

1995

Barbara Crouse v. Human Resources Consulting Group, Inc., Robert J. Thurston : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

BARBARA CROUSE, :
 :
 Plaintiff/Appellee, :
 :
 vs. :
 :
 HUMAN RESOURCES CONSULTING :
 GROUP, INC., a Utah corpor- :
 ation, and ROBERT J. :
 THURSTON, :
 :
 Defendants/Appellants.

Appeal No.950119-CA
Argument Priority 15

APPELLANT'S REPLY BRIEF

Appeal from a Decision of the
Third Judicial District Court,
Salt Lake Salt Lake County,
Judge Ronald O. Hyde

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UTAH COURT OF APPEALS
BRIEF

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COURT OF APPEALS

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ARGUMENT

POINT I

**HRCG HAS MET THE MARSHALING REQUIREMENT TO
CHALLENGE THE TRIAL COURT'S FINDINGS OF FACT.**

Crouse argues that HRCG has not met its burden in marshaling evidence in support of the trial court's findings of fact prior to demonstrating that the evidence does not support the findings. In essence, Crouse's argument amounts to a requirement that HRCG present all of the evidence which was before the trial court. This goes well beyond the marshaling requirement. If all of the evidence must be considered by the appellate court, it is available in the record.

Crouse provides extensive record and transcript citations supposedly supporting all of the trial court's findings of fact. Crouse has not addressed the issues raised by HRCG. HRCG must marshal evidence only with regard to the specific findings which it challenges, not all of the findings entered by the trial court. In its Appellant's Brief, HRCG challenged only the trial court's finding that it had made a settlement offer or agreed to an accord. It then marshaled the scant evidence which would support those specific findings. The marshaling requirement was adequately met and does not require that this Court re-weigh the evidence, but merely determine its sufficiency to support the findings.

POINT II

**IF THE TRIAL COURT PROPERLY RULED THAT HRCG
REACHED AN ACCORD AND SATISFACTION WITH
CROUSE, THE ACCORD WAS SATISFIED BY THE
PAYMENT OF \$14,000.**

The fundamental premise behind accord and satisfaction is

that it is available as a defense to show that substitute performance was tendered and accepted in full satisfaction of any previous contractual duties owed to a party.

An accord and satisfaction arises when the parties to a contract mutually agree that a performance different than that required by the original contract will be made in substitution of the performance originally agreed upon and that the substituted agreement calling for a different performance will discharge the obligation created under the original agreement.

Tebbs, Smith & Assoc v. Brooks, 735 P2d 1305, 1307 (Utah 1987)

HRCG would accept a finding that an accord and satisfaction disposed of this matter, i.e. the satisfaction being the payment of \$14,000 in full settlement of the claims between the parties. Once a satisfaction to an accord has been accepted by a party, that party no longer has a contractual claim for performance beyond the satisfaction. As such, if Crouse accepted the \$14,000 in her "accord and satisfaction", she cannot legally pursue an additional recovery, as her acceptance of the payment is intended as her full recovery of all amounts due and owing under the contract.

POINT III

THE ALLEGED AGREEMENT BETWEEN THE PARTIES DOES NOT SATISFY THE FUNDAMENTAL ELEMENTS OF CONTRACT LAW.

Contrary to Crouse's arguments, the alleged agreement for substituted performance does not meet the basic requirements of contract law. Fundamental to any contract is a meeting of the minds on the exchanged promises of the parties. There are many ways of describing this meeting of the minds, but essentially, the

intentions and expectations of the parties control. *E.g.*, *Commercial Union Associates v. Clayton*, 863 P2d 29, 37 (Utah App 1993) ("A meeting of the minds between contracting parties is essential to the formation of any contract"); *Sparrow v. Tayco Construction Co.*, 846 P2d 1323, 1327 (Utah App 1993) *certiorari denied* 857 P2d 948 (to determine whether documents constitute offers as opposed to written contracts, the court must determine whether there was "mutual assent to all the essential terms.")

When an offer is made which specifies the manner in which it must be accepted, *i.e.* in a final written document signed by both parties, it can only be accepted in the manner specified.

When an offer specifies the manner in which it must be accepted, it can only be accepted in the specified manner. Otherwise mutual assent is lacking, and no contract is formed.

Equitable Life & Cas Ins. Co. v. Ross, 849 P2d 1187, 1192 (Utah App 1993) *certiorari denied* 860 P2d 943 (emphasis added, citing *Crane v. Timberbrook Village, Ltd.*, 774 P2d 3, 4 (Utah App 1989); *Burton v. Coombs*, 557 P2d 148, 148-49 (Utah 1976).

It is clear from the evidence in this case that HRCG did not intend to be bound by any negotiation settlements until an agreement had been reduced to writing and signed by both parties. No such agreement was ever written by the parties. HRCG included in its "compromise" offers express provisions that it would not be bound until any agreement was reduced to a writing signed by both parties. To further avoid any implication that a writing had been created by the "compromise" offers, HRCG sent the letters on plain paper rather than company letterhead and intentionally unsigned by

its president. Its intent is unambiguous.

If the parties clearly do not wish to be bound by legal consequences arising from negotiations until an agreement has been signed, there can be no agreement.

There does not appear to be any doubt that if the parties make it clear that they do not intend that there should be legal consequences unless and until a formal writing is executed, there is no contract until that time.

Engineering Associates v. Irving Place Associates, 622 P2d 784, 787 (Utah 1980). HRCG made it clear, by express provision in writing, that it did not wish to be legally bound unless and until a formal writing was executed. There was never such a formal writing. Under Utah law, there was no meeting of the minds and there was no contract.

The most fundamental legal requirements to formation of a valid contract have not been met in this case. Crouse's claims to a legal remedy as a result of the "negotiated settlement" are unsupported by a valid contract and she is not entitled to prevail on a claim based upon breach of that alleged contract.

CONCLUSION

HRCG has properly met the its burden to challenge a specific finding of the trial court. Aside from the factual issues, however, there is no basis in contract law for finding that a valid, enforceable agreement emerged from the negotiations of the parties until the essential terms of the offer were met. The essence of contracts, a meeting of the minds, is lacking in this case and no new contract has been formed. Therefore, no remedy can be granted for breach of an offer not accepted pursuant to its

terms. Therefore the terms of the original contract would determine the amounts due and owing to the plaintiff.

Dated this 24th day of May, 1995

Ch. White
Attorney for Defendant

