1982

Weldon S. Abbott v. Newell Christensen and Newell Christensen v. Weldon S. Abbott : Reply Brief of Appellant

Utah Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

WELDON S. ABBOTT,

Plaintiff-Appellant,

vs.

NEWELL CHRISTENSEN,

Defendant-Respondent,

Case No. 17616

NEWELL CHRISTENSEN,

Plaintiff-Respondent,

vs.

WELDON S. ABBOTT,

Defendant-Appellant.

REPLY BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF THE
DISTRICT COURT OF DUCHESNE COUNTY
HONORABLE J. ROBERT BULLOCK

WALLACE D. HURD
9 Exchange Place, Suite [illegible]
Salt Lake City, Utah [illegible]
Telephone: (801) 355-[illegible]
Attorney for Appellant

GEORGE E. MANGAN
P.O. Box 246
Roosevelt, Utah 84066
Attorney for Respondent

IN THE SUPREME COURT OF THE STATE OF UTAH

WELDON S. ABBOTT,	:	
Plaintiff-Appellant,	:	
vs.	:	
NEWELL CHRISTENSEN,	:	
Defendant-Respondent,	:	Case No. 17616
NEWELL CHRISTENSEN,	:	
Plaintiff-Respondent,	:	
vs.	:	
WELDON S. ABBOTT,	:	
Defendant-Appellant.	:	

REPLY BRIEF OF APPELLANT

APPEAL FROM A JUDGMENT OF THE
DISTRICT COURT OF DUCHESNE COUNTY
HONORABLE J. ROBERT BULLOCK

WALLACE D. HURD
9 Exchange Place, Suite 520
Salt Lake City, Utah 84111
Telephone: (801) 355-1341
Attorney for Appellant

GEORGE E. MANGAN
P.O. Box 246
Roosevelt, Utah 84066
Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

IN THE SUPREME COURT OF THE STATE OF UTAH

WELDON S. ABBOTT,	:	
Plaintiff-Appellant,	:	
vs.	:	
NEWELL CHRISTENSEN,	:	
Defendant-Respondent,	:	Case No. 17616
NEWELL CHRISTENSEN,	:	
Plaintiff-Respondent,	:	
vs.	:	
WELDON S. ABBOTT,	:	
Defendant-Appellant.	:	

REPLY BRIEF OF APPELLANT

RESPONSE TO STATEMENT OF FACTS

It is exceedingly difficult to respond to the Statement of Facts set forth in Christensen's brief. Never have we seen a brief so replete with characterizations and totally devoid of references to the transcript to support factual statements. There are references to the pleadings, to depositions, to findings and orders of the court. There is not however, a single reference to the transcript in the thirteen page recital of facts. Abbott feels impelled to

call the courts attention to the following statements. They appear without reference to the transcript because they do not exist in the transcript. Under these circumstances the statements must originate in the mind of Christensen's attorney:

Page	Line	Statement
4	Line 2 paragraph 2	"for tax purposes"
4	3rd from last line par. 3	"were not to be carried from year to year"
5	Line 3 par. 2	"Abbott did not have sufficient personal funds"
5	Line 2 Par. 3	"the parties agreed"
5	2nd from last line par. 3	"the parties further agreed"

We now pass to other statements for which no transcript citation is given and which are in fact contradicted in the transcript or other document.

On page six reference is made to Abbott's deposition for the statement that he acknowledged the agreement "had changed from time to time as our situation changed" This statement is relied upon to show that the venture expanded as claimed by Christensen. Reading further in the deposition however, we see that the change was merely to set an upper limit on Christensen's compensation (R 62 P 11-13).

In paragraph F page 6 the statement "All cattle owned by Abbott or the partnership were branded with this brand."

The fact of the matter is shown by the transcript page 412 beginning at line 10:

> "Question: Where those cattle rebranded?
>
> Answer: They were not. The reason to transfer the brand so as we would not have to brand all of them and we did not rebrand them with my brand." (Tr 412)

Page six the first sentence of paragraph G states that the so-called Winterton heifers were purchased to be fed out and sold in the fall of 1971. In Abbott's deposition R 62 page 10 line 18:

> Question: Isn't it true Doctor that you originally purchased those heifers for the purpose of reselling them in the spring and after you had fed them out?
>
> Answer: No. We were going to breed them and this was part of the cow herd we were building up."

