

1958

Sugar & Ulmer v. Plateau Uranium Investment Corporation : Brief of Appellants

Utah Supreme Court

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

UNIVERSITY, UTAH

MAY 3 1958

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SUGAR & ULMER, a partnership, and
PAUL SUGAR and HARRY ULMER,

Defendants and Appellants,

—vs.—

PLATEAU URANIUM INVESTMENT
CORPORATION, a Utah corporation,

Plaintiff and Respondent.

FILED
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Clerk, Supreme Court, Utah

BRIEF OF APPELLANTS

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IN THE SUPREME COURT of the STATE OF UTAH

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—vs.—

PLATEAU URANIUM INVESTMENT
CORPORATION, a Utah corporation,
Plaintiff and Respondent.

Case
No. 8774

BRIEF OF APPELLANTS

STATEMENT OF FACTS

Sugar & Ulmer is a partnership in business as Certified Public Accountants. It was active in securing the organization of Deseret Uranium Corporation. Dan S. Bushnell did the legal work in the incorporation of Deseret and also did the necessary legal work incident to Registration of the corporation with the State and Federal Securities Commissions (R. 3).

Mr. Bushnell was approached originally by a Mr. Prestwich and a Mr. VanBlerkem to do this legal work for Deseret (R. 9, 13, 19 and 24). A fee of \$1,250.00 was discussed at that time, said fee to be paid: (a) for

the incorporation of Deseret and, (b) for the negotiations and work incident to the Securities Commission Registrations. This work was done but the original underwriting failed and the properties were returned to Mr. Prestwich (R. 14).

Thereafter new arrangements were entered into, new properties were acquired for the corporation, additional work was performed, and a new fee arrangement was made superseding the prior fee arrangement (R. 15). The new fee arrangement was for \$3,000.00 cash and \$3,000.00 stock (R. 16, 17 and 21). The additional legal work was completed but the second underwriting of the company did not materialize (R. 39).

Thereafter, Mr. Bushnell sent various billings for his work to Deseret Uranium Corporation (R. 32) (Exs. D-1, 2, 3). Upon receiving no payment of said bills, Mr. Bushnell, through his assignee, filed suit against Deseret Uranium Corporation for the full amount of the fees and at the same time filed suit against Appellants for the same fees which had been included in the suit against Deseret (R. 1, 32, 34) (Ex. 2).

The instant case was appealed from the City Court to the District Court and judgment was rendered in favor of the plaintiff in the amount of \$768.76, from which judgment this appeal is taken.

STATEMENT OF POINTS

POINT 1.

FINDINGS OF FACT NO. 2 IS NOT SUPPORTED BY THE EVIDENCE.

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POINT 2.

APPELLANTS' OBLIGATION IF ANY WAS DISCHARGED AS A JOINT OBLIGATION UNDER TITLE 15-4, UTAH CODE ANNOTATED, 1953.

ARGUMENT

POINT 1.

FINDINGS OF FACT NO. 2 IS NOT SUPPORTED BY THE EVIDENCE.

The testimony adduced at the trial both on behalf of the Respondent and on behalf of the Appellants, does not indicate an original obligation of the Appellants to pay for the legal services rendered by Respondent. At the most, the evidence merely indicates a possible joint obligation owing by Deseret Uranium Corporation and by the Appellants.

An examination of the testimony upon which Respondent relies indicates that Mr. Bushnell was contacted by Mr. Prestwich and Mr. Van Blerkem regarding the legal services to be rendered, prior to being introduced to Mr. Paul Sugar (R. 13, 19 and 24). There was some discussion of a \$1,250.00 fee. However the underwriting failed, the properties were returned to Mr. Prestwich, and it appeared that Mr. Sugar and Mr. Bushnell had performed a considerable amount of work for nothing (R. 14).

It was then decided to go ahead with a new venture and to undertake additional work. For this Mr. Bushnell agreed to an increased fee of \$3,000.00 cash and \$3,000.00 stock which was to be paid solely by the corporation (R. 15, 16, 17 and 21).

The second venture also failed and only after Mr. Bushnell had billed Deseret for several months and was unable to obtain the money and stock due him, did he then attempt to collect the money from Appellants (R. 32), as well as from the Corporation.

