

1987

Whitney L. Lund v. John Heinerman : Brief of Appellant

Utah Court of Appeals

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BRIEF

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870006

DOCKET NO. ~~IN THE~~ UTAH COURT OF APPEALS

WHITNEY L. LUND, et. al.
dba PAUL L. KELSO/ANYTIME TOWING,

Plaintiff/Respondent,

vs.

JOHN HEINERMAN,
Defendant/Appellant.

BRIEF OF APPELLANT

JOHN HEINERMAN

Docketing # 870006 - CA
Circuit No. 860037016SC

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COURT OF APPEALS

WHITNEY L. LUND, et. al.)	
)	BRIEF OF APPELLANT
dba PAUL L. KELSO/ANYTIME TOWING,)	
)	
Plaintiff/Respondent,)	JOHN HEINERMAN
)	
vs.)	
)	
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JOHN HEINERMAN,)	
)	Docketing # 870006 - CA
Defendant/Appellant.)	Circuit No. 860037016SC
)	

IN THE UTAH COURT OF APPEALS

BRIEF OF APPELLANT

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IN THE UTAH COURT OF APPEALS

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vs.)	
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JOHN HEINERMAN,)	
Defendant/Appellant.)	Docketing # 870006 - CA
)	Circuit No. 860037016 SC

BRIEF OF APPELLANT

JURISDICTION AND NATURE OF THE CASE

The above action was brought against Defendant/Heinerman on November 4, 1986 for having made a "stop payment" on a deposit check of \$100.00 for a used 1973 Datsun pick up, the sale price being \$500.00.

DISPOSITION IN LOWER COURT

On December 30, 1986 Defendant/Heinerman, for lack of knowledge about how to proceed in representing himself in Small Claims Court and due to fraud and false statements by the Plaintiff/Lund, was denied relief from his \$100.00 deposit to Plaintiff/Lund for a used pick up truck and the court rendered judgement to Plaintiff/Lund for \$535.00 -- the entire price of the truck being \$500.00 plus court costs of \$35.00.

ISSUES FOR REVIEW AND RELIEF SOUGHT ON APPEAL

Appellant seeks an overturn of the Small Claims Court's ruling as a result of Plaintiff/Lund's fraud and perjury and a denial of relief sought by Respondent/Lund/Kelso.

STATEMENT OF THE CASE AND FACTS

The facts before this court are scanty. The record indicates that on November 4, 1986, Defendant/Heinerman was cited for a purported bad check in the amount of \$100.00 given as a deposit on a 1973 Datsun pickup truck. The Court must assume that Defendant/Heinerman was advised of his opportunity under Utah Code Ann. §41-6-44.10 (F) to his understanding of difference between a "stop payment check" vs. a "bad check" returned for lack of funds.

It is known that Defendant/Heinerman's bank account at the time of this transaction contained \$2,576.64 as evidenced by the bank statement, of which a photocopy is herewith enclosed.

The record does not indicate whether Defendant/Heinerman was able to make this fact known to the Court, when he appeared before the Judge Pro Tem in Small Claims Court on an allegation of issuing a "bad check."

Furthermore, it is not known to what extent Defendant/Heinerman availed himself of the opportunity to cross-examine Plaintiff/Lund, especially when the Plaintiff knowingly and wilfully committed fraud on the court by saying that the vehicle had been stolen. When, in fact, the Co-Plaintiff/Kelso had actually sold said vehicle to a third party in Idaho for the full amount which he is now seeking again from the Defendant.

ARGUMENT

SUMMARY OF ARGUMENTS

On March 5, 1986 Defendant/Heinerman gave a check from his account containing a balance of \$2,576.64 to a Paul L. Kelso/Anytime Towing in the amount of \$100.00 as a deposit on a used 1973 Datsun pickup, but later on the same day he was informed that he needed to leave the United States on overseas business for an indefinite period of time; so he made a stop payment on his check and contacted Plaintiff/Kelso to advise of these events.

Some nine months later on November 4, 1986, Plaintiff/Kelso/Lund brought action for \$500.00 and a charge of issuing a "bad check". Appearing in Small Claims Court on December 30, 1986 in the Fifth Circuit Court before Judge Pro Tem, Plaintiff/Lund swore fraudulently that the pickup truck had been stolen and was subsequently granted judgement for \$535.00 against Defendant/Heinerman.

On January 26, 1987 Cpl. Ron Wall of the Salt Lake County Sheriff's Office could find no record of a theft report on a 1973 Datsun nor one ever filed by Plaintiff/Lund/Kelso, nor one filed from their address of 2894 South 8200 West, Magna, Utah.

