

1985

Jerry Aarts v. Willow Creek Country Club, a Utah corporation : Brief of Appellant

Utah Supreme Court

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1985 20752

IN THE SUPREME COURT OF THE STATE OF UTAH

JERRY AARTS,

Respondent,

vs.

WILLOW CREEK COUNTRY CLUB,
a Utah corporation,

Appellant.

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Case No. 20752

APPEAL OF A JUDGMENT FROM THE
DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
SALT LAKE COUNTY, STATE OF UTAH

HONORABLE DAVID B. DEE, JUDGE

BRIEF OF APPELLANT

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Salt Lake City, Utah 84111

FILED

SEP 26 1985

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

JERRY AARTS,	:	
	:	
Respondent,	:	
	:	
vs.	:	Case No. 20752
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a Utah corporation,	:	
	:	
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NATURE OF THE CASE

This is an action commenced by the respondent for breach of an employment agreement, whereby respondent alleged that appellant failed to pay respondent one-third (1/3) of respondent's yearly salary upon his termination pursuant to paragraph 1(f) of the employment agreement. Appellant answered and counterclaimed, alleging that cause for dismissal was sufficient under the terms of the agreement because respondent's actions which led to his dismissal were unethical and constituted an act moral turpitude.

DISPOSITION IN LOWER COURT

This is an appeal by appellant from the judgment of the trial court in favor of the respondent. The case was heard by the Honorable David B. Dee, Judge of the Third Judicial District Court of Salt Lake County, State of Utah.

STATEMENT OF ISSUES PRESENTED ON APPEAL

What is the standard of conduct which constitutes unethical conduct and moral turpitude, and whether the trial court erred in not granting appellant's motion for a new trial.

Appellant seeks a determination reversing the decision of the lower court, finding that respondent was discharged for cause and that the acts of the respondent which had led to his dismissal were unethical and constituted an act of moral turpitude, or in the alternative that the trial court's Findings of Fact and Conclusions of Law were erroneous and that appellant is entitled to a new trial.

STATEMENT OF FACTS

On September 5, 1980, appellant and respondent entered into an employment agreement. (R. 68) Under the terms of the employment agreement, the respondent was to act as club manager and perform certain designated services. Paragraph 1(f) of the employment agreement sets forth the conditions by which the appellant could terminate respondent's employment:

If, in the judgment of the board of directors of the employer [Willow Creek Country Club], the manager [plaintiff] fails to perform any of his obligations or duties hereunder, and the board of directors determines that the conduct of the manager is unethical, involves gross negligence or a breach of moral turpitude, this contract shall terminate at the option of the employer upon thirty (30) days notice to the manager. In the event, however, the employer shall wish to terminate this contract without sufficient cause or reason, employer shall pay manager one-third (1/3) of one year's salary as liquidated damages (emphasis added).

On January 23, 1983, pursuant to the recommendations of appellant's board of director's, respondent's employment was terminated. (R. 68) Appellant, in terminating respondent's employment, claimed that certain actions by the respondent were unethical and involved acts of moral turpitude. These acts were:

1. Respondent issued salary checks to appellant's employees from which checks respondent did not deduct federal and state taxes and FICA;
2. Respondent issued salary checks to individuals for services rendered who were not employed by appellant;

3. Respondent issued salary checks to one of appellant's employees [Frank Rotunno], which check allegedly compensated that employee for living expenses and travel expenses without consideration to the appellant;

4. Respondent issued bonus checks to two (2) employees and required those employees to pay him some amount from those bonus checks as a cash kick-back;

5. Respondent received services at his personal residence from two (2) of appellant's maintenance workers when these employees were on duty for appellant, and for which appellant received no compensation. (R. 13)

Based on each of these allegations, appellant contended that it had sufficient cause to terminate the respondent's employment pursuant to paragraph 1(f) of the employment agreement.

Subsequent to trial, the court ruled that none of respondent's actions were acts which amounted to gross negligence, unethical conduct or acts of moral turpitude. The court found that appellant breached its employment agreement with respondent in that it terminated respondent without cause and failed to pay respondent one-third (1/3) of his annual salary as liquidated damages. (R. 108-109)

The trial court thus determined that the respondent had been damaged in the amount of \$13,800, plus interest at twelve percent (12%) per annum from January 23, 1983 to the date of judgment, and attorney fees and court costs incurred in enforcing

the employment agreement. (R. 111)

The appellant objected to the original judgment rendered by the trial court for the reason that the court failed to make Findings of Fact and Conclusions of Law. Counsel for respondent thereafter submitted prepared Findings of Fact and Conclusions of Law. (R. 98-100)

