

1989

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

Utah Supreme Court

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John T. Anderson; Biele, Haslam & Hatch; Attorneys for Respondents.

Craig S. Cook; Attorney for Appellant.

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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.)
)
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,)
)
Respondents and Cross-)
Appellants.)
)

Supreme Court No. 890146
(Priority No. 13)

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

CRAIG S. COOK, ESQ.
3645 East 3100 South
Salt Lake City, UT 84109
Telephone: (801) 485-8123
Attorney for Petitioner,
Appellant and Cross-Respondent

JOHN T. ANDERSON, ESQ.
BIELE, HASLAM & HATCH
50 West Broadway, #400
Salt Lake City, UT 84101
Telephone: (801) 328-1666
Attorneys for Respondents
and Cross-Appellants

APR

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.

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,

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CRAIG S. COOK, ESQ.
3645 East 3100 South
Salt Lake City, UT 84109
Telephone: (801) 485-8123
Attorney for Petitioner,
Appellant and Cross-Respondent

JOHN T. ANDERSON, ESQ.
BIELE, HASLAM & HATCH
50 West Broadway, #400
Salt Lake City, UT 84101
Telephone: (801) 328-1666
Attorneys for Respondents
and Cross-Appellants

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STATEMENT OF THE CASE

A. Nature Of The Case And Course of Proceedings.

Respondents, Paul H. Richins ("Richins"), Richtron, Inc. ("Richtron, Inc."), Richtron Financial Corporation ("Richtron Financial"), and Richtron General ("Richtron General") (collectively, the "Richins Parties") accept generally the statement of the case set forth by petitioner, John P. Sampson ("Sampson"). However, the proper determination of Sampson's

petition for writ of certiorari (the "Petition") requires Sampson's statement to be clarified and supplemented in two important respects.

First, as Sampson accurately states, the original complaint in this case was filed in the name of Robert J. Osborn for the ostensible purpose of enforcing in the State of Utah a judgment obtained by Osborn (the "Osborn Judgment") against the Richins Parties in the State of Oregon. However, Sampson fails to state that the Osborn Judgment was one of the many litigation matters for which the Richins Parties retained Sampson to protect their interests (R. 2079, 2083; Exhibits 64 and 67); that rather than negotiating a compromised settlement of the Osborn Judgment as requested by the Richins Parties, Sampson purchased in his own name the Osborn Judgment for the purpose of bringing suit against his former clients, the Richins Parties (R. 2050-51, 2058-59); that after the Richins Parties were served with the summons and complaint in this case, they learned from Osborn that he had previously sold the Osborn Judgment to Sampson and asserted no further interest in the judgment (R. 2051); that upon discovering that fact, the Richins Parties moved to dismiss the action on the basis that it was not being persecuted in the name of the real party in interest Id.; that in response to that motion, Sampson admitted that he had acquired the Osborn Judgment and was indeed the real party in interest Id.; and, that the primary purpose for

which Sampson purchased the Osborn Judgment was to preserve claims against his former clients in his ongoing efforts to take control of the twenty-five limited partnerships in which either Richtron, Inc. or Richtron General was the sole general partner (collectively, the "Limited Partnerships") (R. 2058-59).

In addition, it is important to understand that during the summer of 1982, Sampson was in frequent contact with the United States Internal Revenue Service (the "IRS") for the purpose of providing it with information regarding the internal structure and business affairs of his former clients, the Richins Parties. (Exhibits 298 and 300). With that assistance, the IRS conducted a public auction in October, 1982 to sell a number of assets of the Richtron Companies. (R. 2125-26). Sampson, appearing on behalf of several investors in the Limited Partnerships, submitted the highest bid and thereby apparently¹ acquired substantially all of the assets of the Richtron Companies. Id. Shortly thereafter, Sampson issued a threat to the Richins Parties' legal counsel that unless counsel permanently ceased his representation, Sampson would seek "sanctions" and unspecified "other" relief against him. (R. 2131-32, 2231-32). The district court concluded that Sampson's

¹ After the IRS sale, the Richins Parties sought and obtained from the United States District Court for the District of Utah an order voiding the sale on the grounds that the IRS failed to comply with several requirements governing the sale of the taxpayer's assets.

threat was "bizarre" and constituted "unprofessional conduct." Id.

