12-29-2017

Lunneborg v. My Fun Life Respondent's Brief Dckt. 45200

IN IN THE SUPREME COURT OF THE STATE OF IDAHO

MY FUN LIFE CORP, a Delaware corporation, DAN E. EDWARDS and CARRIE L. EDWARDS, husband and wife, Defendants/Appellants, vs. THOMAS LUNNEBORG, Plaintiff/Respondent.	Supreme Court No. 45200-2017 Kootenai County No. CV-2014-8968

RESPONDENT'S BRIEF

On Appeal from the decision of the District Court of the First Judicial District of the State of Idaho in and for the County of Kootenai; Hon. John T. Mitchell District Judge, Presiding

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I. STATEMENT OF THE CASE

A. Nature of the Case

After a three-day bench trial and two years of litigation, Appellants seek reversal of the District Court's decision in this breach of employment contract case.

The appeal is completely without merit. The District Court unequivocally found that Mr. Thomas Lunneborg was terminated without cause and that Dan and Carrie Edwards lied about the reason for the termination and then attempted to avoid liability by hiding behind their corporation. The District Court applied the correct law and supported its decisions with explicit and extensive findings of fact evidencing the Edwards' dishonesty and treachery in their dealings with Mr. Lunneborg. By way of example, the trial court found (among other things), that:

- Appellee Dan Edwards lied regarding his reason to terminate Mr. Lunneborg (R. Aug. p. 5, L. 1-2);
- Appellee Carrie Edwards lied to Mr. Lunneborg in an attempt to cover up Mr. Edwards' lies (R. Aug. p. 13, L. 9-11);
- Appellee "Dan Edwards is not to be credible," and that "Lunneborg . . . to be credible." (R. Aug. p. 22, L. 3);
- Appellee "Dan Edwards fired Lunneborg based on a false rumor" (R. Aug. p. 23, L. 8);
- Appellees' reasons for terminating Mr. Lunneborg were "false and pretextual" (R. Aug. p. 25, L. 20-21);

- Appellees Dan Edwards and Carrie Edwards disregarded the separate identity of MFL and the corporate entity of MFL" (R. Aug. p. 36, L. 7-8); and
- "To allow the Edwards to escape personal liability would be to sanction an injustice and create an inequitable result" (R. Aug. p. 43, L. 15-16).

On appeal, the Appellants conspicuously ignore the Trial court's extensive factual findings including those cited above. Rather, Appellants, without legal or factual support, ask that this Court overturn the trial court's Judgment against them thus absolving their wrongful conduct. This Court should not entertain such a suggestion.

After over twenty years of sales and product development with the same company, Plaintiff/Respondent Mr. Thomas Lunneborg, was recruited and hired to be the Chief Operating Officer ("COO") of a young company, defendant/appellant, My Fun Life Corp. ("MFL"). R. Aug. p. 7-9. However, Mr. Lunneborg was terminated a mere two months into his new employment because Mr. Lunneborg was unwilling to use his know-how acquired from his previous employer to illegally create and market an identical product for MFL. R. Aug. p. 3-15. Because he was terminated without cause, Mr. Lunneborg was entitled to severance pay from MFL. R. Aug. p. 3. When Mr. Lunneborg attempted to enforce the terms of his employment contract, defendants/appellants Dan and Carrie Edwards refused to pay the contractual severance amount of $60,000. Instead, appellants propounded trumped-up, unfounded (and unproven) allegations that Mr. Lunneborg was terminated for cause because he had failed to perform the "central functions of his position" and he was negotiating a consulting agreement with his former employer that would expressly prohibit him from bringing MFL products to

market. R. Aug. p. 7. Given the Edwards' unreasonable and deceitful position, Mr. Lunneborg was forced to seek the help of the court to enforce the contract.

Appellants' offensive behavior also permeated the court proceeding. Indeed, because of appellants' refusal to comply with proper discovery requests, it took over two years from the time Mr. Lunneborg filed his initial Complaint until the case was ready to be tried. R. p. 2-12. It was apparent that appellants used this delay to drain MFL assets and make it judgment proof as to any potential liability to Mr. Lunneborg. Indeed, by the time the case was tried, Dan and Carrie Edwards had drained essentially all of MFL's assets such that MFL's bankruptcy petition (which was filed well into the discovery process), showed MFL only had assets totalling approximately five dollars. This decrease was a startling and unexplainable contrast to the viable and prosperous MFL that existed at the time Lunneborg was terminated and filed his initial Complaint. R. Aug. p. 43, L. 14.

After the bench trial, the trial court found that Mr. Lunneborg was the prevailing party against all defendants. R. p. 99. In the trial court's exhaustive 48-page Memorandum Decision, Findings of Fact, Conclusion of Law, And Order, the trial court found that Mr. Lunneborg had proven breach of contract and a violation of the Idaho Wage Claim Act and was due his contractual $60,000 severance payment. The trial court trebled this damage amount pursuant to I.C. § 45-615. R. Aug. p. 48. The trial court also pierced MFL's corporate veil and found defendants Dan and Carrie Edwards jointly and severally liable for all damages and attorney fees. R. Aug. p. 48. In rendering its decision, the District Court made numerous factual decisions and judgments based upon the evidence presented. Appellants filed a Motion to Alter

or Amend Judgment, R. p. 10, and then on May 22, 2017, filed a Motion to Disallow Attorney Fees. Id. The trial court denied both Motions.

B. Course of Proceedings

Lunneborg filed his Complaint against MFL on December 8, 2014. Lunneborg's Complaint alleged: 1) MFL terminated Lunneborg's employment without cause, 2) MFL breached its contract with Lunneborg, 3) MFL violated the Idaho Wage Claim Act, I.C. § 45 601, et. seq., 3) MFL wrongfully terminated Lunneborg in violation of public policy, and 4) MFL breached its duty of good faith and fair dealing. R. pp. 13-20.

During the course of discovery, MFL failed to comply with the trial court 's July 28th Order compelling discovery. Therefore, after many continued unsuccessful attempts to secure discovery from defendants, Lunneborg filed a Motion for Sanctions on October 7, 2015. R. p. 5. On December 28, 2015, Lunneborg was awarded attorneys' fees related to bringing the Motion to Compel and the Motion for Sanctions. R. p. 6.

After a delay necessitated by the filing of a bankruptcy petition by MFL, on March 13, 2017, the three-day bench trial began. After the trial both parties were allowed to submit additional briefing. R. p. 10. On April 17, 2017, the trial court entered a 48-page Memorandum Decision, Findings of Fact, Conclusion of Law, and Order. R. Aug. p. 1-48.

On April 25, 2017, Final Judgment was entered against MFL, Dan E. Edwards, and Carrie L. Edwards jointly and severally. R. p. 99. The District Court's decision found Mr. Lunneborg to be the prevailing party as to all defendants. R. p. 200, L. 8-10. The trial court found: (i) Lunneborg had proven breach of contract; and (ii) a violation of the Idaho Wage

Claim Act by Defendant MFL; (iii) damages in the amount of $60,000, which amount was properly trebled pursuant to the Idaho Wage Claim Act; and (iv) that Lunneborg was statutorily entitled to attorneys' fees. R. Aug. p. 48. The trial court also pierced MFL's corporate veil and found Dan and Carrie Edwards jointly and severally liable for all damages and attorney's fees. R. pp. 200-01. On June 5, 2017, the trial court entered a 14-page Memorandum Decision and Order Denying Defendants' Motion to Alter or Amend Judgment. R. pp. 158-171. The trial court 's decision detailed its legal and factual basis for holding both Carrie and Dan Edwards personally liable.

Appellants now seek to overturn the trial court's decisions including its award of attorneys' fees to Lunneborg.

