

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

HOWARD LASSER :  
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 :  
v. : CIV. NO. 3:98CV1104 (HBF)  
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LYNN CHASE DESIGNS, INC. :  
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BENCH RULING

Howard Lasser brings this claim for breach of an employment agreement against his former employer, Lynn Chase Designs, Inc. ("LCDI"), seeking \$100,000 in back wages under the remaining term of the contract, plus a bonus and interest. Jurisdiction is premised on diversity of citizenship, pursuant to 28 U.S.C. §1332.

A bench trial was held on January 9 through 12, 2001. Howard Lasser, Lynn Chase Flintoft, Dick Flintoft and Pat Greenberg testified at trial. Plaintiff also designated portions of the deposition testimony of Dick Gillespie, Lynn Chase Flintoft and Dick Flintoft as evidence in support of plaintiff's case.

Testimony and evidence adduced at the hearing are summarized below as necessary to explain the Court's findings and conclusions.

FINDINGS OF FACT

Based on the credible testimony, the exhibits, and the entire record compiled during the trial<sup>1</sup>, the Court finds established the following facts which are relevant to this ruling.

1. Mr. Lasser is a citizen of the State of Connecticut. [Stip. ¶1].
2. Lynn Chase Designs Inc. (LCDI) is a corporation organized and existing under the laws of the State of Delaware. Its principal place of business is currently 381 Park Avenue South, New York. Until February 28, 1998, LCDI maintained an office in Ridgefield, Connecticut. [Stip. ¶2].

Background

3. LCDI, formed in 1988, designs, manufactures and sells high-end tableware. [Stip. ¶3].
4. At all relevant times, Lynn Chase was Chief Executive Officer of LCDI. [Stip. ¶4].
5. Lynn Chase is the founder, majority shareholder and creative force at LCDI. [Stip. ¶6].
6. Prior to hiring Mr. Lasser in 1996, LCDI had experienced annual losses for most of its history. Ms. Chase

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Prior to trial, the parties stipulated to certain facts, which are listed in the Joint Pretrial Memorandum [Doc. #33], and cited in this opinion as "Stip."

testified that between 1991 and 1996 the company did not turn a profit and it was "worrisome"; she was "killing" herself for no return.

7. Ms. Chase, who had sources of income other than LCDI, had limited understanding of corporate finance or small business administration and limited involvement in the profit generating aspect of the business. She was an artist who designed the tableware for LCDI.
8. Dick Gillespie started the company with Lynn Chase in 1988, holding the title of President of LCDI. Gillespie was responsible for securing manufacturers (known as "sourcing"), marketing and sales. [Stip. ¶7].
9. In 1996, Ms. Chase felt that the company couldn't keep operating financially the way it had been operating in the past. Based on advice from consultants, Ms. Chase felt that the missing ingredient was a financial controller. [Stip. ¶8].
10. In April 1996, LCDI advertised for a person to assume "total responsibility for all financial aspects of the company including reporting, MIS, cost, inventory, etc." [Stip. ¶9; Pl. Ex. 2].
11. Howard Lasser began his employment with LCDI on July 18, 1996. [Stip. ¶5].
12. Lasser, who had experience as a finance officer in the consumer products industry, interviewed with Mr.

Gillespie, Ms. Chase, and a director, Renee Landegger. During his interview with Ms. Chase, she told plaintiff that she would close the company before spending more money on a losing proposition. [Stip. ¶10].

13. Lasser was told that he was being hired by LCDI to help save the company from its unsatisfactory fiscal management and discipline-that is, to institute financial controls that would help reverse the losses experienced by the company. Ms. Chase later informed her board of directors that she had rejected maintaining the status quo or winding down the company. Based on sound financial controls and management information, she intended to build brand awareness, "a franchise." Her first step was to hire Howard Lasser to improve financial control. [Stip. ¶11].
14. Lasser agreed to take the position, although the company was smaller than those he had previously worked for, based on Ms. Chase's statements that "his role would include substantial input into strategic planning and operations." [Stip. ¶12].
15. Gillespie testified that he understood that Lasser would be involved in "anything strategic." [Gillespie Depo. at 34].
16. The minutes of the October 22, 1996 board meeting state, in relevant part, that

Chase . . . felt that . . . for several years, Dick Gillespie had shouldered a tremendous load and that the Directors should all be relieved that Howard Lasser had come on board as Comptroller to ease the burden on Dick. She said that the formation of the team of Messrs. Gillespie and Lasser, in her opinion, was the most important event for the Company in 1996 and would so prove to be in the years to come.

[Pl. Ex. 4].

17. Lasser was hired for a nine month trial period, from July 15, 1996, through March 15, 1997. [Pl. Ex. 8].

18. In a February 19, 1997, at the time his Employment Agreement was being negotiated, Lynn Chase described Lasser's job responsibilities as follows:

As Chief Financial Officer and Controller of our Company it is his responsibility to ensure that every product we produce is cost effective. Howard has control of budgeting, the computer systems, banking relationships and input on strategic planning and the overall direction of the Company. Howard's talents are many and if not for him, we would not be enjoying the great offices we are in! Patty and Howard work together on purchasing and I get daily reports from him.

