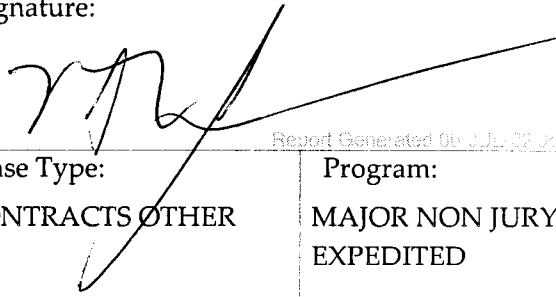


Court of Common Pleas of Philadelphia County
 Trial Division - Civil
TRIAL WORK SHEET

Judge's Name: VINCENT L JOHNSON		Judge's I.D.: J510	Signature: 		
Caption: THORSON ETAL VS EDDW, LLC ETAL		Case Type: CONTRACTS OTHER	Program: MAJOR NON JURY EXPEDITED		
Court Term and Number: #1903-01451		If Consolidated, Court Term and Number:			
Trial Date: 03-MAY-2022	<input type="checkbox"/> Jury <input checked="" type="checkbox"/> Non-Jury	Total Amount: \$2,160,782.75	Number of Days: 4	Disposition Date: 06-JUL-2022	Date Sheet Prepared: 06-JUL-2022

Report Generated On: JUL 22 Job #5

Full Description of Disposition (to be entered Verbatim on the Docket)

See Order. Judgment entered in favor of Plaintiff~~S~~, Jonathan Thorson and Grace Song, against Defendants, EDDW, LLC, BDDW Design, LLC, BDDW Studio, LLC, M.Crow, LLC, and Tyler Hays.

- | | | |
|--|---|--|
| <input type="checkbox"/> Default Judgment/Court Ordered | <input type="checkbox"/> Jury Verdict for Plaintiff | <input type="checkbox"/> Other (explain) |
| <input type="checkbox"/> Directed Verdict | <input type="checkbox"/> Jury Verdict for Defendant | |
| <input type="checkbox"/> Discontinuance Ordered | <input type="checkbox"/> Mistrial | |
| <input type="checkbox"/> Transferred to binding arbitration | <input type="checkbox"/> Hung Jury | |
| <input type="checkbox"/> Finding for Defendant (Non-Jury) | <input type="checkbox"/> Non-Pros entered | |
| <input checked="" type="checkbox"/> Finding for Plaintiff (Non-Jury) | <input type="checkbox"/> Non-Suit entered | |
| <input type="checkbox"/> Damages Assessed | <input type="checkbox"/> Settled prior to assignment for trial (Team Leaders, only) | |
| <input type="checkbox"/> Judgment entered by agreement | <input type="checkbox"/> Settled after assignment for trial | |
| <input type="checkbox"/> Judgment entered | | |
| <input type="checkbox"/> Judgment satisfied | <input type="checkbox"/> prior to jury selection | |
| | <input type="checkbox"/> after jury sworn | |

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WSFFP-Thorson Etal Vs Eddw, Llc Etal



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Complex Litigation Center

JUL 6 2022

Stewart

JONATHAN THORSON and GRACE SONG

Plaintiffs

v.

EDDW, LLC, BDDW DESIGN, LLC
BDDW STUDIO, LLC, M. CROW LLC,
TYLER HAYS, GARRETT
McGLOTHLIN, ERIC ANDERSON and
JACK SHELTON,

Defendant(s)

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

MARCH TERM, 2019
NO. 01451

FINDING OF FACT AND CONCLUSIONS OF LAW

After a non-jury trial in the above-captioned matter, review of the testimony, and review of all exhibits, the Court makes the following Finding of Fact and Conclusions of Law.

FINDING OF FACT

1. The Plaintiff in this matter is Ms. Grace Song, a Philadelphia resident and a former employee of BDDW Design LLC.
2. Ms. Song testified that she is a graduate of Parson School of Design and holds a BFA in industrial design.
3. Ms. Song testified that she was an employee of BDDW from September 4, 2006 through July of 2018. Originally, Ms. Song testified that when hired, she worked in New York for BDDW and for several years ran the Brooklyn, New York shop as Mr. Hays was now opening a shop in Philadelphia, PA.
4. Defendant, Tyler Hays, in 2007, asked Plaintiff Song to relocate to Philadelphia, PA, and she agreed to do so.

5. Ms. Song testified that her duties included hiring and firing of employees, running the company's legal matters and finances including payroll. Ms. Song testified that her duties also included paying the personal bills of Mr. Hays, including bills for his mother.
6. Ms. Song testified that she had the ultimate authority to make decisions regarding the business in Mr. Hays' absence.
7. Ms. Song was the signer on all business bank accounts, lines of credit and sign-on mortgages.
8. Ms. Song testified that in 2012, she was made President of the company and said position was communicated to all employees and partners.
9. Ms. Song testified that key members of the organization were designated as partners.
10. Ms. Song testified that BDDW Design LLC and its related companies were known for the manufacture and sale of upscale furniture and heirloom items sold to celebrities and the 1% of the rich. The luxury county store in Oregon had items such as: a \$475.00 shirt dress, jackets for \$625.00, and pants for \$365.00. In the New York store, the price for tables started at \$3,000.00 and go as high as \$200,000.00.
11. A-list persons attended the many events held by the company including Keith Lodge, Bono, Natalie Portman, Brad Pitt and Angelina Jolie to name a few.
12. Ms. Song testified that in 2017, her salary was \$215,000.00, not including bonuses and perks. Ms. Song's perks included the use of an apartment loft with no rent charged, car allowance of \$750.00 per month, unrelated business expenses of \$200.00 to \$300.00 on the company credit account, and the use of the company beach house whenever she needed it.

