

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 Stoner; William Tingey; James E. Watts; Ralph M. Wright, limited partners v. Richtron, Inc., Utah corporation; Paul H. Richins; Aral Wesley Allred and Sarah Elaine Allred, his wife; and Bank of Utah, a Utah corporation : Unknown

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### Recommended Citation

Legal Brief, *Young Farms v. Richtron*, No. 919902.00 (Utah Supreme Court, 1991).  
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UTAH SUPREME COURT

BRIEF

9/9902

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 STONER; )  
WILLIAM TINGEY; JAMES E. WATTS; )  
RALPH M. WRIGHT, limited partners, )  
Plaintiffs - Appellants, )

Davis County  
Trial Court  
Case No. 29700

-vs-

SUPREME COURT  
Case No. 19902

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

LEO H. RICHINS, )  
Intervenor. )

BRIEF OF INTERVENOR

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

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CLERK, SUPREME COURT OF UTAH

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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 STONER;		
WILLIAM TINGEY; JAMES E. WATTS;	)	Davis County
RALPH M. WRIGHT, limited partners,		Trial Court
	)	Case No. 29700
Plaintiffs - Appellants,	)	
	)	
-vs-		SUPREME COURT
	)	Case No. 19902
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PAUL H. RICHINS; ARAL WESLEY ALLRED	)	
and SARAH ELAINE ALLRED, his wife;		
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	)	
LEO H. RICHINS,	)	
Intervenor.	)	

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#### NATURE OF THE CASE

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The action in the Lower Court was one brought EXCLUSIVELY by the limited partners of Appellant, Young Farms, Ltd. ("Young Farms"), a Utah limited partnership, (i) for an accounting of partnership transactions from Defendant, Richtron, Inc. ("Richtron"), (which had previously withdrawn and retired as general partner of Young Farms and was then the court decreed liquidating general partner thereof), (ii) for a Writ of Replevin requiring Richtron and Defendant, Paul H. Richins ("Paul Richins"), to deliver to Plaintiffs all assets of Young Farms including its money and other property alleged misappropriated, (iii) for a judgment against Richtron and Paul Richins for any monies received from Young Farms during its existence to be determined by an ACCOUNTING, (iv) for a judgment declaring that Richtron has no interest in the properties of Young Farms, and (v) for a determination that Richtron is the "alter-ego" of Paul Richins and he should be liable for the actions of Richtron.

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DISPOSITION OF THE CASE BY THE LOWER COURT

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Prior to dismissal of the case in the Lower Court, Judge Douglas L. Cornaby granted "Partial Summary Judgment" against Richtron declaring that because Milton R. Goff had purchased at an Internal Revenue Service Tax Sale all of Richtron's rights and interest in the real property, which was the subject of Appellants Amended Complaint, and then resold them to Young Farms, Richtron therefor had no interest in any such disputed real property interests. Appellants claim in their Amended Complaint that Richtron had no interest in the real property because of an alleged breach of fiduciary duty of Richtron to Young Farms, but that issue was never adjudicated in the case. Both Richtron and Tower Real Estate ("Tower") claimed they were the general partner of Young Farms, but that issue was NOT adjudicated in the case either, for it had been adjudicated previously in another similar case in favor of Richtron.

Under the "Partial Summary Judgment", Richtron and Paul Richins were dismissed from the case. Richtron and Paul Richins appealed such Judgment. Prior to dismissal, Richtron and Paul Richins were ordered to deposit an aggregate of \$10,431 into Court "until the final conclusion of the matter". Leo H. Richins (a non-party) contributed \$10,431 into Court on behalf of Paul Richins. Richtron did NOT pay its \$10,431 as ordered. After said dismissal, Judge Cornaby entered a Ruling that the \$10,431 paid into Court by Leo Richins should be returned to him, "the source from which it came", if Richtron and Paul Richins withdrew their appeal of the Partial Summary Judgment. Based upon said Ruling and representation of Judge Cornaby, such other appeal was immediately withdrawn. Later, Judge Cornaby entered an Order (which is the one on appeal) reaffirming his earlier Ruling that if such other appeal were dismissed, it

would be proper to return the \$10,431 to Leo Richins, but as long as such other appeal remained in process, the \$10,431 should remain with the Clerk of Court. SAID ORDER WAS ENTERED AFTER SUCH OTHER APPEAL HAD BEEN WITHDRAWN AND THE CASE DISMISSED. Nevertheless, Judge Cornaby still refused to deliver the \$10,431 to Leo Richins or to Paul Richins for whose benefit it was delivered.

The District Court thereafter conducted an Evidentiary Hearing on the sole issue (which had been dismissed) of who owned the \$10,431 on deposit. Judge Cornaby would NOT allow Richtron and Paul Richins to present any evidence at the Evidentiary Hearing respecting the money, because they had been previously dismissed from the case. After the Evidentiary Hearing, Judge Cornaby reaffirmed his previous Ruling and Order by rendering his "Findings of Fact and Ruling" that the \$10,431 was owned by Leo Richins and "should go back to the same source from which it came", but added that "the \$10,431 is not to be removed from the custody of the Clerk of the Court until the plaintiffs have an opportunity for a final determination of this RULING by the appellate process."

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RELIEF SOUGHT ON APPEAL

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Appellants seek (i) a reversal of the "Order", entered in the Lower Court on January 9, 1984, (ii) a reversal of the "Findings of Fact and Ruling", entered in the Lower Court on February 8, 1984, (AFTER entry of the aforesaid "Order" involving the same subject matter), and (iii) a determination that the \$10,431 deposited for the benefit of Paul Richins (a dismissed party) by Leo Richins (a non-party), which is the subject of the "Order" and subsequent "Findings of Fact and Ruling", somehow belongs to Appellants and cannot be returned to a non-party in the Lower Court (but an Intervenor in this Court).

Appellants seek such relief notwithstanding (i) only final orders and judgments are appealable, and certainly not findings of fact or rulings, (ii)



Appellants claim there has never been a dissolution of Young Farms, (iii) Appellants' Amended Complaint seeking the \$10,431 was DISMISSED against both Richtron and Paul Richins, (iv) there has never been a complete accounting of ALL debits and credits between Richtron and Young Farms, (v) there has never been a "trial on the merits" either before such Order was entered or before the case was DISMISSED, and (vi) Appellants have NO right to bring this Appeal.

Intervenor, Leo Richins, seeks (i) an affirmation of the Lower Court's "Order", entered January 9, 1984, that the \$10,431 was paid by him even though he was a non-party in the Lower Court, that it was paid on behalf of Paul Richins (and NOT Richtron), that it belongs to Leo Richins, and that it should be returned to Leo Richins because it is and always has been his money, (ii) a determination that the Lower Court was in error in not returning the \$10,431 to Leo Richins upon dismissal of the case against Paul Richins (and Richtron) and upon dismissal of such other appeal by them, (iii) a determination that Young Farms has NO right to bring this Appeal, and (iv) a determination that the limited partners of Young Farms have NO right to relief under this Appeal because they are NOT parties to the Richtron/Young Farms Contract, there has been NO breach under such contract, and there has NOT been a proper and complete ACCOUNTING of all debits and credits with a balance struck between the Partners of Young Farms (which is a condition precedent to damages against Richtron, if any), and (v) a determination that neither Paul Richins nor Leo Richins are personally liable for such corporate debt of Richtron, if, in fact, Richtron is found to have one without such accounting.

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#### STATEMENT OF FACTS

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1. A lawsuit was commenced in the Second Judicial Court in Davis County on March 10, 1981, SOLELY by the limited partners of Young Farms

("Limited Partners") against Richtron, a Utah corporation, its retired general partner, and Paul Richins, President of Richtron. Notwithstanding Young Farms appears as a Plaintiff-Appellant, Richtron is the stipulated and court decreed liquidating general partner of Young Farms and has NOT authorized Young Farms to bring this Appeal (R. 521-550; par. 12, 523).

2. On November 15, 1974, Richtron purchased the "Allred Property" (480 acres) and the "Freston Property" (368 acres), in the name of "Richtron, Inc.", from Robert M. and Betty Jean Young ("Youngs") under the "Young/Richtron Contract" in escrow at Defendant, Bank of Utah ("Bank") (Exhibit A). The Youngs had previously purchased the Allred Property from Defendants, Aral Wesley and Sarah Elaine Allred ("Allreds") under the "Allred Contract", and the Freston Property from J. Dorrant and Ethelene Freston, under the "Freston Contract". Under the Young/Richtron Contract, Richtron agreed, of itself, to assume and make payments on the underlying Allred Contract and Freston Contract (Exhibit A, par. 18).

3. On November 15, 1974, Young Farms purchased the Allred Property and Freston Property from Richtron pursuant to the wrap-around "Richtron/Young Farms Contract" in escrow at the Bank (Exhibit B). The Limited Partners are NOT parties to such Contract. (See Footnote below.)

4. On February 20, 1981, Richtron made its November 15, 1980, \$10,431 payment on the Allred Contract to the excrow at the Bank (R. 191, par. 3; 194; Exhibit D), and on December 7, 1981, RICHTRON (not Paul Richins) withdrew the money from the Bank (R. 115, par. 2; Exhibit G; Affidavit of Joseph S. Knowlton, Jan. 6, 1982).

