

4-21-2008

Bach v. Miller Clerk's Record v. 4 Dckt. 31716

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"Bach v. Miller Clerk's Record v. 4 Dckt. 31716" (2008). *Idaho Supreme Court Records & Briefs*. 1892.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/1892

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

LAW CLERK IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Vol. 41 of 12

COPY

John N. Bach

Plaintiff / Appellant

Alva Harris, et. al.

Defendants / Respondents

and

John N. Bach

Plaintiff / Respondent

Alva Harris, et. al.

Defendants / Appellants

Katherine Miller, et. al.

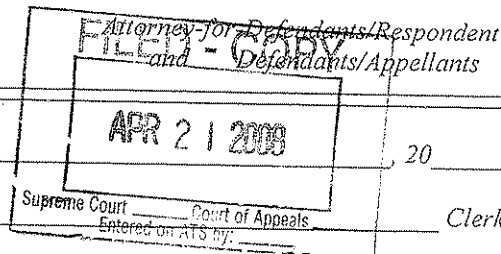
Defendants

Appealed from the District Court of the Seventh Judicial
District of the State of Idaho, in and for Teton County
Hon Richard T. St. Clair, District Judge

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

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

Filed this _____ day of _____, 20____



By _____ Clerk
Deputy

Volume 4 of 10

Supreme Court No. 31716/31717
Teton County No. CV 02-208

John N. Bach
Plaintiff/Appellant
vs
Alva Harris, et. al.
Defendants/ Respondents

John N. Bach
Plaintiff/Respondent
vs
Alva Harris, et. al.
Defendants/Appellants

and

Katherine Miller et. al.
Defendants

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

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

Table of Contents

Volume 1 of 10

Complaint for Damages/Injuries to Plaintiff, His Real & Personal Properties; Malicious Prosecution; Abuse of Process; Slander of Title & Conversion-Theft of Properties; Defamation-Libel & Slander; and for Immediate Injunctive/Equitable relief, Filed July 23, 2002	0001
Affidavit of Plaintiff John N. Bach, in Support of Application/Request for Immediate Ex Parte Issuance of Restraining Order, and Order to Show Cause for Preliminary & Permanent Injunction Against All Defendants, Their Agents, Etc., Protecting Plaintiff's Person and Properties, Filed July 23, 2002	0006
Order of Voluntary Disqualification Pursuant to IRCP 40(d)(4), Filed July 23, 2002	0012
Order Restraining All Defendant Their Agents, Attorneys, or Any Persons/Entities From Entering, Accessing or Attempting to Enter, Access or Be on Any of Plaintiff's Properties; and Order to Show Cause to All Defendants Why Such Restraining Order Should Not Be Issued as a Preliminary and Permanent Injunction, Filed July 25, 2002	0014
Notice of Appearance, Filed August 7, 2002	0016
Special Appearance of Katherine M. Miller, Filed August 7, 2002	0017
Return of Service Upon Katherine D. Miller aka Katherine M. Miller and Jack Lee McLean and Alva A. Harris, Individually & DBA SCONA, Inc., a sham entity and Bob Bagley & Mae Bagley, Filed August 8, 2002	0018
Minutes Report, Dated August 13, 2002	0020
Entry of Appearance, Filed August 16, 2002	0036
Order and Preliminary Injunction, Filed August 16, 2002	0038
Notice of Substitution of Attorney, IRCP 11(b)(1), Filed August 27, 2002	0043
Order on Pending Motions, Filed September 3, 2002	0045
Second Order on Pending Motions, Filed September 19, 2002	0050
First Amended Complaint, Filed September 27, 20002	0053
Motion to Strike Plaintiff's First Amended Complaint and for Rule 11(a)(1) Sanctions Against John Bach, Filed October 3, 2002	0087

Affidavit of Galen Woelk, Dated October 3, 2002	0093
Minutes Report, Dated October 9, 2002	0126
Order Sealing All Records of in Camera Session on September 9, 2002, Filed October 15, 2002	0133
Third Order on Pending Motions, Filed October 15, 2002	0134
Motion, filed November 12, 2002	0137
Order and Notice Setting Jury Trial, Filed November 27, 2002	0139
Minutes Report, Dated November 26, 2002	0141
Fourth Order on Pending Motions, Filed December 3, 2002	0154

Volume 2 of 10

Fifth Order on Pending Motions, Filed January 10, 2003	0165
Minutes Entry, Dated January 9, 2003	0178
Plaintiff John N. Bach's Memorandum Brief No. "1", Re His Objections & Opposition to Defendant Katherine Miller's Motion to Dismiss (Rule 12(b)(8)); and Motion to Strike Said Defendant's Motion and for Evidentiary & Monetary Sanctions. (IRCP, Rule 11(a)(1), Rule 56(g) & Court's Inherent Powers, Etc., Filed January 28, 2003	0182
Sixth Order on Pending Motion, Filed January 28, 2003	0189
Answer, Filed January 29, 2003	0193
Seventh Order on Pending Motions, Filed January 29, 2003	0195
Plaintiff John N. Bach's Memorandum of Objections & Opposition to Defendants In Default (The Dawson's) Motion to Set Aside Deffault & to Strike the Affidavit of Jared Harris Offered Purportedly in Support Thereof; and Plaintiff's Motion for Sanctions, Etc. (IRCP, Rule 12(f), 11(a)(1) & 55(c) and 60(d)(6), Filed February 11, 2003	0199
Summons on First Amended Complaint, Dated September 27, 2002	0204
Appearance; Motion to Dismiss and Motion for Sanctions, Filed January 22, 2003	0210

Plaintiff John N. Bach's Memorandum Brief Re Objections & Opposition to Defendants Dawsons' Motion to Dismiss Per Rule 12(b)(5); & Plaintiff's Motions For Sanctions IRCP, Rule 11(a)(1) & Inherent Power of Court, Filed February 11, 2003	0240
Plaintiff John N. Bach's Motion to Strike and Quash Defendant's Dawsons' Motion To Disqualify the Honorable Richard T. St. Clair, IRCP, Rule 40(d)(1); and for Sanctions Against Dawsons & Their Counsel, Jared Harris, IRCP, Rule 11(a)(1) & Inherent Powers of the Court, Filed February 11, 2003	0242
Eighth Order on Pending Motions, Filed March 4, 2003	0246
Ninth Order on Pending Motions, Filed March 7, 2003	0259
Answer, Counterclaim and Jury Demand for Defendant Katherine Miller, & Miller Third Party Complaint IRCP Rule 14(a) and Miller Cross Claim/Counterclaim IRCP Rule 13(a), 13(g), 13(h), 17(d), 19(a)(1), Filed March 17, 2003	0265
Answer & Demand for Jury Trial, Filed March 19, 2003	0317
Entry of Default Against Defendants; (1) Alva A. Harris, Individually & dba SCONA, Inc., a sham entity; (2) Targhee Powder Emporium, Inc., an Idaho Corporation; & dba Unltd & Ltd.; (3) Jack Lee McLean; (4) Ole Olesen; (aka Oly Olson); (5) Bob Fitzgerald, Individually & dba Cache Ranch; and (6) Blake Lyle, Individually & dba Grande Towing, and also dba Grande Body & Paint (IRCP, Rule 55(a)(1), et seq.) , Filed March 19, 2003	0320
Application & Affidavit of John N. Bach, Plaintiff, for Entry of Default Per IRCP, Rule 55(a)(1), et seq, Against Defendants: (1) Alva A. Harris, Individually & dba SCONA, Inc., a sham entitiy; (2) Targhee Powder Emporium, Inc., Untld and Ltd.; (3) Jack Lee McLean; (4) Ole Olesen; (5) Bob Fitzgerald, Individually & dba Cache Ranch; and (6) Blake Lyle, Individually & dba Grande Towing, and also, dba Grande Body & Paint, Filed March 19, 2003	0321
Notice of Appearance , Filed April 1, 2003	0323
Motion to Set Aside Default, Filed April 2, 2003	0324
Tenth Order on Pending Motions, Filed April 2, 2003	0326

Volume 3 of 10

Eleventh Order on Pending Motions, Filed April 2, 2003	0337
Notice of Appearance, Filed April 4, 2003	0344

Plaintiff & Counterclaimant John N. Bach's Answer & Affirmative Defenses to Counterclaims of Katherine D. Miller, aka Katherine M. Miller, Filed April 4, 2003	0345A
Twelfth Order on Pending Motions, Filed April, 2003	0346
Answer to First Amended Complaint and Demand for Jury Trial, Filed April 14, 2003	0351
Minute Entry, Filed April 15, 2003	0357
Affidavit of John N. Bach in Support of His Motions for Summary Judgment And/or Summary Adjudication (RCP, Rule 56, et seq.), Filed April 18, 2003	0360
Plaintiff & Counterclaim Defendant John N. Bach's Notice of Motions and Motions for Summary Judgment and /or Summary Adjudication, IRCP, Rule 56, et seq., Filed April 18, 2003	0413
Minute Entry, Filed May 5, 2003	0415
Miller's Objection to Bach's Motion for Summary Judgment, Filed May 6, 2003	0419
Defendant Miller's Brief in Opposition to Summary Judgment, Filed May 6, 2003	0421
Katherine Miller's Affidavit in Objection to Bach's Motion for Summary Judgment, Filed May 6, 2003	0435
Thirteenth Order on Pending Motions, Filed May 6, 2003	0442
Plaintiff John N. Bach's Closing Brief in Support of His Motion for Summary Judgment Against All Defendants, Filed May 13, 2003	0455
Plaintiff John N. Bach's Notice of Ex Parte Motion and Motion for Immediate Issuance of Writ of Possession, Assistance and/or Seizure of Plaintiff's Vehicles and Trailers Still in Defendants' Possession, Especially in Possession of Blake Lyle, Filed May 16, 2003	0488
Order, Filed May 22, 2003	0492
Miller's Descriptive Exhibit List, Filed May 27, 2003	0495
Plaintiff & Counterclaim Defendant John N. Bach's Exhibit List and Designations Pending/Subject to Court's Rulings – Orders Re Summary Judgment Motions, Filed May 28, 2003	0501

Volume 4 of 10

Fourteenth Order on Pending Motions, Filed May 28, 2003	0505
Minute Entry, Filed May 29, 2003	0532
Exhibit List, Filed May 29, 2003	0537
Notice of Hearing Motion to Set Aside Default and Motion to Reinstate Answer Filed May 29, 2007	540A
Plaintiff & Counterclaim Defendant John N. Bach's Trial Brief No. Two (2) Defendant & Counterclaimant Miller's Answer & All Counterclaims are Barred as a Matter of Both Fact and Law-By Miller's Discharge of Claims Against Bach in His Chapter 13 Bankruptcy & Per the Written Undispute Settlement Agreement of October 3, 1997. (Also Cited/Presented for Plaintiff's Motion in Limine to be Filed Herein.) Filed May 30, 2003	0541
Fifteenth Order on Pending Motions, Filed June 2, 2003	0562
Plaintiff John N. Bach's Trial Brief No. Three (3) Re for Immediate Entry of Judgment Quieting Title to Plaintiff on Those Properties Subject of Second, Third, and Fourth Counts, Reserving Issues of All Damages Thereon, Filed June 2, 2003	0566
Final Pre-Trial Order, Filed June 3, 2003	0576
Plaintiff John N. Bach's Memorandum Brief Re Objections, Motion to Strike, & Opposition to Defendant Wayne Dawson's Motion Re (1) Second Renewed Motion to Set Aside Default; (2) Motion to Continue Trial or (3) Bifurcate, Etc., Filed June 3, 2003	0591
Defendant Ann-Toy Broughton's Exhibit List, Filed June 4, 2003	0597
Verified Answer to First Amended Complaint, Filed June 6, 2003	0599
Order for Default, Filed June 16, 2003	0603
Order, Filed June 16, 2003	0606
Minute Entry, Filed June 17, 2003	0609
Plaintiff and Counterclaim Defendant John N. Bach's Motion for Directed Verdict on All His Counts in the First Amended Complaint and on All his Affirmative Defenses to Katherine Miller's Counterclaims (IRCP, Rule 50(a) et seq.), Filed June 18, 2003	0613
Special Verdict, Filed June 19, 2003	0621

Minutes Report, Dated June 11, 2003 0629

Volume 5 of 10

Minutes Report, Dated June 16, 2003 0679

Defendant Earl Hamblin's Answer to Plaintiff's First Amended Complaint, Filed June 25, 2003 0721

Verified Answer to First Amended Complaint, Filed June 27, 2003 0734

Brief, Filed June 27, 2003 0757

Findings of Fact and Conclusions of Law, Filed July 1, 2003 0762

Verified Answer, Filed July 1, 2003 0779

Plaintiff's & Counterclaim Defendant John N. Bach's Notice of Motions & Motions Re (1) Order Voiding/Invalidating Special Jury Verdict of June 19, 2003; (2) For Judgment in Complete Favor of Plaintiff & Counterclaim Defendant, John N. Bach, against Defendant & Counterclaimant Katherine D. Miller, aka Katherine M. Miller, in all capacities; (3) Amendment of Ruling/Order or Contemplated Judgment Re Special Verdict &/or new Trial: and for Modification of Final Pretrial Order &/or Relief from Final Pretrial Order & Trial Orders, Special Verdict, Etc. (IRCP, Rules 16, 50, 58, 59, & 60(1)-(6).) Filed July 3, 2003 0786

Sixteenth Order on Pending Motions, Filed July 8, 2003 0801

Plaintiff & Counterclaim Defendant John N. Bach's Notice of Motion, Motion & Affidavit for the Disqualification of the Honorable Richard T. St. Clair, Assigned, (IRCP, Rule 40(d)(2)(A)(1)(3) & (4); 40(d)(5), et seq; and Notice of Motion & Motion for Vacating of All Judge St. Clair's Final Pretrial Orders, Adverse Orders, Findings of Facts and Conclusions of Law, Etc., Filed July 9, 2003 0804

Minute Entry, Dated July 14, 2003 0814

Supplemental Affidavit of John N. Bach, in Support of His Motions, to Disqualify the Honorable Richard T. St. Clair, and All Other Motions Filed July 9, 2003 and July 2, 2003, Filed July 16, 2003 0817

Minute Entry, Filed July 17, 2003 0841

Seventeenth Order on Pending Motions, Filed August 28, 2003 0843

Volume 6 of 10

Eighteenth Order on Pending Motions, Filed September 9, 2003	0857
Minute Entry, Filed October 14, 2003	0862
Nineteenth Order on Pending Motions, Filed October 23, 2003	0868
Judgment, Filed October 23, 2003	0908
Affidavit of John N. Bach (Apart from the Memoranda Briefs Referenced and Incorporated Herein, and the Further Case and Other Authorities Cited Herein to Support Any of Plaintiff's Motions, Plaintiff Will Be Submitting Further Briefs Prior to 14 Days of Hearing of Friday, December 5, 2003), Filed November 6, 2003	0913
Disclaimer of Interest, Filed November 17, 2003	0950
Plaintiff & Counterclaim Defendant John N. Bach's Supplemental Brief No. 1. In Support of His Motions Filed November 6, 2003, Filed November 20, 2003	0953
Plaintiff & Counterclaim Defendant John N. Bach's Supplemental Brief No. 2., In Support of His Motions Filed November 6, 2003. Filed December 3, 2003	0963
Request for Pretrial Conference, Filed December 15, 2003	0968
Additional Findings of Fact and Conclusions of Law, Filed December 23, 2003	0972
Default Judgment Against Wayne Dawson, Filed January 5, 2004	0988
Twentieth Order on Pending Motions, Filed January 6, 2004	0993
Plaintiff's & Appellant's Amended Notice of Appeal, Per Idaho Supreme Court's Order Re: Final Judgment of December 22, 2003. (Related Petition for Writ of Mandate/Prohibition, Idaho Supreme Court Docket No. 30009 Filed September 19, 2000, denied) & Plaintiff, Counterclaim Defendant & Appellant Has Made Two Motions for a Rule 54(b) Certificate, to which Katherine Miller Has Not Objected Except to the form of the Proposed Certificate. Judge St. Clair has delayed issuing said Certificate, most recently, issued a Twentieth Order, see attached copy, continuing all such motion to the 1 st week, Feb., 2004, Filed January 12, 2004	0996
Defendant, Earl Hamblin's Exhibit List, Filed January 13, 2004	1009
Plaintiff John N. Bach's Pretrial Statement of Objections & Requests, Etc., Per IRCP, Rule 16(c), 16(d), etc., Filed January 15, 2004	1012
Minute Entry, Filed June 16, 2004	1018

Twenty First Order on Pending Motions, Filed January 16, 2004	1023
---	------

Volume 7 of 10

Plaintiff John N. Bach's Notice of Motion & Motions Re: (1) Order for Amended Judgment of Default Against Defendant Wayne Dawson; (2) Order Entering Different & Additional Damages & Relief Against Wayne Dawson, in Judgment of January 5, 2004; and (3) Order for Immediate Writ of Possession, Assistance of Execution or Execution. Rules 55(b)(2), 11(a)(2)(A)(B); 60(b)1-3,5-7; &59(e), Filed January 20, 2004	1027
---	------

Order Suspending Appeal, Filed January 22, 2004	1043
---	------

Affidavit of John N. Bach Re: Testimony of Damages to be admitted, considered and included in Judgments Of Defaults Against Defendants Alva A. Harris, Individually & dba SCONA, Inc., a sham entity; Jack Lee McLean, Robert Fitzgerald aka Bob Fitzgerald, Individually & dba Cache Ranch; Oly Oleson, Individually & dba Cache Ranch & dba R.E.M.; and Blake Lyle, Individually & dba Grande Towing and also dba Grande Body & Paint. Filed February 3, 2004	1045
---	------

Plaintiff John N. Bach's Motion Re (1) Protective Order Staying/Abating All Discovery by Defendants Hills, Until They Have Complied Fully with Plaintiff's No. 1, Discovery Set & Until Plaintiff's Motions Re Hills' Default Entries, Etc., Are Heard; and (2) For Striking, Vactating or Disallowing Any Summary Judgment Motions by Defendants Hill. IRCP, Rules 11, 26, 37 & 56(f)(g), Filed February 11, 2004	1059
--	------

Twenty Second Order on Pending Motions, Filed February 12, 2004	1061
---	------

Minute Entry, Filed February 23, 2004	1082
---------------------------------------	------

Amended Default Judgment Against Wayne Dawson, Filed February 23, 2004	1086
--	------

Twenty Third Order on Pending Motions, Filed February 23, 2004	1092
--	------

Default Judgment Against Alva Harris, SCONA, Inc., Bob Fitzgerald, Ole Olesen, and Blake Lyle, Filed February 27, 2004	1101
--	------

Twenty Fourth Order on Pending Motions, Filed March 2, 2004	1109
---	------

Plaintiff John N. Bach's Affidavit Per IRCP, Rule 56(f) to Stay Any Hearing or Action to Consider Granting Defendants Bret & Deena R. Hill's Motion for Summary Judgment Until Plaintiff has His Further Motions for Discovery Sanctions Against Said Defendants Hill Heard; and Affidavit, Part II, in Opposition, Refutations and Objections to Hills Affidavits Re Their Summary Judgment Motions, Filed March 2, 2004	1144
---	------

Disclaimer of Interest in Certain Real Property and Motion to Dismiss, Filed March 8, 2004	1185
Plaintiff John N. Bach's Notice of Motions and Motions Re (1) Reconsideration of Court's Previous Order Re His Answering Defendants Hill's Discovery Set; (2) for Additional Time to Answer/Respond, Etc. to Said Hill's Discovery Set After Plaintiff's Motions for Further Discovery Sanctions and Rule 56(f) Motions are Heard; and (3) for Relief from Any Missing of Discovery Compliance Due Date by Plaintiff, Etc. IRCP, Rules 11(a)(2), Rule 37, 60(1)-(6), Filed March 11, 2004	1188
Plaintiff John N. Bach's Further Memorandum Brief Re Objections & Opposition to Defendants Hills' Motion for Summary Judgment, Filed March 11, 2004	1190
Affidavit of Jana Siepert in Support of Motion to Compel, Filed March 15, 2004	1195
Twenty Fifth Order on Pending Motions, Filed March 16, 2004	1196

Volume 8 of 10

Order, Filed March 18, 2004	1200
Minute Entry, Filed March 22, 2004	1204
Order on Various Motions Heard on March 16, 2004, Filed March 22, 2004	1209
Defendant Earl Hamblin's Disclaimer of Interest in Certain Real Property and Motion to Dismiss, Filed March 23, 2004	1213
Receipt, Dated April 1, 2004	1218
Order Amending Stay Entered April 13, 2004, Filed April 14, 2004	1219
Minute Entry, Filed April 19, 2004	1222
Pre-Trial Order, April 19, 2004	1226
Further Affidavit in Support of His Current Motions to (1) Strike Entire Answer of Defendants Hill and/or Preclude Any Evidence by Them of Their Claims to Title, Ownership, Possession or Rights of Use of Real Property with Home @ 195 N. Hwy 33, Driggs and/or for Unqualified Admissions That Plaintiff is the Sole & Rightful Owner Thereof, Etc., & (2) Alternatively, in Opposition to Defendants Hills' Motion for Summary Judgment, Filed April 20, 2004	1229
Twenty Sixth Order on Pending Motions, Filed April 21, 2004	1256
Twenty Seventh Order on Pending Motions, Filed April 21, 2004	1266

Twenty Eighth Order on Pending Motions, Filed May 6, 2004	1289
Minute Entry, Filed May 9, 2004	1306
Twenty Ninth Order on Pending Motions, Filed July 6, 2004	1310
Judgment Against Defendants Bret Hill and Deena R. Hill, on Second Count and Fourth Count of First Amended Complaint, Granting Quiet Title Judgment in Favor of Plaintiff John N. Bach, and Permanent Injunction in His Favor Re the Real Properties & Interest Quieted to/in Him as to Said Second & Fourth Counts, Filed June 24, 2004	1325
Minute Entry, Filed June 30, 2004	1330
Thirtieth Order on Pending Motions, Filed July 14, 2004	1334
Minute Entry, Filed July 21, 2004	1342
Affidavit of Plaintiff John N. Bach, in Opposition to Defendants' Galen Woelk, individually & dba Runyan & Woelk's Motion for Summary Judgment on Remaining Counts, and to Affidavit of Galen Woelk & Affidavit of Jason Scott; and Request for Judicial Notice of Pending Teton Actions, Filed August 16, 2004	1346
Thirty First Order on Pending Motions, Filed August 18, 2004	1352
Plaintiff John N. Bach's Memorandum Re Court's Inquiry of Effect of Discharge in Bankruptcy of Debtors Property Not Utilized by Trustee for Creditors, Filed September 3, 2004	1356
Minutes Report, Dated September 10, 2004	1362
Default Judgment Against Lynn McLean, as Personal Representative of the Estate of Jack Lee McLean, Filed September 21, 2004	1367

Volume 9 of 10

Thirty Second Order on Pending Motions, Filed September 21, 2004	1375
Affidavit of Lynn Barrie McLean, Dated September 10, 2004	1388
Plaintiff John N. Bach's Notice of Motion & Motion Re: (1) Reconsideration of Default Judgment Terms of September 21, 2004; and (2) Entry of Different Default Judgment Against Jack Lee McLean & His Estate, Especially Quieting All Title & Ownership of McLean to Plaintiff John N. Bach in Peacock & Drawknife Properties, Plus Full Permanent Injunction, Etc. (IRCP, Rule 11), Filed October 5, 2004	1392

Plaintiff John N. Bach;s Notice of Motions and Motions Re; (1) Hearing on All Plaintiff's Motions Filed Since September 27, 2004; (2) For Order Striking, Quashing or Denying Defendants Woelk, Runyan's Motion to Amend/Modify, Etc., Court's 32 nd Order; (2) For Order to Set Pretrial Conference on Remaining & Amending Issues; and (4) For Order Granting Plaintiff Leave to Amend & Add Claims Against Defendants Woelk, Runyan & Their Law Firm. (IRCP Rules 12(f), 15(a), etc.,) Filed October 19, 2004	1396
Plaintiff John N. Bach's Submission of Documentary Evidence in Further Support of His Motions Numbers (1) & (2), filed Oct. 5, 2004 & Argued Nov 4, 2004 @ 9:15 a.m. Before Judge St. Clair, Filed November 5, 2004	1398
Minute Entry, Filed November 9, 2004	1400
Thirty Third Order on Pending Motions, Filed November 30, 2004	1404
Thirty Fourth Order on Pending Motions, Filed December 10, 2004	1410
Plaintiff John N. Bach's Further Affidavit Re Issuance of Proposed Permanent Injunction & Request for Judicial Notice of Orders of Dismissal with Prejudice of all plaintiff (Jack Lee McLean's) Claims in Teton CV 01-33; 01-205; 01-265 & Dismissal of Charges in Teton CR 04-526 With John N. Bach's 4 Motions Filed Dec. 27. 2004 & His Further Memo In Support of His Motions, Filed January 12, 2005	1417
Supplemental Affidavit No. 1. To Plaintiff's Further Affidavit Re Issuance of Permanent Injunction, Etc., filed Jan. 12, 2005, Filed January 13, 2005	1430
Amended Answer and Demand for Jury Trial, Filed January 13, 2005	1433
Exhibit List, Filed January 20, 2005	1439
Plaintiff John N. Bach's Exhibit List for Jury Trial of February 8, 2005, Filed January 21, 2005	1445
Addendum to Stipulated Pretrial Order, Filed January 27, 2005	1453
Amended Exhibit List, Filed February 1, 2005	1457
Remittitur, Filed February 2, 2005	1463
Affidavit of Galen Woelk, Filed February 7, 2005	1465
Emergency Motion for Substitution of Parties and to Shorten Time for Hearing, Filed February 7, 2005	1479
Brief in Support of Emergency Motion for Substitution of Parties and to Shorten Time for Hearing, Filed February 7, 2005	1482
Order, Filed February 7, 2005	1487

Stipulation and Order for Dismissal with Prejudice, Filed February 7, 2005	1490
Thirty Fifth Order on Pending Motions, Filed February 11, 2005	1494
Final Judgment, Filed February 11, 2005	1505
Judgment, Filed February 17, 2005	1511
Plaintiff John N. Bach's Motion to Strike Motion for Attorneys Fees and Costs Brought by Defendants, Estate of Stan Nickell, Personal Representative; and Plaintiff's Memorandum Brief in Support of Said Motion and in Opposition to Nickell's Estate Motion for Attorneys Fees & Costs. & Motion for Sanctions. Rule 11(a)(1) a Full Hearing is not Just Requested but Further Required (ID Const. Art. I, Sec 13, IRCP, Rule, Filed February 23, 2005	1514

Volume 10 of 10

Notice of Motions and Motions by Plaintiff John N. Bach Re Post Twenth Fifth Order and Final Judgment, Along with Order, of February 8, 2005 and February 11, 2005 for Orders: (1) Vacating, Setting Aside, Etc. Said Orders and Final Judgment; (2) Entering New and Different Order & Final Judgment in Favor of Plaintiff; (3) Granting of New Trial as to All Plaintiff's Counts Against Katherine Miller and Galen Woelk; (4) For Order Awarding Plaintiff Costs and Paralegal Fees Sought. & Modifying Permanent Injunction. Filed February 25, 2005	1524
Judgment, Filed February 24, 2005	1561
Notice of Appeal, Filed February 28, 2005	1564
Second Affidavit of John N. Bach, In Support of Motions Filed February 25, 2005, Filed March 7, 2005	1571
Plaintiff & Counterclaim Defendant John N. Bach's Memorandum Brief in Support of His Motions Filed Feb. 25, 2005 (IRCP, 12(f), (g), 59(a), 1, 3, 4, 5, 6, & 7; 52(b); 60(b), (1), (2), (3), (4), (5), & (6); 11(a)(1)(2), Filed March 9, 2005	1579
Minute Entry, Filed March 14, 2005	1612
Thirty Sixth Order on Pending Motions, Filed March 17, 2005	1617
Notice of Appeal, Filed March 25, 2005	1624A
Minute Entry, Filed May 6, 2005	1625

Plaintiff John N. Bach's Closing Brief in Opjections & Opposition to Defendants Hill's Motion/Application for Attorney Fees (IRCP, Rule 54(e)(2), I.C. 12-121; and Also To: Defendant Hamblin's Motion/Application For Attorneys Fees, (IRCP, Rule 54(e)(2), I.C. 12-121), Filed May 6, 2005	1630
Plaintiff & Counterclaim Defendant John N. Bach's Post Judgment Evidentiary Hearing Brief Re: Lack of Jurisdiction, Basis, Reasons and Lack of Any Attorneys' Fees, Reasonable or Otherwise to be Awarded/Allowed Defendants Hills Nor Hamblin Per 12-121. Filed May 6, 2005	1639
Thirty Seventh Order on Pending Motions, Filed May 11, 2005	1648
Amended Judgment, Filed May 23, 2005	1656
Amended Judgment, Filed June 2, 2005	1659
John N. Bach's Amended Notice of Appeal, Per The Supreme Court of the State of Idaho's Order Denying Motion to Dismiss Appeal of May 23, 2005. Filed June 13, 2005	1662
Request for Additional Transcript, Filed June 27, 2005	1682
John N. Bach's Second Amended Notice of Appeal, Per The Supreme Court of the State of Idaho's Order of August 4, 2005, Not Mailed, Purportedly Until August 5, 2005 and Not Received Until on Thursday, August 11, 2005; and John N. Bach's Second Amended Notice of Appeal in No. 31717, Filed August 18, 2005	1685
Request for Additional Record, Filed September 1, 2005	1698
Request for Additional Transcript, Filed September 1, 2005	1701
Request for Additional Record, Filed September 2, 2005	1704
Certificate of Exhibits	1707
Clerk's Certificate	1719
Certificate of Service	1721

Index

Addendum to Stipulated Pretrial Order, Filed January 27, 2005	1453
Additional Findings of Fact and Conclusions of Law, Filed December 23, 2003	0972
Affidavit of Galen Woelk, Filed February 7, 2005	1465
Affidavit of Galen Woelk, Dated October 3, 2002	0093
Affidavit of Jana Siepert in Support of Motion to Compel, Filed March 15, 2004	1195
Affidavit of John N. Bach (Apart from the Memoranda Briefs Referenced and Incorporated Herein, and the Further Case and Other Authorities Cited Herein to Support Any of Plaintiff's Motions, Plaintiff Will Be Submitting Further Briefs Prior to 14 Days of Hearing of Friday, December 5, 2003), Filed November 6, 2003	0913
Affidavit of John N. Bach in Support of His Motions for Summary Judgment And/or Summary Adjudication (RCP, Rule 56, et seq.), Filed April 18, 2003	0360
Affidavit of John N. Bach Re: Testimony of Damages to be admitted, considered and included in Judgments Of Defaults Against Defendants Alva A. Harris, Individually & dba SCONA, Inc., a sham entity; Jack Lee McLean, Robert Fitzgerald aka Bob Fitzgerald, Individually & dba Cache Ranch; Oly Oleson, Individually & dba Cache Ranch & dba R.E.M.; and Blake Lyle, Individually & dba Grande Towing and also dba Grande Body & Paint. Filed February 3, 2004	1045
Affidavit of Lynn Barrie McLean, Dated September 10, 2004	1388
Affidavit of Plaintiff John N. Bach, in Opposition to Defendants' Galen Woelk, individually & dba Runyan & Woelk's Motion for Summary Judgment on Remaining Counts, and to Affidavit of Galen Woelk & Affidavit of Jason Scott; and Request for Judicial Notice of Pending Teton Actions, Filed August 16, 2004	1346
Affidavit of Plaintiff John N. Bach, in Support of Application/Request for Immediate Ex Parte Issuance of Restraining Order, and Order to Show Cause for Preliminary & Permanent Injunction Against All Defendants, Their Agents, Etc., Protecting Plaintiff's Person and Properties, Filed July 23, 2002	0006
Amended Answer and Demand for Jury Trial, Filed January 13, 2005	1433
Amended Default Judgment Against Wayne Dawson, Filed February 23, 2004	1086
Amended Exhibit List, Filed February 1, 2005	1457

Amended Judgment, Filed June 2, 2005	1659
Amended Judgment, Filed May 23, 2005	1656
Answer & Demand for Jury Trial, Filed March 19, 2003	0317
Answer, Counterclaim and Jury Demand for Defendant Katherine Miller, & Miller Third Party Complaint IRCP Rule 14(a) and Miller Cross Claim/ Counterclaim IRCP Rule 13(a), 13(g), 13(h), 17(d), 19(a)(1), Filed March 17, 2003	0265
Answer, Filed January 29, 2003	0193
Answer to First Amended Complaint and Demand for Jury Trial, Filed April 14, 2003	0351
Appearance; Motion to Dismiss and Motion for Sanctions, Filed January 22, 2003	0210
Application & Affidavit of John N. Bach, Plaintiff, for Entry of Default Per IRCP, Rule 55(a)(1), et seq. Against Defendants: (1) Alva A. Harris, Individually & dba SCONA, Inc., a sham entitiy; (2) Targhee Powder Emporium, Inc., Untld and Ltd.; (3) Jack Lee McLean; (4) Ole Olesen; (5) Bob Fitzgerald, Individually & dba Cache Ranch; and (6) Blake Lyle, Individually & dba Grande Towing, and also, dba Grande Body & Paint, Filed March 19, 2003	0321
Brief, Filed June 27, 2003	0757
Brief in Support of Emergency Motion for Substitution of Parties and to Shorten Time for Hearing, Filed February 7, 2005	1482
Certificate of Exhibits	1707
Certificate of Service	1721
Clerk's Certificate	1719
Complaint for Damages/Injuries to Plaintiff, His Real & Personal Properties; Malicious Prosecution; Abuse of Process; Slander of Title & Conversion- Theft of Properties; Defamation-Libel & Slander; and for Immediate Injunctive/ Equitable relief, Filed July 23, 2002	0001
Default Judgment Against Alva Harris, SCONA, Inc., Bob Fitzgerald, Ole Olesen, and Blake Lyle, Filed February 27, 2004	1101
Default Judgment Against Lynn McLean, as Personal Representative of the Estate of Jack Lee McLean, Filed September 21, 2004	1367
Default Judgment Against Wayne Dawson, Filed January 5, 2004	0988

Defendant Ann-Toy Broughton's Exhibit List, Filed June 4, 2003	0597
Defendant Earl Hamblin's Answer to Plaintiff's First Amended Complaint, Filed June 25, 2003	0721
Defendant Earl Hamblin's Disclaimer of Interest in Certain Real Property and Motion to Dismiss, Filed March 23, 2004	1213
Defendant, Earl Hamblin's Exhibit List, Filed January 13, 2004	1009
Defendant Miller's Brief in Opposition to Summary Judgment, Filed May 6, 2003	0421
Disclaimer of Interest, Filed November 17, 2003	0950
Disclaimer of Interest in Certain Real Property and Motion to Dismiss, Filed March 8, 2004	1185
Eighteenth Order on Pending Motions, Filed September 9, 2003	0857
Eighth Order on Pending Motions, Filed March 4, 2003	0246
Eleventh Order on Pending Motions, Filed April 2, 2003	0337
Emergency Motion for Substitution of Parties and to Shorten Time for Hearing, Filed February 7, 2005	1479
Entry of Appearance, Filed August 16, 2002	0036
Entry of Default Against Defendants; (1) Alva A. Harris, Individually & dba SCONA, Inc., a sham entity; (2) Targhee Powder Emporium, Inc., an Idaho Corporation; & dba Unltd & Ltd.; (3) Jack Lee McLean; (4) Ole Olesen; (aka Oly Olson); (5) Bob Fitzgerald, Individually & dba Cache Ranch; and (6) Blake Lyle, Individually & dba Grande Towing, and also dba Grande Body & Paint (IRCP, Rule 55(a)(1), et seq.), Filed March 19, 2003	0320
Exhibit List, Filed January 20, 2005	1439
Exhibit List, Filed May 29, 2003	0537
Fifteenth Order on Pending Motions, Filed June 2, 2003	0562
Fifth Order on Pending Motions, Filed January 10, 2003	0165
Final Judgment, Filed February 11, 2005	1505

Final Pre-Trial Order, Filed June 3, 2003	0576
Findings of Fact and Conclusions of Law, Filed July 1, 2003	0762
First Amended Complaint, Filed September 27, 20002	0053
Fourteenth Order on Pending Motions, Filed May 28, 2003	0505
Fourth Order on Pending Motions, Filed December 3, 2002	0154
Further Affidavit in Support of His Current Motions to (1) Strike Entire Answer of Defendants Hill and/or Preclude Any Evidence by Them of Their Claims to Title, Ownership, Possession or Rights of Use of Real Property with Home @ 195 N. Hwy 33, Driggs and/or for Unqualified Admissions That Plaintiff is the Sole & Rightful Owner Thereof, Etc., & (2) Alternatively, in Opposition to Defendants Hills' Motion for Summary Judgment, Filed April 20, 2004	1229
John N. Bach's Amended Notice of Appeal, Per The Supreme Court of the State of Idaho's Order Denying Motion to Dismiss Appeal of May 23, 2005. Filed June 13, 2005	1662
John N. Bach's Second Amended Notice of Appeal, Per The Supreme Court of the State of Idaho's Order of August 4, 2005, Not Mailed, Purportedly Until August 5, 2005 and Not Received Until on Thursday, August 11, 2005; and John N. Bach's Second Amended Notice of Appeal in No. 31717, Filed August 18, 2005	1685
Judgment Against Defendants Bret Hill and Deena R. Hill, on Second Count and Fourth Count of First Amended Complaint, Granting Quiet Title Judgment in Favor of Plaintiff John N. Bach, and Permanent Injunction in His Favor Re the Real Properties & Interest Quieted to/in Him as to Said Second & Fourth Counts, Filed June 24, 2004	1325
Judgment, Filed February 17, 2005	1511
Judgment, Filed February 24, 2005	1561
Judgment, Filed October 23, 2003	0908
Katherine Miller's Affidavit in Objection to Bach's Motion for Summary Judgment, Filed May 6, 2003	0435
Miller's Descriptive Exhibit List, Filed May 27, 2003	0495
Miller's Objection to Bach's Motion for Summary Judgment, Filed May 6, 2003	0419
Minute Entry, Dated January 9, 2003	0178

Minute Entry, Dated July 14, 2003	0814
Minute Entry, Filed April 15, 2003	0357
Minute Entry, Filed April 19, 2004	1222
Minute Entry, Filed February 23, 2004	1082
Minute Entry, Filed July 17, 2003	0841
Minute Entry, Filed July 21, 2004	1342
Minute Entry, Filed June 16, 2004	1018
Minute Entry, Filed June 17, 2003	0609
Minute Entry, Filed June 30, 2004	1330
Minute Entry, Filed March 14, 2005	1612
Minute Entry, Filed March 22, 2004	1204
Minute Entry, Filed May 5, 2003	0415
Minute Entry, Filed May 6, 2005	1625
Minute Entry, Filed May 9, 2004	1306
Minute Entry, Filed May 29, 2003	0532
Minute Entry, Filed November 9, 2004	1400
Minute Entry, Filed October 14, 2003	0862
Minutes Report, Dated August 13, 2002	0020
Minutes Report, Dated June 11, 2003	0629
Minutes Report, Dated June 16, 2003	0679
Minutes Report, Dated November 26, 2002	0141
Minutes Report, Dated October 9, 2002	0126
Minutes Report, Dated September 10, 2004	1362

Motion, Filed November 12, 2002	0137
Motion to Set Aside Default, Filed April 2, 2003	0324
Motion to Strike Plaintiff's First Amended Complaint and for Rule 11(a)(1) Sanctions Against John Bach, Filed October 3, 2002	0087
Nineteenth Order on Pending Motions, Filed October 23, 2003	0868
Ninth Order on Pending Motions, Filed March 7, 2003	0259
Notice of Appeal, Filed February 28, 2005	1564
Notice of Appeal, Filed March 25, 2005	1624A
Notice of Appearance, Filed April 1, 2003	0323
Notice of Appearance, Filed April 4, 2003	0344
Notice of Appearance, Filed August 7, 2002	0016
Notice of Hearing Motion to Set Aside Default and Motion to Reinstate Answer Filed May 29, 2007	540A
Notice of Motions and Motions by Plaintiff John N. Bach Re Post Twenth Fifth Order and Final Judgment, Along with Order, of February 8, 2005 and February 11, 2005 for Orders: (1) Vacating, Setting Aside, Etc. Said Orders and Final Judgment; (2) Entering New and Different Order & Final Judgment in Favor of Plaintiff; (3) Granting of New Trial as to All Plaintiff's Counts Against Katherine Miller and Galen Woelk; (4) For Order Awarding Plaintiff Costs and Paralegal Fees Sought. & Modifying Permanent Injunction. Filed February 25, 2005	1524
Notice of Substitution of Attorney, IRCP 11(b)(1), Filed August 27, 2002	0043
Order Amending Stay Entered April 13, 2004, Filed April 14, 2004	1219
Order and Notice Setting Jury Trial, Filed November 27, 2002	0139
Order and Preliminary Injunction, Filed August 16, 2002	0038
Order, Filed February 7, 2005	1487
Order, Filed June 16, 2003	0606
Order, Filed March 18, 2004	1200
Order, Filed May 22, 2003	0492

Order for Default, Filed June 16, 2003	0603
Order of Voluntary Disqualification Pursuant to IRCP 40(d)(4), Filed July 23, 2002	0012
Order on Pending Motions, Filed September 3, 2002	0045
Order on Various Motions Heard on March 16, 2004, Filed March 22, 2004	1209
Order Restraining All Defendant Their Agents, Attorneys, or Any Persons/Entities From Entering, Accessing or Attempting to Enter, Access or Be on Any of Plaintiff's Properties; and Order to Show Cause to All Defendants Why Such Restraining Order Should Not Be Issued as a Preliminary and Permanent Injunction, Filed July 25, 2002	0014
Order Sealing All Records of in Camera Session on September 9, 2002, Filed October 15, 2002	0133
Order Suspending Appeal, Filed January 22, 2004	1043
Plaintiff's & Appellant's Amended Notice of Appeal, Per Idaho Supreme Court's Order Re: Final Judgment of December 22, 2003. (Related Petition for Writ of Mandate/Prohibition, Idaho Supreme Court Docket No. 30009 Filed September 19, 2000, denied) & Plaintiff, Counterclaim Defendant & Appellant Has Made Two Motions for a Rule 54(b) Certificate, to which Katherine Miller Has Not Objected Except to the form of the Proposed Certificate. Judge St. Clair has delayed issuing said Certificate, most recently, issued a Twentieth Order, see attached copy, continuing all such motion to the 1 st week, Feb., 2004, Filed January 12, 2004	0996
Plaintiff & Counterclaim Defendant John N. Bach's Exhibit List and Designations Pending/Subject to Court's Rulings – Orders Re Summary Judgment Motions, Filed May 28, 2003	0501
Plaintiff & Counterclaim Defendant John N. Bach's Memorandum Brief in Support of His Motions Filed Feb. 25, 2005 (IRCP, 12(f), (g), 59(a), 1, 3, 4, 5, 6, & 7; 52(b); 60(b), (1), (2), (3), (4), (5), & (6); 11(a)(1)(2), Filed March 9, 2005	1579
Plaintiff and Counterclaim Defendant John N. Bach's Motion for Directed Verdict on All His Counts in the First Amended Complaint and on All his Affirmative Defenses to Katherine Miller's Counterclaims (IRCP, Rule 50(a) et seq.), Filed June 18, 2003	0613
Plaintiff & Counterclaim Defendant John N. Bach's Notice of Motions and Motions for Summary Judgment and /or Summary Adjudication, IRCP, Rule 56, et seq., Filed April 18, 2003	0413

