Brigham Young University Law School
BYU Law Digital Commons

Utah Supreme Court Briefs (1965 –)

1979

Donald A. Dyson et al v. Aviation Office of America, Inc. : Reply Brief of Appellants

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Part of the Law Commons

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors.

Recommended Citation
Reply Brief, *Dyson v. Aviation Office of America, Inc.*, No. 15661 (Utah Supreme Court, 1979).
https://digitalcommons.law.byu.edu/uofu_sc2/1112

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT

OF THE STATE OF UTAH

DONALD A. DYSON, STEPHEN F. KESLER, W. T. BISSELL, RONALD McCLAIN, DONALD L. OBORN, and ELMO WALKER,

Plaintiffs (Donald A. Dyson, Appellant),

vs.

AVIATION OFFICE OF AMERICA, INCORPORATED, a Texas corporation, and RANGER INSURANCE COMPANY, a New York corporation and KENNETH R. SHANNON,

Defendants/Respondents.

AVIATION OFFICE OF AMERICA, INCORPORATED, a Texas corporation, and RANGER INSURANCE COMPANY, a New York corporation,

Third-Party Plaintiffs and Counterclaim Defendants/ Respondents,

vs.

DONALD A. DYSON, LeROY F. DYSON and L. F. DYSON & ASSOCIATES, INC., a Nevada corporation,

Third-Party Defendants and Counterclaimants/Appellants.

STEPHEN F. KESLER, W. T. BISSELL, RONALD McCLAIN, DONALD L. OBORN and ELMO WALKER,

Plaintiffs/Respondents,

vs.

DONALD A. DYSON, LeROY DYSON and L. F. DYSON & ASSOCIATES, INC., a Nevada corporation,

Defendants/Appellants.

Case No. 15661

REPLY BRIEF OF APPELLANTS DONALD A. DYSON AND L. F. DYSON & ASSOCIATES, INC.

FILED

JAN 12 1979

Clerk, Supreme Court, Utah

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

APPEAL FROM JUDGMENT OF THE

THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

HONORABLE BRYANT H. CROFT, JUDGE

H. WAYNE WADSWORTH
of and for
WATKISS & CAMPBELL
310 South Main, 12th Floor
Salt Lake City, Utah 84101

Attorneys for Appellants Donald A. Dyson and L. F. Dyson & Associates, Inc.

WALLACE R. LAUCHNOR
of and for
MOFFAT, WILLING & PAULSEN
900 Tribune Building
Salt Lake City, Utah 84101

Attorneys for Appellant Donald A. Dyson

RAYMOND A. HINTZE
of and for
WALKER & HINTZE
4685 Highland Drive, #202
Salt Lake City, Utah 84117

Attorneys for Respondents Stephen F. Kesler, W. T. Bissell, Ronald McClain, Donald L. Oborn and Elmo Walker

R. CLARK ARNOLD
of and for
REYNOLDS & ARNOLD
922 Kearns Building
Salt Lake City, Utah 84101

Attorneys for Respondent Gary Ferguson

STUART L. POELMAN
of and for
SNOW, CHRISTENSEN & MARTINEAU
200 South Main, #700
Salt Lake City, Utah 84101

Attorneys for Respondents Aviation Office of America, Inc. and Ranger Insurance Company

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

I N D E X

Page

I. INTRODUCTION 1

II. REPLY TO AOA AND RANGER INSURANCE COMPANY . . . 1

A. The Shannon endorsement should be issued as a matter of law 1

B. The evidence does not support a finding that AOA responded to the request for the Shannon endorsement 1

C. The U.C.C. is not applicable to the transaction in question 2

D. Respondents misconstrue the Court's reasoning in Barnett v. State Automobile and Casualty Underwriters, 487 P.2d 311 (Utah 1971) 3

