9-25-2009

Dawson v. Cheyovich Family Trust Appellant's Brief Dckt. 34712

IN THE SUPREME COURT OF THE STATE OF IDAHO

JOHN N. BACH, Individually & dba TARGHEE POWDER EMPORIUM, LTD., Appellant/Appellee Intervenor Complainant, v. JACK LEE McLEAN, Trustee, WAYNE DAWSON, Trustee, DONNA DAWSON, ALVA A. HARRIS, Individually & dba & as Alter Ego of Scona, Inc Katherine M. Miller, and Does 1 through 30, Inclusive. Appellants & Third Party Defendants.	Docket No. 35334 (With Dkt 34712) CROSS APPELLANT JOHN N. BACH'S BRIEF

CROSS-APPEAL BY JOHN N. BACH, Appellant-Appellee, Intervenor Complainant from

ORDERS AND FIRST AMENDED JUDGMENT by the Honorable Darren D. Simpson, Assigned

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I. STATEMENT OF CASE RE CROSS-APPEAL

The initial complaint filed December 18, 2001, was labelled "COMPLAINT TO QUIET TITLE AND PARTITION REAL ESTATE, consisting of twelve (12) pages. (Tr: 001-012) It was dismissed with prejudice , September 11, 2007, in a "JOINT CASES - CV 01-33 & CV 01-265- OPINION MEMORANDUM AND ORDERS, etc., signed by Judge Jon J. Shindirling, district judge for Teton County, Idaho. (Tr: 349- -363, at 361. wherein stated:

> "The COURT ORDERS THE IMMEDIATE DISMISSAL WITH PREJUDICE OF BOTH CV 01-33 and CV 01-265 FOR UTTER LACK BY PLAINTIFFS AND THEIR COUNSEL OF DILIGENT PROSECUTION, AND SEVERE PREJUDICE TO JOHN N. BACH, his witnesses to be called and this very Court.")

Attorney Alva A. Harris, counsel for all plaintiffs in both said CV 01-33 and CV 01-265, stipulated on the record the complaints he filed in both said actions could be dismissed, which dismissal Judge Shindirling ordere with prejudice.

No appeals have been timely nor otherwised filed from said DISMISSAL WITH PREJUDICE ORDERS in both said CV 01-33 and CV 01-265.

Cross-appellant JOHN N. BACH was not a named defendant in the complaint filed herein in CV 01-33; he moved the district court to be allowed/permitted to file, which was granted, a COMPLAINT IN INTERVENTION BY JOHN N. BACH, INTERVENOR, March 26, 2002, against the following THIRD PARTY DEFENDANTS:

> "JACK LEE McLEAN, TRUSTEE, WAYNE DAWSON, TRUSTEE, DONNA DAWSON, ALVA A. HARRIS, Individually, & dba & as Alter Ego of Scona, Inc., KATHEREINE M. MILLER, and DOES 1 through 30, Inclusive." (Tr. 034-039)

Cross-appellant, Intervenor Complainant, also filed Aug. 8, 2002, a verified ANSWER, AFFIRMATIVE DEFENSES & COUNTERLCAIMS, etc., from CV 01-265, as his further pleadings, to the initial Complaint filed by Wayne Dawson and Jack Lee McLean, who had not named, nor served him as an indispensible party. (Tr: 040) This further pleading by JOHN N. BACH, was never sought to be stricken, excluded nor ever removed by the parties represented by Alva A. Harris, as their counsel herein, nor at any time after he had been replaced and a purported substitution of attorneys was filed, putting Marvin M. Smith, as the counsel for ESTATE OF JACK LEE MCLEAN AND SURVIVING BENEFICIARIES AND WAYNE DAWSON, INDIVIDUALLY AND AS TRUSTEES, FILED Oct. 17, 2007, (Tr: 377) well after QUIETING TITLE JUDGMENT IN FAVOR OF JOHN N. BACH, Individually & dba TARGHEE P[WDER EMPORIUM, LTD, and AGAINST JACK LEE MCLEAN, TRUSTEE, WAYNE DAWSON, TRUSTEE, DONNA DAWSON, ALVA A. HARRIS, Individually & dba & as Alter Ego of Scona, Inc., filed Sept 11, 2007, by Judge Jon J. Shindirling, which judgment was rendered "Nunc protunc 8/7/07". (Tr: 364-369)

Copies of both said JOINT CASES ---OPINION MEMORANDUM AND ORDER along with said QUIETING TITLE JUDGMENT IN FAVOR OF JOHN N. BACH, are ADDENDUM 1, to RESPONDENT JOHN N. BACH'S BRIEF in Docket No 34712, and are incorporated by reference in full herein.

II. NATURE OF THE CASE WITH OTHER COORDINATED CASES

The verified COMPLAINT IN INTERVENTION, by John N.

BACH, set forth the following significant and controlling averments and statements of fact:

"3. Party defendants, ALVA A. HARRIS, Individuallv & dba & as alter ego of SCONA, INC., along with KATHERINE M. MILLER, are the coprincipals, conspirators, joint venturers, mutual agents and acting in commonality of purposes, unity of actions and economic enterprises, not only with said JACK McLEAN, WAYNE DAWSON and DONNA DAWSON, in all said capacities, but also among and for each other and his/her own tortious and criminal acts to steal, convert, destroy and/or cheat intervenor of his right, title interest, beneficial/economic ownership, management, possession and entitlement to the real property, hereinafter described." (Tr. 035) (See Baldwin v. Placer Co 9th Cir 2005 412 F3d 629, 646, 648-9.)

