

2003

Maria Elena Gomez, Personally and as Personal
Representative of the Estate of Juan Gomez,
Deceased v. Essential Botanical Farms, LC : Brief of
Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

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

Plaintiff and Appellant,

vs.

ESSENTIAL BOTANICAL FARMS, LC,

Defendant and Appellee.

Appeal No. 20030691-CA
District Court No. 020403464

BRIEF OF APPELLEE

Appeal from the Order of the Fourth Judicial District Court,
Utah County, State of Utah, Dated July 22, 2003
Honorable James R. Taylor, District Court Judge

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UTAH APPELLATE COURTS
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STATEMENT OF JURISDICTION

Appellee accepts Appellant's statement of jurisdiction.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Did Appellant present evidence to the District Court sufficient to create a genuine dispute of fact as to Appellant's assertion that Young Living Farms was not the dba of Essential Botanical Farms, LC despite the fact that Young Living Farms was the legal, registered dba of Essential Botanical Farms, LC?

STANDARD OF APPELLATE REVIEW

Appellee accepts Appellant's statement as to the standard of review.

ISSUE PRESERVED IN TRIAL COURT

The issue was preserved in the trial court. (R. 49-100.)

STATUTE 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 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 or 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

STATEMENT OF THE CASE, PROCEEDINGS AND FACTS

A. Nature of the Case.

Juan Gomez was employed through an employee leasing company, A-Plus Benefits, and worked for Essential Botanical Farms, LC dba Young Living Farms in Mona, Utah. While working at Young Living Farms/Essential Botanical Farms, LC, Juan Gomez was killed in an on-the-job accident on August 17, 2000. Ms. Gomez, widow of Juan Gomez, attempts to assert a wrongful death tort action based on the fatal accident that resulted in her husband's death. The exclusive remedy provision of the Utah Workers' Compensation Act bars civil actions against employers based on injuries (including death) suffered by their employees. In her complaint, Ms. Gomez attempts to get around the workers compensation bar by claiming that Essential Botanical Farms, LC was not the employer, but the "landlord" of the employer, Young Living Farms. There is no merit to Ms. Gomez's assertion because Young Living Farms is merely the dba of Essential Botanical Farms, LC. In short, Young Living Farms and Essential Botanical Farms, LC are one and the same, and it remains the case that Juan Gomez worked for Essential Botanical Farms, LC. Accordingly, the Utah Workers' Compensation Act provides the exclusive remedy for the death of Juan Gomez and bars Ms. Gomez's action against Essential Botanical Farms, LC.

Ms. Gomez acknowledges that Young Living Farms was at all times material to her action the registered dba of Essential Botanical Farms, LC. Brief of Appellant at 5 (¶ 5). Nonetheless, Ms. Gomez contends that Young Living Farms was "really" the dba of another company, Aromatic Research & Technology, LC. On this basis Ms. Gomez

argues that she is entitled to pursue her action against Essential Botanical Farms, LC. There is no merit to Ms. Gomez's contention, and the District Court properly dismissed Ms. Gomez's lawsuit as barred by the exclusive remedy provision of the Utah Workers' Compensation Act.

B. Course of Proceedings and Disposition Below.

Ms. Gomez filed her complaint in this action in the Fourth Judicial District Court, Utah County, State of Utah, on August 14, 2002. Essential Botanical Farms, LC filed its motion for summary judgment on November 22, 2002, arguing that the complaint should be dismissed because Ms. Gomez's wrongful death action was barred by the exclusive remedy provision of the Utah Workers' Compensation Act. Essential Botanical Farms, LC's motion was fully briefed by both sides, with supporting memoranda and affidavits. Oral argument on Essential Botanical Farms, LC's motion was held before the Honorable Steven L. Hansen on April 28, 2003. On June 23, 2003, Judge Hansen issued his Memorandum Decision granting Essential Botanical Farms, LC's motion and dismissing Ms. Gomez's lawsuit. On July 22, 2003, the Honorable James R. Taylor signed the Order Granting Defendant's Motion for Summary Judgment. On August 19, 2003, Ms. Gomez filed her Notice of Appeal with the trial court.

C. Statement of Facts.

1. Plaintiff is the widow of Juan Gomez and the personal representative of the estate of Juan Gomez. Complaint ¶ 1 (R. 10).
2. Essential Botanical Farms, LC operates under the dba of Young Living Farms. Affidavit of Frederick T. Williams ¶ 2 and Ex. 1 thereto. (R. 45, 49-50)

(Addendum A). Young Living Farms was registered as the dba of Essential Botanical Farms, LC on March 22, 1996 and remained the registered dba of Essential Botanical Farms, LC until April 17, 2002, when the registration expired for failure to be renewed. Affidavit of Bruce L. Olson ¶ 2 and Exhibits A and B thereto (R. 113, 114, 117-18) (Addendum E).

3. Essential Botanical Farms, LC does its filings with the Utah State Tax Commission as “Essential Botanical Farms, LC dba Young Living Farms.” Affidavit of Emily Wright ¶ 2 and Ex. A thereto (R. 125, 127) (Addendum C).

4. Since 1996 Young Living Essential Oils has been the legal, registered dba of Aromatic Research & Technology, LC, which has no other dba. Olson Aff. ¶ 3 and Ex. C thereto. (R. 112, 117) (Addendum E).

5. A-Plus Benefits, Inc., an employee leasing company, entered into an employee leasing agreement with Young Living Farms on May 1, 1997. On the same day, A-Plus Benefits, Inc. separately entered into an employee leasing agreement with Young Living Essential Oils, the dba for Aromatic Research & Technology, LC. Affidavit of Randall Barker ¶¶ 3, 4 (R.163).

6. Juan Gomez worked for Young Living Farms/Essential Botanical Farms, LC in Mona, Utah and was employed through A-Plus Benefits, Inc. as a leased employee. Complaint ¶¶ 6-7 (R. 9). Young Living Farms/Essential Botanical Farms, LC directed and controlled the work of Juan Gomez. Williams Aff. ¶ 3 (R. 48) (Addendum A).

