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IN THE UTAH COURT OF APPEALS

MELVIN J. HUNT, Plaintiff and Appellant, vs. ALBERT E. HUNT, ZERA A. HUNT, and DOUGLAS J. HANKS, Defendants and Appellees.	Case No. 20041068-CA

BRIEF OF APPELLANT

APPEAL OF THE JULY 7, 2004 RULING DENYING PLAINTIFF'S REQUEST FOR JUDICIAL DISSOLUTION OF GOLD STREAM CORPORATION, ENTERED IN THE FOURTH DISTRICT COURT, UTAH COUNTY, PROVO DEPARTMENT, THE HONORABLE GARY D. STOTT PRESIDING.

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

TABLE OF AUTHORITIES

Cases

Utah Code Annotated (2004)

BRIEF OF APPELLANT

I. INTRODUCTION

The trial court erred as a matter of law when it concluded that four patented mining claims held by Gold Stream Corporation (hereinafter "GSC") were properly transferred to Appellee Douglas J. Hanks. This Court should therefore find that the conveyance of the mining claims to Appellee Douglas J. Hanks was invalid and therefore void and remand the matter to the trial court for judicial dissolution.

II. JURISDICTION AND NATURE OF THE PROCEEDINGS

This is an appeal from a July 7, 2004, Ruling of the Fourth District Court, Utah County, State of Utah, (Judge Gary D. Stott) denying Plaintiff/Appellant's Request for Judicial Dissolution of GSC. This Court has jurisdiction pursuant to Utah Code Annotated § 78-2a-3(2)(j) (2004).

III. STATEMENT OF THE ISSUES AND STANDARDS OF REVIEW

1. Did the trial court err as a matter of law when it concluded that the patented mining claims were properly transferred to Appellee Douglas Hanks?

Questions of law are reviewed for correctness, giving no deference to the trial court. State v. Pena, 869 P.2d 932, 935 (Utah 1994).

2. Did the trial court's findings of fact support its conclusion of law that the mining claims were properly conveyed to Appellee Hanks?

Findings of fact must be found "sufficient to provide a sound foundation for the judgment . . . ." Forbush v. Forbush, 578 P.2d 518, 519 (Utah 1978).

IV. CONSTITUTIONAL PROVISIONS, STATUTES, AND RULES

Utah Code Ann § 16-10a-704
Action without meeting

. . .

(4) A shareholder action taken pursuant to this section is not effective unless all written consents on which the corporation relies for the taking of an action pursuant to Subsection (1) are received by the corporation within a 60-day period and not revoked pursuant to Subsection (3).

. . . .

(Complete text at **Addendum A**).

Utah Code Ann. § 16-10a-1202(1) (2004)
Sale of property requiring shareholder approval.

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the shareholders approve the transaction.

. . . .

(Complete text at **Addendum A**).

Utah Code Ann. § 16-10a-1402.
Authorization of dissolution after issuance of shares.

(1) After shares have been issued, dissolution of a corporation may be authorized in the manner provided in Subsection (2).
(2) For a proposal to dissolve the corporation to be authorized:
(a) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders;

. . . .

(Complete text at **Addendum A**).

Utah Code Ann. § 16-10a-1405
Effect of Dissolution

(1) A dissolved corporation continues its corporate existence but may not

carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) distributing its remaining property among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

. . . .

(Complete text at **Addendum A**).

Utah Code Ann. § 16-10a-1406.
Disposition of known claims by notification.

(1) A dissolved corporation may dispose of the known claims against it by following the procedures described in this section.

(2) A dissolved corporation electing to dispose of known claims pursuant to this section may give written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:

(a) describe the information that must be included in a claim;

(b) provide an address to which written notice of any claim must be given to the corporation;

(c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved corporation must receive the claim; and

(d) state that unless sooner barred by any other state statute limiting actions, the claim will be barred if not received by the deadline.

(Complete text at **Addendum A**).

Utah Code Ann. § 16-10a-1407
Disposition of claims by publication.

(1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

. . . .

(4) (a) For purposes of this section, "claim" means any claim, including claims of this state, whether known, due or to become due, absolute or

contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(Complete text at **Addendum A**).

Utah Code Ann. § 16-10a-1421
Procedure for and effect of administrative dissolution

. . . .

(3) (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved under this section continues its corporate existence but may not carry on any business except:

(i) the business necessary to wind up and liquidate its business and affairs under Section **16-10a-1405**; and

(ii) to give notice to claimants in the manner provided in Sections **16-10a-1406** and **16-10a-1407**.

. . . .

(Complete text at **Addendum A**).

Utah Code Ann. § 16-10a-1430(2)
Grounds for judicial dissolution.

(2) A corporation may be dissolved in a proceeding by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

. . . ; or

(d) the corporate assets are being misapplied or wasted;

. . . .

(Complete text at **Addendum A**).

V. STATEMENT OF THE CASE

On February 11, 2002, Appellant Melvin J. Hunt filed a complaint against Albert E. Hunt, Zera A. Hunt, and Douglas J. Hanks in the Fourth Judicial District of Utah in Provo, in order to obtain judicial dissolution of Gold Stream Corporation (herein after

GSC). (R. 12-17). On or about April 27, 2003, Appellees Albert Hunt and Zera Hunt signed a power of attorney form allowing Appellee Douglas J. Hanks to act on their behalf in respect to the Melvin J. Hunt complaint. Ex. 37. On April 22, 2002 Appellee Douglas Hanks filed an answer in response to the complaint on behalf of himself and Albert and Zera Hunt. (R. 18-21). An amended complaint was filed by Appellant on May 1, 2003. (R. 42-48). A bench trial was held on April 6, 2004 wherein Appellee Hanks represented himself and the other two Appellees pro se. (R. 482 at 1-2).

On July 7, 2004, the trial court entered judgment in favor of Appellees Hanks, A. Hunt and Z. Hunt. (R. 361-362). A modified judgment was issued by the trial court on July 13, 2002. (R. 363-364). Appellant filed a Motion to Amend Judgment and Reconsider Ruling on July 16, 2004. (R. 368-373). On July 26, 2004, Appellant filed a motion for a new trial. (R. 407-408). The motion for a new trial was denied on September 14, 2004. (R. 450-452).

Appellant filed a notice of appeal on November 30, 2005. (R. 464). The case was transferred to the Utah Supreme Court on the December 9, 2004, and then transferred back to the Utah Court of Appeals on December 10, 2004.

Appellee Hanks filed a Response to Appellant's Docketing Statement and Motion for Summary Disposition on December 30, 2004. (**Addendum B**). Appellant stipulated to Defendant/Appellee's Motion for Summary Disposition and filed a Memorandum in Support of the stipulation on January 6, 2005. (**Addendum C**). The Court of Appeals denied the Motion and Stipulation on February 9, 2005.

VI. STATEMENT OF FACTS

1. On July 1, 1963, GSC was incorporated in the state of Utah. The original incorporators were Wilford Hunt, Albert Hunt, Melvin Hunt, and Sherald James. (R. 74); Ex. 22. The documentation for the formation of the corporation consisted of the Articles of Incorporation, a Stockholders Agreement, and a Compensation Agreement. (R. 359-360 ¶ 1).
2. The Compensation Agreement for GSC stated that all monies advanced by a shareholder to the corporation above what other stockholders were able to contribute would be treated as a loan. (R. 56-63); Ex. 59.
3. The Articles of Incorporation set forth a board of directors of five (5) members. (R. 75); Ex. 22 p. 5. The Articles also stated that the disposition of all or part of the corporate assets could be effectuated only upon the affirmative vote of a majority of the issued stock at a regular or special meeting called for such purpose. (R. 73); Ex. 22 p. 7.
4. GSC was started with limited financial resources and with the idea that all of the original incorporators would be responsible for personal work and financial contributions to advance the corporation. For several years Appellant Melvin J. Hunt was the primary person conducting actual mining and sales operations for the corporation. (R. 359 ¶ 4).
5. In the early 1970's Appellee Douglas J. Hanks became a shareholder in GSC, first receiving shares as a finder's fee and then inheriting his father's shares when his father passed away. (R. 482 at 270:25-271:12).

6. In 1987 Appellee Hanks negotiated an agreement on behalf of GSC granting the Nupetco Company the option to purchase certain mill tailings on the patented mining claims for $20,000. The sum was paid but the assay report had been misread, misrepresenting to Nupetco that there was more gold than actually existed. (R. 482 at 19:5-21).

7. The owner of Nupetco was Appellee Douglas Hanks' boss. Appellee Hanks' boss demanded that Appellee Hanks repay the $20,000 or he would lose his job. (R. 482 at 97:18-23). No corporate records indicate what happened to the $20,000 that was actually paid by Nupetco to GSC. (R. 482 at 19:22-25).

8. On April 27, 1989, GSC held a meeting during which it approved assumption of the debt Appellee Hanks owed to Nupetco. Appellee Zera Hunt made the motion to assume the debt and Appellee Albert E. Hunt seconded the motion. Appellee Hanks abstained. Ex. 7.

9. At the September 1, 1989, GSC annual shareholders meeting Appellee Hanks proposed that the assets of the corporation, consisting of the mining claims, be sold or leased for not less than $1,150,000.00. Ex. 1 p.3.

10. Appellee Albert E. Hunt, as President of the corporation and in his own personal capacity thereafter, began to assume control of the company and borrowed from the Appellant Melvin J. Hunt and his father, Wilford Hunt, all of the corporate documents that they had in their possession, including the records that Appellant, Melvin J. Hunt had maintained as company Secretary; their stock certificates, and particularly the agreement (compensation agreement). The documents borrowed have never been

returned to Appellant Melvin J. Hunt or his father, Wilford Hunt, and their present location is unknown, Appellee Albert E. Hunt being unable to disclose their location. (R. 358-359 ¶ 7).

11. On February 1, 1991, Appellee Albert E. Hunt signed a promissory note on behalf of GSC agreeing to pay Appellee Hanks $24,675.00 with an annual interest rate of 5% to satisfy the Nupetco debt. Ex. 9.

12. In January of 2002, GSC held two meetings. The first meeting, held on January 17, 2002, addressed the questions of dissolution and the transfer of the mining claims, but neither issue was voted on. (R. 482 at 57: 15-23; R. 482 at 203: 4). The meeting concluded with an agreement to meet again in March to further discuss these questions. (R. 482 at 57: 15-19).

13. Evidence introduced by Appellee Douglas Hanks suggests that he received the mining claims 3 days later on January 20, 2002. The evidence states that the mining claims had been transferred to Appellee Hanks in order to fulfill the promissory note signed by Appellee Albert E. Hunt on behalf of GSC. (R. 482 at 209: 13-14); Ex. 9.

14. The mining claims were given to Appellee Hanks in preference to other debts and obligations owed by the corporation. (R. 482 at 60-61: 22-25, 1-21).

15. In addition, Appellee Hanks received the mining claims before the board of directors of GSC voted on a proposed transfer. (R. 482 at 209: 13-14); Ex. 9.

16. On January 23, 2002, a second shareholders meeting was convened. At this meeting board elections were held and Appellees Albert Hunt, Zera Hunt, and Douglas J.

Hanks, as well as Marilyn Hunt and Dilworth Strasser, were elected as directors for GSC.

17. After the election Appellee Hanks quickly moved that the assets of the corporation be liquidated and the ownership portion of the patented mining claims be conveyed to himself, Appellee Hanks, as full and final payment of monies owed to him. Ex. 4. The motion passed and was carried. Finally, Appellee Hanks proposed and Appellee Zera Hunt seconded a motion that GSC be dissolved. This motion also carried. (R. 482 at 58-59: 22-25, 1-23); Ex. 4 p. 3-5.

18. That same day, January 23, 2002, GSC held a board meeting and resolved that the patented mining claims be transferred to Appellee Hanks. Notice of the resolution was given to the stockholders shortly thereafter. (R. 482 at 60: 1-13).

19. During the January 23, 2002, meeting no reference was made to the value of the assets of the corporation, neither was there a reference made to the Compensation Agreement. The shareholders were not made aware of GSC's failure to pay its corporate taxes for 2001 and its failure to file an annual report. (R. at 60:22-61:21).

20. The only reference to any of the debts and obligations owed by GSC was a reference to monies in compensation for the Nupetco debt which Appellee Hanks said GSC owed to him. (R. 482 at 60: 14-21; R. 482 at 206: 11-14).

21. On February 13, 2002 the State of Utah dissolved GSC by administrative action for failing to pay its corporate taxes and for failing to file its annual report for the year 2001. (R. 258 ¶ 9); Ex. 54.

