

1985

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

Utah Supreme Court

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DOCKET NO. **1986** 20752

IN THE SUPREME COURT OF THE STATE OF UTAH

JERRY AARTS,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	
	:	Case No. 20752
WILLOW CREEK COUNTRY CLUB,	:	
a Utah corporation,	:	
	:	
Defendant-Appellant.	:	

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 RESPONDENT

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FILED

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Plaintiff-Respondent,

vs.

WILLOW CREEK COUNTRY CLUB,
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NATURE OF THE CASE

Plaintiff does not dispute the nature of the case as set forth in defendant's Brief.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the record adequately supported the trial court's Finding of Fact that Donna Hagblom, an employee of the defendant, was not required by plaintiff to return to him any portion of bonuses she had received from the defendant.

2. Whether the trial court committed error in determining that, as a matter of law, plaintiff's actions in requesting two of defendant's maintenance men to provide maintenance services on his residence while they were on duty for the defendant were not acts of moral turpitude or unethical conduct.

STATEMENT OF FACTS

On September 5, 1980, plaintiff and defendant executed an Employment Agreement under which plaintiff agreed to be defendant's Club Manager. The conditions of plaintiff's employment, including the obligations of both plaintiff and defendant, were outlined in the Employment Agreement. Findings of Fact, ¶ 3, R. 104; Ex. D-1, R. 6-8.

The Employment Agreement, at paragraph 1(f), sets forth the conditions under which defendant could terminate the plaintiff, and in what instances defendant was obligated to pay

plaintiff liquidated damages subsequent to the termination:

If, in the judgment of the Board of Directors of Employer [defendant], 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)

R.7. On January 23, 1983, defendant terminated the plaintiff. At the time of his termination, his salary was \$41,400.00. Findings of Fact, ¶¶ 4-5, R. 104.

Prior to the trial of this matter, the defendant alleged that plaintiff engaged in certain acts that were either unethical or were acts of moral turpitude. Accordingly, defendant asserted plaintiff was not entitled to post-termination liquidated damages under the Employment Agreement. Defendant alleged that:

1. Plaintiff wrote checks on defendant's account to one of defendant's employees, Jeanette Wilhelm, from which checks plaintiff did not deduct Federal and State taxes and FICA monies;

2. Plaintiff wrote checks on defendant's account to Bruce R. Hewitt, but Hewitt was not employed by the defendant

at the time;

3. Plaintiff wrote checks on defendant's account to Frank Rotunno without defendant's authorization, which checks compensated Rotunno for living expenses and travel expenses;

4. Plaintiff wrote bonus checks on defendant's account to Donna Hagblom and Frank Rotunno, and required them to pay him certain amounts from those bonus checks as a cash kickback; and

5. Plaintiff required Kevin Stewart and Stephen Draper, both maintenance men employed by the defendant, to provide maintenance services to him at his residence while these employees were on duty for defendant. Defendant's Counterclaim, ¶¶ 3-5, R. 12-13; Defendant's Answers to Plaintiff's First Set of Interrogatories, ¶¶ 3-7, R. 26-28.

After hearing the testimony of the witnesses for both sides, the trial court found that none of defendant's allegations against the plaintiff had any merit except that maintenance services had been provided to the plaintiff at his residence and at his request by defendant's maintenance men. The court found that Jeanette Wilhelm had been hired by the plaintiff as an independent contractor pursuant to plaintiff's authority under the Employment Contract, and that because of her status as an independent contractor, plaintiff did not have to withhold Federal or State taxes or FICA monies from her

checks. The court found that of the two checks plaintiff wrote to Bruce R. Hewitt, one was Hewitt's Christmas bonus (he had been an employee of the defendant earlier that year). The second check was actually compensation for services provided by Jeanette Wilhelm, but at her request, the plaintiff wrote the check out to Hewitt. The court further found that the checks plaintiff wrote to Frank Rotunno for living and travel expenses were authorized by Willowcreek Country Club board member Jerry Butterfield, and that the payment of similar expenses, under similar circumstances, had been authorized by the defendant in the past for both Rotunno and the plaintiff. Finally, the court found that plaintiff did not require either Donna Hagblom or Frank Rotunno to return any monies from any bonus checks that the plaintiff wrote to those individuals. Findings of Fact, ¶¶ 14-17, R. 106-108.

