

2002

# Draper Bank and Trust Company v. Claudia R. Brown, Bug Parts Unlimited, Inc., dba Motivation Enterprises, and Western Surety Company : Brief of Appellant

Utah Supreme Court

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Dwight L. King; Attorney for Plaintiff.

David E. Yocum; Terry M. Plant; Attorney for Defendant.

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## Recommended Citation

Brief of Appellant, *Draper Bank and Trust Company v. Claudia R. Brown, Bug Parts Unlimited, Inc., dba Motivation Enterprises, and Western Surety Company*, No. 20591.00 (Utah Supreme Court, 2002).

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20591

IN THE SUPREME COURT OF THE STATE OF UTAH

DRAPER BANK & TRUST COMPANY,  
Plaintiff-Respondent,

v.

CLAUDIA R. BROWN, BUG PARTS  
UNLIMITED, INC., dba MOTIVATION  
ENTERPRISES, and WESTERN  
SURETY COMPANY,  
Defendants.

CASE NO. 20591

WESTERN SURETY COMPANY,  
Appellant.

BRIEF OF APPELLANT

Appeal from the Third Judicial District Court,  
Salt Lake County, State of Utah,  
The Honorable Scott Daniels

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Claudia R. Brown

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Attorney for Defendant-  
Appellant, Western Surety

**FILED**

JUL 22 1985

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IN THE SUPREME COURT OF THE STATE OF UTAH

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DRAPER BANK & TRUST COMPANY, )

Plaintiff-Respondent, )

v. )

CASE NO. 20591

CLAUDIA R. BROWN, BUG PARTS )  
UNLIMITED, INC., dba MOTIVATION )  
ENTERPRISES, and WESTERN )  
SURETY COMPANY, )

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WESTERN SURETY COMPANY, )

Appellant. )

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CLAUDIA R. BROWN, BUG PARTS )  
 UNLIMITED, INC., dba MOTIVATION )  
 ENTERPRISES, and WESTERN )  
 SURETY COMPANY, )  
 )  
 Defendants. )

---

WESTERN SURETY COMPANY, )  
 )  
 )  
 Appellant. )

---

BRIEF OF APPELLANT

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STATEMENT OF ISSUES PRESENTED ON APPEAL

The following issues are presented for review:

1. Whether the actions of defendant Claudia Brown as set forth in the undisputed facts constituted fraud upon the plaintiff.

2. Whether defendant Claudia Brown was acting on behalf of Motivation Enterprises or on her personal behalf when she applied for and obtained the loan from the plaintiff.

3. Whether the motor vehicle dealers bond in question would cover the loss suffered by the plaintiff if such loss was caused by the actions of defendant Claudia Brown.

STATEMENT OF THE CASE

Plaintiff Draper Bank & Trust Company (hereinafter "Draper Bank") brought suit against Claudia R. Brown (hereinafter "Ms. Brown"), Bug Parts Unlimited, Inc., dba Motivation Enterprises (hereinafter "Motivation Enterprises"), and Western Surety Company (hereinafter "Western Surety"), to recover the proceeds of a loan made to Ms. Brown. Plaintiff's claim against this defendant, Western Surety, is based on a motor vehicle dealer's bond issued by Western Surety to Motivation Enterprises. Draper Bank alleged that the actions of Ms. Brown in obtaining a loan to purchase a personal automobile were fraudulent, and Western Surety was, therefore, obligated under its bond.

Upon cross-motions for summary judgment filed by Draper Bank and Western Surety, hearing was held before Third District Court, Judge Scott Daniels on February 8, 1985, and judgment was entered in favor of Draper Bank and against Western Surety. Such judgment was based solely upon a finding that Ms. Brown committed fraud upon Draper Bank and that such fraud was covered by the bond issued to Motivation Enterprises. (See Transcript of Hearing, pp. 20, 21.)

This appeal seeks the review and reversal of the judgment entered. Specifically, Western Surety seeks reversal of the finding that Ms. Brown committed fraud upon Draper Bank in obtaining the loan in question, and that such fraud was covered by the motor vehicle dealer's bond issued to Motivation Enterprises.

#### STATEMENT OF FACTS

On or about January 9, 1979, Draper Bank loaned Ms. Brown \$11,500.00 for the purchase of a 1978 Porche 924 automobile, serial number 1248207920, for her personal use. Accordingly, the loan was in Ms. Brown's name and she signed as the only responsible party. (See Deposition of Claudia R. Brown Conger, p. 21 lines 3-5, p. 33 line 15; attached Promissory Note; and plaintiff's Amended Complaint, paragraph 2.) Ms. Brown paid approximately \$600.00 down for the purchase of the car and the proceeds of the loan were made payable to Ms. Brown and Motivation Enterprises. (See Deposition of Claudia R. Brown Conger, p. 20 line 14; and attached Cashiers Check.)

The car was selected from the Salt Lake Auto Auction and Motivation Enterprises became involved in the transaction due to auction rules that only dealers could purchase at the auction. (See Deposition of Claudia R. Brown Conger, pp. 16, 17.) Motivation Enterprises was owned and operated at the time of the loan by Ms. Brown's husband, Harold Michael Brown (hereinafter



"Mr. Brown"), from whom she was then separated and has since divorced. (See Deposition of Claudia R. Brown Conger, pp. 8, 9, 17.)

Ms. Brown's involvement with Motivation Enterprises was as either the secretary or the vice-president of the company, but her actual responsibilities with the company were limited, as she had nothing to do with the day-to-day operation of the business. (See Deposition of Claudia R. Brown Conger, pp. 8, 11, 12.)

