

5-5-2009

Dawson v. Cheyovich Family Trust Clerk's Record v. 3 Dckt. 34712

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LAW CLERK

Vol. 33 of 5

COPY

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Jack Lee McLean, Trustee
and Wayne Dawson, trustee

Plaintiffs/ Appellants

vs.

Cheyovich Family Trust and Vasa N. Bach Family Trust

Defendants/ Respondents

Appealed from the District Court of the Seventh Judicial
District of the State of Idaho, in and for Teton County
Hon Jon J. Shindurling, District Judge

Marvin M. Smith, 591 Park Ave Suite 202 Idaho Falls, Idaho 83402

Attorney-for-Appellants

John N Bach, PO Box 101 Driggs, Idaho 83422

Pro Se

Filed this _____ day of _____, 20____

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By _____	_____
Supreme Court _____	Court of Appeals _____
Entered on ATS by: _____	

_____ Clerk

_____ Deputy

34712

35334

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Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

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Assigned judge:	Darren Simpson	Start time:	11:00 AM
Court reporter:	Sandra Beebe	End time:	12:00 AM
Minutes clerk:	PHYLLIS HANSEN	Audio tape number:	

Parties: Alva Harris
Jared Harris
Marvin Smlth
John Bach
Jason Scott Telephonically

Tape Counter: 1050 J will start with 02-208
thtt's the only one Jason Scott is involved in
Motions pending -
clerk's record on appeal
Bach - also reporter's transcript
B - motion for contempt - 208 and 265 overlap
B hear my motions first
J - will deal with Miller case first
Smith - haven't seen one on 265
Jared - motion for sanctions in 208 J have reviewed pleadings
don't rehash; hit the main points
J - on last pleading - filed - where did you want filed no case number
Bach - on both
Bach - respond to statement by Jared Harris - found testimony by Harris and Dawson on
208 - want to offer at appropriate time
want offer after SMith's testimony
52-413 - nuisances and moral nuisances
like to have the court consider those two sections as they apply to my request for
contemptcopies of four contempt charges against the persons I seek
Unless court hears motion for reconsideration court would have incomplete info to
consider contempt
motions to strike
also filed motions for sanctions and contempt
Smith - is there a second page to this
J- this is the order you want me to sign? yes
B - another order should be in the file
J - will take in the order I indicated
Tape Counter: 1058 Bach - in view of what I think will develop
would like record to reflect Deena Hill and Katherine Miller are present

000508

Date: 2/14/2008

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 03:55 PM

Minutes Report

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1058

J calls case 02-208

ids those present

Miller does not have counsel here- not representing self - just here to listen

Alva - not representing anyone here

Jared Harris represents Hills and self

Smith - don't represent anybody in this matter

Jason Scott represents Galen Woelk

J Bach filed motion Re record

Bach - two things - brought volume 10 of 10 which is the clerks transcript

000569

Date: 2/14/2008

Time: 03:55 PM

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Seventh Judicial District - Teton County

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Case: CV-2001-0000265

User: PHYLLIS

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1101

B - amended Notice of Appeal page 1662 - 1681
requested proposed jury instructions
jury instructions
minutes of any hearing on those instructions
motion for directed verdict
complete list of exhibits especially those that had been lost
June 31 stamped 20043 were proposed findings of Fact and Con - signed by St Clair
made several motions to set aside
pointed out missing page 12
that was confirmed later by Jason Scott
STC unilaterally severed
in prep of clerks transcript came from Hansen
had hand written A
Scott offered same Fof F that StC signed
Hansen got extension that I objected to
got rechanged date
moved for taking of depo of three people
there has been an obfusscation of clerk's record on appeal but are refelcted by what I just
said
contempt citation consideration - has some critical applications
shoud be in the file 265 and 033 a letter that I sent to Shin
I had seen Harris go through files and pulled apart
later wwent through the files and it was a mess
StC ssent letter back - didn't think any thing wrong
intentional interference
don't know what has been taken out of
also happened before StC at time of trial
J -just present list and file copies
some of these exhibits were missiong
June 31 2003 were never filed in this clerks office before I took the notice of appeal
I had tried to get computerized printout from Hermosillo
FOF was not in the itemization
came out in the final
later when StC - no details - know it was there
tried to make some inquiries
wholy manufactured - never filed and never received
main file is here
should be transcript of the proceeding when I attempted StC
now is retired -
033 have motion to DQ him for cause
he is now D for certain actions he did in this very file
issued order with out any notice - stuck my J Woods
want to take his depo
want to take Hansen depo
have been deprived of record if integrity in 208

000570

Date: 2/14/2008

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 03:55 PM

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1111

J - missing exhibits - discovered they were missing during the trial
was addressed by St C

no
did you keep copies

when discovered orig ex were missing - was that brought up at trial
were you able to use the copies - no because of time restraints put on me by StC
B - I was muzzled

J - hearing re record on appeal - made these arguments

B - not all of them

J - had hearing once?

B - he wouldn't grant me

one page shows up in final transcript

StC I coldn't question him -

He was equivocating all over the plaace

he gave no dates, he gave no times

he wouldn't give me the specifics

I was shut off completely

B - was never filed until I filed my Notice of Appeal

B - in porposed exhibits by scott they had same missing page

Tape Counter: 1114

Scott - clients interest is not what's in and out but want to acheive finality
are three years out from entry of final jugsmnt

raising point of order

this is Bach's second challenge at court leveel

was hearing before StC to address first motion that resulted in Order that directed
additions to the record\

Order said once changes made - shall be deemed settled and sahill be lodged

Rule 30 authorizes SC to take on follow on challenges

that's where this motion should be pending

Rule funnels him into SC to make his challenge

has not argued clerk failed to make changes ordered

improper record; has already been settled

not aware of anything that Bach can depose the presiding Judge or his staff

Tape Counter: 1118

Jared - agree with Scott and want finished

Alava - B said I had been observed rifling through court documents

never observed record never gone to clerks office

never here in the court room

part of what he does

I agree with Scott

matter should be concluded so SC can hear appeal

000521

Date: 2/14/2008

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 03:55 PM

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1119

Bach - StC did not finalize
made objections timely
find unbelievable that in their record StC refused to order what I requested
also application in which there was criminal matter in which I was charged
challenged StC at that
CA was not advised of motion
had made 4 motions before StC - could never get a hearing from my PD
he didn't want to rankle StC
Page 12 still missing
interactions between that criminal procedure that were not made matters of record
have filed my motion
have yet to see anybody dispute what I have put in my motion
This court has to certify it
systematic philosophy in this district that they don't pay attention to the rules
paid over \$10,000 for the clerk's record and the reporter's transcript
Oviatt missed 5 dates I wanted to have transcribed
for almost 2 1/2 years this clerk would not produce a clerk's transcript
still been trying to get certain parts of the record
only person that had lost in this case is me
haven't heard Scott deny F of F were missing page 12
asked second time

Tape Counter: 1126

his clerk gave me the same wrong F of F until after had filed appeal
Next go on to second motion holding in contempt
J - concern have fully complied with 75 C
B - proposed contempt would require further hearing
ask to defer
J - what about Hills and Harris
B - they are interrelated
Affd by Dawson - never rep by Alva
know that to be fabrication
2 - he wants Harris to be co-owner of Z Casper parcel
now final because Dawson has not appealed
that part of what Oviatt did not prepare
can live with that
no have effort by Smith to interject an issue that is no longer an issue
Nov 6, 2007
status conference illegally and without jurisdiction called for by Smith
Page 5 line 13
Page 7

000572

Date: 2/14/2008

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 03:55 PM

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1134

Bach - my concern is where Smith got that info
SMith - is this meant to be evidentiary
J - you are making hearsay - not
J - not going to consider unles call witnesses to verify
way past 14 dyas - out comes affd from Dawson - not from Liponis
nno such aff is made in 01-033
my concern is Dawson (hands document to court)
offer portions of Dawson testimony and Harris's testimony
harris aadmits he was representing Dawson
total misrepresentation of due process by Alva Jared Marvin
bottom line - itemiazation 3 occasions Dawson tried to set aside
ALva got jared to come in
copy file May 15, 03

000573

Date: 2/14/2008

Seventh Judicial District - Teton County

User: PHYLLIS

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1140

Bach - 3 times motion made to set aside Default
named Donna Dawson
how do I get the truth out before a jurist who is disinterested
document CV 01-059 Moss did not accept my DQ
he came back and he dismissed Miller's case
such gerrymandereing of the files - should be letter sent to clerk and set to Shindulring -
why are letting Harris pull apart
wasn't clerk was talking about -
Clerk said go look up - or would charge \$5.00
clerk aiding and abetting -
Rule 65 - consider in contempt ANYONE who violates injunction or restraining order
Want CV - 01-59 considered
Jared - is this going to the contempt
yes
Jared - no objection
Marvin no objection
Scott would be willing to be excused
no objection
Scott - is excued (11:48)
Exhibit PX 01
PX 02
Smith objection
Jared - objection jumps around
Jared - additionally object on relevance
Smith - supllement objection would have to look at entire transcript
Bach - have transcript on appeal would allow counsel to review my copy to keep pages in
order
trust court and clerk
J - mark it - reserve ruling on it's admissibility
allow counsel to review transcripts in it's entirety
Smith 32(A)(4)
Bach - this is not deposition; is clerk's transcript
extra copy should be setting with Hansen
J - should have in file here

000574

Date: 2/14/2008

Time: 03:55 PM

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Seventh Judicial District - Teton County

Minutes Report

Case: CV-2001-0000265

User: PHYLLIS

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1152

J - mark as P's 2 reserve ruling on it
will allow them to look at it
they can respond
Bach - Hansen should have
two inconsistencies
page 1400 line 9
Smith - object - reserved ruling - this hasn't been ruled admissible
Bach - offer of proof
J - Smith is right
not admitted at this time
will allow them to review
you will have chance to respond
will allow argument on that specific issue
will give every opportunity to make your record
Bach - have believe contempt argument can await argument by Smith
another concern about Smith finessing me
don't want to be barred by having the court rule
don't want to be blindsided
ask court to defer ruling on motion to augment until rule on motion for contempt
if rules in way don't think the court should -
if allow McLaine and Ehreler to come in on 001-265- I have basis for removal
don't want to jeopardize 300s to appeal
want to do all in one orderly peice

Tape Counter: 1157

J - going to hear all the motions today
going to take under advisement so if they need to appeal or make other motions, have
record to do so

Tape Counter: 1158

Go into 265
will come back to contempt as you have requested
Bach there has been no motion for reconsideration of dismissal
J - on granting on Motion for Summary Judgment
Smith 2 motions under Rule 11, Rule 60

000575

Date: 2/14/2008
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Minutes Report

Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1200

CV 01-265
motion for reconsideration under Rule 11 dovetails into Rule 60
enter 9-11-07
document not mailed or enter until Oct 3, 22 days after signed
Rule 77 D -
Bach - blindsided this should have been presented before I object
can see sate mailed out by the clerk
was filed within the 14 dyas
Rule 60 B (6) 6 months
can pnly take what clients tell me
Affd of Dawson
he did not know about any authorization in regard to this lawsuit
I have to believe him
Affds governed by Rule 8
proe Dawson, McLean, Ehrler - paid some money thought they were obtaining some
property
did not authorize Dawson to go forward twiht his lawsuit\
shows paid \$30,000
actual purchase price was \$60,000
Dawson ended up paying half of the purchase price and receiving 1/4 of the interest
McLean also
any interest Bach may have had, Bach may have lost to IRS

Tape Counter: 1209

Smith - mereetorious defense so have chance to test theory
lot of criticism of Judges
vast array of case law that states court shouldn't accept fof F from particular party
somehow morphed into quiet title order
may enter default but at least have hearing on damages supposed to be disposed of by
the court
erroneously gives the wrong description
court cannot abidcate it's duty to the parties
adquate showing to show shin Order and Jdgmt should be set aside
everyone should have their day in court to look at affd come to conclusion they should
recover
theory of equitable trust
they paid money for these respective properties
should be determined in open court
how they became divested of their interest

000576

Date: 2/14/2008

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1215

Bach replies -
question for the court ever see movie
that is a crock
this motion is limited by it's own wording
excusable neglect
6 subsections to Rule 60 B
needs affd within 14 days
Harris does represent someone in CV 01-265 - himself SCONA, Wayne Dawson, DOnna
Dawson
don't know who the real parties in interest are
I move to strike within 3 - 5 days
where is excusable neglect
no response to my motion to strike
no affidavit, no memorandum
filed Notice of Appeal
this is not a default hearing
bankruptcy - dissscharged
presented to StC
Dawson will sign anything you put in front of him
his wife is controlling
concerned about misrepresentation of record
can't take judicial notice of 01-033
Harris failed to appear 4 or 5 times in 1-265
Harris had no objection to dismissal

Tape Counter: 1224

J - draw the line
when referring to counsel refer to them in a professional matter don't appreciate
name-calling
stick to the facts
he hasn't called you names
keep it professional
Bach - you have censored me under the first amendment
have never used an untruthful word referring to Smith
move to strike that
Bach - there is no Rule 60B motion before this court
filed untimely - I objected
Supposed to be before StC on 20
have filed motion for DQ
Dawson did not appeal any order against him in 002-208
he was representing Dawson and Harris
cannot grant under 60(B)(1) whicch was not cited

000577

Date: 2/14/2008

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 1237

Bach politics are offensive to me
wasn't situation when Harris McLean and Dawson were owed money
Deed was recorded while McLean was alive
received out of that bankruptcy \$43000. Paid off all my creditors
fifth bite
they attempted over 80 some acres of my property
Harris bought 8.5 acres and sold to Hills
stay order in bankruptcy

Tape Counter: 1242

Bach - Harris filed Aug 17,2007
Shindurling didn't file
this isn't a default hearing
Rule 56 C hearing
Jared - feel like we are getting way afield - arguments are not fond in any file
J - has referred to minute entries that I have seen
Move more to the point
no default was taken without his notice; no motion was heard without his notice

Tape Counter: 1247

J - know where primary argument is gong
gist is Harris had the time and he missed his time line
now Smtih has the case and he missed the time line
J - dealing with the motion for summary judgment
Bach - why should this court be put through the effort of correcting the mistakes that
Harris made
Harris faxed some of these documents to SMlth
that was all planned,tht was all canned
this was very deliberate, very misleading
why am I the villain; why am I called these names
where is the proof
Move to strike any argumentt Rule 60 B

Tape Counter: 1252

Bac last comments - not clerk of this court
equally disadvantaged by delay
don't know who his clients are
what aare we doing here but serving the ego of Mr. Smith and maybe his billing procedure:
All I want is for my case to be heard

Tape Counter: 108

If going to allow Ehrlers and McLean to come in - subject to motion
only thing before the SC is Motion for Reconsideration
If Ehrler or McLean allowed to come, I will remove this to federal Court
Even if I were to do that, It doesn't take the appeal away from the SC
Jack McLean was dismissed in 2005

000578

Date: 2/14/2008

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 112

Motion for Sanctions
Smith - I substituted in Oct 17, 2007
Bach sent letter to Dawson
Rule 4.2 - communications
attorneys acting pro se
no ? communication occurred
letter indicates Bach never Dawson was previously represented
request sanctin be entered in regard to this matter

Tape Counter: 114

Bach - court doesn't have jurisdiction
I'm not a licenses attorney
case cited pertains to attorney
has nothing to do with this
Hall and SMith are parties US DC 06-126
charged with violations
J - as far as I know SMiTh has not been charged with any violation of the RICO act
Bach - I'm not an attorney
J - have to hold to same standard
my letters were not published
that was personal codfidential record in effort to settle
NOthing says I cannot go to a person and attempt to settle my case
How do I find whether Dawson is telling the truth
sent Dawson letter a long time ago
I said I was going to let him out
You don't have jurisdiction over me

Tape Counter: 119

Bach - one last point
said thrid person had let him know
what relevancy
if going to sanction me - then you autthorize and direct Dawson to appear in theis court
I am gong to take his deposition at his expense
object to not only this motion for sanction
how can I ever get a hearing on my rights fuly granted to me

Tape Counter: 120

Smith - want to give Bach what he wants - a trial
jurisdiction - several case
will brief
right to take jurisdiction over the actions
ase
right on point

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Date: 2/14/2008

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 121

J - leaves us now on contempt issues
Bach will submit
Smith - don't represent any parties in 02-208
no idea even what case is about
didn't know had been named as RICO action in Fed COurt
never been served or received - contempt 70(5)(c) or (d)
not purported copy or rule allegedly violated
have no idea why this is being sought in 02-208
this contempt falls under 54(e)(1)

Tape Counter: 125

Bach - all nice potential defenses
not have to be in affd; made a motion
Rule 11A - every licensed atty duty bound to research the law
obstruction of Justice
Hobbs Act
I've been locked out
65(d) order graanting injunction
Alva Harris represented the Hills also Wayne Dawson
Jared stipulated to the injunction
Alva Harris and Jared blew it on the default
I put them on Notice
Oct 25 special appearance
I told Smith about it
where was the file on 208 - it is here
does not excuse abuse of process
IN one of these pages Dawson says I sgined and agreement with Alva Harris

Tape Counter: 134

Smith- still baffled as to what is the point of the motion
counsel thinks is the judgment against the Hills
June 24, 2004 doccument
Never represented the Hills
How did I get involved in this

Tape Counter: 136

Bach responds -
Smith - It's Wayne Dawson; it's not the Hills

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Case: CV-2001-0000265

User: PHYLLIS

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 137

contempts against Hills Harris
Bach - has identical permanent injunction
J - relation to the Hills specifically
Hills have been on the property -
Bach have stipulated judgment - 8.5 acres Hills make no claim
although form was not signed it was agreed to
asked StC to agree to they could not make any claims
Jared despite the order of St C tried to raise the issue
StC based on documents - Hills bought 1 acre they are sitting on
State order transcends everything
Donna Dawson has involved her self
If Alva failed to tell SMith - that's not my problem
responsibility of atty to investigate
J - specifically
against Hills - they had continued to go on to the property in spite of the injunction
Got the SO to file a complaint
Birch said talked to Harris - he said he owns the property
Talked to Jared - says his dad owns the property
special use permit putting a shop building on my 8.5 acres
this has continued
this is ongoing
there are no privileges between Smith and any of the other person
ongoing conduct violates Hobbs Act
want contempt citation issued

Tape Counter: 144

Jared contempt against self
Initially brought as OSC
look at documents initially filed
fails to meet requirements Rule 75 have to be shown to start process of contempt
to give notice
allege people knew of the order
been served with copy of order
actual notice
file appearance; trial down the road
now asking for contempt on 01-265
not my case
never appeared in 01-265
affd doesn't talk about Wayne Dawson at all
not about communication with Smith
saays sent Hills letter; was harrassed by Hill
criminal proceedings had been dismissed
insufficient as matter of law
if find other wise should have opportunity to file reply
nothing additional in regard to the Hills

000581

Date: 2/14/2008

Seventh Judicial District - Teton County

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Case: CV-2001-0000265

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 148

Alva - adopt arguments of SMith and Jared Harris
affd is based on declaration of veracity
statements made here today
he testified that he got irrevocable powers of atty from Dawson, McLean, Liponis
Bach - object
Harris - falsehoods in affidavits
no veracity in affd
he lied to you today

Tape Counter: 151

stated he took same POA used to buy property
then filed with Judge Shindurling to take property away from them
Bach move to strike about POA - had to do with other motions
extraneous
2 - accurate facts - can also be based on what is said in open court - obstructin of justice
point out what aff I have filed after Nov 7 of last year - nothing
all aff's before that were before Judge SHindulring
last point - some times has to be finality
enough is enough
no choice other than to deny
contemptuous to file Rule 60B without notice
xanction can be contempt

Tape Counter: 154

Smith - read order entered Jan 8, 04
Bach - that exact copy was given to SHindurling

Tape Counter: 155

J - as to PX 2 - need to know which transcript referring to
transcript on appeal - 31717
J - clerk has the duplicate
J reads pages
Bach - Page II starts at 1012 and continues - 1111
first fourpages
J - Ex 2 first 4 pages 1398-1435 -
Dec 5, 2003 hearing - default damages - 1388 - 1442
last two pages from Alva Harris testimony 11 - direct exam by Woelk
Bach - ISC asked to stipulate who gets the other copy of that transcript
J - I'm keeping that
Bach want to Smith to respond
Smith - no just rambling on - is this ever going to end
J - smith corrected the court to the correct document
All I need to do is go to that document

000582

Date: 2/14/2008

Time: 03:55 PM

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Seventh Judicial District - Teton County

Minutes Report

Case: CV-2001-0000265

User: PHYLLIS

Jack Lee Mclean, etal. vs. Cheyovich Family Trust, etal.

Selected Items

Tape Counter: 201

Smith - need to look at transcript
don't know if agreement was attached as agreement
need som esemblance of 208
Smith - need 10 days
Jared - 10 days
J - 10 days for Bach to respond
3 days for mailing
J - looking at 26 days for matter to be fully submitted
Bach photocopy shop -
I will bring in my copy of the transcript

Tape Counter: 204

Bach - ask Judge to defer ruling until get all items submitted
J - that what I said - waiting for those briefings to get in
Jared last motion haven't addressed my motion for sanctions

Tape Counter: 205

Clerk was PX 1 admitted?
1 was admitted; 2 was reserved
Filed on Feb 5th
do object to him using an OSC - need to follow the rules
specifically says - sahl not be initiated by OSC
made us appear on a SC hearing
Rule says you can't do that
no good faith basis for him doing that
Insufficient

Tape Counter: 207

Bach - premature
presented before Judge Shindurling
Harris appeared on behalf of his clients
brought a motion
any contempt would have been brought before Judge Shindurling

000583

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Idaho State Bar No. 2236
Attorneys for Plaintiffs

FILED
 5-33
FEB 25 2008
 TETON CO., ID
 DISTRICT COURT

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO; IN AND FOR THE COUNTY OF TETON**

**JACK LEE MCLEAN AND WAYNE
DAWSON,**

Plaintiffs

v.

**CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,**

Defendants.

Case No. CV-01-265

**SECOND AFFIDAVIT OF WAYNE
DAWSON**

STATE OF CALIFORNIA)

ss.

County of Butte)

Wayne Dawson, being first duly sworn upon oath, deposes and says:

- 1. I make the following statements based upon my own personal knowledge,**
- 2. I never authorized and/or retained Alva Harris to file this lawsuit, Teton**

County Case No. CV-01-265 on my behalf.

- 3. It is true that I authorized and/or retained Alva Harris and then subsequently**

Jared Harris to represent me in Teton County Case No. CV-02-208, however, as stated

SECOND AFFIDAVIT OF WAYNE DAWSON - 1

above I never authorized and/or retained Alva Harris to file this lawsuit, Teton County Case No. CV-01-265 on my behalf.

4. I was informed by a telephone call on October 10, 2007 that a quieting title judgment had been entered in this matter.

5. Prior to October 10, 2007, I did not know that a quieting title judgment had been entered in this matter.

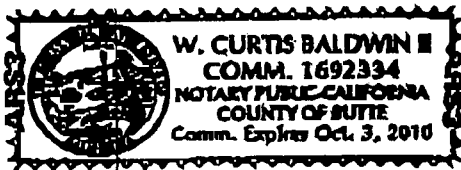
DATED this 25 day of February 2008.

Wayne Dawson
WAYNE DAWSON

SUBSCRIBED AND SWORN to before me this 25th day of February, 2008.

W. Curtis Baldwin

Notary Public
Residing at: *Chico CA*
Commission expires: *Oct 3 2010*



SECOND AFFIDAVIT OF WAYNE DAWSON - 2

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 25 day of February 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail

Marvin M. Smith

MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponka & Dawson 2.0\265.wpd

SECOND AFFIDAVIT OF WAYNE DAWSON - 3

Marvin M. Smith
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 Attorneys for Plaintiffs

FILED

5:33
FEB 25 2008

TETON CO., ID
DISTRICT COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO; IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
 DAWSON,

Plaintiffs

Case No. CV-01-265

SECOND AFFIDAVIT OF WAYNE
DAWSON

v.

CHEYOVICH FAMILY TRUST AND
 VASA N. BACH FAMILY TRUST,

Defendants.

STATE OF CALIFORNIA)
) ss.
 County of Butte)

Wayne Dawson, being first duly sworn upon oath, deposes and says:

1. I make the following statements based upon my own personal knowledge.
2. I never authorized and/or retained Alva Harris to file this lawsuit, Teton County Case No. CV-01-265 on my behalf.
3. It is true that I authorized and/or retained Alva Harris and then subsequently Jared Harris to represent me in Teton County Case No. CV-02-208, however, as stated

SECOND AFFIDAVIT OF WAYNE DAWSON - 1

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above I never authorized and/or retained Alva Harris to file this lawsuit, Teton County Case No. CV-01-265 on my behalf.

4. I was informed by a telephone call on October 10, 2007 that a quieting title judgment had been entered in this matter.

5. Prior to October 10, 2007, I did not know that a quieting title judgment had been entered in this matter.

DATED this 25 day of February 2008.

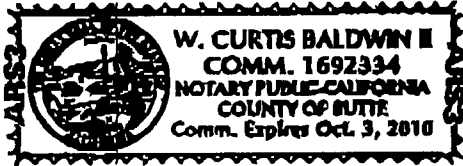
Wayne Dawson

WAYNE DAWSON

SUBSCRIBED AND SWORN to before me this 25th day of February, 2008.

W. Curtis Baldwin

Notary Public
Residing at: Chico CA
Commission expires: OCT 3 2010



CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 25 day of February 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail

MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponia\AffDawson2.0\265.wpd

SECOND AFFIDAVIT OF WAYNE DAWSON - 3

FILED

MAY 13 2008

TIME: 11:41 AM
TETON CO. ID DISTRICT COURT

JOHN N. BACH
400N, 152E
Post Office Box 101
Driggs, ID 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST, and
VASA N. BACH FAMILY TRUST,

Defendants.

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complainant,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

CASE NO: CV 01-265

INTERVENOR-COMPLAINANT
JOHN N. BACH'S CLOSING BRIEF
& MOTIONS TO STRIKE/QUASH
PURPORTED PLAINTIFFS:

1. RESPONSE TO BACH'S MOTION TO STRIKE/QUASH PLAINTIFFS' PENDING MOTIONS, dated Feb. 13, 2008; and
2. SECOND AFFIDAVIT OF WAYNE DAWSON, of Feb. 25, 2008; and

IN SUPPORT OF JOHN N. BACH'S OTHER OBJECTIONS, ALL REQUESTED ORDERS STRIKING/DENYING ALL PURPORTED PLAINTIFFS' MOTIONS FOR RECONSIDERATION & TO SET ASIDE; DENYING ALL PLAINTIFFS' MOTIONS TO CHANGE CAPTION, ADDING EITHER LYNN McLEAN or PAULA EHLER; DENYING ANY SANCTIONS ON JOHN N. BACH;

and

GRANTING JOHN N. BACH'S MOTIONS:

1. TO DISMISS ALL PLAINTIFFS' APPEAL; &
2. ISSUING OF CONTEMPT CITATION AGAINST MARVIN M. SMITH, ALVA HARRIS & LYNN McLEAN

I. PREFACING CONDITION, ISSUES & ADMISSIONS BY PURPORTED PLAINTIFFS

During the oral arguments of Feb. 14, 2008, plaintiffs' purported counsel, Marvin Smith, made several binding admissions, to wit: 1) He was appalled that Mr. Harris had not filed any opposition to JOHN BACH's summary judgments motions; 2) He didn't know why Harris didn't file any opposition, etc.; and 3) which second admission he repeated a second time just before concluding his arguments. SMITH NEVER PRESENTED ANY FACTS WHY HARRIS FILED NO OPPOSITION.

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The Court granted Mr. Smith 13 days to response to the requests and offering by JOHN N. BACH of the exerpts of Harris' and DAWSON's testimonies in Teton CV 02-208, EXHIBIT 2, which now must be admitted for all purposes, as no written objections nor documents have been filed responding with relevant admissibility of showing "excusable neglect" which is the sole basis of his motion for reconsideration. (To be noted, is that even Smith's bogus motion to set aside, which is more than untimely and inappropriately presented, which he expressly limited as the same for reconsideration: "to prove excusable neglect on the party of prior counsel in failing to respond to the motion for summary judgment.")

No cases authorities nor argument refuted nor presented any basis for not applying/following-a) Pullin City of Kimberly, 100 Idaho 343 592 P.2d 849 (1979), holding not only was there no excusable neglect shown therein, but, such basis under 60(b)(1) was mutually exclusive of any basis per 60(b)(6), both basis denied therein; and b) Win of Mich, Inc. v. Yreka United 137 Idaho 747, 53 P.2d 330 (2002)

MOST SIGNIFICANTLY AND CONFESSING OF THE ABSOLUTE FRIVOLOUS, UTTERLY WITHOUT ANY GOOD FAITH, BEING BROUGHT IN BAD FAITH, ETC., IS THAT NO AFFIDAVIT BY ALVA HARRIS STATING HIS REASON OR CLAIMED BASIS WAS FILED, DESPITE ALVA HARRIS BEING PRESENT DURING A TELEPHONE CONFERENCE STATUS CALL AND DURING SAID FEB. 14, 2008 ARGUMENTS. The perjurious affidavits of Dawson and Lynn McLean, utterly untimely and irrelevant, without proper showing of materiality, admissibility, will be analyzed, infra. Mr. Smith did file an affidavit by Harris re what motion for Judge Moss disqualification JOHN BACH filed but such affidavit has no application to the motion for reconsideration. HARRIS WAS AVAILABLE, EVEN PRESENT IN COURT, ESPECIALLY ON Feb. 14, 2008. JNBACH'S CLOS'G BRIEF, OBJNS, MTNS TO STRIKE & REQUESTED ORDERS P.2.

Following the Feb. 14 arguments, later that afternoon, JOHN BACH received for the first time a mailed copy entitled: RESPONSE TO BACH'S MOTION TO STRIKE/QUASH PLAINTIFFS' PENDING MOTIONS, dated Feb 13, postmailed, Bef 13, a copy of which was never served upon him by Mr. Smith before nor during said Feb. 14 arguments-nor any mention made of it by Mr. Smith. JOHN BACH moves to strike/quash this RESPONSE, not only untimely but as Smith's Rule 60(b)(6) motion is based on excusable neglect soely shown by his motion for reconsideration, is also had no timely nor admissible affidavit filed herein. Pullin supra, 100 Idaho 34

Next received, Feb. 27, 2008, by JOHN BACH was a SECOND AFFIDAVIT OF WAYNE DAWSON purportedly signed in Chico, CA, Feb. 25, 2008, with a blank unsigned certificate of service pages. (See such copied page attached. NOTHING FURTHER WAS RECEIVED WHICH ABSENCE OF RESPONSE BY SMITH should be deemed his clients waiver, withdrawal of all objections to JOHN BACH's EX 2, exerpted pages of DAWSON and HARRIS' testimony in CV 02-208, they had written contract and relationship that Harris was the DAWSONS' attorney herein. DAWSON'S SECOND AFFIDAVIT did not produce the written contract nor other documents, which are the best evidence that could show, Harris was not to represent him in this action. JOHN BACH moves to strike/quash such SECOND AFFIDAVIT, untimely, replete with hearsay, lack of foundation, speculative and with conjectures/opinions.

Mr. Smith's own words per his AFFIDAVIT-IN SUPPORT OF PLAINTIFFS' MOTIONS FOR SANCTIONS, admitted/confessed he: ". .substituted in as counsel for Plaintiffs with the consent of Plaintiffs and by the October 17, 2007 filing of a Stipulation of Counsel signed by Plaintiffs' prior counsel, Alva Harris, and myself. . ." (Emphasis Added). (This Affidavit was dated Nov 1, 2007m 11 days before SAWSON initial perjurious Affidavit.)

DAWSON's first affidavit per his paragraphs 1 through 16 and EXH A through H seeks to now amend his stipulated to dismissed complaint to add Alva HARRIS with his thrice rejected claim that Harris has a half undivided
BACH'S CLOS'G BRIEF, OBJNS, MTNS TO STRIKE & REQUESTED ORDERS 000532 P.32

interest with DAWSON in the Zamona Casper 8.5 acre parcel.

Besides, DAWSON never having appealed the Amended Default Judgment against him in Teton CV 02-208, and Judge Shindirling binding QUIET TITLE JUDGMENT IN FAVOR OF JOHN N. BACH, filed herein, Sept 11, 2007, ALVA HARRIS had raised no such claim whatever in any of the pleadings herein. So, why is it raised by DAWSON, and what is are admitted confessed facts thereby. They are:

1. DAWSON is a pawn by both Alva Harris and Marvin Smith who prepared DAWSON's perjurious affidavits, so to fraudulently deceive this Court to hide out the absolute lack of any basis for any reconsideration re excusable neglect. (DAWSON'S CV 02-208 testimony reveals his perjurious habits.)
2. DAWSON had all time herein and even to this date, obtained/retain the legal services of Alva A. Harris and Marvin Smith, jointly to deceitfully mislead this Court and Judge Simpson, via his LDS standings with Alva Harris and Mr. Smith, to offset the criminalities, pursuits of thefts and unconstitutional violations by all original plaintiffs and intervenor-complaint defendants herein. DAWSON's said affidavit requests non-issues, illegally and contrary to at least three (3) court judgments, DENIED ALVA Harris any interest in said 8.5 acres parcel, He ratifies and confirms not just Alva Harris' attorneyship relationship in being retained and still remaining as DAWSON's counsel herein, but, the further acts of the ongoing conspiracy found by Judge Shindirling under the Federal RICO and Idaho RICO acts. Living Designs, 9th Cir. 431 F.3d 353.
3. Marvin Smith, has filed frivolous, specious, without merit motions and pursuits thereby to receive and obtain LDS protectionism from this Court. As prime example beside the utter lack of any showing of "excusable neglect" is his motions to sanction JOHN N. BACH for writing DAWSON and Dr. Liponis, latter an initial plaintiff in Teton CV 01-33, misciting, misapplying and seeking special illegal ruling of this Court, via Runsvold v. ID State Bar, 129 Idaho 419, that JOHN N. BACH, a nonlicensed Idaho attorney should not have direct contact with DAWSON, McLEAN daughters and DR. LIPONIS, to ferret out the perjurious lies and deceitful statements Smith has injected in their affidavits. (SPECIAL NOTE: At the Nov 6, 2007 purported status conference before Judge Shindirling, his self recusal precluded any jurisdictional ruling/order as to the impropriety of Mr. Smith's substituting in as counsel, or of his failure to proceed as required by motion, detailed affidavit and noticed hearing to become attorney of record, per I.C. 3-203(2) (Runsvold, 120 Idaho, @ 420 starts: "SILAK, J. This is an attorney discipline case. . Runsvold is an attorney licensed in Idaho." Neither the Idaho St. Bar, nor this Court, and most certainly not the LDS Church can discipline/sanction JOHN BACH per IRPC 4.2 for contacting DAWSON!)

