

1991

Young Farms Limited, a limited partnership, Phillip O. BOyer, Virgil Condon, Boyd J. Farr, Homer L. Hale, Marie M. Irvine, G. Kenneth Johnson, Kenneth W. Jones, Robert C. Newman, Toffie Sawaya, Richard Stover, William Tingey, James E. Watts, Ralph M. Wright, limited partners v. Richtron, Inc., a Utah corporation, and Paul H. Richins; Aral Wesley Allred and Sarah Elaine Allred his wife; Bank of Utah, a Utah corporation : Brief of

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Utah Supreme Court

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John T. Anderson; Hansen, Jones, Maycock and Leta; attorney for defendants; Leo H. Richins; pro se;.

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BRIEF

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IN THE SUPREME COURT OF THE STATE OF UTAH

YOUNG FARMS LIMITED, a limited)
partnership, PHILLIP O. BOYER,)
VIRGIL CONDON, BOYD J. FARR,)
HOMER L. HALE, MARIE M. IRVINE,)
G. KENNETH JOHNSON, KENNETH W.)
JONES, ROBERT C. NEWMAN, TOFFIE)
SAWAYA, RICHARD STOVER, WILLIAM)
TINGEY, JAMES E. WATTS, RALPH M.)
WRIGHT, limited partners,)

Case No. ~~10000~~
919902

Plaintiffs- Appellants,)

-vs-)

RICHTRON, INC., a Utah corporation,)
and PAUL H. RICHINS; ARAL WESLEY)
ALLRED and SARAH ELAINE ALLRED)
his wife; BANK OF UTAH, a Utah)
corporation,)

Defendants,)

LEO H. RICHINS,)

Intervening Respondent.)

BRIEF OF APPELLANTS

Appeal from the Judgment of the Second Judicial District
Court for Davis County, State of Utah
The Honorable Douglas L. Cornaby, Judge

Leo H. Richins, Pro Se
Intervening Respondent
141 East 100 South
Kaysville, Utah 84037

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Salt Lake City, Utah 84102

FILED
NOV 2 1984

Clerk, Supreme Court, Utah

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HOMER L. HALE, MARIE M. IRVINE,)	
G. KENNETH JOHNSON, KENNETH W.)	
JONES, ROBERT C. NEWMAN, TOFFIE)	Case No. 19902
SAWAYA, RICHARD STOVER, WILLIAM)	
TINGEY, JAMES E. WATTS, RALPH M.)	
WRIGHT, limited partners,)	
 Plaintiffs- Appellants,)	
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his wife; BANK OF UTAH, a Utah)	
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 Defendants,)	
 LEO H. RICHINS,)	
 Intervening Respondent.)	

NATURE OF THE CASE

This is an action brought by a limited partnership and all of the limited partners to get an accounting from the general partner, who had previously resigned, and for damages against the general partner and its president for breach of its fiduciary relationship in carrying out the business of the partnership and for a determination of the contract rights involving the limited partnership's property.

DISPOSITION OF THE CASE BY THE LOWER COURT

Prior to trial, upon motion of the plaintiff-appellants for Partial Summary Judgment, the Honorable Douglas L. Cornaby granted judgment in favor of the plaintiffs against the defendants, Richtron, Inc. and Paul H. Richins, declaring that the general partner, Richtron, Inc., had no interest in the

limited partnership's properties. Thereafter, Judge Cornaby, on an ex parte letter of the dismissed defendants, ruled that a previous payment paid by the general partner and its president into the Court of \$10,431, which represented the 1980 payment on a real estate contract which was the contract covering the purchase of the limited partnership's property, should be awarded to Leo H. Richins, who was not a party to the action but was the defendant Paul H. Richins' father, subject to the defendants Richtron, Inc. and Paul H. Richins dismissing their appeal of the Partial Summary Judgment.

After the Judge's ex parte ruling, upon motion of plaintiffs, the Court granted plaintiffs a right to an evidenciary hearing. After the evidenciary hearing the Court reaffirmed its previous decision, rendering Findings of Fact and Ruling, granting to Leo H. Richins the \$10,431, subject to plaintiffs' appeal.

RELIEF SOUGHT ON APPEAL

The plaintiffs seek a reversal of the decision of the lower court and a determination that the monies paid on the 1980 payment belong to the plaintiff-appellants.

STATEMENT OF FACTS

An action was commenced in the Second Judicial District Court in Davis County on the 10th day of March, 1981. The action was commenced in the name of Young Farms Limited, a limited partnership, and all of the limited partners against Richtron, Inc., a Utah corporation, its general partner and its president.

On the 2nd day of January, 1981 (see Exhibit E) the general partner withdrew from the management of the limited partnership. The limited partners met and decided to continue the limited partnership in order to protect their investment as payments had not been made on the underlying obligations against the limited partnership properties, which consisted of farm land in Duchesne County.

The limited partnership properties were purchased by the limited partnership from the general partner on the 15th day of November, 1974 (see Exhibit B) under a real estate contract dated the 15th day of November, 1974, which properties had been purchased by the general partner on the same day under a real estate contract (see Exhibit A).

On the 14th day of February, 1979, the general partner put itself in the place of the sellers under their real estate contract in connection with the underlying sale and assumed the seller's Promissory Note in the amount of \$95,000 (see Exhibit C). Payments under the contract were to be made on the 15th day of November of each year.

