

2000

Janet Peterson v. Sunrider Corporation d. b. a. Sunrider International and Tei Fu Chen : Reply Brief

Utah Supreme Court

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IN THE UTAH SUPREME COURT

JANET PETERSON,)	
)	
Plaintiff and Appellant,)	
)	Case No. 20000385-SC
vs.)	
)	
THE SUNRIDER CORPORATION,)	Priority 15
d.b.a. SUNRIDER INTERNATIONAL,)	
and TEI FU CHEN,)	
)	
Defendants and Appellees.)	

APPELLANT'S REPLY BRIEF

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

THE HONORABLE JAMES R. TAYLOR AND HOWARD H. MAETANI, PRESIDING

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UTAH SUPREME COURT

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CLERK OF THE COURT

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ARGUMENT

INTRODUCTION

Janet Peterson is appealing the trial court's denial of her Motion for Summary Judgment and the granting of the Defendants' (The Sunrider Corporation, d.b.a. Sunrider International, and Tei Fu Chen, hereafter "Sunrider"), Motion for Summary Judgment and to Dismiss. R. 1575-85, 1667-69. The trial court ruled that the 1976 Agreement, which is at the heart of this case, is illegal, because it violated Utah Code Ann. § 76-6a-2(4). R. 1575-77, and 1667-69. Mrs. Peterson disagrees and raises four issues on appeal: (I) that the trial court erred in ruling that the 1976 Agreement is illegal; (II) that the trial court erred in applying Utah Code Ann. § 76-6a-2(4) retroactively; (III) that the trial court's ruling violates the contract clauses contained in Article I, § 10 of the United States Constitution and Article I, § 18 of the Utah Constitution; and (IV) that the trial court erred in denying the Mrs. Peterson's motion for summary judgment. See Docketing Statement filed on or about May 9, 2000, pages 5-6; and Brief of Appellant, pages 1-2.

I. THE COURT SHOULD CONSIDER MRS. PETERSON'S ISSUES II AND III.

Sunrider argues that Mrs. Peterson failed to preserve in the trial court record two issues, II and III. Appellee's Brief, pp. 17, 19-23.¹ Mrs. Peterson did not specifically raise

¹ Sunrider suggests that Mrs. Peterson should be sanctioned because she is attempting to mislead this Court by misstating the record on appeal. Brief of Appellee, pp. 22-23. Mrs. Peterson is not attempting to mislead the Court or misstate the record. Sunrider argued that the 1976 Agreement was illegal under Utah Code Ann. § 76-6a-2(4) and federal case law. R. 1303-07. Mrs. Peterson has maintained consistently that the 1976 Agreement was a valid,

or preserve these issues because they did not arise until the trial court issued its Memorandum Decision which ruled that the parties' agreement was illegal under Utah Code Ann. § 76-6a-2(4). The trial court later ruled that the Memorandum Decision "fully and completely resolved" all matters at issue in this case. R. 1669. The trial court also later denied Mrs. Peterson's Motion to Strike Defendants' Motion for Summary Judgment and granted Sunriders' Motion for Summary Judgment and to Dismiss as to all issues raised by Mrs. Peterson. R. 1668. The trial court's rulings constituted final judgments on the merits. Mrs. Peterson had no opportunity to object to the trial court's improper retroactive application of the law or its unconstitutional impairment of the parties' contracts prior to the issuance of its final judgments. Thus, she was left to raise these issues on appeal.

Mrs. Peterson asserts that the trial court misapplied the statute and other authority in two ways, (1) it retroactively applied a statute enacted in 1983, and a 1979 Federal Trade Commission (FTC) case, to an agreement made in 1976, with no authority for doing so; and (2) the trial court's application of the statute and FTC case violates the contract clause of the United States and Utah Constitutions. Docketing Statement, page 5, 5. C. and D., and

Footnote 1 continued

legitimate, enforceable contract. R. 297, 1030. In response to Sunrider's claims that the agreement was illegal under state and federal law, Mrs. Peterson asserted that the agreement was "not void or illegal against public policy or any principles of state and federal law." R. 1428. Mrs. Peterson then argued that her compensation under the agreement was based solely on the sale of products. R. 1427. Those arguments and citations to the record support Mrs. Peterson's contentions on appeal that it was error for the trial court to rule that the agreement was illegal or invalid under state or federal law, and that the law was improperly applied by the trial court.

