

2001

Ines Fowler v. Harold W. Taylor : Brief of Respondent

Utah Supreme Court

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UTAH SUPREME COURT

BRIEF

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THE STATE OF UTAH

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INES C. FOWLER,

Plaintiff-Respondent,

vs.

HAROLD W. TAYLOR, dba
HAL TAYLOR ASSOCIATES,

Defendant-Appellant.

BRIGHAM YOUNG UNIVERSITY
J. Reuben Clark Law School

CASE NO. 14399

BRIEF OF RESPONDENT

Appeal From Judgment
of The District Court of Summit County
Honorable George E. Ballif, Judge

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IN THE SUPREME COURT OF THE STATE OF UTAH

INES C. FOWLER,)	
Plaintiff-Respondent,)	
vs.)	CASE NO. 14399
HAROLD W. TAYLOR, dba)	
HAL TAYLOR ASSOCIATES,)	
Defendant-Appellant.)	

BRIEF OF RESPONDENT

STATEMENT OF THE KIND OF CASE

This is an action for commissions earned as a real estate broker and real estate salesperson, and damages for breach of an employment agreement. There was a counterclaim for breach of contract and libel.

DISPOSITION IN LOWER COURT

The trial court entered judgment for respondent, Ines C. Fowler, in the amount \$9,715.25 as a real estate broker's commission and \$1,373.75 as a sales commission; dismissed her claim for damages for breach of an employment agreement; and dismissed Harold W. Taylor's counterclaim. Mr. Taylor's appeal challenges only that part of the judgment that awards Mrs. Fowler \$9,715.25 for her services as a real estate broker.

RELIEF SOUGHT ON APPEAL

Respondent seeks affirmance of the judgment.

STATEMENT OF FACTS

In September, 1971, Mrs. Fowler became a real estate salesman under the real estate broker's license of Monroe Tucker who was employed by Treasure Mountain Corporation, a subsidiary of Greater Park City Company engaged in the sale of condominiums and other real property in Park City, Utah. (T.29). Mr. Tucker received a 3 1/2 percent broker's sales commission for the sale of Treasure Mountain properties of which he paid a 2 1/2 percent sales commission to the salesmen under his broker's license. (T.35). The services of Mr. Tucker were terminated and the Treasure Mountain salesmen worked under the broker's license of Warren King, an officer and director of Greater Park City Company, and president and director of Treasure Mountain Corporation. (T.29).

On December 29, 1972, Treasure Mountain Corporation filed a registration statement with the Securities and Exchange Commission because the condominiums were to be sold with rental pool management agreements and the company felt they might be deemed securities within the meaning of the Securities Act. (T.147). A prospectus was also published

for the Crescent Ridge and Payday condominiums. (T.48).

Because securities were involved, Treasure Mountain Corporation deemed it necessary to hire an independent real estate and securities broker to handle the sale previously handled by the company itself. (T.46). On December 29, 1972, Mr. Taylor entered into an agreement with Treasure Mountain Corporation whereby he would act as selling agent and would receive 3 1/2 percent commission for the sale of the condominium units. (Ex. P-12; T.109).

Mr. Taylor did not have a real estate broker's license, and on or about December 20, 1972, he suggested to Mrs. Fowler that it would be a good idea for her to activate her license as a real estate broker. (T.30). At that time he presented to her some applications to the real estate division by the terms of which she would activate her license as a real estate broker, and Mr. Taylor, William H. Coleman, Trina Leonard, and David D. Scherer, would be licensed as salesmen under her brokerage. (T.30, 36; R.135). Appellant's purpose in requesting respondent to activate her real estate broker's license was to permit him in his sales organization to engage in the sales of the Crescent Ridge and Payday condominiums in accordance with his contract with Treasure Mountain Corporation, Mr. Taylor not then being licensed as

a real estate broker and not qualified for such a license. (T.30; R.135). There was no discussion of Mrs. Fowler's compensation for acting as real estate broker but both Mr. Taylor and Mrs. Fowler were aware of the custom among real estate brokers and salesmen for the real estate broker to receive a portion of the sales commission paid by a seller involving the sale of real property, and Mrs. Fowler expected that a broker's commission would be paid to her for her services. (T.34, 35, 153; R.136). It is customary for brokers to receive compensation for their services. (T.81).

