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KAREN ELLISON, RECORDER

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Findings of Fact, Conclusions of Law and Judgement

(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

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1 Case No. 13-CV-0220

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IN THE NINTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

6

IN AND FOR DOUGLAS COUNTY

7

8 MATTHEW GOMEZ,

9

Plaintiff,

10

vs.

FINDINGS OF FACT,  
CONCLUSIONS OF LAW,  
AND JUDGMENT

11

LSA, INC., a Nevada corporation;  
SIMPLE PUMP COMPANY, LLC, a  
Nevada Limited Liability Company;  
and GARY WITTIG, an individual,

12

13

Defendants.

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On August 13, 2014, a trial de novo was conducted in the Ninth Judicial District Court of the State of Nevada, in and for Douglas County. Plaintiff, Matthew Gomez, appeared represented by Steven G. Ganim, Esq. Defendants LSA, Inc., a Nevada corporation; Simple Pump Company, LLC, a Nevada limited liability company; and Gary Wittig, an individual, appeared represented by John S. Bartlett, Esq. Four witnesses were sworn and testified: Matt Westfield, Rodd Hosilyk, Matthew Gomez, and Gary Wittig.

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Findings of Fact

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The Plaintiff established the following facts by a preponderance of the evidence:

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1. LSA, Inc., a Nevada corporation ("LSA"), is located in Gardnerville, Nevada.

26

2. Simple Pump Company, LLC, a Nevada limited liability ("Simple Pump"), is

27

located in Gardnerville, Nevada.

28

3. Gary Wittig ("Wittig") is a Nevada resident residing in Gardnerville, Nevada.

1           4.     On January 11, 2013, Plaintiff was unanimously appointed by the Board of  
2 Directors of the LSA ("Board") to serve as President of LSA. At the time of the Board meeting,  
3 an oral contract was established employing Plaintiff and providing a salary of Five Thousand  
4 Dollars (\$5,000) per month. That action was intended to, and, did in fact have the collateral  
5 consequence of removing Wittig from the position of President.  
6

7           5.     Plaintiff's employment as President of LSA was effective immediately upon  
8 approval by the Board at the Board Meeting.

9           6.     Plaintiff's compensation was not based on cash availability.

10          7.     The terms of the contract were clear, as were the obligations of each of the parties,  
11 as per the meeting minutes for the Board meeting that occurred on January 11, 2013.  
12

13          8.     The Board clearly and unequivocally intended that the change of control from  
14 Wittig to Plaintiff be effective immediately.

15          9.     Almost immediately after Plaintiff's appointment, Wittig began to interfere with  
16 Plaintiff's work as President of LSA.

17          10.    Wittig purposely withheld resources and cooperation from Plaintiff.

18          11.    Wittig's lack of cooperation with Plaintiff was a result of Wittig's resentment for  
19 being replaced as President of LSA.  
20

21          12.    According to a document entitled "Action by Consent", Wittig purchased certain  
22 shares of LSA stock from Hans "Pint" Piwenzky, and Wittig unilaterally terminated the Board  
23 of Directors and appointed new members of the Board. Subsequent to the purchase, Wittig held  
24 fifty-seven percent (57%) of the outstanding shares of LSA.  
25

26          13.    On March 13, 2013, Wittig terminated Plaintiff via email.

27          14.    Wittig did not follow LSA's corporate rules, as set forth in the Stock Repurchase  
28 Agreement, particularly with regard to the section pertaining to the Right of First Refusal when

1 Wittig purchased the stock from Mr. Piwenitzky. Those rules required that prior to selling any  
2 stock, a stockholder must first offer the equity to the corporation. Wittig was aware of the Right  
3 of First Refusal, but deliberately ignored the requirements set forth in the Stock Repurchase  
4 Agreement.

5  
6 15. Plaintiff submitted his timesheets to Wittig, and Plaintiff requested compensation  
7 for the services rendered to LSA in the amount of Thirteen Thousand Six Hundred Dollars  
8 (\$13,600).

9 16. Plaintiff was never paid for the services he rendered to LSA.

10 17. Wittig acted unilaterally without consultation to the other shareholders when he  
11 unilaterally disbanded the Board, which was in direct contravention of LSA's Bylaws.

12 18. Wittig viewed LSA as his alter-ego, and testified as follows: "I was LSA. LSA  
13 was me."

14  
15 19. Article III, Section 3 of LSA's Bylaws provides that a two-thirds (2/3) majority is  
16 required in order to remove a director.

17 20. On the date that Wittig unilaterally fired the Board, Wittig did not own a two-thirds  
18 (2/3) majority of the outstanding shares of LSA.

19  
20 21. Wittig acted unilaterally, in contravention of Article III, Section 3 of LSA's  
21 Bylaws, when he disbanded the Board. Wittig did so because Wittig acknowledged that he would  
22 not receive cooperation from other Board members.

23 22. Wittig deliberately violated LSA's Bylaws in pursuit of obtaining what Wittig  
24 believed was in Wittig's personal best interest. Wittig testified: "I was LSA. LSA was me."

25 23. Plaintiff seeks only Thirteen Thousand Six Hundred Dollars (\$13,600) in damages,  
26 plus attorney's fees.

27  
28 / / /

Conclusions of Law

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2           1.       On January 11, 2013, the Board entered into an enforceable oral contract on behalf  
3 of LSA, whereby Plaintiff was appointed as President of LSA, and was entitled to Five Thousand  
4 Dollars (\$5,000) per month in compensation.