(Footnote - Upon formation of Young Farms, Richtron disclosed to the Limited Partners that Young Farms was purchasing such properties under different purchasing terms than those of Richtron's, and at a profit to Richtron on the sale of such properties to Young Farms, pursuant to a "Private Placement Memorandum", dated November 15, 1974, used in offering participation interests in Young Farms to the Limited Partners.)

5. On or about February 10, 1982, the District Court entered an Order requiring both Richtron and its President, Paul Richins, to deposit \$10,431 with the Clerk of the Court "pending the determination of the rights of the parties in the Allred Contract and the properties underlying said contract" (R. 234-235). At the time of such Order, the Allreds were not parties (R. 234-235).

6. On or about February 16, 1982, Plaintiffs filed their "Amended Complaint" (R. 236) against Richtron and Paul Richins seeking the relief described under "Nature of Case" above (R. 236-242).

7. On or about March 17, 1982, Leo Richins obtained from the Barnes Banking Company, Kaysville, Utah, at the request of Paul Richins and on Paul Richins' personal behalf (R. 625-626), a Letter of Credit payable to the Second Judicial District Court for \$10,431 in an attempt to help Paul Richins meet his requirement under the February 10, 1982, Order to deposit the money. The Letter of Credit was issued for the "account of Leo H. Richins". (Exhibit E).

8. On December 14, 1982, the District Court entered an order declaring that the Letter of Credit was NOT SUFFICIENT in that it appeared to be revocable and did not provide for interim interest. Judge Cornaby ordered that Leo Richins' Letter of Credit be amended to provide for interest pending the outcome of the case (R. 360).

9. On January 25, 1983, Milton Goff, Trustee in Trust, allegedly assigned, transferred and quit claimed to Young Farms all his rights, title and interest in the property and property rights belonging to RICHTRON, which property rights were allegedly obtained by Goff pursuant to a purchase of the same at a Federal Tax Sale. Said assignment allegedly covered all property and interests known as Young Farms and the property belonging to Young Farms, which included the Allred Property (R. 493-517).

10. On April 22, 1983, Judge Cornaby ruled that no change to Leo

Richins' Letter of Credit had been made and entered an Order requiring Richtron and Paul Richins to deposit \$10,431 in cash into Court within 30 days because no change had been made (R. 442). No cash deposit was made within 30 days by Richtron or Paul Richins as ordered (R. 453).

11. On June 9, 1983, Judge Cornaby ruled that "defendant, RICHTRON, INC., has not deposited their \$10,431" into Court and entered an Order for the Clerk of the Court to collect from Barnes Banking Company \$10,431 in accordance with the terms of the Letter of Credit provided by Leo Richins (on behalf of Paul Richins) "to be deposited with the Clerk of the Court and the Clerk to invest the said sum in interest-bearing certificates UNTIL THE FINAL CONCLUSION OF THIS MATTER" (R. 453-454). The Clerk of the Court then sent a letter to the Barnes Banking Company demanding payment on Leo Richins' theretofore INSUFFICIENT Letter of Credit (R. 486).

12. On October 3, 1983, Plaintiffs filed a "Motion for Partial Summary Judgment" substantially seeking a determination that RICHTRON, INC., had no interest in any of the real estate properties which were part of the case (because of the prior assignment by Goff to Young Farms). No relief was requested for a determination respecting who owned to the \$10,431 on deposit with the Clerk of the Court via the Court drawing down Leo H. Richins' Letter of Credit (R. 491-512).

13. On November 1, 1983, Paul Richins filed his "Defendant Paul H. Richins' Motion to Dismiss as Against Young Farms, Ltd. for Lack of Capacity and Authority to Sue", which was never heard.

14. On November 9, 1983, the District Court entered its "Partial Summary Judgment" adjudicating, in part, that:

"that the Amended Complaint against the defendant, Paul H. Richins, is hereby dismissed without prejudice",...that there was no counsel present with any objection to the Motion for Partial Summary

Judgment against the defendant, Richtron, Inc., "...that the documents on file herein indicate that there are no material facts in dispute in regard to any claim that defendant, Richtron, Inc., might have in regard to the interest in the properties that are the subject of this action", "...that Richtron, Inc., has no right, title or interest or claim to or in the real property which is the subject matter of this suit", "...and "the defendant, Richtron, Inc., is herewith dismissed out of this case."

15. On December 1, 1983, Richtron and Paul Richins filed their "Notice of Appeal" thereby appealing the District Court's "Partial Summary Judgment" entered November 9, 1983 (R. 593; 598).

16. On December 7, 1983, after dismissal of Appellants' Amended Complaint against Richtron and Paul Richins, by way of the "Partial Summary Judgment", PAUL RICHINS, on his own behalf and for Leo Richins, sent a letter to the District Court requesting redelivery of the \$10,431 deposited via Leo Richins' Letter of Credit (R. 600).

17. On December 8, 1983, in answer to PAUL RICHINS' written request for redelivery of the \$10,431, because Plaintiffs' Amended Complaint had been dismissed against Richtron and Paul Richins, Judge Cornaby entered his "Ruling on PAUL RICHINS' Request for Refund", stating that (R. 606):

"If the defendants dismiss the appeal, then it would appear proper to return the \$10,431 to Leo Richins. As long as the appeal remains in process, the amount should remain with the clerk of the court. The defendants' request to return the \$10,431 deposit is denied."

18. On December 20, 1983, after said dismissal of Plaintiffs' Amended Complaint which included their claim for the \$10,431 (R. 236-242, pars. 24-25), Plaintiffs filed a "Motion to Appeal Ruling on Paul Richins Request for Refund" (R. 609). Plaintiffs did NOT submit any affidavit in support of their claims to the \$10,431. Said Motion alleges that:

"under no conditons does this money belong to the defendant Paul H. Richins, Richtron, Inc., or Leo Richins. This money belongs to the plaintiffs..."

19. On December 20, 1983, on the same day Plaintiffs filed their "Motion to Amend Ruling on Paul Richins' Request for Refund", and without Richtron and Paul Richins having adequate notice and an opportunity to file their objections to Plaintiffs' Motion under Rule 2.8 of the Local Rules of Practice, the District Court granted an "Evidentiary Hearing" on Plaintiffs' Motion (R. 614) and heard it on January 3, 1984. Plaintiffs' Motion was denied (R. 647).

20. On January 3, 1984, based on the respected representations of Judge Cornaby in his December 8, 1983, Ruling that would release Leo Richins' \$10,431 if Richtron and Paul Richins withdrew their appeals, a "Notice of Withdrawal of Appeal" was filed and such other appeal was subsequently dismissed (R. 631).

21. On January 9, 1984, the District Court entered an "Order" (which was signed on January 11, 1984, two days after it was filed) wherein it reaffirmed, word for word, its "Ruling on PAUL RICHINS' Request for Refund", dated December 8, 1983 However, the "Order" does NOT ORDER, ADJUDICATE OR DECREE ANYTHING and is not a final order or judgment. (R. 652).

22. On January 12, 1984, upon motion of the Plaintiffs and AFTER THE CASE HAD BEEN DISMISSED against Richtron and Paul Richins, the District Court conducted an Evidentiary Hearing with respect to who owned and should be entitled to receive the \$10,431 deposited by Leo Richins (R. 648).

23. At said Evidentiary Hearing, the District Court denied Paul Richins his right to present evidence and testimony in his defense with respect to the \$10,431, notwithstanding Plaintiffs' claim to it adversely affected him and Leo Richins who provided it for him (R. 648) (Tr. 8:6-13,18-21). Judge Cornaby ruled that Paul Richins had been previously dismissed from the case and was no longer a party. Nevertheless, the District Court took evidence and

testimony EXCLUSIVELY FROM PLAINTIFFS on a claim, under Plaintiffs' Amended Complaint, that had been previously dismissed on Plaintiffs' own initiative (R. 236, pars. 8,9,10,11,13,15).

24. At said Evidentiary Hearing, Paul Richins testified that:

(a) In January, 1981, LTD Investments (who had by then purchased the Freston Property from Young Farms) paid Richtron, as liquidating general partner of Young Farms, \$52,000 under the "Young Farms/LTD Investments Contract" in excrow at First Security Bank in Roosevelt (Tr. 43:2-10). Paul Richins, acting on behalf of Richtron, then took it up to the Bank and made a \$32,396 payment on the "Richtron/Young Farms Contract" in escrow (Tr. 43:8-10). Richtron did not immediately make a payment on the Allred Contract because Richtron was not then required, had a grace period, and simply took advantage of it (Tr. 43:15-22).

(b) Leo Richins and Lucille Richins, the parents of Paul Richins, later provided \$9,310.33 to Richtron (Tr. 45:20-25) and the money was secured with an interest in some contracts (Tr. 44:18-25; 45:1-3). Paul Richins made out a check on behalf of Richtron, for \$10,431 (Exhibit D). Lucille Richins delivered it to the Bank on February 20, 1981 (Tr. 22:7-13; 20:24-25; 21:1-2), as per Lucille Richins' Affidavit in the file (R. 191).

(c) The \$10,431 payment was sent by the Bank to Gayle McKeachnie, Allreds" lawyer. He felt the payment was late, which Richtron immediately denied, and sent it back to the Bank where it sat for several months (Tr. 24:11-18).