The court did find that Kevin Stewart and Stephen Draper provided maintenance services at plaintiff's request upon his residence while they were on duty at Willowcreek Country Club. The court found specifically that Stewart provided approximately 12 hours worth of housecleaning services to the plaintiff, for which the plaintiff occasionally paid him. The court also found that Draper spent 2 hours one afternoon servicing plaintiff's evaporative ("swamp") cooler. Findings of Fact, ¶¶ 11 and 13, R. 105-106. The court then concluded as

a matter of law that plaintiff's requests for the maintenance men's services on his residence were not acts of moral turpitude or unethical conduct. Conclusions of Law, ¶ 3, R. 108.

SUMMARY OF ARGUMENT

I. Defendant asserts on appeal that there was not adequate evidence in the record to support the trial court's Finding of Fact that Donna Hagblom was not required by the plaintiff to "kick back" monies to him from her bonus checks. The standard of review for such an argument is that a trial court's Findings of Fact will be presumed to be correct, and will not be overturned, as long as they are adequately supported by the evidence in the record. Both plaintiff and a witness for the plaintiff, Frank Rotunno, testified at length that plaintiff did not request any monies from Donna Hagblom as a kick back from bonuses that he had given to her from defendant's funds. In fact, Hagblom herself testified that she wasn't certain if Rotunno or the plaintiff asked her to return monies from her bonus checks.

II. The plaintiff's request of maintenance services upon his personal residence from defendant's employees was not an act of moral turpitude or unethical conduct. The defendant at first analogizes plaintiff's request to a "theft of services" crime, and then assumes that plaintiff in fact committed such a crime. Defendant then argues that the commission of

such a crime is an act of moral turpitude and unethical conduct. Defendant put on no evidence at trial with regard to plaintiff's actions fulfilling the elements of the crime of theft of services. Because it was not an issue at the trial level, the plaintiff put on no evidence with regard to his reasons for requesting the services from defendant's employees, for example that he thought he was entitled to them or that he thought the defendant would not mind his use of the employees for such a small amount of time. Notwithstanding defendant's attempt to characterize plaintiff's acts as criminal in nature, when examined in and of themselves, the actions do not rise to the level of moral turpitude or unethical conduct, as defined in the treatises and case law.

III. The trial court did not err in denying defendant's motion for a new trial. The basis for defendant's claim of error is that the trial court allegedly failed to consider testimony by Donna Hagblom and Annie Laurie Baker that plaintiff required Hagblom to return some of the monies from her bonuses to him. This claim is without foundation in the record. Clearly the trial court did consider such testimony, but found plaintiff's testimony and rebuttal more persuasive, because the trial court made a specific finding of fact that plaintiff did not require Hagblom to return those monies to him.

ARGUMENT

I. The record adequately supports the trial court's finding that plaintiff did not require Donna Hagblom to give monies from her bonus checks to plaintiff.

A. Standard of Review of Sufficiency of Evidence Underlying Findings of Fact.

It is well established that a trial court's Findings of Fact will be presumed to be correct, and will not be overturned, as long as they are adequately supported by the evidence in the record. Wessel v. Erickson Landscaping Company, 15 Utah Adv. Rep. 36, 37 (1985)¹. On appeal, the evidence in the record, and all inferences that might reasonably be drawn therefrom, will be viewed in a light most favorable to the judgment entered. Hal Taylor Associates v. Union America, Inc., 657 P.2d 743, 747 (Utah 1982); Nielsen v. Chin - Hsien Wang, 613 P.2d 512, 514 (Utah 1980). It is not the prerogative of the appellate court to determine whether the

1. In footnote 2 of the Wessel opinion, the court noted that previous cases held the standard for determining the sufficiency of the evidence necessary to sustain a finding to be whether the evidence was "substantial." The court then distinguished between the standard of review of a jury's findings and a judge's findings, and concluded that a slightly broader standard of review for the findings of a judge, that of "adequate evidence," is appropriate.

evidence preponderated on one side or the other. The appellate court will only determine whether the evidence in the record adequately supports the lower court ruling. Reimschiessel v. Russell, 649 P.2d 26, 27 (Utah 1982).

