

1988

Malgorzata Jung - Leonczynska and Boguslaw J.
Leonczynski v. Showalter Ford Company, Inc.;
Gary Showalter - Individual; Randy Sidebottom -
Individual; Thrifty Auto Repair, Inc.; John R. Slaugh
- Individual; and John Does 1 through 5 : Reply
Brief

Utah Supreme Court

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Recommended Citation

Reply Brief, *Jung v. Showalter Ford Company*, No. 880124.00 (Utah Supreme Court, 1988).
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IN THE SUPREME COURT
OF THE STATE OF UTAH

MALGORZATA JUNG - LEONCZYNSKA
and BOGUSLAW J. LEONCZYNSKI

Plaintiff - Appellants
(pro se)

88-0124-CA

vs.

Case No.: 87C076

SHOWALTER FORD COMPANY, INC.;
GARY SHOWALTER - Individual;
RANDY SIDEBOTTOM - Individual;
THRIFTY AUTO REPAIR, INC.;
JOHN R. SLAUGH - Individual;
and JOHN DOES 1 through 5,

Defendants - Respondents

REPLY ON BRIEF OF RESPONDENTS:

Showalter Ford Company, Inc.; Gary Showalter and Randy Sidebottom

Appeal from the Judgement of Dismissal of the
Seventh Judicial District Court of Uintah County
State of Utah
dated September 10th, 1986
Case No. 86-CV-209 U.

Malgorzata Jung-Leonczynska
and Boguslaw J. Leonczynski
Plaintiffs - Appellants (pro se)
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110 East 100 South

FILED
FEB 3 1988

IN THE SUPREME COURT
OF THE STATE OF UTAH

MALGORZATA JUNG - LEONCZYNSKA)
and BOGUSLAW J. LEONCZYNSKI)

Plaintiff - Appellants
(pro se)

vs.)

Case No.: 87C076

SHOWALTER FORD COMPANY, INC.;)
GARY SHOWALTER - Individual;)
RANDY SIDEBOTTOM -Individual;)
THRIFTY AUTO REPAIR, INC.;)
JOHN R. SLAUGH - Individual;)
and JOHN DOES 1 through 5,)

Defendants - Respondents)

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IN THE SUPREME COURT
OF THE STATE OF UTAH

MALGORZATA JUNG - LEONCZYNSKA)
and BOGUSLAW J. LEONCZYNSKI)

Plaintiffs - Appellants)
(pro se))

v.)

Case No.: 870076

SHOWALTER FORD CO. INC.)
GARY SHOWALTER - Individual)
RANDY SIDEBOTTOM - Individual)
THRIFTY AUTO REPAIR CO. INC.)
JOHN SLAUGH - Individual)
and JOHN DOES 1 through 5)
Defendants - Respondents)
-----)

This is appellants' reply to respondents' brief in which the author claims that the Supreme Court has no jurisdiction for two reasons:

- the appeal was filed untimely.
- principles of res judicata bar the present case.

Respondents' point of view has been contrary to the substantial facts, unusual circumstances caused by respondents' counsels and also contrary to elemental principles of fair play and legal provisions.

In result of that the respondents' arguments presented in their brief should be seen as frivolous and as such ought to be denied.

Appellants's respectfully stress that respondents had challenged the issue regarding the time of filing Notice of Appeal in this case in their Motion to Dismiss Appeal that was denied by the Supreme Court and is no ground to overrule the said decision.

The res judicata doctrine exists for protection of justice, but not for use it as a mean of manipulation to obtain injustice.

REPLY TO ARGUMENT I.

The uncontroverted fact is that on September 12, 1986 appellants telephoned the District Court in Vernal and than were informed by the court's Clerk Office that a judgement in this case "is not signed".

The same day (September 12, 1986) appellants confirmed the said conversation in written form.

This is also uncontroverted fact that on September 12, 1986 the notice was given to the opposite parties and it was filed with the District Court that appellants did intent to pursue this civil action through the appeal to the Supreme Court of the State of Utah.

On November 28, 1986 appellants requested the District Court for entry of judgement and copies of the request were sent to the parties' counsels

Because a respond was not given, appellants on December 30, 1986 again telephoned the Clerk Office of the District Court, and than appellants were informed that the judgement " was signed and entered on September 10, 1986.

On December 31, 1986 appellants demanded a copy of the said judgeme which was received on or about Januray 8, 1987.

On Januray 31, 1987 supplemental notice of appeal was given and filed with the District Court along with \$ 150.00 court fee.

The said amount was paid by appellants upon Clerk Office information in two separate money orders - \$ 30.00 and \$ 120.00. The money order # 95985 of \$30.00 was accepted and money order # 95984 was returned with information that " the appeal to the Supreme Court, cost is \$ 125.00 what appellants immediately paid in demanded amount.

