

1986

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

Utah Supreme Court

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**UTAH COURT OF APPEALS
BRIEF**

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IN THE SUPREME COURT OF THE STATE OF UTAH

GEORGE P. POST, dba
POST PETROLEUM COMPANY,

Defendant and
Appellant,

vs.

STAN KNIGHT, dba STANCO
INSULATION SERVICES,

Plaintiff and
Respondents.

.A:0

DOCKET NO. 860120-CA

860120-CA

No. 20659

APPELLANT'S REPLY BRIEF

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

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FILED

AUG 26 1985

Clerk, Supreme Court, Utah

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SUMMARY OF THE ARGUMENT

In Point I of this reply to Plaintiff's Brief, Defendant points to several instances in which Plaintiff has misapprehended the extent of the stipulated facts. As clarified here, it becomes clear that Plaintiff properly sought payment from the corporation, that Plaintiff was not misled by any action or inaction of Defendant, and that Plaintiff simply erroneously assumed the corporation owned the property he worked on. Thus, Plaintiff is not entitled to recover under quantum meruit.

Point II responds to Plaintiff's claim that he has proven all of the elements of quantum meruit and therefor is entitled to recover from Defendant on that theory. To the contrary, the argument shows that in fact Plaintiff has failed to satisfy the most critical element, i.e. that Defendant was unjustly enriched.

Plaintiff's argument that Utah case law permits recovery on quantum meruit is addressed in Point III. There it is demonstrated that, to the contrary, the law of Utah precludes recovery under the stipulated facts here under consideration.

Finally, Point IV refutes Plaintiff's claim that this Court must defer to the trial court's findings. Since this case is here on stipulated facts, this Court is in as good a position as the trial court to evaluate those facts and apply the appropriate law.

I.

THE STIPULATED FACTS DO NOT SUPPORT PLAINTIFF'S CONTENTIONS

Plaintiff is laboring under a misapprehension as to the extent of the stipulated facts. In his Statement of Facts, Mr. Knight states: "Although both the Defendant and the corporation knew that Plaintiff had billed the wrong party, neither ever informed the Plaintiff of this fact." (Resp. Br., p. 1.) The stipulated facts are not that the Plaintiff in fact billed the wrong party, but that Plaintiff was never advised that by billing the corporation he had billed the wrong party. (R. 5) The reason, of course, that Plaintiff was never so advised is that he was billing the right party. It was the corporation with which he had contracted (R. 4), and there would be no reason for Mr. Knight to bill Mr. Post personally since he had no contract with Mr. Post. Plaintiff confuses the fact that he wishes he had contracted with the property owners with the stipulated fact that he contracted with the corporation.

Plaintiff compounds the error of his misapprehended facts when he claims that he was misled by "the silence of both Defendant and the corporation as to who would ultimately be responsible for payment." (Resp. Br., pp. 7, 8) The corporation was not silent and the Plaintiff was not misled. Obviously, having contracted with the Plaintiff to furnish the labor and materials (R. 4), the corporation was ultimately responsible

for payment. And the Plaintiff understood that to be the case since he was instructed to bill the corporation. (R. 5) Plaintiff leaps to the conclusion that ownership by itself creates an obligation to pay. It does not, except under the legal remedies of the mechanic's lien statutes (§§ 38-1-1, et seq., Utah Code Annotated (1953, as amended)) and the owner's bond statutes (§§ 14-2-1, et seq., Utah Code Annotated (1953, as amended)), of which Plaintiff failed to avail himself.

Plaintiff's misapprehension of the facts is also apparent at page 5 of his brief. There he argues that although Defendant knew Plaintiff was seeking payment from the corporation, had filed a mechanic's lien against it's interest,* and the corporation had filed bankruptcy, "neither Defendant nor the corporation ever informed Plaintiff that it was Defendant's dba and not the corporation that actually owned the property and received the benefit of the Plaintiff's labor." Defendant respectfully submits that those facts make no difference. Plaintiff contracted with the corporation, not Defendant. Plaintiff does not claim that he inquired as to ownership of the property and was misled. Nor does he claim that any representations of ownership were made. Nor does he claim that he checked the county records and was confused by the

* Again Plaintiff misapprehends the stipulated facts. The stipulated fact is that a lien was filed. (R. 7) It was not stipulated that either Mr. Post or the corporation knew of the lien. Indeed, they had no reason to know, even constructively, since it described the wrong land. See discussion, p. 7.

similarity of the names Post Petroleum Company and Post Petroleum Company, Inc. If anything, he simply erroneously assumed that the corporation was the owner of the property. That assumption on his part does not constitute a "misleading" act on the part of the Defendant.

