

1998

# Robert B. Hansen v. Life-Line, a non-profit corporation : Brief of Appellant

Utah Court of Appeals

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Robert Hansen; Attorney at Law.

Gregory J. Sanders; Kipp and Christian, P.C.; Attorneys for Appellee; Pro Se.

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11.

**ADDENDUM**

(Bound separately, so Table of Contents follows)

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2. Rule 56 U.R.C.P.:	
(c) <b>Motion and proceedings thereon.</b> The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.	
(d) <b>Case not fully adjudicated on motion.</b> If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.	
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11. Controlling Principles and Precedents (attached as pages 10 and 11)	122, 123
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\* not yet paginated as it was filed after original pagination.

**FILED DISTRICT COURT**  
Third Judicial District

NOV 03 1998

SALT LAKE COUNTY

By \_\_\_\_\_ Deputy Clerk

**GREGORY J. SANDERS - 2858**  
**KIPP AND CHRISTIAN, P.C.**  
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10 Exchange Place, Fourth Floor  
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**IN THE THIRD JUDICIAL DISTRICT COURT**  
**SALT LAKE COUNTY, STATE OF UTAH**

ROBERT B. HANSEN, individually, and as  
a Trustee of Defendant,  
  
Plaintiff,

vs.

LIFE-LINE, a nonprofit corporation,  
VERNON UTLEY, and JAMES SMITH,  
  
Defendants.

**ORDER GRANTING  
SUMMARY JUDGMENT**

Civil No. 980900593

Judge Judith S. H. Atherton

The court having considered the motion of the defendant for Summary Judgment, having considered the memoranda in support thereof and in opposition thereto, and having further considered the oral argument presented including additional authority presented by the plaintiff to the court in that hearing, the court rules as follows:

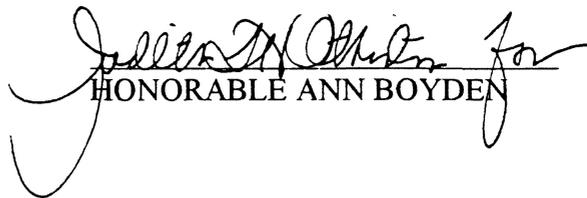
1. The third and fourth causes of action are dismissed upon the stipulation of the parties in hearing on October 5, 1998.
2. The Motion for Summary Judgment by the defendant with respect to the first two

causes of action is granted. The court finds that the plaintiff lacks sufficient evidence to show a genuine issue of material facts so as to overcome the legal presumption that he was an at will employee.

Pursuant to the ruling of the court and the stipulation of the parties recited above, Summary Judgment is hereby entered in favor of the defendants and plaintiff's claims are dismissed, with prejudice.

DATED this 3 day of <sup>Nov</sup>~~October~~, 1998.

BY THE COURT:

  
HONORABLE ANN BOYDEN

**MAILING CERTIFICATE**

I HEREBY certify that on the \_\_\_\_\_ day of October, 1998, I caused a true and correct copy of the foregoing document to be mailed, postage prepaid, to the following:

Robert B. Hansen  
838 - 18th Avenue  
Salt Lake City, UT 84103

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**MUJI 18.1****EMPLOYMENT CONTRACT – DEFINITION**

A contract of employment is a contract by which one person, called the employer, engages another person, called the employee, to do something for the benefit of the employer or a third person for which the employee receives compensation. The contract may be oral or written.

*Comments*

This instruction should be given in all wrongful termination cases.

*References:*

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**MUJI 18.2****EXPRESS EMPLOYMENT CONTRACT**

There is an express employment contract when the employee and employer agree with one another orally or in writing that they are entering into a formal contract setting forth terms on which the employer will employ the employee.

*Comments*

The express/implied distinction is only briefly noted in *Berube v. Fashion Centre Ltd.*, 771 P.2d 1033 (Utah 1989), but the court does say that an implied agreement or term cannot contradict an express contract term. It is therefore important that the jury understand that "express" does not mean an agreement or term that is merely implied.

*References:*

BAJI 10.11 (1987 New.). Reprinted with permission; copyright © 1986 West Publishing Company

## MUJI 18.3

## EMPLOYMENT AT-WILL

When an employee is not hired for a specified period of time, the law presumes that either the employer or the employee may terminate the employment relationship “at will,” that is, at any time for any reason or no reason at all. When the employment relationship is “at-will,” there does not have to be any reason for the termination other than the employer’s desire to discontinue the employment relationship. In such event, the employer is not liable to the employee for terminating the employment relationship. Likewise, an employee may terminate an at-will relationship at any time for any reason and is not liable to the employer.