In light of the above the main issue in this case is,

- whether appellants' notice of intent to pursue this civil action through an appeal to the Supreme Court of the State of Utah met a sufficient standard and purposes required for notice of appeal ?

In State v. Meyers (388 P.2d 798 (Utah 1964)) a purpose of the notice of appeal was defined as follows:

"... the object of a notice of appeal....is to advise the opposite party that an appeal has been taken from a specific judgement in a particular case..."

This is beyond reasonable doubt that under presented facts appellants were misled and prejudiced by the mistake of fact with respect to signing and entry of judgement. By this reason only the notice of appeal given on September 12, 1986 contains additional word " intent " and should be considered as legally valid, upon the legal standard defined by the Court in the above quoted case State v. Meyers.

The crux of the issue is that the respondents and their counsel at the time when the notice was given, knew that judgement of dismissal was signed and entered, and this fact creates not only serious legal issue upon Utah Rules of Civil Procedure but also upon principles of morality and

requirements of the professional conduct.

The matter of fact is, admitted in respondents brief, that appellants no time were notified by the opposite parties about entry of judgement, and neither "notice of entry" nor a copy of the signed judgement was served by respondents upon appellants.

Respondents in their brief stated:

"...Respondents respectfully submit that the 30 day appeal rule is jurisdictional and does not require the clerks office, opposing counsel or any other party to notify the adverse party of the precise date of the entry of the order or judgement..."

This statement seems to be contrary to the Rules: 5 (a) and 58 A (a) of the Utah Rules of Civil Procedure. Rule 5 provides that:

"...every order required by its terms to be served..."

Rule 58 A - " Entry " in subsection (d) " Notice of signing or entry of judgement " provides:

" The prevailing party shall promptly give notice of the signing or entry of judgement to all other parties and shall file proof of service of such notice with the clerk of the court."

These two statutory rules were designated to protect due process and all rights on appeal stage.

In Wood v. Turner (419 P.2d. 634 (Utah 1966)) the Court stated:

" Our Constitution assures the right of appeal in all cases to the end that claimed errors or abuse may be reviewed by another tribunal.

The Court in the same case pointed out that:

" ... It is usually held that statutes implementing the right of appeal are liberally construed and applied in the furtherance of justice, and that an interpretation which will prevent that right from being excised is not favored..."

The Rules: 5(a) and 58 A(d) of the U.R.C.P. were designated to protect rights of appeal. These two rules which should be read together implement guaranties of due process of law, which have been defined by this Court as a fundamental fairness to a party. This well established standard requires to notify and to advice the opposite party that an offered judgement is signed and entered. Such a notice is statutory, made so by legislative enactment, and in the hierarchy of law is next to the Constitution. The reasoning and legislative intent in this matter was to protect the fundamental right of due process of law and prevent the prevailing party from taking an advantage of the adverse party.

Respondents and their counsels were not entitled to ignore statutory provisions of the above quoted rules, and were aware or ought to be aware of consequences of their ignorance, especially that under the established standard by the Utah Rules of Professional Responsibilities attorney always is charged with knowledge.

This neglectful act of ignoring statutory provision is not only a ground for allegation of abuse of defense, but also it is the ground for professional responsibility including disciplinary action.

Respondents and their counsels act was contra legem and should not be profitable in their defense.

To the contrary the interest of justice that the appellants can not be charged with negative legal effects and even if any existed, it should be

nullify by the Supreme Court under the provisions of the Rule 3 (a) of the Utah Appellate Procedure, because it is uncontested fact that appellants were misled and prejudiced by the mistake of fact culpable by the adverse parties and its counsels.

The Supreme Court of the State of Utah strongly and consequently professes the principles of due process rights. The protection of these fundamental rights went as far as to state in cases:

- Buckner v. Main Realty and Ins. Co., 288 P.2d 786 (Utah 1955)
- Hume v. Small Claims Court of Murray City, 590 P.2d 309.

that " time for appeal ran from date of notice of entry of judgement, rather than from date of judgement ". Implicitly the same was stated in Bigelow v. Ingersoll, 618 P.2d 50 (Utah); Calfo v. D.C. Stewart Co., 717 P.2d 697 (Utah 1986)

Appellants rely also on the Court's decisions held in the above cited cases and respectfully submit the issue contained in Buckner v. Main Realty for consideration.

