

1958

Paul P. Eardley v. Jimmie Sammons and Beulah G. Sammons : Brief of Defendants and Respondents

Utah Supreme Court

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Pickett & Pickett; Attorneys for Defendants and Respondents;

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IN THE SUPREME COURT OF THE
STATE OF UTAH

FILED

MAY 16 1958

PAUL P. EARDLEY,

Plaintiff and Appellant,

Clerk, Supreme Court, Utah

vs.

Case No.

JIMMIE SAMMONS and BEULAH G.
SAMMONS, his wife,

8834

Defendants and Respondents

BRIEF OF DEFENDANTS AND RESPONDENTS

PICKETT & PICKETT
Attorneys for Defendants
and Respondents
Pickett Building
St. George, Utah

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on or about July 10, 1956, was either in jail or incapacitated, by reason of being under the influence of alcohol, during most of this period. The court found from the evidence that Mr. Sammons was incapacitated, either by being in the Washington County jail, or due to being under the influence of liquor, for a period of only six weeks during the year, from August, 1955, to July 10, 1956, (See para. 27, Findings of Fact).

It was also amply proved that during the times of the above incapacity the defendant Beulah G. Sammons, wife of defendant Jimmie Sammons, who was a skilled and experienced restaurant operator, was present at the cafe and in charge at all times when defendant Jimmie Sammons was not at the said cafe (Transcript, page 262, Beulah G. Sammons).

At the time of the foreclosure notice on the cafe property, (Plaintiff's Exhibit 9) given by sellers, defendant Jimmie Sammons was in jail at St. George, Washington County, Utah. However, defendants gathered together \$2800.00 of cafe funds, plus \$100.00 of personal funds belonging to the defendant Beulah G. Sammons, and plaintiff advanced \$1100.00 for the payment of the \$4000.00 then due upon said cafe property. Plaintiff did at that time, by representing that he wanted security for his interest in the cafe, obtain from the said defendants and each of them the Assignment of all their right, title and interest in and to the cafe. (Plaintiff's Exhibit No. 6)

Defendant Jimmie Sammons and Beulah G. Sammons both testified that they executed the purported Assignment only upon plaintiff's promise that it

would be used only to protect him (plaintiff) and as security, and after defendant Jimmie Sammons got out of jail the partnership would continue on the same basis as before and the partnership agreement would be reduced to writing. As to these representations by Eardley used to persuade said defendants into signing the Assignment to Eardley or losing everything they had been working for in the cafe, plaintiff had a lapse of memory. (Trans. page 82, 83, 84, 85, Eardley C).

The correct decision was entered by the court when he stated that the Assignment was in fact given by defendants, without consideration, as security for Eardley's original and subsequent investment in the cafe and upon Eardley's promise and representation to both of the defendants that the Assignment would only

be to secure the plaintiff until such time as said partnership was reduced to writing. (Paragraph 1, Conclusions of Law) The general **rule** of such matters is as follows:

"In regard to instruments generally, the view has been taken that parol evidence is admissible to show that an instrument absolute on its face was intended merely as security for payment of a debt." (Am. Jnr. Vol. 20, pages 998-999, Section 1146)

Plaintiff complains that he was deprived of certain rights by the Court's admission of defendants' exhibit No. 13, which purported to be the best and only inventory of the goods and supplies and equipment in the basement at the time Mr. Sammons turned over the keys to the cafe to plaintiff's designated agent, Mrs. Edwards. At the time the keys were turned to Mrs. Edwards, as plaintiff's designated agent, plaintiff promised to make an

immediate inventory of all items of supplies on hand and deliver a copy to Mr. Sammons (Trans. page 89, Eardley C; Trans. page 182, 183, Sammons, D). An inventory was taken at that time by the plaintiff's agents, however, no inventory was taken of the large stock of supplies in the basement. From July 11, 1956 to February, 1957, plaintiff authorized and directed his help at the cafe to use from this basement inventory, and by plaintiff's own statement (Trans. page 93, Eardley C), over 510 pounds of coffee alone were used from the inventory in the basement. No record was kept of any amounts taken from that inventory (Trans, page 92, Eardley D.). When plaintiff finally took the inventory of the remainder of the supplies in the basement, after plaintiff had been using from said basement supplies for a period of over 8 months, there still remained

supplies of a value in excess of \$335.00.
(Plaintiff's Exhibit 12).

