

1957

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

Utah Supreme Court

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In The Supreme Court of the
State of Utah

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GEORGE H. RYAN,

Respondent,

Clerk, Supreme Court, Utah

— vs. —

CASE

NO. 8675

AMERICAN NATIONAL INVESTMENT
COMPANY, A Corporation,

Appellant.

APPELLANT'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

Newel G. Daines

Attorney for Appellant.

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In The Supreme Court of the State of Utah

GEORGE H. RYAN,

Respondent,

— vs. —

AMERICAN NATIONAL INVESTMENT
COMPANY, A Corporation,

Appellant.

CASE
NO. 8675

PRELIMINARY STATEMENT

This is an appeal from a judgment of the Honorable Lewis Jones, Judge, of the Dirstrict Court of Cache County Utah, sitting without a jury entered on the 18th day of March, 1957, wherein the plaintiff was granted judgment against the defendant in the sum of \$1500.00 interest and cost. (R. 5) The appellant was defendant and the respondent the plaintiff in the Court below. They will be referred to as plaintiff and defendant.

STATEMENT OF FACT

The plaintiff sued for the reasonable and agreed value of service rendered, (R. 1), and the defendant denied liability. (R. 2) On conflicting evidence the Court found that the service had been rendered as alleged for the value alleged. However, it further found that the plaintiff agreed to accept shares of stock in the defendant corpor-

ation for one-half of the sum of the services rendered; that is, of the \$1500.00, the amount of the judgment, \$750.00 was to be paid in stock in the defendant corporation and further finding that the defendant had not tendered and at the time of the judgment refused to tender to the plaintiff the stock. (R. 3)

It was agreed between the plaintiff and the defendant that the stock was to be valued at 10¢ per share (Defendant's Exhibit 2), and at the date of the agreement and employment in May, 1955, and during the period the services were performed, the stock had a par value of 10¢ per share. (Defendant's Exhibit 1 and 2.)

The Articles of Incorporation of the defendant provided for an authorized capital stock of \$6,600,000.00 divided into 1,000,000 shares of Class A common voting stock with a par value of 10¢ per share; 100,000 shares of Class B voting stock with a par value of \$25.00 per share; and 40,000 shares of Class A non-cumulative preferred stock with a par value of \$100.00 per share. On March 14, 1955, the Articles of Incorporation were amended dividing the authorized capital stock of \$6,600,000.00 into 65,000,000 shares of Class A common voting stock with a par value of 10¢ per share and 4,000 shares of Class B common voting stock with a par value of \$25.00 per share. Then, again on October 1, 1955, the Articles of Incorporation were amended to provide that the \$6,600,000.00 authorized capital stock was to be divided into 6,600,000 shares of Class A common stock with a par value of \$1.00 per share, thereby eliminating all but the Class A common stock. (Defendant's Exhibit 1).

Plaintiff alleged that he had performed reasonable services for the value of \$1500.00 ,no part of which had been paid. (R. 1) His evidence was to the effect that he was to receive \$50.00 per day and that he had rendered services for a period of 30 days, and the Court so found. However, the plaintiff admitted and it is undisputed that he had received \$45.00 toward the payment of the \$1500.00. This would leave a balance of only \$1455.00, interest and costs. (Defendant's Exhibit 2) The Court in its judgment and findings failed to give the defendant credit for this \$45.00. (R. 3, 4, 5).

As pointed out, the Court further found that the plaintiff agreed to take one-half of his services in stock of the defendant corporation. At the end of the trial the Court ruled that the defendant was indebted to the plaintiff in the sum of \$1500.00 subject to the plaintiff completing his work — the completion of a report — and that the defendant could discharge one-half of this obligation by tendering to the plaintiff \$750.00 of stock. The defendant tendered a stock certificate for the capital stock of the defendant corporation of 750 shares with a par value of \$1.00 each. (R. 122-128, Defendant's Exhibit 13). The plaintiff refused to accept the stock certificate and the Court subsequently held that the defendant was required to tender 7500 shares of stock having a par value of 10¢ each. (R. 136-144). The defendant refused to change its tender of 750 shares of par value stock of \$1.00 each because, due to its amendment, it was unable to do so. However, the Court failed to find that the stock certificate for 750 shares of stock with a par value of \$1.00 each was equal to a stock certificate by the same company for 7500 shares of stock with a par value of 10¢ each.

