

NEW JERSEY COURT OF ERRORS AND APPEALS. 8

MICHAEL T. KULIGOWSKI, *
Plaintiff-Appellant, *
Vs. * ON APPEAL FROM
WILLIAM E. McCULLOUGH, * SUPREME COURT.
Defendant-Appellee. *

* * * * *

S T A T E O F C A S E.

Sat Below: Minturn, Black and Parker.

SOL KANTOR,
Attorney for Plaintiff-Appellant,
JACOB S. KARKUS (Of counsel)

WIGHT, WIGHT & GOLENBOCK,
Attorneys for Defendant-Appellee.

... sale of the derer ... as his

RECORDED FOR DE
MICH. MICH. 8

NEW JERSEY COURT OF ERRORS AND APPEALS.
MICHAEL T. KULIGOWSKI,
Plaintiff-Appellant,
vs.
WILLIAM E. McCULLOUGH,
Defendant-Appellee.

STATE OF CALIF.
Est Below: Martin, Black and Parker.

SOL KANTOR,
Attorney for Plaintiff-Appellant,
JACOB S. KANUS (of counsel)
WIGHT, WIGHT & GOLENBOCK,
Attorneys for Defendant-Appellee.

PERTH AMBOY DISTRICT COURT.

Case Number 19011. *
Michael T. Kuligowski, *
Plaintiff-Appellant, *
vs. *
ON CONTRACT *
STATE OF CASE. *
William E. McCullough, *
Defendant-Appellee. *
* * * * *

Sol Kantor, Attorney for Plaintiff-Appellant,

10 Wight, Wight & Golenbock, Attorneys of Defendant-Appellee.

1. The parties hereto, by their respective attorneys, having been unable to agree upon a state of the case for appeal, and having applied to me, Judge of said Court, within the time limited by law, I do hereby settle the case as follows:

20 2. This is an action commenced by the plaintiff, a real estate broker, to recover from the defendant, commission alleged to be due him for effecting the sale of the defendant's premises, at 271 High Street, in the City of Perth Amboy, in the County of Middlesex and State of New Jersey,

PERTH AMBOY DISTRICT COURT.
Case Number 19011.
Michael T. Kuligowski,
Plaintiff-Appellant,
vs.
William E. McLaughlin,
Defendant-Appellee.
Sol Kantor, Attorney for Plaintiff-Appellant,
Wight, Wight & Goldenbock, Attorneys of
Defendant-Appellee.
I. The parties hereto, by their respective attorneys, having been unable to agree upon a state of the case for appeal, and having applied to me, Judge of said Court, within the time limited by law, I do hereby settle the case as follows:
2. This is an action commenced by the plaintiff, a real estate broker, to recover from the defendant, commission alleged to be due him for effecting the sale of the defendant's premises at 271 High Street, in the City of Perth Amboy, in the County of Middlesex and State of New Jersey, and the \$750.00 was retained by the seller as his damages. The plaintiff was informed of these releases after they were made.

upon a certain written contract as set forth in the state of demand.

10 3. The plaintiff was the first witness called and his testimony brought out the facts that the plaintiff and defendant and Morris Weisberger met at the office of Morris L. Goldberger, a Counselor at Law in the City of Perth Amboy, N. J., on the evening of October 7th, 1924, and then and there the defendant entered into a written contract with the said Morris Weisberger to sell and convey to him certain property on High Street, in the City of Perth Amboy. At the same time plaintiff and defendant entered into the contract for the payment of commissions which is the basis of this action; the said contract fixing the amount of commission ending with these words "to be paid if the title is consummated". At the time the contract of sale was executed the buyer paid a deposit of \$500.00 and one month later in accordance with the provisions of said contract he paid a further sum of \$250.00. On or about April 13th, 1925, the defendant and the buyer executed to each other separate releases relative to the contract of sale and the \$750.00 was retained by the seller as his damages. The plaintiff was informed of these releases after they were made.

20 4. Morris Weisberger, a witness called by the plaintiff testified to the signing of the

upon a certain written contract as set forth in the state of demand. The plaintiff was the first witness called and his testimony brought out the facts that the plaintiff and defendant and Morris Weisberger met at the office of Morris J. Goldberger, a Counselor at Law in the City of Perth Amboy, N. J., on the evening of October 7th, 1924, and then and there the defendant entered into a written contract with the said Morris Weisberger to sell and convey to him certain property on High Street, in the City of Perth Amboy. At the same time plaintiff and defendant entered into the contract for the payment of commissions which is the basis of this action; the said contract fixing the amount of commission ending with these words "to be paid if the title is consummated". At the time the contract of sale was executed the buyer paid a deposit of \$500.00 and one month later in accordance with the provisions of said contract he paid a further sum of \$250.00. On or about April 13th, 1925, the defendant and the buyer executed to each other separate releases relative to the contract of sale and the \$750.00 was retained by the seller as his damages. The plaintiff was informed of these releases after they were made.

