

1978

# Robert D. Tobias And Dorothy M. Pilcher v. Brasher' S Mobile & Motor Homes v. Motors Insurance Corporation : Brief of Respondent

Utah Supreme Court

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IN THE SUPREME COURT OF THE STATE OF UTAH

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ROBERT D. TOBIAS and	)	
DOROTHY M. PILCHER,	)	
	)	
Plaintiff-Appellants,	)	
	)	
vs.	)	
	)	
BRASHER'S MOBILE & MOTOR	)	Case No. 15336
HOMES,	)	
	)	
Defendant-Third Party	)	
Plaintiff-Respondent,	)	
	)	
vs.	)	
	)	
MOTORS INSURANCE CORPORATION,	)	
	)	
Third Party Defendant.	)	

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BRIEF OF RESPONDENT

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT  
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH,  
HONORABLE G. HAL TAYLOR, JUDGE, PRESIDING

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## TABLE OF CONTENTS

STATEMENT OF THE NATURE OF THE CASE . . . . .	Page 2
DISPOSITION IN LOWER COURT . . . . .	Page 2
STATEMENT OF FACTS . . . . .	Page 3
ARGUMENT	
POINT I    THERE IS NO VIOLATION OF UTAH LAW WHICH WOULD RESULT IN APPELLANTS' RECEIVING RESPONDENT'S TRAVEL TRAILER WITHOUT AN OBLIGATION TO PAY FOR IT . . . . .	Page 8
POINT II   APPELLANTS MADE NO SHOWING TO SUBSTANTIATE A CAUSE OF ACTION FOR RESCISSION . . . . .	Page 19
CONCLUSION . . . . .	Page 20

### CASES CITED

<u>Anderson v. Utah County</u> , 13 U. 2d 99, 368 P. 2d 912 (1962) . . . . .	Page 14
<u>Clearfield State Bank v. Peters Plumbing &amp; Heating Co.</u> , 10 U. 2d 136, 349 P. 2d 618 (1960) . . . . .	Page 18
<u>Rowley v. Public Service Commission, et al.</u> , 112 U. 116, 185 P. 2d 514 (1947) . . . . .	Page 14

### STATUTES CITED

Laws of Utah, Chapter 69 (1937) . . . . .	Page 15
§41-1-18, Utah Code Annotated, 1953 . . . . .	Page 9
§41-20-1, Utah Code Annotated, 1953 . . . . .	Page 9,10
§41-1-120, Utah Code Annotated, 1953 . . . . .	Page 9
§41-3-3, Utah Code Annotated, 1953 . . . . .	Page 8
§41-3-23, Utah Code Annotated, 1953 . . . . .	Page 10
§41-3-27, Utah Code Annotated, 1953 . . . . .	Page 17

### SECONDARY AUTHORITY

73 American Jurisprudence 2d, <u>Statutes</u> , §265 . . . . .	Page 14,15
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HOMES,	)	
	)	
Defendant-Third Party	)	
Plaintiff-Respondent,	)	
	)	
vs.	)	
	)	
MOTORS INSURANCE CORPORATION,	)	
	)	
Third Party Defendant.	)	

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BRIEF OF RESPONDENT

# STATEMENT OF THE NATURE OF THE CASE

Respondent seeks to sustain the granting of summary judgment dismissing Appellants' Complaint and granting judgment on Respondent's Amended Counterclaim.

## DISPOSITION IN THE LOWER COURT

On June 17, 1977, the Honorable G. Hal Taylor, District Judge, heard arguments on Respondent's Motion for Summary Judgment. The parties stipulated that there were no issues of fact. The case was submitted solely on the legal issues concerning Appellants' affirmative defense based on various provisions of the Utah Motor Vehicle Code. ?

Appellants' Complaint was dismissed, judgment was entered on Respondent's Amended Counterclaim ordering Appellants to surrender possession of the subject travel trailer to Respondent or in the alternative, pay a money judgment in the amount of \$9,201.79 with interest and costs. Respondent was awarded attorney's fees in the amount of \$950.00.

Pursuant to the Court order, Respondent took possession of the travel trailer.

### STATEMENT OF FACTS

Appellants' Statement of Facts is incomplete and inaccurate in some instances. Through the use of inuendo, Appellants suggest facts which are nonexistent or not a matter of record. For these reasons, Respondent desires to set forth a more correct version of the facts.

