

2000

# Lowell Walker v. Richard L. Sandwick and Pete R. Falvo : Brief of Respondent

Utah Supreme Court

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Don Blackham; Blackham and Boley; Attorneys for Appellants.

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IN THE SUPREME COURT  
OF THE STATE OF UTAH

LOWELL WALKER, )  
 )  
Plaintiff and )  
Respondent, )

Case No. 14266

vs. )

RICHARD L. SANDWICK and )  
PETE R. FALVO, d/b/a Sandwick )  
Motors, )

Defendants and )  
Appellants. )

\*\*\*\*\*

RESPONDENTS' BRIEF ON APPEAL

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STATEMENT OF NATURE OF CASE

Respondent, Lowell Walker, commenced an action in the Salt Lake City Court against the Defendants for the balance of premiums due on an insurance policy.

The City Court ruled against the Plaintiff and the Plaintiff appealed to the District Court and the case was tried denovo before the Honorable Marcellus K. Snow, District Judge, without a jury.

DISPOSITION IN THE LOWER COURT

The District Court entered Judgment in favor of the Plaintiff and against the Defendants in the sum of \$562.25 plus \$42.40 costs.

RELIEF SOUGHT ON APPEAL

The Appellants seek to reverse the Judgment of the District Court and the Respondent seeks the affirmance of that Judgment plus the addition of attorney's fees.

STATEMENT OF FACTS

The Respondent, Lowell Walker, was an independent insurance agent writing various insurances through the Transwestern General Agency Record - (R-p3,4).

About April, 1970 Respondent acting as an independent agent licensed under Transwestern General Agency, sold the Defendants an insurance policy issued by the Yosemite Insurance Company through Transwestern General Agency. (R-11 Exhibit D-3).

Defendants made a payment to the Plaintiff upon this insurance policy.

The Defendants (Appellants) failed to pay the premium thereafter and the Yosemite Insurance Company cancelled the policy leaving an earned premium still outstanding and due.

The Plaintiff is obligated by his contract with the General Agent to collect and remit the premiums to the General Agent and the law of the State of Utah requires the General Agent to maintain a Trust Account into which he must bank his premiums and then pay them over to his principal (less his commissions) (R- Exh 2).

ARGUMENT

POINT I

The Judgment in favor of the Respondent and against the Appellants is wholly supported by the evidence and the

Defendant gave no contradictory evidence.

While the general rule as recited in Franklin W. Baumgartner vs. John C. Burt and Grace G. Burt is that the company has the direct right to sue for and recover the premiums, and that agents do not have the right to sue in their own name except upon a showing.

The agent here has shown that he has a personal obligation to collect and remit the premium in accordance with his contract and that that evidence given by the Plaintiff agent here was uncontroverted by the Defendant (R - Exh 2).

POINT II.

That the obligation of the agent to collect the premium arises by his contract with the insurance company and not by any subrogation or assignment of premiums due and that the Plaintiff (Respondent) adequately proved that contractual obligation (R - Exh 2).

POINT III.

The State of Utah has provision that requires an insurance agent to maintain a trust account for the premiums which he collects for his company and remit the premiums from that trust account (possibly after deducting his commissions) to his principal §31-17-22 (2) U.C.A. 1953:

All funds representing premiums or returned premiums received by an agent, solicitor, or broker, shall be held by him in his fiduciary capacity and shall be promptly be accounted for and paid to the insured, insurer or agent as entitled thereto.

POINT IV.

That the Judgment of the Trial Court should be affirmed if there is evidence to support its Judgment, Jensen v. Howell 75 Ut 64.

POINT V.

The Trial Court should have granted a reasonable attorney's fee of at least \$250.00 for the Plaintiff's appearance at the Trial in the Trial Court to disprove the answers to discovery of the Defendants in accordance with Utah Rules of Civil Procedure. (Rule 37(b) (2) (E) (c) U.R.C.P.) (R-30)

CONCLUSION

The Judgment of the District Court should be affirmed and also a reasonable attorney's fee of at least \$250.00 should be assessed against the Appellants together with costs of this Appeal.

Respectfully Submitted,

FULLMER & HARDING  
Attorneys for Plaintiff-Respondent