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Larsen v. Exclusive Cars : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

WESLEY L. LARSEN,

Plaintiff and Appellant,

vs..

EXCLUSIVE CARS, INC., a Utah
Corporation; FLOYD MAESTAS, an
individual,

Defendants and Appellees.

BRIEF OF THE APPELLANT

Case No. 20010282-CA

Priority No. 15

**AN APPEAL FROM A JUDGMENT OF SUMMARY JUDGMENT
ENTERED WITHOUT NOTIFYING WHEN JUDGMENT
WAS ENTERED BY THE TRIAL COURT**

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STATEMENT OF JURISDICTION

Plaintiff/Appellant appeals a summary judgment dismissal. This Court has jurisdiction under Utah Code Ann. § 78-2-2(4) (1996).

STATEMENT OF THE ISSUES & STANDARD OF REVIEW

The following issues are presented to the Court for review, together with the respective standards of review:

FIRST ISSUE ON APPEAL

Issue. Did the trial court abuse its discretion by granting defendants' Motion for Summary Judgment when there was a contested material issue of fact regarding whether or not plaintiff's reliance upon defendants' fraudulent representations was unreasonable? Preserved for Appeal at 136-149.

Standard of Review. The Court of Appeals should review this case *de novo*. Winegar v. Froerer, 813 P.2d 104 (Utah 1991).

SECOND ISSUE ON APPEAL

Issue. Did the trial court abuse its discretion by awarding attorney's fees in the final judgment when no factual or legal basis for them had been presented to the court, when the trial court did not award them and when the law does not allow them to be awarded? Preserved for Appeal at 136-143, 178-179 and Exhibit A in Addendum.

Standard of Review. The standard of review is *de novo*. Valcarce v. Fitzgerald, 961 P.2d 305, 315 (Utah 1998); Winegar v. Froerer, 813 P.2d 104 (Utah 1991).

THIRD ISSUE ON APPEAL

Issue. Did the trial court abuse its discretion when it refused or failed to send Plaintiff's counsel a copy of the signed Judgment, when it refused or failed to consider or to rule upon Plaintiff's objection to the Judgment, and when it refused to rule upon the amount of attorney's fees requested by Defendants. (Preserved for Appeal at 178-179 and Exhibit A in Addendum.

Standard of Review. The standard of review is *de novo*. Winegar v. Froerer, 813 P.2d 104 (Utah 1991).

CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

UCA Section 78-27-56 is dispositive and the second issue and of the Judicial Rules of the Judicial Administration (CJA) Rules 4-501& 4-504(1)and (2) and URCP Rule 58A and Rule 5 Rule 4-501 are dispositive of the third issue.

STATEMENT OF THE CASE

SUMMARY OF PROCEEDINGS BELOW

On September 7, 1999 Plaintiff filed a complaint alleging that Defendants had sold him a vehicle that they fraudulently and negligently represented, prior to plaintiff signing the contract, to have a new engine (TR 1-4). After a year and several months of litigation a pretrial conference was held on January 10, 2001 (TR 98). Trial had been set for April

16, 2001. At the pretrial conference, despite the passing of the dispositive motions cut-off of October 9, 2000 (TR 94-95), Defendants requested that they be permitted to file a Motion for Summary Judgment. The court trial set aside the motion cut-off date and allowed Defendants to file their Motion for Summary Judgment. Defendants filed their Motion for Summary Judgment on January 12, 2001 and requested a hearing on the motion. The motion was fully briefed by both parties on January 29, 2001. Without granting oral argument, the trial court issued its ruling on February 22, 2001. The final judgment was signed on April 2, 2001.

Defendants raised three issues in their Motion for Summary Judgment. The first is whether or not the merger doctrine and the parol evidence rule defeated Plaintiff's cause of action for negligent misrepresentation. Pursuant to Robinson v. Tripco Inv., 2000 Ut App 200, 398 Utah Adv. Rep. 26 (Ct. App. 2000), a case that was not cited by Defendants in their motion, these doctrines do apply to claims for negligent misrepresentation. In view thereof Plaintiff conceded that his claim for negligent misrepresentation was not well taken and does not appeal the dismissal of this cause of action.

Defendants' other arguments were that Plaintiff could not show, as a matter of law, any evidence of: (1) reasonable reliance, or (2) intent to defraud. As to these issues the trial court entered its order granting summary judgment against the Plaintiff. The trial court's decision was appealed to the Utah Supreme Court. The Utah Supreme Court transferred the current proceeding to the Utah Court of Appeals for further action.

SUMMARY OF FACTS

1. Defendant Floyd Maestas ("Maestas") is a used car salesman for Defendant Exclusive Cars, Inc. (TR 103).
2. On December 4, 1998, the Plaintiff purchased a 1991 Toyota truck ("truck") from Defendants (TR 103).
3. In conjunction with the sale, Plaintiff executed several documents (TR 104).
4. The documents indicate that the sale was "AS IS" and NO warranty was provided (TR 104).
5. Shortly before the purchase of the truck, Plaintiff alleges that Maestas represented that the truck had a new engine. Plaintiff alleges that Maestas further told Plaintiff that Dahle Toyota in Logan, Utah, installed the new engine (TR 104).
6. Plaintiff alleged the truck did not have a new engine (TR 104).
7. Plaintiff alleged that the truck experienced mechanical failure (TR 104).
8. Plaintiff filed this action asserting two causes of action claims for fraudulent misrepresentation and negligent misrepresentation (TR 104).
9. When they filed their Motion For Summary Judgment, Defendants provided no factual or legal basis supporting an award of attorney's fees or any argument to the trial court asserting its alleged right for attorney's fees. The trial court did not award any attorney's fees in its memorandum decision and order granting Defendants' Motion for Summary Judgment (TR 103-114, 150-168, 172-173).

10. Defendants prepared a proposed judgment including an award of attorney's fees. Plaintiff objected to Defendants' proposed judgment granting Defendants attorney's fees (TR 176-179, 186-189).

11. When he purchased the subject vehicle (vehicle), Plaintiff was a 19-year-old high school graduate with no experience with automobile mechanics (TR 36, 44, 138--Larsen Depo. p 5 lns 4-21, p 65 lns 3-5).

12. In November 1998, Plaintiff went to the Defendants' car lot and spoke with Defendants' salesperson Nikki on approximately two occasions to discuss the vehicle and test drive it. Plaintiff test drove it once and Nikki never indicated it had a new engine. On the test drive Plaintiff neither heard or saw anything that would have indicated that the engine had any problems (TR 39-40, 138--Larsen Depo. pp 39-43).

13. On December 4, 1998, defendant Floyd Maestas, a used car salesperson with six and a half years experience, represented before the contract was signed that the subject vehicle had a new engine (TR 35, 37, 138--Larsen Depo. p 4; p 31 ln 3-14).

14. On December 4, 1998, defendant Floyd Maestas represented that the vehicle's new engine had been installed by D. Dahle Toyota of Logan. In fact, Maestas wrote the information as part of the contract paperwork on a post-it note and gave it to the Plaintiff (TR 38, 42, 58, 138--Larsen Depo. pp 34-35, 57-58).

15. The main reason that Plaintiff agreed to purchase the vehicle at the price stated was because it was represented to have a new engine (TR 45, 138--Larsen Depo. p 77 ln 16-25; p 78 ln 1-11).

