

1953

Paul Pantages v. Sam Arge : Brief of Appellant

Utah Supreme Court

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

PAUL PANTAGES,
Plaintiff and Respondent,

vs.

SAM ARGE,
Defendant and Appellant

Case No.
7977

Brief of Appellant Sam Arge

FILED

JUN 1 - 1953

GEORGE E. BRIDWELL,
Attorney for Appellant

Utah Supreme Court, Utah

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IN THE
SUPREME COURT
OF THE
STATE OF UTAH

PAUL PANTAGES,

Plaintiff and Respondent,

vs.

SAM ARGE,

Defendant and Appellant

Case No.
7977

Brief of Appellant Sam Arge

FACTS OF THE CASE

In the month of September, 1951, Plaintiff and Defendant entered into a partnership agreement to buy and sell grapes upon an equal share and contribution basis. Defendant was to be the managing partner.

Pursuant to this agreement, the partners purchased a Ford truck in Defendant's name.

The only partnership grape purchase was made in California, said trip having been made by Plaintiff and one, Tom Argeropolis, an employee of the partnership.

The money for the purchase of the grapes and the expenses for said trip were furnished by Defendant.

A subsequent trip to Pocatello, Idaho for the purpose of selling some of said grapes was made by Tom Argeropolis at the instance of Defendant, as managing partner.

From the middle part of October, 1951, until June of 1952, Plaintiff had and used the truck upon a personal basis, independent of partnership business.

In June, 1952, finance payments due to Commercial Credit Company were delinquent and the finance company was threatening Defendant with suit and repossession of the truck.

Plaintiff refused to, or couldn't make payments; couldn't refinance it; and he concealed the truck from Defendant. In the same month Defendant took peaceable possession of the truck. He placed it for sale with a car agency. He obtained bids for it and finally sold the truck for a gross price of \$1,800.00, the highest bid.

The trial court refused to credit Defendant's capital

account with the following items, for the designated sums. - *Items 1 to 5, below.*

It is from the award of the trial court to Plaintiff of \$1,173.28 and the disallowance of Defendant's paid in capital in the sum of \$1,390.98, as above specified, that this appeal is taken. (R-13, 14, 17, 18, 18, 37, 38, 50, 97, 98, 118, 124, 125, 126, 131, 132, 141, 142, 150, 151, 154, 162, 163, 165, 166, 170, 171, 172.)

SPECIFICATION OF POINTS RELIED ON

The trial court erred in entering judgment for Plaintiff in the sum of \$1,173.28 because:

1. Wages for 3 weeks work paid to Tom Argeropolis; receipt therefor, Defendant's exhibit 4\$ 225.00
2. Expenses for grape buying trip to California, and sales trip to Pocatello, Idaho; receipts therefore, Defendant's exhibit 8\$ 309.72
3. Truck insurance payments; receipt therefor, Defendant's exhibit 2\$ 206.26
4. Difference between actual sales price of truck and the sum trial court held was a fair price\$ 500.00
5. Partnership accounting services, incurred by Defendant\$ 150.00

\$1,390.98

POINT I.

FACTS OF THE TRIAL SHOW THAT DEFENDANT, AS MANAGING PARTNER, WITH PLAINTIFF'S KNOWLEDGE, HAD TOM ARGEROPOLIS WORK AS A TRUCK DRIVER FOR THE PARTNERSHIP, AND THAT DEFENDANT PAID TOM ARGEROPOLIS \$225.00 FOR 3 WEEKS WORK, WHICH SUM WAS NOT CREDITED TO DEFENDANT'S CAPITAL CONTRIBUTION.

POINT II.

FACTS OF THE TRIAL SHOW THAT DEFENDANT PAID FOR ALL TRUCK AND LIVING EXPENSES ON THE GRAPE BUYING TRIP TO CALIFORNIA, UPON PARTNERSHIP BUSINESS, IN THE SUM OF \$309.72, WHICH SUM WAS NOT CREDITED TO DEFENDANT'S CAPITAL CONTRIBUTION.

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FACTS OF THE TRIAL SHOW THAT DEFENDANT PAID TRUCK INSURANCE IN THE SUM OF \$330.29, BUT THAT HE WAS ONLY CREDITED WITH THE SUM OF \$124.03 AS A CAPITAL CONTRIBUTION.

POINT IV.

A PARTNERSHIP IS NOT TERMINATED BY AN ACT OF DISSOLUTION.

POINT V.

FACTS OF THE TRIAL SHOW THAT, UPON THREAT

OF LOSS OF THE TRUCK BY REPOSSESSION, DEFENDANT, BEFORE PARTNERSHIP TERMINATION, SOLD THE TRUCK FOR THE BEST OBTAINABLE PRICE OF \$1,800.00, AND THAT TESTIMONY AS TO ACTUAL WORK SHOULD NOT BE CONSIDERED UNLESS THERE IS ALLEGATION AND PROOF OF FRAUD OR PERSONAL ENRICHMENT OF DEFENDANT.