In the conclusion, considering that the notice given by appellants on September 12, 1986 met with all requirements of the purpose of notice of appeal and relying on the established by this Court standard of due process of law, appellants pray this Court for declare that Notice of Appeal was timely filed and perfected especially in view that appellants were misled and prejudiced by mistake of fact culpable by the adverse parties and its counsels. The Supreme Court of the State of Utah has jurisdiction in this case, and it should not be a reason to reconsider this legal issue again because respondents' Motion to Dismiss Appeal was already DENIED.

REPLY TO ARGUMENT II.

The next contention advanced by respondents is that principles of res judicata bar the present case.

In Richardson v. Grand Central Corp., 572 P.2d 395 (Utah 1977) the Court held:

"...In this jurisdiction the doctrine of res judicata renders a final judgement on the merits, by the court of competent jurisdiction... Before the doctrine is applicable, however a final judgement embracing all the issues, must be entered... preliminary or interim ruling which do not represent a final determination do not rise to the dignity of res judicata..."

also quoted in Bernard v. Attebury, 629 P.2d 892, 895

Claim preclusion is based on the doctrine of res judicata (res adjudicata) and bars a litigation only if claims were previously litigated on merits and resulted in final judgement.

Respondents allege that such a claim preclusion exists to the defendants Showalter Ford Corp. With respect to defendant Gary Showalter as individual it has been argued that even if he was a stranger to the first action he can benefit from summary judgement rendered by Circuit Court.

It seems that respondents in this matter rely on demise of mutuality and cited the leading case Bernhard v. Bank of America, 19 Cal 2d 807 (1942). However in this case the decision went on to state that only three questions are pertinent in deciding whether to allow collateral estoppel:

- was the issue decided in the prior adjudication identical with the one presented in the action in question.?
- was there a final judgement on the merits ?
- was the party against whom the plea is asserted a party or in privity with a party to the prior adjudication ?

The point of this case is, if the answer to each of these questions is " YES ", then and only then estoppel is to be allowed in spite of the absence of mutuality.

Appellants respectfully submit to this Court for examination a copy of complaint filed with Circuit Court (Appendix 1), a copy of the defendant Showalter Ford's affidavit (Appendix 2), and the defendant Randy Sidebottom affidavit (Appendix 3) - which supported Motion for Summary Judgement.

Appellants point out that these two civil actions are substantially different. The first complaint contains in its point 12 only one allegation against defendant Showalter Ford which states:

"... Defendant Showalter Ford knows or should have known that on its property, which is in its possession, plaintiffs vehicle has been unlawfully stored, defendant Showalter Ford has agreed to hold this vehicle on its property."

This allegation does not state any claim which were alleged in this second civil action. Appellants also stress that the summary judgement in favore of defendant Showalter Ford was rendered base upon factual but not legal grounds.

The matter of fact is that the affidavit presented by the defendant Showalter Ford contains sort of fraudulent statement because one knows that on March 4th, 1986 he could not "read" the affidavit of Randy Sidebottom subscribed and sworn three days later, on March 7th, 1986, and under oath "affirm the affirmants contained therein as being truthful and correct."

The appeal from summary judgement has been pending before the District Court in Vernal, Utah.

Appellants do not challenged before this Court any matters with respect to the Circuit Court matters, but submit copies of the mentioned above documents for examination and by reason of respondents allegations of res judicata in this case.

Appellants point out that the rule of claim preclusion does not apply in this case because of different scope of the "claim" involved.

These two action against defendant Showalter Ford are based on separate, different legal theories such as common law of tort law and property law versus statutory law and negligence in second action.

Since the instant claims alleged a different legal theories of responsibility and recovery the appellants' rights to litigate are not barred by res judicata, especially that it could not be litigate before Circuit Court because of lack of jurisdiction, and in fact no time were alleged nor litigated.

Respondents' argument that "the Circuit Court would have jurisdiction over a case or controversy under the Consumer Practices Act" (pages 9-10 of the respondents' brief) - is not valid argument because as long as appellants complied with the provision of the Section 13-11-6 of Utah

Code Ann., and brought the civil action before the proper forum prescribed by statute which is District Court, respondents' claim is wrong and irrelevant and suggests that even if the party comply with rule of law the said action is contrary to the law.

—
Respondents' argument in this matter creates paradox and because of some sort of absurd is not valid and should be rejected.

With respect to this point it is not the issue if the Circuit Court has or might have jurisdiction base on the provisions of the Section 13-11-6 of the said Act but the issue is as appellants pointed out in their brief could the District Court refuse to exercise its jurisdiction vested by statute.

