

1960

Lewis F. Hansen dba Hansen Realty Co. v. Ivy B. Snell : Petition for Rehearing

Utah Supreme Court

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Richards, Bird and Hart; Attorneys for Respondent;

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IN THE SUPREME COURT

of the

STATE OF UTAH

----- FILED

SEP 8 - 1960

LEWIS F. HANSEN, dba)

Hansen Realty Company, :

)

Plaintiff and ::

Respondent,)

:

vs.)

:

IVY B. SNELL,)

:

Defendant and)

Appellant. :

)

Clerk, Supreme Court, Utah

Case No. 9169

PETITION FOR REHEARING

~~XX~~

RICHARDS, BIRD AND HART

ATTORNEYS FOR RESPONDENT AND PETITIONER

IN THE SUPREME COURT

of the

STATE OF UTAH

LEWIS F. HANSEN, dba)
Hansen Realty Company, :

Plaintiff and)
Respondent,)

Case No. 9169

vs.)

IVY B. SNELL,)

Defendant and)
Appellant.)

BRIEF OF RESPONDENT

The court's opinion in this case is an effort to reach a result favorable to someone whom the court apparently regards as a helpless, bereaved widow. It relies on the woman's justification for

refusing to sell her land because her husband was ill and then comments parenthetically, "He later passed away."

The court is invited to take another look at the facts. It is the Respondent whose testimony should be accepted. Mrs. Snell is the owner of substantial property interests. (R. 36, 37, 81). She had tried to sell this particular property for \$37, 500 a year previously (R. 24, 37, 57) and had been unable to find a buyer at that price. This time she listed it at the high price of \$43, 000 indicating that she would be delighted to get that price in her conversation with the broker who is the Appellant. (R. 24). The broker gets an offer for the full price in cash or to pay over any period of years which the Seller cares to stipulate. It balks at the exorbitant and unrealistic interest rate of 10 per cent because that will add

\$25, 000 to the purchase price. (Respondent's Brief, p. 5). The court then concludes that the real estate broker has not earned his commission because the Seller has changed her mind.

In appraising a case of this kind it is of course necessary to look at the circumstances of the parties and determine where the prejudices of the court will lie. But that is primarily a matter for the concern of the District Court and in this case the District Court held for the broker.

On appeal, it is to be expected that the court will judge the law and not the facts.

The brief of Appellant cites cases in support of the rule that where no interest rate is specified the legal rate fixed by statute applies, (Brief, p. p. 4-5), and numerous cases that the rate of interest to be judged is not a "term" of a contract where terms are

to be negotiated. (Brief, p. 6).

The Supreme Court ignores these authorities and the Utah Statute and by the force of its own assertion writes an opinion which Appellant submits is contrary to the law which has previously existed.

Real estate brokers are entitled to make a living. They are licensed by the state and the broker in this case has rendered a creditable service to a well-to-do woman who is attempting to squeeze an exorbitant price out of a buyer who wants her land and in doing so has refused to pay an earned commission.

Appellant respectfully requests that the court rehear and reconsider this case with further oral argument if it please the court.

Respectfully submitted,

RICHARDS, BIRD AND HART

**Attorneys for Respondent
and Petitioner**