

1979

Michael W. Strand v. Jack Cranney et al : Brief of Appellant

Utah Supreme Court

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MICHAEL

JACK

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APPEAL FROM A JUDGMENT OF THE
DISTRICT COURT IN AND FOR THE
STATE OF UTAH, THE HONORABLE
JUDGE PRESIDING

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FILED

JUN 12 1979

IN THE SUPREME COURT OF THE
STATE OF UTAH

* * * * *

MICHAEL W. STRAND, :
Plaintiff-Appellant, :
vs. : Case No. 16176
JACK CRANNEY, et al., :
Defendants-Respondents :

* * * * *

BRIEF OF APPELLANT

* * * * *

APPEAL FROM A JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT IN AND FOR SALT LAKE COUNTY
STATE OF UTAH, THE HONORABLE G. HAL TAYLOR,
JUDGE PRESIDING

* * * * *

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TABLE OF CONTENTS

	<u>Page</u>
STATEMENT OF THE NATURE OF THE CASE-----	1
DISPOSITION IN THE LOWER COURT-----	1
RELIEF SOUGHT ON APPEAL-----	2
STATEMENT OF FACTS-----	3
ARGUMENT	
POINT I	
THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING OF A PARTNERSHIP OR JOINT VENTURE INASMUCH AS THERE WAS NO MEETING OF THE MINDS WITH RESPECT TO THE TERMS AND CONDITIONS THEREOF-----	13
CONCLUSION-----	21

TABLE OF CASES

B & R Supply Co. v. Bringhurst, 28 Utah 2d 442, 503 P.2d 1216 (1972)-----	15
Bassett v. Baker, 530 P.2d 1 (Utah 1974)-----	13,15,20
Bates v. Simpson, 121 Utah 165, 239 P.2d 749 (1952)-----	14
Forbes v. Baxter, 66 Utah 373, 242 Pac. 950 (1926)-----	13
Hammer v. Gibbons & Reed Co., 29 Utah 2d 415, 510 P.2d 1104 (Utah 1973)-----	13
Hayes v. Killinger, 235 Ore. 465, 385 P.2d 747 (1963)-----	16
Holtz v. United Plumbing & Heating Co., 49 Cal. 2d 501, 319 P.2d 617 (1958)-----	20
Johanson Bros. Builders v. Bd. of Review, 118 Utah 384, 222 P.2d 563 (1950)-----	15
Kaunans v. White Star Gas & Oil Co., 9 Utah 24, 63 P.2d 231 (1937)-----	13
Laird v. Johns, 276 Ore. 1095, 557 P.2d 670 (1978)-----	20
Lignell v. Berg, ___ P.2d ___ (Utah 1979)-----	13
Martin v. Peyton, 246 N.Y. 213, 158 N.E. 77 (1927)-----	16

McMillan v. Whitney, 38 Utah 452, 113 Pac. 1026 (1911)-----	13
Paul v. North, 191 Kan. 163, 380 P.2d 421 (1963)-----	15
Realty Development Co. v. Feit, 154 Colo. 44, 387 P.2d 898 (1963)-----	15
Vern Shutte & Sons v. Broadbent, 24 Utah 2d 415, 473 P.2d 885 (1970)-----	16
Wash-A-Matic, Inc. v. Rupp, 532 P.2d 682 (Utah 1975)-----	21
Wasatch Livestock Loan Co. v. Lewis & Sharp, 84 Utah 347, 35 P.2d 835 (1934)-----	13
West v. Soto, 85 Ariz. 255, 336 P.2d 153 (1959)-----	15

MISCELLANEOUS AUTHORITIES

59 Am.Jur.2d Partnership § 973, p. 974-----	17
Crane & Bromberg, Law of Partnership, p. 190-192 (1968)---	15

IN THE SUPREME COURT OF THE
STATE OF UTAH

* * * * *

MICHAEL W. STRAND, :
Plaintiff-Appellant, :
vs. : Case No. 16176
JACK CRANNEY, et al., :
Defendants-Respondents.:

* * * * *

BRIEF OF APPELLANT

* * * * *

STATEMENT OF THE NATURE OF THE CASE

This is an appeal from the Judgment rendered in the Third Judicial District Court, Salt Lake County, State of Utah, the Honorable G. Hal Taylor, Judge.

