

1979

Kim L. Norris et al v. A. M. Anderson : Petition for Rehearing

Utah Supreme Court

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S. Rex Lewis; Robert C. Fillerup; Howard, Lewis & Petersen; Attorneys for Appellants;

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IN THE SUPREME COURT
OF THE STATE OF UTAH

KIM L. NORRIS, LEX R. :
NORRIS, et al.,

Plaintiffs-Appellants, :

vs.

Case No. 15,718

A. M. ANDERSON and NORA S. :
ANDERSON, husband and wife,

Defendants-Respondents.

PETITION FOR REHEARING OF DECISION RENDERED BY
THE SUPREME COURT OF THE STATE OF UTAH ON
JANUARY 22, 1979

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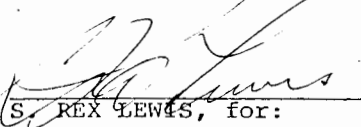
APPELLANT'S PETITION FOR REHEARING

Petition for rehearing of the decision rendered in
the above captioned matter on January 22, 1979.

Appellant's petition is submitted pursuant to the
provisions of Rule 76(e), Utah Rules of Civil
Procedure, and respectfully represents:

1. The appellate court misconstrued and misstated
the facts in its opinion.
2. The Court misapplied the law to the facts, since
the facts are clear that the party who made the
original offer (Anderson) renewed the offer,
thereby making the original offer acceptable.

Respectfully submitted,


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Appellants

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TABLE OF CONENTS

	PAGE
NATURE OF THE CASE	1
DISPOSITION IN LOWER COURT	1
RELIEF SOUGHT ON APPEAL	1
STATEMENT OF FACTS	1
DISPOSITION ON APPEAL	2
ARGUMENT	2
POINT I. THE APPELLATE COURT MISCONSTRUED AND MISSTATED THE FACTS IN ITS OPINION.	2
POINT II. THE COURT MISAPPLIED THE LAW TO THE FACTS, SINCE THE FACTS ARE CLEAR THAT THE PARTY WHO MADE THE ORIGINAL OFFER (ANDERSON) RENEWED THE OFFER, THEREBY MAKING THE ORIG- INAL OFFER ACCEPTABLE.	3

CASES CITED

Burton v. Coombs, Utah, 557 P.2d 148 (1976)	4
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ANDERSON, husband and wife, :

Defendants-Respondents. :

APPELLANTS' BRIEF IN SUPPORT
OF PETITION FOR REHEARING

NATURE OF THE CASE

Appellants incorporate the nature of the case as
set forth in Appellants' Brief on Appeal.

DISPOSITION IN LOWER COURT

Appellants incorporate the disposition in lower
court as set forth in Appellants' Brief on Appeal.

RELIEF SOUGHT ON APPEAL

Appellants incorporate the relief sought on appeal
as set forth in Appellants' Brief on Appeal.

STATEMENT OF FACTS

The statement of facts are as set out in full in the
original brief.

DISPOSITION ON APPEAL

This Court rendered a decision on January 22, 1979, wherein the decision of the trial court was affirmed.

ARGUMENT

POINT I

THE APPELLATE COURT MISCONSTRUED AND MISSTATED THE FACTS IN ITS OPINION.

In the per curiam decision of the Court this Court stated as follows:

"On January 17th Taylor called Anderson and said that 'Norris can do no more.'"

This Court further stated:

"On January 19th, Taylor approached Anderson again with another offer, this time from Boley."

It is respectfully pointed out to this Court that Taylor did not have any communication with Anderson on January 17th. The communication that took place on January 17th was between Taylor and Hall, the agent representing Anderson in the sale.

It is further pointed out to the Court that in the meeting that took place on January 19th Taylor did not approach Anderson with another offer. When the parties arrived at Anderson's home on January 19th, Hall, who was a salesman for Boley, had approached Anderson with an offer from Hall's employer, Boley. (T. 122, 123, 124, 37).

POINT II

THE COURT MISAPPLIED THE LAW TO THE FACTS, SINCE THE FACTS ARE CLEAR THAT THE PARTY WHO MADE THE ORIGINAL OFFER (ANDERSON) RENEWED THE OFFER, THEREBY MAKING THE ORIGINAL OFFER ACCEPTABLE.

The Court, in its per curiam opinion, stated as follows:

"On January 15th Taylor and Hall met with Anderson and tried to get him to accept the Norris conditions, but Anderson refused insisting on the terms of his seven-point counter-offer 'exactly as written,' pointing out that Norris still had one day to accept his seven-point counter-offer."

Based upon the Court's own decision, Anderson, the seller, restated his offer to sell after the conditional acceptance of Norris or counter-offer of Norris which this Court has interpreted as a rejection.

The Court further, in its opinion, stated as follows:

"The law is clear that an offer is terminated by a rejection and thereafter it cannot be accepted so as to create a binding contract. Once the offer is rejected it cannot thereafter be revived by tendering performance. See Restatement of Contracts 2d, Section 37(1) Rejection, p. 87."

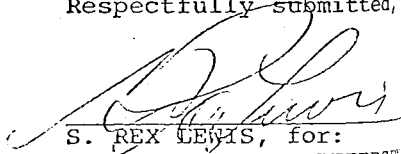
Appellants agree with the law as stated by the Court, however, it is not applicable to this case, since here, Anderson, the seller, renewed his offer to sell on the terms of his seven-point counter-offer "exactly as written".

Thus, this is not a situation wherein an offer is rejected and then with nothing further is accepted. It is a case of an offer being rejected and then the original, as in this case the seven-point offer, being renewed and there after making it subject to acceptance. By reason of these undisputed facts, Burton v. Coombs, (Utah) 557 P.2d 148 (1976), is not in point.

Appellants rely upon the law as set out in their original brief.


The Court is respectfully urged to reexamine its statement of the facts as set forth in its opinion and compare those facts to the transcript. It is believed that a review of the undisputed facts will confirm Appellants' points as set forth in this Petition and that this Court will want to reconsider its opinion so as to properly state the facts and the application of the law thereon.

Respectfully submitted,



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MAILED a copy of the foregoing Petition to V. Pershing Nelson, Aldrich & Nelson, Attorneys for Defendants-Respondents, 43 East 200 North, Provo, Utah 84601, this 6th day of February, 1979.


SECRETARY