5  
6           2.       The oral obligation entered into by the Board with Plaintiff was enforceable, and  
7 the terms of the contract were sufficient to make each of the parties aware of their respective rights  
8 and obligations.

9           3.       Plaintiff began his duties as President of LSA on January 11, 2013, and performed  
10 his duties in good faith until he was fired by Wittig on March 13, 2013.

11           4.       Wittig's unilateral action in disbanding the Board, and terminating Plaintiff  
12 exceeded his authority as a director of LSA.

13           5.       Plaintiff is entitled to compensation as President of LSA for the months of January,  
14 February and March of 2013. To conclude that Plaintiff was not entitled to be compensated for  
15 the services he rendered would be an unjust enrichment to the Corporation and unjust to Plaintiff.

16           6.       The terms of the contract between Plaintiff and the Board did not include a  
17 provision for the proration of Plaintiff's salary.

18           7.       Plaintiff is entitled to an award of principal damages in the amount of Fifteen  
19 Thousand Dollars (\$15,000); however, he seeks only Thirteen Thousand Six Hundred Dollars  
20 (\$13,600).

21           8.       Wittig's conduct in refusing to relinquish administrative and financial control of  
22 LSA, and failing to cooperate with Plaintiff was contrary to the decision of the Board to appoint  
23 Plaintiff as President of LSA, which was effective immediately.

24           9.       Wittig's conduct was motivated by a desire to promote his own personal interests.

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1           10.     Regarding NRS 78.747, the Court concluded as follows:

2           1<sup>st</sup> Factor of NRS 78.747 (A corporation is influenced and governed by the stockholder,  
3 director or officer):

4                   (i)     Wittig refused to acknowledge Board control of LSA and governed LSA  
5 under his own terms. Wittig improperly evicted the Board of Directors of LSA, in contravention  
6 of Article 3, Section 3, of the Bylaws of LSA and subsequently imposed his own will on LSA.

7           2<sup>nd</sup> Factor of NRS 78.474 (There is such unity of interest and ownership that the  
8 corporation and the stockholder, director or officer are inseparable from each other:

9                   (i)     Wittig testified: "I was LSA. LSA was me."

10                   (ii)    Wittig failed to follow corporate procedures and overstepped his authority  
11 when he personally established pay schedules for loans between LSA, himself, and Simple Pump  
12 without providing any formal documentation of those loans.

13                   (iii)   Wittig overstepped his authority and violated a number of corporate  
14 procedures including those set forth in the Stock Repurchase Agreement and the Bylaws when he  
15 purchased Piwenitzky's stock, unilaterally terminated the Board and fired Plaintiff.

16                   (iv)   Wittig violated LSA's governing documents when he failed to prepare  
17 minutes memorializing corporate actions, including firing Board of Directors, firing officers,  
18 appointing new Board of Directors, appointing new officers.

19                   (v)     Wittig failed to follow corporate procedures when he excluded shareholders  
20 from making decisions pertaining to the corporation and failed to apprise shareholders of corporate  
21 action.

22                   (vi)   Wittig purposely chose to act in the manner that he did because he knew  
23 that he could not gain the support of any of the Board of Directors for the actions he intended.

24           / / /

1 3<sup>rd</sup> Factor of NRS 78.747 (Adherence to the corporate fiction of a separate entity would  
2 sanction fraud or promote a manifest injustice.

3 (i) The Board retained the services of Plaintiff as President of LSA.

4 (ii) Wittig's termination of Plaintiff and subsequent failure to pay Plaintiff for  
5 the services he rendered to LSA created a significant injustice.

6 (iii) In the case of Gordon v. Aztec Brewing, 33 Cal.2d 514 (1949), the Court  
7 stated that "it is enough if the recognition of the two entities as separate would result in an  
8 injustice."  
9

10 (iv) In light of Wittig's act of improperly seizing the corporation, stripping  
11 Plaintiff of his duties as President of LSA, and failing to pay Plaintiff for the services he rendered  
12 to LSA, it would be a manifest injustice not to hold Wittig personally liable for his actions.


13 (v) To fail to find Wittig as the alter-ego of the corporation would work an  
14 injustice on other stockholders of the corporation as they were powerless to stop Wittig's seizure  
15 of control.  
16

17 (vi) Simple Pump is not the alter-ego of LSA or Gary Wittig.  
18

19 Judgment

20 Decision for Plaintiff in the total amount of Thirteen Thousand Six Hundred Dollars  
21 (\$13,600). Gary Wittig is found to be the alter-ego of LSA, and LSA and Wittig are jointly and  
22 severally liable for the damages awarded to Plaintiff against LSA.

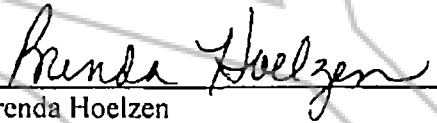
23 DATED this 22 day of August 2014.

24  
25  
26   
27 NATHAN TOD YOUNG  
28 DISTRICT COURT JUDGE

1 Copies served by mail this 22 day of August, 2014 to:

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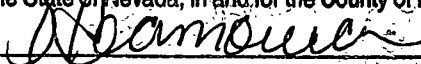
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**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original in file and of record in my office.

DATE November 12, 2014

BOBBIE R. WILLIAMS Clerk of Court  
of the State of Nevada, in and for the County of Douglas,

By  Deputy