

1980

# Bruce E. Holmes dba Holmes Realty v. DeGraff Associates, Inc. : Brief of Respondent in Opposition to Appellant's Petition for Rehearing

Utah Supreme Court

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Wayne G. Petty; Attorneys for Appellant;

Neil R. Sabin; Attorney for Respondent;

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IN THE SUPREME COURT OF THE STATE OF UTAH

BRUCE E. HOLMES, dba )  
HOLMES REALTY, )  
 )  
Plaintiff-Appellant, )  
 )  
vs. )  
 )  
DeGRAFF ASSOCIATES, INC., )  
 )  
Defendant-Respondent, )

RESPONDENT'S BRIEF  
IN OPPOSITION TO  
APPELLANT'S PETITION  
FOR REHEARING

NEIL R. SABIN OF  
STRINGHAM, LARSEN,  
MAZURAN & SABIN  
A PROFESSIONAL CORPORATION  
200 North Main Street  
Salt Lake City, UT 84102  
Attorneys for Respondent

WAYNE G. PETTY of  
MOYLE & DRAPER  
600 Deseret Plaza  
Salt Lake City, UT 84111  
Attorneys for Appellant

FILED

JUN 20 1980

Clark, Supreme Court, Utah

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BRUCE E. HOLMES, dba )  
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NEIL R. SABIN of  
STRINGHAM, LARSEN,  
MAZURAN & SABIN  
A PROFESSIONAL CORPORATION  
200 North Main Street, #200  
Salt Lake City, UT 84103  
Attorneys for Respondent

WAYNE G. PETTY of  
MOYLE & DRAPER  
600 Deseret Plaza  
Salt Lake City, UT 84111  
Attorneys for Appellant

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RESPONDENT'S BRIEF  
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FOR REHEARING

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This brief is submitted in opposition to the Appellant's  
Petition for Rehearing.

STATEMENT OF FACTS

The facts in this case, and the references to the Record  
on Appeal supporting the facts as found by the Trial Court, are  
sufficiently set forth in the Respondent's Brief on pages 1  
through 7.

RELIEF SOUGHT BY RESPONDENT

Respondent respectfully requests that the Appellant's  
Petition for Rehearing be denied.

CASES AND AUTHORITIES CITED

Respondent submits that the cases and authorities  
supporting the Respondent's position are adequately cited and  
analyzed in the Respondent's Brief previously filed with this  
Court.

## ARGUMENT I

### THIS COURT'S OPINION FAIRLY AND SUFFICIENTLY DISPOSED OF ALL ISSUES ON APPEAL

The Appellant, in his Brief in Support of the Petition for Rehearing, acknowledges the principles of appellate review relative to the review of evidence and findings by the Trial Court. In direct contradiction to that acknowledgement, however, the Appellant attempts again to convince this Court to adopt Appellant's own version of the evidence, through recitation of selective "facts" and self-serving statements previously argued in the Appellant's Brief on Appeal and his Reply Brief.

The Appellant begs the question by alleging that the Supreme Court purportedly erred in its "Findings of Fact," set forth in its opinion. The determinative argument is, rather, that the Trial Court considered all of the evidence and found the facts and issues different from the "facts" argued by Appellant on appeal; Appellant never objected to the Trial Court's Findings of Fact; and sufficient, credible evidence supports the Trial Court's Findings of Fact and Conclusions.

The Appellant's implication is that the Supreme Court failed to give adequate review of the facts and issues presented by the parties, an implication which the Respondent rejects as unwarranted. This Court's opinion was correct, and no further argument of the issues will make that opinion less correct.

## ARGUMENT II

THE TOTAL AND COMPLETE ANALYSIS OF EVERY  
ARGUMENT BY APPELLANT IS NOT JUSTIFIED

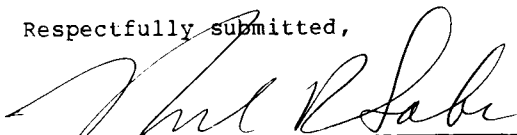
This Court correctly stated that its opinion did not add significantly to existing law. The Respondent suggests that a further, detailed, point-by-point analysis of all issues urged by the Appellant would not change this result. This dispute being a factual dispute, further analysis of all issues would be meaningless.

Likewise, the Appellant's suggestion that this Court did not adequately discuss all issues raised by the Appellant is without merit. The fact that the Supreme Court chose, in its written opinion, specifically to address a limited number of issues does not support a conclusion that this Court failed to consider all issues raised.

## CONCLUSION

The fact that this Court has not adopted the Appellant's view of each fact, issue of law, or emphasis does not create any merit in an otherwise meritless case. The Appellant's Petition for Rehearing should be denied.

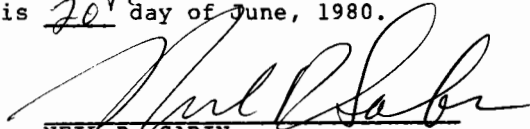
Respectfully submitted,



NEIL R. SABIN  
STRINGHAM, LARSEN, MAZURAN & SABIN  
A PROFESSIONAL CORPORATION  
200 North Main Street, Suite 200  
Salt Lake City, Utah 84103  
(801) 328-1501  
Attorneys for Respondent

CERTIFICATE OF SERVICE

This is to certify that I mailed a true and correct copy of the foregoing Brief in Opposition to Appellant's Motion for Rehearing to Wayne C. Petty, Esq., 600 Deseret Plaza, Salt Lake City, Utah, postage prepaid, this 20<sup>th</sup> day of June, 1980.

  
NEIL R. SABIN