

1963

# Masami Hayashi and Ritsuko Hayashi v. Gordon I. Hyde et al : Brief of Appellants

Utah Supreme Court

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David H. Bybee; Attorney for Plaintiffs-Appellants;

Gordon I. Hyde; Brent Hoggan; Attorney for Defendants and Respondents;

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# IN THE SUPREME COURT OF THE STATE OF UTAH

MASAMI HAYASHI and  
RITSUKO HAYASHI,  
*Plaintiffs and Appellants,*

FILED

JUL 3 - 1963

vs.

Clerk, Supreme Court, Utah

GORDON I. HYDE, GLENNA G.  
HYDE, and JUDITH HYDE  
FULLER, ROBERT H. JOHN-  
SON, IDA YOUNG, and  
CHARLES PHIL HANSON,  
*Defendants and Respondents.*

Case No.  
9893

## BRIEF OF APPELLANTS

Appeal from the Judgment of the Third District Court for  
Salt Lake County, Honorable Merrill C. Faux, Judge

DAVID H. BYBEE  
366 South State Street  
Salt Lake City, Utah  
Attorney for Plaintiffs-  
Appellants

GORDON I. HYDE  
315 East 2nd South  
Salt Lake City, Utah  
Attorney for Defendants and Respondents  
Gordon I. Hyde, Glenn G. Hyde and  
Judith Hyde Fuller

BRENT HOGGAN  
336 South 3rd East  
Salt Lake City, Utah  
Attorney for Defendants and Respondents  
Robert H. Johnson, Ida Young and  
Charles Phil Hanson

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# IN THE SUPREME COURT OF THE STATE OF UTAH

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MASAMI HAYASHI and  
RITSUKO HAYASHI,  
*Plaintiffs and Appellants,*

vs.

GORDON I. HYDE, GLENNA G.  
HYDE, and JUDITH HYDE  
FULLER, ROBERT H. JOHN-  
SON, IDA YOUNG, and  
CHARLES PHIL HANSON,  
*Defendants and Respondents.*

Case No.  
9893

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## BRIEF OF APPELLANTS

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### STATEMENT OF FACTS

This was an action commenced by plaintiffs and appellants in the Third Judicial District Court on a promissory note in words and phrases as follows:

For value received, we the undersigned, promise to pay to Shamrock Realty, or order, at Salt Lake City, Utah, the sum of \$1,157.50 (One Thousand One Hundred Fifty Seven and 50/100 Dollars), interest thereon at the rate of 5 per cent per annum until maturity, thereafter at

the rate of 10 per cent per annum until paid, both before and after judgment. (If to be paid in installments) The sum of \$6.00 or more, to be paid on or before the 15th day of September, 1955, and \$6.00 or more, on or before the 15th day of each and every month thereafter until both principal and interest are paid in full. The makers, sureties, guarantors and endorsers hereof, severally consent to renewals or extensions at or after maturity hereof and waive presentment for payment, notice of dishonor, protest and notice hereof. If above obligations is conditioned, please make brief statement of conditions: Makers agree to pay note in full and when Mr. and Mrs. Hayashi pay full contract balance due makers under contract to sell part of Block 27, Plat "F", Lot 8, dated August 15, 1955 .

/s/ Glenna G. Hyde      /s/ Forest E. Fuller  
/s/ Judith Hyde Fuller   /s/ Gordon I. Hyde

On the back thereof appears the following words and signatures.

\$1,157.50 minus \$35.00 credit for refrigerator leaves balance of \$1,122.50 plus \$23.40 for 5 months interest due.