Appellant's Brief, pp. 1-2, and 12-15. Although not specifically raised below, Mrs. Peterson submits that the court should nevertheless consider the issues either as evidence of plain error committed by the trial court or based on exceptional circumstances.

A. The Court May Consider Plain Error or Exceptional Circumstance Even Though Raised For The First Time In Mrs. Peterson's Reply Brief.

Generally, appellate courts will not consider issues raised for the first time on appeal in a reply brief, because a reply brief is limited, under the Rules of Appellate Procedure, to addressing new matters set forth in the opposing brief. Utah Rule of Appellate Procedure 24(c); *Romrell v. Zions First Nat. Bank, N.A.*, 611 P.2d 392, 395 (Utah 1980). Mrs. Peterson submits that the plain error and exceptional circumstances arguments, although raised for the first time in her reply brief, nevertheless fall within Rule of Appellate Procedure 24(c) because they address new matters raised by Sunrider, i.e., that she failed to preserve the retroactive application of a statute and impairment of contracts issues in the trial court.

Even if Mrs. Peterson's plain error and exceptional circumstances arguments are considered to be outside the scope of Rule of Appellate Procedure 24(c), "[n]evertheless, the Court, in its discretion, may decide a case upon any points that its proper disposition may require, even if first raised in a reply brief." *Id.* (citation omitted). Mrs. Peterson respectfully submits that proper disposition of this case on appeal requires this Court to consider whether the trial court committed plain error or whether exceptional circumstances exist in this case.

B. The Court May Consider Plain Error or Exceptional Circumstance Even Though Raised For The First Time On Appeal.

It is well established that a party who fails to bring an issue before the trial court is generally prohibited from raising it for the first time on appeal. *State v. Irwin*, 924 P.2d 5, 7 (Utah App. 1996), *cert. denied*, 931 P.2d 146 (Utah 1997). There are three exceptions to this rule. *Id.* Two of the three exceptions are plain error committed by the trial court, and exceptional circumstances. *Id.*

The plain error exception enables an appellate court to “balance the need for procedural regularity with the demands of fairness.” *State v. Verde*, 770 P.2d 116, 122 n.12 (Utah 1989). The purpose of the plain error doctrine is to permit appellate courts to avoid injustice. *State v. Eldredge*, 773 P.2d 29, 35 n.8 (Utah 1989).

Likewise, as to exceptional circumstances, this court has ruled

[T]here may be exceptional circumstances when errors not excepted to are so clearly erroneous and prejudicial to the fundamental rights of a [party] . . . that an appellate court will of its own accord take notice thereof.

State v. Scott, 447 P.2d 908, 910 (Utah 1968).

Mrs. Peterson respectfully submits that trial court’s ruling is so erroneous and prejudicial to her rights that the demands of fairness, and the need to avoid injustice, justify this Court in considering these issues raised for the first time in Mrs. Peterson’s reply brief and not specifically preserved in the trial court record.

C. The Trial Court Committed Plain Error, or, Alternatively, Exceptional Circumstances Exist In This Case.

1. Plain Error.

To demonstrate plain error, a litigant must establish that "(i) an error exists; (ii) the error should have been obvious to the trial court; and (iii) the error is harmful, i.e., absent the error, there is a reasonable likelihood of a more favorable outcome for the appellant, or phrased differently, our confidence in the verdict is undermined." *State v. Dunn*, 850 P.2d 1201, 1208-09 (Utah 1993). Mrs. Peterson asserts that all of these standards are met in this case.

The trial court relied on Utah Code Ann. § 76-6a-2(4), enacted in 1983, and a 1979 FTC case in finding that the 1976 Agreement was illegal. R. 1575-76. No other authority was cited by the trial court for invalidating the agreement.

Utah Code Ann. § 68-3-3 provides, "No part of these revised statutes is retroactive, unless expressly so declared." Nothing in 76-6a-1 *et seq.* declares that any part of that statute is retroactive. Without such a declaration, it was plain error for the trial court to apply the statute retroactively. See *Cache County v. Property Tax Division of Utah State Tax Commission*, 922 P.2d 758, 767 (Utah 1996)(It is error to apply statute retroactively when it contains no language or legislative intent that it has retroactive effect).

