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In the

Supreme Court of the State of Utah

AUTO LEASE COMPANY, a partnership,
Plaintiff and Appellant,

vs.

CENTRAL MUTUAL INSURANCE CO., a corporation,
Defendant and Respondent.

Case No. 8746

FILED
JAN 1 0 1958
Clerk, Supreme Court, Utah

BRIEF OF APPELLANT

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In the
Supreme Court of the State of Utah

AUTO LEASE COMPANY, a partnership, *Plaintiff and Appellant,* vs. CENTRAL MUTUAL INSURANCE CO., a corporation, *Defendant and Respondent.*	Case No. 8746

BRIEF OF APPELLANT

STATEMENT OF FACTS

This is an appeal from a ruling of Stewart Hansen, Judge, Third District Court in and for Salt Lake County, Utah, granting to defendant, Central Mutual Insurance Company, summary judgment of dismissal of plaintiff's complaint.

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Plaintiff, in his complaint, seeks to recover damages under a certain insurance policy issued by defendant to Appellant and The Bearing Service and Supply Company on a fleet of automobiles which were leased by The Bearing Service and Supply Company from appellant. The said policy was in force during all times mentioned herein.

On the 31st day of January, 1956 the appellant acquired in Michigan a new 1956 Chevrolet Station Wagon which appellant contends was a replacement of one of the automobiles mentioned in the policy of insurance issued by defendant. The 1956 Chevrolet Station Wagon was delivered to an agent of plaintiff who was to drive the automobile to Salt Lake City. On the morning of the second day of February, 1956 the automobile was totally demolished in a wreck on U. S. Route 30, 16 miles west of Cheyenne, Wyoming.

On the morning of the same day plaintiff notified defendant of the acquisition of the automobile and subsequently made demand for payment of its loss to the insurance company. This demand was refused by the insurance company and plaintiff filed suit.

Defendant-respondent subsequently filed a Motion for Summary Judgment upon the ground that there was no genuine issue as to any material fact and the defendant was entitled to judgment as a matter of law. The motion was based upon the pleadings on file, the insurance policy referred to in plaintiff's Complaint and the deposition of C. R. Jacobs, a partner in the plaintiff company. The motion was granted by the court, Stewart M. Hansen, Judge, and plaintiff appeals.

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STATEMENT OF POINTS

POINT I.

THE RULING OF THE COURT WAS CONTRARY TO LAW AND HENCE THE COURT ERRED IN GRANTING RESPONDENT'S MOTION AND IN DISMISSING THE COMPLAINT.

POINT II.

THE COURT ERRED IN FINDING THAT THE AUTOMOBILE DESCRIBED IN PLAINTIFF'S COMPLAINT WAS NOT COVERED UNDER THE INSURANCE POLICY ISSUED BY THE DEFENDANT AND DESCRIBED IN PLAINTIFF'S COMPLAINT.

ARGUMENT

POINT I.

THE RULING OF THE COURT WAS CONTRARY TO LAW AND HENCE THE COURT ERRED IN GRANTING RESPONDENT'S MOTION AND IN DISMISSING THE COMPLAINT.

Rule 56(c), Utah Rules of Civil Procedure, provides that "* * * The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file * * * show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." However, it is well estab-

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lished law that summary judgment should be denied if there is an issue of fact.

> "The purpose of summary judgment laws is to grant relief against procedural tactics interposed for delay, and not to substitute a new method of trial where an issue of fact exists."
>
> *Fisher* vs. *Sun Underwriters Ins. Co.*, 55 R. I. 175, 179 A. 702, 103 A. L. R. 1097.

It is clear that there is an issue of fact in this matter as to whether or not the automobile which was wrecked was a replacement for one of the vehicles included in the fleet of automobiles furnished to Bearing Service & Supply Company. (See transcript of C. R. Jacobs, Page 6, et seq.)

It may be observed that the deposition of C. R. Jacobs in no way establishes any fact except that the vehicle was to replace and was replacing one of the vehicles which was insured. It may also be observed that the insurance policy issued by respondent provided as follows: "* * * AUTOMATIC INSURANCE FOR NEWLY ACQUIRED AUTOMOBILES: if the insured who is the owner of the automobile, or his spouse if a resident of the same household, acquires ownership of another automobile and so notifies the company within thirty days following the date of its delivery, such insurance as is afforded by this policy applies also to such other automobile as of the date of such acquisition; (a) if it replaces an automobile described in this policy, or (b) if it is an additional automobile and if the company insures all automobiles owned by the insured and such spouse at such delivery date; provided when a limit of liability is expressed in the declarations as a stated

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amount, such limit shall be replaced by the actual cash value."

It is clear that the above portion of the insurance policy is purposed to give coverage on newly acquired automobiles of persons who are already insured by the company —the fact in this case.

> "The purpose of automatic insurance is to give coverage to persons who are already insured with the company in question upon acquiring a new vehicle. The coverage extends to the new acquisition when it replaces the sole automobile owned by the insured."
>
> Appleman on Insurance Law and Practice, Vol. 7, Sec. 4293, see also *Utilities Ins. Co.* v. *Wilson,* 251 Pac. 2d 175.

Appellant complied with all the provisions of the insurance policy when it acquired the car in question. There is no contention on the part of respondent that anything else was done. Appellant contends that according to law it could rely on the belief that the automobile was insured in accordance with the terms of the insurance policy.

> "The language of the policy is to be construed in accordance with the principle that 'the test is not what the insurer intended its words to mean but what a reasonable person in the position of the insured would have understood them to mean.' "
>
> *Watson* v. *Firemen's Insurance Company,* 83 N. H. 200, 202, 140 A. 169.
>
> See also extensive annotation in 127 A. L. R. 483, citing numerous cases.

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In all the evidence presented to the lower court there was not one scintilla of evidence that the wrecked automobile was not acquired to replace the automobile described in plaintiff's complaint and also described in the insurance policy. This is a matter of fact which should have been determined by a trial wherein competent evidence could have been produced.

There is no contention on the part of respondent that if the automobile is a newly acquired vehicle which replaces an insured automobile the insurance policy does not cover that vehicle.

POINT II.

THE COURT ERRED IN FINDING THAT THE AUTOMOBILE DESCRIBED IN PLAINTIFF'S COMPLAINT WAS NOT COVERED UNDER THE INSURANCE POLICY ISSUED BY THE DEFENDANT AND DESCRIBED IN PLAINTIFF'S COMPLAINT.

Respondent relied on the deposition of C. R. Jacobs and the pleadings on file to prove that the automobile described in plaintiff's complaint was not covered under the insurance policy which was issued.

Appellant alleged in the Complaint at paragraph 4 "That on the 31st day of January, 1956 the plaintiff acquired one new 1956 Cheprolet V-8 4 door Station Wagon, Motor #0011887, Serial #VB56S004649 which automobile was to replace item #4 on the fleet schedule Station Wagon Serial #VB55J003559 attached" to respondent's insurance

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policy. Respondent answered with a general denial and a further defense that the automobile did not replace any automobile by reason of the fact that the replaced automobile was still in use. It is submitted that this point is irrelevant in view of the above quoted clause in the insurance policy and, in addition, is contrary to law as stated in *Dean* v. *Niagara F. Ins. Co.*, 24 Cal. App. Supp. (2d) 762, 68 P. (2d) 1021.

The decision of the lower court was clearly contrary to law.

CONCLUSION

Under the law and the facts of this case the decision of the lower court should be reversed.

Respectfully submitted,

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