

1952

## Osborne Allen v. Rose Park Pharmacy : Answer to Petition for Rehearing

Utah Supreme Court

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Pugsley, Hayes & Rampton; Attorneys for Respondent;

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7672

IN THE SUPREME COURT  
OF THE STATE OF UTAH

----- **FILED**

JAN 5 1982

OSBORNE ALLEN,

Plaintiff and Petitioner, :

-vs-

Case No.

ROSE PARK PHARMACY,

7672

Defendant and Respondent. :

Clerk, Supreme Court, Utah

ANSWER TO PETITION FOR REHEARING

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PUGSLEY, HAYES & RAMPTON

Attorneys for Respondent

IN THE SUPREME COURT  
OF THE STATE OF UTAH

- - - - -

OSBORNE ALLEN, :

Plaintiff and Retitioner, :

-vs-

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CASE NO.

ROSE PARK PHARMACY, :

7672

Defendant and Respondent.:

- - - - -

ANSWER TO PETITION FOR REHEARING

\* \* \* \* \*

COMES NOW Rose Park Pharmacy and answers  
the Petition for Rehearing as follows:

1. That the opinion of the court herein  
does not purport to direct issuance of an  
injunction.

2. That the two concluding paragraphs  
of the prevailing opinion read as follows:

"It is therefore our conclusion that the  
restrictive covenant is valid. It is  
supported by consideration. No bad faith  
is shown in the negotiation of the contract.  
The covenant is necessary to protect the  
good will of the business and is reasonable  
in its restriction as to time and area."

"The judgment is reversed. Costs awarded

ff herein was the moving party in the lower court wherein he asked for a declaratory judgment that the negative covenant in the contract of employment was "unenforceable."

4. That the issue raised by the Petition for Rehearing is met as the same has never been requested by an injunctive proceedings between the parties.

5. That the said basic issue has now been adjudged in favor of this defendant and against the plaintiff.

6. That no prayer for an injunction was ever made in proceedings in the lower court, because as of said date, plaintiff was not in violation of his covenant not to compete.

7. That the plaintiff does not attack the propriety of the decision of the court herein or of the principles of law enunciated.

8. That the matter requested to be passed upon by the Petition for Rehearing is not within the issues presented by the appeal and no cross appeal was taken by plaintiff, therefore, the

matter is not properly before the court at this time.

9. That the decision of the majority of this Court as now issued is sound and truly reflects the law and the plaintiff does not otherwise herein contend.

WHEREFORE, defendant and appellant, Rose Park Pharmacy, respectfully pray that the opinion of this Court be permitted to stand as issued and that the Petition for Rehearing be denied.

Respectfully submitted,

LANNER,

PUGSLEY, HAYES & RAMPTON

Defendant

By Harry D. Pugsley

Attorneys for Respondent

DEFENDANT

721 1/2 Cont'l Bank Bldg.  
Salt Lake City, Utah

Mailed a copy of the foregoing answer to J. Richard Bell and Jacques Bell, Attorneys for Petitioner, 1182 West 5th North, Salt Lake City, Utah, this \_\_\_\_\_ day of January, 1952.

HARRY D. PUGSLEY