The evidence indicated and the court found that if the plaintiff was damaged by acceptance of defendants' Exhibit No. 13, he had only himself to blame.

As to the pricing of the inventories by the plaintiff and the defendants, all of the books and records and invoices of the partnership were finally before the court, after the court had issued an order to the plaintiff to produce the records and finally an order to show cause why he should not find plaintiff in contempt of court for producing only part of the records. Having all of the records and invoices before it, the court found the valuation put upon the inventory items by the defendants was the correct one, and they were so accepted and incorporated in the Findings and Decree.

ARGUMENT

Answering Plaintiff's points 1, 2, 4, 7, 9 and 15.

In determining an equitable method of winding up the partnership affairs, the court, taking all evidence, exhibits and pleadings into consideration, awarded the plaintiff the cafe property and business upon condition (1) that the plaintiff assume the outstanding debts and liabilities of the cafe; (2) that plaintiff pay to the defendant Jimmie Sammons and defendant Beulah G. Sammons certain wages and partnership equities (Decree and Judgment, para. 3, 4, and 6).

The court's award to the plaintiff was not an absolute decree forcing a failing business upon the plaintiff and awarding defendants money. The Decree said in effect, if plaintiff desires to keep the business, the valuable cafe

property, equipment, inventory and other items, then he shall pay the cafe accounts due and owing, some of which were wages owing to the defendants, and further the sum of \$631.02 which was one/half of the net worth of the business, as near as the court could determine. It is clear that this Decree was not an absolute decree. If the plaintiff considered himself harmed by the above division of property, he could have refused to pay the accounts and the court would have given a further decree that the property be sold, debts paid, capital returned and any remaining balance divided between the plaintiff and defendants. The Court certainly never intended to award plaintiff all of the partnership funds, cafe equipment, real property and improvements and then award the defendants all of the partnership obligations due and owing as of July 10, 1956, as contended by the plaintiff.

Answering plaintiff's point No. 3 of plaintiff's brief, also No. VIII, IX, X, XIII, XIV. In setting up the assets and liabilities account, from records which were admittedly scattered and incomplete, the court allowed plaintiff credit for the \$1000.00 he had paid on the cafe property by setting up the equity in the cafe property itself as only \$4806.66, which sum included cafe funds in the sum of \$4706.67 and \$100.00 of personal funds of Beulah G. Sammons. As a matter of fact, approximately \$5800.00 had been paid on the principal of the said cafe, thus plaintiff was given full credit for his \$1000.00 contribution to the purchase of cafe property in the accounting of the court (Para. 15, 16, Findings of Fact).

The court found also that defendants' right to a living wage, later set at \$300.00 per month, was not subject to the cafe showing a profit. Plaintiff and

defendants agreed that the cafe would pay a living wage to the defendant for his operation of the same and this was not subject to the business showing a profit.

The evidence was clear, and the court so found, that the defendant Beulah G. Sammons was hired by the said defendant Jimmie Sammons to help operate the said cafe and that she was entitled to a wage as a general creditor of the said partnership for services to the said cafe partnership. As an employee it is impossible to understand how plaintiff can contend that she was not entitled to a reasonable value for the services which she rendered to said partnership. We submit that the fact that the cafe made a profit or loss had no bearing on the rights of the parties hereunder as to wages due and payable although it could have an important bearing on the amounts due the parties hereto on division of partnership

profits on dissolution and termination.

Answering plaintiff's point No. XVI, defendants submit that the court correctly refused to allow plaintiff's alleged costs expended in securing the statement prepared by plaintiff's bookkeeper, and the inventory taken by the various employees of the plaintiff. The defendants also submit that the court correctly decided that the plaintiff was not entitled to compensation for services in operating and managing the property pending litigation and awaiting determination of the court.

The court could only have decided that the sole management and operation of the property during litigation would undoubtedly more than compensate the plaintiff for the managing of the said property, assuming he was entitled to any sums for managing the property during litigation. In order for the court to make such an award, it would be necessary

to enter into all of the bookkeeping and accounts of the said cafe from the period July 10, 1956, until the Decree and Judgment of the court in November of 1957.

Such information was not before the court and would require great expense and further litigation to determine.

CONCLUSION

In conclusion, the defendants request the court to uphold the verdict of the District Court.

Respectfully submitted,

PICKETT & PICKETT
St. George, Utah