

IN THE  
MISSISSIPPI SUPREME COURT  
FOR THE STATE OF MISSISSIPPI

**COPY**

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SUPREME COURT  
COURT OF APPEALS

AAA COOPER TRANSPORTATION  
Plaintiff-Appellant,

v.

CHUCK PARKS, Individually and  
d/b/a DILLINGHAM MOTORS, and  
DILLINGHAM MOTORS,  
Defendant-Appellee.

Appeal from the Circuit Court of Tippah County, Mississippi

**REPLY BRIEF FOR APPELLANT**

Oral Argument Requested

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### **Statement Regarding Oral Argument**

"[O]ral argument will be allowed unless the court, or the panel to which the case is assigned, unanimously agrees that: (1) the appeal is frivolous; or (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument."<sup>1</sup> In this case, the appeal is not frivolous, the dispositive issues have not been recently authoritatively decided, and the decisional process would be significantly aided by oral argument. Therefore, the Court should allow oral argument.

First, the appeal is not frivolous. The first issue in this case, whether the trial court abused its discretion in denying AAA Cooper Transportations' motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment when T. C. Poplar had not responded to written discovery despite an order granting a motion to compel and an order on a motion for sanctions, when Chuck Parks had not produced important documents, such as bills of sale, before the response was due despite a motion to compel further responses to written discovery and a deposition revealing the existence of such documents, and when Taucia Poplar had not been joined as a party and no discovery had been taken from her despite the fact that a motion to amend complaint had been filed a set for hearing shortly after she was identified as a potential party and a material witness to the case, warrants serious consideration. Also, the second issue in this case, whether the trial court erred in granting summary judgment to Chuck Parks and Dillingham Motors when there are genuine issues as to whether Parks employed T. C. Poplar given that Parks and Poplar

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<sup>1</sup> Miss. R. App. P. 34(a).

swear that there was no employment relationship but another witness swears that Parks employed Poplar, when there are genuine issues as to whether Parks sold the vehicle to Poplar given that there are genuine issues as to the date and amount of the alleged sale, and Parks did not produce important documents, which are the best evidence of a sale, and did not properly assign title, and when there are genuine issues as to whether Parks negligently provided Poplar with a vehicle given that Parks did not remove the old Illinois license plates, did not provide a temporary tag, did not ask to see Poplar's driver's license, and did not ask to see any identification from Poplar, is not lacking in intellectual substance. Therefore, the appeal is not frivolous.

Also, the dispositive issues have not been recently authoritatively decided.

The first issue in this case, whether the trial court abused its discretion in denying AAA Cooper Transportation's motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment, deals with Rule 56(f) of the Mississippi Rules of Civil Procedure. There have been recent cases on Rule 56(f). However, a trial court's decision on whether to grant a motion for additional discovery before responding to summary judgment under Rule 56(f) is very fact specific, and there are no recent decisions dealing with whether to grant a motion for additional discovery before responding to a motion for summary judgment when a co-defendant has not responded to written discovery despite an order granting a motion to compel and an order on a motion for sanctions. Also, there are no recent decisions dealing with whether to grant a motion for additional discovery before responding to a motion for summary judgment when the party moving for summary judgment has not produced important documents, such as the contract at the heart of the case, despite a motion to compel further responses to written discovery and a deposition revealing the existence

of such documents. Finally, there are no recent decisions on whether to grant a motion for additional discovery before responding to a motion a motion for summary judgment when a potential party has not been joined to the case despite the fact that a motion to amend complaint was filed and set for hearing shortly after the potential party was disclosed.

The second issue in this case deals with, among other things, whether there is a genuine issue that Chuck Parks sold the vehicle to T. C. Poplar. There are no recent decisions on whether there is a genuine issue as to a sale when the date of the alleged sale is uncertain, when the amount of the alleged sale is uncertain, when title was not properly transferred, if title was transferred at all, and when important documents regarding the sale, including a bill of sale, buyer's guide, privacy notice, consumer credit disclosure, or sales tax form, which are the best evidence of the sale, were never produced. The second issue in this case also deals with, among other things, whether there is a genuine issue that Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar. There are no recent decisions on whether a used car dealer uses reasonable care in providing a vehicle to a buyer when he does not remove the old license plates from the vehicle and when he does not provide temporary tags. Therefore, the dispositive issues have not been recently decided.

