

1969

**Reliable Furniture Company v. American Home Assurance Co.,
Western General Agency, and General Adjustment Bureau :
Petition For Rehearing**

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IN THE SUPREME COURT

OF THE

FILED

STATE OF UTAH

APR 10 1951

Clerk, Supreme Court

RELIABLE FURNITURE COMPANY,

Plaintiff and Appellant,

vs.

**AMERICAN HOME ASSURANCE CO.,
WESTERN GENERAL AGENCY, and
GENERAL ADJUSTMENT BOARD,**

Defendants and Respondents.

APPELLANT'S PETITION FOR

**Petition for Rehearing from
Utah Supreme Court**

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TABLE OF CONTENTS

PETITION FOR REHEARING-----1

RELIEF SOUGHT ON REHEARING-----5

STATEMENT OF FACTS-----6

ARGUMENT-----6

POINT 1.
THE COURT ERRED IN AFFIRMING THE
LOWER COURT JUDGMENT RULING THERE
WAS AN ACCORD AND SATISFACTION-----6

POINT 2.
THE COURT ERRED IN DENYING FRAUD
AS A MATTER OF LAW-----13

POINT 3.
THE COURT ERRED IN DENYING THE
DOCTRINE OF STARE DECISIS-----18

POINT 4.
THE COURT ERRED IN DENYING ECONO-
MIC DURESS AS A MATTER OF LAW-----20

POINT 5.
THE COURT ERRED IN DENYING RIGHT
OF TRIAL BY JURY-----27

CONCLUSION-----31

TABLE OF AUTHORITIES

CASE CITATIONS

<u>Aragon vs. Boyd</u> 80 N.M. 14, 450 P.2d 614 (1969)-----	17
<u>Ralph A. Badger & Company vs. Fidelity Building & Loan Assn.</u> 94 Ut. 97, 75 P.2d 669-----	8
<u>Chester Barnett vs. M. T. Brown and C. V. Hoke</u> 302 P.2d 735 (Oct. 18, 1956) Sup. Ct. of New Mexico-----	19
<u>Bennet vs. Robinson's Medical Mart, Inc.</u> 18 Ut.2d 186, 417 P.2d 761 (Aug. 1966) Sup. Ct. of Ut.-----	7
<u>Casper National Bank vs. Woodin, et al.</u> 232 P.2d 706 (June 19, 1951) Sup. Ct. of Wyoming-----	11
<u>M. G. Chamberlain & Co. vs. Kenneth R. Simpson</u> 343 P.2d 438 (Aug. 25, 1959) Dist. Ct. of Appeal of Cal.-----	13, 15
<u>Dobinson vs. McDonald</u> 27 P. 1098, 92 Cal. 33-----	15
<u>Fimlayson vs. Brady</u> 121 Ut. 204, 240 P.2d 491-----	27, 28
<u>Floyd vs. Dept. of Labor & Industries</u> 69 P.2d 563 (Apr. 9, 1954) Sup. Ct. of Wash.-----	18
<u>Hales vs. VanCleave</u> 429 P.2d 379, 78 N.M. 181-----	18

<u>Jiminez vs. O'Brien</u>	
213 P.2d 337, 117 Ut. 82-----	9
<u>Jordon vs. Guerra</u>	
144 P.2d 349, 23 Cal. 2d. 469-----	16
<u>Kelley vs. Salt Lake Transportation Co.</u>	
116 P.2d 383 (Aug. 15, 1941)-----	9
<u>Kelley vs. United Mutual Insurance</u>	
<u>Assn.</u>	
112 S.W. 2d 929-----	25
<u>Kirchgestner vs. Denver & Rio Grande</u>	
<u>Western Railroad Co.</u>	
233 P.2d 699 (June 19, 1951)-----	10
<u>Manno vs. Mutual Ben., Health and</u>	
<u>Accident Assn.</u>	
187 NYS 2d. 709-----	25
<u>Medler vs. Henry</u>	
101 P.2d 398 (1940) 44 N.M. 275-----	17
<u>Metropolitan State Bank, Inc. vs.</u>	
<u>Arthur Crox, et al.</u>	
302 P.2d 188 (Oct. 8, 1956) Sup. Ct.	
of Colorado-----	23
<u>Moise Bros. Co. vs. Jamison</u>	
1 P.2d 925, 89 Colorado 278-----	25
<u>Moore vs. Satir</u>	
207 P.2d 835 (July 11, 1949) Sup. Ct.	
of Cal.-----	12
<u>State of Oregon vs. Frank B. Reid</u>	
298 P.2d 990 (June 20, 1956) Sup. Ct.	
of Oregon-----	29
<u>Raymond vs. Union Pacific Railroad</u>	
191 P.2d 137 (1948) Sup. Ct. of Ut.-----	27

