

1967

James R. Knight v. Clyde C. Patterson and Ormond Konkle : Brief of Respondents

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**IN THE SUPREME COURT
of the
STATE OF UTAH**

JAMES R. KNIGHT,

Plaintiff-Appellant,

vs.

CLYDE C. PATTERSON and

ORMOND KONKLE,

Defendants-Respondents.

Case No.
10861

BRIEF OF RESPONDENTS

Appeal from the Judgment of the
Second District Court for Weber County
Honorable Ferdinand Erickson

MATT BILJANIC

8138 South State Street

Midvale Utah, 84047

*Attorney for Plaintiff-
Appellant*

PATTERSON, FOLEY, PHILLIPS
& GRIDLEY
427 27th Street
Ogden, Utah 84401

FILED

AUG 30 1967

Clock, Supreme Court, Utah

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IN THE SUPREME COURT of the STATE OF UTAH

JAMES R. KNIGHT,
Plaintiff-Appellant,

vs.

CLYDE C. PATTERSON and
ORMOND KONKLE,
Defendants-Respondents.

Attorneys for Defendants-Respondents

STATEMENT OF THE KIND OF CASE

This was an action brought by plaintiff-appellant growing out of the purchase of a motel and the respective relationships growing therefrom between plaintiff-appellant and the defendants-respondents. Plaintiff filed an action containing four causes of action. The only portion of the problem presented on this appeal is plaintiff's fourth cause of action. In this cause it was claimed by plaintiff that the defendant - respondent, Clyde C. Patterson, slandered the plaintiff-appellant, James R. Knight.

DISPOSITION IN THE DISTRICT COURT

The case was heard upon a motion for summary judgment by defendant on the 10th day of February, 1964, on plaintiff's fourth cause of action. The Honorable Ferdinand Erickson found that any statements

made by the defendant, Clyde C. Patterson, were subject to the defense of truth and within the area of qualified privilege. Pursuant to said finding, the defendants' motion for summary judgment was granted and the plaintiff's fourth cause of action was dismissed.

RELIEF SOUGHT ON APPEAL

In replying to this appeal, defendants-respondents seek an affirmation of the judgment of the lower court granting defendants' motion for summary judgment.

STATEMENT OF FACTS

Clyde C. Patterson and James R. Knight were purchasers of a motel under a uniform real estate contract and, further, plaintiff-appellant worked at managing said motel.

Defendant-respondent repudiates, denies, and evasively castigates paragraph 2 of plaintiff-appellant's Statement of Facts. That paragraph is without record references to substantiate it and is further not only contrary to fact but contrary to the pleadings.

Plaintiff-appellant managed the motel until the close of the 1964 season. Thereafter, the defendant-respondent caused an audit of the books to be made (R-17, R-13, C. C. Patterson affidavit) and at that time found there were several irregularities in the bookkeeping, that there were several checks in the amount of \$702.80 bearing dates between May 16, 1964, through May 25, 1964, which were drawn on moneys sent to the motel for the specific purpose of paying for a sign (R-17, R-13, C. C. Patterson affidavit). The plaintiff-appellant, in addition, had

charged the sum of \$1,356.29 to the motel for materials purchased from the Union Distributing Company for a tackle shop run by his son-in-law. The expenditures made by plaintiff-appellant were to pay bills for a bait business which was his own business and had no connection with the business of a motel (R-11, Request for Admissions No. 1; R-12, Answer No. 1).

James R. Knight, the plaintiff-appellant, had paid Sawyer Sheet Metal \$64 (R-13, Exhibit D) on the Yellowstone Motel account with no notation said charge was to be charged back against him personally. Plaintiff-appellant had paid \$84.15 to R. C. Bait Bags on West Yellowstone Motel check dated July 11, 1964, on behalf of his personal business. These expenditures were in the books of the motel as proper motel business and without any reference to their personal nature to plaintiff-appellant, James R. Knight.

Thereafter, Mr. Knight came to Ogden, Utah, where Mr. Clyde C. Patterson maintains a law office, and contacted Mr. Frank Warner, a practicing attorney in Ogden, Utah, to undertake the collection of certain funds allegedly due plaintiff-appellant from defendant-respondent, Clyde C. Patterson (Deposition of Frank C. Warner, page 4). Pursuant to his employment by plaintiff-appellant, attorney Frank C. Warner contacted Mr. Patterson and had conversations with him respecting the claim of Mr. Knight and the defenses of Mr. Patterson during which Mr. Patterson used words, according to Mr. Warner:

"I have difficulty recalling the specific language used.

"The language used, in substance and effect but not specifically, was 'embezzled and misapplied proceeds.'"

Thereafter, defendant-respondent, Clyde C. Patterson, had a conversation with Arthur Farr Campbell, an employee of Ford Finance Company with whom plaintiff-appellant, James R. Knight, had a loan and for which defendant-respondent, Clyde C. Patterson, had cosigned. Mr. Campbell had also arranged to obtain worms for Mr. Knight's worm business from the North Ogden First Ward upon Mr. Knight's behalf. Mr. Campbell's uncontroverted sworn statement (R-13) indicates no libelous statements respecting Mr. Knight.

ARGUMENT

Plaintiff complains of only two alleged slanders (R-3, Interrogatories 27 through 36; R-7, Answers to Interrogatories 27 through 36)

Interrogatory 27:

"State when in the latter months of the year 1965 plaintiff alleges defendant C. C. Patterson slandered the plaintiff."

Answer to 27:

"During the month of October, 1965."

Interrogatory 28:

"State in whose presence said slander occurred."

Answer to 28:

"Mr. Art Campbell."

Interrogatory 29:

"State the words used by said defendant."

Answer to 29:

"Words to the effect 'That James Knight had embezzled motel monies'."

Interrogatory 30:

"State when in February, 1966, plaintiff alleges that the defendant C. C. Patterson slandered the plaintiff."

Answer to 30:

"November 1, 1965, not February 1966."

Interrogatory 31:

"State in whose presence said slander occurred."

Answer to 31:

"Mr. Frank Warner."

Interrogatory 32:

"State the words used by said defendant."

