

1969

Janice C. Martin, Widow, Gaylynn Martin,
Michelle Martin, Gary Chadwick Martin, And Val
James Martin, Minors By And Through Their
Guardian Ad Litem, Jance C. Martin v. Lynn D.
Christensen And Farmers Insurance . Ex-Change, A
California Corporation : Appellant's Brief

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IN THE SUPREME COURT OF THE STATE OF UTAH

JANICE C. MARTIN, Widow, GAY-
LYNN MARTIN, MICHELLE
MARTIN, GARY CHADWICK
MARTIN, and VAL JAMES MAR-
TIN, Minors by and through their Guard-
ian Ad Litem, JANCE C. MARTIN,

Plaintiffs and Appellants,

vs.

LYNN D. CHRISTENSEN and
FARMERS INSURANCE EX-
CHANGE, a California Corporation,

Defendants and Respondents.

Case No.

~~10000~~
11450

APPELLANT'S BRIEF

Appeal from the Judgment of the Third District Court in and for
Salt Lake County

Honorable Stewart M. Hanson, Judge

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FILED

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Clk. Supreme Court, Utah

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TIN, Minors by and through their Guard-
ian Ad Litem, JANICE C. MARTIN,

Plaintiffs and Appellants,

Case No.
182005

vs.

LYNN D. CHRISTENSEN and
FARMERS INSURANCE EX-
CHANGE, a California Corporation,

Defendants and Respondents.

APPELLANT'S BRIEF

STATEMENT OF NATURE OF CASE

Plaintiffs, Janice C. Martin et al, appeal from an Order granting the defendants' motion for partial Summary Judgment in the Third Judicial District Court of Salt Lake County, State of Utah, the Honorable Stewart M. Hanson presiding.

DISPOSITION IN THE LOWER COURT

Plaintiffs filed a complaint against the defendants in the District Court of the Third Judicial District, Salt Lake County, State of Utah, on the 9th day of September, 1968. After hearing arguments on both plaintiffs' and defendants' motions for summary judgment, Judge Stewart M. Hanson entered an Order partially granting the defendants' motion on the 6th day of November, 1968. Subsequently, the appellants filed an interlocutory appeal pursuant to Rule 72 (b) of the Utah Rules of Civil Procedure.

RELIEF SOUGHT ON APPEAL

The appellant submits that the Order partially granting the defendants' motion for Summary Judgment should be reversed, and an order entered that plaintiffs are entitled to the relief prayed for in their Motion for Summary Judgment as a matter of law.

STATEMENT OF FACTS

At approximately 9:00 p.m. on or about the 1st day of December, 1967, plaintiff, Janice C. Martin, and her now deceased husband, Gary, were pedestrians at the Southeast corner of the intersection at 3300 South and 500 East Streets, Salt Lake County, Utah. While walking on the sidewalk, the plaintiff and her husband were struck by an automobile being driven by defendant, Lynn D. Christensen, an uninsured motorist.

As of December 1, 1967, Gary Martin was the named insured in two (2) insurance policies with Defendant Carrier namely specified as Nos. 76-6643-02-14 and 76-6643-00-14, both of which provided coverage for uninsured motorists. At the time of his death, Gary Martin was thirty-six (36) years of age and had a reasonable life expectancy of another thirty-eight (38) years; and he was earning approximately Ten Thousand Dollars (\$10,000) per year.

At the hearing on November 6, 1968, arguments for Summary Judgment were entered by both plaintiff and defendant. The defendant argued that the extent of financial liability of the defendant was limited to \$10,000 for the heirs of Gary Martin, Deceased, and \$10,000 for injuries to Janice C. Martin. In support of its contention the Defendant relief upon Condition (7) of PART II, Coverage C, of said insurance policies, which reads as follows:

With respect to any occurrence, accident or loss to which this and any other insurance policy or policies issued to the insured by the Company also apply, no payment shall be made hereunder which, when added to any amount paid or payable under such other insurance policy or policies, would result in a total payment to the insured or any other person in excess of the highest applicable limit of liability under any one such policy.

On the other hand plaintiff argued that the extent of financial liability of the Defendant should be found

to include up to an amount of \$20,000 for the heirs of Gary Martin, deceased, and \$20,000 for injuries to Janice C. Martin for reasons which shall appear herein.

At the conclusion of the hearing the Court found in favor of the defendant's motion upon reasons contrary to law and repugnant to public policy.

ARGUMENT

POINT I

THE INSURER VOLUNTARILY WAIVED THE PROVISIONS OF PARAGRAPH 7 OF PART II ENTITLED "OTHER INSURANCE IN THE COMPANY" BY CONTRACTING FOR ADDITIONAL COVERAGE AND ACCEPTING A PREMIUM THEREFOR.