In light of the above appellants point out that the principles of res judicata not apply at all in this case to defendants Showalter Ford and does not bar the present case and stating so, appellants rely in this matter on law and authorities as follows:

Penrod v. Nu Creation Creme, Inc., 669 P.2d 873 (Utah 1983);
Restatement Second of Judgement - Section 17, 19, 26, 27; Restatement Second of Judgement Section 28 Comment - The issue has been not resolved by the Circuit Court by summary judgement on the basis on conflicting submission and the issue is not conclusive because the proceeding in which it was determined has not the characteristic of an adjudicative proceeding including opportunity to offer direct and rebuttal evidence; is not preclusive effect to determination reached in summary proceeding were plaintiffs did not undertake intensive presentation of evidence on the issue because of lack of opportunity to be heard.

REPLY TO ARGUMENT II
regarding Gary Showalter

Respondent Gary Showalter and not a privy to the first civil action before the Circuit Court.

"... The basic problem in the modern law of preclusion as against third person have been (1) how far the mutuality rule should be abandoned, so that a person who litigate against one person is bound in subsequent litigation with another party, and (2) under what conditions an absentee should be bound, under the concept of "privity" or otherwise by the judgement in an action to which he was not a party." (please see "Pleading and Procedure" Fifth Edition - David Louisell page No. 613)

Respondents in their brief (pages 8 - 11) seem to rely on privity and collateral estoppel concept and allege preclusion to the defendant Gary Showalter as if favor to third parties.

In reply to this, appellants argue that respondents allegations are patently wrong because its are contra legem.

"Privity" defined in Zaragosa v. Craven (cited by Respondents) involves a person so identified in interest with another that he represents the same legal rights. (33 Cal.2d 315, 318, 202 P.2d 73 (1949)

Concept of privity as mutual or successive relationship, to the same right of property or an identity of interest pertains to the relationship between a party to a suit and a person, who was not a party but whose interest in the action was such that he will be bound by the final judgement as if he were a party. Eg. Successor in interest in real property, beneficiary of trust, indemnitor

The Tort law, also Labor and Corporation law does not recognized theory of privity in relationship between - employer and employee - and an employee is not bound by the final judgement against or for employer, as if he were a party.

Also, the ground of civil responsibility of a corporation - employer and individual as an employee are based on different legal basis and theories.

It should be underlined that in the first action the claim against Showalter Ford was based upon Property law as against owner or possessor.

In this matter the defendant Gary Showalter as an employee does not have any identification of interest with corporation Showalter Ford.

Appellants point out that " privity" must arise from legal relationship and all apriori factual assumptions are irrelevant.

The general rule is that agent and principal including masters and servants, do not, as such, have any mutual or successive relationship to rights of property and they are not in privity with each other. Consequently the principal or master is not bound by the judgement obtained in an action by or against the agent or the servant, and vice versa. (please see Freeman on Judgements, 5th Ed. Sec.489; Deorosan v. Haslett Warehouse Co., 332 P.2d 422, 435 (Cal.1958); Searle Bros v. Searle, 558 P.2d 689 (Utah 1978); Wilde v. Mid-Century Ins.Co. 635 P.2d 417,419 (Utah 1981).

The legal problem regarding amendment complaint in the Circuit Court's litigation (page 10 - 11 of the respondents' brief) was challenged in appellants' brief and in this place appellants underline only that doctrine of res judicata does not apply in this matter.

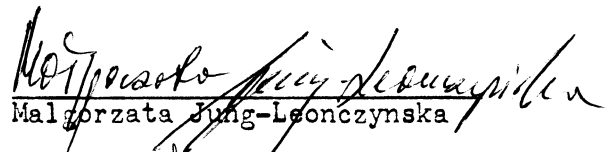
Finally it should be noticed and appellants respectfully move the Court attention that the District Court'Judgement is not in conformity with the ruling and the defendant Gary Showalter is not embranced by the challanged Judgement of Dismissal.

C O N C L U S I O N

Because appellants do belive that our legal system has been based on the principles of justice but not on intersts of stronger, appellants pray the Supreme Court of the State of Utah for judgement f o r a p p e l l a n t s whatever the Court will deem as a proper.

Appellants hereby request oral arguments.

RESPECTFULLY SUBMITTED, this 30th day of January 1988


Malgorzata Jung-Leonczynska

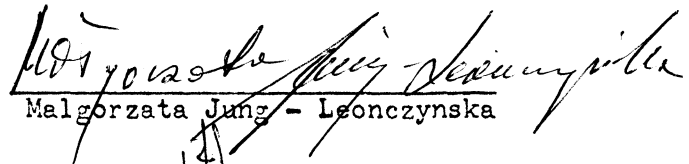

Boguslaw J. Leonczynski

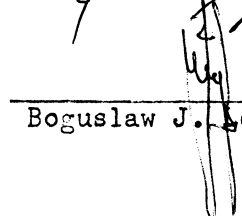
CERTIFICATE OF MAILING

We hereby certify that we mailed out, postage prepaid
true and correct four copies of the plaintiffs - appe-
llants Reply on Brief of Respondents: Showalter Ford Co.
Inc.; Gary Showalter and Randy Sidebottom - to the
Supreme Court of the State of Utah, to the following
on this 30th day of January 1988.

