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EGP Investments, LLC v. Skinner Appellant's Brief Dckt. 41957

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Appearing In Properia Persona, pursuant to
IRCP Rule 10(a)(1) and Public Policy of
the State of Idaho

IN THE SUPREME COURT OF THE STATE OF IDAHO

EGP INVESTMENTS, LLC A Washington Limited Liability Company Plaintiff-Respondent, v. LORI SKINNER, Defendant-Appellant.	)	Docket No. 41957 Case Number: CV-2012-426 APPELLANT'S BRIEF

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Honorable John T. Mitchell

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STATEMENT OF THE CASE.

On December 3rd, 2012 Plaintiff filed a new complaint even though the complaint was signed Four (4) weeks earlier (November 5th, 2012) and was issued a summons. On January 24th, 2013 my son was handed a summons and complaint and was not on the property located at 1681 Ruby Creek Road at the time of delivery. In good faith, on the 8th of February, 2013, I filed a Notice of Special Appearance in accord with IRCP Rule 4(i)(2). By the 21st of February, 2013, still no Affidavit of Service was filed with the Court, I filed the Motion to Dismiss contesting Service. Attached with the Motion to Dismiss was a Memorandum in Support and Three (3) Affidavits in Support. A hearing date was scheduled for May 7th, 2013, on the Motion to Dismiss. Also discovery was sent to Plaintiff to figure out whether or not they had standing. Respondent finally files on the 25th of February, 2013 an untrue Affidavit of Service stating that my son is a co-resident of 1681 Ruby Creek Road in an attempt to cover up his failure to properly serve the Appellant in accord with IRCP Rule 4(d)(2). On March 15th, 2013, I received a Response to my Discovery, which showed that Plaintiff did not have standing to sue on behalf of Chase Bank USA. I was too sick to appear and notified the Court on May 3rd, 2013, to table the Motion.

Because service was not accomplished by June 3rd, 2013 as required by IRCP Rule 4(a)(2), the Motion to Dismiss was not noticed up for hearing by the Appellant. The Court failed to dismiss the case *sua sponte*. Since February of 2013, Respondent could have attempted to serve me, but chose not to. As of June 4th, 2013, no service was made and there was no jurisdiction for the Court to act further. Also the case lacked activity for the continue to have jurisdiction. There was no notification of that either in accord with IRCP Rule 40(c).

Because there was no jurisdiction for the Court to act, I chose to not participate and stand ground on the issue that Service was not done. I am also asserting now, that the Respondent has no standing to bring the action and that the Court is also barred from determining the initial complaint due to principles of illegality of contract being unenforceable by the court.

ISSUES PRESENTED ON APPEAL

The Appellant requests that the Court review the record to see if there was proper service on the Appellant in accord with IRCP Rule 4(d)(1) & (2). The Appellant requests that the Court review the record to see if service was done in accord IRCP Rule 4(a)(2). The Appellant requests that the Court review the record to see if the Court lost jurisdiction due to improper service, improper complaint, failure to dismiss complaint for IRCP Rule 4(a)(2) violations, illegality of contract issues surrounding Respondent and/or the trial court, standing issues surrounding Respondent and/or the trial court pursuant to IRCP Rule 17(a), did Judges Mitchell and Verby have proper authority to preside on this case in any capacity when the case was assigned to Judge Buchanan, and if not does any determinations, rulings, orders, judgments made by them void or voidable for lack of jurisdiction, whether there is a violation of due process and equal protection standards in both the State and National constitutions due to trial court error.

ATTORNEY FEES ON APPEAL

Appellant claims attorney fees pursuant to I.A.R Rule 40 in conjunction with chapter 1 of Title 12, more specifically described as I.C. § 12-114.

Additionally, Appellant claims Attorney Fees pursuant to I.A.R. 41(d) which states in part to wit:

> The claim for attorney fees, which at the discretion of the court may include paralegal fees shall be accompanied by an affidavit setting forth the method of computation of the attorney fees claimed.

For a great part of this case the Appellant has secured the assistance of a paralegal/specialized legal assistant to do most of his writing, research, and preparation of oral arguments before the court. Appellant asserts that should he prevail on Appeal he should be able to get attorney fees for his services as provided by the paralegal/specialized legal assistant.

ARGUMENT

I. Application of Court Rules

A. Authority

Generally speaking when discussing due process of law as it applies to the mechanics of the courts of this State, due process refers to substantive rule making and procedural rule making. Substantive rule making is the creation of courts and its jurisdiction which is exclusively reserved to the Legislative Department. Procedural rule making can be done by either the Legislative or Judicial Department, unless the subject matter is strictly reserved to the Legislative Department, as seen in Constitution of the State of Idaho in Article V, Sections 2, 9 and 13 which states to wit:

> Section 2. Judicial power -- Where vested. The judicial power of the state shall be vested in a court for the trial of impeachments, a Supreme Court, district courts, **and such other courts inferior to the Supreme Court as established by the legislature.** The courts shall constitute a unified and integrated judicial system for administration and supervision by the Supreme Court. The jurisdiction of such inferior courts shall be as prescribed by the legislature. Until provided by law, no changes shall be made in the jurisdiction or in the manner of the selection of judges of existing inferior courts. [Emphasis Added]

> Section 9. Original and appellate jurisdiction of Supreme Court. The Supreme Court shall have jurisdiction to review, upon appeal, any decision of the district courts, or the judges thereof, any order of the public utilities commission, any

> order of the industrial accident board, and any plan proposed by the commission for reapportionment created pursuant to section 2, article III; **the legislature may provide conditions of appeal, scope of appeal, and procedure on appeal from orders of the public utilities commission and of the industrial accident board.** On appeal from orders of the industrial accident board the court shall be limited to a review of questions of law. The Supreme Court shall also have original jurisdiction to issue writs of mandamus, certiorari, prohibition, and habeas corpus, and all writs necessary or proper to the complete exercise of its appellate jurisdiction. [Emphasis Added]
>
> Section 13. Power of legislature respecting courts. The legislature shall have no power to deprive the judicial department of any power or jurisdiction which rightly pertains to it as a coordinate department of the government; **but the legislature shall provide a proper system of appeals, and regulate by law, when necessary, the methods of proceeding in the exercise of their powers of all the courts below the Supreme Court, so far as the same may be done without conflict with this Constitution**, provided, however, that the legislature can provide mandatory minimum sentences for any crimes, and any sentence imposed shall be not less than the mandatory minimum sentence so provided. Any mandatory minimum sentence so imposed shall not be reduced. [Emphasis Added]

No matter whether a rule of procedure is created by the Legislative or Judicial Departments, it is required by the Constitution of the State of Idaho that such rules must be general and uniform throughout the State. This sentiment is expressed in Article V, Section 26 of the Constitution of the State of Idaho, which states to wit:

> Section 26. Court procedure to be general and uniform. All laws relating to courts shall be general and of uniform operation throughout the state, and the organized judicial powers, proceedings, and practices of all the courts of the same class or grade, so far as regulated by law, and the force and effect of the proceedings, judgments, and decrees of such courts, severally, shall be uniform.

This requirement is necessary to ensure that due process and equal protection of the law standards are guaranteed to everybody in the State and is expressed in Article I, Declaration of Rights in Sections 1, 2, 13, 18, and 21. Also, the State is mandated to guarantee everybody in this State the Rights as contained in the Bill of Rights in Amendment to the Constitution of the

United States of America.