POINT VI.

FACTS OF THE TRIAL SHOW THAT DEFENDANT REASONABLY AND NECESSARILY OBLIGATED THE PARTNERSHIP FOR \$150.00 FOR ACCOUNTING SERVICES BEFORE TERMINATION OF THE PARTNERSHIP, WHICH SUM WAS NOT CREDITED TO DEFENDANT'S CAPITAL CONTRIBUTION.

ARGUMENT

POINT I.

FACTS OF THE TRIAL SHOW THAT DEFENDANT, AS MANAGING PARTNER, WITH PLAINTIFF'S KNOWLEDGE, HAD TOM ARGEROPOLIS WORK AS A TRUCK DRIVER FOR THE PARTNERSHIP, AND THAT DEFENDANT PAID TOM ARGEROPOLIS \$225.00 FOR 3 WEEKS WORK, WHICH SUM WAS NOT CREDITED TO DEFENDANT'S CAPITAL CONTRIBUTION.

The testimony of Plaintiff reveals that Defendant was to be the managing partner, and that Tom Argeropolis was to assist in grape hauling, and that they entered into business on that basis (R-14, lines 2 to 18).

Plaintiff testified that Tom was to aid in the business, and did, in fact, work for both partners for a period of about three weeks (R-37, lines 22 to 30; R-38, lines 1 to 20). The three week period when Tom was so employed included his trucking grapes from California, and selling them in Pocatello, with the consent of Plaintiff. (R-40, lines 5 to 25; R-66, lines 1 to 29).

Tom received \$225.00 for this work. (Defendant's exhibit 4; R-81, lines 24 to 30; R-82, lines 1 to 9).

The record is bare of any suggestion that this is unreasonable, yet the trial court, purporting to allow this sum to Defendant, states in its Finding of Fact, Exhibit A, that it is a sales expense, yet fails to give Defendant credit for the expenditure, charging Defendant with receiving the full amount of all sales.

Were the lower court's decision upheld, Defendant would be required to stand the full burden of all wages paid to the only employee the partnership had.

POINT II.

FACTS OF THE TRIAL SHOW THAT DEFENDANT PAID FOR ALL TRUCK AND LIVING EXPENSES ON THE GRAPE BUYING TRIP TO CALIFORNIA, UPON PARTNERSHIP BUSINESS, IN THE SUM OF \$309.72, WHICH SUM WAS NOT CREDITED TO DEFENDANT'S CAPITAL CONTRIBUTION.

The uncontroverted testimony is that Plaintiff did not have any money when he and Tom left for California to buy grapes. (R-17, lines 17 to 22).

Defendant sent \$800.00 with which to purchase grapes and pay expenses. (Defendant's exhibit 3; R-81, lines 5 to 20).

Plaintiff and Tom paid \$620.00 for the grapes in California. (Defendant's exhibit 7; R-86, lines 4 to 17).

There was a \$180.00 balance, therefor, which was expended for trucking and living expenses for the trip to California and Pocatello, said expense items being contained in Defendant's exhibit 8. Further, the sum of \$29.00 additional was expended for like expenses, as shown in said exhibit. The total of \$309.72 was not allowed to Defendant as a credit.

Plaintiff on direct examination testified that he could not identify any of the charges evidenced in Defendant's exhibit 8, and that none of those items were charged when he was on partnership business (R-165, lines 20, 21; R-166, lines 3 to 5).

On cross-examination Plaintiff admitted that many of the charges therein noted were charges made on the trip to California. (R-171, line 30; R-172, lines 1 to 25).

There is absolutely no evidence that any of the

charges in Exhibit 8 were not partnership charges. Those with "T" on them were made by Tom, and those with "P" were made by Plaintiff. There is no evidence that Plaintiff paid any of them with his own money.

The trial court's Judgment, if sustained, would be a holding that either the trips didn't cost anything, or that Defendant had to pay for them by himself. This was a proved partnership with equal contribution. (Findings of Fact, paragraph I), and either result is completely untenable in law, and in good conscience.

Further, the record is completely barren of any evidence by Plaintiff that any of the items in Defendant's exhibit 8 were for anything but partnership purposes.

POINT III.

FACTS OF THE TRIAL SHOW THAT DEFENDANT PAID TRUCK INSURANCE IN THE SUM OF \$330.29, BUT THAT HE WAS ONLY CREDITED WITH THE SUM OF \$124.03 AS A CAPITAL CONTRIBUTION.