(d) On December 4, 1982, Paul Richins, acting on behalf of Richtron, hand delivered a letter (Exhibit F) to Frank Hazen of the Bank (Tr. 24:8-9) which represented a written tender for the \$10,431 payment (R.644). On the same date, at the request of Paul Richins, acting on behalf of Richtron, the

Bank delivered a check (Exhibit G) for \$10,431 to Paul Richins, acting on behalf of Richtron (Tr. 25:6-8; 25:14-17; 26:1-8) (R. 199-201).

(e) The \$10,431 check was deposited in the bank account of Richtron (Tr. 26:7-8; 27:7-8), and from there was paid over to the law firm of Roe and Fowler on the same day as legal fees for Richtron (Tr. 27:9-14; 70:23-25; 71:5-11).

(f) On February 11, 1982, a "Minute Entry" was entered (R. 233), pursuant to Plaintiffs' motion, wherein "RICHTRON, INC." was required to put into Court the \$10,431, but for some reason the Order says "defendants" (R. 234) (Tr. 28:13-21).

(g) Following the February 16, 1982, Order requiring Richtron and Paul Richins to deposit \$10,431 into Court ("pending the dertermination of the rights of the parties in the Contract and the properties underlying said contract") (R. 234), Paul Richins solicited and received from Leo Richins a Letter of Credit drawn on Barnes Banking Company in favor of the District Court (Exhibit H) in order for PAUL RICHINS (not Richtron) to comply with such Order (Tr. 27:19-23; 29:2-3,23-24; 30:16-19; 31:15-18,24-25; 32:1-2; 57:18-25; 58:1-11,16-25; 60:14-21) (R. 625-628).

(h) The Letter of Credit was delivered to the Court on behalf of Paul Richins (who had no interest in the property (R. 625, pars. 3,4) or any obligation to pay a corporate debt with respect thereto) and not on behalf of Richtron, or any obligation it may have had (Tr. 27:19-23; 29:2-3,23-24; 30:16-19; 31:15-18,24-25; 32:1-2; 57:18-25; 58:1-11,16-25; 60:14-21).

(i) Young Farms never made their (\$32,396 November 15, 1981) payment to Richtron (Tr. 62:14-16) (R. 641; 171, pars. 15-16).

25. At said Evidentiary Hearing, Leo Richins testified that:

(a) Leo and Lucille Richins provided \$9,310.33 to Richtron in



order for Richtron to make the (November 15, 1980, \$10,431) payment on the Allred Contract (Tr. 77:15-25; 78:1-9).

(b) In consideration for the \$9,310.33, Leo received an interest in a contract (Tr. 79:6-15).

(c) Paul Richins later told Leo he had taken the \$10,431 payment on the Allred Contract out of the Bank, a portion of which Leo Richins had provided earlier, and paid it as a legal fee to David Leta (Tr. 82:3-8).

(d) On or about March 25, 1982, Paul Richins requested Leo to provide some other monies for him (Tr. 80:21-24; 81:1).

(e) Leo provided the Letter of Credit on behalf of Paul Richins, pursuant to the February 10, 1982, Order which Paul Richins was then under, and not on behalf of Richtron or for any obligation Richtron may have had (Tr. 84:11-14; 87:22-25; 89:6-9; 90:11-14; 92:14-16).

(f) Leo received NO CONSIDERATION for issuance of the Letter of Credit for Paul Richins and provided it as an accommodation for Paul Richins (Tr. 88:1-7; 90:11-16).

(g) Leo deposited the \$10,431 into Court and it should not go back to Paul Richins, but should go back to "the source from which it came" -- LEO RICHINS! (Tr. 89:15-23).

(h) Leo had no idea who the parties were in the lawsuit when he provided the Letter of Credit for Paul Richins or why the Court required it (Tr. 91:12-14; 84:11-19; 88:20-25).

(i) Leo definitely has an interest in the action; the \$10,431 is his; he provided it; he is the source from which it came; and it should go back to him (Tr. 93:7-13,18-23).

26. At said Evidentiary Hearing, Lucille Richins testified that:

(a) Lucille and Leo Richins provided \$9,310.33 to RICHTRON which

represented the majority of the (December 15, 1980, Richtron) payment on the Allred Contract (Tr. 96:18-20).

(b) Lucille delivered a check for the (November 15, 1980, \$10,431) payment for Richtron to the Bank on February 20, 1981 (Tr. 96:8-13).

(c) The money was needed to make a payment on the Allred Contract on behalf of RICHTRON (Tr. 97:16-19).

(d) Lucille knew that Leo Richins' Letter of Credit was provided on or about March 15, 1982 (Tr. 14-18).

(e) Paul Richins asked Lucille and Leo Richins to provide a \$10,431 Letter of Credit for Paul Richins personally because he personally was under a court order to provide \$10,431 to be deposited in the Court, and they so provided it (Tr. 99:19-25; 100:20-23).

(f) Lucille understood that the \$10,431 payment into Court (via the Letter of Credit) was to be put there because the Court had ordered Paul Richins personally to put \$10,431 into Court (Tr. 100:1-8).

(g) The Letter of Credit was provided for PAUL RICHINS personally and NOT for Richtron (Tr. 99:22-25; 100:20-25; 101:1-4,18-25; 102:9-10).

(h) There was NO CONSIDERATION in return for the Letter of Credit (Tr. 101:5-7).

27. At the conclusion of said Evidentiary Hearing, Judge Cornaby ruled that:

(a) There was no question that Young Farms paid their (November 15, 1980) payment to RICHTRON, as required by the (Richtron/Young Farms) contract (Tr. 104:9-12).

(b) Lucille Richins delivered the (\$10,431, November 15, 1980, Allred Contract) payment to the Bank on February 20, 1981, but the payment was not credited until three days later (Tr. 105:5-9). The Allreds refused the

payment, sent it back, and the money remained with the Bank for approximately one year. (Tr. 105:14-15; 106:10-12).

(c) Later, Paul Richins, on behalf of Richtron, sent a letter to the Bank requesting that the money be returned to RICHTRON (Tr. 105:18-21). The Bank returned the \$10,431 to RICHTRON (Tr. 105:21-23) (Exhibits F and G). The Bank's check shows it related to the Allred Contract (Tr. 106:2-3).

(d) Leo and Lucille Richins loaned \$9,310.33 in order to make the initial (November 15, 1980) payment to the Bank. The money was placed in the RICHTRON account. Richtron made up the difference, and a payment was made by RICHTRON for the entire amount on February 20, 1981 (Tr. 106:4-9). Richtron and Frontier Investments received the money and spent at least \$10,000 of it for attorney's fees for RICHTRON or Frontier (Tr. 106:13-16).

(e) The Court entered an Order, dated December 14, 1982 (R. 359), that Defendants (Richtron and Paul Richins) either give the Court a letter of credit that included interest or else pay the cash into Court, because if the Plaintiffs WON THE CASE (which was dismissed later) they had a right to it IF IT WAS DECIDED THEY SHOULD RECEIVE IT (Tr. 107:15-21). Neither was done (Tr. 107:22), so the Court forced the money (behind Leo Richins' Letter of Credit) to be put into the Court as cash so it would draw interest, and that's where it has been since (Tr. 107:24-25).

(f) The Richinses testified the Letter of Credit "was what they considered a personal letter for PAUL RICHINS, not a loan to Richtron or Frontier Equities or any other corporation, and the Court so finds." (Tr. 108:12-15)

(g) The Richinses "received NO CONSIDERATION for the letter of credit", but "obviously did it because they trusted their son, Paul, and because he had requested them to do it and they have a love for their son, Paul, and for

that reason decided to do it." (Tr. 108:16-21)

(h) Paul Richins claims the \$10,431 only on behalf of Leo and Lucille Richins (Tr. 109:9-11). Plaintiffs claim it as the 1980 (Allred Contract) payment, "BUT IT WAS TO BE DETERMINED AT THE END OF THE LAWSUIT, AND THIS COURT BELIEVES WHAT THEY WERE TALKING ABOUT WAS AFTER A TRIAL ON THE MERITS, WHAT THEY WOULD FIND OUT BY IT, WHO OWNED IT." (Tr. 109:11-16) "The Court can't find that Paul Richins personally had an obligation to pay that \$10,431 to the Court. Obviously, Leo Richins didn't have an obligation to pay \$10,431 to the Court (which he did, in fact, do anyway), but THE FACT THAT HE DID PAY IT ON THE ORDER OF THE COURT DOES NOT MEAN THAT IT AUTOMATICALLY BELONGS TO THE PLAINTIFFS." (Tr. 109:16-21)

(i) Paul Richins used the (December 15, 1980, payment of) \$10,431 "on behalf of the corporation, Richtron", and "spent it for attorney's fees and other things." (Tr. 109:24-25; 110:1)

(j) "RICHTRON obviously owes that \$10,431." (Tr. 110:2) "The Court believes that RICHTRON (not Paul Richins) owes that money. RICHTRON received the \$10,431 and RICHTRON owes it." (Tr. 110:5-7) "RICHTRON is the one who owes the debt." (Tr. 110:14-15) "I said they (the Richinses) own it. I said it was theirs." (Tr. 116:13-14)

(k) The fact that Leo Richins paid in the \$10,431 is NOT the same thing as Richtron paying the payment (Tr. 110:2-5).

