

1988

# Jerry Ricketts v. V and H Leasing Services, Inc. a Wisconsin corporation : Brief of Appellant

Utah Supreme Court

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UTAH COURT OF APPEALS  
BRIEF

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DOCKET NO.

88-0208-CA

IN THE SUPREME COURT OF THE  
STATE OF UTAH

JERRY RICKETTS,

Plaintiff and  
Appellant,

vs.

V & H LEASING SERVICES, INC.  
a Wisconsin corporation,

Defendant and  
Respondent.

Case No. 88-0005

Case Priority 14.a.

200

BRIEF OF APPELLANT

APPEAL FROM THE ORDER REGARDING PLAINTIFF'S MOTION  
FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANT'S MOTION  
FOR SUMMARY JUDGMENT IN THE SECOND JUDICIAL  
DISTRICT COURT IN AND FOR DAVIS COUNTY, STATE OF  
UTAH, CIVIL NO. 39279, THE HONORABLE DOUGLAS  
CORNABY PRESIDING.

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Attorney for Appellant

Clerk SLP

MAR 24

JERRY RICKETTS,	)	
	)	
Plaintiff and	)	
Appellant,	)	Case No. 88-0005
	)	
vs.	)	Case Priority 14.a.
	)	
V & H LEASING SERVICES, INC.	)	
a Wisconsin corporation,	)	
	)	
Defendant and	)	
Respondent.	)	
	)	
	)	

APPEAL FROM THE ORDER REGARDING PLAINTIFF'S MOTION  
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FOR SUMMARY JUDGMENT IN THE SECOND JUDICIAL  
DISTRICT COURT IN AND FOR DAVIS COUNTY, STATE OF  
UTAH, CIVIL NO. 39279, THE HONORABLE DOUGLAS  
CORNABY PRESIDING.

Attorney for Appellant

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JERRY RICKETTS,	)	
	)	
Plaintiff and	)	
Appellant,	)	Case No. 88-0005
	)	
vs.	)	Case Priority 14.a.
	)	
V & H LEASING SERVICES, INC.	)	
a Wisconsin corporation,	)	
	)	
Defendant and	)	
Respondent.	)	
	)	
	)	

JURISDICTION OF THE COURT AND  
NATURE OF THE PROCEEDINGS

1

ISSUES PRESENTED FOR REVIEW ON APPEAL

I.

Does an owner/lessor have a statutory duty to maintain the parking brake on its vehicle?

II.

Is the statutory duty to maintain a parking brake delegable, by contract with a lessee, so that third parties injured by an inoperable parking brake cannot recover against the owner?

III.

Does an owner/lessor of a motor vehicle have a common law duty to inspect its vehicle?

STATEMENT OF THE CASE

Plaintiff filed his Complaint on April 25, 1986, asserting claims for negligent maintenance of a vehicle owned by defendant V & H Leasing Services, Inc. Plaintiff also asserted a claim against a contractor, Neil Brienholt, for *negligent parking of his vehicle at the construction site* where Plaintiff was injured. (R. 1-5). Defendant Brienholt was subsequently dismissed upon Stipulation of the parties to this action (R. 50-51). Subsequently, discovery was accomplished and Plaintiff filed a Motion to Amend his



Complaint after completion of discovery. (R. 72-73). An Amended Complaint was filed on October 1, 1987, alleging claims against Defendant for failure to inspect its vehicle, negligent inspection of its vehicle, and negligent maintenance of its vehicle. (R. 83-87). Defendant thereafter filed a Motion for Summary Judgment with supporting Memorandum of Points and Authorities. (R. 91-102). Plaintiff also filed a Motion for Partial Summary Judgment with accompanying Memorandum of Points and Authorities. (R. 112-127). The respective Motions came on for hearing before the Honorable Douglas S. Cornaby, District Court Judge, on November 24, 1987. Judge Cornaby granted Defendant's Motion and denied Plaintiff's Motion resulting in the Order set forth in the Addendum.

