

1986

George P. Post, Post Petroleum Company v. Stan Knight, Stanco Insulation Services : Brief of Appellant

Utah Supreme Court

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John R. Anderson; Beaslin, Nygaard, Coke and Vincent; Attorneys for Respondent.

F. Alan Fletcher; Pruitt, Gushee and Fletcher; Attorneys for Appellant.

Recommended Citation

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UTAH COURT OF APPEALS
BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

UTAH
DOCUMENT
KFU

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DOCKET NO. 860120-CA

GEORGE P. POST, dba
POST PETROLEUM COMPANY,

Defendant and
Appellant,

vs.

STAN KNIGHT, dba STANCO
INSULATION SERVICES,

Plaintiff and
Respondents.

No. 20659

APPELLANT'S BRIEF

Appeal from the Judgment of the Seventh Judicial District
Court for Uintah County
Honorable Richard C. Davidson, District Judge

F. Alan Fletcher
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1850 Beneficial Life Tower
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Attorneys for Respondent

JUN 28 1985

Clerk, Supreme Court, Utah

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STATEMENT OF THE KIND OF CASE

In this action, Plaintiff seeks payment from Defendant, a partial owner of an oil well location, for the value of labor and materials furnished at the oil well location pursuant to a contract between Plaintiff and the corporate operator of the well.

DISPOSITION IN LOWER COURT

The case was decided by the District Court on stipulated facts. From a Judgment for the Plaintiff, Defendant appeals.

RELIEF SOUGHT ON APPEAL

Defendant seeks reversal of the Judgment and entry of judgment in his favor as a matter of law.

STATEMENT OF ISSUES

1. The existence of an express contract with a third party precludes the finding of an implied contract between Plaintiff and Defendant.

2. Plaintiff's failure to exhaust his legal remedies precludes his recovery from Defendant on the equitable theory of quantum meruit.

3. The evidence is insufficient to support a finding of liability under quantum meruit because Plaintiff has failed to show that Defendant was unjustly enriched.

STATEMENT OF FACTS

This case was submitted to the District Court on facts which were stipulated to by Plaintiff and Defendant. In lieu of a record on appeal, the parties have again stipulated to the facts and have submitted an Agreed Statement of the Record on Appeal, which has been approved by the District Court.¹

Plaintiff Stan Knight conducts an insulation business under the name and style of Stanco Insulation Services. (R. 1.) Defendant George P. Post, doing business as Post Petroleum Company, owned a 33.75% working interest in an oil well location in Uintah County, Utah; the balance of the working interest was owned by others. (R. 1, 2) Post Petroleum Company, Inc. (not a party to this action) was the corporate operator of said oil well.

Mr. Knight contracted with Post Petroleum Company, Inc., the corporate operator, to furnish labor and materials for

¹ References to stipulated facts are to the pertinent paragraph of the Agreed Statement of the Record on Appeal, designated by an "R" (i.e., R. 1, R. 5, etc.); references to exhibits are to the exhibits attached to the Agreed Statement of the Record on Appeal, designated "Ex." (i.e. Ex. "A", Ex. "D", etc.) and also to the Addendum designated "Add." (i.e. Add. "1," Add. "3," etc.)

the insulation of an oil tank battery and erection of two buildings at the well location. (R. 4) Between March 18, 1982 and April 26, 1982, Mr. Knight performed and completed the work he contracted to perform. (R. 5, Ex. "C," Add. "2") He then submitted his invoice (Ex. "B," Add. "1") to the corporation in the amount of \$18,437.13, which the parties agree is the reasonable value of the materials and services furnished. (R. 5) Due to his relationship with the corporation, Mr. Post was aware that Mr. Knight was billing the corporation (R. 6), with which it had contracted (R. 4), and not Mr. Post or his proprietorship personally (R. 6), with whom Mr. Knight had not contracted.

