

1977

Archie Clarence Pace v. Brookfield Products, Inc : Reply Brief

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

J. Harold Call; Attorney for Respondent.

Sidney G. Baucom, Thomas W. Forsgren; Attorneys for Appellant.

Recommended Citation

Reply Brief, *Pace v. Brookfield Products*, No. 197714542.00 (Utah Supreme Court, 1977).
https://digitalcommons.law.byu.edu/byu_sc1/423

This Reply Brief 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 by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH
DOCUMENT
KFU
45.9
.S9
DOCKET NO.

UTAH SUPREME COURT

BRIEF

145-42AR B

RECEIVED
LAW LIBRARY

1 JUN 1977

EME COURT

OF THE STATE OF UTAH

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

ARCHIE CLARENCE PACE,
Plaintiff-Respondent

v.

BROOKFIELD PRODUCTS, INC.,
et al.,
Defendant-Appellant.

Case No. 14542

REPLY BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM THIRD JUDICIAL DISTRICT COURT
OF SUMMIT COUNTY

HONORABLE MARCELLUS K. SNOW, PRESIDING

SIDNEY G. BAUCOM
THOMAS W. FORSGREN
1407 West North Temple
Salt Lake City, Utah 84110

Attorneys for Defendant-Appellant

J. HAROLD CALL
30 North Main Street
Suite No. 3
Heber City, Utah 84032

Attorney for Plaintiff-Respondent

IN THE SUPREME COURT
OF THE STATE OF UTAH

ARCHIE CLARENCE PACE, :
 :
 Plaintiff-Respondent :
 :
 v. : Case No. 14542
 :
 BROOKFIELD PRODUCTS, INC., :
 et al., :
 Defendant-Appellant. :

REPLY BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM THIRD JUDICIAL DISTRICT COURT
OF SUMMIT COUNTY

HONORABLE MARCELLUS K. SNOW, PRESIDING

SIDNEY G. BAUCOM
THOMAS W. FORSGREN
1407 West North Temple
Salt Lake City, Utah 84110

Attorneys for Defendant-Appellant

J. HAROLD CALL
30 North Main Street
Suite No. 3
Heber City, Utah 84032

Attorney for Plaintiff-Respondent

TABLE OF CONTENTS

REPLY TO PLAINTIFF-RESPONDENT'S POINTS OF ARGUMENT -----	1
REPLY TO POINT I -----	1
REPLY TO POINT II -----	2
CONCLUSION -----	3
CERTIFICATE OF SERVICE -----	4

IN THE SUPREME COURT
OF THE STATE OF UTAH

ARCHIE CLARENCE PACE, :
 :
 Plaintiff-Respondent :
 :
 v. : Case No. 14542
 :
 BROOKFIELD PRODUCTS, INC., :
 et al., :
 :
 Defendant-Appellant. :

REPLY BRIEF OF DEFENDANT-APPELLANT

Plaintiff-Respondent in his brief argues two points:

1. Under theory of "first in first out doctrine" the obligation of Plaintiff-Respondent has been paid.
2. It was the intention of Defendant-Appellant to apply the payments to the oldest part of the debt.

REPLY TO POINT I

Plaintiff-Respondent in his argument on Point I states, in effect, that ~~the~~ in the absence of agreement payments on an open account are applied to the senior debt and from that alleged rule of law it is concluded by Plaintiff-Respondent that his admitted obligation to Defendant-Appellant has been satisfied.

Defendant-Appellant submits that the position and argument of Plaintiff-Respondent assumes the very question of fact which is in issue, i.e., whether or not payments were made to Defendant-Appellant. Defendant-Appellant, in response to Plaintiff-Respondent's Interrogatory No. 4 asking for a list of all payments received by Defendant-Appellant on the open account in issue, answered that no payments on that account have been made. Accordingly, Defendant-Appellant would submit that the question here is not how to apply payment but whether or not payments were made. There is a question of fact and should be left for determination by a jury.

REPLY TO POINT II

Plaintiff-Respondent in his argument on Point II states that "it was the intention of Defendant-Appellant to apply the payments to the oldest part of the debt." It is assumed again that payments toward the admitted debt of Plaintiff-Respondent have been made, but the state of the record at this time is that Defendant-Appellant denies that payments have been made. The question of whether or not payments have been made is a factual one and should be determined by a jury. The question of Defendant-Appellant's intention concerning the application of payments, if any, to debt then properly would be in issue.

CONCLUSION

Defendant-Appellant respectfully submits that Plaintiff-Respondant's brief supports Defendant-Appellant's position that there are genuine issues as to material facts in this action and that based upon the pleadings, answers to interrogatories and admissions on file, Plaintiff-Respondent is not entitled to a judgment as a matter of law.

RESPECTFULLY SUBMITTED,

SIDNEY G. BAUCOM
THOMAS W. FORSGREN
Attorneys for Defendant-Appellant
30 North Main Street
Suite No. 3
Heber City, Utah 84032

CERTIFICATE OF SERVICE

The foregoing Reply Brief of Defendant-Appellant was served on Plaintiff-Respondent this 15th day of October, 1976, by mailing a copy of same, postage prepaid, to his attorney, J. Harold Call, Esq., 30 North Main Street, Suite #3, Heber City, Utah 84032, and upon Elliott Lee Pratt, Esq., attorney for defendants Pace, 351 South State Street, Salt Lake City, Utah 84111 and upon Ray G. Martineau, Esq., Attorney for defendant Kamas State Bank, 36 South State Street, Salt Lake City, Utah 84111.

