

2000

Janet Peterson v. Sunrider Corporation and Tei Fu Chen: Brief of Appellant

Utah Supreme Court

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IN THE UTAH SUPREME COURT

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

BRIEF OF APPELLANT

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

HONORABLE JAMES R. TAYLOR, DISTRICT JUDGE, PRESIDING

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Duplicate

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STATEMENT OF JURISDICTION

The Supreme Court has jurisdiction over this matter pursuant to Utah Code Annotated §78-2-2(3)(j).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Whether the trial court erred in finding that the 1976 Agreement is illegal?

Standard of Appellate Review

Whether the 1976 agreement is illegal is a question of law, which is reviewed for correctness. Sackler v. Savin, 897 P.2d 1217, 1220 (Utah 1995).

Issue Preserved in Trial Court

This issue was preserved in the trial court at R. 297, 1030, 1427-28¹.

II. Whether the trial court erred in retroactively applying the Utah Pyramid Scheme Act, Utah Code Ann. §76-6a-1 et seq., to the 1976 Agreement?

Standard of Appellate Review

The retroactive application of statutes is a question of law, which is reviewed for correctness. Olsen v. Samuel McIntyre Investment Co., 956 P.2d 257, 259 (Utah 1998).

¹A transcript of the May 18, 1998 Oral Arguments before the Honorable Howard H. Maetani, from which the Order being appealed resulted, is not a part of the appellate record because the District Court personnel cannot locate the videotape from that date.

Issue Preserved in Trial Court

This issue was preserved in the trial court at R. 297, 1030, 1427-28.

III. Whether the trial court's application of the Utah Pyramid Scheme Act, Utah Code Ann. §76-6a-1 et seq., impairs the Plaintiff's/Appellant's contractual rights under the July 31, 1976 agreement in violation of the contract clauses in Article I, §10 of the U.S. Constitution and Article I, §18 of the Utah Constitution?

Standard of Appellate Review

Whether the statute impairs the Plaintiff's/Appellant's contract rights in violation of the Contract Clause is a question of law, which is reviewed for correctness. Trail Mountain Coal v. Division of Lands, 921 P.2d 1365, 1369-71 (Utah 1996).

Issue Preserved in Trial Court

This issue was preserved in the trial court at R. 297, 1030, 1427-28.

IV. Whether the trial court erred in entering the Order denying Plaintiff's/Appellant's motion for summary judgment on her breach of contract cause of action?

Standard of Appellate Review

Appellate review for a summary judgment is one of correctness, with no deference afforded to the trial court. Winegar v. Froerer Corp., 813 P.2d 104, 107 (Utah 1991).

Issue Preserved in Trial Court

This issue was preserved in the trial court at R. 194-303, 987-1051.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

Utah Code Ann. §76-6a-2(4):

“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.

U.S. Constitution Article I, §10(1):

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts.

Utah Constitution Article I, §18:

No bill of attainder, ex post facto law, or law impairing the obligation of contracts shall be passed.

STATEMENT OF THE CASE

Nature of the Case

This matter comes before this Court pursuant to Janet Peterson's appeal of the Order signed by the Honorable James R. Taylor, Fourth Judicial District Court Judge, on March 30, 2000, and entered on March 31, 2000.

This case arises out of a claim by Mrs. Peterson against Sunrider Corporation, d.b.a. Sunrider International (hereinafter collectively referred to as "Sunrider"), for breach of contract and the covenants of good faith and fair dealing, and against Tei Fu Chen, the current Chairman of Sunrider's Board of Directors, for tortious interference with a contract.

Course of Proceedings and Disposition Below

Mrs. Peterson first filed suit in this matter on March 19, 1996. (R. 1-9). Sunrider and Tei Fu Chen (hereinafter collectively referred to as the "Defendants") filed their answer on May 3, 1996. (R. 13-19). Mrs. Peterson subsequently filed an Amended Complaint on September 11, 1996. (R. 42-53). The Defendants filed an Answer To Amended Complaint And Counterclaim on October 8, 1996. (R. 54-63). Mrs. Peterson filed an Answer To Counterclaim on October 9, 1996. (R. 64-66).

On January 15, 1998, Mrs. Peterson file a Motion For Partial Summary Judgment on her breach of contract cause of action. (R. 194-303). On April 1, 1998, Defendants

filed a Motion To Dismiss Mrs. Peterson's tortious interference with contract cause of action, and a Motion For Summary Judgment on each of Mrs. Peterson's causes of action. (R. 1166-67, 1176-1359).

On May 18, 1998, the Honorable Howard H. Maetani held consolidated oral arguments on Mrs. Peterson's motion for partial summary judgment, and the Defendants' motions to dismiss and for summary judgment, as well as other nondispositive motions filed by both Mrs. Peterson and the Defendants. (R. 1472). On June 15, 1998, Judge Maetani issued a Memorandum Decision granting Defendants' motions to dismiss and for summary judgment, and denying Mrs. Peterson's motion for partial summary judgment. (R. 1575-85). On October 6, 1998, Judge Maetani signed and entered an Order memorializing his ruling in the June 15, 1998 Memorandum Decision. (R. 1613-16).

On October 14, 1998, Mrs. Peterson filed a Notice Of Appeal with the trial court. (R. 1620-21). On December 15, 1998, Chief Justice Howe signed an Order dismissing Mrs. Peterson's appeal because the Order appealed from was ruled to be a nonfinal judgment. (R. 1640). On January 21, 2000, the Supreme Court issued a Remittur to the trial court. (R. 1641).

On March 31, 2000, the Honorable James R. Taylor entered an Order adopting the findings and conclusions of fact and law in Judge Maetani's June 15, 1998 Memorandum Decision, granting Defendants' motions to dismiss and for summary judgment, and denying Mrs. Peterson's motion for partial summary judgment. (R. 1668-69). On April

19, 2000, Mrs. Peterson filed a Notice Of Appeal with the trial court. (R. 1690-91).

Statement of Facts

1. NaturaLife International, Inc. was a Utah Corporation which was incorporated on May 27, 1976. (R. 303, 62 and 1585).

2. Tei Fu Chen acquired NaturaLife International, Inc. by entering into a Stock Sale Agreement on September 24, 1982, with the sole stockholders of NaturaLife International, Inc., Kenneth A. Murdock and George T. Murdock, Jr. (R. 302, 61 and 1585).

