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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

GLENDA JOHNSON,
Plaintiff,
v.
INTERNAL REVENUE SERVICE, DEPARTMENT OF JUSTICE, agencies of The United States, and DAVID NUFFER, An individual,
Defendants

Civil No. 2:20-cv-00090

OPPOSITION TO MOTION TO DISMISS

Magistrate Cecilia M. Romero

This court has jurisdiction in this matter in accordance with 28 U.S.C 1346

I should be allowed to challenge the original case decision because it was entered fraudulently and without a basis in law or fact. Below are all the reasons why this case should be allowed to proceed and the government's motion denied:

The IRS changed its position on the Johnson Fresnel lenses from the District Court case in proceedings before the Tax Court as more fully described herein. Whereas, before this Court the IRS claimed the Johnson Fresnel lenses were not qualified as solar energy property within the meaning of §48, the IRS expressly conceded in the Tax Court that the lenses qualify as solar energy property under the IRS code and regulations. Their position before the Tax Court is that the lenses qualify for tax credits but may be limited to passive income, depending on the taxpayer's circumstances.

The Department of Justice should have alerted the District Court to this new position because it materially affects the Court's decision in that original case. The Department failed to do so. Taking two contradictory positions on the same lenses and applying the same law is

grossly misleading. The failure to alert the District Court to the contradictory positions violates their duty of candor to the Court.

Below are excerpts from the transcript from the recent Tax Court proceedings[1]:

> IRS (Mr. Sorensen): The last point, Your Honor, is, **at no point in time has the Respondent ever contended that the lenses do not produce heat in some fashion.**
> THE COURT: That's the point I want to get to. It seems like they were -- that Respondent concedes the point that they thought -- they demonstrated by their experiment.
> IRS (Mr. Sorensen): Concede is a strong word, Your Honor. **We have never contested that the lenses do not produce some form of heat.**
> THE COURT: So Respondent does -- **in your Pre-Trial Memo, you said you agree that the lenses can be used to produce enough heat that in some system** --
> IRS (Mr. Sorensen): Some system somewhere.
> THE COURT: -- **that could potentially produce energy electricity, right, in some system**?
> IRS (Mr. Sorensen): **Could produce electricity**. (TR 15:14-16:5)

The Court referenced the Pretrial Memorandum submitted by the IRS. In it the IRS states, in relevant part:

> "Petitioners view this report as a factual document that will support their position that the equipment they purchased meets the Treas. Reg. § 1.48-9(d)(1) definition of the term "solar energy property" which includes equipment materials and parts solely related to the functioning of such equipment that use solar energy directly to generate electricity." The engineers allegedly conducted a test on September 5, 2018 to show that the lenses could be used as a component in a system to produce electricity. **The respondent has never disputed that the lenses could be a component in a system to produce electricity[.]** (IRS Pretrial Memorandum at p. 3, emphasis added)

The discussion continued,

> IRS (Mr. Sorensen): But yes, **the Court is correct in that we did state that in our pre-trial memo**. So we believe that with that fact involved, that nothing that these experts will testify to is relevant.
> THE COURT: Um-hum. Because the experiment goes to a point that's not in --
> IRS (Mr. Sorensen): Not in dispute. (TR 18:5-11)

> THE COURT: Okay. Mr. Jones, would you like to address the expert report point?
> MR. JONES: Yeah, the expert report --

[1] *Preston Olsen & Elizabeth Olsen v. Commissioner of Internal Revenue*, Tax Court Cases 26469-14 and 21247-16.

