

1977

Russ Bullock, June Mundy Bullock v. Joe Bailey
Auction Company, Et Al, Joe Bailey Auction Co. v.
Western Surety Company : Brief of Appellants

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

RUSS BULLOCK, JUNE MUNDY :
BULLOCK, :

Plaintiffs and :
Appellants, :

-vs- :

JOE BAILEY AUCTION COMPANY, :
et al, :

Defendants and :
Respondents, :

Case No. 14845

JOE BAILEY AUCTION CO., :

Third Party Plaintiff and :
Respondent, :

-vs- :

WESTERN SURETY COMPANY, :

Third Party Defendant and :
Appellant, :

BRIEF OF APPELLANTS

APPEAL FROM JUDGMENT IN THE FIFTH JUDICIAL
DISTRICT COURT, IN AND FOR WASHINGTON COUN-
TY, STATE OF UTAH, THE HONORABLE J. HARLAN
BURNS, JUDGE, PRESIDING

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Third Party Plaintiff and :
Respondent, :

-vs- :

WESTERN SURETY COMPANY, :

Third Party Defendant and :
Appellant, :

BRIEF OF APPELLANTS

STATEMENT OF THE NATURE OF THE CASE

Appellants Russ Bullock and June Mundy Bullock commenced this action seeking a temporary restraining order prohibiting respondent Joe Bailey Auction Co., Inc., from reclaiming equipment sold by Bailey to Bullocks. Respondent Bailey filed a counterclaim against Bullocks and a third party claim against appellant Western Surety Company, the corporate surety under the temporary restraining order. Against the Bullocks, respon-

dent sought recovery of damages allegedly suffered by reason of the Bullocks' breach of the equipment sales agreement, including expenses of resale and loss of commission due to lower resale price. Respondent also sought damages from the Bullocks and the appellant corporate surety for expenses incurred by reason of the allegedly wrongful issuance of the temporary restraining order.

DISPOSITION BELOW

The trial court dissolved the temporary restraining order, and at trial dismissed appellant Bullocks' complaint and entered judgment in favor of respondent on its counterclaim and third party complaint.

RELIEF SOUGHT ON APPEAL

Appellants Russ Bullock and June Mundy Bullock seek reversal of the judgment against them for expenses incurred by respondent Bailey in reselling the equipment and for loss of commission due to the lower resale price on the ground that respondent's reclamation of the equipment bars any other remedy.

Appellants Russ Bullock, June Mundy Bullock and Western Surety Company seek reversal of the judgment entered against them for wrongful issuance of the temporary restraining order on the ground that the order was not wrongful, but was issued under proper circumstances.

Appellants Russ Bullock, June Mundy Bullock and Western Surety Company seek reversal of the judgment entered against them on the counts of respondents' counterclaim

as to the amounts awarded by the Court as damages, which are unsubstantiated by the evidence presented at trial.

STATEMENT OF FACTS

In late 1972, the appellants Russ Bullock and June Mundy Bullock, then June Mundy, planned to enter the water-well drilling business in Southern Utah. Negotiations were entered into with a leasing company to arrange financing for a 5-year lease and purchase of the necessary equipment. The appellants arranged to attend an auction to be conducted by respondent in Ventura, California on December 15, 1972.

The morning of the auction appellants contacted Mr. Parkes Shewmake, an auction official. Mr. Shewmake is one of respondent Bailey Auction Company's officers, and his photograph and name were printed on auction brochures. Exhibits D-2 and D-3. According to the uncontroverted testimony of June Mundy Bullock, appellants met with Shewmake at Shewmake's motel room on the morning of the auction. Transcript (hereinafter T) 29:15-30. Bullocks told Shewmake that they had arranged financing, and they together planned to verify the financing by telephone because a written document was not available. T 29:19. Phone verification of financing was made between representatives of the leasing company and auction company. T 33:19-34:5. The auction was underway at this time, but Bullocks had not yet been allowed to bid. T 37:14-38:9. After the verification was made, Parkes Shewmake did the bidding for Bullocks, selecting the equipment they would need. T 50:9-20.

The Bullocks were successful bidders on several lots of equipment comprising a complete drilling outfit. The equipment was not then in operable condition however, and was left on the auction site. The site was controlled by some third parties who had been involved in the auction, and for their convenience, the equipment was moved to another spot on the same site within a few weeks. T 59:7-16. Though respondent Bailey's guard was on the site for ten days (T 115:9), the successful bidders were responsible for any loss of their equipment. T 170:4-10, 175: 4-11.