Plaintiff's & Counterclaim Defendant John N. Bach's Notice of Motions & Motions Re (1) Order Voiding/Invalidating Special Jury Verdict of June 19, 2003; (2) For Judgment in Complete Favor of Plaintiff & Counterclaim Defendant, John N. Bach, against Defendant & Counterclaimant Katherine D. Miller, aka Katherine M. Miller, in all capacities; (3) Amendment of Ruling/Order or Contemplated Judgment Re Special Verdict &/or new Trial; and for Modification of Final Pretrial Order &/or Relief from Final Pretrial Order & Trial Orders, Special Verdict, Etc. (IRCP, Rules 16, 50, 58, 59, & 60(1)-(6).) Filed July 3, 2003	0786
Plaintiff & Counterclaim Defendant John N. Bach's Notice of Motion, Motion & Affidavit for the Disqualification of the Honorable Richard T. St. Clair, Assigned, (IRCP, Rule 40(d)(2)(A)(1)(3) & (4); 40(d)(5), et seq; and Notice of Motion & Motion for Vacating of All Judge St. Clair's Final Pretrial Orders, Adverse Orders, Findings of Facts and Conclusions of Law, Etc., Filed July 9, 2003	0804
Plaintiff & Counterclaim Defendant John N. Bach's Post Judgment Evidentiary Hearing Brief Re: Lack of Jurisdiction, Basis, Reasons and Lack of Any Attorneys' Fees, Reasonable or Otherwise to be Awarded/Allowed Defendants Hills Nor Hamblin Per 12-121. Filed May 6, 2005	1639
Plaintiff & Counterclaim Defendant John N. Bach's Supplemental Brief No. 1. In Support of His Motions Filed November 6, 2003, Filed November 20, 2003	0953
Plaintiff & Counterclaim Defendant John N. Bach's Supplemental Brief No. 2., In Support of His Motions Filed November 6, 2003. Filed December 3, 2003	0963
Plaintiff & Counterclaim Defendant John N. Bach's Trial Brief No. Two (2) Defendant & Counterclaimant Miller's Answer & All Counterclaims are Barred as a Matter of Both Fact and Law-By Miller's Discharge of Claims Against Bach in His Chapter 13 Bankruptcy & Per the Written Undispute Settlement Agreement of October 3, 1997. (Also Cited/Presented for Plaintiff's Motion in Limine to be Filed Herein.) Filed May 30, 2003	0541
Plaintiff & Counterclaimant John N. Bach's Answer & Affirmative Defenses to Counterclaims of Katherine D. Miller, aka Katherine M. Miller, Filed April 4, 2003	0345A
Plaintiff John N. Bach's Affidavit Per IRCP, Rule 56(f) to Stay Any Hearing or Action to Consider Granting Defendants Bret & Deena R. Hill's Motion for Summary Judgment Until Plaintiff has His Further Motions for Discovery Sanctions Against Said Defendants Hill Heard; and Affidavit, Part II, in Opposition, Refutations and Objections to Hills Affidavits Re Their Summary Judgment Motions, Filed March 2, 2004	1144
Plaintiff John N. Bach's Closing Brief in Opjections & Opposition to Defendants Hill's Motion/Application for Attorney Fees (IRCP, Rule 54(e)(2), I.C. 12-121; and Also To: Defendant Hamblin's Motion/Application For Attorneys Fees, (IRCP, Rule 54(e)(2), I.C. 12-121), Filed May 6, 2005	1630

Plaintiff John N. Bach's Closing Brief in Support of His Motion for Summary Judgment Against All Defendants, Filed May 13, 2003	0455
Plaintiff John N. Bach's Exhibit List for Jury Trial of February 8, 2005, Filed January 21, 2005	1445
Plaintiff John N. Bach's Further Affidavit Re Issuance of Proposed Permanent Injunction & Request for Judicial Notice of Orders of Dismissal with Prejudice of all plaintiff (Jack Lee McLean's) Claims in Teton CV 01-33; 01-205; 01-265 & Dismissal of Charges in Teton CR 04-526 With John N. Bach's 4 Motions Filed Dec. 27, 2004 & His Further Memo In Support of His Motions, Filed January 12, 2005	1417
Plaintiff John N. Bach's Further Memorandum Brief Re Objections & Opposition to Defendants Hills' Motion for Summary Judgment, Filed March 11, 2004	1190
Plaintiff John N. Bach's Memorandum Brief No. "1", Re His Objections & Opposition to Defendant Katherine Miller's Motion to Dismiss (Rule 12(b)(8)); and Motion to Strike Said Defendant's Motion and for Evidentiary & Monetary Sanctions. (IRCP, Rule 11(a)(1), Rule 56(g) & Court's Inherent Powers, Etc., Filed January 28, 2003	0182
Plaintiff John N. Bach's Memorandum Brief Re Objections & Opposition to Defendants Dawsons' Motion to Dismiss Per Rule 12(b)(5); & Plaintiff's Motions For Sanctions IRCP, Rule 11(a)(1) & Inherent Power of Court, Filed February 11, 2003	0240
Plaintiff John N. Bach's Memorandum Brief Re Objections, Motion to Strike, & Opposition to Defendant Wayne Dawson's Motion Re (1) Second Renewed Motion to Set Aside Default; (2) Motion to Continue Trial or (3) Bifurcate, Etc., Filed June 3, 2003	0591
Plaintiff John N. Bach's Memorandum of Objections & Opposition to Defendants In Default (The Dawson's) Motion to Set Aside Deffault & to Strike the Affidavit of Jared Harris Offered Purportedly in Support Thereof; and Plaintiff's Motion for Sanctions, Etc. (IRCP, Rule 12(f), 11(a)(1) & 55(c) and 60(d)(6), Filed February 11, 2003	0199
Plaintiff John N. Bach's Memorandum Re Court's Inquiry of Effect of Discharge in Bankruptcy of Debtors Property Not Utilized by Trustee for Creditors, Filed September 3, 2004	1356
Plaintiff John N. Bach's Motion Re (1) Protective Order Staying/Abating All Discovery by Defendants Hills, Until They Have Complied Fully with Plaintiff's No. 1, Discovery Set & Until Plaintiff's Motions Re Hills' Default Entries, Etc., Are Heard; and (2) For Striking, Vactating or Disallowing Any Summary Judgment Motions by Defendants Hill. IRCP, Rules 11, 26, 37 & 56(f)(g), Filed February 11, 2004	1059

Plaintiff John N. Bach's Motion to Strike and Quash Defendant's Dawsons' Motion To Disqualify the Honorable Richard T. St. Clair, IRCP, Rule 40(d)(1); and for Sanctions Against Dawsons & Their Counsel, Jared Harris, IRCP, Rule 11(a)(1) & Inherent Powers of the Court, Filed February 11, 2003	0242
Plaintiff John N. Bach's Motion to Strike Motion for Attorneys Fees and Costs Brought by Defendants, Estate of Stan Nickell, Personal Representative; and Plaintiff's Memorandum Brief in Support of Said Motion and in Opposition to Nickell's Estate Motion for Attorneys Fees & Costs. & Motion for Sanctions. Rule 11(a)(1) a Full Hearing is not Just Requested but Further Required (ID Const. Art. I, Sec 13, IRCP, Rule, Filed February 23, 2005	1514
Plaintiff John N. Bach's Notice of Ex Parte Motion and Motion for Immediate Issuance of Writ of Possession, Assistance and/or Seizure of Plaintiff's Vehicles and Trailors Still in Defendants' Possession, Especially in Possession of Blake Lyle, Filed May 16, 2003	0488
Plaintiff John N. Bach;s Notice of Motions and Motions Re; (1) Hearing on All Plaintiff's Motions Filed Since September 27, 2004; (2) For Order Striking, Quashing or Denying Defendants Woelk, Runyan's Motion to Amend/Modify, Etc., Court's 32 nd Order; (2) For Order to Set Pretrial Conference on Remaining & Amending Issues; and (4) For Order Granting Plaintiff Leave to Amend & Add Claims Against Defendants Woelk, Runyan & Their Law Firm. (IRCP Rules 12(f), 15(a), etc.,) Filed October 19, 2004	1396
Plaintiff John N. Bach's Notice of Motion & Motions Re: (1) Order for Amended Judgment of Default Against Defendant Wayne Dawson; (2) Order Entering Different & Additional Damages & Relief Against Wayne Dawson, in Judgment of January 5, 2004; and (3) Order for Immediate Writ of Possession, Assistance of Execution or Execution. Rules 55(b)(2), 11(a)(2)(A)(B); 60(b)1-3,5-7; &59(e), Filed January 20, 2004	1027
Plaintiff John N. Bach's Notice of Motions and Motions Re (1) Reconsideration of Court's Previous Order Re His Answering Defendants Hill's Discovery Set; (2) for Additional Time to Answer/Respond, Etc. to Said Hill's Discovery Set After Plaintiff's Motions for Further Discovery Sanctions and Rule 56(f) Motions are Heard; and (3) for Relief from Any Missing of Discovery Complaine Due Date by Plaintiff, Etc. IRCP, Rules 11(a)(2), Rule 37, 60(1)-(6), Filed March 11, 2004	1188
Plaintiff John N. Bach's Notice of Motion & Motion Re: (1) Reconsideration of Default Judgment Terms of September 21, 2004; and (2) Entry of Different Default Judgment Against Jack Lee McLean & His Estate, Especially Quieting All Title & Ownership of McLean to Plaintiff John N. Bach in Peacock & Drawknife Properties, Plus Full Permanent Injunction, Etc. (IRCP, Rule 11), Filed October 5, 2004	1392

Plaintiff John N. Bach's Pretrial Statement of Objections & Requests, Etc., Per IRCP, Rule 16(c), 16(d), etc., Filed January 15, 2004	1012
Plaintiff John N. Bach's Submission of Documentary Evidence in Further Support of His Motions Numbers (1) & (2), filed Oct. 5, 2004 & Argued Nov 4, 2004 @ 9:15 a.m. Before Judge St. Clair, Filed November 5, 2004	1398
Plaintiff John N. Bach's Trial Brief No. Three (3) Re for Immediate Entry of Judgment Quieting Title to Plaintiff on Those Properties Subject of Second, Third, and Fourth Counts, Reserving Issues of All Damages Thereon, Filed June 2, 2003	0566
Pre-Trial Order, Filed April 19, 2004	1226
Receipt, Dated April 1, 2004	1218
Remittitur, Filed February 2, 2005	1463
Request for Additional Record, Filed September 1, 2005	1698
Request for Additional Record, Filed September 2, 2005	1704
Request for Additional Transcript, Filed June 27, 2005	1682
Request for Additional Transcript, Filed September 1, 2005	1701
Request for Pretrial Conference, Filed December 15, 2003	0968
Return of Service Upon Katherine D. Miller aka Katherine M. Miller and Jack Lee McLean and Alva A. Harris, Individually & DBA SCONA, Inc., a sham entity and Bob Bagley & Mae Bagley, Filed August 8, 2002	0018
Second Affidavit of John N. Bach, In Support of Motions Filed February 25, 2005, Filed March 7, 2005	1571
Second Order on Pending Motions, Filed September 19, 2002	0050
Seventeenth Order on Pending Motions, Filed August 28, 2003	0843
Seventh Order on Pending Motions, Filed January 29, 2003	0195
Sixteenth Order on Pending Motions, Filed July 8, 2003	0801
Sixth Order on Pending Motion, Filed January 28, 2003	0189
Special Appearance of Katherine M. Miller, Filed August 7, 2002	0017

Special Verdict, Filed June 19, 2003	0621
Stipulation and Order for Dismissal with Prejudice, Filed February 7, 2005	1490
Summons on First Amended Complaint, Dated September 27, 2002	0204
Supplemental Affidavit No. 1. To Plaintiff's Further Affidavit Re Issuance of Permanent Injunction, Etc., filed Jan. 12, 2005, Filed January 13, 2005	1430
Supplemental Affidavit of John N. Bach, in Support of His Motions, to Disqualify the Honorable Richard T. St. Clair, and All Other Motions Filed July 9, 2003 and July 2, 2003, Filed July 16, 2003	0817
Tenth Order on Pending Motions, Filed April 2, 2003	0326
Third Order on Pending Motions, Filed October 15, 2002	0134
Thirteenth Order on Pending Motions, Filed May 6, 2003	0442
Thirtieth Order on Pending Motions, Filed July 14, 2004	1334
Thirty Fifth Order on Pending Motions, Filed February 11, 2005	1494
Thirty First Order on Pending Motions, Filed August 18, 2004	1352
Thirty Fourth Order on Pending Motions, Filed December 10, 2004	1410
Thirty Second Order on Pending Motions, Filed September 21, 2004	1375
Thirty Seventh Order on Pending Motions, Filed May 11, 2005	1648
Thirty Sixth Order on Pending Motions, Filed March 17, 2005	1617
Thirty Third Order on Pending Motions, Filed November 30, 2004	1404
Twelfth Order on Pending Motions, Filed April, 2003	0346
Twentieth Order on Pending Motions, Filed January 6, 2004	0993
Twenty Eighth Order on Pending Motions, Filed May 6, 2004	1289
Twenty Fifth Order on Pending Motions, Filed March 16, 2004	1196
Twenty First Order on Pending Motions, Filed January 16, 2004	1023
Twenty Fourth Order on Pending Motions, Filed March 2, 2004	1109

Twenty Ninth Order on Pending Motions, Filed July 6, 2004	1310
Twenty Second Order on Pending Motions, Filed February 12, 2004	1061
Twenty Seventh Order on Pending Motions, Filed April 21, 2004	1266
Twenty Sixth Order on Pending Motions, Filed April 21, 2004	1256
Twenty Third Order on Pending Motions, Filed February 23, 2004	1092
Verified Answer, Filed July 1, 2003	0779
Verified Answer to First Amended Complaint, Filed June 6, 2003	0599
Verified Answer to First Amended Complaint, Filed June 27, 2003	0734

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date 5/28/03
Time 2:30
Deputy Clerk M. Southwick

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 IIPONIS, EARL
HAMLIN, STAN NICKELL, BRET HILL
& DEENA R. HILL, and DOES 1
through 30, Inclusive,

Defendants.

Case No. CV-02-208

**FOURTEENTH ORDER
ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court are defendant Cody Runyan's motion to dismiss under Rule 4(a)(2), I.R.C.P., filed on April 7, 2003; defendant Galen Woelk's motion for summary judgment under Rule 56, I.R.C.P., and motion for separate trials under Rule 42(b), I.R.C.P., on to continue trial. both filed on April 10, 2003;

FOURTEENTH ORDER ON PENDING MOTIONS

1

000505

plaintiff John Bach's motion for summary judgment under Rule 56, I.R.C.P., filed on April 18, 2003, and motion to continue Woelk's motion for summary judgment, filed on May 5, 2003; defendant Wayne Dawson's renewed motion to set aside clerk's default under Rule 55(c), I.R.C.P.; and defendant Miller's motion for Rule 11 sanctions against Bach and motion to continue jury trial, both filed on May 6, 2003.

Oral argument was heard on May 20, 2003.

Having read the motions, supporting affidavits and legal memoranda, opposition affidavits and legal memoranda, and the oral arguments of the parties, the Court issues the following decision on the pending motions.

II. ANALYSIS

1. Runyan's Rule 4(a)(2) Motion to Dismiss.

Defendant Cody Runyan's motion under Rule 4(a)(2), I.R.C.P., seeks dismissal of the first amended complaint without prejudice. By affidavit dated April 7, 2003, Runyan testified that he had not been served with a summons and the first amended complaint that was filed on September 27, 2002. During oral argument, plaintiff Bach conceded that he had not served Runyan, because he was awaiting resolution of motions filed by defendant Galen Woelk.

Rule 4(a)(2), I.R.C.P., requires that the Court dismiss without prejudice a complaint as to any defendant not served within 6 months of filing the complaint, unless the plaintiff can establish good cause for not serving such defendant. *Nerco Minerals Co. v. Morrison Knudsen Corp.*, 132 Idaho 531, 533, 976 P.2d 457, 459 (1999). The determination as to good cause is factual using the summary judgment standard of liberal interpretation of admissible facts and reasonable inferences there from. Id.

Since Bach has presented no admissible facts from which good cause for not serving defendant Runyan can be gleaned, the Court must grant Runyan's motion.

2. Woelk's Motion for Summary Judgment.

Defendant Woelk's motion for summary judgment seeks dismissal with prejudice all causes of action alleged against him by plaintiff Bach's first amended complaint. Counts one through four allege quiet title, damages and injunctive relief as to four tracts of real property in Teton County; count five alleges slander of title as to real property; count six alleged intentional interference with contracts, business relationships or economic expectations; count eight alleges violation of attorney client fiduciary duties, breach of implied covenants of good faith, and constructive fraud; count nine alleges

conversion of person property; and count twelve alleges malicious harassment. In the Tenth Order on Pending Motions, count ten was dismissed with prejudice based on the same cause of action having been dismissed with prejudice in a federal action between the same parties.

Woelk filed no affidavits in support of his motion. Bach's first amended complaint was verified, and Bach filed an affidavit in opposition. Bach further asks that the Court consider facts in other affidavits and excerpts of depositions taken in other cases that he filed earlier, and consider his testimony at the hearing on preliminary injunction in this action. The parties requested a jury trial, however the causes of action alleging quiet title and injunctive relief must be decided by the court with or without advisory findings by a jury.

A motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), I.R.C.P.; *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-17, 808 P.2d 851, 853-54 (1991); *Burgess v. Salmon River Canal Co.*, 119 Idaho 299, 307, 805 P.2d 1223, 1231 (1991); *Thompson v. City of Idaho*

Falls, 126 Idaho 587, 590, 887 P.2d 1094, 1097 (Ct.App.1994).

If an action will be tried to a jury, all controverted facts are liberally construed in favor of the non-moving party. *Tusch Enters. v. Coffin*, 113 Idaho 37, 40, 740 P.2d 1022, 1025 (1987); *Doe v. Durtschi*, 110 Idaho 466, 469, 716 P.2d 1238, 1241 (1986) (rehearing denied). Moreover, the court draws all reasonable factual inferences and conclusions in favor of the non-moving party. *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. State, Dept. of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992) (rehearing denied).

If an action will be tried before the court without a jury, the judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment. Rather, the judge is free to arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 650 P.2d 657 (1982); *Blackmon v. Zufelt*, 108 Idaho 469, 700 P.2d 91 (Ct.App.1985); *Sewell v. Neilsen, Monroe, Inc.*, 109 Idaho 192, 706 P.2d 81 (Ct.App.1985).

Where the party moving for summary judgment is not required to carry the burden of proof at trial, the moving party may show that no genuine issue of material fact exists by establishing the absence of evidence on an element that the non-moving party

will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct.App.1994). Once that burden has been met, by either an affirmative showing of the moving party's evidence or by a review of the non-moving party's evidence, the burden shifts to the non-moving party to establish that a genuine issue for trial does exist. Id.

Disputed facts will not defeat summary judgment when the party opposing the motion fails to establish the existence of an essential element of his case. *Podolan v. Idaho Legal Aid Services, Inc.*, 123 Idaho 937, 941-42, 854 P.2d 280, 284-85 (Ct.App.1993) (citations omitted). On the other hand, where admissible facts create genuine and material issues on all of the elements of a cause of action, summary judgment must be denied. See, e.g., *Ashby*, 100 Idaho at 69, 593 P.2d at 404; *Lundy*, 90 Idaho at 326-27, 411 P.2d at 771-72.

Rule 56(e), I.R.C.P., requires that both supporting and opposing affidavits be made on personal knowledge, set forth facts that would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. Moreover, inadmissible opinions or conclusions do not satisfy the requirements for proof of material facts. *Hecla Mining Co. v. Star-Morning Co.*, 122 Idaho 778, 783-786, 839 P.2d 1192, 1197-1200 (1992); *Evans v. Twin*

Falls County, 118 Idaho 210,213, 796 P.2d 87, 90 (1990), cert. denied, 498 U.S. 1086, 111 S.Ct. 960, 112 L.Ed. 2d 48 (1991); *Gardner v. Evans*, 110 Idaho 925, 930, 719 P.2d 1185, 1190, (1986), cert. denied, 479 U.S. 1007, 107 S.Ct. 645, 93 L.Ed. 2d 701 (1986).

The question of admissibility of affidavit and deposition testimony is a threshold question to be answered by the trial court before applying the required liberal construction and reasonable inferences rule in favor of the party opposing a motion for summary judgment. No objection or motion to strike is required before a trial court may exclude or not consider evidence offered by a party, *Hecla Mining Co.*, 122 Idaho at 784, 839 P.2d at 1198; *Ryan v. Beisner*, 123 Idaho 42, 45, 844 P.2d 24, 27 (Ct.App.1992).

Since defendant Woelk's motion for summary judgment attacks the elements of each of plaintiff Bach's causes of action, rather than the establishment of an affirmative defense, the burden of producing admissible facts to support the elements of each cause of action falls on Bach once Woelk produces admissible facts negating one or more elements of each cause of action. Woelk produced no admissible facts negating any element of Bach's first four causes of action alleging quiet title, and at oral argument counsel for Woelk stated that Woelk claimed no

interest in any of the real properties described in such counts. Therefore, summary judgment cannot be granted to Woelk as to counts one through four.

Woelk produced no admissible facts negating the allegations in count five that Woelk prepared false deeds for Targhee Powder Emporium, Inc., an Idaho corporation, that was incorporated in November, 2000, by Woelk and others. The excerpts from Katherine Miller's deposition taken in CV-01-059 establish that Woelk participated in the incorporation of that entity. The affidavit of Woelk in CV-00-526 dated December 13, 2000, states that Woelk knew of such corporation and at least one deed being attached to said affidavit. Bach's testimony at the preliminary injunction hearing and his affidavits contain evidence that he and other persons, trusts, or partnerships were was using the name "Targhee Powder Emporium, Inc." (although no corporation actually existed) along with other names "Targhee Powder Emporium, Ltd. & Unltd." from 1994 through 2000 in connection with acquiring some of the real property he alleges the title was slandered by the deeds recorded for the new Targhee Powder Emporium, Inc., entity created in November, 2000, by Woelk and others. Woelk's evidence in the present record has not negated any of the elements of slander of title. Woelk has not even filed an affidavit stating that he did not prepare such deeds.

Therefore, summary judgment as to count five must be denied.

Count six alleges intentional interference with contracts, business relationships or economic expectations. These causes of action require that the plaintiff establish "the existence of a contract" or "a valid economic expectancy." *Northwest BEC Corp v. Home Living Serv.*, 236 Idaho 835, 841, 41 P.3d 263, 269 (2002); *Highland Enters., Inc. v. Barker*, 133 Idaho 330, 338, 986 P.2d 996, 1004 (1999).

While Woelk has not produced his own evidence negating the foregoing elements, he argues that the great deal of evidence presented by Bach through affidavit, and court testimony negates Bach's ability to prove these causes of action. This Court has combed Bach's evidence and cannot find that Bach lost any specific contract, business relationship or economic expectation because of Woelk. Since this element is not dependent on any facts that would have to be discovered from the defendant, Bach would have specified the particular contracts, business relationships or economic expectancies lost, if there were any. Bach's own evidence suggests that he cannot prove the first element of the causes of action in count six, and partial summary judgment should be granted dismissing count six as to Woelk. Therefore, the Court should conditionally grant partial summary judgment dismissing this count, unless Bach files within

14 days hereafter an affidavit specifying in detail all contracts, business relationships or economic expectancies he contends were lost.

Count eight alleges that Woelk breached the fiduciary duties owed to Bach as his attorney, breached implied covenants of good faith, and should be subject to a constructive trust as to Bach's property in his possession. This Court previously held in its Third Order on Pending Motions, following an evidentiary hearing at which Bach and Woelk both testified, that no attorney client relationship existed between Woelk or Runyan and Woelk and plaintiff Bach. As such no fiduciary duties existed and no express or implied covenants from an attorney-client relationship existed. Bach's own evidence establishes that Woelk is not in possession of any of Bach's property, with the sole exception of the \$15,000.00 discussed in connection with count nine alleging conversion. Since conversion, if established at trial, is a sufficient remedy, constructive trust would not be appropriate as a matter of law. Therefore, summary judgment dismissing count eight as to Woelk should be granted.

Count nine alleges conversion of \$15,000.00 from Bach's bank account by defendant McLean and retention of such money by Woelk. The letters attached to Bach's affidavit written by Woelk and Bach's affidavit in opposition contain admissible facts from

which a jury could find that Woelk at least temporarily converted the \$15,000.00. While Bach's evidence is not sufficient to grant him summary judgment, if he were the moving party, it is sufficient to deny summary judgment on count nine as to defendant Woelk.

Count twelve alleges that defendant Woelk and other defendants maliciously harassed plaintiff Bach because of his ancestry from Montenegrin parents in violation of Idaho Code §§ 18-7901 et. seq. Again Woelk has filed no affidavit to support his motion for summary judgment. Further, Bach's affidavit states that Woelk called him "Jovan Bachovich," "gave him the finger on 3 occasions," and "said he wanted [Bach] to leave the [Teton] valley and that [Bach] would anticipate that people would harm [Bach] if he didn't leave, and that [Bach's] property would not be there for him to enjoy or own." Bach's evidence interpreted liberally in his favor as the non-moving party is sufficient to survive Woelk's motion for summary judgment as to count twelve.

3. Woelk's Motion for Separate Trials or To Continue Trial.

Defendant Woelk's motion for separate trials under Rule 42(b), I.R.C.P., seeks to sever counts one through five, nine and twelve, and to try such counts in a separate trial six months later. Alternatively, he seeks a continuance of the

FOURTEENTH ORDER ON PENDING MOTIONS

entire trial. Woelk argues that he has not had enough time to conduct discovery. Bach argues that Woelk personally has been involved in several similar lawsuits as attorney for various other defendants, and is familiar with the facts in the first amended complaint that he personally received in late September as attorney for defendant Miller.

Rule 42(b), I.R.C.P., authorizes a district court to sever certain claims against certain defendants and conduct a separate trial "in furtherance of convenience or to avoid prejudice" or when it will be "conducive to expedition and economy."

The record establishes that the first amended complaint was served on Woelk in January, 2003. It could have and should have been served in October, 2002. However, while defendant Woelk filed several motions, he undertook no discovery. Any prejudice suffered by defendant Woelk due to not conducting discovery cannot be placed on plaintiff Bach. Bach has been available for his deposition to have been taken, and through his multiple affidavits in response to motions in this case has produced most of what Woelk would have sought had he conducted discovery. Separate trials are not necessary to obviate any prejudice to defendant Woelk.

Counts one through four as to Woelk could be tried more conveniently later to the Court without a jury, particularly

since Woelk claims no interest in the properties that Bach is trying to quiet title against any interest Woelk might have. Bach's proof at the presently scheduled jury trial as to his interest in the properties described in counts one through four will probably be sufficient for this Court to resolve such counts as to Woelk without repeating such evidence in a second trial. Counts five, nine and twelve can be tried later to a separate jury without causing prejudice to any party. The fact that Bach added the claims against Woelk several months after his initial complaint was filed, even though all the underlying facts had occurred before the first complaint was filed, militates in favor of separate trials. Lastly, it would be more convenient for the court in fashioning jury instructions and for the jury in understanding a very complex and confusing case to try the claims against Woelk separately at a later date. The first trial would be shorter, and the second trial likely with require very little repeat evidence, so two short trials will not be any longer than one long trial. However, a jury trial as to Bach's claims against Woelk need not be postponed for 6 months. The Court has time to hold a second trial in August or September.

Therefore, in the exercise of this Court's discretion, defendant Woelk's motion for separate trials should be granted. The alternate motion for continuance is then moot.

4. Bach's Motion for Summary Judgment.

Plaintiff Bach's motion for summary judgment seeks relief against defendant Miller on counts one through five of the first amended complaint, and dismissal of her counterclaim. Although Bach's supporting affidavit and his "closing brief" filed May 13th arguably allude to his seeking summary judgment against defendant Woelk and other defendants not in default, **the motion itself** clearly only notifies the defendants that the motion is against defendant Miller. The motion is inadequate to notify any other defendants that the motion was against them.

Bach's motion is supported by a verified first amended complaint, several affidavits from him, by his testimony at the hearing on preliminary injunction, and by various documents that would be admissible in evidence. In opposition, Miller filed her own affidavit and a legal memorandum on May 6, 2003. In addition, Miller's counterclaim is verified.

Having reviewed all of the affidavits, the testimony of Bach, and the admissible records, this Court finds that genuine issues of material fact preclude summary judgment on count one of the first amended complaint as to defendant Miller. The 1997

deeds under which Bach claims ownership to the four tracts of land show "Targhee Powder Emporium, Inc." as a grantee, yet the facts indicate that it was not a duly incorporated entity. There is conflicting evidence as to whether the other persons, trusts, corporations, and partnerships that had an interest in Targhee Powder Emporium, Inc., during 1994 through 2000, ever assigned their interest to Bach. The Court can find no written assignment from anyone Bach identified as doing business under the fictitious name of Targhee Powder Emporium, Inc., to Bach as to any of the properties described in count one. Further Miller's verified counterclaim and her affidavit dated May 6, 2003, create a genuine issue of material fact as to whether any oral partnership existed between her and Bach. As to the slander of title cause of action in count five Bach's evidence does not establish that Miller created or recorded any of the deeds in November, 2000 that allegedly slandered Bach's title. Therefore, the Court must deny Bach's motion for summary judgment against defendant Miller as to counts one and five.

Counts two, three and four of Bach's first amended complaint seek to quiet title, enjoin possession and damages as to real property comprising a 1 acre lot on Highway 33, an undivided one-half interest in 8.5 acres adjacent to the lot, 40 acres in the SE1/4SW1/4 of Section 35, T6N, R45E B.M., and 40

acres in the SW1/4SE1/4 of Section 6, T5N, R45 E B.M., all in Teton County, Idaho. Miller's affidavit and verified counterclaim contain no facts from which the Court could find that she has any legal interest in these tracts of real property. Miller's legal memorandum argues that she does not claim any interest in such tracts. Therefore, the Court should grant Bach summary judgment against Miller quieting title against her as to such tracts. Bach's evidence does not contain any facts proving that Miller is in possession of or damaged any of these tracts, so summary judgment as to the injunctive relief and damages cannot be granted on this record.

Miller's counterclaim seeks to quiet title against Bach as two 40 acre tracts and a 6.63 acre tract being 110 foot wide by one half mile long in Sections 10 and 11, T5N, R45E B.M. in Teton County, previously referred to as "Miller Property," "Targhee Property," "Miller Access Parcel," and "Targhee/Miller Property;" to impose a purchase money resulting trust in Miller's favor on such properties; return of \$120,000.00 Miller paid or title to the 80 acres based on fraud by Bach; damages based on breach of fiduciary duty; estoppel based on fraudulent statements; damages for slander of title based on Bach's recording a deed on May 7, 2002; and damages for forcible detainer by Bach's blocking access to such properties;

restitution profits or land obtained by Bach based on unjust enrichment.

Bach's motion for summary judgment as to the counterclaim is based principally on affirmative defenses of the 3 year statute of limitations in Idaho Code § 5-218(4), and discharge of debts by a final order entered December 28, 2001 in the U. S. Bankruptcy Court for Eastern District of California in case 97-31942-A-13L.

In opposition, Miller argues that her claims are based on fraud not discovered until November, 2000 so within the discovery rule for applying I. C. § 5-218(4); that if affirmative relief is barred by the statute of limitations, the counterclaims can be used defensively or as an offset; and that Bach's bankruptcy discharge defense is not supported by legal authority or evidence of the bankruptcy order. By closing brief filed on May 13, 2003, Bach supplied uncertified copies of certain filings in the Chapter 13 Bankruptcy proceeding. However, the record does not contain the Chapter 13 petition, asset disclosure sheet, debt disclosure sheet, of the Chapter 13 plan.

There are genuine issues of material fact as to whether Miller discovered the alleged fraudulent representations in November, 2000, which if interpreted liberally in favor of the

non-moving party Miller would not be barred by the 3 year statute of limitations until after the counterclaim was filed. As the moving party Bach was required by Rule 56, I.R.C.P., to file and serve all evidence, including documents from the Bankruptcy Court record at least 28 days before the hearing on motion for summary judgment. Neither party has supplied this Court with any legal authority as to what causes of action Miller asserts in her counterclaim would be barred by the Bankruptcy discharge order. This Court does not have time to research the effect of the Bankruptcy discharge order, and it is not convinced that quiet title claims, or even damages claims accruing after the petition in bankruptcy was filed (presumably sometime in 1997 as inferred from the case number), are discharged. Therefore, the motion for summary judgment as to the counterclaim must be denied.

5. Bach's Motion to Continue Woelk's Motion for Summary Judgment.

Plaintiff Bach's motion to continue the hearing on defendant Woelk's motion for summary judgment argues that defendant Woelk and other defendants have not provided responses to his discovery. Although the motion asks the Court to also strike defendant Woelk's motion and/or his answer, such relief is not proper, because Bach has provided no foundational showing for striking either document under Rule 12(f) or Rule 37,

I.R.C.P., such relief is not authorized by the Idaho Rules of Civil Procedure.

Defendant Woelk argues in opposition that Bach did not serve any discovery on defendant Woelk.

Having reviewed Bach's discovery requests dated January 18, 2003, it is clear that no discovery was directed to or served on defendant Woelk personally with the first amended complaint or on his counsel after appearing of record. Further, Bach has not supplied the affidavit required under Rule 56(f), I.R.C.P., outlining **what** facts necessary to oppose the motion for summary judgment cannot be presently obtained, or **why** such facts cannot be presented by affidavit in opposition to Woelk's summary judgment motion. Lastly, this Court is denying defendant Woelk's motion for summary judgment except as to dismissal of counts six where Bach did not show any specific contracts, business relationships or economic expectancies lost (facts that Bach should know, not the other defendants) and count eight where this Court held an evidentiary hearing and Bach was able to cross examine Woelk.

Therefore, the Court must deny Bach's motion to continue the hearing on defendant Woelk's motion for summary judgment.

6. Dawsons' Renewed Motion to Set Aside Clerk's Default.

Defendant Wayne Dawson and his wife Donna Dawson's renewed motion to set aside clerk's default under Rule 55(c), I.R.C.P., was served on May 6, 2003, and is supported by the affidavits of Wayne Dawson and counsel Jared Harris, a proposed verified answer, and a legal memorandum. Bach filed a memorandum in opposition.

On April 2, 2003, this Court denied defendant Wayne Dawson's original Rule 55(c) motion to set aside clerk's default because Dawson did not show good cause and presented no facts establishing a meritorious defense. See *Eleventh Order on Pending Motions*. Although Dawson calls his motion "renewed" it is really a motion for reconsideration under Rule 11(a)(2)(B), I.R.C.P. This Rule provides that motions to reconsider interlocutory orders must be filed "not later than fourteen (14) days after the entry of the final judgment." Since no final judgment has been entered, the motion for reconsideration is timely.

As pointed out in this Court decision on Dawson's original Rule 55(c) motion, what a moving party must establish as "good cause" for setting aside a clerk's default was explained by the Idaho Court of Appeals decision of *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (App. 1993). As explained by *McFarland*,

"detailed facts" establishing a meritorious defense must be shown by affidavit.

The affidavit filed by Dawson contains at most legal conclusions, without any factual basis, that "there is currently pending in Federal Court a lawsuit between Mr. Bach and myself regarding ownership of the 40 acres," and "I own a ½ interest in approximately 8.5 acres. The other owner of that co-interest is not my concern. That I am opposed to the partitioning of this property." Such conclusions are inadequate for this Court to find that Dawson really has a "meritorious defense." This Court has already held that the federal action John N. Bach v. Teton County, et. al., CV-01-266-E-TGN (Judge Thomas G. Nelson, 9th Circuit Judge sitting by designation) is not dispositive as to most of the causes of action alleged in Bach's first amended complaint. Dawson does not oppose Bach has an undivided interest in the 8.5 acres, and no facts to prevent partition as stated in the affidavit. In short, Dawson fails to meet his burden under *McFarland*.

Donna Dawson is not a party to this action. The first amended complaint names only Wayne Dawson. *Id.* at ¶ 3(j). While the first amended complaint names several Doe defendants, leave of court was not obtained to amend it to name Donna Dawson as a defendant. Donna Dawson could not be expected to know that she

is a Doe defendant from reading the first amended complaint. No default should have been entered against Donna Dawson.

Therefore, the Court must deny defendant Wayne Dawson's motion, but grant non-party Donna Dawson's motion.

7. Miller's Motion for Rule 11 Sanctions Against Bach.

Defendant Miller's motion for Rule 11 sanctions against plaintiff Bach argues that the eight motions Bach pursued against Miller decided by this Court's Thirteenth Order on Pending Motions caused her to incur \$1,700.00 in attorney fees to respond. She argues that attorney fees in that amount should be awarded against Bach because his motions were presented for the improper purposes of creating unnecessary delay, and lacked any legal support. Miller seeks these attorney fees from the surety bond posted by Bach for the preliminary injunction pursuant to Rule 65(c), I.R.C.P.

Plaintiff Bach filed a memorandum in opposition, arguing that Miller did not file an affidavit detailing how the \$1,700.00 in attorney fees were calculated, that he did not get 17 days notice of the motion before the hearing, and that Miller's motion and memorandum do not specify how Bach's legal authority was lacking.

While technically Bach was entitled to a couple more days notice, he has shown no prejudice from the shortened notice of

the motion. The record is devoid of how Miller incurred \$1,700.00 in attorney fees in responding to Bach's motions. The Court's review of Miller's opposition memoranda, and the lack of any significant legal research done, causes it also to question the reasonableness of attorney fees sought as a Rule 11 sanction. The Court cannot disturb the Rule 65(c) security as a source for money to pay Rule 11 sanctions.

Having again reviewed Bach's motions, briefs, and affidavits, and Miller's opposition memoranda, and this Court's Eleventh Order on Pending Motions, the Court hereby finds that Bach's earlier motions were not all in violation of Rule 11. However, this Court now finds that Bach's motion for default against Miller and his motion to strike Miller's answer and counterclaim were **not** well grounded in fact, **not** warranted by existing law, or extension, modification or reversal of law, and that such motions were interposed only to harass Miller. The **reasonable** expenses and attorney fees incurred by Miller as a result of such motions was \$400.00.

Therefore, the Court must grant defendant Miller's motion in part, but otherwise deny it.

8. Miller's Motion to Continue Jury Trial.

Defendant Miller's motion to continue jury trial is based on plaintiff Bach's failure to adequately respond to her discovery

requests served on March 31, 2003. Plaintiff Bach filed an opposition memorandum arguing that he responded to the discovery.

This action was filed in July, 2002. The first amended complaint was filed in September, 2002. The fact that defendant Miller decided not to undertake any discovery until March 31, 2003 does not support a continuance of the jury trial, where the plaintiff has been available to respond to written discovery and have his deposition taken. Most of the subject matter of this action has been alleged a number of prior state and federal actions between Miller and Bach, yet for one reason or another no decision on the merits has been reached. Discovery was conducted in some of the earlier actions. Plaintiff Bach has supplied numerous facts through his testimony at hearings in this action and by numerous affidavits. Further on May 20, 2003, this Court overruled any privilege objections and ordered Bach to fully respond to Miller's discovery.

There is no reason why Miller should not be ready for the jury trial that was scheduled with six months prior notice. Therefore, the Court must deny this motion.

III. ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that

1. defendant Runyan's motion to dismiss is GRANTED, and the first amended complaint is dismissed without prejudice as to defendant Runyan;

2. defendant Woelk's motion for summary judgment is partially GRANTED as to counts six unless plaintiff Bach files an affidavit within 14 days specifying lost contracts, business relationships and economic expectancies; the motion is partially GRANTED as to count eight, but DENIED as to counts one through five, nine and twelve;

3. defendant Woelk's motion for separate trials is GRANTED, and trial as to Woelk on counts one through five, nine and twelve shall be held separately in August or September, 2003; a pretrial conference shall be held at the Teton County Courthouse at 3:00 p.m. on July 18, 2003 with plaintiff Bach and defendant Woelk required to attend with their available trial dates for August and September; Woelk's alternate motion to continue is MOOT;

4. plaintiff Bach's motion for summary judgment against defendant Miller is GRANTED IN PART as to quieting title against Miller to properties described in counts two, three and four of the first amended complaint, but DENIED in all other respects;

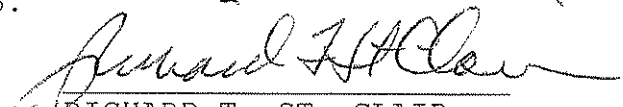
5. plaintiff Bach's motion to continue the hearing on defendant Woelk's motion for summary judgment is DENIED;

6. defendant Wayne Dawson's renewed motion to set aside clerk's default is DENIED, non-party Donna Dawson's motion to set aside clerk's default is GRANTED;

7. defendant Miller's motion for Rule 11 sanctions against plaintiff Bach is GRANTED IN PART, and plaintiff Bach shall pay \$400.00 within 10 days to defendant Miller, but otherwise the motion is DENIED;

8. defendant Miller's motion to continue jury trial is DENIED.

DATED this 28th day of May, 2003.



RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of May, 2003, 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
P. O. Box 101
Driggs, ID 83422
Telefax Nos. 626-441-6673
208-354-8303

(TELEFAX & MAIL)

Alva Harris
P. O. Box 479
Shelley, ID 83274
Telefax No. 208-357-3448

~~(TELEFAX & MAIL)~~
NOT OPERABLE

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)

RONALD LONGMORE
Clerk of Court

M Southwick
Deputy Court Clerk

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

FILED
2:51
MAY 29 2002
TETON CO.
DISTRICT COURT

JOHN N. BACH,)
)
Plaintiff,)
)
vs.)
)
KATHERINE D. MILLER, aka)
KATHERINE M. MILLER, ALVA)
A. HARRIS, individually and)
dba SCONA, INC., a sham entity)
JACK LEE McLEAN, BOB)
FITZGERALD, OLE OLESON, BIB)
BAGLEY and MAE BAGLEY, husband)
and wife, BLAKE LYLE,)
Individually and dba GRANDE)
TOWING, and DOES 1 through 30,)
Inclusive,)
)
Defendant(s).)