5. On or about November 13, 2000, McLean, jointed by HARRIS, SCONA, INC., and KATHERINE M. MILLER, and a secret undisclosed additional principal and conspirator with them, whose true name has been deliberately withheld by HARRIS and is currently unknown to intervenor. . . did attempt to steal, convert, destroy and deprive Intervenor JOHN N. BACH of not only his ownership, interests, and investment in said real property, but also of his dba names and business identities of TARGHEE POWDER EMPORIUM, LTD, UNTLD, and INC., business names, entities, which are his rightful California and Idaho entities, which were not required to be registered in Idaho, and which said plaintiffs and defdentants herein, McLean, DAWSON, HARRIS, MILLER and DOES 1 through 30, Inclusve, seek per the complaint filed in this action to deprive Intervenor therefrom, fraudulently, and contrary to the laws of Idaho, acting voidly and criminally . . ." (Tr: 35-36)(

6. Said tortious and criminal conduct by all of said plaintiffs MCLEAN and DWSON, aong with that of the defendants herein designated have been pursued per their economic enterprise in violation of the Idaho Racketeering and Corrupt Influence Act, for over the last five (5) years with other one or more predicate acts against intervenor as to other land investments and purchases. Intervenor refers to and incorporates herein his ANSER, AFFIRMATIVE DEFENSES and COUNTERCLAIMS, filed in those Teton County Actions, CV 01-33, CV 01-59 and his COMPLAINT IN INTERVENTION in CV 01-266." (Tr. 36) (Cross-appellant's prayer is at Tr. 37)

NOTE: The above interlineation is emphasis added to flag the significant averments, which were later not only admitted, confessed and stipulated to by Alva A. Harris, via his utter inactions and nonresponses to the motions for summary judgments with affidavits and exhibits therewith filed/presented by Cross-Appellant, but required the issuance in full of the QUIETING TITLE JUDGMENS IN CV 01-265 & CV 01-33 of Sept 11, 2007, unchanged by any rulings thereafter in both.)

THE ANSWER, AFFIRMAITVE DEFENSES & COUNTERCLAIMS, filed Aug. 8, 2002 by JOHN N. BACH, states specifically:

> " . . asserts as AFFIRMATIVE DEFENSES, all those issues, facts, and legal points raised hereby him per previous filings herein, which said incorporated AFFIRMATIVE DEFENSES are also averred and set forth herein, as COUNTERCLAIMS, along with his counterclaims set forth in Teton Seventh Judicial Actions, CV 01-33, CV 01-59, counterclaims therein dismissed without prejudice, and those claims set forth in the Complaint filed by JOHN N. BACH, on July 23, 2002 in Teton CV 02-208, and further expanded by his Affidavit also filed therein on July 23, 2002." (Tr. 42)

Per the provisions of I.R.C.P., Rule 10(c) all of said references and incorporation of the pleadings from CV 01-33, CV 01-39, CV-205, CV 01-266, CV 02-208 and other designated pleadings by JOHN N. BACH, so incorporated, were part of his counterclaims and claims per his Complaint in Intervention in CV 01-265, which were required to be answered in some form by the Defendants/Third Parties in Intervention. Most relevantly, they were to be received as evidence, per JOHN N. BACH's verification of his said pleadings as required by I.R.C.P, Rule 56(c)(d)(e), etc., and I.R.E., Rule 201(a) through (f) in support of his motions for summary judgment which he filed July 2, 2007 in both CV 01-33 and herein, CV 01-265, (Tr. 061-105, 317-323, 327- 346, 349-369) Drennen v. Craven 145 Idaho 34, 36-9, 105 P.3d 694 (Ct.App. 2004) and State v. Doe (2008 Id. App.) 195 P.3d 745, 748.

The purported ANSWER OF THIRD PARTY DEFENDANTS, by defendants Paula Ehrler, Successor Trustee to Jack Lee McLean, Trustee, and Wayne Dawson, Trustee, Scona, Inc., and Alva A. Harris, by and through undersigned counsel

counsel being also Alva A. Harris for all said defendants was stamped filed Mar. 25, 2004 (Tr. 044-48), but no one's signature is set forth thereon, nor of anyone who sought to executed the certificate of service by mail. Tr. 47-48)

As a matter of law, per the provisions of I.R.C.P, Rule 11(a)(1), the mandated/required signature of Alva A. Harris being nonexistent thereon requires said purported ANSWER, to be stricken---"it shall be stricken. The legal standings of said named third party defendants was nonexistent; they all were in clear default and without capacity to object to any judgment being rendered against them per JOHN N. BACH, summary judgment motions in CV 01-33 and 01-265.

(IRCP, Rule 8(d)-Complaint in intervention with all incorporations were admitted.)

III. INCORPORATION OF JOHN N. BACH'S RESPONDENT BRIEF IN DOCKET 34712, PAGES 1-23, WITH EMPHASIS RE PAGES 3, THROUGH 19, TO COMPLETE NATURE OF THE CASE & APPLICABLE AUTHORITIES.