Appellant objected to Finding of Fact No. 17 for the reason that respondent, in his answer to appellant's counterclaim, admitted that he received funds from a bonus given to Donna Hagblom, an employee of Willow Creek Country Club. At the trial, respondent denied that he received any funds from Donna Hagblom in any amount and stated in direct examination that he received no kickback funds from Donna Hagblom. (R. 268-269) Donna Hagblom testified unequivocally that respondent stated on two occasions that he would give her a bonus if she would return part of it to him in cash and keep quiet about it. (R. 235-236) The appellant also objected to Conclusions of Law Nos. 3, 5, 6 and 7 upon the grounds that the Court should have concluded that the admitted receipt of a kickback from Donna Hagblom on two occasions was a payment to the respondent of an unauthorized bonus which amounted to embezzlement of appellant's funds. (R. 99)

The appellant further objected and argued that the court should have concluded that accepting services from appellant's employees while on duty was a theft of services under §76-6-409(2), Utah Code Annotated. (R. 99)

Appellant objected to Conclusion of Law No. 3 for the reason that the actions of respondent constituted unethical conduct or acts involving moral turpitude. Appellant asserted that the findings of the trial court that appellant was entitled to setoff against the judgment constituted a recognition that respondent received services from appellant's employees without compensating appellant. (R. 99-100) Theft of services over \$100 is a Class A misdemeanor and theft of funds in excess of \$250 is a third degree felony. See §76-6-412, Utah Code Annotated.

The trial court on April 10, 1985, entered an amended judgment entitling respondent to the sum of \$13,800, together with interest at the rate of twelve percent (12%) per annum from the date of judgment, and entitling the respondent to the costs of the action in the amount of \$41.50 and attorney fees in the amount of \$3,500. Further, the trial court in its Order awarded appellant an offset of \$105 against the above judgment for personal services rendered for respondent by employees of appellant while on company time. On May 24, 1985, the trial court entered an order denying appellant's motion for a new trial and rejecting appellant's objection to Findings of Fact and Conclusions of Law. The court ordered that the Findings of Fact and Conclusions of Law were to remain as entered on April 10, 1985. (R. 110-111)

SUMMARY OF ARGUMENT

Respondent's receipt of unauthorized kickbacks and services constituted acts of moral turpitude and unethical conduct

and therefore, under the terms of the employment agreement entered into between appellant and respondent, respondent was properly discharged from his employment. The trial court erred in not granting appellant's motion for a new trial in that the evidence did preponderate to appellant's benefit, showing that respondent did request and did receive unauthorized kickbacks and services from appellant's employees. The trial court found that the appellant was entitled to an offset of \$105 against the judgment amount entered based upon respondent's receipt of services from employees of appellant, while these employees were on duty for appellant. This in itself would constitute theft of services pursuant to §76-6-409(2), Utah Code Annotated, which must be considered as unethical conduct on the part of respondent.

ARGUMENT

POINT I

RECEIPT OF UNAUTHORIZED "KICKBACKS" AND SERVICES BY RESPONDENT CONSTITUTES ACTS OF MORAL TURPITUDE

A. The Receipt of Unauthorized Kickbacks from Employee Donna Hagblom Constitutes Acts of Moral Turpitude.

In her testimony before the court, Donna Hagblom was questioned as to whether she was required to return to the respondent certain portions of two checks written on the account of appellant in the amounts of \$300 and \$419.85 advanced to her as a "bonus". Mrs. Hagblom testified as follows:

Question: How did the [opportunity to receive
the bonus] come about?

Answer: ...I know Mr. Rotunno and Mr. Aarts were downstairs having lunch and they called me over there.

Question: When you say "downstairs having lunch," where was that? At the club?

Answer: At the Willow Creek Country Club in the Willow Room.

Question: Okay. Go on.

Answer: And they called me over and said there was some money in the gratuity fund and they were going to give me a check and I was to give part of it back to Mr. Aarts. (R. 232-233)

Question: Exhibit 6 contains a check for \$300 written to Donna Hagblom. Is that the \$300 that you are --

Answer: Yes it is.

Question: -- describing for the court?

Answer: Yes.

Question: What specifically did they ask you to do with respect to the money?

Answer: To give half of it back to Mr. Aarts.

Question: In cash?

Answer: Yes. Uh huh.

Question: And did you question them at that time?

Answer: No, I didn't.

Question: What did you in fact do when you received the \$300 check?

Answer: I cashed it, and I gave \$150 to Mr. Aarts.

Question: Where did this transaction take

place?

Answer: It was in his office, and I went in and put it on his desk. (R. 233)

The witness Mrs. Hagblom further testified that the respondent and herself had a conversation in the respondent's office where he told her he would give her a check out of the gratuity fund for a certain amount of money if she would give him all but \$100 of it back. At trial, the witness testified as follows:

Question: Mrs. Hagblom, I call your attention to December, 1982. Did you have an opportunity to receive a bonus in December, 1982?

Answer: Yes, I did.

Question: I call your attention to Exhibit 6 again, the face fly leaf you described on that exhibit has an amount of \$450 [\$419.85 after taxes] and the initials of Mr. Aarts. Do you recall a meeting you had with Mr. Aarts concerning this authorization?