Two weeks later, after the first of the year, the Bullocks returned to the auction site. Repairs eventually costing several thousand dollars were begun on the equipment. As the equipment was repaired, it was moved to Utah. Shewmake, an agent of respondent Bailey Auction Company, was aware of the repairs and moving of equipment, having been present when repairs were being made. T 53:27; T 54; T 93:13; 94:8. Joe Bailey, President of respondent Bailey Auction Company, claimed he was not personally aware of the repairs or moving. T 116:18. Bailey indicated, however, that he was personally unaware of what Shewmake knew or did as an auction company official. T 116:26, 122:16.

The equipment remaining at the lot was entrusted by Bailey Auction Company to the parties who were controlling other activities on the premises. T 115:17-24. These parties were cooperative with the truck driver who transported the

equipment to Utah, and indicated to him equipment on which Bullocks had been successful bidder. T 105:28; 107:11-108:22.

Meanwhile, unexplained difficulties delayed the financing. In mid-January, 1973, as the equipment was being moved to Utah, Mrs. Bullock met with Parkes Shewmake and a representative of the leasing company in Las Vegas, Nevada to discuss these financing problems. Shewmake was aware Mr. Bullock was not present because he was moving equipment to Utah. T 69:8. This testimony is uncontroverted. Following a phone call to Bailey the leasing company representative suggested that Mrs. Bullock should make out a personal check in the amount due for the equipment to give some evidence of her intent to make payment. T 71. The check was marked on the reverse: "Not to be presented to the bank for collection until adequate financing is completed." T 14:8. Joe Bailey, however, attempted to negotiate the check a few days later. The day after the January meeting, the leasing company executed a letter of intent to grant financing to further reassure Bailey Auction Company. Exhibit P-3.

After the last piece of equipment went in transit to Utah in late February, 1973, Joe Bailey called the parties who controlled the lot, and objected to the moving of the equipment. Those individuals spoke with Mrs. Bullock, but the question was moot as all the equipment was gone. T 74.

By March, 1973, all the equipment had been transported to Washington County, Utah, and was being guarded by a Bullock employee, Bob Hood. Hood informed Mrs. Bullock on March 4

that Bailey Auction Company's accountant was in town and intended to sell the equipment. T 77:23. At trial, Mr. Bailey testified that he had already contacted other bidders on the equipment at this time, sold part of the equipment in question to one or more of them and the purchasers had sent trucks to Utah (T 136:18-27), but these facts were then unknown to the Bullocks. T 117:26-118:1. Because of the threat of dispossession, Bullocks obtained the temporary restraining order March 4, 1973, at 2:00 p.m. As a result of the issuance of this order, the intended purchaser's trucks were unable to obtain the equipment, and returned to Texas empty. T 136:27-137:8. Record, p. 219 ¶4. The expense of this trip was assessed against appellants. Costs allegedly incurred by Bailey Auction Company to come to St. George to have the temporary restraining order lifted were also allowed as damages by the trial court. When the temporary restraining order was dissolved March 8, 1973, at 4:00 p.m. (T 18:9), the equipment was removed from Utah and subsequently sold.

It was stipulated and testified at trial that the resale of the goods was without notice to the Bullocks (T 19:5; 118:18-22; 200:4-8), and without published notice. T 118:11. The court, nonetheless, assessed against appellants the costs of resale (\$500.00) and the amount of diminution of respondents' commission caused by an allegedly lower resale price (\$750.00). Appellants, being without notice of the resale, obviously were unable to arrange financing to

rebid the equipment, which had been greatly improved and repaired at appellants' expense.

ARGUMENT

Appellants Russ Bullock and June Mundy Bullock maintain that the judgment below was erroneous in assessing damages against them for costs of resale incurred by Bailey Auction Company and the amount of diminution in commission occasioned by resale at a lower price than that bid by Bullocks. Such judgment was erroneous because Bailey Auction Company elected its remedy by reclaiming the sold goods, and thus is precluded from any further recovery.

Appellants Russ Bullock and June Mundy Bullock and Western Surety Company maintain that assessment of any damage against them for losses or expenses due to the temporary restraining order judgment was erroneous. The claim of error is made because allowance of such a judgment would vitiate the Uniform Commercial Code, and there is no factual basis or legal theory for such a judgment declaring the issuance of the temporary restraining order improper.

