

1992

Guy Barco Zewadski v. Ford Motor Credit Company, Rick Warner Lincoln-Mercury : Reply Brief

Utah Court of Appeals

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Guy B. Zewadski; Appearing pro-se; Appellant.

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IN THE UTAH COURT OF APPEALS

GUY BARCO ZEWADSKI,
Plaintiff, Appellant,

vs.
FORD MOTOR CREDIT COMPANY,
Defendant, Appellee,
and,

RICK WARNER LINCOLN-MERCURY,
Defendant, Appellee.

APPEAL No. 920226
(890901423CN)

Category 16

REPLY BRIEF OF THE APPELLANT

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL
DISTRICT COURT OF
SALT LAKE COUNTY, STATE OF UTAH
THE HONORABLE PAT B. BRIAN PRESIDING

UTAH COURT OF APPEALS
BRIEF

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FILED

SEP 16 1992

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Utah Court of Appeals

IN THE UTAH COURT OF APPEALS

GUY BARCO ZEWADSKI,
Plaintiff, Appellant,

vs.

FORD MOTOR CREDIT COMPANY,
Defendant, Appellee,
and,

**CORRECTIONS TO ZEWADSKI's
APPELLANT BRIEF, AND,
APPELLANT REPLY BRIEF**

RICK WARNER LINCOLN-MERCURY,
Defendant, Appellee.

FORD MOTOR CREDIT COMPANY,
Counter-plaintiff, Appellee,

vs.

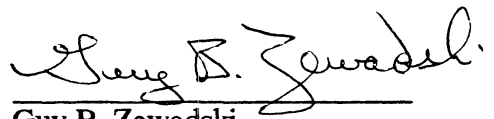
GUY BARCO ZEWADSKI,
Counter-defendant, Appellant.

APPEAL No. 920226

(890901423CN)

Guy Barco Zewadski erred (1) in his citation to the trial court record in his Appellant Brief, on page 28, line 13, citing to pages TR-377-343, which **should read TR-377-382**; and (2) erred in his citation to the trial court record in his Appellant Reply Brief, page 18, line 26, citing to TR-706-707, which **should read TR-710-711**.

DATED this 15th, day of September, 1992.


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IN THE UTAH COURT OF APPEALS

GUY BARCO ZEWADSKI,
Plaintiff, Appellant,
vs.
FORD MOTOR CREDIT COMPANY,
Defendant, Appellee,
and,

CERIFICATE OF MAILING

RICK WARNER LINCOLN-MERCURY,
Defendant, Appellee.

FORD MOTOR CREDIT COMPANY,
Counter-plaintiff, Appellee,
vs.

APPEAL No. 920226

(890901423CN)

GUY BARCO ZEWADSKI,
Counter-defendant, Appellant.

Mailing Certificate

I do hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the **CORRECTIONS TO ZEWADSKI's APPELLANT BRIEF, AND, APPELLANT REPLY BRIEF**, to the following, on this 16th day of September, 1992:

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A handwritten signature in cursive script, reading "Guy B. Zewadski", positioned above a horizontal dashed line.

Guy B. Zewadski

IN THE UTAH COURT OF APPEALS

GUY BARCO ZEWADSKI,
Plaintiff, Appellant,

vs.

FORD MOTOR CREDIT COMPANY,
Defendant, Appellee,
and,

APPEAL No. 920226
(890901423CN)

Category 16

RICK WARNER LINCOLN-MERCURY,
Defendant, Appellee.

REPLY BRIEF OF THE APPELLANT

APPEAL FROM THE JUDGMENT OF THE THIRD JUDICIAL
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AND

**FORD MOTOR CREDIT COMPANY
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DEARBORN, MICHIGAN
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TABLE OF CONTENTS

TABLE OF CONTENTS	i
TABLE OF AUTHORITIES.....	ii
STATUTES	ii
ARGUMENT	
POINT I. THE DEPOSITION FORD CREDIT RELIED UPON ISN'T FILED WITH THE TRIAL COURT AND ISN'T PART OF THE TRIAL COURT RECORD	1
POINT II. FORD CREDIT ATTEMPTS TO MISLEAD THIS COURT IN ARGUING THAT ISSUES OF WRONGFUL DISCLAIMER OF IMPLIED WARRANTIES AND UNCONSCIONABILITY OF CONTRACT WERE NOT CONSIDERED BY THE TRIAL COURT PRIOR TO, AND AS A BASIS FOR ITS SUMMARY JUDGMENTS	10
POINT III. NO APPEAL TAKEN OF TRIAL COURT'S DENIAL TO AMEND	16
POINT IV. THE TRIAL COURT'S FINDING THAT DEALER DID NOT REFUSE TO REPAIR THE VEHICLE WAS LIMITED TO MECHANICAL TYPE DEFECTS, NOT THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR PURPOSE PROBLEMS	17
CONCLUSION	21
APPENDIX A	
APPENDIX B	
APPENDIX C	

TABLE OF AUTHORITIES

CASES

<u>Billings Yamaha v. Rick Warner Ford, Inc.,</u> 681 P.2d 1276 (Utah 1984) -----	p.9,11
<u>Conder v. A.L. Williams & Associates, Inc.,</u> 739 P.2d 634 (Utah Ct. App. 1987) -----	p.4
<u>Hume v. U.S., 10 S.Ct. 134; -----</u>	p.15

RULES

U.R.C.P. Rule 5(e)-----	p.9
U.R.C.P. Rule 15 (b) -----	p.7, 14,15
U.R.C.P. Rule 28(c) -----	p.2
U.R.C.P. RULE 30 (F)(1,3) -----	p.2,3
U.R.C.P. Rule 32 -----	p.2, 3
U.R.C.P. Rule 56 (c) -----	p.4,6,7
U.R.C.P. Rule 79(a) -----	p.9
C.J.A. Rule 4-501 -----	p.6
C.J.A. Rule 4-502(4)(5) -----	p.2,3

STATUTES

Magnuson-Moss-Warranty-Federal Trade Commission Improvement Act, Section 108 (a,c), 15 U.S.C.A. #2308 (a,c). -----	p.12,15
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INTRODUCTION

Guy B. Zewadski ("Zewadski") does not intend to reply to each and every argument in Ford Motor Credit Company's ("Ford Credit") brief, since most of those arguments are adequately addressed in Zewadski's opening brief. Instead, Zewadski will focus on those core issues that are at the heart of this case, and erroneous facts and arguments brought up by the Respondent Ford Credit.

ARGUMENT

POINT 1.

THE DEPOSITION FORD CREDIT RELIED UPON ISN'T FILED WITH THE TRIAL COURT AND ISN'T PART OF THE TRIAL COURT RECORD

First, it would be helpful to resolve a preliminary evidentiary matter concerning whether a deposition taken of Zewadski ("the deposition") was ever before the trial court, and/ or if it is part of the trial court record in this case. In this case where Ford Credit are relying heavily on the deposition to impeach Zewadski's "verified" complaint (which functions as an affidavit for purpose of opposing a summary judgment, see Zewadski's brief, page 22, 23), affidavits, and other testimony in "verified papers", and where Ford Credit has not offered any of their own supporting evidence, it is paramount to the case to determine whether the deposition was ever before the lower court. Zewadski has argued in his Appellant Brief ("Zewadski's brief") that Ford Credit failed to offer any material evidence supporting its summary judgment motions, and failed to file the deposition with the trial court (Zewadski's brief, pages 7, 10, 14, 15, 20, 21, 22, 23, 24, 25, 27, 32, 45, 46). *Ford Credit, in their Ford Credit's brief, are not denying that they've failed to file the deposition in question, in fact they do not deny it.* Instead, Ford Credit are

carefully and confusingly arguing that it is unnecessary for them to "publish" the deposition; and that they have correctly used the deposition in the lower court pursuant to U.R.C.P. Rule 32 (Ford Credit's brief, pages 5, 8, 9). Ford Credit are also erroneously arguing that Zewadski made no objection to Ford Credit's use of Zewadski's deposition (Ford Credit's brief, page 8). Zewadski made timely objection to the use of the deposition, pursuant to U.R.C.P. Rule 32 (b),(c)(2), and 28(c) by stating his objection at the beginning of the deposition, reported on its page 3, which fact was presented to the trial court, and is in the record by affidavit (TR-144, 145, 147, 148, 151); Zewadski's objection was never argued before the trial court and the trial court didn't have to consider Zewadski's objection, because Ford Credit never tried to file the deposition.

Ford Credit are correct in observing that "publication" of a deposition is unnecessary for its use in summary judgment proceedings [see U.R.C.P. Rule 32(d)]; however, Zewadski's argument isn't about publication, but rather that the deposition wasn't filed at all with the trial court, is not part of the trial court record, and thus cannot be used to support the summary judgment motions; the deposition was not admitted as evidence in the case (Zewadski's brief, pages 7, 10, 14, 15, 20, 21, 22, 23, 24, 25, 27, 32, 45, 46).

The objections Zewadski made, to the use of the deposition, were never handled by the trial court because Ford Credit did not attempt to file the deposition pursuant to C.J.A. Rule 4-502, and U.R.C.P. Rule 30 (f). C.J.A. Rule 4-502 (4)(5) is here quoted:

"(4) Depositions taken pursuant to the Rules of Civil Procedure shall not be filed with the clerk of the court except as provided in this Code or upon order of the court for good cause shown."

(5) ... All discovery proceedings shall be completed, including all responses thereto, and all depositions and other documents filed

with the court no later than thirty (30) days before the date set for trial of the case."... [C.J.A. Rule 4-502 (4)(5)]

For a deposition to be considered by the trial court it must first be filed pursuant to U.R.C.P. 30(f)(1, and 3), unless otherwise ordered by the court, and all parties are required to be notified upon its filing. In the instant case there's no record of the deposition being so filed, no record of Ford Credit seeking an order permitting its filing (per C.J.A. Rule 4-502); and no record that the parties were notified of its filing (per U.R.C.P. Rule 30(f)(3). (see "Trial Record Index", Appendix A, attached hereto; and "Trial Court Docket", Appendix B, attached hereto). U.R.C.P. Rule 30(f)(1, and 3) is here quoted in part:

"(f) Certification and filing by officer; exhibits; copies; notice of filing.

(1) The officer shall certify on the deposition that the witness was duly sworn by him and that the deposition is a true record of the testimony given by the witness. Unless otherwise ordered by the court, he shall then securely seal the deposition in an envelope endorsed with the title of the action and marked "Deposition of (here insert name of witness)" and shall promptly file it with the court in which the action is pending or send it by registered or certified mail to the clerk thereof for filing...

(3) The party taking the deposition shall give prompt notice of its filing to all other parties." [U.R.C.P. Rule 30(f)]

Ford Credit are incorrect in claiming in their Ford Credit brief that the deposition was used properly and correctly, pursuant to U.R.C.P. Rule 32 (see Ford Credit brief pages 5, 8). Though there's now no requirement to "publish" a deposition, still, a deposition may only be used so far as admissible under the rules of evidence. U.R.C.P. Rule 32(a) here cited:

"(a) Use of Deposition. At trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence applied as though the witness were then present and testifying, may be used against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof, in accordance with any of the following provisions..." [U.R.C.P. Rule 32(a)].

