4-21-2008

Bach v. Miller Clerk's Record v. 6 Dckt. 31716

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LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

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

Attorney-for-Defendants/Respondent
and Defendants/Appellants

FILED - COPY

Filed this _____ *day of* APR 21 2008, 20____

Supreme Court Court of Appeals
Entered on ATS by:

Clerk

By _____ *Deputy*

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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

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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 Fifith 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 1st 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 32nd 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 Complaince 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-Trail 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

v

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date September 9, 2003
Time 11:15
Deputy Clerk MSouthwick

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 **EIGHTEENTH ORDER ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court is plaintiff John Bach's *ex parte* motion to stay proceedings until September 22, 2003. The motion was filed on September 2, 2003, but was not supported by affidavit or legal memorandum. On September 5, 2003, defendant

Katherine Miller filed an objection. No other party has filed any document in support or in opposition. No party has requested a hearing.

The Court has considered the subject motion and objection. For the reasons hereafter stated, the plaintiff's motion is moot.

II. ANALYSIS

Plaintiff Bach's motion seeks a stay of all proceedings in the action until September 22, 2003, so that Bach may file a petition for writ of mandate or alternative writ of mandate or peremptory writ of mandate with the Idaho Supreme Court. Bach's motion does not cite any Idaho statute or rule in the Idaho Rules of Civil Procedure authorizing a stay. The motion cites no case law addressing similar circumstances.

It is noted that Rule 62, I.R.C.P., governs stays pending appeal of interlocutory orders, partial judgments or final judgments. However no judgments have been entered in this action, and no appeals have been filed in this actions. Further no security bonds have been posted by the moving party, and no facts have been presented by the opposing party as the amount of security necessary to obviate any prejudice resulting from a stay.

Having reviewed the file, this Court concludes that several pending motions are scheduled for oral argument on September 25, 2003 and October 8, 2003. There are no motions pending for which all parties have waived oral argument, or the Court has concluded that oral argument should not be heard. There are no motions for decision. Since Rule 50 and Rule 59 motions to alter and amend findings and for new trial are pending, and no proposed judgments under Rule 58 have been lodged with the Court, there are no decisions to be made before September 22, 2003.

Further the Court has determined that the courtroom in Teton County is occupied by another judge on September 25, 2003 for resolution of previously scheduled matters. Conservation of judicial resources dictates that the motions pending in this case should all be heard in Idaho Falls on October 8, 2003.

Based on the foregoing, this Court concludes that plaintiff Bach's motion is moot because no orders that may affect the substantial rights of any party will be entered before September 22, 2003.

III. ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that plaintiff Bach's motion to stay is MOOT.

IT IS FURTHER ORDERED that all hearings previously scheduled for September 25th are RESCHEDULED for 9:00 a.m. on October 8, 2003 in Courtroom III at the Bonneville County Courthouse.

IT IS FURTHER ORDERED that all motions filed on or before September 8, 2003, not previously noticed for hearing, shall be heard at 9:00 a.m. on October 8, 2003 in Courtroom III at the Bonneville County Courthouse.

DATED this 9th day of September, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 9th ~~day~~ of September, 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)

David Shipman
P. O. Box 51219
Idaho Falls, ID 83405-1219 (TELEFAX & MAIL)

Gregory Moeller
P. O. Box 250
Rexburg, ID 83440-0250 (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

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 8th day of October, 2003, Dawson's second renewed motion to set aside clerk's default, Dawson's request for evidentiary hearing on damages, Hill's motion to set aside clerk's default, Hill's motion to continue trial or bifurcate, Hamblin's motion to set aside clerk's default, Harris, Scona, McLean, Lyle & Fitzgerald's request for hearing on damages, Harris & Scona's motion to set aside clerk's default and motion for leave to file answer, Bach's motion to void special verdict by the jury, motion for JNOV or for new trial or motion to modify pretrial order, Bach's motion for hearing on default, Woelk's renewed motion for summary judgment, Miller's motion for contempt of Bach, Miller's motion for writ of assistance and for entry of

partial judgment 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. Ms. Katherine Miller was present.

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. Alva Harris appeared on behalf of Defendant(s) Harris, Fitzgerald, Lyle, Olson, Scona, Inc., and McLean. Mr. Lyle and Mr. Fitzgerald were in attendance.

Mr. David Shipman appeared on behalf of Defendant Earl Hamblin.

Mr. Greg Moeller appeared on behalf of the Estate of Stan Nichol.

Mr. Jared Harris presented Dawson's second renewed motion to set aside clerk's default. Mr. Bach objected to the hearing being held in Bonneville County before Judge St. Clair today and argued in opposition to the motion to set aside clerk's default. Mr. Harris presented rebuttal argument.

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

Mr. Jared Harris presented Dawson's request for evidentiary

hearing on damages. Mr. Bach argued in opposition to the motion and moved to strike.

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

Mr. Alva Harris presented Hill's motion to set aside clerk's default. Mr. Bach argued in opposition to the motion. Mr. Harris presented rebuttal argument.

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

Hill's motion to continue trial or bifurcate is moot.

Mr. Shipman presented Hamblin's motion to set aside clerk's default. Mr. Bach argued in opposition to the motion.

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

Mr. Bach presented a motion to have the personal representative of Estate of Stan Nichol substituted. Mr. Moeller argued in opposition. This motion was deferred by stipulation of the parties.

Mr. Alva Harris presented Harris, Scona, McLean, Lyle and Fitzgerald's request for hearing on damages. Mr. Bach argued in opposition. Mr. Harris presented rebuttal argument.

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

Mr. Alva Harris presented Harris and Scona's motion to set aside clerk's default and motion for leave to file answer. Mr. Bach argued in opposition to the motion.

Mr. Scott presented Woelk's renewed motion for summary

judgment. 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.

Hearing recessed for a morning break.

Hearing resumed at 11:10 a.m.

Mr. Bach presented motion to void special verdict by the jury, motion for JNOV and or for new trial and motion to modify pretrial order. (Tape CC8553 full continued on CC8574.)

Hearing recessed for lunch break.

Hearing resumed at 1:20 p.m.

Mr. Bach continued presentation of his motion. Mr. Woelk argued in opposition to the motions. (Tape CC8574 full over to CC8584.) Mr. Bach presented rebuttal argument.

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

Mr. Woelk presented Miller's motion for contempt of Bach. Mr. Bach argued in opposition to the motion for contempt and moved the Court to appoint him a public defender. Mr. Woelk argued in opposition to the motion for public defender and in rebuttal. Mr. Bach presented rebuttal argument.

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

Mr. Woelk presented Miller's motion for writ of assistance and motion for entry of partial judgment. Mr. Bach argued in opposition to the motions. Mr. Woelk presented rebuttal argument.

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

Court was thus adjourned.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

H:41bach/CC8552@2226 full over to CC8553
CC8553 full over to CC8574
CC8574 full over to CC8584

CERTIFICATE OF MAILING

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

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Anne Broughton
1054 Rammell Mountain Road
Tetonia, ID 83452

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date 10/23/03
Time 10:55
Deputy Clerk MSouthwick

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 **NINETEENTH ORDER ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court are the following motions:

1. Defendants' Bret and Deena Hill's motion to set aside clerk's default, and motion to continue, or alternatively to bifurcate trial served on June 4, 2003;

1. Defendants' Bret and Deena Hill's motion to set aside clerk's default, and motion to continue, or alternatively to bifurcate trial served on June 4, 2003;

2. Defendant Hamlin's motion to set aside clerk's default served on June 4, 2003;

3. Defendants Harris, Scona, Inc., Fitzgerald, Olesen, Lyle and McLean's request for damage determination under Rule 55(b)(2), I.R.C.P., served on June 6, 2003;

4. Defendant Wayne Dawson's second renewed motion to set aside clerk's default, and request for evidentiary hearing under Rule 55, I.R.C.P., served on June 9, 2003;

5. Plaintiff Bach's motion for default judgment against all defendants having a clerk's default entered against them, and motion for appointment of personal representative for defendant Stan Nickell and for substitution of personal representative as named defendant served on June 23, 2003;

6. Defendants Harris and Scona's motion to set aside clerk's default and motion to file answer filed on June 27, 2003;

7. Plaintiff Bach's motion to void jury's special verdict, motion for judgment notwithstanding the verdict under Rule 50(b), I.R.C.P., motion for new trial under Rule 59(a),

I.R.C.P., and motion to amend final pretrial order served on July 3, 2003;

8. Defendant Miller's motion for writ of assistance, and motion to set aside preliminary injunction filed on July 8, 2003;

9. Defendant Miller's motion for contempt against plaintiff Bach under Idaho Code §§ 7-601(5), 7-603 and 7-610 filed on July 9, 2003;

10. Plaintiff Bach's motion to strike answers filed by all defendants in default served on July 10, 2003;

11. Defendant Woelk's renewed motion for summary judgment served on August 21, 2003; and

12. Defendant Miller's motion for entry of judgment under Rule 58(a), I.R.C.P., served on September 10, 2003.

It is noted that hearings on those motions served before the jury trial held from June 10th through 19th, 2003, had to be postponed until after trial because there was no time to hear the motions. It is further noted that hearings on these pretrial motions, and the hearings on several post trial motions had to be postponed because plaintiff Bach filed a motion to disqualify the presiding district judge on July 9, 2003, and Rule 40, I.R.C.P., prohibited the presiding judge from considering any motion until the motion to disqualify was decided. That motion

was decided on August 28, 2003. It is further noted that the presiding judge was unable to hold a hearing on these motions until October 8, 2003 in Bonneville County.

It is further noted that on September 18, 2003, plaintiff Bach filed an objection to hearings on these motions outside of Teton County. Bach's objection cited no legal authority to support it. Bach filed no affidavit establishing that he was unable to come to Bonneville County, nor how he would be prejudiced by arguing in Bonneville County. Although Bach's objection argued that documents in the Teton County court file might need to be referred to during the argument, there was no showing that the documents could not be copied before hand and displayed during oral argument. Further, no party obtained leave of court to present any witness testimony, and the motions pending typically are decided on affidavits of witnesses rather than in court witness testimony. Lastly, Bach appeared at the hearing in Bonneville County and appeared to have no difficulty expressing his oral argument.

Having read the motions, supporting affidavits on some motions, opposing affidavits on some motions, objections, written legal memoranda on some motions, and the oral arguments of the parties, the Court issues the following orders on the pending motions.

II. ANALYSIS

1. Hills' Rule 55(c) Motion to Set Aside Clerk's Default.

Rule 55(c), I.R.C.P., permits a trial court, upon a showing of good cause, to set aside a clerk's default. The trial court's decision on a Rule 55© motion invokes its sound discretion as to whether good cause is shown by the moving party for not timely filing a responsive motion or pleading, and requires the moving party to show facts which, if true, would amount to a meritorious defense. McFarland v. Curtis, 123 Idaho 931, 854 P.2d 274 (App. 1993).

