

1988

John P. Sampson v. Milton R. Goff, individually and  
as trustee of Milton R. Goff Trust, an  
unincorporated association : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

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DOCKET NO.

880257-CA

JOHN P. SAMPSON,

Plaintiff, Appellant,  
and Cross-Respondent,

and

MILTON R. GOFF, individually and  
as trustee of MILTON R. GOFF TRUST,  
an unincorporated association,

Plaintiffs,

vs.

No. 860565  
& 860570

PAUL H. RICHINS; RICHTRON, INC.,  
a Utah corporation; RICHTRON  
FINANCIAL CORPORATION, a Utah  
corporation; RICHTRON GENERAL,  
a Utah corporation; and FRONTIER  
INVESTMENTS, a Utah corporation,

Defendants, Respondents  
and Cross-Appellants.

BRIEF OF APPELLANT

Appeal from the Judgment of the  
Second Judicial District Court, Davis County  
Honorable Bryant H. Croft

FILED

DEC 2 1987

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## STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Did the lower court err in concluding that John Sampson tortiously interfered with Defendants' business relations?
2. Did the lower court err in assessing damages against John Sampson?

## PERTINENT STATUTES AND RULES

This appeal does not focus upon the specific interpretation of any statutes. However, the decision of the lower court was based in part upon interpretation of the Utah Limited Partnership Act Title 48, Chapter 2, Sections 1-27.

## STATEMENT OF THE CASE

The original Complaint in this case was filed on February 11, 1981 under the title of "Robert J. Osborn, Plaintiff, vs. Paul H. Richins, Richtron, Inc., Richtron Financial Corporation." The relief sought was for a judgment giving full faith and credit to a judgment entered on May 13, 1980 by a circuit court in Oregon. Subsequently, a Motion to Amend the Complaint was granted and plaintiff Robert J. Osborn was replaced with John P. Sampson and the other listed plaintiffs in this present lawsuit. Defendants filed a Counterclaim to this Complaint alleging various defenses to the Oregon judgment and seeking six affirmative claims for relief on the Counterclaim.

In February of 1983 Judge Douglas Cornaby of the Second Judicial District Court in and for Davis County entered an order requiring defendant Paul Richins to obtain a licensed attorney to represent him rather than allowing him to appear pro se. An interlocutory appeal was taken to this Court and the Court



accepted jurisdiction as to whether the lower court's order of representation was proper. In September of 1983 this Court in Case No. 19229 granted Appellants' Motion for Summary Disposition and found that the lower court's order was overly broad and violated Appellants' constitutional right to represent himself.

Additional legal proceedings occurred in the lower court after remand. Those that are relevant to this appeal will be specifically stated in the Statement of Facts. A federal lawsuit was filed in the United States District Court for the District of Utah, Northern Division, Civil No. NC84-013A on August 28, 1984 by defendant Richins alleging securities and racketeering violations.

In October 1985 Judge Cornaby suggested to defense counsel that he may be prejudiced against the defendants and suggested they request a new judge to hear the matter. (R. 1685-87). On October 1, 1985 an order was entered by Judge Cornaby transferring the case to Judge David Roth. (Tr. 1699). Subsequently Chief Justice Gordon Hall acting through the office of the State Court Administrator appointed retired Judge Bryant Croft to further hear and try the case. The parties stipulated that the case would be tried in Salt Lake County but would remain under the jurisdiction of the Second Judicial District. (Tr. 1752-53).

The case came on for trial before the judge without a jury on January 27, 1986. The trial proceeded through the weeks of January 27, 1986 and concluded on February 11, 1986. The trial consisted of eleven days of oral testimony together with 398

exhibits.

In July of 1986 Judge Croft presented the parties with a "Memorandum and Summation of Evidence" consisting of 177 pages and proposed "Findings of Fact and Conclusions of Law and Verdict" consisting of 234 pages.

Objections were filed by both parties as to these Findings and a hearing was held on September 11, 1986. Subsequently, a judgment was entered by the lower court finding in favor of plaintiff Milton Goff and other plaintiffs listed as trustors against the defendants for \$19,057 (R. 2283) as to Plaintiffs' initial complaint, and finding against plaintiff John Sampson on the counterclaim in various amounts totaling approximately \$290,000. (R. 2286-88). A copy of these judgments is attached To Appendix I contained following the Argument portion of this Brief. Plaintiff filed a Notice of Appeal on November 6, 1986. (R. 2339-40). Defendants filed a second Notice of Appeal on November 10, 1986. (R. 2346-47).

Subsequently, a number of motions were filed in this Court by both parties as to the composition of the record and attempts to dismiss Sampson's appeal. Ultimately, the court denied all of Defendants' efforts to dismiss the appeal of Sampson but also limited the scope of the record to be included to that which was originally designated by Sampson on June 9, 1987.

During this same period of time a Complaint was filed by defendant Paul Richins against Sampson with the Utah State Bar. Thirteen separate claims were made by Richins as to Sampson's conduct. On June 15, 1987 the screening panel of the Utah State

Bar issued a private reprimand to plaintiff John Sampson finding that a more severe penalty was unwarranted since in the committee's opinion there was no dishonesty, deceit or bad motive in Mr. Sampson's conduct, and that he was at all times acting in the interest of his limited partner clients. (A copy of the private reprimand is attached herein to the Addendum).

On July 15, 1987 all further complaints filed against Sampson to the Bar Commission were dismissed by Bar counsel. In July of 1987 the parties stipulated to a settlement of the federal court case.

## STATEMENT OF FACTS

### INTRODUCTION

As previously noted the trial of this matter consumed eleven days of oral testimony. Judge Croft after taking the matter under advisement for nearly five months entered extensive factual findings. The court prepared what it called a "Memorandum and Summation of Evidence". This document contains 177 pages and essentially is a chronological listing of all events that were documented in this litigation.

The second document filed by the Court is entitled "Findings of Fact and Conclusions of Law and Verdicts." This document contains 234 pages and is contained in a separate volume to this Brief designated Appendix II. The format of this document consists of 156 pages of findings, 49 pages of conclusions of law, and 27 pages of verdicts. For purposes of this Brief reference will be made separately to the findings (hereinafter referred to as "Findings"); to the conclusions of law

(hereinafter referred to as "Conclusions"); and to the verdicts on both the plaintiffs' and defendants' claims (hereinafter referred to as "Verdicts"). The page of the court's opinion rather than the assigned record page will be referred to for convenience.

Plaintiffs' counsel has thoroughly reviewed the transcript in this case together with the exhibits that were filed by both parties. With the exception of evidence relating to the amount of damages, Plaintiffs believe that the lower court did an admirable job in summarizing the probative facts. The Findings, therefore, are essentially not contested by Plaintiffs in that they accurately reflect the events which transpired throughout these business dealings. It would therefore be needless repetition to refer to the underlying record rather than to the opinion of the lower court in areas where no dispute of the record has occurred.

As to the issue of damages, however, Plaintiffs believe that there is neither evidentiary support nor sufficient findings in the opinion submitted by the lower court to justify the imposition against Plaintiffs. This again, however, is an omission which again can have no citation to the record.

Thus, after reviewing this case in detail it has now become apparent that Plaintiffs' effort to supplement the transcript record in this case was essentially a needless gesture. First, a review of the original designation by Plaintiff as compared with the actual transcriptions reveals that nearly all of the transcript is included in that original designation. Second, and

more important, however, the Findings of the lower court as to probative facts are, as argued by Defendants' counsel during oral argument, sufficient to base both the appeal and the cross-appeal upon and therefore the internal decision of the court will be the focus of this appeal rather than the underlying record.

While Plaintiffs do not disagree with the overwhelming majority of probative facts found by the lower court, Plaintiffs do disagree with the findings relating to ultimate conclusionary facts and conclusions of law. Thus, for example, while not disagreeing that Sampson made certain statements concerning his interpretation of the partnership agreement Plaintiffs disagree that such statements constituted improper means of economic interference thereby justifying liability.

It is obviously impossible to duplicate in this Statement of Facts all of the events which Judge Croft methodically listed in his prepared documents. Fortunately, only some of these facts are relevant to the appeal and the cross-appeal now before this Court. Therefore, Plaintiffs will chronologically list the events which occurred in this litigation as specifically found by the lower court. At the same time, in order to better understand the legal conclusions of the lower court, Sampson will cite to the Conclusions and other analytical comments made by the lower court as to those facts. It is hoped that this process will simplify the examination of this voluminous record for both the appeal and cross-appeal.

#### THE PARTIES

Plaintiff and appellant John P. Sampson is an attorney at

law licensed to practice in the State of Utah and residing in Ogden, Utah. Plaintiff Milton R. Goff is an individual residing in Weber County, was a limited partner of one of the entities involved in this lawsuit, and was trustee for a group of individuals listed as plaintiffs in the court below. For purposes of this appeal, Goff and the other plainiffs will only be referred to when necessary to understand their role in the series of events. Claims levied by them and against them will not be addressed.

The Respondents Richtron, Inc., Richtron General, Richtron Financial Corporation and Frontier Investments are all Utah corporations organized by respondent Paul H. Richins and his wife Sherry. Richins was president of each corporation and Sherry was secretary-treasurer during the years from October 15, 1973 to March 1, 1980.

Richins established at least twenty-six limited partnerships in which either Richtron, Inc. or Richtron General was made the sole general partner in such limited partnerships. Through Richins' efforts approximately 130 parties invested in and became limited partners in one or more of such partnerships. Limited partnership agreements were executed between a general partner, for which Paul Richins signed as president of the general partner, and certain named individual partners, the number of which varied from three to twenty-two in the respective limited partnerships.

Each limited partnership was a farm property, each of which was purchased under a purchase agreement by either Richtron, Inc.

or Richtron Financial Corporation who appeared as buyers and the original owners from whom each property was purchased who appeared as sellers. The Richtron buyer of each property would then sell the property to a particular limited partnership under a sales agreement in which such limited partnership appeared as buyer.

In each such resale contract there was a substantial markup in the purchase price to be paid by the limited partnership for the farm property, together with an increase in the interest rate to be paid on the purchase price. Such resale agreements were all signed by Paul Richins for both the buyer and the seller, with him signing as president of the general partner of the limited partnership making the purchase and as president of the Richtron corporation making the resale to the limited partnership.

#### THE CLAIMS

This lawsuit began on February 11, 1981 under the title of "Robert J. Osborn, Plaintiff, vs. Paul H. Richins, Richtron, Inc., and Richtron Financial Corporation." The relief sought was for a judgment giving full faith and credit to a judgment entered on May 13, 1980 in a court of Oregon. For purposes of this appeal it is unnecessary to detail further procedural facts relating to plaintiffs' initial claim since neither party is contesting the decision rendered in favor of Goff and his trustors.

The Amended Counterclaim filed by Defendants initially alleged six causes of action against defendant Sampson. The

first claim alleged that from about June 11, 1980 until October 7, 1981 Sampson acted as legal counsel for defendants, who in the first claim are identified as Richins, Richtron, Inc., Richtron General and RFC. The Counterclaim alleged that Sampson undertook to represent partners and partnerships in matters adverse to these defendants; endeavored to obtain interests in various enumerated judgments or debts owed by defendants for the purpose of using them to defendants' detriment; utilized confidential information received while representing defendants to their detriment; and alleged that such conduct constituted conflicts of interest, fraudulent attempts to injure defendants, breach of fiduciary duty and trust upon which the attorney-client relationship is based. (Findings, pp. 29-30).

The second claim alleges Sampson, as counsel for defendants, failed to exercise reasonable care or skill ordinarily possessed and exercised by members of the legal profession; that he acted far beyond the scope of his express and implied delegated duties and utilized confidential information acquired while representing defendants. (Findings, pp. 30-31).

The third claim, based upon allegations of slander and defamatory statements, was abandoned by defendants during the trial. The fourth claim for relief alleged that Sampson intentionally and maliciously interfered with Richins' right to earn a livelihood as a syndicator of limited partnership interests and interfered with the other corporate defendants' abilities to make existing contractual relations and economic expectancies. (Findings, pp. 31-32).