(Shades of convicted Idaho Falls Prosecutor Kimball Mason who misused local judges.)

4. The testimony of Alva Harris, just excerpted per Ex 2, +EX 1, Feb. 14, hearing, further admits/establishes he was DAWSON's and his wife's litigation attorney in all Teton CV 01-33, CV 01-59, CV 01-205, CV 01-265, CV 01-266, and CV 01-191, (Attached hereto a further excerpted 1058-61 pages of Alva Harris's testimony in Teton CV 02-208, which reveal he, as an LDS Avenging Angel for DAWSONS, McLEANS, DR. LIPONIS, and KATHERINE MILLER, was retained by all such clients to file any and all lawsuits against JOHN N. BACH, to extort and destroy his rights, claims and interests by said fraudulently formed corporation, TARGHEE POWDER EMPORIUM, INC., to steal all his parcels herein, plus another two or more, such being not just grand theft, per I.C. sec 55-901, ~~§§~~ found by Judge Shindirling, but VOIDS acts, which were corrected by that WARRANTY DEED, Teton Instrument No. 148042, rescinding, restoring and reconveying all plaintiffs' interests herein and in Teton CV 01-33 to JOHN N. BACH, EVEN AS THIS DATE, NEITHER ALVA HARRIS NOR MARVIN SMITH ON ANY PLAINTIFF'S PURPORTED STANDING EVER SOUGHT TO CONTEST, DECLARE INVALID OR NONBINDING SAID WARRANTY DEED #148042, NOR COULD THEY DO SO, AS SUCH WAS DETERMINED BOTH BY JUDGE ST. CLAIR, TETON CV. 02-208 AND JUDGE SHINDIRLING HEREIN AS ILLEGAL, CRIMINAL AND ABSOLUTELY VOID ACTS BY HARRIS, McLEAN, DAWSON, etc. WHICH STOLE JOHN BACH'S PROPERTIES.
5. Mr. Smith's representations to Judge Shindirling, Nov. 6, (CT: 4:15-23 and 7:12-19) were contemptuous statements untrue and now perjured by DAWSONS' affidavits. As JOHN BACH has been stilted from talking directly with DAWSON & LIPONIS, SMITH's denial and preclusions of JOHN N. BACH's First Amendment, and Fourteenth Amendment Rights, along with Mr. Smith's personal and joint violations of the FEDERAL and IDAHO RICO ACTS, of the HOBBS ACT, 18 USC sec 1951(a), etc; interstate fraud by mail, wire-fax/e-mail; and 18 USC, sec 1341, witness tampering/obstruction of justice, puts MR. SMITH as a culpable principal percipient witness, that requires his immediate disqualification/removal as counsel, after this Court denies all his purported clients' motions and grant JOHN N. BACH's motion to DISMISS WITH PREJUDICE ANY CONTENTED PLAINTIFFS' APPEAL, filed.

The Court is referred to the following case authorities re for such requested orders:

A. ORDERS DENYING MOTIONS FOR RECONSIDERATION/TO SET ASIDE:

1. Hilt v. Draper (1992) 122 Idaho 612, re'v den(agency is far reaching and well established)
2. Herbst v. Both of Dairies (Id App 1986)(Agency is result of manifestation of consent subject to right of control which exists despite lack of its exercise.)
3. Rexburg Lumber, Co. v. Purrington 113 P.2d 511, 515, 62 Idaho

461 the applicable controlling case, which, due to all plaintiffs' failure to raise per a mandatory counterclaim any quiet title rights in either Teton CV 02-208, herein or in any prior actions filed by Alva Harris, are forever barred from making any claims now or hereafter to any of said three (3) parcels JUDGE SHINDIRLING quieted title to completely and solely to JOHN N. BACH. (NOTE: Such case decision would trump even the perjurious basis of excusable neglect that somehow, if this court should conclude the DAWSONS did not authorize or empower Alva Harris to represent them herein. Harris did represent them, later his son in Teton CV 02-208, which default judgments neither DAWSONS nor Alva Harris appealed from the quieting title judgments therein in JOHN BACH's favor, nor can they do so now. Thus, Alva Harris' failure to respond to JOHN BACH's summary judgment motion after he agreed to dismiss all plaintiffs' claims herein for lack of diligent prosecution, was an admission and confession as found and ordered by Judge SHINDIRLING his clients had no defenses, nor basis to attempt to contrive any facts as such facts were nonexistent and the REXBURG LUMBER CO, case prevented any showing whatsoever of any showing of genuine material dispute facts--NO SUCH FACTS EXISTED FACTUALLY NOR LEGALLY. Moreover, based on Judge St. Clair's orders, which were presented to Judge SHINDIRLING by JOHN BACH's moving affidavits, requests for judicial notice, from Teton CV 02-208, JUDGE ST. CLAIR found not misrepresentations nor fraud perpetrated on the DAWSON, nor McLEAN, thus, such even conjured issues herein, JUDGE SHINDIRLING FOUND DECIDED/RESOLVED WITH FINALITY AGAINST DAWSON, McLEAN's interests and heirs who never filed to intervene herein and who we now know are barred by the 3 years statute of limitations, I.C. 15-3-108, etc., from any estate being probated, which results in neither any estate nor any non appearing heir herein to date, have any claim to succeed to nor represent per IRCP, Rule 26(a) through 26(e), etc. McLean died Dec. 3, 2003. NONE OF HIS CLAIMS OR OF HIS TRUST SURVIVED HIM BOTH LYNN McLEAN and her sister, PAULA EHRLER, who both failed to probate their father's estate, never intervened herein, having not interests, titles or rights in any of said 3 parcels quieted herein solely to JOHN N. BACH, not only per the foregoing authorities and the WARRANTY DEED, TETON INSTRUMENT 148042, have had all statutes of limitation, either per California or Idaho laws/statutes, as was contractual required to be applied per the original JOINT VENTURE CLIFFORD TRUST AGREEMENT entered into between JOHN BACH, their father and DAWSONS, expired, ran and are forever barred from being a party herein. See Blake v. Blake, 69 Idaho 214, 205 P.2d 495; I.C. 15-410 and 15-3-108. As to the validity of JOHN N. BACH exercising the irrevocable power of attorney granted him, to grant to himself such properties reconveyed to himself, per WARRANTY DEED/#148042 see Marmon v. Vaughn, Ore Supreme Ct., En banc, 219 P.2d 163, 165 cited to Judge Shindirling and found controlling herein. Jack McLean was earlier dismissed with prejudice and all his claims on Jan. 3, 2005, if his daughters ff, even contended surviving trustees, they knew of his death and never sought to intervene. See Dennett v. Kuenzli (C.A. 1997, Idaho) 130 Idaho 708, 936 P2d 618.

THE DAUGHTERS CURRENT MOTION IS NOT TO INTERVENE HEREIN.

B. ORDER DISMISSING WITH PREJUDICE ALL PURPORTED PLAINTIFFS' NOTICE OF APPEAL FILED HEREIN.

Although DAWSON per his Nov. 12, 2007 filed affidavit, par. 17-18, falsely testified he "never authorized Alva Harris to file this lawsuit", McLean's daughters have never denied, nor disclaimed in any fashion, their late father or themselves, individually nor jointly were not represented by Alva Harris herein or in Teton CV 01-33 and CV 02-208. Moreover they've not stated DAWSON wasn't represented at all times herein by Alva Harris, and such silence further verifies and ratifies DAWSON did have an agency relationship with Alva Harris empowering Harris to file this lawsuit, one of six filed by Alva Harris for Dawson, McLean, Liponis and Miller all in 2001 well preceeding Teton CV 02-208. Howell v. Raemann, 77 Idaho 84, 228 P2d 649. Storey v. U.S.F. & G. (1919) 183 P. 990 (authority of attorney to do all acts)

But Mr. Smiths' instigation/perpetration of perjury and subornation of perjury in LYNN McLEAN's affidavit is appalling, egregious, unfathomable and beyond contemptuous. Alva Harris, on the record, August 7, 2007 STIPULATED ON THE RECORD, that JOHN BACH's motion to dismiss, he had no objection to its being granted, Such, stipulation on the record, dismissed all of plaintiffs claims via their filed complaints in both Tetcon CV 01-33 and CV01-265. Alva Harris had "NO" defenses nor refuting facts nor legal authorities that he could advance in good faith to prevent JUDGE SHINDIRLING's granting in full, JOHN N. BACH's summary judgment motions. Savage Ditch Co. v. Pulley 869 P.2d 554 (1994) JUDGE SHINDIRLING, under these circumstances and procedural evolvments had no other responsibility other than his directed/mandated duty per Rule 56(c) to grant summary judgments.

What is absolutely perjurious by Mr. Smith in fashioning LYNN McLEAN'S AFFIDAVIT are the following untruths, lies and deceipts:

1. Her pars 4 and 5 with the unfiled Ex C, a copy of misrepresented appointment as her father's estate personal representative. As revealed by Exh. 1, admitted Feb. 14, the copies from Teton Estate CV 04-136 shows she never accepted, qualified nor took her oath and position as such personal representative, resulting in her father's estate being closed by Judge Luke, May 4, 2004, in which status it remains closed this very date. Per I.C. 15-3-108, the 3 year statute of limitation has run, neither said estate nor she or her sister have any claims to succeeds to or represent herein,

2. More significantly any rights, titles, interests in said 3 parcels quieted herein solely to JOHN N. BACH, were further restored to him, along with that of Dr. Liponis' claimed rights, titles, interests, etc., by WARRANTY DEED, #148042.

3. Par. 6 with referenced EX. C are also deliberately false. Such was suggested, if not argued in Teton CV 02-208 and rejected, found untrue. The purported last handwritten portion is NOT THAT OF JACK McLEAN nor in his handwritting, nor written on July 30, 2002, the date such EX. C., was recorded, as instrument 149,375, after the recording of said WARRANTY DEED, instrument 148042, some 1,332 recorded instruments later. Most significantly, such attempted/purported recorded revocation, cannot and did not revoke the irrevocable power of attorney couple with interest Jack McLean granted to JOHN BACH. Marmon v. Vaughn, 219 P.2d 163, 165;

4. Pars 7 & 8 with referenced EXH D and E. are likewise deceitful, untrue and deliberate lies. EX D, par. 4, thereof, states such trust is "a Revocable Trust," and per par. 8, Jack McLean is the original Trustee. Thus, when Alva Harris filed Teton CV 01-33, 01-205 and this action, 01-265, all claims were in Jack's name. It

didn't make any difference per Dennett v. Kuenzli, 130 Idaho 708. So when Jack McLean died he had no rights, titles or interest of validity, record, legal nor equitable in any of the 3 parcels herein.

5. Most deceitful, untrue and perjurious is her par. 9 with EX. F. in that: a) The copy attached of a claimed WARRANTY DEED, #460623 is not a warranty deed at all, as there is no Notary signature, seal nor attestations; b) By the wording of warranty deed, EX E, only Jack's fractional joint venture interest of the 40 acre parcel is sought to be placed in trust, not any interest in the Draw-knife 33+ acre parcel, and again, this deed was ineffective to change JOHN BACH's ownerships, titles and interests conveyed to him via WARRANTY DEED, #148042; and c) neither LYNN McLEAN nor her sister took any action to quiet title to any such claimed interests of their father either through probating their father's estate or intervening herein and asserting the trust's claimed corpus including such parcels herein quieted in title herein solely to JOHN N. BACH.

Under the current affidavits even if admissible and timely herein, which they are not in any capacity, there was no Estate of Jack Lee McLean nor any Surviving Beneficiaries, having status or capacities to file either a motion for reconsideration on Oct , 2007 nor any NOTICE OF APPEAL, and the attempt per a Motion to Change Caption to now include such daughters, filed Nov. 19, way late, also is inadequate and without effect, as all claims of their father personally or via such bogus trust, have expired, are defunct, etc. and, IRCP, Rule 25(a)(1)-25(e), has no application as there are no claims to which such daughters can succeed nor advance. Discover Bank v. Vaden, (4th 2007) 489 F.3d 594, 601-603; also Blake, v. Ibid 69 Idaho 214.

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C. BASED UPON THE FOREGOING AND ALL OTHER MOTIONS TO STRIKE, OBJECTIONS, ETC., PRESENTED BY JOHN N. BACH, WHICH ARE

INCORPORATED BY REFERENCE HEREIN, MR. SMITH DOES NOT REPRESENT NOR ARE THEIR ANY OF HIS CLIENTS WITH STANDING OR CAPACITIES, TO BE NAMED OR SUBSTITUTED IN AS PLAINTIFFS-APPELLANTS HEREIN AND ALL HIS FILED NOTICES OF APPEAL MUST BE DISMISSED, AND, FURTHER ARE WELL BEYOND THE 42 DAY PERIOD TO NOW FILE AN APPEAL

Attached hereto, is a complete copy of a REPLY IN SUPPORT OF MOTION TO SUSPEND APPEAL AND RESPONSE TO RESPONDENT'S MOTIONS, This REPLY, dated Nov. 19, 2007, 31 days after the filing on Oct 9, 2007, the CERTIFICATE OF FINAL JUDGMENT, Rule 54(b), clearly states, the request to suspend appeal is "until Judge Simpson has had an opportunity to rule upon Plaintiffs' Appellants Motion for Reconsideration." This REPLY does not disclose to the Idaho Supreme Court, that DAWSON earlier, Nov. 12, testified falsely and perjuriously, he'd never authorized Alva Harris to file this lawsuit, nor does he inform that DAWSONS had been ejected from all property still claimed by them, by JOHN BACH, who was in possession, control, exclusively operated said parcels, and that all statutes of limitations had run against DAWSONS' interest and claims. (See JUDGE SHINDIRLING'S JOINT CASES MEMORANDUM OPINION & ORDERS

Now the REPLY which Mr. Smith did not serve timely nor give a copy to before or during the Feb. 14, 2008 arguments, is in violation of Rule 54(b)(2), which states this court has no jurisdiction to hear the Rule 60(b)(6) motion; nor is such 60(b)(1) motion one which the Idaho Supreme Court allowed to be heard and thereby suspended appeal.

TWO CONCLUSIONS AND ORDERS ARE REQUIRED TO STOP THE DECEITFUL ABUSE AND MISUSE OF THE PROCESSES AND JURISDICTION OF THIS COURT, TO WIT:

1. DISMISS WITH PREJUDICE THE FILED NOTICE OF APPEAL, SUCH CLAIMED PLAINTIFFS HAVE NO STANDING, & ANY APPEAL IS UNTIMELY NOW AND PATENTLY FRIVOLOUS, IN UTTER BAD FAITH. Dieziger v. Pickering, 122 Idaho 719, 838 P.2d 321, (Ct. App 1992)(Court of Appeal had no jurisdiction to review merits of district court's decision to dismiss the appeal)
2. MARVIN SMITH and ALVA HARRIS, ARE IN CONTEMPT NOT ONLY IN THIS CASE AND IN TETON CV 02-208, PER THE PERMENENT INJUNCTIONS ISSUED SEPARATELY BY TWO JUDGES, JUDGE ST. CLAIR AND JUDGE SHINDIRLING, BUT, THEY BOTH MUST BE FURTHER ENJOINED

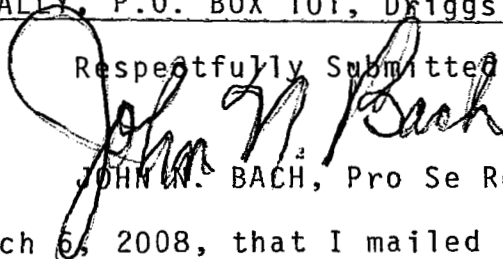
FROM PERPETRATING/COMMITTING ANY FURTHER CRIMINAL ACTS, ETC., FROM PURSUING ANY APPEALS HEREIN, AND ALL PAPERS FILED WITH THIS COURT SINCE SEPTEMBER 11, 2007 THROUGH DATE OF THE ORDERS REQUESTED HEREIN, BE COPIED AT MR. SMITH'S AND MR. ALVA HARRIS' EXPENSE AND SUCH COPIES SENT BOTH TO THE IDAHO ATTORNEY GENERAL, CRIMINAL DIVISION AND THE U.S ATTORNEY FOR IDAHO, BOISE OFFICE, FOR REQUESTED EVALUATIONS FOR ALL APPROPRIATE CRIMINAL (Federal & State) CHARGES AND PROSECUTION INITIATED. Mannos v. Moss 155 P.3d 1166, 143 Idaho 927, 935-36 (A single scheme is sufficient to establish the predicate act that amounts to or constitutes a threat of continuing racketeering activity.); Living Designs, Inc. v. E. I. DuPont DeMemours (9th Cir. 431 F.3d 353. U.S. v. Arias (2005) 431 F.3d 1327, 1340-41; & U.S. v. Baker (2005) 432 F.3d 1189, 1232-33.

- D. BASED UPON THE FOREGOING AND OTHER SHOWINGS PRESENTED BY JOHN N. BACH HEREIN, BOTH MARVIN M. SMITH AND ALVA HARRIS SHOULD BE CITED IN TETON CV 02-208, PER THE MOTION FOR ISSUANCE OF CONTEMPT CITATIONS TO BE ISSUED THEREIN, AS HEARD AND NOW AUGMENTED HEREBY, ADDING ADDITIONAL CONTEMPT CHARGES FOR THE PERJURIOUS AND SUBORNED PERJURY AFFIDAVITS OF WAYNE DAWSON AND LYNN McLEAN.

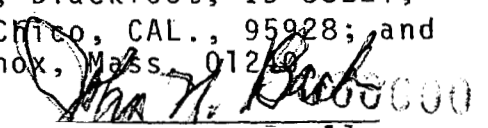
JOHN N. BACH, in all capacities herein, will be forwarding to both WAYNE AND DONNA DAWSON and MARK LIPOINIS, a complete copy of this DOCUMENT with attachments, thereby making demand upon each of them, individually and jointly, to disassociate themselves and renounce both Marvin M. Smith and Alva A. Harris, from and any further criminal acts or pursuits herein by them or any other persons revealed as defendants, either in Teton CV 02-208, or as Plaintiffs in Teton CV 01-33, CV 01-59, CV 01-205, CV 01-265, CV 01-266 or CV 01-191. ALL AND ANY SUCH RESPONSES FROM THE DAWSONS AND LIPONIS OR HIS WIFE MUST BE IN WRITING SENT TO JOHN N. BACH, PERSONALLY, P.O. BOX 101, Driggs, ID 83422

DATED: March 6, 2008

Respectfully Submitted,


JOHN N. BACH, Pro Se Respondent

CERTIFICATE OF SERVICE BY MAIL:

I hereby certify this date, March 6, 2008, that I mailed separate copies of this document with attachments via the U.S mail with sufficient postage attached to each envelope, so sent to: Judge Darren Simps, C/O Bingham County Courthouse, Blackfoot, ID 833221; Marvin M Smith, P.O. Box 51630, Idaho Falls, ID 83405-1630; Alva Harris, P.O. Box 479, Shelley, ID 83274; Jared Harris, P.O. Box 577, Blackfoot, ID 83221; Wayne & Donna Dawson, 1752 Park Vista Drive, Chico, CAL., 95928; and Mark Liponis and Siobdan McNally, 71 Youm, Lenox, Mass. 01240
DATED: March 6, 2009 

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 25 day of February 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail

MARVIN M. SMITH

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SECOND AFFIDAVIT OF WAYNE DAWSON - 3

000601

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
 490 Memorial Drive
 Post Office Box 51630
 Idaho Falls, Idaho 83405-1630
 Telephone (208) 522-3001
 Fax (208) 523-7254
 Idaho State Bar No. 2236
 Attorneys for Plaintiffs

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO; IN AND FOR THE COUNTY OF TETON**

**JACK LEE MCLEAN AND WAYNE
 DAWSON,**

Plaintiffs

v.

**CHEYOVICH FAMILY TRUST AND
 VASA N. BACH FAMILY TRUST,**

Defendants.

Case No. CV-01-265

**SECOND AFFIDAVIT OF WAYNE
 DAWSON**

untimely, unallowed - COURT NEVER
 authorized further Affidavit was to be
 filed - violates further my procedural
 & substantive rights of D/P & E/P.

(REMEMBER - No attny-client privileges
 under any scenario with DAWSONS ALVA
 HARRIS + MARVIN SMITH / LIVING DESIGNS (CWH 2008
 431 F30 353

STATE OF CALIFORNIA)
) ss.
 County of Butte)

Wayne Dawson, being first duly sworn upon oath, deposes and says:

1. I make the following statements based upon my own personal knowledge.
2. I never authorized and/or retained Alva Harris to file this lawsuit, Teton

County Case No. CV-01-265 on my behalf.

3. It is true that I authorized and/or retained Alva Harris and then subsequently

Jared Harris to represent me in Teton County Case No. CV-02-208, however, as stated

SECOND AFFIDAVIT OF WAYNE DAWSON - 1

WHERE ARE all document correspondence /
 etc exchanged between him + ALVA HARRIS?
 Dawson's testimony he had written contract
 with Alva Harris is ignored & the best evidence
 Smith obstructs justice by not producing such
 contract & hrs - worse he's violated a member of federal

ARSAY IN ADMIS-
 BE CONCLUSIONS
 EXECUTIVE LEGAL
 IN IDONS

INTERVENTION

above I never authorized and/or retained Alva Harris to file this lawsuit, Teton County Case

No. CV-01-265 on my behalf.

4. I was informed by a telephone call on October 10, 2007 that a quieting title judgment had been entered in this matter. HEARSAY - WHO CALLED? HOW DID SUCH PERSONS KNOW? DID CALLER(S) HAVE CONTACT WITH ALVA HARRIS - AS HIS/THEIR ATTORNEY? DID DAWSON CALL HARRIS WHEN, WHAT WAS REVEALED & PLANNED? REMEMBER

Also hearsay direct & active constructive knowledge is avoided doesn't exclude

5. Prior to October 10, 2007, I did not know that a quieting title judgment had been entered in this matter.

DATED this 25 day of February 2008.

"NO"

ATTORNEY-CLIENT PRIVILEGE VIA LIVING DESIGN'S CASE (9th Cir 200 431 F3d 353; 14A Wnos 143 Id 927 935-36

Donna Dawson has never denied Harris was their/her counsel herein & in Teton OZ 208, Donna present throughout jury trial, at default judgment hearing, Dec 5, 2003, 2 days after Jack McLean died!

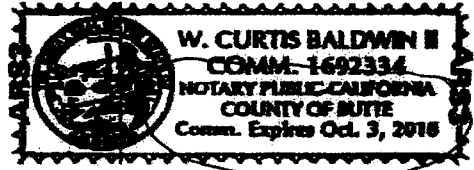
Wayne Dawson
WAYNE DAWSON

SUBSCRIBED AND SWORN to before me this 25th day of February, 2008.

~~THIS AFFIDAVIT IS A WELL FABRICATED & PERJURED DOCUMENT!~~

W. Curtis Baldwin

Notary Public
Residing at: Chico CA
Commission expires: Oct 3 2010



IN CALIF WIFE IS EQUAL COMANAGER OF COMMUNITY PROPERTIES & CAN BIND HER HUSBAND IN ANY COMMERCIAL DEALINGS
Donna Dawson is still client of both herself and Wayne Dawson - ARE third party defendant in COMPLAINT IN INTERVENTION - both shown therein REPRESENTED by Alva Harris, still as of this DATE!

1 THE COURT: You can inquire on cross.
 2 THE WITNESS: I filed that action because
 3 always, always in the documents and everything was
 4 that the owner of the property is Targhee Powder
 5 Emporium, Inc., Unlimited and Limited, was an asset of
 6 the Vasa N. Bach Family Trust.
 7 Q. By Mr. Woelk: Mr. Harris, do you have any
 8 knowledge as to whether my client has acted
 9 maliciously in any of these actions?
 0 MR. BACH: Objection, leading and suggestive,
 1 and also calling for an opinion and conclusion and
 2 invades the providence of the jury.
 3 THE COURT: Sustained on calls for a
 4 conclusion.
 5 Q. By Mr. Woelk: Has my client ever
 6 demonstrated a malicious capacity to you, Mr. Harris?
 7 MR. BACH: Same objection.
 8 THE COURT: Same ruling.
 9 Q. By Mr. Woelk: Mr. Harris, how much have you
 10 charged my client, Katherine Miller, and your other
 11 clients for your services?
 12 MR. BACH: Objection, irrelevant as to the
 13 other clients.
 14 THE COURT: Sustained as to the other
 15 clients.

1 Q. By Mr. Woelk: How much have you billed my
 2 client, Katherine Miller, for the number of years you
 3 have represented her in these lawsuits?
 4 MR. BACH: Objection, irrelevant, Your Honor.
 5 THE COURT: Overruled.
 6 THE WITNESS: I have never sent Kathy Miller
 7 a billing.
 8 Q. By Mr. Woelk: And why - -
 9 A. As a victim and I want justice.
 10 MR. BACH: Move to strike, in addition to
 11 that, a victim, hearsay and speculation.
 12 THE COURT: Sustained.
 13 Q. By Mr. Woelk: And why are you offering
 14 services for free, Mr. Harris?
 15 MR. BACH: Objection, irrelevant.
 16 THE COURT: Overruled.
 17 THE WITNESS: One of the primary duties that
 18 I see an attorney has is see justice done in
 19 circumstances. And when I see people victimized by a
 20 con artist it really rankles my skin.
 21 MR. BACH: Move to strike that as based on
 22 hearsay, conjecture, and hearsay.
 23 THE COURT: Overruled.
 24 THE WITNESS: So I have never charged her
 25 anything, never sent her a bill.

1 MR. WOELK: Just one second, Judge, let me
 2 review my notes and I think I'll be done.
 3 (Brief back in proceedings.)
 4 Q. By Mr. Woelk: Mr. Harris, do you have any
 5 knowledge as to when Mr. Bach's bankruptcy ended?
 6 MR. BACH: Objection, irrelevant.
 7 THE COURT: Sustained.
 8 MR. BACH: There's a stay order.
 9 MR. WOELK: I have no further questions,
 10 Judge.
 11 Thank you, Mr. Harris.
 12 THE COURT: Ms. Broughton.
 13 MS. BROUGHTON: I have no questions.
 14 THE COURT: Mr. Bach.
 15 MR. BACH: Thank you, Your Honor, I do.
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

1 CROSS-EXAMINATION
 2
 3 BY MR. BACH:
 4 Q. Mr. Harris, I heard your very passionate
 5 statement of justice. Are you an avenging angel?
 6 A. I do not like - -
 7 Q. "Yes" or "no" - -
 8 A. - - to see people - -
 9 Q. Are you an avenging angel?
 10 A. I told you the answer, I do not like to see
 11 people - -
 12 Q. Are you an avenging angel, "yes" or "no,"
 13 Mr. Harris?
 14 A. I stand for truth.
 15 Q. So it really rankles your skin to be conned;
 16 is that right?
 17 A. When I see a person - -
 18 Q. Answer "yes" or "no," please?
 19 A. Yes.
 20 MR. BACH: Move to strike as nonresponsive.
 21 THE WITNESS: Yes.
 22 Q. By Mr. Bach: You know as an attorney how to
 23 answer questions. Would you please listen to mine,
 24 and I if you have any problem Mr. Woelk will object,
 25 but answer, no debate. Will you do that, please?

11-18-07

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs

IN THE SUPREME COURT OF THE STATE OF IDAHO

ESTATE OF JACK LEE MCCLEAN AND
SURVIVING BENEFICIARIES AND
WAYNE DAWSON, INDIVIDUALLY
AND AS TRUSTEES,

Plaintiffs/Appellants,

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants/Respondents.

**REPLY IN SUPPORT OF MOTION
TO SUSPEND APPEAL AND
RESPONSE TO RESPONDENT'S
MOTIONS**

Supreme Court No. 34712
Teton County Case No. CV-01-265

COMES NOW Plaintiffs/Appellants, by and through counsel of record, and hereby file their Reply in Support of Motion to Suspend Appeal and Response to Respondent's Motions.

ANALYSIS

Undersigned counsel substituted in as counsel for Plaintiffs/Appellants in this matter on October 17, 2007 and filed a Motion for Reconsideration on the same day. See Stipulation for Substitution of Counsel attached as Exhibit A to the Affidavit of Marvin M. Smith filed herewith. A status conference for this matter was held on November 6, 2007 in front of Judge

Jon Shindurling, at which Plaintiffs/Appellants planned to request that the judge set their Motion For Reconsideration for hearing. Judge Shindurling ruled at said status conference that the undersigned was counsel of record for Plaintiffs/Appellants. At said hearing Judge Shindurling also disqualified himself from this matter and stated that the case would be assigned to another District Court Judge. Judge Shindurling disqualified himself because the undersigned currently represents Judge Shindurling's adult daughter (who does not live in Judge Shindurling's household) in some pending litigation totally unrelated to this case. This matter has been assigned to District Judge Darren Simpson. Plaintiffs/Appellants have resubmitted their Motion for Reconsideration (as well as other motions) to Judge Simpson and said motions have been set for hearing on January 11, 2008 in Teton County, Idaho. See Exhibit B, attached to the Affidavit of Marvin M. Smith filed herewith.

Pursuant to I.A.R 13(b) (Stay Upon Appeal) the District Court has the power and authority to rule upon a motion for reconsideration on an appeal. Based upon the fact that Judge Simpson is hearing Plaintiffs' Motion for Reconsideration on January 11, 2008, Plaintiffs/Appellants request that this Court grant Plaintiffs/Appellants motion to suspend this appeal until Judge Simpson has had an opportunity to rule upon Plaintiffs/Appellants Motion for Reconsideration.

As to Defendant/Respondent's motion to correct caption, Plaintiffs/Appellants have filed a Motion to Change Caption with the district court which is also being heard by Judge Simpson on January 11, 2008. Thus, Plaintiffs/Appellants would request that this Court deny Defendant/Respondent's motion to correct caption and let the district court rule upon and determine the correct caption in this matter.

Finally, Defendant/Respondent's request to dismiss this appeal because Judge Shindurling disqualified himself from the case is nonsensical. As stated above, the undersigned represents Judge Shindurling's adult daughter (who does not live in Judge Shindurling's household) in a totally unrelated matter. Judge Shindurling believed that such representation may present a conflict and disqualified himself from the case. Such action is no grounds to dismiss the appeal.

CONCLUSION

Based upon I.A.R. 13(b), 13.2 and the foregoing analysis and circumstances, Plaintiffs/Appellants respectfully request that this Court grant their motion to suspend the above-captioned appeal until Judge Simpson has entered a decision on Plaintiffs' Motion for Reconsideration (which is being heard on January 11, 2008, in Teton County, Idaho) and deny Defendant/Respondent's motion to correct caption because the caption issue is also being heard and decided by Judge Simpson at the district court level.

DATED this 19th day of November, 2007.

ANDERSON NELSON HALL SMITH, P.A.

By 
Marvin M. Smith

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 19~~th~~ day of November 2007, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponis\Motion.Suspend.Appeal.Reply.01.265.wpd

Marvin M. Smith
 ANDERSON NELSON HALL SMITH, P.A.
 490 Memorial Drive
 Post Office Box 51630
 Idaho Falls, Idaho 83405-1630
 Telephone (208) 522-3001
 Fax (208) 523-7254
 Idaho State Bar No. 2236
 Attorneys for Plaintiffs

FILED
 MAR 07 2008
 4:31
 TETON CO. ID DISTRICT COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
 DAWSON,

Plaintiffs

v.

CHEYOVICH FAMILY TRUST AND
 VASA N. BACH FAMILY TRUST,

Defendants.

Case No. CV-01-265

AFFIDAVIT OF PAULA EHRLER

PROVINCE OF BRITISH COLUMBIA)

: ss.

Town of Kootenay Bay)

Paula Ehrler, being first duly sworn upon oath, deposes and says:

1. I make the following statements based upon my own personal knowledge.
2. I am the adult daughter of Jack Lee McLean, who died on December 3, 2003.
3. I was informed by a telephone call on October 9, 2007 that a quieting title judgment had been entered in this matter.
4. Prior to October 9, 2007, I did not know that a quieting title judgment had

AFFIDAVIT OF PAULA EHRLER - 1

been entered in this matter.

DATED this 28 day of February 2008.

Paula Ehrler

PAULA EHRLER

Identified through British Columbia Driver's License

SUBSCRIBED AND SWORN to before me this 28 day of February, 2008.

Notary Public
Residing at:
Commission expires:

LORNE D. MANN
A Notary Public in and for the
Province of British Columbia

LORNE D. MANN
NOTARY PUBLIC

P.O. Box 427
CRESTON, B.C.
V0B 1G0



CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 7th day of March 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponis Aff. Ehrler.01.265.wps

AFFIDAVIT OF PAULA EHRLER - 3

000611

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs

FILED
MAR 17 2008
TIME: 4:32
TETON CO. ID DISTRICT COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
DAWSON,

Case No. CV-01-265

Plaintiffs

SECOND AFFIDAVIT OF LYNN
MCLEAN

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants.

PROVINCE OF MANITOBA)
) : ss.
City of Winnipeg)

Lynn McLean, being first duly sworn upon oath, deposes and says:

1. I make the following statements based upon my own personal knowledge.
2. I am the adult daughter of Jack Lee McLean, who died on December 3, 2003.
3. I was informed by a telephone call on October 12, 2007 that a quieting title judgment had been entered in this matter.
4. Prior to October 12, 2007, I did not know that a quieting title judgment had

SECOND AFFIDAVIT OF LYNN MCLEAN - 1

been entered in this manner.

DATED this 26th day of February 2008.

[Handwritten Signature]
LYNN MCLEAN

SUBSCRIBED AND SWORN to before me this 26th day of February, 2008.

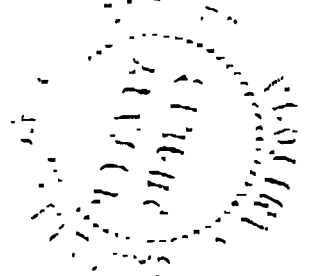
[Handwritten Signature]

Notary Public

Residing at:

Commission expires: *N/A*

CAROLINE B. CRAMER Q.C.
NOTARY PUBLIC IN & FOR MANITOBA
998 SARGENT, WINNIPEG, MB. CDA.
(204) 953-0200 NO EXPIRY



SECOND AFFIDAVIT OF LYNN MCLEAN - 2

7th

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 2nd day of February 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail

Marvin M. Smith

MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponis\Aff.McLean2.01.265.wpd

FILED

MAR 10 2008

TIME: 12:07 CA
TETON CO. ID DISTRICT COURT

JOHN N. BACH
400N, 152E
Post Office Box 101
Driggs, ID 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST, and
VASA N. BACH FAMILY TRUST,

Defendants.

