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Kerry Pipkin v. Randy Haugen, Kip Cashmore, Quick Cash, LLC, USA Cash Stores, USA Cash Services, QC Instant Cash, RKT Holding Company : Brief of Appellant

Utah Court of Appeals

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UTAH COURT OF APPEALS

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| KERRY PIPKIN, |) APPELLANT'S BRIEF |
| |) |
| Plaintiff and Appellant, |) Appellate Case No.20011028-CA |
| |) |
| vs. |) |
| |) |
| RANDY HAUGEN, KIP CASHMORE, |) |
| QUICK CASH, LLC, USA CASH |) |
| STORES, USA CASH SERVICES, QC |) |
| INSTANT CASH, RKT HOLDING |) |
| COMPANY, and DOES 1-50, inclusive. |) |
| |) |
| Defendants and Appellees. |) |

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UTAH COURT OF APPEALS

KERRY PIPKIN.

Plaintiff and Appellant,

vs.

RANDY HAUGEN, KIP CASHMORE,
QUICK CASH, LLC, USA CASH
STORES, USA CASH SERVICES, QC
INSTANT CASH, RKT HOLDING
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) APPELLANT'S BRIEF

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JURISDICTIONAL STATEMENT

This appeal is taken from an order granting all the defendant's Motion for Summary Judgment. The order was entered by Judge Roger S. Dutson on December 12, 2001.

This appeal is a matter of right granted to plaintiff and Appellant, Kerry Dale Pipkin pursuant to Rule 3 of the Utah Rules of Appellate Procedure.

STATEMENT OF ISSUES & STANDARD OF REVIEW

The only issue on appeal is whether or not the trial court erred in granting all the defendants summary judgment.

Appellant Pipkin argues that the trial court erred by granting all of Appellees' Summary Judgment Motion. "Summary judgment should be granted only if there has been a showing that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." (*Brockbank v. Brockbank*, 2001 UT App. 251 990, Utah R. Civ.P.56(c).) Further, "On review of summary judgment, we give no deference to the trial court's conclusions but review them for correctness." (*Brinton v. IHC Hosp., Inc.*, (Utah 1998) 973 P.2d 956). Plaintiff claims that as to defendants Randy Haugen and Kip Cashmore the Court could not as a matter of law grant a summary judgment, as several material facts are seriously in dispute.

CONSTITUTIONAL OR STATUTORY PROVISIONS

There are no constitutional issues involved in this appeal.

The only statutory issue here is whether or not all defendants/appellees should have prevailed in their Summary Judgment Motion per Utah Rules of Civil Procedure 56(c).

STATEMENT OF CASE

On January 30, 2000, plaintiff and appellant, Kerry Pipkin, brought a complaint against Randy Haugen, Kip Cashmore, Quick Cash, LLC, USA Cash Stores, USA Cash Services, QC Instant Cash and RKT Holding Company For:

- A) Intentional Misrepresentation of Fact;
- B) Negligent Misrepresentation of Fact;
- C) Rescission;
- D) Intentional Interference with Business Relations, and
- E) Accounting. (See Addendum Pages 001-014)

Plaintiff's complaint is based on an event dated December 1997, where plaintiff claims he was fraudulently induced by Haugen and Cashmore to sell, at a much reduced price, his 50% ownership share in Quick Cash, LLC to Cashmore. Plaintiff/appellant claims that he would have not sold his interest had Haugen (who owned the 50% with Pipkin) not induced him to sell to Cashmore, based on statements made by Haugen That Haugen was no longer interested in continuing Quick Cash, LLC.

Plaintiff/appellant claims that once he sold his shares to Cashmore at a reduced price, he found out that Cashmore and Haugen continued in the same business, as well as others.

Plaintiff/appellant claims damages for the value of his 50% interest in Quick Cash, LLC had the transaction been done at "arms length", less the amount he received from Cashmore via the sale.

Plaintiff concedes his inability to identify specific actions by defendants Quick Cash, LLC, USA Cash Stores, USA Cash Services, QC Instant Cash and RKT Holding Company, and therefore does not appeal the granting of summary judgment as to those defendants.

