

1979

Amjacs Interwest, Inc. v. Carl Smith : Brief of Defendant-Respondent

Utah Supreme Court

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Recommended Citation

Brief of Respondent, *Amjacs Interwest v. Smith*, No. 16236 (Utah Supreme Court, 1979).
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IN THE SUPREME COURT
OF
THE STATE OF UTAH

AMJACS INTERWEST, INC., :
Plaintiff-Appellant, :
vs. : No. 16236
CARL SMITH, :
Defendant-Respondent, :

BRIEF OF DEFENDANT-RESPONDENT

APPEAL FROM A JUDGMENT AND ORDER OF THE
SECOND JUDICIAL DISTRICT COURT FOR WEBER COUNTY, STATE OF UTAH
The Honorable Calvin Gould, Judge

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FILED

JUL 3 1979

Clerk, Supreme Court, Utah

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relief should be granted them against Smith and that Unico, Inc. was merely a shield for Smith. The Court held Smith was not personally liable and the cause of action against Smith was dismissed.

STATEMENT OF FACTS

Design Associates was a partnership made by written agreement on December 26, 1975, and the first paragraph of that agreement states as follows:

"This agreement entered into between Unico, Inc., hereinafter referred to as Unico, and Richard Fletcher, Gordon Steed, and Jerald Granquist, collectively hereinafter referred to as the firm." (R. 52, R. 102, Exhibit A)

The above individuals signed the partnership agreement and Unico, Inc. signed "Carl T. Smith, President, Unico, Inc." (R. 102, Exhibit A). Carl Smith declared by affidavit he had never been a partner in Design Associates, that he personally had no knowledge of any merchandise, goods or services being obtained from Amjacs by Design Associates until the account became delinquent, and that he had never represented to Amjacs or ever represented publicly that he was a partner in or an agent of Design Associates (R. 109, 110). Design Associates, the partnership, became indebted to Amjacs between November 1, 1976 to June 20, 1977 (R. 96). Lengthy interrogatories were submitted by Amjacs, Unico, Inc. and Smith (R. 29-45, R. 53-56) and approximately 11 pages of answers to interrogatories and certain partnership documents were filed in the record (R. 57-59, 86-88, 91-93), and in addition, affidavits were submitted by Amjacs'

general manager and Carl Smith, along with attachments thereto. (R. 96, 109-110). In total, the lower court had some 113 pages of pleadings and evidence to consider after reviewing each party's briefs and hearing their arguments in open court, and thereupon, the Court found that Carl Smith could not have been a partner as a matter of law and dismissed the cause of action as to him. (R. 115). Thereupon, plaintiff appealed to this court.

ARGUMENT

THE DISTRICT COURT WAS CORRECT IN GRANTING SMITH'S MOTION FOR SUMMARY JUDGMENT AND DISMISSING THE ACTION AS TO HIM.

There was substantial evidence showing that Unico, Inc. was a partner in Design Associates, principally the partnership agreement itself. Although there is substantial evidence in the record relating to the relationship of Design Associates as debtors to Amjacs and liability on the part of all partners to the partnership agreement, there is no evidence that Carl Smith should be found personally liable for payment of the debt incurred by the partnership.

POINT I

THE WRITTEN PARTNERSHIP AGREEMENT DOES NOT ESTABLISH SMITH PERSONALLY AS A PARTNER IN DESIGN ASSOCIATES.

Design Associates partnership agreement entered prior to any indebtedness to Amjacs declares who the partners are, ie. Unico, Inc., Richard Fletcher, Gordon Steed, and

Jerald Granquist. (R. 102, Exhibit A). Further emphasis of that point is made when the president of Unico, Inc. signed "Carl T. Smith, President, Unico, Inc." (R. 102, Exhibit A). Plaintiffs claim that Smith was one of the partners by alluding to such language as "Whereas, Smith is in a position to assist in the business through initial financing through his solely owned corporation, Unico, Inc." (R. 102, Exhibit A), and other such references to Smith's name in the partnership agreement, that he is a partner. It is common knowledge that all corporations operate through individuals and Smith, as president of the corporation, was acting on behalf of the corporation. He even signed the partnership agreement as "President, Unico, Inc." Any reference to the use of his talents in the partnership agreement must be construed as reference to his talents as president of Unico, Inc. because of the manner in which the document was drafted. To rule otherwise would make it necessary to totally ignore the well established laws governing partnerships as well as corporations. Certainly, there was ample evidence before the court to make the determination that Carl Smith was not a partner in Design Associates based upon the written partnership documents in existence.

