

1980

# Edward O'Hara v. Jay A. Hall, Jr : Brief of Respondent

Utah Supreme Court

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IN THE  
SUPREME COURT  
OF THE  
STATE OF UTAH

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ED O'HARA,

Plaintiff & Respondent,

-vs-

JAY A. HALL, JR.,

Defendant and Appellant,  
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)  
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)  
) No. 16820  
)  
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)  
)

RESPONDENT'S BRIEF  
-----

Appeal from the Judgement of the Fifth Judicial  
District Court for Millard County, Honorable D. Christian  
Ronnow, District Court Judge Pro Tem, presiding.

-----  
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## STATEMENT OF THE CASE

Respondant by way of a short reply to appellant's brief reports that the principal issue in the law suit as raised by the complaint was not treated or discussed in Appellant's brief. That is, that the document in writing marked "proposal and contract" prepared by defendant-appellant and signed by him provided, "all of the above work to be completed in a substantial and workmanlike manner according to standard and practice for the sum of \$24,200.00. (emphasis added) (ex.1)

The matter was presented to the Court and jury not only on the issue that the work and repair, (not including siding and cabinets) would be completed for \$24,200.00, but would be completed in a substantial and workmanlike manner according to standards and practice.

### DISPOSITION IN TRIAL COURT

The Jury trial resulted with the jurors signing a special verdict (verdict A) that the defendant's failure to construct the remodeling in a workmanlike manner has resulted in the necessity of plaintiff to re - do all or part of the work done by defendant and that the dollar value of this cost to plaintiffs is \$11,448.00.

Additionally we find an overpayment was made to defendant in the sum of \$4670.56.

If no award is given write "none" following the dollar sign.

The jurors further found in a special "verdict B" that defendant performed work or furnished materials to the remodeling of plaintiff's home, not required by the terms of the contract or that were extra to his obligation under the contract and that the dollar value of such work and material is \$5881.00.

If no award is given write "none" following the dollar sign.

The net award to the plaintiff after consideration of these issues is \$10,237.56.

#### RELIEF SOUGHT ON APPEAL

Appellant, without presenting the issue of defendant's failure to construct the remodeling in a workmanlike manner asked for a dismissal or new trial on the sufficiency of the Contract. Respondant asks for affirmance of the verdict and judgment.

## STATEMENT OF FACTS

The first 140 pages of the transcribed report deals with the selection of the jury, statements to the Court out of the presence of the jury in determining as a matter of law the legal sufficiency and effect of the written instrument and effect of the document "proposal and contract" (ex. 1) prepared by defendant Hall and signed by the parties August 15, 1977.

The authorship or execution of the agreement was never questioned or denied. Counsel for defendant in his statement to the court (tr. page 42 line 16) said, "I'm only saying that the agreement between the parties was an employer/employee or a master/servant agreement, just an employment agreement."

Plaintiff testified that he and his wife had three meetings or conferences with the defendant Hall relative to the repair and remodeling of their home prior to the execution of the "proposal and agreement" of August 15, 1977. (tr. Page 50 line 11) which discussion covered inspections and examination of every room described in the agreement; with Mr. Hall taking measurements and making computation as regard each room to be remodeled or repaired said conferences covered a period of two weeks. (tr. Page 50 line 12) For testimony on details of remodeling, all of which was given outside the presence of the

The document "Proposal and Agreement" (ex 1) described the materials to be furnished and the labor necessary to complete the following:

"An addition to the old house (30' x 12') comprising the family room, Kitchen and front room. Re-shingle old roof. Install thermal pane windows in old house. Lower ceiling in living room and install several doors in old house. (not including siding and cabinets)

All of the above work to be completed in a substantial and workmanlike manner according to the standard and practice for the sum of twenty four thousand two hundred dollars. (\$24,200.00) Payments to be made as needed for material and labor. The entire amount of the contract to be paid within five days after completion."

Plaintiff testified the work continued from about August 15, 1977 for about six months. (tr. 69 line 23) and that defendant was paid as the work went along for materials and labor.

That defendant Hall had men working for him and that plaintiff had nothing to do with these employees of Hall (tr. 69 page 13)

The workmen, Duane Rowley and Richard Darnell were both called by the defendant and both testified that while working on the O'Hara house they were working for Jay Hall and paid by him (tr. 430-436.

The court found no involvement or supervision of workmen by O'Hara

(tr. 436 line 20). This further supported the construction contract.

The defendant Hall performed the remodeling, and the new construction, the electrical, the plumbing, the carpentering, and everything except cabinets, siding and painting which were specifically excluded.

