

1982

# American Manufacturers Mutual v. Resort Campers, Ltd. Et al : Brief of Defendant-Cross Appellant

Utah Supreme Court

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David K. Smith; Attorney for Defendant and Appellants;

R. Scott Williams; Strong & Hanni; Attorneys for Plaintiff and Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

AMERICAN MANUFACTURERS MUTUAL, :  
 :  
 : Plaintiff and :  
 : Respondent, :  
 :  
 : vs. :  
 :  
 : RESORT CAMPERS, LTD. et al, :  
 :  
 : Defendants, : No. 18263  
 :  
 : and :  
 :  
 : ROGER T. RUSSELL, et al. :  
 :  
 : Defendants and :  
 : Appellants. :

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BRIEF OF DEFENDANT-CROSS APPELLANT  
GWYN D. DAVIDSON

---

Appeal from the Third Judicial District Court of  
Salt Lake County, Honorable Dean E. Conder, Judge

---

David M. Swope  
NIELSEN & SENIOR  
1100 Beneficial Life Tower  
36 South State Street  
Salt Lake City, Utah 84111  
  
Attorneys for Defendants-  
Appellants Russell and Cowley

Robert Scott Williams  
STRONG & HANNI  
Sixth Floor Boston Building  
Salt Lake City, Utah 84111  
  
Attorneys for Plaintiff-  
Respondent

Bruce Findlay  
KIRTON, McCONKIE & BUSHNELL  
Defendant-Cross Appellant  
Gwyn D. Davidson's Attorneys  
330 South 300 East  
Salt Lake City, Utah 84111  
Telephone: (801) 521-3680

David S. Cook  
Attorney for Defendants Resort  
Campers, Des Townsend, Glen  
Hatch  
85 West 400 North  
Bountiful, Utah 84010

FILED

JUL - 7 1982

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David M. Swope  
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Salt Lake City, Utah 84111  
  
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Robert Scott Williams  
STRONG & HANNI  
Sixth Floor Boston Building  
Salt Lake City, Utah 84111  
  
Attorneys for Plaintiff-  
Respondent

Bruce Findlay  
KIRTON, McCONKIE & BUSHNELL  
Defendant-Cross Appellant  
Gwyn D. Davidson's Attorneys  
330 South 300 East  
Salt Lake City, Utah 84111  
Telephone: (801) 521-3680

David S. Cook  
Attorney for Defendants Resort  
Campers, Des Townsend, Glen  
Hatch  
85 West 400 North  
Bountiful, Utah 84010

Carl Kingston  
United Bank's Attorney  
Box No. 15809  
Salt Lake City, Utah 84115

David K. Smith  
Attorney for Dale Christiansen  
and John W. Whitely  
311 South State  
Salt Lake City, Utah 84111

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    AND REQUIRES THAT THE BOND PROVIDE \$20,000 PER  
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BRIEF OF DEFENDANT-CROSS APPELLANT  
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Appeal from the Third Judicial District Court of  
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NATURE OF THE CASE

The plaintiff-respondent sued to establish the limits of its liability under a motor vehicle dealer's bond and to interplead parties who had claimed against the said bond.

DISPOSITION IN LOWER COURT

The lower court, the Honorable Dean E. Conder of the Third Judicial District Court of Salt Lake County, held that the liability of the bonding company was \$20,000 per year for each of the years in which the bond was in force, the first anniversary of the bond having occurred on October 31, 1979, and the bond having been terminated on April 12, 1980.

## RELIEF SOUGHT ON APPEAL

Defendant Gwyn D. Davidson originally chose not to appeal the judgment in this matter, but two of the other defendants filed appeals on the last day of which this defendant did not have notice until it was too late to file. This defendant therefore decided to join the appeal in order not to be bound by the first judgment in the event a different outcome is ordered by this court. This defendant also seeks an order that the liability on the bond is \$20,000 per occurrence.

## STATEMENT OF FACTS

This cross-appellant adopts the statement of facts set forth in the brief of defendants-appellants Russell and Cowley.

## ARGUMENT

1. THE LANGUAGE OF THE BOND IS CLEAR AND UNAMBIGUOUS, AND REQUIRES THAT THE BOND PROVIDE \$20,000 PER OCCURRENCE.

This cross-appellant adopts the argument set forth in the brief of Russell and Cowley and respectfully directs the court's attention to it.

2. THIS CROSS-APPELLANT HAD NO OTHER WAY TO PERFECT AN APPEAL THAN BY CROSS-APPEALING

When the time to appeal was running, there were conversations among some of the defendants about whether to appeal, and the undersigned called his client and discussed the options and a decision was reached not to appeal, partly on the basis that it looked as if the other parties would not appeal. When the time for appeal had run, however, the undersigned received in the mail notices of appeal filed in time by several of the defendants. The

undersigned examined the rule, Utah R. Civ. P. 73(a) and

that the time could only be extended upon a showing of excusable neglect, and that the Utah Rules of Civil Procedure do not provide, as do the Federal Rules of Appellate Procedure 4, that --

If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days after the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period last expires.

The nearest Utah Rule of Civil Procedure which addresses the subject of the foregoing Federal Rule, other than the passage in Rule 73(a) cited above, is Utah R. Civ. P. 74, which provides--

(a) Joint or Several Appeals. Parties interested jointly, severally or otherwise in a judgment may join in an appeal therefrom; or any one or more of them may appeal separately or any two or more of them may join in an appeal.