CASE NO: CV 02-265

INTERVENOR-COMPLAINANT JOHN
N. BACH'S FURTHER REQUEST
FOR JUDICIAL NOTICE & RECEIPT
AS EVIDENCE OF WAYNE DAWSON'S
PERJURIOUS AFFIDAVITS

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complainant,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

INTERVENOR-COMPLAINANT JOHN N. BACH, still within the 13 days allowed him by the Court to respond to the allowed filings by Marvin Smith, the purported plaintiffs' counsel, does attached hereto court documents, which further establish and prove Alva Harris is not just litigation counsel for Wayne Dawson, but, fur- is legal counsel for both Wayne Dawson and himself:

1. AFFIDAVIT OF AMOUNT DUE WRIT OF EXECUTION, signed by Alva A. Harris, FEB 15, 2005, in Teton CV 05-10, wherein, top left page 1, it states Alva Harris is:

"Attorney for Judgment Creditors by Assignment of Judgment, Wayne Dawson and Alva Harris."

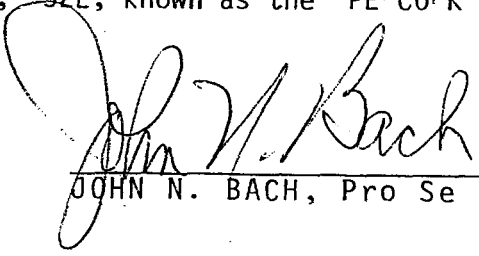
- "2. I am the counsel for Judgment Creditors, Wayne Dawson and Alva Harris." (P.2, unnumbered thereof)
- "4. By Assignment of Judgment all the rights, title and interest in said JUDGMENT of the Judgment Creditors, named above in paragraph 3, were assigned to Wayne Dawson and Alva Harris, Judgment Creditors herein.
5. The name and address of the attorney for Judgment Creditors, Wayne Dawson and Alva Harris is:
Alva A. Harris, Esq.
P.O. Box 479
Shelley, Idaho 83274"

Alva A. Harris' signature appears lower right, page 2 with the Notary's signature, and seal, page 3 unnumbered.

NOTE: On Jan 3, 2005, Judge Shindirling had "dismissed with prejudice" plaintiff's JACK LEE McLEAN's claims herein and two other actions, Teton CV 01-33 and 01-205. No Writ has been pursued to any execution sale by Alva A. Harris nor Wayne Dawson, on said contended bogus Affidavit of Harris, supra. JOHN N. BACH has an over \$50,000 judgment against Harris, Dawson, McLean, Bob Fitzgerald, Ole Oleson & Blake Lyle. (See pg 4-7, top sentence, JOINT CASES-OPINION MEMORANDUM AND ORDERS, filed Sept. 11, 2007.)

2. SUPPLEMENTAL AFFIDAVIT NO. 1. TO PLAINTIFF'S FURTHER AFFIDAVIT RE ISSUANCE OF PERMANENT INJUNCTION, ETC, filed Jan. 12, 2005, with attached copy of Teton CR 05-013 CRIMINAL COMPLAINT. (Plaintiff JOHN BACH and his wife CINDY L. BACH on said stated/referenced dates, therein were living, possessing and developing their residence curtailage of the 40 acres, 40thN, 152E, known as the "PEACOCK PARCEL.")

DATED: MARCH 8, 2008


JOHN N. BACH, Pro Se

CERTIFICATE OF SERVICE BY FAX & MAIL: I certify this Mar. 8, 2008, I mailed copies of this document with attachments to; Judge Darren Simpson, C/O Bingham Courthouse, Blackfoot, ID 83221; Marvin M. Smith, P.O.#51630, Idaho Falls, ID 83405-1630 and Alva Harris, #479, Shelley, ID 83274 and will fax, Monday, Mar. 10, 2008 another copy to Judge Simpson @ 785-8057
DATED: Mar. 8, 2008

- 2 00061 

Marvin M. Smith
 ANDERSON NELSON HALL SMITH, P.A.
 490 Memorial Drive
 Post Office Box 51630
 Idaho Falls, Idaho 83405-1630
 Telephone (208) 522-3001
 Fax (208) 523-7254
 Idaho State Bar No. 2236
 Attorneys for Plaintiffs

FILED
 MAR 11 2008
 TIME 4:22
 TETON COUNTY DISTRICT COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
 DAWSON,

Plaintiffs

v.

CHEYOVICH FAMILY TRUST AND
 VASA N. BACH FAMILY TRUST,

Defendants.

Case No. CV-01-265

**PLAINTIFFS' SECOND MOTION
 FOR SANCTIONS**

COME NOW Plaintiffs, by and through counsel of record, and request that this Court sanction John N. Bach for communicating directly with a represented opposing party. This Motion is supported by the supporting memorandum filed concurrently herewith. Plaintiffs do not wish oral argument and request that the Court rule upon this motion based upon the pleadings and record before it.

DATED this 10th day of March 2008.


MARVIN M. SMITH

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 10th day of March 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponis\Motion.Sanctions2.01.265.wpd

FILED

FEB 17 2005

TIME: 3:00 PM
TETON CO. DISTRICT COURT

Alva A. Harris
Attorney at Law
171 South Emerson
P. O. Box 479
Shelley, Idaho 83274
1-208-357-3448
ISB # 968

Attorney for Judgment Creditors by Assignment of Judgment,
Wayne Dawson and Alva Harris

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

CODY RUNYAN and GALEN WOELK,)
individually and d/b/a Runyan & Woelk,)
Judgment Creditors,)
and)
TETON COUNTY, LAURA LOWRY,)
RYAN KAUFMAN, EILEEN HAMMON,)
NOLAN BOYLE, YOLAND VALLO,)
PHYLLIS HANSEN, LAVELL JOHNSON,)
WILLIAM MOULTON, JAY CALDERWOOD,)
MARK TRUPP, DAVE OVESON,)
JAMES DEWEY, BRENT ROBSON, AND)
DAVE TRAPP, assignors, and WAYNE)
DAWSON and ALVA A. HARRIS,)
assignees, as real parties in interest,)
Judgment Creditors,)
vs.)
JOHN N. BACH,)
Judgment Debtor.)

United States District Court for the District
of Idaho Case No. CV-01-266-E-TGN

Case No. CV-05-10

AFFIDAVIT OF AMOUNT DUE FOR
WRIT OF EXECUTION

STATE OF IDAHO)
County of Bingham)

0 141
000619

Alva A. Harris, being first duly sworn, deposes and says:

1. I am an attorney, I am of adult age, I am under no disability that would affect the truth of the statements set forth in this affidavit, and I have personal knowledge of the facts contained herein.

2. I am counsel for Judgment Creditors, Wayne Dawson and Alva Harris.

3. On December 27, 2004, in the United States District Court for the District of Idaho, Case No. CV-01-266-E-TGN, a Judgment was entered in favor of the following Judgment Creditors: Teton County, Laura Lowry, Ryan Kaufman, Eileen Hammon, Nolan Boyle, Yolanda Vallo, Phyllis Hansen, Lavell Johnson, William Moulton, Roy Moulton, Jay Calderwood, Mark Trupp, Dave Oveson, James Dewey, Brent Robson and Dave Trapp, that awarded those named Judgment Creditors a Judgment against Judgment Debtor herein, John N. Bach, in the amount of \$21,456.50, plus interest at the legal rate under federal law commencing December 27, 2004. A certified copy of the Judgment has been filed with this Court.

3. WHEREAS, the balance of the Judgment as of February 15, 2005 is calculated as follows:

Principal on Judgment:	\$21456.50
------------------------	------------

Statutory interest at 2.71% per annum (the federal post-judgment rate) from 12/27/04 to 1/5/05	\$14.33
--	---------

Statutory interest at 7.125% per annum (the Idaho post-judgment rate) from 1-6-05 to 2-15-05	\$167.54
--	----------

Accruing Costs:

Recording fees	\$6.00
----------------	--------

Writ fees

\$2.00

TOTAL DUE THROUGH 2/15/2005

\$21,646.37

Interest continues to accrue after February 15, 2005, at the rate of \$4.22 per day, and

4. By Assignment of Judgment all the rights, title and interest in said JUDGMENT of the Judgment Creditors, named above in paragraph 3, were assigned to Wayne Dawson and Alva Harris, Judgment Creditors herein.

5. The name and address of the attorney for Judgment Creditors, Wayne Dawson and Alva Harris, is:

Alva A. Harris, Esq.
P. O. Box 479
Shelley, Idaho 83274

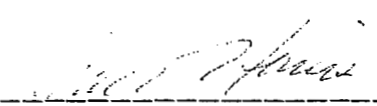
6. The last known mailing address of the Judgment Debtor, John N. Bach, is:

John N. Bach
P. O. Box 101
Driggs, Idaho 83422

7. Bach has paid nothing toward the Judgment and the same is not satisfied.

Further your affiant sayeth naught.

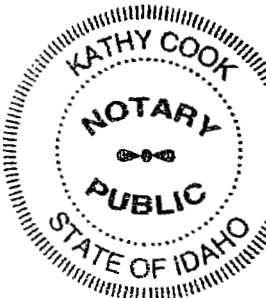
Dated this 15th day of February, 2005.



Alva A. Harris

State of Idaho)
 County of Bingham)

Subscribed and sworn to before me this 15th day of February, 2005



Kathy Cook

 Notary Public for Idaho
 Residing at Shelley, Idaho
 My Comm. expires: *10-27-2006*

FILED

JOHN N. BACH, 1958 Euclid Ave.
San Marino, CA 91108 Tel: (208) 799-3145
(Idaho Local: P.O. #101, Driggs, ID 83422)
Plaintiff Pro Se

JAN 13 2005
2:53 PM
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,
Plaintiff,
v.

CASE NO: CV 02-208
SUPPLEMENTAL AFFIDAVIT NO. 1. TO
PLAINTIFF'S FURTHER AFFIDAVIT RE
ISSUANCE OF PERMANENT INJUNCTION, ETC.,
filed Jan. 12, 2005

KATHERINE D. MILLER, aka
KATHERINE M. MILLER, et al,

Defendants. /

STATE OF IDAHO)
COUNTY OF TETON) ss: I, JOHN N. BACH, duly placed under oath,
give my testimony of my own personal knowledge
participation, witnessing & observations.

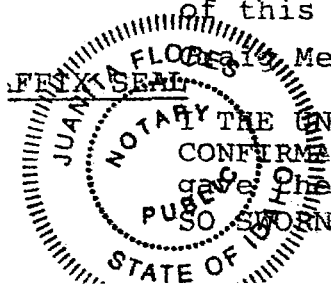
1. About 5:30 p.m. yesterday, I was advised by friends that Blake Lyle had been arrested Mon., Jan 10, 2005 on 2 felony counts of aggravated assaults against Teton officers. The 6 p.m. Channel 6 Local T.V. News further confirmed said arrest, and last evening I had further discussions with Dep. Hurt of the TCSO, who advised LYLE was to be arraigned this date, at 9:30 a.m. Dep. Hurt also informed affiant that LYLE's former employee: that violated affiant and his wife's property, peace and enjoyment of their Peacock residence (See par 2. e) PLAINTIFF'S FURTHER AFFIDAVIT, Jan. 12, 2005) real name was Brian Brady, who upon being stopped by the TCSO that evening, was found to possess/have a loaded 45 Glock revolver, and which he apparently had with or on him when he stalked, harassed, trespassed, etc., upon affiant and his wife, Jan. 5, 2005, a week prior.

2. Affiant attended LYLE's arraignment this morning, heard his preliminary hearing set for Mar. 25, 2005 and obtained a copy of the CRIMINAL COMPLAINT in Teton CR 05-013, a copy of which is attached.

3. Affiant is more than ever concerned about his, his wife's, animals' and other family members safety and well being by virtue of said developments and requests of this Court the immediate issuance of his submitted PERMANENT INJUNCTION form. I have mailed a copy of this document to Judge St. Clair, Alva Harris, Jared Harris, and Meadows this date. DATED: Jan. 13, 2005

THE UNDERSIGNED NOTARY VERIFY, ATTEST AND CONFIRM that JOHN N. BACH was placed under OATH, gave the foregoing testimony and signed his name in my presence.

SWORN AND SUBSCRIBED TO BY: Name: John N. Bach Com'NExp 2/2010



000023

BARTON J. BIRCH
TETON COUNTY PROSECUTOR
89 N Main Street #10
Driggs ID 83422
(208) 354-2990
ISB #6426

FILED
JAN 10 2005
TETON CO.
MAGISTRATE COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON
MAGISTRATE DIVISION

STATE OF IDAHO,

Plaintiff,

v.

BLAKE LYLE,

Defendant.

Case No. CR 05- 013

CRIMINAL COMPLAINT

PERSONALLY APPEARED before me this 10th day of January, 2005, Teton County Prosecuting Attorney, Laura E. Lowery, in and for the County of Teton, State of Idaho, who, being first duly sworn, complains and says that BLAKE LYLE did commit the crime of ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY (2 counts), as follows:

COUNT I
ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY UPON LAW
ENFORCEMENT PERSONAL
Felony, I.C. §18-901; 18-909; 18-915

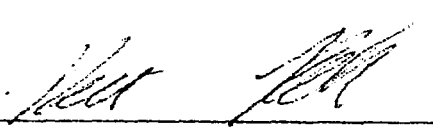
That the Defendant, BLAKE LYLE, on or about the 10TH day of January, 2005, in the County of Teton, State of Idaho, did intentionally, unlawfully, and with apparent ability, threaten by word to do violence upon the person of Teton County Sgt. Jared Hurt by telling Teton County Sgt. Jared Hurt that if he did not get off of his, the Defendant's, property that the Defendant would put a bullet in Teton County Sgt. Jared Hurt, which created a well-founded fear in Teton County Sgt. Jared Hurt that such violence was imminent, with the intent to commit murder.

COUNT II
ASSAULT WITH INTENT TO COMMIT A SERIOUS FELONY UPON LAW
ENFORCEMENT PERSONAL
Felony, I.C. §18-901; 18-909; 18-915

That the Defendant, BLAKE LYLE, on or about the 10TH day of January, 2005, in the County of Teton, State of Idaho, did intentionally, unlawfully, and with apparent ability, threaten by word to do violence upon the person of Teton County Animal Control Officer Robert DeLange by telling Teton County Animal Control Officer Robert DeLange that if he did not get off of his, the Defendant's, property that the Defendant would put a bullet in Teton County Animal Control Officer Robert DeLange, which created a well-founded fear in Teton County Animal Control Officer Robert DeLange that such violence was imminent, with the intent to commit murder.

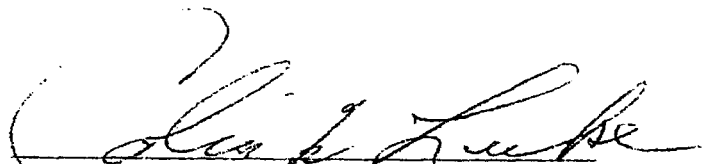
All of which is contrary to the form, force and effect of the statutes made and provided for in such case and against the peace and dignity of the State of Idaho.

Dated this 10th day of January, 2005.



Barton J. Birch
TETON COUNTY PROSECUTOR

SWORN AND SUBSCRIBED TO before me on the date indicated.



MAGISTRATE JUDGE COLIN W. LUKE

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs

FILED

MAR 10 2008

4:22

TETON CO. ID. DISTRICT COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
DAWSON,

Plaintiffs

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants.

Case No. CV-01-265

MEMORANDUM IN SUPPORT OF
PLAINTIFFS' SECOND MOTION
FOR SANCTIONS

COME NOW Plaintiffs, by and through counsel of record, and hereby submit their
Memorandum in Support of Plaintiffs' Second Motion for Sanctions.

STATEMENT OF FACTS

On page 11 of Bach's closing brief Dated March 6, 2008, Bach states:

JOHN N. BACH, in all capacities herein, will be forwarding to both WAYNE
AND DONNA DAWSON and MARK LIPONIS, a complete copy of this
DOCUMENT with attachments, hereby making demand upon each of them,
individually and jointly, to disassociate themselves and renounce both Marvin
M. Smith and Alva A. Harris, from and any further criminal acts or pursuits
herein by them or any other persons revealed as defendants . . . ALL AND
ANY SUCH RESPONSES FROM THE DAWSONS AND LIPONIS OR HIS

WIFE MUST BE IN WRITING SENT TO JOHN N. BACH,
PERSONNALLY, P.O. BOX 101, Driggs, ID 83422.

ANALYSIS

THE COURT SHOULD SANCTION BACH FOR COMMUNICATING DIRECTLY WITH A REPRESENTED PARTY AND ENTER AN ORDER PROHIBITING BACH FROM MAKING ANY CONTACT WITH A REPRESENTED PARTY IN THIS MATTER OR IN TETON COUNTY CASE No. CV-01-33.

Plaintiffs incorporate by reference as if fully set forth herein their original Motion for Sanctions and the accompanying memorandum and affidavit previously submitted to the Court. The Idaho Supreme Court has held: "We hold . . . that a *pro se* attorney may not communicate with the opposing party about the subject of the representation." *Runsvold v. Idaho State Bar*, 129 Idaho 419, 422, 925 P.2d 1118, 1121 (1996).

In this case, there is no question Defendant has in the past directly communicated with a represented opposing party (Wayne Dawson and Dr. Liponis) and has or is apparently directly communicating again with represented opposing parties (Wayne Dawson and Dr. Mark Liponis (Teton County Case CV-2001-33)) about the ongoing litigation. Therefore, Plaintiffs respectfully request that this Court sanction Bach and enter an order prohibiting Bach from making any contact with opposing parties in this litigation.

DATED this 10th day of March 2008.



MARVIN M. SMITH

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 10th day of March 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



 MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponis\Motion.Sanctions.Memo.2.01.265.wpd

JOHN N. BACH
400N, 152E
Post Office Box 101
Driggs, ID 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

FILED
MAR 10 2008
TIME: 4:25
TETON COUNTY DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

<p>JACK LEE McLEAN, Trustee, and WAYNE DAWSON, Trustee, Plaintiffs, v. CHEYOVICH FAMILY TRUST, and VASA N. BACH FAMILY TRUST, Defendants.</p>	<p>CASE NO: CV 01-265 INTERVENOR-COMPLAINANT JOHN N. BACH'S MOTION TO STRIKE/QUASH TWO AFFIDAVITS-SECOND AFFIDAVIT By LYNN McLEAN, dated FEB. 26, 2008; and AFFIDAVIT OF PAULA EHRLER, dated FEB 28, 2008, both Served by Mail, March 7, 2008 & Recei- ved by Mail, March 10, 2008/Afternoon</p>
<p>JOHN N. BACH, individually & dba TARGHEE POWDER EMPORIUM, LTD., Intervenor-Complainant, v. JACK LEE McLEAN, TRUSTEE, WAYNE DAWSON, TRUSTEE, DONNA DAWSON, ALVA A. HARRIS, indivi- dually & dba & as Alter Ego of SCONA, INC., KATHERINE M. MILLER, and DOES 1 through 30, Inclusive, Third Party Defendants.</p>	

COMES NOW "INTERVENOR-COMPLAINANT" AND IN ALL OTHER CAPACITIES,
JOHN N. BACH, who moves this Honorable Court to issue an ORDER
STRIKING/QUASHING the two affidavits served on March 7, 2008 by
Marvin M. Smith, of his purported clients, such affidavits being:

1. SECOND AFFIDAVIT OF LYNN McLEAN, dated February 26, 2008;
2. AFFIDAVIT OF PAULA EHRLER, dated February 28, 2008.

Both AFFIDAVITS are objected to:

- A) THE PURPORTED PLAINTIFFS THAT FIRST FILED A INCOMPLETE AND UNSUPPORTED BY ANY AFFIDAVIT MOTION FOR RECONSIDERATION WERE:
"ESTATE OF JACK L. McLEAN (&
SURVIVING BENEFICIARIES."
- B) NEITHER PAULA EHRLER NOR LYNN McLEAN ARE NOR EVER WERE THE PERSONAL REPRESENTATIVE OF ANY PROBATE ESTATE OF JACK LEE McLEAN, NOR BY REASON OF IC 15-3-108, DID EITHER OF THEM EVER BECOME SUCCESSORS TO ANY CLAIMS SURVIVING JACK McLEAN NOR HIS ESTATE, AS THE LATTER IS NOW PRECLUDED TO BE PROBATED, THEREFORE THEY ARE NEITHER "SURVIVING BENEFICIARIES."
- C) NOR HAVE EITHER OF THEM, MOVED TO INTERVENE OR BE ADDED AS SUCCESSOR TRUSTEES OF ANY TRUST OF/FOR JACK LEE McLEAN. SMITH'S CITED RULES 25(a)-25(e) ARE INAPPLICABLE
- D) NEITHER PAULA EHRLER NOR LYNN McLEAN HAVE ANY CAPACITY, STANDING OR RIGHT TO EITHER INTERVENE, HAVE ANY CHANGE OF CAPTION ORDERED/IMPLEMENTED HEREIN, AND,
- E) MOST SIGNIFICANTLY, BASED UPON THEIR UTTERLY SPECIOUS, SHAM, FRIVOLOUS AND WITHOUT MERIT EFFORTS HEREIN, THEY HAVE FILED NO MOTION FOR RECONSIDERATION AND FURTHER HAVE NOT FILED ANY TIMELY NOTICE OF APPEAL, WITH ALL TIME LIMITS AND PERIODS HAVING EXPIRED. THIS COURT IS WITHOUT JURISDICTION TO ISSUE ANY OTHER ORDERS OTHER THAN STRIKING/QUASHING THEIR SHAM MOTION OFFERED FOR RECONSIDERATION AND ALSO ANY OFFERED NOTICE OF APPEAL IN THE NAMES OF EITHER: "ESTATE OF JACK LEE McLEAN and/or SURVIVING BENEFICIARIES." and ALSO STRIKING, QUASHING AND DISMISSING WITH PREJUDICE THAT NOTICE OF APPEAL, dated Oct. 17, 2007 filed herein.
- F) FURTHER, even if PAULA EHRLER AND LYNN McLEAN HAD COMPLIED WITH AND OVERCOME ALL THE FOREGOING, A) THROUGH E) FAILURES AND OBJECTIONS OF STANDING, JURISDICTION, ETC., THEY ARE COMPOUNDINGLY AND AGGRAVATINGLY LATE, DILATORY AND UNTIMELY IN PRESENTING ALL OF THEIR AFFIDAVITS, AND THAT OF WAYNE DAWSON'S. ESPECIALLY:
- 1) They never obtained any orders allowing their affidavits, including the current one to be filed.
 - 2) At the Feb. 14, 2008 hearing, no motion even verbally was presented, which would have evoked intervenor-complainant's objections and opposition, and no order issued allowing such current affidavits being filed.
 - 3) Their purported counsel, Marvin M. Smith, was allowed by the court, 13 days to respond to Intervenor-Complainant JOHN N. BACH's two EXHIBITS 1 and 2 offered and now received during said oral arguments on Feb. 14, 2007. Such 13 days expired, Feb. 27, 2008 and Dawson's SECOND AFFIDAVIT thereafter and the current two Affidavits are not presented with

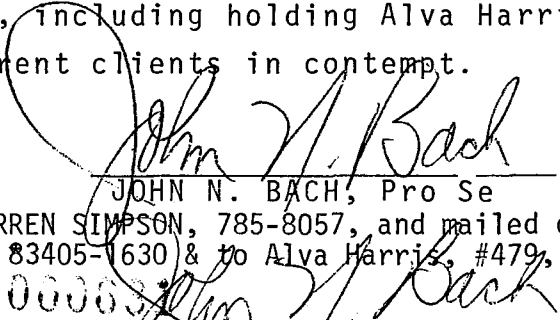
validly/timely presented motion for order to allow them or any of such three affidavits to be filed/allowed due to Marvin Smith's excusable neglect, inadvertence, oversight or error. NOR COULD SUCH MOTION BE VALIDLY NOR PROPERLY MADE NOW.

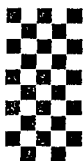
- 4) Both current affidavits by Ehrler and McLean are again devoid, evasive, ignoring and nonpresenting of any relevant, admissible facts or showing of percipients events, etc., that bear in any fashion, respect or degree, whatsoever, to show let alone be sufficient in showing, any excusable neglect by Alva Harris.
- 5) Both current affidavits, additionally are clear further evidence of the deliberate fraud, deceit and contemptuous evasions of Marvin Smith, Alva Harris and the McLean daughters and Wayne Dawson, to extort and destroy the VALID AND APPLICABLE QUIET TITLE JUDGMENTS in this action and CV 01-33 ALONG WITH THE PERMANENT INJUNCTIONS PARAGRAPHS THEREIN.
- 6) Both current affidavits, along with DAWSON'S SECOND AFFIDAVIT facially reveal that whoever may have called them was a snoop and informer of what went on in each of said actions, CV 01-265 and 01-33, and were further conspirators, their agents and joint actors with them to continue/extend the Federal and Idaho Racketeering Acts violations which JUDGE JON SHINDIRLING found and set forth in his JOINT CASES' MEMORANDUM OPINION AND ORDERS, filed Sept 11, 2007.
- 7) Neither said current affidavits nor any filed herein by DAWSON or Lynn McLean previously have any relevancy, admissibility nor evidentiary merit, let alone presentation of facts that show any inference, let alone scintillation, other than utter incompleteness and guesswork/speculations, that justify any consideration of such motion for reconsideration or to set aside.

JOHN N. BACH refers to and incorporates herein all his objections, opposition and motions to strike, etc., filed Oct. 25, 2007 to date hereof. This document is further offered in support of all JOHN N. BACH's motions for sanctions, including holding Alva Harris, Marvin Smith and their purported current clients in contempt.

DATED: March 10, 2008
Certificate of Service by Fax & Mail

I certify that on Mar. 10, 2008 I did fax a copy of this motion document, to JUDGE DARREN SIMPSON, 785-8057, and mailed copies of the same to Marvin Smith #51630, I.F. ID 83405-630 & to Alva Harris, #479, Shelley, ID 83279,


JOHN N. BACH, Pro Se



Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs

FILED
MAR 13 2008
TIME 10:51
TETON CO. ID DISTRICT COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
DAWSON,

Plaintiffs

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants.

Case No. CV-01-265

PLAINTIFFS' RESPONSE TO
BACH'S MOTION TO
STRIKE/QUASH SECOND
AFFIDAVIT OF LYNN MCLEAN
AND AFFIDAVIT OF PAULA
EHLER

COME NOW Plaintiffs, by and through the undersigned counsel, and hereby submit their response to Bach's Motion to Strike/Quash all of Plaintiffs' pending motions.

ANALYSIS

BACH'S MOTION TO STRIKE/QUASH SECOND AFFIDAVIT OF LYNN MCLEAN AND AFFIDAVIT OF PAULA EHRLER MUST BE DENIED.

At the hearing of this matter on February 14, 2008, and in response to Plaintiffs' notice argument per I.R.C.P. 77(d), Bach argued it was unclear exactly when Dawson, Lynn McLean, and Paula Ehrler received actual notice of the September 11, 2007 Order and

RESPONSE TO BACH'S MOTION TO STRIKE SECOND AFFIDAVIT OF LYNN MCLEAN AND AFFIDAVIT OF PAULA EHRLER - 1

Judgment Quieting Title in this matter. Wayne Dawson, Lynn McLean, and Paula Ehrler have submitted affidavits after said hearing to make perfectly clear to the Court that they did not receive actual notice of the Order and Quieting Title Judgment until October 10 (Dawson), October 12 (McLean), and October 9 (Ehrler), 2007. Therefore, the affidavits have merit, contrary to Bach's assertions, and affirmatively evidence when Dawson, McLean, and Ehrler received any type of notice about the Order and Quieting Title Judgment entered in this matter.

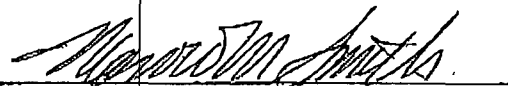
CONCLUSION

Based upon the foregoing Plaintiffs respectfully request that this Court deny Bach's Motion to Strike/Quash Second Affidavit of Lynn McLean, Affidavit of Paula Ehrler, and any purported attempt to strike the Second Affidavit of Wayne Dawson.

DATED this 12th day of March, 2008.

ANDERSON NELSON HALL SMITH, P.A.

By



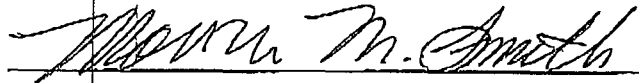
Marvin M. Smith

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 12th day of ~~February~~ ^{March} 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponis\Response.Motion.Strike.Affidavits.01.265.wpd

RESPONSE TO BACH'S MOTION TO STRIKE SECOND AFFIDAVIT OF LYNN MCLEAN AND AFFIDAVIT OF PAULA EHRLER - 3

000634

FILED

MAR 13 2008

TIME: 12:41
TETON CO. ID. DISTRICT COURT

JOHN N. BACH
400N, 152E
Post Office Box 101
Driggs, ID 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se
Specially Appearing, Contesting All Aspects of Jurisdiction
SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEVOVICH FAMILY TRUST, and
VASA N. BACH FAMILY TRUST,

Defendants.

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complainant,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

CASE NO: CV 07-265

INTERVENOR-COMPLAINANT JOHN
N. BACH'S SPECIAL APPEARANCE
RE: OBJECTIONS TO ASSERTED JUR-
ISDICTION RE SUBJECT MATTER AND
LACK OF PERSONAL JURISDICTION
OVER JOHN N. BACH TO CONSIDER
PURPORTED PLAINTIFFS' (WITHOUT
STANDING OR CAPACITY) SECOND
MOTION FOR SANCTIONS and Offered
MEMORANDUM in SUPPORT OF PLAIN-
TIFFS' SECOND MOTION FOR SANCTIONS

and
JOHN N. BACH'S MOTION TO STRIKE
BOTH SAID SECOND MOTION FOR SANC-
TIONS and Offered MEMORANDUM.
(IRCP, Rules 12(b)(1)-(8) & 54(b)(2))

A HEARING IS REQUESTED TO BE SET
WITHIN NEXT 7 DAYS; JOHN N. BACH
CONSENTS SUCH HEARING COULD BE
IN Blackfoot, ID., Bingham County
* * * COURTHOUSE * * * *

NOTICE IS HEREBY GIVEN, that INTERVENOR-COMPLAINANT,
JOHN N. BACH, does appear herein specially, contesting and ob-
jecting to all aspects of jurisdiction, in rem and in personam,
making the aforestated/designated objections and motion to strike
quash purported "Plaintiffs' Second Motion For Sanctions and
offered Memorandum (offered in support thereof, incorporating
herein and throughout, infra, the foregoing titled objections,
JNBACH's Obj/Mtn to Strike Plts' 2nd Mtn for Sanctn P. 1.

000035

motion to strike, etc., with stated IRCP, Rules, under the CASE NO. CV 01-265 caption, supra.

I. LACK OF SUBJECT MATTER JURISDICTION. SAID SECOND MOTION:

A. Fails to show this Court has any jurisdiction whatsoever and per Rule 54(b)(2) which states explicitly this Court has no jurisdiction over such motion as an Appeal has been filed. Plus the Idaho Supreme Court has only limitedly allowed this court solely jurisdiction to hear purported "Plaintiffs' MOTION FOR RECONSIDERATION, filed without any 14 days affidavit filed from and after Oct. 9, 2007.

B. No order has even issued recognizing Marvin M. Smith has the properly employed legal counsel for whatever plaintiffs he might be found as representing herein.

C. The standing appearance by purported plaintiffs are: "Estate of Jack Lee McLean, Surviving Beneficiaries and WAYNE DAWSON, Trustee."

The first two purported plaintiffs do not exist nor could they and such entities are fraudulently non-existing, without standing or capacities to have any claim as surviving the death of Jack McLean; in fact, no claims survived his demise to any of his purported daughters

WAYNE DAWSON has filed no motion with supporting affidavit memorandum and set no date for hearing of having Marvin M. Smith be ordered to appear as his counsel herein, all as required per I.C. 3-203(2), etc.

D. The offered MEMORANDUM IN SUPPORT THEREOF, 2 pages, only cites the frivolously nonrelevant and nonapplicable decision of Runsvold v. Idaho State Bar, 129 Idaho 419, deliberately deceitfully misciting the relevant page 420, thereof, wherein J. Silak, restricts such decision to an appeal from the Idaho State Bar discipline court, to

the Idaho Supreme Court, to determine if a private reprimand issued by the state bar court was improper or overkill, assessed solely against a licensed Idaho attorney who made repeated personal contacts, not letter writings to his then estranged wife, latter represented by her own selected counsel. There is no application whatsoever of said decision to nor upon JOHN N. BACH herein, who is neither licensed as an Idaho Attorney, nor any where else, but, appears herein, pro se as a lay person and private citizen property owner, having obtained a QUIETING TITLE JUDGMENT, etc., which includes a liability judgment against all third party defendants and the initial plaintiffs for fraud and violation of both the Federal RICO Act, 18 U.S.C. 1961, etc., and the Idaho Racketeering Act, whereby among the many undisputed fact evidentiary basis and actions/orders of JUDGE JON L. SHINDIRLING, ordered all the initial plaintiffs' rights, title, interests, etc., and that of the third party defendants in intervention rights titles, interests, claims to three (3) parcels of realty, forfeited, reconveyed, returned and reaffirmed as solely belonging to JOHN N. BACH.

D. Per the gibberish statements of both said SECOND MOTION and offered MEMORANDUM, purported plaintiffs' counsel, Marvin M. Smith reveals further his specious and utterly without merit statements that:

1. His motion applies to Teton CV 01-33 but, this Court, Judge Darren B. Simpson has been and is disqualified therein, has no jurisdiction at all.

2. The affidavits prepared, drafted and presented herein by Marvin M. Smith, signed under penalty of perjury by WAYNE DAWSON (2 such affidavits); by Lynn McLean (2 such documents by her) and a single affidavit by Paula ehrler, have been clearly shown to be perjurious, repleted with false and deceitfully stated materials facts, which facts and events did not occur; all such affidavits are suborned by perjury occassioned by Marvin Smith, false documents and exhibits filed herein, constituting interstate criminal offenses not just of wire/e-mail, internet and mail fraud, but criminal obstruction of justice, etc., all as pointed out, analyzed and proven by JOHN N. BACH's filed motions and memo bri- filed herein. (Plaintiffs & Smith have no attorney client priv-
ileges!)
3. All of said Marvin Smith's filings, especially the two motions for some sort of sanctions against JOHN BACH, reveal, establish and prove as both undeniable facts and conclusions of law, that Marvin Smith along with all his purported plaintiffs and still present third party in intervention defendants and their counsel, Alva A. Harris, have joined, become complicitors, individuals jointly aiding, participating, abetting and counseling all and each other in further of both continuing/extending the Court's earlier findings of their violations of the Federal RICO ACT AND Idaho statute 18-7804 and 18-7805, et seq

II. THIS COURT CANNOT ALLOW, SANCTION, CONDONE NOR APPROVE, LET ALONE BECOME SUCH A SEPARATE JOINT VIOLATOR OF BOTH THE FEDERAL RICO ACT AND IDAHO'S RACKETEERING STATUTE.

