

1981

Hal Taylor Associates, a Utah Corporation v.  
Unionamerica, Inc., a Corporation, aka Westmor;  
Ramshire, Inc., a Corporation; William R.  
Stevenson; Park City Reservations, Inc, a  
Corporation dba Skyline Realty; Harry F. Reed and  
Gary Cole : Proposed Findings of Fact and  
Conclusions of the Law

Utah Supreme Court

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Original Brief submitted to the Utah Supreme Court; funding for digitization provided by the Institute of Museum and Library Services through the Library Services and Technology Act, administered by the Utah State Library, and sponsored by the S.J. Quinney Law Library; machine-generated OCR, may contain errorsP.S. Prince, Jr.; Attorney for Respondents Unionamerica, Inc., Ramshire, Inc., and William R. StevensonStephen G. Crockett; Attorney for Respondents Park City Reservations, Inc., Harry F. Reed and Gary ColeKent B. Linebaugh; Attorneys for Appellant

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IN THE THIRD JUDICIAL DISTRICT COURT OF SALT LAKE COUNTY  
STATE OF UTAH

HAL TAYLOR ASSOCIATES, a  
Utah corporation, and  
HAROLD W. TAYLOR,

Plaintiffs,

vs.

UNIONAMERICA, INC., a corpora-  
tion, aka WESTMOR; RAMSHIRE,  
INC., a corporation; WILLIAM R.  
STEVENSON; PARK CITY RESERVA-  
TIONS, INC., a corporation,  
dba SKYLINE REALTY; HARRY F.  
REED; and GARY COLE,

Defendants.

PROPOSED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW

Civil No. 5557

The above entitled matter came on for trial without a jury, on January 14, 1980, before the above entitled Court, the Honorable James S. Sawaya, District Court Judge, presiding. Plaintiffs were represented by their counsel, Kent B. Linebaugh; defendants Unionamerica, Inc., Ramshire, and William R. Stevenson were represented by their counsel F. S. Prince, Jr.; and defendants Park City Reservations, dba Skyline Realty, Harry F. Reed, and Gary Cole were represented by their counsel, Stephen G. Crockett.

The Court having heard and considered the evidence, together with the arguments of counsel, and being fully advised in the premises, hereby makes and enters its Findings of Fact and Conclusions of law as follows:

FINDINGS OF FACT

1. Plaintiff, Hal Taylor Associates (HTA) is a Utah corporation and has its principal place of business in Summit County, Utah.

2. Plaintiff Harold W. Taylor (Taylor) is a resident

of Summit County, State of Utah. Harold W. Taylor is the sole owner of Hal Taylor Associates and is a real estate broker licensed to do business in the State of Utah.

3. Defendant Unionamerica, Inc. (Unionamerica) is a foreign corporation qualified to transact business in the State of Utah, and having its principal place of business in the State of Utah in Summit County.

4. Defendant Ramshire, Inc. (Ramshire) is a wholly owned subsidiary of Unionamerica and is a foreign corporation qualified to transact business in the State of Utah, having its principal place of business in the State of Utah in Summit County.

5. Defendant Park City Reservations, Inc., dba Skyline Realty (Skyline) is a Utah corporation, having its principal place of business in Summit County, and was a licensed real estate broker at all times material to the issues of this case.

6. Defendant William R. Stevenson (Stevenson) is a resident of the State of California. Defendant Stevenson acted as Vice President of defendant Ramshire during the period of time material to the allegations contained in plaintiffs' complaint.

7. Defendant Harry F. Reed (Reed) is a resident of and has his principal place of business in Summit County, State of Utah. Defendant Reed is the owner of Skyline and at all times relevant to this action, was a real estate broker licensed to do business in the State of Utah.

8. Defendant Gary Cole (Cole) is a resident of and has his principal place of business in Summit County, State of Utah. Defendant Cole at all times relevant to this action was a real estate salesman licensed by the State of Utah in the office of Skyline.

9. On February 17, 1977, plaintiffs Hal Taylor and Hal Taylor Associates entered into a written agreement ("the Settlement Agreement") to settle a lawsuit then pending by them against Greater Park City Company (GPCC) and defendant Unionamerica. Pursuant to the Settlement Agreement, defendant Unionamerica agreed to enter into an exclusive listing agreement with HTA for any property that it might wish to sell over a period of five years. The Settlement Agreement provided that HTA would be required to perform the usual real estate broker activities and "(Taylor) will be entitled to a commission rate, of six percent, and Taylor will further agree to a fee splitting arrangement giving sixty percent (60%) to the selling broker and forty percent (40%) to the listing broker."

