

FACTS ON DISPUTED ISSUES AS FOUND BY THE COURT

Mytu Do, aka Julie Do, and Benny Leo Birch, aka Ben Birch, met as she was a house flipper and he contracted as her landscaper. Summary of Evidence [*hereinafter SoE*] 5/16/19, p.11, ln. 22-23, p. 12, ln 6-9. Ben Birch has a Federal conviction for Bankruptcy Fraud. SoE 5/16/19, p. 20, ln.15-16.

At some point they came up with the idea of opening a pharmacy: Pharmacy Development Corporation (PDC). SoE 5/16/19, p. 14, ln. 1-2; p. 21, ln. 20-21. Ms. Do's testimony indicated that she thought Mesa Pharmacy and PDC might have been two different entities, but didn't know which might have been the subsidiary of the other. SoE, 5/16/19, p. 18, ln. 18-20; p. 19, ln.12-15. Ben Birch testified, initially, that he wasn't certain that there were separate corporations for PDC and Mesa, but then testified PDC was the top corporation and all the Mesa iterations were under that umbrella. SoE 5/16/19, p. 21-22, ln. 13-2. Under crossexamination by Mesa's counsel, Ben Birch testified that PDC was set up as the corporation with Mesa, Inc. as its asset along with four other subsidiaries which were each different pharmacy locations. SoE 5/16/19, p. 27, ln.3-11. Ms. Do claimed not to know how the company was created, but she did know she didn't put any money into it, nor did her son, Andrew. SoE 5/16/19, p. 12, ln. 3-6, ln. 17-20. Ben Birch indicated that he was the only one who put up any capital for the venture. SoE 5/16/19, p. 21, ln. 11-13. Ed Kurtz claimed that he was the one who incorporated PDC in Nevada, its sole director and shareholder, and that he was never part of Mesa.

Ms. Do claimed not to be aware of having an ownership interest in PDC/Mesa and stated that Andrew Do did not have an ownership interest. SoE 5/16/19, p. 13, ln. 1-3, ln. 4-5; p. 17, ln. 1-2. Ben Birch's testimony contradicted this. SoE 5/16/19, p. 21, ln. 17- 20. However, she did testify that they put Andrew Do's name on all the paperwork. They formed Mesa in 2005 or 2006, approximately two to three years after Andrew had graduated from pharmacy school. SoE 5/16/19, p. 14, ln. 1-3. None of the Mesa physical locations ever made any money so they closed all but Mesa 7 by 2011. SoE 5/16/19, p. 16 ln 10-12.

She only occasionally received money from Mesa 7 after that as Mesa wasn't doing well financially. SoE. 5/16/19, p.14, ln. 20-21; p.15, ln. 19-21, ln. 24-25. She insisted that the money she received was salary, not dividends, and she didn't know who actually owned Mesa. SoE 5/16/19, p.19, ln. 7-9, ln. 10-11.

She was the one who made Andrew the Pharmacist in Charge without having to consult

anyone. SoE 5/16/19, p 16, ln. 19-23. When Ben Birch put his son-in-law Ed Kurtz in place of Andrew as CEO it was presented to her as done deal. SoE. 5/16/19, p. 17, ln. 3-8. Mr. Kurtz claimed he was only on the PDC BOD not that of Mesa. To Ms. Do's knowledge here were no board of director meetings and as far as she knew there was no board. SoE. 5/16/19, p. 14, ln. 10-17. Ben Birch claimed there was a BOD and that both of the Dos were on it. SoE 5/16/19, p. 22, ln. 19-23. However, he couldn't actually recall having any BOD meetings, instead stating they "probably" happened. SoE 5/16/19, p. 22, ln. 15-17.

Andrew Do was the lead pharmacist. SoE 5/15/19, p. 25, ln. 23-25. He is listed on various documents as holding various positions on the Board of Directors of Mesa. Those documents were verified by Ed Kurtz and they indicated that Mr. Do was at times President, CEO and CFO. SoE 5/21/19, p. 20, ln 6-8. Mr. Do was never aware that he was on the Board. SoE 5/15/19, p. 22, ln. 10-12. Although Mr. Do testified that he "formed" the corporation, (SoE 5/15/19, p. 17, ln. 18-22) he had no knowledge of if there was a board or who was on the board, (SoE 5/15/19, p. 22, ln. 10-12) how much money they did or did not make, (SoE 5/16/19, p. 5, ln. 12-14) who actually ran the day to day operations, (SoE, 5/15/19, p. 20, ln. 18-19) whether there was stock issued and how he ultimately wound up with Praxsyn stock. SoE 5/15/19, p.30, ln. 18-20. He testified at one point that he was the president of Mesa, (SoE 5/15/19, p. 18, ln. 2-3) but then contradicted himself later indicating that this title was "only on paper." SoE 5/15/19, p. 18, ln. 15-16; p. 27, ln. 24-25. As president from 2007 to 2014 he couldn't recall ever attending a meeting, (SoE 5/15/19, p. 22, ln. 13-14) seeing a profit or loss statement or doing more than signing checks. SoE 5/15/19, p. 18, ln. 11-14; p. 22, ln. 13-14.