The fifth claim for relief alleged that between June 14, 1980 and January 15, 1981 Richtron, Inc. and Richtron General withdrew as general partners of twenty-four named limited partnerships which obligated the general partner of each to wind up and terminate the affairs of the limited partnerships. It further alleged that Sampson who was purportedly acting as successor general partner deliberately interfered with the rights of the general partners to wind up the affairs and liquidate the limited partnerships. An accounting was requested. (Findings, pp. 32-33).

In the sixth claim for relief defendants assert that by reasons of all of the conduct alleged in the other claims that they have suffered irreparable injury for which there is no adequate legal remedy and thus seek injunctive relief. Defendants requested both compensatory as well as punitive damages under the various claims asserted. (Findings, p. 33).

#### CHRONOLOGY OF EVENTS

1. Finding: Between October 15, 1973 and March 1, 1980 Richins established at least 25 limited partnerships for the purpose of operating farms throughout the intermountain area. (Findings, p. 28). Each limited partnership had its own separate agreement signed by Richins as president of either Richtron, Inc. or Richtron General as general partner and by each investor in the particular limited partnership. The content of each agreement was identical, except as to dates, description of the property, the names of the investors and the amounts of the initial capital.

2. Finding: As of May, 1980, the evidence suggests a bleak outlook for the future in the overall operation of the limited partnerships by Richins. This was caused by (1) the failure of many limited partners to pay their assessed capital contribution which they had agreed to in their respective partnership agreements and (2) the failure of Richins as president of the general partners of each partnership to fulfill the duties and responsibilities he had to the limited partners under the partnership agreements. (Findings, pp. 54-57).

The court listed numerous problems with the farm properties in the latter part of 1979 and the early part of 1980. (Findings, pp. 60-64). In summary, the court stated that by May of 1980 there was dissatisfaction of the partnership affairs together with a lack of meaningful information from the general partner, the existence of judgments, troubles and tax problems, a state security commission investigation, a revocation of RFC's certificate of authority in Oregon, the failure of many limited partners to pay their assessments and Richins' failure to do anything about it. (Findings, p. 72).

Conclusion: By May of 1980 Richins had so mismanaged partnership affairs that it did not have sufficient funds to pay installments owed to RFC, so RFC could not pay its installment obligation to the contract sellers. Substantial judgment were obtained for failure to pay partnership obligations. Partners were angry because of Richins' failure to follow the partnership agreement upon assessment and failure to pay; to give an audited annual report to each, to have the properties appraised by a qualified appraiser and to give the partners a report of the holdings and to advise them regarding advances and obligations with respect thereto. (Verdict, p. 229).

3. Finding: On or about May 21, 1980 Richins had his first contact with Sampson concerning this action. Sampson called Richins, stating he was calling on behalf of Milton Goff and had some questions about the Catlow Valley Property--one of the limited partnerships. Richins told Sampson he was going to call a meeting of the Catlow Valley limited partners to tell them about the judgments that had been entered against the partnership and other problems. (Findings, p. 7).

4. Finding: On May 29, 1980 a meeting of the limited partners of the seven Catlow Valley farm partnerships was attended by about thirty limited partners. Its purpose was to discuss the critical financial condition of those partnerships and the need to act as to a sheriff's sale set for the following month. Richins advised those present that \$140,000 had to be raised immediately to stop the sale and that an additional \$30,000 to \$50,000 was needed to continue drilling water wells. The total amount of money then needed to pay the obligations owed was computed at \$240,000. (Findings, p. 63).

5. Finding: Sampson representing limited partners Goff and Kohler suggested that RFC file a Chapter 11 bankruptcy as an alternative. He also stated that he did not think RFC could keep the markup equity because it was a breach of fiduciary responsibility for a general partner to buy property at one price and to sell it to a partnership at a profit. This was a theme which Sampson repeatedly expressed in the months and years ahead. Richins disagreed with Sampson's conclusion but did agree to file a Chapter 11 bankruptcy on behalf of RFC. (Findings, pp. 36-37).

Conclusion: The court states that it does not believe that the markup in the contract price for which RFC or Richtron, Inc. sold farm property to a partnership by contract was a breach of fiduciary duty which rendered such contract or the markup illegal or void. The statement by Sampson was therefore erroneous. (Conclusion, p. 189).

6. Finding: It was agreed at this meeting that \$17,000 would be raised by the limited partners for the purpose of attorneys' fees and other expenses. When the limited partners raised the question as to who would have custody of the funds Richins suggested that Ken Hansen be appointed for that purpose. (Findings, pp. 64-5).

7. Finding: On May 30, 1980 a meeting of the Snowville limited partnership was held at which time they employed Sampson as legal counsel for the partnership and requested Sampson to take necessary steps to relieve Richtron as general partner and to liquidate in an orderly manner. They decided they would not pay contributions requested by Richins until after an audit was completed but would make contributions to meet the July 1st payment on the property if advised to do so by Sampson. It was also agreed to request the Springfield and Morland limited partnerships to do likewise. (Findings, p. 64).

8. Finding: On June 2 and June 5, Richins as the general partner in the partnerships executed quit claim deeds by which all of the limited partnerships conveyed to RFC the real property previously acquired by them. These deeds were executed without advising any investor or partnerships. The apparent basis for such deeds was the failure of the partnerships to keep current the payments due RFC on the real estate contracts by which the partnerships had purchased their farm lands from RFC.

Conclusion: The undisclosed execution by Richins as president of the general partner of the quit claim deeds on or about June 2 and 5, 1980 which deeds purported to convey all partnership properties to RFC was contrary to law and void. This effort would have essentially deprived the partnerships of their only assets making it impossible for them to carry on ordinary business. This action violated §48-2-9(2) of the Utah Code Annotated. It is difficult to conceive of any circumstance falling more closely into the statutory provision requiring notice and written consent of limited partners than the secretive conveyance of the partnership farms to a third party. (Conclusion, pp. 168-69).

9. Finding: On June 5, 1980 Richins prepared and signed as president of Richtron, Inc., the general partner, eighteen promissory notes which obligated the limited partnerships of the note issued to pay Richtron, Inc., Richtron General, or RFC, or their respective successors or assigns, the greater amount of the principal sum named therein or the total of the aggregate advances made to the partnership by the holder as

defined in the limited partnership agreement. (Findings, pp. 65-66).

Conclusion: The court found that while the general partners advanced funds under the partnership agreement they did not comply with Article V(1)(c) of the various agreements since there were no loan instruments prepared when such advances were made. The court specifically found that the promissory notes dated June 5, 1980 did not constitute a loan instrument as used in the partnership agreement. The money, therefore, could only be repaid at the time of termination of the partnership assuming sufficient assets were still available. (Findings, pp. 102-03).

10. Finding: On June 9, 1980 the Blackfoot limited partners had a meeting attended by both Richins and Sampson. Sampson stated his opinion that the markup on the propert was a breach of fiduciary duty and that Richtron was not entitled to the repayment of advances made to the limited partnership. Sampson throughout these events continually maintained that the general partners were not entitled to repayment of the advances they allegedly made. (Findings, p. 66).

Conclusion: Sampson's advice as to the repayment of advances was erroneous. While the money was not due and owing to the general partner immediately it was a legitimate debt upon termination of the partnership. (Conclusions, pp. 166, 170).

11. Finding: At the June 9, 1980 Blackfoot director meeting some of the limited partners expressed their dissatisfaction of Richins' performance. Richins stated that if they were not satisfied they could repay the advances, agree to pay in full for the personal property and could elect a new and more compatible general partner to take Richtron's place. He said that if they refused he might withdraw Richtron as a general partner and effect a dissolution and liquidation thereby forcing settlement of accounts and he would not consent to the election of a new general partner. On June 10 he sent a letter to the limited partners of Blackfoot and stated he was filing notice of Richtron, Inc.'s withdrawal as general partner. He demanded they repay advances of \$25,000 and that they elect a new general partner to fill the vacancy but also stated that the partnership was terminated and its affairs were to be wound up. (Findings, p. 66-67).

Conclusion: The court stated that Richins gave contrary instructions when he informed the Blackfoot partners as well as two others that he had withdrawn as the general partner and that they should go ahead and elect a new general partner while at the same time telling them that the partnership had been terminated and that the assets would have to be distributed. This raised confusion in the minds of the limited partners as to what they were expected to do. He placed his own erroneous interpretation of §48-2-20, U.C.A. (Conclusion, pp. 170-171).

12. Finding: On June 26, 1980 a large number of limited partners met with Sampson and Richins to discuss the problems taking place. Richins advised them that he had advanced \$350,000 and that many limited partners had failed to pay their assessments. He stated that \$300,000 was needed in the immediate future and \$60,000 was needed immediately. Sampson stated that he was present at the meeting to advise Kohler and Goff about their pension and profit sharing investments. After several heated discussions it was agreed that Sampson and his associates would buy out Richins for \$700,000 with an interest rate of 13%. (Findings, p. 37-38, 68).

13. Finding: Richins told Sampson that he anticipated creditors filing lawsuits during the next few months. Sampson said he would answer them and stall off the creditors and that once the agreement had been consummated he would like to continue as legal counsel for Richtron. The limited partners all agreed Sampson should represent their interests. At the same time with the probability of a settlement existing, at the insistence of active limited partners and with Richins' consent Sampson became the recipient of partnership funds paid by some limited partners for assessments. He was charged with maintaining control over how such funds were to be spent with such initial arrangements including an agreement for Sampson to pass the funds through to Richins for payment of pressing obligations. (Findings, pp. 38-39, 68).

Conclusion: Legally Richins had no authority to consent to Sampson's role in the collection of funds nor did the limited partners have the authority to hire a lawyer to represent them. However, in view of the tentative agreement for a settlement these factors should not be given much weight in determining the legality of what Sampson did in the months that followed. (Conclusions, p. 171).

14. Finding: During the summer and early fall of 1980 Sampson undertook various legal matters on behalf of the limited partners and the general partners. These included such acts as answering lawsuits, attempting to negotiate settlements, and attending trustee sales. All of these activities are outlined in the court's Findings, pages 39-43.

Conclusion: The court concluded that during the summer and fall of 1980 an attorney-client relationship existed between Sampson, Richins, and Richtron companies. The court found that the breach of fiduciary duty violated ethical standards adopted by the Bar Association and is part of the overall conduct of Sampson said to be tortious. (Conclusion, pp. 164-65).

15. Finding: On October 2, 1980 Sampson sent to all investors a copy of the completed compromise and settlement agreement and urged them to sign it and return it immediately to Richins. The agreement as drafted had received the approval of both Richins and Sampson and afforded the gateway through which

the controversies could be resolved. Although many limited partners signed it, others did not and so this agreement was never consummated. (Findings, pp. 68-69).

16. Finding: Following failure of having the settlement agreement consummated, Richins on November 13, 1980 drafted and executed a notice of withdrawal of the general partner which he then sent to the limited partners of six partnerships. On January 6, 1981 identical notices were mailed to the limited partners of 18 other partnerships. (Findings, p. 69). By separate letter Richins advised the limited partners that the general partner had withdrawn, the partnerships were terminated, and affairs would be wound up as indicated in the partnership agreements. (Id.).

Conclusion: Richins' statement in these notices that the partnerships had automatically terminated was erroneous. Article V of the partnership agreement does not state that withdrawal of a general partner automatically dissolves the partnership. Article VII of the agreement allows the limited partners to elect a new general partner upon the withdrawal of the old general partner. (Findings, pp. 70-72). The court further stated that while Richins relied upon §48-2-20, U.C.A. that this section was not applicable to this case and that it was necessary to look instead to the certificate of partnership agreement as to the responsibility arising out of the withdrawal of a general partner. As a matter of law, the limited partners had the right to elect a new general partner without terminating the partnership. (Conclusions, pp. 177-78).

17. Finding: Although Richins stated that he would immediately begin to wind up all of the partnership entities there is no evidence that he undertook any such action. The court stated, "We search in vain for evidence of any affirmative action by Richins to have the general partners undertake the promised wind-up of partnership affairs." (Findings, pp. 69-70).

