

1977

Smith & Edwards v. The Golden Spike Little League, Dee Bloxham, Dave Anderson, Pete Halvo, Gloria Boren, Tom Larse, Pete Foremaster, Mike Leshko, Robert Downard, Ron Willis, Lon Eskelson, Randy Deem And Stan Sems : Brief of Respondents Tom Larsen And Robert Downard

Utah Supreme Court

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IN THE SUPREME COURT FOR THE
STATE OF UTAH

SMITH & EDWARDS,

Plaintiff and
Appellant,

vs.

Case No. 14803

THE GOLDEN SPIKE LITTLE LEAGUE,
DEE BLOKHAM, DAVE ANDERSON,
PETE MONTALVO, GLORIA BOREN,
TOM LARSEN, PETE FOREMASTER,
MIKE LESHKO, ROBERT DOWNARD,
RON WILLIS, LON ESPILSON,
RANDY DEEM AND STAN SEMS,

Defendants and
Respondents.

FILED

SEP 30 1977

Clerk Supreme Court, Utah

BRIEF OF RESPONDENTS TOM LARSEN AND ROBERT DOWNARD

Appeal from the Decision of the Second Judicial District
Court for Weber County, Utah, The Honorable John F.
Wahlquist, Judge.

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IN THE SUPREME COURT FOR THE
STATE OF UTAH

SMITH & EDWARDS,	:	
	:	
Plaintiff and	:	
Appellant,	:	
	:	
vs.	:	Case No. 14803
	:	
THE GOLDEN SPIKE LITTLE LEAGUE,	:	
DEE BLOXHAM, DAVE ANDERSON,	:	
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 RESPONDENTS TOM LARSEN AND ROBERT DOWNARD

Appeal from the Decision of the Second Judicial District
Court for Weber County, Utah, The Honorable John F.
Wahlquist, Judge.

STATEMENT OF THE NATURE OF THE CASE

This is an action seeking to collect for baseball uniforms and equipment furnished by the plaintiff-appellant to the Golden Spike Little League for the operation of a summer baseball recreational program.

DISPOSITION IN LOWER COURT

The lower court with Honorable John F. Wahlquist presiding dismissed the appellant's Complaint against the respondents Tom Larsen and Robert Downard at the end of the plaintiff's case and thereafter heard testimony from the remaining defendants and found no cause of action against the remaining defendants with the exception of Golden Spike Little League.

RELIEF SOUGHT ON APPEAL

The respondents seek to have this court affirm the lower court's dismissal of the plaintiff's claim against the respondents Tom Larsen and Robert Downard. Prior to April of 1974, Tom Larsen, the Mayor of Harrisville City, and other interested citizens banded together to form a little league baseball association. Tom Larsen became the president of that organization and served as its president until April

of 1974. At which time he resigned as the president and discontinued his association with the organization except as a concerned citizen. (R. p. 179 L 28) Tom Larsen did not serve on the Board of Directors and was not an officer or director at the time negotiations were entered into with the appellant for the purchase of baseball equipment. (R. p. 211) After Tom Larsen resigned Randy Deem became president of the little league and retained that position until July of 1974, when Dee Bloxham became president. (R. p. 179 L 28 - p. 180 L 4) On approximately May 8, 1974, after Randy Deem had become president, a meeting of the Little League Association was held at which time authorization was given for the purchase of equipment. (R. p. 187 L 27 - p. 188 L 2) Thereafter various items of equipment were obtained from the appellant for use in the little league.

The respondent Dave Anderson contacted the appellant and made arrangements with a Brad Briggs to purchase equipment for the little league. The arrangement provided that the coaches and managers of the little league could pick up the equipment as they needed it. (R. p. 151 and 152) The account set up by the appellant was in the name of Golden Spike Little c/o Dave Anderson. (R. p. 154) The arrangement set up with the appellant by Dave Anderson was to the effect that the coaches and managers could pick up the equipment and sign as an evidence

that they had received the equipment. (R. p. 156 L 28-p. 161 L 16) The managers and coaches were not accepting personal responsibility for the payment of the money when they signed to pick up the equipment. (R. p. 161 L 24-p. 162 L 3; p. 162 L 17-21) The owner of the appellant company, Albert M. [redacted] testified that the managers and coaches did not accept the liability for the merchandise when they signed the slip but were merely acknowledging receipt of the equipment which was billed to the Golden Spike Little League c/o Dave Anderson. (R. p. 244 L 3-28) The appellant was looking to the Golden Spike Little League and to the community to pay the bill incurred for the equipment. (R. p. 257 L 13-23)

