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Russell W. Young and Saba O. Young v. Elvis Hansen and Bonnie Hansen : Brief of Appellants

Utah Supreme Court

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In the Supreme Court of the State of Utah

R. W. YOUNG and SABA O.
YOUNG, his wife,
Plaintiffs and Appellants.

vs.

ELVIS HANSEN and BONNIE HAN-
SEN, his wife,
Defendants and Respondents.

Case No. 7428

FILED

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BRIEF OF APPELLANTS

CLERK, SUPREME COURT, UTAH

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BRIEF OF APPELLANTS

STATEMENT OF FACTS

This is a suit for breach of contract. The plaintiffs allege in their amended complaint (T. 13 to 17) in substance that:

1. The defendants are owners of certain real estate at 220 West Central Avenue in Salt Lake County, Utah.
2. The said property is a farm. About May 14, 1948, plaintiffs and defendants entered into an oral partnership agreement wherein plaintiffs were to move onto said farm and

occupy an apartment in the home of defendants thereon. Plaintiffs were to pay \$9,000.00 for one-half interest in said venture. They were to raise cattle, chickens, pigs, rabbits, etc. The said \$9,000.00 was to be paid when the home of plaintiffs at 3348 South State Street was sold. But if it was not sold by November 15, 1948, then they were to pay defendants \$50.00 per month until the house was sold. It was agreed they would put in writing the details and terms at a future date. The defendants had a mortgage of about \$2,000.00 on the farm. Defendants were to pay said mortgage and deed to plaintiffs an undivided one-half interest in the real estate and give them a bill of sale for an undivided one-half interest in all the personal property on the farm.

3. In July, 1948, plaintiffs mortgaged their home and paid defendants the sum of \$4,000.00 cash and certain credits for \$60.00 making \$4,060.00 credit. It was agreed that if the home of plaintiffs was not sold by November 15, 1948, that all the partnership papers and other necessary papers would be drawn up at that time so that there would be a definite understanding in writing between them. In accordance with the oral partnership agreement, the plaintiff moved from their home on State Street about August 1, 1948, to the defendants' property, put their home up for sale, stood half the expense of operating the farm, advanced money for the purchase of grain, sand and gravel, lumber and building materials, payment of taxes and other things together with putting about 400 hours of labor upon said farm. When November 15 came along, defendants continued to delay the executing of the agreement and the delivery of the warranty deed and bill of sale.

4. About February 15, 1949, although plaintiffs at all times have been ready and willing to perform, defendants refused to execute the said deed, bill of sale or partnership written agreement and told plaintiffs they would not enter into any agreement whatsoever and requested plaintiffs to leave their premises.

5. As damages for the breach the plaintiffs set up the \$4,060.00 paid, together with interest on it, labor put on the premises by plaintiff, R. W. Young, in the sum of \$472.50, moving to and from the premises \$100.00, money advanced for purchase of a saw \$53.00, money advanced for sundry articles detailed in the amended complaint totaling \$161.37, money advanced for purchase of a trailer \$16.00, money advanced on defendants' taxes \$37.01, further cash advanced to defendants \$53.50 all totaling \$5,145.93.

The prayer asked for judgment in that amount and for general relief.

Defendants answered that they did agree to sell the one-half interest for \$9,000.00 and gave plaintiffs credit for the \$4,060.00 and that they engaged with said plaintiffs in a joint enterprise on the farm and agreed to enter into a written partnership agreement. Defendants further allege that the whole of the \$9,000.00 was to be paid *on or before* November 15, 1948, and denied that it was to be paid in any other manner. Defendants deny that plaintiffs have been damaged by reason of any breach of the defendants but allege that plaintiffs breached the agreement by failing to pay the balance and by repudiating the agreement (T. 23 to 27).

The case was tried before Judge Ray Van Cott, Jr. sitting without a jury on September 16, 1949. After all the evidence was in the court stated the plaintiffs had not sustained their burden of proof on the question that defendants had breached the contract and in its judgment dismissed the case no cause of action (T. 121, 32 and 40).