DISPOSITION IN THE LOWER COURT

On February 7, 1978, the appellant filed a complaint in the District Court, Third Judicial District, Salt Lake County, State of Utah, against the respondent alleging the respondents without authorization sold certain stock of appellant which stock was pledged as security for loans from respondents to appellant. It was further alleged that respondents were in possession of stock of the appellant and improperly refused to return said stock. (R. 2-5). An order to show cause seeking return of the stock was also issued by the District

Court. (R. 9). A motion to vacate the order to show cause

was heard and denied and the case given preferential trial setting. (R. 22) The respondents duly filed an answer and counterclaim. (R. 39) In the latter pleading, the respondents alleged a joint venture in the stock and sought relief. Appellant made reply to the counterclaim (R. 46) and the matter came on for trial on April 12, 1978, before the Honorable G. Hal Taylor, Judge. On the 26th day of June, 1978, Findings and Judgment were rendered dismissing the appellant's complaint and awarding relief to respondents on their counterclaim. (R. 94-101) A motion pursuant to Rule 59 to alter and amend the Judgment for a new trial was thereafter filed by appellant. (R. 103). On November 17, 1978, amended Findings and a Judgment were entered (R. 114-122) finding that a partnership agreement existed between the appellant and the respondent and that the respondent was, therefore, entitled to one-half of certain stock that had been deposited by the appellant with the respondent in exchange for sums that had been advanced by the respondent to the appellant.

RELIEF SOUGHT ON APPEAL.

The appellant requested the Judgment and Findings of the District Court should be reversed and that there be a finding that no meeting of the minds had been reached with respect to a partnership and that the common stock had been deposited with the respondent by the appellant was collateral to sums advanced and that upon repayment of those advances the stock should be returned to the appellant.

STATEMENT OF FACTS

Appellant's statement of facts is taken from the trial transcript which will be designated as (Tr.).

The case involves a series of transactions between the parties which were at first considered by both to constitute secured loans. Thereafter, according to the respondent, the transactions changed in nature to be partnership transactions wherein the respondent was to advance sums of money in exchange for which the appellant was to deposit stock with the respondent which was to become partnership property. According to the respondent, the parties were to split the profits from the resale of the stock. The appellant acknowledges that there was some discussion concerning a partnership, but contends that no agreement was ever reached and that all of the transactions between the parties constitute secured loans.

The Court found with the respondent and against the appellant that a partnership agreement had, in fact, been formed and that the respondent was entitled to one-half of the stock after certain adjustments had been made for repayment of sums advanced.

The first transaction between the parties occurred on March 5, 1977. The transaction was discussed at a dinner meeting between the appellant and the respondent and their wives. While at dinner, the respondent inquired of the appellant concerning his business activities and the fact that the appellant was a trader of stocks. During the course of the dinner the respondent tendered to the appellant the sum of \$1,000 which the respondent requested the appellant invest in

any way he saw fit. Thereafter, the appellant ordered for the respondent's benefit and in the respondent's account at a stock brokerage firm, Olsen & Company, 4,000 shares of Classic Mining Corporation stock. The purchase amounted to approximately \$1,000. The respondent received the stock in his account and the appellant paid therefor. The above is the totality of that transaction. There was no reference to a partnership; a joint sharing of the profits and losses; nor a community of interest in the stock or in the requirement of a joint determination as to when to sell. (Tr. 13-14, 143-144).

The second transaction involved an advance of \$20,000 to the appellant by the respondent on March 25, 1977. In exchange for the \$20,000 advance, the appellant executed in favor of the respondent a promissory note and a security agreement. (See Exhibits 5 and 6). Pursuant to the security agreement the appellant gave to the respondent 190,000 shares of Classic Mining Corporation stock. Additionally, as consideration for the loan, appellant gave to the respondent 10,000 shares of Classic Mining Corporation stock. The note was not to bear interest. (Tr. 14, 19, 28, 30-32).

