

1 Superior Court of California
2 County of San Bernardino
3 303 W. Third Street, Dept. 38
4 San Bernardino, CA 92415

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

NOV 8 2012

By *Richard M. Allen*
Deputy

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9 SUPERIOR COURT OF CALIFORNIA
10 COUNTY OF SAN BERNARDINO, SAN BERNARDINO DISTRICT

11
12 NORMAN GIEBELER,

13 Plaintiff,

14 vs.

15 JAMES GIEBELER,

16 Defendant.
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Case No.: CIVDS 1016552

COURT'S STATEMENT OF DECISION

21 **1. INTRODUCTION**

22 The parties include Plaintiff, Norman Giebeler, by David D. Werner of
23 Gresham, Savage, Nolan and Tilden, and Defendant James Giebeler by Mark A.
24 Fisher and Nathan Myer of Russ, August, Kabat.

25 Plaintiff, Norman Giebeler filed a complaint alleging three (3) causes of
26 action; (1) breach of contract; (2) breach of implied covenant of good faith and
27 fair dealing; (3) declaratory relief against his brother, Defendant James Giebeler.
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1 The matter came for a bench trial on September 25, 2012, wherein Plaintiff by
2 oral motion, amended his complaint to include claims to partial ownership of the "724
3 Patent." After the consideration of evidence and oral and written argument of counsel,
4 the Court makes the following rulings:

5 **2. Findings of The Court of Fact and Law**

6 The Court finds that the Defendant, James Giebeler was more credible than
7 Plaintiff, Norman Giebeler therefore, this Court finds that there was no agreement
8 enforceable or otherwise, to share in "724 Patent."

9 The Court finds pursuant to 35 U.S.P. section 261 provides that assignments
10 must be in writing; "applications for patents or any interest therein, shall be assignable
11 in law by instrument in writing." Here, there was no evidence to establish a written
12 assignment of the "724 Patent." As such, since the Plaintiff, Norman Giebeler does not
13 come within any exception under the law the Plaintiff claim is barred by 35 U.S.P.
14 section 261.

15 The Court finds, the Plaintiff, Norman Giebeler has not established and proven 1)
16 a partnership; 2) partnership assets/proceeds used to acquire the patent; or 3) an
17 agreement that the partnership would own the patent. Here, the Plaintiff has not
18 established evidence to make an asset, a partnership asset. While testifying under
19 oath, the Plaintiff, Norman Giebeler when asked: "there were no proceeds from any Jim
20 and Norm partnership that were used to pay for getting the patent, correct?, the Plaintiff
21 stated, "correct". Additionally the Plaintiff stated there were no "no partnership assets"
22 "used to develop the tool". Further, the Plaintiff has the burden of establishing; 1) the
23 existence of partnership; 2) the use of partnership assets to acquire the patent; 3) the
24 intent of the partners to own the patent through the entity of a partnership, not as
25 individuals to merit Zanett case exception. This, the Plaintiff has failed to do.

26 The Court finds there was no implied partnership. The Plaintiff has failed to
27 establish; (1) there was an express agreement that there was a partnership; (2) that the
28 two (2) parties acted as partners in a business or partnership. Here, there was no

1 evidence to establish express or implied partnership by agreement or conduct or actions
2 of the party. Similarly, there is no evidence to establish a joint venture between the
3 parties for the same reason stated above.

4 As the Court finds, as a matter of law, there was no express or implied
5 partnership, the equitable question of "unclean hands" is unnecessary. However, were
6 there to have been a Zanett partnership of the "724 Patent", a dissolving of such
7 partnership without notice to one's partner would constitute fraud if done in bad faith
8 and thereby invoke the "unclean hands" events.

9 **3. Judgment**

10 Accordingly, the Court enters judgment in favor of the Defendant, James
11 Giebeler, and against Plaintiff Norman Giebeler, on his complaint in prayer for relief in
12 its entirety.

13 Each side to bear their own costs except for statutory costs.

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15 Dated this 9 day of November, 2012.

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19 Donna G. Garza,
20 Judge of the Superior Court
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IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN BERNARDINO

SAN BERNARDINO DISTRICT, CIVIL DIVISION

TITLE OF CASE (ABBREVIATED): In the Matter of

NORMAN GIEBELER vs. JAMES GIEBELER

CASE NUMBER: **CIVDS 1016552**

DECLARATION OF SERVICE BY MAIL

My business address is: San Bernardino Superior Court, 303 West Third Street, San Bernardino, California 92415.

I hereby declare that I am a citizen of the United States, over the age of 18, employed in the above-named county, and not a party to nor interested in this proceeding. On November 8, 2012, I deposited in the United States mail at San Bernardino, California, a sealed envelope (postage prepaid) which contained a true copy of the attached:

NAME OF DOCUMENT:

Court's Statement of Decision

which was addressed as follows:

Name and Address of Persons Served:

**David D. Werner
Ben A. Eilenberg
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3750 University Ave., Suite 250
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**Russ, August & Kabat
Marc A. Fenster
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At the time of mailing this notice there was regular communication between the place of mailing and the place(s) to which this notice was addressed.

I declare under penalty of perjury the foregoing to be true and correct.

DATED: November 8, 2012

by



Michele Stallone
Administrative Assistant II