Ballin Oaks, a high LDS priestholder, advisor, Apostle, former Supreme Court Justice of Utah, former President of the American Bar Association, is the main spokesman, espouser and advocate of LDS priest-holders elevated stature; he has been repeatedly quoted in several church publications, the public TV. series, "THE MORMONS" and in public, private reported interviews in all media dimensions, that:

"A man (such as an LDS priestholder) ordained of God, cannot and must not be criticized, degraded or attacked for what he has done or said that is wrong, even if the criticisms, etc., are true and accurate." (Only LDS men can become priestholders & to hold Temple recommends.)

This special advocated stature applies to all LDS ATTORNEYS who so far have been given favorably biased and prejudicially benefitting treatment by LDS JUDGES of Eastern Idaho. JOHN N. BACH has consistently objected to any violation of his First Amendment-all of them- and his FOURTEENTH AMENDMENT RIGHTS, especially as violated by Alva A. Harris and Marvin M. Smith herein.

Judge JON L. SHINDIRLING, refused to adhere to or recognize any such special unconstitutional privileged stature of Alva Harris and I believe he would not pursue or allow such biasedly unconstitutional protectionism of Marvin M. Smith's conduct and criminal actions herein. (Mr. Smith should know such as a former Idaho Judge.)

What is most relevant, is Marvin Smith's said actions, statements and now attempts to unconstitutionally and illegally muzzle and/or eviscerate JOHN N. BACH's constitutional rights, is the failure and evasion of this current Court to recognize, and take immediate ameliorative actions, that Marvin Smith, Alva Harris and all their clients herein plus others found acting in conspiracy/concert jointly with them are "persons", associating still acting via a "enterprise" (any union or group of individuals associated in fact JNBACH's OBJ/MTN TO STRIKE PIts' 2d Mtn for Sanctns P. 5. 000639

although not a legal entity), still pursuing/functioning via a "pattern of racketeering activity" especially unlawfully pursuing/proceeding and continually/unceasingly perpetrating "racketeering activities" against JOHN N. BACH, even to this date, as proscribed by 18 U.S.C. 1961(1)(A), (B), (C); (2),(3),(4), (5),(6), especially all attempts and threats, despite the discharge of all purported claims, to collect on illegal/unlawful debts discharged in JOHN N. BACH's bankruptcy, are grand theft, plus embezzlement (the grand theft of JOHN BACH's \$15,000 from his agency trust account), by mail fraud, by wire fraud, by obstruction of justice (this violation repeated-- despite the VOIDING OF ALL DEEDS transfers by plaintiff-in violations of the automatic stay order of JOHN BACH's Chapter 13 bankruptcy); obstruction of Criminal investigations, of State and local Idaho law enforcement, of arson of JOHN BACH's almost completed lodge and barn buildings/structures; interference with commerce, extortions, threats of murdering JOHN N. BACH and his wife, CINDY L. BACH,

18 U.S.C. sec 1961(2) defines "unlawful debt" as a "debt. . . incurred in violation of the law of the United States, a State or Federal law in whole or in part as to principal or interest. . . incurred in connection with the business of lending money. . ."

This Court has been cited to two major controlling/applicable cases, to wit: Mannos v. Moss 143 Idaho 927, 935-36; and Living Designs Inc. v. E. I Dupont DeMemours (9th Cir. 2005) 431 F.3d 353, latter case wherein defense insurance counsel and their retained forensic experts, who followed pattern of perjury test results, perjurious testimony during depositions, so directed by the retaining defense counsel, insurance agents, were conspirators perpetrating as an "enterprise" a pattern of racketeering activity" against JOHN N. BACH. I.C. 18-7804 and 18-7804 are patterned after the federal act, and JNBACH's OBJ/MTN to Strike Plts* 2nd Mtn for Sanctns P. 6. federal cases apply/in-

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Mannos, supra, and Living Designs, Inc., supra, cited and applied;
U.S. v. Turkette (Mass, 1981) 101 S.Ct. 2524, 452 U.S. 576,
69 L.Ed2d 246, on remand 656 F.2d 5., holds that 1961-62, makes
anyone liable for participation or association with group of
individuals in fact, conducting a pattern of racketeering. Even
informal association with common purpose of making money from re-
lated criminal activity which united defendants with others, as
associates or counselors is sufficient to find Marvin Smith as
violating racketeering statutes, federal and Idaho State. See
U.S. v. Campanale, C.A. Cal. 1975, 518 F.2d 352, cert den. 96 S.Ct.
777, 423 U.S. 1050, 46 L.Ed2d 638 rehrg den.,
96 S.Ct. 1422, 424 U.S. 950, 47 L.Ed2d 356.
Gunther v. Dinger, D.C.N.Y. 1982, 577 F.Supp 339 (Estate of Decedent
was "enterprise" within definition of RICO.)

Under 18 U.S.C. sec. 1962(d) IT IS PROHIBITED---

"(c) It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct, or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt." (Emphasis added)

DAWSON lives in Chico, CA., while the two purported McLean sisters, live respectively in British Columbia and Manitoba, Canada, thus, both interstate and foreign commerce have been criminally impacted, utilized and still will be violated. Most significantly, when Marvin Smith is the drafter, prime authority and director to file false records, either separately from or as part of perjured, suborned perjured documents, etc., constitutes substantive violations of federal and Idaho RICO acts, regardless of whether any of the other defendant racketeering participant were aware of the actual preparation of false or perjured records, affidavits, etc, U.S. v. Bofa D.C. Del. 1980, 513 F.Supp 444. U.S. v. Lemm C.A.Neb. 1982) 680 F.2d 1193, cert den 103 S.Ct. 739, 459 U.S. 1110, 74 L.Ed2d 960
JNBACH's Obj/Mtn to Strike Plts' 2nd Mtn for Sanctns P. 7. 000641

(It's not necessary of continuity of personnel to show enterprise; determinative factor is whether the associational ties of those charged with RICO violations, amount to an organization pattern or system of authority.)

Marvin M. Smith, has not substituted himself in place of Alva A. Harris; he has clearly by the affidavits of DAWSON and McLean sisters, joined, associated himself and in a position of strategy, control, direction and participation in the same acts which HARRIS, DAWSON, and JACK McLean, now further adopted and participated in by his two daughters, still functioning as the ongoing RICO enterprise and pattern of racketeering. U.S. v. Campale, C.A. Cal. 1975, 518 F.2d 352, supra; Hellenic Lines, Ltd v. O'Hearn, D.C.N.Y. 1981 506 F.Supp 244; U.S. v. Mandal D.C.Md. 1976, 415 F. Supp 997, supplemented 415 F.Supp 1025 (Whoever engages in prohibited patterns of racketeering activities comes within purview of RICO ACT, including public officials. See also U.S. v. Rone, C.A. Cal. 1979, 598 F.2d 564, cert den. 100 S.Ct 1345. As to violations by attorney as advisor and directing strategy being a coconspirator, and part of a RICO enterprise via patterns of racketeering activity; see U.S. v. Loftin, D.C.N.Y 1981, 518 F.Supp 839.

Thus, Marvin Smith's participation, interests in remuneration or recovery of property for his clients, especially his statute as counsel of record herein, is subjected to, removal, forfeiture, dismissal or disqualification-and production of all records, files and documents, etc., accumulated and/or derived from his racketeering association and participation in such illegal and criminal enterprise. U.S. v. Meyers, D.C.Pa 1977, 432 F. Supp 456; U.S. v. Thevis, D.C.Ga 1979, 474 F.Supp. 134, aff'd 665 F.2d 616, rehrg den. 671 F.2d 1379, cert den., 102 S.Ct. 2300, 456

A defendant's interest or ownership in real estate, even any claim by current purported plaintiffs represented by Marvin Smith and those intervenor complaint defendants, still represented by Alva Harris, even their rights of appeal or current frivolous motions are subject to forfeiture. U.S. v. Godoy C.A.Cal 1982, 678 F.2d 84; U.S. v. Spilotro, C.A.Nev 1982, 680 F.2d 612; and U.S. v. Huber, C.A.N.Y. 1979, 603 F.2d 386m cert den., 100 S.Ct. 1312, 445 U.S. 927, 63 L.ED2d 759.

Marvin Smith does not need to be named as a defendant herein or alleged to have participated in two predicate or for Idaho's statute, one predicate act; he has patently, overtly and blatantly, shown is is jointed with, in association with, a coconspirator, joint actor, in joint union, conducting and participating in the conduct of an illegal enterprises affairs which affairs are still conducted, directed and controlled by himself through a regurgitated pattern of racketeering activities. U.S. v. Tille, (C.A.Wash 1984) 720 F.2d 615. Also controlling in removing Marvin Smith entirely and his law firm, immediately from any participation, association, representation, legal or otherwise and turning over all his files, correspondence, documents, (especially the information sought by JOHN BACH on the dates, times, names and messages received by all clients since July 7, 2007 to removal, recusal, and forfeiture date requested to be immediately, is more than justified by 18 U.S.C 1964(a),(b)(c) and I.C. 18-7805(a)(c)(d)(1)(2)(3)(4)(5)(6) & (7). (See U.S. v. Barber, D.C.W.Va 1979, 476 F.Supp 182) (See Nov 19 Demand Letter to Dawson/Liponis-attache

Judge Shindirling's JOINT CASES -OPINION MEMORANDUM AND ORDERS, filed Sept 11, 2007, page 13 found and determined:

"Plaintiffs and their COUNSEL have waived, abandoned (and JOHN N. BACH's OBJ/MTN TO STRIKE Plts' 2nd Mtn for Sanctns P. 9

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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 provisions 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. 18-7895(a),(c),(d)(1)(2)(3)(4)(5) & (7)." (NOTE: Immediately thereafter both actions were dismissed with prejudice for utter lack of diligent prosecution. This dismissal was stipulated to by Alva Harris.)

On page 14 of the JOINT CASES-MEMORANDUM AND ORDERS, par. 3, Subparts A., B., and C., set forth the permanent injunction terms, identical in both CV 01-265 and CV01-33, which is mandatorily applicable to: "ALL PLAINTIFFS, COUNTERCLAIM DEFENDANTS, THIRD PARTY COMPLAINT DEFENDANTS, in Teton CV 01-33 and CV 01-265, along with their successors in interests, corporations, trusts, spouses, children, issues, and all attorneys, especially especially ALVA A. HARRIS, and any members of his law firm, are PERMANELTY ENJOINED, RESTRAINED, PRECLUDED, PREVENTED and FORECLOSED FROM: (Emphasis Added)

. . . .
B. Making any further claims against JOHN N. BACH, individually and dba TARGHEE POWDER EMPORIUM, INC., UNLTD and/or LTD., OR DOING, initiating any act, pursuits or communication with the Teton County Tax Assessor, Tax Collector or the County Clerk's Recorder's Office to place any cloud encumbrance or slanderous document or instrument upon the quieted titles herein to JOHN N. BACH, individually and dba TARGHEE POWDER EMPORIUM, INC., UNLIMITED and LIMITED."

All Plaintiffs, purported current plaintiffs and their attorney Marvin M. Smith have intentionally, deliberately and in continuation of said racketeering activities and patterns, have so violated especially said PART B. and also PART C., latter requiring to account, deliver and


produce "all records, documents, and files, which they, their attorneys or others acting, jointly or separately, but in concert with them have created, assembled or acted as or for TARGHEE POWDER EMPORIUM, INC., or dba TARGHEE POWDER EMPORIUM, UNLIMITED or LIMITED . . . within thirty (30) days from the date of filing of this JUDGMENT, to JOHN N. BACH, 400N, 152E, P.O.Box 101, Driggs, Idaho 83422. The Court will tolerate no delays, refusals, or evasions of this paragraph." (Emphasis added)(See attached J.N. BACH's DEMAND Nov. 1tr.

Even the frivolous filing of said motion for reconsideration and even more utterly without merit of a motion set aside, no compliances have been forthcoming, despite JOHN N. BACH's letters' demands to produce said record, documents and files. The current purported plaintiffs have not filed any application for stay of execution of said permanent injunction paragraphs and their provisions. Following said part 3., the court expressly stated that each paragraphs of the permanent injunction was "based and per I.C. 18-7805(c),(d),(1) (2)(3)(5) & (6),), and Rule 65 &70, IRCP."

CONCLUSION: This Court, under the aforesaid and the current status of frivolous, specious, unsupported, nonapplicable motions filed herein, all motions, including any for sanctions, to amend captions, etc., should be stricken, denied and determined untimely, without any merit or compliance with the applicable I.R.C.P., Rules or any statutes, along with their NOTICE OF APPEAL WITH PREJUDICE, and all motions of JOHN N. BACH granted, removing, recusing and DISQUALIFYING MARVIN SMITH & his law firm from representing any purported plaintiffs and holding MARVIN M. SMITH ALONG WITH HIS PURPORTED CLIENTS, AND ALVA HARRIS IN DIRECT CONTEMPT OF COURT, IMPRISONING THEM ALL FOR AT LEAST THREE DAYS, FOR EVERY DAYS EACH OF THEM HAVE VIOLATED PARTS 3., A., B., And C., of the PERMANENT INJUNCTION.

JOHN N. BACH, requests a full hearing on these objections, motions to strike, etc., at the earliest date. JOHN N. BACH is willing, as an accomodation to the Court, to have such hearing in the Bingham County Courthouse, Blackfoot, upon a date he is available with at least seven (7) days notice via telephone.

DATED: MARCH 13, 2008


JOHN N. BACH, Pro Se

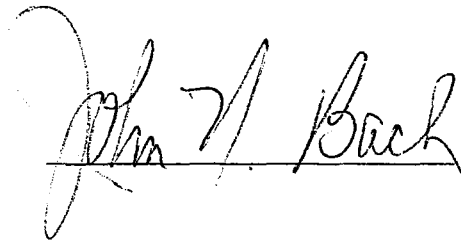
CERTIFICATE OF SERVICE BY MAIL:

I, the undersigned hereby certify that on Wed., March 12, 2008, I did mail copies of this document to each of the following:

- | | |
|--|--|
| 1. Judge Darren B. Simpson
C/O Bingham County Courthouse
Blackfoot, ID 83221 | 2. Marvin M. Smith
P.O. Box 51630
Idaho Falls, ID 83405-1630 |
| 2. Jared Harris
P.O. Box 577
Blackfoot, ID 83221 | 4. Alva A. Harris
P.O. Box 479
Shelley, ID 83274 |

I also will fax Thursday morning, March 12, 2008, a full copies of this document with attachments to Judge Darren B. Simspon, C/O 785-8057.

DATED: March 13, 2008


JOHN N. BACH, Pro Se

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October 19, 2007

PLEASE FORWARD

WAYNE DAWSON
1752 Park Vista Dr.
Chico, CA 95926

MARK LIPONIS
71 Yokum
Lenox, MA 01240

RE: Teton County Civil Actions
Nos: CV 01-33 and CV 01-265

GENTLEMEN:

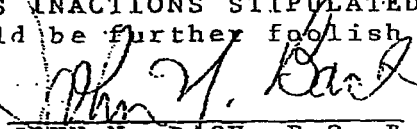
I'm taking the chance of getting both of you to finally be sensible and responsible in honoring, complying with and possibly settling the remaining damages issues against both of you, per the two QUIETING TITLE JUDGMENTS filed Sept. 11, 2007, signed by Judge Jon L. Shindirling, in the afore referenced civil actions which you filed, represented by Alva A. Harris.

In the past, my letters to both of you to show remorse, undo the fraudulent and destructive theft of my properties and interests, fell, not just on deaf ears, but, resulted in your compounding and further aggravating frivolous pursuits via Alva Harris against myself and my properties. Mr. Harris is a pettifogger, charlatan and utter fraud, with whom you joined,, along with Kathy Miller, Jack McLean and others to villify and steal my investment properties. Harris has filed some seven (7) laws suits, including the two above, against me and LOST ALL OF THEM.

Now, Alva Harris, has sought cover and protection from an attorney Marvin Smith, who must know, or soon will readily know what I state in the foregoing paragraphs and otherwise, infra, is true. The question to both of you, apart from your required compliance with the complete terms of said two QUIETING TITLE JUDGMENTS, especially the last two pages, being pages 4-5, thereof with which you must immediately comply in all respects, is whether you are willing to settle my damages' claims/issues vs YOU, which have been severed for jury trial???

I am enclosing herewith copies of said pages 4-5, which are identical in both QUIETING TITLE JUDGMENTS. If you have not been given a copy of the complete "JOINT CASES -CV 01-33 and CV 01-265 OPINION MEMORANDUM AND ORDERS, etc.," of 15 pages and the two QUIETING TITLE JUDGMENTS, I suggest you get it; immediately from your counsel. In the meantime, YOU ARE COMMANDED TO COMPLY WITH ALL TERMS OF SAID PERMANENT INJUNCTIONS' TERMS FORTHWITH, AS ALSO ARE: KATHY MILLER, JACK McLEAN'S daughters and all his counsel (Harris & Smith and all your coconspirators, especially per paragraph "C" thereof.

YOUR DILEMMA IS NOT YOUR CONSCIENCE, BUT, YOUR UNREPENTENT GREED AND FAILURES OF ALVA HARRIS, WHO BY HIS INACTIONS STIPULATED TO BOT QUIETING TITLE JUDGMENTS. You both would be further foolish not to respond to this letter directly.


JOHN N. BACH, P.O. Box 101
Diggs, ID 83422

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FILED

MAR 14 2008

TIME: 3:32
TETON COUNTY DISTRICT COURT

JOHN N. BACH
400N, 152E
Post Office Box 101
Driggs, ID 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST, and
VASA N. BACH FAMILY TRUST,

Defendants.

CASE NO: CV 07-265

INTERVENOR-COMPLAINANT
JOHN N. BACH CLOSING
BRIEF IN SUPPORT OF HIS
MOTION TO STRIKE/QUASH
SECOND AFFIDAVIT OF LYNN
McLEAN AND AFFIDAVIT OF
PAULA EHRLER

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complainant,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

INTERVENOR-COMPLAINT JOHN N. BACH, does hereby submit his CLOSING BRIEF IN SUPPORT OF HIS MOTIONS TO STRIKE/QUASH SECOND AFFIDAVIT OF LYNN McLEAN, AFFIDAVIT OF PAULA EHRLER, and SECOND AFFIDAVIT OF WAYNE DAWSON and FURTHER, IN SUPPORT of his MOTIONS TO STRIKE/QUASH ALL OF PLAINTIFFS' PENDING MOTIONS; Incorporated herein is JOHN BACH's March 6, 2008 CLOSING BRIEF.

This CLOSING BRIEF further refutes that two (2) page, JNBACH's CLOS'G BRIEF/SUPP. HIS MTNS TO STRIKE AFF-L. McLean/Ehrler P. 1.

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prepared by Marvin Smith, document labelled PLAINTIFFS' RESPONSE TO BACH'S MOTION TO STRIKE/QUASH SECOND AFFIDAVIT OF LYNN MCLEAN AND AFFIDAVIT OF PAULA EHLER, received via mail, March 13, 2008, late afternoon. Such purported Plaintiffs' RESPONSE is much broader in purpose stating at the outset it is "their response to Bach's Motion to Strike/Quash all of "purported Plaintiffs' motions.

IT IS NOTEWORTHY TO CORRECT THE FOLLOWING MISSTATEMENTS PERPETRATED AND ADVANCED BY MR. SMITH IN SAID RESPONSE, TO WIT"

A. It has never been ruled upon by this Court as to who are the plaintiffs herein from and after McLean's death.

1. No ruling nor order, despite Smith's convoluted unfounded conclusions, has a qualified judge ruled yet he is the attorney for any purported plaintiffs who have existence, standing and capacity to inherit or carry on nonclaims of Jack McLean, whose estate never was probated, has not existed since his death and is now outlawed by I.C. 15-3-108 et seq.

(The statement by Judge Shindirling on Nov. 6, 2007 that, "disqualifying himself for cause:

"THE COURT: Two comments. I'm not going to disavow the substitution at this time. (Emphasis Added)

But I would make the comment, Mr. Smith, that you're sending in pleadings which list as the plaintiff in both cases the estate of Jack McLean and surviving beneficiaries. This is the very issue that I've been trying to get Mr. Harris to address for years. And that is that Jack McLean died, and I couldn't get Mr. Harris to substitute the plaintiff." (Nov 6, '08 Transcript, P5:4-12)

2. BEcause of Judge Shindirling's recusal for cause, the above was a declination and inability to rule, but flagging for Mr. Smith and whoever were his purported clients, that they were not properly-
legally with standing/capacity before the Court.

- B. The same defects, uncertainties and lack of standing and capacities of the purported plaintiffs were repeated, compounded and aggravated by Mr. Smith's using the identical without standing, nonexisting, etc. plaintiffs in his NOTICE OF RECONSIDERATION and his NOTICE OF APPEAL filed in not just this action, CV 01-265 and CV 01-33. More significantly misstated and deceitfully IGNORED by Mr. Smith is that there was no timely 14 days affidavits presented with said motion for reconsideration. As the Certificate of Final Judgment, per Rule 54(b) was signed filed Oct. 9, 2008, in open court per a hearing on JOHN BACH's motion for its issuance, with all timely and proper service upon Alva Harris, Alva Harris filed no opposition to such and failed to even appear or communicate with the court. ALVA HARRIS had direct knowledge such CERTIFICATE OF FINAL JUDGMENT, per Rule 54(b) would surely issue as he was served Oct. 3, 2007 with filed copies of the JOINT CASES MEMORANDUM AND ORDERS, plus the QUIETING TITLE JUDGMENTS IN FAVOR OF JOHN N. BACH, such being filed Sept 11, 2007.
- C. IT DIDN'T MATTER UNDER THE ABOVE UNCONTROVERTED FACTS, WHEN EITHER DAWSON, EITHER OF THE McLEAN DAUGHTERS FOUND OUT SUCH JUDGMENTS HAD BEEN ENTERED/ISSUED.
- D. WHAT DOES BECOME RELEVANT IS WHO NOTIFIED DAWSON AND McLEAN'S DAUGHTERS, BECAUSE OF THE MISREPRESENTATION, DECEITFUL MISLEADING AND UNTRUE STATEMENTS BY Mr. SMITH ON Nov 6, 2007, THAT IT WAS MARK LIPONIS WHO "DID NOT AUTHORIZE MR. HARRIS TO PROCEED WITH THE LAWSUIT. (Trnscpt Nov 6, '07/P. 7:12-8:18)

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This is for the Court an easily verifiable "LIE" and "CONTEMPTUOUS DECEITFUL STATEMENT" by Mr. Smith, In TETON CV 01-33, is found separately filed, much later after the filing of the complaint therein, which was only verified by Jack McLean, a sole verification page signed by Dr. Mark Liponis, such filing over the many stated objections by JOHN N. BACH as defendant and counterclaimant therein.

E. It was only when JOHN N. BACH objected to the Idaho Supreme Court of the incorrectness of the caption and they were not the plaintiffs as stated by Mr. Smith in the notice of appeal herein, that Mr. Smith then on Nov. 19, 2007, filed a formal motion to change the caption herein to state who he again deceitfully misstated to be Lynn McLean and Paula Ehrler, such motion further aggravatedly and compoundedly, misstated/misrepresented to the Idaho Supreme Court, on Nov 19, '07 via Smith's REPLY IN SUPPORT MOTION TO SUSPEND APPEAL, etc.

(See JOHN BACH's March 06, 2008 CLOSING BRIEF RE His Motions to Strike Plts Pending Mtn filed Feb. 13, '08 & 2nd Aff. of DAWSON; and in Support of Mtns to Deny Mtns for Reconsid/To Set Aside, To Dismiss Appeal &

Issuing Contempt Citations v. Smith, Harris & Lynn McLean.
NOTE: MR. Smith does not response to JOHN BACH's Mar 06 CLOSING BRIEF: Pg 2-11; with attention esp. to pg 3-6, pg 8-9 itemizing the five biggest perjurious lies of Lynn McLean's First affidavit. NONE OF SUCH PERJURIOUS LIES ARE ADDRESSED IN SMITH's 2 page current RESPONSE. SMITH authored said lies.

F. SPECIALLY MISSTATED BY MR. SMITH is: "Bach argued (Feb. 14) it was unclear exactly when Dawson, Lynn McLean and Paula Ehrler received actual notice of the Sept 11, ORDER.

This further convoluted machination and deceptive claimed

mental recall by Mr. Smith, is further deceptively advanced to further obfuscate DAWSON'S LIES HE DID NOT RETAIN OR AUTHORIZE ALVA HARRIS TO REPESENT HIM IN THIS ACTION, This was the sole question which Mr. Smith sought and got 13 days to response to EXHIIBITS 1 and 2 offered by JOHN BACH during said Feb. 14, 2008 hearing. Mr. Smith questioned the accuracy and foundational showing for this Court to receive into evidence, showing DAWSON's, (the copied pages of DAWSON's and Alva Harris') testimonies to the contrary, given in Teton CV 02-208. The only response was DAWSON's SECOND AFFIDAVIT FURTHER OBDURATELY UNTRUE AND CONVOLUTEDLY OBFUSCATING THE MANY LIES FASHIONED BY MR. SMITH IN DAWSON'S and LYNN McLEAN'S Nov. 12, 2007 AFFIDAVITS; THESE THESE AFFIDAVITS WERE WELL BEYOND THE 14 days from Oct. 9, 2007 AND WERE OBJECTED, OPPOSED and SUBJECT TO JOHN BACH'S MOTIONS TO STRIKE.

- G. WHAT JOHN N. BACH has consistently insisted is the names, relationships, full messages and information of those persons or person who purportedly called DAWSON and LYNN McLEAN on Oct. 10, 2007, and now also called PAULE EHRLER. WHY IS SUCH DETAILS AND SPECIFICITY NECESSARY. Such exact information will further reveal the many lies fashioned by Mr. Smith in his purported clients' affidavits. IT IS IRRELEVANT ON WHAT DATE DAWSON AND THE McLEAN SISTERS WERE PURPORTEDLY NOTIFIED. THE MISSING DETAILS AND ANY RELEVANT SHOWING OF EXCUABLE NEGLECT CLAIMED, EVEN THOUGH NOW UTTERLY UNTIMELY AND INADMISSIBLY RELEVANT IS PROOF, IRREFUTABLY OF MR. SMITH AND ALL INTERVENOR

COMPLAINT DEFENDANTS', especially Alva Harris, now joined/aided by Marvin Smith and his law firm, in continuing and further extending the racketeering activities proved and found by Judge Shindirling to have been perpetrated and still continuing, in a further coverup and perjuriously advanced motions for reconsideration/to set aside brought by Mr. Smith. It is apparent the Mr. Smith has chosen not to respond to the Living Designs, Mannos v. Moss, Rexburg Lumber and Pullin cases repeatedly cited by JOHN N. BACH herein, especially pages pages 2, 4-6, and 11, CLOSING BRIEF, etc. filed March 6, 2008.

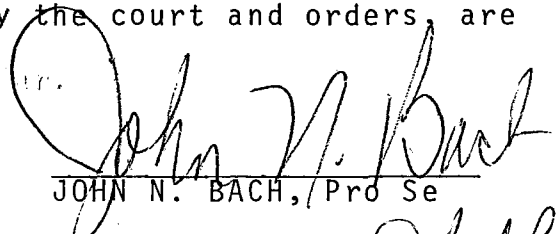
II. THERE ARE ABSOLUTELY NO MERITS OF ANY KIND THAT SUPPORT THE UNTIMELY OFFERED AFFIDAVITS OF DAWON, LYNN McLEAN and PAULA EHRLER. AS EACH OF SUCH UNTIMELY, OBJECTED TO AND OPPOSED AFFIDAVITS UTTERLY FAIL, EVADE AND AVOID ANY ADMISSIBLE EVIDENTIARY SHOWING OF ANY EXCUSABLE NEGLECT.

March 13, 2008 JOHN BACH, filed herein, serving the Court, and all counsel by mail, his SPECIAL APPEARANCE RE: OBJECTIONS TO ASSERTED JURISDICTION RE SUBJECT MATTER AND LACK OF PERSONAL JURISDICTION OVER JOHN N. BACH TO CONSIDER PURPORTED PLAINTIFFS' (WITHOUT STANDING OR CAPACITY) SECOND MOTION FOR SANCTIONS, and Offered MEMROANDUM IN SUPPORT OF PLAINTIFFS' SECOND MOTION FOR SANCTIONS, and JOHN N. BACH's MOTION TO STRIKE BOTH SAID SECOND MOTION FOR SANCTIONS and Offered MEMORANDUM, etc., of 12 pages plus attached copy of Oct. 19, 2007 DEMAND LETTER upon DAWSON and LIPONIS.

This filed SPECIAL APPEARANCE, etc., by such reference is incorporated herein. and further, reveals Mr. Smith's efforts, filings and arguments, herein, to be most specious, without merit, etc., in violations of Rule 1(a) and 11(a)(1). JOHN BACH's requested further actions by the court and orders, are reiterated herein in full.

JNBACH's CLOS'g
BRIEF/SUPP HIS
Mtns to STRIKE
AFF=L. McLean/
Ehrler P. 6.

DATED: March 14, 2008


JOHN N. BACH, /Pro Se

CERTIFICATE OF SERVICE BY FAX/MAIL

I hereby certify that on this date, Mar. 14, 2008, I did both mail and Fax (via 785-8057) a copy of this document to Judge Darren B. Simpson; C/o Bingham Co. Courthouse, Blackfoot, ID 83221; Marvin Smith, #5160, I.F. ID 83405-1630; Alv Harris, #479, Shelley, 83274; & Jared Harris, #577, Blackfoot, ID 83221.



FILED

MAR 20 2008

TETON CO. ID
DISTRICT COURT

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
DAWSON,

Plaintiffs

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants.

Case No. CV-01-265

**AFFIDAVIT OF MARVIN M.
SMITH IN SUPPORT OF
PLAINTIFFS' SECOND MOTION
FOR SANCTIONS**

STATE OF IDAHO)
: ss.
County of Bonneville)

Marvin M. Smith, being first duly sworn upon oath, deposes and says:

1. I am an attorney representing Wayne Dawson and Paula Ehrler and Lynn McLean (heirs of Jack Lee McLean) in the above-referenced matter and make the following statements based upon my own personal knowledge.
2. I am attorney representing Dr. Mark Liponis in Teton County Case No. CV-

AFFIDAVIT OF MARVIN M. SMITH IN SUPPORT OF PLAINTIFFS' SECOND MOTION FOR
SANCTIONS - 1

2001-33.

3. I have been contacted by my clients Wayne Dawson and Dr. Mark Liponis who have informed me that they both have received correspondence from John Bach this month (March 2008) relating to their ongoing litigation with Mr. Bach.

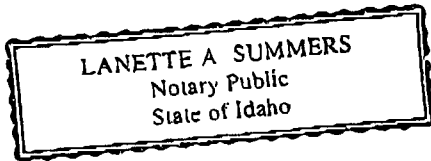
4. Attached hereto as Exhibit A is a true and correct copy of the first page the correspondence received by Wayne Dawson from John Bach.

5. Attached hereto as Exhibit B is a true and correct copy of the envelope post marked March 6, 2008 containing the correspondence sent to Dr. Mark Liponis from John Bach.

DATED this 19th day of March 2008.

Marvin M. Smith
MARVIN M. SMITH

SUBSCRIBED AND SWORN to before me this 19th day of March, 2008.



Lanette Summers
Notary Public
Residing at: *Idaho Falls*
Commission expires: *12-14-2011*

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 19th day of March 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



 MARVIN M. SMITH

L:\MMS\7060.1 Bach v McLean, Liponis\Aff.MMS.Second.Motion.Sanctions.wpd

EXHIBIT A

000657

FILED

JOHN N. BACH
400N, 152E
Post Office Box 101
Driggs, ID 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

MAR 06 2008

TIME: 11:42 AM
TETON CO. ID DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST, and
VASA N. BACH FAMILY TRUST,

Defendants.

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complainant,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

As signed
Rec'd by me 3/11/08
via USPS
Mailed to [unclear]
Dawson
Wayne Dawson

2. SECOND AFFIDAVIT OF WAYNE
DAWSON, of Feb. 25, 2008;
and

IN SUPPORT OF JOHN N. BACH'S
OTHER OBJECTIONS, ALL REQUESTED
ORDERS STRIKING/DENYING ALL
PURPORTED PLAINTIFFS' MOTIONS
FOR RECONSIDERATION & TO SET
ASIDE; DENYING ALL PLAINTIFFS'
MOTIONSTO CHANGE CAPTION, ADD-
ING EITHER LYNN McLEAN or PAULA
EHRLER; DENYING ANY SANCTIONS ON
JOHN N. BACH;

and

GRANTING JOHN N. BACH'S MOTIONS:

- 1. TO DISMISS ALL PLAINTIFFS' APPEAL; &
- 2. ISSUING OF CONTEMPT CITA-
TION AGAINST MARVIN M. SMITH,
ALVA HARRIS & LYNN McLEAN

I. PREFACING CONDITION, ISSUES & ADMISSIONS BY PURPORTED PLAINTIFFS.

During the oral arguments of Feb. 14, 2008, plaintiffs' purp-
orted counsel, Marvin Smith, made several binding admissions, to
wit: 1) He was appalled that Mr. Harris had not filed any opposi-
tion to JOHN BACH's summary judgments motions; 2) He didn't know
why Harris didn't file any opposition, etc.; and 3) which second
admission he repeated a second time just before concluding his
arguments. SMITH NEVER PRESENTED ANY FACTS WHY HARRIS FILED NO OPPOSITION.

JNBACH'S CLOS'G BRIEF, OBJNS, MTNS TO STRIKE & REQUESTED ORDERS P. 1.

000058

EXHIBIT B



Mrs #101183100 Schex/1011# 011

MARK LIPONIS &
Siobdhan McNally

71 Yokum

1 Envy Macs 01240

000000

forward

JOHN N. BACH
400N, L52E
Post Office Box 101
Driggs, Idaho 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

1571 11 11
1071 11 11
TIME: 3:43
TETON CO. DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST and
VASA N. BACH FAMILY TRUST,

Defendants.

CASE NO: CV 01 - 265

INTERVENOR-COMPLAINANT
JOHN N. BACH'S OBJECTIONS
AND MOTION TO STRIKE/QUASH
AFFIDAVIT OF MARVIN M. SMITH
IN SUPPORT OF PLAINTIFFS'
SECOND MOTION FOR SANCTIONS,
dated March 19, 2008

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complaint,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

COMES NOW INTERVENOR-COMPLAINANT JOHN N. BACH, and moves hereby this Honorable Court to strike/quash in entirety that AFFIDAVIT OF MARVIN M. SMITH IN SUPPORT OF PLAINTIFFS' SECOND MOTION FOR SANCTIONS, dated March 19, 2008, but not mailed until March 20, 2008 (see copy of front of envelope showing said "20 MARCH 2008 PM" mailing date containing such AFFIDAVIT), not received until the late afternoon, March 21, 2008.