The next transaction took place on April 13, 1977. It involved a further advance of \$15,000 together with another exchange of stock for collateral and a promissory note. (Exhibit 7). At this time an additional 10,000 shares of Classic Mining Corporation common stock was deposited by the appellant with the respondent. Again, it is not disputed that this transaction involved a further loan with a further deposit of stock

as collateral although no written security agreement was made at the time of this transaction. (Tr. 14, 28, 33-34, 148-149, Exhibits 3 and 7).

The next transaction involved the alleged formation of a partnership. On May 4 or May 5, the appellant again went to the respondent to borrow an additional \$20,000. The respondent testified that at this point he did not trust the appellant because his failure to repay earlier loans, and unwilling to lend the appellant more money on a loan basis but for some unexplained reason he was willing to advance additional monies if a partnership were to be formed wherein each party would share in the profits to be made from the subsequent sale of the Classic Mining Corporation stock. (Tr. 35, 46-48).

The appellant's version is somewhat different. Although the appellant acknowledges that a partnership in the future was discussed, he denies that the terms of any present partnership were agreed upon. (Tr. 156, 162).

The other participant in the meeting denies that a partnership was agreed to. (Tr. 228-231).

According to the respondent, the terms of the partnership were that the partnership property would consist of 800,000 shares of Classic Mining Corporation stock; that sufficient stock would be sold that respondent Cranney could recoup the \$56,000 advanced to Strand; then another amount of shares would be sold so that Strand would receive \$56,000; thereafter, the stock would be sold and the proceeds would be split. (Tr. 50-51).

Appellant Strand's version was somewhat different. He testified that the partnership discussed involved respondent Cranney creating additional buying into the stock market for Classic Mining Corporation stock in the amount of \$500,000 and that if he did so then each would receive \$56,000 and then the balance of 300,000 shares were to be divided between the two. Further, respondent Cranney was going to take his portion and reinvest in further ventures with the appellant (Tr. 158-161). Appellant Strand's version was supported by the independent witness at the meeting. (Tr. 229).

The following facts concerning the alleged partnership formation after the April 18 meeting are undisputed:

1. The voucher copy of the check issued by Cranney to Strand for \$20,000 on the April 18 meeting did not state partnership contribution, but rather provided "Loan on stock 400,000 shares of Classic Mining" (Tr. 102, 161-162, Exhibit 14).
2. The defendant did not cancel the two previous promissory notes which he stated were to be cancelled and deemed a partnership contribution (Tr. 34).
3. When defendant delivered some stock back to plaintiff, he signed a receipt indicating receipt of "collateral" (Tr. 111-112, Exhibit 12); not distribution of partnership property.
4. The plaintiff himself was unaware of all of the terms of the partnership or the extent of the partnership property (Tr. 64, line 13-14, 135).
5. There was no agreement as to when the Classic Mining stock would be sold or who would decide when to sell the so-called partnership property (Tr. 53, lines 16-17).

6. It was agreed to prepare a written agreement at some future time and the written agreement that was eventually prepared was unsatisfactory to the defendant and he refused to sign the same, mainly because the provisions giving the plaintiff authority to determine when to sell Classic Mining Corporation common stock and also that the terms were incomplete because it was not known what or how much Classic Mining Corporation common stock would be in the partnership (Tr. 51-54, Exhibit 8, 134, 231-236).
7. The defendant -- a so-called partner -- did not consider himself bound by the transactions of the plaintiff in the stock held by the defendant (Tr. 136-137).
8. The defendant considered that he had a right to sell the Classic stock -- the so-called partnership property -- without consulting the plaintiff until such time as he had recouped the \$56,000 that he originally advanced.
9. No partnership books were set up (Tr. 134).
10. There was no license or any certificate or any other authority obtained by either the plaintiff or the defendant to do business as a partnership.
11. Only the defendant, not the plaintiff, had access to the partnership property (Tr. 278).
12. The defendant Cranney's testimony with respect to his lack of understanding as to what the partnership included and his testimony concerning the notes that he had made "how are we partners", his further testimony that he considered himself to be partners in "one-half of Strand's action", even though he knew Strand was doing things in which he was not considered to be a partner shows the indefiniteness of the so-called partnership agreement and a lack of the meeting of the minds (Tr. 135-136). No decision as to when the stock would be sold (Tr. 131).
13. The parties, including the party defendant in his books and records treated the transaction as a loan and not as a partnership (Tr. 88).

