

State of New Hampshire
Supreme Court

NO. 2009-0731

Steven Hall

v.

Epsom Bible Church, Garry E. Barnes, Elder
Higher Ground Baptist Church, George Jackman, Pastor

RULE 7 APPEAL OF FINAL DECISION OF
ROCKINGHAM COUNTY SUPERIOR COURT

BRIEF OF PLAINTIFFS/APPELLANTS

Steven Hall *pro se*
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Newton, NH 03858

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QUESTIONS PRESENTED

1. Did the court err in dismissing plaintiff's Writ of Replevin?
Preserved: Plaintiff's Opposition to Motion to Dismiss and for Other Relief, Notice of Appeal
2. Did the court err by relying on disputed facts set forth by the defendant in its motion to dismiss?
Preserved: Plaintiff's Opposition to Motion to Dismiss and for Other Relief , Notice of Appeal
3. Did the court err by ignoring facts set forth by the plaintiff in his Petition and Affidavit?
Preserved: Plaintiff's Opposition to Motion to Dismiss and for Other Relief , Notice of Appeal
4. Did the court err by accepting defendant's contention that title to the subject property never passed to the plaintiff when the pleadings specifically state that the plaintiff was the rightful owner of the property?
Preserved: Plaintiff's Opposition to Motion to Dismiss and for Other Relief , Notice of Appeal

STATEMENT OF FACTS AND STATEMENT OF THE CASE

Steven Hall has been in the business of relocating and recycling buildings to provide rental housing since 1984. He has purchased and relocated buildings from businesses, private individuals, and the State of New Hampshire. In each case there was a written contract and Mr. Hall satisfied all of the terms of the contracts. Hall Petition, Ex. A, Par. 10 (Hall Affidavit) *appx.* at 17. In the instance which lead to this litigation Mr. Hall unfortunately entered into a transaction based on a verbal agreement.

In August of 2008 Mr. Hall negotiated and entered into a verbal contract with Garry E. Barnes, Elder of Epsom Bible Church (hereinafter referred to as EBC) for the removal and purchase of two modular boxes which combined formed a single classroom building. Mr. Barnes offered the modular boxes for \$4,000, but agreed to “\$2500 for the modular plus he [Mr. Hall] would move it at his own expense.” Hall Petition, Ex. E Par. 2 (Barnes Statement) *appx.* at 31. During the negotiations leading up to the agreement Mr. Hall stated that he would not be able to make the payment immediately, due to the expense of moving the modular boxes, other financial commitments he had, and the need to obtain approvals from the town. Hall Petition, Ex. A Pars. 3-9 *appx.* at 16-17. Mr. Barnes told Mr. Hall that the church (EBC) had “decided to accept my offer” Hall Petition, Ex. A, par. 9 *appx.* at 17. Mr. Barnes told Mr. Hall that he did not have to pay a deposit, stating “no, that the buildings are yours and that nobody would be taking them” and that the church was not as concerned about the money, as they were with the follow through and removal of the buildings. Hall Petition, Ex. A, par. 9 *appx.* at 17.

Mr. Hall prepared the modular boxes for relocation, including purchasing new parts and replacing the tires on the trailers. On October 2, 2008 Mr. Hall took possession of the two modular boxes, removed them from the EBC property and placed them on his own land at 311 Goboro Road in Epsom, New Hampshire. Hall Petition, Par. 3 *appx.* at 12. As of that date, Mr. Hall had performed a major portion of his obligations under the agreement, having removed the surplus modular boxes, the “most important part of the deal” Hall Petition, Ex. A par. 9, *appx.* at 17.

Subsequently, Mr. Hall and Mr. Barnes had several conversations regarding the \$2,500 payment and in December of 2008 Mr. Hall offered the EBC a partial payment of \$1,250 with the remaining balance of \$1,250 to follow. Mr. Barnes refused the payment. Hall Petition, par. 4 *appx.* at 12. On June 8, 2009 Mr. Hall mailed the full amount of \$2,500 to Mr. Barnes. EBC received the check on June 9, 2009. Hall Petition par. 6 *appx.* at 13.

On June 15, 2009 Mr. Hall discovered that the modular boxes were missing from his property. Mr. Hall discovered that defendant Higher Ground Baptist Church had contracted with Concord Homes, a towing company, to take the modular boxes from Mr. Hall’s property on June 12, 2009 and relocate them to the premises of the Higher Ground Baptist Church. Hall Petition, pars. 7-9, *appx.* at 13. EBC did not seek or receive any compensation from Higher Ground Baptist Church, but simply gave Mr. Hall’s modular boxes to Higher Ground Baptist Church, even though they had no right to do so. Hall Petition, par 11 *appx.* at 13.

STATEMENT OF THE CASE

On July 21, 2009 Mr. Hall filed a Petition for a Writ of Replevin in the Rockingham Superior Court, seeking an order from the Court directing the defendants to return the modular boxes to their previous location on Hall's property from which they were taken. The defendants filed a motion to dismiss, and for other relief. The Superior Court granted the motion to dismiss, and denied defendants' request for other relief. This appeal followed.