Before the State of Idaho was a State of the Union and was called the Territory of Idaho , the federal government handled all substantive and procedural issues through legislation. So the laws on court procedures where codified in the Territorial Laws of the Territory of Idaho. When the Territory of Idaho was accepted as a State and became the State of Idaho, the Courts of the State had the power to create procedural law in the furtherance of the Court. This was recognized by the Legislature with the following excerpts from two cases to wit:

> "Our legislature has recognized and confirmed the procedural rule-making power of the Supreme Court. I.C. §§ 1-212, 1-213. ... This occurred in 1941.
>
> I.C. § 1-212 provides:
>
> Rule-making power recognized. — The inherent power of the Supreme Court to make rules governing procedure in all the courts of Idaho is hereby recognized and confirmed.
>
> I.C. § 1-213 provides:
>
> Duty to make rules — Limitation. — The Supreme Court shall prescribe, by general rules, for all the courts of Idaho, the forms of process, writs, pleadings and motions, the manner of service, time for appearance, and the practice and procedure in all actions and proceedings. Said rules shall neither abridge, enlarge nor modify the substantive rights of any litigant."

c.f. State v. Currington, 108 Idaho 539, 700 P.2d 942 at 943-44 (1985); *R.E.W. Construction Inc. v. District Court of Third Judicial District*, 88 Idaho 426, 400 P.2d 390 (1965). many of the procedures dealing with the Court as stated in the laws for the Territory of Idaho, which was re-titled as the laws of the State of Idaho were supplanted with Court Rules adopted by the Supreme Court of the State of Idaho. On or about 1975, the Supreme Court adopted most of the series of Federal Court Rules, inclusive of the Federal Rules of Civil Procedure (FRCP).

After several amendments to the Idaho Rules of Civil Procedure, we have today these rules for service of process on individuals starts in Idaho Rule of Civil Procedure 4(d)(1) which details the use of the summons and begins the mandatory instructions on how personal service is to be accomplished, to wit:

> "A copy of the complaint shall be served with the summons, except when the service is by publication as provided in Rule 4(e). The plaintiff shall furnish the person making service with such copies as are necessary. **Service shall be made as follows:** [Emphasis Added] I.R.C.P. Rule 4(d)(1)

"Idaho Rule of Civil Procedure 4(d)(2) details the requirements for personal service upon individuals as follows:

> Upon an individual other than those specified in subdivision (3) of this rule, by delivering a copy of the summons and of the complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of eighteen (18) years then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process."

c.f.[1] *Lohman v. Flynn*, 139 Idaho 312, 78 P.3d 379 (2003).

This appeal is primarily a question of whether there is sufficient service of process.

B. Liberal Construction of the Court Rules and Service of Process Rules.

In the last sentence of Rule 1(a) of the Idaho Rules of Civil Procedure states, "These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding." I know of no case which defines what exactly the terms "liberally construed" means, but the terms "liberal construction" has been decided to include these parameters in the case of *Bunn v. Bunn*, 99 Idaho 710, 587 P.2d 1245 (1978) in which the Court

1 *c.f.* means "cited from."

stated,

> "The 'liberal construction' of the rules required by Rule 1, while it cannot alter compliance which is mandatory and jurisdictional, will ordinarily preclude dismissal of an appeal for that which is but technical noncompliance." *c.f. Bunn v. Bunn*, 99 Idaho 710, 587 P.2d 1245 (1978).

Due to the nature of the question of service, and service being both mandatory and jurisdictional in nature, liberal construction of what Rule 4(d) states cannot be liberally construed, but must be strictly construed. I started with the language in Rule 4(d)(1) because it states that "Service shall be done as follows." "The manner in which the summons and original complaint in a civil action are to be served is specified in Rule 4(d) of the Idaho Rules of Civil Procedure." *c.f. Rudd v. Merritt*, 138 Idaho 526, 66 P.3d 230 (2003). Even though the word "shall" has been decided by the courts to mean in statute to be "mandatory", "The word *shall,* when used in a statute, is mandatory. Munroe v. Sullivan Mining Co., 69 Idaho 348, 207 P.2d 547 (1949); Pierce v. Vialpando, 78 Idaho 274, 301 P.2d 1099 (1956)." *c.f. Paolini v. Albertson's Inc,* 143 Idaho 547, 149 P.3d 822 (2006); *Gilbert v. Moore,* 108 Idaho 165, 697 P.2d 1179 (1985); *Goff v. H.J.H. Co.*, 95 Idaho 837, 521 P.2d 661 (1974), "This Court has held on many occasions that the word `shall' denotes a mandatory, not a discretionary act." *See Madison v. J.I. Morgan, Inc.*, 115 Idaho 141, 144, 765 P.2d 652, 655 (1988). When the term "shall" was used in Rules 11(b)(3) and 54(e)(3) This Court determined that the word "shall" denoted mandatory act(s). "The rule, employing the term "shall," is mandatory—it requires the court to consider all eleven factors plus any other factor the court deems appropriate." *c.f. Lettunich v. Lettunich*, 141 Idaho 425, 111 P.3d 110 (2005). I am of the opinion that "There are rules, and, particularly, `shall' rules I think have to be complied with, and courts themselves are places where rules are followed." *c.f. Sammis v.*

Magnetek, Inc., 130 Idaho 342, 941 P.2d 314 (1997). Rules 4(d)(1) and 4(d)(2) are part of the "shall" rules, which requires mandatory acts to be in accordance with these expressed Court Rules.

II. Service of Process on Individuals Requirements

Pursuant to Idaho Rules of Civil Procedure, Rule 4(d)(2) there are three methods for service on an individual. They are: 1) delivering a copy of the summons and of the complaint to the individual personally; 2) by delivering a copy of the summons and of the complaint by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of eighteen (18) years ***then residing therein***; [Emphasis Added] and lastly 3) by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process. "Idaho Rule of Civil Procedure 4(d)(2) provides that service upon an individual is proper if the summons and complaint are delivered to the individual personally or left at their residence with an authorized person, or by delivering a copy of the summons and complaint to an agent authorized by appointment or by law to receive service of process." *c.f. Sivak v. Idaho Department of Corrections*, Docket No. 39013, 2012 Unpublished Opinion No. 522. (2012).

It is not in dispute that the Appellant was not personally served. In other words the summons and complaint was never placed into the hands of the Appellant by the process server employed by the Respondent. And I do not believe that it is in dispute that summons and complaint was never placed into the hands of an agent authorized by appointment or by law to receive service of process. So, the issue of whether service of process was accomplished in

accord with option 2 in IRCP Rule 4(d)(2) by delivering a copy of the summons and of the complaint by leaving copies thereof at the individual's dwelling house or usual place of abode with some person over the age of eighteen (18) years ***then residing therein***; [Emphasis Added] is contested by Appellant and most likely by Respondent.

III. Time Line, It's Importance and Errors Committed.

As mentioned in the Statement of Facts the time line from the initial filing of the complaint until a few days before trial is important to go over again, this time in detail. Using the ROA, R Vol. I, pages 9 – 10, and is incorporated herein by its reference.

On December 3rd, 2012 Plaintiff filed a new complaint even though the complaint was signed Four (4) weeks earlier (November 5th, 2012) and was issued a summons. The case was assigned to District Court Judge Steven Verby. ROA, R Vol. I, page 9. Respondent had Six (6) months to serve the summons and complaint on the Appellant in accord with IRCP Rule 4(a)(2) which is jurisdictional and mandatory. IRCP Rule 4(a)(2) states to wit:

> (2) Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within six (6) months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with 14 days notice to such party or upon motion. IRCP Rule 4(a)(2)

Mandatory compliance with IRCP Rule 4(a)(2) for service of the summons and complaint ended on June 3rd, 2013 or the Court is under mandate to dismiss the case pursuant to IRCP Rule 4(a)(2). This is not a discretionary act. "As a matter of policy, any jurisdictional consequence of a rule should be plainly expressed in the rule itself. Loss of jurisdiction should not be a subtle creature of inference, lurking as a threat to the unwary." *c.f. Ward v. Lupinacci*, 111 Idaho 40, 41,

720 P.2d 223, 224 (Ct.App. 1986). "'There are rules, and, particularly, `shall' rules I think have to be complied with, and courts themselves are places where rules are followed.' Rule 4(a)(2) is couched in mandatory language, requiring dismissal where a party does not comply, absent a showing of good cause. *c.f. Sammis v. Magnetek, Inc.*, 130 Idaho 342, 941 P.2d 314 (1997).