It was at this point of time that the District Court found that a partnership had been formed between the appellant and the respondent. The finding of fact provided that on or

about May 4, 1977, and thereafter, the appellant and the respondents were engaged in a joint venture for the purpose of investing and trading in stock of Classic Mining Corporation. At that time the appellant had deposited with the respondent 800,000 shares of Classic Mining Corporation stock which the Court found to be the partnership property.

Thereafter, the appellant and respondent entered into another transaction with a third party, Mr. Galen Ross. This transaction involved \$29,250 advance from the respondent and 280,000 more shares of Classic Mining Corporation stock deposited by the appellant with the respondent. (Tr. 29, 23, 19-23). With respect to this transaction, according to the respondent, the appellant approached him with the proposition of purchasing 100,000 shares of Classic Mining Corporation stock. The purchase price was to be \$29,250. The respondent said he had insufficient funds or credit with which to consummate the transaction and, therefore, needed to use the respondent's capital. According to the respondent, the appellant represented that the purchase of 100,000 shares of Classic Mining Corporation would be a short term proposition and upon resale the parties would divide the profits. However, according to the respondent, the respondent would no longer loan money to the appellant, but he would loan money to someone else. Therefore, the \$29,250 check of the respondent's was made out to Mr. Galen Ross who, in exchange, gave back to the respondent his check for \$29,250. The \$29,250 check of Mr. Ross' was never made good. It was

the respondent's testimony that the \$29,250 was not to be considered as part of the partnership at that time. However, when Mr. Ross' check bounced, it came to be considered as part of the partnership. (Tr. 40-41).

As the respondent testified "and so on May 31, they brought me an additional 200,000 shares of stock bringing the total to 954,000 shares that was added to the original agreement and this was put into what they call a box which was part of the partnership, because they couldn't come up with the money on the hot checks they passed me, and that's both Ross and Strand." (Tr. 60).

Another 80,000 shares were brought in later.

Mr. Strand explains the transaction in a different manner. He testified that he became aware of a large block of Classic Mining Corporation stock -- 150,000 shares being offered for sale which could be purchased for \$29,250. He testified that he did not have sufficient funds to make the transaction nor credit at the brokerage firm. Therefore, according to Mr. Strand, Cranney placed the order for the purchase of the 150,000 shares and delivered his check for \$29,250. The transaction was one on a Friday. They needed to create a float to give sufficient time to raise the \$29,250. Therefore, in order to do so, they obtained a check from Mr. Galen Ross for the \$29,250. This check was to be deposited in Mr. Cranney's account on Monday. They figured that they would have until Wednesday to make the check good. Thus, they would be able to "float" the transaction or "kite" the transaction

from Friday until Wednesday. When Wednesday came Mr. Strand had still been unable to come up with sufficient funds to pay off Cranney. (Tr. 198, 204).

After the \$29,250 transaction, the parties had another transaction which the district court did not find to be a part of the partnership. This transaction occurred in August and involved the drilling of an oil well by Classic Mining Corporation. (Tr. 62-66). The respondent testified that he gave the appellant Mr. Strand a \$12,000 check and in exchange for that he was to receive an interest in an oil well that cost \$5,000. The interest in the oil well was not purchased. The appellant explained the transaction differently. He indicated Mr. Cranney was out of town and he was entitled to receive back some of the stock that he had pledged with Cranney for collateral. Mr. Cranney was unable to get to his safety deposit box and, therefore, he gave his bank authority to loan Mr. Strand \$12,000 (Tr. 175-176). The Court did not find that transaction involved a partnership. However, the Court required that the \$12,000 be reimbursed to the respondent from the partnership capital prior to the appellant being able to receive anything from the partnership. Also, Mr. Cranney testified that he is entitled to sole sort of a partnership in a royalty interest in some uranium properties. (Tr. 62, 65). But the appellant testified that he had never received the royalty interest in any uranium property and that he never gave respondent any partnership interest in any property that he had. (Tr. 177-178).