B. Statement of Facts.

Contrary to Sampson's assertion that his conduct was undertaken in "good faith" and involved only "technical violations", See Petition at 18, the factual record upon which the trial court based the Judgment and upon which the Court of Appeals affirmed it establishes something completely different: a calculated scheme, ". . . one of greed and a vendetta to oust Richins [from the Limited Partnerships] and take complete control." (R. 2159; Finding No. 93). The general contours of Sampson's intentional interference with the Richins Parties' contractual relations as general partners of the Limited Partnerships is set forth below.

1. Sampson's initial interference with the Richins Parties' management and control of the Limited Partnerships.

On May 29, 1980, Richins conducted a meeting of the Catlow Valley Farms Limited Partnership at which many of the limited partners were in attendance. (R. 2103, 2107-08). Sampson, who was retained by two of the limited partners to evaluate their interests in that partnership, also attended the meeting. (R. 2076-77). After Richins informed those in attendance that two judgments (including the Osborn Judgment) had recently been entered against the Richins Parties, Sampson began sowing the seeds of investor discontent:

His [Sampson's] actions there were a bit more than just privately counseling his two clients, for he not only recommended to those at the meeting and got started the movement to have Richtron Financial file for bankruptcy under chapter 11 proceedings, but he also expressed the legal opinion to all present that he did not think Richtron Financial could keep the mark-up equity arising from Richtron Financial's resale of the farm property to the Catlow Valley Partnership for an amount in excess of what it paid for it, which was a theme which Sampson repeatedly [and erroneously] expressed in the months and years ahead.

(R. 2076-77).

As shown below, Sampson used this meeting as a springboard to launch his assault on the interests of the Richins Parties and gradually seize control of the Limited Partnerships.

2. Sampson's tenure as legal counsel for the Richins Parties and his betrayal of their trust.

At a Limited Partnership meeting on June 26, 1980, Sampson and two of his clients agreed to purchase the capital stock of the Richtron Companies for \$700,000. (R. 2078). At that time, Richins informed Sampson that he anticipated that several creditors would be filing lawsuits against the Richtron Companies in the near future. (R. 2078-79). Sampson instructed Richins to send him any such complaints and told Richins that he ". . . would answer and stall them off." Id. Pursuant to that understanding, Sampson ". . . soon became involved in handling certain legal matters for Richins and his companies." (R. 2079). Specifically, Sampson

agreed to represent the Richins Parties and protect their interests in at least fourteen separate matters. (R. 2079-83). After agreeing to answer and otherwise take care of those litigation matters, Sampson failed to do so, thereby allowing at least five cases to result in the entry of default judgments against the Richins Parties. (R. 2081).

Notably, one of the matters in which Sampson agreed to assist the Richins Parties was negotiating a compromised settlement of the Osborn Judgment. In that regard, Sampson participated with Richins in seeking to negotiate a settlement of Osborn's claim during a meeting on July 1, 1980. (R. 2079). While the district court found that the ". . . certainty of the existence of any attorney/client relation between Sampson and Richins during discussions with . . . Osborn. . . is by no means clear," R. 2079, the record is undisputed that one of the files that Mr. Gillette turned over to Sampson for Sampson's attention in August, 1980 was the Osborn file. (R. 2083; Exhibits 64 and 67). That was consistent with Richins' understanding. (Exhibit 118).

In evaluating the extent to which Sampson's conduct deviated from the standard of care customarily imposed upon lawyers in the representation of their clients, the district court concluded that:

Sampson's acceptance of the representation of defendants in various lawsuits as set forth in the findings and his failure to answer or otherwise respond, or to take steps for defendants to obtain other counsel and thereby

avoid defaults, constituted negligence and a failure to measure up to the standard of care to be expected of members of the legal profession.

