

1992

Jim Yates dba Cinco v. Guy Taylor : Reply Brief

Utah Court of Appeals

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Gary Anderson; Attorney for Plaintiff.

Guy Taylor; Pro Se.

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BRIEF

UTAH COURT OF APPEALS
BRIEF

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DOCKET NO. 920336-CA

IN THE UTAH COURT OF APPEALS

JIM YATES, DBA CINCO,

Plaintiff/Appellee,

PRIORITY NO 16

VS.

GUY TAYLOR,

Defendant/Appellant.

CASE NO 92-0336-CA

REPLY BRIEF OF APPELLANT

AN APPEAL FROM A FINAL ORDER OF THE FOURTH JUDICIAL
DISTRICT COURT FOR UTAH COUNTY, STATE OF UTAH.

THE HONORABLE CULLEN Y CHRISTENSEN, JUDGE

GUY TAYLOR, PRO SE
H.C. 2, BOX 40
DUCHESNE, UTAH 84021

APPELLANT

(801) 738-2608

GARY ANDERSON, ESQ.
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PROVO, UTAH 84601

APPELLEE

(801) 373-6440

FILED

JUL 8 1992

Shanon
Clerk of the Court

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ADDENDUMS

- ADDENDUM A - CERTIFICATION OF MAILING 4 COPIES [UNSIGNED]
DATED JUNE 3, 1992. [NEVER RECEIVED BY APPELLANT]
- ADDENDUM B - CERTIFICATION OF MAILING LISA PEAY, DATED
JUNE 20, 1992. [NEVER RECEIVED BY APPELLANT]
- ADDENDUM C - RECEIPT FROM UTAH COURT OF APPEALS, PAGE
COPIES OF APPELLEES BRIEF.
- ADDENDUM D - STATEMENT OF FACTS (YATES)
- ADDENDUM E - COMPLAINT ALTERED DURING TRIAL
- ADDENDUM F - THE ISSUE OF MACHINE OWNERSHIP RAISED AT TRIAL

IN THE UTAH COURT OF APPEALS

JIM YATES, DBA CINCO EQUIP,

PLAINTIFF/APPELLEE,

PRIORITY NO. 16

VS.

GUY TAYLOR,

DEFENDANT/APPELLANT.

CASE NO. 910370-CA

REPLY BRIEF OF APPELLANT

EACH PARTY HAVING DIRECTED APPELLANT AND APPELLEE BRIEFS TO THIS COURT CITING THE FACT SITUATIONS IN A LIGHT MOST FAVORABLE TO EACH POSITION AND IT BEING THE APPELLANT'S RESPONSIBILITY TO CONVINCE THE COURT OF ITS POSITION, APPELLANT WILL DESPENSE WITH A STATEMENT OF ISSUES, STATEMENT OF FACTS, AND SUMMARY ARGUMENT AND WILL CITE TO THE COURT BY WAY OF ARGUMENT, SPECIFIC POINTS WHICH TAYLOR BELIEVES YATES HAS MISTATED OR MISARGUED IN HIS APPELLEE BRIEF. FIRST TAYLOR HAD TO TRAVEL TO SALT LAKE CITY FROM DUCHESNE AND PAY THE CLERK OF THE UTAH COURT OF APPEALS A PROPER COPIING FEE TO OBTAIN A COPY OF THE YATES RESPONSE BRIEF, WHICH WAS FILED LATE, AND OBJECTED TWO BY TAYLOR, AND THE ATTORNEY REPRESENTING YATES CERTIFIED THAT [HE] OR [SHE] HAD MAILED [A] COPY OF THE REPLY BRIEF TO TAYLOR. {EXHIBIT ONE} TAYLOR DID NOT RECEIVE THE FOUR COPIES OF YATES REPLY AS CLAIMED BY LISA PEAY.