*Comments*

This instruction is not to be used when there is an express contract.

*References:*

*Johnson v. Morton Thiokol*, 818 P.2d 997 (Utah 1991)  
*Brehany v. Nordstrom*, 812 P.2d 49 (Utah 1991)  
*Hodges v. Gibson Product Co.*, 811 P.2d 151 (Utah 1991)  
*Caldwell v. Ford, Bacon & Davis Utah, Inc.*, 777 P.2d 43 (Utah 1989)  
*Berube v. Fashion Centre Ltd.*, 771 P.2d 1033 (Utah 1989)  
*Rose v. Allied Development Co.*, 719 P.2d 83 (Utah 1986)  
*Bihlmaier v. Carson*, 603 P.2d 790 (Utah 1972)  
*Held v. American Linen Supply Co.*, 307 P.2d 210 (Utah 1957)

## MUJI 18.4

REBUTTING THE PRESUMPTION OF  
AT-WILL EMPLOYMENT

The “at-will” relationship between an employer and an employee is only a presumption. This presumption can be overcome when the employee proves the existence of an “implied” contract that the employee’s employment would not be terminated except for certain conduct or pursuant to certain procedures.

*Comments*

This instruction is not to be used where there is an express employment contract.

This instruction, as well as several that follow, presumes that it is the employee-plaintiff who is asserting the existence of an implied employment contract. The instruction would be revised in the case of an employer asserting the existence of an implied employment contract. See Comments to MUJI 18.6.

*References:*

*Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331 (Utah 1992)  
*Sanderson v. First Security Leasing Co.*, 844 P.2d 303 (Utah 1992)  
*Johnson v. Morton Thiokol, Inc.*, 818 P.2d 997 (Utah 1991)

## MUJI 18.5

**BURDEN OF PROOF IN ESTABLISHING THE  
EXISTENCE OF AN IMPLIED CONTRACT**

The employee has the burden of proving, by a preponderance of the evidence, that there was an implied employment contract between the employee and the employer. That is, the employee has the burden of establishing that, although there was no express employment contract, the employer and the employee nevertheless agreed that the employee would be employed on terms other than “at will.”

**References:**

*Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331 (Utah 1992)  
*Sanderson v. First Security Leasing Co.*, 844 P.2d 303 (Utah 1992)  
*Johnson v. Morton Thiokol, Inc.*, 818 P.2d 997 (Utah 1991)

## MUJI 18.6

**IMPLIED EMPLOYMENT CONTRACT**

In order to find that an implied employment contract exists, the plaintiff must prove that:

1. The employer intended that the employee's employment would not be terminated except for certain conduct or pursuant to certain procedures; and
2. The employer communicated its intent to the employee; and
3. The communication was sufficiently clear and definite so that the employee could reasonably believe that the employer was offering employment on terms other than “at will.”

To determine the meaning of an implied contract, the intent of the parties and the circumstances as a whole must be considered.

**Comments**

The specific phrase or phrases describing the operative term(s) of the implied contract, such as “except for certain conduct or pursuant to certain procedure,” should be edited according to specific employment issue(s) in the case.

This instruction does not address possible evidentiary grounds for an implied contract. See *Johnson v. Morton Thiokol, Inc.*, 818 P.2d at 1002 (Utah 1991). However, the evidence must be sufficient to fulfill the requirements of a unilateral contract. An employee manual or bulletin may create binding contract terms only if those terms are consistent with the meaning of the contract as a whole. In addition, evidence of conduct or oral statements may establish an implied contract, even without the support of written policies, bulletins or handbooks, if the conduct or oral statements meet the standards for a unilateral contract. Such evidence must be strong enough to overcome any inconsistent written policies and disclaimers.

**References:**

*Johnson v. Morton Thiokol, Inc.*, 818 P.2d 997 (Utah 1991)

## MUJI 18.7

**THE PROVISIONS OF AN IMPLIED  
EMPLOYMENT CONTRACT**

For conduct, writings, or oral statements to be a provision of an implied employment contract, such conduct, writings or statements must be sufficiently definite and clear so that it is possible to determine whether or not the provision has been violated. If an asserted provision is so uncertain that there is no basis to decide whether the provision has been kept or broken, then such provision is not part of an implied employment contract.