Answer: Yes, I do.

Question: Where did that meeting take place?

Answer: In his office.

Question: And who was present?

Answer: Just Mr. Aarts and myself.

Question: And do you remember how that meeting came about?

Answer: Well, he just called me in and told me he was going -- if he gave me a check out of the gratuity fund for this amount of money if I would give him all but a hundred dollars of it back.

Question: Did you question him as to why he wanted you to do that?

Answer: No -- he was my superior. I didn't question him.

Question: Did he suggest to you anything about keeping the matter confidential?

Answer: Yes. He said "Don't say anything to anybody." Of course I said I wouldn't, but I did. (R. 235-236)

Question: [Mr. Haslam] Now, after you received the check, what did you do after that? I'm talking about the \$419.85 check.

Answer: I went down to the bank and cashed it.

Question: And did you return the funds to Mr. Aarts?

Answer: All but \$100 of it.

Question: So you gave Mr. Aarts \$300 of the \$419.85?

Answer: Right.

Question: Now, after that transaction had taken place, did you have an occasion to have a conversation with any other person at Willow Creek Country Club about the transaction?

Answer: Yes, I did. It was about a week or so later and Annie Laurie [Baker, a Willow Creek employee] was coming out of the ladies restroom and she was really upset and was feeling very bad. And I said, "I know how you feel. I don't feel right about it, but please don't say anything about it to anybody." (R. 236-237)

At trial, Annie Laurie Baker testified that she had spoken with the witness Donna Hagblom about the fact that Mrs. Hagblom had received several bonuses from Mr. Aarts and had been asked to return part of the bonus to Mr. Aarts. At trial she

testified:

[Annie Laurie Baker]: We were talking about the fact that she [Donna Hagblom] had received several bonuses from Mr. Aarts and had been asked to return part of the bonus to Mr. Aarts.

The Court: Okay.

Question: [Mr. Haslam] Okay. After you had that conversation with Donna Hagblom, what happened after that Mrs. Baker?

Answer: Well, that was a Friday afternoon. And Monday morning I repeated the conversation to Chell [a Willow Creek Country Club employee], and Chell called Byron Watts [at that time president of Willow Creek Country Club]. Byron Watts called Bert Bruns [a member of the Board of Directors of Willow Creek Country Club at that time], and Bert Bruns came out and talked to both Chell and me. And the very next day I knew they had fired Mr. Aarts. (R. 205-206)

Testimony at trial was clear that the respondent could not share in bonuses paid from the appellant's gratuity fund.

Testifying before the trial court, Annie Laurie Baker testified:

Question: [Mr. Haslam] Now, who had the discretion to -- to give bonuses at Willow Creek Country Club while you were working there?

Answer: Mr. Aarts.

Question: And did Mr. Aarts as manager share in those gratuities?

Answer: No, he did not.

Question: Those are just specifically for the employees?

Answer: Uh huh. (R. 211-212)

The record demonstrates conclusively that respondent did

in fact receive unauthorized kickbacks from bonuses paid to the witness Donna Hagblom from a Willow Creek Country Club account, and these kickbacks precipitated respondent's termination.

The respondent, in response to the allegations set forth in paragraph 4 of appellant's counterclaim (R. 14), admitted that employee Donna Hagblom was paid a bonus of \$419.85, and further admitted that Mrs. Hagblom returned some of that to respondent, but alleged that she did so of her own accord.

In defining the term "moral turpitude", the courts have determined as follows:

Moral turpitude is an act of baseness, vileness or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rules of right and duty between man and man. It appears from the authorities to the rule without exception, that the offense of obtaining money from another by fraud or false pretenses, or larceny after trust, or crimes malum in se, involve moral turpitude.

Huff v. Anderson, 90 S.E.2d, 329 (Ga. 1955).

The testimony is clear and convincing that the activity engaged in by the respondent with respect to receipt of the funds from Donna Hagblom, in and of itself constituted acts of moral turpitude. The board of directors of appellant concluded that respondent breached a duty owed to appellant, and thereafter terminated respondent pursuant to paragraph 1(f) of the employment agreement. (R. 222)

The question of whether certain actions constitute acts

of moral turpitude is a question of law to be determined from the record on appeal. See In Re Pearce, 136 P.2d 969, 970 (Utah 1943). The Utah Supreme Court has held that moral turpitude is anything done knowingly contrary to justice, honesty or good morals. Moral turpitude implies something immoral in itself, regardless of its being punishable by law. Moral turpitude is adaptive; it is determined by the state of the public morals and the common sense of the community. See In Re Pearce, supra, pp. 971-972. In Re Pearce approved each one of these definitions in and of themselves as adequate to constitute moral turpitude.

Certainly the respondent's actions were contrary to the duties he owed the appellant, and on this basis alone, the court should have determined that the actions of respondent involved moral turpitude.