22. On March 1, 2002, Appellee Hanks, acting as secretary of GSC, filed Articles of Dissolution with the state of Utah. (R. 482 at 62: 7-9); Ex. 62. However, due to the fact that the corporation had already been dissolved by administrative action, the Articles of Dissolution were not processed. (R. 482 at 62: 11-14); Ex. 54.

23. On March 6, 2002, Appellee Hanks filed Articles of Incorporation for a new corporation called Corporate Office Group (herein after "COG"). Ex. 57 p. 4. Appellees Hanks and Zera Hunt were both listed as shareholders in COG, owning 35% and 5% of the shares respectively. Dilworth Strasser was listed as the primary stockholder of COG owning 50% of the shares. Ex. 57 p. 2.

24. Approximately one month prior to the incorporation of COG, on the February 5, 2002, Appellees Albert Hunt and Douglas Hanks, acting as directors of GSC, conveyed the four patented lode mining claims to COG for the nominal sum of ten dollars. Ex. 58. The Appellees made this transaction before they incorporated COG. Ex. 57 p. 1.

25. No evidence was ever presented that GSC owed any debts or obligations to COG. No evidence was presented that COG paid anything other than nominal consideration for the patented mining claims.

26. There is no evidence that a proposal was ever sent to the shareholders regarding the transfer of the mining claims to COG, and there is no evidence that a vote was ever taken by the shareholders approving the transfer of the mining claims to COG. Finally, no evidence was ever presented showing that the shareholders of GSC had any knowledge whatsoever of the transfer of the mining claims to COG until a certain point in these proceedings. (R. 482 at 62: 19-25).

27. The record contains no evidence of an official appraisal of the mining claims in connection with their attempted transfer.

VII. SUMMARY OF THE ARGUMENT

The findings of fact from the trial court do not sufficiently support the trial court's conclusion that the transfer of the mining claims was valid. The court merely concluded that the transaction was valid without drawing any connection to its factual findings. Furthermore, the trial court entirely omitted any reference to the value of the mining claims, other creditors, the selection of the Board of Directors, and the basis of Appellee Hunt's alleged priority right. These and other findings are essential to a properly supported conclusion that the claims were lawfully transferred.

The findings of fact do, however, support Appellate Hunt's grounds for judicial dissolution. The findings of facts include evidence of illegal or unethical actions taken by the Appellees and the misapplication of the mining claims. The trial court failed to show that the findings of fact represented the sentiment of the trial court in regards to its conclusions. After noting the unavailability of the corporate documents critical to the proof of Appellant's case, and acknowledging Appellees' culpability in the unavailability of the documents, the trial court acted on a presumption in *favor* of Appellee by finding that "Plaintiff failed to meet his burden of proof." Appellant maintains that the trial court thereby abused its discretion and erred as a matter of law.

The lower court also erred as a matter of law when it concluded that the patented mining claims were properly transferred. Appellee Hanks received the mining claims on January 20, 2002, three days prior the date that GSC met to vote on the conveyance of the

claims. Therefore, Appellee Hanks improperly transferred the mining claims to himself without board or shareholder approval.

Furthermore, Appellee Hanks' orchestration of the conveyance of the claims to COG was not lawful. Documents submitted to the court indicate that GSC transferred the mining claims to COG *after* the mining claims had allegedly been transferred to Appellee Hanks. If GSC no longer owned the claims, it had no power to convey them. Therefore, the attempted conveyance of the mining claims to COG is tacit admission that the conveyance to Appellee Hanks was invalid.

Additionally, the transfer of the mining claims to COG was done outside of a meeting, kept hidden from the shareholders, never voted on, and only recently discovered. If the conveyance to Appellee Hanks was invalid and GSC still owned the claims, then GSC violated Utah law and breached its duty to its shareholders when it failed to put the transfer before them for a vote and subsequently concealed the transfer.

The transfer was further invalid because the Appellees participated in the transactions. The Supreme Court of Utah and the Utah Court of Appeals support the principle that directors who have a personal financial interest in a corporate transaction cannot bind the corporation. The GSC board of directors could not approve the transfer to COG because three of the five directors were also major shareholders in COG.

Furthermore, Appellee Hanks proposed the transfer and signed the quit claim deed transferring the claims to COG. Appellee Hanks was also shareholder in COG and because of his personal interest in the mining claims he did not have the authority to

conduct the transaction and therefore could not bind GSC. For these reasons the mining claims could not have been properly transferred to COG.

Finally, the trial court erred in concluding that the transfer was proper because the mining claims were given to Appellee Hanks in preference to other debts and were arguably in excess of the amount allegedly owed to Appellee Hanks. As members of the board of directors, Appellees pushed the transaction through without attempting to appraise the value of the mining claims. They did this with a knowledge that the claims were worth more than $24,675.00 plus interest. GSC had numerous debts and obligations, yet *all* of the patented mining claims were transferred to satisfy one obligation ($24,675.00 plus interest); an obligation to a director. Commitments left unpaid included obligations to corporate shareholders and corporate taxes owed to the State of Utah.

The trial court erred in concluding that the transfer was proper because the transaction did not follow Utah Law and violated Utah statutes. Full disclosure of the corporation's debts and obligations was never made to GSC shareholders. The mining claims were conveyed twice to two different entities without shareholder approval. Furthermore, Appellee Hanks participated in each transaction as a director and as an interested party. The conveyance of the mining claims to Appellee Hanks is thus invalid and should be reversed.

VIII. ARGUMENT

A. The trial court's findings of fact do not support its conclusions of law.

The present case should be reversed because the trial court failed to adequately support its conclusions of law. Indeed, Appellee Hanks himself filed a Motion for Summary Disposition attacking the trial court's judgment on the basis of "manifest error." (**Addendum B**). The Utah Court of Appeals has established that "the findings [of fact] must themselves be sufficient to provide a sound foundation for the judgment, and conversely . . . any proper judgment can only be entered in accordance with the findings." Sampson v. Richins, 770 P.2d 998, 1003 (Utah 1989), quoting Forbush v. Forbush, 578 P.2d 518, 519 (Utah 1978). Conclusions of law that do not "conform to the pleadings and the evidence" in support of the judgment are not regarded as sufficient. Sampson 770 P.2d 1003, quoting Pearson v. Pearson, 561 P.2d 1080, 1082 (Utah 1977).

In Sampson v. Richins the both the plaintiff and the defendant appealed the trial court's ruling alleging that the findings of fact did not support the conclusions of law. Sampson 770 P.2d 1001. Before making its ruling the Utah Court of Appeals stipulated that it could not overturn the trial court unless the findings of fact did not "clearly indicate the mind of the court" and unless the findings did not "resolve all issues of material fact necessary to justify the conclusions of law and judgment entered thereon." See Sampson, at 1003 (Utah 1989); quoting Parks v. Zions First Nat'l Bank, 673 P.2d 590, 601 (Utah 1983). The Sampson court held that the findings of fact did support the trial court's conclusions in relation to both parties and declined to overturn the trial court. Sampson 770 P.2d 1009. Unlike the Sampson findings, the findings of fact in the current case do not "clearly indicate the mind of the court" or "resolve all issues of material fact necessary to justify the conclusions of law and judgment entered thereon."

1. The trial court's findings of fact do not support the conclusion that GSC properly transferred the mining claims to Appellee Hanks.

The trial court's findings of fact do not support the conclusion that GSC properly transferred the mining claims to Appellee Hanks. In order to establish the validity of the transfer, the findings would need to establish that the conveyance followed proper procedure and that Appellee Hanks did not have personal interest in the transaction. Sampson at 1003 (holding that conclusions of law must conform to the pleadings and the evidence to support the judgment); Farr v. Brinkerhoff, 829 P.2d 117, 120-121 (Utah 1992) (holding that to properly transfer substantially all of a corporation's assets the board of directors must propose and the shareholders must approve of the transfer); Davis v. Heath Dev. Co., 558 P.2d 594, 596 (Utah 1976); Utah Code Ann. § 16-10a-1202(1) (2004).

In summary, the trial court found that: 1) Gold Stream Corporation ("GSC") was incorporated as documented in the Articles of Incorporation, the Stockholder's Agreement, and the "compensation agreement"; 2) GSC was a closed corporation with stated limitations on the transfer of shares; 3) the Corporation was authorized to issue 45,000 shares, of which each of the five original incorporators received one-fifth, or 9,000 shares; 4) GSC operated a mining property in the state of Montana, and for the first several years Melvin J. Hunt was the primary person conducting mining operations and sales procedures; 5) the five shareholders met regularly, with Plaintiff acting as secretary; 6) the original officers included Albert E. Hunt and President and Melvin J. Hunt as Secretary. Defendant Albert E. Hunt secured stock certificate forms "which were filled

out and signed and delivered to each of the five original shareholders, with each stock certificate being for 9,000 shares"; 7) "Albert E. Hunt, as President of the corporation and in his own personal capacity thereafter, began to assume control of the company" and subsequently borrowed and lost corporate documents including the records that Melvin J. Hunt had maintained as company Secretary: stock certificates and particularly the compensation agreement; 8) the corporation variously continued its operations, including temporary relationships with Brigham Young University and the DALL foundation, which never did become shareholders; and 9) based on Utah state records, GSC failed in 2001 to pay its corporate taxes and to file its annual report as required by law. The state of Utah dissolved the corporation by administrative action. (R. 357-360).

Finding of Fact 4 acknowledges that Melvin J. Hunt was the primary provider of labor and management to the corporation for several years. Nowhere does the court find any obligations owing from Gold Stream Corporation to Appellee Douglas J. Hanks. In fact, Appellee Hanks is *not once mentioned* in the Findings of Fact. Based upon that foundation, the trial court inexplicably concluded, "that fourth *(sic.)* patented mining claims were properly transferred to Mr. Hanks for obligations due and owing to Mr. Hanks by Gold Stream Corporation." (R. 358 at ¶ 10). The trial court then attempted to justify its unsupported conclusion by further concluding that "Plaintiff failed to meet his burden of proof to establish its claims set forth in the Complaint filed herein," declaring itself "unable to find from a preponderance of the evidence that Plaintiff is entitled to the relief requested." (R. 358 at ¶ 11) This in spite of Finding of Fact 7, in which the trial

court explicitly acknowledged Appellee Albert E. Hunt's responsibility for the unavailability of critical corporate records. (R. 359 at ¶ 7).

Furthermore, the trial court failed to make the findings essential to support its conclusions. Among other omissions, the trial court failed to find that Appellee Hanks was a creditor of GSC. The court made no findings regarding other potential creditors of GSC with the exception of Appellant, whom the court recognized in its findings but ignored in its conclusion. The court did not address the totality of corporate debt or priority among creditors. The court failed to rebut the presumption that since the recognized debt to Appellant pre-dated the unrecognized debt to Appellee Hanks, Appellant's debt had priority. Furthermore, the trial court made no finding as to the value of the four patented mining claims, whether this value exceed the corporate debt, and how any excess value should be distributed among the shareholders.

The court's sole finding regarding the shareholder's percentage ownership in GSC was that each shareholder received an initial distribution of 9,000 shares. Thus, the findings of fact can support no other conclusion than that the shareholders had equal stock in the company, which directly opposes the court's conclusion that the shares were properly transferred. The allegation that Appellee Hanks owned a substantial majority of the corporate shares constitutes Appellee's entire justification for seizing control of the corporation, stacking the Board of Directors, and ramrodding the transfer to himself of $1,150,000 of corporate assets in payment for an alleged $24,675 debt. Nevertheless, one searches the trial court's findings in vain for any mention of a final distribution of shares—a contested issue of material fact essential to any determination of the propriety

of the mining claim transfer. The court's findings additionally omitted the legality of the final Board member selection, which also turns on the distribution of shares and is critical to the validity of the conveyance of the claims to Appellee Hanks.

Ultimately, the trial court did not make a single finding in support of the transfer yet still ruled that it was proper. (R. 358 ¶ 10). The trial court did recognize the Articles of Incorporation and thus accepted a procedure for transferring corporate assets. The procedure states that a majority of the shareholders must approve of any transfer of corporate assets. (R. 360 ¶ 1; R. 73). Appellee Hanks did not provide any evidence of the January 20, 2002 transfer of the mining claims to Appellee Hanks or the secret February 5, 2002 transfer of the claims to COG. Yet the trial court still concluded that the transfer was proper. (R. 482 at 62: 19-24); Ex. 4; Ex. 9; Ex. 58. In so doing, the trial court committed legal error.

2. The trial court's findings supports Appellate Hunt's request for judicial dissolution.

The trial court's findings do support the proposition that GSC should be judicially dissolved. Utah Code Annotated § 16-10a-1430 establishes the grounds for judicial dissolution. The statute states in part that:

> (2) A corporation may be dissolved in a proceeding by a shareholder if it is established that: . . . (b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent; . . . (d) the corporate assets are being misapplied or wasted.