Answer to 32:

"That James Knight had embezzled motel funds and that he (Clyde C. Patterson) had evidence to corroborate the same."

Interrogatory 33:

"State where said slander occurred."

Answer to 33:

"Ogden, Utah."

Interrogatory 34:

"State the names of the several persons to whom the defendant C. C. Patterson has slandered the plaintiff."

Answer to 34:

"Joe Wilson, Carl Thornton, Claude Duncan, Bill Gray, Red Davis and Art Campbell."

Interrogatory 35:

"State when the said C. C. Patterson slandered the plaintiff."

Answer to 35:

"See interrogatory No. 27 and No. 30; other statements only reflect the existence of malice."

Interrogatory 36:

"State where said statements were made."

Answer to 36:

"See interrogatory No. 27 and No. 30."

POINT I

THE COURT PROPERLY FOUND UNDER THE LAW AND THE FACTS THAT ANY STATEMENTS MADE TO FRANK WARNER AND ARTHUR CAMPBELL ABOUT JAMES R. KNIGHT WERE PRIVILEGED. EVIDENCE PRESENTED TO THE COURT BY PLEADINGS, AFFIDAVITS AND DEPOSITIONS FAILED TO SHOW ANY MALICE ON THE PART OF DEFENDANT-RESPONDENT TO REMOVE THE STATEMENTS FROM THE AREA OF QUALIFIED PRIVILEGE.

- A. *The unrefuted record shows no libelous statements made by C. C. Patterson to Arthur Campbell.*
- B. *The unrefuted record shows that any conversation between Clyde C. Patterson and Arthur Campbell were privileged.*
- C. *Counsel for the plaintiff-appellant concede that the statements to Arthur Campbell were within the area of qualified privilege.*
- D. *The record shows that any statements made to Frank Warner were not proper subject matter for an action in libel, since it was "lawyer talk" about a proposed law suit and the defenses thereto.*
- E. *The record shows that any statements from Clyde C. Patterson to Frank Warner were, in addition to being lawyer talk, within the area of qualified privilege.*

POINT II

THE COURT PROPERLY FOUND THE ALLEGED STATEMENTS MADE BY DEFENDANT - RESPONDENT ABOUT PLAINTIFF-APPELLANT WERE SUBJECT TO THE DEFENSE OF TRUTH.

POINT I

THE COURT PROPERLY FOUND UNDER THE LAW AND THE FACTS THAT ANY STATEMENTS MADE TO FRANK WARNER AND ARTHUR CAMPBELL ABOUT JAMES R. KNIGHT WERE PRIVILEGED. EVIDENCE PRESENTED TO THE COURT BY PLEADINGS, AFFIDAVITS, AND DEPOSITIONS FAILED TO SHOW ANY MALICE ON THE PART OF DEFENDANT-RESPONDENT TO REMOVE THE STATEMENTS FROM THE AREA OF QUALIFIED PRIVILEGE.

- A. *The unrefuted record shows no libelous statement made by C. C. Patterson to Arthur Campbell.*

Assuming the plaintiff-appellant's allegations with respect to alleged libelous statements made to Arthur Campbell in their best possible light, it is uncontroverted the only persons who know what was said to Mr. Campbell is Mr. Patterson and Mr. Campbell himself. Mr. Patterson denies making any libelous statement to Mr. Campbell with respect to Mr. Knight, and the sworn statement of Mr. Campbell sustains that position. His affidavit is set out in full in the Appendix and indicates nothing of a libelous nature. From the complete status of the record there is, therefore, nothing in the record to justify a finding of any libel on the part of Mr. Clyde C. Patterson about James R. Knight made to Mr. Arthur F. Campbell. There is no sworn affidavit or any evidential material to sustain the position of James R. Knight that there was, in fact, any statement made of a libelous nature.

- B. *The unrefuted record shows that any conversations between Clyde C. Patterson and Arthur Campbell were privileged.*

Mr. Clyde C. Patterson had cosigned a loan with Mr. James R. Knight at Ford Finance Company where Mr. Campbell works. In addition, Mr. Knight was using motel checks and funds to purchase supplies for his own personal worm business, and Mr. Arthur Campbell was the go-between in the purchase of worms from a grower in Ogden, Utah. It seems, then, that there is little question respecting the motel interest of the parties with respect to the area of qualified privilege.

C. *Counsel for the plaintiff-appellant concede that the statements to Arthur Campbell were within the area of qualified privilege.*

Counsel concedes the foregoing when he says in his brief:

“The elements of a conditionally privileged communication, as mentioned above, might conceivably be found to exist in the statement to
ARTHUR F. CAMPBELL.”

In summary, therefore, with respect to any slander action growing out of alleged statements between Arthur F. Campbell and Clyde C. Patterson, the status of the record shows that no such statements exist. Further, the record substantiates and counsel for plaintiff-appellant concede the statements to have been within the area of qualified privilege.

In discussing the matter of summary judgments, as presented to the trial court in the instant case, the California courts in *Hicks v. Bridges*, 152 CA 2d 46 315 P.2d 15, a 1957 case, state as follows:

“Such a motion is addressed to the sound dis-

cretion of the trial court and in the absence of a clear showing of abuse thereof, the exercise of that discretion will not be disturbed on appeal. Therefore, the issue on appeal is whether the trial court abused its discretion in granting the motion. A motion for a summary judgment raises the issue of whether any triable issues of fact exist. *Desny v. Wilder*, 46 Cal.2d 715, at page 725, 299 P.2d 257. Under Code of Civil Procedure, § 437c, the motion must be supported by affidavit of any person or persons having knowledge of the facts. If the affidavit of the other party does not show facts which present a triable issue of fact, the judgment may be entered. The sufficiency of the allegations of the complaint do not determine the motion for a summary judgment."