Plaintiff Jerry Ricketts (herein Ricketts) sustained serious injury to his arm resulting in replacement of his elbow with a plastic elbow. (R. 119). The surgery has left a fifteen inch (15") scar on his arm and has caused permanent injury. (R. 119). Ricketts' injury occurred on February 27, 1985, while Ricketts was working for his employer, Swanson Building Materials. The accident occurred while one Brian Eberhardt was driving a 1984 Ford flatbed truck at a construction site in Davis County. Ricketts had been guiding

Brian Eberhardt's backing of the truck due to the fact that a pickup truck was parked in front of the construction site. Ricketts was assisting Eberhardt by standing towards the back of the truck and giving hand instructions on how far Eberhardt could back the truck without hitting the parked pickup truck. When the truck stopped, Eberhardt put the truck in neutral, set the parking brake and began to exit the vehicle. As he exited the vehicle, the truck rolled backwards, pinning Ricketts' arm against the parked pickup truck. (R. 118, 119). Ricketts' employer, Swanson Building Materials, had leased the truck from Defendant V & H Leasing Services, Inc. (hereinafter V & H Leasing) and Defendant V & H Leasing was owner of the truck at the time of the accident herein. (R. 116).

Prior to February 27, 1985, Ricketts' employer had been advised that there was a problem with the parking brake on the flatbed truck in that it was inoperable. (R. 118). Furthermore, V & H Leasing did not inspect the truck they owned after delivery on August 15, 1980, (R. 157) and relied solely upon the provisions of the lease agreement between Defendant V & H Leasing and Swanson Building Materials as follows:

"4. Registration and Inspection. Lessee shall accomplish, at the expense of

Lessee, the titling, registration, and licensing of each vehicle in the name of Lessor, and all inspections thereto required by governmental authorities during the lease term. Lessee shall permit Lessor to inspect any vehicle from time to time at reasonable intervals...

6. Maintenance and Repairs. (a) Lessee, at the expense of Lessee, shall maintain each vehicle and each part thereof, in good working order and condition, properly serviced and lubricated, and make all necessary repairs and replacements thereto. Title to all replacements shall vest in Lessor. All such servicing, lubrication and repairs shall be accomplished at Lessor's garage unless Lessor shall consent in writing to the contrary, unless any interested insurance company shall direct otherwise..." (Emphasis supplied). (R. 117).

#### SUMMARY OF THE ARGUMENT

Plaintiff maintains there is a statutory duty upon the owner of a vehicle to properly maintain the parking brake so that it will not cause injury. Ricketts maintains that this statutory duty applies to Defendant V & H Leasing because Defendant V & H Leasing is statutorily defined as the owner of the vehicle for purposes of maintenance of the vehicle. Furthermore, Ricketts maintains that he proved a prima facie case of breach of the foregoing statutory duty by virtue of the testimony of Bruce Eichbaur (who was the manager of Ricketts' employer's trucks) that the parking brake was

inoperable prior to the accident. As such, Ricketts maintains there was a duty owed to Plaintiff by the owner of the vehicle, Defendant V & H Leasing, which Defendant V & H Leasing breached because it did not properly maintain the parking brake on the flatbed truck.

Ricketts also maintains that the lease agreement between V & H Leasing and Ricketts' employer, Swanson Building Materials, cannot, as a matter of law, operate to defeat Ricketts' claim as to Defendant V & H Leasing. That is, the delegation by contract/lease of the statutory duty to maintain a parking brake does not affect Ricketts' right of recovery as to the owner of the vehicle.

Finally, Ricketts maintains that there exists a common law duty to inspect one's motor vehicle and Defendant V & H Leasing was negligent in inspecting its vehicle inasmuch as no inspections by V & H Leasing occurred during its ownership.