[Pl. Ex. 7].

19. During the first nine months of his employment, Lasser's job responsibilities included substantially reducing back orders,<sup>2</sup> analyzing the true cost of products, establishing

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Lasser reduced the back orders from about \$500,000 to approximately \$90,000. [Chase Depo.I at 44].

inventory controls, implementing standardized costing for products, implementing daily/weekly reports on budget, sales and sales forecasts and instituting purchasing procedures. [Chase Depo.I at 44-47; Pl. Ex. 6 & 47].

20. Lasser also negotiated the lease for the January 1997 move of the Connecticut office to another Ridgefield location.
21. At the time Lasser was hired, the only people in the company with significant responsibility were Lynn Chase and Dick Gillespie. Chase testified that Gillespie was doing too much and the company needed a Chief Operating Officer to take the pressure off Gillespie so he would focus on product development and marketing. During the trial period, responsibilities were divided along the lines Lasser envisioned, even though Gillespie resisted.
22. In February 1997, Gillespie told Chase that he couldn't work with Lasser. Chase testified that she told Gillespie "you've got to try because I think we need a Chief Financial Officer, and Dick might have said something in passing, a slur against Howard or wanted to fire him, but I didn't take that seriously."<sup>3</sup> [Chase Depo.I at 52].

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Regarding Gillespie, Chase further testified that

He was very unhappy in his situation and he absolutely hated not only Howard, but Sherr[y] Baker.

Q: And I take it that you made a decision

23. It was clear during this time period that Chase was giving Lasser authority over financial operations and expected him to get control of the budget and spending and maintain the financial viability of the company.

The Employment Agreement

24. Lasser and LCDI entered into a written Employment Agreement dated March 16, 1997 (the "Agreement"), pursuant to which LCDI agreed to employ Lasser as Chief Financial Officer for a two-year term beginning March 16, 1997. [Stip. ¶14; Pl. Ex. 13, ¶3].

25. Paragraph 3 of the Agreement states in part that Lasser will perform such duties consistent with his position as reasonably assigned to him by the Company and will be given such powers and authority as may be needed to carry out his duties. . . . Employee will report to the Chief Executive Officer of the Company."

[Stip. ¶15, Pl. Ex. 13, ¶3].

26. Paragraph 4 of the Agreement states in part that

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to take the company forward with Mr. Lasser and Ms. Baker rather than with Mr. Gillespie in this March 1997 time frame?

A: I was really upset and I made that decision, knowing that the company had not been successful under Mr. Gillespie's guidance, so I hoped that this situation would make the company more viable.

[Chase Depo.I at 63-64].

a. Salary: The Company will pay the Employee a base salary at an annual rate of \$96,000 subject to periodic review and adjustment in accordance with the Company's standard practice from time to time.

. . .

b. Annual Bonus: Subject to the approval of the Company's Compensation Committee, Employee will be entitled to a yearly cash bonus up to 15% or such higher amount, as the Company shall determine, of the base salary he receives. The annual bonus will be based upon his performance and the Company achieving its operating profit and objectives. . . .

[Stip. ¶16, Pl. Ex. 13, ¶4(a-b)].

27. Paragraph 7 of the Agreement states in part

d. Termination by Employee: Employee may terminate his employment hereunder for Good Reason. For purposes of this Agreement, the term "Good Reason" shall mean (1) a substantial reduction of Employee's duties, position, authority or responsibilities hereunder which is not corrected within thirty (30) days after written notice from Employee . . . .

[Stip. ¶17, Pl. Ex. 13, ¶7(d)].

28. Paragraph 7 of the Agreement also states in part

e. Other Remedies:

. . .

If Employee's employment is terminated by the Company without Cause or by Employee with Good Reason, then Employee shall be entitled to receive, as severance, up to the balance of his contract in monthly installments at his then current rate of salary.

. . .

[Stip. ¶18, Pl. Ex. 13, ¶7(e)].



29. The Agreement was approved by the Board of Directors of LCDI and executed by the Company's Chairman, Lynn Chase, at a board meeting on April 24, 1997. [Pl. Ex. 5, 13].

1997 Relaunch Plan

30. Approximately one month after the Employment Agreement was signed, Lynn Chase revised LCDI's business priorities.

31. In January 1997, LCDI hired Sherry Baker, a marketing consultant, to "assess the company's position in the marketplace and recommend marketing strategies." [Pl. Ex. 5]. Baker was paid approximately \$15,000 a month for her consulting services.<sup>4</sup>

32. At the board of directors' meeting on April 24, 1997, "Sherry Baker was introduced and reported the results of her strategic review of the company and recommendations for a near term marketing program." [Pl. Ex. 5].

33. The Minutes of the April 24 board meeting state, in relevant part,

Sherry Baker listed a number of initiatives that require large up-front investment to create a franchise and ultimately drive sales and increase profits:

- New logo incorporated on all communications, advertising, packaging, product and promotions
- Complete, uniform, high quality Lynn Chase "look" brochure and catalogue
- Collectors Society - "launch this

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On or before April 24, 1997, Sherry Baker became a director of LCDI. [Pl. Ex. 5].

initiative even before we have the right to." This merchandising method greatly increases gross profit margins and leads to follow on sales as people validate their initial purchase decision.