The Court did not find that the respondent was the partnership in the uranium royalty.

During the period of time of the supposed partnership, the respondent undertook to sell a portion of the stock that had been given to him by the appellant without informing the appellant of the proposed sale. On June 30 and July 15, a total of 44,000 shares were sold and the proceeds from the sales were given to the defendant in the amount of \$10,017 (Tr. 17). He also sold 10,000 shares in January of 1978, and on the 1st of February, an additional 13,000 shares. He received \$5,435 for the January sale and \$6,795 for the February sale. (Tr. 18). These sales were made without consent or even advice to appellant, the so-called partner.

Also during the period of time of the partnership, Mr. Cranney gave shares of stock back to Mr. Strand. On August 9, he gave him 110,000 shares. (Tr. 19). On December 23, he gave him 55,000 shares. (Tr. 20). Interestingly enough, even though the respondent states he thought they had a partnership the 55,000 shares was given back at the same time the appellant paid to the respondent \$10,000. (Tr. 16). Additionally, when the 190,000 shares were given to the appellant Strand, he signed a receipt in favor of the respondent which stated that the stock was "collateral". (Exhibit 17, Tr. 111-112). The stock was referred to as collateral even though the respondent testified at trial that he considered it to be partnership capital.

As stated before, when the appellant received the 55,000 shares back from the respondent, he gave to the respondent a \$10,000 check. The appellant had typed on the back of the check "Pay to the order of Cranney Enterprises to apply to \$67,000 loan". The respondent signed immediately below those words and added some typing of his own. Those words were "for partial payment on \$67,000 note". The additions were made at a time when the respondent contended that he was in partnership with the appellant and was not on the basis of lender and borrower. (Tr. 109-110, Exhibit 10).

In his testimony the respondent himself acknowledged that he was unsure of the terms of the partnership of joint venture or the extent thereof. In October, more than five months after the alleged formation of the partnership, the respondent -- according to his own testimony -- asked the appellant, "How are we partners?" (Tr. 64). He stated this whole thing with Producer's and the acquisitions, apparently the company was getting more and more valuable and I wanted Mr. Strand to specify what we were partners in . . ." (Tr. 64, Exhibit 9). At another time, the respondent Cranney described the partnership as "half of Mike Strand's action." (Tr. 124-125).

The district court ordered that the partnership be dissolved and that the stock held by the respondent be distributed in such a manner that the respondent would receive back all monies that he had advanced to Mr. Strand; thereafter, Strand would receive back a dollar for every share of Classic stock he sold and the respondent would receive a dollar for every share of Classic stock he sold. The court also ordered that the respondent account the appellant with the balance of the \$67,000 loan.

ARGUMENT

POINT I

THERE WAS INSUFFICIENT EVIDENCE TO SUPPORT A FINDING OF A PARTNERSHIP OR JOINT VENTURE INASMUCH AS THERE WAS NO MEETING OF THE MINDS WITH RESPECT TO THE TERMS AND CONDITIONS THEREOF.