(emphases added)

Further, pursuant to U.R.C.P. Rule 56(c), in a Summary Judgment proceeding, only those papers *on file* with the trial court may be considered by the trial court in deciding upon the motion. U.R.C.P. Rule 56 (c) is here quoted in part:

"Motion and proceedings thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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...." U.R.C.P. Rule 56(c) (emphases added)

This Court has recently considered and ruled upon this very issue, in a case regarding the failure to file depositions (distinguishing "filing" from "publishing"), Conder vs. A.L. Williams & Associates, Inc, 739 P.2d 634 (Utah Ct. App. 1987) with Judge Orme, J. concurring and filing an opinion. In that case this court found that where facts in a deposition are heavily relied upon by the parties, then documentation that the trial judge had access to the deposition is essential; here cited in part:

"... After a close review of the record we find no evidence that the depositions were in fact ever filed with the district court, much less that the trial judge had actual access to the deposition transcripts when hearing and deciding Williams' and MILICO's motion for summary judgment. In this situation where the parties cite the same depositions to support conflicting versions of the facts, we believe that documentation that the trial judge had access to the deposition transcripts is essential." Conder vs. A.L. Williams & Associates, Inc, 739 P.2d 634 (Utah Ct. App. 1987)

Judge Orme, in the above cited case, gave this concurring opinion:

"I concur fully in the thorough and well reasoned main opinion. I write separately only to emphasize that it is the apparent failure of the two depositions of plaintiff Conder to be filed with the district court pursuant to Rule 30(f) of the Utah Rules of Civil Procedure,

rather than any failure to have had the depositions published, which I find fatal to respondents' position. Rule 56(c) entitles a party to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any," so warrant.

While there has been a quaint custom in this state, apparently of long-standing, that depositions, even once duly filed, may not be used for Rule 56 purposes until they have been formally published, I see no requirement of formal publication in Rule 56 or anywhere else in our rules. On the contrary, I see an entitlement to rely on filed depositions, if otherwise proper, when making a summary judgment motion without having to go through any additional procedural hoops [foot note 3: Of course "[o]nly that portion of a deposition that would be admissible in evidence at trial may be introduced on a summary judgment motion." 10A C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure*, Sec. 2722, at 48-49 (1983)]. Confusion about a requirement of formal publication ought to be definitively put to rest with new Rule 32(d), Utah R. Civ. P., which became effective January 1, 1987. While this change should hasten the demise of the formal publication tradition, a requirement of formal publication has been nothing but illusory heretofore anyway.

Had the depositions been duly filed, and as they were used in support of the motion for summary judgment, I at least would view them as eligible for inclusion in the record under the former practice of designating the record on appeal or as automatically part of the record under Utah R. App. P. 11(a), and R. Utah Ct. App. 11(a) despite the fact they were not formalistically published. I might even be inclined to grant the renewed motion to supplement the record if the only reason we did not have the depositions available to us was because they had not been formally published. But, alas, we are unable to determine from the record that the depositions were even filed, and for failure of the record to show us otherwise respondents have no one to blame but themselves. See Utah R. Civ. P. 30(f)(3). Conder v. A.L. Williams & Associates, Inc., 739 P.2d 634, at 640, 641; [Utah Ct. App. 1987]

The deposition at issue is paramount to Ford Credit's case because it is the only material evidence Ford Credit tried to offer to support their summary judgment motions, and to controvert Zewadski's verified complaint, affidavits, and other testimony in Zewadski's supplemented "verified" papers (see argument in Zewadski's brief, pages 28-32). Ford Credit, in their memorandums supporting their summary judgment motions on both Zewadski's

suit, and Ford Credit's counterclaim, cited to parts of the deposition but did not quote any of Zewadski's testimony. Rather than accurately quoting Zewadski's testimony in their summary judgment memorandums, (or by affidavit), Ford Credit chose instead to inaccurately paraphrase Zewadski's deposition testimony and present it out of context (see TR-134-137; and TR-243-249), and Zewadski brought this to the courts attention both in Zewadski's opposing memorandum (TR-152, 153), and opposing affidavits (TR-144, 145). Further, Zewadski's verified complaint sets forth his contradicting testimony prior to, and in opposition to Ford Credit's unsupported summary judgment motions (TR-2,3,4, 7, and TR-10, 11, 16) (see argument in Zewadski's brief, pages 14, 20-25; and 28-32).

Ford Credit simply failed to comply with the summary judgment rules. It is necessary under the rules of civil procedure, and code of judicial administration, that the movant for summary judgment set forth facts, specifically referring to the facts in specific parts of the trial court record on file upon which he relies (U.R.C.P. 56 (c); [C.J.A. Rule 4-501 (2)(a)]).

C.J.A. Rule 4-501 (2)(a), is here quoted:

"(2) Motions for summary judgment.

(a) Memorandum in support of a motion. The points and authorities in support of a motion for summary judgment shall begin with a section that contains a concise statement of material facts as to which movant contends no genuine issue exists. The facts shall be stated in separate numbered sentences *and shall specifically refer to those portions of the record upon which the movant relies.*" (emphases added)

Also see U.R.C.P. 56(c) quoted hereinabove.

Ford Credit did not specifically refer to the record on file as the above rules require because the deposition was not filed with the the trial court and is not part of the record.

Ford Credit additionally argues that Zewadski's affidavits which contradict his testimony in his deposition should not be allowed to create material issues of fact preventing summary judgment (Ford Credit's brief, page 9). That appears to be a sound legal principle, but is irrelevant in the instant case. There is no deposition or evidence put in the record by Ford Credit for Zewadski to contradict with his affidavits. Rather, Ford Credit shouldn't be granted summary judgment without somehow overcoming Zewadski's verified complaint (TR-2-7; TR-9-16); his affidavits (TR-144-149; TR-167-183; TR-549-554b); and that other "verified" testimony of Zewadski's in the record pursuant to U.R.C.P. Rule 15(b) (see Zewadski's brief, pages 27 through 33) (TR-337-343; TR-377-382). Summary judgment is only available when the provisions of U.R.C.P. 56 are met, the rule providing that *"...The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, 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..."* [U.R.C.P. Rule 56(c)] (emphases added). Ford Credit should not be granted summary judgment upon the strength only of unsupported memorandums which inaccurately paraphrase testimony that is not entered into the court record, and which was contradicted in the trial court record by sworn, filed, testimony of Zewadski.

Ford Credit did, as they claim in their Ford Credit brief, page 8, file one affidavit, of employee Nancy Rollins (TR-459-461) on August 13, 1991, however it was immaterial to (1) the arguments regarding Zewadski's complaint and Ford Credit's summary judgment thereon, which was granted earlier, on January 2, 1991, (TR-228-230); (2) was immaterial to Zewadski's

affirmative defences to Ford Credit's counterclaim (see Zewadski's brief, pages 25-33); and, (3) merely set forth the method whereby Ford Credit computed the lease residual value of the vehicle, (as described in Ford Credit's brief, page 15), which they wished to recover from Zewadski, and did not address the merits of the case (see TR-228-230).

The only way the trial court could have entered summary judgment in favor of Ford Credit considering the foregoing is if the trial court found that there was no legal basis for Zewadski's suit, thus the facts in dispute were immaterial; Zewadski, as he understands this case from the record, views this as the only prudent judicial reasoning in granting the summary judgments.

The trial court, in its summary judgments on both Zewadski's complaint, and Ford Credit's counterclaim, listed the papers it considered in rendering its judgments, and the list omits the deposition. The summary judgment order on Zewadski's complaint is here quoted:

"... the Court having reviewed the files and records herein, including the motion, affidavits and extensive Memoranda of the parties in support of and opposition to the motion, and having heard argument of the parties, and it appearing from the record... and the Court being fully advised in the premises, and good cause appearing therefore..." (Zewadski's brief, addendum A) (TR-229).

(the summary judgment on Ford Credit's counterclaim contains almost identical wording, also omitting the deposition, (see Zewadski's brief, addendum A; and TR-574) .

Zewadski argues that, in the most favorable view, but notwithstanding the other issues on appeal; (1) the trial court didn't and couldn't consider the facts set forth in the deposition in rendering its summary judgments but rather based them upon those papers in the record specifically listed in the summary judgment orders (TR-229; and TR-574); (2) that the

trial court was convinced by Ford Credit's argument that the problems complained of by Zewadski were implied warranty type problems from which Ford Credit were expressly waived of responsibilities by a disclaimer clause in the contract at issue; and, (3) that the trial court was convinced by Ford Credit's argument that Utah case law, Billings Yamaha v. Rick Warner Ford, Inc., 681 P.2d 1276 (Utah 1984) applied in the instant case (see argument in Zewadski's brief, pages 16-20, 20) (see TR-185-195).

Finally, to close this argument that Ford Credit failed to file the deposition, it should be noted that the act of "filing" with a court of record in Utah is a formalistic act, and formalistic records are kept of papers filed; "filing" here defined in the Utah Rules of Civil Procedure, Rule 5(e) in these words:

" Filing with the court defined. The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the office of the clerk, if any."

and,

there is a duty of the court clerk to keep a record of papers filed with the trial court, described in U.R.C.P. Rule 79(a), here quoted in part:

" Register of actions. The clerk shall keep a book known as the "register of actions", and shall enter therein each civil action to which these rules are made applicable. Actions shall be assigned consecutive file numbers. The file number of each action shall be noted on the page of the docket, whereon the first entry of the action is made. All papers filed with the clerk, all process issued and returns made thereon, all appearances, orders, verdicts, and judgments shall be entered chronologically in the civil docket on the page assigned to the action and shall be marked with its file number..."

There is no record in the trial court record that any of those events occurred in this case.

With the foregoing in mind, Ford Credit's argument fails, in its Ford Credit brief, page 12, stating that "...the undisputed facts reveal that neither Rick Warner nor FMCC ever represented that the Vehicle would not slide on snow or ice..." To the contrary, the only facts properly before the trial court are those filed by Zewadski in his verified complaint, affidavits, and other verified papers. The facts in Zewadski's verified complaint are "undisputed", stating:

"1.) ... defendant Rick Warner's agents Vic Field, and Paul Smith, falsely and fraudulently, and with intent to deceive and defraud plaintiff, represented to plaintiff, upon his specific inquiry and expression of concern, that the 1988 Merkur XR4Ti automobile would perform reliably and without problem in snowy weather. Promotional literature was also provided indicating the automobile was designed to be used in inclement weather and freezing conditions." (TR-10)

2.) That the aforesaid representations were false and were then and there known by defendant to be false; that in truth and in fact, the automobile often cannot be driven at all, much less safely, in fresh snow of any minute depth, or in wet snow or slush, or on ice." (TR-10).