In an effort to not be repetitious, but still include his arguments and the nature of case statements and issues statements raised by JOHN N. BACH in docket 34712, he also incorporates by his now reference and identification, his RESPONDENT BRIEF's designated pages of 1 through 23 with emphasis on pages 3 through 19, herein in full as though set forth in each and every particular. Moreover, said pages 1 through 23, are presented and requested thereby to be given full judicial notice, receipt thereof per I.A.R. Rule 201(a)-(f).

ISSUES RAISED PER CROSS-APPEAL

A. SUBSIDIARY ISSUES RAISED BY DAWSON'S FRIVOLOUS APPEAL

Dawson's statement of issues in his APPELLANT'S BRIEF, Docket No. 34712, will be deemed to include every subsidiary issue fialry comprised thereof, and shall be heard, whether or not precisely delineated by Dawson. State v. Robinson 1-9 Idaho 890, 811 P.2d 500 (Ct.App. 1991)

Although I.A.R.,Rule 15(a) provides: "If no affirmative relief is sought by way of reversal, vacation or modification of the judgment, order or decreee, any issue may be presented by the respondent as an additional issue on appeal under Rule 35(b)(4) without filing a cross-appeal. State v. Fisher 140 Idaho 365, 93 P.3d 695 (2004). Because of the without jurisdiction and utter gross abuse of any discretion, by Judge Simpson, in issuing the following: (1) MEMORANDUM DECISSION AND ORDER DENYING DEFENDANTS' MOTION FOR RECONSIDERATION, April 8, 2008 (Tr. 667-684, particularly 672-684 thereof); (2) ORDER DENYING AS MOOT INTERVENOR-COMPLAINANT'S MOTION TO STRIKE MARVIN SMITH'S FURTHER FILINGS, April 15, 2008 (Tr. 703-705); (3) ORDER DENYING AS MOOT INTERVENOR-COMPLAINT'S MOTION FOR ORDER STRIKING PLAINTIFFS' MOTIONS FOR RECONSIDERATION, filed April 15, 2008 (Tr. 707-708); and FIRST AMENDED JUDGMENT, filed May 27, 2008, (Tr. 730-734), this Cross-Appeal will address such issues, patently and subsidiarily raised and presented,

Cross-Appellant's timely NOTICE OF APPEAL, etc., was filed June 10, 2008. (Tr. 739-742) Without restating herein, for sake of brevity and expediency, but not exclusions are Cross appellant's statements of lack of jurisdiction, clear

errors, abuse of discretion and without authority orders, rulings and First Amended Judgment by Judge Simpson. (Tr. 741)

DAWSON'S APPELLANT BRIEF, Docket 34712, does not address, nor did his motion for did his motion for reconsideration, Rule 11(a)(2)(B), nor in any memorandum filed, and most certainly not in his oral argument, whatsoever, did he address the utter lack of jurisdiction re his failures to timely and properly file such motion within the 14 days required by said Rule 11(a)(2)(B). He likewise, failed, evaded and ignored to file any affidavits by either Alva Harris, Dawson and himself, as to what facts and evidence there that proved his statement in the motion for reconsideration (Tr. 380) that "(as) counsel for Plaintiffs (he) needs an opportunity to prove exclusable neglect on the part of prior counsel in failing to response to the motion for summary judgment filed by Defendant. ." Mr. Marvin Smith included in unverified documents, especially per EXHBIT C, attached to said motion for reconsideration(Tr. 409-432) irrelevant, immaterial and utterly frivolous documents pertaining not to Dawson, but Mark Liponis, the plaintiff and counterclaim defendant in Teton CV 01-33, now Docket 34713 before this Court.

In RESPONDENT'S BRIEF, Docket 34712, page 5, JOHN N. BACH stated: "The true relevant facts are the time, nature and/or failures of compliance, wrongful, use or misuse by Appellant via his motions for reconsideration (Rule 11(a)(2)(B); . . . . motion for Rule 60(b)(6?) and motions for Rules 52(b) and 59(e). None of said motions were properly made nor argued. Jensen v. State (2003) 139 Idaho 57, 72, 72 P.3d 897 (Wherein Judge Shindirling's striking of reconsideraton motion for noncompliance with Rule 6(d) and 11 (a)(2)(B) was upheld).

At no point in any of his motions, argumenst nor at any point by Judge Simpson assigned, did either raise, argue nor submit relevant applicable case authorities, statutes, re the issues raised per this cross-appeal. (Burke v. McDonald (1890) 2 Idaho 679, 33 P.49 (No answer waives right to proof of complaint; no testimony need be tendered in support thereof.)

B. ISSUES RAISED PER THIS CROSS-APPEAL

1. Did the plaintiffs that first appeared via Marvin Smith have any standing/capacity to file any appeals? ANSWER?: "NO!"

2. Did the failures of both plaintiffs represented by Marvin Smith, timely, properly and with required jurisdiction, file any motion for reconsideration per Rule 11(a)(2)(B), or any othr subsequent motions? "NO!"