(R. 2209).

3. Sampson's solicitation, receipt and wrongful retention of capital contributions and crop proceeds.

Beginning in late June, 1980, some of the limited partners insisted, and Richins consented, that Sampson serve as the initial repository of capital contributions. (R. 2112). That mechanism was put in place to insure some degree of control over how the funds were spent. Id. (R. 2150). Importantly, Sampson was in all instances to ". . . pass the funds through to Richins for payment of pressing obligations" of the Limited Partnerships. (R. 2112). In classic understatement, the district court observed:

That plan was not followed to the letter and Sampson began placing and retaining partner contributions in his trust accounts at his bank, and particularly so when the settlement agreement [between the Richins Parties and the limited partners] was not approved.

(R. 2150). Indeed, the extent to which Sampson deviated from the "letter" of the agreement is staggering: from June 27, 1980 to October 29, 1984, he solicited and received approximately \$1,522,000.00 of capital contributions and proceeds derived from the sale of crops cultivated on the Limited Partnerships' properties. (R. 2265). Richins repeatedly made demand on Sampson to comply with the original agreement by relinquishing the proceeds

to the Richtron Companies that were then (and, as the district court concluded, always had been) the sole general partner of the Limited Partnerships. (R. 2056, 2226; Exhibits 54, 147, 161, 162, 163, 179, 182, 184, 188, 195, 196, 198, 204, 206, 209).

4. Sampson's repeated efforts to stop the Richins Parties from being repaid loan advances.

In early June, 1980, Sampson informed numerous limited partners that the Richins Parties were not entitled to the repayment of any loan advances they had previously made to the Limited Partnerships. (R. 2100-01, 2148). He "repeatedly" reiterated that statement "both orally and in letters." (R. 2148). The amount of those advances exceeded \$300,000.00. (R. 2100). As a result of Sampson's statements, the limited partners refused to consent to the Limited Partnerships' repayment of the loan advances to the Richins Parties. (R. 2110-2112).

Another important result of Sampson's statements regarding repayment of advances was to prevent consummation of an early settlement of the Limited Partnerships' affairs. (R. 2112-13). In the words of the district court:

A major stumbling block [to settlement] was the insistence of a few partners that nothing should be paid to Richins which factor, I believe, and so find, was based in part upon Sampson's early and repeated statements that the partnerships were not obligated to repay advances. Id.

5. Sampson floods the limited partners with letters criticizing the Richins Parties and urging that limited partners to insert his corporations as general partner.

By early December, 1980, the long hoped-for settlement between the Richins Parties and the limited partners had fallen through. (R. 2112). At that point, Sampson prepared and sent to all of the limited partners of the Limited Partnerships a letter dated December 2, 1980. (R. 2119-20; Exhibit 7). That letter sets forth in astonishing detail and with almost palpable rage, a plan that Sampson and several of the limited partners had conceived to wrest control of the Limited Partnerships from the Richtron Companies. In that letter, Sampson made a number of inflammatory and ultimately destructive recommendations to all of the limited partners.² Among those recommendations was that the investors refuse to settle with the Richins Parties; that the investors not pay any monies to the Richins Parties; that the investors stop payment on any checks previously issued to the Richins Parties; that the investors sue the Richins Parties for fraud and breach of fiduciary duty; that the investors send all further monies to Sampson, and not the Richins Parties; that the investors consent

² It is important to recall that Sampson represented only 2 of the 130 investors in the Limited Partnerships. (R. 2142). As the district court concluded with apparent exasperation, Sampson "never fully specifically identified" any of the additional clients whom he purportedly represented. (R. 2159).

to Sampson inserting his professional corporation as successor general partner of the Limited Partnerships; that the investors give their voting proxies to Sampson; and, that the investors pay substantial compensation to Sampson. Id.