10. Also on February 17, 1977, HTA entered into a Vacant Property Listing Agreement for the sale of approximately 10.5 acres of property (the "Village" property) in Park City, Utah, owned by defendant Ramshire, Inc.

11. The entire agreement between plaintiffs Hal Taylor and Hal Taylor Associates and defendants Unionamerica, Inc., and Ramshire, Inc., is contained in the Settlement Agreement and the Vacant Property Listing Agreement. These agreements were not altered or added to by any oral agreements between the parties, now was there any fraud on the part of one or more defendants nor any mutual mistake involved in the formation of these agreements.

12. None of the parties to the foregoing Agreement disclosed the terms thereof to Skyline Realty or any of its officers or agents. Shortly after entering into the February 17, 1977, Agreement, the plaintiffs contacted Skyline Realty and requested the assistance of Skyline Realty in selling the property. Each of the parties understood that should Skyline sell

the property, it would be entitled to receive sixty percent (60%) of the commission from any such sale.

13. On or prior to October 1, 1977, Mr. Jack Davis (Davis), the eventual purchaser of the "Village" property, had a telephone conversation with Mr. Robert Volk, the President of Unionamerica, Inc. This conversation was arranged by a mutual acquaintance. Davis indicated he was interested in purchasing property in a resort area, to wit, the "Village" property in Park City, Utah. Davis and Volk agreed, either in this initial conversation or in a subsequent one, to meet in Park City, Utah, so that Davis could see the property.

14. On the morning of October 3rd, Volk directed Stevenson to fly from Los Angeles to Salt Lake City for the purpose of meeting him and Jack Davis, and showing Davis the "Village" property. Stevenson had previously been informed that there was someone in San Diego expressing interest in the property, although he had not yet heard of the Davis name.

15. Volk was unable to meet in Park City and instructed Stevenson to go to Park City to meet Davis.

16. Davis and his wife went to Park City, Utah, on or about October 3, 1977. They either talked to or met briefly with Stevenson on the night of October 3rd.

17. On October 3rd, after being told to go to Park City to meet Davis, Stevenson called Taylor's office to see if he would be available. He was told that Taylor was out of town and would not be back until later in the week.

18. After he arrived at the Salt Lake City Airport, and after trying to contact Taylor, Stevenson called Cole and asked if he could meet with Cole and Reed at Cole's house in Park City. He told Cole that there was a person interested in the

"Village" land and inquired as to whether Cole and Reed would be available the next day to meet with Stevenson and the interested party (Davis).

19. Stevenson, Reed, Cole, and Mr. and Mrs. Davis met on the morning of October 4th at the Eating Establishment in Park City for breakfast. After breakfast the five people went in Reed's car to acquaint the Davis' with the City of Park City in general and the "Village" property in particular.

20. Stevenson did not see Jack Davis again between the time they parted on October 4th and the time the Earnest Money Agreement was signed on October 17th.

21. Subsequent to the meeting on October 4th, and at Davis' invitation, Reed and Cole went to San Diego and met with Davis in the latter's office. At that time Davis executed the Earnest Money Receipt and Offer to Purchase, and delivered to Reed and Cole the earnest money required by the offer. Later the same day, Stevenson and Cole, representing Mr. Davis, went to Los Angeles and presented the offer to Stevenson who accepted on behalf of Ramshire.

22. Mr. Davis testified and the Court so finds that Mr. Davis after meeting Reed and Cole decided that he wanted Reed and Cole to represent his interests in Park City, Utah.

23. Prior to obtaining the Earnest Money Receipt and Offer to Purchase, defendant Reed confirmed with plaintiff Taylor that Taylor had a listing relating to the property and that Taylor would be willing to split the commission on any sale in accordance with the usual custom in the community, viz forty percent (40%) to the listing broker and sixty percent (60%) to the selling broker. At the time Reed disclosed that he had a possible buyer for the property, Reed did not disclose that the

client had been referred to Skyline by defendant Stevenson, an officer of defendant Ramshire, Inc.

