

1982

Deanne Penrod et al v. Nu Creation Creme Inc. : Brief of Appellant Corrections to Statement of Facts

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

* * * * *

DEANNE PENROD, MAXINE G.)
KITCHEN, DON SEVEY, JACK)
E. LaFOLLETTE, TRUMAN O.)
MOORE, and LINDA R. MOORE,)
Appellants,)
-vs-)
NU CREATION CREME, INC., a)
Utah corporation, GEORGE)
D'AMBROSIO, FRANK A. NELSON,)
JR., and JOHN SAVAS,)
Respondents.)

BRIEF OF APPELLANT
CORRECTIONS TO IV. STATEMENT OF FACTS

CASE NO. 18197

ON APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE G. HAL TAYLOR, PRESIDING

CORRECTIONS TO
PAGES 2, 3 AND 4

(The following information contained in the corrections to Appellant's Statement of Facts was discovered after Appellant's Brief was filed and primarily relates to the pages upon which the relevant factual allegations appear within the Court's Record on Appeal.)

FILED

MAY - 7 1982

IV. STATEMENT OF FACTS

Appellants, on or about March 18, 1981, duly filed a civil complaint against respondents Nu Creation Creme, Inc., George D'Ambrosio, Frank A. Nelson, Jr. and John Savas, in the United States District Court for the District of Utah, Central Division (R. 20, 36, 58). Said Complaint was thereafter amended, materially altering only certain of the party plaintiffs. In addition to four pendent claims, said Amended Complaint asserted a private right of action purusant to specific provisions of the Federal Trade Commission Act ("FTCA"), and predicated subject matter jurisdiction thereon (R. 20-27, 36-43, 58-65). Diversity of citizenship of the parties did not exist.

More particularly, appellants alleged a breach by respondents of the affirmative franchise disclosure requirements of Title 16, Code of Federal Regulations, Section 436.1, et seq. (1980) (R. 20-27, 36-43, 58-65). Respondents moved for the dismissal of said claim together with the claims pendent thereto, alleging that a private right of action does not exist and is not maintainable under the FTCA (R. 20-27, 36-43, 58-65). Said motion was granted by the United States District Court, Honorable Bruce S. Jenkins, and, on or about September 14,

1981, a written decision was issued dismissing Appellants' cause of action predicated on 16 C.F.R. §436.1, together with the claims pendent thereto (R. 20-27, 36-43, 58-65).

Appellants, in response thereto, on or about September 30, 1981, duly filed a complaint against respondents in the Third Judicial District Court for Salt Lake County, State of Utah (R. 2-11). Said Complaint realleged the claims originally appended to the FTCA claim in the United States District Court, and asserted a new cause of action grounded upon negligent misrepresentation (R. 2-11). Appellants did not, however, assert a private right of action under the FTCA or 16 C.F.R. §436.1, et seq. (1980). Admittedly, mention was made of the affirmative disclosure requirements of 16 C.F.R. §436.1 et seq. (1980) (R.6). Such reference was, however, made only as a suggested aid or guideline to be considered by the Court in establishing and quantifying the duties owed by respondents to appellants under a negligent misrepresentation theory.

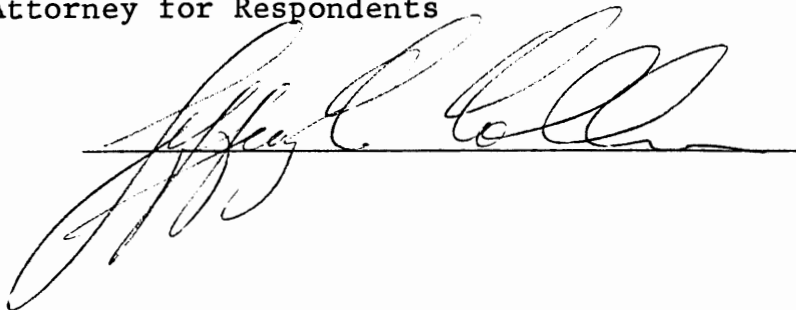
Nu Creation Creme, D'Ambrosio and Nelson, on or about November 30, 1981 moved the Third Judicial District Court for Salt Lake County for an Order dismissing appellants' Complaint (R. 18-27). Said motion asserted that appellants negligent misrepresentation claim was barred by the principal of res judicata, in light of the prior decision of the United States District Court (R. 18-27). The Third Judicial District Court, the Honorable G. Hal Taylor presiding, on or about November 30, 1981 granted respondents'

motion and, on or about December 2, 1981, entered a final order dismissing appellants' negligent misrepresentation claim with prejudice as being violative of the principals of res judicata (R. 47-48). Said Order was subsequently amended to further delineate the ruling of the Court (R. 90-93). Appellants' appeal from said final order (R. 80-81).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I mailed a true and correct copy of the foregoing Brief of Appellant, Corrections to IV. Statement of Facts, postage prepaid, this 7 day of May, 1982, to:

Paul N. Cotro-Manes, Esq.
Cotro-Manes, Warr, Green & Shand
311 South State Street
Salt Lake City, Utah 84111
Attorney for Respondents

A handwritten signature in cursive script, appearing to read "Paul N. Cotro-Manes", is written over a horizontal line.