16. After Plaintiff took possession of the vehicle, it broke down on December 17, 1998. There was no indication on the test drive nor when Plaintiff took possession that the engine was not new as represented by Mr. Maestas (TR 39-40, 139 Larsen Depo. pp 39, 43, 45).

17. It was determined that the vehicle's engine was not new and that it will cost between \$2,500 and \$8,600 to fix (TR 43,139--Larsen Depo. pp 62-63).

18. In a conversation Mr. Maestas had with Plaintiff in approximately April of 1999, Mr. Maestas admitted that he had told Plaintiff before he purchased the vehicle that the vehicle had a new engine (TR 139, 147-149--Maestas Depo. p 46, lns 16-18; p 47 ln 11-18; p 50 ln 6-13).

19. Mr. Maestas admitted that he would not tell a customer that a vehicle has a new engine unless he had the documents to back it up (TR 139, 146--Maestas Depo. p 12 lns 22-25).

20. The court disregarded the Plaintiff's objection to the award of attorney's fees (TR 178-179) and without notifying Plaintiff or sending Plaintiff's counsel a copy of the signed judgment, entered the final judgment. See Exhibit A.

21. Defendants then submitted an affidavit and order on attorney's fees (TR 190-234).

22. Plaintiff objected to the award of attorneys fees and noticed the issue of the amount of attorney's fees for decision. See Exhibit A.

23. The trial court has refused to render a decision on the contested issue of the amount of attorney's fees. See Exhibit A.

24. The trial court has also failed to provide a complete appellate record of its file. See Exhibit A.

SUMMARY OF ARGUMENTS

The trial court erred when it found, as a matter of law, that Mr. Larsen was unreasonable to rely upon the fraudulent representations of the Defendants. This is a question of fact that cannot be ruled upon by weighing the evidence as the trial court did in summary judgment. Furthermore in Utah, attorney's fees are can be awarded when allowed by contract or statute. There was no basis for an award of attorney's fees in this case and none should have been awarded. A jury should be allowed to hear the evidence and make its determination based thereon.

ARGUMENT

I. THE PAROL EVIDENCE RULE & THE MERGER DOCTRINE DO NOT APPLY TO PLAINTIFF'S ASSERTIONS OF FRAUD AND THEREFORE THE EXPRESS TERMS OF THE CONTRACT ARE IRRELEVANT THERETO

Summary judgment is only appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Utah R. Civ. 56(c); see also Heglar Ranch, Inc. v. Stillman, 619 P.2d 1390, 1391 (Utah 1980);

Bill Brown Realty, Inc. v. Abbott, 562 P.2d 238, 239 (Utah 1977). In this case, it will be shown that the trial court was incorrect to hold that there were no disputed issues of material fact and misapplied Gold Standard, Inc. v. Getty Oil Co., 915 P.2d 1060, 1063 (Utah 1996).

In Robinson v. Tripco Inv., 2000 Ut App 200, 398 Utah Adv. Rep. 26 (Ct. App. 2000), W.W. & W.B. Gardner, Inc. v. Mann, 680 P.2d 23 (Utah 1984), and Berkeley Bank v. Meibos, 607 P.2d 798 (Utah 1980), and as cited by defendant in Lamb v. Bangart, 525 P.2d 602, 607 (Utah 1974), the Utah Courts have conclusively stated that:

All preliminary negotiations, conversations, and verbal agreements are merged in and superseded by the subsequent written contract, and unless fraud, . . . be averred, the writing constitutes the agreement between the parties and its terms cannot be altered by parol evidence.

In this case fraud has been averred therefore the merger doctrine and parol evidence rule do not apply. To prove fraud, Plaintiff must demonstrate by clear and convincing evidence that: (1) defendant made a representation about the vehicle he sold to Plaintiff, (2) the representation concerned a presently existing material fact, (3) the representation was false, (4) the Defendants knew the representation was false, or were recklessly indifferent as to the truth or falsity of the representation, (5) Defendants' intent was induce Plaintiff to buy the vehicle, (6) the Plaintiff reasonably relied upon the representation in ignorance of its falsity, (7) Plaintiff relied upon the representation, (8) Plaintiff was induced to act by Defendants misrepresentation, and (9) the Plaintiff has

been damaged. Conder v. A.L. Williams & Assocs., 739 P.2d 634, 638 (Ct. App. Utah 1987).

In their Motion for Summary Judgment, Defendants asserted that, as to these nine elements, Plaintiff could not produce evidence of “reasonable reliance” or “intent to defraud.” The trial court granted the Motion for Summary Judgment solely on the finding that the Plaintiff had not “reasonably relied upon” the Defendants’ fraudulent representation.

A. THERE IS SUFFICIENT EVIDENCE OF REASONABLE RELIANCE ON DEFENDANTS’ MISREPRESENTATIONS.

In Conder v. A.L. Williams & Assocs., 739 P.2d 634, 639 (Ct. App. Utah 1987), the Court, in setting aside a trial court’s dismissal of a fraud action, explained the concept of reasonable reliance:

Reasonable reliance must be considered with reference to the facts of each case, and is usually a question for the jury to determine. Although it is impossible to draw precise legal boundaries of when reliance is reasonable, the courts have given some directions. **Generally, a Plaintiff may justifiably rely on positive assertions of fact without independent investigation. It is only where, under the circumstance, the facts should make it apparent to one of his knowledge and intelligence, or he has discovered something which should serve a warning that he is being deceived, that a Plaintiff is required to make his own investigations. . . . Reliance also has been found reasonable even where a Plaintiff executes a written agreement in reliance upon verbal promises that the contrary written provision is not operative, or where a Plaintiff is induced to refrain from reading the contract.**” (Emphasis added).

In this case, Plaintiff has asserted that Defendants, through defendant Maestas, a cars salesperson with six and a half years of experience, made a positive assertion about

the vehicle that Mr. Maestas wanted the Plaintiff to purchase, stating that it had a new engine. Summary of Facts [SOF] above, ¶¶ 5, 13-14. Not only did defendant Maestas represent that the vehicle had a new engine but that the vehicle's new engine had been installed by D. Dahle Toyota of Logan. SOF ¶ 14. When view in the light most favorable to Plaintiff, this comment added credence to defendant's statement and caused Plaintiff to believe Mr. Maestas. Plaintiff did not observe or discover anything when inspecting the vehicle or test driving it that would have alerted him that the vehicle's engine was not new and that he should conduct an independent investigation. SOF ¶¶ 5, 12, 13, 16. At the time, Plaintiff was a nineteen-year-old highschool graduate with no experience with automobile mechanics. SOF ¶ 11. At no time during the negotiations or in the written contractual paperwork did defendant Maestas ever indicate that his representation was false nor did he retract his representation.

Because of his youth, education, and his non-mechanical background, a jury could find that Plaintiff's reliance was reasonable. In fact, it could even be concluded that once he had learned that the vehicle had a new engine, his actions in purchasing the vehicle "as is" and declining to purchase a service contract support his reasonably relying on Defendants' misrepresentations. A purchaser of a vehicle is likely to believe that a vehicle with a new engine or one with low milage is a more safe buy as an "as is" purchase. Plaintiff believed Mr. Maestas was telling the truth and nothing that occurred tipped him off that he should have distrusted Mr. Maestas.

