

1987

Mitchell D. Henderson v. For-Shor Company : 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.

James C. Jenkins; attorney for appellant.

J. Blaine Zollinger; Zollinger & Atwood; attorney for plaintiffs.

Recommended Citation

Reply Brief, *Mitchell D. Henderson v. For-Shor Company*, No. 870502 (Utah Court of Appeals, 1987).
https://digitalcommons.law.byu.edu/byu_ca1/700

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.

STATE COURT OF APPEALS
BRIEF

JTAH
DOCUMENT
CFU
50
A10
DOCKET NO.

870502-CA

IN THE SUPREME COURT OF THE STATE OF UTAH

MITCHELL D. HENDERSON,
ILEEN BUTTARS, LAURENA B.
HENDERSON, and DAVID HALE

REPLY BRIEF OF
CROSS-APPELLANT

Plaintiffs/Respondents

vs.

FOR-SHOR COMPANY

Supreme Court No. 20626

Defendant/Appellant

870502-CA

REPLY BRIEF OF RESPONDENTS
MITCHELL D. HENDERSON, ILEEN BUTTARS,
LAURENA B. HENDERSON, and DAVID HALE

Appeal from the Judgment and Decision of the
FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY, STATE OF UTAH
The Honorable VeNoy Christoffersen, Presiding

J. Blaine Zollinger
ZOLLINGER & ATWOOD
256 North First West
Logan, Utah 84321
Telephone: (801) 753-0012

Attorney for Plaintiffs/
Respondents/Cross-Appellant

James C. Jenkins
JAMES C. JENKINS & ASSOCIATES
67 East 100 North
P.O. Box 3700
Logan, Utah 84321
Telephone: (801)

Attorney for Defendant/Appellant

FILED
NOV 12 1985

U.S. Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

MITCHELL D. HENDERSON,
ILEEN BUTTARS, LAURENA B.
HENDERSON, and DAVID HALE

REPLY BRIEF OF
CROSS-APPELLANT

Plaintiffs/Respondents

vs.

FOR-SHOR COMPANY

Supreme Court No. 20626

Defendant/Appellant

REPLY BRIEF OF RESPONDENTS
MITCHELL D. HENDERSON, ILEEN BUTTARS,
LAURENA B. HENDERSON, and DAVID HALE

Appeal from the Judgment and Decision of the
FIRST JUDICIAL DISTRICT COURT OF CACHE COUNTY, STATE OF UTAH
The Honorable VeNoy Christoffersen, Presiding

J. Blaine Zollinger
ZOLLINGER & ATWOOD
256 North First West
Logan, Utah 84321
Telephone: (801) 753-0012

Attorney for Plaintiffs/
Respondents/Cross-Appellant

James C. Jenkins
JAMES C. JENKINS & ASSOCIATES
67 East 100 North
P.O. Box 3700
Logan, Utah 84321
Telephone: (801)

Attorney for Defendant/Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF ISSUES PRESENTED ON APPEAS	1
STATEMENT OF THE CASE	1
NATURE OF THE CASE AND DISPOSITION OF THE COURT BELOW . .	1
STATEMENT OF THE FACTS	2
SUMMARY OF ARGUMENTS	3
DEFENDANT REFUSES TO ACKNOWLEDGE FACTS ESTABLISHED BY THE EVIDENCE WHEN CONSIDERING THE MERITS OF THE CLAIMS RAISED BY PLAINTIFF HALES AND MISINTERPRETS THE CASE OF <u>LEIGH V. ISOM</u>	3
ARGUMENT	3
CONCLUSION	6

TABLE OF AUTHORITIES

RULES:

Rule 24(a)(6) Utah Rules of Appellate Procedure 2

CASE LAW:

Leigh Furniture & Carpet Co. v. Isom, 3 & 7
657 P.2d 293 (Utah 1982).

IN THE SUPREME COURT OF THE STATE OF UTAH

MITCHELL D. HENDERSON,
ILEEN BUTTARS, LAURENA B.
HENDERSON, and DAVID HALE

REPLY BRIEF OF CROSS-APPELLANT

Plaintiff/Respondents

vs.