13. Ms. Song testified that she was approached by Mr. Tyler Hays in 2009 and told that she was crucial to his business and that he wanted to make her a 3% partner of the fair market value of the business if she remained with him for at least five more years. There were no other terms, and she accepted his offer. Ms. Song further testified that the determination of her 3% interest in the company would come from Mr. Hays employing someone to value the company to determine its worth and from that determination, Ms. Song's 3% would be calculated.
14. When Ms. Song joined BDDW in 2006, sales of BDDW were 2 million dollars but by 2017, sales had risen to 16 to 17 million dollars.
15. Plaintiff's Exhibit 1 consists of 5 pages demonstrating the value of the merchandise sold by the respective companies managed by Ms. Song.
16. Ms. Song testified that the group of key employees, known as the partners, worked very closely together for the benefit of the Defendant, Tyler Hays. Ms. Song indicated that the partners worked and socialized together and that on Thursdays, known as "Thunder Thursday", the key employees (partners) would meet with Mr. Hays from 8 a.m. until 12 p.m. working and discussing his design ideas and other related matters for the business. Ms. Song testified that food and beer, as well as other alcoholic beverages, were served.
17. Ms. Song also testified that the partners took business trips together, in addition to social vacations together. Routinely, they would all vacation at Mr. Hays' beach house in Ocean Grove, New Jersey.
18. Ms. Song testified that, in 2015, while acting as the president of the company, Mr. Hays offered her 5% of the value of M. Crow to be effective immediately because of her work and the fact that the revenues were high.

19. In accordance with Ms. Song's testimony, problems began when Co-Plaintiff, Jonathan Thorson, another key employee and known as a partner, requested an apportionment of his partnership profit to put down on a house.
20. According to Ms. Song, she had been informed by Mr. Hays that Mr. Thorson was a 2% partner. Ms. Song testified that Jonathan Thorson was the face of the New York sales office of BDDW and responsible for 85% of all sales of the company. According to Ms. Song, Mr. Thorson knew, met, and sold to the high-end customers of BDDW.
21. Ms. Song was aware that Jonathan Thorson had entered into an oral agreement, as she did, with Defendant, Tyler Hayes.
22. According to Ms. Song, after discussion with Mr. Hays, Jonathan Thorson's request was dissuaded. Mr. Thorson was told he would not be allowed to cash out his equity.
23. Song testified that things further changed at BDDW when at a 2017 dinner party, Mr. Hays' wife, Jen, had a conversation with several partners concerning Mr. Hays' demeanor and attitude. It was thought that he was angrier than normal. It was known that Tyler Hayes was arguing with Dustin Mears who ran the design and manufacturing department at BDDW. Morale was low, and Dustin wanted to quit.
24. According to Ms. Song's testimony, the partners, which included Grace Song, Jonathan Thorson, Eric Anderson, Jack Shelton and Mr. Hays' wife, had a meeting to discuss morale and bettering the work environment.
25. Tyler Hays heard about the meeting of the partners and called a second meeting of the partners; he shared how extremely upset he was and accused them of having a coup behind his back.
26. Song testified that in March of 2017, Dustin Mears quit BDDW.

27. Song testified that it was after Mears quit that Defendant, Tyler Hays, then gave her a raise, increasing her salary from \$195,000.00 to \$215,000.00.
28. Song testified that at this point revenue was 17 million dollars for BDDW.
29. Song testified that she and Jonathan Thorson were considered the managing partners of the company; she ran the operations of the business and Jonathan was responsible for 85% of all sales of BDDW. He was responsible for all client/customer contact.
30. Song testified that in April of 2018, Jonathan Thorson resigned from the company and requested his partnership percentage of the business that was promised to him by Mr. Hays through an oral contract that Mr. Hays had individually, personally, and privately made with Thorson.
31. According to Ms. Song, Mr. Thorson gave three months' notice to the company of his leaving.
32. Ms. Song was advised by Tyler Hays to meet with Mr. Thorson and attempt to figure out a financial settlement for him, but that he was not entitled to his partnership share because he failed to give a one-year notice to Tyler that he was leaving. Ms. Song had never heard about a one-year notice because it was not part of her arrangement with Mr. Hays.
33. Ms. Song testified that she and Eric Anderson met with Mr. Thorson to come to an arrangement. Mr. Hays authorized a payment of \$150,000.00 to Jonathan Thorson to which he rejected.
34. Ms. Song testified that with the departure of Jonathon Thorson, Tyler Hays put her in charge of the operations and the upcoming events that were scheduled to take place.

35. Ms. Song testified that there were many events held by BDDW in New York, Milan, and other places around the world for marketing. The events would allow customers and others to meet and buy expensive items from BDDW. These events included archery events, auctions, and various other types of activities where buyers and celebrities would come and buy from the company.
36. According to Ms. Song, these events always included food and lots of alcohol for the customers to drink.
37. According to Ms. Song and others, it was well known that providing alcohol and a good time helps the customers buy and spend more money.
38. Ms. Song testified that a major event was scheduled to take place, and since Jonathan Thorson was gone, she was responsible for his duties, which included managing the staff, selecting, and notifying the VIPS dealing with the caterers.
39. According to Ms. Song, it was well known that Tyler Hays spiked the punch for the event with Everclear, a 190-proof grain alcohol. It was not uncommon for people attending these events to become intoxicated.
40. The event took place on a Thursday with 100 people attending and bidding on expensive items made by BDDW. The event started at 6 p.m. and was over by 8 p.m., however, clients would hang around after the event until the place closed.
41. After the event, while some of the customers and guests were still mingling, Ms. Song was accused of being intoxicated. Ms. Song was placed on a 30-day suspension and was requested in writing to seek medical attention.
42. During this period, Ms. Song was locked out of all the company accounts.

