

1990

# Lorenzo J. Taylor v. Douglas E. Bagley : Brief of Appellee

Utah Court of Appeals

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**UTAH COURT OF APPEALS  
BRIEF**

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DOCKET NO.

900454-CA

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**IN THE COURT OF APPEALS IN AND FOR  
THE STATE OF UTAH**

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LORENZO J. TAYLOR,

\*

Plaintiff and Appellant

\*

vs.

\*

DOUGLAS E. BAGLEY,

\*

Defendant and Appellee

\*

Case No. 900454-CA

Priority 16

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**BRIEF OF APPELLEE**

---

Appeal from: Third District Court  
Salt Lake County  
Judge Dennis Frederick  
Case No. 89-0905272CN

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**FILED**

NOV 1 1990

W. T. Noonan  
Clerk of the Court  
Utah Court of Appeals

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**IN THE COURT OF APPEALS IN AND FOR  
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BRIEF OF APPELLEE

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I.

JURISDICTION OF THE COURT

This matter was properly referred to the above-captioned Court by the Supreme Court of Utah, pursuant to Utah Code Annotated <78-2a-3(2)(j).

II.

STATUTES, RULES AND CONSTITUTIONAL PROVISIONS

There are two rules of Utah Rules of Civil Procedure which come under scrutiny and are applicable to these proceedings, namely Rule 15(a) and Rule 56(a) and 56(b). Both rules are set forth in full in the attached addendum.

### III.

#### STATEMENT OF THE CASE AND ISSUES

Plaintiff brought an action in the Third District Court for collection of a promissory note. Plaintiff asserted that the subject note was a "joint and several" liability of Mr. Bagley and a corporation, namely "Oncor Sound, Inc". Plaintiff chose not to include Oncor Sound, Inc. as a party to the action. Mr. Bagley defended and asserted that the subject promissory note was signed in a corporate capacity and there was no personal liability attached thereto. The trial court agreed with defendant's position and dismissed the cause of action brought by plaintiff. Plaintiff has brought the present appeal.

### IV.

#### SUMMARY OF ARGUMENT

On or about November 6, 1984, plaintiff's agent/son drafted and submitted to defendant for signature a note which contained the signature line as follows:

Oncor Sound, Inc.

\_\_\_\_\_  
President

Mr. Bagley (appellee herein) being president of Oncor Sound, Inc. executed the promissory note where indicated. Almost five years later, plaintiff/appellant initiated the action for collection on the note, against Mr. Bagley personally, which action has led to the appeal herein.

Appellee filed a motion for summary judgment based upon the fact that the subject note was signed solely in a corporate capacity and there was no basis for individual liability. The trial court agreed with that interpretation, granted the motion for summary judgment, and the appeal herein ensued.

Both parties agree that the underlying note is not ambiguous, and Appellee asserts that the subject note was signed solely in a corporate capacity, and therefore the decision of the trial court was a proper one.

Appellant asserts that the trial court erred in failing to grant the Motion to Amend the original complaint. Appellee did not respond to such motion and the court denied such motion on the basis that the complaint had already been dismissed, and therefore there was no complaint before the Court to amend. Appellant's sole remedy to allege some alter ego theory would be to file a new, independent action with the court.

## V.

### ARGUMENT

#### A. THE TRIAL COURT MADE A FACTUAL DETERMINATION AS TO THE AMBIGUITY OF THE NOTE, AND ITS DECISION SHOULD NOT BE DISTURBED

Both parties to this action have asserted throughout the proceedings that the underlying note is not ambiguous and should therefore be interpreted by the specific terms thereof. Cross-motions for summary judgment were filed with the trial court. The trial court determined that the note was in fact not ambiguous and



appellant's complaint against the individual appellee must be dismissed.