- Publish a book on the "art" of Lynn Chase; tie-in with national advertising program, store promotions and public relations.
- A sustained, coordinated, thoughtful advertising and public relations program.

Sherry Baker summation: This company needs another chance; additional spending is required for another chance; there must be a thoughtful and coordinated rationale for spending; relaunch must take place with cost controls and timely, accurate management information. Company must take a "branded" long term approach to create the "franchise" for growth in new areas.

[Pl. Ex. 5].

34. Effective April 1, 1997, LCDI retained an advertising firm, Burkhardt & Hillman, and a public relations firm, Corbin & Associates, to "create and produce advertising, collateral design and public relations programs for Lynn Chase Designs." [Def. Ex. A; Pl. Ex. 5]. LCDI agreed to compensate the firms at "a minimum of \$8,000 per month fee, plus 10% commission on all costs." [Def. Ex. A].
35. On or about April 24, 1997, "Richard R. Gillespie announced his desire to reduce his responsibilities and step down as President and function as Vice President, Marketing for the Company." [Pl. Ex. 5; Def. Ex. D].
- Chase offered the position of President to Lasser, but he

turned it down.<sup>5</sup>

36. At the April 24, 1997, board meeting, Lynn Chase "announced her decision to hire Tony Mann[ing] to consult on new product development. . . ." [Pl. Ex. 5].
37. On or about May 5, 1997, Dick Gillespie left LCDI.
38. On May 7, 1997, Lasser sent Chase a memo recapping the product development costs to date versus LCDI's 1997 budget.

As you can see, as of the end of April, we have spent or committed virtually the entire annual development budget. I suggest that **before we make further plans** we take stock of the situation. Many of the expenses have been surprises or unplanned. Are there any other "surprises" out there? As we plan new products lets not forget to consider the cost of development as well as potential volumes.

[Pl. Ex. 17, emphasis in original].

39. On May 15, 1997, Lynn Chase hired Laurie Facci as Director of Sales at an annual salary of \$110,000. [Def. Ex. E; Stip. ¶24]. Facci began her employment on June 16, 1997 [Pl. Ex. 18].

40. On May 23, 1997, Lasser advised Chase that

One of the areas we did not discuss last night was Advertising/Merchandising

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Flintoft testified that he recalled telling Chase "some time after Gillespie stepped down that [Lasser] would be a logical person to be president. He was the only one that was in the company that would even be close to being capable of performing that job." [Flintoft Depo. at 29].

spending. I am concerned that there are issues you need to consider before making decisions and that we may go too far in a single direction without that proper consideration.

. . . .  
However, before making an additional investment, regardless of its source, we must first evaluate the planned spending to be sure that it is consistent with your goals as to impact on the company's growth and your time frame.

. . . .  
From this base, we should be looking at a range of options or incremental steps to the ultimate image that will project Lynn Chase the way we all believe it should be. We will need to make some assumptions as to the costs of each alternative as well as the incremental sales it will generate. Only then can we make a realistic estimate of what we need in terms of additional financing versus what you are willing to risk.

[Pl. Ex. 49, emphasis in original].

41. On June 1, 1997, Richard Flintoft, Lynn Chase's fiancé, became "acting President of LCDI." [Stip. ¶19; Pl. Ex. 18]. Flintoft was paid by Lynn Chase, "at no expense to the company", approximately \$10,000 a month for his consulting services. [Chase Depo.I at 88; Def. Ex. G].
42. In June 1997, Bill Dupre was hired as a sourcing consultant for new products. Dupre was simultaneously employed by a competitor of LCDI. Plaintiff stated at the time that he believed it was unethical for Dupre to

consult with LCDI while working as a full-time employee for Swift Powell.

43. When plaintiff expressed objections to the hiring of Bill Dupre and his authority, he was told that Dupre had a special relationship with a needed and major new lower cost supplier in the Far East. [Stip. ¶23]. Lynn Chase testified she made "an executive decision" to keep Dupre over Lasser's objection.
44. In a June 24, 1997, memo to Lasser from Chase regarding Lasser's request for increased compensation,<sup>6</sup> Flintoft wrote

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In a memo dated June 9, 1997, regarding "Salary Adjustment," Lasser wrote Chase

When we discussed the terms of employment for Laurie [Facci] you suggested adjusting my compensation plan. After reflection on this, I suggest we adjust my base to a par with Laurie's effective July 15. That is my anniversary date and I believe an appropriate time for such an adjustment. I do not think it is necessary to adjust any other employment terms.

[Def. Ex. I]. On June 10, Chase responded in relevant part

Having signed a two year employment agreement with you on April 24<sup>th</sup>, 1997, that was in fact pretty much authored by you, I do not feel that any adjustment to base salary is appropriate at this time. . . . Given your concern about our year end figures, I have no desire to increase any costs unless they are directly linked to sales and marketing. . . .