The respondent Robert Downard was a manager and coach for the senior league of the Golden Spike Little League Association. The manager and coach had substantially the same duties which consisted mainly of coaching a team. (R. p. 147) Robert Downard was never involved in any negotiations to purchase equipment from the appellant. (R. p. 196 L 1-6 p. 161 L 9-11) In fact, Robert Downard as a coach would often pick up equipment for other coaches as a favor to them. (R. p. 196 L 13-29) Robert Downard was not a director of the Association. (R. p. 228 L 25-p. 229 L 4) At the end of the appellant's evidence, Richard Campbell, the attorney for the appellant in the lower court, conceded that Richard Downard

an officer or director of the Golden Spike Little League.

(R. p. 280 L 29-30)

After the appellant had rested, the respondents Tom Larsen and Robert Downard moved the court for dismissal at which time the court dismissed the action against both Tom Larsen and Robert Downard on the basis that they were not officers or directors of the Golden Spike Little League. Thereafter the court ordered said respondents to withdraw from the courtroom. (R. p. 281 L 18-20)

ARGUMENT

POINT I

TOM LARSEN WAS NOT AN OFFICER, DIRECTOR, OR AGENT OF THE GOLDEN SPIKE LITTLE LEAGUE AND DID NOT ASSUME ANY PERSONAL LIABILITY FOR THE DEBTS INCURRED BY SAID ORGANIZATION.

As set forth in the statement of facts, Tom Larsen was the president of the Golden Spike Little League up until April of 1974, at which time he resigned. The business arrangement with the appellant was not entered into until after Tom Larsen had resigned as president. Thereafter Tom Larsen did not hold a position as an officer or director and did not pick up or sign for any of the equipment furnished by the appellant to the little league association. The appellant did not present any testimony at the trial which in any way alleged or

established that Tom Larsen had assumed any responsibility in connection with the debt owed to the appellant. At the time of the appellant's presentation of evidence, a motion was made to dismiss Tom Larsen from the lawsuit and Judge Wahlquist granted that motion on the basis that Tom Larsen was not an officer or director of said association.

It is the position of the respondent, Tom Larsen, that he cannot be held liable for the indebtedness owing to the appellant unless some evidence is produced to show that he either personally assumed said indebtedness or is liable for said indebtedness because of his position as an officer or director of the Golden Spike Little League Association. This was not done and consequently it is the respondent's position that this court should affirm the lower court's decision to dismiss him from the lawsuit.

The appellant in his brief does not claim that the court committed error in ruling as a matter of fact that Tom Larsen was not an officer or director of the Golden Spike Little League. The appellant's brief is directed entirely to the theory that some of the defendant's were agents of the little league association rather than of the national association. The appellant in point IV of his argument cites authority to the effect that officers of unincorporated associations are liable for the debts of said association. Even if the court found that allegation of law to be correct, it would have no

effect upon the responsibility of Tom Larsen in this lawsuit.

POINT II

ROBERT DOWNARD WAS NOT AN OFFICER OR DIRECTOR OF THE GOLDEN SPIKE LITTLE LEAGUE AND DID NOT ASSUME ANY PERSONAL LIABILITY FOR THE INDEBTEDNESS OWED TO SAID ORGANIZATION.

The facts presented before the lower court clearly establishes that Robert Downard acted as a manager and as a coach of the Golden Spike Little League. He did not at any time hold a position as a director of the organization or as an officer of the organization. As a manager and coach, his only responsibilities were to coach and direct one of the little league teams involved in said association. Robert Downard did on occasion pick up equipment from the appellant's place of business and sign indicating that he had received said equipment. As indicated in the statement of facts, on occasion Robert Downard would pick up equipment for other coaches as a favor to them. The facts are undisputed that Robert Downard did not at any time assume any liability for the purchase of the equipment and that his signature on the receipt did not constitute an agreement to pay for the equipment. Albert M. Smith, the owner of the appellant business, stated specifically that a signature on the receipt by a person picking up the equipment was only for the purpose of acknowledging that the

items had been received. (R. p. 244) Mr. Smith also acknowledged that the appellant company was looking to the Golden Spike Little League Association and to the community for the payment of the indebtedness rather than to the coaches and managers. (R. p. 257)