Upon purchasing the car through Motivation Enterprises, a disagreement as to the price of the car arose. Thereafter, rather than presenting the cashier's check to Mr. Brown, Ms. Brown endorsed the check in her own name, signing as vice-president of Motivation Auto, and deposited the check in her own account at "Tack & Togs", a western tack store owned personally by her. The next day, Ms. Brown wrote a personal check, reflecting the lower price, payable to Mr. Brown for the purchase of the car. (See Deposition of Claudia R. Brown Conger, pp. 21, 22, 23.)

After purchasing the car, Ms. Brown paid three monthly installments to Draper Bank and attempted to obtain title to the vehicle to give to the bank. (See Deposition of Claudia R. Brown Conger, pp. 25, 26, 28.) Due to her inability to secure the title to the car, Ms. Brown had the car resold through the Salt Lake Auto Auction sometime in April of 1979 in an attempt to

obtain funds to pay off the loan. (See Deposition of Claudia R. Brown Conger, pp. 25, 26.) Ms. Brown was unable to get the proceeds from the second sale and she urged Mr. Brown to continue the payments, which he did reducing the loan balance to \$8,549.15. (See Deposition of Claudia R. Brown Conger, pp. 25, 26.) As of March 7, 1983, this balance remained due, Ms. Brown was in default on the loan and Draper Bank brought suit to recover the balance. Said suit was based upon Ms. Brown's execution of a promissory note and her subsequent default. (See Plaintiff's original Complaint, paragraphs 2, 7.)

On or about January 13, 1984, Draper Bank amended its complaint to include as defendants, Bug Parts Unlimited, Inc., dba Motivation Enterprises, and Western Surety. (See Plaintiff's Amended Complaint.) Draper Bank's claim against Western Surety was based upon a motor vehicle dealer's bond issued to Motivation Enterprises. (See Plaintiff's Amended Complaint.) It was alleged that Ms. Brown had committed fraud upon Draper Bank and that Western Surety, by reason of its bond, became liable to Draper Bank for any loss suffered by way of Ms. Brown's fraud.

On February 8, 1985, cross-motions for summary judgment were heard before the Honorable Scott Daniels, whereupon summary judgment was granted in favor of Draper Bank and against Western Surety. The judgment, against Western Surety, was based solely on the court's finding that Ms. Brown had committed fraud upon

the plaintiff. (See Transcript of Hearing, pp. 21, 21.) A written order granting plaintiff's motion for summary judgment was entered by the court on March 19, 1985.

#### SUMMARY OF ARGUMENT

The judgment entered by the trial court which was based totally on fraud by Ms. Brown should be reversed because Ms. Brown's actions did not amount to fraud as defined by Utah law. There is no evidence whatsoever that Ms. Brown misrepresented a presently existing material fact or that she did not intend to carry out her promise to repay her loan when she applied for and obtained the loan from Draper Bank. To the contrary, the undisputed facts show that Ms. Brown never intended to defraud Draper Bank and that she endeavored to carry out her obligations on the loan agreement. Ms. Brown may have breached her contract to repay her loan, but such breach does not rise to the level of fraud.

If this court finds Ms. Brown committed fraud upon Draper Bank, such fraud would have been committed in her individual capacity, and not as a representative of Motivation Enterprises. The loan documents and the testimony of Ms. Brown show that the loan transaction was a personal loan to Ms. Brown. She was not acting as a dealer or in behalf of a motor vehicle dealer when she obtained the loan or at any time thereafter. The bond in question, a copy of which is attached, applies to actions

committed "as a dealer". The applicable Utah statute and case law make it clear that Western Surety would only be liable on its bond in this case if Ms. Brown had been acting for Motivation Enterprises as a dealer, which she was not. The judgment below must, therefore, be reversed.

### ARGUMENT

#### POINT I

**DEFENDANT CLAUDIA BROWN'S ACTIONS DID NOT AMOUNT TO FRAUD UPON DRAPER BANK, AND WESTERN SURETY IS THEREFORE NOT LIABLE TO DRAPER BANK FOR ANY LOSS IT MAY HAVE SUFFERED.**

Draper Bank, in its amended complaint, alleged that Ms. Brown committed fraud upon Draper Bank by failing to obtain title to the vehicle and failing to note its lien thereon. (See Plaintiff's Amended Complaint.) It was further alleged that Western Surety became liable, as surety for Motivation Enterprises, for the loss suffered by Draper Bank from the fraud of Ms. Brown. (See Plaintiff's Amended Complaint.) The undisputed facts, however, as they were presented on the cross-motions for summary judgment below, are totally devoid of evidence that Ms. Brown committed fraud, and the summary judgment entered must, therefore, be reversed.

It should be noted that in review of a judgment entered on cross-motions for summary judgment, the "clearly erroneous" standard applicable to factual findings of a trial court is

inapplicable. Wessells v. State Department of Highways, Alaska, 562 P.2d 1042, 1046 (1977). Rather, in such a case, where the facts were undisputed and the issue is one of law, the Supreme Court is not bound by the conclusions of the trial court and may determine the question for itself. Pacific Development Co. v. Stewart, 113 Utah 403, 195 P.2d 748, 751 (1948); and Betenson v. Call Auto & Equip. Sales, Inc., Utah, 645 P.2d 684, 687 (1982). Thus, in reviewing the judgment below, this court is free to determine whether the undisputed facts "clearly and convincingly" establish the essential elements of fraud. Taylor v. Gasor, Inc., Utah, 607 P.2d 293, 295 (1980).

In Taylor, the court set forth the essential elements of fraud and recognized the appropriate burden of proving fraud as follows:

A finding of fraud must be based on the existence of all its essential elements, i.e., the making of a false representation concerning a presently existing material fact which the representor either knew to be false or made recklessly without sufficient knowledge, or the omission of a material fact when there is a duty to disclose, for the purpose of inducing action on the part of the other party, with actual, justifiable reliance resulting in damage to that party. [citations omitted]

As stated in Lundstrom v. Radio Corporation of America, 17 Utah 2d 114, 117-18, 405 P.2d 339, 341 (1965), "fraud is a wrong of such nature that it must be shown by clear and convincing proof and will not lie in mere suspicion or inuendo." Id. at 294.

