

1987

Jerry Lawley v. Valley Ford, Inc., a Utah corporation
dba Valley Jaguar David G. Bastian, an individual :
Brief of Appellant

Utah Court of Appeals

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Lloyd C. Eldredge; Attorney for Jerry Lawley.

Paul H. Van Dyke; Elggren & Van Dyke.

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 870490 CA IN THE UTAH COURT OF APPEALS

JERRY LAWLEY,)	
)	
Plaintiff-Respondent)	
)	
vs.)	CASE NO. 87 0490 CA
)	
VALLEY FORD, INC., a Utah)	
corporation dba Valley Jaguar)	
DAVID G. BASTIAN, an)	
individual,)	
)	
Defendant-Appellant)	

Brief of the Appellant

Appeal from an Order of the Third Judicial District
Court in and for Salt Lake County Utah, Honorable
Timothy R. Hanson, District Judge

Argument Priority No. 14b.

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Paul H. Van Dyke
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COURT OF APPEALS

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IN THE UTAH COURT OF APPEALS

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DAVID G. BASTIAN, an)	
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)	
Defendant-Appellant)	

Brief of the Appellant

Valley Ford, Inc.

Statement of Jurisdiction

Jurisdiction is vested in the Utah Court of Appeals pursuant to Sections 78-2-2(4) and 78-2a-3(2)(h), Utah Code Annotated, 1953 (as amended).

Nature of the Proceedings

This is an appeal from the default judgment entered by the Third Judicial District Court, the Honorable Timothy Hanson, in the sum of \$34,059.96 against the Appellant, Valley Ford, Inc.

Statement of the Issues

The sole issue on appeal is:

Did the District Court abuse its discretion in refusing to set aside the default of the defendant where:

(1) Defendant's Motion to Set the Default Aside was brought within three months of the default;

(2) The motion was supported by an Affidavit setting forth a defense to the complaint; and,

(3) The defendant failed to file an answer only because defendant's attorney was attempting to personally contact plaintiff's attorney to negotiate a settlement and mistakenly assumed that in light of his attempt to contact opposing counsel, opposing counsel would, as a commonly extended professional courtesy, withhold entering defendant's default until further discussion or notice.

Determinative Statute

Rule 60(b), Utah Rules of Civil Procedure, provides as follows:

On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based

has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1) (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This Rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

Statement of the Case

Respondent, Jerry Lawley, filed suit in the Third District Court in and for Salt Lake County against Valley Ford, Inc., and David Bastian seeking to rescind a contract for the purchase of the vehicle purchased from Valley Ford, Inc., and for damages allegedly arising from the sale. Those facts relevant to the issue on appeal are as follows:

1. Valley Ford, Inc., was served with plaintiff's Summons and Complaint on June 30, 1986. (R. 10)

2. Counsel for the plaintiff was aware that the allegations of plaintiff's Complaint were disputed by Valley Ford, Inc., and alerted his secretary, soon after service was effected upon Valley Ford, Inc., to expect a phone call from Valley Ford's agent. (R. 33)

3. Mr. Bryce Wade, Valley Ford, Inc., 's registered agent and attorney, tried on numerous occasions after having been served with plaintiff's Summons and Complaint and prior to the entry of the default certificate, to contact Mr. Lloyd Eldredge, plaintiff's attorney, for the purpose of discussing the case and exploring the possibility of settlement by leaving phone messages for Mr. Eldredge. No direct communication was made between Mr. Wade and Mr. Eldredge until the day of the entry of default although attempts were made by Mr. Eldredge to return the calls of Mr. Wade. (R.15)

4. Mr. Wade and Mr. Eldredge spoke with each other on July 22, 1986, the day the default was entered, regarding the case. In answer to Mr. Wade's suggestion that the parties attempt to negotiate an amicable settlement, or, if that was not acceptable, Mr. Wade would file an answer to plaintiff's Complaint with the court, Mr. Eldredge replied that it was too late to file an answer. (R.15)

5. The default of Valley Ford was entered on July 22, 1986, the date of the conversation between Mr. Wade and Mr. Eldredge. (R.12)

