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Vern Shutte & Sons v. J. R. Broadbent And Earl Fredrickson : Brief of Plaintiff And Respondent

IN THE

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vs.

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BRIEF OF PLA

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IN THE

SUPREME COURT

OF THE

STATE OF UTAH

VERN SHUTTE & SONS
Plaintiff and Respondent

vs.

J. R. BROADBENT AND
EARL FREDRICKSON
Defendants and Appellants

Case No.
11937

BRIEF OF PLAINTIFF AND RESPONDENT

STATEMENT OF KIND OF CASE

This is an action for the balance due upon an account for chopping hay at Hazleton, Idaho, a small town by Burley, Idaho.

DISPOSITION IN THE LOWER COURT

The case was tried in the District Court before the Honorable Stewart M. Hanson. Judgment was granted in favor of the plaintiff and against both of the defendants.

RELIEF SOUGHT ON APPEAL

Plaintiff and Respondent requests the court to affirm the Judgment of the Lower Court.

STATEMENT OF FACTS

The defendant, J. R. Broadbent owned cattle which he was feeding at Hazleton, Idaho. J. R. Broadbent owned all of the cattle in the feed lot of Carl Nelson and Von Kincaid and they were the only cattle in the feed lots and were in Broadbent's possession. (R. 68, 69, 89, 90, 102) Plaintiff was called by Carl Nelson and asked to chop hay for the Broadbent cattle that were in his yard. (R. 75) Plaintiff went to Carl Nelson's place also called Steele Ranch and started chopping the hay. For the first few days, plaintiff did not ask whose cattle they were, but he was told by Carl Nelson or Von Kincaid that they were J. R. Broadbent's cattle. (R. 60, 65, 66) The information that the people had in Idaho was that they were Broadbent's cattle and that Earl Fredrickson was in charge of them. No one was told of the details of any deal between Broadbent and Fredrickson. Plaintiff testified,

> "Yes, I heard that, and I heard he was working for Broadbent and it was a joint deal, so I don't know. We just did the chopping. I didn't discuss that part with Mr. Fredrickson." (R. 58)

When there was approximately $1,000.00 due plaintiff Vern Shutte asked Earl Fredrickson for his money. He received a check in the sum of $1,000.00. Thereafter he chopped hay which amounted to $1,035.05, for which he was not paid. Thereafter, J. R. Broadbent came to Idaho and there was a change in who was handling Broadbent's cattle from Earl Fredrickson to Blaine Hoffman. (R. 104, 105, 106). After he took charge of the cattle, the plaintiff

went on chopping hay and after that he was paid for the chopping which he did.

Prior to the time the cattle were moved and while they were subject to a lien, the plaintiff called J. R. Broadbent and made demand on him for the money, and told him that he had to be paid the balance due of $1,035.05. J. R. Broadbent told him to send a bill to Box 1522, El Centro, California, which he sent by certified mail and which was refused. (Exhibit IP, R. 55-56) In the latter part of May, the cattle were moved from the yards at Steele Ranch to Wyoming where they were to be summered. All of the hay that was chopped by plaintiff was fed to J. R. Broadbent's cattle (R. 69 and 75).

Mr. Broadbent's version of the deal was that Mr. Fredrickson was to acquire feed location and take care of all the exepnses of his cattle and that he was to be reimbursed at 15¢ per pound on the gain on the cattle during the time he had them in his possession. (R. 77, 78)

Earl Fredrickson's version of the deal for feeding the cattle was that J. R. Broadbent would furnish the cattle and Fredrickson would feed the cattle on a gain basis and Broadbent would advance 15¢ per head per day once a month for the expenses of the feed lot operation and for the difference between the weigh in and the out weight, he would be paid 15¢ per pound on the gain. (R. 77, 78, 84, 85, 111, 112)

No written contract was entered into between Earl Fredrickson and J. R. Broadbent, but after Fredrickson was no longer in charge of the cattle, (R. 84) there was a

written contract drawn up by attorney Oman and it was signed by the parties. Earl Fredrickson testified that it was not the entire contract between the parties and he had conveyed certain property to J. R. Broadbent, and in consideration thereof, Broadbent was to pay all the bills that had been incurred in the feeding of the cattle. (R. 72, 74, 87, 88, 113) Fredrickson was to get his share of the gain on the cattle. That J. R. Broadbent paid bills incurred by Fredrickson to Gary Easton (R. 104, 105, 106) and to Carl Nelson and George Burton, (R. 88, 90), and Blaine Hoffman told Fredrickson Mr. Broadbent would see that all these bills were taken care of. (R. 107)

Mr. Fredrickson's version of the hiring of Mr. Shutte is as follows:

> "Q. Mr. Fredrickson, you are the one that originally got Mr. Shutte to chop the hay?
>
> A. Yes, through Mr. Nelson.
>
> Q. And the price of the hay was $3.50 a ton?
>
> A. That is right, correct.
>
> Q. And that would be the reasonable value of chopping of the hay there in Burley there at that time?
>
> A. Yes, that was a fair price."

