

IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

ROBERT I. UNANUE, FRANCISCO R. :  
UNANUE, and GOYA FOODS, INC. :  
 :  
Plaintiffs, :  
 :  
vs. : Civil Action  
 : No. 204-N  
 :  
JOSEPH A. UNANUE and :  
ANDREW UNANUE, :  
 :  
Defendants. :

- - -  
Chancery Courtroom No. 12C  
New Castle County Courthouse  
Wilmington, Delaware  
Thursday, April 29, 2004  
9:05 a.m.  
- - -

BEFORE: HON. DONALD F. PARSONS, Vice Chancellor.

- - -  
TRIAL TRANSCRIPT - VOLUME I  
- - -

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CHANCERY COURT REPORTERS  
500 North King Street - Suite 11400  
Wilmington, Delaware 19801-3759  
(302) 255-0525

1 COO of the company.

2 Did you have occasion to form a view  
3 with respect to whether the level of his experience  
4 was commensurate with that job?

5 A. Yes.

6 Q. Would you please tell us your view.

7 A. That he had potential, but he didn't  
8 have the experience to be running a company. He had  
9 been working a couple years in Secaucus in the mid to  
10 early nineties, had spent a year or so in the  
11 Dominican Republic and worked about a year in  
12 Puerto Rico. He didn't really have the full  
13 foundation fundamentals for a position of that so  
14 quickly.

15 Q. Did you have occasion to observe  
16 Andrew Unanue's conduct in terms of how he imported  
17 himself with the employees of the company?

18 A. Yes.

19 Q. Can you describe that for us, please?

20 A. Maybe times he could be gracious,  
21 outgoing; other times he could be cold, arrogant and  
22 cutting. He would sometimes switch on, switch off.

23 Q. How would you describe his leadership  
24 abilities?

1           A.           Fair to poor. The inability in  
2 management meetings to really openly allow free  
3 thought or expression. If individuals were saying  
4 something that was not to his liking, to be abruptly  
5 cut off, scolded even. That stifled many individuals  
6 from even speaking up anymore. They figured why go  
7 through that.

8           Q.           Were you stifled in that respect?

9           A.           At first I didn't think I was being  
10 stifled, but in late 2003 it became almost a personal  
11 attack.

12          Q.           Now, I'm going to get to that in a  
13 couple minutes.

14                       Did there come a time when you had a  
15 discussion with Andrew Unanue with respect to whether  
16 you should be communicating with his cousins?

17          A.           Yes.

18          Q.           What was that discussion, please?

19          A.           I got to see him about two years ago  
20 in his office and asked him, I'd like to see if there  
21 was some time we could go to lunch because I wasn't  
22 clear or understanding where the company was going,  
23 what we were doing. And he said, great, because he  
24 wanted to speak to me as well.

1                   So, I felt good for a few moments.  
2   And then he began yelling, raging at me that I'm not  
3   a team player, nobody wants to work with me, nobody  
4   likes me, why did my cousins call you, why didn't  
5   they call me. I tried to explain to him, "When they  
6   call me, we talk about business."

7                   "But why do they call you? Who do  
8   you think you are?"

9                   I told him -- I told him, "Well, I  
10   can't tell them I can't talk to them. If you want,  
11   tell them not to call me."

12                   He said, "No. No. You're right. We  
13   have to talk together. We have to work together."  
14   Talked a few more minutes, and then, "About my  
15   cousins, why do they call you? Do you want my job?  
16   Do you think you can do my job?" It didn't make any  
17   sense.

18                  Q.           Mr. Perez, you mentioned going out to  
19   lunch with Mr. Unanue. Is that something that you  
20   typically do as part of your professional experience,  
21   go out to lunch?

22                  A.           Normally, I just work through the  
23   day.

24                  Q.           Did you have any occasion to observe

1 Andrew Unanue imbibing alcoholic beverages?

2 A. I've seen him come to the office  
3 drunk or smelling of alcohol. And at corporate  
4 functions, yes, there would be drinking.