FOR-SHOR COMPANY

Supreme Court No. 20626

Defendant/Appellant

STATEMENT OF ISSUES PRESENTED ON APPEAL

The Court is referred to Respondent and Cross-Appellants' Issues presented on Cross Appeal, (p. 1 of Respondent's Brief) for a statement of issues dealt with in this response.

STATEMENT OF THE CASE

Nature of the Case and Disposition of the Court Below

Plaintiff, Mitchell Henderson sued Defendant for intentional infliction of mental distress. Counsel for Plaintiffs requested, pursuant to the Utah Rules of Civil Procedure, that the Court awarded Plaintiffs some costs and expenses and attorney's fees for having to prove some facts which Plaintiffs requested that Defendant admit. Plaintiff, David Hale sued Defendant for intentional interference with favorable business relationships. The Court found for Defendant on Mitchell Henderson's claim for intentional infliction of mental distress because the loss of the equipment (which Defendant converted to its own use) which caused

the distress, was not owned by Plaintiff, Mitchell Henderson. The Court also denied Plaintiffs' request for expenses, attorney's fees and costs caused by Defendant's failure to admit, but the Court gave no reasons for its decision. It also found against Plaintiff, David Hale, in his claim for intentional interference with favorable business relationships, because "... it was between him and Mr. Henderson..." (Court's Memorandum Decision. T.p.382).

Statement of the Facts

The Court is referred to the facts set forth in Respondent's Brief. Rather than citing the record and arguing against the "Facts" recited by Appellant on pp. 1-3 of its Reply Brief, Respondent and Cross-Appellants will rely on this Court's Rule 24(a)(6) wherein this Court requires that:

"All statements of fact and references to the proceedings below shall be supported by citations to the record (see paragraph (e))."

Appellant, however, has recited support for one of its claimed facts in paragraph #3 of its Statement of Facts. However, the Court should be aware of Mitchell Henderson's testimony on this point. T.pp. 20, 23-24, 360 line 12-361 line 23. Therefore, the facts are disputed and the Court apparently felt to accept the facts as testified to by Plaintiff.

The only additional fact the Plaintiffs want this Court to note is that there was no address mix-up when the notice of first meeting of Creditors was sent to Defendant. Plaintiff makes such a claim in its Appellant's Brief p. 1 and in its Reply Brief p. 15. However, after attempting to make it appear that there

was such a mixup on further cross exam. Defendant's manager, James Snarr had to admit that the adjacent business did not occupy the adjacent property during the period when the bankruptcy notices would have been sent. T.pp. 209210.

SUMMARY OF ARGUMENTS

Respondents rely on the argument summaries set forth in their previously filed Brief except:

Defendant Refuses to Acknowledge Facts Established by the Evidence when Considering the Merits of the Claims Raised by Plaintiff Hale and Misinterprets the Case of Leigh vs. Isom. Leigh v. Isom was a case dealing with intentional interference with favorable prospective business relationships, not actual existing contracts. Nevertheless, it has application to this case because of its broad statement of principles. Defendant ignores the fact of Defendant's interference with the favorable contractual and other business relationships between Plaintiffs as established by the evidence.

ARGUMENT

On p. 16 of Defendant's Reply Brief, Defendant states:

"Defendant was not aware that David Hale was intending to purchase those specific forms."

On p. 313-314 of the Transcript, Plaintiff, David Hale states:

"Q When did you tell Mr. Sharp that you were going to buy those forms? Do you recall the date?

A I believe I mentioned it to him on the second of July.

Q And how do you know that?

A Because I went--I did have an account with For-Shor, and every time I went down to purchase something or rent something from that company I had to first check it with Dan Sharp, and on the secon of July I purchased 1,300 nine-inch flat ties.

Q And you talked to him about that?

A And he asked me whose forms I was using, and I go, I go, "I'm using Mitch's forms, and I'm also going to buy them."

Q Did you talk to Mr. Sharp any time after the taking of the forms, after the ninth?