3. NaturaLife International, Inc.'s name was changed to Sunrider Corporation. (R. 302, 255 and 1585). NaturaLife and Sunrider are hereinafter collectively referred to as the "Company."

4. Sunrider International is a d.b.a. of Sunrider Corporation. (R. 302, 62 and 1584).

5. The Company markets its products through a multi-level marketing sales program. (R. 302, 60 and 1584).

6. Lloyd D. Peterson, the now deceased spouse of Janet Peterson entered into an agreement effective July 31, 1976 with the Company (hereinafter referred to as the "Agreement") which made Sharon and John Farnsworth (husband and wife) and their sponsored organization (hereinafter collectively referred to as the "Farnsworth

Organization”) first level distributors of the Company’s products to Janet Peterson, as though the Farnsworth Organization had been originally sponsored by Janet Peterson. (R. 301-02, 287, 250-52 and 1584).

7. Pursuant to the Agreement, Mrs. Peterson remains a director of the Company for the purpose of receiving override commissions from directors occurring in her organization regardless of her personal purchase volume (PV) level. (R. 301, 287, 1050, 1006, and 1014-19).

8. The Company currently calls the override commissions referred to in the Agreement a “Leadership Development Bonus.” (R. 301 and 244).

9. The Agreement waived each and every requirement that existed at the time the Agreement was entered into for Mrs. Peterson being a director with the Company for the purpose of receiving override commission/Leadership Development Bonus from directors occurring in her organization. (R. 301, 1050, 1006, and 1014-19).

10. The override commission/Leadership Development Bonus pays a director of the Company a monthly amount that is a percentage of product sales made by the director’s organization. (R. 300 and 1013).

11. The scheduled rate for calculating the override commission/Leadership Development Bonus is contained in the Company’s Policy Guides or Business Guides. (R. 1013).

12. The reason the Company agreed to enter into the Agreement in the first place was because if the company did not pay the override commission/Leadership Development Bonus to Mrs. Peterson as called for in the Agreement, the monies would stay with the Company. (R. 1012).

13. There are 17 different levels of achievement under which the Company's distributors may earn various forms of compensation. (R. 419, 755 and 757).

14. Mrs. Peterson received her monthly override commission/Leadership Development Bonus payment from the Company, from the time the Agreement was executed until December of 1994. (R. 299, 224 and 242-43).

15. By December of 1994, Mrs. Peterson's monthly override commission/Leadership Development Bonus averaged approximately \$3,500.00 per month. (R. 299 and 249).

16. Pursuant to a decision made by the Company's current President, Oi-Lin Chen, the Company refuses to pay any sums to Mrs. Peterson. (R. 299, 238 and 1584).

17. Mrs. Peterson has not signed any writing which purports to modify the Agreement, and there has been no conversation between Mrs. Peterson and anyone from the Company which purported to modify the Agreement. (R. 299 and 239-40).

SUMMARY OF ARGUMENT

The trial court erred in entering the March 31, 2000 Order granting the Defendants' motion for summary judgment. The trial court ruled that the Agreement was for an illegal purpose, and based its ruling on the definition of a "pyramid scheme" found in Utah Code Ann. §76-6a-2(4) which was adopted in 1983. The trial court wrongly interpreted the definition of a "pyramid scheme" in Utah Code Ann. §76-6a-2(4) against the facts of this case.

Even if the trial court correctly interpreted the definition of a "pyramid scheme" in Utah Code Ann. §76-6a-2(4) against the facts of this case, the trial court erred in retroactively applying a statute that was enacted in 1983 to the Agreement which was entered into in 1976.

Even if the trial correctly interpreted the definition of a "pyramid scheme" in Utah Code Ann. §76-6a-2(4) against the facts of this case, and did not wrongfully apply Utah Code Ann. §76-6a-2(4) retroactively in this case, the trial court wrongfully impaired Mrs. Peterson's contract rights that were in existence immediately prior to enactment of Utah Code Ann. §76-6a-2(4) in violation of the contract clause in both Article I, §10 of the U.S. Constitution and Article I, §18 of the Utah Constitution.

Finally, the trial court erred in entering the March 31, 2000 Order denying Mrs. Peterson's motion for partial summary judgment on her breach of contract cause of action

because there exists no genuine issue as to any material fact and she is entitled to a judgment as a matter of law on that issue.

ARGUMENT

I. The trial court erred in finding that the 1976 Agreement is illegal.

In ruling on Mrs. Peterson's motion for partial summary judgment, and the Defendants' motion for summary judgment, the trial court in its June 15, 1998 Memorandum Decision ruled that the Agreement is for an illegal purpose, and summarily dismissed Mrs. Peterson's breach of contract claim against the Defendants. In doing so, the trial court based its ruling on the definition of a pyramid sales scheme found in Utah Code Ann. §76-6a-2(4) which was adopted in 1983. Utah Code Ann. §76-6a-2(4) 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 has wrongly interpreted the definition of a “pyramid scheme” in Utah Code Ann. §76-6a-2(4) against the facts of this case.

To find that the Agreement violates Utah Code Ann. §76-6a-2(4), the evidence would have to show that the override commission/Leadership Development Bonus called

for by the Agreement is derived primarily from the introduction of other persons into the Company rather than from the sale of goods. No such evidence exists.

The evidence shows that Mrs. Peterson's override commission/Leadership Development Bonus was based solely upon the product sales made by the Farnsworth Organization, and had nothing to do with, and was not contingent upon, the introduction of new persons into the Farnsworth Organization. In fact, the evidence is silent as to whether or not any person in the Farnsworth Organization was introduced or sponsored into the Farnsworth Organization subsequent to the Agreement being entered into in 1976.

