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N. J. Meagher, Jr. et al v. Equity Oil Company et al :
Plaintiffs' Reply to the Answering Brief of Paul
Stock and Joe T. Juhan

Utah Supreme Court

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In the Supreme Court

OF THE

State of Utah

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N. J. MEAGHER, JR., et al.,

Plaintiffs,

VS.

EQUITY OIL COMPANY, a corporation, et al.,

Defendants.

PLAINTIFFS' REPLY TO THE ANSWERING BRIEF OF PAUL STOCK AND JOE T. JUHAN.

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1. PRELIMINARY STATEMENT.

We have carefully reviewed the Opening Brief filed by the Meaghers in light of the grave charges contained in the Stock-Juhan Answering Brief. Both authors of this brief now reaffirm each statement of fact and reassert each legal conclusion therein contained. We need not emphasize, to this Court, the weakness displayed by attorneys who seek to try opposing counsel rather than their case. We shall confine our argument in this reply to the issues presented under the Stock-Juhan statement of points.

**2. CONCERNING THE STOCK-JUHAN POINT 1, NAMELY, THAT
“THE DECEMBER 15, 1955 ORDER SHOULD BE REVOKED.”**

A. The argument here begins with the premise that the Dunford Decree, as affirmed, awarded an interest in the lease to Stock and Juhan. The Meaghers concede this. In fact, the Dunford Decree awarded Stock and Juhan, together, an undivided one-quarter interest in the lease which was necessarily carved out of the Phebus Half. Then the Stock-Juhan argument insinuates that unless Stock and Juhan are permitted to withdraw one-half of the impounded funds, they cannot enjoy the benefits awarded to them by the Dunford Decree as affirmed. Their Brief says, on p. 24: “Equity Oil Company was holding the money until the *further order of the Court.*” This statement might lead the Court into the same mistake that Judge Tuckett made when he inadvertently signed the order of December 13th. The argument ignores the fact that only proceeds allocable to the owners of one-half of the lease were or ever have been impounded. The proceeds attributable to the other half have always been free from impounding. Thus Stock and Juhan have been receiving their share from the free funds. It follows that Stock and Juhan, in asking for the order of December 13, 1955, were, in effect, asking Judge Tuckett to permit three-quarters of the lease proceeds to become free from impounding. When Judge Tuckett realized that this was the effect of the order of December 13, 1955, he vacated it. The vacating order of December 15th makes it clear that Judge Tuckett considered the order of December 13th to be inconsistent with the Interlocutory

Decree. This proves the lower court's intention that the Interlocutory Decree should be paramount.

B. Next the Stock-Juhan Brief argues that the Interlocutory Decree is surplusage because they claim the ruling on motions, dated October 14, 1955, as distinguished from the Interlocutory Decree, constituted the judgment. This point was raised by Weber in its assertion that the ruling of October 14th is the only appealable final order. We refer the Court to our answer to that argument, which is set forth in Section 4 of our reply to Weber's Answering Brief. It is incomprehensible to us that counsel will thus repudiate the very practice which they themselves adopted. However, even if the ruling of October 14th were deemed to be the judgment, the order of December 13th, directing payment of funds to Stock and Juhan, would still be reversible error because there is nothing in the ruling of October 14th, or in the Dunford Decree, which awards Stock or Juhan any proceeds allocable to the former Stock Half of the lease. The proceeds allocable to the Phebus Half of the lease (Stock and Juhan's only source of title) have never been impounded.

3. CONCERNING THE STOCK-JUHAN POINT 2, NAMELY, "THE INTERLOCUTORY JUDGMENT AND DECREE OF DECEMBER 13, 1955, IS BY ITS VERY NATURE INTERLOCUTORY AND NOT APPEALABLE."

This point, as raised by the Stock-Juhan Brief, is tantamount to a motion to dismiss the appeal as being

premature. There are four judicial pronouncements of Judge Tuckett which the appeals seek to review. They are (1) the order dismissing the Fourth Count; (2) the Interlocutory Judgment and Decree; (3) the order of December 13, 1955 authorizing payment of half of the impounded funds to Stock and Juhan, and (4) the order of December 15, 1955 vacating the order of December 13th. Obviously, if the Interlocutory Judgment and Decree does not qualify for review at this time because of its interlocutory aspects, the same applies to the other three rulings of the lower court which have been brought into question by the pending appeals. It would therefore seem that if this Court deems the appeals to be premature, a ruling to that effect is in order now to eliminate the unnecessary delay which would be involved in hearing the appeals on their merits.