On January 24th, 2013 my son was handed a summons and complaint and was not on the property located at 1681 Ruby Creek Road at the time of delivery. IRCP Rule 4(i)(2) states to wit:

> (2) Motion or Special Appearance to Contest Personal Jurisdiction. A motion under Rule 12(b)(2), (4) or (5), whether raised before or after judgment, a motion under Rule 40(d)(1) or (2), or a motion for an extension of time to answer or otherwise appear does not constitute a voluntary appearance by the party under this rule. The joinder of other defenses in a motion under Rule 12(b)(2), (4) or (5) does not constitute a voluntary appearance by the party under this rule. After a party files a motion under Rule 12(b)(2), (4) or (5), action taken by that party in responding to discovery or to a motion filed by another party does not constitute a voluntary appearance. If, after a motion under Rule 12(b)(2), (4), or (5) is denied, the party pleads further and defends the action, such further appearance and defense of the action will not constitute a voluntary appearance under this rule. The filing of a document entitled "special appearance" which does not seek any relief but merely provides notice that the party is entering a special appearance to contest personal jurisdiction, does not constitute a voluntary appearance by the party under this rule if the party files a motion under Rule 12(b)(2), (4), or (5) within fourteen (14) days after filing such document, or within such later time as the court permits. IRCP Rule 4(i)(2) and is incorporated herein by its reference.

By the 8th of February, 2013, I filed a Notice of Special Appearance in accord with IRCP Rule 4(i)(2) which automatically gave me 14 more days to file a Motion to Dismiss pursuant to IRCP Rule 12(b)(2),(4), & (5). See IRCP Rule 4(i)(2) and ROA, R Vol. I, page 9. Pursuant to IRCP Rule 4(i)(2) no general appearance was made.

Judge Verby quit[2] as District Court Judge to supposedly head for retirement and was replaced with newly appointed District Court Judge Barbara Buchanan as noted in the ROA as a "(batch process)" on February 1st, 2013. Also Two (2) weeks had gone by and no Affidavit of Service was filed with the Court.

By the 21st of February, 2013, still no Affidavit of Service was filed with the Court, I filed the Motion to Dismiss contesting Service, R. Vol. I, pages 18-20, attached with a Memorandum in Support, R. Vol. I, pages 21-23, and Three (3) Affidavits in Support. See R. Vol I, pages 24-29 and are incorporated herein by its reference. A hearing date was scheduled for May 7th, 2013. Also discovery was sent to Plaintiff to figure out whether or not they had standing. Still there is no general appearance on my part to constitute a waiver in accord with IRCP Rule 4(i)(2). In the affidavits that I filed, the affiants all testified that my son does NOT reside at 1681 Ruby Creek Road, since 2011, which is still true today. The affiants all testified that my son does NOT act as our (my husband and myself) agent to accept service of process.

After these facts that my son does NOT reside at 1681 Ruby Creek Road and my son does NOT act as our (my husband and myself) agent to accept service of process was established on the case record - R. Vol I, pages 24-29, the Respondent finally files on the 25th of February, 2013 an untrue Affidavit of Service stating that my son is a co-resident of 1681 Ruby Creek Road in an attempt to cover up his failure to properly serve the Appellant in accord with IRCP Rule 4(d)(2).

2 This is important, because I would have automatically disqualified him due to his poor reputation. Him suddenly quitting his post I thought he must have been accused of something, like his predecessor. Also, it was common knowledge that he had a high rate of automatic disqualifications or self imposed disqualifications, which left me with the feeling he was either incompetent or didn't perform well to the ends of proper justice or both.

On March 15th, 2013, I received a Response to my Discovery, which showed that Plaintiff did not have standing to sue on behalf of Chase Bank USA, nor were they assignees of Chase Bank USA, and nor were they third party beneficiaries as part of any alleged the contract entered in the State of Idaho between Chase Bank USA and I, nor was there ANY agreement entered in the State of Idaho between Chase Bank USA and I to have my financial information disclosed to any third party(ies).

Art. I, § 18 of the Idaho Constitution .... provides:

> "Courts of justice shall be open to every person, and a speedy remedy afforded for every injury of person, property or character, and rights and justice shall be administered without sale, denial, delay or prejudice."

c.f. Jones v. State Board of Medicine, 97 Idaho 859, 555 P.2d 399 (1976). It is hardly effective for a Court to be open to every person, if only attorneys get heard and the judge on the bench falls asleep when the individual appearing *in propria persona* speaks to the Court for relief or to defend himself/herself. In the First Judicial District the appearance of this disrespect is more than an appearance it is actually occurring. In this case the disrespect was shown in the application of IRCP Rule 7(b)(4) wherein location of the parties was used to deny telephonic appearances even though location of the parties is not discussed in the rule. This impartiality to due process cannot be met if being heard is not done in a meaningful manner via equal access to a telephonic hearing under IRCP Rule 7(b)(4). I am tried of being abused by the court that is unjust in the application of its rules, which favors attorneys over *in propria persona* litigants. This is especial true when the Court expects *in propria persona* litigants to follow the rules of court as if we are trained attorneys. As *in propria persona* litigants we expect to receive the same benefits or relief from

the rules of court as does an attorney receive. I think that is not unreasonable to request. As a result by the conduct of the presiding judge, I was not afforded the same opportunity as was given to the attorney for the Respondent, and I was prejudiced as a result, due to my illness.

"Procedural due process "basically requires that a person, whose protected rights are being adjudicated, is afforded an opportunity to be heard in a timely manner." *Powers v. Canyon County*, 108 Idaho 967, 969, 703 P.2d 1342, 1344 (1985). There must be notice and the opportunity to be heard must "occur at a meaningful time and in a meaningful manner. . . ." *Cowan v. Bd. of Comm'rs*, 143 Idaho 501, 512, 148 P.3d 1247, 1258 (2006) (quoting *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 91, 982 P.2d 917, 926 (1999)) (internal quotations omitted)." *c.f. Ada County Highway District v. Total Success Investments, LLC.*, 145 Idaho 360, 179 P.3d 323 (2008).

In April of 2013, I established a double standard and prejudice of Judge Buchanan. When an attorney requests to be heard telephonically it is granted, but when someone is appearing in propria persona and does not have an attorney at their side the same request is denied. R. Vol I, pages 36-38 and 45-48, respectfully. Also, the Respondent removed my husband from the case and amended the caption, R. Vol I, pages 41-43, due to their thinking that service was done and they no longer needed him for service issues. I was too sick to appear and notified the Court on May 3rd, 2013, to table the Motion. R. Vol I, pages 51-52. Still there is no general appearance on my part to constitute a waiver in accord with IRCP Rule 4(i)(2).

Also this series of events showed me that Judge Buchanan was not impartial and was biased and prejudiced against the Appellant.

Service was not accomplished by June 3rd, 2013 as required by IRCP Rule 4(a)(2) and the Court failed to dismiss the case either. Since February of 2013, Respondent could have attempted to serve me, but chose not to. As of June 4th, 2013, no service was made and there was no jurisdiction for the Court to act further.

"'If a party wishes to insist upon the objection that he is not in court, he must keep out for all purposes except to make that objection.' *Pingree Cattle Loan Co. v. Charles J. Webb & Co.*, 36 Idaho 442, 446, 211 P. 556, 557 (1922) (quoting from *Lowe v. Stringham,* 14 Wis. 222 (1861)). ... Rule 4(i) of the Idaho Rules of Civil Procedure mitigates to some extent the rule that the party must keep out for all purposes except to object that he is not in court." *c.f. Rhino Metals, Inc., v. Craft*, 146 Idaho 319, 193 P.3d 866 (2008). After June 3rd, 2013, I did not participate, except to notify the Court of that fact.

"The service of the summons confers the court with personal jurisdiction over a party. *Engleman v. Milanez,* 137 Idaho 83, 84, 44 P.3d 1138, 1139 (2002).

