

1972

Estate Realty, Inc. v. Walter W. Kershaw : Petition For Rehearing

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IN THE SUPREME COURT OF THE STATE OF UTAH

ESTATE REALTY, INC.,
a corporation,

Plaintiff and Appellant

vs.

WALTER W. KERSHAW,

Defendant and Respondent

APPELLANT'S PETITION

Appeal from the Judgment
for Sale of Real Estate

Honorable Joseph B. ...

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FILED
FEB 20 1934

Clerk, Supreme Court

IN THE SUPREME COURT OF THE STATE OF UTAH

ESTATE REALTY, INC.,
a corporation,

Plaintiff and Appellant

vs.

WALTER W. KERSHAW,

Defendant and Respondent.

}
Case No.
12896

APPELLANT'S PETITION FOR REHEARING

PETITION FOR REHEARING

Plaintiff-Appellant proceeding by and through its attorneys, Bettilyon & Howard, Gary A. Weston and F. Burton Howard, and pursuant to Rule 76(e)(1) URCP, moves this Court to grant it a rehearing on the decision of the Court filed in the above-entitled matter on January 16, 1973, and pursuant to rehearing, to enter a decision responsive to the issues raised on appeal to the Court.

The Court in its decision, determines that since the Defendant-Respondent entered into a contract to sell real property prior to qualifying as executor of the estate of a decedent, that he did not thereby impose liability upon the estate for the performance of said contract. The issue so determined, is that which was raised by the Plaintiff in the First and Second Claims for Relief of its Amended Complaint and which Claims were dismissed by the trial court *upon Plaintiff's Motion*. The decision of the trial court from which this appeal is taken, is relevant only to the question of whether the Defendant is *individually* liable to the Plaintiff under the terms of the Earnest Money Agreement executed by the Defendant prior to the date of his qualifying as executor of the estate.

A re-reading of the Briefs submitted by the Plaintiff and Defendant together with the District Court Judgment from which this appeal has been taken, will clearly evidence that the issues placed before this Court incident to said appeal relate only to the question of whether the Defendant is *personally* and *individually* obligated to the Plaintiff under the terms of their said contract. The decision filed by this Court on January 16, 1973, is neither responsive to nor determinative of those issues.

The Plaintiff-Appellant respectfully submits that the facts as analyzed and the authorities as cited in its brief on file with this Court clearly establish a meritorious claim for a real estate commission due and owing by the Defendant, individually, pursuant to the terms of the contract subject of this appeal, that the decision filed by this Court on January 16, 1973, is neither responsive to nor determinative of the issues raised on appeal and that the Plaintiff is entitled to and should be

granted a rehearing on the said decision in order that there may be obtained a decision from the Court responsive to the issues as raised.

Respectfully submitted,

BETTILYON & HOWARD

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