C. A Concise Statement of the Facts

Mr. Lunneborg was recruited and hired to be COO of MFL. R. Aug. p. 44, L. 2-4. However, a mere two months into his new employment Lunneborg was terminated because he was unwilling violate the law and use his know-how and trade secrets from his previous employer to illegally create and market an identical product for MFL. R. Aug. p. 1-48. According to the Edwards, Lunneborg was terminated *for cause* because he had failed to perform the "central functions of his position" and he was negotiating a consulting agreement with his former employer that would expressly prohibit him from bringing MFL products to marker. R. Aug. p. 7. The trial court found that the alleged causes were false and nothing more than a pretext for termination. *Id.* The trial court found that Mr. Lunneborg's termination was

without cause because Lunneborg fully performed his duties as COO and the Edwards were aware that Mr. Lunneborg intended to transition out of his previous position.

1. Tom Lunneborg is recruited to join MFL as its COO.

Prior to being hired by MFL, Tom Lunneborg worked for Oxyfresh for nearly 20 years. R. Aug. p. 5. Lunneborg served as Oxyfresh's VP of Logistics and Product Development. R. Aug. p. 5. In that capacity, he along with Dr. Todd Schlapfer (Schlapfer), a naturopath, developed many products for Oxyfresh, including LifeShotz, a nutritional supplement which took more than two years to develop. R. Aug. pp. 14-15.

Mr. Lunneborg was recruited and hired by Dan and Carrie Edwards, who own and operate several corporations in addition to MFL. MFL is a multi-level marketing company that "sold" memberships to access travel accommodation discounts although the evidence presented indicated that the Edwards had plans to expand MFL to include additional products. R. Aug. p. 3. Lunneborg was initially introduced to the Edwards by Dr. Schlapfer. R. Aug. p. 5. "Dan Edwards had known Schlapfer for quite some time," because Schlapfer had treated Edwards' mother. R. Aug. p. 5, L. 21-22. "Schlapfer knew Dan Edwards was looking for an executive-level employee to run MFL," and put Edwards in touch with Lunneborg. R. Aug. p. 5. "On March 27, 2013, Dan and Carrie Edwards, Lunneborg and Schlapfer met [for lunch] at the Coeur d'Alene Resort Golf Course café." R. Aug. p. 5. They discussed Lunneborg's significant experience in operations and logistics at Oxyfresh and the fact that that MFL recently parted ways with its COO. Tr. p. 157:17-25. At trial, Lunneborg was asked about the lunch and why he thought Dan Edwards was looking for someone to manage the operations of MFL:

Q. Okay. Did Dan bring up to you that he was looking for a new COO?

A. He brought up to me that he didn't have enough bandwidth and that he needed somebody to help run his day-to-day.

Tr. p. 162:13-15

A. [that] he wanted somebody to take over the daily stuff that he didn't enjoy as much, and he wanted to spend more time in the field.
Q. So it was your understanding at that point he was looking for someone to help him with those – with the operations . . . ?
A. Yeah, absolutely. He was looking for somebody to take over the operations.

Tr. p. 164:1-11.

A couple of days later, on March 29, 2014, Mr. Edwards texted Lunneborg the following: "I want you to know that I am looking for someone like yourself, that knows this business to run my company so I can go into the field to recruit and train our teams. I don't particularly care to run day to day operations." Tr. p. 165:11-16. Lunneborg understandably believed this message to mean that Mr. Edwards was recruiting him to be COO. Tr. p. 166:1-2. That same day, Dan and Carrie Edwards, Lunneborg, and Lunneborg's fiancée, Brenda, had dinner together. R. Aug. p. 6. The couples discussed MFL, its potential growth, and why Lunneborg's experience would be helpful to the company. Tr. pp. 167-168. At the end of the dinner, the Edwards agreed to let Lunneborg review MFL's financial documents to determine if he was comfortable joining MFL. Tr. p. 168:6-8.

Two days later, Lunneborg reviewed several of MFL's financial reports provided by Carrie Edwards. R. Aug. p. 6, L. 22-23. The financial statements showed that MFL had significant income and low overhead. Tr. p. 309:2-23. On April 16, 2014, Lunneborg signed a

contract of employment as COO of MFL. R. Aug. p. 6. "Lunneborg's first day as COO of MFL was May 21, 2014." R. Aug. p. 7.

2. No consulting agreement existed to facilitate Lunneborg's transition from Oxyfresh or hinder his ability to perform his duties for MFL.

Although Lunneborg was very excited to start working for MFL and the idea of helping MFL grow and expand, Lunneborg also appreciated his previous employer – Oxyfresh. Lunneborg realized that after being with Oxyfresh for over twenty years, his sudden departure might harm the company and its distributors. Tr. 174:15-20. In order to ease the transition, Lunneborg offered to remain at Oxyfresh in a consulting capacity for a period of six months while the company trained his replacement. Tr. 174:15-20. Lunneborg openly discussed this plan with both his new employers – Dan and Carrie Edwards, as well as the head of Oxyfresh – Mr. Brooke. The testimony of both Lunneborg and Dan Edwards evidences that the Edwards were aware of Lunneborg's intent to consult for Oxyfresh.

> Q. And Dan and Carrie knew that you intended to maintain somewhat of a relationship for about six months with Oxyfresh after you moved over to MyFunLife full-time, right?
> A. (Lunneborg) They were crystal clear. We were very up-front about my supporting Oxyfresh and Life Matters. It was brought up at our dinners. It was brought up with Schlapfer. It was brought up throughout all of our conversations even prior to signing the agreement.
>
> Tr. p. 175:4-12.
>
> Q. The Q. The most recent draft of the [proposed] consulting agreement . . . with a place for Dan and Carrie to sign, had you shown that to Dan?
> A. Yes.
> Q. So did he know prior to this that you had been negotiating a consulting agreement?

A. He was crystal clear. We'd talked about it a ton of times. We'd texted about it. He'd seen a draft.

Tr. p. 271:3-12.

Q. . . . (to Dan Edwards) what is your recollection of when you first became aware that Mr. Lunneborg was proposing to stay or wanting to stay on in a consulting capacity for Oxyfresh?
A. (Dan Edwards) I really didn't have a problem with it. Um, I respected the decision because I know what it takes to make a transition in the industry. I know it's very tender, and I didn't want anybody to be hurt, especially Richard Brooke. I didn't want his company to be hurt in any way.

Tr. p. 502:15-23.

Although Lunneborg intended to help Oxyfresh during a transition period, he never actually signed a consulting agreement with Oxyfresh. R. Aug. pp. 22-23. Certainly, he signed no agreement that would have prohibited him from performing his duties at MFL as COO or bringing products to market for MFL. R. Aug. p. 23. The trial court highlighted Dan Edwards' testimony demonstrating that Edwards knew Lunneborg had not signed any such consulting agreement with Oxyfresh.

> Dan Edwards was asked at trial, "Doesn't that imply that Tom had not signed a contract?" Dan Edwards answer was as obtuse as it was disingenuous. He would not agree with the statement in that question, and then testified, "I took it to mean the contract we were being asked to sign." To which Dan Edwards was then asked, "You knew you hadn't signed the agreement?" Dan Edwards had to admit that. Thus, Dan Edwards fired Lunneborg as if Lunneborg had signed a contract with Brooke, while ignoring the fact that Lunneborg had never signed such a contract.

R. Aug. p. 18, L. 17-23

3. Product development was not the primary purpose of Mr. Lunneborg's employment with MFL.

While Lunneborg and Dan Edwards explored several product options, Mr. Edwards, by his own admission acknowledged that no decision was made on a product to pursue and it was he and not Lunneborg who "had the ultimate say." R. Aug. p. 9, L. 13. Additionally, Dan Edwards did not hire Schlapfer even though Edwards knew that neither he nor Lunneborg had the training in medicine and chemistry necessary to bring a nutritional product to market. R. Aug. pp. 13-14. Therefore, "[i]f Dan Edwards had wanted a nutritional product . . . Dan Edwards needed to get Schlapfer working for him in some capacity. That never occurred." R. Aug. pp. 12-14.

