

1998

Geri Pasquin v. John Pasquin, Jimmie Pasquin, The Estate of Kory Pasuin, Quality Parts, Quality Transport Refrigeration Parts, INC., Thomas A. Duffin, Daniel O. Duffin and Does : Brief of Appellee

Utah Court of Appeals

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BRIEF

**UTAH
DOCUMENT**

IN THE UTAH COURT OF APPEALS

GERI PASQUIN,

Plaintiff/Appellant,

vs.

JOHN PASQUIN, JIMMIE PASQUIN, THE
ESTATE OF KORY PASQUIN, QUALITY
PARTS, a Utah general partnership, QUALITY
TRANSPORT REFRIGERATION PARTS,
INC., THOMAS A DUFFIN, DANIEL O.
DUFFIN and DOES 1-40,

Defendants/Appellees.

FILE NO. 980293-CA

Case No. 980293-CA

Priority No. 15

BRIEF OF APPELLEES THOMAS A. DUFFIN AND DANIEL O. DUFFIN

Appeal From the Orders of the Third District Court,
Salt Lake County, State of Utah
Honorable J. Dennis Frederick

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2 5 1998

IN THE UTAH COURT OF APPEALS

GERI PASQUIN,	:	
	:	
Plaintiff/Appellant,	:	Case No. 980293-CA
	:	
vs.	:	
	:	Priority No. 15
JOHN PASQUIN, JIMMIE PASQUIN, THE	:	
ESTATE OF KORY PASQUIN, QUALITY	:	
PARTS, a Utah general partnership, QUALITY	:	
TRANSPORT REFRIGERATION PARTS,	:	
INC., THOMAS A DUFFIN, DANIEL O.	:	
DUFFIN and DOES 1-40,	:	
	:	
Defendants/Appellees.	:	

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STATEMENT OF JURISDICTION

Jurisdiction to hear this appeal is conferred upon the Utah Supreme Court pursuant to Article VIII, Section 5 of the Constitution of the State of Utah, U.C.A. § 78-2-2(3)(j) and Rule 3(a) of the Utah Rules of Appellate Procedure. This case was poured over to the Utah Court of Appeals by the Utah Supreme Court.

STATEMENT OF ISSUES PRESENTED FOR REVIEW

1. Whether the trial court correctly ruled that Ms. Pasquin's alleged oral partnership agreement was void under the statute of frauds and that consequently Ms. Pasquin's claims against the Duffins should be dismissed with prejudice.

In determining whether the trial court correctly found that there were no genuine issues of material fact, the appellate court views the facts and all reasonable inferences in a light most favorable to the party opposing the motion. It reviews the trial court's conclusions of law for correctness, including its conclusion that there are no material fact issues. Neiderhauser Bldrs. & Dev. Corp., v. Campbell, 824 P.2d 1193 (Utah App. 1992).

2. Whether the Duffins owed any duty to Ms. Pasquin.

The reviewing court may affirm a grant of summary judgment on any ground available to the trial court, even if it is one not relied on below. Higgins v. Salt Lake County, 855 P.2d 231 (Utah) 1993).

3. Whether the trial court correctly denied Ms. Pasquin's Rule 56(f) motion with respect to the Duffins.

The appellate court reviews a trial court's denial of a Rule 56(f) motion under an abuse of discretion standard. Reeves v. Geigy Pharmaceutical, Inc., 764 P.2d 636 (Utah App. 1988).

RELEVANT STATUTES

U.C.A. § 25-5-4 Certain agreements void unless written and signed.

The following agreements are void unless the agreement, or some note or memorandum of the agreement, is in writing, signed by the party to be charged with the agreement:

(1) every agreement which by its terms is not to be performed within one year from the making of the agreement.