E. Respondents' own actions have created an ambiguity 4

F. Respondents cannot distinguish away the case of Lewis v. Travelers Insurance Co., 239 A.2d 4 (N.J. 1969) 5

G. Respondents' argument under Point V is a "boot strap" argument that begs the issue in question 6

III. REPLY TO RESPONDENTS KESLER, ET AL 7

A. Appellants' appeal of the judgment in favor of respondents Kesler, et al., was not for the purpose of delay 7

B. The [illegible] court did not err in denying [illegible] respondents' attorneys fees in this action 9

C. The trial court did not err in denying [illegible] interest incurred on their [illegible] note 11

IV. [illegible] 12

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

A U T H O R I T I E S

Page

I. Case law:

Barnett v. State Automobile and Casualty Underwriters, 487 P.2d 311 (Utah 1971) 3, 4

Bullfrog Marina, Inc. v. Lentz, 501 P.2d 266 (Utah 1972) 4

Ephraim Theatre Co. v. Hawk, 321 P.2d 221 (Utah 1958) 4

Keller v. Deseret Mortuary Company, 455 P.2d 197 (Utah 1969) 11

Lewis v. Travelers Insurance Company, 239 A.2d 4 (N.J. 1969) 5, 6, 12

Pacific Coast Title Insurance Co. v. Hartford Accident and Indemnity Co., 325 P.2d 906 (Utah 1958) 9

Stubbs v. Hemmert, 567 P.2d 168 (Utah 1977) 9

II. Utah Code Annotated, 1953, as amended:

Title 70A, U.C.C. 2

Section 70A-1-103 3

Section 70A-1-205(3) 3

Section 70A-1-205(4) 2

III. Utah Rules of Civil Procedure:

Rule 73(d) 8

Rule 73(l) 7, 8, 1

IV. Federal Rules of Civil Procedure:

Rule 38 8

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

I.
INTRODUCTION

Appellants Donald A. Dyson and L. F. Dyson & Associates reply to the Briefs of Respondents AOA and Ranger Insurance Company and Respondents Kesler, Bissell, McClain, Oborn, Walker and Ferguson as follows.

II.
REPLY TO AOA AND RANGER INSURANCE COMPANY

A. The Shannon endorsement should be issued as a matter of law.

Respondents' argument that no endorsement to add Shannon as a covered pilot misses the point of Appellants' appeal, i.e., that pursuant to the acknowledged conduct and practice of AOA to issue endorsements effective as of the date of request if AOA has all the information necessary to rate the risk, it was obliged as a matter of law to extend coverage to Shannon since it admittedly had all information necessary to rate the risk when it received the unqualified request to add Shannon as a covered pilot.

B. The evidence does not support a finding that AOA responded to the request for the Shannon endorsement.

Also, Respondents misstate the legal effect of the record when they say that "the last known communication from the company requested Dyson to give his approval as to the new status of the policy and to the additional premium" since Respondents' evidence as discussed under Point IV of Appellants' Brief was insufficient to establish a presumption that such communication was ever received by the Dyson agency and the direct testimony of Mrs. Cartwrigh

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

was that it had never been received. The trial court acknowledged the deficiency in proof of mailing sufficient to raise a presumption of receipt when it received AOA's file copy of the memo in evidence by stating, "I would say this, the acceptance of the exhibit I would not interpret it as saying, as proof you received it." (R. 632).

C. The U.C.C. is not applicable to the transaction in question.

An examination of Title 70A, Uniform Commercial Code, will reveal that it purports to deal with limited and specific types of transactions, e.g.:

Chapter 2, Sales;

Chapter 3, Commercial Paper;

Chapter 4, Bank Deposits & Collections;

Chapter 5, Letters of Credit;

Chapter 6, Bulk Transfers;

Chapter 7, Warehouse Receipts, Bills of Lading and Other Documents of Title;

Chapter 8, Investment Securities; and

Chapter 9, Secured Transactions.

The section relied upon by Respondents, 70A-1-205(4), is contained within Chapter 1, entitled General Provisions. To contend that some language in the general provisions of the code applies to types of transactions not covered by the code is a strained attempt at statutory construction not worthy of those who urge it. However, even if one assumes that the general provisions of the code apply in this case, such provisions make evident that the principles

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

of agent-principal law are not to be abrogated by the code. A preceding section of the code, §70A-1-103 states:

> "Supplementary general principles of law applicable. Unless displaced by the particular provisions of this act, the principles of law and equity, including the law merchant and the law relative to capacity to contract, principal and agent, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause shall supplement its provisions."