There was also an underlying mortgage against the property in favor of Equitable Life Insurance Company (Tr. 21, Testimony of Paul H. Richins).

The general partner, as of the date of his withdrawal, had not paid the underlying obligations either to the mortgage company or to the original seller (Allreds) of the partnership properties.

The general partner received, on behalf of the limited partnership, a payment in the amount of approximately \$52,000 on November 30, 1980 (Tr. 39-43). The payment to the Allreds was tendered to the Bank of Utah, the escrow holder, on February 20, 1981 (see Exhibit D). This payment of \$10,431 was the payment due under the real estate contract between the general partner and the Allreds. The Allreds refused the payment as being late.

On December 4, 1981 the defendant Richtron, Inc. and an entity known as Frontier Investments withdrew the 1980 payment in the amount of \$10,431 from the escrow at the Bank of Utah and tendered that amount, pursuant to Section 78-27-1 Utah Code Annotated 1953 As Amended (see Exhibit F), and the Bank issued its check dated December 7, 1981 to Richtron, Inc. and Frontier Investment in the amount of \$10,431.

On December 17, 1981 Judge J. Duffy Palmer heard defendants' Motion for Continuance on plaintiffs' Motion for an Injunction and Motion for an Order Compelling Discovery and Motion for Writ of Replevin which was filed on the 9th day of December, 1981.

On December 21, 1981 Judge Palmer ordered that all parties to the proceedings were temporarily restrained from any actions, transactions or conduct affecting or relating to the property at issue in this action pending hearing on plaintiffs' motions, providing that any party may pay or satisfy underlying liens and interests of persons or entities having claims against the property (R. 100 and 101).

On the 6th day of January, 1982, after plaintiffs had been informed of the withdrawal by defendants of the 1980 payment, they filed a Motion to require the defendants to deposit the 1980 payment in the Court (see R. 113). In defendants' argument against plaintiffs' motion (R. 150) defendants argued that the tender is the equivalent of payment in actual cash and, further, that "Richtron's actions were justified, in good faith and legal pursuant to UCA Section 78-27-1. At all times material hereto Richtron had and now has the ability to produce the actual money", when, in actuality the defendant Richtron did not have the money to pay the 1980 payment (Tr. 69 and 70), and in fact the funds that were necessary to pay the 1980 payment were not taken from the funds advanced by the Limited Partnership but \$9,310 of it was borrowed from Paul Richins' parents, Lucille and Leo H. Richins (Tr. 22) and Leo and Lucille Richins received an interest in a contract to secure their payment (Tr. 79, Testimony of Leo Richins).

On the 16th day of February, 1982 the Court ordered the defendants to deposit into the Court the \$10,431 which represented the 1980 payment on the Allred contract and the plaintiffs were ordered to deposit in the Court the sum of \$10,431 which represented the 1981 Allred contract payment. The funds when deposited were to be placed in interest-bearing certificates and held pending determination of the rights of the parties in the Allred contract and the properties underlying the said contract. Further, the plaintiffs were directed to amend the complaint to bring into the action the Allreds, being the sellers of the property for which the payments were in controversy (R. 234), after which time plaintiff amended their complaint, bringing in the Allreds, seeking a determination of the contract rights against the Allreds (R. 236). The plaintiffs provided documentation in regard to the payment of the underlying obligations on the 3rd day of March, 1982 (R. 268), being the mortgage with the Equitable Life Insurance Society of the United States, which was in default, and the payment of the Robert Young and Betty Jean Young equity interest, who were the sellers to the general partner (see Exhibit A).

Defendants answered the complaint and crossclaimed against the Allreds (R.274) and alleged that the plaintiffs were improper parties to bring the action.

The plaintiffs deposited the \$10,431 representing the 1981 payment on the Allred contract, the defendants deposited an irrevocable Letter of Credit, dated March 15, 1982, drawn on the Barnes Banking Company (R. 288-89). The Letter of Credit did not provide for any interest and provided for an expiration date of September, 1982, with an automatic extension of six months.

On the 20th day of May, 1982 the plaintiffs' attorney moved that the money previously ordered to be deposited be deposited, and defendants' counsel was ordered to put the money into the Court (R. 317).

On the 17th day of November, 1982 defendant made a Motion to require the payment under the Letter of Credit (R. 343) and, after argument by defendants' counsel that the Letter of Credit was the same as cash as required by the original order, the Court ordered that the current Letter of Credit be amended to provide for the payment of interest that would be provided from money market certificates from the date of the original order until the money had been deposited in Court or the Letter of Credit levied upon by the Court, and that the Letter of Credit was to be open ended (R. 359-360).

Upon defendants' failure to comply with the Court's order to amend the Letter of Credit, plaintiffs moved for an order to require payment of the Letter of Credit on the 12th day of April, 1983 (R. 413), and Judge Cornaby, on the 2nd day of May, 1983 (R. 444), provided that Richtron pay the \$10,431 to the Clerk of the Court and if payment was not made within thirty days the Letter of Credit would be drawn upon. The cash was not supplied and on the 9th day of June, 1983 (R. 453) the Court ordered the Clerk of the Court to collect from the Barnes Banking Company the amount due under their Letter of Credit.

