

1994

Guadalupe Lopez, Plaintiff and Appellant, vs. Larry J. Coet Used Car Dept. and First Security Bank, Defendants and Appellees : Reply Brief

Utah Court of Appeals

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UTAH COURT OF APPEALS  
BRIEF

IN THE UTAH COURT OF APPEALS

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Guadalupe Lopez

Plaintiff/Appellant,

vs.

Case No. 940304-CA

Larry J. Coet Used Car  
Dept. and First Security  
Bank,

Priority No. 15

Defendants/Appellees.

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**APPELLANT LOPEZ' REPLY BRIEF**

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On Appeal from the Judgment of  
the Third Circuit Court for  
Salt Lake County, State of Utah  
Honorable Dennis Fuchs

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MAR 17 1995

COURT OF APPEALS

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## **Reply Brief**

**This appeal is very simple. If First Security Bank assigned to Coet its rights under the Installment Contract which was the subject matter of this litigation, then this appeal must be denied. However, if First Security Bank never did assign said contract to Coet, then this appeal must be granted.**

**Coet consistently tries to characterize the payoff by Coet of the Installment Contract as a "purchase" of the contract, which somehow obviated the requirement that the contract be assigned to Coet. However, the testimony elicited at trial was that:**

- 1. Coet was the original "creditor-seller" under the contract.**
- 2. Coet assigned the contract to First Security Bank via a written assignment, and delivered the original thereof to First Security Bank.**
- 3. After default on the contract, First Security demanded that Coet "pay off" the contract.**
- 4. Coet "paid off" the installment contract -- and typed right on its payoff check to First Security that it was to "Pay Off Account of Guadalupe Lopez".**
- 5. First Security stamped the original contract as "Paid," and retained the original in its files -- and sent nothing (no correspondence, no copy of the**

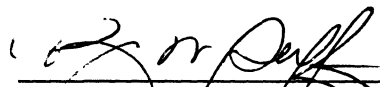
contract -- nothing) back to Coet which would suggest that First Security had assigned its rights under the contract back to Coet.

6. In fact, First Security testified that it did not assign the contract, either in writing or orally, to Coet.

Nothing that Coet can try to do to characterize the payoff of the contract as a "purchase" of the same can change the evidence that was adduced at trial -- the contract was never assigned, either in writing or orally to Coet. Which means that Coet had an equitable claim against Lopez for reimbursement, but not a claim under the contract itself. Consequently, Coet is not entitled to a higher-than-legal rate of interest on the Court's award, nor to the recovery of attorney's fees.

Plaintiff/appellant Lopez respectfully requests that its appeal be granted, and that the trial court's award of contract interest and attorney's fees be reversed.

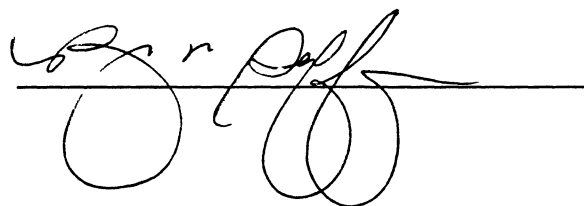
DATED the 17th day of March, 1995.

  
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**Brian W. Steffensen**  
**Attorney for Plaintiff/Appellant**  
**Lopez**

**CERTIFICATE OF SERVICE**

**I, Brian W. Steffensen, certify that on the 17th day of March, 1995, I caused four copies of the foregoing Appellant Lopez' Reply Brief to be served on counsel for appellee by mailing the same, postage prepaid, addressed as follows:**

**P. Bryan Fishburn  
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A handwritten signature in black ink, appearing to read "Brian W. Steffensen", is written over a horizontal line. The signature is stylized and cursive.