

1986

Stan Katz v. Allwin W. Pierce, Kent S. Larson and Ruby Larson : Petition for Rehearing

Utah Supreme Court

Follow this and additional works at: https://digitalcommons.law.byu.edu/byu_sc1



Part of the [Law Commons](#)

Original Brief Submitted to the Utah Supreme Court; digitized by the Howard W. Hunter Law Library, J. Reuben Clark Law School, Brigham Young University, Provo, Utah; machine-generated OCR, may contain errors.

Raymond Scott Berry; Green & Berry; Attorneys for Respondent.

Andrew B. Berry Jr.; Attorney for Appellants.

Recommended Citation

Legal Brief, *Katz v. Pierce and Larson*, No. 198620924.00 (Utah Supreme Court, 1986).
https://digitalcommons.law.byu.edu/byu_sc1/1445

This Legal Brief is brought to you for free and open access by BYU Law Digital Commons. It has been accepted for inclusion in Utah Supreme Court Briefs by an authorized administrator of BYU Law Digital Commons. Policies regarding these Utah briefs are available at http://digitalcommons.law.byu.edu/utah_court_briefs/policies.html. Please contact the Repository Manager at hunterlawlibrary@byu.edu with questions or feedback.

UTAH SUPREME COURT
BRIEF

UT
D'

45.0
1986

1986
20924

FILED

IN THE SUPREME COURT OF THE

1986

STATE OF UTAH

Utah Supreme Court

STAN KATZ,)
)
Plaintiff and)
Respondent,)
)
vs.)
)
ALLWIN W. PIERCE, VENNADEL)
PIERCE, KENT S. LARSON and)
RUBY LARSON,)
)
Defendants and)
Appellants.)
)
)

Docket No. 20924

PETITION OF RESPONDENT FOR REHEARING

Appeal from a Judgment Rendered by
the District Court of the Third Judicial District
for Salt Lake County
Honorable Homer F. Wilkinson, Presiding

GREEN & BERRY
RAYMOND SCOTT BERRY
528 Newhouse Building
10 Exchange Place
Salt Lake City, Utah 84111
Telephone: (801) 363-5650
Attorneys for Respondent

ANDREW B. BERRY, JR.
100 Harmon Building
3540 South 4000 West
West Valley City, Utah 84120
Telephone: (801) 967-3700
Attorney for Appellants

Pursuant to Rule 35 of the Utah Rules of Appellate Procedure, Respondent Stan Katz through his undersigned counsel herewith files this Petition for a Rehearing of the above-entitled appeal solely on the issue of whether reasonable attorney's fees are to be awarded to the Respondent in the above-entitled action.

FACTUAL BACKGROUND

This matter involved an appeal from a judgment of the Third Judicial District Court of Salt Lake County, the Honorable Homer F. Wilkinson presiding. Judgment was entered on May 17, 1985. Paragraph 2 of the judgment awarded Respondent in this action that the reasonable attorney's fees incurred by Plaintiff in the lower Court in the amount of \$500.00. (Exhibit D to Appellant's Brief on Appeal).

Reasonable attorney's fees were awarded pursuant to a contractual provision contained in the Uniform Real Estate Contract which was the basis for Plaintiff's claim. (Attachment to Exhibit B of Appellant's Brief on Appeal).

Respondent in his Brief on Appeal specifically requested that he be awarded costs and attorney's fees incurred in the appeal based on the contractual provision. (Brief of Respondent, P. 10). The decision of the Court in this matter, filed September 10, 1986, issued per curiam, completely affirms the decision of the lower Court. However, the decision as issued does not address Respondent's request for an award of its reasonable attorney's fees incurred in the appellate process.

ARGUMENT

The New Utah Rules of Appellate Procedure do not address the procedure for a claim by the prevailing party of reasonable attorney's fees incurred in the appeal. Historically, prior to the adoption of the New Utah Rules of Appellate Procedure, this Court awarded reasonable attorney's fees on appeal in circumstances where prevailing party was entitled to attorney's fees in the lower Court and where the prevailing party requested in its Brief that it be awarded attorney's fees incurred in the appeal.

In the case at hand, lower Court in fact awarded reasonable attorney's fees in the amount of \$500.00 based on a contractual provision contained in the Uniform Real Estate Contract which was the basis for Plaintiff's claim in this case.

Respondent, in its Brief on Appeal (P. 10), also specifically requested that reasonable attorney's fees be awarded on appeal.

PRAYER FOR RELIEF


Respondent respectfully requests that it be awarded his reasonable attorney's fees incurred in this appeal and that the Court specify the procedure to be followed in fixing the amount of the fees to be awarded.

Respondent respectfully requests that the Court continue to follow its prior rule that reasonable attorney's fees will be awarded on appeal where such fees were properly claimed before the lower Court, and where the prevailing party specifically requests in its Brief that reasonable fees be awarded on appeal. Fixing

the amount of such fees might be handled in the same procedure described in Rule 34(d) relating to the taxing of costs after remittitur.

DATED this 18 day of September, 1986.

GREEN & BERRY



RAYMOND SCOTT BERRY
Attorney for Plaintiff and
Respondent

MC85:06

CERTIFICATE OF MAILING


STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Mary Crawford, being duly sworn, says:

That she is employed in the offices of GREEN & BERRY, attorneys for Plaintiff/Respondent herein, that she served four (4) copies of the attached Petition of Respondent for Rehearing upon the following parties by placing a true and correct copy thereof in an envelope addressed to:

Andrew B. Berry
Attorney at Law
100 Harmon Building
3540 South 4000 West
West Valley City, Utah 84120

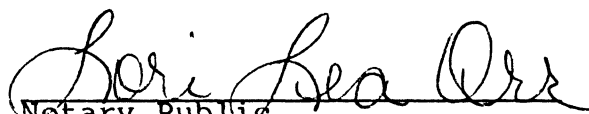
and depositing the same, sealed, with first class postage prepaid thereon, in the United States Mail at Salt Lake City, Utah on the 19 day of September, 1986.



SUBSCRIBED AND SWORN to before me this 19th day of September, 1986.

My commission expires:

7-15-90


Notary Public
Residing at: Salt Lake City, Utah