

1988

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

Utah Court of Appeals

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John T. Anderson; Biele, Haslam & Hatch; Attorneys for Respondents.

Craig S. Cook; Attorney for Appellant.

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BRIEF

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DOCKET NO.

880257-CA

IN THE UTAH COURT OF APPEALS FOR THE STATE OF UTAH

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.

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.

Court of Appeals No.
880257-CA

Supreme Court Case Nos.
860565 and 860570

CROSS-APPELLANTS' REPLY BRIEF

Appeal from a Judgment of the
Second Judicial District Court, Davis County
State of Utah

Honorable Bryant H. Croft, Presiding

Craig S. Cook, Esq.
3645 East 3100 South
Salt Lake City, UT 84109

Attorney for Appellant
and Cross-Respondent

John T. Anderson, Esq.
BIELE, HASLAM & HATCH
50 West Broadway, #400
Salt Lake City, UT 84101

Attorneys for Respondents
and Cross-Appellants

IN THE UTAH COURT OF APPEALS FOR THE STATE OF UTAH

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Salt Lake City, UT 84101

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TABLE OF CONTENTS

	<u>Page</u>
SCOPE OF REPLY	1
ARGUMENT I	2
THE OVERWHELMINGLY RECKLESS AND PREDATORY NATURE OF SAMPSON'S CONDUCT REQUIRES THE IMPOSITION OF PUNITIVE DAMAGES	
A. Sampson's Conduct is the Type of "Extraordinary Event" Mandating the Imposition of Punitive Damages	2
B. In Applying a Requirement That Sampson Could Be Liable For Punitive Damages Only Upon a Showing of Intentional Misconduct, The District Court Improperly Heightened the Applicable Standard For the Award of Such Damages	3
C. Sampson's Conduct Was Particularly Contemptible In Light of His Fiduciary Duty Toward The Richins Parties	4
D. Sampson Misconstrues The Standard for the Award of Punitive Damages	5
ARGUMENT II	6
SAMPSON HAS FAILED TO REFUTE THE RICHINS PARTIES' CLAIM TO DAMAGES IN AN AMOUNT EQUAL TO ALL MONIES THAT HE COLLECTED AND DISBURSED DURING THE FIRST 28 MONTHS OF HIS UNLAWFUL CONTROL OF THE LIMITED PARTNERSHIPS	
CONCLUSION	8

CASES CITED

<u>Cases</u>	<u>Page</u>
<u>Bassan v. Investment Exchange Corp.</u> 524 P.2d 233, 238 (Wash. 1974)	6
<u>Behrens v. Raleigh Hills Hospital, Inc.</u> 675 P.2d 1179, 1186 (Utah 1983)	3
<u>Clayton v. Crossroads Equipment, Co.</u> 655 P.2d 1125, 1131 (Utah 1982)	5
<u>First Security Bank of Utah v. J.B.J. Feedyards</u> 653 P.2d 591, 598-99 (Utah 1982)	4
<u>Harline v. Daines</u> 562 P.2d 1120 (Utah 1977)	6
<u>Kessler v. Rogers</u> 542 P.2d 354 (Utah 1975)	4
<u>Lachmunb's Estate</u> 170 P.2d 748 (Ore. 1946)	5
<u>Tomlin v. Ceres Corporation</u> 507 F.2d 642, 648 (5th Cir. 1975).	6
<u>Wroblewski v. Brucher</u> 550 F. Supp. 742, 746 (W.D. Okla. 1982).	6
 <u>Others</u>	
<u>Restatement (Second) of Torts</u> , Section 908.	3
7 Am. Jur. 2d, <u>Attorneys at Law</u> , Section 119 (1980)..	5

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CROSS-APPELLANTS' REPLY BRIEF

SCOPE OF REPLY

This reply brief will address two issues raised by cross-respondent, John P. Sampson ("Sampson"), in his brief:

1. Whether the district court applied an incorrect standard in concluding that no award of punitive damages should be assessed against Sampson.

2. Whether the district court's refusal to award damages

to the Richins Parties in an amount equal to all monies collected and disbursed by Sampson during the first twenty-eight months of his unlawful control of the Limited Partnerships should be reversed.