Ultimately, Mr. Do took the Fifth when asked to testify as to whether he ever signed a contract with TPS to market the products that he prepared as a pharmacist. SoE 5/15/19, p. 19, ln 11-13.

Mr. Do did not believe he had any ability to hire or fire pharmacists, which contradicted

the testimony of Ed Kurtz. SoE 5/15/23, p. 26, ln. 17-18; SoE 5/16/23, p.5, ln. 18-19. Kurtz claimed that he reported to Mr. Do. This contradicted Do's testimony as Do claimed he reported to Kurtz. SoE 5/16/19, p. 8, ln. 9-12. The trial was the first time Mr. Do had seen the license history certification for Mesa Pharmacy and he was surprised to learn of it. SoE 5/15/19, p. 22, ln. 14-17. He didn't know who prepared it. SoE 5/15/19, p. 23-24, ln. 25-2. He was aware that Mesa had several incarnations (the one that merged with PAWS was Mesa 7) and also formed Pharmacy Development Corporation (PDC). SoE 5/15/19, p. 25, ln. 1-6.

In 2012 Mesa and a company owned by Garbino, Trestles Pain Specialists, LLC (TPS) entered into their first contracts with each other...neither side having conducted any due diligence. SoE 5/14/19, p. 7, ln. 8-15; 5/15/19, p. 27, ln. 15-23. TPS had a wholly owned subsidiary, Trestles RX. SoE 5/14/19, p. 18, ln 204. Kurtz negotiated the contracts with TPS/Garbino and brought them in. SoE 5/14/19, p. 10, ln. 3-4. None of the other Mesa players were aware of this business arrangement until the contracts were signed. SoE 5/16/19, p. 6, ln. 5-6; 5/16/19, p. 26, ln. 22-23; 5/15/29, p. 21, ln 20-23.

John Edward Garbino plead guilty to a Federal Felony of Healthcare fraud in the fall 2017. SoE 5/14/19, p. 5, ln. 3-4. He testified that the charges stemmed from the sale of prescriptions through a government program. *Id.* Notably, this is the same type of business which comprised his relationship with Mesa Pharmacy.

Garbino/TPS had contractual business relationships with Ray Riley and David Fish. SoE 5/14/19, p. 13, ln. 23-24. David Fish was convicted, as part of Premier Medical Management, of Workers' Compensation kick-back schemes and permanently suspended from participating in the California Workers' Compensation System. SoE 5/14/19, p. 10, ln 18-19.

As part of the TPS agreement, Mesa was filling prescriptions through TPS contracts for Andrew Robert Jarminski and Craig Chanin, (SoE 5/22/19, p. 10, ln. 4-8) both of whom were charged with involvement in the Workers' Compensation kick- back scheme as part of the First Choice and Landmark Medical schemes. This was in addition to Mesa's already established relationship with Robert Villapania, DC as a referral source for prescriptions. SoE 5/22/19, p. 10, ln. 15-21. Garbino testified that Villapania introduced him to Mesa sometime in 2011. SoE 5/14/19, p. 5, ln. 15-16. This is the same Villapania who was charged in People of the State of

California v. Robert Julian Villapania (Case no. 16CF1360) and who is listed by the DIR on the criminally charged providers list.

Garbino initially met Ed Kurtz, who was related by marriage to the Birch family. SoE 5/22/19, p.11, ln. 1-3. Andrew Do did not meet Garbino or know of the contracts with TPS until he started filling the prescriptions...despite, ostensibly, being president of Mesa. Garbino was under the impression that Ed Kurtz owned Mesa. SoE 5/15/19, p. 12, ln 18-19.