Although Lunneborg was allegedly fired because he failed "to bring a health and nutritional product to market," the trial court found this was a ruse because there was

> no evidence [presented] that Dan Edwards gave the 'green light to any product that Lunneborg then refused to take steps to bring to market. Even if he had, given the fact that Dan Edwards did not supply Lunneborg with the key person to make that happen, specifically Schlapfer, not bringing a product to market was simply not Lunneborg's responsibility within that two-month time frame."

R. Aug. p. 16, L. 10-15. Rather, the evidence demonstrated that Dan Edwards hired Lunneborg with the unilateral intent of obtaining a copy of the Oxyfresh LifeShotz product for MFL. R. Aug. p. 21, L. 6-9. When Lunneborg refused to make "an illegal mirror image of LifeShotz," and it was apparent to Edwards that MFL would not be bringing a "product to market overnight, Dan Edwards fired Lunneborg." R. Aug. p. 21, L. 5, 11-12.

4. Lunneborg's termination was without cause and the Appellants' arguments to the contrary are without merit.

Thus, a mere "Sixty-nine days later, on July 29, 2014, Dan Edwards terminated Lunneborg's employment." R. Aug. p. 7. Mr. Lunneborg's termination letter read:

> Dear Tom:
>
> You are aware of the several instances in which I have expressed concern with your performance in your position at MyFunLIFE, Inc. After repeatedly attempting to resolve those matters without success, MyFunLIFE has finally decided to terminate your employment, effective immediately.
>
> Your termination is for cause, for the following reasons:
>
> 1. The central purpose of your employment here was to bring health and nutritional products to market. You are unable to make any significant progress to that end, and whenever I have encouraged you to work on that goal, you have refused to take action, citing roadblocks that you claim prevent the development of new products.
>
> 2. I have also learned that you have been negotiating a consulting agreement with your former employer that would expressly prohibit your from bringing other new products to market. This is in direct competition with your duties at MyFunLIFE and a serious breach of your obligations to us. We cannot continue to pay an employee who not only fails to perform the central functions of his position, but is motivated to continue in that failure by an outside consulting arrangement that requires continued inaction.
>
> We regret that we are forced to take this action and wish you the very best in your future professional endeavors.
> Sincerely,
> MyFunLIFE
> Dan Edwards, CEO

R. Aug. p. 7.

Lunneborg knew the alleged reasons in the termination letter were without merit, and therefore, requested his termination pay. When the Edwards refused, Lunneborg was forced to file the underlying action. The trial court agreed with Lunneborg that the termination letter was merely a smokescreen to cover appellants' wrongful and duplicitous behavior. In fact, the trial court determined: (1) Lunneborg's termination was without cause; (2) Dan and Carrie Edwards disregarded MFL's corporate form and drained MFL's funds by manipulating the assets and liabilities by and among their entities and personal accounts with the intent of avoiding payment of any potential liability to Mr. Lunneborg; and (3) Mr. Lunneborg was entitled to the attorney's fees awarded.

5. The District Court's factual determinations are supported by the evidence and should not be disturbed on appeal.

Appellants spend very little space in their brief identifying errors of law, likely because none exist. Rather, appellants attempt to persuade this Court that the trial court did not properly interpret and decide the facts at trial. Of course, this Court should refrain from taking appellants' invitation, and should provide the proper deference and respect due to the trial court's factual decisions. The trial court's decision should be affirmed.

II. ISSUES PRESENTED ON APPEAL

1. Did the District Court err in finding that My Fun Life Corp. ("MFL") terminated Mr. Lunneborg's employment without cause?
2. Did the District Court err in piercing MFL's corporate veil?

3. Did the District Court err when it determined that Carrie Edwards' separate property and interest in the community estate of Dan and Carrie Edwards is subject to the Final Judgment?

4. Did the District Court err in awarding Plaintiff attorney's fees and costs in the amount of $167,028.69 plus post judgment interest?

III. ATTORNEYS' FEES ON APPEAL

An additional issue on appeal is attorneys' fees. Lunneborg seeks attorney's fees on appeal pursuant to Idaho Code sections 12-120(3) and 12-121. Idaho Code section 12-120(3) entitles the prevailing party in any civil action arising from a commercial transaction to recover attorney fees. "All transactions other than those for personal or household purposes are considered commercial transactions." *Carrillo v. Boise Tire Co.*, 152 Idaho 741, 755 (2012). "[I]n order for a transaction to be commercial, each party to the transaction must enter the transaction for a commercial purpose." *Id.* at 756. Because this appeal arose out of a commercial transaction, the prevailing party is entitled to attorney fees. Mr. Lunneborg also seeks attorney's fees pursuant to I.C. § 12-121. "Section 12-121 permits an award of attorney fees in a civil action to the prevailing party if the court determines the case was brought, pursued or defended frivolously, unreasonably or without foundation." *Ravenscroft v. Boise Cnty.*, 154 Idaho 613, 617 (2013) (internal quotation marks omitted). Similarly, "[a]ttorney fees are awardable if an appeal does no more than simply invite an appellate court to second-guess the trial court on conflicting evidence, or if the law is well settled and appellant has made no substantial showing that the district court misapplied the law." *Johnson v. Edwards*, 113 Idaho

660, 662, 747 P.2d 69, 71 (1987) In this case, appellants' simply invite the Court to second-guess the trial court's factual findings, therefore the appeal is frivolous and brought without adequate foundation entitling Lunneborg is entitled to attorneys' fees under I.C. §§ 12-120(3) and 12-121. Lunneborg also requests attorneys' fees under I.A.R 41(a).

IV. ARGUMENT

A. Standard of Review

The review of a trial court's decision after a court trial is limited to ascertaining "whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law." *Idaho Forest Industries, Inc. v. Hayden Lake Watershed Imp. Dist.*, 135 Idaho 316, 319, 17 P.3d 260, 263 (2000). The trial court's findings of fact will not be set aside unless clearly erroneous. *Id.*; I.C. § 52(a). Thus, if the findings of fact are supported by substantial and competent evidence, even if the evidence is conflicting, the reviewing court will not disturb those findings. *Idaho Forest Industries, Inc.*, 135 Idaho at 319, 17 P.3d at 263. In view of the trial court's role to weigh conflicting evidence and testimony and to judge the credibility of witnesses, the trial court's findings of fact must be liberally construed in favor of the judgment entered. *Sun Valley Shamrock Resources, Inc. v. Travelers Leasing Corp.*, 118 Idaho 116, 118, 794 P.2d 1389, 1391 (1990). In reviewing a trial court's conclusions of law, however, the reviewing court is not bound by the legal conclusions of the trial court, but may draw its own conclusions from the facts presented. *Idaho Forest Industries, Inc.*, 135 Idaho at 319, 17 P.3d at 263; *Indep. Lead Mines v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006).

B. The District Court did not err in finding that MFL terminated Lunneborg's employment without cause.

At trial, the parties agreed that Lunneborg signed an employment agreement with MFL. R. Aug. p. 3. The employment agreement provided in part, that if Mr. Lunneborg was terminated without cause, he was entitled to a severance wage equaling six months of his salary. Tr. p. 24, ¶¶ 4-5. Because Mr. Lunneborg's salary with MFL was $10,000 per month, six months' termination pay was $60,000. R. Aug. p. 3. The parties did not dispute that Mr. Lunneborg began working for MFL on May 21, 2014, and that he was terminated on July 29, 2014. R. Aug. p. 3. However, they did dispute whether MFL terminated Lunneborg without cause, thus entitling Lunneborg to the $60,000 in severance pay. R. Aug. p. 3. Therefore, the District Court was tasked with the fact-intensive analysis of determining whether MFL had "good cause" to terminate Mr. Lunneborg. R. Aug. p. 3.