Conclusion: Of great importance as to determining the losses to the various partnerships was Richins' own failure to undertake efforts to wind up partnership affairs and bring about dissolution and termination with any resulting benefits to all concerned. The courts were there to help him do so but he never used them for that purpose. Even in this litigation Richins did not seek a windup and dissolution by this court. (Verdict, pp. 229-30).

18. Finding: In December of 1980 Sampson sent out letters to all of the limited partners requesting that they return to him a signed power of attorney which would give him the ability to vote their rights. He informed them that settlement had failed and that it was necessary to sign these powers in order to remove Richins and his companies as general partners and to retain the properties and preserve legal remedies. The powers

of attorney stated that they were to be irrevocable for six months and to continue on until otherwise notified. (Findings, p. 76).

19. Finding: At this same time Sampson incorporated the John P. Sampson professional corporation and using the powers of attorney given to him by the various limited partnership undertook to vote the Richtron companies out as general partners and voted his own professional corporation in as the new substitute general partner. Sampson executed several documents to this effect and recorded notices of substitution as an amendment to the certificate of partnership agreement. In March 1981 he again executed other documents attempting to substitute his professional corporation as the general partner. (Findings, pp. 76-77).

Conclusion: The court ruled that as a matter of law Sampson did not legally substitute his professional corporation for that of the defendants since §48-2-24(d) requires that an amended certificate be signed and sworn to by all limited partners. Since it was only signed by Sampson the attempted substitution was invalid ab initio as not being in conformity with law and had no force or effect in removing the Richtron general partners. (Conclusions, p. 182).

20. Finding: A stipulated judgment had been entered in Oregon against the defendants on behalf of Robert Osborn. The judgment was entered on May 13, 1980 for \$75,683.00. (Findings, p. 6). During January of 1981 Sampson negotiated with the attorney for Osborn and purchased the Osborn judgment for \$20,000 down and \$20,000 more to be paid in three months. A complaint was filed on February 11, 1981 with Osborn being named as plaintiff seeking enforcement of the Oregon judgment. In March the amended complaint was amended to reflect Sampson's name as the real party in interest. Subsequently, the original assignment of the suit was revoked because of Sampson's failure to pay the remaining \$20,000. Later, however, the assignment was reinstated upon payment by Goff on behalf of other limited partners who are now named parties to this lawsuit. (Findings, pp. 10-13).

Conclusion: The court concluded that the purchase of this judgment by Sampson was in direct violation of §78-51-27 U.C.A. which prohibits attorneys from purchasing such judgments. Further, when Sampson obtained the second assignment on behalf of Goff and the other trustees he violated the section a second time. (Findings, pp. 109-10).

21. Finding: At this time the RFC bankruptcy proceedings were still alive and Sampson was notified by the Bankruptcy Court that a professional legal corporation was not authorized to become a general partner in an agricultural enterprise. On March 23, 1981 Sampson incorporated AG Management, Inc. of which he was one of its incorporators,

directors and the president. After doing so Sampson took steps to substitute AG Management for his PC as general partner of each partnership. (Findings, p. 78).

Conclusion: Sampson's attempted substitution of AG Management as general partner of each partnership in place of Sampson's PC without filing an amended certificate showing such change was contrary to law, a nullity, and gave AG Management no authority to act as such. (Conclusions, p. 192).

22. Finding: At the end of 1980 and into 1981 Sampson repeatedly solicited funds from the limited partners directing that the funds be sent to him and not to Richins. He determined the manner in which such funds were to be used and did so in the months and years ahead. From the end of June 1980 through November 1982 he received and disbursed at least \$645,000 from and for the limited partners and their partnerships. The evidence showed that Sampson kept detailed records of his receipts and disbursements. (Findings, p. 79).

23. Finding: Sampson, as counsel for Goff and certain limited partners, attended an IRS tax sale on October 29, 1982 relating to Richins and Richtron interests. As the only bidder they bid in \$40,000 to purchase all of Richins' claims in the partnerships, the Richins entities, the purchase and resale contracts and stock in the Richtron companies. These assets the IRS has purportedly taken by some thirty-five IRS seizures and levies. (Findings, pp. 81-2).

24. Finding: In a case filed in the District Court in Davis County entitled "Blackfoot Farms, et al. v. Paul H. Richins, Richtron Inc., RFC, et al." Judge Duffy Palmer entered Findings of Fact and Conclusions of Law on November 24, 1982 wherein he ruled that AG Management was not the general partner of any of the partnerships; that Richtron, Inc. and Richtron General were the liquidating general partners; that notwithstanding their withdrawals they were still in control of the partnership; and that the partnership certificates were never amended to admit AG Management as a general partner. (Findings, pp. 80-1).

25. Finding: Notwithstanding Sampson's setback in the face of Judge Palmer's ruling, Sampson continued to lay claim to and hold for his clients all of the Richins and Richtron rights and interests in the partnerships and their properties, including, as noted, all stock in the Richtron companies, doing so by reason of the procedural consequences of the IRS tax sale. (Findings, p. 82).

26. Finding: Emphasis was added to the legality of Sampson's claims by two subsequent court rulings made by Judge Cornaby in the District Court of Davis County, one on December 27, 1982, and the second on July 21, 1983. In both cases Judge Cornaby ruled that the IRS sale was valid, that Goff was the



purchaser of all Richins and Richtron property interest as evidenced and described by the IRS' certificate of sale, and that such sale covered all property interest, all causes of action, and all rights to wind up the affairs of the limited partners of which the Richtron companies had been general partners. (Findings, p. 82).

27. Finding: On May 16, 1984 Judge David Winder of the United States District Court for Utah entered an order which fully and unequivocally voided the IRS tax sale declaring that Goff had no interest in the capital stock of the Richtron companies, in the right of those companies to wind up partnership affairs, nor the right to institute causes of action. (Findings, p. 83).

28. Finding: After losing the IRS ruling Sampson and Richins wrote letters to each other as well as the limited partners at which time Sampson said that all the farms had been foreclosed upon and that they had been purchased directly from the individual sellers and therefore Richins and his companies no longer had any interest. The list of foreclosures introduced by Richins at trial indicates that all farms had been foreclosed upon by the dates of these letter exchanges. (Findings, p. 85).

29. Finding: Although Judge Winder's ruling was on May 16, 1984 Richins took no action to vacate Judge Cornaby's prior orders until January 3, 1985 when he finally filed a motion to do so. Based upon Judge Winder's decision, Judge Cornaby on February 15, 1985 made a ruling vacating his prior two orders because they had been based upon the assumption that the IRS sale was valid. (Findings, pp, 83-4).

30. Finding: There is no evidence in the record as to what became of various partnership properties although Richins testified at trial that none of the limited partners to his knowledge ever received any return on their investments. It is a reasonable inference that payments due to the original owners as sellers were not made; that those contracts fell into default; that a substantial reason therefore was that no money was available to meet such payments, and that the probable reason was the failure of many limited partners to pay the assessments necessary to obtain the funds to meet those payments. (Findings, p. 86).

31. Finding: From June 27, 1980 to October 29, 1984 approximately \$1,522,000 of unduplicated funds were deposited in the various accounts over which Sampson had control. (Verdict, p. 221). It is clear from the evidence that most of the funds that passed through Sampson's hands were paid out on partnership expenses. There was no evidence in the record that Sampson ended up with the partnership assets and in fact the only evidence shows that the properties were foreclosed upon. (Verdict, pp. 221-23).

## VERDICTS ENTERED BY THE COURT

The decision of Judge Croft as to plaintiff's initial Complaint is simplistic in that it provides a judgment against the defendants for \$19,057.42 in favor of the plaintiffs excluding John P. Sampson. (R. at 23-26).

The decision relating to the counterclaim is essentially summarized on pages 233 and 234 of the decision. The underlying reasoning supporting these verdicts, when it is stated in the document at all, is found throughout the Findings and Conclusions as well as the special section entitled "Verdict". Since these verdicts will be discussed extensively in the Argument portion of the Brief the following summary is offered for an overview of what the court reasoned.

1. The court found that as to Count I Sampson violated the attorney-client relationship in that he represented some of the defendants during 1980 but the court found that no evidence of damage was presented as to any of the counterclaims asserted by Defendants and therefore no award was given as to the First Count. (Findings, pp. 44-51; Conclusions, pp. 165-65).

2. As to Count II the court found that Sampson was negligent in the handling of various lawsuits. The court awarded Richins \$2,027.40 for the costs incurred in setting aside a default judgment which Sampson allowed to be entered against him. (Findings, pp. 52-3; Conclusions, pp. 165-66).

3. The Fourth Claim for interference of contractual relationships is the heart of the court's decision relating to the counterclaim. As to Richins individually (A) the court found

that Sampson did not interfere with Richins right to earn a livelihood or with anticipated opportunities for employment. (Findings, p. 90).

The court did find, however, that Sampson intentionally interfered with the other defendants' existing and potential economic relationships with each of the limited partners under their respective partnership agreements. (Findings, p. 93).

(B) The court considered RFC to have two potential claims: first, as the buyer and ultimate seller of the various farms to the limited partnerships, and second, as a limited partner itself in the Richfield Farm Limited Partnership and in Catlow Valley No. 2 and No. 6. The court concluded that even if Sampson had never appeared on the scene it was not probable that RFC could have prevented foreclosure of the original purchase contracts based upon the existing facts and circumstances disclosed by the evidence. (Verdict, pp. 228-30). The court awarded \$100 nominal damages to RFC for its interest as the seller of the farm property contracts.

The court did, however, award RFC \$30,974.50 for its interest in the Catlow Valley and Richfield Limited Partnerships. The court concluded that Sampson ignored its rights as limited partners in these partnerships, sent no notices to either, and offered no evidence as to what happened to the interests of the limited partnerships thereby causing a loss to RFC in the amount of their respective capital interest in those partnerships. (Verdict, pp. 228-30).

(C) The remaining defendants seeking damages against

Sampson were Richtron, Inc. and Richtron General which acted as general partners for the partnerships. Richtron, Inc. was awarded \$4,222.50 as a limited partner in the Pleasant Valley Partnership on the same basis as had been given to RFC on its two limited partnership interests.

In addition, however, an award of \$250,000 was made in favor of these general partners. The court specifically rejected the general partners' claims for repayment of advances made to the limited partnerships. The court found that there was no preponderance of evidence to show that but for Sampson's efforts the partnerships would have in fact been solvent to pay the advances made by the general partners at the termination of the partnerships. (Findings, p. 105; Conclusions, pp. 215-16). As to the general partners' claim for a ten percent of profits from the limited partnerships the court concluded that the evidentiary record in the case was purely speculative as to whether any profits would be in existence at the time of termination. (Findings, p. 133; Conclusions, p. 198, 204).

The court at the conclusion of its opinion made the following statement:

As stated before, damages are in tort, not in contract, rendering liability for damages for either the pecuniary loss of the benefits of the contract or consequential for which the tortious interference is the legal cause. I think as to some claim for relief damages, of at least a consequential nature, have been shown with a reasonable degree of certainty by a preponderance of the evidence. (Verdict, p. 232).

Thus, the award of \$250,000 is based upon consequential damages allegedly suffered by the general partners as a result of Sampson's wrongful interference.

The court rejected the affirmative defenses raised by Sampson including waiver and estoppel and held that the facts did not evidence any intent by Richins to waive his control over the partnership and step aside in favor of Sampson. (Conclusions, p. 205).

4. The court rejected Richins request under his Fifth Claim for Relief that an accounting be ordered. The court stated that any further accounting would not add to the certainty of the evidence.

5. The court also denied Richins Sixth Claim for Relief for an injunction on the basis that it was not supported by any preponderance of the evidence and that there was nothing shown that could be enjoined. (Conclusions, p. 164).