*References:*

*Hodgson v. Bunzl Utah, Inc.*, 844 P.2d 331 (Utah 1992)  
*Johnson v. Morton Thiokol, Inc.*, 818 P 2d 997 (Utah 1991)  
 Restatement (Second) of Contracts § 33 (1979)

## MUJI 18.8

**IMPLIED EMPLOYMENT CONTRACT – NEW TERMS**

An implied employment contract may be modified or replaced by subsequent writings, conduct, or oral statements of the employer. When an employer communicates to the employee new policies, procedures or other conditions of employment and the employee chooses to continue the employment, a new or modified implied employment contract is formed. The new terms of the new or modified implied contract supersede the prior terms.

*References:*

*Johnson v. Morton Thiokol, Inc.*, 818 P 2d 997 (Utah 1991)  
*Brehany v. Nordstrom, Inc.*, 812 P.2d 49 (Utah 1991)

CONTROLLING PRINCIPLES AND PRECEDENTS

The subject motions are to be resolved pursuant to U.R.C.P. Rule 56. The annotations ~~under~~<sup>are</sup> that rule on pages 171 and 172 and read as follows:

In case of motion for summary judgment the adverse party is entitled to have the court survey the evidence and all reasonable inferences fairly to be drawn therefrom in the light most favorable to him. *Morris v. Farnsworth Motel*, 123 Utah 289, 259 P.2d 297 (1953); *Thompson v. Ford Motor Co.*, 16 Utah 2d 30, 395 P.2d 62 (1964); *Bowen v. Riverton City*, 656 P.2d 434 (Utah 1982).

Where trial court granted defendant's motion for summary judgment on the ground that the plaintiff's own statement in his deposition showed that plaintiff was contributory negligent in causing his injuries, on appeal by plaintiff, contesting that ruling, Supreme Court was obliged to consider the evidence in the light most favorable to plaintiff. *Whitman v. W.T. Grant Co.*, 16 Utah 2d 81, 395 P.2d 918 (1964).

Submissions in support of or opposition to a motion for summary judgment should be looked at in the light favorable to the nonmoving party's position. *Durham v. Margetts*, 571 P.2d 1332 (Utah 1977); *Salt Lake City Corp. v. James Constructors, Inc.* 761 P.2d 42 (Utah Ct. App. 1988).

Because disposition of a case by summary judgment denies the benefit of a trial on the merits, any doubt concerning questions of fact, including evidence and reasonable inferences drawn from the evidence, should be resolved in favor of the party opposing

the motion. *Beehive Brick Co. v. Robinson Brick Co.*, 780 P.2d 827 (Utah Ct. App. 1989).

CONCLUSION

Respectfully submitted,



---

Robert B. Hansen  
Attorney for Plaintiff



status" on page 24 of the deposition of Vern Utley taken on March 12, 1998 and the word "unique" on page 26 of the same deposition (both underlined). He also presented some model Utah jury instructions and a list of cases with principles which should govern the disposition of such motions.

4. This Stipulation should be made part of a supplemental record in this case.

Dated this 23<sup>rd</sup> day of February, 1999.

  
\_\_\_\_\_  
Robert B. Hansen, Pro Se

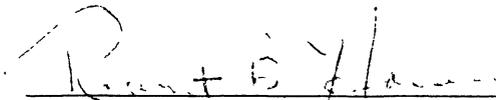
  
\_\_\_\_\_  
Gregory J. Sanders  
Attorney for Defendants

MAILING CERTIFICATE

I certify that the foregoing **STIPULATION REGARDING RECORD ON APPEAL** was sent to the following parties by placing a true and correct copy thereof in an envelope addressed to the parties listed below:

Gregory J. Sanders  
KIPP & CHRISTIAN, P.C.  
Attorneys at Law  
10 Exchange Place, #400  
Salt Lake City, UT 84111

and mailing the same, sealed, with first class postage prepaid thereon, in the United States Mail at Salt Lake City, Utah on this the \_\_\_\_\_ day of February, 1999.

  
\_\_\_\_\_  
Robert B. Hansen, Pro Se