

1957

George H. Ryan v. American National Investment Co. : Brief of Respondent

Utah Supreme Court

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In the Supreme Court
of the State of Utah

FILED

OCT 23 1957

GEORGE H. RYAN,

Plaintiff and Respondent,

- vs. -

AMERICAN NATIONAL IN-
VESTMENT COMPANY, A
Corporation,

Defendant and Appellant.

Clerk, Supreme Court, Utah

Case No. 8675

RESPONDENT'S BRIEF

Appeal from the District Court of the First Judicial
District of the State of Utah, in and for
the County of Cache

Honorable Lewis Jones, District Judge

George D. Preston

Attorney for Respondent

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In the Supreme Court of the State of Utah

GEORGE H. RYAN,
Plaintiff and Respondent,

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VESTMENT COMPANY, A
Corporation,

Defendant and Appellant.

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ADDITIONAL STATEMENT OF FACTS

All references herein will be to the numbered pages of the Record by the County Clerk.

The Court entered judgement in this case on the 18th day of March, 1957, giving plaintiff a judgment for \$1,500.00.

The entire record is replete with procrastination and what might be deemed to be defiance of orders of the Court.

At the time of the commencement of this action, the defendant had never made any tender of any shares of stock whatsoever and for that reason the plaintiff sought a money judgement.

When the case was submitted to the Court for judgment, the Court ordered (R-122) that the plaintiff must submit by December 24, 1956 the original geological report based upon work he had done for the defendant in Southern Utah, and the Court ordered an original of this report to be filed with the Clerk of the Court with proper exhibits on or before 24 December, 1956. This the plaintiff did. The Court also gave the defendant until the same day at 10 o'clock A. M. to deposit with the Clerk of the Court, stock certificate representing \$750.00 worth of stock. The defendant refused, or at least neglected, to so deposit said shares of stock.

On December 24, 1956 further proceedings were had, (R-124), at which time the plaintiff had completed and deposited his report with the Clerk of the Court as per oral order of the Court.

“MR. PRESTON: I now ask the Clerk in open court if there was deposited, in conformity with the order of the Court, certain shares of stock endorsed to Mr. Ryan at the time ordered by the court.

THE CLERK: No.

MR. PRESTON: The record may show the Clerk has answered that there is no deposit.

THE COURT: Then you may have a judgment for the full amount.” (R-125)

In trying to arrive at the value of the stock, or some value thereon, Mr. Daines asked further time to bring in additional witnesses, (R-126), at which time a

demand was made upon the defendant to produce in court an officer qualified to testify to the financial condition of the company and also to show that the stock certificate in question was legally issued. Again the Court gave the defendant an additional two weeks to produce the records of the company (R-127).

Even up to this date, January 7, 1957, the defendant had not deposited the 750 shares. There has been talk of 700 shares, which counsel sought to withdraw from the record, (R-127), at which time the Court again told counsel that he could withdraw either one or both of the exhibits and the Court again indicated that plaintiff should have judgement for \$1,500.00.

A still further proceeding was had on January 21, 1957 so as to give the defendant an opportunity to produce its records as agreed and as demanded (R-132), and at that time no company records were produced. In an attempt to ascertain who the officers of the company were, the Court stated:

“Why not just indicate that either you bring the books or the records or else we’ll grant the motion and substitute the individual defendants, open the case up and try it over again.

MR. DAINES: Well, I want to investigate and let those directors, if they want to employ somebody to come down and fight their case.

THE COURT: Well, that’s all right.”

In an attempt to get the matter again before the

Court, the Court granted an additional week continuance. (R-133)

“MR. PRESTON: Well, you’re the attorney for the corporation. Now, what I want to know is, do you now refuse to produce the books of your company in this court?”

MR. DAINES: No. I haven’t said I refused to. If I’m supposed to we’ll produce them, but I don’t know whether I have a right to produce them from up in Preston.

THE COURT: Well, you submitted to the jurisdiction of the court here.

MR. DAINES: Well, of course, we’re authorized to do business here, but I think I should have a right to check.