Utah Code Ann. §76-6a-1. et seq., is a part of Utah's Criminal Code, and was enacted by the legislature to guard against programs that create compensation derived primarily from introducing others into the sales plan. Virginia has enacted a similar statute, as have many states. The Virginia Supreme Court made clear the legislative purpose of these types of statutes in its decision in the case of Bell v. Commonwealth, 236 Va. 298, 303, 374 S.E.2d 13, 16 (1988) where it stated:

As the number in the chain of participants expands and the market for new recruits declines, the law of diminishing returns begins to operate against the interests of those who become participants late in the process. Once the market is exhausted, no participant...has an opportunity to receive compensation...in return for inducing other persons to become participants in the program.

The override commission/Leadership Development Bonus called for in the Agreement does not operate against the interest of the persons in the Farnsworth Organization because

any override commission/Leadership Development Bonus not paid to Mrs. Peterson stays in the Company. Additionally, there are 17 different levels of achievement under which the persons in the Farnsworth Organization may earn various forms of compensation, which shows that each person within the Farnsworth Organization has the opportunity to receive compensation, despite when that person joins the organization. There is no evidence that other persons in the Farnsworth Organization complained about the Agreement, or were adversely affected by the Agreement.

The evidence in this case does not support the trial court's ruling that the Agreement is for an illegal purpose. The trial court erred in finding that the 1976 Agreement was illegal, and should be reversed.

II. The trial Court erred in retroactively applying the Utah Pyramid Scheme Act, Utah Code Ann. §76-6a-1 et seq., to the 1976 Agreement.

Utah Code Ann. §68-3-3 provides, "No part of these revised statutes is retroactive, unless expressly so declared." This statutory provision is merely a statement of well settled rules of statutory construction. Farrel v. Pingree, 5 Utah 443, 448, 16 P. 843, (1888).

In dismissing Mrs. Peterson's breach of contract claim against the Defendants, the trial court based its ruling on the definition of a pyramid sales scheme found in Utah Code

Ann. §76-6a-2(4). In doing so, the trial court wrongfully retroactively applied a statute that was enacted in 1983 to the Agreement which was entered into in 1976.

Even if this Court were to find that the trial court correctly interpreted the definition of a “pyramid scheme” in Utah Code Ann. §76-6a-2(4) against the facts of this case, the legality of the Agreement must be determined by the law in force at the time of its execution. Cache County v. Property Tax Div. Of Utah State Tax Comm’n., 922 P.2d 758, 766 (Utah 1996).

Utah Code Ann. §76-6a-2(4), or any similar statutory provision, did not exist at the time the Agreement was entered into. Utah Code Ann. §76-6a-1 et seq. makes no express statement that the chapter is to have retroactive effect. As a result, the Agreement is legal and enforceable. The trial court’s finding that the Agreement is for an illegal purpose and void, is error and should be reversed.

III. The trial court’s application of the Utah Pyramid Scheme Act, Utah Code Ann. §76-6a-1 et seq., impairs the Plaintiff’s/Appellant’s contractual rights under the July 31, 1976 agreement in violation of the contract clauses in Article I, §10 of the U.S. Constitution and Article I, §18 of the Utah Constitution.

The contract clause of both Article I, §10 of the U.S. Constitution and Article I, §18 of the Utah Constitution, prohibits the State of Utah from enacting any law that impairs

a person's contract rights. The prohibition contained in both the federal and state constitution protects contractual obligations in existence at the time the disputed legislation is enacted, and relates only to legislative action, not to judicial decisions. George v. Oren Ltd. & Assoc., 672 P.2d 732, 738 (Utah 1983).

In dismissing Mrs. Peterson's breach of contract claim against the Defendants, the trial court based its ruling on the definition of a pyramid sales scheme found in Utah Code Ann. §76-6a-2(4). In doing so, the trial court wrongfully applied a statute that was enacted in 1983, to impair Mrs. Peterson's contract rights that existed since the Agreement was entered into in 1976. The trial court's ruling violates both Article I, §10 of the U.S. Constitution and Article I, §18 of the Utah Constitution.

Over the years, courts have carved out an exception to the general prohibitions contained in the contract clause of federal and state constitutions. This exception was defined in this Court's opinion in George.

It is well settled that in the exercise of its police power, a state can enact regulations or laws reasonably necessary to secure the health, safety, morals, comfort or general welfare of the community regardless of whether such laws or regulations affect contracts incidentally, directly or indirectly.

George, 672 P.2d at 737. A brief summary of Utah Code Ann. §76-6a-1 et seq. is in order to show that such an exception is not applicable in the present case.

Utah Code Ann. §76-6a-1 et seq. states any person who knowingly organizes, establishes, promotes, or administers a pyramid scheme is guilty of a third degree felony, and further provides that a criminal conviction under the chapter is prima facie evidence

of a violation of Utah Code Ann. §13-11-4, the Utah Consumer Practices Act. The Chapter also provides a civil remedy for persons who have become involved in an illegal pyramid scheme to recover the consideration paid by that person.

Even if Utah Code Ann. §76-6a-1 et seq. is a proper exercise by the state of its police power, there is no evidence to suggest that Mrs. Peterson's Agreement with the Company jeopardized the health, safety, morals, comfort or general welfare of the community. Accordingly, even if this Court were to find that the trial court correctly interpreted the definition of a "pyramid scheme" in Utah Code Ann. §76-6a-2(4) against the facts of this case, and finds that the trial court did not wrongfully apply Utah Code Ann. §76-6a-2(4) retroactively in this case, the trial court may not impair Mrs. Peterson's contract rights that were in existence immediately prior to enactment of Utah Code Ann. §76-6a-2(4). The trial court's summary dismissal of Mrs. Peterson's breach of contract claim against the Defendants, was error, and should be reversed.

**IV. The trial court erred in entering the Order denying
Plaintiff's/Appellant's motion for summary judgment on her
breach of contract cause of action?**

Ut R. Civ P. 56 provides that summary judgment "shall be rendered if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party

is entitled to a judgment as a matter of law.” In the present case, Mrs. Peterson is entitled to summary judgment on her breach of contract cause of action.

The Agreement Is A Valid, Enforceable Contract.

