

1971

Leon C. Smith v. Alfred Brown Company : Appellant's Reply Brief

Utah Supreme Court

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

LEON C. SMITH,

Plaintiff and
Appellant,

vs.

ALFRED BROWN COMPANY,

Defendant and
Respondent.

CASE NO.
12399

APPELLANT'S REPLY BRIEF

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FILED

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Clerk, Supreme Court, Utah

In The Supreme Court of The State of Utah

LEON C. SMITH,

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APPELLANT'S REPLY BRIEF

Respondent's brief points out very dramatically the reasons why this Court should remand the case back to the trial court for trial. On page 2, the Respondent states,

"The Appellant, in his brief, has failed to state clearly and completely the undisputed facts."

Respondent, on page 3, characterizes plaintiff's actions in stepping off the scaffold to be "jumped backwards" off the scaffolding in the direction of the window opening. The extracts from the plaintiff's deposition never mentioned "jumping." The plaintiff states clearly in at least six places that he "stepped" off the scaffold. On page 8 of his brief, the Respondent again states that "the lower Court and plaintiff's counsel were told all reasonable men would argue plaintiff was guilty of contributory negligence because he was aware of the window opening when he jumped backwards off the scaffold" There is absolutely no evidence to indicate that this was the action of the plaintiff. If this were the basis upon which Defendant-Respondent and the Court felt that plaintiff was contributorily negligent as a matter of law, it is submitted that there is no foundation for such a finding.

It is further submitted that defendant's conclusion on page 19 of its brief is in error. Respondent states,

"This defendant has already paid for the workmen's compensation coverage providing benefits for plaintiff's accident. Allowing an additional suit would require this defendant to pay twice for the same injury in controvension to the express public policy

of the Workmen's Compensation Laws."

The subcontract agreement entered into evidence specifically states that Ashton Construction Company was to pay the Workmen's Compensation premiums on the plaintiff. Plaintiff's counsel verified with the State Industrial Commission and the State Insurance Fund and found that plaintiff, Leon C. Smith, was listed as an employee of Ashton Construction Company and that Leon C. Smith was not listed as an employee of the defendant, Alfred Brown Company. There is absolutely no evidence to show that Alfred Brown Company, defendant herein, paid the workmen's compensation benefit for plaintiff and in fact the plaintiff can prove that *it did not*. It is submitted that the conclusion of Respondent is a flagrant misstatement of fact concerning a critical concept in the case. The Respondent's self-made fact could not form the basis for the Court's ruling.

Respectfully submitted,

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