43. Ms. Song testified that after the 30-day period, she returned to work only to have Jeffrey Ciarlanto, counsel for the company, inform her that she was fired.
44. Prior to her termination, Ms. Song consulted a lawyer; this fact was reported to Tyler Hays. At that point, Ms. Song had taken no legal action, and Tyler refused to talk with her.
45. Ms. Song testified that she had gone beyond the five years pursuant to her oral contract with Mr. Hays. There was no condition nor term that modified her arrangement with Tyler Hays and the business, and, as a result, Ms. Song felt that she was entitled to her 3% value of the fair-market value of the business.
46. On cross examination, Ms. Song confirmed that her verbal agreement with Defendant, Tyler Hays, was made in 2009 on Samson Street in Philadelphia, PA with no one else present but Mr. Hays and herself.
47. When asked did she notify anyone else of the agreement, Ms. Song responded, her parents and some friends were made aware of the agreement she had with Mr. Hays. She also restated that the terms of her agreement were 3% of the market value of the company conditioned upon her remaining with the company for an additional five years.
48. When asked on cross examination whether she drank at the event that led to her firing, Ms. Song stated that she had something to drink but was not drunk.
49. When asked whether she placed a \$200,000.00 ceramic helmet on the head of one of the clients during that event, Ms. Song responded in the affirmative. Ms. Song indicated that she was close friends with the client and his wife and was acting playfully when she placed the ceramic helmet of the fighting suit, which had been purchased by the client, on the client's head.

50. On cross examination, Ms. Song stated that Tyler Hays had major anger issues, and she did not like being yelled at.
51. On cross examination, Ms. Song confirmed that she was aware that employees were instructed by Tyler Hays to spike the punch with an alcohol named Everclear that guests were to be drinking at the event.
52. On cross examination, Ms. Song admitted that Tyler Hays accused her of being drunk and placed her on a 30-day leave of absence and suggested that she go seek help for her drinking.
53. On cross examination, Ms. Song was shown a written notice of her leave of absence (Defense Exhibit 3), she admitted her acknowledgment of same. When asked whether she followed through with the recommendation to seek help for her drinking, she stated after speaking with her parents and close friends about the matter, she did not.
54. On cross examination, Ms. Song was presented with text messages dated June 11, 2018, between herself and Eric Anderson (Defense Exhibit 5). When asked during her leave of absence, did she attempt to go behind Mr. Hays' back when she texted Mr. Anderson; she indicated no. Ms. Song testified that she did not know what was going on, and Mr. Hayes was accusing her of something she disagreed with to which she contacted Mr. Anderson to gain clarification.
55. On cross, Ms. Song was asked, while on leave and after her termination, whether she accessed BDDW account and emails remotely. Ms. Song responded in the affirmative.
56. However, Ms. Song explained that within her thirteen years at the company, she had no personal email account. Therefore, her personal information was intermixed with that of

the business. Thus, she only secured her personal information and did not access any business or proprietary information from BDDW.

57. On redirect, Ms. Song was asked how the company was to be evaluated to determine its market value. Ms. Song responded that Mr. Hays was going to hire an evaluator to determine the company's value. Mr. Hays believed, from talking with a friend, that his luxury company was worth four times the revenue.

58. On cross examination, Ms. Song was asked, other than being terminated by the BDDW, did she ever receive a reprimand from the company or warning concerning any matter; she responded no.

59. After Ms. Song testified, Mr. Jonathan Thorson was next to testify. Mr. Thorson testified that he was married with three children and had a Liberal Arts Degree in Fine Arts.

60. Mr. Thorson worked at an architectural firm before working at BDDW. Once he was made aware about an opening at BDDW, he secured an interview and began working for Defendant, Tyler Hays, in 2004. Mr. Thorson started from the bottom doing tasks such as packing mirrors and other various jobs. In 2005 or 2006, he was promoted to running the sales operation in New York.

61. While working at the company, Mr. Thorson hired Grace Song. After hiring Ms. Song, she quickly rose up the ranks within the business to later become the president of the company. He later confirms the fact that after her hire, she quickly rose up the ranks of the business to become president of the company and ran all the various aspects of finance, HR, and many other things.

62. Mr. Thorson testified that his primary focus was sales and client relations. He stated that when he first started, sales were around \$800,000.00. Mr. Thorson testified that under his

direction and management, sales grew from \$800,000.00 when he started to \$18 Million dollars in 2018. He stated he developed a team in the New York sales office. Mr. Thorson further testified that he was responsible for the New York showroom and displays in the showroom. He hired and fired employees and handled the day-to-day operations in New York until he left in 2018.

63. Mr. Thorson confirmed the testimony of Grace Song that it was an unspoken rule not to leave Tyler Hays alone with customers, especially at events. While he was good with business, Mr. Hays was poor with customer relations. At events, due to Mr. Hays' poor memory, he would not know the names of clients, and Ms. Song or Mr. Thorson would have to give him cues.

64. Mr. Thorson testified that he handled between 80 and 90 percent of all sales including celebrities and wealthy clients. Some of the celebrity clients included Joe Montana, Bono, the Clinton Family, notably Chelsea Clinton, and Steven Spielberg.

