

1989

John P. Sampson and Milton R. Goff v. Paul H. Richins, Richtron Inc., Richtron Financial Corporation, Richtron General, and Frontier Investments : Reply Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Sampson and Goff v. Richins*, No. 890146.00 (Utah Supreme Court, 1989).
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UTAH SUPREME COURT
BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

JOHN P. SAMPSON,

Petitioner, Appellant
and Cross Respondent,

and

MILTON R. GOFF, individually
and as Trustee of MILTON R.
GOFF TRUST, an unincorporated
association,

Plaintiffs,

vs.

Supreme Court No.
890146

PAUL H. RICHINS; RICHTRON, INC.,
a Utah corporation; RICHTRON
FINANCIAL CORPORATION, a Utah
corporation; RICHTRON GENERAL,
a Utah corporation; and FRONTIER
INVESTMENTS, a Utah corporation,

(Priority No. 13)

Respondents and
Cross Appellants.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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FILED
MAY 2 1993

Clerk, Supreme Court, Utah

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ARGUMENT

POINT I

THE COURT OF APPEALS HAS MISCONSTRUED
THIS COURT'S DECISION OF LEIGH
FURNITURE AND HAS MISSTATED THE
ELEMENTS REQUIRED TO FIND THE TORT OF
INTENTIONAL INTERFERENCE WITH ECONOMIC
RELATIONS.

Respondents in their Brief in Opposition to Petition for Writ
of Certiorari have listed a number of acts which they claim

constitute the "improper means" of Sampson in this affair.

(Respondents Brief, pp. 1-14). First, it should be observed that many of these purported "improper means" were not specifically relied upon by the lower court in making its decision. See, Petition, pp. 11-12. Thus, Respondents have again attempted to expand the claimed wrongful acts which were not utilized by the court in reaching its decision.

Moreover, even if it is assumed that all of the various events listed by Respondents constitute the "improper means" relied upon by the court, a finding of predatory conduct still cannot be made. It is undisputed that both Sampson and Richins were in a hotly contested battle over the control of the limited partnerships. As noted in the Petition, the reasons that Sampson even came into the picture were simply that Richins' business was financially collapsing and Richins voluntarily withdrew from any control thereby essentially throwing supervision of the limited partners into Sampson's lap. Later, Richins, for whatever reason, decided he wanted the control back and battled furiously with Sampson and certain limited partners to regain control.

Admittedly, both parties did everything they could to strengthen their own position and weaken that of the other. Both made mistakes in judgment and in legal technicalities. However, it is submitted that neither party can be said to have used "improper means" during this raging battle. Both parties attempted to influence the various limited partners by communicating with them both directly and indirectly. Both parties attempted to gain legal control of the general

partnerships in order to receive and distribute the assets of the partnerships. Both parties believed that they were in the right and that the other party was in the wrong.

As noted in the Petition, however, none of these actions are of the type of conduct specifically prohibited in the Leigh Furniture case or in the Oregon decisions upon which Leigh Furniture was based. If this type of action is prohibited then every attempted take-over of a corporation, every stockholders' election for new directors, and hundreds of other examples which occur every day in the business environment would give rise to a myriad of tortious interference lawsuits.

There is clearly certain types of conduct which under any circumstances would give rise to liability. If Sampson had hired thugs to intimidate Richins into withdrawing from the contest, if Sampson had bribed government officials or other interested parties, if Sampson had committed fraud or attempted to use unlawful trade practices to drive Richins out of business, then no claim could now be asserted by Sampson in this case. However, these types of blatant acts did not occur. Rather, Sampson is charged with giving erroneous legal advice, failing to ethically protect the interests of Richins even though he believed he never represented Richins, assisting the Internal Revenue in collecting on delinquent taxes owed by Richins, and a host of other acts which in and of themselves cannot be said to be predatory per se.

In Leigh Furniture the defendant filed two lawsuits against the plaintiffs. The filing of a lawsuit cannot be said to

be an "improper means" in and of itself. Thousands of lawsuits are filed each week by parties seeking to assert valid claims. Yet, this Court concluded that the filing of the lawsuit was an "improper means" because the lawsuits were "groundless". Thus, this Court essentially determined as a factual matter that the suits were filed in bad faith for the sole purpose of injuring the plaintiff. It was not the filing of a lawsuit but the filing of a bad faith lawsuit which created liability in that case. This distinction is critical and must be explained in a subsequent decision to prevent the present confusion which now exists in the lower courts.

Richins acknowledges that the lower court entered inconsistent findings as to the intentions of Sampson. (Richins' Brief, pp. 17-18). While finding, on the one hand, that Sampson was motivated by a vendetta to oust Richins, the court also found that Sampson acted in good faith in trying to represent the interests of the limited partners. The court analyzed good faith in terms of punitive damages but failed to do so in terms of "improper means".

A review of the cases in which tortious interference claims are made reveals that almost all of them will involve instances where both compensatory and punitive damages are allowed. In Leigh Furniture, for example, the same bad faith which created the "groundless lawsuit" also gave rise to the punitive damage award. In this case, however, there is an internal inconsistency with finding that Sampson acted improperly but did so for a proper

motive and with good intentions.