The entire said affidavit with offered/purported Exhibits

Exhibit A (purported handwritten note from Wayne Dawson} and Exhibit B (purported copy of front of envelope speculatively mailed to Mark Liponis and Siobdan McNally) is replete with hearsay, lack of authentication and foundational showing, speculative, conjectural and without certification via a notary of the signatures or records of either of said purported individuals, testified of their own personal knowledge.

Most egregiously, Marvin M. Smith, upon such hearsay, lack of authentication and other foundational showings, etc., compounds such multiple hearsay, etc., speculative assertions, etc., and "VOUCHES" without propriety nor showing of admissibility or materiality, what he further states falsely are true and correct copies. None of Marvin Smith's conjectural and further speculative misstatements have been properly verified under penalty of perjury by either of his purported clients, which clients have not been recognized nor validly ordered as his clients and with standing or capacity to appear or present any motions in this action nor the companion action, TETON CV 01-33, in which latter action, Judge Darren B. Simpson is disqualified and cannot consider any offered speculative fact or statement of law via Marvin Smith's said affidavit.

Even the parties to which said two exhibits were purportedly sent, include "Donna Dawson" to whom purported Ex. A was mailed via the hearsay statement of "via USPS" and EX B, to "Siobdan McNally. Neither Donna Dawson nor Siobdan McNally are attempted to be represented by Marvin Smith nor his law firm herein, and again, Mark Liponis and Siobdan McNally, are not any party whatsoever in this action, but such Ex B, appears to bring in the

companion action, CV 01-33, wherein Judge Simpson is disqualified. Any request for judicial notice of any aspect of CV 01-33 requires a full hearing be granted JOHN BACH, I.R.E., Rule 201, et seq.

The first three (3) paragraphs of Smith's Affidavit are wholly hearsay, conjectural, without foundation, relevancy or admissibility. What is most revealing, as stated in John Bach's earlier memo briefs, as to said first 3 paragraphs are:

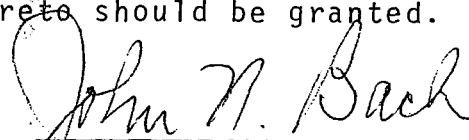
1. No valid order/decision by any qualified judge has issued which holds that Marvin Smith or his law firm have properly been substituted in/appeared for any plaintiffs herein that have standing or capacities.
2. Until such an order/ruling, which order/ruling cannot be retroactively nor nunc pro tunc issued, Smith and his firm also have no confidentialities/nor privileges with his purported clients; he has ratified, confirmed, and further waived and abandoned any privileges, saying "my clients . . . have informed me that they have received correspondence from . . ."
3. What SMith's clients may have received, at least by a purported first page, Ex. A., is a court filed document, which is not correspondence by any definition. The forwarding herein by such court filed document should have been by the clerk of this court inasmuch as Smith has not been found to be counsel for anyone, and anyone, who might be a party herein would have both the obligation and absolute privilege (litigation privilege) to send the real parties herein a copy. Nor does Prof'l Rule of Conduct 4.2 apply whatsoever.
4. Neither Donna Dawson nor Siobdan McNally are represented by Smith nor his law firm. McNally is not a party herein, but is in CV 01-33. Any husband in both California and Mass., are equal comanagers of the martial properties and business activities and entitled to be given notice of all demands or liabilities of their spouses, so as to bind both. Neither said spouses have filed any motions for reconsideration, to set aside nor any valid timely Notice of Appeal.
5. Smith's said frivolous, contrived affidavit is in utter bad faith, violates Rules 1, 11(a), etc., and is a contemptuous abuse of process and obstruction of justice.

The foregoing objections, opposition and motion to strike/quash Smith's said Affidavit with exhibits thereto should be granted.

DATED: March 24, 2008

CERTIFICATE OF SERVICE-FAX & MAIL

I, hereby certify that I served this document this date upon: Judge D.B. Simpson, via Fax 785-8057/also C/O Bingham Courthouse, Blackfoot, ID 83221; Marvin Smith, #51630, I.F., ID 83405 & Alva Harris. #479. Shellew


JOHN N. BACH, Pro Se



ANHS

ANDERSON NELSON HALL SMITH, P.A.

Attorneys & Counselors

490 Memorial Drive
PO Box 51630
Idaho Falls, ID 83405-1630

POCATELLO ID 832

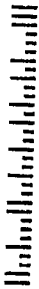
20 MAR 2008 PM 1 T

"LET THE DATE TO REMIND,
THINK, SPEAK AND ACT WISELY."

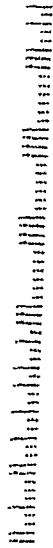


John Adams
1735-1826

John N. Bach
PO Box 101
Driggs, ID 83422



83422+0101



000884

JOHN N. BACH
400N, L52E
Post Office Box 101
Driggs, Idaho 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

FILED
APR 08 2008
TIME: 2:39
TETON COUNTY DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST and
VASA N. BACH FAMILY TRUST,

Defendants.

CASE NO: CV 01 - 265

INTERVENOR-COMPLAINANT
JOHN N. BACH'S OBJECTIONS &
MOTION TO STRIKE "THIRD
AFFIDAVIT OF WAYNE DAWSON"

IRCP, Rule 12(f)

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complaint,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

INTERVENOR-COMPLAINANT JOHN N. BACH hereby submits his objec-
tions and motion to strike that 2 page THIRD AFFIDAVIT OF WAYNE
with offered EXHIBIT A, attached, dated March 31, 2008, received
April 2, 2008.

Such THIRD AFFIDAVIT OF WAYNE DAWSON, is not just untimely,
as apparently DAWSON and his purported counsel, Marvin Smith,
do not adhere to the filing and service prerequisites of IRCP, Rule 6(a)
Rules 7(b), 11(a)(b), etc-nor do they recognize required deadlines

that do not allow for further filings unless timely and proper motions with relevant affidavit showing good causes for the extensions of such deadlines have been filed. No motions with such required affidavit for any further extension to file the current THIRD AFFIDAVIT OF WAYNE DAWSON have been presented, JOHN BACH, further objects to any such motions, application hereafter, as DAWSON and SMITH should be treated as "lazy and contumacious elementary school students who have deliberately missed a teacher's due date deadline for submission of a major report, only to have such students turn their reports in half a month or more later, and expect full credit for completion, let alone any grade other than F-." Neither SMITH nor DAWSON dilatory incompleteness can be given any meri

JOHN BACH refers to his Mar . 26, 2008 filed OBJECTIONS AND MOTION TO STRIKE AFFIDAVIT OF MARVIN M. SMITH RE sanctions, etc., BY SUCH REFERENCE INCORPORATES SUCH AS THOUGH SET FORTH IN FULL.

Additionally par. 2 and 3 of said THIRD AFFIDAVIT along with the offered EXHIBIT A., are hearsay, without adequate foundation, showing of relevant or admissibility, and the offered self serving note of DAWSON reveals such front page of an Mar. 9, 2008 filed document was mailed to "DONNA DAWSON," a third party defendant not represented by Smith nor having filed any motion for reconsideration or appeal herein. Such exhibit A is not any concluded "correspondence". No showing is made that any other pages might've been received.

JOHN BACH moves to strike said THIRD AFFIDAVIT OF WAYNE DAWSON with offered Ex. A, in entirety; but to use such THIRD AFFIDAVIT, only for further basis to issue a citation of contempt and for sanctions against DAWSON and Smith per JOHN BACH's earlier motions.

DATED: April 4, 2008

I certify this date, copies of this document were mailed and faxed to Judge JOHN N. BACH, Pro Se Simpson, and to Marvin Smith, #51630 IF.ID 83405 & Alva Harris, #479 Shelley, ID 83274

John N. Bach
John N. Bach - 2 - 000000

April 08, 2008

AT 2:00 pm
Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee; and WAYNE)
DAWSON, Trustee;)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST; and VASA N.)
BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba)
TARGHEE POWDER EMPORIUM, LTD.;)

Intervenor-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee; WAYNE)
DAWSON, Trustee; DONNA DAWSON;)
ALVA A. HARRIS, individually and dba)
SCONA, INC.; KATHERINE M. MILLER; and)
DOES 1-30, inclusive;)

Third-Party Defendants.)

Case No. CV 2001-265

**MEMORANDUM DECISION AND
ORDER DENYING PLAINTIFFS'/
THIRD-PARTY DEFENDANTS'
MOTION FOR RECONSIDERATION**

I. INTRODUCTION

BEFORE THIS COURT is the Motion of the plaintiffs/third-party defendants, Jack Lee McLean, Trustee, and Wayne Dawson, Trustee (hereinafter collectively referred to as the "Plaintiffs"), for Reconsideration.¹ This Court heard the Plaintiffs' Motion on February 14, 2008.² At that hearing, this Court gave the Plaintiffs until March 11, 2008 to respond to the request of Intervenor-Complainant John S. Bach ("Bach") to submit portions of deposition transcripts into the record. This Court considers the matter submitted as of March 11, 2008. Having reviewed the record in this matter, the arguments of the parties and the briefs submitted, this Court finds that the Plaintiffs' Motion should be denied.

II. BACKGROUND

The Plaintiffs filed suit against the Cheyovich Family Trust (hereinafter "Cheyovich") and the Vasa N. Bach Family Trust (hereinafter the "Bach Trust") to quiet title to a 40-acre parcel of real estate in Teton County, and to partition that real estate.³ Attorney for the Plaintiffs Alva Harris (hereinafter "Harris")⁴ served the Complaint and Summons upon Bach as the successor trustee of the Bach Trust.⁵ The Clerk of the Court entered a default against the Bach Trust on January 15, 2002.⁶

¹ Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed October 17, 2007) (hereinafter "Plaintiffs' Motion").

² Minute Entry, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed March 21, 2008).

³ Complaint to Quiet Title and Partition Real Estate, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed December 18, 2001) (hereinafter the "Complaint").

⁴ This Court notes that Harris is also named as a third-party defendant to this lawsuit.

⁵ Affidavit of Service, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed December 31, 2001).

⁶ Default, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed January 15, 2002).

On February 26, 2002, this Court, the honorable Brent J. Moss presiding, granted Bach's motion to intervene in the case as to his personal interests only.⁷ On March 26, 2002, Bach filed his Complaint in Intervention against the Plaintiffs, and third-party defendants Donna Dawson, Harris, and Katherine M. Miller, whereby he requested quiet title to "at least one-fourth" of the real estate in issue, and damages against the Plaintiffs and the third-party defendants.⁸

On January 3, 2005, this Court, the honorable Jon J. Shindurling presiding, granted Bach's Motion for Dismissal with Prejudice as to Plaintiff Jack Lee McLean.⁹ On September 11, 2007, this Court, the honorable Jon J. Shindurling presiding, ordered the dismissal, with prejudice of the Plaintiffs' case for lack of prosecution and granted summary judgment in favor of Bach on Bach's claims.¹⁰ Judge Shindurling issued the Judgment in the case on the same date.¹¹

⁷ Minute Report, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (dated February 26, 2002), at p. 5.

⁸ Complaint in Intervention by John N. Bach, Intervener, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed March 26, 2002) (hereinafter "Bach's Complaint in Intervention").

⁹ Order, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed January 3, 2005) (hereinafter the "1-3-05 Order").

¹⁰ Joint Cases – CV 01-33 & CV 01-265 – Opinion Memorandum and Orders re: 1) Granting Defendant, Counterclaimant & Complainant in Intervention John N. Bach's Motions for Summary Judgment; and 2) for Order and Issuance of Judgment of Dismissal with Prejudice of Plaintiffs' Complaints in CV 01-33 and CV 01-265 with Orders for: Immediate Issuance of Judgment in John N. Bach's Favor Quieting Sole title, Ownership, Possession, Use, and Occupation of Real Property Parcels Kkown [sic] as – Drawknife parcel (33 acres), Peacock parcel (40 acres) and Zamona Casper Parcel (8.5 acres, with Permanent Injunction against all Plaintiffs, their Trustees, any and all Successors in Interests, Attorneys, Agents, etc., *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed September 11, 2007) (hereinafter the "9-11-07 Memorandum Order"), at p. 13.

¹¹ 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, Alva A. Harris, Individually & dba & as Alter Ego of Scona, Inc., *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed September 11, 2007) (hereinafter the "Judgment").

On October 17, 2007, attorney Marvin M. Smith (hereinafter "Smith") substituted into the case, in place of Harris, as attorney of record for the Plaintiffs.¹² The Plaintiffs, through new counsel Smith, filed their Motion for Reconsideration on the same date, arguing lack of service of the 9-11-07 Memorandum Order and the Judgment, Bach's lack of standing to appear on behalf of any party other than his individual interests, inconsistency with a prior order by the honorable Richard St. Clair, inconsistency with chain of title and excusable neglect.¹³ Bach objected to the Plaintiffs' Motion for Reconsideration, on the grounds that (1) Smith did not properly substitute in the case as counsel for the Plaintiffs; (2) no "estate of Jack Lee McLean" exists; (3) the applicable time limitations for any motion for reconsideration have expired; (4) the Plaintiffs' excusable neglect argument lacks merit because Harris, as former counsel for the Plaintiffs, agreed to the dismissal of the Plaintiffs' case for lack of prosecution; and (5) Harris remains counsel of record for the Plaintiffs.¹⁴

III. ANALYSIS

A. Standard of Review – Substitution of Counsel.

Idaho Rule of Civil Procedure 11(b)(1) addresses the procedure for a substitution of counsel after the initiation of a lawsuit. It reads:

¹² Stipulation for Substitution of Counsel, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed October 17, 2007) (hereinafter the "Stipulation for Substitution").

¹³ Plaintiffs' Motion, at pp. 1-2.

¹⁴ Defendant, Counterclaimant and Intervener Complainant John N. Bach's Notice of Motions and Motions re: (1) for Order Striking, Vacating & Purging all Plaintiffs' Motions for Reconsideration, Dated Oct. 17, 2007 in Teton Case Nos: CV 01-33 & CV 01-265; and (2) for Order of Removal, Precluding or Recusal, with Sanctions of Marvin M. Smith & his Law Firm of Anderson, Nelson, Hall, Smith, P.A. as Counsel for any Plaintiffs in Both Said Teton Civil Actions, 01-33 and 01-265, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed October 25, 2007) (hereinafter "Bach's Objection to Motion for Reconsideration").

The attorney of record of a party to an action may be changed or a new attorney substituted by notice to the court and to all parties signed by both the withdrawing attorney and the new attorney without first obtaining leave of the court. If a new attorney appears in an action, the action shall proceed in all respects as though the new attorney of record had initially appeared for such party, unless the court finds good cause for delay of the proceedings.

Idaho Code (“I.C.”) §§ 3-203 and 3-204 also address the change of attorney during the course of a lawsuit. Those code sections read:

3-203. Change of attorney. – The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon his own consent, filed with the clerk, or entered upon the minutes.
2. Upon the order of the court or judge thereof, upon the application of the client, after notice to the attorney.

3-204. Notice of change. – When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, or of the appearance of the party in person, must be given to the adverse party; until then, he must recognize the former attorney.

Smith’s Stipulation for Substitution meets the I.R.C.P. 11(b)(1), I.C. § 3-303 and I.C. § 3-204 requirements. Smith filed his notice, which bears both his signature and Harris’s signature.¹⁵ Thus, Harris gave his consent to the change in counsel, and such consent was filed with the Clerk of the Court. Smith’s Certificate of Service shows that he mailed a copy of the Stipulation for Substitution to Bach.¹⁶ There is no requirement that all parties sign the stipulation. This Court finds that Smith properly substituted into the lawsuit as counsel of record for the Plaintiffs and that Harris is no longer the attorney of record for the Plaintiffs.

¹⁵ Stipulation for Substitution, at p. 1.

¹⁶ *Id.* at p. 2.

B. Caption of Case.

Bach argues that Smith fabricated the entity entitled “the Estate of Jack McLean and Surviving Beneficiaries,” which entity is named as a plaintiff in the Plaintiffs’ Motion for Reconsideration.¹⁷ The record reflects that prior to Smith’s substitution into the case as attorney of record for the Plaintiffs, the caption of this lawsuit read, in pertinent part, “Jack Lee McLean, Trustee.”¹⁸ The record also reflects that Jack Lee McLean died in December of 2003.¹⁹

Following the filing of the Motion for Reconsideration, the Plaintiffs filed several other pleadings using the “Estate of Jack McLean and Surviving Beneficiaries” in the caption.²⁰ However, as of November 21, 2007, the Plaintiffs’ pleadings have been captioned with “Jack Lee McLean” instead of the “Estate of Jack McLean.”²¹ In addition, the Plaintiffs have filed a

¹⁷ Bach’s Objection to Motion for Reconsideration, at p. 2.

¹⁸ Complaint, at p. 1.

¹⁹ 1-3-05 Order, at p. 1.

²⁰ See: Notice of Appeal, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed October 23, 2007); Objection to Defendant’s Motions Dated October 25, 2007, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 1, 2007); Plaintiffs’ Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 2, 2007); Memorandum in Support of Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 2, 2007); Affidavit of Marvin M. Smith in Support of Plaintiffs’ Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 2, 2007).

²¹ See, e.g.: Affidavit of Wayne Dawson in Support of Plaintiffs’ Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007) (hereinafter the “Dawson Affidavit”); Memorandum in Support of Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007) (hereinafter the “Plaintiffs’ Memorandum”); Motion to Change Caption, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007) (hereinafter the “Motion to Change Caption”); Affidavit of Lynn McLean in Support of Motion for Reconsideration and Motion to Change Caption, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007) (hereinafter the “McLean Affidavit”); Notice of Hearing, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007).

Motion to Change the Caption of the case, to remove Jack Lee McLean as a plaintiff and replace him with his heirs, Lynn McLean and Paula Ehrler.²²

Although the Plaintiffs, represented by Smith, utilized an incorrect caption on their initial pleadings, such error does not rise to the level of grounds for denying their Motion for Reconsideration. Indeed, the Plaintiffs have now corrected their mistake, and Bach has shown no harm or prejudice by the Plaintiffs' temporary use of the incorrect title of one of the parties plaintiff.

C. Standard of Review – Motion for Reconsideration.

The Plaintiffs' premise their Motion for Reconsideration upon I.R.C.P 11(a)(2)(B).²³

Idaho Rule of Civil Procedure 11(a)(2)(B) provides, in pertinent part:

A motion for reconsideration of any interlocutory orders of the trial court may be made at any time before the entry of final judgment but not later than fourteen (14) days from the entry of final judgment.

On a motion for reconsideration of a summary judgment, this Court should reconsider those facts, established by summary judgment, in light of any new or additional facts that are submitted in support of the motion.²⁴ Specifically, the Plaintiffs must bring to this Court's attention:

... any new facts presented by the moving party that bear on the correctness of the interlocutory order. The burden is on the moving party to bring the trial court's attention to the new facts. [The trial court is] not required to search the record to determine if there is any new information that might change the specification of facts deemed to be established.²⁵

²² Motion to Change Caption, at p. 1.

²³ Plaintiffs' Motion, at p. 1.

²⁴ *Coeur d'Alene Mining Co. v. First Nat'l Bank of Northern Idaho*, 118 Idaho 812, 823, 800 P.2d 1026, 1037 (1990).

²⁵ *Id.* (emphasis added).

Rule 11(a)(2)(B) requires that a motion for reconsideration present new facts, or disclose additional facts, within the record.²⁶

This Court has considerable discretion whether to grant or deny a motion for reconsideration.²⁷ A trial court's discretion is examined under a three part test: 1) whether the trial court correctly perceived the issue as one of discretion, 2) whether the trial court acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the consideration of an award, and 3) whether the trial court reached its decision by an exercise of reason.²⁸

D. Timeliness of the Plaintiffs' Motion.

Bach argues that the Plaintiffs failed to file their Motion within the fourteen (14) day period required by I.R.C.P. 11(a)(2)(b).²⁹ The Plaintiffs do not deny that their Motion was filed more than fourteen days after the entry of the Judgment, but argue that they did not receive notice of the Judgment or the 9-11-07 Memorandum Order until after the fourteen-day period for filing a motion for reconsideration had run.³⁰

²⁶ *Id.*

²⁷ *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001).

²⁸ *Sun Valley Shopping Center v. Idaho Power Co.*, 119 Idaho 87, 94, 803 P.2d 993, 1000 (1991).

²⁹ Bach's Objection to Motion for Reconsideration, at pp. 3-4.

³⁰ Plaintiffs' Memorandum, at p. 2; Dawson Affidavit, at p. 3; McLean Affidavit, at p. 2.

Both the Judgment and the 9-11-07 Memorandum Order, filed September 11, 2007, show that the Clerk of the Court mailed them to Harris on October 3, 2007, twenty-two (22) days from the date Judge Shindurling signed them.³¹ Under I.R.C.P. 77(d),

Immediately upon the entry of an order or judgment the clerk of the district court, or magistrates division, shall serve a copy thereof, with the clerk's filing stamp thereon showing the date of filing, by mail on every party affected thereby by mailing or delivering to the attorney of record of each party ...

* * *

Lack of notice of entry of an order or judgment does not affect the time to appeal or to file a post-judgment motion, or relieve or authorize the court to relieve a party for failure to appeal or file a post-trial motion within the time allowed, except where there is no showing of mailing by the clerk in the court records and the party affected thereby had no actual notice.³²

In this case, not only does the record reflect that the Clerk of the Court did not mail the 9-11-07 Memorandum Order and Judgment until October 3, 2007, but it also reflects that, as of October 2, 2007, the Plaintiffs had no actual notice of the 9-11-07 Memorandum Order or the Judgment. On September 25, 2007, Bach filed a motion, wherein he requested that the Court enter Bach's proposed 9-11-07 Memorandum Order and Bach's proposed Judgment.³³ Bach's Motion for Entry of Memorandum Order and Judgment apparently reflects that, as of September 25, 2007, Bach had not received the 9-11-07 Memorandum Order or the Judgment. On October 2, 2007, the Plaintiffs filed an objection to Bach's Motion for Entry of Memorandum Order and Judgment, stating: "This Motion is premature since this Court has not issued its Decision or

³¹ Judgment, at p. 6; 9-11-07 Memorandum Order, at p. 15.

³² I.R.C.P. 77(d) (emphasis added).

³³ Notice of Motions and Motions by Defendant John N. Bach [& In All Capacities Appearing] in These Two Actions re: (1) For Signing & Entry of Opinion and Order Decision Along with Two Separate Formal Judgments in Forms Presented by Him and (2) for Certificate of Final Appeal of Said Judgments, Once Entered per IRCP, Rule 54(b), *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed September 25, 2007) (hereinafter "Bach's Motion for Entry of Memorandum Order and Judgment").

Order concerning the Summary Judgment matter presented prior hereto.”³⁴ This statement convinces this Court that the Plaintiffs did not have actual notice of the 9-11-07 Memorandum Order or the Judgment until October 3, 2007. By October 3, 2007, the fourteen-day time limitation for filing a Motion for Reconsideration had already passed.

Where a party does not receive actual notice until after the deadline for taking further action has passed, that party is deprived of any opportunity to take further action. Accordingly, the deadline for taking the action contemplated begins to run anew from the date the party receives actual notice.³⁵

Since the Clerk of the Court mailed the copies of the 9-11-07 Memorandum Order and the Judgment to the Plaintiffs, the Idaho Rules of Civil Procedure accord the Plaintiffs three (3) days, in addition to the fourteen days allowed, for filing a motion for reconsideration. Idaho Rule of Civil Procedure 6(e)(1) states:

Whenever a party has the right or is required to so some act or take some proceedings within a prescribed period after the service of a notice or other paper upon the party and the notice or paper is served upon the party by mail, three(3) days shall be added to the prescribed period.

Thus, the Plaintiffs had fourteen (14) days from the date they received notice of the 9-11-07 Memorandum Order and the Judgment, together with three (3) days added for the mail rule, or until October 20, 2007. The Plaintiffs filed their Motion for Reconsideration on October 17,

³⁴ Objection to Motion, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed October 2, 2007).

³⁵ See: *Herrett v. Herrett*, 105 Idaho 358, 360, 670 P.2d 63, 65 (Ct. App. 1983).

2007. This Court finds that the Plaintiffs filed their Motion for Reconsideration within the time limits allowed under I.R.C.P. 11(a)(2)(B), and the motion shall be considered on its merits.

E. Merits of the Plaintiffs' Motion for Reconsideration.

1. Dawson's Alleged Lack of Notice.

The Plaintiffs argue that Wayne Dawson never authorized Harris to file this suit on his behalf.³⁶ This Court notes that Jack Lee McLean verified the Complaint.³⁷ This Court also notes that Harris filed the Complaint on December 18, 2001, over six (6) years ago.

Although this Court finds no signature of, or other acknowledgment by, Wayne Dawson in the record, this lawsuit has proceeded with Harris as the Plaintiffs' attorney for the last six (6) years. If Dawson did not, in fact, have any knowledge of the lawsuit, he may have a claim or grievance against Harris. However, if this Court reconsiders a judgment, six years after the inception of the lawsuit, on the basis of a party's lack of knowledge (particularly in light of the unfavorable judgment rendered against Dawson), such action sets a dangerous precedent in any lawsuit founded upon unverified pleadings. This Court finds that Dawson's claim, if any, is against Harris, and is not a credible ground for reconsidering the judgment rendered in this case.

2. The 8+ Acre Parcel of Real Estate.

Plaintiffs argue that Bach has no interest in the eight-plus (8+) acre parcel of land,³⁸ as it was sold by the Internal Revenue Service to a third party for payment of back taxes.³⁹ This Court

³⁶ Plaintiffs' Memorandum, at p. 3.

³⁷ Complaint, at p.

³⁸ The 8+ acre parcel of land was described in the Warranty Deed as follows:

notes, however, that this lawsuit, entitled *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265, does not concern the 8+ acre parcel of property.

The Plaintiffs' Complaint in this lawsuit sought to quiet title to an approximately forty (40) acre parcel of land.⁴⁰ Bach's Complaint in Intervention sought to quiet title to the same forty-acre parcel.⁴¹ The 9-11-07 Memorandum Order, which bears the style and case numbers for both Teton County case no. CV 2001-33 (*McLean v. Bach*) and Teton County case no. CV 2001-265, states, in pertinent part:

Although the afore [sic] two cases, TETON CV 01-33 and CV 01-265 have never been ordered consolidated, they are interrelated and must be considered at least, to be coordinated and ruled upon jointly, due to JOHN N. BACH's MOTIONS FOR SUMMARY JUDGMENT, in all his capacities in both action, [sic] and secondly, MOTIONS TO DISMISS both complaints therein, with prejudice, due to all plaintiffs' and their counsel of record, Alva A. Harris', lack of diligent prosecution.⁴²

* * *

B. COMPLAINT filed by Plaintiffs Filed by Plaintiffs [sic] JACK LEE McLEAN, Trustee and WAYNE DAWSON, Trustee, in Teton CV 01-265

This Complaint sought in part as well the reformation or termination of another Joint Venture agreement regarding 40 acres the PEACOCK property

Lot 1, Block 1, Teton Peaks view, Division 1, as per the recorded plat thereof, Teton County, Idaho. LESS Beginning at the NW Corner of Lot 1, Block 1, Teton Peaks View Subdivision, as per the recorded plat thereof, and running thence South 200 feet, thence East 220 feet, thence North 200 feet, thence West 220 feet to the point of beginning.

Dawson Affidavit, at Exhibit E, p. 4.

³⁹ Plaintiffs' Motion, at p. 4; Dawson Affidavit, at Exhibit G.

⁴⁰ The 40-acre parcel of land is described in the "Correction Corporation Warranty Deed" as follows:

A portion of the South ½ South ½ Section 6, Township 5 North, Range 46 East, Boise Meridian, Teton County, Idaho, being further described as: From the SW corner of said Section 6, South 89 degrees 50'12" East, 2630.05 feet to the true point of beginning; thence North 00 degrees 07'58" East, 813.70 feet to a point; thence North 01 degrees 37'48" East, 505.18 feet to a point; thence South 89 degrees 58'47" East, 1319.28 feet to a point; thence South 00 degrees 07'36" West, 1321.69 feet to a point on the Southern Section Line; thence North 89 degrees 51'01" West, 1320.49 feet along the Southern Section Line to the South ¼ Corner of said Section 6, a point; thence North 89 degrees 50'13" West, 12.13 feet along the Southern Section Line to the point of beginning.

Complaint, at Exhibit A, p. 3

⁴¹ Bach's Complaint in Intervention, at p. 2, ¶ 4 and at p. 4, ¶ 1.

⁴² 9-11-07 Memorandum Order, at pp. 1-2.

between McLean, Dawson, Cheyovich's [sic] and JOHN N. BACH's mother's trust expired at said time, the VASA N. BACH FAMILY TRUST.⁴³

The 9-11-07 Memorandum Order then quieted title to Bach, individually and dba Targhee Powder Emporium, Ltd., to the following parcel of land:

the PEACOCK PARCEL of 40 acres, showing his title in and thereof of an undivided three-quarters interests with the other undivided one-quarter interest owned and in the name of MILAN CHEYOVICH AND DIANA CHEYOVICH, husband and wife, 1858 S. Euclid Ave., San Marino, CA 91108, such percentages still held in a Joint Venture Spendthrift Land Trust.⁴⁴

The 9-11-07 Memorandum Order also quieted title to Bach, individually and dba Targhee Powder Emporium, Ltd., to the 8+ acres of land (which is the subject of *Bach v. Miller*, Teton County case no. CV 2002-208) and in 33+ acres of land (which property is apparently the subject of *McLean v. Bach*, Teton County case no. CV 2001-33).

The Judgment, which bears the style and case number of the case at bar only, cites to the cases of *McLean v. Bach*, Teton County case no. CV 2001-33,⁴⁵ *Bach v. Miller*, Teton County case no. CV 2002-208,⁴⁶ *Miller v. Bach*, Teton County case no. CV 2001-59,⁴⁷ *McLean v. Vasa N. Bach Family Trust*, Teton County case no. CV 2001-266,⁴⁸ and *Miller v. Vasa N. Bach Family Trust*, Teton County case no. CV 2001-191,⁴⁹ as follows:

NOW, THEREFORE, by virtue of the law and by reasons of this Court stated in such [9-11-07] OPINION MEMORANDUM, etc., in this action and also CV 01-33 and the premises per Judicial Notice taken of proceedings in Teton CV

⁴³ 9-11-07 Memorandum Order, at p. 4, ¶ B.

⁴⁴ 9-11-07 Memorandum Order, at p. 14, ¶ 1.

⁴⁵ Judgment, at pp. 1-4, 6.

⁴⁶ Judgment, at pp. 2, 3.

⁴⁷ Judgment, at p. 3.

⁴⁸ Judgment, at p. 3.

⁴⁹ Judgment, at p. 3.

02-208 and Judgments final and conclusive therein, as well as Judicial Notice of the cases of Teton CV 01-59, CV 01-266, CV 01-191 and CV 01-266, and via all of this Court's previous rulings, orders, etc.⁵⁰

The Judgment then quiets title to Bach in the 8+ acre parcel of land,⁵¹ the 33+ acre parcel of land,⁵² and the 40-acre parcel of land.⁵³

Although Dawson's evidence of Bach's lack of interest in the 8+ acre parcel is disturbing, this Court is unable to determine, on the record before it, whether or not this evidence was brought to the attention of Judge Shindurling. Neither party produced a transcript of the August 7, 2007 hearing. No Minutes Report of the August 7, 2007 hearing exists in the record.

Furthermore, this Court finds that the 8+ acre parcel is not relevant to this litigation. The parties' pleadings involve the 40-acre parcel. That the Judgment purports to adjudicate other parcels of land does not invalidate the adjudication of the 40-acre parcel, but does necessitate amendment thereof to clarify the issues that pertain to this case alone.

The 9-11-07 Memorandum Order and the Judgment were prepared by Bach and appear to include judgments from the other lawsuits cited therein. The 9-11-07 Memorandum Order includes the headings from both this case, and the case entitled *McLean v. Bach*, Teton County case no. CV 2001-33. Since the 9-11-07 Memorandum Order is a consolidated order, this Court shall leave it undisturbed.

⁵⁰ Judgment, at p. 3.

⁵¹ Judgment, at pp. 3-4.

⁵² Judgment, at p. 4.

⁵³ Judgment, at p. 4.

On the other hand, the Judgment pertains to this case alone. This Court finds that the Judgment must be reformed to adjudicate the sole issue in this matter, the 40-acre parcel and to delete superfluous verbiage. Therefore, this Court shall amend the Judgment, entered on 9-11-07, to delete or footnote references to other cases and other judgments, in order to clarify the judgment pertaining to this case alone.

3. The Plaintiffs' Interest in the 40-Acre Parcel

The Plaintiffs argue they have a meritorious defense in that they have an interest in the 40-acre parcel.⁵⁴ This is not new evidence. The Plaintiffs' interest in the 40-acre parcel was the thrust of their original quiet title action against Cheyovich and the Bach Trust.⁵⁵ However, the Plaintiffs failed to pursue their claims in a timely manner and their suit was dismissed with prejudice for lack of diligent prosecution.⁵⁶ In addition, the Plaintiffs failed to respond in a timely manner to Bach's Motion for Summary Judgment as to Bach's claims to the 40-acre parcel, and, as a result, this Court granted summary judgment against the Plaintiffs.⁵⁷ The Plaintiffs have not shown good cause or new evidence for reconsidering this Court's Judgment, dated 9-11-07, as amended by this Court.

⁵⁴ Plaintiffs' Memorandum, at pp. 3-4.

⁵⁵ See: Complaint.

⁵⁶ 9-11-07 Memorandum Order, at p. 2.

⁵⁷ 9-11-07 Memorandum Order, at p. 13.

4. Incorrect Legal Descriptions.

Plaintiffs argue that the 9-11-07 Judgment contains the incorrect legal descriptions of the 40-acre parcel and the 8+ acre parcel.⁵⁸ Such error is clerical in nature, rather than error on the merits. This Court shall reform the 9-11-07 Judgment to include the proper legal description of the 40-acre parcel. As discussed above, the 8+ acre parcel has no relevance to the allegations of the parties in this particular lawsuit.

F. Execution of Orders Submitted by Bach.

Finally, the Plaintiffs argue that this Court erred in accepting “wholesale” and signing the 9-11-07 Memorandum Order and the Judgment.⁵⁹ In support of their argument, the Plaintiffs cite to *Rodriguez v. Oakley Valley Stone, Inc.*⁶⁰ In *Rodriguez*, the Idaho Supreme Court, addressing an order prepared by a party and signed by the presiding judge, wrote:

We have often discouraged the practice of trial courts requesting counsel to prepare its findings of fact and conclusions of law, not only because of the possibility of error or embellishment, but because this practice takes away the court’s clear articulation of its actual intent. [Cites omitted.] As we noted in our decision in *Compton*,⁶¹ the purpose of the written expressions of a judge is so that he himself may be satisfied that he has dealt fully and properly with all the issues in the case before he decides it and so that the parties involved and this court on appeal may be fully informed as to the bases of his decision when it is made.⁶²

⁵⁸ Plaintiffs’ Memorandum, at pp. 4-5.