Howard asked for a raise from \$96K to \$110K to be even with our Nat'l Sales Manager. Lynn responded that she would do that if her contract was mutually canceled. He declined.

[Pl. Ex. 19].

Chase testified

Q: Why did you want [Lasser's] contract to be cancelled at this time?

A: Because I felt it was very one-sided and I was getting a better team in New York and I knew this was going to be a problem.

[Chase Depo.I at 102].

45. In a June 26 personal letter, Lasser responded to Chase as follows.

I received your fax regarding compensation and I accept your decision.

. . . .  
However, I want to add that I am deeply hurt by the tenor of your letter and our recent discussions. When you hired me, you had lost almost half a million dollars in the two previous years. You said it was a turn around situation and you did not know if you had a company. Under these circumstances I do not think either of us came to this union with the expectation that the primary responsibility was financial reporting. In fact I suggested at the time, if that is all you need you could get a bookkeeper for half what you would pay me.

. . . .  
It seems that nine months of accomplishments have somehow been forgotten, and in some cases for naught. In that nine months I straightened out the inventory accounting; initiated standard costing; began UPC coding for all products . . . created a WEB page; initiated daily

sales reporting to you; created a unit sales forecast; developed an annual unit purchase plan which reduced back orders from over half a million dollars to less than ninety thousand; implemented a purchase order policy; created cost analysis for new products, product profitability analysis for existing products, developed a monthly operating and capital budget for 1997. . . . [T]he bank increased our line of credit by 50% without additional personal guarantees. You often cited concern over your personal liability and I took this action by the bank as the highest vote of confidence and achievement.

[Pl. Ex. 20].

46. Chase testified

Q: So you intended [Lasser] to do much more than financial reporting?

A: I intended him to help turn this company around.

[Chase Depo.I at 107].

47. 1997 became a year of dramatic change for LCDI. For example, LCDI hired new consultants, a marketing manager, and representatives for new product sources, retained new public relations and advertising firms, published a new catalogue costing approximately \$250,000, formed a new products committee, and refurbished the business image and product line.

48. In the summer of 1997, Lynn Chase also decided to move the Ridgefield operation to New York City. [Stip. ¶20]. Lasser advised Chase against the move because of the cash flow problems, the expense of maintaining office space in

New York, and the risk of losing Connecticut staff. Chase testified that she decided to move the company despite the financial constraints. While it might be more appropriate to stay in Connecticut, she stated, it was an "emotional decision." [Chase Depo.I at 134, 149].

49. Chase testified that the move "was the most important thing in my life at the moment."

Q: And that was too important to allow the CFO to be involved with?

A: Yes.

[Chase Depo.I at 151-52].

50. These changes and decisions required Lynn Chase to substantially increase her capital contributions and personal guarantees of loans in order to fund the expenses incurred. [Stip. ¶21].
51. Lasser often expressed financial concerns about increased expenses for new promotions, personnel, products, inventory, the relocation of the Ridgefield operation, and the effect of these expenses on LCDI's 1997 budget and income. [Stip. ¶22].
52. For example, in a memo from Lasser to Chase, dated July 24, 1997, regarding "Financial Statements", he stated in relevant part

Most importantly, we need to discuss the Cash situation. I want you to be absolutely clear on the fact that, failing any action, we will be out of funds by the middle of



October! Currently our net cash position, that is money in the bank less our credit line is a negative One million two hundred fifty thousand dollars (\$1,250,000). This does not include printing the sell sheets, all of which must be paid for by the end of August. I should also point out that we are approaching the time of year when we will be receiving large shipments of inventory.

I believe I can manage through the end of August with the remaining credit line and cash receipts from Accounts Receivable. I can probably make it through September as well, by stretching our payables. However, we must have at least Three hundred thousand dollars (\$300,000) by the middle of October and probably another Two hundred thousand dollars (\$200,000) by year-end.

As the cash requirements . . . of my schedules shows, over the next eighteen months we will need to raise a minimum of \$750,000, either through bank loans or additional equity. . . .

Please advise when we can meet to discuss our plans and strategies to cover this pressing need.

[Pl. Ex. 38].

53. In a memo to Chase, dated August 8, 1997, regarding "cost of goods goals for 1998", Lasser stated in relevant part,

One item we did not discuss, regarding new product development, is the new products development budget. As I have indicated previously, we have used up the entire 1997 budget for new product development. In order to build a proper plan and cash flow analysis, we need to agree on the projects currently in development and an appropriate level of capital spending for each. I suggest we use the Product Development Budget Form I provided at our meeting on

July 9<sup>th</sup>.

[Pl. Ex. 28].

54. In a July 1, 1997 memo from Flintoft to Lasser, entitled "Organizational Chart," Flintoft described Lasser's job as follows:

Effecting purchase orders, regular follow-up, receiving of inventory and transfers fall under your responsibility as head of operations. New product development, its coordination, tracking its progress time line, quality control, and liaison between Tony Manning and Bill Dupre, I believe is a full time job for Pat, given its strategic importance to our success.