7. On August 17, 2000, Juan Gomez was killed in an on-the-job accident while working at Young Living Farms/Essential Botanical Farms, LC. Complaint ¶¶ 13-

14 (R. 8). Plaintiff specifically alleges that Juan Gomez was “working” when “a steam distillation unit became over-pressured [and] ruptured,” thereby “fatally wounding Juan Gomez.” Id. (R. 8).

8. Workers’ compensation insurance coverage for employees working at Young Living Farms/Essential Botanical Farms, LC was provided through Liberty Mutual insurance, which is providing workers’ compensation benefits to Ms. Gomez. Williams Aff. ¶ 4 and Ex. 2 thereto (R. 44, 48) (Addendum A).

9. Ms. Gomez’s lawsuit and her attempt to get around the exclusive remedy provision of the Utah workers’ Compensation Act is premised on the assertion that Essential Botanical Farms, LC was not the employer of Juan Gomez, but the “landlord” of the employer, Young Living Farms. Complaint ¶¶ 5, 7 (R. 9). Ms. Gomez did not present any evidence to the District Court of a “landlord” relationship between Essential Botanical Farms, LC and Young Living Farms. (R. 2-8, 50-100.) At summary judgment, Ms. Gomez did not dispute Essential Botanical Farms, LC’s statement that it “is not the landlord of and does not lease any property or premises to Young Living Farms.” Affidavit of Frederick T. Williams ¶ 2 (R. 48-49); Memo. In Support of Defendant’s Motion for Summary Judgment at 3 (R. 41); Memo. . . . In Opposition to Defendant’s Motion for Summary Judgment at 2-5 (R. 96-99). Instead, Ms. Gomez argued that Young Living Farms was the dba of another company, Aromatic Research & Technology, LC. (R. 95-96.)

10. The District Court ruled that “Young Living Farms was a legal dba of Essential Botanical Farms,” that “Essential Botanical Farms/Young Living Farms

directed and controlled the work of Juan Gomez,” that “Liberty Mutual insurance provided workers’ compensation insurance coverage for employees working at Essential Botanical Farms/Young Living Farms,” that “Liberty Mutual Insurance is currently paying workers’ compensation benefits to the plaintiff,” and that “the exclusive remedy provision of the Workers’ Compensation Act bars any action [by Ms. Gomez] against Essential Botanical Farms.” Memorandum Decision at 1, 3 (R. 179, 177) (Addendum F).

SUMMARY OF ARGUMENT

Ms. Gomez’s wrongful death action against Essential Botanical Farms, LC is barred by the exclusive remedy provision of the Utah Workers’ Compensation Act because her deceased husband, Juan Gomez, was killed while working at Essential Botanical Farms, LC. Ms. Gomez does not dispute that the Utah Workers’ Compensation Act bars a wrongful death claim against the employer of the deceased. Instead, Ms. Gomez argues that Essential Botanical Farms, LC is the “landlord” to the employer, Young Living Farms, and hence is subject to suit. When it was pointed out at summary judgment that Young Living Farms was merely the dba of Essential Botanical Farms, LC, Ms. Gomez argued that Young Living Farms was somehow “really” the dba of another company, Aromatic Research & Technology, LC. On this basis Ms. Gomez claims to be entitled to assert her wrongful death claim against Essential Botanical Farms, LC. There is no basis for this argument. It is undisputed that Young Living Farms was the legal, registered dba of Essential Botanical Farms, LC, and none of Ms. Gomez’s arguments to the contrary has any merit.

ARGUMENT

I. MS. GOMEZ'S WRONGFUL DEATH CLAIM IS BARRED BY THE UTAH WORKERS' COMPENSATION ACT.

Ms. Gomez's action is barred because the Utah Workers' Compensation Act ("UWCA") provides exclusive remedy under Utah law for a work-related injury or death. Neither an employee nor an employee's spouse, widow or personal representative may bring a civil action against the employer based upon the employee's injury or death. This rule of law is based on clear statutory language and has been reaffirmed by numerous decisions of the Utah Supreme Court and the Utah Court of Appeals. For example, the Utah Supreme Court recently affirmed the dismissal of a wrongful death action brought by the personal representatives of an employee, explaining:

The UWCA is the exclusive remedy available to an employee's heirs for "any . . . 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." . . . Because plaintiffs assert, at heart, that [the employee] sustained her death due to her employment, the UWCA clearly governs their claim We hold that the plain language of the UWCA precludes plaintiffs' wrongful death claim because, according to plaintiffs' allegations, [the employee's] . . . death was sustained because of her employment with [the defendant]. We therefore affirm [dismissal of plaintiffs' complaint].

Cook v. Zions First National Bank, 57 P.3d 1084, 1086-87 (Utah 2002) (quoting Utah Code Ann. § 34A-2-105(1)). See also Mathews v. Kennecott Utah Copper Corp., 54 F. Supp. 2d 1067, 1076 (D. Utah 1999) ("[C]ompensation under the [Utah Workers' Compensation] Act is intended to be the exclusive remedy an employee has against an employer for any injury incurred by the employee arising out of his employment. Thus,

if [the employee] suffered any injury compensable under the Act, the exclusive remedy provision should bar a separate negligence action for those injuries.”) aff’d, 208 F.3d 226 (10th Cir. 2000); Mounteer v. Utah Power & Light Co., 823 P.2d 1055, 1057 (Utah 1991) (Workers’ Compensation Act provides exclusive remedy for “physical or mental injury”; complaint dismissed); Lantz v. National Semiconductor Corp., 775 P.2d 937, 940 (Utah App. 1989) (affirming dismissal, under UWCA, of tort action against employer and supervisor based on plaintiff’s job-related injuries); Worthen v. Kennecott Corp., 780 F.2d 856, 857-860 (10th Cir. 1985) (affirming dismissal, under UWCA, of wrongful death action based on job-related conduct).