Counsel in his brief suggests to the Court that a naked assertion of malice in the pleadings is sufficient to remove the case out of the defense of qualified privilege. However, the Courts of this jurisdiction have held:

1. *Combes v. Montgomery Ward & Co.*, 272, 119 U 407, 228 P.2d 272,

"Where the conditional privilege exists, the defendant is protected unless plaintiff pleads and proves facts which indicate actual malice in that the utterances were made from spite, ill will or hatred toward him and, unless the plaintiff produces such evidence, there is no issue to be submitted to the jury, *Speilberg v. Kuhn & Brother Co. et al*, 39 Utah 276, 116 P. 1027; *Williams v. Standard Examiner Pub. Co.*, 83 Utah 31, 27 P.2d 1. The law concerning this principle is well stated by the court in the case of *Wagner v. Scott*, 164 Mo. 289, 63 S.W. 1107, where the court, quoting page 1111: 'The jury, however,

will be the proper tribunal to determine the question of express malice where evidence of ill will is forthcoming; but if, taken in connection with admitted facts, the words complained of are such as must have been used honestly and in good faith by the defendant, the judge may withdraw the case from a jury, and direct a verdict for the defendant.' See also Newell, Slander and Libel, 4th ed. Sec. 395."

2. *Williams v. Standard Examiner*, 27 P.2d 1, 8; Utah 31,

"When, as in the instant case, the publication was qualifiedly privileged, the burden of proving malice in fact or actual malice in law or implied malice, was cast upon the plaintiff."

3. *Carter v. Jackson*, 10 P.2d 284 351 P.2d 957,

"There are two classes of privileged communications, absolute and qualified or conditional. In the case of absolutely privileged communications, the utterance or publication, although both false and malicious, does not give rise to a cause of action. *In the case of a qualified or conditional privilege the law raises merely a prima facie presumption in favor of the occasion.*" *Emphasis supplied.*

The only allegation of any malice to be found within the file as presented to the trial court is found in paragraph 3 of the fourth cause of action of plaintiff's complaint where it says:

"... , defendant C. C. Patterson in the presence of others maliciously and with intent to cause it believed . . ."

The trial court at the time of the hearing had the facts of the conversation of the parties, to-wit: Mr. Camp-

bell and Mr. Patterson, before him, together with the uncontroverted facts of the surrounding circumstances, and found no issue of malice to take the matter out of the area of qualified privilege. Actually, there was no slander at all to be found from the statement of Mr. Patterson to Mr. Campbell respecting Mr. Knight.

This Court has held in *Combes v. Montgomery Ward & Co.*, supra, where the facts are substantially without dispute, that the existence of a conditional privilege is for the court. It would seem to follow logically that if the facts with respect to malice again are without dispute this should also be a question for the court.

“First, we refer to the problem of whether the court properly determined that a conditional privilege existed. *Where the facts regarding the circumstances of publication are substantially without dispute as here, the existence of a conditional privilege is a question for the court.* Restatement of Torts, Sec. 619, *Hales v. Commercial Bank of Spanish Fork, Utah* 1948, 197 P.2d 910, 913. If there is any dispute about the facts, they are to be determined by the jury, *Newell, Slander and Libel*, 4th ed. Sec. 395.” *Emphasis supplied.*

D. *The record shows that any statements made to Frank Warner were not proper subject matter for an action in libel, since it was “lawyer talk” about a proposed law suit and the defenses thereto.*

In the case of *Western States Title Insurance Company v. Warnock*, 415 P.2d 316, 18 Utah2d 70, the Court had this precise problem before it in discussing the libelous nature of statements made between attorneys or defendant and opposing attorney with respect to the

legal basis in libel for such statements. In that case the Court said:

“We pass to consideration of the second cause of action. The statement allegedly made by the defendant was to the opposing counsel in an office discussion of the lawsuit they were involved in relative to the position that his adversary would take respecting certain matters under consideration in the case. For a lawyer to be apprised of the position of his adversary takes with respect to some particular testimony or circumstance involving a pending lawsuit is usually more helpful than harmful. If all circumstances of greater importance than this were permitted to become matters for litigation there could be no free and honest communication between opposing counsel in a case before the courts.”

That is precisely the issue presented to the court on appeal in the instant case. Mr. Warner contacted Mr. Patterson and indicated a potential claim against Mr. Patterson growing out of the operation of the motel. To that, Mr. Patterson asserted possible defenses to the action in that Mr. Knight had been taking funds of the motel for his personal business without permission and further without any notation that Mr. Knight was to be charged back for said funds. This was attorney talk involving possible defenses to a law suit and regarding the respective rights of the parties. It should not, under *Western States Title Insurance Company v. Warnock*, supra, be any basis in law for a libel action against Mr. Patterson.

E. *The record shows that any statements from Clyde*

C. Patterson to Frank Warner were, in addition to being lawyer talk, within the area of qualified privilege.

It is difficult to determine any case that would be more within the area of qualified privilege since the conversation was instigated by Mr. Knight's own attorney and grew out of their common interest in the motel and relationship of the parties. *Mortensen v. Life Insurance Corporation*, 6 P.2d 408 315 P.2d 283,

"There is no dispute that a privilege to publish defamation exists to protect a public or private interest recognized by the law to merit such protection."

Here, again, the trial judge had before him all the affidavits and deposition of Mr. Frank Warner, and after review of all the facts which were present before him, found no element of malice to take the matter out of the qualified privilege area.

In summary, therefore, the statements made to Frank Warner were attorney talk and not the proper subject for a libel action. However, disregarding that aspect of the case, which should be controlling, the conversations were found to be properly within the defense of qualified privilege.

POINT II

THE COURT PROPERLY FOUND THE ALLEGED STATEMENTS MADE BY DEFENDANT-RESPONDENT ABOUT PLAINTIFF-APPELLANT WERE SUBJECT TO THE DEFENSE OF TRUTH.

The affidavit of defendant- respondent indicates an

unequivocal misuse of funds.

"1. That on or about the 16th day of May, 1964, your affiant and defendant Ormond Konk... sent to plaintiff James R. Knight the sum of \$1900.00 for payment of the unpaid balance in monies due on a sign previously installed at said Motel. That said money was to be used for that purpose only. That no investigation was made of the books and records of the Motel during the operating season or until the 16th day of October, 1964, at which time Joan M. Patterson, the wife of your affiant and an accountant associated with the CPA firm of Atwood, Johnson and Costly, went to West Yellowstone, Montana, and for the first time examined the books for the operating season of 1964. At that time she discovered that instead of making payment of the sign that the said plaintiff James R. Knight had made the following checks in the following amounts, all of which he stated were for his own personal business.