6. Defendants in their cross-appeal are seeking punitive damages which were denied to them by the trial court. The court found that Sampson in good faith attempted to negotiate settlement with Richins for the benefit of the limited partnerships (Findings, p. 140). Sampson honestly believed that the powers of attorney authorized him to exercise the vote of each partner and that he therefore legally removed the Richtron general partners and substituted his own PC and then his AG Management as general partners. Also, there was no direct proof that Sampson was aware of the provisions of §78-51-27 which rendered the acquisition of the Osborn judgment a violation of law even though it would not have been for anyone else. (Findings, p. 80, 142).

The court found that Sampson operated the partnership under

the power of attorney authorization until it was ruled invalid. At that time, however, Sampson had purchased the defendants' interest in an IRS sale and Judge Cornaby ruled on two occasions that the sales were valid. (Findings, p. 141).

The court stated:

One wonders what Richins thought the partnerships were expected to do. The Richtron general partners' withdrawal had left them with an uncertain future. Many limited partners had sought legal advice from Sampson and he gave it to them. The fact that he erred in the advice given them does not render his actions malicious. (Findings, p. 143).

The judgment of Judge Croft was entered on October 9, 1986. It is from this judgment that both plaintiff and defendants now appeal.

#### SUMMARY OF ARGUMENT

1. The court erred in finding Sampson had tortiously interfered with defendants' relationships with the limited partners. First, there was no factual evidence to show Sampson had the evil motive necessary to find "an improper purpose." Second, the "means" relied upon by the trial court were not of the quality necessary to justify tort liability. Also, had the court properly applied a "good faith standard", many of the acts of Sampson would not have been considered as wrongful means. Third, the court erred in finding causation when the facts showed that the relationship of defendants with the limited partners would have most probably terminated with or without Sampson's presence. Finally, the court should have found defendants waived any right to complain and are estopped from claiming injury.

2. The court erred in awarding \$250,000 consequential damages without specifically entering findings as to its composition. There was no evidence of consequential damages that the court found nor was there any presented by defendants at trial. Finally, the award of the capital investment as limited partners for Richtron and RFC was erroneous since there was no evidence of their values at Sampson's entry, and is unfair to the other limited partners.

## ARGUMENT

### INTRODUCTION

Even a cursory review of the decision rendered by Judge Croft in this case shows that an extraordinary effort was made by the lower court in deciding the various issues presented in this complex lawsuit. The court, after listening to some eleven days of testimony and reviewing over 350 exhibits, prepared what it termed a "Memorandum and Summation of Evidence" of some 178 pages. This document attempts to summarize in chronological order the various events which occurred in this lawsuit. The court, not counsel, prepared this extensive summary of evidence.

Utilizing this "Memorandum" the court then on its own initiative and with no assistance of counsel prepared the "Findings of Fact and Conclusions of Law and Verdicts" contained in Appendix II to this Brief. This document consists of 234 pages and is divided into a "Findings" section, a "Conclusions of Law" section and a "Verdict" section. Appellant Sampson appreciates the conscientious effort that Judge Croft made in this case and certainly does not complain that the case was not thoroughly

analyzed or considered by the lower court.

As noted earlier, Appellants' counsel has extensively reviewed both the record containing the transcript evidence and documentary evidence with the various factual probative findings entered by the lower court. With only few exceptions, Appellant does not contest the probative findings of the lower court and therefore has not relied upon the underlying record in this case to make the various legal arguments which will follow. Sampson concedes that the events chronicled by the lower court did in fact occur and his only concern is focused upon the ultimate facts found by the lower court based upon these probative facts and upon conclusions of law based upon the factual findings.

The voluminous nature of this decision creates a difficult problem for appellant Sampson. It is, for example, easy to become lost and confused in the maze of pages written by the lower court and to digress from the essential issues now being raised by Appellant. It is also difficult to reconcile all of the portions of the Findings in that the sheer number of findings create repetition and improper classification of facts as conclusions of law and conclusions of law as facts. Hopefully, Appellant will be able to sufficiently direct this Court's attention to those limited problems surrounding the judge's opinion in order to eliminate a fruitless journey into unnecessary issues and resolutions.

Before proceeding into the legal arguments concerning this appeal it is well to summarize the various standards of review which apply to the issues now raised by appellant Sampson.



First, Rule 52 of the Utah Rules of Civil Procedure simply states, "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58A. . . ." The lower court complied with this rule in the preparation of the "Findings of Fact and Conclusions of Law and Verdicts" contained as Appendix II to this Brief.

The secondary document entitled "Memorandum and Summation of Evidence" does not comply with this rule since it was intended by the lower court as a document to assist it in compiling the massive evidence presented at trial. For this reason, therefore, Appellant has not utilized the "Memorandum" in the preparation of this Brief even though the chronology of events listed therein are generally accurate and sequential. However, much of the information contained in the Memorandum is extraneous and does not relate to the specific Findings and Conclusions ultimately entered by the court as contained in Appendix II. For this reason, therefore, Appellant maintains that review must be limited solely to the Findings, Conclusions and Judgment in order to comply with Rule 52 and the normal rules of judicial review.

Second, in this appeal a number of separate errors are being asserted relating to the relationship of findings and conclusions of law. These principles of review are stated as follows.

The Findings of Fact must provide a basis for determining whether there is a rational basis for the award of damages. Proper findings are essential to enable this Court to perform its

function of assuring that the findings support the judgment and that the evidence supports the findings. Romrell v. Zions Bank, 611 P.2d 392 (Utah 1980); Chandler v. West, 610 P.2d 1299 (Utah 1980).

Next, an appellate court does not accord any deference to conclusions of law of the trial court sitting without a jury in reviewing such conclusions of law for correctness. This Court is as capable of determining a question of law as is the trial court and therefore is not bound by its conclusions. Wessel v. Erickson Landscaping Co., 711 P.2d 250 (Utah 1985); Automotive Mfrs. Warehouse, Inc. v. Service Auto Parts, Inc., 596 P.2d 1033 (Utah 1979). If a conclusion by the trial court conflicts with, or does not follow, a finding of fact made by the trial court, the appellate court will apply the proper conclusion of law. City of Raton v. Vermego Conservancy District, 678 P.2d 1170 (N.M. 1984).

When findings of fact by a trial court are either so inconsistent or so confusing, vague or indefinite that an appellate court cannot determine the facts that the trial court intended to find, such findings are insufficient to support the judgment. Hawkins v. Teeples and Thatcher, Inc., 515 P.2d 927 (Ore. 1973).

Findings of fact that are conclusions of law are treated as such on appeal and will stand only if there are other findings of fact sufficient to support them. Town Concrete Pipe of Washington, Inc. v. Redford, 717 P.2d 1384 (Wash. App. 1986); Thompson-Hayward Chemical Co. v. Cyprus Mines Corp., 660

P.2d 973 (Kan. App. 1983). The appellate court is free to review without deference to the lower court findings that combine both facts and law when there is error as to the law. Abrams v. Horizon Corp., 669 P.2d 90 (Ariz. App. 1982).

An appellate court must give great weight to the findings made and the inferences drawn by the trial judge but it must reject his findings if it considers them to be clearly erroneous. A finding is clearly erroneous when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed. It may regard a finding as clearly erroneous only if the finding is without adequate evidentiary support or is induced by an erroneous view of the law. State v. Walker, 743 P.2d 191 (Utah 1987); Adair v. Bracken, 70 Utah Adv. Rep. 39 (Ct. App. 11-24-87).

The failure of the trial court to make findings on all material issues is reversible error unless the facts in the record are clear, uncontroverted, and capable of supporting only a finding in favor of the judgment. In addition, the findings must indicate that the court's judgment or decree follows logically from, and is supported by the evidence. Also, the findings must be sufficiently detailed and include enough subsidiary facts to disclose the steps by which the ultimate conclusion on each factual issue is reached. Epstein v. Epstein, 741 P.2d 974 (Utah App. 1987).

Finally, findings of probative facts can be used to overcome an express finding of the ultimate fact as where it clearly

appears that the ultimate fact is found only as a conclusion from the particular probative facts found or the probative facts found are such as necessarily overcomes the finding of the ultimate fact. 89 C.J.S., "Trial", §636, p. 470.

With these principles in mind it now remains to examine the issues raised by Appellant in this appeal.

#### POINT I

THE COURT ERRED IN FINDING SAMPSON HAD INTENTIONALLY INTERFERED WITH THE BUSINESS RELATIONSHIPS OF DEFENDANTS.

The trial court found liability against Sampson in this case based upon Plaintiff's Fourth Claim of Relief seeking damages for intentional interference of contractual and prospective relationships. The court recognized this theory of liability as enunciated in this Court's decision of Leigh Furniture & Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982). The court entered mixed findings of fact and conclusions of law concerning the elements of this tort. See, Findings, pp. 93-116 and Conclusions, pp. 188-193. In finding liability the court concluded that Sampson had (1) an improper motive in his relationship with the limited farm partnerships; (2) that he used improper means in implementing his control and (3) that these actions caused injury to the defendants. In addition, the court rejected Sampson's claim of the affirmative defense of waiver on the part of defendants. Each of these conclusions will now be examined in seriatim.

- A. Sampson Neither Had an Improper Purpose Nor Used an Improper Means When He Assisted the Various Farm Limited Partnerships Which Had Been Created by Defendants Nor Did He

Legally Cause Injury to Defendants.

1. There was No Factual Finding Sufficient to Justify the Conclusion that Sampson had an Improper Purpose in His Dealings With the Limited Partnerships.

In Leigh Furniture this Court held that the tort of intentional interference with prospective economic advantage may be shown by proving an improper purpose or motive, intent or objective. "Because it requires that the improper purpose predominate, this alternative takes the long view of the defendant's conduct, allowing objectionable short run purposes to be eclipsed by legitimate long-range economic motivation." 567 P.2d at 307.

In Leigh Furniture and Carpet this Court noted that even when a defendant has ill will toward a plaintiff an improper motive will not be found if there is a proper purpose in the conduct. Essentially, conduct must be directed solely to the satisfaction of spite or ill will and not at all to the advancement of his competitive interest over the person harmed if an improper purpose is to be found. This Court observed:

Problems inherent in proving motivation or purpose make it prudent for commercial conduct to be regulated for the most part by the improper means alternative which typically requires only a showing of particular conduct. Id. at 307.

In the Leigh Furniture case this Court found even though the plaintiff had deliberately injured the defendants' economic relations that their injury was not an end in itself. Instead it was an intermediate step toward achieving a long-range financial goal of profitability by reselling the building free of

the defendant's interest. This Court concluded that "because that economic interest seems to have been controlling, we must conclude that the evidence in this case would not support a jury finding that the corporation's predominate purpose was to injure or ruin Isom's business merely for the sake of injury alone." Id. at 308.

In its factual findings the court states the following:

Sampson suggested from time to time that his sole objective was to salvage the partnerships' assets for the limited partners to the point of at least getting back their investments. The evidence does not show that all investors joined in retaining Sampson as their attorney or their proxy, but the evidence does make clear that Sampson's main goal and effort soon became one of getting rid of Richins from all partnerships and obtaining control thereof for himself and his clients whom he never fully specifically identified. I think the evidence shows, and so find, that his self-declared benevolent motive soon changed to one of greed and a vendetta to oust Richins and take complete control. (Findings, p. 115).

The court also makes the statement that Sampson interfered with the limited partnerships with a desire to do harm to defendants for his own sake, a mere officious intermeddling for no other reason than a desire to interfere and such a showing of facts as to establish by a preponderance of the evidence to a substantial degree that the improper purposes predominated any other purpose. Id. The court entered a conclusion of law essentially to the effect that the evidence preponderates in showing that Sampson intentionally interfered with the relations of Defendants for an improper purpose. (Conclusions, p. 193).

Sampson would submit that these "Findings" by the lower court are really conclusions of law and that a review of the actual probative findings in the case reveals no evidence to

sustain the conclusion. There is no finding, for example, that Sampson had any relationship with Richins prior to Sampson being contacted by several limited partners concerning their investments. The lower court noted that Milton Goff and Rex Kohler sought Sampson's legal advice and that "their concerns were real and based upon the problem facts and circumstances then confronting Richins and his companies for which Richins, not Sampson, was responsible." (Findings, p. 98).