65. Mr. Thorson testified to the importance of Dustin "Dusty" Mears within the company. He testified that Mr. Mears' talent, skill, and leadership surpassed other partners like Shelton, Anderson, and McGlothlin. Mr. Mears quickly became shop manager. It was testified by Mr. Thorson that Mr. Hays felt that "we can't do this without Dusty."

66. Mr. Thorson testified to being a partner and described what partners were. Mr. Thorson also testified that he and Ms. Song were considered the managing partners of the group.

67. Mr. Thorson testified that in 2009, Mr. Hays invited him to his loft in New York and offered him as a partner a 2% share of the value of the company. To receive the 2% share, the only terms were a commitment of five more years working for the company

and at that time the 2% partnership interest would vest. He further testified that the value of the company would be determined by an outside valuation company.

68. Mr. Thorson testified that there were no other conditions, and the money could be accessed at any time after the five-year period had been attained. Mr. Thorson further testified that Mr. Hays informed the partners that the longer they stayed, the greater the value of the business.
69. Mr. Thorson testified that, in addition to his salary, he was given other perks such as: the use of credit card for dinners, a small expense account, a company vehicle, and use of an apartment. He also testified that he had access to a beach house in Ocean Grove, New Jersey
70. Mr. Thorson testified that he was told by Mr. Hays that his 2% agreement was his 401k and that if you work harder, you'll make more money.
71. Mr. Thorson testified that after his five years had vested, in 2015, he went to Tyler Hays and requested some of his percentage to buy a house for his family, but Mr. Hays refused to provide the money from his vested percentage.
72. After this refusal by Tyler Hays, Mr. Thorson testified that he began to doubt the veracity of Mr. Hays.
73. Thorson testified at a meeting of the partners with Defendant, Tyler Hays, one of the partners asked that their arrangement be put in writing. Mr. Hays did not comply but insinuated that he was good for the money.
74. Mr. Thorson testified that in the summer of 2017, he became aware of a new job offering, however, it was not until near the winter of 2017 that things progressed, and he decided to move forward for an interview with the new company. In January of 2018, he accepted

a position with the new company as CEO and requested that he start in three months so he could give timely notice to BDDW.

75. Mr. Thorson testified that after he accepted the new position, he contacted and met with Tyler Hays to discuss his resignation and his partnership share.

76. Upon hearing of Mr. Thorson's resignation, Tyler Hays informed him that he was sorry that he was leaving, but because he did not give a year's notice of his resignation, he would not receive a full payout.

77. Mr. Thorson testified that he was shocked to hear Tyler Hays' statement after giving 14 years to the company.

78. Mr. Thorson also testified that he had never heard of a year-notice requirement until Mr. Hays said it on the date that Mr. Thorson gave his notice.

79. Mr. Thorson testified that Tyler Hays said he would confer with the partners concerning what Mr. Thorson might be entitled to.

80. Mr. Thorson testified that Tyler Hays brought a lawsuit against him and his new employer in New York.

81. Mr. Thorson testified that he did not have a written contract with BDDW and that he was an employee at will. Further, he had no agreement with Mr. Hays that he could not compete if he left.

82. Mr. Thorson testified that his new employer is not similar to BDDW and sells different types of furniture than BDDW.

83. Mr. Thorson also testified that he did not take any confidential information from BDDW to his new employer USM.

84. Mr. Thorson testified that he was paid \$195,000.00 at BDDW with benefits. At his new job, he would be CEO, and his opportunities would be greater.
85. On behalf of Tyler Hays, Grace Song and Eric Anderson attempted to offer Mr. Thorson a settlement, however, it was rejected.
86. Mr. Thorson testified that he was present at the very VIP event that was held in New York.
87. Mr. Thorson verified that everyone, including Tyler Hayes, was drinking.
88. Mr. Thorson testified that he did not see Grace Song intoxicated.
89. Mr. Thorson testified that no one complained to him about Grace Song's drinking.
90. Mr. Thorson confirmed to the Court that the offer of percentages of the business were made in private individually with Tyler Hays and not with others present.
91. As a result of his frustration with not receiving his 2% interest in the business, he hired a lawyer.
92. Mr. Thorson considered his 2% interest in the business as his 401k and retirement.
93. Mr. Thorson said on cross examination when he discussed the one-year notice with Garrett, another partner, he too was unaware of the one-year notice requirement.
94. After hearing from Mr. Jonathan Thorson, Dustin Mears was called by the Plaintiffs as a witness.
95. Dustin Mears was a former shop manager for BDDW.
96. Mr. Mears testified that he was employed at BDDW from 2011 to 2017.
97. Mr. Mears testified that his duties were to purchase and plan all the production work and manage the shop teams.
98. Mr. Mears testified who the partners were and identified himself as one of them.

99. Mr. Mears explained that he was offered one percent of the business if he stayed for 10 years. No other conditions were made to him by Tyler Hays. Mr. Mears was never told of a one-year notice condition nor was he ever told that he would forfeit his interest if terminated.

100. He described the working condition at BDDW as a close-knit group of people.

101. Mr. Mears described the many events that took place at BDDW and indicated that alcohol was present at these events and that partners were allowed to drink.

102. Mr. Mears testified that the partnership agreement was oral and not put in writing.

103. Mr. Mears testified that he left BDDW after working there only six years, therefore, his partnership did not vest.

104. Mr. Mears testified that he had no financial connection or interest in the lawsuit before the court.

105. Mr. Mears testified that he has no animosity toward Mr. Hays or anyone at BDDW.

106. When Mr. Mears was asked why he submitted an affidavit in this case, he responded that "You know, we were all part of that company, all part of BDDW, as you are now and it was a lot of trust and a lot of faith put in each other and put in Tyler, and this is a breaking of trust..."