1. The District Court applied the correct law.

The trial court correctly noted that "[w]here good cause is required, the employer must show that the employee did something wrong that justified the termination." R. Aug. p. 4 (*citing Metcalf v. Intermountain Gas Co.*, 116 Idaho 622, 630, 778 P.2d 744, 752 (1989)). Thus, good cause depends on whether the employer had an objectively reasonable basis for the termination "based on facts (1) supported by substantial evidence and (2) reasonably believed to be true." R. Aug. p. 4. The District Court found that good cause did *not* exist in this case because "neither of the two reasons given [in the termination letter are] true . . . [and] [n]either of the two reasons are supported by the evidence." R. Aug. p. 7. The trial court also stated that "even if Dan

Edwards believed in the truth of those reasons, such belief was not reasonable." R. Aug. p. 5. Because the trial court 's findings are supported by the evidence, this Court must affirm.

In their brief, appellants argue that the trial court erred because it "[s]ubstitut[ed] its judgment for that of the employer." Appellants' Br. p. 28. In other words, according to appellants, the trial court should not have weighed the facts and evidence presented to determine whether MFL had cause to terminate Mr. Lunneborg. Rather, the trial court was apparently expected to solely rely on Dan Edwards' belief, or more accurately the pretext he manufactured, that he had reason to terminate Mr. Lunneborg. This is because, according to the appellants, "courts are not authorized to second guess an employer." Appellants' Br. p. 29. Contrary to appellants' argument, this is not a correct description of Idaho law. Rather, "where there exists a conflict with respect to the circumstances surrounding the employee's discharge, the *existence of good cause is an issue for the trier of fact*." *Rosecrans v. Intermountain Soap & Chem. Co.*, 100 Idaho 785, 787, 605 P.2d 963, 965 (1980). Thus, the trial court applied the correct law and it did exactly what it was charged with doing -- it analyzed and weighed the evidence presented, it used its firsthand observation of the testimony to evaluate the demeanor and credibility of the various witnesses, and it made reasonable and well supported findings as to whether good cause existed for Lunneborg's termination. Based on substantial credible evidence, the trial court found that Lunneborg was terminated *without cause.* Although appellants disagree with this finding, they fail to provide any credible evidence that the trial court erred and therefore, the trial court should be affirmed.

2. *The District Court's findings were supported by substantial and competent evidence.*

Given that the trial court applied the correct Idaho law, the next question is whether the trial court 's holding is supported by substantial and competent evidence. Of this, there should be no doubt. Indeed, more than 20 pages of discussion of the facts supports its decision. Importantly, despite appellants argument to the contrary, it is the province of the trial court, not the reviewing court, to weigh conflicting evidence and testimony and judge the credibility of witnesses. Appellants had a full and fair opportunity to present their evidence and their argument. The trial court simply did not believe appellants' testimony. Appellants incorrectly believe that alleging legal error in their brief transforms the fact-based issue of "cause" into an issue of law. Appellants ask this Court to review the same facts, weigh the evidence and credibility of the witnesses, and ultimately come to a different conclusion. However, as this Court has reminded parties many times, the reviewing court is not authorized to "go behind such findings, and . . . to say whether they are contrary to the weight of the evidence, that function being wholly for the trial court." *Cox v. Cox*, 84 Idaho 513, 520, 373 P.2d 929, 933 (1962).

Appellants further argue that the trial court did not give Dan Edwards' reasons for terminating Lunneborg proper deference. Appellants' Br. p. 30, L. 3-4. Contrary to Appellants' argument, the extensive recitation of facts and findings in its Memorandum Decision leaves no doubt that the trial court fully heard and considered Mr. Edwards' reasons for terminating Lunneborg. The trial court just did not believe Mr. Edwards. The District Court found that Mr.

Edwards was not credible. Conversely, the trial court found that Lunneborg and Dr. Schlapfer were credible ("Court finds *Dan Edwards not to be credible* in his "sugarcoating" explanation", R. Aug. p. 13; "Court finds Lunneborg and Schlapfer credible on this point, that Dan Edwards specifically asked them to make an illegal mirror image of LifeShotz", R. Aug. p. 21; "Court finds Lunneborg and Schlapfer to be credible, and *Dan Edwards not to be credible*" R. Aug. p. 22) (emphasis added).

It was absolutely the trial court's duty and right to listen to the conflicting evidence and determine the credibility of the witnesses. In doing so, the trial court found Dan Edwards' version of the facts was not believable and that even if it believed Dan Edwards, the alleged reasons were unreasonable given the evidence presented. R. Aug. p. 5, L. 1-4. The trial court further found that Carrie Edwards lied to cover up Mr. Edwards' lies. R. Aug. p. 13, L. 9-11. This Court simply does not weigh credibility of witnesses; that is exclusively the province of the trial court.

Although appellants want to believe that the trial court was required to take Dan Edwards' reasons for terminating Lunneborg at face value, the trial court properly analyzed the reasonableness and credibility of each "for cause" reasons alleged by Dan Edwards in Lunneborg's termination letter. After careful analysis, the trial court found that neither reason was supported by the facts nor believable. R. Aug. p. 7.

(i) The District Court found that bringing products to market was not the central purpose of Mr. Lunneborg's employment, and even if it was, it was not realistic that Lunneborg could bring a nutritional or health product to market to within two months without the help of Schlapfer and without the go ahead from Dan Edwards.

Lunneborg's termination letter included two "for cause" termination reasons. The first reason stated: "The central purpose of your employment here was to bring health and nutritional products to market. You are unable to make any significant progress to that end, and whenever I have encouraged you to work on that goal, you have refused to take action, citing roadblocks that you claim prevent the development of new products." R. Aug. p. 7. The trial court found that this alleged reason for the termination was not supported by the evidence, and therefore, did not support a finding of termination for cause. R. Aug. p. 16.

First, the trial court acknowledged that the parties presented conflicting argument and evidence as to why MFL hired Lunneborg and Lunneborg's primary duties while employed by MFL. Dan Edwards and MFL argued that Lunneborg was hired "primarily to develop products for MFL." R. Aug. p. 9. Lunneborg on the other hand, offered evidence proving that he was primarily hired to *run* MFL. R. Aug. p. 9 (emphasis added). The trial court agreed with. Lunneborg. The court determined that Lunneborg's central purpose was running MFL by serving as the Chief Operating Officer ("COO"). Although both parties anticipated that Mr. Lunneborg would be involved in MLF's product development, bringing products to market was *not* Mr. Lunneborg's "*central purpose*.". R. Aug. p. 7 (emphasis in original). Some of the facts identified by the trial court as the basis of this determination included: (1) objective facts such

as the position description in Lunneborg's Offer of Employment, which read "Position. You will serve in a full-time capacity as Chief Operating Officer of the Company. You will report to the CEO." R. Aug. p. 9; (2) Communications from Dan Edwards evidencing an intent for Mr. Lunneborg to *run* MFL, including a text from Edwards to Lunneborg "I am looking for someone like yourself, that knows this business to *run* my company so I can go into the field to recruit and train our teams. I don't particularly care to run day to day operations" R. Aug. p. 11; (3) Communication from Carrie Edwards to Mr. Lunneborg, confirming that product development was not the primary purpose "NO, Dan did not say you were hired only to bring us products!" R. Aug. p. 13; (4) facts as to the way Lunneborg's position was presented to members and others including the fact that "Dan and Carrie Edwards took a vacation the first two weeks that Lunneborg began working, and before they left, Dan Edwards . . . told the employees to take direction from Lunneborg." R. Aug. p. 10, and a webcast Dan Edwards broadcasted to members on Mr. Lunneborg's first day of work, "He [Lunneborg] will be overseeing operations and marketing." R. Aug. p. 10.

