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7
8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 LOCKSMITH FINANCIAL
CORPORATION, a British Columbia
corporation;

CASE NO.: A-20-807745-C
DEPT NO.: 31

12 Plaintiff,

13 v.

14 VOIP-PAL.COM, INC., a Nevada
15 corporation; NEW HORIZON TRANSFER,
16 INC., a British Columbia business entity;
DOE INDIVIDUALS I through X; and ROE
17 ENTITIES XI through XX,

18 Defendants.

19 **NOTICE OF ENTRY OF FINDINGS OF
FACT, CONCLUSIONS OF LAW AND JUDGMENT**

20 PLEASE TAKE NOTICE that the Findings of Fact, Conclusions of Law and Judgment was
21 filed in the above Court on January 19, 2022 a copy of same

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1 is attached hereto.

2 DATED this 19th day of January, 2022.

3 ALVERSON TAYLOR & SANDERS

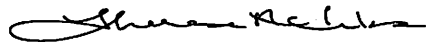
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14 *Attorneys for Defendants*

11 **CERTIFICATE OF SERVICE**

12 I hereby certify that on this 19th day of January, 2022, I did serve, via Case
13 Management/Electronic Case Filing, a copy of the above and foregoing **NOTICE OF ENTRY
OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT** addressed to:

14 MICHAEL E. SMITH, ESQ.
15 ATTORNEY FOR PLAINTIFF

16
17 

18 _____
19 An Employee of ALVERSON
20 TAYLOR & SANDERS

21 I:\CLIENTS\26500\26538\pleading\NEOJ finding of facts.doc

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Adam R. Knecht
CLERK OF THE COURT

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8 DISTRICT COURT
9 CLARK COUNTY, NEVADA

10 * * *

11 LOCKSMITH FINANCIAL
CORPORATION, a British Columbia
corporation,

CASE NO.: A-20-807745-C
DEPT NO.: 31

12 Plaintiff,

13 **FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT**

14 v.

15 VOIP-PAL.COM, INC., a Nevada
16 corporation; NEW HORIZON TRANSFER,
INC., a British Columbia business entity;
17 DOE INDIVIDUALS I through X; and ROE
ENTITIES XI through XX,

18 Defendants.

19 This matter came before the Court pursuant to Plaintiff LOCKSMITH FINANCIAL
20 CORPORATION's ("Plaintiff" or "Locksmith") Motion for Partial Summary Judgment and
21 Motion in Limine to Exclude Extraneous Matters, and Defendants VOIP-PAL.COM, INC.
22 ("VPLM") and NEW HORIZON TRANSFER, INC.'s (collectively, "Defendants") Motion for
23 Summary Judgment and Motion in Limine to Exclude Plaintiff's Claim for Monetary Damages.
24 The hearing was held before Department 31 of the Eighth Judicial District Court, in and for Clark
25 County, Nevada, with the Honorable Joanna Kishner presiding, on December 28, 2021, at 1:00
26 p.m. Plaintiff LOCKSMITH FINANCIAL CORPORATION appeared by and through its
27 attorney, Michael E. Smith, Esq; Defendants VOIP-PAL.COM, INC. and NEW HORIZON
28

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1 TRANSFER, INC. appeared by and through their attorney, Adam R. Knecht, Esq. of the law firm
2 Alverson, Taylor & Sanders.

3 The Court, having reviewed the pleadings and papers on file, being fully advised on the
4 premises and having heard the arguments of counsel, for reasons stated on the record and good
5 cause appearing therefor, enters the following Findings of Fact, Conclusions of Law and
6 Judgment:

7 **FINDINGS OF FACT**

8 1. There was prior litigation between the parties, styled as *Locksmith Financial*
9 *Corporation, Inc., et al. v. Voip-Pal.com, Inc., et al.*, Case No. A-15-717491-C (the “previous
10 litigation”).

11 2. The previous litigation was initiated in 2015 by Plaintiff LOCKSMITH
12 FINANCIAL CORPORATION (“Locksmith”).