107. Defendant then called Eric Anderson to testify.

108. Mr. Anderson testified that he was a partner in BDDW and is the current shop manager.

109. Mr. Anderson testified that his duties included hiring, firing, ordering materials, researching, machinery, overseeing employees and projects, keeping timelines in check, and quality control.
110. He testified that he had been employed for 22 years at BDDW.
111. He testified that he was a partner of BDDW.
112. He testified that he had a verbal contract with Mr. Tyler Hays and that the terms of his employment were the following: to stay with the company five years, give a one-year notice if you wish to leave and not to be fired for cause. Once his payout vested, the value would be determined by Mr. Hays.
113. Mr. Anderson believed the other partners were aware of the one-year notice and the condition that you could not be fired for cause but could give no specifics as to a particular meeting when such information was shared.
114. Mr. Anderson confirmed that he was not present when Grace Song or Jonathan Thorson were made partners.
115. Mr. Anderson testified that he was present at company events when Ms. Song was intoxicated.
116. Mr. Anderson testified that prior to Mr. Thorson's resignation, he had no prior conversation with him concerning a one-year notice requirement.
117. Mr. Anderson testified that he was still currently employed at BDDW and that employment was his only source of income.
118. Mr. Anderson testified that Mr. Hays controls the terms of his employment and the value of his partnership. Mr. Anderson testified that Mr. Hays had the power to determine that he had no interest in the business at all.

119. Mr. Anderson also indicated that Mr. Tyler Hays was totally responsible for determining the value of his 1 ½ % interest in the company. He agreed that Mr. Hayes could value his share at zero which, under his agreement, was in the discretion of Mr. Hays.
120. Mr. Anderson testified that he had seen Grace Song drinking at a number of company events.
121. Mr. Anderson has witnessed Grace Song at several events inebriated to the point of passing out on an employee.
122. After Mr. Anderson testified, Mr. Jack Shelton was called by the Defense to testify.
123. Mr. Shelton testified that he started to work for BDDW in 2004 in the New York office and currently makes \$110,000.00.
124. Mr. Shelton is currently a manager for the company. He testified that he is referred to as a partner in casual settings.
125. When asked on direct what did the title of partner mean, he testified the title of “partner” was used in social settings so people would know he had authority to make decisions and that he was working with Mr. Hays in a partnership capacity.
126. Mr. Shelton stated the terms of his agreement were that after five years, he was to be given 1½ percentage as kind of a bonus. If he left the company, he had to give a one-year notice, and he had to be in good standing with the company.
127. Mr. Shelton testified that he was not present when Grace Song and Jonathan Thorson made their partnership deal with Tyler Hays. Further, he never discussed their respective deals with either Grace Song or Jonathan Thorson.

128. Mr. Shelton testified that he never discussed with Tyler Hays the agreement between Ms. Grace Song or Mr. Jonathan Thorson.
129. After hearing from Mr. Shelton, Defense called Daniel Ramsey to testify.
130. Mr. Ramsey is married with two children.
131. Mr. Ramsey had a degree in furniture design from the University of Arkansas.
132. Since October of 2014, Mr. Ramsey has been employed with BDDW and is the General Manager of the manufacturing facility for BDDW.
133. Mr. Ramsey testified that he has seen Grace Song drink at company events. Further, he has also witnessed Ms. Song drink to the point of intoxication on several occasions.
134. Mr. Ramsey admitted that other employees and guests were also drinking at these events.
135. Mr. Ramsey admitted that he was not a partner at BDDW.
136. After hearing from Mr. Ramsey, Defense called Michael Junkins to testify.
137. Mr. Junkins testified that he currently runs the M. Crow project in Oregon and that M. Crow sells goods that are manufactured in Philadelphia under BDDW.
138. Mr. Junkins indicated that he works closely with Mr. Hays and talks to him on a daily basis. Mr. Junkins also stated that his wife is Mr. Hays' cousin.
139. Mr. Junkins stated that he has known Grace Song for 19 years.
140. Mr. Junkins testified that he was present at events when Ms. Song appeared intoxicated.
141. Mr. Junkins testified that he was present for a conversation when Jonathan Thorson discussed his resignation.

142. Mr. Junkins testified that he heard Tyler say there was a one-year notice requirement.
143. Mr. Junkins testified he never heard Mr. Thorson say there was a notice requirement.
144. Mr. Junkins testified that he has a written email agreement with Mr. Hayes and M. Crow where after five years, he is entitled to a percentage of the business, but he forfeits the agreement if he is terminated for cause and he must give a one-year notice if he wishes to resign.
145. Mr. Junkins testified that he is to receive a percentage of the value of the stock or valuation of the company; he was not sure of which he is to receive.
146. After hearing from Mr. Junkins, Defense called Mr. Edward Gavagan to testify.
147. Mr. Gavagan testified that he owns a design and construction company in New York called Praxis NYC.
148. Mr. Gavagan testified that he has known Tyler Hays since December of 2000 and have been to many BDDW events.
149. Mr. Gavagan testified that he is familiar with Grace Song and Jonathan Thorson.
150. Mr. Gavagan testified that he knew that Mr. Hays didn't like the handling of the day-to-day work of employee relations and client contact, so he delegated those duties to Grace Song.
151. Mr. Gavagan testified that he had witnessed Grace Song drink alcohol in excess.
152. Mr. Gavagan testified that others at these events also could have been drinking in excess, but he paid no attention to them.

