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# Richard F. Bassett v. Walter Baker : Brief of Appellant

Utah Supreme Court

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

UNIVERSITY  
SCHOOL

RICHARD F. BASSETT,  
*Plaintiff and Respondent,*  
vs.  
WALTER BAKER,  
*Defendant and Appellant.*

Case No.  
14026

BRIEF OF APPELLANT

Appeal from a ruling of the  
Fourth District Court for Wasatch County  
Honorable J. Robert Bullock, Judge

FILED

APR 24 1975

Clerk, Supreme Court, Utah

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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RICHARD F. BASSETT,  
*Plaintiff and Respondent,*

vs.

WALTER BAKER,  
*Defendant and Appellant.*

Case No.  
14026

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## BRIEF OF APPELLANT

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### STATEMENT OF THE NATURE OF THE CASE

The plaintiff and the defendant entered into an arrangement to raise cattle for profit. The plaintiff was to buy the cattle, and the defendant was to provide the labor and manage the herd. The arrangement was terminated and this action was instituted to adjust the rights and liabilities of the parties.

### PROCEDURAL BACKGROUND

This cause is submitted to the Supreme Court for

the second time. The procedural history is as follows:

1. On March 4, 1974, the Honorable J. Robert Bullock entered a pretrial order bifurcating the issues as follows: "(1) The matter to be tried in two parts. The first part will be to determine the relationship between the parties and the second part to determine the type of accounting after that relationship has been determined. (2) The plaintiff contends that the parties entered into a partnership. (3) The defendant contends that a partnership was discussed but that no actual partnership was entered into and that he is entitled to his claim based upon a *quantum meruit* theory or unjust enrichment."

2. The cause was tried on June 3, 1974, in a bench trial; and on June 13, 1974, the Honorable J. Robert Bullock entered his findings of fact and conclusions of law holding that, "The respective parties entered into a joint venture on or about the 9th day of September, 1972."

3. On July 18, 1974, the defendant filed an amended notice of appeal.

4. On December 24, 1974, the Supreme Court filed its decision, Justice Ellett writing for a unanimous court stated, "We are of the opinion that his Honor erred in holding that a joint venture existed between the parties and in holding that Baker must share in any financial losses which Bassett may sustain. Baker

has only a right to share in any profits which may result from the sale of the offspring. He cannot recover anything from Bassett if there is no profit. The judgment is reversed and the case is remanded for such other proceedings as may be proper.”

5. On December 27, 1974, the defendant made a motion in the Lower Court for a partial summary judgment on the issue of liability of the plaintiff in *quantum meruit*.

6. On February 19, 1975, the Honorable J. Robert Bullock filed a memorandum ruling denying the defendant's motion for partial summary judgment.

7. On February 25, 1975, the defendant filed a notice of appeal from the lower court's ruling denying the defendant's motion for partial summary judgment.

### RELIEF SOUGHT ON APPEAL

The defendant seeks a reversal of the lower court's order denying the defendant's motion for partial summary judgment on the issue of liability under a *quantum meruit* theory.

The effect of such a reversal would be to grant to the defendant a judgment for the labor and materials which he furnished while caring for the animals belonging to the plaintiff.

## STATEMENT OF FACTS

The facts were succinctly abstracted by Justice Ellett and are set forth here as in his original opinion.

1. Bassett, an airline pilot without any experience in ranching, desired to go into the cattle business.

2. Baker was experienced in the raising and tending of cattle.

3. The two entered into a loosely-stated oral agreement whereby Bassett would buy 100 head of cattle and Baker would care for them. The offspring would be sold by Bassett, and the profits would be divided equally.

4. Bassett bought 25 head of cattle and after branding them with his own brand placed them in the care of Baker.

5. Bassett bought 26 more head of cattle but claimed them as his own with no right to Baker to share in any profits, although he placed them in Baker's care. He bought no more cattle.

6. Bassett assisted Baker some while the two herds were in Baker's care.

7. There was no agreement relative to the sharing of losses should any occur.

8. Bassett demanded all of the cattle, and when Baker claimed some right to recompense, Bassett secured a court order and took possession of most of them.

9. Bassett then sued for the recovery of some calves which he claims Baker had in his possession and for an accounting.

## ARGUMENT

The defendant's counterclaim alleges that he and his family spent some 1260 hours plus \$2,305.55 in out of pocket expenses in managing and caring for the plaintiff's cattle.

According to the agreement between the parties, and pursuant to this court's decision entered December 24, 1974, the defendant is entitled to look to one-half of the profits of the business enterprise as the return for his labors and expenditures.

The defendant welcomes his right to share in those profits. The problem, however, is that the concept of "profits" implies some logical maturity of the business enterprise. For example, if a shepherd tends sheep in return for a share of the lambs, the agreement implies that the division (or profits) be made at the end of the lambing season. If a sharecropper plants and manages land in return for a share of the crop, the agreement



implies that the division (or profits) be made when the crop is harvested.

The record below clearly shows that the plaintiff's business enterprise had not reached its zenith and the defendant's employment was terminated in an untimely fashion. Therefore, although the defendant is entitled to share in the profits of the enterprise, there remains a substantial problem to what constitutes profits or how they can be determined.

Under such circumstances the courts have uniformly permitted the terminated employee an option to sue to recover his share of the profits under the contract or, in the alternative, to recover under *quantum meruit*.

In view of the substantial difficulty and burden of proving the amount of the plaintiff's profits, the defendant elected below to move for summary judgment in *quantum meruit* instead of attempting to prove the amount of profits under the contract.

A near carbon copy of the instant case is the case of *DeFord v. Wansink*, 452 P.2d 73 (Mont. 1969). In that case the plaintiff entered into an agreement with the defendant whereby "defendant would furnish 150 head of breedable yearling heifers, together with bulls in sufficient numbers to service the same. Plaintiff would care for them. . . . As compensation plaintiff would receive 100% of the calf crop in 1965, and 65%

in 1966 and 1967 . . .” Approximately eighteen months after the parties entered into the contract a dispute arose and the agreement was terminated. The plaintiff brought his action for damages under the contract or, in the alternative, for *quantum meruit*. The lower court found the value of the plaintiff’s services to be \$18,579.91, and made an award in *quantum meruit*.

On appeal the defendant urged that if the contract was terminated, the plaintiff’s recovery should be limited to the “. . . stipulated compensation’ from the express contract.” The appellate court held that the plaintiff could have his recovery either on the contract or in *quantum meruit*. The court at 76 stated in part:

“Here the written contract was for three years, the first eighteen month period was by the testimony of all witnesses the tough and dangerous one for heifer calves. Plaintiff simply did not get the benefit of the second and third year. Under this situation the trial court was correct in finding the reasonable worth and value of the services performed by the plaintiff was to be had without regard to the part of the written contract performed.

The evidence of the reasonable value consisted of uncontroverted testimony regarding pasture, hay, hired hands, and prices received.”

See also *Garlitz v. Carrasco*, 339 S.W.2d 92 (Tex. 1960); and *McCarren v. Merrill*, 15 Utah 2d 179 (1964).

## CONCLUSION

This court has previously held (on December 24, 1974) that this defendant is entitled to one-half of the "profits" of the plaintiff's business enterprise . However, where this defendant was terminated in an untimely fashion making "profits" difficult or impossible to ascertain, the defendant should be entitled in the alternative to pursue his remedy in *quantum meruit*.

Respectfully submitted,

ROBERT J. DeBRY

Attorney for Defendant and  
Appellant.