The appellant submits the trial court's findings with reference to there being a joint venture or partnership between appellant Strand and respondents, especially Jack Cranney, is not supported by the facts. The trial court's finding was in effect that there was a joint venture relationship between Strand and Cranney as to stock in Classic Mining Corporation. Joint ventures are in the nature of a partnership and subject to the law of partnership. Lignell v. Berg, ___ P.2d ___ (Utah 1979); Forbes v. Baxter, 66 Utah 373, 242 Pac. 950 (1926); Wasatch Livestock Loan Co. v. Lewis & Sharp, 84 Utah 347, 35 P.2d 835 (1934); Kaumans v. White Star Gas & Oil Co., 9 Utah 24, 63 P.2d 231 (1937). Generally, joint ventures bear the same relationship to each other as partners to a partnership, Hammer v. Gibbons & Reed Co., 29 Utah 2d 415, 510 P.2d 1104 (Utah 1973). Appellant acknowledges that there is nothing improper about a joint venture in a stock speculation, McGillan v. Whitley, 38 Utah 452, 113 Pac. 1026 (1911). However, a finding of a joint venture must be based on evidence sufficient to support a legal conclusion that such a relationship existed. In Bassett v. Baker, 530 P.2d 1 (Utah 1974), this Court reversed a determination of the trial court that the parties had formed a joint venture relationship with reference to a cattle

operation. This Court observed:

"A joint venture is an agreement between two or more persons ordinarily but not necessarily limited to a single transaction for the purpose of making a profit. The requirements for the relationship are not exactly defined, but certain elements are essential: The parties must combine their property, money, effects, skill, labor and knowledge. As a general rule, there must be a community of interest in the performance of the common purpose, a joint proprietary interest in the subject matter, a mutual right to control, a right to share in the profits, and unless there is an agreement to the contrary, a duty to share in any losses which may be sustained.

While the agreement to share losses need not necessarily be stated in specific terms, the agreement must be such as to permit the court to infer that the parties intend to share losses as well as profits."

In Bates v. Simpson, 121 Utah 165, 239 P.2d 749 (1952), a similar result was reached in a case involving the financing of an automobile. This Court stated:

"But appellant contends that the sale to Bates was a joint adventure, participated in by both Simpson and Saunders and therefore the judgment in favor of Saunders upon the bond of Simpson cannot be sustained, and further that Bates should be entitled to recover against the bond of Saunders so that appellant is entitled to indemnification for its loss against Saunders. We have frequently announced in this court that 'joint adventure is in the nature of partnership,' Wasatch Livestock Loan Co. v. Lewis & Simpson, 61 Utah 347, 30 P. 2d 835; Kearns v. White Star Gas & Oil Co., 92 Utah 24, 63 P.2d 141, 15 P.S. 111; 'a joint adventure there must be an agreement, express or implied, for the sharing of profits,' 36 Am. Jur. p. 662. The relationship in this case is not one of joint adventure by virtue of the fact that Saunders received a profit in the form of accumulated revenues with Strivell-Peterson Company. Profits gained by Simpson from the sale of the car and revenues earned by Saunders for financing the transaction are distinct things. As a result, there is no community of

estoppel as defined in the Uniform Partnership Act, 69-1-13, U.C.A. 1943. A joint adventure by estoppel likewise fails for lack of reliance by Bates, or consent to being held out as a joint adventure by Saunders."

The burden of proof was upon the respondents, on their counterclaim, to establish that a joint venture existed, since the burden is upon the party who claims an agreement was reached to show a meeting of the minds, B & R Supply Company v. Bringham, 28 Utah 2d 442, 503 P.2d 1216 (1972). It was therefore incumbent upon the respondents to establish a contract, a common purpose, a community of interest and an equal right of control, Bassett v. Baker, supra; West v. Soto, 85 Ariz. 255, 336 P.2d 153 (1959). Some form of agreement was necessary to establish the joint venture relationship, Paul v. North, 191 Kan. 163, 380 P.2d 421 (1963). A joint venture "cannot arise by mere operation of law", its "legal force is derived from a voluntary agreement" of the parties either express or implied, Realty Development Co. v. Feit, 154 Colo. 44, 387 P.2d 898 (1963). See Crane & Bromberg, Law of Partnership, p. 190-192 (1968).

In Johanson Bros. Builders v. Bd. of Review, 118 Utah 384, 222 P.2d 563 (1950), this Court ruled that where workers formed an association to engage in construction work, whereby the organizer received compensation for his equipment, there was shared profits, but where the organizer was the contracting authority and handled all finances that the association was not a joint enterprise. This Court stated:

"A joint enterprise has been defined as a 'method of operation where there is a community of interest in the objects and purposes of the

undertaking and an equal right to direct and govern the conduct of each other with respect thereto, and each enterpriser must have some voice and right to be heard.' Black's Law Dictionary, 3rd Ed.

