

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 : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca2

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Brian W. Steffensen; Steffensen, McDonald, Steffensen; Attorney for Appellant.

Steven L. Taylor; Murphy, Tolboe and Mabey; Carmen E. Kipp; Michael F. Skolnick; Kipp and Christian; Robert Copier; Attorney for Appellees.

Recommended Citation

Reply Brief, *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*, No. 980293 (Utah Court of Appeals, 1998).
https://digitalcommons.law.byu.edu/byu_ca2/1586

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

IN THE UTAH COURT OF APPEALS

GERI PASQUIN,
Plaintiff/Appellant,
vs.

NO. 980293-CA

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.

Case No. 980293-CA

REPLY BRIEF OF APPELLANT

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

Robert Copier
243 East 400 South, #200
Salt Lake City, Utah 84111
Telephone (801) 531-7923

Brian W. Steffensen, P.C.
Steffensen ♦ McDonald ♦ Steffensen
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Telephone (801) 485-3707

Steven L. Taylor
Murphy, Tolboe & Mabey
124 South 600 East, #100
Salt Lake City, Utah 84102
Telephone (801) 533-8505

Carman E. Kipp
Michael F. Skolnick
Kipp and Christian, P.C.
10 Exchange Place - Newhouse Building, Fourth Floor
Salt Lake City, Utah 84111-2314
Telephone (801) 521-3773

FILED
Utah Court of Appeals
JAN 29 1999

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.

Case No. 980293-CA

REPLY BRIEF OF APPELLANT

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

Robert Copier
243 East 400 South, #200
Salt Lake City, Utah 84111
Telephone (801) 531-7923

Steven L. Taylor
Murphy, Tolboe & Mabey
124 South 600 East, #100
Salt Lake City, Utah 84102
Telephone (801) 533-8505

Carman E. Kipp
Michael F. Skolnick
Kipp and Christian, P.C.
10 Exchange Place - Newhouse Building, Fourth Floor
Salt Lake City, Utah 84111-2314
Telephone (801) 521-3773

Brian W. Steffensen, P.C.
Steffensen ♦ McDonald ♦ Steffensen
2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Telephone (801) 485-3707

TABLE OF CONTENTS

ARGUMENT	1
I. Reply to Pasquin-Quality Parts' Brief	1
II. Reply to The Duffins' Brief	4
III. Reply to the Estate of Kory Pasquin's Brief	6
CONCLUSION	7
Addendum A – Mrs. Pasquin's Memorandum In Opposition to Motion for Summary Disposition	

TABLE OF AUTHORITIES

Rules of Civil Procedure

Rule 56(f)	4, 7
------------------	------

ARGUMENT

After review of the three Appellee's Briefs filed herein, Geri Pasquin believes that her Appellant's Brief sufficiently addresses her main arguments. However, Mrs. Pasquin will address certain issues in each brief which she believes are new.

I. **Reply to Pasquin-Quality Parts' Brief.** The Pasquin-Quality Parts Brief is unpersuasive for the following reasons:

- (a) The Brief sets forth a statement of facts which is in contradiction with the facts set forth in Mrs. Pasquin's Statement of Undisputed Facts -- these defendants seem to forget that the facts must be construed in the light most favorable to the party opposing the motion for summary judgment; further, these motions really started (since the subsequent motions joined in the Estate's initial motion) as motions for judgment on the pleadings -- such that the allegations in Mrs. Pasquin's complaint were required to be deemed to be true;
- (b) The Brief argues that even if Mrs. Pasquin can identify and urge an exception to the Statute of Frauds with respect to life-time employment, Judge Fredericks found that no reasonable jury could have found an employment for life agreement; but if this is what Judge Fredericks ruled as a matter of law he was wrong and this Court should reverse because (i) it is entirely understandable and conceivable that Kory Pasquin promised and his mother accepted an employment for life agreement with Quality Parts and the Corporation, and (ii) it appears that Judge Fredericks improperly weighed the evidence (John Pasquin's affidavit against Mrs. Pasquin's sworn verification of her Statement of Disputed Facts) at the summary judgment stage of this case -- which is not proper and

requires reversal;