Reliable Furniture Co. vs. Fidelity
398 P.2d 685 (Feb. 3, 1965) 16 Ut.
2d 211-----11, 16, 19, 20, 23, 28, 30

Reliable Furniture Co. vs. Fidelity
Sup. Ct. of Ut. (3/10/70)---7, 13, 19, 21, 26

Samora vs. Lorenzo Bradford
465 P.2d 88 (Jan. 2, 1970) Ct. of
Appeals of New Mexico-----17

Scoville vs. Kellogg Sales Co.
261 P.2d 933 (Oct. 16, 1953)-----8

Sewell Co. vs. Commercial Casualty &
Insurance Co.
15 P.2d 327, 80 Ut. 378-----8

Siegal vs. A. L. Lechler
275 P.2d 949 (Nov. 1, 1954) Sup. Ct.
of Colorado-----12

Stocks vs. Stocks
183 P.2d 617. (July 24, 1947) Sup. Ct.
of Nevada-----20

Trompeter vs. United Insurance Co.
316 P.2d 455 (Oct. 17, 1957) Sup. Ct.
of Wash.-----9

Wheelock Bros., Inc., vs. Bankers
Warehouse Co., et al.
171 P.2d 405 (July 1, 1946) Sup. Ct.
of Colorado-----24

Winstanley vs. Ackerman
294 P. 449, 110 Cal. App. 641-----15

CONSTITUTION OF UTAH

Article 1, Section VII-----30

Article 1, Section XI-----28

UTAH STATUTES

78-21-2, UCA (amended 1953)-----28

SECONDARY AUTHORITIES

Books

Black's Law Dictionary, fourth edition,
Page 157-----19

Annotations

53 Am. Jur., Page 292, Section 362-----29

IN THE SUPREME COURT
OF THE
STATE OF UTAH

_____ /
RELIABLE FURNITURE COMPANY, /
Plaintiff and Appellant, / PETITION
FOR
REHEARING
vs. /
AMERICAN HOME ASSURANCE CO., /
WESTERN GENERAL AGENCY, and / Case No.
GENERAL ADJUSTMENT BUREAU, / 11656
Defendants and Respondents. /
_____ /

The Plaintiff and Appellant, Reliable Furniture Company, herein Petitions this Honorable Court for a rehearing on the Judgment rendered by the Supreme Court on March 10, 1970, wherein this Honorable Court affirmed the Judgment of a lower District Court. The lower District Court, having granted the Defendant's and Respondent's Motion to Dismiss in accordance with Rule 41. (B) U.R.C.P., denying, by reason of granting the Motion to Dismiss, the Plaintiff's contention of its right of submission

to a jury of the issues presented to the lower Court. Appellant and Petitioner submits:

1. The Court erred in affirming the Judgement of the lower Court on the basis of holding that there was an Accord and Satisfaction where the Pleadings and the Briefs, of both the Appellant and the Respondents, show no affirmative pleading or defense of Accord and Satisfaction when Utah Statutes require that such a defense be an affirmative one.

2. The Court erred in determining and ruling, that as a matter of law, the Plaintiff did not prove fraud on the part of the Defendant and the Court seeks to avoid the facts evidenced in the case, on the basis of the credibility of the witnesses and in not submitting credibility to the Trier of Facts which, in this case, constituted a jury in the lower Court.

3. The Court erred in that the Appellant had a valid right to rely upon the rule of stare

decisis when the Court in a previous case between the same parties, upon the same facts reversed its previous findings and holdings between the same parties.

4. The Court erred when it ruled as a matter of law, that there was no economic duress visited upon the Appellant.

5. The Court erred in ignoring the Petition of the Appellant and its plea to the Court, to be allowed a right of trial by jury, granted by the Constitution of the United States and the Constitution of the State of Utah, such denial constituting a denial of due process of law to the Appellant herein.

WHEREFORE, the Appellant, Reliable Furniture Company, prays that this Honorable Court grant the Petitioner's plea that upon considering the Briefs hereto attached, this Court reverse the Judgment of the lower Court and grant to the Appellant a right of trial by jury in the lower Court.

Respectfully submitted,

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