In a case recently decided by the Utah Supreme Court, the appellant challenged the trial court's Findings of Fact in an almost identical manner to defendant's instant appeal. The appellant presented its argument based upon the facts as it had presented them at trial, rather than upon the trial court's findings. The Utah Supreme Court stated that in order to attack Findings of Fact, an appellant must first marshal all the evidence supporting the trial court's findings, and then demonstrate that, even viewing it in the light most favorable to the court below, the evidence is insufficient to support the findings. Scharf v. BMG Corporation, 700 P.2d 1068, 1070 (Utah 1985). In the Scharf case, the appellant had not presented evidence supporting his version of the facts, much less the evidence supporting the trial court's findings. In the instant case, the defendant has presented some evidence on the record supporting its version of the facts, but has failed to enlighten the court as to the extensive evidence supporting the trial court's findings.

B. Evidence Supporting the Trial Court's Finding of Fact

The defendant argues that uncontroverted evidence at

trial supports a finding that the plaintiff required Donna Hagblom to "kickback" some of her bonus money to him. The court found otherwise, and had substantial reason to so find.

During defendant's cross-examination of Frank Rotunno, a former employee at Willow Creek Country Club, Rotunno testified about a bonus he received from the plaintiff, and about the monies from that bonus that he voluntarily returned to the plaintiff:

A: I said I received a part of a \$600 bonus for the Utah Open. A part of it.

Q: A part of it?

A: Yes.

Q: How much did you receive?

A: \$300.

Q: Mr. Rotunno, at the time you received that bonus of \$300 did you keep the full amount?

A: No sir.

Q: What happened to the proceeds of the check?

A: I gave with consent from another party working at the club \$100 to Mr. Jerry Aarts.

Q: Who was the other party working at the club you are talking about?

A: I believe the young lady over there in the sort of dark blue suit. (Indicating). [Mr. Rotunno pointed to Donna Hagblom.]

Q: Why did you return \$100 of the \$300 to Mr. Aarts?

A: When I received the \$300 bonus I asked Mr. Aarts if he was going to take any part of it. He said "no." I said "well, I don't think it's right." So I then went to this young lady and told her the situation and said, "I think we ought to give Jerry some money." That is my doing, and Mr. Aarts knew nothing about it and refused it.

Q: Your testimony is that he refused the \$100?

A: The first time, yes, sir. I insisted he take it and left it on the desk, my money and her money. We gave \$100 apiece and that was at my suggestion, and my suggestion only. Mr. Aarts knew nothing about it nor did she until I talked to her.

Q: In other words, this was just a gratuity on your part?

A: Just a nice gesture. He gave me, and I gave in return.

Q: With respect to these living expenses and --

A: I would like to make a note, sir, that when I approached the young lady and I said to her, "I think we ought to give him \$100 apiece," I also said that it would be very good for her because I thought that when I left she would become the assistant manager, and she then gave me the \$100.

Q: It's your testimony that she gave you an additional \$100?

A: She gave me \$100 of the \$300.

Q: You in turn gave those funds to Mr. Aarts?

A: Yes, I did.

Q: You did that as a gratuity?

A: I gave that as a gesture.

Q: A gesture of what?

A: Yes, sir.

Q: Of what?

A: Of appreciation.

Q: And you were well paid, were you not, for your work at Willow Creek Country Club.

A: Yes, sir.

Q: Why did you feel that you should have to give Mr. Aarts anything?

A: I didn't feel I had to give Mr. Aarts anything.

R. 189-192.

Defendant noted in its brief that Donna Hagblom testified of meetings with Jerry Aarts and Frank Rotunno where she was required to return some monies from her bonus checks to the plaintiff. R. 232-238. However, what the defendant did not note was Hagblom's testimony regarding her fuzzy memory about these meetings.

Q: [By Mr. Oritt]. Okay. Now, when you testified about this meeting between you and Jerry Aarts and Frank Rotunno you said that they said to keep quiet about it. Do you recall who said it, if Jerry said it or if Frank said it? Do you remember which one?

A: I really, truly don't remember which one.

Q: So it could have been Frank who said don't you think you should give over some of this money to Jerry?

A: Could have been.

R. 238.

In rebuttal testimony, the plaintiff testified with regard to meetings with Donna Hagblom concerning her bonuses.

Q: [By Mr. Oritt]. Directing your attention to the testimony of Mrs. Hagblom earlier today, tell me, Mr. Aarts, why did you give bonuses to Mr. Rotunno and Mrs. Hagblom after the Utah Open in 1982?