6. Mr. Wade and Mr. Eldredge discussed the possibility of settlement until October 20, 1986, at which time negotiations ceased and Valley Ford, Inc., moved the court to set aside the default judgment and also submitted in support thereof its proposed Answer and Third Party Complaint. (R.13, 15-16, 17-21)

7. Valley Ford's motion to set aside the default certificate was denied. (R.37-39). A hearing was subsequently held on the issue of damages and judgment was entered against Valley Ford, Inc., in the sum of \$34,059.96. The plaintiff was also required to return the vehicle to Valley Ford, Inc. (R.81-82)

Summary of the Argument

The Trial Court abused its discretion in refusing to set aside the default of Valley Ford, Inc., because the expectation of Mr. Bryce Wade, counsel for Valley Ford, Inc., that Mr. Eldredge would extend to him the common professional courtesy of not entering the default of Valley Ford, Inc., without discussion or notice, where Mr. Wade had placed a number of phone calls with Mr. Eldredge's office, was reasonable and constitutes mistake, inadvertence or excusable neglect entitling Appellant to relief under Rule 60(b).

Argument

THE DENIAL OF THE DEFENDANT'S MOTION TO SET ASIDE THE
DEFAULT WAS AN ABUSE OF DISCRETION.

The present case involves a question of the proper application of Rule 60(b), Utah Rules of Civil Procedure, to a common factual situation made uncommon only by the intransigence of plaintiff's counsel. This appeal asks this court to decide if defendant's counsel's expectation of the professional courtesy from plaintiff's counsel of communication or notice before entering defendant's default was reasonable under the circumstances and, if so, was the

Trial Court's refusal to set aside the default in this case an abuse of discretion. Standards of common courtesy and professional conduct previously articulated by the Utah Supreme Court, necessarily expected from counsel to expediently and economically resolve litigation and the principles and policies underlying in Rule 60(b), Utah Rules of Civil Procedure, require this court's reversal of the Trial Court's order denying defendant's motion to set aside its default.

At 46 Am Jur 2nd, Judgment, Section 686, it is stated:

A motion to vacate a default judgment, and particularly when timely filed, is to be treated to best serve the ends of justice and preserve to a litigant his day in court. It is said that courts must, in a proper case, upon such a motion, yield the procedural exactitudes to the more basic rules of fundamental fairness. On the other hand, relief from a default judgment on the basis of equitable principals is to be granted only when the occasion demands it, when the exercise of such just power is necessary to prevent injustice. In any determination of whether a default judgment should be set aside, the court is governed by equitable principals requiring that a defendant be given a fair opportunity to litigate a disputed obligation, and also requiring that a plaintiff, who has according to regular and legal proceedings, secured a judgment be protected against a violation of the rules which require the sanctity and security of a valid judgment.

The Utah Supreme Court has often stated its agreement with the position stated in the authority immediately above and has consistently held that a trial court should relieve

a party from default if any reasonable excuse is offered by the defaulting party. In the case of Olsen v. Cummings, 565 P2d 1123 (Utah, 1977), the Utah Supreme Court repeated its position as to vacation of default judgments:

Although a trial court is endowed with considerable latitude of discretion in granting or denying a motion to vacate a final judgment, it cannot act arbitrarily.

. . . it is quite uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside.

Because an application to set aside a default is equitable in nature and is addressed to the conscience of the court, all the attendant circumstances should be considered. Relief in doubtful cases considered. Relief in doubtful cases generally will be granted so a party may have a hearing. Id at 1124.

The Utah Supreme Court has also recognized the extreme hardship that a default can involve and has stressed the liberality with which Rule 60(b), Utah Rules of Civil Procedure, should be applied in such cases. The Utah Supreme Court in the case of Utah Sand and Gravel Corp. v. Tolbert, 16 Ut. 2d 407, 402 P2d 703 (Utah, 1965) stated:

It is in accordance with our rules, and our decisional law, that where a default has been taken against a party and there is any justifiable excuse, the court should be indulgent in setting aside the judgment to afford him an opportunity for a trial on merits, and any doubt about such a matter should be resolved in favor of doing so. 16 Utah 2nd at 410, 402 P2d at 704.

