

2003

Maria Elena Gomez v. Essential Botanical Farms, LC, : Brief of Appellant

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MARIA ELENA GOMEZ, personally)
and as Personal Representative) Case No. 20030691-CA
of the Estate of JUAN GOMEZ,)
Deceased,)
)
Plaintiff and Appellant,)
)
vs.)
)
ESSENTIAL BOTANICAL)
FARMS, LC,)
)
Defendant and Appellee.)

BRIEF OF APPELLANT

APPEAL FROM THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH

HONORABLE JAMES R. TAYLOR, DISTRICT COURT JUDGE

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UTAH APPELLATE COURTS
MAR 25 2004

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STATEMENT OF JURISDICTION

The Utah Court of Appeals has jurisdiction over this matter pursuant to Utah Code Ann. §78-2a-3(2)(j).

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

Did the trial court err by granting summary judgment for defendant limited liability company and against a wrongful death claimant using the exclusive remedy provision of the Utah’s Workers’ Compensation Act, where the defendant limited liability company held a “dba” of an entity that employed the deceased, but in practice, the defendant limited liability company’s manager and member and the employer entity’s registered agent have represented that the employer “dba” is held by another entity?

Standard of Appellate Review

Appellate review for a summary judgment is one of correctness, with no deference afforded to the trial court. *Winegar v. Froerer Corp.*, 813 P.2d 104, 107 (Utah 1991).

Issue Preserved in Trial Court

This issue was preserved in the trial court at R. 49-100.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Utah Code Ann. §34A-2-105(1):

“The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or to the employee’s spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee’s employment, and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section, however, shall prevent an employee, or the employee’s dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.”

Utah Code Ann. §42-2-5(1):

“Every person who carried on, conducts, or transacts business in this state under an assumed name, whether that business is carried on, conducted, or transacted as an individual, association, partnership, corporation, or otherwise, shall file with the Division of Corporations and Commercial Code a certificate setting forth:

- (a) the name under which the business is, or is to be carried on, conducted, or transacted, and the full true name, or names, of the person owning, and the person carrying on, conducting or transacting the business; and
- (b) the location of the principal place of business, and the street address of the person.”

STATEMENT OF THE CASE

Nature of the Case

This matter comes before this Court pursuant to an appeal by the Plaintiff of the Order signed by the Honorable James R. Taylor, Fourth Judicial District Court Judge, and entered on July 22, 2003.

This case arises out of a claim by Maria Elena Gomez, personally and as the personal representative of her husband's estate, against Essential Botanical Farms, L.C., (hereinafter referred to as "Essential Botanical"), for the wrongful death of her husband, Juan Gomez, when a steam distillation unit, which was located on and affixed to real property owned by Essential Botanical, ruptured and fatally wounded Juan Gomez.

Course of Proceedings and Disposition Below

Ms. Gomez filed a Complaint and Demand for Jury Trial in the Fourth District Court of Utah, in and for Utah County, on August 14, 2002. (R. 1-10). Essential Botanical filed its Answer on September 20, 2002. (R. 14-18).

On November 22, 2002, Essential Botanical filed a Motion for Summary Judgment. (R. 34-36). On January 7, 2003, Ms. Gomez filed a Memorandum of Points and Authorities in Opposition to Defendant's Motion for Summary Judgment. (R. 49-100). A Reply Memorandum was filed on January 17, 2003. (R. 119-124).

On April 28, 2003, the Honorable Steven L. Hansen held oral arguments on Essential Botanical's Motion for Summary Judgment. (R. 172). On June 23, 2003, Judge

Hansen issued a Memorandum Decision granting Essential Botanical's Motion for Summary Judgment. (R. 176-179). The Order Granting Defendant's Motion for Summary Judgment was signed by the Honorable James R. Taylor and entered on July 22, 2003. (R. 180-182). On August 20, 2003, Ms. Gomez filed a Notice of Appeal with the trial court. (R. 183-184).

Statement of Facts

1. The Appellant Maria Elena Gomez is the surviving spouse of Juan Gomez and the personal representative of the Estate of Juan Gomez. (R. 9-10).