John R. Anderson Esq.
185 North Vernal Avenue, Suite 1
Vernal, Utah 84078

Kenneth G. Anderton Esq.
110 East 100 South
Vernal, Utah 84078


Malgorzata Jung - Leonczynska


Boguslaw J. Leonczynski

ADDENDUM:

1. Complaint in the Seventh Circuit Court
2. Motion for Summary Judgement in Seventh Circuit Court
3. Affidavit deposed by Gary Showalter
4. Affidavit deposed by Randy Sidebottom
5. Ruling on Motion for Summary Judgement
6. Order on Summary Judgement

MALGORZATA JUNG-LEONCZYNSKA
BOGUSLAW LEONCZYNSKI
9645 Sleeply Hollow Circle
Sandy, Utah 84070

IN THE SEVENTH CIRCUIT COURT

UINTAH COUNTY, STATE OF UTAH

MALGORZATA JUNG LEONCZYNSKA
and BOGUSLAW LEONCZYNSKI,
husband and wife,

Plaintiffs,

vs.

THRIFTY AUTO REPAIR, JOHN R.
SLAUGH, individual, RANDY
SIDEBOTTOM, individual,
SHOWALTER FORD, and JOHN
DOES 1 through 5,

Defendants.

:

:

:

:

:

:

:

:

COMPLAINT

Civil No. 85-EV-410

Plaintiffs complain of the defendants individually
and jointly as follows:

JURISDICTION AND PARTIES

1. Plaintiffs Matgorzata Jung-Leonczynska and
Boguslaw Leonczynski are husband and wife.

2. Plaintiff Matgorzata Jung-Leonczynska and
Boguslaw Leonczynski are residents of Sandy, Salt Lake County,
State of Utah.

3. Plaintiffs are the owners, as a tenancy by the
entirety, of the motor vehicle 1973 Pontiac Lemans, Utah Plate
Number NVV 835.

4. Defendant Thrifty Auto Repair is an upon plaintiffs belief organized and existing under and by virtue of the law of the State of Utah and doing business in the State of Utah.

5. Defendant John R. Slaugh is a resident of Uintah County, State of Utah.

6. Defendant Randy Sidebottom is a resident of Vernal, Uintah County, State of Utah.

7. Defendant Showalter Ford is an upon plaintiffs belief organized and existing under and by virtue of the laws of the State of Utah and doing business in the State of Utah.

8. This Court has jurisdiction over all the parties hereto under the facts and circumstances alleged herein.

9. That at all times material to this complaint defendants John R. Slaugh and Randy Sidebottom and John and Jane Does, were the agents, servants, employees of their co-defendants and were as such acting with the course and scope of their employment and authority of their agency.

10. The true names and capacities whether individual, corporate, associate or otherwise of defendants Does 1 through 5 and are unknown to plaintiffs who sue these defendants by such fictitious names pursuant to Utah Rule of Civil Procedure 10(a).

STATEMENT OF THE CLAIMS

1. On or about June 20, 1985, plaintiff Matgorzata Jung-Leonczynska was in Vernal, State of Utah and her car Pontiac LeMans broke down on Route 44.

2. A tow truck arrived, driven by defendant Randy Sidebottom, and plaintiff's vehicle was towed to the Showalter Ford garage.

3. Defendant Randy Sidebottom stated to plaintiff Matgorzata Jung-Leonczynska that the transmission was defective, and he had a substitute transmission as a replacement.

4. Next day on June 21, 1985, defendant Randy Sidebottom took the car key and said that the car will be repaired at a cost of about \$200 plus tax. Defendant Randy Sidebottom took the vehicle to a place unknown to plaintiff for repair. Said defendant notified plaintiff Matgorzata Jung-Leonczynska later the same day that his transmission did not operate, and plaintiff must pay \$100 plus tax to the repair shop.

5. Plaintiff had no time contracted with the defendant Thrifty Auto Repair and she did not authorize defendant Randy Sidebottom to do so.

6. No time was there an agreement and understanding that the plaintiff would pay for a non-operating vehicle. Plaintiff did not contract for an attempt to repair.

Plaintiff did not agree to pay for work to be performed as an experiment.

7. Plaintiff Matgorzata Jung-Leonczynska on June 21, 1985, was notified by defendant Randy Sidebottom that defendant Thrifty Auto Repair would not release her car unless plaintiff paid pay him \$100 plus tax.

