

1995

# Shui Kwong Chan and Grace Chan v. Eddie NG, Grace Scott, individuals, and The Pearl Restaurant, Inc. A Utah corporation : Reply Brief

Utah Court of Appeals

Follow this and additional works at: [https://digitalcommons.law.byu.edu/byu\\_ca1](https://digitalcommons.law.byu.edu/byu_ca1)



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Robert M. Anderson. Attorney for Appellants/Defendants.

Keith W. Meade. Attorney for Appellees/Plaintiffs.

---

## Recommended Citation

Reply Brief, *Chan v. NG*, No. 950206 (Utah Court of Appeals, 1995).

[https://digitalcommons.law.byu.edu/byu\\_ca1/6545](https://digitalcommons.law.byu.edu/byu_ca1/6545)

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

[http://digitalcommons.law.byu.edu/utah\\_court\\_briefs/policies.html](http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html). Please contact the Repository Manager at [hunterlawlibrary@byu.edu](mailto:hunterlawlibrary@byu.edu) with questions or feedback.

**UTAH COURT OF APPEALS  
BRIEF**

IN THE UTAH COURT OF APPEALS

UTAH  
DOCUMENT  
KFU  
80  
A10  
DOCKET NO. 950206CA

SHUI KWONG CHAN and )  
GRACE CHAN, )

Plaintiffs and )  
Appellees, )

vs. )

EDDIE NG, GRACE SCOTT, )  
individuals, and )  
THE PEARL RESTAURANT, INC. )  
a Utah corporation, )

Case No. 950206-CA

Defendants and )  
Appellants. )

Priority 15

**REPLY BRIEF OF APPELLANTS**

Appeal from the Third District Court  
of Salt Lake County, State of Utah  
Honorable Pat B. Brian, District Judge, Presiding

Robert M. Anderson (0108)  
ANDERSON & SMITH, L.C.  
900 Kearns Building  
136 South Main Street  
Salt Lake City, Utah 84101

**Attorneys for Appellants/Defendants**

Keith W. Meade, Esq.  
COHNE, RAPPAPORT & SEGAL  
525 East 100 South #500  
P. O. Box 11108, 84147  
Salt Lake City, Utah 84102

**Attorneys for Appellees/Plaintiffs**

**FILED**

**OCT - 2 1995**

**COURT OF APPEALS**



TABLE OF CONTENTS

TABLE OF AUTHORITIES . . . . . ii

I. ARGUMENT . . . . . 1

    A. The Pleadings and Evidence in the Record Clearly Establish that Defendants Suffered Losses Due to Overdrafts of the Restaurant Checking Account . . . . . 1

    B. The Trial Court's Findings Demonstrate that it Employed an Improper Measure of Damages in Calculating Plaintiffs' Recovery . . . . . 2

    C. The Trial Court Erred in Considering Evidence of Food Inventory Abandoned by Plaintiffs . . . . . 4

II. CONCLUSION . . . . . 5

TABLE OF AUTHORITIES

1. CASES	PAGE
<u>Hardy v. Hardy</u> , 717 P.2d 917, 923 (Utah App. 1989) . . . . .	3
<u>Reid v. Mut. of Omaha Ins. Co.</u> , 776 P.2d 896, 899 (Utah 1989) . . . . .	3

This brief is submitted in reply and response to the brief filed by plaintiffs.

## I. ARGUMENT

### A. The Pleadings and Evidence in the Record Clearly Establish that Defendants Suffered Losses Due to Overdrafts of the Restaurant Checking Account.

In their brief, plaintiffs contend that the pleadings and evidence offered at trial do not support the set-off for overdrawn checks which the defendants argue the judge erroneously failed to award them. On the contrary, however, the full amount of the set-off in question was specifically requested by defendants, and was firmly substantiated by the trial record.

In their Proposed Findings of Fact and Conclusions of Law, defendants claimed a total loss of \$26,475.00 as a result of overdrawn checks. (R. 575, 575). This entire amount was included in the request for set-offs which defendants submitted to the trial judge. (R. 578). Furthermore, the evidence at trial showed that it was almost precisely this same amount, \$26,500.00, which was deposited to the China Pearl account to compensate for large negative balances incurred during plaintiffs' operation of the restaurant. (Ex. P-54).

Defendants testified at trial that they were forced to cover numerous overdrawn checks written by plaintiffs on the restaurant account. (R. 943-44, 815-17, 1071-72). The record clearly indicates that the account was frequently overdrawn, and that checks written by plaintiffs during these periods increased the

negative balance of the account. (Ex. P-54). Each of the overdrawn checks identified in the trial exhibits and specified in defendants' brief was paid on a date on which the account showed a negative balance. (See Appellants' Brief, at 8; Ex. P-54).