The only undisputed facts in the record are those set forth by Zewadski that support his claim that Rick Warner and Ford Credit misrepresented the merchantability or fitness for purpose of the vehicle.

ARGUMENT

II.

FORD CREDIT ATTEMPTS TO MISLEAD THIS COURT IN ARGUING THAT ISSUES OF WRONGFUL DISCLAIMER OF IMPLIED WARRANTIES AND UNCONSCIONABILITY OF CONTRACT WERE NOT CONSIDERED BY THE TRIAL COURT PRIOR TO, AND AS A BASIS FOR ITS SUMMARY JUDGMENTS

Ford Credit misleadingly would have this court believe that (1) the trial court did not grant its summary judgments in part on the legal basis that the contract at issue properly disclaimed all implied warranties; (2) that Ford Credit did not argue that all implied warranties had been properly disclaimed, and; (3) that Zewadski did not oppose the summary judgments on that basis before summary judgment was granted dismissing his complaint (see Ford Credit's brief, pages 12-14). Zewadski has argued otherwise in his opening brief, (see Zewadski's brief, pages 10,11,16,17,18,19, 20).

The trial court record speaks for itself and clearly shows otherwise [see the summary judgment orders (TR-229 and TR-574); also Appendix A of Zewadski's brief].

Ford Credit argued in both, (1) **its memorandum** supporting its motion for summary judgment on Zewadski's complaint (TR-135, 137, 138), and, (2) **its reply** supporting its motion for summary judgment on Zewadski's complaint (TR-162-165, at 165), that the contract at issue contained express disclaimers as to merchantability and fitness for purpose, and that Zewadski's complaint was in part one of implied warranty problems (TR-137, 138, 140).

Ford Credit's **memorandum** supporting its motion for summary judgment on Zewadski's complaint is here quoted in part:

"Plaintiff, however, has admitted in his deposition that the contract, executed by plaintiff, contained express disclaimers of warranties." (TR-137)

"Plaintiff has failed to substantiate any allegation that the Vehicle was warranted as being equipped with all season tires or that the Vehicle was warranted to handle well in snow." (TR-137, 138)

"Utah courts have held that buyers remedies for a defect in an automobile are limited to express warranties, *and are further limited by disclaimers in a contract which exclude warranties for fitness and merchantability. Billings Yamaha v. Rick Warner Ford, Inc.*, 681 P.2d 1276 (Utah 1984). In the instant case, there was no

express warranty as to the type of tire with which the Vehicle was equipped *and the Contract contained express disclaimers as to the merchantability and fitness for purpose*. There is no breach of warranty that may serve as a basis for plaintiffs attempted rescission of the contract, and summary judgment should be granted." (TR-138) (emphases added).

Ford Credit's reply supporting its motion for summary judgment on Zewadski's complaint is here quoted in part:

"The arguments are creative, but as a matter of law fail because (1) the warranties which plaintiff claims were made are properly excluded as a matter of law," (TR-165)

Zewadski's testimony in his "verified" complaint was in part about implied warranties of merchantability and fitness for purpose, stating in part:

"1.) ... defendant Rick Warner's agents Vic Field, and Paul Smith, falsely and fraudulently, and with intent to deceive and defraud plaintiff, represented to plaintiff, upon his specific inquiry and expression of concern, that the 1988 Merkur XR4Ti automobile would perform reliably and without problem in snowy weather. Promotional literature was also provided indicating the automobile was designed to be used in inclement weather and freezing conditions." (TR-10)

2.) That the aforesaid representations were false and were then and there known by defendant to be false; that in truth and in fact, the automobile often cannot be driven at all, much less safely, in fresh snow of any minute depth, or in wet snow or slush, or on ice." (TR-10).

The record shows that Zewadski opposed the above summary judgment arguments of Ford Credit, prior to any decision thereon, with opposing memoranda, arguing that the implied warranties survived the disclaimers (TR-185, 188), and arguing the issues of unconscionability of contract (TR-191-193; Zewadski's memoranda is here quoted in part:

"2. A dispute of material fact exists whether the "service contract" provided for in the lease "Contract" serves to preserve "Implied Warranty, Suitability, or Fitness for Purpose of Vehicle" regardless of disclaimers in "Contract", by act of law under the Magnuson-Moss-Warranty-Federal Trade Commission Improvement Act, Section 108 (a,c), 15 U.S.C.A. #2308 (a,c). Ford Credit admits in

their "Reply Memorandum" that "... the warranties which plaintiff claims were made are properly excluded as a matter of law." (TR-185) (TR-188) (TR-184-195)

The trial court found, in its first (interlocutory) summary judgment order dismissing Zewadski's complaint (TR-229), that all warranties of merchantability and fitness for purpose were disclaimed, here quoted in part:

"(1) that statements of Rick Warner Lincoln-Mercury or its employees were not false, fraudulent nor material misrepresentations or omissions relating to capabilities of the vehicle; (2) that all warranties, if any, as to merchantability or fitness for purpose were excluded; (3) that there is no credible showing that the vehicle failed to perform within acceptable standards..." (TR-229)

Following the summary judgment dismissing Zewadski's complaint (TR-228-230), Ford Credit then moved the trial court for a summary judgment upon its counterclaim, supported by a memorandum (TR-243-251) wherein Ford Credit then argued that the merits of all Zewadski's defenses to their counterclaim had been ruled upon with prejudice in the prior summary judgment, against Zewadski, and that no question remained, that they were entitled to summary judgment upon their counterclaim (TR-246-248). Here following is quoted part of Ford Credit's memorandum supporting that motion for summary judgment on their counterclaim:

"On January 2, 1991, this Court granted a Motion for Summary Judgment in Ford Credit's favor dismissing with prejudice and on the merits Plaintiff's claims asserted in his Complaint and First Amended Complaint. It is undisputed that Plaintiff still owes a deficiency amount under the terms of the Lease Contract. At no time has Plaintiff disputed whether he owed the amount under the Contract. Instead, Plaintiff's basis for not paying amounts due under the Lease Contract were the allegations set forth in Plaintiff's Complaint and First Amended Complaint. Because those allegations have been dismissed as having no merit, no question remains as to whether Plaintiff owes the amounts under the Lease Agreement..." (TR-247-248)

Ford Credit wrongly and misleadingly state in their Ford Credit

brief, at page 12-14, that Zewadski first brought up the issues of (1) wrongful disclaimer of implied warranties, and, (2) unconscionability of contract, in a latter motion to supplement his complaint and first amended complaint, (filed July 26, 1991) (TR-376-392), which was denied by the trial court on August 30, 1991 (TR-498-501); but the record shows this isn't true. Zewadski in fact twice tried to get the court to recognize the issues regarding the wrongful disclaimer of implied warranties, and the unconscionability of the contract, in relation to his suit for rescission of contract. (And additionally, Zewadski made further efforts with these facts to set up an affirmative defense to the counterclaim against him, see Zewadski's brief, pages 25-33). First, Zewadski filed papers opposing summary judgment, on October 12, 1990 (TR-184-195), prior to the summary judgment on Zewadski's complaint (TR-228-230) by about 80 days; and the second time (which Ford Credit is referring to in their brief, pages 12, 13), about July 26, 1991 (TR-376-376a; TR-383-393).

Zewadski's early (October 12, 1990) (TR-184-195) opposing papers are properly a part of the trial court record, were argued before the court, argued between the parties, not struck from the record, and, pursuant to U.R.C.P. Rule 15(b), the pleadings in this case have been amended to include these early papers (TR-185-195), setting forth issues of unconscionability of contract and wrongful disclaimer. (see argument in Zewadski's brief, pages 25-33).

As referred to in Zewadski's brief, pages 20, 12, Zewadski filed the supplemental papers opposing summary judgment on his complaint, early on, (about 62 days prior to the hearing on the matter, heard December 14, 1990, TR-220), (filed October 12, 1990) (TR-184-195); amending the pleadings per

U.R.C.P. Rule 15(b), arguing, here quoted:

"Point I. "Rick Warner", by including a "service contract" in the lease "Contract", provided plaintiff an "implied Warranty of Merchantability and Suitability or Fitness for Purpose" with automobile by law regardless of disclaimer within the "Contract". The instant case falls comfortably within perimeters of the "Magnuson-Moss-Warranty Federal Trade Commission Improvement Act" which invalidates disclaimer clauses in certain types of consumer transactions, including both "leases", and "sales". [Magnuson-Moss-Warranty Federal Trade Commission Improvement Act, Sec. #108 (a,c), 15 U.S.C.A. #2308(a,c)], which says in part: (a) "No supplier may disclaim or modify... any implied warranty to a customer with respect to such consumer product if... at the time of sale, or within 90 days thereafter, such supplier enters into a service contract with the consumer which applies to such consumer product." and; "(c) "A disclaimer, modification, or limitation made in violation of this section shall be ineffective for purposes of this section and State law." (TR-188)

"Point IV. Whether viewed as a U.C.C. case or common law bailment case the "Contract" is an unconscionable one at the least. A procedure is followed by "Rick Warner" and Ford Motor Company whereby no written "service contract" is issued at the point of sale but must be "applied" for and delivered by mail, depriving one of the opportunity to read the fine print. How could one know that the "service contract" doesn't incorporate the "Manufacturer's New Vehicle Warranty", or that the "service contract" cannot stand alone but has effect only with the "Manufacturer's New Vehicle Warranty", if that information is to be mailed later? It is sold by Ford Motor Company. Why would one suspect that representation and presentation of a "warranty identification card", and "warranty informational booklet" wouldn't indicate that there is a "Manufacturer's New Vehicle Warranty". An unconscionable contract is one such as no man in his senses not under delusion would make on the one hand, and as no honest and fair man would accept on the other." (Hume v. U.S., 10 S.Ct. 134; 4 Bouv. Inst. n. 3848) (TR-191-192).

Ford Credit, in their argument in their Ford Credit brief, pages 12, and 13, misleads the this court and misunderstands the trial court's reasoning in denying Zewadski's latter motion to supplement his pleadings, (on August 30, 1991), even though Ford Credit quotes the trial courts reasoning in their Ford Credit brief, page 13. The trial court recognized that the issues Zewadski

sought to supplement into his pleadings had already been supplemented into his pleadings earlier (October 12, 1990 TR-184-195), and had been considered and ruled upon by the trial court in its earlier summary judgment dismissing Zewadski's complaint, and the trial court explained itself on this matter in its order of August 30, 1991, denying the motion to supplement, here quoted in part:

"... The court finds that Zewadski offered no new factual or legal arguments beyond those which have been voluminously briefed and argued at length in a prior hearing on a motion for Summary Judgment, and upon which the court issued an order in FMCC's favor dated January 2, 1991, stating that no material issues of fact or law remain as to any fraud allegedly perpetrated by Rick Warner or as to any warranty issues relevant to this case. On that basis, Zewadski's Motion for Leave to Supplement his Complaint and First Amended Complaint is denied." (TR-500-501) (emphases added)

Considering the foregoing, the record shows that part of Zewadski's complaint was of an implied warranty nature, (that the car couldn't be used as cars are normally used, and as it was represented); that Ford Credit offered as defense to its responsibility for the problems that all implied warranties had been properly disclaimed by a clause in the contract, and that such disclaimers were valid under Utah law; and the trial court ruled that all implied warranties of merchantability and fitness for purpose were properly disclaimed. The record also shows that Zewadski put into issue that such disclaimers are invalid by Federal law, and that the contract was unconscionable.

