

1979

John Darger, D.B.A. Custom Drilling v. Park West Village, Inc., A Utah Corporation : Appellant's Reply Brief

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN DARGER, d.b.a.	:	
CUSTOM DRILLING,	:	Supreme Court No. 16235
	:	
Plaintiff and	:	
Appellee,	:	
	:	
vs.	:	Civil No. 5571
	:	
PARK WEST VILLAGE, INC.,	:	
a Utah Corporation,	:	
	:	
Defendant and	:	
Appellant	:	

APPELLANT'S REPLY BRIEF

Appeal from a Judgment in Favor of the Plaintiff and
an Order Denying Defendant's Motion for a New Trial
In the District Court of the Third Judicial District
In and For Summit County, Utah
The Honorable Dean E. Conder, Judge.

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DEFENDANT

IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN DARGER, d.b.a.	:	
CUSTOM DRILLING,	:	Supreme Court No. 16235
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	:	
Defendant and	:	
Appellant	:	

APPELLANT'S REPLY BRIEF

There is an error in Apellant's initial brief on page 11 thereof. On line 11, page 11, the first sentence should read "At Forty Dollars (\$40.00) per foot,....." instead of "At Forty Dollars (\$40.00) an hour,....".

ARGUMENT

In his brief, the Plaintiff argues that the Addendum Agreement was never incorporated into the original contract and was not binding on either party. It cites for authority on that proposition the Finding of Fact No. 2 (Plaintiff's Brief - Page 5). Finding No. 2 only relates to the contract itself and says that, by their conduct, the parties recognized an hourly charge. However, there was absolutely no

evidence of any conduct after March 1, 1978 which would justify extending that to the Addendum Agreement which was entered into on March 1, 1978. Only one week after that Agreement was entered into, the Court found the Plaintiff willfully abandoned the contract. Therefore, Plaintiff's counsel is only speculating in his brief since neither the Findings nor the Court's handwritten opinion refer to the Addendum Agreement at all but simply state that there was "insufficient evidence to show that Defendant/Appellant suffered any damages by Plaintiff's breach by abandoning the contract".

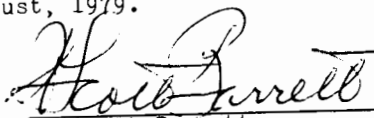
Plaintiff erroneously contends (Plaintiff's Brief - Pg 9) that "The lower Court specifically refused to apply the provisions of the Addendum because it never went into effect". It is submitted that there is no such Finding in either the Court's handwritten opinion nor the Findings of Fact. Plaintiff further contends that the Addendum was never incorporated into the contract because Defendant failed to meet certain conditions subsequent to the Addendum. (Plaintiff's Brief - Pg 9) Transcript page 51 is the citation. It is submitted that there is absolutely nothing on page 51 of the transcript that supports such a contention. The only thing that could even be construed to support such a contention is the statement that Plaintiff "felt that he (Defendant) had violated our contract from the first to the end of it".

The facts are to the contrary since the Court found that, except for the moving charge of Two Hundred Fifty Dollars (\$250.00), which had never been billed, the Defendant was completely paid up as of March 1, and only seven (7) days thereafter Plaintiff himself breached the contract by willfully abandoning the well.

As to the Seven Hundred Dollar (\$700.00) payment for which Defendant never got credit, Plaintiff contends in his brief that there is conflicting testimony on the \$700.00 and refers to Transcript page 48. (Plaintiff's Brief - Pg 8) An examination of page 48 shows that there was no evidence whatsoever that the \$700.00 was properly applied. Plaintiff admitted that he got the \$700.00, but attempted to contend that it was for "other monies that was owed". However, he admitted that he didn't know what they were. Certainly this is a flimsy basis upon which to refuse to give credit to Defendant for a \$700.00 payment.

It is therefore respectfully submitted that the Addendum Agreement was binding on both parties and that the evidence unequivocally shows Defendant is entitled to the \$700.00 credit and damages under its Cross Complaint as set forth in Appellant's Opening Brief.

DATED this 14 day of August, 1979.


W. Scott Barrett
Attorney for Defendant/
Appellant