SUMMARY OF ARGUMENT

Mr. Hall first notes the proofs and standards that the Superior Court should have applied to motions to dismiss, and how at an early stage of the litigation the plaintiff's burdens are low. Mr. Hall then shows how the pleadings and Mr. Hall's affidavit in the case, when interpreted using the appropriate standards, are sufficient to establish an accepted cause of action for replevin, contain the facts necessary to support the action, and a remedy for the taking of Mr. Hall's property. Mr. Hall also shows that the Superior Court erred by accepting defendant's version of contested facts, and/or overlooking facts set forth by Mr. Hall. The court below should not have granted the defendants' motion to dismiss.

ARGUMENT

I. Causes of Action Should Not be Dismissed When the Facts Plead Constitute a Basis for Legal Relief

While the lower court did not set forth the reason for its granting of defendant's motion to dismiss Mr. Hall's suit, defendants, in their Motion to Dismiss incorrectly contended that "No reading of the pleading lends itself to an allegation that the title to the subject property ever passed or is vested in the plaintiff." Defendant's Motion to Dismiss, par. 3, *appx.* at 33. Apparently the lower court accepted that reasoning. It erred in doing so.

"In reviewing the trial court's grant of a motion to dismiss, [this Court's] task is to ascertain whether the allegations pleaded in the plaintiff's writ are reasonably susceptible of a construction that would permit recovery." *In the Matter of Larue & Bedard*, 156 N.H. 378, 381 (2007). "In ruling on a motion to dismiss, all facts properly pleaded by the plaintiff are deemed true, and all reasonable inferences derived therefrom are construed most favorably to the plaintiff." *Vermont Wholesale Bldg. Products, Inc. v. J.W. Jones Lumber Co., Inc.*, 154 N.H. 625, 627 (2006); *LaChance v. U.S. Smokeless Tobacco Co.*, 156 NH 88, 93 (2007). This Court "then engage[s] in a threshold inquiry that tests the facts in [the] petition against the applicable law." *Larue*, 156 N.H. 378, 381. When the facts construed most favorably to the plaintiff constitute a basis for legal relief, but the trial court erroneously dismissed the case, this Court reverses and remands for further proceedings. *Mountain Springs Water Co., Inc. v. Mountain Lakes Village Dist.*, 126 N.H. 199, 202 (1985); N.H. CONST., pt. I, art. 14.

II. Mr. Hall Set Forth a Sufficient Factual Basis to Establish that he had Title to the Property Which is the Subject of This Dispute

Mr. Hall set forth facts in his Petition establishing that an agreement for the sale of the property that is the subject of this case was reached with one of the defendants, EBC in August of 2008¹. Hall Petition par. 1, Hall Affidavit par. 8, 9 *appx.* at 12 and 17. Mr. Hall set forth facts establishing that the agreement between him and the Epsom Bible Church allowed for delayed payment, and that the consideration provided by the plaintiff included both the value of the removal of the property, which was no longer wanted by EBC, from its parking lot, and \$2,500 Hall Petition par. 2, Hall Affidavit par. 5, 9 *appx.* at 12 and 16-17. Mr. Hall further set forward facts establishing that he took possession of the property on October 2nd 2008. Hall Petition par.3, Hall Affidavit par. 12 *appx.* at 12 and 17. Mr. Hall also set forward testimony in his affidavit that “I asked if they needed a small deposit and [Barnes] said “no, that the buildings are yours and that nobody would be taking them” Hall Affidavit par. 9 *appx.* at 17.

At the point in time in August of 2008 that EBC, through Mr. Barnes, and Mr. Hall reached an agreement between themselves, and EBC accepted Mr. Hall’s offer, a contract was formed between EBC and Mr. Hall. See RSA 382-A:2-204 At that time and place title for the property at issue in this case passed to Mr. Hall. See RSA 382-A:2-401 (3) (b).

The sale of the property from EBC to the Mr. Hall was completed in August of 2008, and subsequent to that time Mr. Hall had title to and was the rightful owner of the property. As of October 2nd, 2008, when Mr. Hall moved the property from the premises

¹ It is uncontested that an agreement for the sale of the modular boxes existed between EBC and Mr. Hall by August of 2008, Hall Petition, Exhibit E, par. 2 although there are factual disputes regarding the terms of the agreement, and Mr. Hall disputes a number of Mr. Barnes’ statements regarding the agreement and the parties subsequent actions as set forth by Mr. Barnes in his Statement.

of EBC to his own land, he had possession of the property as well as title to it, and by his removal of the surplus modular boxes, he had performed the “most important part of the deal” Hall Petition, Exhibit A, par. 9, *appx.* at 17. From the time of the sale in August, EBC was an unsecured creditor of Mr. Hall. Mr. Barnes sought payment of the \$2500 from Mr. Hall, but tellingly, he did not ask Mr. Hall to return the property. Hall Petition par. 4, 5 *appx.* at 12. By asking for payment, instead of return of the property, Mr. Barnes’ own action at the time shows that at that time he believed his relation to Mr. Hall was that of a creditor to a debtor, and that at that time Mr. Barnes did not believe that EBC held title to the property.