3. Was Judge Simpson, assigned, without jurisdiction in his own stead to change, alter, delete or amend the JOINT CASES- CV 01-33 & CV 01-265 - OPINION MEMORANDUM AND ORDERS of Sept 11, 2008 and the QUIETING TITLE JUDGMENT IN FAVOR OF JOHN N. BACH, etc., of Sept. 11, 2008, both made Nunc Pro Tunc to "8/7/07"? "YES!"

4. Even if, assuming Judge Simpson had jurisdiction, did he commit gross errors and grossly abuse his discretion in alt-ring, deleteing, modifiying or amending said JOINT CASES . . OPINION MERMORANDUM AND ORDERS and QUIETING TITLE JUDGMENT IN FAVOR OF JOHN N. BACH of Sept 11, 2007? "YES."

5. Did Judge Simpson, violate, deny and refuse JOHN N. BACH's procedural and also substantive rights to due process and equal protection in not setting, holding and ruling in a specifically notice hearing which included JOHN N. BACH's presence and participation before issuing/recording the FIRST AMENDED JUDGMENT? "YES!"

Judicial Notice and Receipt into the Idaho's Suprme Court's consideration of the foregoing issues are all of Cross-Appellant's and Respondent's motions and memos filed herein, before any appellated briefs were filed, in both Dockets 34712/35334 and 34713, as well. Such documents judicially noticed (IRE, Rule 201(a)-(f), reveal the utter speciousness of any purported

standings or capcities of either anyone for the nonexistent estate of Jack McLean nor for Wayne Dawson, to make any appearances herein to file any claimed/purported motions for summary judgment or Rule 60(b)(6?)

Applicable to all said five (5) issues are the following irrefutable facts:

1. Dawson and even the claimed frivolous/nonexistent estate of Jack McLean did not appeal the motion for dismissal with prejudice of their complaint due to their utter lack of diligent prosecution. Such order granting said dismissal was not part of the motion for summary judgment as JOHN N. BACH, requested, argued and it was so stated in said JOINT CASES . . OPINION MEMORANDUM AND ORDERS, that such dismissal was only granted after Judge Shindirling had first granted the motion for summary judgment in both CV 01-33 and CV01-265.

2. Neither of said purported plaintiffs nor their two counsels, not Alva Harris nor Marvin Smith, ever presented, argued nor disputed that Harris' purported answer to the Complaint in Intervention by John Bach was a nullity and by operation of law is deemed stricken, thus all proceedings were done on the irrefutable pleading status that said Third Party Intervening Defendants were in default and never never moved, nor provided any evidentiary timely presented affidavits to set aside such default. In fact, irrefutably found and established by Judge Shindirling' JOINT CASES - -OPINION MEMORANDUM & ORDERS:

   "The Court finds and determines that Plaintiffs and their COUNSEL have waived, abandoned (and by their violations of the provisions of Rule 11(a)(1), their answers, affirmative defenses and all/any opposition, to the relief sought by JOHN N. BACH per his complaint in intervention in CV 01-265, which also applies to their complaint in CV 01-33 per the express provsions of the Idaho Racketeering Statute, I.C. 18-7804(a), (b), (c), (d), (g)(1)(2) and (h), with Judgments and permanent injunctions to be issued in both said actions, CV 01-33 and 01-265, per I.C. 18-7805(a),(c),(d)(1)(2)(3)(4)(5)(6) & (7)." (Tr. 395; also Judge Shindirling's findings/conclusions396-392)

3. In the first three (3 Pages, Appellant's Reply Brief, Docket 34712, (there are only 4 pages thereof) DAWSON fails, evades and avoids reply, refuting or in any statement disputing the applicability and controlab-

ility of any of the thirty (30) cited case authorities in his TABLE OF CASES AND AUTHORITIES, pages ii-iii, RESPONDENT'S BRIEF, Docket 34712; nor was there any refutation or any ressponses whatsoever to the further citations, analysis and relevant application of such cases, as set forth pages 5 through 20, thereof, by Dawson's scimpy and nondescript reply brief.

In the issues raised herein, supra page 8, most controlling as depriving subject matter jurisdiction of a post appealable judgment motion for reconsideration are the following:

1. Jensen v. State (2003) 139 Idaho 57, 72, 72 P.ed 859, wherein Judge Shindirling, district court judge, was upheld in striking the motion for reconsideration, which was not accompanied within the mandate 14 days by any relevant, admissible duly verified affidavit, thus depriving him of any jurisdiction to evern consider such motion. He also struck such motion for reconsideration per IRCP, Rule 6(d).

2. Couer d'Alene Mining Co. v. First Nat'l Bank of North-Idaho , 118 Idaho 812,(1990) (Wherein this Idaho Supreme Court held that trial court had no basis upon which to consider its order. NOTE: This Case was decided 13 years before Jensen, supra, 139 Idaho 57.

3. Hooper v. Bageley 117 Idaho 1091, 793 P.2d 1263 (Ct. App. 1990)(Holding plaintiff's use of a Rule 60(b)(6) motion as a substitute for reconsideration motion per Rule 11(a)(2)(B) is inappropriate and must be denied. (Another way of restating it's holding, there was post judgment jurisdiction for Rule 60(b)(6) motion therein)

4. PHH Mortg Services Corp v. Perreiria)Jan 30, 2009) 200 P.3d 1180, 1183

5. VFP VC v. Dakota Co, 142 Idaho 675, 681 (Holding Rule 60(b)(6) motion does not provide any jurisdiction or basis for relief from oversight orders.)