ARGUMENT I.

The Overwhelmingly Reckless and
Predatory Nature of Sampson's
Conduct Requires The Imposition
of Punitive Damages

A. Sampson's conduct is the type of "extraordinary event" mandating the imposition of punitive damages. In his cross-respondent's brief, Sampson correctly observes that an award of punitive damages is an "extraordinary event" which should be awarded only in "exceptional cases." (Sampson Brief, p. 34). It is difficult, however, to imagine a case more exceptional than this one: a case in which a lawyer purposely allows numerous default judgments to be entered against his clients (R. 2081); a case in which a lawyer receives and wrongfully disburses client funds (R. 2051); a case in which a lawyer purchases, and later sues on, a judgment obtained against his former clients (R. 2050-52, 2059, 2124, 2202-03); a case in which a lawyer conceives, implements and executes a six year plan to seize control of his former clients' business interests; (See generally Richins Parties' Brief, pp. 6-23); and, a case in which a lawyer solicits the IRS' cooperation in liquidating those business

interests. (Exhibits 298 and 300; R. 2125-26).

Clearly, contrary to Sampson's assertion, this is not a case of "mere inadvertence, mistake, errors of judgment and the like" which Section 908 of the Restatement (Second) of Torts suggests does not justify the imposition of punitive damages. As such, the Richins Parties have satisfied the threshold requirement of demonstrating the existence of an event so extraordinarily shocking as to require the imposition of exemplary damages.

B. In applying a requirement that Sampson could be liable for punitive damages only upon a showing of intentional misconduct, the District Court improperly heightened the applicable standard for the award of such damages. In its findings of fact and conclusions of law, the district court stated, "[h]e [Sampson] should have known the law, but I do not believe he intentionally violated it." (R. 2187) (Emphasis added). The Utah Supreme Court, however, has expressly determined that willful intent on the part of a defendant is not required to support a punitive damages award. In Behrens v. Raleigh Hills Hospital, Inc., 675 P.2d 1179, 1186 (Utah 1983) the court held that:

"A defendant's conduct must be malicious or in reckless disregard for the rights of others, although actual intent to cause injury is not necessary." (Emphasis added).

Notably, the test announced by the court is in the disjunctive,

allowing a plaintiff to premise punitive damages on a showing of malicious conduct or reckless disregard for the rights of others.

Furthermore, the district court stated that, "As wrong as Sampson was in many of the things he did, I think he believes himself to be right in doing what he did and the way he did them." (R. 2187). Again, however, the Utah Supreme Court has long held that punitive damages are available regardless of the defendant's state of mind. In Kessler v. Rogers, 542 P.2d 354 (Utah 1975), the court pointed out that, "[d]espite [defendant's] argument that he was but attempting to enforce what he believed to be his legal rights" the evidence showed that his conduct was willful and warranted punitive damages. Id. at 359. It was the defendant's "wrongful conduct" that caused the court to sustain the punitive damages award. Id.

In this case, the district court's apparent rejection of this principle and its substitution of a qualitatively steeper standard of intentional conduct constitutes reversible error.

C. Sampson's conduct was particularly contemptible in light of his fiduciary duty toward the Richins Parties.

Among the various factors to be considered for a punitive damages award is the relationship between the parties. First Security Bank of Utah v. J.B.J. Feedyards, 653 P.2d 591, 598-99 (Utah 1982). The case at bar involves an attorney/client relationship. That relationship has been characterized as "one

of extreme personal trust and confidence" In re Lachmunb's Estate, 170 P.2d 748 (Ore. 1946). Moreover, "the relationship between an attorney and his client is highly fiduciary in its nature and of a very delicate, exacting, and confidential character, requiring a high degree of fidelity and good faith. It is purely a personal relation, involving the highest personal trust and confidence" 7 Am. Jur. 2d Attorneys at Law, Section 119 (1980). And, even if the attorney/client relationship has ceased, the attorney's loyalty to the client is not discharged. Id. at Section 120. Sampson's conduct, standing alone, was reckless; undertaken in the context of the attorney/client relationship, it was predatory and abusive. The district court failed to attach sufficient weight to the existence of that relationship, and the incredible extent to which that relationship was abused, in declining to award punitive damages.

