

IN THE
SUPREME COURT
OF THE STATE OF UTAH

MAY TERM, 1927

OMEGA INVESTMENT COMPANY,
a Corporation,
Plaintiff and Respondent.

VS.

WEST R. WOOLLEY, NATHANIEL
BALDWIN SALES COMPANY OF DELAWARE, a
Corporation, and NATHANIEL
BALDWIN INCORPORATED,
a Corporation,
Defendants and Appellants,

Case No. 4509

F. COWLEY and NATHANIEL
BALDWIN,
Intervenors and Respondents,
W. CLARK, H. S. PANNER,
ORIN C. WOOLLEY and
LYDIE NIELSON,
*Impleaded Defendants and
Appellants.*

Omega Investment Company, Plaintiff and
Respondent, and of M. F. Cowley and Nathaniel
Baldwin, Intervenors and Respondents.

STATEMENT

For the convenience of the Court the respondent,

Omega Investment Company, which is the plaintiff in this case, and the respondent, Nathaniel Baldwin, who is an intervenor, will submit a joint brief and argument in defense of the judgment made and entered herein.

The original complaint was filed by the plaintiff Omega Investment Company, with the clerk of the District Court of Salt Lake County on May 26, 1925. At that time the only defendants were Ernest R. Woolley, Nathaniel Baldwin Sales Company of Delaware, a corporation, and The Nathaniel Baldwin, Inc., a corporation. Immediately after the filing of this complaint, to-wit: on May 27, 1925, John T. Clark, H. S. Tanner, Lorin C. Woolley, Clyde Nielson and Daniel R. Bateman pretended to meet as a Board of Directors of the Omega Investment Company, and pretended to pass a resolution with respect to among other things, provided that the action of Nathaniel Baldwin in instituting the suit of the Omega Investment Company was without authority of the Board of Directors, and that the suit so commenced by said Defendant was unjustifiable and without cause, and pretended to direct that said suit be dismissed *with prejudice*. (Tr. 9.) (We refer to bottom page(s).)

Then said directors pretended to enter into a stipulation with Ernest R. Woolley, stipulating and agreeing that said suit be dismissed *with prejudice*. This stipulation appears on page 10 of the transcript and was filed with the clerk of the District Court of Salt Lake County on May 27, 1925.

Then appears in the transcript a paper entitled "Co-

of Dismissal," *not signed by any judge*. (This paper, of course, must be disregarded.)

Thereupon on May 28, 1925, M. F. Cowley filed his complaint in intervention, pursuant to leave of Court ordered on said day by the Honorable L. B. Wright, Judge of the District Court. (Tr. 13 and 14.)

On the same day there was made a restraining order against the negotiating or transferring of any of the 434,420 shares of stock. (It will be noted that up to this date there was involved in this suit only 434,420 shares of stock in controversy.)

And up to the time of the filing of the complaint in intervention by M. F. Cowley, the impleaded defendants, to-wit: John T. Clark, H. S. Tanner, Lorin C. Woolley and Clyde Nielson, were not defendants. Cowley, by his complaint in intervention, brought these impleaded defendants into the suit (Tr. 12) and brought in the shares of stock which had been transferred to said impleaded defendants. In the bill of exceptions it appears, on pages commencing with 201, that a hearing was had before the court as to the granting of a preliminary order to restrain the transfer of the stock. At that hearing Ernest Woolley was called as a witness by Mr. Walton, who represented the plaintiff company and M. F. Cowley, the intervenor. On page 212 of the transcript he testified:

"I had in my possession a certificate of stock or certificates of stock, approximately 465,000 shares."

Then, on the same page, fixed the date, "The twenty-

sixth or twenty-seventh of December of last year (meaning 1924). He says that this certificate was made out in the name of Ernest R. Woolley and the Nathaniel Baldwin Sales Company of Delaware. (Tr. 214.) He says:

“That certificate, at the present time, is in New York City, that is my understanding where it is.” (Tr. 214.)

He says that he sent it to Mr. Hudson. He is then asked the question:

Q. Did you send it by mail?

A. I don't know whether I did, as I recall. I don't know whether he took it in person or whether I delivered it to Mr. Hudson.

Q. Did you deliver it to him personally?

A. Yes, sir.

Q. Where?

A. At my office, Salt Lake City.”

He again testified that he was not an officer of the Nathaniel Baldwin Sales Company; that he owned about 20 per cent of the capital stock of that company; that he did not remember whether they had a process agent or not, and finally said he did not think they had one here at all; that Mr. Hudson might be or might not be an officer of the company, but he was its agent and representative; that he turned this stock over to Hudson in the fore part of January (this would be in 1925; Tr. 215) and that he had no interest in the stock except as he had an interest in the Sales Company of Delaware through stock

ownership; that the stock still belongs to Nathaniel Baldwin Sales Company.

On page 218 of the transcript he says:

“All of the stock, all of the contracts that I owned belonged to the Nathaniel Baldwin Sales Company of Delaware, and when I did it I did it merely as agent for the transfer. I had my stock in the Sales Company of Delaware.”

(Note, this includes all contracts that Woolley owned.)

And again he says he was an individual agent of the Nathaniel Baldwin Sales Company; that he was just a firm of transfer, and that outside of the fact that he was interested in the stock of the Nathaniel Baldwin Sales Company he had no interest in this stock, and that far as he knew the Nathaniel Baldwin Sales Company retained the certificate. (Tr. 219.)

He then says that at the time he received the certificate he was an officer of the Nathaniel Baldwin Sales Company of Delaware; that he was either President or Vice-President; he did not remember that he had an office at that time; that the Sales Company of Delaware had no office in Salt Lake City but had one in New York City; that he ceased to be an officer of the Sales Company of Delaware in the fore part of January or at least he might so.

He says that he had some contracts executed between Mr. Baldwin and himself which he had transferred to the Nathaniel Baldwin Sales Company of Delaware, and that it was in consideration of those contracts and that