

1965

Universal C.I.T. Credit Corporation v. Richard D. Nelson, and Jesse E. Nelson, dba Holladay Used Cars, and Richard D. Nelson, and Jesse E. Nelson : Respondent's Brief

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THE SUPREME COURT
OF THE STATE OF UTAH

FILED

OCT - 1

UNIVERSAL C. I. T. CREDIT
CORPORATION, a corporation,
Plaintiff and Appellant,

vs. —

EDWARD D. NELSON, and
EUSEBIO E. NELSON, d/b/a
WELLDAY USED CARS, and
EDWARD D. NELSON, and
EUSEBIO E. NELSON, as individuals,
Defendants and Respondents.

Clerk Supreme Court

Court

No. 1

RESPONDENT'S BRIEF

Appeals From the Order of Dismissal With Prejudice
of the Third District Court in and for
Salt Lake County
HONORABLE MERRILL C. FAULK, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

UNIVERSAL C. I. T. CREDIT
CORPORATION, a corporation,
Plaintiff and Appellant,

-- vs. --

RICHARD D. NELSON, and
JESSE E. NELSON, d/b/a
HOLLADAY USED CARS, and
RICHARD D. NELSON, and
JESSE E. NELSON, as individuals,
Defendants and Respondents.

Case
No. 10300

RESPONDENT'S BRIEF

STATEMENT OF THE KIND OF CASE

This case is based on Appellant's contention that it furnished financing to Holladay Used Cars and relied upon statements that Holladay Used Cars was a partnership consisting of Jesse E. Nelson and Richard D. Nelson. Appellant further sued on the theory that Jesse E. Nelson had furnished Appellant a guaranty of payment of any indebtedness owed by Holladay Used Cars or Richard D. Nelson. Respondent Jesse E. Nelson de-

fended by denying any partnership and further alleged that the guarantee of payment had been obtained by fraud and that Appellant had obtained the same by misrepresentations as to the condition of Holladay Used Cars when they knew, or should have known that the company was deeply indebted to Appellant.

DISPOSITION IN LOWER COURT

The Court held that there was no partnership between Jesse E. Nelson and Richard D. Nelson and that the guarantee of payment was obtained by statements made to Jesse E. Nelson by Appellant which Appellant knew, or should have known, were false. The action was dismissed as to Jesse E. Nelson.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmation of the decision of the lower court.

STATEMENT OF FACTS

On approximately July 18, 1962, the Appellant had dealings with Richard D. Nelson regarding automobile financing. Some documents were signed by Richard D. Nelson, who added the word partner to his signature, in order to get financial backing from plaintiff. Subsequently, after some lengthy period of time had passed, the defendant Jesse E. Nelson was requested by plaintiff's agent to sign a guarantee of payment for Holladay

Used Cars on the representation that business was "wonderful; everything is just fine" (TR 110) and further that plaintiff was going to extend Holladay Used Cars credit. As a matter of fact, Richard D. Nelson *at that time* owed many thousands of dollars to plaintiff. Defendant Jesse E. Nelson further denied that he ever had been a partner in the business known as Holladay Used Cars in any way, shape or form. Defendant Richard D. Nelson admitted that he had signed as "partner" but alleged his wife was his partner. Nearly all evidence except that presented by Mr. Jesse E. Nelson was evasive and vague.

POINT ONE

THE TRIAL COURT USED ITS DISCRETION IN BELIEVING OR DISBELIEVING TESTIMONY OFFERED IN EVIDENCE AND THUS COMMITTED NO ERROR IN DISMISSING AS TO JESSE E. NELSON.

ARGUMENT

It is the duty of the trier of facts to determine the truth or falsity of testimony presented in evidence and he may believe one over many or many over one. The evi-

dence presented in this case was in direct conflict and to make a decision the trial court was in the best position to observe the demeanor of witnesses and determine whose testimony was most worthy of belief.

CONCLUSION

It is respectfully submitted that because the lower court found in favor of defendant Jesse E. Nelson that the facts should be stated most favorably to the party who prevailed below and that the decision of the lower court should be affirmed, there being a direct conflict in the testimony.

Respectfully submitted,

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