In applying "Gold Standard" the trial court stated:

Assuming, as the Court has, that Defendant Maestas, in fact, represented that the vehicle Plaintiff was purchasing had a new motor, the question is whether it was reasonable for Plaintiff to rely on that representation without taking independent steps to verify it in light of contrary written documents. Plaintiff claims his reliance on Mr. Maestas statement was reasonable notwithstanding 4 separate documents which he received and signed: (a) a "Motor Vehicle Contract of Sale," which clearly stated that there were no express or implied warranties on any used vehicles; (b) a waiver of benefits statement declining the offer to purchase an extended warranty plan, and acknowledging that he bore "sole responsibility" for any repairs- (c) a document entitled "Buyer's Guide" (also referenced in the vehicle Contract of Sale) which was displayed in the vehicle window and which stated "AS IS-NO WARRANTY" and which also indicated that no systems were covered by any warranty; and (d) a "DUE BILL" which in capital letters indicated "ORAL PROMISES ARE NOT BINDING ON THE DEALER!" along with a handwritten statement below that stating "Nothing else promised, implied, or expressed." Moreover, although Plaintiff had been advised by his brother-in-law (prior to concluding the deal) to secure written documentation of Maestas' representation, Plaintiff made a single request which was not directly responded to. To the extent that Plaintiff's request yielded some information (i.e., the name of the dealer that had worked on the vehicle's engine), Plaintiff then failed to follow-up on the information he was provided orally.

The Utah Supreme Court's decision in Gold Standard, *supra*, conclusively resolves the question of "reasonable reliance" at issue here. "Under the law of [Utah], a party cannot reasonably rely upon oral statements by the opposing party in light of contrary written information. No matter how naive or inexperienced [Plaintiff was], [he] could not close [his] eyes and accept unquestioningly any representations made to [him]. It was [his] duty to make such investigation and inquiry as reasonable care under the circumstances would dictate." Gold Standard, 915 P.2d at 1068 (citing Rubey v. Wood, 373 P.2d 386, 387-88 (Utah 1962)). "The one who complains of being injured by. . . false representation cannot heedlessly accept as true whatever is told him, but has the duty of exercising such degree of care to protect his own interests as would be exercised by an ordinary, reasonable and prudent person under the circumstances, and if he fails to do so, is precluded from holding someone else to account for the consequences of his own neglect." Gold Standard, at 1069 (quoting Mikkelsen v. Quail Valley Realty, 641 P.2d 124 (Utah 1982)). Plaintiff here was provided not one, but many, "red flags" which he chose to disregard. Having done so, he must deal with the "consequences of his own neglect."

The facts of Gold Standard are very different from those in this case and were misapplied by the trial court. In Gold Standard, the parties, "GSI and Getty," were two sophisticated business entities, that, "consistently dealt with each other at arm's length." In Gold, GSI, was told explicitly in subsequent writings that the oral representations made in earlier discussions by Getty were no longer valid. As stated above, in this case defendant Maestas never retracted his representations that the vehicle had a new engine. Plaintiff, an unsophisticated teen, with no mechanical experience believed him. Moreover, unlike Gold Standard, the paperwork Plaintiff signed did not ever indicate that the vehicle did not have a new engine, it merely indicate the purchase was "AS IS" with no warranties.

If Gold Standard were applicable to Plaintiff's case, the Defendants would have had to have put in the paperwork that the affirmative assertion that Mr. Maestas's earlier representation that the car had a new engine was false and should not have been relied on by the Plaintiff. Since there was no information that Plaintiff had been given indicating that Mr. Maestas was defrauding him, there was no duty to make further inquiries or to follow through and obtain the paperwork as suggested by Plaintiff's brother-in-law.

Admittedly, probably the fact most favorable to Defendants' position is that one of the documents that Plaintiff signed stating, "ORAL PROMISES ARE NOT BINDING ON THE DEALER!" Nonetheless, if this statement would mean as a matter of law that Plaintiff's reliance was not reasonable, it would only apply to the dealer and not Mr.

Maestas. Plaintiff, would submit that because of the “averred fraud” that this written statement would still not indicate that there is no disputed material fact.

The facts of this case are more similar to Cardiomed, Inc. In Cardiomed, Inc. vs. Tripco Investment, Inc., 398 Utah Adv. Rep. 26 (Ct. App. 2000), a case decided after Gold Standard. In Cardiomed, the court stated that:

[T]o determine whether the reliance was reasonable, the reliance ‘must be considered with reference to the facts of each case.’ Conder, 739 P.2d at 638. **In general, a Plaintiff may justifiably rely on positive assertions of fact without independent investigation. It is only where, under the circumstances, the facts should make it apparent to one of his knowledge and intelligence, or he has discovered something which should serve as a warning that he is being deceived, that a Plaintiff is required to make his own investigation. Id. . . .** Applying the foregoing legal principles to the facts of this case, we cannot say as a matter of law that Cardiomed was unreasonable in its reliance on Tripp's statements regarding the structural integrity of the building. Viewing the facts in the light most favorable to Cardiomed, they demonstrate that Robinson walked through the building with Tripp before Cardiomed purchased it. Robinson questioned Tripp regarding some problems he observed and Tripp responded that he had been involved in the construction and engineering of the building, and that the building had no structural defects. To support that claim, Tripp then provided Robinson with an inspection report that failed to note any structural problems with the building. Simply stated, because **Tripp held himself out as someone with superior knowledge of the building and then lent support to his representations by providing an inspection report, a genuine issue of material fact exists as to whether Cardiomed's reliance was reasonable.** Accordingly, because there were genuine issues of material fact regarding the three elements of fraud relied upon, summary judgment on that cause of action was improperly granted.

Similarly, Mr. Maestas, held himself out as someone with superior knowledge of the vehicle's condition and categorically stated that the vehicle had a new engine, thus justifying the requested purchase price. Mr. Meaestas went so far as to represent M. Dahle's as the place where the new engine had been installed. When viewing the facts in

the light most favorable to the Plaintiff, based upon the **"[Plaintiffs'] knowledge and intelligence,"** and the fact that, as Plaintiff testified that he never **"discovered something which should serve as a warning that he [was] being deceived,"** it was reasonable for him to rely on Mr. Maestas' misrepresentation.

The facts of this case are also more similar to Semenov v. Hill, 982 P.2d 578, (Utah 1999) another case decided after Gold Standard. In Semenov, the court stated that:

Hill contends that, as a matter of law, Semenov's allegations cannot support a claim of misrepresentation. He asserts that the documentation available at the closing showed the business to be losing money and that Semenov could not have relied reasonably upon any oral representations to the contrary. Hill relies on our decision in Gold Standard as disposing of Semenov's claim that language difficulties can create a triable issue of fact that would be material to a fraud claim. Hill relies on the statement in Gold Standard that "under the law of this state, a party cannot reasonably rely upon oral statements by the opposing party in light of contrary written information" to support his claim that a dispute over Semenov's English proficiency is not a dispute over a "material" fact. 915 P.2d at 1068.

