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IN THE SUPREME COURT OF THE STATE OF NEVADA

YOAV EGOSI)	
Appellant,)	No.: 83454
vs.)	
PATRICIA EGOSI, N/K/A)	District Court Case No.: D-16-540174-
PATRICIA LEE WOODS,)	D
Respondent.)	

JOINT APPENDIX

VOLUME 8 OF 19

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1 court, that's not a fatal flaw or -- or a defective point that would create a
2 basis for this Court to invalidate the prenuptial agreement and the -- the
3 Defendant has acknowledged that that would be her sole and separate
4 property and he's not trying to argue that -- that it wouldn't be because there
5 was no disclosure form.¹¹

6 Upon aforementioned findings, among others, this Court rendered the following
7 conclusions of law (though framed as findings):

8 So I do find based on the sheer factors that there was -- that -- that the
9 Defendant has satisfied his burden to demonstration that the antenuptial
10 agreement was not the result of fraud, duress, mistake, misrepresentation,
11 or non-disclosure of material facts...Similarly, I -- I find that he's
12 demonstrated that the agreement is not unconscionable.¹²

13 Despite this, however, the Court went on to conclude that:

14 What I do find and given the discretion that I do have is there should be a limiting
15 aspect to the enforceability of the terms of the prenuptial agreement. First, the
16 only assets I view as being protected by the prenuptial agreement are the four
17 assets listed in the -- in the exhibit attached to the prenuptial agreement. There
18 has been debate and discussion about bank accounts not being disclosed on both
19 sides. I -- I don't view -- and -- and so I don't view this prenuptial agreement and
20 I would not apply it given that discretion that I have to approve in whole or part.
21 I don't view the agreement as protecting bank accounts or bank account
22 information. A -- and as far as the Court's division of assets and debts or view of
23 what should be divided by the Court and the final -- final division of assets. It's
24 limit -- limited to the specific assets that -- that have been referenced and no other
25 assets are included as part of my -- the protection that's offered by the prenuptial
26 agreement.¹³

27 The operative effect of this ruling is that any after acquired asset is presumed to
28 be community property, essentially gutting the prenuptial agreement and neutering it. As
the discussion below demonstrates, this is clear legal error which this Court should
reverse -- in part because the Court failed to state any equitable grounds upon which to

¹¹ AE 391, lines 1-16.

¹² Id., lines 1-23.

¹³ Page 394-395.



1 base its exercise of discretion, aside from concluding that it can exercise discretion,
2 which is not legally sufficient.

3 **c. Facts Specific to Joe's Motion for Partial Summary Judgment**

4 Hawk Communications, LLC ("Hawk") is a single member limited liability
5 company registered in the State of Georgia on December 8th, 1999. Joe is the sole
6 managing member of Hawk. Hawk holds business accounts with Chase Bank. Hawk
7 Communications is a telecommunications services provider – it provides web hosting, it
8 is an internet service provider, and a VOIP provider. Hawk is registered with the Federal
9 Communications Commission.
10

11 Customers purchase services online through www.joiphone.com, where they
12 register for an account, add items to a shopping cart, and purchase online. Hawk accepts
13 online debit and credit card payments through a merchant account which is linked to
14 Hawk's Chase business accounts.
15

16 Hawk has multiple brands, domains, and registered trademarks for use in different
17 markets, and with different products and services, such as:
18

- 19
- Joi Internet brand to use for dialup Internet service.
 - JoiPhone brand telephony services for the residential market.
 - JoiBiz brand telephony services for the business and SMB market.
 - Hawk VoIP to use with wholesale VoIP.
 - JOI is a registered trademark of Hawk Communications LLC.
 - Hawk Communications has domain such as Joi Phone, Joi Internet, JoiBiz.
 - Hawk Communications has products such as Joi Fax, Joi SMS, and Joi CRM.
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25 JoiBiz ("JoiBiz"), LLC is also a single member limited liability company
26 established in 2009.¹⁴ JoiBiz is not registered with the FCC.¹⁵ Rather, it is a reseller
27

28 ¹⁴ AE 596.

¹⁵ Id. at 602-603.



1 which provides Hawk products. When JoiBiz makes a sale, it goes to a merchant account,
2 then an internal transfer to Hawk's business accounts is made through the same bank
3 (Chase).