May 16, 1964	\$ 31.72
Garret Freight Lines	
May 22, 1964	342.02
Fanning Wholesale	
May 23, 1964	178.06
R & T Enco	
May 25, 1964	101.00
Ford Finance Corporation	

"Plaintiff James R. Knight further advised the affiant's accountant that the following checks, to-wit:

Smith & Edwards	\$38.70
June 19, 1964	
Smith & Edwards	77.00

July 10, 1964
R. C. Bait Bags \$4.15
July 10, 1964

were likewise checks which were paid out of the West Yellowstone account and appeared to be West Yellowstone Motel bills, but which were in fact items paid from the Motel account for the use and benefit of James R. Knight.

"All of the aforesaid items were marked so as to indicate that they were Motel items, and nothing was indicated that they were to be credited to James R. Knight as a personal draw."

In reply to that affidavit the plaintiff-appellant, Knight, states:

"... that affiant sent reports to defendant on the following dates, to-wit: July 15; July 9; July 21, August 7, August 27, and October 16, the books were examined and all necessary adjustments made. . . ."

The answers to requests for admissions indicate the same philosophy on the part of plaintiff-appellant, James R. Knight, that, when you caught me, I took an adjustment on what you owed me. This in no way denies the wrongful taking and simply ignores it by reason of the later adjustment.

Plaintiff in his affidavit (Exhibit 17, last paragraph, page 2) further concedes the statements made in defendant-respondent's affidavit in stating:

"Affiant further states that a full accounting was made to defendant's accountant on October 16, 1964, as stated heretofore, and that Exhibits A through F as attached to defendant's affidavit as invoices and checks paid, were ac-

counted for or accepted by affiant as personal expenses."

The affiant in the affidavit at no point denies that those expenditures were not listed as personal but as motel expenditures. Neither does he deny that there was no indication on any of those expenditures that they were to be charged against him personally, but rather seems to say, When you caught me I then prepared an accounting. This happened on October 16, many months after the use of the funds as shown by the checks, which were made out in May and July of 1964. Neither does the affidavit refute defendant-respondent's sworn affidavit quoted above.

Defendant-respondent's affidavit indicates a sum of money sent to plaintiff-appellant for one specific purpose, the payment of a sign in the amount of \$1,900.00. To that the plaintiff-appellant replies, under oath:

"That the \$1900.00 received from defendant was not paid in its entirety on the amount owed for installation and purchase of the motel sign. That affiant informed Clyde C. Patterson that the sign was incomplete since no lettering accompanied said sign and with the latter's knowledge a lesser sum was paid. Affiant believes said sum was \$1400.00."

Herein, again, there is no denial on the part of the plaintiff-appellant, James R. Knight, rather, an affirmation of defendant-respondent's position that the money was sent for a specific purpose and then misused by James R. Knight. The fact that the full amount was not to be paid immediately to the sign company is in

to way a justification for James R. Knight to divert the unpaid balance of the funds sent to him for his personal business.

The general law with respect to law of truth as a defense in a libel action is set forth in *Emde v. San Joaquin County, Central Labor Council*, 23 C2d 143 C2d 20, California, 1943:

"More open to question, however, is the specific charge that 'while the contract was still in force, the management openly violated its word by hiring non-union milk wagon drivers.' *It is generally agreed that it is not necessary to prove the literal truth of an allegedly libelous accusation in every detail, so long as the imputation is substantially true so as to justify the 'gist' or 'sting' of the remark.* *Hearne v. DeYoung*, 119 Cal. 670, 52 P. 150, 499; *Kurata v. Los Angeles News Pub. Co.*, 4 Cal.App.2d 224, 227, 40 P.2d 520; *Mortensen v. Los Angeles Examiner*, 112 Cal.App. 194, 203, 296 P. 927; *Strocki v. Stahl*, 14 Cal.App. 1, 5, 110 P. 957; 3 Rest., Torts, Sec. 582, Comment 2; Prosser on Torts, sec. 95, pp. 855, 856." *Emphasis supplied.*

That law represents the same position as taken by the courts of the State of Utah in *Orelin v. Thomas*, 122 Utah 122 247 P.2d 264. The Court affirmed the principle, saying:

"Admittedly, when truth is pleaded in justification, it is not necessary to prove the literal truth of the precise statement made. Slight inaccuracies of expression are immaterial, providing that the defamatory charge is true in substance. Restatement of Torts, Sec. 584, Comment

(e); 53 C.J.S., Libel and Slander, 137, p. 225."

Therefore, under the uncontroverted status of the record, Mr. James R. Knight, when he was running the West Yellowstone Motel, did receive a check in the amount of \$1,900.00 from Clyde C. Patterson for the specific purpose of paying a \$1,900.00 motel sign bill. Thereafter, Mr. Knight paid \$1,400.00 on the motel bill to the sign company and diverted other of those funds to his own personal business and did so without consent and without even making a notation on the checks and invoices that they were for his personal bills in connection with his personal bait business and not for the motel business. Thereafter, many months later when auditing Mr. Knight, according to his own affidavit, finally made an accounting. The trial court was, therefore, obligated to find that the gist of any statements with respect to Mr. Knight's misuse of motel funds was true and subject to the defense of truth.

CONCLUSION

It is, therefore, respectfully submitted that the trial court was obligated in the sound use of its discretion to grant defendant-respondent's motion for summary judgment on plaintiff-appellant's fourth cause of action.

