

SHAHAN V. STRYKER, 1976-NMSC-060, 90 N.M. 119, 560 P.2d 540 (S. Ct. 1976)

**I. E. SHAHAN, Wendal Owen and Owen & Associates, Inc., a
New Mexico Corporation, Plaintiffs-Appellants and
Cross-Appellees,
vs.
Robert L. STRYKER, Wanda Hyatt, and Stryker Realty, Inc.,
Defendants-Appellees and Cross-Appellants.**

No. 10906

SUPREME COURT OF NEW MEXICO

1976-NMSC-060, 90 N.M. 119, 560 P.2d 540

September 24, 1976

COUNSEL

Campbell & Campbell, Thomas K. Campbell, Las Cruces, for appellants.

Adams & Foley, Quincy D. Adams, Albuquerque, for Hyatt.

Crouch, Herring & Valentine, James R. Crouch, Las Cruces, for Stryker.

JUDGES

MONTOYA, J., wrote the opinion. McMANUS and SOSA, JJ., concur.

AUTHOR: MONTOYA

OPINION

DECISION

MONTOYA, Justice.

{1} WHEREAS, the above entitled cause has been submitted for decision and the Court having considered all matters presented, Mr. Justice Montoya, Mr. Justice McManus and Mr. Justice Sosa concurring;

{2} NOW, THEREFORE, IT IS ORDERED AND ADJUDGED by the Court that the judgment of the District Court of Dona Ana County, wherein this cause originated, be and the same is hereby affirmed. The trial court found that none of the defendants acted as agents for Barber's Supermarkets, Inc. in connection with the purchase of the land in

question, that none of the plaintiffs were joint tortfeasors with any of the defendants with respect to the transactions involved, and concluded that plaintiffs were not entitled to indemnity or contribution from defendants or any of them.

{3} A review of the record indicates that the decision of the trial court is supported by substantial evidence.

{4} The trial court also decided that the counterclaim of the defendants for a real estate commission should be dismissed. It found that the agreement to pay a commission was an oral one and that there was no memorandum in writing signed by the plaintiffs regarding the payment thereof to the defendants, and that more than four years had elapsed from the time of the sale of the real estate to the time of filing the counterclaim. It concluded that the applicable statute of limitations barred the claim and that the alleged agreement was void.

{5} The trial court is affirmed on its decision on the counterclaim.

McMANUS and SOSA, JJ., concur.