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Sonja Jensen v. James B. Stinson : Reply Brief

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

SONJA JENSEN, Appellant, vs. JAMES B. STINSON, M.D.; et al Appellees	Appeal No. 2007649-SC Lower Court No.050902765

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The Appellees state that Sonja Jensen came up with a new theory after the Motion for Summary Judgment was filed that the Jensens owned an interest in Summit via an oral agreement. This is inaccurate. In the Plaintiff's complaint, in paragraphs 41-49, the Plaintiffs clearly allege an oral agreement granting to them an interest in Summit. (R.10-12)

The Appellees state that no agreement was ever reached. This is also inaccurate, but more importantly is a disputed issue of fact which would preclude granting Summary Judgment. In her initial Brief, Sonja refers this Court to the various pages in her deposition where she discusses the agreements and the formation thereof. (Brief of Appellant, pages 12-17) The best proof that an agreement was reached is that the oral agreement was reduced to writing with all of the final terms (R. 655-673 & 809-814) and would have been signed had the Jensens not separated and had the Appellees not conspired to change the agreement in an attempt to protect William Jensen and having the interest in Summit divided with Sonja Jensen through Focus and the Family Partnership.(R.844-845)

The Appellees further state that Sonja did not receive the authority to act for Focus until after the Summary Judgment was granted. This is inaccurate. On the 1st of August, 2006 over seven months prior to the Summary Judgment being granted, Sonja filed a Motion to Intervene on behalf of Focus based upon the fact that a stipulation had been entered into between the Jensens giving Sonja the authority. William Jensen did not oppose this Motion to Intervene. (R. 475-477).

The Appellees argue that neither William Jensen nor Focus own any portion of Summit or the dialysis centers. Again this is a disputed issue of fact that would preclude granting summary judgment. Why would the Respondents prepare a written agreement memorializing the terms of the oral agreement between the parties if there were no discussions about that agreement and the terms had not been finalized? Sophisticated businessmen, like the Appellees, do not pull the terms of an agreement out of thin air and place them in a written agreement. There was no letter or fax sent with the written agreement (R. 655-673) indicating that it was an offer since it was a final agreement with all of the terms and was only sent to the Jensens to be signed by Focus.

Appellees argue that the subject written agreement has to be signed before there is a meeting of the minds of the parties. This is also inaccurate. Appellant refers this Court to the case of *In the Matter of Flake v. Flake*, 2003 UT 17, 71 P.3d 589, cited in Appellant's initial brief where an unsigned agreement was held to be an enforceable contract which contained the terms of an oral agreement and where there was a meeting of the minds of the parties. Whether there was a meeting of the minds is a fact question which would preclude summary judgment.

Appellees refer this Court to the case of *Herm Hughes v. Quintek*,834 P.2d 582 (Utah Ct. App. 1992)where this Court held that a contract never existed since there was never a meeting of the minds between the parties as to material terms of the contract. However, the present case differs from the *Hughes* case in that the parties in the present case came to a meeting of the minds and wrote all of the terms of the contract in a written agreement to be signed. Further, the Hughes case went to trial and the determination by the trial court that a contract did not exist was after all of the evidence was introduced. In the present case the Appellant claims that the unsigned written agreement

contains all of the terms of the parties oral agreement and that the parties had come to a meeting of the minds prior to the agreement being reduced to writing and it was not just a draft for discussion purposes.(R.809-816) The Appellees contend that the unsigned written agreement was only a draft for discussion purposes and even state in their Brief at page 16 that the unsigned agreement itself states that it is a "draft for discussion purposes",but there is no where in said agreement where one could find said language. Whether it is a draft or the final agreement is a significant and material dispute of fact that precludes summary judgment. Further, there were no differences in the unsigned written agreement and the signed written agreement except for the deletion of the interest of the Jensens through Focus.(R.655-674,675-715)

Appellees argument in Footnote 6 of their brief is inappropriate since it is taken out of context and was not argued to the Trial Court as part of their Motion for Summary Judgment and cannot be presented to the court for the first time on appeal. *Associated Gen. Contrs. V. Bd.of Oil*, 2001 UT 112.

Appellees continue to contend that when Sonja discussed the unsigned written agreement that she was not referring to the oral agreement between the parties that was reduced to writing but this is simply not true as previously argued in Appellee's initial Brief. Appellees even refer this Court to Sonja's answers to interrogatories (R.969-77)where she specifically describes all of the terms of the oral agreement that were reduced to writing. The Appellees are playing a game of semantics in their references to Sonja's statements that there were no unwritten agreements since they know that she was always referring to the fact that the oral agreement had been reduced to writing and therefore in her mind it was a written agreement and not an unwritten one.

Appellees contend that there was no evidence before the Trial Court of an oral agreement, but the Trial Court had the Complaint, Sonja's Affidavit and Deposition, and the unsigned written agreement which was the best evidence of the oral agreement. This was argued to the Trial Court since the unsigned written agreement contained all of the terms of the oral agreement.

In regard to the West Valley agreement, Sonja testified in her deposition that William Jensen owned a 2.71 percent ownership

in that (R.720)and further explained it in her answers to her interrogatories.(R.969-77) Just because a copy of the signed agreement could not be found does not mean it didn't exist, and again this is an issue to be decided by a trier of fact.

Appellees argue that Sonja cannot claim an interest in Summit through her husband, William, but she is claiming her interest through Focus which was set up by William to own the interest for them. That is why Focus should have been allowed back into lawsuit when Sonja received the authority to act for Focus in August, 2006 well before the hearing on the Motion for Summary Judgment. Appellees contention that she did not have the authority is not only wrong since there was a stipulation between Sonja and William Jensen in August, 2006 giving her the authority, but again this is another issue of fact in dispute and the Trial Court erred when it refused to allow Focus back into the lawsuit.

Focus was a necessary party since the interest was held in it's name and Appellant did argue this in her initial Brief and that the Trial Court erred in not granting her Motion to Intervene which was brought pursuant to Rule 19 of URCP. Sonja had the authority for Focus and it was a necessary party.

CONCLUSION

The Motion for Summary Judgment should not have been granted and this matter should be reversed and remanded to the Trial Court for a trial on the merits.

Dated this 3rd day of March, 2008.

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CERTIFICATE OF MAILING

This is to certify that a true and correct copy of the foregoing Reply Brief was sent this 3rd day of March, 2008 postage pre-paid and addressed as follows:

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