Gold Standard is inapposite. That case did not involve a party asserting a language deficiency; rather, it involved two sophisticated parties proficient in English. Here, the question of Semenov's language capability is material to his fraud claim. It is true that the general rule pertaining to acceptance of an offer by signing is that "where a person signs a document, he is not permitted to show that he did not know its terms, and in the absence of fraud or mistake he will be bound by all its provisions, even though he has not read the agreement and does not know its contents." 17 C.J.S. Contracts § 41(f) (1963) (emphasis added); see also id. § 139; Restatement (Second) of Contracts § 157 cmt. b (1981). However, it is also true that "the illiteracy of a party has an important bearing on the question of the existence of fraud in procuring [a] signature." 17 C.J.S. Contracts § 139 (1963). Semenov's English proficiency or the lack thereof is a material fact that "should be considered in determining whether or not he has been defrauded." Id.

Because Semenov and Hill disagree on the state of Semenov's English proficiency at the time of the closing, a factual dispute exists which must be resolved by a jury or a judge after an evidentiary hearing. Our decision to remand this case is consistent with Heuter v. Coastal Air Lines Inc., where a New Jersey court overturned a summary judgment in favor of the defendant and held that a jury should decide whether an uneducated and illiterate non-English-speaking Plaintiff should be bound to a release form he signed with an airline when the contents of the writing were unknown to him. 12 N.J. Super. 490, 79 A.2d 880, 883 (N.J. Super. Ct. App. Div. 1951).

Again, similarly, Defendants claim that, "the documentation available at the closing [of the sale of the car] showed the [car was sold as is with no warranties] and that [Plaintiff] could not have relied reasonably upon any oral representations to the contrary. Nevertheless, like Semenov's illiteracy, Plaintiff was an unsophisticated nineteen year old. Moreover, unlike this case, in Semenov, the court noted that the Gold Standard case "involved two sophisticated parties proficient in English. Here, the question of [Plaintiff's inexperience] is material to his fraud claim."

B. THERE IS EVIDENCE OF AN INTENT TO DEFRAUD OR DECEIVE.

To maintain a cause of action for fraud Plaintiff must prove that Maestas either knew his representation was false or made the representation recklessly knowing that there was insufficient knowledge upon which to base the representation.

In Galloway v. AFCO Dev. Corp., 777 P.2d 506, 508 (Ct. App. Utah 1989) the court stated that:

Intentional fraud generally requires a showing of intent to deceive, that is, the misrepresenter's intent to induce the victim's reliance on the false representation.

The intent to deceive, required for common law fraud, may be inferred where a misrepresentation is voluntarily communicated to the victim with knowledge that it is false, or without knowing whether it is true or false but knowing that the victim is likely to rely on it. Thus . . . it is sometimes said that a “reckless” misrepresentation, made “knowing that the [the misrepresenter] had insufficient knowledge upon which to base such a misrepresentation” is tantamount to the intent to deceive.

Also, in Dugan v. Jones, 615 P.2d 1239 (Utah 1980), the court favorably cited an Idaho case for the holding that under the doctrine of constructive fraud the vendor of goods or land has a special duty to know the truth of his representations and is presumed to know the facts to which his representations relate. Consequently, a misrepresentation made by such a vendor is fraudulent even if not made knowingly, willfully or with actual intent to deceive.

Here, Plaintiff has alleged that he made several trips to the Defendants' car lot. In his first trips he dealt with salesperson Nikki who never mentioned that the vehicle had a new engine. Then after several negotiations in which Plaintiff insisted that the price was too high, Mr. Maestas then indicated that the vehicle had a new engine. In his deposition, Mr. Maestas acknowledged that he would not make such a representation unless he had documents to back himself up. Hence, he himself establishes fact that if Plaintiff's assertions are found to be true by the Jury, his actions were at the very least reckless.

It is well understood in our mobile society that an engine is an integral part of an automobile. Mr. Maestas, a used car salesperson for many years, knew that this misrepresentation would clinch the deal and induce Mr. Larsen to agree to purchase the automobile at the higher purchase price. Hence, “the intent to deceive, required for

common law fraud, may be inferred where a misrepresentation is voluntarily communicated to the victim . . . without knowing whether it is true or false but knowing that the victim is likely to rely on it.”

II. THERE IS NO BASIS FOR AN AWARD OF ATTORNEY’S FEES

Generally, attorney fees in Utah are awarded only as a matter of right under a contract or statute. See Cabrera v. Cottrell, 694 P.2d 622, 625 (Utah 1985); And pursuant to UCA 78-27-56 attorney’s fees may be awarded under very particular circumstances. The Defendants never made any legal or factual argument regarding why they should be awarded attorney’s fees nor did the court indicate why she signed an order granting attorney’s fees over Plaintiff’s objections. Since there is no basis for an attorney’s fee award they should not have been awarded.

III. THE TRIAL COURT COMMITTED ERROR WHEN IT REFUSED OR FAILED TO SEND PLAINTIFF’S COUNSEL A COPY OF THE SIGNED JUDGMENT, WHEN IT REFUSED OR FAILED TO CONSIDER OR TO RULE OPEN PLAINTIFF’S OBJECTION TO THE JUDGMENT, AND WHEN IT REFUSED TO RULE UPON THE AMOUNT OF ATTORNEY’S FEES REQUESTED BY DEFENDANTS.

The trial court did not award attorney’s fees in its memorandum Decision and Order. Defendants submitted a proposed judgment with an award of attorney’s fees. The Plaintiff objected to the judgment. Rule 4-504(1) of the Judicial Rules of the Judicial Administration (CJA) requires that any proposed judgment be “in conformity with the

ruling,” of the trial court. This rule prevents parties from overreaching and protects the court’s reasoning process.

Plaintiff objected to the proposed judgment, but the trial court completely disregarded the Plaintiff’s objection and signed the proposed judgment on March 30, 2001 but did not send it to Plaintiff. Plaintiff had to obtain a copy from the defendants. Rule 4-504(2) of CJA allows a party to object to a proposed judgments. The trial court should have therefore considered the objection before entering the order. When judgment is entered, Rule 4-504(2) of the Judicial Rules of the Judicial Administration, URCP Rule 58A and URCP Rule 5 require the trial court to serve a copy of a signed judgment be on all the parties. This procedural rule has the intent of providing the parties sufficient notice to cease possibly unnecessary legal proceedings and preparations that may be rendered moot because of the entry of judgment. More importantly, these rules also ensure that the parties can effectively secure their appellate rights by filing a timely notices of appeal. To rule otherwise will require parties to call the court’s every day to determine if a decision has been rendered.

The trial court did not do this. However, because of Plaintiff’s counsel’s prior experience with this trial court, he filed a Notice of Appeal before the actual entry of the final judgment and several times thereafter as a prophylactic measure. TR 180, 237

After the entry of the final judgment, Defendants then submitted an affidavit and order on attorney’s fees. Plaintiff objected to the award and noticed the issue of the amount of attorney’s fees for decision. The trial court has refused to render a decision on

this issue. The trial court has also failed to provide a complete appellate record of its file. This again violates Rule 4-501 of the CJA and violates the ethical rules which require trial court judges to be diligent in their disposition of matters before them.


Plaintiff/appellant would urge this court to require trial courts to adhere to the proper civil procedures by providing notice of the entry of final judgments, to consider all objections and motions filed with the court and to make expeditious rulings of issues presented to it. Failure to do this should be deemed as sanctionable.

CONCLUSION

The Plaintiff/Appellant respectfully requests that this case be remanded to the trial court and that he be allowed to proceed with his cause of action for fraud.

DATED this 3 day of January, 2002.

ARROW LEGAL SOLUTIONS, LLC.

