

1977

Richard Greenhalgh v. Ben Mitchell : Brief of Appellant

Utah Supreme Court

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Don Blackam; Attorney for Defendant and Appellant;

Dave McMillis; Attorney for Plaintiff and Respondent;

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IN THE SUPREME COURT
OF THE STATE OF UTAH

RICHARD GREENHALGH,)
)
Plaintiff and)
Respondent,)
)
-vs-)
)
BEN MITCHELL,)
)
Defendant and)
Appellant.)
)

Case No. 15305

APPELLANT'S BRIEF

DON BLACKHAM
BLACKHAM AND BOLEY
Attorney for Defendant
and Appellant
3535 South 3200 West
Salt Lake City, Utah 84119

DAVE McMULLIN
Attorney for Plaintiff
and Respondent
City Office Building
Payson, Utah 84651

FILED

SEP 16 1977

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OF THE STATE OF UTAH

RICHARD GREENHALGH,)	
Plaintiff and)	
Respondent,)	
-vs-)	Case No. 15305
BEN MITCHELL,)	
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Appellant.)	
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DON BLACKHAM
BLACKHAM AND BOLEY
Attorney for Defendant
and Appellant
3535 South 3200 West
Salt Lake City, Utah 84119

DAVE McMULLIN
Attorney for Plaintiff
and Respondent
City Office Building
Payson, Utah 84651

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Plaintiff and)	
Respondent)	Case No. 15305
)	
-vs-)	
)	
BEN MITCHELL,)	
)	
Defendant and)	
Appellant)	
)	

APPELLANT'S BRIEF

APPEAL FROM A JUDGMENT OF THE
FOURTH JUDICIAL DISTRICT COURT OF UTAH COUNTY,
THE HONORABLE ALLEN B. SORENSEN, DISTRICT JUDGE

DON BLACKHAM
BLACKHAM AND BOLEY
Attorney for Defendant
and Appellant
3535 South 3200 West
Salt Lake City, Utah 84119

DAVE McMULLIN
Attorney for Plaintiff
and Respondent
City Office Building
Payson, Utah 84651

IN THE SUPREME COURT
OF THE STATE OF UTAH

RICHARD GREENHALGH,

Plaintiff and
Respondent,

-vs-

BEN MITCHELL,

Defendant and
Appellant

Case No. 15305

APPELLANT'S BRIEF

STATEMENT OF NATURE OF CASE

Respondent sued appellant in contract for material supplied and for use of machinery upon a roadway to appellant's property at Santaquin, Utah.

Appellant denied a contractual relationship with the respondent.

DISPOSITION IN THE LOWER COURT

The case was tried in the Fourth Judicial District Court of Utah County, before the Honorable Allen B. Sorensen, sitting without a jury. From an adverse Judgment entered against him in favor of the plaintiff and respondent, the defendant and appellant prosecute this appeal.

RELIEF SOUGHT ON APPEAL

Appellant, Ben Mitchell, seeks a reversal of the Judgment entered by the trial court and recovery of costs.

STATEMENT OF FACTS

In May, 1973, appellant contacted James Eldon Greenhalgh, a distant relative of respondent (R-5), about cutting a roadway up a hillside to property owned by appellant east of Santaquin, Utah. Appellant's contact of James Eldon Greenhalgh was pursuant to a referral by a third party, respondent claiming to be that third party (R-8) and appellant having no recollection of that third party as being the respondent (R-20 and 21).

The roadway was cut by James Eldon Greenhalgh for appellant on May 28, 1973 (R-3). For the road cutting job, appellant paid James Eldon Greenhalgh right on the jobsite upon completion of the work (R-4 and 21). Appellant was more than satisfied with the work which had been done by James Eldon Greenhalgh in cutting the roadway on May 28, 1973 (R-6 and 21).

Length of the roadway constructed by James Eldon Greenhalgh for Appellant was 1584 feet according to the testimony of respondent (R-8 and 9) or 1295 feet according to the testimony of appellant's witness (R-27). After James Eldon Greenhalgh had finished cutting the roadway and while he was still on the jobsite with appellant, James Eldon Greenhalgh and appellant walked together along the roadway (R-21). During the walk of James Eldon Greenhalgh and appellant along the roadway, there was discussion between appellant and James Eldon Greenhalgh about covering two or three spots along the roadway with gravel (R-21 and 22). Graveling of the entire roadway was never discussed with James Eldon Greenhalgh (R-22), and appellant never discussed graveling of any part of the roadway with respondent (R-13 and 22).

Respondent claimed to have delivered 540 tons of crushed gravel at \$2.00 per ton and 5 hours of machinery work on July 7, 1973 upon appellant's roadway.

ARGUMENT

Point I

THE TRIAL COURT SHOULD HAVE GRANTED
DEFENDANT'S (APPELLANT'S) MOTION TO
DISMISS AT THE CLOSE OF PLAINTIFF'S
(RESPONDENT'S) EVIDENCE.

That the respondent and appellant had no agreement between themselves concerning the gravelling of appellant's roadway is undisputed (R-13 and 14). Appellant's only agreement was with James Eldon Greenhalgh (R-4). The evidence does not further disclose that appellant was aware that James Eldon Greenhalgh was making the agreement with appellant to put gravel upon appellant's roadway on behalf of anyone but himself (James Eldon Greenhalgh). In the instant case, appellant asked James Eldon Greenhalgh to put some gravel on the roadway (R-4), and James Eldon Greenhalgh had respondent do the job. It was held by this Court in the case of Kelly V. Richards et al, 95 Utah 560, 83 P 2d 731 that "it is elementary that where one seeks to recover under a contract he must allege the making of the contract either with him or with someone under whom he claims".

In the instant case, the complaint filed by respondent alleged that the 540 tons of crushed gravel at \$2.00 per ton and the bulldozer work, spread and finish at 5 hours for \$22.00 per hour were at the request of appellant. This simply was not the case where appellant had no dealings with respondent.

In a case, not greatly unlike the instant case decided by the Supreme Court of Kansas in 1976 - Holiday Development Co., Inc. V. J. A. Tobin Construction Company, 549 P 2d 1376, a supplier of material was denied recovery personally against a landowner for the value of materials supplied.

Point II


THERE WAS NO CONTRACT BETWEEN RESPONDENT
(PLAINTIFF) AND APPELLANT (DEFENDANT).

One of the essentials for the formation of a contract between two parties is a mutuality of assent. E. B. Wicks Co., V. Moyle, 103 Utah 554, 137 P 2d 342. In the instant case, appellant requested James Eldon Greenhalgh "to put some gravel on the road" (R-4). However, appellant and James Eldon Greenhalgh walked along the roadway, during which time appellant pointed out two or three areas to James Eldon Greenhalgh where gravel was needed (R-21 and 22). There is certainly nothing in the record to indicate any request from appellant for a gravelling of the entire roadway. Clearly, there is nothing in the record to show that assent of the appellant to the gravelling of some 1200 feet of roadway.

CONCLUSION

The trial court should be reversed for the reason that appellant and respondent were not parties to a contract whereby gravel was placed upon the roadway by respondent and there was no meeting of the minds between the appellant and respondent as to the gravel to be supplied. Costs should be awarded to appellant.

Respectfully submitted,



DON BLACKHAM
BLACKHAM AND BOLEY

3535 South 3200 West
Salt Lake City, Utah 84115