Hill's motion was supported by the affidavit of Deena Hill, denying that she has ever met plaintiff Bach or defendants Fitzgerald, Olsen, Bagley, Lyle, Woelk, Runyan, Broughton, Dawson or Liponis, and stating that she met with defendant's Harris, Scona, Miller and McLean only in the spring of 2002 for the purpose of looking at house and 1 acre located at 195 N. Highway 33 in Teton County, and which the Hills later bought from Scona, Inc. She denies that when she bought the house that she knew Bach previously owned the house, or had taken out bankruptcy. This house and 1 acre are the same property that plaintiff Bach seeks to quiet title to in Count Three of his first amended complaint. Mrs. Hill further denies in the affidavit that she went on any other land as alleged by Bach, nor caused any damage to any real or personal property as

affidavit that she went on any other land as alleged by Bach, nor caused any damage to any real or personal property as alleged by Bach, nor slandered or interfered with Bach's contracts or economic expectancies, nor acted with any of the named defendants to cause Bach any damage. Mrs. Hill's affidavit is sufficient to state a meritorious defense as required by McFarland, supra. Therefore, this motion must be granted.

The Hills' motion to continue or bifurcate the trial is somewhat moot in that the trial of Bach's claims against defendants Miller and Broughton proceeded. By operation of law the Hills will be entitled to a trial and it will be bifurcated from the earlier trial that occurred in June, 2003.

2. Hamlin's Rule 55© Motion to Set Aside Clerk's Default.

Hamlin's second affidavit served on June 23, 2003, states that he has owned for the last 30 years approximately 158 acres of real property adjacent to and north of the 87 acres at issue between Bach and Miller. Hamlin denies that he destroyed or moved the boundary fence between the properties as alleged by Bach's first amended complaint. Hamlin denies that he cut or opened the fence to let Bach's horses out, and denies that he injured Bach's horses. Hamlin denies that his livestock went upon Bach's land, and denies that he trespassed on Bach's land. He denies that Bach has any right to receive water through his

ditches, and states that Bach's water right comes from ditches running through land owned by the Harrops and defendant Nickell. He denies assaulting or harassing Bach. He states that he thought the federal lawsuit CV-or-266-E-TGN as to which Bach is plaintiff and he is a defendant was for the same claims asserted in this action, so that is why he did not retain an attorney to defend this action until June, 2003. While an attorney or legally trained person probably would recognize that many of the claims in Bach's first amended complaint as against Hamlin are different from Bach's claims in the federal action, because of the shotgun approach to pleading utilized by Bach it would be difficult for Hamlin to understand that such claim were not superseded by the federal action.

Mr. Hamlin's affidavit is sufficient to state good cause for failure to file an answer and also a meritorious defense as required by Rule 55© and McFarland, supra. Therefore, this motion must be granted.

3. Harris, Scona, Fitzgerald, Olesen, Lyle and McLean's Request for Damage Determination.

Rule 55(b)(2), I.R.C.P., provides that if the court needs to determine the amount of damages or to establish the truth of any averment by evidence or investigate any matter before entering a judgment by default on a complaint seeking relief other than for a sum certain specified in the complaint, the

court may conduct such hearings as are necessary and proper. While there is no Idaho appellate case discussing whether a defaulted defendant can participate in such default evidentiary hearing, at least one federal district court has held that a defaulted defendant may appear and offer proof regarding the amount of damages sustained by the plaintiff in an automobile accident. Clague v. Bednarski, 105 F.R.D. 552 (E.D.N.Y. 1985); 6 Moore's Federal Practice §55.03[2].

In this case, because all of the defendants are lumped together in the pleadings as having caused several different types of damages to the plaintiff, the Court believes it is necessary and proper to allow the defaulted defendants to participate and offer evidence as to damages that the plaintiff suffered, and which were caused in whole or in part by any particular defendant. Therefore this motion should be granted.

4. Dawson's Second Renewed Motion to Set Aside Clerk's Default and Request for Evidentiary Hearing.

The instant motion is Dawson's third attempt to set aside the clerk's default entered against him. On April 2, 2003, in its Eleventh Order this Court denied Dawson's motion because he did not show good cause or a meritorious defense. On May 28, 2003, in its Fourteenth Order this Court denied Dawson's renewed motion because he presented no factual basis for his conclusion that he had a defense.

While Dawson cites no civil rule authorizing this motion, it is clear that the motion is another motion for reconsideration under Rule 11(a)(2)(B), I.R.C.P. Although the Rule does not specifically address whether more than one motion for reconsideration of an interlocutory order is permissible, this Court holds that unless newly discovered evidence or newly announced legal principles are shown a party is limited to one motion for reconsideration. Repeated motions for reconsideration simply adding more facts, that were known all the time to the moving party, causes undue economic duress on the opposing party and unnecessary waste of judicial resources. Thus, Dawson's present motion is not authorized by Rule 11(a)(2)(B).

Further, while Dawson's present motion is supported by a more detailed affidavit, it is still largely made up of conclusions. Dawson's statement that Bach is seeking to quiet title against Dawson's undivided one-half ownership of the 8.5 acres is a misreading of Count Two of the first amended complaint, and Dawson presents no facts to support a defense to partition alleged by Bach. Dawson's statements that Bach should not be allowed to quiet title to one half of the 40 acre tract (referred to sometimes as "Peacock property") because Dawson paid $30,000.00 and received a deed to only 10 acres instead of 20 acres does not attribute any false statements of material

fact as being made by Bach in order to support a fraud defense to Count Four.

The remaining statements in Dawson's most recent affidavit go toward causation and amount of damages sought by Bach. For the reasons stated in part 3 above, Dawson may participate and offer evidence as to damages that Bach suffered, and which were caused in whole or in part by any particular defendant.

Therefore Dawson's second renewed motion to set aside clerk's default must be denied. Dawson's request for an evidentiary hearing is granted to the extent that it relates to damages sought by Bach.

5. Bach's Motion for Default Judgment as to Defaulted Defendants and Motion for Appointment of Personal Representative for Stan Nickell's Estate and Substitution as Party Defendant.

Bach's motion for default judgment as to all defaulted defendants seeks a judgment under Rule 55, I.R.C.P. Since this Court has concluded that the defaults entered against defendants Hill and Hamlin must be set aside, it will be necessary to schedule a trial to resolve the causes of action against those defendants.

Pursuant to Rule 55(b)(2), I.R.C.P., this Court has concluded that it is necessary and proper to hold an evidentiary hearing at the Teton County Courthouse, Driggs, Idaho for the

purpose of receiving evidence from plaintiff Bach as to each element of his causes of action against defaulted defendants, except damages. Immediately following such hearing, a second hearing shall be held as to the nature and amount of damages caused to Bach by defaulted defendants Harris, Scona, Fitzgerald, Olesen, Lyle, McLean and Dawson.

During the hearing on these motions, Bach and counsel for Stan Nickell stipulated to deferring argument and decision on the motions related to Stan Nickell.

6. Harris and Scona's Motion to Set Aside Clerk's Default and Motion to File Answer.

Harris and Scona's motion to set aside clerk's default was supported by an affidavit of Alva Harris and a supporting legal memorandum. Since this Court earlier denied a similar motion by Harris and Scona in its Fifteenth Order entered on June 2, 2003, this Court will treat the current motion as a motion for reconsideration of an interlocutory order under Rule 11(a)(2)(B), I.R.C.P.

In its Fifteenth Order, this Court concluded that Harris and Scona had not shown good cause as to why they did not timely file an answer to the first amended complaint. The most recent affidavit of Alva Harris contains no additional facts to show good cause for not filing a timely answer.

Further, Harris' affidavit contains no facts establishing any defense to Bach's allegations for quieting title to the 87 acres alleged in Count One of the first amended complaint. It contains no facts establishing any defense to Bach's allegations to quiet title as to an undivided one-half interest in the 8.5 acres allegedly owned by Bach and Dawson at issue in Count Two. The affidavit and its attachments do state an affirmative defense for the Hills to Bach's allegations to quiet title to the 1 acre and house allegedly owned by the Hills at issue in Count Three, but not an affirmative defense for Harris or Scona. The affidavit contains no facts establishing any defense to Bach's allegations to quiet title to the two 40 acre tracts allegedly owned by Bach, Dawson, Liponis and McLean at issue in Count Four.

The remainder of the statements in Harris' most recent affidavit go toward causation and amount of damages sought by Bach. For the reasons stated in part 3 above, Harris and Scona may participate and offer evidence as to damages that the plaintiff suffered, and which were caused in whole or in part by any particular defendant.

Therefore Harris and Scona's motion to set aside clerk's default and motion to file answer must be denied.

7. Bach's Motions to Void Verdict, for JNOV, New Trial, and to Amend Pretrial Order.

Bach's motion and supporting briefs served on July 3rd and September 30th seeking to void the jury verdict argues the same grounds as his other motions. Therefore, this Court treats such separate motion as encompassed by Bach's motion for judgment notwithstanding the verdict under Rule 50(b) and his motion for a new trial under Rule 59(a), I.R.C.P.

A. Motion for Judgment Notwithstanding the Verdict

In ruling on a motion for judgment notwithstanding the jury verdict, the trial court is to review the evidence and draw all legitimate inferences therefrom in a light most favorable to the non-moving party. Bott v. Idaho State Building Authority, 128 Idaho 580, 586, 917 P.2d 737, 743 (1996); Pocatello Auto Color, Inc. V. Akzo Coatings Inc., 127 Idaho 41, 45, 896 P.2d 949, 953 (1995). Leavitt v. Swain, 131 Idaho, 963 P.2d 1202 (App.1998). The Court is not free the weigh the evidence or pass on the credibility of witnesses in deciding a motion for judgment notwithstanding the verdict. Smith v. Praegitzer, 113 Idaho 887, 749 P.2d 1012 (Ct. App. 1988). Drawing reasonable inferences in favor of the non-moving party, the Court must determine whether substantial and competent evidence supports the jury's verdict. Quick v. Crane, 111 Idaho 759, 727 P.2d

1187 (1986). "Substantial" evidence is more than a mere scintilla, but rather evidence of sufficient quantity and probative value that reasonable minds could conclude that a verdict in favor of the party against whom the motion was made is proper. Adkison Corp v. American Building Co., 107 Idaho 406, 408, 690 P.2d 341, 343 (1984); Leavitt v. Swain, 131 Idaho 765, 963 P.2d 1202 (App. 1998). Judgment not withstanding the verdict should be granted if there is no substantial competent evidence which supports the jury's verdict. Brand S Corp. v. King, 102 Idaho 731, 639 P.2d 429 (1981).

Bach's motion lacks specificity and clarity as to what he is arguing as a basis for judgment notwithstanding the jury verdict. However, from reading his supporting memoranda, this Court believes Bach's principal grounds for judgment notwithstanding the jury verdict and entry of judgment in his favor on all counts in his first amended complaint and against Miller on her counterclaims are as follows:

1. Miller knew all the facts constituting Bach's fraud and breach of fiduciary duty before October 3, 1997, and by written settlement agreement on October 3, 1997 released all her claims against Bach, as evidenced by exhibits 7, 8, 12 and 13 and other exhibits introduced at the court hearing on the preliminary

injunction in August, 2002, and evidenced by jury trial exhibits including exhibits 22, 23, GGG and 96.

2. Because of the facts established in subparagraph a., Miller's counterclaims were barred by the 3 year statute of limitations.

3. Miller's counterclaims were barred by the Bach's discharge in bankruptcy.

4. Miller's counterclaims were barred by estoppel, quasi estoppel and judicial estoppel.

5. Miller did not prove by clear and convincing evidence a false representation of fact, because Bach as a seller of property can ask for any price.