THE COURT: We will continue the matter for a week, and the court requests you to bring the books down here.

MR. DAINES: I will if we get through with the case over in Brigham. You have a case starting over there tomorrow at two o’clock.” (R-134)

“MR. PRESTON: So there will be no misunderstanding about this order, continued for a week, at which time the defendant is directed to produce the—

MR. DAINES: No, I have no direction of that.

MR. PRESTON: Well, you tell the court whether you’ll obey the order or not.

MR. DAINES: He hasn’t made an order.

THE COURT: The court merely at this

time makes a request that the books be brought down here for next Monday.

MR. DAINES: Now, your honor, what if it isn't proper—

THE COURT: That's the question. I don't make an order at this time.

MR. DAINES: All right, I'll check it through.

THE COURT: That's right.

MR. DAINES: I don't want an order if it's a request.

THE COURT: At this time, as far as the court is concerned, the court requests they produce their books. If a gentlemanly request won't do it, we may make an order. And serve a copy on the—

MR. DAINES: I'll tell you, if we're supposed to produce them we will.

THE COURT: If you're doing business in this state, I think it may be that the Secretary of State will cooperate if necessary." (R-135)

THE COURT: All right. Now let's set that at noon next Monday, because I'll have this—maybe we'd better say one-thirty.

On January 28, 1957 (R-136) the Court called the same case up when it was reported that the chief witness, one Gibbons, could not be located because Mr. Gibbons had locked the records of the company up and gone to places unknown.

The Court again continued the case to February 11,

1957 and on February 11 (R-137) the case was again called and it was stated:

“MR. PRESTON: I want to point out to the court that I think this is the third time that this matter has been before the court on a request of the court for the American National Surety Company to produce its books.

Mr. Daines again reported (R-137) that the books were at Preston, Idaho, and the following transpired:

“MR. DAINES: If he (meaning counsel for the plaintiff) wants to see the books he can go to Preston and see them.

MR. PRESTON: Do you refuse before this court to produce the books of the company?

MR. DAINES: I'll produce anything the court orders me to.

The Court, having reached its limit of endurance, made the following further oral order:

“All right. Well, let's conclude the matter and somebody can appeal then. Unless by five o'clock tonight 7,500 shares are deposited with the Clerk—” (R-143)

The Court then extended that time to 5 o'clock P. M. the following Wednesday. (R-145) Of course, no production was made and the matter received further attention by the Court on March 11. (R-145)

The Court stated, (R-147):

“Well, there's an inferential thing here that you wouldn't bring your books and records in and let us take a look at them.

MR. DAINES: I said we'd bring anything the court ordered. I don't think it's material.

THE COURT: I thought the court ordered you to bring in the books and records."

"THE COURT: Well, are you willing to produce them at this late date? (R-147)

MR. DAINES: Well, now, let's see what they are.

THE COURT: We want all the books, records, financial statements—"

There was further discussion and the Court said, (R-148):

"Well, if you say you won't bring them, that will dispose of the matter.

MR. DAINES: Well, I'll consult him (Mr. Gibbons) and his attorney whether he'll bring them or not.

THE COURT: I'll give you one more chance."

The records were never produced and the Court entered judgement for \$1,500.00.

I believe these quotations from the record are sufficient to illustrate why the Court granted a judgement.

ARGUMENT

The Court granted the defendant two alternatives. One was to deposit the stock with the Clerk prior to December 24, 1956 at 10 o'clock A.M. Defendant did not do so. Up until the very last day of the hearing the

defendant was requested by the Court to present its books to determine what the stock rights consisted of. The defendant did not do so and the Court finally granted the judgment which the defendant complains of.

The Court is within its rights to grant an alternative judgement. (Parish vs. McConkie, 35 P. 2d, 1001) This seems to be the only question involved in the case and plaintiff deems it unnecessary to make further argument except to say that defendant claims that is has not been given credit for \$45.00. Defendant is correct in this assumption and plaintiff consents to the reduction of the judgment by said amount.

RESPECTFULLY SUBMITTED,

GEORGE D. PRESTON

Attorney for Plaintiff and Respondent