On approximately April 29, 1986 Kelso's next door neighbor, a Mr. and Mrs. J. C. Young, inquired about the 1973 Datsun pickup to see if it was still available for purchase, but was told by Plaintiff/Kelso that the truck had been sold some time ago to a buyer from Idaho.

On January 27, 1987 a Dee Brower of 1016 East 3825 South Salt Lake City inquired at Plaintiff/Kelso's place of business in Magna, Utah if he still owned the 1973 Datsun pickup that a Dr. John Heinerman was earlier interested in. Plaintiff/Kelso's reply was to the effect that "no, that truck was sold to a party in Idaho about the first of May last year (1986)."

POINT I

JUDGEMENT WAS OBTAINED UNDER FALSE STATEMENTS

1. That this is a "stop payment issue" rather than a "bad check issue" for \$100.00, because Defendant/Heinerman's bank account showed a balance of \$2,576.64 at the time of issue.

2. That Plaintiff/Lund fraudulently swore to Judge Pro Tem that the involved vehicle had been stolen, while evidence to the contrary definitely shows that he and Plaintiff/Kelso had previously sold the vehicle to an out-of-state buyer. Plaintiff/Lund's actions show that he and Plaintiff/Kelso are greedily trying to profit twice on this vehicle.

3. Plaintiff/Lund/Kelso accused Defendant/Heinerman of failure to cancel this agreement on the vehicle, while in truth, Defendant/Heinerman learned just the same day of a call to leave the United States for 30+ days. He immediately notified Plaintiff/Kelso of this fact and Plaintiff/Kelso was also made aware that a "stop payment" order had been issued by the Defendant for reasons already cited.

4. Plaintiff/Kelso shortly thereafter resold the vehicle to an Idaho buyer, and there was no thief involved in the presumed theft of said truck as Plaintiff/Lund falsely swore under oath to later on before the Judge Pro Tem of Small Claims Court.

5. Defendant/Heinerman forgot to go and pick up this "stop payment" check; and nine months later the Plaintiffs, upon reviewing this check, permitted plain old greed to entice them into doubling their profits on this vehicle by bringing this unjust action to Small Claims Court.

POINT II

DEFENDANT/HEINERMAN, NOT BEING ACQUAINTED WITH COURT PROCEEDINGS AND BEING HARD OF HEARING, DID NOT RESPOND TO THE FRAUDULENT LIES GIVEN UNDER OATH BY PLAINTIFF/LUND BEFORE THE JUDGE PRO TEM AT TIME OF SMALL CLAIMS COURT ACTION

1. When Plaintiff/Lund appeared before Small Claims Court Judge Pro Tem, he approached the bench to within two feet of the Judge and conversed with him in low tones. Defendant/Heinerman, standing back at the railing and being somewhat hard of hearing, missed a considerable portion of the proceedings, especially where the court was fraudulently lied to by Plaintiff/Lund about -- A. the vehicle being stolen; B. that this was a bad check and not a stop payment issue; C. that Defendant/Heinerman had failed to adequately notify them.

2. The evidence shows Plaintiff/Lund wilfully deceived the Court when he lied about the vehicle being stolen; that the check of the Defendant was a bad check; and that they had not been notified by Defendant.

3. Three witnesses and one Plaintiff/Kelso admitted that the pickup truck was sold and definitely not stolen. Cpl. Ron Hall of the Salt Lake County Sheriff's Dept. could find no record of a theft report ever being made, either from Plaintiffs/Lund/Kelso or by the name of their business or by their address.

4. Mr. and Mrs. J. C. Young, next door neighbors to Paul L. Kelso/Anytime Towing at 8920 West 2900 South, Magna, Utah (phone # 250-3975) on or about April 29-30, 1986 inquired of Paul Kelso if they could purchase the 1973 Datsun pickup truck, but were given the answer that said truck had already been sold to a fellow in Idaho.

5. On January 27, 1987, a Mr. Dee Brower of 1016 East 3825 South, Salt Lake City, (phone #266-6879), visited Plaintiff/Kelso's place of business in Magna, Utah, and asked Mr. Kelso directly if he still owned the 1973 Datsun pickup truck that Defendant/Heinerman was interested in almost a year earlier. To which Plaintiff/Kelso responded: "No, that truck was sold last spring to a party living in Idaho shortly after Dr. Heinerman told us that he was leaving the country."