- (c) The Brief argues for the first time that Mrs. Pasquin's sworn Statement of Disputed Facts was evidentiarily insufficient to defeat the movants' claims -- arguing, without any specific examples, that they are conclusory and evidentiarily inadmissible; however, not only is this the first time that this argument has ever been raised, but it is simply incorrect – Mrs. Pasquin's sworn testimony that she had conversations with Kory and John and that in these conversations she was offered and promised that she would be a "partner," that she became a partner "immediately," that John Pasquin was aware of and consented to the offer that she be made a partner; that she was promised life-time employment, etc., are all evidentiarily proper and sufficient; it must be remembered that all inferences from the statements of fact must be drawn in favor of Mrs. Pasquin;
- (d) The Brief props up the "straw man" argument that Mrs. Pasquin's claim of life-time employment should be defeated because it involves an agreement to pay whether she was physically able to work or not; the fact is that at all times relevant hereto Mrs. Pasquin has been physically capable of working and it is John Pasquin who became injured and now operates at an apparently diminished capacity; and, again, among partners and family members, it is very believable that they agreed that a perquisite of their partnership interest would be an employment contract providing for payment under very liberal circumstances;
- (e) The Brief tries to side-step the fact that John Pasquin signed answers to interrogatories on behalf of these defendants which admitted that Kory Pasquin had in fact promised, on behalf of the partnership and then corporation, that Mrs. Pasquin would have employment

for life, by incredibly asserting that Mrs. Pasquin's claim that this promise was made is not believable — how can they claim a promise which they admit in writing was in fact made, is unbelievable?!?!

- (f) The Brief also makes an argument – again for the first time – that Mrs. Pasquin breached the life-time employment agreement; but, even if she did temporarily quit as alleged in a footnote in the brief, it is obvious that she came back to work and at the time of this litigation up until she was fired after the summary judgments were granted herein, she was working;
- (g) The Brief acknowledges that partnerships can be oral, but makes a strange argument that the oral partnership is "one at-will," which can be dissolved by any one of the partners and then invites this Court to help them find some way to utilize this doctrine as grounds to affirm; this is bizarre, to say the least, but should be rejected because there is nothing in the record upon which this Court can find that the partnership which Mrs. Pasquin alleges was created was somehow terminated; and, even if Mrs. Pasquin did temporarily cease to come into work over some point of disagreement (which fact is not in the record), this would not have constituted an election to dissolve the partnership but was merely an employment dispute; and even if it were to be construed to be an election to dissolve, she obviously came back to work, and everybody moved forward – so, there must have been a reaffirmation of the partnership;
- (h) With respect to the computation of time, the Brief argues that once the mailing time of three (3) days is added to a five (5) day time period, the sum of this is now eight (8) days and holidays and weekends are no longer excluded; this argument should be rejected

because it defeats the purpose of the rules; if a proposed order is mailed rather than hand-delivered to an opposing party, that mailing can often take the three days to arrive – which means that the responding party literally still has only five days left to respond; under these circumstances, since there still is literally only five days left to respond, the rule excluding holidays and weekends should apply to give the responding party a reasonable time within which to deal with the substance of the proposed order;

- (i) With respect to the Rule 56(f) motion, the Brief admits that John Pasquin was injured and could not be deposed, but claims that Mrs. Pasquin could have pursued other discovery but did not; this ignores the fact that John Pasquin is the key witness, besides Mrs. Pasquin, on the issues involved herein – the attorneys were not likely to have been present for the private and/or onsite meetings between Mrs. Pasquin, Kory and John on these issues; furthermore, the only person, other than Mrs. Pasquin, knowledgeable of the business records was Mr. Pasquin; the only meaningful discovery, therefore, could only have been had from John Pasquin – and he was the witness who was unavailable; it is disingenuous and unfair to assert otherwise;
- (j) Finally, the Brief does not address Mrs. Pasquin’s assertion in article V of her Appellant’s Brief that most of her claims were unrelated to the Statute of Frauds and should not have been dismissed summarily (see Appellant’s Brief, pp. 35-36); the dismissal of these claims should unquestionably be reversed.

