

1969

A. B. Summerhays, dba Summerhays Insurance Agency v. Carl Holm : Brief of Appellant

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2



Part of the [Law Commons](#)

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Charles E. Bradford; Attorney for Respondent Horace J. Knowlton; Attorney for Appellant

Recommended Citation

Brief of Appellant, *Summerhays v. Holm*, No. 11559 (Utah Supreme Court, 1969).
https://digitalcommons.law.byu.edu/uofu_sc2/155

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT OF THE STATE OF UTAH

A. B. SUMMERHAYS, dba SUM-
MERHAYS INSURANCE
AGENCY,

Plaintiff and Respondent,

vs.

CARL HOLM,

Defendant and Appellant.

Case No.
11559

BRIEF OF APPELLANT

Appeal from the Judgment of the
Third District Court for Salt Lake County
Hon. Bryant H. Croft, Judge

FILED

JUL 1 1969

Clerk, Supreme Court, Utah

Horace J. Knowlton
214 Tenth Avenue
Salt Lake City, Utah
Attorney for Appellant

Charles E. Bradford
1610 South Main Street
Bountiful, Utah
Attorney for the Respondent

TABLE OF CONTENTS

	Page
STATEMENT OF THE KIND OF CASE	1
DISPOSITION IN THE LOWER COURT....	1
RELIEF SOUGHT ON APPEAL	2
STATEMENT OF FACTS	2
ARGUMENT	2
POINT I. THERE BEING A MATERIAL ISSUE OF FACT AS TO THE AMOUNT OF CREDITS PAID BY THE DEFEND- ANT TO THE PLAINTIFF, THE COURT ERRED IN GRANTING PLAINTIFF'S MO- TION FOR SUMMARY JUDGMENT.	2
CONCLUSION	3

CASES CITED

Larsen v. Christensen, 21 U2d 219, 443 P2d 402....	3
Gerard v. Young, 20 U2d 30, 432 P2d 343	3
Strand v. Mayne, 14 U2d 355, 384 P2d 396	3

IN THE SUPREME COURT OF THE STATE OF UTAH

A. B. SUMMERHAYS, dba SUM-
MERHAYS INSURANCE
AGENCY,

Plaintiff and Respondent,

vs.

CARL HOLM,

Defendant and Appellant.

Case No.
11559

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This case was brought by the plaintiff for the collection of a promissory note. The defendant defended on the ground of payment.

DISPOSITION IN THE LOWER COURT

The court granted the plaintiff's motion for summary judgment.

RELIEF SOUGHT ON APPEAL

The defendant seeks to have the case remanded for trial.

STATEMENT OF FACTS

Carl Holm, the defendant, has been acting for many years as agent to sell insurance for the plaintiff. He claims that he has given to the plaintiff amounts in premiums to which he was entitled to a percentage in amounts that would have paid the note sued upon in full with the percentages to which he was entitled. Plaintiff denies that the amounts of the percentages turned in by the defendant were sufficient to pay the note, but admits in his affidavit that credits have been received since the date of the note in the amount of \$95.07 which he offered as credit on the note. The defendant by his affidavit denies the truthfulness of the affidavit of the plaintiff and claims that "the amount due and owing him from the plaintiff for premiums earned is in excess of the amount sued upon and alleges that he is in no way indebted to the plaintiff for any amount or at all.

ARGUMENT

POINT I

THERE BEING A MATERIAL ISSUE OF FACT AS TO THE AMOUNT OF CREDITS

PAID BY THE DEFENDANT TO THE
PLAINTIFF, THE COURT ERRED IN
GRANTING THE PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT.

The fact of payment is very plainly alleged by the defendant in his answer, in his affidavit and by his testimony taken at the time of the hearing on the 17th of February, 1969.

“In considering a motion for summary judgment, the basic and controlling consideration is whether there exists a genuine issue of fact.” *Larsen v. Christensen*, 21 U2d 219, 443 P2d 402.

“No ruling can be made by a trial court on summary judgment except ‘that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’ (Rule 56 U.R.C.P.)” *Mary Louise Gerard v. Preston L. Young*, 20 U2d 30, at 37, 432 P2d 343.

“On defendant’s summary judgment motion, the court surveys the evidence and all reasonable inferences fairly to be drawn therefrom in light most favorable to plaintiff. Rules of Civil Procedure, rule 56 (c).” *Strand v. Mayne*, 14 U2d 355, 384 P2d 396.

CONCLUSION

In this case the question of payment of the note becomes a genuine issue of fact, and as stated in the dissenting opinion of Chief Justice Crockett at page 38

of 20 U2d in the Gerald v. Young case above cited, the defendant should have the “privilege of a trial”.

Respectfully submitted,

HORACE J. KNOWLTON
Attorney for Defendant