153. Mr. Gavagan testified that the events held by BDDW were marketing and business development events with customers that involved alcohol being served.
154. Mr. Gavagan testified that alcohol is used to make clients spend more money because people may spend more money if they have been drinking alcohol.
155. Mr. Gavagan testified that he has probably seen Tyler Hays drunk at these events.
156. Mr. Gavaghan testified that he and Mr. Hays are best friends and that he was a groomsman at Mr. Hays' wedding.
157. After the Defense rested, Plaintiff called Barbara Pearsall as a rebuttal witness.
158. Ms. Pearsall testified that she currently resides in Ann Arbor, Michigan where she is a graduate student.
159. Ms. Pearsall testified that she worked at M. Crow as a sales associate in New York.
160. Ms. Pearsall testified that the culture at M. Crow and at BDDW was a boy's club with frequent drinking and some inappropriate behavior.
161. Specifically, she testified there was pressure to drink and inappropriate language for a workplace setting.
162. Ms. Pearsall testified that Mr. Hays commissioned a nude painting of his female employee without her consent and displayed it in the showroom where it could be publicly viewed. Ms. Pearsall further stated the employee was forced to see the painting because it was shown publicly at the workplace.
163. Ms. Pearsall said that she resigned from M. Crow because Grace Song left BDDW.

164. Ms. Pearsall felt she was no longer in a safe working environment. She stated that Ms. Song was an incredible role model and the reason she stayed with the company was to work under Ms. Song.
165. Ms. Pearsall testified that after Grace Song's departure, other employees started leaving.
166. Ms. Pearsall testified that she was present at the June 6th event where it was alleged that Grace Song was intoxicated. She testified that she does not remember whether she observed Ms. Song being intoxicated.
167. Ms. Pearsall refuted the allegation that she complained to Mr. Hays concerning Grace Song's drinking.
168. Ms. Pearsall testified that during the two years she was present at M. Crow and BDDW, she never heard of any complaints of Ms. Song being intoxicated or inebriated. She also testified that she attended five business shows with Ms. Song.
169. After Ms. Pearsall testified, Plaintiff called their expert witness, Eugene E. Urcan, to testify.
170. Mr. Urcan testified that he is self-employed and works under the business name of Urcan and Company LLC.
171. Mr. Urcan's business is that of investment banking and valuation services.
172. Mr. Urcan testified that he worked his way up through the investment and banking world starting as an analyst, associated vice president, director and managing director. He indicated that he closed over 70 merger and acquisitions and completed over a thousand valuations. He states he was head of valuations for Houlihan Capital.
173. Mr. Urcan carries several SEC licenses.

174. Mr. Urcan testified that he spends 30 percent of his time doing valuation work and 70 percent doing mergers and acquisitions.
175. Mr. Urcan admitted during voir dire that he has no degree related to finance or math. He indicated that he was not a CPA nor did he hold an accreditation in Business Valuation.
176. Mr. Urcan testified that he had never been certified as an expert witness by any court prior to this case.
177. At the Court's request, Mr. Urcan described in detail the type of businesses and companies that he has valued and the method by which he did those valuations.
178. After voir dire of the witness, Mr. Urcan was permitted to testify as an expert in business valuation.
179. Mr. Urcan testified that he was asked to value the business BDDW and was given the federal tax returns for the business from 2013 to 2018. In addition, he was given financial statements from 2013 to 2018.
180. Mr. Urcan described the method of valuation used by him as the market approach where he used comparable companies to place a value on the business.
181. Mr. Urcan testified that even though BDDW is a private company, he had no access to a compatible private company's financial reports as a comparison. Thus, Mr. Urcan used public companies that he felt were comparable.
182. Mr. Urcan testified that he drafted two expert reports, one dated November 1st and the other dated November 17th. When asked the reasoning for two expert reports, Mr. Urcan indicated his second report had better data for the comparisons of the businesses.

183. Mr. Urcan testified that he was looking at businesses that were producing furniture that were specialty crafted.
184. Mr. Urcan testified that the net sales of the businesses for the year 2017 through December 15, 2017 were \$16,785,031.00.
185. Mr. Urcan also testified that he then took into consideration the cash sales that were made in 2018 in the amount of \$501,232.00 and the sales through 2017, plus the cash on hand for 2018, and combined them for a total of \$17,286,262.00.
186. Mr. Urcan testified concerning how he determined the multipliers to use in this matter and determined the multipliers to range from one with a value of \$17.2 million to 67.6 million with a multiplier of four.
187. Mr. Urcan testified that at the midpoint rate between one times revenue and four times revenue to be the valuation of the business, that number being 42.4 million.
188. Mr. Urcan testified that he did not perform a separate valuation for M. Crow LLC.
189. On cross examination, Mr. Urcan discussed why he compared BDDW to companies like Tiffany and Company, Lois Vuitton, and other brands.
190. Mr. Urcan admitted that the public companies he selected for comparison were larger in revenue than BDDW, but he indicated there are no private companies or single members LLC that he could use to compare to BDDW.
191. At the conclusion of Plaintiffs' case, Plaintiffs moved the following into evidence: P1, P2, P3, P4, P5, P6, P7, P8, P10, P12, P13, P14, P15, P16, P17, P18, P19, P20, and P21.
192. At the conclusion of Defendants' Case, Defendants moved the following into evidence: Defense exhibit 1, 2, 3, 4, 5, 6,7, 8, 9, 10,11, 12, 13, 14, and 15.