It is significant to note that Mr. Bushnell claims a \$500.00 fee which arose out of the original transaction and further claims that he was to receive that fee thirty days after clearance of the corporation under the original underwriting (R. 25). Notwithstanding said alleged fee arrangement, Mr. Bushnell went forward with the second arrangements wherein he agreed to the total fee of \$3,000.00 cash and \$3,000.00 worth of stock to be paid by the corporation (R. 30, 39). There is no documentary evidence whatsoever to support the \$500.00 fee arrangement contended for by Mr. Bushnell. To the contrary, defendant's Exs. 1, 2 and 3 all are statements of Mr. Bushnell addressed to Deseret Uranium Corporation, claiming the full amount for his services from that company (R. 42). No statements were ever sent to Appellants. These facts, when considered with the manner in which Mr. Bushnell went ahead with the work are entirely inconsistent with any claim for \$500.00. Rather, these facts do prove a fee arrangement of \$3,000 cash and \$3,000 worth of stock, payable by the corporation.

Finally when suit was brought to collect the alleged fee, suit was brought against Deseret Uranium Corporation for the full amount of the bill and then according to Mr. Bushnell's own testimony (R. 32, 33, 34) a separate suit was brought against Appellants to collect again

the alleged \$500.00 (Ex. 2) (R.-1). The only explanation offered by Mr. Bushnell for the two suits is that the obligation was a joint obligation (R. 35). Certainly prior to this time there was no indication whatsoever either in the testimony of the parties, in the actual carrying on of the second transaction or in the billing by Mr. Bushnell, to indicate any attempt to collect the \$500.00 from Appellants. Actually the evidence clearly indicates that the original fee arrangement whatever it may have been was merged into the fee arrangement involving the second transaction, to-wit, \$3,000.00 cash and \$3,000.00 worth of stock. It was on the basis of this arrangement that Mr. Bushnell and the corporation proceeded. It was on the basis of this arrangement that Mr. Bushnell filed suit against the corporation and admittedly in that suit claimed all of the fee to which he felt entitled because of his work on the corporation and on the underwriting. The present suit was just added insurance.

Therefore, there is not sufficient evidence to indicate any original obligation of Sugar & Ulmer to pay to Dan Bushnell the said \$500.00 fee pluss \$198.00 costs. The only reasonable conclusion is that the corporation fee agreement was the superseding and final word.

POINT 2.

APPELLANTS' OBLIGATION IF ANY WAS DISCHARGED AS A JOINT OBLIGATION UNDER TITLE 15-4, UTAH CODE ANNOTATED, 1953.

If under the evidence, the Court *should* determine that there is sufficient proof of an obligation by Sugar

& Ulmer to pay \$500 fee plus \$198.00 costs, then there is no question but that it is a joint obligation. Mr. Bushnell himself on cross-examination, states unequivocally that the obligation was a joint obligation. The following excerpt from the record at Page 34 so indicates:

“Q. Now, as a matter of fact, in your complaint in this — in the complaint in this particular action, you have also sued for services rendered — for the identical services rendered — during the identical time and for the identical costs, have you not?

A. That is true.

Q. So, at the time that you filed this action, you also filed the action seeking to recover the same amount of money from Deseret Uranium Company?

A. That's right.

Q. Now, is it not true that you considered that Plateau owed you for this money, as well as Sugar & Ulmer — you are now attempting to recover from Sugar & Ulmer?

A. Yes, I considered them as co-obligors to the extent of the \$500 and costs, and the balance would be the sole obligation of the corporation.

Q. So, as to the amount you are suing Sugar & Ulmer for, you considered that as a joint obligation?

A. Yes.”

Therefore, since this obligation is admittedly a joint obligation, the amount owed by Sugar & Ulmer has been

discharged by reason of a release of that amount made by Mr. Bushnell in the case against Deseret Uranium Corporation, Civil No. 108219 (Ex. 3).

