

IRWIN V. LAMAR, 1964-NMSC-253, 74 N.M. 811, 399 P.2d 400 (S. Ct. 1964)

**A. LEE IRWIN, Plaintiff-Appellee,
vs.
CLYDE LAMAR, Defendant-Appellant**

No. 7505

SUPREME COURT OF NEW MEXICO

1964-NMSC-253, 74 N.M. 811, 399 P.2d 400

December 14, 1964, filed

Filed on Motion for Rehearing. Rehearing Denied February 22, 1965.

COUNSEL

McATEE, TOULOUSE, MARCHIONDO, RUDD & GALLAGHER, MARY C. WALTERS,
Albuquerque, New Mexico, Attorneys for Appellee.

B. J. BAGGETT, Farmington, New Mexico, Attorney for Appellant.

JUDGES

NOBLE, Justice, wrote the opinion.

WE CONCUR:

DAVID W. CARMODY, C.J., DAVID CHAVEZ, JR., J.

AUTHOR: NOBLE

OPINION

OPINION ON MOTION FOR REHEARING

NOBLE, Justice.

{1} Appellant, for the first time on rehearing, asserts a lack of jurisdiction in the trial court because of failure to allege an indebtedness owing to Meadowdale, Inc. The contention is without merit. The court permitted an amendment to the pleadings to conform to the evidence. The complaint will be treated in all respects as so amended, and a failure to formally amend the pleadings does not affect the result of the trial on

such issues. Rule of Civil Procedure 15(b) (21-1-1(15)(b), N.M.S.A. 1953). See Posey v. Dove, 57 N.M. 200, 257 P.2d 541. The motion for rehearing is denied.

{2} WE CONCUR:

DAVID W. CARMODY, C.J., DAVID CHAVEZ, JR., J.