13 3. During the previous litigation, Locksmith made allegations regarding the
14 transferability of its stock in Defendant VOIP-PAL.COM, INC. (“Voip-Pal”). For example,
15 Plaintiff alleged in the “Breach of Contract” section of its Third Amended Complaint from the
16 previous litigation that Defendants had imposed a freeze of Locksmith’s shares and refused to
17 “provide clearance to the transfer agent” for the sale of Locksmith’s shares. *See* Third Amended
18 Complaint, ¶ 44. Plaintiff further alleged that Defendants had sought to “strip Plaintiffs’ lawful
19 ownership of the shares by freezing and seeking to cancel the shares.” *Id.* at ¶ 78.

20 4. Throughout the previous litigation, the subject of the transferability of stock
21 remained at issue.

22 5. The previous litigation eventually resulted in a jury trial.

23 6. At trial, the Court read Jury Instruction No. 52 to the jury, which consisted of the
24 text of NRS 104.8403.

25 7. During opening statements, Plaintiff’s counsel explained to the jury that “perhaps
26 the most important a shareholder has is the right to sell or transfer their stock. *See* Opening
27 Arguments, 19:15-16. Further, Plaintiff’s counsel represented to the jury that “the act of freezing
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1 the shares made the stock effectively worthless. So by doing this, Voip-Pal was able to keep both
2 the stock and money.” *Id.* at 31:6-9.

3 8. During trial, Plaintiff’s counsel argued that that NRS 104.8403 “governs the fact
4 that when a share of stock is properly presented for transfer, the company may not refuse to
5 transfer except on a couple of conditions.” *See* Closing Arguments, 45:23-46:1.

6 9. Similarly, Plaintiff’s counsel argued that Defendants’ transfer agent was not aware
7 of its duties under Article 8 of the Uniform Commercial Code. *Id.* at 48:17-49:11.

8 10. Ultimately, the jury awarded Plaintiff \$355,000.00 for its Breach of Fiduciary
9 Duty claim. However, the jury rejected Plaintiff’s remaining claims, including its claim for
10 Breach of Contract.

11 11. Following trial, the parties stipulated to “forego and waive any and all rights to
12 appeal” or to file “any post-trial motion” in the previous lawsuit. *See* Stipulation and Order,
13 dated November 6, 2019.

14 12. On January 1, 2020, Plaintiff filed its Complaint in this instant action, and its First
15 Amended Complaint on January 30, 2020. Plaintiff’s Complaint and supplements thereto alleged
16 that Defendants refused to register a transfer of Plaintiff’s alleged shares in November 2019 in
17 violation of NRS 104.8401.

18 13. Shortly after the filing of the First Amended Complaint, Defendants moved for
19 dismissal on February 20, 2020 based on the theories of claim preclusion and issue preclusion.

20 14. At a hearing held on June 10, 2020, the Court granted Defendants’ Motion to
21 Dismiss the First Amended Complaint, but Plaintiff was given leave to amend the complaint to
22 plead additional facts. In the Order Granting Defendants’ Motion to Dismiss, the Court stated
23 that “it appears that claim preclusion may apply; however, granting leave to amend would be
24 appropriate to allow the plaintiffs to plead additional factual material to better specify the issues.”
25 *See* Order Granting Dfdt’s Motion to Dismiss, p. 3.

26 15. As a result, Plaintiff filed its operative Second Amended Complaint on August 14,
27 2020. Regarding the previous litigation between the parties, the Second Amended Complaint
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1 alleged that “[a]t no time during the proceedings did either the jury or the court make any findings
2 as to the transferability of the Stock, as that was not an issue of the case.” See Second Amended
3 Complaint, ¶ 61.

4 16. In addition, Plaintiff alleged that Defendants breached their duties related to the
5 transfer of shares under NRS 104. Specifically, Plaintiff alleged that Defendants “have, without
6 cause or privilege to do so, denied LOCKSMITH its legal right under NRS 104.8401 to transfer
7 the LOCKSMITH Shares.” *Id.* at ¶ 89.

8 17. Plaintiff asserted three causes of action: 1) declaratory relief for the transfer of
9 shares under NRS 104.8401; 2) injunctive relief; and 3) supplemental relief in the form of
10 monetary damages for Plaintiff’s “opportunity loss.”