4. Morris Weisberger, a witness called by the plaintiff testified to the signing of the

contract for the purchase of the premises and the payments of \$500.00 and \$250.00 in accordance with the terms of the contract, and that he and the seller afterwards met and released each other from the obligation of the said contract. The seller retained the \$750.00 as damages. He further testified that the reason he did not take the title was because he was not able to do so as he did not have the money at the time.

10 Judgment for the defendant.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of July, 1925.

C. C. Hommann,
Judge.

contract for the purchase of the premises and the
payments of \$500.00 and \$250.00 in accordance with
the terms of the contract, and that he and the
seller afterwards met and released each other from
the obligation of the said contract. The seller
retained the \$750.00 as damages. He further testi-
fied that the reason he did not take the title was
because he was not able to do so as he did not
have the money at the time of the defendant's
offer of judgment for the defendant. The defendant
IN WITNESS WHEREOF, I have hereunto set
my hand this 3rd day of July, 1935.
C. O. Hoffman,
Judge.

PERTH AMBOY DISTRICT COURT.

Michael T. Kuligowski, *
Plaintiff, * Court File #19011.
Vs. * ON CONTRACT
William E. McCullough, * STATE OF DEMAND.
Defendant. *

* * * * *

1. The plaintiff demands of the defendant, the sum of \$450.00, upon a certain written agreement, a copy of which is herewith attached and made a part hereof.

2. That it was agreed by and between the plaintiff and defendant, that the plaintiff was to receive a commission of \$300.00 from the defendant, for effecting the sale of the defendant's premises at 271 High Street, in the City of Perth Amboy, in the County of Middlesex and State of New Jersey; to one Morris Weisberger.

3. That the plaintiff has fully performed his part of the contract, in that he has brought about the sale of the premises above referred to; but that the defendant has neglected and refused to perform his part of the said contract.

4. That the plaintiff has demanded that the

PERTH AMBOY DISTRICT COURT
Michael T. Kuligowski, Plaintiff,
vs.
William E. McCullough, Defendant.

1. The plaintiff demands of the defendant the sum of \$450.00, upon a certain written agreement, a copy of which is herewith attached and made a part hereof.

2. That it was agreed by and between the plaintiff and defendant, that the plaintiff was to receive a commission of \$300.00 from the defendant, for effecting the sale of the defendant's premises at 271 High Street, in the City of Perth Amboy, in the County of Middlesex and State of New Jersey; to one Morris Weisberger.

3. That the plaintiff has fully performed his part of the contract, in that he has brought about the sale of the premises above referred to; but that the defendant has neglected and refused to perform his part of the said contract.

4. That the plaintiff has demanded that the

defendant pay the said commission of \$300.00, but that the defendant has refused and still refuses to pay the same.

5. Judgment will be claimed for the sum of \$300.00 together with interest and costs of suit.

SOL KANTOR,
Attorney for Plaintiff.

COPY OF AGREEMENT.

I hereby agree with Mr. M. Kuligowski Real Estate Broker to pay him a commission of \$300.00 for selling my property known as 271 High St., Perth Amboy for price of \$15000.00, to be paid if the title is consummated.

W. E. McCULLOUGH.

NEW JERSEY SUPREME COURT.
No. 423, January Term, 1926.

MICHAEL T. KULIGOWSKI,)
Appellant,) ON APPEAL.
Vs.)
WILLIAM E. McCULLOUGH,)
Respondent.)

Submitted January Term, 1926; Decided May 7th, 1926.

Before Justices Parker, Minturn & Black.

For the Appellant: Sol. Kantor, Esq.
(Jacob S. Karkus, of counsel)
For the Respondent: Wight, Wight & Golenbock.

PER CURIAM:

This suit was brought to recover a broker's commission under a written contract dated October 6, 1924, for selling the property known as No. 271 High St., Perth Amboy, N. J.

The case was tried by the Court without a jury resulting in a judgment for the defendant.