At the end of the appellant's evidence in the lower court, the respondent, Robert Downard, moved for dismissal on the basis that he was not an officer or director of the little league association. At that time, counsel for the appellant, Richard Campbell, conceded that he was not able to present any testimony to establish that Mr. Downard was an officer. Counsel for the appellant at that time did not contend before the lower court that Robert Downard was liable because of any agency relationship that he had maintained with the Golden Spike Little League Association. Since the appellant did not raise that issue at the lower trial, it is the position of the respondent that it cannot do so for the first time on appeal. Indeed, it is not even clear whether or not the appellant is attempting to allege that the relationship of an agent would establish liability on the part of Robert Downard or other individuals similarly situated. The authorities cited by the appellant in his brief concerns the responsibility of an officer of an unincorporated association and the liability that he incurs for the debts of said association. The case of Conner vs. Steel, Inc., 470 P2d 71 (Colo. Ct. App 1970)

discusses the liability of an agent who purchases goods without disclosing his principal. Such a situation did not exist in the case before this court and no evidence was produced by the appellant at the lower court hearing to indicated that Robert Downard at any time purchased goods as an agent without disclosing his principal.

It is the position of Robert Downard that no evidence was produced at the lower trial which would in any way establish liability on his part to the appellant.

POINT III

THE APPELLANT HAS NOT APPEALED FROM THE DECISION OF JUDGE WAHLQUIST IN DISMISSING THE APPELLANT'S COMPLAINT AS AGAINST THE RESPONDENTS, TOM LARSEN AND ROBERT DOWNARD.

The appellant in his brief does not at any time attack the factual finding of Judge Wahlquist that Tom Larsen and Robert Downard were not officers or directors of the Golden Spike Little League Association. Therefore it can only be concluded that the appellant accepts that finding of fact. Point IV of the appellant's brief requests the 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." Said section does not request the court to find that Tom Larsen or Robert Downard were agents of the Golden Spike Little League or had incurred any liability to the

appellant by reason of their position as agent of said league. Consequently, it is the position of the respondents that the appellant has failed to appeal the decision dismissing said respondents from the lawsuit.

POINT IV

THIS COURT DOES NOT HAVE THE AUTHORITY TO DIRECT A VERDICT AGAINST THE RESPONDENTS, TOM LARSEN AND ROBERT DOWNARD.

Judge Wahlquist, of the lower court, after ruling on the respondent's motion for dismissal, specifically ordered respondents to withdraw from the case. Consequently the respondents, Tom Larsen and Robert Downard, were only able to participate in the trial and to cross examine the witnesses produced by the appellant. All of the testimony presented by the defendants who remained in the lawsuit was presented after the respondents were ordered to leave the court; and consequently, the respondents were prevented from cross examining said defendants or any witnesses produced by them and from presenting additional testimony of their own. Consequently, Tom Larsen and Robert Downard were not present and did not participate in any of the trial wherein testimony was given by the other defendants which constitutes all of the records from page 281 through page 381. The respondents respectfully contend that this court may refer the matter back to the lower court to be tried but may not grant judgments against the

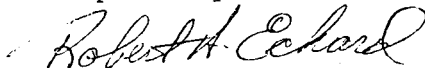
the respondents, Tom Larsen and Robert Downard. It should be noted that the appellant does not request that the matter be referred to the lower court for a new trial. Consequently, the appellant has not requested any relief from this court which it has the authority to grant as to the respondents, Tom Larsen and Robert Downard; and consequently, the lower court's dismissal of said individuals should be affirmed.

SUMMARY

No evidence was presented at the time of trial which indicated that Tom Larsen or Robert Downard were officers, directors, or agents of the Golden Spike Little League or had assumed any personal responsibilities for the indebtedness incurred by said association. In addition, the appellant has not properly perfected an Appeal from Judge Wahlquist's ruling dismissing said individuals from the lawsuit. Consequently, the respondents respectfully request the court to affirm the lower court's dismissal of them from this lawsuit.

DATED this 30th day of September, 1977.

Respectfully submitted,



Robert A. Echard
Attorney for Respondents-
Tom Larsen and Robert Downard