The speciousness of Plaintiff's claim that he was somehow confused or misled by the similarity in names is demonstrable. Curiously, Plaintiff never says how things would have come out differently if he had known that the corporation did not own the well. It could not be that he would have had a valid lien on Mr. Post's interest since the Notice of Lien he did file is patently defective. The Notice of Lien (Ex. "C," Add. "1" hereof) describes the well as being in "Township 1 South, Range 1 East, U.S.B. & M. Section 9: The Roosevelt Unit 1-19" (emphasis added), whereas the Designation of Agent form (Ex. "A," Add. "2" hereof) shows that Well 1-19 is in the "NW¼ Sec. 19 T.1S, R.1E," (emphasis supplied) (It is customary to use such a number to designate wells within sections, i.e. 1-19 refers to the first well in Section 19.) Since Plaintiff's lien was filed in Section 9 rather than the correct Section 19, it was invalid even if Plaintiff had named the actual owners.

Nor would things have been different for Plaintiff with respect to his rights under the owner's bond statutes (§ 14-2-1, et seq., Utah Code Annotated (1953, as amended)) had he known of Defendant's ownership interest at the outset. Plaintiff

first learned the corporation had no interest sometime prior to January 10, 1983, the date on which Plaintiff filed his claim in the corporate bankruptcy. (R. 8,9) He had from then until April 26, 1983 (one year after he last performed work as shown by his Notice of Lien, Ex "C," Add. "1" hereof) as required by § 14-2-2, Utah Code Annotated (1953, as amended). Yet he failed to do so. Would he have timely filed suit if he had known the status of title for one year instead of three and one-half months? There is nothing to suggest that he would have.

Finally, Plaintiff has not demonstrated that things would have been different but for the similarity of names. He only claims confusion as to Defendants' proprietorship, Post Petroleum Company, which owned only 33.75% of the well. He does not claim to have been confused or misled by the names of the other owners. Had Plaintiff really believed he was contracting with the owners, or even doing work for the owners, that belief obviously would have attached to all the owners, not just Mr. Post. It seems obvious that it was only after the fact, only after it became apparent that the corporation could not pay, that Plaintiff looked around, discovered the similarity in names, and said to himself, "I must have been confused or misled. I thought I was dealing with Mr. Post who still has money." That simply won't wash.

II.

PLAINTIFF HAS FAILED TO PROVE ALL OF THE ELEMENTS OF QUANTUM MERUIT

Defendant agrees with Plaintiff that the elements of quantum meruit are (1) a benefit conferred, (2) appreciation or knowledge of the benefit, and (3) retention of the benefit under circumstances which would be inequitable without payment of its value. (Resp. Br., pp. 3, 4, quoting from Berrett vs. Stevens, 690 P.2d 553, 557 (Utah 1984)). Defendant also agrees that the stipulated facts establish the first two elements of quantum meruit--Defendant's partial ownership interest was benefited by Plaintiff's services and Defendant knew that that benefit was being conferred. However, the stipulated facts wholly fail to establish the third element, which requires a showing that Defendant is retaining the benefit under circumstances which make it inequitable for him to do so without payment to Plaintiff or, in other words, that he has been unjustly enriched.

Plaintiff argues that the inequity is shown by the fact that Defendant knew Plaintiff was seeking payment from the corporation, "knew" that Plaintiff attempted to lien the interest of the corporation, (see footnote, p. 6), and knew that the corporation had filed for bankruptcy, yet did not inform Plaintiff that Defendant was a partial owner of the property benefited. (Resp. Br., p. 5) Plaintiff then notes

that his ability to recover from the corporation has been hampered and leaps to the conclusion that it would be unjust under the circumstances for Defendant to retain the benefit without compensating Plaintiff. Plaintiff cites no cases in support of his argument.

As has previously been demonstrated, Defendant did nothing to mislead Plaintiff. (Point I, supra) Plaintiff is simply asking this Court to correct mistakes he unilaterally made. He mistakenly assumed that the corporation owned the well. (A surprising assumption since operators of wells are often not the owners, and contractors usually do their business with the operators, not the owners.) Had he simply inquired of the corporation or checked the county records, he would have found his assumption was erroneous. He would have learned the actual ownership of the well in time to file a valid lien against not only Defendant's 33.75% interest but also the interests of the other owners. Having failed to make those simple inquiries, and the time for filing a lien against the ownership interest having expired, Plaintiff now asks this Court to afford him another remedy in addition to the one granted him by statute.