B. Respondent Wrongfully Deprived Appellant Of Employee's Services.

In its Findings of Fact and Conclusions of Law, the court determined as follows: "During the course of plaintiff's employment with defendant, and in response to plaintiff's request, Kevin Stewart, a maintenance man employed by the defendant, cleaned plaintiff's house on several occasions, working a total of twelve hours. Plaintiff paid Stewart occasionally for these services, which Stewart provided while he was on duty at the Willow Creek Country Club." (R. 105-106) (Emphasis added)

During respondent's course of employment with appellant,

and in response to respondent's request, Steve Draper [a maintenance man employed by appellant], serviced respondent's evaporative [swamp] cooler for approximately two hours while he was on duty for appellant. (R. 106)

Paragraph 4 of the Conclusions of Law provides that "plaintiff must reimburse defendant for the services of its maintenance men, for a total of fourteen hours at \$5.00 per hour, plus \$35 for transportation costs, or a total offset of \$105." (R. 108)

The trial court recognized that the respondent wrongfully appropriated the services of appellant's maintenance men. This amounts to a theft of services, proscribed by §76-6-409(2), Utah Code Annotated, which states:

(2) A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts such services to his own benefit or to the benefit of another who he knows is not entitled thereto.

Theft of services of \$100 is a Class A misdemeanor, and theft of funds in excess of \$250 is a third degree felony. §76-6-412, Utah Code Annotated. As noted in In Re Pearce, 136 P.2d 969, 970 (Utah 1943), the actual conviction of a crime in and of itself does not determine whether an act constitutes moral turpitude. Generally crimes "malum in se" involve moral turpitude. See In Re Pearce, supra. "Malum in se" is defined as a wrong in itself; an act or case involving illegality from the very nature

of the transaction, upon principles of natural, moral, and public law. An act is said to be "malum in se" when it is inherently and essentially evil, that is, immoral in its nature and injurious in its consequences, without any regard to the fact of its being noticed or punished by the law of the State. See Black's Law Dictionary 5th Ed. p. 865 (1978).

In committing an act which is "malum in se", the person is presumed to intend an actual consequences of his act, and general criminal intent with which an act is done may be inferred from the words and conduct of the actor. See Peck v. Dunn, 574 P.2d 367, 369 (Utah 1978).

POINT II

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION FOR A NEW TRIAL

In its Findings of Fact the trial court found that "At the conclusion of the trial in this matter, the defendant withdrew the following claims for damages that it made in its counterclaim:

(a) \$1,900 in living expenses and travel expenses paid to Frank Rotunno;

(b) \$300 of Frank Rotunno's bonus which appellant alleged respondent forced Rotunno to return to him in cash; and

(c) \$300 of Donna Hagblom's \$419.85 bonus, and \$150 of her \$300 bonus, which appellant alleged respondent forced her to return to him in cash. (R. 105)

Subsection (c) of the trial court's Findings of Fact in

paragraph 10 is without basis. The transcript clearly demonstrates that counsel for appellant specifically reserved its claim regarding the claim for damages respecting respondent's instructions to the witness Donna Hagblom to return a substantial portion of the bonus taken from Willow Creek funds. The transcript reads as follows:

Mr. Haslam: I will withdraw the counterclaim as far as Mr. Rotunno is concerned, but if your Honor finds these violations with respect to the services performed to the Club -- pardon me, from Mr. Aarts by the Club maintenance men, I think we should have a judgment for the value of those services and also the money that was turned back, the club money that was turned back, from Mrs. Hagblom and Mr. Rotunno, and that in accordance with the evidence, there was a transfer of that. But there is surely \$300 which was returned by Mrs. Hagblom and \$150 paid by Mrs. Hagblom.... (R. 279-280)

Appellant objected to the Findings of Fact and Conclusions of Law, citing Mrs. Hagblom's testimony that she would receive a "bonus" if she would return \$300 to Mr. Aarts. (R. 99)

Where the trial court has denied the motion for a new trial, the trial court's denial will be reversed if "the evidence to support the verdict was completely lacking or was so slight and unconvincing as to make the verdict plainly unreasonable and unjust." Nelson v. Trujillo, 657 P.2d 730, 732 (Utah 1982); Pollesche v. Transamerican Insurance Company, 27 Utah 2d 430, 497 P.2d 236 (1972).

As set forth in the Findings of Fact and Conclusions of Law, the court in making its ruling did not take into account the

claims of the witness Donna Hagblom, mistakenly believing that these claims had been withdrawn. Since the trial court did not take the claim under consideration, there is considerable prejudicial effect on the outcome of this case. One of appellant's major assertions is that respondent's actions in taking appellant's money to award a "bonus" to an employee in order to receive a kickback from that employee, constituted an act of moral turpitude and unethical conduct, which would support the termination for cause as set out in paragraph 1(f) of the employment agreement.

