

**FILED**

JUL 22 1997

SUPERIOR COURT OF VERMONT  
CALEDONIA COUNTY

**CALEDONIA  
SUPERIOR COURT**

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ENTRY ORDER

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**RUDY FLOTHOW v. DENNIS BESSETTE**

257-10-96 CaCv

Title: Appeal from Decision of Small Claims Court, Docket #131-4-96 Casc  
Filed on: October 25, 1996  
Filed by: Rudy Flothow (Defendant in Small Claims Action)

This matter came before the court on July 3, 1997 for oral argument on the appeal from the decision of Judge Vance in Small Claims court. Judge Vance entered judgment for Plaintiff Dennis Bessette in the amount of \$610.00 plus \$50.00 in court costs for a total of \$660.00, and Defendant/Appellant Rudy Flothow appealed. Both parties were present in court on July 3, 1997, and argued their positions to the court.

The court has reviewed the entire record of the hearing in Small Claims Court held before Judge Vance on September 30, 1996. This included listening to the tape of the hearing and reviewing all exhibits.

It is not the function of the Superior Court to substitute its own judgment for that of the trial court below. Rather, the role of the Superior Court is to determine whether the trial court correctly applied the law, and whether or not its findings on factual matters are supported by the evidence introduced and admitted at the hearing. If the law is correctly applied, and if there is any basis on which the trial court below may be upheld, it is the duty of this court to affirm the trial court below.

Based on its thorough review, the court concludes that the court below made no errors of law, and the findings of fact and conclusions are supported by the evidence. Specifically, there was evidence to support the court's findings that there was a contract between the parties dated March 20, 1996 for custom home construction work, that it was structured in installments so that if terminated it could be separated into distinct parts, that it was terminated by Mr. Flothow on April 3, 1996, that at the time it was terminated Mr. Bessette was owed \$1,150 under the terms of the first sections of the contract including a \$900 door, that Mr. Bessette had completed the \$900 door but that it was still in his possession, and that Mr. Bessette had paid \$460 for a vanity that had been installed in Mr. Flothow's home. Mr. Bessette had spent \$1,962 in additional materials he had expected to use in completing the contract, but all of those were still in his possession, and he had the benefit and value of them. Thus, there was sufficient evidence upon which Judge Vance could reasonably base his conclusion that Mr. Flothow owed Mr. Bessette \$610.<sup>1</sup> Court costs of \$50.00 are allowed as a matter of law.

Mr. Flothow had filed a counterclaim in which he sought the return of \$1,600.00 he had paid to Mr. Bessette due to a claim of poor workmanship.

<sup>1</sup>\$1,150 - 900 = 250 + 460 = \$710. It is not clear why the judgment was for \$610 instead of \$710, but Mr. Bessette accepted the judgment and did not appeal. He argued in support of the judgment at oral argument on July 3, 1997.

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There was conflicting evidence from the two parties, but there was sufficient evidence in the form of photographs and testimony from both parties to support the result reached by Judge Vance that there was not a basis for a claim of faulty workmanship, and therefore there was a proper basis for the denial of the counterclaim.

For the reasons stated above, the decision below is AFFIRMED.

Mary Miles Teachout Date: July 22, 1997  
Mary Miles Teachout, Presiding Judge  
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Date copies sent to: \_\_\_\_\_ Clerk's Initials \_\_\_\_\_  
Copies sent to:  
Dennis Bessette, Plaintiff- Appellee  
Rudy Flothow, Defendant-Appellant

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