(l) In December, 1982, (pursuant to an IRS Tax Sale), the IRS sold to Milton Goff, as trustee for others, all of the interests of Richtron (in the Allred and Freston Contracts, among others) (Tr. 106:17-23) (R. 595). "The Court believes that with this settlement between those parties" (Milton Goff, the alleged new owner of the rights of Richtron in the Allred and Freston Contracts and Young Farms (R. 595)), "and the dismissal of Paul Richins from the

lawsuit, that the letter of credit for the \$10,431 plus the interest from which it has been ordered should go back to the same source that it came from which was LEO RICHINS. So, that's going to be the ruling of the Court." (Tr. 111:2-10)

(m) Paul Richins doesn't have any right to the money, Leo Richins does, "BECAUSE WE (the Court) DREW ON LEO'S MONEY." (Tr. 111:21-25) "There's no way that Paul Richins could have drawn on the letter of credit. Others could have, but not Paul." (Tr. 112:6-8)

28. At said Evidentiary Hearing, Plaintiffs did NOT introduced any documentary evidence or testimony that the \$10,431 belongs to Appellants or anyone other than Leo Richins, and nothing to refute the testimony of Paul, Leo and Lucille Richins (Entire Tr.). There is no sworn statement in the Record wherein Plaintiffs even claim they own or have a right to the money.

29. At said Evidentiary Hearing, the only documentary evidence or significant testimony introduced by Plaintiffs was that Young Farms had paid RICHTRON (not Paul Richins personally) enough cash in order for RICHTRON to make the November 15, 1980, payment on the Allred Contract, but that RICHTRON (not Paul Richins personally) had picked up the money from the Bank and applied it for attorney's fees for RICHTRON.

30. At said Evidentiary Hearing, Plaintiffs introduced No documentary evidence or testimony that Paul Richins (a dismissed party) or Leo Richins (a non-party) should be personally liable for and be required to pay the corporate debt, if any, of RICHTRON, (particularly when Plaintiffs' "alter-ego" claim against Paul Richins was previously dismissed on Plaintiffs' own initiative and Leo Richins was not a party. (Entire Tr.).

31. At said Evidentiary Hearing, Plaintiffs did NOT introduce, and Richtron and Paul Richins were NOT permitted to introduce, any testimony or

documentary evidence reflecting a proper and complete ACCOUNTING between the parties with a balance struck of ALL debits and credits between Richtron and Young Farms (which would have disclosed a substantial liability of Young Farms to Richtron of at least \$75,000, but for which Richtron has been unable to collect) (Entire Tr.).

32. At said Evidentiary Hearing, Plaintiffs did NOT introduce any evidence that Richtron had defaulted under the Richtron/Young Farms Contract, thus giving rise to a claim by Young Farms for specific performance. Nor was any evidence introduced proving that any Limited Partner had an interest in such contract or any right to alleged damages under it.

33. On February 1, 1984, notwithstanding said DISMISSAL three months before, the District Court entered its "Findings of Fact and Ruling" respecting the Evidentiary Hearing conducted AFTER said dismissal and entry of the "Order" (R. 662). Said instrument was submitted by Plaintiffs and NOT served on Richtron, or Paul Richins or Leo Richins whose interests where materially affected adversely, but rather served on attorneys for other Defendants (R. 665). The District Court did NOT enter any final order or judgment respecting the matter after the Evidentiary Hearing.

34. Richtron is the court decreed, liquidating general partner of Young Farms, and Richtron has NOT acted on behalf of or authorized Young Farms to bring this Appeal (R. par. 12, 523).

35. On December 29, 1981, Richtron retired and withdrew as general partner of Young Farms, thus effectively dissolving Young Farms (R. 530).

36. The Limited Partners of Young Farms have continued the business of Young Farms after dissolution and without an accounting, a winding up, and termination (R. 551).

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ARGUMENTS

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ARGUMENT I

The Lower Court's "Findings of Fact and Ruling" and  
"Order" are NOT Final Orders and Judgments  
and are NOT Appealable

Appellants have appealed for the Lower Court (i) an "Order", entered January 9, 1984, and (ii) the "Findings of Fact and Ruling", entered February 1, 1984. Rule 72(a) of the Utah Rules of Civil Procedure provides, in part, that:

"An appeal may be taken to the Supreme Court from all FINAL ORDERS and JUDGMENTS in accordance with their rules; ...."

The Lower Court's "Findings of Fact and Ruling" (R. 662-665) is NOT a FINAL ORDER or JUDGMENT. A "ruling" is a judicial or administrative interpretation of a provision of a statute, order, regulation or ordinance, and certainly not a final order or a judgment. The "Findings of Fact and Ruling" DOES NOT ORDER, ADJUDGE OR DECREE ANYTHING. The Supreme Court lacks jurisdiction to consider an appeal respecting the "Findings of Fact and Ruling".

The "Order" is not a FINAL ORDER or JUDGMENT either. Although on its face it states it is an order, a review of it clearly shows that IT DOES NOT ORDER, ADJUDGE, OR DECREE anything either, and does NOT have even the first essential requisite of a judgment. Under Rule 54(a), Utah Rules of Civil Procedure, a "judgment" is defined as:

"(a) Definition; Form. "Judgment" as used in these Rules includes a decree and any order from which an appeal lies..."

In re: ELLINWOOD vs. BENNION, 73 U. 563, 267 P. 159, the Utah Supreme Court found:

"No particular form or words was essential to constitute a judgment, provided they were such as to indicate with reasonable certainty a final determination of the rights of the parties and the relief granted or denied. But in order that the document be a judgment it had to be sufficiently definite and certain as to be susceptible of

enforcement; it had to specify the relief granted or denied; it had to determine the right of the parties, and describe the parties for or against whom it was rendered. IF IT DID NOT ORDER, ADJUDGE, OR DECREE ANYTHING, IT HAD NOT EVEN THE FIRST ESSENTIAL REQUISITE OF A JUDGMENT.

The "Order", was entered as a result of Plaintiffs' motion for the Lower Court to modify its previous Ruling, entered December 8, 1983, by deleting the following wording from it:

"It the defendants dismiss the appeal then it would appear proper to return the \$10,431 to Leo Richins. As long as the appeal remains in process, the amount should remain with the clerk of the court."

Said Motion did NOT seek an ORDER, ADJUDICATION or DECREE of anything, nor was the Motion supported by any sworn statements as to Plaintiffs right to the \$10,431. Such motion was denied.

In re: COX vs. DIXIE POWER CO., 81 U. 94, 16 P. 2nd 916, the Utah Supreme court found:

"Order was decision of a motion, while judgment was decision of trial."

There was NO "trial on the merits" in this case PRIOR to entry of the "Order". There is NO sworn statement anywhere in the Record wherein Plaintiffs claim a right to the \$10,431. Certainly FINAL orders and judgments cannot be entered without at least some kind of sworn statements or testimony or documentary evidence to fully adjudicate the matter. The Record evidences that NONE of these essential elements existed before entry of the "Order". In re: KENNEDY vs. NEW ERA INDUSTRIES, INC., AND M.S. ROSENBERG, ET AL., U. 600 P. 2nd 534, the Utah Supreme Court held in SCHURTZ vs. THORLEY 90 Utah at 384, 61 P. 2nd at 1264, quoting NORTH POINT CONSOLIDATED IRRIG. CO. vs. UTAH AND SALT LAKE CANAL CO., 14 Utah 155, 46 P. 824 that:

"A JUDGMENT TO BE FINAL MUST DISPOSE OF THE CASE AS TO ALL THE PARTIES AND FINALLY DISPOSE OF THE SUBJECT MATTER OF THE LITIGATION ON THE MERITS OF THE CASE."

Such "Order" cannot possibly dispose of the case because it had



already been disposed of, i.e., the case had been dismissed against Richtron and Paul Richins TWO MONTHS before. The "Order" could not have possibly disposed of the subject matter on the merits of the case because the Evidentiary Hearing was not only conducted AFTER the case was dismissed against Richtron and Paul Richins, but AFTER entry of the "Order". The "Order" simply is NOT a final order or judgment from which an appeal may lie. In further re: OLDROYD vs. McCREA, 65 U. 142, 235 P. 580, 40 A.L.R. 230:

"Judgment to be final for purposes of appeal had to dispose of case as to all parties and finally DISPOSE OF SUBJECT MATTER OF LITIGATION ON MERITS, or be a termination of particular proceeding or action."

In further re: WINNOVICH vs. EMERY, 33 U. 345, 93 P. 988; BRISTOL vs. BRENT, 35 U. 213, 99 P. 1000:

"Test of finality for purpose of appeal was not necessarily whether whole matter involved in action was concluded, but whether particular proceeding or action was terminated by judgment."

Clearly, the "Order" did NOT terminate the proceeding or action because the case had already been dismissed against Richtron and Paul Richins, and something cannot be terminated that no longer exists. The "Order" simply is not a FINAL ORDER or JUDGMENT, and, therefore, NOT appealable.

Furthermore, the "Order" precedes the "Findings of Fact and Ruling". The "Order" was entered on January 9, 1984, actually 2 days before it was signed on January 11, 1984. The Evidentiary Hearing was later held on January 12, 1984. The "Findings of Fact and Ruling" were then entered after the Evidentiary Hearing on February 1, 1984. The "Order" cannot, therefore, be supported by the "Findings of Fact and Ruling" and the "Order" has NO validity in equity or law. In re: REICH vs. REBELLION SILVER MIN. CO., 3 U. 254, 2 P. 703:

"Written findings of fact and conclusions of law, separately stated, had to be made and filed before any judgment could be entered. They were the foundations of the judgment and were as necessary to precede any judgment as a verdict in case of a trial by jury. There was no presumption in the absence of findings."