MINUTE ENTRY
Case No. CV-2002-208

On the 20th day of May, 2003, Defendant Runyan's motion to dismiss under Rule 4(a)(2) IRCP for plaintiff's failure to serve amended complaint within 180 days, Defendant Woelk's motion for summary judgment as to amended complaint under Rule 56 IRCP, Defendant Woelk's motion to sever plaintiff's causes of action as to Woelk to be tried in six months, Bach's motion for summary judgment as to defendant Miller for relief under first amended complaint and for dismissal of Miller's counterclaim, Defendant Miller's motion to compel discovery under Rule 37 against Bach, Bach's motion to continue Woelk's motion for summary judgment under Rule 56(f), Defendant Dawson's renewed motion to set aside

clerk's default under Rule 55(c) and to shorten time, Defendant Miller's motion for Rule 11 sanctions against Bach, Defendant Miller's motion for continuance of jury trial, came before the Honorable Richard T. St. Clair, District Judge, in open court at Idaho Falls, Idaho.

Mr. Ross Oviatt, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. John Bach appeared pro se on his own behalf as Plaintiff.

Mr. Galen Woelk appeared on behalf of Defendant Katherine Miller.

Mr. Jason Scott appeared on behalf of Defendant(s) Galen Woelk dba Runyan & Woelk.

Mr. Jared Harris appeared on behalf of Defendant Wayne Dawson.

Mr. Scott presented Defendant Runyan's motion to dismiss under Rule 4(a)(2) IRCP for plaintiff's failure to serve amended complaint within 180 days. Mr. Bach argued in opposition to the motion. Mr. Scott presented rebuttal argument. The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Scott presented Defendant Woelk's motion for summary judgment as to amended complaint under Rule 56 IRCP. Mr. Bach argued in opposition to the motion. Mr. Scott presented rebuttal argument. The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Scott presented Defendant Woelk's motion to sever

plaintiff's causes of action as to Woelk to be tried in six months. Mr. Bach argued in opposition to the motion. Mr. Scott presented rebuttal argument. Mr. Woelk joined in the motion. The Court will take the motion under advisement and issue an opinion as soon as possible.

Mr. Bach presented Bach's motion for summary judgment as to defendant Miller for relief under first amended complaint and for dismissal of Miller's counterclaim. Mr. Woelk argued in opposition to the motion. Mr. Bach presented rebuttal argument.

The Court will take the motion under advisement and issue an opinion as soon as possible.

Mr. Woelk presented Miller's motion to compel discovery under Rule 37 against Bach. Mr. Bach argued in opposition to the motion. Mr. Woelk presented rebuttal argument. The Court overruled objection, granted the motion, and ordered Mr. Bach to respond fully and completely by providing documents to the Copy Cabin for copying by Mr. Woelk at his expense by Friday, May 23, 2003, at 5:00 p.m. The Court awarded \$100.00 attorney fees from Mr. Bach to Mr. Woelk. Mr. Woelk will prepare a written order.

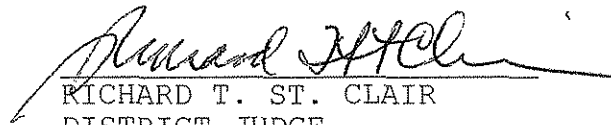
Mr. Bach presented Bach's motion to continue Woelk's motion for summary judgment under Rule 56(f). Mr. Scott argued in opposition to the motion. The Court will take the motion under advisement and issue an opinion as soon as possible.

Mr. Jared Harris presented Defendant Dawson's renewed motion to set aside clerk's default under Rule 55(c) and to shorten time. Mr. Bach argued in opposition to the motion. Mr. Jared Harris presented rebuttal argument. The Court will take the

motion under advisement and issue an opinion as soon as possible.

Mr. Woelk presented Defendant Miller's motion for Rule 11 sanctions against Bach and Miller's motion for continuance of jury trial. Mr. Bach argued in opposition to the motion. Mr. Woelk presented rebuttal argument. Mr. Bach presented surrebuttal argument. The Court will take the motion under advisement and issue an opinion as soon as possible.

Court was thus adjourned.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

H:21bach.mine

CC8367 @2840 full over to CC8368 full over to CC8373

CERTIFICATE OF MAILING

I certify that on the 22nd day of May, 2003, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE

R. Southwick
Deputy Court Clerk

John N. Bach
1958 S. Euclid Ave.
San Marino, CA 91108
(626) 799-3146
PO Box 101
Driggs, ID 83422
FAX (208) 354-8303

Alva N. Harris
PO Box 479
Shelley, ID 83274
(208) 357-3448
FAX (208) 357-3448

Galen Woelk
PO Box 533
Driggs, ID 83422
FAX (208) 354-8886

Jared Harris
PO Box 577
Blackfoot, ID 83221

Jason Scott
PO Box 100
Pocatello, ID 83204

Teton County Clerk
Teton County Courthouse
ATTN: PHYLLIS
89 N. Main, Ste 1
Driggs, ID 83422
FAX (208) 354-8496

000536

Ronald E. Bush, ISB No. 3066
Jason D. Scott, ISB No. 5615
HAWLEY TROXELL ENNIS & HAWLEY LLP
333 South Main Street
P.O. Box 100
Pocatello, ID 83204-0100
Telephone: (208) 233-0845
Facsimile: (208) 233-1304
E-mail: REB@hteh.com

FILED
3:01
MAY 29 2002
TETON CO.
DISTRICT COURT

Attorneys for Defendant Galen Woelk, individually & dba Runyan & Woelk

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

JOHN N. BACH,)	
	)	Case No. CV-02-0208
Plaintiff,)	
	)	EXHIBIT LIST
vs.)	
)	
KATHERINE D. MILLER, aka KATHERINE)	
M. MILLER, Individually and dba R.E.M., et)	
al.,)	
)	
Defendants.)	
)	

Pursuant to section II(2) of the Order and Notice Setting Jury Trial entered by the Court on November 27, 2002, Defendant Galen Woelk, individually & dba Runyan & Woelk, submits this list of the exhibits he may offer into evidence at trial:

1. November 3, 2000 letter from Woelk to Laura Lowery
2. November 16, 2000 letter from Woelk to Laura Lowery
3. Affidavit of Alva Harris dated November 17, 2000
4. Memorandum Decision dated December 28, 2000
5. Motion to Dismiss and Memorandum in Support of Motion to Dismiss dated December 20, 2000

6. Photos of Miller property dated October 27, 2000, October 4, 2000, November 8, 2000, and September 22, 2000
7. Motion to Dismiss dated December 13, 2000
8. August 2, 2000 letter from Cody Runyan to Plaintiff
9. August 3, 2000 letter from Plaintiff to Runyan & Woelk
10. September 18, 2000 letter from Laura Lowery to Runyan & Woelk
11. July 12, 2000 letter from Woelk to Plaintiff
12. July 10, 2000 letter from Plaintiff to Miller
13. Verified Complaint dated May 19, 2000
14. May 2, 2001 order to dismiss
15. November 17, 2000 criminal complaint
16. January 31, 2000 memorandum in support of motion to dismiss
17. March 23, 2001 order denying motion to dismiss
18. January 22, 2001 order denying motion to dismiss
19. April 20, 2001 motion to dismiss
20. April 2, 2001 order
21. September 22, 2000 letter from Bach to Laura Lowery
22. January 30, 2001 criminal information
23. Verified Complaint dated February 9, 2001
24. March 28, 2001 letter from Kenneth Stringfield
25. November 28, 2000 letter from Plaintiff to Mark Liponis
26. November 29, 2000 letter to Plaintiff from Mark Liponis
27. November 30, 2000 letter from Woelk to Laura Lowery
28. November 22, 2000 letter from Woelk to Laura Lowery
29. November 22, 2000 letter from Plaintiff to Jack McLean
30. November 30, 1997 letter from Plaintiff to Jack McLean

31. Signature card for Liponis Emporium trust account
32. Joint Venture Agreement dated July 7, 1994
33. December 11, 2000 letter from Plaintiff to Laura Lowery
34. All exhibits listed or utilized at trial by any other party to this action

DATED THIS 27th day of May, 2003.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By Jason D. Scott
Jason D. Scott
Attorneys for Defendant Galen Woelk, individually
& dba Runyan & Woelk

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of May, 2003, I caused to be served a true copy of the foregoing EXHIBIT LIST by the method indicated below, and addressed to each of the following:

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

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☒ Telecopy

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

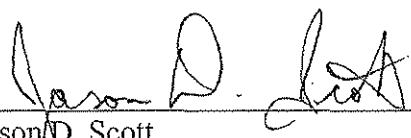
☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

Galen Woelk
Runyan & Woelk, P.C.
P.O. Box 533
Driggs, ID 83422

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy

Jared M. Harris
Baker & Harris
P.O. Box 577
Blackfoot, ID 83221

☒ U.S. Mail, Postage Prepaid
☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Jason D. Scott

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

FILED
2:57
MAY 29 2002
TETON CO.
DISTRICT COURT

Attorney for Defendants Harris, Fitzgerald, Lyle and Olson
McLean, and Scona, Inc.

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

JOHN N. BACH,)	
	)	Case No. CV-02-0208
Plaintiff,)	
vs.	)	NOTICE OF HEARING
)	
KATHERINE D. MILLER, etal	)	MOTION TO SET ASIDE
Defendants.	)	DEFAULT
	)	AND
	)	MOTION TO REINSTATE
	)	ANSWER

NOTICE IS HEREBY GIVEN that Alva A. Harris, attorney for Defendants herein, requests that a hearing be held upon their Motion to Set Aside Default and their Motion to Reinstate Answer on Friday, the 30th day of May, 2003, at 3:30 p.m., or as soon thereafter as counsel can be heard, at the Courtroom of the above-named court in Driggs, County of Teton, State of Idaho. This motion is supported by the Affidavit attached hereto and by the IRCP Rules cited in said Motions.

DATED this 23th day of May, 2003.



Alva A. Harris

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22h day of May, 2003, I served a true and correct copy of the following described document on the Plaintiff and attorney's listed below by depositing the same in the United States mail, with the correct postage thereon, in envelopes addressed as follows:

Document Served: NOTICE OF HEARING, MOTION TO SET ASIDE DEFAULT,
MOTION TO REINSTATE ANSWER

Plaintiff Served: John N. Bach, Pro Se
1858 S. Euclid Ave.
San Marino, CA 91108

Counsel Served: Galen Voelk, Esq.
PO Box 533
Driggs, Idaho 83422

Jason Scott, Esq.
Ron Bush, Esq.
PO Box 100
Pocatello, Idaho 83204

Jared Harris, Esq.
PO Box 577
Blackfoot, Idaho 83221

Court Services: Hon. Richard T. St. Clair, District Judge
605 N. Capital Ave.
Idaho Falls, Idaho 83402

Teton County Clerk
89 N. Main, Ste 1
Driggs, Idaho 83422



Alva A. Harris

Alva A. Harris
Attorney at Law
171 South Emerson
P.O. Box 479
Shelley, Idaho 83274
(208) 357-3448
Idaho State Bar No. 968

Attorney for Defendants Harris, Fitzgerald, Oleson, Lyle, McLean, and Scona,
Inc.

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

JOHN N. BACH,)	
	)	CIV-02-208
Plaintiff,)	
vs.	)	AFFIDAVIT OF
)	
KATHERINE D. MILLER, et al	)	ALVA A. HARRIS
)	
	)	IN SUPPORT OF MOTIONS
Defendants.)	

STATE OF IDAHO)
ss.
County of Bingham)

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

1. That he is the attorney for Defendants Harris, Fitzgerald, Oleson, Lyle, McLean and Scona, Inc..
2. That this affidavit is given according to my own personal knowledge.
3. That this affiant received from this Court its "Thirteenth Order on Pending Motions" dated May 6, 2003, at the conclusion of a hearing in this

matter on May 20, 2003. No mailed copy has ever been received by affiant and affiant does not employ fax methods.

4. On page 5 of the "Thirteenth Order" their appears to be a clerical error. It writes,

"The record establishes that on January 27, 2003, a clerk's default was entered against these defendants. Apparently those defendants filed an answer sometime thereafter,"

5. This Court's "Eighth Order on Pending Motions" was filed in Chambers of March 4, 2003, and mailed to this counsel. Receipt should have been within 3 days. Therein these Defendants were first informed that their Rule 12 (b) motion against the amended complaint was denied. Under the applical IRCP rules these Defendants could not have been in default until at least 10-13 more days had lapsed from March 4, 2003.

6. On March 19, 2003, this affiant, in compliance with the Court's "Eighth Order" of March 4, 2003, filed these Defendant's "Answer" and "Demand for Jury Trial" and also their "Objection to Request For Production of Documents" by mailing. The certificates thereon are undisputed and the address of Plaintiff is correctly marked as 1858 South Euclid Avenue, San Marino, CA 91108. Plaintiff's filing described below in paragraph 9 evidences his receipt thereof.

7. Affiant did not mail a copy of the same to this Court in chambers because the instructions received from this Court in the last paragraph of its "Eighth Order" was taken to mean that only motions, and the documents related thereto, were to be sent to this Court in Chambers.

8. On or about March 31, 2003, this affiant received from Plaintiff a filing marked as having been filed in Teton County on March 28, 2003. It is entitled "Affidavit of Plaintiff John N. Bach, re Clerk's Irregularities/Actions...."

9. The second document enclosed in the above filing was concerning an "affidavit for entry of default" against these Defendants and was dated March

18, 2003; the third and fourth documents enclosed in the above filing gave notice to this affiant that a purported "Default" against these Defendants had been filed dated March 19, 2003. The same date affiant filed his Answer, etc. pleadings by mail.

10. On April 1, 2003, the next day, this affiant filed a Motion to Set Aside Default. Before this Affiant could determine the next hearing date scheduled he was stricken with kidney stones and related fever. He was out of the office for most of the next 5 weeks.

11. This affiant has never received any notice of any kind from the Clerk of the Court that any Default against these Defendants had been lodged.

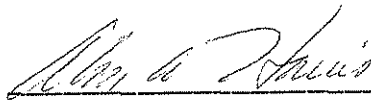
12. This affiant has never received any notice of any type from Plaintiff on an intention to take Default.

13. Affiant is a sole practioner and cannot spend his full time on Bach cases. Affiant has always resisted the multitude of litigation filed by Bach and these Defendants have valid and legal defenses against this Plaintiff.

14. Affiant feels that the granting of these Defendants Motions will not predudice any party to this case.

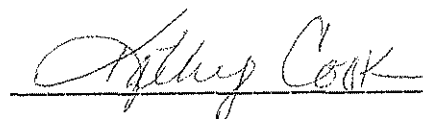
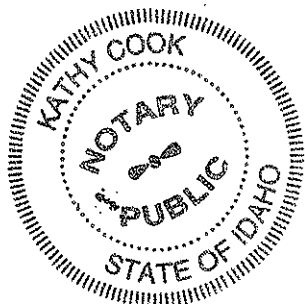
15. Further this affiant sayeth naught.

Dated this 22 day of May, 2003.



Alva A. Harris

SUBSCRIBED AND SWORN TO before me this 22 day of May, 2003.



Notary Public for Idaho

Residing at Shelley, Idaho

My comm. expires: 10-27-2006

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel; (626) 799-3146
(Seasonal: P.O. Box 101
Driggs, ID 83422
Tel: (208) 354-8606
Plaintiff & Counterclaim
Defendant Pro Se

FILED
9:36
MAY 30 2002
TETON CO.
DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff & Counter-
claim Defendant,

v.

KATHERINE D. MILLER, aka
KATHERINE M. MILLER, Individ-
ually and dba R.E.M. et al.,

Defendants &
Counterclaimant.

CASE NO.: CV 02-208

PLAINTIFF & COUNTERCLAIM
DEFENDANT JOHN N. BACH'S
TRIAL BRIEF NO. TWO (2)
DEFENDANT & COUNTERCLAIMANT
MILLER'S ANSWER & ALL COUNTER-
CLAIMS ARE BARRED AS A MATTER
OF BOTH FACT AND LAW-BY MILLER'S
DISCHARGE OF CLAIMS AGAINST BACH
IN HIS CHAPTER 13 BANKRUPTCY &
PER THE WRITTEN UNDISPUTE SETTLE-
MENT AGREEMENT OF OCTOBER 3, 1997.

(ALSO CITED/PRESENTED FOR PLAIN-
TIF'S MOTIONS IN LIMINE TO BE
FILED HEREIN.)

This Plaintiff's and Counterclaim Defendant's, John N. Bach's Trial Brief N. TWO (2) addresses the inadvertent nonconsideration of both admitted/established/proven facts and law, which this Court did not apply in it's FOURTEENTH ORDER ON PENDING MOTIONS, filed May 28, 2003, 2:03 p.m., a copy of which was not physically received until 1:30 p.m., Thursday, May 29, 2003.

This Court's FOURTEENTH ORDER, page 17, center full paragraph, inappropriately, if not mistakenly, did not consider either, admitted Plaintiff's Exhibit 1, Documents from CV 01-59, and the application of I.R.E., Rule 901(a)(b)(1) ["Testimony of witness with knowledge. Testimony of a witness with knowledge that a matter is what it is claimed to be true."], Rule 902(10) ["Presumptions created by law. Any signature, document, or other matter declared by any law of the United State or of this State, or rule prescribed by the

Idaho Supreme Court, to be presumptively or prima facie genuine or authentic."], said Rule 803(6) [Records of regularly conducted activity,], which letter from Chapter 13, Trustee, Loheit of January 10, 2002 with copies of FINAL DECREE APPROVING TRUSTEE'S FINAL REPORT AND ACCOUNT, DISCHARGING TRUSTEE AND CLOSING DATE, dated 12-28-01, with said date filed stamp, FINAL REPORT AND ACCOUNT, filed Dec. 28, 9:33 a.m., showing that "KATHY D. MILLER" was named as a creditor, filed no claim and was discharged, all of said copies being Defendant's Exhibit 9, pages 1-4, but was admitted during the August 13, 2002 hearing via plaintiff JOHN N. BACH's testimony and authentication of said documents as true and correct, all part of Plaintiff's Exhibit "1" herein & reaffirmed by plaintiff's affidavits.

Also overlooked, which was more than significant was the next Exhibit "X", copy of which was attached to plaintiff's closing brief re support of his motions for summary judgment, but said copy has already been admitted herein on August 13, 2002 and testified, authenticated and identified by plaintiff to be entirely in Miller's handwriting, which handwritten note she has neither denied nor even mentioned in the invalid affidavit she filed in opposition to said plaintiff's summary judgment motions. (NOTE: Miller's affidavit, her answer and counterclaim are not properly under sworn oath, of her own personal knowledge affidavit which precluded this court from considering anything she may have stated in her said purported affidavit, answer or counterclaims, as such were not controverting affidavits or properly sworn of personal knowledge pleadings per Rule 56(e).)

All of said copies from Loheit and Miller handwritten letter, were plaintiff's business records, "kept in the regular practice of his business activity" as so provided in I.R.E., Rule 803(6), which includes "business, institution, association, profession, occupation

and calling of every kind, whether or not conducted for profit." The Chapter 13 petition, proceedings therein/therewith and the Order of Discharge, etc., comes within said definitions and enumerations on both sides, from the Chapter 13 Trustee's side and JOHN N. BACH's side, as both a petitioner therein and plaintiff/counterclaimant defendant herein. Said records and Miller's handwritten letter, the latter admitting she knew of John N. Bach's pending bankruptcy and her advice to him, re seeking a quit claim deed, also come within the hearsay exceptions of said Rule 803(14) (15) and (24) (A) (B) and (C), and as to the latter rules, subpart (24) Miller has had more than multiple notices and knowledge of said trustee's records and her written note in advance, as both were utilized not just in Teton CV 01-59, which was dismissed with prejudice, but also in USDC, Idaho, CV 01-266.

More significantly, overlooked and not considered nor applied, is that the Bankruptcy Court has still, and had exclusive jurisdiction over Miller's affirmative defenses and counterclaims as well as even cross claims and third party claims. Plaintiff cited to this Court per his initial brief re support of preliminary injunction a number of Ninth Circuit Court of Appeals cases, that hold, citing U.S. Supreme Court decisions and the Chapter 13, Bankruptcy federal statutes and especially of the automatic stay order and said bankruptcy's court's exclusive, sole and all inclusive jurisdiction, that MILLER has no standing, capacities nor rights of any kind to make any claims vs. JOHN N. BACH, individually or in any associational, dba or other entity affiliation capacities; the sole and exclusive jurisdiction of said claims, if Miller ever had them or still possesses them is to petition for relief in said bankruptcy court wherein she was discharged and precluded from making any claims whatsoever against plaintiff and counterclaim defendant JOHN N. BACH.

Attached hereto, is the complete copied decision of McGhan v. Rutz, (9th Cir., May 7, 2002, D.A.R. 4968471, which unequivocally and uncontradictorily, establishes that a state court lacks total jurisdiction as to a bankruptcy proceeding, even lacks jurisdiction to determine whether creditor received adequate notice of discharge in bankruptcy, and as stated pertinently to the preclusion of this Idaho Court from allowing Miller to proceed with her affirmative defenses, counterclaims, etc., as follows:

"Our extension of Gruntz to modifications of the discharge order and discharge injunction flows naturally from the policy concerns that informed our decision there. Our decision was animated by our concern that permitting a state court to modify the federal automatic stay 'would undermine the principle of a unified federal bankruptcy system as declare in the Constitution and realized through the Bankruptcy Code.' 202 F.3d at 1083. 'If state courts were empowered to issue binding judgments modifying the federal injunctions created by the automatic stay, creditors would be free to rush into friendly courthouses around the nation to garner favorable relief.' Id. at 1083-83. The same concerns arise when California [Idaho] courts purport to modify a discharge order and to grant relief from the bankruptcy court's permanent injunction." (See lower left paragraph page 4970)

McGhan, supra, also invalidates any order, ruling or judgment adversetto JOHN N. BACH in that action entitled SCONA, INC., an Idaho Corp., Plaintiff v. JOHN N. BACH and TARGHEE POWDER EMPORIUM, UNLTD, as nominee of JOHN N. BACH, Defendants., Teton CV 98-025. SCONA, INC., and ALVA A. HARRIS are both in default in this action and defendants BRET & DEENA R. HILL have admitted all the facts and circumstances of the FIRST AMENDED COMPLAINT, thus, plaintiff is entitled to judgement of quieting title, along with a writ of assistance and/or possession under his THIRD COUNT, pages 16-17, with further award of damages per IRCP, Rule 55(b)(2). (See also copy attached of JOHN N. BACH's FURTHER BRIEF, etc., filed Sept. 24, 1998, in Teton CV 98-025.

BUT MOST SIGNIFICANTLY OVERLOOKED BY THE COURT IN SAID

ORDER, is the unquestioned, unassailed and uncontroverted

SETTLEMENT AGREEMENT entered into between plaintiff JOHN N. BACH, and as nominee, C.E.O., and as sole owner of TARGHEE POWDER EMPORIUM, INC., (an unformed and nonexisting corporation, and in fact a solely owned, and under a dba designation, individually by JOHN N. BACH), with KATHERINE M. MILLER, a single women, who was represented by counsel, Charles (Chuck) Homer, such being EXHIBIT "H" to the AFFIDAVIT OF JOHN N. BACH, filed herein April 18, 2003, in support of his motions for summary judgment. Said affidavit and all exhibits thereto and requested judicial notice of various Teton County actions was filed more than 31 days before May 20, 2003, the hearing date on his summary judgment motions.

BUT EVEN MILLER & HER COUNSEL, UTTERLY FAILED, IGNORED AND AVOIDED MAKING ANY COMPETENTLY ~~CONTESTIBLE~~ FACT OR STATEMENT, UNDER OATH, ON PERSONAL KNOWLEDGE, THAT SAID SETTLEMENT AGREEMENT WAS NOT EFFECTIVE, OR THAT MILLER DENIED IT OR THAT SOMEHOW EXTRINSIC FRAUD PRECLUDED IT'S EFFICACY AND APPLICATION AS BARRING, BY WAIVER, FOREVER RELEASES AND DISCHARGES of "Targhee and Bach and all of their present and past employees, attorneys, insurers and agents and each of them from any and all claims, demands, debts, liabilities, accounts, obligations, costs, expenses, liens, actions, and causes of action of every kind and nature, whether or known or unknown, suspected or unsuspected, that Miller now owns or holds or at any time heretofore has owned, or held, based upon, or related to, or by reason of any contract, liens, liability, matter, cause, fact, thing, act, or omission whatever." THUS, MILLER, WHO HAS NOT AVERRED ANY EXTRINSIC FRAUD THAT WOULD INVALIDATE SAID SETTLEMENT AGREEMENT, IS BARRED, PRECLUDED, AND ESTOPPED, BY THE VERY TERMS OF SAID AGREEMENT FROM ANY AFFIRMATION DEFENSES, COUNTERCLAIMS OR CROSSCLAIMS, ETC., AGAINST JOHN N. BACH, TARGHEE POWDER EMPORIUM, INC., OR ANY TRUST KNOWN AS THE VASA N. BACH, PLT'S TRIAL BRIEF NO. TWO (2) Page 5. 000545

BANKRUPTCY

State court lacks jurisdiction to determine whether creditor received adequate notice of discharge in bankruptcy proceeding.

Cite as 2002 DJDAR 4968

In re: LON MCGHAN, aka Lon L. McGhan fdba
Envirotrend, Inc. fdba McGhan Management,
Debtor.

LON MCGHAN,
Appellant,
v.
JASON RUTZ,
Appellee.

No. 99-56956
BAP No. CC-99-01219-PaMeMa
United States Court of Appeals
Ninth Circuit
Filed May 7, 2002

Appeal from the Ninth Circuit Bankruptcy Appellate Panel
Pappas, Meyers and Marlar, Judges, Presiding

Argued and Submitted May 10, 2001--Pasadena, California

Before: M. Margaret McKeown and Raymond C. Fisher,
Circuit Judges, and David W. Hagen, District Judge.
Opinion by Judge Fisher

COUNSEL

John C. Tobin, Hanover & Schnitzer, San Bernardino,
California, for the debtor-appellant.

William J. Light, David B. Felsenthal, Law Offices of
Todd Rash, Riverside, California, for the appellee.

OPINION

FISHER, Circuit Judge:

Appellee Jason Rutz was a listed creditor in his stepfather's -- appellant Lon McGhan -- bankruptcy proceedings. Rutz, a minor at the time, did not file a complaint of nondischargeability in those proceedings. As a result, the bankruptcy court issued an order discharging Rutz's claim and issued a permanent injunction barring Rutz from collecting on the debt. After Rutz attained maturity, he nonetheless filed a civil action against McGhan to collect on the discharged debt. Over McGhan's objections, the state court in which that action was filed ruled that Rutz's action could proceed because Rutz had inadequate notice of the earlier bankruptcy proceedings. Arguing that only the bankruptcy court had jurisdiction to resolve that question, McGhan then moved the bankruptcy court to reopen his bankruptcy case to review the state court's decision. The bankruptcy court denied the motion, reasoning that McGhan's desire to relitigate an issue already heard in state court was insufficient cause to reopen the case. We reverse. Relying on *Gruntz v. County of Los Angeles* (In re Gruntz), 202 F.3d 1074 (9th Cir. 2000) (en banc), we hold that state courts lack jurisdiction to determine whether a listed and scheduled creditor received adequate notice of discharge proceedings. We also hold that the state court lacked authority to modify the bankruptcy court's orders discharging Rutz's claim and permanently

enjoining Rutz from collecting on the debt. In light of those holdings, we conclude that it was an abuse of discretion for the bankruptcy court to decline to reopen McGhan's bankruptcy case. The bankruptcy court was required to reopen the proceedings to protect its exclusive jurisdiction over the enforcement of its own orders.

FACTS AND PROCEDURAL BACKGROUND

In 1991, McGhan was charged with five counts of sexual molestation of Rutz, his stepson. At the time the charges were filed, Rutz was 12 years old. McGhan pled guilty to one count of felony violation of California Penal Code § 288(a) (lewd and lascivious acts committed on a child under 14).

Shortly after his conviction, McGhan filed a voluntary petition for bankruptcy under Chapter 7 of the Bankruptcy Code. When a debtor files a Chapter 7 petition, the debtor lists each of his creditors. The appointed bankruptcy trustee convenes a meeting of these creditors pursuant to 11 U.S.C. § 341(a). All creditors must receive at least 30 days' advance notice of the creditors' meeting. Rule 4007(c). Within 60 days after the date first set for that meeting, any creditor wishing to have a debt characterized as nondischargeable must file a complaint alleging nondischargeability of the debt. Id. If the creditor has adequate notice of the meeting but fails to make a timely complaint, his claim is automatically discharged pursuant to § 523(c)(1). Although debts for intentional torts such as Rutz's claim ordinarily are not dischargeable under § 523(a)(6) of the code, which states that debts for "willful and malicious injury" are nondischargeable, such claims will be discharged automatically if the listed creditor fails to make a timely objection. When a debtor is discharged under the Bankruptcy Code, the discharge "operates as a permanent injunction against any attempt to collect or recover on a . . . debt." *Irizarry v. Schmidt* (In re Irizarry), 171 B.R. 874, 878 (B.A.P. 9th Cir. 1994); accord *Am. Hardwoods, Inc. v. Deutsche Credit Corp.* (In re Am. Hardwoods, Inc.), 885 F.2d 621, 626 (9th Cir. 1989).

A different provision of the code is implicated when the creditor was not listed on the bankruptcy petition. An unlisted creditor's claim ordinarily is not discharged. Under § 523(a)(3) of the code, however, the debt will be discharged if the creditor had "notice or actual knowledge" of the bankruptcy proceedings in time to permit the creditor to file a proof of claim and, if necessary, challenge its dischargeability. Under § 523(a)(3)(B), which applies to debts for "willful and malicious injury" defined by § 523(a)(6), the debt will not be discharged if the creditor (1) was neither listed nor scheduled and (2) did not have "notice or actual knowledge" of the case in time for timely filing a proof of claim and timely request for a determination of dischargeability. Federal courts have exclusive jurisdiction over §§ 523(a)(6) (nondischargeability of willful and malicious injury) and 523(c)(1) (adequacy of notice to a listed creditor) of the code, whereas state and federal courts have concurrent jurisdiction over § 523(a)(3) (unlisted or unscheduled debt) proceedings.

With respect to Rutz's claim, McGhan's bankruptcy proceedings followed the general scheme for a listed creditor rather than an unlisted one. His petition for bankruptcy listed Rutz as a creditor holding an unsecured nonpriority claim against him.² As Rutz's guardian, Rutz's mother received timely notice of the creditors' meeting and the deadline for creditors to file a complaint objecting to discharge of the debtor or to determine dischargeability of debts, but she did not file a nondischargeability claim on her son's behalf. Applying § 523(c)(1), the bankruptcy court issued a discharge order automatically discharging McGhan's debt to Rutz. The discharge order also stated that

"any
court
liabil
523(c)
perm
conti
liabil
court
U
again
dam
of
actic
the l
suit
McG
num
incl
as
peri
bee
ban
disc
froi
ord
nei
dis
rec
to
har
con
con
Th
re:
de
ap
ag
A
di

cc
C
le
S
n
ju
u
n
c
f
t
r
t
c
:
j

of those
ation for
cGhan's
uired to
isdiction

ND
ounts of
ime the
an pled
ia Penal
ed on a

oluntary
nkruptcy
e debtor
y trustee
t to 11
30 days
4007(c).
ing, any
ized as
alleging
itor has
a timely
pursuant
such as
under §
"willful
claims
itor fails
charged
tes as a
ollect or
rizarry),
rd Am.
re Am.
).
when the
ion. An
f. Under
will be
wledge"
creditor
enge its
plies to
d by §
ditor (1)
ot have
r timely
for a
ts have
23(a)(6)
ury) and
) of the
ncurrent
led debt)

nkruptcy
a listed
tion for
nsecured
r, Rutz's
ting and
cting to
ibility of
claim on
cy court
charging
ated that

"any judgment . . . obtained in any court other than this court is null and void as a determination of the personal liability of the debtor with respect to" any debt under § 523(a)(6). Pursuant to § 524, the discharge order also permanently enjoined any listed creditor "from instituting or continuing any action . . . to collect such debts as personal liabilities of the above-named debtor." The bankruptcy court closed McGhan's case.

Upon reaching adulthood, Rutz filed a civil action against McGhan in California Superior Court, seeking damages arising out of his sexual molestation at the hands of McGhan. McGhan promptly moved to dismiss the action, arguing that Rutz's claim had been discharged by the bankruptcy court's discharge order and that Rutz's civil suit was enjoined by the § 524 discharge injunction. At McGhan's request, the state court took judicial notice of numerous documents from McGhan's bankruptcy case, including McGhan's bankruptcy petition, which listed Rutz as a creditor; and the discharge order containing the permanent injunction, which showed that Rutz's claim had been automatically discharged. McGhan contended that the bankruptcy court possessed exclusive jurisdiction over the dischargeability of Rutz's claim and that Rutz was estopped from collaterally attacking the validity of the discharge order and injunction in state court. Rutz responded that neither he nor the state court should be bound by the discharge order or permanent injunction because he had not received the notice required by § 523(c)(1) as a prerequisite to automatic discharge. Because notice of the proceedings had been provided only to his mother and her interests had conflicted with his own, he contended, the bankruptcy court's orders did not apply to his action against McGhan.³ The superior court agreed with Rutz. First, the court reasoned that it had jurisdiction pursuant to § 523(a)(3) to determine the sufficiency of Rutz's notice and the applicability of the discharge order. Second, the court agreed with Rutz that notice had been inadequate.⁴ Accordingly, the court ruled that Rutz was not bound by the discharge order and allowed Rutz's case to proceed.⁵

McGhan then sought to collaterally attack the state court's ruling in federal court. He moved to reopen his Chapter 7 bankruptcy case in the bankruptcy court, seeking leave to file a complaint against Rutz for violation of the § 524 permanent discharge injunction. In denying McGhan's motion, the bankruptcy court agreed that the state court had jurisdiction to adjudicate the adequacy of Rutz's notice under § 523(a)(3)(B) and reasoned that McGhan's desire to relitigate an issue already properly decided by the state court did not constitute sufficient cause to reopen.⁶ The Bankruptcy Appellate Panel ("BAP") affirmed, holding that the bankruptcy court had not abused its discretion in refusing to reopen McGhan's case. Like the state court and the bankruptcy court, the BAP assumed that the state court's jurisdiction validly rested on § 523(a)(3). The BAP also affirmed on the alternative ground that the Rooker-Feldman doctrine precluded the bankruptcy court from reversing or modifying the state court decision.⁷ McGhan appeals.

STANDARDS OF REVIEW

We review jurisdictional issues in bankruptcy appeals de novo. *Durkin v. Benedor Corp.* (In re G.I. Indus., Inc.), 204 F.3d 1276, 1279 (9th Cir. 2000). A refusal to reopen a bankruptcy case is reviewed for an abuse of discretion. *Weiner v. Perry, Settles & Lawson, Inc.* (In re Weiner), 161 F.3d 1216, 1217 (9th Cir. 1998). We review the decision of the BAP de novo. *Scovis v. Henrichsen* (In re Scovis), 249 F.3d 975, 980 (9th Cir. 2001), and independently review the bankruptcy court's rulings. *Oyama v. Sheehan* (In re Sheehan), 253 F.3d 507, 511 (9th Cir. 2001).

DISCUSSION

I. State Court Jurisdiction

To assess whether the bankruptcy court abused its discretion by denying McGhan's § 350(b) motion to reopen his bankruptcy case, we first must determine whether the state court had the authority to adjudicate the adequacy of Rutz's notice and modify the bankruptcy court's discharge order and permanent discharge injunction. Relying on our en banc opinion in *Gruntz v. County of Los Angeles* (In re Gruntz), 202 F.3d 1074 (9th Cir. 2000), we conclude that the state court lacked that authority. In reaching a contrary conclusion, the state court asserted that it had jurisdiction pursuant to § 523(a)(3), which vests state courts with concurrent jurisdiction to adjudicate the adequacy of the notice provided to creditors who were neither listed nor scheduled. Because Rutz was a listed and scheduled creditor, § 523(a)(3) has no application here.

A. Gruntz

Gruntz involved a Chapter 13 debtor who was prosecuted by the Los Angeles County District Attorney, convicted for misdemeanor failure to support his dependent children and sentenced to 360 days in jail. Gruntz subsequently filed an adversary proceeding against the County in bankruptcy court, asking the court to declare the state proceedings void as violative of the § 362(a) automatic stay on proceedings to collect debt. Reasoning that the state court's judgment included a determination that the automatic stay did not enjoin the state criminal proceeding, the bankruptcy court dismissed the complaint as collaterally estopped by the state judgment. The district court, acting in its appellate capacity, affirmed the dismissal on the basis of the Rooker-Feldman doctrine, which prohibits direct appellate review of state court decisions by federal courts other than the Supreme Court. 202 F.3d at 1077-78.

We reversed. Gruntz, as well as our later decision in *Contractors' State License Bd. v. Dunbar* (In re Dunbar), 245 F.3d 1058, 1063 (9th Cir. 2001), stand primarily for the proposition that federal courts are not bound by state court modifications of the automatic stay. Gruntz, 202 F.3d at 1077. Gruntz held that the Rooker-Feldman doctrine does not deprive federal courts of jurisdiction over the scope and applicability of the stay. *Id.* at 1083. Dunbar added that state court modifications of the automatic stay do not preclude federal relitigation of the scope and applicability of the stay under the doctrines of collateral estoppel and res judicata. Dunbar, 245 F.3d at 1060.⁸

Gruntz has broader implications, however, that dictate the outcome here. First, Gruntz holds not only that a federal court may review state court decisions modifying an automatic stay, but also that state courts lack jurisdiction in the first instance to modify the stay. *Id.* at 1082-83. Because "bankruptcy court orders are not subject to collateral attack in other courts," "[a]ny state court modification of the automatic stay would constitute an unauthorized infringement upon the bankruptcy court's jurisdiction to enforce the stay," and actions and judicial proceedings taken in violation of the automatic stay are void. *Id.* at 1082; see also *Gonzales v. Parks*, 830 F.2d 1033, 1035-36 (9th Cir. 1987) ("Congress' grant to the federal courts of exclusive jurisdiction over bankruptcy petitions precludes collateral attacks on such petitions in state courts.").

Second, Gruntz bars state court intrusions on all "bankruptcy court orders" (or other "core" bankruptcy proceedings). 202 F.3d at 1082, not just the automatic stay. As we stated in Gruntz, "state courts should not intrude upon the plenary power of the federal courts in administering bankruptcy cases by attempting to modify or extinguish federal court orders such as the automatic stay."

Id. at 1088 (emphasis added). Thus, just as "[a] state court does not have the power to modify or dissolve the automatic stay," id. at 1087, a state court also lacks authority to modify or dissolve a discharge order or the § 524 discharge injunction.⁹ See *Lenke v. Tischler* (In re *Lenke*), 249 B.R. 1, 10 (Bankr. D. Ariz. 2000) (applying *Gruntz* and holding that state courts lack jurisdiction to modify a bankruptcy court's discharge order); see also *Pavelich v. McCormick, Barstow* (In re *Pavelich*), 229 B.R. 777, 782 (B.A.P. 9th Cir. 1999) ("Congress has plenary authority over bankruptcy in a manner that entitles it to preclude state courts from doing anything in derogation of the discharge.").

Our extension of *Gruntz* to modifications of the discharge order and discharge injunction flows naturally from the policy concerns that informed our decision there. Our decision was animated by our concern that permitting a state court to modify the federal automatic stay "would undermine the principle of a unified federal bankruptcy system, as declared in the Constitution and realized through the Bankruptcy Code." 202 F.3d at 1083. "If state courts were empowered to issue binding judgments modifying the federal injunction created by the automatic stay, creditors would be free to rush into friendly courthouses around the nation to garner favorable relief." Id. at 1083-84. The same concerns arise when California courts purport to modify a discharge order and to grant relief from the bankruptcy court's permanent injunction.

Accordingly, we conclude that the state court lacked authority to adjudicate the adequacy of the notice received by Rutz. By reaching that issue, the state court held that Rutz was bound by neither the discharge order nor the discharge injunction, documents that on their face plainly barred Rutz's action. The state court effectively modified both orders, and in so doing impermissibly infringed upon the bankruptcy court's jurisdiction to enforce its orders. See *Gruntz*, 220 F.3d at 1082.

In so deciding, we do not hold that a state court is divested of all jurisdiction to construe or determine the applicability of a discharge order when discharge in bankruptcy is raised as a defense to a state cause of action filed in state court by a listed creditor. See *Pavelich*, 229 B.R. at 783 (holding that "state courts have the power to construe the discharge and determine whether a particular debt is or is not within the discharge" because "discharge in bankruptcy is a recognized defense under state law").¹⁰ It plainly was in the power of the state court to take judicial notice of McGhan's proceedings. In this case, those documents showed that Rutz was a listed creditor, that Rutz's claim was discharged and that Rutz was enjoined from taking any action to collect on the debt. The state court should have given effect to the bankruptcy court's orders. By going further, the state court exceeded its jurisdiction, even if the state court believed that Rutz had valid grounds to object to the orders. As we noted in *Gruntz*, "persons subject to an injunctive order issued by a court with jurisdiction are expected to obey that decree until it is modified or reversed (by the issuing court), even if they have proper grounds to object to the order." 202 F.3d at 1082 (quoting *Celotex Corp. v. Edwards*, 514 U.S. 300, 306 (1995)).

Nor do we suggest that a listed creditor such as Rutz is without means to attack a discharge order on grounds of inadequate notice or to repel attempts to enforce the order against him if notice was insufficient. Rather, we hold that only the bankruptcy court could grant such relief. Rutz had several options, such as addressing the validity of the discharge order before proceeding in state court by petitioning the court to reopen the McGhan proceedings or by petitioning the bankruptcy court for leave to file an untimely complaint of nondischargeability. If Rutz was

unaware of the existence of the bankruptcy order until after he filed his state action, he could have sought to stay the lawsuit and petitioned the bankruptcy court for relief before proceeding in state court.

B. Section 523(a)(3)

In concluding that it possessed jurisdiction to adjudicate the adequacy of Rutz's notice and to modify the discharge order and injunction, the state court erroneously relied on § 523(a)(3). State and federal courts have concurrent jurisdiction over actions brought under § 523(a)(3), which allows debtors to extend the coverage of the discharge order to creditors who were not listed but who had actual notice of the bankruptcy proceedings. See *Menk v. Lápáglia* (In re *Menk*), 241 B.R. 896, 904 (B.A.P. 9th Cir. 1999). By its plain language, however, that subsection applies only to creditors "neither listed nor scheduled" during the initial bankruptcy proceedings. See, e.g., *Malandra*, 206 B.R. at 672 (holding that a listed creditor contending that he did not receive notice of the case until after the discharge had issued did not raise a § 523(a)(3) claim because not being listed is a prerequisite to raising an issue under that subsection). Rutz offers no authority to the contrary. There is no dispute that Rutz was listed during McGhan's bankruptcy proceedings, so the state court had no jurisdiction under § 523(a)(3) and Rutz is barred from obtaining relief under that subsection.