AND PURSUANT TO RULE 26 (a), URAP. NO STIPULATION WAS FILED WITH THE COURT FOR ANY TIME EXTENSION WITH WHICH APPELLEE DESIRED A TIME EXTENSION [PRIOR TO] THE EXPIRATION OF THE PERIOD SOUGHT TO BE EXTENDED. [NOR] DID] TAYLOR RECEIVE ONE SINGLE COPY OF THE APPELLEE'S REPLY BRIEF PURSUANT TO RULE 26 (b) URAP, WHICH ALLOWS, FOUR COPIES [SHALL] BE SERVED ON COUNSEL FOR EACH PARTY SEPARATELY REPRESENTED, SURELY THIS WOULD INCLUDE TAYLOR ACTING PRO SE. TAYLOR HAD TO OBTAIN HIS OWN COPY OF YATES APPELLEE BRIEF, DRIVE 250 MILES, EXPEND A FULL DAY, TAKE THE TIME OF THE COURT CLERK, OBTAIN THE REPLY BRIEF AND PAY FOR THE COPIES, PAGE BY PAGE AN AMOUNT \$ 15.50. THIS ALONG WITH THE FOLLOWING SERIES OF ACTS CLEARLY INDICATE BAD FAITH, CONFUSION, MISUNDERSTANDINGS, AND PURSUANT TO RULE 24 (c) ONLY COVERS NEW MATTER SET FORTH IN THE OPPOSING REPLY BRIEF.

ARGUMENT

YATES WOULD [LIKE] TO HAVE THE COURT BELIEVE THAT YATES HAD 12 YEARS OF HIGH SCHOOL, WAS A MECHANIC FOR 3 YEARS, WAS A TRUCK SALESMAN FOR 16 OR 17 YEARS, HAS BEEN BUYING AND SELLING EQUIPMENT FOR 14 OR 15 YEARS, AND IS 49 YEARS OLD. THIS SCENARIO WOULD INDICATE THAT YATES WAS 2 YEARS OLD WHEN HE STARTED SCHOOL. THIS EXAGGERATED STORY, FOR WHAT EVER REASON PRESENTED CLEARLY REFLECTS THAT YATES SIMPLY [STRETCHES THE FACTS] EVEN IN A REPLY BRIEF, GIVEN TO A SACRED PANEL, SUCH AS THE UTAH COURT OF APPEALS. THE POINT IN ALL OF THIS IS THAT YATES SIMPLY [CANNOT OR WILL NOT] REPRESENT THE TRUTH. SUCH WAS THE CASE WHEN YATES [PERSONALLY] SHOWED TAYLOR THE EXCAVATORS, AND CLAIMED THAT THEY WERE BOTH IN GOOD CONDITION. (TR 48-49) YATES SHOULD HAVE TOLD

TAYLOR THE TRUTH, THAT THE MACHINE WAS NOT HIS, THAT HE WAS HELPING GARY GARRETT DISPOSE OF HIS WORN OUT MACHINE, BUT NO, LIKE THE ABOVE EXPERIENCE SENERIO, YATES PAINTED THE MACHINE TO LOOK GOOD, REPRESENTED THAT IT WAS A GOOD MACHINE. CLEARLY THE APPELLEE BRIEF WOULD HAVE THE COURT BELEIVE THAT TAYLOR WAS AN EXPERT IN USED EQUIPMENT. TAYLOR HAD PURCHASED TWO PEICES OF EQUIPMENT FROM YATES OVER A PERIOD OF TEN TO TWELVE YEARS SIMPLY DOES NOT MAKE TAYLOR AN EQUIPMENT EXPERT. TAYLOR DID RELY ON YATES JUDGEMENT SINCE YATES EXPERIENCE WORKING WITH EQUIPMENT IS AN EVERY DAY AFFAIR, WHERE HE SELL BETWEEN TWO HUNDERD AND THREE HUNDRED PEICES OF EQUIPMENT A YEAR. (REPLY BRIEF PAGE 9, LINE 4.) "SIC", THE ACTUAL TRANSCRIPT RECORDED ON PAGE 84 LINES 14,15,16, CLEARLY DIFFERS BY A POSITIVE RESPONSE OF 300 PEICES OF EQUIPMENT. [If the Court reasons this out, that is 8 tenths peices of equipment each day for 365 days] all this comings and goings, with only VAUGHN ADAMS, JEANNIE JORGENSEN, ADAMS IS THE MACHINIC, JORGENSEN THE BOOKEEPE- R., YATES THE PURCHASER OF EQUIPMENT, OWNER GENERAL MANAGER, SALESMAN, THIS IS SIMPLY UNBELEIVABLE, IF YATES IS TELLING THE TRUTH. A CORRECTION NEEDS TO BE MADE ON PAGE 12, OF THE APPELLEE BRIEF, ON PAGE 12, LINE 17, WHICH REFERS TO ADAMS WELDING A CRACKED BOOM (TR 51. AT 6. REFERS TO ONLY TO A QUESTION [DID HE SAY ANYTHING TO YOU WHILE HE WAS DOING---} AND TR 52 AT 17 IS AN ANSWER [AT LEAST, YES} NEITHER REFERENCES ARE DIRECTED TO WELDING A CRACKED BOOM, ANOTHER FALSEHOOD CONTAINED IN THE APPELLEE BRIEF. THE APPELLEE BRIEF AVERS THAT THE EVIDENCE PRESENTED TO THE TRIAL COURT WAS FACT, WHEN THE EVIDENCE WAS

