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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MULTNOMAH

G&P BUSINESS ENTERPRISES, LLC, an  
Oregon Limited Liability Company,

Plaintiff,

vs.

JOSE PARRA and EL REVENTON  
RESTAURANT BAR & LIVE  
ENTERTAINMENT, INC., and Oregon  
Corporation,

Defendants.

) Case No. 110003250E

) GENERAL JUDGMENT

) (Dismissal - Commercial FED)

This case came before the Honorable Jerome LaBarre for a regularly-scheduled trial on February 28, March 1, 2, and 3, 2011. Plaintiff G&P Business Enterprises, LLC appeared by and through its attorney of record, Michael J. Morris. Defendants Jose Parra and El Reventon Restaurant Bar and Live Entertainment, Inc. appeared by and through their attorney of record, Samantha N. Dang.

This case was heard along with civil Case No. 1102-01588, entitled Jose Parra v. James R. Greenfield (aka Jim Greenfield), Golden Age of Movies LLC, and G+P Business Enterprises, LLC (aka G&P Business Enterprises, LLC), whereby Plaintiff Jose Parra is represented by Samantha N. Dang, and Defendants James R. Greenfield (aka Jim Greenfield), Golden Age of Movies LLC, and G+P Business Enterprises, LLC (aka G&P Business Enterprises, LLC) is represented by Michael J. Morris.

1 By stipulation of the parties, evidence was fully presented and taken in both cases. The  
2 attorneys made opening statements on behalf of their respective client(s), introduced testimony  
3 and other evidence in support of their respective cases, and rested.

4 The court has heard lengthy evidence. The case went well beyond the time estimated.  
5  
6 The court has paid close attention to the evidence presented and has taken type-written notes in  
7 excess of 20 pages. Attached to this General Judgment and made part of this General Judgment  
8 and fully incorporated herein is the Court's Oral Opinion. Upon the conclusion of trial, the court  
9 announced its findings and conclusions on the record, which are attached hereto and incorporated  
10 herein by reference.

11 The Court enters Judgment as follows:

12 Address of premises: 12436 SE Powell Blvd., Portland, Oregon 97236.

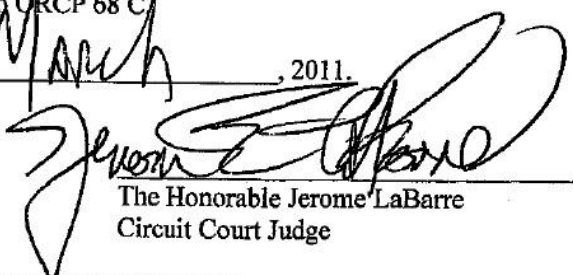
13 ☒ Judgment is hereby entered for Defendants.

14 ☒ This case is hereby dismissed with prejudice. Defendants' counterclaim is dismissed  
15 pursuant to ORS 105.132.

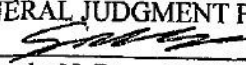
16  
17 IT IS FURTHER ORDERED

18 ☒ Defendants are awarded their attorney fee, costs, and disbursements against Plaintiff  
19 in an amount to be determined pursuant to ORCP 68 C

20 DATED this 31st day of March, 2011.

21  
22   
23 The Honorable Jerome LaBarre  
Circuit Court Judge

24 GENERAL JUDGMENT PREPARED AND SUBMITTED BY:

25   
26 Samantha N. Dang, OSB #02041  
6735 SE 82<sup>nd</sup> Avenue, Portland, OR 97266  
Telephone: 503-777-2520

Date: 3/28/11

### COURT'S ORAL OPINION

There is a very high standard for granting of a preliminary injunction under Oregon Law. I am going to refer briefly to the applicable Oregon Law. Oregon follows the 9<sup>th</sup> Circuit Court of Appeals and Ms. Dang in her briefing, Plaintiff's hearing brief in Opposition to a Preliminary Injunction, particular page 3, refers to some of the standards. A more complete statement of the burden and the standard is as follows.

First the burden – burden of proof -is by clear and convincing evidence. In Oregon Law, clear and convincing evidence means that the Plaintiff asserting or contending something must prove that it is highly probable, and the law in terms of the standard for preliminary injunction and I am referring now to the 9<sup>th</sup> Circuit Court of Appeals case International Jensen Incorporated v. Metrosound U.S.A, Inc., dba L.A. Sound 4 F.3d 819 (9<sup>th</sup> Cir. 1993) and on the Westlaw version of the case on page 6 of Westlaw version which is the second full page into the case, the court sets out the standard.

Traditionally, a court may issue a preliminary injunction if it determines (1) the moving party will suffer irreparable injury if the relief is denied. (2) the moving party will probably prevail on the merits (3) the balance of the potential harm favors the moving party, and depending on the nature of the case, (4) there is a public interest that favors granting of the relief. Citing to another 9<sup>th</sup> Circuit Case, the Metrosound Case. This court has also adopted an alternative standard under which the moving party may meet its burden by demonstrating either (1) a combination of probable success on the merits and the possibility of irreparable injury if relief is not granted or (2) the existence of serious questions going to the merits and that the balance of hardship tips sharply in its favor (that is tips sharply in favor of the moving party). The alternative standards "are not separate tests but the outer reaches of a single continuum."