POINT III.

NO APPEAL TAKEN OF TRIAL COURT'S DENIAL TO AMEND

Ford Credit mistakenly characterizes Zewadski as appealing the trial court's order of August 30, 1991 (TR-498-501), denying Zewadski's

motion to supplement his pleadings (see Ford Credit brief, page 12, 13). For the reasons set forth above in Argument III., this is a mischaracterization of Zewadski's appeal because Zewadski has not appealed that order of denial (found in TR-498-501), but appeals the earlier summary judgment order that is the basis of the later denial to amend (see Zewadski's brief, page 26-27). There was no prejudice to Zewadski to deny his later motion to amend, because the issues were already amended into the record and decided earlier (see above, Argument III.; and Zewadski's brief, pages 25-32).

POINT IV.

THE TRIAL COURT'S FINDING THAT DEALER DID NOT REFUSE TO REPAIR THE VEHICLE WAS LIMITED TO MECHANICAL TYPE DEFECTS, NOT THE IMPLIED WARRANTY OF MERCHANTABILITY AND FITNESS FOR PURPOSE PROBLEMS

Ford Credit misses the point in its argument that Zewadski conceded in open court that there was no failure by dealer to repair the vehicle (Ford Credit brief, pages 10-12). Zewadski did so concede, but only within a specific narrow context responding to a direct question from the trial court regarding mechanical type "defects" (TR-710-711). This hearing was for Ford Credit's motion for summary judgment upon its counterclaim, held August 30, 1991 (TR-705-714), and prior to that time the court had already heard and ruled upon the issue of implied warranties, upon merits and with prejudice, in its earlier order granting summary judgment dismissing Zewadski's complaint dated January 2, 1991 (TR-228-230), finding "... that all warranties, if any, as to merchantability or fitness for purpose were excluded..." (TR-229). The trial court transcript regarding this later hearing which Ford Credit is using in its argument is here more fully quoted:

"THE COURT: Did you take the vehicle, purchased from Ford Motor Credit Company, back to Ford Motor Credit, and allege there were defects in the vehicle, and that they were required to repair those defects?"

MR ZEWADSKI: I leased it, your Honor. I didn't purchase it.

THE COURT: Yes or no?

MR. ZEWADSKI: Yes, I did, your Honor.

THE COURT: What did you do?

ZEWADSKI: Through phone calls, visits and correspondence with Rick Warner Lincoln-Mercury, I ultimately ended up returning the vehicle, after serving them a notice of rescinding the contract.

THE COURT: Why?

MR. ZEWADSKI: The original complaint, your honor, dealt with implied warranty solely, and not any express warranty. It just was that the car wasn't useful to me.

THE COURT: Was there ever any allegation by the plaintiff that Rick Warner failed to repair the Vehicle?

MR. ZEWADSKI: No, your Honor.

THE COURT: Then why is a service warranty in issue?

MR. ZEWADSKI: Because it is invalid, your Honor.

THE COURT: Whether it even exists is immaterial if it is not in issue.

MR. ZEWADSKI: I believe it makes the contract an unenforceable and unconscionable contract.

THE COURT: Anything further? Both sides submit?"

(at TR-706-707)(TR-705-714)

The dialog above is consistent with Zewadski's earlier testimony in his verified complaint, his affidavits, and pleadings, i.e. that Zewadski, upon experiencing problems with the car, (being unable to drive it when it snowed), took it up with Rick Warner and Ford Credit, with telephone calls, visits, and

correspondence, that it had been misrepresented, and was informed they had no responsibility, that the problem was not covered by warranty, that the strict terms of the lease contract applied, which provided no warranty whatsoever; after which Zewadski elected to rescind the contract. (see first letter of correspondence to defendants, regarding problems with vehicle, exhibited in affidavit at TR-182-183, [TR-167-183]; and TR-52-53). The trial court made findings regarding the above hearing on summary judgment upon counterclaim, stating:

"The Court further finds that, consistent with the plaintiff's own acknowledgment, there has never been, from the date the vehicle was delivered to the plaintiff until the date it was returned to the lessor, an assertion by the plaintiff that mechanical problems, electrical problems, suspension problems, or any other defective problems existed with the vehicle which was the subject of the lease." (TR-692)

The trial court's finding above (TR-692) specifically deals with "defects" of the mechanical type nature and is not inconsistent with its earlier findings regarding "implied warranty" matters (TR-229), and does not say that Zewadski did not make any assertions, or testimony, regarding the vehicles failure to be merchantable, suitable, or fit for a purpose, as set forth in Zewadski's verified complaint, here quoted in part:

"1.) ... defendant Rick Warner's agents Vic Field, and Paul Smith, falsely and fraudulently, and with intent to deceive and defraud plaintiff, represented to plaintiff, upon his specific inquiry and expression of concern, that the 1988 Merkur XR4Ti automobile would perform reliably and without problem in snowy weather. Promotional literature was also provided indicating the automobile was designed to be used in inclement weather and freezing conditions." (TR-10)

"2.) That the aforesaid representations were false and were then and there know by defendant to be false; that in truth and in fact, the automobile often cannot be driven at all, much less safely, in fresh snow of any minute depth, or in wet snow or slush, or on ice... Plaintiff... believes there may be design reasons other than the tires which renders the automobile unusable, and unsafe in snowy

conditions because the addition of snow tires did not completely cure the problems with directional control and stability. The automobile still drove vastly inferior to all others on the road and in plaintiff's experience in the aforementioned conditions and was a danger and hazard to plaintiff and all others on the road." (TR-10-11)

"3.) That plaintiff believed and relied on defendant's aforesaid representations and was thereby induced to enter into a contract with defendant..." (TR-11);

and, as set forth in Zewadski's affidavits with exhibits (TR-348-353), here quoted in part:

"3. Problems developed with the vehicle and it came to my attention through various dealings with Rick Warner and Ford Credit that I had warranty problems.

4. I elected the remedy to rescind the contract, and sent formal notice..." (TR-349-353)

Zewadski answered the above direct questions as directly and precisely as he could, and would have been glad for an opportunity to qualify and clarify the answers, but felt under some threat from the court of sanctions. Just minutes before, in this hearing, Ford Credit, on the record, reminded the court of its earlier warning to Zewadski of sanctions, here quoted from the trial court transcript:

"Mr. Taylor: The last hearing this Court heard extensive argument by Mr. Zewadski regarding what he believed to be the significance of service contracts and warranties in this case. This Court emphatically, sharply and with a raised voice stated to Mr. Zewadski that no further factual or legal issues of service contracts or warranties existed in this case, and this Court mentioned that if he heard -- if this Court heard the word "service contracts" one more time, it would hold him in contempt again." (TR-707-708)

And the court had already once before levied sanctions against Zewadski for using an improper form, for \$200.00 (TR-433; TR-649).

Zewadski submitted an affidavit to disqualify the Judge in this case setting forth other rather intimidating actions, words and acts, including a

threat to throw me into a "grimy drunk tank" if I once again brought up the issues of warranty or service contract in this case; and, a threat that he would jail me, if after giving the case to another judge, he found I had acted in bad faith. (TR-649) (TR-648-651).

At any rate, for the foregoing reasons, I believe the trial court's finding that Zewadski acknowledged he had never asserted there was a mechanical, electrical, suspension, or other defective problem should and must be strictly interpreted from the transcript, as referring to "mechanical type defects, and viewed as exempting, and separate from, his sworn testimony of record regarding issues of implied warranty of merchantability and fitness for purpose, which the court had ruled upon earlier as a matter of law on the basis of the disclaimer clause in the contract.

CONCLUSION

Ford Credit are basing almost their entire argument upon their use of a deposition that they've failed to file with the trial court, and inaccurately paraphrased alleged testimony from, in their unsworn pleadings, to impeach and contradict facts properly sworn to and in the record by Zewadski. Ford Credit don't deny their failure to file the deposition, but rather argue that they've somehow used it properly, ignoring all the rules of civil procedure, court rules, rules of evidence, and case law, of the State of Utah, regarding the use of depositions in summary judgment proceedings. They argue, in essence, that even though the record shows that Zewadski objected to its use, and to the inaccuracy of the paraphrased use, that somehow, though not filed, their use of it is sufficient to impeach and contradict Zewadski's other testimony of record

and entitle them to summary judgment.

Ford Credit also, shamelessly, in the face of their own pleadings in the record, argue (1) that they never at any time argued that as a matter of law all implied warranties for the vehicle were properly disclaimed, thereby eliminating the basis of Zewadski's complaint for rescission of contract; and, (2) that the issues of wrongly disclaimed implied warranties, and unconscionability of contract, were not raised prior to the summary judgment on Zewadski's complaint (January 2, 1991), but first raised upon a motion to amend, about 8 months later (about August 30, 1991). Considerable space is devoted above and in Zewadski's brief on this matter, as well as in the trial court record, and I most kindly say they are extremely wrong and should know better. Ford Credit successfully convinced the trial court that Zewadski's suit for rescission was without legal basis under Utah case law because implied warranties were properly disclaimed by disclaimer clauses in contracts, and accordingly caused a summary judgment on the complaint to specifically find that "...all warranties, if any, as to merchantability or fitness for purpose were excluded;".

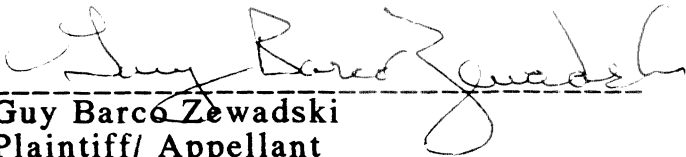
Ford Credit argues, that based upon the findings of the trial court, the judgments and awards in this case were proper. Zewadski disagrees. The trial court's later findings and awards were based upon the foundation of its earlier judgment and findings, which for the reasons above, fail.

For the reasons set forth above, and in Zewadski's brief, Zewadski respectfully requests this Court to vacate the lower court's summary judgment on Ford Credit's counterclaim, and dismiss it, or that failing, said judgment should be reversed and dismissed, or reversed and remanded for trial or further

action by the trial court.

Zewadski respectfully requests that this this Court reverse the lower court's summary judgment dismissing Zewadski's first amended complaint, and remand the matter for trial or further proceedings.

DATED this 8th day of September, 1992.



