

1996

Michael Erhart v. Waste Management of Utah, Inc. : Reply Brief

Utah Court of Appeals

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COURT NO 960506-CA

UTAH COURT OF APPEALS

MICHAEL ERHART,

Plaintiff and Appellant,

v.

**WASTE MANAGEMENT OF UTAH,
INC.,**

Defendant and Appellee.

Case No. 960506-CA

Argument Priority No. 15

REPLY BRIEF OF THE APPELLANT

Appeal from an Order Granting Defendant's Motion for Summary
Judgment in the Third Judicial District Court in and for Salt Lake County,
State of Utah, the Honorable David S. Young, Judge.

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TABLE OF CONTENTS

INTRODUCTION	1
STATUTES, RULES AND CONSTITUTIONAL PROVISIONS	1
ARGUMENT	
SUMMARY JUDGMENT WAS IMPROPER BECAUSE WHETHER DEFENDANT HAD ACTUAL OR CONSTRUCTIVE NOTICE OF DANGEROUS CONDITIONS WITH THE FLOOR OF THE TRAILER IS A QUESTION OF FACT FOR THE JURY	2
CONCLUSION	4

TABLE OF AUTHORITIES

CASES CITED

<u>Bowen v. Riverton City</u> , 656 P.2d 434 (Utah 1982)	2
<u>Bushnell Real Estate, Inc. v. Nielson</u> , 672 P.2d 746 (Utah 1983)	2
<u>Ferree v. State</u> , 784 P.2d 149 (Utah 1989)	2
<u>Higgins v. Salt Lake County</u> , 855 P.2d 231 (Utah 1993)	2
<u>Jackson v. Dabney</u> , 645 P.2d 613 (Utah 1982)	2
<u>King v. Searle Pharmaceuticals, Inc.</u> , 832 P.2d 858 (Utah 1992)	2
<u>Ohlson v. Safeway Stores, Inc.</u> , 568 P.2d 753 (Utah 1977)	3
<u>Pollari v. Salt Lake City</u> , 176 P.2d 111 (Utah 1947)	3
<u>Versluis v. Guaranty National Cos.</u> , 842 P.2d 865 (Utah 1992)	2

RULES

Utah R.Civ.P. 56(c)	2
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REPLY BRIEF OF THE APPELLANT

INTRODUCTION

The jurisdictional statement, issues presented for review and standards of review, statement of the case, and facts have all been previously presented. Brief of Appellant at 1-5. Appellant presents this brief in reply to issues raised by the Appellee in its brief.

STATUTES, RULES, AND CONSTITUTIONAL PROVISIONS

Any statutes, rules, and constitutional provisions relevant to the disposition of this appeal are set forth in the text of this brief.

ARGUMENT

SUMMARY JUDGMENT WAS IMPROPER BECAUSE WHETHER DEFENDANT HAD ACTUAL OR CONSTRUCTIVE NOTICE OF DANGEROUS CONDITIONS WITH THE FLOOR OF THE TRAILER IS A QUESTION OF FACT FOR THE JURY

Summary judgment is proper only when no genuine issues of material fact remain and the moving party is entitled to judgment as a matter of law. Utah R.Civ.P. 56(c);

Higgins v. Salt Lake County, 855 P.2d 231, 235 (Utah 1993). “We determine only whether the trial court erred in applying the governing law and whether the trial court correctly held that there were no disputed issues of material fact.” Ferree v. State, 784 P.2d 149, 151 (Utah 1989) (citing Bushnell Real Estate, Inc. v. Nielson, 672 P.2d 746, 749 (Utah 1983); Bowen v. Riverton City, 656 P.2d 434, 436 (Utah 1982)).

Accordingly, “[b]ecause this is an appeal from a summary judgment, the appellate court must review the factual submissions to the trial court in a light most favorable to finding a material issue of fact.” Versluis v. Guaranty National Cos., 842 P.2d 865, 867 (Utah 1992) (citing King v. Searle Pharmaceuticals, Inc., 832 P.2d 858 (Utah 1992)). “A genuine issue of fact exists where, on the basis of the facts in the record, reasonable minds could differ” on any material issue. Jackson v. Dabney, 645 P.2d 613, 615 (Utah 1982).

Defendant argues on appeal that Plaintiff failed to submit to the trial court any material evidence regarding when a dangerous condition arose, whether the Defendant

had actual knowledge of a dangerous condition existing in the floor at the time Plaintiff fell, or that a dangerous condition existed or was observable when the prior repairs were made, and as such, summary judgment was proper. To the contrary, the evidence before the trial court and in the record clearly demonstrates that TIC called Modulaire in February or March, 1992 and requested repairs to the floor of the trailer due to water damage as a result of faulty seals around the doors. Someone not associated with TIC came to the trailer and performed some repairs in the area of the front door. Such repairs included installing new support members, new subfloor material and replacing floor tile. By calling and requesting that Modulaire come and repair the water damage to the floor of the trailer, TIC placed Defendant on notice that a dangerous condition existed with the floor in the area of the front door.

Defendant's argument fails to consider that whether Defendant had notice of dangerous conditions with the floor of the trailer is a question of fact for the jury. Ohlson v. Safeway Stores, Inc., 568 P.2d 753, 755 (Utah 1977); Pollari v. Salt Lake City, 176 P.2d 111, 116 (Utah 1947). A reasonable jury could conclude that Defendant had actual or constructive notice that a dangerous condition existed in the floor of the trailer. Additionally, as Plaintiff argued in his opening brief, the evidence demonstrates that Plaintiff's injury occurred in the area where Defendant had made repairs to the floor of the trailer some months before.

Summary judgment is proper only when no genuine issues of material fact remain and the moving party is entitled to judgment as a matter of law. In this case, there are

numerous issues of material fact in dispute, including whether Defendant had notice of the dangerous condition, whether Plaintiff fell in the area of the repairs, and the nature and extent of those repairs. Such questions are questions of fact and are properly reserved for the jury. Granting summary judgment in this case was improper.

CONCLUSION

The trial court erroneously granted Defendant's Motion for Summary Judgment when it concluded that Plaintiff presented no evidence upon which a jury could conclude that the Plaintiff received his injuries in the area where repairs had been performed some months prior to the accident. Viewed in the light most favorable to Plaintiff, the evidence clearly shows that Plaintiff fell through the floor in the area of the repairs. Such a logical conclusion is exactly opposite of the trial court's ruling.

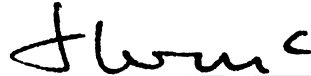
Additionally, whether Defendant had notice that a dangerous condition existed with the floor of the trailer is a question of fact for the jury and is not appropriate for the trial court to decide in summary judgment. Defendant's argument that Plaintiff presented insufficient evidence as to the nature and extent of the dangerous condition fails to consider that determination of those material issues is a question of fact for the jury.

Wherefore, Plaintiff respectfully requests this Court to reverse the trial court's Order granting summary judgment and remand to allow Plaintiff to present his case on the merits to the jury.

Dated this 4 day of December, 1996.

Respectfully submitted,

PARKER, McKEOWN & McCONKIE:



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CERTIFICATE OF SERVICE

I hereby certify that two (2) true and correct copies of the above and forgoing
REPLY BRIEF OF THE APPELLANT were either hand delivered or mailed by United
States Mail, postage prepaid, this 4 day of December,
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