> "Personal jurisdiction refers to the court's authority to adjudicate the claim as to the person. That a court has "jurisdiction of a party" means either that a party has appeared generally and submitted to the jurisdiction, has otherwise waived service of process, or that process has properly issued and been served on such party." *c.f. State v. Rogers*, 140 Idaho 223, 91 P.3d 1127 (2004)
>
> "Generally, where a party has not been served with process or was improperly served with process, any judgment against such party is void. *Wells v. Valley Natl. Bank of Arizona,* 109 Ariz. 345, 509 P.2d 615 (1973). As we noted in *Garren v. Rollins,* 85 Idaho 86, 375 P.2d 994 (1962):

> Under the due process clause of the Constitution of the United States, a personal judgment rendered without service of process on, or legal notice to, a defendant, in the absence of a voluntary appearance or waiver is void, and not merely voidable.

Thiel v. Stradley, 118 Idaho 86, 87, 794 P.2d 1142, 1143 (1990). Thus, a judgment taken in an action where service of process was not made, or improperly made, is void..." *c.f. Lohman v. Flynn*, 139 Idaho 312, 78 P.3d 379 (2003).

There being neither lawful service of process upon nor a voluntary appearance before the court by any of the defendants, the district court was wholly without jurisdiction of the defendants. See *Garren v. Rollins*, 85 Idaho 86, 375 P.2d 994 (1962).

"Additionally, a judgment is void when a court's action amounts to a plain usurpation of power constituting a violation of due process. *Dragotoiu v. Dragotoiu,* 133 Idaho 644, 647, 991 P.2d 369, 372 (1998). The right to procedural due process guaranteed under both the Idaho and United States Constitutions requires that a person involved in the judicial process be given meaningful notice and a meaningful opportunity to be heard. 133 Idaho at 648, 991 P.2d at 373." *c.f. McGloon v. Gwynn*, 140 Idaho 727, 100 P.3d 621 (2004).

The January 22nd, 2014 "status conference hearing", there no such animal in the Idaho Rules of Civil Procedure, this hearing was conducted not in Boundary County but in Bonner County, before someone other than Judge Buchanan who was not appointed to be on the case in violation of the public policy of this State and who decided the Motion to Dismiss wholly without jurisdiction, without proper Notice. From the looks of the Transcript the hearing was conducted telephonically from the Kootenai County Courthouse, before Judge John Mitchell who

was not assigned to this case by way of court order and was an interloper on the case which had no jurisdiction for its existence.

"Procedural law is governed by state practice." *c.f. Stobie v. Potlach Forrests, Inc., 95 Idaho 666, 518 P.2d 1 (1973).* There is no practice in the Court Rules for constant switching out assigned judges for somebody else. IRCP Rule 1(c) makes it clear that the judges and magistrates cannot make up rules as they go. IRCP Rule states to wit in part: "No district court or magistrates division of the state shall make rules of procedure except as expressly authorized by these rules" The only person who can stop this nonsense is the Supreme Court of the State of Idaho by enforcing its rules and creating new ones to restrict judges from this type of ulta vires behavior.

Keeping in mind that Judge Mitchell who is also not assigned to this case through Court order, unlawfully and in excess of his jurisdiction conducted the "status conference hearing" not recognized in the IRCP and in violation of IRCP Rule 1(c).

Then, Judge Verby who had been taken off this case and was replaced with Judge Buchanan, was acting wholly without jurisdiction by his actions to interfere with this case by ruling on my Motion to Dismiss from Bonner County. Not even the ROA properly shows what had happened.

But it seems, by the what took place through this unlawful and unauthorized "status conference" that emphasis was given and taken by the Judges Mitchell and Verby that somehow using discovery procedures is considered a general appearance even though the rules and case law would suggest otherwise.

In the Court Rules the filing of discovery is not a pleading as outlined in IRCP Rule 7(a) to constitute a general appearance under IRCP Rule 4(i)(2). Due process requires notice and no notice is given in the Idaho Rules of Civil Procedure that using discovery methods is considered to be a general appearance. Appellant has not made a general appearance in this case. Even though Judge Verby's conduct is the tampering with the administration of justice, if he had read his own case citations, this concept that discovery does not constitute a general appearance is clearly stated in *Roy v. Superior Court*, 25 Cal.Rptr.3d 488, 127 Cal.App.4th 377, at n9 (2005), a case he cites in his illegitimate ruling on the Motion to Dismiss, wherein it states to wit: "If a defendant does need to engage in discovery, he may do so without being deemed to have made a general appearance. (See *Harding v. Harding*, (2002) 99 Cal.App.4th 626, 636, 121 Cal/Rptr.2d 450.)" Clearly the Appellant has not made a general appearance in this case. As usual the merits of the issues raised in the Motion to Dismiss for lack of proper service was not determined and of course the mandatory dismissal under IRCP Rule 4(a)(2) was also not done, in error.

Unauthorized Judge Verby in his quest to interfere with the administration of justice did conduct a hearing outside of the County in which the action was brought, who has no authorization to be assigned to the above entitled case from the Supreme Court and Administrative Judge for the 1st Judicial District, who conducted a foreign hearing not in accord with the Idaho Rules of Civil Procedure called a "Status Conference", made arbitrary and capricious determinations not in accord with the laws of this State and did deprive the Appellant of due process of law and equal protection under the law in violation of Sections 13, 18 of Article 1 of the Constitution of the State of Idaho and the 6th and 14th Amendments of the Bill of Rights

of the Constitution of the United States of America. Isn't that enough to reverse and dismiss this case.

On January 27th, 2014, once again Judge Mitchell conducted a trial who was without authority to preside over the case, as he was not assigned to the in which Judge Buchanan was. Given that privilege. Judge Buchanan not being incapacitated in any way or suffering the way of death (at least yet) or being disqualified with or without cause, there was no reason for an unauthorized substitute not recognized in the Court Rules and in fact in violation of IRCP Rule 1(c). Due to this impediment the determinations and judgments entered as a result of Judge Mitchell acting wholly without jurisdiction or justification is void ab initio.

"Under the due process clause of the Constitution of the United States, a personal judgment rendered without service of process on, or legal notice to, a defendant, in the absence of a voluntary appearance or waiver is void, and not merely voidable. McDonald v. Mabee, 243 U.S. 90, 37 S.Ct. 343, 344, 61 L.Ed. 608. A judgment cannot be based on void service of process. Ennis v. Casey, 72 Idaho 181, 238 P.2d 435, 28 A.L.R.2d 952. Due process of law envisions opportunity upon reasonable notice for a fair hearing before an impartial tribunal. Yellowstone Pipe Line Co. v. Drummond, 77 Idaho 36, 287 P.2d 288. A void judgment is a nullity, and no rights can be based thereon; it can be set aside on motion or can be collaterally attacked at any time. Miller v. Prout, 33 Idaho 709, 197 P. 1023. Jensen v. Gooch, 36 Idaho 457, 211 P. 551. 30A Am.Jur. 198, Judgments, § 45. For a valid execution to issue it must be supported by a valid judgment. Apple v. Edwards, 123 Mont. 135, 211 P.2d 138; 33 C.J.S. Executions § 8, p. 141." *c.f. Garren v. Rollins*, 85 Idaho 86, 375 P.2d 994 (1962).

IV. Standing.

"Courts have the power to inquire into their own jurisdiction; they are obligated to ensure their own subject matter jurisdiction and must raise the issue sua sponte if necessary." *In re City of Shelly*, 151 Idaho 289, 255 P.3d 1175 (2011); *Laughy v. Idaho Department of Transp.*, 149 Idaho 867, 233 P.3d 1055 (2010). "A court has a sua sponte duty to ensure that it has subject matter jurisdiction over a case." *State v. Urrabazo*, 150 Idaho 158, 244 P.3d 1244 (2010). "The a court lacks jurisdiction to hear a case is a question of law, and maybe raised at any time." *Dunlap v. State*, 146 Idaho 197, 192 P.3d 1021 (2008). "The question of jurisdiction is fundamental and cannot be ignored; even if jurisdictional questions are not raised by the parties, the Supreme Court must address them on its own initiative." *State v. Hartwig*, 150 Idaho 326, 246 P.3d 979 (2011). "A question of jurisdiction is fundamental; it cannot be ignored when brought to the attention of the court and should be addressed prior to considering the merits of an appeal." *State v. Kavajecz*, 139 Idaho 482, 80 P.3d 1083 (2003). A real party in interest is jurisdictional as stated in IRCP Rule 17(a).