An examination of the record in this case indicates the lack of several essential elements of fraud. First, there was no false representation of a presently existing material fact when Ms. Brown and Draper Bank entered into the loan agreement. Ms. Brown applied for and obtained the loan for the purpose of purchasing a car for her personal use. (See Deposition of Claudia R. Brown Conger, pp. 17, 33.) Accordingly, Ms. Brown entered into the agreement in her personal capacity and signed the promissory note in her personal capacity. (See attached Promissory Note.) Thus, all evidence indicates that the loan was a personal loan and there is no evidence at all that Ms. Brown made any material misrepresentation in obtaining the loan.

Second, there is no indication that Ms. Brown had the requisite scienter to commit fraud. There is no evidence that she knowingly or recklessly made a false representation for the purpose of inducing action on the part of Draper Bank. To the contrary, she fully intended to pay off the loan at the time the loan was obtained and fully intended to obtain title and note the lien thereon. (See Deposition of Claudia R. Brown Conger, pp. 19, 28, 35.) Also evidencing a lack of intent to defraud is the fact that Ms. Brown completed three installment payments on the loan and the fact that the loan balance was reduced from \$11,500.00 to \$8,549.15 before default occurred. (See Deposition

of Claudia R. Brown Conger, pp. 26, 28; and Plaintiff's Amended Complaint, paragraph 6.) Further evidence of Ms. Brown's intent to carry out her obligation on the loan is found from her attempt to obtain title to give to Draper Bank, and her subsequent sale of the car in an attempt to get funds to pay off the loan. (See Deposition of Claudia R. Brown Conger, pp. 28, 33.) Thus, rather than scienter to commit fraud, the facts clearly show an intent on the part of Ms. Brown to carry out her obligations on the promissory note, which intent remained while she possessed the car and after she sold the car. In short, Ms. Brown "never tried to defraud [Draper Bank] out of anything." (See Deposition of Claudia R. Brown Conger, pp. 19, 35.)

The fact that Ms. Brown failed to obtain title as agreed and defaulted on the note, subsequent to obtaining the loan, does not indicate or establish fraud, but rather a breach of contract. A promise to perform certain acts in the future is not fraudulent unless accompanied by a present intention not to perform it. Cerritos Trucking Co. v. Utah Venture No. 1, Utah, 645 P.2d 608, 611 (1982).

The gist of the fraud, in such cases, is not the breach of a promise, but the fraudulent intent of the promisor or obligor at the time he makes the promise or executed the contract, not to perform the same, and to deceive the obligee by his false promise. Hence to render nonperformance fraudulent, the intention not to perform must exist when the promise is made, and if the promise is

made in good faith when the contract is entered into there is no fraud though the promisor subsequently changes his mind and fails or refuses to perform. Cerritos, at 612.

Without an intent to defraud at the time the loan was obtained, Ms. Brown cannot be guilty of fraud against Draper Bank, but has merely defaulted on the promissory note and breached her agreement with Draper Bank. In the case of such a default, Draper Bank has no action against Western Surety on its bond, as Western Surety's bond does not cover such defaults, but only fraud. (See attached Motor Vehicle Dealers Bond.)

That motor vehicle dealer's bonds do not cover such breaches of obligation, is well-illustrated by cases from other jurisdictions. In Butte Motor Co. v. Strand, Oregon, 358 P.2d 279 (1960), the Oregon Supreme Court determined the scope of liability imposed by a motor vehicle dealer's bond. In Butte Motor, the bonded dealer purchased two vehicles from the plaintiff and paid by checks. When the checks were presented, payment was refused because of insufficient funds. The plaintiff brought suit against the dealer and the surety on the basis that the dealer's conduct in failing to pay plaintiff for the cars when they were sold amounted to fraud as that term is used in the statute requiring the bond and in the bond itself.

In determining whether fraud had been committed, the court quoted an earlier Oregon case as follows:



The general rule, ... is that "fraud cannot be predicated on a promise not performed; that, to constitute actionable fraud there must be a false assertion in regard to some existing matter by which a party is induced to part with his money or property." The mere nonperformance of a promise made in the course of negotiations or the failure to carry out an intention expressed in the course of such negotiations is not of itself either a fraud or evidence of a fraud, in the absence of allegations and proof that the representations were falsely and fraudulently made with intent to deceive; that is, that the statement of intent as to the future was made in bad faith: [citations omitted]. A representation to be fraudulent in the legal sense, must relate to a past fact or present condition, and must not be a mere promise: [citations omitted]. Id. at 281.

The Butte Motor court then found that there was no evidence that the dealer's promise to pay was not made in good faith. Consequently, there was no fraud but merely a breach of a promise to perform and the surety was not liable on the bond.

The scope of liability imposed by a motor vehicle dealer's bond is further illustrated by Kerr v. Schwartz, New Mexico, 475 P.2d 457 (1970). In that case, the plaintiff traded in his car for the purchase of a new car. The trade-in value was \$1,900.00 and it was agreed that this would be applied towards the purchase price of the new car. The new car was never delivered and the plaintiff brought suit against the surety and another. The court found that there was no evidence that the

dealer, at the time of his receipt of the trade-in and the making of the agreement, fraudulently intended not to keep his promise. Thus, although the plaintiff was a creditor of the dealer, by reason of the dealer's breach of promise, the plaintiff was not entitled to the protection of the statutory automobile dealer's bond because no fraud had been committed. Id. at 459.