2. On August 17, 2000, while working in Mona, Utah, Juan Gomez was killed when a steam distillation unit, located on and affixed to real property owned by Essential Botanical, became over-pressurized and ruptured. (R. 8).

3. At the time of his death, Juan Gomez was employed by A-Plus Benefits, Inc. (hereinafter referred to as "A-Plus Benefits") and was a leased employee to Young Living Farms (hereinafter referred to as "YLF"). (R. 8, 17).

4. On August 14, 2002, Ms. Gomez filed a Complaint in the Fourth District Court naming Essential Botanical as the sole defendant. The Complaint sought damages for wrongful death from Essential Botanical under the theory that Essential Botanical was the owner/landlord of the real property where YLF operated its business and Essential Botanical had negligently maintained such property in a defective or dangerous condition. (R. 10).

5. On March 22, 1996, YLF was registered as a “dba” of Essential Botanical with the Utah Department of Commerce, Division of Corporations. (R. 92).

6. A-Plus Benefits entered into an Employee Leasing Agreement with YLF on May 1, 1997. At the time of the employee leasing agreement between A-Plus Benefits and YLF, YLF presented A-Plus Benefits with a voided check on the account of YLEO with First Security Bank, which was to be used for pre-arranged payments. (R. 157, 163).

7. On April 17, 2002, the “dba” registration for YLF expired for failure to file a renewal. (R. 92).

8. The “dba” registration for YLF listed Bruce L. Olson as the registered agent. (R. 92).

9. Bruce L. Olson is an attorney with the Salt Lake City law firm of Ray, Quinney & Nebeker. Mr. Olson and Keith A. Kelly, also with Ray, Quinney & Nebeker, appeared as defendants’ counsel in an unrelated action filed in the Fourth Judicial District Court in and for Utah County, State of Utah, entitled *Young Living, Inc., Dixie Wickstrom, Gary Richer, Maurice Lawty and JVK Associates, Plaintiffs, v. Aromatic Research and Technology, L.L.C. dba Young Living Essential Oils, dba Young Living Farms, Classic Holding Trust, Don Gary Young, individually, Mary Billeter-Young, LaRue Billeter, Young Living Essential Oils Trust, Jenny Lind, Defendants*, case number 980404964, (hereinafter referred to as the “1998 Lawsuit”). (R. 88-89, 98).

10. In the 1998 Lawsuit, Darwin C. Fisher, counsel for the plaintiffs, was disqualified by a motion by the defendants because Mr. Fisher was the previous attorney for Young Living Essential Oils (hereinafter referred to as “YLEO”). (R. 80, 88).

11. The defendants in the 1998 Lawsuit filed a Notice to Appear or Appoint Counsel. The pleading was prepared by Mr. Olson and filed with the Court on January 24, 2000—approximately seven months prior to Juan Gomez being killed. (R. 88-89).

12. The Notice to Appear or Appoint Counsel filed in the 1998 Litigation identified YLF as a “dba” of Aromatic Research and Technology, L.L.C. (hereinafter referred to as “Aromatic Research”). (R. 88-89).

13. The registered agent for Aromatic Research is Bruce L. Olson. (R. 86).

14. YLEO was registered as a “dba” of Aromatic Research with the Utah Department of Commerce, Division of Corporations in 1996. (R. 112, 117).

15. Don Gary Young, a named defendant in the 1998 Litigation, is the manager of both Essential Botanical and Aromatic Research. Mary Billeter Young, another named defendant in the 1998 Litigation, is a member of both Essential Botanical and Aromatic Research. (R. 84, 86).

16. Juan Gomez’s pay check stub, dated August 18, 2000—one day after he was killed—lists the company name as YLF; no “dba” is listed and Essential Botanical is not listed. (R. 82).

17. On October 3, 2001, Lillian Bustamante, an employee with A-Plus Benefits, sent correspondence and documents addressed to Linda, YLEO, in reference to the “Juan Gomez claim.” Thus, A-Plus Benefits believed that Juan Gomez, when he was killed, was working for Young Living Essential Oils. (R. 69).