POINTS RELIED ON

POINT I

THE COURT ERRED IN FINDING THAT THE DEFENDANT WAS INDEBTED TO THE PLAINTIFF IN THE SUM OF \$1500.00, INTEREST AND COSTS AND IN FAILING TO FIND THAT IT WAS ONLY INDEBTED TO THE PLAINTIFF IN THE SUM OF \$1455.00, INTEREST AND COSTS.

POINT II

THE COURT ERRED IN FINDING THAT THE DEFENDANT HAD NOT TENDERED AND REFUSED TO TENDER THE AMOUNT OF STOCK NECESSARY TO PAY THE PLAINTIFF ONE-HALF FOR THE SERVICES PERFORMED.

ARGUMENT

POINT I

On conflicting evidence the Court found that the plaintiff had performed 30 days' service and that he was entitled to the sum of \$50.00 per day for the services rendered, allowing him the sum of \$1500.00 together with interest and cost, and this was the amount of the judgment rendered. However, in so doing the Court failed to take into consideration the fact that the defendant had paid in satisfaction of any amount due the sum of \$45.00. The evidence of the \$45.00 payment was not in dispute and the plaintiff admitted that he had received such a sum. (Defendant's Exhibit 2 — a letter from the plaintiff to the defendant dated July 18, 1955).

POINT II

The Court found in line with the evidence that the plaintiff was to receive for one-half of his services the stock of the defendant corporation and that the stock was to be valued at 10¢ per share. This was the par value of the defendant stock at the time the agreement was entered into in May, 1955. (Defendant's Exhibit 1 and 2). However, subsequent to that date and after the services had been rendered the defendant by amendment without decreasing or increasing the amount of its authorized capital stock, namely \$6,600,000.00, amended its Articles of Incorporation changing the par value of its stock from 10¢ per share to \$1.00 per share. This amendment in no way effected the value of the stockholders' interest in the defendant corporation as the amount of outstanding shares was reduced accordingly; and a person who received a stock certificate of 750 shares of stock with a par value of \$1.00 each received the same interest in the defendant's company as a stockholder who received 7500 shares of stock at the time the stock had a par value of 10¢ each. We could understand the court's ruling in holding that a stock certificate of 750 shares with a par value of \$1.00 each did not meet the value agreed upon by the parties at the time the contract was made if by the amendment to the Articles of Incorporation the authorized capital stock of the corporation had been increased. We do not believe it necessary to argue this point further because it is just a matter of simple arithmetic that 750 shares of par value stock having a value of \$1.00 each is of the same value as 7500 shares of stock having a par value of 10¢

each issued by the same corporation; and the plaintiff receiving the said stock would have the same interest in the corporation as he had agreed to accept.

CONCLUSION

In conclusion, defendant submits:

That being bound by non-conflicting evidence the Court failed to credit the defendant with the \$45.00 payment and the judgment in any event should not have been in excess of \$705.00, interest and costs, after defendant received credit for the \$750.00 in stock.

That the Court erred in finding that the defendant failed to tender the amount of stock agreed upon by the parties in satisfaction of any services rendered by the plaintiff and that the tender of the 750 shares of stock having a par value of \$1.00 each satisfied the agreement of the plaintiff and the defendant relative to the plaintiff agreeing to accept one-half for his services in the stock of the defendant corporation.

In conclusion, we contend that the decree of the lower Court should be reversed and a decree entered in accordance with the facts and the law in this case.

Respectfully submitted,

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