It is clear that the policy of the Utah Supreme Court is in favor of permitting parties to have their day in court to settle the merits of the controversy. It is in favor of setting aside the judgment where a reasonable justification or excuse for the default appears. Nonetheless, the Utah Supreme Court allows trial courts "discretion" in deciding whether or not "reasonable justification or excuse" exists to justify setting aside the default judgment. This "discretion" is not without bounds however. The Utah Supreme Court stated in Carman v. Slavens 546 P2d 601 (Ut., 1976):

It is true that where the authority to perform proposed action or rests within the discretion of the court we must allow considerable latitude in which he may exercise his judgment. But this does not mean that the court has unrestrained power to act in any arbitrary manner. Fundamental to the concept of the rule of law is the principal that reason and justice shall prevail over the arbitrary and uncontrolled will of any one person; and that this applies to all men in every status: to court's and judges as well as to autocrats or bureaucrats. The meaning of the term "discretion" itself imports that the action should be taken within reason and good conscience in the interest of protecting the rights of both parties and serving the ends of justice. It has always been the policy of our law to resolve doubts in favor of permitting parties to have their day in court on the merits of a controversy. Id at 603.

The limits of the trial court's discretion to set aside default judgment in cases similar to the instant case have been recently set forth in the cases Helgesen v. Inyangumia, 636 P2d 1079 (Ut., 1981) and Katz v. Pierce 732 P2d 92

(Ut., 1986). Helgesen v. IngYangumia required the Utah supreme Court to decide whether or not the trial court abused its discretion in failing to set aside a default judgment in a personal injury lawsuit. The trial court refused to set aside the default judgment even though the plaintiff's attorney and the defendant's insurance adjuster had been in frequent contact with each other for five months in negotiating a settlement of the claims. Additionally, plaintiff's attorney was well aware that the claims at issue were in dispute and fully expected a defense to the lawsuit. Nonetheless, shortly after the expiration of the twenty days for answering had expired, the plaintiff's attorney had the default of the defendant entered without giving prior notice to the adjuster. The Utah Supreme Court reversed the trial court holding that the trial court abused its discretion in failing to set aside the default. The court stated:

Common courtesy and ordinary professional conduct dictated that before proceeding to the court the attorney should have made contact with the adjuster with whom he had been dealing with so long to have made inquiry as to why an answer had not been filed. Id at 1081.

The court went on to say:

It is not uncommon in the practice of the law that when parties are negotiating settlement and one party files a lawsuit to bring pressure to bear, the other party is not strictly held to the time requirements of the rules of procedures since settlement talk continues to the day of trial and a few days delay has little or no

effect when the trial date will be set.
Id at 1081.

In Katz v. Pierce, the Utah Supreme Court refused to set aside a default judgment where the plaintiff and defendant were negotiating a settlement after service of the complaint but prior to entry of default judgment. Plaintiff's counsel, by telephone call, prior to submitting the default of the defendant to the court, advised the defendant's attorney that the plaintiff's claim would be actively pursued and that he expected an answer prior to the expiration of the time in which the answer had to be filed. Plaintiff's counsel followed that telephone call up with a letter of confirmation specifically cautioning defendant's attorney to file an answer within the time limit or his default would be entered. The Utah Supreme Court held that the refusal of the trial court to set aside the default judgment under those circumstances was not an abuse of discretion.

The Utah Supreme Court Court in Katz v. Pierce found that an abuse of discretion on the part of the trial court was not shown by the defendant where it was clear that the defendant ". . . was clearly advised that plaintiff expected a timely response to the complaint and that, otherwise, appellants default and a judgment would be immediately obtained." Id at 94. This is in contrast to the case in Helgesen where no such notification was given even though plaintiff's attorney knew the matter was disputed and negotiations were ongoing.

The present case is closer factually to the facts in Helgesen which required setting aside the default than the facts of Katz, wherein an opposite result was obtained. Although all of the factual elements present in Katz justifying reversal of the trial court in that case are not present in this case, the policy of liberality in setting aside default judgments and hearing cases on the merits warrants a similar holding as that obtained in Helegesen.