Tested by that definition there can be no question but that this was not a joint enterprise. The principles mentioned above for a partnership are in part applicable to a joint enterprise and the facts of this case show that most of the workers did not have any voice in the control or management of the venture; they merely performed their work as directed. The plan contemplated using individuals who had little, if any, training in the trade and having them work as apprentices, not as joint venturers. Their rate of pay or participation in the profits when starting was meager and while it may have increased with experience it bore no relationship to any interest which they may have had in the venture. The amount may have been influenced by the number of participants, but Johanson and two or three older members usually determined the rate."

In Vern Shutte & Sons v. Broadbent, 24 Utah 2d 415, 473 P.2d 885 (1970), this Court held a cattle-feeding contract to be several and not a joint venture. The Court cited to and adopted language from the Oregon Supreme Court in Haves v. Killinger, 235 Or. 465, 385 P.2d 747, 754 (1963):

"In summary we see that in order to create a joint adventure it is not enough that the parties act in concert to achieve some economic objective. The ultimate inquiry is whether the parties manifested by their conduct a desire to combine their profits, control, and risks in achieving the objective. * * *

An agreement, express or implied, for the sharing of profits among the co-venturers is indispensable to the creation of the joint venture, and the profit accruing must be joint and not several."

Since the profits accruing were several, as in this case, the Court found no joint venture. See also, for the same result in loan securities matter, Martin v. Peyton, 20 N.Y. 215, 153 N.E. 77 (1927) finding no partnership.

The appellant submits there never was a meeting of the minds to form a joint venture. The circumstances were a loan of money coupled with some negotiations between the parties for a possible partnership arrangement, but nothing was ever concluded expressly or impliedly. In 59 Am.Jur 2d, Partnership § 973, p. 974, it is stated:

"However, it is often difficult to determine whether there was, in fact, a mere loan or an actual investment or capital . . . if there is an absolute obligation on the part of the debtor to repay the entire amount of the financing, this constitutes evidence that the financier is a creditor and not a partner. Among parties who have been held not to be partners are those who finance the business with the provision that they would be repaid from the proceeds of the first sales of the business. (Citing Spier v. Lang, 4 Cal.2d 711, 53 P.2d 138 (Financier to be repaid from first funds of royalty.) Also, Bills v. Delira Corp., 145 Ca. App. 2d 124, 302 P.2d 397 (Financier to be repaid from first run of the radio show.) Meisinger v. Johnson, 162 Neb. 360, 76 N.W.2d 267 (Financier to be repaid from proceeds with first sale of lots.)).

Applying the standards of the above cases to the facts of the instant case, it is apparent that as a matter of law the evidence before the trial court was insufficient to find a joint venture. First, the initial transaction between appellant and respondents on March 5, 1977 involved a situation where appellant merely acted as the agent for respondent Cranney in purchasing stock for his benefit. That transaction involved no reference to partnership, joint sharing of profits or losses, or any community of interest in the stock. The second transaction on March 25, 1977 involved an obvious loan transaction. Strahl executed a promissory note and security agreement in

favor of Cranney. His fee of 10,000 shares of Classic Mining Corporation stock was given by Strand to Cranney as consideration for the loan. (Tr. 14, 19, 28 30-32). The next transaction on April 18, 1977 also involved a loan transaction in which a promissory note was given and there is no dispute among the parties that this was a loan with a deposit of stock as collateral. (See Exhibits 3 & 7). The transaction in the first part of May, either the 4th or 5th of that month, allegedly involved the formation of the joint venture relationship. The only independent evidence of a joint venture relationship other than the contention of the respondent was another person who was a participant at the meeting who denied that there was any partnership agreement. (Tr. 228, 231). There does not appear in the respondent's version of the facts any suggestion that a true joint venture relationship was intended. Rather, it appears that the transaction was one to allow the previous loans to be extinguished. There was no partnership of interest in the stock nor any understanding of community of interest other than the satisfaction of the previous loans. Thus, the facts are inconsistent with a joint venture of the nature found by the trial court. The facts set forth in Items 1 through 13 of the Statement of Facts in this Brief clearly show that there was no joint venture relationship established. The facts belie any claim of a partnership interest in the usual sense of the word. There was no meeting of the minds, no settled terms