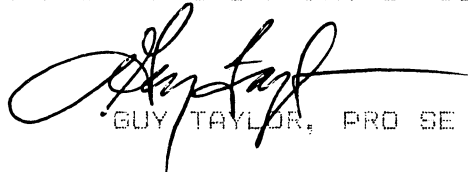
NOT FACT, AND WAS ERRONEOUS. EVIDENCE AFTER THE TRIAL CLEARLY PROVED THAT THE SO CALLED REPAIRS SIMPLY WERE NOT MADE TO THE MACHINE AT ALL. HAD YATES SUPPLIED TAYLOR WITH THE NAME OF THE MAN YATES SOLD THE MACHINE TO AS AGREED, THE TRIAL COURT WOULD NEVER MADE A RULING AWARDDING YATES FOR REPAIRS THAT WERE NEVER MADE. THE MACHINE WAS BROKEN DOWN PRIOR TO TAYLOR PICKING UP THE MACHINE. AND THE SAME DEFFECTS WERE PRESENT WHEN ACKERMAN RECIEVED THE MACHINE. TAYLOR HAS "MARSHALLED THE EVIDENCE" AND THE AFFADAVITE OF WHETSTONE CLEARLY CALLS ATTENTION TO THE FACTS. ADDITIONALLY THE APPELLEE YATES ARGUES POINTS WHICH WERE SIMPLY NOT AT ISSUE AT TRIAL. THE COMPLAINT WAS INFACIT AMENDED AT TRIAL TO ONLY INCLUDE SO CALLED REPAIRS WHICH YATES CLAIMED HE MADE TO THE MACHINE IN ORDER TO RE SELL IT. THE COURT MADE ITS AWARD SIMPLY ON THAT BASIS. YATES SOLD THE MACHINE FOR \$ 22,000.00. HAD SUFFERED NO LOSS. THE DAMAGES THAT THE COURT FEELS, WERE BOLT THE CAB DOWN, ETC. (TR 233,234,235,236) ITS IRONIC THAT DISCOVERY PROVED THAT NONE OF THE WORK CLAIMED BY YATES WAS EVER DONE. FURTHER GARRETT ASSURED THE COURT THAT HE (GARRETT, THE MACHINES OWNER AT THE TIME OF SALE) NOTICED ASIDE FROM A PAINT JOB NOTHING HAD BEEN DONE TO THE MACHINE. ALSO THAT THE MACHINE WAS IN VERY ROUGH CONDITION. (TR 132) AND THAT THE CAB WAS NOT BOLTED DOWN. (TR 133 LN 16-25)

CONCLUSION


THROUGH OUT THIS WHOLE UNNECESSARY ORDEAL, FROM START UNTIL NOW, YATES HAS REPEATEDLY MISREPRESENTED FACT. EVEN THIS BRIEF, IS MORE FICTION THAN FACT. EVEN CLAIMING THAT TAYLOR [DID NOT APPEAR FOR DEPOSITION AS SCHEDULED] A BALD LIE. IT