II. Reply to The Duffins’ Brief. Mrs. Pasquin believes that the Duffins’ Brief is unpersuasive for the following reasons:

- (a) The Duffins’ Brief makes the argument, similar to that made by the Pasquin-Quality Parts

Defendants, that an oral partnership may not be void under the statute of frauds, but is terminable at will; the Brief goes on to argue that the formation of the corporation constituted a dissolution; but, even if this is so, Mrs. Pasquin, as a partner as of the date of said dissolution, is entitled to an accounting as to the assets of the partnership and to recover her fair share thereof which was apparently transferred fraudulently by her allegedly former partners to their allegedly separate corporation; her claims for relief, including her alternative claims, could not have been entirely defeated by this argument;

- (b) The Duffins' Brief addresses Mrs. Pasquin's "partial performance" exception to the statute of frauds by arguing that "partial performance of a contract within one year does not take it out of the statute of frauds;" this argument demonstrates that these defendants misunderstand this exception; under the cases cited by Mrs. Pasquin, the fact that the parties continued to act as partners for year after year – even if by technical operation of law the partnership could only be for a year at a time (which Mrs. Pasquin does not acknowledge to be the law) – the exception provides that if the parties perform year after year, the partnership will not be voided; it may be terminated at will, but it should not be voided because in the face of the parties' substantial partial performance, voiding the partnership that would be totally unfair and inequitable;
- (c) The Duffins' Brief attempts to argue that while the estoppel argument may apply to Kory Pasquin's Estate and to the Pasquin-Quality Defendants, it should not apply to the Duffins because they were not the front-line actors; but this argument must fail because the Duffins' liability in part is a derivative of whether there was a partnership between Mrs. Pasquin and Kory and John Pasquin; if there was a partnership – which cannot be

denied by the other partners pursuant to the application of the doctrine of estoppel – then the Duffin attorneys have a problem because their client was a partnership which included Mrs. Pasquin; their argument simply misses the mark;

- (d) The Duffins' Brief argues finally that they had no duty to Mrs. Pasquin on grounds other than as a result of the application of the statute of frauds; this argument must be rejected primarily because the Duffins' motion for summary judgment was a joinder with the Kory Pasquin Estate's statute of frauds motion; Mrs. Pasquin's Appellant's Brief deals with this argument, and how the facts need to be construed, in more detail and which points will not be restated by Mrs. Pasquin here;
- (e) Finally, as with the Pasquin-Quality Defendants' Brief, the Duffins' Brief also is completely silent with respect to Mrs. Pasquin's assertion, in article V of her Appellant's Brief, that there were claims against these defendants which should not have been dismissed even if the statute of frauds operates to defeat the partnership and employment for life claims; for example, Mrs. Pasquin alleges that the Duffins induced the Pasquin-Quality Defendants to breach her employment at will agreement (if that is what the Court determines it to be), and participated directly in the actions which intentionally inflicted emotional distress upon Mrs. Pasquin; as argued in Mrs. Pasquin's Appellant's Brief at pp. 35-36, these and other claims should not have been dismissed under any of the motions.

III. Reply to the Estate of Kory Pasquin's Brief. The Estate's Brief is unpersuasive for the following reasons.

- (a) The Estate's Brief argues that the notice of appeal was untimely filed with respect to the


order on its motion for summary judgment; this matter was raised in a motion for summary disposition, which was denied; Mrs. Pasquin's memorandum in opposition thereto is attached hereto as Addendum A, and the arguments set forth therein in opposition to this point are incorporated herein in refutation of the Estate's position;

- (b) The Estate's Brief then sets forth a peculiar narrative concerning "Boy Scout principles," and other matters; Mrs. Pasquin does not believe that this narrative refutes the arguments she presents in her brief and will stand on the same;
- (c) Finally, again Mrs. Pasquin's assertion on pp. 35-36 of her Appellant's Brief that claims outside the application of statutes of limitations should not have been dismissed was wholly ignored by the Estate's Brief.

CONCLUSION

Based upon the foregoing, plaintiff/appellant Geri Pasquin respectfully requests that this Court (1) reverse Judge Frederick's orders granting summary judgment in favor of the defendants in their entirety, or (2) reverse that portion of Judge Frederick's orders granting summary judgment as to the claims not automatically resolved by the Statute of Frauds challenge, or (3) reverse Judge Frederick's ruling regarding the timeliness of objections and the computation of time with respect thereto, and/or (4) at the very least, set aside the orders granting summary judgment, find that Mrs. Pasquin's Rule 56(f) motion should have been granted, and directing that the motions not be ruled upon until the requested relevant discovery is completed and Mrs. Pasquin has had an opportunity to supplement her oppositions accordingly.