Respectfully submitted,
PATTERSON, FOLEY,
PHILLIPS & GRIDLEY
BY: ROBERT V. PHILLIPS
Attorneys for Defendant-
Respondents
427 27th Street
Ogden, Utah 84401

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

Plaintiff,)
JAMES R. KNIGHT,)
vs.)
Defendants,)
ORMOND KONKLE,)
JOAN M. PATTERSON,)
and)
JAMES R. KNIGHT,)

A F F I D A V I T

No. 45160

Dept. No. 3

Plaintiff,)
JAMES R. KNIGHT,)
vs.)
Defendants,)
ORMOND KONKLE,)
JOAN M. PATTERSON,)
and)
JAMES R. KNIGHT,)

Subscribed and sworn to before me this)
16th day of May, 1964, at) ss
West Yellowstone,)
Weber County, Utah.)
JAMES R. KNIGHT,)

JOAN M. PATTERSON, being first duly sworn on oath, deposes and says:

I am one of the owners of the Yellowstone Motel at West Yellowstone, Montana, and one of the above-named defendants. During the operating season of the year 1964, the plaintiff James R. Knight and his wife did manage the Motel for the times and periods set forth in defendants' Answers to Interrogatories.

Plaintiff further states as follows:

That on or about the 16th day of May, 1964, your affiant and defendant Ormond Konkle sent to plaintiff James R. Knight the sum of \$1900.00 for payment of the unpaid balance of the money due on a sign previously installed at said Motel.

That said money was to be used for that purpose only. That no investigation was made of the books and records of the Motel during the operating season or until the 16th day of October, 1964, at which time Joan M. Patterson, the wife of your affiant

and an accountant associated with the CPA firm of Atwood, Johnson and Costly, went to West Yellowstone, Montana, and for the first time examined the books for the operating season of 1964. At that time she discovered that instead of making the payment of the sign that the said plaintiff James R. Knight had

made the following checks in the following amounts, and which he stated were for his own personal business.

May 16, 1964	\$ 31.72
Garret Freight Lines	
May 22, 1964	342.02
Fanning Wholesale	
May 23, 1964	178.06
R & T Enco	
May 25, 1964	101.00
Ford Finance Corporation	

Plaintiff James R. Knight further advised the affiant's accountant that the following checks, to-wit:

Smith & Edwards	38.70
June 19, 1964	
Smith and Edwards	77.00
July 10, 1964	
R. C. Bait Bags	84.15
July 10, 1964	

were likewise checks which were paid out of the West Yellowstone account and appeared to be West Yellowstone Motel bills, but which were in fact items paid from the Motel account for the use and benefit of James R. Knight.

All of the aforesaid items were marked so as to indicate that they were Motel items, and nothing was indicated that they were to be credited to James R. Knight as a personal draw.

2. That during the Motel season the said James R. Knight used the credit of the Motel venture for his own personal advantage. That as a part thereof he obtained credit from the Union Distributing Company, Salt Lake City, Utah, a copy of said invoice is hereto attached, marked Exhibit "A", and made a part hereof. That although plaintiff had advised the affiant and Ormond Konkle, and affiant's accountant, on October 16, 1964, that he had only charged to the Motel as Motel expenses rather than personal expense the above bills, the affiant states that a further list of such unauthorized payments were disclosed, a list of such are hereto attached, marked Exhibit "B", and made a part hereof. That as illustrative of these unauthorized

Exhibit "A" plaintiff attaches a receipt, marked Exhibit "C", and a receipt, marked Exhibit "D", together with a receipt, marked Exhibit "E" and a receipt, marked Exhibit "F", all of which are attached for reference.

Plaintiff, affiant states and refers to answers to questions asked by the claims of plaintiff that defendants have denied plaintiff of certain personal property belonging to him and which he paid for; that partial denial of the alleged claims indicates that the defendants are guilty of the following:

Plaintiff that
Plaintiff that
Plaintiff that
Plaintiff that
Plaintiff that

Plaintiff records show that these items were charged to the defendant Motel and paid for out of Motel funds as follows:

Plaintiff that	
Plaintiff that	\$ 5.10
Plaintiff that	
Plaintiff that	25.97
Plaintiff that	
Plaintiff that	3.87
Plaintiff that	
Plaintiff that	8.55
Plaintiff that	
Plaintiff that	7.61
Plaintiff that	
Plaintiff that	1.75

4. That none of the foregoing listed expenditures were

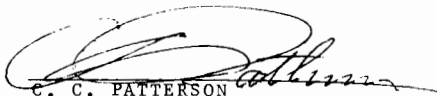
made with the knowledge or consent of either affiant or defendant

James R. Knight; that no knowledge was possessed by them of any

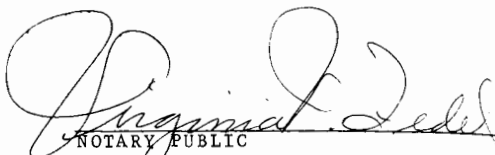
expenditures made from Motel by James R. Knight prior to

October 16, 1964, and a substantial amount of said expenditures were not discovered until subsequent to said date.

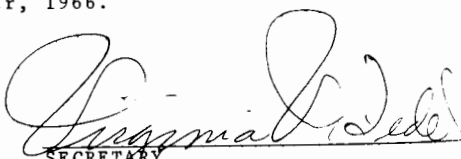
Further affiant sayeth not.

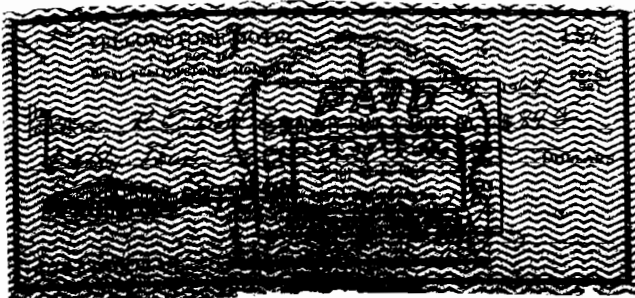

C. C. PATTERSON

Subscribed and sworn to before me this 29th day of December, 1966.


NOTARY PUBLIC
RESIDING AT OGDEN, UTAH
MY COMMISSION EXPIRES: 2/1/69

Mailed a copy of the foregoing Affidavit to Matt Biljanic, Attorney for Plaintiff, 8138 South State Street, Midvale, Utah, this 29th day of December, 1966.