8. Plaintiff went to defendant Thrifty Auto Repair. Defendant John R. Slaugh, said that he had no knowledge of plaintiff and had never contracted with her. Defendant John R. Slaugh acting all the time as an agent, servant and/or employee of defendant Thrifty Auto Repair, within the course and scope of his employment and authority of his agency as principle, refused to return plaintiff's car, unless plaintiff paid \$100 plus tax to Thrifty Auto, even though said car did not run.

9. Because of defendant John R. Slaugh unlawful refusing to return the car upon plaintiff's demand, plaintiff called the Vernal City Police Department, and Officer Martin Mangum came to the scene. Defendant John R. Slaugh, one of the owners of Thrifty Auto Repair, wrongfully transferred plaintiff's vehicle to defendant Randy Sidebottom, in who's unlawful possession the car is until the present time.

10. Upon plaintiff's, Matgorzata Jung-Leonczynska, demand defendant Randy Sidebottom wrongfully refused to return plaintiff's vehicle. Defendant Randy Sidebottom all the time

was acting as an agent, servant, employee of the defendant Showalter Ford, and was as such acting within the course and scope of his employment and authority of his agency as principle.

11. From the June 21, 1985, unlawfully taking of plaintiff's car, defendant Randy Sidebottom has kept it on the property next to the defendant Showalter Ford's garage building. This property is either own or leased by defendant Showalter Ford, said real property is under control of defendant Showalter Ford.

12. Defendant Showalter Ford knows or should have known that on its property, which is in its possession, plaintiff's vehicle has been unlawfully stored, defendant Showalter Ford has agreed to hold this vehicle on its property.

13. On or about June 21, 1985, defendant John R. Slaugh of Thrifty Auto Repair intentionally and wantonly harassed the plaintiff Matgorzata Jung-Leonczynska threatening to have plaintiff arrested for trespass by Officer Martin Mangum, because plaintiff came for her car. Plaintiff was afraid and she left the defendant's property. Defendant John R. Slaugh's conduct was wrongful and outrageous and cost the plaintiff Matgorzata Jung-Leonczynska great mental pain and anguish.

14. As a result and proximate cause of the tortious, wrongful and unlawful and outrageous conduct of defendants

plaintiff Matgorzata Jung-Leonczynska was required to take numerous drugs and medication to eliminate suffering and was require to undergo therapy by the doctor.

15. The defendants conduct cost both plaintiffs great mental pain and anguish and they were extremely nervous and upset.

WHEREFORE, by reason of said unlawfully depriving the plaintiffs of said vehicle, the plaintiffs pray for judgment against all defendants jointly and severally as follows:

- for returning the vehicle which the fair market value is \$1500.00

- for medical expenses at less \$75.00

- for lost of income at less \$700.00

- for loss of use of said vehicle reasonable amount since June 21, 1985

- for reasonable compensatory damages and punitive damages which should be awarded in this action.

The plaintiffs pray for judgment against all defendants jointly and severally for total amount \$10,000.00 with statutory interest and for costs incurred by the plaintiffs in the bringing of this action and for such other relief as this Court may deem just and proper in the premises.

DATED this 28th day of October, 1985.

Matgorzata Jung-Leonczynska
MALGORZATA JUNG-LEONCZYNSKA

Boguslaw Leonczynski
BOGUSLAW LEONCZYNSKI

JOHN R. ANDERSON, 0093, of
Beaslin, Nygaard, Coke & Vincent
- Attorney for Defendants, Randy
Sidebottom and Showalter Ford
185 North Vernal Avenue, Suite 1
Vernal, Utah 84078
Telephone: 789-1201

IN THE SEVENTH CIRCUIT COURT OF UINTAH COUNTY
STATE OF UTAH

MALGORZATA JUNG LEONCZYNSKA :
and BOGUSLAW LEONCZYNSKI,
husband and wife, :

Plaintiffs, :

vs. :

A F F I D A V I T

THRIFTY AUTO REPAIR, JOHN R. :
SLAUGH, Individual, RANDY :
SIDEBOTTOM, Individual, :
SHOWALTER FORD, and JOHN :
DOES 1 through 5, :

Defendants. :

Civil No. 85-CV-410

STATE OF UTAH)
: ss.
COUNTY OF UINTAH)

COMES NOW Gary Showalter an officer of Showalter Ford, one
of the above named defendants, and being first duly sworn deposes
and says:

1. I have read the Affidavit of Randy Sidebottom filed
herewith and affirm the affirmants contained therein as being
truthful and correct.

2. That Showalter Ford did not write any work orders or
agree or have dealings to repair or in any way have anything

to do with the automobile owned by the plaintiffs.