Finally, although the facts and legal arguments are adequately presented in the briefs and record, the decisional process would be significantly aided by oral argument. The first issue in this case, whether the trial court abused its discretion in denying AAA Cooper Transportations' motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment, involves a lengthy procedural history, and the decisional process would be significantly aided by having

present the attorneys involved in the lengthy procedural history to respond to questions. Also, the second issue in this case, which involves whether there is a genuine issue that Chuck Parks sold the vehicle to T. C. Poplar, and whether there is a genuine issue that Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar, deals with a complex matrix of state and federal laws and regulations that govern used car dealers, and the decisional process would be significantly aided by having present attorneys who are familiar with those laws and regulations to respond to questions. Finally, this case will affect all used car sales in Mississippi, and a decision of this nature would be significantly aided by oral argument. Therefore, the decision process would be significantly aided by oral argument and this Court should grant oral argument.

## Table of Contents

Statement Regarding Oral Argument .....	i
Table of Contents .....	v
Table of Citations .....	vi
Argument .....	1
I.    The summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court abused its discretion when it denied AAA Cooper Transportation's motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment .....	1
II.   Even if the trial court did not abuse its discretion when it denied AAA Cooper Transportation's motion for additional discovery, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court erred when it granted Chuck Parks and Dillingham Motors's motion for summary judgment when there are genuine issues as to material facts.. ..	3
Conclusion .....	11
Certificate of Service .....	13
Certificate of Filing .....	14

## Table of Citations

<i>Dillion v. Suburban Motors, Inc.</i> , 166 Cal. App. 3d 233, 212 Cal. Rptr 360, 366 (1985) .	9
<i>Laurel Yamaha v. Freeman</i> , 956 So. 2d 897, 904 (Miss. 2007) . . . . .	8
<i>Sligh v. First National Bank of Homes County</i> , 735 So. 2d 963, 969-970 (Miss. 1999) .	9
Miss. R. App. P. 34(a) . . . . .	i

## **Argument**

- I. The summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court abused its discretion when it denied AAA Cooper Transportation's motion for additional discovery before responding to Parks's and Dillingham Motors's motion for summary judgment.**

In their brief, Chuck Parks and Dillingham Motors do not respond to AAA Cooper Transportation's argument that summary judgment should be reversed because the trial court abused its discretion when it denied AAA Cooper Transportation's motion for additional discovery before responding to Parks's and Dillingham Motors's motion for summary judgment. In other words, in their brief, Chuck Parks and Dillingham Motors do not counter the fact that AAA Cooper Transportation had to respond to their motion for summary judgment when T. C. Poplar had not responded to written discovery despite an order granting a motion to compel and an order on a motion for sanctions. Also, in their brief, Chuck Parks and Dillingham Motors do not answer the fact that AAA Cooper Transportation had to respond to their motion for summary judgment when Chuck Parks had not produced important documents, such as the contract at the heart of the transaction, despite a motion to compel further responses to written discovery and a deposition revealing the existence of such documents. Finally, Chuck Parks and Dillingham Motors do not riposte the fact that AAA Cooper Transportation had to respond to their motion for summary judgment when Taucia Poplar, a necessary party learned of a month and a half before the deadline to respond, through a deposition occasioned by an order on a motion for sanctions, had not been joined and discovery had not been taken from her, despite a motion to amend complaint.



Rather, the most that Chuck Parks and Dillingham Motors can muster are the simple assertions that AAA Cooper Transportation performed, "in depth discovery,"<sup>2</sup> and "le[ft] no stone unturned."<sup>3</sup> AAA Cooper Transportation replies that it could not perform in depth discovery and leave no stone unturned when T. C. Poplar had not responded to written discovery despite an order granting a motion to compel and an order on a motion for sanctions, when Chuck Parks had not produced important documents, such as the contract at the heart of the transaction, despite a motion to compel further responses to written discovery and a deposition revealing the existence of such documents, and when Taucia Poplar, a necessary party learned of a month and a half before the deadline to respond, through a deposition occasioned by an order on a motion for sanctions, had not been joined and discover had not been taken from her, despite a motion to amend complaint. Clearly, under these circumstances, the trial court abused its discretion when it denied AAA Cooper Transportation's motion for additional discovery before responding to Chuck Parks's and Dillingham Motors's motion for summary judgment. Therefore, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed.

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<sup>2</sup> Brief of Appelles at 8.

<sup>3</sup> Id at 17.

