

1960

Melvin Bradshaw v. Eugene N. Davie and Mrs. Eugene N. Davie : Reply Brief of Appellants

Utah Supreme Court

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Rich, Elton & Mangum; Attorneys for Appellants;

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IN THE SUPREME COURT OF THE STATE OF UTAH

MELVIN BRADSHAW,

Respondent,

FILED

JAN 7 - 1960

— Vs. —

Clerk, Supreme Court, Utah
Case

No. 9094

EUGENE N. DAVIE and
MRS. EUGENE N. DAVIE,

Appellants.

REPLY BRIEF of APPELLANTS

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REPLY BRIEF of APPELLANTS

STATEMENT OF FACTS

Through inadvertence both appellant and respondent have omitted to print in their briefs plaintiff's Exhibit No. 1, the partnership contract between the parties. We feel that this document should be before each of the Justices, and we are for that reason printing it in its entirety in this brief as follows:

“BEAVER COUNTY PHARMACY

G. L. Sions, Mgr.

Milford, Utah

AGREEMENT

1) This is an agreement between Melvin Bradshaw and Eugene N. Davie concerning certain mining claims known as (1) pumice hole, (4) Bear Hill, (3) Green Brush, & (1) Richard's Spot — and other claims now being located or to be located by either party.

2) For a fifty percent interest in these claims, Eugene N. Davie agrees to advance what monies are needed to purchase equipment to operate these claims. The equipment cost & others costs of operating said claims are to paid from proceeds of company plus 6% per annum on all monies advanced.

3) Melvin Bradshaw is to receive a salary of \$400.00 a month for working these claims and is to spend his time to the best of his ability to develop and work these claims. In addition, he is to receive 25c per ton to be paid monthly on all shipments of pumice (and similar construction material — such as perlite, silica sand, etc) until an amount of \$20,000.00 has been paid out of shipments of ore —

4) This partnership is a binding agreement on both partners— If one desires to sell he must first give the other partner an opportunity to buy—on a buy or sell offer.

5) All equipment purchased and all claims owned now or in the future owned in this perlite area belong to the partners share & share alike. It is understood that there may be other minerals of commercial grade — and if these are mined on

claims owned by the partnership in the pumice-perlite area— any profits shall be equally shared by the 2 partners.

6) When all costs of operations and all guaranteed royalties are paid, any profit remaining shall be the property of the partners share & share alike.

7) Certain indebtedness exists against the property at the present time in the amount of \$5000.00 — and this money is to be advanced for payment of this indebtedness — under the same provisions as the purchase of new equipment— by, on or about June 1, 1957.

This agreement is to be properly drawn by attorneys — of both parties — however the general intent & purpose is agreed at this time—

/s/ EUGENE N DAVIE

/s/ MELVIN BRADSHAW"

STATEMENT OF POINTS

POINT VI.

THE PURPORTED ACCOUNTING ADOPTED BY THE TRIAL COURT WAS IN CONTRAVENTION AND VIOLATIVE OF THE RULES OF DISTRIBUTION AND ACCOUNTING OF PARTNERSHIPS.

Since the brief of appellants was printed and submitted appellants have discovered a Utah case which we believe is directly in point. We refer to *Eardley v. Sammons*, 8 Utah 2d 159, 330 Pac. 2d 122, decided by the Supreme Court in October, 1958. The facts of this case are so nearly analogous to those in the instant case that we

call this ruling to your attention, believing that it is conclusive of the pending matter.

CONCLUSION

In conclusion appellants urge upon this court that a study of the contract itself and the decision of this court in the *Eardley v. Sammons* case compels a reversal of the trial court ruling.

All other points raised are amply discussed and fully supported in the original brief.

Respectfully submitted,

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