Ms. Gomez’s action is asserted against Juan Gomez’s employer Essential Botanical Farms, LC (dba Young Living Farms) based on the accidental death of Juan Gomez that occurred while he was working for Essential Botanical Farms, LC. Facts ¶¶ 1, 6-7. Juan Gomez was covered by workers compensation insurance which is currently paying benefits to Ms. Gomez. Facts ¶ 8. Juan Gomez worked for Essential Botanical Farms, LC through an employer leasing arrangement with A-Plus Benefits, Inc. Facts ¶ 6. The exclusive remedy provision of the Utah Workers’ Compensation Act applies to both the “client company” (Essential Botanical Farms, LC) and “the employee leasing company” (A-Plus Benefits, Inc.). Utah Code Ann. § 34A-2-105(2).¹

¹ See also Utah Home Fire Ins. Co. v. Manning, 985 P.2d 243, 249 (Utah 1989) (employee of temporary service considered employee of client employer for workers compensation purposes and therefore barred from suing client employer or any employee of client employer); Gherisi v. Salazar, 883 P.2d 1352, 1357 (Utah 1994) (same); Bliss v. Ernst Home Center, Inc., 866 F. Supp. 1362, 1365-67 (D. Utah 1994) (“an employee for

Accordingly, Ms. Gomez's action against Essential Botanical Farms, LC is barred by the exclusive remedy provision of the Utah Workers' Compensation Act.

II. THERE IS NO MERIT TO ANY OF MS. GOMEZ'S ARGUMENTS THAT YOUNG LIVING FARMS WAS A DBA OF ANOTHER COMPANY.

Ms. Gomez makes various argument to support her contention that Young Living Farms was the dba of another company, Aromatic Research & Technology, LC. None of these arguments has any merit.

A. Essential Botanical Farms, LC's Relationship with A-Plus Benefits, Inc. Does Not Support Ms. Gomez's Contention.

Ms. Gomez argues that Essential Botanical Farms, LC's relationship with A-Plus Benefits, Inc. somehow supports her contention that Young Living Farms was a dba of another company, Aromatic Research & Technology, LC. Brief of Appellant at 11. There is no merit to this argument. A-Plus Benefits, Inc. entered into an employee leasing agreement with Young Living Farms on May 1, 1997. On the same day, A-Plus Benefits, Inc. entered into a separate employee leasing agreement with Young Living Essential Oils, the dba of Aromatic Research & Technology, LC. Facts ¶ 5 and R. 163. The existence of two separate agreements demonstrates that A-Plus Benefits, Inc. was contracting with two separate companies. Clearly, A-Plus Benefits, Inc. would not have entered into two separate employee leasing agreements on the same day if it thought that

the purpose of workers' compensation, may have two employers Either employer may invoke the exclusive remedy provision;" dismissing tort and contract claims of employee of temporary employment service against client employer).

Young Living Farms and Young Living Essential Oils were the same entity (Aromatic Research & Technology, LC) as Ms. Gomez contends.²

B. The Caption in an Unrelated Lawsuit Does Not Support Ms. Gomez's Contention.

Aromatic Research & Technology, LC operates under the registered dba of "Young Living Essential Oils" and has done so since 1996. See Facts ¶ 4 and Affidavit of Bruce L. Olson ¶ 3 and Exhibit C thereto (R. 110-113, 117) (Addendum E). Contrary to Ms. Gomez's contention, "Young Living Farms" has not been and is not the dba of Aromatic Research & Technology, LC. Olson Aff. ¶ 3 and Affidavit of Emily Wright ¶ 2 (R. 110, 113, 117, 127) (Addenda C and E).

Ms. Gomez argues that the caption in another, unrelated lawsuit shows that the dba of "Young Living Farms" belongs to Aromatic Research & Technology, LC. Brief of Appellant at 5, 10. This argument is without merit for multiple reasons. First, the caption in question was prepared by plaintiffs in the other action, not by defendant Aromatic Research & Technology, LC. Affidavit of Kerth A. Kelly ¶¶ 2-3 and Ex. A thereto. (R. 105, 107-108) (Addendum D). Second, in that other action, the attorney representing Aromatic Research & Technology, LC and the other defendants merely used the plaintiffs' caption because he was representing all the defendants, the dba designation

² Ms. Gomez claims that Young Living Essential Oil provided a deposit check to A-Plus Benefits, Inc. on behalf of Young Living Farms. Brief of Appellant at 11. Even if true, this would not alter the fact that Young Living Farms and Young Living Essential Oils were different companies. In any case, the form document to which Ms. Gomez refers is not completed and does not identify *any* company. (R. 157).

was not material, and the attorney did not want to create any risk of confusion by changing the names of the defendants in the caption. Id. ¶ 4 (R. 108) (Addendum D).

Third, in that action, the defendants successfully moved to have the plaintiffs' attorney disqualified and the action dismissed; no answer to the complaint was ever filed and defendants never responded to the plaintiffs' incorrect dba designation. Id. ¶ 4 (R. 108). Fourth, in their memorandum in support of their Motion to Disqualify Opposing Counsel, defendants correctly identified Young Living Essential Oils as the dba of Aromatic Research & Technology, LC:

... Defendant Aromatic Research & Technology, L.C., dba
Young Living Essential Oils ("YLEO").

(R. 53) (Addendum B). Thus, Aromatic Research & Technology, LC did not declare or represent to the court that "Young Living Farms" was a dba of Aromatic Research & Technology, LC.

Finally, Ms. Gomez attempted to support for her contention at the District Court by misquoting from an affidavit filed in the other action. Ms. Gomez claimed that the affidavit of Ronald Spence in the other action declared that "Young Living Farms Essential Oils" was a dba of Aromatic Research & Technology, LC. Pl. Opposition Memo. at 4, ¶ 7 (R. 97). Ms. Gomez incorrectly added the word "Farms" to what the affidavit actually stated. See Exhibit F to Pl. Opposition Memo., in which the affiant merely (and correctly) stated that "Young Living Essential Oils" was the dba of Aromatic Research & Technology, LC. (R. 80.)

In sum, the caption in the other, unrelated action does not provide any support for Ms. Gomez' contention that Young Living Farms is a dba for Aromatic Research & Technology, LC.