In re: FISHER vs. EMERSON, 15 U. 517, 50 P. 619; BILLINGS vs. PARSONS, 17 U. 22, 53 P. 730:

"Making and filing of findings and conclusions was part, and had to precede entry, of judgment."

In re: HOLM vs. HOLM, 44 U. 242, 139 P. 937:

"Court could not properly proceed to judgment until findings were made on all issues."

In further re: THOMPSON'S ESTATE, 72 U. 17, 269 P. 103:

"Statutory requirement of findings was just as essential in equity as in a law case. A judgment rendered on no findings or upon insufficient or improper findings had no more validity in equity than at law."

## ARGUMENT II

Appellant, Young Farms, has NO right  
to file or maintain this Appeal

Young Farms was organized under the Utah Uniform Limited Partnership Act ("Act"), as a limited partnership, of which Richtron was designated as sole general partner. Plaintiffs, Limited Partners, are the limited partners. A certificate of "Limited Partnership Agreement of Young Farms, Ltd." ("Certificate") was filed in the office of the Davis County Clerk, Utah, under Section 48-2-2 of the Act. Pursuant to Section 48-2-1, of the Act, and paragraph 1, Article V, of the Certificate, Richtron had the exclusive right to initiate and maintain lawsuits on behalf of Young Farms, and the Limited Partners and their counselors at law are NOT entitled to act for Young Farms in any respect including this Appeal.

On December 29, 1980, due to certain Limited Partners' and their lawyer's continual interference in management and purchases of and attempts to purchase interests absolutely and unequivocally adverse to Richtron in an attempt to deprive Richtron of its assets, Richtron withdrew from and retired as general partner of Young Farms by filing a "Notice of Withdrawal" with the Davis County Clerk on January 7, 1981 (R. 530), and by serving written notice of such

retirement on all Limited Partners, pursuant to paragraph 5, Article V, of the Certificate, which states:

"The General Partner (Richtron) may at any time WITHDRAW from the Partnership, sell, or assign all or any part of its interest as a General Partner to a qualified party, by giving Notice to all the Limited Partners, and such action shall be effective upon the receipt by the last Partner of such notice of WITHDRAWAL, sale or assignment."

All Limited Partners consented to such retirement. No Limited Partner objected verbally or in writing, nor does the Record evidence any obligation to such retirement. Paragraph 6, Article VII, of the Certificate states:

"In the event that the General Partner desires to take any action which is subject to the consent of the Limited Partners, the General Partner shall give each Limited Partner notice of the proposed action, and each Limited Partner shall be deemed to have consented to such action unless the General Partner receives an objection from such Limited Partner within 14 days from the date on which notice was mailed."

Upon such retirement, Young Farms dissolved with the express written consent of the Limited Partners, pursuant to Article VII of the Certificate, which states:

"The Partnership shall terminate (dissolve) twenty (20) years from the date of this Agreement or upon the prior occurrence of any of the following events:

a. The WITHDRAWAL, dissolution or bankruptcy of the General Partner"

A "Notice of Dissolution and Discontinuance of Limited Partnership" was filed with the Davis County Clerk on January 11, 1982 (R. 531). A "Notice of Cancellation of Certificate of Limited Partnership of Young Farms, Ltd." was filed on May 28, 1982 (R. 532). Under Section 48-2-20 of the Act, the retirement of Richtron dissolved Young Farms. Said statute provides:

"Effect of retirement, death or insanity of a general partner. -- The retirement....of a general partner dissolves the partnership, unless the business is continued by the remaining general partners:

- (a) Under a right so to do stated in the certificate; or,
- (b) With the consent of ALL members."

Upon such retirement, there was NO remaining general partner of Young Farms; there is NO right given in the Certificate providing for a continuance or renewal of the business of Young Farms solely by or at the will of the Limited Partners upon the retirement of Richtron as the sole general partner; and there is NO provision under the Act entitling the Limited Partners to so continue or renew the business absent an express provision under the Certificate otherwise. Upon such retirement, Richtron (still a member of Young Farms), did NOT give consent to a continuance or renewal of the business of Young Farms solely by the Limited Partners and their non-member agent -- Tower.

Immediately after such retirement, the Limited Partners attempted to elect John P. Sampson, Esq, (who was Richtron's and Young Farms' legal counsel) as substitute general partner of Young Farms, and attempted to continue Young Farms as if no dissolution had occurred (R. 527-529). Richtron quickly resisted. Although it had retired, it was still the stipulated liquidating general partner under the Certificate. NO amendment to the Certificate had been duly executed, acknowledged and filed as required under paragraphs 9 and 11 of the Certificate and Sections 48-2-24 and 48-2-25 of the Act removing Richtron or authorizing Tower's admittance and a continuance.

Later, on July 1, 1981, Tower, then attempting to act as general partner of Young Farms, and the Limited Partners executed and filed what at first glance appears to be an amendment to the Certificate (R. 551-582). However, on close examination, the alleged amendment is totally invalid for two reasons: (i) it does not bear the signature of Richtron, as a member of Young Farms and a party to the Certificate as required under Section 48-2-25(1)(b) of the Act, and (ii) the alleged amendment was NOT executed by Richtron on its own behalf and for each Limited Partner. Paragraph 9 of the Certificate (R. 539) specifically provides that the written consent of Richtron is required to amend

the Certificate:

"9. This Agreement may be amended, from time to time, with the WRITTEN CONSENT OF THE GENERAL PARTNER (Richtron) and all of the Limited Partners."

Paragraph 11 of the Certificate (R. 540) specifically provides that Richtron has the IRREVOCABLE right to execute and file all amendments to the Certificate as attorney for each Limited Partner:

"11. Each Limited Partner by the execution of this Agreement or a counterpart of this Agreement does IRREVOCABLY constitute and appoint the General Partner (Richtron) his true and lawful attorney in his name, place and stead, to execute, acknowledge, deliver, file and record in the appropriate public offices (a) all certificates and other instruments (including counterparts of this Agreement) which the General Partner (Richtron) deems appropriate to qualify or CONTINUE the Partnership as a limited partnership (or a partnership in which special partners have limited liability) in the jurisdictions in which the Partnership may conduct business; (b) all instruments which the General Partner (Richtron) deems appropriate to reflect a CHANGE or MODIFICATION of the Partnership in accordance with the terms of the Agreement; and (c) all conveyances and other instruments which the General Partner (Richtron) deems appropriate to reflect this dissolution and termination of the Partnership. THE POWER OF ATTORNEY GRANTED HEREIN SHALL BE DEEMED TO BE COUPLED WITH AN INTEREST and shall survive the death or incompetency of a Limited Partner and the assignment by a Limited Partner of his Partnership interest."

Section 48-2-24(2)(d) and (e) specifically provides under what circumstances the Certificate shall be amended:

"(2) A certificate shall be amended when:

- (d) A person is admitted as a general partner;
- (e) A general partner RETIRES, dies, or becomes insane, and the business is CONTINUED under section 48-2-20;"

Section 48-2-25(1)(b) also specifically provides that all members (including Richtron) shall sign an amendment to the Certificate, subject, of course, to the aforesaid power-of-attorney of Richtron to sign it for ALL Limited Partners:

"(1) The writing to amend a certificate shall:

- (b) Be signed and sworn to by all members..."

On page 10 of Appellants' Brief, Appellants admit to exactly who

executed and filed the alleged amendment:

"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".

However, under the provisions of the Act and the Certificate as cited above, the ONLY person (partner) empowered to execute, deliver and file an amendment to the Certificate is RICHTRON! The Limited Partners and Tower had NO authority whatsoever to execute, deliver and file the alleged amendment, and any such alleged "Amended Articles" removing Richtron and admitting Tower as general partner and continuing Young Farms, are FATALLY DEFECTIVE, absent proper execution by Richtron for itself and all Limited Partners.

On page 10 of Appellants' Brief, Appellants cite paragraph 6, Article VI, of the Certificate as their authority to remove the present general partner (Richtron) and elect a new general partner (Tower). Tower, which was NOT a member of Young Farms or a party to the Certificate, then executed the alleged amendment, just as if it were already a member duly admitted as substitute general partner, to remove Richtron and admit Tower as general partner. However, Richtron had by then already withdrawn and retired, with the written consent of the Limited Partners, and, therefore, Richtron couldn't possibly be removed, nor were the removal provisions of the Certificate then applicable. As shown below, this issue was fully adjudicated in another case involving similar issues in favor of Richtron.

As demonstrated above, RICHTRON is the only IRREVOCABLY authorized member to execute and file with the Davis County Clerk an amendment to the Certificate on behalf of ALL partners, general or limited. And RICHTRON has Not authorized, executed or filed one! Only a general partner (not a limited

partner) has the right to prosecute or appeal matters on behalf of a limited partnership. In re: LIEBERMAN vs. ATLANTIC MUTUAL INSURANCE COMPANY, 385 P. 2d. 53, 62 Washington 2d. 922:

"Requirement for joinder of all partners in an action upon a partnership asset does not apply to limited partnerships, and in the case of a limited partnership ONLY THE GENERAL PARTNER MAY INSTITUTE A SUIT ON ITS BEHALF."

"Limited partners lacked capacity to maintain an action to recover amount allegedly due under a fire policy issued by defendant insurers on a partnership asset, but such action could be maintained ONLY by general partner of the limited partnership."