The findings from the trial court provide support for Appellant Hunt's petition for judicial dissolution of GSC.

The trial court's findings support the suggestion that the directors of GSC were acting in an illegal or fraudulent manner. (R. 358-359 ¶ 7); Utah Code Ann. § 16-10a-1430(2) (2004). First, the trial court found that as Appellee A. Hunt began to assume to control of GSC that he took from Appellant and his father all of the corporate documents that they had, including their stock certificates, and never returned them. (R. 358-359 ¶ 7). By withholding access to the records the Appellees successfully hid from Appellant the transfer of the mining claims to COG. Ex. 58.

Next, trial court's findings of fact effectively recognize that the Appellees misapplied the mining claims in awarding them exclusively to Appellee Hanks in preference to Appellant and other creditors. The trial court found that the compensation agreement signed by the original shareholders was one of three documents that constituted the formation of the corporation. (R. 359-360 ¶ 1). The compensation agreement allowed the original shareholders to be reimbursed for all money lent to the corporation. Ex. 59.

The trial court acknowledged Appellant's personal work and other contributions to GSC when it found that Appellant, in the early years of GSC, was the primary person working and contributing the operation of the mines. (R. 359 ¶ 4). By acknowledging Appellant's contributions, for which he had never been paid, and by recognizing the Compensation Agreement the trial court effectively found Appellant to be a creditor of GSC. Ex. 24 p. 1-2; Ex. 25. The court inherently recognized the State of Utah as a creditor of GSC when it found that the corporation had suffered an administrative dissolution for non-payment of taxes. (R. 258; Ex. 54). Conversely, the trial court failed

to find that Appellee Hanks was a creditor of GSC. Even if GSC did assume the $20,000 debt to Nupetco, Appellee Hanks was not the only creditor of GSC and the application of the mining claims to him alone was a misapplication of corporate assets.

B. The trial court erred as a matter of law when it concluded that GSC properly transferred the mining claims because the Appellees did not follow proper procedure and engaged in self-dealing.

Appellant's position that the trial court erred as a matter of law rests on two common-sense principles supported by well-settled Utah Court of Appeals and Utah Supreme Court authority. The *first* proposition is that the sale, lease, exchange, or disposal of substantially all of a corporation's property is not proper unless the board of directors proposes and the shareholders approve the transaction. Farr 829 P.2d at 120-121; Utah Code Ann. § 16-10a-1202(1). The *second* principle is that the director who has an interest in a transaction does not have the authority to bind the corporation. Davis, 558 P.2d at 596.

The impropriety of the sale of corporate assets without shareholder approval, when it is required, is well established in Utah Law. The Utah Court of Appeals has held that the sale of substantially all of a corporation's assets, outside the ordinary course of business, requires shareholder approval before the transaction can be deemed valid. Farr 829 P.2d at 121; see also Utah Code Ann. § 16-10a-1202(1).

Additionally, Utah Supreme Court precedent establishes the illegality of directors preferring the payment of debts in which they have a personal stake, and the impropriety of director participation in transactions where the directors have a personal interest. Walker Bros. v. Eastern Motors Co., 262 P. 97, 98 (Utah 1927); Davis 558 P.2d at 596.

As a director of GSC, Appellee Hanks preferred payment to himself. Furthermore, he not only participated in, but initiated, orchestrated, and motivated, the transaction allegedly transferring the mining claims to himself and to COG. Therefore, the trial court acted improperly when it held that the conveyance of nearly all of GSC's remaining assets to Appellee Hanks was proper. (R. 358 ¶ 10).

1. The January 20, 2002 vote to transfer the patented mining claims to Appellee Douglas Hanks should have been invalidated because GSC did not approve the transfer.

The trial court's ruling should not survive review because Appellee Hanks received the mining claims before the shareholders could vote on the matter. (R. 482 at 209: 13-14); Ex. 9. This Court has established that the sale of substantially all of a corporation's assets requires shareholders approval and that a "failure to comply with . . . statutory requirements renders the conveyance . . . invalid." Farr 829 P.2d at 121; Utah Code Ann. § 16-10a-1202(1).

The Utah Court of Appeals held in Farr v. Brinkerhoff that the conveyance of corporate assets must comply with statutory authority. Farr 829 P.2d at 120. To properly convey substantially all of a corporation's assets the corporation's board of directors must (1) adopt a resolution recommending the conveyance, (2) provide a written or printed notice of the resolution to each shareholder entitled to vote, and (3) ensure that the resolution is adopted by the shareholders. Farr at 120-121; Utah Code Ann. § 16-10a-1202(1).

In Farr v. Brinkerhoff the president of EEB, a corporation, transferred out the corporation's only asset and sold it to a creditor in order to satisfy a personal debt. Farr at

120. EEB objected to the sale claiming an ownership interest in the conveyed asset. Id. This Court held that "where a corporation proposes to sell all [or virtually all] of its corporate assets, there must be an attempt to comply with [statutory authority] in order to render the contract for sale of the assets enforceable." Id. at 121; Utah Code Ann. § 16-10a-1202(1). The Farr court invalidated the transfer because the corporate president failed to obtain a board resolution, failed to provide evidence of a meeting wherein the transfer was even considered, and failed to obtain shareholder approval for the conveyance. Id. at 121.

In the current case the mining claims constituted virtually all of GSC's assets. Ex. 4 p. 1. The patented mining claims were the first and the most substantial of GSC's few assets. (R. 482 at 16-17: 19-25, 1). Evidence shows that on January 20, 2002, Appellee Hanks received the mining claims from GSC in payment of a debt. (R. 482 at 209:13-15); Ex. 9. However, Appellee Hanks has not provided any evidence that prior to that date the board of directors of GSC voted to transfer the mining claims to him. The only evidence of a vote concerning this transfer came *three days after* Appellee Hanks alleges mining claims had been transferred to him. (R. 482 at 60: 1-13).

Moreover, the trial court erred when it failed to invalidate the transfer because the conveyance of the corporate assets to Appellee Hanks was not approved by GSC shareholders. The GSC articles of incorporation state that the assets of the corporation cannot be sold or disposed of unless the majority of the shares approve the transaction. Ex. 22 p. 7. In the present case Appellee Hanks has not provided the court with any evidence that prior to January 20, 2002, the shareholders voted to transfer the mining

claims to him. Appellee Hanks' motion at the January 23 stockholders meeting to vote on the transfer was nothing more than an attempt to receive post hoc approval for a transfer he knew to be invalid. Ex. 4 p. 4. Because neither the board of directors nor the shareholders approved the January 20, 2002 transfer the trial court erred when it found that the mining claims had been properly transferred to Appellee Hanks.

2. The January 23, 2002 vote to transfer the mining claims should have been invalidated because Appellate Hanks engaged in self-dealing.

The trial court erred because it failed to hold that Appellee Hanks' participation in the satisfaction of a debt owed to him by GSC invalidated the conveyance of the mining claims. The Utah Supreme Court has said that when officers of a corporation "deal with [the] corporation in their own interests, that as to them the contract is void . . . ." Davis 558 P.2d at 596 (citations omitted). Such a contract is void because "any director who has an interest in a proposed transaction with the corporation cannot participate in such business to bind the corporation, either to make up the quorum or to vote on the proposal." Id.

In Davis v. Heath the Court invalidated the transfer of corporate assets to two corporate directors. Id. at 596. In Davis two board members from the Heath Development Company attempted to purchase property from the corporation. Id. at 595. The sale of the land was approved by a quorum of four board members, two of whom were the purchasers. Id. The Heath Corporation subsequently refused to recognize the conveyance and the Court upheld the refusal. Id. The Court held that transfer was invalid because the sale had not been approved by a quorum. Id. The Court reasoned that

because two members of the approving quorum were directors with a personal interest in the proposed transaction that they could not be in the quorum. Id. The Court held that they did not have the authority to bind the corporation. Id.

Here, Appellee Hanks' participation voided the conveyance because he was the driving force behind the conveyance of the patented mining claims. Appellee Hanks not only made the motion to transfer the mining claims to himself but he also orchestrated an election for a new board of directors, successfully adding to the GSC board Dilworth Strasser and Appellee Z. Hunt, both leading shareholders in COG, the eventual attempted transferee of the mining claims. Ex. 4 p. 4; Ex. 57.

The trial court erred in recognizing the transfer as valid because Appellee Hanks was Secretary of GSC when he made the motion to transfer. Id. As a director with an interest in the transaction Appellee Hanks could not legally participate, yet he made the proposal that he receive the mining claims. Appellee Hanks should have abstained from the motion and the vote to convey the mining claims to himself, just as he abstained when GSC voted to assume his debt to Nupetco. Ex. 7. Because he was an interested party his motion was improper and the vote invalid.

Additionally, Appellee Hanks provided no evidence that he ever received possession of the mining claims subsequent to the shareholder vote. The record does, however, show that on February 5, 2002, GSC transferred the mining claims to a different entity, COG. By failing to transfer the mining claims to Appellee Hanks the GSC board of directors effectively declared that the transfer of the mining claims to him was not

valid. GSC's February 5, 2002 transfer of the mining claims to COG was a further admission that the transfer to Appellee Hanks was invalid.

3. The February 5, 2002 transfer of the mining claims to COG was invalid under Utah Code Ann. § 16-10a-704 because GSC shareholders did not approve it and the Appellees again engaged in self-dealing.

The trial court erred by failing to find fault with the conveyance of the mining claims to COG. There is no evidence of a shareholder meeting or a vote to approve the transfer. Utah Code Ann. § 16-10a-704 specifies the conditions under which action may be taken without a meeting. Any action permissible at an annual or special meeting

> may be taken without meeting and without prior notice, if one or more consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted.

The transfer to COG took place without a meeting, and also without the required written consents. Without a finding of fact on the percentage ownership of shares, it is impossible to determine the number and identity of "the holders of outstanding shares having not less than the minimum number of votes" necessary to authorize the action. The history of share ownership subsequent to the initial distribution of 9,000 shares to each stockholder is one of the most hotly contested issues in this action.

This issue alone is sufficient to justify a judicial dissolution in order to protect the other shareholders from the machinations of Appellee Hanks, who as secretary had control of the corporate records, and of other Appellees including Albert E. Hunt. Indeed, a judicial dissolution may be entirely justified by the trial court's Finding of Fact 7 that "Albert E. Hunt, as President of the corporation and *in his own personal capacity*

thereafter, began to assume control of the company" that he subsequently "borrowed" from Appellant and Wilford Hunt "all of the corporate documents that they had in their possession, including the records that Melvin J. Hunt had maintained as company Secretary, their stock certificates and *particularly the agreement (compensation agreement)*," and that the documents have never been returned, "Albert E. Hunt being unable to disclose their location." (R. 359-58) (emphasis added). Whether or not Appellees maliciously took measures to conceal evidence harmful to their claims, the very difficulty of resolving contested issues such as share ownership in the absence of that evidence calls for supervision by the court.

It is uncontested, however, that GSC transferred the four patented mining claims to COG without a meeting, and without section 16-10a-704(1) written consent. Section 16-10a-704(4) provides that a "shareholder action taken pursuant to this section is not effective unless all written consents on which the corporation relies for the taking of an action pursuant to Subsection (1) are received by the corporation within a 60 day period." Therefore, in the absence of any evidence of the written consents, the non-meeting transfer of the mining claims to COG was and is invalid.

The February 5, 2002, transfer of the mining claims from GSC to COG is further invalid because: 1) the transfer was made prior to the incorporation of COG; 2) there is no evidence that the transfer ever received stockholder approval; 3) the leading shareholders of COG were on the board of directors for GSC; and 4) Appellee Hanks, despite his conflicts of interest, deeply involved himself in the transaction. Ex. 4 p. 3-4; Ex. 57 p. 2; Ex. 58.

Additionally, by failing to obtain shareholder approval for the COG transfer Appellee Hanks again failed to comply with the GSC articles of incorporation. Ex. 22 p. 7. In fact, Appellant only learned of this transfer after he received answers to his interrogatories in the present case, this despite being present when the shareholders dissolved GSC. (R. 482 at 62: 19-24); Ex. 4 p. 3-4.

Furthermore, there is no evidence to suggest that the board of directors of GSC ever considered transferring the mining claims to COG, nor is there any evidence to suggest that the GSC board of directors proposed to transfer the mining claims to COG. But even if the GSC board of directors had approved the transfer to COG they would have lacked the authority to bind GSC. Because three out of the five GSC directors were also major shareholders in COG, the GSC board could not form a voting quorum without engaging in self-dealing. Ex. 4 p. 4; Ex. 57 p.2; see Davis 558 P.2 at 596 (holding that directors who have an interest in a transaction cannot bind the corporation).