C. Ms. Gomez's Estoppel Argument Has No Merit.

Ms. Gomez argues that Essential Botanical Farms, LC should be estopped from claiming the protection of the exclusive remedy provision of the Utah Workers' Compensation Act. Brief of Appellant at 11-12. There is no merit to this argument for several reasons. First, "this kind of estoppel," as Ms. Gomez admits, is not recognized "in this jurisdiction" or anywhere else "in the United States." Id. at 11. Second Ms. Gomez's estoppel argument is made for this first time on appeal, and was not presented to the District Court. (R. 94-100.) As such, the argument is improper and should not be considered by this court. See Colman Ex Rel. Schefski v. Stevens, 17 P.3d 1122, 1124 (Utah 2000) (issues not raised in the trial court are not preserved for appellate review and therefore will not be considered on appeal); Coombs v. Juice Works Development Co., Inc., 81 P.3d 769, 772 n. 3 (Utah App. 2003) ("We will not address any new arguments raised for the first time on appeal.").

Finally, there is no factual basis for Ms. Gomez's estoppel argument. Essential Botanical Farms, LC did not, contrary to Ms. Gomez's allegation, engage in any "deceptive practices" with respect to its dba, Young Living Farms. Brief of Appellant at 12. Rather, Essential Botanical Farms, LC openly made Young Living Farms its legal,

registered dba.³ Facts ¶ 2. Additionally, Essential Botanical Farms, LC identified Young Living Farms as its dba in its filings with the Utah State Tax Commission. Facts ¶ 3. Similarly, Aromatic Research & Technology, LC openly made Young Living Essential Oils its legal, registered dba. Facts ¶ 4. There is no evidence of any third party being confused by the dba's of the two companies. As Ms. Gomez herself points out, the U.S. Food and Drug Administration knew that Young Living Essential Oils was the dba of Aromatic Research & Technology, LC. Brief of Appellant at 7 (¶ 19). Likewise, A-Plus Benefits, Inc. knew that "Young Living Essential Oils was a dba of Aromatic Research and Technology, L.C.," and A-Plus Benefits, Inc. entered into separate agreements with Young Living Farms and Young Living Essential Oils. Barker Aff. ¶ 2-4 (R. 163-164). Finally, as explained above, the caption in the other, unrelated lawsuit was not a representation or declaration that Young Living Farms was a dba of Aromatic Research & Technology, LC.

CONCLUSION

At all times material to this action, Young Living Farms was the legal, registered dba of Essential Botanical Farms, LC. There was no "landlord" relationship between Essential Botanical Farms, LC and Young Living Farms because they were (and are) the same company. Ms. Gomez's attempt to show that Young Living Farms was the dba of a

³ Ms. Gomez contends that there is no evidence that Mr. Gomez knew that Young Living Farms was the dba of Essential Botanical Farms, LC. Brief of Appellant at 12. There is no evidence in the record one way or the other about what Mr. Gomez knew. In any case, given that Young Living Farms was the registered dba of Essential Botanical Farms, LC, this information was available to Mr. Gomez as well as to anyone else who might be interested.

different company, Aromatic Research & Technology, LC, is groundless and without merit. In sum, Ms. Gomez's wrongful death action is barred by the exclusive remedy provision of the Utah Workers' Compensation Act because she is suing the employer of her deceased husband. The District Court's Order Granting Defendant's Motion for Summary Judgment should be affirmed.

DATED this 27th day of April, 2004.



W. MARK GAVRE
ANGIE NELSON
PARSONS BEHLE & LATIMER

CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of April, 2004, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **BRIEF OF APPELLEE**,
to:

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ADDENDUM

- A. Affidavit of Frederick T. Williams (R. 44-49)
- B. Excerpt from Memorandum in Unrelated Case (R. 58-60)
- C. Affidavit of Emily Wright (R. 125-128)
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- F. Memorandum Decision (R. 176-179)

Tab A

4TH JUDICIAL DISTRICT COURT
PROVO, UTAH

2002 MAY 23 PM 3:29 PM

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**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.

**AFFIDAVIT OF FREDERICK T.
WILLIAMS**

Case No. 020403464
Division 7

Judge Hansen

I, Frederick T. Williams, being first duly sworn, depose and state that I have personal knowledge of the following facts:

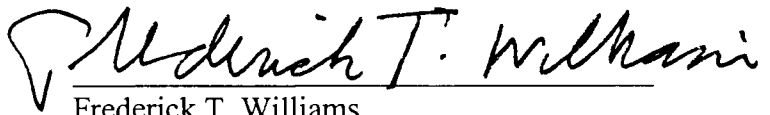
1. I am Director of Human Resources for Essential Botanical Farms, LC.
2. Young Living Farms is a dba for Essential Botanical Farms, LC, and Young Living Farms has been registered as a dba of Essential Botanical Farms, LC since March 22, 1996. See Ex. 1 hereto. Essential Botanical Farms, LC is not the landlord of and does not lease

any property or premises to Young Living Farms because they are the same entity. Essential Botanical Farms, LC simply does business as Young Living Farms.

3. Juan Gomez worked for Essential Botanical Farms, LC dba Young Living Farms, and was hired through an employee leasing company (A-Plus Benefits) used by Essential Botanical Farms, LC. Juan Gomez worked under the direction and control of Essential Botanical Farms, LC. Juan Gomez was working for Essential Botanical Farms, LC when he was fatally injured in an on-the-job accident.

4. Juan Gomez was covered by workers compensation insurance through a policy provided by Liberty Mutual, which is currently paying workers compensation benefits to Maria Elena Gomez and her two children based on the death of Juan Gomez. See Ex. 2 hereto.

DATED this 22 day of November, 2002.


Frederick T. Williams

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Frederick T. Williams, being first duly sworn, says that he is the Director of Human Resources for Essential Botanical Farms, LC., the defendant in the foregoing action; that he has read the foregoing and knows the contents thereof; and that the same is true to his knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes the same to be true and correct.