The trial court also examined the reasonableness of expecting Lunneborg to bring a nutritional product to market within two months when Edwards did not provide the resources or expertise necessary for such an undertaking. Indeed, the trial court found that even if MFL's central purpose in hiring Lunneborg was product development, it was *unreasonable* for MFL to believe that Lunneborg could accomplish such a task within two months. R. Aug. p. 5. According to the trial court, the uncontroverted evidence demonstrated that product development takes longer than two months and Lunneborg did not possess the scientific

engineering skills necessary to formulate a health or nutritional product. Therefore, Mr. Edwards need to and failed to get Schlapfer contracted to help MFL. R. Aug. pp. 9-16.

The trial court first focused on the evidence and testimony demonstrating that "Lunneborg could not bring [a nutritional] product to market by himself. He would need [the help of] someone like [Dr.] Schlapfer." R. Aug. p. 10. L. 20-21. The trial court noted that neither Lunneborg nor Edwards had the chemical engineering skills necessary to create a nutritional or skin care product, rather, Schlapfer or someone with similar skills was necessary for product development. R. Aug. p. 14. "Lunneborg is not a doctor; he is not a chemist. Lunneborg's skills are bringing the product to production, marketing the product, and distributing the product. The only person . . . who could actually come up with the formulation for a product was [Dr. Todd] Schlapfer." R. Aug. p. 14. Accordingly, the trial court found that "Lunneborg was not responsible for the first two steps in bringing a nutritional product to market, [because] Dan Edwards was the one to make the determination of what product to bring to market [and] Dan Edwards was responsible for obtaining the services of [Dr. Todd] Schlapfer to *formulate* that nutritional product." R. Aug. p. 9, L.1-2 (emphasis in the original). Although Edwards discussed MFL hiring Schlapfer, this never happened. R. Aug. p. 14. Importantly, the trial court understood that "the task of getting Schlapfer on contract with MFL was upon Dan Edwards, [not Lunneborg] and Dan Edwards failed in that regard." R. Aug. p. 14.

The trial court also focused on the unreasonableness of the timeline for bringing a new product to market. According to the trial court, the unequivocal evidence supported a finding

that the process to bring a product to market takes "more than two months." R. Aug. p. 14, L. 24. The trial court found Dan Edwards not credible in his assertions that "Lunneborg could have immediately brought a nutritional product to market" because four days before terminating Lunneborg for failing to bring nutritional products to market, "Dan Edwards' own handwritten notes indicated that after identifying a potential product they were [still] 16 weeks to 22 weeks away" because there was "8-10 weeks to get formulation ready" and "8-12 weeks manufacturing." R. Aug. p. 15; L. 12-13, 15-17.

Finally, the trial court determined that it was not reasonable for Edwards to allege that Lunneborg was terminated due to his alleged failure to bring a health product to market because it was Edwards who actually had the ultimate say as to product development and he had never given Lunneborg the green light to begin developing any product. In support of this finding, the District Court highlighted the chain of command and the fact that Mr. Lunneborg as COO *reported to* CEO Dan Edwards. R. Aug. p. 9, L. 6. Therefore, "Dan Edwards retained the ultimate say," and "any new product Lunneborg proposed to be brought to market would need Dan Edwards' approval." R. Aug. p. 10, L. 19. "Dan Edwards would be the one to make final approval of whether MFL's assets would be directed to research and development of a product, and that . . . decision [could] only [be made] after he made the decision on *what* the product should be." R. Aug. p. 13 (emphasis in original). Importantly, "two weeks before Dan Edwards fired Lunneborg for not bringing a nutritional product to market, Dan Edwards had not even determined what that product might be." R. Aug. p. 13 Again, contrary to the appellants' assertions, the trial court found that there was "no evidence [presented] that Dan Edwards gave

the 'green light' to any product that Lunneborg then refused to take steps to bring to market. Even if he had . . . Dan Edwards did not supply Lunneborg with the key person to make that happen, specifically Schlapfer." R. Aug. p. 16, L. 11-16. Therefore, Lunneborg was simply not equipped with the time, skills, or authority to bring a nutritional product to market "within that two-month time frame." R. Aug. p. 16, L. 17.

The foregoing is merely a glimpse of the extensive evidence relied upon by the trial court in its determination that the first reason given by Mr. Edwards for terminating Mr. Lunneborg was *not* based on substantial evidence and was not believable. Because the District Court's finding that the first reason for termination was pretext is supported by substantial and competent evidence, the District Court should be affirmed as to this issue.

(ii) Dan Edwards knew Lunneborg maintained a relationship with Oxyfresh/Brooke, and knew or should have known that Lunneborg did not sign an agreement with his former employer Oxyfresh which specifically prohibited Lunneborg from developing new products for MFL.

Mr. Edwards continued his letter of termination to Lunneborg by stating:

> I have also learned that you have been negotiating a consulting agreement with your former employer that would expressly prohibit your from bringing other new products to market. This is in direct competition with your duties at MyFunLIFE and a serious breach of your obligations to us. We cannot continue to pay an employee who not only fails to perform the central functions of his position, but is motivated to continue in that failure by an outside consulting arrangement that requires continued inaction.

R. Aug. p. 7. The trial court found this alleged reason "to be false and pretextual." R. Aug. p. 25. The trial court noted that in order for Dan Edwards "not run afoul of multilevel marketing

laws," he "needed a physical product to sell along with his vacation discounts." R. Aug. p. 21. Therefore, the evidence presented demonstrated that Edwards hired Lunneborg with the intent of having Lunneborg copy the popular Oxyfresh LifeShotz product for MFL. R. Aug. p. 21. However, when Lunneborg refused, Dan Edwards fired him, using the pretext of "an imagined conflict of interest between Lunneborg and Oxyfresh/Brooke as the basis for his decision to fire Lunneborg." R. Aug. p. 21. Again, the trial court thoroughly and explicitly supported it findings and accordingly, the trial court 's decision should be affirmed.

First, the trial court focused on the facts supporting the proposition that Dan Edwards wanted a Life Shotz-like product and became frustrated and fired Lunneborg when Lunneborg refused to break the law and give it to him. Both Lunneborg and Schlapfer testified that Dan Edwards had asked them to create a mirror image of Life Shotz for My Fun Life. R. Aug. p. 19, L. 16; p. 20, L. 9-11. Both men refused stating that it was not ethical. R. Aug. p. 19, L. 16; p. 20, L. 9-11. Although Edwards denied the allegation, the trial court found "Lunneborg and Schlapfer credible on this point, that Dan Edwards specifically asked them to make an illegal mirror image of LifeShotz." R. Aug. p. 21, L. 4-5.

Thus, it was clear to the trial court that any refusal by Lunneborg to create a mirror image of the Oxyfresh Life Shotz product was because such action would be illegal and unethical and not because Lunneborg had signed some contract with Oxyfresh prohibiting him from helping MFL create products to market. R. Aug. p. 3 23-24. The trial court focused on evidence indicating that contrary to Dan Edwards' assertions, Edwards was always aware of Lunneborg's intent to maintain a limited involvement with Oxyfresh by serving as a consultant.

> Dan Edwards was asked by his attorney at trial in the defense case-in-chief, "When were you first aware plaintiff wanted to consult with Brooke?", to which Dan Edwards really didn't answer that question, but then stated, "I had no problem with it, I didn't want Brooke to be hurt, Plaintiff told me it would be a couple hours a week at lunch time, and that seemed reasonable." It is uncontradicted that Dan Edwards knew Lunneborg still performed some work for Brooke. This knowledge makes the fact that Dan Edwards fired Lunneborg based on an unsubstantiated rumor all the more untenable. These facts deprive Dan Edwards of his ability to claim his firing of Lunneborg was "for cause."