Flintoft's organizational chart, attached to the memo, had Lasser reporting directly to the President of LCDI, Flintoft. After a conversation between Lasser and Chase, Flintoft clarified that Lasser would report "directly" to Chase. [Pl. Ex. 23].

55. In a July 28, 1997 memo, regarding Flintoft's organizational chart, Lasser, writing to Chase and Flintoft, responded,

First I believe the CEO should have a direct line of communication to the CFO and vice a versa. Particularly in our case since the CEO is also the principal stockholder.

With regard to Purchasing . . .once quality and quantity have been agreed to by Lynn and Laurie, the purchasing decision becomes primarily a financial one. It is the obligation of finance/operations to assure

inventories are in house in sufficient quantities to support the sales forecast, and that the inventory is landed at or below a target cost of goods. It is therefore more appropriate to leave the purchasing function in the finance/operations side of the organization. . . .

[Pl. Ex. 22].

56. Flintoft testified that, when he drafted the organizational chart, Lasser was reporting to him. He stated that Lasser's relationship with Chase in the summer of 1997 was strained, that they had trouble communicating, and that Chase preferred that Lasser report to Flintoft.

57. In a July 30 memo from Chase and Flintoft to LCDI employees, regarding the organizational chart, Lasser's job duties were described. Under the subject heading, "New Products Committee," it said, "Howard Lasser is responsible for product cost comparison analysis and reporting the financial impact of the new product program on the Company." [Pl. Ex. 24]. Under the subject heading "Inventory Planning Committee," it stated, "Howard will provide comparative cost analysis and report on the financial impact related to recommended inventory levels." The memo further described Lasser's "functional areas of responsibility" as follows.

Howard Lasser, CFO Howard is responsible for the following functions: Accounting, Financial Analysis & Planning (cost

comparisons, budgeting & forecasting), Operations, Systems, Treasury, Credit Risk Management, and responsible comparative vendor analysis and reporting the financial effects of new product development and inventory recommendations.

[Pl. Ex. 24].

58. Flintoft testified that, between July 22 and the circulation of his PowerPoint chart on July 30, Chase changed her mind- "She's a woman." He thought that there might have been a blowup between Chase and Lasser and she changed her mind and told Flintoft what she wanted on the Organizational Chart. Lasser complained about the PowerPoint version, stating it violated his contract. Flintoft stated he was frustrated with PowerPoint and was unable to make the change. Instead, he made a handwritten change to the document, with the notation "Changed at Howard's insistence" and circulated it to the staff. Flintoft testified he was "frustrated with the entire situation."

59. At her deposition, Chase testified

Q: I am looking at the July 30 memorandum. Where in the July 30 memorandum, which you and Mr. Flintoft wrote, setting out for the company the responsibilities of the senior officers of the company, does it say that Mr. Lasser has control over the purchasing of inventory for the business?

A: I don't know.

Q: It doesn't say it anywhere in this memorandum, does it?

A: I guess not.

Q: So that was a responsibility that was

taken away from Mr. Lasser, correct, by this July 30 memorandum?

A: No . . . He still had purchase ordering power, for God's sake. He purchased every single product that we have. By signing a purchase order. That also is inventory, and you have to figure out how much we are going to bring in and where it goes. I'd say that was very important.

Q: Where does it say anything about how much you are going to bring in, how much inventory you are going to buy?

A: The control is a purchase order.

Q: You mean somebody tells him sign a purchase order to buy a thousand plates?

A: We get the best price that we can; we get the best margin that we can and often times these factories say our minimum order is X. So we have to go with the minimum order. Now, Howard may say, well, that's not right. We can't take this. The inventory is going to be too high, and then I have to make an executive decision, because it's my money that's going to be buying the inventory, whether to go ahead. That's how it works.

[Chase Depo.I 130-32].

60. On August 8, 1997, Lasser wrote Chase a letter on his personal stationary to address Chase's July 30 memo and organizational chart.

As I said, I have concerns and objections to the structure you have imposed. I have indicated to you previously, I believe it is imperative that the CFO maintain a direct reporting relationship to the CEO, due to the importance of providing key financial information - both good and bad - to you on a timely and complete bases. I think we both recognized this since the time I join Lynn Chase Designs, resulting in the provision in my Employment Agreement that I report to the CEO. I am very concerned that the new organizational

structure does not allow for vendors, staff, management, directors and auditors. Most importantly, it limits my effectiveness in reporting financial information to the CEO and the Board in a manner which assures both that it will be received in its entirety and without modification. It was precisely these concerns, together with a recognition of my value to the organization which resulted in the Employment Agreement requirement. This, together with my serving as a committee member making recommendations in areas previously within my purview would result in my responsibilities being substantially reduced upon the implementation of the new structure.

. . . . .

You indicated your willingness to reconsider the new organizational structure, in light of the above, I hope you will do so, so as to enable me to perform my responsibilities in the most effective manner possible, and in the manner contemplated in my Employment Agreement.

[Pl. Ex. 27].

