1977

Smith & Edwards v. The Golden Spike Little League, Dee Bloxham, David Anderson, Pete Montalvo, Gloria Boren, And Tom Larsen : Appellant's Brief

Utah Supreme Court

George B. Handy; Attorneys for RespondentsDavid L. Gladwell; Attorneys for Appellant

IN THE SUPREME COURT FOR THE

STATE OF UTAH

SMITH & EDWARDS, *

Plaintiff and Appellant, *

v. *

Case No.

THE GOLDEN SPIKE LITTLE LEAGUE, *
DEE BLOXHAM, DAVE ANDERSON, 14803
PETE MONTALVO, GLORIA BOREN, *
TOM LARSEN, PETE FOREMASTER,
MIKE LESHKO, ROBERT DOWNARD, *
RON WILLIS, LON ESKELSON,
RANDY DEEM and STAN SEMS, *

Defendants and Respondents. *

BRIEF OF APPELANT

STATEMENT OF THE NATURE OF THE CASE

This is a collection action brought by appellant against respondents for a large unpaid debt incurred by respondents who purchased baseball uniforms, balls, bats and other baseball equipment from appellant in connection with the operation of a summer baseball recreation program.

DISPOSITION IN LOWER COURT

The District Court Judge, The Honorable John F. Wahlquist, found respondent, Golden Spike Little League liable for the debt incurred, but found no cause of action against all other

respondents and dismissed appellants claim against them, based upon its finding that such other defendants were acting as agents within the scope of their authority of Little League Baseball, Inc.

RELIEF SOUGHT ON APPEAL

The appellant seeks reversal of the dismissal and further asks this court to instruct the lower court to find in favor of appellant and against all respondents in conformity with those findings by said lower court which are consistent with the facts testified to below.

STATEMENT OF FACTS

Early in the Spring of 1974, the Golden Spike Little League, hereinafter referred to as "Little", was organized for the purpose of providing organized baseball activities for youngsters living in several small communities located just north of Ogden, Utah. Exhibit 10-P. The association was subsequently chartered by the Little League Baseball, Inc., hereinafter referred to as "Inc." R. 177, which conferred upon "Little" the right to use the name "Little League" in connection with its activities. R.267. The charter also conferred upon "Little" the right to wear Little League approved emblems and patches, and provided access to standards, guidebooks, and insurance for the participants. R. 268 332.

During one of the initial meetings of the organizers of "Little", the need for baseball equipment and uniforms was discussed. R. 142 - 143. Respondent, Dave Anderson, then Vice President of "Little" and director of "Little's" senior League

volunteered to contact various dealers in baseball equipment and uniforms, to determine at what price the needed equipment could be purchased. R. 143. Thereafter, respondent Anderson made contacts with representatives of appellant Smith and Edwards Co., then a dealer in baseball equipment, and found that appellant would give "Little" the best discount on baseball equipment of all dealers contacted. R. 143. The President of appellant, Albert Smith, in fact testified that the price he would offer, due to the beneficial nature of "Little's" activities, would be near cost. R. 239.

Accordingly, during the course of the 1974 baseball season, approximately $4,000 (R. 149) worth of baseball equipment and uniforms was delivered to officers, members and coaches of "Little" by Appellant, and was used by "Little" participants during their league play. R. 312. The fact that "Little" received the merchandise was stipulated to by the parties before trial. R. 139, 140. Further testimony revealed that "Little" never denied liability to Appellant for the equipment purchased. R. 194, 230. Testimony also clearly revealed that up to the date of the trial, Appellant had received only $149.00 as payment toward the debt. Exhibit 19-P, R. 238.

ARGUMENT

POINT I.

The lower court's finding of fact that respondents were purchasing merchandise from appellant as agent's of Little League Baseball, Inc. was clearly erroneous and not supported

by the evidence.

At the outset, appellant acknowledges that the trial court has been long recognized as a forum where justice and equity may be administered with a view toward finality, and that when judgment is pronounced and findings made with respect to matters of fact adduced at trial through witnesses whose manners, credibility, and demeanor the trial judge, sitting as trier-of-fact, has exclusive view of, the reviewing court will exercise great restraint before that same evidence is reviewed again from the bare record.

Nevertheless, there are occasions when the trial court, sitting as trier-of-fact, enters findings of "fact" without making a sound survey of or according the proper effect to all of the cogent facts. In such cases, those findings must receive superior judicial inspection because they were obviously made with improper, unjudicious or illegal motives, however worthy.