In *George v. Oren Ltd. & Associates*, 672 P.2d 732, 738 (Utah 1983), this Court ruled that the "impairment of contracts" clause in the United States and Utah Constitutions protects contractual obligations already in existence at the time a statute is enacted. The

Court cited with approval, and adopted, authority from other jurisdictions which held that the clause applies to legislative actions and not to judicial decisions, except where judicial decisions “. . . expressly, or by necessary implication, give effect to a subsequent law of the state whereby the obligation of the contract is impaired.” *Id.* The trial court’s decision in this case expressly gives effect to subsequent law which not only impairs, but invalidates, the obligations arising under the parties’ 1976 Agreement.

Judge Bench, sitting by assignment with this Court, articulated this principle in his concurring and dissenting opinion² in *Consolidation Coal v. Div. of State Lands*, 886 P.2d 514, 532-33 (Utah 1994):

It is a fundamental principle of constitutional law that a state may not pass a law altering the nature and legal effect of an existing contract to the prejudice of either party to the contract. It is likewise a fundamental principle of constitutional law that the state may not pass a law altering a contractual remedy when the remedy is material to the contract. . . .

Any law which changes the intention and legal effect of the original parties, giving to one a greater or the other a less interest or benefit of the contract, impairs its obligations. “Law” for purposes of impairment has been defined to mean “[a]ny enactment, from whatever source it originates, to which a state gives the force of law.” This includes “acts of the legislature, municipal ordinances passed pursuant to legislative authority, rules and orders by an instrumentality of the state exercising delegated authority, and state constitutions and constitutional amendments.”

² Mrs. Peterson cites Judge Bench’s dissenting opinion not because she believes it should have been controlling in the *Consolidation Coal* case, but because it accurately and succinctly recites the law as it applies to this case.

(Citations omitted). Judge Bench further noted:

Assuming, but not conceding, that the state can constitutionally impair obligations like the one in the instant case, such ruling can be given only prospective application. See, e.g., 16A Am. Jur. 2d Constitutional Law § 689 (1979) (statute tending to impair contractual obligations, if assumed to be valid, may not be given retroactive effect so as to impair contracts already in existence without violating Constitution).

Id. at 533 n. 5.

Under the elements established by this Court, the trial court's application of Utah Code Ann. § 76-6a-2(4) and the 1979 FTC case violates the impairment of contracts clause of the United States and Utah Constitutions because it retroactively impairs the parties' contract and obligations.

Based on the foregoing, the three elements of plain error are present in this case. (1) An error exists. The trial court improperly retroactively applied Utah Code Ann. § 76-6a-2(4), enacted in 1983, and the 1979 FTC case to the 1976 Agreement between the parties. (2) This error should have been obvious to the trial court. Fundamental principles of constitutional law dictate that a state may not pass, nor may courts apply, a law which retroactively impairs contracts to the prejudice of a party to a contract. (3) The error is harmful. This factor is established in a number of ways.

The trial court's ruling deprives Mrs. Peterson of the benefit of the agreement entered into in 1976 and which she had received for more than 18 years. R. 224, 242-42, 249, 250-52, 287, 299, 301-302, and 1584; Appellant's Brief, pp. 6-8. The record demonstrates that

this benefit was substantial, amounting to approximately \$42,000 per year for an indefinite period of time. R. 1576. The purpose of the agreement was to provide income to Mrs. Peterson from a company/business which her husband helped establish. See Addendum 1 attached hereto.