6. Esser Elec. v. Lost River Ballistics Technologies, Inc. May 20, 2008, 188 P.3d 854, 145 Idaho 912, 916-20 (Upholding 100 year rule that a party is not entitled to relief from a judgment due to the negligence or unskillfulness of his attorney, nor does trial court have to refuse to admit a moving affidavit if no evidentiary objections nor motion to strike is made-the trial court can admit and use such nonobjected to affidavit to grant summary judgment.

7. First Bank & Trust v. Parker Bros (1986) 112 Idaho 30, 31032, 730 P.2d 950 (Held a Rule 60(b)(6) motion is not intended to allow reconsideration of district court's original decision.)

Now turning to the analysis and argument with citations presented under the ISSUES itemized, supra, page 8.

V. ANALYSIS OF ISSUES - ARGUMENTS

ISSUE ANALYSIS & CONCLUSION RE NO. 1: DAWSON, AND MOST CERTAINLY, THE NONEXISTENT ESTATE OF JACK McLEAN, NOR HIS CLAIMED BENEFICIARIES, WHOEVER THEY MIGHT CLAIM TO BE, HAD ANY STANDING TO FILE ANY MOTION FOR RECONSIDERATION, BECAUSE THEY WERE DEFAULTED BY THE AUTOMATIC STRIKING OF THEIR UNSIGNED ANSWER.

The motion for summary judgment in both CV 01-33 and CV 01-265, was made without any answer legally on file, and even without any order entering default, per the provisions of Rule 8(d) and 11(a)(1) they had moreover, admitted and wholly confessed their liabilities to the JUDGMENT that John Shindirling entered Sept. 11, 2007. Until and even after they retained, if they truly did, Marvin M. Smith as their new counsel, his filing an Appeal, Oct. 23, 2007, was not merely premature but utterly without jurisdiction. The essential precondition to any appeal to be filed, depended upon the valid, timely and properly supported, with relevant admissible affidavits to set aside such default and striking of their-answer to the COMPLAINT IN INTERVENTION.

Such a motion possibly necessary for reconsideration was to show the mistake, inadvertence or excusable neglect by timely filing within 14 days of the entry of judgment being given to be allowed to file an answer showing, also by verified relevant and admissible affidavits, showing good and sufficient defenses which they could prove. In Curtis v. Siebrand

Bros Circus & Carnival 68 Idaho 285, at 281 (1948) it was held: " . . . as this Court has hled in Savage v. Stoker supra, (54 Idaho 109, 116) the misstake, inadvertence or excusable neglect must be such as might be expected . . . of a reasonably prudent person under the circumstances, and moreover, lawsuits must be brought to an end sometime and judgments must become final."

What Dawson, as purported appellant herein did, via Marvin Smith was to jump a huge hurtle beyond the default/striking of his and other cross complaint defendants' answer, and seek per an without foundation and jurisdiction motion to reconsider the judgment granted Sept. 11, 2007 by claiming that he was going to show/prove "excusable neglect on the part of prior counsel in failing to respond to the motion for summary judgment. ." (Tr. 380) This same lame and wholly without foundation or jurisdiction motion was made in CV 01-33.

AT NO TIME DID DAWSON EVER MAKE A TIMELY AND PROPER MOTION TO SET ASIDE, IF HE COULD THE DEFAULT, BEFORE ADDRESSING THE JUDGMENT ENTERED FOR SUMMARY JUDGMENT, SEPT 11, 2007. NOR, AS STATED SUPRA, WAS ANY TIMELY, NOR ANY AFFIDAVITS FILED WHATSOEVER, SHOWING NOT JUST SUCH CLAIMED EXCLUSABLE NEGLECT BUT ANY VIABLE DEFENSES.

As stated in Ponderoso Paint Mfg, Inc.,v. Yack 125 Idaho 310, 317-18, 870 P.2d 663 (Ct.App. 1994), dealing with a Rule 60(b)(1) motion re excuable neglect of counsel, at 125 Idaho 317: "We agree with the district court, It is unnecessary for us to address the merits of Yack's contention that their failure to file a legal brief, affidavit or other evidence in

opposition to the summary judgment motion was a result of excusable neglect, for they have made no showing of a viable defense which, if timely presented, could have prevented summary judgment."

The foregoing facts of Dawson's purported answer not being such, not signed and automatically to be striken, gave Alva Harris, attorney at the time Judge Shindirling heard oral arguments, signed the JOINT CASES . . .MEMORANUM OPINION & ORDER, and entered the QUIETING TITLE JUDGMENT SOLELY TO JOHN N. BACH, with permanent injunctions issued therein, no standing to make the motion for reconsideratin, untimely, unsupported and without any affidavits filed as required.

Cross-appellant's motions filed Oct 25, 2007 re: (1) FOR ORDER STRIKING, VACATING & PURGING ALL PLAINTIFFS' MOTIONS FOR CONSIDERATION, DATED OCT. 25, 2007 IN TETON CASE NOS: CV 01-33 & CV 01-265 (Tr. 437-441) were more than valid, controlling and required to be granted by Judge Simpson, but more relevantly, should have been a major concern by Judge Simpson, sua sponte, as a matter of law, whether he had jurisdiction.

