IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

DEEPGULF, INC. and
TOKE OIL AND GAS, S.A.,

Plaintiffs,

vs.

MARC M. MOSZKOWSKI,

Defendant.
_____/

Case No.: 2018 CA 000543
Division:

RESPONSE TO MOTION TO STRIKE THE COMPLAINT AS A SHAM

COMES NOW, Plaintiffs, by and through their undersigned attorneys and respond to the Motion to Strike the Complaint as a Sham and in support thereof, state as follows:

STANDARD AND PROCEDURE FOR A MOTION TO STRIKE

Rule 1.150(a) reads as follows:

> **(a) Motion to Strike.** If a party deems any pleading or part thereof filed by another party to be a sham, that party may move to strike the pleading or part thereof before the cause is set for trial and the court shall hear the motion, taking evidence of the respective parties, and if the motion is sustained, the pleading to which the motion is directed shall be stricken. Default and summary judgment on the merits may be entered in the discretion of the court or the court may permit additional pleadings to be filed for good cause shown.

In the case of Reyes v. Roush, 99 So.3d 586 (Fla. 2nd DCA 2012), the court stated that under the Rule regarding Motions to Strike, a trial court may only strike a complaint when:

> "[t]he falsity thereof clearly and indisputably appears. As otherwise, expressed to warrant the rejection of a pleading as a sham, it must evidently be a mere pretense set up in bad faith and without color of fact. The rule cannot be applied to any case except where the defense is shown to be a plain fiction"

Furthermore, a full evidentiary hearing is required so as to give both sides "an opportunity to offer evidence on the issue of whether the complaint alleged a fair cause of action." Id.

Furthermore, in Cromer v. Mullally 861 So.2d 523 (Fla. 3d DCA 2003), the court stated that "[a] pleading is only considered a sham when it is inherently false and clearly known to be false at the time the pleading was made." The court went on to state that "a hearing on a motion to strike a pleading as sham is not for the purpose of trying the issues, but rather serves the purpose of determining whether there are any genuine issues to be tried."

Finally, in Scarfone v. Silverman, 408 So.2d 778 (Fla. 2d DCA 1982), the court held that "the rule authorized the court to hear testimony on the limited issue of whether the pleadings of a party are manifestly false. It cannot be intended to permit a mini-trial on the merits of the case."

RESPONSE TO SECTION LABELED "WHY ALL 11 COUNTS OF THIS COMPLAINT ARE A SHAM"

In the first section described as jurisdiction and the parties, Defendant cites multiple times to the idea that "one of the Plaintiffs is a fictitious entity devoid of legal existence" referring to Toke Oil & Gas, S.A. Even if Toke Oil & Gas, S.A. is dissolved under the laws of the country of Timor Leste, Article 940, Paragraph 2 of the Timor Leste Civil Code[1] states that "[o]nce the company has been dissolved, the power of the directors shall be limited to the practice or acts concerning the daily operations and, in the event no liquidator has been appointed to the acts required for the liquidation of the company assets." Under Florida law, the act of the "liquidation of company assets" would be similar to the process of a corporation winding up its' business. The winding up includes the collection of assets, which may include bringing or defending legal proceedings associated with winding up or liquidation. Selepro, Inc. v. Church, 17 So.3d 1267 (Fla. 4th DCA 2009) (emphasis added). As such, an administratively dissolved corporation in Florida has the capacity to sue provided the suit is necessary to wind up and liquidate its' business

[1] A copy of this excerpt from the Timor Leste Civil Code is attached as Exhibit "A."

and affairs. Id. In the present case, if the company is in fact dissolved, Toke Oil and Gas, S.A. would be perfectly within its rights to pursue this litigation against the Defendant.

As to the Motion as it relates to Count I, Defendant claims that he already assigned his patent interest to DeepGulf many years ago, by virtue of the Agreement entered into between him and DeepGulf when he became employed by DeepGulf. The Plaintiff agrees; however, the evidence will show that Defendant has disputed such before and has threatened to take the intellectual property and do the very things with the technology that DeepGulf was formed to do. As such, DeepGulf is in need of a declaration stating that the intellectual property described in Count I is owned by DeepGulf (to the extent of the portion of the patents that is owned by Defendant).