11 18. During this instant action, Defendants deposed Locksmith’s principal officer,
12 Richard Kipping. Mr. Kipping testified that “it’s pretty obvious that the two cases are based on
13 the same transaction.” See Deposition Testimony of Richard Kipping, 29:2-3. Mr. Kipping also
14 admitted that no subsequent freeze of shares had occurred since 2014. *Id.* at 109:7-110:3.

15 19. On November 10, 2021, both parties moved for summary judgment.

16 CONCLUSIONS OF LAW

17 Pursuant to Rule 56 of the Nevada Rules of Civil Procedure, a court shall grant summary
18 judgment if a movant shows that (1) there is “no genuine dispute as to any material fact,” and (2)
19 the moving party is “entitled to a judgment as a matter of law.” Nev. R. Civ. P. 56(a). *Cromer v.*
20 *Wilson*, 126 Nev. 106, 109–10, 225 P.3d 788, 790 (2010); *Wood v. Safeway, Inc.*, 121 Nev. 724,
21 729, 121 P.3d 1026, 1029 (2005).

22 The mere existence of some issue of fact does not necessarily preclude summary
23 judgment. *Wood v. Safeway, Inc.*, 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005); *Oh v. Wilson*,
24 112 Nev. 38, 39, 910 P.2d, 277 (1996). When the court reviews a motion for summary judgment,
25 the evidence, and all reasonable inferences drawn from the evidence, must be viewed in a light
26 most favorable to the nonmoving party. See *Allstate Ins. Co. v. Fackett*, 125 Nev. 132, 137, 206
27 P.3d 572, 575 (2009); *Waldman v. Maini*, 124 Nev. 1121, 1136, 195 P.3d 850, 860 (2008).

1 In this instant action, Defendants have asserted a defense of claim preclusion based on the
2 previous litigation between the parties. The Nevada Supreme Court has ruled that claims must be
3 precluded where: "(1) the parties or their privies are the same, (2) final judgment is valid, and (3)
4 the subsequent action is based on the same claims or any part of them that were or could have
5 been brought in the previous lawsuit." *Five Star Capital Corp. v. Ruby*, 124 Nev. 1048, 1054, 194
6 P.3d 709, 713 (2008). Further, the Nevada Supreme Court has explained that "[w]hether a claim
7 that was not raised in the previous action could have been raised therein depends in part on
8 whether the same transaction or connected series of transactions is at issue, whether the same
9 evidence is needed to support both claims, and whether the facts essential to the second were
10 present in the first." *Rock Springs Mesquite II Owners' Ass'n v. Raridan*, 136 Nev. 235, 239, 464
11 P.3d 104, 108 (2020).

12 There was prior litigation between the parties that concluded in a final judgment,
13 satisfying the first two elements of claim preclusion. The final element of claim preclusion,
14 whether the subsequent action is based on the same claims or any part of them that were or could
15 have been brought in the previous lawsuit, is also present.

16 During the previous litigation, Plaintiff Locksmith Financial Corporation made allegations
17 regarding the transfer of the subject stock. For example, Plaintiff alleged in the "Breach of
18 Contract" section of its Third Amended Complaint that Defendants had imposed a freeze of
19 Locksmith's shares and refused to "provide clearance to the transfer agent" for the sale of
20 Locksmith's shares. *See* Third Amended Complaint, ¶ 44. Plaintiff further alleged that
21 Defendants had sought to "strip Plaintiffs' lawful ownership of the shares by freezing and seeking
22 to cancel the shares." *Id.* at ¶ 78.

23 While things may change between a complaint and trial, Jury Instruction No. 52 from the
24 previous litigation set forth NRS 104.8403 regarding the transferability of stock. Jury instructions
25 have to specifically relate to the claims at issue. In order to be included as a jury instruction, there
26 had to be a legal basis for the jury to apply NRS 104.8403 to the facts of the case.