The distinction between § 523(a)(3), pertaining to an unlisted creditor, and § 523(c)(1), relating to the adequacy of notice provided to a listed creditor, is not merely technical. A creditor who was not listed in the bankruptcy proceedings is not expressly covered by the discharge order. When a court adjudicates whether that creditor's claim nonetheless should be discharged because the creditor had actual notice of the bankruptcy proceedings in time to file a nondischargeability complaint, the state court is not entertaining a collateral attack on the bankruptcy court's order or infringing on the bankruptcy court's exclusive jurisdiction. That situation is altogether different from the one here, where a state court entertains a listed creditor's argument to void or modify a discharge order or injunction that is facially valid and that expressly covers the creditor's claim. In the latter situation, the jurisdictional and policy concerns discussed in *Gruntz* are paramount.

II. Abuse of Discretion

Having concluded that the bankruptcy court erroneously assumed that the state court had jurisdiction to modify the discharge order and injunction, we hold that the bankruptcy court abused its discretion by denying McGhan's § 350(b) motion to reopen proceedings. First, *Gruntz* and *Dunbar* make clear that neither *Rooker-Feldman* nor collateral estoppel is applicable here. To the extent that the bankruptcy court was concerned that it would have been collaterally estopped from relitigating an issue determined by the California Superior Court, therefore, that concern was misplaced. See *Dunbar*, 245 F.3d at 1064 (holding that the bankruptcy court erred in finding itself precluded from reviewing the judgment of a state administrative law judge modifying the automatic stay); see also *Pavelich*, 229 B.R. at 782 (holding that when a bankruptcy court was presented with a motion to reopen proceedings after a state court had proceeded to hear a claim on a debt discharged by a bankruptcy court order, the bankruptcy court "should not have taken the position that it could not examine the state court judgment"). For the same reason, the BAP erroneously concluded that the bankruptcy court's decision was compelled by the *Rooker-Feldman* doctrine. See *Gruntz*, 202 F.3d at 1083 (holding that *Rooker-Feldman* is not implicated by collateral challenges to core bankruptcy proceedings because Congress vested the federal courts

order until after
right to stay the
or relief before

n to adjudicate
the discharge
isly relied on §
ve concurrent
3(a)(3), which
discharge order
d actual notice
Lapaglia (In re
1999). By its
plies only to
ing the initial
a. 206 B.R. at
ng that he did
discharge had
ause not being
ue under that
ontrary. There
ng McGhan's
ourt had no
s barred from

maintaining to an
the adequacy
s not merely
he bankruptcy
ischarge order.
editor's claim
e creditor had
e time to file a
court is not
ruptcy court's
rt's exclusive
erent from the
sted creditor's
or injunction
the creditor's
al and policy

rt erroneously
to modify the
he bankruptcy
an's § 350(b)
and Dunbar
nor collateral
ent that the
ld have been
ie determined
that concern
(holding that
cluded from
ive law judge
ich, 229 B.R.
was presented
ate court had
arged by a
"should not
ine the state
the BAP
urt's decision
ctrine. See
r-Feldman is
e bankruptcy
ederal courts

with the final authority to determine such issues). Our concern that the bankruptcy court misconstrued the validity of the state court's jurisdiction and the preclusive effect of the state court's decision requires at the very least that we remand for the bankruptcy court to reconsider its decision. See Dunbar, 245 F.3d at 1064.

Given the posture of this case, however, we go further and hold that the bankruptcy court should have reopened the proceedings. It is well settled that "[a] Congressional grant of exclusive jurisdiction to the federal courts includes the implied power to protect that grant." Gonzales, 830 F.2d at 1036. A bankruptcy court may not decline to invoke this power in the face of a clearly invalid state court action infringing upon the bankruptcy court's exclusive jurisdiction. The bankruptcy court was required to reopen the proceedings to protect its exclusive jurisdiction over the enforcement of its own orders. Cf. id. (holding that the bankruptcy court properly vacates a state court judgment and properly holds that a state court's action was void from the outset when the state court proceeded with an action in violation of an automatic stay).

III. Adequacy of Rutz's Notice

We offer no opinion on the viability of Rutz's claim that he did not receive the notice required by § 523(c)(1). Because the bankruptcy court may confront that issue on remand, however, we note that in *In Re Chicago, Rock Island & Pacific R.R. Co.*, 788 F.2d 1280 (7th Cir. 1986), the Seventh Circuit opined that notice to a minor's mother might be inadequate where a conflict of interest prevents the mother from representing the minor's interests adequately in the bankruptcy proceedings. Id. at 1283. Whether the Seventh Circuit's reasoning should be applied here, and, if so, whether Rutz can establish that a conflict of interest or other grounds prevented his interests from being adequately represented so as to vitiate notice are issues to be determined in the first instance by the bankruptcy court.

CONCLUSION

The judgment of the BAP is reversed. Under the circumstances of this case, the bankruptcy court abused its discretion by denying McGhan's motion to reopen the bankruptcy proceedings. We remand for further proceedings consistent with this opinion.

REVERSED AND REMANDED. Each party to bear its own costs.

* The Honorable David Walker Hagen, Senior District Judge, United States District Court for the District of Nevada, sitting by designation.

¹ Unless otherwise indicated, all Chapter, Section and Rule references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1330, and to the Federal Rules of Bankruptcy Procedure, Rule 1001-9036.

² The petition described the claim as follows: "January 1989[.] Potential Civil Action for Personal Injury, Amount Unknown."

³ Rutz asserted a conflict of interest because his mother, also a listed creditor in McGhan's bankruptcy proceedings, had a competing claim for child support against McGhan.

⁴ Section 523(a)(3)(B) provides that a debtor is not discharged from any debt neither listed nor scheduled in time to permit the creditor to file a claim, and request that the debt be found nondischargeable, unless the creditor had notice or actual knowledge of the case in time to file a timely request for a determination of dischargeability.

⁵ McGhan then filed a petition for writ of mandate with the California Court of Appeal, arguing the superior court had misapplied federal bankruptcy law; the court of appeal denied the petition.

⁶ Section 350(b) states: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." In its conclusions of law, the bankruptcy court stated that it would exercise its discretion to reopen McGhan's bankruptcy case

only if he would stipulate to allow the bankruptcy court to hear Rutz's claims under § 523(a)(6). McGhan would not so stipulate.

⁷ The Rooker-Feldman doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). Rooker held that federal statutory jurisdiction over direct appeals from state courts lies exclusively in the Supreme Court and is beyond the original jurisdiction of federal district courts. See 263 U.S. at 415-16. Feldman held that this jurisdictional bar extends to particular claims that are "inextricably intertwined" with those a state court has already decided. See 460 U.S. at 486-87.

⁸ Gruntz identified three limited circumstances in which a state judgment could be given preclusive effect in subsequent bankruptcy proceedings in federal court: (1) the state judgment is prepetition; (2) the bankruptcy court affirmatively has authorized the state action, as, for example, by lifting an automatic stay; or (3) the case does not involve a core proceeding that implicates substantive rights under title 11. See Dunbar, 245 F.3d at 1063; Gruntz, 202 F.3d at 1084; cf. *Diamond v. Kolcuhan* (In re Diamond), _____ F.3d _____, 2002 WL 500657 (9th Cir. Apr. 4, 2002) (affirming bankruptcy court's decision to give preclusive effect to state court judgment where the bankruptcy court lifted the stay as to the creditors' state court action).

⁹ No matter how we characterize it, the state court's action here relates to a core bankruptcy proceeding. Dischargeability of a debt under § 523(a)(6), for instance, is a core bankruptcy proceeding. See, e.g., *Sandersville Prod. Credit Ass'n v. Douthitt* (In re Douthitt), 47 B.R. 428, 430-31 (M.D. Ga. 1985); *Wurm v. Ridgway* (In re Ridgway), 265 B.R. 853, 857 n.1 (Bankr. N.D. Ohio 2001); *Mass. Cas. Ins. Co. v. Green* (In re Green), 241 B.R. 550, 559 (Bankr. N.D. Ill. 1999); *Leathem v. Volkmar* (In re Von Volkmar), 218 B.R. 890, 892 (Bankr. N.D. Ill. 1998), over which federal courts possess exclusive jurisdiction. *Rein v. Provident Fin. Corp.*, 270 F.3d 895, 904 (9th Cir. 2001). The adequacy of notice required for automatic discharge under § 523(c)(1) also is related to a core proceeding over which federal courts exercise exclusive jurisdiction. See, e.g., *RTC v. McKendry* (In re McKendry), 40 F.3d 331, 335 (10th Cir. 1994); *Schunck v. Santos* (In re Santos), 112 B.R. 1001, 1005 (B.A.P. 9th Cir. 1990). Finally, actions relating to the § 524 discharge injunction also constitute "core" proceedings. See *Inis. Co. of N. Am. v. NGC Settlement Trust & Asbestos Claims Mgmt. Corp.* (In re "Atl Gypsum Co."), 118 F.3d 1056, 1064 (5th Cir. 1997); *In re Kewanee Boiler Corp.*, 270 B.R. 912, 918 (Bankr. N.D. Ill. 2002) (action to enforce discharge injunction); *Polysat, Inc. v. Union Tank Car Co.* (In re Polysat), 152 B.R. 886, 888 (Bankr. E.D. Pa. 1993) (scope of discharge injunction).

¹⁰ At least one out-of-circuit bankruptcy court has read Gruntz as barring a state court not only from modifying a discharge order but also from assessing the applicability of a discharge order to the action before it. See *Siskin v. Complete Aircraft Services, Inc.* (In re Siskin), 258 B.R. 554, 562 (Bankr. E.D.N.Y. 2001) (criticizing and refusing to follow Gruntz because it supposedly blurred the distinction between a state court's valid authority to determine the applicability of an automatic stay to the action before it and the bankruptcy court's exclusive authority to grant relief from the automatic stay). But see *Lenke v. Tischler* (In re Lenke), 249 B.R. 1, 8 (Bankr. D. Ariz. 2000) ("Gruntz should not be read to mean that states lack jurisdiction to determine the applicability of either the stay or the discharge, but only that they lack jurisdiction to modify either of them[.]"). However narrowly Gruntz is read, the state court's modification of the discharge order runs afoul of that decision.

JOHN N. BACH
1196 Sierra Madre Blvd.
San Marino, CA 91108
(626) 584-6679
Defendant In Pro Per, Appearing
Specially, Contesting All
Aspects of Jurisdiction over any and
all Defendants.

FILED

SEP 24 1998

TETON CO.
DISTRICT COURT

DISTRICT COURT OF SEVENTH JUDICIAL DISTRICT

STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

SCONA, Inc. an Idaho Corp,

CASE NO: CV 98-025

Plaintiff,

v.

JOHN N. BACH and TARGHEE
POWDER EMPORIUM, UNLTD as
nominee of JOHN N. BACH,

Defendants.

DEFENDANT'S FURTHER BRIEF
IN SUPPORT OF ALL HIS
MOTIONS AND FOR SANCTIONS
AGAINST PLAINTIFF AND ITS
ATTORNEY; and IN OPPOSITION
OF ALL PLAINTIFF'S MOTIONS
Hearing Date: Sept. 24, '98
Time: 2:00 p.m.
Place: Driggs, Idaho (Teton
County Courthouse)

I.

PREFACE TO FURTHER BRIEF
BY PLAINTIFF IN SUPPORT
OF ALL HIS MOTIONS &
IN OPPOSITION TO PLAINT
IFF'S MOTIONS WHICH ARE
SPECIOUS.

Defendant JOHN N. BACH's motions before this Court,
per his said special appearance are completely unopposed
by plaintiff. Nor can they validly be opposed per the
presented specious allegations of two complaints, to wit,
the original complaint and a purported amended complaint,

which was filed without a noticed motion so allowing it to be filed and certainly without any order of this Court. More controlling is the further total absence of any cited federal statutes or Idaho Code sections or applicable case authorities to counter the mandating authorities cited by defendant JOHN N. BACH, that this court has absolutely no subject matter or personal jurisdiction over any defendant named herein, other than the duty, obligation and jurisdiction to grant all defendant's motions in full, awarding the requested monetary sanctions of \$5,000.00 against plaintiff and their counsel, holding said plaintiff's counsel in contempt for direct acts of contempt, misrepresentation, deceit and violation of his oath and the applicable rule of professional conduct and ordering plaintiff and its attorney to execute forthwith a proper and complete warranty deed conveying any and all interests, claims, etc., in the subject property to TARGHEE POWDER EMPORIUM, UNLTD. Said defendant is entitled to full amelioration and relief to have this Court totally void, invalidate and establish any purported sale of the subject property as entirely null and remove all and any claims by the plaintiff or the I.R.S. to such property by an appropriate decree/judgment herein quieting title to said property in the sole name of TARGHEE POWDER EMPORIUM, UNLTD, free and clear of all liens, claims or interests whatsoever by the plaintiff or the I.R.S. and directing the Teton Clerk-Recorder's office and Assessor and Tax Collector's offices to show by their official records such return to complete and unencumbered ownership of said real property to TARGHEE POWDER EMPORIUM, UNLTD.

II.

PLAINTIFF AND ITS COUNSEL, ALVA
A. HARRIS, FURTHER PRESENTS A
WHOLLY SPECIOUS, FRIVOLOUS AND
UTTELY SHAM ISSUE THAT JOHN N.
BACH CANNOT REPRESENT TARGHEE
POWDER EMPORIUM, UNLTD per his
special appearance; and that
HE IS PRACTICING LAW WITHOUT
AL LICENSE.

The aforesaid caption under this part, should have aroused the ire and concern of this Court by the further deception, fraud and contemptuous acts and conduct of Alva A. Harris. This Court on its own, once it had evidence that the Sacramento Chapter 13 proceeding had exclusive jurisdiction over all aspects of this action, should have issued an order to show cause upon plaintiff and its counsel why the same orders as sought by defendants motions should not be forthwith granted without further delay. I.R.C.P., Rule 11(a)(1); Bell v. Bell (Ct. App. 1992) 122 Idaho 520, 835 P.2d 1331 (Court must take into its concern and consideration of misuse of its process, whether the attorney sought to be sanctioned made reasonable inquiry or acted in a manner to harass, cause unnecessary delay or needless increase in the costs of litigation.); Durrant v. Christensen, (1990) 117 Idaho 70, 785 P.2d 624 (reasonableness under the circumstances, and a duty to make reasonable inquiry prior to filing the action and continuing

thereafter, is the appropriate standard to apply under this rule and a showing of subjective bad faith is no longer necessary for the imposition of sanctions.)

In the very recent case of Paul Oil Co. Inc. v. Federated Mutual Insurance Company (Ninth Cir, decided September 8, 1998,) Los Angeles Daily Appellate Reports, pages 9688-9689, copy attached hereto, any sham act brought to the district court's attention, there a sham declaration prepared with the assistance of counsel to try to frustrate the granting of a motion for summary judgment should be inquired into and be determined by "the district court as they bear upon the integrity of the bar."

Alva A. Harris and his client, in which he is also a n investor, officer and director, if not an alter ego thereof, now make the wholly egregious and specious argument to draw attention away from their unprofessional and contemptuous acts, herein, that JOHN N. BACH, in representing TARGHEE POWDER EMPORIUM, UNLTD, an asset of the VASA N. BACH, FAMILY TRUST of California, is practicing law without a license. Had Alva A. Harris just attempted to research even the Idaho law on this issue, let alone read the Restatement of Trusts, Second, sections 2 and 280, as well as SCOTT ON TRUSTS, §§23, 24 (4th ed. 1989) and §280.6, and George G. Bogert, TRUSTS & TRUSTEES (2nd ed. 1980) he would have readily known that his assertion of JOHN N. BACH, either as a trustee or claimed nominee of TARGHEE POWDER EMPORIUM, UNLTD, appearance specially herein, was practicing law without a license is entirely bogus, frivolous, utterly without merit and justifies sanctions against

against him and his client corporation, SCONA, INC. More immediately he had easily available to him in any law library, the internee, West Law, etc., the decision of Dennet v. Kuenzli (Idaho Ct. App. 1997) 130 Idaho 21, 936 P.2d 219, wherein at pages 228-229, Alva A. Harris would know that he is not only wrong in such assertion but the law on trusts is entirely against his making any such assertion. On page 229, the following applications and conclusions were reached by said Idaho Court of Appeals:

" . . . This statutory modification [of Idaho Code §15-7-306(a)] of the common law rule does not, however, alter the trustee's status as the holder of title to the assets in the trust estate, nor does it make it necessary for the trustee to disclose his fiduciary capacity in executing documents that affect the trust estate. By implication, the statute recognizes that a trustee may effectively enter into contracts for trust purposes without such disclosure.

We hold, therefore, that Dennett's exercise of the option in his own name was effective even if the option right was held by him subject to his fiduciary obligation as trustee.

Simiarly, a trustee may bring legal actions in his own name regarding proper or contract interests of the trust estate. On this point, a commentator has stated:

"By the weight of authority it is held that in an action brought by the trustee against a third person, whether for a tort with respect to the trust property or on a contract held by him in trust, it is unnecessary for the trustee in the pleadings or other proceedings to describe himself as trustee. As far as the third person

is concerned, it is immaterial whether the plaintiff is suing on his own account or as trustee. If the trustee does describe himself as trustee the description is treated as surplusage. It is true that whatever is recovered by the trustee in the action, he will hold subject to the trust; but with this the defendant is not concerned.

SCOTT, §280.6 See also RESTATMENT (SECOND) OF TRUSTS §280 cmt. h. (1959) (stating that it is unnecessary for a trustee to describe himself as a trustee in the pleadings or other proceedings and that such a description is treated as surplusage); George C. Bogert, TRUSTS & TRUSTEES (2nd ed 1980) (stating that a trustee may bring a suit in his own name); Loring, supra, (same)." [Loring, refers to A.P. Loring, A TRUSTEE'S HANDBOOK 92-93 (4th ed. 1928).]

"Accordingly, we conclude that Dennett was not required to refer to himself as the trustee of the Mel Dennett Living Trust in order to act in that capacity in exercising the option. We conclude, as well, that Dennett is the real party in interest as plaintiff in this action. . . ."

[Emphasis and note
added re Loring.]

But even more egregiously is the confession and admission by Alva A. Harris, who obviously prepared, filed and masterminded the Amended Complaint which has not been properly served upon JOHN N. BACH as trustee herein, and therefore, this Court does not have jurisdiction of said trustee or trustee. Said confession is found at page 3, which is unnumbered as all said pages of the Amended verified

complaint are, per paragraph 5 thereof:

"That Targhee Powder Emporium, Unltd is a non existent corporation or trust, has never properly been created, has no shareholders or directors or trustees, and has never legally received this real property as a corporation or trust asset. That the title to the property was taken in this name solely as an attempt to circumvent the claims of the IRS for income taxes levied and assessed against the said JOHN N. BACH and this 'entity' is merely a nominee, transferee, and/or alter ego entity for defendant, John N. Bach. . . . "

By verifying such machinated and obfuscatedly phrase he confesses that he is only suing defendant John N. Bach. But John N. Bach has a validly filed Sacramento Bankruptcy Chapter 13 proceeding which existed before the attempted sale of said property to plaintiff and that Alva A. Harris and the plaintiff knew that, knew there was a stay order that precluded the I.R.S. sale to him or his corporation, and yet he and his corporation along with the I.R.S. conspired to criminally and tortuously violate, disregard and flaunt the law and thereby, commit not only subornation of perjury, but perjury itself, obstruction of justice and criminal conspiracy to violate John N. Bach's constitutional and civil rights. 18 U.S.C. §§240, 241, et seq; Federal RICO Act, Idaho Racketeering Act, I.C. §§18-7001 to 18-7005, See also Idaho Code Section 48-603A Unconscionable methods, acts or practices, et seq & particularly 48-603C(1); and Dennis v. Higgins (Nb. 1991)

111 S.Ct. 865, 113 L.Ed2d 969 (a private person acts under color of law for purposes of application of the Federal Civil Rights Act, 42 U.S.C. §§1983-1988, either under color of state or federal law; if he is a participant or conspirator in a joint action with the federal government or the state or any of its agencies, agents or representatives). See also re liability via conspiracy of joint conspirators, Hafer v. Brown (1992) 983 F.2d 570, 576-577; Hampton v. Hanrahan (1979) 600 F.2d 600, 620-24)

What Alva A. Harris, has done in the past is use the false charge, assertion and deceptive ploy to charge persons, such as individuals or individual trustees who are presenting themselves in pro per or pro se, as practicing law without a license. Such utterly frivolous charge, practice and acts are patently an unconstitutional deprivation of such in pro per or pro se's rights to procedural and ^{substantive} due process, equal protection and constitute disbarable acts by Alva A. Harris. For this Court to allow, countenance of ignore such unconstitutional practices, acts or efforts, is more than blatant condonation and acquiescence it the same, but exposes this Court to the further powers of federal district courts to intervene and put a stop once and for all to such affronts and violations. See Lebbos v. Judges of Superior Court of Santa Clara County, (CA 9 1989) 883 F.2d 810n 5, 813 (judges not immune from claims for injunctive or equitable relief for continuing constitutional violations and practices sanctioned); Consumers Union of United States v. American Bar Assoc. et al (ED Va 1981) 505 F. Supp 822, app. dismd 451 U.S. 1012 (1982) (district court awarded attorney fees under 42 U.S.C.

§1988 against the members of the Virginia Supreme Court for their part in enforcing unconstitutional state bar rules and their application-that State judges enforcing unconstitutionally state bar rules or procedures are not acting in a judicial capacity.)

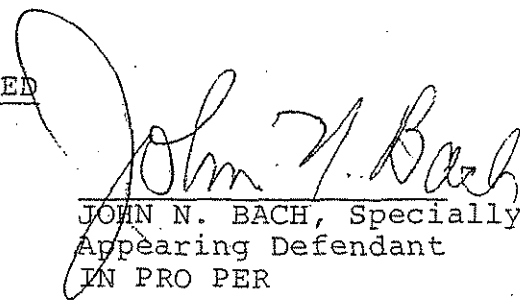
Since such claims per federal statutes must be brought and are exclusively jurisdictioned against the I.R.S. and those acting with complicity, conspiracy, joint venture, enterprise, common plan, scheme or concert of actions, etc., with the I.R.S., in federal district court, even if this court had subject matter jurisdiction or over the defendant's person, which it does not, plaintiff's complaint and action would have to be transferred to the appropriate venued federal district court. Defendant specially appearing herein, is having prepared, along with a number of other plaintiffs such a federal district court complaint against the I.R.S. and the plaintiff and its Attorney Alva A. Harris along with a number of other defendants.

III.

ALL DEFENDANT'S MOTIONS

SHOULD AND MUST BE GRANTED

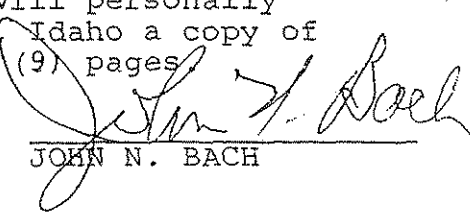
DATED: September 24, 1998


JOHN N. BACH, Specially
Appearing Defendant
IN PRO PER

CERTIFICATE OF SERVICE

I hereby certified that on this date I will personally deliver or hand to Alva A. Harris at Driggs, Idaho a copy of this further brief consisting of these nine (9) pages.

DATED: September 24, 1998


JOHN N. BACH

000559

ATTORNEYS

District Court must determine whether attorney played role in preparing sham affidavit.

Cite as 98 Daily Journal D.A.R. 9688

PAUL OIL COMPANY, INC.,
a California Corporation,
Plaintiff-Appellant,

v.

FEDERATED MUTUAL
INSURANCE COMPANY,
a Minnesota Corporation,
Defendant-Appellee.

No. 97-16190
D.C. No. CV-95-05308-OWW
United States Court of Appeals
Ninth Circuit
Filed September 8, 1998

Appeal from the United States District Court
for the Eastern District of California

Oliver W. Wanger,
District Judge, Presiding

Argued and Submitted July 16, 1998—
San Francisco, California

Before: Stephen Reinhardt, John T. Noonan, and David
R. Thompson, Circuit Judges. Opinion by Judge Noonan

COUNSEL

Lori T. Okun, Greben & Associates, Sacramento,
California, for the plaintiff-appellant.

Thomas H. Crouch, Meagher & Geer, Minneapolis,
Minnesota, for the defendant-appellee.

NOONAN, Circuit Judge:

Paul Oil Company, Inc. (Paul Oil), a California corporation, appeals the grant of summary judgment against it in its suit against Federated Mutual Insurance Co. (Federated), a Minnesota corporation. The district court, after first denying Federated's motion for summary judgment, reconsidered, finding that Paul Oil's attempt to defeat the motion had depended upon a sham. The district court also denied Paul Oil's offer of additional testimony on the ground that Paul Oil had been disingenuous as to the availability of the witness whose testimony it belatedly attempted to offer. Affirming the district court, we write to call attention of the duties of counsel to the court.

FACTS

Paul Oil is a family-owned business whose president and CEO since 1974 has been Ross Barton Paul (Bart Paul). The company is a jobber of Shell Oil products. In 1985 it leased property on Highway 99 in Livingston, California from Leonard and Shirley Blevins. The property had previously been used for a convenience store and gas station. It contained one underground gasoline storage tank holding 8,000 gallons, two tanks holding 5,000 gallons and a 4,000 gallon tank holding diesel fuel.

On May 24, 1986 Paul Oil entered into several insurance contracts with Federated, including a pollution liability insurance policy. On the first page of the policy in type much larger than the rest of the text a heading announced: "THIS IS A CLAIMS MADE POLICY - PLEASE READ CAREFULLY." The first paragraph under this heading said the company would pay compensatory damages for bodily injury or property damage provided that "(1) such bodily injury or property damage is caused by a pollution incident which commences subsequent to the retroactive date shown in the declarations of this policy; and (2) the claim for such damages is first made against the insured during the policy period and reported to the company during the policy period or within fifteen days after its termination." The policy continued: "A claim shall be deemed to have been made only when suit is brought or written notice of such claim is received by the insured." The "retroactive date" was the same as the date the policy was entered into, May 24, 1986.

Federated issued similar policies to Paul Oil for May 24, 1988 through May 24, 1989 and for May 24, 1989 through August 1, 1989 when Paul Oil cancelled.

Paul Oil tested the tanks on the property and in June 1986 found a leak in a supply line between the tank and a pump. It was due to a faulty pipeline coupling. Paul Oil replaced the coupling and cleaned out the soil. The company notified the Merced County Environmental Management Department, which approved its handling of the problem. The amount of soil removed was approximately five cubic yards. Paul Oil was receiving deliveries three times a week and doing from 60,000 to 80,000 gallons of business per month. It kept a tight inventory control of the gasoline in the tanks by doing daily stickings. The company was unaware of any other leaks or losses from the tanks. Occasionally there were small losses when a driver drove away from a pump with the nozzle from the tank still in his car.

In 1989 the California Department of Transportation began studies for a bypass in Livingston and made an environmental investigation that revealed at least 20,000 gallons of petroleum product in the ground that apparently had come from the site occupied by Paul Oil. On November 14, 1990 the district attorney of Merced County notified Paul Oil and prior occupiers of the site of alleged code violations that had caused the problem. In 1992 Paul Oil was sued by the Bergers, adjacent land owners, who asserted that their land had been contaminated from the Paul Oil site. In 1994 the California Regional Water Quality Control Board sent Paul Oil a Clean Up and Abatement Order. The order noted that the gasoline contamination dated back to 1978 and the total amount in the soil was between 37,000 and 50,000 gallons.

Paul Oil tendered these matters to Federated for defense and indemnification. Federated denied any duty to defend or to indemnify, noting that none of the claims had been made while the policies were in effect.

PROCEEDINGS

On March 29, 1995 Paul Oil filed suit against Federated in the Superior Court for Merced County. The suit referred generally to "policies" issued by Federated which gave rise to obligations that Federated was not fulfilling. The suit sought declaratory relief, damages for breach of contract, and damages for breach of the implied covenant of good faith. On the ground of diversity Federated removed the suit to the federal district court for the Eastern District of California.

Both sides took deposition testimony, Federated taking inter alia the deposition of Bart Paul. Both sides also served

each other with interrogatories. On August 14, 1995 Federated moved for summary judgment. At a hearing on the motion the court asked Paul Oil's counsel to identify any record evidence of a claim in 1986 by Merced County and gave counsel five days to search the record for such evidence. Counsel responded with Bart Paul's sworn declaration stating that Merced County had inspected leakage at the site in 1986. The district court then granted Federated's motion for summary judgment, subject to another grace period for Paul Oil to introduce evidence of a claim during the period the policies were in effect. In response Paul Oil submitted the declaration of Jeff Palsgaard, Director of the Division of Environmental Health of the county, stating that it was and had been Merced County's custom "to issue a letter demanding investigation and repair when evidence of a release from leaking underground storage tanks occurred." Palsgaard, however, added that he had been unable to locate such a letter in 1986 to Paul Oil. He submitted a sample of the kind of letter the county would have sent if it had followed its usual custom. The court observed that it would take a quantum leap to infer from Palsgaard's letter that Merced County had actually made a claim in 1986 against Paul Oil. The court gave the plaintiff another 10 days to submit evidence that a claim had been made.

On March 15, 1995 Bart Paul filed a sworn declaration stating that within a month after the June 1986 leak Paul Oil "received a letter from Merced County requiring that we conduct an inspection and clean up of the subject property." (emphasis in Bart Paul's affidavit). Bart Paul stated he was unable to locate a copy of the letter. He also stated, "I was advised by Merced County that Paul Oil would be subject to enforcement action if these remedial steps were not taken" and that Paul Oil expended more than \$5,000 "to comply with Merced County's dictates." Characterizing the evidence as "weak" the district court nonetheless found it sufficient to defeat summary judgment.

Federated moved for reconsideration on the grounds that Bart Paul's new declaration was a sham, contradicting his deposition testimony and his answers to interrogatories. In his December 14, 1990 telephone interview with Federated, Bart Paul stated that the only thing he knew about government actions against him was the November 1990 letter from the Merced County District Attorney. In Paul Oil's September 14, 1995 response to Federated's interrogatories it wrote in response to a request that it admit that the first claim made against it was the 1990 claim by the district attorney that "[t]here may have been a telephone call immediately prior to" the letter. In his October 13, 1995 deposition Bart Paul agreed that this letter was the first written notice Paul Oil . . . received from the . . . District Attorney that it was claiming . . . damages from" Paul Oil; that the district attorney's letter, the subsequent action by the California Regional Water Quality Control Board, and the civil suit by the Bergers were the only claims "made against Paul Oil for damages arising out of contamination" and that they "were made after" Paul Oil cancelled its policy with Federated; and that no claims were made against Paul Oil after it fixed its leaking fuel tank in 1986. All of these statements are contradicted by Bart Paul's assertion in his supplemental declaration that Merced County made a written demand that contamination be removed in 1986.

Federated also filed a new affidavit of Palsgaard stating: "We have exhausted every avenue of inquiry and discovered no information suggesting that we took any action at the site in 1986." David Block of the Merced County Department of Public Health provided an affidavit that the county's investigation of the site began in 1989,

adding that its files were complete and that he had searched them and found no documentation supporting the suggestion that his office had commenced any investigation in 1986. A similar affidavit was sworn to by William Peeler, another county employee involved in the later investigation by the county. On October 9, 1996 the court granted reconsideration, finding that Bart Paul's second sworn declaration attempting to create an issue of fact had been a sham. No genuine issue of fact existed.

Paul Oil now moved for reconsideration of the finding that the declaration was a sham. Counsel for Paul Oil asked for 30 days to search for Pat Catanzarite, the maintenance man who had worked on the removal of the soil in 1986. When the court inquired why this witness had not been produced before, counsel replied "[w]e have a missing witness and have had for a long time. . . . [h]e is apparently somewhere in the area absolutely unlocatable. We have been trying literally for years to track him down."

Two days later Paul Oil obtained an affidavit from Pat Catanzarite that he remembered the alleged 1986 letter from Merced County. Federated took steps to determine whether Catanzarite had, in fact, been previously unlocatable. It took only minutes for Federated to locate him by using directory assistance and only a few minutes more to confirm that he had been at the same place for many years. Federated opposed the admission of his declaration on the grounds that it was not newly discovered evidence. The court agreed, holding that counsel for Paul Oil had "disingenuously" informed the court that Catanzarite was "absolutely unlocatable." The court denied Paul Oil's motion for reconsideration and granted Federated summary judgment on all issues.

Paul Oil appeals.

ANALYSIS

By the terms of the pollution liability policies, Federated was liable only for claims made during the policy period.

None of the claims made against Paul Oil in 1990, 1992, and 1994 fell within the policy periods of May 24, 1986-August 1, 1989. Paul Oil had no basis on which to bring its suit.

A second, independent reason existed why Paul Oil had no case. The farthest back any pollution liability policy covered was May 24, 1986. From the facts in Paul Oil's knowledge, the claims being advanced were for enormous gas spillages which could not have occurred in the four years Paul Oil occupied the premises. Keeping a close track of its inventory, Paul Oil was well aware that it never had spillages that could have amounted to 20,000 to 50,000 gallons of pollution. For this reason, too, its suit was baseless.

Whether the sham declaration of Bart Paul was prepared with the assistance of counsel and whether the statement about Catanzarite's unavailability was made by counsel because of inaccurate information supplied by others are matters we cannot determine on this appeal, but should be determined by the district court as they bear on the integrity of the bar.

AFFIRMED.

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date 6/2/03
Time 10:40
Deputy Clerk M Southwick

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

**FIFTHTEENTH ORDER
ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court is defendants Harris, Scona, Inc.,
Fitzgerald, Olesen, Lyle and McLean's motion to set aside
clerk's default under Rule 55(c), I.R.C.P., dated May 23, 2003.
The motion was supported by an affidavit of counsel Alva Harris.

An objection was filed by plaintiff Bach on May 28, 2003. Oral argument was heard on May 30, 2003.

Having read the motion, supporting affidavit, objection, and the oral arguments of the parties, the Court issues the following order on the pending motion.

The clerk's default entered on January 27, 2003, must be set aside because these defendants filed a motion to dismiss under Rule 12(b)(8), I.R.C.P., on January 22, 2003, that was not decided until March 4, 2003. These defendants' counsel received the Court's Eighth Order by telefax on March 4, 2003. Under Rule 12(a), I.R.C.P., a responsive pleading from these defendants was not due until March 14, 2003.

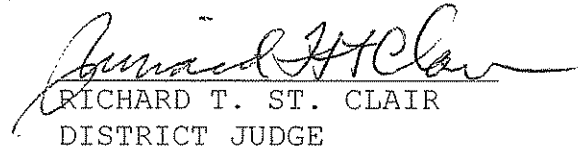
The clerk's default entered at 9:01 a.m. on March 19, 2003, cannot be set aside because these defendants did not file an answer under 11:25 a.m. on March 19, 2003. These defendants' argument that a clerk's default under Rule 55(a) cannot be entered without a three (3) notice is without merit because the three (3) day notice in Rule 55(b)(2) does not apply to entry of a clerk's default under Rule 55(a). *Olson v. Kirkham*, 111 Idaho 34, 36-37, 720 P.2d 217, 219-220 (App. 1996). Their argument that "good cause" is shown for setting aside a clerk's default under Rule 55(c) is without merit because they have shown no facts to support any "meritorious defense." *McFarland v. Curtis*,

123 Idaho 931, 854 P.2d 274 (App. 1993).

NOW THEREFORE, IT IS HEREBY ORDERED that

1. defendants Harris, Scona, Inc., Fitzgerald, Lyle and McLean's motion to set aside clerk's default entered on January 27, 2003 is GRANTED, but their motion to set aside clerk's default entered on March 19, 2003, is DENIED.

DATED this 2nd day of June, 2003.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of June, 2003, 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
P. O. Box 101
Driggs, ID 83422
Telefax Nos. 626-441-6673
208-354-8303 (TELEFAX & MAIL)

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

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)

RONALD LONGMORE
Clerk of Court


Deputy Court Clerk

FILED

JUN - 2 2003

TIME: 10:44 am
TETON CO. DISTRICT COURT

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
(Seasonal: P.O. Box 101
Driggs, ID 83422
Tel: (208) 354-8606
Plaintiff & Counterclaim
Defendant Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

CASE NO.: CV 02-208

Plaintiff & Counter-
claim Defendant,

PLAINTIFF JOHN N. BACH'S
TRIAL BRIEF NO THREE (3) RE
FOR IMMEDIATE ENTRY OF JUDGMENT
QUIETING TITLE TO PLAINTIFF ON
THOSE PROPERTIES SUBJECT OF
SECOND, THIRD, and FOURTH COUNTS,
RESERVING ISSUES OF ALL DAMAGES
THEREON,

v.

KATHERINE D. MILLER, aka
KATHERINE M. MILLER, Individu-
ally and dba R.E.M. et al.,

Defendants &
Counterclaimant.....

Plaintiff JOHN N. BACH, submits this TRIAL BRIEF NO. THREE (3)
in support of his application/request for not only issuance of default
judgments against those defendants which entries of defaults have
been entered (Alva A. Harris, SCONA, Inc., Jack Lee McLean, Robert
(Bob) Fitzgerald, individually & dba CACHE RANCH, OLY OLESEN, (who
appeared as OLY OLSON before entry of default against him), Blake
Lyle, Individually & dba GRANDE TOWING and also GRANDE BODY & PAINT,
WAYNE DAWSON, EARL HAMLIN, BRET & DEENA HILL), on all counts of the
FIRST AMENDED COMPLAINT, but, especially for separate judgments per
I.R.C.P., Rule 54 (b), for the immediate issuance of separate
JUDGEMENTS in favor of plaintiff, quieting title, ownership, all int-
erests, rights of immediate possession, use and exclusive control,
along with appropriate writs of possession, assistance and/or exclu-
sion of all said defaulted defendants, as to those properties the
Plt's TRIAL BRIEF NO. 3

000566
Page 1

the subject of his SECOND, THIRD and FOURTH COUNTS of said FIRST AMENDED COMPLAINT.

Several most recent developments and rulings/orders of this court and the Ninth Circuit court of Appeals, which includes Idaho, more than justify, if not call for such immediate separate judgments being entered. This Court's rulings/orders on late Friday, May 30, 2003, during the pretrial conference, denying Alva A. Harris' motions, restated for the third time, of seeking the setting aside of his clients' entries of defaults, and the entries of defaults, earlier that day, @ 9:26 a.m., of defendants BRET HILL & DEENA R. HILL, preclude any delay or hesitations of entering said request special separate judgments of quiet title to plaintiff on the SECOND, THIRD and FOURTH COUNTS, while reserving the court's further determination of damages, injuries and property losses and related amounts to be awarded plaintiff on said SECOND, THIRD & FOURTH COUNTS, and all other remaining COUNTS against all said defendants whose defaults have been entered herein.

The very recent decision of 40235 Washington Street Corp. v. Lusardi, (9th Cir. May 23, 2003) reported in L.A. Daily Journal, D.A.R., May 27, 2003, Pages 5547-5550, is a decision almost on all fours with the facts of the THIRD COUNT, quieting title in plaintiff's sole favor, rights, claim and all interests in that one (1) acre parcel with home, and all water rights, Teton Canal Company twenty-two (22) plus shares thereof. A complete copy of the said Lusardi decision, is attached hereto and incorporated herein. For the sake of brevity and ease of legal principles applying herein, plaintiff has either bracketed or directed via margin "arrows" to those applicable and binding holdings of said decision herein. The very first paragraph, thereof, reveals, that said litigation therein, had been

Plt's TRIAL BRIEF NO. 3. 000567 Page 2.

ongoing "for more than a dozen years, in both state and federal court." Said first paragraph is repeated herein for emphasis:

" W. C. Lusardi purchased an apartment complex at a Riverside County tax foreclosure auction in 1990. Unbeknownst to Lusardi, the owner of the property, 40235 Washington Street Corporation ('WSC' or 'the corporation') had recently filed a federal bankruptcy petition, creating an automatic stay preventing the sale. The sale was therefore void, and although the bankruptcy petition was later dismissed, Lusardi never acquired possession or any benefit of ownership. Neither has his money been returned to him by Riverside County. The parties have been litigating for more than a dozen years, in both state and federal court. This appeal arises from the district court's order quieting title and granting declaratory relief in favor of WSC and denying relief to Lusardi. We affirm, although not on the same ground as that relief on by the district court." [Emphasis added]

Lusardi claimed exemption from the automatic stay order, per 11 U.S.C. sec. 549, subsection (c), but as the decision pointed out page 5548: "As subsection (a) and (d) [of sec. 549] make clear, section 549 concerns avoidance actions by the [bankruptcy] trustee, not transfers that are already void under the automatic stay. ." As the court further stated, page 5549:

" . . . Specifically, so far as we are aware, every court that has considered the governing legal factors has reached the conclusion we have, that section 549(c) does not create an exception to the automatic stay. [citations omitted, esp., see three (c) cases cited thereafter]. ."

And at page 5550:

"As noted above in our discussion of the federal Bankruptcy Code issue, transfers in violation of an automatic stay under section 362(a) are void: The property interests remain the same as they would have been if no transfer had been attempted. See Schwarz, 954 F.2d at 571. ." [Emphasis Added]

All of plaintiff's creditors were discharged in his Chapter 13, bankruptcy, especially named therein were Miller, Dawson and the IRS, along with numerous others. Both the IRS and Alva Harris and SCONA, Inc., who purchased illegally plaintiff's said real property of 195 N. Hwy 33, Driggs, were told by plaintiff and others at the sale, Plt's TRIAL BRIEF NO. 3 000568 Page 3.

of the automatic stay order and the voidness of such sale. Thereafter, Scona Inc., and Harris pursued an action against JOHN N. BACH, individually and as nominee of Targhee Powder Emporium, Unltd, being Teton County 98-025, in clear violation and contemptuous defiance of said bankruptcy stay order. See Plaintiff's TRIAL BRIEF No. 2, etc., filed May 30, 2003 @ 9:36 a.m., especially the decision of McGhan v. Rutz, (9th Cir. May 7, 2002) attached thereto, and also the attached "Defendant's [John N. Bach's] Further Brief In Support of his Motions and For Sanctions Against Plaintiff [SCONA, Inc.,] and ITS ATTORNEY [Alva A. Harris], etc., filed Sept. 24, 1998 in Teton Action CV 98-025.