On the 30th day of September, 1983 plaintiffs moved for a Partial Summary Judgment against the general partner, Richtron, Inc. and its president (R. 491), which motion was heard by Judge Cornaby on the 1st day of November, 1983 and was granted (R. 584). At that time both the defendants, Richtron, Inc. and the general partner and its president, Paul H. Richins, were dismissed and it was determined that the general partner had no right, title, interest or claim to or in the real property which was the subject matter of the suit and which was all of the property of the limited partnership.

Prior to that ruling, Paul Richins had filed an Affidavit (R. 521) making his argument that Richtron, Inc. was the only general partner that could represent the limited partnership, that the Court had previously ruled in the Blackfoot Farms case that Richtron, Inc. was to be the sole liquidating general partner (R. 543-47). Also included in Mr. Richins' Affidavit was the complete Amended Articles of Limited Partnership made the 12th day of February, 1981 and filed in the County Clerk's office on July 1, 1981, which shows the addition of Tower Real Estate, a Utah corporation, as the new general partner, which Articles were signed by all of the limited partners and the new general partner (R. 551-582).

After the dismissal of the defendants Richtron, Inc. and Paul H. Richins, those defendants appealed the Partial Summary Judgment pro se, although Paul H. Richins would not be able to represent Richtron, Inc. pro se (R. 593-98).

On December 7, 1983 Paul Richins wrote to Judge Palmer requesting a return of the \$10,431 representing the 1980 Allred payment. The letter was referred by Judge Palmer to Judge Cornaby who ruled ex parte that if the defendants dismissed the appeal it would be proper to return the \$10,431 to Leo Richins. As long as the appeal remained in process the amount should remain with the Clerk of the Court (R. 606). Plaintiffs moved to amend Judge Cornaby's ruling on their request for refund (R. 609). This motion was denied and the ruling was left in tact (R. 647). Plaintiffs moved for an evidenciary hearing, which hearing was held on January 12, 1984 (R. 648). The Judge made Findings of Fact and Ruling (R. 662-667). The Judge found that the plaintiffs paid the 1980 payment to Richtron; that Richtron made its 1980 payment to the Allreds on the 20th day of February, 1981 in the amount of \$10,431; that the Allreds refused the payment; that Paul Richins on behalf of Richtron, Inc. requested the 1980 payment be returned to him and that the Bank returned the \$10,431 to Richtron, which \$10,431 represented the 1980 payment; that Leo and Lucille Richins loaned to Paul Richins or Richtron \$9,310 in order to make it possible for them to make the payment on February 20, 1981; that Richtron and Frontier Investment received the \$10,431 and spent it. The Court further found that Judge Palmer directed the defendants to put the 1980 payment into the Court; that instead the defendants submitted a Letter of Credit to be drawn on the account of Leo Richins; that the Court finally ordered the Letter of Credit be drawn upon, be turned into

cash and deposited in the Court. The Court found that the \$10,431 represented by the Letter of Credit was submitted at the request of Leo H. and Lucille Richins on what they considered a personal Letter of Credit for Paul Richins and not a loan to Richtron, Inc. or Frontier Investment or any other corporation; that Leo and Lucille Richins received no consideration for the Letter of Credit; that they instructed the Bank to issue the Letter of Credit because they trusted their son Paul and because he had requested them to do it and they had love for their son Paul and for that reason decided to do it; that the Letter of Credit was irrevocable and that the \$10,431 represented by the Letter of Credit represented the November, 1980 payment to the Allreds.

The Court then ruled that the \$10,431 represented by the Letter of Credit and any interest drawn on that amount was owned by Leo and Lucille Richins; that it was not owned by the defendant Paul Richins and that Richtron, Inc. owes the \$10,431 represented by the Letter of Credit since they were the entity that received the \$10,431 from the Bank. Further, the Court ruled that the Letter of Credit was being paid as a loan and the Court isn't sure, even, if it is a loan. The Letter of Credit was there to be drawn as if it were a loan, if it were ever received by the Court. The Court ruled that the Letter of Credit for \$10,431 plus interest should go back to the payment source from which it came, which was Leo Richins, and further ruled that the \$10,431 was to remain in the custody of the Clerk until a final determination of the Judge's rulings was determined by the appellate process.

The plaintiffs and remaining defendants, after dismissing the Bank of Utah, entered into a settlement agreement wherein the plaintiffs paid all back payments on the contract and had the contracts reinstated (R. 678-686).

ARGUMENT

POINT I

THE TRIAL COURT ERRED IN RULING THAT THE \$10,431 REPRESENTING THE 1980 PAYMENT ON THE ALLRED CONTRACT BELONGED TO LEO H. AND LUCILLE RICHINS.

At no time was Leo or Lucille Richins a party to this action until they moved to intervene in the appeal on or about the 4th day of June, 1984. It is well established in law that:

"A judgment can be rendered only for or against a party to the action or proceeding and not for or against one not a party. The rights and liabilities of persons not parties cannot be adjudicated." (40 CJS Paragraph 28, p. 68)

Judge Cornaby, in ruling that the money belonged to Leo H. and Lucille Richins exceeded his authority. The Letter of Credit was not placed into the Court by Leo H. and Lucille Richins. It was placed in the Court by the defendants Richtron, Inc. and its president Paul H. Richins. The only connection with the Letter of Credit that Leo and Lucille Richins had was the fact that it was to be drawn on their account. It was, therefore, a loan or personal arrangement between Leo and Lucille Richins and their son, Paul H. Richins, and/or Richtron, Inc., the defendants.