During the next three years, Sampson sent numerous letters to the investors in which he denigrated the Richins Parties and sought to obtain investor support for his plan to seize control of the Limited Partnerships. In so doing, Sampson ". . . had for all practical purposes reduced Richins' control in partnership affairs to a letter writing role." (R. 2161).

6. Sampson's acquisition of the Osborn Judgment.

Immediately after sending the December 2, 1980 letter, Sampson contacted Osborn and Osborn's legal counsel for the purpose of buying the Osborn Judgment. (R. 2050). Those discussions resulted in a January, 1981 agreement whereby Osborn agreed to sell the Osborn Judgment to Sampson for \$40,000.00, \$20,000.00 of which was to be paid immediately and the balance of which was to be paid within three months. Id. Accordingly, on January 23, 1981, Sampson sent a check in the amount of \$20,000.00 to Osborn's legal counsel. Id. Several days later, counsel transmitted to Sampson an assignment of the Osborn Judgment that recited on its face that in consideration of the sum of \$40,000.00, Osborn assigned to Sampson personally all of his right, title and interest in and to the Osborn Judgment. (R. 2050-52). In a cover letter accompanying

that assignment, Osborn's counsel wished Sampson "good luck on your proceedings against the [Richins Parties]." (Exhibit 17). For obvious reasons, Sampson did not inform the Richins Parties of that acquisition. (R. 2051).

Both the initial \$20,000.00 (and the additional \$45,000.00 that Sampson later paid to Osborn after Sampson defaulted in his payment of the required initial installments) were derived from monies paid to Sampson by investors in the Limited Partnerships. (R. 2050). Sampson's admitted purpose for acquiring the Osborn Judgment was for to preserve and assert a claim against the Richins Parties by bringing an action thereon. (R. 2059, 2203). Accordingly, the district court concluded that Sampson's purchase of the Osborn Judgment violated Utah Code Ann., §78-51-27, which prohibits a lawyer from acquiring a ". . . demand of any kind for the purpose of bringing an action thereon. . ." (R. 2202-3). It further concluded that Sampson's dual violations of that statute were "a serious violation of law." (R. 2124).

7. Sampson's cooperation with the IRS as an additional vehicle for dismembering the Richins Parties.

During 1982, and while simultaneously pursuing the conduct described above, Sampson also communicated freely with the IRS in seeking to assist it in identifying and describing various assets owned by his former clients, the Richtron Companies. (Exhibits 298 and 300).

Shortly thereafter, on October 29, 1982, the IRS conducted a public auction for the purpose of seeking to sell the various assets of the Richtron Companies. (R. 2125-26). Sampson, as the only bidder at that sale, purported to acquire the Richtron Affiliates' assets. Id.³

8. Sampson's ongoing solicitation and use of monies from some of the limited partners of the Limited Partnerships.

From June, 1980 to November, 1982 (just after the IRS sale at which Sampson purported to acquire whatever interest the Richtron Companies had in the Limited Partnerships), Sampson solicited, received and disbursed ". . . at least \$645,000.00 from and for the limited partners and their partnerships." (R. 2123). In doing so, he directed the investors to send the monies to ". . . him and not to Richins." Id.⁴ From November, 1982 to October, 1984, Sampson received an additional \$900,000.00, resulting in total receipts for the four and one-half year period of approximately \$1,522,000.00. (R. 2265). Thus, during that period of time, ". . . Sampson had

³ As indicated at n. 1, supra, that sale was, at the instance of the Richins Parties, later voided by the United States District Court for the District of Utah.