POINT III

JUDGE PRO TEM ACTED WITHOUT FULL FACTS

1. As the facts are analyzed, the lower court acted without full knowledge of all facts involved, not knowing that they were being deceived into thinking a loss had been suffered on the part of the Plaintiffs.

2. Plaintiffs suffered no loss whatsoever and, in fact, if this particular Judgement is allowed to stand as it, they will in effect profit twice or literally be doubling their earnings from this action.

3. Defendant/Heinerman received absolutely no benefit from this encounter: no use of a vehicle, no equity in a vehicle, and, worst of all, no vehicle, period!

4. Plaintiff/Lund sold truck for their full retail price shortly after this encounter with Defendant/Heinerman and now their greed demands that the Court assist them in profiting twice through this fraudulently-obtained judgement by being permitted to collect the truck's full price again.

Defendant/Heinerman has been harrassed and harrowed because it had been revived by the aforesaid Plaintiffs, simply because the Defendant forgot to pick up his "stop payment" check.

CONCLUSION

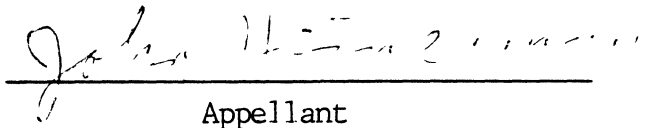
COURT IS ASKED TO OVERTURN THE UNJUST
JUDGEMENT IN FAVOR OF DEFENDANT

Two conniving men felt to profit doubly from the sale of a used vehicle , when an honest man failed to recognize the greed and deceit in others. By failing to pick up his stop payment check, these men concocted an illicit scheme to profit again from still having the check in their possession, which they had previously intended to return to its maker.

Nine months later, after no word from these men had come concerning their alleged loss in this encounter, they managed to slip into a Small Claims Court with fraudulent lies about the vehicle having been stolen in their scheme to defraud the Defendant/Heinerman of \$500.00 for an old, used truck they had previously sold and profited on.

By the unjust rendering made in their behalf, the lower court has become an unwitting victim in helping them to perpetrate their fraudulent claims further. Therefore, the Defendant/Heinerman humbly asks the Court to reverse this unjust judgement in his favor, thereby ending the deceit which Plaintiff/Lund has continually manifested thus far.

Dated April 7th, 1987.


Appellant

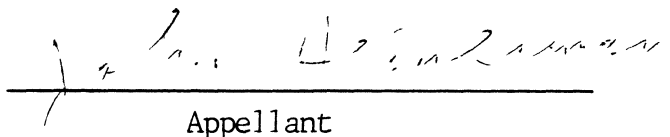
CERTIFICATE OF MAILING

The undersigned certifies that on the date below a copy of the above notice of appeal was mailed to:

Whitney Lund, POB 2502, Salt Lake City, UT 84110

with all postal and other fees prepaid.

Dated April 7th, 1987.


Appellant

EXHIBITS

FOURTH SOUTH
405 SOUTH MAIN
P.O. BOX 720
SALT LAKE CITY UT 84110

**First
Security**

BANK PHONE NUMBER (801) 350-1359

STATEMENT DATE
MARCH 31, 1986

B

PREVIOUS STATEMENT
FEBRUARY 28, 1986

ANTHROPOLOGICAL RESEARCH CENTER
PO BOX 11471
SALT LAKE CITY UT 84147

PAGE 1

ACCOUNT NUMBER	ACCOUNT TYPE	PREVIOUS BALANCE	NO	DEPOSITS AMOUNT	REGULAR CHECKS NO	REGULAR CHECKS AMOUNT	OTHER DEBITS NO	OTHER DEBITS AMOUNT	CURRENT BALANCE
1-00224-69	CHECKING	2,652.74	7	4,780.00	39	4,761.18	2	94.92	2,576.00

** TAX IDENTIFICATION NUMBER 529-66-6007 **

DEPOSITS AND OTHER CREDITS TO CHECKING ACCOUNT

REFERENCE NUMBER	DESCRIPTION	DATE	AMOUNT
0001410	DEPOSIT	03-05-86	500.00
0001411	DEPOSIT	03-10-86	400.00
0001412	DEPOSIT	03-18-86	20.00
	DEPOSIT	03-20-86	300.00
	DEPOSIT	03-21-86	685.00
0001413	DEPOSIT	03-31-86	365.00
	DEPOSIT	03-31-86	2,510.00