Upon EBC’s receipt of the payment on June 9th, Mr. Hall had completed each and every one of his obligations under the agreement, and had no further liability or obligation to EBC. Any alleged lien or security interest that EBC might claim to have had was extinguished by the payment. On June 12th, when Higher Ground Baptist Church removed the modular boxes from Mr. Hall’s property, Mr. Hall had title to and was the rightful owner of the modular boxes².

III. As the Owner of the Modular Boxes Mr. Hall is Entitled to Seek an Order for Their Return from the Court

Mr. Hall, in his Petition and accompanying Affidavit, set forth sufficient facts to constitute a basis for legal relief. The facts set forth by Mr. Hall in his Petition and Affidavit clearly show that Mr. Hall had title to the property at issue as of August 2008, possession of the property as of October 2nd 2008, and that Mr. Hall, by his payment to EBC on June 9th, 2009 extinguished any claim or implied lien EBC may have had

² The tires, parts, and tarps used to seal the modular boxes and prepare them for moving were purchased by Mr. Hall and are also his property. Higher Ground Baptist Church took them along with the modular boxes on June 12, 2009.

against Mr. Hall as a creditor³. In addition, Mr. Hall has a statutory right of replevin as the buyer of the modular boxes sold to him by EBC. RSA 382-A:2-716 (3) As the rightful owner of the property at issue in this case from all times from August 2008 until the present, a Writ of Replevin is an appropriate action, and Mr. Hall's suit should have survived the defendant's motion to dismiss.

IV. It is an Error for the Lower Court to Rely on Disputed Facts Set Forth by the Defendant or Ignored Facts Set Forth by Mr. Hall

While the lower court did not set forth the reason for its granting of defendant's motion to dismiss Mr. Hall's suit, defendant, in its Motion to Dismiss, made a number of statements which are either incorrect, or rely on disputed facts. Apparently the lower court accepted defendant's reasoning and statements and ignored Mr. Hall's statements in granting its motion to dismiss, even though "In ruling on a motion to dismiss, all facts properly pleaded by the plaintiff are deemed true, and all reasonable inferences derived therefrom are construed most favorably to the plaintiff." *Vermont*,, 154 N.H. 625, 627

Defendant's entire motion to dismiss is predicated on their contention that "title to the subject property [never] passed [to] of is vested in the plaintiff" and that "There was never a completed sale". Motion to Dismiss at par. 3,5 *appx.* at 33, 34. Both statements are at odds with Mr. Hall's Petition and Affidavit. As set forth above, title to the modular boxes passed to Mr. Hall as soon as he and Mr. Barnes reached an agreement for the removal and purchase of the boxes. There was a completed sale, as the term is used for transactions under the Uniform Commercial Code as soon as the parties reached an agreement and a contract was formed. Mr. Hall, in the first paragraph of his Petition

³ EBC is not entitled to a security interest since EBC was not in possession of the goods, nor did Mr. Hall enter into a written agreement providing for a security interest in the goods with EBC.

states “Steven Hall (“Hall”) negotiated and entered into a verbal agreement with Garry E. Barnes (“Barnes”), Elder of Epsom Bible Church, who was acting as an agent and on behalf of the church in August 2008 for the removal and purchase of two (2) 14’ x 52’ modular boxes which combined form a single building that had formerly been used as classrooms by the Epsom Bible Church.” Hall Petition par. 1 *appx.* at 12. A sale is still completed even if payment is not made at the time that the contract for the sale is made. Even if the sale were to be considered “completed” only when the final payment was made, as Mr. Hall stated in his Affidavit “I know from the return receipt that the Epsom Bible Church received my check on June 9, 2009. This completed my contract with the Epsom Bible Church.” Hall Petition, Exhibit A par. 16 *appx.* at 18.

The lower court erred by relying on statements by the defendants that are inconsistent with the facts pleaded by the plaintiff, Mr. Hall, and the reasonable inferences which would be drawn from them. The lower court should not have dismissed Mr. Hall’s suit.

CONCLUSION

In accordance with the foregoing, Mr. Hall requests this honorable Court to reinstate his cause of action, or in the alternative, to order defendant Higher Ground Baptist Church to return the modular boxes to Mr. Hall’s property.

Respectfully Submitted,

Steven Hall, *pro se*

Dated: January 4, 2010

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WAIVER OF ORAL ARGUMENT AND CERTIFICATION

Mr. Hall does not believe that oral argument is necessary for the Court to rule on this matter.

I hereby certify that on January 4, 2010, copies of the foregoing will be forwarded to Tony F. Soltani, Esq. counsel for the defendants. Copies will also be forwarded to the Rockingham County Superior Court.