SECRETARY



R. C. BAIT BAGS
DIVISION OF
RUTLEDGE CORPORATION
224 ELEANOR STREET
KALAMAZOO, MICHIGAN 49006

EXHIBIT "E"

INVOICE
NO. #15568

INVOICE
DATE June 1, 1964

SHIPPED
TO Same

SOLD TO
Jim Knight
Yellowstone Motel
P. O. Box 486
West Yellowstone, Montana

MAKE CHECKS PAYABLE TO: R. C. BAIT BAGS

OUR ORDER NO.	YOUR ORDER NO.	SALESMAN	TERMS	SHIPPED VIA	PPD. OR COLL.
				Parcel Post	
QUANTITY	DESCRIPTION			PRICE	AMOUNT
2000	No. 30 R. C. BAIT BAGS TIN TIE - Specially Imprinted			@30.35M	\$ 60.70
250	No. S-754 R. C. BAIT BAGS REGULAR				21.45
1	Book - Profitable Earthworm Farming				2.00
	11-10-12-15-17-19-21-23-25-27-29-31-33-35-37-39-41-43-45-47-49-51-53-55-57-59-61-63-65-67-69-71-73-75-77-79-81-83-85-87-89-91-93-95-97-99-101-103-105-107-109-111-113-115-117-119-121-123-125-127-129-131-133-135-137-139-141-143-145-147-149-151-153-155-157-159-161-163-165-167-169-171-173-175-177-179-181-183-185-187-189-191-193-195-197-199-201-203-205-207-209-211-213-215-217-219-221-223-225-227-229-231-233-235-237-239-241-243-245-247-249-251-253-255-257-259-261-263-265-267-269-271-273-275-277-279-281-283-285-287-289-291-293-295-297-299-301-303-305-307-309-311-313-315-317-319-321-323-325-327-329-331-333-335-337-339-341-343-345-347-349-351-353-355-357-359-361-363-365-367-369-371-373-375-377-379-381-383-385-387-389-391-393-395-397-399-401-403-405-407-409-411-413-415-417-419-421-423-425-427-429-431-433-435-437-439-441-443-445-447-449-451-453-455-457-459-461-463-465-467-469-471-473-475-477-479-481-483-485-487-489-491-493-495-497-499-501-503-505-507-509-511-513-515-517-519-521-523-525-527-529-531-533-535-537-539-541-543-545-547-549-551-553-555-557-559-561-563-565-567-569-571-573-575-577-579-581-583-585-587-589-591-593-595-597-599-601-603-605-607-609-611-613-615-617-619-621-623-625-627-629-631-633-635-637-639-641-643-645-647-649-651-653-655-657-659-661-663-665-667-669-671-673-675-677-679-681-683-685-687-689-691-693-695-697-699-701-703-705-707-709-711-713-715-717-719-721-723-725-727-729-731-733-735-737-739-741-743-745-747-749-751-753-755-757-759-761-763-765-767-769-771-773-775-777-779-781-783-785-787-789-791-793-795-797-799-801-803-805-807-809-811-813-815-817-819-821-823-825-827-829-831-833-835-837-839-841-843-845-847-849-851-853-855-857-859-861-863-865-867-869-871-873-875-877-879-881-883-885-887-889-891-893-895-897-899-901-903-905-907-909-911-913-915-917-919-921-923-925-927-929-931-933-935-937-939-941-943-945-947-949-951-953-955-957-959-961-963-965-967-969-971-973-975-977-979-981-983-985-987-989-991-993-995-997-999-1001-1003-1005-1007-1009-1011-1013-1015-1017-1019-1021-1023-1025-1027-1029-1031-1033-1035-1037-1039-1041-1043-1045-1047-1049-1051-1053-1055-1057-1059-1061-1063-1065-1067-1069-1071-1073-1075-1077-1079-1081-1083-1085-1087-1089-1091-1093-1095-1097-1099-1101-1103-1105-1107-1109-1111-1113-1115-1117-1119-1121-1123-1125-1127-1129-1131-1133-1135-1137-1139-1141-1143-1145-1147-1149-1151-1153-1155-1157-1159-1161-1163-1165-1167-1169-1171-1173-1175-1177-1179-1181-1183-1185-1187-1189-1191-1193-1195-1197-1199-1201-1203-1205-1207-1209-1211-1213-1215-1217-1219-1221-1223-1225-1227-1229-1231-1233-1235-1237-1239-1241-1243-1245-1247-1249-1251-1253-1255-1257-1259-1261-1263-1265-1267-1269-1271-1273-1275-1277-1279-1281-1283-1285-1287-1289-1291-1293-1295-1297-1299-1301-1303-1305-1307-1309-1311-1313-1315-1317-1319-1321-1323-1325-1327-1329-1331-1333-1335-1337-1339-1341-1343-1345-1347-1349-1351-1353-1355-1357-1359-1361-1363-1365-1367-1369-1371-1373-1375-1377-1379-1381-1383-1385-1387-1389-1391-1393-1395-1397-1399-1401-1403-1405-1407-1409-1411-1413-1415-1417-1419-1421-1423-1425-1427-1429-1431-1433-1435-1437-1439-1441-1443-1445-1447-1449-1451-1453-1455-1457-1459-1461-1463-1465-1467-1469-1471-1473-1475-1477-1479-1481-1483-1485-1487-1489-1491-1493-1495-1497-1499-1501-1503-1505-1507-1509-1511-1513-1515-1517-1519-1521-1523-1525-1527-1529-1531-1533-1535-1537-1539-1541-1543-1545-1547-1549-1551-1553-1555-1557-1559-1561-1563-1565-1567-1569-1571-1573-1575-1577-1579-1581-1583-1585-1587-1589-1591-1593-1595-1597-1599-1601-1603-1605-1607-1609-1611-1613-1615-1617-1619-1621-1623-1625-1627-1629-1631-1633-1635-1637-1639-1641-1643-1645-1647-1649-1651-1653-1655-1657-1659-1661-1663-1665-1667-1669-1671-1673-1675-1677-1679-1681-1683-1685-1687-1689-1691-1693-1695-1697-1699-1701-1703-1705-1707-1709-1711-1713-1715-1717-1719-1721-1723-1725-1727-1729-1731-1733-1735-1737-1739-1741-1743-1745-1747-1749-1751-1753-1755-1757-1759-1761-1763-1765-1767-1769-1771-1773-1775-1777-1779-1781-1783-1785-1787-1789-1791-1793-1795-1797-1799-1801-1803-1805-1807-1809-1811-1813-1815-1817-1819-1821-1823-1825-1827-1829-1831-1833-1835-1837-1839-1841-1843-1845-1847-1849-1851-1853-1855-1857-1859-1861-1863-1865-1867-1869-1871-1873-1875-1877-1879-1881-1883-1885-1887-1889-1891-1893-1895-1897-1899-1901-1903-1905-1907-1909-1911-1913-1915-1917-1919-1921-1923-1925-1927-1929-1931-1933-1935-1937-1939-1941-1943-1945-1947-1949-1951-1953-1955-1957-1959-1961-1963-1965-1967-1969-1971-1973-1975-1977-1979-1981-1983-1985-1987-1989-1991-1993-1995-1997-1999-2001-2003-2005-2007-2009-2011-2013-2015-2017-2019-2021-2023-2025-2027-2029-2031-2033-2035-2037-2039-2041-2043-2045-2047-2049-2051-2053-2055-2057-2059-2061-2063-2065-2067-2069-2071-2073-2075-2077-2079-2081-2083-2085-2087-2089-2091-2093-2095-2097-2099-2101-2103-2105-2107-2109-2111-2113-2115-2117-2119-2121-2123-2125-2127-2129-2131-2133-2135-2137-2139-2141-2143-2145-2147-2149-2151-2153-2155-2157-2159-2161-2163-2165-2167-2169-2171-2173-2175-2177-2179-2181-2183-2185-2187-2189-2191-2193-2195-2197-2199-2201-2203-2205-2207-2209-2211-2213-2215-2217-2219-2221-2223-2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225-4227-4229-4231-4233-4235-4237-4239-4241-4243-4245-4247-4249-4251-4253-4255-4257-4259-4261-4263-4265-4267-4269-4271-4273-4275-4277-4279-4281-4283-4285-4287-4289-4291-4293-4295-4297-4299-4301-4303-4305-4307-4309-4311-4313-4315-4317-4319-4321-4323-4325-4327-4329-4331-4333-4335-4337-4339-4341-4343-4345-4347-4349-4351-4353-4355-4357-4359-4361-4363-4365-4367-4369-4371-4373-4375-4377-4379-4381-4383-4385-4387-4389-4391-4393-4395-4397-4399-4401-4403-4405-4407-4409-4411-4413-4415-4417-4419-4421-4423-4425-4427-4429-4431-4433-4435-4437-4439-4441-4443-4445-4447-4449-4451-4453-4455-4457-4459-4461-4463-4465-4467-4469-4471-4473-4475-4477-4479-4481-4483-4485-4487-4489-4491-4493-4495-4497-4499-4501-4503-4505-4507-4509-4511-4513-4515-4517-4519-4521-4523-4525-4527-4529-4531-4533-4535-4537-4539-4541-4543-4545-4547-4549-4551-4553-4555-4557-4559-4561-4563-4565-4567-4569-4571-4573-4575-4577-4579-4581-4583-4585-4587-4589-4591-4593-4595-4597-4599-4601-4603-4605-4607-4609-4611-4613-4615-4617-4619-4621-4623-4625-4627-4629-4631-4633-4635-4637-4639-4641-4643-4645-4647-4649-4651-4653-4655-4657-4659-4661-4663-4665-4667-4669-4671-4673-4675-4677-4679-4681-4683-4685-4687-4689-4691-4693-4695-4697-4699-4701-4703-4705-4707-4709-4711-4713-4715-4717-4719-4721-4723-4725-4727-4729-4731-4733-4735-4737-4739-4741-4743-4745-4747-4749-4751-4753-4755-4757-4759-4761-4763-4765-4767-4769-4771-4773-4775-4777-4779-4781-4783-4785-4787-4789-4791-4793-4795-4797-4799-4801-4803-4805-4807-4809-4811-4813-4815-4817-4819-4821-4823-4825-4827-4829-4831-4833-4835-4837-4839-4841-4843-4845-4847-4849-4851-4853-4855-4857-4859-4861-4863-4865-4867-4869-4871-4873-4875-4877-487				