5 Q. Let's talk about in the office. Did  
6 you see smelling of alcohol in the office?

7 A. Yes.

8 Q. On roughly how many occasions, sir?

9 A. At least five, possibly more.

10 Q. And when was the last time?

11 A. In October of 2003.

12 Q. And of these five or so occasions,  
13 were they during work hours?

14 A. Yes, they were.

15 Q. What happened --

16 THE COURT: I'm sorry. I didn't  
17 hear.

18 THE WITNESS: Yes, they were.

19 BY MR. SCHIAVONE::

20 Q. What happened in October, the last  
21 time you saw him?

22 A. We were in a test kitchen in our  
23 facility -- I can't recall the product we were  
24 testing -- Andy came in. He was very loud, unstable,

1 flush, smelling of alcohol.

2 Q. What time of day was it?

3 A. About 11.

4 Q. Who else was there?

5 A. Several people: Conrad Colon,  
6 Esperanza Carrion, Frank Cicio.

7 Q. Would you explain to Vice Chancellor  
8 Parsons who Conrad Colon is?

9 A. Conrad Colon is our vice president of  
10 sales and marketing. He is the longest standing  
11 employee at the company currently. He has been with  
12 us 46 years.

13 Q. And who is Esperanza?

14 A. Esperanza is the marketing director.

15 Q. Why did you draw the conclusion that  
16 he had been drinking?

17 A. Because he was talking out loud,  
18 wreaked of alcohol and was unstable on his feet.

19 Q. Did any of the other employees ever  
20 express any concern to you that Andy was coming into  
21 the office during office hours in that state?

22 A. Yes.

23 Q. Who were they?

24 A. David Kinkela. He's vice president

1 of MIS. He has been with us 30 years.

2 Q. Who else?

3 A. Conrad Colon.

4 Q. What did Mr. Colon tell you, if  
5 anything, with respect to this situation?

6 A. It was a disgrace to the company.

7 Q. Did he ever tell you that he tried to  
8 assist Andrew on such occasions?

9 MR. SEITZ: I think we're getting a  
10 little far afield here, Your Honor. This is hearsay,  
11 also.

12 THE COURT: Yes. If there's  
13 something that's going to action that he -- that this  
14 witness took, that kind of thing.

15 MR. SCHIAVONE: I'll move on, Your  
16 Honor.

17 THE COURT: Otherwise, if it's just  
18 hearsay --

19 MR. SCHIAVONE: I'll move on. Thank  
20 you.

21 BY MR. SCHIAVONE: :

22 Q. Did you ever observe Andrew drinking  
23 at corporate events?

24 A. Yes.

1 Q. What did you observe?

2 A. Normally at the corporate events  
3 there would be a dinner dance. The bars were in the  
4 hallways. And about halfway through the function,  
5 Andy and groups of people would be by the bars doing  
6 shots.

7 Q. And were you able to observe any  
8 level of inebriation?

9 A. As they continued, a high level.

10 Q. How many corporate functions did take  
11 place where this occurred?

12 A. There's two a year: the salesman  
13 dinner and then the employee dinner.

14 Q. On how many occasions have you made  
15 such observations?

16 A. All that I attended.

17 Q. How many would that be?

18 A. Pretty much catch all of them the  
19 last couple years. Because of illness and the family  
20 I missed two, I believe.

21 Q. Two out of --

22 A. Two out of -- in the last five years,  
23 ten. So, eight.

24 Q. Have you had occasion to observe

1 Andy's work habits?

2 A. Yes.

3 Q. And what did you observe?

4 A. When he would be in the office he  
5 would be doing work; other times there was the issue  
6 of coming in late, leaving early, to the point I  
7 spoke to him and that I was concerned that perhaps he  
8 was ill and contracted the same disease his brother  
9 had. He assured me, no, he had things to do. But to  
10 run a company, you have to be there.

11 Q. Mr. Perez, did you have occasion with  
12 respect to the time period of December 2003,  
13 January 2004 to make any observations with respect to  
14 the state of morale at Goya?

15 A. Morale was very low, very bad.

16 Q. Why do you say that?

17 A. Everyone was pretty much on pins and  
18 needles. Entrance of a large consulting group that I  
19 had mentioned to management that -- in a separate  
20 meeting to the staff -- that you're either with us or  
21 against us. They were revamping the company from top  
22 to bottom. One third would be for it, one third  
23 would be indifferent, one third would be against.

24 There was the issue of changes of