DATED this 29th day of January, 1999.



Brian W. Steffensen, P.C.

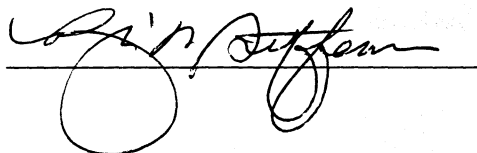
CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of January, 1999, I caused two true and correct copies of the foregoing instrument to be X mailed, postage prepaid; and/or hand-delivered by _____ fax and/or by _____ courier; addressed to:

Kipp & Christian, P.C.
Attn: Carman E. Kipp
10 Exchange Place - Newhouse Building
Fourth Floor
Salt Lake City, Utah 84111-2314
FAX 359-9004

Murphy, Tolboe & Mabey
Attn: Steven L. Taylor
124 South 600 East, #100
Salt Lake City, Utah 84102
FAX 533-8508

Robert Copier
243 East 400 South, #200
Salt Lake City, Utah 84111
FAX 531-7928



Brian W. Steffensen, P.C., (#3092)
Steffensen ♦ McDonald ♦ Steffensen

2159 South 700 East, Suite 100
Salt Lake City, Utah 84106
Telephone (801) 485-3707
Attorneys for Plaintiff/Appellant

**IN THE SUPREME COURT
STATE OF UTAH**

GERI PASQUIN,

Plaintiff/Appellant,

Appellant's Opposition to the Pasquin
Estate's Motion for Summary
Disposition

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,

No. 970612
970900011CV

Defendants/Appellees

The motion for summary disposition should be denied because:

1. Although the Court entered separate orders for each group of defendants, they all joined in the same motion, such that the time for appeal did not begin to run until the final order on the "joined" motion for summary judgment was entered;
2. Although the Pasquin Estate's form of order contained language which seems to comply with Rule 54(b), the trial court was never asked to, nor did it specifically, find the items required in Rule 54(b); and
3. The appeal herein certainly does raise substantial issues which are in dispute and require determination.

Addendum A

Statement of Facts

1. The Pasquin Estate filed a motion for summary judgment on or about August 29, 1997. No where in the motion or memorandum in support did the Pasquin Estate ask the court to make the findings required under Rule 54(b) to make the judgment thereon "final."

2. The Plaintiff/Appellant filed an opposing memorandum, and then the Pasquin Estate filed a Reply -- which again did not ask the court to make the findings which under Rule 54(b) are required to make the judgment thereon "final."

3. On or about September 9, 1997, the Duffins filed a Motion & Memorandum in which they stated that they "hereby joined in and adopted the arguments of the Estate of Kory Pasquin in its Motion for Summary Judgment."

4. On or about September 25, 1997, the remainder of the defendants (the Pasquin Related Entities) filed a Motion and Memorandum for summary judgment in which they stated that they also "hereby incorporate and adopt the arguments of the Estate of Kory Pasquin in its Motion for Summary Judgment"

5. The Plaintiff/Appellant filed additional memoranda in opposition to these two joining motions, incorporating by reference prior memoranda in opposition, and stating that the later memoranda were also offered in opposition to the prior, joined motions.

6. Surprisingly, without hearing argument, the Court started ruling on the motions as if they were separate motions -- rather than joined motions. As indicated in the Docketing Statement herein, orders were entered as follows:

a. The Pasquin Estate's summary judgment was granted on October 21, 1997;

b. The Pasquin Related Entities' summary judgment was granted on

November 3, 1997; and

c. The Duffins' summary judgment was first signed on November 17, 1997, and then amended on November 26, 1997.

7. The Pasquin Estate slipped language in its proposed order which appears to satisfy Rule 54(b) -- but the issues were never properly raised, nor was the trial court given an opportunity to consider, after briefing, the appropriateness of making the requisite determination.

8. The Notice of Appeal was filed December 12, 1997.

Argument

Timeliness of Notice of Appeal. Unless a proper Rule 54(b) determination is made, the time for filing an appeal does not begin to run until after the last order disposing of all of the issues relating to all parties has been entered -- the proverbial "final" judgment or order. See Reed v. Reed, 806 P. 2d. 1182 (Utah 1991). In this case, there are two reasons why the last order -- November 26, 1997 -- should be considered the "final" order: (1) The motions were inextricably linked, such that they cannot be considered separate motions -- and the summary judgments granted in connection therewith cannot be considered separate and were not finally granted until the last order; and (2) Rule 54(b) was not in fact followed and complied with.