Between January 1, 1973, and February 19, 1973, salesmen working under Mrs. Fowler's real estate broker's license and Mr. Taylor's securities broker's license realized gross sales of \$2,193,050.00, on which Treasure Mountain paid Mr. Taylor a 3 1/2 percent commission. (Ex. P-24; Ex. P-12). Of this commission 2 1/2 percent was paid to the salesman who negotiated the particular sales, and one percent, or \$21,930.50, was retained by Mr. Taylor. (R.136). Although Mrs. Fowler operated as a real estate broker, prepared forms, and arranged with Mr. Taylor for an opening of a trust account as required by Utah law, she received no compensation for her services or the use of her real estate broker's license. (T.35; R.131). According to Mr. Taylor's

own figures, a maximum of \$1,500.00 per month or \$2,500.00 during the period January 1, 1973, through February 19, 1973, would be chargeable against the brokerage commissions for overhead. (R.136). Reducing the brokerage commission by the \$2,500.00 expended in connection with Mr. Taylor's operations as a selling agent leaves a net broker's commission after expenses of \$19,430.50. (R.136).

On February 19, 1973, Mr. Taylor succeeded in obtaining a real estate broker's license, whereupon he arranged for the termination of the active broker's license of Mrs. Fowler and transfer of the salesmen to conduct future transactions under his own real estate broker's license. (T.35).

The trial court found that Mr. Taylor orally engaged Mrs. Fowler to serve as real estate broker and salesman for the sale of condominiums owned by Treasure Mountain Corporation for a period from January 1, 1973, through February 19, 1973 (R.135); that the Statute of Frauds has no application to the transaction between the parties since it did not involve the legal relationship between an owner and real estate salesman (R.139); that a broker's license was required by law for Mr. Taylor to discharge his contractual obligations to Treasure Mountain Corporation (R.131); that it is customary in the real estate business that a percentage of

the sale of salesmen be paid to or retained by the broker under whose license the salesman operates (R.136); that Mrs. Fowler is entitled to \$9,715.25, which is one-half of the net broker's commission of \$19,430.50. (R.136, 139, 140).

ARGUMENT

I

THE TRIAL COURT CORRECTLY DETERMINED THAT MRS. FOWLER'S CLAIM FOR A REAL ESTATE BROKER'S COMMISSION FROM MR. TAYLOR IS NOT BARRED BY THE STATUTE OF FRAUDS.

The Utah Statute of Frauds, 25-5-4 Utah Code Annotated 1953, provides:

Certain agreements void unless written and subscribed. In the following cases every agreement shall be void unless such agreement, or some note or memorandum thereof, is in writing subscribed by the party to be charged therewith:

* * *

(5) Every agreement authorizing or employing an agent or broker to purchase or sell real estate for compensation.

The purpose of this and similar statutes is to discourage unfounded claims for commissions between the broker or agent and the owner of land. The Statute of Frauds has no application to agreements between brokers or a broker and a salesman, neither of whom is the owner of the land. The trial court correctly understood this distinction as evidenced by the following pertinent observations from its decision:

The Court concludes that the Statute of Frauds has no application to the transaction between the parties since it does not involve the legal relationship between an owner and real estate salesman. (R.130).

The trial court's decision is buttressed by the Utah case of Anderson v. Johnson, 108 Utah 417, 160 P.2d 725 (1945), wherein this court held that an agreement to assist a real estate broker in procuring listings of property for sale in consideration of a share of the commission was not within the Statute of Frauds. This court stated:

The contention of respondent that plaintiff cannot recover because his agreement was oral is untenable. The contract was one of employment and not involving any right or interest in land. See Johnson v. Allen, Utah 1945, 158 P.2d 134. The proposition that a contract for fee or commission may be recovered by agent from broker though not in writing is upheld in [citing cases from California, Wyoming, Nebraska, and Louisiana].