Additionally, the quit claim deed transferring the mining claims was not binding because Appellee Hanks engaged in self-dealing. Appellees Albert Hunt and Douglas Hanks signed the quit claim deed on the part of GSC to convey the patented mining claims to COG. Ex. 58. Appellee Hanks had a personal interest in the transaction because he was the second leading shareholder in COG. As a partial owner of COG, Appellee Hanks did not have the authority to bind GSC in conveying the mining claims. Davis 558 P.2d at 596; Ex. 57 p. 2.

The absence of shareholder approval, the violation of section 16-10a-704, the impermissibility of the GSC board of directors' approval of the transfer, and Appellee

Hanks' personal interest in the February 5 transaction nullified the conveyance of the mining claims to COG.

The Utah Supreme Court has ruled that a director of an insolvent corporation does not have the right to prefer the debt of a creditor "where a director of the corporation was liable as indorser, guarantor, or surety." Walker Bros. at 98; See also W.P. Mercantile Co. v. Mt. Pleasant Co-op., 42 P. 869 (Utah 1895) (holding that the bona fide debt of a director of a corporation may be paid in preference to the debt of another creditor); Hoggan v. Price River Irrigation Co., 184 P. 536, 542 (Utah 1919) (holding that directors are prohibited from preferring debts due to themselves).

C. The trial court erred in approving the transfer because the value of the mining claims exceeds the amount owed to Appellee.

The trial court erred in it decision because Appellee Hanks acted contrary to Utah law by orchestrating the transfer of a corporate asset of greater value than the debt owed. A director of a corporation cannot prefer himself in the payment of a corporate debt insofar as the payment exceeds the pro rata share of that which was properly payable. Walker Bros. 262 P. at 98.

In Walker Bros. v. Eastern Motors Co., the president of an insolvent corporation sold five cars and applied the sum of the sale to a bank note for which he was the indorser. Id. at 98-99. The Utah Supreme Court held that the action was illegal insofar as the payment exceeded the pro rata share which was properly payable. Id. at 99.

In the current case there is evidence that GSC had approved a debt to Appellee Hanks of $24,675 plus interest. Ex. 9. It is, however, undisputed the GSC owed money

to other GSC shareholders and to the State of Utah for unpaid taxes. (R. 358 ¶ 9). The assets available to GSC for the payment of debts consisted primarily of the mining claims. Ex. 4 p. 1. The mining claims were not appraised at the time of the trial, however at the September 1, 1989, GSC annual shareholders meeting Appellee Hanks proposed the assets of the corporation, consisting of the mining claims, be sold or leased for not less than $1,150,000.00. Ex. 1 p. 3. Therefore, the value of the mining claims, far exceed the amount due to Appellee Hanks and should have been distributed on a pro rata basis among various GSC creditors including Appellant and the State of Utah, as Appellee Hanks was well aware. Nevertheless GSC, at Appellee Hanks' instigation, preferred his debt, as a GSC director, above those of others. Furthermore, the value of the assets far exceed the amount of the debt. Accordingly, the trial court erred and its ruling should be overturned.

D. GSC's dissolution, including the transfer of the four patented mining claims to Appellee Hanks, violated Utah dissolution statutes and this matter should be remanded for judicial dissolution.

During the January 23, 2002, meeting Appellee Hanks moved that GSC be dissolved. Appellee Zera Hunt seconded the motion, which passed by shareholder vote. Utah Code Ann. § 16-10a-1402 authorizes the dissolution of a corporation after the issuance of shares. Section 1402(2)(a) requires that "the board of directors must recommend dissolution to the shareholders *unless* the board of directors determines that because of a conflict of interest or other special circumstances, it should make no recommendation and communicates the basis for its determination to the shareholders." (Emphasis added). Thus, under the statute, the board of directors must assess any

personal conflict of interest and disclose it to the shareholders before recommending dissolution. Board members subject to such a conflict or circumstances may not recommend dissolution to the shareholders.

Appellee Hanks' conflict of interest is beyond dispute. He had orchestrated circumstances so that upon dissolution of GSC he stood to receive the entire corporate assets—assets which he himself had recommended not be leased or sold for less than $1,150,000. Ex. 1. p.3. Therefore, under Utah statute, Appellee Hanks had no authority even to recommend, much less propose, the dissolution. Consequently, the dissolution and all associated transactions, most notably the transfer of the mining claims, were invalid. See Farr 892 P.2d at 121 ("failure to comply with statutory requirements . . . renders the conveyance . . . invalid.")

GSC was subsequently the subject of an administrative dissolution. The record indicates that on February 13, 2002, the State of Utah dissolved GSC. (R. 258); Ex. 54. The trial court found that "the state of Utah by administrative action dissolved the corporation" after GSC failed to pay corporate taxes and file an annual report as required by law. (R. 360 p. 3).

Utah Code Ann. § 16-10a-1421 provides that

> (3) (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved under this section continues its corporate existence but may not carry on any business except:
>
> (i) the business necessary to wind up and liquidate its business and affairs under Section 16-10a-1405; and
>
> (ii) to give notice to claimants in the manner provided in Sections 16-10a-1406 and 16-10a-1407.

GSC was obligated by virtue of its administrative dissolution to adhere to the provisions of sections 16-10a-1405, 1406, and 1407. However, GSC's dissolution-related transfer of its entire assets to an individual whom the trial court did not recognize as a creditor or majority stockholder violates Utah dissolution statutes 16-10a-1405 and 1421.

GSC's failure to give notice to creditors violated Utah notice statutes 16-10a-1406 and 1407. Utah Code Ann. § 16-10a-1405 provides, in relevant part, that a dissolved corporation

> may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:
> (a) collecting its assets;
> (b) disposing of its properties that will not be distributed in kind to its shareholders;
> (c) discharging or making provision for discharging its liabilities;
> (d) distributing its remaining property among its shareholders according to their interests; and
> (e) doing every other act necessary to wind up and liquidate its business and affairs.

GSC's transfer of the four patented mining claims to Appellee Hanks and to COG was not "appropriate to wind up and liquidate its business and affairs." GSC did not (a) collect its assets. A reasonable collection of assets would require an appraisal to determine the value of the assets. GSC did not (b) dispose of its properties that would not be distributed in kind to its shareholders. There is no evidence that the GSC Board even considered in kind distribution or any disposal of assets other than the transfer to Appellee Hanks. GSC did not (c) discharge or make provision for discharging its liabilities. Although the trial court's findings recognize Appellant and the State of Utah

as creditors (R. 360 pp. 2-3) GSC gave no consideration to liabilities other than the alleged debt to Appellee Hanks. GSC did not (d) distribute its remaining property among its shareholders according to their interests. The transfer of the mining claims to Appellee Hanks ignored the interests of all other shareholders. Therefore, this court should void the transfer of the mining claims and remand this matter for judicial dissolution conducted in compliance with Utah Code Ann. § 16-10a-1405.

Utah Code Ann. § 16-10a-1406 provides for the disposition of known claims by notification and Utah Code Anne § 16-10a-1407 provides for the disposition of claims by publication. There is no evidence that GSC attempted either notification or publication. Therefore, this court should void the transfer of the mining claims and remand this matter for judicial dissolution conducted in compliance with Utah Code Ann. §§ 16-10a-1406 and 1407.

IX. CONCLUSION

This Court should reverse the trial court's judgment that the four patented mining claims owned by GSC were properly transferred to Appellee Douglas Hanks and remand this matter to the trial court for judicial dissolution as provided by Utah Code Ann. § 16-10a-1430(2).

DATED this 25th day of August, 2005.

FILLMORE SPENCER LLC

Mark D. Stubbs
Attorney for Appellant

CERTIFICATE OF SERVICE

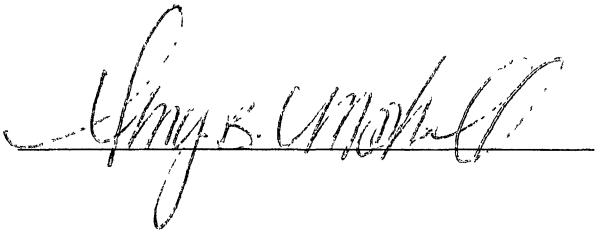
I certify that on the 25 day of August, 2005, I caused a true and correct copy of the foregoing **BRIEF OF APPELLANT** to be sent by the method(s) indicated below to the following:

Douglas J. Hanks
51 North 600 East
Centerville, UT 84014
:Defendant

- ☐ Hand Delivered
- ☐ First Class Mail
- ☐ Facsimile
- ☐ UPS

Zera A. Hunt
10171 Golden Sand Place
South Jordan, UT 84095-2430
:Defendant

Albert E. Hunt
233 East 900 North
Bountiful, UT 84010-4631
:Defendant



ADDENDUM A

16-10a-704. Action without meeting.

(1) Unless otherwise provided in the articles of incorporation and Subsection (5), and subject to the limitations of Subsection **16-10a-1704**(4), any action which may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if one or more consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take the action at a meeting at which all shares entitled to vote thereon were present and voted.

(2) (a) Unless the written consents of all shareholders entitled to vote have been obtained, notice of any shareholder approval without a meeting shall be given at least ten days before the consummation of the transaction, action, or event authorized by the shareholder action to:

(i) those shareholders entitled to vote who have not consented in writing; and

(ii) those shareholders not entitled to vote and to whom this chapter requires that notice of the proposed action be given.

(b) The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

(3) Any shareholder giving a written consent, or the shareholder's proxyholder, or a transferee of the shares or a personal representative of the shareholder or their respective proxyholder, may revoke the consent by a signed writing describing the action and stating that the shareholder's prior consent is revoked, if the writing is received by the corporation prior to the effectiveness of the action.

(4) A shareholder action taken pursuant to this section is not effective unless all written consents on which the corporation relies for the taking of an action pursuant to Subsection (1) are received by the corporation within a 60-day period and not revoked pursuant to Subsection (3). Action taken by the shareholders pursuant to this section is effective as of the date the last written consent necessary to effect the action is received by the corporation, unless all of the written consents necessary to effect the action specify a later date as the effective date of the action, in which case the later date shall be the effective date of the action. If the corporation has received written consents as contemplated by Subsection (1) signed by all shareholders entitled to vote with respect to the action, the effective date of the shareholder action may be any date that is specified in all the written consents as the effective date of the shareholder action. Unless otherwise provided by the bylaws, the writing may be received by the corporation by electronically transmitted facsimile or other form of communication providing the corporation with a complete copy thereof, including a copy of the signature thereto.

(5) Notwithstanding Subsection (1), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors.

(6) If not otherwise determined under Sections **16-10a-703** or **16-10a-707**, the record date for determining shareholders entitled to take action without a meeting or entitled to be given notice under Subsection (2) of action so taken is the date the first shareholder delivers to the corporation a writing upon which the action is taken pursuant to Subsection (1).

(7) Action taken under this section has the same effect as action taken at a meeting of shareholders and may be so described in any document.

16-10a-1202. Sale of property requiring shareholder approval.

(1) A corporation may sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property, with or without the good will, otherwise than in the usual and regular course of business, on the terms and conditions and for the consideration determined by the board of directors, if the board of directors proposes and the shareholders approve the transaction. A sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, other than in the usual and regular course of business and other than pursuant to a court order, in connection with its dissolution is subject to the requirements of this section, but a sale, lease, exchange, or other disposition of all, or substantially all, of the property of a corporation, with or without the good will, that is pursuant to a court order is not subject to the requirements of this section.

(2) If a corporation is entitled to vote or otherwise consent, other than in the usual and regular course of its business, with respect to the sale, lease, exchange, or other disposition of all, or substantially all, of the property, with or without the good will, of another entity which it controls, and if the shares or other interests held by the corporation in the other entity constitute all, or substantially all, of the property of the corporation, then the corporation shall consent to the transaction only if the board of directors proposes and the shareholders approve the consent.

(3) For a transaction described in Subsection (1) or a consent described in Subsection (2) to be authorized:

(a) the board of directors must recommend the transaction or the consent to the shareholders unless the board of directors determines that because of conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders with the submission of the proposed transaction; and

(b) the shareholders entitled to vote on the transaction or the consent must approve the transaction or the consent as provided in Subsections (5) and (6).

(4) The board of directors may condition the effectiveness of the transaction or the consent on any basis.

(5) The corporation shall give notice in accordance with Section **16-10a-705** to each shareholder entitled to vote on the transaction described in Subsection (1) or the consent described in Subsection (2), of the shareholders' meeting at which the transaction or the consent will be voted upon. The notice must:

(a) state that the purpose, or one of the purposes, of the meeting is to consider:

(i) in the case of action pursuant to Subsection (1), the sale, lease, exchange, or other disposition of all, or substantially all, of the property of the corporation; or

(ii) in the case of action pursuant to Subsection (2), the corporation's consent to the sale, lease, exchange, or other disposition of all, or substantially all, of the property of another entity (which shall be identified in the notice) the shares or other interests of which held by the corporation constitute all, or substantially all, of the property of the corporation; and

(b) contain or be accompanied by a description of the transaction, in the case of action

pursuant to Subsection (1), or by a description of the transaction underlying the consent, in the case of action pursuant to Subsection (2).