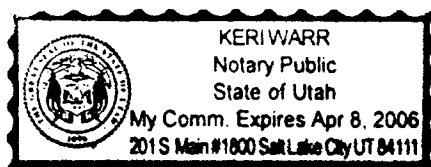
NOTARY PUBLIC

My Commission Expires:

4-8-06

Residing at:

SLC, UT

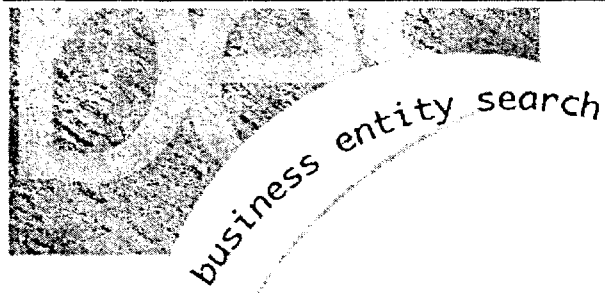


CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of November, 2002, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **AFFIDAVIT OF FREDERICK T. WILLIAMS**, to:

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

Katrine L. Richmond



Utah Department of
Commerce



return to business
entity search

Name	Type	City	St
YOUNG LIVING FARMS	DBA	SALT LAKE CITY UT	E

Principal Information

Position	Name	Address
Applicant	ESSENTIAL BOTANICAL	unknown address NA 00000
Applicant	FARMS, LC LC012848	unknown address NA 00000
Registered Agent	BRUCE L OLSON	36 S STATE ST STE 1400 PO BOX 45385 SLC UT 841450385

Cancel

Do Another

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 [Division of Corporations Home](#) |
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 [Utah.gov Accessibility Policy](#)
 Copyright © 2001 State of Utah - All rights reserved.

EXHIBIT "1"

P. O. Box 989000
Sacramento, CA 95798-9000-2037
Phone #: 1-800-821-0967
Fax #: (916) 564-2059



9/6/2002

Young Living Farms
2505 S. Main
Payson, UT 84651

Attn: Fred Williams

Re: Juan Gomez
File #: WC 608-324337

Dear Mr. Williams:

As discussed, this is an accepted Workers' Compensation claim. Fatal benefits are being paid at \$262.00 per week (\$250.00 spouse + \$10.00 for 2 kids) effective 8/17/01 to current date. Payments will continue for a period of six (6) years, per WC statute.

Sincerely:

William Nussear
Team Manager II

EXHIBIT "2"

Tab B

FILED IN
4TH JUDICIAL DISTRICT COURT
STATE OF UTAH
UTAH COUNTY

Oct 5 3 01 AM '99

MSY

Keith A. Kelly (A4748)
Bruce L. Olson (A2468)
RAY, QUINTNEY & NEBEKER
79 South Main Street, Suite 700
Salt Lake City, Utah 84111

Attorneys for Defendants

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

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.

MEMORANDUM IN SUPPORT OF
DEFENDANTS' RULE 1.9 MOTION
TO DISQUALIFY OPPOSING
COUNSEL

Civil No. 980404964

Judge Maetani

Under Rule 4-501 of the Utah Code of Judicial Administration, Defendants submit the following Memorandum in Support of their Rule 1.9 Motion to Disqualify Opposing Counsel.

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I.	INTRODUCTION	1
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A.	Rule 1.9(a) Requires Disqualification (i) If This Matter Is “Substantially Factually Related” to Fisher’s Prior Representation of YLEO, or (ii) If Fisher Can Use Information He Received from YLEO to Its Detriment.....	4
B.	A Substantial Factual Relationship Should Be Found When the Attorney Obtained Internal Information About His Former Client Relevant to the Current Representation.....	5
C.	The Current Lawsuit Is “Substantially Factually Related” to Fisher’s Prior Representation of YLEO Because Both Matters Involve YLEO’s Distributors and Distribution Network	7
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I. INTRODUCTION.

Plaintiffs' counsel Darwin C. Fisher ("Fisher") is the former attorney of Defendant Aromatic Research & Technology, L.C., dba Young Living Essential Oils ("YLEO"). Fisher represented YLEO in dealing with distributor problems and with its distributor relationships. During the course of the representation, YLEO provided Fisher with internal and confidential information about YLEO's distribution system, including information about YLEO distributors who formerly were distributors for Plaintiff Young Living, Inc. ("YLI").

Now, Fisher is suing YLEO and the other defendants, claiming that YLEO tortiously interfered with the business relationships of YLI because it improperly "took the distributors" of YLI. (*See* Complaint ¶¶ 38-48 (3rd Cause of Action).)

Because both this lawsuit and Fisher's former representation of YLEO both involve YLEO's distributors and distribution system, they are both "substantially factually related" matters. Moreover, YLEO provided Fisher with confidential information that could now be used against it in this lawsuit. Thus, under Rule 1.9 of the Utah Rules of Professional Conduct, Fisher should be disqualified from representing the Plaintiffs against his former client YLEO.

II. STATEMENT OF MATERIAL FACTS.

Under Rule 4-501(1)(A) of the Utah Code of Judicial Administration, Defendants submit the following statement of material facts:

1. In the Fall of 1995, YLEO sought legal counsel because the company had experienced difficulties with certain of its distributors who had violated their distribution agreements. YLEO's former general manager Ron Spence ("Spence") introduced YLEO's managing director D. Gary Young ("Young") to Fisher, who YLEO hired to handle legal matters

Tab C

4TH DISTRICT
PROVO DEPT. 111
2003 JUN 25 10:49 AM

W. MARK GAVRE (4577)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

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.

AFFIDAVIT OF EMILY WRIGHT

Case No. 020403464
Division 7

Judge Hansen

I, Emily Wright, being first duly sworn, depose and state that I have personal knowledge of the following facts:

1. I am the Executive Assistant to D. Gary Young, who is the Managing Director of Essential Botanical Farms, LC. I am familiar with and have first-hand knowledge of the business activities of Essential Botanical Farms, LC.
2. Essential Botanical, Farms, LC operates under the dba of "Young Living Farms." No other company uses the dba of Young Living Farms. Attached hereto as Exhibit A is a Utah State Tax Commission Exemption Certificate filed by Essential Botanical Farms, LC which shows that it uses the dba of "Young Living Farms."

DATED this 17th day of January, 2003.


Emily Wright

STATE OF Utah)

: ss.

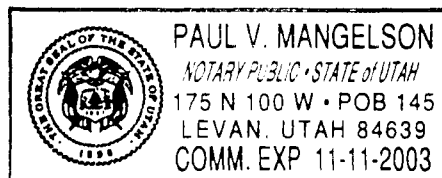
County of Juab)

Emily Wright, being first duly sworn, acknowledges the above to be true to her knowledge, except as to those matters therein stated on information and belief, and as to those matters, she believes the same to be true and correct.


