

1988

# Mark VII Financial Consultants Corporation v. Dale Smedley and the First National Bank of Layton : Brief of Respondent

Utah Court of Appeals

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**BRIEF**

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DOCKET NO. 88-0606 IN THE COURT OF APPEALS

OF THE STATE OF UTAH

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MARK VII FINANCIAL	:	
CONSULTANTS CORPORATION,	:	
	:	Case No. 880606-CA
Plaintiff-Appellant,	:	
	:	
vs.	:	
	:	
DALE SMEDLEY AND THE FIRST	:	
NATIONAL BANK OF LAYTON,	:	Category 14b
	:	
Defendants-Respondents.	:	

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BRIEF OF RESPONDENT SMEDLEY

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APPEAL FROM THE JURY VERDICT AND AMENDED JUDGMENT OF THE  
SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY,  
STATE OF UTAH, THE HONORABLE RODNEY S. PAGE, PRESIDING

---

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DEPOSITED BY THE  
STATE OF UTAH  
AUG 16 1990

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CONSULTANTS CORPORATION

IN THE COURT OF APPEALS  
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STATEMENT OF THE ISSUE

The only issue involving Respondent, Smedley, in this Appeal is whether or not the Trial Court erred in refusing to give the jury an instruction regarding punitive damages.

STATEMENT OF THE FACTS

Generally speaking, the Statement of the Case and the Statement of the Facts in Appellant's Brief are accurate. The facts germane to the issue of whether or not Plaintiff was entitled to an instruction regarding punitive damages are stated briefly.

Plaintiff and Smedley entered into a Joint Venture Agreement to develop land owned by Smedley in Morgan County, Utah. The trial court found that as a matter of law the contract was very ambiguous and allowed parole evidence to be

introduced to the jury so that the jury may decide what the actual agreement was between the parties. As shown by the jury's verdict, granting an offset to Dale Smedley as against the amounts owing by Smedley to Plaintiff on the drilling rig, the jury found that Smedley still retained an interest in the drilling rig, even though a bill of sale was given to Plaintiff by Smedley.

It is true that Smedley consulted with the bank in an effort to gain what Smedley, in good faith, believed was his rightful interest to the drilling rig. Smedley testified at trial that he had done more than \$20,000.00 work toward paying off the debt owed to the Plaintiff with regard to the drilling rig. The jury found Smedley did just over \$20,000 worth of work on the project and allowed him an offset in that amount.

The trial court refused, as a matter of law, to instruct the jury on punitive damages. The trial court found that this was not a case in which punitive damages should even be an issue.

#### SUMMARY OF THE ARGUMENT

This case is a mere breach of contract case, and it falls far short of the standard necessary for punitive damages to be awarded as set by the Utah Supreme Court. Respondent Smedley, acted in good faith, to protect what he believed was

his rightful interest in the drilling rig, believing that Plaintiff had breached the contract. There is simply no evidence, and Plaintiff does not specifically direct the court's attention to any such facts, that would support a finding by the jury or anyone else that Respondent Smedley's conduct was willful and malicious or manifested a knowing and reckless indifference and disregard to the rights of others. Punitive damages are simply not appropriate in this case.

#### ARGUMENT

##### 1. THE TRIAL COURT PROPERLY REFUSED TO INSTRUCT THE JURY ON PUNITIVE DAMAGES.

The Utah Supreme Court has recently addressed the standard for assessing punitive damages in civil cases, in the case of Johnson v. Rogers, 763 P.2d. 771 (Utah 1988). Although the Johnson case is a personal injury case, the standard for imposition of punitive damages which is set forth in the case applies in all civil matters. The Court held:

"The standard for punitive damages in non false imprisonment cases is thus clear: They may be imposed for conduct that is willful and malicious or that manifests a knowing and reckless indifference and disregard toward the rights of others. 763 P.2d. at 774.

Punitive damages serve as a deterrence function for such willful or reckless conduct. The court also held that punitive damages are appropriate in cases where the conduct of a Defendant is extreme, outrageous and shocking. Id. at 775-776.



In the present case, Plaintiff, who bears the burden of showing some type of error in the trial court refusing to give an instruction on punitive damages, does not point to any specific facts which would support an award of punitive damages. Rather Plaintiff makes unsupported statements that there was a conspiracy between Smedley and the bank which was willful and malicious. Unquestionably the jury found that Smedley had an interest in the drilling rig which he allegedly converted. The jury allowed him a \$20,000.00 setoff. Smedley claims that he was owed more. The amount he was owed as a setoff is not as significant in relation to the issue of punitive damages as the fact that the jury awarded him an offset. This shows that the jury believed that Smedley was acting in good faith in attempting to protect whatever interest he may have had in the drilling rig. This case is a mere breach of contract case and any award of punitive damages is totally inappropriate. Plaintiff has produced no facts whatsoever which would even approach the extreme and outrageous behavior necessary for an award of punitive damages. In fact, Plaintiff's Appeal of this issue as to the Defendant Smedley borders on the frivolous.

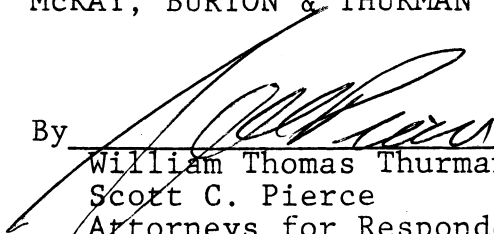
#### CONCLUSION

This Court should affirm the trial courts refusal to give the jury instruction on punitive damages in the case. In fact, the issue of punitive damages as against the Defendant

Smedley, in light of the findings of the jury in this case is boardering on the frivolous and Smedley would ask the Court to grant him appropriate relief for having to defend such an appeal.

RESPECTFULLY SUBMITTED this 11<sup>th</sup> day of January, 1989.

McKAY, BURTON & THURMAN

By   
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Scott C. Pierce  
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Dale Smedley

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on this 11<sup>th</sup> day of January, 1989, a true and correct copy of the foregoing was mailed, postage prepaid, to the following:

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