There have been a great number of cases from other jurisdictions interpreting similar statutes, and they are quite harmonious in holding that such statutes are enacted to protect the owners of real property against claims by real estate brokers or salesmen. They do not require a written agreement between brokers, or between a broker and a salesman with respect to the sharing of real estate commissions payable by an owner or seller of real estate. The law is summarized in an annotation, "Agreement between brokers as within statute requiring

agreements for commission for the sale of real estate to be in writing", 44 A.L.R. 2d 741, 745:

While the statutes in particular jurisdictions differ in important respects, the more numerous referring either to "employment" of a broker, payment of a "commission" or requiring that the writing be signed by the "owner," there appears to be general agreement that such statutes, unless they specifically refer to an agreement between brokers, were designed specifically to protect owners of real estate against unfounded claims of brokers, and therefore are not applicable to agreements between brokers to pool their efforts and share in the commission thereby earned.

Appellant relies on the cases of Baugh v. Darley, 112 Utah 1, 184 P.2d 335 (1947), Case v. Ralph, 56 Utah 243, 188 P. 640 (1920), Watson v. Odell, 58 Utah 276, 198 P. 772 (1921) and Smith Realty Co. v. Dipietro, 77 Utah 176, 292 P. 915 (1930) to support his argument that Mrs. Fowler's claim for a commission based upon an implied agreement is void under the Statute of Frauds. These cases are easily distinguished because they all involve dealings between owners of land and real estate brokers or salesmen.

It is true, of course, that where an agreement is unenforceable because within the Statute of Frauds, the courts will not permit recovery on an implied contract or a quasi contract, because such recovery would thwart the prohibitions of the statute. However, where an implied or quasi contract does not run counter to the Statute of Frauds, there is no

reason for application of such a rule. In 37 C.J.S. Statute of Frauds § 229, this principle is stated in the following manner:

The statute of frauds applies to contracts implied in fact, and hence if they fall within its scope they are unenforceable. This rule does not apply to an implied or inferred contract which does not fall within the scope of the statute . . . (Emphasis added)

Since the agreement wherein Mr. Taylor engaged Mrs. Fowler to serve as real estate broker and salesman is not within the Statute of Frauds, there is no rule which would prevent the court from raising an implied contract or permitting recovery on the principle of restitution.

Appellant's final argument, that even if 25-5-4(5) Utah Code Annotated 1953 pertains only to agreements between real estate brokers or agents and owners of real property, it would apply in the instant situation because Mr. Taylor was the agent or alter ego of the property owner, merits little consideration. The point is raised for the first time on this appeal; it contradicts the terms of the Treasure Mountain prospectus (Ex. D-2, pp.1, 4) and the agreement between Taylor and Treasure Mountain (Ex. 12, p.6); and it has no support in the evidence. Even if Mrs. Fowler could not have enforced the agreement as against Treasure Mountain, it makes no difference because Treasure Mountain did pay the commissions

II

THE TRIAL COURT CORRECTLY DETERMINED THAT THERE WAS AN AGREEMENT, IMPLIED IN FACT, THAT MR. TAYLOR WOULD PAY TO MRS. FOWLER THE REASONABLE VALUE OF HER SERVICES AS A REAL ESTATE BROKER.

Activities of real estate brokers and real estate salesmen, and their right to participate in commissions for the sale of real estate, are regulated by law.

The following statutory provisions from Title 61, Chapter 2, Utah Code Annotated 1953, are pertinent:

61-2-1. License Required. - It shall be unlawful for any person, co-partnership or corporation to engage in the business, act in the capacity of, advertise or assume to act as a real estate broker or a real estate salesman within this chapter without first obtaining a license under the provisions of this chapter.

61-2-10. Salesmen's Right To Commission Restricted. - It shall be unlawful for any real estate salesman to accept a commission or valuable consideration for the performance of any of the acts herein specified from any person, except his employer, who must be a licensed real estate broker.

61-2-18. Unlicensed Broker - Action For Recovery of Compensation Prohibited - Action By Real Estate Salesmen. - (a) No person, partnership, association or corporation shall bring or maintain an action in any court of this state for the recovery of a commission, a fee, or compensation for any act done or service rendered the doing or rendering of which is prohibited under the provisions of this act to other than licensed real estate brokers, unless such person was duly licensed hereunder as a real estate broker at the time of doing such act or the rendering of such service.