7 DEPOSITS 4,780.00

REGULAR CHECKS

CHECK NO	AMOUNT	DATE	CHECK NO	AMOUNT	DATE	CHECK NO	AMOUNT	DATE	CHECK NO	AMOUNT
10 1526	200.00	03-03	1560	109.50	03-10	1571	50.00	03-24	1581	6
04 1549*	325.00	03-05	1561	50.00	03-18	1572*	13.75	03-18	1582*	4
06 1552*	57.96	03-07	1562	15.00	03-18	1573*	15.00	03-14	1583	5
04 1553	200.00	03-24	1563	50.00	03-12	1574	65.00	03-20	1585*	
06 1554	26.00	03-11	1565*	17.29	03-14	1575	45.00	03-24	1586	34
06 1555	418.70	03-07	1566	100.00	03-13	1576	26.27	03-27	1587*	16
03 1556	471.50	03-10	1567	400.00	03-18	1577*	58.11	03-31	1588	15
06 1557	75.00	03-14	1568	243.23	03-14	1578	19.46	03-31	1589*	3
04 1558	100.00	03-13	1569	30.14	03-14	1579	171.49	03-25	1593*	12
04 1559	300.00	03-19	1570*	60.00	03-24	1580	50.00			

39 REGULAR CHECKS 4,761.18

OTHER DEBITS

REFERENCE NUMBER	DESCRIPTION	CHARGE	DATE PAID	AMOUNT
	ANALYSIS	CHARGE	03-17-86	84.92
	SPEC HANDLING	CHARGE	03-27-86	10.00

2 OTHER DEBITS

94.92

DAILY BALANCE SUMMARY

E	BALANCE	DATE	BA'
03	2,071.74	03-07	
04	1,146.74	03-10	
05	1,596.74	03-11	
06	1,019.08	03-12	

On or about the third week in April Paul's wife had stated the situation concerning the green Toyota truck had gone bad and a resale was being considered. As of the last week in April or first of May My husband and I inquired about purchasing the vehicle at which time Paul stated he had sold it. We are residing next door to Paul's previous address. We were his neighbors from approximately Nov 85 to Oct. 86. Thank you

Mrs. J. C. Young
18920 W. 2800 S. Magna, UT.
Records Div. S.P.C. Sheriff's Office has no record of (250-3975)
a stolen vehicle report from Mr Kelso of address 2894 S 8900 W.
1-26-87 Cpl Ron Wall

ID 52 REV 2/82 1Y

To: 061 OFFICE
First Security Bank of Utah
NATIONAL ASSOCIATION

STOP PAYMENT REQUEST

TRANSACTION CODE ☐ - 27 ENTER

Anthropological Research Center

ACCOUNT NAME

061-00224-69

ACCOUNT NUMBER

3-5-

DATE

1986

Please stop payment on Check No. 1551

In the amount of \$ 100.00

Dated 3-2- 19 86

in favor of Anytime towing / Paul Kelso

In requesting you to stop payment of this item, the undersigned agrees to hold you harmless for all expenses and costs incurred by you on account of refusing payment thereof, and further agrees not to hold you liable on account of payment contrary to this request if same occur through inadvertance, accident or oversight or if by reason of such payment other items drawn by the undersigned are returned because of insufficient funds.

This request is effective for 6 months, but renewals may be made from time to time. No renewal or withdrawal hereof shall be valid unless in writing and served at the bank.

Reason(s) for wishing payment stopped: Rejected 3.5.86

You are hereby authorized to charge my account with Stop Payment fee of \$ Analysis

Date stopped: 19

Time request received: 19

The above request is withdrawn: Date 19

TRANSACTION CODE ☐ - 28 REMOVE

SIGNATURE OF DEPOSITOR

SIGNATURE OF DEPOSITOR

January 27, 1987
Salt Lake City, Utah

To whom it may concern:

On January 26, 1987 approximately 3 p.m. I drove to Magna, Utah, to Paul Helso's residence and place of business, 2894 South 8900 West, and found it vacant--so I went next door to a Mrs. J. C. Young at 8920 West 2900 South who informed me that Paul Helso had moved to 3500 South 8700 West. I found Paul at this red building. I asked Paul Helso if he still owned the green Datsun pickup truck he earlier was going to sell to Dr. John Reinerman. Paul Helso said, Oh, no, that was sold to a fellow in Idaho shortly after John had put a stop payment on the check.

Dee Brower
Dee Brower

*016 E 3825 S.
Salt Lake City, UT
84106*

SUBSCRIBED AND SWORN TO before me this 28th day of January
19 87.

Christina [Signature]
Notary Public

Residing at LLC

My comission expires 4-20-87