Finally, Richins' claim that "good faith" is a privilege is simply wrong. (Richins' Brief, p. 18). As noted in the Petition a person who asserts a privilege does so regardless of any finding of tortious liability. The status of the person rather than his good faith belief is what gives the protection to circumvent liability from the tort. For example, in Searle v. Johnson, 709 P.2d 328 (Utah 1985) this Court held that the privilege of petitioning the government for grievances overrides any action of boycotting which would otherwise be considered tortious interference. In effect, therefore, a "privilege" immunizes an otherwise culpable defendant.

For the reasons originally stated in the Petition, therefore, the Court of Appeals erred in failing to recognize the various distinctions required in analyzing the conduct in a tortious interference case and therefore this Court should exercise its power to correct the present confusion and injustice.

POINT II

THE COURT OF APPEALS IMPROPERLY APPLIED
APPELLATE RULES OF CONSTRUCTION IN
CREATING A FINDING OF FACT FOR SPECIAL
DAMAGES WHICH WAS NEVER MADE BY THE LOWER
COURT AND WHICH WAS CONTRARY TO THE LOWER
COURT'S SPECIFIC FINDINGS.

Richins contends that the discussion by the court on page 232 of its Verdict somehow justifies the finding on page 234 of \$250,000 general damages. This argument is clearly incorrect for several reasons. First, the lower court specifically informed counsel during the motion for new trial that the \$250,000 was considered as general damages. It is therefore a complete fiction

to try to find a justification for this award in the Court's Findings when the Court did not believe that specific itemized damages were necessary.

Second, the amount in the bank account of \$288,597 is obviously not \$250,000. Moreover, the amount discussed on page 232 of the Court's Verdict which Richins now recites is \$274,320. Thus, none of the three amounts are the same.

Finally, the Court never concluded that the money from the bank accounts was wrongfully used by Sampson but instead essentially concluded that the money had been used on behalf of the limited partnerships. Without this finding of wrongful taking no award can be justified.

Richins then cites several cases of this Court which supposedly justifies the actions of the Court of Appeals and the lower court. (Richins' Brief, pp. 20-22). The Peterson, Allphin and Foss Lewis & Sons Construction Co. cases all involve the application of legal theories to affirm a decision of the lower court. In each instance, a statute or other legal principle was applied by the appellate court even though it had not been applied by the district court. This rule, however, is not appropriate in the instant case since we are not dealing with legal principles of liability but factual findings.

The Bastian and Winsness cases are also illustrative of the errors committed. In Winsness the lower court dismissed a lawsuit for failure of the plaintiff to prove lost profits from the unlawful closing of a service station. This Court held that there were means available by which the plaintiff could produce

credible evidence to establish those profits and therefore it was improper to dismiss the claim on the basis of speculation. (In light of Richins' footnote 8 of his Brief, p. 21, it may be noted that Sampson's present counsel served as co-counsel in the Winsness case for the successful appellant).

The Bastian case relied upon by Richins strongly supports the position of Sampson. In that case the general principles of speculative damages was cited and the court noted that a defendant may not escape liability because the amount of damage cannot be proved with precision. In reversing the decision of the lower court, however, this Court stated:

In this case, however, we have no way of knowing from the Findings of Fact on what basis the crop damages were computed. The Findings do not indicate either the theory on which the damages were computed or the dollar values used to reach the figure of \$2,966. The Findings simply state that the damage to the crop amounted to that figure. . . .

The Findings of Fact must provide a basis for determining whether there is a rational basis for the award of damages. Proper findings are essential to enable this Court to perform its function of assuring that the findings support the judgment and that the evidence supports the findings. . . .

Our concern as to the basis for the damage award is furthered by a minute entry made by the trial judge showing damage of \$2,817 to the crops, the cost of harvesting to be \$1,408.75, the value of stubble and court costs to be \$1,568 and damage to the pipe of \$500. We are not able to ascertain from these or any other figures how the award of \$2,966 was computed. Therefore, we have no alternative but to remand the case for the entry of findings which supports the damage award, or if the award is erroneous for a redetermination of damages. See, Silliman v. Powell, Utah, 642 P.2d 388 (1982). 661 P.2d 953, 597 (Utah 1983).

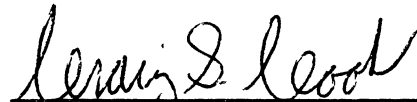
Here, there is equally no basis to justify the \$250,000 award and the Court of Appeals erred in applying the principle of

speculative damages to the facts of this case.

CONCLUSION

For these reasons, therefore, Petitioner respectfully requests that certiorari be granted and that these manifest errors be corrected.

Respectfully submitted this 1st day of May, 1989.



Craig S. Cook
Attorney for Sampson

MAILING CERTIFICATE

I hereby certify that I mailed four true and correct copies of the foregoing Reply Brief in Support of Petition for Writ of Certiorari to John T. Anderson, Biele, Haslam & Hatch, 50 West Broadway, No. 400, Salt Lake City, Utah 84101 this 1st day of May, 1989.