Mr. Knight's invoices were not paid and on July 14, 1982, he recorded a Notice of Lien (R. 7, Ex. "C," Add. "2") in which he expressed his intent to hold and claim a lien on the interest of the corporate operator in the oil well location. (R. 7) Several months later, the corporation filed a petition in bankruptcy and, on January 10, 1983, Mr. Knight filed a creditor's claim against the corporation in the bankruptcy proceeding, seeking payment of the entire amount due.² (R. 8, Ex. "D," Add. "3") It was at this time, nearly nine months after the work was completed, that Mr. Knight first learned of Mr. Post's ownership interest in the well and elected to seek payment from him. (R. 9, 10, 12) Until that time,

² On February 6, 1984, Mr. Knight amended his bankruptcy claim to seek only those sums which he does not recover from Mr. Post in these proceedings. (R. 13, Ex. "F," Add. "4")

Mr. Knight did not even know of Mr. Post's existence (R. 10) and he had consistently sought payment only from the corporation with which he had contracted. (R. 3, 4, 5, 6, 7, 8; Ex. "B," "C," "D;" Add. "1," "2," "3")

SUMMARY OF THE ARGUMENT

The District Court erred in its Ruling in favor of Plaintiff because Plaintiff is barred as a matter of law from recovery on quantum meruit. Plaintiff had no express agreement with Defendant and, therefore, he must rely on an implied contract based on unjust enrichment. Plaintiff is precluded however, from recovering on the basis of an implied contract because he had an express contract with a third party and because he has failed to exhaust his legal remedies.

Assuming arguendo that Plaintiff has not lost his right to sue on an implied contract, the evidence is insufficient to sustain such an action. The stipulated facts show only that (1) Defendant's property was benefited by Plaintiff's work and (2) that Plaintiff has not been paid therefore. There is a third element of unjust enrichment, however, which is that it would be unjust for Defendant to retain the benefit. Plaintiff has failed to carry his burden of proof on this point as there is no evidence even on stipulated facts, that Defendant has been unjustly enriched.

ARGUMENT

I.

PLAINTIFF IS BARRED AS A MATTER OF LAW FROM RECOVERING
ON QUANTUM MERUIT.

A. There is No Express Agreement with Post.

The stipulated facts clearly show that Mr. Knight never entered into an express agreement with Mr. Post for provision of the materials and labor which are the subject of this litigation. Mr. Knight admits that his contract was with Post Petroleum Company, Inc., the corporate operator of the well location. (R. 4) And, of course, he could not have contracted with Mr. Post personally since he did not even learn of Mr. Post's existence or his partial ownership interest in the well until long after the work was completed. (R. 10) Plaintiff's right to recover from Defendant "must be based upon an agreement, either express or implied." Commerical Fixtures and Furnishings, Inc. vs. Adams, 564 P.2d 773, 774 (Utah, 1977). There being no express agreement with this Defendant, Plaintiff must recover, if at all, on the basis of an implied contract.

B. The Existence of an Express Contract Precludes the Finding of an Implied Contract.

As noted above, Mr. Knight admits that he had an express contract with the corporate operator, Post Petroleum Company,

Inc. (R. 4) That very fact precludes him from asserting that Mr. Post is liable to him under an implied contract.

"There cannot be an express and an implied contract for the same thing existing at the same time." 66 Am.Jur.2d, Restitution and Implied Contracts, §6, p. 948, approved in Commercial Fixtures and Furnishings, Inc. vs. Adams, supra, at 564 P.2d 774. See also Verdi vs. Helper State Bank, 57 Utah 502, 196 Pac. 225, 15 A.L.R. 641 (1921).

The relationship of the parties in Commercial Fixtures, supra, was similar to the relationship of the parties here. There, the defendant's lessee, Great Outdoors, Inc., entered into a purchase contract for materials which were incorporated into the defendant lessor's building. When the lessee defaulted in payment of the purchase price, plaintiff brought suit directly against the lessor on an implied contract theory of unjust enrichment. This Court denied recovery to the plaintiff, saying:

It is also noted that there was an express contract between plaintiff and the lessee for the furnishing of materials, and when an express agreement exists one may not be implied.

564 P.2d 774. The same result should obtain here. Mr. Knight contracted with Post Petroleum Company, Inc. which, just as the tenant in Commerical Fixtures, was not the owner of the property. The existence of that express contract precludes a direct action against Mr. Post in this action.