The lower Court was concerned about the fact that there was no consideration given by Paul Richins and/or Richtron, Inc. to Leo H. and Lucille Richins. However, the Utah State Code, Section 70A-5-105 1953 As Amended provides:

"Consideration. No consideration is necessary to establish a credit or to enlarge or otherwise modify its terms."

This provision is in the section dealing with Letters of Credit and does, in fact, establish that a Letter of Credit is the same in nature as cash. This being the case, Leo H. and Lucille Richins had no claim to the money as it is amply determined by the Court and supported by the facts that the \$10,431 represented by the Letter of Credit represented the 1980 payment on the Allred contract.

It can also be argued that since the Letter of Credit was drawn upon and cash was deposited, that that terminated any interest or claim that Leo H. and Lucille Richins might have had against the cash. However, I think that the statutory provision is determinative in regard to any question of lack of consideration.

The Court further ruled that the Letter of Credit was supported by love and affection for their son Paul H. Richins. Since the Richins had been given a contract interest in properties as security for the original payment of \$9,310, it could be argued that there was consideration for them to make the second payment to protect that interest. Further, the love and affection for their son Paul was sufficient consideration.

The original \$10,431 payment made on the 20th day of February, 1981 by the general partner was paid not from funds provided by the limited partnership, which were ample to cover the payment, but were paid by funds from his parents so, obviously, the general partner had spent or utilized the funds for some purpose other than that for which the payment had been received. The general partner not only failed to make the Allred payment, he also failed to make the underlying mortgage payment and the limited partnership, in order to protect their interest in the properties, not only had to make up the 1980 payment but had to pay off the mortgage and the intermediary equity position by the Youngs. Since the limited partnership had provided the funds to pay the November, 1980 payment and the mortgage payment, which funds were not utilized for that purpose, and since the limited partnership was required to pay the 1980 payment again in order to re-establish the contract with the Allreds, it would be patently unfair and unjust to allow the general partner and/or its president and/or its president's parents to benefit from the breaching of the fiduciary duty to the limited partners and the limited partnership to make the payments.

The \$10,431 represented by the irrevocable Letter of Credit represented the 1980 payment on the Allred contract and should be utilized as such and, as this payment has been made by the limited partnership, the \$10,431 and interest accumulated on that amount should be returned to them.

It is unfortunate that Leo and Lucille Richins, the parents of Paul Richins, have paid the 1980 payment twice and it is unfortunate that the limited partners have had to make the payment twice. However, the parties in this matter are the limited partnership, the limited partners and the general partner and its president and the equities lie with the limited partners, the party at fault being the general partner and its president, whose parents have a legal right to proceed against him or the general partner for a recovery of their monies paid to them or provided to them for their benefit.

POINT II

THE LIMITED PARTNERSHIP AND LIMITED PARTNERS HAVE A RIGHT TO BRING THIS ACTION AGAINST THE GENERAL PARTNER AND ITS PRESIDENT FOR AN ACCOUNTING AND ARE THE PROPER PARTIES TO RECEIVE THE BENEFITS OF THE LIMITED PARTNERSHIP PROPERTIES.

The Court dismissed out of the law suit the defendants Richtron, Inc. and its president, Paul H. Richins on plaintiffs' motion for Partial Summary Judgment. The defendants thereupon appealed that decision and thereafter withdrew their appeal.

The question of the right of the limited partnership and/or the limited partners to bring the action was an issue in the case, as was defined in the pre-trial order dated May 16, 1983 (R. 446). The granting of the Partial Summary Judgment against the defendant Richtron, Inc. and its president, Paul H. Richins, laid to rest that issue

The defendant, Paul H. Richins, made all of the arguments in his Affidavit to the Court and, at the time of the motion for a Partial Summary Judgment that had to do with plaintiffs' failure to successfully appoint a new General Partner, the Court's previous ruling in the Blackfoot case, and his position that the defendant Richtron, Inc. could be the only party to represent the limited partnership in a liquidating procedure.

The original limited partnership agreement of Young Farms Limited provides in paragraph 6 of Article VI:

"The limited partners have the right by vote of a majority to do all or any one of the following acts:

- a. Remove the present general partner and elect a new general partner, provided, however, that the exercise of such power shall not affect the general partner's right to share in partnership proceeds or distributions as provided in this Agreement."

All of the limited partners got together and amended the Articles of the Limited Partnership Agreement on the 12th day of February, 1981, which Amended Articles were filed July 1, 1981 and which Amended Articles provided that Tower Real Estate, a Utah corporation, would be the general partner. These Amended Articles were signed by all of the limited partners.