⁴ Indeed, Sampson's solicitation of monies from investors in the Limited Partnerships was shockingly direct. For example in a letter dated January 7, 1981 sent to all investors, Sampson stated: ". . . since we are now taking over all of the partnerships would you please make all those payments [assessments previously made by the Richtron Companies] to me." Exhibit 183.

taken over and assumed control of the twenty-five partnerships, and he was receiving all of the funds, disbursing them and using them in whatever way he determined. He continued such control for five years, yet produced no evidence as to what had happened to those partnerships." (R. 2158). His use of those partnership funds was determined by the district court to be "unauthorized" because the Richtron Companies ". . . remained general partner with complete control over partnership affairs." (R. 2236). So long as Sampson failed to lawfully install his corporations as successor general partner of the Limited Partnerships, he had "no legal authority to make such decisions regarding partnership assets." (R. 2056).

Notably, from the moment the federal court voided the IRS tax sale on May 16, 1984 (R. 2157), the legal ability of Sampson and his limited partner clients to undertake any further efforts to wind upon the affairs of any of the Limited Partnerships ". . . ended then and there." (R. 2231). However, even after the entry of that order, the two bank accounts which he controlled -- the Ag-Management account and the Consolidated Farms account -- had a balance of approximately \$289,000.00. (R. 2229, 2244, 2263, 2276). That amount, all of which legally belonged to Richtron, Inc. and Richtron General, is greater than the amount of consequential damages awarded to Richtron, Inc. and Richtron General. (R. 2278).

9. Sampson's concealment of his predatory conduct.

Sampson boasted in a letter sent to all investors that he had creatively concealed from the Richins Parties -- his own former clients -- the financial information necessary to trace his use of the Limited Partnerships' funds:

I wanted him [Richins] to spend all his time occupied at doing something, trying to figure out what we had done. I have always known that if he went through the proper procedures in court he could get the information. I simply wanted him to spend all his time and money to do it. (Exhibit 88).

C. General Overview of Case.

The district court cogently summarized its decision as follows:

The record in summary thus shows that in May, 1980, Richins and his companies had control of at least twenty-five limited farm partnerships with assets and liabilities of such a nature that they had serious financial problems in May, 1980, when Sampson first became involved. It further shows that when Sampson first got involved he had nothing in the twenty-five partnerships except two clients that wanted advice. By Sampson's act and conduct by the end of 1980 -- within seven months -- Sampson had taken over and assumed control of the twenty-five partnerships, disbursing them and using them in whatever way he determined.

. . .

Sampson suggested from time to time that his sole objective was to salvage the partnership assets for the limited partners to the point of at least getting back their investments. The evidence does not show that all investors joined in retaining Sampson as their attorney or their proxy, but the evidence does make

clear that Sampson's main goal and effort soon became one of getting rid of Richins from all partnerships and obtaining control thereof for himself and his clients whom he never fully specifically identified. I think the evidence shows, and so find, that his self-declared benevolent motive soon changed to one of greed and a vendetta to oust Richins and take complete control.

. . .

As floundering as the partnerships were, Sampson saw value there and spent what now totals six years in achieving what he now has, whatever it may be, leaving Richins and his companies with no tangible assets or values.

(R. 2158-59, 2275) (Emphasis added).

ARGUMENT I

In Affirming The District Court's Judgment, The Court of Appeals Faithfully And Methodically Applied The Principles And Rationales Of Leigh Furniture and Carpet Co. v. Isom

Sampson asserts in the Petition that the Court of Appeals' decision is erroneous for three reasons: (i) the "majority" of the acts performed by Sampson, and on which the Court of Appeals affirmed the Judgment, do not constitute "improper means" within the meaning of this Court's decision in Leigh Furniture and Carpet Co. v. Isom, 657 P.2d 293 (Utah 1982), (ii) the Court of Appeals failed to recognize that ". . . a lack [of] good faith is a prima facie element for a plaintiff to establish to show certain actions are indeed 'improper'" and (iii) the element of a defendant's "good faith" is not the functional equivalent of the affirmative defense

of privilege. (Petition at 12, 13). Those assertions are, however, belied by both the factual record relied upon by the district court in entering the Judgment and by a fair reading of Leigh Furniture.

A. The Factual Record Establishes, and the Court of Appeals' Decision Identifies, a Wide Array of Intentional Interference and Improper Means of Contract Interference by Sampson.