STATEMENT OF ERRORS

The Court erred in the following particulars:

1. In dismissing the case.
2. In concluding that defendants did not violate the terms of the oral agreement between plaintiffs and defendants.
3. In not giving judgment to the plaintiffs.
4. In making the following finding as included in finding III.

“That it was a part of said agreement that when plaintiffs paid defendants the sum of \$9,000.00 for an undivided one-half interest therein, that the parties would then enter into a partnership agreement, the terms and provisions of which would be then discussed and settled. . . . and that the said \$9,000.00 should be paid to defendants on or before November 15, 1948.”

5. In making finding IV “that at no time was there an agreement between plaintiffs and defendants that plaintiffs were to pay the sum of \$50.00 per month on and after November 15, 1948.”

6. In making those parts of findings V and VI to the effect that the \$9,000.00 should be entirely payable "on or before the 15th day of November, 1948."

7. In making finding VII that "on and after the 1st day of August, 1948, the plaintiffs and defendants operated said farm as a joint enterprise . . . applied the net proceeds therefrom to the expenses of operation and divided equally the balance."

8. In making the following part of finding VIII: "That on and after November 15, 1948, the plaintiffs failed, neglected and refused to pay the balance of said purchase price of said half interest."

9. In receiving in evidence Exhibit "1." After defendants' counsel offered in evidence said Exhibit, counsel for plaintiffs asked Mr. Young, one of the plaintiffs, as shown on pages 108 and 109 of the transcript:

"Q. Mr. Young, this proposed Exhibit "1," under what circumstances was that received?

A. Well, Elvis Hansen, he wanted me to take and write down what I had taken, make arrangements for him to pay me the four thousand dollars, so I wanted to be fair and I deducted everything that I had received—money for the rabbits and pigs and all—and added on the money that I had paid out; that is, for grain and things of that sort, and then deducted that from the four thousand, leaving three thousand six hundred and some odd dollars. That was up to December 31st.

Q. Was that done in an attempt to compromise and get together and settle.

A. Yes, I tried again and he wouldn't even come up to the house.

Mr. Young: (counsel) I object to this on the grounds it is an attempt to prove a compromise settlement which is not proper in the case and object to the exhibit.

Mr. Elton: I will submit it, your Honor.

The Court: The objection will be overruled. It will be received. Exhibit "1" will be received in evidence."

ARGUMENT

1. THE COURT ERRED IN DISMISSING THE CASE.

It appears beyond any question of a doubt that defendants are indebted to the plaintiffs in an amount in excess of \$4,000.00 as shown by the testimony of all the witnesses. The parties had entered upon a partnership agreement. Elvis Hansen, the defendant, admitted it (T. 148, 149). The defendants' answer admitted the \$4,060.00 was paid by plaintiffs to defendants. Then there were numerous other items that were put into the venture by plaintiffs in the nature of work, cash and materials (T. 85 to 90). Although the whole thing was a rather loose and informal affair (T. 92) the plaintiffs put substantial amounts of money into the venture. If the parties never understood each other as to the exact moment when the balance was to be paid or when the deeds were to be drawn or the partnership papers drawn, should the court have left the plaintiffs out on a limb? The defendant, Elvis Hansen, said he was not willing to go ahead with the deal (T. 151). The plaintiffs were always willing to go ahead with the deal by paying either the \$50.00 per month, as they thought the agreement was, or by paying the whole amount of the balance

to make up the \$9,000.00 as soon as they could get together in drawing up the papers so they would be protected (T. 162, 163, 165). The amended complaint as amended at the time of trial alleges plaintiffs are now and have at all times been ready and willing to go ahead with the deal (T. 16). Even though the court did not feel entirely satisfied that defendants had breached a contract, it still could have given judgment to render equity and justice in the case. Plaintiffs' prayer asks for \$5,145.93 judgment, . . . "*and for such other relief as to the court may seem proper in the premises.*" If that part of the prayer is not a mere irrelevant and redundant statement, then it must mean exactly what it says. "For such other relief" was placed there so that if the court thought that the relief we asked for was not proper under the evidence, then it could give plaintiffs any other relief "as to the court may seem proper in the premises." The plaintiffs believe there was a breach by the defendants and set up in the complaint facts which they thought constituted that breach and set up various items of account and call them damages. The defendants came to issue with plaintiffs on those various items of account. They presented in evidence the reasonable rental value of the apartment where plaintiffs are living on defendants' property, the fact that they were entitled to credits for work they put into the venture for use of their truck, etc. (T. 137, 138, 107, 108, 109). Counsel for defendants has contended that all the facts that could have been presented in a dissolution of partnership case were presented, or could have been presented in this case. That being the case, then the court erred in not giving plaintiffs the benefit of the general relief clause.