61. In a memo dated August 21, 1997, to Lasser, Chase described Pat Greenberg as LCDI's "primary contact with suppliers." Chase went on to state that Ms. Greenberg reported directly to her and that Greenberg would "provide timely financial information to [Lasser], to the extent possible, to enable [him to] perform appropriate financial analysis as the CFO and report it directly to me." [Pl. Ex. 25]. Chase testified that Lasser was previously the "primary contact with suppliers" and that this was a

responsibility that was taken from Lasser and given to Ms. Greenberg. [Chase Depo.I at 135].

62. The August 21 memo further stated, under the subject heading "Purchasing Procedures,"

The intention behind your September 18, 1996 Memorandum is understandable and financial controls are necessary. . . .I would appreciate your thoughts on achieving a balance between necessary financial controls and an autocratic bureaucracy. I will inform you, if possible, prior to making or approving any purchase that would materially effect the budget, and in any event, I will provide you with documentation immediately thereafter.

[Pl. Ex. 25].

63. Lasser responded to Chase's August 21 memo by personal letter dated August 25, 1997, which stated, in relevant part,

In order for me to do my job I need information about future product plans. My requests for information as to unit pricing, volumes, and price breaks are necessary for me to respond to your queries and assure compliance with your stated objectives of an overall cost of goods of 45% in 1998. The fact that you have isolated me from this information and excluded me from meetings where this could be discussed and indicated that Pat is the go between, makes it imperative that Pat raise these issues and obtain the appropriate information. A response from Pat that "it is not my job" is not acceptable and indicates a professional level of competence still in need of training and direction. If you eliminate my ability to deal with the competencies of the clerical staff, you eliminate my ability to perform my job.

[Pl. Ex. 26].

64. Regarding purchasing procedures, Lasser responded,

I am not committed to a specific form or format and am open to change, However, you should consider that these procedures were implemented to solve the lack of communication that previously existed in the company. Commitments were made without any regard to the budget, eliminating any opportunity to evaluate the impact of these commitments on our financial condition. These financial "surprises," as you have said, are what led you and the Board of Directors to the conclusion that you needed a strong financial controller.

My role in the purchasing process as outlined, is to evaluate the request to assure it is consistent with the budget. If it is, then it proceeds without further comment. If the request is over and above the budget and there are not stated plans to save in other areas, then the request needs to be evaluated with regard to the company's ability to support the expense, specifically its impact on profitability and our cash flow. With this information, **YOU** can make an informed decision as to whether or not to proceed with the request. I think this procedure is neither overly autocratic or bureaucratic. Furthermore, excluding me from the information loop prior to the commitment, as you propose, further reduces my ability to function as your CFO, providing appropriate analysis and advice on our financial position.

[Pl. Ex. 26; emphasis in original].

65. Flintoft testified as follows

Q: So in your view it was a good idea to require the CFO to sign off before the company committed itself to buy, let's say, thirty thousand dollars worth of tableware?



A: That was the policy, in effect, and I think it was a good policy.

Q: It was a good idea to- would that policy also require the CFO to be told about the purchase before a commitment was made?

A: The CFO should be told about the purchases before they are made.

Q: He should have an opportunity to voice his opinion about whether the purchase should be made?

A: That's correct.

[Gillespie Depo. at 42].

66. A Lasser memo dated August 28, 1997, said:

Attached please find my most recent analysis of our cash position and operating requirements. As you can see this shows a cash shortfall in excess of \$700k. Please note this analysis includes only the information I am absolutely certain of as well as reasonable estimates for obligations I know we will have (e.g. commissions and distribution). The analysis does not include any estimates for relocation of the office or cash requirements for new staff, Travel and Entertainment expenses, and a host of other incidental expenses which we will undoubtedly incur in the next three or four months. I would guess that these together would add between \$150k to \$200k to the total cash requirement.

. . . .  
Please advise how you would like to proceed.

[Pl. Ex. 29].

67. Flintoft testified that Lasser's estimate of losses at the October 1997 Board meeting was "pretty close;" LCDI ended

up losing \$780,000 in 1997.

68. Lynn Chase testified that she invested over \$600,000 of her "own money" in LCDI in 1997. At her deposition in February 1999, Chase testified that she had not taken a salary as Chief Executive Officer of LCDI for the "past twenty-two months." [Chase Depo.I at 6]. She stated she had other sources of income besides LCDI. Id.

69. Chase testified that

Q: Did you agree that in August of 1997, commitments were being made without any regard to budget?

A: It was a very critical time for us and even though Howard advised against it, we had to commit - I felt we had to commit to new products in order to appear like a design company for October sales meeting.

[Chase Depo.I at 156].

70. A memo from Lasser to Chase dated September 10, 1997, regarding the "Purchase Orders for Butterfly Bamboo", said,

Pat has completed three PO's for the above referenced products following instructions from Bill Dupre. I need to point out that these PO's do not conform to the decisions we made at the planning meeting on September 4<sup>th</sup>.

. . . .

I also understand from Pat that we have a commitment for another 1,500 sets. This was not discussed last week.

. . . .