POINT I

RECLAMATION OF THE AUCTIONED GOODS BARS ANY OTHER RECOVERY

In the present case, recovery of the auctioned equipment was effected by the respondent. Respondent contends, however, that he is further entitled to recovery of expenses and loss occasioned by resale. Allowance of both of these remedies is precluded by Article 2 of the Uniform Commercial Code.

a. Article 2 of the Uniform Commercial Code governs this case

Auctions are clearly within the scope of Article 2, the Sales article, by specific inclusion. Utah Code Ann. 70A-2-328. The statute itself adopts the language of treatise and case authority in stating that "[a] sale by auction is complete when the auctioneer so announces by the fall of the hammer," Utah Code Ann. 70A-2-328(2).

Though respondent contended below that no sale was made because there was no payment, the court did not so find. While the Findings of Fact and Conclusions of Law state that a condition of the sale was payment "by cash, cashier's check, or acceptable financing," (Record p. 218 ¶5.) and that such payment "was a condition precedent to the consummation [sic] of such sale," (Record p. 218 ¶3) that does not mean there was no sale. Since consummation in its usual sense means "to complete or to carry out," the finding that payment was a condition precedent to the completion of obligations under the sale is consistent with the existence of a sale contract subject to Article 2. The contract made at the fall of an auctioneer's gavel is executory, State v. Clinger, 238 P.2d 1145 (Idaho 1951), because the fall of the gavel only signifies acceptance of the offered bid and formation of a contract (see Corbin on Contracts, (One Vol. Ed) § 108 (1952), Restatement (Second) of Contracts § 27), not that the obligations of the contract are discharged.

In respondents' counterclaim an auction sale is clearly pled. Record 31 ¶4. Furthermore, prior to putting

on evidence, it was stipulated to that the property in question was sold by the Bailey Auction Company to the Bullocks. The testimony of Joe Bailey was replete with the use of the words buy, sell, sale, purchase and purchaser. T 8:28-9:1; T 169:15-16. In fact, Mr. Bailey admitted that the bid was accepted when the actioneer said sold and that the responsibility for the items then rested with the bidder. T 175:8-11. The facts in this case clearly fall within the definition of a sale as set forth in 70A-2-328, subject to Article 2. This case is one of offer, acceptance and breach of contract by the Plaintiffs.

Though the sale agreement had terms and conditions one of which was payment there was a sale agreement nonetheless. That fact brings the transaction within Article 2 of the Code. The fact that there has been no payment did not mean there was no agreement, it simply meant there had been a breach of the sale agreement by the appellants.

b. Under Article 2 reclamation of goods bars any other remedy.

Remedies under Article 2 are enumerated in Part Seven. A seller's remedies for buyer's breach in general are found in U.C.A. 70A-2-703. Remedies enumerated are withholding or stopping delivery of undelivered goods, reselling the undelivered goods and recovering the damages, recovery of damages for nonacceptance of undelivered goods, or cancellation of the sale with respect to goods yet undelivered. This section does not give the seller the right to repossess its goods. The official comment to Section 70A-2-703 states that

"[T]his section is an index section which gathers together in one convenient place all of the various remedies open to a seller for any breach by the buyer." A preceding section, §70A-2-702 does give the seller a limited right to reclaim the goods from the buyer upon the buyer's insolvency. 67 Am. Jur. 2d, "Sales", §575. A similar right of reclamation exists under §70A-2-507(2). This should not be confused with the right of repossession under Article 9 of the Code dealing with secured transactions.

Under Article 2 the reclamation may only be made under certain terms and conditions and "[s]uccessful reclamation of goods excludes all other remedies with respect to them." (Emphasis added) U.C.A. 70A-2-702(3). Because the respondent Bailey Auction Company reclaimed the goods in question the phrase just cited from §70A-2-702 should be dispositive of this case. Respondent Bailey Auction Company's reclamation of the goods prohibits the grant of other remedies. Paragraph 3 of the official comment to §70A-2-702 indicates the theory behind this one action concept of Article 2. Reclamation under 70A-2-702 allows such preferential treatment as against other creditors, that no other remedy is to be allowed a seller if a breach is remedied by reclamation.