THE COURT: The thing that troubles me is --
MR. JONES: Sure.
THE COURT: -- primarily, it does seem to me that it may not just be relevant. **If Respondent agrees that you can take these lenses, and they can be used to generate enough heat through some system to power an engine and produce electricity, if that's conceded**, I don't see what more they prove by their experiment than that.
MR. JONES: If I can get that concession on the record, I will agree. Yeah.
THE COURT: Well, I think they said they have an agreement, but concession was too strong a word.
MR. JONES: Right.
IRS (Mr. Sorensen): **We don't disagree, Your Honor, that the lenses do produce heat, and that heat, in some systems, can be then used to generate electricity. We do not dispute that**.
IRS (Mr. Sorensen): So is that -- the question, though, is that a concession. So –
THE COURT: But let me read the relevant sentence of the report. Find it. Okay. It's on page 11, "Conclusion: It's clearly, by the most basic definitions, electrical power. **The Johnson Fresnel Lens System produces enough solar process heat to run a Stirling engine and produce electricity**. Selecting a Stirling engine size for this application and tuning the engine generator will likely improve performance". Well, it –
IRS (Mr. Sorensen): Up until that last sentence, Your Honor, I think we were okay.
THE COURT: How about system? I don't think you agree there's a system.
IRS (Mr. Sorensen): No, we don't agree. We agree the system that they tested and utilized was not the system --
MR. JONES: Not the system.
IRS (Mr. Sorensen): -- not the system that was envisioned.
MR. JONES: And just if I could speak to that specific point. So this case is not about the system that International Automated Systems and RaPower3 developed and promoted and sold and so forth, or -- what the taxpayer at issue in this case purchased was the lens. And so its use is what is at issue. It gets leased to an entity called LTB. There is an understanding about what those lenses were intended to do, once they were leased, that this taxpayer has. And so the concern -- the overarching concern that Petitioners have is, is that lens -- does it qualify to solar energy property under the regs? Is it energy property under the Code, by extension?
And so we are dealing with just the lens itself. We believe that a reading of the regs qualifies it as solar energy property because it can be used in a system that will generate electricity.
THE COURT: Well, I think you're getting into you --
MR. JONES: Sure.
THE COURT: -- opening argument now. But I'm just trying to -- I mean, if we take the word "system" out, if we just say that the conclusion of these engineers was that, **by the most basic definition electrical power, the Johnson Fres-**

> **nel Lens produces enough solar process heat to run an engine and produce electricity. If Respondent would agree with that**, right --
> IRS (Mr. Sorensen): As long as there's not a commercial --
> THE COURT: Right. Right.
> IRS (Mr. Sorensen): -- determination.
> THE COURT: Right.
> IRS (Mr. Sorensen): **That the lenses do produce sufficient heat, that the Stirling engine did produce some electricity, we have no problem with that**.
> THE COURT: **I think you've got the concession** that --
> MR. JONES: Okay.
> THE COURT: -- you want. So on that basis, I will exclude this report as not relative to any point in dispute. (TR 26:3-27:7)

The Fresnel Lenses sold by the original Defendants were solar equipment and therefore qualified under §48. In Tax Court, the IRS took the position that the issue is whether the taxpayer could deduct losses against active versus passive income based on the solar energy tax credit, not whether a credit was available at all for the Johnson Fresnel lenses.

Dr. Mancini has changed his testimony:

The District Court's Findings of Fact (ECF 467) relied exclusively upon the testimony of Thomas Mancini for findings that the lenses would not generate electricity, either on their own or in combination with other components. (See, ¶¶ 258-264.) The Court found his testimony and demeanor credible and relied on him for all of the Court's findings that the lenses were not capable of producing heat. (See ¶ 267.) However, in testimony about the same solar lenses before the Tax Court, Dr. Mancini testified to the opposite of his testimony at the trial in the District Court proceeding:

> **MANCINI TESTIMONY:**
> On Direct Examination:
> Q That's okay. Okay. So again, it sounds like we don't have a disagreement with the ring. The ring with the lenses on it comes to a focal point where there is heat absorption. And so from that point, do you believe that it's possible to implement **any number of different systems that might generate or that would generate electricity**?
> A **Yes**. I mean, I think the discussion yesterday about maybe putting photocells at that location or something like that, although there are other issues and so forth. Yes. The answer to that is yes. (TR 506:17 -507:2, emphasis added.)