(b) No real estate salesman shall have the right to institute suit in his own name for the recovery of a fee, commission, or compensation for services as a real estate salesman except where the action is against the broker but any such action shall be instituted and brought by the broker with whom the salesman is connected.

In order for Mr. Taylor to carry out the obligations of his contract with Treasure Mountain Corporation, it was necessary that the salesmen within the organization operate under the license of a real estate broker, pursuant to the provisions of 61-2-1. When Mr. Taylor requested Mrs. Fowler to renew her license, the circumstances were such that a person in his position would ordinarily be expected to compensate her for her services, and a person in Mrs. Fowler's position would ordinarily expect compensation. Mrs. Fowler testified that she expected to receive a broker's commission of one percent, the same rate paid to previous brokers:

Q (By Mr. Roe) Mrs. Fowler, was there any discussion with respect to brokerage commissions:

A He only said that it was good for me to activate my license.

Q So the subject wasn't mentioned at all?

A No, not at all. He didn't approach the subject.

Q At that time what expectations did you have, if any, respecting commissions?

A Well, all the sales for Treasure Mountain Corporation had been done on the premises that the Broker will get one percent commission on all sales.

Q And that was your expectation?

A And that was my expectation. He was the Salesman and I was the Broker, and I expected to be paid as a Broker. (T.34, 35).

It is customary among real estate brokers and salesmen for the broker to receive a portion of the selling commission. This is established not only by the custom and practice with relation to the sale of the Treasure Mountain condominiums, where both before and after the Taylor-Treasure Mountain contract the broker received a one percent commission and the salesman received a 2 1/2 percent commission on the sales of condominiums, but it is true among real estate agents and brokers generally. Robert Monson, who testified in behalf of Mr. Taylor, stated that it was customary for real estate brokers to receive a percentage of the commission.

In E. Friedman, Real Estate Encyclopedia (Prentice Hall, 1960), it is stated:

SHARING OF BROKER'S COMMISSION: A salesman is paid for his services by his employer. His compensation generally consists of a percentage of the broker's commission earned on sales made by the salesman. The salesman is not entitled to collect commissions direct from principals.

Each real estate organization establishes its own schedule for division of commissions between the employer and its salesmen. Some

real estate organizations pay their salesmen 50% of commissions earned, others pay 40% with 10% to the supervisor. In some firms, step-ups are provided; if the brokerage commission exceeds a certain amount, an additional 5% may be paid; above that amount, a further percentage may be allowed.

And see A. Ring, Real Estate Principles and Practices
Chapter 18 (Prentice Hall, 1972):

The compensation of a salesman depends entirely on his arrangement with his employer, the broker. A novice may receive a small salary and a small share of any commissions earned by the broker as a result of the salesman's work. As he gains in experience and usefulness, his compensation changes. Ultimately he reaches a point at which his compensation is from 40 to 60% of the brokerage paid on his transactions, quite possibly with a drawing account against such earnings.

The circumstances under which the brokerage services were performed by Mrs. Fowler are such that the court should find a contract implied-in-fact under which Mr. Taylor agreed to pay her the reasonable value of those services.

With respect to implied-in-fact contracts, the following statement is found in 17 Am.Jur. 2d Contracts § 4:

There is a wide variety of particular circumstances under which contracts will be implied-in-fact. Thus, where a person performs services, furnishes property, or expends money for another at the other's request and there is no express agreement as to compensation, the promise to pay the reasonable value of the services or property or to reimburse for money expended may properly be implied where, but only where, the circumstances warrant such an inference.

Generally, there is an implication of a promise to pay for valuable services rendered with the knowledge and approval of the recipient, in the absence of a showing to the contrary. A promise to pay the reasonable value of the service is implied where one performs for another, with the other's knowledge, a useful service of a character that is usually charged for, and the latter expresses no dissent or avails himself of the service. * * *

That contracts may be implied in fact, without express agreement, was recognized by the Utah Supreme Court in Kimball Elevator Company v. Elevator Supplies Co., 2 Utah 2d 289, 272 P.2d 583 (1954). Although the court failed to find an implied contract in that case, it stated the general rule as follows:

It is of course conceded that a contract may be made out even though there be no express words formally stating it, and that the promise may be inferred wholly or in part from such conduct as justifies the promisee in understanding that the promisor intended to make it.