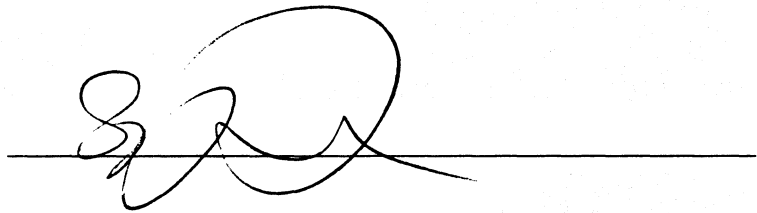


Loren M. Lambert
Attorney for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I certify that I mailed a true and correct copy of the foregoing document on
January 4, 2002, postage prepaid to:

Nick J. Colessides
Attorney for Defendants/Appellees
466 South 400 East, Suite 100
Salt Lake City, Utah 84111

A handwritten signature in black ink, appearing to be 'N. Colessides', is written over a horizontal line.

ADDENDUM

Dismissal

FILED
THIRD DISTRICT COURT
SANDY DEPT.
4-2-01

NICK J. COLESSIDES (969)
Attorney at Law
466 South 400 East, # 100
Salt Lake City, Utah 84111-3325
Tele: 801.521-4441 *521-4452*

Attorney for Defendants
Exclusive Cars, Inc., and Floyd Maestas

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, SANDY DEPARTMENT
STATE OF UTAH

WESLEY L. LARSEN

Plaintiff,

vs.

EXCLUSIVE CARS, INC., a Utah
corporation, and FLOYD
MAESTAS,

Defendants.

JUDGMENT

Case No.: 99 04 08099

Judge: Denise P. Lindberg

Defendant's Motion for Summary Judgment having come regularly for consideration and decision before the Honorable Denise P. Lindberg, and the Court having received the submissions of the parties, to-wit: Memoranda and attached exhibits thereto in support of each party's respective position, and the Court having considered the submission of the parties, and the Court having made and entered its Decision and Order on Defendants' Motion for Summary Judgment, which decision, order, and findings,

are incorporated herein by this reference, and the Court having found that plaintiff Wesley L. Larsen did not act reasonably in relying upon the oral representations of defendant Floyd Maestas, despite having been provided with many red flags and ignoring the same, and plaintiff failing to follow up in an inquiry to determine the veracity of the information orally presented by defendant Maestas, and plaintiff having received from the defendant dealer four separate and distinct documents disclaiming any oral representations, and the Court having entered its order granting defendants their motion for summary judgment, and good cause otherwise appearing therefor, now therefore, upon the motion of Nick J. Colessides, attorney for defendants Exclusive Cars, Inc., and Floyd Maestas,

IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that plaintiff's complaint be and the same is hereby dismissed with prejudice, no cause of action, and that defendants are hereby entitled to and shall recover money judgment against plaintiff for defendants' reasonable attorney's fees and costs incurred in connection with the defense of this matter, the same to be presented to the Court by an affidavit of defendants' counsel, and for augmentation of costs and attorney's fees for the collection of the judgment.

SO ORDERED.

Dated this 30th day of March, 2001.

STATE COURT
JUDICIAL DEPT.
4-2-01

DENISE P. LINDBERG, JUDGE
Third District Court

CERTIFICATE OF SERVICE

On March 24, 2001, counsel for defendants shall file the original of the foregoing Judgment with the Clerk of the Court, addressed as follows:

CLERK'S OFFICE
THIRD JUDICIAL DISTRICT COURT
SANDY DEPARTMENT
210 WEST 10000 SOUTH
SANDY UTAH 84070

A copy of the foregoing has been served to plaintiff's attorney addressed as follows:

MR LOREN M LAMBERT ESQ
ATTORNEY AT LAW
266 EAST 7200 SOUTH
MIDVALE UTAH 84047

_____ via hand delivery;
_____ via fax: 801.352-0645
☒ via first class mail

postage pre-paid, this 14th day of March, 2001.



IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, STATE OF UTAH
SANDY DEPARTMENT

WESLEY L. LARSEN,)	
)	
Plaintiff,)	
)	
vs.)	DECISION AND ORDER ON DEFENDANTS'
)	MOTION FOR SUMMARY JUDGMENT
EXCLUSIVE CARS, INC., a)	
Utah corporation, and FLOYD)	Civ. No. 990408099
MAESTAS,)	
)	
Defendants.)	
)	

Defendants have moved this Court for Summary Judgment and filed a Memorandum of Law in support of their motion. Plaintiff has responded and Defendants have replied to Plaintiff's opposition. Defendants have requested oral argument. However, after reviewing the parties' submissions and applicable case law, it is the Court's view that the dispositive issue governing the granting or denial of the motion has been authoritatively decided. Accordingly, oral argument is not necessary.

Plaintiff's complaint alleged both fraudulent and negligent misrepresentation. In his opposition to Defendant's Motion for Summary Judgment, however, Plaintiff conceded that under the authority of Robinson v. Tripco Inv., 2000 Ut. App. 200, his claim for negligent misrepresentation "must fail." Consequently the only issues for the Court are whether (1) there are material issues of fact that preclude summary judgment on the fraudulent misrepresentation claim, or (2) if no material issues of fact are in dispute, whether Defendants are entitled to judgment as a matter of law. Utah R. Civ. P. 56.

Plaintiff has agreed with Defendants' statement of undisputed facts. In his opposition, however, Plaintiff raises additional factual statements, some of which (paragraphs 1-3) are accepted without dispute by Defendants, others of which (paragraphs 4-8) are disputed in whole or in part by Defendants. The Court hereby incorporates by reference all the undisputed facts noted in Defendants' and Plaintiff's memoranda. Furthermore, for purposes of ruling on this motion the Court accepts as true Plaintiff's version of the disputed facts. Notwithstanding this assumption, the Court concludes that, as a matter of law, Defendants must prevail.

Plaintiff's remaining cause of action (for fraudulent misrepresentation) requires that Plaintiff establish the following elements: (1) that a representation was made, (2) concerning a presently existing material fact, (3) which was false, and (4) which the representor either knew to be false, or made recklessly, knowing that there was insufficient knowledge upon which to base such a representation, (5) for the purpose of inducing the other party to act upon it, and (6) that the party, acting reasonably and in ignorance of its falsity, (7) did, in fact, rely upon it, (8) and was

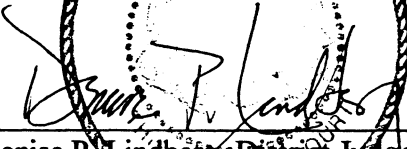
thereby induced to act, (9) to that party's injury and damage. Gold Standard Inc., v. Getty Oil, 915 P.2d 1060, 1067 (Utah 1996). This Court is mindful that "[w]hile the question of reasonable reliance is usually a matter within the province of the jury . . . there are instances where courts may conclude that, as a matter of law, there was no reasonable reliance." Id. The Court holds as a matter of law that, on the facts of this case, it was not reasonable for Plaintiff to act as he did.