In conclusion, it is clear that the trial court erred in finding that Ms. Brown had committed fraud upon Draper Bank. Ms. Brown may have defaulted on the note and breached her agreement with Draper Bank, but such facts do not constitute fraud and it is clear from Butte Motor, Kerr, and the provisions of the bond itself, that motor vehicles dealers bonds do not cover such contract obligations. Since the lower court determined that Ms. Brown's actions constituted fraud and based its judgment upon that finding the judgment of the lower court must be reversed.

POINT II

**ASSUMING, ARGUENDO, THAT DEFENDANT  
CLAUDIA BROWN COMMITTED FRAUD UPON DRAPER  
BANK, SUCH FRAUD WOULD NOT BE COVERED BY  
WESTERN SURETY'S BOND BECAUSE MS. BROWN  
WAS NOT ACTING ON BEHALF OF THE BONDED  
DEALER.**

Even if Ms. Brown was guilty of fraud as against Draper Bank, which she was not, such fraud would not be covered by the motor vehicle dealer's bond issued to Motivation Enterprises. That such bonds do not cover every fraudulent act that a dealer or a dealer's salesman may make, is clear from the statute requiring the bond and the case law analyzing the scope of such bonds. The statute requiring motor vehicle dealers to be bonded, Utah Code Ann., §41-3-16(1), provides in pertinent part:

The bond shall be approved as to form by the attorney general, and conditioned that the applicant will conduct business as a dealer without fraud or fraudulent representation,.... [emphasis added].

Further, Utah Code Ann., §41-3-18, which allows a right of action against the dealer and the surety when the dealer commits fraud, states in pertinent part:

A person who suffers a loss or damage by reason of fraud,... by a licensed dealer, [or] one of his salesmen acting for the dealer on his behalf,... shall have the right to maintain an action for recovery against a dealer,... and the [surety]....

Thus, it is clear that the bond covers fraud committed by the dealer or his salesmen only when such fraud was committed by the dealer when conducting business as a dealer, or when such fraud was committed by a salesman "acting for the dealer on his behalf."

The case law analyzing the scope of such a bond emphasizes the above point. Betenson v. Call Auto & Equip. Sales, Utah, 645 P.2d 684 (1982) addressed this threshold issue regarding the scope of a dealer's bond, as follows:

It is clear that coverage under the bond exists only for activities constituting the conduct of a dealer's business "as a dealer," or for activities which the dealer has represented as part of his business "as a dealer."

\* \* \*

In a more recent case, Western Surety Co. v. Redding, Utah, 626 P.2d 437, 439 (1981), this court emphasized that the bond "was intended to protect all persons doing business with a motor vehicle dealer." We note that the foregoing statement is accurate so long as the motor vehicle dealer is himself doing business as a dealer; the bond was never intended to indemnify all persons who contract with a dealer in a capacity unrelated to his motor vehicle dealership. Betenson at 687.

In the instant matter, Ms. Brown applied for the loan from Draper Bank in her individual capacity, not as a dealer or on behalf of a motor vehicle dealer. Ms. Brown was the sole

applicant for the loan and her signature is the sole signature on the loan application form. She also signed as the only responsible party on the promissory note. (See attached Promissory Note; and Loan Approval Form.) As the loan was clearly a personal loan, applied for and received by Ms. Brown in her individual capacity, the bond issued by Western Surety to Motivation Enterprises would not cover all actions that Ms. Brown may have committed, only those committed "as a dealer". The applicable statutes and controlling case law make this clear.

Furthermore, besides being a personal loan taken out in her individual capacity, it is clear that when Ms. Brown endorsed the loan check, she did so because she was at odds with Motivation Enterprises in that she could not agree on a price for the car with them. (See Deposition of Claudia R. Brown Conger, p. 22.) She then endorsed the check, deposited it in her checking account and wrote a personal check to Motivation Enterprises reflecting a lower price. (See Deposition of Claudia R. Brown Conger, pp. 22, 23.) These facts clearly indicate that Ms. Brown was not acting as a dealer or for and in behalf of Motivation Enterprises but on her own behalf. Therefore, Western Surety is not liable to Draper Bank for the loss suffered by reason of any fraud committed by Ms. Brown. If any such fraud occurred, she was acting in her personal capacity and Western Surety cannot be held responsible for it. The judgment of the lower court must, therefore, be reversed.

CONCLUSION

Western Surety requests this court to reverse the judgment rendered below. Such judgment was based upon a finding that Ms. Brown had defrauded Draper Bank and that such fraud was covered by Western Surety's bond. Both of these bases are clearly unsupported by the evidence and the judgment must be reversed.

DATED this 22nd day of July, 1985.

HANSON, DUNN, EPPERSON & SMITH



---

TERRY M. PLANT  
Attorney for Appellant

**CERTIFICATE OF SERVICE**

I hereby certify that I caused to be mailed, postage prepaid, this 22nd day of July, 1985, four (4) true and correct copies each of the foregoing to the following:

Dwight L. King, Esq.  
Attorney for Plaintiff  
2121 South State, #205  
Salt Lake City, Utah 84115

David E. Yocom, Esq.  
Attorney for Defendant Claudia Brown  
255 East 400 South, #100  
Salt Lake City, Utah 84111

HANSON, DUNN, EPPERSON & SMITH

  
\_\_\_\_\_

ADDENDUM



JUDGMENT

FILED IN CLERK'S OFFICE  
Salt Lake County Utah

MAR 19 1985

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DWIGHT L. KING & ASSOCIATES, P.C.  
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2121 South State Street  
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H. Dixon Hindley, Clerk 3rd Dist. Court  
By [Signature]  
Deputy Clerk

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

DRAPER BANK & TRUST COMPANY,  
Plaintiff,  
vs.  
CLAUDIA R. BROWN, BUG PARTS  
UNLIMITED, INC., dba MOTIVATION  
ENTERPRISES, and WESTERN SURETY  
COMPANY,  
Defendants.