The trial court's ruling unconstitutionally impairs Mrs. Peterson's rights and benefits under the 1976 Agreement. The trial court improperly applied Utah Code Ann. § 76-6a-2(4) and the 1979 FTC case, and lacked authority to retroactively apply that law to deprive Mrs. Peterson of the benefits of her agreement with Sunrider.³

The trial court's ruling denied Mrs. Peterson a trial despite the court's acknowledgment that "... there are material facts in dispute that must be determined by a fact-finder regarding the 1976 writing, modification, and plain language." R. 1577; Appellant's Brief, Addendum 2, page 9. This acknowledgment by the court also evidences plain error by its finding that genuine issues of material facts exist, yet nevertheless granting Sunriders' motion for summary judgment, and denying Mrs. Peterson a trial on the merits

³Sunrider cites *In Re Koscot Interplanetary, Inc.*, 86 F.T.C. 1106 (1975), which predates the parties' agreement, and claim that it supports the trial court's retroactive application of the Utah's anti-pyramid statute by arguing that "... the trial court held Mrs. Peterson to law which predated the 1976 Agreement." Appellee's Brief, p. 26. But the trial court did not cite or rely on *In re Koscot* anywhere in its memorandum decision. The only authority cited by the court to invalidate the agreement was Utah's anti-pyramid statute and the 1979 FTC case, *In Re Amway*, 93 F.T.C. 618 (1979). R. 1576. Each of these authorities postdates the parties' 1976 agreement. In any event, as argued in this brief, the 1976 Agreement does not violate *Koscot* because Mrs. Peterson's compensation under the agreement was not based on the introduction of other people into any business arrangement.

of the case.

The trial court misapplied Utah Code Ann. § 76-6a-2(4) to the parties agreement. It simply has no application to Mrs. Peterson, because she was not involved in a pyramid scheme. The statute provides:

“Pyramid scheme” means any sales device or plan under which a person gives consideration to another person in exchange for compensation or the right to receive compensation which is derived primarily from the introduction of other persons into the sales device or plan rather than from the sale of goods, services, or other property.

The trial court stated, “[t]he Court realizes that Mrs. Peterson is not recruiting people into the . . . organization.” R. 1576. Indeed, the record on appeal is devoid of any contention or allegation or evidence that Mrs. Peterson ever recruited introduced any person into the organization. Likewise, the record contains no allegation or evidence that Mrs. Peterson ever received any compensation whatsoever based on the introduction of other persons into the sales plan or organization. Thus, the statute has no application to her.

What troubled the trial court, and also apparently troubles Sunrider who is a successor to the party that entered into the agreement with the Mrs. Peterson, is that the 1976 Agreement provides income to her without her having to do any of the normal activities Sunrider claims are associated with the business, i.e., the direct selling of products, and recruiting other individuals to sell products.⁴ R. 287, 1575-77. However, that was the very

⁴ It is important to note that the agreement was negotiated and executed by Mrs. Peterson’s late husband and NaturaLife International. Sunrider is a successor to the

purpose of the agreement - to provide her income based on her late husband's contributions in helping the company get established. Addendum 1, R. 1011, 1014-1019.

Moreover, the record on appeal establishes that the monies paid to Mrs. Peterson were based solely upon her organization's product sales and not on the introduction of any people into the business. R. 303, 1013. Hence, the court misapplied the statute to the parties' agreement, and has wrongfully deprived Mrs. Peterson of the benefit of the 1976 Agreement.

Accordingly, Mrs. Peterson respectfully submits that plain error is established in this case, and this Court should reverse the trial court's decision denying her motion for summary judgment and granting Sunrider's motion for summary judgment and to dismiss.

2. Exceptional Circumstances.

The "exceptional circumstances" doctrine provides an avenue of appellate review of issues not preserved in the trial court. It acts as a "safety device" to prevent manifest injustice from occurring if an issue is not considered on appeal. *State v. Archambeau*, 820 P.2d 922, 923 (Utah App. 1991).

The same reasons articulated above also create exceptional circumstances for the court to review the trial court's decision and to reverse it. As noted previously, this Court ruled in *State v. Scott*, 447 P.2d 908, 910 (Utah 1968), where errors not excepted to are so clearly erroneous and prejudicial to the fundamental rights of a party, appellate review and

agreement and is attempting to now avoid its terms and obligations.

intervention is appropriate.

This case presents “rare procedural anomalies” as noted by this Court in *State v. Dunn*, 850 P.2d 1201, 1209 n. 3 (Utah 1993). Here, the trial court incorrectly applied a statute and an FTC case retroactively to declare the parties’ agreement illegal. The trial court’s application of the statute violated the impairment of contracts clause of the United States and Utah Constitutions. The trial court, while acknowledging that material facts were in dispute, nevertheless granted Sunrider’s motion for summary judgment and denied Mrs. Peterson a trial on the merits. R. 1575-77 (Addendum 2 to Brief of Appellant), 1581, 1614-15, 1668-69 (Addendum 3 to Brief of Appellant).

