

1963

# A. Z. Richards and A. H. Sorensen dba Caldwell, Richards & Sorensen v. Lake Hills : Brief of Respondents

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

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A. Z. RICHARDS and A. H. SOR-  
ENSEN, Partners, doing business  
under the firm name of CALDWELL,  
RICHARDS & SORESENSEN,

*Plaintiffs and Respondents,*

vs.

LAKE HILLS, a corporation,

*Defendant and Appellant.*

Supreme Court, Utah

Civil No.  
9885

RESPONDENTS' BRIEF

Appeal from the Judgment of the  
3rd District Court for Salt Lake County  
Honorable Ray Van Cott, Jr.

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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vs.

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*Defendant and Appellant.*

Civil No.  
9885

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## RESPONDENTS' BRIEF

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This is an action to recover judgment for \$9,616.81 for engineering services furnished by the plaintiffs to the defendant over the period from 1954 to 1960. The services consisted of surveying, the preparation of plans for roads, burial lots, and for facilities for a cemetery in south Salt Lake County, known as Lake Hills Memorial Park. The appellant's brief is largely addressed to points not in issue, and consequently it is necessary to supplement the appellant's statement of facts.

## STATEMENT OF FACTS

At the pre-trial hearing the defendant appeared by its counsel and admitted that the work was done but claimed that the agreement was made with A. Z. Richards, personally, and not with the partnership and that the agreement was to pay \$10,000.00 for the services "after the real property on which the work was done had been paid for in full, to-wit, 1970." (R. 17). At the trial it was again agreed that there were only two issues to be determined by the court, (1) whether the defendant was indebted to A. Z. Richards, personally, or to the partnership, and (2) when the debt was to be paid. (R. 56-58).

Mr. Richards, who was 79 years of age at the time of the trial, testified that in 1954 when the oral agreement for engineering service was made, he took the employment for the partnership (R. 60-62), the work was done and substantial cash outlays were made by the partnership (R. 62-67, Exhibits 1, 2, 3 and 5). Bills were sent by the partnership to the defendant during the period 1955-1960. (R. 63-64). No definite time was fixed for payment for the services when the employment agreement was made or during a later conversation. (R. 68).

The assistant manager of the partnership testified that he took a statement of account to Charles Merrill, Executive Trustee of defendant, in 1961 and attempted to collect it. (R. 81-83). He was offered a bond in pay-

ment but the offer was refused and the bond was returned. (R. 83-85).

Witnesses for the defendant testified that when the employment arrangement was made, Mr. Richards agreed to wait for his money. (R. 96, 113, 117-120).

There are conflicts in the evidence as to some of the details of the conversaton which resulted in the contract of employment.

The trial court found that the plaintiff partnership was employed; that no definite time for payment was agreed upon by the parties; that a reasonable time for payment expired before suit was filed; and that the defendants were indebted to the plaintiffs in the amount of \$9,616.81. (R. 22, 23). Judgment was entered for this amount.

## STATEMENT OF POINTS

### I

The findings of fact and judgment are sustained by competent evidence.

### II

Where no definite time for payment of an obligation is fixed it must be paid within a reasonable time.

## ARGUMENT

### THE FINDINGS OF FACT AND JUDGMENT ARE SUSTAINED BY COMPETENT EVIDENCE.

To succeed on appeal, the appellant must show that there is no competent evidence in the record to support the trial court's findings of fact on the two issues upon which the case was tried. No attack is made upon the finding that the partnership was employed to do the work, and with regard to the time of payment the appellant's only argument is that there was a "special agreement" between the parties as to the time of payment. The only attempt made to support this argument in the appellant's brief is found on pages 3 and 4, and the substance of the references to the record is that Mr. Richards agreed to "wait for his money." There is no testimony in the record that a definite time for payment was fixed.

The law is well settled that the Supreme Court is bound by the trial court's findings of fact if there is any competent evidence to support them. *Buckley v. Cox*, 122 Utah 151, 247 P.2d 277; *Knudson Music Co. v. Masterson*, 121 Utah 252, 240 P.2d 973; *Harper v. Tri-Motors, Inc.*, 90 Utah 226, 63 P2d 1056.

This court cannot weigh evidence and pass upon the credibility of witnesses in law cases but is restricted to a determination of errors of law and the competency and sufficiency of evidence to support the findings. In

re Dong Ling Hing's Estate, 78 Utah 324, 329, 2 P2d 902.

There is a presumption that the judgment of the trial court was correct, and every reasonable intendment must be indulged in favor of it. The burden of affirmatively showing error is upon the appellant. *Burton v. Z.C.M.I.*, 122 Utah 360, 249 P.2d 514.

Here the trial court chose to believe Mr. Richards' testimony that no definite time for payment for the engineering service was fixed and also found that the partnership was employed. The appellant having failed to point out wherein the findings are not supported by competent evidence, and it appearing that they are amply supported, the findings and judgment must stand.

## II

WHERE NO DEFINITE TIME FOR PAYMENT OF AN OBLIGATION IS FIXED IT MUST BE PAID WITHIN A REASONABLE TIME.

The rule is well settled that where no definite time is fixed for the payment of an obligation it must be paid within a reasonable time.

5 Page on Contracts, section 2825, p. 5000  
70 C.J.S., p. 216



In this case the itemized bills in evidence, Exhibit 1, 2, 3 and 5 show that from 1954-1956 the plaintiff not only did substantially all of the professional work for which they seek payment, but made out-of-pocket advances for blue prints, photos, materials, etc., of more than \$1,000.00. Bills were sent out and in 1960 and 1961 attempts were made to collect them. (R. 81-83) The defendant admitted the indebtedness but tried to settle it with a "non-interest debenture" (Exhibits 6 and 7) made out to the partnership, with a maturity date typed in "September 15, 1975," and a provision in the body of the instrument that it is payable on or before fifty (50) years after date without interest, and the further provision that it will be paid out of a sinking fund "after the sum of Three Million Dollars has been provided for the construction, improvement and development of the company's cemetery." The reasons for rejection of the offer are obvious.

The appellants have not argued that the trial court's finding that a reasonable time for payment expired before this action was filed is not supported by the evidence. The court believed that a period of more than eight years after the work was commenced in 1954 constituted a reasonable time and so found. It is submitted that the finding is supported by substantial and competent evidence.

## CONCLUSION

The appellant having to carry the burden of showing that the findings and judgment are not supported by competent evidence or that the trial court erred in the application of the law, the judgment must be affirmed.

Respectfully submitted,

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