C. The Equitable Remedy of Quantum Meruit is Not Available to Plaintiff Because He Failed to Exhaust His Legal Remedies.

Under the facts of this case, it is apparent that Mr. Knight had available to him several legal remedies. He has chosen to forego those remedies, however, preferring instead to initiate this direct action against Mr. Post. Unfortunately for Plaintiff, the law does not permit such an election.

Once again the facts in Commercial Fixtures and Furnishings, Inc. vs. Adams, supra, are similar to the instant facts and the law stated therein is determinative here. In Commercial Fixtures, this Court noted that the plaintiff had failed to file a lien and had failed to sue the lessee. Such failures constituted one of the grounds on which this Court denied plaintiff equitable relief:

The action brought by plaintiff is one in equity and brought without any attempt to exhaust any legal remedies available. Also, the stipulated facts are that plaintiff has brought no suit against the lessee nor did he initiate any action to enforce a mechanic's lien, if any he had. As a consequence, such lien right was lost by passage of time.

564 P.2d 774. The same defects and others lie here. Mr. Knight failed to record a valid lien, failed to initiate an action under the owner's bond statutes, and failed to pursue his claim in bankruptcy against the corporate operator.

It is to be noted that Mr. Knight did attempt to impose a lien on the property but failed to properly describe the interest to which the lien was to attach. A review of the Notice of Lien (Ex. "C," Add. "2") shows that Mr. Knight was uncertain as to the interest held by Post Petroleum Company, Inc. in the property. The lien notice states that he intended to hold and claim a lien "upon the property and improvements thereon owned and reputed to be owned by Post Petroleum Company, Inc. as lessee or operator of the mineral rights. . . ." (Ex. "C," Add. "2" lines 3-6; emphasis supplied) Further, Mr. Knight stated in the second single spaced paragraph of the Notice that, "The undersigned furnished said materials to was [sic] employed by Post Petroleum Company, Inc., who was the operator," (emphasis supplied) Thus it appears that Mr. Knight knew that Post Petroleum Company, Inc. was the operator of the well but apparently was uncertain as to whether or not it was a lessee thereof. In view of his uncertainty, Mr. Knight had a duty to inquire or to investigate the records of the Uintah County Recorder to determine the legal title owner. Having failed to do so he cannot be heard to complain that he liened the interest of the operator which, of course, was a fruitless act since the operator had no interest.

Mr. Knight also had an opportunity to recover his debt under what is commonly known as the owner's bond statute, Utah Code Annotated (1953, as amended) §§14-2-1, et seq. (Add. "6") Under that law, providers of labor and materials

have a direct right of action against the sureties if a bond has been posted (§14-2-1) or, if no bond has been posted, a direct right of action against the owners. (§14-2-2) Such actions may be brought at any time within one year from the date last materials were furnished or labor performed. (§14-2-2) Mr. Knight completed his contract on April 26, 1982 (Ex. "C," Add. "2"), thus he had a right to sue until April 26, 1983. Yet he failed to avail himself of that opportunity, even after he learned of Mr. Post's partial ownership when the bankruptcy proceeding was filed in January, 1983.

Finally, Mr. Knight has failed to assert and prosecute his claims in the bankruptcy proceeding, electing instead to sue Mr. Post on implied contract. Mr. Knight did initially file a claim in the bankruptcy proceeding for the entire amount due (R. 8, Ex. "D," Add. "3"), but has since amended that claim to seek only the difference between the amount due and what he recovers here. (R. 13, Ex. "F," Add. "4") Thus he has once again failed to pursue a legal remedy available to him.

