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Utah Supreme Court

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E. Nordell Weeks; Ted Boyer; McMillan and Browning; Attorneys for Defendants-Appellants.
Edward A. Watson; Attorney for Plaintiffs-Respondents.

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SEP 16 1976

IN THE SUPREME COURT OF THE STATE OF UTAH

LOUIS BUZIANIS & GUS BUZIANIS,)
)
Plaintiffs-Respondents,)
)
vs.)
)
BENEFICIAL HOMES, INC., a Utah)
Corporation, and RONALD GIBB,)
)
Defendants-Appellants.)

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

CASE NO. 14258

BRIEF OF RESPONDENTS

Louis Buzianis and Gus Buzianis

Appeal from the judgment of the Third
Judicial District Court of Tooele County.
Gordan R. Hall, District Judge,
Presiding

EDWARD A. WATSON
Tooele County Courthouse
Tooele, Utah 84074
Attorney for Plaintiffs-Respondents

E. Nordell Weeks
Ted Boyer
McMILLAN and BROWNING
1020 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Defendants-Appellants

IN THE SUPREME COURT OF THE STATE OF UTAH

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BENEFICIAL HOMES, INC., a Utah)
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Defendants-Appellants.)

CASE NO. 14258

* * * * *

BRIEF OF RESPONDENTS

Louis Buzianis and Gus Buzianis

STATEMENT OF THE NATURE OF THE CASE

This is an action brought to recover judgment for services rendered.

DISPOSITION IN THE LOWER COURT

Judgment was rendered for the plaintiff in the amount of \$2,665.00 plus interest of \$517.79 and costs of \$38.90.

RELIEF SOUGHT ON APPEAL

Plaintiffs-Respondents seek affirmance of the judgment of the trial court.

STATEMENT OF FACTS

Respondents accept the statement of facts of appellants with the following clarifications and additions:

Plaintiffs and the defendant Ron Gibb entered into an oral agreement, whereby plaintiffs were to perform excavation and backfill work for the defendant Ron Gibb.(TR. 2,3,13). Under the initial terms of this agreement the plaintiffs were

to dig and backfill basements at the rate of \$100.00 per lot. Pursuant to this oral agreement plaintiffs excavated and back-filled thirty-five lots from January 1971 through August 1972. (TR.9).

At the trial the plaintiff Louis Buzianis testified that he performed other excavating work at the specific request of the defendant Ron Gibb. (TR.3). This work involved digging trenches, cutting roads and sidewalks and backfilling. (TR.3,15). He further testified that he attempted to change the price from a lot to an hourly basis. (TR.4).

The defendant Ron Gibb testified that there was never an agreement concerning an increase in costs of excavation but said that they had agreed to "do it in the future". (TR.12).

Plaintiffs admitted that they received \$850.00 from the defendant Ron Gibb for the above described services and had credited it to the amount due and owing under the oral agreement (TR.6). Plaintiff Louis Buzianis testified that a billing was prepared at his direction from his personal records and submitted to the defendant Ron Gibb in the amount of \$2,665.00 or the amount prayed for in plaintiffs' Complaint. (TR.6). The court received a copy of this bill as evidence and marked it Exhibit No. 1 which the defendant Ron Gibb did not object to. (TR.6).

POINT I

THE JUDGMENT OF THE TRIAL COURT WAS SUPPORTED BY THE EVIDENCE

Plaintiffs filed suit against Ron Gibb personally and

TABLE OF CONTENTS

	<u>Page No.</u>
Statement Of The Nature Of The Case	1
Disposition In The Lower Court	1
Relief Sought On Appeal.	1
Statement Of Facts	1
POINT I. The Judgment Of The Trial Court Was Sup- ported By The Evidence.	2
POINT II. The Amount Of The Judgment Was Supported By The Evidence.	4
Conclusion	6

Cases Cited

Hardy v. Hendrickson, 27 Utah 2d 251, 495 P. 2d 28	6
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IN THE SUPREME COURT OF THE STATE OF UTAH

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EDWARD A. WATSON
Tooele County Courthouse
Tooele, Utah 84074
Attorney for Plaintiffs-Respondents

E. Nordell Weeks
Ted Boyer
McMILLAN and BROWNING
1020 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Defendants-Appellants

Beneficial Homes Incorporated, for excavation services performed. The oral agreement to perform this excavation work was entered into between the plaintiffs and the defendant Ron Gibb personally. (TR.3,13). The plaintiff Louis Buzianis testified at trial that "the defendant Ron Gibb approached him personally and requested that certain work be done". (TR. 2,3). He also testified that when he requested a price increase for his services he spoke directly to Ron Gibb, and Ron Gibb testified that in response thereto he said that they agreed to get together. (TR.5,7,12) Finally, plaintiff Louis Buzianis stated that he presented a bill for services directly to Ron Gibb and he received payment from Ron Gibb personally. (TR.7,8,15,16).