In re: FOX vs. SACKMAN, 591 P. 2d. 855, 22 Washington App. 707:

"Only general partner in limited partnership is authorized to bring action on behalf of the limited partnership under real party in interest rule."

"Sole general partner of limited partnership which purchased property from general partner in his individual capacity was real party in interest and therefore authorized to commence quiet title action."

It is NOT the right or duty of the Limited Partners of a Utah limited partnership to prosecute any action or conduct any business affairs on behalf of, and in the name of, the limited partnership including Young Farms.

On March 10, 1981, the Limited Partners of Young Farms, through its alleged substitute general partner, Tower, filed the District Court action (Case #29700) against Richtron and Paul Richins. On November 4, 1981, the Limited Partners, through the other alleged substitute general partner, John P. Sampson, a Professional Corporation, filed another similar lawsuit against Richtron and Paul Richins, among others, in the Second Judicial District Court (Case #30994) involving substantially the same issues as those filed earlier in Case #29700. Both lawsuits were simultaneously heard before the same District Court Judge, J. Duffy Palmer, until later transferred to Judge Cornaby in December, 1982.

During the pendency of the lawsuit under Case #30994, Young Farms was NOT dismissed from the case as a party-plaintiff, notwithstanding the Limited

Partners and Tower, the other alleged substitute general partner, had filed a lawsuit under Case #29700 eight months before and WERE AWARE OF THE SECOND LAWSUIT. Appellants suggest in their Brief that they were not aware of Case #30994. This is hard to believe in that the limited partners of Young Farms gave John P. Sampson their Limited Powers of Attorney to vote their partnership interests, admit him as general partner (R. 529), then sue Richtron and Paul Richins, which they subsequently did (R. 541). And both cases were being heard before the same Judge in Department #2. (The Limited Partners would obviously see which lawsuit produced the best results for them).

On November 24, 1982, Richtron sought a Summary Judgment in Case #30994 seeking a determination of Richtron's authority to liquidate, wind up and terminate Young Farms and other similarly controlled limited partnerships, and the authority, if any, of ALL other alleged substitute general partners to act on behalf of Young Farms or other partnerships. On November 24, 1982, in Case #30994, Judge Palmer, who was simultaneously hearing Case #29700, entered an "Order Respecting Summary Judgment and Judgment of Dismissal Without Prejudice", which was never appealed by Young Farms or the limited partners (R. 548).

The aforesaid Order and Judgment fully adjudicated once and for all the authority of Tower, John P. Sampson, a Professional Corporation, or any other person or entity other than Richtron to act on behalf of Young Farms. Tower has never been duly admitted as substitute general partner of Young Farms (which matter was fully adjudicated in the said Order and Judgment on November 24, 1982, in Case #30994), and, therefore, is NOT now, nor was it then, entitled to notice of any pleadings or actions whatsoever respecting Young Farms. Richtron is the exclusive, stipulated, court decreed, liquidating general partner of Young Farms.

On page 10 of Appellants' Brief, Appellants would like this Court to



believe that the issue of Richtron's or Tower's authority as general partner was somehow later reconsidered by another Judge who again adjudicated the same issue in a "Pre-trial Order" dated May 16, 1983 (R. 446). Judge Cornaby is NOT an appellant Judge over Judge Palmer, nor can he override Judge Palmer's previous Order and Judgment. Also, the granting of the Partial Summary Judgment involving a real property interest somehow laid the already adjudicated issue of control of Young Farms to rest. The fact is, the two issues had absolutely nothing to do with one another. Appellants claim in such Brief that Paul Richins made all the same arguments about the issue in his Affidavit to the Court (R. 521-582). However, a cursory review of the Record absolutely and unequivocally shows that the issue of authority of Tower to control Young Farms or prosecute legal matters for Young Farms was NOT reconsidered, much less adjudicated, in such Pre-trial Order or the Partial Summary Judgment, or at any other time in Case #29700. Notwithstanding Richtron made a similar motion to dismiss in Case #29700 because of Tower's lack of authority to sue, the case was dismissed 9 days after such Motion was filed. It was NOT heard nor was the issue adjudicated in Case #29700 as Appellants so represent. However, the issue of Richtron's authority to act for Young Farms (as granted under said Order and Judgment in Case #30994) was, nonetheless, conclusive. Such issue is identical with the issue respecting other partnerships effected by said Order and Judgment. This is precisely why JUDGE PALMER MADE NO EXCEPTION FOR YOUNG FARMS AND RICHTRON'S RIGHT TO CONTROL IT and decreed accordingly.

On February 27, 1984, AFTER Richtron was dismissed from the case, Judge Cornaby entered the aforesaid Pre-trial Order in which Appellant claimed Tower was "recognized" as the general partner. Said Order was prepared by Plaintiffs and entered without notice to Richtron, and Richtron was NOT a party to or affected by it because Richtron had been dismissed from the case. It has

NO affect on Richtron's previously decreed rights to control Young Farms. Any reference to Tower as the general partner of Young Farms and Joseph S. Knowlton as counsel for Young Farms was NOT ORDERED, ADJUDGED OR DECREED by the District Court, nor could it be. THE MATTER IS RES JUDICATA!

Appellants' Appeal invokes the doctrine of RES JUDICATA. The authority of Richtron or anyone else (including Tower) to control Young Farms has been fully adjudicated in Case #30994 without appeal. Intervenor is entitled to rely upon the decreed rights of Richtron in this Appeal, and Appellants are governed thereby as well. The Record does NOT reflect any assignment of those rights to Tower, including the right to bring this Appeal for Young Farms.

Richtron General has been granted the EXCLUSIVE RIGHT, pursuant to Sections 42-2-7 through 11, inclusive, U.C.A., 1953, amended, to carry on, conduct and/or transact business in the State of Utah under the assumed name of "Young Farms, Ltd." for a 5 year term from April 28, 1982, to April 28, 1987. The Record does NOT reflect where Richtron General has assigned to Tower, or the Limited Partners, its right to conduct this Appeal under the assumed name of "Young Farms, Ltd."

RICHTRON is, therefore, the absolute, court decreed, liquidating general partner of Young Farms. RICHTRON IS the ONLY party (partner) authorized to initiate or maintain this Appeal on behalf of Young Farms; and Richtron has NOT authorized this Appeal. If the Supreme Court were to determine that the \$10,431 belongs to Young Farms, the Lower Court would then have to return it to RICHTRON as the only authorized person to liquidated the affairs of Young Farms.

#### ARGUMENT III

Richtron and Paul Richins cannot be Bound  
by Decisions of the District Court  
in a Case for which They are  
no longer Parties

Plaintiffs' Amended Complaint was DISMISSED against Richtron and Paul Richins on November 9, 1983, under the "Partial Summary Judgment". An appeal of such Judgment was filed on January 3, 1984. Based on the representations of Judge Cornaby in a Ruling that he would release the \$10,431 to Leo Richins if such other appeal was dismissed, such other appeal was withdrawn on January 3, 1984. The case was then remitted to the District Court. From that day on, Richtron and Paul Richins were NOT parties to the case. Nevertheless, the "Order" was entered on January 12, 1984, which affected the \$10,431 deposited by Leo Richins on behalf of Paul Richins. Paul Richins (and Richtron) cannot be bound by any decision of the District Court made after such case and other appeal were dismissed because they were not parties. An Evidentiary Hearing was later held, but Richtron and Paul Richins were not given the opportunity to be heard because they were no longer parties. 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 P. 2nd 567, 8 Utah 2nd 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 with the jurisdiction of the judicial tribunal about to render judgment."

Under the existing circumstances, the ONLY thing the District Court could do with the \$10,431 after the case against Richtron and Paul Richins and such other appeal were dismissed, was to release the money to Leo Richins, "the source from which it came". The District Court erred in hearing and determining the matter further, and particularly erred in retaining the money until Plaintiffs went through the appeal process.

#### ARGUMENT IV

Neither Young Farms nor the Limited Partners have a Right to an Award of the \$10,431 because there is NO breach of Contract, there has been NO proper or complete Accounting, and the Limited Partners have NO Interest in the Limited Partnership's Assets

There is NO affidavit, testimony or documentary evidence in the Record proving that Richtron defaulted under the Richtron/Young Farms Contract. Under the terms of such Contract (Exhibit B), the only material obligation imposed on Richtron is to deliver a good and sufficient warranty deed and a policy of title insurance upon Young Farms' payment in full of the purchase price. If Richtron could not deliver a deed, Young Farms (not the Limited Partners who were not parties to such Contract) would then have an action for specific performance, but only then. There is NO evidence that Richtron could not have delivered a warranty deed and title insurance upon payment. Richtron made the November 15, 1980, payment on the Allred Contract within the grace period on February 20, 1980. The \$10,431 stayed in the Bank until Richtron withdrew it on December 7, 1981. It should be noted that when Young Farms made its 1980, payment of \$32,396 to Richtron under the Richtron/Young Farms Contract, that money then belonged to Richtron. Young Farms thereafter had NO right to or interest in any part of the it. Richtron replaced "its" money with a written tender of payment on December 7, 1981 (R. 644), because Young Farms had not paid their November 15, 1981, payment of \$32,396 to Richtron (R. 641). By that time, the Limited Partners, acting under the guise of Young Farms, had USED RICHTRON'S OWN ASSETS UNDER THE FRESTON PROPERTY to deed around Richtron, therein by-passing the rights and interests of Richtron in said property (R. 258-273). In this manner, the Limited Partners obtained "warranty deeds" conveying such property directly to them from the Frestons and Youngs without paying Richtron what was owed. The Record also reflects that the Limited Partners were negotiating directly with

Allreds' lawyer to purchase Allreds' rights and squeeze Richtron from that end too. Is it any wonder then that Richtron withdrew its payment?