18. YLEO, maintains an Internet website. On the website, YLEO represents that “Young Living has its own organic research farms in Idaho and Utah where Gary Young designed and built the first stainless steel vertical steam distiller in North America.” (R. 67). A map on the website indicates that the “research farm” located in Utah is the YLF farm in Mona, Utah; YLEO provides directions to the YLF farm on its Internet website, but titles the farm as “Young Living Family Farms.” (R. 62).

19. In correspondence from the Food and Drug Administration of the U.S. Department of Health and Human Services dated July 30, 1999, YLEO is referred to as the dba of Aromatic Research. (R. 64-65).

20. Liberty Mutual Insurance Company provided workers’ compensation insurance coverage for employees working at YLF, and is currently paying workers’ compensation benefits to Ms. Gomez. (R. 44, 48).

SUMMARY OF ARGUMENT

The trial court erred in entering the July 22, 2003 Order Granting Defendant’s Motion for Summary Judgment. The trial court incorrectly ruled that Essential Botanical

was the employer of Juan Gomez when he was killed because Essential Botanical held the “dba” of YLF at the time of Mr. Gomez’ death, where Essential Botanical’s manager and member and YLF’s and Aromatic Research’s registered agent had represented to the court that the YLF “dba” was held by Aromatic Research, the arrangement with YLF’s employee leasing company used YLEO’s checking account, and YLEO’s previous attorney filed suit and listed YLF as a “dba” of YLEO, a “dba” of Aromatic Research.

ARGUMENT

I. The trial court erred by wrongfully determined that Essential Botanical can be afforded protection from suit under the exclusive remedy provision of the Utah Workers’ Compensation Act.

In ruling on Essential Botanical’s Motion for Summary Judgment, the trial court ruled in its June 23, 2003 Memorandum Decision that Essential Botanical, as the registered holder of the “dba” for Mr. Gomez’s employer, YLF, was protected from any wrongful death actions brought by Ms. Gomez. In doing so, the trial court based its ruling on the exclusive remedy provision of the Utah Workers’ Compensation Act found at Utah Code Ann. §34A-2-105(1), which provides:

The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, shall be the exclusive remedy against the employer and shall be the exclusive remedy against any officer, agent, or employee of the employer and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or

to the employee's spouse, widow, children, parents, dependents, next of kin, heirs, personal representatives, guardian, or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of or arising out of the employee's employment, and no action at law may be maintained against an employer or against any officer, agent, or employee of the employer based upon any accident, injury, or death of an employee. Nothing in this section, however, shall prevent an employee, or the employee's dependents, from filing a claim for compensation in those cases in accordance with Chapter 3, Utah Occupational Disease Act.

The trial court made this determination despite evidence that Essential Botanical's manager and member, Aromatic Research's manager and member and YLF's and Aromatic Research's registered agent had represented to the Fourth District Court of Utah in the 1998 Lawsuit that the "dba" of YLF was held by YLEO, which was a "dba" of Aromatic Research.

In Utah, assumed business names are governed by Utah Code Ann. §42-2-5 to 11. Utah Code Ann. §42-2-5(1) requires every person who conducts or transacts business under an assumed name in Utah to file with the Division of Corporations and Commercial Code a certificate stating the assumed business name, the true name of the business or person, and the location of the principal place of business. The purpose of filing such a certificate is to give notice of the assumed business name and to protect those who transact business with the entity under the assumed name. Putnam v. Industrial Comm'n, 80 Utah 187, 14 P.2d 973 (1932) (decided under previous version of assumed business name law). Essential Botanical filed the required certificate with the Division of Corporations and Commercial Code on May March 22, 1996.

