1967

Werner Kiepe v. Eli D. Lecheminant : Respondent's Reply Brief on Cross-Appeal

IN THE SUPREME COURT OF THE STATE OF UTAH

WERNER KIEPE,

Plaintiff-Appellant and Cross Respondent,

vs.

ELI D. LECHEMINANT,

Defendant-Respondent and Cross Appellant.

Case No.
107[illegible]

RESPONDENT'S REPLY BRIEF
BRIEF ON CROSS APPEAL

Appeal from the judgment of the [illegible] Court for Salt Lake County, Honorable [illegible]. Snow, Judge.

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IN THE SUPREME COURT OF THE STATE OF UTAH

WERNER KIEPE,
Plaintiff-Appellant and Cross Respondent,

vs.

ELI D. LECHEMINANT,
Defendant-Respondent and Cross Appellant.

Case No. 10767

RESPONDENT'S REPLY BRIEF AND BRIEF ON CROSS APPEAL

Appeal from the judgment of the Third District Court for Salt Lake County, Honorable Marcellus K. Snow, Judge.

STATEMENT OF NATURE OF THE CASE

This is an action involving the operation of a partnership business for a period of thirteen months covering the period of time between the dissolution of the partnership and the final winding up of the

partnership business between Appellant and Respondent.

DISPOSITION OF CASE MADE IN LOWER COURT

Respondent agrees with the disposition of the case in the Lower Court as stated by Appellant.

STATEMENT OF FACTS

Respondent agrees with the statement of facts related by Appellant with the following exception:

It is presumed that Appellant intended to use the word Appellant in the last paragraph of page 4, line 5 of his brief.

Respondent does not agree with the statement of overcharges to customers made by Respondent. Were this appeal from the final judgment, then that part of the Appellant's statement of facts pertaining to the original case resulting in the judgment of March 12, 1964 not herein objected to might be in order, but the only record of the case on which this appeal is taken is that made subsequent to the judgment entered March 12, 1964. To go behind this record is unimportant and simply confuses the facts as to the real issue on this appeal.

Appellant states that the partners continued to operate the business of the partnership in the same manner they had done prior to notice of dissolution.

In this we do not fully agree. The fact as shown by the record is that while the partners continued on in the same office, Appellant took into his possession and under his control, the appraisal business and records, claiming those assets as his own and not partnership assets and Appellant conducted his own independent appraisal business, he did not intend that Respondent participate in the income, therefrom. Respondent carried on the mortgage loan and insurance business of the partnership, as a partnership operation from which Appellant at all times participated in the income just as Appellant did prior to the dissolution of the partnership. Appellant put no time into partnership operation but Appellant devoted the whole of his time to his appraisal business. The only question before the court is what is the equitable basis under which the parties operated for a period of thirteen months, from the date of dissolution through the winding up period to the final breaking off date. The attention of the court is directed to the fact that this phase of the case was not made an issue by the pleadings. Contrary to the contention of Appellant the trial court did retain jurisdiction, after having entered its judgment on the case for the purpose of settling the controversy which had arisen between the parties as to the thirteen month period of time when the parties could not resolve their differences. The Order from which the appeal is taken was initiated not by any pleadings but upon application of Respondent for an Order to Show Cause why Appellant should not be found in contempt of court for having failed to com-

ply with the judgment of the court which was made and entered on March 12, 1964. At this hearing, on Respondent's application, no pleadings were filed but both parties initiated the matter of accountings for the thirteen month period subsequent to the date of dissolution.

The attention of the court is directed to the fact that when the trial court stated that no compensation would be allowed either party for services during the thirteen month period, the court had not considered nor allowed compensation to be paid to Ruth Barlow and R. L. Christensen, and charged as a partnership expense, neither had the court allowed compensation to Appellants accountant, Mr. Pinnock, as a partnership expense.

At page 6 of Appellant's Brief Appellant states that at the conclusion of the evidence, the purport of the evidence was discussed with counsel, during which counsel for Respondent makes the following statement:

> I said if they would be willing to invoke the partnership agreement all the way down the line, we would be willing to do that. But they want to omit the renewal insurance and that means that much more disadvantage to us. (R. 244)

The Court then stated:

> All right. The Court will adopt the suggestion of Mr. Backman that we go all the way down the line***. *Neither partner will receive*

> *any special compensation for services during this interim period*, and all of the expenses by whichever department incurred or by whom will be lumped together and deducted from the profit and loss account, if there is sufficient in there, and the balance shall be distributed equally between the partners. I won't need to take it under advisement, and you can proceed accordingly and wind up today if you want. (R. 245)

The difficulty is that the court did not invoke the partnership agreement all the way down the line in that the court allowed the compensation paid to Ruth Barlow and R. L. Christensen to be charged as partnership expense. The partnership agreement provided that mutual consent of the partners was necessary to employ anyone on behalf of the partnership (R. 174). The Respondent told Appellant that he would not pay Ruth Barlow if Appellant employed her.