The remedies claimed by the auction company in the present case are actually those specified in 70A-2-703(d) (authorizing resale and recovery of damages) and 70A-2-706, (outlining the procedure for resale and recovery), and 70A-2-710 (allowing incidental damages.) All of these reme-

dies, however, assume that the goods were never removed from the Seller's control and thus never "reclaimed" as provided under Section 70A-2-702. Respondent, nevertheless, was granted judgment for the costs of resale (\$500.00) and the diminution in his commission by reason of the lower resale price after his reclamation of the goods (\$750.00). Further, the trial court allowed a deficiency judgment and incidental damages, when all of remedies are expressly barred by 70A-2-702(3).

This argument, that reclamation precludes the award of a deficiency judgment was made before the trial court, T 135:1-3, and in appellants' Memorandum of Points and Authorities submitted December 22, 1975. Record, p. 190. The trial court's failure to apply Section 70A-2-702(3) to this fact situation thus disallowing any remedy beyond the self-help reclamation was error.

c. Respondents' failure to comply with other sections of the Code bars the remedies granted.

Respondent claimed, and was awarded damages for the deficiency of the commission he actually received as compared to the commission he would have received had appellants made payment under the sale agreement. Section 70A-2-706 allows such a deficiency judgment only in a situation where Seller has the right to resell goods, for example, where a breach occurs prior to delivery. This section of the Code requires that the resale be made in good faith and in a reasonable manner, and where the resale is private, the Seller must give the Buyer reasonable notice

of his intent to resell. The evidence was uncontradicted that Bailey Auction Company failed to notify the appellants of its intention to resell. T 19:5; 118:18-22; 200:4-8. Furthermore, the evidence showed that at the time of repossession, three trucks were enroute from Abilene, Texas, on behalf of a buyer who had purchased part of the equipment in question. T 136:18-27.

Article 9 of the Uniform Commercial Code contains language very similar to that found in Section 2-706 allowing deficiency judgments. Under §70A-9-504 where a secured party fails to give notice to the debtor of a sale, courts almost uniformly hold that the secured party is denied any deficiency rights he may have had against the debtor. Skeels v. Universal CIT Credit Corp., 222 F.Supp. 696, 1 UCC Rep.Serv. 639 (W.D. Pa. 1963). See, One Twenty Credit Union v. Darcy, 40 Mass. App.Dec. 64, 5 UCC Rep.Serv. 792 (1968); In re Bro. Cliff, Inc., 8 UCC Rep.Ser. 1144 (Ref.Dec.W.D.Minn. 1971); Associated Discount Corp. v. Cary, 47 Misc. 2d 369, 262 N.Y.S. 646 (Civ. Ct. 1956); Foundation Discounts Inc., v. Serna, 81 N.M. 474, 468 P.2d 875, 7 UCC Rep.Serv. 854 (1970).

For example, in the Georgia case of Braswell v. American National Bank, 117 Ga.App. 699, 161 S.E.2d 420, 5 UCC Rep.Serv. 420 (1968), the Georgia Supreme Court held that failure to allege and prove proper notice under Section 9-504 precluded the plaintiff-creditor from recovering a deficiency judgment against the debtor. Likewise, in Baber v. Williams Ford Co., 239 Ark. 1054, 396 S.W.2d 302, 3 UCC Rep.Serv. 83 (1965), the

Arkansas Supreme Court held that if the secured party were to hold the debtor liable for any deficiency, "[i]t must give the debtor 'reasonable notice'". Id. at 1057, 396 S.W.2d at 304, 3 UCC Rep.Serv. at 86.

U.C.A. 70A-2-706 provides for a similar form of notification by the seller to buyer. Here the seller failed to notify the buyer of its intention to resell until after the fact. The policy applicable to the Article 9 cases as cited above is equally applicable to an Article 2 case such as this one. Denial of a deficiency judgment is the appropriate sanction in this case where the seller fails to give notice.

POINT II

THE AWARD OF DAMAGES TO COMPENSATE FOR LOSS ALLEGEDLY OCCASIONED BY THE TEMPORARY RESTRAINING ORDER WAS IMPROPER

The court awarded damages to respondent for the expenses incurred in the attempted repossession by respondent's agents and also allowed the expense incurred by the second purchaser when his trucks traveled to Washington County, Utah, from Texas and returned without obtaining the equipment then subject to the temporary restraining order. Findings of Fact and Conclusions of Law, R., p. 219 ¶ 12(a).

To allow respondent to recover such damages is to allow a recovery of expenses for the doing of an illegal act, and could only encourage contravention of the law. The Court has made appellants liable for respondent's expenses caused by resistance to respondent's extra-legal repossession.