The elements of valid, enforceable contract are: 1) proper subject matter; 2) competent parties; 3) offer; 4) acceptance; and 5) consideration. Neiderhauser Builders and Development Corp., v. Campbell, 824 P.2d 1193, 1197-98 (Utah App. 1992). The Agreement is the outward manifestation of a legitimate business agreement between two competent parties. The Agreement involves a subject matter that was proper for these two parties to be entering into contracts over. The Agreement manifests an offer by Lloyd D. Peterson, the now deceased spouse of Janet Peterson, to make the Farnsworth Organization first level distributors of the Company’s products to Janet Peterson, as though the Farnsworth Organization had been originally sponsored by Janet Peterson. Lloyd Peterson’s offer was accepted by the Company. Valid consideration was paid to the Company by Lloyd Peterson. The Agreement satisfies each of the elements of a contract, and because the Company now refuses to pay any sums called for by the Agreement to Mrs. Peterson, Mrs. Peterson’s cause of action for breach of contract should be granted by summary judgment.

The Agreement Has Not Been Modified.

- i. Modification Requires A Meeting Of The Minds, Additional Consideration, And A Writing Sufficient To Satisfy The Statute Of Frauds.

A condition precedent to enforcement of a modified contract is that there be a meeting of the minds of the parties, which must be spelled out, either expressly or impliedly, with sufficient definiteness. Fisher v. Fisher, 907 P.2d 1172, 1177 (Utah App. 1995). By its own admission, the company has never spoken to Mrs. Peterson concerning a modification to the Agreement, and has no document executed or signed by Mrs. Peterson which would manifest her understanding of, or agreement to, a modification of any of the terms of the Agreement. Clearly there has been no meeting of the minds concerning any modification of the Agreement, therefore Mrs. Peterson could not have expressly or impliedly agreed to, or acquiesced in, any modification of the Agreement.

Even if there had been a meeting of the minds concerning a modification of the Agreement, when a contract is modified, there must be additional consideration for such modification. Wilson v Gardner, 10 Utah 2d 89, 91, 348 P.2d 931 (1960). Mrs. Peterson received her monthly override commission/Leadership Development Bonus payment from the Company, from the time the Agreement became effective, July 31, 1976, until December of 1994. These payments are the payments called for by the Agreement, to which Mrs. Peterson is entitled to under the Agreement. Mrs. Peterson has received nothing from the Defendants that she was not already entitled to, and certainly nothing that

would constitute additional consideration in support of an alleged modification of the Agreement. Because there has been no additional consideration, the Agreement could not have been modified.

Even if there had been a meeting of the minds regarding a modification to the Agreement, and Mrs. Peterson had received additional consideration which would support a modification of the Agreement, the Agreement could not have been modified because the statute of frauds requires the modification to be in writing, signed by the party to be charged by the modification. This Court explained this when it held that if the original contract is within the statute of frauds, any modification of that contract must also comply with the statute of frauds. Fisher, 907 P.2d at 1176. Under the Utah Statute of Frauds the Agreement was required to be in writing inasmuch as the agreement could not be completed in one year's time. See Utah Code Ann. §25-5-4(1). Thus any modification to the Agreement would also require a writing that will satisfy the statute of frauds. No such writing exists, so the Agreement could not have been modified.

ii. The Policy Guides Or Business Guides Alone Could Not Modify the Agreement.

In the years since the Agreement was entered into, the Company has published Policy Guides and Business Guides which contain the elements of the Company's multi-level marketing program. In general, the Policy Guides and Business Guides contained

new programs and “opportunities” for the Company’s distributors, and also imposed some additional requirements on the Company’s distributors. For example, in the March, 1993, version of the Company’s Business Guide there appeared for the first time additional requirements for being a Sales Leader, which were that Sales Leaders hold periodic sales meetings and maintain frequent mail contact with distributors downline from the Sales Leader.

Before Oi-Lin Chen made the decision to stop paying Mrs. Peterson her monthly override commission/Leadership Development Bonus payments, no person from the Company ever told Mrs. Peterson that the monthly override commission/Leadership Development Bonus payments called for by the Agreement were, in the Company’s opinion, contingent upon Mrs. Peterson complying with the new requirements of the Business Guides. Such an instruction, if given, would have breached the Agreement, and would have been contrary to the course of dealings between the parties which had honored the payments required by the Agreement for over 18 years.

It is clear from the evidence that Mrs. Peterson was not required to do anything to remain a Director in the Company for the purposes of receiving override commission/Leadership Development Bonus payments. Since there was no meeting of the minds between Mrs. Peterson and the Defendants concerning the alleged new requirements, and because Mrs. Peterson received no additional consideration in return for

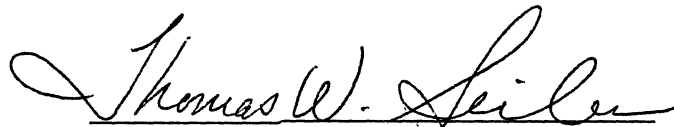
agreeing to the alleged new requirements, the Company's Policy Guides or Business Guides alone could not have modified the Agreement.

CONCLUSION

Based upon the foregoing reasons and analysis, Mrs. Peterson respectfully requests that this Court reverse the trial court's March 31, 2000 Order granting summary judgment in favor of the Defendants, and denying partial summary judgment in her favor on her breach of contract cause of action.

DATED this 23rd day of October, 2000.

ROBINSON, SEILER & GLAZIER, LC

A handwritten signature in cursive script, reading "Thomas W. Seiler", written over a horizontal line.

Thomas W. Seiler
Jared L. Anderson
Attorneys for Plaintiff/Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 23rd day of October, 2000, I caused the foregoing Brief of Appellant to be served upon Appellees by mailing, via first class mail, true and correct copies of the same, to:

H. Thomas Stevenson
Brad C. Smith
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_____

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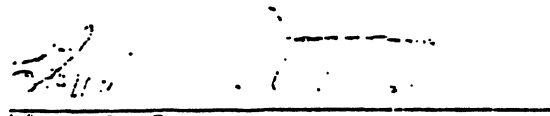
ADDENDUM

1. 1976 Agreement
2. June 15, 1998 Memorandum Decision
3. March 31, 2000 Order

Addendum 1

1976 Agreement

I, Lloyd D. Peterson, do hereby offer to purchase from NaturaLife International the NaturaLife Distributors known as Sharon and John Farnsworth (husband and wife) and their sponsored organization for the sum of \$1500 (one thousand five hundred dollars). This amount will be reduced by NaturaLife International from salary due me. It is understood that this purchase will become effective at 11:59 p.m. on July 31, 1976, and from that time on, the above Farnsworth NaturaLife organization will become first level distributors or directors as the case may be to my wife, Janet S. Peterson. It is also specified that my wife, Janet Peterson, will remain a director with the company for the purpose of receiving overrides from directors occurring to her organization regardless of her personal purchase volume (PV) level. I do understand, however, that her personal group PV for those below director level will be paid at the scheduled rate for the PV level reached each month.