Therefore not only did Judge Simpson error as a matter of law, but more importantly, acting without or in excess of jurisdiction in issuing the following: 1) the entire April 8, 2008 MEMORANDUM DECISION AND ORDER DENYING PLAINTIFFS'/THIRD-PARTY DEFENDANTS' MOTION FOR RECONSIDERATION of 19 pages (Tr. 667-685); April 10, 2008 ORDER DENYING INTERVENOR-COMPLAINANT'S

MOTION FOR ORDER OF REMOVAL AND SANCTIONS AGAINST ATTORNEY MARVIN M. SMITH (Tr. 686-688); 3) April 15, 2008, ORDER DENYING INTERVENOR-COMPLAINATN'S MOTION FOR CONTEMPT (Tr 698-701); April 15, 2008 ORDER DENYING AS MOOT INTERVENOR-COMPLAINT'S MOTION TO STRIKE MARVIN SMITH'S FURTHER FILINGS (Tr 703-705); 4) April 15, 2008, ORDER DENYING AS MOOT INTERVENOR-COMPLAINANT'S MOTION FOR ORDER STRIKING PLAINTIFFS' MOTION FOR RECONSIDERATION (Tr. 707-708); and 5) FIRST AMENDED JUDGMENT filed May 27, 2008, which is without jurisdiction, a gross and prejudicial abuse of process, utterly void. (Tr. 730-34) McCloon v. Gwynn, IdahoDkt 29450, Opn 113, Oct. 23, 2004 (Judgment is void where court violates due process, plain usurpation of power.)

The AMENDED NOTICE OF APPEAL, and all other notices of appeal filed May 23, 2008 (Tr. 726-728) and on June 23, 2008 (Tr. 742-747) are untimely, without jurisdiction to be acted upon by either Dawson or this Honorable Idaho Supreme Court, which must dismiss with prejudice all Dawson's notices of appeal and reinstate as final the September 11, 2007, JOINT CASES -CV 01033 & CV 01-265 - OPINION MEMORANDUM AND ORDERS (Tr 349-363) and the QUIETING TITLE JUDGMENT IN FAVOR OF JOHN N. BACH, Individually & dba TARGHEE POWDER EMPORIUM, LTD, and AGAINST JACK LEE McLEAN, TRUSTEE, WAYNE DAWSON, TRUSTEE, DONNA DAWSON, Individually & dba as Alter Ego of Scona, Inc. (Tr. 364-369) McCloon v. Gywnn, Idaho Dkt 29450, 2004, Opn 113, Oct 23, 2004 (Void Judgment when Court's action amounts to plain usurpation of power violating due process); Cole v. USDC (9th Cir [Idaho] 366 F. 3d 626, 643-46.

ISSUE ANALYSIS & CONCLUSION RE NO. 2: DAWSON WAS WITHOUT JURISDICTION BESIDES STANDING/CAPACITY TO FILE ANY MOTION FOR RECONSIDERATION AS HE DID AND JUDGE SIMPSON WAS WITHOUT JURISDICTION TO HEAR, LET ALONG CONSIDER GRANTING IN PART OR WHOLE, ANY PORTION OF SAID MOTION FOR RECONSIDERATION, OTHER THAN TO DENY IT ENTIRELY, WITHOUT ANY ORDER OR FIRST AMENDED JUDGMENT BEING ENTERED TO THE CONTRARY.

All Cross-appellant's foregoing arguments, authorities and incorporated pages of his Respondent Brief, in Docket 34712 are reincorporated herein in support of this issue No. 2. analysis and conclusion.

The analysis and conclusions herein are also submitted in support of ISSUES ANALYSIS AND CONCLUISON NO. 3., INFRA.

Can a default judgment herein be taken by and determined by the granting of Cross-appellant's motion for summary judgment? Yes, and Judge Shindirling's JOINT CASES . . .MEMORANDUM OPINION AND ORDERS, Sept 11, 2007, at pages 6, 8-9, and 11-15, citing at page 13 Bradbury v. Voge 93 Idaho 360, 461 P.2d 255 (1989). (Tr. (Tr. 354 , 356-357, 359-15 and 361)

Moreso, as a matter of law, the provisions of Rule 8(d) in conjunction with Rule 11(a)(1), as cited, supra, required not only the granting of cross-appellant's motion for summary judgment and the aforesaid judgment ented Sept 11, 2007, but, the immediate striking, quashing and vacating of all orders by Judge Simpson, especially as aforesaid and his FIRST AMENDED COMPLAINT. This Idaho Supreme Court should further order per Rule 1, IRCP, the immediate reinstatement, affirmation and validity of saidn JOINT CASES . . .MEMORANDUM OPINION & ORDERS and QUIETING TITLE JUDGMENT IN FAVOR OF JOHN N. BACH, of Sept 11, 2007, Nunc pro Tunc.