Therefore, even if the Uniform Commercial Code is applicable to the present situation, it does not preclude appellants' contention that AOA's acknowledged policy of backdating endorsements to the date of request conferred upon appellants an apparent authority to bind the insurer.

Subsection §70A-1-205(3), which immediately precedes the subsection that respondents rely upon, states:

> "A course of dealing between parties and any usage of trade in the vocation or trade in which they are engaged or of which they are or should be aware give particular meaning to and supplement or qualify terms of an agreement."

It is clear that respondents' consistent and acknowledged practice of backdating the endorsements to the date of request was a "course of dealing between the parties" with which respondents were totally familiar. It is obvious from the literal words of the statute that this well-established course of dealing "supplement[s] or qualify[ies] terms of an agreement."

D. Respondents misconstrue the Court's reasoning in Barnett v. State Automobile and Casualty Underwriters, 487 P.2d 311 (Utah 1971).

In that case, the dispute was between the insured and the insurer, not between the agent and the principal. Respondents fail

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

to point out that the Court in Barnett relied explicitly on the applicable provisions of the Utah Insurance Code which control all contracts for insurance in this state. In the present case, the issue involves an agency contract, not an insurance contract. Additionally, in the Barnett case, the Court specifically noted that the evidence produced at trial demonstrated that the custom asserted by the plaintiffs was disputed by the defendants. In the present case, there is no contention by the respondents that they did not have a practice of backdating endorsements to an existing policy. In fact, Mr. Tom Dougherty, a senior Vice-President at AOA specifically acknowledged that this was the practice of AOA (R.612)

E. Respondents' own actions have created an ambiguity.

Respondents also set forth Ephraim Theatre Co. v. Hawk, 321 P.2d 221 (Utah 1958), a case of an action to recover rent, as the "rule for interpretation of contracts". (Respondents' Brief, p. 22 In the Ephraim case, the Court found absolutely no ambiguity in the contract. However, in a later case, involving a dispute over the terms of an employment contract, the Court again addressed the issu of contract interpretation in the following language:

> "In Hardinge Co. v. Eimco Corp., [266 P.2d 494 (Utah 1954)] this court stated that in the interpretation of contracts, the interpretation given by the parties themselves as shown by their acts will be adopted by the court. (We think this should be: will be regarded as advisory.) In Bullough v. Sims [400 P.2d 20 (Utah 1965)] this court explained that when parties place their own construction on their agreement and so perform, the court may consider this as persuasive evidence of what their true intention was. It is true that the doctrine of practical construction may be applied only when the contract is ambiguous; but the question becomes ambiguous to whom? Where the parties have demonstrated by their actions and performance that to them the contract meant something quite different, the meaning and intent of the parties should be enforced. In such

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

a situation, the parties by their actions have created the ambiguity to bring the rule into operation. If this were not the rule, the courts would be enforcing one contract when both parties have demonstrated that they meant and intended to the contract to be quite different." Bullfrog Marina, Inc. v. Lentz, 501 P.2d 266 (Utah 1972).

Respondents, by their own undisputed practice of backdating endorsements, have clearly shown the meaning they themselves have placed upon the terms of the agency contract, or that they initially agreed to modify it by the course of their conduct. It is difficult for appellants to understand how respondents, after engaging in this practice since October 1970 (R.507-511), which plainly demonstrates the meaning respondents placed on the terms of the agency contract, can now assert that they never intended to be bound by their own practices and policies.

