

1977

Gillham Advertising Agency I Inc. v. Robert K. Ipson : Brief of Defendant-Appellant

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

GILLHAM ADVERTISING AGENCY, INC.,:

Plaintiff-Respondent, :

vs. :

Case No. 14843

ROBERT K. IPSON, :

Defendant-Appellant. :

BRIEF OF DEFENDANT-APPELLANT

Appeal from Judgment of the
Third District Court for
Salt Lake County,
Honorable Marcellus K. Snow

GEORGE H. SPECIALE
Twelve Exchange Place
Salt Lake City, Utah 84111

Attorney for Defendant-Appellant

MILO S. MARSDEN, JR.
1700 University Club Building
Salt Lake City, Utah 84111

Attorney for Plaintiff-Respondent

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1700 University Club Building
Salt Lake City, Utah 84111

Attorney for Plaintiff-Respondent

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vs. : Case No. 14843

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Defendant-Appellant. :

BRIEF OF DEFENDANT-APPELLANT

STATEMENT OF THE NATURE OF THE CASE

This is a creditor's action to recover from an individual money owed pursuant to an agreement in the nature of a promissory note executed by the individual as an officer of a corporation.

DISPOSITION IN LOWER COURT

The creditor was granted Summary Judgment against the individual.

RELIEF SOUGHT ON APPEAL

Appellant seeks reversal of the Summary Judgment against him.

STATEMENT OF FACTS

Defendant-Appellant, Robert K. Ipson (hereinafter

"Ipson") executed, as President of Bonneville Raceways (R. 6), an agreement (R. 4 through R. 6) in favor of "Gillham Advertising, Inc.", as it appears in the agreement (R. 4 and R. 5, passim), which is apparently the same entity as Plaintiff-Respondent Gillham Advertising Agency, Inc. (R. 2) (hereinafter "Gillham").

The agreement consists, generally, of an acknowledgement "that in behalf of Bonneville Raceways, Gillham Advertising, Inc." advanced certain monies (emphasis added) (R. 4), coupled with the promise of Bonneville Raceways to repay the amounts advanced, together with interest, in a specified manner. (R. 5).

The agreement was executed by "Bonneville Raceways By Robert K. Ipson Pres.". (R. 6).

The debt not having been paid according to the terms of the agreement, Gillham brought suit naming "ROBERT K. IPSON, d/b/a BONNEVILLE RACEWAYS", Defendant.

Ipson answered the Complaint, alleging, inter alia, "that BONNEVILLE RACEWAYS is a corporation, and any amounts due and owing to plaintiff are corporate debts of BONNEVILLE RACEWAYS." (R. 9, THIRD DEFENSE).

Gillham then deposed Ipson (R. 19, Supplemental Record), and subsequently made its Motion of Summary Judgment (R. 13 and R. 14) which was granted. (R. 20 Minute Entry,

and R. 25) -

Whereupon this appeal was taken.

ARGUMENT

Point I

SUMMARY JUDGMENT WAS IMPROPERLY AWARDED
SINCE THE DOCUMENTS RELIED UPON
IN SUPPORT OF THE MOTION CLEARLY SHOW
GENUINE ISSUES OF MATERIAL FACTS.

Rule 56(c) U.R.C.P. provides, in part, that:

"The [Summary] judgment sought shall be rendered forthwith if the pleadings [and] depositions...on file...show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

Gillham relied exclusively upon the pleadings on file and the deposition of Ipson in making its Motion for Summary Judgment. (R. 13 and R. 14, Paragraph 3.(a) and (b).)

The issue in this case is specifically whether judgment was properly rendered against the individual defendant, Robert K. Ipson, over his claim that he was acting as a corporate officer.

The Complaint is simply premised upon the allegation that Robert K. Ipson owes Gillham money (R. 2); the answer denies all allegations of the Complaint generally (R. 9, SECOND DEFENSE), but specifically denies that Ipson, personally owes the debt. (R. 9 THIRD DEFENSE).

The pleadings having thus controverted one another, the Court, in rendering its decision, was obligated to look to the only other document of record, the deposition of Ipson, in determining whether there existed a material issue of fact.

This Court has said that "it only takes one sworn statement under oath to dispute the averments on the other side of the controversy and create an issue of fact." Holbrook Co. v. Adams, 524 P.2d 191, 193 (1975).

Prior to being deposed, Ipson was duly sworn. (R. 19, Deposition, p.29).

Under oath, Ipson stated that he intended to sign the agreement (Deposition, Exhibit A, also R. 4 through R. 6) "strictly as a corporate liability." (Deposition, p.16, line 4). He explained that Bonneville Raceway is a Nevada corporation which owns MSJ & Associates, a Utah corporation, which "operates the raceway." (Deposition, p.18, lines 4-7).

Gillham introduced no affidavit or other sworn statement in opposition to the sworn statement of Ipson that the agreement evidenced a corporate obligation, and accordingly judgment (and the action) does not properly lie against the individual, though it may properly lie against the corporation.

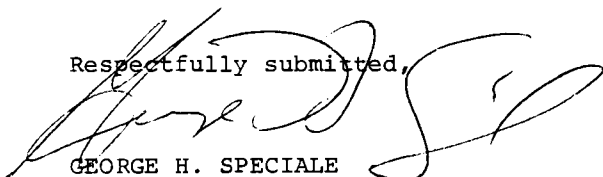
CONCLUSION

Every word uttered under oath in the deposition of

the Appellant points to the fact that the obligation was a corporate obligation; every document set forth as an exhibit by the Respondent points to the fact that the obligation was a corporate obligation; nothing in the record indicates that the obligation is other than a corporate obligation.

There being nothing in the record to indicate that the obligation sued upon was the obligation of the individual Robert K. Ipson, the Summary Judgment should be reversed.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to George H. Speciale, is written over the typed name and address.

GEORGE H. SPECIALE
Attorney for Defendant-Appellant
Twelve Exchange Place
Salt Lake City, Utah 84111