After complying with the technical filing requirements, Essential Botanical's manager and member, Aromatic Research's manager and member and YLF's and Aromatic Research's registered agent represented to the Court the YLF "dba" belonged to Aromatic Research. In the 1998 Lawsuit, the actual caption of the case listed the defendants as "Aromatic Research and Technology, L.L.C., dba Young Living Essential Oils, dba Young Living Farms..." (R. 88-89). When filing pleadings in the 1998 Lawsuit, counsel for Aromatic Research, who was the registered agent for both YLF and Aromatic Research, represented to the trial court that he was the attorney for defendants Aromatic Research doing business as YLEO doing business as YLF. Since he was the registered agent for both YLF and Aromatic Research, Mr. Olson's representations are binding on YLF, Mr. Gomez's employer. Mr. Olson also represented Don Gary Young and Mary Billeter Young, the manager and a member, respectfully, of Aromatic Research and Essential Botanical: Mr. Young and Ms. Billeter Young confirmed, through their pleadings, that YLF was a "dba" of Aromatic Research. YLF, along with the other defendants, successfully moved to disqualify Darwin C. Fisher, plaintiffs' counsel, from the 1998 Lawsuit, on the grounds that Mr. Fisher was the former attorney of YLEO. Mr. Fisher, the former attorney of YLEO, represented in the plaintiffs' pleadings that YLF was a "dba" of YLEO, a "dba" of Aromatic Research. Mr. Fisher made this representation as an officer of the Court, being bound by the requirements of Ut. R. Civ. P. 11(b).

Further evidence demonstrates that the actual ownership of the YLF “dba” was actually not held by Essential Botanical. When first beginning the arrangement with A-Plus Benefits, YLF provided A-Plus Benefits with a check, drawn on YLEO’s bank account, for future debit entries. When Mr. Gomez’s employee leasing company was processing the claim for his death, A-Plus Benefits addressed such correspondence to YLEO, not to Essential Botanical. (R. 69). YLEO’s Internet website indicates that its “research farm” is actually the farm where YLF is located. (R. 62).

Essential Botanical is estopped from claiming protection under the workers’ compensation exclusive remedy provision. While this kind of estoppel is an issue of first impression in this jurisdiction, as well as in the United States, there is a similar type of estoppel which has previously been recognized in Utah: corporation by estoppel. Corporation by estoppel arises when parties, by their agreement or conduct, are estopped from denying the existence of a corporation. American Vending Services, Inc. v Morse, 881 P.2d 917, 920 (Ut. App. 1994) (quoting Harris v. Stephens Wholesale Bldg. Supply Co., 309 So. 2d 115, 117-118 (Ala. Civ. App. 1975)). The doctrine was developed in courts of equity to prevent unfairness. Morse, 881 P.2d at 923.

Applying the principals of corporation by estoppel to the present case, Essential Botanical’s manager and member represented through pleadings and published materials that YLF was the “dba” of YLEO, a “dba” of Aromatic Research. When dealing with A-Plus Benefits, YLF used the YLEO checking account. In marketing materials on YLEO’s

Internet website, YLF's location is indicated as YLEO's "research farm." To now claim that YLF was the "dba" of Essential Botanical is inequitable and inconsistent with previous actions. Essential Botanical should not be afforded protection from its conduct and should be estopped from claiming the YLF "dba."

Estopping Essential Botanical from claiming the "dba" of YLF would be consistent with the general public policy against deceptive practices by employers. There is no evidence that Mr. Gomez knew YLF was the "dba" of Essential Botanical—Essential Botanical's name did not appear on his paycheck, and there is no evidence from A-Plus Benefits that Essential Botanical was the holder of the YLF "dba." Furthermore, to not estop Essential Botanical from claiming YLF as a "dba" would essentially allow Essential Botanical to escape the natural consequences arising from permitting others to use the YLF "dba."

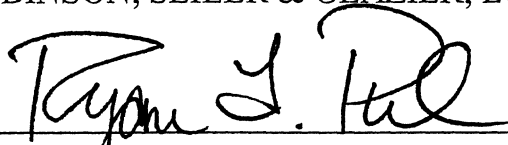
The evidence in this case demonstrates that Essential Botanical allowed other entities to claim ownership of the "dba" of YLF, but when faced with liability, attempted to shield itself as the registered holder of the YLF "dba." The trial court erred in allowing Essential Botanical protection under the workers' compensation exclusive remedy provision, and should be reversed.

CONCLUSION

Based upon the foregoing reasons and analysis, Ms. Gomez respectfully requests that this Court reverse the trial court's July 22, 2003 Order Granting Defendant's Motion for Summary Judgment and direct the trial court to find that Essential Botanical was not Mr. Gomez's employer.

DATED this 24th day of March, 2004.