Assuming, as the Court has, that Defendant Maestas, in fact, represented that the vehicle Plaintiff was purchasing had a new motor, the question is whether it was reasonable for Plaintiff to rely on that representation without taking independent steps to verify it in light of contrary written documents. Plaintiff claims his reliance on Mr. Maestas statement was reasonable notwithstanding 4 separate documents which he received and signed: (a) a "Motor Vehicle Contract of Sale," which clearly stated that there were no express or implied warranties on any used vehicles; (b) a waiver of benefits statement declining the offer to purchase an extended warranty plan, and acknowledging that he bore "sole responsibility" for any repairs; (c) a document entitled "Buyer's Guide" (also referenced in the vehicle Contract of Sale) which was displayed in the vehicle window and which stated "AS IS-NO WARRANTY" and which also indicated that no systems were covered by any warranty; and (d) a "DUE BILL" which in capital letters indicated "ORAL PROMISES ARE NOT BINDING ON THE DEALER!" along with a handwritten statement below that stating "Nothing else promised, implied, or expressed." Moreover, although Plaintiff had been advised by his brother-in-law (prior to concluding the deal) to secure written documentation of Maestas' representation, Plaintiff made a single request which was not directly responded to. To the extent that Plaintiff's request yielded some information (i.e., the name of the dealer that had worked on the vehicle's engine), Plaintiff then failed to follow-up on the information he was provided orally.

The Utah Supreme Court's decision in Gold Standard, supra, conclusively resolves the question of "reasonable reliance" at issue here. "Under the law of [Utah], a party cannot reasonably rely upon oral statements by the opposing party in light of contrary written information. No matter how naive or inexperienced [Plaintiff was], [he] could not close [his] eyes and accept unquestioningly any representations made to [him]. It was [his] duty to make such investigation and inquiry as reasonable care under the circumstances would dictate." Gold Standard, 915 P.2d at 1068 (citing Rubey v. Wood, 373 P.2d 386, 387-88 (Utah 1962)). "The one who complains of being injured by . . . false representation cannot heedlessly accept as true whatever is told him, but has the duty of exercising such degree of care to protect his own interests as would be exercised by an ordinary, reasonable and prudent person under the circumstances, and if he fails to do so, is precluded from holding someone else to account for the consequences of his own neglect." Gold Standard, at 1069 (quoting Mikkelson v. Quail Valley Realty, 641 P.2d 124 (Utah 1982)). Plaintiff here was provided not one, but many, "red flags" which he chose to disregard. Having done so, he must deal with the "consequences of his own neglect."

Defendants' Motion for Summary Judgment is GRANTED. Based on this disposition, the trial dates are stricken. So ordered.

Dated this 21st day of February, 2001.


Denise P. Lindberg, District Judge
SANDY

CERTIFICATE OF NOTIFICATION

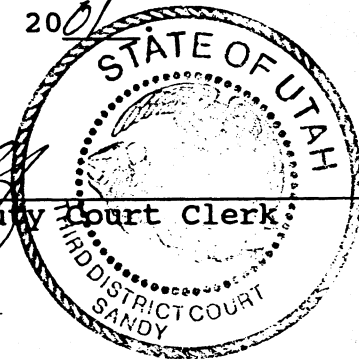
I certify that a copy of the attached document was sent to the following people for case 990408099 by the method and on the date specified.

METHOD NAME

Mail	NICK J COLESSIDES ATTORNEY 466 So. 400 East, Suite #100 SALT LAKE CITY, UT 84111-3303
Mail	LOREN LAMBERT ATTORNEY 266 E 7200 S MIDVALE UT 84047

Dated this 22 day of Feb, 2001

Deputy Court Clerk



IN THE UTAH COURT OF APPEALS

WESLEY L. LARSEN,

Plaintiff and Appellant,

AFFIDAVIT OF LOREN M. LAMBERT

vs..

Case No. 20010272CA

**EXCLUSIVE CARS, INC., a Utah
Corporation; FLOYD MAESTAS, an
individual,**

Priority No. 15

Defendant and Appellee.

AFFIDAVIT OF LOREN M. LAMBERT

**NICK J. COLESSIDES
Attorney for Defendant/Appellee
466 South 400 East, Suite 100
Salt Lake City, Utah 84111
Telephone: 521-4441**

**LOREN M. LAMBERT No. 5101
ARROW LEGAL SOLUTIONS, LLC
Attorney for Appellant
266 East 7200 South
Midvale, Utah 84047
Telephone 801-568-0041**

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

COMES NOW LOREN M. LAMBERT, being first duly sworn, states the following:

1. I am the attorney for Plaintiff in this case.

2. Because of past experience with the Third District Court of Utah, Sandy Department failing or refusing to send me notices of when final judgments have been entered and a copy of the judgment, I filed several Notices of Appeal in this case. The first one was sent after the trial judge issued her memorandum decision and order.

3. After I received the defendants' proposed judgment, I filed an objection to it. I objected to the language granting defendants attorney's fees. The judge then, without addressing my objection, signed the proposed judgment and in fact did not notify me thereof or send me the signed judgment. I had to get a copy of the signed judgment from the opposing counsel, which was faxed to me (attached as Exhibit 1).


4. After I filed my first Notice of Appeal and after the proposed judgment was signed and entered by the trial court, the defendants submitted an affidavit of attorney's fees. I then objected to the amounts of attorney's fees being requested (attached as Exhibit 2). I sent a Notice to Submit a decision thereon on that this issue could be resolved prior to the briefing of this appeal (attached as Exhibit 3). For some reason unbeknownst to us, the judge and the trial court

failed to make the Notice a part of the Trial Record and are refusing or failing to make a ruling on this issue.

5. I had directed my office personnel to inquire several times whether a decision had been made on attorneys fees and whether a decision would ever be made. The trial court indicated to my assistant, Frances M. Wyss that a decision thereon would not be rendered. Please see Exhibit 4 and Exhibit 5, the Affidavit of Frances M. Wyss.

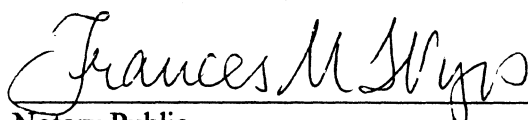
6. I have brought to this same court this same problem in Oseguera v. Farmers Insurance Exchange, Supreme Court Case Nos. 20010037-SC 990410525. Also in Silvia Nunez v. Dominic Albo, M.D., Supreme Court Case No. 20010037-CA, an issue arose in which the trial court signed a proposed judgment that included conclusions that had not been made by the trial court.

DATED this 3 day of January, 2002.


Loren M. Lambert

On the 3 day of January, 2002, before me personally appeared LOREN M. LAMBERT, to me known to be the person named herein and who executed the foregoing Affidavit and that the statements contained therein were true and correct to the best of his knowledge.




Notary Public

CERTIFICATE OF MAILING

I hereby certify that on this 4 day of January, 2002, a true and correct copy of the foregoing AFFIDAVIT OF LOREN M. LAMBERT was mailed postage prepaid to the following:

Nick J. Colessides
466 South 400 East, Suite 100
Salt Lake City, UT 84111

Frances Hyslop

NICK J. COLESSIDES
ATTORNEY AT LAW
466 SOUTH 400 EAST, # 100
SALT LAKE CITY, UTAH 84111-3325
USA

TELEPHONE: (801) 521-4441
FAX: (801) 521-4452
E-MAIL ADDRESS: njcolessides@msn.com

Facsimile Transmission Cover Sheet

Date:

7/16/01

To:

MR. LOREN LAUBERT

Via fax:

352 0645

Re:

Total pages including this transmittal page: 5
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The information contained in this transmission is privileged and confidential; it is intended for the use of the individual or entity named above. Any unauthorized dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this fax communication in error please immediately notify this office by telephone, collect if necessary, and return the original message to this office at the above address via U. S. Postal Service. Thank you.