The Court apparently felt that the attempted repossession was justified because the Bullocks were not entitled to possession of the equipment and because the Bullocks had not "paid" for the equipment.

- a. Uncontroverted evidence indicates appellants' possession was consensual.

Though the court found that the appellants took the equipment from the auction site without permission, there was uncontradicted evidence to the contrary. The consistent testimony of June Mundy Bullock and Glen Stanley was that Parkes Shewmake, an auction company official and the site managers released the equipment without protest. T 53:27; T 54; T 93:13; 94:8; T 105:28; 107:11-108:22. Joe Bailey testified he was personally unaware of any acts of Parkes Shewmake on behalf of respondent Bailey Auction Company. The delivery of the equipment to the Bullocks was consensual and they had the right to possession. Of course, even if appellants' possession was nonconsensual Bailey had no right to a repossession without consent. The courts were the proper forum for Bailey Auction Company to seek a remedy.

The court further found that "payment ... [was] to be made on the date of sale by cash, cashier's check, or approved financing, and the Plaintiffs (appellants) did fail to pay as provided and agreed" Findings of Fact 15, R.213. This Finding also is unsupported by any evidence. At no point in the record is the testimony of June Mundy Bullock contradicted that Bailey Auction Company had approved her

financing. T 29:19; 33:19-34:5; 34:14-38:9. Admittedly, the financing fell through, and satisfaction of the debt was never made, but on the day of the auction and for a period of time thereafter, the financing was acceptable to Bailey Auction Company. See, Testimony of Joe Bailey, T 166:20-167:22.

b. Nonpayment did not justify the attempted self help reclamation.

In ruling for the dissolution of the temporary restraining order, the court relied on the nonpayment rationale:

Frankly, Mr. Allen, the Court intends to grant Mr. Foremaster's Motion to Quash and Dissolve the temporary restraining order, you having admitted that the payment hasn't been made and the Court having given you an opportunity to state what the agreement is, doesn't believe that's sufficient to restraining [sic] the defendants from reassuming possession of this particular piece of property...[T]he facts of life being what they are in all likelihood Joe Bailey Auction Company and the other Defendants are entitled to the money that is due and owing them. Reporter's Transcript (of hearing on Temporary Injunction and Restraining Order,) p. 5.

The court seems to have felt that because money was yet owing under the sales agreement, repossession without notice was a proper remedy, even though no security interest was retained by the Seller. In the judgment below, the court allowed respondent monetary damages for appellants' refusal to allow respondent to successfully effect a self help repossession without notice. In so acting, however, appellants may be said to have only required respondent to follow the proper procedures outlined in detail by Article 2 of the Utah Uniform Commercial Code.

The simple fact of a non-payment by appellants did not justify respondent's nonconsensual repossession without

notice. Nonpayment was a breach of the sales contract made when the gavel fell. Remedies for breach listed in Article 2 of the Uniform Commercial Code simply do not include reclamation without notice. Section 70A-2-702 allows reclamation only upon notice given within ten days of the sale, or if there has been a misrepresentation of solvency by the buyer, the notice may be given at any time. Testimony did not indicate that notice of repossession was ever given to the Bullocks, nor did testimony show any discrepancy of understanding between the Bullocks and the auction company as to their solvency. The right of reclamation under 70A-2-507(2) is subject to the same limitations. Section 70A-2-705 allows a reclamation of goods from a carrier, before they have reached the buyer, but in this case the reclamation was made after delivery to the buyer.

A case analogous to this present case is Stumbo v. Paul B. Hult Lumber Co., 444 P.2d 564 (Or. 1968). Stumbo supplied logs to Keystone, a mill which became insolvent. Keystone had failed to pay for logs delivered, so Stumbo effected a self help repossession by pulling some logs from Keystone's pond and selling them to Hult, another mill. Hult's agent retained the proceeds of the sale, and Stumbo sued for that amount. Southern Logging Company, which also supplied logs to Keystone, sued to garnish the proceeds of the sale, claiming the money was Keystone's property. The rights of Southern Logging Company and Stumbo to the money depended on the validity of Stumbo's self help reclamation. If Stumbo

was justified in reclaiming the logs, the proceeds of the sale were his. If the reclamation was improper, the proceeds belonged to Keystone and were subject to garnishment by Southern Logging Company. The Oregon Court examined the Uniform Commercial Code provisions cited above, noting the absence of a timely demand and that the logs were in Keystone's possession and found the self help repossession unjustified.