Once the trial court issued its Memorandum Decision (R. 1575-1585, Addendum 2 to the Brief of the Appellant) which retroactively applied Utah Code Ann. § 76-6a-2(4) and the 1979 FTC, and unconstitutionally impaired and invalidated the parties’ contract, Mrs. Peterson’s next remedy was to appeal the rulings. The trial court acknowledged that the Memorandum Decision was a final decision the merits, “fully and completely” resolving all matters at issue, and granted Sunrider’s Motion for Summary Judgment and to Dismiss as to each claim raised by Mrs. Peterson. R. 1668-69 (Addendum 3 to Brief of Appellant).

Based on the foregoing, Mrs. Peterson respectfully submits that exceptional circumstances exist in this case which justify appellate review and which support reversal of the trial court’s decisions which are the subject of this appeal.

II. THE AGREEMENT AT ISSUE IS LEGAL.

A. Mrs. Peterson's Compensation Under The Agreement Was Not Based On The Introduction Of Other Persons Into the Business, But On Product Sales.

Sunrider cites a number of authorities regarding illegal pyramid schemes. Mrs. Peterson does not dispute any of the holdings of the cases cited by Sunrider, however, none of the cited authority applies to the facts of this case.

All of the cases cited by Sunrider say exactly what Utah law says: that schemes where a person's compensation is obtained primarily from bringing others into the plan or business are illegal and prohibited. Utah Code Ann. § 76-6a-2(4), and *State v. Hall*, 905 P.2d 899, 901 (Utah App. 1995). Mrs. Peterson's compensation under the agreement at issue had nothing to do with sponsoring or introducing other people into the business.

The agreement provides in part that Mrs. Peterson would be deemed a "director" for purposes of receiving override commissions, based on her husband's purchase of the Farnsworth organization. R. 287. The override commissions are referred to as "Leadership Development Bonuses" by Sunrider. R. 244 & 301. The override commission/Leadership Development Bonus compensates directors in the business a monthly amount based on a percentage of product sales by the director's organization. R. 300 & 1013. Thus, if there are no sales, there are no commissions or bonuses.

Nothing in this agreement violates Utah law or any other law prohibiting illegal pyramid schemes. Mrs. Peterson did not earn any compensation from the introduction of other persons into the plan or business. The trial court acknowledged that Mrs. Peterson did

not recruit any person into the business. R. 1576. Mrs. Peterson's compensation was based solely on product sales by the organization of which she was a director. R. 300 & 1013.

Thus, the court could not find, as a matter of law, even if it could apply the law retroactively, that Mrs. Peterson's compensation was based on the introduction of other persons into the plan or business. Moreover, there is nothing in Utah's anti-pyramid scheme statute that precludes compensation based on product sales by an organization, or that requires compensation to be based on product sales by an individual only. Accordingly, there is nothing illegal about the compensation paid to Mrs. Peterson under the agreement.

B. Mrs. Peterson Has Not Violated Any Provision of Utah Code Ann. § 76-6a-1 *et seq.*

The trial court's ruling that the 1976 Agreement is illegal and invalid under Utah Code Ann. § 76-6a-2(4) logically implies that Mrs. Peterson has violated that statute. Yet, the record on appeal establishes that Mrs. Peterson has not violated any provision of the statute.

Utah Code Ann. § 76-6a-3 provides

- (1) A person may not organize, establish, promote, or administer any pyramid scheme.
- (2) A criminal conviction under this chapter is prima facie evidence of a violation of Section 13-11-4, the Utah Consumer Sales Practices Act.
- (3) Any violation of this chapter constitutes a violation of Section 13-11-4, the Utah Consumer Sales Practices Act.
- (4) All civil violations of this chapter shall be investigated and prosecuted as prescribed by the Utah Consumer Sales Practices Act.

Similarly, 76-6a-4 provides

- (1) Any person who knowingly organizes, establishes, promotes, or administers a pyramid scheme is guilty of a third degree felony.
- (2) The appropriate county attorney or district attorney has primary responsibility for investigating and prosecuting criminal violations of this chapter.