STATEMENT OF FACTS

1. John and Kory Pasquin formed Quality Parts, a Utah general partnership, early in the 1990s. John and Kory Pasquin formed Quality Transport Refrigeration Parts, Inc., a Utah corporation ("Quality Transport") in early 1996 to take over the business of Quality Parts. (R. 94)

2. Thomas and Daniel Duffin ("the Duffins") are attorneys practicing law in Salt Lake City, Utah. Beginning in 1990 the Duffins handled business matters on behalf of Quality Parts and subsequently Quality Transport. The Duffins' clients were Kory and John Pasquin. (R. 84, 86)

3. Ms. Pasquin alleges in her complaint that after Kory and John Pasquin formed Quality Parts, Kory Pasquin recruited her to become a partner. (R. 94, 95) The partnership was pursuant to an oral partnership agreement, although Ms. Pasquin argues that Quality Parts' invoices, paychecks and car insurance payments evidenced the agreement to make Ms. Pasquin a partner.¹ (R. 88, 94-95)

4. Ms. Pasquin's complaint also alleges that she entered into an oral agreement with Kory Pasquin for lifetime employment. (R. 96)

5. Ms. Pasquin claims that when Kory and John Pasquin formed Quality Transport, they led her "to believe that her one-third partnership interest in Quality Parts would transfer over to a one-third interest in [Quality Transport] and that Quality Transport "would honor all agreements that Quality Parts had with [Ms. Pasquin]." (R. 96)

6. Between 1991 and 1994 Thomas Duffin had no contact with Ms. Pasquin in a business sense as a partner of Quality Parts or as a person having any interest in Quality Transport. He had no specific dealings with Ms. Pasquin at all.² (R. 84)

7. During the time Quality Transport was incorporating, Daniel Duffin had conversations with Kory and John Pasquin. Ms. Pasquin's name was never mentioned during this time nor in any subsequent conversations with either Kory or John Pasquin. (R. 86)

¹Ms. Pasquin opposed the Duffins' Motion for Summary Judgment by verifying the allegations in her complaint (R. 88, 93-106) and submitting three additional paragraphs of alleged material facts in a "Statement of Disputed Facts." (R.88)

²The affidavits of Thomas and Daniel Duffin submitted in support of their Motion for Summary Judgment (R. 83-86) are attached in the Addendum to this brief.

8. From 1993 to the date of Kory Pasquin's death, Daniel Duffin had no contact with Ms. Pasquin in a business sense as a partner in Quality Parts or as a person having any interest in the Quality Transport. He had no specific dealings with Ms. Pasquin at all. (R. 86)

9. Neither of the Duffins is aware of any writing representing Ms. Pasquin had an ownership interest in either Quality Parts or Quality Transport. (R. 84, 86)

10. The first and only contact Ms. Pasquin alleges with the Duffins occurred after Kory Pasquin's death.³ A meeting took place in the Duffins' law offices wherein it was alleged by a Boyd Simper in the presence of the Duffins that Ms. Pasquin was "part of the company." Ms. Pasquin alleges no other direct contact with the Duffins on the subject of her partnership, ownership interest in Quality Transport or lifetime employment agreement. (R. 97)

11. Ms. Pasquin alleges in her complaint that the Duffins were her lawyers because she was a partner in Quality Parts. She alleges that by assisting John and Kory Pasquin in forming the Quality Transport corporation and transferring assets and business of the partnership thereto without providing for her ownership interest, the Duffins breached fiduciary duties owed to her. (R. 100-101)

³Kory Pasquin passed away after formation of Quality Transport. Accordingly, Ms. Pasquin alleges no communication whatsoever with the Duffins when the alleged oral partnership between John, Kory and Ms. Pasquin existed.

12. Ms. Pasquin states in her complaint “if [the Duffins] were not fully aware of plaintiff’s claim of a partnership interest in said assets and business prior to Kory’s death, the statements of Boyd Simper that plaintiff was a part of the partnership put them on notice of their fiduciary duty to plaintiff. Yet the Duffins have advised John and the company to resist the plaintiff’s claims and have expressly induced the company and John to breach their employment agreements with the plaintiff.” (R. 101)

SUMMARY OF ARGUMENT

The trial court correctly held that the oral partnership agreement alleged by Ms. Pasquin was void under the statute of frauds. A majority of courts considering similar facts have held that an oral partnership agreement not to be performed within a year is terminable at will. Accordingly, the oral partnership agreement alleged by Ms. Pasquin was terminated when Kory and John Pasquin formed the Quality Transport corporation.