And see Radley v. Smith, 6 Utah 2d 314, 313 P.2d 465 (1957), wherein the Utah Supreme Court, in upholding a finding of an implied contract, said:

It is sufficient for our purposes to affirm the court's ruling because it is well established that the meeting of minds necessary for the formation of a contract can be found from conduct and circumstances as well as by verbal expression.

It is generally held that where one engages or accepts beneficial services of another for which compensation is customarily made and naturally anticipated, even though there is no expressed agreement for compensation, the law implies an understanding or intent to pay the value of the services rendered. In Florey v. Sinkey, 77 Nev. 275, 362 P.2d 271 (1961), the plaintiff real estate broker brought an action for the reasonable value of his services in procuring a purchaser for defendant's mining property. No agreement to pay compensation was entered into by the parties, but evidence was presented that it was a custom in the area for the seller of mining property to pay 10 percent of the consideration actually received by him to the person who was the procuring cause of the sale. The trial court determined that the custom was sufficiently known to charge the defendant with constructive knowledge of the same and held that there was an implied agreement to pay plaintiff the reasonable value of his services. On appeal the Nevada Supreme Court stated:

The trial court found that there was an implied agreement on the part of Florey to pay Sinkey the reasonable value of his services, and as there was substantial evidence in support of such finding, as well as the other findings of the trial court, the same may not be disturbed on

this appeal. The amount found to be the reasonable value of Sinkey's services was the same as 10% of the \$84,000 found to have been actually received by Florey from Kaufmann. In effect, the sum found to be due Sinkey as compensation for his services, under the established custom of the mining locality, became the reasonable value of such services. (Citations omitted.) 362 P.2d at 273.

Appellant concedes that where no compensation is agreed upon in advance for services requested by and performed by another, there is a presumption that compensation was intended. However, the contention is made that the presumption is rebutted by the circumstances of this particular case.

Appellant's primary argument is that Mrs. Fowler's strong self-interest in complying with Mr. Taylor's request to activate her real estate broker's license negates any inference of an implied-in-fact agreement for compensation. However, appellant fails to take into consideration that Mrs. Fowler's self-interest is no different than the interest of any other broker in having salesmen working under him and sharing in the commissions from their sales. Mrs. Fowler would not have taken on the added responsibility and potential liability of acting as real estate broker without expecting additional compensation. Appellant was not justified in assuming that Mrs. Fowler would comply with his request to

act as real estate broker and then receive only the standard 2 1/2 percent sales commission on her sales.

Appellant's second and third arguments in support of his contention that there was no implied-in-fact agreement is that there was no agreement between the parties respecting compensation and that the intentions of the parties as to compensation were clearly contrary to each other. There is no basis for these arguments, as the law requires neither an agreement nor similar intentions of the parties for the court to find an implied agreement for compensation. To find an implied-in-fact contract, there must be mutual assent of the parties to contract but there is no requirement of mutual assent as to compensation. Florey v. Sinkey, supra.

In the case at bar, the mutual assent required was simply that both Mr. Taylor and Mrs. Fowler agree that Mrs. Fowler would act as real estate broker. After this fact was established, the court properly found an implied-in-fact agreement to pay Mrs. Fowler reasonable compensation for her services. The law in this regard is summarized in the following manner:

If there is no agreement fixing the compensation which a broker is to receive for his services, but there is a well-established custom

in the neighborhood with respect to the amount of compensation to which a broker is entitled, the law implies a promise on the part of the person employing him to pay the usual and customary commissions. If no such custom or usage can be shown, the broker is entitled to reasonable compensation. 12 Am.Jur.2d Brokers § 161.

In the absence of a special agreement as to the matter, the broker is entitled to a fair and reasonable compensation for his services. 12 C.J.S. Brokers § 78.

In this case the evidence shows there was a well established custom within the sales organization of Treasure Mountain Corporation to pay the broker a one percent commission on the sales price of all units sold. The court properly found an implied agreement to compensate Mrs. Fowler in a similar manner.