Lloyd D. Peterson

The NaturaLife International company accepts the offer of Lloyd D. Peterson for the purchase of the sponsorship of John and Sharon Farnsworth and their sponsored organization as distributors and/or directors as though they had been originally directly sponsored by Janet S. Peterson. The purchase price and terms are approved as written in the proposal.


Ken Wurdock

ak/48

Addendum 2

June 15, 1998 Memorandum Decision

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

FILED
Fourth Judicial District Court of
Utah County, State of Utah.
CARMA B. SMITH, Clerk
6-15-98 (RM) Deputy

JANET PETERSON,

Plaintiff,

vs.

SUNRIDER CORP., dba SUNRIDER
INTERNATIONAL, and TEI FU CHEN,

Defendants.

MEMORANDUM DECISION

CASE NO. 960400174

DATE: JUNE 15, 1998

JUDGE: HOWARD H. MAETANI

This matter came before the Honorable Howard H. Maetani, Fourth District Court Judge. Plaintiff filed a Motion to Amend, a Motion to Name an Expert Witness, a Motion to Strike Affidavits, a Motion to Strike Defendant's Summary Judgment Motion, and a Motion for Partial Summary Judgment. Defendant filed a Motion to Compell Discovery, and a Motion for Summary Judgment and to Dismiss. The Court heard oral arguments on these motions on May 18, 1998.

Having reviewed the filed, memoranda and exhibits submitted by both parties, heard oral arguments and being fully advised in the premises, the Court makes the following:

MEMORANDUM DECISION

I

STATEMENT OF FACTS

1. NaturaLife International, Inc. was a Utah Corporation which was incorporated on May 27, 1976.
2. The Defendant Tei Fu Chen acquired NaturaLife International, Inc. by entereing into a Stock Sale Agreement on September 24, 1982, with the sole stockholders of NaturaLife International, Inc., Kenneth A. Murdock and George T. Murdock, Jr.
3. NaturaLife International, Inc.'s name was changed to Sunrider Corporation.

4. Sunrider International is a dba of Sunrider Corporation. The same are collectively referred to herein as "Sunrider."

5. Defendant Sunrider markets its products through a multi-level marketing sales program.

6. On July 31, 1976, Lloyd D. Peterson, the deceased spouse of the Plaintiff, purchased from NaturaLife International, Inc., for and on behalf of the Plaintiff Mrs. Peterson, the NaturaLife distributors known as Sharon and John Farnsworth (husband and wife), and their sponsored organization.

7. Pursuant to a decision made by Oi-Lin Chen, President of Sunrider, the Defendant Sunrider refuses to pay any sums to Mrs. Peterson.

8. On May 3, 1995, a letter was sent to Sunrider by Mrs. Peterson's counsel by which Mrs. Peterson demanded payment from Sunrider for all past, present, and future amounts due and owing her under the 1976 purchase document executed by her deceased husband.

9. Plaintiff filed a Complaint against Defendant Sunrider on March 19, 1996.

10. Defendant filed an Answer on May 3, 1996.

11. Plaintiff filed an Amended Complaint on September 11, 1996.

12. Defendant filed an Answer to Amended Complaint and Counterclaim, October 8, 1996.

13. Plaintiff filed an Answer to Counterclaim, October 9, 1996.

14. Plaintiff filed a Motion and Memorandum for Partial Summary Judgment, January 15, 1998.

15. Defendant filed a Memorandum in Opposition to Summary Judgment and Request for Hearing, February 3, 1998.

16. Plaintiff filed a Reply to Defendant's Memorandum in Opposition to Summary Judgment, February 6, 1998.

17. Plaintiff filed a Motion and Memorandum to Amend their Complaint, February 10, 1998.

18. Plaintiff filed a Motion and Memorandum to Name an Expert Witness, February 12, 1998.

19. Defendant filed a Memorandum in Opposition to Amend, February 25, 1998.
20. Defendant filed a Memorandum in Opposition to Name an Expert Witness, March 4, 1998.
21. Defendant filed a Motion and Memorandum for Summary Judgment and to Dismiss, April 1, 1998.
22. Defendant filed a Motion and Memorandum to Compell Discovery, April 3, 1998.
23. Plaintiff filed a Motion to Strike and a Memorandum in Opposition to Defendant's Motion for Summary Judgment and to Dismiss, April 16, 1998.
24. Defendant filed a Reply Memorandum for Summary Judgment and to Dismiss, and in Opposition to Plaintiff's Motion to Strike, April 23, 1998.

II

ISSUES

Plaintiff argues that Sunrider has breached the Contract entered into by Plaintiff's deceased husband on her behalf by refusing to pay "commissions" on the products sold by distributors on her "down-line." Defendant argues that Plaintiff has failed to meet the requirements of a director and first-level distributor, as defined in Sunrider's Business Records, that are in addition to her personal purchase volume.

III

ANALYSIS

MOTION TO AMEND

The Court has broad discretion in granting leave to amend. Courts have liberally construed Utah R. Civ. P. 15(a) to "further the interest of justice" and to allow parties to have their claims fully adjudicated. Timm v. Dewsnup, 851 P.2d 1178, 1183 (Utah 1993). In the interest of judicial economy and having Plaintiff's claim fully adjudicated, the Court grants Plaintiff leave to amend. Plaintiff can add Oi Lin Chen as a defendant. Plaintiff can clarify that "Sunrider International" is the new name of "NaturaLife International." Plaintiff can change a typographical error in the payment termination date from December 1995 to December 1994. Defendant will be granted a fair opportunity to respond to the amended pleadings.