The Courts have held on numerous occasions that even though the parties to a contract have a completely different interpretation of certain terms or conditions of a contract, that in and of itself, does not make a contract or the terms thereof ambiguous. Buehner Block Co. v. UWC Associates, 752 P.2d 892, (Utah 1988); Jones v. Hinkle, 611 P.2d 733, (Utah 1980); Land v. Land, 605 P.2d 1248, (Utah 1980).

The trial court made a determination that the note was not ambiguous and its decision is not subject to reversal by this court.

**B. THE SUBJECT CONTRACT WAS BETWEEN A  
CORPORATION AND APPELLANT, WITH  
NO PERSONAL LIABILITY TO APPELLEE**

Appellant has attempted to circumvent the laws of corporate insulation by asserting that the subject contract was a "joint and several obligation", but such assertion will not withstand scrutiny of the many precedents determined before it, as set forth hereafter.

It is undisputed that the terms of the contract showed Rene Taylor, agent for Lorenzo Jones Taylor was the obligee and Oncor Sound, Inc. was the obligor under such contract. The name of Douglas Bagley did not appear anywhere on the contract, until such time as Mr. Bagley affixed his name above the printed line, indicating "President" of Oncor Sound, Inc.

In the present matter, the only conceivable argument made by

Appellant showing personal liability by Mr. Bagley, is that he did not sign his name in a corporate capacity. The failure of an officer signing a contract, to affix his corporate title is not fatal to the validity of a corporate contract, especially in those instances where the contract on its face is a contract of the corporation, and the other parties have notice of the officer's relation to the corporation. The contract will be upheld, despite the officer's failure to add his title. Trident Construction Company v. West Electric, Inc. 776 P.2d. 1239, (Nevada 1989); Kenneally v. First National Bank of Anoka, 400 F.2d 838, 841 (8th Cir. 1968). There can be no dispute that Mr. Bagley affixed his name to the subject contract as president of Oncor Sound, Inc.

The Court's have gone even further in protecting individual signators by holding that an individual acting within the scope of authority for the corporation cannot be held personally liable upon a contract signed by him on behalf of the corporation, so long as notice has been given that he is acting for the corporation or the identity of the corporation has been disclosed. Bidwell v. Jolley, 716 P.2d 481 (Colo. App. 1986). The face of the contract indicates Oncor Sound, Inc. as the obligor. There is only one signature line for the "President" of Oncor Sound, Inc. There is no other reference on the contract that an individual who signs said contract is liable upon the terms thereof. The monies were received and distributed by the corporation.

In 1984 the Supreme Court of Utah was faced with a similar factual scenario in Marveon Sign Company v. Roennebeck, 694 P.2d

604. In that case an invoice was made out to "Fred Roennbeck, Precious Coins". There was a blank signature line with the words "authorized signature" printed below. Myrna Roennbeck, the wife of Fred Roennebeck signed the invoice, and a suit was brought against her personally for nonpayment of the invoice. The court held that the printed words under the signature line implied and indicated that she was signing only as an authorized representative of the company and was not personally obligated. In the instant case, the same determination has been made by the court. Mr. Bagley signed only in his representative capacity, and since Oncor Sound, Inc. was not made a party to the action, the Court acted properly in dismissing the complaint.

In setting forth the liability of parties, Utah Code Annotated, §70A-3-403(2)(a) and 403(3) states as follows:

(2) An authorized representative who signs his own name to an instrument (a) is personally obligated if the instrument neither names the person represented nor shows that the representative signed in a representative capacity;

(3) Except as otherwise established, the name of an organization preceded or followed by the name and office of an authorized individual is a signature made in a representative capacity.

From the foregoing it is easily discernable that the court made the proper decision in finding that the subject contract was a contract between Oncor Sound, Inc. and Appellant, and the signature affixed to such contract was only as a corporate officer.