Courts of other jurisdictions have followed the same rule of law as that followed by this Court in Commerical Fixtures, supra. In Utschig vs. McClone, 114 N.W.2d 854 (Wis. 1962), the Wisconsin Supreme Court noted that the subcontractor's lien statutes of Wisconsin offer security and protection to subcontractors and refused to allow direct action against the property owner, saying that the subcontractor's "failure to avail himself of the remedy so provided does

not produce for him a right to recover payment directly from an owner who did not employ him with whom he had no contract." 114 N.W.2d 856. And in Dale's Service Company, Inc. vs. Jones, 534 P.2d 1102 (Idaho, 1975), a case which is on "all fours" with the instant action, the Supreme Court of Idaho refused to allow a subcontractor's direct claim in quantum meruit against a land owner where it had not availed itself of its remedies under the mechanic's lien laws. 534 P.2d 1107. See generally 62 A.L.R.3d 288, Subcontractor's Recovery Against Owner, §4, pp. 297-303, and cases cited therein, wherein the annotator observed at page 297 that denial of recovery by a subcontractor is:

[G]enerally grounded . . . upon such factors as the insufficiency of the evidence to establish any unjust enrichment of the land owner at the subcontractor's loss or expense and the failure of the subcontractor to have availed himself of his other remedies.

II.

PLAINTIFF HAS FAILED TO CARRY HIS BURDEN OF PROVING EACH ELEMENT NECESSARY TO A RECOVERY ON QUANTUM MERUIT.

Even on stipulated facts, Plaintiff's evidence does not support a judgment against this Defendant on a theory of quantum meruit. Plaintiff apparently assumes that he is entitled to recover if he shows simply that he performed work which benefited Mr. Post's property and that he was not paid for that work. That is not enough. As was said

by this Court in Commerical Fixtures and Furnishings, Inc.
vs. Adams, supra:

The mere fact that a person benefits from a contract between two others does not make such third person liable in quasi-contract, unjust enrichment, or restitution. See 66 Am.Jur.2d 960. There must be some misleading act, request for services, or the like, to support such an action. Mere failure of performance by one of the contracting parties does not give rise to a right of restitution.

564 P.2d 774. Mr. Knight has shown that the property of a third party, Mr. Post, was benefited by a contract between he and the corporate operator. As stated by the Commerical Fixtures Court, that is not enough. Mr. Knight has also shown that the corporate operator failed to perform its side of the contract by not paying Plaintiff. Again, as stated by the Commerical Fixtures Court, that is still not enough. And obviously Mr. Post did not request Mr. Knight's services since his existence was not even known until long after the work was completed. (R. 10)

Mr. Knight's only claim is that the name of Mr. Post's proprietorship, Post Petroleum Company, is similar to the corporate operator's name, Post Petroleum Company, Inc. Under the facts of this case, we fail to see how that circumstance could have misled Mr. Knight and resulted in his loss of direct remedies otherwise available to him. He admits that he knew he was contracting with the corporation. (R. 4) His Notice of Lien indicates that he was uncertain as to whether the corporation had a leasehold interest in the property

or was merely the operator thereof. (Ex. "C," Add. "2") Significantly, he does not claim that he was misled by some document or misrepresentation. Obviously, he erroneously assumed that the operator was the owner. But under such an assumption, the situation would have been no different had Mr. Post's proprietorship been named the XYZ Oil Company.

The crux of every action in quantum meruit is that the defendant has been unjustly enriched. Pendleton vs. Sard, 297 A.2d 887, 62 A.L.R.3d 277 (Me. 1972). The basis of liability is the benefit conferred upon the defendant and not the detriment incurred by plaintiff. First Investment Company vs. Andersen, 621 P.2d 683, 687 (Utah, 1980). Thus it is Plaintiff's burden to show unjust enrichment. However, Mr. Knight has wholly failed to adduce any evidence that Mr. Post has been unjustly enriched. He simply assumes that since the property was benefited, he is entitled to recover. But mere enrichment is not sufficient--it must be unjust enrichment. "Clearly every benefit conferred is not recompensable and unjustly received." Kershaw vs. Tracy Collins Bank & Trust Company, 561 P.2d 683, 685 (Utah 1977).

Unjust enrichment cannot be presumed. Mr. Post could have been enriched, but not unjustly. For instance, Mr. Post's payment of Post Petroleum Company, Inc. pursuant to his contract with it would make his acceptance of the benefits just, as opposed to unjust, since he then did not accept


the benefit without payment therefore. See Crockett vs. Sampson, 439 S.W.2d 355 (Tex. Civ. App., 1969); Rogers vs. Whitson, 228 Cal.Ap.2d 662, 39 Cal. Rptr. 849 (Cal. 1964).