Bk 196 No. 2035  
3-20-85-80ham.

SUMMARY JUDGMENT  
Civil No. C83-2938  
Judge Scott Daniels

The above-entitled matter came on regularly to be heard before the Honorable Scott Daniels, one of the Judges of the above-entitled Court, on the 8th day of February, 1985 at the hour of 2:00 o'clock P.M. Plaintiff appeared by its attorney, Dwight L. King. Defendant Claudia R. Brown appeared by her attorney, David E. Yocom. Western Surety Company appeared by its attorney, Terry M. Plant. The matter came on for hearing before the Court on motions for summary judgment filed by plaintiff and by Western Surety Company. Both plaintiff and Western Surety Company stipulated in open court that the deposition of defendant Claudia R. Brown could be received by the Court, that the deposition described the transaction between Claudia R. Brown, Bug Parts Unlimited, Inc.,

1 dba Motivation Enterprises, and Draper Bank & Trust Company.  
2 Defendant Western Surety Company's Motion for Summary Judgment was  
3 submitted based on the deposition and argued that no fraud is  
4 shown as that is defined by the sections of Utah Code Annotated  
5 relating to bonding of automobile dealers. Draper Bank & Trust's  
6 Motion for Summary Judgment was based on the Claudia R. Brown  
7 deposition and exhibits submitted. Its claim was that the  
8 exhibits and the Claudia R. Brown deposition show that there was  
9 fraud committed upon the plaintiff as defined by Utah Code  
10 Annotated relating to bonding of automobile dealers. There was  
11 no dispute concerning the balance owing on the Draper Bank & Trust  
12 Company promissory note.

13 The matter was argued and submitted and the Court, being  
14 fully informed in the premises, does hereby ORDER, ADJUDGE AND  
15 DECREE as follows:

16 1. Plaintiff is granted judgment against the defendant  
17 Western Surety Company for the sum of \$12,976.20, the principal  
18 balance owing together with interest to the 8th day of February,  
19 1985.

20 2. Judgment is based upon the finding by the Court that the  
21 conduct of Claudia R. Brown was in fraud of the rights of the  
22 plaintiff as defined by Utah Code Annotated relating to bonding of  
23 automobile dealers and the Bond of Motor Vehicle Dealers, Exhibit A,  
requires defendant Western Surety Company to pay the damage caused  
to the plaintiff.

DONE IN OPEN COURT this 19 day of <sup>March</sup>~~February~~, 1985.

ATTEST  
H. DIXON HINDLEY  
Clerk

BY THE COURT:

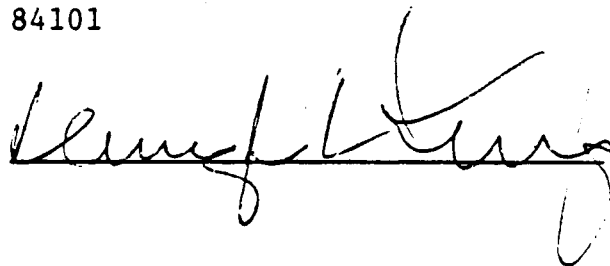
Scott Daniels  
JUDGE

MAILING CERTIFICATE

Undersigned certifies that a copy of the foregoing Summary Judgment was mailed this 12~~th~~ day of February, 1985, postage prepaid, to the following:

David E. Yocom  
Attorney for Defendant Claudia R. Brown  
255 East 400 South, #100  
Salt Lake City, Utah 84111

Terry M. Plant  
Hanson, Dunn, Epperson & Smith  
Attorneys for Defendant Western Surety Co.  
650 Clark Leaming Office Center  
175 South West Temple  
Salt Lake City, Utah 84101



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**SUMMARY STATEMENT**

1. Loan Proceeds . . . . . \$11,500.00

2. Other charges:

Fees or taxes: . . . . . \$

Credit Insurance (See 10 below) . . . . . \$ .00

Other: . . . . . \$

3. Amount Financed . . . . . \$11,500.00

4. FINANCE CHARGE . . . . . \$2,684.72

5. ANNUAL PERCENTAGE RATE . . . . . 14% %

6. Total of Payments (3 + 4) . . . . . \$14,184.72

Payable as checked:

Single payment on . . . . . 19

36 successive monthly installments of \$394.02 each on the 15th day of each month commencing February 15, 1979, with final installment in amount of \$394.02 due on January 15, 1982

. . . . .

7.  Balloon payment of \$ . . . . . due . . . . . 19 may be refinanced as follows:

8. Prepayment of loan with interest to date of prepayment may be made without penalty except that Lender may collect a minimum finance charge of \$5 on loans of \$75 or less and \$7.50 on loans in excess of \$75.

9. Prepaid finance charge \$ . . . . . Required deposit balance \$ . . . . .

10. Credit insurance is not required by Lender but will be purchased if requested.  
Purchase credit insurance:  life at cost of \$ . . . . . ;  life and disability at cost of \$ . . . . .

Borrower to be insured.

11. If any default occurs, Lender may offset against this loan any bank account or other amounts owed by Lender in any capacity to Borrower.  
 This loan is otherwise unsecured.  
 This loan is secured by  Security Agreement,  Trust Deed of even date and reference is made to such document(s) and to separate loan disclosure statement for additional information.

12. Reasonable attorney's fees, legal expenses and lawful collection costs incurred after default may be imposed.

Received this statement and note, with all blanks completed, before signing any document evidencing this loan.