**II. Even if the trial court did not abuse its discretion when it denied AAA Cooper Transportation's motion for additional discovery, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed because the trial court erred when it granted Chuck Parks and Dillingham Motors's motion for summary judgment when there are genuine issues as to material facts.**

**B. There is a genuine issue as to whether Chuck Parks employed T. C. Poplar.**

In their brief, Chuck Parks and Dillingham Motors seem to concede that there is a genuine issue as to whether Chuck Parks employed T. C. Poplar. According to Chuck Parks and Dillingham Motors, "[T]he affidavit of a witness paid by the plaintiff, at the very least, could create a genuine issue as to whether Mr. Parks ever employed T. C. Poplar."<sup>4</sup> Chuck Parks and Dillingham Motors then devote the remainder of their response to the argument that, even if Chuck Parks employed T. C. Poplar, Chuck Parks and Dillingham Motors are not liable to AAA Cooper Transportation, Inc. for the accident because T. C. Poplar was not acting within the course of his employment with Chuck Parks and Dillingham Motors at the time of the accident. According to Chuck Parks and Dillingham Motors, "Appellant fails miserably to present any proof that, even if a jury were to believe an employment relationship existed in December of 2005, Mr. Poplar was 'in the course and scope of his employment' with Mr. Parks . . . ."<sup>5</sup>

Given that Chuck Parks states that he never employed T. C. Poplar, and that Poplar states that he was never employed by Parks, but Todd Leidold states in an affidavit that Parks told him that Poplar was his employee, if Parks and Dillingham Motors are conceding that there is a genuine issue as to whether Parks employed

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<sup>4</sup> Brief of Appellees at 15.

<sup>5</sup> Brief of Appellees at 17.

Poplar, then AAA Cooper Transportation would accept that concession. As to the point that AAA Cooper Transportation failed to present any proof that T. C. Poplar was acting within the scope of his employment relationship with Chuck Parks or Dillingham Motors at the time of the accident, AAA Cooper Transportation would reply that they did offer such proof through T. C. Poplar's deposition. In his deposition, T. C. Poplar testified that he did not remember anything about the 24 hour period before the accident.<sup>6</sup> Also, in his deposition, T. C. Poplar testified that he did not remember anything about the trip immediately before the accident.<sup>7</sup> T. C. Poplar's lack of memory creates a genuine issue of material fact to be decided by the jury as to whether T. C. Poplar was acting within the scope of his employment relationship with Chuck Parks or Dillingham Motors at the time of the accident.

**C. There is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar.**

In their brief, Chuck Parks and Dillingham Motors state, "Parks naturally argues that because he had sold the Dodge Avenger, he could not be held liable for negligent entrustment in light of the Mississippi Supreme Court's clear mandate in Laurel Yamaha, Inc. v. Freeman, 956 So. 2d 897 (Miss. 2007)."<sup>8</sup> In reply, AAA Cooper Transportation states that there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar such that *Laurel Yamaha* does not apply. First, there is a genuine issue as to the date of the alleged sale when the certificate of title, which was the only document produced before AAA Cooper Transportation was required to respond to

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<sup>6</sup> C. P. 3:278.

<sup>7</sup> C. P. 2:279-280.

<sup>8</sup> Brief of Appelles at 10.

Chuck Parks's and Dillingham Motors's motion for summary judgment, shows that Anna Jonesboro Motor Company, Inc., a dealer in Illinois, transferred the vehicle to Chuck Parks on December 14, 2005, and Chuck Parks, a dealer in Mississippi, transferred the vehicle to T. C. Poplar on December 14, 2005, the same day. Also, there is a genuine issue as to the amount of the alleged sale when the bills of sale, which were not produced to AAA Cooper Transportation until after it was required to respond to Chuck Parks's and Dillingham Motors's motion for summary judgment, show that on December 14, 2005, Anna Jonesboro Motor Company, Inc., sold the vehicle to Chuck Parks for \$100.00, and that on December 14, 2005, Chuck Parks, a dealer in Mississippi, sold the vehicle to T. C. Poplar for \$4,750.00, a 4,650% profit in less than one day. Further, there is a genuine issue as to whether title was transferred when Chuck Parks admits that, on the day of the agreement, he did not give T. C. Poplar title to the vehicle, as is generally done in non-dealer transactions, and did not complete an application for new certificate of title, as is generally done in dealer transactions, and still retains the original certificate of title on the vehicle. Finally, important documents, which are the best evidence of the alleged sale, were never produced and Chuck Parks cannot testify that he sold the vehicle to T. C. Poplar when he did not produce the documents. Therefore, there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar such that *Laurel Yamaha* does not apply.