IRCP Rule 17(a) mandates that every action be prosecuted in the name of the real party in interest. Courts must hesitate before resolving the rights of those not parties to litigation. *State v. Doe*, 148 Idaho 919, 231 P.3d 1016 (2010) citing *Singleton v. Wolf*, 428 U.S. 106, 113, 96 S.Ct. 2868, 2873-74, 49 L.Ed.2d 826, 832-33 (1976). Where a Plaintiff does not have standing it cannot be said that the case or controversy requirement has been satisfied. *Martin v. Camas County Ex Rel Rel. Bd. Com'rs.* 150 Idaho 1243, 248 P.3d 1243 (2011). Without standing the judiciary lacks jurisdiction to hear the case. *Martin v. Camas County Ex Rel Rel. Bd. Com'rs.* 150

Idaho 1243, 248 P.3d 1243 (2011).

A real party in interest "is the person who will be entitled to the benefits of the action if successful, one who is actually and substantially interested in the subject matter." *Carrington v. Crandall,* 63 Idaho 651, 658, 124 P.2d 914, 917 (1942). *See* Carl H. Christensen Family Trust v. Christensen, 133 Idaho 866, 870, 993 P.2d 1197, 1201(1999); *State, Dep't of Law Enforcement v. One 1990 Geo Metro,* 126 Idaho 675, 680, 889 P.2d 109, 114 (Ct.App.1995).

It is common knowledge that only parties to a contract have standing to bring an action for breach of contract. See IRCP Rule 17(a). The Justices of the Supreme Court for the State of Idaho issued recently several decisions pertaining to who can bring an action for breach of contract. In *Noak v. Idaho Dept. of Correction*, 152 Idaho 305, 271 P.3d 703 (2012), rehearing denied, the High Court held that "Only a party to a contract may assert a claim for breach of covenant of good faith and fair dealing." and in *Baccus v. Ameripride Services Inc.*, 145 Idaho 346, 179 P.3d 309 (2008) the court held that "Contract obligations are imposed because of conduct of the parties manifesting consent, and are owed only to the specific individuals named in the contract." Back in 1984 the justices of the Supreme Court of the State of Idaho in *Wing v. Martin*, 107 Idaho 267, 272, 688 P.2d 1172, 1177 (1984), did hold that "'Party must look to person with whom he is in direct contractual relationship for relief, in the event that his expectations under contract are not met.' Citing *Pierson v. Sewell*, 97 Idaho 38, 45, 539 P.2d 590, 597 (1975); *Minidoka County v. Krieger*, 88 Idaho 395, 399, P.2d 962 (1965); *Coburn v. Fireman's Fund Ins. Co.*, 86 Idaho 415, 387 P.2d 598 (1963)."

Other jurisdictions within the Pacific Reporter have jurisprudence on point as to who can bring an action such as this one for breach of contract.

The justices of the Supreme Court State of Montana in the case of *Thompson v. Lincoln Nat. Life Ins. Co.*, 114 Mont. 521, 138 P.2d 951, the court held that "A contract binds no one but parties thereto." And again in 1977 in the case of *Gambles v. Perdue*, 175 Mont. 112, 572 P.2d 1241 the court held that "Obligation of contracts is limited to contracting parties.

The justices of the Supreme Court for the State of New Mexico in *Staley v. New*, 56 N.M. 756, 250 P.2d 893 (2011), the court held that "Generally, one who is not a party to a contract cannot maintain a suit upon it.

The justices of the Supreme Court of the State of Wyoming in *Cates v. Daniels*, 628 P.2d 862, the court held that "For one to be liable on a contract, he must be a party to the contract or must have given agent written authority to sign the agreement on his behalf." And again, in *Ultra Resources, Inc. v. Hartman*, 226 P.3d 889 (2010), the court held "A stranger to a contract lacks standing to maintain an action upon it."

The justices of the Court of Appeals of the State of Colorado in *East Meadows Co., LLC v. Greeley Irr. Co.*, 66 P.3d 214 (2003), held that "The general rule is that one who is not a party to a contract, and from whom no consideration moved, has no connection therewith; he can avail himself of its terms neither as a cause of action nor a defense."

The justices of the Supreme Court of the State of Arizona in *Lofts at Fillmore Condominium Ass'n v. Reliance Commercial Const., Inc.*, 218 Ariz 574, 190 P.3d 733 (2008), held that "As a general rule only the parties and privies to a contract may enforce it."

The justices of the Supreme Court of the State of Oklahoma in *Wells Fargo Bank, N.A. v. Heath*, 280 P.3d 328, the court held that "Contracts are binding only upon those who are parties thereto, and are enforceable only by the parties to a contract or those in privity with it."

As admitted by counsel for Respondent, Respondent is not the original creditor, nor are they an assignee of Chase Bank USA, See Plaintiff's Response to Defendant's Discovery Request for Admissions, Request No. 8, 14, 15 and is incorporated herein as Appendix "A". There is no nexus between the Appellant and Respondent. See Plaintiff's Response to Defendant's Discovery Request for Admissions, Request No. 23, 24. Plaintiff's Denies Admission Request No. 25, but no agreement was ever placed into the record at trial. Equally true there were no contracts between Chase Bank USA and the Appellant placed into the Court record either establishing a nexus between Chase Bank USA and the Appellant. Without the contracts between Chase Bank USA and the Appellant, Plaintiff could not establish that they are third party beneficiaries. Respondent has no evidentiary showing that they are entitled to any damages resulting from any alleged contractual relationship between Chase Bank USA and the Appellant. Simply put Respondent has no standing to sue on this issue of contract between Chase Bank USA and the Appellant.

Respondent does not have "privity" with Appellant or Chase Bank USA, alleged original creditor. Person not in privity cannot sue on a contract. *Wing v. Martin*, 107 Idaho 267, 688 P.2d 1172 (1984). Privity refers to those who exchange contractual promissory words or those to whom promissory words are directed. *Wing v. Martin*, 107 Idaho 267, 688 P.2d 1172 (1984). See also *Professional Lens Plan, Inc. v. Polaris Leasing Corp.*, 234 Kan 742, 675 P.2d 887 (1965). I have no privity with the Respondent or counsel for the Respondent.

Furthermore, Respondent and the counsel for Respondent did not allege in the verified complaint that they are third-party beneficiaries to the alleged agreement between Chase Bank USA and the Appellant, and that such status as third-party beneficiary could only be established by Respondent by showing that the contract was primarily entered into for his benefit. See *Parout v. Harper*, 145 Idaho 683, 183 P.3d 771 (2008). By absence of allegation in the complaint that Respondent is a third-party beneficiary by way of a contract with Chase Bank USA and the Appellant, indicates there was no intent expressed in any alleged contract with Chase Bank USA and the Appellant for the Respondent to be or become a third-party beneficiary.

There is no assignment from Chase Bank USA to EGP Investments, Inc., to make this case a chose in action claim. "'Assignment' is defined as "the transfer of rights or property." Black's Law Dictionary 115 (7th ed.1999). American Jurisprudence, Second Edition, defines "assignment" as:

... a transfer of property or some other right from one person (the `assignor') to another (the `assignee'), which confers a complete and present right in the subject matter to the assignee. An assignment is a contract between the assignor and the assignee, and is interpreted or construed in accordance to rules of contract construction. 351*351 Ordinarily, the word `assignment' is limited in its application to a transfer of intangible rights, including contractual rights, choses in action, and rights in or connected with property, as distinguished from transfer of the property itself. According to the Restatement of Contracts, an assignment of a right is a manifestation of the assignor's intention to transfer it by virtue of which the assignor's right to performance by the obligor is extinguished in whole or in part and the assignee acquires a right to such performance.

6 Am.Jur.2d Assignment § 1 (1999).

> To be effective, an assignment must be completed with a delivery, and the delivery must confer a complete and present right on the transferee. The assignor must not retain control over the property assigned, the authority to collect, or the power to revoke.