6. Miller's proof established no specific damages for slander of title resulting from Bach's deeds recorded in May, 2002.

Each of these grounds will be analyzed below.

Release defense under October 3, 1997 agreement

This Court ruled several weeks before the jury trial that notwithstanding Rule 65, I.R.C.P., the parties would have to introduce again at the jury trial in June, 2003 any exhibits previously admitted at the hearing on the preliminary injunction which the parties wished to have the jury consider, because the jury was not present during the preliminary injunction hearing

and the foundations for many exhibits admitted at the preliminary injunction hearing were not adequate for admission before the jury. While this Court has reviewed and considered the exhibits admitted at the preliminary hearing in connection with equitable causes of action, several of those exhibits were not introduced or admitted before the jury. In ruling on a motion for jnov, it is the evidence before the jury that must be considered. As to the exhibits admitted before the jury, some tended to support Miller's testimony that she first learned from Alva Harris in the summer of 2000 that Teton Powder Emporium, Inc. was not in fact incorporated and such corporation did not pay over $100,000 for a one half interest in the 87 acres as represented to her by Bach in December, 1994. Other exhibits tended to impeach her testimony. Part of exhibit 22, being a memorandum to file by Chuck Homer the attorney who drafted the settlement agreement supported her testimony, because it stated at the time of signing on October 3, 1997, that Bach told him that Bach was the CEO or president of Targhee Powder Emporium, Inc. and had authority to sign for it. The jury was instructed to consider and give weight to all exhibits and also testimony. Although the evidence presented to the jury was conflicting, there was substantial and competent evidence to support its verdict Bach's affirmative defense of release.

Three year statute of limitations

Although the jury could have found that Miller knew, or should have known more than three years before Miller filed her counterclaim in March, 2003, that Bach falsely represented the existence of Targhee Powder Emporium, Inc. and the amount Bach told Miller the corporation paid for its one half interest in the 87 acres, the jury could have believed Miller's testimony that she did not know until after July, 2000 when told by Alva Harris. Again the evidence as to Bach's affirmative defense of statute of limitations was conflicting, but substantial and competent evidence supports the jury verdict against Bach.

Bankruptcy defense

Bach and Miller introduced exhibits from Bach's bankruptcy filings in California, and also the order of discharge. Miller testified that Bach told her he listed her as a creditor for a $2,000.00 loan. None of the filings by Bach list any Teton County, Idaho property owned by Bach, although Bach listed real property in Butte County, Idaho near Atomic City and property in California. There was no evidence that the Bankruptcy Trustee took possession of any of the Teton County property for administration of the Chapter 13 plan. Although Bach's bankruptcy filings disclosed he had an interest in Targhee Powder Emporium, Inc. and Targhee Powder Emporium, Ltd., the

evidence at the jury trial was that neither corporation was incorporated in any state by Bach. Clearly, the Teton County property could not be owned by a non-existent corporation. There is substantial and competent evidence to establish that Bach did not disclose the Teton County property to the federal Bankruptcy Court and the Bankruptcy Trustee. Further Bach did not petition the Bankruptcy Court to re-open the case at any time after Miller filed her counterclaim in March, 2003, so the Bankruptcy Court will not be adjudicating Miller's counterclaim. Thus, there was substantial and competent evidence for the jury to find that Bach's bankruptcy discharge is not a defense.

Estoppel, quasi estoppel and judicial estoppel

Bach's argument that Miller's conduct amounts to estoppel, quasi estoppel or judicial estoppel is not supported by the trial evidence. For purposes of the motion, this Court must accept as true Miller's testimony about not knowing Targhee Powder Emporium, Inc. was not a valid corporation and paid nothing for the Teton County property until being so advised by Alva Harris in July, 2000. There was no evidence that after July, 2000, Miller changed her position to the detriment of Bach.

False statements of fact in sale of interest in 87 acres

This Court agrees with Bach's argument that a seller of real property can set whatever price he wants and it is not a false statement of material fact to support a fraud cause of action, citing Nataros v. Fine Arts Gallery of Scottsdale, Inc., 612 P.2d 500 (Ariz); and Myers v. MHI Inv. Inc., 606 P.2d 652 (Or.)

However, those cases are distinguishable factual from this case. In this case Bach did not simply tell Miller that he had an option to buy 80 acres, and would sell Miller a one-half interest for $120,000.00. Instead Bach falsely told Miller that Targhee Powder Emporium, Inc., a corporation owned by several California investors, had paid over $100,000.00 to buy a one half interest in the 80 acres. In fact Bach knew there was no corporation, Bach knew that no California investors had placed any money with such corporation, and Bach knew that only Miller's money was being paid to the Harrops to purchase the property. When Bach later induced Miller to pay $7,456.00 to buy the 6.63 acre strip from the Harrops to access the 80 acres, he continued to adhere to his original false statements about Targhee Powder Emporium, Inc.

The testimony of Miller and Bach was clear and convincing, and supported the false representation of fact element of fraud found by the jury.

Damages for slander of Miller's title

Bach correctly argues that while Miller testified that she paid her attorney Galen Woelk $15,000.00 for legal services in connection with this action, there was no evidence as to the amount reasonably incurred to correct any damage to her title to the 87 acres caused by the deed recorded by Bach in May, 2002. Since Miller did not segregate such amounts from all the attorney fees incurred on other issues presented by Bach's first amended complaint and Miller's counterclaim, it was sheer speculation for the jury to arrive at $5,000.00 in damages. However, Miller would be entitled to nominal damages for prevailing on such cause of action, and this Court sets nominal damages at $500.00.

Therefore, Bach's motion for judgment notwithstanding the verdict must be denied, except as to reducing the $5,000.00 general damage award for slander of title in May, 2002 to nominal damages of $500.00.

B. Motion for New Trial

Rules 59(a), I.R.C.P., authorizes the trial court to grant any party a new trial on all or part of the issues in an action

on a showing of any one of seven specific grounds. The decision to grant or deny a motion for a new trial under Rule 59(a), generally rests within the sound discretion of the trial court. Davis v. Sun Valley Ski Educ. Foundation, Inc., 130 Idaho 400, 405, 941 P.2d 1301, 1306 (1997); Bott v. Idaho State Building Authority, 128 Idaho 580, 589, 917 P.2d 737, 746 (1996); O'Dell v. Basabe, 119 Idaho 796, 813, 810 P.2d 1082, 1099 (1991); Quick v. Crane, 111 Idaho 759. 766, 727 P.2d 1187, 1194 (1986). The trial court must act within the outer boundaries of its discretion and consistent with any applicable legal standards, using an exercise of reason. State v. Hedger, 115 Idaho 598, 600, 768 P.2d 1331, 1333 (1989); Leavitt v. Swain, 131 Idaho 765, 963 P.2d 1202 (App. 1998).

The trial court must distinguish between the various grounds upon which a motion for new trial is based. Stewart v. Rice, 120 Idaho 504, 507, 817 P.2d 170, 173 (1991).

Bach's motion lacks specificity and clarity as to what he is arguing as a basis for a new trial. Bach argues that this Court erred in refusing some of Bach's requested jury instructions, erred in giving some of Miller's requested jury instructions, erred in allowing an advisory special interrogatories on equitable causes of action being decided by the court, erred in refusing admission of some of Bach's

proposed exhibits, erred in admitting some of Miller's, erred in sustaining some of Miller's objections, and erred in overruling some of Bach's objections. Bach further argues that the jury engaged in misconduct, that the verdict was against the weight of evidence. Lastly, Bach's motion argued that the Court had not decided motions for directed verdicts taken under advisement and that it had not filed findings of fact and conclusions of law on equitable causes of action within two weeks of the jury verdict.

Depending on how broad one reads Bach's motion, briefs, and oral argument, several subdivisions of Rule 59(a), I.R.C.P., could come into play.

Rule 59(a)(1), I.R.C.P., authorizes a new trial for irregularity in the proceedings of the court, jury or adverse party or any order of the court or abuse of discretion by which a party was deprived of a fair trial. Unfair tactics of counsel for a party such as improper remarks or closing argument may constitute grounds for a new trial. Robertson v. Richards, 115 Idaho 628, 664, 769 P.2d 505, 541 (1989).

Rule 59(a)(2), I.R.C.P., authorizes a new trial for misconduct of the jury. Misconduct can consist of use of a verdict by chance, including a gambling verdict or a quotient verdict. Watson v. Navistar Intern. Transp. Corp., 12 Idaho 643, 827 P.2d 656 (1992). Misconduct also can consist of a jury using

extraneous prejudicial information, such as a juror obtaining information during the course of the trial from talking with other people about the facts of the case. Leavitt v. Swain, 131 Idaho 765, 963 P.2d 1202 (App. 1998).

Rule 59(a)(5), I.R.C.P., authorizes a new trial for excessive or inadequate damages appearing to have been awarded by the jury under the influence of passion or prejudice. In ruling on a motion under this ground, the trial court must weigh the evidence and make an assessment of the credibility and weight of that evidence, determine the amount of damages with its own subjective sense of fairness and justice, and if the judge's determination of damages differs so substantially from the jury's award that it shocks the judge's conscience and can only be explained by passion or prejudice, then a new trial, or remittitur or additur conditioned on a new trial should be granted. Collins v. Jones, 131 Idaho 556, 557, 961 P.2d 647, 648 (1998); Pratton v. Gage, 122 Idaho 848, 840 P.2d 392 (1992); Quick v. Crane, 111 Idaho 759, 727 P.2d 1187 (1986).

Rule 59(a)(6) authorizes a new trial because the evidence was insufficient to justify the verdict or that it is against the law. In ruling on motion under this ground, the trial court must weigh all the evidence, including the judge's own determination of the credibility of the witnesses, and determine

whether the verdict is supported by the evidence. Bott v. Idaho State Building Authority, 128 Idaho at 589, 917 P.2d at 746. 59(a)(6). In order to grant a new trial based on insufficiency of the evidence, the trial court must determine both (1) the jury verdict is against the clear weight of the evidence, and (2) a new trial would produce a different result. Heitz v. Carroll, 117 Idaho 373, 378, 788 P.2d 188, 193 (1990).

Rule 59(a)(7), I.R.C.P, provides that the trial court may grant a new trial for "error in law, occurring at trial." The trial court has a duty to grant a new trial under Rule 59(a)(7), I.R.C.P., where prejudicial errors of law have occurred, even though the verdict is supported by substantial and competent evidence. Davis v. Sun Valley, 130 Idaho 400, 405, 941 P.2d 1301, 1306 (1997); Sherwood v. Carter, 119 Idaho 246, 261, 805 P.2d 452, 467 (1991).

Rule 59(a) expressly states that any motion made under subdivisions (1) and (2) must be accompanied by an affidavit stating in detail the facts relied upon, and a motion under subdivisions (6) and (7) must set forth the factual grounds therefore with particularity. However, Bach filed no affidavit at all, and did not even detail evidentiary facts in his briefs or oral argument. There was no law provided by Bach supporting any of his requested jury instructions, or stating that

instructions actually given by the court were contrary to Idaho law. It is impossible to determine which exhibits he argues were erroneously excluded or admitted, or which evidence objections were erroneous. Rule 39(c), I.R.C.P., expressly authorizes a trial court to try any issue with an advisory jury. With the exception of the $5,000.00 general damages for slander of title in May, 2002, the jury verdict is not against the "clear weight of the evidence." Within 30 days of trial, the trial court was able to file its written findings of fact and conclusions of law on the equitable causes of action.