Ever since Defendant decided to go rogue and take a salary for his work for Toke Oil and Gas, S.A., while being paid a salary from DeepGulf, he has retained and refused to turn over a computer owned by DeepGulf, which he has exclusive possession of in France, as well as various files and intellectual property on said computer which DeepGulf is entitled to possession of.

As to Count II, Defendant simply states that he never competed with DeepGulf; however, the evidence will show and Defendant admits that he worked for Toke while employed by DeepGulf and received remuneration from Toke during this time frame. The evidence will show that DeepGulf sent Defendant to East Timor to find opportunities for DeepGulf and paid him to do so. When he worked for Toke and received remuneration from them for said work, it was a violation of the non-compete provisions in the Agreement.

As to Count III, Defendant argues the Statute of Limitations. Plaintiffs position is that Defendant has not filed a proper responsive pleading to Plaintiffs' First Amended Complaint. As such he has not asserted the Statute of Limitations as a proper affirmative defense to this matter.

In addition, had he asserted the Statute of Limitations properly, Plaintiffs would have replied to such an affirmative defense with the doctrine of "fraudulent concealment," in that Defendant had fraudulently concealed the acts in question from Plaintiff. Such a theory is distinct from that of "delayed discovery."

In Licul v. Volkswagen Group of America, Inc., 2013 WL 6328734 (S.D. Fla. 2013), the court listed the elements of fraudulent concealment as being: "(1) successful concealment of the cause of action, (2) fraudulent means to achieve that concealment, and (3) plaintiff exercised reasonable care and diligence in seeking to discover the facts that form the basis of his claim."

The evidence will show that it was always Defendant's intent to leave DeepGulf, Inc. to form a new company to compete with DeepGulf using its technology or work for a competitor to bring projects to fruition not for the benefit of DeepGulf, Inc. Moreover, the evidence will further show that upon returning from East Timor, on February 2, 2008, at a DeepGulf, Inc. Board Meeting, Defendant gave information regarding the potential for pipeline operation in East Timor following his recent time spent researching the project. He informed the Board, and adamantly still maintained during litigation, it would not be possible to do business in East Timor as a US corporation. Based upon these representations, the Board discussed solutions including the creation of a DeepGulf, Inc. subsidiary company in East Timor.

Subsequently, in East Timor, Defendant established Toke Oil and Gas, S.A. and made himself and two other companies an owner rather than DeepGulf, Inc. Defendant led the Board of DeepGulf, Inc. to believe that he established and was holding Toke Oil and Gas, S.A. in his name for the benefit of DeepGulf, Inc., and that it would have been reckless to hold that interest in DeepGulf, Inc.'s name. While Defendant was in East Timor, Rustin Howard attempted to travel

to East Timor; however, Defendant told Rustin Howard it was too dangerous for him to go to East Timor. No other DeepGulf, Inc. employee or Director ever traveled to East Timor.

Defendant's fraudulent concealment of information from DeepGulf, Inc. does not end there. On November 29, 2017, Defendant sent his friend, William Lott, Jr., an email which was submitted to the District Court in Appellants' Response to Motion for Summary Judgment. A true and correct copy is attached hereto as Exhibit "B."[2] The email discusses payments that were made from Toke Oil and Gas, S.A. to various individuals and entities. Defendant is still concealing information from DeepGulf, Inc.'s Chairman of the Board, Rustin Howard. Defendant, in an email that Defendant thought would always be private, says "I just refuse to give Rus what he wants" and described the email as "**FOR YOUR EYES ONLY, PLEASE DO NOT FORWARD. THIS IS HOW SALARIES WERE PAID. I WANT RUS TO SWEAT FOR THIS INCONSEQUENTIAL BREAK-UP"** (emphasis supplied). Importantly, this email shows his refusal to provide information to Mr. Howard, just weeks before receiving the initial Civil Theft warning letters. Defendant did not want the Chairman of the Board of DeepGulf to be made aware of how monies were paid from the projects in East Timor. It is evident from the email that even the Defendant believed as of November 29, 2017 that DeepGulf's Chairman of the Board was not aware of the monies paid to him by Toke Oil and Gas, S.A. He wanted to keep it that way by fraudulently concealing that information from him. Plaintiff did not know until the discovery phase of the litigation in federal court how payments made to Toke's directors and owners were broken down.