6 Am.Jur.2d Assignment § 132 (1999).

Idaho recognizes that choses in action are generally assignable. *McCluskey v. Galland*, 95 Idaho 472, 474-75, 511 P.2d 289, 291-92 (1973). An assignment may be done in such a way to be construed as a complete sale of the claim. 6 Am.Jur.2d Assignment § 147 (1999). However, an assignment that is absolute in form can be shown to be for purposes of collection only. *Id.* In order to determine the intent of the assignment, the Court looks to the contract between the assignor and assignee. *Id.* An assignment of the chose in action transfers to the assignee and divests the assignor of all control and right to the cause of action, and the assignee becomes the real party in interest. *McCluskey*, 95 Idaho at 474, 511 P.2d at 291. Only the assignee may prosecute an action on the chose in action. *Id." c.f. Purco Fleet Services, Inc., v. Idaho Department of Finance*, 140 Idaho 121, 90 P.3d 346 (2004)

However, EGP Investments, Inc. admits that what they believe they purchased was "charge off" accounts. According to Ballentine's Law Dictionary, 3rd Edition, page 193 the term "charge off" means to wit:

> "An accounting term for the elimination from assets of an item of corporeal property or of an account receivable, because of loss of value rendering the corporeal property worthless or the insolvency of the person indebted upon the account rendering it uncollectible. *Rubinkam v. Commissioner*, 118 F.2d 149."

See also *Jones v. Commissioner*, 38 F.2d 550; *Commissioner v. MacDonald*, 102 F.2d 942, 945; and *Stephenson v. Commissioner*, 43 F.2d 348 citing *Avery v. Commissioner* 22 F.2d 6, 55 A.L.R. 1277. The way a "charge off" account works is that Chase Bank USA declares on their tax return a loss on these accounts including the expenses for collection in which they receive a dollar-for-dollar tax write off, eliminating any damages from the source, which is the contract. On top of that Chase Bank USA also made a claim to FSDLIC Insurance who gave that amount again on an insurance claim. So, Chase Bank USA at the very least doubles their "investment" which was nothing because it was the Federal Reserve System that created the credit out of thin air. All fraudulent and all illegal.

Oh, but it gets better. Chase Bank USA literally sells a list of accounts which is nothing more than financial information of each cardholder to a third party information broker. In this State, doing that act is a felony, under I.C. § 18-3125 and § 18-3126, commonly referred to as "Identity Theft."

Nowhere in the credit card agreement does the cardholder contract to allow the card issuer sell his/her financial information to a third party information broker. Remember there is no third party beneficiary named in the contract. Most credit card agreements no longer have as part of the agreement provisions for assigning the account in the event there is a default in the payment.

EGP Investments complaint is insufficient on its face, due to there not being attached a contract to show a valid assignment, a legal purchase as a third party beneficiary, and without Chase Bank USA not being named as a party the parties to the contract are not before the Court, as was in the case of *Capps v. FIA Card Services,* 149 Idaho 737, 90 P.3d 346 (2010) and is

incorporated herein by its reference.

"For example, suppose Busy Bee Grocery is owed $850.00 by Joe Debtor and Christensen acquires an assignment of the debt. Christensen might in turn seek out some individual to whom he can sell Joe Debtor's debt, and might convince Jane Doe to buy it. Instead, Christensen approaches Joe Debtor and convinces Joe that his life will be better if he, Joe, buys up the debt. The right to recover a debt is a chose in action, and no law prohibits dealing in the business of buying and selling choses in action." *c.f. Western Acceptance Corporation v. Jim Jones*, 117 Idaho 399, 788 P.2d 214 (1990). Looking at this example we can replace Busy Bee Grocery with Chase Bank USA, Joe Debtor with the Appellant and Jane Doe with EGP Investments, Inc. We know that EGP Investments, Inc., cannot be Christensen because he has no assignment of the debt. Seeing other Purchase Agreements I know that EGP Investments, Inc., purchased only the information to the account, which is a felony under Idaho Law of I.C. § 18-3125 and § 18-3126 and that Chase Bank USA still owns the underlying security because they charge off the account and made it worthless. If Chase Bank USA sold the account to EGP Investments, LLC., then, they committed securities fraud, that is why they need Christensen. But in this case Christensen is not in the case, so standing to sue does not exist on the record, it cannot exist by your own example in *Western Acceptance Corporation v. Jim Jones*, 117 Idaho 399, 788 P.2d 214 (1990). See Plaintiff's Response to Defendant's Discovery Request for Admissions. What's worse is that by the trial court not dismissing the case out *sua sponte,* it has aligned itself with illegal and unlawful activity in derogation of the Constitution of the State of Idaho and the Constitution of the United States of America. You see, Jane Doe who is EGP

Investments, LLC., is suing out a claim in which he has no interest in the underlying credit card debt. His interest is in the information obtained to harass the Appellant, in which he paid a stippen, probably less than $400.00, in which he is claiming his damage to be over $ 18,000.00. Where is the equities in that? By the way, guess who can still sue for the $18,000, that's right, Chase Bank USA. This is true because it is going on across this nation and is a judicial problem. Just so the record is complete, I do not owe EGP Investments, LLC., the monies they paid for the information either. The more important question here is: Is this appellate court going to stop the extortion, securities fraud, and racketeering from continuing created by the trial court or is it too also going to be enjoined in the lawlessness.

Please understand I am not saying that Chase Bank USA may not have a claim against the Appellant. I'm saying that EGP Investments does not have a claim against the Appellant, when there was no notice of assignment provided to the Appellant as required by law, no assignment has been shown to exist connecting them with Chase, and no contract detailing the contractual obligations has been shown to exist between Chase and the Appellant or EGP Investments and the Appellant.

Due to the foregoing and the absence in the record to show that Respondent is in fact a real party in interest entitled to the benefits of the contract, it was error for the Court to enter judgment against the Appellant.

V. Any Interest Obtained is From an Illegal Contract and is Unenforceable.

"Whether a contract is against public policy is a question of law for the court to determine from all the facts and circumstances of each case. *Stearns v. Williams*, 72 Idaho 276, 283, 240 P.2d 833, 840 (1952). Public policy may be found and set forth in the statutes, judicial decisions or the constitution. *Id.* at 287, 240 P.2d at 842. An illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy. 17A AM.JUR.2D *Contracts* § 239; *see Miller v. Haller*, 129 Idaho 345, 924 P.2d 607 (1996). A contract prohibited by law is illegal and hence unenforceable. *Miller*, 129 Idaho at 351, 924 P.2d at 613.

Although not clearly argued below or addressed in either the magistrate's decision or the district court, in Idaho a court may not only raise the issue of whether a contract is illegal *sua sponte*, *Nab v. Hills*, 92 Idaho 877, 882, 452 P.2d 981, 986 (1969); *Belt v. Belt*, 106 Idaho 426, 430 n. 2, 679 P.2d 1144, 1148 n. 2 (Ct.App.1984), but it has a duty to raise the issue of illegality, whether 702*702 pled or otherwise, at any stage in the litigation. *Stearns*, 72 Idaho at 290, 240 P.2d at 842. As the Court in *Stearns* explained:

> A party to a contract, void as against public policy, cannot waive its illegality by failure to specially plead the defense *or otherwise,* but *whenever the same is made to appear at any stage of the case,* it becomes *the duty of a court to refuse to enforce it;* again, a court of equity will not knowingly aid in the furtherance of an illegal transaction; in harmony with this principle, it does not concern itself as to the manner in which the illegality of a matter before it is brought to its attention.

Id. (emphasis added) (citation omitted). .... Illegal contracts are void. *Miller*, 129 Idaho at 351, 924 P.2d at 613; *see* 17A AM JUR 2D *Contracts* § 304. A void contract cannot be enforced.