Guy Barco Zewadski
Plaintiff/ Appellant
Appearing Pro-se


Mailing Certificate

I do hereby certify that I caused to be mailed, postage prepaid, a true and correct copy of the foregoing Reply of Appellant to the following, on this 8th day of September, 1992:

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Guy B. Zewadski

APPENDIX A

APRIL 30, 1990

INDEX
DISTRICT COURT NO. 890901423
COURT OF APPEALS NO. 920226-CA

CLERK'S CERTIFICATE	1
COMPLAINT FOR RESCISSION OF CONTRACT, RECOVERY OF DAMAGES, DECEIT, FRAUD	2-8
FIRST AMENDED COMPLAINT FOR RESCISSION OF CONTRACT, RECOVERY OF DAMAGES, DECEIT, FRAUD	9-19
SUMMONS	20-21
ANSWER OF FORD MOTOR CREDIT COMPANY TO PLAINTIFF'S AMENDED COMPLAINT AND COUNTERCLAIM	22-31
NOTICE OF TAKING DEPOSITION	32-34
AFFIDAVIT	35-36
MOTION FOR CHANGE OF VENUE	37-39
STATEMENT OF POINTS AND AUTHORITIES	40-44
SUMMONS	45-47
ANSWER TO DEFENDANT FORD MOTOR CREDIT COMPANY'S COUNTERCLAIM	48-55
RESPONSE IN OPPOSITION TO RICK WARNER LINCOLN MERCURY'S MOTION FOR CHANGE OF VENUE	56-64
SUMMONS	65-66
MOTION IN OPPOSITION TO RICK WARNER LINCOLN MERCURY'S MOTION FOR CHANGE OF VENUE	67-76
MOTION FOR PROTECTIVE ORDER, AND DISCOVERY AND PRETRIAL CONFERENCES	77-78
AFFIDAVIT	79-84
OBJECTION TO PLAINTIFF'S MOTION FOR PROTECTIVE ORDER AND DISCOVERY AND PRETRIAL CONFERENCES	85-88
REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND DISCOVERY, AND PRETRIAL CONFERENCES	89-94
NOTICE OF APPEAL	95
MOTION TO VACATE ORDER OR RE-HEAR WITH HEARING	96-100
NOTICE OF TRANSMITTING APPEAL	101
AFFIDAVIT	102-104
ORDER DATED JUNE 20, 1989	105
NOTICE OF ENTRY OF ORDER	106-107
REMITTITUR	108-109
ANSWER	110-114
AMENDED NOTICE OF TAKING DEPOSITION	115-118
NOTICE OF TAKING DEPOSITIONS	119-123
NOTICE OF CANCELLATION OF NOTICE OF TAKING DEPOSITION	124-130
DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON THE FIRST AMENDED COMPLAINT AND MOTION TO PUBLISH DEPOSITION OF PLAINTIFF	131-133

APRIL 30, 1990

INDEX (pg 2)
DISTRICT COURT NO. 890901423
COURT OF APPEALS NO. 920226-CA

DEFENDANT FORD MOTOR CREDIT COMPANY'S MEMORANDUM OF PINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	134-141
PLAINTIFF'S MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT AND PUBLICATION OF DEPOSITION	142-143
AFFIDAVIT	144-146
AFFIDAVIT	147-149
PLAINTIFF'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF PLAINTIFF'S FIRST AMENDED MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT AND PUBLICATION OF DEPOSITION	150-156
PLAINTIFF'S FIRST AMENDED MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED CMPLAINT AND PUBLICATION OF DEPOSITION	157-158A
NOTICE TO SUBMIT FOR DECISION	159-161
FORD MOTOR CREDIT COMPANY'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	162-166
AFFIDAVIT AND EXHIBITS URCP 56; AND 56(f); AND; IN SUPPORT OF SUPPLIMENTAL REPLY AND MEMORANDUM OF POINTS AND AUTHORITIES	167-183
PLAINTIAFF'S SUPPLEMENTAL AND REPLY MEMORANDUM OF POINTS AND AUTHORITIES AND SUPPORTING AFFIDAVIT IN SUPPORT OF PLAINTIFF'S FIRST AMENDED MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT	184-196
CORRECTION TO FORD MOTOR CREDIT COMPANY'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	197-199
EX-PARTE APPLIACTION OVER-LENGTH SUPPLEMENTAL AND REPLY MEMORANDUM AND REQUEST FOR HEARING ON MOTION	200-201
REQUEST THAT THE COURT DISREGARD PLAINTIFF'S SUPPLEMENTAL AND REPLY MEMORANDUM OF POINTS AND AUTHORITIES AND SUPPORTING AFFIDAVIT IN SUPPORT OF PLAINTIFF'S FIRST AMENDED MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT	202-204

APRIL 30, 1990

INDEX (pg 3)
DISTRICT COURT NO. 890901423
COURT OF APPEALS NO. 920226 CA

NOTICE TO SUBMIT FOR DECISION	205-207
MOTION FOR COURT TO ACCEPT SUPPLEMENTAL AND REPLY MEMORANDUM OF POINTS AND AUTHORITIES AND SUPPORTING AFFIDAVIT IN SUPPORT OF PLAINTIFF'S FIRST AMENDED MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT	208-209
POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR COURT TO ACCEPT SUPPLEMENTAL AND REPLY MEMORANDUM SUPPORTING AND AFFIDAVIT IN SUPPORT OF PLAINTIFF'S FIRST AMENDED MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT	210-213
NOTICE TO SUBMIT FOR DECISION	214-216
NOTICE TO SUBMIT FOR DECISION	217-219
MINUTE ENTRY DATED DEC 14, 1990	220
REQUESTS FOR ADMISSION AND PRODUCTION OF DOCUMENTS	221-226
MINUTE ENTRY DATED JAN 2 1991	227
SUMMARY JUDGMENT	228-231
FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT	231A-233
NOTICE OF HEARING	234-236
NOTICE TO SUBMIT FOR DECISION	237-239
CERTIFICATE OF SERVICE	240-242
FORD MOTOR CREDIT COMPANY'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	243-251
AFFIDAVIT OF NANCY ROLLINS	252-255
RESPONSE IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT	256-258
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT	259-267
AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEWADSKI	268-279
REQUEST FOR HEARING ON MOTION FOR SUMMARY JUDGMENT	280-285
GUY BARCO ZEWADSKI'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO SUPPLEMENT ANSWER TO DEFENDANT FORD MOTOR CREDIT COMPANY'S COUNTERCLAIM	286-292
CORRECTION TO GUY BARCO ZEWADSKI'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT	293-295
AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEWADSKI	296-301
RESPONSES TO REQUESTS FOR ADMISSION AND REQUESTS FOR PRODUCTION OF DOCUMENTS	302-314
NOTICE OF HEARING	315-317
REPLY TO DEFENDANT ZEWADSKI'S RESPONSE TO FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT	318-319

GUY B. BARCO ZEWADSKI - APPELLANT VS FORD MOTOR CREDIT COMPANY - APPELLEE
APRIL 30, 1990

INDEX (pg 4)
DISTRICT COURT NO. 890901423
COURT OF APPEALS NO. 920226-CA

FORD MOTOR CREDIT COMPANY'S RESPONSE TO ZEWADSKI'S MOTION FOR LEAVE TO SUPPLEMENT ANSWER TO FMCC'S COUNTERCLAIM	325-327
PROPOSED SUPPLEMENTAL ANSWER	328-333
REPLY TO FORD MOTOR CREDIT COMPANY'S RESPONSE TO ZEWADSKI'S MOTION FOR LEAVE TO SUPPLEMENT ANSWER TO FMCC'S COUNTERCLAIM	334-336
VERIFIED PROPOSED SUPPLEMENTAL ANSWER	337-343
CORRECTION TO GUY BARCO ZEWADSKI'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT	344-347
SECOND AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEWADSKI	348-353
NOTICE TO SUBMIT FOR DECISION	354
MOTION TO RECONSIDER ORDER AND VACATE SUMMARY JUDGMENT	355-356
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO RECONSIDER ORDER AND VACATE SUMMARY JUDGMENT	357-366
AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEWADSKI	367-372
OBJECTION TO ORDER TO SHOW CAUSE	373-375
MOTION FOR LEAVE TO SUPPLEMENT GUY BARCO ZEWADSKI'S COMPLAINT AND FIRST AMENDED COMPLAINT	376-376A
SUPPLEMENTAL/AMENDING COMPLAINT OF GUY BARCO ZEWADSKI	377-382
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR LEAVE TO SUPPLEMENT GUY ZEWADSKI'S COMPLAINT AND FIRST AMENDED COMPLAINT	383-392
AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEWADSKI	393-398
ORDER TO SHOW CAUSE	399-403
AFFIDAVIT AND EXHIBITS SUPPORTING RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIM	404-414
AFFIDAVIT OF CORRECTIONS	415-417
ATTORNEY'S FEE AFFIDAVIT	418-427
MOTION TO STRIKE	428-429
AFFIDAVIT OPPOSING MOTION FOR SUMMARY JUDGMENT ON COUNTERCLAIM	430-432
MINUTE ENTRY DATED AUG 2, 1991	433-434
NOTICE OF HEARING	435-437
NOTICE OF OBJECTION TO FORM OF ORDER C.J.A. RULE 4-504	438-441
SUPPLEMENTAL/AMENDED REPLY TO ANSWER AND COUNTERCLAIM OF FORD MOTOR CREDIT COMPANY AND COUNTERCLAIM BY PLAINTIFF AGAINST DEFENDANT U.R.C.P. RULES #15(d)(a); #18	442-449
AFFIDAVIT OF SERVICE	450-451
RESPONSE TO ZEWADSKI'S OBJECTION TO FORM OF ORDER	452-455
NOTICE OF HEARING	456-458
AFFIDAVIT OF NANCY ROLLINS	459-461

