

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Roland C. Riemers ) **Supreme Court No. 20130407**  
Plaintiff/Appellant )  
vs. )  
Heidee Hill, et al )  
Defendants/Appellees ) (Ref. Grand Forks County Case 18-13-CV-1299)

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

**APPELLANT'S BRIEF**

JAN 31 2014

STATE OF NORTH DAKOTA

**SUPPORTING APPEAL OF**

**DISMISSAL**

Brief By: Roland C. Riemers, Plaintiff/Appellant, Pro Se  
P.O. Box 14702  
Grand Forks, ND 58208  
701-317-1803

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## **STATEMENT OF ISSUES FOR REVIEW**

- I. DID THE COURT ERR BY NOT MAKING SPECIFIC FINDINGS AND JUST RULING AGAINST RIEMERS FOR FAILURE TO APPEAR AT THE HEARING?
- II. DID THE COURT ERR BY NOT FOLLOWING THE RULES FOR SUMMARY JUDGMENT.
- III. DID THE COURT ERR IN AWARDING ATTORNEY FEES?
- IV. DID THE COURT ERR BY ALLOWING NEW EVIDENCE AT HEARING?

## **NATURE AND FACTS OF CASE & PROCEEDINGS BELOW**

There was no oral argument on the Dismissal Motion and no testimony was given due to a mix-up in knowing if the third back-up hearing was going to be held, so Riemers missed the scheduled hearing. No findings were made, and the case was dismissed without prejudice and Riemers ordered to pay \$500 in attorney fees with no stated reason for doing so.

The Defendants/Appellees, Heidee Hill; her husband Jason Hill; and their 3 daughters; Hannan Hill; Hailey Marie Hill and Ashley Roseler (here-in-after Hills), on 1 October 2008 leased a rental home from Roland Riemers (here-in-after Riemers) at 108 Cairns Avenue in Emerado, ND. The agreement was basically a lease with option to buy. Hills agreed to pay \$850 a month rent and make a \$2,000 deposit, of which \$500 of that was credited for doing house repairs. Hills never did the repairs, so actual deposit was just \$1,500. (¶ 5 of Complaint)

Under an earlier court action (Writ of Restitution, 18-13-CV-732) Hills were evicted for failure to pay rent. This action was heard by Judge Lawrence Jahnke who dismissed the writ action because by the time of the hearing Hills had finally moved out. As for lost rents and damages, Jahnke also ruled that these items could be brought up in a later separate district court action, and filing fees would be waived for doing so. (See pages 19 & 20 of App). On the 28<sup>th</sup> of August 2013 Riemers filed this current lawsuit for these damages, as previously directed by Judge Jahnke. Per that earlier ruling, the filing fees were waived. In this current action Riemers sought \$1,7000 in lost rents, \$620 in unpaid late fees, \$8,000 in property damage and destruction, and \$10,000 in punitive damages. (page 8 of App)

Hills never responded to the complaint, never submitted any supporting affidavits, never testified, and never answered Riemers discovery. Instead, on 14 September 2013 Hills filed a Motion to Dismiss and requested attorney fees for a frivolous claim by Riemers (page 9 of App). On the same date Hills also filed a Counterclaim for Abuse of Process. (Page 10-11 of App). At no point have the Hills ever denied they did damage to Riemers

1 rental home, or that they owed Riemers rents and late fees. Nor have Hills ever claimed the  
2 current problems in the house were problems in 2008 or that they ever reported these  
3 problems to Riemers prior to eviction. Instead - at the time of their eviction - Hills claimed  
4 that after 5 years of their use, there were damages that Riemers had not repaired such as mold  
5 and broken electrical fixtures, and thus the house was not liveable. Hills counterclaimed for  
6 \$25,000 for these (non-specified) damages. Id. The court never ruled on Hills' counterclaim.

