

1991

Christiansen v. Flexi-Lease Inc : Unknown

Utah Supreme Court

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**UTAH SUPREME COURT
BRIEF**

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DOCKET NO. 919700

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December 9, 1986

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FILED

DEC 9 1986

Clerk, Supreme Court, Utah

Supreme Court
State of Utah
Attention: Geoffrey J. Butler
Clerk of Court
322 State Capitol Building
Salt Lake City, UT 84114

Re: Patricia Christiansen v. Holiday Rent-A-Car dba
Flexi-Lease, Inc. et al. Case No. 19700

Dear Mr. Butler:

Pursuant to Rule 24(J) of the Utah Rules of Appellate Procedure, appellants in the above-referred matter hereby submit citations of supplemental authorities. These authorities became available, or to the attention of counsel, after the filing of briefs in this matter.

POINT I.

Judicial Estoppel. Page 29 of appellants Brief.

Condas v. Condas, 618 P.2d 491 (Utah, 1980). Statements by a party constitute "admissions against interest" even against parties successor in subsequent litigation on the same issue.

Southern Life Ins. Co. v. Caves, 481 So.2d 764 (Miss. 1985). Acts and knowledge of agent included imputed to insurer even when agent does not fully advise insurer.

Trovillion v. United States Fidelity & Guaranty, 474 N.E.2d 953 (Ill. 1985). When case presents genuine issues as to coverage, insurer estopped from later denying coverage unless it first either exercises option of defending with reservation of rights or seeking declaratory judgment on coverage.

POINT II.

Summary Judgment Law. Page 30 of appellants' Brief.

Beck v. Farmers Insurance Exchange, 701 P.2d 795 (Utah, 1985). Opposing motions for summary judgment with only one supported by admissible evidence. "In the absence of any responsive affidavits, we take the assertions of (opposing) affidavits as true."

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Celotex Corp. v. Catrett, 54 U.S. Law Week 4775, 477 U.S._____, 91 L.Ed.2d 265, 106 S.Ct. 2548 (1986). Summary judgment no longer disfavored in law when it helps to secure the "speedy, just and inexpensive determination" of a case. Summary judgment mandatory if party fails to make an adequate factual showing on an essential point.

Anderson v. Libert Lobby Inc., 54 U.S. Law Week 4755, 477 U.S._____, 106 S.Ct. 2505. Companion case to Celotex. To withstand documented summary judgment motion, rebuttal must be substantial and factual.

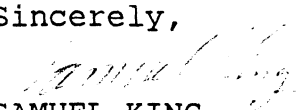
Lind v. Lynch, 665 P.2d 1276 (Utah, 1983). On summary judgment motion, even negative position must be supported by evidence. In Lind, negative was lack of malice. Here, negative is lack of insurance.

POINT III.

Lima v. Chambers, 657 P.2d 279 (Utah, 1982). As insurer may be bound by default judgment if it has knowledge of proceedings, it can intervene to protect its interests.

Jefferson Pilot Fire & Casualty Co. v. Prichett, 345 S.E.2d 629 (Ga. 1986). While insurer may initially refuse to insure or defend, it may continue to do so only as long as facts or law make the defense viable, and is independently liable if it persists in non-coverage thereafter.

Sincerely,


SAMUEL KING

SK/has

cc: Robert L. Stevens