There is no question but that appellate courts are loathe to permit litigation to proceed in piecemeal fashion. On the other hand, we believe the modern tendency is to subordinate this principle to the paramount policy which requires litigation to be administered in such a manner as to bring all issues to ultimate conclusion as rapidly as possible. These competing policies are well expressed in *Kasishke v. Baker* (C. A. 10th 1944) 144 F. (2d) 384, 385.

The pronouncements of the lower court which are here under review do not purport to dispose of all of the issues of the litigation. On the other hand, they do raise questions which, in their nature, are conditions precedent to determination of the remaining issues. In an accounting

suit it is desirable to first determine any issues which bear upon the plaintiff's right to have an accounting. If those issues are determined adversely to the plaintiffs, a great amount of unnecessary future litigation would be obviated. If those issues are determined in favor of the plaintiffs, the lower court will have the advantage of having the law of the case with respect to those issues and can then proceed with confidence to determine that which remains to be decided.

It was with these problems in mind that the Meaghers petitioned this Court for leave to file an interlocutory appeal. The same considerations caused the Meaghers to move this Court for an order directing further proceedings below to avoid any possible ambiguity in the record to be presented here. Those motions were denied. We have assumed that those rulings imply that the pending appeals will be heard notwithstanding the interlocutory aspects of the rulings of the lower Court.

In retrospect we are glad if this is the rule of this Court. We welcome any opportunity to isolate and determine issues in this case and to avoid confusion which results only in prolonging the litigation.

4. CONCLUSION.

Plaintiffs note that the Stock-Juhan Brief is silent with respect to the merits of the case. Nowhere have they dared to trace their chain of title to whatever interest they may have in the Sheridan Lease. If they did, it would be disclosed that the Dunford Decree gave the former Stock Half to the Meaghers and gave one-quarter of the lease (half of the Phebus Half) to Stock and Juhan together. Then they would be required to admit that under the "one-for-all, all-for-one" agreement they have committed themselves to divide their quarter interest with Weber. By that same agreement they would be entitled to a share of whatever Weber might acquire in the remainder of the Phebus Half. From this it would follow that the Meaghers own half of the lease, Weber owns one-quarter and Stock and Juhan would each own one-eighth. This would be consistent with the Dunford Decree, and the ownership of the Phebus Half would be controlled by the *inter se* agreement between the defendants. Stock and Juhan cannot face any such straightforward analysis of their interests. So far as they are concerned, all of this was decided years ago. The defendants now ask for something which neither the Dunford Decree nor this Court gave them. The Meaghers ask only for a speedy determination of their rights under the Dunford Decree as affirmed.

5. ADDENDUM.

In view of the complexity of these appeals, plaintiffs submit this Addendum which summarizes their objectives. It applies to the entire case and is not limited to the Stock-Juhan issues, although, for convenience, the Addendum is set forth in this Brief:

Plaintiffs respectfully request rulings from this Court as follows:

(1) Affirming the Interlocutory Judgment and Decree, but declaring that the following issues remain open for determination by the lower court:

- (a) The status of Equity Oil Company, and
- (b) The obligations of Stock, Juhan and Weber to plaintiffs,

or, alternatively,

Modifying the Interlocutory Judgment and Decree to provide:

(a) That Equity Oil Company is not a mere stakeholder but, as an associate of the other defendants, has the same obligations to plaintiffs as are owed to them by Weber, Stock and Juhan, and,

(b) That the Interlocutory Judgment and Decree imposes the same obligations upon Weber, Stock and Juhan, the principals, as it imposes upon Equity Oil Company, their agent.

(2) Reversing the order of December 13, 1955, which authorizes Equity to pay impounded funds to Stock and Juhan,

or, alternatively,

Affirming the order of December 15th, which vacates the order of December 13th.

(3) Reversing the order which dismisses the Fourth Count of the Complaint.

Dated: April 27, 1956.

Respectfully submitted,

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