It was stipulated in open court during the argument on defendant's motion for summary judgment which gave rise to this appeal that there were no issues of fact before the court. The parties agreed to submit the matter on the pleadings, affidavits and exhibits submitted to the lower court (R. 97).

On or about July 26, 1976, Respondent sold a used 1973 Air Stream Travel Trailer to Appellants. They took possession of the trailer and made payments for the months of August, September and October. They ceased making payments on the trailer and in December of 1976 filed a complaint asking for rescission of the contract on the basis that the trailer "is unfit for the implied and warranted purposes in that the same cannot be licensed in the state of Washington and other unknown states which plaintiffs [Appellants] require licenses in, and, therefore, cannot be used by plaintiffs for its designated and intended use." (R. 2, 69,70,74). Appellants asked for no other relief than rescission.

The travel trailer, which is the subject of this action, was purchased in 1974 by Respondent from Third Party Defendant Motors Insurance Corporation (hereinafter "MIC"). The trailer had been stolen sometime prior to 1974 and had been recovered by MIC, who received title because it had reimbursed its insured for loss of the trailer. MIC submitted the trailer to the state of Washington Department of Motor Vehicles. The trailer was inspected. Under the direction of the Washington Highway Patrol, the trailer was reassigned a valid vehicle identification number. All requirements of the state of Washington were met for the issuance of title and relicensing of the trailer. MIC obtained valid title. (R. 76 through 83).

All motor vehicles, including travel trailers have a vehicle identification number (VIN) stamped in several locations on the vehicle. The correct VIN for the trailer is 131B3S1849. Apparently, the thieves who stole the unit altered a VIN which is located on the door plate of the trailer to 131B3S2839. When the state of Washington Highway Patrol reattached the correct and original number on the right-front draw bar of the trailer, they failed to correct the altered serial number on the door plate. (R. 72,76-83).

At the time the trailer was sold to Appellants, an employee of Respondent incorrectly recorded the altered serial number from the door plate on the contract and title



documents. When Respondent submitted the title documents to the State of Utah, they discovered their error and corrected it. (R. 72).

Although Appellants imply in paragraph 1 of the Statement of Facts, page 4, Appellants' brief, that the trailer was not licensed, it is an undisputed fact that the trailer was validly titled and licensed in the State of Utah when purchased. At all times material to this cause of action, the trailer has been and at the time of the argument on defendant's motion for summary judgment, was licensed and titled in the State of Utah.

The trailer can be licensed in the state of Washington or in any other state of the Union. (R. 76). It should be emphasized, that the trailer has gone through all necessary steps for relicensing and retitling in the state in which it was stolen, Washington, and in the state in which it was purchased and used, Utah. (R. 72,73,76-83).

After Appellants purchased, licensed and titled the trailer in Utah, they took the vehicle to the state of Washington. Initially, the state of Washington refused to title the vehicle. It is assumed the vehicle inspector saw the altered serial number on the door plate and failed to check for the correct number. Appellants contacted Respondent. Respondent contacted the state of Washington which apologized for its error and requested Appellants to resubmit the

trailer for licensing. Respondent contacted Appellants and told them that Washington state would issue title and license for the trailer. Appellants never attempted to license the trailer in Washington after Respondent contacted them. (R. 84-86).

Subsequent to the sale of the trailer, Respondent negotiated the contract of purchase to Zions First National Bank. Contrary to the terms of the agreement, Appellants failed to make the payments due under the contract. (R. 69, 72,74,75).

In April of 1977, Zions First National Bank assigned the contract back to Respondent and received \$9,211.79 as a pay off on the loan for the underlying transaction. (Ex. 1, 74,75).

Appellant makes a major misstatement of the facts in paragraph 2, page 4, of the Statement of Facts. Appellants' brief states:

In addition to the above facts, the uncontroverted admissions and interrogatories indicated:

2. That the Travel Trailer was not insurable (R. 85).

There is no statement in the record including page 85 which supports the statement that the trailer was un-insurable. On page 85 of the Record, it states:

Request No. 2. Admit that the travel trailer which is the subject matter of plaintiff's Complaint

was insured under an insurance policy with Caravanner Insurance, Inc., said policy had an expiration date of June 5, 1977.

(a): Denied.