Further, compelling, if not controlling in the immediate issuance of said separate quiet title judgements on the SECOND, THIRD & FOURTH COUNTS, is the uncontested and properly executed and recorded"

"WARRANTY DEED, ANNULLING, VOIDING & RESCINDING WARRANTY DEEDS RECORDED NOVEMBER 21, 2000, BY TARGHEE POWDER EMPORIUM, INC., JACK LEE McLEAN, Vice President, BEING INSTRUMENT NUMBERS 140249, 140248, 140247, 140246 and CORPORATION WARRANTY DEEDS, RECORDED FEBRUARY 22, 2001, INSTRUMENT NO. 141453 AND AUGUST 16, 2001, INSTRUMENT 143453 and REGRANTING REESTABLISHING ALL OWNERSHIP OF JOHN N. BACH AS SOLE OWNER OF ALL PROPERTIES DESCRIBED IN THE VOIDED DEEDS" [This annulling, voiding & rescinding, etc., warranty deed being Teton County Instrument Number 148042]

As all said defaulted defendants now have deemed admitted all the facts and statements of Plaintiff's FIRST AMENDED COMPLAINT, plaintiff's immediate quiet title judgments relief should be granted without delay. Most significantly, to be included within the monetary amount of damages, properties' losses, etc., to be awarded plaintiff, against all said defaulted defendants, and even Miller, Individually and dba R.E.M., and CACHE RANCH, and defendants GALEN WOELK, Individually and dba RUNYAN & WOELK, and defendants ANN-TOY BROUGHTON and STAN NICKELL's, are those moneys not only paid illegally and per all of said defendants' criminal pursuits in removing plaintiff from Plt's TRIAL BRIEF NO. 3 Page 4. 000569

said property and residence of 195 N. Hwy 33, Driggs, but the extorted and stolen, contrived and void rent amount imposed upon plaintiff per said Teton CV 98-025, of over \$15,000.00, on or about November 14, 2000, which plaintiff paid to prevent further void judgment liens from going to a sheriff's sale on his other properties, the subject of all FIRST through FOURTH COUNTS, the loss of rent to said house from the time he was illegally/criminally removed by a writ of assistance in September, 1999 therefrom, by all of said defendants' further conversions, theft and destruction to his personal belongings, furniture, antiques, other personalty, etc., which he was not able to remove from said property and house at 195 N. Hwy 33, and the further special and general damages suffered by plaintiff and inflicted upon him by all said defendants herein. See such damages, relief as sought per paragraphs 19 and 22 of SECOND & THIRD COUNTS, which damages/relief are sought against all defendants, and plaintiff is now entitled to such full relief by reason of said defaults and the further, admitted, confessed and proven, vicarious liabilities of Miller, Woelk, Broughton and Nickells of coprincipals, mutual agents, servants/employees, representatives and conspirators for each other and all defendants. [See par. 2, of First Amended Complaint incorporated in all counts thereof, as are paragraphs 5, 6, 8, 9, 10, 12, 13 and 14. Included within said damages/losses and injuries amounts, etc., to be awarded plaintiff is the specific sum of 415,000.00 stolen from his personal bank account by all said defendants, which amount was at least 2 plus times promised to be returned to plaintiff by defendant GALEN WOELK, but who as a major principal, perpetrator, conspirator and instigator of said illegal/criminal actions of defendants against plaintiff, specifically wanted to break plaintiff financially and make him a pauper so he

Plt's TRIAL BRIEF NO. 3 000570Page 5.

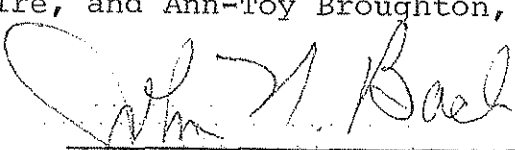
could not have resources, means or finances to repel and defend against all defendants' said criminal and illegal acts, pursuits and misuse of process.¹

NOTE: TO the extent, plaintiff's contracts, agreements and other prospective economic ownership, title, uses, possession and management, etc., of all said properties the subject of First through Fourth Counts, exist, they are hereby also disclosed to Woelk and his law firm, per page 25 provisions of this Court's Fourteenth ORDER of May 28, 2003. These contracts, agreements, and economic advantages, relations, etc., are also disclosed as to all other counts, per said May 28, 2003 ORDER, especially of Woelk's and his law firm's now established liabilities per Plaintiff's FIFTH, SIXTH, SEVENTH, EIGHTH, NINTH, TENTH, ELEVENTH and TWELVTH COUNTS of the FIRST AMENDED COMPLAINT.

DATED: June 2, 2003


JOHN N. BACH Pro Se

CERTIFICATE OF SERVICE BY FAX & MAIL: I, the undersigned, certify, that on June 2, 2003, I did personally fax a copy of this document with attachments to Judge St. Clair, Galen Woelk, Jason Scott, Jared Harris, and did further mail a copy to each of the following at their given addresses per the filings made on their behalves herein, to wit: mailed a copy to Alva A. Harris, Esquire, and Ann-Toy Broughton, Stan Nickells and Earl Hamblin.

*Personal Delivered to
Mr. Woelk and Son, Etc. High Driggs Office
Circuit Court*

¹ As said requested and applied for separate quiet title judgments are solely on equitable issues, to be decided by the court only, and said defendants, some 10 of them are already re default entries without any opposition to said quieting titles, the hearing re such judgments being entered, must be given immediate precedence, priority and resolution, even ahead of the jury selection now set for June 10, 2003.

PLAINTIFF THEREFORE REQUESTS, THAT SELECTION OF THE JURY HEREIN BE DELAYED ONE (1) DAY, to JUNE 11, 2003, to have the Court hold a hearing on said entries of QUIET TITLE JUDGMENTS, ETC., WHICH WILL SHOTREN THE JURY TRIAL ISSUES RESOLUTION CONSIDERABLY. Athletic Pound Table Inc. v. Merrill, 99 Idaho 598, 586 P.2d 1042 (19978) (No reason for delay in entering separate judgments, in multiple claims quiet title action as there was no reason for request removal of encroachments to await ascertainment of actual damages between plaintiff & defendants/third parties) See also Rule 65(a)(2) Initialed *JB*

ary judgment, at
different than the
ike. In any case,
er binding nor
aw." (Howard
Construction Co.
Angeles County
value.

from the evidence
uld be misled by
ation. The trial
cient showing of
of his claims.

rike is affirmed.

FYBEL, J.

BANKRUPTCY

*Good faith purchaser status under
11 U.S.C. Section 549(c) does not create
exception to automatic stay provision.*

Cite as 2003 DJDAR 5547

40235 WASHINGTON
STREET CORPORATION,
a California corporation,
Plaintiff-Appellee,

v.

W. C. LUSARDI, an individual,
Defendant-Appellant.

No. 01-56644
D.C. No. CV-90-01472-JSR

40235 WASHINGTON
STREET CORPORATION,
a California corporation,
Plaintiff-Appellant,

v.

W. C. LUSARDI,
an individual,
Defendant-Appellee.

No. 01-56801
D.C. No. CV-90-01472-JSR
United States Court of Appeals
Ninth Circuit
Filed May 23, 2003

Appeal from the United States District Court
for the Southern District of California

John S. Rhoades,
District Judge, Presiding

Argued and Submitted February 4, 2003
Pasadena, California

Before: Harry Pregerson,
Stephen Reinhardt,
and Glenn L. Archer, Jr.,*

Opinion by Judge Reinhardt

COUNSEL

David A. Niddrie, Niddrie & Hegemier, LLP, for W.C. Lusardi.

Duane S. Horning, Mary A. Lehman, and James W. Huston, Gray Cary Ware & Friedenrich, LLP, for 40235 Washington Street Corporation.

OPINION

REINHARDT, Circuit Judge:

W.C. Lusardi purchased an apartment complex at a Riverside County tax foreclosure auction in 1990. Unbeknownst to Lusardi, the owner of the property, 40235 Washington Street Corporation ("WSC" or "the corporation") had recently filed a federal bankruptcy petition, creating an automatic stay preventing the sale. The sale was therefore void, and, although the bankruptcy petition was later dismissed, Lusardi never acquired

possession or any benefit of ownership. Neither has his money been returned to him by Riverside County. The parties have been litigating for more than a dozen years, in both state and federal court. This appeal arises from the district court's order quieting title and granting declaratory relief in favor of WSC and denying relief to Lusardi. We affirm, although not on the same ground as that relied on by the district court.

I. Background

WSC was incorporated on February 20, 1990. Eight days later it purchased an apartment complex in Palm Desert, California, located on a property that was in tax default and was scheduled to be sold at a Riverside County tax auction. The next day it filed a Chapter 11 bankruptcy petition, thereby creating, under section 362(a) of the federal Bankruptcy Code, an automatic stay on sales of properties it owned. 11 U.S.C. § 362(a). Although WSC informed the tax collector of its bankruptcy filing, Riverside County proceeded with the sale in violation of the stay. Lusardi, unaware of the bankruptcy petition, purchased the property at the foreclosure sale for \$269,500. The foreclosure sale included competitive bidding and complied with state law. After the tax sale, the bankruptcy court dismissed WSC's bankruptcy petition, finding that it was filed in bad faith. *In re 40235 Washington St. Corp.*, No. 90-01612-LM11 (Bankr. S.D. Cal. filed May 15, 1990). WSC retained, and continues to retain, possession of the property, and Riverside County has never returned Lusardi's money.

The litigation that followed, in both state and federal court, is described in the most recent decision of the district court, *see 40235 Washington St. Corp. v. Lusardi*, 177 F. Supp. 2d 1090, 1095-96 (S.D. Cal. 2001) and, in greater detail, in a 1998 order of the district court, *see 40235 Washington St. Corp. v. Lusardi*, No. 90-1472-R, unpublished order at 1-6 (S.D. Cal. filed August 19, 1998). A brief description of the federal litigation is all that is required here.

The federal proceedings were initiated by WSC, which sought to quiet title and to obtain declaratory relief. It contended that because of the automatic stay Lusardi never acquired any title to the property. The proceedings in federal court were stayed pending the outcome of the state court litigation. *See 40235 Washington St. Corp. v. Lusardi*, 976 F.2d 587 (9th Cir. 1992). In 1998, the district court granted a motion by Lusardi to lift the stay on the federal litigation, and allowed Lusardi to bring counterclaims under federal and state law. Lusardi asked the court to quiet title in his favor on the ground that section 549(c) of the federal Bankruptcy Code, 11 U.S.C. § 549(c), provides an exception to the automatic stay provision and is applicable to him as a good faith purchaser without knowledge of the bankruptcy petition. Alternatively, he demanded compensation from WSC for his lost investment and associated costs, under section 3728 of the California Revenue and Taxation Code. *Lusardi*, 177 F. Supp. 2d at 1096.

Ultimately, the district court granted WSC's motion for declaratory relief and to quiet title and denied all relief to Lusardi. *Id.* at 1090. It agreed with Lusardi that section 549(c) of the Bankruptcy Code creates an exception to the automatic stay provision, *40235 Washington St. Corp. v. Lusardi*, No. 90-1472-R, unpublished order at 9-12 (S.D. Cal. filed Jan. 19, 1999), but held that Lusardi's purchase did not meet the requirements for invoking the exception. *Lusardi*, 177 F. Supp. 2d at 1096-102. The district court further held that the state tax law provisions under which Lusardi seeks compensation are preempted by the federal Bankruptcy Code. *Id.* at 1102-05. Lusardi appeals the district court's grant of relief to WSC, including its quiet

title order, while WSC argues that there is no federal jurisdiction. Although we hold, contrary to the district court, that section 549(c) of the Bankruptcy Code does not create an exception to the automatic stay provision, we affirm its grant of relief to WSC for the reasons set forth below.

II. Discussion

A. Jurisdiction

Federal courts have jurisdiction over matters in which a federal question is presented on the face of the wellpleaded complaint. *Abada v. Charles Schwab & Co., Inc.*, 300 F.3d 1112, 1118 (9th Cir. 2002). "Where the plaintiff seeks coercive relief under state law, as in a quiet title action, a well pleaded complaint presents a federal question if the plaintiff's right to such relief 'necessarily turn[s] on some construction of federal law.'" *Yokeno v. Mafnas*, 973 F.2d 803, 807 (9th Cir. 1992) (quoting *Franchise Tax Bd. v. Const. Laborers Vacation Trust*, 463 U.S. 1, 9 (1983)). In the case before us, it would be impossible to quiet title in favor of either party without addressing the federal Bankruptcy Code issue discussed below. Furthermore, the Bankruptcy Code issue is not raised as a defense or merely in anticipation of avoiding a defense. See *Yokeno*, 973 F.2d at 807. Rather, the automatic stay provision, which was raised by WSC in its complaint, is the only basis on which WSC's claim to title could be superior to that of Lusardi. Therefore, there is federal jurisdiction.

B. Stay Exception

Section 362(a) of the Bankruptcy Code provides that the filing of a bankruptcy petition creates an automatic "stay, applicable to all entities, of," inter alia, "any act to create, perfect, or enforce any lien against property of the estate." 11 U.S.C. § 362(a). Transfers in violation of the automatic stay are void. *Schwartz v. United States (In re Schwartz)*, 954 F.2d 569, 575 (9th Cir. 1992). When WSC filed its bankruptcy petition, the automatic stay took effect, with the result that the Riverside County tax sale, conducted to enforce the tax lien on the property, was void. Unless an exception to section 362(a) applies, therefore, Lusardi's purchase of the property at the tax sale was without effect.

Eighteen exceptions to section 362(a) are listed in section 362(b). 11 U.S.C. § 362(b) (listing circumstances in which "the filing of a petition . . . does not operate as a stay"). The text of section 362(a) makes reference to the exceptions listed in section 362(b), 11 U.S.C. § 362(a) (providing that the stay applies "[e]xcept as provided in subsection (b) of this section"), but not to any other exceptions. The language of section 362, thus, suggests that the 18 listed exceptions are the only exceptions to the automatic stay.

Lusardi does not argue that any of the 18 exceptions of section 362(b) applies to his purchase. Rather, he asserts that section 549(c) of the Code provides a further exception to the automatic stay provision. This assertion is plausible primarily because a number of courts, including ours on some occasions, have assumed it to be correct, as we discuss below. The district court in the present case relied on such assumptions and held that section 549(c) does create an exception to the automatic stay provision. *Lusardi*, No. 90-1472-R, unpublished order at 9-12 (S.D. Cal. filed Jan. 19, 1999). However, we have never before addressed the question directly. Recently the Bankruptcy Appellate Panel of the Ninth Circuit did so and concluded in an opinion we find persuasive that section 549(c) does not create an exception to section 362(a). *Value T Sales, Inc. v. Mitchell (In re Mitchell)*, 279 B.R. 839, 841-44 (B.A.P. 9th Cir. 2002). We reach the same conclusion as the Bankruptcy Appellate Panel.²

Section 549 concerns the ability of a bankruptcy trustee to avoid postpetition transfers of the property of the estate, and subsection (c) protects bona fide purchasers who did not know of the petition and who meet certain other requirements. Section 549 provides in full as follows:

§ 549. Postpetition transaction

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2) (A) that is authorized only under section 303(f) or 542(c) or that is authorized only under section 303(f) or 542(c) of this title; or

(B) that is not authorized under this title or by the court.

(b) In an involuntary case, the trustee may not avoid under subsection (a) of this section a transfer made after the commencement of such case but before the order for relief to the extent any value, including services, but not including satisfaction or securing of a debt that arose before the commencement of the case, is given after the commencement of the case in exchange for such transfer, notwithstanding any notice or knowledge of the case that the transferee has.

(c) The trustee may not avoid under subsection (a) of this section a transfer of real property to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value unless a copy or notice of the petition was filed, where a transfer of such real property may be recorded to perfect such transfer, before such transfer is so perfected that a bona fide purchaser of such property, against whom applicable law permits such transfer to be perfected, could not acquire an interest that is superior to the interest of such good faith purchaser. A good faith purchaser without knowledge of the commencement of the case and for less than present fair equivalent value has a lien on the property transferred to the extent of any present value given, unless a copy or notice of the petition was so filed before such transfer was so perfected.

(d) An action or proceeding under this section may not be commenced after the earlier of—

(1) two years after the date of the transfer sought to be avoided; or

(2) the time the case is closed or dismissed.

11 U.S.C. § 549.

As subsection (a) and (d) make clear, section 549 concerns avoidance actions by the trustee, not transfers that are already void under the automatic stay. Subsection (c), which Lusardi invokes, prevents such avoidance actions from succeeding against certain bona fide purchasers. By its terms, subsection (c) creates an exception only to subsection (a). 11 U.S.C. § 549(c) (describing transfers that "trustee may not avoid under subsection (a) of this section"). Thus, as the *Mitchell* court noted, the language and the structure of both section 362 and section 549

of a bankruptcy trustee property of the estate, purchasers who did not meet certain other full as follows:

action (b) or (c) of void a transfer of

element of the case;

under section 303(f) only under section

this title or by the

trustee may not avoid on a transfer made case but before the value, including fraction or securing commencement of the case notwithstanding any that the transferee

under subsection (a) property to a good knowledge of the deed for present fair notice of the transfer of such real interest such transfer, and that a bona fide purchaser against whom transfer to be perfected, is superior to the transferor. A good faith purchaser at the commencement of the case sent fair equivalent transferred to the purchaser, unless a copy or filed before such

under this section may transfer of—

the transfer sought to

dismissed.

It is clear, section 549 states, not transfers that stay. Subsection (c), which avoidance actions bona fide purchasers. By its exception only to describing transfers that subsection (a) of this act noted, the language 362 and section 549

support the view that section 549(c) does not create an exception to the automatic stay provision.

This interpretation is also consistent with the purposes of the two sections. The purpose of the automatic stay is to protect debtors from their creditors while bankruptcy proceedings are underway. *Schwartz*, 954 F.2d at 571 (“[The stay] is designed to protect debtors from all collection efforts while they attempt to regain their financial footing.”); see H.R. Rep. No. 595, 95th Cong., 1st Sess. 340 (1978) (“The automatic stay is one of the fundamental debtor protections . . .”). The purpose of section 549, in contrast, is to provide a just resolution when the debtor himself initiates an unauthorized postpetition transfer. The general rule in such situations is that the trustee is authorized to avoid the transfer in order to protect the creditors. See 11 U.S.C. § 549(a); *Schwartz*, 954 F.2d at 574 (“Section 549 exists as a protection for creditors against unauthorized debtor transfers of estate property.”). Section 549(c) creates an exception to that rule to protect innocent purchasers whom the debtor has defrauded. 5 COLLIER ON BANKRUPTCY, § 549.06 (15th ed. rev. 2002). As sections 362 and 549 are designed to protect different parties, it is not surprising that an exception to one would not apply to the other. Congress evidently saw fit, as *Mitchell* discerned, “to afford greater protection to [bona fide purchasers] who purchase from debtors than to those purchasing at sales violating the automatic stay.” *Mitchell*, 279 B.R. at 843.

As noted above, some of our prior decisions imply, contrary to our present holding, that section 549(c) does create an exception to the automatic stay provision. Most recently, in *Schwartz*, we stated at one point in the opinion that “subsection 549(c)’s protection of good faith purchasers carves out an extremely specific and narrow exception to the automatic stay when section 362 overlaps subsection 549(c).” *Schwartz*, 954 F.2d at 574. This statement, although the district court in *Lusardi* believed it was binding, was a mere assumption that did not contribute to our resolution of any matter at issue in the case. The “sole issue” in *Schwartz* was whether transfers in violation of the automatic stay were void or merely voidable. *Id.* at 570-71. We held that they were void and addressed section 549(c) only to refute the argument that section 549(c), because it is an exception to section 362(a), demonstrates that violations of the stay are not void.³ Our assumption that section 549(c) does create such an exception was, in this sense, actually in tension with our holding. Furthermore, in subsequent portions of the opinion, *Schwartz* appears to assume precisely the opposite of its initial assumption: It appears to state quite clearly that section 549(c) does not create an exception to the automatic stay. See, e.g., *id.* at 574 (“The law in this circuit is that violations of the automatic stay are void and that section 549 applies to transfers of property which are not voided by the stay.”). We therefore draw no conclusion from *Schwartz* as to the relationship between sections 362(a) and 549(c). In another case, we assumed that section 549(c) creates an exception to the automatic stay but held that the requirements of section 549(c) were not met. *Walker v. California Mortgage Serv. (In re Walker)*, 861 F.2d 597, 600 (9th Cir. 1988) (perfection requirement not met). Similarly, we made the same assumption but decided the issue on a different basis in *Thompson v. Margen (In re McConville)*, 110 F.3d 47, 49 (9th Cir. 1997) (applying section 364(c)(2)). Finally, to confuse matters even further, in *Phoenix Bond & Indemnity Co. v. Shamblin (In re Shamblin)*, 890 F.2d 123, 127 n.5 (9th Cir. 1989), we expressly declined to “resolve [the] difficult question” whether the section 549 exception applies when an automatic stay is in effect.

We also acknowledge that our holding today conflicts with the view expressed in two bankruptcy treatises, see 3 COLLIER ON BANKRUPTCY § 362.11[1] (15th ed. rev. 2002) (“Section 549(c) contains an important limitation of the principle that actions taken in violation of the stay are void, or at least voidable.”); NORTON BANKRUPTCY LAW AND PRACTICE 2D § 59:5 (Supp. Nov. 2002) (stating that *Schwartz* “correctly” regarded section 549(c) as an exception to section 362(a)). We also note that in *Tsafaroff v. Taylor (In re Taylor)*, 884 F.2d 478 (9th Cir. 1989), we assumed *Collier* to be correct, without considering the question, and affirmed a decision of the Bankruptcy Appellate Panel holding that the lack of notice requirement of 549(c) was met. *Id.* at 483-84. We did so only shortly before we announced, in the final amended opinion in *Shamblin*, that the question was an open one.

We also note that the Third and Fifth Circuits and, in a pre-*Mitchell* decision, the Bankruptcy Appellate Panel of the Ninth Circuit, have stated in dictum, and a number of Bankruptcy Courts have held, assumed, or opined, contrary to our holding today, that section 549(c) does create an exception to section 362(a). See, e.g., *In re Siciliano*, 13 F.3d 748, 751 n.2 (3d Cir. 1994); *Sikes v. Global Marine, Inc.*, 881 F.2d 176, 179 (5th Cir. 1989); *Shaw v. County of San Bernadino (In re Shaw)*, 157 B.R. 151 (B.A.P. 9th Cir. 1993); *Jones v. Wingo (In re Wingo)*, 89 B.R. 54, 58 (B.A.P. 9th Cir. 1988); *In re Shah*, 2001 Bankr. LEXIS 380, *15-*26 (Bankr. E.D. Pa. 2001); *Carpio v. Smith (In re Carpio)*, 213 B.R. 744, 750-51 (Bankr. W.D. Mo. 1997); *Groupe v. Hill (In re Hill)*, 156 B.R. 998, 1007 (Bankr. N.D. Ill. 1993); *Little v. Bago (In re Bago)*, 149 B.R. 610, 612 (Bankr. C.D. Cal. 1993); *In re King*, 35 B.R. 530, 531 (Bankr. N.D. Ga. 1983).

None of these decisions, however, considered the textual, structural, and policy arguments we address above. Most were arrived at without any analysis at all. While numbers are on the side of finding section 549(c) to create an exception, the clear weight of judicial reasoning strongly supports the contrary view. Specifically, so far as we are aware, every court that has considered the governing legal factors has reached the conclusion we have, that section 549(c) does not create an exception to the automatic stay provision. See *Mitchell*, 279 B.R. at 841-44; *Glendenning v. Third Fed. Sav. (In re Glendenning)*, 243 B.R. 629, 633-34 (Bankr. E.D. Penn. 2000); *Smith v. London (In re Smith)*, 224 B.R. 44, 46-48 (Bankr. E.D. Mich. 1998); *New Orleans Airport Motel Assocs. v. Lee (In re Servico, Inc.)*, 144 B.R. 933, 934-37 (Bankr. S.D. Fla. 1992).

Because we hold that section 549(c) does not create an exception to section 362(a), we do not reach the issue whether *Lusardi*’s purchase at the Riverside County tax foreclosure sale met the requirements of section 549(c).

C. Preemption

California state law provides that after a property has been sold in a tax foreclosure sale, the tax deed acquired by the purchaser may not be voided unless the former owner reimburses the purchaser “the amount of taxes, penalties and costs expended by him or her as determined by the court in pursuit of title to the property.” Cal. Rev. & Tax. Code § 3728(a).⁴ “If the amount required to be paid . . . is not paid within . . . six months, the court shall order a new tax deed issued by the county tax collector to the original grantee or his successor in interest as designated in the order.” *Id.* § 3728.1. *Lusardi* asserts that these provisions prevent the federal courts from voiding his deed unless WSC pays him the full amount he paid to Riverside County at the tax sale, as well as the other costs he incurred in acquiring title. The district court held that section 3728 is preempted by the automatic stay provision of the Bankruptcy Code. 11 U.S.C. § 362(a). We agree.

Under the doctrine of "conflict preemption," preemption is implied where "compliance with both federal and state regulation is a physical impossibility." *Gade v. Nat'l Solid Wastes Mgmt. Ass'n*, 505 U.S. 88, 98 (1992) (internal quotation marks omitted).

Section 3728 requires that, before a tax deed is declared void, the court must determine the amount of taxes owed on the property and order the former owner to pay to the purchaser that portion of the taxes, penalties and costs that the purchaser expended in pursuit of the title. Cal. Rev. & Tax. Code § 3728. Next, the court must order that the former owner pay any taxes that it still owes on the property to the appropriate tax agencies. *Id.* If both payments are not made within six months, a new tax deed will issue to the purchaser. *Id.* § 3728.1.

As noted above in our discussion of the federal Bankruptcy Code issue, transfers in violation of an automatic stay under section 362(a) are void: The property interests remain the same as they would have been if no transfer had been attempted. *See Schwartz*, 954 F.2d at 571. Section 3728 conflicts directly with this rule. First, it does not treat the transfer as if it never happened. To the contrary, under section 3728, the transfer has important consequences, burdening the trust or former owner. Second, under section 3728 the transfer is not void, as *Schwartz* held with respect to transfers under the automatic stay provision, but voidable. If no action is taken, the deed remains effective.

As the district court noted, section 3728 also conflicts with the Bankruptcy Code's system of ordering creditor's claims. If the tax lien is not paid in full within six months, then the tax purchaser takes the property free of all encumbrances under California Revenue and Taxation Code section 3712, whereas under the Bankruptcy Code all secured claims remain after bankruptcy proceedings are complete. 11 U.S.C. § 1129(b)(2); *see Lusardi*, 117 F. Supp. 2d at 1105.

The district court was therefore correct to hold California Revenue and Taxation Code section 3728 preempted.

Because of our preemption ruling, we do not reach the further issue raised by WSC that, regardless of federal law, section 3728 is not applicable in this case.

Conclusion

For the foregoing reasons the judgment of the district court is

AFFIRMED.

* The Honorable Glenn L. Archer, Jr., Senior Circuit Judge, United States Court of Appeals for the Federal Circuit, sitting by designation.

¹ Certain details of the state court litigation are relevant to WSC's arguments that Lusardi's claims for relief are both timebarred and barred by collateral estoppel. However, because we affirm the district court's denial of relief on other grounds, we do not reach those issues.

² Although the bankruptcy court dismissed WSC's bankruptcy petition as having been filed in bad faith, the dismissal has no bearing on the issues before us. Lusardi asked the court to apply the dismissal retroactively so as to give effect to the tax sale. The parties disagree as to whether the bankruptcy court denied the motion or rather declined to address it. In either case, Lusardi does not now seek relief on the theory that the stay should be retroactively voided.

³ In truth, we did not explain clearly in *Schwartz* the argument based on section 549(c) that we were refuting. We wrote that "[i]t is disingenuous to argue that the general rule must be invalid simply because there is a narrow exception to the rule." *Schwartz*, 954 F.2d at 574. It appears, then, that one of the parties argued that violations of the stay cannot be void because violations that meet the requirements of section 549(c) are not void. However, that argument is without any logic, because violations that meet the requirements of section 549(c) are also not voidable. A better argument on basis of section 549(c) can be found

in *Sikes v. Global Marine, Inc.*, 881 F.2d 176, 179 (5th Cir. 1989), which held, contrary to *Schwartz*, that transfers in violation of the stay are voidable, not void. *Id.*

We addressed section 549 as a whole in *Schwartz* in order to refute the following, more persuasive argument: A transaction can be both in violation of the automatic stay and controlled by section 549; section 549 explicitly makes unauthorized postpetition transactions not void, but rather avoidable by the trustee; therefore, a holding that transactions in violation of the automatic stay are void would conflict with section 549. *Schwartz*, 954 F.2d at 573-74. We assumed the premises of this argument but rejected the conclusion. *Id.*

⁴ Section 3728 provides in full as follows:

§ 3728. Payments required to be made before voiding deed. Before holding any tax deed heretofore or hereafter given under this chapter or Chapter 8 (commencing with Section 3711), former Chapter 3 (commencing with Section 3475), former Chapter 4.3 (commencing with Section 3534), or former Sections 3897 and 3897d of the Political Code to be void, the court shall determine the correct amount of taxes, penalties and costs that should be paid upon redemption to discharge the tax and assess ment liens of all taxing agencies and revenue districts had the purported tax sale not been held and the court shall order the former owner or other party in interest to pay that amount within six months as follows:

(a) To the purchaser, or his or her grantee or successor in interest, the amount of taxes, penalties and costs expended by him or her as determined by the court in pursuit of title to the property, and when the purchaser at that sale or the grantee in any deed for taxes or his or her grantee or successor in interest is in possession of that property in good faith and claiming the property under a tax deed, which is regular upon its face, and has made permanent improvements thereon, the court shall not make that decree until there has also been repaid to the purchaser or his or her grantee or successor in interest a sum, as determined by the court, equal to the amount by which the value of the property has been enhanced by those permanent improvements; and

(b) To the county tax collector, the balance, if any, of the correct amount as determined by the court that should be paid upon redemption, which shall be distributed by the county to the taxing agencies and revenue districts as redemption money.

If the amounts are not paid in accordance with the order the court shall not hold the tax deed void.

03 JUN -3 10:15

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

FINAL PRE-TRIAL ORDER

The Court held a final Pre-Trial Conference on the 30th day
of May, 2003; the plaintiff John Bach appeared in person, the
defendant Katherine Miller appeared by and through counsel Galen
Woelk, Esq., the defendant Ann-Toy Broughton appeared in person,
The defendant Stan Nickell did not appear, but the parties
advised the Court that Mr. Nickell died in March, and the

FINAL PRE-TRIAL ORDER

1

000576

defendants Bret and Deena Hill appeared by and through counsel Alva Harris, Esq. Bach, Miller and the Hills filed lists of witnesses and exhibits. Miller filed proposed jury instructions.

The Court file reflects that earlier in the morning of May 30th, the Clerk had entered a default under Rule 55(a)(1), I.R.C.P., against defendants Hill for failure to plead. Mr. Harris advised the Court that he would move to have the default set aside and asked to be excused. Clerk's defaults also have been entered against defendants Harris, Scona, Inc., McLean, Fitzgerald, Olesen, Lyle, Dawson and Hamlin. No return of service is present as to defendants Bagley or Liponis. The first amended complaint was dismissed as to defendant Runyan for lack of service. The claims against defendant Woelk were severed for a separate trial.

The likelihood of a settlement is poor. A jury trial is scheduled to commence at 10:00 a.m. on June 10, 2003, on Bach's first amended complaint, Broughton's answer, and Miller's answer and counterclaim.

Now therefore, IT IS HEREBY ORDERED that pursuant to Rule 16(f), I.R.C.P., the following shall control the trial of this matter.

A. Nature of the Action.

This is an action by John Bach to quiet title in his sole

name as to several tracts of real property in Teton County, Idaho, for injunctive relief and damages as to such property, for damages for conversion and loss of personal property, and for damages for personal injuries from assaults and ancestry harassment. It is also an action to quiet title to some of the same real property in the sole name of Miller, for injunctive relief, imposition of constructive trust and damages based on fraud and breach of fiduciary duty.

As a result of the Court's Tenth Order on Pending Motions, count ten alleging violations of the Idaho RICO Act was dismissed. As a result of the Court's Fourteenth Order on Pending Motions, Bach was granted partial summary judgment against Miller as to quiet title to real property described in counts two, three and four. Defendant Broughton's answer claims no interest in the property described in counts one, two, three and four.

B. Statement of All Claims For Trial.

1(a). In **count one** Bach claims that under an oral partnership agreement between he and Miller entered sometime after October 3, 1997, that title be quieted in his name against Miller as to following described 4 tracts of real property, all situate in Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, to wit:

1. A part of the S1/2SW1/4 Section 11, commencing from the SW corner of said Section 11 thence N 0 02'03" W 1214.14 feet along the Western section line to the true point of beginning: thence N 0 02'03" W 110.00 feet further along said Western section line to the NW corner of the S1/2SW1/4 of Section 11; thence S 89 57'55" E 2627.56 feet along the north line of the S1/2SW1/4 of Section 11 to a point on the Western right of way line of State Highway 33; thence S 0 09'27" W 110.00 feet along the Western right of way line of State Highway 33 to a point; thence N 89 57'55" W 2627.19 feet to the point of beginning, comprising 6.63 acres more or less (hereafter "Miller Access Parcel").

2. W1/2S1/2SE1/4 Section 10, comprising 40 acres more or less (hereafter "Miller Property").

3. E1/2S1/2SE1/4 Section 10, comprising 40 acres more or less (hereafter "Targhee Property").

4. A part of the E1/2S1/2SE1/4 Section 10, commencing from the NE corner of the E1/2S1/2SE1/4 of said Section 10; thence West along the North boundary line of the E1/2S1/2SE1/4 of said Section 10 to the NW corner of the E1/2S1/2SE1/4 of said Section 10; thence South along the West boundary line of the E1/2S1/2SE1/4 of said Section 10 110.00 feet; thence East to the East boundary line of the E1/2S1/2SE1/4 of said Section 10 to the point of beginning (hereafter the "Targhee/Miller Property").

Bach seeks to enjoin Miller and Broughton from entering these properties, and damages from their obstructing his use of such properties.

1(b). Miller denies Bach's claims, and alleges affirmatively that she owns the properties solely or jointly with others, that Bach is estopped to claim ownership, that the statute of frauds bars any oral interest in real property, failure of consideration, fraudulent acts by Bach, illegality,

waiver, equitable unclean hands, equitable laches, release and assignment, comparative negligence, nuisance abatement, superseding acts of third persons, and failure to join real parties in interest.

1(c). Broughton denies Bach's claims.

2(a). In **count five** Bach claims that he was damaged by Miller and Broughton slandering his title to the 4 tracts of property described above, and 4 more tracts of real property comprising a 1 acre lot on Highway 33, an undivided one-half interest in 8.5 acres adjacent to the lot, 40 acres in the SE1/4SW1/4 of Section 35, T6N, R45E B.M., and 40 acres in the SW1/4SE1/4 of Section 6, T5N, R45 E B.M., all in Teton County, Idaho, by recording false deeds.

2(b). Miller denies Bach's claims, and asserts the same affirmative defenses listed above.

2(c). Broughton denies Bach's claims.

3(a). In **count six** Bach claims that he was damaged by Miller and Broughton intentionally interfering with his contracts, business relationships and economic expectancies.

3(b). Miller denies Bach's claims, and asserts the same affirmative defenses listed above.

3(c). Broughton denies Bach's claims.

4(a). In **count seven** Bach claims that he was damaged by

Miller's breach of fiduciary duties of trust, loyalty and candor and implied duties of good faith and fair dealing.

4(b). Miller denies Bach's claims, and asserts the same affirmative defenses listed above.

4(c). This count does not allege any liability against Broughton.

5(a). In **count nine** Bach claims damages from conversion of his money, personal property and business names by Miller and Broughton.

5(b). Miller denies Bach's claims, and asserts the same affirmative defenses listed above.

5(c). Broughton denies Bach's claims.

6(a). In **count eleven** Bach claims damages from malicious prosecution and abuse of process by Miller's prosecuting Teton County Case CV-01-59 against him in 2001 and 2002.

6(b). Miller denies Bach's claims, and asserts the same affirmative defenses listed above.

6(c). This count does not allege any liability against Broughton.

7(a). In **count twelve** Bach claims damages under I. C. §§18-7901 through 18-7904 from malicious harassment by Miller and Broughton based on Bach's Montenegrin ancestry.

7(b). Miller denies Bach's claims, and asserts the same

affirmative defenses listed above.

7(c). Broughton denies Bach's claims.

8(a). In her **first counterclaim** Miller claims that title to the 4 tracts described above as the "Miller property," "Targhee Property," "Miller Access Parcel," and "Targhee/Miller Property," be quieted in her sole name because the two 40 acre tracts were purchased entirely with her \$120,000.00 payments in December, 1994 and March, 1995, and the 6.63 acre strip was purchased entirely with her \$7,456.73 payment in October, 1996, because Bach falsely represented that other "undisclosed" investors in "Targhee Powder Emporium, Inc." were paying like amounts for Targhee Powder Emporium's equal interest in the property, when she discovered in November, 2000 that in truth Targhee Powder Emporium had no other investors nor made any payments.

8(b). Bach denies Miller's claims, and alleges affirmatively that the court lacks subject matter and personal jurisdiction, the claims are barred by a Chapter 13 federal bankruptcy discharge order, the claims are barred by failure to assert a compulsory counterclaims in federal case CV-99-014-E-BLW, the claims are barred by dismissal of Teton County case CV-01-59, the claims are barred by res judicata and collateral estoppel or claim preclusion from Teton County case CV-00-76,

the claims are barred by promissory estoppel, equitable estoppel, and quasi estoppel, the statute of limitations, release by agreement of October 3, 1997, illegality and misappropriation or conversion of business name, equitable unclean hands, fraudulent acts by Miller, breach of fiduciary duties, failure to exhaust conditions precedent, waiver, abandonment, failure to mitigate damages, and superseding acts of third persons.

9(a). In her **second counterclaim** Miller claims imposition of a purchase money resulting trust to hold the property for her benefit based on the same facts.

9(b). Bach denies Millers claims, and alleges the affirmative defense described above.

10(a). In her **third counterclaim** Miller claims damages and return of the \$127,456.73 she spent based on Bach's fraudulent acts.

10(b). Bach denies Millers claims, and alleges the affirmative defense described above.

11(a). In her **fourth counterclaim** Miller claims damages based on breach Bach's breach of attorney-client fiduciary duties.

11(b). Bach denies Millers claims, and alleges the affirmative defense described above.

12(a). In her **fifth counterclaim** Miller claims that Bach be estopped to claim any interest in the 4 tracts because of his fraudulent acts.

12(b). Bach denies Millers claims, and alleges the affirmative defense described above.

13(a). In her **sixth counterclaim** Miller claims damages from Bach's slander of title by recording a false deed as to the 4 tracts on May 7, 2002, and that such deeds should be declared void.

13(b). Bach denies Millers claims, and alleges the affirmative defense described above.

14(a). In her **seventh counterclaim** Miller claims damages from Bach's obstructing her use of the "Miller Property" and her sole or undivided one half interest in the "Miller Access Parcel" and the "Targhee/Miller Property" from September 15, 1999 through the present, and seeks treble damages under I. C. §6-317 for forcible detainer.

14(b). Bach denies Millers claims, and alleges the affirmative defense described above.

15(a). In her **eighth counterclaim** Miller claims damages for the unjust enrichment of Bach by having the use of the 4 tracts of property that Miller paid the entire purchase price to acquire.

15(b). Bach denies Millers claims, and alleges the affirmative defense described above.

C. Admissions or Stipulations of the Parties.

None.

D. Amendments to Pleadings.

None.

E. Statement of Issues of Fact Which Remain to be Litigated.

1. The prima facie factual elements of **counts one, five, six, seven, nine, eleven and twelve** described in ¶B above proved by Bach's evidence as to Miller.

2. The prima facie elements of **counts one, five, six, nine and twelve** described in ¶B above proved by Bach's evidence as to Broughton.

3. The prima facie factual elements of affirmative defenses described in ¶B above proved by Miller's evidence.

4. The prima facie factual elements of **counterclaims** described in ¶B above proved by Miller's evidence as to Bach.

5. The prima facie factual elements of affirmative defenses described in ¶B above proved by Bach's evidence.

F. Statement of Issues of Law For the Court.

1. Whether Bach's evidence is sufficient to require instructing the jury on any causes of action against Miller and Broughton in the first amended complaint?

2. Whether Miller's evidence is sufficient to require instructing the jury on any affirmative defenses in her answer.

3. Whether Miller's evidence is sufficient to require instructing the jury on any counterclaims against Bach?

4. Whether Bach's evidence is sufficient to require instructing the jury on any affirmative defenses in his reply.

5. Whether judgment should be entered on the first amended complaint and the counterclaim based on the jury's verdict on legal claims and the Court's findings of fact on the equitable claims, for or against Bach, Miller and Broughton, and the specific relief to be awarded.

G. Orders on Matters to Expedite Trial.

1. The parties shall meet and agree before trial on which exhibits shall be admitted into evidence by stipulation.

H. List of Exhibits.

1. Plaintiff's exhibits are listed and described in plaintiff's exhibit list on file.

2. Defendant Miller's exhibits are listed and described in defendant Miller's exhibit list on file.

3. Defendant Broughton's exhibits are listed and described in defendant's exhibit list on file.

4. All of the parties' exhibits shall be deposited with the clerk not later than June 4, 2003 at 5:00 p.m. Plaintiff's

exhibits shall be pre-marked numerically, and defendants' exhibits shall be pre-marked alphabetically. The parties may examine each other's pre-marked exhibits under supervising of the clerk of court.

5. No proposed exhibit not described above and filed with the clerk shall be admitted into evidence, except when offered for impeachment purposes or when otherwise permitted by the Court in the interest of justice.

I. List of Witnesses.

1. Plaintiff Bach's witnesses are John Bach, Cindy L. Milleer, Diana Cheyovich, Milan Cheyovich, J. D. Ritchie, Elaine Ritchie, Garen Hancock, Steve Green, Travis Thompson, Carol Eck, Chuck Geiger, Steven N. Bach, Melissa Bach Lehmer, Minda N. Trimmer, Jeff Trimmer, Roger Kaufman, Gene Knight, Dave Guymon, Sherry Guymon, Tyler Hammond, Cindy McCracken, Roxanne Sanchez, Staci Sanchez, Linda Miller, Sanford I. Beck, William Vrabec, Mary Lou Vrabec, Harold Steinecker, Blake Robinsion, William j. Thomas, Ken Price, Jaydell Buxton, Judy Buxton, Layne price, Gary Johnson, Kathy Johnson, him Williams, Ken Chambers, ken Dunn, Sam Sewell, Ralph Sewell, Larry Hansen, Don Moller, Ole Olesen, Kelly Circle, John Schultz, Audie Schultz, Dick Arris, Sonny Arris, Mark Wittig, Beth Wittig, Leanne Bolten-Lewis, Charles Homer, Charles Wright, Alva Harris, Ronald E. Miller,

and Ken Stringfield.

2. Defendant Miller's witnesses are Ken Rizotti, Alva Harris, Robert Fitzgerald, Jack McLean, Laura Lowery, Anne Broughton, Janet Woodland, John Letham, Wane Dawson, Donna Dawson, Jerrilee Bower, Katherine Miller, Paula Ehrler, Craig Case, John Bigley, and Mark Liponis.