Date: Jan 9, 1979 Claudia Brown  
Borrower

**PROMISSORY NOTE (Interest)**

January 9, 1979

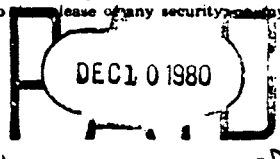
The undersigned, jointly and severally, promise to pay to the order of Drapar Bank & Trust at 903 E. 12300 Sq. in Drapar, Utah, or at such other place as the holder hereof may designate in writing, the sum of FOURTEENTHUSANDONEHUNDREDEIGHTYFOUR & 72/100 (\$14,184.72), payable as follows: 36 Successive Monthly Installments of \$394.02 each due the 15th day of each month commencing February 15, 1979. together with interest on the unpaid balance thereof from date until paid at the rate of FOURTEEN per cent (14%) per annum, interest payable as follows:

**MONTHLY**

Prepayment of this note with interest to date of payment may be made at any time without penalty.

If the holder deems itself insecure or if default be made in payment of the whole or any part of any installment at the time when or the place where the same becomes due and payable as aforesaid, then the entire unpaid balance, with interest as aforesaid, shall, at the election of the holder hereof and without notice of said election at once become due and payable. In event of any such default or acceleration, the undersigned, jointly and severally, agree to pay to the holder hereof reasonable attorney's fees, legal expenses and lawful collection costs in addition to all other sums due hereunder.

Presentment, demand, protest, notice of dishonor and extension of time without notice are hereby waived and the undersigned consent to release of any security, in any part thereof, with or without substitution.


Claudia Brown

DRAPER BANK & TRUST

*Copy*

APPLICATION FOR LOAN from

Date 1-2 1978

I wish to apply for a Loan of \$ 11,500 payable on the 1st day of each month of approximately number of months 120 for the purpose of NEW CAR LOAN 1978 Dodge 924 - New

TYPE OF CREDIT REQUESTED  
 NOTICE: This application may be made in your individual name OR as a joint application of husband and wife.  
 JOINT  HUSBAND AND WIFE: I/we apply for the following credit based on our combined credit worthiness.  INDIVIDUAL I apply for the following credit based SOLELY on my own credit worthiness.

NOTICE: You may include income based on alimony, child support, or maintenance payments, but you are under no obligation to do so. If you do rely on income derived in whole or in part from alimony, child support, or maintenance payments, information concerning your spouse and/or former spouse may be required.

INDIVIDUAL IF JOINT, COMPLETE THIS SECTION

Applicant's Full Name <b>Claudia Ruth Brown</b>	Social Security No. <b>528 15 3326</b>	Name of Spouse <b>H. Michael</b>	Social Security No.
Home Address <b>5499 S. 1300 W.</b>	How Long There <b>4 Yrs. Mos.</b>	Address of Spouse	Business
City <b>SALT LAKE CITY, Utah</b>	Zip Code <b>84107</b>	Spouse's Employer	Zip Code
Previous Home Address (if at Above less Than 2 Yrs) <b>1059 W. 500 S.</b>	Spouse's Employer's Address	Telephone No.	
New Long There <b>18 Yrs. Mos.</b>	Name Telephone No. of Children <b>1-2 YRS</b>	Position Held	
Name and Address of Two Relatives NOT Living with me <b>1. Claude Brown 1059 W. 500 S. SLC</b>	Relationship <b>Grandfather</b>	How Long There <b>3 Yrs. Mos.</b>	Monthly Take Home Pay \$ <b>1400.00</b>
<b>2. 364 4618</b>	Relationship	Source Other Income Spouse	Spouse's Other Income \$
Name and Address of Relative NOT Living with me		Name and Address of Relative NOT Living with me	
Employer's Name <b>Jack's Togs</b>	Telephone No. <b>565-5655</b>	How Long There <b>1 Yrs. 4 Mos.</b>	Monthly Take Home Pay \$ <b>1400.00</b>
Employer's Address <b>7579 S. Redwood Rd</b>	Position Held <b>OWNER</b>	How Long There <b>4 Yrs. Mos.</b>	
Applicant's Previous Employer <b>Motivation Enterprises Inc</b>	Position Held <b>Vice President</b>	If in Military Service presently, give Branch, Rank and Serial No.	
Employer's Address <b>1770 S. 300 W. SLC UT.</b>	Other Income <b>Lid. Bull. State Salary \$2000</b>		

CREDIT REFERENCES AND COMPLETE LIST OF ALL DEBTS NOW OWING: include payment of Alimony and/or child support, if applicable. (Attach and itemize sheet, if necessary)  
 NOTICE: If your application is INDIVIDUAL, you may, under Federal law, include, in addition to those credit references in your OWN name, ALL accounts in SPOUSE'S name for which you are contractually liable or for which you are an authorized user. You, MUST include ALL family debts.

Name of Lender or Mortgage Holder	Address or Branch	Original Balance	Present Balance	Monthly Payment	Security
<input checked="" type="checkbox"/> Home Loan <input type="checkbox"/> Rent	<b>CLM -</b>				

Ever Taken Bankruptcy?  Yes  No  
 Ever had merchandise repossessed?  Yes  No If yes, by whom?  
 Ever had suits or judgments?  Yes  No If yes, give written explanation:

Vehicles You Own	Year	Make	Model	Financed Through	Amount Owed	Monthly Payment
<b>1968</b>	<b>Dodge</b>	<b>912</b>	<b>CHRY</b>		<b>0</b>	<b>0</b>

Your Bank West Jordan B & T Chg. Acct. No. 77-323119  
 Location 1510 W 7800 S. Sec. Acct. No. \_\_\_\_\_  
 Dt. Os. 1-20-78 LV 150  
 No. Ret. 4 LV  
 No. Os. 9 LV  
 Lt. Ret. 12-5-78

I hereby certify that all statements in this application are true and complete and are made for the purpose of obtaining credit. I understand that if the statements are not made in good faith to be true and complete that such is cause for denial of credit. NOTE: It is a Federal crime for any person to knowingly make any false statement or report, or willfully overstate the value of any land, property or security for the purpose of influencing in any way the action of any Bank the deposits of which are insured by the FDIC. I ACKNOWLEDGE THAT THIS APPLICATION FOR CREDIT WILL BE REFERRED BY THE DEALER TO THE ABOVE NAMED BANK FOR REVIEW OF CREDIT REQUIREMENTS.