There is a misleading statement in the brief (page 7) referring to the purchase of Birch No. 1 and Birch No. 2 that "the required funds were to be furnished by Abbott, but when they were needed, Abbott did not have the same." The facts regarding these transactions are set forth in the transcript page 404 through 406, and may be summarized as follows. Four checks were written by Abbott on his Walker Bank Account to various of the Birches and one check for $500.00 on the same account all signed by Newell Christensen for Dr. Abbott. In addition a check for "eleven thousand and some odd dollars" was sent out by Dr. Abbott. The check

was held for several years because the Birch property was in the course of probate and when the check was presented to the bank it was refused for stale date.

Several times in Christensen's brief appear statements that Christensen "personally" purchased a tract of ground. Abbott testified as to the usual practice, that:

> "Answer: Since Newell was my agent in finding and buying these places then he signed the property over to me.
>
> Question: I show you what has been marked as Exhibit 25 and ask you if you can identify that document.
>
> Answer: This is the document, essentially turning the contract over to me, the Lindsay place was my property. (Tr 94 line 19)"

The truth of the matter is shown by the exhibits herein, as in every instance when property was purchased in Christensen's name or the joint name of Christensen and Abbott, following the purchase, a contract was prepared and signed by Christensen as seller, selling the property to Abbott as buyer on the same terms as the purchase from the original owner.

Contrary to statement at the bottom of page 7 that Christensen personally purchased the Whitehead ranch, attention is called to Exhibit 74 which is a contract from Christensen to Abbott covering the Whitehead property. This

is in accordance with Abbott's usual practice as testified to in the foregoing quotation from the record.

On page 8 under I appears the statement: "the parties attempted to purchase an additional ranch." (Italics added). The fact of the matter of course is that the parties did in truth execute a contract to purchase which was signed in both names (Exhibit 19).

Page 9 paragraph K is the statement that calves were sold and the parties had sufficient income to "pay their expenses and the retained heifers were their profit." Cited is Abbott's deposition page 34 lines 12 to 14. The cited material reads:

> "Question: That is right and then in that year all of the expenses were paid, isn't that true?
>
> Answer: All the expenses were paid, yes, by me."

It is obvious from reading the quoted material and following pages of the deposition that the witness was not testifying as to any profit but simply that he had furnished funds to pay all of the expenses of the operation. There is no further citation to the transcript and we submit that the entire statement should be disregarded.

We make the same comment as to the statement under L on page 9 that five horses were sold with sufficient profit to

pay for all of them. Nowhere in the transcript does such statement occur.

In paragraph two page 11 is the statement that the 1973 calf crop was divided and "Abbott made no demand at the time for the rest". Again there is no citation of authority. The transcript however contains the following:

> Question: Did prior to the bringing of the replevin, did you make demand on Mr. Christensen for the return of these cows?
>
> Answer: Yes. I was sort of non plussed that he wouldn't. I spoke to him several times about it. He refused and that is why I brought the action." (Tr 89 line 22-27)

On page 11 par. 3 is the statement "Abbott made no claim to the 425 shares of water. Again there is no citation of authority. However we find Abbott's testimony:

> "And our discussion at the final division was that I would keep the water off the Reary Place. Newell planned to transfer the water from the Birch places down to the Reary place which is approximately the same amount of water...." "And I told him he could go ahead and leave the water there if he would pay the assessment until I needed it..." " And I didn't need it for a couple of years." (Tr 391-393)

There are other mis-statements and inaccurate comments in Christensen's brief. Failure to specifically mention each one should not be construed as being an agreement with any statement unsupported by citation to the transcript or the record.

POINT I

THE REPORTS OF THE SPECIAL MASTER DID NOT CONFORM TO THE STIPULATION OF THE PARTIES OR TO THE COURT'S ORDER

In Christensen's argument he quotes the order of the court appointing the special master and emphasizes the phrase that the special master shall examine "all documents which he shall determine is necessary". We respectfully suggest that emphasis should properly be put on the phrase "so as to fully reflect the joint operations of the parties".

It is respectfully urged that the operation of the parties can not be fully reflected without taking into account capital contributions made not only by Christensen but also by Abbott.

Even Christensen's own witness who testified as to his role in bringing the parties together indicated that Abbott was to receive credit for his contribution when the witness Faucett testified "Dr. Abbott would pay for it and down the line they would split that payment up sometime." (Tr 121 line 28)

Again counsel makes a statement supported by no evidence. On page 15 appears "Abbott does not attack this finding (finding No. 2) by the court." We respectfully call attention to the statement at the end of point I in Abbott's brief "nor does the evidence support the trial court's

findings of fact No. 2, 7 and 8 and conclusions of law No. 1 and 6."