APRIL 30, 1990

INDEX (pg 5)
DISTRICT COURT NO. 890901423
COURT OF APPEALS NO. 920226-CA

MOTION TO STRIKE ZEWADSKI'S AMENDED ANSWER AND MOTION FOR RULE 11 SANCTIONS	462-470
NOTICE-FILING AMENDED PLEADING SERVICE OF AMENDED PLEADING	471-471A
AFFIDAVIT OF SERVICE	472-477
NOTICE OF HEARING	478-480
REQUEST THAT COURT DISREGARD BOTH DEFENDANT FOR MOTOR CREDIT COMPANY'S RESPONSE TO ZEWADSKI'S OBJECTION TO FORM OF ORDER, AND NOTICE OF HEARING THEREON, AND REQUEST THAT THE COURT ACCEPT PROPOSED ORDER PREPARED BY ZEWADSKI	481-485
RESPONSE IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S MOTION TO STRIKE ZEWADSKI'S AMENDED ANSWER AND MOTION FOR RULE 11 SANCTIONS, WITH COUNTER REQUEST FOR COURT IMPOSED SANCTIONS	486-496
MINUTE ENTRY DATED AUG 30, 1991	497
ORDER DATED AUG 30, 1991	498-502
MINUTE ENTRY	503
SUPPLEMENTAL ATTORNEYS' FEE AFFIDAVIT	504-538
AFFIDAVIT OF SERVICE	539-541
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF AMENDED RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT	542-546
AMENDED RESPONSE IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT	547-548
AFFIDAVIT IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT	549-554
AFFIDAVIT OF SERVICE	555-556
NOTICE OF OBJECTION TO FORM OF ORDER C.J.A. RULE 4-504	557-561
NOTICE OF HEARING	562-564
SUPPLEMENTAL ATTORNEYS' FEE AFFIDAVIT	565-575
NOTICE OF OBJECTION TO FORM OF ORDER	576-577
MINUTE ENTRY DATED SEPT 20, 1991	578
ORDER DATED SEPT 20, 1991	579-583
AFFIDAVIT OF SERVICE	584-585
MOTION TO STRIKE	586
MEMORANDUM OF POINTS AND AUTHORITIES	587-589
MOTION TO STRIKE	590
MEMORANDUM OF POINTS AND AUTHORITIES	591-596
MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR NEW TRIAL	597-604
AFFIDAVIT IN SUPPORT OF NEW TRIAL	605-618
AFFIDAVIT OF SERVICE	619-620
AMENDED NOTICE	621-622
MEMORANDUM IN RESPONSE TO ZEWADSKI'S MOTION TO STRIKE FMCC'S ATTORNEYS' FEE AFFIDAVIT AND MOTION TO STRIKE SUPPLEMENTAL ATTORNEYS' FEE AFFIDAVIT	623-625

APRIL 30, 1990

INDEX (pg 6)
DISTRICT COURT NO. 890901423
COURT OF APPEALS NO. 920226-CA

MEMORANDUM IN OPPOSITION TO ZEWADSKI'S MOTION FOR A NEW TRIAL, FOLLOWING SUMMARY JUDGMENT UPON COUNTERCLAIM	626-629
NOTICE OF HEARING	630-632
REPLY OF ZEWADSKI SUPPORTING MOTION FOR NEW TRIAL	633-634
REPLY OF ZEWADSKI SUPPORTING MOTION TO STRIKE ATTORNEYS' FEE AFFIDAVITS	635-647
AFFIDAVIT FOR DISQUALIFICATION OF JUDGE (U.R.C.P. #63)	648-651
NOTICE TO SUBMIT FOR DECISION THE MOTION TO STRIKE ATTORNEYS' FEE AFFIDAVIT (8-1-91)	652-653
NOTICE TO SUBMIT FOR DECISION THE MOTION TO STRIKE ATTORNEYS' FEE AFFIDAVIT (9-18-91)	654-655
NOTICE TO SUBMIT FOR DECISION THE MOTION FOR NEW TRIAL DATED 9-30-91	656-657
CERTIFICATE OF SERVICE	658-659
MINUTE ENTRY DATED OCT 25, 1991	660
CERTIFICATE OF SERVICE	661-662
CERTIFICATE OF SERVICE	663-670
REQUEST FOR HEARING ON AFFIDAVIT FOR DISQUALIFICATION OF JUDGE	671-673
MINUTE ENTRY DATED NOV 12, 1991	674
ORDER DATED NOV 20, 1991	675-676
NOTICE	677-678
SUPPLEMENTAL ORDER	679-681
NOTICE OF APPEAL	682-683A
CERTIFICATE OF SERVICE	684-685
LETTER FROM SUPREME COURT	686
LETTER FROM SUPREME COURT	687
LETTER FROM COURT OF APPEALS	688
TRANSCRIPT DATED SEPT 20, 1991	689-704
TRANSCRIPT DATED AUG 30, 1991	705-714
TRANSCRIPT DATED DEC 19, 1991	714a-728

APPENDIX B

THIRD DISTRICT COURT - SLC

MONDAY AUGUST 10, 1992

2:56 PM

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

Cause of Action:

Amount of Suit.: \$.00

Return Date.....

Judgment.....: SJ Summary Judgment

Date: 09/20/91

Amt:

\$.00

Disposition.....

Date:

Court Set: MO SUMMARY JUDGMENT	on 12/14/90 at 0830 A in room G with PBB
MO SUMMARY JUDGMENT	on 08/02/91 at 0830 A in room G with PBB
MO SUMMARY JUDGMENT	on 08/30/91 at 0830 A in room G with PBB
MO SUMMARY JUDGMENT	on 09/20/91 at 0930 A in room G with PBB
HEARING	on 10/25/91 at 0830 A in room G with PBB
HEARING	on 12/19/91 at 0100 P in room G with PBB

No Tracking Activity.

A/R Type:		Total Due	Received	Paid	Balance
Other Trust	# 01	200.00	200.00	.00	.00
Other Trust	# 02	300.00	300.00	.00	.00

Transaction:	Date:	Cash-in	Check-in	Check-out	Total
Civil File Fee	03/06/89	.00	75.00	.00	75.00
Civil File Fee	04/25/89	.00	60.00	.00	60.00
Civil File Fee	06/13/89	30.00	.00	.00	30.00
Civil File Fee	07/02/91	5.00	.00	.00	5.00
Civil File Fee	07/31/91	5.00	.00	.00	5.00
Civil File Fee	08/12/91	50.00	.00	.00	50.00
Other Paid In # 01	08/12/91	200.00	.00	.00	200.00
Civil File Fee	09/30/91	5.00	.00	.00	5.00
Civil File Fee	01/29/92	30.00	.00	.00	30.00
Other Paid In # 02	04/20/92	300.00	.00	.00	300.00
Other Paid In # 02	05/04/92	300.00-	.00	.00	300.00-
Other Paid In # 02	05/04/92	300.00	.00	.00	300.00

Party...: PLA Plaintiff

Name....:

ZEWADSKI, GUY BARCO

THIRD DISTRICT COURT - SLC

MONDAY AUGUST 10, 1992

2:56 PM

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

Party...: DEF Defendant
Name....:

RICK WARNER LINCOLN-MERCURY

Party...: DEF Defendant
Name....:

FORD MOTOR CREDIT CO

Party...: ATD Atty for Defendant
Name....:

Work Phone.: (801) 375-9801

HARRISON, BRIAN C.
ATTORNEY AT LAW
3325 NO UNIVERSITY AVE
#200
PROVO UT 846040000

Party...: ATD Atty for Defendant
Name....:

Work Phone.: (801) 521-9000

TAYLOR, THOMAS F
10 EXCHANGE PLACE, 11TH FLOOR
P O BOX 45000
SALT LAKE CITY UT 84145

03/06/89 Case filed on 03/06/89 ==> Contracts GLN
Began tracking Review on 03/06/90 GLN
FILING FEE GLN
890430146 Civil filing fee received 75.00 GLN
I 04/04/89 FILED: FIRST AMENDED COMPLAINT FOR RESCISSION OF CONTRACT, AJG
I RECOVERY OF DAMAGES, DECEIT, FRAUD AJG

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

04/18/89	FILED: SUMMONS ON RETURN, SERVED RICK WARNER LINCOLN MERCURY	WWD
04/25/89	COUNTERCLAIM	JMB
	890800243 Miscellaneous civil fee received	60.00 JMB
I	FILED: ANSWER OF FORD MOTOR CREDIT COMPANY TO PLAINTIFFS AMENDED	WWD
I	COMPLAINT AND COUNTERCLAIM	WWD
I 05/04/89	FILED: CERTIFICATE OF SERVICE	BLB
I	FILED: NOTICE OF TAKING DEPOSITIONS	BLB
05/05/89	FILED: STATEMENT OF POINTS AND AUTHORITIES	BLB
I 05/11/89	FILED: ANSWER TO DEFENDANT FORD MOTOR CREDIT COMPANYS	WWD
I	COUNTERCLAIM	WWD
I	FILED: RESPONSE IN OPPOSITION TO RICK WARNER LINCOLN MERCURYS	WWD
I	MOTION FOR CHANGE OF VENUE	WWD
I	FILED: SUMMONS ON RETURN, SERVED FORD MOTOR COMPANY	WWD
I	FILED: CERTIFICATE OF SERVICE BY MAIL	BLB
05/19/89	FILED: MOTION IN OPPOSITION TO RICK WARNER LINCOLN MERCURYS	WWD
	MOTION FOR CHANGE OF VENUE	WWD
: 05/22/89	FILED: MOTION FOR PROTECTIVE ORDER AND DISCOVERY AND PRETRIAL	WWD
:	CONFERENCES	WWD
:	FILED: AFFIDAVIT	WWD
: 05/26/89	FILED: OBJECTION TO PLAINTIFFS MOTION FOR PROTECTIVE ORDER AND	WWD
:	DISCOVERY AND PRETRIAL CONFERENCES	WWD
06/01/89	FILED: REQUEST FOR SUBMISSION OF MOTION FOR CHANGE OF VENUE AND	WWD
	MOTION FOR CHANGE OF VENUE	WWD
	FILED: REPLY IN SUPPORT OF MOTION FOR PROTECTIVE ORDER AND	WWD
	DISCOVERY AND PRETRIAL CONFERENCES	WWD
06/13/89	APPEAL TO COURT OF APPEALS *125 REC	JMB
	D*	JMB
	891130205 Miscellaneous civil fee received	30.00 JMB
	FILED: NOTICE OF APPEAL	WWD
06/16/89	FILED: AFFIDAVIT	LLS
06/20/89	FILED: NOTICE OF ENTRY OF ORDER	JBW
	FILED: ORDER	JBW
07/03/89	FILED: REMITTITUR - APPEAL DISMISSED	LVP
07/05/89	FILED: ANSWER	MTF
08/31/89	FILED: AMENDED NOTICE OF TAKING DEPOSITION	AAB
09/06/89	FILED: NOTICE OF TAKING DEPOSITIONS	AAB
	FILED: NOTICE OF TAKING DEPOSITIONS	AAB
09/07/89	FILED: NOTICE OF CANCELLATION OF NOTICE OF TAKING DEPOSITION	AAB
09/11/89	FILED: SECOND AMENDED NOTICE OF TAKING DEPOSITION	AAB
09/07/90	FILED: DEFT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY	EHM
	JUDGMENT ON THE FIRST AMENDED COMPLAINT AND MOTION TO	EHM
	PUBLISH DEPOSITION OF PLA	EHM
	FILED: DEFT FORD MOTOR CREDIT COMPANY'S MEMORANDUM OF POINTS	EHM
	AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	EHM
09/20/90	FILED: PLAINTIFF'S MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR	AAB
	CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST	AAB
	AMENDED COMPLAINT AND PUBLICATION OF DEPOSITION	AAB
	FILED: AFFIDAVIT	AAB
	FILED: CERTIFICATE OF SERVICE BY MAIL	AAB