The trial court also found that the evidence presented at trial did not preponderate to appellant's benefit that Mrs. Hagblom was required by respondent to return \$150 of her \$300 bonus and \$300 of her \$419.85 bonus in cash to plaintiff. As has been shown, the testimony of Donna Hagblom and Annie Laurie Baker is uncontroverted that the respondent did request these actions on the part of Mrs. Hagblom. Nelson v. Trujillo is controlling in reversing the trial court's decision because the evidence to support the respondent's claim is on its face not convincing.

The appellant is entitled to have the trial court review the evidence regarding unauthorized kickbacks received by the respondent from Donna Hagblom and thereby determine whether this receipt of funds would constitute unethical conduct or an act of moral turpitude. If so, this would justify respondent's termination pursuant to the language of paragraph 1(f) of the employ-

ment agreement.

The failure of the trial court to review these aspects of the case serves to make the verdict "plainly unreasonable and unjust" as set forth in Nelson v. Trujillo, supra.

POINT III

THE ACTS OF RESPONDENT CONSTITUTE UNETHICAL CONDUCT

Black's Law Dictionary defines unethical as "not ethical; hence colloquially, not according to business or professional standards." Black's Law Dictionary 1698 (Rev. 4th Ed. 1968).

The findings of the trial court that appellant is entitled to an offset of \$105 conclusively demonstrates that the conduct of the respondent did not conform to professional standards. Fraudulent actions by the employee in his relationship with third persons will justify his discharge in case such conduct also affects the value of the performance that is due the employer. See Conway, Inc. v. Ross, 627 P.2d 1029, 1030 (Alaska 1981). An employee owes a duty to his employer to conduct himself in a manner which benefits his employer. See Chiodo v. General Waterworks Corp., 17 Utah 2d 425; 413 P.2d 891, 892 (1966).

The trial court made a determination for an amount of offset on the judgment based upon hours worked by the employees of appellant. The court made a distinction between work performed at the respondent's residence which benefited the respondent (i.e., snow shoveling done while employee was on duty for appellant so

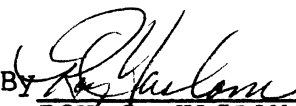
respondent could get to work) (R. 106), and the work done for the direct benefit of the respondent with no benefit whatsoever to appellant (i.e., cleaning respondent's house on several occasions and servicing respondent's evaporative swamp cooler). (R. 105-106) As noted in Point I(B), findings of the trial court in this instance would subject the respondent to criminal sanctions for theft of services. By no stretch of the imagination can it be assumed that an employee engaged in criminal activity to the detriment of his employer would be acting "ethically".

CONCLUSION

Based upon the foregoing, appellant requests this Court reverse the decision of the trial court, finding that discharge of respondent was justifiable and the acts of respondent which led to his discharge were unethical and constituted moral turpitude. In the alternative, the appellant seeks a determination that the trial court's Findings of Fact and Conclusions of Law were in error and that appellant is entitled to a new trial.

RESPECTIVELY SUBMITTED this 26th day of September, 1985.

BIELE, HASLAM & HATCH

BY 

ROY G. HASLAM
Attorney for Appellant

AFFIDAVIT OF MAILING

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

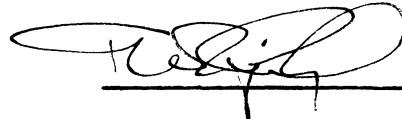
Thomas R. Grisley, being duly sworn, says:

That he is employed in the office of Biele, Haslam & Hatch, attorneys for appellant, Willow Creek Country Club.


That he mailed four (4) true and accurate copies of appellant's Brief upon the parties to the within described action by placing a true and correct copy thereof in an envelope addressed to:

Jeffrey R. Oritt
PRINCE, YEATES & GELDZAHLER
Attorneys for Respondent
Third Floor MONY Plaza
424 East 500 South
Salt Lake City, Utah 84111

and by mailing the same with the United States Post Office, first class, postage prepaid, on the 26th day of September, 1985.



SUBSCRIBED AND SWORN to before me this 26th day of September, 1985.


NOTARY PUBLIC
Residing in Salt Lake County

My Commission Expires:
11/6/88

ADDENDUM

Employment Agreement

Letter dated December 22, 1982 from Kenneth R. Chidester,
President of Willow Creek Country Club to Jerry W. Aarts

Findings of Fact and Conclusions of Law

Amended Judgment

EMPLOYMENT AGREEMENT

In consideration of the mutual covenants and conditions herein contained, WILLOW CREEK COUNTRY CLUB, a non-profit corporation of the State of Utah, hereinafter referred to as "Employer", and JERRY W. AARTS, hereinafter referred to as "Manager", hereby covenant and agree as follows:

1. Employer hereby agrees to employ Jerry W. Aarts as the manager of its club facilities at Sandy City, Salt Lake County, Utah, for an indeterminate term, commencing April 1, 1980, and continuing thereafter, and the Manager agrees thereto, subject to the following terms:

a. Manager shall serve as "Club Manager" of Willow Creek Country Club, and shall be responsible for the maintenance of the main clubhouse facilities, including the pool area, and adjacent areas thereto, and shall devote his full time and capabilities to the welfare of the Club and the described facilities within the framework of directives promulgated by the Board of Directors, consistent with the clubhouse rules and By-Laws of Willow Creek Country Club. Manager shall be directly accountable and responsible to the Board of Directors and officers of the said Club.

b. Manager shall attend all Board Meetings as the Board may direct and meetings of the House Committee as the Chairman of the House Committee may direct, and shall render such advice and assistance and submit such reports as may be requested at any time and from time to time.

c. Manager shall have the exclusive authority of his area of responsibility as defined hereinabove, and shall have authority to employ and discharge the necessary personnel, including maintenance personnel employed in his area of responsibility as he shall determine to be necessary for the best interests of the Club.

d. Manager shall use all reasonable efforts to enforce clubhouse rules and regulations, and shall bring to the attention of the Board of Directors any violation of uses or privileges or of unbecoming conduct on the part of club members.

e. Employer shall provide Manager with a bond under the blanket bond coverage for other employees. The amount of said bond is to be determined by the Board of Directors, such bond to cover the handling and accounting of all monies coming into Manager's hands in connection with his duties as "Club Manager".

f. If, at any time during the term of this Contract, Manager is unable to discharge any substantial portion of his responsibilities hereunder, due to illness or disability, either physical or mental, this contract shall terminate at the option of employer upon thirty days notice to the employee. If, in the judgment of the Board of Directors of Employer, Manager fails to perform any of his obligations or duties hereunder, and the Board of Directors determines that the conduct of the Manager is unethical, involves gross negligence or a breach of moral turpitude, this Contract shall terminate at the option of the Employer upon thirty (30) days notice to the Manager. In the event, however, the Employer shall wish to terminate this Contract without sufficient cause or reason, Employer shall pay Manager one-third (1/3) of one year's salary as liquidated damages.

g. During the term of this Agreement, Employee shall pay to Manager a yearly salary of \$36,000.00, from which shall be deducted all Federal and State Withholding Tax. In addition, Employer shall lease and provide for Manager an automobile, providing for maintenance and insurance, which shall approximate an additional \$4,000.00 per year and shall provide an additional \$65.00 per month for the payment of health and medical insurance for the use and benefit of Manager. All payments due hereunder shall be paid monthly.

h. Manager shall have the right to participate in activities and obtain memberships in the State and National organizations which may be applicable to club managers; the expense of which shall be paid by Employer.

i. Manager shall receive two (2) weeks vacation per calendar year which shall be taken by Manager during the slack season of each year, and the time provided for Manager to attend any National Organization applicable to "club managers", local or national, shall not be deducted from Manager's regular vacation benefits. All such vacation shall be taken in accordance with the Employer's vacation policy as determined by its Board of Directors.

2. The parties to this agreement hereby agree that on or before January 15, of each calendar year, the Board of Directors of the Employer and the "Manager" will review the performance and the salary and benefits paid to the Manager and the salary and benefits shall be renegotiated annually on said anniversary date by the parties during the life of this agreement.

3. In the event of default by either party to this agreement, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee incurred in enforcing its terms or in recovering damage for its breach.


4. This agreement sets forth the entire agreement between Employer and Manager with respect to the subject matter hereof, and this Agreement may be modified only by an instrument in writing, executed by the parties hereto.


DATED this 5th day of Sept, 1980.

WILLOW CREEK COUNTRY CLUB

By 
Its President

ATTEST


Secretary


JERRY H. AARTS

22 December 1982

Mr. Jerry W. Aarts
9448 Fox Drive Circle
Sandy, Utah 84070

Re: Willow Creek Country Club

Dear Mr. Aarts,

Reference is made to your Employment Agreement with Willow Creek Country Club wherein you are now acting as Manager. It has come to the attention of the Board of Directors that you have been engaged in activities which are detrimental to the club and which violate the terms and conditions of the contract as are described in paragraph 1 (f).

The Board of Directors hereby gives you notice that your employment as Manager of Willow Creek Country Club shall be terminated as of the 23rd day of January, 1983.

It is the desire of the Board of Directors that you immediately vacate the premises of Willow Creek Country Club and provide no further services during the thirty (30) days notice period. Upon completion of an audit, you will be paid your final monthly salary to the date of termination.