MOTION TO NAME AN EXPERT WITNESS

The Court will grant Plaintiff leave to name an expert witness for the purpose of calculating damages. Rule 702 of the Utah Rules of Evidence provides that “[i]f scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence . . . a witness qualified as an expert . . . may testify thereto” Clarifying the Bonus Recap Reports and other damage issues will assist the trier of fact in determining the appropriate remedy if it is found there has been a breach of contract. The expert witness will be particularly useful if the 1978 business guide is found to be the correct guide for calculating damages. Defendant has adequate time to prepare for adjudication of this issue.

MOTION TO STRIKE AFFIDAVITS

The Court denies Plaintiff’s motion to strike the affidavits of Sharon Farnsworth, Robert Katchen, and Ras Jeyakumar. Although the affidavits may have been filed a few days late, because the Court is allowing Plaintiff to add a new party and name an expert witness, to be fair, the Court will not strike these three affidavits submitted by the Defendant. Plaintiff has adequate time to prepare for adjudication of any issues relating to these three affidavits.

MOTION TO STRIKE DEFENDANT’S SUMMARY JUDGMENT MOTION

The Court denies Plaintiff’s motion to strike Defendant’s Summary Judgment Motion. The Mailing certificate indicates that Defendant’s motion was mailed timely on March 31, 1998. Because this motion could be served by mail, service was deemed complete upon mailing. Utah R. Civ. P. 5(b)(1).

MOTION TO COMPEL DISCOVERY

The Court grants Defendant’s motion to compel discovery. Once again, the Court wants to be fair. Although Defendant’s interrogatories may have been broader than anticipated, because the Court is allowing Plaintiff to add a new party and call an expert witness after the discovery deadline, the Court will order Plaintiff to answer Defendant’s interrogatories in a manner that is not evasive or incomplete.

PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Under the Utah Rules of Civil Procedure, Rule 56(a) and (b), a party against whom a claim has been made, may at any time move for a summary judgment in his favor. The motion should be granted if “. . .the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” URCP Rule 56C.

The Court denies Plaintiff's motion for partial summary judgment. Plaintiff asks the Court to grant a partial summary judgment on her first cause of action--breach of contract. Summary judgment is appropriate if Plaintiff can show no genuine issue of material facts and that Plaintiff is entitled to judgment as a matter of law, after allowing all reasonable inferences in favor of the Defendant. Estate of Covington v. Josephson, 888 P.2d 675, 677 (Utah Ct. App. 1994). In addition, “[o]nly when contract terms are complete, clear, and unambiguous can they be interpreted by the judge on a motion for summary judgment.” Webb v. R.O.A. General Inc., 804 P.2d 547 (Utah App. 1991) (quoting Colonial Leasing Co. v. Larsen Bros. Const., 731 P.2d 483 (Utah 1986)). The Court cannot summarily determine there has been a breach of contract because the terms of the contract are unclear and ambiguous.

Plaintiff contends that the 1976 writing is a valid contract because it meets the elements of proper subject matter, competent parties, offer, acceptance, and consideration. The 1976 writing may meet these requirements, however, both parties look beyond the 1976 writing to different business guides to determine payments and other contract terms. Obviously, the 1976 writing is not a completely integrated contract. There are at least two questions of material fact in dispute. First, the parties dispute which business guide should be used to supplement the 1976 writing. Second, the parties dispute whether the 1976 writing waives all Director requirements or only the requirement of personal purchase volume. Both of these facts are necessary to determine whether there has been a breach of contract.

There is a question of material fact as to which business guide should be used. Plaintiff argues that the 1978 business guide should be used because the payment schedule listed in the

1978 business guide is the same payment schedule that existed in 1976 when the 1976 writing was drafted. Defendant argues, relying upon Plaintiff's own testimony, that the current business guide should be used because even Plaintiff acknowledged that Sunrider could change its business guide unilaterally when things were not quite right. Based upon Plaintiff's testimony, it is a reasonable inference that each new business guide combines with the 1976 writing to form an integrated contract, or alternatively, each new business guide modifies the 1976 writing. Determining whether to use the 1978 or the most current business guide is unclear, and therefore is a question of fact to be decided by a fact-finder.

There is a question of material fact as to whether the 1976 writing waives all Director requirements or only the requirement of personal purchase volume. Plaintiff relies on the extrinsic evidence of Ken Murdock, one of the original parties to the contract, to show that the intent of the parties was to keep Plaintiff a Director regardless of any requirements listed in the business guides. Defendant argues that the face of the 1976 only waives the personal purchase volume requirement, not any other Director requirement. It is ambiguous whether the 1976 writing waives all Director requirements or only the requirement of personal purchase volume, and therefore is a question of fact to be determined by a fact-finder. Also, when contract interpretation must be determined by extrinsic evidence of intent, it becomes a question of fact. Records v. Briggs, 887 P.2d 864 (Utah Ct. App. 1994).

Plaintiff argues that none of the business guides could legally modify the 1976 writing because Plaintiff never agreed to the terms of the business guides, Plaintiff never received any additional consideration, and Plaintiff never signed any of the business guides. This argument puzzles the Court. Plaintiff wants the Court to treat the business guides as being non-binding but at the same time allow Plaintiff to rely on the 1978 business guide to calculate damages. If Plaintiff can rely on the 1978 business guide to show the payment schedule of the 1976 writing, based upon Plaintiff's own testimony and the face of the 1976 writing, it is not an unreasonable inference that the business guides may also contain additional requirements to the 1976 writing.

The Court cannot summarily decide there has been a breach of contract because the contract is unclear and ambiguous.

DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT AND TO DISMISS

Intentional interference with contractual relations

The Court grants Defendants motion to summarily dismiss the claim of intentional interference with contractual relations.

Plaintiff relies on the five elements of intentional interference with contractual relations listed in Model Utah Jury Instructions (MUJI). However, the case law requires more than the five elements listed in MUJI. In Soter v. Wasatch Dev. Corp., 443 P.2d 663 (Utah 1968), a case that both parties cite, the Utah Supreme Court stated that “[i]n order to establish a right to recover on such a cause of action the plaintiffs would have to show that the defendants, without justification, by some wrongful and malicious act, interfered with the plaintiffs’ right of contract, and that actual damage resulted.” Id. at 664. Also, because Tei Fu Chen is the president of Sunrider, to meet the requirement of “contract of another,” Plaintiff must show that Tei Fu Chen “acted beyond the scope of his powers or against the interests of the corporation,” Stratton v. West States Construction, 440 P.2d 117, 118 (Utah 1968).