This action was commenced in March of 1981 by the limited partnership and by all of the limited partners. It was answered by Mr. David Leta, representing the defendants Richtron, Inc. and Paul H. Richins, that the

Blackfoot Farms case was filed in November, 1981 by an attorney who had no right to represent Young Farms Limited, Mr. James Brown. The defendants in the Blackfoot Farms action were the same defendants as in this action and were represented by the same law firm. Both cases were in the same Court. The attorneys for the defendants in the Blackfoot Farms case moved for a dismissal on the basis that Mr. Brown had no authority to file the action on behalf of the limited partnerships, of which Young Farms Limited was one, and used as part of their argument the fact that the current case was pending, which action was brought by someone besides Mr. Brown. The Court granted the motion to dismiss the action on the basis of lack of authority to file and made Findings of Fact that adversely affected Young Farms Limited and its limited partners and its new general partner. The counsel for the defendants was aware of the Young Farms case; that Young Farms Limited was not a proper party as they argued and that Mr. Brown had no authority to represent them. Young Farms Limited, its general partner and limited partners were not given notice of the Blackfoot Farms law suit; no one connected to Young Farms Limited was made a party; the new general partner was not made a party; the limited partners were not made parties and no one was ever given notice of the action. Mr. Brown filed a verified statement of authority in which he admitted he had no authority to represent Young Farms Limited in bringing the action.

These plaintiffs cannot be bound by a decision of the Court wherein they are not parties, have never been given notice until after the Court rendered its decision, and have never had the opportunity to make an appearance therein.

40 CJS, paragraph 23, p.52 provides:

"A valid judgment may be rendered against a defendant only when he has been given notice and accordingly a judgment which is rendered without notice to or service of process on the defendant and without his voluntarily appearing is generally void for want of jurisdiction."

46 Am Jur (2) paragraph 18, p. 324 provides:

"It is a fundamental doctrine of the law that a party to be affected by a personal judgment must have a day in Court or an opportunity to be heard."

This doctrine was reiterated by the Utah Supreme Court in Smith vs. Morris 334 Pac. 2nd 567, 8 Utah 2d 359:

"It is of course an elementary rule of law that there can be no judicial action affecting vested rights that is not based upon some process or notice whereby the interested parties are brought within the jurisdiction of the judicial tribunal about to render judgment."

Mr. James T. Anderson, representing a defendant who is not a respondent, a defendant who had previously been dismissed out of the law suit, made an appearance and moved to withdraw the appeal, setting forth the Blackfoot Farms case and its decision, of which the Young Farms Limited and its limited partners are not proper parties.

Section 48-2-20 Utah Code Annotated 1953 As Amended provides:

"The retirement, death or insanity of a general partner dissolves the partnership unless the business is conducted by the remaining general partners,

- a. under a right so to do stated in the certificate, or
- b. with the consent of all members."

Section 48-2-24 (2) provides:

"A certificate shall be amended when a person is admitted as a general partner."

In this case, a new general partner was elected as provided in the Limited Partnership agreement and the Utah Code. The defendant Richtron, Inc. has argued that since Richtron, Inc. did not sign the Amendment, the Amendment is invalid. If, in fact, the Amendment is invalid by reason of any failure to comply with the statute, then such failure would render the limited partnership a general partnership and the general partnership would accede to all of the rights and properties of the limited partnership. In this action, if there was any failure in regard to the Amendment, then the limited partners, all of whom are plaintiffs and appellants in this action, would have all of the rights and properties of the limited partnership accrue to them and they would be the proper parties to bring an action to determine the property rights and the accounting against the former general partner who had withdrawn.

Therefore, Mr. John T. Anderson's entry of appearance for Richtron, Inc., who was not a respondent and who had been previously dismissed out of the action and whose time for appeal had run, and his notice of or motion for withdrawal of appeal is not well taken.

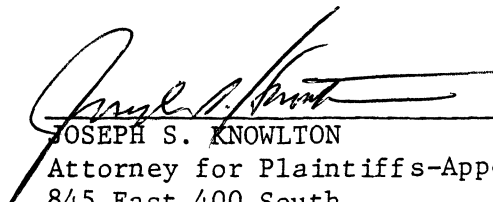
CONCLUSION

There is no question but what the \$10,431 Letter of Credit that was deposited with the Clerk of the Court represented the 1980 payment to the Allreds which had previously been withdrawn from the Bank by the defendants. The Letter of Credit was deposited by the defendants as a requirement of the Court order, and was with the Clerk in lieu of cash. The statute requires no consideration for such a transaction and the trial court's finding that one was necessary was in error. Even if consideration was necessary, there was sufficient consideration for such a deposit as it was a loan by Leo Richins to his defendant son, Paul.

The appellants were required to make the 1980 payment twice and should be able to recover the 1980 payment that is being held by the Court pending this appeal.

Mr. John T. Anderson's appearance for the defendant Richtron, Inc. is not well taken as Richtron, Inc. was previously dismissed out of the law suit and their appeal time from that dismissal has run. His contention that the plaintiffs are not proper parties to bring this action is not well taken and no further consideration should be given to his motion to withdraw the appeal.

DATED this 2nd day of November, 1984.


JOSEPH S. KNOWLTON
Attorney for Plaintiffs-Appellants
845 East 400 South
Salt Lake City, Utah 84102

MAILING CERTIFICATE

I hereby certify that I have this 2nd day of November, 1984 mailed a true and correct copy of the foregoing Brief of Appellants to Leo H. Richins, Pro Se, Intervening Respondent, 141 East 100 South, Kaysville, Utah 84037; and John T. Anderson, Attorney for Defendant Richtron, Inc., Hansen Jones Maycock & Leta, 50 West Broadway, Salt Lake City, Utah 84101.