The statements made in Abbott's brief as to the inequity of the trial court's conclusion as set forth in finding No. 2 where made simply to reinforce other arguments by showing that no reasonable person would have made such an agreement.

POINT II

PURCHASE OF THE ZANE CHRISTENSEN PROPERTY WAS PART OF THE JOINT VENTURE AND ABBOTT SHOULD RECEIVE CREDIT FOR THE DOWN PAYMENT

On page 17 Christensen states that after the seller had forfeited the contract interest on November 20, 1974 Abbott and Christensen did not have a viable or meaningful contract.

Christensen completely ignores the contract which Abbott had prepared and which was by its own terms executed June 19, 1974 by and between Abbott as seller and Newell Christensen as buyer. (Exhibit 79) Obviously on November 20, 1974 Abbott had no further interest in the Zane Christensen contract and what Newell Christensen did, or did not do, regarding the same was not Abbott's concern.

At page 18 Christensen makes the comment that "Once Christensen denied the contract or to having agreed to purchase the property, Abbott never reopened the subject."

Abbott had already testified:

"Answer: Well this is a contract when I sold my interest in the Blue Mountain, I mean in the Zane Christensen Mountain Home Ranch to Newell Christensen on November 1, 1974.

Question: Have you examined the last page of that contract?

Answer: Yes.

Question: There appears signatures on there were those affixed in your presence?

Answer: Yes.

Question: Whose signatures are they?

Answer: My signature, my wife's signature, and Newell Christensen's signature.(Tr 437)

And at Tr 440 line 1:

Answer: The notes, one was for $25,000.00 which was a note for half of that down payment that Newell had agreed to sign but never would sign after we started having problems, since I didn't send the note out immediately.

In view of the foregoing testimony there was simply nothing else that Abbott could say. He had already testified that the contract was signed by Christensen, by himself and by Dr. Abbott's wife in Dr. Abbott's presence. Further testimony would have been subject to objection as being repetitious. The court did not ever pass on the

question of the validity of the contract although the court commented:

> "It certainly has the appearance of his signature, but he claims - I don't know. I'm going to receive it.
>
> Mr. Mangan: Doesn't hurt us as far as position except that we just don't claim the signature.
>
> The Court: I think, really, just being candid on those signatures I think he's forgotten it because they appear to me to be of bold hand and they appear to me to be the same as the ones that he covered." (Tr 439 line 1ff)

We respectfully call to the court's attention the difference in approach used by Christensen's attorney and his argument under this point. Elsewhere in the brief he has made statements that Christensen "personally purchased" property or Christensen "in his own name" made some transaction. Here, however, on page 17 the statement is "Abbott elected not to pay the full down payment." It should be noted that the parties both signed a contract (Exhibit 19) and were each legally bound thereby.

We respectfully submit that there is no evidence upon which the court could base a finding that the Zane Christensen contract was not part of the joint venture.

POINT III

THE TESTIMONY OF THE PARTIES SUPPORTS ABBOTT'S CONTENTION THAT THE ONLY PROFITS TO BE SHARED WERE FROM THE SALE OF CALVES

It is respectfully submitted that the matter addressed

here by Christensen has been adequately covered under point IV in Abbott's brief. Aside from the citation to Abbott's deposition on which we have heretofore commented, the so-called argument under this point consists merely of statements of counsel unsupported by citation to the transcript or the record or anything else.

POINT IV

THE EVIDENCE DOES NOT SUPPORT THE FINDINGS OF FACT THAT ALL LOSSES FROM THE OPERATION WERE TO BE ABBOTT'S

We are as confused as Christensen's attorney appears to be in attempting to answer this argument in view of the matters urged under Point XI. There the argument is made that Christensen should receive profits. Under point IV Christensen's attorney impliedly admits that the corporation lost money and insists that this loss should belong to Abbott. If in fact the corporation lost money we can only ask what gains or profits is Christensen seeking to have under Point XI. We respectfully submit that Christensen can not have it both ways.

We take exception to the statement on page 20 the second line of the first full paragraph which implies that Abbott "was requested to produce partnership tax returns showing profits, losses, tax credits, etc." There is

nothing in the transcript or the record or elsewhere in these cases showing any requests to produce partnership, tax returns, showing profits, losses, or anything else. We are unsure of the meaning of "etc." in this and many other contexts as used in Christensen's brief. As to the use made of partnership losses, Christensen's attorney is entitled to presume what he wishes. Misleading statements however, we respectfully suggest are improper.