Very truly yours,

Willow Creek Country Club

Kenneth R. Chidester
President

KRC/ccb

IN THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH

JERRY AARTS,	:	
	:	
Plaintiff,	:	FINDINGS OF FACT AND
	:	CONCLUSIONS OF LAW
vs.	:	
	:	
WILLOW CREEK COUNTRY CLUB,	:	
a Utah corporation,	:	Civil No. C83-2383
	:	(Judge David B. Dee)
Defendant.	:	

The above-entitled matter came on regularly for trial before this Court, the Honorable David B. Dee presiding, on March 20, 1985 at 10:00 a.m. Plaintiff was represented by Jeffrey Oritt; defendant was represented by Roy G. Haslam. The Court, having read all pleadings and memoranda submitted by the parties in support of their respective positions, having heard testimony from witnesses for both sides and having heard argument from counsel, having reviewed all documentary evidence, being fully advised in the premises herein, and good cause appearing therefor, hereby makes the following:

FINDINGS OF FACT

1. Plaintiff Jerry Aarts is an individual residing in the State of New York. At the time of the events pertaining to this lawsuit, he resided in Salt Lake County, State of Utah.

2. Defendant Willow Creek Country Club is a not-for-profit Utah corporation located in Salt Lake County, State of Utah.

3. On September 5, 1980, plaintiff was hired by defendant to be ~~their~~ club manager. Pursuant to that hiring, plaintiff and defendant executed an Employment Agreement in which the conditions of plaintiff's employment, including the obligations of both plaintiff and defendant, were outlined.

4. Defendant agreed to pay plaintiff an initial annual salary of \$36,000. Effective January 1, 1982, and until plaintiff was terminated, his annual salary was \$41,400.

5. Defendant terminated plaintiff as its manager on December 22, 1982. The effective date of the termination was January 23, 1983.

6. The Employment Agreement between defendant and plaintiff discusses termination for cause at ¶1(f). Termination for cause could only take place because plaintiff had engaged in conduct that was unethical or involved gross negligence or moral turpitude.

7. The Employment Agreement requires defendant to pay plaintiff one-third (1/3) of his annual salary at the time of his termination as liquidated damages if defendant terminates the plaintiff without cause.

8. After terminating plaintiff, defendant failed, and refused, to pay plaintiff one-third (1/3) of his annual salary as liquidated damages.

9. The Employment Agreement provides for court costs and attorney's fees in the event the Agreement is enforced through litigation by either plaintiff or defendant.

10. In its defense of this action, defendant alleged a number of events that it claims fulfill the "cause" requirement for termination without liability for liquidated damages. Defendant also filed a Counterclaim. At the conclusion of the trial in this matter, defendant withdrew the following claims for damages that it made in its Counterclaim:

(a) \$1,900 in living expenses and travel expenses paid to Frank Rotunno;

(b) \$300 of Frank Rotunno's bonus, which defendant alleged plaintiff forced Rotunno to return to him in cash; and

(c) \$300 of Donna Hagblom's \$419.85 bonus, and \$150 of her \$300 bonus, which defendant alleged plaintiff forced her to return to him in cash.

11. During the course of plaintiff's employment with defendant, and in response to plaintiff's request, Kevin Stewart, a maintenance man employed by defendant, cleaned

plaintiff's house on several occasions, working a total of 12 hours. Plaintiff paid Stewart occasionally for these services, which Stewart provided while he was on duty at the Willow Creek Country Club.

12. During the course of plaintiff's employment with defendant, and in response to plaintiff's request, Steve Draper, another maintenance man employed by defendant, plowed out plaintiff's driveway on one occasion when plaintiff, who had no snow removal equipment, needed to get to work at Willow Creek Country Club. The snow shoveling was done by Draper, while he was on duty, for the benefit of Willow Creek Country Club.

13. During the course of plaintiff's employment with defendant, and in response to plaintiff's request, Draper serviced plaintiff's evaporative ("swamp") cooler for approximately two hours while he was on duty for Willow Creek Country Club.

14. From August, 1982 through December, 1982, plaintiff hired and employed Jeanette Wilhelm as a food service consultant. She worked irregular hours, at the sole direction of plaintiff, and provided ideas and implementation concerning various aspects of defendant's food service operations. Her compensation between August and December, 1982, was in the form

of checks from defendant's General Fund, signed by plaintiff on behalf of defendant. No Federal or State taxes or FICA monies were withheld from her checks.

15. In December, 1982, plaintiff signed two checks to Bruce R. Hewitt, one in the amount of \$46.65, and one in the amount of \$565.25. Taxes and FICA monies were withheld from these checks. The Court finds by a preponderance of the evidence that the \$46.65 check was Mr. Hewitt's Christmas bonus, and the \$565.25 check, which was to compensate Ms. Wilhelm for certain hours she had worked at Willow Creek Country Club, was made payable to Mr. Hewitt at Jeanette Wilhelm's request.