It is apparent that the defendants were in a joint venture, both trying to make a profit from the operation.

ARGUMENT

There was a joint venture. The defendants held themselves out as joint adventurers. Broadbent owned the cattle and they were always in his possession, but he let Earl Fredrickson have control of all the cattle and the entire operation. People who furnished the feed and who chopped the feed did not know the exact deal, but they were led to believe that the owner of the cattle would pay their bill. Plaintiff is entitled to compensation for chopping of the hay because it conferred a benefit on Broadbent's cattle and Broadbent is liable under any of the following four theories:

(1) That is was a joint enterprise between the two defendants, Broadbent and Fredrickson.

(2) There was an agency. Broadbent made Fredrickson his general agent and there is an implied agency between J. R. Broadbent and Earl Fredrickson in any event.

(3) That Broadbent, by his acts, and allowing others to furnish feed to his cattle was estopped to deny the agent's authority.

(4) Unjust enrichment — J. R. Broadbent is liable because he got the benefit from having the chopped hay and would be unjustly enriched if he is not required to pay for it.

JOINT VENTURE

As to third person who deals with a joint adventurer in good faith and without knowledge of any limitations upon

his authority, the law presumes him to have been given power to bind his associates by such contracts as is reasonably necessary to carry out his business.

JOINT VENTURE

The rights and liabilities as to third persons' liability is set out in 46 Am. Jur. 2nd, page 76, Section 57, and we quote from page 76 as follows:

> "57. Generally. It has already been pointed out that the rights, duties and liabilities of joint venturers are governed, in general, by rules which are similar or analogous to those which govern the corresponding rights, duties, and liabilities of partners, except as they are limited by the fact that the scope of a joint venture is narrower than that of the ordinary partnership. As in the case of partners, joint venturers may be jointly and severally liable to third parties for the debts of the venture. Thus, a joint venturer whose name does not appear on a note can be held liable thereon where the note was signed by his coventurer in the name of the joint venture.
>
> The liability of one engaged in a joint enterprise, for the acts of his associates, is founded on principles of agency. In accordance with the general rule that each member of a joint venture acts as both principal and agent of his coventurers as to those things done within the apparent scope of the venture and for its benefit, it is held that each of several joint venturers has power to bind the others and to subject them to liability to third persons in matters which are strictly within the scope of the joint enterprise. As stated, in the absence of a limitation of authority imposed by the participants in

a joint venture, a member can bind his associates, whether disclosed or undisclosed, by such contracts as are reasonably necessary to carry on the venture. The rule is that as to third persons who deal with a joint venturer in good faith and without knowledge of any limitations upon his authority, the law presumes him to have been given power to bind his associates by such contracts as are reasonably necessary to carry on the business in which the joint venturers are engaged, and they become liable on such contracts, notwithstanding that they may have expressly agreed among themselves that they should not be liable. Even in jurisdictions where the power of a joint venturer to bind his associates by contracts with third persons relating to the venture is considered to be less full than that of an ordinary partner, it is recognized that one joint venturer may bind the others in matters respecting which he has been given express of apparent authority."

To the same effect is the citation in 33 C.J., page 871, section 99 as follows:

"99. A. Liabilities to Third Persons — 1. Simple contracts — a. By individual Members. As to third persons who deal with a joint adventurer in good faith and without knowledge of any limitation upon his authority, the law presumes him to have been given power to bind his associates by such contracts as are reasonably necessary to carry on the business in which the joint adventurers are engaged, and they become liable upon such contracts, notwithstanding they may have expressly agreed amongst themselves that they should not be liable."

In 48 C. J. S. Section 15, page 871, it states:

"15.—Rights against third Persons. The authority of a member of a joint adventure to bind his asso-

> ciates so as to affect the rights of such associates against third persons has been held to be governed generally by the law applicable to partnerships."

Also, there is a citation in 33 C. J., under Section 16 on page 846, top of column 2, in which it says:

> "the acquisition and performance of contracts for municipal or government works, the carrying on of building operations, the purchase and management of vessels or animals." 85

In headnote 85 they cite the following cases:

> "85. Rice v. Peters, 128 App. Div. 778, 113 NYS 40 (rev. 58 Misc. 385, 111 NYS 5) (joint adventure for the buying and selling of horses: Peterson v. Nichols 90 Wash., 398, 156 P. 406 (ownership and management of stallion)."