3. The only involvement of Showalter Ford was in the use of its wrecker and in providing towing services from the point of breakdown back to Vernal, Utah, and no other.

4. The storage of the vehicle on our back lot has been done with the permission of us purely as a gratuity for Randy Sidebottom and John R. Slaugh and we have not taken any responsibility to assert storage charges or to retain possession of the vehicle from any rightful owner and we have no knowledge of any dealings between the plaintiffs and Randy Sidebottom other than his personal involvement.

5. It is strictly against our policy or instructions to our employees to make any dealings with towing customers for the repair of their automobiles outside service performed regularly and in the ordinary course of our business in our own shop.

Further Affiant saith not.

DATED this 4th day of March, 1986.

SHOWALTER FORD

By Gary Showalter
Gary Showalter

SUBSCRIBED AND SWORN to before me this 4th day of March, 1986.

Paula Williams
Notary Public
Residing in Vernal, Utah 84078

My Commission Expires:

April 15, 1989

JOHN R. ANDERSON, 0093, of
Beaslin, Nygaard, Coke & Vincent
Attorney for Defendants, Randy
Sidebottom and Showalter Ford
185 North Vernal Avenue, Suite 1
Vernal, Utah 84078
Telephone: 789-1201

IN THE SEVENTH CIRCUIT COURT OF UINTAH COUNTY

STATE OF UTAH

MALGORZATA JUNG LEONCZYNSKA :
and BOGUSLAW LEONCZYNSKI, :
husband and wife, :

Plaintiffs, :

vs. :

A F F I D A V I T

THRIFTY AUTO REPAIR, JOHN R. :
SLAUGH, Individual, RANDY :
SIDEBOTTOM, Individual, :
SHOWALTER FORD, and JOHN :
DOES 1 through 5, :

Defendants. :

Civil No. 85-CV-410

STATE OF UTAH)
 : ss.
COUNTY OF UINTAH)

COMES NOW Randy Sidebottom, one of the above named defendants,
and being first duly sworn deposes and says:

1. On or about June 20, 1985, I was on call as a wrecker
driver and had the Showalter Ford wrecker at my disposal for after
hours calls.

2. Responding to a call on said date I proceeded twenty-
seven miles North of Vernal, on Highway 44 and arrived at the
call at approximately 4:15 p.m.

3. I towed the vehicle in question and in trying to help, I discounted the hookup fee from \$35.00 to \$30.00 and charged \$20.00 less on the mileage, or a total of \$25.00. The total towing bill was paid and remitted to Showalter Ford.

4. My total involvement as an agent for Showalter Ford was in the travel time and towing time involved in towing the vehicle from its breakdown point back to Vernal, Utah.

5. I took it upon myself, not as an agent of Showalter Ford, but as a way to help out, and located a used transmission for the plaintiff and made other arrangements with her to install a used transmission and to try and obtain the repairs between myself and John R. Slauch acting on my own and without authority from Showalter Ford.

6. After the repairs and costs had been incurred and the plaintiffs' refusal to pay the same, I took it upon myself personally to retain the automobile and assert a mechanic's or repairman's lien for payment without the knowledge, permission, consent or authority of Showalter Ford.

Further Affiant saith not.

DATED this 7 day of March, 1986.

Randy Sidebottom
Randy Sidebottom

SUBSCRIBED AND SWORN to before me this 7 day of March, 1986.

Paul Williams
Notary Public
Residing in Vernal, Utah 84078

My Commission Expires:

BEASLIN, NYGAARD, COKE & VINCENT
Attorney for Defendants, Randy
Sidebottom and Showalter Ford
185 North Vernal Avenue, Suite 1
Vernal, Utah 84078
Telephone: 789-1201

IN THE SEVENTH CIRCUIT COURT OF UTAH COUNTY

STATE OF UTAH

MALGORZATA JUNG LEONCZYNSKA :
and BOGUSLAW LEONCZYNSKI, :
husband and wife, :

Plaintiffs, :

vs. :

MOTION FOR SUMMARY JUDGMENT

THRIFTY AUTO REPAIR, JOHN R. :
SLAUGH, Individual, RANDY :
SIDEBOTTOM, Individual, :
SHOWALTER FORD, and JOHN :
DOES 1 through 5, :

Defendants. :

Civil No. 85-CV-410.

COMES NOW Showalter Ford, by and through its counsel, John R. Anderson, and moves the Court pursuant to Rule 56 of the Utah Rules of Civil Procedure and submits the matter pursuant to Rule 2.8 of the Uniform Circuit and District Court Rules of Practice and makes this motion for an order of dismissal with prejudice as against the defendant, Showalter Ford, upon the grounds and for the reason that Showalter Ford was not involved in any way in the dealings complained of and the defendant, Randy Sidebottom, was not an agent of Showalter Ford at any time material during the transactions complained of herein by the plaintiffs.