In the present case, Mr. Eldredge, attorney for the plaintiff, knew of the dispute and fully expected a defense. The Affidavit of Mr. Wade clearly stated that phone calls were passed between his office and Mr. Eldredge's office thereby indicating that Mr. Eldredge knew that Mr. Wade was attempting to deal with the Complaint. Nonetheless, without so much as a letter or actual communication, Mr. Eldredge, shortly after the expiration of the twenty-day period, entered the default of Valley Ford, Inc., stating to Mr. Wade on the very day the default was entered that "it was too late to file an answer." (R.15)

Certainly a different case would exist if Mr. Eldredge was not aware that this matter was vigorously disputed and was unaware that Mr. Wade was attempting to contact him, that is, if Mr. Wade did nothing. However, Mr. Eldredge did know that the action was disputed and did know that Mr. Wade was attempting to reach him. Certainly, the professional courtesy concept referred to in Helgesen should extend to this situation and Mr. Eldredge should have at least sent a

letter to Mr. Wade indicating that he intended to stand by the twenty day period of the Summons and did not intend to communicate with Mr. Wade further, if such was his intention.

An attorney should be able to rely upon the assumption that placing phone calls with opposing counsel puts opposing counsel who has served a complaint, where that attorney knows that a dispute regarding the complaint exists, on notice that communication should be made prior to precipitous action in a pending lawsuit. To hold otherwise would be to move one step back from the standard of cordiality and professional courtesy which counsel should be able to expect from one another. Accordingly, this court should rule on the side of deciding cases on their merits and on the side of high standards of professional courtesy and cordiality, not on the side of procedural exactitudes.

CONCLUSION

Based upon the foregoing, the Appellant, Valley Ford, Inc., respectfully requests that this Court vacate the judgment by default and remand this case with instructions to the District Court to set the case for trial.

DATED this 20th day of January, 1988.

Elggren & Van Dyke
Paul H. Van Dyke
Attorneys for Appellant

CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the above and foregoing Brief of the Appellant, Valley Ford, Inc., and placed the same in the U. S. Mail, postage prepaid, first class mail, direct to the following:

Lloyd C. Eldredge
Attorney for Respondent
7050 South Union Park Avenue, Suite 570
P. O. Box 7005
Salt Lake City, Utah 84107

Paul H. Van Dyke
Paul H. Van Dyke

PHV/sf

ADDENDUM

1. Rule 60. Relief from Judgment or Order.
2. Affidavit of Bryce Wade.
3. Answer and Third Party Complaint.
4. Affidavit of Claudette Mathie.

Rule 60. Relief from Judgment or Order

(a) **Clerical Mistakes.** Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. During the pendency of an appeal, such mistakes may be so corrected before the appeal is docketed in the appellate court, and thereafter while the appeal is pending may be so corrected with leave of the appellate court.

(b) **Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** On motion and upon such terms as are just, the court may in the furtherance of justice relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) when, for any cause, the summons in an action has not been personally served upon the defendant as required by Rule 4(e) and the defendant has failed to appear in said action; (5) the judgment is void; (6) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (7) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time and for reasons (1), (2), (3), or (4), not more than 3 months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding or to set aside a judgment for fraud upon the court. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

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Telephone: 531-7116
No: 6-995

H. J. CONNELL, CLERK
3rd DIST. COURT
DEPT. CLERK

IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JERRY LAWLEY,)	A F F I D A V I T
)	
Plaintiff,)	
)	
vs.)	Civil No. C 86-04943
)	
VALLEY FORD, INC., a Utah)	
corporation, dba VALLEY)	
JAGUAR, DAVID C. BASTIAN, an)	
individual,)	
)	
Defendants.)	

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Bryce Wade, being first duly sworn, deposes and says under oath:

1. Affiant is the registered agent for Valley Ford, Inc., and is authorized to make this Affidavit on behalf of Valley Ford, Inc., and on behalf of David C. Bastian, an employee of Valley Ford, Inc. Affiant is also an attorney and a member of the Bar of the State of Utah.

2. On June 30, 1986, I was served with a Summons and Complaint in the above-entitled civil action. On approximately the same date, David C. Bastian, an employee of Valley Ford, Inc., was also served with the Summons and Complaint in the above-entitled civil action. Said matter was brought to my

attention for the purpose of filing an Answer in behalf of both defendants or to attempt to resolve the matter through settlement.