SARVER HEATING & SHEET METAL SHOP

Your Lennox Dealer

Box 331

West Yellowstone, Montana

Phone 646-7733

SOLD BY		DATE	
		5-14 1964	
NAME <i>Jim Knight</i>			
ADDRESS <i>W Y Mont</i>			
<input type="checkbox"/> CASH	<input type="checkbox"/> CHARGE	<input type="checkbox"/> New Ret'd	PREVIOUS BALANCE
<input type="checkbox"/> C.O.D.	<input type="checkbox"/> PAID OUT	<input type="checkbox"/> Pd. on Acct.	
<i>3'x5'x18" *16.00</i>			
<i>Warm Beds *64.00</i>			
<i>Paid in full</i>			
<i>W.Y.M.</i>			
<i>Copy</i>			
Thank You!		RECEIVED BY	

PAID

RECEIVED BY

DATE

AMOUNT

REMARKS

PAID

RECEIVED BY

DATE

AMOUNT

REMARKS

STATEMENT

EXHIBIT "A"

UNION DISTRIBUTING COMPANY

WHOLESALE DISTRIBUTORS

P. O. BOX 15245
3447 SO. MAINSOUTH SALT LAKE BRANCH
SALT LAKE CITY 5, UTAH

PHONE HUNTER 7-7791

DATE July 1, 1964 100Yellowstone Motel
P.O. Box 486
West Yellowstone, Montana

DATE	DESCRIPTION	DEBIT	CREDIT	BALANCE
	Balance forward (due 7/10/64)			1356.29
			7/1/64	400.00
				956.29
			7/5/64	500.00
				456.29
	# 5915 - 7-13-64	5.96		
	# 6087 - 7-27-64	454.20		
				916.45

UNION DISTRIBUTING COMPANY
SALT LAKE CITY, UTAH

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

JAMES R. KNIGHT,

Plaintiff.

vs.