27 Moreover, the transcripts of closing arguments and other parts of trial demonstrate that
28

1 Plaintiff argued to the jury that NRS 104.8403 “governs the fact that when a share of stock is
2 properly presented for transfer, the company may not refuse to transfer except on a couple of
3 conditions.” *See* Closing Arguments from previous litigation, 45:23-46:1. Further, Plaintiff’s
4 counsel argued that Defendants’ transfer agent was not aware of its duties under Article 8 of the
5 Uniform Commercial Code. *Id.* at 48:17-49:11. Plaintiff made arguments regarding the
6 transferability of the shares and NRS 104. Those arguments involve the same concept of not
7 having the free ability to do what one wants with the shares, which is the same basis for this
8 instant action.

9 The previous litigation and instant action involve the same nucleus of operative facts.
10 Both actions relate to the 2014 freeze of shares and inability to transfer. Plaintiff’s instant claims
11 are of the same nature as Jury Instruction No. 52 from the previous litigation.

12 Defendants also asserted a statute of limitations defense, arguing that Plaintiff’s instant
13 claims are untimely and barred by a three-year statute of limitations pursuant to NRS 11.190.
14 However, Defendants’ statute of limitations argument should be denied without prejudice as
15 Defendants did not identify a trigger date for the statute of limitations in their Motion. In addition,
16 Defendants have not satisfied its burden to demonstrate that the Court should impose sanctions
17 under Rule 37 of the Nevada Rules of Civil Procedure.

18 Plaintiff filed its own Motion for Partial Summary Judgment on November 10, 2021.
19 Plaintiff has not met the evidentiary burden required for summary judgment pursuant to Rule 56
20 of the Nevada Rules of Civil Procedure. Further, Plaintiff’s Motion must be denied because the
21 Court has found affirmatively that Defendants’ Motion for Summary Judgment should be granted.
22 Because there is no material issue of fact as to Defendants’ Motion for Summary Judgment, the
23 Court must deny Plaintiff’s Motion as a matter of law.

24 Finally, by virtue of the Court’s ruling on Defendants’ Motion for Summary Judgment,
25 the motions in limine filed by each party are moot.

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JUDGMENT

Based on the above Findings of Fact and Conclusions of Law,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment should be entered in favor of Defendants VOIP-PAL.COM, INC. and NEW HORIZON TRANSFER, INC. on each and every one of Plaintiff's claims.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that there is no just reason for delay of entry of final judgment and final judgment is so entered pursuant to Rule 54 of the Nevada Rules of Civil Procedure.

IT IS SO ORDERED.

Dated this 19th day of January, 2022



DISTRICT COURT JUDGE
5A9 800 5246 B64B
Joanna S. Kishner
District Court Judge

Agreed as to Form and Content:
LAW OFFICE OF
MICHAEL E. SMITH, ESQ., P.C.

/s/ Michael Smith

MICHAEL E. SMITH, ESQ.
Nevada Bar No. 13764
1515 E. Tropicana Avenue, Suite 530
Las Vegas, Nevada 89119
Attorney for Plaintiff

Submitted by:
ALVERSON TAYLOR & SANDERS

/s/ Adam Knecht

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Attorneys for Defendants

Matthew Havili

From: Michael Smith <msmith@nevadalawyers.us>
Sent: Friday, January 14, 2022 3:23 AM
To: Matthew Havili
Subject: Re: Findings of Fact, Conclusions of Law and Judgment - Voip-Pal adv. Locksmith

The proposed order looks fine. I assume someone will fix the typos, then you may affix my facsimile signature.

-M

Regards,

MICHAEL E. SMITH, Esq.
Law Office of Michael E. Smith, Esq., P.C

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On Tue, Jan 11, 2022 at 3:01 PM Matthew Havili <MHavili@alversontaylor.com> wrote:

Michael,

Please find the attached proposed order for your review. Please let us know whether you approve as to form and content. Thanks.

Matthew Havili, Esq.



Alverson Taylor
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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Locksmith Financial
Corporation, Plaintiff(s)

vs.

VOIP-Pal.com, Inc.,
Defendant(s)

CASE NO: A-20-807745-C

DEPT. NO. Department 31

AUTOMATED CERTIFICATE OF SERVICE

This automated certificate of service was generated by the Eighth Judicial District Court. The foregoing Findings of Fact, Conclusions of Law and Judgment was served via the court's electronic eFile system to all recipients registered for e-Service on the above entitled case as listed below:

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