193. Named Defendant, Tyler Hays, who is the owner of EDDW LLC, BDDW Design LLC, BDDW Studio LLC, and M. Crow LLC, did not testify.
194. At the conclusion of Defendants' case, Plaintiff moved for a directed verdict on counterclaim counts 1, 2, 3, 4, 5, and 6.
195. After argument, the Court found in favor of Plaintiffs' directed verdict.
196. Plaintiffs withdrew Count 6 of Plaintiffs' Complaint as it relates to Defendants, Anderson, McGlothlin, and Shelton.

FINDING OF CREDIBILITY

1. The Court finds the testimony of the Plaintiff, Grace Song, to be credible and accepts it in full.
2. The Court finds the testimony of the Plaintiff, Jonathan Thorson, to be credible and accepts it in full.
3. The Court finds the testimony of Plaintiff's witness, Dustin "Dusty" Mears, to be credible and accepts it in full.
4. The Court finds the testimony of Defendants' witness, Eric Anderson, to be incredible in part and credible in part. The Court does not find the following testimony of Mr. Anderson to be credible: his statement that Tyler Hays could value his partnership shares at zero, and he would accept that determination, that Mr. Anderson had any common conversation with others concerning the term of the respective party's partnership agreements, statements made by Mr. Anderson with reference to anyone's partnership agreement or the terms thereof. The Court does not accept Mr. Anderson's incredible testimony. However, the Court accepts Mr. Anderson's testimony of witnessing Ms. Song being intoxicated and finds the testimony to be credible.

5. The Court finds the testimony of the Defendant's witness, Jack Shelton, to be incredible in part and credible in part. The Court finds the following testimony of Jack Shelton to be incredible: his testimony relating to his satisfaction of the financial agreement with Tyler Hays, the testimony wherein if the company earned a billion dollars and all the conditions of his agreement had been met that he would be fine with Tyler giving him zero, and all the testimony relating to his agreement and his knowledge of anyone else's agreement or terms. The Court does not accept Mr. Shelton's incredible testimony. However, the Court accepts Jack Shelton's testimony that he witnessed Grace Song being drunk and finds that testimony to be credible.
6. The Court finds the testimony of Defendant's witness, Daniel Ramsey, to be credible and accepts it in full.
7. The Court finds the testimony of Defendant's witness, Michael Junkins, credible and accepts it in full.
8. The Court finds the testimony of Defendant's witness, Edward Gavagan, to be credible and accepts it in full.
9. The Court finds the testimony of Plaintiffs' rebuttal witness, Barbara Pearsall, to be credible and accepts her testimony in full.
10. The Court finds the testimony of Plaintiffs' expert witness, Eugene R. Urcan, to be creditable and accepts his testimony in full. However, while the Court accepts the testimony as credible, the Court has taken into consideration the weight of the evidence in considering the comparatives used by Mr. Urcan.

CONCLUSIONS OF LAW

1. The Court finds the named Defendants are as follows: EDDW LLC, BDDW Design LLC, BDDW Studio, M. CROW, and Tyler Hays. The aforementioned companies are wholly owned by Defendant Tyler Hays. EDDW LLC is the parent company of BDDW Design LLC and BDDW Studio. M. CROW is an independent company from EDDW, but M. CROW is also wholly owned by Tyler Hays. For the Court's convenience, the companies shall be known as "BDDW".
2. The Court finds that BDDW sold high-end clothes, furniture, and other related items to wealthy individuals and celebrities.
3. The Court finds that the Plaintiff, Grace Song, was an employee of Defendant, BDDW, from September of 2006 until July 2018.
4. The Court finds that Ms. Song was made President of BDDW and its related businesses. Further, Ms. Song was also responsible for the day-to-day operations of BDDW and its related businesses.
5. The Court finds that Grace Song was crucial to the operation of BDDW.
6. The Court finds that under Ms. Song's management, sales started at two million dollars and rose to over 17 million dollars.
7. The Court finds that in 2009, Mr. Tyler Hays entered into an oral contract with Grace Song wherein he promised to pay her 3% of the fair-market valuation of the business if she remained with him for at least the next five years.
8. The Court finds that Ms. Song stayed with Mr. Hays an additional nine years and satisfied the condition precedent of the oral agreement.
9. The Court finds that there were no other conditions or terms of the oral agreement.

10. The Court finds that there is a valid oral contract between Grace Song and Tyler Hays and BDDW.
11. The Court finds that Grace Song is owed, under the contract, 3% of the value of the business at the time of her termination.
12. The Court finds that there is a valid oral contract that exists between Grace Song and Tyler Hays and M. Crow for 5% value of M. Crow at the time of her termination.
13. The Court finds that the Plaintiff, Ms. Song, has chosen not to pursue her 5% valuation claim against M. Crow and Tyler Hays at this time.
14. The Court finds that the Plaintiff, Jonathan Thorson, was an employee of Defendant, BDDW.
15. The Court finds that the Plaintiff, Jonathan Thorson, was Sales Manager of the New York store and was responsible for the day-to-day operation of the store and contacting and promoting high-end furniture to their clientele.
16. The Court finds that Mr. Thorson was responsible for sales increasing from \$800,000.00 to \$18 million dollars in 2018.
17. The Court finds that Mr. Thorson was crucial to the operation of BDDW.
18. The Court finds that in 2009, Mr. Hays entered into an oral contract with Jonathan Thorson wherein he promised to pay him 2% of the fair-market value of the business if he remained with him for five more years.
19. The Court finds that there were no other conditions or terms of the agreement.
20. The Court finds that in accordance with the condition precedent, Mr. Thorson stayed beyond the requested five years and is entitled to the benefit of the contract.