3. During the twenty days following being served with the papers as set forth above, I tried on numerous occasions to contact Lloyd C. Eldredge, attorney for plaintiff. Some of my calls were not returned, and other calls were returned to me, but I was not available for calls at the time they were returned from plaintiff's attorney. On other occasions, no one answered the plaintiff's attorney's telephone number when I placed calls, and therefore, until approximately July 22, I was unable to make contact with plaintiff's counsel.

4. The purpose of my call to plaintiff's counsel was for the purpose of attempting to propose a settlement for this matter or to obtain additional time for having an answer filed on behalf of the defendants.

5. When I did speak with Mr. Eldredge, I was informed that a default had already been entered on both defendants and it was too late to file an answer.

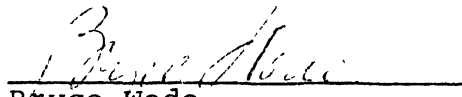
6. I then contacted Stephen B. Elggren to have him file an answer in behalf of Valley Ford and David C. Bastian and to make a Motion to Set Aside the Default that had been entered. However, in the process of my conversations with Mr. Elggren, I was able to make additional contact with Mr. Eldredge and we continued to make proposals for resolving this matter.

7. Ultimately, on October 20, 1986, settlement negotiations broke down and it became necessary to take action under the

default that had been entered.

8. The information that has been provided to me indicates that there are valid defenses against the plaintiff. In particular, the vehicle sold to the plaintiff was sold "as is" without any warranty from the dealer. Furthermore, there were no misrepresentations made by the defendants to the plaintiff, and also, if any damages were caused to the vehicle purchased by the plaintiff from defendant Valley Ford, those damages resulted from the repairs made by Less Jenson Collision Repair prior to the vehicle being delivered to defendant Valley Ford, Inc., in connection with a trade-in involving said vehicle. Alternatively, inasmuch as the vehicle was in the plaintiff's possession for a period of time prior to any claim for damages as asserted by the plaintiff, such damages may have resulted from the handling by plaintiff which was beyond the control of defendants.

9. Accordingly, the defendants claim that they have valid defenses to the charges asserted by the plaintiff, also the immediate entry of the Default by the plaintiff at the end of twenty days when affiant had been attempting to contact plaintiff's counsel in an attempt to resolve this matter provides the basis upon which affiant asserts that the default should be set aside against defendants.


Bryce Wade

Subscribed and sworn to before me this 22nd day of October, 1986.

My commission expires: 9.25.89  Notary Public Residing at: 8406

6007 17

ELGGREN & VAN DYKE
Stephen B. Elggren 0970
Attorney for Valley Ford
444 South State St. #201
Salt Lake City, UT 84111
Telephone: 531-7116
No: 6-995

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IN THE DISTRICT COURT OF SALT LAKE COUNTY

STATE OF UTAH

JERRY LAWLEY,
Plaintiff,

vs.

VALLEY FORD, INC., a Utah
corporation, dba VALLEY
JAGUAR, DAVID C. BASTIAN, an
individual,

Defendants.

VALLEY FORD, INC., a Utah
corporation, dba VALLEY
JAGUAR, DAVID C. BASTIAN, an
individual,

Third Party Plaintiffs,

vs.

LFSS JENSON COLLISION REPAIR,
INC., a Utah corporation,

Third Party Defendant.

) ANSWER AND THIRD PARTY
) COMPLAINT

) Civil No. C 86-04943

Defendants Valley Ford, Inc., and David C. Bastian,
hereinafter referred to defendants, through their undersigned
counsel, answer the Complaint as follows:

FIRST DEFENSE

Plaintiff's Complaint fails to state a cause of action
against defendants upon which relief can be granted.

SECOND DEFENSE

Defendants answer the numbered paragraphs of plaintiff's Complaint as follows:

1. Admit the allegations of paragraph Nos. 1, 3, 5 and 31.
2. Defendants are without sufficient information to admit or deny whether defendant David C. Bastian was acting within the scope of his agency for defendant Valley Ford, Inc., and therefore deny that portion of paragraph No. 2 of the Complaint but admit all other allegations in said paragraph.
3. Deny that any misrepresentations were made to the plaintiff and therefore deny the allegations of paragraph Nos. 6, 7, 9, 10, 11, 12, 13, 14, 15, 17, 18, 19, 20, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34, 35, 36, and 37 of plaintiff's Complaint and all other allegations not admitted herein.
4. As to paragraph Nos. 4, 8, 16, 21, and 30 of the Complaint, defendants incorporate herein by reference the applicable answers as set forth above.