On Cross Examination:
Q And we heard testimony yesterday from Randy Johnson, for example, where they had also intended just to use one tower alone. And so you're -- I just want to make sure I'm being clear. **You're saying there's no reason why that couldn't be done**. You could use this one tower or --
A **That's correct. They could use just one tower and the power cycle there, yes**. (TR 509: 18-24, emphasis added.)

Q Yeah. So you testified in direct when Mr. Bradbury was asking you that you think it probably could be a viable system. And I got specific points here, but I think in your direct you said this so we can save some time here, but you kind of made the overarching statement that, yeah, get better personnel, I guess wash the lenses. I think you have an issue about sandblasting the towers and painting them, things like that. But get all this in place. You think the technology could probably work to generate electricity in five years, you said. Is that --
A Oh, I don't know. I don't know five years. But I think if you got the right team on it, and you really invested the money in it, **you could probably make something that would generate electricity using the concept as it stands**. (TR 516:4-18, emphasis added.)

But, during trial before this Court, Mr. Mancini's testimony was to the contrary:

A. My first opinion is that the IAS solar dish system has not produced any electricity or any other useful form of energy from sunlight.
Q. Why do you think that?
A. I never saw anything operating. **It's a series of components that, once I analyzed them, really don't fit together into a system that will operate efficiently or effectively at all.**
TR 86:1-8

On the Tracking System his testimony before the Tax Court was:

And I think during the second visit, I think they were tracking it automatically, but I don't know that. But Randale was operating it, so I assume that that same dish was tracking in both elevation and azimuth. But it was not fully populated with lenses at that point either. (TR 523: 19-24)

But during the District Court trial, Mr. Mancini's testimony was:

Q. At any time on your site visit, Dr. Mancini, did you see any of the collectors automatically tracking the sun?
A. No, ma'am. There were only two. On each visit there was one collector moved. During the first visit it moved only in azimuth, and during the second visit they had both an elevation and an azimuth on that collector, but they were both moved manually. I saw none track automatically.
TR 91:5-13

On the economic viability, or "commercial grade" of solar equipment, in the Tax Court he testified:

> THE COURT: Well, could I ask a question about that. It seems to me, commercial grade can be a lot of different things. On the one hand, an invention that has gone through all four stages of development and really works and is ready to be sold, you might say is commercial. When it's going to be highly profitable given the market and the competing products and the tariffs and the taxes, that's whole different question, right?
> THE WITNESS: And that's why I said, **I'm not aware of a good definition of commercial grade, what that means**. And that's why I'm trying to qualify it a little bit here. But the work I did in those cases was technical work. It was not related to that.
> Certainly, commercial grade has a lot to do with profitability and whether you can sell it in the open market. And you might try, and it doesn't work. And you don't make it. (TR480: 9-25, emphasis added.)

But during trial before the District Court, Mr. Mancini's testimony was:

> A. **It's my opinion that the IAS solar technology will never be a commercial solar energy system producing electrical power or any other form of useful energy.**
> Q. And what are the two primary reasons for that conclusion?
> A. The two primary reasons are, first of all, the components are just a series of components. They don't really fit together as a system that will -- will make a commercial grade solar energy system. And the second is that the -- probably, one of the major underpinnings for all of my conclusions here are that the resources, both in intellectual capacity in terms of training and background and in terms of sheer numbers of people working on this project are not sufficient to produce or develop a commercial system.
> TR 111:21 – 112:10

> A. Well, certainly as it's currently represented, it's, **in my opinion it will never be a commercial system or will ever produce electricity or any other useable form of energy.**
> TR 162:21-24

The original District Court case 2:15-cv-00828 is used by the defendants to defend their right to shut down the trading of IAS a publicly trading company. This allows the plaintiff to collaterally attack case number 2:15-cv-00828 and show that the original case was flawed and should not have lost on the issue of fraud for several reasons.

First the case never had jurisdiction. Jurisdiction was obtained by fraud on the court. A federal court must have a point of controversy before the court could have subject matter

jurisdiction of this case. The controversy was whether the property in question was solar energy property. The property in question was solar energy property as the IRS conceded before the Tax Court and therefore allowed the solar energy tax credits.