Sampson's conduct, as set forth in pp. 2-15, above and in pp. 9-11 of the Court of Appeals' decision, is clearly intentional. When aggregated, it constitutes a pattern of unlawful conduct crossing the ". . . threshold beyond what is incidental and justifiable to what is tortious." 657 P.2d at 306. Indeed, Sampson's four year pattern of tortious activity was accomplished through conduct far more serious and pervasive than those found to be actionable in Leigh Furniture.

B. Neither Leigh Furniture nor the Cases on which it is Based Requires a Plaintiff to Establish a Defendant's Lack of Good Faith as a Separate Element of a Plaintiff's Prime Facie Case.

There are at least three separate reasons why there is no merit to Sampson's claim that the Richins Parties must establish his lack of good faith as an additional element of their prima facie case. First, the presence or absence of "good faith" is relevant only to the element of improper purpose enunciated by Leigh Furniture. It is not an additional element to be engrafted

on the improper means prong of the tort. To the extent the Richins Parties established at least one improper means to effectuate Sampson's intentional interference, Sampson cannot insulate himself from liability by claiming that those means were undertaken in "good faith." All that Leigh Furniture requires, and all that the Court of Appeals' decision held, was that once an intentional interference accomplished by an improper means is established, the state of mind of the defendant is, from the standpoint of the plaintiff's prima facie case, unnecessary to establish liability.

Second, the cumulative effect of Sampson's deployment of multiple means of contract interference makes any finding of good faith factually impossible. Sampson's purchase of the Osborn Judgment for the primary purpose of preserving and asserting claims against his former clients (R. 2058-59); his unethical disclosure to the IRS of his former client's business assets and subsequent purchase of those assets at the sale (R. 2125-260; his purposeful and wrongful solicitation, receipt and retention of investor capital contributions and crop proceeds (R. 2150) and; his subsequent efforts to conceal the extent of his tortious conduct, See Exhibit 88, to name a few, militate strongly against any finding of good faith.

Finally, Sampson's citation to the district court's Findings setting forth his supposed absence of bad faith, See Petition at 15, is misleading in that the findings relate solely to the court's

decision not to award punitive damages. These findings obviously conflict with the court's earlier findings that Sampson's conduct was actuated by "greed" and a "vendetta to oust Richins," R. 2159 and by a ". . . desire to do harm to the Richins Parties for its own sake." Id. But, as the Court of Appeals' decision properly noted, the conflict normally would be resolved by resort to the underlying record. Decision at 16. Sampson's failure to provide that record, however, precludes that inquiry.

C. The Issue of a Defendant's Supposed Good Faith Constitutes a Claim of Legal Privilege Which Must be Raised as an Affirmative Defense.

Sampson's reliance on a standard of "good faith" is nothing more than an assertion that he was legally privileged to carry out the conduct that he did. However, he failed to plead privilege as an affirmative defense in his reply to the Richins Parties' second amended counterclaim. (R. 1656-63). That failure, of course, constitutes a waiver of the affirmative defense, See Utah R. Civ. P., 12(h) and cannot now be raised for the first time on appeal. Manger v. Davis, 619 P.2d 687 (Utah 1980).

Thus, the Court of Appeals' decision suffers from none of the defects which Sampson ascribes to it. The Petition accordingly must be denied.

ARGUMENT II

The Court of Appeals Properly Affirmed The District Court's Damage Award

In seeking to challenge the Court of Appeals' affirmance of the district court's damage award of \$250,000⁵, Sampson argues that the Court of Appeals ". . . took an incredible leap and essentially wrote its own Findings of Fact as to what the \$250,000 was based on." Brief at 21. The Court did no such thing.