D. Sampson misconstrues the standard for the award of punitive damages. In his brief, Sampson argues that because he "acted in good faith" the district court properly denied the Richins Parties' claim for punitive damages. (Sampson Brief, p. 37). However, a good faith standard has never been the primary measure of whether punitive damages are properly recoverable. Indeed, the element of bad faith is only one small component of that standard. Clayton v. Crossroads Equipment, Co., 655 P.2d

1125, 1131 (Utah 1982). The district court's unwillingness to apply that principle must be rectified.

ARGUMENT II.

Sampson Has Failed To Refute The Richins Parties' Claim to Damages In An Amount Equal To All Monies That He Collected And Disbursed During The First 28 Months of His Unlawful Control of The Limited Partnerships

The law is, of course, well settled that "a limited partner can claim no interest or right in the assets, properties or rights of the partnership." Wroblewski v. Brucher, 550 F. Supp. 742, 746 (W.D. Okla. 1982). Accord, Harline v. Daines, 562 P.2d 1120 (Utah 1977); Tomlin v. Ceres Corporation, 507 F.2d 642, 648 (5th Cir. 1975); Bassan v. Investment Exchange Corp. 524 P.2d 233, 238 (Wash. 1974). Nothing in the limited partnership agreements at issue in this case alters that principle. Each of those agreements provided that:

"The general partner [the Richtron Companies] shall have full charge of the management, conduct, and operation of the partnership affairs in all respects and in all matters . . . No limited partner shall take part in the conduct or control of the affairs of the partnership. . ."

Therefore, once the district court correctly concluded that only the lawfully installed general partner (Richtron, Inc. or Richtron General) had authority to collect limited partnership funds, R. 2210, and that Sampson's use of those funds was ". . .

unauthorized as Richtron, Inc., remained general partner with complete control over partnership affairs," R. 2236, the full amount of diverted funds -- \$645,101.38 -- should have been awarded to the Richins Parties.¹

Interestingly, in his brief, Sampson seeks to side-step that issue by arguing without any accurate reference to the record that those monies were used ". . . for the benefit of the limited partnerships." (Sampson Brief, p. 39). In doing so, however, Sampson conveniently ignores the fact that Section 48-1-35 of the Utah Uniform General Partnership Act establishes a clear mechanism for seizure and possession of partnership property: (i) payment to the incumbent general partner of the value of such partner's interest in the partnership or (ii) procuring of a court approved bond. There is nothing in the record to suggest that Sampson ever understood, let alone complied with, that provision. That failure renders him personally liable for all damages occasioned by his unlawful control of the Limited Partnerships' property. The district court's conclusion to the contrary must

¹ This is the amount taken by Sampson between June 1980 and November, 1982, the period during which the district court determined he had no colorable authority to serve as general partner. (R. 2123). On October 29, 1982, he arguably acquired such authority through his purchase at an IRS tax sale of various assets of the Richtron Companies. Thus, the Richins Parties are seeking on this issue an award of damages only for the 28 month period of Sampson's undeniably illegal assumption of control of the Limited Partnerships.

be reversed.

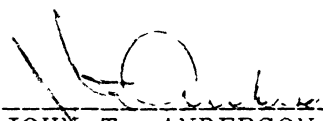
CONCLUSION

For the reasons set forth above, this Court should reverse the judgment of the district court and remand with instructions to (i) determine the amount of punitive damages to be extracted from Sampson and, (ii) enter judgment in favor of the Richins Parties for the additional principal sum of \$645,101.38 plus interest.

RESPECTFULLY SUBMITTED this 16 of September, 1988.

BIELE, HASLAM & HATCH

By



JOHN T. ANDERSON

Attorneys for Respondents and
Cross-Appellants

CERTIFICATE OF MAILING

I hereby certify that I caused to be mailed first class mail, postage prepaid, four copies of the Cross-Appellants' Reply Brief to the following on the 16 day of September, 1988:

Craig S. Cook, Esq.
3645 East 3100 South
Salt Lake City, UT 84109
Attorney for Appellant