In the case of Pomponio vs. Larsen, 251 P. 534 (Colo. 1926) we copy the following from the syllabus:

"Formal distinctions between actions in law and suits in equity are abolished and only one form of civil action now exists; *all the pleader needs to do is to state the facts*, constituting his cause of action or defense, where they relate to the same subject matter, and the court will grant relief regardless of the prayer."

To practically the same effect is Malmberg vs. Baugh, 218 P. 975, 62 Utah 331 (1923). There the court stated it would not permit forfeitures of inequitable amounts; also Moran vs. Knights of Columbus, 151 P. 353, 46 U. 397; Section 101-1-2 of U. C. A. (1943) provides for but one form of civil action and Section 88-2-2 of U. C. A. (1943) provides that rules of equity shall prevail.

The surrounding circumstances in this case show that Mr. Young was stating the truth when he said: "I was to pay him the money, the full amount, when the house was sold, and if the house wasn't sold by the time the six months was up, I could get some money and pay him \$50.00 a month on the balance until we got the house sold" (T. 69).

The house wasn't sold and he paid defendants \$4,000.00 before the six months were up.

2. IS THE CONCLUSION THAT THE DEFENDANTS DID NOT VIOLATE THE TERMS OF THE AGREEMENT ERROR?

Plaintiffs claim that the preponderance of evidence shows they would not cooperate with plaintiffs in getting agreements

reduced to writing. The evidence shows that at all times, even up to the time of trial, plaintiffs have been ready, able and willing to go ahead with the deal (T. 165). As already stated defendant, Elvis Hansen, said on the witness stand that he would *not* go ahead with the deal. If there were any refusal to complete the deal at either the \$50.00 per month or by paying the entire balance, it was because defendants would not cooperate in getting papers drawn up so plaintiffs would be protected (T. 162). Defendants promised to have papers drawn up when plaintiffs paid the \$4,000.00. After the \$4,000.00 was paid, defendants put off drawing the agreements and finally talked the Youngs into waiting until November 15, 1948, without any security whatsoever for the money they had advanced. Naturally when defendants did not hold to their word in getting together on a written agreement at the time of receiving the \$4,000.00, the plaintiffs did not want to be taken again for another \$5,000.00. In that event they would find themselves without security on \$9,000.00 plus other amounts they had put into the venture. They only wanted the papers to be drawn up, so the whole transaction of paying the rest of the money and getting the deed, bill of sale and partnership written agreement would be done concurrently (T. 62, 65, 66, 68, 110, 162, 163, 165). Elvis Hansen said he would not get the contract drawn up (T. 122). When asked: "Are you willing to go ahead with the deal?" the defendant, Elvis Hansen, insisted on the answer, even though his counsel objected and he said:

"A. I am willing to answer the question, and the answer is 'No.' "

That is exactly how he felt about it. That is exactly how he felt about it from the time he went to his lawyer in Murray about November, 1948. After that visit with Judge Allen by Hansen Mrs. Young said, "Some way or other it just didn't work out." (T. 122). No doubt Judge Allen told him a partnership of that kind could not work out, and probably advised against it. But rather than have the courage to face the Youngs (it had gone on for about six months and they had already spent the \$4,000.00 they had received) the Hansens decided to let it drift. About then it was that Mr. Hansen wanted to buy the plaintiffs' share of the pigs for \$125.00, which Youngs would not sell, but which Hansen later sold for \$600.00 and refused to account to the Youngs (T. 72, 73). When Youngs refused to sell their interest in the pigs late in November or early in December, 1948, the defendants started to make trouble. The defendants then got into trouble between themselves, and by February, 1949, Mrs. Hansen told Youngs she was getting a divorce from Mr. Hansen (T. 123).