JOSEPH S. KNOWLTON

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UTAH SUPREME COURT

BRIEF

IN THE SUPREME COURT OF THE STATE OF UTAH

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YOUNG FARMS LIMITED, a limited)
partnership, PHILLIP O. BOYER,)
VIRGIL CONDON, BOYD J. FARR,)
HOMER L. HALE, MARIE M. IRVINE,)
G. KENNETH JOHNSON, KENNETH W.)
JONES, ROBERT C. NEWMAN, TOFFIE)
SAWAYA, RICHARD STOVER, WILLIAM)
TINGEY, JAMES E. WATTS, RALPH M.)
WRIGHT, limited partners,)

Case No. 19902

Plaintiffs-Appellants,)

-vs-)

RICHTRON, INC., a Utah corporation,)
and PAUL H. RICHINS; ARAL WESLEY)
ALLRED and SARAH ELAINE ALLRED)
his wife; BANK OF UTAH, a Utah)
corporation,)

Defendants,)

LEO H. RICHINS,)

Intervening Respondent.)

APPELLANTS' REPLY BRIEF

Appeal from the Judgment of the Second Judicial District
Court for Davis County, State of Utah
The Honorable Douglas L. Cornaby, Judge

Leo H. Richins, Pro Se
Intervening Respondent
141 East 100 South
Kaysville, Utah 84037

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FILED

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Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

YOUNG FARMS LIMITED, a limited)	
partnership, PHILLIP O. BOYER,)	
VIRGIL CONDON, BOYD J. FARR,)	
HOMER L. HALE, MARIE M. IRVINE,)	
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SAWAYA, RICHARD STOVER, WILLIAM)	Case No. 19902
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WRIGHT, limited partners,)	APPELLANT'S REPLY BRIEF

Plaintiffs-Appellants,)	
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-vs-)	
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RICHTRON, INC., a Utah corporation,)	
and PAUL H. RICHINS; ARAL WESLEY)	
ALLREAD and SARAH ELAINE ALLRED,)	Case No. 19902
his wife; BANK OF UTAH, a Utah)	
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Defendants,)	
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LEO H. RICHINS,)	
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Intervening Respondent.)	
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REPLY TO INTERVENING RESPONDENT'S STATEMENT OF
DISPOSITION OF CASE BY LOWER COURT

Intervening respondent, in the last sentence of the first paragraph, states that the issue of who was to be the general partner of the Young Farms limited partnership was not adjudicated in this case but had been adjudicated previously in another case. The record indicates that the defendants filed a counter claim in response to the original complaint (R. 18). The first nine paragraphs of the counter claim set forth a claim based upon the concept that the defendant Richtron, Inc. is the only entity entitled to act as the plaintiff Young Farms, Limited general partner.

The defendants' answer and cross claim to the plaintiffs' Amended Complaint (R. 274) fails to include a counter claim and there is no claim that the limited partnership is being improperly represented, although on their Fifth Defense the defendants claim lack of standing on behalf of the individual plaintiffs.

At the end of the first pre-trial, defendant's counsel included the question of whether or not Richtron's resignation as a general partner

gave plaintiff the right to substitute as general partner (R. 446). On the 31st day of October, 1983 the defendant Paul H. Richins submitted an Affidavit (R. 521) including all of the arguments and documentation to support the arguments that he makes now in regard to whether or not the plaintiff limited partnership can be represented by someone else other than the defendant Richtron, Inc. The defendant Paul H. Richins then made a Motion to Dismiss Plaintiff's Motion for Partial Summary Judgment on the basis of the arguments made in his Affidavit. This was done on November 1, 1983 (R. 583). Defendant Richin's Motion was denied and the Court granted Plaintiff's Motion for Partial Summary Judgment (R. 584, 585).

The Court's ruling in regard to defendants Motion to Dismiss Plaintiff's Motion for Partial Summary Judgment adjudicates the issue of whether or not the plaintiff can be represented by someone other than Richtron, Inc.. However, this issue is not one that is material to the appeal by the plaintiffs and the intervening respondent Leo Richins.

Leo Richins contention that the \$10,431 that was deposited into the Court as the 1980 payment on the real estate contract was deposited on behalf of Paul H. Richins likewise doesn't stand up to a perusal of the record. The original order requiring the deposit was entered on the 16th day of February, 1982 and required the defendants to deposit into the Court the sum of \$10,431 which represents the 1980 payment on the Allred contract and the plaintiff was to deposit a like sum into the Court, representing the 1981 Allred contract payment (R. 234). The minute entry (R. 233) provided that Richtron was to put the money in the Davis County Clerk's office. If the defendant Richins did not like the way the order was drafted and contended that he had no interest in the contract, his counsel should have had the order read that only Richtron was required to make the payment. Instead, all other orders dealing with the deposit (R. 317, 358, 359, 419, 445 and 453) deal with the Letter of Credit as coming from both defendants. In fact, the defendants Motion for an Order Setting Aside and Vacating the Order Respecting the Collection of the Letter of Credit (R. 459) claims that the order (R. 453) dated June 9, 1983 requiring the payment should be set aside and vacated because the defendant Richtron, Inc. had filed in bankruptcy and the Court did not have jurisdiction to require the defendant Richtron, Inc. to provide the funds. This motion was denied (R. 487).