The district court expressly found and concluded that the date on which the federal district court voided the IRS tax sale on which Sampson based his claim of interest in the Limited Partnerships -- May 16, 1984 -- "ended then and there" Sampson's right to take ". . . any further steps in the winding up of any affairs of the partnerships in which the Richtron Companies remained as general partner." (R. 2231). The court then observed that despite the entry of that order, Sampson "undauntingly"⁶ continued from that point to collect and receive additional limited partner monies which, as of October 29, 1984 (the last day for which the Richins Parties were able to obtain Sampson's accounting

⁵ It is important to note that the Petition does not seek this Court's review of the propriety of three other components of damages: (i) \$30,974.50 to Richtron Financial (ii) \$4,222.50 to Richtron, Inc. and (iii) \$2,027.40 to Richins.

⁶ R. 2276.

records) totalled \$288,597.00 -- \$245,597.00 of which were contained in the Consolidated Farms account and \$43,000.00 of which were contained in the Ag Management account. (R. 2229, 2263, 2276). Significantly, Sampson's use of the Limited Partnerships' funds was determined by the district court to be "unauthorized" because the Richtron Companies . . . "remained general partner with complete control over partnerships' affairs." (R. 2236). Thus, "Sampson had no authority to make decisions regarding partnership assets." (R. 2056).

Immediately after rendering its conclusions regarding Sampson's unlawful collection and retention of the \$288,597.00 after the federal court order was entered, the court concluded that the Richins Parties had established damages "of at least a consequential nature" that had been established with ". . . a reasonable degree of certainty by a preponderance of the evidence." (R. 2276).

Therefore, in fixing the Richins Parties' damages at \$250,000.00, the court had before it an eminently certain basis for fixing those damages -- the aggregate amount of all monies collected and retained by Sampson after entry and in violation of the federal court order. Thus, the \$250,000.00 damage award suffers from none of the lack of precision of which Sampson

complains. It has an abundantly "rational basis" in the record as required by Utah law⁷. As such it cannot be overturned.

That result is not altered by Sampson's argument that an appellate court cannot ". . . create a factual finding which does not exist." (Petition at 22). The Court of Appeals merely interpreted the district court's specific, detailed findings respecting Sampson's legally unauthorized retention of Limited Partnerships' funds in the amount of \$289,000 as an obvious basis for supporting its conclusion that Sampson's contract interference had damaged the Richins Parties in the amount of at least \$250,000. That the Court of Appeals had authority to do so has been repeatedly recognized by this Court. Peterson v. Peterson, 645 P.2d 37 (Utah 1982)⁸ (Court confirmed an alimony award on a basis considered by neither the court nor any of the parties -- the enactment of a statute controlling the respondent's entitlement to an award of alimony); Allphin Realty, Inc. v. Sine, 595 P.2d 860 (Utah 1979); ("Under the rules of appellate review, we affirm the trial court if we can do so on any proper ground even if the court below assigned an incorrect reason for its ruling."); Foss Lewis

⁷ Bastian v. King, 661 P.2d 953, 956 (Utah 1983); Winsness v. M. J. Conoco Distributors, 593 P.2d 1303 (Utah 1979).

⁸ Sampson's present counsel served as co-counsel for the unsuccessful appellant in that case.

& Sons Construction Company v. General Insurance Company of America, 30 Utah 2d 290, 517 P.2d 539, 540 (1973) ("whether or not the judge gave the correct reason for his ruling is of no importance, since he should be affirmed if he reaches the correct result.").


The Court of Appeals' faithful adherence to this salutary principle of appellate review requires no correction by writ of certiorari.

CONCLUSION

Neither of the arguments contained in the Petition has any substantive merit; neither presents the type of issue required or suggested by Rule 43, Supreme Court Rules. Therefore, the Petition should be denied.

DATED this 26 day of April, 1989.


BIELE, HASLAM & HATCH

By 
JOHN T. ANDERSON
Attorneys for Cross-Appellants

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed four copies true and correct copy of the foregoing BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI first class mail, postage prepaid on this 27 day of April, 1989, to the following counsel of record:

Craig S. Cook, Esq.
3645 South 3100 South
Salt Lake City, UT 84109



richin2.bri