#### ARGUMENT

##### I.

DEFENDANT V & H LEASING AS OWNER/LESSOR  
HAS A STATUTORY DUTY TO MAINTAIN THE  
PARKING BRAKE ON ITS VEHICLE AND THE  
TRIAL COURT ERRED IN GRANTING DEFENDANT'S  
MOTION FOR SUMMARY JUDGMENT.

Utah Code Annotated 41-6-145(b) (as amended 1953),

provides as follows:

"Every motor vehicle and combination of vehicles shall have a parking brake system adequate to hold the vehicle or combination on any grade on which it is operated under all conditions of loading on a surface free from snow, ice or loose material or which shall comply with performance standards issued by the Department." (Emphasis supplied).

The foregoing statute quite clearly prescribes a standard of safety regarding automobiles/trucks that applies to owners/lessors such as Defendant V & H Leasing. That the foregoing statute was intended to apply to owners/lessors can be found in express statutory intent in the definition sections of the motor vehicle act:

"If a vehicle is the subject of an agreement to lease, the Lessor is considered the owner until the Lessee exercises its option to purchase the vehicle." U.C.A. 41-1-1(x) (as amended 1953). (Emphasis supplied).

Further, the violation of the parking brake statute by V & H Leasing is prima facie evidence of negligence. See Hall v. Warren, 632 P.2d 848, 850 (Utah 1981), Little America Refining Co. v. Leyba, 641 P.2d 112, (Utah 1982). Numerous courts have held violation of brake statutes to constitute negligence. Lynghaug v. Payte, 76 N.W.2d 660 (Minn. 1956); Ferran v. Jacquez, 68 N.M. 367, 362 P.2d 519 (1961); Swope v. Fallen, 413 S.W.2d 8 (Ky. 1967); Platt v. Gould, 548 P.2d 28

(Ariz. App. 1976); Johnson v. McAfee, 261 S.E.2d 708 (Ga. App. 1979); Hartford Accid. & Indemn. v. J. I. Case Co., 625 F.Supp. 1251 (S.D. Ohio 1985). Moreover, the statutory duty rests on both the owner and the driver. Wilcox v. Glover Motors, Inc., 269 N.C. 473, 153 S.E.2d 76 (1967).

In view of the foregoing compelling authority, the trial court committed reversible error in holding that there is no statutory duty of an owner/lessor to maintain a parking brake on its vehicle in Utah. As such, the matter should be remanded to the trial court for a jury trial on the merits.

## II.

THE TRIAL COURT ERRED IN HOLDING THAT THE  
STATUTORY DUTY TO MAINTAIN BRAKES IS  
DELEGABLE AND THIS CASE SHOULD BE  
REVERSED AND REMANDED WITH AN ORDER THAT  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT  
BE GRANTED.

A principal defense of Defendant V & H Leasing to this action was that no statutory duty to maintain a parking brake existed because of the contractual delegation of the duty to repair contained in the lease agreement with Swanson. (See paragraph 4 of the lease provision quoted in the Summary of Argument hereinabove). This argument is wholly unfounded and not supported by sound case law because several courts have specifically held the statutory duty to maintain brakes is non-delegable. Maloney v. Rath, 71 Cal. Rptr. 897, 445 P.2d

513 (1968); Wentworth v. Ford Motor Co., 501 P.2d 1218 (Nevada 1972); Rager v. Superior Coach, 111 Arizona 204, 526 P.2d 1056 (1974).