This motion is supported by Affidavits of Randy Sidebottom and Showalter Ford attached hereto and filed with this motion.

DATED this 10th day of ^{March} February, 1986.

BEASLIN, NYGAARD, COKE & VINCENT

[Handwritten signature]

IN THE SEVENTH CIRCUIT COURT OF UINTAH COUNTY

STATE OF UTAH

* * *

MALGORZATA JUNG LEONCZYNSKA)
and BOGUSLAW LEONCZYNSKI,)
husband and wife,)

Plaintiff)

- RULING ON MOTION
FOR SUMMARY JUDGMENT

vs)

THRIFTY AUTO REPAIR, JOHN R.)
SLAUGH, Individual, RANDY)
SIDEBOTTOM, Individual,)
SHOWALTER FORD, and JOHN)
DOES 1 through 5,)

Defendants)

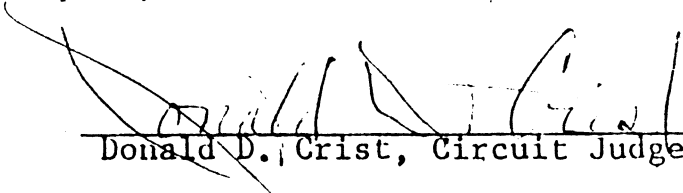
Civil No. 85-CV-410

* * *

On the basis of the Pleadings and the sworn affidavits
filed by Randy Sidebottom and Gary Showalter, the Court finds
that Showalter Ford should be granted a Summary Judgment in this
case.

Wherefore, it is ordered that the Complaint against
defendant, Showalter Ford, be dismissed with prejudice, each side
to bear their own court costs and attorney fees. On the basis
of Randy Sidebottom's affidavit, the Court finds that the tow bill
has been paid in full and it is ordered that the 1973 Pontiac
LeMans owned by plaintiffs, Malgorzata Jung Leonczynska and Boguslaw
Leonczynski, be immediately released to plaintiffs without any
further charges or fees being paid to Showalter Ford.

Dated this 8th day of April, 1986.


Donald D. Crist, Circuit Judge

JOHN R. ANDERSON, 0093, of
Beaslin, Nygaard, Coke & Vincent
Attorney for Defendants, Randy
Sidebottom and Showalter Ford
185 North Vernal Avenue, Suite 1
Vernal, Utah 84078
Telephone: 789-1201

IN THE SEVENTH CIRCUIT COURT OF UINTAH COUNTY

STATE OF UTAH

MALGORZATA JUNG LEONCZYNSKA :
and BOGUSLAW LEONCZYNSKI, :
husband and wife, :

Plaintiffs, :

vs. :

THRIFTY AUTO REPAIR, JOHN R. :
SLAUGH, Individual, RANDY :
SIDEBOTTOM, Individual, :
SHOWALTER FORD, and JOHN :
DOES 1 through 5, :

Defendants. :

ORDER ON
SUMMARY JUDGMENT

Civil No. 85-CV-410

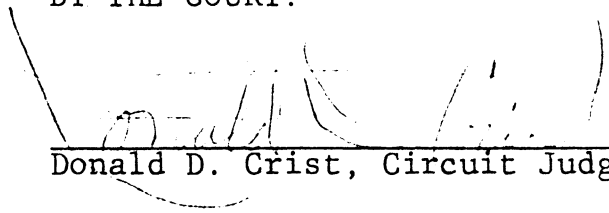
Based on the ruling of the Court, the pleadings and sworn Affidavits and the Motion For Summary Judgment on file and the Court being fully advised and having entered its Ruling On Motion For Summary Judgment granting said summary judgment in favor of Showalter Ford now, therefore, it is hereby:

ORDERED, ADJUDGED AND DECREED that the Complaint against defendant, Showalter Ford, be dismissed with prejudice, each side to bear their own costs and attorney fees.

The Court further finds that the towing bill was paid in full and that the 1973 Pontiac LeMans owned by plaintiffs has already been released to the plaintiffs on stipulation of the parties and has been in plaintiffs' possession since on or before March 26, 1986.

DATED this 16th day of April, 1986.

BY THE COURT:


Donald D. Crist, Circuit Judge

Twelfth Circuit Court

125 E. CENTER STREET
MOAB, UTAH 84532



Malgorzata Jung Leonczynska
Boguslaw Leonczynski
9645 Sleepy Hollow
Sandy, UT 84070