7 On 3 October 2013 Riemers responded to Hills Motion and requested a hearing as well  
8 as demanding that Hills be ordered to immediately respond to Riemers Complaint and his  
9 Discovery Requests (served 31 August 2013). (Page 12 of App and #18 of Registry).

10 Finally, a hearing was held on the various motions on the 5<sup>th</sup> of December 2013. The  
11 hearing was a third back-up that day. Do to a misunderstanding of the clerks email notice,  
12 Riemers was not aware the hearing was going to be held, so he did not make an appearance.  
13 (page 15 of App) Based on the fact Riemers did not appear, the Court granted Hills' Motion  
14 to Dismiss. (page 3 -4, lines 21 to 1 of App) No testimony or argument was given other then  
15 previous briefs and affidavits. The only exception was a letter from Housing which had  
16 denied assistance to one of the daughters which was admitted to the recorded at the hearing.  
17 At the hearing Hills also requested attorney fees and their attorney offered to submit them  
18 later. (page 4, lines 18 to 24 of transcript). No bases was given for the attorney fee reward.

19 Later that day, Hills' attorney submitted an Affidavit for \$3,300 for his work, with  
20 \$300 an hour for 3 hours being charged for attending the brief court hearing. (page 13 of  
21 App). The court lowered this award to just \$500 - without stating the bases for the award -  
22 and also ordered that the case was dismissed "*without prejudice.*" (page 14 of App)

23 On the 7<sup>th</sup> of December 2013, after discovering the court ruling, Riemers filed a  
24 Petition for Rehearing and an Objection to the attorney fee award. (page 15 of App).

25 On the 13<sup>th</sup> of December 2013 the court issued a Judgment for \$500 in attorney fees

1 and a dismissal without prejudice. (page 16 of App).

2 On the 16<sup>th</sup> of December 2013 the court issued an order Denying Petition for  
3 Rehearing. (page 17 of App). The court wrote “*Based on Plaintiff’s non-appearance, the*  
4 *court dismissed his Complaint without prejudice.*” It also advised that “*However, since his*  
5 *Complaint was dismissed without prejudice, he has the option of re-filing if he wishes.*”  
6 (page 17, lines 12-16 of App)

7 A timely Appeal was filed with the ND Supreme Court on the 17<sup>th</sup> of December 2013.

## 8 ARGUMENT

### 9 **I. THE COURT ERRED BY NOT MAKING SPECIFIC FINDINGS AND** 10 **RULING AGAINST RIEMERS FOR FAILURE TO APPEAR AT THE HEARING.**

11 Under N.D.R.Civ.P. 52(a)(1) the hearing court “. . . *must find the facts specially and*  
12 *state its conclusions of law separately.*” At the dismissal hearing the only findings made by  
13 the court was: “*Mr. Riemers is not present. It’s now 3:15. Defendant’s Motion to dismiss is*  
14 *granted.*” (page 3, lines 24 & 25, and page 4, line 1 of App). Thus the court clearly abused  
15 its discretion by not following this mandatory Rule of Civil Procedure.

16 Furthermore, even if Riemers had been present at the hearing, it would have been only  
17 to make oral argument as the case had already been fully submitted prior to the hearing and  
18 no additional testimony or evidence was expected. Nor was there even a requirement for a  
19 hearing. So, Riemers absence had absolutely no effect on the court’s decisions.

20 In the past, this Court has ruled that a “. . . *court must . . . comply with N.D.R.Civ.P.*  
21 *52(a) and further explain its findings of fact as well as make specific findings . . .* (Haugrose  
22 *v. Anderson, 2009 ND 81 at ¶ 17 , 765 N.W.2d 677) and the ruled that “Because our review*  
23 *of this case is significantly hampered by the district court’s failure to make specific, detailed*  
24 *findings on the relevant issues, we reverse and remand for further findings and explanation*  
25 *of the basis for the court’s determination.*” Id at ¶ 17

1           **II.     THE COURT ERRED BY NOT FOLLOWING THE RULES FOR SUMMARY**  
2           **JUDGMENT.**

3           In Hills' Motion to Dismiss, Hills claimed Riemers had failed to make a claim upon  
4           which relief can be granted. (page 9 of App). Under N.D.R.Civ.P. Rule 12(b)(vi) such a  
5           motion must be treated as one for summary judgement and disposed of as per Rule 56.