ISSUE ANALYSIS & CONCLUSION RE NO 4: JUDGE SIMPSON GROSS PREJUDICIAL ERROR AND ABUSE OF HIS DISCRETION IN NOT TAKING JUDICIAL NOTICE OF THE TETON CIVIL ACTIONS SET FORTH AND INCORPORATED BY REFERENCE PER IRCP, RULE 10(c) IN NOT ONLY CROSS-APPELLANT'S INTERVENOR COMPLAINT, BUT, ALSO IN HIS MOTIONS FOR SUMMARY JUDGMENT, WITH ALL HIS AFFIDAVITS, ATTACHED & ADMITTED EXHIBITS AND HIS MEMORANUM BRIEFS PRESENTED THERWITH.

All cross-appellant's foregoing arguemtns, authorities, etc., supa, pages 1 through 15, are reincorporated herein in full in support of said analysis and conclusions re issue no. 4. Also incorporated herein is JOHN N. BACH's RESPONDENT'S BRIEF filed herein in companion docket 34712. Also applicable and controlling herein as to this issue is I.C. 5-336, which reads:

> " . . Except as to a party against whom a judgment is entered by default, every final judgment shall grant the relief to which the party in whose favor it is rendered is entitled, even if the party has no demanded such relief in his pleadings. . ."

It was clear by the woridng of the COMPLAINT IN INTERVENTION herein, per its paragraphs 3 through 6, supra, page 3 (Tr. 035-37) that he did not only seek to recover against DAWSON and said other third party intervenor defendants, per Idaho's Racketeering and Corrupt Influence Act, but also he sought to recover his lost real properties and investments holdings whci said DAWSON and other third party defendants had stole, converted, destroyed or deprived him of using his dba names and business identities of TARGHEE POWDER EMPORIUM LT, UNLTD, and INC.; he further sought recovery of not just the Peacock Parcel, 40 acres, but also that of other "predicate acts against intervenor as to other land investments and purchases." (Tr. 36) His motions for summary judgment revealled,

proved and irrefutably establish his claims for return of ownership, possession, use, management and enjoyment of two other parcesl, to wit: the Drawknife parcel of 33+ acres and the Zamona Casper parcel of 8.5 acres.

And throughout his complaint in intervention and his fur-ther ANSWER, AFFIRMATIVE DEFENSES & COUNTERCLAIMS in Teton CV 01-59, 01-205, 01-265, 01-266 and 01-208, which were incorporated therewith and therein, he had the better rightful, legal and all equitable titles to all of said three (3) parcels: Peacock, Drawknife and Zamona Casper.

What was so hard for Judge Simpson to review all said Teton Civil actions aforesaid, which were made a specific inclusion and incorporation by reference in said cross-appellant's pleadings? All of said files were in the Teton's Clerk's office when he came to its courthouse in Driggs; all he had to do was request all said files to be made available to him, because all had been made available and considered by Judge Shindirling, as he specifically stated in his JOINT CASES-CV 01-33 & CV 01-265- MEMORANDUM OPINION & ORDERS.

Moreso, even if such effort and request was not made by DAWSON or his current counsel, Marvin Smith, when Judge Simpson heard, when he heard arguments on Dawson's motion for reconsideration and Rule 60(b)(6), on Feb. 14, 2008. No decision, ruling or orders issued on the merits of Dawson's said argued motions, except Judge Simpson, issued sua sponte, over cross-appellant's objections, Dawson "until March 11, 2008 to

submit portions" of depositions transcripts into the record. The matter was then to be submitted as of March 11, 2008 without any further hearing, argument nor presentations of any further affidavits or evidence.

But from Feb. 25, 2007 through April 8, 2008, Dawson merely filed repetitive affidavits of Dawson, Paula Ehrler and Lynn McClean (latter two adult daughters of Jack McLean, deceased) re when they heard by an anonomous telephone call to each that a Quieting Title Judgement in favor of JOHN N. BACH had been entered in CV 01-33 and 01-265. (Tr. 584-666 which includes/covers JOHN N. BACH's numerous motions to strike, quash etc., said affidavits, etc.)

Judge Simpson's MEMORANDUM DECISION AND ORDER DENYING PLAINTIFFS'/THIRD PARTY DEFENDANTS' MOTION FOR RECONSIDARATION was filed April 8, 2008, over 53 days after the Feb. 14, 2008 hearing and still Judge Simpson had not taken any review and judicial notice, as had Judge Shindirling of said Teton CV actions, 01-59, 01-33, 01-205, 01-265, 01-266 and 02-208, which Judge Shindirling had stated he'd done in his JOINT CASES . . MEMORANDUM OPINION and ORDERS.

Judge Simpson's failure to exercise complete review of the entire records received into evidence by Judge Shindirling, as aforesaid, even if Judge Simpson had then jurisdiction to change Judge Shindirling's MEMORANUM DECISION & ORDERS and said QUIETING TITLE JUDGMENT, all filed Sept 8, 2007, was a gross and prejudicial refusal of his judicial responsibilities and even worse, his actions without jurisdiction,

without legal bais or authorities and resulted in pure speculations, assumptions and utter conjectural deletions finding that "the 8+ acre parcel is not relevant to this litigation. . . does necessitate amendment thereof to clarify the issues that pertain to this case alone. . . . The Court finds that the Judgment must be reformed to adjudicate the sole issue in this matter, the 40-acre parcel and to delete superfluous verbiages. Therefore, this Court shall amend the Judgment, entered on 9-11-07, to deltee or footnore references to other cases and othe judgments, in order to clariy the judgment pertaiing to this case aone." (Tr 677-681)

No such part nor parcel of Dawson's motion for reconsideration nor per Rule 60(b)(6) motion, was ever made, argued nor submitted to Judge Simpson either on Feb. 14, 2008 nor per any subsequent filings by Dawon's counsel thereafter. Such bizarre actions, speculations and orders was done further in violation of the earlier cited cases, Drennen v. Craven, supra 145 Idaho 34, 36-39 and State v. Does 195 P.3d 745, 748. (See page 4-5, supra.)