Therefore, the Court must deny the motion for new trial.

C. Motion to Amend Pretrial Order

Bach's motion to amend pretrial order seeks to prohibit the jury from rendering an advisory verdict on quiet title and equitable causes of action tried to the court. However, objections to the final pretrial order must be filed within 14 days of the order. Rule 16(g), I.R.C.P. Thus, this motion must be denied.

8. Miller's Motion for Writ Assistance and Motion to Set Aside Preliminary Injunction.

Miller's motion seeks a writ of assistance directing the Sheriff of Teton County to remove Bach and his personal property from the 87 acres. Bach objects to the motion arguing that

Miller waived, or is estopped from quieting title, because she pursued her damages remedy in the jury trial. He further objects because the Court has not fixed the reasonable value of improvements installed by Bach.

This Court has considered the cases cited by Bach in support of his waiver and estoppel arguments, and concludes that until judgment is rendered a party seeking alternative remedies of constructive trust or damages may elect between the two remedies. Miller did not waive, and is not estopped from electing to take a constructive trust as to the 87 acres.

Bach is correct that this Court has not set the value of any improvements he made on the 87 acres. I. C. § 6-414 through 417 provide that where an occupant of real estate having color of title and in good faith has made valuable improvements thereon, is found not to be the owner, no execution shall issue to put the owner in possession unless the occupant is allowed to remove such improvements that can be removed without injury, or the court sets the value of the improvements and the owner pays the occupant for the value of such improvements. Here, the Court has not set the value of the improvements now present on the 87 acres that were installed by Bach. Further the Court has not entered a quiet title judgment yet.

Therefore, after a judgment quieting title is entered Miller may obtain a writ of assistance only as to removal of Bach and his personal property from the West 40 acres. A hearing must be scheduled to determine the reasonable value of improvements Bach installed on the East 40 acres, the 3.3 acres on the north part of said East 40 acres, and the 6.63 access strip.

Miller's motion to set aside the preliminary injunction is objected to by Bach based on essentially the same grounds argued by Bach for judgment notwithstanding the verdict and for a new trial, or based on the grounds that Miller waived or is estopped from electing a constructive trust remedy. This Court has concluded that such grounds are without merit as to ownership of the 87 acres. This Court has entered findings of fact and conclusions of law supporting a judgment of quiet title for Miller as to the 87 acres. While I. C. § 4-614 may prohibit issuance of an execution or writ of assistance to put Miller in possession of the 87 acres, there is no basis to enjoining Miller from going upon any portion of the 87 acres. Therefore, this motion must be granted in part.

9. Miller's Motion to Hold Bach in Contempt.

Miller's motion to hold Bach in contempt is brought under I. C. § 7-601 et. seq. and is supported by the affidavit of her

counsel Galen Woelk. Miller seeks an order imposing a fine or incarcerated against Bach under I. C. §7-610 alleging that Bach did not pay $400.00 in discovery sanctions under Rule 37, I.R.C.P. to Miller by June 8, 2003 as ordered on May 28, 2003. Bach objects to the motion, and requests appointment of counsel at public expense.

The affidavit filed on behalf of Miller initiates the proceedings. I. C. § 7-603; Jones v. Jones, 91 Idaho 578, 428 P.2d 497 (1967). Where the alleged contempt did not occur in the presence of the court, it is an indirect contempt. Id., Reeves v. Reynolds, 112 Idaho 574, 733 P.2d 795 (App. 1987). It must be prosecuted in non-summary proceedings. I. C. § 7-603. A warrant of attachment may be issued with a bond set in order to bring the contemnor before the court, or a show cause order may issue without attachment requiring the contemnor to show cause why he should not be held in contempt. I. C. §7-604. In this case a show order is more appropriate. The contempt shall be decided based on the evidence submitted at the hearing. I. C. §7-610.

If Bach is found in criminal contempt the maximum penalty is $1,000.00 fine or 5 days in the Teton County jail, or both. I. C. § 7-610. If he is found in civil contempt he may be imprisoned until he performs the required act. I. C. § 7-611.

Smith v. Smith, 136 Idaho 120, 29 P.3d 956 (App. 2001). A reasonable attorney fee may be awarded to the prevailing party. Id.

This Court will schedule a hearing in Teton County to her Miller and Bach's evidence on the motion for contempt.

10. Bach's Motion to Strike Answers Filed by Defaulted Defendants.

Bach's motion seeks to strike the answers filed by the Hills, Hamlin, Wayne Dawson, Harris, Scona, Fitzgerald, Olesen, Lyle and McLean. Based on this Court's rulings in parts 1 and 2 above, it must deny Bach's motion as to the Hills and Hamlin, but based on rulings in parts 3, 4 and 6 above it must grant Bach's motion as to Wayne Dawson, Harris, Scona, Fitzgerald, Olesen and McLean.

11. Woelk's Renewed Motion for Summary Judgment.

Woelk's renewed motion for summary judgment seeks dismissal of the remaining counts in Bach's first amended complaint, i.e. counts one through four seeking quiet title, injunctive relief and damages for trespass on the Miller 87 acres, the house and 1 acre 8.5 acres at 195 N. Highway 33, the "Peacock" 40 acre parcel, and the "Drawknife" 40 acre parcel, count five for damages from slander of title, count six for intentional interference with contracts or economic expectations, count nine for conversion of $15,000.00, count twelve for statutory

malicious harassment based on ethnic origin. This motion was supported by the affidavits of Woelk and Harris, and a legal memorandum. Bach filed an objection to the motion. Woelk then filed a reply memorandum.

In the interest of saving paper, this Court incorporates by reference the standards applicable to deciding motions for partial summary judgment under Rule 56, I.R.C.P., as set forth in its Fourteenth Order on Pending Motions that addressed Woelk's first motion for summary judgment.

Counts One, Two, Three and Four

Since the Court found that title must quieted in Miller and against Bach as to the 87 acres described in count one, it is a complete defense to Bach's claims to quiet title, injunctive relief and damages as to count one, and partial summary judgment must be granted to Woelk dismissing count one with prejudice.

There is no evidence in this record from which the trier of fact could find that Woelk has any defense to the quiet title and injunctive claims in counts two, three and four. Therefore, the motion must be denied and Bach may continue to trial against Woelk on such claims. The claims for damages due to Woelk's trespassing on the properties described in counts two, three and four are denied by Woelk, and Bach has presented no admissible evidence that Woelk has been on such properties. Partial

summary judgment must be granted and all damages claims in counts two, three and four of the first amended complaint.

Count Five

Count five of the first amended complaint seeks damages against Woelk and several other defendants based on deeds recorded by defendant Alva Harris on behalf of Targhee Powder Emporium, Inc., an Idaho corporation, formed in November, 2000 purporting to transfer title to properties described in count one to Miller, title to property in count two to Dawson and Scona, title to property in count three to the Hills, and title to property in count four to McLean, Dawson and Liponis.

While the affidavits of Woelk and Harris state that Woelk did not participate in the preparation of such deeds, there is testimony under oath at previous hearings in this case and in previously filed affidavits by Bach establishing that Woelk's office was used for meetings to incorporate the subject corporation in November, 2000. Since a jury trial was requested, Bach must be given the benefit of inferences that might be drawn from such evidence, including that Woelk encouraged the preparation and recording of such deeds.

Since title to the 87 acres must be quieted in Miller, Bach has no damages from slander of title to such property, and partial summary judgment must be granted dismissing a part of

count five as against Woelk. However, partial summary judgment as to all other claims for slander of title in count five is precluded by genuine issues of material fact.

Count Six

In its Fourteenth Order on Pending Motions, this Court conditionally granted Woelk's motion for partial summary judgment in the event that Bach did not file affidavits containing admissible evidence supporting his claims for intentional interference of contracts and economic expectancies in count six. Bach did not file an affidavits identifying the specific contracts and/or economic expectancies. If such contracts and/or economic expectancies existed and were lost, Bach is the party with the facts to prove such elements of the cause of action. Woelk cannot read Bach's mind. Therefore, partial summary judgment must be granted and count six dismissed as against Woelk.

Count Nine

Count nine seeks to recover damages for conversion of $15,000.00 allegedly taken by defendant McLean from an account established by Bach. While Woelk argues that ownership of the $15,000.00 will be determined between Bach and McLean in the case of *Jack Lee McLean and Mark J. Liponis v. Jovan N. Bachovich, aka John N. Bach*, Teton County case no CV-01-033, it

Woelk's affidavit establishes without contradiction in this record that McLean withdrew the $15,000.00 without knowledge or suggestion by Woelk, the letters in this record from Woelk to Bach and the Teton County Prosecutor establish that Woelk prevented release of the money to Bach. Since a jury trial was requested, Bach must be given all favorable inferences from facts, and it is possible for a jury to find that Bach was caused damages if it finds Bach was entitled to release of the money.

Next Woelk argues that it is a waste of judicial resources for this Court to have a trial on Bach's claims, because Judge Shindurling will decide whether McLean or Bach owns the same $15,000.00. If Judge Shindurling holds for McLean, Woelk's argument holds true. However, if Judge Shindurling holds for Bach, then this Court would have to hold a jury trial on Bach's conversion claim against Woelk. If Judge Shindurling does not rule for McLean before the jury trial on Bach's other claims against Woelk in this case, then Bach may present evidence at trial in this case. Therefore, the motion must be denied as to count nine.

Count Twelve

Count twelve seeks damages against Woelk based on Idaho's malicious harassment statute, I. C. § 18-7901 et. seq. For the

reasons stated in this Court's Fourteenth Order on Pending Motions, there are genuine issues of material fact precluding partial summary judgment as to this count. While Woelk and Harris filed affidavits attempting to explain why Woelk referred to Bach as "Bachovich" and "bag of shit," and pointed the "finger" at Bach, those new facts just go to the weight of the evidence. Bach is still entitled to have a jury consider Bach's testimony and inferences from it. The motion as to count twelve must be denied.

12. Miller's Motion for Entry of Judgment.

Miller's motion for entry of judgment under Rule 58(a), I.R.C.P. seeks a judgment on the jury verdict rendered on June 19, 2003, and the Court's findings of fact and conclusions of law rendered on July 8, 2003. Bach objects to the motion based on the arguments presented by his motion for jnov and motion for new trial, as well as his argument that Miller waived or is estopped from electing a constructive trust remedy over damages awarded by the jury.

This Court has addressed Bach's objections in its analysis above. All of Bach's objections are without merit, except that judgment notwithstanding the verdict on Miller's slander of title counterclaim. The Court concluded that $5,000.00 in general damages was not supported by the evidence, but that $500

in nominal damages was appropriate. Judgment quieting title in the 87 acres solely in Miller's name and awarded $500.00 in nominal damages will be entered against Bach on Miller's counterclaim and Bach complaint as to Miller and Broughton will be dismissed with prejudice.