It is to be noted that no objection was made to the introduction of evidence introduced by Respondent at the hearing had on February 13, 1964 as to special services rendered by Respondent during the winding up period in Respondents having preserved the mortgage loan asset of the partnership (R. 164-175).

ARGUMENT

POINT ONE

THE JUDGMENT THAT DEFENDANT IS AWARDED THE SUM OF $2,500.00 FOR SERV-

ICES FOR A PERIOD OF THIRTEEN MONTHS SUBSEQUENT TO DATE OF DISSOLUTION OF THE PARTNERSHIP IN PRESERVING THE MORTGAGE LOAN ASSET OF THE PARTNERSHIP IS NOT SUPPORTED BY THE EVIDENCE.

The action is an equitable action, and contrary to the argument of Appellant that the court had no evidence to support its order, the court did hear evidence and had theretofore indicated to counsel that it intended to award some compensation to Respondent for his having preserved the mortgage loan asset of the partnership, and having retained jurisdiction of the case, the case having been tried piece meal, the court exercised its equitable powers in entering its order allowing compensation to Respondent for his services rendered, particularly when the court allowed compensation to be paid to Ruth Barlow and R. L. Christensen to be charged as partnership expenses. Therefore an appeal from the ruling is not in order, nor is the order appealed from an appealable order.

Appellant cannot come into a court of equity and seek to avail himself of the benefits of that part of an order beneficial to him and object to that part of the order which is not beneficial to him, which it is apparent Appellant seeks to do, this especially when he is faced with the same omission, if there is an omission, as that complained of. Here the court awarded, and charged against the partnership income, the salary of a clerk whom Respondent had discharged and who had been rehired by Appellant.

after Respondent had stated to Appellant that if he reemployed the party discharged Appellant would be required to pay her salary; and a clerk whom Appellant brought into his employment to learn the business, after dissolution, one who had never been an employee of the partnership; none of this is supported by pleadings.

Respondent finds no fault with the authorities cited and relied upon by Appellant, but they are not applicable to this case.

Appellant points out the fact that the court adopted the recommendation of Respondent in ordering that all income received by each party from January 1, 1963 to February 1, 1964 is to be distributed in the same manner and as is provided by the partnership agreement and as has heretofore been received and distributed, and that neither partner will receive any compensation for services during this interim period. It is evident however that when such recommendation was made by Respondent's counsel it was assuming that the partnership agreement if invoked, would be invoked in all aspects. This would require the consent of Respondent to the employment of those not employed by the partnership. Thus Respondent would be protected and would not be compelled to pay one-half the salary of such employees. (See R. 83)

POINT TWO

THE ISSUE UPON WHICH THE AWARD OF $2,500.00 TO THE RESPONDENT BY THE

JUDGMENT OF JUNE 27, 1966 WAS TRIED ON FEBRUARY 13, 1964, AND WAS ADJUDGED AGAINST THE RESPONDENT BY THE JUDGMENT OF MARCH 12, 1964, WHICH JUDGMENT HAD BECOME FINAL AND WAS RES JUDICATA OF SAID ISSUE AT THE TIME OF THE ENTRY OF JUDGMENTS OF NOVEMBER 9, 1964, AND OF JUNE 27, 1966. NO MOTION FOR A NEW TRIAL OR MOTION TO BE RELIEVED OF SAID JUDGMENT OF MARCH 12, 1964, HAS EVER BEEN FILED, NOW NEARLY THREE YEARS SINCE IT WAS ENTERED.

Appellant bases this argument on the ground that the award made by the court to Respondent was an issue, it was not made an issue by any pleading but was simply an announcement by a court of equity in its arriving at a settlement of a dispute arising after the court had rendered judgment, and when the court retained jurisdiction of the case to settle the dispute. It is evident that Appellant would take advantage of his having led Respondent into believing that Appellant's net income was considerably more than Appellant later showed his net income to be, and in counsels reliance on such representation and counsels recommending to the court that which he considered a fair division of income and expenses, which recommendation the court adopted. Respondent later found when the true facts were made known, which facts were much different from those represented by Appellant, that not only would Respondent sustain a substantial loss from participating in any income of Appellant but Respondent would expose his income to ridiculously

high operation costs resulting in a much different award than had been anticipated.