4 JoiBiz conducts no physical transactions: everything occurs online, through
5 Hawk's equipment/software. JoiBiz uses the domain www.joibiz.com which is owned by
6 Hawk. JoiBiz's website, email, and all other IP services utilize Hawk owned IP
7 addresses,¹⁶ and are run by Hawk employees and automated software on Hawk owned
8 equipment.
9

10 Nor does JoiBiz have any ability to bill customers independent of Hawk: JoiBiz
11 does not send bills or invoices, nor does it have a billing system. Without a telephony
12 billing engine, the company cannot rate, charge, or route calls. The billing engine, and
13 platform which bills, rates, routes, and invoice customers are all owned and operated by
14 Hawk.
15

16 JoiBiz does not own Telecom equipment.¹⁷ Such equipment provides telephone
17 services including dial tone, and inbound and outbound voice, fax, and sms. All these
18 services/products are owned by Hawk and Hawk VoIP LLC. Joe and others invested over
19 a million dollars in the telecom network and equipment owned by Hawk between 1999-
20 2006 – obligations that remain outstanding.
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24 ¹⁶ AE 605. See also AE at 610-612.

25 ¹⁷ JoiBiz cannot legally provide any telecom services such as telephony VoIP because it does not
26 have an FCC license. Without that, it cannot provide 911 emergency services as all telephony
27 providers are required to carry by the FCC. See <https://www.fcc.gov/consumers/guides/voip-and-911-service> (The FCC requires that providers of interconnected VoIP telephone services using the
28 Public Switched Telephone Network (PSTN) meet Enhanced 911 (E911) obligations. E911 systems automatically provide to emergency service personnel a 911 caller's call back number and, in most cases, location information). Hawk Communications license with the FCC required it to enter into a contract with Intrado (AE 613-655) for the provision of those services.



1 Finally, JoiBiz Terms of Service (its contract with customers) is on its website,
2 located at <http://www.joibiz.com/tos.html>.¹⁸ It provides clearly that the "Agreement is
3 between JoiBiz, a Hawk Communications LLC company ("We", "Us", "Our" or
4 "JoiBiz")." The about us on JoiBiz website <http://www.joibiz.com/aboutus.htm> states
5 that "Headquartered in Nevada, JoiBiz, a Hawk Communications LLC company" and,
6 furthermore, it says "Since 1999, Hawk Communications LLC has built an unparalleled
7 IP and Voice network, and has the technical experience not found with other IT
8 companies."¹⁹

10 In short, under no circumstances can JoiBiz operate independent of Hawk. As
11 such, it is a wholly owned subsidiary and alter ego of Hawk. Therefore, as the discussion
12 below elaborates on, JoiBiz is an extension of Hawk and not a separate entity which
13 should be protected under the prenuptial agreement.

15 **d. Facts Specific to Joe's Motion to Dismiss Under NRCP 12(b)(5)**

16 In Plaintiff's complaint, she makes the following conclusory statements:

17 During the course of the marriage, Defendant's personal conduct has
18 resulted in the waste, erosion, dissipation, depletion, loss, and/or destruction
19 of marital assets. Among other relief, Plaintiff, in accordance with equity
20 and justice, should be awarded a greater share of the marital estate based
21 upon Defendant's conduct which has caused the waste of marital property
22 and the loss of financial opportunities.²⁰

23 The complaint further alleges:

24 Plaintiff and Defendant are fiduciaries in the management and control of
25 community assets, and are fiduciaries as to each other's interests in the
26 community estate. By Defendant's conduct and behavior, he has breached
27 his community management and fiduciary duties, causing economic waste
28 to the community estate. In accordance with equity and justice, Plaintiff

¹⁸ AE 656-661.

¹⁹ AE 608.

²⁰ Plaintiff's Complaint, paragraph 15.



1 should be aware a greater share of the marital estate based upon Defendant's
2 breach of his fiduciary duty.²¹

3 In *Ashcroft v. Iqbal*, 556 U.S. 662 (2009), the Unites States Supreme Court
4 explained that the complaint must contain more than just conclusory accusations: "[t]o
5 survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted
6 as true, to 'state a claim to relief that is plausible on its face ... [a] claim-only has facial
7 plausibility when the plaintiff pleads factual content that allows the court to draw the
8 reasonable inference that the defendant is liable for the misconduct alleged."²²
9

10 These are exactly the "labels and conclusions" and "[t]hreadbare recitals of the
11 elements of a cause of action, supported by mere conclusory statements"²³ the *Iqbal* court
12 held would not suffice. As such, and as more fully discussed below, Plaintiff fails to state
13 a claim upon which relief may be granted.
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15 II. Legal Analysis

16 a. Reconsideration is Appropriate

17 Under E.D.C.R. 5.512:

- 18
- 19 (a) A party seeking reconsideration and/or rehearing of a ruling (other than
20 an order that may be addressed by motion pursuant to NRCP 50(b),
21 52(b), 59, or 60), must file a motion for such relief within 14 calendar
22 days after service of notice of entry of the order unless the time is
23 shortened or enlarged by order. A motion for reconsideration does not
24 toll the period for filing a notice of appeal.
- 25 (b) If a motion for reconsideration and/or rehearing is granted, the court
26 may make a final disposition without hearing, may set it for hearing or
27 resubmission, or may make such other orders as are deemed appropriate
28 under the circumstances.