21. The Court finds that there is a valid oral contract between Jonathan Thorson and Tyler Hays and BDDW.
22. The Court finds that Mr. Thorson is owed, under the contract, 2% of the fair-market value of BDDW at the time of his resignation.
23. The Court finds that the Defendants failed to offer sufficient evidence to refute the allegations of Plaintiffs.
24. The Court finds that Plaintiff, Grace Song, sometimes drank until the point of intoxication at business functions.
25. The Court finds that there were no prior written or oral warning given to Ms. Song advising or warning her of her drinking.
26. The Court finds that at BDDW events, there existed a known culture to drink alcohol in excess.
27. The Court finds that Ms. Song's termination based upon drinking was unwarranted and a pretextual firing to avoid payment of just compensation due Grace Song per the oral contract.
28. The Court finds that the Defendant, Tyler Hays, did not testify.
29. The Court finds that Defendant, Tyler Hays, was a principal witness.
30. The Court finds that the Defendant did not enter into evidence any depositions taken of the Defendant, Tyler Hays.
31. The Court may take an adverse inference when during trial, evidence, that is in the control of a party in a lawsuit that would be relevant and helpful to that party, is not produced, and that party has not satisfactorily explained why it was not produced. While the counsel for the Defendant stated at the beginning of the trial that Mr. Hays was in the

hospital receiving treatment, he notified the Court that Mr. Hays would be able to come to court to testify. At no time during the trial did Defendant's counsel indicate that there was a medical change that prevented Mr. Hays from testifying and producing evidence. The Court became aware that, from the testimony of the witnesses, a deposition of Mr. Hays may have been taken. At no time did Defense counsel offer said deposition, if it existed, into evidence. For the above-stated reasons, this Court has taken an adverse inference deeming that any evidence adduced would have been unfavorable to the Defendant had it been presented.

32. The Court finds, pursuant to the testimony of Plaintiffs' expert, Eugene Urcan, the revenue of BDDW for the period of 2017 until mid-2018 was \$17,286,262.00. The revenue is the combination of the sales number through December 17 plus the cash on hand for 2018.
33. The Court finds that, based on the testimony of Plaintiffs' expert using the multiple of revenues analysis, the estimated range is one times revenue on the low side and four times revenue on the high side to determine the value of BDDW. Mr. Urcan testified that the estimated range in monetary value is between \$17.2 million and \$67.6 million. The Plaintiffs' expert, in his opinion, suggested by using a midpoint of the average, the value of BDDW would be \$42.4 million.
34. The Court finds that the comparable used by Plaintiffs' expert may not be totally reflective of BDDW, and the Court is reluctant to use the suggested midpoint as selected by Mr. Urcan. However, the Court finds that two times the revenue of BDDW is an appropriate value of the company based upon the \$17,286,262.00 figure which is

undisputed by the parties. Using the multiplier of two times \$17,286,262.00 equals a business valuation of \$34,572,524 for BDDW.

35. The Court finds that Plaintiff, Grace Song, is entitled to 3% of \$34,572,524.00, representing the business valuation of BDDW or \$1,037,175.72.

36. The Court finds that Plaintiff, Jonathan Thorson, is entitled to 2% of \$34,572,524.00, representing the business valuation of BDDW or \$691,450.48.

37. The Court finds that, in adhering to 43 P.S. § 260.10, both Grace Song and Jonathan Thorson are entitled to claim, in addition, as liquidated damages, an amount equal to twenty-five percent (25%) of the total amount of wages due. This makes the total amount due to Grace Song \$1,296,469.65, and the total amount due to Jonathan Thorson \$864,313.10.

38. The Court finds that Plaintiff's counsel is entitled to an award of attorney cost and fees under 43 P.S. §260.9a. Following this verdict, Plaintiff's counsel is to submit, as a post-verdict matter, a petition for attorney cost and fees.

JONATHAN THORSON and GRACE SONG

Plaintiffs

v.

EDDW, LLC, BDDW DESIGN, LLC
BDDW STUDIO, LLC, M. CROW LLC,
TYLER HAYS, GARRETT
McGLOTHLIN, ERIC ANDERSON and
JACK SHELTON,

Defendant(s)

COURT OF COMMON PLEAS
PHILADELPHIA COUNTY

MARCH TERM, 2019
NO. 01451

ORDER

AND NOW this 6th day of July 2022, in consideration of the foregoing Finding of Fact and Conclusions of Law, the Court finds in favor of Plaintiffs, Jonathan Thorson and Grace Song, and against Defendants, EDDW, LLC, BDDW Design, LLC, BDDW Studio, LLC, M. Crow LLC, and Tyler Hays.


The Court finds that Plaintiff, Jonathan Thorson, is entitled to 2% of the Defendants' valuation of the business plus, as liquidated damages, an amount equal to twenty-five percent (25%) of the total amount of wages due, which gives a total amount of \$864,313.10.

The Court finds that Plaintiff, Grace Song, is entitled to 3% of Defendants' valuation of the business plus, as liquidated damages, an amount equal to twenty-five percent (25%) of the total amount of wages due of \$1,296,469.65.

The Court finds that Plaintiff's counsel is entitled to attorney's cost and fees.¹

Judgment is entered in favor of Plaintiffs, Jonathan Thorson and Grace Song, and against Defendants, EDDW, LLC, BDDW Design, LLC, BDDW Studio, LLC, M. Crow LLC, and Tyler Hays.

BY THE COURT:



J.

¹ Plaintiff's counsel is to submit a post-verdict petition explaining their costs and fees incurred in relation to the present matter.