(6) Unless this chapter, the articles of incorporation, the initial bylaws or the bylaws as amended pursuant to Section **16-10a-1021**, or the board of directors acting pursuant to Subsection (4) requires a greater vote, the transaction described in Subsection (1) or the consent described in Subsection (2) must be approved by each voting group entitled to vote on the transaction or the

consent by a majority of all the votes entitled to be cast on the transaction or the consent by that voting group.

(7) After a transaction described in Subsection (1) or a consent described in Subsection (2) is authorized, the transaction may be abandoned or the consent withheld or revoked by the corporation's board of directors subject to any contractual rights or other limitation on the abandonment, withholding, or revocation, without further shareholder action.

(8) A transaction that constitutes a distribution is governed by Section **16-10a-640** and not by this section.

16-10a-1402. Authorization of dissolution after issuance of shares.

(1) After shares have been issued, dissolution of a corporation may be authorized in the manner provided in Subsection (2).

(2) For a proposal to dissolve the corporation to be authorized:

(a) the board of directors must recommend dissolution to the shareholders unless the board of directors determines that because of a conflict of interest or other special circumstances it should make no recommendation and communicates the basis for its determination to the shareholders; and

(b) the shareholders entitled to vote on the proposal must approve the proposal to dissolve as provided in Subsection (5).

(3) The board of directors may condition the effectiveness of the dissolution on any basis.

(4) The corporation shall give notice in accordance with Section **16-10a-705** to each shareholder entitled to vote on the proposal to dissolve, of the proposed shareholders' meeting at which the proposal to dissolve will be voted upon. The notice must state that the purpose or one of the purposes of the meeting is to consider the proposal to dissolve the corporation.

(5) The proposal to dissolve must be approved by each voting group entitled to vote separately on the proposal, by a majority of all the votes entitled to be cast on the proposal by that voting group, unless a greater vote is required by the articles of incorporation, the initial bylaws or the bylaws amended pursuant to Section **16-10a-1021**, or the board of directors acting pursuant to Subsection (3).

16-10a-1405. Effect of dissolution.

(1) A dissolved corporation continues its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs, including:

(a) collecting its assets;

(b) disposing of its properties that will not be distributed in kind to its shareholders;

(c) discharging or making provision for discharging its liabilities;

(d) distributing its remaining property among its shareholders according to their interests; and

(e) doing every other act necessary to wind up and liquidate its business and affairs.

(2) Dissolution of a corporation does not:

(a) transfer title to the corporation's property;

(b) prevent transfer of its shares or securities, although the authorization to dissolve may provide for closing the corporation's share transfer records;

(c) subject its directors or officers to standards of conduct different from those prescribed in Part 8;

(d) change:

(i) quorum or voting requirements for its board of directors or shareholders;

(ii) provisions for selection, resignation, or removal of its directors or officers or both; or

(iii) provisions for amending its bylaws or its articles of incorporation;

(e) prevent commencement of a proceeding by or against the corporation in its corporate name;

(f) abate or suspend a proceeding pending by or against the corporation on the effective date of dissolution; or

(g) terminate the authority of the registered agent of the corporation.

16-10a-1406. Disposition of known claims by notification.

(1) A dissolved corporation may dispose of the known claims against it by following the procedures described in this section.

(2) A dissolved corporation electing to dispose of known claims pursuant to this section may give written notice of the dissolution to known claimants at any time after the effective date of the dissolution. The written notice must:

(a) describe the information that must be included in a claim;

(b) provide an address to which written notice of any claim must be given to the corporation;

(c) state the deadline, which may not be fewer than 120 days after the effective date of the notice, by which the dissolved corporation must receive the claim; and

(d) state that unless sooner barred by any other state statute limiting actions, the claim will be barred if not received by the deadline.

(3) Unless sooner barred by any other statute limiting actions, a claim against the dissolved corporation is barred if:

(a) a claimant was given notice under Subsection (2) and the claim is not received by the dissolved corporation by the deadline; or

(b) the dissolved corporation delivers to the claimant written notice of rejection of the claim within 90 days after receipt of the claim and the claimant whose claim was rejected by the dissolved corporation does not commence a proceeding to enforce the claim within 90 days after the effective date of the rejection notice.

(4) Claims which are not rejected by the dissolved corporation in writing within 90 days after receipt of the claim by the dissolved corporation shall be considered accepted.

(5) The failure of the dissolved corporation to give notice to any known claimant pursuant to Subsection (2) does not affect the disposition under this section of any claim held by any other known claimant.

(6) For purposes of this section, "claim" does not include a contingent liability or a claim based on an event occurring after the effective date of dissolution.

16-10a-1407. Disposition of claims by publication.

(1) A dissolved corporation may publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice.

(2) The notice contemplated in Subsection (1) must:

(a) be published one time in a newspaper of general circulation in the county where the dissolved corporation's principal office or, if it has no principal office in this state, its registered office is or was last located;

(b) describe the information that must be included in a claim and provide an address at which any claim must be given to the corporation; and

(c) state that unless sooner barred by any other statute limiting actions, the claim will be barred if an action to enforce the claim is not commenced within five years after the publication of the notice.

(3) If the dissolved corporation publishes a newspaper notice in accordance with Subsection (2), then unless sooner barred under Section **16-10a-1406** or under any other statute limiting actions, the claim of any claimant against the dissolved corporation is barred unless the claimant commences an action to enforce the claim against the dissolved corporation within five years after the publication date of the notice.

(4) (a) For purposes of this section, "claim" means any claim, including claims of this state, whether known, due or to become due, absolute or contingent, liquidated or unliquidated, founded on contract, tort, or other legal basis, or otherwise.

(b) For purposes of this section, an action to enforce a claim includes any civil action, and any arbitration under any agreement for binding arbitration between the dissolved corporation and the claimant.

16-10a-1421. Procedure for and effect of administrative dissolution.

(1) If the division determines that one or more grounds exist under Section **16-10a-1420** for dissolving a corporation, it shall mail the corporation written notice of:

(a) the division's determination that one or more grounds exist for dissolving; and

(b) the grounds for dissolving the corporation.

(2) (a) If the corporation does not correct each ground for dissolution, or demonstrate to the reasonable satisfaction of the division that each ground does not exist, within 60 days after mailing the notice provided by Subsection (1), the division shall administratively dissolve the corporation.

(b) If a corporation is dissolved under Subsection (2)(a), the division shall mail written notice of the administrative dissolution to the dissolved corporation, stating the date of dissolution specified in Subsection (2)(d).

(c) The division shall mail a copy of the notice of administrative dissolution to:

(i) the last registered agent of the dissolved corporation; or

(ii) if there is no registered agent of record, at least one officer of the corporation.

(d) A corporation's date of dissolution is five days after the date the division mails the

written notice of dissolution under Subsection (2)(b).

(e) On the date of dissolution, any assumed names filed on behalf of the dissolved corporation under Title 42, Chapter 2, Conducting Business Under an Assumed Name, are canceled.

(f) Notwithstanding Subsection (2)(e), the name of the corporation that is dissolved and any assumed names filed on its behalf are not available for two years from the date of dissolution for use by any other person:

(i) transacting business in this state; or

(ii) doing business under an assumed name under Title 42, Chapter 2, Conducting Business Under an Assumed Name.

(g) Notwithstanding Subsection (2)(e), if the corporation that is dissolved is reinstated in accordance with Section **16-10a-1422**, the registration of the name of the corporation and any assumed names filed on its behalf are reinstated back to the date of dissolution.

(3) (a) Except as provided in Subsection (3)(b), a corporation administratively dissolved under this section continues its corporate existence but may not carry on any business except:

(i) the business necessary to wind up and liquidate its business and affairs under Section **16-10a-1405**; and

(ii) to give notice to claimants in the manner provided in Sections **16-10a-1406** and **16-10a-1407**.

(b) If the corporation is reinstated in accordance with Section **16-10a-1422**, business conducted by the corporation during a period of administrative dissolution is unaffected by the dissolution.

(4) The administrative dissolution of a corporation does not terminate the authority of its registered agent.

(5) (a) Upon the administrative dissolution of a corporation, the division shall be an agent of the dissolved corporation for purposes of service of process.

(b) Service of process on the division under this Subsection (5) is service on the dissolved corporation.

(c) Upon receipt of process under this Subsection (5), the division shall deliver a copy of

the process to the dissolved corporation at its principal office.

(6) A notice mailed under this section shall be:

(a) mailed first-class, postage prepaid; and

(b) addressed to the most current mailing address appearing on the records of the division for:

(i) the registered agent of the corporation, if the notice is required to be mailed to the registered agent; or

(ii) the officer of the corporation that is mailed the notice, if the notice is required to be mailed to an officer of the corporation.

16-10a-1430. Grounds for judicial dissolution.

(1) A corporation may be dissolved in a proceeding by the attorney general or the division director if it is established that:

(a) the corporation obtained its articles of incorporation through fraud; or

(b) the corporation has continued to exceed or abuse the authority conferred upon it by law.

(2) A corporation may be dissolved in a proceeding by a shareholder if it is established that:

(a) the directors are deadlocked in the management of the corporate affairs, the shareholders are unable to break the deadlock, irreparable injury to the corporation is threatened or being suffered, or the business and affairs of the corporation can no longer be conducted to the advantage of the shareholders generally, because of the deadlock;

(b) the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, oppressive, or fraudulent;

(c) the shareholders are deadlocked in voting power and have failed, for a period that includes at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired or would have expired upon the election of their successors; or

(d) the corporate assets are being misapplied or wasted.

(3) A corporation may be dissolved in a proceeding by a creditor if it is established that:

(a) the creditor's claim has been reduced to judgment, the execution on the judgment has been returned unsatisfied, and the corporation is insolvent; or

(b) the corporation is insolvent and the corporation has admitted in writing that the creditor's claim is due and owing.

(4) A corporation may be dissolved in a proceeding by the corporation to have its voluntary dissolution continued under court supervision.

ADDENDUM B

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Pro Se for Defendant and Appellee

IN THE UTAH COURT OF APPEALS

MELVIN J HUNT, Plaintiff and Appellant ALBERT E. HUNT, ZERA A. HUNT and DOUGLAS J. HANKS, Defendants and Appellees	Defendant / Appellee's response to Appellant's Docketing Statement and Defendant / Appellee's Motion for Summary Disposition Appellate No. 20041068 Trial Court No. 020400556

Comes now the Defendant / Appellee, Douglas J. Hanks, and objects to Plaintiff / Appellant's "Docketing Statement" as allowed in Rule 10, (a)(2)(B) "To reverse the order or judgement which is the subject on the basis of "manifest error".

The Defendant / Apellee responds to Appellant's "Docketing Statement" using the reference numbers as used and provided by the Appellant.

1. Appellee stipulates

2. Appellee stipulates

   A. Appellee stipulates

   B. Appellee stipulates

3. Appellee stipulates

4 JURISDICTION: Appellee stipulates (Appellant uses the number "4" twice.)

4. NATURE OF PROCEEDING: Appellee stipulates

5 SUMMARY OF FACTS is not true, constituting a manifest error.

A. The GSC was a closed corporation, but the stock was not all issued, and constitutes a manifest error. At that time there were five (5) equal shareholders, all of whom also comprised the Board of Directors. The statement that: "Each shareholder owned 9,000 shares of common stock, for a total of 45,000 shares" is not true . One half of the common shares were issued, with each shareholder receiving an equal amount of 4500 shares. (See attachment 1 for an example of the first Certificates issued in 1966) The balance was left as Treasury Shares, as provided in the "Stockholders Agreement" page 6, par.6. (See attachment 2) Certificates were issued later reflecting the issue of Treasury shares to enhance the noted stockholders position. (See attachment 3)

B. GSC was a closed corporation , Only half of the Authorized shares were issued at the time of the first issue. The "Stockholders" agreement was set aside by all five (5) of the original shareholders while supporting the intended issuance of shares to the Brigham Young University and to the Dal Foundation and other stock transactions during later years. The statement constitutes a "manifest error.

C. This statement is not true. The "Stockholders Agreement" allows for un-issued shares, but does not provide that the shareholders will forfeit their shares. (See attachment 2). FURTHER: there may have been comments between shareholders about the work and effort needed, but the Corporate records do not show any formal agreement. These statements constitute manifest errors.