²¹ Id. paragraph 16.

²² *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

²³ *Iqbal*, 556 U.S. at 678. (Internal citations omitted).



1 In this matter, no order has issued. As such, no notice of entry of order has been
2 filed. Thus, the time bar provided for in EDCR 5.512(a) has not run and the matter is ripe
3 for reconsideration under the standard is met under the rule. Under EDCR 5.512, "points
4 or contentions not raised, or passed over in silence on the original hearing, cannot be
5 maintained or considered on petition for rehearing."²⁴ Once a petition for rehearing has
6 been denied, further consideration of the underlying issue is precluded, even as to points
7 or contentions not raised.²⁵ "This rule is equivalent to holding that matters so waived
8 cannot be entertained later, and good reasons exist for its enforcement."²⁶ Here, Mr.
9 Egosi has not challenged the decision reached by this Court at the challenged evidentiary
10 hearing, though Plaintiff has, without any countermotion having been filed by Mr. Egosi
11 (though an opposition to that motion was filed). Therefore, Mr. Egosi is not precluded
12 from requesting that this court reconsider its decision.

13 A district court may reconsider a previously decided issue if substantially
14 different evidence is subsequently introduced or the decision is clearly erroneous.²⁷
15 Furthermore, this Court may reconsider a previously decided matter if new issues of fact
16 or law are raised supporting a ruling contrary to the ruling already reached.²⁸ Here, Mr.
17 Egosi contends that this Court clearly erred in the application of its equitable authority
18 and that new law presented in this motion will compel this court to reach a different
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25 ²⁴ *Chowdhry v. NLVH, Inc.*, 893 P.2d 385, 387, (Nev., 1995); citing *Belanger v. Leonard*, 68 Nev. 258,
26 262, 229 P.2d 153, 155 (1951) (quoting *Brandon v. West*, 29 Nev. 135, 85 P. 449, 88 P. 140 (1906)).

27 ²⁵ *Id.*

28 ²⁶ *Id.*; citing *Brandon*, 29 Nev. at 141, 88 P. at 140 (emphasis added).

²⁷ *Masonry and Tile Contractors Ass'n of Southern Nevada v. Jolley, Urga & Wirth, Ltd.*, 941 P.2d 486,
489, 113 Nev. 737 (Nev., 1997); See *Little Earth of United Tribes v. Department of Housing*, 807 F.2d
1433, 1441 (8th Cir.1986).

²⁸ *Moore v. City of Las Vegas*, 551 P.2d 244, 245 92 Nev. 402 (Nev., 1976).



1 ruling in the matter at issue; i.e., that the Prenuptial Agreement should be enforceable in
2 whole.

3 **b. This Court Erred In the Application of Its Equitable Powers**

4 In this matter, what was asserted, though it was not stated, was an equitable
5 defense; i.e., this Court declined to enforce the prenuptial agreement in whole out of
6 fairness to the Plaintiff, though that is not explicitly, indeed not even implicitly, stated in
7 the decision – one must glean that conclusion from consideration of the whole transcript.
8 In other words, this court reformed the parties' agreement. As the following discussion
9 shows, application of equitable defenses, equitable maxims, and grounds of equitable
10 relief in contract enforcement is well understood. Thus, this Court could have, and should
11 have, based its decision on firmer ground – and if its equitable powers were better
12 understood, this Court should have reached a different result in the matter.

13 **i. In General**

14 Though it is unclear from the record, this Court's June 14th, 2017 decision
15 concerning the parties' prenuptial agreement can be construed as a "fairness defense"
16 against the application of an otherwise enforceable agreement, imposed by this Court
17 upon Joe. Though this Court should have based its decision on existing, well-settled, and
18 well understood equitable grounds (see the discussion below), to the extent the defense
19 was raised by this Court sua sponte in exercising its discretion, a discussion of the
20 fairness of allowing such a defense follows:
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25 The values that drive equitable defenses are values of fairness and justice between
26 parties.²⁹ Dean Robert Stevens found in equity "a more particularized justice" that
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28 ²⁹ Emily L. Sherwin, Law and Equity in Contract Enforcement, 50 Md. L. Rev. 253 (1991).