The Court granted the plaintiff's Motion for a Partial Summary Judgment, dismissing the defendants Richtron, Inc. and Paul H. Richins as

defendants and thereafter dealt with the question of the relationship between the plaintiffs being the Young Farms limited partnership and the defendants Allred being the owners of the limited partnership property.

The money was deposited in the Court not by Leo Richins but was deposited in the Court by the defendants. The fact that the Letter of Credit was drawn on the account of Leo Richins has no materiality. The Court cannot go in back of the immediate transfer to determine who put up the money or for what reasons. The money was put in for the purpose of the 1980 payment. The appellants were required to make that payment to the Allreds to keep the contract viable (R. 660). The source from which the money came was the defendants and not Leo Richins.

REPLY TO STATEMENT OF FACTS

In Intervening Respondent's Statement of Facts, Mr. Richins spends a great deal of time on the proposition that Young Farms Limited has no authority to bring the action and the appeal. This issue is one between the defendant Richtron, Inc. and the plaintiffs and was fully resolved by the trial court, appealed from by the defendant Richtron, Inc., and their appeal was later withdrawn and is not an issue in this appeal and Mr. Richins has no standing to raise these issues on behalf of Richtron, Inc.

It is interesting that Mr. Richins brings in evidence that is not a part of the record and which is immaterial to this case (see footnote on p. 8 of Mr. Richins' brief).

The last part of the last sentence in the finishing paragraph number 31 refers to \$75,000 that was a liability of Young Farms to Richtron. There was no evidence of a liability of Young Farms to Richtron. In fact, as pointed out earlier, the defendant Richtron did not file a counter claim against the plaintiff Young Farms Limited.

Mr. Leo Richins spends a great deal of time in his Statement of Facts pointing out that he was not a party, was not obligated to make any payments in this lawsuit, that he did so on behalf of the defendant Paul H. Richins, his son, and that his son had no interest in the property or any obligation to make the payment, that he, Leo, had previously paid almost all of the 1980 payment that was put into the escrow (\$9,310.33 of it), for which he received an interest in the contract, and yet he claims that he has an interest in the money paid.

I can't see where it makes any difference if Mr. Leo Richins provided the source from which the funds came. The funds were placed into the Court for the purpose of being the 1980 contract payment to the Allreds. Once the defendants were dismissed out of the lawsuit, the funds should have been maintained for that purpose and that purpose alone.

Mr. Paul Richins was the president of Richtron, Inc. Richtron, Inc. had a fiduciary duty to see to it that the payment was made on the contract as that money had been paid by the plaintiffs to make that payment. The relationship between Leo Richins and his son in regard to the payment is immaterial and the funds belong to the plaintiffs as they were required to make up the payment to the Allreds in order to keep the real estate contract viable for the limited partnership.

ARGUMENTS

REPLY TO ARGUMENT I

There is no question but what the Court's order was a final order in regard to the 1980 payment and the money involved therein, nor was there any necessity for any sworn statement from the plaintiffs in regard to their claim for the \$10,431. This money was put into the Court as the 1980 payment on a contract that was being purchased by the plaintiffs. They had the possessory right to the property and they had a legal right to have the general partner protect their investment interests as the general partner was their fiduciary agent in this regard.

The appeal was not taken until all of the issues were disposed of in the case. The issue in regard to the \$10,431 was reserved and was appealed after the final order of the Court.

REPLY TO ARGUMENT II

In response to Mr. Richins' argument that the appellant Young Farms has no right to file or maintain this appeal, Mr. Leo Richins is not the party that has any interest in this determination. This right would only relate to Richtron, Inc. and Mr. Richins is not representing Richtron, Inc. in any sense of the word and the defendant Richtron, Inc. has not filed a brief as leave was given them to do by this Court.

There is no question that the District Court has the right to determine the relationship and rights of the parties and this matter is res

judicata; this issue was determined judicially by the lower court and that determination was appealed by the defendants Richtron, Inc. and Paul Richins, and their appeal was withdrawn (R. 598, 605, 675, 676), and the question of appellant Young Farms' right to maintain this appeal is res judicata.

REPLY TO ARGUMENT III

It is interesting that Mr. Leo Richins would make this argument which basically supports the appellants' position in regard to the Blackfoot Farms case. Richtron, Inc. and Paul Richins were parties to this action. They were dismissed out of the action. If you follow Mr. Richins' argument to its logical conclusion, the monies that were deposited in the Court would then belong to the remaining parties, i.e., the plaintiffs and/or defendants Allreds, which is exactly the point the plaintiffs are making.

If Mr. Leo Richins had wanted to be a party, he should have made an effort to become one in the District Court. If he thought he had an interest in the money, he should have made an effort to protect his interest in the District Court. If the defendants had wanted to present arguments and/or be heard, they could have done so. The plaintiffs made a motion to reinstate Mr. Paul Richins as a party and to try the case as a whole (see pages 4 through 8 of the transcript). Mr. Richins objected to plaintiffs' motion to reinstate the defendants into the action.