There is no statement on this page or on any other page of the Record which indicates that the trailer was uninsurable. In fact, Appellants' counsel knows that this is not the case. At the argument on the Motion for Summary Judgment, Respondent's counsel produced a sworn affidavit from Caravanners Insurance, Inc., which stated that the travel trailer which is the subject matter of this action was currently insured with said company, and that said company knew of no reason why the trailer could not continue to be insured with the company. Through inadvertence, the affidavit was not formally submitted to the court and, therefore, is not a part of the record. However, Appellants' counsel had the opportunity to review the affidavit and was aware of its contents.

Appellants' Statement of Facts implies that Respondent altered the serial number on the subject travel trailer. Such is not the case. The serial number was altered by those who stole the trailer. The state of Washington Highway Patrol failed to remove the altered number when it was retitled and when the correct VIN was replaced on the unit. Brasher's incorrectly recorded the altered number on the sales documents. That error was quickly rectified.

## ARGUMENT

### POINT I

THERE IS NO VIOLATION OF UTAH LAW WHICH WOULD RESULT IN APPELLANTS' RECEIVING RESPONDENT'S TRAVEL TRAILER WITHOUT AN OBLIGATION TO PAY FOR IT.

#### Introduction

Appellants seek, by a tortured application of 41-3-3, UCA (1953), as amended, to be able to obtain Respondent's travel trailer worth in excess of \$10,000.00 with no obligation to pay for it!

Quite simply, Appellants suggest that Respondent violated 41-1-18, 41-1-120 and 41-20-1, which are included within the scope of 41-3-3 by virtue of 41-3-23(a)(4) set forth below.

#### A. There Have Been No Violations of Utah Law.

41-3-3 UCA (1953), as amended, provides:

Penalties for violation of act.-- No action or right of action to recover any such motor vehicle, or any part of the selling price thereof, shall be maintained in the courts of this state by any such dealer or vendor, his successors or assigns, in any case wherein such vendor or dealer shall have failed to comply with the terms and provisions of this act, and such vendor or dealer, upon conviction for the violation of any of the provisions of this act shall be deemed guilty of a misdemeanor and shall be punished by a fine of not more than \$299 or by imprisonment for not more than six months in the county jail, or by both such fine and imprisonment.

Sections 41-1-18, 41-1-120, and 41-20-1 respectively provide as follows:

41-1-18. Registration and certificates of title-- Unlawful to violate provisions requiring.-- It shall be unlawful for any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway any vehicle of a type required to be registered hereunder which is not registered or for which a certificate of title has not been issued or applied for, or for which the appropriate fee has not been paid when and as required hereunder, except that when application accompanied by proper fee has been made for registration and certificate of title for a vehicle it may be operated temporarily pending complete registration upon displaying a temporary permit duly verified, or other evidence of such application, or otherwise under rules and regulations promulgated by the commission.

41-1-120. Selling or buying vehicles without manufacturers' numbers a felony.-- Any person who knowingly buys, receives, disposes of, sells, offers for sale or has in his possession any motor vehicle or engine removed from a motor vehicle, from which the manufacturer's serial or engine number or other distinguishing number or identification mark or number placed thereon under assignment from the department has been removed, defaced, covered, altered or destroyed for the purpose of concealing or misrepresenting the identify of said motor vehicle or engine, is guilty of a felony.

41-20-1. Definitions.-- As used in this act:

(1) The words "American Standard" mean a standard adopted and published by the American National Standards Institute or the National Fire Protection Association.

(2) The words "mobile home" mean a vehicular, portable structure built on a chassis and designed to be used without a permanent foundation as a dwelling when connected to indicated utilities.

(3) The words "travel trailer" mean a vehicular, portable unit, mounted on wheels, not requiring special highway movement permits when drawn by a motorized vehicle:

(a) Designed as a temporary dwelling

for travel, recreational and vacation use;  
and

(b) When factory-equipped for the road, having a body width of not more than eight feet and a body length of not more than forty feet.

(4) The words "motor home" mean a self-propelled vehicular unit, primarily designed as a temporary dwelling for travel, recreational and vacation use.

(5) The words "recreational vehicle" mean a vehicular unit, other than a mobile home, primarily designed as a temporary dwelling for travel, recreational and vacation use, which is either self-propelled or is mounted on or pulled by another vehicle, including but not limited to: a travel trailer, a camping trailer, a truck camper, and a motor home.

(6) The word "person" includes any individual, firm, partnership, corporation, or other legal entity.