Appellant testified as to the fact as follows:

> Altogether I've had $28,825.00 of total appraisal work finished so that my income for 1963 amounts to over $30,000.00, to Mr. LeCheminant's $8,900.00. This is the problem we each have half of that 50-50. But I have against that some $10,000.00 personal expenses which I have paid. (R. 93)

Appellant did not deny having made such representations as is evidenced by the following testimony (R. 106, Vol. 2):

> Q. Do you recall, Mr. Kiepe, in the trial of this case the question arose as to what you would estimate your income for 1963 and January of '64, would be? And the expenditures against that for the earning of it? If I remember correctly you stated that it would be approximately $28,000.00 income with expenditures of about $10,000.00 against that?
>
> A. Well, I remember being asked the question, and I did make some estimates, but now I have the true and actual facts, item by item.

In reliance on this representation, and assuming there would be close to $20,000.00 go into the partnership account through Appellant's earnings, the above referred to recommendation was made by Respondent's counsel. It is evident that the court considered there would be sufficient income realized

by Respondent from Appellant's earnings to offset any additional award which the court had therefore indicated it would make to Respondent for his services in preserving the assets of the partnership represented by the mortgage loan business. The court realizing the inequity resulting, and to correct this inequitable situation stated that as it had retained jurisdiction of the case it made the ward of $2,-500.00.

The evidence shows the difficulty Respondent faced in compelling Appellant to render an accounting of his earnings as ordered by the court, and in Appellant, each time the matter was brought before the court, furnishing a different account, finally forcing Respondent to obtain an Order To Show Cause.

POINT THREE

THE FINDING OF FACT CONTAINED IN PARAGRAPH 6 OF THE FINDINGS OF FACT THAT EACH PARTY IS ENTITLED TO $535.00 BONUS IS NOT SUPPORTED BY A WORD OF PLEADINGS NOR BY ONE WORD OF EVIDENCE OR ANY OTHER PROOF, AND AS APPLIED IN THE JUDGMENT WOULD GIVE RESPONDENT $535.00 TOO MUCH AND APPELLANT $535.00 TOO LITTLE.

This point is predicated entirely upon an accounting principal which the court considered. Appellant had, according to his accounting submitted, received his revised bonuses over and above the 50%

awarded in the original judgment and the court, in order to place both parties on the same bonus basis awarded this item to Respondent.

POINT FOUR

THAT PORTION OF PARAGRAPH 7 OF THE JUDGMENT WHICH READS: "* * * AS MODIFIED UNDER WHICH IT IS DETERMINED THAT THE DEFENDANT IS ENTITLED TO THE SUM OF $16,433.22 OUT OF THE CASH ON HAND OF $28,723.98" IS NOT SUPPORTED BY THE EVIDENCE.

The same is true of this item as that item under Point III. This is arrived at out of the accounting submitted not by Respondent but by Appellant. The trial court being an accountant himself concluded this was a correct interpretation of the account.

POINT FIVE

THE COURT ERRED IN DENYING APPELLANT'S MOTION TO AMEND THE JUDGMENT OF MARCH 12, 1964.

Appellant is most inconsistent in his position on the whole of this case, in arguing under Point II that the award of $2,500.00 made by the court is res adjudicata, then under this point Appellant would go back of the judgment which was entered on March 12, 1964, and he assigns as error the court's refusal to correct that which appellant contends was

a typographical mistake many months after th judgment had been entered. True counsel for Re spondent did state that if there were an error h would consent to its being corrected, but after con sulting with Respondent it was determined that n error existed. The court did not refuse to correc an apparent error as Appellant would have this Hon orable court believe.

That which the court did was to suggest to coun sel if an error appeared, to request the court to cor rect same. Respondent found no error as charged

POINT SIX

THE STATEMENT CONTAINED IN THI THIRD UNNUMBERED PARAGRAPH OI FINDINGS OF FACT AND CONCLUSIONS OI LAW ARE FALSE AND ARE NOT SUPPORTEI BY THE EVIDENCE.