In addition, Defendant talks about a claim that DeepGulf owes him over $1,000,000 in salary. First of all, this is not a claim which is before this court. Second, there were two actions

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[2] This email was received in the course of discovery during the initial federal court litigation and only after various Motions to Compel.

which took place, which Defendant agreed occurred in deposition testimony and they are attached hereto as Exhibit "C" and Exhibit "D". The first is minutes of a meeting whereby Defendant and the Board of Directors agreed that "he would not claim the pre-revenue expenses if the company would give him backpay for any unaccrued salary after the company secures revenue or investor capital." The second is an "Executive Order on Salaries" whereby Rustin Howard summarized a skype conversation that he and Defendant had whereby they "agreed to not accrue any further executive payroll till the company has funds to pay." This applied not only to the Defendant, but also to Rustin Howard.

Count IV, V and VI all address claims from a statute of limitations position. For these Counts, Plaintiffs refer to the discussion found in Plaintiffs discussion regarding Count III, supra.

As to Count VII, the evidence will show that Rustin Howard did in fact compile the information into the Private Placement Memorandum, but such information was provided by Defendant, as he was the only one with access to the information. The evidence will further show that Defendant approved the Private Placement Memorandum after Rustin Howard drafted the document.

As to Count VIII, Defendant has at many times asserted that Toke Oil & Gas, S.A. may not have been owned 100% by Plaintiff, DeepGulf, Inc. Even if Toke did not file the equivalent to Florida's Annual Report paperwork, the entity still exists in the eyes of the law for the purposes of winding up the entity. As such, a declaration determining the ownership of said corporation is appropriate for this Court to decide.

As to Count IX, Plaintiffs request an accounting from Defendant for the time within which he hid the fact that he was making money from Toke Oil & Gas, S.A. in violation of the Noncompetition, Nondisclosure and Developments Agreement with DeepGulf, Inc. Defendant

was employed by DeepGulf and sent to East Timor by DeepGulf to find opportunities for DeepGulf, instead Defendant paid himself additional monies out of this opportunity and Plaintiffs are entitled to accountings for the monies that were earned by Toke and what monies were paid out to whom. Defendant refers to Exhibit VII in his Motion as support for a statute of limitations defense. The email is merely a sending of attachments, which are all in French. The evidence will show that Rustin Howard has not and does not speak French, so this does not support a claim that Mr. Howard was aware of the meaning of this email or its attachments.

Count X is based upon Defendant's violation of his non-compete agreement. Toke Oil & Gas, S.A. used work which was produced by Defendant on behalf of DeepGulf, Inc. Toke Oil & Gas, S.A. made money off of said work, as did Defendant, when all such funds should have been remitted to DeepGulf, Inc. The Agreement specifically states the following:

> 1. Noncompetition. During the period of my Business Relationship with the Company and for one year following the termination of my Business Relationship, regardless of the reasons for my termination, I shall not, directly or indirectly, alone or as a consultant, partner, officer, director, employee, joint venturer, lender or stockholder of any entity, (a) accept employment with any business or entity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed or sold by the Company, or (b) engage in any business or activity that is in competition with the products or services being conceived, designed, created, developed, manufactured, marketed, distributed or sold by the Company.

Toke Oil & Gas, S.A. used the products or services that were conceived, designed, created, developed, manufactured, marketed, distributed or sold by DeepGulf, Inc. in making millions of dollars and Defendant paid himself handsomely for that through Toke Oil & Gas, S.A.

Count XI is requesting that Plaintiff be declared the owner of various intellectual property that includes access to certain websites utilized by DeepGulf over time including www.deepgulf.net; www.deepgulf.com; www.deep-gulf.com and http://pipepredictor.com.