Mesa's initial relationship with TPS had issues and the business faltered. SoE 5/15/19, p. 14, ln. 4-7. Mesa could not handle the amount of business that TPS was bringing in. SoE 5/21/19, p. 28, ln. 19-20. They needed financing to expand. In 2013 that was rectified by obtaining financing through parties such as Javlin III. SoE. 5/21/19, p. 17-18, ln. 23-2. Garbino discussed Mesa's business with Javlin and other financiers. SoE 5/15/19, p. 11, ln. 18-20. Garbino testified that he was involved in the business meetings with the potential financiers, some occurring at Mesa's headquarters and others at dinner meetings. SoE 5/14/19, p. 15, ln. 21-14.; 9/30/20, p. 4-5, ln. 22-18. Kurtz contradicted Garbino as to the level of Garbino's involvement in those meetings, but admitted that he was part of them. SoE 5/21/19, p. 18, ln 8-12, p. 19-20, ln. 23-2. Mr. Shebanow confirmed that Mr. Garbino was part of those meetings. SoE 9/29/20, p. 8,ln. 18-21. Andrew Do, although allegedly Mesa's president, was not involved in any of these meetings. SoE 5/15/19, p. 29, ln. 14-22; 5/21/19, p. 19-20, ln. 23-2. Neither, Mr. Garbino nor Mr. Kurtz could recall if Mr. Do, president of Mesa Pharmacy, was ever present at one of those meetings. SoE 5/15/19, p. 15-16, ln. 24-1; 5/21/19, p. 18, ln. 11-12.

This funding revitalized the Mesa/TPS agreement. SoE 5/14/19, p. 9, ln. 17-20.

Mesa's sales "exploded" in 2014 as a result of the agreement. SoE 5/14/19, p. 24, ln. 13-15.

Garbino testified that TPS brought in most, if not all, of the sales for Mesa during their relationship. SoE 9/30/20, p. 5, ln. 23-25. Mr. Kurtz confirmed that, when Mr. Garbino, entered the picture, Mesa had to purchase more equipment to handle the significant influx of prescriptions he brought into the company. SoE 5/21/19, p. 31, ln. 3-5; 9/30/20, p. 6, ln. 7-9. According to Garbino, he, Riley and Fish had a great deal of input into Mesa's business strategy.

SoE 5/15/19, p. 9-10, ln. 24-3; 5/14/19, p.11, ln. 3-6. Garbino confirmed that he was listed as an officer of Mesa on Exhibit O, but he claimed he didn't know how his name got there. SoE 5/15/19, p. 12, ln. 23-25. Andrew Do testified that he didn't fill out any documents of this sort for Mesa. SoE 5/15/19, p. 25-26, ln. 25-2. Kurtz testified that Do would have been the one to do it. SoE 5/21/19, p. 21, ln. 18-19. Kurtz testified that prior to the contracts with Garbino/TPS Mesa had less than 50 employees, (SoE 5/21/19, p. 11, ln. 13-14; p. 31, ln. 11-13) after that they expanded to, at one point, 140. SoE 5/21/19, p. 31, ln. 8-10. This was in order to deal with the volume of the prescriptions Mr. Garbino brought to Mesa. SoE 5/21/19, p. 31, ln. 9-11.

Mr. Kurtz discussed the expansion of Mesa to a nationwide company with Garbino. SoE 5/21/19, p. 20, ln. 19-20. These were strategic collaborations with Mr. Garbino about Mesa's business strategy. SoE 7/9/19, p. 8, ln. 11-14; 9/30/20, p. 6, ln. 5-7.

Andrew Do testified, then immediately recanted, that Mr. Garbino told him what ingredients should be used in the prescriptions. SoE 5/16/19, p. 7-6, ln. 24-2. Mr. Garbino admitted, then immediately recanted, that he had discussions with Mr. Do regarding the compounds and formularies. SoE 5/15/19, ln. 3-10.

Garbino did confirm during trial that, as he had testified in his deposition, he had a lot of influence on Mesa – about one-hundred-million dollars' worth. SoE, 5/14/19, p. 11, ln. 4-6. Garbino testified that prescriptions provided through TPS affiliated doctors accounted for a substantial portion of Mesa's business by 2014. This was confirmed by Mr. Kurtz. SoE. 7/9/19, p. 22, ln. 11-13.

In 2014 Garbino became aware that Mesa listed him as an officer in filings with the Arizona Pharmacy Board. He did tell Kurtz that Mesa should expand into other states. SoE 5/21/19, p. 20, ln. 19-20.

In 2013 Mesa, according to Ben Birch, was introduced to the owners of PAWS Airline, Shebanow, which had gone "belly up." SoE 5/16/19, p. 27-28, ln. 24-6. Neither Ben Birch, Andrew Do nor Mytu Do were involved in the merger of PAWS and Mesa to become Praxsyn. SoE 5/16/19, p.28, ln. 6-8; p. 29, ln. 4-5. They just knew they got stock out of the deal. SoE 5/16/19, p. 13, ln. 10-19; p.28, ln. 6-9. Ed Kurtz acknowledged that he was the point-man in