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

10/01/90 FILED: PLA'S FIRST AMENDED MOTION IN OPPOSITION TO DEFT FORD EHM
MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON EHM
FIRST AMENDED COMPLAINT AND PUBLICATION OF DEPOSITION EHM
FILED: PLA'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EHM
PLA'S FIRST AMENDED MOTION IN OPPOSITION TO DEFT FORD EHM
MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT ON EHM
FIRST AMENDED COMPLAINT AND PUBLICATION OF DEPOSITION EHM
FILED: AFFIDAVIT OF GUY B ZEWADSKI EHM
10/04/90 FILED: NOTICE TO SUBMIT FOR DECISION AAB
FILED: FORD MOTOR CREDIT COMPANY'S REPLY MEMORANDUM IN SUPPORT AAB
OF MOTION FOR SUMMARY JUDGMENT AAB
10/10/90 FILED: CORRECTION TO FORD MOTOR CREDIT COMPANY'S REPLY EHM
MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT EHM
10/12/90 FILED: AFFIDAVIT AND EXHIBITS IN SUPPORT OF SUPPLIMENTAL REPLY NMN
AND MEMORANDUM OF POINTS AND AUTHORITIES NMN
FILED: PLAINTIFF'S SUPPLEMENTAL AND REPLY MEMORANDUM OF POINTS NMN
AND AUTHORITIES AND SUPPORTING AFFIDAVIT IN SUPPORT OF NMN
PLAINTIFF'S FIRST AMENDED MOTION IN OPPOSITION TO NMN
DEFENDENT FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY NMN
JUDGMENT ON FIRST AMENDED COMPLAINT NMN
10/15/90 FILED: EX-PARTE APPLICATION OVER-LENGTH SUPPLIMENTAL AND REPLY NMN
MEMORANDUM AND REQUEST FOR HEARING ON MOTION NMN
10/16/90 FILED: NOTICE TO SUBMIT FOR DECISION NMN
FILED: REQUEST THAT THE COURT DISREGARD PLAINTIFF'S SUPPLEMENTAL NMN
AND REPLY MEMORANDUM OF POINTS AND AUTHORITIES AND NMN
SUPPORTING AFFIDAVIT IN SUPPORT OF PLAINTIFF'S FIRST NMN
AMENDED MOTION IN OPPOSITION TO DEFENDANT FORD MOTOR NMN
COMPANY'S MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED NMN
COMPLAINT NMN
10/19/90 FILED: MOTION FOR COURT TO ACCEPT SUPPLIMENTAL AND REPLY NMN
MEMORANDUM OF POINTS AND AUTHORITIES AND SUPPORTING NMN
AFFIDAVIT IN SUPPORT OF PLAINTIFF'S FIRST AMENDED MOTION NMN
IN OPPOSITION TO DEFENDANT FORD MOTOR CREDIT COMPANY'S NMN
MOTION FOR SUMMARY JUDGMENT ON FIRST AMENDED COMPLAINT NMN
11/01/90 FILED: NOTICE OF HEARING NMN
11/06/90 FILED: NOTICE TO SUBMIT FOR DECISION TVA
11/14/90 SUM scheduled for 12/14/90 at 8:30 A in room G with PBB AAB
11/30/90 FILED: CERTIFICATE OF SERVICE BY MAIL NMN
12/10/90 FILED: NOTICE TO SUBMIT FOR DECISION NMN
12/14/90 FILED: MINUTE ENTRY: DEFT'S MOTION FOR SUMMARY JUDGMENT GRANTED AAB
12/21/90 FILED: OBJECTION TO FORM OF SUMMARY JUDGMENT AAB
FILED: REQUESTS FOR ADMISSION AND PRODUCTION OF DOCUMENTS AAB
01/02/91 FILED: MINUTE ENTRY: TELEPHONE CONFERENCE HELD BETWEEN COUNSEL AAB
AND COURT-PLTF'S OBJECTIONS DENIED-ORDER SIGNED AS AAB
SUBMITTED AAB
FILED: SUMMARY JUDGMENT AAB
01/17/91 FILED: CERTIFICATE OF SERVICE NMN
05/02/91 Ended tracking of Return Date AAB
06/13/91 FILED: FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT NMN

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

06/13/91 FILED: FORD MOTOR CREDIT COMPANY'S MEMORANDUM OF POINTS AND NMN
AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT NMN
FILED: AFFIDAVIT OF NANCY ROLLINS NMN

06/26/91 FILED: RESPONSE IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S NMN
MOTION FOR SUMMARY JUDGMENT NMN
FILED: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF NMN
RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT NMN
FILED: AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEADSKI NMN

07/01/91 FILED: REQUEST FOR HEARING ON MOTION FOR SUMMARY JUDGMENT NMN

07/02/91 MOTION TO AMEND MRT
911250250 Miscellaneous civil fee received 5.00 MRT
FILED: GUY BARCO ZEADSKI'S MOTION FOR LEAVE TO SUPPLEMENT NMN
ANSWER TO DEFT FORD MOTOR CREDIT COMPANY'S COUNTERCLAIM NMN
AND MOTION TO PUBLISH FORD MOTOR CREDIT COMPANY'S NMN
RESPONSE TO REQUESTS FOR ADMISSION NMN

FILED: GUY BARCO ZEADSKI'S MEMORANDUM OF POINTS AND AUTHORITIES NMN
IN SUPPORT OF MOTION FOR LEAVE TO SUPPLEMENTAL ANSWER TO NMN
DEFT FORD MOTOR CREDIT COMPANY'S COUNTERCLAIM NMN

FILED: CORRECTION TO GUY BARCO ZEADSKI'S MEMORANDUM OF POINTS NMN
AND AUTHORITIES IN SUPPORT OF RESPONSE OPPOSING MOTION NMN
FOR SUMMARY JUDGMENT NMN

FILED: AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEADSKI NMN

07/03/91 FILED: RESPONSES TO REQUESTS FOR ADMISSION AND REQUESTS FOR BLK
PRODUCTION OF DOCUMENTS BLK

07/11/91 FILED: NOTICE OF HEARING 8/2/91 @8:30 AM W/PBB NMN

07/15/91 SUM scheduled for 8/ 2/91 at 8:30 A in room G with PBB AAB
FILED: FORD MOTOR CREDIT COMPANY'S RESPONSE TO ZEADSKI'S NMN
MOTION FOR LEAVE TO SUPPLEMENT ANSWER TO FMCC'S COUNTER- NMN
CLAIM NMN

FILED: REPLY TO DEFT ZEADSKI'S RESPONSE TO FORD MOTOR CREDIT NMN
COMPANY'S MOTION FOR SUMMARY JUDGMENT NMN

07/19/91 FILED: PROPOSED SUPPLEMENTAL ANSWER NMN

07/22/91 FILED: REPLY TO FORD MOTOR CREDIT COMPANY'S RESPONSE TO NMN
ZEADSKI'S MOTION FOR LEAVE TO SUPPLEMENT ANSWER TO NMN
FMCC'S COUNTERCLAIM NMN

FILED: VERIFIED PROPOSED SUPPLEMENTAL ANSWER NMN

FILED: CORRECTION TO GUY BARCO ZEADSKI'S MEMORANDUM OF POINTS & NMN
AUTHORITIES IN SUPPORT OF RESPONSE OPPOSING MOTION FOR NMN
SUMMARY JUDGMENT NMN

FILED: SECOND AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEADSKI NMN

07/23/91 FILED: NOTICE TO SUBMIT FOR DECISION NMN

07/25/91 ISSUED OSC TO DEFT RETURNABLE 8/2/91 @8:30 AAB
FILED: MOTION TO RECONSIDER ORDER AND VACATE SUMMARY JUDGMENT NMN
FILED: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION NMN
TO RECONSIDER ORDER AND VACATE SUMMARY JUDGMENT NMN

FILED: AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEADSKI NMN

07/26/91 FILED: MOTION FOR LEAVE TO SUPPLEMENT GUY GARCO ZEADSKI'S NMN
COMPLAINT AND FIRST AMENDED COMPLAINT NMN

FILED: SUPPLEMENTAL AMENDING COMPLAINT OF GUY BARO ZEADSKI NMN

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

07/26/91 FILED: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION NMN
FOR LEAVE TO SUPPLEMENT GUY BARCO ZEWADSKI'S COMPLAINT & NMN
FIRST AMENDED COMPLAINT NMN
FILED: AFFIDAVIT AND EXHIBITS OF GUY BARCO ZEWADSKI NMN
FILED: OBJECTION TO ORDER TO SHOW CAUSE NMN
07/31/91 OSC MRT
911440259 Miscellaneous civil fee received 5.00 MRT
FILED: OSC ON RETURN SERVED TO DEFT ON RETURN SET FOR 8/2/91 NMN
@8:30 AM NMN
FILED: AFFIDAVIT & EXHIBITS SUPPORTING RESPONSE OPPOSING MOTION NMN
FOR SUMMARY JUDGMENT ON COUNTERCLAIM NMN
08/01/91 FILED: AFFIDAVIT OF CORRECTIONS NMN
FILED: CERTIFICATE OF SERVICE BY MAIL NMN
FILED: MOTION TO STRIKE NMN
FILED: AFFIDAVIT OPPOSING MOTION FOR SUMMARY JUDGMENT ON COUNTER NMN
-CLAIM NMN
FILED: ATTORNEY'S FEE AFFIDAVIT NMN
08/02/91 FILED: MINUTE ENTRY: COURT IMPOSES SANCTIONS ON PLTF FOR AAB
VIOLATION OF RULE 11-PLTF TO PAY \$200 TO COURT IN CERT AAB
FUNDS BY 8/16/91-DEFT ALSO AWARDED FEES AND COSTS RE AAB
PLTF'S OSC-SUCH FEES AND COSTS TO BE SUBMITTED BY AAB
AFFIDAVIT-PLTF'S MOTION TO RECONSIDER AND VACATE ORDER IS AAB
DENIED-PLTF'S MOTION TO STRIKE DENIED-PLTF'S MOTION TO AAB
SUPPLEMENT 1ST AMENDED COMPLAINT DENIED-PLTF'S MOTION TO AAB
SUPPLEMENT ANSWER TO DEFTS' COUNTERCLAIM GRANTED-DEFTS' AAB
MOTION FOR SUMMARY JUDGMENT IS CONTINUED-PLTF'S AMENDED AAB
ANSWER TO BE FILED WITHIN 10 DAYS AAB
08/05/91 FILED: NOTICE OF HEARING SET FOR 8/30/91 @8:30 AM W/PBB NMN
FILED: ATTORNEY'S FEE AFFIDAVIT NMN
08/06/91 SUM scheduled for 8/30/91 at 8:30 A in room G with PBB NMN
08/08/91 FILED: NOTICE OF OBJECTION TO FORM OF ORDER CJA RULE 4-504 NMN
FILED: AFFIDAVIT OF SERVICE NMN
08/12/91 COUNTERCLAIM KDA
911520106 Miscellaneous civil fee received 50.00 KDA
CREATE Trust A/R # 01 Other Trust Category 200.00 KDA
911520110 Trust Pmt - Other A/R #01 200.00 KDA
SANCTION KDA
FILED: NOTICE OF HEARING FOR 8/30/91 AT 8:30 AM BLK
FILED: RESPONSE TO ZEWADSKI'S OBJECTION TO FORM OF ORDER BLK
FILED: AFFIDAVIT OF SERVICE BLK
FILED: SUPPLEMENTAL/AMENDED REPLY TO ANSWER AND COUNTERCLAIM OF BLK
FORD MOTOR CREDIT COMPANY AND COUNTERCLAIM BY PLAINTIFF BLK
AGAINST DEFENDANT BLK
08/13/91 FILED: AFFIDAVIT OF NANCY ROLLINS NMN
08/20/91 FILED: MOTION TO STRIKE ZEWADSKI'S AMENDED ANSWER AND MOTION FOR NMN
RULE 11 SANCTIONS NMN
FILED: NOTICE OF HEARING SET FOR 8/30/91 @8:30 AM W/PBB NMN
08/21/91 FILED: NOTICE FILING AMENDED PLEADING SERVICE OF AMENDED NMN
PLEADING NMN