R. Aug. p. 23, L. 9-17.

The trial court also found it unbelievable and incredulous that Edwards would fire Lunneborg for entering into an alleged contract with Oxyfresh without first asking his employee and COO "Lunneborg for his side of the story." R. Aug. p. 23, L. 2-3. Importantly, the trial court found this alleged conflict of interest asserted by Edwards to be disingenuous because Edwards admitted that he "knew Lunneborg still performed some work for [Oxyfresh]," there was no evidence of a signed contract between Lunneborg and Oxyfresh, and because Edwards never confronted Lunneborg about the alleged contract. R. Aug. p. 23.

The trial court summarized why Dan Edwards' version of the events was not believable as follows:

> Dan Edwards went without any COO for April and May 2014, yet Dan Edwards only gave Lunneborg two months before terminating him. Dan Edwards testified about the wrongdoings of his previous COO, testified that he had no COO in April and May, thus he was anxious to hire Lunneborg the end of May. Yet, Dan Edwards only gave him two months before Dan Edwards terminated Lunneborg. That makes absolutely *no business sense*. That makes *no common sense*. It is a *lie* by Dan Edwards that he was terminating Lunneborg for failing to bring a nutritional product to market.

R. Aug. p. 24, L. 3-10 (emphases added).

Contrary to Appellants' assertions, the trial court applied the correct law and its finding that Lunneborg was terminated without cause is supported by substantial and competent evidence. The Edwards were found to be liars and not believable by the trial court. There is no cause to overturn those findings.

C. The Edwards Used the Corporate Form of MFL to Commit Injustice and Injury on Lunneborg; Therefore, the District Court Did Not Err in Piercing MFL's Corporate Veil.

The general rule is that the owners of a corporation are not personally liable for a corporation's contracts or debts. *See Barlow's Inc. v. Bannock Cleaning Corp.*, 103 Idaho 310, 314–15, 647 P.2d 766, 770–71 (1982). However, under Idaho law, a court may disregard a corporate entity (i.e., "pierce the corporate veil") if there is "such a unity of interest and ownership that the separate personalities of the corporation and individual no longer exist," and if a showing is made that "if the acts are treated as those of the corporation, an inequitable result will follow or that it would sanction a fraud or promote injustice." *Hutchison v. Anderson*, 130 Idaho 936, 940, 950 P.2d 1275, 1279 (Ct. App.1997).

Thus, it was proper for the trial court to pierce MFL's corporate veil if Lunneborg established the following: (1) a unity of interest and ownership to a degree that the separate personalities of the corporation and individual no longer exist and (2) if the acts are treated as acts of the corporation, an inequitable result would follow. Appellants' Br. p. 34, L. 5-8 (*citing Wandering Trails, LLC v. Big Bite Excavation, Inc.*, 156 Idaho 586 (2014). Although

Appellants agree that this is the law of Idaho, Appellants go on to argue that piercing the corporate veil also required a showing that MFL financial transactions were improper, illegal, and/or failed to follow accounting procedures. Appellants' Br. p. 37, L. 7-8; p. 38, L. 11-13; p. 39, L. 14-18; p. 40, L. 1-2. Appellants argue that Lunneborg did not establish that MFL accounting procedures were not followed or that the many corporate transfers were illegal, therefore, the trial court erred in piercing the corporate veil. *See, e.g.,* Appellants' Br. p. 38, L. 11-13 ("unless Lunneborg can show this was an illegal or improper transfer, or that accounting procedures were not followed [the court could not pierce MFL corporate veil]"). However, this strawman argument is not a correct statement of Idaho law. Rather, the trial court applied the correct standard and a thorough review of the record demonstrates there was substantial competent evidence to support the trial court 's findings. R. Aug. p. 29-43. Therefore, the trial court must be affirmed.

First, the trial court began its analysis by correctly noting that whether to pierce a corporate veil is a heavily fact-specific inquiry and courts have identified numerous factors to assist in the analysis. R. Aug. p. 29. Some of the factors used by Idaho courts when deciding whether to pierce the corporate veil, include, but are not limited to: (1) the level of control that the shareholder exercises over the corporation; (2) the lack of corporate formalities, such as failing to hold regular directors' or shareholders' meetings, maintaining written minutes for these meetings and/or adopting corporate by-laws; (3) shareholders failed to submit corporate contracts or loans for approval by the board of directors; (4) corporate funds were transferred, corporate accounts were accrued and paid and/or corporate claims were satisfied without

approval by the board of directors; (5) the corporation was not represented to third parties as an entity separate from its shareholders; and/or (6) the corporation's initial capitalization was inadequate to meet the corporation's "reasonably foreseeable potential liabilities." *Alpine Packing Co. v. H.H. Keim Co.*, 121 Idaho 762, 764-65, 828 P.2d 325, 327-28 (Ct.App.1991); *Hutchison v. Anderson*, 130 Idaho 936, 940, 950 P.2d 1275, 1279 (Ct.App.1997); *Nakamura, Inc. v. G & G Produce Co.*, 93 Idaho 183, 184-85, 457 P.2d 422, 423–24 (1969). The above factors are not exclusive because the conditions under which a corporate entity may be disregarded vary according to the circumstances of the case.[1] *Surety Life Ins. Co. v. Rose Chapel Mortuary, Inc.*, 95 Idaho 599, 601, 514 P.2d 594, 596 (1973).

1. The Edwards and MFL shared such a unity of interest and ownership that the separate personalities of the corporation and individual no longer existed.

The first inquiry to pierce the corporate veil is whether the separate personalities of the person and the corporation were indistinguishable. In their brief, Appellants correctly assert that the mere failure to adhere to corporate formalities does not automatically create liability. Appellants' Br. p. 36, L. 1-4. However, it is a factor that courts may consider. *See, e.g., Hutchison v. Anderson*, 130 Idaho at 940, 950 P.2d at 1279. In this case, MFL did not observe any corporate formalities. It did not issue any stock certificates, it did not conduct regular corporate meetings, and the only corporate minutes MFL kept were the initial meeting minutes.

[1] The District Court applied the correct law despite stating later in its Memorandum Decision that "Lunneborg need only prove one factor in order to pierce the corporate veil of MFL and hold Dan Edwards and Carrie Edwards personally liable to Lunneborg." R. Aug. p. 32. At most this may be harmless error because it is not the standard the District Court utilized when making its decision to pierce MFL's corporate veil. Indeed, in the next sentence the District Court notes that "nearly all these various factors have been met in light of the facts of the present case." Therefore, it is clear that District Court did not base its decision to pierce MFL's corporate veil on the existence of only one factor demonstrating unity of interest between the individual and the corporation.

R. Aug. p. 32, L. 18-21. Additionally, MFL did not observe corporate formalities with respect to positions within the company. Carrie Edwards testified that "she was the Chief Administrative Officer . . .she was [also] the COO for a few weeks before Lunneborg was hired and, after that, was Executive Vice President," despite the fact that "there were no corporate resolutions authorizing Carrie Edwards to assume any of these positions." R. Aug. p. 32, L.14-18. Nor was there a corporate resolution authorizing the hiring or firing of Mr. Lunneborg.

