

UNITED STATES COURT OF APPEALS  
FOR THE TENTH CIRCUIT

**FILED**  
United States Court of Appeals  
Tenth Circuit

FEB 02 1988

ANNA LAMBOURNE,

Plaintiff-Appellee,

v.

DAVID M. PARKINSON; RONALD H.  
HARRISON,

Defendants-Appellants.

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ROBERT L. HOECKER  
Clerk

No. 86-1898  
(D.C. No. C-84-0882 J)  
(D. Utah)

ORDER AND JUDGMENT

Before LOGAN, SEYMOUR, and ANDERSON, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.8. The cause is therefore ordered submitted without oral argument.

In 1981, Lambourne served as a broker in the sale of the stock of a corporation whose assets were primarily Utah real estate. The purchasers of the corporation agreed to pay her finder's fee, but have not done so. She sued for her fee, and the district court granted summary judgment in her favor.

Utah requires that real estate brokers be licensed. Utah Code Ann. § 61-2-1 (1985). Lambourne is a resident of California and is not licensed in Utah. Section 61-2-18 of the Utah statute restricts the right to bring an action for the recovery of a commission or fee to persons licensed as a principal broker at the time of the act or service in question. Utah Code Ann. § 61-2-18 (1986).

Lambourne argues that the transaction was for the sale of stock and therefore does not fall within the real estate provisions of the Utah statute. However, Utah defines real estate to include "business opportunities." Utah Code Ann. § 61-2-2(4) (1986). At the time of the sale in question, this term had a statutory definition: "an existing business, business and the good will attached thereto or any one or combination thereof." Utah Code Ann. § 61-2-2 (1978).<sup>1</sup> Utah thus includes business brokers under the definition of real estate brokers. Section 61-2-2, by its terms and under the case law, includes sales of businesses through the sale of stock. See Phillips v. JCM Development Corp., 666 P.2d 876 (Utah 1983) (sale of a construction company through stock transfer falls under § 61-2-2); Annot., Validity, Construction, and Enforcement of Business Opportunities or "Finder's Fee" Contract, § 1, 24 A.L.R.3d 1160,

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<sup>1</sup> The 1985 revision of this section eliminated the definition of "business opportunity." Utah Code Ann. 61-2-2 (1986). The revision is not relevant to this case.

1164 (1969). The sale in this case is therefore governed by chapter 2 of title 61 of the Utah Code (Division of Real Estate).

Without discussing the application of section 61-2-18, the district court concluded that "[t]he defendants' agreement to undertake [the seller's obligation to pay Lambourne a finder's fee] represented a portion of the total purchase price for the transaction." Rec., Order and Judgment. The court apparently distinguished the obligation to pay the total purchase price from the finder's fee itself, and based summary judgment on the defendants' unfulfilled obligation to pay Lambourne. This distinction is not supported by the agreement for sale of the stock, and we cannot uphold it. The district court's conclusion would mean that brokers and finders could evade Utah's requirement that they be licensed simply by convincing the seller to make the buyer responsible for payment. Moreover, a finder's fee or broker's commission will always be part of the total cost of a sale in which a finder or broker renders services. Whether it is considered an addition to the purchase price or a reduction in the price received by the seller is irrelevant.

Lambourne was not licensed as required by the Utah statute. Unless she can show on remand some reason why this provision should not be applied to her, her suit must be dismissed.

The judgment of the United States District Court for the District of Utah is REVERSED and the case REMANDED for further proceedings in accordance with this opinion.

The mandate shall issue forthwith.

Entered for the Court

Stephanie K. Seymour  
Circuit Judge