F. Respondents cannot distinguish away the case of Lewis v. Travelers Insurance Co., 239 A.2d 4 (N.J. 1969).

Through a careful, self-serving editing of the New Jersey Supreme Court's opinion, respondents point out that in Travelers the agent alleged that the company had expressly modified the agency agreement, granting the agent binding authority. Yet the Court specifically stated in its analysis of the facts that "[w]e accept the premise that Travelers never in so many words authorized the agents to bind a risk in that category." Id. at 6. Respondents also attempt to assert that the Travelers court implied that the authorization to the agent was ambiguous and that this is not true in the present case. (Respondents' Brief 25 and 26). However, as the Travelers case clearly points out, the ambiguity was created by

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

the company's repeated policy of backdating policies, not by the terms of the written agreement. Those circumstances in Travelers which led the court to its conclusion that the agent had apparent authority to bind the company parallel the circumstances found in the present situation, i.e., a clear practice of backdating endorsements grants the agent the authority to bind the company on endorsements to existing policies, a fact admitted by Mr. Dougherty.

Also, respondents assert that the holding of the Travelers case was based on a theory of modification which cannot apply to this case. Yet, respondents ignore the clearly stated holding of Travelers court:

> "We prefer to hold that a practice of backdating policies to the date requested in the application implies, as between principal and agent, authority in the agent to bind a risk pending the principal's decision on the application." Id. at 9.

The practice of backdating policies was without doubt the basis for the holding in Travelers. That exact practice is unarguably the practice on which appellants relied in the present case. That practice was instituted by the respondents and was in effect since October, 1970. To allow the respondents to now disavow this practice would clearly lead to an unfair and inequitable result.

G. Respondents' argument under POINT V is a "boot strap" argument that begs the issue in question.

Respondents state that "the trial court held that AOA and Ranger had not accepted the risk on Shannon as a pilot since no endorsement was specifically made nor was a course of conduct shown to impliedly cover Shannon", overlooking the fact that

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Mr. Dougherty admitted the practice in question. Interestingly, respondents do not attempt to justify the reasons given by AOA's claims department for denying coverage of the loss. The issue is not whether Shannon had been endorsed on the policy, but whether or not under the acknowledged "backdating" practice, he should have been endorsed. The claims department was silent on the issue. Likewise, the other reason given, that Dyson was not the <u>sole</u> owner of the aircraft is without merit, since the application for the insurance does not even request such information, and in any event, Dyson still had a security interest in the aircraft at the time of the loss. AOA/Ranger's stated reasons for denial of coverage are nothing more than a <u>bad faith</u> attempt to deny coverage under a fact situation where they would have "backdated" the requested endorsement and charged a premium therefor if the loss had not occurred before they had processed the requested endorsement.

III.
REPLY TO RESPONDENTS KESLER, ET AL.

A. <u>Appellants' appeal of the judgment in favor of respondents Kesler, et al., was not for the purpose of delay</u>.

Utah Rule of Civil Procedure 73(1) provides, in pertinent part:

> "On the trial of the cause on appeal, if it appears to the court that the appeal was made <u>solely</u> for delay, it may add to the costs such damage as may be just, not exceeding twenty-five percent of the judgment appealed from." (Emphasis added).

At the trial, the parties entered into a stipulation in which the Dyson Agency admitted liability to said plaintiffs (Kesler,

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

et al.) "if no insurance coverage was found to exist". Trial Court's Memorandum Decision, p. 4 (emphasis added). The trial court found that no insurance coverage did exist and that, therefore, the Dyson Agency breached its contract with the plaintiffs Kesler, et al. The Dyson Agency has appealed that decision to this Court. If this Court finds that AOA should have issued an endorsement covering Shannon or a pilot as requested, and, therefore, that insurance coverage did indeed exist in law, then Dyson would not have breached his contract with the plaintiffs Kesler, et al., and the trial court's ruling that the Dyson Agency breached its contract with the plaintiffs Kesler, et al. would be erroneous and there would be no grounds for liability of the Dyson defendants to the plaintiffs.

It is clear from these facts that Dysons' appeal from the judgment against them in favor of the plaintiffs is not "made solely for delay" but rather, to the contrary, because there are genuine issues of law concerning the liability between Dysons and the plaintiffs to be resolved by this Court. Furthermore, the Dyson Agency, in compliance with Rule 73(d), Utah Rules of Civil Procedure, has filed a supersedeas bond in the amount of $30,000.00, which further evidences Dysons' intent to meet any final judgment rendered against them.