Appellant charges Respondent with havin falsely caused the court to make a finding that bot parties requested the court to retain jurisdiction o the case to adjudicate the rights and obligation of each party during the thirteen month winding u period. We submit that the record of the case clearl shows that the court did retain jurisdiction, that n objection to the offering of evidence was made b Appellant but on the contrary, Appellant took pa in the trial as the same applied to the winding u period, all of which reflects the fact that the charg of falsely stating facts as made by Appellant is mos unfair.

CROSS APPEAL OF RESPONDENT STATEMENT OF NATURE OF THE CASE

This is an appeal from an Order made and entered on November 9th, 1964 awarding Respondent the sum of $2,500.00 for preserving the mortgage loan assets of a partnership when Respondent had asked for $5,000.00; from the award under said order of compensation to Ruth Barlow and R. L. Christensen as partnership expense; from a charge against Respondent of $400.00 (½ of $800.00) fee charged by Appellant's accountant and in awarding Respondent out of funds on hand the sum of $16,433.32 when Respondent was entitled to an amount in excess of said sum.

DISPOSITION OF CASE MADE IN LOWER COURT

The lower court entered an Order on November 9th, 1964 which provided among other things:

1. That the Respondent be awarded $2,500.00 for "preserving the mortgage loan assets of the partnership."

2. That a bonus of $535.00 be awarded to each of the parties.

3. Adjudging that the Respondent is entitled to total credits of $20,101.93, less refunds of $3,-668.71.

4. Adjudging that the Respondent is entitled to net credits of $16,443.22.

5. Adjudging that compensation paid to Ruth Barlow and R. L. Christensen should be allowed as partnership expense and be borne equally by the partners.

6. Adjudging that the fee charged by Lawrence S. Pinnock, Certified Public Accountant, should be a partnership expense and borne equally by the partners.

7. Awarding Respondent a net balance credit of $16,433.22 out of cash on hand of $28,723.90.

RELIEF SOUGHT ON CROSS APPEAL

Cross Appellant seeks reversal of the above portions of the Judgment or Order dated November 9, 1964 and judgment in his favor as follows, to-wit:

1. Awarding to Respondent (Cross Appellant) the sum of $5,000.00 for Respondent's services in preserving the mortgage loan asset of the partnership.

2. Adjudging that the compensation paid to Ruth Barlow is not an expense of the partnership and should be borne by Appellant.

3. Adjudging that the compensation paid to R. L. Christensen is not an expense of the partnership and should be borne by Appellant.

4. Adjudging that the fee paid Lawrence S. Pinnock is not an expense of the partnership and should be borne by Appellant.

5. Awarding to Respondent out of the cash on hand of the partnership, the sum of $22,093.22 being the sum of $16,433.22 awarded, plus one-half the compensation of Ruth Barlow of $2,550.00 or $1,-275.00; one-half the compensation of R. L. Christensen of $2,970.00 or $1,485.00; one-half the fee paid to Lawrence S. Pinnock of $800.00 or $400.00, and an additional $2,500.00 for services in preserving the mortgage loan asset of the partnership.

STATEMENT OF FACTS

Cross Appellant and Cross Respondent entered into a written partnership agreement the business of which partnership commenced under said agreement on October 1, 1943 (R. 3), which provided among other things that each partner should work for the partnership on a basis of a salesman's commission, which should be 50% of any commissions accruing from the listings, sale, rental, or appraisal of real estate, or from insurance commissions. That the partnership should be on a 50-50 basis as to costs and profits. That disbursements from a joint checking account shall be made over the signature of both partners, *and that neither partner will incur an obligation in the name of the partnership in excess of $10.00 without first obtaining the approval of the other partner.* That the agreement as to percentage of division of commission was later orally amended which is unimportant on this cross-appeal.

Cross Respondent served written notice of dissolution of the partnership upon Cross Appellant on

December 30, 1962, to become effective February 1, 1963. The partners continued to conduct business at the same location, under the same firm name, with some of the same employees, sharing the partnership office in the same manner after February 1, 1963 as before. Cross Appellant who had, prior to dissolution for many years, managed the mortgage loan business of the partnership, and who recognized this business as an asset of the partnership, continued to manage this business of the partnership in the same manner as he had done previous to the dissolution, but Cross Respondent carried on his appraisal business, spending no time whatsoever in the mortgage loan business of the partnership; this relationship continued for a period of thirteen months after February 1, 1963. The parties were unable to agree on a division of assets, and in the winding up of the partnership business, as a result Cross Respondent filed action against Cross Appellant for an accounting which resulted in a judgment entered by the court on March 12, 1964. Neither party to the action had by any pleading asked for a determination of the rights of the parties during the thirteen month period subsequent to the cutting off date of the partnership as of February 1, 1963. When the parties were unable to agree on an equitable division of income and expenses during this thirteen month period the parties sought the aid of the court to settle this controversy, which the court did and which resulted in the Order herein appealed from.