The court clarified the status of Ron Gibb as a party defendant at the trial when it stated on page 11 of the transcript the following:

"The Court: Gentlemen, so that the record will be clear in this matter, is it correct that we are now proceeding only with Mr. Gibb as a defendant. . . ."

"Mr. Watson: We are proceeding against Mr. Gibb, yes."

"The Court: All right and him alone?"

"Mr. Watson: Right."

"The Court: So that his appearance today is in behalf of himself and certainly not on behalf of Beneficial Homes, Inc."

"Mr. Watson: That is right, your honor."

The evidence is clear that the defendant Ron Gibb personally entered into an oral agreement with the plaintiffs and

thereafter never did anything inconsistent with that personal representation and involvement in the matter. There was no evidence introduced at the trial indicating that Ron Gibb was the principal operating officer of Beneficial Homes, Inc. The defendant Ron Gibb never made any statements concerning the fact that the work he requested to be done was for anyone other than himself. Ron Gibb at no time during the trial mentioned the name of Beneficial Homes, Inc., the part it played in the transaction at issue, if any, or his relationship to that corporation.

The only evidence before the court was that Ron Gibb personally contracted for plaintiffs services and that work was thereafter performed by the plaintiffs at Mr. Gibb's direction. After the plaintiffs action was filed Mr. Gibb personally and in his own behalf filed his answer to plaintiffs' Complaint and never thereafter made any attempts to cross-claim against Beneficial Homes, Inc., or represent to the court that he was acting other than in his own behalf.

POINT II

THE AMOUNT OF THE JUDGMENT WAS SUPPORTED BY THE EVIDENCE.

Plaintiff Louis Buzianis testified that the original agreement between the parties was that the plaintiffs would dig basements and backfill them at the rate of \$100.00 per lot.(TR.4). Defendant Ron Gibb also testified that an agreement had been entered into between the parties.(TR.13).

Plaintiff Louis Buzianis testified that he had excavated

and backfilled basements on thirty-five lots between January 1971 and August 1972, at the request of Ron Gibb and pursuant to the oral agreement. (TR.9).

Louis Buzianis also testified that he had received \$850.00 from Ron Gibb as partial payment for the thirty-five basements excavated and for other excavation work performed at the request of the defendant, including excavating of trenches, roads and sidewalks. (TR.3,6). These statements were uncontroverted by the defendant Ron Gibb at the trial.

The plaintiff Louis Buzianis testified that he attempted to negotiate a change of price from a lot to an hourly basis with Ron Gibb, since he was doing more than digging and backfilling basements on each lot. (TR.4). The plaintiff was induced to continue performing excavation work by the defendant Ron Gibb's response that an agreement would be reached in the future. (TR.12).

The plaintiffs' bill for work performed was at the rate of \$15.00 per hour. The total bill was for \$2,665.00 and the amount prayed for in plaintiffs' Complaint. The \$850.00 received by the plaintiffs had been previously credited in defendant's favor.

Even if the trial court had based its judgment on the original agreement of \$100.00 per lot for a basement dug and backfilled it would have reached substantially the same result, as it did on an hourly basis.

Plaintiff Louis Buzianis' uncontroverted testimony is that he dug basements and backfilled them on thirty-five lots, at Ron Gibb's request. (TR.9). At \$100.00 per lot this is a

total of \$3,500.00. If the defendant is credited \$850.00 this leaves a total of \$2,650.00 due and owing the plaintiffs. This is a difference of \$5.00 from the amount of the judgment rendered by the court and it is clear that substantial evidence favors the courts findings and judgment.

In Hardy v. Hendrickson 27 Utah 2d 251, 495 P. 2d 28, this court stated general rule with respect to review of a trial court's findings at page 254 as follows:

"On appeal the evidence is viewed in the light most favorable to sustain the lower court, and the findings will not be disturbed unless they are clearly against the weight of evidence. . . ."

It can not be stated in present case that the judgment is clearly against the weight of evidence.

CONCLUSION

The evidence presented to the trial court clearly indicated that the defendant Ron Gibb personally entered an oral agreement to pay plaintiffs for excavation work and that he was personally liable for the services rendered. The court's judgment whether based on an hourly rate or on a lot basis would be substantially the same and the evidence supports the judgment.

RESPECTFULLY SUBMITTED this 10th day of March, 1976.

EDWARD A. WATSON
Tooele County Courthouse
Tooele, Utah 84074
Attorney for Plaintiffs-Respondents

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