POINT V

THE REPLEVIED COWS BELONGED TO ABBOTT

Most of the argumentative statements made by Christensen under this point are so magical mystical and wonderous, and so "bound tall buildings" that we suggest they do not merit response.

However, on page 21 there is again a statement supported by no citation to anything: "Although requested, Abbott failed to indicate in any manner or form. i.e., how or for what, Christensen received credit for his share of the calves." For the facts see Tr page 103 line 12:

> "Question: Well now didn't I understand you to say that you offered to give him credit, in fact did you give him credit for these calves?
>
> Answer: He was given yes as I remember about two hundred - $150 or something like that credit for each one of them. When I made the final settlement of, you know, the bills he was going to take over and the credits that he got for the real estate that I gave him, let him have.

Question: You recognize then at that time that Newell in fact had an interest in those calves of some kind, didn't you which had become mother cows?

Answer: The money yes, without any cows.

Question: Well they had been calves that you had elected to keep in your cows didn't you?

Answer: Right.

Question: He had an interest in them by virtue of that only didn't he?

Answer: Only if in that year and all preceeding years there was a profit above the expenses of all operating and ranch expenses."

POINT VI

PROPERTY VALUES

The difficulty with Christensen's statements in this argument is that they are taken out of context, and are therefor misleading.

The parties arrived at what Abbott thought was a settlement. Real property was divided; the livestock which always belonged to Abbott, he would of course retain; Christensen was to feed & care for Abbott's cows until summer time, and Christensen was to pay certain outstanding obligations of the venture in the amount of $30,421.56 and to pay Abbott $79,000.00 ($29,000.00 on the Lindsay place & $50,000.00 on the Zane Christensen purchase).

This was the settlement package. However, Abbott did not receive his cows; he did not receive $79,000.00, or any other sum of money, and Christensen now sues to reform one real estate contract and to recover for feeding the cows, and for the bills paid, as well as a share in other cows.

The settlement was a package and to consider it otherwise disregards the intent of the parties. From the package Abbott has not received what it was agreed he should have.

The principal purpose of Exhibit 81 was to show the trial court that Christensen received very very substantial assets from the partnership in which he made a miniscule financial contribution. Whether Table I or Table II is considered the benefit to Christensen is great. The trial court simply overlooked or refused to consider these facts and enforce the settlement agreed upon as a package.

Christensen complains of the unreality of the figures shown in Exhibit 81 Table II. However, no effort was made to refute any of these figures.

Abbott takes exception to the comment on page 23 of Christensen's brief: "'Figures don't lie' or is it that 'liars don't figure'". The double quoted statement appears as a quote in Christensen's brief. His attorney however fails to advise as to the source of the quote. We submit

that such statements in a brief of appeal are inappropriate, offensive and probably libelous per se, and we object strongly.

POINT VII

THE AWARD TO CHRISTENSEN FOR CARE OF ABBOTT'S CATTLE WAS EXCESSIVE AND UNJUSTIFIED

In his argument on this point, Christensen raises nothing new and we respectfully suggest that the matter is appropriately covered under points VII and VIII in appellants brief.

We must, however, respond to Christensen's statement that Abbott misconstrues his testimony. We respectfully suggest that the testimony speaks for itself (Tr 258, 263). It should further be noted that by Christensen's own testimony it was stated that he used Abbott's as well as his own:

> "Question: So you used your own hay for Dr. Abbott's cattle is that correct?
>
> Answer: Yes sir. I didn't keep track of his hay. It was fed too. This was just my hay and that many cattle on my hay off my place." (Tr 262 line 9)

It should also be remembered that at this time Christensen did have in addition to the $500.00 a month a place to live, the Reary place, which he had received from joint venture assets.

POINT VIII

CHRISTENSEN IS NOT ENTITLED TO THE FARNSWORTH CANAL STOCK

Christensen's brief states that "Why a bill of sale for only 30 shares was tendered is a complete mystery". We respectfully submit that if counsel would read the transcript this mystery would be solved. Abbott testified:

> "Answer: When Newell was making arrangements about the purchase of the Reary Birch place he also made a deal with Mrs. Birch at that time that he would trade her 30 shares of Water for 30 shares in an oil well they were drilling on her place there. He didn't have any water. And I agreed to sell him 30 shares so that he could consummate that if you know, he paid me for the water shares. . And this was never done. That's why the bill of sale was not completed." (Tr 417 line 24ff)

If in fact the trial court based its finding on the three items set forth on page 33 (9th line from the end) of Christensen's brief, we respectfully submit that the finding must be reversed. A finding based only on these three items is contrary to the pronouncement of this court in Hatch v. Adams.