NOTARY PUBLIC

My Commission Expires: 11-11-03

Residing at: Levan, Utah



Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2003, I caused to be mailed, first class,
postage prepaid, a true and correct copy of the foregoing **AFFIDAVIT OF EMILY WRIGHT**,
to:

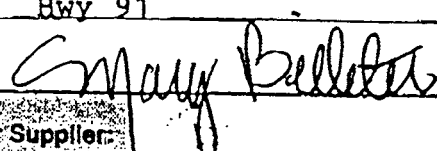
Thomas W. Seiler
Robinson, Seiler & Glazier, LC
80 North 100 East
P.O. Box 1266
Provo, Utah 84603-1266

Kathie L. Richmond



Utah State Tax Commission
Exemption Certificate
(Sales, Use, Tourism, and Motor Vehicle Rental Tax)

TC-721
Rev. 7/97

Name of business or institution claiming exemption (purchaser) <u>Essential Botanical Farms LC dba/Young Living Farms</u>		Telephone number <u>801 623 7911</u>	
Street address <u>3700 North Hwy 91</u>	City <u>Mona</u>	State <u>UT</u>	ZIP Code <u>84645</u>
Authorized signature 	Date <u>07-16-97</u>	Title <u>Owner</u>	
Name of Vendor or Supplier <u></u>			

The person signing this certificate MUST check the applicable box showing the basis for which the exemption is being claimed. Questions should be directed (preferably in writing) to Customer Service, Utah State Tax Commission, 210 N 1950 W, SLC Utah 84134, Telephone 801) 297-2200, or toll free 1-800-662-4335.

- ☐ **RESALE OR RE-LEASE** Sales Tax License No. E45868
I certify that I am a dealer in tangible personal property or services and that the tangible personal property or services purchased are for resale or re-lease. If I use or consume any tangible personal property or services that I purchase tax free for resale, or if my sales are of food, beverages, dairy products and similar confections dispensed from vending machines (see Rule R865-19S-74), I will report and pay sales tax on the proper cost thereof directly to the Tax Commission on my next regular sales and use tax return.
- ☐ **LEASEBACKS**
I certify that the tangible personal property leased satisfies the following conditions: (1) the property is part of a sale-leaseback transaction; (2) sales or use tax was paid on the initial purchase of the property; (3) the leased property will be capitalized and the lease payments will be accounted for as payments made under a financing arrangement.
- ☐ **RELIGIOUS OR CHARITABLE INSTITUTION** Sales Tax Exemption No. _____
I certify that the tangible personal property or services purchased will be used or consumed for essential religious or charitable purposes.
- ☐ **FUELS, GAS, ELECTRICITY** Sales Tax License No. _____
I certify that all gas, electricity, coal, coke, and other fuel purchased will be used for industrial use only and not for residential or commercial purposes. Include the business Standard Industrial Code, and state the predominant use of the fuel covered by the exemption.
Standard Industrial Code: _____
Use of the fuel: _____
- ☐ **POLLUTION CONTROL FACILITY** Sales Tax License No. _____
I certify that our company has been granted a "Certification of Facilities" as provided for by Utah Code Ann. Sections 19-2-123 through 19-2-127 and as explained in Sales Tax Rule R865-19S-83 by either the Air Quality Board or the Water Quality Board. I further certify that each item of tangible personal property purchased under this exemption is qualifying machinery or equipment for this purpose.
- ☐ **COMMERCIALS, FILMS, AUDIO AND VIDEO TAPES**
I certify that purchases of commercials, films, prerecorded video tapes, prerecorded audio program tapes or records are for sale or distribution to motion picture exhibitors, or commercial television or radio broadcasters. If I subsequently resell items to any other customer, or use or consume any of these items, I will report any tax liability directly to the Tax Commission.
- ☐ **COMMERCIAL AIRLINES**
I certify that the food and beverages purchased are by a commercial airline for in-flight consumption; or, any parts or equipment purchased are for use in aircraft operated by common carriers in interstate or foreign commerce.
- ☐ **BUILDING MATERIALS USED OUTSIDE UTAH**
I certify that the building materials and equipment purchased will be incorporated into real property outside the State of Utah, and that the state of use will not allow credit for sales or use tax paid to Utah.
Vendor invoice number: _____ Date: _____
Location of job outside Utah: _____
- ☒ **AGRICULTURAL PRODUCER**
I certify that the items purchased will be used primarily and directly in a commercial farming operation and qualify for the Utah sales and use tax exemption.

Tab D

4TH DISTRICT COURT
PROVO DEPARTMENT
2003 JUN 21 5 11 37

W. MARK GAVRE (4577)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

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.

AFFIDAVIT OF KEITH A. KELLY

Case No. 020403464
Division 7

Judge Hansen

I, Keith A. Kelly, being first duly sworn, depose and state that I have personal knowledge
of the following facts:

1. I am an attorney licensed to practice law in Utah (Bar #4748), and I am a
shareholder at the law firm of Ray, Quinney & Nebeker in Salt Lake City, Utah.
2. From 1998 through 2000, I represented Aromatic Research and Technology, LC
and the other defendants in an action brought in the Fourth Judicial District Court of Utah
County, State of Utah, styled Young Living, Inc., Dixie Wickstrom, Gary Richer, Maurice

Lawty, and JVK Associates 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 Billiter, Young Living Essential Oils Trust, Jenny Lind, Civil No. 980404964 (the "Lawsuit").

3. The caption on the complaint filed in the Lawsuit listed the defendants as described by the plaintiffs, including the two "DBAs". See Exhibit A hereto. Plaintiffs incorrectly listed Aromatic Research and Technology, LC as having the DBA of "Young Living Farms" as well as the DBA of "Young Living Essential Oils." This is incorrect. Only "Young Living Essential Oils" is a DBA of Aromatic Research and Technology, LC.