POINT II

THERE IS SUBSTANTIAL EVIDENCE FOR CONSIDERATION BY THE LOWER COURT THAT CARL SMITH WAS NOT A PARTNER UNDER ANY EQUITABLE THEORIES OF PARTNERSHIP SUCH AS ESTOPPEL OR ALTER EGO.

Plaintiffs are demanding that the case be referred back to the lower court for additional evidentiary hearings to establish that under some equitable principles, Amjacs is entitled to recovery against Smith personally by disregarding the corporation structure of Unico, Inc. One of their theories is partnership by estoppel.

Utah Code Annotated, 48-1-13, (1953 as amended), reads:

"Partner by Estoppel - 1. When a person by word spoken or written or by conduct represents himself, or consents to another's representing him, to anyone as a partner, in an existing partnership or with one or more persons not actually partners, he is liable to any such person to whom such representation has been made who has on the faith of such representation, given credit to the actual or apparent partnership, and, if he is made such representation or consented to it being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by, or with a knowledge of, the apparent partner making the representation or consenting to it being made."

There can be no equitable relief under the partnership by estoppel statute because Amjacs never relied on any representations made by Carl Smith that he would, in fact, be liable as a partner. (R. 109,110). The best Amjac can do is claim that sometime after June 8, 1977, after most of the debt was already incurred, they received a 1976 Unico, Inc. balance sheet which, at the bottom, stated, "Principal: Carl T. Smith" with an Ogden, Utah address. (R. 97, Exhibit B). At that point in time, the bull was already out of the chute - the indebtedness had been incurred prior to that date. (R. 2, 97, Exhibit C). Amjacs

even admits they were dealing with "Design Associates and not Carl Smith", when they declare that "Carl Smith did not personally ever submit a written request to the plaintiffs for the goods and services which were supplied to the defendants." (R. 102). There is ample evidence in the record to show that Carl Smith was not partner by estoppel.

The second equitable theory is that of alter ego. The brief submitted in support of plaintiff's motion for summary judgment to the trial court claims Smith was only trying to use the corporation as a shield and that any way you look at it, the result is the same. "Carl Smith is personally liable for the debts of Design Associates, as is his solely owned corporation, Unico, Inc." (R. 102), and that he "has at times tried to use his solely owned corporation as a shield," (R. 102). Certainly, that theory of alter ego was before the court below. Plaintiff now claims that there are still so many material facts left open concerning that issue that this court should reverse the lower court and return the case for additional evidence. They refer to numerous cases in an effort to bolster their position. It is defendant's position that the lower court had available to it all the evidence that was necessary to resolve that equitable issue.

Any consideration of disregarding the corporate structure must commence with the presumption that there is a valid corporate structure. This court has previously stated,

"Under some circumstances, the corporate entity may be disregarded in the interests of justice in such cases as fraud, contravention of law or contract, or public wrong. However, great caution should be exercised by the courts in disregarding the entity." E.R. Shaw v. Bailey-McCune Company, 355 P2d 321, 322 (Utah 1960).

The court further cautioned about disregarding the corporate entity, even though the stock is owned by a single individual. That concept, as well as a restatement of the factors that must be shown to find alter ego are declared in an earlier case of Surgical Supply Center v. Industrial Commission, 223 P 2d 593, 596 (Utah 1950). Only to prevent fraud or defend crime or injustice will the court look through the veil of corporate structure. Court in that case declared,

"While upon equitable principles, the legal entity of a corporation may be disregarded when it is the mere alter ego or business conduit of an individual, or when the notion of its legal entity is used to defeat public convenience, justify wrong, protect fraud, or defend crime, (1 Fletcher, CYC. COR., 135), still, it is the general rule that although one person owns all the stock of a corporation, he and the corporation are in law, two separate and distinct persons." (Supra, 596).

Therefore, to disregard the corporate structure and enter judgment against Carl Smith personally, the court must find that Carl Smith used the corporate structure to:

- a. Commit fraud,
- b. Justify wrong,
- c. Contravene law or contract,
- d. Or defend crime.