Appellant's final argument in support of his contention that the court erred in finding an implied agreement is that there can be no implied-in-fact contract where the law with respect to such contract has not been complied with. Appellant cites Rule 19 of the Utah State Securities Commission, Real Estate Division, as requiring brokers to provide salesmen with the terms of employment in writing to avoid misunderstandings, and Rapp v. Salt Lake City, 527 P.2d 651 (Utah 1974) for the proposition that no contractual liability can be created without compliance with the applicable ordinances. The case involved an ordinance that voided contracts

not signed by the City Recorder.

The instant case is clearly distinguishable in that no voiding ordinance is involved. Instead, Rule 19 of the rules and regulations issued by the Department of Business Regulation, Real Estate Division, requires that brokers provide salesmen with the terms of their employment in writing, but provides no sanction for failure to do so. In addition, this rule was enacted for the protection of real estate salesmen, who stand to benefit only if they can recover on oral or implied contracts when the broker has failed to designate in writing the terms of their employment. To construe the rule as contended by appellant would be a clear misapplication of the law.

The evidence in this case shows that there is a custom and practice among real estate brokers and salesmen that the broker will share in the commission; there was a particular custom with respect to the sales made for Treasure Mountain Corporation; Mrs. Fowler activated her real estate broker's license with the expectation that she would receive a brokerage commission; and Mrs. Fowler's brokerage services were beneficial to Mr. Taylor. The circumstances, therefore, contain all the elements of a contract implied-in-fact and support the lower court's decision.

III

THE TRIAL COURT CORRECTLY DETERMINED THERE WAS AN AGREEMENT, IMPLIED IN LAW, THAT MR. TAYLOR WOULD PAY TO MRS. FOWLER THE REASONABLE VALUE OF HER SERVICES AS A REAL ESTATE BROKER.

Mrs. Fowler is entitled to recover for the value of her brokerage services on principles of restitution, or quasi contract. Valuable services were performed on behalf of Mr. Taylor at his request, and he received a benefit by virtue of the performance of those services, i.e., he was able to perform his contract with Treasure Mountain Corporation for the sale of condominiums. Without Mrs. Fowler's active broker's license, the sales program could not have proceeded.

The most general statement of rule regarding restitution is found in Restatement of Restitution § 1:

A person who has been unjustly enriched at the expense of another is required to make restitution to the other.

With respect to benefits conferred at request, the following is found in Restatement of Restitution § 107:

(1) A person of full capacity who, pursuant to a contract with another, has performed services or transferred property to the other or otherwise has conferred a benefit upon him is not entitled to compensation therefor other than in accordance with the terms of such bargain, unless the transaction is rescinded for fraud, mistake, duress, undue influence or illegality, or unless the other has failed to perform his part of the bargain.

(2) In the absence of circumstances indicating otherwise, it is inferred that a person who requests another to perform services for him or to transfer property to him thereby bargains to pay therefor. (Emphasis added)

Another statement of the rule is found in 66 Am.Jur.

2d Restitution and Implied Contracts § 21:

The performance of services at the request of another confers a benefit upon such other within the principle that a person who has been unjustly enriched at the expense of another is required to make restitution to the other. In the absence of circumstances indicating otherwise, it is inferred that a person who requests or orders another to perform services for him thereby bargains to pay for the services rendered. Where services are rendered or materials are furnished upon request, it is ordinarily a reasonable inference that the parties understand and agree that they are to be paid for, and accordingly, one rendering services or furnishing materials at another's request ordinarily may recover from the other in quantum meruit for the value thereof. The law will imply an agreement to pay the reasonable worth of services performed for another at the latter's special instance and request where there is no agreement with reference to compensation to be paid.

In McCollum v. Clothier, 121 Utah 311, 241 P.2d 468 (1952), the trial court granted judgment for plaintiff in quantum meruit for services rendered and travel expenses incurred in securing buyers and bidders on certain machinery and equipment which was sold for defendant's benefit at a sheriff's sale after foreclosure of a mortgage. There was no agreement for compensation, but the Supreme Court held

that the trial court had properly found an implied contract to pay for the services. The court said:

The question of moment, then, is as to the authorization of this work. The rule applicable to the situation is contained in the Restatement of Agency, Volume 2, Section 441: "Except where the relationship of the parties, the triviality of the services, or other circumstances indicate that the parties have agreed otherwise, it is inferred that one who requests or permits another to perform services for him as his agent promises to pay for them." (Citing cases and authorities.)