WAS THE PLAINTIFF [WHO WAS NOT READY] TO HOLD A DEPOSITION AS
SCHEDULED, IN FACT DID NOT HAVE A COURT REPORTER PRESENT AND
THAT FRUSTRATED TAYLOR, WHO THEN LEFT ANDERSONS OFFICE. AFTER
FIRST BEING DETAINED AGAINST TAYLORS WILL. REPEATEDLY YATES
HAS INDICATED IN HIS BRIEF THAT TAYLOR FAILED TO SHOW UP FOR
TRIAL. IT WAS THE COURT WHO MADE A [TENNATIVE] COURT DATE
THAT WAS NEVER CONFIRMED, AND TAYLOR DID NOT RECEIVE ANY
CONFIRMATION OF A TRIAL DATE FROM THE COURT. ALSO NO
CONFIRMATION WAS EVER ISSUED BY THE COURT. YATES [DOES NOT]
PROVIDE TAYLOR WITH ANYTHING, ALTHOUGH CAREFULLY CLAIMS TO
DO SO. THIS [CONFUSES] TAYLOR, SINCE TAYLOR FACED THE ELEMENT
OF SURPRISE, AT TRIAL, AND STILL FACES THAT SAME ELEMENT NOW. IT
APPEARS, THAT MUST BE THE WAY YATES WORKS. HE CERTIFIES HE
MAILS SOMETHING, THAT IS NEVER RECEIVED BY TAYLOR. THIS SIMPLY
IS UNREASONABLE. THIS APPELLEE BRIEF IS AN EXAMPLE. TAYLOR
HAVING RESPONDED TO A FEW OF THE INCONSISTENCIES AND ERRORS
AS STATED BY YATES IN HIS BRIEF, RESPECTFULLY REQUESTS A
REVERSAL OF THE TRIAL COURTS DECISION AND A REMANDING OF THE
CASE FOR FIXING OF DAMAGES ON TAYLORS COUNTER CLAIM.

RESPECTFULLY SUBMITTED THIS 8TH DAY OF JULY 1992.


GUY TAYLOR, PRO SE

CERTIFICATE OF MAILING

I HEREBY CERTIFY THAT I MAILED, POSTAGE PREPAID, FOUR
COPIES OF ALLELLANTS REPLY BRIEF TO THE FOLLOWING ON THIS


MR GARY ANDERSON,
ATTORNEY FOR APPELLEE
WEST PARK
750 NORTH FREEDOM BLVD
PROVO, UTAH 84601

A handwritten signature in black ink, appearing to read "Gary Anderson", with a long horizontal flourish extending to the right.

Rule 26

UTAH RULES OF APPELLATE PROCEDURE

as all parties otherwise consent, an amicus curiae or guardian ad litem shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus curiae or guardian ad litem will support, unless the court for cause shown otherwise orders. A motion of an amicus curiae or guardian ad litem to participate in the oral argument will be granted when circumstances warrant in the court's discretion.

Rule 26. Filing and service of briefs.

(a) **Time for serving and filing briefs.** The appellant shall serve and file a brief within 40 days after date of notice from the clerk of the appellate court pursuant to Rule 13, unless a motion for summary disposition has been previously interposed pursuant to Rule 10, in which event service and filing shall be within 30 days from the denial of such motion. The appellee shall serve and file a brief within 30 days after service of the appellant's brief. A reply brief may be served and filed by the appellant within 30 days after the filing and service of the appellee's brief, but, except for good cause shown, a reply brief must be served and filed at least 10 days before argument. By stipulation filed with the court, the parties may extend each of such periods for no more than 30 days in civil cases or 15 days in criminal cases. No such stipulation shall be effective unless it is filed prior to the expiration of the period sought to be extended.