AFFIRMATIVE DEFENSES

1. As affirmative defenses, defendants assert that the vehicle sold to plaintiff was sold without dealer warranty, i.e., "AS IS", pursuant to the terms of the Automobile Agreement, a copy of which is annexed hereto as Exhibit "A".
2. Defendants further assert as an affirmative defense that no misrepresentations were made by the defendants to the plaintiff.
3. The vehicle was in the possession of the plaintiff for some period of time before any claims were made by the plaintiff as to any problems in connection with the vehicle, plaintiff had

driven the vehicle on various occasions before purchase and there were no known problems with said vehicle which was accepted by the plaintiff, and any damage to the vehicle may have been caused by the plaintiff subsequent to his receiving possession of the same.

4. Any repairs made to the vehicle which have been made negligently were made by Less Jenson Collision Repair which was not an agent of the defendant and if there was any improper repair, Less Jenson Collision Repair would be liable to the plaintiff and should indemnify the defendants for any damages suffered herein.

5. The action brought by the plaintiff has been brought in bad faith and defendant should be awarded attorney's fees for appearing herein pursuant to 78-27-56, Utah Code Annotated.

WHEREFORE, defendants pray that plaintiff's Complaint be dismissed with prejudice and that defendants be awarded attorney's fees for appearing herein.

THIRD PARTY COMPLAINT

Defendant Valley Ford, Inc., asserts a Third Party Complaint and complains of Less Jenson Collision Repair as follows:

1. As a condition for third party plaintiffs to accept a trade-in of a 1984 Jaguar XJS, VIN #SAJNV5843EC113007 from Kent Jones, said vehicle was to be properly repaired by third party defendant Less Jenson Collision Repair, Inc.

2. Said vehicle was improperly repaired and any damages that the plaintiff has suffered were the result of improper repairs and/or services performed by Less Jenson pursuant to an agreement

with the prior owner of said vehicle, Kent Jones.


3. Said vehicle was traded into the defendant Valley Ford, Inc., on the condition that proper repairs were made on said vehicle, and if repairs made on said vehicle are not proper, and/or defendants are damaged as a result of the claims of plaintiff against defendants, defendants are entitled to judgment against third party defendant, Less Jenson Collision Repair, for said sum together with costs for appearing herein.

4. Damages suffered by the defendants at the hands of third party defendant are unknown at this time and will be determined at trial.

WHEREFORE, third party plaintiffs pray that judgment be rendered against third party defendant requiring third party defendant to indemnify third party plaintiffs for any damages suffered by third party plaintiffs in the above-entitled civil action.

DATED this 22nd day of October, 1986.

ELGGREN & VAN DYKE



Stephen B. Elggren
Attorney for Defendants and
Third Party Plaintiffs

CERTIFICATE OF MAILING

I hereby certify that I duly mailed, postage prepaid, at Salt Lake City, Utah on the 22nd day of October, 1986, a true and correct copy of the foregoing to the following: Lloyd C. Eldredge, Attorney for Plaintiff, P.O. Box 17884, Salt Lake City, Utah 84117.



Stephen B. Elggren

SBE/nh

JERALD A LAULEY

VERTON State OR Zip Code 97006 Phone

AGREE TO PURCHASE FROM YOU, UNDER THE TERMS AND CONDITIONS SPECIFIED, THE FOLLOWING:

NEW 84 USED	YEAR	MAKE	MODEL	IDENTIFICATION NUMBER	COLOR	TRIM
	84	JAGUAR	XJS	SAJNV5843EC113007	GRAY	

VEHICLE SOLD AS EQUIPPED UNLESS OTHERWISE STATED IN THIS AGREEMENT

4	7 NO FREE WORK PROMISED	10
5	8	11
6	9	12

is purchase is to be made 19 , or as soon thereafter as possible. It is agreed, however, that neither or the manufacturer will be liable for failure to effect delivery.

sumes responsibility for any difference in excess of amount shown below, and will difference in cash on demand. If not so paid, orizes dealer, at dealer's option, to increase the monthly and contract balance to cover the difference and finance ereon, or repossess the vehicle sold.

this vehicle is made by dealer subject to credit approval by nancial institution where customer has agreed for dealer to incing. In the event of a credit report unacceptable to the the financial institution, the purchaser will return the rein described immediately to the dealer and pay any costs n vehicle repair and recovery costs, mileage and loss of use , of which such costs or damages may have been created m of buyers usage. In the event of customer obtaining own or cash, money is due as shown in payment schedule.