The motions were all joined, such that it may in fact have been procedurally inappropriate for Judge Fredericks to have issued separate orders treating the motions as separate. Since they all raised the identical issues, it certainly was reasonable and appropriate for the Plaintiff/Appellant to wait until the last order on the joined motions was entered to file her appeal. It was premature for Judge Fredericks to issue an order on one motion, when the other, "joined motions," were still pending and being briefed.

Rule 54(b) requires more than just slipping language in a proposed order which appears

to satisfy the rules' requirements. An earlier order or judgment is to be treated as "final," prior to a literally final order in a case, "only upon an express determination by the court that there is no just reason for delay and upon an express direction for the entry of judgment. In the absence of such determination and direction," the order in question is not a final order. See Rule 54(b); Reed v. Reed, supra (an order was not found to be a "final" order because "no Rule 54(b) motion was made requesting the court to certify the amended default judgment ... as final"). The trial court cannot make this express determination without being requested to do so pursuant to a "Rule 54(b) motion ... requesting the court to certify the amended default judgment ... as final," to quote the Reed Court, and the party opposing such a determination being given an opportunity to present its opposition, if any, to the same. The Pasquin Estate never made such a motion, nor in any other way did it specifically ask Judge Fredericks to make the required determinations. There was no motion, no briefing, no evidence, nor any argument whatsoever on the issue. Rule 54(b) was not satisfied.

Further, this is not the situation in which such a Rule 54(b) finding is usually made. In this case, there were several parallel, almost identical, orders in process of being entered, all of which related to exactly the same issues raised in a "joined" motion. This was not a situation where, as to one party, the issues were distinct and unrelated to the issues affecting the other parties such that a separate appeal as to that party should be allowed to commence. In this case, there were almost identical, "joined," motions. This was not a situation where it would have been appropriate for the Court to make Rule 54(b) findings. To the contrary. This is a case where judicial economy demanded that the appeal time not run until the last of the joined, identical, motions was ruled on. Otherwise, multiple notices of appeal would be required raising exactly the same issues.

The truth is that Judge Fredericks never in fact consciously made the required Rule 54(b) determinations, and the Pasquin Estate's supposed "final judgment" should not be considered "final" under Rule 54(b).

The Plaintiff/Appellant respectfully requests, therefore, that this Court rule that under these circumstances Rule 54(b) was not met and/or is not applicable, that the order on November 26, 1997 was the final order, and that the Notice of Appeal was timely.

**THE APPEAL MOST DEFINITELY RAISES SUBSTANTIAL
ISSUES NEEDING REVIEW.**

Mrs. Pasquin, With the Knowledge and Consent of John Pasquin, Became a Partner Immediately in the Partnership -- the Statute of Frauds Does Not Even Apply. There certainly can be oral partnerships -- most partnerships are oral. Further, most partnerships exist and operate over a period of years. If an oral partnership were always void under the statute of frauds because it contemplated being in business and operating for more than a single year, almost no oral partnership agreement would be enforceable. Which is why it is mind boggling that the Pasquin Estate prevailed on a claim that the Statute of Frauds precluded Mrs. Pasquin's attempts to enforce her oral partnership interest.

The Pasquin Estate seems to recognize the weakness in this argument, and in the motion for summary disposition tries to argue -- inaccurately -- that Mrs. Pasquin did not become a partner -- immediately -- in the partnership because John Pasquin did not consent thereto (apparently conceding that there would be substantial testimony from witnesses confirming Kory Pasquin's promises to Mrs. Pasquin that she would be, and did become, a partner in Quality Parts). The Pasquin Estate must lose on this point because Mrs. Pasquin specifically asserted in her statements of disputed facts in connection with the joined motions for summary judgment

that John Pasquin was aware of Kory Pasquin's promises in these regards, and that John Pasquin expressly consented to Mrs. Pasquin becoming a partner in Quality Parts. For the purposes of this motion, the court must assume these facts to be true. If assumed to be true, Mrs. Pasquin most certainly did become a partner -- immediately upon promise and acceptance -- in Quality Parts and her appeal should not only proceed forward, but should be granted.