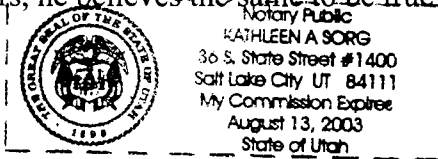
4. I used the plaintiffs' caption in the pleadings I filed in the Lawsuit on behalf of the defendants, because I represented all the defendants in the Lawsuit, because the incorrect naming of DBAs was not material, and because I did not wish to introduce any possible confusion by altering the way in which the defendants were listed in the caption. In doing so, I was not declaring or representing to the court that the plaintiffs' caption was correct, and in particular, I was not declaring or representing to the court that "Young Living Farms" was a DBA of Aromatic Research and Technology, LC. I responded to the Complaint with a Motion to Dismiss and a Motion to Disqualify plaintiffs' counsel. Opposing counsel was disqualified and the Lawsuit was dismissed before any Answer was required on behalf of the defendants. Accordingly, the defendants never responded to the plaintiffs' incorrect DBA designation in the caption.

DATED this 17th day of January, 2003.

Keith A. Kelly
Keith A. Kelly

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

Keith A. Kelly, being first duly sworn, acknowledges the above to be true to his knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes the same to be true and correct.



Kathleen A. Sorg
NOTARY PUBLIC

My Commission Expires:

8-13-03

Residing at:

Salt Lake County, Utah

690297

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2003, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **AFFIDAVIT OF KEITH A. KELLY**,
to:

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

Kathie L. Erickson

FILED
JUL 2 2 21 PM '04

DARWIN C. FISHER, 1080
A Professional Corporation
2696 No. University Ave., Suite 210
Provo, UT 84604
Telephone: (801) 373-9606

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

YOUNG LIVING, INC., DIXIE
WICKSTROM, GARY RICHER,
MAURICE LAWTY and JVK
ASSOCIATES,

Plaintiffs,

vs.

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.

COMPLAINT

Civil No: 9804-4964
Judge: Maetani

PARTIES AND JURISDICTION

1. Plaintiff Young Living, Inc. is a Delaware corporation.
2. Plaintiff Maurice Lawty is a resident of the State of Washington.

Tab E

4TH DISTRICT COURT
PROVO DEPARTMENT *g*

2003 JAN 21 PM 1:37

W. MARK GAVRE (4577)
PARSONS BEHLE & LATIMER
One Utah Center
201 South Main Street, Suite 1800
Post Office Box 45898
Salt Lake City, UT 84145-0898
Telephone: (801) 532-1234
Facsimile: (801) 536-6111

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.

AFFIDAVIT OF BRUCE L. OLSON

Case No. 020403464
Division 7

Judge Hansen

I, Bruce L. Olson, being first duly sworn, depose and state that I have personal knowledge of the following facts:


1. I am an attorney licensed to practice law at the law firm of Ray, Quinney & Nebeker in Salt Lake City, Utah.

2. Essential Botanical Farms, LC is a company for which I have performed legal services. On or about March 22, 1996 on behalf of Essential Botanical Farms, LC, I filed a "DBA Application" with the Department of Commerce, State of Utah, requesting that Essential

Botanical Farms, LC be granted the DBA of "Young Living Farms." See Exhibit A hereto. The DBA of "Young Living Farms" for Essential Botanical Farms, LC was registered on March 22, 1996 by the Utah Department of Commerce. See Exhibit B hereto.

3. I am familiar with Aromatic Research & Technology, LC, for which I have performed legal services and for which I am the registered agent. Aromatic Research & Technology, LC is a Utah limited liability company which has operated under the registered DBA of "Young Living Essential Oils" since 1996. See Exhibit C hereto. Young Living Farms is not a DBA of Aromatic Research & Technology, LC.

DATED this 16th day of January, 2003.



Bruce L. Olson

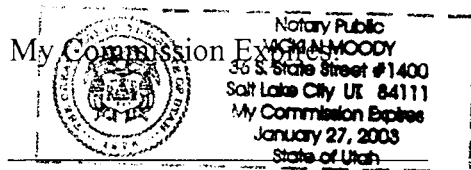
STATE OF UTAH)
)
COUNTY OF SALT LAKE)

Bruce L. Olson, being first duly sworn, acknowledges the above to be true to his knowledge, except as to those matters therein stated on information and belief, and as to those matters, he believes the same to be true and correct.

Vicki N. Moody
NOTARY PUBLIC

Residing at:

Salt Lake City, Utah



CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of January, 2003, I caused to be mailed, first class, postage prepaid, a true and correct copy of the foregoing **AFFIDAVIT OF BRUCE L. OLSON**, to:

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

Kathie L. Richmond



● When approved, your business name is registered for 3 years ●

Do not use this form if this business will need new state tax registration

RECEIVED

1. Requested Business Name Young Living Farms 11-1-82 1980
2. Nature of Business Farming; leasing of farm property Utah Div. of Corp. & Comm. Code
3. Business Address 2665 East 3120 South Salt Lake City UT 84109
Street City State Zip
4. THIS SECTION MUST BE COMPLETED:

Bruce L. Olson

Print Name of Registered Agent (to whom all mailings will be sent.) Must be a **UTAH RESIDENT**.

Ben F Olson

Signature of Accepting Agent

(801) 532-1500

Daytime Phone Number

79 South Main Street	Salt Lake City	UTAH	84111
Street Address ONLY	City		Zip

INFORMATION ABOUT YOU, THE APPLICANT:

- A. If you are a corporation, limited partnership or limited liability company, you must be in good standing and incorporated, or be registered or qualified in the state of Utah.
- B. If you are a general partnership, your general partnership name must also be registered with this office.
- C. If you are not a corporation and not a partnership and not a new business, this application is the only one you must file for a business name. Additional forms may be required for tax purposes for a new business.

5. APPLICANT INFORMATION:

If the name of the agent above is also the applicant, Please write "Same As Above":

Essential Botanical Farms, LC LC#012848

If Applicant is business entity, Please print name of business.

D. Gary Young

Individual Person Name

2665 East 3120 South Salt Lake City UT 84109
Address City State Zip

Signature and Title

If Applicant is business entity, Please print name of business.