A: It wasn't only Donna Hagblom and Frank Rotunno. There was a dozen or so employees that had worked above and beyond. We put in a lot of hours. I think we averaged about 70 hours each that week setting up the stands outside and breaking them down. The staff that is normally not on that gratuity fund, the service personnel, say the bus boys and waiters and waitresses, bartenders, I distributed a portion of that fund to these people and the people in the office. We had a girl stand on the golf course to check the cash from the office. Annie Laurie was picking up the cash.

Q: It was a pretty big event, wasn't it?

A: Yes, it was. Sharon Luhse was on the snack bar and sold sandwiches at the tee, and we had this money left over in the gratuity fund and that's how we distributed it.

Q: What kind of hours did you keep during that event?

A: Same amount of hours, 70.

Q: 70 hours?

A: Something like that.

Q: Now, with reference to Mrs. Hagblom's testimony being required to give some of her money back after the Utah Open, do you recall any meeting between you and Frank Rotunno and Mrs. Hagblom about the bonuses?

A: I recall a meeting where I gave them each a \$300 check and then I believe Frank imposed whether in my presence or not in my presence, Frank said to Donna . . .

Q: Mr. Aarts, do you recall where this meeting took place?

A: No, I do not.

Q: All right. Do you recall who was at the meeting?

A: Myself, Donna and Frank.

Q: And -- and -- okay. Let's take this a step at a time. What did you first do with the bonus checks?

A: I gave them each a \$300 check.

Q: What happened next?

A: The meeting broke and I think Frank came back to me and he said, "I spoke to Donna, and we want you to have this." I said, "Frank, I don't want any part of it." He said, "no. Donna and I got together and we feel you should have some of this."

Q: What did he give you?

A: \$100 from Frank and \$100 from Donna.

Q: All right. Mrs. Hagblom also testified about you requiring some money back from a Christmas bonus. Do you have any recollection of that?

A: No sir.

Q: Did that ever happen?

A: No sir.

Q: Do you recall giving her a Christmas bonus?

A: I gave her not a bonus. I gave her extra money above and beyond because she worked very hard over the holidays, during the, you know, Lights On Season and parties and so forth. I gave her a bonus for that. I gave her extra compensation.

Q: Did you ever ask her to give any of that back?

A: No sir.

R. 266-269.

Frank Rotunno was recalled by the plaintiff as a rebuttal witness, subsequent to Mrs. Hagblom's testimony. Mr. Rotunno testified, on direct examination and cross-examination, that a meeting between Jerry Aarts, Frank Rotunno and Donna Hagblom, to which Mrs. Hagblom testified, never took place. He testified that he spoke with Mrs. Hagblom outside of plaintiff's presence and discussed returning some of their bonus monies to him, and that she voluntarily agreed to do so. R. 274-278.

In short, plaintiff put on a substantial amount of

evidence by which the trial court could find, and in fact did find, that Hagblom had voluntarily returned some of her bonus money to the plaintiff, and that she was not required to do so by the plaintiff. The defendant, however, ignores the substantial evidence rebutting its witness' testimony and assumes, for purposes of its brief, that Donna Hagblom was required to "kick back" monies from her bonuses to the plaintiff. Defendant then argues that such a "kickback" is an act of moral turpitude. The court need not determine whether such a "kickback" would be an act of moral turpitude. There is adequate evidence, indeed substantial evidence, in the record to support the trial court's Finding of Fact regarding monies given back by Donna Hagblom to the plaintiff, and therefore the trial court's finding must be upheld.

II. Plaintiff's request of maintenance services from defendant's employees was not an act of moral turpitude.

The trial court found that plaintiff requested maintenance services on his personal residence from two of defendant's employees, Kevin Stewart and Stephen Draper. Stewart provided 12 hours of service at the plaintiff's residence over the course of plaintiff's two and one-half years of employment by the defendant. Draper provided 2 hours of service at the plaintiff's residence during that time. The

trial court ruled that, since the men were on duty for the defendant when they worked for the plaintiff, plaintiff should reimburse the club the fair market value of the maintenance men's services, plus transportation costs, totalling \$105. Findings of Fact, ¶¶ 11, 13, R. 105-106; Conclusions of Law, ¶ 4, R. 108-109.