The contract contained this clause "I hereby agree with Mr. Kuligowski, Real Estate ^{Broker} ~~Broker~~, to pay him a commission of \$300.00 for selling my property known as 271 High St., Perth Amboy, N. J. to Mr. Weisberger, also of Perth Amboy, N. J. Price \$15,000.00 to be paid if title is consummated."

"October 6, 1924.

W. E. McCullough".

The state of the case shows that the title was never consummated.

We think the precise question involved on this appeal is the same as was discussed and decided in the case of Feldman V. Holdman, No. 413 January Term, 1926.

For the reasons stated in that case the judgment in this case is affirmed.

We think the precise question involved on the
 consummated.
 The state of the case shows that the title was
 "October 6, 1934. W. E. McCullough
 submitted."
 Amboy, N. J. Price \$15,000.00 to be paid in title
 St., Perth Amboy, N. J. to Mr. Weisberger, also of
 mission of \$300.00 for selling my property known as
 with Mr. Kulligowski, Real Estate Broker, to pay a
 The contract contained this clause "I hereby
 ing in a judgment for the defendant.
 The case was tried by the Court without a jury
 the property known as No. 271 High St., Perth Ambo
 under a written contract dated October 6, 1934, to
 This suit was brought to recover a broker's fee
 PER CURIAM:
 For the Respondent: Wight, Wight & Goldenbock
 (Jacob S. Karkus, Esq.)
 For the Appellant: Sol. Kantor, Esq.
 Before Justices Parker, Mintun & Black.
 Submitted January Term, 1938; Decided May Term
 Respondent.)
 WILLIAM E. McCULLOUGH,
 Appellant,
 MICHAEL T. KULLIGOWSKI,
 ON APPEAL.
 No. 423. January Term, 1938.
 NEW JERSEY SUPREME COURT.

JACOB S. KARKUS
 SOL
 217
 Perth
 LOS
 422
 Perth
 JACO
 of c
 SPECS

 WILL
 MICH
 NEW

NEW JERSEY SUPREME COURT.
No. 483, January Term, 1924

MICHAEL T. KULIGOWSKI,
(Appellant,
vs.
WILLIAM E. McCULLOUGH,
(Respondent.)

Submitted January Term, 1923; Decided May Term,
Before Justices Parker, Minnin & Black.
For the Appellant: Sol. Kantor, Esq.
(Jacob S. Karkus, of
For the Respondent: Wight, Wight & Goldenbook

PER CURIAM:

This suit was brought to recover a broker's
under a written contract dated October 6, 1924, for
the property known as No. 271 High St., Perth Ambo
The case was tried by the Court without a jur
ing in a judgment for the defendant.
The contract contained this clause: "I hereby
with Mr. Kuligowski, Real Estate Broker, to pay a
mission of \$300.00 for selling my property known as
St., Perth Amboy, N. J. to Mr. Weisberger, also of
Amboy, N. J. Price \$15,000.00 to be paid in title
summed."
"October 6, 1924. W. E. McCullough
The state of the case shows that the title was
consummated.

We think the precise question involved on this

NEW JERSEY COURT OF ERRORS
AND APPEALS

MICHAEL T. KULIGOWSKI,
Plaintiff-Appellant,
vs.
WILLIAM E. McCULLOUGH,
Defendant-Appellee.

ON APPEAL
SPECIFICATION OF POINTS.

JACOB S. KARKUS,
Of counsel with Plaintiff-
Appellant,
224 Smith Street,
Perth Amboy, N. J.

SOL KANTOR,
A ttorney for Plaintiff-
Appellant,
217 Smith Street,
Perth Amboy, N. J.

NEW JERSEY COURT OF ERRORS
AND APPEALS

ON APPEAL
MICHAEL T. KULIGOWSKI,
Plaintiff-Appellant,
Vs.

WILLIAM E. McCULLOUGH,
Defendant-Appellee.

ON APPEAL
AFFIRMATION OF POINTS.

B. S. KARKUS,
Counsel with Plaintiff-
Appellant,
Smith Street,
Amboy, N. J.

KANTOR,
Attorney for Plaintiff-
Appellant,
Smith Street,
Amboy, N. J.

W. E. McCullough

We think the precise question involved on the
case is that the title was
construed.