Ms. Pasquin’s alleged partial performance of the oral partnership agreement and her equitable estoppel claim do not defeat the Duffins’ statute of frauds defense. Partial performance does not vitiate the statute of frauds and Ms. Pasquin failed to offer any material facts to support an equitable estoppel claim against the Duffins.

The Duffins owed no legal duty to Ms. Pasquin because no attorney-client or other fiduciary relationship existed between the Duffins and Ms. Pasquin. Finally, the trial correctly denied Ms. Pasquin’s Rule 56(f) motion with respect to the Duffins because Ms. Pasquin failed to supply the trial court with any verified material facts indicating what

additional facts she sought to discover that might assist in proving her claims against the Duffins.

ARGUMENT

I. THE TRIAL COURT CORRECTLY HELD THAT THE ALLEGED ORAL PARTNERSHIP AGREEMENT WAS VOID UNDER THE STATUTE OF FRAUDS

A. Any Oral Partnership Agreement that May have Existed with Ms. Pasquin was Terminable at Will

The Estate of Kory Pasquin moved first for summary judgment in this case, arguing that the oral partnership agreement and lifetime employment agreement alleged by Ms. Pasquin were void under UCA 25-5-4(1) because they were not to be performed within a year. (R. 76-78) The Duffins joined the Estate's motion and filed as additional support the affidavits of Thomas and Daniel Duffin. (R. 80-86) Ms. Pasquin filed an opposing memorandum, which she supported by verifying her Complaint and submitting three additional paragraphs of verified facts contained in a "Statement of Disputed Facts."⁴ (R. 87-106)

⁴On September 25 and October 10, 1998 Ms. Pasquin filed additional memoranda opposing summary judgment and in support of her Rule 56(f) motion (R. 143-148, 155-162) Ms. Pasquin's opposing memoranda contained verifications under which she purports to have "read the foregoing instrument and that based upon my personal knowledge the factual allegations contained therein are true and correct to the best of my knowledge and information." Ms. Pasquin's verification of legal memoranda containing mixed factual allegations and legal arguments should be disregarded by this court. To the extent verified, material facts may be gleaned from Ms. Pasquin's memoranda, they have no bearing on the Duffins' Motion for Summary Judgment or issues relevant to the Duffins' appellate arguments.

Ms. Pasquin argued in her opposing memorandum that the oral agreement to make her a partner could be performed within a year. She claimed that since the agreement to make her a partner was performed immediately and she thereafter performed as partner, the statute of frauds is inapplicable. (R. 89) Ms. Pasquin also argued that writings supported the oral partnership agreement and the employment agreement.⁵ (R.89-90)

The trial court granted the Estate of Pasquin and Duffins' Motions for Summary Judgment for the reasons specified in the supporting memoranda. (R. 153) The court subsequently entered its Amended Summary Judgment with respect to the Duffin defendants, stating there was no cause of action against the Duffins by plaintiff" as there is no evidence of a partnership between the plaintiff and the other defendants." (R. 215)

Most courts considering this issue have agreed with the trial court's ruling in this case, holding that a parol agreement for a partnership intended to last more than a year is void under the statute of frauds.

In Wahl v. Barnum, 22 N.E. 280 (N.Y. 1889) plaintiffs verbally agreed with one of the defendants to form a co-partnership for three years to succeed defendants' former firm. The defendant was to contribute the remaining merchandise of the old firm and the plaintiffs were each to contribute \$5,000.00 toward partnership capital. No time for payment

⁵Although Ms. Pasquin claimed that several different writings supported her partnership status, the only writing she submitted to the trial court consisted of a Quality Parts invoice bearing in the bottom right hand corner the legend: "Please accept our sincere thanks for letting us serve you Kory - John & Geri." (R. 107)

of the partnership capital was agreed upon. The Wahl court held that the contract of co-partnership was within the clause of the statute of frauds requiring contracts not to be performed within a year to be in writing and was hence “determinable at will”. Id. at 282.