Plaintiff argues that Tei Fu Chen acted maliciously and outside the scope of his powers as a Sunrider officer because he entered into discussions with various Sunrider employees for the purpose of terminating payments to Plaintiff. However, Plaintiff offers nothing to explain why discussing payment termination with various employees was malicious, outside the scope of Defendant’s powers, or against the interests of Sunrider. In fact, the undisputed evidence indicates that Sunrider acted justifiably in terminating Plaintiff’s payments because Plaintiff was failing to qualify, Plaintiff was failing to work or train her down line, Plaintiff’s inaction prejudiced other qualifying participants, and Sunrider wanted to comply with the law. Sunrider had nothing to gain by stopping Plaintiff’s payments. Even Plaintiff testified that Sunrider would have to pay out the same percentage amount regardless of whether Plaintiff was paid. Plaintiff started to testify that Sunrider may benefit because some of its “big people” would get more money but then retracted the statement. (See page 153-156 of the Deposition of Janet Peterson).

There are no material facts in dispute on this issue, and Defendant is entitled to

judgment as a matter of law. The Court grants Defendants motion to dismiss the claim of intentional interference with contractual relations.

Breach of contract against Tei Fu Chen

The Court grants Defendant's motion to summarily dismiss the breach of contract against Tei Fu Chen.

"As a general rule, stockholders of a corporation are not liable, as such, for any obligations of the corporation, regardless of how they were incurred." Parker v. Telegift International, Inc., 505 P.2d 301, 302 (Utah 1973) (citing 19 Am.Jur.2d, Corporations § 713). In fact, the president and major stockholders of a corporation cannot be liable for breach of contract unless they "acted beyond the scope of [their] powers or against the interests of the corporation." Stratton at 118.

Plaintiff argues that Tei Fu Chen became personally responsible for all obligations of NaturaLife, including the contract with Plaintiff, because he became the only shareholder. However, Plaintiff offers no facts or law to base this conclusion on. Just because Tei Fu Chen is the sole shareholder does not necessarily make him personally liable for the 1976 writing. It is also important to note that there are no facts indicating that Tei Fu Chen acted beyond his power, or against the interest of Sunrider (See the "intentional interference with contractual relations" section above).

There are no facts in dispute on this issue because Plaintiff has offered no evidence showing that Tei Fu Chen personally assumed liability for the 1976 writing, or that Tei Fu Chen acted outside the scope of his power. Because there are no material facts in dispute, and Defendant is entitled to judgment as a matter of law, the Court must summarily dismiss the personal liability claim against Tei Fu Chen.

Punitive damages

The Court grants Defendant's motion to summarily dismiss Plaintiff's claim of punitive damages.

Punitive damages may be awarded if there is “clear and convincing evidence that the acts or omissions of the tortfeasor are the result of willful and malicious or intentionally fraudulent conduct, or that manifests a knowing and reckless indifference toward, and a disregard of the rights of others.” Utah Code 78-18-1. Malice can be implied from unjustifiable conduct. Branch v. Western Petroleum, Inc., 657 P.2d 267 (Utah 1982).

Plaintiff claims punitive damages against Tei Fu Chen. However, as noted above, there is no evidence showing any unjustifiable conduct, malice, or reckless indifference. The undisputed evidence indicates that Sunrider stopped payments because Plaintiff was not working and because Sunrider wanted to comply with the law. Because the tort claim of intentional interference against Tei Fu Chen has been dismissed, the prayer for punitive damages against Tei Fu Chen will also be summarily dismissed.

Plaintiff also claims punitive damages against Sunrider. Plaintiff argues that Sunrider violated its contractual duty of good faith and fair dealings. However, punitive damages are not available for a breach of contract. Jorgensen v. John Clay & Co., 660 P.2d 229, 232 (Utah 1983). Punitive damages are only available if “the breach of contract amounts to an independent tort. Jorgensen at 232. There is no tort claim against Sunrider. Therefore, the Court must summarily dismiss the claim of punitive damages against Sunrider.

Breach of contract against Sunrider

The Court grants Defendants motion to summarily dismiss the breach of contract claim against Sunrider.

Defendant argues that they are entitled to summary judgment because the language of the 1976 writing is plain, because Plaintiff accepted modifications, and because Plaintiff does not present sufficient evidence to show damages. However, as noted above in Plaintiff’s motion for partial summary judgment, there are material facts in dispute that must be determined by a fact-finder regarding the 1976 writing, modification, and plain language. However, the Court does grant Defendant’s motion for summary judgment on the basis of the contract being illegal.

It is undisputed that Plaintiff claims she is entitled to a leadership bonus based solely on her sponsorship of the Farnsworth organization. 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. Plaintiff admits that she has no obligation to promote or sell a product, and no obligation to train or supervise down-line distributors. In fact, Plaintiff claims she is entitled to a leadership bonus without any obligation at all.

The Court holds as a matter of law that receiving bonuses in a multi-marketing business is illegal when the bonuses are based only upon sponsorship of an organization, rather than upon promoting a product, selling a product, or training and supervising down-line distributors. Utah Code Ann. § 76-6a-2(4) defines a pyramid scheme as “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.” It seems clear that Plaintiff is receiving compensation derived primarily from the work of other people who were introduced into the Farnsworth organization. Plaintiff is expecting a bonus without selling any goods, services, or other property.

The Court realizes that Plaintiff is not recruiting people into the Farnsworth organization. What troubles the Court is that Sunrider has adopted certain requirements in recent years to comply with anti-pyramid laws, and Plaintiff claims that these requirements do not apply to her. The Court disagrees.

The Federal Trade Commission stated that to prevent a pyramid scheme, the safeguards and requirements of a multi level marketing business must “serve to prevent inventory loading and encourage retailing. In Re Amway Corp., 93 F.T.C. 618, 716 (1979). One requirement that the F.T.C. found to be important was requiring each participant to submit proof of retail sales; this rule “makes retail selling an essential part of being a distributor. In Re Amway Corp. at 716.

