

2008

Gene M. Richards v. Resource Technics, LLC : Brief of Appellant

Utah Court of Appeals

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Resource Technics, LLC; Petitioner/Appellee.

Gene Richards; Attorney for Appellant.

Recommended Citation

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IN THE UTAH COURT OF APPEALS

GENE M. RICHARDS }
 }
 }
RESPONDENT/APPELLANT, } APPELLATE COURT NO. 20080910
 } DISTRICT COURT NO. 060920611

vs.

RESOURCE TECHNICS, LLC }
a Nevada based corporation }
and *et all* }
PETITIONER /APPELLEE. } **REQUEST FOR ORAL ARGUMENTS**

APPELLANT'S BREIF

LIST OF PARTIES

PETITIONER/APPELLEE

RESPONDENT/APPELLANT

RESOURCE TECHNICS, LLC

GENE RICHARDS

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GENE RICHARDS

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TABLE OF AUTHORITIES

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Lundahl vs. Quinn, 2003 UT 11, 14, 67, P.3d 1000

Paulos vs. All My Sons Moving and Storage, 2008 UT App 462

Rohn vs. Boseman, 2002 UT App 109, 28, 46 P. 3d 753

JURISTICTIONAL STATEMENT

This Court has jurisdiction as a matter of right to hear and determine this appeal.

STATEMENT OF ISSUE AND STANDARDS OF REVIEW

Whether or not the court should remand this case back for a new trial pursuant to Utah R. Civil Procedure Rule 4-201, Record of Proceedings based on the fact there is no audio or video record of hearing of final judgment in front of Judge Stephen Henroid May 7, 2008 to support

Whether or not the trial court abused its discretion and authority by granting a Summary Judgment awarding attorney fees for a foreign judgment for Interphase Company in the amount of \$23,274.33

Whether or not the trial court abused its discretion and authority by granting a Summary Judgment for Resource Technics in the amount of \$53,656.58 pursuant to *Paulos vs. All My Sons Moving and Storage*, 2008 UT App 462.

Whether or not the court abused its discretion of “leniency” for a *pro se* litigant, (Defendant/Appellant) who was *pro se* throughout a large part of this case pursuant to Rohn vs. Boseman, **2002 UT App 109, 28, 46 P. 3d 753**, Lundahl vs. Quinn, **2003 UT 11, 14, 67, P.3d 1000**.

Whether or not the trial court failed to consider Jurisdiction and Venue by not adhering to designated rules of procedure with Appellee being a Nevada based corporation and intertwined a lawsuit in California, therefore not domesticating it in Utah.

Whether or not the findings and facts are insufficient to support the findings as represented in Attorney’s Ronald George and Victor Jackson’s erroneous judgment by admitting irrelevant interrogatories and admission pursuant to J.G. vs. State of Utah, **2008 UT App 439**.

Whether the Appellee, purposely confused the trial court by bringing a foreign judgment outside the State of Utah’s jurisdiction.

Whether the Appellee properly requested the trial court enter of Judgment of Slander of Title as referred in Paragraph 1 of Judge Christiansen’s Order against the Appellant by recognizing a foreign judgment, without requiring that it properly be registered and domesticated in the State of Utah from a California Court pursuant to Gardiner vs. York, **2006 UT App 496, Case No. 20051162-CA** .

Whether or not the Trial Court’s Summary Judgment resulted in Unjust Enrichment which resulted in a windfall in favor for the opposing counsel.

CONSTITUTIONAL OR STATUTORY PROVISIONS

Article 1 § 7 of the Utah State Constitution (Due Process)

No person shall be deprived of life, liberty, or property, without due process of law.

Article 14 § 14 of the United States Constitution {Due Process}:

No state shall make or enforce any law, which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law.

Article 1 § 5 of the Utah State Constitution (Utah State Supremacy Clause)

United States Constitution Amendment 6 Right to an attorney and a fair trial.

C.G.S.A. Constitution, Article 1 § 8, {Due Process}.

PROCEDURAL PROVISIONS

Utah R. Civil Procedure Rule 4-201, Record of Proceedings

Utah R. of Appellate Procedure Rule 54(a), Sufficiency of Evidence Supporting Findings or Conclusion.

STATEMENT OF THE CASE

A Summary Judgment in the amount of \$53,656.58 was granted for Appellee Resource Technics a Summary Judgment awarding attorney fees for a foreign judgment was granted in favor for Interphase Company in the amount of \$23,274.33. Since this was the improper jurisdiction and venue for this case, this case would not have resulted in a windfall if favor of the Appellee's and unlawful Summary Judgment's in the amounts of \$76,930.91 against the Appellant.

Appellee's abused the Appellant's Due Process by filing this court action in Third District Court acting ethically and forcing Richards to act as a *pro se* litigant. Richards should be granted

some leniency as in the case of Lundahl v Quinn, 2003 UT 11/4, 67 P.3d 1000, whereas, the Court has the right to give leniency to persons acting in a *pro se* capacity; Manifest Injustice

There is also no record of Proceedings based on the fact there is no audio or video record of hearing of final judgment in front of Judge Stephen Henroid May 7, 2008 to support issues and facts of the case of Summary Judgment in the amount of \$53,656.58, which then also supports the Summary Judgment of \$23,274.33 of attorneys fees based on final Order of Judge Stephen Henroid signed on May 7, 2008.