NOW THEREFORE, IT IS HEREBY ORDERED that

1. Defendants' Bret Hill and Deena Hill's motion to set aside clerk's default is GRANTED, and the Hills' motion to continue, or alternatively to bifurcate trial is MOOT;

2. Defendant Hamlin's motion to set aside clerk's default is GRANTED;

3. Defendants Harris, Scona, Inc., Fitzgerald, Olesen, Lyle and McLean's request for damage determination under Rule 55(b)(2), I.R.C.P., is GRANTED, and evidence may be submitted at a default hearing under Rule 55(b)(2), I.R.C.P., **at the Teton County Courthouse from at 1:00 p.m. to 4:00 p.m. on Friday December 5, 2003 as to damages;**

4. Defendant Wayne Dawson's second renewed motion to set aside clerk's default is DENIED, and Dawson's request for evidentiary hearing on damages is GRANTED, and evidence may be submitted at a default hearing under Rule 55(b)(2), I.R.C.P., **at the Teton County Courthouse from at 1:00 p.m. to 4:00 p.m. on Friday December 5, 2003 as to damages;**

5. Plaintiff Bach's motion for default judgment against defendants Hamlin and the Hills is DENIED; and the motion is GRANTED as to defaulted defendants Wayne Dawson, Harris, Scona, Fitzgerald, Olesen, Lyle and McLean to the extent that relief is supported by evidence submitted at a default hearing under Rule 55(b)(2), I.R.C.P., **at the Teton County Courthouse from 10:00 a.m. to noon on Friday December 5, 2003 as to liability;**

6. Defendants Harris and Scona's motion to set aside clerk's default and motion to file answer is DENIED;

7. Plaintiff Bach's motion to void jury's special verdict is DENIED, his motion for judgment notwithstanding the verdict under Rule 50(b), I.R.C.P., is GRANTED IN PART and the $5,000.00 damages awarded by the jury is reduced to $500.00, otherwise the motion is DENIED; his motion for new trial under Rule 59(a), I.R.C.P., is DENIED; and his motion to amend final pretrial order is DENIED;

8. Defendant Miller's motion to set aside preliminary injunction is GRANTED as to her; her motion for writ of assistance is DENIED as being premature; and an evidentiary hearing shall be held under I. C. §6-414 as to the value of improvements now located on the 87 acres placed thereon in good faith by Bach **at the Teton County Courthouse from 9:30 a.m. to 10:00 a.m. on Friday December 5, 2003;**

9. Defendant Miller's motion for contempt against plaintiff Bach under Idaho Code §§ 7-601(5), 7-603 and 7-610 is scheduled for and evidentiary hearing **at the Teton County Courthouse from 9:00 a.m. to 9:30 a.m. on Friday December 5, 2003;**

10. Plaintiff Bach's motion to strike answers filed by all defendants in default is GRANTED IN PART, and the answers filed by defendants Dawson, Harris, Scona, Fitzgerald, Lyle and McLean are stricken, and DENIED IN PART as to Hamlin and the Hills;

11. Defendant Woelk's renewed motion for summary judgment as to count one, damages alleged in counts two, three and four, a part of count five as to slandering title to Miller's 87 acres, and count six is GRANTED, but the motion is DENIED as to quiet title and injunctive relief alleged in counts two, three and four, damages as to slandering title to North Highway 33 property, "Drawknife" property and "Peacock" property, and relief alleged in counts nine and twelve; and

12. Defendant Miller's motion for entry of judgment under Rule 58(a), I.R.C.P., is GRANTED IN PART, with the exception of $5,000.00 in damages for slander of title which is reduced to $500.00.

IT IS FURTHER ORDERED that a jury trial shall be held **at the Teton County Courthouse starting at 9:30 a.m. on Tuesday January 27, 2004,** on remaining causes of action alleged in Bach's first amended complaint as against defendants Woelk, the Hills, Hamlin and, if added by substitution, the personal representative of the estate of Stan Nickell.

IT IS FURTHER ORDERED that plaintiff Bach and defendants Woelk, the Hills, Hamlin and, if added by substitution, the personal representative of the estate of Stan Nickell, may engage in discovery to be completed not later than January 15, 2004.

IT IS FURTHER ORDERED that a pretrial conference may be held in Bonneville County or Teton County earlier in January, 2004, if requested by Bach, the Hills, Hamlin, Nickell's personal representative or Woelk on a mutually agreeable date is available.

DATED this 23rd day of October, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of October, 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)

David Shipman
P. O. Box 51219
Idaho Falls, ID 83405-1219 (TELEFAX & MAIL)

Teton County

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date 10/23/03
Time 10:50
Deputy Clerk MSouthwick

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.	) **JUDGMENT**
	)
KATHERINE M. MILLER, et. al.,	)
	)
Defendant.	)
	)

This action having been bifurcated by the Court, and all causes of action as between Plaintiff John Bach and Defendant Katherine Miller having come on regularly for trial on June 10th through June 19th, 2003, and a jury having been impaneled to try certain issues, and a special verdict having been rendered on June 19th, 2003; and the Court having heard and considered the evidence and arguments of counsel, and the Court having filed its findings of fact and conclusions of law on all remaining issues; now,

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therefore, on and in conformity with the special verdict of the jury, and by virtue of the Court's findings and conclusions aforesaid in equity:

WHEREFORE IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That Katherine Miller is the owner in fee simple and entitled to the sole and unfettered possession of certain real property situated in the County of Teton, State of Idaho, legally described as follows:

Tract 1

Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: W1/2 S1/2 SE1/4.
Together with all mineral rights and 10 shares of water in the Grand Teton Canal Company.

Tract 2

Township 5 North, Range 45 East of the Boise Meridian, Teton County, Idaho Section 10: E1/2 S1/2 SE1/4.
Together with all mineral rights and 10 shares of water in the Grand Teton Canal Company.

Tract 3

A part of the S1/2 SW1/4 Section 11, TWP, 5N., RNG. 45E., B.M., Teton County, Idaho, being further described as : From the SW corner of said Section 11; thence N0°02'03"W, 1214.14 feet along the Western section line to the true point of beginning: thence N0°02'03"W, 110.00 feet further along the Western section line to the NW corner of the S1/2 SW1/4 of Section 11; thence S89°57'55"E, 2627.56 feet along the North line of the S1/2 SW1/4 of Section 11 to a point on the

Western right-of-way line of State Highway 33; thence S0°09'27"W, 110.00 feet along the Western right-of-way line of State Highway 33 to a point; thence N89°57'55"W, 2627.19 feet to the point of beginning. Containing 6.63 acres more or less.

Tract 4

A part of the E1/2 S1/2 SE1/4 of Section 10, Township 5 North, RNG 45 East, Boise Meridian, Teton County, State of Idaho, described as: From the NE Corner of the E1/2 S1/2 SE1/4 of said Section 10; thence West along the North boundary line of the E1/2 S1/2 SE1/4 of said Section 10 to the NW Corner of the E1/2 S1/2 SE1/4 of said Section 10; thence South along the West Boundary line of the E1/2 S1/2 SE1/4 of said Section 10, 110 feet; thence East to the East Boundary line of the E1/2 S1/2 SE1/4 of said Section 10; thence North along the East boundary line of the E1/2 S1/2 SE1/4 of said Section 10 to the point of beginning.

Title to Tracts 1, 2, 3 & 4, described above, are hereby quieted in the name of Katherine Miller.

2. That the claims of plaintiff John Bach and all who claim title under him in and to the parcels of real property listed above, including any of those non-incorporated entities and dba's referred to as Targhee Powder Emporium, Inc., Targhee Powder Emporium Investments, Targhee Powder Emporium Limited, Targhee Powder Emporium Unlimited and the Vasa N. Bach Family Trust, are without any right whatsoever, and plaintiff John Bach has no estate, right, title, lien, or interest whatsoever in or to the real property or any part of such property parcels.

3. That Plaintiff John Bach and all persons or entities claiming by or through him are hereby permanently enjoined from asserting any estate, right, title, lien, or interest in or to the real property or any part of those parcels of real property specified above, except as to improvements under Idaho Code § 6-414 through 417. (RTS)

4. That defendant Katherine Miller have and recover from plaintiff John Bach by way of her slander of title counter-claim the sum of FIVE-~~THOUSAND~~ HUNDRED DOLLARS ($~~5,000.00~~ $500.00), (RTS) together with interest thereon at the legal rate from this date.

5. That plaintiff John Bach take nothing in this action on any of his counts against the defendant Katherine Miller, and that plaintiff's FIRST AMENDED COMPLAINT be, and it hereby is, dismissed on the merits with prejudice as it pertains in any way to defendant Katherine Miller and Ann-Toy Broughton. (RTS)

6. That defendants Katherine Miller and Ann-Toy Broughton recover her costs of suit against plaintiff John Bach. (RTS)

DATED this 23rd day of October, 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 the 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.

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
Anne Broughton 1054 Rammell Mountain Road Tetonia, ID 83452	[✓] Mail [ ] Hand Delivery [ ] Facsimile
David H. Shipman Bart J. Birch P.O. Box 51219 Idaho Falls, ID 83405-1219	[✓] Mail [ ] Hand Delivery [ ] Facsimile
Gregory W. Moeller P.O. Box 250 Rexburg, ID 83440-0250	[✓] Mail [ ] Hand Delivery [ ] Facsimile

M Southwick
, clerk

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

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff &
Counterclaim
Defendant,

v.

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

Defendant &
Counterclaimant,
et al.,

_____/

CASE NO: CV 02-208

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)

STATE OF IDAHO)
SS
COUNTY OF TETON)

I, JOHN N. BACH, duly being placed under oath, hereby give my testimony of my own personal knowledge, participation, observations, witnessing, direct involvement and understanding.

1. This Affidavit is offered in support of Affiant's motions filed this date, December 6, 2003. It supplements and further expands the following AFFIDAVITS filed by Affiant herein since June 19, 2003, which prior AFFIDAVITS this Court, per the last paragraph of Page 4, NINETEENTH ORDER innocuously and selectively, but without designating what affidavits, refused and ignored to specifically state what affidavits it did consider, read and apply and those which it didn't and the reasons for

avoidances or refusals. Further, the Court's decision re treatment of Affiant's separate motions as set forth in Part 7, sole paragraph thereunder, Page 13 of NINETEENTH ORDER is in error, and ignores what Affiant said in his oral argument on October 8, 2003. As any motions per Rule 50(b) and Rule 59(a), which may be made, said Rules require that they be made within 14 days from entry of judgment which judgment was not entered, along with said NINETEENTH ORDER until and on October 23, 2003. Thus, Affiant's knowledge and understanding is the court's attempt is and was to improperly & prematurely to decide said motions when Affiant was not able to pursue such and is now in the posture and timely filing of said herein, on this date, which is the 14th day from October 23, 2003. Affiant refers to and reaffirms and incorporates herein the following Affidavits already on file:

a) Filed July 9, 2003, 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 FACT AND CONCLUSIONS OF LAW, ETC.

b) Filed July 16, 2003, SUPPLEMENTAL AFFIDAVIT OF JOHN N. BACH, IN SUPPORT OF HIS MOTIONS, TO DISQUALIFY THE HONORABLE RICHATD T. ST. CLAIR, and ALL OTHER MOTIONS FILED JULY 9, 2003 and JULY 3, 2003.

c) Filed Oct. 1, 2003 PLAINTIFF & COUNTERCLAIM DEFENDANT JOHN N. BACH'S FURTHER MEMORANDUM BRIEF IN SUPPORT OF HIS MOTION FOR JUDGMENT NOT WITHSTANDING THE VERDICT, (IRCP, RULE 50(a), 50(b), etc.) and Other Motions Brought by Plaintiff As Applicable and IN OPPOSITION TO ALL DEFENDANTS' CURRENT MOTIONS, especially is such FURTHER MEMORANDUM BRIEF incorporated and made a part herein, and along with the attached "EXHIBIT '14' ", May 13, 2003 ORDER in USCA, Ninth Circuit No 02-35330, USDC, ID., CV 99-014, and the 12 page verified PETITION FOR WRIT OF MANDATE/PROHIBITION, etc., filed Sept. 19, 2003, Idaho Supreme Court, Dkt #3009, with all EXHIBITS therein referenced which are in the files and record herein.