The facts are so clear with many pages of evidence in this case that none of the above were committed by Carl Smith, that the corporate structure should not be disregarded. Carl Smith at no time represented to Amjacs that he would be personally liable for the debt they are now attempting to collect from the partnership. He simply had no dealings at all with them, and it was only after the debt was incurred, they began to try and recover from him. Amjacs could have exercised caution about whom they were dealing with before the debt was incurred or not have allowed the debt to get out of hand, as it did, but they obviously elected to run the risks. Now they are before this court arguing that Carl Smith has either committed fraud, justified wrong, contravened law or contract, or defended crime, or at least there is not ample evidence before the lower court to make the determination that has occurred and they should have a rehearing on that issue. The evidence is overwhelming that none of the foregoing did occur, based upon the record. Amjacs contracted with Design Associates for payment of the debt. They never did contract with Carl Smith personally. That is clear in the record. They simply never did look to Carl Smith for payment of the debt until after it had been incurred, as per their own admission. (R. 87) and all the evidentiary hearings in the world are not going to change the facts as clearly established below. The record shows the location and function of Unico, Inc. since the date of its

incorporation in 1966, (R. 49), every line of business engaged in, the types of business engaged in, each person who had been affiliated with Unico, Inc. in the positions of chief executive officer, chief operating officer, general manager, secretary, treasurer, chairman of the board, members of the board, sales manager or equivalent, every person who had been legal or official owner of more than ten percent of any stock since the date of its incorporation, the relationship that any such parties had to Carl Smith, any transfers of property to any business entity of Carl Smith, and transfers of property to Carl Smith directly, any considerations therefore, and numerous pages of such questions which were a part of the record for consideration by the court below. (R. 49-52, 92-93). And now plaintiff requests that this court send this case back for additional evidence under the apparent theory that failure to do so would "promote injustice". The evidence is already so clear that there is not an injustice to Amjacs or the public by failure to disregard the corporate structure. Plaintiffs have relied heavily on Plotkin v. National Lead Company, 482 P.2d 323, (Nev. 1971). In that case, summary judgment had been entered against Mr. and Mrs. Plotkin, who had been the owners of stock in a corporation named American Paint & Supply. The Plotkins had written to National Lead, to whom the corporation was indebted "regarding the balance we owe you through American Paint" and then later, Mrs. Plotkin stated to counsel for National Lead that "\$1,702.36 was the correct indebtedness amount." It was

obvious the facts were not clear that the corporation structure should be disregarded with such evidence in the record, and of course, the matter was referred back for additional hearing after the court stated that the facts on the record did not support the alter ego theory, as follows:

"It is apparent that under the facts as related, there was not an assumption of the corporate debt. It is equally clear that the scanty record will not permit one to conclude, as a matter of law, that the alter ego doctrine should be applied. The record, at this moment, does not disclose that the corporation was governed by the Plotkins; that there was such a unity of interest and ownership that one is inseparable from the other; and that adherence to the fiction of separate entity would promote injustice."

The facts are totally different in this case, in that there is clear record evidence below that no injustice would occur by failure to apply the concept of alter ego. Again, the law states that to apply the equitable principle of alter ego against an individual by disregarding the corporate veil, there must be a clear showing that there was such a "unity of interest and ownership that one is inseparable from the other . . . and . . . that adherence to the fiction of separate entity would promote injustice." McCleary Cattle Co. v. Sewell, 73 Nev. 279, 317 P2d 957. The only injustice imaginable in this case would be for Carl Smith personally to be required to pay Amjacs for a debt contracted between Amjacs and Design Associates partnership. Amjacs simply could never show they will suffer a wrong, fraud or injustice at the hands of Carl Smith in this case, because

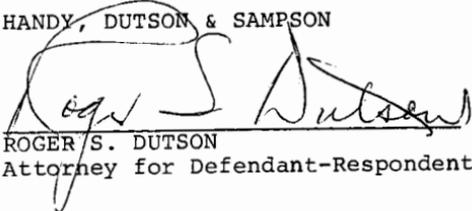
they never did look to him for payment until after the fact. The record is clear that the principle of alter ego or other equitable reliefs claimed by plaintiffs will not apply in this case and that is what the trial court determined in dismissing Smith from the suit.

CONCLUSION

The plaintiffs' claim that additional evidence is required to resolve the issues at bar is unwarranted. The record is clear that Carl Smith was not a partner in Design Associates, that Amjacs could never show fraud, public wrong or injustice at the hands of Carl Smith and that the corporate structure should not be set aside and disregarded herein. The findings and order of the trial court should be sustained.

RESPECTFULLY SUBMITTED THIS 27th day of June, 1979.

HANDY, DUTSON & SAMPSON



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CERTIFICATE OF MAILING

I hereby certify that I caused a true and correct copy of the above and foregoing Brief of Respondent to be mailed, postage prepaid, this 29th day of June, 1979, to:

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