

1980

Global Recreation,, Inc., A Utah Corporation, Dba  
Global Enterprises And Associates, Eldon P.  
Hendricks And Stan Snarr v. Cedar Hills  
Development Company, A Partnership Consisting  
of Associated Industrial Developers, Inc., A  
California Corporation, And Near East  
Technological Services, Inc., A California  
Corporation : Respondents' Brief

Utah Supreme Court

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#### Recommended Citation

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IN THE SUPREME COURT  
STATE OF UTAH

GLOBAL RECREATION,, INC., a )  
Utah Corporation, dba GLOBAL )  
ENTERPRISES AND ASSOCIATES, )  
ELDON P. HENDRICKS and STAN )  
SNARR, )

Respondents, )

vs. )

Case No. 16685

CEDAR HILLS DEVELOPMENT )  
COMPANY, a partnership )  
consisting of ASSOCIATED )  
INDUSTRIAL DEVELOPERS, INC., )  
a California corporation, and )  
NEAR EAST TECHNOLOGICAL )  
SERVICES, INC., a California )  
corporation, )

Appellants. )  
)

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RESPONDENTS' BRIEF

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FILED

FEB - 7 1980

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and NEAR EAST TECHNOLOGICAL :  
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RESPONDENTS' BRIEF

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NATURE OF THE CASE

Plaintiffs brought action to recover a real estate  
commission owing plaintiffs.

DISPOSITION IN LOWER COURT

The Court granted the plaintiffs claim for  
commissions and dismissed the defendants' Counterclaim.

RELIEF SOUGHT ON APPEAL

Plaintiffs seek to have the Court sustain the  
ruling of the lower Court or in the event the Court finds  
the Findings of Fact to be in error that the case be remanded  
for the filing of amended Findings of Fact.

## STATEMENT OF FACTS

On the 28th day of September, 1976, the defendant Associated Industrial Developers, hereinafter referred to as AID, entered into an agreement with Global Recreation Incorporation in which they were given an exclusive right to sell properties owned by AID (Exhibit 1). The agreement was signed in behalf of the owner by Jerald Richardson, a licensed broker in the State of Utah. (Tr. p. 36)

One of the employees of Global Recreation Inc. was the plaintiff Stan Snarr who was a licensed real estate agent during all of 1976. Snarr was listed in the Business Regulations Department, Real Estate Division, for the State of Utah as a salesman associated with the defendant AID (Exhibit 3).

Pursuant to this agreement, on the 19th day of November, 1976, Stan Snarr sold certain property for the owner, defendant AID, to Wincor Development, Inc. (Exhibit 4). Following this sale the broker Jerald Richardson, on the 15th day of May, 1977, acknowledged that such sale had occurred and agreed to pay to Mr. Stan Snarr through his company, Global Enterprises and Associates (Exhibit 2). That in a prior hearing the plaintiffs and defendants stipulated that the amount owing, in the event the Court found in the favor of the plaintiffs, was the amount of \$6,780.00 as opposed to \$10,170.00 which was the amount stated in plaintiffs' Exhibit 2 as being owing to the plaintiffs.

ARGUMENT I

PLAINTIFFS HAVE COMPLIED WITH THE LICENSING STATUTES OF THE STATE OF UTAH AND ARE ENTITLED TO JUDGMENT

It is completely proper for the plaintiffs to recover judgment under the facts within this case. The defendants were at all times the owners of the real property which was the subject of this sale and at all times during the negotiations, the signing of the agreement, and the subsequent sale to Wincor. Defendants had employed Jerald Richardson, a licensed broker; the sale was consummated by Stan Snarr, a licensed real estate agent who was affiliated with the defendant AID. The testimony of Stan Snarr was as follows:

"Question: But you did register yourself as an agent with the Business Regulations Commission under the real estate division, you registered your license as an agent for AID, is that correct?"

Answer: That is right. Jerald Richardson's broker.

Question: And in the year 1976, with whom are you affiliated on that license?

Answer: Associated Industrial Developers."  
(Tr. p. 5)

At a later time Jerald Richardson testified that in September of 1976 I was a licensed broker, Snarr was a licensed agent under Richardson Brokerage. (Tr. p. 36)

Thus, the provisions of 61-2-1 and 61-2-2, Utah Code Annotated 1953, have been complied with. Under 61-2-18(b), Utah Code Annotated 1953, it states:



"(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...." (Underlined for emphasis)

In this instance, the broker, Jerald Richardson, was an officer and employed by AID who was the owner of the real estate sold. It is therefore completely proper, and within the purview of Title 61-2, Utah Code Annotated 1953, where the plaintiff Stan Snarr, a licensed real estate agent associated with the defendant AID and dealing with Jerald Richardson, a licensed broker, to bring this action and recover judgment.

The lower Court's judgment is further supported by Exhibit 2 which acknowledges the debt owing to Mr. Snarr, his licensed agent, and signed by the broker.