CONCLUSION

It is respectfully submitted that Plaintiff is not entitled to recover in quantum meruit on the facts of this case. Plaintiff's recovery is barred as a matter of law since he has no express contract with Defendant, he had an express contract with the corporate operator which precludes the finding of an implied contract, and he has failed to pursue his legal remedies. Further, the evidence fails to show that Defendant was unjustly enriched. The lower court's ruling should be reversed and judgment entered in Defendant's favor, no cause of action.

RESPECTFULLY SUBMITTED, this 28th day of June, 1985.

PRUITT, GUSHEE & FLETCHER

By: 
F. Alan Fletcher
Attorneys for Appellant

ADDENDUM

	Attachment Number
Stanco Insulation Services Statement, dated 6/17/82 (Ex. "B")	1
Notice of Lien (Ex. "C")	2
Proof of Claim in Bankruptcy (Ex. "D")	3
Amended Proof of Claim [in Bankruptcy] (Ex. "F")	4
Ruling [of the District Court]	5
Section 14-2-1, et seq., Utah Code Annotated (1953, as amended)	6

INSULATION SERVICES

OIL FIELD SERVICES

STATEMENT

P.O. BOX 340
ROOSEVELT, UTAH 84066
PHONE 722-3847

Dan Welch 4/18/82

1-405-272-068-1

Dan Welch

Lynn Johnston

POST PETROLEUM, INC.
SUITE 1000
15 NO. ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102

\$ 17,943.78

DATE	REFERENCE	CHARGES	CREDITS	BALANCE
1/15/82	INVOICES #2154, 2155, 2156	6102.25		6102.25
4/1/82	INVOICE #549	11,750.00		17,852.25
6/15/82	INTEREST ON ACCOUNTS 60 DAYS AND OVER	91.53		17,943.78
<p>THIS STATEMENT IS TO REPLACE STATEMENT SENT TO YOU IN ERROR ON 6/15/82.</p> <p>thank you.</p>				
IRRENT	30-60 DAYS	60-90 DAYS	90 DAYS & OVER	SERV. CHG.
	11,750.00	6102.25		91.53
				17,943.78

PAY LAST AMOUNT

CSA

July No 193512 1 Disposal Union County 4.00
 Date July 14, 1935 17.55 to Union County Proc.
 By _____ Deputy Book 308 Page 64

Hereby gives notice of intention to hold and claim a lien upon the property and improvements thereon owned and reputed to be owned by POST PETROLEUM CO., INC., as lessee or operator of the mineral rights and located in Uintah County, Utah, more particularly described as follows:

The amount demanded hereby is \$18,437.13 owing to the undersigned for furnishing materials used in performing labor upon the construction improvement upon the above described property, to wit: insulating an oil well battery and erection of 2 buildings.

Insulated battery built 2 buildings and furnished materials for the same.,

EXHIBIT C

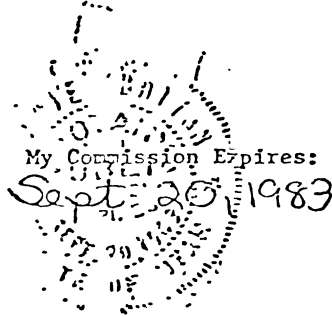
Alan Knight

STATE OF UTAH

County of Duchesne

WILLIAM STANFORD KNIGHT being first duly sworn, says that he is Roosevelt Branch Manager of the claimant in the foregoing Notice of Lien; that he has read said notice and knows the contents thereof, and that the same is true of his own knowledge

Stan Knight
Subscribed and sworn to before me this 13th day of July 1982



Marie Bolton (ink name)
Residing at *Roosevelt, Uta*
Notary Public

Notice of Lien

AGAINST

Dated _____, 19__

Recorded at the request of

at _____ minutes past _____ o'clock _____ M.