A I believe it was on August tenth when I was returning my shoring back from my Jackson Hole job, I--excuse me. It would have been--since I didn't know anything about it until the twelfth of July, it would have had to have been either the 13th or the 14th of July. I made a visit to Salt Lake to see if I could rent some forms, and that is when I told him that the forms that I was thinking of, or the forms that I was planning on buying, part of them turned up missing, and I told him to keep an eye out for some hot forms, because they might be trying to unload them in Salt Lake or whatever.

Q Did he make any comment to you about that?

A He said that he would keep his eye out for them.

Q So this was a Monday or a Tuesday that you went down to replace the ones that you had lost; is that correct?

A Yes, it is.

Q And you were going to have to find some more because you had this job lined up?

A Yes, I did.

Q And you were talking to Mr. Sharp about that possibitility, is that correct, about renting from him?

A Yes, I did, I was.

Q And when you asked him if he could rent some forms, what did he say?

A "Sure." He said, "No problem."

Mr. Dan Sharp testified regarding the conversation as follows:

"Q Who was present when you had this conversation with Mr. Hale?

A Just myself and Mr. Hale.

Q And where did that take place?

A In my little office.

Q At For-Shor?

A Yes, uh-huh.

Q All right. What was said in that conversation regarding Mitch Henderson?

A Basically that, if I recall, David Hale was at the time renting forms from us, and he said that he was going to buy some forms from Mitch Henderson. That's about all I recall.

Q Did you say anything in response?

A I don't know, but somewhere--I can't recall the conversation, but somewhere in the conversation it came, the location of the forms came out, I believe.

Q And did you say anything to Mr. Hale once you learned of the location of the forms?

A No, I did not.

Q What was your reaction when you learned that Mr. Hale intended to buy some forms from Mitch Henderson and that they were located in Clarkston?

A I went to Mr. Henderson's file and found on there an invoice for forms that was yet uncollected and felt that that would be an opportunity to repossess what was ours.

Q Did you do something after that?

A Well, I talked with Jim Snarr, our manager, and we discussed it.

Q All right. Now, did you do that in the presence of Mr. Hale?

A No.

Q Was this during the time that Mr. Hale was there or did you do that after?

A After he had left." T.pp. 292-293.

Thus, it becomes clear that Defendant's argument and factual claims "that Defendant was not aware that David Hale was not intending to purchase those specific forms..." have little or no basis in fact.

Defendant claims on p. 20 of its Reply argument that the conversion of Plaintiff's property as found by the Court in this case was repossessing by "proper means." Obviously, conversion is not "proper means" and counsel is surprised that anyone would argue that it is.

CONCLUSION

A review of Plaintiffs' request for admissions and Defendant's refusal when taken in light of what Plaintiffs were required to do to prove those facts, warrant an award if the Court is to require adherence to the rules on discovery and thus help control the costs of litigation.

Much of what Defendant has to say in its Reply Brief are assertions only and have no support in the Record. Some assertions are in direct conflict with the facts as established by the evidence, and the Court should disregard them unless properly referenced in the record.

It is clear that the Defendant caused David Hale to lose money on the jobs he had lined up. Defendant's conversion of

Mrs. Buttars' property terminated Mr. Hale's deal with her to buy the forms. Such circumstances warrant a damage award to Mr. Hale if justice is to be done, and if Leigh v. Isom is to be followed.

Respectfully submitted this 8 day of November, 1985.

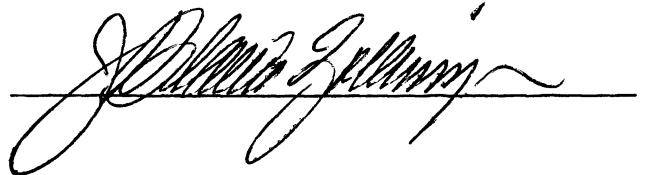
ZOLLINGER & ATWOOD


J. Blaine Zollinger

CERTIFICATE OF SERVICE

I hereby certify that four (4) copies of Respondent's Brief were served on Defendant/Appellant's Counsel, James C. Jenkins at 67 East 100 North, P.O. Box 3700, Logan, Utah 84321.

DATED this 8 day of November, 1985.

A handwritten signature in cursive script, appearing to read "J. William Jenkins", is written over a horizontal line.