#### ARGUMENT II

THE TRANSACTION IN QUESTION DID NOT FALL WITHIN THE PROVISIONS OF THE UTAH CODE GOVERNING SALES BY A REAL ESTATE BROKER

The provisions of 61-2-2, Utah Code Annotated 1953, includes language as follows:

"The provisions of this chapter shall not apply to any person, partnership, association or corporation who as owner or lessor shall perform any of the acts aforementioned with reference to property owned or leased by such person, partnership, association or corporation...." (Underlined for emphasis)

Further, on Tr. page 37, Mr. Richardson testified that AID owned the property being sold. In Mr. Snarr's testimony he stated (Tr. p. 21):

"At this time, Mr. Richardson was the principal and the broker. He had the property and we were selling his property."

Because of the provision of 61-2-2, Utah Code Annotated 1953, it is the plaintiffs contention that the commissions payable under the set of facts elicited at trial would not have required a broker. However, the transaction was completed by a real estate broker and licensed agent. See 167 ALR p. 778.

In the case of Strumpf vs. State, 31 AlaApp 409, 18 So2d 104, the court held:

"A regular employee of a corporation exclusively engaged in purchasing and subdividing acreages into lots and selling the lots to the public through its employees . . . held not to be required to have a real estate broker's license where, although he devoted his full time to the sale of such lots on a commission basis, the statute exempted regular employees of a corporation selling its own property."

Also see Blackforest Realty and Investment Co. vs. Clarke, 86 Col 454, 282 P. 878.

"The employment of a realty and investment company of a person on a fixed salary plus commission basis, to act as a general sales manager and to supervise and control, subject to the board of directors, all salesman engaged in selling the company's own property does not constitute such person a real estate broker."

See also 12 AmJur2d Sec. 14 p. 784, stating:

"Ordinarily, and in the absence of a statute providing otherwise, a person dealing with his own property would not be deemed to be acting as a real estate-broker or agent, and some licensing statutes, or statutes defining the term 'real-estate broker', may expressly except owners of the property."

### ARGUMENT III

TRIAL COURT WAS AUTHORIZED TO MAKE FINDINGS OF FACT BASED UPON EQUITABLE PRINCIPLES HOWEVER IF THE SUPREME COURT FINDS SUCH FINDINGS OF FACT TO BE IN ERROR THE CASE SHOULD BE REMANDED FOR PURPOSES OF MAKING AMENDED FINDINGS

The lower Court saw fit to base its decision upon equitable principles; which it was justified in doing. However, in the event the Court feels that the lower Court's findings, premised upon equity, are in error there is adequate justification for remanding the matter for purpose of making new findings based upon a compliance with the provisions of Title 61-2, pertaining to real estate brokers.

A holding by this Court that the Findings of Fact were in error would not logically be the basis for reversal or new trial but merely for a remand to rectify the claimed error of the Court and enter new Findings.

The defendants contend that the commission on the Wincor transaction is not due since the transaction was never closed. (Tr. p. 71-72) One, Reed Nixon, testified that he was an officer in Wincor, the purchaser of the property, and became a managing partner of the defendant Cedar Hills Development and at this time he conveyed what interest Wincor

had in the contract to Cedar Hills Development thus voiding the sale. Surely, the defendants cannot escape liability and payment of commission by virtue of having repurchased the interest which was originally sold through the plaintiffs efforts.

#### ARGUMENT IV

#### THE COURT'S DISMISSAL OF THE DEFENDANTS' COUNTER-CLAIM WAS NOT ERROR

The defendants argue that they are entitled to recover the monies that were previously paid to the plaintiffs. It is ironical that the defendant Cedar Hills Development Company, which is a partnership consisting of AID and Near East Technological Services, should now claim the commissions which their broker paid to Global should be refunded. If Jerald A. Richardson, as the broker for AID, entered into an illegal contract under the State of Utah by agreeing to pay a commission as broker to Global Recreation when, in fact, such agreement was in violation of the law certainly this counterclaimant should be estopped to claim recovery for paid commissions. See 61-2-18(a), Utah Code Annotated 1953, which says:

"No person, partnership, association or corporation shall bring or maintain an action in any court of this state for the recovery of 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,...."

The defendants find themselves upon the "horns of a dilemma" in that if they prevail in defending the plaintiffs' complaint upon the premise that a commission is not owing to the plaintiffs because of violation of the provisions of Title 61-2, Utah Code Annotated 1953, then in turn, they defeat their objective under their counterclaim, namely, the recovery of previously paid commissions. On the other hand if the plaintiffs prevail upon their complaint and the Court holds there is no violation of State Statute, the commissions which have been previously paid were proper and should not be refunded.


The law is replete with cases holding that a party seeking relief must come into Court with "clean hands" and if they are a party to a fraudulent or illegal transaction, no relief can be afforded. See 27 AmJur2d Sec. 141 p. 676.

#### SUMMARY

A careful review of the record and exhibits reveal that there is no violation of the statutes pertaining to real estate brokers in the State of Utah and the plaintiffs are entitled to their recovery obtained. If the Court feels the findings were being premised upon equitable principles in error, such case should be remanded for new findings.

The defendants contention of a right to recover previously paid commissions is without merit for if their relationship with Global was illegal and improper, they cannot recover back those commissions previously paid.

DATED this 4th day of February, 1980.

  
\_\_\_\_\_  
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MAILING CERTIFICATE

I hereby certify that I mailed a copy of the fore-  
going to Jeril B. Wilson, Attorney for Defendants/Appellants,  
350 East Center, Provo, Utah 84601, postage prepaid, this  
6th day of February, 1980.

  
\_\_\_\_\_