I HAVE READ AND UNDERSTOOD THE APPLICATION FORM AND AGREE TO PROVIDE ANY ADDITIONAL INFORMATION WHICH MAY BE LEGALLY REQUIRED TO DETERMINE CREDITWORTHINESS.  
 Signature of Applicant Claudia Brown

Spouse's Signature, IF JOINT APPLICATION

**WORK SHEET**

YEAR	NEW USED N/U	MAKE-TRADE-NAME	NO. CYL.	DESCRIPTION	TYPE OF BODY, MODEL, NO.	MANUFACTURER SERIAL NO. OR MOTOR NUMBER	LICENSE NUMBER
1978	<input checked="" type="checkbox"/>	Porsche	4	2/R 9.24		1-48207920	44118411-60

AUTO TRANS.  
  4 SPEED TRANS.  
  POWER STEERING  
  POWER BRAKES  
  POWER WINDOWS  
  POWER SEATS  
  STEREO VINYL TOP  
  SUN ROOF  
  AIR COND.  
  AM/FM STER. TAPE DECK

1. CASH SELLING PRICE \$ 13,500.00 TAX \$ 675.00 TOTAL 14,175.00

2. TRADE-IN AMOUNT 0 LESS OWING \$ 0 NET \$ 0

DESCRIPTION N/A CASH DOWN PAYMENT \$ 2675.00

3. UNPAID CASH BALANCE \$ 11,500.00

4. INSURANCE - PHYSICAL DAMAGE INS. CO. Allstate \$ \_\_\_\_\_

AGENT \_\_\_\_\_ ADDRESS \_\_\_\_\_ PHONE NO. \_\_\_\_\_

COVERAGE VERIFIED BY \_\_\_\_\_ DATE \_\_\_\_\_

**AUTOMOBILE INSPECTION REPORT**

	GOOD	FAIR	POOR	MILEAGE _____	LOAN DECISION <input type="checkbox"/> YES <input type="checkbox"/> NO
BODY & FRAME	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	SERIAL NO. _____	
INTERIOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	PURCHASED FROM _____	_____
TIRES	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	COLLATERAL VALUATION	
MOTOR	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	RETAIL	LOAN VALUE
PAINT	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____	_____
GLASS	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	INSPECTED BY _____	DATE _____
COLOR _____				\$ _____	\$ _____

**PROPERTY TO BE IMPROVED**

LEGAL DESCRIPTION \_\_\_\_\_

Name of Titleholder \_\_\_\_\_ PURCHASE PRICE \$ \_\_\_\_\_  
 BALANCE OWING \_\_\_\_\_  
 APPRAISED VALUE \_\_\_\_\_

Firm \_\_\_\_\_ Firm \_\_\_\_\_ Firm \_\_\_\_\_ Firm \_\_\_\_\_

Open \_\_\_\_\_ Open \_\_\_\_\_ Open \_\_\_\_\_ Open \_\_\_\_\_

High \_\_\_\_\_ High \_\_\_\_\_ High \_\_\_\_\_ High \_\_\_\_\_

Sol. \_\_\_\_\_ Sol. \_\_\_\_\_ Sol. \_\_\_\_\_ Sol. \_\_\_\_\_

Terms \_\_\_\_\_ Terms \_\_\_\_\_ Terms \_\_\_\_\_ Terms \_\_\_\_\_

D.L.P. \_\_\_\_\_ D.L.P. \_\_\_\_\_ D.L.P. \_\_\_\_\_ O.L.P. \_\_\_\_\_

D.N.D. \_\_\_\_\_ D.N.D. \_\_\_\_\_ D.N.D. \_\_\_\_\_ D.N.D. \_\_\_\_\_

Sec. \_\_\_\_\_ Sec. \_\_\_\_\_ Sec. \_\_\_\_\_ Sec. \_\_\_\_\_

Rating \_\_\_\_\_ Rating \_\_\_\_\_ Rating \_\_\_\_\_ Rating \_\_\_\_\_

Inquiries \_\_\_\_\_ Inquiries \_\_\_\_\_ Inquiries \_\_\_\_\_ Inquiries \_\_\_\_\_

0000 - 23747.  
Jan 1, 1979

**DRAPER** Bank  
OF TRUST  
DRAPER, UTAH 84302

97-105  
1243

REMITTER Loan Proceeds

DATE January 9, 1979

NO 46407

PAY TO THE  
ORDER OF Claudia Brown & Motivation Auto

\$11,500.00

DRAPER BANK **11,500.00**

DOLLARS

CASHIER'S CHECK

*[Handwritten Signature]*  
AUTHORIZED SIGNATURE

⑈046407⑈ ⑆1243⑈0105⑈ 1999908305⑈

62 ⑈0901150000⑈

78,051.11

71  
323109

Secure a Utah Certificate of Title to automobile for which this check represents payment showing Draper Bank & Trust, Draper, Utah as lien holder and also warranties good and clear title to said automobile.