(b) Cross Appeals. Where any one or more parties have filed a notice of appeal as required by Rule 73, the other parties may separately or together cross appeal from the order or judgment of the lower court without filing a notice of appeal; provided, however, such party or parties shall file a statement of the points on which he intends to rely on such cross-appeal within the time and as required by subdivision (d) of Rule 75.

Both United Bank and Gwyn Davidson on this appeal have availed themselves of Rule 74, United Bank by filing a notice of joining the appeal and Gwyn D. Davidson by filing a notice of cross-appeal and a statement of points, a copy of which is reproduced as an addendum to this brief.

The purpose of filing a cross-appeal, therefore, is simply to avoid the possibility that filing a joint appeal or statement expressing the intention of joining the appeal would be untimely after the running of the usual thirty days, while a cross-appeal is still timely. The content of the point on appeal expressed by this

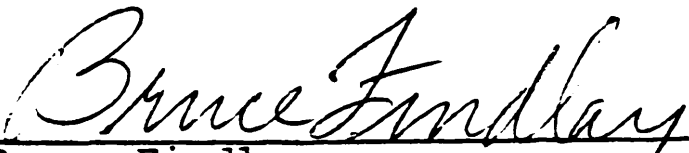


defendant clearly shows that his intent is to join with appellants in seeking an order of this court to the effect that the bond issued by the plaintiff covered each claim against the bonded dealer up to \$20,000 per claim.

This defendant respectfully suggests to the court, that the court should view the defendant Gwyn D. Davidson as a joint appellant with the other defendants in this case, in view of Rule 1(a) which provides in pertinent part that --

These rules . . . shall be liberally construed to secure the just, speedy, and inexpensive determination of every action.

RESPECTFULLY SUBMITTED,

  
Bruce Findlay  
Attorney for Defendant Gwyn D.  
Davidson  
330 South Third East  
Salt Lake City, Utah 84111  
Tel. 521-3680

SERVED the foregoing brief by mailing two copies thereof to each of the following this 7 July 1982:

Scott Williams,  
Sixth Floor  
Boston Building  
Salt Lake City, Utah 84111

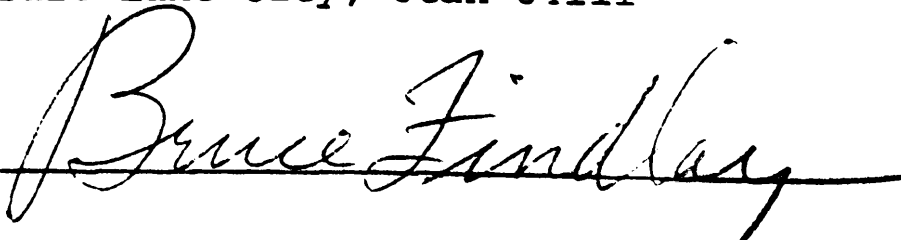
Carl Kingston  
P. O. Box 15809  
Salt Lake City, Utah 84115

David S. Cook  
85 West 400 North  
Bountiful, Utah 84010

Thomas M. Vogel  
2427 Nantucket Drive  
Salt Lake City, Utah 84121

David K. Smith  
311 South State Street, Suite No. 280  
Salt Lake City, Utah 84111

David M. Swope  
1100 Beneficial Life Tower  
Salt Lake City, Utah 84111



Bruce Findlay  
KIRTON McCONKIE AND BUSHNELL  
Attorneys for Gwyn Davidson  
330 South Third East  
Salt Lake City, UT 84111  
Tel. 521-3680

IN THE THIRD JUDICIAL DISTRICT COURT FOR SALT LAKE COUNTY

STATE OF UTAH

--oo0oo--

AMERICAN MANUFACTURERS MUTUAL,

Plaintiff,

vs.

RESORT CAMPERS, LTD., et al.,

Defendants.

NOTICE OF CROSS-APPEAL  
AND DESIGNATION OF  
POINTS

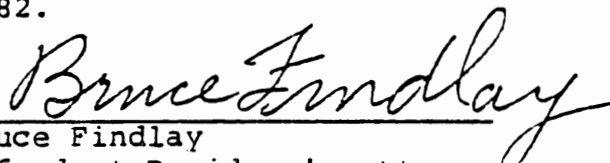
Case No. C 81-4295

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Gwyn D. Davidson, one of the defendants herein, hereby gives notice that he intends to and hereby does cross-appeal from the judgment of the court entered herein on or about January 22, 1982, and states the following point on which he appeals:

1. The court failed to find that the bond in suit provided for \$20,000 for each occurrence of liability thereunder, when the plain language of the bond clearly requires payment by the bonding company in the amount of up to \$20,000 "for any loss suffered by reason of violation of the conditions hereinafter contained . . ."

Dated this 12 March 1982.

  
Bruce Findlay  
Defendant Davidson's attorney  
330 South Third East  
Salt Lake City, Utah 84111  
Tel. 521-3680

SERVED a copy of the foregoing this 12 day of March, 1982, by mail,  
upon the following:

Scott Williams, Sixth Floor, Boston Bldg.,  
Salt Lake City, Utah 84111

Carl Kingston, P. O. Box 15809, Salt Lake City, UT 84115

David S. Cook, 85 West 400 North, Bountiful, UT 84010

Thomas M. Vogel, 2427 Nantucket Dr., Salt Lake City, UT 84121

David K. Smith, 311 South State Suite No. 280  
Salt Lake City, Utah 84111

David M. Swope, 1100 Beneficial Life Tower  
Salt Lake City, Utah 84111

