

1970

Seth H. Young v. Richard Saunders : Brief of Appellant

Follow this and additional works at: https://digitalcommons.law.byu.edu/uofu_sc2

Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errors. Gordon I. Hyde; Attorney for Appellant

Recommended Citation

Brief of Appellant, *Young v. Saunders*, No. 11868 (1970).
https://digitalcommons.law.byu.edu/uofu_sc2/4949

This Brief of Appellant is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs (1965 –) by an authorized administrator of BYU Law Digital Commons. For more information, please contact hunterlawlibrary@byu.edu.

IN THE SUPREME COURT

OF THE **FILED**
STATE OF UTAH

MAR 26 1970

SETH H. YOUNG,
Plaintiff and Respondent,

vs.

RICHARD SAUNDERS,
Defendant and Appellant.

Clerk, Supreme Court, Utah

Case No.
11868

BRIEF OF APPELLANT

Appeal from Judgment of
Second District Court of Weber County, Utah
Honorable John F. Walquist, *Judge*

GORDON I. HYDE
610 Kearns Building
Salt Lake City, Utah
*Attorney for
Defendant-Appellant*

GREENWOOD AND MESERVY
444 South State Street
Salt Lake City, Utah
Attorneys for Plaintiff-Respondent

TABLE OF CONTENTS

	<i>Page</i>
STATEMENT OF THE KIND OF CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	2
ARGUMENT	3
POINT I.	
PLAINTIFF-RESPONDENT FAILED TO ESTABLISH TITLE AND RIGHT TO POSSESSION	3
CONCLUSION	6

TEXTS CITED

73 C.J.S. Property #17b. P. 213	4
---------------------------------------	---

IN THE SUPREME COURT
OF THE
STATE OF UTAH

SETH H. YOUNG,
Plaintiff and Respondent,

vs.

RICHARD SAUNDERS,
Defendant and Appellant.

Case No.
11868

BRIEF OF APPELLANT

STATEMENT OF THE KIND OF CASE

This action was brought by the plaintiff-respondent to obtain the possession of a boat which had been sold to the defendant-appellant by United Motor Club. Plaintiff-respondent claims title through Kenneth Arge, son of the owner of United Motor Club.

DISPOSITION IN LOWER COURT

The lower court found title to the boat in the plaintiff and ordered the defendant to deliver possession to the plaintiff-respondent Young.

RELIEF SOUGHT ON APPEAL

The defendant-appellant seeks a reversal of the judgment of the lower court and restoration of the possession of the boat to him.

STATEMENT OF FACTS

Sometime in early April, 1967, Sam Arge, the owner of United Motor Club, a Utah corporation, approached the defendant Richard Saunders and asked him if he would lend \$2,000.00 to the United Motor Club, which was in very serious financial condition and could not survive without the needed loan (Tr. P. 31, 32).

Neither Arge nor the Club had enough credit to obtain a loan; therefore, it was proposed that Saunders borrow the money from his bank. Saunders contacted his bank, and they agreed to lend him \$1,500 against a boat to be provided as security by Arge. Saunders agreed that he would borrow \$1,500 against the boat and lend \$500 of his own money to save the Motor Club. Arge then instructed Harry Stout, the President of United Motor Club, to give Saunders a bill of sale on the boat, the oral understanding being that the Club would make the payments on the bank loan and the \$500 of Saunders' money, and then Saunders would reconvey the title to the Club (Tr. P. 32 to 35).

Stout gave Saunders a bill of sale (R. 17), and Saunders borrowed the \$1,500.00 from the First Security Bank, who duly filed the financing statement with the Secretary of State (R. 17). Stout, a lawyer by training, first verified that the title was in United Motor Club by checking the title documents held by Continental Bank & Trust Company pursuant to a

loan made by them to United Motor Club, who pledged the boat to secure that loan (Tr. P. 50-52).

Saunders turned over the \$1,500 received from the bank and \$500 of his own funds to Arge and Stout, who used the funds for the benefit of the Motor Club.

Four months later in settling a debt owed to Seth Young, Sam Arge volunteered to make Young a gift of the boat. According to Young, the boat was not part of the consideration for settling the debt but was a gift:

“I’m going to give you the boat. I don’t care whether you ever pay me for it or what you do, but I’m leaving town, and I want to do right by you, and I want you to have it.” (Tr. P. 17)

Four months after the boat had been conveyed to Saunders, Arge had his son Kenneth give a bill of sale of the boat to Young. No evidence was offered to show any title in Kenneth Arge or by what theory Kenneth Arge obtained any title to the boat to convey to Young.

ARGUMENT

POINT I.

PLAINTIFF - RESPONDENT FAILED TO ESTABLISH TITLE AND RIGHT TO POSSESSION.

The plaintiff Young sued to obtain possession of the boat in question, alleging title in himself, but failed at the trial to establish any title. It was his burden

to prove clearly his title as against Saunders, who had obtained title four months earlier.

“The burden is on one alleging divestiture of another’s ownership of property to prove it clearly, and one seeking to dispossess the possessor of personal property has the burden of showing title and the right to do so.” (73 C.J. S. Property #17b. P. 213)

Young offered the following proof to establish title in order to recover possession from Saunders:

1. Arge promised to give him the boat.
2. Kenneth Arge gave a bill of sale to him.
3. The records of the Utah State Park and Recreation Commission showing that Sam Arge had applied for registration as owner of the boat in 1966 and Kenneth Arge applied for registration in 1967. This evidence was objected to but admitted.

This evidence does not meet the standards of the clear proof required. Young, on notice that Sam Arge himself claimed ownership, failed to request any evidence of the right of his boy to give a bill of sale on the boat. No evidence at all was offered to show how Kenneth Arge obtained any claim to title.

On the other hand, the evidence of title introduced by the defendant established title in United Motor Club. This was established by the following facts:

1. The United Motor Club made all of the payments on the boat. Plaintiff’s own witness established this (Tr. P. 29).

2. The United Motor Club pledged the boat title with Continental Bank and later paid the loan off (Tr. P. 30 and Tr. P. 49-50).

3. Harry Stout, President of United Motor Club, handled financing at the Continental Bank, which involved pledging the title to the bank and saw the original title documents, which were in the name of United Motor Club (Tr. P. 49-52).

4. Sam Arge directed Harry Stout to make out the bill of sale to Saunders for the \$2,000 loan to United Motor Club.

5. Stout checked the title before issuing the bill of sale to Saunders and found the title was in United Motor Club. Arge asked Stout to check with Continental Bank because he could not recall who had title to the boat (Tr. P. 59).

6. Stout told both Arge and Young that the Saunders interest would have to be paid before the boat could be transferred to Young (Tr. P. 53).

Had the bill of sale been given by Sam Arge himself, the plaintiff might be closer to meeting the burden of proof required of him. However, the plaintiff defeated his own claim by introducing the bill of sale from Kenneth Arge after attempting to prove and claiming that the title was in Sam Arge and that he had the power to sell the boat.

CONCLUSION

The plaintiff-respondent failed to prove his title to the boat, and the trial court, therefore, erred in granting him possession. The Court should order the possession of the boat restored to defendant-appellant and order the complaint to be dismissed.

Respectfully submitted,

GORDON I. HYDE

610 Kearns Building
Salt Lake City, Utah

*Attorney for
Defendant-Appellant*