2. In Paragraph 12, page 37 of the Court's NINETEEN ORDER ON PENDING MOTIONS, states that "Defendant Miller's motion for entry of judgment under Rule 58(a), I.R.C.P., is GRANTED IN PART with the exception of $5,000.00 in damages for slander of title which is reduced to $500.00."

This particular ORDER, Paragraph 12, is wholly void and in violation of I.R.C.P., Rule 54(b), in that it fails to comply with "the entry of a final judgment upon one or more but less than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of the judgment. [and]In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilites of less than all the parties shall not terminate the actions as to any of the claims or parties, and the order of other from of decision is subject to revisions at any time before entry of judgment adjudicating all the claims and the rights and liabilites of all the parties. . ."

3. The NINETEENTH ORDER and JUDGMENT OF October 23, 2003 are seemingly premised upon the Jury Trial's verdict of June 19, 2003 and the Court's FINDINGS OF FACT AND CONCLUSIONS OF LAW, which were not filed either timely nor properly in the Teton County, Court Clerk's office. Said FINDINGS are wholly unsupported by the evidence presented and supplemented by this Affidavit, but further the CONCLUSIONS OF LAW are also wholly without legal authority, precedent or jurisdiction of this Court or any subjec matter jurisdiction, as Miller's counterclaims against AFFIANT further fail to state any facts upon which any claim can be based. But most preliminary, no jury trial is authoritized by Idaho statute nor cases authorities, as cited in previous filed affidavits incorporated herein.

4. Attached hereto are copies of plaintiff's EXHIBITS Numbers 103, 104, 95, 97, 98A and 98B. These EXHIBITS were marked for identification in the trial herein, but not admitted, as the Court errored in restricting and limiting Affiant's cross-examination of Katherine Miller. All of said exhibits reveal the faxes affiant received from Miller, faxes in her own handwriting, except for copies of tax and legal material pages which Miller, her attornies and accountants, especially Dan Dedloff, Miller's Michigan accountant just one of hers, from Nov. 1, 1994 through November 23, 1994, such being NOs 103, 104 and 95, with 103 and 95 having Affiant's distinct self rendered shorthand notes of what Miller told him. One of Affiant's such entries on No. 103 is a summary of Miller telling him that she "Tried to get ready f the woman attny - saw her." Affiant's writing on No. 104 is all of what Miller told him of her efforts personally, via her attorneys, accountants and even Midas advisors, especially of getting her husband Ron, to whom she was still married, even into March, 1995, to give her in settlement of their property division, not only shares in Ron's corporation, Miller's Development, Inc., but a personal contract with her as a consultant for 10 years to quarantee payment to her of a noncomplete clause which she would sign in staying out of the bridge building construction business, for which she "I want--51% with Proxy f Power of Attny.[. . .]She but he's to pay me [Miller] 125K + must be w/i 1 yr." Miller, was very capable, competent, knowledgeable and exceedingly thorough in every business transaction she considered entering and such business habit, custom and practice, she followed with Affiant in all her delaings, with the typed contract of December 8 & 12, 1994 (EX. 22C.)

Miller has never denied nor offered any contrary evidence and she had never answered nor denied Affiant's letter to her of August 13, 1997, especially the first paragraph on page 2, thereof, such being Plt's EX. 23(B)3 admitted. Also Plt's EX. 20, Nov. 16, 1994 New York Times articles, "The Rich are Different: They Can afford Homes', which affiant was given by Miller, who researched the real estate market at that time in Jackson, Wyoming and Teton Valley, Idaho, and copied said article from the Jackson Public Library, facts which Miller never denied, reveal and establish her completeness, thoroughness and investigation of all aspects of any contemplated business dealings she may entered or commit herself to. In Plt's EX 94, admitted, faxed pages of Nov. 15, 1994 from R.E.M., Inc in Mt. Pleasant Mich., Miller wrote on the first page faxed to Affiant: "Ron [her husband] mentioned that he was impressed with my proposal & appreciates the work I did!"

5. In Miller's faxed materials, EX 95, dated Nov. 23, 1994, she starts out "8 a.m. I have some 'what if' tonight. What if I purchased the farthestwest 20 acres and you purchased the next 20 acres?" Affiant apologizes for the quality of this exhibit's copy but it was the best that could be made off the original, which is of fax paper. However, the court can review this entire EXHIBIT 95, not admitted and compare it with Defendant Miller's EXHIBIT G, admitted, which is a three (3) pages copy of Affiant's letter, as C.E.O. of Targhee Powder Emporium, Inc., of December 1, 994, faxed to VICKI Motloch and her husband offering a 20 acre parcel of the Harrops original 160 acres at the same price and terms as offered to Miller, with the exception the Motloch's were not offered by Affiant to buy back at the end of two (2) years from purchase at 10% as was Miller. A copy of

Miller's said EX. G, admitted, is attached to affiant's SUPPLEMENTAL AFFIDAVIT, etc., filed July 16, 2003.

6. Plt's EXHIBIT 97A-D., not admitted, but attached, are pictures taken in midsummer 1996, at 195 N. Hwy 33, Driggs, the first of Affiant standing next to the TARGHEE POWDER EMPORIUM, sign which he first erected in 1992, and maintained throughout his living at that address, until later Oct, 1999. The second picture is of Affiant standing on Ski Hill Road going to Grand Targhee Ski Resort, with his youngest brother DANILO BACH and his two (2) sons, NATHANIEL and MAX, depicted in the third photo; and the last photo is that of Affiant with Miller on the backside of Fred's Mountain, Grand Targhee taken the same date as the other three photos. Miller never as an investor, nor principals nor incorporator or formation person of any nature in Targhee Powder Emporium, be such designated Inc., Unltd or Ltd., until she and her attorneys, Harris, Woelk, Moulton with Jack McLean, Robert Fitzgerald, Wayne Dawson, Mark Liponis and Oly Oleson, stole affiant's said business identities and names and all of his real properties, investments and personalty with improvements thereon in Teton County, Idaho, via void warranty deeds, all dated November 21, 2000 executed by Jack McLean. All of said warranty deeds were validly rescinded, voided and negated completely but Affiant's execution per an irrevocable power of attorney with vested interest and rights, in himself from Jack McLean, such being Plaintiff's EXHIBIT 26B(1), recorded May 16, 2002, being Teton County Recorded Instrument 148041. Plaintiff's said WARRANTY DEED and EXHIBIT 26B(1) has not been addressed whatsoever by

this Court's FINDINGS OF FACT and CONCLUSIONS OF LAW, nor could it, as no evidence whatsoever, was presented nor any offered, relevant, admissilbe by Jack McLean, that Affiant did not have such irrevocable power of attorney with vested property rights, interests and claims. Only McLean could have presented proper written evidence, if at all to the contrary, and McLean never was called as a witness nor was any such relevant, foundationally shown and admissible documents or other evidence ever presented. Therefore, said WARRANTY DEED, Pt's EX 26B(1) stands herein uncontested, fully effective and controlling; it was not any basis for any of the void and improper issues contrived and wholly inadequately presented both by lack of jury instructions and secondly without any jurisdiction of the jury existing herein, to decide or consider any of Miller's claims via her counterclaim against Affiant. The court is cited to Cox v. Freeman 227 P.2d 670, 678, 204 Okl 138.

&. Plaintiff's EXHIBITS 98A & 98B, not admitted attached hereto, were created, 98A by Affiant with meetings and discussions with Miller in April 1, 1996, when she agreed to purchase the front 80 acres, fronting Hwy 33, from the Harrops; and 98B, is in Miller's own handwriting, a calculation summary of the costs of building a house for Affiant and herself, , on said front 80 acres to be purchased which would be a novation to the terms of said Dec. 8 & 12, 1994 written agreement, and in which Affaint was to have an equal undivided one-half ownership, legal and equitable interest. Said further facts and statements as well as actions by Miller are set forth in the Sept. 1997 Affidavit of Affiant filed In Teton CV 94-047, which Miller's testimony confirmed and corroborated, but which purchase agreement

she violated and breached as she also violated and breached her fiduciary and confidential relationship, business and personal to Affiant at that time.

8. All of the above statements, testimony and exhibits Affiant wanted and attempted to present, were it not for the time and cross examination restrictions and due process, procedural and substantive, violations and that of equal protection, inflicted by the Court. All of said statements, supra, and herein are submitted in support of the Affiant's said mptions, and especially the new trial motions, per Rule 59(a) and Rule 60(b)(1), (2), (3), (4), and (6). All of said violations and errors by the court, come within each and all of the foregoing Rules and said subparts. Affiant has had a fraud created, imposed and still inflicted upon him by Judge St. Clair, as shown herein in this action, especially per the Affidavits, p.2, supra, Memorandum Briefs, this Affidavit and initial Memorandum Brief.

9. On August 15, 2002, Judge St. Clair found and concluded, which is still binding herein at to the October 3, 1997 agreement Quitqlaim Deeds and Easement Agreement:

> "THE COURT: Whatever is consistent with the agreement, the undivided sharing agreement that Chuck Homer, put together these parties signed in October of '97.
>
> I've heard a lot of evidence, but nothing has convinced me that the legal status of any of these people, as far as their rights to this property, has changed since October 3, 1997, Now, maybe my final decision will be different, but based on what I've heard so far." (Page 9, lines 8-17 of Partial Transcript.) [During Trial he failed to comply with Rule 65 Evidence]

10. On October 8, 2003, in Affiant's oral argument, upon questions Affiant put to the court, and from the court's responses, Judge St. Clair was personally "rankled", upset and unwilling to (1) adhere to the terms, unambiguous and controllings as they are in said Oct 3, 19997 Settlement Agreement, Quitclaim Deeds

and Easement Agreement; "rankled" about and not willing to accept evidentiary wise, other than to look upon Affiant's testimony as insufficient and untrustworthy, because of Affiant'exercising his constitutional rights and rights of informal discovery and investigation in going through Miller's abandoned documents placed in a large trash container on the public west bound lane of Road 550N, some 100 yards or more from her claimed residence; and "rankled" because of Affiant's business acuemen and procedures in selling properties as he did in Teton County, especially the parcels involved in Affiant's FIRST COUNT of his FIRST AMENDED COMPLAINT. Not only is such frame of mind nonconducive to the impartiality, objectivity and unbiased mindset of a qualified objective judge, but it particularly is the entry of Judge St. Clair as an attorney and biased advocate for Miller and other defendants herein, contrary to:

(A) Lande v. Jurisich (1943) 139 P.2d 657, 660; 59 C.A.2d 613. "While a court of equity may exercise broad powers in applying equitable remedies, it may not create new substantive rights, under the guise of doing equity. Rosenberg v. Lawrence 1938, 10 Cal.2d 590, 594, 75 P.2d 1082 (1084-85] / /"

(B) Bay City Bridge Co. v. Etten, 36 MIch 210 (Where remedy at law is completely adequate, equity does not have and should not assumre jurisdiction)

(C) Majewsky v. Empire Construction Co. (Cal 1970) 467 P.2d 547, 85 Cal. Rptr., 2 C.3d 478 (Resulting trust cannot be found and was not found herein, on fact that money or property of one has been used by another to purchase property, especially where a buyer and also a seller is entitled to make a profit and there is no promise or agreement that as a seller to another buyer there was no promise nor understanding other what was in writing, that such seller would take the property in trust, a resulting trust.) (NOTE: See esp., pages 550-51, and 533) (THIS CASE UNDERMINES MILLER'S CLAIMS, ALL OF THEM)(Pg 548-53 attache

(D) U.S. v. Oregon Lumber Co. (1922) 435 S.Ct. 100, 260 U.S.290, 204, 301, 67 L.Ed. 291 (Inconsistent remedies doctrine operates as matter of law to preclude resort to equity relief, esp., when not only statute of limitations is mandatorily to be applied, but also res judicata and doctrine of affirmation of contract, estoppel, all based upon "maxim forbiding that one shall be twice vexed forone and the same cause." (See also pages 299-301).)