We submit that in this case there was created as far as third parties are concerned a joint adventure.

At 48 C. J. S. Section 2, page 813, we quote:

> "(b) Particular transactions. Whether the parties to a particular contract have thereby created, as between themselves, the relation of joint adventurers depends on their intention. * * * As to third persons the legal, and not the actual, intention controls." 93

Note 93 cites the following cases:

> "93. U.S. — Corpus Juris cited in Aiken Mills v. U.S., D.C.S.C. 53 F. Supp. 524, 526, affirmed, C.C.A., 144 F2nd 23 Cal — Snavely v Walls, 57 P.2d 161, 13 Cal. App. 2d 600."

That one of the above cited cases is the case of *Snavely*

v. Walls, 57 P.2d 161, 13 Cal. App. 2d 600, and the head notes are as follows:

> "1. Joint Adventures. Key 1. Whether relationship is that of debtor and creditor or one of joint liability is determined, as between parties, from letter of contract and conduct of parties thereunder, but where rights of third parties are involved, fundamental question is what third parties had right to believe from language of contract and conduct of parties as it affected them.
>
> 2. Joint Adventures. Key 1. Evidence held sufficient to support judgment against two defendants for balance due on open book account for lumber sold defendants on ground that defendants were engaged in joint venture."

We further quote from 48 C.J.S. at page 813, top of column 2, note 93:

> "In applying the rules discussed in the preceding subdivision of this section, particular transactions which have been held to constitute joint adventures include agreements providing that the parties thereto shall contribute money to be used in the purchase of lands to be sold for their mutual benefit in equal or specified proportions, or that one or more shall contribute money and the other or others special knowledge, experience, or judgment, as in the purchase, and development of lands; the organization, acquisition, consolidation, or development of corporation; the buying and selling of corporate stocks; the making, acquisition, or transfer of contracts for specified purposes the acquisitions and performance of contracts for municipal of government works; the construction of buildings or the carrying on of building operations; the purchase and management of

vessels ,the purchase, management, or sale of animals." 7

Note 7 cites the following cases:

"7. Iowa—Johanik v. Des Moines Drug Co., 17 N. W. 2d, 385 Mont. — Snyder v. Carmichael, 58 P.2d 1004, 102 Mont. 387. N.Y. — Titus v. Empire Mink Corporation, 17 N.Y.S.2nd 909. Or. — Mid Columbia Production Credit Ass'n v. Smeed, 136 P.2d 255, 171 Or. 140.
33 C.J. p. 846 note 85."

There are sub-heads under these cases on bulls, horses, mules and stallions.

In the case of *Priestley v. Peterson,* 145 P.2nd, 253, 19 Wash. 2nd 820, on page 264 of the Pacific, bottom of second column, headnote 11, 12 is as follows:

(11, 12) In 33 C.J. p. 871 Sec. 99, appears the following text: "As to third persons who deal with a joint adventurer in good faith and without knowledge of any limitations upon his authority, the law presumes him to have been given power to bind his associates by such contracts as are reasonably necessary to carry on the business in which the joint adventurers are engaged, and they become liable upon such contracts, notwithstanding they may have expressly agreed amongst themselves that they should not be liable. * * *

AGENCY
IMPLIED OR BY ESTOPPEL

J. R. Broadbent was the owner of the cattle and had control of them at all times and J. R. Broadbent placed Earl Fredrickson in possession of the cattle.

Under such circumstances ,there is an implied agency or agency by estoppel. We quote from 2 C.J., page 440, Section 36 as follows:

> "(5) From Active Holding Out. An agency may be implied where one person by his conduct holds out another as his agent, or thereby invests him with apparent or ostensible authority as agent; and he thereby becomes liable for such agent's acts, whether the liability is based upon an implied agency or an agency by estoppel, and whether he actually intends to be bound or not."

At 2 C.J.S., Section 23, page 1045, Implied Agency, top of second column, we quote:

> "The relation of agency need not depend upon express appointment and acceptance thereof, but may be, and frequently is, implied from the words and conduct of the parties and the circumstances of the particular case. If, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understood it to be an agency."

At 2 C.J.S. page 1046, Section 23, 2nd column, 2nd paragraph:

> "In the notes below will be found instances of facts from which, when considered with all attending circumstances, it has been held that an agency may be implied." 78

Under note 78 is the following:

Possesion of personalty

"Agency may be implied from the fact that one is placed in possession of personal property belonging to another. — Beers v. McNaught, 162 N.Y.S. 514, 175 App. Div. 643 — Bertrand v. Hunt, 154 P. 804, 89 Wash. 475; 2 C.J. p. 439 note 96."