3. Defendant Broughton's witnesses are Ann-Toy Broughton, Katherine Miller, Alva Harris, Ryan Kaufman, Craig Peterson, Bob Fitzgerald, Louis Everett, Mike Webster, Dr. Don Ritchey, Bob Russ, Charlene O'Connell and Chris Lander.

4. All other proposed witnesses, except impeachment witnesses and rebuttal witnesses whose identity was unknown before trial, shall be excluded from testifying at the trial unless permitted by the Court in the interest of justice.

J. Discovery.


The parties have completed discovery.

K. Trial Date.

Trial shall commence at 10:00 a.m. on Tuesday, June 10, 2003, initially for jury selection at the Driggs High School auditorium, and thereafter in the District Courtroom, Teton County Courthouse, Driggs, Idaho, before a jury composed of twelve (12) persons, and (1) alternate. Each party shall have five (5) peremptory challenges. Trial shall last no longer than

eight (8) days. Ninety (90) prospective jurors have been summoned. The struck jury system shall be utilized with a seated panel of twenty eight (28) to be questioned as to possible challenges for cause, and peremptory challenges to be made by secret ballot with five rounds.

DATED this 3rd day of June, 2003.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of June, 2003, 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
P. O. Box 101
Driggs, ID 83422
Telefax Nos. 626-441-6673
208-354-8303 (TELEFAX & MAIL)

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

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)

RONALD LONGMORE
Clerk of Court



Deputy Court Clerk

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
(Seasonal: P.O. Box 101
Driggs, ID 83422
Tel: (208) 354-8303
Plaintiff Pro Se

FILED
4:21
JUN 03 2003
TETON CO.
MAGISTRATE COURT

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

JOHN N. BACH,

Plaintiff,

v.

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

Defendants &
Counterclaimant.

CASE NO: CV 02-208
PLAINTIFF JOHN N. BACH'S
MEMORANDUM BRIEF RE OBJECTIONS,
MOTION TO STRIKE, & OPPOSITION
TO DEFENDANT WAYNE DAWSON'S
MOTIONS RE (1) SECOND RENEWED
MOTION TO SET ASIDE DEFAULT;
(2) MOTION TO CONTINUE TRIAL
OR (3) BIFURCATE, ETC.

DATE OF HEARING: June 5, 2003
TIME OF HEARING 9 a.m.
PLACE: Bonneville County Courthouse
THE HONORABLE RICHARD T. ST. CLAIR,
Assigned, Presiding.

COMES NOW PLAINTIFF & COUNTERCLAIM DEFENDANT JOHN N. BACH,
and submits his initial MEMORANDUM BRIEF OF OBJECTIONS, MOTION TO
STRIKE, and OPPOSITION TO DEFENDANT WAYNE DAWSON'S SPECIOUS AND
UTTERLY FRIVOLOUS/VEXATIOUS MOTIONS RE (1) SECOND RENEWED MOTION
TO SET ASIDE DEFAULT [ENTRY], (2) TO CONTINUE TRIAL DATE, or
(3) ALTERNATIVELY, BIFURCATE, etc., dated June 2, 2003, not pro-
perly served by fax nor timely otherwise, served by any validly
issued nor any issued ORDER SHORTENING TIME, but, speciously set
for hearing Thursday, June 5, 2003, @ 9 a.m., in Bonneville County
Courthouse. Dawson's motions are attempted to be supported by two
(2) contrived and deliberately falsified affidavits of Dawson,
himself and his current counsel, Jared Harris. (Plaintiff incorporates
herein his earlier Memo Briefs re Objections/Opposition to Dawson's earlier motions.)

I. OBJECTIONS & MOTION TO STRIKE DAWSON'S MOTIONS, AFFIDAVIT
& AFFIDAVIT OF JARED HARRIS.

000591

Pt's Mem Brief re Objn/Mtn-Strike & Opp to Df Dawsons 2d Renw'd Mtn/Set/Deflt P. 1.

plans were made, with what travel agency or transportation/airline, etc., nor what confirmations, moneys paid, whether such moneys are refundable or not, etc., But more indicative of such canards by Jared Harris, is that nothing about such family vacation plans were brought up, either in the motions, nor at argument, etc., of Jared Harris' first two motions to set aside DAWSON's defaults, such relief being sought for both Wayne & Donna Dawson. (See Twelveth Order of this Court.) Even then, Jared Harris, filed an appearance on both Wayne and Donna Dawson's behalves, made no mention of his vacation plans, nor was any mention made of Wayne Dawsons' now clearly contrived health injuries condition. In fact, when Plaintiff made a motion to stike the DAWSONs' said general appearances, Jared Harris did not oppose, nor appear during argument thereon, to oppose or advise the court of any vacation problems or health injury conditions of either DAWSONS nor of WAYNE DAWSON. (See May 6, 2003, filed Thirteenth ORDER, page 9, paragraph 7. "Motion to strike defendant Dawsons' attorney's notice of appearance." . . . "No party opposes this motion. Since th[is] supports Bach's argument, good cause for granting this motin has been shown. Therefore, the Court must grant Bach's motion.")

Even after Jared Harris, noticed the second motion, denominated Renewed Motion to Set Aside Defaults, etc., again no mention whatsoever, made nor any statements presented re Jared Harris' conflicting vacation plans, nor Wayne Dawson's health or injury condition preventing his attendance at trial. (At this point it is very revealing, that defendant Miller's witness list, reveals and declares that her witness number "9. Wayne and Donna Dawson.") Most deceptively stated is the entire affidavit of Wayne Dawson, who in his very last paragraph itemizes what are invalid injury conditions purportedly keeping him

000592

Objections are made to both affidavits of Dawson and his current attorney Jared Harris, the son of Alva Harris, who previously was Dawson's attorney herein and is still DAWSON's attorney in that USDC, Idaho Action, CV 01-266-E-TGN, as follows:

1. Said DAWSON's motions are untimely, in point not only of filing, but also, incredibly and egregiously late, on the even of trial herein, after two (2) other motions were denied, found to be untimely, without showing of good cause and without any proof properly and admissibly presented of any adequate defense. Now, these third motions, designated a SECOND RENEWED MOTION is compounding and moreso aggravating ~~RE THE UTTER LACK OF SHOWING, that it be heard a third time,~~ let alone considered for any relief whatsoever. Said DAWSON's motions do not comply, nor seek to comport with IRCP, Rules 6(d), 6(e), 11(b)(1)(2), nor Rules 55(c) and least of all Rule 60(b), which rules, although cite generally, no particular subportion therein is cited, not case authority nor law is given or supplied by any memorandum brief as required, per said Rule 60(b) and Rule

2. Most deceptively, the affidavits offered are more than contrived and a contemptuous misuse of process, creating great prejudice, loss of time and resources, as well as enegeries from plaintiff, re his preparation for trial which is set to comment June 10, 2003. Said trial date was well known to Alva A. Harris, herein and Jared Harris in both November and December 2002, and ever since then. At no time had Jared Harris, in his two previous motions, advised the court or plaintiff of any of his personal travel commitments with his family as precluding his availabilities for trial. More signigicantly, Jared Harris' prior refusal and ignoring of DAWSON's calls and efforts of communications with and to him, had nothing to do with his not contrived June 1-17, 2003 travel plans. Jared Harris' affidavit does not say when in Nov., 2002 said

from traveling to trial, but which occurred over eight (8) plus weeks, over two (2) months ago, purportedly on Mar. 31, 2003, from downhill skiing, but which now contrived and sympathy seeking injuries were nothing that had to be mentioned earlier or at all. Plaintiff has received brief information, since his receipt of DAWSON's 2d RENEWED MOTIONS, that Wayne Dawson is very ably going around and outside of Chico, drives his pickup truck, attends Chico State and High School sporting events, sitting on many hard wood or steel bleachers and even has been seen with a tennis racket in hand playing on numerous local tennis courts. NO WHERE WITHIN DAWSON'S AFFIDAVIT DOES HE MENTION HOSPITALIZATION, FOR HOW LONG, NOR HIS DOCTORS' NAMES, NOR IF HE HAD ANY SURGERY NOR ANY DOCTORS' REPORTS, AFFIDAVITS OF CONVALESCENT CONCERNS, AT THIS LATE DATE. (Plaintiff in his own law practice as a plaintiffs' injury attorney, became very familiar with rehabilitation periods, which for the generally described and thoroughly routine fractures, hairline, or cast settings, ribs bindings, etc., the normal estimated recovery and recuperation period was 5 weeks and at the most 8 weeks with light non weight bearing physical therapy to preclude any muscular atrophy.) DAWSONS' claimed injuries are more than bamboozling false sympathy seeking biased treatment. The real truth is that his two attorneys, Alva and Jared Harris rely upon the L.D.S. status and statutes they claim and the very nonjudicial L.D.S. preferences they receive from L.D.S. judges, to cover such attorneys' errors and omissions. But the statutes, rules and authorities which are applicable herein have not been refuted nor shown to be distinguishable in any of said DAWSONS' and HARRIS' previous motions to set aside defaults. Nor are any authorities cited whatsoever.

Plaintiff moves to strike both affidavits and all said motions.

000594

II. OPPOSITION TO DAWSON'S MOTIONS, ALL THREE, WHICH MOTIONS ARE MORE THAN SPECIOUS AND VEXATIOUS, BEING UTTERLY WITHOUT MERIT, AND CALL FOR MONETARY SANCTIONS AGAINST DAWSON & HIS COUNSEL, TO REIMBURSE ALL COSTS, EXPENSES, AND OBLIGATIONS INCURRED BY PLAINTIFF TO TRAVEL AND ATTEND THE HEARING ON JUNE 5, 2003 at IDAHO FALLS.

Before going into any response and opposition to DAWSON'S affidavit, the court is reminded that Wayne Dawson was a disclosed, a named creditor in Plaintiff's Bankruptcy petitions, one filed originally in Idaho, and then because of questions of jurisdictions, thesecond filed in Sacramento, CA, Eastern Cal., U.S. Bankruptcy Court. In the Aug. 13 and 15, 2002 hearing re preliminary injunction, testimony and documentary evidence was admitted that Wayne Dawson was listed as a \$15,000.00 creditor of petitioner John N. Bach, he never filed any claims, was subject to the automatic stay order, and was discharged. Until said Chapter 13 bankruptcy terminated in Dec 28, 2001, Dawson did absolutely nothing to have his claim of fraud exempted from said bankruptcy proceedings, a contrived fraud claim which he asserts now in his perjurious declaration against JOHN N. BACH, personally, and in which affidavit he deliberately avoids stating with clarity the exact date, circumstances, etc., purportedly he discovered such fraud by JOHN N. BACH. Despite his further smear contrivances of plaintiff misusing falsely his funds, no amounts, times or reasons of when, how and for what purposes such unclarified moneys and denominations thereof, were misappropriated by plaintiff. Such bogus contrivances are the demented thoughts and Alice in Wonderland distortions of both Harris' who as counsel for DAWSON constantly revise and recreate falsehoods to cover the numerous crimes they have perpetrated upon plaintiff.

Therefore, even under DAWSON'S perjurious false and contrived defenses, since he was named in August 4, 1997 as a creditor in said Cal., Chapter 13 Petition, not only was his claim denied /disproven of

000595

any validity or satisfaction, he never made any claim, never asked such purported fraud to be exempt from said bankruptcy petition or automatic stay order. But, secondly, all statutes of limitations of three, four and even five years have long since expire, even if you start counting from Aug 4, 1997, but such statutes ran from late '94.

But most revealing of DAWSON'S and his dual counsels' duplicities, is that no counterclaims are asserted, nor could they be. No denial is made of the illegal, criminal misues of Targhee Powder Emporium, Inc., an Idaho Corporation formed by Alva Harris, Jack McLean, Dawson himself, Kathy Miller, Mark Liponis, and others, to steal from plaintiff his $\frac{1}{2}$ interest in the 8.5 acres adjacent to 195 N. Hwy 33, Driggs, Idaho & his one-quarter interest in said PEACOCK PARCEL of 40 acres. Plaintiff never defrauded nor committed any torts or crimes on either DAWSONS who have joined with all said defendants in their conspiracies to financially destroy plaintiff. Plaintiff refers to his Trial Briefs Two and Three and the authorities cited therein, that DAWSONS has absolutely no meritorious defenses, despite his and his counsels' canardly esconed assertions in his affidavits and that of Jared Harris.

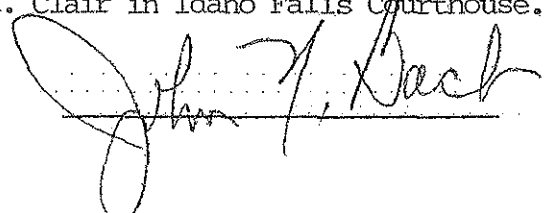
III. PLAINTIFF EVEN AS A NONLICENSED ATTORNEY, BUT IN PRO PER IS ENTITLED TO BE REIMBRUSED FOR HIS TRAVEL, MEALS, LODGING COSTS, EXPENSES AND ALSO TIME LOST IN PREPARING FOR TRIAL, SUCH SANCTIONS AGAINST DAWSON AND HIS COUNSEL TO BE IN THE AMOUNT OF FIVE HUNDRED DOLLARS (\$500.00) PAYABLE TO PLAINTIFF FORTHWITH.

DATED: June 3, 2003

(NOTE: Dawson's Notary's seal on his proposed ANSWER (Ver.) was signed/affixed some 3 plus miles from his home, on April 17, 2003.)


JOHN N. BACH, Pro Se

CERTIFICATE OF SERVICE BY MAIL & FAX: I the undersigned hereby certify on June 3, 2003, that I did mail a copy of this document to each attorney of record; Jared Harris, Alva A. Harris, Jason Scott and Galen Woelk, and further mailed copies to defendants in pro per stauts, to wit, Ann-Toy Broughton and Stan Nickells, and did fax a copy this date, J-ne 3, 2003 to Judge St. Clair in Idaho Falls Courthouse.
DATED: June 3, 2003


JOHN N. BACH, Pro Se

000596

FILED
4:50
JUN 04 2003
TETON CO.
MAGISTRATE COURT

ANN-TOY BROUGHTON
1054 Rammell Mountain Rd.
Tetonia, ID 83452
208 456-2758
Defendant Pro Se

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

JOHN N. BACH,
Plaintiff & Counterclaim Defendant

CASE NO. CV 02-208
DEFENDANT ANN-TOY
BROUGHTON'S EXHIBIT LIST

TRIAL DATE, JUNE 10, 2003

v.

ANN-TOY BROUGHTON et al.,

Defendant hereby submits her list of exhibits.

1. 7/15/2001 John N. Bach's data statement to Idaho State Police G-1
2. 3 No Trespassing signs: "goons", "gang" and "crazed posse" A-1, B-1 + C-1
3. A series of photographs E-1 and F-1
4. A video D-1
5. Transcript from Case CR-99-165
6. Other exhibits offered or produced during any other participants' testimony

DATED: June 2, 2003


ANN-TOY BROUGHTON, Pro Se

Certificate of Service:

I certify that on June 2nd, 2003, I did fax copies of this DEFENDANT ANN-TOY BROUGHTON'S EXHIBIT LIST to Judge St. Clair, hand deliver same to Galen Woelk, and did mail a copy by depositing the same in the United States mail, with the correct postage thereon, in an envelope addressed as follows:

John Bach
P.O. Box 101
Driggs, ID 83422


ANN-TOY BROUGHTON, Pro Se

Alva A. Harris
 Attorney at Law
 171 South Emerson
 P.O. Box 479
 Shelley, ID 83274
 Idaho State Bar No. 968
 Attorney for Defendants Bret Hill and Deena R. Hill

FILED

JUN 06 2003

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

JOHN N. BACH,)	
	)	Case No. CV-02-208
Plaintiff)	
)	
vs.	)	VERIFIED ANSWER TO
)	
KATHERINE D. MILLER et al,	)	FIRST AMENDED COMPLAINT
)	
Defendants.)	
)	

COMES NOW the defendants Bret Hill and Deena R. Hill, his wife, and
 Answer the First Amended Complaint as follows:

1. The complaint fails to state a claim against these defendants upon which relief may be granted.
2. These defendants deny each and every allegation of said complaint that is not specifically admitted herein.
3. Answering the allegations of paragraph 1 defendants do not know whether the same are correct or false and therefore deny the same.
4. Answering the allegations of paragraph 2 defendants deny acting in any capacity with any one to damage plaintiff and specifically deny that they "purchased with knowledge of void deeds and transaction" their home. Defendants affirmatively allege that they are good faith purchasers for value of their residence.

5. Defendants deny the allegations of paragraph 4 and the first 5 and affirmatively allege that they know nothing of plaintiffs purported properties or background and have never sought to remove him from Teton County.

6. Defendants know nothing of plaintiff's property and do not know whether the same as alleged in 5(a) are correct or false and therefore deny the same.

7. Defendants deny the allegations of paragraph 5(b) and (c).

8. Defendants are not mentioned in paragraph 6, 7,8,9,10,12,13 or 14 and therefore do not answer the same. If an answer is required they deny the same.

9. Defendants are excluded from the allegations of the First Count and therefore do not respond to it.

10. Defendants are included in allegations of the Second Count; therefore, they assert all defenses alleged above as if inserted herein and deny all of said allegations.

11. Defendants deny all the allegations referred to in the Third Count. Defendants deny that plaintiff ever held title to said real property. Defendants deny that they participated in "criminal theft" of their residence and deny that they had "constructive notice" of any type that would or could void their purchase of their residence. Defendants affirmatively allege that their predecessors in interest have had title and possession of the real property since August 7, 1997, and that this action is barred by the statute of limitations as five (5) years has lapsed. Defendants affirmatively allege that plaintiff is barred from recovery against defendants by the doctrines of res judicata, judicial estoppel, and/or collateral estoppel inasmuch as the U.S. District Court has ruled on this issue and held title confirmed in Scona, Inc.

12. Defendants are excluded from the allegations of the Fourth Count, Seventh Count, Eighth Count, both Eleventh Counts and the Twelveth Count and therefore no response is needed to those.

13. Defendants are included in allegations of the Fifth Count; therefore, they assert all defenses alleged above as if inserted herein and deny all of said allegations. Defendants affirmatively allege that any damages suffered by plaintiff were the proximate result of plaintiff's own acts or omissions, or of third parties, in such a degree as to bar recovery against these answering defendants. Plaintiff is further barred from damage recovery against defendants because of the doctrine of unclean hands and misrepresentation wherein he represented that he was the agent for undisclosed principles when in fact he was covering for himself in dealing with his alleged properties.

14. Defendants are included in allegations of the Sixth Count; therefore, they assert all defenses alleged above as if inserted herein and deny all of said allegations. Defendants affirmatively allege that any damages suffered by plaintiff were the proximate result of plaintiff's own acts or omissions, or of third parties, in such a degree as to bar recovery against these answering defendants. Plaintiff is further barred from damage recovery against defendants because of the doctrine of unclean hands and misrepresentation wherein he represented that he was the agent for undisclosed principles when in fact he was covering for himself in dealing with his alleged properties.

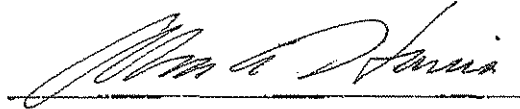
15. Defendants are included in allegations of the Ninth Count; therefore, they assert all defenses alleged above as if inserted herein and deny all of said allegations. Defendants affirmatively allege that any damages suffered by plaintiff were the proximate result of plaintiff's own acts or omissions, or of third parties, in such a degree as to bar recovery against these answering defendants. Plaintiff is further barred from damage recovery against defendants because of the doctrine of unclean hands and misrepresentation

wherein he represented that he was the agent for undisclosed principles when in fact he was covering for himself in dealing with his alleged properties.

16. Defendants are included in allegations of the two Tenth Counts; therefore, they assert all defenses alleged above as if inserted herein and deny all of said allegations. Defendants deny that they have ever engaged in any racketeering enterprise or committed any criminal offense that would subject them to said act.

WHEREFORE, defendants Hill respectfully pray that plaintiffs complaint be dismissed with prejudice, that plaintiff be awarded nothing, and that defendnts be awarded their costs and attorney fees herein.

DATED this 4th day of June, 2003.



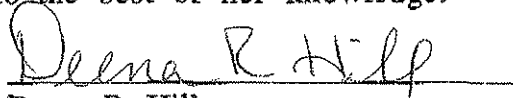
Alva A. Harris

VERIFICATION

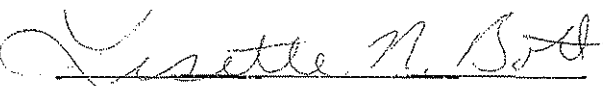
STATE OF IDAHO)
 :SS
County of Teton)

Deena R. Hill, being first duly sworn on oath, deposes and says:

That she is one of the defendants in the above entitled matter; that she has read the forefoing Verified Answer, knows the contents thereof, and that she verily believes the same to be true to the best of her knowledge.


Deena R. Hill

SUBSCRIBED AND SWORN TO before me this 4th day of June, 2003.


Notary Public for Idaho
Residing at: Teton, Id.
My Comm. expires: 1-3-06

GALEN WOELK
RUNYAN & WOELK, P.C.
P.O. BOX 533
DRIGGS, ID 83422
TELE (208) 354-2244
FAX (208) 354-8886
IDAHO STATE BAR #5842

FILED
9:00
JUN 16 2003
TETON CO.
MAGISTRATE COURT

ATTORNEY FOR DEFENDANT

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

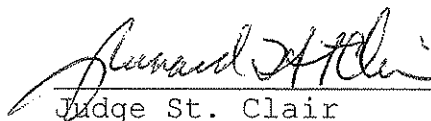
JOHN N. BACH,)	
)	
Plaintiff,)	
)	
vs.)	
	)	CASE NO. CV-02-208
KATHERINE M. MILLER, et. al.,)	
)	
Defendant.)	
	)	ORDER FOR DEFAULT
<hr/>		
KATHERINE M. MILLER,)	
)	
Third Party Plaintiff)	
Counterclaimant)	
Cross Claimant,)	
vs.)	
)	
VASA N. BACH FAMILY TRUST,)	
JOHN N. BACH SUCCESSOR TRUSTEE)	
AND TARGHEE POWDER EMPORIUM, INC.,)	
(A NON-INCORPORATED ENTITY) ALSO)	
DOING BUSINESS AS TARGHEE POWDER)	
EMPORIUM INVESTMENTS, TARGHEE)	
POWDER EMPORIUM LIMITED, TARGHEE)	
POWDER EMPORIUM UNLIMITED,)	
TARGHEE POWDER EMPORIUM A HOLDING)	
VENTURE OF VASA N. BACH FAMILY)	
TRUST, JOHN N. BACH, TRUSTEE,)	
NOMINEE, CEO,)	
)	
Third Party Defendant)	
Involuntary Plaintiffs.))	
Parties Defendant.)	

In the above-entitled cause, it appearing from Affidavit on file that the above-named defendant is not a person in the military service of the United States and is not an infant or incompetent person, and it appearing that the defendant has been properly served with a Complaint and Summons in the above entitled matter, and having not entered an answer,

IT IS HEREBY ORDERED, and this does order, that Third Party Defendant/Party Defendant:

a. Vasa N. Bach Family Trust (John N. Bach, Successor Trustee) is in default in this action, and the Clerk is hereby directed to enter a default of said defendant on the records and files herein.

DATED this 16th day of June, 2003.



Judge St. Clair

CERTIFICATE OF ENTRY
BY MAIL, HAND DELIVERY OR FACSIMILE TRANSMISSION

I, the undersigned and Clerk of the above-entitled Court, hereby certify that pursuant to Idaho rule of Civil Procedure 77(d), a copy of the foregoing was duly posted by first class mail to the following persons at the names and addresses stated below.

Galen Woelk
Runyan & Woelk, P.C.
P.O. Box 533
Driggs, ID 83422

☒ Mail
☐ Hand Delivery
☐ Facsimile

Vasa N. Bach Family Trust
(John N. Bach, Successor Trustee)
P.O. Box 101
Driggs, ID 83422

☒ Mail
☐ Hand Delivery
☐ Facsimile

Alva Harris
Box 479
Shelley, ID 83274

☒ Mail
☐ Hand Delivery
☐ Facsimile

Hawley, Troxell, Ennis & Hawley
Jason Scott, Esq.
P.O. Box 100
Pocatello, ID 83204

☒ Mail
☐ Hand Delivery
☐ Facsimile

Jared Harris, Esq.
P.O. Box 577
Blackfoot, ID 83221

☒ Mail
☐ Hand Delivery
☐ Facsimile

Gabriela Hermasillo
Clerk

FILED
9:00
JUN 16 2003
TETON CO.
MAGISTRATE COURT

GALEN WOELK
RUNYAN & WOELK, P.C.
P.O. BOX 533
DRIGGS, ID 83422
TELE (208) 354-2244
FAX (208) 354-8886
IDAHO STATE BAR #5842

ATTORNEY FOR DEFENDANT

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

JOHN N. BACH,)
	) CASE NO. CV-02-208
Plaintiff,)
)
vs.)
	) ORDER
KATHERINE M. MILLER, et. al.,)
)
Defendant.)
_____)

On June 5th, 2003, this Court heard Miller's SECOND MOTION TO COMPEL DISCOVERY, whereby oral argument was made by Miller's attorney and Plaintiff Bach, and Bach answered discovery on the record. Having reviewed the written motions and having heard argument thereon;

The Court takes notice that:

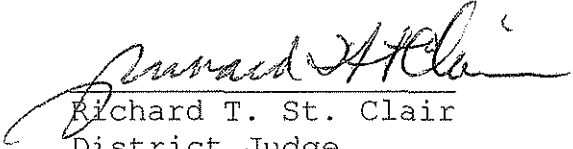
1. Plaintiff Bach responsively answered, pursuant to Miller's Discovery Requests, that he did disclose or report his ownership interest in the properties

located west of highway 33 just south of milepost 138 to the California Bankruptcy Court in his Federal Bankruptcy action.

2. Plaintiff Bach stated that Targhee Powder Emporium, Inc. and/or Targhee Powder Emporium, Limited and Unlimited had never been registered to do business in the State of Idaho.

IT IS FURTHER HEREBY ORDERED that Miller's motion to compel discovery is GRANTED. Plaintiff Bach shall provide Miller with copies of his individual tax returns for the years 1994 through 1998. These tax returns shall be provided by Tuesday, June 10th, 2003 at 10:00a.m..

DATED this 16th day of June, 2003.


Richard T. St. Clair
District Judge

CERTIFICATE OF ENTRY
BY MAIL, HAND DELIVERY OR FACSIMILE TRANSMISSION

I, the undersigned and Clerk of the above-entitled Court, hereby certify that pursuant to Idaho rule of Civil Procedure 77(d), a copy of the foregoing was duly posted by first class mail to the following persons at the names and addresses stated below.

Galen Woelk
Runyan & Woelk, P.C.
P.O. Box 533
Driggs, ID 83422

☒ Mail
☐ Hand Delivery
☐ Facsimile

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

☒ Mail
☐ Hand Delivery
☐ Facsimile

Alva Harris
Box 479
Shelley, ID 83274

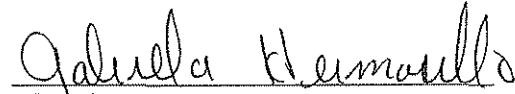
☒ Mail
☐ Hand Delivery
☐ Facsimile

Hawley, Troxell, Ennis & Hawley
Jason Scott, Esq.
P.O. Box 100
Pocatello, ID 83204

☒ Mail
☐ Hand Delivery
☐ Facsimile

Jared Harris, Esq.
P.O. Box 577
Blackfoot, ID 83221

☒ Mail
☐ Hand Delivery
☐ Facsimile


Clerk

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

JOHN N. BACH,)
)
Plaintiff,)
)
vs.) MINUTE ENTRY
) Case No. CV-2002-208
)
KATHERINE D. MILLER, aka)
KATHERINE M. MILLER, ALVA)
A. HARRIS, individually and)
dba SCONA, INC., a sham entity)
JACK LEE McLEAN, BOB)
FITZGERALD, OLE OLESON, BIB)
BAGLEY and MAE BAGLEY, husband)
and wife, BLAKE LYLE,)
Individually and dba GRANDE)
TOWING, and DOES 1 through 30,)
Inclusive,)
)
Defendant(s).)
_____)

FILED
3:52
JUN 17 2003
TETON CO.
MAGISTRATE COURT

On the 5th day of June, 2003, Defendant Miller's motion for reconsideration and alternative request for findings of fact, Miller's motion for entry of default against Vasa Bach Family Trust and Targhee Powder Emporium, Miller's second motion to compel discovery or alternatively dismiss counts of Bach's complaint as sanctions, Miller's motion to disqualify Bach, came before the Honorable Richard T. St. Clair, District Judge, in open court at Idaho Falls, Idaho.

Mr. Ross Oviatt, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. John Bach appeared pro se on his own behalf as Plaintiff.

Mr. Galen Woelk appeared by telephonic connection on behalf

of Defendant Katherine Miller.

Mr. Steve Madsen appeared on behalf of Defendant Wayne Dawson.

Mr. Alva Harris appeared on behalf of Defendant(s) Bret and Deena Hill.

Mr. David Shipman and Mr. Bart Birch appeared on behalf of Defendant Earl Hamblin. Defendant Earl Hamblin was present at counsel table.

Mr. Woelk presented Defendant Miller's motion for reconsideration and alternative request for findings of fact. Mr. Bach argued in opposition to the motion. Mr. Woelk presented rebuttal argument.

The Court denied the motion.

Mr. Woelk presented Miller's motion for entry of default against Vasa Bach Family Trust and Targhee Powder Emporium. Mr. Bach argued in opposition to the motion. The Court will allow entry of default against the Vassa N. Bach Family Trust. The Court will not allow entry of default against Targhee Powder Emporium. Mr. Woelk presented further argument.

Mr. Woelk presented Miller's second motion to compel discovery or alternatively dismiss counts of Bach's complaint as sanctions. Mr. Bach presented argument in opposition to the motion. The Court inquired of Mr. Bach. Mr. Woelk presented rebuttal argument. Mr. Bach presented further argument.

The Court ordered Mr. Bach to provide tax return information by Tuesday, June 10, 2003 at 9:00 a.m. Mr. Woelk is to prepare a proposed order and default on the trust.

Mr. Woelk presented Miller's motion to disqualify Bach. Mr. Bach objected to the motion.

The Court denied the motion.

Mr. Shipman presented Defendant Hamblin's motion to set aside default judgment against Hamblin. Mr. Bach argued in opposition.

The Court instructed Mr. Shipman to file the motion with the Court, schedule the motion for hearing and give the parties adequate notice of the hearing.


Mr. Madsen presented Defendant Dawson's motion to set aside default judgment against Dawson.

The Court instructed Mr. Madsen to file the motion with the Court, schedule the motion for hearing and give the parties adequate notice of the hearing.

Mr. Alva Harris presented Defendant Hill's motion to set aside default judgment against Hill.

The Court instructed Mr. Harris to file the motion with the Court, schedule the motion for hearing and give the parties adequate notice of the hearing.

Court was thus adjourned.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

A:23Bach/CC8384@1360 full over to CC8385

CERTIFICATE OF MAILING

I certify that on the 9th day of June, 2003, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

John N. Bach
1958 S. Euclid Ave.
San Marino, CA 91108
(626) 799-3146
PO Box 101
Driggs, ID 83422
FAX (208) 354-8303

Alva N. Harris
PO Box 479
Shelley, ID 83274
(208) 357-3448
FAX (208) 357-3448

David H. Shipman
Bart J. Birch
PO Box 51219
Idaho Falls, ID 83405-1219
FAX (208) 523-4474

Galen Woelk
PO Box 533
Driggs, ID 83422
FAX (208) 354-8886

Jared Harris
PO Box 577
Blackfoot, ID 83221

Jason Scott
Steven Madsen
PO Box 100
Pocatello, ID 83204

Teton County Clerk
Teton County Courthouse
ATTN: PHYLLIS
89 N. Main, Ste 1
Driggs, ID 83422
FAX (208) 354-8496

000612

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
(Seasonal Address: P.O. #101
Driggs, Idaho 83422
Tel: (208) 354-83030

9:10
FILED

JUN 18 2003

TETON CO.
DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

CASE NO: CV 02-208

Plaintiff,
Counterclaim
Defendant,

PLAINTIFF and COUNTERCLAIM
DEFENDANT JOHN N. BACH'S
MOTION FOR DIRECTED VERDICT ON
ALL HIS COUNTS IN THE FIRST
AMENDED COMPLAINT AND ON ALL
HIS AFFIRMATIVE DEFENSES TO
KATHERINE MILLER'S COUNTERCLAIMS.

v.

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

(IRCP, Rule 50(a) et seq.)

Defendants,
[Miller] Counter-
claimant, et al.,

COMES NOW PLAINTIFF and COUNTERCLAIM DEFENDANT JOHN N. BACH,
and does hereby move this Honorable Court for a finding and order
of DIRECTED VERDICT of liability, culpability and FINDING in his
favor against the defendants KATHERINE D. MILLER, aka KATHERINE
M. MILLER, individually and dba R.E.M., and defendant ANN-TOY
BROUGHTON, on all his counts in his FIRST AMENDED COMPLAINT and
on all his affirmative defenses to KATHERINE MILLER's Counterclaims
averred against him. Said motion for such directed verdicts on
all said counts and all his affirmative defenses is based upon
the provisions and authorities with I.R.C.P., Rule 50(a)

DIRECTED VERDICT AS TO COUNT ONE AGAINST MILLER AND BROUGHTON

Idaho gernal statutes sections 6-415 through 6-418, require
that issues be tried before a court, as to quiet title and equitable
issues. Shield v. Johnson (1904) 10 Idaho 476, 79 P. 391, 3 Adm.

Cas. 245 (No jury trial exists in quiet title actions, which include not only legal or equitable titles, but rights of possession, [rights of installation of gates, control of access, easements, licenses, permission at will egress and ingress, etc.]). Every estate or interest known to law in real property, whether legal or equitable, may be determined in an action to quiet title. Lewiston Lime Co. v. Baine (1964) 87 Idaho 462, 394 P.2d 323. (See 65 Am. Jur. 2d, Quieting Title & Determination of Adverse Claims, Sec. 29 et seq.) Even the plaintiff's and counterclaim's installation, control and permission of access per gates over Miller's claim of jointly owned property, besides being proper, appropriate and protect, is a quiet title action issue, to be resolved by the Court. (See right to Install Gate or Fence vs. Right of Way, 52 A.L.R.3d 9, especially pages 56-57 & 60-61. Moreover, the trial court solely, has the jurisdiction and right to try partnership dissolutions and/or disputes created thereby, other than breach of contract, fraud or other clear legal actions and legal issues for a jury to resolve. (See Plaintiff's INITIAL MEMORANDUM BRIEF, etc., filed Aug. 13, '02)

As to all the evidence presented herein, it has now been shown, conclusively and irrefutably that:

1. Katherine Miller, via the October 3, 1997 Settlement Agreement waived, relinquished and surrender all and every claim she had, against John N. Bach as of that date, regardless of whether she knew or appreciated the exact theory or basis of said claims.

2. Moreover, her failure to raise in USDC, Idaho 99-014, any counterclaim is both a bar and issue/claim preclusion against JOHN N. BACH, per any of her claims via her Counterclaims both

per F.R.C.P., and I.R.C.P., identical Rule 13(a) Federated Dept. Stores, Inc., v. Moities, 452 U.S. 394, 397-99, 69 L.Ed 2d 103 (1981).

3. Katherine Miller's single claim, premature and without basis, in CV 01-59, to remove JOHN N. BACH, on a claimed basis of tenant at sufferance, dismissed with prejudice May 23, 2002, precludes all her counterclaims since she cannot serially in successive actions, advance such claim, but is subject to issue/claim preclusion for what claims she now asserts. Nielsen v. City of Moss Point, 701 F.2d 556, 560 (5th Cir. 1983)

4. Miller's agreement, conspiracy and scheme of, from Nov. 13, 2000 through this date, of stealing/converting plaintiff's moneys (\$15,000 plus), real property parcels, i.e. the 87 acres, the Draw-knife and Peacock investment interests, his $\frac{1}{2}$ interest in 8.5 acres, along with his personalty properties removed, destroyed and damaged, by his agents, etc., via the new Targhee Powder Emporium, Inc., an Idaho corporation, and dba as T.P.E., Unltd and Ltd, are criminal, illegal and void schemes, contract and actions, that cannot be given any effect or validity whatsoever; thus Miller and her agents, including Ann-Toy Broughton, who jointed them and did nothing to stop or disassociate herself from Miller, her agents, etc., are liable to plaintiff on all counts. (Kunz v. Lobos Lodge (1999) 133 Idaho 609, 990 P.2d 1219.)

5. Any any all statutes of limitations that could be applicable have lone expired; Miller since May, 1995 and certainly, by end of July, 1995 knew completely directly and via her attorney, Chuck Homer, of the price and terms at which John Bach agreed to purchase the 160 acres from Harrops.

6. Katherine Miller more than acquiesced in the benefits of said purchase agreement terms; in fact, she sought to solely benefit

and take full advantage of the terms of said settlement agreement, which she per assignment from plaintiff to her of the Harrop agreement of purchase, became not merely specifically knowledgeable of the Harrop's agreement's terms, but she accepted and utilized for her personal and private advantage to offer to purchase the remaining easterly 80 acres for \$80,000.00, which she so testified/admitted was through her attorney, Chuck Homer. Miller is more than estopped, as a matter of law to prevail on any of her affirmative defenses, she is also estopped and more so, quasi estopped to pursue or prevail over any of her counterclaims against counterclaim defendant JOHN N. BACH. Brown v. Burnside (1971) 94 Idaho 363, 366, 487 P.2d 957, 960 (Wife quasi estopped where it's shown se was "actually aware of the contract" or benefitted from it during it's duration.) Grice v. Woodworth 10 Idaho 459, 466, (S/F subj to estoppel)

7. Also uniquely applicable and proven as a matter of law is the application of promissory estoppel, along with all other doctrines averred by plaintiff's answer to her counterclaim, that require a directed verdict that there was an oral partnership agreement, upon which not only did plaintiff JOHN N. BACH, rely to his detriment, but in fact, performed and honored, despite Miller's breaches and violations of her fiduciary duties and express, as well as implied covenanats of good faith and fair dealings with/to plainitff. The court should direct a verdict finding that plaintiff is a one half equal partner/joint venturer with Katherine Miller, as to the ownership of the most westerly 40 acres; and the strip of 110 feet by $\frac{1}{2}$ mile, from Hwy 33 to the easterly boundary of plaintiff's solely owned 40 acres at the end of said $\frac{1}{2}$ mile strip; that Miller has breached and disassociated herself from such partnership, with the result, that plaintiff has succeeded to all her interests and ownership of being a 50% partner, with her interest value at $\frac{1}{2}$ of \$2,500.00 and acre, or \$1,500 for the 40 acre partnership nor solely owned by plaintiff most westerly parcel, being therefore established as \$50,000.00 plus $\frac{1}{2}$ half of \$8,000.00 for the 6.3 acres strip of 110 feet by $\frac{1}{2}$ mile, for another \$4,000.00, totalling \$54,000.00 less the

monetary damages/awarded plaintiff by the jury, and further, if any balance according to Idaho's Uniform Partnership Act.

8. Katherine Miller's claims against plaintiff are barred by all her claims being discharged and dismissed in plaintiff's Chapter 13 bankruptcy proceeding, Eastern District of California, Sacramento Division: (Plt's Ex. 13(2); (4), (5), (6), (7); 26B(2) and 30.) Plaintiff refers to his Trial Briefs Two and Three re further case authorities which apply and preclude this Idaho State Court from determining any issues that should have been raised by Miller, Dawson, or even Alva Harris in his now discharged and terminated bankruptcy, which was terminated and closed Dec. 28, 2001.

Therefore as to the FIRST COUNT, all rights, title, possession, interests and benefits of use, enjoyment and/or ownership to all parcels comprising the 87 acres, plus all water rights, water shares, mineral rights, etc., as to said 87 acres, should by the court's order now be quieted in/to JOHN N. BACH, a single man, and to no one else. The Court should enter forthwith a permanent injunction as sought by plaintiff, including but not limited to restraining permanently all defendants, their attorneys, agents, representatives, friends and/or family members from entering upon, trespassing, damaging, destroying or attempting to do so, any of said real property and/or any form of improvements, personalty thereon, therewith or utilized at any time hereafter by plaintiff re said real property, and especially enjoining, restraining and precluding all defendants from using, possessing and/or operating further the Idaho Corporation, formed Nov. 13, 2002, along with all dbas of Targhee Powder Emporium, Unltd and Ltd, which per a mandatory permanent injunction all defendants are to forthwith transfer, assign and convey to JOHN N. BACH, solely with all defendants, their attorneys, agents,

representatives, etc., further permanently enjoined and restrained from using any of said corporate or dba names, or interfering with any aspect of said corporation and dbas transferred to plaintiff, all as further may be restrained and enjoined per I.C.

Thus, as to count one, not just a directed verdict should be granted but full judgment, quieting title and permanent injunction being entered/ordered by the court, with damages and amount of monetary relief being determined by the jury. Such quiet title directed verdict and judgement quieting title and permanent injunction should also be entered/ordered in plaintiff's favor as to Counts Two, Three and Four, as to the interests of Plaintiff per his Warranty Deed, Rescinding and Voiding all deeds signed by Jack Lee McLean, purported as a vice president, of that void and illegal corporation, formed by Alva Harris, Katherine Miller, Mark Liponis, Jack McLean, and Bob Fitzgerald, on November 13, 2000 and which said warranty deeds were in violation of public policies and the criminal grand theft statute of Idaho, in the execution and recording of all said corporation's warranty deeds of Nov. 21, 2000, which are attached to the FIRST AMENDED COMPLAINT, received in evidence herein for all purposes, being Plt's Ex: 21.