⁵⁹ Plaintiffs’ Memorandum, at pp. 5-6.

⁶⁰ 120 Idaho 370, 816 P.2d 326 (1991).

⁶¹ See: *Comton v. Gilmore*, 98 Idaho 190, 560 P.2d 861 (1977).

⁶² *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho at 375, 816 P.2d at 331.

The Court had before it a conflict between the district court's oral pronouncement and the written order subsequently entered.⁶³

The Plaintiffs have not offered evidence of a conflict between Judge Shindurling's oral pronouncements on August 7, 2007 and the 9-11-07 Memorandum Order and/or Judgment, both documents submitted by Bach and signed by Judge Shindurling.

The *Rodriguez* Court also noted that the written order entered in that case was unclear as to whether the district court allowed intervention of a third-party or substitution of parties, and the order was not wholly consistent with intervention.⁶⁴ The Court found other conflicting factors in the record.⁶⁵ Based upon the various conflicts and inconsistencies, the Court found the written order ambiguous and remanded the case to the district court.⁶⁶

The Plaintiffs point to no inconsistencies or conflicts in Judge Shindurling's 9-11-07 Memorandum Order or his Judgment, other than the fact that the Judgment contains adjudications pertinent to other, related lawsuits. Instead, the Plaintiffs merely rely on the fact that Judge Shindurling signed documents submitted by Bach as a basis for error. The Plaintiffs have not presented this Court with evidence of error, only evidence that Judge Shindurling signed documents submitted by Bach. For these reasons, the Plaintiffs' contention that Judge Shindurling's 9-11-07 Memorandum Order and/or his Judgment should be reconsidered because Bach prepared the documents is without merit and shall be denied. As stated above, the

⁶³ *Id.*

⁶⁴ *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho at 376, 816 P.2d at 332.

⁶⁵ *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho at 376-7, 816 P.2d at 332-3.

⁶⁶ *Rodriguez v. Oakley Valley Stone, Inc.*, 120 Idaho at 377, 816 P.2d at 333.

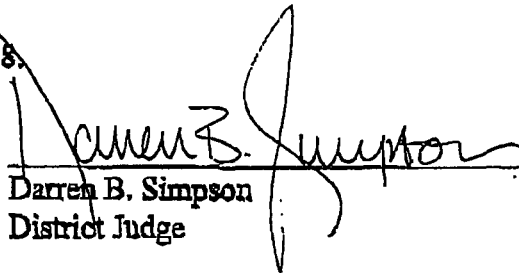
Judgment shall be reformed to reflect only those adjudications which pertain to this case, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265.

IV. CONCLUSION AND ORDER

Based upon the foregoing findings, this Court denies the Plaintiffs' Motion for Reconsideration.

IT IS SO ORDERED.

DATED this 8th day of April 2008.


Darren B. Simpson
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 15, I served a true copy of the foregoing Memorandum Decision and Order Denying Plaintiffs'/Third-Party Defendants' Motion for Reconsideration on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

U.S. Mail Courthouse Box Facsimile

Kathleen M. Heimerl, Esq.
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John N. Bach
400 N, 152 E
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U.S. Mail Courthouse Box Facsimile

Alva A. Harris, Esq.
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

U.S. Mail Courthouse Box Facsimile

MARY LOU HANSEN, Clerk of the Court

By: James Greeman
Deputy Clerk

000685

FILED CHAMBERS AT BLACKFOOT,
 BINGHAM COUNTY, IDAHO
 April 10, 2008
 AT 2:23pm
 DARREN B. SIMPSON
 DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
 IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
 DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
 BACH FAMILY TRUST,)

Defendants.)

Case No. CV 2001-265

**ORDER DENYING INTERVENOR-
 COMPLAINANT'S MOTION FOR
 ORDER OF REMOVAL AND
 SANCTIONS AGAINST ATTORNEY
 MARVIN M. SMITH**

JOHN N. BACH, individually and dba)
 TARGHEE POWDER EMPORIUM, LTD.,)

Intervenor-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
 DAWSON, Trustee, DONNA DAWSON,)
 ALVA A. HARRIS, individually and dba)
 SCONA, INC., KATHERINE M. MILLER, and)
 DOES 1-30, inclusive,)

Third-Party Defendants.)

BEFORE THIS COURT is the Motion by Intervenor-Complainant John N. Bach (hereinafter "Bach") "for Order or Removal, Precluding or Recusal, with Sanctions of Marvin M. Smith & his Law Firm of Anderson, Nelson, Hall, Smith, P.A. as Counsel for any Plaintiffs in

Both said Teton Civil Actions, CV 01-33 and 01-265.¹ Bach argues that attorney Marvin M. Smith (hereinafter “Smith”) failed to properly substitute into this lawsuit, as attorney of record for the Plaintiffs, fabricated the “Estate of Jack Lee McLean,” and filed a Motion for Reconsideration beyond the time limitation.² Bach also maintains that attorney Alva A. Harris remains counsel of record in this case for the Plaintiffs/Third-Party Defendants.³

This Court has previously found, in its Memorandum Decision and Order Denying Plaintiffs’/Third-Party Defendants’ Motion for Reconsideration, that Smith properly substituted into this lawsuit as counsel of record for the Plaintiffs.⁴ This Court further found that, whereas Smith did use the wrong caption to describe Plaintiff Jack Lee McLean, Trustee in several pleadings filed between October 23, 2007 and November 2, 2007, Smith corrected the heading as of his pleadings filed from November 21, 2007 and thereafter.⁵ This Court further found that Smith’s error did not rise to the level of a basis for denying the Plaintiffs’ Motion for Reconsideration.⁶

¹ Defendant, Counterclaimant and Intervenor Complainant John N. Bach’s Notice of Motions and Motions re: (1) for Order Striking, Vacating & Purging all Plaintiffs’ Motions for Reconsideration, Dated Oct. 17, 2007 in Teton Case Nos: CV 01-33 & CV01-265; and (2) for Order of Removal, Precluding or Recusal, with Sanctions of Marvin M. Smith & his Law Firm of Anderson, Nelson, Hall, Smith, P.A. as counsel for any Plaintiffs in Both said Teton Civil Actions, 01-33 and 01-265 (The Foregoing Motions should be Granted Ex Parte, Immediately based upon the Five Basis [sic] set forth plus the Fact, Appeal have been Filed in Both Actions by the Unauthorized Attorneys for Plaintiffs, Especially Failure to Comply with I.C. 3-203(2), Storey v. USF&G, 32 Idaho 388, 183 P. 990 (1919); & Ada v. Batten 126 Idaho 114 (C.A. 1994), McLean v. Cheyovich Family Trust, Teton County case no. CV 2001-265 (filed October 25, 2007) (hereinafter “**Bach’s Motion**”).

² Bach’s Motion, at pp. 1-4.

³ Bach’s Motion, at p. 5.

⁴ Memorandum Decision and Order Denying Plaintiffs’/Third-Party Defendants’ Motion for Reconsideration, McLean v. Cheyovich Family Trust, Teton County case no. CV 2001-265 (filed April 8, 2007) (hereinafter “**Order Denying Motion for Reconsideration**”), at pp. 4-5.

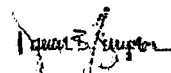
⁵ Order Denying Motion for Reconsideration, at p. 6.

⁶ Order Denying Motion for Reconsideration, at p. 7.

Bach has not convinced this Court of any sanctionable conduct on the part of Smith or his law firm. Accordingly, Bach's Motion, dated October 25, 2007, is hereby **denied**.

IT IS SO ORDERED.

DATED this 10th day of April 2008.



DARREN B. SIMPSON
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 15, I served a true copy of the foregoing Order Denying Intervenor-Complainant's Motion for Order of Removal and Sanctions against Attorney Marvin M. Smith on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL U.S. Mail Courthouse Box Facsimile
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

Kathleen M. Heimerl, Esq.
P.O. Box 828 U.S. Mail Courthouse Box Facsimile
Victor, Idaho 83455

John N. Bach
400 N, 152 E U.S. Mail Courthouse Box Facsimile
P.O. Box 101
Driggs, Idaho 83422

Alva A. Harris, Esq.
171 S. Emerson Ave. U.S. Mail Courthouse Box Facsimile
P.O. Box 479
Shelley, Idaho 83274

MARY LOU HANSEN, Clerk of the Court

By: *James Freeman*
fr Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO _____

April 10, 2008
AT 2:23pm

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE
DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.
BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba
TARGHEE POWDER EMPORIUM, LTD.,)

Intervenor-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE
DAWSON, Trustee, DONNA DAWSON,
ALVA A. HARRIS, individually and dba
SCONA, INC., KATHERINE M. MILLER, and)
DOES 1-30, inclusive,)

Third-Party Defendants.)

Case No. CV 2001-265

**ORDER DENYING PLAINTIFFS'
MOTION FOR SANCTIONS**

BEFORE THIS COURT is the Motion of the Plaintiffs/CounterDefendants, Jack Lee
McLean, Trustee, and Wayne Dawson, Trustee (hereinafter "McLean & Dawson") for

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Sanctions.¹ Dawson & McLean request that this Court sanction Intervenor-Complainant John N. Bach (hereinafter “Bach”) for communicating directly with a represented opposing party in this lawsuit.² In an affidavit submitted by counsel, McLean & Dawson offer a copy of an envelope, addressed to Wayne Dawson, post-marked October 19, 2007, which shows a return address of “W3/#101/83402.”³

At oral argument, Bach did not deny that he has communicated with opposing parties in this lawsuit. Bach contended that he, as a party representing himself (and not an attorney licensed in the state of Idaho), is not bound by the rules of professional conduct and that this Court has no jurisdiction over letters Bach sends to California or Massachusetts.

The Idaho Supreme Court has held that “a pro se lawyer/litigant does represent a client when representing himself or herself in a matter; thus, I.R.P.C. 4.2 applies to prevent the pro se attorney from directly contacting a represented opposing party.”⁴ Thus, the Idaho Rule of Professional Conduct 4.2 does apply to Bach who is acting as a *pro se* attorney in this case. Furthermore, this Court has jurisdiction over the parties to and subject matter of this lawsuit. Any communications between parties with regard to the subject matter of this lawsuit fall within the ambit of this Court’s jurisdiction, regardless of where those parties might be located.

This Court holds that from this date henceforth, no party to this litigation shall contact any other party, except through counsel. This Court further holds that no sanction shall be

¹ Plaintiffs’ Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 2, 2007) (hereinafter the “Dawson & McLean’s Motion”).

² Dawson & McLean’s Motion, at p. 1.

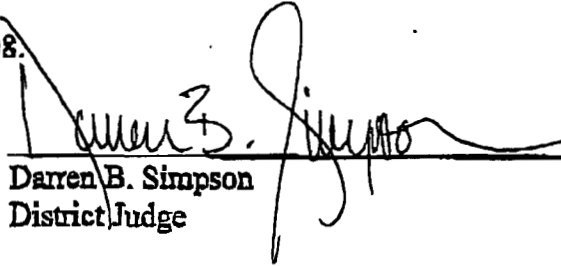
³ Affidavit of Marvin M. Smith in Support of Plaintiffs’ Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 2, 2007) (hereinafter the “Smith Affidavit”), at Exhibit A.

⁴ *Runsvold v. Idaho State Bar*, 129 Idaho 419, 421, 925 P.2d 1118, 1120 (1996).

assessed for Bach's direct communications with represented parties prior to the date of this Order. Accordingly, McLean & Dawson's Motion for Sanctions is denied.

IT IS SO ORDERED.

DATED this 10th day of April 2008.



Darren B. Simpson
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 15, I served a true copy of the foregoing Order Denying Plaintiffs' Motion for Sanctions on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL U.S. Mail Courthouse Box Facsimile
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

Kathleen M. Heimerl, Esq.
P.O. Box 828 U.S. Mail Courthouse Box Facsimile
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John N. Bach
400 N, 152 E U.S. Mail Courthouse Box Facsimile
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Driggs, Idaho 83422

Alva A. Harris, Esq.
171 S. Emerson Ave. U.S. Mail Courthouse Box Facsimile
P.O. Box 479
Shelley, Idaho 83274

MARY LOU HANSEN, Clerk of the Court

By: *James A. Freeman*
Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,
 BINGHAM COUNTY, IDAHO _____
 APRIL 10, 2008
 AT 2:22pm _____
 DARREN B. SIMPSON
 DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
 IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
 DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
 BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba)
 TARGHEE POWDER EMPORIUM, LTD.,)

Intervener-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
 DAWSON, Trustee, DONNA DAWSON,)
 ALVA A. HARRIS, individually and dba)
 SCONA, INC., KATHERINE M. MILLER, and)
 DOES 1-30, inclusive,)

Third-Party Defendants.)

Case No. CV 2001-265

**ORDER DENYING AS MOOT
 PLAINTIFFS' MOTION TO CHANGE
 CAPTION**

BEFORE THIS COURT is the Motion by the Plaintiffs/CounterDefendants Jack Lee
 McLean, Trustee and Wayne Dawson, Trustee (hereinafter "McLean & Dawson") to Change

Caption.¹ McLean & Dawson seek to substitute Lynn McLean and Paula Ehrler as plaintiffs, in the place of Plaintiff Jack Lee McLean, Trustee.² Jack Lee McLean died on December 3, 2003.³ McLean & Dawson allege that Lynn McLean and Paula Ehrler are now the owners of the ¼ interest in the 40-acre parcel of property at issue in this litigation.⁴

This Court denied McLean & Dawson's Motion for Reconsideration,⁵ thereby affirming this Court's prior order dismissing Jack Lee McLean, Trustee⁶ and dismissing with prejudice McLean & Dawson's lawsuit for failure to prosecute.⁷ Thus, McLean & Dawson's Motion to Change Caption is now moot.

¹ Motion to Change Caption, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007) (hereinafter "McLean & Dawson's Motion").

² McLean & Dawson's Motion, at p. 1.

³ Affidavit of Lynn McLean in Support of Motion for Reconsideration and Motion to Change Caption, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007).

⁴ McLean & Dawson's Motion, at p. 1.

⁵ See: Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed October 17, 2007).

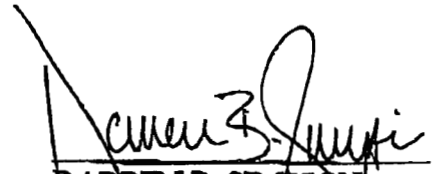
⁶ See: Order, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed January 3, 2005);

⁷ See: Joint Cases – CV 01-33 & CV 01-265 – Opinion Memorandum and Orders re: 1) Granting Defendant, Counterclaimant & Complainant in Intervention John N. Bach's Motions for Summary Judgment; and 2) for Order and Issuance of Judgment of Dismissal with Prejudice of Plaintiffs' Complaints in CV 01-33 and CV 01-265 with Orders for: Immediate Issuance of Judgment in John N. Bach's Favor Quieting Sole title, Ownership, Possession, Use, and Occupation of Real Property Parcels Kkown [sic] as – Drawknife parcel (33 acres), Peacock parcel (40 acres) and Zamona Casper Parcel (8.5 acres, with Permanent Injunction against all Plaintiffs, their Trustees, any and all Successors in Interests, Attorneys, Agents, etc., *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed September 11, 2007).

Accordingly, McLean & Dawson's Motion to Change Caption is hereby denied as moot.

IT IS SO ORDERED.

DATED this 10th day of April 2008.


DARREN B. SIMPSON
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 15, I served a true copy of the foregoing Order Denying as Moot Plaintiffs' Motion to Change Caption on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

U.S. Mail Courthouse Box Facsimile

Kathleen M. Heimerl, Esq.
P.O. Box 828
Victor, Idaho 83455

U.S. Mail Courthouse Box Facsimile

John N. Bach
400 N, 152 E
P.O. Box 101
Driggs, Idaho 83422

U.S. Mail Courthouse Box Facsimile

Alva A. Harris, Esq.
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

U.S. Mail Courthouse Box Facsimile

MARY LOU HANSEN, Clerk of the Court

By: *James Freeman*
Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO

April 15, 2008

AT 11:50 a.m.
Darren B. Simpson

DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba)
TARGHEE POWDER EMPORIUM, LTD.,)

Intervenor-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
DAWSON, Trustee, DONNA DAWSON,)
ALVA A. HARRIS, individually and dba)
SCONA, INC., KATHERINE M. MILLER, and)
DOES 1-30, inclusive,)

Third-Party Defendants.)

Case No. CV 2001-265

**ORDER DENYING INTERVENOR-
COMPLAINANT'S MOTION FOR
CONTEMPT**

BEFORE THIS COURT is the Motion by Intervenor-Complainant John N. Bach (hereinafter "Bach") for Contempt.¹ In summary, Bach argues: "Alva Harris and the descendents of Jack McLean, along with the Dawsons are still in viwlations [sic] of this Court's permmaent [sic] injunction provisions, as they are of the like permanent injunction provisions in Teton CV 02-208. The conclusion and requests for contempt citations to be issued set forth in JOHN BACH'S Oct 25. 2007 are reiterated."²

Idaho Rule of Civil Procedure ("I.R.C.P") 75(c), which addresses nonsummary contempt proceedings, reads:

Nonsummary contempt proceedings may be commenced only as provided herein.

* * *

(2) **Contempt not initiated by a judge – Motion and affidavit.** All contempt proceedings, except those initiated by a judge as provided above, must be commenced by a motion and affidavit. Contempt proceedings shall not be initiated by an order to show cause.

(3) **Factual allegations.** The written charge of contempt or affidavit must allege the specific facts constituting the alleged contempt. Each instance of alleged contempt, if there is more than one, must be set forth separately. If the alleged contempt is the violation of a court order, the written charge or affidavit must allege that either the respondent or the respondent's attorney was served with a copy of the order or had actual knowledge of it. The written charge or affidavit need not allege facts showing that the respondent's failure to comply with the court order was willful.

(4) **Notice to Appear.** The respondent shall be served with written notice of the time, date, and place to appear to answer to the charge of contempt.

¹ Intervenor-Complaint [sic] John N. Bach's Further Objections/Opposition with Motions to Strike-Quahs [sic] Purported Plaintiffs' Motions for Reconsideration with All Documents Filed in Support thereof, etc., and Further Brief in Support of John N. Bach's Notice of Motions & Motions (1) & (2) Filed Oct. 25, 2007 (Consisting of 5 pages); and Further Notice of Issuance of Direct and/or Indirect Contempt Citations, with Monetary/Evdientiary [sic] Sanctions, IRCP, Rule 75(a)-(d). etc., *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed January 31, 2008) (hereinafter "Bach's January 31 Motion for Contempt").

² Bach's January 31 Motion for Contempt, at p. 5.

Thus, according to I.R.C.P., Bach must file a motion for contempt, together with an affidavit, in order to initiate contempt proceedings against Third-Party Defendant Alva Harris, Plaintiff/Counterdefendant Jack Lee McLean, Plaintiff/Counterdefendant Wayne Dawson, and Third-Party Defendant Donna Dawson.³

Bach's pleading, filed October 25, 2007 and referenced in his January 31 Motion for Contempt, does not seek contempt against any party.⁴ Bach did not file an affidavit with either his October 25 Motion or his January 31 Motion for Contempt. This Court finds that no written notice of the time, date and place to appear was served upon Third-Party Defendant Alva Harris, Plaintiff/Counterdefendant Jack Lee McLean, Plaintiff/Counterdefendant Wayne Dawson, or Third-Party Defendant Donna Dawson, other than a hearing date, time and place listed on the caption of Bach's January 31 Motion for Contempt. Such listing does not meet the standard set forth in I.R.C.P. 75(c)(4).

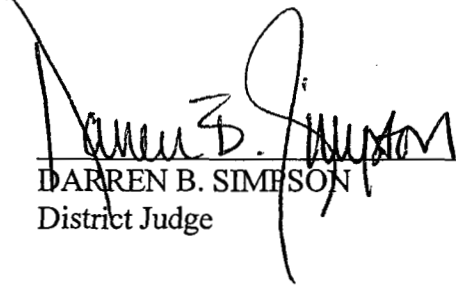
³ This Court notes that the descendants of Jack Lee McLean are not parties to this lawsuit. Therefore, this Court has no jurisdiction to make any findings against them herein.

⁴ See: Defendant, Counterclaimant and Intervenor Complainant John N. Bach's Notice of Motions and Motions re: (1) for Order Striking, Vacating & Purging all Plaintiffs' Motions for Reconsideration, Dated Oct. 17, 2007 in Teton Case Nos: CV 01-33 & CV01-265; and (2) for Order of Removal, Precluding or Recusal, with Sanctions of Marvin M. Smith & his Law Firm of Anderson, Nelson, Hall, Smith, P.A. as counsel for any Plaintiffs in Both said Teton Civil Actions, 01-33 and 01-265 (The Foregoing Motions should be Granted Ex Parte, Immediately based upon the Five Basis [sic] set forth plus the Fact, Appeal have been Filed in Both Actions by the Unauthorized Attorneys for Plaintiffs, Especially Failure to Comply with I.C. 3-203(2), Storey v. USF&G, 32 Idaho 388, 183 P. 990 (1919); & Ada v. Batten 126 Idaho 114 (C.A. 1994), McLean v. Cheyovich Family Trust, Teton County case no. CV 2001-265 (filed October 25, 2007) (hereinafter "Bach's October 25 Motion").

For the foregoing reasons, this Court finds that Bach has not properly moved for contempt and has not properly served the parties at whom his January 31 Motion for Contempt is aimed. Accordingly, Bach's January 31 Motion for Contempt is hereby **denied**.

IT IS SO ORDERED.

DATED this 15th day of April 2008.



DARREN B. SIMFSON
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 15, 2008 I served a true copy of the foregoing Order Denying Intervenor-Complainant's Motion for Contempt on persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL U.S. Mail Courthouse Box Facsimile
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

Kathleen M. Heimerl, Esq. U.S. Mail Courthouse Box Facsimile
P.O. Box 828
Victor, Idaho 83455

John N. Bach U.S. Mail Courthouse Box Facsimile
400 N, 152 E
P.O. Box 101
Driggs, Idaho 83422

Alva A. Harris, Esq. U.S. Mail Courthouse Box Facsimile
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

MARY LOU HANSEN, Clerk of the Court

By: *James S. Greenman*
Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,
 BINGHAM COUNTY, IDAHO _____
April 15, 2008
 AT 11:20 am

 DARREN B. SIMPSON
 DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
 DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
 BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba)
 TARGHEE POWDER EMPORIUM, LTD.,)

Intervenor-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
 DAWSON, Trustee, DONNA DAWSON,)
 ALVA A. HARRIS, individually and dba)
 SCONA, INC., KATHERINE M. MILLER, and)
 DOES 1-30, inclusive,)

Third-Party Defendants.)

Case No. CV 2001-265

**ORDER DENYING AS MOOT
 INTERVENOR-COMPLAINANT'S
 MOTION TO STRIKE MARVIN
 SMITH'S FURTHER FILINGS**

BEFORE THIS COURT is the Motion by Intervenor-Complainant John N. Bach (hereinafter "Bach") "to Strike, Quash and/or Vacate, Etc., Marvin Smith's Further Illegal and

Unauthorized Filings.”¹ Bach argues that no “estate” for Jack Lee McLean exists; Jack Lee McLean has been dismissed from this lawsuit; no estate of Jack Lee McLean is allowable under the relevant statute of limitations, and the deadline for filing a motion for reconsideration has passed.² Bach argues that attorney Marvin M. Smith (hereinafter “Smith”) failed to properly substitute into this lawsuit as attorney of record for the Plaintiffs.³ Bach also claims that the Plaintiffs’ Motion for Sanctions, filed by Smith, amounts to the commission of a crime against Bach.⁴

This Court has previously found, in its Memorandum Decision and Order Denying Plaintiffs’/Third-Party Defendants’ Motion for Reconsideration, that Smith properly substituted into this lawsuit as counsel of record for the Plaintiffs.⁵ This Court further found that, whereas Smith did use the wrong caption to describe Plaintiff Jack Lee McLean, Trustee in several pleadings filed between October 23, 2007 and November 2, 2007, Smith corrected the heading as of his pleadings filed from November 21, 2007 and thereafter.⁶ This Court further found that Smith’s error did not rise to the level of a basis for denying the Plaintiffs’ Motion for

¹ Defendant, Counterclaimant & Intervening Complainant John N. Bach’s Objections, and Motion to Strike, Quash and/or Vacate, etc., Marvin Smith’s Further Illegal and Unauthorized Filings herein [sic] of: 1. Notice of Status Conference, dated Oct. 30, 2007; 2. Objection to Defendant’s Motions Dated Oct. 25, 2007 (which Objections are dated Oct. 31, 2007; and 3. Plaintiffs’ Motion for Sanctions, all presented in both Teton CV01-33 & 01-265, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 2, 2007) (hereinafter “**Bach’s Motion**”).

² Bach’s Motion, at p. 3.

³ Bach’s Motion, at p. 4.

⁴ Bach’s Motion, at p. 5.

⁵ Memorandum Decision and Order Denying Plaintiffs’/Third-Party Defendants’ Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed April 8, 2007) (hereinafter “**Order Denying Motion for Reconsideration**”), at pp. 4-5.

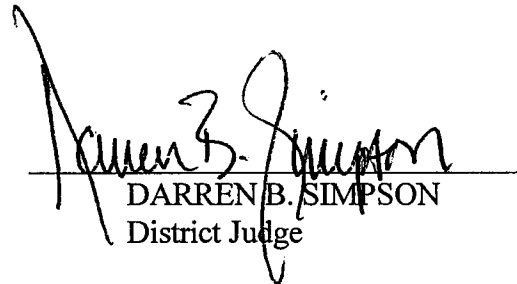
⁶ Order Denying Motion for Reconsideration, at p. 6.

Reconsideration.⁷ In addition, this Court denied the Plaintiffs' Motion for Sanctions against Bach.⁸

Based upon these rulings, Bach's Motion to Strike, Quash and/or Vacate, Etc., Marvin Smith's Further Illegal and Unauthorized Filings is rendered moot. Accordingly, Bach's Motion to Strike, Quash and/or Vacate, Etc., Marvin Smith's Further Illegal and Unauthorized Filings is **denied as moot.**

IT IS SO ORDERED.

DATED this 14th day of April 2008.


DARREN B. SIMPSON
District Judge

⁷ Order Denying Motion for Reconsideration, at p. 7.

⁸ Order Denying Plaintiffs' Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed April 10, 2008).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 15, I served a true copy of the foregoing Order Denying as Moot Intervenor-Complainant's Motion to Strike Marvin Smith's Further Motions on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

U.S. Mail Courthouse Box Facsimile

Kathleen M. Heimerl, Esq.
P.O. Box 828
Victor, Idaho 83455

U.S. Mail Courthouse Box Facsimile

John N. Bach
400 N, 152 E
P.O. Box 101
Driggs, Idaho 83422

U.S. Mail Courthouse Box Facsimile

Alva A. Harris, Esq.
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

U.S. Mail Courthouse Box Facsimile

MARY LOU HANSEN, Clerk of the Court

By: *Gene Freeman*
Deputy Clerk

FILED IN CHAMBERS AT BLACKFOOT,
BINGHAM COUNTY, IDAHO

April 15, 2008
AT 11:20 a.m.

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
DAWSON, Trustee,)
)
Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
BACH FAMILY TRUST,)
)
Defendants.)

Case No. CV 2001-265

**ORDER DENYING AS MOOT
INTERVENOR-COMPLAINANT'S
MOTION FOR ORDER STRIKING
PLAINTIFFS' MOTIONS FOR
RECONSIDERATION**

JOHN N. BACH, individually and dba)
TARGHEE POWDER EMPORIUM, LTD.,)
)
Intervenor-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
DAWSON, Trustee, DONNA DAWSON,)
ALVA A. HARRIS, individually and dba)
SCONA, INC., KATHERINE M. MILLER, and)
DOES 1-30, inclusive,)
)
Third-Party Defendants.)

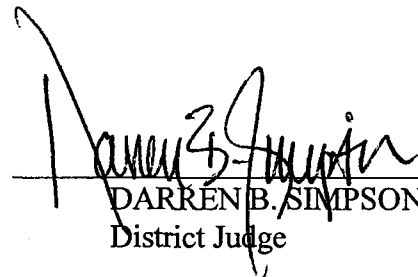
BEFORE THIS COURT is the Motion by Intervenor-Complainant John N. Bach
(hereinafter "Bach") "for Order Striking, Vacating & Purging All Plaintiffs' Motions for

Reconsideration.”¹ Bach argues that attorney Marvin M. Smith (hereinafter “Smith”) failed to properly substitute into this lawsuit as attorney of record for the Plaintiffs, fabricated the “Estate of Jack Lee McLean,” and filed a Motion for Reconsideration beyond the time limitation.² Bach also maintains that attorney Alva A. Harris remains counsel of record in this case for the Plaintiffs/Third-Party Defendants.³

This Court has previously denied the Plaintiffs’ Motion for Reconsideration.⁴ Thus, Bach’s Motion to Strike the Plaintiffs’ Motion for Reconsideration is rendered moot. Accordingly, Bach’s Motion for Order Striking, Vacating & Purging All Plaintiffs’ Motions for Reconsideration is **denied as moot**.

IT IS SO ORDERED.

DATED this 14TH day of April 2008.


DARREN B. SIMPSON
District Judge

¹ Defendant, Counterclaimant and Intervenor Complainant John N. Bach’s Notice of Motions and Motions re: (1) for Order Striking, Vacating & Purging all Plaintiffs’ Motions for Reconsideration, Dated Oct. 17, 2007 in Teton Case Nos: CV 01-33 & CV01-265; and (2) for Order of Removal, Precluding or Recusal, with Sanctions of Marvin M. Smith & his Law Firm of Anderson, Nelson, Hall, Smith, P.A. as counsel for any Plaintiffs in Both said Teton Civil Actions, 01-33 and 01-265 (The Foregoing Motions should be Granted Ex Parte, Immediately based upon the Five Basis [sic] set forth plus the Fact, Appeal have been Filed in Both Actions by the Unauthorized Attorneys for Plaintiffs, Especially Failure to Comply with I.C. 3-203(2), Storey v. USF&G, 32 Idaho 388, 183 P. 990 (1919); & Ada v. Batten 126 Idaho 114 (C.A. 1994), McLean v. Cheyovich Family Trust, Teton County case no. CV 2001-265 (filed October 25, 2007) (hereinafter “Bach’s Motion”).

² Bach’s Motion, at pp. 1-4.

³ Bach’s Motion, at p. 5.

⁴ Memorandum Decision and Order Denying Plaintiffs’/Third-Party Defendants’ Motion for Reconsideration, McLean v. Cheyovich Family Trust, Teton County case no. CV 2001-265 (filed April 8, 2007), at pp. 4-5.

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on April 15, I served a true copy of the foregoing Order Denying as Moot Intervenor-Complainant's Motion for Order Striking Plaintiffs' Motions for Reconsideration on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

U.S. Mail Courthouse Box Facsimile

Kathleen M. Heimerl, Esq.
P.O. Box 828
Victor, Idaho 83455

U.S. Mail Courthouse Box Facsimile

John N. Bach
400 N, 152 E
P.O. Box 101
Driggs, Idaho 83422

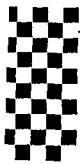
U.S. Mail Courthouse Box Facsimile

Alva A. Harris, Esq.
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

U.S. Mail Courthouse Box Facsimile

MARY LOU HANSEN, Clerk of the Court

By: *Jaime Freeman*
Deputy Clerk



Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs

FILED
APR 16 2008
TIME 4:27
TETON CO. ID DISTRICT COURT

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
DAWSON,

Plaintiffs

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants.

Case No. CV-01-265

**PLAINTIFFS' MOTION TO
ALTER OR AMEND A
JUDGMENT**

COME NOW Plaintiffs, by and through the undersigned counsel, and pursuant to Rule 59(e) and 52(b) of the Idaho Rules of Civil Procedure, move this Court to alter or amend the Memorandum Decision and Order Denying Plaintiff's Motion to Reconsider. This motion is made upon the grounds that the September 11, 2007 Quieting Title Judgment in this matter quieted title to the subject 40 acre parcel 3/4 to John Bach and 1/4 to Milan and Diana Cheyovich, quieted title to the 8.5 acre parcel to John Bach, and this Court ruled in its Memorandum Decision and Order Denying Plaintiff's Motion for Reconsideration that "Plaintiffs have not shown good cause or new evidence for reconsidering this Court's

PLAINTIFFS' MOTION TO ALTER OR AMEND - 1

000710

Judgment, dated 9-11-07, as amended by this Court.” However, Plaintiffs presented this Court with excerpts from an Amended Default Judgment Against Wayne Dawson entered February 23, 2004 by District Court Judge Richard St. Clair in Teton County Case No. CV-02-208 (attached as Exhibit B to Plaintiff’s Motion for Reconsideration dated October 17, 2007 and attached hereto as Exhibit A) which specifically states Wayne Dawson has an undivided 1/4 interest in the 40 acres which is the subject of this lawsuit and an undivided 1/2 interest in the 8.5 acres which has been discussed in this lawsuit.

The Court should address in its findings and conclusions and Order in this matter the above described Judgment per Judge St. Clair and that Judgment’s interplay and relationship to the instant Court’s Order. Is Judge St. Clair’s Judgment superceded? And if so, the legal basis.

DATED this 16th day of April, 2008.

ANDERSON NELSON HALL SMITH, P.A.

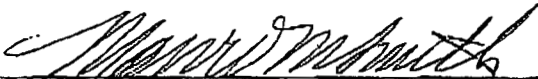
By 
Marvin M. Smith

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 10th day of April 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



MARVIN M. SMITH

L:\MMS\Bach v McLean, Liponis 7060.1\Motion.Alter.Amend.01.265.wpd

EXHIBIT A

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER aka
KATHERINE M. MILLER, ALVA
HARRIS, Individually & dba
SCONA, INC., JACK LEE McLEAN,
BOB FITZGERALD, OLE OLSON, BOB
BAGLEY & MAE BAGLEY, husband and
wife, BLAKE LYLE, Individually
and dba GRAND TOWING, GALEN
WOELK and CODY RUNYAN,
Individually & dba RUNYAN &
WOELK, ANN-TOY BROUGHTON, WAYNE
DAWSON, MARK LIPONIS, EARL
HAMLIN, STAN NICKELL, BRET HILL
& DEENA R. HILL, and DOES 1
through 30, Inclusive,

Defendants.