In the argument on this point it is interesting to note that Christensen makes no mention of Hatch vs. Adams, 7 Utah 2nd 73 318 Pacific 2nd 633 which was decided approximately 3 years after the Brim case and reaches the contrary conclusion. In doing so the court states:

> "We are of the opinion that proof that water represented by water stock was used on certain land by

the owner of the land during the entire period of his ownership of the land is not alone sufficient to rebut the presumption that such water is not to be deemed appurtenant."

In the Hatch case the contract and the escrow agreement after describing the real property said, "Together with all buildings and approvements thereon and all water rights appurtenant thereto." At the time of signing the escrow agreement it was amended by the addition 'thereto' of a list of certain shares of stock. In finding the 7 1/2 shares of stock in an additional company which was not listed, was not intended to be transferred the court interpreted the Brim case and set forth the standard of proof as requiring a showing:

> "By clear and convincing evidence that said water right was in fact appurtenant and that the grantor intended to transfer the water right with the land, even though no express mention of any water right was made in the deed." (emphasis in original)

It is respectfully submitted that the trial court was correct in its original tentative determination, that the Reary water was not intended to be included in the contract of sale and that Christensen failed in his burden of proof to show the contrary "by clear and convincing evidence."

POINT IX

THE FINDING THAT THE $29,000.00 DOWN PAYMENT ON THE LINDSAY PLACES WAS NEVER REPAID IS CORRECT

Christensen's brief on point IX contained many factual

statements for which no citation to the transcript is included. It is also stated that it was "Christensen's understanding" that the $29,000.00 down payment on the Lindsay Ranch had been paid. We do not know where Christensen arrived at this "understanding". His attorney however apparently had a different understanding. At page 101 Tr line 6 the following occurred:

> "Mr. Hurd: Might I at this point ask a question? Am I to take it from counsel's statement that there will be no contention that the $29,000.00 in cash was paid to Dr. Abbott?
>
> Mr. Mangan: At that particular time?
>
> Mr. Hurd: At any time.
>
> Mr. Mangan: We believe it was paid in other consideration without accord and satisfaction. Not in the form of cash or check or anything like that."

Nowhere, however, in the record is it revealed when or how the $29,000.00 was "paid in other consideration" either with or without accord and satisfaction.

On the contrary, Abbott testified clearly regarding the $29,000.00 that he sent his son out with the contract and instructions to pick up a check from Christensen for this amount and further that he had never received the $29,000.00 and had made demand therefore repeatedly by telephone,

personal contact and by letter (Tr 99 line 3ff). Abbott's testimony in this regard was never disputed. At page 114 Tr line 14ff is further testimony by Abbott showing that he has never received the $29,000.00 and that in a personal confrontation with Christensen no explanation was offered as to why or how Christensen contended that the payment had been made.

At page 35 under this point Christensen's counsel asks if Abbott "was still to receive $29,000.00 from Christensen, then why doesn't Abbott list that in his Exhibit 81 where he lists all that he was to receive from the joint venture." The answer to that is very simple. Abbott was not to receive $29,000.00 from the joint venture he was to receive it from Christensen and the court so found and such finding comports to all of the evidence.

It is respectfully submitted that on this point the Court on the evidence before it could not conclude otherwise than "That the $29,000.00 down payment recited in the Lindsay contract has not been paid by the Defendant to the Plaintiff" (Finding 9, R135).

POINT X

THE TRIAL COURT WAS CORRECT IN REFUSING TO ALLOW CHRISTENSEN CREDIT FOR THE $35,000.00 CONTRIBUTION TO THE BLEAZARD PURCHASE AND THE $45,000.00 ZIONS BANK LOAN

The trial court correctly concluded that Christensen

was entitled to no credit for contributions to the Bleazard place and that the $45,000.00 loan from Zions Bank was not in connection with the joint venture with Abbott.

In argument on this point, as elsewhere in the brief, counsel makes statements originating in his own mind rather than in the evidence before the court. In the first sentence of this point he states that Abbott did not have the financial means to "'Swing the Deal'".