The counterclaimants have moved for a preliminary injunction. Counsel for Mr. Parra has responded that the balance of hardships tips very strongly in favor of Mr. Parra and contends in essence that at all times Mr. Parra pays what he reasonably understood to be the agreed rent, and continued to make those payments at all times up until recently, at which point Mr. Greenfield had made it very clear that payments would not be accepted, and Ms. Dang also argues among other things on this issue, that Mr. Parra has invested totally about \$450,000 into the property which is the subject of this litigation and that the balance of hardships tips strongly in his favor.

1 Ms. Dang has also raised the affirmative defense of unclean hands and contended that the  
2 conduct of Mr. Greenfield and the counterclaimants, breaches the implied covenant of good faith  
3 and fair dealing, and under a long line of cases which I believe started with the case of Best v.  
4 United States National Bank, every contract in Oregon has an implied covenant of good faith and  
5 fair dealing. I agree with Ms. Dang. I find the balance of hardships tips strongly in favor of Mr.  
6 Parra. I do not find that the counterclaimants represented by Mr. Morris have met the high  
7 burden of proof of clear and convincing evidence for many reasons.

8 There has been no request for findings of facts and conclusions of law and I am not in a  
9 position to make such detailed findings, but among the other reasons are the total or almost  
10 complete disregard of the formalities of limited liability companies, Mr. Greenfield, that you  
11 engaged in, and I want to focus on G&P but largely the same disregard of corporate formalities  
12 or LLC formalities seems to apply to Golden Age of Movies LLC-GAM LLC, very simply,  
13 except when you believe it was to your advantage you really treated these as your own private  
14 piggy bank and the payments were made – nothing really flowed through the LLCs and the focus  
15 on this case is G&P – in G&P, there were supposed, based on the evidence present, there were  
16 supposed to be 2 members, Mr. Parra, and I believe it was GAM, although the conduct just  
17 showed that in actuality it was Mr. Greenfield in his own personal capacity. The term formality  
18 seems to be a dismissive term – all of us would like to just focus on the substance of matters and  
19 not be hung up on formalities but the reason that Oregon law and the law of other states requires  
20 many detailed formalities both for corporations and LLCs is for protection of the members and  
21 protection of the public.

22 Here there was a complete commingling of the assets, really Mr. Greenfield treating these  
23 matters as his own – as evidenced among other things Exhibit 40 – the 2009 schedule of the  
24 personal tax return of James and Rose Greenfield and there is testimony about this because this  
25 relates to the highly unusual practice that Mr. Greenfield insisted upon of having large cash  
26 payments made to him and in this regard, I reject Mr. Greenfield's testimony. I do not find it  
credible.

27 In evaluating witness testimony, the trier of fact can look at factors such as the witnesses'  
28 memory, the witnesses' manner while testifying, other evidence that contradicts the witnesses'  
29 testimony. There is another instruction we give to the jury which applies to the trier of fact, and

1 if you find any person has intentionally give false testimony in some part, you may distrust the  
2 rest of that person's testimony.

3 Mr. Greenfield, you are a highly educated person, graduated from law school, you  
4 studied for and gotten admitted into the Bars of the State of Oregon and the State of  
5 Pennsylvania. You practiced law for a period of time. You have, it's very obvious, a high level  
6 of business sophistication, and you certainly know what it means to testify under oath.

7 Yet, you got on the witness stand, and I took careful notes, and first testified that the idea  
8 of cash payments was mutually desired. I don't find that to be true. I find just to be the opposite  
9 - and I accept the testimony of Mr. Parra and all the exhibits. I don't know all the purposes and  
10 whether they were nefarious purposes involved in insisting on cash payments which totaled  
11 under the exhibits in the case to approximately \$125,000. In the business world when people  
12 talk about cash payments they usually mean wired funds, checks or money orders, that's what's  
13 cash, but here just so that the record is completely clear, and these comments, this represents my  
14 oral opinion citing the case and its not going to be very long and detailed, and this oral opinion  
15 should be typed up and attached to the orders coming out of this case as the court's rationale.

16 The cash payments, as I was explaining, were not checks or wired funds, money order,  
17 certified checks, they were the green stuff, \$20 dollar bills, \$100 dollar bills, and time after time,  
18 that's what Mr. Greenfield insisted on, and even though the payments were supposedly going to  
19 G&P there was nothing in existence. There is no evidence in the records in terms of any  
20 corporate books and records or LLC books and records for G&P. The only reference to its  
21 existence is the exhibit which Ms. Dang put into evidence that shows that at some point there  
22 was registration of G&P with the State. But the commercial lease in this case is dated September  
23 7, 2007 and G&P was not in existence then. This one page summary of the registration shows  
24 that the registry date is in late October 2009. At the time the commercial lease was theoretically  
25 entered by G&P -G&P -There is no evidence in the record that it even existed. There is no  
26 evidence in the record that it had right to ownership and possession of the property.