Make Porsche 924  
car 1978  
serial # 1248207920

*[Handwritten notes]*  
144  
144

PAY TO THE ORDER OF  
DRAPER BANK & TRUST  
WEST JORDAN BRANCH  
FOR DEPOSIT ONLY  
CLAUDIA BROWN  
TACK AND TOGS, INC.  
71 - 32310 - 9

MAY 11 1977

BOND NO. 2334416

EXHIBIT A

BOND OF MOTOR VEHICLE DEALER OR SALESMAN

KNOW ALL MEN BY THESE PRESENTS: That we, Bug Parts Unlimited Inc.

of Street Address 1156 So. State Street City Salt Lake City

County of Salt Lake Utah, as Principal, and WESTERN SURETY COMPANY, 527 HAMILTON AVENUE, PALO ALTO, CALIFORNIA

a Surety Company qualified and authorized to do business in the State of Utah as Surety, are jointly and severally held and firmly bound to the people of the State of Utah to indemnify any and all persons, firms and corporations for any loss suffered by reason of violation of the conditions hereinafter contained, in the penal sum of TWENTY THOUSAND Dollars (\$20,000.00) lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors, administrators, successors and assigns, jointly, severally and firmly by these presents.

THE CONDITION OF THIS OBLIGATION IS SUCH, That,

WHEREAS, the above bounden principal has applied for a license to do business as a Motor Vehicle Dealer within the State of Utah, and that pursuant to the application, a license has been or is about to be issued.

NOW, THEREFORE, if the above bounden principal shall obtain said license to do business as such Motor Vehicle Dealer and shall well and truly observe and comply with all the requirements and provisions of THE ACT PROVIDING FOR THE REGULATION AND CONTROL OF THE BUSINESS OF DEALING IN MOTOR VEHICLES, as provided by Chapter 3, Title 41, Utah Code Annotated, 1953, and indemnify any and all persons, firms and corporations for any loss suffered by reason of the fraud or fraudulent representations made or through the violation of any of the provisions of said Motor Vehicle Business Act and shall pay all judgments and costs adjudged against said principal on account of fraud or fraudulent representations and for any violation or violations of said law during the time of said license and all lawful renewals thereof, then the above obligation shall be null and void, otherwise to remain in full force and effect.

The Surety herein reserves the right to withdraw as such surety except as to any liability already incurred or accrued hereunder and may do so upon the giving of written notice of such withdrawal to the principal and to the Motor Vehicle Business Administrator; provided, however, that no withdrawal shall be effective for any purpose until sixty days shall have elapsed from and after the receipt of such notice by the said administrator, and further provided that no withdrawal shall in anywise effect the liability of said surety arising out of fraud or fraudulent representations or for any violation or violations of said law by the principal hereunder prior to the expiration of such period of sixty days, regardless of whether or not the loss suffered has been reduced to judgment before the lapse of sixty days.

Signed and sealed this 10th day of May 19 77

*Bug Parts Unlimited Inc.*  
*H. Michael Brown*  
Principal

ATTEST  
By \_\_\_\_\_

Approved as to form  
PHIL L. HANSEN  
Attorney General

By (Signed) Burton Howard

WESTERN SURETY COMPANY  
Surety  
*L. Mydland*  
Attorney-in-Fact  
L. Mydland, Assistant Secretary



INDIVIDUAL ACKNOWLEDGMENT OF PRINCIPAL

STATE OF UTAH

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally came \_\_\_\_\_, to me known and known to me to be the person, and described in, and who executed the foregoing instrument, and acknowledged to me that he executed the same.

(SEAL)

Commission Expires \_\_\_\_\_

Notary Public

PARTNERSHIP OR FIRM ACKNOWLEDGMENT OF PRINCIPAL

STATE OF UTAH

COUNTY OF \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known and known to me to be one of the firm of \_\_\_\_\_ described in and who executed the same as and for the act and deed of said firm.

(SEAL)

Commission Expires \_\_\_\_\_

Notary Public

CORPORATE ACKNOWLEDGMENT OF PRINCIPAL

STATE OF UTAH

COUNTY OF Salt Lake

On the 15th day of June, in the year 1977, before me personally came \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say: That he resides in \_\_\_\_\_, that he is \_\_\_\_\_ of the \_\_\_\_\_ the corporation described in and which executed the above instrument; that he knew the seal of said corporation; that the seal affixed to said instrument was such corporate seal; that it was so affixed by order of the Board of Directors of said corporation, and that he signed his name thereto by like order.

(SEAL)

Commission Expires \_\_\_\_\_

Notary Public

CORPORATE ACKNOWLEDGMENT OF PRINCIPAL

(To be executed by corporation without corporate seal)

STATE OF UTAH

COUNTY OF Salt Lake

On the 2nd day of June, in the year 1977, before me personally appeared \_\_\_\_\_, to me known, who, being by me duly sworn, did depose and say: That he resides in \_\_\_\_\_, that he is the \_\_\_\_\_ of the \_\_\_\_\_ the corporation which executed the above instrument and which is described therein; that he signed the above mentioned instrument on behalf of said corporation; that he was authorized to do so by Article \_\_\_\_\_ of the Articles of Incorporation of the said corporation, and by order of the Board of Directors of said corporation, and that his signature as it thus appears in the above instrument is binding upon the corporation.

(SEAL)

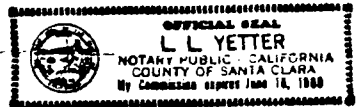
Commission Expires Aug 13, 1977

Notary Public

AFFIDAVIT OF QUALIFICATION

STATE OF CALIFORNIA

COUNTY OF SANTA CLARA



L. Mydland \_\_\_\_\_ being first duly sworn, on oath deposes and says that he is the Assistant-Secretary of said company, and that he is duly authorized to execute and deliver the foregoing obligations; that said company is authorized to execute the same and has complied in all respects with the Laws of Utah in reference to becoming sole surety upon bonds, undertakings and obligations.

Subscribed and sworn to before me this 10th day of May 19 77

My Commission expires:

L. Mydland, Assistant Secretary