STATEMENT OF FACTS

1. On or about January 1985, plaintiff and defendant Haugen began a business relationship involving an Amway distributorship which has since become very successful. Defendant Haugen and defendant Cashmore were also involved with Amway as well as various other business partnerships and ventures. (Addendum page 003)

2. On or about the fall of 1994, Mark Archer, an individual in plaintiff's Amway organization, approached plaintiff with a business idea, which was to form a credit service company utilizing post dated checks. At the time it was a relatively new concept and Mr. Archer did not have the capital to fund its development. Plaintiff told Mr. Archer it was a great idea and proposed entering into an equal three way partnership with plaintiff and defendant Haugen providing the funds and Mr. Archer as the manager. Defendant Haugen agreed to plaintiff's proposal and a three way partnership entitled Quick Cash was formed. Additionally, plaintiff and Haugen decided to keep their involvement in Quick Cash private so that it would not be detrimental to their Amway business which they both agreed was their first priority. (Addendum page 003 - 004)

3. The next few years proved to be very successful for Quick Cash as it expanded to eight (8) stores in Utah, California and Nevada. However, in the fall of 1996, plaintiff and

defendant Haugen suspected the third partner (Archer) of embezzling. When confronted by them he left the partnership leaving plaintiff and Haugen equal partners each holding a 50% interest in Quick Cash. (Addendum page 004)

4. On or about July of 1997, defendant Haugen told plaintiff that defendant Cashmore knew a company that was interested in purchasing the Quick Cash stores. Plaintiff had no active interest at the time of selling his interest in the stores. Defendants Haugen and Cashmore met with plaintiff to discuss the value of the stores. Defendant Cashmore received information from another cash store chain that the Quick Cash stores were valued at approximately 1.2 million dollars. Plaintiff informed defendant Haugen that he would not sell the stores for 1.2 million or even 1.5 million and defendant Haugen agreed. (Addendum page 004)

5. On or about September 1997, defendant Haugen told plaintiff that defendant Cashmore had an idea regarding the business and that plaintiff should hear defendant Cashmore out. The three men met wherein defendant Cashmore revealed his plan to develop the business to a size large enough to take public with defendants Haugen, Cashmore and plaintiff as partners. Plaintiff and defendant Haugen agreed to keep the existing stores as a separate entity between them and start a new partnership with defendant Cashmore. Defendant Cashmore proposed a cash figure that would be needed to start up the new stores which plaintiff and Haugen agreed to. Defendant Cashmore then approached them a second time and a third time, each time raising the amount of the capital needed from \$100,000.00

to close to a half a million dollars. Plaintiff did not want to borrow close to a half a million dollars and suggested that he and Haugen put up their stores as their share of the venture and have defendant Cashmore put up the balance needed. Defendant Cashmore informed plaintiff he was against this suggestion and that he did not want the existing stores. Plaintiff believed that it was at this time that defendant Haugen and defendant Cashmore became at odds with plaintiff because plaintiff would not agree with them on a satisfactory purchase price. (Addendum page 004 - 005)

6. On or about October 1997, defendant Haugen gave defendant Cashmore full access to the stores so defendant Cashmore could obtain any information he needed to assist defendant Cashmore in expanding and taking the stores public. Defendant Haugen never consulted plaintiff regarding allowing defendant Cashmore full access to the stores. Additionally, it was at this time that defendant Haugen began to pressure plaintiff into selling their stores. Defendant Haugen told plaintiff that he no longer wanted the stores as it was detrimental to his Amway business. Additionally, defendant Haugen also told plaintiff that defendant Cashmore had made an offer of \$250,000.00 on their Sacramento store. A week later, Haugen told plaintiff that Cashmore had offered \$750,000.00 on all the stores including the Sacramento store and that plaintiff should sell so that defendant Haugen could get out of the check cashing business. Plaintiff accepted the offer of \$750,000.00 because had he not, defendant Cashmore would have opened additional stores on his own without justly compensating plaintiff. Defendant Haugen specifically told plaintiff that he wanted out of

the business so that he could concentrate on Amway. Plaintiff and Haugen agreed to sell and end their partnership after pressure from defendant Haugen because defendant Haugen wanted out of the check cashing business. Plaintiff received from Cashmore, \$375,000.00. Plaintiff claims that Haugen only received the down-payment from defendant Cashmore, but none of the monthly payments. (Admission made in recorded conversation to plaintiff not admitted into evidence). Argued on Page 36 of the transcript before Judge Dutson. (Addendum page 005 - 006)

7. At different times throughout 1998, plaintiff asked defendant Haugen if he was in partnership with defendant Cashmore in the business plaintiff and Haugen owned. Each time defendant Haugen denied that he was still a partner in the business and told plaintiff that it was not good for their Amway business to let anyone know about plaintiff's or Cashmore's check cashing business. (Addendum page 006)

8. On or about May 1998, plaintiff, through the discovery of various documents, discovered that defendant Haugen never sold his part of the partnership to defendant Cashmore but instead continued the partnership with Cashmore instead of plaintiff. Plaintiff believes that if not for the representations of defendants Haugen and Cashmore made to him he would not have sold his share of the partnership. Additionally, because of the representations of defendants, plaintiff was forced to sell at a price lower than the true value of the business and was forced to expend additional capital to restart his own business. (Addendum page 006)

SUMMARY OF ARGUMENT

- 1) There are material facts in dispute precluding the granting of summary judgment on plaintiff's claims as to defendants Haugen and Cashmore.
- 2) Plaintiff suffered injury as a result of Cashmore's "discounted" purchase price, induced by defendant Haugen.
- 3) Plaintiff concedes legal remedies would suffice, and therefore does not pursue rescission and accounting.
- 4) Plaintiff concedes his claims against defendants Quick Cash LLC, USA Cash Stores, USA Cash Services, QC Instant Cash and RKT Holding Company.