ROBINSON, SEILER & GLAZIER, LC

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Thomas W. Seiler

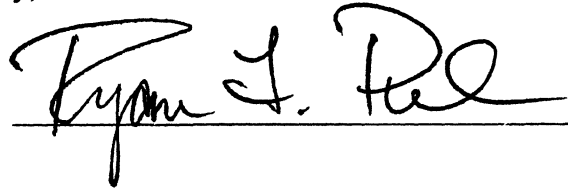
Ryan T. Piel

Attorneys for Plaintiff/Appellant

CERTIFICATE OF MAILING

I hereby certify that on the 24th day of March, 2004, I caused two (2) true and correct copies of the foregoing Brief of Appellant to be served upon Appellee, through counsel, via U.S. First Class Mail, with postage pre-paid, addressed to:

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A handwritten signature in black ink, appearing to read "Ryan J. Hall", is written over a horizontal line.

ADDENDUM

1. June 23, 2003 Memorandum Decision
2. July 22, 2003 Order Granting Defendant's Motion for Summary Judgment

Addendum 1

June 23, 2003 Memorandum Decision

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

MARIA ELENA GOMEZ, personally and as
Personal Representative of the Estate of
JUAN GOMEZ, Deceased,

Plaintiff,

vs.

ESSENTIAL BOTANICAL FARMS, LC, a
Utah limited liability company,

Defendant.

MEMORANDUM DECISION

Case No. 020403464

Date: June 23, 2003

Judge Steven L. Hansen

Before the Court is Defendant's Motion for Summary Judgment. The Court heard arguments on the Motion April 28, 2003. Now having reviewed all relevant memoranda, makes the following decision:

Facts

1. On August 17, 2002, Juan Gomez was killed in an accident while working at Essential Botanical Farms, LC doing business as Young Living Farms.
2. Essential Botanical Farms, LC operates under the registered dba of Young Living Farms.
3. Mr. Gomez was employed at Essential Botanical Farms/ Young Living Farms through an employee leasing company, A-Plus Benefits.
4. Essential Botanical Farms/ Young Living Farms directed and controlled the work of Juan Gomez.
5. The plaintiff specifically alleges that Juan Gomez was working at the time of the accident.
6. Liberty Mutual insurance provided Worker's compensation insurance coverage for employees working at Essential Botanical Farms/ Young Living Farms.
7. Liberty Mutual insurance is currently paying worker's compensation benefits to the plaintiff, Maria Elena Gomez.

Analysis

The defendant, Essential Botanical Farms brings this motion, arguing that the exclusive remedy provision of the Workers' Compensation Act bars any action against Essential Botanical Farms by Mrs. Gomez, and they are, therefore, entitled to Summary Judgment.

Mrs. Gomez argues that Essential Botanical Farms is not the same entity as Young Living Farms but rather that Young Living Farms is the dba for Young Living Essential Oils. For this reason, Mrs. Gomez argues that Essential Botanical Farms is merely the landlord for Young Living Farms and as such is not protected by statute.

The exclusive remedy provision of the Workers' Compensation Act, § 34A-2-105 of the Utah Code, governs the remedy for a job related injury.

(1) The right to recover compensation pursuant to this chapter for injuries sustained by an employee, whether resulting in death or not, shall be the exclusive remedy against the employer...and the liabilities of the employer imposed by this chapter shall be in place of any and all other civil liability whatsoever, at common law or otherwise, to the employee or the employee's spouse, widow,...personal representatives,...or any other person whomsoever, on account of any accident or injury or death, in any way contracted, sustained, aggravated, or incurred by the employee in the course of or because of arising out of the employee's employment, and no action at law may be maintained against an employer...based upon any accident, injury, or death of an employee...

(2) The exclusive remedy provisions of the section apply to both the client company and the employee leasing company in an employee leasing arrangement

The statute is clear that workers compensation benefits are the exclusive remedy for a job related injury, including death; an employer is, therefore, immune from any other civil liability based upon such injury or death of an employee.