relieves against individual hardship.³⁰ Professor Ralph Newman, another advocate of equitable principles, called equity "the force by which law becomes humanized."³¹ Equity represents "ideal justice," "standards of decent and honorable conduct," "human brotherhood,"³² and "the duty to share the burdens of unanticipated misfortune."³³ *But they express the basic idea of the fairness defense, that one party should not be allowed to profit from a bargain that resulted from the other's error or lack of sophistication and imposes considerable hardship on the promisor.*³⁴ (Emphasis Added). Another way to look at equitable defenses is to fit them into Professor Duncan Kennedy's dialectic conception of contract law. In Kennedy's view, contract law is subject to polar forces of individualism and altruism.³⁵ The fairness defense is an expression of altruism, because it requires individuals to share wealth and sacrifice self-interest for others *who are less astute bargainers.*³⁶ (Emphasis Added).

Similarly, "the ideal of corrective justice may belong in the equity column."³⁷ Professor James Gordley has proposed that the principle of corrective justice supports

³⁰ Stevens, A Plea for the Extension of Equitable Principles and Remedies, 41 CORNELL L. REV. 351, 353 (1956).

³¹ Sherwin, *supra*.

³² Emily L. Sherwin, Law and Equity in Contract Enforcement, 50 Md. L. Rev. 253 (1991).

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.*

³⁶ The fairness defense also fits Kennedy's description of the relation between substance and form. Throughout his article, Kennedy traces connections between individualism and the use of rules, and between altruism and the use of standards.

³⁷ Emily L. Sherwin, Law and Equity in Contract Enforcement, 50 Md. L. Rev. 253 (1991). For a sample of different conceptions of corrective justice, see Coleman, Corrective Justice and Wrongful Gain, 1 IJ. LEGAL STUD. 421, 423-28 (1982) (rectification based on fault or taking); Epstein, A Theory of Strict Liability, 2 J. LEGAL STUD. 151, 160-89 (1973) (liability based on causation); Fletcher, Fairness and Utility in Tort Theory, 85 HARV. L. REV. 537, 540-42 (1972) (reciprocity); Nickel, Justice in Compensation, 18 WM. & MARY L. REV. 379, 387-88 (1976) (protection of just holdings); Posner, The Concept of Corrective Justice in Recent Theories of Tort Law, 10 J. LEGAL STUD. 187, 201-06 (1981) (wealth maximization); Schroeder, Corrective Justice and Liability for Increasing Risks, 37 UCLA L. REV. 439, 451-69 (1990) (liability based on personal responsibility, *ex ante*; compensation based on harm).



1 judicial relief against unequal exchange. In Gordley's view, any exchange for less than
2 market value is an unjust enrichment, which should be rectified.³⁸ Corrective justice is
3 purely a remedial principle that requires *correction of wrongful gain and loss*.³⁹

4 Finally, the fairness defense can be identified with paternalism. Stated favorably,
5 *a fairness defense allows the judge to identify cognitive defects or gaps in information*
6 *that distorted the promisor's decision to enter into the contract*, and to give relief against
7 subsequent regret. Stated less sympathetically, a fairness defense allows the judge to
8 question the competence of the promisor's expressed choice on an individual basis.

9 Here, this Court made detailed findings of fact that directly contradict the
10 application of any "fairness defense." In other words, the prenuptial agreement
11 procedurally and substantively fair, as this court made clear in its findings. (See Fact
12 Summary, supra). Stated more succinctly, a finding that the prenuptial agreement is not
13 unconscionable necessarily means that this Court implicitly found that any notions of
14 fairness necessitating the application of any fairness defense are nullified: i.e., a) this
15 Court found no error or lack of sophistication on the part of Plaintiff such that enforcing
16 the contract in whole would impose a considerable hardship on Plaintiff, b) Plaintiff was
17 not found to be a less astute bargain – rather, Plaintiff was very knowledgeable and
18 sophisticated when it came to her understanding of the operation of the business, the
19 existence of the prenuptial agreement and its meaning, and even had the assistance of
20 counsel in interpreting it, and c) there was no cognitive defect Plaintiff labored under nor

21 caused, ex post); Simons, Corrective Justice and Liability for Risk-Creation: A Comment, 38 UCLA L.
22 REV. 113 (1990) (a reply to Schroeder)."

23 ³⁸ The fairness defense usually rests on a combination of circumstances, including defects in the bargaining
24 process as well as inequality in the values exchanged. Gordley's argument goes further, because it treats an
25 unequal result as unjust in itself without regard to the contract process.

26 ³⁹ See ARISTOTLE, Nicomachean Ethics, bk. V, ch. 4, at *1132.