

1976

Kirk Nelson dba Nelson Sheet Metal v. Richard Watts dba Richard Watts Construction Company and Leon Carver : Appellant's Reply Brief

Utah Supreme Court

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KIRK MONTGOMERY
METAL,

VS.

RICHARD E. MONTGOMERY
CONSTRUCTION
CARVER,

Defendant

Appeal from

Dale M. Dorius
P. O. Box U
29 South Main Street
Brigham City, Utah 84302
Attorney for Plaintiff-
Respondent

IN THE SUPREME COURT
OF THE STATE OF UTAH

KIRK NELSON dba NELSON SHEET)
METAL,)

Plaintiff and Respondent,)

vs.)

Case No. 14956

RICHARD WATTS dba RICHARD WATTS)
CONSTRUCTION COMPANY and LEON)
CARVER,)

Defendants and Appellant.)

APPELLANT'S REPLY BRIEF

Appeal from Judgment of the First Judicial District
Court for Cache County, Utah

Lyle W. Hillyard
175 East First North
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Attorney for Defendant-
Appellant

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IN THE SUPREME COURT
OF THE STATE OF UTAH

KIRK NELSON dba NELSON SHEET
METAL,

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CONSTRUCTION COMPANY and LEON
CARVER,

Defendants and Appellant.

APPELLANT'S REPLY BRIEF

Rather than to review the contested facts as alleged by Respondent, may it be pointed out that the facts most supportive of the Respondent's position as set forth in Appellant's brief are his own self-serving testimony and that of his relative. This testimony is vague and is contradicted by the following evidence: (a) Appellant's denial of any agreement; (b) Carver's lack of recall of any agreement; (c) failure of Respondent to obtain a written contract contrary to Appellant's undisputed normal course of business and prior dealings with Respondent; and (d) Respondent's initial billing to Carver alone at his business office in Brigham City.

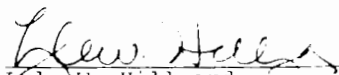
Carver's sub-contract included the sheet metal work and his billings were never reduced to show he no longer was responsible for its completion. Carver was paid the bulk of his bid. It was undisputed that had the Respondent delivered the initial bill in March, 1970, to the Appellant who he now claims

in Brigham City, the Appellant would have had notice in time to have held up a big payment sent to Carver on the bid and the Respondent would have been paid.

Issues of fact in the instant case should clearly be resolved in Appellant's favor. The lower court "found" nothing (Respondent's Brief, page 3); rather, the jury gave judgment to Respondent in spite of a preponderance of evidence to support Appellant's position. Significantly, Respondent could not respond to the fact that he had billed Carver at Carver's address in March, 1970, before he decided to bill both Carver and Appellant at Appellant's address. He joined Carver as a named Defendant as late as 1974. Further, Respondent did not endeavor to protect himself in any way through written agreement or through lien rights afforded by law. The jury ignored uncontroverted, credible evidence in reaching the verdict. Lund vs. Phillips Petroleum Co., 351, p. 2d, 952, 955 (Utah 1960).

For the protection of the parties above and for those similarly situated, the verdict should be overturned and the Complaint dismissed as no cause of action. Appellant should be awarded his costs.

DATED this 15th day of December, 1976.


Lyle W. Hillyard
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Logan, Utah 84321

CERTIFICATE OF MAILING

I hereby certify that I mailed eleven (11) copies of the foregoing Appellant's Reply Brief to the Utah Supreme Court of Utah, two (2) copies to the Plaintiff-Respondent's attorney, Dale M. Dorius, P. O. Box U, 29 South Main Street, Brigham City, Utah 84302, this 11th day of December, 1976.

Steven L. Appleton