No evidence exists in the record on appeal that Mrs. Peterson organized, established, promoted, or administered a pyramid scheme as a result of the 1976 Agreement. That is because, as argued above, she never received compensation which was derived primarily from the introduction of other persons into the business plan. All compensation she received was based on the product sales of her organization. The record on appeal reflects that under the 1976 Agreement she did not have to do any thing to receive the compensation bargained for by her late husband. R. 1011, 1014-1019.

Mrs. Peterson has never been investigated, charged or convicted of any criminal or civil violation under this statute or Utah's Consumer Sales Practices Act. That is because she has done nothing that constitutes a violation of either statute. Under the 1976 Agreement, she was not required to, and did not, organize, establish, promote or administer any pyramid scheme.

The agreement can be simply construed as an arms length transaction between Mrs. Peterson's late husband and NaturaLife International to provide Mrs. Peterson an annuity. This characterization is supported by the trial court's finding that "Plaintiff's husband purchased the Farnsworth organization for \$1,500. In return, Plaintiff was to receive approximately \$42,000 per year for an infinite period of time." R. 1576077. Such an

annuity would be neither inappropriate nor illegal based on the consideration paid by Mr. Peterson under the agreement, and based on his efforts and contributions in helping to establish NaturaLife International's business enterprises.

It is difficult to conceive how the Defendants can argue and the trial court could rule that the 1976 Agreement is illegal and invalid under 76-6a-2(4) when there has been no, and there is no basis for, criminal or civil investigation, charge or conviction under the statute. Mrs. Peterson has not violated this statute in any sense, and it was error for the trial court to rule that the 1976 Agreement violated any part of the statute.

III. THE TRIAL COURT IMPROPERLY GRANTED SUNRIDER'S MOTION FOR SUMMARY JUDGMENT AND TO DISMISS.

Sunrider argues that Mrs. Peterson cannot succeed on her contract claims because the 1976 Agreement was not the whole agreement, that the agreement cannot be understood without reference to Sunrider's business guides, that the rules of contract construction preclude her claims, and that the agreement has been superceded by Sunrider's business guides. Appellee's Brief, pp. 29-40. The Sunriders' arguments ignore the trial court's finding that these issues required determination at trial.⁵

The trial court specifically ruled that "... there are material facts in dispute that must be determined by a fact finder regarding the 1976 writing, modification, and plain language.

⁵ The trial court did not mention or otherwise rule on Sunrider's contention that rules of contract construction barred Mrs. Peterson's claims. Thus, that issue is not before this court, and is subject to further litigation if this Court reverses the trial court's decisions.

However, the Court does grant Sunrider's motion for summary judgment on the basis of the contract being illegal." R. 1577. Because the agreement is not illegal, and because genuine issues of material fact exist, it was error for the court to grant Sunriders' Motion for Summary Judgment and to Dismiss.

IV. SUNRIDERS' ARGUMENTS RELATING TO THE TRIAL COURT'S DENIAL OF MRS. PETERSON'S MOTION FOR SUMMARY JUDGMENT ARE MISPLACED.

Sunrider argues that Mrs. Peterson's reliance on the Statute of Frauds was erroneous, and that the 1976 Agreement is meaningless without reference to Sunrider's Business Guides. Sunrider's arguments assume facts not in evidence nor in the record on appeal.

There is simply no support for Sunrider's contention that the agreement could have been completed within one year, thus obviating application of the Statute of Frauds. Sunrider assumed and argued, but provided no evidence whatsoever, that the agreement would have died with Mrs. Peterson if she had died within one year. No time period regarding completion of its terms is specified in the agreement. There is nothing in the agreement that states the obligations thereunder would "die" with Mrs. Peterson. Because the agreement is silent as to these terms, it is conceivable that the benefits under the agreement would pass to Mrs. Peterson's heirs or assigns, thereby triggering application of the Statute of Frauds.

The trial court found that under the agreement that "... Mrs. Peterson was to receive approximately \$42,000 per year, for an *infinite* period of time." (Emphasis added). Thus,

the Statute of Frauds is applicable because the agreement could not be completed within one year.

