

1978

Pete Falvo, dba Falvo Realty v. Joan A. Hoover : Brief of Defendant-Respondent

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

PETE FALVO, d/b/a FALVO
REALTY,

Plaintiff-Appellant,

vs.

Case No. 15422

JOAN A. HOOVER,

Defendant-Respondent.

BRIEF OF DEFENDANT-RESPONDENT

APPEAL FROM A PORTION OF A TRIAL JUDGMENT GRANTED
BY THE THIRD DISTRICT COURT IN AND FOR SALT LAKE
COUNTY, STATE OF UTAH, PETER F. LEARY, JUDGE

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IN THE SUPREME COURT
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Case No. 15422

BRIEF OF DEFENDANT-RESPONDENT

NATURE OF CASE

This appeal is by Pete Falvo, the selling real estate agent, from an award to him of 40% of the 6% real estate commission which the defendant-respondent agreed to pay on her listing of the real property with Keys Realty.

DISPOSITION OF LOWER COURT

The Trial Judge awarded the appellant that portion of the real estate commission which he testified he was entitled to.

RELIEF SOUGHT ON APPEAL

Appellant seeks a determination as a matter of law that he was entitled to the full 6% commission provided on the listing card and the Earnest Money Receipt and Offer to Purchase.

STATEMENT OF FACTS

Respondent and her husband signed a listing agreement, which is shown as Exhibit 2-P, with Keys Realty Company on the 9th of February, 1976. The listing agent was a good friend of the respondent, one Bill Scott. Appellant obtained a buyer and an Earnest Money Receipt was executed.

There arose a dispute between the respondent, the real estate salesman and the listing agent. Respondent's position being that because the real estate agent falsely represented that they would be able to obtain housing for her and her family at a more reasonable price than what was being paid on the home up for sale, she could rescind. The real estate people could not furnish such accommodation and respondent attempted to rescind the Earnest Money Receipt and Offer to Purchase. Court held that she could not rescind and that the buyers were entitled to specific performance and decreed such specific performance.

Keys Realty and Bill Scott, the listing agent for Keys Realty, were not parties to the litigation. The only parties were Falvo Realty and the buyers.

The listing card contained the proviso that the respondent would pay a 6% commission. This 6% commission was also written on the Earnest Money Receipt and Offer to Purchase. On cross-examination the appellant testified clearly and precisely that on the 6% commission, he would receive 40% (Tr., page 6, Point 1). The Trial Court awarded all of the commission to which appellant was entitled.

POINT I

APPELLANT WAS AWARDED ALL OF THE COMMISSION TO WHICH HE WAS ENTITLED.

It would appear to the respondent that there is no real dispute as to what the facts of this appeal are and those that are relevant are:

(1) Appellant testified clearly that he was entitled to only 40% of the 6% commission provided in the Earnest Money Receipt and Offer to Purchase and on the listing card.

(2) The other 60% of the commission belonged to the listing agent, Keys Realty, and Bill Scott. Neither of said parties are present before this Court nor were they present at the Trial Court.

(3) No authority was shown by appellant to collect on behalf of Keys Realty and/or Bill Scott the commission to which they were entitled, if any. Keys Realty, through Bill Scott, obtained the listing from defendant (See Exhibit 2-P).

It would appear that the respondent may owe Keys Realty and/or Bill Scott the balance of 60% of the commission under the listing card (Exhibit 2-P) and as was later placed on the Earnest Money Receipt and Offer to Purchase. Defendant claims that there were a number of violations of the principal-agent relationship which would affect her obligations to Keys Realty which the appellant did not become burdened with. He denied specifically that he represented the interest of respondent, but at all times was representing the buyer, Mr. Kosel (Tr., page 6, lines 21-22-23).

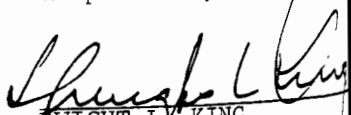
Whether Keys Realty and Bill Scott are entitled to any commission in this transaction is an entirely different question from the question of appellant's right to commission. Appellant's testimony is correct, he represented only the buyer and was not charged with protecting the interest of the seller and following her instructions. Keys represented respondent's interests which were not protected, she claims. Her claims against Keys were not litigated as Keys was not a party to the litigation.

It is respectfully submitted that Keys Realty and/or Bill Scott, the listing agent, are entitled under the uncontradicted testimony to the 60% of the commission if it is earned. No authority is shown by appellant to collect on behalf of Keys or Scott.

CONCLUSION

Wherefore, respondent submits that the Trial Court correctly ruled that Falvo, appellant, has no right to collect any portion of real estate commission other than that part which he is entitled to receive.

Respectfully submitted,


DWIGHT L. KING
Attorney for Defendant-Respondent