Furthermore, defendants testified, and plaintiffs admitted, that defendant Grace Scott had personally guaranteed all overdrafts to the account. (R. 1072, 1004). Contrary to the assertions of plaintiffs' brief, defendants did request the trial court to find that their funds were used to cover overdrafts to the account. (R. 575-76). The trial court erroneously concluded that because the checks in question were all paid, defendants had failed to prove losses from overdrafts to the account. The evidence clearly showed, however, that due to defendant Grace Scott's undisputed personal guarantee, defendants suffered losses through covering these overdrafts. This court should thus remand the case to the trial court for new findings on this issue.

B. The Trial Court's Findings Demonstrate that it Employed an Improper Measure of Damages in Calculating Plaintiffs' Recovery.

Plaintiffs contend in their brief that the Findings of Fact, Conclusions of Law, and Order entered by the trial court show that the judge understood the proper measure of damages to be employed in an action for unjust enrichment. However, it is obvious from the findings that the trial court incorrectly applied that applicable law in this case.

Findings of fact by a trial court "must be articulated with sufficient detail so that the basis of the ultimate conclusion can be understood." Reid v. Mut. of Omaha Ins. Co., 776 P.2d 896, 899 (Utah 1989); see also Hardy v. Hardy, 717 P.2d 917, 923 (Utah App. 1989). "The failure to enter adequate findings of fact on material issues may be reversible error." Reid, 776 P.2d at 899.

Plaintiffs contend that the benefit conferred on defendants is established by plaintiffs' Trial Exhibit 64. The court failed, however, to make any findings whatsoever with regard to several of the major items listed in that exhibit. The court determined, the total amount of the specific benefits plaintiffs conferred on defendants was only \$128,761.00. (R. 581). By contrast, the total amount the court found plaintiffs expended on the venture was \$180,000.00. (R. 580-81). The court therefore clearly employed an improper measure of damages when it credited plaintiffs for the full \$180,000.00 without making specific findings of the individual and aggregate benefit conferred on defendants in that amount.

The evidence was undisputed that \$150,000.00 of plaintiffs' investment was spent by plaintiffs and not defendants prior to plaintiffs assuming operation of the restaurant. (R. 893-95). Defendants repeatedly denied receiving a benefit from these funds. (R. 575, 1066-67). The trial court's failure to make specific findings as to the benefits conferred on defendants in an amount equivalent to the full recovery it awarded plaintiffs thus demonstrates that the court employed an improper measure of

damages. This court should therefore remand for a new trial or instructions to properly determine the matter according to established legal principles.

C. The Trial Court Erred in Considering Evidence of Food Inventory Abandoned by Plaintiffs.

Plaintiffs state in their brief that they did not claim any damages at trial from food which they left in the restaurant when they abandoned the business. Despite the absence of such a claim, however, the trial court effectively credited plaintiffs for this abandoned and discarded food, based on testimony presented at trial, and thus committed legal error.

At trial, defendants claimed a loss of \$20,000.00 for the value of usable food left in the restaurant for plaintiffs when they assumed operation of the business. (R. 576, 1117). There was no testimony by plaintiffs disputing this amount. Plaintiffs plainly admitted that they either used or discarded this food. (R. 981-82).

Despite these facts, the trial court failed to award defendants an offset for this food which defendants left for plaintiffs' use. Instead, the court made reference to \$15,000.00 of food plaintiffs themselves claimed to have left when they abandoned the restaurant. (R. 583). Although plaintiffs did not affirmatively claim the value of this food as an offset, it is clear from the court's findings that it effectively credited plaintiffs for this amount. Since defendants were never in a

position to utilize the food inventory, due to plaintiffs' abandonment of the business premises and the food spoilage which resulted, the trial court committed legal error by including this abandoned inventory in its formulation of its Conclusions of Law. This court should therefore remand for a new trial and thus new findings on this issue.

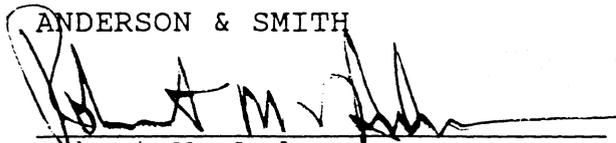
## II. CONCLUSION

For the foregoing reasons, appellant requests that this court remand the case for a new trial with instructions that the court follow established legal principles in connection with determination of damages.

DATED this 2nd day of October, 1995.

Respectfully submitted,

ANDERSON & SMITH

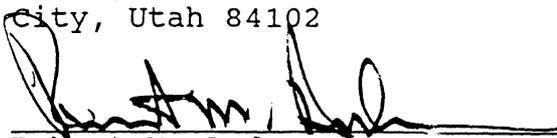
A handwritten signature in black ink, appearing to read 'Robert M. Anderson', is written over a horizontal line.

Robert M. Anderson  
Attorneys for Appellants/Defendants

CERTIFICATE OF SERVICE

I hereby certify that I caused to be hand delivered this 2nd day of October, 1995, two copies of the foregoing REPLY BRIEF OF APPELLANTS to the following:

Keith W. Meade, Esq.  
COHNE, RAPPAPORT & SEGAL  
525 East 100 South #500  
P. O. Box 11108, 84147  
Salt Lake City, Utah 84102



---

Robert M. Anderson  
Attorneys for Appellants/Defendants