The court also found that almost immediately upon attending the first meeting of limited partnerships that the limited partners asked Sampson to be legal counsel for them and requested him to take necessary steps to relieve Richtron as general partner and to liquidate in an orderly manner. (Findings, p. 64). Later, Richins agreed that Sampson should hold the partnership funds since the limited partners did not trust Richins and therefore would not pay him directly. (Findings, p. 68).

It is also undisputed that in May of 1980 when Sampson first was contacted by his clients that the partnerships were in dire straits financially and that a number of events seriously jeopardized their continuing existence. (Findings, pp. 54-64). In May of 1980 RFC upon the suggestion of Sampson and the other limited partners filed for Chapter 11 bankruptcy. (Findings, p. 134).

It is also undisputed that during the majority of 1980 Sampson and Richins attempted to settle the interests of Richins' companies and that in fact a compromise agreement had been made

and was sent to all of the limited partners for approval. (Findings, pp. 68-69). This entire lawsuit would have been avoided had all of the limited partners agreed to the terms of the settlement.

Thus, the conclusion of the trial court is not supported by its own factual findings. There is no question but that the limited partners being represented by Sampson had important financial interests at stake in view of the serious problems that had been created by Richins' "mismanagement". (Findings, pp. 57-64). These limited partners had a justifiable motive in protecting their financial interests. See, Serafino v. Palm Terrace Apts., Inc., 343 S.2d 851 (Fla. App. 1976); Restatement of Torts 2d, §769 ("The rule stated in this Section applies for the purpose of protecting the actor's interest. If his conduct is directed to that end, it is immaterial that he also takes a malicious delight in the harm caused by his action.").

During this entire period of time when Sampson first entered the scene in 1980 up until 1984 Sampson maintained limited partnership clients who depended upon him for both legal advice and financial advice. Had Sampson merely advised all of the limited partners who had retained him to terminate their relationship with the defendants' corporation, then there clearly could have been no finding of evil purpose. An attorney acting within the scope of his employment or a business advisor is privileged to give advice without fear of a tortious suit. Parker v. Gordon, 442 S.2d 273 (Fla. App. 1984); Los



Angeles Airways, Inc. v. Davis, 687 F.2d 321 (9th Cir. 1982); Welch v. Bancorp Management Advisors, Inc., 675 P.2d 172 (Ore. 1982). This privilege or absence of evil motive exists even if the attorney or financial advisor receives a financial gain himself. Los Angeles Airways, Inc., supra; Lichtie v. U.S. Home Corp., 655 F. Supp. 1026 (D. Utah 1987).

Even the court's own conclusion does not allow the finding of an improper motive. The fact, for example, that "Sampson's main goal and effort soon became one of getting rid of Richins from all partnerships and obtaining control thereof for himself and his clients" does not state an improper motive if Sampson and his clients believed that Richins was detrimental to the financial stability of the limited partnership farm operations.

In conclusion, therefore, applying the standards adopted by this Court in the Leigh Furniture case the lower court erred in concluding an improper motive on Sampson's part when there was no factual findings nor evidence to justify this conclusion.

2. The Lower Court Erred in Concluding that Sampson Utilized Improper Means During His Relationship With the Limited Partnerships.

The court listed a number of acts which it believed constituted improper means as defined in the Leigh Furniture case. These included: (1) erroneous advice by Sampson that the markup charged by the defendants was a breach of a fiduciary duty owed to the partnership (Findings, p. 101); (2) Sampson's erroneous advice that the advances made by the general partners would not have to be repaid by the partnership (Findings, pp.

103-105); (3) Sampson's acts of collecting money on behalf of the partnership (Findings, p. 105); (4) refusal of Sampson to deliver documents of foreclosure to Richins after requested (Findings, p. 106); (5) wrongfully utilizing a power of attorney to substitute general partners (Findings, p. 107); (6) failing to properly amend the limited partnership certificates (Findings, p. 109); (7) obtaining an assignment of the Osborn judgment in violation of §78-51-27 (Findings, p. 109); (8) Sampson substituting his clients as plaintiffs in the Osborn case in violation of §78-51-27 (Findings, p. 110); and (9) making use of facts obtained while involved as an attorney-client in violation of ethical standards (Findings, p. 116).

The legal conclusion of improper means is erroneous for two reasons: first, these acts alone or in combination are not the type of acts prohibited under the "improper means" standard. Second, the lower court failed to apply a "good faith" standard in determining the conduct of Sampson.

As to this first contention this Court in Leigh Furniture stated that improper means is shown where the means used to interfere with a party's economic relations are contrary to law, such as violations of statutes, regulations or recognized common law rules. This Court stated, "Such acts are illegal or tortious in themselves and hence are clearly 'improper' means of interference. Examples used to illustrate this principle were secondary boycott, price fixing, violence, threats or other intimidation, deceit or misrepresentation, bribery, unfounded litigation, defamation, or disparaging falsehood." Id. at 308.

The Restatement of Torts requires the means used to be "innately wrongful, or predatory in character." Restatement of Torts 2d, §766A, Comment e, p. 19 (1979).

Appellant submits that the listed items by the lower court do not fit this category of "improper means" since they involve conduct which is not itself predatory or tortious and generally involve errors in judgment or technical legal violations.

Second, the lower court failed to consider Sampson's good faith efforts in undertaking a majority of the actions which the lower court listed. For example, the court noted that Sampson in giving legal advice as to the markup and the advances believed that he was giving the right legal opinion but stated that his belief did not make it so and therefore was a factor to be considered in determining tort liability. (Conclusions, pp. 172-73).

Likewise, the court found that Sampson honestly believed that the powers of attorney authorized him to exercise the vote of each partner that signed the power and returned it to him thereby authorizing him by majority vote to remove the general partners and substitute his own PC. "What Sampson did he, in my opinion, did believing in the validity of his own stand." (Findings, p. 80). Likewise, "there was no direct proof that Sampson was aware of the provisions of §78-51-27, which rendered his acquisition of the Osborn judgment, as a lawyer, a serious violation of law." Id.

Likewise, the court found that at all times Sampson believed because of one circumstance or another that he had authority to

operate as the general partner on behalf of the limited partnerships. The court stated:

For almost six months he worked amicably with Richins on settlement. When that failed, by powers of attorney he got proxies to vote the limited partners' interest. He did so, alleging his PC a general partner. When that was said to be contrary to law, he voted AG Management in as the general partner and so operated. By the time Judge Palmer ruled that illegal, Sampson was able to carry on under a color of authority by receipt of an IRS certificate of sale, followed by two favorable rulings by Judge Cornaby until the IRS sale was voided in May of 1984 by a federal court order. (Conclusions, p. 143).

In Hill v. Kansas City Star Co., 719 S.W.2d 808 (Mo. App. 1986) a suit was brought against a newspaper for allegedly tortiously interfering with the contract of a newspaper vendor. The newspaper terminated a contract on the basis of a report that the vendor had been vandalizing vending machines of the newspaper. The court in ruling in favor of the newspaper held that the question was not whether or not the vendor had committed the vandalism but whether the newspaper had acted in good faith in believing the report that such vandalism occurred. Whether the report was mistaken or not was irrelevant.

Similarly, in Hennum v. City of Medina, 402 N.W.2d 327 (N.D. 1987) the appellate court reversed the lower court and held that whether a mayor acted in good faith as to information he had about an employee was relevant in determining whether a termination was improper under a suit for tortious interference.

In GM Ambulance v. Canyon State Ambulance, 739 P.2d 203 (Ariz. App. 1987) an ambulance company brought suit to enjoin a competitor from operating in its territory. The court stated that the ambulance competitor had violated a statute prohibiting

such competition. The court referred to this Court's decision in Leigh Furniture and noted that improper conduct gives rise to liability. The court stated, however:

We believe, however, that Canyon State's violation of the statute is outweighed by the good faith reliance on the letter. Canyon State relied on the opinion of the very department charged with regulating its conduct. Under such circumstances we do not believe that it acted improperly so as to subject itself to liability for the tort of interference with contract. Id. at 205.

In Institutional Food v. Golden State Strawberries, 587 F. Supp. 1105 (D. Mo. 1983) the court noted that it is not necessarily whether a particular fact exists or does not exist at the time an interference allegedly occurs. Instead, it is the good faith belief of the party at the time in taking its course of action. To find liability there must be a showing that the defendant acted maliciously, in bad faith, without any reasonable basis for believing in the merit of its claim justifying its course of action.

Finally, in American Petrofina, Inc. v. PPG Industries, Inc., 679 S.W.2d 740 (App. Tex. 1984) the court ruled that the defendant had improperly interpreted a contract upon which it based its alleged interference. The court in finding no liability stated:

There is no evidence that Fina acted under anything other than a good faith belief that it was not required to deliver oil which had trippled in value over four years of inactivity in a transaction which contemplated frequent purchases and use of the oil at the prevailing rates. Although the trial court found, and this court concurs, that the two contracts are to be construed together, we cannot say that Fina could not have had the conviction that it was bound only by the provisions of its contract with its distributor. . . Complete innocence and perfect good faith might

very well be the basis of the justification which constitutes a defense to a claim for tortious interference with a contract. Id. at 758-59.

Here, the court in its Findings relied upon the Leigh decision in which this Court stated:

Even in small groups, these acts might be explained as merely instances of aggressive or abrasive--though not illegal or tortious--tactics, excesses that occur in contractual and commercial relationships. But in total and in cumulative effect, as a course of action extending over a period of three and one half years and culminating in the failure of Isom's business, the Leigh Corporation's acts crossed the threshold beyond what is incidental and justifiable to what is tortious. 657 P.2d at 306. See the Court's reference to "crossing the threshold" at pp. 94 and 114 of Findings.

Since the lower court obviously applied the strict letter of the law to the acts of Sampson and failed to consider any element of good faith it is impossible to say whether these series of events relied upon by the lower court to find an improper means would have been sufficient had a majority of them been negated by Sampson's conceded good faith belief. In other words, if a person believes he is complying with the laws of limited partnership, believes that he is interpreting a limited partnership agreement correctly, and believes that he has legal authority to act as a general partner then such actions are not "illegal means" under the Leigh Furniture case even though it is later determined that these actions are all legally invalid because of various legal interpretations made by subsequent court decisions.

For these reasons, therefore, the Findings of the lower court did not justify the conclusion of improper means in that

the listed acts did not rise to the level required of predatory acts and second, the lower court incorrectly failed to apply a good faith standard in determining these acts.

3. The Lower Court Erred in Concluding that the Actions of Sampson Caused Injury to the Defendants.

In order to recover damages for an intentional interference with prospective economic relations it is required that the plaintiff prove that the defendant caused injury to the plaintiff. 657 P.2d at 304. The court entered a finding that "Sampson by his tortious conduct caused injury to the defendants." The court noted that it does not appear that Richins "ever gained actual control over any of the partnerships after [the end of 1980] even though he successfully reversed Sampson's tactics in state and federal courts." (Findings, pp. 116-17). The court also entered a conclusion of law that based upon the summary of facts as contained in Findings 96 and 97 that Sampson caused injury to the defendants. (Conclusions, p. 193).

This finding of injury is inconsistent with other findings of the court which negate such causation. First, the court correctly noted that the limited partnership agreement in this case could be terminated by either the limited partners or the general partners at will. (Conclusions, p. 209).

Next, the court in a series of findings observed the financial instability of the limited partnerships at the time Sampson first became involved. The court noted that as of May 1980 the evidence suggested a bleak outlook for the future of the limited partnership operations. (Findings, p. 54). The court

stated, "As stated in prior findings, by May, 1980, Richins and his companies had become confronted with substantial financial problems, as well as others likewise mentioned elsewhere, which were of such magnitude that success in overcoming them seemed doubtful." (Findings, p. 97).

In another finding the court stated, "There is in fact, no assurance, even disregarding the problems defendants and the partnerships were confronted with in May, 1980, that in the end after final sale of the properties that there would be profits remaining to be so divided." (Findings, p. 134).