Plaintiff also had a direct right of action against Defendant under the owner's bond statutes (§§ 14-2-1, et seq., Utah Code Annotated (1953, as amended)). Again, he failed to avail himself of this remedy within the one year period of limitation, even though he discovered Defendant's ownership interest approximately three months prior to the

expiration of the statute of limitations.* Thus, once again having failed to timely exercise his rights, Plaintiff asks this Court to give him another chance.

Opening Brief, it is Plaintiff's burden of showing that Defendant has been unjustly enriched. The stipulated facts do not demonstrate this necessary element for recovery and Plaintiff has made nothing but bald, unsupported assertions thereof based on erroneous assumptions.

III.

PLAINTIFF IS BARRED FROM RECOVERY UNDER QUANTUM MERUIT

Plaintiff quarrels with the language quoted by Defendant from Kershaw vs. Tracy Collins Bank and Trust Company, 561 P.2d 683, 685 (Utah, 1977), to the effect that "clearly every benefit conferred is not recompensable and unjustly received." He claims that that language was taken out of context. (Resp. Br., p. 6) This Court has, however, consistently reiterated that principle. In Berrett vs. Stevens, supra, (cited by Plaintiff) it was said, "The mere fact that a person benefits another is not by itself sufficient to require the other

* The work was completed April 26, 1982 (Notice of Lien, Exhibit "C", Add. 2), thus the statute of limitations did not run until April 26, 1983; Plaintiff discovered Defendant's ownership interest in January, 1983, after the bankruptcy proceedings had been filed. (R. 8, 9)) As noted in Appellant's

to make restitution." 690 P.2d 558. And in General Leasing Company vs. Manivest Corporation, 667 P.2d 596 (Utah, 1983), (also cited by Plaintiff) it was said that, "Unjust enrichment does not apply to every circumstance where one has been benefited by another's detriment." 667 P.2d 597.

Plaintiff contends that his services were rendered under the belief that he would be paid therefore. (Resp. Br., p. 6) Defendant agrees. However, it is respectfully submitted that the stipulated facts show that Plaintiff expected to be paid by the corporation, not this Defendant, since his contract was with the corporation (R. 4), he billed the corporation for the work (R. 5), he attempted to lien the interest of the corporation (R. 7), and he filed a creditor's claim against the corporation in the bankruptcy proceeding (R. 8). It was only after Plaintiff discovered that he would be unable to promptly collect from the corporation that he decided that he had really intended to deal with Defendant.

Since the holding of Commercial Fixtures and Furnishings Inc. v. Adams, 564 P.2d 773 (Utah 1977), is dispositive here, Plaintiff attempts to distinguish it from the facts of this case. (Resp. Br., p. 6) At the outset it should be observed that there were five bases for the result in Commercial Fixtures: (1) the tenant had contracted away his right to charge the land with the value of improvements; (2) the stipulated facts showed no agreement, either express or implied, since the Plaintiff had placed no reliance on the credit of the Defendant

and the lease agreement obligated the lessee to pay; (3) there was no showing of unjust enrichment since there was no misleading act, request for services or the like but merely a failure of performance; (4) there was an express contract which precluded imposition of an implied contract; and (5) the Plaintiff failed to exhaust his legal remedies by filing a mechanic's lien or bringing suit against the lessee. It is respectfully submitted that any one of those five bases was sufficient to deny recovery in Commercial Fixtures, but Plaintiff only addresses three here.

First, Plaintiff contends that Commercial Fixtures is distinguishable because there the tenant had contracted away any right he may have had to charge Defendant's interest with the value of improvements or repairs whereas no such relinquishment has occurred here. (Resp. Br., pp. 6, 7) It is true that the stipulated facts do not show any such relinquishment. However, the stipulated facts also do not show that the corporation had any authority to encumber Defendant's interest.