Mr. Hansen said he was not going to do anything about making up the papers until the \$5,000.00 balance was paid. Then he was asked the question: "And what assurance did they (plaintiffs) have that you were going to do that?" (give them a written agreement).

"A. My word.

"Q. Your word and that is all?

"A. You betcha." (T. 148).

There never was any agreement inferentially or expressly that plaintiffs would pay the \$9,000.00 cash to defendants with

the understanding defendants were to take their own time about having agreements and deeds drawn up after such payment was made.

Plaintiffs feel that when defendants refused to cooperate with plaintiffs in having the necessary papers drawn up to protect them in their investment, as it was originally intended by the parties, that defendants violated said agreement.

3. Plaintiffs adopt the argument under assignment of Error 2 for this assignment of Error 3.

4. IN MAKING THE PART OF FINDING III AS STATED IN ASSIGNMENT OF ERROR 4.

There is not any evidence that the \$9,000.00 was to be paid before the parties would enter into a partnership agreement. As has been hereinbefore stated, they were already engaged in a partnership. Also, it does not appear in the evidence that "the \$9,000.00 should be paid to the defendants *on or before* November 15, 1948." These findings are not supported by the evidence. The best evidence to support the last finding is that of Mr. and Mrs. Hansen, when they said the money was to be paid "on or *shortly after* November 15, 1948." (T. 144, 146, 155). It stands to reason that if the house had not been sold by November 15, 1948, that they would not have the money immediately. It would take some time to negotiate deals to get the money even though the agreement was that the whole amount was to be paid. Young offered the \$5,000.00 right after November 15, 1948, and offered the \$50.00 a month many times (T. 98, 99, 101, 102, 110).

Assignment of Errors 5 and 6 were argued in Number 4 above. We, therefore, adopt that argument for these two assignments of error.

7. ASSIGNMENT OF ERROR NUMBER 7.

The plaintiffs and defendants started their partnership arrangement in May, 1948, and they did not divide the profits equally. Finding VII is in error since there is no evidence to support it. The evidence of plaintiffs and defendants alike show it was started in May. It is true that plaintiffs did not move there until August 1, 1948, but from May until that time the plaintiff, Mr. Young, had been going to the farm every day to do what he was supposed to do under the partnership agreement. There was money on the rabbits, as well as the \$600.00 the defendants took, that was not divided. No accounting was given to the Youngs for the \$161.37 for lumber and materials they purchased for the farm, for saw, trailer and many other things (T. 127, 85 to 90).

8. ASSIGNMENT OF ERROR NUMBER 8.

There is no evidence to support the finding that "on and after November 15, 1948, the plaintiffs failed, neglected and refused to pay the balance of said purchase price." This is borne out by Elvis Hansen's testimony that he refused to go ahead with the deal. All along from November 15, 1948, to and on the day of trial the offer was made by plaintiffs to pay the balance in any way the defendants wanted it, provided they would give them written papers of some kind for security at the time the money was paid. Clearly, then, this is an erroneous finding. At the end of the case the court said, "I can't

tell which one of them is telling the truth . . . I don't know which one of the men is telling the truth . . . I am in a position where I don't know which one is telling the truth" (T. 169). If that be the case, then how can he make these findings?

9. ASSIGNMENT OF ERROR NUMBER 9.

This was clearly an attempt on the part of both parties for a compromise settlement. Hansens asked the Youngs to give them a statement of what they would settle for. The Youngs cut it down as far as possible so they could have a fair chance to settle the difficulty. "Exhibit "1" was given to the Hansens by the Youngs as a statement of what they would take as a rock bottom settlement so there would be no further trouble between them (T. 108, 109). Compromises are encouraged by the courts, and for that reason they are not to be received in evidence as admissions. (Vol. 1—Jones on Evidence—Fourth Edition, pp. 545-6).

We feel that the judgment of the lower court should be set aside and a new trial granted.

Respectfully submitted,

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