**D. There is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar.**

In their brief, Chuck Parks and Dillingham Motors state, "[T]here has been no evidence whatsoever submitted by plaintiff on the second component of that theory of

liability, that being any specific act of negligent entrustment.”<sup>9</sup> Also, “[P]laintiff’s claims of negligent entrustment are [] doomed because of the failure to present any evidence whatsoever of facts supporting a claim for negligent entrustment.”<sup>10</sup> In reply, AAA Cooper Transportation states that it has presented evidence to establish a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar. More specifically, AAA Cooper Transportation has presented evidence that Chuck Parks did not remove the old Illinois license plates,<sup>11</sup> did not provide a temporary tag,<sup>12</sup> did not ask to see a driver’s license,<sup>13</sup> and did not ask to see any identifying information.<sup>14</sup> Once again, the trial court erred in granting Chuck Parks’s and Dillingham Motors’s motion for summary judgment because there is a genuine issue as to the material fact of whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not remove the old Illinois license plates, when he did not provide a temporary tag, when he did not ask to see a driver’s license, and when he did not ask to see any identifying information.

**1. Chuck Parks did not remove the old Illinois license plates.**

In their brief, Chuck Parks and Dillingham Motors do not respond to AAA Cooper Transportation’s argument that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not remove the old Illinois license plates. In other words, in their brief, Chuck Parks and Dillingham

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<sup>9</sup> Brief of Appellees at 12.

<sup>10</sup> Brief of Appellees at 6.

<sup>11</sup> Brief of Appellant at 42-43.

<sup>12</sup> Brief of Appellant at 43-44.

<sup>13</sup> Brief of Appellant at 44-47.

<sup>14</sup> Brief of Appellant at 47.

Motors do not counter AAA Cooper Transportation's argument that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not remove the old Illinois license plates and Section 27-19-141 of the Mississippi Code requires the removal of old license plates. Also, in their brief, Chuck Parks and Dillingham Motors do not explain how there is no genuine issue of material fact as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when Chuck Parks, who is presumably an expert in the field of used car sales, states that, depending on the case, he sometimes leaves old license plates on when he sells a vehicle and that he sometimes takes old license plates off when he sells a vehicle, but had no explanation for this particular transaction, "I just didn't [do it]." As previously mentioned, one explanation for why Chuck Parks did not remove the old Illinois license plates is that, on the day of the alleged sale, Chuck Parks did not give T. C. Poplar documents regarding title, which are necessary to obtain new license plates for a vehicle. Given the lack of explanation in Chuck Parks's deposition, and the lack of response in Parks's and Dillingham Motors's brief, AAA Cooper Transportation submits that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not remove the old Illinois license plates and that the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment.

**2. Chuck Parks did not provide a temporary tag.**

In their brief, Chuck Parks and Dillingham Motors do not respond to AAA Cooper Transportation's argument that there is a genuine issue as to whether Chuck Parks

used reasonable care in providing a vehicle to T. C. Poplar when he did not provide a temporary tag. In other words, in their brief, Chuck Parks and Dillingham Motors do not counter AAA Cooper Transportation's argument that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not provide a temporary tag and Section 27-19-40(2) of the Mississippi Code requires that used car dealers in the State of Mississippi provide temporary tags when they sell cars to nonresidents of the State of Mississippi. Given the lack of response in Chuck Parks's and Dillingham Motors's brief, AAA Cooper Transportation submits that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not provide a temporary tag and that the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment.

### **3. Chuck Parks did not ask to see a driver's license**

In their brief, Chuck Parks and Dillingham Motors state, "The best argument plaintiff can muster in an effort to establish negligent entrustment is the fact that Mr. Parks did not try to determine whether T. C. Poplar was a licensed driver. This argument, however, has expressly been rejected by this Court in Laurel Yamaha, Inc. v. Freeman, 956 So. 2d 897 (Miss. 2007) as a basis for a finding of negligent entrustment."<sup>15</sup> In reply, AAA Cooper Transportation states that *Laurel Yamaha* is distinguishable from this case. First, in *Laurel Yamaha*, a driver's license was asked for and produced, it just did not have a motorcycle endorsement.<sup>16</sup> In this case, by

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<sup>15</sup> Brief of Appellee at 6.

<sup>16</sup> *Laurel Yamaha, Inc. v. Freeman*, 956 So. 2d 897, 904 (Miss. 2007).

contrast, no driver's license was ever asked for or produced.<sup>17</sup> Also, *Laurel Yamaha* seems to conflict with another case, *Sligh v. First National Bank of Holmes County*,<sup>18</sup> where the Mississippi Supreme Court seemed to indicate that a driver's license or lack thereof was a factor to consider in determining whether a used car dealer was liable for negligent entrustment. According to the Court,