of agreement and the receipts and documents treat the relationship as one of borrower and lender. The subsequent transactions after April 18th show that there was no set pattern of operation between Strand and Cranney. Rather, it appears again to be a series of independent transactions. The transaction involving Mr. Ross and the \$29,250 and 100,000 shares of Classic Mining Corporation stock was not considered a part of any joint venture or partnership arrangement at the time the transaction was formulated. Cranney only considered it as a part of the partnership after the check in question was not honored. (Tr. 40, 41). Other evidence clearly suggests that the transaction was a float transaction to allow the appellant to have a limited loan of funds with which to pay off the indebtedness to Cranney. This is not consistent with the community of interest and sharing of involvement associated with a joint venture relationship. Further, subsequent to that transaction, the oil well drilling deal between Cranney and Strand in August was determined by the court not to be a part of the joint venture. The court merely allowed an offset on that transaction against the amount to Strand. The actions of the respondent Cranney are inconsistent with a joint venture relationship. He sold a portion of the stock without authority apparently to satisfy the outstanding indebtedness. This is inconsistent with a theory of sharing of profits and losses. Further, Cranney returned certain shares

of stock to Strand thus supporting a conclusion that there was no joint venture in the stock but that the stock that Cranney held was intended as collateral. The transaction itself involved a check referring to the transaction as a loan. (Tr. 109, 110, Exhibit 10). Viewing the evidence in a light most favorable to the respondent's position, Cranney himself acknowledged that he was unsure of the terms of the partnership or joint venture. It appears that there was never a meeting of the minds. The conduct of Cranney is inconsistent with a mutual purpose of stock acquisition and investment. There was no indication of a mutual right to control or share in the profits or losses nor any community of interest in the stock on a share and share alike basis. Rather, both Cranney and Strand treated the matter as a debtor-creditor relationship. Under these circumstances, the evidence is insufficient as a matter of law to make out a joint venture. Bassett v. Baker, 530 P.2d 1 (Utah 1974).

The state of the evidence presented to the trial court does not show the parties engaged in such a relationship as would legally support a conclusion of a joint venture. Whether a joint venture exists depends largely upon the intention the parties determined from the facts of the particular case, Holtz v. United Plumbing & Heating Co., 49 Cal.2d 501, 319 P.2d 617 (1968). The rules of interpretation and formation ordinarily applicable to contracts apply to joint ventures. In Laird v. Johns, 276 Ore. 1995, 557 P.2d 670 (1973), the

Court noted:

"Whether a particular contract creates between the parties thereto the strict relation of joint adventurers or some other relation involving cooperative effort depends upon actual intention of the parties which is determined in accordance with ordinary rules governing interpretation and construction of contracts and such contract need not be expressed but may be implied from the conduct of the parties."

In this case there was no express joint venture. Nor can one be implied in law. There was no meeting of the minds, no terms of partnership or adventure, and none of the legal incidents of such a relationship as would justify the conclusion of law reached by the trial court. At best, there was a preliminary arrangement to consider a joint venture. This is insufficient to make out a joint venture contract. Cf. Wash-A-Matic, Inc. v. Rupp, 532 P.2d 682 (Utah 1975). This Court should reverse and remand the case to the trial court to resolve the equities and legal relationship between the parties based on a debtor-creditor relationship.

CONCLUSION

The trial court committed reversible error in concluding that the facts were sufficient to create a joint venture relationship between appellant and respondents concerning the Classic Mining Corporation stock. The facts and circumstances are insufficient as a matter of law to show the existence of the legal incidents of a joint venture. The relationship that is established by the facts is that of debtor-creditor and this Court should reverse and direct

the District Court to resolve the case on the basis of
such relationship.

Respectfully submitted

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