In Pinner v. Leder, 188 N.Y.S. 818 (1921) the court held an oral partnership agreement to continue for more than three years falls within the statute of frauds. The court held that the oral agreement was not void in and of itself, but only under the statute of frauds.

The court further observed that:

An oral agreement described in the statute of frauds is not void in and of itself, but only void under the statute, and the plea of its invalidity must be affirmatively interposed . . . The mere fact that the contract is terminable at the will of one party renders it nonetheless a contract recognized as valid and subsisting until such determination. If a partnership is one dissolvable at will, a partner’s election to dissolve the partnership is not a breach of the partnership contract and there is no right to recover damages resulting from the dissolution, in the absence of a partnership agreement to the contrary.”

Id. at 819.

59A Am Jur. 2d Partnership § 88 (1974), echoes the above holdings, stating “an oral partnership agreement without provision for its duration creates a partnership at will and while it is dissoluble within one year for purposes of the statute of frauds, it need not necessarily terminate in that time.”

At least one court has held contra. In Shropshire v. Adams, 89 S.W. 448 (Tex. 1905) the court held that an oral partnership contract to be continued for five years was not within the statute of frauds. The court reasoned that “inasmuch as the death of either party

would work a dissolution of the partnership . . . it follows, also, that the contract of partnership was not within the statute of frauds.” Id. at 449.

The Shropshire court’s reasoning is suspect, in that it would effectively eviscerate the one year provision contained in UCA 25-5-4(1) and similar statutes. Applying the Shropshire court’s reasoning, parties could argue that any number of contingencies might occur which would terminate the partnership within one year. Death of a partner, dissolution by one of the partners or some other imagined event that rendered performance impossible could conceivably occur within the one year period. Under the Shropshire court’s analytical approach, it would be difficult to ever demonstrate that a partnership agreement (or indeed most contracts) could not be performed within a year.

Ms. Pasquin has never alleged that the alleged oral partnership agreement between herself and John and Kory Pasquin was to be performed within a year. Indeed she alleges that she was to be employed by the partnership for her life, implying that the partnership was to last at least until her death. Accordingly, the alleged partnership was, at most, a partnership at will.

If a partnership is one at will, without any definite term or definite undertaking to be accomplished, a dissolution by the election of one partner is not a breach of contract. The terminating partner incurs no liability, whatever the motive for the termination may have been. This rule extends to bar tort and other claims premised upon an unenforceable contract. Mildfelt v. Lair, 561 P.2d 805, 813 (Kan. 1977).

Even if the alleged oral partnership agreement existed, any partnership formed thereby was dissolved at the formation of Quality Transport. Because the oral agreement created -- at most -- a partnership at will, no action exists by Ms. Pasquin against the Duffins for breach of contract, tort or any other claim premised upon the unenforceable contract.

B. Ms. Pasquin's Alleged Partial Performance Does not Overcome the Duffins' Statute of Frauds Defense

Ms. Pasquin also argues since she immediately commenced performance under the terms of the alleged oral partnership agreement, the agreement is not encompassed by the statute of frauds. However, it is clear that partial performance of a contract within a year does not take it out of the operation of the statute of frauds. The term "performance" in the one year statute of frauds provision means complete performance. Pemberton v. LaDue Realty & Constr. Co., 244 S.W. 2d 62 (Mo. 1951); Sophie v. Ford, 245 N.Y.S. 470 (1930). The statute of frauds renders a contract not fully to be performed within a year -- insofar as executory -- completely unenforceable, and does not permit it to be enforced against the defendant to the extent that its performance within a year is called for. Pemberton at 64.