Aside from the incremental cash

requirement, this raises some question about our overall planning process. Bringing in anticipated annual requirements all at once, particularly in the beginning of the year will increase our carrying costs as well as increase our business risk. In the past LCDI has projected extremely large demand and been left with significant inventory levels (approximately one-third or \$400k of our inventory is either in discontinued product or in excess of a years' requirement). This puts a drag on earnings as well as reduces the resources, or conversely increases the requirement for additional resources (i.e. cash), needed to invest in the broad range of products we would like to pursue.

[Pl. Ex. 41].

71. By fax dated October 1, 1997, Chase told Lasser,

I want to do everything possible, short of going into bankruptcy, to jump start this company and get everyone who sells our product highly motivated. Therefore please give Laurie any assistance she needs to implement her programs.

Lasser responded,

You can be assured everyone here, including myself, will give Laurie all the help she needs.

[Def. Ex. S].

72. By fax dated October 31, 1997, regarding Daishowa payment and terms, Lasser advised Chase that,

I would prefer to advise Daishowa that these terms are not acceptable, nor are they common practice. It would be preferable and more prudent under the circumstances for Lynn Chase Designs, Inc. to negotiate alternative means of payment which more clearly assures delivery and protects our interests. If you however

wish to accept these terms please advise so in writing.

I also have an additional invoice for development expense for the Monkey Business bowls, attached. I was surprised by this as you had previously assured me that no such expenses were to be incurred, particularly without proper purchase orders. I cannot stress enough, my concern for the risks associated with and the inadvisability of allowing a third party, non corporate officer, encumbering the assets of this company. If you wish to pay this invoice please sign the fax copy and return it to my attention. . . .

[Pl. Ex. 52].

73. In a personal letter dated January 12, 1998, Lasser wrote

Dear Lynn,

I in no[] way wish to escalate the issues and remain interested in an amicable solution. However, I do want to impress upon you my desire to resolve all outstanding issues, relevant to the attached letter, prior to the end of the month.

[Pl. Ex. 34]. In the attached letter dated January 1, 1998, Lasser said,

Dear Lynn,

This is to inform you that you are in breach of my Employment Agreement. I am therefore terminating my employment for Good Reason. As I indicated to Dick at our meeting of December 18, if you have no interest in remedying the breach, I remain willing to discuss ways to insure a smooth transition without sacrificing any of my rights under the Employment Agreement.

[Pl. Ex. 34].

#### CONCLUSIONS OF LAW

The Employment Agreement between the parties, and its interpretation, is governed by Connecticut law. The Court finds on this record that the agreement is enforceable. The Court further finds that Lasser terminated his employment for good reason under the agreement and is entitled to damages.

The record establishes that the expectations of the parties which existed when Lasser was hired, and when Lasser's employment contract was negotiated, were superseded by the

corporate relaunch plan, which led to a substantially different structure with a substantially different role for the C.F.O. than envisioned early in 1997.

When Lasser was hired in July 1996, the only people at LCDI with significant responsibility were Lynn Chase and Dick Gillespie. Chase testified that Gillespie was doing too much and there was a need for a Chief Operating Officer to take the pressure off Gillespie so he could concentrate on marketing and product development. With the creation of Lasser's position, there was a division of responsibilities along the lines Lasser envisioned, even though Gillespie resisted. In 1996 LCDI had not turned a profit in years and Chase looked to her CFO to help turn around the finances of LCDI and bring the company to profitability. It is clear that Lynn Chase gave Lasser authority to implement financial controls to make the company profitable.

In March 1997, when Lasser's employment agreement was negotiated, it was expected that Gillespie would remain president. Even at the April 1997 board meeting when Gillespie stepped down as president, Lasser had no expectation that Gillespie would leave the company.<sup>7</sup> From Lasser's point of

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Flintoft testified that Gillespie wanted to step down as president because he felt his duties were circumscribed and felt his best role in LCDI was Vice President, Sales. When Chase offered the position of president to Lasser, he turned it down.

view, Lasser would control operations and Gillespie would concentrate on marketing and sourcing.

The critical time period began shortly after the April 1997 board meeting when the employment agreement was signed and Chase announced the plans for relaunching LCDI. The Court finds that there was a substantial reduction in Lasser's duties, position, authority and responsibilities from the time surrounding the execution of his employment contract to the period after Flintoft, Manning, Dupre and Facci were hired and LCDI was implementing the planned relaunch.<sup>8</sup>

The evidence demonstrates that at or about the time of the employment agreement Lasser had direct access to Chase and had her ear and her confidence. Between April and August of 1997 as the relaunch plans were implemented, Lasser lost influence with Chase as the emphasis of the company shifted from controlling costs and making a profit to the imperatives of the "relaunch"/"rebirth". Lasser's job to put on financial brakes strongly conflicted with the relaunch plans that were "busting the budget." Flintoft testified that when he came on board in June, he didn't believe there was a financial crisis and was focused on Sherry Baker's strategy for the relaunch.

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There is no need to consider the scope of Lasser's authority during the interim after Gillespie left LCDI. It is apparent from plaintiff's testimony that he perceived the corporate relaunch, and not Gillespie's resignation, as the cause for a substantial reduction of his job duties.