(E) HAWE v. HAWE (1965) 406 P.2d 106, 109-111 Idaho Supreme Court. (It's presumed holder of tile to property is owner thereof; condition subsequent are not favored, strictly to be construed and not implied nor incorporated in deed where no clear unequivocal language so exists. No express nor implied intention at the time of execution or transaction that creates resulting trust-Pg 110-111)

11. Another set of facts that "rankled" Judge St. Clair was that Affiant did not form any corporation known as Targhee Powder Emporium, Inc., and did businees under that name and Targhee Powder Emporium, Unltd and Ltd. Nothing sinister, nor wrong nor illegal occurred by such Affiant's actions and uses of said names, since as stated in Willis v. City of Valdez (Supreme Ct, Alaska 1976) 546 P.2d 570,"[persons dealing

> with unformed corporations] may be estopped from denying the corporate existence. .'Corporation by estoppel' is actually a misnomer for the result of applying the policy whereby private litigants amy, be their agreements, admissions or conduct, places themselves in a position where they will not be permitted to deny the fact of the existence of a coporation.[4]"
>
> . . . . .
>
> ("4. Cf. 8 W. M. Fletcher, Cyclopedia of the Law of Private Corporations (1966 rev;d ed.) &3889 [herein cited as Fletcher].)
>
> . . . . .
>
> "Because estoppel as a doctrine is concerned with the acts of parties, as opposed to the legality of the corporation itself, we think the better rule is that the corporation by estoppel doctrine may be employed even when the corporation has not achieved de facto existence.[5]"
>
> (5. Id. at &3902.
>
> 6. Additionally, we recognize decisional law to the effect that a person who conveys real properto to an association as a coporation cannot avoid the conveyance by denying the corporate existence of the grantee. 8 Fletcher, supra note 4, &3958. Bukacek. v. Pell City Farms, Inc. 286 Ala, 141, 237 So. 2d 851 (1970), cert. denied, 401 U.S. 910, 91 S. Ct. 872, 27 L.Ed2d 809 (1971); Jolley v. Idaho Securities, Inc., 90 Idaho 373, 414 P. 2d 879, 888 (1966).:

Miller comes within said authorities as a matter of law, in her continuous acceptance, recognition and reliance, ratification and affirmance of the settlement in Teton Cv 95-047, her and her counsels' letters to affiant, as CEO, President or Resident

Manager of Targhee Powder Emporium, Inc., Unltd and Ltd. Most accepting and estopping MIller's denial of Affiant so conducting himself, as such corporation and dbas was and is the October 3, 1997 Settlement Agreement, Quitclaim Deeds and Easement Agreement, the latter three recorded on October 3, 1997. There was and is nothing wrong or illegal nor of any adverse evidentiary consequences to Affiant for having done such business as said corporation and dbas. The further cases of Mollendorf v. Derry (Idaho 1972) 95 Idaho 1, 501 P.2d 199, 202; and Heltinger v. Sybrandy (1994) 126 Idaho 467, 886 P.2d 772, 775-76 recognize and support Affiant proper right to be personally liable as an individaul doing business under such designations. In the application of the foregoing authorities, it is clear that equity does not have jurisdiction herein to even consider either a resulting trust nor a constructive trust, and particularly, equity cannot relieve a party from a bargainbecause it is hard or unprofitable. Hassenplfug, v. Hart 360 P.2d 481, 843-483, 89 Ariz 235 ("Equity does not demand that a plaintiff be relieved of a contract entered with knowledge of the responsbilities assumed thereunder, which is in effect a gamble on inflationary trends, when if the gamble is lost, the opposite party may have to suffer the loss. . equity does not relieve a party from a bargain because it is hard or unprofitable. 19 Am. Jur. 57, &29.")

12. Miller's purchase of said westerly 40 acres before she entered into a partnership of such 40 with Affiant is not a hard or unprofitable contract or bargain. Miller knew before she signed the Dec. 8 & 12, 1994 Agreement as to the price of the average home in Jackson, to be $581,000.00 and

rising at the rate of 46% every 2 years. She had an option only she could exercise to force Affiant at the end of 2½ years to buy her out, at the paid prices plus 10% per annum for such 2½ years. No better rates existed at that time in either money market account, certificate of deposits nor treasury bills. Evidence was presented that a large parcel to the west of said most westerly 40, was developed and one (1) acre lots in a planned subdivision were offered at $55,000.00 initially and were to increase. If one took Miller's paid price, excluding the $40,000 she never paid Affiant for not building him a home in 2 years., plus the possible future expectation, which is not any misrepresentation, that each 90 days her price would increase $1,000.00 or $4,000.00 a year for the for the next eight (8) years, (1995 through 2002 when the lawsuit was filed herein), that would amount to $32,000.00 per acre on top of the $3,000.00 per acre she paid for a total of $35,000.00 per acre through 2002, which is $15,000 less than the adjacent 1 acre lots being offered at $55,000. Further, even taking said $120,000.00 through the end of 2002 at the rate of 6% per annum which Affiant knows is/was a very good rate of return on the $120,000.00, such would yield her $57,600.00 interest which added to the $120,000.00 would come to $177,600 for the westerly 40 acres, divided by 40 acres, comes to $4,415.00 per acre, as value on such calculated basis. Miller's own so called expert appraisal valued her property at least worth $5,000 any acres, and Treavor Thompson, of Arrowhead Mortgage company, Driggs, testified the front remainding 74 acres, which Miller offered to purchase at $80,000.00 when she could have purchased it for $90,000.00

in the summer and fall of 1996, was sold for $5,700.00 an acres, Spring '03. The current owners, as notified by postings on fence posts and articles, of said 74 acres are now seeking to subdivide such 74 acres into 2½ acre parcels, which similar 2½ acres parcels, north of Miller's claimed residence on 500N, and on Peacock and other subdivisions between said two East and West roads are selling for over $60,000.00 to $75,000.00 for 2½ acre parcels. One of such subdivisions just listed and developed is adjacent to the 40 acres investment property of Affiant known as the "Peacock Joint Venture Properties" consisting of a total of 40 acres, along which westerly boundary Affiant in 1994, along with other joint venturers therein granted a 30 foot easement for road and utlities purposes only, to adjacent neighboring parcels to the North. But Miller is greedy & spiteful.

13. Miller's counterclaims, are all barred, void and utterly without any facts to constitute or raise a viable claim of recovery. Under IRCP, Rule 12(h)(2) and (3) she has no basis of recovery and this court in equity has no jurisdiction over the clear, unamibuous contracts, (Dec. 8 & 9, 1995, the Oct 3, 1997 agreements and quitclaim deeds) the ratifications and affirmation acts repeatedly by Miller from Dec. 30, 1994 through November 1, 2000 of upholding the terms of said contracts, as and against Affiant and his said corporate and dbas entities, such latter being reveale by Miller filing in CV 99-014, (Plt's EX 96) and in Teton CV 00-76, in her verified compliant which referred to and incorporated her Affidavit in support of an OTC against Affiant and his corporation of Targhee Powder Emporium, Inc. Not to be overlooked are Miller's and her counsel's (Chuck

Homer's) letters, memos and communiques to Affiant, in said capacities re CEO, President and Resident Manager of Targhee Powder Emporium, Inc., Unltd and Ltd.

14. Miller and Affiant from the summer crop year of 1995 through summer crop year 2000, via Affiant's management, grew grass hay on the 2 40 acre parcels; in 1995 such hay was harvested by Clair Hillman and his son, divided between Miller and Affiant per an accounting Affiant insisted upon; The next crop years 1996, Affiant and Miller leased said 2 acre parcels to Ken Dunn for his black angus, and against split the proceeds by agreeing to equally use their respective shares to initially install the base of the driveway from the location of eventually the front gate on Hwy 33, to the first pond, put in a culvert and per verbal agreement have the driveway go at a 45° slant to the north fence line and then was to be further improved within a 30 feet permission strip, which was both before and after the October 3, 1997 agreements and deeds, adhered to until Miller got nosey, spiteful and jealous of what Affiant was doing or who he was seeing. In 1997, 1998 1999, and 2000, Affiant had John Letham, swath said grass hay putting such into large hay loaves, which as testified to by Affiant and admitted to by Miller, were mostly destroyed in 1998 by Letham's cattle and cattle from Earl Hamblin getting into such loaves. In 1999 and 2000, Affiant was able to get for Miller's share of hay crop only $400.00 from Letham, and he took his share, continuing, in delivery of hay loaves as he needed for his horses. In 2001 through 2003 the drought has eviscerated any hay crops and Miller's actions along with Stan Nickel's and Earl Hamblin's of converting and misappropri-

iating his waters rights, riparian, surface flow and water shares, have prevented Affiant from getting any hay at all from his said two 40 acres parcels, Thus, by harvesting, utilization of said hay crops and yields, Miller has not only ratified and is estopped to deny all written contracts with Affiant and his oral partnership and sole exclusive management and succession thereto, per Plt's EXHIBITS, admitted, Nos 21 & 22, and plaintiff's testimonies on August 13, and 15, 2002 and during the void jury trial herein, but cannot seek any equitable relief. (See U.S. v. Oregon Lumber Co, supra, page 9, and her remedies sought are not just inconsistent and barred but this court has no equity subject matter jurisdiction. To be further received in evidence in support of Affiant's motions are the statements in defendants HILL's AFFIDAVIT submitted to set aside their defaults, that Miller, McLean and Harris met with them and discussed their purchase of Affiant's home at 195 N. Hwy 33, Driggs; and Hamlin's Affidavit offered to like motion to set aside his default, admitted he had been in contact with Miller, and gave her permission and his approval to use his adjacent acreage to the north of the north boundary line of Affiant's 87 acres, to go back to what she claimed was her most westerly 40. Because of the Court's illegal refusal to order discovery from Miller, as Affiant's motions prior hereto requests and are documented herein, Affiant has not been able, but has been deprived from such facts and further facts and information which will only be revealed per future discovery, as provided by the Court's NINETEENTH ORDER, but way to late to assist Affiant with his motions or during said void jury trial.