Paragraph 6(a) of the Noncompetition, Nondisclosure and Developments Agreement with DeepGulf, Inc. says the following:

> 6. Assignment of Developments.
>
> (a) If at any time or times during my Business Relationship with the Company, I shall (either alone or with others) make, conceive, create, discover, invent or reduce to practice any Development that (i) relates to the business of the Company or any customer of or supplier to the Company or any of the products or services being developed, manufactured or sold by the Company or which may be used in relation therewith; or (ii) results from tasks assigned to me by the Company; or (iii) results from the use of premises or assets (whether tangible or intangible) owned, leased or contracted for by the Company, then all such Developments and the benefits thereof are and shall immediately become the sole and absolute property of the Company and its assigns, as works made for hire or otherwise. The term "Development" shall mean any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, trade secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright, trademark or similar statutes or subject to analogous protection) relating to the business of the Company. I shall promptly disclose to the Company (or any persons designated by it) each such Development. I hereby assign all rights (including, but not limited to, rights to inventions, patentable subject matter, copyrights and trademarks) I may have or may acquire in the Developments and all benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without disclosing to others the same, all available information relating thereto (with all necessary plans and models) to the Company.

The website names, password and control of said intellectual property fall within the scope of this Paragraph and, regardless if access to the website as an owner is through a hosting server or domain name, the result is the same. DeepGulf, Inc. and its board of directors are entitled to access to these websites.

WHEREFORE, based upon the arguments presented in this Response, Plaintiffs respectfully request that Defendant's Motion to Strike be denied and such other and further relief as is necessary and proper.

RESPECTFULLY SUBMITTED,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I have on this 6th day of February, 2025, a copy of the foregoing has been furnished to the Defendant, Marc M. Moszkowski, Le Verdos, 83300 Chateaudouble, France (m.moszkowski@deepgulf.net) via the Court's E-filing system.

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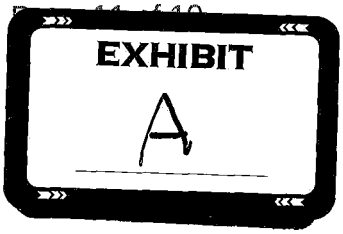


Article 939
(Dissolution by Agreement. Extension of the Duration)

1. The dissolution by agreement requires the unanimous vote of the partners unless the agreement permits the alteration to the clauses or the dissolution of the company by a simple majority vote.

2. The extension of the length of time set out in the agreement may be validly and collectively agreed upon until further notice; the company shall be tacitly considered as extended for an undetermined period of time if the partners have continued to carry out their company activities, except if the circumstances show that this was not the intention.

Article 940
(Powers of Directors upon Dissolution)

1. Once the company has been dissolved, the powers of the directors shall be limited to the practice of acts concerning the daily operations and, in the event no liquidator has been appointed, to the acts required for the liquidation of company assets.

2. For the obligations that the directors take on vis-à-vis the provisions set out in the paragraph above, the company and the other partners only respond to third parties if the latter have been acting in good faith or when, in the event that the dissolution must be registered, this has not been done; in all other cases, the directors singly and jointly respond to the obligations that they have assumed.

SECTION VI
Company and Stock Liquidation

ARTICLE 941
(Company Liquidation)

Once the company has been dissolved, the liquidation of its assets shall be carried out.

ARTICLE 942
(Form of Liquidation)

1. In the event the agreement has not set out the form of liquidation, this shall be settled by the partners; in the lack of a unanimous agreement, the provisions of the following articles and those of procedural laws shall be complied with.

2. In the event the time limit for liquidation has not been defined, any partner or creditor may request that it be defined by the courts.

ARTICLE 943
(Liquidators)

1. Liquidation is of the responsibility of the directors.

2. In the event the agreement entrusts the appointment of the liquidators to the directors and no agreement can be reached, the appointment shall be made by the competent courts at the initiative of any of the partners or creditors.