D. There are no company records that support this allegation. This constitutes a manifest error. Comments or allegation by the Plaintiff / Appellant twenty nine years after the fact are not relevant, particularly since there have been no formal submissions made to the company for redress.

E. During this period of Time the Appelant, Melvin Hunt, was the secretary, and when he was unable to continue as Secretary he did not turn over any records showing the contributed work, effort or money contributed by any of the various shareholders. Any claims or submissions made twenty or more years later are not relevant. The statement that Sherald James only contributed $ 47.15 is not true and constitutes a manifest error. The Trial Transcript shows that Sherald James provided the initial funds to get the Gold Stream Corporation started. The funds provided by Sherald James were used to retire obligations owed by the shareholders of the Hunt Mining Company, of which Milton, Albert and Wilford Hunt were shareholders. (See attachment 4) One half of that those funds provided by Sherald James paid for his equal share. The other half of those funds provided were to be paid back to Sherald James by the Appellant Melvin Hunt. The Trial Transcript shows that Sherald James never received any return from the Appellant, Melvin Hunt, for his equal share in the new Gold Stream Corporation. So! The Hunt Brothers provided the mining claims for their shares. Sherald James provided funds for his share, the Appellant, Melvin Hunt, got his shares for free.

F. This statement is not based on fact, and is a manifest error.

G. This statement is not true and is a manifest error. The company records show that a price was paid by Albert Hunt for the shares acquired from the corporation in the form of time, labor and money provided by him, and as were authorized by the shareholders and the Directors, one of which was the Appellant Melvin Hunt. (See one of many examples, attachment 5)

FURTHER: The "Stockholders Agreement" (which was largely ignored by the shareholders) applied only to the original five (5) signatories to the Agreement and did not apply to the un-issued treasury shares. (See attachment 2)

H. This statement may be true, but those issues, if any, are not relative to the issues before the Court.

I. The Minutes of the Shareholders Meeting held November 3, 1965, (See Attachment 6) show that the Shareholders authorized an increase to the "Outstanding" shares, not a double increase as stated. Since the intent was to increase the "Outstanding" shares, not the "Authorized Shares". It would appear that there was no breach of fiduciary responsibility. FURTHER: The Officers and Stockholders all agreed to the increase. Such action, had it been accomplished, may have constituted a breach of fiduciary responsibility by all of the Shareholders, including the Appellant, Melvin Hunt. FURTHER: There is no record of any Certificates being issued or returned. The records, Minutes and Stock Ledger do not show that any stock certificates were ever issued for the intended authorized transfer of shares to the BYU or the Dal Foundation. The first Stock Certificates of record were issued eight months later. (See attachment 1) Appellant, Melvin Hunt, may have been the Secretary at that time, and as such would know if there were Shares issued to BYU and/or the Dal Foundation. The statement is a manifest error.

J. The statement that Albert Hunt benefited by the return of said shares is not reflected in the Stock Ledger, minutes or records anywhere. FURTHER: Corporate records show that in 1972, before the stock split and seven years after the Brigham Young situation, (See attachment 6, right column) Albert Hunt had 7312 shares. There fore the statement is not true and is a manifest error.

K. This statement is unsubstantiated, unfounded. Weather or not Alfred Hunt and /or Milton Hunt sold their shares is not relevant to the matter before the court. Who they sold to, or for how much was of no interest to the Corporation. particularly since the Share holders agreed that the "Stockholders Agreement" had been set aside. (See attachment 7, pg 2, item 1) The records and the stock ledger show that the statement that Milton Hunt and Alfred Hunt only owned 18,000 shares is unfounded and untrue, and is based on the untrue assumption that the original five shareholders each received 9,000 shares. (See attachments 1, 5, & 6) This also qualifies as a manifest error. FURTHER: the minutes show and the correspondence file shows that the existing shareholders were informed and offered the opportunity to participate in the sale of the Milton Hunt stock. (See attachment 7, pg 2, item 2 & 7a) The same was true with other offers to sell as well. However the records do not show where there has never been a written offer to sell or a written offer of acceptance as required by the "Stockholders Agreement".

L. This statement is untrue and is a manifest error. The Stock Transfer Ledger shows the history of each share of stock after the Appellee, Douglas Hanks, became Secretary of Gold Stream back in the early "70's" (See attachment 8) and shows that this statement is not true. The Appellant. Melvin Hunt, served on the Board of Directors after being elected by the shareholders, including the Appellee's, Albert Hunt, Zera Hunt, and Douglas Hanks, and never questioned the fact that Albert Hunt or any other shareholder was not a qualified shareholder. FURTHER: Such has been the case for the last thirty (30) years. The shareholders list has never been "distributed". It has been available for review by shareholders. Another manifest error.

M. This statement is not true, and qualifies as a manifest error. The Minutes and Corporation records show that the Shareholders authorized a change of the Authori- Shares from 45,000 to 5,000,000

to provide additional funds for continued operations. The Stock Ledger shows that all of the certificates of record were called in and new certificates issued on the basis of 25-1. The Appellants certificate number #4 for 5850 shares (see attachment 3) was re-issued as certificate 103 for 146,250 shares. (see attachment 8) FURTHER: The Corporate records do not show any complaints from any shareholder as a result of the stock split as authorized in the Shareholders Meeting of June 19, 1976, and in which Appellate Melvin Hunt' shares were voted to sustain said stock split. That was over twenty five (25) years ago.

N. The authorized increase of the Authorized Shares was done to provide a vehicle to raise additional funds for continued operation. The extra shares became treasury shares. The statement "providing that the five (5) original shareholders now owned 1,000,000 shares each" is untrue and qualifies the statement as a manifest error. FURTHER: assuming that the substantiated allegation were true, what would have been the point? The purpose of the change of "Authorized Shares" was to provide a way for additional corporate funds to be raised for continued operation.

O. This statement is not true. The Trial Judge ordered that the corporate records be provided to the Appellant. The Appellant knows from their review that the Stock Ledger does not substantiate such an allegation. This is a manifest error.

P. This statement is unsubstantiated and without merit. The Corporate Minutes and records show that a sales contract was entered into between Gold Stream and H & H Endeavers, (which name was changed to H & H Gold.) for the sale of corporate assets From Gold Stream to H & H Gold. H & H Gold filed for protection under the Bank ruptcy Law and the four patented mining claim assets, of the H & H Gold Corporation, were taken into receivership, along with other assets, by the Bankruptcy Trustee. Funds were then provided to the Trustee which enabled the Trustee to vacate any further interest in those assets in favor of Gold Stream.

Q. This statement is not true. The required notice was given to all shareholders of record which could be found. Almost eight two percent of the outstanding shares were represented at the shareholders meeting and a very large majority of the shares voted were in favor of the dissolution. A large majority of the shares represented then voted to provide the four panted mining claims to a Court recognized certified creditor, the Appellee, Douglas Hanks. The statement qualifies as a manifest error.

R. This statement is not true. The Trial Court did not recognize the Appellant as a qualified creditor. The corporate records and minutes show that the alleged obligation to the Appellant, Melvin Hunt, was to be paid to the Appellant from revenues generated from production of the properties. (See attachments 9) One of which is signed by the Appellant. Since the needed additional funds for continued operations could not be generated the corporation voted to dissolve. The dissolution of the Corporation removed the possibility of further production by the Gold Stream Corporation. FURTHER: In the Minutes of the Corporation it was moved and carried that the company would not accept any obligation not previously authorized by the Board. Most of the claimed obligations by the Appellant were not authorized except as noted in the Minutes. (See attachment 9) The Trial Court found that the Appellant did not qualify as a creditor.

S. This statement is not true and qualifies as a manifest error. (see attachment 10) in which the Appellee notes that he will entertain an offer by the Appellant to purchase the four patented claims.

T. This statement is not true. A purported unsubstantiated statement made by the Appellant thirty years ago is without merit. The Corporate records do not substantiate such a claim. The Appellee, Douglas Hanks, as Secretary received all of the Corporate records from the previous Secretary Mr. Alfred Fellows. FURTHER: The Appellant did have some records that he provided to the Corporation, such as the minutes he took, as secretary, that dealt with the BYU and Dal Foundation situation.

It was probably assumed at that time that the Appellant did not withhold Corporate records from the new Secretary. FURTHER. The Appellee states that in all of the meetings he has attended, with or without the attendance of Melvin Hunt at said meetings, there ever been a mention of a "Compensation Agreement alluded to by the Appellate.

6. ISSUES FOR REVIEW AND STANDARDS OF REVIEW:

After considering A. through D. the Appellee defers to the Court

F. Appellee argues that the Court did not err concerning the Melvin Hunt Affidavit, since the Affidavit was presented to the Trial Court after the final Modified Judgement of July 13, 2004, and was not a consideration of the Court. FURTHER: the allegation in said Affidavit that the Appellee was responsible for the loss of corporate documents is unsubstantiated and without foundation.

Appellee Observation: It would appear that the basis for the Appellant's "Docketing Statement" comes directly from the Affidavit referred to in "E" above. It would appear that Counsel for the Appellant accepted the Affidavit at face value without reviewing the Trial Transcript and the Exhibits provided.

The Defendant / Appellee, Douglas Hanks, prays that the Court accepts the Findings of Fact and Conclusion of law of the Trial Court based on the "Manifested Errors" contained in the "Docketing Statement" some of which are supported by the attachments.

The Appellee prays that the Court will recognize and accept the "Manifested Errors", as stated and Prays that the Court will honor Appellee's petition for a Summary Disposition. Dated this 30th day of December, 2004.

Douglas J. Hanks,
Defendant / Appellee

CERTIFICATE OF SERVICE

I hereby certify that on the 30th day of December, 2004, I caused a true and correct copy of the foregoing to be sent by the method(s) indicated below to the following:

MARK D STUBBS
FILLMORE SPENCER LLC
3210 NORTH UNIVERSITY AVE
PROVO UT 84604

- ☑ Hand Delivered
- ☑ First Class Mail
- ☐ Facsimile
- ☐ UPS

UTAH COURT of APPEALS
450 South State Street
P O Box 140230
Salt Lake City, Utah 84114-0230

Appellate No: 20041068

Douglas J. Hanks

ADDENDUM C

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IN THE UTAH COURT OF APPEALS

MELVIN J. HUNT, Plaintiff and Appellant, vs. ALBERT E. HUNT, ZERA A. HUNT, and DOUGLAS J. HANKS, Defendants and Appellees.	**APPELLANT'S MEMORANDUM IN SUPPPORT OF STIPULATION TO DEFENDANT/APPELLEE'S MOTION FOR SUMMARY DISPOSITION** Appellate No. 20041068 Trial Court No. 020400556

Plaintiff and Appellant Melvin J. Hunt, by and through his counsel of record, hereby submits this APPELLANT'S MEMORANDUM IN SUPPPORT OF STIPULATION TO DEFENDANT/APPELLEE'S MOTION FOR SUMMARY DISPOSITION.

Defendants and Appellees ("Appellee") have moved the court, pursuant to rule 10(a)(2)(B), to "reverse the order or judgment which is the subject on the basis of "manifest error." Precisely stated, rule 10(a)(2)(B) provides a party with the opportunity to move the court, within 10 days after the docketing statement, "[t]o reverse the order or judgment which is the subject of review on the basis of manifest error." The order or judgment which is the subject of

review in this appeal is the judgment and associated order issued by the Fourth District Court (the "trial court") on July 7, 2004, in Appellee's favor.

In support of the motion, Appellee cites as manifest error various statements of fact in the Docketing Statement. A significant portion of the statements attacked relies on the Findings of Fact and Conclusions of Law upon which the trial court based its decision. If, as can be inferred from the MOTION FOR SUMMARY DISMISSAL, Appellee believes that the trial court's judgment and order were grounded in manifest error, then that judgment and order should be reversed and this appeal dismissed under rule 10(a)(2)(B). Appellant is of course willing to stipulate to that reversal and dismissal.

Appellant agrees that the judgment of the trial court is manifest legal error quite apart from Appellee's attack on the trial court's Findings of Fact. The trail court committed error and abused its discretion in failing to establish any legal or factual connection between the court's first nine Findings of Fact, which contain nothing damaging to Appellant, and its final two Findings of Fact and Judgment against Appellant. Furthermore, in its Finding of Fact 7 the trial court found that:

> Albert E. Hunt, as President of the corporation and in his own personal capacity thereafter, began to assume control of the company and borrowed from the Plaintiff and his father, Wilford Hunt, all of the corporate documents that they had in their possession, including the records that Melvin J. Hunt had maintained as company Secretary, their stock certificates, and particularly the agreement (compensation agreement). The documents borrowed *have never been returned* to Melvin J. Hunt or his father, Wilford Hunt, and their present location is unknown, *Albert E. Hunt being unable to disclose their location*.