J. R. Broadbent as principal is estopped to deny Frederickson was his agent. A general statement of this rule is found at 3 Am. Jur.2nd, Section 76, page 479, which we quote as follows:

"76. Estoppel of principal to deny agent's authority. Although the general statements of the doctrine of apparent authority do not include all the elements of an estoppel in pais, or equitable estoppel, the prerequisites for the application of the doctrine to bind the principal are such that there is no practical difference in effect between them in such respect; and, as applied by the courts, the doctrine of apparent authority is neither broader than nor essentially dissimilar to the estoppel of the principal to deny the agent's authority. Stated in terms of estoppel, the rule is that where a principal has, by his voluntary act, placed an agent in such a situation that a person of ordinary prudence conversant with business usages and the nature of the particular business is justified in assuming that such agent has authority to perform a particular act and deals with the agent upon that assumption, the principal is estopped as against such third person from denying the agent's authority; he will not be permitted to prove that the agent's authority was, in fact, less extensive than that with which he was apparently clothed."

Under note 18 they quote the Utah case of *Harrison v.*

Auto Securities Co., 257 P. 677, 70 U. 11, and we quote from the Pacific at page 677, headnote 3 and 4.

> "3. Principal and agent, Key 99 — Principal is bound by agent's acts within apparent scope of authority, as against third parties dealing with agent in good faith. * * *
>
> 4. Estoppel Key 72 — Where one of two innocent parties must suffer, loss should fall on him who made third party's wrongful act possible."

UNJUST ENRICHMENT

J. R. Broadbent had the cattle delivered to Steele Ranch owned by Carl Nelson and Von Kincaid. The cattle were fed chopped hay and were fed during the winter. When it came time to move them to Wyoming, the cattle had made gain and thereby J. R. Broadbent has been enriched.

If J. R. Broadbent is not liable either as joint tenant or as principle he would have been unjustly enriched.

At 66 C.J. page 32, 2nd column, 3rd paragraph it is as follows:

> "Unjust enrichment. A phrase much used by Prof. James Barr Ames to designate a principle which lies at the foundation of the great bulk of quasi-contracts — that one shall not unjustly enrich himself at the expense of another."

At 91 C.J.S. page 490, 2nd column, 3rd paragraph we quote:

> "Unjust enrichment. A doctrine or principle which is that one shall not be allowed to profit or enrich himself at the expense of another contrary to equity.

> There must be some specific legal principle or situation which equity has established or recognized to bring a case within the scope of the doctrine."

Under note 21 is annotated the Utah Case of *Baugh v. Darley*, 184 P. 2d 335, 112 Utah 1, and on page 337 of the Pacific we quote from bottom of first paragraph:

> "(3) Unjust enrichment of a person occurs when he has and retains money or benefits which in justice and equity belong to another. Hummel v. Hummel, 133 Ohio St. 520, 14 N.E.2d 923, 927; Federal Corporation v. Radtke, 229 Wis., 231, 281, N.W. 921, 923; Richland County Bank v. Joint School District No. 2 of Boaz, 213 Wis. 178, 250 N.W. 407. The benefit may be an interest in money, land, chattels, or choses in action; beneficial services conferred; satisfaction of a debt or duty owned by him; or anything which adds to his security or advantage. American Law Institute Restatement of Restitution, Sec. 1, comment b."

ANSWERING DEFENDANT'S ARGUMENT

We have cited authorites in this Brief setting out joint adventure and the law pertaining to third persons dealing with joint adventurers, but without this distinction we are going to apply the facts in the instant case to the elements set out in the case of *Mukasey v. Aaron*, 20 U.2nd 383, 438 P.2nd, 702:

> "1. An agreement, express or implied, among the members of the group."

We submit there was an agreement between J. R. Broadbent and Earl Fredrickson.

"2. A common purpose to be carried out by the group."

The common purpose was to make a profit by putting gain on the cattle.

"3. A community of pecuniary interest in that purpose, among the members."

Each intended to make a profit out of the cattle feeding operation.

"4. An equal right to a voice in the direction of the enterprise, which gives an equal right of control."

We submit that both J. R. Broadbent and Earl Fredrickson had equal rights to a voice in how the cattle were to be fed, what they were to be fed. They were both interested in the final result of putting gain on the cattle, during the winter.

We submit there was a joint adventure as to third parties dealing with J. R. Broadbent and Earl Fredrickson.

Defendant cites the case of *Robinson Transport Company vs. Hawkeye Security Insurance Company*, (Wyoming, 1963) 385, P.2d 203. In that case they hold there was no sharing of the profit. We submit that in the instant case there was the intent of sharing the gain made on the cattle between J. R. Broadbent and Earl Fredrickson, and that said case is not in point with the facts in the instant case, and clearly distinguishable upon the factual situation.