27 The method of dealing of Mr. Greenfield is very similar to what courts have frequently  
28 criticized in other cases which are helpful in this case. This is not a case involving a claim of  
29 disregard of LLC or corporate formalities, what is commonly referred to as Piercing the  
30 Corporate Veil, but that body of law is helpful because the courts in looking at those cases  
31 recognize the importance of honoring the corporation, which is a legal entity under the law, and

1 the cases including the case of Amfac Foods v. Int'l Systems, found at 294 Or 94 a 1982 case, for  
2 instance, at page 110, the court talks about how evidence of improper conduct, which it appears  
3 there's improper conduct here, and appears that there is breach of the implied covenant of good  
4 faith and fair dealing. The court points, among other things that apply in this case, to the  
5 commingling - the commingling as evidenced by exhibit 40 - the Supplemental Income and  
6 Loss Tax Schedule for Mr. Greenfield personally - for he and his wife, on page 2 of that exhibit  
7 for instance, he shows payment of interest, the payor is Jose Parra and this particular entry is  
8 \$9,000, well, there is no G&P documentation - there is no operating agreement that was ever  
9 signed - there are no resolutions, there is no authorization. Corporate formalities in large part are  
10 to protect the members (the LLC formalities) to protect the members, as well as, to protect the  
11 public. Mr. Parra was a member. His position in G&P was totally ignored. He was never given  
12 notice of any meetings, there were no meetings. This money simply flowed through - it was  
13 paid in cash - put into Mr. Greenfield's hand. Mr. Greenfield put it in his personal bank account.  
14 It didn't flow through G&P. it did not flow through GAM LLC. It flowed into his personal  
15 account or lock box, wherever he put this large amount of cash totaling over \$125,000 in three  
16 years.

17 I find that moving party on this preliminary injunction has not made out its case - has not  
18 met the applicable burden of proof - and alternatively, I find that the affirmative defenses of  
19 unclean hands and breach of the implied covenant of good faith and fair dealing - I agree with  
20 the contentions made - I don't find that this was - the covenant of good faith and fair dealing-  
21 was honored.

22 In making my decision, the court is looking at direct evidence, circumstantial evidence,  
23 reasonable inferences drawn from the evidence. I stated the standards for preliminary injunction  
24 the standards have not been met in this case and I conclude therefore that the motion for  
25 preliminary injunction is respectfully denied.

26 \*\*\*\*\*

27 The court incorporates by reference all of the statements the court has just made on  
28 denying the motion for preliminary injunction and the court also makes credibility findings.

- 29 • I do not find Mr. Greenfield's testimony and evidence credible.
- 30 • I do find Mr. Parra's evidence and testimony credible.
- 31 • I make credibility findings in favor of Mr. Parra.



1 In FED case there is a lower burden of proof than there is in a preliminary injunction  
2 case. The burden of proof is more likely than not is the contention true. And under the  
3 formulation in Oregon law and this is what we use to instruct the jury. If the evidence is equally  
4 divided – if there is dispute in the evidence and it's equally divided, or if the trier of fact simply  
5 cannot say on whose side the evidence weighs more heavily – in other words, if the plaintiff has  
6 not convince the court that what it contends is more likely than not true, and the court simply  
7 cannot say, then the burden of proof is not met and the claim must be denied.

8 I also incorporate by reference all the statements I've made concerning the large amount  
9 of cash payments – the almost complete lack of compliance with formalities representing G&P  
10 limited partnership.

11 Plaintiff in an FED case in this case for eviction has claimed that G&P has the right to  
12 possession- has the right to evict and has claimed among other things and FEDs are short matters  
13 and this is a commercial FED – that the amount of payment of rent and what was due for rent  
14 was not paid. The Defendant on that, Mr. Parra, has denied the allegations and stated that the  
15 amount of rent which was due has been paid or tendered and everything reasonable has been  
16 done up until the time that Plaintiff G&P refused to take payment, and again this is an FED  
17 action with G&P being the claimant - for the reasons that I've already explained, I am not  
18 persuaded by a preponderance of the evidence – that G&P even had the right to possession at the  
19 time that the commercial lease, Plaintiff's Exhibit No. 1, was entered, G&P did not even exist.

20 There was no LLC meeting. There was no ratification at any time. There are references  
21 in other documents but those don't rise to the level of what's required under an LLC, so I find  
22 overall, that the elements have not been proven, and among other matters on the amount of rent  
23 due. I agree with Ms Dang. I do not find that there has been proof by a preponderance of the  
24 evidence that the rent due has not been paid.

25 I accept Mr. Parra's contentions as Ms. Dang has presented them that in late 2010 a new  
26 promissory note was entered.

27 I do not accept Mr. Greenfield's testimony on that, and I find that that new promissory  
28 note – there was a novation it replaced the prior promissory note.

29 So, I have not stated all the elements but sufficed to say, plaintiff has come into court  
30 G&P claiming that it is entitled to a judgment of eviction on the FED action and I simply find  
31 that Plaintiff has not proven its case and therefore, I find in favor of Mr. Parra.