Miller, 129 Idaho at 351, 924 P.2d at 613; *Wheaton v. Ramsey*, 92 Idaho 33, 436 P.2d 248 (1968). A party to an illegal contract cannot ask the Court to have his illegal objects carried out, as the law will not aid either party to an illegal agreement, but leaves the parties where it finds them. *Ingle v. Perkins*, 95 Idaho 416, 510 P.2d 480 (1973); *Whitney v. Continental Life & Accident Co.*, 89 Idaho 96, 403 P.2d 573 (1965); *Worlton v. Davis*, 73 Idaho 217, 249 P.2d 810 (1952); *Hancock v. Elkington*, 67 Idaho 542, 186 P.2d 494 (1947)." *c.f. Quiring v. Quiring*, 130 Idaho 560, 944 P.2d 695 (1997).

In this case, the purchase of financial information without the consent of the card holder is an illegal act in accordance with I.C. § 18-3125 and § 18-3126 to which this Court is obligated to and in fact has a duty not to enforce it or any judgment when no standing exists arising from the illegality. "In fact this Court has a duty to raise the issue of illegality. *Quiring v. Quiring*, 130 Idaho 560, 944 P.2d 695 (1997); *see also Trees v. Kersey*, 138 Idaho 3, 6, 56 P.3d 765, 768 (2002)." *c.f. Barry v. Pacific West Coast Construction, Inc.*, 140 Idaho 827, 103 P.3d 440 (2004).

"The Court will not enforce an illegal contract. *Quiring*, 130 Idaho at 568, 944 P.2d at 703. Illegal contracts are void, and generally the Court will "leave the parties where it finds them." *Id.*; *Trees*, 138 Idaho at 9, 56 P.3d at 771; *Kunz v. Lobo Lodge, Inc.*, 133 Idaho 608, 611, 990 P.2d 1219, 1222 (Ct.App.1999). This Court has stated that, "the rationale for leaving the parties where the law finds them is premised on the notion that both parties are equally at fault." *Trees*, 138 Idaho at 9, 56 P.3d at 771. When the Court "leaves the parties where it finds them," it denies recovery to either party. *Morrison v. Young*, 136 Idaho 316, 319, 32 P.3d 1116, 1119 (2001); *Kunz*, 133 Idaho at 612, 990 P.2d at 1223." *c.f. Barry v. Pacific West Coast Construction,*

Inc., 140 Idaho 827, 103 P.3d 440 (2004).

"Idaho has long disallowed judicial aid to either party to an illegal contract. *McShane v. Quillin*, 47 Idaho 542, 547, 277 P. 554, 559 (1929) ("No principle in law ... is better settled than that which, with certain exceptions, refuses redress to either party to an illegal contract."). An illegal contract is one that rests on illegal consideration consisting of any act or forbearance which is contrary to law or public policy. *Quiring v. Quiring*, 130 Idaho 560, 566, 944 P.2d 695, 701 (1997). Generally, when the consideration for a contract explicitly violates a statute, the contract is illegal and unenforceable. *Barry v. Pac. W. Constr., Inc.*, 140 Idaho 827, 832, 103 P.3d 440, 445 (2004). In most cases, the court will leave the parties to an illegal contract as it finds them. *Id." c.f. Farrell v. Whiteman,* 146 Idaho 604, 200 P.3d 1153 (2009)

VI. CONCLUSION

Respondent failed to not only properly serve the Appellant or her husband in Accord with IRCP Rule 4(d)(1) and (2), but when given the opportunity to correct their error within the time limitation of IRCP Rule 4(a)(2) for service of a summons and complaint, they failed to correct the error serving the summons and complaint in accord with IRCP Rule 4(d)(1) and (2). By no later than June 5th, 2013, the District Court lost all jurisdiction and was required to sua sponte dismiss the case for lack of timely service which they failed to do so in accord with IRCP Rule 4(a)(2) and Article I, section 18 of the Constitution of the State of Idaho and the due process clauses of the Constitution of the State of Idaho in Article I, Section 13 and the 14th Amendment of the Bill of Rights Amending the Constitution of the United States of America.

Besides having this jurisdictional defect to continue the case due to the failure of proper service, the Court itself was playing its own set of games to impair the Appellant from having a fair and impartial hearing. With the advent of Judge Steven Verby resigning (quitting) his commission as a district court judge in mid-stream, Magistrate Barbara Buchanan was promoted to replace him as District Court Judge and was assigned to the case. There were no objections filed by the parties. To the best of the Appellant's knowledge and belief Judge Buchanan does not suffer from any condition which would disqualify her from presiding over this case she was assigned to by the Court. The Court however, scheduled proceedings foreign to the Idaho Rules of Civil Procedure, sent out notices not in harmony with the Idaho Rules of Civil Procedure detailing multiple alternative judges, which is not allowed by the Idaho Rules of Civil Procedure or the Justices of the Supreme Court of the State of Idaho or the Legislature of the State of Idaho. These acts of ulta vires coupled with the Judges Verby and Mitchell participation in this case without being properly assigned to the case, are acts wholly without jurisdiction and all determinations, rulings, judgments are null and void ab initio. As a result of the actions of the Court, Judges Verby and Mitchell, Appellant's rights under Article I, section 18 of the Constitution of the State of Idaho and the due process clauses of the Constitution of the State of Idaho in Article I, Section 13 and the 14th Amendment of the Bill of Rights Amending the Constitution of the United States of America were violated, not to mention the that there is a judgment against the Appellant damaging the Appellant which can only be looked upon as a conspiracy to violate the civil rights of the Appellant.

Lastly, the Respondent themselves know they have no standing to bring this action and has committed a fraud upon the court. But I have no State Court to turn to because they are too busy not providing a proper administration of justice under the Constitution of the State of Idaho and being in accord with the laws of the State and Court Rules as adopted by the Supreme Court of the State of Idaho.

IF Judge Buchanan would have permitted the Appellant to appear telephonically as requested and in accord with IRCP Rule 7(b)(4), due process could have been reached with two parties slugging it out between them. But the biases and prejudices of the Judges of the First Judicial District and I imagine the judges throughout whole State seems to be more important to the Judges to keep rather than their Oath of Office, Constitution of the State of Idaho and of the United States of America, the laws of the State and the Court Rules adopted by the Supreme Court of the State of Idaho. The Mission Statement of the Supreme Court is a facade and NOBODY will have access to a court in this State for the proper administration of justice. History always repeats itself especially to governments which no longer serve the people in the manner it is suppose to, which seems to be the way of the Courts of this State.

The obvious should not be needed to say, but I'll say it anyway. This case needs to be reversed, remanded back to the District Court with Orders to Vacate the Judgment and dismiss the case on jurisdictional grounds. Appellant needs to be compensated for the reasonable costs associated in defending this frivolous suit and reasonable costs on appeal. The Appellant requests the Court to issue all necessary Orders to reverse, remand, vacate judgments, award costs to the Appellant and dismiss case with prejudice. The Appellant requests the Court to issue

all necessary Orders to award to Appellant costs on appeal.

Dated this 12th day of August, 2014.

Lori Skinner

Lori Skinner, In Propria Persona

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of August, 2014, I caused to be served and delivered the original and Six (6) true and correct copies of the Appellant's Brief on Appeal and One (1) unbound, unstapled copy to the Supreme Court and Two (2) true and correct copies of the Appellant's Brief on Appeal to each party; and Certificate of Service; by the method as indicated below, and addressed to the following:

Stacey L.Wallace and Sean Beck
Johnson Mark, LLC
3023 East Copper Point Drive, Suite 102
Meridian, near [83642]
State of Idaho

[✓] U.S. Mail
[ ] Hand Delivered
[ ] FAX Tel:

The Clerk of the Court
Idaho Supreme Court
Post Office Box 83720
Boise, near [83720-0101]
State of Idaho

[✓] U.S. Mail
[ ] Hand Delivered
[ ] FAX Tel:

By: _____
Steven David of aver

Appendix "A"

FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO
COUNTY OF BOUNDARY

EGP INVESTMENTS, LLC, a Washington Limited Liability Company, Plaintiff, vs. LORI SKINNER, individually, and the marital community comprised of LORI SKINNER and BRET E. SKINNER, wife and husband, Defendants.	**NO. CV-2012-426** **PLAINTIFF'S RESPONSES TO DEFENDANTS' FIRST SET OF REQUESTS FOR ADMISSION**

TO: LORI SKINNER, individually, and the marital community comprised of LORI SKINNER and BRET E. SKINNER, wife and husband,

Comes Now Plaintiff, EGP Investments, LLC, by and through its attorney of record, Brad L. Williams, and pursuant to Civil Rule 33(a)(2), hereby submits its *Answers and Responses to Defendants' First Set of Requests for Admission*, as follows:

BRAD L. WILLIAMS, P.S.
621 W Mallon Avenue, Ste. 603
Spokane, WA 99201
(509) 456-5270

Requests for Admission

ADMISSION NO. 1: You have no signed contract or signed application for credit which shows that the Defendant(s) applied for a credit with Chase Bank USA for alleged account xxxx-xxxx-xxxx-8103.