(b) **Number of copies to be filed and served.** Ten copies of each brief, one of which shall contain an original signature, shall be filed with the Clerk of the Supreme Court. Eight copies of each brief, one of which shall contain an original signature, shall be filed with the Clerk of the Court of Appeals. Four copies shall be served on counsel for each party separately represented.

(c) **Consequence of failure to file briefs.** If an appellant fails to file a brief within the time provided in this rule, or within the time as may be extended by order of the appellate court, an appellee may move for dismissal of the appeal. If an appellee fails to file a brief within the time provided by this rule, or within the time as may be extended by order of the appellate court, an appellant may move that the appellee not be heard at oral argument.

(d) **Return of record to the clerk.** Each party, upon the filing of its brief, shall return the record to the clerk of the court having custody pursuant to these rules.

Rule 27. Form of briefs.

(a) **Paper size; printing and spacing.** Briefs shall be typewritten, printed or prepared by photocopying or other duplicating or copying process that will produce clear, black and permanent copies equally legible to printing, in type not smaller than ten characters per inch, on opaque, unglazed white paper 8½ inches wide and 11 inches long, and shall be securely bound along the left margin. The impression must be double spaced, except for matter customarily single spaced and indented, with adequate margins on the top and sides of each page.

(b) **Binding.** Briefs shall be printed on both sides of the page, and bound with a compact-type binding so as not unduly to increase the thickness of the brief along the bound side. Coiled plastic and spiral-type bindings are not acceptable.

(c) **Color of cover; contents of cover.** The cover of the brief of appellant shall be blue; that of appellee, red; that of intervenor, guardian ad litem, or amicus

curiae, green; that of any reply brief, gray; that of any petition for rehearing, tan; that of any response to a petition for rehearing, white; that of a petition for certiorari, white; that of a response to a petition for certiorari, orange; and that of a reply to the response to a petition for certiorari, yellow. All covers shall be of heavy stock. There shall be adequate contrast between the printing and the color of the cover. The cover of all briefs shall set forth in the caption the full title given to the case in the court of agency from which the appeal was taken, as modified pursuant to Rule 3(g), as well as the designation of the parties both as they appeared in the lower court or agency and as they appear in the appeal. In addition, the covers shall contain: the name of the appellate court; the number of the case in the appellate court opposite the case title; the priority number of the case, as set forth in Rule 29; the title of the document (e.g., Brief of Appellant); the nature of the proceeding in the appellate court (e.g., Appeal, Petition for Review) and the name of the court and judge, agency or board below; the names and addresses of counsel for the respective parties designated as attorney for appellant, petitioner, appellee, or respondent as the case may be. The names of counsel for each party filing the document shall appear in the lower right and opposing counsel in the lower left of the cover.

(d) **Effect of non-compliance with rule.** The clerk shall examine all briefs before filing. If they are not prepared in accordance with this rule, they may not be filed but shall be returned to be properly prepared. The clerk may permit variance from this rule for good cause.

Rule 28. Prehearing conference.

The court may direct the attorneys for the parties to appear before the court, a justice, judge, or an appointed referee for a prehearing conference to consider the simplification of the issues and such other matters as may aid in the disposition of the proceeding by the court. The court, justice, judge, or appointed referee shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered, and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

Rule 29. Oral argument.

(a) **In general.** Oral argument will be allowed in all cases unless the court concludes:

- (1) The appeal is frivolous; or
- (2) The dispositive issue or set of issues has been recently authoritatively decided; or
- (3) The facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

(b) **Priority of argument.** Cases shall be scheduled for oral argument in accordance with the following list of priorities:

- (1) Appeals from convictions in which the death penalty has been imposed;
- (2) Appeals from convictions in all other criminal matters;
- (3) Appeals from habeas corpus petitions and other post-conviction proceedings;
- (4) Appeals from orders concerning child custody or termination of parental rights;

requested, he shall specify so much of it as is true and deny only the remainder.

Compiler's Notes.