STATEMENT OF FACTS

The Appellant, Gene Richards, herein referred as “Richards” was involved with a lawsuit which started in the State of California by giving money to the Appellee’s. This case was tried and Richards was to receive \$55,000 from this lawsuit. Richard’s wrote the Appellee’s, Resource Technics, herein referred as “Weston” for the money owed to him from the Weston’s prevailing Foreign lawsuit, Interphase Company to confuse issues in this Court action.

Court failed to consider Jurisdiction and Venue by not adhering to designated rules of procedure with Appellee being a Nevada based corporation and intertwined a lawsuit in California, therefore not domesticating it in Utah.

The court should remand this case back for a new trial pursuant to Utah R. Civil Procedure Rule 4-201, Record of Proceedings based on the fact there is no audio or video record of hearing of final judgment in front of Judge Stephen Henroid May 7, 2008 to support issues and facts of the case of Summary Judgment in the amount of \$53,656.58.

The Trial Court’s Summary Judgment resulted in Unjust Enrichment which therefore resulted in a windfall in favor of the Appellee and their opposing counsel.

ARGUMENTS

POINT I

There is No Record of Proceedings based on the fact there is no Audio or Video Record of the Proceedings of Final Judgment in front of Judge Stephen Henroid May 7, 2008.

There is no audio or video to support issues and facts of the case of the Summary Judgment in the amount of \$53,656.58, which was the Summary Judgment which later became the basis for Attorney's Fees of \$23,274.33. Richard's can only base the relevant facts of the case from memory of Law and Motion in the court of Judge Stephen Henroid on April 14, 2008. (Attached hereto as Exhibit A). Richard's has only a transcript of the proceedings of the Order signed on 23 October 2008 by Judge Christiansen which were set for decision on Attorney's Fees. This transcript is not a supporting document, since it is based on a judgment and support for attorney fees in Judge Henroid Court which Richard's is unable to support his facts without a transcript. (Attached hereto as Exhibit #B, Record data desk/Midgley).

Pursuant to *Utah R. of Appellate Procedure Rule 54(a)*, Sufficiency of Evidence Supporting Findings or Conclusion; where an appellant intends to challenge the sufficiency of the evidence supporting finding of conclusion, "the appellant must include in the record a **TRANSCRIPT**, of all evidence relevant to the challenged finding or conclusion", as in the cases of *Child vs. Child*, **UT Sup. Ct. No. 20081044, March 17, 2009**, and *J.G. vs. State of Utah*, **2008 UT App 439**.

Richards went through the proper appellate procedures in ordering transcripts to back his

appeal, to no avail, found through the Court Recorders Office there was no audio or video of the proceedings which supported a \$76,930.91 judgment against him.

Based on only hearsay by both parties, and having no audio or video record from the Court to present a proper appeal for Richard's, the Court of Appeals should remand this case back for a new trial pursuant to Utah R. Civil Procedure Rule 4-201, Record of Proceedings.

POINT II
Improper Jurisdiction and Venue not Recognized by the Court.

The trial court failed to consider Jurisdiction and Venue by not adhering to designated rules of procedure with Appellee being a Nevada based corporation and intertwined a lawsuit in California, therefore not domesticating it in Utah.

In Judge Christiansen's Order against the Appellant there was no recognition of a foreign judgment, which was not properly registered and domesticated in the State of Utah from a California Court. Pursuant to Gardiner vs. York, 2006 UT App 496, Case No. 20051162-CA, Gardiner domesticated the case in Utah and then went after York alleging that the transfer of the warehouse was fraudulent, just as in this case, since the Appellee's did not prevail to the point of satisfaction in California, they went after the Appellant in a fraudulent manner, when the Appellee's owed Richard's the \$55,000.00, which they could not get a satisfactory judgment in California.

POINT III
The Appellant was a Pro Se Litigant in District Court.

Richard's is a *pro se* litigant and should have some leniency Lundahl v Quinn, 2003 UT 11/4, 67 P.3d 1000, whereby leniency should be granted when a *pro se* litigant is required or

CONCLUSION

This case needs to be reversed and remanded back for new trial based upon no transcript available to support Richard's appeal for evidence supporting findings, facts, and conclusion of law. In the alternative, this case can be vacated based on the fact that this is a foreign judgment which has not been domesticated in Utah which does not follow the *Utah R. of Civil Procedure* regarding proper jurisdiction and venue of these civil proceedings.

Dated this 13th day of April 2009.