C. JOINT AND SEVERAL LIABILITY DOES  
NOT EXIST

Appellant place great emphasis and reliance in the matter of Fidelity Deposit Ins. Corp. v. Bismarck Investment Corp., 547 P.2d 212, (Utah 1976), wherein the court determined that it was not necessary to wait for the resolution of a bankruptcy to proceed against one of the joint obligors. In Fidelity Deposit, there was no dispute and no disagreement that joint and several liability existed. The dispute before the court was whether or not the plaintiff could proceed against one of the joint obligors while the other obligors were protected from the automatic stay provisions of the bankruptcy court. The present case can be distinguished from the foregoing in that Appellee has maintained throughout that he is not a joint obligor, and the only source of remedy available to Appellant is to proceed against Oncor Sound, Inc.

D. THE COURT PROPERLY DENIED APPELLANT'S  
MOTION TO AMEND THE ORIGINAL COMPLAINT

Appellant asserts that the Court acted improperly in failing to allow the amendment of the original complaint to add a new cause of action against Appellee on the basis of some sort of alter ego theory.

Appellant chose the course of action and procedures that he determined to follow in this case. Once the Motion for Summary Judgment was before the Court, there was an obligation by the Court to make a decision upon said motion. On April 4, 1990, Appellant requested a decision on the Motion for Summary Judgment. The Court responded to such request and denied Appellant's Motion for Summary

Judgment and granted Appellee's Motion for Summary Judgment. On April 16, 1990, almost two weeks after the requested decision for Summary Judgment, Appellant requested a decision on the Motion to Amend. The Court, upon receipt, determined that since the original complaint had already been dismissed pursuant to previous Requests for Decision, there was no complaint before the Court to amend, and properly denied such Motion to Amend.

Utah Rules of Civil Procedure, Rule 15(a) provides that amendment of pleadings is an affirmative policy that should be freely given when justice so requires. Of course, the amendment of pleadings or the allowance by the Court to do so is not a mechanical absolute and the circumstances and terms upon which such leave is to be "freely given" is committed to the informed, careful judgment and discretion of the trial judge. Lone Star Motor Import, Inc. v. Citroen Cars Corp., 288 F.2d 69 (5th Cir. 1961).

The Utah Supreme Court in Nichols v. State, 554 P2d. 231 (Utah 1976) held that an order of dismissal of a complaint for failure to state a claim for relief is a final adjudication and thereafter plaintiff may not file an amended complaint. The Court went on to caution that if the moving party desired to amend their pleadings, they should request that such an order of the Court allow an amendment thereof. In the instant case, the order was submitted and signed by the Court without objection from Appellant. In addition, Appellant made no alternative request for decision in their Motion for Summary Judgment.

CONCLUSION

Based upon the foregoing arguments, Appellee asserts and states that the decision of the trial court was a proper decision, and such decision should not be disturbed by the Court of Appeals.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of October, 1990.

A handwritten signature in dark ink, appearing to read "Les F. England", is written over a horizontal line.

LES F. ENGLAND  
Attorney for Appellee

## ADDENDUM

### UTAH RULES OF CIVIL PROCEDURE

#### RULE 15. AMENDED AND SUPPLEMENTAL PLEADINGS.

(a.) Amendments. A party may amend his pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, he may so amend it any time within 20 days after it is served. Otherwise a party may amend his pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires. A party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within 10 days after service of the amended pleading, whichever period may be the longer, unless the court otherwise orders.

#### RULE 56. SUMMARY JUDGMENT

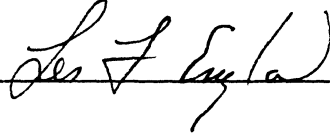
(a) For claimant. A party seeking to recover upon a claim, counterclaim or cross-claim or to obtain a declaratory judgment may, at any time after the expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in his favor upon all or any part thereof.

(b) For defending party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought, may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof.

CERTIFICATE OF MAILING

I hereby certify that on the 30<sup>th</sup> day of October, 1990, I caused to be mailed, postage prepaid, four true and correct copies of Appellee's Brief in the above-captioned matter to:

Mr. Phillip W. Dyer, Esq.  
318 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101

  
\_\_\_\_\_