**FOR VALUE RECEIVED, We, the undersigned, hereby transfer all our rights, title and interest in and to the note on the reverse side hereof to MASAMI HAYASHI and RITSUKO HAYASHI.**

**SHAMROCK REALTY by:**

/s/ Robert H. Johnson  
/s/ Ida Young  
/s/ Charles Phil Hanson

Plaintiffs and Appellants complain in two causes of action. On one cause of action they seek to recover all delinquent installments plus interest. On another they allege that defendants by their failure to pay had repudiated the contract and on the theory of anticipatory breach had claimed the full amount of the unpaid balance of the note plus interest and costs. Defendants Gordon I. Hyde and Glenna G. Hyde answered and brought a cross complaint alleging that plaintiffs and appellants herein owed them a balance on furniture and furnishings which would offset any amounts that these defendants and respondents owed to plaintiffs and appellants. Defendants and respondents Robert H. Johnson, Ida Young and Charles Phil Hanson answered setting forth only that any judgment that plaintiffs and appellants might recover against the defendants and these defendants and respondents might recover the same judgment against defendants Gordon I. Hyde, Glenna G. Hyde and Judith Hyde Fuller.

At the pretrial conference the court dismissed one cause of action of plaintiffs and appellants, namely the anticipatory breach theory so that the plaintiffs and appellants must recover if at all only the amount due up to the time of Judgment, all installment payments since July 2, 1956, to date. And the pretrial order provided as follows:

“The court holds as a matter of law that there would be due all payments pursuant to the note since July 2, 1956, to date, together with interest as provided in the note, and that as an offset

against that sum, all defendants would be entitled to an amount equal to the reasonable market value of the furniture at the time demand was made for the return thereof, provided that the endorsers are not guilty of fraud in inducing the contract by reason of misrepresenting that the furniture would go with the building, and in case of fraud on the part of the endorsers, the endorsers would not be entitled to this credit.”

At the time of trial the defendants and respondents Gordon I. Hyde, Glenna G. Hyde and Judith Hyde Fuller dismissed their claim for any money for furniture or furnishings and any offset to the promissory note so the entire problem for the trial court to decide was the amount of money due plaintiffs under the terms of the promissory note.

The trial court found that some payments had been made on the note, the last payment having been made July 2, 1956, which payment reduced the principal to \$1,126.70.

The trial court also found that there was due plaintiffs \$6.00 per month from July 2, 1956, to date. The court computed the amount to be \$468.00 and applied it as follows: \$366.24 to interest and \$101.76 to the principal thereby reducing it to \$1,024.94.

## ASSIGNMENT OF ERROR

The court erred in refusing to give to the plaintiffs and appellants interest as provided in the note, to-wit:

Ten per cent per annum upon all matured portions of the note that were unpaid:

2. The court erred in refusing to give to the plaintiffs and appellants judgment for court costs.

## ARGUMENT

Assuming that the court was correct in its interpretation that the note should be paid in installments of \$6.00 per month, then it must follow that when a monthly installment of \$6.00 was not paid the note had matured to the extent of \$6.00 and each month that the installment of \$6.00 was not paid should bear interest at the rate of ten per cent per annum.

It was agreed that plaintiffs and appellants had not paid the full balance due makers under contract to sell part of Block 27, Plat "F", Lot 8, dated August 15, 1955. And, therefore, if that portion of the note is to be given effect the total balance would not become due. However, since the court found that the note was to be paid in installments of \$6.00 per month, it must also find that the note matured at the rate of \$6.00 per month. Therefore, the note should bear interest on the matured unpaid amounts at the rate of ten per cent per annum which would amount to \$0.05 per month on each unpaid installment computed to the date of payment.

The court erred in finding that the plaintiffs and appellants were not entitled to court costs. The court

costs are awarded as a matter of course to the prevailing party and since the court found that defendants and respondents owed plaintiffs the sum of \$468.00 then it must of course award court costs to the plaintiffs and appellants. The court pointed out that there was a line drawn through the promissory note, which line would otherwise read "agreed to pay a reasonable attorney's fee together with costs and expenses incurred in the event this note is placed in the hands of an attorney for collection" and that by striking that out the makers of the note had relieved themselves of paying court costs.

Court costs are assessed as a matter of law and certainly a unilateral agreement not to pay court costs could not be binding upon the court.

## CONCLUSION

That in addition to the judgment granted by the trial court plaintiffs and appellants are entitled to interest at the rate of ten per cent per annum on all delinquent \$6.00 monthly installments and plaintiffs are entitled to court costs.

Respectfully submitted,

DAVID H. BYBEE  
366 South State Street  
Salt Lake City, Utah  
Attorney for Plaintiffs-Appellants