NEW JERSEY COURT OF ERRORS AND APPEALS
MICHAEL T. KULIGOWSKI,
Plaintiff-Appellant,
ON APPEAL
WILLIAM E. McCULLOUGH,
Defendant-Appellee.
JACOB S. KARKUS
BOB KANTOR

self. /
JACOB S. KARLUS
for Plaintiff-Appellant.
SOL KANTOR
submitted,
for the sum of three
with interest and
Appellant against the
a judgment may be
that the judgment
latter contract was
stipulated in the con-
to the vendor in
that the mutual re-

NEW JERSEY COURT OF ERRORS AND APPEALS.

MICHAEL T. KULIGOWSKI, *
Plaintiff-Appellant, *
Vs. * ON APPEAL
WILLIAM E. McCULLOUGH, * SPECIFICATION OF POINTS.
Defendant-Appellee. *
* * * * *

The following is a specification of the points on which the appellant means to rely at the argument:

1. Because the defendant was not entitled to a judgment by the law arising upon the facts.

Freeman Vs. Van Wagner, 90 N. J. L. 358.
Hinds Vs. Henry, 36 N. J. L. 328.
Dermody Vs. New Jersey Realities, 128 Atl. 265.

2. Because the court rendered a judgment for the defendant and against the plaintiff.

Freeman Vs. Van Wagner, 90 N. J. L. 358.
Hinds Vs. Henry, 36 N. J. L. 328.
Dermody Vs. New Jersey Realities, 128 Atl. 265.

Sol Kantor
.....
Attorney for Plaintiff-Appellant.

Jacob S. Karlus
.....
Of counsel with Plaintiff-Appellant.

We think the precise question involved on this
consummated.

BY SUPREME COURT.
January Term, 1924

ON APPEAL.

Decided May 27th
Starn & Black.

Appellant, Ed.
Jacob S. Karkus, of
Wight & Golensbock

Appellee, a broker's
October 6, 1924, to
High St., Perth Ambo

Court without a fur
ment.

clause "I hereby
broker, to pay
property known a
Leiberg, also of
to be paid if title

W. E. McCullough

of the case flows that the title wa

We think the precise question involved on the

consummated.

Bermody vs. New Jersey Real Estate, 188 Atl. 365.
Hinds vs. Henry, 38 N. J. L. 328.
Fresman vs. Van Hooker, 90 N. J. L. 358.
By the law relating to the facts.

I. Because the defendant was not entitled to a judgment
on which the appellant means to rely at the argument.

The following is a specification of the points

Defendant-Appellee.

WILLIAM E. MCCULLOUGH,

* SPECIFICATION OF POINTS.

that the mutual re-
mises to the vendor in
stipulated in the con-
the latter contract was
vices.
argued that the judgment
at a judgment may be
the-appellant against the
for the sum of three
ther with interest and

fully submitted,

BOL KANTOR
for Plaintiff-Appellant.

JACOB S. KARKUS
sel.

NEW JERSEY COURT OF ERRORS AND APPEALS.

MICHAEL T. KULIGOWSKI, *

Plaintiff-Appellant, *

ON APPEAL

Vs. *

WILLIAM E. McCULLOUGH, *

Defendant-Appellee. *

* BRIEF OF PLAINTIFF-
APPELLANT.

* * * * *

STATEMENT OF FACTS.

The Perth Amboy District Court after hearing the plaintiff's side of the case gave judgment for the defendant in this case.

The action was brought by the plaintiff, a licensed broker to recover a commission of \$300.00 under a contract of employment in writing as follows:

Oct. 6, 1924.
I hereby agree with Mr. M. Kuligowski, Real Estate Broker to pay him a commission of \$300.00 for selling my property known as 271 High St., Perth Amboy, N. J. to Mr. Weisberg also of Perth Amboy for Price of \$15,000. To be paid if the title is consummated.

W. E. McCullough.

The State of Case discloses that the property was sold by the plaintiff, the broker, at the price of \$15,000.00, and that the purchaser had paid a deposit of \$500.00 and a month later an additional sum of \$250.00 in accordance with the provision of the contract (State of Case page 2 line 7) and that several months later the defendant and the buyer executed to each other separate releases. The \$750.00 paid by the buyer was retained by the seller as his damages. (State of Case page 2 line

NEW JERSEY COURT OF APPEALS
SUPREME COURT
January Term, 1921

MICHAEL T. KULIGOWSKI,
Plaintiff-Appellant,
vs.
WILLIAM E. MCCULLOUGH,
Defendant-Appellee.