24. On October 26, 1977, Ramshire, Inc., and Davis executed the Real Estate Agreement, and Davis paid the \$25,000.00 due at that time, to the escrow agent.

25. Since the date of the Real Estate Agreement, Davis has paid for and obtained conveyance of two of the parcels of property described in the Real Estate Agreement, and has constructed, or is in the process of constructing, approximately 144 condominium units.

26. At the time of the first of the multiple closings called for in the Real Estate Agreement, Unionamerica, pursuant to the provisions of paragraph 13 of the Agreement, deposited the \$96,000.00 in an interest bearing escrow account pending settlement or resolution of the dispute between the brokers. None of the defendants have at any time since that closing had the use or benefit of the \$96,000.00 so deposited. Unionamerica acted reasonably in so depositing these funds in an escrow account in light of the dispute.

27. Skyline Realty by and through its agents, Reed and Cole, fully performed the obligations required of a selling broker under the fee splitting agreement reached between plaintiffs and Skyline Realty.

28. The Court finds that any defense as to the lack of capacity by the defendant Park City Reservations, Inc., to maintain this action should have been pleaded in plaintiffs' answer to the counterclaim asserted by Park City Reservations Inc., or, at the very least, prior to trial. Although the plaintiffs had knowledge of the facts upon which they based the defense as to lack of capacity, such defense was not raised until the trial was

almost complete.

29. During 1979, Unionamerica or one of its subsidiaries sold a condominium apartment to Mr. Jack Davis for the sum of \$42,500.00. The parties negotiated directly and concluded the sale without assistance of a real estate broker.

From the foregoing Findings of Fact, the Court now makes and enters the following:

#### CONCLUSIONS OF LAW

1. Plaintiffs Hal Taylor and HTA performed all services and discharged all obligations required of them by the Settlement Agreement and the Vacant Property Listing Agreement.

2. The Settlement Agreement and the Vacant Property Listing Agreement were not altered, added to or modified by oral agreement of the parties, nor will these agreements be reformed on the grounds of mutual mistake or fraud.

3. Park City Reservations, Inc., was a licensed real estate broker at all times material to the issues of this case.

4. The Settlement Agreement and the Vacant Property Listing Agreement contemplate that, in addition to HTA, other brokers might find buyers for the listed properties and negotiate sales therefore. Neither agreement contains any express or implied provisions that Unionamerica or Ramshire would direct to HTA persons making inquiries about the listed properties.

5. Unionamerica acted reasonably in paying the \$96,000.00 commission into an interest bearing escrow account pending settlement or resolution of the dispute between the brokers, and Unionamerica's failure to pay HTA strictly in accordance with the terms of the listing agreement is excused.

6. HTA is entitled to receive forty percent (40%) of the \$96,000.00 held in the escrow account, together with the



interest thereon accrued, and Park City Reservations, Inc., is entitled to receive the remaining sixty percent (60%) of the \$96,000.00 held in such account, together with interest accrued thereon.

7. HTA is entitled to judgment against Unionamerica and Ramshire in the amount of six percent (6%) of \$42,500.00, or \$2,550.00, together with interest thereon at the rate of six percent (6%) per annum from the date of sale of the condominium apartment to Jack Davis to the date of judgment, and together with interest at the rate of eight percent (8%) per annum from the date of judgment until paid.

8. The Court finds there is no factual basis for a finding of a conspiracy, conversion, wrongful creation of a liability, breach of a duty to act in good faith, breach of a fiduciary duty, or intentional infliction of mental distress, and the Court concludes that none of the foregoing torts occurred in this case.

9. The Court having concluded that defendants were not guilty of tortious acts against the plaintiffs, and that none of the parties breached the applicable contracts, hereby concludes there is no basis for plaintiff's claim for punitive damages.

10. By virtue of plaintiffs' failure to timely raise the defense of lack of capacity to maintain this action, the Court finds that any such defense was waived by the plaintiffs. The Court further finds that any such defense must fail because at all times pertinent to this action the defendant Harry F. Reed was a broker licensed by the State of Utah and was operating on

behalf of Park City Reservations, Inc., dba Skyline Realty.

MADE AND ENTERED this \_\_\_\_ day of \_\_\_\_\_, 1980.

BY THE COURT:

James S. Sawaya, Judge