Guranteed Employment For Life Is Enforceable. The Pasquin Estate attempts to argue that an oral promise of employment for life can never, as a matter of law, be enforceable. But this simply is not true. Mrs. Pasquin's memoranda in opposition to the joined motions for summary judgment cited cases and exceptions to the rule. (See Mrs. Pasquin's various memoranda in opposition to the three joined motions, where are incorporated herein by reference). Since there can be exceptions, and Mrs. Pasquin alleged them and the facts supporting them, the matter should have gone to trial to determine if the factual requisites to support the exceptions were present. Judge Fredericks erred in ignoring these exceptions and that there were factual disputes as to whether they were applicable in this case. The motion for summary disposition is inaccurate in this regard and should be denied.

For example, Mrs. Pasquin cited the trial court to the answers to interrogatories of John Pasquin, Jimmie Pasquin, Quality Parts and Quality Transport Refrigeration Parts, Inc., where these defendants admitted being aware of the promise of life-time employment, and specifically reaffirmed that promise and commitment. This answer to interrogatory was (a) a writing, (b) signed by John Pasquin for himself and the partnership and corporate defendants, which (c) expressly acknowledged the promise of life-time employment as follows:

"John is aware that Kory, out of that concern, would assist Plaintiff as much as he could in order to assure that Plaintiff would have employment with the Defendants' business as long as Plaintiff so desired and was able to perform her duties. Defendants

are unaware of any of such communications being reduced to writing. Further, shortly after Kory's death in October, 1996, the parties met at Defendant Duffins' office. Also present were Dennis Welker, Boyd Simper and Julie Flarrity (Plaintiff's daughter from a prior marriage). At the meeting, Ms. Flarrity stated that she was present to assure that the Plaintiff '... got her fair share of the company.' John Pasquin stated that he was aware of and would honor Kory Pasquin's desire to provide employment for Plaintiff as long as she wanted it." (Defendants' John Pasquin, Jimmie Pasquin, Quality Parts, a Utah general partnership, and Quality Transport Refrigeration Parts, Inc., Answers to Plaintiff's First Set of Interrogatories, Request for Admission & Request for Production of Documents, Answer No. 7)

These facts were undisputed, yet Judge Fredericks did not find that there was a writing which took the promised life-time employment out of the statute of frauds. This was reversible error.

Further, this writing most definitely constituted "evidence" that the employer did "convey a clear and unequivocal intention" to agree to grant her life-time employment as she alleged, as required by Sanderson v. First Security Leasing Co., 844 P. 2d 303 (Utah 1992). These facts were vigorously argued in the oppositions to the joined motions. Mrs. Pasquin met her burden of setting forth facts which disputed the Pasquin Estate's summary judgment and which should have entitled her to a trial on the claims raised in her complaint.

The docketing statement does, despite Mr. Copier's inaccurate assertions to the contrary, recite the foregoing facts. The facts in the docketing statement, and in the statements of disputed facts in the Plaintiff/Appellant's various memoranda in opposition to the joined motions for summary judgment, raised and supported all of the issues which Mrs. Pasquin asks this Court to address -- and which should have been more than enough to require a denial of the joined motions to dismiss. This appeal is well taken and should ultimately be granted.

Conclusion

For all of these reasons, the Plaintiff/Appellant respectfully requests that the motion for summary disposition be denied and that this appeal proceed forthwith.

DATED the 23rd day of November, 1998.

S/

Brian W. Steffensen
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I hereby certify that on the 23 day of November, 1998, I caused a true and correct copy of the foregoing instrument to be _____ mailed, postage prepaid; and/or hand-delivered by _____ fax and/or by _____ courier; addressed to:

**Kipp & Christian, P.C.
Att.: Carman E. Kipp
10 Exchange Place - Newhouse Building
Fourth Floor
Salt Lake City, Utah 84111-2314
FAX 359-9004**

**Murphy, Tolboe & Mabey
Att.: Steven L. Taylor
124 South 600 East, #100
Salt Lake City, Utah 84102
FAX 533-8508**

**Robert Copier
243 East 400 South, #200
Salt Lake City, Utah 84111
FAX 531-7928**