Appellant argues that 41-1-18, 41-1-120 and 41-20-1 are included within the proscription of 41-3-3 by 41-3-23(a) (4) which states:

41-3-23. Prohibited acts or omissions--Violation by licensee.--(a) It shall be unlawful and a violation of this act for the holder of any license issued under the terms and provisions hereof:

...

(4) To violate any law of the state of Utah now existing or hereafter enacted respecting commerce in motor vehicles or any lawful rule or regulation respecting commerce in motor vehicles promulgated by any licensing or regulating authority now existing or hereafter created by the laws of the state of Utah.

Respondent did not violate 41-1-18 UCA (1953), as amended. That statute makes it unlawful for "any person to drive or move or for an owner knowingly to permit to be driven or moved upon any highway [any vehicle requiring registration]." [emphasis supplied]. There is no evidence before this court that Respondent drove or moved the travel trailer on the highway. As a matter of fact, it did not. Respondent was not the owner of the trailer--Appellant was. Hence, the statute has no application. There is no evidence that the travel trailer was ever moved on the highway when it was unregistered. The only evidence before this court is that the travel trailer was properly titled and licensed in the state of Utah in the course of purchase and that during the litigation it was relicensed in the state of Utah.

The only evidence of any registration problem in Utah is that Respondent make a clerical error and recorded the wrong identification number on the contract and title documents. This error was discovered, corrected and title and license was issued. Even if there were a violation, certainly, there was no knowing violation, as required by the statute.

Respondent did not violate 41-1-120 UCA (1953), as amended. This section says that a violation requires a

person knowingly buy, receive, dispose or sell a motor vehicle or engine from a motor vehicle, from which the manufacturer's serial engine number or identification number has been removed, defaced, covered, altered or destroyed "for the purpose of concealing or misrepresenting the identify of said motor vehicle ..." [emphasis supplied] is guilty of a felony.

Although for some purposes of the code a travel trailer is a "motor vehicle," for this section of the code, a travel trailer is not a "motor vehicle." A "motor vehicle" is defined for the purposes of Chapter 1 in 41-1-1(b). It states:

(b) "Motor Vehicle." Every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wire, but not operated upon rails.

A trailer is defined as follows:

(g) "Trailer." Every vehicle without motive power designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that no part of its weight rests upon the towing vehicle.

Clearly, a travel trailer is not a motor vehicle within the meaning of Chapter 1.

Assuming for purposes of argument that a travel trailer is a motor vehicle within the purview of Chapter 1, it requires a knowing violation for the purpose of concealing



or misrepresenting the identity of the motor vehicle. There is no evidence whatsoever that Respondent was guilty of any such conduct.

There is no violation of 41-20-1 UCA (1953), as amended. This section is merely a definitional section. It contains no affirmative duties.

Appellant on page 8 of its brief, argues that the travel trailer did not have an inscription on the trailer permanently identifying the trailer as a travel trailer. There is no evidence to support this contention in the record. More importantly, that requirement of 41-20-1 was removed from the statute by the 1971 amendment and is no longer contained therein.

B. 41-3-3 Must Be Construed So As Not To Lead To An Absurd and Unjust Result.

Assuming, arguendo, that there is some type of technical violation of the act by Respondent, it would be an absurd and unjust result which would grant to the plaintiff the huge windfall of receiving a travel trailer without having to pay for it. Surely, the legislature, in passing 41-3-3, did not intend to encourage those buying travel trailers to cease payments thereon in hope that some technical violation would give them the travel trailer free of all encumbrances.

In Rowley v. Public Service Commission, et al., 112 U 116, 185 P. 2d 514 (1947), the appellant was arguing for what would have been an absurd or unjust interpretation of the statute dealing with the regulation of contract carriers. The appellant argued that the literal interpretation of the various laws regulating contract carriers would mean that his rights would have been preserved under the grandfather provision of the applicable acts, even though he was in violation of the law during the grandfather period. This Court recognized that such an intention could not rationally be found in the statute and stated:

[W]hen the legislative intent is not clear and certain, and a literal interpretation of the language of the statute gives an absurd result, then the court is justified in searching the enactment for further indication of legislative intent. These indications can be determined by the wording of the act or by considering the underlying reasons ... and the purposes to be accomplished. 185 P. 2d at 520. [This language was approved in Anderson v. Utah County, 368 P. 2d 912 (1962)]

In light of the history of amendment and change of 41-3-1, et seq. and in light of the shocking results which would attach to this case if appellant were allowed to apply this section as argued, this Court has a duty to interpret that section to avoid such an unjust result. As is stated in 73 Am Jur 2d Statutes, §265:

A statute subject to interpretation is presumed

not to have been intended to produce absurd consequences, but to have the most reasonable operation that its language permits. If possible, doubtful provisions should be given a reasonable, rational, sensible, and intelligent construction. These rules prevail where they are not restrained by the clear language of the statute. Under this rule, general terms in a statute should be so limited in their application as not to lead to absurd consequences.

