

1980

## Michael W. Strand v. Jack Cranney et al : Petition for Rehearing

Utah Supreme Court

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JACK

DEPARTMENT

BRIEF IN

\*\*\*\*\*

PETITION FOR REHEARING  
UTAH SUPREME COURT REHEARING

\*\*\*\*\*

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IN THE SUPREME COURT OF THE  
STATE OF UTAH

\* \* \* \* \*

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

\* \* \* \* \*

PETITION FOR REHEARING  
AND  
BRIEF IN SUPPORT THEREOF

\* \* \* \* \*

PETITION FOR REHEARING

The Plaintiff-Appellant petitions the Supreme Court of the State of Utah for rehearing on its Decision rendered in the above-entitled case on February 14, 1980.

ARGUMENT

Point I

THE MISUNDERSTANDINGS BETWEEN THE PARTIES WERE NOT MERELY CONCERNING DETAILS BUT CONCERNING THE ESSENCE AND CONDITION OF A JOINT VENTURE AGREEMENT.

Assuming Arguendo that the parties had agreed to a joint venture with respect to shares of stock in Classic Mining Corporation, there is no question that there was no

agreement concerning who had the right to determine when, where and if to sell partnership property. The Defendant's own testimony acknowledges this. (Tr. 53, 56-57, 127-131) The proposed partnership agreement contained the provision that the Plaintiff was to determine when, where and if to sell the Classic stock and the Defendant's testimony was that he refused to sign the agreement because of such provision (Tr. 51-54, Exhibit 8, Tr. 134, 231-236) Further, the Defendant refused to be bound by the Plaintiff's decision to sell the stock (Tr. 136-137) Strand testified that he would not enter into a joint venture unless he alone had the right to determine when to sell. (Tr. 166-167)

The Utah Supreme Court's Opinion was that there was a joint venture agreement but a mere misunderstanding as to some details. However, the authority to determine when, where, and if to sell is not a mere detail, but a condition to an agreement or a meeting of the minds. The Utah Supreme Court's Decision does not contemplate the nature of the Plaintiff's business or the purpose for the joint venture assuming the existence of the joint venture.

The Utah Supreme Court described the Plaintiff as a self-employed trader in stock or what could be described as a stock promoter. It is the function of a stock promoter to create an interest or demand for the stock of a particular

company; in this case, Classic Mining Corporation. If the Plaintiff, Mr. Strand, was to do his job and use the money furnished by Mr. Cranney in pursuit of such endeavor, then he would create an interest or demand for Classic Mining Corporation's stock. He can do so in several ways. He could create demand from investors, either institutional or individual. He could inform brokers about the prospects for Classic Mining Corporation in hopes that they will create interests among their customers. He could induce traders in the over-the-counter market to "make market" in the stock of Classic, and usually in so doing, he promises to indemnify the traders against any possible loss in connection with their trading of Classic. It is for this purpose that he would need funds such as those from Defendant, Cranney. Further, to create interest he may promise to sell a portion of his holdings below the market if the purchasers were to make further purchases at the market. These are some of the reasons why it is necessary for the promoter to have the right to determine when, where, and if to sell the stock which is the subject of a joint venture agreement. This very thing occurred in the present case and the Defendant testified that he did not consider himself bound by Mr. Strand's transactions.

(Tr. 136-137)

The price of a particular stock is based upon supply and demand. If the demand is created for a stock then the price should keep rising as long as supply of stock is not fed into the market at the quoted price. If Defendant Cranney were allowed to sell into the market demand created by Plaintiff Strand, the whole purpose for the joint venture would be defeated. The price would not rise and no profit would be made. Thus, the disagreement on the single issue of who had the right to determine when and where and if to sell Classic Mining Corporation stock--the subject of the joint venture--defeats the whole purpose for the joint venture and prevents a meeting of the minds on an agreement, not merely a detail of the venture.

The Utah Supreme Court's Decision citing that Bassett v. Baker, Utah, 530 P.2d 1, 2 (1974) notes that the right to control is an essential term of a joint venture agreement. See also, Johanson Bros. Builders vs. B. D. of Review, 118 Utah 384, 222 P.2d 563 (1950).

#### ARGUMENT

##### Point II

THE REMEDY ORDERED IS CONTRARY TO THE TERMS OF ANY AGREEMENT AND THE INTENTIONS OF THE PARTIES.

If in fact a joint venture existed between the parties of the nature and type described by the Defendant Cranney and which was held to exist in the Utah Supreme



Court's Decision, the remedy of dissolution of the venture and distribution of the stock is contrary to the agreement of the parties and would frustrate the whole purpose for the venture. If the stock were distributed between the parties, then each party would presumably have the right to sell when and if he desired. This would mean that the parties would get differing amounts from the proceeds of their sales. However, the agreement testified to by Defendant Cranney, found by the Utah Court, and affirmed by this Court contemplates a division of the proceeds from the sale of stock, not a division of the stock itself. Therefore, the Order of the Court should be that if in fact the partnership or joint venture exists, that the parties should be required to sell the stock and in either the manner contemplated by the agreement, or to appoint a receiver and allow him to sell the stock and then the proceeds should be divided.

Such a resolution only makes sense. The price of the Classic Mining Corporation stock, since the parties initiated their transaction has risen from twenty cents per share to a high of four dollars and fifty cents per share. At the time of writing this Petition for Rehearing, the price is three dollars and twenty-five cents per share, or down approximately one dollar and a quarter. The price

has dropped nearly a dollar since the announcement of this Decision in the Enterprise, a newspaper of general circulation in the investment community in Salt Lake City. If the Decision of this Court remains that the stock is to be distributed between the parties, there is no question that the price will continue to drop. There will be no incentive to create an interest and demand for Classic Mining Corporation stock if Mr. Cranney is allowed to sell into the demand. Thus, the Court should re-examine the judgment of the trial court affirmed by the Supreme Court which ordered a dissolution of the venture and a distribution of the stock.

DATED this \_\_\_\_ day of February, 1980.

Respectfully submitted

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CERTIFICATE OF MAILING

I hereby certify that on this \_\_\_\_ day of February, 1980, I did mail a true and accurate copy of the foregoing Petition for Rehearing And Brief In Support Thereof to Bryce E. Roe, Attorney for Respondent, 340 East 400 South, Salt Lake City, Utah, 84111, postage prepaid, in the United States Mail.

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