Young Farms technically has NO legal title to the Allred Property.

68 C.J.S. Section 475 provides:

"Firm Property. Although it has been held that the ownership of firm property is vested in the limited partnership as such, there is authority that the legal title to all the firm property should be vested in the general partner."

Furthermore, no Limited partner has a direct property right in the Allred Contract or Property, and, therefore, cannot directly succeed to any monies with respect to it. 68 C.J.S. Section 471.c. provides:

"The Special Partners, Nature of Interest in Firm: A special partner is not a creditor of the firm, and although he may, in a sense, be considered as an owner, HE HAS NO PROPERTY RIGHT IN THE FIRM'S ASSETS."

On page 12 of Appellants' Brief, Appellants claim that:

"If there was any failure in regard to the Amendment, then the LIMITED PARTNERS, all of who 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 accounting against the former general partner who had withdrawn."

It should be noted that the claim for an accounting brought by the Limited Partners (whether they now have the rights of a general or limited partner) was dismissed on their initiative. The above language suggests that each Limited Partner has automatically succeeded to all the rights and interests in the Allred Contract and Property as would a general partner in a general partnership. Notwithstanding they invalidly executed and filed an alleged amendment to the Certificate and continued and renewed the partnership, the Limited Partners do NOT have any greater right now than the Certificate and the Act initially gave them. 68 C.J.S. Section 461 provides:

"Effect Of Failure To Comply With Statutes... Although there is authority that as a result of such failure to satisfy the statutes the firm is a general partnership for all purposes, there is other

authority that the firm is such a general partnership only as to its relation to third persons; that the firm in for, is a limited partnership, subject to all the rules applicable to such partnerships; THAT AS BETWEEN THE PARTNERS THEY ARE BOUND BY THEIR AGREEMENT; AND THAT ALL THE SPECIAL PARTNERS' RELATIONS TO HIS CO-PARTNERS AND THEIR OBLIGATIONS TO HIM GROWING OUT OF THE RELATION REMAIN UNIMPAIRED."

Plaintiffs' comments above also suggest that a limited partner can acquire the rights and interests in property as would a general partner by simply attempting to take control of and invalidly continue a limited partnership, acquire rights in a co-partners' property adverse to the co-partner, deed around the co-partner's and limited partnership's interests and attempt to expel the already retired co-partner when who tries to stop it. Also, by so doing, a limited partner can convert his personal property interest in the limited partnership to a real property ownership interest in the partnership's or the co-partner's real property. This is ludicrous. The rights of the Limited Partners are set forth in Section 48-2-10 of the Act, which provides:

"Rights of a limited partner.-- (1) A limited partner shall have the same rights as a general partner to:

- (a) Have the partnership books kept at the principal place of business of the partnership, and at all times to inspect and copy any of them;
- (b) Have on demand true and full information of all things affecting the partnership, and a formal account of partnership affairs whenever circumstances render it just and reasonable; and
- (c) Have dissolution and winding up by decree of court.

(2) A limited partner shall have the right to receive a share of the profits or other compensation by way of income, and to the return of his contribution as provided in sections 48-2-15 and 48-2-16."

This doctrine was reiterated by the Utah Supreme Court in WESTLEY G. HARLINE and RICHARD NILSON vs. LOWELL R. DAINES, et al., 567 Pac. Rep., 2nd p. 1120, Utah, 1977:

"...The rights of a limited partner are set forth in Section 48-2-10, U.C.A., 1953. There is nothing there that confers on limited partners the power to interfere in the conduct of the partnership business or to surreptitiously devise a scheme to divert the assets from the

partnership so as to deprive the general partners of their interest."

The Limited Partners Amended Complaint was an action against their co-partner, Richtron, and its President, Paul Richins, to recover, among other things, \$10,431 they alleged had been missapplied by Richtron. However, the Record clearly evidences that there has NOT been a final settlement of partnership affairs accomplished by marshaling partnership assets, ascertaining surplus and discharging liabilities, which is a fundamental doctrine of common law and a condition preceding an award of the \$10,431 to Plaintiffs even if they were entitled to it (which they are not). In re: FULTON vs. BAXTER, 596 P. 2nd 540, Okla. 1975:

"One general partner cannot bring an action against his co-partner to recover damages until a final settlement of partnership affairs was accomplished by marshaling partnership assets, ascertaining surplus and discharging liabilities."

There was NO "trial on the merits" before the case against Richtron and Paul Richins was dismissed, which would have produced a complete and proper accounting between the partners including at least \$75,000 owed to Richtron by Young Farms. Notwithstanding the \$10,431 was never the property of Young Farms or any Limited Partner, and even if it was, the Limited Partners have asked the District Court and now the Supreme Court to ascertain their alleged right to it without a settlement of partnership affairs. 68 C.J.S. Section 377 provides:

"Necessity of Settlement. Before the rights of the several partners in the property of the firm can be ascertained, and such property distributed among them, a settlement of partnership affairs must generally be had."

In paragraph 3 of Plaintiffs' "Reply", dated April 9, 1981, to the Counterclaim of Richtron and Paul Richins, Plaintiffs admit to a continuance of Young Farms without a dissolution and settlement of partnership affairs. The Limited Partners petitioned the District Court to settle an account with Richtron and state the balance between the partners respecting partnership

affairs, which they alleged included the \$10,431, notwithstanding they claimed, in effect, that no dissolution had occurred. For if a dissolution had occurred under the Certificate and the Act, the partnership could not have been continued. The District Court could not interfere to settle accounts and state the balance between the partners absent a dissolution which the Limited Partners disclaimed. 68 C.J.S. Section 377(b) provides:

"Necessity of Dissolution. The general rule, subject to a few exceptions, is that a partnership accounting cannot be demanded or an action brought therefore, until the partnership is dissolved, unless Plaintiff seeks in the same action a dissolution of the partnership and a settlement of the partnership accounts as discussed infra Section 406. Also while the partnership continues, a court of equity will not interfere to settle accounts and state the balance between the partners, except where the complaining partner establishes a case of extreme necessity."

Even if the \$10,431 on deposit was Plaintiffs' (which the evidence and law clearly shows it isn't and can't be), Richtron was and is entitled to an accounting where the Record clearly shows that the Limited Partners and their agent, Tower, have sought to deed around the interests of Richtron in the Properties using Richtron's own assets in payment (R. 258-273), have sought to exclude Richtron from the firm business, and have sought to expel Richtron from Young Farms after it had withdrawn. 68 C.J.S. Section 377(b) provides:

"Necessity of Dissolution. Even though there has been neither a dissolution nor a prayer for dissolution, the right to an accounting ordinarily exists where some of the partners are improperly withholding firm assets, or have wrongfully excluded, or sought to exclude, a co-partner from the firm or the firm business, or have sought to expel him from the co-partnership, or drive him to a dissolution."

Therefore, Plaintiffs cannot possibly be entitled to the \$10,431 under any theory, in law or in equity, because the Limited Partners have NO direct interest in the assets of Young Farms and there has been NO accounting and settlement of the affairs of Young Farms between the partners.



#### ARGUMENT V

Paul Richins is NOT liable for  
Richtron Obligations, if Any

On November 15, 1974, Richtron purchased the Allred Property from the Youngs and agreed to assume the Allred Contract (Exhibit A, par. 18(b)). Richtron then resold the Allred Property to Young Farms (Exhibit B) which was organized simultaneously. Paul Richins was NOT a party to any such Contracts, and had NO interest or claimed any interest in such Contracts or underlying Properties (Exhibits A & B). There is nothing of record, proven or alleged, establishing that Paul Richins had an interest in the purchase or resale; that he acted in his own behalf rather than in his capacity as an officer of Richtron; that he took the \$10,431 from the Bank on his own behalf; that it was subsequently spent on his own behalf; or that he was using Richtron as his "alter-ego" and as himself. The District Court so determined. Any action taken by him was on behalf of Richtron, with the exception of his personal compliance with the Court's Order for him to deposit \$10,431 if Richtron didn't. Under Utah law, with these facts, Paul Richins is NOT liable for a Richtron corporate obligation, if, in fact, Richtron had one.

#### ARGUMENT VI

The \$10,431 was Deposited into Court pending Determination  
of the Rights of the Parties in the Allred Contract  
and the Properties under the Contract.

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." The Allreds were not "parties" when said Order was entered. Paul Richins claimed no personal interest in the Allred Contract or underlying property, nor did Plaintiffs allege he had any. Under

Section 48-2-18, U.C.A., 1953, amended, the Limited Partners holding a PERSONAL PROPERTY interest in Young Farms had no direct rights in the Allred Contract or underlying property, which is a REAL PROPERTY interest. The sole rights of the Limited Partners are defined in Section 48-2-10, U.C.A., 1953, amended and the limited partnership agreement. Nothing contained therein grants any Limited Partner a REAL PROPERTY interest in the Allred Contract, nor are the Limited Partners parties to the Richtron/Young Farms Contract. Section 48-2-18 of the Act provides:

"Nature of limited partner's interest in partnership.-- A limited partner's interest in the partnership is personal property."