MESSAGE

AS PER YOUR REQUEST

NICK J. COLESSIDES (969)
Attorney at Law
466 South 400 East, # 100
Salt Lake City, Utah 84111-3325
Tele: 801.521-4441 521-4452

Attorney for Defendants
Exclusive Cars, Inc., and Floyd Maestas

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, SANDY DEPARTMENT
STATE OF UTAH

WESLEY L. LARSEN

Plaintiff,

vs.

EXCLUSIVE CARS, INC., a Utah
corporation, and FLOYD
MAESTAS,

Defendants.

JUDGMENT

Case No.: 99 04 08099

Judge: Denise P. Lindberg

Defendant's Motion for Summary Judgment having come
regularly for consideration and decision before the Honorable
Denise P. Lindberg, and the Court having received the submissions
of the parties, to-wit: Memoranda and attached exhibits thereto
in support of each party's respective position, and the Court
having considered the submission of the parties, and the Court
having made and entered its Decision and Order on Defendants'
Motion for Summary Judgment, which decision, order, and findings,

are incorporated herein by this reference, and the Court having found that plaintiff Wesley L. Larsen did not act reasonably in relying upon the oral representations of defendant Floyd Maestas, despite having been provided with many red flags and ignoring the same, and plaintiff failing to follow up in an inquiry to determine the veracity of the information orally presented by defendant Maestas, and plaintiff having received from the defendant dealer four separate and distinct documents disclaiming any oral representations, and the Court having entered its order granting defendants their motion for summary judgment, and good cause otherwise appearing therefor, now therefore, upon the motion of Nick J. Colessides, attorney for defendants Exclusive Cars, Inc., and Floyd Maestas,

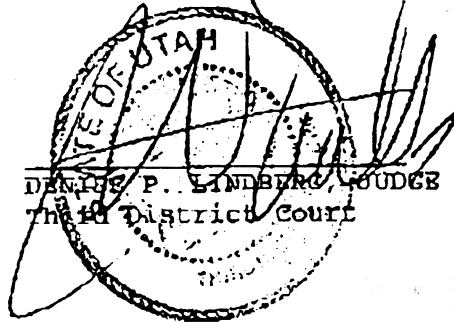
IT IS HEREBY ORDERED, DECREED, AND ADJUDGED that plaintiff's complaint be and the same is hereby dismissed with prejudice, no cause of action, and that defendants are hereby entitled to and shall recover money judgment against plaintiff for defendants' reasonable attorney's fees and costs incurred in connection with the defense of this matter, the same to be presented to the Court by an affidavit of defendants' counsel, and for augmentation of costs and attorney's fees for the collection of the judgment.

SO ORDERED.

Dated this 30th day of March, 2001.

CLERK OF DISTRICT COURT
JANUARY DEPT.

4-2-01



CERTIFICATE OF SERVICE

On March 24, 2001, counsel for defendants shall file the original of the foregoing Judgment with the Clerk of the Court, addressed as follows:

CLERK'S OFFICE
THIRD JUDICIAL DISTRICT COURT
SANDY DEPARTMENT
210 WEST 10000 SOUTH
SANDY UTAH 84070

A copy of the foregoing has been served to plaintiff's attorney addressed as follows:

MR LOREN M LAMBERT ESQ
ATTORNEY AT LAW
266 EAST 7200 SOUTH
MIDVALE UTAH 84047

_____ via hand delivery;
_____ via fax: 801.352-0645
X _____ via first class mail

postage pre-paid, this 14th day of March, 2001.

Rich J. Coleman

LOREN M. LAMBERT (5101)
Arrow Legal Solutions, LLC
266 East 7200 South
Midvale, Utah 84047
Tele: (801) 568-0041
Fax: (801) 352-0645
Attorney for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR SALT LAKE COUNTY, SANDY DEPARTMENT
STATE OF UTAH

WESLEY L. LARSEN	:	VERIFIED OBJECTION TO
	:	AFFIDAVIT OF ATTORNEY'S
	:	FEES
Plaintiff,	:	
	:	
vs.	:	Case NO.: 99 04 08099
	:	
EXCLUSIVE CARS, INC., a Utah	:	Judge Lindberg
corporation, and FLOYD MAESTAS	:	
	:	
Defendants,	:	
	:	

Pursuant to UCA 78-27-56 plaintiff objects to defendant's attorney's fees affidavit. Plaintiff asserts that defendant's request for attorney's fees is not allowed under Utah law, is excessive, and if having been awarded pursuant to UCA 78-27-56, it should not be awarded pursuant to subsection (2) (a) and (b). This objection is based upon attorney Lambert's experience of over 13 years of trial work. He has associated with dozens of attorneys, some from Richards, Brandt, Miller & Nelson; Snow, Christensen & Martineau; and Parsons, Behle &

Latimer. Perhaps Mr. Lambert has not encountered an attorney of the calibre of Mr. Collessides and would acknowledge that he has demonstrated zealous competence and effectiveness in this case; however from the numerous attorney fees requests that Mr. Lambert has addressed he has never experienced such an excessive fee as that sought by defendants.

Since the court has never indicated the basis for its award of attorney's fees, plaintiff assumes it was because the court found plaintiff's action to be without merit or asserted in bad faith. This assumption is made because plaintiff is unaware of any other basis for the court's award. If this is not the case, no attorney's fees are warranted under any theory.

1. Defendants' Request is Excessive

Defendants' motion for summary judgment was based upon the "As Is" language of the purchasing documents of the case. At the onset of this case Defendants' had in their possession all of the information and evidence used in their motion. Therefore their motion could have been filed prior to filing an answer. This would have avoided the bulk of the incurred attorney's fees. Also, defendants' counsel missed a scheduling conference because of health problems and missed court deadlines and therefore had to petition the court for extension, causing further delays and additional attorney's fees.

Defendants' counsel's billing rate of \$210 is extortionate in a case of this nature. Plaintiff's counsel knows of no Salt Lake Attorney that charges such a rate in a case of this nature.

Mr. Dunlap asserts that he spent 39.70 hours preparing the motion for summary judgment. Plaintiff's counsel has prepared and responded to several hundred motions for summary judgment and would assert that it would not take this amount of time to prepare such a motion.

On 9-29-199 defendants' attorney asserts that it took .7 hours to file and mail an answer. It takes no more than 10 minutes to accomplish this. On 10-25-1999, Defendants' attorney asserts that it took 6.1 hours to prepare a discovery request. It takes no more than an hour and a half minutes to accomplish this. On 12-29-1999, Defendants' attorney asserts that it took 1.5 hours to prepare a Notice of Deposition. It takes no more than 10 minutes to accomplish this.

On 1-4-00 & 1-26-00, Defendants' attorney charged travel time to the library to research a motion in limine. Attorneys do not charge for travel time to do research since they have access to on-line or computer disk research. It is inconceivable that an attorney that bills at \$210 an hour does not have access to computer-based research. On 1-4-00 Defendants' attorney asserts that it took 1.5 hours reviewing plaintiff's request for discovery and sending copies to defendants. It should have taken no more than 25 minutes to accomplish this. On 4-18-2000, Defendants' attorney asserts that it took 5.5 hours to simply review plaintiff's responses to interrogatories, a documents request, and two other small documents. It should have taken no more than 20 minutes to have done this. Plaintiff's counsel has reviewed all of the documents and pleadings referred to by defendants' attorney and that only the most inefficient attorneys

could have billed this many hours to accomplish these tasks.