I hereby assume personal responsibility for the balance owed on the above described vehicle of which amount shall be financed by If customer is obtaining own financing or paying cash, customer agrees to provide dealer with free and clear title to trade in, if any, and pay any outstanding property taxes on or before I understand that Valley Ford Inc. is NOT responsible for obtaining financing for this vehicle nor have such representation been made to me.

Signature

Jerald A. Lauley

Selling Price Including Delivery & Handling	26000.00	Cash Price w/Accessories	26000.00
Less Trade	N/A	Delivery & Handling	\$ 189.5
Net for Sales	26000.00	TOTAL CASH PRICE (1)	26000.00

DE TO BUYER: The seller, hereby expressly disclaims all warran either express or implied, including any implied warranty of antability or fitness for a particular purpose, and neither assumes thorizes any other person to assume for it any liability in connec with the sale of the vehicle.

Sales Tax	N/A
License & Fees	N/A
License & Title Service	10.00
Service Contract	N/A
TOTAL (2)	10.00

CE	TYPE	YEAR	IDENTIFICATION NO.
OMETER READING	COLOR	TRANS	AIR COND. P. STEER. VINYL ROOF

TOTAL 1 & 2

26010.00

ed Veh. Allowance N/A Bal. Due (Payoff) N/A Net Equity N/A

lance Owed To:

sh on Delivery N/A Cash Deposit with Order N/A

AL DOWN PAYMENT

BALANCE DUE

LIABILITY INSURANCE COVERAGE FOR ODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

Jerald A. Lauley
Customer's Signature

INSURANCE

Collision	Deductible
Fire, Theft & Comprehensive	
Credit Life	
Accident and Health	

TERM (MONTH)

PREMIUM

TOTAL INSURANCE PREMIUMS (3)

26010.00

16648

8/17

Payment Schedule:

Special Notes payments @ \$ Due

Balance in monthly notes of \$ each starting

lloon Payment(s) \$ on \$ on

(Insert amount of each payment that is more than twice the amount of any otherwise regularly scheduled equal payment.)

SUMMARY

UNPAID BALANCE, Including Insurance

FINANCE CHARGE (4)

DEFERRED PAYMENT PRICE Sum of 1, 2, 3 and 4

TOTAL OF PAYMENTS

ANNUAL PERCENTAGE RATE

CREDIT LIFE INSURANCE

Credit life insurance and, or accident and health insurance is available only on the life of one natural person who is obligated to make payments under this retail installment instrument and who is under the age of 65 on the date hereof. Benefits will be limited to a refund of premiums if there is no person eligible for such insurance, or if death results from suicide within one year from date hereof or from certain pre-existing diseases or conditions within ninety days from the date hereof.

Credit Life or Credit Accident & Health Insurance on the life of

Credit Accident and, or Life Insurance provided by

In accordance with the separate Application, Notice Certificate or Policy delivered to Buyer This date

This agreement is not binding on dealer until accepted by dealer in writing. I have read the printed matter on the back hereof and agree to it as a part of this agreement, and the front and back of this agreement comprise the entire agreement pertaining to this purchase. I further agree that no promises or representations have been made to me other than what is stated in this agreement. In the event the vehicle sold hereunder is a used vehicle it is agreed that dealer assumes only such warranty obligations to Buyer as are set forth on the face of this order or in a separate written instrument. New car warranties are only those which are issued in writing directly from the manufacturer.

NOTICE TO THE BUYER:

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign. Buyer acknowledges receipt of a true and completely filled in copy of this contract at the time of signing. Buyer certifies that he/she is at least 18 years of age and no credit has been extended except as appears here-

Salesman's Name

David B

Accepted

Colleen Henderson

Must be accepted by an Authorized Representative of the Dealer

LLOYD C. ELDREDGE (3927)
Attorney for Plaintiff
970 East 4800 South, Suite 3G
P.O. Box 17884
Salt Lake City, Utah 84117-0884
Telephone: (801) 261-0088

RECORDED
SALT LAKE CO.