Second, Plaintiff points out that in Commercial Fixtures the plaintiff had failed to exhaust his administrative remedies by not filing a mechanic's lien. (Resp. Br., p. 7) He argues here that he attempted to file a mechanic's lien against the corporation's interest but that remedy has been impaired by the bankruptcy proceedings. The argument is without merit. The filing of a mechanic's lien against the corporation's interest was a fruitless act at the outset since the corporation had no interest. The lien would have had no effect regardless

of the bankruptcy proceedings. Plaintiff failed to record a lien against the owner's interest, i.e. Defendant and his co-owners. Plaintiff does not contend that his failure was due to confusion arising from the similarity between the names of Defendant's proprietorship and the corporation. As previously noted, Plaintiff simply assumed that the corporation owned the property without making any adequate investigation thereof. And, as previously shown (supra, p. 7), the Notice of Lien was patently defective; it described the wrong property and would have been ineffective even if the actual owners were identified.

Third, Plaintiff attempts to distinguish Commercial Fixtures by contending that there was a misleading act here in that the corporation and Defendant did not inform him of which entity would "ultimately be responsible for payment." (Resp. Br., pp. 7, 8) The fact of the matter is that the contract was with the corporation and the corporation was ultimately responsible for payment; Plaintiff was not misled since he was specifically instructed to bill the corporation.

In attempting to distinguish Commercial Fixtures, Plaintiff ignores the specific holding of the Court that where there is an express contract, as here between Plaintiff and the corporation, no contract can be implied between Plaintiff and this Defendant. Commercial Fixtures and Furnishings, Inc. v. Adams, supra, at 774. Nor does Plaintiff address the Commercial Fixtures requirement that no implied contract will be found where it is not shown that the Plaintiff placed

reliance on the credit of the Defendant. (Id.) Clearly Plaintiff here did not rely on Defendant's credit since he did not even know of his existence until nine months after the contract was made and performed. It cannot be said that Plaintiff was relying on the ownership interest as Defendant's credit for that would fly in the face of Commercial Fixtures, since there, too, the defendant had an ownership interest and the Court found no reliance. (Id.)

Finally, Plaintiff asserts that this Court should abandon the rule enunciated by Commercial Fixtures and its predecessors and adopt the Tennessee rule of Paschall's, Inc. vs. Dozier, 407 S.W. 2d 150 (Tenn. 1966). Paschall's has not, however, been well received by courts of other jurisdictions. For instance, in Pendleton vs. Sard, 297 A.2d 889 (Me. 1972), the court made an indepth analysis of Paschall's, then rejected that approach in favor of the Texas rule in Crockett vs. Sampson, 439 S.W.2d 355, (C.C.A. Tex., 1979). In Crockett, the Texas Court found that there were no circumstances under which the subcontractor would be led to believe that anyone other than the prime contractor would pay him and, therefore, there was no basis for recovery in quantum meruit since there were no inequities shown. 439 S.W.2d 355, 358. The analysis of the Pendleton court in applying the Crockett rule is worth quoting in depth:

We cannot anticipate every factual situation that may arise but we conclude that under ordinary and usual circumstances the equities will not permit the supplier of labor and materials to obtain a personal

judgment against the owner with whom he had no contractual dealings. . . . The prime contractor may have been paid in full by the owner. The subcontractor may not have exhausted his remedies against the prime contractor. The subcontractor, with opportunity available to test the credit of the prime contractor, has elected to give the latter credit. The owner may naturally assume that suppliers dealing with the prime contractor will look to the latter for payment. Defenses which may be available to the prime contractor as against the supplier may not be known or available to the owner. Any one or a combination of these equitable considerations, and perhaps others raised by the facts, will tend to prevent any "enrichment" from being "unjust" and will thus militate against a quasi contractual obligation.

297 A.2d 895. It is submitted that here, also, any one or combination of those considerations may exist. Having failed to prove that they do not, Plaintiff has not carried his burden of proving that Defendant was "unjustly enriched".

IV.

THIS COURT IS NOT BOUND BY THE FINDINGS OF THE TRIAL COURT

Plaintiff suggests that this Court must defer to the findings of the trial court because it was in a better position to evaluate the evidence. (Resp. Br., pp. 9, 10) That is true when there has been a full trial in the lower court and it has heard the testimony of witnesses and assessed their credibility. But here there was no trial--the case was submitted to Judge Davidson on precisely the same facts as are before this Court. He was not required to decide

which witness was more believable but only to apply the law to the facts presented to him.