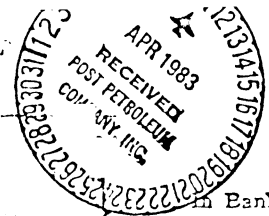
In Book _____ of _____ page _____

Recorder _____ County _____

BLANK NO 105—

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UNITED STATES DISTRICT COURT
FOR THE
Western District of Oklahoma



In the matter of

Port Petroleum Company, Inc. ID #73-1041913
Formerly
Overland Exploration Corporation

In Bankruptcy
No. 82-01889

(Important—Insert name of bankrupt or debtor above).

PROOF OF CLAIM IN BANKRUPTCY

William Stanford Knight (Stanco Insulation of No. Box 340
Roosevelt, County of Uintah, State of Utah, City)
IF CLAIMANT IS AN INDIVIDUAL:

1. (a) That he is the claimant herein.

IF CLAIMANT IS A PARTNERSHIP:

1. (b) That he is a member of _____, a copartnership, composed
of the undersigned and _____, of _____, in the County
of _____, State of _____, and carrying on business
at No. _____ Street, in _____ County of _____
State of _____

IF CLAIMANT IS A CORPORATION:

1. (c) That the undersigned is the _____ of _____, a corporation organized
(Official title) (Creditor)
under the laws of the State of _____, and carrying on business at No. _____ Street
in _____ County of _____, State of _____, and is duly
authorized to make this proof of claim on its behalf.

IF MADE BY AGENT OR ATTORNEY:

1. (d) That the undersigned is the agent or attorney of William Stanford Knight-Stanco Insulation
(Creditor) Service
of No. Box 340 Street, in Roosevelt, County of Uintah
Utah; that he is duly authorized by said William Stanford Knight
to make this proof of claim in his behalf; that said proof cannot be made by said William Stanford Knight
in person because he has requested his attorney to file on his behalf (Creditor)

2. That the above-named bankrupt (or debtor) was at and before the filing by (or against) him of the petition herein (for ad-
judication of bankruptcy), and still is, justly and truly indebted (or liable) to the claimant (or copartnership or corporation), in
the sum of EIGHTEEN THOUSAND FOUR HUNDRED THIRTY SEVEN (\$ 18,437.13)

3. That the consideration of this debt (or liability) is as follows:
Insulation work at well battery and erection of two buildings in
T 1 So, R 1 W, USB&B, Section 19, Uintah County, Utah

4. That no part of the debt (or liability) has been paid except None

5. That there are no set-offs or counterclaims to the debt (or liability), except NONE

6. That claimant (or said copartnership or said corporation) does not hold, and has not, nor has any person by his or (its)
order, or to the knowledge or belief of the undersigned, for his (or its) use, had or received, any security, or securities for the
debt (or liability), except NONE

7. [If the debt or liability is founded upon an instrument of writing.] That the instrument upon which the debt (or liability) is
founded is attached hereto (or lost or destroyed, as set forth in the affidavit attached hereto.)

8. [If the debt is founded upon an open account.] That the said debt was (or will become) due on April 26, 1982
(or that the average date thereof is _____; that no note, or other negotiable instrument, has been received
for such account, or any part thereof (or that the said debt is evidenced by a note, or other negotiable instrument, which is attached
hereto; and that no judgment has been rendered thereon, except NONE

9. This claim is filed as an { UNSECURED } CLAIM
SECURED
PRIORITY
Dated at Roosevelt, Utah

Signed this 10th day of January 19 83
George M. Mays
Attorney at Law

EXHIBIT D

INSULATION SERVICES

OIL FIELD SERVICES

P.O. BOX 340
ROOSEVELT, UTAH 84066
PHONE 722-3547

STATEMENT

Don Welch 4/15/82
1-405-272-0681

Don Welch
Lynn Johnston

Frederick Goodland

POST INSULATION INC.
SUITE 1000
15 NO. ROBINSON
OKLAHOMA CITY, OKLAHOMA 73102

\$ 17,943.78

DATE	REFERENCE	CHARGES	CREDITS	BALANCE
1/25/82	INVOICES #2154, 2155, 2156	6102.25		6102.25
4/1/82	INVOICE #549	11,750.00		17,852.25
6/15/82	INTEREST ON ACCOUNTS 60 DAYS AND OVER	91.53		17,943.78
THIS STATEMENT IS TO REPLACE STATEMENT SENT TO YOU IN ERROR ON 6/15/82. thank you.				
CURRENT	30-60 DAYS	60-90 DAYS	90 DAYS & OVER	SERV. CHG.
	11,750.00	6102.25	91.53	\$17,943.78