H. DIANE RINDLEY CLERK
3RD DISTRICT COURT
BY *Claudette Mathie*
DEPUTY CLERK

IN THE THIRD JUDICIAL DISTRICT COURT, IN AND FOR
SALT LAKE COUNTY, STATE OF UTAH

JERRY LAWLEY,)	
)	A F F I D A V I T
Plaintiff,)	
)	
vs.)	
)	Civil No.C86 04943
VALLEY FORD, INC. a Utah)	
coorporation, dba VALLEY JAGUAR,)	
DAVID C. BASTIAN, individual,)	Judge Timothy R. Hansen
)	
Defendants.)	

State of Utah)
: ss.
County of Salt Lake)

Claudette Mathie, being first duly sworn upon oath,
deposes and says:

1. That she is receptionist and secretary to Lloyd C. Eldredge who is the attorney for the Plaintiff in the above entitled action.

2. That she is primarily responsible for the receipt and logging and incoming telephone calls to the Law Office of Lloyd C. Eldredge, that her normal working hours are approximately 8:30 a.m. to approximately 5:30 p.m. Monday through Friday and that at all times, including weekends, when she is not on duty and acting as receptionist there is an answering machine at said offices for the receipt of incoming calls.

3. That on ~~or about~~ June 30, 1986 Mr. Eldredge that the Summons and Complaint prepared indicated case against Defendant, Valley Ford, Inc., served and I was alerted to expect a phone call from a representative from said Defendant.

4. At no time during the hours for which I was in my usual place of employment and acting as receptionist in the Law Office of Lloyd C. Eldredge, was a phone call received by me from Mr. Bryce Wade or anyone else porporting to represent Valley Ford, Inc.

5. I have reviewed the incoming phone memos which are maintained at our offices for the period of June 30, 1986 up to and including June 22, 1986 and, except as hereinafter set forth, can discover no call from Mr. Bryce Wade or any other person representing Valley Ford, Inc., or any other matter concerning the above indicated matter.

6. That on July 22, 1986, a call was received from Mr. Bryce Wade and recorded by the answering machine at our offices. A copy of the phone memo concerning the said call, and prepared by me, dated July 22, is attached hereto as Exhibit "A", and by this reference incorporated herein. As previously stated this is the only call received by me or received on our answering machine from Mr. Bryce Wade or any other individual representing Valley Ford, Inc.

MEMO	TO	DATE		TIME		SIGNED	
	FROM	AREA CODE		NUMBER		EXTENSION	
PHONED	CALL BACK	RETURNED CALL	WANTS TO SEE YOU	WILL CALL AGAIN	WAS IN	URGENT	

AI GNER FORM NO 50-176

PHONE MEMO	TO	DATE		TIME		SIGNED	
	FROM	AREA CODE		NUMBER		EXTENSION	
PHONED	CALL BACK	RETURNED CALL	WANTS TO SEE YOU	WILL CALL AGAIN	WAS IN	URGENT	

AI GNER FORM NO 50-176

PHONE MEMO	TO	DATE		TIME		SIGNED	
	FROM	AREA CODE		NUMBER		EXTENSION	
PHONED	CALL BACK	RETURNED CALL	WANTS TO SEE YOU	WILL CALL AGAIN	WAS IN	URGENT	

AI GNER FORM NO 50-176

PHONE MEMO	TO	DATE		TIME		SIGNED	
	FROM	AREA CODE		NUMBER		EXTENSION	
PHONED	CALL BACK	RETURNED CALL	WANTS TO SEE YOU	WILL CALL AGAIN	WAS IN	URGENT	

AI GNER FORM NO 50-176

Exhibit "A"

FUTHER AFFIANT SAYTH SA

DATED this 24th day

Claudette Mathie
CLAUDETTE MATHIE

SUBSCRIBED AND SWORN to before me this 24th day of
November, 1986.

[Signature]
Notary Public

Residing at

32-87

My commission expires