It is appreciated that this rule should not be applied to bind one under implied contract who merely permits services to be rendered him, or accepts benefits from another, under such circumstances that he may reasonably assume they are given gratuitously. The law should not require everyone to keep on guard against such possibilities by warning persons offering services that no pay is to be expected. It is, therefore, essential that the court should exercise caution in imposing the obligations of an implied contract, as contrasted to express contract where the parties have actually defined and agreed to the terms they are to be bound by. With such caution in mind, the test for the court to apply was: under all the evidence, were the circumstances such that the plaintiff could reasonably assume he was to be paid and that the defendant should have reasonably expected to pay for such services.

Appellant cites the cases of Baugh v. Darley, supra, and Rapp v. Salt Lake City, supra, to support his argument that Mrs. Fowler cannot obtain quasi-contractual relief. These cases are readily distinguishable. In the former

case, the court refused to award plaintiff the value of his services on the basis that the defendant did not receive any real benefit from plaintiff's actions and that the purpose of the Statute of Frauds would be nullified by granting quantum meruit relief. In the latter case a quasi-contractual remedy was not allowed, on the statutory grounds previously referred to (all contractual obligations with the city are void without satisfying the requisite formalities), and also because the action was basically a tort claim for deceit; to obtain quasi-contract relief, the obligation must more closely resemble a contract action than a tort claim.

Mrs. Fowler performed valuable services for Mr. Taylor under circumstances in which he would be expected to pay for them. They were conferred at his request; they were beneficial to him; and they fulfilled an obligation that he had to Treasure Mountain Corporation, i.e., to obtain the necessary licenses to carry out the corporation's sales program. Mrs. Fowler is entitled to restitution for the reasonable value of the benefit conferred.

IV

THE TRIAL COURT PROPERLY COMPUTED THE VALUE OF MRS. FOWLER'S BROKERAGE SERVICES AT \$9,715.25.

The trial court's computation of damages is set forth in page 2 of its decision:

The Court finds that the sales made by salesmen during the period in question totaled \$2,193,053.00, that the brokers commissions based on one percent of this price equals \$21,930.50, that the expenses required to be paid in the operation of the broker's office and expended by the defendant was the sum of \$2,500.00 reducing the net commissions to \$19,430.50. Of this amount the plaintiff would be entitled to one-half or the sum of \$9,715.25 since the Treasure Mountain agreement with defendant included his services as Securities Broker as well as that of Real Estate Broker, which plaintiff served as during said period. (R.131).

Appellant concedes that if Mrs. Fowler is entitled to recovery of damages, the measure of recovery would be the reasonable value of her services. However, appellant contends that the "50-50 split" used by the court in arriving at the amount of judgment does not reflect the reasonable value of Mrs. Fowler's services.

Contrary to appellant's contention, in the absence of an express agreement, a "50-50 split" is the reasonable method to divide commissions between brokers. In 12 Am.Jur. 2d Brokers § 177, the general law is expressed as follows:

The amount recoverable under an agreement between brokers to divide or share commissions would appear to depend largely upon the terms of the particular agreement, the extent of the services performed, and the circumstances of the particular case. It would seem that in the absence of a contrary stipulation, an agreement for a division of compensation would contemplate an equal division. . . . (Emphasis added.)

The court's assumption that one-half of the net commission was to be paid to Mrs. Fowler for her services as real estate broker and one-half of the net commission was to be paid to Mr. Taylor for his services as securities broker gave to each party compensation for the reasonable value of their services and was the most equitable decision.

CONCLUSION

Mrs. Fowler performed valuable services as real estate broker for Treasure Mountain Corporation at the request and for the benefit of the appellant, Mr. Taylor. Although there was no agreement fixing the amount of compensation Mrs. Fowler was to receive for her brokerage services, the trial court correctly determined that she was entitled to reasonable compensation. The court's decision is supported either under a theory of unjust enrichment or by implying a promise on the part of Mr. Taylor to pay Mrs. Fowler the reasonable value of her services.

The judgment of the trial court should be affirmed.

Respectfully submitted,

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