

1972

Phillips Manufacturing Company v. Gerald Putnam, Dba Star Valley, Dba Putnam Enterprise, And Fay Putnam : Brief of Respondent

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IN THE SUPREME COURT
of the
STATE OF UTAH

PHILLIPS MANUFACTURING CO.

Plaintiff and Appellant,

vs.

GERALD PUTMAN, dba STAR VALLEY,
dba PUTMAN ENTERPRISE, and FAY
PUTMAN, his wife, dba per above,

} Case
No.
12865

Defendant and Respondent.

BRIEF OF RESPONDENT

Appeal from the Judgment of the Second District Court
Ronald O. Hyde, Judge.

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BRIEF OF RESPONDENT

NATURE OF CASE

Plaintiff brought suit against the defendants attempting to obtain judgment against the defendant, Fay Putman, on the theory that she was a partner of her husband, the defendant, Gerald Putman, in a business known as Star Valley Sales and as regards his dealings with the plaintiff Phillips Manufacturing Company.

DISPOSITION IN THE LOWER COURT

The District Court awarded plaintiff a judgment against the defendant, Gerald Putman, and held that the defendant, Fay Putman, was not his partner, by estoppel or otherwise, in the business, Star Valley Sales, and as regards his dealings with the plaintiff.

RELIEF SOUGHT ON APPEAL

Affirmation of the District Court's decision.

STATEMENT OF FACTS

The defendant does not disagree substantially with the Statement of Facts contained in plaintiff's brief but would note the following additional facts:

1. The defendant, Gerald Putman, was engaged in selling new campers and accessories for retail, which were purchased from the plaintiff.

2. In addition to the defendant, Gerald Putman, and his wife signing the sales invoices, employees of the defendant, Gerald Putman, also signed such invoices (See plaintiff's Exhibit J)

3. The sums of money drawn on the defendant, Fay Putman's, checking account were loans to the defendant, Gerald Putman, and repaid by deposits made to her account from the sale of campers and accessories.

4. In the Dealer's Application filed on or about the 7th day of February, 1969, over the signature of Fay Putman, the business to be operated was a used car business and the firm name assigned was Putman's Used Cars (Plaintiff's Exhibit E).

5. In the Application for License to Engage in Business filed on or about March 7, 1969, (which was issued on May 19, 1969), the business for which a license was requested was the operation of a milk depot, apartments, and used cars (Plaintiff's Exhibit C).

6. The Quarterly Sales Tax Returns filed with the State were all filed over the signature of the defendant, Gerald Putman (See plaintiff's Exhibit D).

7. The defendant, Fay Putman, made no representation in answering plaintiff's interrogatories as to the fashion in which the sales taxes were paid (See concluding paragraph of defendant's Answers to Interrogatories).

8 Each of the defendants denied a partnership arrangement between them as regards the purchase of campers and accessories from the plaintiff and in their subsequent resale (TR. page 89, line 21), and the defendant, Fay Putman, denied having given consent or permission for the defendant, Gerald Putman, or any one, to represent her by any method as a partner of her husband in that regard or in the business Star Valley Sales ,TR. page 15, line 24).

ARGUMENT

The issue raised by plaintiff's appeal is whether or not the applications filed over the signature of the defendant, Fay Putman, on or about February 7, 1969, and March 7, 1969, (Plaintiff's Exhibits E and C and the payment of sales taxes resulting from the sale of campers and accessories by the defendant, Gerald Putman,

through a tax number issued to Putman's Enterprises, were representations made by the defendant, Fay Putman, of a partnership relationship made in a public manner so as to come within the provisions of 48-1-13 (1), Utah Code Annotated, 1953, providing as follows:

“Partner by estoppel. - (1) When a person by words spoken or written or by conduct represents himself, or consents to another's representing him, to anyone as a partner, in an existing partnership or with one or more persons not actual partners, he is liable to any such person to whom such representation has been made who has on the faith of such representation given credit to the actual or apparent partnership, and, if he has made such representation or consented to its being made in a public manner, he is liable to such person, whether the representation has or has not been made or communicated to such person so giving credit by, or with the knowledge of, the apparent partner making the representation or consenting to its being made.”

The applications described were each filed approximately one year in advance of any dealings with the plaintiff and concerned a partnership to be known as Putman's Used Cars. The business to be conducted was restricted to the management of apartments, milk depot, and the sale of used cars and such business was apparently undertaken. No representation was made in the applications as to formation of a general partnership and, specifically, none was made regarding the sale

of new campers and/or accessories whether as Star Valley Sales, or otherwise.