Counsel relys heavily on Exhibit 32 and particularly page 9 thereof. Dr. Abbott testified that this loan was made so that Newell Christensen could help his father in a venture totally disconnected with this matter. Christensen claims that the $90,000.00 loan was part of this joint venture. In the brief it is stated that notes of Zions First National Bank loan officer on the date the application was made on May 17, 1974 indicates that the loan was "for operating expenses and until sell of calves in the fall".

Examination of the transcript as to the origin of this document shows that Dennis Wilcox the then loan officer testified that it was in his handwriting and that the information thereon was obtained "either from Dr. Abbott or Newell Christensen" (Tr 157 line 12). We respectfully submit that with such identification of the information on page 9 of Exhibit 32 the miniscule weight given to it by the trial court was entirely proper and appropriate.

The truth of the matter is the trial court believed Dr. Abbott's testimony supported by evidence as to the disbursement of this loan to the Blue Mountain enterprise. Such finding is amply supported by the evidence.

As to the court's refusal to give Christensen a $35,000.00 credit for the property contributed to the Bleazard place the trial court obviously concluded that Christensen had received far greater value in land than he had ever contributed and believed Dr. Abbott's testimony in that regard. Such testimony is more than sufficient together with the values received by Christensen for a very limited contribution of either capital or labor.

It is respectfully submitted that the trial court was correct in refusing to credit Christensen with $35,000.00 and was correct in determining that the $45,000.00, half of the loan from Zions Bank was not for the operation of the joint venture.

POINT XI

THE PARTNERSHIP HAD NO GAINS TO AWARD TO CHRISTENSEN OR ANYONE

The argument under this point assumes that the joint venture with Abbott and Christensen made a profit. It is typical of the arguments in this brief that Christensen makes much of the fact that by his words Abbott wants an

accounting of the losses but is unwilling to make an accounting of the profits. We should point out that under Point IV herein Christensen blithely states that the losses of the joint operation belonged to Abbott and now in Point XI he says "Oh but the profits belong one-half to me".

Christensen repeats the allegation that with regard to the seven horses "they were sold for enough to pay for all of them" and again the statement is made without reference to the transcript.

POINT XII

EACH PARTY SHOULD BEAR HIS OWN ATTORNEY'S FEES AND COSTS

In argument on this point Christensen's attorney analyzes of the decisions made by the trial court on the various matters involved. He arrives at the conclusion that Christensen was the "prevailing party" in all actions simply because Christensen received an award of the largest amount of money. Reasoning from this fallacious conclusion Christensen's attorney comes to the result that in the action brought on Reary contract Christensen was entitled to an award of attorneys fees for the consolidated actions which resulted in the accounting.

As is usual in this brief Christensen's counsel maligns Abbott by stating that there is a lack of good faith on his

part. We submit that statements of such nature are objectionable and improper.

Again in outlining matters undertaken on behalf of Christensen, his counsel continues to use the designation "etc.". The meaning and intent behind the use of such abbreviation is unclear to say the least.

It is respectfully submitted that in a complex accounting matter such as this each party should bear his own attorneys fees and the trial court correctly so decided.

CONCLUSION

It is respectfully urged that finding of fact #9 entered by the trial court should be affirmed.

This finding was based on clear and undisputed evidence that the $29,000.00 had never been paid to Abbott by Christensen and as herein noted under Point IX Christensen's attorney admitted that the $29,000.00 had not been paid.

On such state of the record it is respectfully submitted that no other finding could be made.

It is further urged that the trial court was correct in adopting the portion of the special master's report which failed to allow Christensen a credit for the contribution of property to the purchase of the Bleazard place and for the $45,000.00 loan at Zions Bank.

It is further submitted that the action of the trial court in finding that the Winterton calves belonged to Abbott and denying Christensen any compensation for them or for the mare and colts is correct and should be affirmed.

In this case there is no "prevailing party" and therefore the trial court acted correctly in allowing no costs or fees to either party.

Without repeating here the statements in the conclusion of appellant's original brief, appellant respectfully urges this court to remand this matter to the trial court with instructions as requested in appellant's original brief.

Respectfully submitted.

Wallace D. Hurd
Attorney for Appellant

MAILING CERTIFICATE

I hereby certify that two true and correct copies of the foregoing Reply Brief of Appellant was mailed postage prepaid this _____ day of August, 1982 to George E. Mangan, P.O. Box 246, Roosevelt, Utah 84066.