

The State of New Hampshire
Supreme Court

No. 2018-0141

Jacqueline Lane v. Antonio Barletta

RULE 7 APPEAL FROM THE
6th Circuit – District Division- Hillsborough

REPLY BRIEF OF THE APPELLANT, ANTONIO BARLETTA

Antonio Barletta, Appellant

By his attorney,
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Oral Argument by Deb Bess Urbaitis

TABLE OF CONTENTS

Table of Contents.....2

Table of Authorities.....3

Text of Relevant Authorities.....4

Further Statement of the Case and Facts.....7

Argument.....8

I. The Trial Court Correctly Applied District Court Rule 5.10 When it Denied the Tenant’s Motion to Reconsider.....8

II. A Landlord is Not Required to Provide a Permanent, Installed Heat Source Pursuant to NH RSA 48-A:14.....9

III. New Hampshire RSA 358-A: 2 Cannot and Does Not Apply to this Case.....10

Conclusion.....10

Rule 26(7) Certificate of Service.....11

Certificate as to Compliance with Word Limit.....11

TABLE OF AUTHORITIES

STATUTES

NEW HAMPSHIRE

N.H. Rev. Stat. Ann. c. 48-A:14 (XI)9

N.H. Rev. Stat. Ann. c. RSA 358-A:2.....10

N.H. Rev. Stat. Ann. c. RSA 358-A:10.....10

N.H. Rev. Stat. Ann. c. RSA 540-A:3, I.....10

N.H. Rev. Stat. Ann. c. RSA 540-A:4 IX (a).....8,10

TEXT OF RELEVANT AUTHORITIES

48-A:14 (XI)

The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 65 degrees F, or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 65 degrees F. in all habitable rooms

358-A:10, I. Private Actions

Any person injured by another's use of any method, act or practice declared unlawful under this chapter may bring an action for damages and for such equitable relief, including an injunction, as the court deems necessary and proper. If the court finds for the plaintiff, recovery shall be in the amount of actual damages or \$1,000, whichever is greater. If the court finds that the use of the method of competition or the act or practice was a willful or knowing violation of this chapter, it shall award as much as 3 times, but not less than 2 times, such amount. In addition, a prevailing plaintiff shall be awarded the costs of the suit and reasonable attorney's fees, as determined by the court. Any attempted waiver of the right to the damages set forth in this paragraph shall be void and unenforceable. Injunctive relief shall be available to private individuals under this chapter without bond, subject to the discretion of the court.

540-A:3, I. Certain Specific Acts Prohibited

No landlord shall willfully cause, directly or indirectly, the interruption or termination of any utility service being supplied to the tenant including, but not limited to water,

heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

540-A:4, IX (a). Remedies

Any landlord or tenant who violates RSA 540-A:2 or any provision of RSA 540-A:3 shall be subject to the civil remedies set forth in RSA 358-A:10 for the initial violation, including costs and reasonable attorney's fees incurred in the proceedings. Each day that a violation continues after issuance of a temporary order shall constitute a separate violation.

District Division Rule 5.10 - Post Trial Motions and Appeals.

A. Post trial motions in all cases shall be filed within seven days after the date of the Clerk's Notice of Judgment.

B. Appeals are initiated by filing a Notice of Intent to Appeal with the Clerk within seven days after the date of the Clerk's Notice of Judgment. If the possessory action was based on nonpayment of rent and the defendant files a Notice of Intent to Appeal, the defendant must, at the time the defendant files the Notice of Intent to Appeal, pay into Court one week's rent as determined by the Court. The appeal shall otherwise be filed in accordance with Supreme Court rules.

C. At any time during the pendency of the appeal, the landlord may file a motion to the district court for recovery of the rent money that has been paid into court pursuant to RSA 540:25, I. The court may grant such motion unless the tenant objects and the court rules that the landlord is not lawfully entitled to the full amount of rent. If the court rules

that the landlord is not entitled to the full amount of the rent, it shall release such portion of the rent to which the court deems the landlord is lawfully entitled, if any, and make specific findings in support of its decision to deny or partially deny the landlord's motion. The rent money retained by the court shall be apportioned between the landlord and the tenant upon final disposition of the appeal.

D. The filing of a post-trial motion does not stay the running of the seven-day period for filing a Notice of Intent to Appeal.

FURTHER STATEMENT OF THE CASE AND FACTS

In addition to the Statement of the Case and Facts previously presented in the opening brief, the Appellant adds the following facts:

The Trial Court's Order from the hearing on the merits is dated February 22, 2019. *Appellant's Opening Brief at 21*. Ms. Lane filed a Motion to Reconsider which was received by the Trial Court on March 5, 2018, 11 days after the Final Order. *Oct. 12, 2018 Trn. at 4*.