ARGUMENT

Defendants' motion for summary judgment should have been denied as there are many genuine issues of material facts that are in dispute. While defendants are correct in stating the standard for summary judgment. (See Addendum Page 061) it is clear from reviewing the issues still in dispute in this case that several issues, which are material, are highly disputed. Specifically, Plaintiff plead with great specificity fraud, negligent misrepresentation and intentional interference with economic relations against various defendants. Plaintiff now concedes on appeal some of the claims and some of the defendants were properly dismissed.

In the very essence of Plaintiff's complaint he claims that Mr. Haugen and Mr. Cashmore conspired amongst themselves to defraud Plaintiff by "squeezing" him out of the check cashing business which he was involved in with Defendant Haugen only to learn afterwards that Defendants Haugen and Defendant Cashmore continued with the business. Plaintiff submitted enough evidence, in the form of two declarations, that show that Defendants Haugen and Cashmore continued with the business, even though Defendant Haugen claims that he sold his entire interest to Defendant Cashmore. (See Addendum Pages 147-158) Plaintiff claims that he sold his interest to Cashmore at a discount based on

the fact that Mr. Haugen, his partner of several years and his sponsor¹ in the Amway business, told him that he is exiting the check cashing business. Plaintiff claims that he would have never sold to Defendant Cashmore and certainly not for the amount that he did without the misrepresentations made by Cashmore and Haugen.

In their summary judgment motion defendants argue, supported only by their declarations, that Plaintiff does not have a case. (See Addendum Pages 115-118; 125-126) Plaintiff disagreed and attached is his declaration and exhibits that were discovered that contradict the declarations of defendants. (See Addendum Pages 147-168) Therefore, there are too many material facts are in dispute and defendants' Motion for Summary Judgment should have been denied. Additionally, plaintiff argued before the Honorable Judge Dutson that their summary judgment was premature, as he was not able to conduct sufficient discovery (i.e. depositions) (See transcript of November 5, 2001 hearing before the Honorable Roger S. Dutson). Granting summary judgment was not correct under those circumstances. The Court in *Surety Underwriters v. E & C Trucking*, 2000 UT 71, ¶14, 10 P. 3d 338 stated as follows:

"Summary judgment is appropriate only 'if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.'" Utah R. Civ.P.56(c).

¹ As a sponsor they have a close and ongoing relationship which requires their mutual assistance in training and recruiting others.

The granting of defendants' Motion for Summary Judgment was based upon the two (2) affidavits of the defendants and nothing more.

A. There Are Sufficient Material Facts in Dispute Precluding The Granting of Summary Judgment of Plaintiff's Claim as to Defendants Haugen And Cashmore.

Defendants in their Motion for Summary Judgment, provide seventeen alleged "undisputed material facts". Plaintiff will concentrate in this brief on his claim of the disputed facts. (See also Addendum Pages 159-162)

In their fourth "undisputed fact", Defendant's claim that Cashmore paid \$750,000 (seven hundred, fifty thousand dollars) for quick cash, \$375,000 (three hundred, seventy five thousand dollars) to Pipkin, and \$375,000 (three hundred, seventy five thousand dollars) to Haugen. Plaintiff, through his own affidavit, states that while Defendant Cashmore paid Plaintiff \$375,000, he did not pay Haugen anything. This fact is relevant because Plaintiff is informed and believes and thereupon alleges that in his complaint Defendant Haugen and Cashmore conspired to defraud him by informing him that Defendant Cashmore is paying \$375,000 to both Defendants Haugen and himself when indeed Defendant Haugen did not receive any money, but instead continued doing business with Defendant Cashmore. The fact is highly material, because had Plaintiff believed that Defendant Cashmore was not going to pay Defendant Haugen any money but instead continued doing business with him, he certainly would not have sold out. Plaintiff provided evidence of the continued dealings

between Defendants Haugen and Cashmore in the form of exhibits to the Declaration of Attorney Rosen. (See Addendum Pages 147-155)

In their seventh "undisputed facts", Defendants claim that Pipkin, Haugen and Cashmore have fully performed, so have each fully performed under the Pipkin and Haugen agreements. Plaintiff highly disputes that statement. Plaintiff claims, and that claim is material, that Defendant Cashmore did not pay \$375,000 to Defendant Haugen, but instead, continued doing business with Defendant Haugen, after Defendant Haugen induced Plaintiff to sell out. Defendants could have not performed under the agreements.