C. Ms. Pasquin's Equitable Estoppel Claim has no Bearing on the Duffins' Statute of Frauds Defense

Ms. Pasquin relies on Jacobsen v. Cox, 202 P.2d 714 (Utah 1949) to argue that the Duffins' statute of frauds defense is rendered inoperative by an estoppel *in pais*. An estoppel *in pais* is the doctrine by which a person may be precluded by his act or conduct, or

silence when it is his duty to speak, from asserting a right which he otherwise would have had. Mitchell v. McIntee, 514 P.2d 1357, 1359 (Or. 1973).

To constitute an equitable estoppel, or estoppel by conduct, (1) there must be a false representation; (2) it must be made with knowledge of the facts; (3) the other party must have been ignorant of the truth; (4) it must have been made with the intention that it should be acted upon by the other party; and (5) the other party must have been induced to act upon it. Mitchell at 1359.

As argued above, Ms. Pasquin has alleged no false representation by either of the Duffins. In addition, the only record evidence before the court shows the Duffins had no knowledge that Ms. Pasquin even claimed a partnership interest. Ms. Pasquin did not submit any verified, material facts to support her naked allegation that the Duffins knew or should have known of the alleged oral partnership agreement. In short, Ms. Pasquin has submitted no material fact that would preclude the Duffins, by reason of equitable estoppel, from asserting their statute of frauds defense.

II. THE DUFFINS OWED NO LEGAL DUTY TO MS. PASQUIN

A. No Attorney-Client Relationship Existed Between the Duffins and Ms. Pasquin

The Duffins submitted affidavits in support of their Motion for Summary Judgment alleging they never considered Ms. Pasquin a client, were not aware that she was ever a partner in Quality Parts and were not aware of any right on Ms. Pasquin's part to lifetime employment. Based on these affidavits, the Duffins argued that Ms. Pasquin could

not prevail on her claim against them, including her claims for breach of fiduciary duty, interference with contract and intentional infliction of emotional distress.

The trial court did not reach the issue of whether the Duffins' owed Ms. Pasquin any duty, ruling that the alleged oral partnership agreement was void under the statute of frauds. However, the lack of an attorney-client or other fiduciary relationship provides this court with an additional basis for upholding the trial court's summary judgment with regard to the Duffins. A reviewing court may affirm a grant of summary judgment on any ground available to the trial court, even if it is one not relied on below. Higgins v. Salt Lake County, 855 P.2d 231 (Utah 1993).

Ms. Pasquin argues in her brief that her "sworn testimony states that she was made a partner, that she did consider [the Duffins] to be her attorneys, that she was promised lifetime employment, and such [sic]. Ms. Pasquin's sworn testimony disputed all materials facts argued by the Duffin defendants in their motion." (Ms. Pasquin's opening brief, p. 30.)

A client's mere belief that an attorney-client relationship exists, unless reasonably induced by representations or conduct of the attorney, is not sufficient to create the relationship. Breuer-Harrison, Inc. v. Combe, 799 P.2d 716, 727 (Utah App. 1990). In Breuer-Harrison, a real estate purchaser brought action against a vendor for rescission and the vendor cross-claimed against a title insurer for negligence. The Court of Appeals held that neither the title insurer nor searching attorney could be held liable to the vendor for negligence in failing to discover an irremediable easement.

In holding that no attorney-client relationship -- and hence no duty -- existed, the Utah Court of Appeals observed that “an attorney-client relationship cannot be created unilaterally in the mind of a would-be client; a reasonable belief is required.” Id. at 728, citing Hecht v. Superior Court, 192 Cal. App. 3rd 560, 237 Cal. Rptr. 528, 531 (1987). The rationale for this rule is readily apparent: it would be manifestly unfair to impose an attorney-client relationship on an attorney when he or she has no reasonable basis to know such a relationship exists.

Because no attorney-client relationship existed between Ms. Pasquin and the Duffins, there is no liability on the part of the Duffins to Ms. Pasquin. No liability exists under the law of torts unless a person from whom relief is sought owed a duty to the allegedly injured party. Vickers v. Hanover Const. Co., Inc., 875 P.2d 929 (Id. 1994). In this case there is no factual or legal basis for a duty owed by the Duffins to Ms. Pasquin.

