

1993

JJBAKD, a Utah General Partnership v. Howard F. Hatch : Reply Brief

Utah Court of Appeals

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Howard F. Hatch, pro se.

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UTAH COURT OF APPEALS
OF

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DOCKET NO. 930043

IN THE UTAH COURT OF APPEALS

JJBAKD, a Utah General Partnership,

Plaintiff and Appellee,

vs.

HOWARD F. HATCH,

Defendant and Appellant.

REPLY BRIEF OF APPELLANT

Case No. 930043-CA

Priority No. 29(b)(15)

Lower Court #920-2330 CV

APPEAL FROM THE SUMMARY JUDGMENT AND DISMISSAL OF THE
FOURTH CIRCUIT COURT, PROVO DEPARTMENT, STATE OF UTAH,
THE HONORABLE E. PATRICK MCGUIRE, PRESIDING.

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Murray, Utah 84107

FILED

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COURT OF APPEALS

IN THE UTAH COURT OF APPEALS

JJBAKD, a Utah General Partnership,)	REPLY BRIEF OF APPELLANT
)	
Plaintiff and Appellee,)	
vs.	)	Case No. 930043-CA
)	
HOWARD F. HATCH,	)	Priority No. 29(b)(15)
)	
Defendant and Appellant.)	Lower Court #920-2330 CV

APPEAL FROM THE SUMMARY JUDGMENT AND DISMISSAL OF THE
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TABLE OF CONTENTS

	<u>Page</u>
REBUTTAL OF APPELLEE'S STATEMENT OF THE CASE	1
ARGUMENT	2
CONCLUSION	3

ATTACHMENTS:

1. Defendant's Affidavit.
2. Defendant's Motion and Memorandum to Set Aside Order.

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Cases Cited:</u>	
<u>Beehive Brick Co. v. Robinson Brick Co.</u> , 780 P.2d 827	3
 <u>Statutes and Rules Cited:</u>	
§57-16-5(1), Utah Code Ann., 1953, as amended	1,3
§57-16-8, " " " " " "	1
§78-36-8.5, " " " " " "	1,3
Rule 4-501(2), Utah Code of Judicial Administration	2

IN THE UTAH COURT OF APPEALS

JJBAKD, a Utah General Partnership,	)	REPLY BRIEF OF APPELLANT
Plaintiff and Appellee,)	
vs.	)	Case No. 930043-CA
)	
HOWARD F. HATCH,	)	Lower Court #920-2330 CV
Defendant and Appellant.)	
)	

REBUTTAL OF APPELLEE'S STATEMENT OF THE CASE

The plaintiff/appellee has mistated the facts in an attempt to justify its switch of statutes under which it sought to evict the mobile home belonging to the defendant, from §57-16-5(1) of the Utah Code (R. 25). to §78-36-8.5 of the Utah Code. On page 2 of the brief, plaintiff/appellee has said that "Appellant also owed rent for July, 1992, in the amount of \$170.00 ..." What plaintiff/appellee has failed to say is that the defendant/appellant had previously tendered this sum but the check had been returned with a statement that it was being refused because of other alleged violations (see Defendant's Affidavit attached as "1").

The trial court, refusing to acknowledge or failing to see this, required the appellant/defendant to post a \$3,500 bond in the form of cash, and further required payment of interim rents as well without making this clear to the defendant/appellant. When it became clear to the defendant that these were required in addition to the bond amount, the defendant offered to pay them into court but the tender was refused (R. 145,146) and summary judgment given based on his failure to pay the rental amounts, which had previously been returned (R. 60-61).

The plaintiff/appellee's motion for summary judgment was based on its allegation that the defendant had failed to comply with the requirements of §57-16-8 of the Utah Code (Mobile Home Park Residency

Statute), and judgment was entered by Judge McGuire within one day of the filing of a motion for summary judgment by the plaintiff (R. 83), on October 16th and not on November 18, 1992 as claimed by the plaintiff/appellee on p. 6 of its brief (see Attachment "2", Defendant's Motion to Set Aside Order).

Because of a protest lodged, the court set a hearing to consider the motion for summary judgment which it had already granted. Without notice that the matter would be considered and without any opportunity provided to the defendant/appellant to present evidence of the validity of his counterclaim, the court not only granted summary judgment on the plaintiff/appellee's claims but also dismissed out of hand the defendant/appellant's counterclaims (R. 111).

ARGUMENT

The defendant believes the court showed extreme prejudice and did not respect his legal rights, that even though the initial judge did disqualify himself, he attempted to influence the course of the proceedings by his gratuitous minute entry and influence within the local court system. And that Judge McGuire appeared just as prejudiced against the defendant/appellant by prematurely granting summary judgment and denying the defendant equity before the bar as evidenced by the many other statutes violated in the process.

Evidence of Judge Sumpson's prejudice was evident when he interrupted the plaintiff's opening comments that the case was a "simple" one by saying: "Anything Mr. Hatch is involved in is not simple and before you are through you will find that out." (R. 63, 64)

When judgment was entered by Judge McGuire within one day of the filing of a motion for summary judgment by the plaintiff/appellee, in violation of Rule 4-501(2) of the Code of Judicial Administration,

it proved that Judge McGuire was just as prejudiced and eager to punish the defendant as Judge Sumsion, especially where he refused to set this aside after being requested to do so.

Under the Utah Code governing mobile home parks,

§57-16-6(5), provides that "eviction proceedings commenced under this chapter and based on causes set forth in Subsections 57-16-5(1), (2), and (5) shall be brought in accordance with the Utah Rules of Civil Procedure and shall not be treated as unlawful detainer actions under Chapter 36, Title 78."