Plaintiff highly disputes on the same grounds defendants alleged ninth "undisputed fact", that Haugen and Cashmore have fully performed the Haugen agreement.

On somewhat unrelated issue was defendants tenth "undisputed fact". Defendants claim that Cashmore never promised or agreed to include Pipkin in any of his future business ventures as a condition of his agreement with Pipkin to purchase Pipkin's interest in Quick Cash. With that statement, Plaintiff highly disagrees as seen in his affidavit. (See Addendum Pages 156-158) While Defendant Cashmore never promised or agreed to include Plaintiff Pipkin in any of his future business ventures, it was understood that Defendant Cashmore and Defendant Haugen would not continue with the same check cashing business among themselves. Plaintiff claims that he would have never exited the check cashing business had it not been for Haugen's misrepresentations.

Finally, plaintiff takes issue with defendants' sixteenth "undisputed fact", that

Defendant QC Instant Cash is a California Limited Liability Company operating a check cashing business in California, and was an asset owned by Quick Cash when Quick Cash was sold to Cashmore. Cashmore is the only member of QC Instant Cash. Plaintiff highly disputes this fact, and specifically the last sentence that Cashmore is the only member of QC Instant Cash. Plaintiff believes that QC Instant Cash is owned by both Defendant Cashmore and Defendant Haugen. Plaintiff provided evidence in the form of Exhibit "B" to the Declaration of Etan Rosen opposing the summary judgment motion, indicating that QC in January 5, 1998, still had Randy Haugen's name on a check written after the purchase by Cashmore. (See Addendum Page 153)

B. Plaintiff Suffered Injury as a Result of Cashmore's "Discounted" Purchase Price, Induced by Defendant Haugen.

An issue in dispute is the extent, if any, of plaintiff's injuries due to his contention that he sold his half interest in Quick Cash, LLC. at a deep discount to Cashmore.

Defendants' position is that plaintiff, and defendants Cashmore and Haugen signed agreements by which Cashmore is to pay \$375,000.00 to each. Defendants then argue that Cashmore performed under the agreements, hence, no damages.

Defendants' argument is a simplification of the facts and also a decoy. Plaintiff is not arguing that defendant Cashmore breached a contract to pay him \$375,000.00, but rather that he induced, together with defendant Haugen, plaintiff to sell what was worth 1.2 million -

1.5 million (for all the stores) for \$750,000.00.

Plaintiff has argued this point to no avail. (See Transcript of the Hearing) At a minimum, the issue is one of material fact that should have not been disposed of in summary judgment. There is another issue in dispute which is the actual value of Quick Cash, LLC at the time of the sale. Plaintiff contends that he would have not sold even for 1.5 million, and that defendant Haugen shared his view. Plaintiff also contends that defendant Cashmore indicated a value of 1.2 million. Regardless of the actual appraised value in December 1998 (either 1.2 million or 1.5 million) plaintiff's one-half interest was substantially higher than what he sold it for. Plaintiff contends he would have not done so without the additional threat that Haugen was exiting the business.

C. Plaintiff Concedes Legal Remedies Would Suffice, And Therefore Does Not Pursue Rescission And Accounting.

As stated above, on appeal plaintiff concedes these causes of action, and therefore dismisses them herewith.

D. Plaintiff concedes his claims against defendants Quick Cash LLC, USA Cash Stores, USA Cash Services, QC Instant Cash and RKT Holding Company.

Defendants brought their summary judgment prior to plaintiff's ability to conduct meaningful discovery of any kind. (Plaintiff's argument seen in the Transcript of the

Hearing of November 2, 2001) Plaintiff has not been able to explore defendants Haugen and Cashmore's relationship to the other defendants, even though such relationship must exist. Therefore, plaintiff reluctantly, and for purposes of this appeal, asks that this honorable court disregard his claims against Quick Cash LLC, USA Cash Stores, USA Cash Services, QC Instant Cash and RKT Holding Company.

CONCLUSION

For the reasons stated above, plaintiff respectfully requests that his appeal be granted thereby denying defendants' Motion for Summary Judgment.

Dated 06/06/02

BEYER, PONGRATZ & ROSEN

By



Etan E. Rosen
Attorney for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I mailed two true and correct copies of the foregoing **APPELLANT'S BRIEF AND APPELLANT'S ADDENDUM** by depositing the same in the U.S. mail, postage prepaid, on the 10th day of June, 2002, addressed to the following:

Thomas R. Karrenberg
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700 Bank One Tower
50 West Broadway
Salt Lake City, Utah 84101-2006

By: _____


Etan E. Rosen