307
535/12/2

Thank You

PAY LAST AMOUNT IN THIS COLUMN



FILED 01/11/84

WALTER W. MOUNTS
CLERK, U. S. BANKRUPTCY COURT
WESTERN DISTRICT OF OKLAHOMA
BY _____

IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA

IN RE: :
POST PETROLEUM COMPANY, INC., : No. BK-82-01889-B
Debtor. : (Chapter 11)

AMENDED PROOF OF CLAIM

COMES NOW William Stanford Knight, dba Stanco Insulation Services and hereby and herewith amends his Proof of Claim heretofore filed for the sum of EIGHTEEN THOUSAND FOUR HUNDRED THIRTY-SEVEN AND 13/100 DOLLARS (\$18,437.13) and hereby serves notice upon the Debtor in possession; Creditor's Committee and/or Trustee, if appointed, that further facts have developed indicating that Post Petroleum Company, Inc., may not have an interest in the oil well and properties in Uintah County, State of Utah, and accordingly litigation has been commenced against George P. Post, dba Post Petroleum Company, a proprietorship, for collection of this matter.

This Proof of Claim is hereby amended and will be credited with any amounts recovered in the civil action pending in Uintah County, State of Utah, wherein George P. Post, dba Post Petroleum Company, is Defendant, Civil No. 12480.

The effect of this amendment is to make the Proof of Claim based upon a debt which may have a contingent liability determination

DOCKET

the Debtor in possession and/or Trustee is hereby given notice of this status and the claim is hereby amended in accordance herewith.

DATED this 6th day of February, 1984.

William Stanford Knight
William Stanford Knight, dba
Stanco Insulation Services

STATE OF UTAH)
 : ss.
COUNTY OF UINTAH)

William Stanford Knight, dba Stanco Insulation Services, being first duly sworn upon his oath, deposes and states: That he has read the above and foregoing Amended Proof of Claim, with the contents therein, that the same is true and correct, except as to matters therein stated upon information and belief, and as to such matters he believes the same to be true.

William Stanford Knight
William Stanford Knight, dba
Stanco Insulation Services

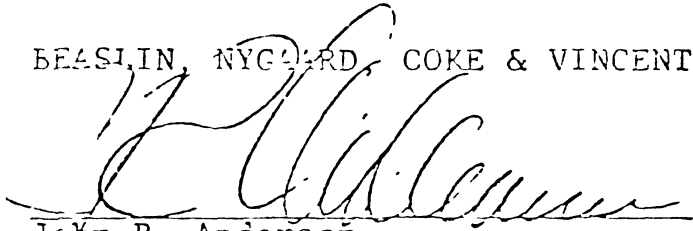
SUBSCRIBED AND SWORN to before me this 11th day of February, 1984.

Paula Williams
Notary Public
Residing in Vernal, Utah 84078

My Commission Expires:

7,000.00 1985

BEASLIN, NYGARD, COKE & VINCENT

A handwritten signature in dark ink, appearing to read "John R. Anderson", is written over a horizontal line.

John R. Anderson

Attorney for William Stanford
Knight, dba Stanco Insulation
Services

185 North Vernal Avenue, Suite 1

Vernal, Utah 84078

Telephone: (801) 789-1201

IN THE SEVENTH JUDICIAL DISTRICT COURT OF UINTAH COUNTY
STATE OF UTAH

STAN KNIGHT dba STANCO INSULATION)	
SERVICES,)	
)	
PLAINTIFF,)	<u>RULING</u>
)	
vs.)	
)	
GEORGE P. POST dba POST)	
PETROLEUM COMPANY,)	
)	
DEFENDANT.)	CIVIL NO. 12,480

