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Frank Riggle And Geneva H. Riggle, His Wife v. Daines Manufacturing Company, Inc. : Petition For Rehearing

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IN THE SUPREME COURT OF THE STATE OF UTAH

FRANK RIGGLE and GENEVA H. RIGGLE, his wife,
Plaintiffs and Respondents,

— vs. —

DAINES MANUFACTURING COMPANY, INC., a corporation,
Defendant and Appellant.

Case No. 10948

PETITION FOR REHEARING

NATURE OF THE CASE

The purpose of this case is to determine whether or not the Defendant-Appellant is liable for the balance due on its promissory note in favor of the Plaintiffs-Respondents.

DISPOSITION BY THE UTAH SUPREME COURT

The Utah Supreme Court, by decision filed March 20, 1968, reversed and remanded for further proceedings the Summary Judgment granted March 28, 1967, by Salt

Lake County District Court in favor of the Plaintiffs-Respondents for the amount due on the promissory note, including interest, attorney's fees, and Court costs.

RELIEF SOUGHT ON PETITION FOR REHEARING

Plaintiffs-Respondents seek to have the Court reconsider its decision and conform the same to the admitted facts and law applicable to this case.

STATEMENT OF FACTS

The Statement of Facts contained in the brief of the Plaintiffs-Respondents on file with this Court is incorporated herein by this reference.

Certain essential and salient facts are misstated in the Court's opinion and other facts that were admitted have not been given consideration in such opinion. Further facts have been assumed which are not supported by the record. Therefore, certain of the facts in the instant case are restated and reviewed.

1. The partnership consisted of four members and was organized in early 1954 (R-36).

2. The Corporation was organized in early 1955 and had in excess of ten incorporators (Respondents' Brief-3).

3. The employment contract that gave rise to the note was executed over five months after the incorporation of the Defendant (R-13).

4. The Corporation did not assume the $10,000.00 obligation of the partnership. (Please take judicial notice of Case No. 155799, Salt Lake District Court, Salt Lake County, wherein the Plaintiff herein has sued the partnership, and each member, for the unpaid $10,000.00 note. The Corporation is not a party Defendant, nor has it been interplead by the Defendant partners).

Please note that there are no agreements, deeds, choses of action, or otherwise between the Plaintiff, Riggle, and the Defendant Corporation other than the promissory note here sued on and subject of this action.

ARGUMENT

In order to properly address an argument to this case, it is necessary to analyze some of the confusing statements in the Court's opinion. The Court stated that the Defendant had claimed that Mr. Riggle lacked qualifications to render service. The employment agreement is in the record (R-13). The agreement, which is signed by the Corporation's president, and admitted genuine by the pleadings, states that Mr. Riggle had several years of experience in business management and metal engineering. The statement, which is signed by the Corporation, has not been contested by the Corporation. Further, in the affidavit of Darrel R. Daines, President of the Corporation, he states that, "The Plaintiff Frank Riggle was to furnish business and engineering consultation as a way of justifying his employment" (R-19).

Please note that the employment contract required Mr. Riggle to be available on demand and that there is no claim that he ever refused to render service.

The entire argument in relation to whether or not Mr. Riggle rendered services is moot, irrelevant, and immaterial, for the Corporation's contract with Mr. Riggle was merged into a promissory note, the contract terminated, and the note represents the total obligation between the parties.

In the opinion the Court states, ". . . the members of the partnership organized the defendant corporation . . ." This statement contains only half truths, for the Defendants were merely some of the parties who organized the Corporation that had more than ten incorporators. A completely new legal entity was created and the ownership thereof was entirely changed (Respondents' Brief-3).

The Court further states, "After its incorporation the defendant assumed the obligations of the partnership, including the note and the employment contract." This statement is entirely unsupported by the record. It is also untrue. The Corporation did not at any time assume the $10,000.00 note. The only statement that is even slightly evidentiary in this matter would be the statement of Mr. Daines in his Affidavit to the extent that, "It was agreed that both the note and employment contract would become obligations of the Corporation when the Corporation organization was completed" (R-19). This statement was made in relation to the trans-

action that took effect before the Corporation was organized and is not even evidence of what the Corporation did after it was organized.