Rus Howard

From: m.moszkowski@deepgulf.net
Sent: Wednesday, November 29, 2017 1:15 PM
To: wblottjr@gmail.com
Subject: Break-up FOR YOUR EYES ONLY

Could it be that Rus thinks Gino never received any salary, or received less than I said Vince and he did, and I received his share?

Anyway, I just refuse to give Rus what he wants, primarily because he accused me of embezzlement and white collar crime and I refuse to act as if I were defending myself. Also, I want him to sink deeper and deeper in his delusion.

FOR YOUR EYES ONLY, PLEASE DO NOT FORWARD. THIS IS HOW SALARIES WERE PAID. I WANT RUS TO SWEAT FOR THIS INCONSEQUENTIAL BREAK-UP:

- Salaries were paid to Gino Favaro directly: total $56,950.00 (2008, 2009, and 2010)
- Salaries were paid to Gino Favaro and Vicente Ximenes through their common company, Hali: total $573,798.02 (2008, 2009, and 2010). I have no idea how they split that amount among themselves, or whether their spouses or others received some for tax or other reasons.
- Salaries were paid to Gino Favaro through his company, Timor Gas: total $8,731.20 (2008)
- Salaries were paid to Vicente Ximenes directly: total $320,255.00 (2008, 2010, and 2011)
- Salaries were paid directly to Marc: total $345,000.00 (2010 and 2011)

Total: $1,304,764.22

Total Vince and Gino: $959,764.22

Because Gino left early, if Hali's share was split halfway between them I wouldn't be surprised if in the end Gino received $352,610.21 and Vince $607,154.01. I cannot guarantee that Hali's share was split halfway though.

Total Marc: $345,000

Same figures as in my letter.

I will copy Rod of this email confidentially.

M

Minutes of the
Special Meeting of Deep Gulf Board of Directors
15 January 2016

Directors Attending:
Marc Moszkowski
Tom McMillan II
Bill Lott, arrived late 10:42
Rus Howard

The meeting was called by Company President Marc Moszkowski.
Notice of meeting was sent by email to all members of the board on 1/13/2016 by Marc Moszkowski to which all members acknowledged receipt.

Rus welcomed everyone to the meeting.
The meeting was called to order at 9:44 pm.
The meeting was then turned over to Marc Moszkowski.
M Moszkowski reviewed status and progress on various projects and ventures, including potential JV Partners in Korea, status of EDTL project and politics in East Timor, and on the financial condition of the company and the need for funding. Rus expressed concern about reliability of information about happenings in Asia.

Some discussion was had about the nature and detail of the C-GAS Joint Venture including possible terms of agreement and potential margins for the JV partners.

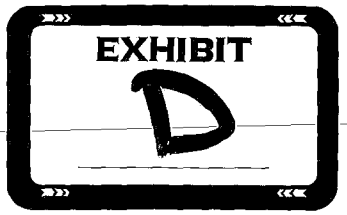
Marc asked about his salary and about unreimbursed expenses during startup including travel to Timor to secure the company's first contract. After some discussion he said he would not claim the pre-revenue expenses if the company would give him backpay for any unaccrued salary after the company secures revenue or investor capital. The Board agreed.

No resolutions were proposed.

Rus made a motion to adjourn the meeting, which was seconded by Bill Lott.

The meeting ended at 12:09 pm.

Minutes Respectfully Submitted



Executive Order on Salaries

Sept 28, 2012

Skype conversation
Rus and Marc

After lengthy discussion on how Israel must defend itself against Libya and the bomb and a few updates on status in Timor, I raised the issue of payroll and the lack of funds.

I told marc we are getting very low on funds. I told him that we can make the next payroll but I thought we should cease to pay payroll. He said he needed the money.
I explained to him that if we accrue payroll and not pay it, but book the amount due as a debt we still must pay the taxes and it would soon consume all of our remaining funds.

I told him that we could pay him some of the money that the company owed him since there are no payroll taxes on repayment of debt. He was very happy to hear that.

We agreed to not accrue any further executive officer payroll till the company had funds to pay.

Also discussed travel plans to Dili on First of October.