

1979

Federal Employees Credit Union, A Corporation v. Agapito Espinoza and Mary Espinoza : Brief In Support of Appellant's Petition For Rehearing

Utah Supreme Court

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IN THE SUPREME COURT
OF THE STATE OF UTAH

FEDERAL EMPLOYEES CREDIT
UNION, a corporation,

Plaintiff/Respondent,

v.

AGAPITO ESPINOZA and MARY
ESPINOZA,

Defendants/Appellant.

Case No. 15238

BRIEF IN SUPPORT OF APPELLANT'S
PETITION FOR REHEARING

Appeal from Judgment of the
Judicial District Court for
County, The Honorable Ronald
Hyde, presiding.

UTAH
By
15238
Self
ATTORNEY
Respondent

TIMOTHY W. BLACKBURN, ESQ.
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Ogden, Utah 84401

Attorney for Respondent

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2 Attorneys for Appellant
3 Mary Espinoza
4 By BRUCE PLENK
352 South Denver Street
Salt Lake City, Utah 84111
Telephone: 328-8891

5 IN THE SUPREME COURT OF THE
6 STATE OF UTAH

8 FEDERAL EMPLOYEES CREDIT)
9 UNION, a corporation,)

10 Plaintiff/)
11 Respondent,)

12 v.)

13 AGAPITO ESPINOZA and MARY)
ESPINOZA,)

14 Defendants/)
15 Appellant.)

PETITION FOR REHEARING
and MOTION FOR ORAL
ARGUMENT

Case No. 16224

16 Appellant, by and through her attorney of record
17 Bruce Plenk, of Utah Legal Services, Inc. and pursuant to
18 Rule 76(e), Utah Rules of Civil Procedure, hereby petitions
19 this Court to rehear and reconsider its judgment, entered
20 October 10, 1979, summarily affirming the decision of the
21 Second District Court for Weber County. Appellant further
22 moves this Court to schedule oral argument on this matter.

23 This Petition is based upon the following grounds:

24 1. Appellant's appeal raises novel and substantial
25 questions about the standards to be used in determining
26 whether a waiver of statutory exemption rights has occurred.

27 2. This issue was not briefed, argued or dis-
28 cussed in full in Clearfield State Bank v. Contos, 562 P.2d
29 622 (Utah 1977), which held only that exemption rights could
30 be waived, a point not contested by any party herein.

31 3. The implicit result of this Court's opinion
32 is to establish different standards for similar exemption
33 rights, namely exempt personal property and exempt home-
34 steads.
35

Petition for Rehearing
& Motion for Oral
Argument-1

UTAH LEGAL SERVICES, INC.
333 SOUTH DENVER
SALT LAKE CITY, UTAH 84111
(801) 328-0121

1 4. No oral argument has been heard on this
2 appeal.

3 5. This Court's new Rule 75B(e), effective
4 September 11, 1979, was apparently applied retroactively to
5 this appeal, which was filed on January 2, 1979.

6 6. Important issues affecting all lending insti-
7 tutions and persons seeking credit in Utah are involved
8 herein. This Court should provide guidance in this area by
9 fully considering Appellant's contentions and issuing a
10 published opinion to provide this future guidance.

11 Respectfully submitted this 30th day of October,
12 1979.

13 UTAH LEGAL SERVICES, INC.
14 Attorneys for Appellant
15 Mary Espinoza

16 By Bruce Plenk
17 BRUCE PLENK

18
19
20
21
22
23
24 CERTIFICATE OF MAILING

25 I HEREBY CERTIFY that I mailed a copy of the fore-
26 going Petition for Rehearing and Motion for Oral Argument to
27 Timothy Blackburn, Attorney for Respondent, 2605 Washington
28 Boulevard, Suite 320, Ogden, Utah 84401, on this 30th day
29 of October, 1979.

30
31 Dorothy Egan
32
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34
35

Petition for Rehearing
& Motion for Oral
Argument-2

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