So the only rights in the Allred Contract and the underlying property to be determined at "trial on the merits" were those of Richtron and Young Farms. Richtron had purchased the Allred Property by assumption of the Allred Contract from the Youngs, and had resold it at a disclosed profit to Young Farms, pursuant to the "Richtron/Young Farms Contract. However, the Limited Partners of Young Farms claimed in their Amended Complaint that such act was a breach of Richtron's fiduciary responsibility to Young Farms, and sought to rescind the "Richtron/Young Contract" and cause Richtron to hold as trustee for Young Farms the Allred Contract, thereby eliminating Richtron's disclosed profit on resale.

Richtron never paid into Court the \$10,431 as ordered. Notwithstanding Paul Richins was only an officer of Richtron and NOT a shareholder and claimed NO personal interest in the Allred Contract or Property, nevertheless, for some unknown reason, he personally was required to deposit \$10,431 into Court if Richtron didn't. When Richtron didn't, he solicited and received from his father, Leo Richins, a Letter of Credit drawn on Barnes Banking Company in favor of the District Court "for the account of Leo H. Richins". Unsatisfied with the

Letter of Credit, Plaintiffs sought and received an Order from the Clerk of the Court to collect from Barnes Banking Company \$10,431 in accordance with the terms of the Letter of Credit and provided on behalf of Paul Richins. The \$10,431 was "to be deposited with the Clerk of the Court and the Clerk to invest the said sum in interest-bearing certificates UNTIL THE FINAL CONCLUSION OF THIS MATTER" (R. 553-554).

At the Evidentiary Hearing held on January 12, 1984, Judge Cornaby, who had been assigned the case from Judge Palmer, interpreted both Orders respecting deposit of the money to mean that the \$10,431 was to be retained by the Court until it was determined, "AFTER A TRIAL ON THE MERITS", who owned it (Tr. 109:11-16), "because if the Plaintiffs WON THE CASE they had a right...(to it)...if it was decided they should receive it" (Tr. 107:15-21). The Record shows there was NOT a "trial on the merits". Also, Plaintiffs' Amended Complaint against Richtron and Paul Richins was dismissed before the Evidentiary Hearing due substantially to Young Farms' purchase of the Allred and Freston Contracts from Milton R. Goff who allegedly purchased them at an IRS Tax Sale.

As noted by Judge Cornaby during the Evidentiary Hearing in December, 1982, Milton R. Goff, Trustee in Trust, allegedly purchased all of Richtron's rights and interest in the Allred and Freston Contracts, among others. (Tr.106:17-23) On January 25, 1983, Goff assigned, transfered and quit claimed to Young Farms all his rights and interests in the Allred and Freston Contracts together with the underlying properties (R. 493, 495). The "rights of parties in the Allred Contract and the properties underlying said Contract" were allegedly determined, and Plaintiffs had no need to proceed against Richtron and Paul Richins to obtain the Allred and Freston Contracts. Thereafter, Plaintiffs sought and received a "Partial Summary Judgment" declaring that Richtron had no interest in the Allred and Freston Properties.

Goff's alleged sale of Richtron's interest in the Allred Contract and Property to Young Farms and the subsequent "Partial Summary Judgment" (which allegedly decreed the right of Plaintiffs in the Properties and, in fact, dismissed Richtron and Paul Richins from the case) allegedly determined Plaintiffs' rights thereunder. The \$10,431 should have been returned at that point because Plaintiffs had absolutely NO cause of action for anything against Richtron and Paul Richins before the Court, particularly after Paul Richins withdrew his appeal of the "Partial Summary Judgment". How can the District Court thereafter hold an EVIDENTIARY HEARING on a cause of action previously dismissed against Richtron and Paul Richins, and particularly one where ONLY the Plaintiffs are allowed to present evidence and their side of the case, and Paul Richins is not? How can the Court enter Findings of Fact AFTER the case was dismissed against Richtron and Paul Richins and a Ruling respecting a dismissed matter?

#### ARGUMENT VII

Leo Richins Deposited the Letter of Credit on Behalf of  
Paul Richins, and NOT on behalf of Richtron

The Record is replete with substantial documentation, affidavits, and the sworn testimony on THREE witness that Leo Richins provided the Letter of Credit, which the District Court drew on, in behalf of Paul Richins, and NOT on behalf of Richtron. Appellants have produced NO documentation, affidavit, or sworn testimony otherwise. The Letter of Credit was provided clearly for Paul Richins who was not adjudicated liable to Appellants for anything, and the case against him was dismissed. Even if Richtron were determined to be liable to Appellant for the \$10,431, without a complete accounting and settlement of partnership affairs, Paul Richins clearly is NOT!

#### ARGUMENT VIII

The \$10,431 on Deposit was Contributed by, is the Property

of, and Must be Returned to Leo Richins,  
the Source from Which it Came

Intervenor, Leo Richins, incorporates each and every Argument above in this Argument VIII. What Richtron may or may not have done with the \$10,431 should NOT affect Leo Richins' money or his ability to get it back. Appellants cannot, in good faith claim the money should be turned over to them because Leo Richins was never a party and Paul Richins is not a party. If Appellants believe they are entitled to the money, they had their chance to try the issue on the merits. They chose to dismiss their Amended Complaint against Richtron and Paul Richins and get them out of the case without a trial. But when Paul Richins requested the money from the Court on behalf of Leo Richins, then Appellants decided they wanted a "trial" after all, but without any opposition. The money was

to be put with the District Court until the case was concluded. The findings of the District Court that the money belongs to Leo Richins must be affirmed and and the money returned to him, "the source from which it came."

#### CONCLUSION

The Limited Partners brought an action against Richtron and Paul Richins in the Lower Court. They also brought such action under the guise of Young Farms. Richtron is the stipulated, court decreed, liquidating general partner of Young Farms, as has NOT authorized such action or this Appeal. The rights of Richtron to control Young Farms have been adjudicated in another similar case involving the same subject matter. Only Richtron has the right to initiate such action and this Appeal. John T. Anderson, attorney for Richtron and Young Farms, has filed a "Notice of, or Motion for, Withdrawal of Appeal", dated July 3, 1984. Tower and Joseph S. Knowlton, Esq. have NOT been authorized by Richtron to appear in such action or this Appeal.

There has been NO settlement of the partnership affairs of Young Farms between Richtron and the Limited Partners which is a condition precedent to damages. The Limited Partners' rights are specifically set forth in Section 48-2-10, of the Act. The interest of the Limited Partners is a personal property interest in Young Farms, with the right to receive a share of the profits or other compensation by way of income, and to the return of their contribution as provided in Sections 28-2-15 and 48-2-16 of the Act. There is nothing there that confers on the Limited Partners a direct real property interest in the Allred Contract, even if they have invalidly continued Young Farms. The Limited Partners are NOT parties under any Contract covering the Allred Property. Although Limited Partners may, in a sense, be considered owners of the Allred Property, the legal title and rights under the Allred Property vest in Richtron.


The Lower Court's "Order" entered January 9, 1984, was entered AFTER the case against Richtron and Paul Richins had been dismissed on Plaintiffs' own initiative without a "trial on the merits", and could not have affected the rights of Leo Richins (or Paul Richins) in the \$10,431. Plaintiffs then sought to have a portion of its dismissed claims tried anyway, but without an opposing party. Upon Plaintiffs motion, the Lower Court conducted an Evidentiary Hearing on January 12, 1984, on an issue that had been dismissed. The Lower Court refused to take evidence from Richtron and Paul Richins because they were no longer parties to the action. Only Plaintiffs were allowed to present evidence. On February 1, 1984, the Lower Court entered its "Findings of Fact and Ruling". No judgment was entered thereafter. Neither such "Order" or Findings of Fact and Ruling" is a final order or judgment, nor could they be because the case against Richtron and Paul Richins had been previously "finalized" in the dismissal under the "Partial Summary Judgment" entered November 9, 1983.

Furthermore, neither one ORDERS, ADJUDICATES OR DECREES ANYTHING.

The \$10,431 is the property of Leo Richins. The Lower Court drew on a Letter of Credit he provided solely for Paul Richins. The case was then dismissed against Paul Richins. The Lower Court erred in not returning the \$10,431 to "the source from which it came" as it represented it would.

Richtron has NO obligation to Appellant, absent an accounting and a balance struck between the partners. Richtron has not defaulted under the terms of the Allred Contract, the Young/Richtron Contract or the Richtron/Young Farms Contract. Paul Richins has NO personal liability to pay Richtron obligations even if one existed, and Leo Richins, a non-party, certainly cannot be held liable. If this Court determines that the \$10,431 cannot be returned to Leo Richins because he was not a party in such action, then the Lower Court erred in taking it from a non-party in the first place.

DATED this 17th day of December, 1984.

  
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LEO H. RICHINS,  
Intervenor, Pro Se

MAILING CERTIFICATE

I hereby certify that I have this 17th day of November, 1984, mailed a true and correct copy of the foregoing "Brief of Intervenor" to John T. Anderson, HANSEN JONES MAYCOCK & LETA, Attorneys for Defendants, Richtron, Inc., and Paul H. Richins, 50 West Broadway, Salt Lake City, Utah 84101, and Joseph S. Knowlton, Attorney for Appellants, 845 East 400 South, Salt Lake City, Utah 84102.

  
\_\_\_\_\_  
LEO H. RICHINS