

1986

Shelter America Corporation v. Ohio Casualty & Insurance Company : Brief of Respondent

Utah Court of Appeals

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BRIEF

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860174-CA

IN THE COURT OF APPEALS FOR THE STATE OF UTAH

SHELTER AMERICA CORPORATION, a
Colorado Corporation,

Plaintiff-Appellant,

No. 860174-CA

vs.

Supreme Court No. 860104

OHIO CASUALTY AND INSURANCE
COMPANY, an Ohio Corporation,

Defendant-Cross
Appellant/Respondent.

SUPPLEMENTAL BRIEF OF CROSS APPELLANT/RESPONDENT

Appeal From a Judgment of the Third Judicial
District Court in and for Salt Lake County

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SUPPLEMENTAL BRIEF OF CROSS APPELLANT/RESPONDENT

STATEMENT OF ISSUE PRESENTED

This case deals with a statutory motor vehicle dealer bond. The issue requires deciding whether a mobile home is a motor vehicle as that term is defined by the applicable statute. The applicable statute was amended after the initial briefs were filed. The issue raised by this supplemental brief is whether the addition of mobile homes to the definition of a motor vehicle indicates that mobile homes were not included in the definition of a motor vehicle prior to the amendment.

STATEMENT OF FACTS

1. The 1987 Utah Legislature amended Title 41, Chapter 3 of the Utah Code and added mobile homes to the prior definition of a motor vehicle. Senate Bill No. 63, Utah Legislative Report (1987).

2. "Motor vehicle" was previously defined as follows:

"Motor Vehicle" means vehicle intended primarily for use and operation on the public highways which is self-propelled; a vehicle intended primarily for operation on the public highways which is not driven or propelled by its own power, but which is designated either to be attached to or become part of, or to be drawn by a self-propelled vehicle; but not including farm tractors and other machines and tools used in the production, harvesting and care of farm products.

Utah Code Ann. § 41-3-7 (1986, before amendment).

3. As amended by Senate Bill No. 63, "motor vehicle" is now defined as follows:

"Motor Vehicle" means a vehicle intended primarily for the use and operation on the public highways, and which is self-propelled; a vehicle intended primarily for operation on the public highways which is not driven or propelled by its own power, but which is designated either to be attached to and become a part of, or to be drawn by a self-propelled vehicle; including mobile homes, but not including farm tractors and other machines and tools used in the production, harvesting, and care for farm products.

Utah Code Ann. § 14-3-7 (1987) (Emphasis added).

4. The only change to the statute is the addition of "including mobile homes."

ARGUMENT

THE ADDITION OF MOBILE HOMES TO THE
DEFINITION OF MOTOR VEHICLES INDICATES THAT
MOBILE HOMES WERE NOT INCLUDED BEFORE THE
AMENDMENT.

The objectives of Senate Bill 63 included broadening the definition of an automobile dealer. Utah Senate Debate; Second Reading of Senate Bill 63; February 9, 1987; Day 29; 47th Legislature (Recording on file at Utah Senate Office). The addition of mobile homes to the definition of motor vehicles indicates that the law was expanded to include mobile homes and therefore dealers of mobile homes.

"When a statute is amended it is presumed that the legislature intended the statute to have a different meaning from the meaning accorded the statute before amendment." In Interest of Miller, 110 Idaho 298, 715 P.2d 968, 969 (1986); Accord, Bauman v. Crawford, 104 Wash. 2d 241, 704 P.2d 1181, 1185 (1985); In Re Lance W., 37 Cal. 3d 873, 694 P.2d 744, 753, 210 Cal. Rptr. 631 (1985); Broussau v. Fitzgerald, 138 Ariz. 453, 675 P.2d 713, 715 (1984); State v. Duvish, 234 Kan. 708, 675 P.2d 877, 883 (1984); Foster v. Kovich, 673 P.2d 1239, 1243 (Mont. 1983). Courts have also concluded that "[f]rom the addition of words it may be presumed that the legislature intended some changes in the existing law" Tec America v. DeKalb City Board of Tax Assessors, 170 Ga. App. 533, 317

S.E. 2d 637, 641 (1984) (quoting, C. W. Matthews Contracting Co. v. Capital Ford Truck Sales, 149 Ga. App. 354, 254 S.E.2d 426 (1979)).

Presumably by the addition of mobile homes to the definition of a motor vehicle the Legislature intended to change the existing law. This was the only change made to the statute. The presumption is stronger in the case of an isolated, independent amendment. Board of Educ. of Unified School Dist. v. Vic Regnier Builders, Inc., 231 Kan. 731, 648 P.2d 1143, 1147 (1982).

The recent addition of mobile homes to the definition of motor vehicles confirms Ohio Casualty's previous argument that mobile homes were not included in the old definition of motor vehicles.

The Legislature has now decided that mobile home buyers should have the same protection as automobile buyers but that protection was not provided by the old statute under which this case arose.


CONCLUSION

For these reasons as well as those stated in Ohio Casualty's initial briefs, Ohio Casualty respectfully requests that this Court reverse the ruling of the lower court and rule that Ohio Casualty is not liable to Shelter America in any amount.

DATED this 25th day of August, 1987.

SNOW, CHRISTENSEN & MARTINEAU

By



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Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that I caused to be mailed four (4) true and correct copies of the foregoing Supplemental Brief of Cross Appellant/Respondent to John A. Beckstead, Callister, Duncan & Nebeker, Suite 800 Kennecott Building, Salt Lake City, Utah 84133, on the 25th day of August, 1987.