CLYDE C. PATTERSON &
ORMOND KONKLE

Defendants.

[Signature]
A F F I D A V I T

No. 45160
Dept. No. 3.

STATE OF UTAH)
COUNTY OF WEBER)

: ss.

JAMES R. KNIGHT, being first duly sworn on oath, deposes and says as a counter affidavit to defendant's filed herein:

1. That defendant, Clyde C. Patterson, came up to the motel in West Yellowstone on several occasions and examined the daily records. That affiant sent reports to defendant on the following dates, to-wit: June 15; July 9; July 21; August 7; August 27; and October 16, the books were examined and all necessary adjustments made. The above dates were all in 1964. The above mentioned reports gave a daily accounting of income from the motel, trailers, garbage hauling and miscellaneous.

That the \$1900.00 received from defendants was not paid in its entirety on the amount owed for installation and purchase of the motel sign. That affiant informed Clyde C. Patterson that the sign was incomplete since no lettering accompanied said sign and with the latter's knowledge a lesser sum was paid. Affiant believed said sum was \$1400.00.

That affiant had during the 1963 season made cash draws for personal living expenses since no regular pay check was available. The checks made payable to Garrett Freight Lines, Fanning Wholesale, R&T Enco and Ford Finance Corporation, all written in 1964, were made with the same understanding. The motel was not drawing any substantial income as of May 25, 1964, which was clearly ref-

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ected by the reports that were forwarded to Clyde C. Patterson.

That checks made payable to Smith and Edwards and R.C. Bait Bags were reflected on the accounting statement prepared by the defendant, Clyde C. Patterson's, accountant-wife, relating to the motel operation in 1964. That affiant had the above amounts, including the three checks mentioned earlier, credited against his wages for the year 1964. Affiant states that a full disclosure of all facts known to him was made to defendant's accountant on the meeting of October 16, 1964. That the check to Garrett Freight lines was discussed at said meeting and Mr Knight, affiant, agreed to assume responsibility for the same even though it was not clear whether said account was personal or business.

Affiant further states that the checks made payable to Smith and Edwards were used to replace equipment that was destroyed while affiant was using the same for tree removal. That the proceeds from garbage hauling and guide work was all turned into the motel account by affiant. That proceeds earned by affiant on miscellaneous jobs outside the motel business itself were also credited against affiant's wages as salary earned, when in fact this should not have been credited. This is reflected in the accounting statement prepared by defendant's accountant, and amounted to approximately \$1400.00.


2. Affiant further states that the credit with Union Distributing Company was obtained after credit applications were filed by James Knight, affiant, and Edward Kenley. The invoice was shown as Yellowstone Motel for delivery purposes only and not for credit purposes. That items were shipped to affiant and Edward Kenley prior to the opening of the tackle shop and the invoice dated July 1, 1964, was one of the last shipments.

Affiant further states that a full accounting was made to defendant's accountant on October 16, 1964, as stated heretofore, and that Exhibits A through F as attached to defendant's affidavit as invoices and checks paid, were accounted for or accepted by


affiant as personal expenses.

3. Affiant states that Clyde C. Patterson was fully apprised of the purchases made by Jim Knight, affiant herein, of the items listed in paragraph 3 of defendant's affidavit. Mr. Patterson told affiant that he would pay for the items listed therein because he could not see the need for the purchases. The T.V. Antenna claimed by affiant was one of two used at the motel and was brought from affiant's home. It is not the same antenna referred to in paragraph 3 of defendant's affidavit. It is on this basis that affiant makes claim to said property.

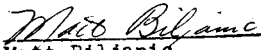
4. Affiant states that he had authority to negotiate the purchase of many items for the motel without first obtaining the consent of defendants and the operating records of the motel clearly demonstrate this fact. Affiant states that most, if not all, of the confusion that has arisen on the accounting for the motel operation resulted from the confused manner of administering the investments made by all concerned and the failure of or lack of payment of wages to affiant.


JAMES KNIGHT

Subscribed and sworn to before me this ____ day of February 1967.


NOTARY PUBLIC
RESIDING AT:
My Commission expires:

I hereby certify that I mailed a true and correct copy of the foregoing affidavit to Robert Phillips, Attorney for Defendant at 427-27th Street, Ogden, Utah, this 1st day of February, 1967.


Matt Biljanic

IN THE DISTRICT COURT OF WEBER COUNTY, STATE OF UTAH

JAMES R. KNIGHT,
PLAINTIFF,

CLYDE C. PATTERSON &
FRED ROKALE,
DEFENDANTS.

A F F I D A V I T

No. 45160 - 3

STATE OF UTAH)
: ss
COUNTY OF WEBER)

CLYDE C. PATTERSON, being first duly sworn on oath,
deposes and says:

That he has read the answering Affidavit of the plaintiff;
that he denies that said James R. Knight ever advised and/or
requested permission to use motel funds or checks to pay his,
James R. Knight's, personal bills. That he had no knowledge of
said payments, to whom they were made or the accounts thereof,
prior to October, 1964, and that on at least one account, namely:
for worm vats, he was not apprised of such charge and payment
until the following year.

Affiant further states that there was nothing in the
records of the motel to indicate that said accounts were for
James R. Knight, that as a matter of fact the invoices on said
items had been destroyed and not removed from the files, so that
it was impossible to identify the nature of the purchases.


Affiant further states that if James R. Knight intended to
use said money for advance wages that he should have withdrawn
the money from the motel account and placed the same in his
personal account. That he had full authority to do so and

could have done so if he so desired. That further replying
affiant states that the records contained no information,
notation or statement that said James R. Knight considered
said payment as an advance on his salaries theretofore or to
be earned.

Further affiant sayeth not.


C. C. PATTERSON

Subscribed and sworn to before me this 10th day of February, 1969.


NOTARY PUBLIC
RESIDING AT OGDEN, UTAH
MY COMMISSION EXPIRES: 2/1/69