STATEMENT OF FACTS

The Perth Amboy District
the plaintiff's side of the case
defendant in this case.
The action was brought
licensed broker to recover a commis-
a contract of employment in writing
I hereby agree with Mr. M. K.L.
Broker to pay him a commission of
my property known as 371 High St.,
to Mr. Weisberg also of Perth Amboy
to be paid if the title is consummated
W.
The State of Case disclos-
was sold by the plaintiff, the prop-
\$15,000.00, and that the purchaser
\$500.00 and a month later an addi-

10.)

The plaintiff was informed of these releases after they were made.

The uncontradicted evidence was that Morris Weisberger, the purchaser, received and executed a release to and from the seller releasing each other from the obligations of said contract.

The plaintiff rested and the defendant moved for a judgment in his favor which was granted.

L A W.

1. BECAUSE THE DEFENDANT WAS NOT ENTITLED TO A JUDGMENT BY THE LAW ARISING UPON THE FACTS.
2. BECAUSE THE COURT RENDERED A JUDGMENT FOR THE DEFENDANT AND AGAINST THE PLAINTIFF.

The buyer produced by the broker having been accepted by the owner and a written contract having been entered into, entitles the broker to his commission. This has been laid down as the law in the case of Freeman Vs. Van Wagner, 90 N. J. L. 358. The court in that case among other things said:

"It is a mistake to think that we decided in Hinds Vs. Henry, 36 N. J. L. 328, that the broker could never recover unless he produced an able and willing purchaser and that the words 'sell' and 'sale' in an agreement between owner of lands and real estate broker mean no more than to negotiate a sale by finding a purchaser upon satisfactory terms."

That where the broker's contract with the owner stipulates, that his commission shall be dependant upon the passing of title; nevertheless, if the buyer and the seller enter into an agreement where the seller re-

arrounded by the fact that the
The unsolved mystery
the broker of the fruits of his
the money does not under the la
W. E. McMillan
set for the passing of title th
set for passing of title and th
have been able, ready and will
sum of \$250.00 strongly indicat
the deposit of \$500.00 and a m
time", nevertheless the fact th
the State of Case indicating wh
do so and did not have the mon
he did not take title, he repl
that when the purchaser, Morris
The uncontradicted ev
A R G U M E N T
April 16, 1925.)
Black & Black
Decided May 1925
New Jersey Realities;
the broker is then entitled to
leases the buyer and the buyer
SUPREME COURT
January Term, 1925

It can fairly be said that the mutual re-leases substituted payment of damages to the vendor in the place of the purchase money stipulated in the contract of sale and purchase, which latter contract was brought about by the agent's services.

It is respectfully urged that the judgment under review be reversed and that a judgment may be entered in favor of the plaintiff-appellant against the defendant in the District Court for the sum of Three Hundred (\$300.00) dollars, together with interest and costs incurred.

Respectfully submitted,

SOL KANTOR
Attorney for Plaintiff-Appellant.

JACOB S. KARKUS
Of counsel.

Involved on the
at the time
W. E. McCullough
Of course he paid it title
berger, also of
properly known a
to pay a
because I hereby
Respect
St., Perth Ambo
October 6, 1934, to
over a broker's
defendant in the District Court
entered in favor of the plaintiff
under review be reversed and the
It is respectfully
brought about by the agent's as
tract of sale and purchase, whi
the place of the purchase money
lease substituted payment of d
the work. It can fairly be said
SUPREME COURT.
January Term, 1934
ON APPEAL.
Decided May 1934
Black & Black.

INDEX

...	1
...	2
...	3
...	4
...	5
...	6
...	7
...	8
...	9
...	10
...	11
...	12
...	13
...	14
...	15
...	16
...	17
...	18
...	19
...	20
...	21
...	22
...	23
...	24
...	25
...	26
...	27
...	28
...	29
...	30
...	31
...	32
...	33
...	34
...	35
...	36
...	37
...	38
...	39
...	40
...	41
...	42
...	43
...	44
...	45
...	46
...	47
...	48
...	49
...	50
...	51
...	52
...	53
...	54
...	55
...	56
...	57
...	58
...	59
...	60
...	61
...	62
...	63
...	64
...	65
...	66
...	67
...	68
...	69
...	70
...	71
...	72
...	73
...	74
...	75
...	76
...	77
...	78
...	79
...	80
...	81
...	82
...	83
...	84
...	85
...	86
...	87
...	88
...	89
...	90
...	91
...	92
...	93
...	94
...	95
...	96
...	97
...	98
...	99
...	100