The insurance policies in question are identical with the exception of the description of the vehicles, and the dates of issuance. Both policies contained an uninsured motorist provision, and a provision limiting liability where there was "other insurance." The situation thus becomes that Farmers issued a second policy to the Martins knowing that the "other insurance" condition in the first policy would invalidate the expected coverage in the second policy.

Plaintiff respectfully contends that knowledge of the "other insurance" clause on the part of Farmers plus acceptance and retention by the company of additional

premium payments constitutes a waiver of said clause and that the Respondent should be estopped from asserting said clause as a defense. See generally 28 Am. Jur. 2d, Estoppel and Waiver, § 162. Under the terms of the first insurance policy, the Appellants would have received Twenty Thousand Dollars (\$20,000), the exact amount the defendant admits it owes despite the existence of a second policy.

In light of above principles and well-settled notions of equity, the lower court was clearly in error in granting the defendant's motion for partial summary judgment.

POINT II

THE LOWER COURT'S GRANTING OF DEFENDANT'S MOTION FOR PARTIAL SUMMARY JUDGMENT FRUSTRATES THE PURPOSE OF UTAH'S UNINSURED MOTORIST STATUTE.

Utah Code Ann., 1953, Sec. 41-12-21.1 (1967 Supp.) sets out certain minimum requirements automobile insurance policies must meet. The requirement under consideration is found in Utah Code Ann., 1953, 41-12-5 (1967 Supp.) and reads in part as follows:

“ . . . provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interests and costs, of not less than \$10,000 because of bodily injury to or death of one person

in any one accident and, subject to said limit for one person, to a limit of not less than \$20,000 because of bodily injury to or death of two, or more persons in any one accident, . . . ”

The obvious intent of the Legislature in enacting the Uninsured Motorist Act was to provide insurance to policyholders such as plaintiff Martin against inadequate compensation for injuries or death caused by the negligence of financially irresponsible motorists. Furthermore, the statute sets out only the minimum requirements an insurance policy must meet in this state. The statute does not prohibit parties from contracting for more insurance coverage if they so desire, and what better example of additional desired coverage can there be than by purchasing a second policy and paying additional premiums?

The plaintiff is seeking to recover only the amount stated in each policy which is the minimum amount of coverage required by state law for bodily injury to, or death of, two or more persons in any one accident.

A case almost exactly in point is the case of *Robey v. Safeco Insurance Company of America*, 270 F. Supp. 473 (D. Ark. 1967). In *Robey* the defendant had issued to plaintiff two insurance policies on two different cars. Judge John E. Miller had before him the questions of the legal effect of the “other insurance” clauses in the two policies issued by Safeco. Both of the policies contained an uninsured motorist provision, and a provision limiting liability where there was “other insurance.”

Judge Miller held:

“The ‘other insurance’ provision in the Safeco policies are not applicable with respect to each other. The contention of the defendant that its liability should be pro-rated between the two policies is invalid.”

Thus, the court held that the liability of the defendant was the sum of the minimum amounts required by state law under both policies. In essence the court held in the *Robey* case that the legislative intent as expressed in the Uninsured Motorist Act required the insurer to give the stated coverage in each policy regardless of the “other insurance” provisions found in the two Safeco policies issued to the plaintiff.

It should also be noted that the Arkansas statute is practically identical with the Utah act. See Ark. Stat. Ann. Sec. 66-4003 (1966 Repl.) and Sec. 75-1427 (1965 Supp.). This latter section provides that no policy or bond shall be effective:

“ . . . unless issued by an insurance company or surety company authorized to do business in this State . . . unless such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interests and costs, of not less than \$10,000 because of bodily injury to or death of one (1) person in any one (1) accident and subject to said limit for one (1) person, to a limit of not less than \$20,000 because of bodily injury to or death of two (2) or more persons in any one (1) accident . . . ”

In other words, the court in *Robey* said the effect of the issuance of the second policy which also contained the uninsured motorist clauses was to provide the plaintiff coverage of \$20,000/\$40,000 for uninsured motorist protection despite the presence of "other insurance" clauses in both policies.

CONCLUSION

For the foregoing reasons plaintiff respectfully submits that this Court determine that the lower court should have rejected defendant's motion for summary judgment because the ruling was contrary to principles of equity; was contrary to judicial precedent; and which, if allowed to stand, would frustrate the expressed legislative intent embodied in the Utah Uninsured Motorists Act.

This court should ~~reserve to~~ ^{reverse the} decision of the lower court and remand the case back to the District Court for relief in accordance herewith.

Respectfully submitted,

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