Even though the requiring of a counterbond of the Defendant was contrary to the Code Section just cited, the court further violated the defendant/appellant's rights by requiring that the bond be in cash only (§78-36-8.5(2)(b) allows other options).

It is clearly the rule, which is supported by prior decisions of the appellate courts in this state, that all claims of plaintiff or counterclaimant shall be given a fair opportunity to be heard.

Because disposition of a case by summary judgment denies the benefit of a trial on the merits, any doubt concerning questions of fact, including evidence and reasonable inferences drawn from the evidence, should be resolved in favor of the party opposing the motion. Beehive Brick Co. v. Robinson Brick Co., 780 P.2d 827 (Utah Ct. App. 1989)

CONCLUSION

The defendant would respectfully request this court to reverse the judgment of the lower court and remand the matter back for a full and fair hearing before a jury as to the facts bearing on the case, and directing the court administrator to refer the matter to an impartial judge.

DATED: 6-30-93


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FILED IN
PROVO CITY COURT
UTAH COUNTY, UTAH
SEP 17 4 14 PM '92

PROVO CITY COURT

IN THE FOURTH CIRCUIT COURT, PROVO DEPARTMENT
IN AND FOR UTAH COUNTY, STATE OF UTAH

JJBAKD, a Utah General Partnership,

Plaintiff,

vs.

HOWARD F. HATCH

Defendant.

DEFENDANT'S AFFIDAVIT

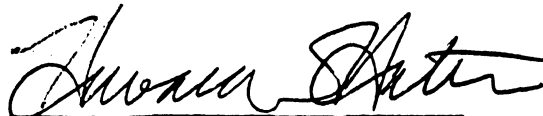
Civil No. 920-2330 CV

Judge _____

State of Utah,
:ss
County of Utah.

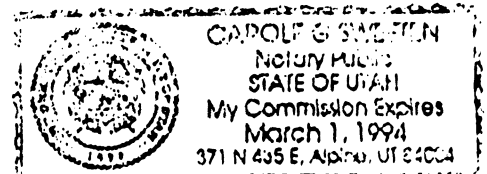
The affiant, Howard F. Hatch, says and avers as follows:

1. That he is the defendant in the above entitled case.
2. That he tendered the July rent but that it was refused and returned by the Plaintiff's agent.
3. That during the interim, every attempt he has made to sublet the subject premises has been undermined by the Plaintiff's agent who has persistently threatened and harrassed potential and actual tenants until they have been intimidated to the point of leaving.
4. That these harrassment techniques have been followed in spite of the fact that the present action had already been filed and the rights of the respective parties were subject to an interpretation of this court as provided for by law.


Howard F. Hatch, pro se

SWORN AND SUBSCRIBED TO this 17 day of September, 1992.


Notary Public



ATTACHMENT "2"

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FILED IN
PROVO CITY COURT
UTAH COUNTY, UTAH
NOV 3 12 28 PM '92
PROVO CITY COURT

IN THE FOURTH CIRCUIT COURT, PROVO DEPARTMENT
IN AND FOR UTAH COUNTY, STATE OF UTAH

JJBKD, a Utah General Partnership,	)	DEFENDANT'S
	)	MOTION AND MEMORANDUM
Plaintiff,	)	TO SET ASIDE ORDER
vs.)	
	)	Civil No. 920-2330 CV
HOWARD F. HATCH	)	Judge _____
Defendant.)	

Comes now the Defendant, Howard F. Hatch, and respectfully requests this court to set aside that certain order entered in the above case on October 19, 1992, wherein Plaintiff's summary judgment was granted inadvertently. This motion is supported by the adjoining Memorandum and is based on Rule 60(b) of the Utah R. of Civ. P..

MEMORANDUM OF POINTS AND AUTHORITIES

FACTS SUPPORTING MOTION

1. On the 15th day of October, 1992, a Motion for Summary Judgment was filed with the court by the Plaintiff along with a proposed Order should such be granted.
2. Said Order was signed by Judge McGuire on the 16th of October, only one day after the motion was filed.
3. On the 19th of October, the Order was entered.
4. The Defendant's Memorandum in Opposition to the summary judgment motion was filed with the court on the 20th of October, 1992.
5. As soon as the Defendant became aware of what had happened, late on the 22nd, he complained to the clerk of the court about the irregularity and was subsequently informed the order would be stayed.

POINTS AND AUTHORITIES

Rule 60(b), Utah Rules of Civil Procedure, Utah Code, 1953 as amended, allows the court to "relieve a party... from a final judgment, order, etc. for the following reasons: (1) mistake, inadvertence, etc."

Rule 4-501(2) of the Code of Judicial Administration, the rule governing civil practice, allows an opposing party 10 days to respond to a motion of this kind. Subsection (9) further affords the opposing party an opportunity to be heard in oral arguments, which had been requested, if "the granting of a motion would dispose of the action or any issues therein on the merits with prejudice..."

The Defendant was given inadequate time to respond to the Motion for Summary Judgment prior to action by the Court and was not given an opportunity to be heard at a hearing of oral arguments, as provided for by the rules, prior to the granting of the summary judgment.

CONCLUSION

The premature signing of the proposed order appears to be clearly inadvertent and a mistake and the Order should be formally set aside.

DATED: 11-3-92


Howard F. Hatch, pro se

MAILING CERTIFICATE

I certify that a true and correct copy of the above was mailed to the Plaintiff's attorney November 3rd, 1992, as follows:

James R. Boud, 302 West 5400 South, Suite 103, Murray, Utah 84107


Howard F. Hatch