Case No. CV-02-208

AMENDED

DEFAULT JUDGMENT
AGAINST WAYNE DAWSON

This amended judgment is entered this 23rd day of February, 2004, with such amendments to the January 5, 2004 judgment stated herein below in bold typeface.

On September 27, 2002, plaintiff John N. Bach ("Bach") filed a first amended complaint against defendant Wayne Dawson ("Dawson") and several other defendants, seeking as to Dawson a decree quieting title to several tracts of real property in Teton County, Idaho, and seeking compensatory damages.

AMENDED DEFAULT JUDGMENT AGAINST WAYNE DAWSON

EXHIBIT

Further Dawson has no title to, or interest in, the 1 acre property located at 195 North Hwy 33, Driggs, Idaho, described as follows:

Approximately 1 acre on the East side of Highway 33, North of Driggs, Idaho, with the address of 195 N. Hwy 33, Driggs, Idaho, beginning at the NW corner of Lot 1, Block 1, Teton Peaks View, Division 1, Teton County, Idaho according to said recorded plat; running thence South 200 feet; thence East 220 feet; thence North 200 feet; thence West 220 feet to the point of beginning.

Further Dawson has only an undivided one-half interest in the 8.5 acres adjacent to 195 North Highway 33 in Teton County described as follows:

Lot 1, Block 1, Teton Peaks View, Division 1, as per the recorded plat thereof, Teton County, Idaho. Together with 20 shares of Grand Teton Canal Company and all mineral, gas, oil and geothermal rights appurtenant thereto, LESS approximately 1 acre on the East side of Highway 33, North of Driggs, Idaho, with the address of 195 N. Hwy 33, Driggs, Idaho, beginning at the NW corner of Lot 1, Block 1, Teton Peaks View, Division 1, Teton County, Idaho according to said recorded plat; running thence South 200 feet; thence East 220 feet; thence North 200 feet; thence West 220 feet to the point of beginning.

Further Dawson has only an undivided one-fourth interest in the Peacock 40 acres in Teton County described as follows:

SW1/4SE1/4 of Section 6, Township 5 North, Range 46 East, Boise Meridian, Teton County, Idaho.

2. As to counts five, six, seven, nine, eleven and twelve seeking damages, plaintiff Bach shall have judgment against Dawson for \$5,000.00, being those damages proximately caused by AMENDED DEFAULT JUDGMENT AGAINST WAYNE DAWSON

all acts of Dawson established by "well pleaded factual allegations" as to Dawson alleged in the complaint and by testimony at all evidentiary hearings and in affidavits on file in this action;

3. Count one is barred by this Court's judgment quieting title as to all real property described in that count in the name of defendant Katherine Miller; count eight does not allege a claim against Dawson; and count ten is barred by res judicata effect of the Judge Nelson's order dismissing the same count with prejudice in the above cited federal action.

4. The amount of any costs shall be determined hereafter under Rule 54, I.R.C.P.

DATED this 23rd day of February, 2004.

Richard T. St. Clair
RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the ^{23rd} day of February, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
1858 S. Euclid Avenue
San Marino, CA 91108
Telefax Nos. 626-441-6673 (TELEFAX & MAIL)

Alva Harris
P. O. Box 479
Shelley, ID 83274
Telefax No. 208-357-3448 (TELEFAX & MAIL)

AMENDED DEFAULT JUDGMENT AGAINST WAYNE DAWSON

Galen Woelk
 Runyan & Woelk, P.C.
 P.O. 533
 Driggs, ID 83422
 Telefax No. 208-354-8886 (TELEFAX & MAIL)

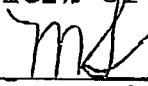
Jason Scott
 P. O. Box 100
 Pocatello, ID 83204
 Telefax No. 208-233-1304 (TELEFAX & MAIL)

Jared Harris
 P. O. Box 577
 Blackfoot, ID 83221
 Telefax No. 208-785-6749 (TELEFAX & MAIL)

Anne Broughton
 1054 Rammell Mountain Road
 Tetonia, ID 83452 (MAIL)

David Shipman
 P. O. Box 51219
 Idaho Falls, ID (COURTHOUSE BOX)

Gregory Moeller
 P. O. Box 250
 Rexburg, ID 83440-250 (MAIL)

RONALD LONGMORE
 Clerk of Court

 Deputy Court Clerk

FILED

APR 21 2008

TIME: 9:57 AM
TETON CO. ID DISTRICT COURT

JOHN N. BACH
400N, L52E
Post Office Box 101
Driggs, Idaho 83422
Tel: (208) 354-8303
Intervenor-Complainant Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee, and
WAYNE DAWSON, Trustee,

Plaintiffs,

v.

CHEYOVICH FAMILY TRUST and
VASA N. BACH FAMILY TRUST,

Defendants.

CASE NO: CV 01 - 265

INTERVENOR-COMPLAINANT
JOHN N. BACH'S MOTION TO
STRIKE, VACATE AND/OR QUASH

PLAINTIFFS' MOTION
TO ALTER OR AMEND A
JUDGMENT (IRCP, RULE
59(e) and 52(b), of
April 16, 2008.

JOHN N. BACH, individually &
dba TARGHEE POWDER EMPORIUM,
LTD.,

Intervenor-Complaint,

v.

JACK LEE McLEAN, TRUSTEE,
WAYNE DAWSON, TRUSTEE, DONNA
DAWSON, ALVA A. HARRIS, indivi-
dually & dba & as Alter Ego of
SCONA, INC., KATHERINE M. MILLER,
and DOES 1 through 30, Inclusive,

Third Party Defendants.

COMES NOW Intervenor-Complainant JOHN N. BACH, and gives NOTICE OF HIS MOTION TO STRIKE, VACATE and/or QUASH, that PLAINTIFFS' MOTION TO ALTER OR AMEND A JUDGMENT, of April 16, 2008 per IRCP, Rules 59(e) and 52(b), upon the grounds that said motion is woefully late, this court doe not have jurisdiction to consider, hear nor rule upon it (other than to strike it, etc.), and that the Idaho Supreme Court did not per its ORDERS SUSPENDING APPEAL, permit it to be filed, heard nor ruled upon by this Court.

I. INITIAL MEMORANDUM BRIEF IN SUPPORT OF MOTION TO STRIKE, VACATE OR QUASH.

" A motion to alter or amend the judgment shall be served not later than fourteen (14) days after entry of the judgment." IRCP, Rule 59(e)

" A motion to amend findings or conclusion or make additional findings or conclusions shall be served not later than fourteen (14) days, after entry of the judgment No party may assign as error the lack of findings unless the party raised such issue as to the trial court by an appropriate motion." (IRCP, Rule 52(b).

Clearly, plaintiffs' current April 16, 2008 motions are dilatory, woefully late and well beyond the mandated 14 days date after entry of judgment herein of September 11, 2007. In this Court's MEMORANDUM DECISION, etc, filed April 8, 2008, page 7, it analyzes Plaintiffs' motion for Reconsideration, being premised on IRCP, 11(a)(2)(B) requires it be made "not later than fourteen (14) days from the entry of final judgment. and such motion is for reconsideration of a summary judgment which the Plaintiffs have the burden to bring to the court's attention "any new facts" that bear on the correctness of the order or judgment. The Court in quoting from Coeur d'Alene Mining Co. v. First Nat'l Bank of Northern Idaho 118 Idaho 812, 823, 800 P2d 1026, 1037, it is "not required to search the record to determine if there is any new information that might change the specification of the facts deemed to be established."

In the NOTICE OF APPEAL, NON-EXISTENT Appellants, "Estate of Jack Lee McLean and surviving beneficiaries, appealed from: 3.G. "In the even the district court denies Plaintiffs/Appellants pending Motion for Reconsideration, the district court will have abused its discretion in denying said motion."

(In 7.B & C., the estimated fees for reporter's transcript & clerk's record have been paid).
JNBACH'S MTN to Strike, etc., Plts' Mtn to Alter/Amend Judgmt P. 2.

000719

Oct. 17, 2007 Smith filed a purported Substitution of Counsel for said fictitious plaintiffs/appellants and a motion for reconsideration. (In such appellants' motion to suspend appeal, it was only for a ruling upon motion In said MEMORANDUM DECISION, pages 10-11, this Court for recor held that since NOTICE OF ENTRY OF JUDGMENT was not given deration- Nothing ELSE!) until October 3, 2007 to Plaintiffs' then counsel, the 14 day period plus 3 via service by mail, required Plaintiffs' Motion for Reconsideration to be filed October 20, 2007, and they filed their Motion for Reconsideration on October 17, 2007, which the Court found was within the time limit allowed (actually required!) under Rule 11(a)(2)(B) and considered it "on the merits?" (TO BE NOTED is that such motion was still ineffective, even if ruled otherwise by the Court, as it was filed by fabricated, nonexistent plaintiffs stated as "the Estate of Jack McLean and Surviving Beneficiaries." However per I.C. 15-3-108 whoever were the plaintiffs failed to probate McLean's Estate, within 3 years of his date. and, such blatant creation of nonexistent entities or persons, was not an error which could be corrected, which it wasn't within said mandatory 14 days period, as no timely nor proper motion to be relieved of neglect, error, etc., per Rule 60(b)(1), etc., was ever made; lastly, if such deficiency could have been correctible, it does not relate back to when filed. Tingley v. Harreson 125 Idaho 80, 847 P.2d 960 (1994)

It is still JOHN BACH's position that the entire motion by Plaintiffs' to Reconsider, was void and without jurisdiction from the outset. No fictions nor gratuities extended to Marvin Smith's contended plaintiffs' can alter that!

Thusly, even by the Court's controlling computations that the very last day for filing postjudgment motions within its

mandated 14 days period, plus another 3 if service by mail,
October 20, 2007 was the last day.

Plaintiffs' now offered motion of April 16, 2008 to
alter or amend is 178 DAYS LATE/TARDY, almost half a year!

Most important is that Plaintiffs' initial motion for
Reconsideration should be treated as a motion to alter or amend
a judgment, per Rule 59(e) if the motion was timely made. As
stated Rule 59(e) it must have been made within 14 days after
entry of Judgment. Ross v. State. ----Idaho---, 115 P3d 761 (Ct.
App. 2005) Hamilton v. Rybar 111 Idaho 396, 724 P.2d 132 (1986)

Since this Court has ruled per its MEMORANDUM DECISION
AND ORDER DENYING PLAINTIFFS' THIRD-PARTY DEFENDANTS' MOTION FOR
RECONSIDERATION, there is NO basis, either by Order of the Idaho
Supreme Court, nor the Idaho Civil Procedure Rules for a further
motion for reconsideration of a denial of a motion for reconsidera-
tion or to correct any errors contended were made in said ORDER
DENYING PLAINTIFFS' MOTION FOR RECONSIDERATION. (See Rule 11(a)(2)(B) last
sentence.)
(Third-Party Defendants' NEVER TIMELY NOR OTHERWISE, MADE A MOTION
FOR RECONSIDERATION. This Court again not just abuses its discre-
tion that such THIRD PARTY DEFENDANTS made such a motion, but re-
veals its bias, prejudice and favoritism to save such THIRD PARTY
DEFENDANTS legal chestnuts that they did not do so. Such favorit-
displayed is a violation of both rights of JOHN N. BACH, to proced-
ural and substantive due process and equal protection.)

Also, contrived as a basis to make such motion to alter/
amend a judgment is that findings and conclusions are required
where a court grants summary judgment. NOT SO AT ALL. Bank of Idaho
v. Nesseth 104 Idaho 842, 664 P.2d 270 (1983) See Worthen v. State, 96 Idaho 175,
525 P.2d 957 (1974)

Moreover, where the court is the sole finder of fact where issues are to be resolved by the Court, the provisions of Rule 56(c) require granting summary judgment. Aid Ins. Co. v. Armstrong 119 Idaho 897, 811 P.2d 507(Ct. App 1991); Verbillis v. Dependable Appliance Co. 107 Idaho 335, 689 P2d 227(C.A. 1984)-S/J motions decided on facts shown, not upon those which might have been.); Loomis v. City of* ~~Earther,~~ in this specific area, ALVA A. HARRIS filed NOC affidavits of contravening or facts contended to be disputes of genuine material facts. Judge Shindirling found by such omissions, avoidances and noncompliance with Rule 56(c), HARRIS HAD STIPULATED TO ALL ASPECTS OF THE JOINTLY FILED JOHN BACH'S MOTIONS FOR SUMMARY JUDGMENT WHICH JUDGE SHINDIRLING THEN TOOK FULL JUDICIAL KNOWLEDGE OF AND RECEIVED from TETON CV 01-33 in this ACTION ENTIRELY!

This Court's MEMORANDUM DECISION AND ORDER DENYING PLAINTIFFS' ETC., MOTION FOR RECONSIDERATION is now final as to its last act of jurisdiction returned to it by the special order of the Idaho Supreme Court. Plaintiffs' NOTICE OF APPEAL, forecast such denial and stated it also appeals from the denial of their motion for reconsideration. This Court has no further or continuing jurisdiction, other than to strike, vacate and quash said plaintiffs' motion to alter/amend.

DATED: April 19, 2008
*Haily 119 Idaho 434, 807 P2d 1272(1991);
Kaufman v. Fairchild, 119 Idaho 859,
810 P.2d 1145(CtAPP 1991)


JOHN N. BACH, Pro Se Inter-
venor-Complainant.

CERTIFICATE OF SERVICE BY MAIL

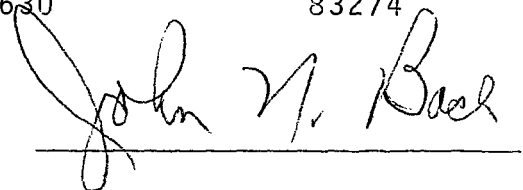
I hereby certify that I served a true copy of the foregoing document on April 19, 2008, by mailing with necessary postage affixed to:

Darren B. Simpson
C/O Bingham County Cthse
501 N. Maple, #310
Blackfoot, ID 83221

Marvin Smith
P.O. Box 51630
Idaho Falls, ID
51630

Alva Harris
P.O. Box 479
Shelley, ID
83274

DATED: April 19, 2008



000722

Apr 23, 2008

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND WAYNE
DAWSON,

Plaintiffs

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants.

Case No. CV-01-265

**PLAINTIFFS' RESPONSE TO
BACH'S MOTION TO STRIKE
PLAINTIFFS' MOTION TO
ALTER OR AMEND A
JUDGMENT**

COME NOW Plaintiffs, by and through the undersigned counsel, and submit their Response to Bach's Motion to Strike Plaintiffs' Motion to Alter or Amend filed April 16, 2008.

ANALYSIS

On April 15, 2008, this Court sent out its Memorandum Decision Denying Plaintiffs' Motion for Reconsideration. On April 16, 2008, Plaintiffs filed their Motion to Alter or Amend Judgment requesting that this Court alter or amend the Memorandum Decision and

PLAINTIFFS' RESPONSE TO BACH'S MOTION TO STRIKE PLAINTIFFS' MOTION TO ALTER OR AMEND - 1

000723

Order Denying Plaintiff's Motion to Reconsider sent out April 15, 2008 for the reasons set forth in Plaintiffs' Motion to Alter or Amend. Bach's contention that Plaintiffs' Motion to Alter or Amend were filed late and should be stricken is nonsensical. In fact, Bach appears to be under the mistaken impression that Plaintiffs are requesting the Court to alter or amend the September 11, 2007 Judgment, which is not the case. Plaintiffs are requesting that the Court alter or amend its Memorandum Decision and Order denying Plaintiffs' Motion for Reconsideration dated April 8, 2008 and mailed out April 15, 2008.

Rules 59(e) and 52(b) of the Idaho Rules of Civil Procedure clearly state that a party has 14 days after the entry of the judgment to file a motion to alter or amend. In this case, the Court's Memorandum Decision and Order denying Plaintiffs' motion for reconsideration was dated April 8, 2008 and not mailed until April 15, 2008. Plaintiffs' Motion to Alter or Amend said order was filed April 16, 2008, eight (8) days after the order was entered and one day after it was actually mailed to the parties. Therefore, Plaintiffs' Motion to Alter or Amend the Court's order denying Plaintiffs' motion for reconsideration was not untimely and Bach's motion to strike has absolutely no merit.

CONCLUSION

Based upon the foregoing, Plaintiffs respectfully request that this Court deny Bach's Motion to Strike Plaintiffs' Motion to Alter or Amend the Court's order denying Plaintiff's Motion for Reconsideration dated April 8, 2008 but not mailed out until April 15, 2008. Further, Plaintiffs' respectfully request that this Court enter a ruling on their Motion to Alter or Amend filed April 16, 2008.

DATED this 22nd day of April, 2008.

ANDERSON NELSON HALL SMITH, P.A.

By 
Marvin M. Smith

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 22nd day of April 2008, by hand delivery, mailing with the necessary postage affixed thereto; facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

- Mailing
- Hand Delivery
- Fax
- Overnight Mail


MARVIN M. SMITH

L:\MMS\Bach v McLean, Liponis 7060.1\Response.Motion.Strike.Motion.Alter.Amend.01.265.wpd

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs/Third-Party Defendants/Appellants

FILED
MAY 20 2008
TIME 3:07 *dl*
TETON CO. ID DISTRICT COURT

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF TETON

ESTATE OF JACK LEE MCCLEAN AND
SURVIVING BENEFICIARIES AND
WAYNE DAWSON, INDIVIDUALLY
AND AS TRUSTEES,

Plaintiffs/Appellants,

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants/Respondents.

JOHN N. BACH, individually and dba
TARGHEE POWDER EMPORIUM, LTD.;

Intervenor-Complainant/Respondent,

v.

JACK LEE MCLEAN, Trustee; WAYNE
DAWSON, Trustee; DONNA DAWSON;
ALVA A. HARRIS, individually and dba
SCONA, INC.; KATHERINE M. MILLER;
and DOES 1-30, inclusive;

Third-Party Defendants.(McLean &
Dawson Respondents)

Case No. CV-01-265

NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENTS JOHN N. BACH, individually and dba TARGHEE POWDER EMPORIUM, LTD., CHEYOVICH FAMILY TRUST, VASA N. BACH FAMILY TRUST, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellants, Jack Lee McLean, deceased, and Wayne Dawson, appeal against the above-named respondents to the Idaho Supreme Court from the (1) Memorandum Decision Denying Plaintiffs-Third Party Defendants' Motion for Reconsideration; (2) Order Denying as Moot Plaintiffs' Motion to Change Caption; and (3) Order Denying Plaintiffs' Motion for Sanctions; entered in the above-entitled action on the 8th day of April, 2008, Honorable District Judge Darren B. Simpson.

2. The Plaintiff Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a) (1) I.A.R.

3. Preliminarily, the issues on appeal are as follows:

A. The decisions and orders were not consistent with applicable law nor supported by substantial and competent evidence.

B. The trial court did not discuss, review or provide a decision on appellants' Rule 60(b) motion.

This list of issues shall not prevent the appellant from asserting other issues on appeal.

4. An order has not been entered sealing all or any portion of the record.

5. A. A reporter's transcript is requested.

B. The Plaintiff/Appellant requests the preparation of the entire reporter's

standard transcript.

6. I certify:

A. That a copy of this Notice of Appeal has been served on the reporter.

B. That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

C. That the estimated fee for preparation of the clerk's record has been paid.

D. That the appellate filing fee has been paid.

E. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 20th day of May, 2008.


MARVIN M. SMITH

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 20th day of May, 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

Mailing
 Fax
 Hand Delivery
 Overnight

Sandra Beebe
Court Reporter
501 N. Maple, #205
Blackfoot, ID 83221-1700

Mailing
 Fax
 Hand Delivery
 Overnight

Nancy Marlow
Court Reporter
605 N. Capital
Idaho Falls, ID 83402

Mailing
 Fax
 Hand Delivery
 Overnight



MARVIN M. SMITH

L:\MMS\Bach v McLean, Liponis 7060.1\Supreme Court Appeal\Notice of Appeal.wpd

May 27, 2008

AT 2:30 PM

Darren B. Simpson

DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba)
TARGHEE POWDER EMPORIUM, LTD.,)

Intervener-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
DAWSON, Trustee, DONNA DAWSON,)
ALVA A. HARRIS, individually and dba)
SCONA, INC., KATHERINE M. MILLER, and)
DOES 1-30, inclusive,)

Third-Party Defendants.)

Case No. CV 2001-265

FIRST AMENDED JUDGMENT

BEFORE THIS COURT, on Tuesday, August 7, 2007, came to be heard the Motions of
Intervenor-Complainant John N. Bach's Motion for Summary Judgment (against Plaintiffs Jack

Lee McLean, Trustee, and Wayne Dawson, Trustee, and third-party defendants 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) and for Dismissal with Prejudice of the plaintiffs' Complaint.¹ Bach's Motion for Summary Judgment included his prayer for quiet title and his demand for a finding of liability against the plaintiffs and the third-party defendants 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.

Based upon this Court's "Opinion Memorandum and Orders re: 1) Granting Defendant, Counterclaimant & Complainant in Intervention John N. Bach's Motions for Summary Judgment; and 2) for Order and Issuance of Judgment of Dismissal with Prejudice of Plaintiffs' Complaints in CV 01-33 and CV 01-265 with Orders for: Immediate Issuance of Judgment in John N. Bach's Favor Quieting Sole Title, Ownership, Possession, Use, and Occupation of Real Property Parcels known as – Drawknife Parcel (33 acres), Peacock Parcel (40 acres) and Zamona Casper Parcel (8.5 acres) with Permanent Injunction against all Plaintiffs, their Trustees, any and all Successors in Interests, Attorneys, Agents, etc.," entered September 11, 2007, and based on this Court's Memorandum Decision and Order Denying Plaintiffs'/Third-Party Defendants'

¹ At the same hearing, this Court heard John N. Bach's Motion for Summary Judgment and for Dismissal with Prejudice of the Plaintiffs' Complaint in the related case entitled *McLean v. Bach*, Teton County case no. CV 2001-33.

Motion for Reconsideration, entered April 8, 2008,² this Court finds the following orders appropriate:

Plaintiffs' Complaint in this action is hereby **dismissed with prejudice** for failure to prosecute.³

Intervenor-Complainant John N. Bach's Motion for Summary Judgment is **granted**. John N. Bach, individually, shall have quiet title to an undivided three-fourths interest in the forty (40) -acre parcel of land referred to as the "Peacock Parcel"⁴ and formally described as:

A portion of the South ½ South ½ Section 6, Township 5 North, Range 46 East, Boise Meridian, Teton County, Idaho, being further described as: From the SW corner of said Section 6, South 89 degrees 50'12" East, 2630.05 feet to the true point of beginning; thence North 00 degrees 07'58" East, 813.70 feet to a point; thence North 01 degrees 37'48" East, 505.18 feet to a point; thence South 89 degrees 58'47" East, 1319.28 feet to a point; thence South 00 degrees 07'36" West, 1321.69 feet to a point on the Southern Section Line; thence North 89 degrees 51'01" West, 1320.49 feet along the Southern Section Line to the South ¼ Corner of said Section 6, a point; thence North 89 degrees 50'13" West, 12.13 feet along the Southern Section Line to the point of beginning.

John N. Bach shall retain the management and full possession of the Peacock Parcel to the exclusion of all the Plaintiffs and Third-Party Defendants to this action, their attorneys, spouses, children, issue, successors in interest, and agents.

² Memorandum Decision and Order Denying Plaintiffs'/Third-Party Defendants' Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed April 8, 2008).

³ This Court, the honorable Jon Shindurling presiding, dismissed Plaintiff Jack Lee McLean on January 3, 2005. See: Order, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (entered January 3, 2005).

⁴ The remaining undivided one-fourth interest in the Peacock Parcel is held by Milan Cheyovich and Diana Cheyovich, husband and wife, 1858 S. Euclid Ave., San Marino, California 91108.

All Plaintiffs and Third-Party Defendants to this action, their attorneys, spouses, children, issue, successors in interest, and agents are permanently enjoined, restrained, precluded, prevented and foreclosed from:

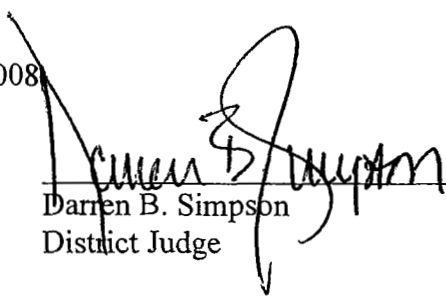
1. Trespassing, entering upon, invading, intruding or causing any such trespassing, entering, invading or intruding upon the Peacock Parcel;
2. Making any further claims against John N. Bach, individually, or doing or initiating any act, pursuit, or communication with the Teton County Tax Assessor, Tax Collector, or County Clerk Recorder's Office, to place any cloud, encumbrance, or slanderous document or instrument upon the quieted title of John N. Bach to the Peacock Parcel; and
3. Using, acting as, applying or appropriating "Targhee Powder Emporium, Inc.," "dba Targhee Powder Emporium, Unlimited," or "dba Targhee Powder Emporium, Limited."

Plaintiffs and Third-Party Defendants shall account, deliver and produce all records, documents and files which they, their attorneys or agents, acting jointly or separately, have created or assembled using the name "Targhee Powder Emporium, Inc." or "dba Targhee Powder Emporium, Unlimited or Limited." Such accounting, delivery and production shall be completed within thirty (30) days of the filing of this First Amended Judgment to: John N. Bach, 400 N 152 E, P.O. Box 101, Driggs, Idaho 83422.

Any requests for costs and/or fees shall be deferred until after this Court enters judgment as to John N. Bach's claim for monetary damages.

IT IS SO ORDERED.

DATED this 21st day of May 2008



Darren B. Simpson
District Judge

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on May 27, 2008, I served a true copy of the foregoing First Amended Judgment on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

U.S. Mail Courthouse Box Facsimile

Kathleen M. Heimerl, Esq.
P.O. Box 828
Victor, Idaho 83455

U.S. Mail Courthouse Box Facsimile

John N. Bach
400 N, 152 E
P.O. Box 101
Driggs, Idaho 83422

U.S. Mail Courthouse Box Facsimile

Alva A. Harris, Esq.
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

U.S. Mail Courthouse Box Facsimile

MARY LOU HANSEN, Clerk of the Court

By: James Freeman
for, Deputy Clerk

May 27, 2008
AT 2:12 pm

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba)
TARGHEE POWDER EMPORIUM, LTD.,)

Intervener-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
DAWSON, Trustee, DONNA DAWSON,)
ALVA A. HARRIS, individually and dba)
SCONA, INC., KATHERINE M. MILLER, and)
DOES 1-30, inclusive,)

Third-Party Defendants.)

Case No. CV 2001-265

**ORDER DENYING AS MOOT
PLAINTFFS' SECOND MOTION
FOR SANCTIONS**

BEFORE THIS COURT is the Second Motion of the Plaintiffs/Counter Defendants, Jack Lee McLean, Trustee, and Wayne Dawson, Trustee (hereinafter "McLean & Dawson") for

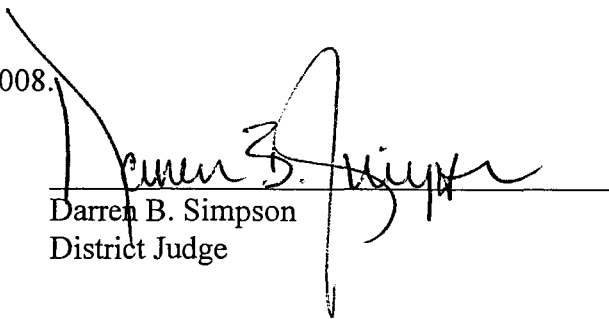
Sanctions.¹ McLean & Dawson request that this Court sanction Intervener-Complainant John N. Bach for communicating directly with a represented opposing party in this lawsuit.²

This Court, on April 10, 2008, denied McLean & Dawson's original Motion for Sanctions and ordered that, from April 10, 2008 onward, no party to this litigation shall contact any other party except through counsel.³ In light of this Court's April 10 Sanction Order, and the fact that the conduct cited in McLean & Dawson's Second Motion for Sanctions occurred before April 10, 2008, McLean & Dawson's Second Motion for Sanctions shall be denied as moot.

Accordingly, McLean & Dawson's Second Motion for Sanctions is **denied as moot**. This Court's April 10 Sanction Order remains in full force and effect.

IT IS SO ORDERED.

DATED this 27TH day of May 2008.



Darren B. Simpson
District Judge

¹ Plaintiffs' Second Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed March 10, 2008) (hereinafter the "**Dawson & McLean's Second Motion for Sanctions**").

² Memorandum in Support of Plaintiffs' Second Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed March 10, 2008).

³ Order Denying Plaintiffs' Motion for Sanctions, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed April 10, 2008) (hereinafter the "**April 10 Sanction Order**").

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on May 21, 2008, I served a true copy of the foregoing Order Denying Plaintiffs' Second Motion for Sanctions on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

U.S. Mail Courthouse Box Facsimile

Kathleen M. Heimerl, Esq.
P.O. Box 828
Victor, Idaho 83455

U.S. Mail Courthouse Box Facsimile

John N. Bach
400 N, 152 E
P.O. Box 101
Driggs, Idaho 83422

U.S. Mail Courthouse Box Facsimile

Alva A. Harris, Esq.
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

U.S. Mail Courthouse Box Facsimile

MARY LOU HANSEN, Clerk of the Court

By: Jaime Freeman
for, Deputy Clerk

JOHN N. BACH
490N, 152E/Post Office Box 101
Driggs, ID 83422/Tel (208) 354-8303
Intervenor-COMPLAINT-Respondent
and Appellant, Pro Se

FILED

JUN 10 2008

TIME: 11:46
TETON CO. ID DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JACK LEE McLEAN, Trustee and WAYNE
DAWSON, Trustee,

Plaintiffs-Appellants,

v.

CHEYOVICH FAMILY TRUST, and VASA N.
BACH FAMILY TRUST,

Defendants-Respondents.

JOHN N. BACH, individually and dba
TRAGHEE POWDER EMPORIUM, LTD.,

Intervenor-Complaint-Respond-
ent and Limited Appellant,

v.

JACK LEE McLEAN, Trustee; WAYNE
DAWSON, Trustee; DONNA DAWSON; ALVA
HARRIS, individually and dba SCONA,
INC.

Third Party Defendants and
Appellants;

and

KATHERINE M. MILLER; and DOES 1-30,
inclusive,

Third Party Defendants.

TETON CASE NO: CV 01-265

(Idaho Supreme Court Appeal
Docket NO: 34712, Now
Ordered Consolidated with
Appeal Dkt NO: 35334, Per
Idaho Supreme Court AMENDED
ORDER CONSOLIDATED APPEALS,
Dated May 30, 2008

JOHN N. BACH'S NOTICE OF AP-
PEALS, CROSS APPEAL AND COUN-
TER APPEALS,
IN ALL CAPACITIES, APPEALING
THE FIRST AMENDED JUDGMENT
Judge Darren B. Simpson, Assig-
ned, and ORDERS filed May 27,
2008, by Judge Simpson, with
Said First Amended Judgment
Or Issued/Filed Prior Thereto

(Appendix A, Category T)
(I.A.R. 17, 18, 15 & 23) JAB

NOTICE OF APPEALS, ORIGINAL APPEAL, CROSS APPEAL AND COUNTER-
APPEALS IS HEREBY GIVEN BY JOHN N. BACH, Intervenor-Complaint and
Respondent, but all such appeals are from that FIRST AMENDED JUDGMENT,
and ORDERS filed by Judge Darren B. Simpson, Assigned, as filed on
May 27, 2008, and portions of prior rulings, memorandum and orders,
filed prior to the May 27, 2008 date.

I. ATTORNEYS FOR PARTIES

Plaintiffs-Appellants, whoever or purportedly they may be are represented by MARVIN M. SMITH, of Anderson,, Nelson, Hall, Smith, P.A.490 Memorial Drive, P) Box 51630, Idaho Falls, ID 83405-1630, Tel: (208) 522-3001

Intervenor-Complainant, Respondent and limited Issues Appellant, per his NOTICE OF APPEALS, etc., is JOHN N. BACH, Pro Se, 400N, 152E, P.O. Box 101, Driggs, ID., 83422, Telephone: Tel: (208) 354-8303

Third Party Defendants, being Jack Lee McLean, Trustee, WAYNE DAWSON, trustee and individually, DONNA DAWSON, ALVA A. HARRIS, individually and dba SCONA, INC., a sham corporation, are still represented by ALVA A. HARRIS, Esquire, P.O. Box 479, Shelley, ID, 83274, Tel: (208)

SAID THIRD PARTY DEFENDANTS ARE ALSO APPELLANTS HEREIN, ALTHOUGH THEY HAVE FILED NO NOTICES OF APPEAL, BUT ARE DIRECT PARTIES EFFECTED AND SUBJECT TO ALL APPEALS OTHERWISE PROPERLY/TIMELY FILED AND PERFECTED.

II. CERTIFICATE OF SERVICE BY MAIL OF THIS NOTICE OF APPEALS

Intervenor Complainant, in all capacities, certifies this date, June 10, 2008, he served true and complete copies of this NOTICE OF APPEALS on each of the attorneys of record and each pro se party set forth in Part I, supra.

III. JOHN N. BACH, HAS STANDING AND CAPACITY TO GIVE THIS NOTICE OF APPEALS AND THE PRIMARY ISSUES, INCLUDED BY LIMITED TO THOSE SET FORTH INITIALLY.

A NOTICE OF APPEAL, was filed in the Clerks of the Courts Idaho Supreme Court on May 27, 2008, by the purported plaintiffs

appellants who previously on October 23, 2007 filed their initial NOTICE OF APPEAL. JOHN BACH via motions questioned the standings/ capacities of plaintiffs to file the initial appeal and questions their current notice of appeal as proper. Appellants' motion for reconsideration was woefully late, incomplete ~~but~~ denied by Judge Darren B. Simpson, Assigned. However, Judge Simpson, in his April 8, 2008 filed Memorandum Decision and Order Denying Plaintiffs/Third Party Defendants' Motion for Reconsideration, wherein he denied such motion for reconsideration, he, without jurisdiction and/or in clear error, abuse of discretion and without any authority, stated the judgment of September 11, 2007 by Judge Jon J. Shindirling should not have quieted title to JOHN N. BACH on the parcel known as the ZAMONA CASPER parcel of 8.5 acres; he ignored the issues of the complaint in intervention. Appellants then filed a further late, without any supporting affidavits or memorandum, ^{motion} /to amended Judge Shinridling's Judgment of September 11, 2007, JOHN BACH filed a motion to strike with stated objections and requested a hearing, but no hearing was noticed or held, May 27, 2008. Judge Simpson issued a FIRST AMENDED JUDGMENT and ORDER DENYING AS MOOT PLAINTIFFS' SECOND MOTION FOR SANCTIONS, portions of which JOHN N. BACH now appeals, especially as to the deletion of the quieting title to himself of the ZAMONA CASPER 8.5 parcel and, per said ORDER, that he and "no party to this litigation shall contact any other party except through counsel³", which is based on Idaho State Bar Rule of Professional Conduct, Rule 4.2. To the extent this Order relies upon any memorandum decision and any other ORDERS of April 10, 2008, such orders are also appealed from.