Mrs. Gomez's brings this action against her deceased husband's employer, Essential Botanical Farms/ Young Living Farms, as the result of the death of her husband that occurred while he was working for Essential Botanical Farms/ Young Living Farms. Essential Botanical

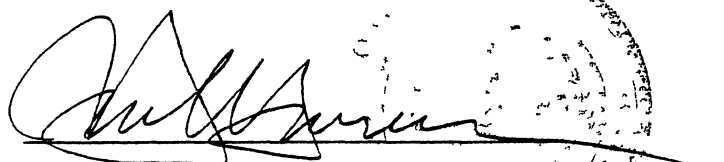
Farms and Young Living Farms are the same legal entity At the time of his death, Mr Gomez was covered by worker's compensation insurance which is currently paying benefits to Mrs Gomez The exclusive remedy provision of the Workers' Compensation Act applies to both the employee leasing company and the client company

Summary judgment may be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law Utah R Civ P 56(c) The Court concludes that no genuine issues of material fact exist and that, as a matter of law, at the time of the incident giving rise to this suit, Young Living Farms was a legal dba of Essential Botanical Farms. The Court determines further that Essential Botanical Farms is entitled to judgment as a matter of law since the exclusive remedy provision of the Workers' Compensation Act bars any action against Essential Botanical Farms.

Counsel for the Defendant is to prepare an order consistent with this ruling and submit it for the Court's signature

DATED this 23 day of June, 2003

BY THE COURT


STEVEN L. HANSEN, JUDGE

000177

CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 020403464 by the method and on the date specified.

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Dated this 24 day of June, 2003.

Tom Sperry
Deputy Court Clerk

Addendum 2

July 22, 2003 Order Granting Defendant's Motion for Summary Judgment

4TH
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FILED
Fourth Judicial District Court
of Utah County, State of Utah

7-22-03 Deputy

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

MARIA ELENA GOMEZ, personally and as
Personal Representative of the Estate of Juan
Gomez, deceased,

Plaintiff,

vs.

ESSENTIAL BOTANICAL FARMS, LC, a
Utah limited liability company,

Defendant.

**ORDER GRANTING DEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

Case No. 020403464
Division 7

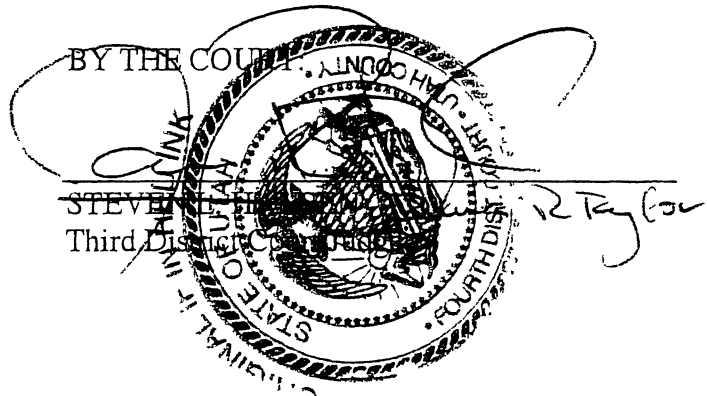
Judge Hansen

Defendant Essential Botanical Farms, L.C.'s ("Essential Botanicals") Motion for Summary Judgment against plaintiff Maria Elena Gomez ("Ms. Gomez") came for oral argument before the Honorable Steven L. Hansen on April 28, 2003. Essential Botanicals was represented by Mark Gavre of Parsons Behle & Latimer. Ms. Gomez was represented by Thomas W. Seiler of Robinson, Seiler & Glazier.

After considering the memoranda, affidavits and exhibits submitted by the parties and hearing oral argument, it is hereby

ORDERED that Essential Botanical's Motion for Summary Judgment is granted against Ms. Gomez on the grounds that there is no genuine issue of material fact that Young Living Farms was a legal dba of Essential Botanicals and, therefore, because at the time of his death the decedent was employed by Young Living Farms, the exclusive remedy provision of the Workers' Compensation Act bars any action against Essential Botanicals. This case is accordingly dismissed with prejudice.

DATED this 22 day of July, 2003.



CERTIFICATE OF SERVICE

I hereby certify that on this 9th day of July, 2003, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT TO:**

Thomas W. Seiler
Robinson, Seiler & Glazier, LC
80 North 100 East
P.O. Box 1266
Provo, Utah 84603-1266

Brett R. McFarland