The trial court next focused on the extensive evidence showing regular comingling of funds. The court concluded that according to the evidence presented, "the lines between [the Edwards'] personal assets and the assets of all their businesses, including MFL, were heavily blurred." R. Aug. p. 36, L. 12-14. The parties did not dispute that in addition to owning MFL, Dan and Carrie Edwards owned at least four additional companies: Ink Drop Signs, TraffiCorp, Hawaiian Sun Tanning Salon, and an LLC to hold their real property. R. Aug. p. 32, L. 20-21. Carrie Edwards testified that the various corporations "gave advance monies to each other", that "one to two times a month, depending on cash flow" they would transfer money from one corporation to another, then back again. She testified that this was done to "help out" their various businesses. She also "testified this was all kept track in their records, and it all got paid back." R. Aug. p. 32, L. 24-25; p. 33, L. 1-3. The trial court found that Carrie Edwards statement was not credible and not supported by the evidence. R. Aug. p. 33, L. 17-19. Rather, the trial court found that "Dan and Carrie Edwards produced no written documents to evidence the many transfers of funds between themselves and their companies . . . there were no loan documents, no contracts, no bank statements, and no notes evidencing these transfers. There

were no corporate minutes to document these transfers. And even the spreadsheet contradicts Carrie Edwards' testimony that those transfers were paid back to MFL." R. Aug. p. 36, L. 15-22. According to the trial court, contrary to the Edwards' assertions, there was " no evidence to show that MFL was ever paid back or made whole by TraffiCorp or Ink Drop Signs." R. Aug. p. 37, L. 28-29.

Carrie Edwards' testimony as to the payment of expenses and the accounting for the personal and corporate credit cards also demonstrated the blurring of lines and unity of interest by and among the various closely-held businesses the Edwards' personal accounts. R. Aug. pp. 34-36. Evidence was presented that the corporate credit cards were routinely used to purchase personal items and for personal expenses. R. Aug. p. 35. The trial court noted that although the Edwards alleged that the commingling and transfers of money between accounts was proper and trackable, the evidence contradicted their testimony. The evidence highlighted the lack of any proper accounting and great confusion as to where money went and why, that it was not possible for the Edwards to demonstrate whose money was in each account during any specific time. R. Aug. p. 32-36. In the District Court's Memorandum Decision, it identified several pages of transactions demonstrating the commingling of funds without concern and without proper accounting or reconciliation. R. Aug. p. 32-38. The trial court properly concluded that financial evidence showed that the "Edwards used the MFL credit cards . . . as if they were their personal assets, rather than corporate assets." R. Aug. p. 40, L.1-2.

The trial court also found that Dan Edwards and Carrie Edwards did not identify "themselves as MFL employees and did not report receiving any salary." R. Aug. p. 36, L. 21-

22. Rather, the Edwards identified themselves as independent contractors, allowing them to disguise and avoid paying taxes on the hundreds of thousands of dollars their family withdrew from MFL. R. Aug. p. 38, L. 22-24. The trial court exclaimed that "it defies belief that the president and executive vice president of a corporation would qualify as independent contractors for the purposes of receiving a Form 1099." R. Aug. p. 39, L.3-5. According to the trial court, the routine payments of the Edwards' personal expenses by their closely-held businesses including MFL, "constituut[ed] a diversion of corporate assets to the Edwards." R. Aug. p. 39, L. 22-23. Finally, the court found the fact that most of the Edwards closely held companies operated out of the same location with no consistent allocation of costs was evidence of a unity of identity. R. Aug. pp. 38-40.

Based on the testimony and evidence presented, the trial court correctly concluded that "the first prong of the piercing of the corporate veil test—unity of interest—is clearly established." R. Aug. p. 40, L. 14-15. Because a review of the record demonstrates that this finding is supported by substantial competent evidence, the District Court should be affirmed.

2. It was necessary to pierce MFL's corporate veil, because an injustice would have resulted if only MFL were held liable.

The second inquiry when piercing the corporate veil is whether an inequitable result would follow if only the corporation was held liable. *Hutchinson*, 130 Idaho at 940, 950 P.2d at 1279. The trial court correctly noted that when determining the second element, Idaho requires "something less than an affirmative showing of fraud but something more than the mere prospect of an unsatisfied judgment." R. Aug. p. 40, L. 16-19 (citing *Wachovia Secs., LLC v.*

Banco Panamericano, Inc., 674 F.3d 743, 756 (7th Cir. 2012)). In this case, the trial court found the second element existed and this finding should be affirmed because it is supported by substantial competent evidence.

From the evidence presented, the trial court properly found that Dan and Carrie Edwards drained MFL assets not only for their personal benefit, but also to become judgment-proof against Lunneborg's claim for severance pay. R. Aug. p. 40-43. The trial court concluded that piercing the corporate veil in this case was justified because, similar to other cases in which the veil was pierced, the Edwards, "through the issuance of dividends and bonuses and repayment of undocumented loans, bled the corporation of assets so that it would not be able to satisfy a known corporate liability." R. Aug. p. 41, L. 25-26. The court highlighted that the Edwards were so successful at diverting funds from MFL, that as of June 22, 2016, MFL was forced to file bankruptcy with only a little more than five dollars in assets. R. Aug. p. 43, L. 12-14. Thus, any attempts by Lunneborg to collect on a judgement against MFL would have been futile. *See Contra Ross v. Coleman Co.*, 114 Idaho 817, 832, 761 P.2d 1169, 1184 (1988) (noting there was nothing in the record to "reflect that [the corporation] was inadequately capitalized and as a result *could not* respond to a judgment against it"); *see also, e.g., Hutchison*, 130 Idaho at 940, 950 P.2d at 1279 (1997) (considering that the corporation "was undercapitalized and thus any attempt to collect on a judgment against it would probably be futile") (internal quotation marks omitted)); *Baker v. Kulczyk*, 112 Idaho 417, 420, 732 P.2d 386, 389 (Ct. App. 1987) (discussing whether defendant corporations may have sufficient worth to satisfy a judgment). The District Court found that the Edwards, "[i]nstead of paying the severance to Lunneborg as provided in

his employment contract . . . drained MFL of all income and assets by diverting those assets and income to themselves and to TraffiCorp." R. Aug. p. 43, L. 9-12.

In this case, the trial court 's decision to pierce MFL's corporate veil should be affirmed because substantial competent evidence demonstrates that not only is the unity of interest and ownership requirement met, but an inequitable result will arise if MFL's corporate entity is not disregarded as against the Edwards. As the trial court correctly cautioned, "allow[ing] the Edwards to escape personal liability would be to sanction an injustice and create an inequitable result." R. Aug. p. 43, L. 15-16.

D. The District Court Did Not Err in Finding Carrie Edwards' Separate Property and Interest in the Community Marital Estate is Subject to the Final Judgment.

Appellants argue that the trial court erred in subjecting Carrie Edwards' property to the Final Judgment. Appellants' Br. p. 40. Appellants made the same unsuccessful argument to the trial court in their Motion to Alter or Amend Judgment. R. p. 159, L. 6-8. The trial court denied the motion in a 14-page Memorandum Decision and Order. R. pp. 158-171. The trial court found Carrie Edwards personally liable because she actively participated in the misconduct that led to the piercing of MFL's corporate veil. R. p. 170, L 1-8; p. 171, L. 1-10. The trial court 's decision is supported by substantial competent evidence and it should be affirmed.

Appellants argue that the District Court erred because Carrie Edwards "never agreed that such property could be reached under I.C. § 32-912" and because she was not a shareholder. Appellants' Br. p. 40, ¶ D, L. 2-4, 10-13. The District Court found both arguments unpersuasive. The District Court acknowledged in its Memorandum Decision and Order

Denying Defendants' Motion to Alter or Amend Judgment ("Order Denying"), that "Idaho courts have not squarely addressed whether an individual must be [a] shareholder to be potentially liable for corporate debts." R. p. 165, L. 4-6 (*citing Swenson v. Bushman Investment Properties, Ltd.*, 870 F. Supp. 2d 1049 (D. Idaho 2012). However, the District Court agreed with the reasoning of several other courts and concluded "that shareholder status is not a prerequisite or bar to piercing the corporate veil." R. p. 167, L. 1-4 (*e.g. Buckley v. Abuzir,* 8. N.E.3d 1166 (Ill. Ct. App. 2014); *Fontana v. TLD Builders, Inc.,* 362 Ill. App. 3d 491 (2005)). Thus, the District Court properly concluded that "shareholder status is *a factor* to consider when deciding whether the unity-of-interest-and-ownership prong is satisfied, but it is not a dispositive factor." R. p. 167 L. 2-4 (emphasis in original). Appellants have not presented any binding Idaho case law demonstrating that the District Court's analysis was incorrect.