Lasser was initially chief operating officer in the Ridgefield office but, after the relaunch, in the spring and summer of 1997, Chase pressed for a consolidated office in New York City with herself as chief executive officer, acting through Flintoft as president. Lasser's access to Chase was restricted, she was often unavailable to him and Flintoft acted as intermediary. The physical relocation was a manifestation of Lasser's loss of influence with Chase. The more complex division of responsibilities after the reorganization contributed to Lasser's exclusion from the decision making process.

The Court concludes this was not a matter of organizational charts or official positions. Authority was diffused; responsibilities were not clearly defined, and the management goals were shifting in directions Lasser opposed. The battle of the memos is further evidence of Lasser's frustration and anger. By the summer of 1997, Lynn Chase had clearly revised her assessment of what financial controls the company required as the company adopted the approach that to make big money it must spend money.<sup>9</sup> Chase as C.E.O. had little appreciation for prudent accounting practices and other tenets of C.F.O. faith. As Lasser voiced his concerns, recommending

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<sup>9</sup>

Flintoft testified that the 1997 relaunch program and costs "busted the budget."



incremental steps for the relaunch and restrictions on free spending practices, identifying risk, advising caution, his access to Chase and pertinent information became more and more limited and his influence waned.<sup>10</sup>

#### Notice and Cure

The Court finds that the two August letters<sup>11</sup> constituted notice under the contract, particularly in light of the evidence that Flintoft read the contract in July.<sup>12</sup> [Pl. Ex. 26, 27]. Further, the Court finds LCDI made no efforts to cure, and no efforts to discuss or resolve Lasser's issues.

The battle of the memos demonstrates this. It is clear that Chase developed a different idea for running the company than what she hired Lasser to do. There is no need in this case for the Court to choose between these visions of the company. A C.E.O. and C.F.O. cannot work at cross purposes if a company is

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<sup>10</sup>

Flintoft testified that Lasser always wanted numbers. "How many can you sell? How quickly? At what price?" Lasser would ask for justification, Flintoft explained; it was "part of what he was suppose to do for the company." He would raise "question[s] more than anybody else." During the summer and fall of 1997, Flintoft stated that Lasser was most likely to advise against spending.

<sup>11</sup>See Letters of August 8 and 25, 1997 [Pl. Exs. 26, 27].

<sup>12</sup>

The Court construes Lasser's January 1998 correspondence as termination, not initial notice. [Pl. Ex. 34]. The fact that Lasser did not leave until February is attributable to the move of the office, efforts to "insure a smooth transition." Nevertheless, the Company had changed direction and Lasser no longer considered himself C.F.O. of LCDI. Id.

to succeed; Provision 7(d) of the contract was created in part to resolve such a conflict, to give Lasser an out if his position changed in ways he could not accept. Despite notice, LCDI failed to address or correct Lasser's concerns.<sup>13</sup> The Company could not terminate Lasser's employment without paying him for the term remaining on the contract except for cause under section 7(c). There is no claim that Lasser breached the contract or otherwise did not fulfill his job responsibilities.

Accordingly, the Court finds that plaintiff terminated the employment agreement for good reason and is entitled to damages. Lasser's base salary was \$96,000 per year and there were twelve and one-half months remaining on the term of his employment.<sup>14</sup> The Court awards plaintiff his salary for those twelve and one-half months, or \$100,000.

#### Bonus

The Court declines to award plaintiff a bonus. For reasons

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Indeed, Flintoft testified that in December 1997, Lasser "still felt we didn't need Dupre and should get rid of him. . . [they] talked about the flow of information. I told him I would try to make sure he got the information he wanted." Flintoft explained there was a lot of turmoil with the relaunch of LCDI and Baker plan, and maybe some things "slipped through the cracks." Flintoft told Lasser he'd make his best efforts to make sure Lasser had the power and responsibility he was looking for.

<sup>14</sup>

Lasser left his position at LCDI on February 26, 1998; the employment agreement expired on March 15, 1999.

not necessarily attributable to Lasser's absence, the Company was not profitable in 1997 or 1998. It would be far too speculative on this record to find that LCDI would have been profitable and a bonus warranted, had he remained at LCDI.

#### Post-Judgment Interest

Under 28 U.S.C. §1961, prevailing plaintiffs are entitled to post-judgment interest on all money judgments obtained through the federal court. "Post-judgment interest is designed to compensate the plaintiff for the delay it suffers from the time damages are reduced to an enforceable judgment to the time the defendant pays the judgment." Andrulonis v United States, 26 F.3d 1224, 1230 (2d Cir. 1994). Defendant will pay post-judgment interest to the plaintiff pursuant to 28 U.S.C. §1961.

#### CONCLUSION

Based on the foregoing, the Court finds for plaintiff in the amount of \$100,000 plus interest.

This is not a recommended ruling. The parties consented to proceed before a United States Magistrate Judge [Doc. #28] on November 29, 1999, with appeal to the Court of Appeals.

Judgment shall enter for plaintiff in the amount of \$100,000 plus interest.

ENTERED at Bridgeport this 11th day of April 2001.

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HOLLY B. FITZSIMMONS  
UNITED STATES MAGISTRATE JUDGE