Moreover, a recent California case demonstrates the scope of the foregoing rule of law. In Kaley v. Catalina Yachts, 232 Cal. Rptr. 384 (Cal. App. 2 Dist. 1986), plaintiff Kaley was employed as a truckdriver by a company known as Coast to Coast Distributors. During his employment, plaintiff was operating a vehicle owned by a corporation known as Catalina Yachts. While plaintiff was driving the vehicle, the vehicle malfunctioned and plaintiff sustained injuries from a resulting accident. Coast to Coast was responsible for maintaining and using the vehicle and exercised full control over the truck. Plaintiff brought suit against the owner (Catalina) of the truck and obtained a \$407,000.00 jury verdict. Catalina appealed, asserting that it had no opportunity to control, repair or maintain the truck. The Appellate Court rejected Catalina's argument and held:

"That Coast may have undertaken to do all of the maintenance work on the truck does not absolve Catalina. There was certainly substantial evidence that Coast was Catalina's agent for that purpose. Assuming, however, that Coast was not Catalina's agent but was, rather, an independent contractor, Catalina chose to

do business with Coast and to allow it to operate and maintain the truck which the jury impliedly found to belong to Catalina. Catalina is in no better position than Ramona Rath in Maloney v. Rath, supra, 69 Cal. 2d 442, 71 Cal. Rptr. 897, 445 P.2d 513, or Bodo Dziabas in Clark v. Dziabas, supra, 69 Cal.2d 449, 71 Ca. Rptr. 901, 445 P.2d 517, who had their brakes overhauled, some three months and six months respectively, before the accidents in those cases." (Kaley at 391.) (Emphasis supplied).

Defendant V & H Leasing should not be permitted to absolve itself of liability through a contractual delegation of duties as to Plaintiff and the lower court's holding that a contractual delegation of duties is effective as to third parties should be reversed and remanded for a jury trial.

### III.

DEFENDANT V & H LEASING HAS A COMMON LAW DUTY TO INSPECT ITS VEHICLE AND BREACHED THAT DUTY BY FAILING TO PERFORM ANY INSPECTIONS ON THE VEHICLE IT OWNED.

The owner of an automobile may be held liable to third persons for injuries resulting from a defective or unsafe condition of the vehicle if, through exercise of reasonable care, the owner should have known of the defect or condition. See Lane v. Messer, 731 P.2d 488 (Utah 1986); accord, White v. Pinney, 99 Utah 484, 108 P.2d 249 (1940). Moreover, the Utah Supreme Court stated in White the general rule of law to be:



"The owner or operator of a motor vehicle must exercise reasonable care in the inspection of the machine, and is chargeable with notice of everything that such inspection would disclose.... the great weight of authority holds that there is no liability on the part of an owner where an outsider has been injured by a defective mechanism which was unknown to the owner and which would not have been disclosed by a reasonable inspection". Id at P.2d 253.

Plaintiff maintains the foregoing Utah case law imposes a duty to inspect upon V & H Leasing. Moreover, the lease agreement between V & H Leasing and Swanson implicitly acknowledges this duty by reserving in V & H Leasing the right to perform inspections. Furthermore, the duty to inspect increases as a vehicle grows older, Scudamore v. Horton, 426 S.W.2d 142 (Ky. 1968) and the fact that the vehicle had been with Swanson for four and one-half years imposed a greater duty upon V & H Leasing to exercise reasonable care.

Defendant V & H Leasing breached the duty to inspect by its candid admission in its responsive Memorandum of Points and Authorities that it had not inspected or maintained the vehicle after delivery to Swanson Building Materials. As such, Plaintiff can prove a prima facie case of negligence under the foregoing case law and the lower court's granting

of Defendant's Motion for Summary Judgment was therefore erroneous and should be reversed.

CONCLUSION

For the foregoing reasons, Plaintiff Jerry Ricketts maintains that the court erred in not granting his Motion for Partial Summary Judgment determining that Defendant V & H Leasing has a statutory duty to maintain its truck as well as a common law duty to inspect its truck. Furthermore, Plaintiff Jerry Ricketts maintains the court erred in holding the statutory duty to maintain a parking brake is delegable and the Order granting Defendant's Motion for Summary Judgment should be reversed and remanded for a jury trial.

DATED this 24 day of March, 1988.