Another question presented in this case is whether or not Harreld Chevrolet had the requisite knowledge of Lorange's drinking habits and that he would likely endanger a third party. This is no evidence in the record which would indicate that Harreld Chevrolet had knowledge of Lorange's drinking habits. Harreld Chevrolet sold a truck to Lorange and no further relationship existed between the two. A review of the record shows no evidence that Lorange appeared at the dealership in a drunken state. Further at the time of the purchase he possessed a valid drivers license. There is no casual connection between the sale of the automobile and the accident which occurred two and one-half years later.<sup>19</sup>

Finally, *Laurel Yamaha* cannot be read to absolve used car dealers of any responsibility regarding who they sell cars to, so long as they make a valid sale. Rather, the more reasonable rule, as set forth in the common law, and as applied in *Sligh*, is that

If a claimant's evidence demonstrates that the person (private owner, renter, or seller of the vehicle) had actual knowledge or knowledge of facts from which that person should have known the purchaser or driver was unlicensed, such knowledge is sufficient to place a duty of inquiry as to the competency of such person. . . . It is then for the trier of fact to determine whether under the circumstances the entrustor was negligent in placing the car into the hands of the driver.<sup>20</sup>

Again, there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not ask to see a driver's license and the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment.

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<sup>17</sup> C.P. 3:373; R.E. 64.

<sup>18</sup> 735 So. 2d 963 (Miss. 1999).

<sup>19</sup> *Sligh v. First National Bank of Holmes County*, 735 So. 2d 963, 969-970 (Miss. 1999).

<sup>20</sup> *Dillion v. Suburban Motors, Inc.*, 166 Cal. App. 3d 233, 212 Cal. Rptr 360, 366 (1985).



**4. Chuck Parks did not ask to see any identifying information.**

In their brief, Chuck Parks and Dillingham Motors do not respond to AAA Cooper Transportation's argument that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not ask to see any identifying information. In other words, in their brief, Chuck Parks and Dillingham Motors do not counter AAA Cooper Transportation's argument that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not ask to see any identifying information and when 31 U. S. C. 5318(l) (2006) requires car dealers who sell cars through retail installment contracts, at a minimum, to verify the identity of any person seeking to open an account to the extent reasonable and practicable. Given the lack of response in Chuck Parks's and Dillingham Motors's brief, AAA Cooper Transportation submits that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not ask to see any identifying information and that the trial court erred in granting Chuck Parks's and Dillingham Motors's motion for summary judgment.

## Conclusion

First, in their brief, Chuck Parks and Dillingham Motors do not respond to AAA Cooper Transportation's argument that summary judgment should be reversed because the trial court abused its discretion when it denied AAA Cooper Transportation's motion for additional discovery before responding to Parks's and Dillingham Motors's motion for summary judgment. Clearly, then, the summary judgment in favor of Chuck Parks and Dillingham Motors should be reversed on these grounds.

Also, in their brief, Chuck Parks and Dillingham Motors seem to concede that there is a genuine issue as to whether Chuck Parks employed T. C. Poplar. AAA Cooper Transportation accepts this concession. Chuck Parks and Dillingham Motors then spend the remainder of their response on the argument that that Chuck Parks and Dillingham Motors are not liable for the accident because T. C. Poplar was not acting within the course of his employment at the time of the accident. AAA Cooper Transportation replies that there is a genuine issue of material fact as to whether T. C. Poplar was acting within the course of his employment when he cannot remember anything about the 24 hour period before the accident.

Further, in their brief, Chuck Parks and Dillingham Motors argue that *Laurel Yamaha* relieves them of liability in this case because they sold the vehicle to T. C. Poplar. AAA Cooper Transportation relies that there is a genuine issue as to whether Chuck Parks sold the vehicle to T. C. Poplar when there is a genuine issue as to the date of the alleged sale, the amount of the alleged sale, whether title was transferred, and when Chuck Parks has not produced important documents regarding the sale, which are the best evidence of the sale.

Finally, in their brief, Chuck Parks and Dillingham Motors argue that there has been no evidence whatsoever submitted by plaintiff on negligent entrustment. AAA Cooper Transportation replies that there is a genuine issue as to whether Chuck Parks used reasonable care in providing a vehicle to T. C. Poplar when he did not remove the old Illinois license plates, when he did not provide temporary tags, when he did not ask for a driver's license, and when he did not ask for any identification.

Respectfully submitted,


A handwritten signature in cursive script, appearing to read "Asa Baker", is written over a horizontal line.

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### **Certificate of Filing**

I, Asa Baker, attorney for appellant, AAA Cooper Transportation, certify that I have this day deposited in the United States mail first class with postage prepaid and addressed to the Clerk four copies of the Reply Brief for Appellants.

This the 15<sup>th</sup> day of January, 2009.

  
\_\_\_\_\_  
Asa Baker