Defendant's exhibit 2 is a receipt for truck insurance paid by Defendant in the sum of \$330.29. (R-79, lines 28 to 30; R-80, lines 1 to 28). The trial court allowed credit to Defendant of only \$124.03. (Finding of Fact exhibit A).

The only rebuttal testimony offered against this item is found in Plaintiff's exhibit F, referred to at R-161, lines 29 to 30; R-162, lines 1 to 25, by Plaintiff, who states he doesn't know what it is, what date it was made, or what it means.

Defendant explains Plaintiff's exhibit F, admitted over objection, at R-108, 109, 110, and there is no evidence of even a slightly contradictory nature.

Here again, the trial court, upon no evidence, though Plaintiff has the burden of proof, disallows a capital contribution of Defendant's in the sum of \$206.26.

POINT IV.

A PARTNERSHIP IS NOT TERMINATED BY AN ACT OF DISSOLUTION.

The court in its Findings of Fact, paragraph III, states as a matter of law that when Defendant took peaceable possession of the truck on June 26, 1952, that he converted it, and thus the partnership was terminated. It is well settled in Utah and elsewhere that such is not the law, and that such an act results in dissolution, but not termination.

Title 48, Chapter 1, Sec. 27, 1953 U.C.A.

PARTNERSHIP NOT Terminated by dissolution —

On dissolution a partnership is not terminated, but continues until winding up of partnership affairs is completed.

Title 48, Chapter 1, Sec. 28 (2), 1953 U.C.A. Causes of Disolution — Dissolution is caused: (2) In contravention of the agreement between the partners, where the circumstances do not permit a dissolution under any other provision of this section, by the express will of any partner at any time.

The evidence is clear that the partners could not agree, and Defendant, to protect both parties, committed a positive act of dissolution by re-taking the truck and disposing of it, as will be set forth in Point V, following.

POINT V.

FACTS OF THE TRIAL SHOW THAT, UPON THREAT OF LOSS OF THE TRUCK BY REPOSSESSION, DEFENDANT, BEFORE PARTNERSHIP TERMINATION, SOLD THE TRUCK FOR THE BEST OBTAINABLE PRICE OF \$1,800.00, AND THAT TESTIMONY AS TO ACTUAL WORK SHOULD NOT BE CONSIDERED UNLESS THERE IS ALLEGATION AND PROOF OF FRAUD OR PERSONAL ENRICHMENT OF DEFENDANT.

Facts of the trial show that Plaintiff had the sole and exclusive personal use of the truck from October, 1951 to June, 1952. (R-49, lines 5 and 6). It is clear Plaintiff held it as his own (R-52, lines 3 to 5), but

could not refinance it ~~and~~ to relieve Defendant of liability on the finance contract. (R-162, lines 26 to 30; R-163, lines 1 to 20).

Defendant was threatened with writ for delinquent payments and repossession (R-153, lines 24 to 30; R-154, lines 1 to 20).

Defendant had to take the truck to protect both parties. Defendant was dealing with an uneducated man, as is revealed by Plaintiff's language and his own testimony at R-47, lines 26 and 27.

Defendant obtained many bids and had the truck placed for sale with a dealer. He took the best cash offer, which was \$1,800.00 (R-97, 98, 99).

The trial court held that the market value of the truck was \$2,300.00, and deducted the difference from Plaintiff's capital account.

Defendant sold the truck in winding up the affairs of the partnership, and he should not be thus penalized without evidence of fraud or bad faith.

POINT VI.

FACTS OF THE TRIAL SHOW THAT DEFENDANT
REASONABLY AND NECESSARILY OBLIGATED THE

PARTNERSHIP FOR \$150.00 FOR ACCOUNTING SERVICES BEFORE TERMINATION OF THE PARTNERSHIP, WHICH SUM WAS NOT CREDITED TO DEFENDANT'S CAPITAL CONTRIBUTION.

Facts of the trial show the accounting work done, the scope of it, and the reasonableness of the charge. (R-131, 132, 141, 142).

The partnership was not terminated when this work was done, as the trial court ruled.

The work was necessary to a winding up of the affairs of the partners.

This is an equity action for an accounting, and it is neither just nor equitable that the full burden of accounting expense upon winding up should be borne by only one partner.

CONCLUSION

It is urged that the trial court erred in its Judgment in that the Judgment is not sustained in fact, in law, or in good conscience.

It is urged that Defendant's disallowed items herein referred to in the total sum of \$1,390.98 should be offset against Plaintiff's Judgment in the sum of \$1,173.28,

which would leave a credit balance to Defendant of \$217.70. Said sum of \$217.70 should then be divided and Judgment awarded in favor of Defendant for the sum of \$108.85.

Respectfully submitted,

GEORGE E. BIRDWELL,

Attorney for Appellant.