As with its argument regarding Donna Hagblom's alleged "kickbacks", the defendant here attempts a boot-strapping argument in order to persuade this Court that plaintiff's acts rise to the level of moral turpitude. The defendant argues that, because the plaintiff improperly requested services from defendant's maintenance men for his personal use, he is guilty of theft of services, which is per force an act of moral turpitude. But defendant's argument fails because the assumption upon which it is based is incorrect. The trial court did not rule as a matter of law that plaintiff's use of defendant's maintenance men was a theft of services.

Defendant did not put on evidence at the trial level fulfilling the elements of the crime of theft of services. Notably lacking in the record is any evidence of the intent of the plaintiff to deprive the defendant of services. Theft of services is a specific intent crime. The prosecution must prove that the accused had the intent to deprive the rightful owner of the services. The accused can defend the charge by

claiming that he either acted in the honest belief that he had the right to obtain or exercise control over the services as he did, or that he obtained or exercised control over the services honestly believing that the owner, if present, would have consented. § 76-6-402(3)(b) and (c), Utah Code Ann. (1953, as amended). Had the defendant presented evidence as to the issue of theft of services in this case, the plaintiff could have responded, defending his actions, and the court would have made the requisite Findings of Fact and Conclusions of Law. Instead, defendant assumes on appeal that plaintiff's actions are a theft of services and are "malum in se", that is, an act that is evil in itself, like murder, rape, or kidnapping. However, "malum in se" crimes require only general intent, not specific intent. In crimes such as those, and not in specific intent crimes like theft of services, a person is presumed to intend the natural consequences of his act which can be inferred from the words and conduct of the actor. Peck v. Dunn, 574 P.2d 367, 369-370 (Utah 1978).

Clearly, theft of services is not a "malum in se" crime, and, therefore, the defendant must prove plaintiff's specific intent to commit theft of services, in order to argue that his actions in asking defendant's maintenance men to perform some maintenance work on his personal residence rise to the level of moral turpitude.

The Court must determine on appeal if plaintiff's request for services by defendant's maintenance men on his residence, while they were on duty for defendant, was an act of moral turpitude. An act of moral turpitude has been defined as

An act of baseness, vileness or depravity in the private and social duties which a man owes to his fellowmen or to society in general, contrary to the accepted and customary rule of right and duty between man and man.

United States v. Smith, 420 F.2d 428, 431 (5th Cir. 1970) (citing BLACK'S LAW DICTIONARY 1160 (Rev. 4th Ed. 1957)).

There is little case law clarifying the definition of moral turpitude. In the context of deportation of aliens, acts of moral turpitude have included bigamy, breaking and entering, burglary, carnal knowledge of females under the age of consent, counterfeiting, forgery, lewdness, manslaughter in the first degree, rape and robbery. CORPUS JURIS SECUNDUM, Aliens, § 94(d)(7) at 720. In a lawyer discipline case, the Oklahoma Supreme Court concluded that "moral turpitude" implied something immoral in and of itself, regardless of whether the behavior decried as an act of moral turpitude was punishable by law. State ex rel Oklahoma Bar Association v. Denton, 598 P.2d 663, 664 (Okla. 1979).

The Utah Supreme Court has determined that, where the issue before it is one of law, it is not bound by the conclusions of the trial court and may determine the question.

Olwell v. Clark, 658 P.2d 585, 587, n.1 (Utah 1982). Accord, Scharf v. BMG Corporation, 700 P.2d at 1070 (Utah 1985). The trial court concluded that plaintiff's actions were not acts of moral turpitude. Conclusions of Law, ¶ 3, R. 108. Plaintiff submits that plaintiff's acts in requesting the services of defendant's maintenance men for his personal residence certainly did not rise to the level of ". . . an act of baseness, vileness or depravity . . .". Perhaps plaintiff's actions were ill-advised, and he should have checked with the defendant to determine if he could utilize defendant's maintenance men for the brief period of time that he did. But, as a matter of law, plaintiff's actions were not acts of moral turpitude, and the trial court's conclusion of law to that effect should be affirmed.

III. The trial court did not err in denying defendant's Motion for a new trial.

Defendant claims that the court failed to consider testimony by Donna Hagblom and Annie Laurie Baker that plaintiff required that Hagblom return some of the monies from her bonuses to him. Defendant then argues that, because the court refused to consider its testimony to that end, it's denial of defendant's Motion for a new trial is error.