Plaintiff admitted that the property in question was solar energy property in IRS court case *Preston Olsen & Elizabeth Olsen v. Commissioner of Internal Revenue*, Tax Court Cases 26469-14 and 21247-16. The plaintiff admitted that they never disputed that the property in question was in fact solar energy property.

If this information would have been available to the defendants in District Court case 2:15-cv-00828 the defendants would have had the case dismissed for lack of a controversy and therefore lack of jurisdiction. This is fraud on the court and makes the case void from the very beginning and lacks subject matter jurisdiction. The plaintiffs withheld vital information that if known would have concluded the case for lack of jurisdiction.

By them withholding evidence I have been harmed by their actions by the court shutting down IAS because of fraud. I have been harmed by shutting down the trading of IAS stock. I ask the court to compensate me for my losses. I ask the court to return my stock to a trading position.

According to the law jurisdiction can be raised at any time. Jurisdiction must be proved by the plaintiff to begin the case. As pointed out by the defendants in this case. Jurisdiction must be proved by a preponderance of evidence. For the original case 2:15-cv-00828 to have jurisdiction plaintiff would have to prove that they had a point of contention. They did not prove that they had a point of controversy.

For the case 2:15-cv-00828 to have shown that the property in question was not solar energy property. They admitted in the Tax Court case that they never disputed that the property in question was in fact solar energy property. This admission clearly establishes that there was no controversy over the property being solar energy property. This action of

withholding this information harmed me because it allowed the court to:

1. Destroy the reputation of IAS.

2. Destroy the assets of IAS.

3. Shutting down the trading of IAS.

I assert that the act of withholding vital information is extrinsic fraud on the court.

This allows me to bring this case based on the IRS' fraud on the court. They admitted that they had this information before the trial began. They caused me to suffer great harm. They have caused me severe anxiety. They have caused me to lose my property rights. I ask the court to return my stock to its original value. I ask the court to compensate me for the losses caused by the damages to IAS's reputation. I ask the court to compensate me for the stress and anxiety by those actions.

During the trial the expert witness caused me to lose value in my stock by attacking the solar energy property and lying about it being viable solar energy property. The government's own website describes what constitutes solar energy property. See exhibit solar energy website

I will show that the expert witness either knew about information found there or should have known. The information obtained from the website clearly establishes that the property in question would be classified as solar energy property. Mr. Mancini deliberately tried to mislead the court from the truth about the equipment, how it operated and its ability to function and produce solar energy. His testimony caused me great harm. His testimony was fraudulent. That the statements made in his depositions and written reports were not true. He knew that they were not true. The District Court case 2:15-cv-00828 relied on his testimony to reach their conclusions. In the IRS Tax Court case his testimony was changed and admitted that the system could work. The results of his testimony caused great harm:

1. Is to destroy the reputation of Mr. Johnson.

2. Destroy the reputation of IAS.

3. Destroy the value of the IAS stock.

Caused severe stress and anxiety to me.

I ask the court to compensate me for the losses.

During the trial of District Court case 2:15-cv-00828 there were no witnesses that established that any statement about the property in question or solar energy property in question was false, untrue or misleading. All the witnesses said they had full access to the solar energy property in question. They were free to examine the solar energy property in question. They were able to observe solar energy property in question performing as advertised. All witnesses asserted that the solar energy property concentrated the solar flux creating high temperatures at the focal point. All of the witnesses that had observed the solar energy equipment did in fact work according to any statements made concerning the operation of said equipment. The courts conclusion stating that in service letter was a fraudulent statement was not proved by any witnesses or any evidence presented in the court case 2:15-cv-00828.

Because the court drew his own conclusions made up his own facts. Not facts established from the record in the court case 2:15-cv-00828. This is clearly a false statement and a false conclusion based on nothing from the court documents that would allow the court bring any negative connotation from the record or from the evidence. The court never showed a fraudulent statement made concerning the solar energy property. The court never showed by any evidence that the system would not concentrate solar energy. The court never presented a scientific conclusion that the property in question could not and would not concentrate solar flux energy.