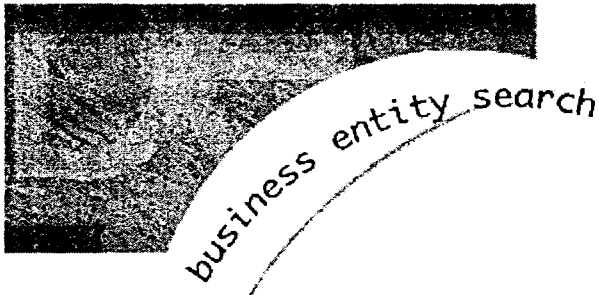
Individual Persons Name

Address	City	State	Zip
---------	------	-------	-----

Signature and Title

FEE \$20.00

STATE OF UTAH
DIVISION OF CORPORATIONS
AND COMMERCIAL CODE
160 East 300 South P.O. Box 45801
Salt Lake City, Utah 84145-0801
Phone Number (801) 530-4849
Fax (801) 530-6438



Utah Department of
Commerce



return to business
entity search

Name	Type	City	State
YOUNG LIVING FARMS	DBA	SALT LAKE CITY UT	UT

Business Name: YOUNG LIVING FARMS

Entity Number: 2309139-0150

Registration Date: 3/22/1996

State of Origin: UT

Address

2665 E 3120 S

SALT LAKE CITY UT 84109

Status

Status: Expired

Status Description: Failure to File Renewal

This Status Date: 4/17/2002

Last Renewed:

License Type: DBA

Expiration Date: 3/22/2002

Registered Agent

Registered Agent: BRUCE L OLSON

Address Line 1: 36 S STATE ST STE 1400

Address Line 2: PO BOX 45385


City: SLC

State: UT

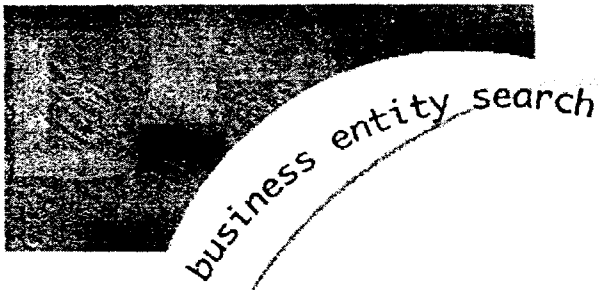
Zip: 841450385

Additional Information

SIC Title: 0762-FARM MANAGEMENT SERVICES



Utah Department of
Commerce



Name	Type	City	
YOUNG LIVING ESSENTIAL OILS	DBA	RIVERTON UT	:

Principal Information

Position	Name	Address		
Applicant	AROMATIC RESEARCH &	unknown address	NA 00000	
Applicant	TECHNOLOGY, LC LC015073	unknown address	NA 00000	
Registered Agent	BRUCE L OLSON	36 S STATE ST STE 1400	PO BOX 45385	SLC UT 841450385

State of Utah
Department of Commerce
Division of Corporations and Commercial Code

I Hereby certify that the foregoing has been filed and approved on the 19 day of August 1996 in the office of this Division and hereby issue this Certificate thereof.

Examiner [Signature] Date 9-19-96

[Signature]
KORLA T. WOODS
Division Director
Office Use Only

013

ENDMENT FORM ONLY! (No Charge)

**BUSINESS NAME REGISTRATION
(OR DBA) APPLICATION**

INESS NAMES MAY NO LONGER BE CHANGED.

All changes must be approved by the Applicant(s)

Name: Young Living Essential Oils DB # 143878

Boxes where changes are to be made:

Business purpose: Manufacturing, Distributing and Sales of Health Products

Business Address: 12662 South Redwood Road Riverton UT 84065
Street Address ONLY City State Zip

Red Agent:

Bruce L. Olson 532-1500
Daytime Phone Number

[Signature]
Signature
79 South Main Street, Suite 400 Salt Lake City Utah 84111
Street Address ONLY City State Zip

To change APPLICANTS: A LETTER OF TRANSFER from the old applicants with their names, addresses & signatures must be attached. The new applicants must complete the following information:

Owner is a business entity, name of business goes here:
Aromatic Research & Technology, LC 40015073 253-2700
Daytime phone number

2665 East 3120 South Salt Lake City, UT 84109
Street Address City State Zip

Signature and title: Manager

Owner is a business entity, name of business goes here:

Daytime phone number

City State Zip

Signature and title: _____

FILE IN DUPLICATE

RECEIVED

SEP 19 1996

Utah Div. of Corp. Comm. Code

STATE OF UTAH
DIVISION OF CORPORATIONS
AND COMMERCIAL CODE
160 EAST 300 SOUTH/P.O. BOX 45801
SALT LAKE CITY, UTAH 84145-0801
PHONE (801) 530-4849

RECEIVED

MAY 24 1996

Utah Div. of Corp. Comm. Code



May 24, 1996

Division of Corporations
and Commercial Code
160 East 300 South
Salt Lake City, Utah 84145-0801

RECEIVED

MAY 24 1996

Utah Div. of Corp. Comm. Code

Re: Young Living Essential Oils

To Whom It May Concern:

I hereby grant my approval and consent to the transfer of the name "Young Living Essential Oils" from dba registered as No. 143878 on your records to a newly formed limited liability company known as Aromatic Research & Technology, LC.

Please contact me if you have any questions.

Sincerely,

Jenny Lynd
12662 South Redwood Road
Riverton, Utah 84065

BLO/lis
178512.wp/blo

RECEIVED

SEP 19 1996

Tab F

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

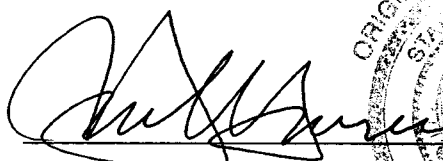
Farms and Young Living Farms are the same legal entity. At the time of his death, Mr. Gomez was covered by worker's compensation insurance which is currently paying benefits to Mrs. Gomez. The exclusive remedy provision of the Workers' Compensation Act applies to both the employee leasing company and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

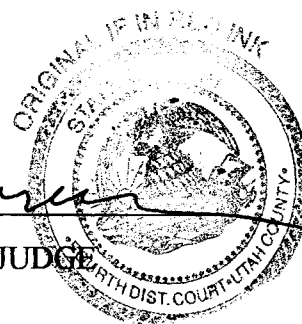
Summary judgment may be granted where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Utah R. Civ. P. 56(c). The Court concludes that no genuine issues of material fact exist and that, as a matter of law, at the time of the incident giving 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



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