This Rule apparently supersedes former sections 104 12 2, 104 12 3, 104 53 1 and 104 53 2 (Code 1943) all of which sections were repealed by Laws 1951, ch. 58, § 3. This Rule is considerably different from procedure under former Civil Code. Under former section 104 12 2 it was required that the opposing party deny under verified oath the execution of written instruments and the endorsements thereon in the pleadings, except as provided in former section 104 12 3, where such party is

denied an inspection of the original. Under this Rule a party is entitled to inspect all such instruments. Under provisions of former section 104 53 1, a party was authorized to exhibit papers material to the action and request an admission in writing of its genuineness. The penalty for the refusal as contained in that section and in former section 104 53 2 is similar to the penalty provided under present Rule 37.

This Rule is similar to Fed Rule 36(b)

(b) **Effect of Admission.** Any admission made by a party pursuant to such request is for the purpose of the pending action only and neither constitutes an admission by him for any other purpose nor may be used against him in any other proceeding.

Compiler's Notes.

This Rule is entirely new to the procedure of this state, it having had no counterpart in the former Civil Code. It

is, however, a proper limitation on the right to require admissions as to writings and other material.

This Rule is similar to Fed Rule 36(b)

RULE 37

REFUSAL TO MAKE DISCOVERY CONSEQUENCES

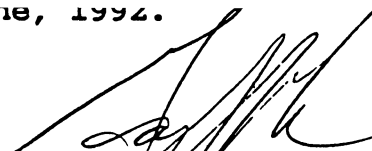
(a) **Refusal to Answer.** If a party or other deponent refuses to answer any question propounded upon oral examination, the examination shall be completed on other matters or adjourned, as the proponent of the question may prefer. Thereafter, on reasonable notice to all persons affected thereby, he may apply to the court in which the action is pending or the court in the district where the deposition is taken for an order compelling an answer. Upon the refusal of a deponent to answer any interrogatory submitted under Rule 31 or upon the refusal of a party to answer any interrogatory submitted under Rule 33, the proponent of the question may on like notice make like application for such an order. If the motion is granted and if the court finds that the refusal was without substantial justification the court shall require the refusing party or deponent and the party or attorney advising the refusal or *either of them to pay the examining party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees.* If the motion is denied and if the court finds that the motion was made without substantial justification, the court shall require the examining party or the attorney advising the motion or both of them to pay to the refusing party or witness the amount of the reasonable expenses incurred in opposing the motion, including reasonable attorney's fees.

Compiler's Notes

This Rule is new to the procedure of this state, although contempt has been used as a method of compelling an answer where deponent refuses either on his own

initiative or on the advice of counsel. The statutory provisions relative to contempt have been retained and were not repealed by Laws 1951, ch. 58, § 3

Dated this 3rd day of June, 1992.



Gary J. Anderson, Attorney for
Appellant.

MAILING CERTIFICATE

I certify that on the 3rd day of June, 1992, I mailed four
copies of the foregoing, prepaid to the Appellant, at the
following address:

-30-

Addendum # (A)

MAILING CERTIFICATE

I hereby certify that on the 20 day of June, 1991, I mailed a true and correct copy of the foregoing to the following, postage prepaid.

Mr. Guy L. Taylor
H.C. 2 Box 40
Duchesne, Utah 84021

Aida Peay

691\YATES.O&J

Note Descripency
In this? Note
Y & AK etc.
*Taken from Reply Brief)

**UTAH
COURT OF APPEALS**

400 Midtown Plaza
230 South 500 East
Salt Lake City, UT 84102
(801) 533-6800

July 06, 1992

Case: 920336-CA
Title: Guy Taylor v. Jim Yates

Payor: Guy Taylor

Photocopy Charge Check 15.50

Receipt No. 000463 by JAS

Addendum (C)

STATEMENT OF FACTS

A. General Background of the Parties.

1. The Plaintiff, Jim Yates is 49 years of age (Tr. P. 82 at Line 10). After Mr. Yates graduated from high school he operated heavy equipment for a period of time and then became employed by Rick Warner Truck Sales as a mechanic (Tr. P. 82 at Line 22 to P.

- 8 -

83 at Line 5).