6           Under Rule 56(c) Hills had to "*. . . show that there is no genuine issue as to any*  
7           *material fact and that any party is entitled to a judgment as a matter of law.*" But, Hills  
8           never presented any evidence or denied that they did damage to the rental home, nor that they  
9           owed back rent and late fees to Riemers. (See record as a whole)

10          Furthermore, Rule 56(d) requires that the court "*. . . shall thereupon make an order*  
11          *specifying the facts that appear without substantial controversy, including the extent to which*  
12          *the amount of damages or other relief is not in controversy, and directing such further*  
13          *proceedings in the action as are just.*" None of which the court did in this case.

14          **III.    THE COURT ERRED BY AWARDING ATTORNEY FEES.**

15          In Hills' Motion to Dismiss (page 9 of App), they sought "*court costs, fees, and*  
16          *attorney's fees for a frivolous claim by the Plaintiff.*" Without any findings from the court,  
17          Riemers assumes this is the bases for the \$500 attorney fee award. (page 16 of App)

18          Under N.D.C.C. 28-26-01(2). "*In civil actions the court shall, upon a finding that a*  
19          *claim for relief was frivolous, award reasonable actual and statutory costs, including*  
20          *reasonable attorney's fees to the prevailing party. Such costs must be awarded regardless of*  
21          *the good faith of the attorney or party making the claim for relief if there is such a complete*  
22          *absence of actual facts or law that a reasonable person could not have thought a court would*  
23          *render judgment in their favor, providing the frivolous nature of the claim. This subsection*  
24          *does not require the award of costs or fees against an attorney or is supported by a good*  
25          *faith argument for an extension, modification, or reversal of the existing law.*"

1 In the case at bar, Riemers bought the case only after Judge Jahnke in the earlier  
2 eviction case directed that he should bring a new action for damages. (page 19-10 App). Nor  
3 did Hills in the earlier case ever make a claim it was frivolous. So how can a case be found  
4 frivolous if it is filed under direction of the court and as a continuance of a previous action?

5 In the dismissal of this case, it was dismissed "*without prejudice*." (page 16 & 17 of  
6 App) So why would a court dismiss a case for being frivolous, and then rule that the same  
7 frivolous case can be filed again for the third time?

8 Historically, this Court has always had concern with the RUSH TO SUMMARY  
9 JUDGMENT, and that "*Summary judgment is appropriate only after the non-moving party*  
10 *has had a reasonable opportunity, for discovery to develop his position.*" (Vicknair v. Phelps  
11 Dodge Industries, Inc., 2011 ND 39 at ¶ 18, 794 N.W.2d 746). In this case, Riemers had  
12 served discovery on the 31<sup>st</sup> of August, but Hills had NEVER responded. In Riemers  
13 Response of 3 October 2013, Riemers asked the court to immediately order Hills to answer  
14 Discovery as well as the Complaint. (page 12 of App) Neither Hills nor the court responded.  
15 So discovery and answers were actively being sought, but never given. Thus, how could  
16 Riemers have had a reasonable opportunity to discover and develop his position? For  
17 example, all the Hill family were named in the suit, because they all lived in the home during  
18 the lease period, and discovery may have resolved which ones were actually responsible for  
19 which damages owed to Riemers and thus some may have been removed from the law suit.  
20 Discovery may have also disclosed which damages to the home were caused by what Hills,  
21 and which damages were from normal wear and tear that they would not be responsible for.