ARGUMENT

POINT 1

THE COURT ERRED IN NOT AWARDING CROSS APPELLANT THE SUM OF $5,000.00 WHICH WAS THE SUM ASKED BY CROSS APPELLANT FOR HIS EFFORTS AND SERVICE DURING THE LAST THIRTEEN MONTHS IN PRESERVING THE MORTGAGE LOAN ASSET OF THE PARTNERSHIP.

It is evident from the testimony of Cross Appellant that at the time notice of dissolution of the partnership was served on him there was nearly seven million dollars of mortgage loan business handled by Cross Appellant for the partnership; that there were some 600 accounts which required some service every month in order to keep the accounts current. This business was carried on by Cross Appellant for the thirteen month period. As the mortgage loan account could have been cancelled by the mortgage loan company because of the dissolution, it was important that extra effort be made to service these accounts in a creditable manner, which was done by Cross Appellant.

As a result of the service performed by Cross Appellant, this asset which it is evident was a very valuable one was preserved. Cross Appellant testified in detail to the service rendered by him in preserving this asset, (R. 13-25, Vol. 2). Cross Respondent benefited through these services of Cross Appellant and received his share of the profits from this operation while at the same time Cross Re-

spondent devoted the whole of his time to his
praisal business; not partnership business.

The sum of $5,000.00 asked for by Cross
pellant was most modest and should have bee
lowed by the court.

This case might be likened to one where ins
of Cross Respondent remaining in the same o
and conducting his private business therefron
takes a trip to Hawaii for a period of thi
months during which time Cross Appellant ca
on the partnership business. We think Cross
spondent would make no objection to an allow
by the court for Cross Appellant's services du
that time. This case is no different. Or it is like
case where Cross Respondent might have died, w
his interest passes to his estate and Cross Appe
carries on the business. Such was the holding i
case of *Puffer v. Morton*, 168 Wis. 366, 170
368, 5 ALR 1288 involving a law partnership w
one of the partners died and the firm had on
no contingent fee cases but all business held
was on the usual general retainer basis wher
clients could have dispensed with the service
the firm. The court said:

> Neither can it be said that the condu
> to a conclusion of law business on hand a
> time of the death of a partner is simp
> winding up of the partnership. It is more
> that, it is a continuation of business afte
> partnership has ceased to exist. Often
> continuation may require years of hard
> for completion. Hence it is not equitable

the estate of a deceased partner which has contributed nothing towards such work should share in its compensation. Citing *Rowell v. Rowell*, 122 Wis. 1, 99 N.W. 473.

POINT II

THE COURT ERRED IN ALLOWING COMPENSATION PAID TO RUTH BARLOW AS A PARTNERSHIP EXPENSE TO BE BORNE EQUALLY BY THE PARTNERS. THIS ITEM AMOUNTS TO THE SUM OF $2,550.00.

Cross Appellant discharged Ruth Barlow shortly before February 1, 1963, and after some period of time Cross Respondent rehired her. It is evident from the testimony in the record that Ruth Barlow devoted the greater part of her time not to partnership business, but in reviewing records and accounts in an effort to make out a case against Cross Appellant on behalf of Cross Respondent. Her services were not needed by the partnership, neither were her services required in the winding up of the business of the partnership. At the time Cross Respondent rehired Ruth Barlow, Cross Appellant told Cross Respondent that if he hired Ruth, Cross Appellant would be required to pay her salary, that Cross Appellant would not, nor would he consent to the partnership paying same. Even when Cross Appellant signed salary checks for Ruth Barlow he advised Cross Respondent that he would look to the amount to come out of and be charged to the account of Cross Respondent.

The evidence shows by Exhibit 22, that on February 5, 1963, Cross Appellant addressed a letter to Cross Respondent which is in part as follows:

> Now concerning Ruth. I will not agree to increasing the overhead in any way during the period of the partnership dissolution. I told Ruth the day she went to the hospital of the dissolution and that I would call her as soon as this problem was resolved. At the present time we do not need more than a part time girl. Linda is doing in a half day all the work done by Ruth in a full day. If you insist on rehiring Ruth before the dissolution is complete you should pay her salary. I invoke the terms of the partnership agreement on this point.