2. The Plaintiff was a mechanic for only three years after which he became a heavy truck salesman which position he held sixteen to seventeen years (Tr. P. 83 at Line 1 to Line 8).

3. In approximately 1985 or 1986, the Plaintiff discontinued his employment with Rick Warner to expand his business of buying and selling used heavy equipment (Tr. P. 83 at Line 12 to P. 84 at Line 6). To the time of trial, Mr. Yates has been buying and selling used heavy equipment for fourteen to fifteen years (Tr. P. 83 at Line 7 to Page 84 at Line 6).

4. During the time the Plaintiff has been in the used heavy equipment business, he has sold approximately Two Hundred to Three Hundred pieces of equipment a year (Tr. P. 84 at Line 14 to Line 22).

5. At the time of trial the Defendant was 56 years of age.

Adverse (D)

1 broke that machine down, the difference of what it cost me
2 to put it back into good shape.

3 Q So we are back to a situation where you are not
4 expecting to receive the \$22,000 from this party and \$21,000
5 from me, a total of \$43,000?

6 A No, I'm not expecting that. All I want is what you
7 broke down and what it cost me to put that back into shape
8 so I could turn around and sell it the second time.

9 Q In other words, you acknowledge that you've receiv-
10 ed \$22,000?

11 A I acknowledge that I have received \$22,000.

12 Q So you have actually no damage --

13 A Yes, I do.

14 Q -- done to you?

15 A It cost me whatever it is, nine, ten thousand
16 dollars to put it back into shape so I could sell it for
17 \$22,000.

18 MR. TAYLOR: Okay. I'd like to enter
19 this exhibit, your Honor.

20 MR. ANDERSON: I have no objection.

21 THE COURT: It will be received.

22 MR. TAYLOR: I'd like to offer another
23 exhibit, the deposition of Mr. Yates.

24 THE COURT: You can have it published.

25 What do you --

1 A No, I'm not asking for double profit, I'm just
2 asking for the damage that you've done.

3 Q (By Mr. Taylor) In your complaint you made refer-
4 ence to the fact that I would not return the machine to you.
5 I think if you follow the original complaint, it states that
6 you want some type of damage for failure to return the machine
7 to you and to continue to use it. Is that not true?

8 A Say that again.

9 Q Let me get the complaint. We'll read it.

10 MR. ANDERSON: Your Honor, perhaps we
11 could short-circuit that. I think perhaps at the time Mr.
12 Johnson drafted that complaint he was unaware that the machine
13 had not been returned. We are not asking for those damages,
14 we are asking for the damages that Mr. Yates has testified
15 to only.

16 MR. TAYLOR: Counsel, is it true then
17 that we are changing the original scope of the complaint?

18 MR. ANDERSON: We are not changing any-
19 thing. What we are doing is asking for the damage that
20 Mr. Yates has testified to. And that's all that we are ask-
1 ing for.

2 Q (By Mr. Taylor) Then it's, if I understand this
3 correctly, and ask you the question, Mr. Yates: Are you
expecting payment of this \$21,000 from me?

A I'm expecting right now the difference, and you

erty, the machinery for more than \$22,000?

MR. TAYLOR: No. I think that he sold machinery, that he misrepresented the machine, your Honor. I think that he didn't own the machine at the time of the sale. I think that the machine didn't come back in repairs less than what it was received. I think it came back in better shape than it was received.

THE COURT: You may go into that if you want; but as far as what the machine was sold for, to whom it was sold, that's been provided to you. I don't want to pursue that any further.

MR. TAYLOR: Okay.

THE COURT: As to whether or not he owned the machine, that has never been raised as an issue. I don't want you to pursue that any further. You can go into the question of its condition, and that may be relevant.

Q (By Mr. Taylor) Mr. Yates, you indicated that you never give a warranty on a used machine?

A I never give a warranty on a used machine.

Q Do you understand the term "implied warranty," what is an implied warranty?

MR. ANDERSON: I'll object, your Honor, as irrelevant.

THE COURT: The objection is sustained.

Q (By Mr. Taylor) And let's see, I had an exhibit