Mr. Barletta objected to the Motion as untimely. *App. to Appellant's Opening Brief at 10*. The Trial Court conducted a hearing on October 12, 2018 on Ms. Lane's Motion to Reconsider. *Oct. 12, 2018 Trn. at 1*. The Trial Court denied the Motion to Reconsider stating that it was untimely. *App. to Appellant's Opening Brief at 14*. Ms. Lane cross-appealed that decision.

ARGUMENT

I. The Trial Court Correctly Applied District Court Rule 5.10 When it Denied the Tenant's Motion to Reconsider.

The District Court correctly applied the timelines outlined in District Division Court Rule 5.10 which allows only 7 days for filing post-trial motions. *District Division Rule 5.10*. This case is a dispute between a landlord and tenant. It was docketed by the District Court the docket number 444-2017-LT-00045, a landlord-tenant case. The case, at the trial court level, originated when Ms. Lane filed an RSA 540-A:4 Petition. *Appendix to Appellant's Opening Brief at 3*. The very nature of an RSA 540-A:4 Petition is a dispute between and tenant and landlord needing immediate resolution. District Division Rule 5.10 sets very tight time deadlines which is completely appropriate given the need for immediate resolution to the issues brought in an RSA 540-A:4 Petition. *District Division Rule 5.10*

The District Court's Final Order is dated February 22, 2018. *Appellant's Opening Brief at 21*. Ms. Lane's Motion to Reconsider was filed on March 5, 2018. *Appendix to Appellant's Opening Brief at 6 and Oct. 12, 2018 Trn. at 4*. The Motion was filed eleven days after the Trial Court's Final Order, well outside the seven-day deadline. The Tenant did not request late entry

for the Motion to Reconsider. *Oct. 12, 2018 Trn. at 4*. Given all of this, the Trial Court correctly denied the Tenant’s Motion to Reconsider as untimely.

II. A Landlord is Not Required to Provide a Permanent, Installed Heat Source Pursuant to NH RSA 48-A:14.

New Hampshire RSA 48-A:14 (XI) states, “The premises do not have heating facilities that are properly installed, safely maintained and in good working condition, or are not capable of safely and adequately heating all habitable rooms, bathrooms and toilet rooms located therein, to a temperature of at least an average of 65 degrees F, or, when the landlord supplies heat in consideration for the rent, the premises are not actually maintained at a minimum average room temperature of 65 degrees F. in all habitable rooms.” *RSA 48-A:14 (XI)*. A plain read of this section of statute indicates that the premises needs a heating system that is properly installed, safely maintained, and in good condition, *or* are capable of keeping the premises at 65 degrees F (emphasis added). *RSA 48-A:14 (XI)*. The word “or” is a critical piece of language in this RSA. It allows a landlord to provide a heat source, installed or not, that maintains an adequate temperature in the rental unit. *Id.*

In the instant case, Mr. Barletta asserts that he provided an alternate heating source that could heat the rental unit to 65 degrees F, as contemplated by NH RSA 48-A:14 (XI).

IV. New Hampshire RSA 358-A:2 Cannot and Does Not Apply to this Case.

The Defendant's assertion that a violation of 540-A:3 can be a violation enumerated in NH RSA 358-A:2 was not preserved for appeal and was not noticed in her cross-appeal. Further, New Hampshire RSA 540-A:4 only contemplates damages calculated pursuant to NH RSA 358-A:10, not RSA 358-A:2. *RSA 540-A:4*. The plain language of the statute dictates how damages will be calculated. Further, the Petition filed in this case made no mention that the Landlord violated RSA 358-A:2. *Appendix to Appellant's Opening Brief at 3*. Therefore, the issue is not properly before this Honorable Court.

CONCLUSION

For the foregoing reasons, Mr. Barletta respectfully requests that this Honorable Court uphold the Trial Court's decision that denied the Tenant's Motion to Reconsider as untimely and reverse the holding of the Trial Court awarding Ms. Lane damages and attorney's fees.

Respectfully submitted,
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By his attorney,
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June 28, 2019

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Rule 26(7) Certificate of Service

I, Deb Bess Urbaitis, Esq., Attorney for Appellant Antonio Barletta, hereby certify under the pains and penalties of perjury that, on this date, I electronically served copies of this Reply Brief of the Appellant upon Attorney Kyle McDonald.

June 28, 2019

By: /s/ *Deb Bess Urbaitis*
Deb Bess Urbaitis, Esq.

Certification as to Compliance with Word Limit

I hereby certify that the within document complies with the required word limit for opening briefs and contains 1731 words.

June 28, 2019

By: /s/ *Deb Bess Urbaitis*
Deb Bess Urbaitis, Esq.