As to whether or not Sunrider's Business Guides modified the 1976 Agreement, the Mrs. Peterson stands by her arguments in her Appellant's Brief, pp. 17-20. Modification requires a meeting of the minds, additional consideration, and a writing sufficient to satisfy the Statute of Frauds. No meeting of the minds, additional consideration, or writing executed by Mrs. Peterson modifying the agreement exists. Nor could the Business Guides alone modify the agreement without a meeting of the minds, additional consideration, and a writing which satisfies the Statute of Frauds.

CONCLUSION

For the reasons stated above, and in the Appellant's Brief, Janet Peterson respectfully requests this Court to reverse the trial court's June 15, 1998 Memorandum Decision and its March 31, 2000 Order which grants summary judgment in favor of Sunrider and denies her motion for summary judgment.

Dated this 28th day of February, 2001.

ROBINSON, SEILER & GLAZIER, LC



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CERTIFICATE OF MAILING

I hereby certify that I mailed a true and correct copy of the foregoing by U.S. Mail this 28th day of February, 2001, to the following:

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CHERI HANSON, Secretary

G:\SEILER\PETERSON J\Reply Brief wpd

Addendum 1

Excerpt Deposition of Janet Peterson

1 A. No. He had a friend, Jerry Thomas, who I
2 guess the Murdocks knew. We were in Riverside,
3 California. And Jerry came to Lloyd and said, you
4 know, the business, and multi-level, I'm turning this
5 over to you.

6 Q. Okay. And he essentially introduced --

7 A. Lloyd to Ken.

8 Q. -- Lloyd to Ken. Okay. Who is or who
9 was George Murdock?

10 A. He was the brother of Ken --

11 Q. Okay.

12 A. -- in the business. The Murdock
13 International was with the two brothers.

14 Q. Okay. What does Murdock International
15 do, or what did they do?

16 A. At that time, they were just producing, I
17 think, old fashion herbs, and specific -- just single
18 herbs and a few combinations.

19 Q. Okay. You mentioned that Ken brought
20 Lloyd on board to help with starting NaturaLife. Is
21 that a fair summary?

22 A. Yes. I think it was through Jerry, of
23 course, that they became acquainted.

24 Q. Okay. And what was Lloyd Peterson's
25 initial role with NaturaLife?

1 A. I don't know. He was to set up the whole
2 multi -- the multi-level line that they were going to
3 produce from their -- the rest of their herb line.

4 Q. Okay.

5 A. And he came in and found three different
6 people to bring -- to bring their combinations in
7 with the NaturaLife.

8 Q. Okay. Who were those three people?

9 A. Dean Griffin, Stan Maulstrom, and
10 Christopher -- John Christopher is what his name was.

11 Q. Did Lloyd Peterson have previous
12 experience in multi-level marketing entities?

13 A. Yes. We worked in Riverside with Jerry
14 Thomas. That's how we knew -- in Shacklee. And we
15 had looked into Amway and several other lines, which
16 I can't remember right now, but we decided to go into
17 Shacklee. And that's where Jerry Thomas -- we worked
18 with.

19 Q. You said we looked into Shacklee. You
20 were involved --

21 A. Yes, my husband and I were involved.

22 Q. Were you a distributor?

23 A. Yes, we were.

24 Q. Are you involved with Shacklee today?

25 A. No.

1 Q. When did your involvement as a
2 distributor with Shacklee cease?

3 A. Probably about 1975.

4 Q. Okay. You testified that Ken essentially
5 was introduced to Lloyd, or perhaps vice versa, and
6 that Lloyd was used to help set up the multi-level
7 marketing business plan, if you will --

8 A. Yes.

9 Q. -- for NaturaLife. That's a fair --

10 A. Well, it wasn't named NaturaLife at the
11 time. It was a multi-level line, and then, I guess,
12 a few people got together and later named it
13 NaturaLife.

14 Q. Okay. But he was involved in initially
15 setting it up?

16 A. Yes.

17 Q. That's a fair statement?

18 A. Setting the whole multi-level line up.

19 Q. And this would have been in 1975 or so?

20 A. About '76, it would be, uh-huh. The end
21 of '75. I'm just --

22 Q. Well, we're talking about something quite
23 a while back.

24 A. Yes.

25 Q. Did you have any involvement in setting