It is well-settled that an attorney, while performing his obligations to his client, is not liable to third parties in the absence of fraudulent or malicious conduct. McQue v. Hyatt Legal Services, Inc., 813 P.2d 754, 756-57 (Colo. Ct. App. 1990); Marelius v. Field, DeGoff, Huppert & McGowan, 160 Cal. Rptr. 239 (1979); Atkinson v. IHC Hospital, Inc., 798 P.2d 733, 735-36 (Utah 1990) (an attorney had no duty to properly advise plaintiffs on the adequacy of settlement of a claim where the attorney was retained by the hospital against which the claim was made for purposes of drafting settlement documents for presentation to the court for approval).

The only basis for Ms. Pasquin to allege that the Duffins were her attorneys is that the Duffins represented the partnership and that she was a member of the partnership under the alleged oral agreement. Ms. Pasquin alleged no specific communications or actions on the part of the Duffins to support her belief that the Duffins were her attorneys. She alleged nothing to indicate that the Duffins were ever informed or knew that she claimed to be a partner, until well after the corporation had been formed and the partnership at will had been dissolved. She pled no facts indicating fraudulent or malicious conduct on the part of the Duffins. Accordingly, Ms. Pasquin may not hold the Duffins liable in connection with the Duffins' representation of Kory and John Pasquin.

B. The Duffins Owed Ms. Pasquin No Separate Fiduciary Duty

Fiduciary duties do not exist in the abstract nor arise out of thin air. They are 1) created by or arise out of contract or 2) implied in law under circumstances such as when there is confidence reposed on one side and resulting domination and influence on the other. First Security Bank v. Banberry Development, 786 P.2d 1326, 1332-33 (Utah 1990); Dennison State Bank v. Madeira, 640 P.2d 1235, 1241 (Kan. 1982).

No contract ever existed between the Duffins and Ms. Pasquin out of which a fiduciary duty could arise. As argued above, the Duffins did not represent Ms. Pasquin in any capacity. The Duffins were not parties to the alleged oral contracts for partnership or lifetime employment and cannot be held liable for any obligations or breach of duties arising thereunder. An agent acting within the scope of his authority is not liable in tort to third

persons for economic harm caused by his actions. State Ex. Rel. Ranni Assoc. v. Hartenbach, 742 S.W.2d 134 (Mo. Banc. 1987); American Ins. Co. v. Material Transmitt. Inc., 446 A.2d 1101 (Sup. Ct. Del. 1982); Greyhound Corporation v. Commercial Cas. Ins. Co., 19 N.Y.S.2d 239 (Sup. Ct. 1940).

Section 359 of Restatement of Agency (Second) (1958) clearly states this rule as follows:

An agent who intentionally or negligently fails to perform duties to his principal is not thereby liable to a third person whose economic interests are thereby harmed.

This case is analogous to one where an insurance company hires an attorney to represent the insurance company in the matter of settlement of claims against its insured. When an attorney is representing only the interest of the insurance company in the matter of the settlement of claims against the insured, “if the attorney fails to give proper consideration to the interests of the insured causing loss to the insured there is no cause of action against the attorney because he owes no duty in that respect to the insured. In that case, the insured’s cause of action is only against the insurance company.” Lysick v. Walcom, 258 Cal. App. 2d 136, 65 Cal. Repr. 406, 415-16 (1968).

Similarly, no circumstances exist in this case such that a fiduciary duty should be implied in law. It is undisputed that Ms. Pasquin had no basis to repose confidence in the Duffins. The Duffins’ un rebutted affidavits state that they never had any knowledge that Ms. Pasquin was or claimed to be a partner in Quality Parts. Because there was no

communication whatsoever between the Duffins and Ms. Pasquin there was no way for them to exercise domination and influence over Ms. Pasquin.