This case presents a unique situation. The anti-pyramid requirements of Sunrider seem to encourage sales, and prevent focusing on finding new recruits. This is exactly what anti-pyramid laws require. Plaintiff argues that her contract is not illegal because her bonus is based on sales, not recruits. Then, Plaintiff states that she does not have to comply with the new anti-pyramid requirements of Sunrider. It seems that Plaintiff is gaining the benefits of Sunrider’s anti-pyramid requirements while refusing to comply with the requirements herself. Although Sunrider

may not be operating a pyramid scheme, until Plaintiff complies with Sunrider's anti-pyramid requirements, Plaintiff's contract is for an illegal purpose. At the very least, Plaintiff must make some retail sales to qualify to receive leadership bonuses.

The Court cannot enforce an illegal contract, therefore, the Court summarily dismisses Plaintiff's claims.

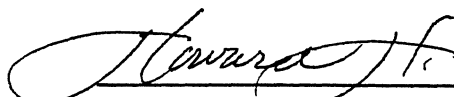
IV DECISION

For the reasons discussed above:

1. The Court GRANTS Plaintiff's Motion to Amend.
2. The Court GRANTS Plaintiff's Motion to Name an Expert Witness.
3. The Court DENIES Plaintiff's Motion to Strike Affidavits.
4. The Court DENIES Plaintiff's Motion to Strike Defendant's Summary Judgment Motion.
5. The Court DENIES Plaintiff's Motion for Summary Judgment.
6. The Court GRANTS Defendant's Motion to Compel Discovery.
7. The Court GRANTS Defendant's Motion for Summary Judgment and to Dismiss.

Counsel for the Defendant is to prepare an Order consistent with the decision of this Court and submit it to opposing counsel for approval.

DATED at Provo, this 5 day of June, 1998.


HOWARD H. MAETANI
Fourth District Court Judge



cc: Thomas W. Seiler
H. Thomas Stevenson

Addendum 3

March 31, 2000 Order

FILED
Fourth Judicial District Court
of Utah County, State of Utah

3-31-2000 put Deputy

**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

Janet Peterson,

:

Plaintiff

:

ORDER

vs.

:

Date: March 30, 2000

The Sunrider Corporation, d.b.a.
Sunrider International, and Tei Fu Chen

:

Case Number: 960400174

Defendant

:

Division V: Judge James R. Taylor

This matter comes before the Court for execution of a "clarifying order" authorized by Judge Ray M. Harding, Sr. during a pre-trial scheduling conference held on April 11, 1999. Both counsel have submitted proposed orders, each arguing that their opponent's order is either inadequate or improper. In addition to reviewing the pleadings in this file, this Court has reviewed the tape record of the April 11, 1999 hearing, conferred with Judge Harding, Sr. (who has no independent recollection of the matter) and reviewed the Memorandum Decision of Judge Maetani dated June 15, 1998. Being advised in the premises, this Court therefore ORDERS:

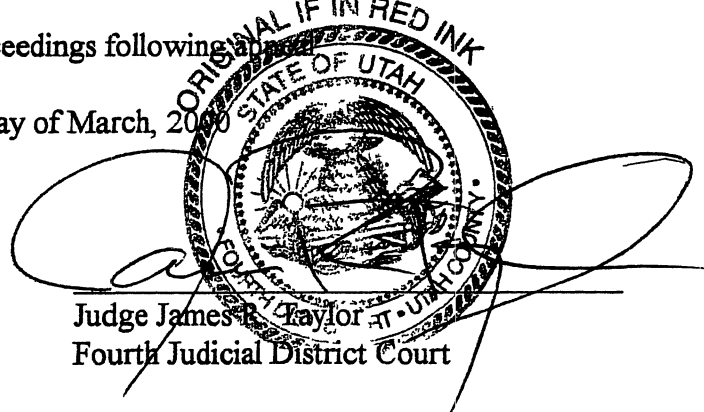
Findings and conclusions of fact and law as stated and/or made implicit in the Memorandum Decision of Judge Maetani on June 15, 1998 are adopted herein as the findings of this Court.

The matters at issue in this case are fully and completely resolved by the findings and ruling of Judge Maetani and this order. Under the heading "Decision" in the Memorandum Decision, Judge Maetani made 7 specific rulings. Numbers 1, 2, 3 and 6 were rendered moot by

the conclusions of numbers 4, 5 and 7. In addition, Judge Harding, Sr., on April 11, 1999, denied the Defendants' motion for sanctions. Although this Court does not intend to disturb or in any way contradict the decision of Judge Maetani, for the purposes of this clarifying order:

- 1) Plaintiff's Motion to Strike Defendants Summary Judgment Motion is denied.
- 2) Plaintiff's Motion for Summary Judgment is denied.
- 3) Defendant's Motion for Summary Judgment and to Dismiss is granted as to each claim raised by the Plaintiff's most recently amended complaint.
- 4) Defendant's Counterclaim is dismissed.
- 5) Defendant's Motion for Sanctions is denied without prejudice to renewing the motion if this matter is remanded for further proceedings following an appeal.

Dated this 30th day of March, 2000



A certificate of mailing is on the following page

Peterson v. Sunrider, 960400174: Order of March 30, 2000.

Copies of this Order mailed to:

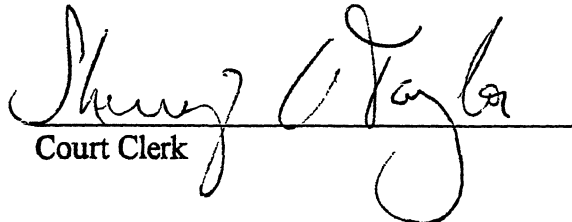
Counsel for the Plaintiff:

Thomas W. Seiler
Jared L. Anderson
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80 North 100 East
P.O. Box 1266
Provo, Utah 84603-1266

Counsel for the Defendants:

H Thomas Stevenson
Brad C. Smith
STEVENSON & SMITH, P.C.
2605 Washington Blvd., Suite 300
Ogden, Utah 84401

Mailed this 31 day of March, 2000, postage pre-paid as noted above.


Court Clerk