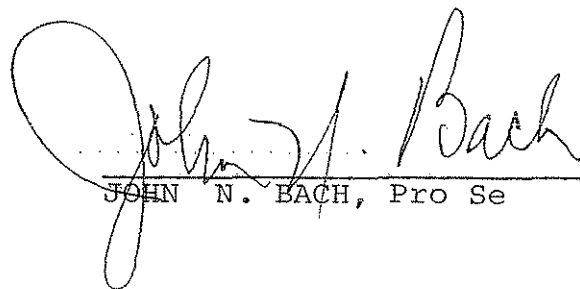
Plaintiff further moves for directed verdict in his favor on all counts thereafter, for the establishment and order directing the jury to find for plaintiff on all remaining counts, as to all basis of liabilities set forth, and leaving only for the jury's determination, of the amount of damages against Miller and Broughton. Especially, plaintiff moves and seeks a directed verdict, that all the defendants whose defaults have been entered were all (1) agents of Miller, acting at all times within the nature and scope of their

authority as given and established by Defendant Miller, such also including defendant Broughton being such an agent of Miller's at all times stated in the FIRST AMENDED COMPLAINT: (2) that said defendants in default and Broughton were coprincipals, copperpetrators and coparticipants along with Miller and each other, such including Alva Harris, Jack McLean, Bob Fitzgerald, Blake Lyle, Ole Olesen Wayne Dawson, and even Mark Liponis, Bob and May Bagley's, the latter three (3) being not being named as defendants who were served and appeared on the FIRST AMENDED COMPLAINT; and (3) that all of said defendants, supra, and as otherwise stated in the FIRST AMENDED COMPLAINT, were coconspirators with each and all others, acting with more than one overt wrongful and criminal acts, for which per said agency, coprincipals, etc., and said conspiracy, which still continues, they are all joint and severally liable to plaintiff for the damages that the jury is to award plaintiff. As to the specific counts FIVE through TWELVE, plaintiff moves and request for directed verdict, order and ruling, that in each count, as a matter of law, based upon the evidence presented by plaintiff and not refuted with any degree of quantum proof of evidence to the contrary by Miller and Broughton, that said defendants and all others as agents, coprincipals and conspirators did (1) slander plaintiff's titles to said lands quieted to him per Counts, One through Four, (2) intentional interfering of plaintiff's existing contractual relations, prospective and reasonably known business and economic advantages, opportunities, etc., (3) did both per sue malicious prosecution and acts of abuse of legal/court processes against plaintiff, (4) did maliciously harass, target and harm plaintiff for his family ethnicity, origina and heritage as a first born Montenagrin-American son of Montenegrin parents, and (5) breaches of the fidicuary relations with Miller, and of the express covenants as well

good faith and fair dealings that Miller, and all her agents, coprincipals and conspirators owed to plaintiff, along with ((6) directed verdict of liabilities and judgment in favor of plaintiff on all other counts in the FIRST AMENDED COMPLAINT.

Plaintiff further moves and requests for an order of directed verdict that the jury award him punitive and/or exemplary damages, as such damages were set forth as requested relief, in the original complaint filed July 23, 2002, which original complaint is referred to and incorporated by reference within the FIRST AMENDED COMPLAINT, as was also his affidavit filed in support of his application for preliminary injunction and the evidence he presented in support thereof, on August 13 and 15, 2002. Any and all cash bond should be ordered exonerated and returned forthwith to plaintiff, along with said \$15,000.00 stolen from him by Miller, McLean, Harris and all said other mutual agent, coprincipals and conspirators defendants.

DATED: June 18, 2003


JOHN N. BACH, Pro Se

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, ANN-TOY BROUGHTON, et. al. Defendants. and KATHERINE M. MILLER, Counterclaimant, vs. JOHN N. BACH, Counterdefendant.	Case No. CV-02-208 SPECIAL VERDICT
--	---

We the jury find that the title to the real property described in Amended Jury Instruction NO. 14 should be quieted, as follows:

- A. West 40 Acre Parcel to Katherine Miller.
- B. East 40 Acre Parcel to Katherine Miller.
- C. 6.63 Acre Access Strip to Katherine Miller.
- D. 3.3 Acre Access Strip to Katherine Miller.

And we find as to the claims and counterclaims for damages, as follows:

SPECIAL VERDICT

1

000021

QUESTION NO. 1: Did the defendant Katherine Miller breach an oral partnership agreement between plaintiff John Bach and her?

ANSWER: Yes ____ or No ☒.

If you have answered Question No. 1 "Yes" then answer Question No. 2. If you answered Question No. 1 "No" then do not answer Question No. 2, and go to Question No. 3.

QUESTION NO. 2: What is the total amount of compensatory damages sustained by plaintiff Bach on his breach of oral partnership claim against defendant Miller?

ANSWER?: \$ _____.

QUESTION NO. 3: Did the defendant Katherine Miller trespass on plaintiff John Bach's real property?

ANSWER: Yes ____ or No ☒.

If you have answered Question No. 3 "Yes" then answer Question No. 4. If you answered Question No. 3 "No" then do not answer Question No. 4, and go to Question No. 5.

QUESTION NO. 4: What is the total amount of compensatory damages sustained by plaintiff Bach on his trespass claim against defendant Miller?

ANSWER?: \$ _____.

QUESTION NO. 5: Did the defendant Ann-Toy Broughton trespass on plaintiff John Bach's real property?

ANSWER: Yes ____ or No ☒.

If you have answered Question No. 5 "Yes" then answer Question No. 6. If you answered Question No. 5 "No" then do not answer Question No. 6, and go to Question No. 7.

QUESTION NO. 6: What is the total amount of compensatory damages sustained by plaintiff Bach on his trespass claim against defendant Broughton?

ANSWER?: \$ _____.

QUESTION NO. 7: Did the defendant Katherine Miller slander the title of plaintiff John Bach's real property?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 7 "Yes" then answer Question No. 8. If you answered Question No. 7 "No" then do not answer Question No. 8, and go to Question No. 9.

QUESTION NO. 8: What is the total amount of compensatory damages sustained by plaintiff Bach on his slander of title claim against defendant Miller?

ANSWER?: \$ _____.

QUESTION NO. 9: Did the defendant Ann-Toy Broughton slander the title of plaintiff John Bach's real property?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 9 "Yes" then answer Question No. 10. If you answered Question No. 9 "No" then do not answer Question No. 10, and go to Question No. 11.

QUESTION NO. 10: What is the total amount of compensatory damages sustained by plaintiff Bach on his slander of title claim against defendant Broughton?

ANSWER?: \$ _____.

QUESTION NO. 11: Did the defendant Katherine Miller intentionally interfere with plaintiff John Bach's prospective economic expectancy?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 11 "Yes" then answer Question No. 12. If you answered Question No. 11 "No" then do not answer Question No. 12, and go to Question No. 13.

QUESTION NO. 12: What is the total amount of compensatory damages sustained by plaintiff Bach on his intentional interference claim against defendant Miller?

ANSWER?: \$ _____.

QUESTION NO. 13: Did the defendant Ann-Toy Broughton intentionally interfere with plaintiff John Bach's prospective economic expectancy?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 13 "Yes" then answer Question No. 14. If you answered Question No. 13 "No" then do not answer Question No. 14, and go to Question No. 15.

QUESTION NO. 14: What is the total amount of compensatory damages sustained by plaintiff Bach on his intentional interference claim against defendant Broughton?

ANSWER?: \$ _____.

QUESTION NO. 15: Did the defendant Katherine Miller convert or misappropriate plaintiff John Bach's personal property?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 15 "Yes" then answer Question No. 16. If you answered Question No. 15 "No" then do not answer Question No. 16, and go to Question No. 17.

QUESTION NO. 16: What is the total amount of compensatory damages sustained by plaintiff Bach on his conversion or misappropriation claim against defendant Miller?

ANSWER?: \$ _____.

QUESTION NO. 17: Did the defendant Ann-Toy Broughton convert or misappropriate plaintiff John Bach's personal property?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 17 "Yes" then answer Question No. 18. If you answered Question No. 17 "No" then do not answer Question No. 18, and go to Question No. 19.

QUESTION NO. 18: What is the total amount of compensatory damages sustained by plaintiff Bach on his trespass claim against defendant Broughton?

ANSWER?: \$_____.

QUESTION NO. 19: Did the defendant Katherine Miller damage plaintiff John Bach's personal property?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 19 "Yes" then answer Question No. 20. If you answered Question No. 19 "No" then do not answer Question No. 20, and go to Question No. 21.

QUESTION NO. 20: What is the total amount of compensatory damages sustained by plaintiff Bach on his personal property damage claim against defendant Miller?

ANSWER?: \$_____.

QUESTION NO. 21: Did the defendant Ann-Toy Broughton damage plaintiff John Bach's personal property?

ANSWER: Yes _____ or No ☒.

If you have answered Question No. 21 "Yes" then answer Question No. 22. If you answered Question No. 21 "No" then do not answer Question No. 22 and go to Question No. 23.

QUESTION NO. 22: What is the total amount of compensatory damages sustained by plaintiff Bach on his personal property damage claim against defendant Broughton?

ANSWER?: \$_____.

QUESTION NO. 23: Did the defendant Katherine Miller maliciously prosecute a civil action against plaintiff John Bach?

ANSWER: Yes ____ or No ☒.

If you have answered Question No. 23 "Yes" then answer Question No. 24. If you answered Question No. 23 "No" then do not answer Question No. 24, and go to Question No. 25.

QUESTION NO. 24: What is the total amount of compensatory damages sustained by plaintiff Bach on his malicious prosecution claim against defendant Miller?

ANSWER?: \$_____.

QUESTION NO. 25: Did the defendant Katherine Miller maliciously harass based on ancestry plaintiff John Bach?

ANSWER: Yes ____ or No ☒.

If you have answered Question No. 25 "Yes" then answer Question No. 26. If you answered Question No. 25 "No" then do not answer Question No. 26, and go to Question No. 27.

QUESTION NO. 26: What is the total amount of compensatory damages sustained by plaintiff Bach on malicious harassment claim against defendant Miller?

ANSWER?: \$_____.

QUESTION NO. 27: Did the defendant Ann-Toy Broughton maliciously harass based on ancestry plaintiff John Bach?

ANSWER: Yes ____ or No ☒.

If you have answered Question No. 27 "Yes" then answer Question No. 28. If you answered Question No. 27 "No" then do not answer Question No. 28, and go to Question No. 29.

QUESTION NO. 28: What is the total amount of compensatory damages sustained by plaintiff Bach on his malicious harassment claim against defendant Broughton?

ANSWER?: \$_____.

QUESTION NO. 29: Did the counterdefendant John Bach fraudulently induce counterclaimant Katherine Miller to acquire real property?

ANSWER: Yes ☒ or No ☐.

If you have answered Question No. 29 "Yes" then answer Question No. 30. If you answered Question No. 29 "No" then do not answer Question No.30, and go to Question No. 31.

QUESTION NO. 30: What is the total amount of compensatory damages sustained by counterclaimant Miller on her fraud counterclaim against counterdefendant Bach?

ANSWER?: \$ 127,456.73

QUESTION NO. 31: Did the counterdefendant John Bach trespass on Katherine Miller's real property?

ANSWER: Yes ☐ or No ☒.

If you have answered Question No. 31 "Yes" then answer Question No. 32. If you answered Question No. 31 "No" then do not answer Question No.32, and go to Question No. 33.

QUESTION NO. 32: What is the total amount of compensatory damages sustained by counterclaimant Miller on her trespass counterclaim against counterdefendant Bach?

ANSWER?: \$ _____.

QUESTION NO. 33: Did the counterdefendant John Bach breach a fiduciary duty owed to counterclaimant Katherine Miller?

ANSWER: Yes ☒ or No ☐.

If you have answered Question No. 33 "Yes" then answer Question No. 34. If you answered Question No. 33 "No" then do not answer Question No.34, and go to Question No. 35.

QUESTION NO. 34: What is the total amount of compensatory damages sustained by counterclaimant Miller on her breach of fiduciary duty counterclaim against counterdefendant Bach?

ANSWER?: \$ 127,456.73

QUESTION NO. 35: Did the counterdefendant John Bach slander the title of counterclaimant Katherine Miller's real property?

ANSWER: Yes ☒ or No ☐.

If you have answered Question No. 35 "Yes" then answer Question No. 36. If you answered Question No. 35 "No" then do not answer Question No.36, and sign the verdict.

QUESTION NO. 36: What is the total amount of compensatory damages sustained by counterclaimant Miller on her slander of title counterclaim against counterdefendant Bach?

ANSWER?: \$ 5000.⁰⁰

DATED this 19 day of June, 2003.

Brenda J. Dean
Foreman

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 1 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Hearing type:	Jury Trial	Minutes date:	06/11/2003
Assigned judge:	Richard T. St. Clair	Start time:	09:00 AM
Court reporter:		End time:	09:00 AM
Minutes clerk:	PHYLLIS HANSEN	Audio tape number:	CV 6
Prosecutor:	[none]		
Defense attorney:	[none]		

Tape Counter: 1 J calls case; jury is not present
J - parties wanted embellishments on Instruction 14
P agrees
DA agrees
Parties would like Alice Stephenson questioned

Tape Counter: 98 DA motion limiting order - in regards to final pre-trial order No 14 - Bach slandering my client
COncern is that we attempting to prove my client slandered - attempting to litigate ownership of all properties - then others will be necessary parties
P has not named Targhee Powder Emporium - Corporation has not been included

Tape Counter: 224 P - too late; Woelk does not have any standing to raise that
Talking about pre-trial order that DA has not responded to
Miller has conceded she does not have any interest in those properties
Is prejudicial; has no standing
This is issue for this jury to decide
Ask court to strike and deny this motion

Tape Counter: 329 Da responds - have made these motions all along

Tape Counter: 343 J - considered motion in limine - is proper motion
Bach has a right to present evidence of slander of title
No summary Judgment ruling dismissing that
There is different in liability
THink issue has been joined; will deny motion

Tape Counter: 419 Alice Stevenson is called in
J ? her about visiting with potetnial witnesses yesterday
Did you have a discussion after selection yesterday with Donna Dawson
Just met her yesterday don't remember her last name
Mary Langdon has been friend for years
Bassically she just said she was glad to meet me
J - ? about Mary Langdon
She asked about my son and she explained to Donna how she knew my son
I asked her how she liked her job; she said she was teaching in Rigby;
She told me about her boyfriend

000629

Date: 06/13/2003

Time: 05:02 PM

Page 2 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 505

P ? juror
Didn't you feel uneasy talking to her
No, we were not talking about the case at all
I did not see her there in the morning, did not talk to her before the meeting in the aisle
Did not discuss the trial at all
I did not think that the fact that she knew Kathy Miller meant that I could not talk to her about anything
I believe I can be completely impartial during this trial
I did not think I was violating any restrictions
I am totally convinced that I can be a fair and impartial juror
P I do challenge for cause

Tape Counter: 656

DA - Mary Langdon is not named as a witness for this case
Somewahat confused with regards as to how juror would not be allowed to talk to person

Tape Counter: 679

DB - no ?; no objection to for cause
P argues - Craig Crass has made slanderous remarks about me this past week
Do not see how Mary Langdon's actions can not be testified to
Langdon has been direct conduit from Kathy Miller to poison the well against me for the past 5 years

Tape Counter: 744

J - don't know about any of this P is talking about
going on what info I have
Instruction to her - is clear to me that she did not know that Mary Langdon was any body's witness
Did not know DONna Dawson
Did not discuss the facts of this case with them
They did not say anything about the case to her
She has indicated that she can be a fair and impartial juror I believe she is honest and would leave of her own volition if she felt she could not be fair and impartial
Will deny request

Tape Counter: 821

P move for mistrial
based on statements from juror
Find inescapable of attempts to influence this juror

Tape Counter: 842

DA - object to P's motion
No evidence this juror has been influenced

Tape Counter: 857

Jury is recalled 9:32
Clerk calls jury attendance
J addresses jurors
Parties have asked that I read some additional defenses
Will generate amended instruction 14

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 3 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 928

Miller's defense to Bach's claim - statute of frauds
Counter claim - Bach denies Miller's claims - court lacks subject matter
Barred by Bankruptcy
Barred by dismissal of Cv 01 -59
Res Judicata or collateral Estoppel
Statue of Limitations
Illegality and misappropriation
Failure to mitigate damages
Superceding acts

Tape Counter: 1001

P gives opening
CONcern is that at all time that you realize that you are now judges
Number of defendants that were named on complaint that have been defaulted; they failed to answer
DA object - not relevant J sustains
One of Defenants is Alve Harris
He along with Woelk were
Da objects to referrences to cliams against me overruled
DA objects to referrals to rulings this court has made Sustained
Jack <cLean
Bob Fitzgerald - dry out facility unlicensed by the State of Idaho
Ole Olesen - wa alcoholic and drug user; firmly involved and perpetrator
Blake Lyle - Used by Miller to pull off property - 8 vehicles, 4 trailers
DA objects to a juror panel's conclusions as being evidence in this case sustained
DA objects - to testimony - no cause of action as to burning barn
Purpose of opening statement what party anticipates what will proof
What jury is to rely on is testimony of withnesses and exhibits
Evidence will sho that although only trying this case against two defendants, there are a number of actors they have used
2. People are mutuak agents - jointly liable
Co conspirators - associated in plan or action
These people had ameeting of the mind; doesn't have to be written
4. people can know what's going on and they have a duty to stop whatr is going on
Direct and indirect evidence to hav e equal weight

000631

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 4 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1444

Are a total of 11 potential counts you may have to decide
1 - quiet title of 80+ acres
two other parcels were purchased by P in 1992
1 house one acre lot purchased in the name of Targhee Powder Emporium Unlimited
Purchased 8.5 acres around the one acre; did as joint vnture; as a partnership
Layne Price and has wife owned the 1 acres; he paid them cash \$80,00
Lived in that house while he was sojourning here
P has always California Driver's License
Two parcels one nect to Drawknife 33>5 acres
Purchased for P for McLean and Liponis
Just before closing P walked 33 acres and finds out it is short; p then renegotiates
purchase price
Agreed to put in special accountt; put in Dr. Liponis's name but was understood this was
p's private account
DA - object -t his will not come out in evidence - J - P can put on what he wants to put on -
overruled
Per David Kearsley - whoever puts money in, that money belongs to him
Peacock porperty - 40 acres - four people went in;
Both parcels under name of Targhee Powder Emporium Limited
McLean knew there was s difference in what he paid and what Dawson and Liponis paid
Parcel secured from john Stewart - High ranking Priest and Member of the LDS church
Secured agreement to buy 13.2 acres from Stewart
Agreement came apart in 1995
Miller flew to oregon to meet with her daughter Clare Caffo
Lovell and Edith Harrop 160 acres
Secured agreement that he could buy that property at \$1350/acre
1994 P contact ed people as to the pu rchase prospects of that property
On November 11 Miller wanted to buy in on 160 acres
December 8 and 12, Miller agreed to buy the back 40 acres at \$3000/acre

Tape Counter: 2440

Irritated judges as trial advocate - not at attorney
Because of ethnic background; p was disbarred
Miller agreed to build P house within 3 years or would owe him \$40,000
Prior to Christmas 1994, Miller asked to move in; P said no - had to go visit his aging
mother
Knew P spoke high Russian dialect; went to first grade not knowing a word of
English\Could not accept that P was of that ethnic religious beleifs
Miller established an office in the basement at 195 Highway 33
Involved P in personnel problems

Tape Counter: 2521

Evidence will show I found some of her notes from her counselor
around May 1995 Harrops failed to disclose zoning anf wetaInd status some of acreage
Miller and P were sued by Harrops; they wanted the 80 acres bak
Miller was told to hire her own attorney; that p was not an attorney
Represented by high politiccal LDS church oriented law firm
Attornies got Harrops to dismiss her without prejudice
DA - going to object is P is going to read from Exhibit not in evidence yet

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 5 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2700 Miller made 4 statements has now recanted
Knew about purchase price
Pursuaded to buy in at \$2000/acres
Case settled as to me
Have signed complete settlement agreement releaseing Bach from any and all claims up
top that date
Signed a umber of answers to interrogatories in federal court case
Did not provide all exhibits reuquested

Tape Counter: 2787 Miller siad she would give P lifetime interest in her house
said she would always take care of P
She was named as creditor at second Chap 13 bankruptcy

Tape Counter: 2894 Siad wanted to get relationship back on track
Said would always take care of P; said that was the least she owed him
Recess 10:33
Reconvene 10:50

Tape Counter: 2935 J recalls case; all jurors are present
School board swap for LDS seminary
Pursuaded LDS leaders to pull back offer

Tape Counter: 3300 P was assaulted by Cliff Calderwood
P had agreed to just take front 40 acres
Irene Beard case in Bonneville OCunty
D would come by to see what P was doing
Even came in to house because she had not returned his key
Invited him to dinner on Valentines Day and had intimacy afterwards
Miller was visiting property and leaving gates open
P told her to be careful of his animals
May 2000 CV 00-076 filed verified complaint and affidavit
Admitted that P owned 40 acres
Action was later dismissed without prejudice by D
P drove by Miller's house; pulled from trash can notes from meeting with Nancy Schwartz
and Roy Moulton that she should have disclosed
Then filed false report; tried to get crimianl complaint filed against him
Circle called to back 40 acres Fitzgerald had shotgun
Runyan and Woelk directed what Miller and Fitzgerald should do
Miller attempted to run over P and Deputy Circle
All SO was doing was maintaining the staus quo
There have been a number of attacks and damages
Found Miller and Fitzgerald had one one porperty and damaged fenceposts, windows,
painted graffiti; placed water in his gas tanks
Prosectuion of Fitzgerald for Minor malicious destruction

Tape Counter: 3848 P came to So and demnded protection for property
Lowery, Kaufman, Luke said you are an outlaw - we will not protect you
This is campaign of hate directed by Miller
Five times there were assualts on that property
Had to block property with his vehicles to prevent further damage to property

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 6 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 3976 Stole \$15,000 from Liponis account
Formed new corporation Targhee Powder Emporium - business identity theft and grand theft
In Cv 01-059 Bach filed counterclaim - Moss said filed as defendant
D (Bach) got restraining order keeping Miller off strip and property
On two occasions tried to start fire
Moss threw out the complaint of Miller with prejudice; told Bach to refile

Tape Counter: 4254 THree Saturdays ago, P received info from Tyler Hammond and Dave Guymon that Lyle still had possession of three of Bach's vehicles
Travis Thompson presented to P development of subdivision
Not only cloud but slander of title on P's title that no financial institution would touch
Slander or title on 2 1/2 million dollars

Tape Counter: 4476 Other than that marital plan, p would have been in that business'SHe said not to worry about it - that she had enough money to take care of us
Counterclaims in this lawsuit are absolutely bogus
Lack of progress and planning and intolerance for other religious persuasions

Tape Counter: 4646 Counts 7 and 8 are somewhat related
8 is delayed for another trial against Woelk and his law firm
Unless you play by unwritten rules, you don't get justice

Tape Counter: 4700 COunt 9 - conversion
McLean was told of account by Miller - took \$15,000
Abuse of legal process
Lists items destroyed or stolen from trailer

Tape Counter: 4875 Malicious prosecution and Abuse of Legal Process
four cases that Miller has either lost or withdrawn

Tape Counter: 5014 Malicious harassment hate group
Miller knew large family of poor immigrant parents
Needed large caring family

Tape Counter: 5209 Ms Broughton told Miller to try and get dirt on Bach
Miller did nothing to stop it
Don't throw common sense out especially when it comes to damages
Include not only for my loss of time
Damages of lost opportunity - sale of remaining 72 acres by Harrops for \$52,000
Magnitude of damages will be considerable
Recess 11:48

000634

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 7 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 5388

Reconvene 1:01
J recalls case; all are present
Da begins opening
Confidence game, confusion harrassment
Paranoid delusion and lies
Bach didn't mention he didn't pay one dimes on these (points) properties
P objects - bordering on argument rather than evidence
J try to stick with the topic
Harrassment - stalking and harrassment of Kathy Miller
P objection - that is not at issue; has never been raised - J opening statement
Only thing D did wrong is put her trust in this man
Remember "undisclosed principles"
Miller buys westerly 40 acres, TPE buys 40 acres next to them
She pays Wright Law Office; she thinks "U P" paid for the other 80
3 -15 -95 told they need another \$10,000; told her to make it to TPE
Just spent \$120,000 and 2 days later she finds out she's been sued
Title to property was tied up while Bach litigated
Told needed to pay additional \$7500 for easement in 1996
P objects- argument DA - will rephrase
TPE paid nothing
Harrops received \$102,000 for property plus \$74?? for easement - roughly \$110,00
P - same objection sustained
Kathy gets 40 acres of property and an easement for \$120,000; Bach gets \$17,000 and
TPE, Inc gets 40 acres of property
Make sure Bach shows you the evidence of all the moeny he spent individually
P - admonish Woelk to be professional
J - be professional or will dismiss jury and impose sanctions
Not one of these properties was listed as having been owned by Bach in Federal
bankruptcy
Never listed for any taxes
'98 -'99 P began blocking her access to her property
In 2000 Miller engaged services of Alva Harris
Harris said Bachsaid TPE was "U P"; not registered
Said you and others file as TPE
Not one deed out there that has P's individual name on it
going to ask you to come back and tell my client that she has done nothing wrong

000635

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 8 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 6938

DB gives opening
Chose to represent myself because I find it hard to beleive that I am actually a part of this law suit
P - think this is argument
J - Just outline evidence
As you will see, I am a friend of Ms. Miller
Evidence of P's systematic attempts to isolate her from her friends
Law suit filed in Federal court against over 80 defendants
i was not on origianl complaint; I was an after thought
i was added only after I accompanied Ms. Miller on to her property
Only vaguest of details
No where do I claim title or interest of any kind in any of these properties
Simply not involved in this matter except as Ms. Miller's friend
We dmaged nothing, we removed nothing, we merely drove down the access strip
Miller has good reason to fear Bach
Tape 7 ends 7474

Tape Counter: 25

Tape 8 begins
P calls W - 1 Garron Hancock
Clerk swears in W - 1 Lewisville Idaho
P ? W -1 Small contractor
Built pond
Built channel so water would go over road
Finished road to first 40 acres - about \$5,000
Bach did paralegal work for you around \$7000
exchanged vacation trailer - \$2500
Paid \$500
Told me right up front had been disbarred
DA objects - leading sustained
DA objects - leading sustained
P requests PX 13

Tape Counter: 288

DA initial problem several pictures not individually marked
DA going to be easier if do each exhibit 1 - 10 one at a time
P will take in sequence; provided to DA before delivering it
P PX 13 - 1
DA objects relevance J need to know more about it; going to sustain
P - note of automaticce stay of bankruptcy sale
DA - continuing objection as to how assertion prohibited sale
J - don't know either but has to be some evidence on it somewhere
PX 13 second page (2)
Notice handed out at bankruptcy sale hand to Harris and Mason before slae
DA objects - hearsay sustained
Followed Mason and Harris to another office

000636

Date: 06/13/2003

Time: 05:02 PM

Page 9 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 461

PX 13 (5) PX 13(6)
W ids -
PX 13 (7) ALva Harris in the courtroom
DA objects - no foundation sustained
call from Bach
DA objects - leading sustained
Da objects - relevance sustained
P ask court to reconsider J - not going to reconsider
DA objects relevance sustained
DA objects leading sustained
PA offers PX 13 1,2, 5,6,7
DA objects on relevance, no foundation
J sustained 1,2, overrule 5,6,7
Ask court to reconsider succeeding pages on 13 - 2 and mark as A - H
J will not reconsider
Da objects leading sustained
DA objects leading overruled

Tape Counter: 761

DA begins X
Trying to sue government yes
Was dismissed yes
How many plaintiffs
P objects relevance overruled
P objects irrelevant sustained
P objects Irrelevant sustained
P objects asked and answered - overruled
P objects relevance, prejudicial, inflammatory overruled
P objects irrelevant and hearsay sustained

Tape Counter: 886

P calls Katherine as adverse witness
Clerk swears in W -2
DA requests recess J not at this time

Tape Counter: 920

P ? W -2
DA objects relevance - think just background
DA objects relevance overruled
DA objects relevance J what is sustained
DA objects relevance sustained
DA objects relevance sustained
DA objects relevance sustained
DA objects A&A overruled
DA objects relevance overruled
DA objects relevance overruled
P move to strike as non -responsive sustained
W - beleive that might be confidential sustained
DA objects - how is Midas Business relevant to ths case sustained
DA objects relevance sustained
DA objects relevance sustained

000637

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 10 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1560

P intro PX 93 marked hand written letter
P offers 93 no objection ADMITTED
P may have read to jury J - don't want to take the time
DA - like record to reflect P ripped off part of the evidence he wants to submit
No objection as long as he includes the top page that he ripped off
J why coming up with new exhibits now
P - you said except fro ompeachment
P finally received 2 huge boxes of evidence from San Marino

Tape Counter: 1737

Da would object to P trying to impeach client with documents I haven't seen
Want to have page he ripped off for purposes of impeachment
P later
P not offering until lay foundation
J then going to keep both out.
Recess 2:41

Tape Counter: 1818

Reconvene 304
J recalls case
P will stipulate to admission
Da will stipulate
P want to lay more foundation
PX 94 A - F
W not sure these are in order
DA - document speaks for itself P no it doesn't J overruled
P move to strike as non-responsive

Tape Counter: 2115

P intro PX 20 W ids
DA objects overruled
Can remember looking at 3 properties - the one I eventually bought
11 acre piece enxt to Trout's Ranch - John Stewart
Third piece off Peacock Lane
Had started personal relationship in early November
DA objection relevance sustained

Tape Counter: 2367

Back to PX 20
DA objection calls for speculation sustained
Strike Latter as non responsive stricken

Tape Counter: 2480

P intro PX 22, PX 23 Dated Dec 8m 1994 on 3rd page
Move to strike as guessing sustained
Move to strike as non-responsive overruled
DA my client wasn't finished responding P it was non responsive
DA objection relevance as wells confidential overruled
Da same objectionn overruled
Move te strike as non responsive overruled

Tape Counter: 2745

Did you tell him you were not of your own mind
DA objects relevance overruled
W don't agree with that
At end of two years you were going to pay me back and you had no money
Move to strike as non responsive

000000

Date: 06/13/2003

Time: 05:02 PM

Page 11 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2838 (P moves to easel)
Began living with Back in May of 95
Who paid for option price Mr Bach
Then what attorney said was a lie? But you had money refunded

Tape Counter: 2995 Envelope that Bach sealed
Recommended another attorney in Chuck Homer's office
Homer secured a dismissal in this lawsuit
P want to pull action 95-047
J not now

Tape Counter: 3284 First Federal lawsuit
Did not file compulsory counterclaim
Was still under the impression that TPE had purchased some of the land
Moved to strike as non responsive - sustained

Tape Counter: 3416 P refers to PX 22 (H) 5 page executed agreement with exhibits A, B, C
W - some of these are not signed

Tape Counter: 3535 Document not in to evidence on=bject to client reading from it Sustained
P then as be admitted
DA - would change response no objection to Exhibit C Dec letter to Miller
Object to Exhibit 22(H) as not best evidence
Objection is overruled as to 22 (C) 3 pages and 22(H) 5 pages plus exhibits A-C
J recess 3:55

Tape Counter: 3656 Reconvene 4:15
J recalls case
P continues examination
Ethnicity
DA objects compound ? sustained
P - can have file folder with Miller's Answer and Affirmative Defenses
P have had PX 22 C and PX 22 (H) marked separately (handed to jury)

Tape Counter: 4081 P refers to court file #4
DA objects don't beleive is proper impeachment
Certainly can't be impeaching on prior inconsistent statements
J sustained on lack of foundation
DA same objection
J - don't think document
P asks w to read bottom of page 10 last sentence
Is that your statement under penalty of perjury
Move to strike as non responsive sustained
Move to strike as non responsive sustained
Move to strike as no -responsive sustained
J will be stricken
Did you make that statement under penalty of perjury
This is a lawsuit prepared by my attorney for me
Move to strike as non responsive Answer will be stricken
On page 37 verification read it to yourself

000639

Date: 06/13/2003

Time: 05:02 PM

Page 12 of 50

Seventh Judicial District - Teton County

Minutes Report

User: PHYLLIS

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 4384

P intro PX 96
Is it your duty to read very carefully and completely any reports
You don't see any distortion between this and the Counterclaim?
Who did Bach represent in the Harrop lawsuit
You always told me
Move to strike as non responsive

Tape Counter: 4624

P wants marked 97 AB
DA objects no in time sustained
P still want marked

Tape Counter: 4818

Attorneys consulted about house
Nancy Schwartz
DA objects foundation
intimate
DA objects relevance sustained
DA continue to object on relevance sustained
J evening recess
admonishes jury - do not discuss; do not form an opinion

Tape Counter: 5000

Jury is excused
In pre-trial order instructed parties to get together and stipulate to exhibits
J orders parties to get together in Treasurers Office and go through exhibits and stipulate
to exhibits
place in different piles
Clerk will read all exhibits stipulated to
Second pile will be exhibits that you can't agree on
Adjourn
End Tape 8 at 5100

Tape Counter: 1

Tape 9
reconvene 9:01
Injunction
2. Juror that wrote a note basis of reptitious nature Instructions were questions, not
critique Implies that more than one juror were discussing
Renew motion for mistrial
Found intolerable Mary Langdon came up back steps for jurors - knows she is not to be
near jurors
Feel her actions are compromising the jurors

Tape Counter: 99

DA
just looking at Rule 65 A
Anything admissible becomes part of the record
P attempts to admit large reams of paper
object to motion in that regard
2. Like juror to be discovered and voir dire - don't think question necessitates voir dire
That can become part of their deliberations
3. There is no evidence put on the record that that is the case, and certainly object
Can we have an idea when the case might in or when witnesses might be called
Need to let my own witnesses know
Asking for some limiting instructions: need some kind of basis with which to work

Date: 06/13/2003

Time: 05:02 PM

Page 13 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 188 DB first two issue s defer to Woelk
third issue - think we need to be very careful before we make assumptions

Tape Counter: 210 P - voir dire and further instruct jurors as to their responsibilities
THink Court should determine the identity of the juror
prejudicing DA's case - two witnesses in the hospital
Looking forward to resting on Monday
Am mindful of court's instruction that don't go more than 8 days but I disagree with that
Object to any motion in limine as far as resticting me as to my witnesses

Tape Counter: 299 J going to deny first motion
Preliminary injuncion was court trial- very liberal in letting exhibits come in
Rule reserves the right at jury trial with both parties
Proper the exhibits that go to jury come in by stipulation or ruling
2. Voir dire or mistrial
Did read off record; think said should be on the record
Reads note - tend to agree with the comment by the juror - think it goes to style rather
than evidence
Don't think juror was not obeying instructions
Will be denied
3. injubction against Mary Langdon - jurors have been instructed not to talk with anyone
about the case, if she is trying to contact, assume the court will be notified. SHe could
end up being prosecuted. Has to have rocks in her head to even get near jurors
4. P intends to be trhoug with his case by Monday
Witnesses in hospital, he may reopen should they get out of hospital
DA not preopened to answer whether would let reopen if necessary for witnesses

Tape Counter: 463 P - do renew motion for mistrial based on note from juror and contact wioth Mary Langdon
J - heard the argument and made my ruling.

Tape Counter: 484 Jury is called in 9:17
Parties waive roll call of jurors
Katherine Miller is recalled

Tape Counter: 507 DA announces exhibits that have been stipulated for admission
P agree to admission of named exhibits

Tape Counter: 646 P continues ? of D Miller
P Refers to PX 96
At any time during federal district court action - did you ever assert that Bach had cheated
you or defrauded you - not in this document

000641

Date: 06/13/2003

Time: 05:02 PM

Page 14 of 50

Seventh Judicial District - Teton County

Minutes Report

User: PHYLLIS

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 830

Bankruptcy proceedings
Don't remember being told that I was going to be named as creditor
Did you tell me to transfer my properties to you
You will agree that you were told what the purpose of filing was
You ask me to try to subvert any proceedings by giving you a quit claim deed
DA improper question sustained
Chap 13 just to reorganize bills
Were you informed there was a second bankruptcy to be filed in CA - yes
DA hearsay overruled
Did I not tell you I had to refile in Sacramento - yes
ONLY property in California to be sold were community properties
Thought your house in CA was to be sold
You were told you were going to be listed as creditor
DA objects assumes facts not in evidence overruled
Move to strike as non responsive stricken
Have you ever filed a claim in Chap 13 proceedings no
have you ever as the court to set aside that petition no
Did you challenge the legitimacy of filing no

Tape Counter: 1171

P intros PX 35
Restraining order and injunction
you named John N Bach and Targhee Powder Emporium, Inc
DA object J beleive was just illustrative no it isn't evidence
THere ha ve been so many lawsuits, I can't remember
This cover page says this is the first set of interrogatories but there are none attached
DA objection foundation J sustained as to reading from a document not in evidence

Tape Counter: 1368

P - didn't want to burden the court with the 300 pages of that document.
These are just select pages stapled
DA continue to object sice P has just admitted that he cannot lay the foundation as to the
complete document J going to sustain
P - turned to 4th page of that exhibit
Are you asking to have that money returned to you?
DA objection calls for legal conclusion overruled
Making claim to either get the land I paid for or get the money I paid
Sure yes. I want it back
DA continue to object to foundation of these exhibits
Were confusing and misleading when we refer to documents included n 35 A
J can't just rule without a ?