The appellants Kesler, et al. assert that Rule 73(l) is similar to Rule 38, Federal Rules of Appellate Procedure and cite several Federal cases which applied this rule. Federal Rule 38 states:

> "If a court of appeals shall determine that an appeal is frivolous, it may award just damages and single or double costs to the appellee."

Even a cursory reading of the two rules reveals a significant

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

difference. Unlike the Federal Rule, the Utah Rule allows damages only if the appeal was made for the sole purpose of delay while the broader Federal Rule extends to all frivolous appeals. The issues raised on appeal by the appellants clearly show that the appeal was not taken solely for delay, but because appellants contend that the trial court erred and that insurance coverage did exist as a matter of law for the loss in question and, therefore, appellants should not be held liable to the Kesler, et al. respondents.

Additionally, it should be noted that the plaintiffs Kesler, et al. have cross-appealed the decision of the trial court. By asking for additional damages from this court they are in effect requesting this court to have the Dyson Agency pay for their own independent appeal.

B. <u>The trial court did not err in denying plaintiff respondents' attorneys fees in this action</u>.

It is well settled in Utah that a party cannot recover attorney's fees from an opposing party without an express contractual or statutory duty for the opposing party to pay such fees. <u>Stubbs v. Hemmert</u>, 567 P.2d 168 (Utah 1977). Plaintiffs Kesler, et al. relies on <u>Pacific Coast Title Co. v. Hartford</u>, 325 P.2d 906 (Utah 1958) to support their claim for attorney's fees. The issue in that case was whether a party was entitled to recover attorney's fees from an opposing party in an action against a third party brought about as a direct result of the opposing party's breach. In that case, the plaintiff, a title insurance company, issued title insurance policy for homes being built by a contractor. Due to the financing requirements, these policies were issued before the rights of

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

materialmen and laborers had been concluded. For that very reason, the title company was the named obligee on a bond issued by the defendants which stated that the title company would be saved harmless from defaults on the part of the contractor. The contractor failed to meet its obligations to its subcontractors and materialmen who filed liens and subsequently attempted to foreclose the liens. The title company, due to its obligation to keep the titles unencumbered, had an obligation to defend against these liens.

The court found that this series of events could reasonably be foreseen and that the defendant's bond was issued specifically to protect the title company from that type of loss. In the present case, the trial court specifically found that the plaintiff's attorney's fees were fees claimed within the plaintiff's action itself. (Memorandum Decision, 19).

The plaintiffs claim that they were "forced to participate in the lawsuit because of their being moving parties in initiating the action and because they could not be released from attendance at the trial" (Plaintiffs' Brief, p. 9). However, plaintiffs fail to point out that Dyson himself was a party to the original suit filed against AOA and that after the plaintiffs filed suit against Dyson personally and the Dyson Agency, they independently elected to continue their own claim against AOA. (Memorandum Opinion, p. 19). The plaintiffs made this election despite the stipulation agreed to by Dyson that admitted liability to the plaintiffs if no insurance coverage was found to exist. It is clear that the plaintiffs unnecessarily incurred the attorney's fees in question by pursuing

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

their claim against Dyson, since no matter what occurred in the suit between Dyson and AOA/Ranger, the plaintiffs would recover damages for the loss of the aircraft, either from Dyson or from Ranger.

C. The trial court did not err in denying plaintiffs interest incurred on their Walker Bank note.

There is no better settled rule of law than that the measure of damages for a breach of contract is that which puts the non-breaching party in as good position as he would have been had there been no breach. Keller v. Deseret Mortuary Co., 455 P.2d 197 (Utah 1969). Even accepting, arguendo, the trial court's decision that Dyson did breach the contract with the plaintiffs, there is no doubt that the plaintiffs would have had to pay the interest on the note to Walker Bank & Trust Company. The plaintiffs were obligors under this note and the insurance coverage which they sought through the Dyson Agency was for the value of the aircraft, not for the value of their debt obligations.