No fiduciary duty existed under contract or could be implied in law under the facts existing in this case. Accordingly, the Duffins cannot be held liable by Ms. Pasquin for legal advice rendered to their clients: the Quality Parts partnership consisting of Kory and John Pasquin or the Quality Transport corporation formed by Kory and John Pasquin.

III. THE TRIAL COURT CORRECTLY DENIED MS. PASQUIN'S RULE 56(f) MOTION WITH RESPECT TO THE DUFFINS

Ms. Pasquin's Rule 56(f) motion was correctly denied with respect to the Duffins because Ms. Pasquin failed to support her motion with an affidavit specifying the facts she believed further discovery would produce to defeat the Duffins' Motion for Summary Judgment. In Callioux v. Progressive Ins. Co., 745 P.2d 838 (Utah Ct. App. 1987) the Court of Appeals affirmed the trial court's denial of plaintiff's Rule 56(f) motion for similar reasons, explaining:

[E]ven if a party does file an affidavit or the court is willing to consider other material in place of an affidavit, the opposing party must nevertheless explain how the continuance will aid his opposition to summary judgment. [citations omitted] . . . the party opposing the motion must present facts in proper form... And the opposing party's facts must be material and of a substantial nature.

Id. at 841 citing 6 J. Moore, W. Taggart & J. Wicker, Moore's Federal Practice ¶ 56.15[3] (2d ed. 1987).

In this case, Ms. Pasquin merely argued in her Rule 56(f) motion that she had made timely discovery requests and attempted depositions, but was thwarted in her discovery efforts by the Pasquin defendants' failure to cooperate or other events beyond her control. She nowhere states in her Rule 56(f) supporting memorandum what specific facts she sought to discover that might assist in proving her claims against the Duffins. Indeed any such allegation on her part would contradict the allegation in her Verified Complaint that her first contact with the Duffins on the subject of her alleged status as a partner or lifetime employee occurred at a meeting in the fall of 1996 in the Duffins' offices. (R. 97)

Ms. Pasquin did not and could not have submitted specific facts in an affidavit supporting a Rule 56(f) motion opposing the Duffin defendants' Motion for Summary Judgment. Accordingly, the court correctly denied the Rule 56(f) motion with regard to the Duffin defendants.

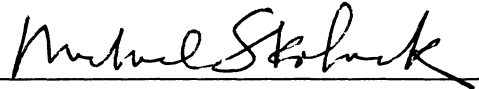
CONCLUSION

The trial court correctly held that the alleged oral partnership agreement was void under the statute of frauds. The Duffins owed no legal duty to Ms. Pasquin. Ms. Pasquin's Rule 56(f) motion with respect to the Duffins' Motion for Summary Judgment dismissing with prejudice Ms. Pasquin's claims against the Duffins was properly denied.

Accordingly, this court should affirm the trial court's Amended Summary Judgment dismissing with prejudice Ms. Pasquin's claims against the Duffins.

DATED this 25 day of November, 1998.

KIPP AND CHRISTIAN, P.C.

A handwritten signature in black ink, appearing to read "Michael Skolnick", is written over a horizontal line.

CARMAN E. KIPP

MICHAEL F. SKOLNICK

Attorneys for Defendants/Appellees

Thomas A. Duffin and Daniel O. Duffin

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed, postage prepaid, this 25 day of November, 1998, a true and correct copy of the foregoing BRIEF OF APPELLEES THOMAS A. DUFFIN AND DANIEL O. DUFFIN, to the following:

Brian W. Steffensen, P.C.
Attorney for Geri Pasquin
675 East 2100 South, Suite 350
Salt Lake City, Utah 84106

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A D D E N D U M

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH

GERI PASQUIN,	:	AFFIDAVIT OF THOMAS A. DUFFIN
Plaintiff,	:	
vs.	:	
JOHN PASQUIN; JIMMIE PASQUIN;	:	
THE ESTATE OF KORY PASQUIN;	:	
QUALITY PARTS, a Utah general	:	
partnership; QUALITY TRANSPORT	:	
REFRIGERATION PARTS, INC.;	:	
THOMAS A. DUFFIN AND DANIEL O.	:	
DUFFIN,	:	Civil No. 970900011 CV
Defendants.	:	Honorable J. Dennis Frederick

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Thomas A. Duffin, being first duly sworn upon oath, deposes and states:

1. That I am a lawyer licensed to practice law in the state of Utah.

2. That I was the lawyer handling business matters on behalf of Quality Transport Refrigeration Parts, Inc.; and Quality Parts, a Utah general partnership. My clients during this period of time were Kory Pasquin and John Pasquin.