The applications were filed with the State as required by statute (see application heading) and solely for the purpose of satisfying the statute and obtaining a business license and tax number. The information contained in the applications was neither intended nor sought for public consumption or dissemination and was not designed to persuade nor effect the general community in any way.

In consideration of the foregoing, the trial court held as a fact that the applications and payment of sales tax were not representations of partnership as contemplated in the latter portion of 48-1-13 (1), Utah Code Annotated, 1953, nor, specifically, did they regard Star Valley Sales or the defendant, Gerald Putman's, dealings with the plaintiff. The court, therefor, refused to hold the defendant, Fay Putman, a partner by estoppel.

Assume, however, for purposes of argument, the court had held the applications and tax payment to have constituted a representation of partnership in Star Valley Sales. Would a different result have obtained? It would not.

The information contained in the sales tax returns and the method utilized in payment, were privileged, private in nature, and not to be publicly divulged as per the provisions of 59-15-7, Utah Code Annotated, 1953:

*“Information furnished tax commission privileged—Preserving records.—*Except in accordance with judicial

order or as otherwise herein provided, the tax commission, its agents, clerks and employees shall not divulge any information gained by it from any return under the provisions of this act. The officials charged with the custody of such returns shall not be required to produce any of them or evidence of anything contained in them in any action or proceeding in any court, excepted on behalf of the tax commission in an action or proceeding under the provisions of this act which it is a party, or on behalf of any party to any action or proceeding under the provisions of this act when the report or facts shown thereby are directly involved in such action or proceeding in either of which events the court may require the production of, and may admit in evidence, so much of said reports or of the facts shown thereby, as are pertinent to the action or proceeding and no more. Nothing herein contained shall be construed to prohibit the delivery to a person or his duly authorized representative of a copy of any return or report filed in connection with his tax nor to prohibit the publication of statistics so classified as to prevent the identification of particular reports or returns and the items thereof. Any return filed under the provisions of this act or any information return and other written statement filed with the state tax commission, designed to be supplemental to or become a part of any such tax return, shall be open to examination and inspection, under rules and regulations prescribed by the state tax commission, by all departments and political subdivisions of the state of Utah or any other state or the federal government and all agencies thereof or any territory established and existing under and by virtue of the laws of the United States by or through

such examiners or agents as they may designate or appoint in connection with an official matter upon the written request of the head of such department or political subdivision; provided, the statutes of such other states and their political subdivisions or the United States and its subdivisions and their territories grant substantially similar privileges to this state. Rules and regulations may be prescribed for the issuance by the state tax commission of information concerning statistics and the identity of all taxpayers who have failed to file sales tax returns or to pay the tax due hereunder. Reports and returns shall be preserved for three years and thereafter until the tax commission orders them destroyed.”

Clearly, the provisions of this statute contradict any contention that the tax returns and payment of taxes be considered a representation made in a “public manner”.

Defendant submits the same protection should be provided the applications which were filed pursuant to statute and intended by the applicant to be used for specific statutory purposes. The applications made no attempt to inform the public generally of any claimed business association.

The requirements of 48-1-13 (1) Utah Code Annotated, 1953, that representations of partnership, *if found*, be made in a public manner would, therefor, not be met. The decision of the court would remain the same.

Though not raised directly as an issue on appeal, suggestion is made in plaintiff’s brief that the defendant, Fay Putnam, made direct representation of partnership

to the plaintiff upon which reliance was placed in extending credit. Such suggestion is clearly contradicted by the testimony of Larry Phillips, plaintiff's principal witness. Mr. Phillips candidly agreed that no direct representations were made by nor reliance placed in the defendant, Fay Putman (TR. page 51, line 17 through page 59, line 27).

As the case of *Buehner Block v. Glezos*, 6 Utah 2d 226, 310 p2d 512, dealt exclusively with direct representations of partnership and reliance in the creditor, the decision reached is inapplicable in the instant case.

Defendant submits that her activity in advancing money to her husband and co-defendant, through her checking account, and in signing one of plaintiff's invoices upon accepting delivery of a camper unit is as consistent with simple husband and wife relationship as with her being a business partner, and should be construed and interpreted, on appeal, in light most favorable to the defendant.

CONCLUSION

The findings of fact made by the trial Court should not be disturbed on appeal except for clear abuse of discretion. The trial Court's findings are consistent with the evidence and the resultant decision proper in law. The trial Court's verdict should be affirmed.

Respectfully submitted
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