

1994

Bruce A. Boyd v. JR Simplot Company; and Savage Scaffold & Equipment, Inc. : Reply Brief

Utah Court of Appeals

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_ca1

 Part of the [Law Commons](#)

Original Brief Submitted to the Utah Court of Appeals; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Scott W. Christensen; Hanson, Epperson & Smith; Attorneys for Defendant/Appellee.

Mark Dalton Dunn; J. Rand Hirschi; Kevin D. Swenson; Dunn & Dunn; Daniel Bay Gibbons;

Kirton, McConkie & Poelman; Attorneys for Plaintiff/Appellant.

Recommended Citation

Reply Brief, *Boyd v. JR Simplot Company*, No. 940558 (Utah Court of Appeals, 1994).

https://digitalcommons.law.byu.edu/byu_ca1/6210

This Reply Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Court of Appeals Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at

http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

**UTAH COURT OF APPEALS
BRIEF**

UTAH
DISTRICT
COURT

FILED
DEPT NO. 940558

IN THE UTAH COURT OF APPEALS

BRUCE A. BOYD,

Plaintiff/Appellant,

vs.

J. R. SIMPLOT COMPANY, a
Nevada corporation; and
**SAVAGE SCAFFOLD &
EQUIPMENT, INC.,** a Utah
corporation,

Defendants/Appellee.

Case No. 940558-CA
930902896PI

Priority No. (15)

REPLY BRIEF OF APPELLANT

APPEALED FROM AN ORDER GRANTING SUMMARY JUDGMENT
TO DEFENDANT SAVAGE FROM THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, THE HONORABLE MICHAEL R. MURPHY, PRESIDING

SCOTT W. CHRISTENSEN, #0649
HANSON, EPPERSON & SMITH
4 Triad Center, Suite 500
Salt Lake City, Utah 84110

Attorneys for Defendant/Appellee
Savage Scaffold & Equipment, Inc.

MARK DALTON DUNN, #4562
J. RAND HIRSCHI, #1503
KEVIN D. SWENSON, #5803
DUNN & DUNN
230 South 500 East, Suite 460
Salt Lake City, Utah 84102

DANIEL BAY GIBBONS, #4837
KIRTON, McCONKIE & POELMAN
60 East South Temple, #1800
Salt Lake City, Utah 84111

Attorneys for Plaintiff/Appellant

FILED

MAR 13 1995

COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

BRUCE A. BOYD,

Plaintiff/Appellant,

vs.

J. R. SIMPLOT COMPANY, a
Nevada corporation; and
**SAVAGE SCAFFOLD &
EQUIPMENT, INC.,** a Utah
corporation.

Defendants/Appellee.

Case No. 940558-CA
930902896PI

Priority No. (15)

REPLY BRIEF OF APPELLANT

APPEALED FROM AN ORDER GRANTING SUMMARY JUDGMENT
TO DEFENDANT SAVAGE FROM THE THIRD JUDICIAL DISTRICT COURT,
SALT LAKE COUNTY, THE HONORABLE MICHAEL R. MURPHY, PRESIDING

SCOTT W. CHRISTENSEN, #0649
HANSON, EPPERSON & SMITH
4 Triad Center, Suite 500
Salt Lake City, Utah 84110

Attorneys for Defendant/Appellee
Savage Scaffold & Equipment, Inc.

MARK DALTON DUNN, #4562
J. RAND HIRSCHI, #1503
KEVIN D. SWENSON, #5803
DUNN & DUNN
230 South 500 East, Suite 460
Salt Lake City, Utah 84102

DANIEL BAY GIBBONS, #4837
KIRTON, McCONKIE & POELMAN
60 East South Temple, #1800
Salt Lake City, Utah 84111

Attorneys for Plaintiff/Appellant

PARTIES TO THE PROCEEDING

The names of all parties to the proceeding in the lower court are set forth in the caption of the case on appeal. J.R. Simplot Company is not involved in this appeal.

TABLE OF CONTENTS

PARTIES TO THE PROCEEDING ii

TABLE OF AUTHORITIES iv

ARGUMENT 1

POINT I: **AT A MINIMUM, THIS MATTER SHOULD BE REMANDED TO
THE TRIAL COURT TO ALLOW A FACTUAL DETERMINATION
AS TO THE PARTIES' "CIRCLE OF ASSENT".**

CONCLUSION..... 2

TABLE OF AUTHORITIES

Cases

Page

Frederick May & Co. v. Dunn, 368 P.2d 266 (Utah 1962)

1

ARGUMENT

I

AT A MINIMUM, THIS MATTER SHOULD BE REMANDED TO THE TRIAL COURT TO ALLOW A FACTUAL DETERMINATION AS TO THE PARTIES' "CIRCLE OF ASSENT"

Savage claims that "the plaintiff failed to show any colorable evidence that the conduct of the parties or the Rental Delivery itself were unfair or procured in an improper manner." (Brief of the Appellee, p. 26.) It is important to note that in order to have the trial court's order granting summary judgment reversed and remanded, the appellant only has to show colorable evidence or infer that a possibility exists the appellant may prevail if given a trial. *Frederick May & Co. v. Dunn*, 368 P.2d 266 (Utah 1962).

If this court will objectively review the Rental Delivery in question from the standpoint of Savage's customers, it will be obvious that the Rental Delivery was intended to hide the most complicated legal provisions which are crowded onto the backside of the first page of the document. It is clear from the document itself and particularly clear from the photocopy of the document that the provision in question is, at best, difficult to locate and read.

It is not Savage's practice to distinguish between "sophisticated businessmen" and other individuals casually renting scaffolding equipment. In this case, Boyd was an agent for Painting Unlimited. On another occasion, Boyd's wife picked up scaffolding and signed a similar Rental Delivery document.

The terms of the clause in question are, without doubt, unreasonable. Not only must Savages' customers be responsible for any injuries they may receive due to Savage's negligence, the customers must indemnify Savage for any injuries others may receive as a result of Savage's negligence.

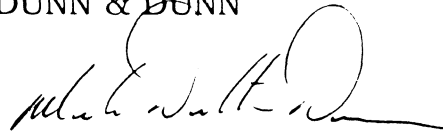
The record below does not sufficiently set forth the relative economic strengths between the silo painter, Boyd, and the company leasing scaffolding equipment, Savage. That, in and of itself, demands that this matter be remanded to the trial court.

CONCLUSION

The Rental Delivery in question is oppressive and unfairly surprise Savage's customers. This court should not allow such a contract to be enforced against unsuspecting consumers. Accordingly, the appellant requests the court reverse and remand this matter to the trial court.

DATED this 13th day of March, 1995.

DUNN & DUNN



MARK DALTON DUNN
J. RAND HIRSCHI
KEVIN D. SWENSON
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

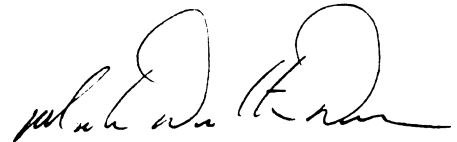
I hereby certify that two true and correct copies of the foregoing Reply
Brief of Appellant were mailed, postage prepaid, this 13th day of March,
1995, to the following:

Attorney for Plaintiff

Daniel Bay Gibbons
KIRTON, McCONKIE & POELMAN
60 East South Temple, Suite 1800
Salt Lake City, Utah 84111-1104

**Attorneys for Defendant Savage Scaffold &
Equipment, Inc.**

Scott W. Christensen
HANSON, EPPERSON & SMITH
4 Triad Center, Suite 500
P. O. Box 2970
Salt Lake City, Utah 84110



MARK DALTON DUNN