

1988

Amica Mutual Insurance v. Carl F. Schettler : Brief of Respondent NATB

Utah Supreme Court

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UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 880032-CA IN THE SUPREME COURT OF THE STATE OF UTAH

AMICA MUTUAL INSURANCE,
Plaintiff-Respondent

vs.

CARL F. SCHESSLER,
Defendant-Appellant.

88-0032-CA

CARL F. SCHESSLER,
Third-Party Plaintiff
and Appellant

Case No. 860621

vs.

(Category No. 13(b))

JAMES M. BLACK and BARBARA J.
BLACK dba BLACK, NICHOLS &
GUIVER; R. LAMAR GUIVER; and
NATIONAL AUTOMOBILE THEFT
BUREAU,

Third-Party Defendants
and Respondents.

BRIEF OF RESPONDENT NATB

Appeal from the Judgment of the
Third Judicial District Court in and for
Salt Lake County, State of Utah,
the Honorable Richard H. Moffat, presiding.

FILED

OCT 14 1987

Clerk, Supreme Court, Utah

IN THE SUPREME COURT OF THE STATE OF UTAH

AMICA MUTUAL INSURANCE, :
 :
 Plaintiff-Respondent :
 :

vs. :
 :

CARL F. SCHETTLER, :
 :
 Defendant-Appellant. :
 :

CARL F. SCHETTLER, :
 :
 Third-Party Plaintiff :
 and Appellant :
 :

vs. :
 :

JAMES M. BLACK and BARBARA J. :
 BLACK dba BLACK, NICHOLS & :
 GUIVER; R. LAMAR GUIVER; and :
 NATIONAL AUTOMOBILE THEFT :
 BUREAU, :
 :

Third-Party Defendants :
 and Respondents. :

Case No. 860621

(Category No. 13(b))

BRIEF OF RESPONDENT NATB

Appeal from the Judgment of the
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STATEMENT OF THE CASE

This appeal grows out of an actin brought by Carl Schettler against Amica Mutual Insurance Company, James Black, Barbara Black and R. LaMar Guiver dba Black Nichols & Guiver wherein Schettler alleged that the defendants were guilty of misconduct and improprieties with respect to their involvement in the investigation and prosecution of Carl Schettler for insurance fraud.

STATEMENT OF FACTS

1. NATB's only link to the investigation of Carl Schettler was due to the fact that Amica reported the theft to NATB, which automatically opened a file at NATB. (Deposition of Ellery Summer at 21, Record on appeal at 1151).

2. NATB played no active role i the investigation and subsequent prosecution of Carl Schettler. (Deposition of Ellery Summer at 19, 29, 30, 43, 44, 47, 68, 80, 82, 86, 87, and 98. (Record on appeal at 1151).

3. NATB did not urge the prosecution of Carl Schettler at any time during the course of the investigation. (Deposition of Ellery Summer at 98. (Record on appeal at 1151).

4. NATB's sole involvement in the investigation of Carl Schettler consisted of gathering and compiling information provided by other parties to the investigation. (Deposition of Ellery Summer at 19, 30, 44, 47, 53, 68, 80, 82, 87 and 98. (Record on appeal at 1151).

5. NATB neither conducted any independent investigation nor discovered any new evidence in the investigation. (Deposition of Ellery Summer at 19, 30, 44, 53, 68, 80, 82, 87 and 98. (Record on appeal at 1151).

6. NATB brought a Motion for Summary Judgment (Record on appeal at 495-509).

7. The court granted NATB's Motion for Summary Judgment (Record on appeal at 636-637, 638-639).

SUMMARY OF ARGUMENT

Third-party defendant and respondent, National Automobile Theft Bureau, hereinafter "NATB", responds to Carl Schettler's brief on appeal by pointing out that, at the time of NATB's Motion for Summary Judgment, Schettler presented no facts on the record to support any of his claims against NATB. As a consequence, summary judgment was proper as to Schettler's claims against NATB.

ARGUMENT

POINT I. THERE WAS NO EVIDENCE ON RECORD AT THE TIME OF NATB'S MOTION FOR SUMMARY JUDGMENT THAT NATB WAS INVOLVED IN ANY OF THE CONDUCT ALLEGED IN SCHETTLER'S COMPLAINT

Summary judgment is proper where there exists no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Mountain States Telephone and Telegraph Company vs. Atkin, Wright and Miles, Chartered, 681 P2d 1258 Utah (1984). In his complaint, defendant and third party plaintiff Carl F. Schettler (hereinafter "Schettler") alleged the

following causes of action against NATB: 1) Malicious prosecution, 2) defamation, 3) blackmail, 4) bad faith, 5) negligence, 6) conversion, and 7) conspiracy. All these causes of action required a showing of active participation by NATB in the investigation and prosecution of Carl Schettler.

At the time of NATB's Motion for Summary Judgment, Schettler had established no evidence on the record that NATB was actively involved in any of the activities alleged in the complaint. In its motion for summary judgment, NATB cited to the deposition of Ellery Summer, special agent for NATB in Utah, which established that NATB's involvement in the investigation was limited to gathering and compiling information provided by other parties to the investigation. Mr. Summer's deposition testimony was to the effect that NATB did not conduct any independent investigation or uncover any new evidence in the investigation. Schettler pointed to no deposition testimony and offered no affidavits to rebut this evidence. As a consequence, the evidence was undisputed that NATB was not actively involved in the investigation to any extent and therefore, was innocent of any of the conduct alleged in Schettler's complaint. Because there existed no facts to support Schettler's claim, summary judgment was proper.

Now, in his appellate brief, Schettler is unable to cite to any fact in the record below that would support his claim against NATB. As a consequence, it is impossible for him to meet his burden of showing that the trial court committed error in

granting NATB's Motion for Summary Judgment. For this reason, the trial court's ruling should be affirmed.

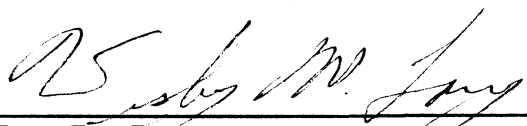
CONCLUSION

Because there is no evidence in the record that NATB was actively involved in the investigation and prosecution of Carl Schettler, NATB respectfully requests that this court affirm the trial court's grant of Summary Judgment against Carl Schettler.

DATED this 14th day of Oct, 1987.

CHRISTENSEN, JENSEN & POWELL, P.C.

By


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CERTIFICATE OF SERVICE

I hereby certify that on the 14~~th~~ day of Oct.
1987, four true and correct copies of the RESPONSE OF RESPONDENT
NATB was mailed, first-class postage prepaid to:

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