In speculation, it is difficult to imagine what type of valid consideration would support the Corporation's assumption of a $10,000.00 debt in a situation where the Corporation did not receive any benefit from the assumption. Please note that the entire $10,000.00 had been given to the partnership many months before the Corporation was organized.

The Court, in its second paragraph, indicates that the defendant corporation claimed that the employment contract was an inducement to make the loan to the partnership and a device to avoid the usury law. It is absolutely, factually, legally, and logically impossible to support these statements! How, by any stretch of the imagination, could an employment contract between a corporation and the Plaintiff that arose 11 months and 22 days after the loan of $10,000.00 to a partnership, be an inducement to loan the money to the partnership. It may be presumptuous to refer the Supreme Court to a dictionary for a definition of the word inducement, so we merely refer the Court to the word and call its attention to the effect that an inducement must antidate, not postdate, the thing it induces.

Mr. Riggle had no economic leverage on the Corporation prior to the time the Corporation executed an employment contract with him. Even if the Corporation had assumed prior debts or employment agreements, this

would be a unilateral assumption and not enforceable by Riggle without new consideration passing from the Corporation to him and no such consideration is alleged or implied in the record.

The Corporation entered into an employment contract requiring the Plaintiff to render services at their demand. The employment contract was terminated and the promissory note issued in substitution therefor.

Even though it is not necessary that the original obligation which is discharged by the novation be valid, (*Williston on Contracts,* Volume 6, Section 1872, pages 52-58), in the case before the Court the original obligation was valid in every sense of the word, for the Corporation voluntarily executed the employment agreement with Mr. Riggle under circumstances where there could not have been any legal or financial reason motivating the Corporation to execute the employment agreement.

The Court stated that one of the issues would be lack of consideration for the note. Since a peppercorn is adequate consideration, certainly the cancellation of a contract requiring monthly payment and forgiveness of an accruing obligation containing additional years of performance is legal consideration.

If the Plaintiff's services under the contract were not adequate or performed in accordance with the terms of the contract, these would have been matters that would have given the Corporation the right to terminate the contract for cause. We do not know why the Corpora-

tion terminated the contract, but we do know it was terminated and that the Corporation then acknowledged a past-due indebtedness and confirmed such indebtedness with a promissory note. There is no question of fact as to the consideration for the note.

The Supreme Court states that a question of fact is the legality of the obligation. I am certain this Court is familiar with the laws relating to negotiable instruments and promissory notes. Defendants have admitted the genuineness of the promissory note. If the note is genuine, how is it possible for the note to be illegal. There is no allegation that it was issued in violation of any statute or any law. To the contrary, the facts show that even assuming the Defendant's claim of usury in connection with the $10,000.00 promissory note issued by a partnership at a time prior to the existence of the Corporation was true, nevertheless this transaction did not possibly, legally, logically, morally, or in any other way taint a transaction occurring after the date of the supposed usurious transaction and between different parties and for different purposes. It is simply not logically possible for this agreement between the Plaintiff and a corporation which was not even existing at the time a usurious contract was claimed to have been executed to have been an inducement to or usury for the loan which had been completed over a year before the contract came into being.

We should like to further point out that whether or not services were rendered under the contract is now

both immaterial and irrelevant to this cause for the following reasons:

1. The contract required performance only at the request of the Corporation.

2. It is not alleged that Plaintiff ever refused a request of the Corporation.

3. The contract was terminated and in lieu of the contract a promissory note was executed which is the subject of the action before this Court.

CONCLUSION

In conclusion your Petitioner would like to again indicate the simplicity of this action and the issues before the Court. Since this Corporation was not even an existing thing at the time the usurious transaction was claimed to have occurred, it could not have been a party nor can it claim to be even connected to the alleged usurious transaction. Is there never an end to controversy? Should not this Court support settlement to give some finality to transactions between citizens?

Respectfully submitted,

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