Consequently, we conclude that plaintiffs had no right to recover the logs from Keystone and were no more than unsecured general creditors without any interest in particular assets of Keystone, including the logs taken from Keystone's millpond. See generally, Peters, Remedies for Breach of Contract Relating to the Sale of Goods Under the Uniform Commercial Code; A Roadmap for Article Two, 73 Yale L J 199 (1963). Id., 572.

The attempted reclamation in this case was also not within any of the sections of Article 2 and therefore the order restraining this reclamation was proper.

c. The judgment below encourages contravention of the Uniform Commercial Code.

To allow a seller damages for failure to successfully remedy a situation through extra legal techniques not granted nor condoned by the Uniform Commercial Code due to the buyer's rightful resistance to those extra legal techniques is offensive to the law and the policy behind it. Because respondent's first attempted reclamation of the property was in direct contravention of Utah law, there should be no compensation for expenses incurred in pursuing an extra-legal remedy unsuccessfully and in being temporarily restrained by court order in so pursuing that extra-legal and unlawful remedy.

Simply stated, the appellants' petition for the temporary restraining order and the issuance of the order itself was properly done in light of the fact that appellant at the time of the order's issuance was proceeding directly in contravention of Utah law. To hold otherwise is to emaciate the protective nature of the prophylactic provisions of Article 2 of the Utah Uniform Commercial Code and to put a premium on self-help, no-noticed reposessions in contravention of the law.

POINT III

THE DAMAGES AWARDED ARE NOT SUBSTANTIATED BY THE EVIDENCE

Several of the amounts awarded against the appellants are not found at any point in the evidence. At paragraph 11(b) of the findings and conclusions, R.220, \$1,500.00 is included in the damage awarded as an amount paid to Parkes Shewmake. Joe Bailey testified at trial, without documentary support, that Parkes Shewmake was paid "about two hundred dollars a day" for six days (T 143:10-29) and incurred \$518.33 in expenses. T 142:4-6. Note since Shewmake would have been paid the same by Bailey wherever he was during those six days because the figures testified to do not equal the amount awarded, one can only speculate how the court calculated this amount.

Paragraph 11(c) of the findings and conclusions indicates \$800.00 was incurred as expenses by Joe Bailey. The only evidence of Mr. Bailey's expenses was that they amounted to \$370.88. T 145:30. Figures on this expense sheet were challenged by appellants as expense account inflation. T 196:27-197:6.

Paragraph 11(d) of the findings and conclusion awards \$500.00 to respondent for expenses incurred by Cecil Biggs. Bailey testified that Biggs was paid \$500.00 wages during the period in question. T 146:13-21. However, Bailey also admitted that Biggs would have incurred this expense whether or not the temporary restraining order had been issued. T 196:18-20. Therefore, no causation was shown as to these damages.

Also the source of the \$500.00 figure for costs of resale of in paragraph 13 of the findings and conclusions is unclear. Not knowing how the court calculated this amount, since there was no testimony by Bailey of a cost of resale in that amount, results in it being impossible to determine if this award was proper.

Appellants submit that the absence of substantiation by testimony or exhibit, for the amounts awarded by the court renders the findings and conclusions illusory. The apparent use of balancing and approximation on some accounts is not an acceptable method of measuring damages.

CONCLUSION

The judgment below granted recovery to respondent (1) for expenses of effecting a resale of the auctioned equipment and (2) for loss of commission by the resale Price being lower than the price agreed upon by appellants, and also (3) for damages allegedly sustained when respondent was restrained from effecting an illegal self-help repossession.

Appellants request reversal of the judgment below on the ground that under the Uniform Commercial Code the respondent's reclamation of the property bars any other recovery, including incidental and deficiency damages and also because

procedures to obtain such damages were not followed. Also, the temporary restraining order was properly issued, to prevent respondents' extra-legal repossession, thus prohibiting any recovery for its supposedly wrongful issuance. Further, the amounts of the awards are not supported by the evidence.

DATED this 24th day of June, 1977.

Frank A. Allen
FRANK A. ALLEN

Michael D. Hughes
MICHAEL D. HUGHES

MAILING CERTIFICATE

I do hereby certify that on this 24th day of June, 1977, I did mail a correct and true copy of the above and foregoing BRIEF OF APPELLANTS to Mr. Phillip L. Foremaster, Attorney for Defendant and Respondent, 494 E. Tabernacle, St. George, Utah 84770.

Christina Shaw
Secretary