Respectfully submitted,



Phillip W. Dyer  
Attorney for  
Plaintiff/Appellant

a:Ricketts.SCB  
Medical #1

## **ADDENDUM**

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DAVIS COUNTY, UTAH

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2ND DISTRICT COURT

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Salt Lake City, Utah 84101  
(801) 363-5000

IN THE SECOND JUDICIAL DISTRICT COURT IN AND FOR  
DAVIS COUNTY, STATE OF UTAH

JERRY RICKETTS,	)	
	)	
Plaintiff,	)	ORDER REGARDING
	)	PLAINTIFF'S MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT
vs.	)	AND DEFENDANT'S MOTION
	)	FOR SUMMARY JUDGMENT
	)	
V & H LEASING SERVICES, INC.,	)	
a Wisconsin corporation,	)	Civil No. 39,279
	)	
Defendant.	)	Judge Cornaby
	)	
	)	

Plaintiff's Motion for Partial Summary Judgment and Defendant's Motion for Summary Judgment came on for hearing before the Honorable Douglas Cornaby, District Court Judge, on the 24th day of November, 1987, at 3:30 p.m., with the Plaintiff appearing in person with his counsel, Phillip W. Dyer, and Defendant V & H Leasing Services, Inc., appearing through its counsel, Joy L. Sanders of Snow, Christensen & Martineau. Respective counsel thereupon argued the matter to the Court. After hearing the argument of counsel, the Court having concluded that the Defendant had no common law duty to

inspect the vehicle it owned, that the Defendant had no statutory duty to maintain the parking brake on its vehicle and that any statutory duty the Defendant may have had to maintain the parking brake on its vehicle was a delegable duty that Defendant had delegated by a lease/contract, and good cause appearing therefore,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

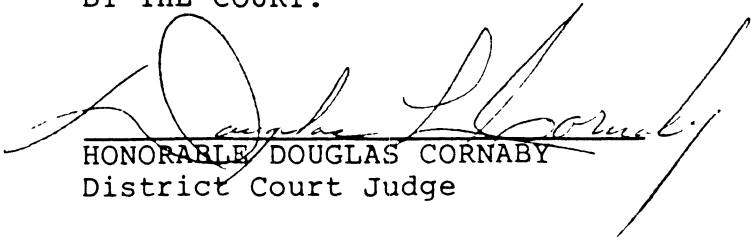
1. Plaintiff's Motion for Partial Summary Judgment is denied.

2. Defendant's Motion for Summary Judgment is granted because Defendant had no common law duty to inspect its vehicle, the Defendant has no statutory duty to maintain the parking brake on its vehicle and any statutory duty the Defendant may have had was a delegable duty that Defendant had delegated by a lease/contract..

3. Plaintiff's Amended Complaint is dismissed with prejudice as to Defendant V & H Leasing Services, Inc., no cause of action, without costs.

DATED this 2 day of Dec., 1987.

BY THE COURT:

  
HONORABLE DOUGLAS CORNABY  
District Court Judge

CERTIFICATE OF HAND DELIVERY

STATE OF UTAH                    )  
                                      ) ss.  
COUNTY OF SALT LAKE )

Francis Fecteau being duly sworn, deposes and says:

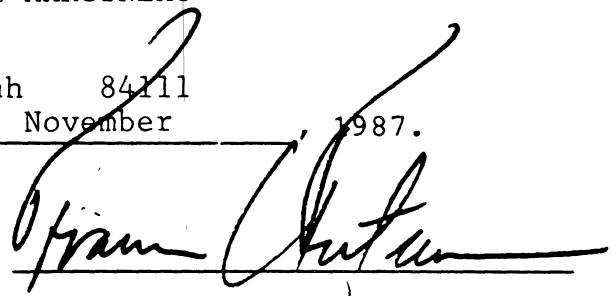
That he served

ORDER REGARDING MOTION FOR PARTIAL SUMMARY  
JUDGMENT AND DEFENDANT'S MOTION FOR SUMMARY  
JUDGMENT

upon the following parties by hand delivering a true and correct  
copy thereof in an envelope addressed to:

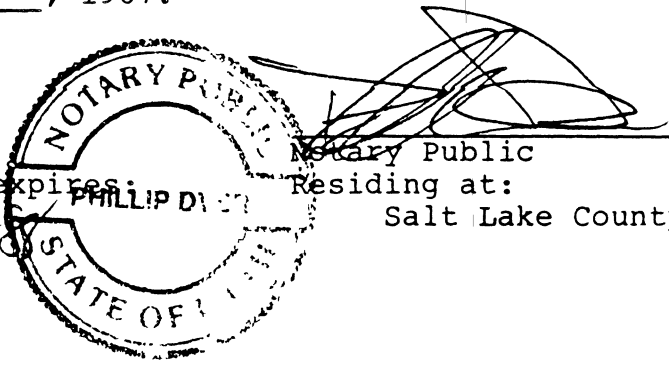
JOY L. SANDERS, ESQ.  
RAYMOND M. BERRY, ESQ.  
SNOW, CHRISTENSEN & MARTINEAU  
10 Exchange Place  
11th Floor  
Salt Lake City, Utah 84111

DATED this 30th day of November, 1987.



SUBSCRIBED AND SWORN to before me this 30 day of

November, 1987.



My Commission expires

2-14-88

Notary Public

Residing at:

Salt Lake County, Utah

Utah Code Annotated 41-6-145

41-6-145. Braking systems required - Adoption of performance requirements by department.

(b) Every motor vehicle and combination of vehicles shall have a parking brake system adequate to hold the vehicle or combination on any grade on which it is operated under all conditions of loading on a surface free from snow, ice or loose material or which shall comply with performance standards issued by the department.

Utah Code Annotated 41-1-1

41-1-1. Definitions.

(x) "Owner" means a person who holds the legal title of a vehicle. In the event said title reflects the names of two or more persons as coowners in the alternative by use of the word "or" or "and/or", each coowner is considered to have granted to the other coowners the absolute right to endorse and deliver title and to dispose of the vehicle. In the event the title reflects the names of two or more persons as coowners in the conjunctive by use of the word "and", or the title does not reflect any alternative or conjunctive word, the title shall thereafter require the endorsement of each coowner to transfer the vehicle. If a vehicle is the subject of an agreement for the conditional sale or installment sale or mortgage thereof with the right of purchase upon performance of the conditions stated in the agreement and with an immediate right of possession vested in the conditional vendee or mortgagor, or if the vehicle is the subject of a security agreement, then the conditional vendee, mortgagor, or debtor is considered the owner for the purposes of this chapter. If a vehicle is the subject of an agreement to lease, the lessor is considered the owner until the lessee exercise his option to purchase the vehicle.



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IN THE SUPREME COURT OF THE  
STATE OF UTAH

JERRY RICKETTS,

Plaintiff and  
Appellant,

vs.

V & H LEASING SERVICES, INC.  
a Wisconsin corporation,

Defendant and  
Respondent.

CERTIFICATE OF FILING  
AND SERVICE

Case No. 88-0005

Phillip W. Dyer, attorney for Plaintiff/Appellant,  
hereby certifies that on the 24 day of March, 1988, the  
original and ten copies of the Brief of Appellant were filed  
with the Clerk of the Supreme Court by hand delivery, and  
that four copies of the Brief of Appellant were hand  
delivered to Raymond M. Berry, Esq., and Joy L. Sanders,  
Esq., Attorneys for Defendant/Respondent, at SNOW,  
CHRISTENSEN & MARTINEAU, 10 Exchange Place, 11th Floor, Salt  
Lake City, Utah, 84111.

DATED this 24 day of March, 1988.

Respectfully submitted,



Phillip W. Dyer  
Attorney for Plaintiff/Appellant