#### 22 **IV. THE COURT ERRED BY ALLOWING NEW EVIDENCE AT HEARING.**

23 At the December 5<sup>th</sup> hearing, after the Dismissal was granted, Hills' attorney presented  
24 a letter denying a daughter housing assistance because of her involvement in this case. (page  
25 4, lines 3 to 16 of Transcript) No testimony or reason for entering this letter was submitted,



1 but its obvious intent was just to inflame the court as it has absolutely no relevance to the  
2 Motion to Dismiss. Also, under Rule 5(d)(2) N.D.R.Civ.P. *"All affidavits, notices and other*  
3 *papers designed to be used upon the hearing of a motion or order to show cause shall be*  
4 *filed at least 24 hours before the hearing unless otherwise directed by the court."* And under  
5 NDRCivP Rule 5(a)(1)(F) Hills had to serve/file this letter prior to submitting it to the judge.  
6 Thus is was a violation of Rule 5 and an abuse of discretion to allow this last minute evidence  
7 into the court record, especially after the case had already been dismissed by the court.

### 8 CONCLUSIONS AND RELIEF SOUGHT

9 Riemers has a right under the North Dakota Constitution to bring an action for  
10 possessing and protecting property and reputation (Article I, Sec. 1 of N.D. Constitution).  
11 And *" , , , nor be deprived of . . . property without due process of law."* (Article I, Sec. 12  
12 of N.D. Constitution). Also *"All courts shall be open, and every man for any injury done*  
13 *him in his lands, goods, person or reputation shall have remedy by due process of law, and*  
14 *right and justice administered without sale, denial or delay."* (Article I, Sec. 9 of N.D.  
15 Constitution) Riemers was also been denied a remedy by a court that has abused its discretion  
16 and ignored the Rules of Civil Procedure and State Law. In this instance, Riemers has been  
17 denied twice a remedy for his rental house damages, and now is expected by the court to file  
18 yet another action? The exact same action? To recover the exact same damages! Clearly a  
19 violation of Riemers' property and due process rights.

20 Riemers asks that the ruling of the District Court be reversed and the case be returned  
21 for further proceedings. That Hills be ordered to answer both the Complaint and the  
22 Discovery requests. That Riemers be awarded his costs for this appeal and any other just and  
23 reasonable remedy. Riemers would also urge some type of disciplinary action be taken  
24 against Hills' attorney for repeatedly and knowingly misleading the court in this preceding.

25 Dated: 31 January 2014

By: 

26 Roland Riemers, Plaintiff/Appellant, Pro Se

27 P.O. Box 14702, Grand Forks, ND 58208, 701-317-1803

IN THE SUPREME COURT

STATE OF NORTH DAKOTA

Roland C. Riemers ) **Supreme Court No. 20130407**

Plaintiff/Appellant )

vs. ) **Affidavit of Mail Service**

Heidee Hill, et al )

Defendants/Appellees ) (Ref. Grand Forks County Case 18-13-CV-1299)

I, Dennis Zdon, being sworn, state that I am a citizen of the United States of America over the age of eighteen and that I am not a party to the above-entitled matter. That on this 31<sup>st</sup> day of January 2014, this Affiant deposited in the mailing department of the United States Post Office at Grand Forks, North Dakota, true and correct copies of the following document filed in the above captioned action.

### APPELLANTS' BRIEF and APPENDIX

That copies of the above documents were securely enclosed in an envelope with postage duly prepaid, and addressed as follows:

**Timothy Lamb, P.O. Box 5562, Grand Forks, ND 58206-5562**

To the best of his Affiant's knowledge, information and belief, such address as given above is the actual post office address of the party intended to be served. The above documents were duly mailed in accordance with provisions of the North Dakota Rules of Civil and Appellate Procedure.

Affiant's signature: 

The above Person I have personally identified, and has subscribed and sworn to before me this 31 day of January 2014.



  
Notary Public State of North Dakota

**FILED**  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

**JAN 31 2014**

**STATE OF NORTH DAKOTA**