Plaintiffs' argument that since Dyson was a joint obligor under the note he, in effect, has agreed to pay the higher rate of interest is totally spurious and frivolous. This argument conveniently overlooks the obvious fact that on the original note the plaintiffs were also obligors who had agreed to pay their share of the interest. It is totally incomprehensible how plaintiffs can assert that one who signs a note as a joint obligor agrees to pay all the interest on that note, and that the other joint obligors should pay none.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

This court has specifically stated that when a party breaches a contract to repay a sum certain, "the measure of the damages for such a breach would ordinarily have been the legal rate of interest allowable for such non-performance". Reed v. Armstrong, 6 Utah 2d 291, 312 P.2d 777 (1957). To hold that Dyson is liable for interest damages beyond that amount would clearly be an award of punitive damages against Dyson for breach of contract.

IV.
SUMMARY

For the reasons set forth in appellants' Brief, the judgment of the trial court in favor of AOA/Ranger should be reversed since the trial court erred in not applying the legal principals set forth in Lewis v. Travelers Insurance Company, 239 A.2d 4 (N.J. 1968) to the facts of this case and AOA's reasons for denial of coverage amount to nothing more than a bad faith attempt to avoid coverage under an endorsement AOA should have issued, and eventually would have issued, had not the loss occurred before processing had been completed.

The trial court's judgment denying the Walker Bank interest as an item of damages should be affirmed since the purchasers of the aircraft (plaintiffs/respondents) would have had to pay the Walker Bank interest, even if there had been no loss, and, thus, no question regarding insurance coverage ever raised.

Likewise, the trial court's denial of attorney's fees as an item of damages was proper since there was no agreement between the parties regarding the payment of fees necessary to support such an award.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

Appellants did not undertake this appeal for the purposes of delay, but for the bona fide purpose of contesting the trial court's judgment in favor of AOA/Ranger, which appellants verily believe to be erroneous, and, therefore, no penalty under Rule 73(1), U.R.C.P., should be assessed against appellants, even if this Court were to sustain the judgment in favor of AOA/Ranger, which appellants pray should be reversed.

WHEREFORE, appellants pray that this Honorable Court reverse the judgment of the trial court by directing that judgment be entered in favor of Donald A. Dyson against AOA/Ranger on plaintiffs' Complaint, or that judgment be entered in favor of Donald A. Dyson and L. F. Dyson & Associates on their Counterclaim against AOA/Ranger in the amount of any judgment found in favor of the Owners against the Dysons.

Alternatively, appellants pray that the action be remanded to the Third Judicial District Court in and for Salt Lake County for trial by jury pursuant to appellants' demand therefor prior to the trial of this case.

Respectfully submitted this ____ day of January, 1979.

H. WAYNE WADSWORTH
of and for
WATKISS & CAMPBELL
310 South Main, 12th Floor
Salt Lake City, Utah 84101

Attorneys for Appellants Donald A. Dyson and L. F. Dyson & Associates, Inc.

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.

WALLACE R. LAUGHNOR
of and for
MOFFAT, WELLING & PAULSEN
900 Tribune Building
Salt Lake City, Utah 84101

Attorneys for Appellant Donald
A. Dyson

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I mailed, postage prepaid, two copies of the foregoing Reply Brief of Appellants to each counsel for the parties as designated below on the ____ day of January, 1979.

RAYMOND A. HINTZE
WALKER & HINTZE
4685 Highland Drive, #202
Salt Lake City, Utah 84117
Attorneys for Respondents Stephen F. Kesler, W. T. Bissell, Ronald McClain, Donald L. Oborn and Elmo Walker

R. CLARK ARNOLD
REYNOLDS & ARNOLD
922 Kearns Building
Salt Lake City, Utah 84101
Attorneys for Respondent Gary Ferguson

STUART L. POELMAN
SNOW, CHRISTENSEN & MARTINEAU
200 South Main, #700
Salt Lake City, Utah 84101
Attorneys for Respondents Aviation Office of America, Inc. and Ranger Insurance Company

H. WAYNE WADSWORTH
Of Appellants' Attorneys

Sponsored by the S.J. Quinney Law Library. Funding for digitization provided by the Institute of Museum and Library Services
Library Services and Technology Act, administered by the Utah State Library.
Machine-generated OCR, may contain errors.