Tape Counter: 1547

Page 45, 46 dated Octo 8, 1997
2 page hand written letter from Bach to Miller
Fantasy letter
Partnership

Tape Counter: 1620

Page 54
W - letter from you to me date is cut off
This is not the "fantasy" letter

000642

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 15 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1672

Page 69 and 70
Are they in your hand writing - yes
Date 6-22-98
Thinking this is what came out of my trash can or out of my house
Move to strike as non responsive overruled
Not related to that conversation
DA object asked and answered; she's testified she doesn't know what that document is sustained
You always wanted me to join into a joint venture with you
Move to strike her answer - granted

Tape Counter: 1900

Pages 72 and 73
March 6, 1997
Did you ever deny the statements in that letter no
Ask that letter be received in evidence
No objection
J will be 35 72 & 73 ADMITTED
DA - will object attorney client privilege
There has been no foundation that privileges have been waived
J going to overrule on the grounds that the W has identified it
J has been admitted already

Tape Counter: 2197

Had my attorneys contact you (about trailer) but never filed a lawsuit
Garbage -
Papers submitted to lawyers
That is the approximate time (June 7, 2000) that papers were missing from my house
Filed complaint with TCSO that P had broken in to my home
DA objects form of question argumentative sustained
Ms. Lowery did not contact me

Tape Counter: 2378

Started rating P's property
Had friends that would help me
Visit by yourself and 6 vehicles traveling the Harrop property

Tape Counter: 2494

PA refers to PX 82
DA will stipulate to admission
P have not offered it yet
Incident August 17, 2000; didn't make report until 11 days later
Did you authorize Fitzgerald to act as your real estate agent
Drove from the south across farmer's field to get to the back because you were locking the gate
I drove across the farmer's lane and three ditches to get to my land

000643

Date: 06/13/2003

Time: 05:02 PM

Page 16 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2732

DA object on relevance grounds sustained
Was very upset when you tried to ram my car
Circle tried to arrest you and Mr. Bob Fitzgerald
DA objects assumes facts not in evidence sustained
P offers document no objection ADMITTED
DA objects relevance uverruled
I tried to drive on to my own land and you tried to ram my car and I found that very
upsetting

Tape Counter: 2941

DA objects assumes facts not in evidence Sustained
DA objects client privilege sustained
DA objects assumes facts not in evidence overruled
Da objects answered sustained
Da objects asked and answered sustained
Would like to have video tape set up and played for the jury
PX 45
Would note that video has been spliced
Recess 10:39

Tape Counter: 3021

reconvene 11:07
J about to view PX 45 A
J reads note from juror Visual diagram of all land plots
P note w is not in witness chair
Lawsuit in May or June 2000
DA onjection confused compound, assumes facts
File lawsuit don't remember date
P was Case CV 01-059
Bach had sent letters was building a barn and a house
Received notice you had rescinded all of my rights unilaterally
You knew Bach was going to build barn and house
Vasa N. Bach trust sole nominee
move to strike as non repsonisive overruled

000644

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 17 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 3162

Vidoe tape played PX 45

PX 45 vidoe played

000645

Date: 06/13/2003

Time: 05:02 PM

Page 18 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

User: PHYLLIS

000046

Date: 06/13/2003

Time: 05:02 PM

Page 19 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

User: PHYLLIS

Date: 06/13/2003

Time: 05:02 PM

Page 20 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

User: PHYLLIS

Tape Counter: 4409

Tape ends

P continues with questions

DA objects misstates the law sustained

DA objects argumentative overruled

DA objects asked and answered sustained

moves to strike non responsive sustained

Tape Counter: 4609

Had always been told by Mr. Bach that TPE was an Idaho Corporation that was owned by other people, it was not you

Move to strike overruled

J explains reasons on rulings

000648

Date: 06/13/2003

Time: 05:02 PM

Page 21 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 4689

P requests PX 26 A and 26 B
P offers objects foundation J No foundation sustained
Da objects to P's attempts to get in to evidence by reading it now overruled
DA continue objections J will sustain as reading from document not in evidence
DA objects asked and answered sustained
P juror asked for plat of property - sub ex 7 page 1 of 2
W - yes I prepared plat -

Tape Counter: 4950

wrote "Bach's parcel"
P offer as PX 26 B
DA want to voir dire
P object J can wuestion witness in aid of objection
When you wrote in 40 acres Bach
P objects not voir dire
P objects asked and answered
Strike as non responsive
J 2 pages 26B(7) 1,2 will be admitted
J admonishes jury
recess 11:57

Tape Counter: 5193

No statute of limtation that precluded her totally
settlemaent agreement as well
going to spend inordinate amount of time on something that cannot be changed

Tape Counter: 5220

Da responds
settlement agreement is frad\ud
Client should be allowed to make that claim
3 year statue haven;t seen any evidence that specifies that we have missed the statue of
limitations
when date is disputed is ? for trier of fact
Request motins be denied

Tape Counter: 5285

P - para 8 oc counter claim
no allegations of anything other than fraud
even 5 year statute has run
Testimony was that she had settled all of her claims completelyMake specific offer of
proof showing averments in affirmative defenses

Tape Counter: 5355

J really a motion for directed verdict is premature
P hasn't rested on his case
cannot rule as a defense until DA has put on evidence
P then still can argue
No allegation that this settlement agreement was a fraud upon Ms. MillerJ objection to
ruling is noted

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 22 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 5425

Jury is recalled 1:10

J recalls case; all jurors are present

DA objects asked and answered sustained

DA asked and answered sustained

Did you ever use any part of this acreage in the winter I had gone cross country skiing
how many times

DA objects relevance overruled

did you go alone

DA objects relevance overruled

DA A&A overruled

Would walk on it when the snow wasn't too deep

Tape Counter: 5656

Met with Cody Runyan and others to plot against Mr. Bach

DA objects overruled

Tape Counter: 5717

When was Targhee Powder Emporium incorporated
November 2000

How many meetings one when met don't remember

Were you advised there was a Judgment Lien Notice on property

Said found Harris's name on internet as purchaser of property

Tape Counter: 5852

When did you actually retain Harris don't remember

Hires Harris sometime between June and end of July

You were still intending to pursue legal action in spite of having settled everything with P

Did you sue your attorney

DA objects argumentative sustained

What was sole reason you wanted to continue prosecuting Bach after October settlement
agreement I wanted to find out if Bach had put any money into any purchase

Da objects argumentative overruled

Move to strike overruled

Tape Counter: 6091

Who told you there was fraud - Mr Harris

What other business was Harris in

DA objects relevance

Da objects A&A sustained

DA objects A&A overruled

I hired him to try to ascertain the truth about this transaction

Did he tell you there was no fraud no he felt there was fraud

Did he tell you you had signed a settlement agreement

Date: 06/13/2003

Time: 05:02 PM

Page 23 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 6252

Officers of TPE
FITZgerald case went to trial in front of jury
TPE gave that person the land that they had paid for
DA objects - misstatement of the law sustained
DA sme objection overruled
What was Liponis going to get
DA objects same objection overruled
J same objection Bach is attempting to testify as to what the law is to the jury
Lack of foundation Assumes facts, assumes the law J will sustain
DA lack of foundation hearsay overruled
Da objection overruled
DA objection relevance and privilege sustained

Tape Counter: 6595

P request PX 23
DA need to address evidentiary issues
P no right of confidentiality; are public records
J - proceed to lay some foundation
J objection is premature
Da asking for hearing outside presence of jury
Jury is excused 1:35

Tape Counter: 6696

Da - p is going to try to attempt to X W to introduce letters I wrote to PA when I
represented FITZgerald and McLean in criminal actions
are privileged information
No way my letters to settle are not relevant
He will not be able to authenticate
Not relevant peice of evidence
J Rule 502 lawyer client privilege
408 offer to settle
P -no such thing
Is irrelevant to this case

Tape Counter: 6843

PA - do you have the benefit of Idaho Constitution Article 1 Sec 22
J have read it; not memrized it
Dont have it here at the bench
P have right to have investigation documentation
Almost a discovery provision
three letters for date Nov 3, 16, 22 2000

Tape Counter: 7072

408 only pertains to civil prodeeding
Is prelude to other affidavits in Fitzgerald case
There is no privilege

Tape Counter: 7183

Da - have hard time remembering whre conspiracy comes in
Court needs to start weeding out relevant stuff from irrelevant stuff
He is attempting to call me as a witness so he can disqualify me

Tape Counter: 7254

P know I warned the court against letting Woelk try this case in front of a jury
Should not be prejudiced

Tape Counter: 7315

J not privileged communication when send to prosecutor
Tape ends 7358

000651

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 24 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1 J reads from law book
Don't think any of those exceptions apply
Dont think 408 protects it
Do think is irrelevant - nothing establihes that MS. Miller could be liable
Have serious dobtbs as to whether or not this witness can authenticate it
Will grant Motion

Tape Counter: 48 P has the court read these letters
Ask the court to read the next to the last paragraph
P read page 2
Da are you going to let him read part of the letter
J - it can be part of the record
P reads

Tape Counter: 120 P I have ? about this claim
That is conversion, I am entitled
J - there is no showing that that would make Miller liable for the money
She has contained it
She has control of it
DA - where does it say

Tape Counter: 169 At this point you haven't put any kind of foundation
P haven't laid foundation yet
J as long as you don't tried to put them in to evidence
DA - why are we litigating this \$15,000
I think the conversion is an issue in this case
This court can take judicial notice that it has \$15000 in it;s account
J I haven't researched those files
DA - you can take judicial notice
J - maybe you can do it later
J - you can ask W what she knows about the \$15,000
Am going to grant motion in limine
Jury is recalled 1:56

Tape Counter: 278 P intro PX
P id's documents in question
You knew McLean was told to go and take \$15000 out of Liponis account
DA objects A&A sustained

Tape Counter: 576 P continues
You have kept yourself deliberatelyignorant to justify stealing thsesse properties
W - Harris was the agent
I beleive the information about that account were in the origianl packet that I gave Mr.
Harris at our original meeting
You were going to take all the interest in all 86 acres
Who were going to take theother properties
Drawkife Dr Liponis ad paid
Moved to strike non responsive
Peacock Lane property

000652

Date: 06/13/2003

Time: 05:02 PM

Page 25 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 718

P requests PX 27
Entire First Amended Complaint
DA objects sustained

Tape Counter: 787

November 15 2000 was Fitzgerald living with you
DA objects relevance overruled
Remember one time Jack coming over to my house
He had just stolen \$15,000 from me
DA relevance overruled
You knew a warrant for his arrest had gone out
Did you harbor Mr. Mclean until the next Monday
DA confused - don't see P on stand right now
J is not evidence

Tape Counter: 900

In PX 23 supplemental affidavit of Harris filed Nov 17, 2000
On Woelk's letterhead
DA A&A sustained
DA A&A she said she's never seen it
P argues overruled
DA calls for speculation hypothetical ?
P non responsive
W - you hypothetical does not match this situation
DA objects argumentative sustained
DA objects argumentative sustained
Da argumentative sustained
P move to strike sustained

Tape Counter: 1087

Look at next 7 pages
Have not seen affd of Galen Woelk no
Have seen Articles of Incorporation
Assumed Business Name

Tape Counter: 1139

Did you ever put me on notice to indemnify you or to hold you harmless
{ those were before the October 13, 1997 settlement
DA objection document speaks for itself sustained
Mr. Harris took care of all the paperwork for me

Tape Counter: 1214

Ask affd of MR. Woelk be marked separately and that they be marked as supsection
DA objects foundations
PX 23 A has been marked and moved for admission
DAB has no objection
Will be admitted

Tape Counter: 1380

Da objects argumentative sustained
Didn't you know you had to file a Quiet Title action
I didn't think you owned the land
Harris filed a lawsuit in 2001

000653

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 26 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1474

P requests PX 68-76
That is my signature
Did you ever send Bach a copy of your deed
Offer exhibit
DA already stipulated to it
J if already admitted no point in offering it again
DA reads list of exhibits stipulated to that missed this morning
DAB no objection ADMITTED

Tape Counter: 1657

P offering PX 76
DA argues that it is incomplete without the Findings that go along with it

Tape Counter: 1713

Judge reads letter from juror
Wants to know difference between with or without prejudice
J Instruction 4 ? for witness would ask
This appears to be question for the Judge
Probably will be covered in final instructions

Tape Counter: 1758

P continues
This is triple marked exhibit
DA objects no foundation sustained
Recess 2:51

Tape Counter: 1960

Jury is recalled 3:11
J preliminary matter Can start tomorrow at 8:00
P continues
PX 26 b sub exhibit E
DA if could go one at a time, perhaps would stipulate to
P would normally accept but want to proceed the way I am
J how many exhibits
I;m mr. Woelk does not want the jury to see this
P will stipulate that both of the exhibits in their entirety come in
I offered these and he objected
DA these two exhibits have 25 documents each I told him I would stipulate to most of them
D they can come is as one exhibit

Tape Counter: 2109

PX B (e) 4 typed pages
Seems to be recreation
Move to strike sustained
Says Targhee Powder Emporium on the top
Did you call Bach and ask him to stop using the name TPE
Did you take to any attorney and say answer this letter
Move to strike nonresponsive sustained
P offers them
DA objects self serving statement; doesn't mean it goes to the truth sustained
It gave you notice of his legal position
Ask this be received strictly for the legal position
DA same objection sustained

000654

Date: 06/13/2003

Time: 05:02 PM

Page 27 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2314

2 page letter dated Jan 10, 2001 Admitted as L
Addressed to Roger Wright by Alva Harris
? are very specific
Was Harris attorney on that date yes
Did you authorize or approve that letter
Move to strike as non responsive sustained
Did not receive this letter
Did you review this letter - don't remember seeing this letter no
Did you review that letter with Harris in that action before it was offered
No it is a defendant's exhibit
Did you refute that letter being sent - don't recall

Tape Counter: 2445

DX M admitted May 16,
DA will stipulate to that ADMITTED
P intro 26A(1)
DA stipulate ADMITTED

Tape Counter: 2670

P PX 26B(2)
W - don't recall seeing this
Did you go over this exhibit with your attorneys - no
DA A&A
DA ? has been answered Bach hasn't met foundational requirements
Did Bah ever discuss with you his expectation that there was enough money in California
to pay almost all his assets
DA relevance sustaining
P not talking about that document
Did you find out from Dawson money from Chap 13 bankruptcy
You never discussed that subject with either of the Dawson's

Tape Counter: 3000

Have you seen those four pages before (PX 26B(3))
P offers PX
DA object insufficient foundation sustained\Oral agreement as to Bach putting in front
metal gate
Making improvements
Only space you were to be given was along northern boundary
Agreed terminable condition
Move to strike as non responsive

000655

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 28 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 6162

Six pages in handwriting - j\6 pages
Wants marked as 26A(2)
Wants 26A(3) marked
Is that handwriting yours
I think these are things that were taken from my house
Moves to strike sustained
Da objects argumentative overruled
Don't Recall writing some of these things
These same documents were filed in Federal District Court
You filed an Affidavit claiming they were stolen
You were upset because Lowery would not press criminal charges
They were so pristine it's hard to believe they were in my trash can
How do you know that it's you
DA improper impeachment overruled need to make objection before she answers
DON't believe the whole page is about John N Bach

Tape Counter: 3457

Did you make these notes after talking to Roy Moulton
DA no objection ADMITTED
PA intro PX 26A(3)
No objection ADMITTED
Move to strike as non-responsive

Tape Counter: 3595

Cost of building a house for you and Bach
DA objects front 80 acres overruled say it again
Wrote down somethings for building a house - not for you or me
DA continue objection to relevance overruling
Did you attempt to buy the 80 acres from the Harrops; they refused
Was that offer made through Mr. HomerP offers exhibits
Da objects improper impeachment
J excuses jury 4:01

Tape Counter: 3727

P intros PX 98A 98 B
Being offered for limited issue of impeachment
DA - improper impeachment

Tape Counter: 3883

P responds all goes to impeachment
1 yes she did write it down
2 did make offer of \$80,000
These documents do impeach that
That negates that testimony and further credibility further at issue
She has been evasive, she has been non responsive

Tape Counter: 3949

J she admitted she offered to buy 80 acres
she diagrammed to buy a house
This is going to impeach her
You may attempt to impeach her

000656

Date: 06/13/2003

Time: 05:02 PM

Page 29 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

User: PHYLLIS

Selected Items

Tape Counter: 3983

P ?
did you walk the 80 acres
placed stakes where could build a house
did you receive frm Bach as assignment to purchase
DA ? is somewhat confusing
Not sure these two go together

Tape Counter: 4117

J have heard enough
They are not inconsistent with anything she has said
They should have been disclosed beforehand
Jury is recalled 4:12

Tape Counter: 4163

three ?
in 1996 as to front 80 acres of Harrops - did you walk the front acres with Bach
Do remember putting possible places to put house
Did you walk that property and put stakes
Yes
Did you go with Bach to Health Dept to apply for septic tank permit - no
Did you go to kaufman's to get bid to build road to build house
Got an estimate to build a road
J not offeing? no
J - if we're not going to have 98 A admitted, what is the purpose of having her testify about
it
Sustained

Tape Counter: 4300

Assignment of rights
Went to Homer make offer on front 80 acres
On the day we walked the property we talked about the ex-wife's Cahp 13 bankruptcy
Move to strike as non responsive

Tape Counter: 4373

In year 2000, did you give Back notice to vacate or remove from property
Da objects relevancy sustained
DA objects sustained
Da objection sustained
DA objects sustained
Did Ole Olesen drive on to property in you rvehicle
You removed yourself from Olesen for last 40 days
DA objects relevance sustained
DA objects relevance overruled
DA relevance sustained
DA relevance overruled no
Did talk to Cindy McCracken and tell her she was on my witness list
Told John Letham he was on your witness list
DA argumentative overruled

Tape Counter: 4636

did you undertake any action to legally obtain a preliminarly injunction no
Howed many actins filed against Bah in 2001
Move to strike as non responsive overrule in the interest of time
Order to maintian status quo
Move to strike as non responsive overruled
Move to strike

000557

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 30 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 4830

P intro PX 1,2,3 already ADMITTED

Tape Counter: 5100

Da will just save ? of W for direct

Tape Counter: 5160

P calls w -3 Cindy Miller

Clerk swears in W -3

They said you stole money and used women

Names of friends

Mary gives gestures or signs - very derogatory - puts her middle finger up

Tape Counter: 5800

Damaged fences

Da objects leading

DA objects sustained

DA objects overruled

DA leading sustained

Jury is excused

Recess 4:54

End of tape 10 6125

Tape Counter: 1

Tape 11 June 13, 2003

Jury is recalled 8:05

J recalls case; all jurors are present

P continues questioning of W -3 Cindy Miller

DA objects A&A J ask your question before the witness answers

Barbed wire gate

DA leading sustained

More than one instance where the Barbed wire gate was left open

DA leading sustained

Da leading overruled

Tape Counter: 199

P requests PX 32 B, 43, 44, 46-55

W ids PX 42

DA leading sustained

Photos cover year 2000

PX 54 1-22

Taken before 42 series

DA objects foundation overruled

P am prepared to go through each one of these photographs

DA - all these photographs are all cumulative

J - which one are they cumulative with

DA - basically they are just photos of hs property

DA - no bjection will stipulate to them coming in

PX 54 will be admitted

P - PX 42 (Actually was 43)

DA will stipulate to admission

600658

Date: 06/13/2003

Time: 05:02 PM

Page 31 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 558

PX 44
DA stipulate to those
Photos of damage of Sept 12 and 13 2000
These were taken after Bach's return from California
Depict damage that was left after Fisztgerald and Miller
J will ADMIT 44

Tape Counter: 619

Repair of damages
DA objection nos responsive sustained
DA objection leading sustained
Da objection leading overruled
DA leading removed
Da leading overruled
DA assumes facts not in evidence J sustained ask her what she saw

Tape Counter: 743

P intro PX 28
Which raid - after the wedding
DA leading sustained
Da leading overruled
Did not see them done

Tape Counter: 809

PX 53 1-28
Da will stipulate to those to move things along
Now back to sequence
DA leading sustained
DA hearsay sustained
DA objects calls for hearsay sustanied
DA objects leading sustained
Da objection hearsay move to strike sustained
P default already entered
admissions are attributed to principle

Tape Counter: 967

DA - untrue theory, no establishment of admissions or of agency
J only if establishment of Lyle as agent of Miller
Objection sustianed
DA move to strike overruled
DA leading sustained
Believe Lyle returned camp trailer, white horse trailer, gray pickup and white pickup
Let trailer drop from about 4 feet up

Tape Counter: 1100

Bob Fitzgerald as there
Lyle came with wrecker within inch or two from ramming my vehicle
he told me to get my f'ing vehcile out of the way
DA object to any further testimony with regards to relevance overruled
DA hearsay sustained
I was very frightened, very scared
DA objects sustained
My ? was what fears concerned her J was not

000659

Date: 06/13/2003

Time: 05:02 PM

Page 32 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1212

Went to Lyle's place of business
PX 32B 1-26
W id's
DA moves to strike - non responsive overruled
W ids each picture

Tape Counter: 1547

P offers 32 B
DA foundation and relevancy
DB no objection ADMITTED
DA objects leading sustained

Tape Counter: 1590

Located Dodge pickup and Camry last night at Shauna Crandall's
DA objects relevancy overruled
DA objects relevancy overruled
DA objects hearsay sustained
Da objects hearsay overruled

Tape Counter: 1784

Lyle's initial response to attempt to get vehicles back
DA objects - foundation overruled
DA hearsay overruled
He said Kathy Miller had requested that they be towed from the \$110 foot strip
DA same objection sustained on leading

Tape Counter: 1846

Miller's vehicle left at Lyle's Ford Expedition left for 3 or 4 days
DA leading sustained
Da relevancy sustained
DA objection overruled
Da objects relevancy
J if that's where you're going with it, I'll overrule the objection
DA continue to object on relevancy
J - has nothing to do with Cindy McCracken so will sustain objection

Tape Counter: 1950

Miller and Olesen talking to Cindy McCracken
They appeared to be waiting for me to leave
DA objects - leading sustained

000660

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 33 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2010

Talking to Ken Price
DA lack of foundation sustained
DA leading move to strike overruled
Olesen was in blue FOrd ickup and Fitagerald was on passenger side and they blocked us
goingout on to the road
DA objects overruled
DA objects calls for hearsay sustained
DA non responsive sustained
DA leading sustained
Da relevance sustained
DA objection calls for hearsay sustained
DA objection Leading sustained
DA assumes facts not in evidence sustained
DA objects - non responsive sustained
DA objects leading sustained
DA objects leading sustained
Da leading move to strike
DA - going to lead, I'm going to object, you'll sustain and she'll know what he wants her to
say

Tape Counter: 2272

J explains "leading"
DA lack of foundation overruled
DA leading sustained
DA non responsive overruled
DA foundation, speculation sustained
DA same objection sustained on foundation
DA objection hearsay sustained
DA objection leading overruled
Da objects relevancy sustained
DA objection relevancy
DA relevancy sustained

Tape Counter: 2500

March 24 this year Sunday
Ritchie's left approx 8:30 9:00
Vistied approx 45 minutes with landlord and son
Recess 9:31

Tape Counter: 2636

Reconvene 9:45
Ask witness to speak up
Telephone call to Mr. B ach on phone close to an hour
Sheriff came and knocked on outside wall of bedroom
Went down to property
the barn was entirely engulfed in flames
I rode with the sheriff, Bach was still getting his clothes

Tape Counter: 2706

P intros PX 51; 49 already admitted
DA stipulate to admission of PX 50 1-12
Consturction of house and barn
50 will be ADMITTED

Date: 06/13/2003

Time: 05:02 PM

Page 34 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2800

Progress on house
Offers PX 51
Da not relevant
DB defer to Woelk
ADMITTED

Tape Counter: 2898

View from house
Could see Ms. Miller's house
Stayed out there most of the day
Joined by friends of ours
Arrived early morning 9:30 10:00

Tape Counter: 2994

Fire chief Henry
DA objects relevance sustained
DA sam sustained
DA same sustained
Da same sustained
DA relevance sustained
DA relevance sustained
Jury is excused 9:56

Tape Counter: 3045

P -If court is sustaining relevancy, am surprised it is not relevant
My pleadings have placed this throughly in evidence
Incorporated First amended Complaint
Testimony was of threat by Olesen and Fitzgerald to burn that barn
No motion was made for more definate statement
Had alleged punative damages of \$5,000,000 and no one objected
Intending to make that part of the already stipulated to First Amended Complaint
Tere is no doubt that I can testify to what I heard Blake Lylw and Olesen's threat and
Fitzgerlad's threat
Loss of damages from those threats

Tape Counter: 3167

DA not remember and reference in FAC
Not relevant
Rule 403 will allow to tell Bach this evidence isn't going to come in
Is attempt tp mislead jury

Tape Counter: 3208

P wants Exhibit 21
DB defer to Woelk

Tape Counter: 3271

Page 6 C reads
Don't see need to amend my pleading
If I do, ask for time to amend

Tape Counter: 3339

Torts committed after SSept 27,2002 is outside scope of pleadings and outside the scope
of issues to be trried in this case
Such evidence is irrelevant and immaterial
Undue prejudice to defendant to have to defend against charges not given notice of

Date: 06/13/2003

Time: 05:02 PM

Page 35 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, et al.

Selected Items

Tape Counter: 3393	P inclusion J not suggest anythin; it may be but not gong to be in this lawsuit I supplied those; set forth damages Is the court saying that is insufficient notice J - yes I am dnager and threat starts at the beginning of an act, can be contiuned
Tape Counter: 3472	If you can prove that a match was lit in Sept 2002 and it tool 6 months to burn, that's quite a feat Have made ruling on this issue Jury in returned 10:07
Tape Counter: 3500	P's 49 sonstruction of the barn Offers 49 Already ADMITTED Living in Alice Sessions apartment DA objects relevance, hearsay sustained Da leading sustained DA leading foundation sustained DA leading, hearsay P that's what 403, 404 allow DA relevancy as well J sustained on lack of relevance DA same objection sustained on lack of relevance P assume if ask about Olesen, answer will be the same correct
Tape Counter: 3762	Christmas party - dead horse DA objection relevancy sustained DA same objection J hearing outside jury Jury is excused 10:15
Tape Counter: 3800	J where are we gong with this dead horse P -was pled in FAC August 13,14 hearings Starting to lay foundation both in to deciphering cause of death J - how does relate to Miller and bRoughton Fitzgerald poisoned the horse J you saw him P no
Tape Counter: 3869	DA - same objections Looked at counts; don't see any counts 9th count - doesn't say livestock Would set forth request that it be incorporated was denied Cannot base on inferential evidence No evidence of dead horse; no discovery
Tape Counter: 3968	DB noopinion Defer to Woelk
Tape Counter: 3988	P incorporate all paragraphs of allegation Para 5, page 10 The horse issue is there; it was raised P's 61 1-19 are photos relative to the death of that horse

Date: 06/13/2003

Time: 05:02 PM

Page 36 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 4056

Tape Counter: 4078

J reads paragraph Guess yo've got that in the pleadings

DA no discovery

How will we even know that horse was poisoned

P - have listed witnesses

J - you're going to be done wth your case on Monday

P - going to try

DA - No expert witnesses have been disclosed

P disclose in timely manner

P gave Woelk additional 40 days

Intent to call one or both of those expert witness

Francie Tritka; Jane Weins

P - But those weren't the pnly witnesses

DA - Tritka is listed

Tape Counter: 4247

J - think expert has been disclose

DA would like court to look at Discovery request

Asked for damages

Request no. 14

J - think entered order requiring Bach to provide copies; if not in that pile,another issue

Tape Counter: 4309

Da will continueto object to Miller's theories about how horse poisoned

J will have to wait unti ? asked

DA miller's own testimony can't be qualified as expert

Says "I;m somewhat acquainted with horses."

"Used to live on a ranch" "My husband ran the ranch/"

J - will decide on qualifications of witness

Tape Counter: 4393

Jury is recalled 10:30

P continues

300-350 head of brood mares

DA objects foundation sustained

DA ojects leading sustained

Da objects leading sustained

DA ? is objeted to sustained

Da foundation sustained

P ask court to determine foundation has been laid

J - is inadequate to answer the question asked

DA objects sustained

Da same objection sustained

Tape Counter: 4646

horse fed winter 2001-2002

where was source of hay front gate

where in relation was dead horse found

DA - foundatin sustained

DA leading overruled

DA leading sustained

DA foundation sustained

FOotprints leading from road to horse

Date: 06/13/2003

Time: 05:02 PM

Page 37 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

User: PHYLLIS

Selected Items

Tape Counter: 437

PX 66 1-14
DA objectin leading sustained
Footprints around horse
Anything unusual about prints in the snow
DA objects leading overruled
Lead from road over fence to horse
DA objection leading sustained
Don't beleive another set of prints leading back to raod don't beleive so
Offers ex
DA objects no proof they are what they say they are; they could be staged
Offers
66 ADMITTED
DA objects relevance sustained
DA relevance sustained
Da relevance sustained
DA foundation sustained
DA same foundation sustained
DA relevance sustained
DA foundation sustained
Da leading sustained
DA leading overruled
DA foundation overruled
DA non responsive sustained
DA objection relevance, foundation sustined

Tape Counter: 5114

DA begins X
Dou you own land - no
pay rent
P irrelevant and immaterial
DA sh'e talkin about all the horses she has on the property overrule
P objects overrule
J not sure talking about same exhibit
Never have parties out there no
have people over yes
Sleep out there on one occasion
Grow hay out there cuts depend on sub
No cut since 1999
P objects vague, sustained as to time frame
P objection time frame, propertues overruled
SHe came out inthe summer
SHe could put her horses out there in the summer
Have never placed one of my vehicles in fromnt of the easment stip
DA requests DX WW

Date: 06/13/2003

Time: 05:02 PM

Page 38 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 5390

P asked and answered sustained
P stipulated date on picture is accurate although we don't know
Not a corral; is fenced in area so horses couldn't get to the hay
P - argumentative; assumes facts not in evidence
J - going to have to lay more foundation sustained

Tape Counter: 5484

Fenced in area
right next to entrance gate
DA A&A, assumes facts overruled
Did not put there to help obstruct entrance
P A&A overruled
Didn't need residential permit
No water, no electricity
At some point on time, going to try to live in it

Tape Counter: 5644

P irrelevant, immaterial, improper X sustained
P A&A overruled
P same objection, overruled
Did you believe he owned the entire easement strip
P objection argumentative sustained
Never locked gates in front of easement
P hearsay sustained

Tape Counter: 5760

Lived with Bach full time since 99
Idaho residence
P objection irrelevant and immaterial sustained
P objection irrelevant overruled
How many days did P spend in Ca this year
How many days last year 30
He goes back off and on
2001
P objects - irrelevant overruled
1999 criminal case
P objects relevance overruled
Recently in criminal action
P objects relevance overruled

Tape Counter: 5915

p objects relevance sustained
p objects irrelevant overruled
Move to strike sustained
P objects misstates testimony sustained
P objects irrelevant; overruled

Tape Counter: 6036

Paralegal services
P objects relevance overruled
How many lawsuits filed in Teton County in last years 5-6

Tape Counter: 6154

objection to witness leading

Tape Counter: 6155

overruled, objection noted

000666

Date: 06/13/2003

Time: 05:02 PM

Page 39 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

User: PHYLLIS

Selected Items

Tape Counter: 6208

Damages to vehicles
white horse trailer
first one
P objects vagu overruled
4 hours stock trailer
P objection relevance J could be she doesn't know
P objection lack of proper foundation not covered on direct overrules
P objects sustained

Tape Counter: 6313

J istere a title document on a horse trailer mentioned in this law suit
J objectio is sustained
Second horse trailer
Objection, lack of foundation, irrelevant pverruled
P objection sustained

Tape Counter: 6376

Picture showing Easment strip
Has P ever signed property over to you
P objects irrelevant
P objects assumes facts not in evidence overruled

Tape Counter: 6484

Chiarlift ride in 1999
did you take notes - put notes together after that
Not real sure exact date
Didn't you tell them Bach had been keeping a daily log on client
didn't tell you had a retirement account you wouldn't tell John about because you were
afraid he would take it

Tape Counter: 6590

Skis
P objects irrelevant overruled
P Irrelevant and lack of foundation J where going?
DA just reliability, impeachment
No actually resigned

Tape Counter: 6700

Just happen to remember
Objection misstates testimony, compound, complex sustained on compound complex
Objectin argumentative overruled
W - don't recall specific dates
Don't always take notes
Da argumentative and irrelevant overruled
Never seen Bach follow client around

Tape Counter: 6822

Didn't Lyle tell you you could get those trucks back once you paid the impound fee
We didn't have them towed
Da refers to DX Ww
Can't tell if they are blocking the strip
P objection lack of foundation vague overruled

Tape Counter: 6926

Don't recall Back living in storage shed
Tape 11 ends 6938

Date: 06/13/2003

Time: 05:02 PM

Page 40 of 50

Seventh Judicial District - Teton County

Minutes Report

User: PHYLLIS

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1. Leave horse on ground over 4 months
P sustained on which horse
Da explains
J overruled
P objects irrelevant immaterial overruled

Tape Counter: 49 Footprints in the snow
Prosecution
P objects overruled
P objects A&A 4th time sustained
horse visible from the road - not very much
P aske Da be instructed
P never testified he was blocking the horse

Tape Counter: 111 Has that parcel ever been blocked
DB no ?

Tape Counter: 121 P redirect
Lyle blocked entrance to that strip
ALI four tires were flat; one popped off rim; pole wedged between vehicles
DA leading sustained
DA leading sustained

Tape Counter: 189 Present job financial manager
Da objects relevance sustained
Da relevance beyond scope sustained
Da objection leading sustained
DA beyond scope sustained
Da leading beyond scope
P he opened this door sustained
Da relevancy beyond scope sustained on scope
DA beyond scope sustained
DA same objection sustained
Could use caretakers room to sleep in
DA relevance sustained
Done anything to damage property
Done anything to reduce hay crop
DA objection foundation
DA leading sustained
Da foundation overruled
Da objection foundation beyond the scope overruled
Da object to foundation still J will sustain from point of objection
J go another direction
DA leading beyond scope J not going to let reopen on water
DA objection foundation sustained

Date: 06/13/2003

Time: 05:02 PM

Page 41 of 50

Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 386

P calls himself 11:33
P will not swear
J gives oath of affirmation
P limit to question and answer
J - will be overly burdensome to ask question and then give answer
P move to strike

Tape Counter: 453

General background
Da obejcts foundatin overruled
Da same objection sustained
DA smae objection sustained J if any instructions need to be given, I will give
DA foundatin J - not entirely accurate
Move on to another area

Tape Counter: 764

Involved in cases in Utah Nevada Oregaon Washington D.C. Texas
Considered trial advocate
Perosnal injury, federal civil rights, wrongful termination
When you turn your legal talent against hgh public officials, there is a lot of political
backlash

Tape Counter: 859

Back log of cases
Began to realize my health was failing,
could not give proper service to clients
Tried to give resignation to California Bar
Want to go back to being ahuman being
Had some fabulous results

Tape Counter: 991

Arrived in Driggs in 1986
Came back again in 1991
Did not write check
Signed contract
Complete patdown search
Jury is excused
Recess 11:58

Tape Counter: 1128

Reconvene 1:02
Jury is recalled
P resumes testimony
DA object relevance issues J in interest of time will sustain objection
Came to Teton Valley in May 1992

000669

Date: 06/13/2003

Time: 05:02 PM

Page 42 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

User: PHYLLIS

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 1323

Targhee Powder Emporium Utld
P requests 8, 9, 10, 11B, 12, 13
P requests 4 - 6A
Px copy of Court Deed
PX 8 Warranty Deed from Layne and Cindy Price
P offers No objec ADMITTED
PX 10 American Realty West W ids
offers PX 10 no objection ADMITTED
PX Chandler Insurance Packet shows there is motgaggee TPE Utld
Offers PX 9 No Objection ADMITTED
Tried to have bed and breakfast
Then tried to have exclusive Sportsmens' Lodge

Tape Counter: 1584

Started residing There on a seasonal basis on September 16, 1992
Was there a minimum of 20 some times in 1993
Maintained California license
DA objects relevance sustained

Tape Counter: 1621

Forming a Trust for her
Da objects hearsay sustained
DA objects hearsay sustained
DA objects foundation overruled
Da continue to object foundation and hearsay overruledDA objects overruled
Offers PX 5
DA objects beleive is hearsay , proper foundation J will ADMITTED

Tape Counter: 1709

PX 6
DA objects to reading from document not in evidence overruled
Accepted as standing to represent trust as assignee
DA Idaho Uniform Custodial Trust Act; Invalid
J want to voir dire witness
DA want side bar
J will admit assignment document; not admit letter to Judge Shindurling
DA 68-1307 says must be registered
J can submit proposed instruction
Inadmissable letter to Judge will be 6 B

Tape Counter: 1878

PX 6A
Moves admit PX 12
No objection ADMITTED

Tape Counter: 1946

PX 6A
DA objects
P offers 6A
self serving, unreliable, unnotarized
Doesn't comply with 6501
P - others parties have no standing to it
J think is admissable you can submit a propsed instruction
ADMITTED
Da it's not hearsay J it is hearsay but comes with legal significance

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 43 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2047	PX 14 and 15 P requests PX 16, 16A, 17, 18, 18 A, 18 B Offers Want 12, 6A, 8, 9 submitted to jury DA objects sustained DA objects relevance sustained
Tape Counter: 2231	McLean pleaded with me to let him join i with me on some property Da wil stipulate for any deeds to these properties P talking now about Drawknife and Peacock PX 16, 16A DA OObjects J let's take one at a time
Tape Counter: 2275	J is there a deed to the Peacock or Drawknife property P 16 DA will wtipulate to PX 16 ADMITTED
Tape Counter: 2320	PX 16A notice of Assignemnt of all rights Liponis, McLean TPE ltd - Drawknife DA objects as hearsay ADMITTED Offers 18 No Ojection ADMITTED
Tape Counter: 2391	PX 18 A Offers no objection ADMITTED 18B joint venture agreement no objection ADMITTED DA think last comment misstates the evikdence Offer 18 B no objection ADMITTED
Tape Counter: 2469	P request 18D and 19 1993 offer to Harrops from Wright Law Office DA objects relevance overruled DA objects hearsay relevance sustained
Tape Counter: 2769	Miller came by to see 160 acres I had total possession of 160 acres had Piad \$5000 cash of my own money Also took to see 13.2 acres John J Stewart Drawknife property Peacock Property Took her to see 5 acre parcel in a Subdivision just of 250 that had been sold by McLean to Mark Liponis She asked me how much he had paid
Tape Counter: 2880	PX 17 Copy of Warranty Deed 08/15/94 This is the property I showed to Miller She said she wanted to buy some large acreage Particularly lkied back 20 I had other prospects that wanted to buy the back 40 Offers PX 17 DA no relevant sustained

000871

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 44 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2950 Up to end of 94 receiving calls almost every night from D
DA a&A sustained
Gave name of tw attorneys she had talked to
Said she did not want name with TPE
said Diana was interestd in purchasing the front 80 acres

Tape Counter: 3100 D professed some feelings for me; said wanted to have a relationship with me
Discussed Idaho is common law marriage state
DA objects sustained
cinversed and exchanged calls
Sent he a proposal - if you want in on thise, here are my terms
Want this as part of prenuptial agreement
Said not to use term Pre-nuptual

Tape Counter: 3187 Indicated to her that this was to be the first step of many
at a loss to understand what as happening
DA relevance sustained
Da relevance sustained
J - let's move to exchange of money
DA relevance sustained

Tape Counter: 3236 She dropped off check for \$110,000 to Wright Law Office
Did all contact by phone and by fax as directed by Kathy Miller
Escrow closed Dec 31, 1994
Miller got back 40 acres
TPE got the 40 acres to the east of that

Tape Counter: 3318 When I got back, Miller was still in the house as was her daughter Christy
DA relevance sustained
Da Relevance sustained

Tape Counter: 3358 Around 10 March 95,
changed fax to Targhee Powder Emporium
DA irrelevant and immaterial sustained

Tape Counter: 3424 June 1995 complete office had been set up in the basement
Da relevance overruled
Set up two separate lines
Could run Midas shop in Michigan
Found out she was intercepting my calls

Tape Counter: 3474 J can you tell us about the \$10000 check
Offer 11 B utility bill and statements
no objection 11B ADMITTED

Tape Counter: 3542 Liponis Emporium TRust Account not trus Trust account
Da relevance
McLean saw the check
DA objects hearsay

000672

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 45 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 3595	Got served with Summons and Subpoena CV 95-047 Showed to Miller Miller got notice identical complaint was waiting for her back in Michigan Told her considered it a bogus lawsuit Harrops had misstated to salient conditions Front portion were not wetland Entire 80 acres could not be subdivided
Tape Counter: 3710	Firt ? Herndon asked was what was TPE Inc Were security interests Kept Miller constantly informed of everything that was filed or faxed in that case
Tape Counter: 3761	Told me she wanted to buy the front 80 acres Da - want to object to any comment about front 80 acres J O isn't your testimony going to be cumulative J will give 5 minutes to discuss the front 80 acres 2:16
Tape Counter: 3822	PA request 24, 24 B, 24 C DA is using to refresh memory" documents are not admissible Miller asked for Assignment of 6 month tenancy renewable Then walked the property with three of her friends Drew a schematic drawing and bought stakes I had sole possession of all the property
Tape Counter: 3924	Went with her to District 7 Health Dept Said wanted everything put in her name to keep from ex-wife Miller broke down the cost of building this house ALI of these filed in CV 95-047 She said let's put all this in her name "I can take care of it and I can take care of you"
Tape Counter: 4000	She was going to offer Harrops \$80000 DA objects sustained Da relevance sustained Same objection to the rest of the 80 acres That case settled in mid 1996 upon direction of Kathy Miller
Tape Counter: 4079	Gave limited assignment of 80 acres to Miller For almost the next year, nothing happened on that settlement Took motion by me to get things moving Had not been reduced to formal written document
Tape Counter: 4141	Relationship had shifted significantly Terminated relationship July 4, 1997 Da object relevancy overruled
Tape Counter: 4176	J - now go to October of 97 Submitted offer to Miller Da relevance sustained Da relevance let's not talk about dogs and Amanda P - is significant because Miller was going through house and documents

000673

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 46 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 4263 Call from Ms. Miller saying want to get back with you
I will take care of you
I know what we can do with the back 40 acres
We had discussed that she wanted me to put and sign whatever put before me
Can't have my children know about it, parents know about
Please John just sign the settlement agreement and I will take care of you

Tape Counter: 4343 Fantasy letter as from me to her
Will enter in to that partnership
Had settlement agreement that had been kept from me since January 3
Told both of the no

Tape Counter: 4424 Told IRS had leined the house
DA objection hearsay
J sustained as far as anything Homer said
Told both of them everything about that bankruptcy
Main assets in that bankruptcy were my California properties

Tape Counter: 4482 Miller had taken me to Pocatello to file Chap 13
Knew she had been named as creditor
Recess 2:34

Tape Counter: 4522 Reconvene 2:58
J recalls case Will begin again Monday at 9:00 and got to 5:00
Will take until Wednesday to put on case
Doing best to have evidence on by Friday

Tape Counter: 4606 P continues PX 13(2), (3), (4)
Faxed to Alva Harris with attached notice to buyers
Have received back 13 (4) envelope from Harris
Offers all three
DA what offering
Stip to 13 (4)
object to 13 (2)
13-4 ADMITTED
13 -2
Move to strike testimony as to Alva Harris being agent
Sustain to 13-2 and 13-3 not admitted
Offers Da Bach misstated testimony
Strike the testimony
will admit exhibit
20 ADMITTED

Tape Counter: 4819 Assignemnt offers in 22 D and 22 L
Want marked
22 D 2 pages
22 E
DA 22 D relevancy and hearsay
22 E same objection
Sustain objection

000674

Date: 06/13/2003

Time: 05:02 PM

Page 47 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

User: PHYLLIS

Tape Counter: 4969

22 F
DA objects hearsay
J may attempt to lay foundation
document used by Miller in Federal Court case
Part of my official business record
DA same objections foundation overrule
DB no
DA what is objection to hearsay J - statement by attorney
DA goes to truth

Tape Counter: 5079

PX 30 6 pages last page 9 2 97 authenticate signature
Offer for all purposes
Copy further confirmed in front of attorney
da - four objections
J what part appears to be altered
Page two properties and value of properties
J don't know as I see any
P tat is true and authentic copy
J you can voir dire the witness

Tape Counter: 5219

DA third paragraph here on side
objecting in that you can't read what it says and you don't have the appropriate \$ amount
J - goes to weight will ADMIT
Up to jury to assign what ever weight they want to give it

Tape Counter: 5269

PX letter of Jan 10, 2001 fro Alva Harris to Roger Wright
Note to Kathey
Objection hearsay
offered also for impeachment of MS. Miller
DA want to know what business talking about

Tape Counter: 5333

Responds -
Name of business
P objects irrelevant
Da Idaho Code 55 53-504 55-509
J 24 C will be admitted exception to hearsay rule statement of attorney to party

Tape Counter: 5407

Conversation of October 2
Miller said should trust her and rely on her
Da foundation sustained
Da hearsay sustained
CRiminal action against Bob Fitzgerald
Da relevance J this is not a crimanl action sustained

Tape Counter: 5509

Thought property was endangered by criminal action
DA relevance Sustained
P want to get documents from Clerk
Memory was I stipulated to them
Talking about the ones he took from her garbage cans

Tape Counter: 5641

J not 91, not 93, not 94
2 hand written sheets by Mrs. Miller

000675

Date: 06/13/2003

Time: 05:02 PM

Page 48 of 50

Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

User: PHYLLIS

Selected Items

Tape Counter: 5777

P continues
Specifically indicated that she wanted to get together that Thanksgiving
Wasn't in any position to give her what she wanted
Told her all further contacts would have to be in writing
45 days litigation in Federal district court
DA objects res judicata
That is closed not to be cited
J been overruled
No mandatory counter claim
Da best evidence J sustained on that
Da objection hearsay J foundation is inadequate
P haven't finished yet
DA same objection
December year 2000
in Pocatello Da best evidence then
overruled

Tape Counter: 6016

Not only was no basis for settlement
DA - foundation best evidence hearsay
J think it comes in, your client was there

Tape Counter: 6055

She had not and would not breach any of the commitments she had made
Will sustain what Judge Winmill said
He's not an agent or attorney of D
Were to protect not only my interest but also the interest MS. Miller had in the back 40

Tape Counter: 6120

Had number of raids - confirmed some of the acts directed against myself
Saw Fitzgerald set his own field afire
Da foundation sustained
P offer as to my frame of mind
Da object to offering for a limited purpose
Allow for limited purpose of Bach's state of mind; not limited for the truth

Tape Counter: 6224

Frame of mind based on not only what saw but also previous discussions with Fitzgerald
personally
J - can have continuing objection as to what Fitzgerald said
Being in drug trafficking

Tape Counter: 6285

Concerned as to lack of protection by SO of this county and the prosecutor
DA continue to object sustained
Search warrant
Da objects sustained

Tape Counter: 6331

Access on property by Ms. Miller
Gave to Schwartz who gave to Miller
Knew she could go on to property if she wanted to

Tape Counter: 6366

Summer 2000, 2001
was french keyed out
Locked out of property while horses, animals, other personal property were on the
property

000676

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 49 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 6400

2001 case filed CV 01 -059
Had no idea there was a separate corporation formed under name of TPE
Da objections sustained; documents speak for themselves
Best evidence objection was sustained

Tape Counter: 6475

Dismissal was made by Judge Moss
DA objects hearsay move to strike Harris was clients attorney overruled
DA hearsay
Sustained as to what Judge Moss said
Judge Moss froze the status quo
objection as to what Judge Moss did
DA best evidence overruled

Tape Counter: 6600

They said they didn't need the access through the front gate
Raid by Bob Fitzgerald - I saw his truck
Cut the front posts; cut the gates
SO wouldn't come
Observed that it was Bob Fitzgerald with Ole Olesen and Mae Bagley was out in front
Stayed overnight to protect the property
there were no gates; there was no fence
Blake Lyle pulled red F250 pull up to his place of business
it was at that time that I filed the original verified complaint
Was under time limits

Tape Counter: 6766

Filed lawsuit
Had Ritchie take to Teton county
Judge Moss dq'd
Judge St. Clair was assigned and immediately sign restraining order
All parties were served
Had to use \$800 in plane fares and came back to find out hearing was delayed
Tape 12 ends 6838

Tape Counter: 1

Tape 13
Harris made appearance for Miller who was present in the courtroom
Lyle admitted
DA objects Think evidence Lyle was her agent overruled
DA same objection
J can have continued objection overruled
DA just so I can understand this was said at the preliminary injunction hearing

000677

Date: 06/13/2003

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 05:02 PM

Minutes Report

Page 50 of 50

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 95

This Court issued Retraining Orde
In front of Judge Shindurling
After that hearing Cindy Miller and myself drove to the property
Everytime I was in court three other raids had occured on my property
Upon arrival to property, saw tow truck on property
He dropped it and dragged it
Flagged down Ronnie Fullmer
Called 911
When went across the street to Roger kaufmans, Lyle and Fitzgerald left
Jury is admonished
Recess 3:58
Tape 275

000673