Thus, in interpreting §41-3-3, the initial question must be to what motor vehicles does this section refer when it says "any such motor vehicle." The word "any" may be given a restrictive interpretation while the word "such" should be given the effect called for in its context.

Sections 41-3-1 through 41-3-5, as originally enacted in 1937, constituted a separate act having the following stated statutory purpose:

An Act to Regulate the Business of Selling Used Motor Vehicles by Dealers Not Residing in or Having a Permanent Place of Business in the State of Utah, and by Resident Dealers Purchasing, Handling and Selling Used Motor Vehicles Received or Acquired From Nonresident Dealers; Requiring All Used Cars Brought Into the State for the Purpose of Sale to Be Registered With the State Tax Commission, All Such Dealers to Execute and Deliver to Each Purchaser of a Used Motor Vehicle a Bond Indemnifying the Purchaser Against Failure of Title or Breach of Warranty or Fraudulent Misrepresentations, and the Delivery of a Certificate of Title to the Vendee; Defining Terms, and Providing Penalties for the Violation of the Provisions of This Act. Laws of Utah, Chapter 69, 1937.

The act in using the phrase "any such motor vehicle," referred only to those motor vehicles mentioned in

41-3-1 [which is now repealed], dealing only with non-resident dealers and the requirement to register motor vehicles transferred into the state within ten days and posting a bond thereon, and 41-3-2 [which is currently in effect] dealing with the requirement to deliver title to a vendee of a used motor vehicle within forty-eight hours.

Id.

Chapter 3 of Title 41 has subsequently been expanded through amendment, but an analysis of what has been added, makes it clear that the remedy provided by §41-3-3 was not meant to apply to the additions. §§41-3-6 through 41-3-27 were added in 1949. These sections deal with definitions, provide for an administrator and an advisory board to administer and enforce the act, define procedural matters, stipulate types of licenses that dealers and salesmen can obtain, state the required fees to obtain the licenses and how the fees are to be used, explain the requirements for filing bonds, and detail the administrator's hearings and the effect thereof. Only §41-3-23, "Prohibited Acts or Omissions" refers to motor vehicles in a context which might be applicable to 41-3-3.

For example, 41-3-23(3) makes it unlawful for a licensee to knowingly purchase, sell, transport or otherwise handle stolen motor vehicles. §41-3-23(4), which is relied upon by Appellant, makes it unlawful to violate any law

dealing with commerce in motor vehicles. §41-3-23(a) deals with restricting licensees from dismanteling a motor vehicle without a permit. The whole context of 41-3-23 deals with prohibited acts of licensees. The subject matter is not motor vehicles, but licensees. Thus, applying the reference of "any such motor vehicle" in 41-3-3 to 41-3-23, wherein the subject matter is not motor vehicles, but licensees, is tenuous at best.

In addition, the act added in 1949 provided its own penalty provision. §41-3-27 describes the penalty for violations of this act [meaning 41-3-6 through 41-3-27]. The terminology used in 41-3-27 in many ways is redundant to the penalties imposed by 41-3-3. No mention is made in 41-3-27 of a bar to recovery of a "motor vehicle" because, as mentioned above, motor vehicles were not the subject matter of the 1949 addition.

While one could argue that losing a right to recover a motor vehicle is a "penalty" to a dealer, such a penalty does not comport with the nature of the other penalties imposed (misdemeanor), nor with the general public policy of not allowing one to benefit from his own wrongdoing as it applies to the facts of this case. Hence, the addition of 41-3-27 apparently evidences a legislative intent to retain the effect of the penalty of 41-3-3 as applying only to the 1937 act, while the penalty of 41-3-27 was added to

apply to the 1947 act.