In a conclusion the court stated:

If adjusted for prior payments made by the partnerships to RFC, it would probably reflect a total markup which amount could be used as a measure of damages only if defendants could prove that but for Sampson's conduct, all partnership contracts would have been paid off in full. This they have not done and could not have done. (Conclusions, p. 197).

In another area the court stated:

Even if a true value of RFC's equity in each partnership property under its resale contract could be established, circumstances existing in May 1980, created a strong probability that some, if not all, of such contracts would never be paid out. (Verdict, p. 224).

Finally, in the conclusion of the Verdict section the court says:

Even if Sampson had never appeared on the scene, it does not appear probable that Richins and RFC would have prevented foreclosure of the original purchase contracts, based upon the existing facts and circumstances. (Verdict, pp. 230-31).

These inconsistent findings will now be analyzed in terms of case law. An interest in a contract terminable at will is primarily an interest in future relations between the parties



since the parties have no legal assurance of the continuing relationship. Kelly v. St. Vincent Hospital, 692 P.2d 1350 (N.M. 1984). A contract which is "at will" gives either party the absolute right to withdraw from the obligation at any time. Levin v. Cuhn Loeb & Co., 417 A.2d 79 (N.J. 1980).

Thus, under the terms of all of these limited partnership farm agreements the limited partners were free at any time to terminate their relations with the defendants or some of the defendants by either dissolving the partnership altogether or by electing a new general partner to take the defendants' place. There was no "right" for the defendants to continue their control over the limited partnerships in the future.

The Missouri Court of Appeals in Tri-Continental Leasing Co. v. Neidhardt, 540 S.W.2d 210 (Mo. App. 1976) stated the correct rule for analysis as to causation in tortious interference cases. The court stated that "to establish liability in a tortious interference with contract case, the plaintiff must show that the defendant's acts caused the breach." The court then stated:

In determining whether the defendant's acts were a "moving cause" in the breach, courts apply what is essentially a "but for" test of causation. (Citations omitted). The rule presupposes that the party defaulting was ready, able and willing to perform and would have done so if it had not been prevented or persuaded by the malicious and unwarranted interference of a third party. Id. at 216.

The court observed that a plaintiff must show that a defendant actively and affirmatively took steps to induce a breach but that this factor alone is not sufficient to establish liability. "There must be an additional showing that the defendant's

affirmative conduct caused the breach--that had it not been for the defendant's acts, the contract would have been performed." Id. at 216.

The court in that case found that there was no evidence, direct or circumstantial that would permit the jury to find without resort to speculation or conjecture that the third party would have performed the contract "but for" the actions of the defendant. Because a jury cannot resort to such speculation and conjecture, the appellate court affirmed a motion for directed verdict granted by the lower court overturning a jury verdict in favor of the plaintiff.

The Supreme Court of New Mexico made a similar decision. In Anderson v. Dairyland Ins. Co., 637 P.2d 837 (N.M. 1981) the court stated:

It is a basic rule that the defendant must be shown to have caused the interference. We cannot uphold a claim for interference with prospective contractual relations where it is not clear that the plaintiff himself has not caused the interference. Where the claim is based on an indirect interference such as that alleged here, the plaintiff must clearly show that his own action or inaction did not constitute interference. In other words, Anderson must prove that there was an actual prospective contractual relation which, but for the insurer's interference, would have been consummated. This Anderson has failed to show. Id. at 841.

In Levin v. Cuhn Loeb & Co., 417 A.2d 79, 85 (N.J. Super. 1980) the court affirmed a summary judgment in favor of the defendant when it found that viewing the evidence most favorably to the plaintiff there was no showing that the plaintiff would have continued his contractual relation but for the conduct of the defendant. The court cited authority which

stated "there must be some certainty that the plaintiff would have gotten the contract but for the fraud. This cannot be left to surmise or speculation." Id. See also, Special Event Entertainment v. Rockefeller Center, Inc., 458 F. Supp. 72 (D.N.Y. 1978). ("The pleadings themselves reveal that the Radio City defendants were not disposed toward honoring their alleged commitment even before the state defendants entered the negotiations.").

The Findings of the Court show that the limited partners were already fleeing a sinking ship before Sampson entered the picture. The partnerships were in foreclosure proceedings, the IRS had attached defendants' assets for failure to pay taxes and RFC was in bankruptcy. To conclude that the limited partners would have remained with defendants "but for" Sampson's interference is pure speculation and against the weight of the court's own factual findings.

B. The Lower Court Erred in Concluding That The Affirmative Defenses of Waiver and Estoppel Were Not Applicable to the Defendants in This Case.

The court specifically found that there were not sufficient facts to establish either estoppel or waiver as against the defendants. (Findings, pp. 145-50). The court also entered the following Conclusion:

As to the affirmative defenses of estoppel, waiver and laches, it is my opinion that Sampson did not prove by a preponderance of the evidence that Richins' actions at any time induced Sampson to believe certain facts existed that lead to Sampson's detriment; or by his actions evince in any unequivocal manner an intent to waive his control over the partnerships and

step aside in favor of Sampson; nor did Richins' actions at any time constitute a lack of diligence which brought injury to Sampson; and I so conclude. (Conclusions, p. 205).

Sampson submits that this legal conclusion is not supported by the factual findings of the court. The court found, for example, that as early as June 9, 1980 Sampson told the members of the Blackfoot Limited Partnership that he was withdrawing as general partner and told them to find a more compatible one. On June 10 he filed a formal notice withdrawing and on June 11 he wrote three other similar letters withdrawing. (Findings, pp. 67-68).

On June 2 and June 5, Richins without advising any investor or partnership, executed quit claim deeds purporting to convey all of the partnership properties from the limited partnerships to RFC. (Findings, p. 65). The deeds were recorded in December 1980 and January 1981.

On November 13 Richins executed a notice of withdrawal of the general partner to six other limited partnerships. By January 6, 1981 he had sent identical notices to eighteen other partnerships. (Findings, p. 69). While stating that the partnerships would be wound up immediately Richins undertook no effort to wind up the partnerships after notice was given. (Findings, p. 64).

In a conclusion of law the court stated:

The Richtron general partners, even after withdrawal, had the duty and obligation under the law to wind up the partnership affairs and terminate the partnership, when there had been no valid exercise of the partners' right to remove by majority vote the general partner and elect a new one. Richins continuously challenged the validity of Sampson's

actions with respect to installing a new general partner, yet delayed in seeking help from the court to rule on his challenge when prompt action seemed indicated. (Conclusions, p. 204).

In the Verdict portion of the opinion the court made this finding:

Finally, and of great importance, was Richins' failure to himself undertake efforts to wind up partnership affairs and bring about dissolution and termination with any resulting benefits to all concerned. The courts were there to help him to do so but he never used them for that purpose. I recall that in the Blackstone suit against defendants, they counterclaimed seeking dissolution; but when Judge Palmer ruled in their favor that AG Management was not legally elected general partner, any further effort in that case on their counterclaim was not brought out in this trial. Even in the case at bar, Richins did not seek a windup and dissolution by this Court. (Verdict, p. 229).

Finally, the court observed in its findings that after Sampson had obtained the power of attorneys and remained in control of the limited partnerships Richins did nothing for two years before obtaining a summary judgment that the transfer was invalid. In addition, Richins after obtaining the invalidation of the IRS sale in May of 1984 waited until January 5, 1985 before requesting Judge Cornaby to vacate the prior orders. (Findings, pp. 140-41).

It requires no legal citation that the principles of waiver and estoppel should be applied in this case. Essentially, Richins voluntarily withdrew as general partner in all of the limited partnerships. It is hard to imagine what act could be considered more of a waiver of rights to continue as the general partner than the notices of withdrawal. In addition, Richins did nothing to wind up the affairs of the corporation or to seek

court relief in obtaining orders allowing a winding up. Sampson and the limited partners were essentially left on a course of their own with all of the Richins financial problems still on board the sinking partnership vessel. Finally, Richins allowed this conduct to continue for over two years before finally obtaining a court order invalidating Sampson's authority.

The lower court should have found in favor of Sampson as to these defenses which under the terms of tortious interference would have negated any improper purpose or improper means which the court attributed to Sampson.

In conclusion, therefore, the lower court erred in finding an improper purpose, an improper means, in finding causation of injury, and in not finding in favor of the affirmative defenses.

## POINT II

### THE LOWER COURT ERRED IN ITS AWARD OF DAMAGES IN FAVOR OF DEFENDANTS.

The question as to damages only becomes relevant to this appeal if this Court rejects the previous contentions of Appellant relating to the finding of liability. As an alternate grounds for appeal, therefore, Sampson maintains that the lower court erred in its award of damages to the defendants. Specifically, the court erred in awarding \$250,000 in favor of Richtron, Inc. and Richtron General against Sampson as consequential damages and an award in favor of RFC against Sampson for \$30,974.50 and Richtron against Sampson for \$4,222.50 which represents their equity amounts as limited partners. Both of these objections will now be discussed.

#### A. The Factual Findings of the Lower Court Do Not

Justify the Imposition of \$250,000 as Consequential Damages.

As noted earlier, it is essential that a trial court enter adequate findings as to damages in order to justify the decision and to allow appellate review. In the instant case the lower court failed to adhere to this requirement. It is submitted that anyone reading the 234 page opinion of Judge Croft would believe that no substantial damages had been awarded to the defendants against Sampson until the very last page of the opinion is read. In other words, the \$250,000 figure appears like a phantom in the night. There is no previous reference to this amount in either the Findings, Conclusions, or Verdict.

This inadequacy was stated to the judge during oral argument on motions to amend the findings. Sampson's trial counsel made the following statement to the lower court:

In Objection No. 5, Your Honor, the court in finding 232 acknowledges that there are damages of a consequential nature and then, however, the Court does not go on with any to identify what damages the Court is referring what evidence supports that particular statement, then the Court goes on and awards the \$250,000 in favor of the general partners and against Mr. Sampson. As we have outlined here on page 5, I think the Court walked through all the various theories, and then the Court dispelled most of these theories, and I guess our position is we don't have any idea, Your Honor, where the \$250,000 comes from. (Transcript Hearing of September 11, 1987, p. 26).

The statement by Sampson's attorney is correct. An examination of the opinion of Judge Croft essentially rejects every damage contention of the defendants with minor exceptions. The court found that as to the attorney-client fiduciary breach there was evidence of liability but no damages had been proven. (Findings, pp. 44-51; Conclusions, p. 165). As to the Count II

claim of negligent handling of lawsuits the court awarded Richins as an individual \$2,027.40 for the cost incurred in setting aside a default judgment. (Findings, pp. 52-53; Conclusions, pp. 165-66). The only other awards of damages was \$30,974.50 to RFC for its interest in the Catlow Valley and Richfield Limited Partnerships and \$4,222.50 to Richtron for its limited partnership interest in the Pleasant Valley Partnership. Both of these awards will be discussed in the following section.

Thus, as to the Fourth Claim relating to tortious interference no award was made with the exception of the \$250,000 to Richtron, Inc. and Richtron General and \$100 to RFC. Richins' individual claims were denied on the basis he did not prove any interference with his own personal right to earn a livelihood. (Findings, p. 90). As to RFC the court concluded that its only claim to damages was as the seller of the farm properties to the various limited partnerships. The court reasoned that even if Sampson had never appeared on the scene it was not probable that RFC could have prevented foreclosure of the original purchase contracts based upon the existing facts and circumstances disclosed by the evidence. (Verdict, pp. 228-30). This was especially true since FRC was in bankruptcy at the time Sampson first came into the partnership affairs. (Verdict, p. 226). The court awarded \$100.00 as nominal damages.

As to the two general partners the court specifically rejected each of the requested items of damages. First, it rejected the defendants' claim for repayment of advances made to



the limited partnership on the basis that there was no preponderance of evidence to show that but for Sampson's efforts the partnerships would have in fact been solvent to pay the advances made by the general partners at the termination of the partnerships. (Findings, p. 105; Conclusions, pp. 215-16). As to the general partners' claim for a ten percent of profits from the limited partnerships the court concluded that the evidentiary record in the case was purely speculative as to whether any profits would be in existence at the time of termination and therefore no damages could be awarded. (Findings, p. 133; Conclusions, pp. 198, 204).