But more egregiously in gross prejudicial error, in complete violations of cross-appellant's procedural and substantive rights of due process and equal protection, such deletions, changes and utter superfluous verbiages of Judge Simpsons' decisions were utterly void, ab initio and entirely.

Such void and utterly without jurisdiction actions/rulings by Judge Simpson were further compounded, aggravated

emasculated by Judge Simpson acceding to Plaintiff's Motion to Aler or Amend A Judgement (Tr. 710-717) which cross-appellant filed a motion to strike, vacate and/or quash (Tr. 718-722), but resulting in no hearing date set on said Plaintiff's motion no hearing held nor any arguments presented in open court as required not only by the IRCP, Rule 6(d), etc., but also procedural and substantive principles of due process and equal protection. McCloon & Cole cases, supra, page 14

Without said compliance and perfection of cross-appellant's said rights of due process and equal protection, sua sponte Judge Simpson issued/filed May 27, 2008 his FIRST AMENDED JUDGMENT, which JUDGEMENT in its entirety is also void.

ISSUE ANALYSIS & CONCLUSIONS RE NO. 5: JUDGE SIMPSON'S SAID ACTIONS, AS SET FORTH HEREIN, SUPRA, PER PAGES 1 through 19, WHICH ARE INCORPORATED IN FULL HEREIN WERE WITHOUT JURISDICTION, A NULLITY AND UTTERLY VOID. SUCH REQUIRE THE STRIKING AND DECLARING AS VOID, AB INITION BOTH THE MEMORANDUM DECISION AND ORDER DENYING PLAINTIFFS'/THIRD-PARTY DEFENDANTS' MOTION FOR RECONSIDERATION, WHICH SHOULD INSTEAD HAVE BEEN QUASHED AND DENIED ENTIRELY OUTRIGHT, ALONG WITH THE FIRST AMENDED COMPLAINT WHICH IS ALSO UTTERLY VOID, AB INITION AND OF NO LEGAL EFFECT.

JUDGE SHINDIRLING's JOINT CASES . . .MEMORANDUM OPINION & ORDER ALONG WITH HIS QUIETING TITLE JUDGMENT FILED SEPT. 11, 2007 SHOULD BE ORDER RECOGNIZED AS FINAL, DETERMINATIVE AND BINDING FOR ALL PURPOSES REINSTATED WITHOUT ANY DELETIONS, MODIFICATIONS OR ALTERATIONS.

VI. REQUEST FOR FULL JUDICIAL KNOWLEDGE AND RECEIPT HEREIN, ALL BRIEFS/RECORDS OF APPEAL DOCKET 34713, LIPONIS v. JOHN N. BACH, TETON CV 01-33

The foregoing request is made per I.A.R. Rule 201 (a) through (f) and the decisions cited supra, pages 1 through 20 and arguments made which are incorporated herein.

VII. CONCLUSION ALONG WITH MOTION FOR SANCTIONS AND ORDER OF PAYMENT OF ALL COST, EXPENSES, ETC., INCLUDING PARALEGAL FEES, ETC., INCURRED BY CROSS-APPEALLANT RE A SHAM, FRIVOLOUS, SPECIOUS AND WITHOUT MERIT APPEAL BY DAWSON, TO BE ORDERED AGAINST HIM AND MARVIN M. SMITH.

Cross-appellant incorporates all his arguments, cited decisions and authorities for an order reinstating all said september 11, 2007, JOINT CASES . . .MEMORANDUM DECISION & ORDERS ALONG WITH THE QUIEITING TITLE JUDGMENT IN FAVOR OF JOHN N. BACH, etc., of September 11, 2007 WITHOUT ANY DELECTIONS, MODIFICATIONS OR ALTERATIONS: AND FURTHER, DUE TO THE PURSUIT OF THIS APPEAL for an improper purpose of unnecessary delay to increase the costs of litigation and preclude the favorable denial of DAWSON's appeal before the appeal in Docket 31717 is heard on first two weeks of Jan. 2010 and decides many issues before the issues herein can be presented. Rae v. Bunce (2008) 145 Idaho 798, 805-08, & Justice Jones concurring in part & dissenting in part opinion. IC 12-121.

DATED: September 24, 2009

Respectfully Submitted,

John N. Bach

JOHN N. BACH, Pro Se

CERTIFICATE OF SERVICE BY MAIL. I, the undersigned certify this Sept 24, 2009, that I mailed two copies of this Cross Appellant Reply Brief to Marvin M Smith, 591 Park Ave., Ste 202, Idaho Falls, ID 83402 and to Alva A. Harris, P.O. Box 479, Shelley, ID 83274.

John N. Bach