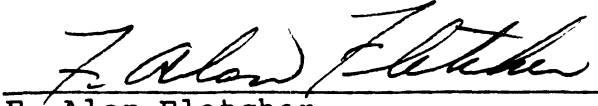
Thus the appeal presented here is one of law, not of disputed facts. Where questions of law are presented, "the same deference need not be accorded the lower court's position as [would be accorded] findings of fact. Provo City Corp. vs. Nielson Scott Company, Inc., 603 P.2d 803, 804 (Utah, 1979) This Court is at full liberty to make its own decision, regardless of the ruling below.

CONCLUSION

It is respectfully submitted that Plaintiff has failed to establish his right to recover from Defendant. He has not shown that Defendant has been unjustly enriched. The Trial Court's Ruling and Judgment should be reversed and the case should be remanded with instructions to enter judgment in favor of Defendant, no cause of action, and Defendant should be awarded his costs.

RESPECTFULLY SUBMITTED, this 26th day of August, 1985.

PRUITT, GUSHEE & FLETCHER


F. Alan Fletcher
Attorney for Appellant

ADDENDUM

Attachment Number

Notice of Lien (Ex. "C")

1

Designation of Agent (Ex. "A")

2

Page No 19512 ¹¹ Shirley's Education 4.00
 Date July 11, 1922 at 9.55 a Star Line Union County Regis
 by Shirley Deputy Book 208 Page 244

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:

TOWNSHIP 1 SOUTH, RANGE 1 EAST, U.S.B.&M.
Section 9: The Roosevelt Unit -1-19

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.

The undersigned furnished said materials to was employed by POST PETROLEUM CO., INC., who was the operator, such being done by the undersigned under a contract made between POST PETROLEUM CO. inc. and the undersigned by the terms and conditions of which the undersigned did agree to Pay cash when the contract was performed, or net within 30 days after completion in consideration of payment to the undersigned therefore as follows:

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

and under which contract the first material was furnished labor was performed on the 18th day of March, 1982 and the last was so furnished or performed on the 26th day of April, 1982, and for all of which materials labor the undersigned became entitled to \$18,437.13, which is the reasonable value thereof, and on which payments have been made and credits and offsets allowed amounting to \$ 0 leaving a balance owing to the undersigned of \$18,437.13 after deducting all just credits and offsets, and for which demand the undersigned holds and claims a lien by virtue of the provisions of Chapter 1, Title 38, Utah Code annotated 1953.

EXHIBIT C

STANCO INSULATION SERVICE

Alan Knight

Supervisor, Oil and Gas Operations:

The undersigned is, on the records of the Geological Survey, Unit Operator under the D & J Oil Co. unit agreement, Utah County, Utah (state), No. I-Sec. No. 886 approved 10/30/51 and hereby designated:

NAME: Post Petroleum Company, Inc.
George P. Post

ADDRESS: 15 No. Robinson Suite 1000 Colcord Building
Oklahoma City, OK 73102

as its agent, with full authority to act in its behalf in complying with the terms of the Unit Agreement and regulations applicable thereto and on whom the supervisor or his representative may serve written or oral instructions in securing compliance with the Oil and Gas Operating Regulations with respect to drilling, testing, and completing unit well No. 1-19, in the 1/4 NW 1/4 Sec. 19, T. 1S, R. 1E, Utah County, Utah.

It is understood that this designation of agent does not relieve the Unit Operator of responsibility for compliance with the terms of the unit agreement and the Oil and Gas Operating Regulations. It is also understood that this designation of agent does not constitute an assignment of any interest under the unit agreement or any lease committed thereto.

In case of default on the part of the designated agent, the Unit Operator will make full and prompt compliance with all regulations, lease terms, or orders of the Secretary of the Interior or his representative.

The Unit Operator agrees promptly to notify the oil and gas supervisor of any change in the designated agent.

This designation of agent is deemed to be temporary and in no manner a permanent arrangement.

This designation is given only to enable the agent herein designated to drill the above-specified unit well. Unless sooner terminated, this designation shall terminate when there is filed in the appropriate district office of the U. S. Geological Survey a completed file of all required Federal reports pertaining to subject well. It is also understood that this designation of agent is limited to field operations and does not cover administrative actions requiring specific authorization of the Unit Operator.

P. J. 82

D & J Oil Co.
Unit Operator
By: Donald J. Johnson
Its Attorney in Fact

CERTIFICATE OF MAILING

I hereby certify that on this 26th day of August, 1985,
I mailed, postage prepaid, four (4) copies of the foregoing
Appellant's Reply Brief to:

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



F. Alan Fletcher