The court used lack of proof to be proof. This clearly violates the principle established facts are needed to prove something in a court. The Supreme Court has ruled that a lack of

evidence is not evidence see *Kumho Tire Co. v. Carmichael* - 526 U.S. 137, 119 S. Ct. 1167 (1999). Therefore, the court using the lack of evidence to establish truth violates due process and equal protection under the law. Violation of due process also causes the court to lose jurisdiction in case 2:15-cv-00828.

The court officers knew this rule and how to evaluate and use evidence to establish a conclusion or to draw a conclusion from evidence presented. This was a deliberate attempt to use his position to deliberately try and destroy Mr. Johnson and his company. There were many other acts in the case 2:15-cv-00828 history actions that clearly gave advantage to the opposing side. I can demonstrate through the court documents that any normal person would arrive at the same conclusion that the District Court was biased. The judge clearly was acting out of revenge or other bias feelings for Mr. Johnson. Bias is considered obstruction of justice according to the law and the UNCAC treaty. These acts are considered criminal under the UNCAC treaties. This behavior is not allowed by the UNCAC treaties and gives the victims of such acts the right to receive compensation. These acts have caused me great harm. I deserve compensation for the harm caused. The greatest harm is the lost confidence in the honesty and integrity of the federal court system. Because of the harm I have suffered I'm asking for criminal investigations into the actions taken by the court in case 2:15-cv-00828 number.

For these and other reasons I ask the court to remove Judge Nuffer, preventing further involvement in any of the pleadings or litigations or any other federal court cases that involve me or the other defendants.

After trial there was an expert who used the solar lenses to produce electricity with a Sterling Engine. He provided a report to the District Court. The defendants asked for a motion to settle this question and the verdict should be overturned because it produced electricity. It was denied by just saying it was too late. The law states form 3468 that if a

project takes two or more years then the equipment purchased would be considered placed in service at the time the equipment was purchased. Therefore, once the product in question produced electricity that it proved the product in question satisfy the requirements of form 3468. This makes his statement fraudulent for he knew or should have known that statement was false.

Therefore, all the rules and conclusions of law Judge Nuffer in regards to case 2:15-cv-00828 are void. This also means that when Judge acts without jurisdiction he acts without authority. His actions are therefore not judicial acts. Because these acts are not judicial they are not protected by immunities. Therefore, he can be sued for those acts. This confers jurisdiction on this court to act and adjudicate these actions. Therefore, the court has jurisdiction over this case.

After the trial the new concentrated solar energy system was brought to a state of production. The solar energy concentrated PV system was in its prototype state was shown to their expert witness Mancini. The same system was shown to the plaintiff's attorneys. This same system was shown working in the focal point of the Fresnel lens. This system was being recorded by the video recording person while Mr. Johnson was making electricity. This system was making electricity when the recorder was recording was taking a video of it working. Electricity being produced was the kind of electricity that would be produced from any PV system. The same photovoltaic chips used in the home PV system was used in the focal point of the concentrated PV system and was producing electricity at that time. The prototype concentrated PV system demonstrated that the system would produce the same quality electricity as any other PV system. During the trial the plaintiff asked about the system Mr. Johnson testified that the prototype CPV was working. Plaintiff attorneys remarked that this was only a PV system. This clearly demonstrated that the court was aware of the CPV

system. They knew that it produced the same quality electricity as any other PV system. Therefore, the statement made in the conclusion of law based upon the facts about the quality of electricity that the system can produce is false.

Judge Nuffer new or should have known that concentrated PV would make the same type and kind of electricity as any other PV system. Making this statement fraud on the court. This is an illegal act and gives this court jurisdiction over this case. I deserve to be compensated for the harm committed by these acts.