Findings of Fact and Conclusions of Law, p. 3 (attached here as **Exhibit A** (emphasis added).) After noting the unavailability of the very documents critical to the proof of Appellant's case, and acknowledging Appellees' culpability in the unavailability of the documents, the trial court proceeded to act on a presumption in favor of Appellee by finding that "Plaintiff failed to meet his burden of proof." Appellant maintains that the trial court thereby abused its discretion and committed manifest error.

Nevertheless, Appellant respectfully notes that a 10(a)(2)(B) motion is illogical for Appellee to make, being against Appellee's own interests. More appropriate might have been a motion pursuant to rule 10(a)(2)(A), which provides the opportunity for a party move the court to "affirm the order or judgment that is the subject of review on the basis that the grounds for review are so insubstantial as not to merit further proceedings and consideration by the appellate court." At this point, however, any attack on the substantiality of the grounds for review is precluded by Appellee's challenge to every statement of fact in the Docketing Statement, (attached here as **Exhibit B**) including those drawn directly from the trial court's Findings of Fact and Conclusions of Law. Appellee attempts to support these challenges in more than twenty-five pages of exhibits. Appellee clearly believes that the grounds for review are substantial.

A reviewing court will reverse a district court's findings of fact only if they are clearly erroneous. State v.Wanosik, 79 P.3d (Utah 2003). It is unusual, to say the least, for the party prevailing at trial to attempt to show that the findings of fact supporting the favorable judgment are clearly erroneous. Yet that appears to be Appellee's objective.

Appellee declares that "The statement that: 'Each shareholder owned 9,000 shares of common stock, for a total of 45,00 shares is not true'" and alleges that each stockholder received only 4,500 shares, with the remainder being left in treasury stock. However, Finding of Fact 3 states that "The Corporation was authorized to issue 45,000 shares of stock having a par value of $1.00. Each of the original five incorporators and shareholders received one-fifth, or 9,000 shares of the original authorized issue." (Ex. A, p. 2.) Finding of Fact 6 states that "The Defendant, Albert E. Hunt, secured stock certificate forms which were filled out and delivered to each of the five shareholders, with *each stock certificate being for 9,000 shares.*" (Ex. A, p. 2 No. 6 (emphasis added).)

Appellee condemns as "manifest error" Docketing Statement Fact B that "GSC was a closed corporation and the stock was all issued, out standing, and non-assessable. The stockholders' agreement provided that the only way stock could be sold within the corporation was through a written offer to the other stockholders, such that the other stockholders held the first option to purchase." (Ex. B, p. 2.) Yet the trial court's Finding of Fact 2 states that "Gold Stream Corporation was a closed corporation and the three integrated documents provided for limitation on the transferability of the corporate shares, with a provision that such limitation would be printed on the corporate stock certificates." (Ex. A, p. 2.)

Docketing Statement Summary of Facts C (Ex. B, p. 3) states that "[t]here was also a provision in the stockholder agreement that allowed the creation of 7,500 shared (1/6 share of the 45,000, and 1.500 shares from each stockholder) of treasury stock, but only for the purpose of raising money to operate on, which was never implemented. Rather, each of the original five (5) shareholders/directors agreed to contribute all they could individually to the operation of the

corporate business." Appellees contend that "[t]his statement is not true. The 'Stockholders Agreement' allows for un-issued shares, but does not provide that the shareholders will forfeit their shares." Fact C makes no reference to the forfeit of shares, so this objection is inapposite. Appellees acknowledge that "there may have been comments between shareholders about the work and effort needed, but the Corporate records do not show any formal agreement"[1] and reiterate that "[t]hese statements constitute manifest errors." In contrast, Finding of Fact No. 4 (Ex. A, p. 2) states that "reliance was on the shareholders' personal work and contributions to move forward their mining business."

Appellee also invokes "no company records" in its attack on Docketing Statement Fact D (Ex. B, p. 3), setting forth the hours of labor contributed by Appellant, by his father, Wilford Hunt, and by Milton Hunt, and pronounces this statement "manifest error." This notwithstanding Finding of Fact 4, which states that "[the stockholders] had originally contemplated equal efforts from each of the shareholders. However, it soon developed that they were unable to do that because of other work and earning opportunities which came especially to Sherald James and Alvin E. Hunt. Consequently, shareholder Melvin J. Hunt, for the first several years, was the primary person conducting actual mining operations and sales procedures on the premises of the property." (Ex. A, p. 2.)

---

[1] Appellant respectfully draws the Court's attention to the fact it would be inappropriate to rely on any allegation by Appellee, regarding what the Corporate records do *not* show, Appellee itself having "lost" a significant portion of the Corporate records. For the same reason, it was particularly inappropriate for the trial court to engage in any presumption in favor of Appellees on anything that may reasonably have been proved by the lost records. Docketing Statement Fact D.

Docketing Statement Fact K (Ex. B, p. 4) details an irregular and impermissible stock transaction between Albert Hunt, Milton Hunt and outside investors. Appellee, in its attack on Statement K, renews its attack on trial court Finding of Fact 3, that each of the original shareholders received 9,000 shares. (Ex. A, p. 2.)

Appellee attacks as "not true" Docketing Statement Fact T, (Ex. B, p. 7) which describes the loss of the corporate records. Yet Fact T is reproduced word for word in Finding of Fact 7. Furthermore, in the same attack, Appellee "states that in all of the meetings he has attended, . . .there has ever *(sic)* been a mention of a 'Compensation Agreement *(sic)* alluded to by the Appellate." Assuming that Appellee intended to contend that there has "never" been a mention of the Compensation Agreement, this statement constitutes an attack on Finding of Fact 1 (Ex. A, pp. 1-2), "[t]hat the documentation for the formation of the corporation consisted of three integrated documents; the first being the Articles of Incorporation (Ex. 50), the second, a Stockholder's Agreement (Ex. 51), executed by the shareholders and incorporators; and the third, by an "agreement" referred to as a 'compensation agreement' (Ex. 59) also executed by the five shareholders and incorporators."

Appellee, at the conclusion of the above attacks, "prays that the Court accepts the Findings of Fact and Conclusions of law of the Trial Court based on the 'Manifested Errors' contained in the 'Docketing Statement' some of which are supported by the attachments.

"The Appellee prays that the Court will recognize and accept the 'Manifested Errors' as stated and Prays that the Court will honor Appellee's petition for a Summary Disposition."

Appellant joins Appellee in the prayer that the Court accept the first nine Findings of Fact of the trial court, as these findings contain nothing damaging to Appellant, and in fact

substantiate many of Appellant's key contentions. Appellant also joins Appellee in praying that the Court will recognize manifest errors and honor Appellee's petition for a Summary Disposition.

The manifest errors to which Appellant refers, however, comprise the total disconnect between the trial court's Findings of Fact 1-9 and 10-11, and the near absence of Conclusions of Law. In summary, the trial court found that: 1) Gold Stream Corporation ("GSC") was incorporated as documented in the Articles of Incorporation, the Stockholder's Agreement, and the "compensation agreement"; 2) GSC was a closed corporation with stated limitations on the transfer of shares; 3) the Corporation was authorized to issue 45,000 shares, of which each of the five original incorporators received one-fifth, or 9,000 shares; 4) GSC operated a mining property in the state of Montana, and for the first several years Melvin J. Hunt was the primary person conducting mining operations and sales procedures; 5) the five shareholders met regularly, with Plaintiff acting as secretary; 6) the original officers included Albert E. Hunt as President and Melvin J. Hunt as Secretary. "The Defendant, Albert E. Hunt, secured stock certificate forms which were filled out and signed and delivered to each of the five original shareholders, with each stock certificate being for 9,000 shares"; 7) "Albert E. Hunt, as President of the corporation and in his own personal capacity thereafter, began to assume control of the company" and subsequently borrowed and lost corporate documents including the records that Melvin J. Hunt had maintained as company Secretary; stock certificates and particularly the compensation agreement; 8) the corporation variously continued its operations, including temporary relationships with Brigham Young University and the DALL foundation, which never did become shareholders; and, 9) Based on Utah state records, GSC failed in 2001 to pay its

corporate taxes and to file its annual report as required by law. The state of Utah dissolved the corporation by administrative action.

Findings of Fact 4 acknowledges that Melvin J. Hunt was the primary provider of labor and management to the corporation for several years. Nowhere does the court find any obligations owing form Gold Stream Corporation to Douglas J. Hanks. In fact, Mr. Hanks is *not once mentioned* in the Findings of Fact. Based upon that foundation, the trial court inexplicably enters Finding of Fact 10, "that fourth *(sic)* patent mining claims were properly transferred to Mr. Hanks for obligations due and owing to Mr. Hanks by Gold Stream Corporation." Finding of Fact 11, which is the court's nearest approach to a conclusion of law, finds "that Plaintiff failed to meet his burden of proof to establish its claims set forth in the Complaint filed herein," declares itself "unable to find from a preponderance of the evidence that Plaintiff is entitled to the relief requested, and dismisses Plaintiff's claims. This in spite of Finding of Fact 7, in which the trial court explicitly acknowledges Appellee Albert E. Hunt's responsibility for the unavailability of critical corporate records.

WHEREFORE, Plaintiff/Appellant respectfully confirms its willingness to stipulate to DEFENDANT/APPELLEE'S MOTION FOR SUMMARY DISPOSITION, and prays the Court to dismiss this action pursuant to rule 10(a)(2)(B).

DATED this 27th day of January, 2005.

FILLMORE SPENCER LLC

Mark D. Stubbs
Attorneys for Melvin Hunt

CERTIFICATE OF SERVICE

I certify that on the 31st day of January, 2005, I caused a true and correct copy of the foregoing **APPELLANT'S MEMORANDUM IN SUPPPORT OF STIPULATION TO DEFENDANT/ APPELLEE'S MOTION FOR SUMMARY DISPOSITION** to be served first class mail, postage pre-paid, to the following:

Douglas J. Hanks
51 North 600 East
Centerville, UT 84014
:Defendant

Hand Delivered
X First Class Mail
Facsimile
UPS

Zera A. Hunt
10171 Golden Sand Place
South Jordan, UT 84095-2430
:Defendant

Albert E. Hunt
233 East 900 North
Bountiful, UT 84010-4631
:Defendant

Exhibit A
to
ADDENDUM C

FILED
Fourth Judicial District Court
of Utah County, State of Utah
7-7-04 1[illegible] Deputy

IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

MELVIN J HUNT, Plaintiff, vs. ALBERT E HUNT, ZERA A HUNT, and DOUGLAS J HANKS, Defendant.	**FINDINGS OF FACT AND CONCLUSIONS OF LAW** CASE NO. 02040556 JUDGE: GARY D STOTT CLERK: KS

The above-entitled matter came before the Court for trial on the 6th day of April, 2004, the Honorable Gary D Stott, District Judge, presiding. The Plaintiff,, Melvin J Hunt, was present, together with his legal counsel, Milton T Harmon. The Defendants, Douglas J Hanks and Zera A Hunt, were present representing themselves. The Defendant, Albert E Hunt, was not present having elected to absent himself from the procedures. The Defendants were not represented by legal counsel, but elected to represent themselves and were seated at the defense counsel table, together with Dilworth Strausser, a shareholder of the corporation, who aided in the joint consideration of the Defendants with regard to the presentation of their case. The Court thereupon heard the testimony offered by witnesses, considered the documentary evidence offered, heard the oral presentation of the parties and, based thereon and for good cause shown, does now enter the following Findings of Fact and Conclusions of Law.

1. The subject corporation, Gold Stream Corporation, was a Utah corporation, incorporated on the 1st day of July, 1963. The incorporation was effected by the filing of Articles of Incorporation and paying of appropriate fees with the State of Utah on said date. That the documentation for the formation of the corporation consisted of three integrated documents; the first being the Articles of Incorporation (Ex. 50), the second, a Stockholder's Agreement (Ex. 51)

executed by the shareholders and incorporators; and third, by an "agreement" referred to as a "compensation agreement" (Ex. 59) also executed by the five shareholders and incorporators.

2. Gold Stream Corporation was a closed corporation and the three integrated documents provided for limitation on the transferability of the corporate shares, with a provision that such limitation would be printed on the corporate stock certificates.

3. The Corporation was authorized to issue 45,000 shares of stock having a par value of $1.00. Each of the original five incorporators and shareholders received one-fifth, or 9,000 shares of the original authorized issue.

4. Gold Stream started operating mining property under a business license issued by the state of Montana, prior to incorporation in the State of Utah. This was done with limited financial resources and, consquently, reliance was on the shareholders' personal work and financial contributions to move forward their mining business. They had originally contemplated equal efforts from each of the shareholders. However, it soon developed that they were unable to do that because of other work and earning opportunities which came especially to the shareholders Sherald James and Albert E Hunt. Consequently, shareholder Melvin J Hunt, for the first several years, was the primary person conducting actual mining operations and sales procedures on the property.

