

1978

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 ESKELSON,	:	
RANDY DEEM AND STAN SEMS,	:	
Defendants and	:	
Respondents.	:	

BRIEF OF RESPONDENTS TOM LARSEN AND ROBERT DOWNARD

Petition for Re-Hearing

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PRIOR DISPOSITION IN SUPREME COURT

On March 24, 1978, the Court entered its decision in the above captioned matter. The Court in that decision reversed the judgement and remanded the case for further proceedings as the parties deemed appropriate.

RELIEF SOUGHT ON PETITION FOR RE-HEARING

The respondents seek to have this Court consider and rule on issues which were originally listed in the brief of the respondents on appeal. It is the position of the respondents that the issues set forth in the respondents' brief were not considered by the Court in its previous decision on this case.

ARGUMENT

POINT I

THE SUPREME COURT DID NOT RULE UPON THE ISSUES RAISED BY THE RESPONDENTS TOM LARSEN AND ROBERT DOWNARD IN THEIR BRIEF ON APPEAL.

The respondents herein in Point III of their Brief on Appeal raised the issue that the appellants had not properly appealed from the decision against said respondents. The position of the respondents was set out in detail in the brief and the decision issued by the Supreme Court on the 24th day of March did not address itself to that problem.

As previously indicated in the Statement of Facts of said

brief, the District Court upon motion dismissed the action against Tom Larsen and Robert Downard at the completion of the appellant's testimony and ordered said respondents to withdraw from the courtroom (R. p. 281 L 18-20). Consequently, said respondents did not present any testimony in their defense at the lower trial. The appeal signed by the appellant was limited to asking this court to reverse the District Court's Findings of Law concerning the liability of an agent. The appellant did not appeal from the decision that Tom Larsen and Robert Downard were not agents, officers or directors of the Golden Spike Little League. As a matter of fact, the appellant in the lower court conceded that the respondents were not officers or directors of the Golden Spike Little League, and that he had no additional evidence to produce that would establish any agency relationship on their part (R. p. 280 L 29-30).

The appellant in his brief did not allege that the court had committed any error in its Findings of Fact. The appeal was strictly from the court's determination and application of the law. Consequently, the appellant is bound by the court's determination that Tom Larsen and Robert Downard were not officers, directors or agents of the Golden Spike Little League. The decision by the court only establishes liability on the part of an agent.

POINT II

THE DECISION ISSUED BY THE SUPREME COURT ON MARCH 24,

1978, WHEN APPLYING THE FACTS INVOLVED IN THIS CASE, DOES NOT

IMPOSE LIABILITY UPON THE RESPONDENTS.

This Court in its March 24, 1978, decision held that when a individual is acting as an agent for a principle and, in fact, there is no such principle, he renders himself personally liable upon the contract. As indicated in the previous point of argument, the Findings of Fact issued by Judge Wahlquist were to the effect that neither Tom Larsen nor Robert Downard were agents of the Golden Spike Little League. Consequently, this Supreme Court ruling should not create any liability on their part.

POINT III

THE COURT ACTED IN EXCESS OF ITS AUTHORITY IN GRANTING A JUDGEMENT AGAINST THE RESPONDENTS.

The decision of this Court appears to have created a judgement against all of the defendants regardless of whether or not they were allowed to put testimony in evidence of their defense. The respondents respectfully contend that this Court does not have the authority to grant a judgement against the respondents when they have not had an opportunity to present testimony in their defense.

POINT IV

THE SUPREME COURT'S DECISION IS VAGUE AND UNCLEAR.

This Court has reversed the judgement and remanded the matter for proceedings deemed appropriate by the parties.

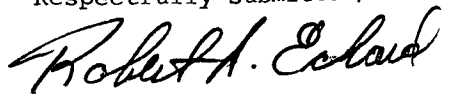
The decision of the Court is not clear as to whether or not the judgement entered is against all defendants or only those who were not dismissed out and therefore presented a defense before the Court. Nor is the decision clear as to what proceedings the District Court should take as to the parties that were dismissed out of the lawsuit at the end of the plaintiff's presentation of evidence.

CONCLUSION

The respondents contend that this Court did not consider any of the four issues raised by their appeal, and that its decision is vague enough that it is difficult to determine what results the Court intended to accomplish.

DATED this 12th day of April, 1978.

Respectfully submitted,



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

MAILING CERTIFICATE

I hereby certify that I mailed a true and correct copy of the foregoing Brief of Respondents Tom Larsen and Robert Downard to David I. Gladwell, Attorney for Appellant,

2910 Washington Boulevard, Suite 305, Ogden, Utah 84401,
postage prepaid, this 12th day of April, 1978.

Charlotte Argyle
CHARLOTTE ARGYLE, SECRETARY

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