Case.....: 890901423 CN Contracts
Case Title:Filing Date: 03/06/89
Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

08/21/91	FILED: AFFIDAVIT OF SERVICE	NMN
	FILED: NOTICE FILING AMENDED PLEADING SERVICE OF AMENDED PLEADING	NMN
	FILED: AFFIDAVIT OF SERVICE	NMN
08/26/91	FILED: REQUEST THAT COURT DISREGARD BOTH DEFT FORD MOTOR CREDIT COMPANY'S RESPONSE TO ZEWAWSKI'S OBJECTION TO FORM OF ORDER AND NOTICE OF HEARING THEREON AND REQUEST THAT THE COURT ACCEPT PROPOSED ORDER PREPARED BY ZEWAWSKI	NMN
	FILED: AFFIDAVIT OF SERVICE	NMN
08/29/91	FILED: RESPONSE IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S MOTION TO STRIKE ZEWAWSKI'S AMENDED ANSWER AND MOTION FOR RULE 11 SANCTIONS WITH COUNTER REQUEST FOR COURT IMPOSED SANCTIONS	NMN
	FILED: AFFIDAVIT OF SERVICE	NMN
08/30/91	FILED: MINUTE ENTRY: 8/2/91 MINUTE ENTRY CORRECTED-PLTF GRANTED 10 DAYS TO RESPOND TO DEFTS' MOTION FOR SUMMARY JUDGMENT- HEARING ON MOTION SET FOR 9/20/91 @9:30AM	AAB
	SUM scheduled for 9/20/91 at 9:30 A in room G with PBB	AAB
	FILED: ORDER (8/2/91 HEARING)	AAB
09/09/91	FILED: AMENDED RESPONSE IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT	NMN
	FILED: MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF AMENDED RESPONSE OPPOSING MOTION FOR SUMMARY JUDGMENT	NMN
	FILED: AFFIDAVIT IN OPPOSITION TO FORD MOTOR CREDIT COMPANY'S MOTION FOR SUMMARY JUDGMENT	NMN
	FILED: AFFIDAVIT OF SERVICE	NMN
09/10/91	FILED: NOTICE OF OBJECTION TO FORM OF ORDER CJA RULE 4-501	NMN
09/11/91	FILED: AFFIDAVIT OF SERVICE	NMN
09/17/91	FILED: SUPPLEMENTAL ATTORNEYS' FEE AFFIDAVIT	NMN
	FILED: NOTICE OF HEARING SET FOR 9/20/91 @9:30 AM W/PBB	NMN
09/20/91	FILED: MINUTE ENTRY: DEFT'S MOTION FOR SUMMARY JUDGMENT GRANTED- PLTF'S OBJECTIONS TO ORDER DENIED-ATTYS FEES AWARDED-SEE FILE	AAB
	FILED: ORDER (8/30/91 HEARING)	AAB
	FILED: SUMMARY JUDGMENT ORDER	AAB
	SUMMARY JUDGMENT ORDER IN FAVOR OF FMCC	5692.44 SWH
	2168514	SWH
	DATE: 9-23-91	SWH
	TIME: 8:18 AM	SWH
	NOTE: WITH INTERST OF 10% PER ANN	SWH
	ATTORNEY'S FEES OF 9267.50	SWH
	POST-JUDGMENT INTEREST OF 10% PER ANNUM	SWH
	SEE FILE	SWH
	Case judgment is Summary Judgment	AAB
09/24/91	FILED: NOTICE OF OBJECTION TO FORM OR ORDER	NMN
	FILED: AFFIDAVIT OF SERVICE	NMN
09/25/91	FILED: AFFIDAVIT OF SERVICE	NMN
	FILED: MOTION TO STRIKE	NMN
	FILED: MEMORANDUM OF POINTS AND AUTHORITIES	NMN

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

09/25/91	FILED: MOTION TO STRIKE	NMN
	FILED: MEMORANDUM OF POINTS AND AUTHORITIES	NMN
09/30/91	MOT FOR NEW TRIAL	BLC
	911860292 Miscellaneous civil fee received 5.00	BLC
	FILED: MOTION FOR NEW TRIAL FOLLOWING SUMMARY JUDGMENT UPON COUNTERCLAIM	NMN
	FILED: MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR NEW TRIAL	NMN
	FILED: AFFIDAVIT IN SUPPORT OF NEW TRIAL	NMN
10/10/91	Notice of Setting	AAB
	HRG scheduled for 10/25/91 at 0830 A in room G with PBB	AAB
	FILED: AMENDED NOTICE OF HEARING	AAB
10/11/91	FILED: MEMORANDUM IN OPPOSITION TO ZEWAWSKI'S MOTION FOR A NEW TRIAL FOLLOWING SUMMARY JUDGMENT UPON COUNTERCLAIM	NMN
	FILED: MEMORANDUM IN RESPONSE TO ZEWAWSKI'S MOTION TO STRIKE FMCC'S ATTORNEYS' FEE AFFIDAVIT AND MOTION TO STRIKE SUPPLEMENTAL ATTORNEYS' FEE AFFIDAVIT	NMN
	FILED: NOTICE OF HEARING SET FOR 10/18/91 @8:30 AM W/PBB	NMN
10/21/91	FILED: REPLY OF ZEWAWSKI SUPPORTING MOTION TO STRIKE ATTORNEYS' FEE AFFIDAVITS	NMN
	FILED: REPLY OF ZEWAWSKI SUPPORTING MOTION FOR NEW TRIAL	NMN
	FILED: REPLY OF ZEWAWSKI SUPPORTING MOTION TO STRIKE SUPPLEMENTAL ATTORNEY'S FEE AFFIDAVIT	NMN
10/24/91	FILED: AFFIDAVIT FOR DISQUALIFICATION OF JUDGE (URCP # 63)	NMN
	FILED: NOTICE TO SUBMIT FOR DECISION THE MOTION TO STRIKE ATTORNEYS' FEE AFFIDAVIT	NMN
	FILED: NOTICE TO SUBMIT FOR DECISION THE MOTION TO STRIKE ATTORNEYS' FEE AFFIDAVIT (8-1-91)	NMN
10/25/91	FILED: MINUTE ENTRY: BASED ON AFFIAVIT FOR DISQUALIFICATION FILED BY PLTF CASE REFERRED TO PRESIDING JUDGE FOR REVIEW	AAB
	FILED: CERTIFICATE OF SERVICE	NMN
	FILED: CERTIFICATE OF SERVICE	NMN
	FILED: CERTIFICATE OF SERVICE	NMN
	FILED: CERTIFICATE OF SERVICE	NMN
10/31/91	FILED: REPLY MEMORANDUM TO ZEWAWSKI'S AFFIDAVIT FOR DISQUALIFICATION OF JUDGE	NMN
11/01/91	FILED: REQUEST FOR HEARING ON AFFIDAVIT FOR DISQUALIFICATION OF JUDGE	NMN
11/12/91	FILED: MINUTE ENTRY: AFFIDAVIT FOR DISQUALIFICATION INSUFFICIENT-CASE SENT TO PRESIDING JUDGE FOR REVIEW	AAB
11/20/91	FILED: SIGNED ORDER REFERRING MATTER BACK TO JUDGE BRIAN	MPB
11/27/91	Notice of Setting	AAB
	HRG scheduled for 12/19/91 at 0100 P in room G with PBB	AAB
	FILED: NOTICE OF HEARING	AAB
12/19/91	FILED: MINUTE ENTRY: PLTF'S OBJECTION TO FORM OF ORDER DENIED-PLTF'S MOTION FOR NEW TRIAL DENIED-PLTF'S MOTION TO STRIKE DEFTS' AFFIDAVIT OF ATTYS FEES CONTINUED-DEFTS TO SUBMIT MORE SPECIFIC AFFIDAVIT BY 1/3/92-ORDER FROM 8/2 HEARING TO BE SIGNED NUNC PRO TUNC	AAB

Case.....: 890901423 CN Contracts

Filing Date: 03/06/89

Case Title:

Judge: PAT B BRIAN

ZEWADSKI, GUY BARCO VS RICK WARNER LINCOLN-MERCURY

12/30/91	FILED: SUPPLEMENTAL ORDER		AAB
01/03/92	FILED: SUPPLEMENTAL ATTORNEYS' FEE AFFIDAVIT		NMN
01/29/92	NOTICE OF APPEAL (RECEIVED \$125)		KDA
	920200086 Miscellaneous civil fee received	30.00	KDA
	FILED: NOTICE OF APPEAL. FORWARDED NOTICE PLUS FEE TO SUPREME COURT.		MGS
	FILED: CERTIFICATE OF SERVICE		MGS
02/04/92	FILED: AFFIDAVIT OF SERVICE		NMN
02/06/92	FILED: LETTER FROM SUPREME COURT NO. 920054		MGS
03/09/92	FILED: TRANSCRIPT DATED SEPT 20, 1991		MGS
	FILED: TRANSCRIPT DATED DEC 19, 1991		MGS
	FILED: TRANSCRIPT DATED AUG 30, 1991		MGS
04/06/92	FILED: LETTER FROM SUPREME COURT POURED OVER TO COURT OF APPEALS		MGS
04/20/92	CREATE Trust A/R # 02 Other Trust Category	300.00	KDA
	920780067 Trust Pmt - Other A/R #02	300.00	KDA
	COST BOND		KDA
04/23/92	FILED: LETTER FROM COURT OF APPEALS NO. 920226-CA		CMR
05/04/92	920880235 Reverse Trust Pmt-A/R #02 Other Paid In)	300.00-	VJA
	WRONG PAYOR		VJA
	920880238 Trust Pmt - Other A/R #02	300.00	VJA
	COST BOND		VJA

End of the docket report for this case.

CERTIFY THAT THIS IS A TRUE COPY OF
ORIGINAL DOCUMENT ON FILE IN THE THIRD
DISTRICT COURT, SALT LAKE COUNTY, STATE OF
UTAH.

DATE: 8/10/92

DEPUTY