Because the District Court concluded that Carrie Edwards' lack of status as a shareholder did not automatically preclude her personal liability, the District Court focused instead on whether Carrie Edwards' own degree of involvement and control in MFL was so great so as to make her personally liable. The District Court found the answer was yes. According to the evidence presented, including Carrie Edwards's testimony, Ms. Edwards was "directly involved in the day-to-day management of MFL." R. Aug. p. 44, ¶ 9. Indeed, Carrie Edwards was extensively involved in all of the Edwards' corporations, including MFL. Carrie Edwards participated in the negotiations and hiring of Mr. Lunneborg[2], she was involved in the

[2] For example, "Dan *and Carrie* Edwards, Lunneborg and Schlapfer met at the Coeur d'Alene Resort Golf Course café. That led to a dinner two days later with Dan *and Carrie* Edwards . . . Two days after that dinner Lunneborg

ongoing communications and discussions[3], and most importantly she was responsible for the almost constant commingling and transferring of funds between corporate and personal accounts, all without executing any promissory notes or any other indicia of debt. R. Aug. 32-36. Rather than finding Carrie Edwards an innocent bystander, the District Court found that Carrie Edwards "directly benefited from using the corporate assets," (R. Aug. p. 45, ¶ 18) and it was Carrie Edwards who "*primarily, if not exclusively*, moved the money around . . . [siphoned off the assets of MFL] and made MFL prematurely judgment proof." R. p. 170 L. 3-7 (emphasis added). Given Carrie Edwards complete disregard for the corporate form and her culpability in depleting MFL's assets, it was proper for the District Court to find her jointly and severally liable. A thorough review of the record demonstrates that the District Court's decision was supported by substantial and competent evidence and should be affirmed.

E. The District Court Did Not Abuse Its Discretion in Awarding Lunneborg Attorney's Fees and Costs.

"An award of attorney fees and costs is within the discretion of the trial court and subject to an abuse of discretion standard of review." *Smith v. Mitton*, 140 Idaho 893, 901, 104 P.3d 367, 375 (2004). "In reviewing an exercise of discretion, this Court must consider '(1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available to it; and (3) whether the trial court

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reviewed several of MFL's financial reports *provided by Carrie* Edwards." R. Aug. p. 6, L. 20-24. *See, e.g.,* R. Aug. pp. 12-13.

[3] *See, e.g.,* R. Aug. pp. 12-13.

reached its decision by an exercise of reason.'" *Id.* at 902, 104 P.3d at 376 (*quoting Sun Valley Shopping Ctr., Inc. v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991)).

Appellants argue that the attorney's fees and costs awarded to Lunneborg was an abuse of discretion, (Appellants' Br. p. 43, L. 3-4) and that the District Court "fail[ed] to conduct a proper analysis." Appellants' Br. p. 44 L. 5-6. Appellants do not provide any case law or statutory authority to support their argument, nor do the appellants offer any evidentiary support. Certainly, Appellants fail to cite anything that would allow a reviewing court to reverse or remand. Indeed, Appellants' argument is easily rejected by a review of the District Court's 13-plus page, very thorough and very complete analysis in support of its award of attorney's fees. Because the District Court's award of attorney's fees was not an abuse of discretion, it should be affirmed.

In this case, although the District Court was not required to make specific findings as to I.C. § 54(e)(3), nor was it required to demonstrate how it employed the factors in determining an award amount (*Empire Fire and Marine Ins. Co. v. North Pacific Ins. Co.*, 127 Idaho 716, 720, 905 P.2d 1025, 1029 (1995)), the District Court thoroughly, completely, and reasonably analyzed and discussed each of the I.C. § 54(e)(3) factors. R. pp. 173-187.

Although Appellants allege that the District Court awarded attorney's fees to punish the them, this is not supported by the record. Appellants' Br. p. 44, L. 2-13. Rather, the attorney's fees were awarded because Lunneborg was statutorily entitled to the fees. The amount of the fees awarded was based on a reasonable number of hours worked at a reasonable hourly rate. The supporting evidence was thoroughly examined by the District Court. R. pp. 172-186.

Indeed, after thoroughly reviewing the amount requested and the supporting documents, the District Court reduced the amount of attorney's fees requested by Lunneborg. In reducing the number of attorney hours, the District Court noted the deduction was not because "the hours were not spent on the case" and contrary to appellants' allegations, it was not because "any of the work was duplicative" or unnecessary. R. p. 179, L. 5-13. Rather, it determined that a 10% reduction was appropriate, thus reducing the amount of the attorney's fees requested by $21,766.50. R. p. 180, L. 5-6. The Trial court reduced the fees by an additional $16,588.00 when it also reduced the hourly rate allowed for one of Plaintiff's attorneys despite the attorney's extensive experience and skills. R. p. 180, L. 16-25.

Importantly, Appellants fail to address the real reason the attorney's fees might be higher than other cases involving three-day trial – the bad conduct of the Appellants. Indeed, the Trial court emphasized several times that it was Defendants "bad conduct [that] cause more hours to be spent by Lunneborg's attorneys . . . [because] Lunneborg's attorneys had to work harder and expend more hours dealing with discovery abuses perpetuated by defendants, dealing with defendant MFL's bankruptcy" and because "there were volumes of defendants financial records that had to be poured over." R. p. 184, L. 1-4; p. 185. L. 7. The Trial court explained that the reason "the case did not resolve quickly was due to the Defendant actions throughout the litigation, first, with failing to comply with discovery rules, and second, with filing bankruptcy. There is a difference between recalcitrance (almost all adverse parties are recalcitrant) and actively obstructing your opponent and doing so by violating discovery rules and the rules under which you operate a corporation." R. p. 183, L. 13-18.

From a thorough review of the record, the award of attorney's fees should be affirmed because the Trial court correctly perceived the issue as one of discretion, it acted within the outer boundaries of its discretion, and it reached its decision by an exercise of reason. Therefore, the Trial court's award of attorney's fees was not an abuse of its discretion.

V. CONCLUSION

The appellants have failed to carry their burden on appeal. Indeed, Appellants' brief is devoid of any credible argument that the Trial court applied incorrect law. Additionally, appellants fail to provide this Court with any credible evidentiary grounds for reversing the Trial court. The Trial court painstakingly provided fact after credible fact in support of its decisions. Regardless of whether this Court may have weighed the evidence differently, "the findings made by the trial judge [may] not be set aside unless clearly erroneous." *Sun Valley Shamrock Res., Inc. v. Travelers Leasing Corp.*, 118 Idaho 116, 118, 794 P.2d 1389, 1391 (1990). Thus, to succeed on appeal, appellants had to present evidence sufficient to establish that the trial court's finding were unreasonable. Appellants did not provide any credible argument or facts sufficient to support such a finding. Based on the foregoing the decisions of the trial court should be upheld in their entirety.

DATED this 26th day of December, 2017.

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CERTIFICATE OF SERVICE

I certify that on the 26th day of December, 2017, I caused two true and correct copies of the foregoing RESPONDENT'S BRIEF to be forwarded, with all required charges prepaid, by the method(s) indicated below, to each of the following person(s):

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