So it is with this case. The conclusion of the trial of this matter, the lower court, acting as trier-of-fact, found that respondents were not liable because they were acting as agent's of the Little League Baseball, Inc. (sometimes referred to erroneously in the transcript as the National Little League.). R. 378, R. 97, Finding of Fact #14. Such a finding is wholly unsupportable by the evidence and is clearly erroneous. In preparing this brief, appellant, through its attorney, has searched every word of the transcript and recorded separately every page

of said transcript wherein evidence concerning Little League Baseball, Inc., hereafter "Inc.", was adduced. R. 164, 176, 177, 212, 219, 220, 221, 222, 234, 235, 236, 237, 265, 267-270, 273 - 276, 333, 361. Many of the references to "Inc." contained within the transcript are not material to the issue of agency, and appear for the express purpose of establishing that respondent, Golden Spike Little League, hereinafter "Little," was "chartered" by "Inc." Those few references in the transcript dealing with "Inc." and concepts of agency or liability clearly establish that no agency relationship existed between respondents and "Inc."

Examples (our emphasis added by underlineation):

A. Examination of respondent Randy Deem at page 92 of transcript (R.220):

"Q. Did you in behalf of Golden Spike Little League ever look to the National Little League Incorporated or whatever it is, for payment of this obligation to Smith and Edwards?

A. .....had nothing to do with the national people as far as paying the bills. "

B. Examination of respondent Dee Bloxham at page 108 of transcript (R. 236):

"Q. .....wasn't it your understanding that you were purchasing this equipment from Smith and Edwards for the National Little League and were expecting them to pay for it?

A. No."

C. Examination of Wesley Hariu, District Administrator for The

Northern part of Utah for "Inc." at page 140 of transcript (R. 268):

"Q. The question, Sir, was, do these charters to the Golden Spike Little League bestow any agency upon the Golden Spike Little League or its members and officers to purchase equipment to be used by the Little League on behalf of or bind the parent corporation Little League Baseball, Inc.?

A. No. This would be entirely up to the League themselves."

and Mr. Harju again at page 142 of transcript (R. 270):

"Q. .....Then did you convey to Golden Spike Little League on behalf of Little League Baseball, Inc., the National Corporation, any authorization to purchase any equipment on behalf of the National Organization.

A. No authorization was given."

From the foregoing examples, the testimony clearly establishes that "Little" and other respondents were not agent's of "INC." and had no authority from them to purchase uniforms, balls, bats and the like.

The record further reveals that the sole relationship between the respondents and "Inc." arose out of a charter issued by "Inc." to "Little", which enabled "Little" to utilize and play baseball under the name of "Little League", and to use or wear its emblem, insignias, patches and other sanctioned paraphenalia, and to have rule books, suggested by-laws and other similar material made available to them. Exhibits 15D and 16D, R. 267 - 268, R. 270 - 271.

Does this mean that membership in the Utah Bar Association, evidenced by charter or certificate, confers upon the member the right to purchase office furniture, stationary, and other property used in connection with the practice of law and then look to the Bar for payment? Nonsense! So it is with trial court's finding of agency.

The erroneous nature of the trial court's ruling regarding agency is further magnified by the testimony regarding the negotiations between appellant and respondents which led to the purchase "agreement." R. 238 - 240, 242 - 243, 346. The record in this respect is absolutely void of any mention of or reference to "Inc."

Moreover, respondents almost without exception, in obviously selfserving testimony, consistently pointed the finger of liability to "Little", proclaiming in one accord that in purchasing merchandise from appellant, they were acting for and in behalf of "Little." R. 157, 194, 212, 230. (See also excerpts from transcript, supra.)

Never - no not once - does the record reveal that any of the respondents ever thought that they were acting in behalf of "Inc." regarding merchandise purchases.

Based upon all the evidence, it is clear that insufficient evidence was adduced in the lower court upon which any reasonable man could find that the respondents were acting as agents of "Inc." in their purchase of equipment from appellant. There-

fore, appellant respectfully requests that this court reverse the finding of the trial court in this regard.

POINT II

The lower court's ruling that appellant knew that respondents were organizing under authority and direction of Little League Baseball, Inc. is clearly erroneous and not supported by the evidence.

At conclusion of the trial, the lower court also found that appellant knew that "Little" was organizing under the authority and direction of "Inc." R. 377, R. 97, Finding of Fact #10. There is absolutely no evidence to support such a finding. (See argument in Point I, supra, regarding negotiations between appellant and respondents leading to purchase agreement).

Hence, even if this court were to find, upon a review of the record, that an agency relationship existed between respondent and "Inc.", a finding the appellant is persuaded is wholly untenable, the court must nevertheless find the respondent liable on authority of Conner -vs- Steel, Inc. 470 P2D (Colo. Ct. App. 1970). The court in that case, espousing the "undisclosed principal" doctrine, found that the defendants admitted, as respondents did in this case, that there was an obligation owed to the plaintiff, but that it was an obligation of a corporation they allegedly represented, and not of the individual defendants. The court found that defendants had failed to disclose to plaintiff that it was acting for and in behalf of an undisclosed principal. In finding said defendant liable, the court concluded that an agent who purchases goods for his principal without disclosing

his agency becomes personally liable for the goods.