But he had neither the expertise, the know how or the license to do plumbing, or electrical general contracting. The State Plumbing Inspector, Robert Compton testified as to defects in the plumbing and failure of Hall to comply with the standards of the Plumbing code. The defects in plumbing are described in detail by him. (tr. pages 156 to 178), where he testifies that to replace, repair and re do the defective plumbing would cost \$6000.00 (tr. page 178 line 16)

Ross Glass, the State Building Inspector testified, (tr. pg 217) that the carpentry was defective including porch columns, the installation of the shakes and shingles none of which would pass building inspection. Neither would the plumbing, and that it would need to be re done, certain walls removed and the plumbing replaced ( tr. page 228, lines 10 to 25)

After a correction notice had been delivered to Mr. Hall by the State Plumbing inspector, Hall engaged a Plumber, Duane Eyre, of Richfield to make the correction, but which corrections were never made. Mr. Eyre testified the plumbing was installed improperly. (tr. pages 209 to 211) The corrections

A licensed electrical contractor Wes Barton testified that the electrical installation and repair made by Hall were defective and would not pass code. (tr. page 299)

Marlow Mace, a general contractor testified that on July of 1977 the plaintiff had invited him to submit a contract offer for the repair and remodeling of the O'Hara home. That he inspected the home then, and since the work has been done by the defendant Hall. He detailed the defects in the construction on pages 322 to 345 of the Transcript, estimating a cost of \$19,547.00 to make the Hall job comply with the building code. (Tr. page 344 line 7)

Thus it is evident that the damages resulting from the defective work which would not pass the standards as it was required to do under defendant's written document was the main issue; and for which the jury found damages of \$11,448, and plaintiff is entitled to compensation for such defective performance by reason of the fact that the defendant guaranteed his work to the plaintiff as a condition to performing the work.

## ARGUMENT

POINT 1. There was a binding contract.

The parties dealt with each other at arms length. There was a meeting of the minds; an offer and an acceptance.

There was a consideration of \$24,200.00. Had the negotiation called for an estimate only, the figure would be in round numbers... \$24,000.00 or \$25,000.00. The document prepared and furnished by Hall is construed in favor of the plaintiff.

Hall wrote into the contract:

"All of the above work to be completed in a substantial and workmanlike manner according to standards and practices for the sum of Twenty four thousand two hundred (\$24,200.00)

Payments to be made as needed for material and labor. The entire amount of the contract to be paid within five days after completion.

Any alteration or deviation from the above specifications involving extra cost of material or labor will only be extended upon written orders for same and will become an extra charge over the sum mentioned in the contract. All agreements must be made in writing. Signed... Jay A. Hall

## ACCEPTANCE

You are hereby authorized to furnish all materials and labor required to complete the work mentioned in the above proposal, for which \_\_\_\_\_ agree to pay the amount

mentioned to said proposal, and according to the terms thereof.

Accepted.... signed.... Edward J. O'Hara... August 16, 1977 "

According to the Law of Contracts. 17 AM JUR 2D Sec.1

"A contract is a transaction in which each party comes under an obligation to the other and each reciprocally acquires a right to what is promised by the other.

The primary test as to the actual character of a contract is the intention of the parties, to be gathered from the whole scope and effect of the language used, and mere verbal formulas, if inconsistent with the real intention, are to be disregarded. It does not matter by what name the parties chose to designate it. But the existence of a contract, the meeting of the minds, the intention to assume an obligation, and the understanding are to be determined in case of doubt not alone from the words used, but also the situation, acts, and conduct of the parties, and the attendant circumstances.

Sec. 3. Contracts are said to be either express, implied, or constructive. Contracts are express when their terms are stated by the parties, and they are often said to be implied when their terms are not so stated. Thus, an implied contract is one inferred from the conduct of the parties, though not expressed in words.

Contracts may be implied either in law or in fact. Contracts implied in fact are inferred from the facts and circumstances of the case, and are not formally or explicitly stated in words.

It is often said that the only difference between an express contract and a contract implied in fact is that in the former the parties arrive at their agreement by words, whether oral or written, while in the latter their agreement is arrived at by a consideration of their acts and conduct, and that in both of these cases there is, in fact, a contract existing between the parties, the only difference being in the character of evidence necessary to establish it. In other words, in an express contract all the terms and conditions are expressed between the parties, while in an implied contract some one or more of the terms and conditions are implied from the conduct of the parties.

POINT 2. The findings and the judgment of the District Court are entitled to the traditional rule of the Appellate Court viewing the evidence, and all inferences that can reasonably be drawn therefrom in the light most favorable to the findings made and judgment given by the trial court. Cutler vs. Bowen, Utah 1975, 543, P2 1349; and Hardy vs. Hendrickson, 27 Utah 251, 495 P2 28, and Oberhansley vs. Don B. Earl, et al, 1977, Utah 572 P2 1384.

In the above cases the Court found on appeal the decision of the trial court is entitled to a presumption of validity, and all

evidence and inferences drawn therefrom in the light most favorable to sustaining the Court.

The Court painstakingly considered all the testimony of fourteen witnesses, some who testified out of the hearing of the Jury. He examined hundreds of pieces of evidence, bills, receipts, cancelled checks, vouchers. He, better than anyone else knew whether the parties came to a meeting of the minds; whether there was an offer and acceptance; whether the parties relied upon the promise of the others. The Court was also careful in the submitting of special verdicts to have the jury determine the damage caused by the lack of workmanlike construction requiring re-doing; The overpayment made to the defendant. And the Court even had a special "verdict B" allowing for labor or materials furnished by defendant Hall over and above the contract.

#### CONCLUSION

The verdict of the jury and the judgment of the District Court is supported by all the evidence both as to the agreement between the parties and especially as to the amount and nature of damages occasioned when defendant failed to complete all of the work in a substantial and workmanlike manner according to standard and practices and for the work he never completed as agreed for which he was paid.

Respectfully,