

1989

# Co-Ax Enterprises v. The Triax Company : Unknown

Utah Court of Appeals

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Claron C. Spencer; Dale E. Anderson; Attorneys for Appellant.

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December 17, 1987

Geoffrey J. Butler, Clerk  
Supreme Court of Utah  
332 State Capitol Building  
Salt Lake City, Utah 84114

Re: Co-Ax Enterprises v. The Triax Company, Case No. 20033

Dear Mr. Butler:

I

As counsel for appellant, I wish you would bring to the attention of the justices of the Court the jury instruction No. 8 in this case which is set forth in the attached copy of page 909 of the record.

We make this request in response to a question from the Court, during oral argument, as to whether paragraph 5 in the Special Verdict referred to an express promise or to an implied promise as well.

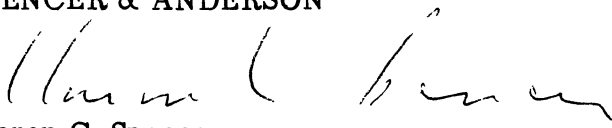
Instruction No. 8 shows that the jury was told that the "promise" spoken of in paragraph 5 of the Special Verdict was an "expressed" promise. Appellant's point is that the absence of an express promise does not prevent an implied obligation from arising by the implication or inference of the law from the nature of the contract as found by the jury.

II

We also wish to correct an error in the citation on page 10 of appellants' brief to Section 1295 of Williston's treatise on the law of contracts. The correct pages for Section 1295 are 32-50 in Volume 11 of the treatise. The language quoted by Professor Williston and in our brief is found at pages 38-39 of Volume 11.

Very truly yours,

SPENCER & ANDERSON

  
Claron C. Spencer

CCS:js

cc: William L. Nixon, Esq.

DEC 17 1987

Clerk, Supreme Court Utah

1 Instruction No. 8

2 A "promise" as used in these instructions, is an  
3 undertaking, however expressed, either that something shall  
4 happen or that something shall not happen, in the future.

5 Words which in terms promise the happening or  
6 failure to happen of some thing are to be interpreted as a  
7 promise or undertaking to be answerable for such proximate  
8 damages as may be caused by the failure to happen or the  
9 happening of the specified event.

10 The word "promise" and "guarantee" are inter-  
11 changeable.

12 Instruction No. 9

13 An "Agreement" is a manifestation of mutual  
14 assent by two or more persons to one another.

15 Instruction No. 10

16 The contract price agreed upon by the parties  
17 means the price originally agreed in the contract plus or  
18 minus adjustments for the subsequent changes agreed to by the  
19 parties.

20 Instruction No. 11

21 The interpretation by the parties to a contract,  
22 as shown by their conduct relating to the subject matter of  
23 the contract before any controversy arose between them, is  
24 one of the best indications of the true intent of the  
25 parties.