The issue in this case is whether a contract can be implied between Plaintiff and Defendant upon the Theory of Quantum Meruit. The Elements of Quantum Meruit are generally that one party bestows a benefit upon another and retention of that benefit without compensation would be unjust. The effect of finding these elements is the implication of a contract between the parties requiring payment for the benefit. The problem in this case arises when the work is performed at the request of one party but a third party is charged with receiving the benefit. In such a case, normally the third party cannot be held to be liable. However, two factors must be considered. First, was the third party to be the ultimate beneficiary of the benefit? In this case, the Defendant, being the owner of the well, was to be the ultimate beneficiary of the benefit and for that purpose obtained the services of the corporation to do the work. The

corporation subsequently entered into an agreement with Plaintiff, the benefit of such flowing to the Defendant. While Plaintiff may have been acting under a mistaken impression of fact, the Defendant and the corporation were not. The Defendant was the owner desiring the benefit, the well drilled and put into production, and the corporation was hired to do so.

Second, the relationship of the parties must be examined. Certainly, some relationship between Defendant and the corporation existed at the time of Plaintiff's services. The fact that Plaintiff may have been confused and billed the wrong party likely was known or should have been known to Defendant and the corporation. Such confusion cannot now be raised to shield the Defendant from responsibility when such confusion may have been contributed to by Defendant's action or inaction.

The Court finds that Plaintiff is entitled to recover from Defendant for the value of his services and materials received by defendant.

The Court has not been shown the relationship of Defendant to the other owners of the well. It has been stipulated that Defendant is only a partial owner. Consequently, judgment is granted against Defendant in the sum of 33.75% of the amount claimed by Plaintiff, such judgment being \$6,222.53, together

with Court costs.

DATED this 14 day of February, 1985.

BY THE COURT:

A handwritten signature in cursive script, reading "Richard Davidson", written over a horizontal line.

cc: John R. Anderson
F. Alan Fletcher

Utah Code Annotated (1953, as amended),
Title 14, Chapter 2: Private Contracts

14-2-1. Bond to protect mechanics and materialmen. The owner of any interest in land entering into a contract, involving \$2,000 or more, for the construction, addition to, or alteration or repair of, any building, structure or improvement upon land shall, before any such work is commenced, obtain from the contractor a bond in a sum equal to the contract price, with good and sufficient sureties, conditioned for the faithful performance of the contract and prompt payment for material furnished and labor performed under the contract. Such bond shall run to the owner and to all other persons as their interest may appear; and any person who has furnished materials or performed labor for or upon any such building, structure or improvement, payment for which has not been made, shall have a direct right of action against the sureties upon such bond for the reasonable value of the materials furnished or labor performed, not exceeding, however, in any case the prices agreed upon; which right of action shall accrue forty days after the completion, or abandonment, or default in the performance, of the work provided for in the contract.

The bond herein provided for shall be exhibited to any person interested, upon request.

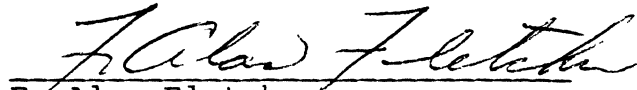
14-2-2. Failure to require bond—Direct liability—Limitation of actions.—Any person subject to the provisions of this chapter, who shall fail to obtain such good and sufficient bond, or to exhibit the same, as herein required, shall be personally liable to all persons who have furnished materials or performed labor under the contract for the reasonable value of such materials furnished or labor performed, not exceeding, however, in any case the prices agreed upon. Actions to recover on such liability shall be commenced within one year from the last date the last materials were furnished or the labor performed.

14-2-3. Action on bond to protect mechanics and materialmen—Attorney's fee.—In any action brought upon the bond provided for under this chapter the successful party shall be entitled to recover a reasonable attorney's fee to be fixed by the court, which shall be taxed as costs in the action.

CERTIFICATE OF MAILING

I hereby certify that on this 28th day of June, 1985,
I mailed, postage prepaid, four (4) copies of the foregoing
Appellant's Brief to:

John R. Anderson
BEASLIN, NYGAARD, COKE & VINCENT
185 North Vernal Avenue
Vernal, Utah 84078-2196


F. Alan Fletcher