§§41-3-28 through 41-3-37 were added to Chapter 3 of Title 41 in 1953 and likewise do not discuss "motor vehicles" in the context where the reference from 41-3-3 ("any such motor vehicle") would be applicable. These sections deal with allowing temporary permits and special plates, not with motor vehicles per se. In conclusion, the phrase "any such motor vehicle" as is used in 41-3-3 must refer only to those motor vehicles described in the original 1937 act.

In any event, the legislature could not have intended that 41-3-3 would apply to a dealer who had in good faith complied with the law in all respects, but because of a clerical error, might have been guilty of a technical violation.

C. 41-3-3 Is Not Applicable to Resident Dealers.

This court held in Clearfield State Bank v. Peters Plumbing, 10 U 2d 136, 349 P. 2d 618 (1960), that §41-3-3 was only applicable to non-resident dealers. Respondent is a Utah corporation duly qualified and doing business in the state of Utah and, hence, is a resident dealer.

In Clearfield, supra, "A" sold a car to "B," but kept title until "B" paid for it. "P," a bank, handled the draft for the transaction. "B," a used car dealer, sold the car on time to "D." "B" then assigned the security agreement

and note received from "D" to the same bank, "P." "B" never paid "A" for the car, so "A" kept the title. The purchaser, "D," upon learning that "A" had the title, refused to make payments to "B," and made them to "A," eventually receiving the title. "P" brought suit against "D" to recover the car. The Utah Supreme Court held that "P" was not barred from bringing suit by §§41-3-2 and 41-3-3 as "D" asserted, because those sections applied only to non-residents.

Appellants argue in their brief that Clearfield has been overruled because 41-3-1 was repealed by the 1967 legislature. He cites no legislative history or authority for this proposition, and the restrictive application as set forth in Clearfield still applies to the remaining portions of the statute. From the title of the act, supra, page 15, it is clear that it was intended to apply to non-resident dealers. Absent some specific showing, there is no basis to assume as Appellant has that by repealing Section 1, the legislature has overruled Clearfield.

## POINT II

APPELLANTS MADE NO SHOWING TO SUBSTANTIATE A CAUSE OF ACTION FOR RESCISSION.

Appellants' Complaint was narrowly drawn to ask the court for the remedy of rescission. There is no cause of action stated for damages or for any other type of relief. It is so well supported so as not to need recitation

of authority that rescission, as an equitable remedy, will only lie when the party requesting rescission has an inadequate remedy at law.

Appellants have made no such showing. In fact, the record is totally devoid of any basis for rescission at all. Assuming all interpretations of the facts in favor of Appellants, all they have shown is that there was a clerical error made on the sales documents, and upon initial presentation of the trailer to the Washington state authorities, they refused to license it. It is undisputed, that the trailer was licensed and is licensed in the state of Utah and that it can be licensed in the state of Washington. If Appellants have suffered anything, they have suffered a minor inconvenience, which was remedied promptly by the Respondent. Surely, these facts do not constitute sufficient grounds to invoke the court of equity to grant the drastic remedy of rescission. Thus, the trial court was imminently correct in dismissing plaintiffs' Complaint.

#### CONCLUSION

What Appellants seek to have this court do is create an enormously unjust result. They seek to have this court award them an expensive travel trailer with no obligation to pay for it. Respondent has done everything in its power to comply in good faith with the laws of the state



of Utah. Its compliance is evidenced by the fact that the travel trailer has been licensed and titled in this state and can be licensed in the state of Washington. Respondent has violated no law. Appellants have shown no grounds for the relief they are requesting.

The decision of the lower court should be affirmed because (1) Respondent has not violated any Utah law which would bring §41-3-3 into operation; (2) Even if Respondent were guilty of a technical violation of 41-3-3, the statute must be construed so as not to lead to an absurd and unjust result; (3) This court has held that 41-3-3 does not apply to resident dealers; and (4) Appellants' proof is woefully inadequate to justify the granting of the equitable remedy of rescission.

RESPECTFULLY SUBMITTED this 15th day of February, 19

15/  
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Attorney for Respondent

CERTIFICATE OF SERVICE

This is to certify that I hand delivered true and correct copies of Respondent's Brief to Robert M. McRae and Robert J. Haws, Attorneys for Appellants, 370 East Fifth South, Salt Lake City, Utah 84111; and to Alan D. Frandsen, Attorney for defendant Motors Insurance, 353 East Fourth South, Salt Lake City, Utah 84111, this 6<sup>th</sup> day of February, 1978.

151