If we apply the provisions of Section 48-1-27 UCA 1953 which is as follows:

> PARTNERSHIP NOT TERMINATED BY DISSOLUTION.
>
> On dissolution a partnership is not terminated, but continues until the winding up of partnership affairs is completed.

Cross Respondent had no right to reemploy Ruth Barlow inasmuch as the provisions of the partnership agreement continued in force until dissolution under the above quoted section.

The partnership agreement as to the right to incur obligations by either partner on behalf of the partnership provides that neither partner will incur

an obligation in the name of the partnership in excess of $10.00, without obtaining the approval of the other partner.

If it should be contended that the partnership agreement is not in force after dissolution and during the winding up period, then Cross Respondent cannot claim this item as an expense inasmuch as Cross Respondent had not shown in any respect that Ruth Barlow's services were required in the winding up process of the partnership, or to complete transactions begun but not finished as provided by Section 48-1-30 UCA 1953 which read as follows:

> Except as far as may be necessary to wind up partnership affairs or to complete transactions begun but not then finished, *dissolution terminates all authority of any partner to act for the partnership.*

Therefore Cross Respondent cut off all authority to employ Ruth Barlow or anyone else, unless agreed to by Cross Appellant, by his having served notice of dissolution on Cross Appellant.

POINT III

THE COURT ERRED IN ALLOWING COMMISSION PAID TO R. L. CHRISTENSEN AS A PARTNERSHIP EXPENSE TO BE BORNE EQUALLY BY THE PARTNERS, THIS ITEM AMOUNTS TO THE SUM OF $2,970.00.

R. L. Christensen was never an employee of the partnership. He was employed by Cross Respondent

subsequent to dissolution to learn the business. It is evident that Mr. Christensen did not take the place of another employee of the partnership and the record contains not a word of evidence that the services of Mr. Christensen were necessary in the winding up of the business of the partnership. Cross Respondent was never consulted nor did he at any time consent to the employment of Mr. Christensen.

For the same reasons as argued under Point II, this charge against the partnership is not proper.

There are no pleadings or findings to support either this award or that under Point II.

POINT IV

THE COURT ERRED IN CHARGING THE FEE OF LAWRENCE S. PINNOCK, CERTIFIED PUBLIC ACCOUNTANT, AS A PARTNERSHIP EXPENSE, PAID FROM PARTNERSHIP FUNDS AND BORNE EQUALLY BY THE PARTNERS. THIS ITEM AMOUNTS TO THE SUM OF $800.00.

After Cross Appellant had objected to several accountings furnished to Cross Respondent, Cross Respondent engaged the services of Mr. Pinnock to examine accounts, not of the partnership, or of Cross Appellant, but accounts, items of which reflected the earnings of Cross Respondent during the thirteen month period subsequent to the February 1, 1963 date. Cross Appellant did not consent to, nor did he agree at any time that he would pay any part of

the fee paid to Mr. Pinnock. For the same reasons as relied upon under Points II and III this is not a proper charge against the partnership.

POINT V

THE COURT ERRED IN ITS FINDING THAT CROSS APPELLANT IS ENTITLED TO RECEIVE THE SUM OF $16,433.22 OUT OF THE CASH ON HAND OF $28,723.98.

This item results in the assumption that the Cross Appeal of Cross Appellant will be favorable to Cross Appellant on all points relied upon, in which case the award to Cross Appellant should be $22,-093.22 and not the sum of $16,433.22 awarded to Cross Appellant by the Order appealed from.

CONCLUSION

The Respondent and Cross Appellant submits that the law and the evidence requires:

That the Order appealed from by Appellant be affirmed except as to those Points on which Cross Appellant assigns as errors in the following particulars:

(a) That Cross Appellant be awarded the sum of $5,000.00 for services rendered by him in the preservation of the mortgage loan asset of the partnership.

(b) That the allowance of compensation paid to Ruth Barlow as a partnership expense to be borne equally by the partners be set aside.

(c) That the allowance of compensation paid to R. L. Christensen as a partnership expense to be borne equally by the partners be set aside.

(d) That the allowance of fee of Lawrence S. Pinnock, as a partnership expense be set aside.

(e) That the finding that Cross Appellant is entitled to receive the sum of $16,433.22 out of the cash on hand of $28,723.98 be set aside, and that Cross Appellant be awarded the sum of $22,093.22 out of said sum.

Respectfully submitted,

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