ANSWER:

Admit.

ADMISSION NO. 2: You have no signed contract or signed application for credit which shows that the Defendant(s) applied for a credit with Chase Bank USA for alleged account xxxx-xxxx-xxxx-3888.

ANSWER:

Admit.

ADMISSION NO. 3: You have no signed contract or signed application for credit which shows that the Defendant(s) applied for a credit with Chase Bank USA for alleged account xxxx-xxxx-xxxx-5766.

ANSWER:

Deny.

ADMISSION NO. 4: You have no signed contract or signed application for credit showing that these alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766 was actually established by in the Defendant(s).

ANSWER:

Deny.

ADMISSION NO. 5: You have no written contract entitled "Cardmember Agreement" from with Chase Bank USA or such other name that states the terms and conditions pertaining to Chase these alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766.

ANSWER:

Deny.

BRAD L. WILLIAMS, P.S.
621 W Mallon Avenue, Ste. 603
Spokane, WA 99201
(509) 456-5270

ADMISSION NO. 6: You have no written or signed contract with Chase Bank USA stating what the Defendant(s) would be responsible on any charges made on the account in connection with these alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766.

ANSWER:

Deny.

ADMISSION NO. 7: You have no merchant sales receipts showing the charges that were incurred on these alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766 with the alleged sums in your complaint.

ANSWER:

Admit.

ADMISSION NO. 8: You have no contract with Chase Bank USA assigning you to collect these alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766 for the above entitled case.

ANSWER:

Admit.

ADMISSION NO. 9: That it is true that neither Chase Bank USA or any other name it may have, is not registered with the Secretary of State of Idaho to conduct business in this state as required by Assumed Business Name Act.

ANSWER:

Deny. Plaintiff lacks the knowledge to either admit or deny the request. Therefore, it denies the same. Plaintiff cannot testify to the business practices of Chase Bank.

ADMISSION NO. 10: That EGP Investments, LLC purchased "charge-off" accounts from Chase Bank USA or through a third party.

ANSWER:

Admit.

ADMISSION NO. 11: It is true that you paid for these "charge-off" accounts is substantially less than the debts alleged to be owed to Chase Bank USA.

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ANSWER:

Objection. Relevance. The amount paid is irrelevant to whether Plaintiff used the credit card and has a balance due and owing. Without waiving their objection Plaintiff will respond that it did not pay the charge-off balance to purchase the account.

ADMISSION NO. 12: It is true that EGP Investments, LLC does have a purchase agreement for these "charge-off" accounts from either Chase Bank USA or through a third party.

ANSWER:

Admit.

ADMISSION NO. 13: It is true that EGP Investments, LLC does NOT have a purchase agreement for these "charge-off" accounts from either Chase Bank or through a third party.

ANSWER:

Deny.

ADMISSION NO. 14: It is true that EGP Investments, LLC does have a collection agreement with Chase Bank USA for alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766.

ANSWER:

Deny.

ADMISSION NO. 15: It is true that EGP Investments, LLC does NOT have a collection agreement with Chase Bank USA for alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766.

ANSWER:

Admit.

ADMISSION NO. 16: It is true that EGP Investments, LLC does NOT know the "charge-off" full account numbers from Chase Bank USA for any alleged accounts concerning the Defendants.

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ANSWER:

Deny.

ADMISSION NO. 17: It is true that EGP Investments, LLC does know the "charge-off" full account numbers from Chase Bank USA for any alleged accounts concerning the Defendant(s).

ANSWER:

Admit.

ADMISSION NO. 18: It is true that EGP Investments, LLC failed to respond to a debt verification letter concerning any of these alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766 pursuant to the Federal Debt Collection Practices Act.

ANSWER:

Deny.

ADMISSION NO. 19: It is true that EGP Investments, LLC has NOT failed to respond to a debt verification letter concerning any of these alleged accounts xxxx-xxxx-xxxx-8103, xxxx-xxxx-xxxx-3888, xxxx-xxxx-xxxx-5766 pursuant to the Federal Debt Collection Practices Act.

ANSWER:

Admit.

ADMISSION NO. 20: It is true that based upon an actual signed contract with Chase Bank USA for alleged account xxxx-xxxx-xxxx-8103, you have no actual knowledge of any provision within said contract which allows for debt transferability by sale to a third party.

ANSWER:

Objection. The Plaintiff cannot respond to the vague and ambiguous term "contract" with Chase Bank. Plaintiff's knowledge only extends to the Cardholder Agreement that governs the terms and conditions of the credit cards in question.

ADMISSION NO. 21: It is true that based upon an actual signed contract with Chase Bank USA for alleged account xxxx-xxxx-xxxx-3888, you have no actual knowledge of

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any provision within said contract which allows for debt transferability by sale to a third party.

ANSWER:

Objection. The Plaintiff cannot respond to the vague and ambiguous term "contract" with Chase Bank. Plaintiff's knowledge only extends to the Cardholder Agreement that governs the terms and conditions of the credit cards in question.

ADMISSION NO. 22: It is true that based upon an actual signed contract with Chase Bank USA for alleged account xxxx-xxxx-xxxx-5766, you have no actual knowledge of any provision within said contract which allows for debt transferability by sale to a third party.

ANSWER:

Objection. The Plaintiff cannot respond to the vague and ambiguous term "contract" with Chase Bank. Plaintiff's knowledge only extends to the Cardholder Agreement that governs the terms and conditions of the credit cards in question.

ADMISSION NO. 23: It is true that EGP Investments, LLC does not have ANY signed agreements/contracts with the Defendant(s) pertaining to Chase Bank USA alleged account xxxx-xxxx-xxxx-8103.

ANSWER:

Admit.

ADMISSION NO. 24: It is true that EGP Investments, LLC does not have ANY signed agreements/contracts with the Defendant(s) pertaining to Chase Bank USA alleged account xxxx-xxxx-xxxx-3888.

ANSWER:

Admit.

ADMISSION NO. 25: It is true that EGP Investments, LLC does not have ANY signed agreements/contracts with the Defendant(s) pertaining to Chase Bank USA alleged account xxxx-xxxx-xxxx-5766.

ANSWER:

Deny.

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STATE OF WASHINGTON)
) ss
COUNTY OF CHELAN)

Brian Fair, being first duly sworn on oath, deposes and says:

That he is the Member-Manager of EGP Investments, LLC, Plaintiff in the above-entitled action; that he has read the above and foregoing answers to Defendant's Request for Interrogatories; that he knows the contents thereof and believes the same to be true.

Brian Fair

SIGNED AND SWORN to (or affirmed) before me this 8th day of ~~February~~ March, 2013, by Brian Fair.

NOTARY PUBLIC
STATE OF WASHINGTON
CARMA R BAIRD-FIGUEROA
My Appointment Expires Dec. 15, 2016

Print Name: Carma R. Baird-Figueroa
NOTARY PUBLIC, state of Washington
My Commission Expires: 12/15/16

I am an attorney for the party answering these discovery requests; that I have read the discovery requests propounded to Defendants and the answers and objections, if any, thereto, know the contents thereof and believe the same to be true.

Brad L. Williams, ISB#3976
Attorney for Plaintiff

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