REPLY TO ARGUMENT IV

Mr. Leo Richins in this argument fails to recognize that what the lower court did in this action was conduct an accounting of the rights of the parties to the limited partnership's assets and rule that the limited partnership's assets belonged to the limited partnership and that the defendants Richtron, Inc. and Paul Richins had no interest therein and that, upon payment of the outstanding obligations on the contract of sale to the Allreds, that contract was reinstated in the name of the Young Farms Limited and not in the name of Richtron, Inc.

This argument is moot as the general partner and its president were previously dismissed out of the action and the rights of the parties were determined by the Court, appealed from, and their appeal withdrawn.

The \$10,431 was deposited, without question, for the purpose of being the 1980 payment on the real estate contract, which represented the real estate which comprised the assets of the limited partnership. Who has a better right to the limited partnership assets than the limited partnership and its limited partners? The Court makes that determination and the defendants objected to that determination and appealed that ruling and later withdrew their appeal. That ought to make the issue moot.

A review of the record, in particular the final order (R. 678), can lead to no other conclusion but that the Court determined the rights of the parties in regard to the limited partnership property and made a final accounting in regard to that property and the rights of the parties to it.

REPLY TO ARGUMENT V

I can't understand how, if Mr. Paul Richins has no liability for any of Richtron Inc.'s obligations, he would have been so willing to put \$10,431 into the Court. He was represented by competent counsel at the time. If he objected to the placing of the money into Court, he should have made the objection known and/or changed the order. He was certainly aware that the purpose for the \$10,431 was the 1980 payment which he, as the president of Richtron, Inc., withdrew from the escrow account, knowing that there were no funds to replace it.

I fail to see where this argument has any materiality to the question of Mr. Leo Richins' right to the money. Mr. Leo Richins didn't put the money into the Court, Mr. Paul Richins did. Mr. Leo Richins provided the money to his son, Paul Richins, and I don't believe the reasons for his providing those funds have any materiality whatsoever as to what those funds were to be used for or placed in the Court for. They were placed into the Court for the purpose of paying the 1980 payment on the Allred contract. There is absolutely no question at all about that fact. Whether the funds were paid by Paul Richins mistakenly or by his father to Paul and then to the Court makes no difference.

REPLY TO ARGUMENT VI

"The initial 'Order to Compel Deposit' signed by Judge J. Duffy Palmer (R. 234) required Richtron and Paul Richins to deposit \$10,431 into Court, representing the 1980 payment on the Allred contract, to be held

'PENDING THE DETERMINATION OF THE RIGHTS OF THE PARTIES IN THE ALLRED CONTRACT AND THE PROPERTIES UNDERLYING SAID CONTRACT.'" (p. 39 of Brief of Intervenor.) The Court determined the rights of the parties in the Allred contract. The Court determined that the Young Farms Limited, the limited partnership, had the right, upon the payment of the delinquent payments, of which the 1980 \$10,431 was one, to be put in the place of defendant Richtron, Inc. as the purchaser of the property covered by the Allred contract. The Court made the determination that the defendants Paul Richins and Richtron, Inc. had no interest in that property. There can be no other interpretation of the results of this lawsuit. The Court's ruling that the Court would go in back of the initial deposit to determine where the money came from and award the money to that party, Mr. Leo Richins, who is not a party to the lawsuit, is in error and that error should be cured by this appeal.

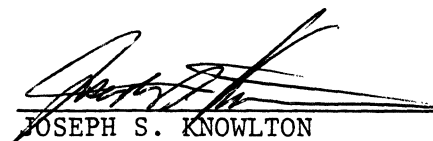
REPLY TO ARGUMENTS VII AND VIII

In reply to arguments VII and VIII, it makes no difference why Leo Richins deposited the Letter of Credit. The Letter of Credit was the same as cash and no consideration was required for it. It was deposited for the purpose of paying the 1980 payment on the Allred contract. The fact that it was contributed by Mr. Leo Richins does not make it his property. It was deposited to replace a payment that was made by the defendant Richtron, Inc. on behalf of and with the funds that should have been from the plaintiff limited partnership. The question of where cash comes from to make a payment required by the Court under the contract is immaterial. This Court should look at what the purpose was for which the money was deposited. It was deposited, without question, as the 1980 payment on the Allred contract covering the limited partnership's real property.

CONCLUSION

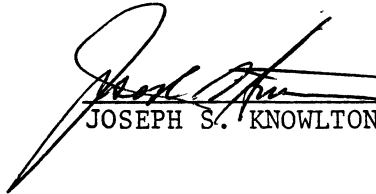
The \$10,431 was to be the 1980 payment. It was paid by the limited partnership to the general partner for that purpose and it was later required that the limited partnership pay it again in order to maintain its property rights. The limited partnership should have the right to recover this payment.

DATED this 16th day of January, 1985.


JOSEPH S. KNOWLTON

MAILING CERTIFICATE

I hereby certify that I have this 16th day of January, 1985 mailed a true and correct copy, postage prepaid, of the foregoing Appellants' Reply Brief to Leo H. Richins, Pro Se, Intervening Respondent, 141 East 100 South, Kaysville, Utah 84037; and John T. Anderson, Attorney for Defendant Richtron, Inc., Hansen Jones Maycock & Leta, 50 West Broadway, Salt Lake City, Utah 84101.



JOSEPH S. KNOWLTON