5. As the company stated, the five shareholders met regularly. The Plaintiff acted as Secretary and kept records of company activities and meetings and acted upon the direction of all shareholders.

6. The original company officers included the Defendant, Albert E Hunt, as President, and the Plaintiff, Melvin J Hunt, as Secretary. The Defendant, Albert E Hunt, secured stock certificate forms which were filled out and signed and delivered to each of the five original shareholders, with each stock certificate being for 9,000 shares.

7. Albert E Hunt, as President of the corporation and in his own personal capacity thereafter, began to assume control of the company and borrowed from the Plaintiff and his father, Wilford Hunt, all of the corporate documents that they had in their possession, including the records that Melvin J Hunt had maintained as company Secretary; their stock certificates, and particularly the agreement (compensation agreement). The documents borrowed have never been

returned to Melvin J Hunt or his father, Wilford Hunt, and their present location is unknown, Albert E Hunt being uanble to disclose their location.

8 The corporation continued its operation and business in various manners, including some business relationship with Brigham Young University and the DALL Foundation However, these parties never did become shareholders of the corporation and after a few years' association, they discontinued further activity

9 Based upon the records of the State of Utah, Gold Stream Corporation failed to pay its corporate taxes in 2001 and failed to file its annual report as required by law Consequently the state of Utah by administrative action dissolved the corporation

10. The Court finds that fourth patent mining claims were properly transferred to Mr Hanks for obligations due and owing to Mr Hanks by Gold Stream Corporation

11. The Court finds that Plaintiff failed to meet his burden of proof to establish its claims set forth in the Complaint filed herein The Court is unable to find from a preponderance of the evidence that Plaintiff is entitled to the relief requested and therefore Plaintiff's claims are dismissed.

12 Plaintiffs are entitled to all costs incurred in this action

DATED this 7 day of July, 2004.

Gary D. Stott

District Court Judge

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K Sargent

Exhibit B
to
ADDENDUM C

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IN THE UTAH COURT OF APPEALS

MELVIN J. HUNT, Plaintiff and Appellant, vs. ALBERT E. HUNT, ZERA A. HUNT, and DOUGLAS J. HANKS, Defendants and Appellees.	**DOCKETING STATEMENT** Appellate No. 20041068 Trial Court No. 020400556

Plaintiff and Appellant Melvin J. Hunt, by and through counsel, hereby submits a Docketing Statement pursuant to Rule 9, Utah Rules of Appellate Procedure.

1. DATE OF ENTRY OF JUDGMENT OR ORDER APPEALED FROM: Plaintiff/ Appellant is appealing from the trial court's Findings of Fact and Conclusions of Law and of the Judgment entered on July 7, 2004 and of the Modified Judgment entered July 13 2004.

2. NATURE OF POST-JUDGMENT MOTIONS, DATES FILED AND DISPOSITION:

A. Plaintiff's Motion to Amend Judgment and Reconsider Ruling was filed on July 19, 2004. This Motion has not been ruled on by the trial court.

B. Plaintiff's Motion for New Trial was filed on July 26, 2004. This Motion was denied in a Ruling dated September 14, 2004 and an Order dated 1 November 2004.

3. DATE OF FILING OF NOTICE OF APPEAL: The last pertinent post-judgment order in this case was filed November 1, 2004, and Plaintiff/Appellant timely filed its Notice of Appeal on 30 November 2004 (attached).

4. JURISDICTION: The Utah Court of Appeals has jurisdiction in this matter pursuant to the 10 December 2004 Order of the Utah Supreme Court.

4. NATURE OF THE PROCEEDING: This appeal is from the Fourth District Court's Findings of Fact and Conclusions of Law and of the Judgment entered on July 7, 2004 and of the Modified Judgment entered July 13 2004.

5. SUMMARY OF FACTS: The facts relevant to this appeal are as follows:

A. Melvin Hunt was one of the original shareholders of Gold Stream Corporation ("GSC"), which was formed in June 1963. At that time, there were five (5) equal shareholders, all of whom also comprised the Board of Directors. Each shareholder owned 9,000 shares of common stock, for a total of 45,000 shares.

B. GSC was a closed corporation and the stock was all issued, outstanding, and non-assessable. The stockholders' agreement provided that the only way stock could be sold within the corporation was through a written offer to the other stockholders, such that the other stockholders held the first option to purchase.

C. There was also a provision in the stockholder agreement that allowed the creation of 7,500 shares (a 1/6 share of the 45,000, and 1,500 shares from each stockholder) of treasury stock, but only for the purpose of raising money to operate on, which was never implemented. Rather, each of the original five (5) shareholders/directors agreed to contribute all they could individually to the operation of the corporate business.

D. Despite this understanding, Melvin Hunt's father, Wilford Hunt, and Melvin contributed an aggregate total of 4,024 hours during the first two years of operation. Albert Hunt contributed only 886 hours and Milton Hunt contributed only 763 hours during that same time period.

E. Moreover, during this same time period referenced in the foregoing paragraph, Wilford and Melvin Hunt contributed $2,917.14 in cash, while Albert Hunt contributed only $310.09 and Milton Hunt contributed only $1.00. Another shareholder, Sherald James, contributed a total of $47.15 during this two-year period.

F. The extra contributions made by Melvin and Wilford Hunt constituted loans to GSC that have never been repaid.

G. Yet, inexplicably, Albert Hunt's stock shares allegedly increased, without consideration and contrary to the express terms of the shareholders' agreement and Articles of Incorporation. Even more perplexing, Albert Hunt eventually claimed a controlling interest in GSC, which also occurred contrary to the provisions of the corporate documents.

H. Over the years, Albert Hunt operated *ultra vires*, conducting many transactions that were unauthorized and contrary to the Articles of Incorporation, the shareholders' agreement, and in violation of his fiduciary duty.

I. For example, in 1965, Albert Hunt authorized a double increase in the outstanding stock and transferred 50% of the total stock to Brigham Young University. This action was not only contrary to the shareholders' agreement and Articles of Incorporation, but was never authorized and approved by the State of Utah with the requisite amendment to the Articles of Incorporation. Accordingly, this increase and transfer of stock was invalid.

J. At some point, the 50% shares originally transferred to Brigham Young University were transferred back to GSC, at which time, according to the shareholders' agreement, they should have been evenly distributed among the five (5) shareholders, assuming they were valid shares to begin with (which they were not). However, contrary to the shareholders' agreement, Albert Hunt obtained this 50% as his personal stock, thus illegally obtaining a controlling interest in GSC.

K. In addition, Albert and Milton Hunt sold personal stock from unrelated mining claims to some investors. When that investment went sour and the investors demanded their money, the parties in that unrelated transaction agreed that the investors would be paid 5 percent of the net proceeds of GSC mining operations. This agreement was apparently secured by Albert and Milton Hunt transferring 20,000 shares of their GSC stock to those investors. However, between them, they in fact owned only 18,000 shares of GSC stock, and additionally had no authority to transfer any

other shareholder's stock. This transaction violated the shareholders' agreement which required them to give the other shareholders the first option to purchase company stock.

L. Notwithstanding the fact that the foregoing transaction was illegal and unauthorized, it should have removed Albert and Milton Hunt as shareholders of GSC – they had purportedly transferred all their personal stock and were therefore no longer shareholders. Yet, when the next stock list was distributed, Albert and Milton Hunt were not only listed as stockholders, but they owned more shares than any other stockholder. This result was impossible under the shareholders' agreement. Even assuming that Albert and Milton had repaid their personal creditors, they could still be at most only equal shareholders in GSC.

M. These wrongful actions by Albert and Milton Hunt inexplicably resulted in losses to the other three shareholders, contrary to law and the provisions of the shareholders' agreement. Ultimately and contrary to the corporate by-laws, Albert and Milton Hunt diluted the value of the remaining three shareholders' stock, such that the remaining three shareholders went from holding an equal share to holding a minority interest in GSC.

N. On June 27, 1978, the State of Utah granted a request from GSC to amend its Articles of Incorporation such that the 45,000 original shares were split into 5,000,000 shares, thereby providing that the five (5) original shareholders now owned 1,000,000 shares each. Of course, assuming that transfers of stock that Albert and Milton Hunt made to outside parties was valid, they would each have owned something substantially less than 1,000,000 shares each, and could therefore no longer be equal owners.

O. Melvin Hunt has never sold or transferred any of his GSC stock, yet on June 27, 1978, minutes from a company meeting on June 27, 1978, list his total shares as 146,250; and lists Albert Hunt's total shares as 881,014, and Milton Hunt's total shares as 331,350. This is simply impossible and in clear violation of the shareholders' agreement.

P. Over the years, there were many other instances where Albert Hunt conducted similarly unauthorized transactions whereby he hurt GSC and all of the shareholders, constituting both a severe conflict of interest and a breach of his fiduciary duty. In 1989, for example, he transferred all of the GSC mining claims to another company – H & H Endeavors in which he had a personal interest. Ultimately, the mining claims were transferred back to GSC with a substantial liability attached such that GSC lost assets, including company equipment, in order to pay that liability. Again, Albert Hunt's breach of his fiduciary duty and violation of the corporate by-laws caused a great loss to GSC and hurt all of the shareholders.

Q. On January 23, 2002, without the requisite 10-days' notice for such a meeting, the GSC Board of Directors purportedly dissolved GSC and gave all the remaining assets (four patented mining claims) to Douglas J. Hanks, purportedly for a $25,000 debt owed by GSC to Mr. Hanks.

R. In addition to the cash and labor Melvin Hunt put into GSC during the first two years of incorporation, Melvin Hunt contributed $35,986 in cash (i.e. property taxes, purchase of corporate assets, legal fees over water rights and investors, etc.) and $55,868 in labor to the corporation. In all the years since its inception, Melvin contributed well over $100,000 to GSC, including interest. Accordingly. Melvin Hunt is a creditor of GSC.

S. Subsequent to this Court's July 7, 2004 ruling on this case, Douglas Hanks offered to sell Melvin the four patented mining claims that are the subject of this action for $140,000.

T. Albert E. Hunt, as President of the corporation and in his own personal capacity therafter, began to assume control of the company and borrowed from Melvin Hunt and Wilford Hunt all of the corporate documents that they had in their possession, including the records that Melvin Hunt had maintained as company Secretary; their stock certificates, and particularly the agreement (compensation agreement). The documents borrowed have never been returned to Melvin Hunt or Wilford Hunt, and their present location is unknown, Albert Hunt being unable to disclose their location.

6. ISSUES FOR REVIEW AND STANDARDS OF REVIEW:

Issues for Review:

A. Whether the trial court abused its discretion in failing to address relevant facts indicating that Albert and Milton Hunt were not, in actuality, the majority shareholders in GSC.

B. Whether the trial court erred in ignoring the fact that Albert Hunt's management of both GSC and his own stock violated the GSC Shareholder's Agreement and Articles of Incorporation.

C. Whether the trial court erred in failing, in its Findings of Fact and Conclusions of Law, to present legal conclusions in support of its ruling.

D. Whether the trial court erred in failing to find that proper procedures regarding the dissolution of GSC were not followed, subsequent to the State of Utah's dissolution of GSC.

E. Did the trial court err in ignoring Melvin Hunt's affidavit and finding that Plaintiff failed to prove his case by the preponderance of the evidence in light of the court's own finding that Defendant was responsible for the loss of the corporate documents containng the evidence potentially supporting Melvin Hunt's statements of fact.

Standards of Review:

A. Questions of law are reviewed for correctness, giving no deference to the trial court. Sate v. Pena, 869 P.2d 932, 935 (Utah 1994).

B. The reviewing court will reverse a district court's findings of fact only if they are clearly erroneous. Sate v. Wanosik, 79 P.3d 937 (Utah 2003).

7. RELATED APPEALS: Counsel is unaware of any other appeal.

8. ATTACHMENTS:

- Findings of Fact and Conclusions of Law, dated July 7, 2004
- Judgment, filed July 7, 2004
- Modified Judgment, filed July 13, 2004
- Notice of Appeal, filed 30 November 2004

DATED this 15 day of December, 2004.

FILLMORE SPENCER LLC

Mark D. Stubbs
Attorneys for Plaintiff/Appellant

CERTIFICATE OF SERVICE

I certify that on the 21st day of December, 2004, I caused a true and correct copy of the foregoing **DOCKETING STATEMENT** to be sent by the method(s) indicated below to the following:

Douglas J. Hanks
51 North 600 East
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:Defendant

☐ Hand Delivered
☒ First Class Mail
☐ Facsimile
☐ UPS

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