3. That in approximately 1990, John Pasquin contacted me concerning the representation of Quality Parts, a business, which at that time was located on Redwood Road. I met with him and Kory Pasquin during that period of time.

4. That between 1991 and 1994, telephone calls were always exchanged between Quality Parts and this law firm. During this period of time, I had no contact with Geri Pasquin in a business sense as a partner of Quality Parts or as a person having any interest in the corporation, Quality Transport Refrigeration Parts, Inc. I had no specific dealings with Geri Pasquin at all.

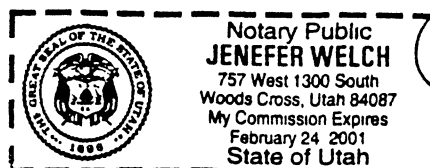
5. That there are no writings of which I am aware that would represent to this court that Geri Pasquin had any interest in either of these businesses. She may have been an employee, but she certainly had no ownership interest.

DATED this 9 day of Sept, 1997.

Thomas A. Duffin
Thomas A. Duffin

SUBSCRIBED AND SWORN to before me this 9th day of September,

1997.



Jenefeer Welch Rendles
Notary Public

CARMAN E. KIPP 1829
MICHAEL F. SKOLNICK 4671
SANDRA L. STEINVOORT 5352
KIPP AND CHRISTIAN, P. C.
Attorneys for Thomas A. Duffin & Daniel O. Duffin
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GERI PASQUIN,	:	AFFIDAVIT OF DANIEL O. DUFFIN
Plaintiff,	:	
vs.	:	
JOHN PASQUIN; JIMMIE PASQUIN;	:	
THE ESTATE OF KORY PASQUIN;	:	
QUALITY PARTS, a Utah general	:	
partnership; QUALITY TRANSPORT	:	
REFRIGERATION PARTS, INC.;	:	
THOMAS A. DUFFIN AND DANIEL O.	:	
DUFFIN,	:	Civil No. 970900011 CV
Defendants.	:	Honorable J. Dennis Frederick

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Daniel O. Duffin, being first duly sworn upon oath, deposes and states:

1. That I am a lawyer licensed to practice law in the state of Utah.

2. That I was the lawyer handling business matters on behalf of Quality Transport Refrigeration Parts, Inc.; and Quality Parts, a Utah general partnership. My clients during this period of time were Kory Pasquin and John Pasquin.

3. That during the time of incorporation of Transport Refrigeration Parts, Inc, I had conversations with both Kory Pasquin and John Pasquin. Geri Pasquin's name was never mentioned during this time nor in any subsequent conversations with either of my clients.

4. That ^{FROM 1993 TO THE DATE OF KORY PASQUIN'S DEATH} ~~between 1994 and 1994~~, telephone calls were always exchanged between Quality Parts and this law firm. During this period of time, I had no contact with Geri Pasquin in a business sense as a partner of Quality Parts or as a person having any interest in the corporation, Quality Transport Refrigeration Parts, Inc. I had no specific dealings with Geri Pasquin at all.

5. That there are no writings of which I am aware that would represent to this court that Geri Pasquin had any interest in either of these businesses. She may have been an employee, but she certainly had no ownership interest.

DATED this 9 day of ~~September~~, 1997.


Daniel O. Duffin

SUBSCRIBED AND SWORN to before me this 9th day of September,

1997.



Notary Public
JENEFER WELCH
757 West 1300 South
Woods Cross Utah 84087
My Commission Expires
February 24, 2001
State of Utah


Notary Public