An examination of this file indicates a suit by Plateau Uranium Investment Corporation, the assignee of Mr. Bushnell, against Deseret Uranium Corporation for the full amount of \$6,448.68. The Complaint in that case is for the identical work set forth in the complaint of the subject case and is couched in identical terms. Mr. Bushnell clearly indicates that the claim against Deseret included the amount sought to be recovered from Appellants. Mr. Bushnell also very clearly indicates that in taking judgment against Deseret in Civil No. 108219, he specifically reduced that judgment and thus the joint liability by \$700.00 (R. 35). Having clearly settled the claim against Deseret for less than the amount sought to be recovered, the joint obligor, Appellants in this case, is released from any further obligation. As is shown in Civil No. 108219, and specifically in the judgment therein entered, the claimed amount was voluntarily reduced by \$700.00. Such a release without specifically reserving liability against the joint obligors, releases in this case Sugar & Ulmer from any liability thereon, since the obligation was joint only to the extent of the \$500 plus \$198.68 costs.

An examination of our statute, Title 15-4, U.C.A. 1953, upholds this contention:

“15-4-4. Release of coobligor-Reservation of rights. — Subject to the provisions of section

15-4-3, the obligee's release or discharge of one or more of several obligors, or of one or more of joint or of joint and several obligors, shall not discharge coobligors against whom the obligee in writing and as part of the same transaction as the release or discharge expressly reserves his rights; and in the absence of such a reservation of rights shall discharge coobligors only to the extent provided in section 15-4-5."

"15-4-5. Release of coobligor — Effect of knowledge of obligee. — If an obligee releasing or discharging an obligor without express reservation of rights against a coobligor then knows or has reason to know that the obligor released or discharged did not pay as much of the claim as he was bound by his contract or relation with that coobligor to pay, the obligee's claim against that coobligor shall be satisfied to the amount which the obligee knew or had reason to know that the released or discharged obligor was bound to such coobligor to pay.

"If an obligee so releasing or discharging an obligor has not then such knowledge or reason to know, the obligee's claim against the coobligor shall be satisfied to the extent of the lesser of two amounts, namely: (a) the amount of the fractional share of the obligor released or discharged, or (b) the amount that such obligor was bound by his contract or relation with the coobligor to pay."

In interpreting these two sections, reference is made to the case of *Greenhatch vs. Shell Oil Company*, 78 Fed. 2d 942, 10th Cir. This Utah case is analogous to the subject case in that the plaintiff had previously sued one party for a wrong and had accepted a certain sum

of money in full satisfaction therefor and had given a release and Stipulation for Dismissal which did not expressly reserve any rights against the coobligor. The Court upheld the general rule of law that a release of one joint debtor discharges his co-joint debtor unless the discharge or release specifically reserves the claim against the coobligor. See also additional cases under the annotation in 50 *A.L.R.* 1057 and in 49 *C.J.S.*, para. 564.

Thus we can only conclude that if this obligation survived the new arrangement for \$3,000.00 cash and \$3,000.00 stock, at most it was a joint obligation wherein Deseret Uranium Corporation was the joint obligor. Mr. Bushnell sued Deseret and sued Sugar & Ulmer to recover the same \$500.00 plus costs. He thereafter released Deseret Uranium from any liability on this joint obligation. In releasing this joint obligor, he did not reserve any claim against Sugar & Ulmer and as is stated in the *Greenhalch*, *supra* case "there being no written reservation of right against defendant (Appellants) as provided in Section 4, we conclude that the release given discharged defendant from liability, if any" for the fee obligation.

SUMMARY

In conclusion, Appellants contend that there may have been some discussion in the earlier transaction of a \$1,250.00 fee arrangement. There is confusion as to whether the fee was to be \$500.00 or \$1,250.00. Whatever the figure may have been when the original transaction failed, that fee arrangement was discarded. In under-

taking the new and subsequent transaction, the fee arrangement was \$3,000.00 cash and \$3,000.00 worth of stock plus costs, to be paid by Deseret Uranium Corporation. The evidence which indicates anything to the contrary is inconsequential. However, if this court does find enough evidence to support *Findings of Fact No. 2*, the Court must also find the existence of a joint obligation between Deseret Uranium Corporation and Appellants. Having made such a determination, the Court as a matter of law must hold that said joint obligation has been released and satisfied by the release by one of the joint obligors without sufficient written reservation of the claim against the other joint obligor.

Appellants respectfully pray that this Honorable Court reverse the decision of the trial Court, awarding costs to these Appellants.

Respectfully submitted,

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