Respectfully Submitted,



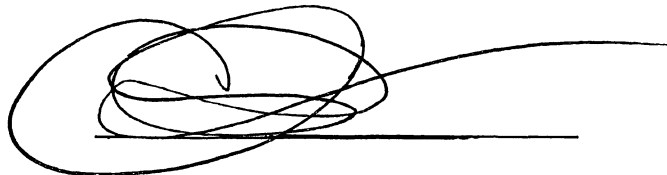
Wayne R.N. Searle
Counsel for the Appellant

CERTIFICATE OF SERVICE BY MAIL

I certify that on this 13th day of April 2009, I personally placed a true and correct copy of the "Appellant Brief", in a sealed envelope. I further placed the same in the United States Postal Service and addressed it to the following:

Ronald S. George
Law Offices of Ronald S. George P.A.
218 W Paxton Ave.
Salt Lake City, Utah 84101

Delano S. Findlay
Attorney at Law
648 East Vine Street, Suite #3
Murray, Utah 84107



ATTACHMENT

A

3RD DISTRICT COURT - SALT LAKE
SALT LAKE COUNTY, STATE OF UTAH

RESOURCE TECHNICS LC, : MINUTES
Plaintiff, : LAW AND MOTION
: :
: :
vs. : Case No: 060920611 MI
: :
GENE M RICHARDS Et al, : Judge: STEPHEN L. HENRIOD
Defendant. : Date: April 14, 2008

Clerk: mckaem

PRESENT

Defendant's Attorney(s): DELANO S FINDLAY

Audio

Tape Number: W47 8-08 Tape Count: 9:11

HEARING

TAPE: W47 8-08 COUNT: 9:11

This case is before the Court for oral argument.
Plaintiff's Motion for Order Deeming admissions is granted. Mr
Findlay is to prepare Order and for default judgment.

EXHIBIT A1

Page 1 (last)

EXHIBIT A2

ATTACHMENT

B

Record Data Desk/Midgley
Matheson Courthouse
450 South State Street
P.O. Box 1860
Salt Lake City, UT 84111-1860
(801) 238-7408 direct
edm@email.ntcourts.gov
December 29, 2008

Wayne Searle, Esquire
and to Others Whom it My Concern.
Att: Christi
c/o raamenergy@gmail.com

Re: Resource Technics LC v. Gene M. Richards,
Case No. 060920611, 20080910-CA, Acting
Managing Court Reporter's letter affidavit
regarding lack of video or audio data for an
April 28, 2008 hearing.

Dear Mr. Searle:

Circa December 5, 2008, Christi from Mr. Searle's office had a chat with me at the W-40 Reception desk about the apparent inability to locate record data (either video or audio) of a certain hearing held April 28, 2008. Mr. Searle's office had had prior conversations with Bunny Neuenschwander, Managing Court Reporter, about this subject, and Christi advised me that what was needed was some form of affidavit or statement averring that no such data was able to be located.

As Ms. Neuenschwander was at that time on funeral leave, I took note of the matter and advised Ms. Neuenschwander in the particulars upon her return. In that discussion, she told me in fact that no data was able to be found and I told her of Mr. Searle's need for something in writing. Regrettably as to timing, it was within the next week or ten days that Ms. Neuenschwander retired from the courts, and apparently the written memorialization anticipated from her never materialized.

Please, therefore, then consider this a letter affidavit underscoring the fact that, to all good efforts of the Managing Reporter's office, no data is able to be located for the hearing above-referenced, and your attention is appreciated.

Sincerely,

Ed Midgley
Record Data Desk
(De facto Managing Court Reporter)
Third District Court

EDM/cc Searle, Court of Appeals

Christy White
Paralegal for
Wayne R.N. Searle #2904

AFFIDAVIT SUPPORTING ED MIDGLEY

I, Christi(y) White am signing and submitting this foregoing document. This Affidavit involves the circumstances involving Gene Richards Appellant/Defendant vs. Resource Technics LLC. Appellee/Plaintiff, Case no. 060920611, Appellate Case No. 20080910.

Under the direction of Wayne Searle I helped Gene Richards (herein referred as Richards) ordered transcripts from the Third Judicial Court in the State of Utah on November 4, 2008 working with Bunny Neuenschwander, (herein referred as Bunny), Managing Court Reporter. The assigned transcriber for the transcripts was Carolyn Erickson (herein referred as Carolyn). The transcripts ordered in Judge Henroid's Court were for the Order dated May 7, 2008 and in Judge Michele Christiansen's Court September 29, 2008.

Bunny called Richards, on or about September 29, 30, 2008, and then Richards called me to talk with Bunny. Bunny told me she looked through the whole month of April 2008 involving this civil case in front of Judge Henroid and could not find any audio or video for the case. Bunny told me she had talked to Carolyn to also let her know there was no audio or video for Judge Henroid's Court in Richards' case and only audio and video available in Judge Christiansen's Court, so we proceeded in a timely way and had Carolyn transcribe (which she did in a timely way) and delivered the transcripts to the Third Judicial Court.

On or about December 10, 2008 I had to contact Bunny for an Affidavit for the Utah Supreme Court and Court of Appeals because we could not get a written transcript, she was in the process of retiring so I worked with Ed Midgley who was working on Bunny's behalf and he supplied me, Wayne Searle and the Court of Appeals with documentation with which my affidavit supports.