The court reviewed the various pieces of evidence offered by the defendants to show loss of equity positions or profits. (Findings, pp. 124-37). The court entered Conclusions of Law that any attempt to prove profits or equity was too speculative and that the evidence offered by the defendants was not credible. (Conclusions, pp. 198-205). Finally, in the "Verdict" portion of the opinion the court once again went through its reasoning as to all of the defendants and all of the claims. (Verdict, pp. 209-32).

The court noted, for example, that by May of 1980 Richins had so mismanaged the partnership affairs that they did not have funds to pay installments owed RFC so that RFC could not pay its installment obligations to the contract sellers. (Verdict, p. 229). The court stated that it was the problems created by Richins' mismanagement followed by Sampson's tortious conduct that brought this case to court for a decision as to whether any

damages were recoverable upon the counterclaim. The court stated that even though the partnerships were floundering Sampson sought value and spent six years in running it leaving Richins with no tangible asset or value. (Verdict, p. 231).

The only explanation for the \$250,000 judgment has to be contained on Page 232, two pages before the decision ends. The court said:

As stated before, damages are in tort, not in contract, rendering liability for damages for either the pecuniary loss of the benefits of the contract or consequential for which the tortious interference is the legal cause. I think as to some claim for relief damages, of at least a consequential nature, have been shown with a reasonable degree of certainty by a preponderance of the evidence. (Verdict, p. 232).

The only other indication giving any enlightenment as to the composition of the \$250,000 figure is seen in the court's oral colloquy with Sampson's trial counsel during the hearing to amend the findings. A copy of this portion of the transcript is contained in Appendix I of this Brief. The lower court basically took the position that the \$250,000 figure was analogous to a jury bringing in a \$25,000 figure in a \$100,000 suit. (Tr. p. 26). The court stated that he was not obligated to say what the \$250,000 is made up of. (Tr. p. 31). The court stated that "recovery wasn't based upon contract relationships. It was a tort just like you run a red light and crash into your car. I commit a tort and you're injured. And you are entitled to recover damages. But how much? Well, the jury says \$25,000. You wanted \$100,000. You get \$25,000, you see." (Tr. p. 28).

The court concluded by saying that in no sense of the word could he give Richins \$5 million, \$6 million, \$9 million, or \$12

million as he requested because the evidence wasn't there. The \$250,000 is just the amount the court came up with. He is not, according to the court, required to break it down into advances not recovered, improper expenditure of attorneys' fees by Sampson or overhead expenses. (Tr. p. 31).

A brief review of case law concerning damages will support Sampson's contention that the award of \$250,000 without any evidentiary basis was error. In Robinson v. Herinson, 409 P.2d 121 (Utah 1965) this Court stated the rule that no award of damages should be based upon mere speculation or conjecture. There must be firm foundation for any award of damages by proof that is at least more probable than not that damages have been suffered. See also, Monter v. Kratzers Specialty Bread Co., 504 P.2d 40 (Utah 1972).

More recently, this Court stated:

It is true that some degree of uncertainty in the evidence of damages will not relieve a defendant from recompensing a wronged plaintiff. However, it is also a general rule of long standing that a plaintiff must show damages by evidence of fact and not by mere conclusion, and that the items of damage must be established by substantial evidence and not by conjecture. And, whether general or special, damages must be traceable to the wrongs complained of. Highland Constr. Co. v. Union Pacific Railway Co., 683 P.2d 1042, 1045 (Utah 1984).

By its very definition "consequential" damages must be analogous to special damages. This Court noted the distinction between general and special damages by stating:

General damages are those which naturally and necessarily result from the harm done. They are damages which everybody knows are likely to result from the harm described and so are said to be implied in law. Special damages are those which occur as a natural consequence of the harm done but are not

so certain to flow therefrom as to be implied in law. One claiming them must plead them so as to let his adversary know what will be involved. (Emphasis added). Cohn v. J.C. Penney Co., 537 P.2d 306, 307 (Utah 1975). (Emphasis added).

The court in describing these distinctions used the following illustration:

Plaintiff sues defendant for blowing up his dam in the river and claimed damages in the amount of \$5,000. His proof shows the cost of repairs to the dam to be \$1,000. He offers evidence to the effect that he had a water mill which had to be shut down for two months during the rebuilding of the dam and that he lost profits in the amount of \$4,000 as a result thereof. The rebuilding of the dam is an item of general damages, but the loss of profits due to inoperation of the mill is an item of special damage because it is peculiar to his case.

Another man might have his dam blown up and might not even own a mill, or it might not be operative. Still another man might have special damages because he could not irrigate his farm as a result of the destruction of the dam which he owned and the lowering of the water below the bottom of his lateral ditch. Each dam owner would need to set forth his particular special damages because such special damages do not of necessity follow as a result of the tort. Id. at 307. See also, Prince v. Peterson, 538 P.2d 1325, 1328 (Utah 1975).

The lower court essentially held that all of the claimed damage theories of defendant could not be sustained because of their speculative nature. He rejected the general partners' claim for advances, for lost profits, and for management fees. He then, however, concluded that consequential damages was of the nature of a general damage and that an amount could be awarded without any explanation just as if a jury were awarding damages for pain and suffering to an injured plaintiff.

This reasoning is clearly erroneous since in order to determine whether a damage is "legally caused" by the actions of

the defendants it is necessary to know both the amount and the source of claimed injury. Under §774A of the Restatement of Torts "consequential losses for which the interference is the legal cause may be awarded." Without specific amounts and sources the "legal cause" could never be reviewed by an appellate court.

Besides the deficiency in the court's Findings and Conclusions there is simply no evidence listed by the court that would in any way constitute consequential damages giving rise to any award. The defendants simply did not plead or produce such evidence since their damage theories were based upon other claims which were all summarily rejected by the court.

For this reason, therefore, the award of \$250,000 damages to the two general partners should be vacated.

B. The Lower Court Erred in Awarding Damages to Richtron, Inc. and to RFC for Their Respective Limited Partnership Interests In Several Farm Properties.

The court awarded \$30,974.50 in favor of RFC and against the plaintiff Sampson for its limited partnership interest in Richfield Farms and Catlow Valley Farms Nos. 2 and 6. It awarded Richtron, Inc. \$4,222.50 for its limited partnership interest in the Pleasant Valley Farm. (Verdict, pp. 233-34). The reasoning behind these awards is contained in the court's Verdict where it said that Sampson "ignored [their] rights as such limited partners, sent no notices to either, offered no evidence as to what in fact happened to the interests of the Pleasant Valley, Richfield and Catlow Valley Limited Partners, and thereby caused a loss to RFC and Richtron, Inc. in the amount of their

respective capital interest in those partnerships. (Verdict, p. 230).

Essentially, the lower court awarded both RFC and Richtron, Inc. their original capital shares as limited partners in all of these farm limited partnerships. This was done with no showing by the plaintiffs that at the time Sampson took over the operation of the partnerships that their original capital contributions had the same value as when they were initially contributed. Consider, for example, that the Catlow Valley Partnership was in foreclosure and that Richins in May of 1980 stated that an additional \$240,000 had to be raised to save the property. (Findings, p. 63).

Plaintiffs produced no evidence and the courts made no findings that the ignoring of the rights or the failure to send notices to either of them substantially affected their partnership interests. In other words, their interests were no different than any of the other limited partners in the farm properties and they were entitled to no more than what their interests were worth at the time of the alleged interference.

Further, it should be noted that the designated general partner of each of these limited partnerships to which awards were granted was one of Richins' corporate entities. Thus, when Richins sent out notices of withdrawal as to the general partner he could have at that point wound up the affairs of these partnerships properly and distributed their shares at such time. Instead, he did nothing during the course of the years and allowed Sampson to continue acting as general partner. Thus, any

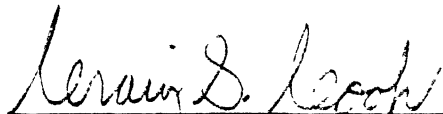
interest in those limited partnerships again was essentially waived by Richins when he failed to take action to preserve the capital interests of each entity. In view of the fact that the lower court found that all of these farms had been ultimately foreclosed upon by their owners and that RFC was in bankruptcy it was unreasonable to award Richtron, Inc. and RFC their entire initial capital investment when the evidence clearly showed that such investment had been forfeited, or at least substantially reduced.

For these reasons, therefore, the award of damages as stated above should also be vacated.

#### CONCLUSION

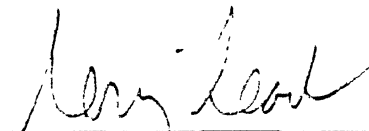
The decision of the lower court should be reversed and judgment entered on behalf of defendant Sampson.

Respectfully submitted this 23rd day of December, 1987.

  
\_\_\_\_\_  
Craig S. Cook  
Attorney for Appellant

#### CERTIFICATE OF HAND DELIVERY

I hereby certify that I personally delivered four copies of the foregoing Brief of Appellant to John T. Anderson, Attorney for Respondents, Suite 600, Valley Tower, 50 West Broadway, Salt Lake City, Utah this 28 day of December, 1987.

  
\_\_\_\_\_

## APPENDIX I



John T. Anderson, Esq., Utah State Bar No. 94  
HANSEN & ANDERSON  
Attorneys for Defendants  
Suite 600, Valley Tower  
50 West Broadway  
Salt Lake City, Utah 84101  
Telephone: (801) 532-7520

IN THE SECOND JUDICIAL DISTRICT COURT OF WEBER COUNTY

STATE OF UTAH

—oo0oo—

JOHN P. SAMPSON and MILTON R.  
GOFF, individually, and as  
trustee of Milton R. Goff  
Trust, an unincorporated  
association,

Plaintiffs,

v.

PAUL H. RICHINS; RICHTRON  
INC., a Utah corporation;  
RICHTRON FINANCIAL CORPORA-  
TION, a Utah corporation;  
RICHTRON GENERAL, a Utah  
corporation, and,  
FRONTIER INVESTMENTS,  
a Utah corporation,

Defendants.

JUDGMENT

Civil No. 29552

—oo0oo—

The counterclaim of defendants, Richtron, Inc., Richtron General, Richtron Financial Corporation and Paul H. Richins (collectively, "Counterplaintiffs"), came on regularly for trial before the Honorable Bryant H. Croft, District Court Judge, between January 27, 1986 and February 11, 1986. Counterplaintiffs were represented by their counsel, John T. Anderson of Hansen & Anderson. Counterdefendants, John P. Sampson and Milton R. Goff, trustee, were

represented by their counsel, Christopher L. Burton and Paul M. Harman of Jones, Waldo, Holbrook & McDonough. The court having heard and considered the arguments, representations and statements of counsel and the testimony of witnesses; having read and considered the complete file of pleadings and papers and exhibits in this case; having made and entered its memorandum and summation of evidence; having made and entered its original and amended findings of fact and conclusions of law and verdicts; and good cause appearing therefor, the court hereby enters judgment on Counterplaintiffs' counterclaim as follows:

1. Counterplaintiff, Paul H. Richins, shall be, and he hereby is, granted judgment against counterdefendant, John P. Sampson, for the sum of \$2,027.40.

2. Counterdefendant, Milton R. Goff, trustee, shall be, and he hereby is, granted judgment of no cause of action on Richins' individual claims against Milton R. Goff, trustee.

3. Counterplaintiff, Richtron Financial Corporation, shall be, and it hereby is, granted judgment against counterdefendant, John P. Sampson, in the sum of \$31,074.50.

4. Counterplaintiff, Richtron, Inc., shall be, and it hereby is, granted judgment against counterdefendant, John P. Sampson, in the amount of \$4,222.50.

5. Counterplaintiffs <sup>Richtron Inc and</sup> Richtron General, shall be, and <sup>are</sup> ~~he~~ hereby ~~is~~ granted judgment against counterdefendant, John P. Sampson, in the sum of \$250,000.00.

6. Counterdefendants, Milton R. Goff, trustee for Virgil R. Condon, Paul D. Hubert, O&M Plumbing & Heating Company, Earl V. Gritton, Phillip R.