Id. at.

Hence, appellant respectfully requests that this court reverse the finding of the lower court that appellant knew "Little" was organized under authority and direction of "Inc., where absolutely no evidence in that regard was adduced, and enter its own ruling that respondents are liable for debts incurred by it in connection with the purchase of appellant's merchandise.

POINT III

The trial court's finding of abency between respondent's and Little League Baseball, Inc. should have been limited by the trial court to matters regarding use of name, rules, emblems, etc.

In Noujoks -vs- Shurmann, 9 Utah 2d 84, 337 P2d 967 (Utah 1959), the court found agency existing between plaintiff and defendant, but found said agency to have been established for a limited purpose. It stated at page 969:

"It is appreciated that the fact that one may be an agent for one purpose does not make him an agent for every purpose, but the agency is limited to acts within the scope of authorized duties."

Hence, even if the court were to find that agency existed between respondents and "Inc." for purposes of using its name appropriately and utilizing its emblems and patches according to "Inc." standards, the evidence overwhelmingly compels the

conclusion that agency ends there and does not extend to respondents purchase and use of appellant's merchandise. This view is amply and without conflict wholly supported by testimony adduced at trial to the effect that at no time was "Little" or its officers authorized to purchase equipment on behalf of "Inc." R. 270, nor did "Little" or its officers ever consider that they had such authority. R. 236. Moreover, although some of the respondents testified in a general way that they were operating under the general direction of "Inc.", R. 222, 234-237, it is amply clear from the record that this was limited to equipment, patches, insurance, name use, and similar items. R. 332.

Therefore, appellant respectfully requests this court to limit the lower court's finding of agency pursuant to law, and find respondents liable in connection with its purchase of appellant's merchandise.

POINT IV

The trial court erred in failing to rule that respondents are liable for their debt to appellant.

Based upon the foregoing appellant respectfully urges this court to reverse the lower court's finding with respect to agency, or limit said finding to matters dealing solely with use of name, rules, emblems, etc.

In addition, appellant would urge this court to enter an order in favor of appellant and against respondents, and thereby find respondents liable for its indebtedness occurred to appellant

in the purchase of baseball uniforms and equipment.

The lower court correctly ruled that "Little" was liable for the debt to appellant. This finding is strongly supported by the evidence appellant has reviewed herein. It is baffling to appellant how the court could find "Little", an unincorporated association, liable, but not the association's officers and agents who assumed its name and admitted acting in its behalf. R. 157, 194, 212, 230. Such a finding compells the additional conclusion that respondents are also liable for the debt.

Rule 17 (D) of the Utah Rules of Civil Procedure states the following:

"When two or more persons associated in any business either as a joint-stock company, a partnership or other association, not a corporation, transact such business under a common name, whether it comprises the names of such associates or not, they may be sued by such common name; and any judgment obtained against the defendant in such case shall bind the joint property of all the associates in the same manner as if all had been named defendants and had been sued upon their joint liability."

Although the foregoing is arguably a rule of procedure, it codifies and sets forth a long standing substantive rule of law that officer's of unincorporated associations are liable for the debts of said association.

7 C.J.S., Associations, Section 20, p. 54; 6 Am. Jur. 2d, Associations and Clubs, Section 46, p. 477.

CONCLUSION

The record clearly reveals that insufficient evidence was adduced at trial in the court below upon which the lower court could base its findings of agency and knowledge with respect to respondent's baseball equipment purchases and cognizance that "Little" was formed under the direction and supervision of "Inc." To the contrary, the evidence clearly establishes that respondents were at no time acting as agents of "Inc.", or if so acting, were acting as agents in a very limited manner. Furthermore, the evidence is absolutely void of any testimony that would tend to show that appellant knew that "Little" was organized under the direction or supervision of "Inc."

Therefore, appellant respectfully moves this court to reverse the lower court's finding of no liability and in particular its findings with respect to agency and knowledge, and based upon the testimony adduced at trial, and the lower court's correct finding regarding "Little's" liability, instruct the lower court to find respondents liable on the debt and to enter judgment accordingly.

Respectfully submitted this 27th day of July, 1977.

DAVID L. GLADWELL
Attorney for Appellant

CERTIFICATE OF MAILING

A copy of the foregoing Brief of Appellant was posted in the U.S. Mail, postage prepaid and addressed to the attorneys for the Respondent's this _____ day of July, 1977.

_____
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