The trial court specifically found that there was no evidence preponderating to defendant's benefit that Hagblom was

required to return some monies from her bonuses in cash to the plaintiff. Findings of Fact, ¶ 17, R. 108. Furthermore, as set forth earlier in this Brief, there was substantial testimony by the plaintiff and by Frank Rotunno that directly controverted the testimony of Donna Hagblom and Annie Laurie Baker.

Under the very cases defendant cites in its Brief that set forth the standard for reversing a trial court's denial of a Motion for a new trial 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), the trial court's denial of the defendant's Motion for a new trial should be affirmed, as there was substantial evidence to support its verdict.

IV. Plaintiff's request of services from defendant's maintenance men does not rise to the level of unethical conduct.

The trial court found that Donna Hagblom was not required by the plaintiff to return any monies to plaintiff from her bonuses, thus leaving the only action of plaintiff that defendant alleges is unethical to be his request for, and receipt of, services from defendant's maintenance men on his personal residence.

Defendant argues that the trial court's order of an

offset of \$105, to be paid by plaintiff to the defendant for the services of defendant's maintenance men, implies a legal conclusion that plaintiff's actions were unethical. Contrarily, the trial court specifically concluded that those actions did not rise to the level of unethical conduct. The defendant again analogizes to theft of services, and tries to boot-strap its assumption that plaintiff's actions were theft of services into a legal argument that, because plaintiff committed theft of services, he is guilty of unethical conduct. Once again, defendant's argument fails because the assumption that there was a theft is incorrect. The court made no such finding or conclusion.

There is even less case law or discussion in treatises about unethical conduct than about acts of moral turpitude. Black's Law Dictionary defines unethical conduct as: "Conduct not according to business or professional standards." BLACK'S LAW DICTIONARY 1698 (Rev. 4th Ed. 1968). There was no evidence put on by either side at the trial level as to professional standards of private club managers. The trial court concluded, as a matter of law, that plaintiff's actions in utilizing defendant's maintenance men for a few hours on his personal residence were not unethical. Plaintiff submits that, while plaintiff's actions were perhaps ill-advised, certainly his actions were not unethical.

V. Costs and Attorney's Fees

The trial court awarded the plaintiff the costs and attorney's fees he incurred in enforcing the Employment Agreement, pursuant to ¶ 3 of the Employment Agreement. R. 3. Plaintiff prays at this time for an Order by this Court awarding him his costs and attorney's fees incurred in defending this appeal.

CONCLUSION

There is more than adequate evidence in the record to support the trial court's Finding of Fact that Donna Hagblom was not required by the plaintiff to "kick back" monies from her bonus to him. The trial court made a specific Finding of Fact on that issue, thereby supporting its denial of defendant's motion for a new trial.

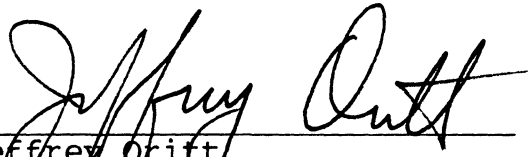
The only act of the plaintiff that defendant can ask this Court to review in the context of legal standards for acts of moral turpitude and unethical conduct is plaintiff's request of services upon his personal residence from defendant's maintenance men. The trial court found that plaintiff's request was not an act of moral turpitude or unethical conduct, and merely ordered him to compensate defendant for the fair market value of the services of defendant's employees, plus their transportation costs. Given the prevailing legal definitions of acts of moral turpitude and unethical conduct, the trial

court's Conclusion of Law that plaintiff's acts did not rise to the level of unethical conduct or acts of moral turpitude must be affirmed.

Accordingly, plaintiff urges that the trial court's Judgment be affirmed on all issues of fact and law. Plaintiff also urges this Court to award him his costs and attorney's fees incurred in defending this appeal.

DATED this 11th day of November, 1985.

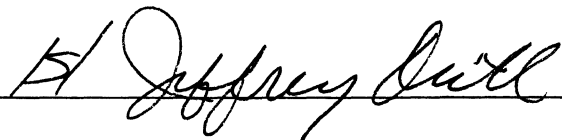
PRINCE, YEATES & GELDZAHLER

By 
Jeffrey Oritt
Attorneys for Plaintiff-Respondent

CERTIFICATE OF HAND DELIVERY

On this 11th day of November, 1985, I hereby certify
that I caused to be hand-delivered four true and correct copies
of the foregoing BRIEF OF RESPONDENT to the following:

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