Boyer, Toffe Sawaya and Russell Smuin, shall be, and they hereby are, granted judgment of no cause of action on all claims <sup>BHE</sup> of the counterclaims.

7. Counterdefendant, John P. Sampson, shall be, and he hereby is, granted judgment of no cause of action against defendants on their claims for injunctive relief and an accounting <sup>per JPT</sup> for the reason that the accounting information provided by Counterplaintiff, Paul H. Richins, is sufficient.

8. Counterplaintiffs shall be, and they hereby are, granted judgment against counterdefendant, John P. Sampson, for costs in the sum of \$1,625.80.

9. Interest shall accrue on the foregoing sums at the rate of 12% per annum from the date of entry hereof until the date of payment.

DATED this 29 day of September, 1986.

BY THE COURT:

Bryant H. Croft  
The Honorable Bryant H. Croft

APPROVED AS TO FORM:

HANSEN & ANDERSON

By John T. Anderson  
John T. Anderson Robert D. Miller  
JONES, WALDO, HOLBROOK & McDONOUGH

By Paul Hansen

BEFORE THE BOARD OF COMMISSIONERS  
OF THE UTAH STATE BAR

-----

In re:	)	
Complaint of	)	
Paul H. Richins and	)	PRIVATE REPRIMAND
Richtron Companies	)	
against	)	
John P. Sampson	)	Case No. 4-83-5-0080
Respondent	)	
DOB - 10/15/39	)	
Admission - 12/26/68	)	

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The Ethics and Discipline Committee of the Utah State Bar, having conducted its investigation into charges of unethical conduct brought against John P. Sampson by Paul H. Richins and certain Richtron Companies, and a Screening Panel of the Ethics and Discipline Committee having met and considered written submissions and oral presentations of the parties, now renders its Findings, Conclusions and Recommendation as follows:

FINDINGS OF FACT

1. Beginning in 1980, Mr. Sampson undertook the representation of certain limited partners in limited partnerships organized by Mr. Richins.

2. On behalf of the limited partners, Mr. Sampson attempted to work out settlements with Mr. Richins and the Richtron Companies.

3. In connection with the settlements, Mr. Sampson sought to protect the interests of his limited partner clients by appearing in certain suits on behalf of Richins and certain of the Richtron Companies.

4. Mr. Sampson failed to make clear to Mr. Richins and the Richtron Companies that his involvement in the suits was solely to protect the interests of his limited partner clients.

5. Mr. Sampson's appearance in certain cases on behalf of Mr. Richins and Richtron Companies created a technical conflict of interest.

6. Mr. Sampson received money on behalf of his limited partner clients and disbursed it pursuant to their general instructions, and did not hold money belonging to the limited partnerships, Mr. Richins or the Richtron Companies.

7. Mr. Sampson was careless in documenting trust fund expenditures and in accounting to his clients.

8. Mr. Sampson was careless in documenting disbursements to himself from the trust funds and for payment of legal fees and expenses.

9. Mr. Sampson commingled client funds held in his trust account with his private funds for the purpose of protecting his private funds from judicial levy.

10. Mr. Sampson purchased, on behalf of limited partnership clients, and for their benefit, a judgment in favor of Mr. Osborne and against Richins and two Richtron Companies, but took assignment of the judgment in his own name in violation of § 78-51-27, Utah Code Ann. (1953 as amended).

11. Many of the allegations made by complainants are not related to ethical misconduct, and resolution of those issues should be left to the civil courts.

12. Mr. Sampson defended on the ground that he did not represent Mr. Richins and the Richtron Companies and that he acted at all times in the interest of and under the direction of his limited partner clients.

#### CONCLUSIONS OF LAW

1. Mr. Sampson violated Canon 9, DR 9-101: A lawyer shall avoid even the appearance of impropriety; and Canon 5, DR 5-105(B): A lawyer shall not continue multiple employment, in appearing in suits on behalf of Mr. Richins and Richtron Companies.

2. Mr. Sampson violated Canon 9, DR 9-102(A): All funds of clients paid to a lawyer shall be deposited in identifiable bank accounts and no funds belonging to the lawyer shall be deposited therein, by the comingling of funds.

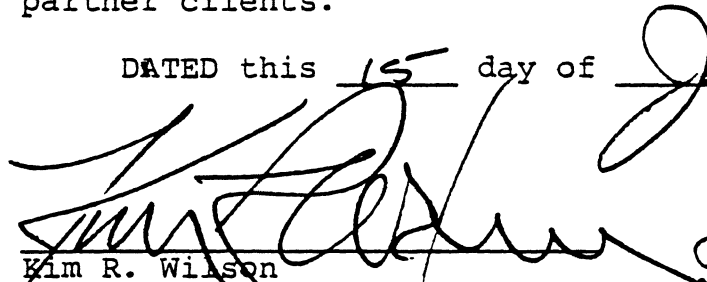
3. Mr. Sampson violated Canon 1, DR 1-102(A)(5): A lawyer shall not engage in conduct that is prejudicial to the administration of justice, for his actions in connection with the assignment

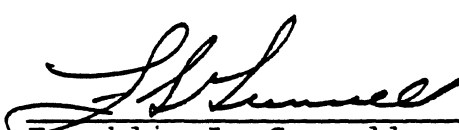
of the Osborne judgment.

RECOMMENDATION OF DISCIPLINE

The Ethics and Discipline Committee of the Utah State Bar, pursuant to Rule VII(e) and Rule IX(1)(D) of the Procedures of Discipline, recommends to the Board of Bar Commissioners that John P. Sampson be privately reprimanded for professional misconduct as above described. In making this recommendation, the Committee took into account its belief that there was no dishonesty, deceit or bad motive in Mr. Sampson's conduct, and that he was at all times acting in the interest of his limited partner clients.


DATED this 15 day of June, 1987.

  
Kim R. Wilson  
Chairman, Panel D

  
Franklin L. Gunnell  
Chairman, Ethics and  
Discipline Committee

  
Jon J. Bunderson

  
Paul S. Felt

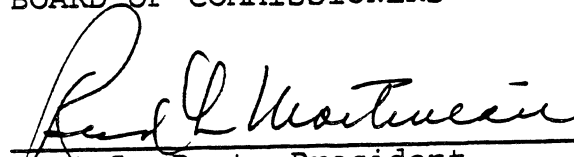
  
Ellen M. Maycock

ORDER OF BAR COMMISSIONERS

Upon the recommendation of the Committee on Ethics and Discipline of the Utah State Bar, the Board of Commissioners hereby privately reprimands John P. Sampson for professional misconduct unbecoming a member of the Bar of this state.

DATED this 31 day of July, 1987.

BOARD OF COMMISSIONERS



~~Paul L. Dart~~, President

PAUL L. MARTINEAU



COPY OF TRANSCRIPT HEARING ON SEPT. 11, 1986  
Pages 26-31

MR. HARMON:

In Objection No. 5, Your Honor, the Court in finding 232 acknowledges that there are damages of a consequential nature and then, however, the Court does not go on with any to identify what damages the Court is referring what evidence supports that particular statement, and then the Court goes on and awards the \$250,000 in favor of the general partners and against Mr. Sampson. As we have outlined here on page 5, I think the Court walked through all the various theories, and then the Court dispelled most of these theories, and I guess our position is we don't have any idea, Your Honor, where the \$250,000 comes from.

THE COURT:

Do you have any idea when a jury comes in with a verdict for \$25,000 in a \$100,000 as to where it got that figure? I have seen that hundreds of times in trials that I have presided over. You don't know how they have arrived at those figures, generally.

I gave considerable thought to this problem. It was, I guess, one of my major things that I wrestled with. There wasn't any doubt in my mind based upon the record made during the trial that John Sampson had intentionally interfered with an existing economic relationship, and that all of the elements, both the means and the manner that were spelled out by our Supreme Court as constituting elements of that particular tort to me were clearly established by the evidence.

I think you will recall that while I could see Sampson's representation of Richtron companies in various lawsuits was probably--turned out to be a conflict of interest when he was also opposing them, and that that might have been a breach of duty, maybe there was a negligence on the part of Sampson as alleged in one of the counts. I felt that while those particular counts may have been proven insofar as allegations of wrong doing was concerned, the record didn't present specific evidence that enabled me to say, yes, because he represented, and I expect maybe Mr. Anderson might talk about this in his, because he represented us in a dozen lawsuits, or was supposed to represent us and failed to do so we had default judgments taken against us.

The record doesn't tell me what the defendants' damages were as a result of proximate cause of those factors. And I felt that the tort, and I stress the tort aspect of the cause of action about the intentional interference with an existing economic relation, and I don't think we'll ever get a more clear cut example of that being done than we have in

this case.

But that particular thing was not a contract violation. Recovery wasn't based upon contract relationships. It was a tort just like you run a red light and crash into your car. I commit a tort and you are injured. And you are entitled to recover damages. But how much? Well, the jury says \$25,000. You wanted \$100,000. You get \$25,000, see.

And, so, I considered the evidence at substantial length. What exactly was the total of the advances made by the general partners to the limited partners. I am trying to say I don't know. Because various exhibits that came into evidence gave us different amounts. \$75,000 goes for overhead expenses. I don't know what they were. Maybe they were to pay John Sampson's law office expenses. I don't know.

\$100,000 goes out to Sampson as attorneys' fees. Well, I can't say that he's not entitled to attorneys' fees for all that he did in this case, and, therefore, I wouldn't say the money was spent for attorneys' fees or that Sampson took for attorneys' fees was all wrongfully taken in view of the history of this thing and, therefore, that's one specific element of damage that the general partners

are entitled to recover.

I think if I took the time I could think of other similar examples. A factor that I examined closely and brought out in my findings was Richins' contention with respect to the value of all the property which--for which he was seeking millions of dollars in damages, you see. Yet on his bankruptcy schedules the value of the properties listed as being properties in which RFC had an interest fell far below his \$9 and \$12 million figures that he set forth in some of his exhibits. I have no way of knowing what value of the loss of those properties could be assessed if any.

I guess I will talk more about this when I hear from Mr. Anderson. But I concluded that Richins' conduct was indeed intentional. That it was an interference.

I don't mean Richins. I mean Sampson. That it was an interference with an existing economic relationship--several existing economic relationships. As I pointed out in seven months at the end of 1980 he literally controlled all of the partnerships. And there is something to be said for his doing that on the other side of the question, too. And I recognize that. And we'll probably talk about that some more with Mr. Anderson.

But the end result is that is the defendants in the case end up with nothing because of Sampson's conduct. And I felt that his conduct justified as a substantial recovery. And as I said, I wrestled with my thoughts for hours trying to think of a basis for fixing a figure, and that's the figure I came up with. It's less than what some exhibits claim the advances were. I think I pointed out in my findings that the repayment of those advances had substantial uncertainty if all of the partnerships had been dissolved and liquidated in an orderly, proper fashion, all expenses paid and the property sold for the best price they could collect.

I point out that there still may not have been any money left to pay all or even part of the advances. So, I don't think that the advances gives me necessarily an accurate measure of damages that I could award to them. If I had done so it would be, maybe, \$100,000 more than it is.

There were many factors that I weighed and considered and you see them scattered throughout my findings. And, so, I just concluded this is a tort. Damages was caused by Sampson through his conduct. I find it was not such conduct as justified punitive damages, and will be talking about that, I am sure, but that the defendants were entitled to a substantial

recovery. In no sense of the word could I go to Richins \$5 million and \$6 million and \$9 million and \$12 million figures in arriving at damages because the evidence wasn't there. Credible evidence wasn't there that I could accept as being a proper foundation for a measure of damages. But I just say that that's the amount I came up with and I don't think I am obligated to say that the \$250,000 is made up of \$250,000 in advances which I think he would have recovered if they'd have orderly liquidated all of the partnerships or that it is made up of \$100,000 attorneys' fees Sampson took plus the \$75,000 that he used for overhead, plus another \$75,000 for some other specific item.

You see, and that's the reason I did what I did, and I don't think I can really--need to do or can do any different.