

## NEBRASKA SUPREME COURT

### Eagle Partners, L.L.C. v. Rook

301 Neb. 947 (2018) · No. S-18-058 · Decided December 21, 2018

#### SUMMARY

The Nebraska Supreme Court held that a real estate broker’s commission claim arising from the sale of estate property could be pursued under the probate claims procedure in either the county or district court. The court concluded that the listing agreement unambiguously identified the purchasers as “No Commission Buyers,” and that the estate had not waived that provision through the purchase agreement. The court reversed the judgment awarding the broker a commission and remanded with directions to enter summary judgment for the estate.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                 |
|-----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Nebraska Supreme Court                                                                                                                                                                                                                                                                                                                          |
| WRITING FOR THE COURT | Heavican, C.J.; Miller-Lerman, J.; Cassel, J.; Stacy, J.; Funke, J.; Papik, J.; Freudenberg, J.                                                                                                                                                                                                                                                 |
| JURISDICTION          | Nebraska                                                                                                                                                                                                                                                                                                                                        |
| DECIDED               | December 21, 2018                                                                                                                                                                                                                                                                                                                               |
| DOCKET                | S-18-058                                                                                                                                                                                                                                                                                                                                        |
| DISPOSITION           | reversed_and_remanded                                                                                                                                                                                                                                                                                                                           |
| PROCEDURAL POSTURE    | The Estate appealed a district court summary judgment awarding Eagle Partners a real estate commission, and Eagle Partners cross-appealed the denial of attorney fees, costs, and prejudgment interest.                                                                                                                                         |
| STANDARD OF REVIEW    | Summary judgment is reviewed de novo, with the evidence viewed in the light most favorable to the party against whom judgment was granted and that party given the benefit of all reasonable inferences. Statutory interpretation is reviewed independently as a question of law. Denial of leave to amend is reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | published and precedential                                                                                                                                                                                                                                                                                                                      |
| PARTIES               | Donna L. Rook, Successor Personal Representative of the Estate of Donald H. Lienemann v. Eagle Partners, L.L.C., doing business as Keller Williams Greater Omaha, doing business as Keller Williams Realty                                                                                                                                      |

## TOPICS

summary judgment

probate procedure

estate administration

contract interpretation

waiver

## PRACTICE AREAS

contracts

probate

real estate

civil procedure

appellate procedure

## QUESTIONS PRESENTED

1. Whether the district court had subject matter jurisdiction over Keller's claim for a real estate commission against the Estate.
2. Whether attorney and broker fees arising from estate administration may be pursued through the probate claims procedure.
3. Whether the listing agreement and purchase agreement entitled Keller to a commission on the sale to the identified "No Commission Buyers."
4. Whether the Estate waived the no-commission provision.
5. Whether Keller could recover as a third-party beneficiary of the purchase agreement.
6. Whether Keller had standing to assert an equitable-estoppel theory based on the Estate's alleged negotiation tactics.
7. Whether Keller was entitled to prejudgment interest, attorney fees, or costs.

## HOLDINGS

1. The district court had subject matter jurisdiction over Keller's claim because the probate statutes give the county court and district court concurrent jurisdiction to enforce probate claims.
2. Read together, the unambiguous agreements provided that Keller was not entitled to a commission on the sale to Bachman, Allen, or Torczon, the identified "No Commission Buyers."
3. The Estate did not waive the listing's no-commission provision.
4. Even assuming Keller was a third-party beneficiary of the purchase agreement, it was not entitled to a commission because the agreements unambiguously excluded payment for the sale to the identified buyers.
5. Keller lacked standing to assert that the Estate's negotiation tactics should be equitably estopped because Keller did not suffer an injury from those tactics.
6. The district court erred by granting summary judgment to Keller and denying summary judgment to the Estate.

## KEY QUOTATIONS

*"To the extent that In re Estate of Wagner holds differently, it is dicta and disapproved."* (957)

*"The only reasonable reading of paragraph 27 of the purchase agreement in conjunction with the listing demonstrates that under paragraph 27, Keller is not entitled to a commission according to the terms of the*

*listing.*” (958-59)

*“The contract is unambiguous in this case, and Keller is not entitled to a commission under paragraph 23.”*  
(961)

## FACTUAL BACKGROUND

The Estate entered into a listing agreement with Keller to market approximately 77 acres of real property. The listing specifically identified John Bachman, John Allen, and Jerry Torczon as “No Commission Buyers” and stated that the Estate would not owe Keller a commission on a sale to them. The property was ultimately sold to Allen and Torczon through Bachman, and the purchase agreement stated that Keller would be entitled to a commission pursuant to a separate agreement with the Estate. Keller sought a commission, but the Nebraska Supreme Court held that the listing and purchase agreement, read together, unambiguously barred payment.

## PROCEDURAL HISTORY

Eagle Partners filed a probate claim for a real estate commission after the Estate disallowed the claim, then filed an amended complaint in the Sarpy County District Court. The district court granted Eagle Partners summary judgment, awarded \$97,473.60 plus prejudgment interest, and denied both parties' postjudgment motions. The Nebraska Supreme Court reversed and remanded with directions to enter summary judgment for the Estate.

## DISPOSITION

reversed\_and\_remanded

## REMAND INSTRUCTIONS

Remand to the district court with directions to enter summary judgment in favor of the Estate.

## CASES CITED

- Bixenmann v. Dickinson Land Surveyors, 294 Neb. 407, 882 N.W.2d 910 (2016), modified on denial of rehearing, 295 Neb. 40, 886 N.W.2d 277 (2016)
- Hargesheimer v. Gale, 294 Neb. 123, 881 N.W.2d 589 (2016)
- Bailey v. First Nat. Bank of Chadron, 16 Neb. Ct. App. 153, 741 N.W.2d 184 (2007)
- Gonzalez v. Union Pacific RR. Co., 282 Neb. 47, 803 N.W.2d 424 (2011)
- McCullough v. McCullough, 299 Neb. 719, 910 N.W.2d 515 (2018)
- Holdrege Co-op Assn. v. Wilson, 236 Neb. 541, 463 N.W.2d 312 (1990)
- In re Estate of Wagner, 253 Neb. 498, 571 N.W.2d 76 (1997)
- Kerrigan & Line v. Foote, 5 Neb. Ct. App. 397, 558 N.W.2d 837 (1997)
- In re Estate of Reimer, 229 Neb. 406, 427 N.W.2d 293 (1988)
- In re Estate of Chrisp, 276 Neb. 966, 759 N.W.2d 87 (2009)
- J.R. Simplot Co. v. Jelinek, 275 Neb. 548, 748 N.W.2d 17 (2008)
- Properties Inv. Group v. Applied Communications, 242 Neb. 464, 495 N.W.2d 483 (1993)

- In re Estate of Balvin, 295 Neb. 346, 888 N.W.2d 499 (2016)
- Kropp v. Grand Island Pub. Sch. Dist. No. 2, 246 Neb. 138, 517 N.W.2d 113 (1994)
- D & S Realty v. Markel Ins. Co., 280 Neb. 567, 789 N.W.2d 1 (2010)
- Mid-Continent Properties, Inc. v. Pflug, 197 Neb. 429, 249 N.W.2d 476 (1977)
- Central Neb. Pub. Power Dist. v. North Platte NRD, 280 Neb. 533, 788 N.W.2d 252 (2010)

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