16. From April through August, 1982, plaintiff wrote checks from the General Fund totalling approximately \$1,900 to Frank Rotunno, which were for living expenses and travel expenses, and from which no taxes or FICA monies were withheld. The Court finds by a preponderance of the evidence that plaintiff obtained authorization for the payment of such expenses to Mr. Rotunno, and in such manner, when he obtained the approval of Willow Creek Country Club Board Member Jerry Butterfield to retain Mr. Rotunno on the same basis that Rotunno was retained by plaintiff between November, 1981, and January, 1982, at which time such living and travel expenses, and the method of payment, were approved by Club Treasurer Jay

Berquist. The Court also finds by a preponderance of the evidence that plaintiff was paid living and travel expenses by defendant for the first several months he was employed by defendant, and that no taxes or FICA were withheld from his checks at that time.

17. During 1982, plaintiff wrote bonus checks to Donna Hagblom in the amount of \$300 and \$419.85, and a bonus check to Frank Rotunno in the amount of \$300. The Court finds that the evidence presented at trial did not preponderate to defendant's benefit that Ms. Hagblom was required by plaintiff to return \$150 of her \$300 bonus, and \$300 of her \$419.85 bonus, in cash to plaintiff, nor did the evidence preponderate to defendant's benefit that Mr. Rotunno was required by plaintiff to return \$150 of his \$300 bonus in cash to plaintiff.

CONCLUSIONS OF LAW

1. This Court has jurisdiction over this action pursuant to § 78-3-4, Utah Code Ann. (1953, as amended).

2. Venue is proper in this Court pursuant to § 78-13-7, Utah Code Ann. (1953, as amended).

3. None of plaintiff's actions as found above are acts of gross negligence, unethical conduct, or moral turpitude.

4. Plaintiff must reimburse defendant for the services of its maintenance men, for a total of fourteen hours at

\$5 per hour, plus \$35 for transportation costs, or a total off-set of \$105.

5. Defendant breached its Employment Agreement with plaintiff, in that it terminated plaintiff without cause and failed to pay plaintiff one-third (1/3) of his annual salary as liquidated damages.

6. Plaintiff has been damaged in the amount of \$13,800, plus interest at twelve percent (12%) per annum from January 23, 1983, to the date of Judgment rendered herein.

7. Plaintiff is entitled to \$41.50 in court costs and \$3,500 in attorneys' fees, incurred in enforcing the Employment Agreement.

DATED this _____ day of April, 1985.

BY THE COURT:

David B. Dee
District Judge

APPROVED AS TO FORM
~~AND CONTENT.~~

Biele, Haslam & Hatch

By  _____

Roy G. Haslam
Attorneys for Defendant

4868G

IN THE THIRD JUDICIAL DISTRICT COURT
FOR SALT LAKE COUNTY, STATE OF UTAH

JERRY AARTS,	:	
	:	
Plaintiff,	:	A M E N D E D
	:	J U D G M E N T
vs.	:	
	:	
WILLOW CREEK COUNTRY CLUB,	:	
a Utah corporation,	:	Civil No. C83-2383
	:	(Judge David B. Dee)
Defendant.	:	

The above-entitled matter came on regularly for trial before this Court, the Honorable David B. Dee presiding, on March 20, 1985 at 10:00 a.m. Plaintiff was represented by Jeffrey Oritt; defendant was represented by Roy G. Haslam. The Court, having read all pleadings and memoranda submitted by the parties in support of their respective positions, having heard testimony from witnesses for both sides, having heard argument from counsel, having reviewed all documentary evidence, being fully advised in the premises herein, and having made and entered its Findings of Fact and Conclusions of Law;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

1. Under plaintiff's Cause of Action, plaintiff is entitled to the sum of \$13,800, together with interest at the

rate of twelve percent per annum from January 23, 1983, to the date of Judgment herein.

2. Plaintiff is entitled to the costs of this action in the amount of \$41.50 and attorneys' fees in the amount of \$3,500, as set forth in plaintiff's Affidavit of Attorneys' Fees and Costs.

3. Defendant is entitled to an offset of \$105 against the above Judgment.

DATED this _____ day of April, 1985.


BY THE COURT:

David B. Dee
District Judge

APPROVED AS TO FORM

~~ANALYST~~:

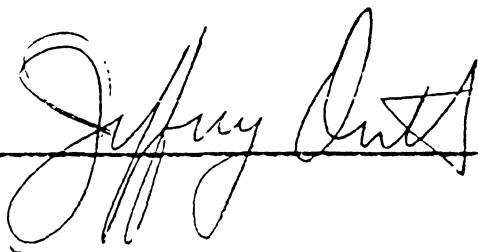
Biele, Haslam & Hatch



Roy G. Haslam
Attorney for Defendant

CERTIFICATE OF HAND DELIVERY

The foregoing AMENDED JUDGMENT and accompanying FINDINGS OF FACT AND CONCLUSIONS OF LAW were prepared by Jeffrey Oritt, counsel for the plaintiff, and hand-delivered to Roy G. Haslam, counsel for the defendant, on this 2nd day of April, 1985.



A handwritten signature in cursive script, appearing to read "Jeffrey Oritt", is written over a horizontal line.

4841G