On 1-10-01 Defendants' attorney asserts that it took 2.3 hours to appear at a scheduling conference. Plaintiff registered one hour for this conference, including travel time. On 3-22-01 and shortly thereafter, Defendants' attorney asserts that it took 1.9 hours to review plaintiff's Notice of Appeal, review a letter from the supreme court and review a docketing statement. Such task should have only taken at the most one half hour.

On 6-17-01 Defendants' attorney asserts that it took .3 hours to review "and analyze a judgment signed by Judge Lindberg. Defendant's counsel had prepared this judgment for the court and it was a page and a half long. The court made no changes to the judgment. Why would defendants' counsel need to analyze a judgment he prepared?

Defendants request that plaintiff pay for messenger service by LMI. This expense was incurred by defendants because defendants were late and would miss a court deadline due to their lack of planning. This is not a proper cost.

2. Attorney's fees should be waived.

Plaintiff has on file with the court an Affidavit of Impecuniosity. Therefore, pursuant to UCA 78-27-56,(2) (a) and (b), this court should not award attorney's fees.

CONCLUSION

Plaintiff respectfully requests that no attorney's fees be awarded.

DATED this 30 day of July, 2001.

Loren M. Lambert
Loren M. Lambert - Attorney for Plaintiff

STATE OF UTAH)
)ss
COUNTY OF SALT LAKE)

On the 30th day of July, 2001, before me personally appeared to me Loren M. Lambert known to be the person named herein and who executed the foregoing document and stated he had read, understood and voluntarily executed the same. He further verifies that to the best of his personal knowledge the facts asserted above are true.

My Commission Expires:



FRANCES M. WYSS
NOTARY PUBLIC - STATE OF UTAH
1090 LORI WAY
SALT LAKE CITY, UT. 84117
COMM. EXP. 06-25-2005

Frances M. Wyss
NOTARY PUBLIC

MAILING CERTIFICATE

I hereby certify that on July 30, 01 a true and correct copy of the foregoing document was mailed postage prepaid to the following:

NICK J. COLESSIDES
Attorneys at Law
466 South 400 East, # 100
Salt Lake City, Utah 84111-3325

Frances Wyss

LOREN M. LAMBERT, No. 5101
ARROW LEGAL SOLUTIONS, LLC
Attorney for Plaintiff
266 East 7200 South
Midvale, UT 84047
Telephone: (801) 568-0041
Fax: (801) 352-0645

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

WESLEY L. LARSEN,

Plaintiff,

vs.

EXCLUSIVE CARS, INC., a Utah
Corporation; FLOYD MAESTAS, an
individual,

Defendants.

NOTICE TO SUBMIT RE
DEFENDANTS' REQUEST FOR
ATTORNEY'S FEES

Civil No. 99-04-08099

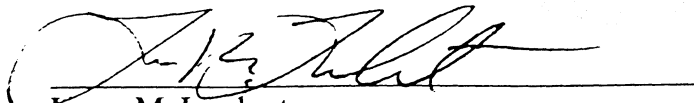
Hon. Denise P. Lindberg

COMES NOW PLAINTIFF and requests that the court submit for decision Defendants'

Request for Attorney's Fees.

DATED this 17 day of September, 2001.

ARROW LEGAL SOLUTIONS, LLC


Loren M. Lambert
Attorney for Plaintiff

CERTIFICATE OF MAILING

I hereby certify that on this 17 day of September, 2001, a true and correct copy of the foregoing NOTICE TO SUBMIT RE DEFENDANTS' REQUEST FOR ATTORNEY'S FEES was mailed postage prepaid to the following:

Nick J. Colessides
466 South 400 East, Suite 100
Salt Lake City, UT 84111

Celeste Simmons

PHONE CALL

FOR	Loren	DATE	9/7	TIME		A.M. P.M.
MESSAGE	I called Sandy Court -					
OF	a judgement has					
PHONE		FAX				
not been entered				TELEPHONED		
in the Wes Larson				<input type="checkbox"/> RETURNED YOUR CALL		
case. Re: Attorney fees				<input type="checkbox"/> PLEASE CALL		
				<input type="checkbox"/> WILL CALL AGAIN		
				<input type="checkbox"/> I WANT TO SEE YOU		
SIGNED <i>BT</i>				1154		

565-5700

99-04-08099

IN THE UTAH COURT OF APPEALS

WESLEY L. LARSEN,

Plaintiff and Appellant,

AFFIDAVIT OF FRANCES M. WYSS

vs..

Case No. 20010282-CA

EXCLUSIVE CARS, INC., a Utah
Corporation; FLOYD MAESTAS, an
individual,

Priority No. 15

Defendant and Appellee.

AFFIDAVIT OF FRANCES M. WYSS

NICK J. COLESSIDES
Attorney for Defendant/Appellee
466 South 400 East, Suite 100
Salt Lake City, Utah 84111
Telephone: 521-4441

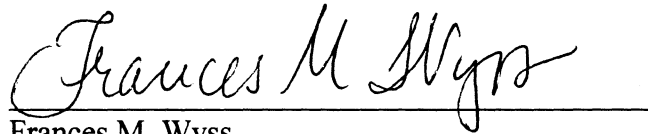
LOREN M. LAMBERT No. 5101
ARROW LEGAL SOLUTIONS, LLC
Attorney for Appellant
266 East 7200 South
Midvale, Utah 84047
Telephone 801-568-0041

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

COMES NOW FRANCES M. WYSS, being first duly sworn, states the following:

1. I am a paralegal for Loren M. Lambert, Plaintiff's attorney in this case.
2. Over the past several months, Mr. Lambert had asked all of his office staff to call the Sandy Division of the Third District Court regarding the above case. Several of Mr. Lambert's staff have called many times to inquire about the status of this case.
3. I know of one specific time that I called to inquire about the status. I spoke with Bonnie at the Sandy District Court on 11/14/01. She read to me from their files the following information: "On October 31, 2001 the following was entered in the docket: 'There appears to be some sort of objection to the proposed judgment against W Larsen. That appears to have been sent north. Without that, because it involves a matter currently on appeal, I think it's not a judgment that can be signed.'" Bonnie then told me it was signed by Judge Lindberg.
4. Our office has not received any written notice of this information from the Sandy District Court.

DATED this 3 day of January, 2002.



Frances M. Wyss

On the 3 day of January, 2002, before me personally appeared FRANCES M. WYSS, to me known to be the person named herein and who executed the foregoing Affidavit and that the statements contained therein were true and correct to the best of her knowledge.



Loren M. Lambert
Notary Public

CERTIFICATE OF MAILING

I hereby certify that on this 31 day of January, 2002, a true and correct copy of the foregoing AFFIDAVIT OF FRANCES M. WYSS was mailed postage prepaid to the following:

Nick J. Colessides
466 South 400 East, Suite 100
Salt Lake City, UT 84111

Frances Wyss

PARTIES TO THE PROCEEDINGS BELOW

The caption of the case on appeal contains the names of all parties to the proceedings in the district court.