Also appealed is Judge Simpson's error in not just excluding Judge Shindirling's quieting of title to JOHN N. BACH, per his Sept. 11, 2007 JUDGMENTS, but that both the PEACOCK PARCEL (40 acres) and CASPER (8.5) were awarded to JOHN N. BACH, individual & dba TARGHEE POWDER

EMPORIUM, LTD. Copies of said FIRST AMENDED JUDGMENT and ORDER DENYING AS MOOT PLAINTIFF'S SECOND MOTION FOR SANCTIONS with JB filed.

IV. STATEMENT OF INITIAL ISSUES APPEALED

1. Did/Do Plaintiffs /Appellants Have Standing/Capacity to file any appeals herein?
2. Did Plaintiffs/Appellants File, Timely and Properly any Motion for Reconsideration or other subsequent motions?
3. Was the assigned Judge without jurisdiction to change, alter or delete any portions or orders and JUDGMENT of Judge Jon J. Shinridlirng, filed Sept 11, 2007?
4. Did the assigned Judge, both error and/or grossly abuse his discretion in altering, modifying or deleting any portions of Judge Shindirling's Sept. 11, 2007 JUDGMENTS and prior orders? Was the assinged Judge Disqualified?
5. Did the assigned Judge, deny and/or violated JOHN N. BACH's procedural and substantive due process and equal protection rights in not setting a hearing on plaintiffs' motions, especially their untimely and inappropriate motion to amend Judgment and to enforce/apply Rule 4.2 against JOHN BACH, a nonlicensed Idaho attorney, appearing pro se?

V. COURT CLERK'S AND REPORTER'S TRANSCRIPTS' REQUESTS

As Plaintiffs/Appellants have requested the preparation of said clerk's and reporters' transcripts record on appeal, at this point/stage JOHN N. BACH will rely upon them unless incomplete or fragmented; he will request no further preparations of the records. Such records are further covered by the AMENDED ORDER CONSOLIDATING APPEALS, MAY 30, 2008, Idaho Supreme COURT.

VI. JOHN N. BACH further CERTIFIES, he's paid to the TETON COUNTY CLERK, per I.A.R., Rule 23, etc., Appendix A, Category "T" a \$86.00 postal money order to the Idaho Supreme Court, a further sum of 9.00 for the Teton Clerk's Fee and other sums to certify process this NOTICE OF APPEAL.

VII. DATED: June 10, 2008

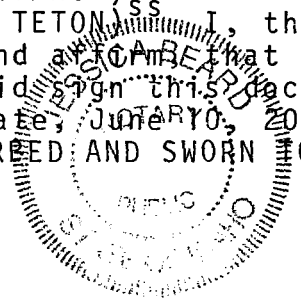
STATE OF IDAHO)
COUNTY OF TETON,)
I, the undersigned Idaho Notary, attest, verify, state, and affirm that JOHN N. BACH, appeared before me, known to me, who did sign this document in my presence and witness thereof, on this date, JUNE 10, 2008.
SO SUBSCRIBED AND SWORN TO.

John N. Bach

JOHN N. BACH

Jennifer Beard

Notary's Signature
Residing in Teton County
Commission Expires on 07/23/2013



000742
Address & Comm'n Expiration

AS PLACED UNDER THE SEAL TESTIMONY HIS PERSONAL KNOWLEDGE BEFORE AS TESTED ABOVE
9/28/08 JB

F F L E D

Jun 23 2006

SEVENTH JUDICIAL DISTRICT COURT

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs/Third-Party Defendants/Appellants

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF TETON

ESTATE OF JACK LEE MCCLEAN AND
SURVIVING BENEFICIARIES AND
WAYNE DAWSON, INDIVIDUALLY
AND AS TRUSTEES,

Plaintiffs/Appellants,

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants/Respondents.

JOHN N. BACH, individually and dba
TARGHEE POWDER EMPORIUM, LTD.;

Intervenor-Complainant/Respondent,

v.

JACK LEE MCLEAN, Trustee; WAYNE
DAWSON, Trustee; DONNA DAWSON;
ALVA A. HARRIS, individually and dba
SCONA, INC.; KATHERINE M. MILLER;
and DOES 1-30, inclusive;

Third-Party Defendants.(McLean &
Dawson Respondents)

Case No. CV-01-265

AMENDED NOTICE OF APPEAL

TO: THE ABOVE-NAMED RESPONDENTS JOHN N. BACH, individually and dba TARGHEE POWDER EMPORIUM, LTD., CHEYOVICH FAMILY TRUST, VASA N. BACH FAMILY TRUST, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellants, Jack Lee McLean, deceased, and Wayne Dawson, appeal against the above-named respondents to the Idaho Supreme Court from the (1) Memorandum Decision Denying Plaintiffs-Third Party Defendants' Motion for Reconsideration; (2) Order Denying as Moot Plaintiffs' Motion to Change Caption; and (3) Order Denying Plaintiffs' Motion for Sanctions; entered in the above-entitled action on the 8th day of April, 2008, Honorable District Judge Darren B. Simpson.

2. The Plaintiff Appellant has a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a) (1) I.A.R.

3. Preliminarily, the issues on appeal are as follows:

A. The decisions and orders were not consistent with applicable law nor supported by substantial and competent evidence.

B. The trial court did not discuss, review or provide a decision on appellants' Rule 60(b) motion.

This list of issues shall not prevent the appellant from asserting other issues on appeal.

4. An order has not been entered sealing all or any portion of the record.

5. A reporter's transcript is requested as to the following hearing dates:

i. Motions, August 7, 2007 (Nancy Marlow, Reporter) (Copy

attached)

ii. Hearing, November 6, 2007 (Nancy Marlow, Reporter)

iii. Hearing, February 14, 2008 (Sandra Beebe, Reporter)

6. Appellant requests the preparation of the clerk's record.

7. I certify:

A. That a copy of this Notice of Appeal has been served on the reporter.

B. That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.

C. That the estimated fee for preparation of the clerk's record has been paid.

D. That the appellate filing fee has been paid.

E. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 5th day of June, 2008.


MARVIN M. SMITH

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 20th day of June, 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

Mailing
 Fax
 Hand Delivery
 Overnight

Sandra Beebe
Court Reporter
501 N. Maple, #205
Blackfoot, ID 83221-1700

Mailing
 Fax
 Hand Delivery
 Overnight

Nancy Marlow
Court Reporter
605 N. Capital
Idaho Falls, ID 83402

Mailing
 Fax
 Hand Delivery
 Overnight



MARVIN M. SMITH

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN AND MARK J.)
LIPONIS, Trustee,)
)
Plaintiffs,)
)
vs.) Case No. CV-01-33
)
JOHN N. BACH,)
)
Defendant.)
)
_____)

JACK LEE MCLEAN AND WAYNE)
DAWSON, TRUSTEE,)
)
Plaintiffs,)
)
vs.) Case No. CV-01-265
)
CHEYOVICH FAMILY TRUST AND)
VASA N. BACH FAMILY TRUST,)
)
Defendants.)
_____)

MOTIONS
AUGUST 7, 2007

BEFORE THE HONORABLE JON J. SHINDURLING

Driggs, Teton County, Idaho

COPY

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A P P E A R A N C E S

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FOR THE PLAINTIFFS:

ALVA A. HARRIS, ESQ.
171 S. Emerson Avenue
P. O. Box 479
Shelley, Idaho 83274

FOR THE DEFENDANTS:

JOHN N. BACH, PRO SE
P. O. Box 101
Driggs, Idaho 83422

AUGUST 7, 2007

1
2
3 THE COURT: Now we've got to take up a whole
4 bunch of other cases --

5 MR. BACH: Thank you, Your Honor.

6 THE COURT: -- that I don't think you're
7 involved in, Mr. Harris. Mr. Alva Harris is.

8 I've got motions involving CV-01-33, which is
9 entitled McLean and Liponis versus Bach, and I've got
10 01-266, which is McLean and Liponis versus the Bach
11 Trust. Of course, you don't represent that party.

12 MR. BACH: No, I haven't made any motions in
13 that, Your Honor.

14 THE COURT: I was just looking at the files
15 I've got.

16 MR. BACH: Thank you.

17 THE COURT: And I've got 01-205, which is
18 McLean versus Bach and the Bach Family Trust. I've
19 got 01-265, which is McLean versus the Trust. And you
20 don't have anything pending in that case.

21 MR. BACH: I do. I am a third-party intervenor
22 in that one, Your Honor.

23 THE COURT: Okay. So that one's pending?

24 MR. BACH: Yes.

25 THE COURT: And I've got -- I thought I had

3

1 206 in here.

2 Did we not bring that in?

3 COURT CLERK: I'm not aware of anything on 206,
4 Your Honor.

5 THE COURT: I don't think there's anything
6 pending in 206, but I wanted to ask about where we are
7 on it.

8 MR. BACH: There was -- the other one that I
9 made the two motions in is 01-33, Your Honor.

10 THE COURT: I've got that, and I named that
11 one.

12 MR. BACH: And the other one is 01-265.

13 THE COURT: I've got that one.

14 MR. BACH: All the other files --

15 THE COURT: And then you have 205.

16 MR. BACH: That was dismissed, Your Honor, with
17 prejudice.

18 THE COURT: Well, I thought your motion --

19 MR. BACH: It's not in there.

20 THE COURT: One of your motions dealt with 205.
21 Maybe I was looking at an old motion as I was pulling
22 these. So that one's dismissed?

23 MR. BACH: Yes.

24 THE COURT: Okay. I don't even need to think
25 about that one today then.

4

1 All right, let's look at -- so we're
2 looking at 01-33 and 01-265; right?

3 MR. BACH: Correct, Your Honor.

4 THE COURT: Okay.

5 Present on behalf of John Bach personally is
6 Mr. Bach. Present on behalf of McLean and Liponis is
7 Alva Harris.

8 Where are we on these matters?

9 MR. BACH: Your Honor, I filed two motions.

10 THE COURT: I know, a motion for summary
11 judgment and a motion to dismiss for lack of
12 prosecution.

13 MR. BACH: That's correct. And there's been no
14 opposition filed.

15 THE COURT: Well, there's been an objection,
16 which is overruled, and I want to address the issue.
17 I want to address it on the lack of prosecution.

18 I'm really frustrated with these cases, because
19 I had instructed Mr. Harris years ago -- I'm talking
20 four or five years ago, whenever it was Mr. McLean
21 passed away -- to insure that the case was brought
22 into proper status by having the estate substituted in
23 for Mr. McLean personally, and that's never been done.
24 Nothing has ever been done. The cases sit. No
25 prosecution effected in four or five years, since

5

1 2003, I think, at the latest.

2 MR. BACH: Well, I can assist the Court in that
3 regard. Both of these were filed in 2001.

4 THE COURT: Right.

5 MR. BACH: And the last ruling that I had moved
6 to dismiss for lack of diligent prosecution, you
7 denied that in February of 2004. It's over two and a
8 half years.

9 THE COURT: Right. So there's been nothing
10 done since.

11 MR. BACH: Nothing, nothing. You have
12 dismissed Mr. McLean completely, with prejudice, from
13 all of these cases.

14 THE COURT: Right.

15 MR. BACH: All of them, not just 01-33 and
16 01-265.

17 THE COURT: I thought we had taken some action
18 in that regard.

19 MR. BACH: You did.

20 THE COURT: But my concern is that these are
21 sitting, and I don't know how to get them moving.

22 Mr. Harris, any reason I shouldn't just get rid
23 of these under Rule 40(b)? I think it's 40(b).

24 MR. HARRIS: I didn't hear you, Your Honor.

25 THE COURT: Is there any reason I shouldn't

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1 just dismiss these under Rule 40, for failure to
2 prosecute?
3 MR. HARRIS: No, Your Honor, only without
4 prejudice.
5 THE COURT: They will be dismissed with
6 prejudice, if I dismiss them. You had the opportunity
7 to prosecute them, and you have not done so.
8 MR. HARRIS: I understood from the Court when
9 we talked the last time, Your Honor, that we were
10 going to dismiss Mr. McLean and continue on after we
11 got through the other case, the 208 case. That's why
12 I have been waiting.
13 THE COURT: I want to find my memo from Aaron.
14 I thought I had it in here.
15 Go ahead. I'm sorry. I'm talking to myself.
16 It happens rather frequently the older I get.
17 MR. HARRIS: My understanding from the last
18 time we were in court on the order, like I indicated,
19 was we would do nothing in these actions until after
20 we got through 2008. That's what I understood.
21 THE COURT: 2008?
22 MR. HARRIS: No, the case of 208. It's the
23 Miller case, the one that was the big case that was on
24 appeal.
25 MR. BACH: No.

7

1 THE COURT: I've never stayed these cases.
2 Would you look on my desk? I should have a
3 memo on there from Aaron, my law clerk.
4 MR. BACH: Your Honor, I hate to interrupt, but
5 just for clarification, Mr. Alva Harris never appeared
6 before this Court. In fact, he was totally absent
7 when I filed a motion for this Court to return to me
8 \$15,000 that was in a court-ordered account. That
9 order is the first exhibit attached to my affidavit in
10 support of my motion for summary judgment.
11 THE COURT: Right.
12 MR. BACH: Mr. Harris absolutely made no
13 contact. In fact, I was the only one that appeared.
14 Your Honor signed an order that I had presented. I
15 got a certified copy, and I had the money released
16 that day. And on the same day, Your Honor then issued
17 an order of dismissing Mr. McLean in all of these
18 matters in which his name appears as a trust or as an
19 individual.
20 But, secondly, I am very concerned about three
21 things. Number one, I now have a final judgment
22 against Mr. Dawson, except for my right of appeal that
23 is still pending. And I have cited the Rexburg Lumber
24 Company case in which he failed not only to file a
25 proper answer with any affidavit to show that he had a

8

1 defense, but I failed to file a counterclaim
2 asserting any quiet title action. And I have filed
3 with this Court the Rexburg Lumber Company versus
4 Purrington case that says, the failure not only to
5 properly appear in time, but a default with a failure
6 to file a mandatory counterclaim under 13(a) requires
7 the title in all the properties, all the properties
8 that Mr. Dawson may be asserting now in action 01-33
9 or 01-265, to be awarded to myself. It's a final
10 conclusive judgment that I have against him.
11 And that judgment has also been attached to my
12 affidavit. And what I have here is the Amended
13 Default Judgment against him, which is recorded as
14 Teton Instrument 161729.
15 So I can share with Your Honor the frustration
16 by the Court in lack of prosecution by the plaintiffs,
17 but I have counterclaims and complainant intervention
18 that depends on what happens to those complaints. So
19 I don't want my counterclaims or complainant
20 intervention or third-party complaint dismissed. I
21 do want to amend it, and I think I am entitled to
22 amend it, if the Court is gracious enough to agree
23 with me, which I think it must. That not only must
24 the summary judgment be granted because there is
25 absolutely no opposition, there is no response under

9

1 Rule 56(c) through (e), there is absolutely no denial
2 that there has been a prior judgment outstanding
3 imposing liability against not only Mr. Dawson but
4 Mr. Alva Harris, as well. And that binds, by the
5 bankruptcy proceeding, which has been -- I have had
6 them all discharged, Mr. Dawson and also as far as
7 Mr. Alva Harris. And as co-privity in interest and
8 co-complicitor has been Mr. Mark Liponis. And that
9 applies to him, as well.
10 So I am seeking of this Court that I have a
11 separate judgment, on the motion for summary judgment
12 being ordered, that a three-quarter interest in the
13 40 acres known as Peacock parcel be further quieted to
14 myself to the exclusion of Mr. Dawson, to the
15 exclusion of Mr. Harris, to the exclusion of
16 Mr. Liponis, and to the exclusion of Mr. McLean and
17 his estate. They have never appeared in this action,
18 and I think I am entitled to that right.
19 I am further entitled, as to the second parcel,
20 which is an 8.5 acre parcel on Highway 33, to also
21 have that quieted and awarded to me entirely to the
22 exclusion of Mr. Dawson, who is the only one that can
23 possibly claim any kind of interest in it and can't
24 now.
25 And the third parcel is the 33 acre parcel

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1 known as the Drawknife parcel have set this all
2 out in my motion.

3 And Mr. Liponis has -- he never appeared. He
4 was an indispensable party in the CV-02-208. I'm
5 entitled to have the entire 33 1/3 acres quieted to
6 myself, to his exclusion, and again to Mr. McLean's
7 exclusion.

8 I'm finding notes here, Your Honor. And what
9 you just heard a little while ago, that I'm going to
10 be briefing on in the order to show cause for a
11 contempt, involves an Amended Default Judgment against
12 Mr. Dawson. And I'm having now Mr. Alva Harris and
13 Jared Harris, who have no interest and are the
14 subjects of a permanent injunction against making any
15 claims or going on that property, either directly or
16 through their agents, the Hills, or anybody else -- I
17 have severe prejudice unless I have both motions
18 granted.

19 I would like to offer to the Court, but I would
20 like to have back the original, and this is the
21 recorded Default Judgment. And in the opposition and
22 the motion to strike to Mr. Alva Harris's objections,
23 I've pointed out and I've attached, for judicial
24 notice, certified copies of -- I own Targhee Powder
25 Emporium, Inc. I and Targhee Powder Emporium, Inc.,

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1 jointly -- I, individually -- are doing business as
2 Targhee Powder Emporium, Unlimited, and, secondly, as
3 Limited. I am named individually and dba Targhee
4 Powder Emporium, Limited, in action 01-265.

5 This has been such an obstruction of legal
6 process and procedure by Mr. Harris and his --

7 THE COURT: But there's been nothing in
8 response here, other than his objection, which I have
9 denied. Submit to me your orders on summary judgment.

10 MR. BACH: I will.

11 THE COURT: Granted.

12 MR. BACH: Thank you, Your Honor. And I'll
13 provide a copy to Mr. Harris.

14 THE COURT: Very well.

15 MR. BACH: Thank you, Your Honor.

16 THE COURT: All right. Summary judgment will
17 be granted for lack of response under Rule 56.

18 MR. BACH: Thank you, Your Honor.

19 MR. HARRIS: Your Honor, I call the Court's
20 attention to the fact that Mr. Bach cannot speak for
21 the Cheyovich Family Trust or the Vasa N. Bach Family
22 Trust.

23 THE COURT: There's no motion with regard to
24 those parties. However, Mr. Harris, I am giving you
25 notice today, which will be made of record, under

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1 Rule 40(c), you have 14 days in which to show
2 cause to me why these matters as to the trust or
3 anyone else that's a party in this case should not be
4 dismissed as an inactive case. So under Rule 40(c),
5 you show me good cause for retention within 14 days,
6 or those matters will be dismissed, as well. Mr. Bach
7 will be able to pursue his counterclaims and cross
8 claims, whatever they might be.

9 MR. BACH: Thank you.

10 THE COURT: But they will be dismissed as to
11 your clients as a permanent action, unless I see good
12 cause for retention.

13 MR. BACH: Thank you, Your Honor.

14 THE COURT: All right. Thank you. We will be
15 adjourned in those cases.

16 Now, Mr. Bach and Mr. Harris, one last thing --
17 or two last things.

18 One is that there were a number of matters that
19 were set for hearing by Mr. Bach for today without
20 first securing permission from the clerk to add those
21 to the calendar. That won't happen. If you've got
22 something you want to have heard, talk to the clerk
23 and get a date and time. If you want something else
24 heard at that same time, let the clerk know.

25 MR. BACH: I shall.

13

1 THE COURT: Don't just file another motion and
2 tack it on. We don't have time sometimes to just
3 stack stuff on.

4 The second thing is, if you've got stuff to
5 file in a case -- I was getting stuff today. I got
6 stuff today on this that was filed moments before
7 court. That can't happen. So get your stuff filed
8 timely. Okay?

9 MR. BACH: Okay, Your Honor. Just for
10 clarification, I followed procedure.

11 THE COURT: I know. You were responding to
12 him, and he was late responding.

13 MR. BACH: All right. Thank you, Your Honor.

14 THE COURT: And that's fine, but it's really
15 hard for me to prepare --

16 MR. BACH: I agree.

17 THE COURT: -- if I'm getting stuff just before
18 court. I didn't get Mr. Harris's filings until today.
19 I didn't get yours until just before lunch.

20 MR. BACH: Thank you.

21 THE COURT: Or just after lunch.

22 All right. Thank you. You may be excused.

23

24 (Proceedings Concluded)

25

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3 REPORTER'S CERTIFICATE

4 STATE OF IDAHO)
5) ss.
6 COUNTY OF BONNEVILLE)

7 I, NANCY MARLOW, Certified Shorthand Reporter
8 and Notary Public in and for the State of Idaho, do
9 hereby certify:

10 That prior to being examined, all witnesses
11 named in the foregoing proceeding were duly sworn to
12 testify to the truth, the whole truth and nothing
13 but the truth.

14 That said proceeding was taken down by me in
15 shorthand at the time and place therein named, and
16 thereafter reduced to typewriting under my direction,
17 and that the foregoing transcript contains a full,
18 true, and verbatim record of said proceeding.

19 I further certify that I have no interest in
20 the event of this action.

21 WITNESS my hand and seal this 8th day of
22 November, 2007.

23
24 NANCY MARLOW, CSR, in and
25 for the State of Idaho

July 23, 2008
AT 3:18 pm

Darren B. Simpson
DARREN B. SIMPSON
DISTRICT JUDGE

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO

IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee, and WAYNE)
DAWSON, Trustee,)

Plaintiffs,)

vs.)

CHEYOVICH FAMILY TRUST and VASA N.)
BACH FAMILY TRUST,)

Defendants.)

JOHN N. BACH, individually and dba)
TARGHEE POWDER EMPORIUM, LTD.,)

Intervener-Complainant,)

vs.)

JACK LEE MCLEAN, Trustee, WAYNE)
DAWSON, Trustee, DONNA DAWSON,)
ALVA A. HARRIS, individually and dba)
SCONA, INC., KATHERINE M. MILLER, and)
DOES 1-30, inclusive,)

Third-Party Defendants.)

Case No. CV 2001-265

**ORDER DENYING
PLAINTIFFS'/THIRD-PARTY
DEFENDANTS' MOTION TO
ALTER OR AMEND A
JUDGMENT AND DENYING AS
MOOT INTERVENER-
COMPLAINANT'S MOTION TO
STRIKE**

THIS COURT, on April 8, 2008, entered its Memorandum Decision and Order Denying Plaintiffs'/Third-Party Defendants' Motion for Reconsideration.¹ Plaintiffs'/Third-Party Defendants Jack Lee McLean and Wayne Dawson (hereinafter "McLean and Dawson") then filed a Motion to Alter or Amend a Judgment, wherein they "move this Court to alter or amend the Memorandum Decision and Order Denying Plaintiff's Motion to Reconsider."² Thus, in essence, McLean and Dawson seek reconsideration of this Court's Memorandum Decision and Order, which denied reconsideration. The Idaho Rules of Civil Procedure do not contemplate a successive motion to reconsider.

However, in their Motion to Alter or Amend, McLean and Dawson argue that this Court failed to consider the conflicting Amended Default Judgment Against Wayne Dawson, entered by the honorable Richard St. Clair, in *Bach v. Miller*, Teton County case no. CV 2002-208 (hereinafter the "Conflicting Judgment"), which McLean and Dawson attached to their Motion for Reconsideration as Exhibit B. This Court notes that in their Motion for Reconsideration, McLean and Dawson raise the issue of the Conflicting Judgment as a grounds for reconsideration.³ However, McLean and Dawson neither mention the Conflicting Judgment in their Memorandum in Support of Motion for Reconsideration, nor offer any authority in support

¹ Memorandum Decision and Order Denying Plaintiffs'/Third-Party Defendants' Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed in chambers at Blackfoot, Bingham County, Idaho April 8, 2008) (hereinafter the "Memorandum Decision and Order").

² Plaintiffs' Motion to Alter or Amend a Judgment, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed April 16, 2008) (hereinafter "Plaintiffs' Motion to Alter or Amend").

³ Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed October 17, 2007), at p. 2, ¶ 3.

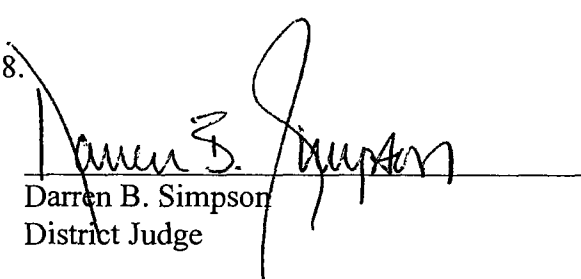
of the Conflicting Judgment as a basis for reconsideration.⁴ This Court did not consider McLean and Dawson's Conflicting Judgment claim since it was neither mentioned, nor supported by argument or authorities, in McLean and Dawson's Memorandum in Support.⁵

This Court shall not grant McLean and Dawson relief on their Motion to Alter or Amend where they failed to support the same argument in their original Motion to Reconsider. Accordingly, McLean and Dawson's Motion to Alter or Amend is hereby **denied**.

Based upon this ruling, Intervener-Complainant John N. Bach's responsive Motion to Strike, Vacate and/or Quash Plaintiff's Motion to Alter or Amend a Judgment (IRCP 59(e) and 52(b), of April 16, 2008), filed April 21, 2008, is hereby **denied as moot**.

IT IS SO ORDERED.

DATED this 2ND day of July 2008.



Darren B. Simpson
District Judge

⁴ See: Memorandum in Support of Motion for Reconsideration, *McLean v. Cheyovich Family Trust*, Teton County case no. CV 2001-265 (filed November 21, 2007) (hereinafter "**McLean and Dawson's Memorandum in Support**").

⁵ See: *Vanderford Company, Inc. v. Knudson*, 144 Idaho 547, ___, 165 P.3d 261, 269 (2007); *Watkins v. Peacock*, ___ Idaho ___, 184 P.3d 210, 215 (2008).

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on July 2, 2008 I served a true copy of the foregoing Order Denying Plaintiffs'/Third-Party Defendants' Motion to Alter or Amend a Judgment and Denying as Moot Intervener-Complainant's Motion to Strike on the persons listed below by mailing, first class, postage prepaid, or by hand delivery.

Marvin M. Smith, Esq.
ANDERSON NELSON HALL
SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630

U.S. Mail Courthouse Box Facsimile

Kathleen M. Heimerl, Esq.
P.O. Box 828
Victor, Idaho 83455

U.S. Mail Courthouse Box Facsimile

John N. Bach
400 N, 152 E
P.O. Box 101
Driggs, Idaho 83422

U.S. Mail Courthouse Box Facsimile

Alva A. Harris, Esq.
171 S. Emerson Ave.
P.O. Box 479
Shelley, Idaho 83274

U.S. Mail Courthouse Box Facsimile

MARY LOU HANSEN, Clerk of the Court

By: *James S. Freeman*
Deputy Clerk

July 9, 2008

Marvin M. Smith
ANDERSON NELSON HALL SMITH, P.A.
490 Memorial Drive
Post Office Box 51630
Idaho Falls, Idaho 83405-1630
Telephone (208) 522-3001
Fax (208) 523-7254
Idaho State Bar No. 2236
Attorneys for Plaintiffs/Third-Party Defendants/Appellants

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF IDAHO
IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee and
WAYNE DAWSON, Trustee,

Plaintiffs/Appellants,

v.

CHEYOVICH FAMILY TRUST AND
VASA N. BACH FAMILY TRUST,

Defendants/Respondents.

Case No. CV-01-265

**SECOND AMENDED NOTICE OF
APPEAL**

TO: THE ABOVE-NAMED RESPONDENTS JOHN N. BACH, individually and dba TARGHEE POWDER EMPORIUM, LTD., CHEYOVICH FAMILY TRUST, VASA N. BACH FAMILY TRUST, AND THE CLERK OF THE ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above-named appellants, Jack Lee McLean, deceased, and Wayne Dawson, appeal against the above-named respondents to the Idaho Supreme Court from the (1) Memorandum Decision Denying Plaintiffs-Third Party Defendants' Motion for Reconsideration; (2) Order Denying as Moot Plaintiffs' Motion to Change Caption; (3) Order Denying Plaintiffs' Motion for Sanctions; entered in the above-entitled action on the

8th day of April, 2008; and (4) Order Denying Plaintiffs'/Third Party Defendants' Motion to Alter or Amend A Judgment entered in the above-entitled action on the 2nd day of July, 2008, Honorable District Judge Darren B. Simpson.

2. The Plaintiffs/Appellants have a right to appeal to the Idaho Supreme Court, and the judgments or orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a) (1) and 11(a)(7) I.A.R.

3. Preliminarily, the issues on appeal are as follows:

A. The decisions and orders referenced above in paragraph 1 were not consistent with applicable law nor supported by substantial and competent evidence.

B. The trial court did not discuss, review or provide a decision on appellants' Rule 60(b) motion.

This list of issues shall not prevent the appellant from asserting other issues on appeal.

4. An order has not been entered sealing all or any portion of the record.

5. A reporter's transcript is requested as to the following hearing dates:

i. Motions, August 7, 2007 (Nancy Marlow, Reporter) (Copy attached)

ii. Hearing, November 6, 2007 (Nancy Marlow, Reporter)

iii. Hearing, February 14, 2008 (Sandra Beebe, Reporter)

6. In addition to the documents automatically included in the clerk's record pursuant to Rule 28, I.A.R., Appellants request that the following documents be included in the clerk's record:

- A. Objection to Motions for Summary Judgment and for Dismissal filed August 6, 2007;
- B. Motion for Continuance filed August 20, 2007;
- C. Objection to Motion filed October 5, 2007;
- D. Stipulation for Substitution of Counsel dated October 17, 2007;
- E. Motion for Reconsideration and all attachments filed October 17, 2007;
- F. Plaintiffs' Motion for Sanctions filed November 2, 2007;
- G. Memorandum in Support of Plaintiffs' Motion for Sanctions filed November 2, 2007;
- H. Affidavit of Marvin M. Smith and any attachments in Support of Plaintiffs' Motion for Sanctions filed November 2, 2007;
- I. Motion to Change Caption filed November 21, 2007;
- J. Memorandum in Support of Motion for Reconsideration filed November 21, 2007;
- K. Affidavit of Wayne Dawson and all attachments filed November 21, 2007;
- L. Affidavit of Lynn McLean and all attachments filed November 21, 2007;
- M. Motion to Set Aside Order and Quieting Title Judgment Per I.R.C.P. 60(b) filed February 8, 2008;
- N. Second Affidavit of Wayne Dawson and any attachments filed February 25, 2008;
- O. Affidavit of Paula Ehrler and any attachments filed March 7, 2008;

- P. Second Affidavit of Lynn McLean and any attachments filed March 7, 2008;
 - Q. Plaintiffs' Second Motion for Sanctions filed March 10, 2008;
 - R. Memorandum in Support of Plaintiffs' Second Motion for Sanctions filed March 10, 2008;
 - S. Affidavit of Marvin M. Smith and any attachments in Support of Plaintiffs' Second Motion for Sanctions filed March 20, 2008;
 - T. Plaintiffs' Motion to Alter or Amend a Judgment and any attachments filed April 16, 2008;
 - U. Plaintiffs' Response to Motion to Strike filed April 23, 2008;
 - V. Order Denying Motion to Alter or Amend Judgment filed July 2, 2008.
7. I certify:
- A. That a copy of this Notice of Appeal has been served on the reporters.
 - B. That the Clerk of the District Court has been paid the estimated fee for preparation of the reporter's transcript.
 - C. That the estimated fee for preparation of the clerk's record has been paid.
 - D. That the appellate filing fee has been paid.
 - E. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 8th day of July, 2008.


MARVIN M. SMITH

CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 8th day of July, 2008, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

John N. Bach
PO Box 101
Driggs, ID 83422

Mailing
 Fax
 Hand Delivery
 Overnight

Sandra Beebe
Court Reporter
501 N. Maple, #205
Blackfoot, ID 83221-1700

Mailing
 Fax
 Hand Delivery
 Overnight

Nancy Marlow
Court Reporter
605 N. Capital
Idaho Falls, ID 83402

Mailing
 Fax
 Hand Delivery
 Overnight


MARVIN M. SMITH

L:\MMS\Bach v McLean, Liponis 7060.1\Supreme Court Appeal\Second.Amended Notice of Appeal.wpd

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee and)	
WAYNE DAWSON, Trustee)	
	)	Supreme Court No. 34712 and
Plaintiffs/Appellants	)	35334 CONSOLIDATED
)	
- vs -	)	TETON COUNTY CASE NO
	)	CV 01-265
CHEYOVICH FAMILY TRUST AND)	
VASA N. BACH FAMILY TRUST	)	CLERK'S CERTIFICATE OF EXHIBITS
)	
Defendants/Respondents)	
_____)	

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that there were no exhibits sent.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this 1st day of April, 2009.

Mary Lou Hansen

by Phyllis A. Hansen
Deputy Clerk

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee and)	
WAYNE DAWSON, Trustee)	
)	
Plaintiffs/Appellants	)	Supreme Court No. 34712 and
	)	35334 CONSOLIDATED
- vs -)	
	)	TETON COUNTY CASE NO
CHEYOVICH FAMILY TRUST AND	)	CV 01-265
VASA N. BACH FAMILY TRUST)	
Defendants/Respondents	)	CERTIFICATE OF SERVICE
_____)	

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that I have personally served or mailed, by United States mail, postage prepaid, one copy of the Clerk's Record to each of the parties or their Attorney of Record as follows:

Marvin Smith
591 Park Ave, Suite 202
Idaho Falls, Idaho 83402

John N Bach
PO Box 101
Driggs, Idaho 83422

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 1st day of April 2009.

Mary Lou Hansen

by Phyllis A. Hansen
Phyllis A. Hansen, Deputy

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

JACK LEE MCLEAN, Trustee and)	
WAYNE DAWSON, Trustee)	
	)	Supreme Court No. 34712 and
Plaintiffs/Appellants	)	35334 CONSOLIDATED
)	
- vs -	)	TETON COUNTY CASE NO
	)	CV 01-265
CHEYOVICH FAMILY TRUST AND)	
VASA N. BACH FAMILY TRUST)	
	)	CLERK'S CERTIFICATE
Defendants/Respondents)	
<hr/>		

I, Phyllis A. Hansen, Deputy Clerk of the District Court of the Seventh Judicial District of the State of Idaho, in and for the County of Teton, do hereby certify that the above entitled cause was compiled and bound under my direction as, and is a true, full and correct record of the pleadings and documents under Rule 28 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 4th day of May 2009

Mary Lou Hansen

by Phyllis A. Hansen
Phyllis A. Hansen, Deputy