After the trial was over a completed production model of the concentrated photovoltaic system is now available. The new CPV production model is available for the court to see working. Experts in the field of electrical engineering have seen it work and will testify in court as expert witnesses that the system is working according to the specifications required. This is new evidence and was not available at the time of trial. As a rule 60 motion for new discovered evidence gives this court jurisdictions to evaluate this evidence. This again demonstrates that the expert witnesses knew or should have known that a CPV system prototype was available at trial. If a CPV was demonstrated and would produce the same type of electricity as any other PV system then it should qualify for the same tax credits offered by other systems producing the same type of electricity. This means that Dr. Mancini's testimony was false therefore it would be fraud on the court.

This new CPV system would also remove the court case 2:15-cv-00828 jurisdiction proving that the product in question was capable of producing the same electrical energy with the same quality as any other PV system.

The UNCAC was adopted by the US as part of its laws or in addition to its laws. These laws supersede all laws where they either add to or supersede others. For example, article 19 abuse of function. Abuse of function is now a criminal offense when committed intentionally. Abusive functions or position that is the performance of or failure to perform an

act, in violation of laws, by a public official in the discharge of his or her functions, or the purpose of obtaining an undue advantage for himself or for other persons or entities is a criminal act. Judicial act by a judge does not include any act that would be considered a criminal act. Therefore, with the passage of the treaty these functions became law. Judge Nuffer has during the course of the trial case 2:15-cv-00828 has committed many acts that have given an undue advantage to the opposing party. He has also committed acts including which I believe is bribery where he has obtained an advantage for himself or others. For example, Mr. Johnson filed suit for fraud on the court. Judge Nuffer asked for a stay on those proceedings. The judge assigned to that case stay was granted and is in affect to this day I believe it is based only on the fact that he was a Judge. Judge Nuffer and the judge on that new case are guilty of giving and taking bribes. Under the UNCAC laws this is a criminal act and must be addressed by the courts.

Judge Nuffer changed the law by only quoting part of the law leaving out the two or more years. This clearly established that Judge Nuffer violated article 19 of the UNCAC treaty. These violations are in fact considered criminal. These violations gave advantage to the plaintiffs. His criminal act resulted in harm to me. I deserve to be compensated for my losses. I also expect the court to abide by these laws. As a public official you are required by law to report to the proper authorities the criminal acts committed by Judge Nuffer. Not to report these acts would be in violation of article 19 and the laws passed by adopting the UNCAC treaty. These acts also proved bias on the part of Judge Nuffer. Therefore, he must be removed from any further actions on cases involving case 2:15-cv-00828 or any of the defendants' actions in further proceedings. Therefore, I ask for a stay on any involving motions against me or any other defendants involved in case 2:15-cv-00828.

The right to suspend or close down a public traded company is a reserved right belonging to the SEC. The right to regulate is 17 CFR $ 205.7 No private right of action. See

exhibit no private right of action. The power to shut down a public company from trading was usurped by Judge Nuffer and Mr. Klein. They acted under color of law impersonating a federal SEC agent. This is clearly a violation of the stated law and would be considered an illegal act. This illegal act caused me harm.

To avoid being prosecuted for a tax scheme a promoter can rely on an expert in his area of expertise, unless the promoter knows or has reason to know why he should not. See exhibit tax scheme paper. There are many expert witnesses that have written their opinions about the solar energy in question. All have agreed that this product in question qualifies as solar energy property. Therefore, Mr. Johnson cannot be charged with promoting a tax scheme. Among other expert witnesses I also add the IRS plaintiffs own testimony to the expert witness list. They testified that the product being sold qualifies as solar energy property is solar energy property.

No tax scheme no point of controversy. No point of controversy no subject matter jurisdiction. All of the proceedings void.

Also it can be proved that at least both IAS and RaPower were completely paid out. That nothing is owed and I intend to prove it during this case.

I declare under the penalty of perjury, that the foregoing is true and correct.

DATED this 19th day of May, 2020.

Glenda E. Johnson

Glenda E. Johnson

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2020 the foregoing OPPOSITION TO MOTION TO DISMISS was hand dilivered and filled with the Clerk of the Court.

I hereby certify May 20, 2020, I served the foregoing OPPOSITION TO MOTION TO DISMISS upon the following by U.S. Mail, first-class postage prepaid.

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