15. The Court has deliberately ignored the overwhelming evidence, testimony and the exhibits that establish as a matter of law, that Miller has a fiduciary duties and a relationship with Affliant since the recording of the two deeds on Dec. 30, 1994, one to Affiant as dba Targhee Powder Emporium, Inc., the most easterly of the back 80 acres and her initial most westerly 40 acres taken in her name as a single women, while she was still married to Ron Miller, Mt. Pleasant, MI., and knowlingly entered in May, 1995 in a meretricious relationship with affiant. Miller's still stnds in a fiduciary relationship with duties of more than good faith and fair dealings with Affiant. And not only the laws re such fiduciary duties by Miller to Affiant have been denied, not applied, but, likewise, the tenancy in common relationship, and Affiant's partnership, or at the very least joint venturing of the most westerly 40 acres have also been ignored and denied by the prejudiced and biased mindset of Judge St. Clair. As stated in Hawe v. Hawe, supra, 406 P.2d 111: "The evidence clearly indicates with the exception of visits upon the land and occasional hunting [one instance of cross country skiing by Miller herein] upon the premises, Arleigh [Miller] did not exercise or atempt to exercise control over [any of the property] the premises after 1947 [here, after Dec 30, 1994]."

16. The equitable doctrine which the Court refuses to apply, that: A party cannot either in course of litigations or in dealings in pais, occupy inconsistent poistions (Mailhes v. Investors Syndicate, 36 P.2d 610, 220 C. 735) or proceed in inconsistent and irreconciliable claims. (McDaniels v. Gen'l Ins. Co. of America, 36 P.2d 829, 1 C.A.2d 454; Patrons State Bank

V. Shapiro, 528 P.2d 1198, 215 Kan 856.) is further error both in fact and law, especially the latter which precludes subject matter jurisdiction. Court is especially referred to: Adams v. Jensen-Thomas, 571 P.2d 958, 18 Wash. App. 752 (Man not entitled to trust relief re property he transferred to second woman, allegedly on promise to marry him, when he and she did not live together as man and wife, nor hold themselves out to be husband and wife, and man still married to his wife.)

17. Miller's pleadings of all claims or counts of her counterclaimsagainst Affiant never pled any viable cause of action, never pled that there was any express promise or agreement that Affiant would hold his 40 acres for her. Thus, neither by any resulting trust speculative theory and absolutely no evidence for such resulting trust, equity will not creat or enforce any written contract which sets forth clear ascertainable intent of the parties. Bemis v. Estate of Bemis, 114 Nev. 1021, 907 P.2d 437 (1998) In short no resulting or constructive trust arises from a written contract or agreement legally enforceable. Mays v. Jackson, 346 Mo. 1224, 145 S.W. 2d 392.; Filsonv. Fountain, 171 F.2d 999 (D.C. Cir 1948) reversed on other grounds, 336 U.S. 681.

DATED: November 6, 2003

(SEAL OF NOTARY)

MAUREEN GREEN
Notary Public
State of Idaho

JOHN N. BACH

NOTARY ACKNOWLEDGE, VERIFICATION AND CONFIRMATION OF TESTIMONY UNDER OATH;

I, the undersigned NOTARY for Idaho, declare, state, acknowledge and verify that JOHN N. BACH, personally appeared before me, this date, known personally to me, was placed under oath, gave the foregoing testimony under such oath, and signed his signature in my prsence and witness thereof.

Name: Maureen Green
Com'n Exp 08/05/08

PLAINTIFF'S EXHIBIT 103
CV 02-208
6-17-03

3:15 PM

What's the weather like over there? On the "the" side of the mountain?

... me when you get back in - 734-1965. If ... don't get an answer there try me at 739-9023.

I can go to IF tomorrow - can you?

K

RTC

1. Morning - 8 A.M -
2. Mitzi Hodges - her horses there
3. North 7 Spirits Drive
4. Shall call me after she sees her horses
5. Tried to get ready of the woman atty - saw her
6. Didn't feel well this morning for 10-11 AM
7. Jan has a friend Amy from North Ca[illegible] all 3 went to lunch & then went ice skating - then to Albertson

Mother's maiden name (~~517~~) 616-949-2439 [illegible] Ron [illegible]

FROM : Miller Development Inc. PHONE NO. : 5176443707 NOV. 18 1994 11:48AM P1

11-18-94 – (1) She stayed there last night (2) [illegible] ignored her (3) Went to sleep at 10 P.M. & slept like a log (4) She talked to [illegible] this morning [illegible] [illegible] business.

November 18

Acceptance/Ambition

I long to accomplish a great and noble task, but it is my chief duty to accomplish small tasks as if they were great and noble.

—Helen Ke[...]

Such amazing words from a person whos[e] [...] itself was such "a great and noble task"! In Keller's words we sense such deep acceptance [...] life. We have a glimmer of insight into the p[...] that if we just take one step at a time and do each task as it presents itself, we may discover we have done great and noble things. If we are trying to do great and noble tasks, we may well find that we have missed those magic opportunities just to do what we need to do.

As the author Brenda Ueland says, "Try to discover your true, honest, untheoretical self." Our theoretical self often interferes with our real self.

My illusion of myself may not be who I am.
My illusion of my work may not be what it is.

Good Morning!

I am feeling incredibly powerful this morning – so much so it's a little scary!

** [illegible] [illegible] & she's [illegible] life [illegible] – Ron is not apparent

I'm faxing my accountant's information on taxes.

My schedule – here for about an hour – 10:30 my time then I have an 11:00 AM appt with Dan [illegible] & on to Mido's shop for the P.M.

The sun is shining here – life is good!

Have a "satisfying" day will you be skiing?

I await your call – Kath

#3

#1 P.S. Also faxing what I'd like for the management proposal!

#4 I told Dan I'd be 1/2 hr late – he's fine with that call me back & let me know what you think

1 Mothers [illegible] (~~517~~) 616-949-2439 [illegible]

FROM : Miller Development Inc. PHONE NO. : 5176443707 NOV. 18 1994 11:48AM P1

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As the author Brenda Ueland says, "Try to discover your true, honest, untheoretical self." Our theoretical self often interferes with our real self.

[M]y illusion of myself may not be who I am. My illusion of my work may not be what it is.

Good Morning!

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** [illegible]

I'm faxing my accountant's information on taxes.

My schedule - here for about an hour - 10:30 my [illegible] - then I have an 11:00 AM appt. with Dan Dodloff & on to Midas shop for the P.M.

The sun is shining here - life is good!

Have a "satisfying" day. Will you be skiing?

I await your call... Kath

#3

PLAINTIFF'S EXHIBIT 104
cv-ba-202
6-19-03

#1 P.S. Also faxing what I'd like for the management proposal!

#4 I told Dan I'd be 1/2 hr late - he's fine with that call me back & let me know what you think

FROM : Miller Development Inc. PHONE NO. : 5176443707

000032

- She DN put in any line, why, a services

$500/week for 10 years -- irrevocable as a guaranteed non-compete clause $26,000/year

$500/week to be executive consultant/manager
Review jointly every 6 months -- not 30 day notice -- after review either may terminate within 30 days

Also:
Maintenance & gas for 2 vehicles - 1 in Wy 1 in Mi
Car phone
6 roundtrip air tickets to Mi per year
Attendance at 2 Midas conventions per year if I choose
Up to $5000/year for expenses - i.e., motels, computer programs, etc.
At end of 3? years
5? years - Bonus of new 3/4 ton 4x4 Suburban or Extended cab truck of my choice if shop has performed satisfactorily in sales + operation - i.e. I did a good job
- medical, dental & ocular

Maintain 10% shares until contract of consultant is over - perhaps until 10 yrs is over to guarantee payment of non-compete clause

I want <-> 51% w Proxy of Power of Atty
She bet her a pay and 125K + [illegible]

$60,000 | 5 yrs

Rules That Apply to Both Married and Divorced Taxpayers

I-3601. Gain or loss on transfers between spouses.

No gain or loss is recognized on a transfer of property from an individual to a spouse. And with two exceptions (see below), no gain or loss is recognized on an individual's transfer in trust for the benefit of a spouse. n1 For income tax purposes, the recipient spouse is treated as having received a gift of the transferred property. n2

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n1 Code Sec. 1041(a).
n2 Code Sec. 1041(b)(1).

Gain is not taxed to the transferor spouse even if it is recapture income (e.g. income resulting from disposition of depreciated property). Further, the nonrecognition rule applies whether the transfer is for the relinquishment of marital rights, for cash or other property, for the assumption of liability in excess of basis (except for transfers in trust) or for other consideration and applies to payment in the form of a discharge of indebtedness. n3

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n3 H Rept No. 98-432, Part 2 (PL 98-369) p. 1492.

The transfer need not be incident to a divorce. The nonrecognition provision (footnote 1) applies to any transfer of property between spouses regardless of whether the transfer is a gift or is a sale or exchange between spouses acting at arm's length (including a transfer in exchange for the relinquishment of property or marital rights or an exchange otherwise governed by another non-recognition provision of the Code). A divorce or legal separation need not be contemplated between the spouses at the time of the transfer nor must a divorce or legal separation ever occur. n4

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n4 Reg 1.1041-1T(a).

There are two exceptions for nonrecognition treatment for property transferred in trust for the benefit of a spouse. Gain or loss is recognized on the transfer in trust of property with liabilities in excess of basis n5 (see I-3605) and on the transfer in trust of installment obligations n6 (see I-3606).

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n5 Code Sec. 1041(e).
n6 Code Sec. 453B(g).

For transfers to a third party on behalf of a spouse,

F-12015. Stock redemptions incident to divorce.

Whether the redemption of stock incident to a divorce will generate a dividend appears to depend on the nature of the obligation to buy back stock arising out of the marital settlement or decree. Where the husband has a personal obligation to purchase the wife's stock, the redemption by the corporation in satisfaction of that obligation results in a dividend to the husband. n45 However, where the husband has no personal obligation to buy the stock, the corporation's redemption of the wife's stock does not result in a dividend to the husband. Thus, even if the divorce decree states that the husband has an obligation to buy the wife's stock, no constructive dividend results from the redemption where the facts show that a corporate obligation was intended. n46

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n45 Berger, Roy, (1974) TC Memo 1974-172, PH TCM 74172, affd (1976, CA-9) (unpublished); Gordon, John, (1975) TC Memo 1975-86, PH TCM 75086.

n46 Nichols, Wayne, (1973) TC Memo 1973-114, PH TCM 73114.

Where a shareholder (H) had entered into a separation agreement by which he agreed to purchase his wife's (W's) stock in a closely-held corporation, the corporation's later redemption of that stock resulted in a constructive dividend to H, even though the redemption was authorized by a state court order that purported to correct the terms of H and W's divorce decree. Under the order, which was obtained by H after the redemption had begun, the divorce decree was changed by deleting the terms requiring H to purchase W's stock and inserting a provision authorizing the redemption. The Tax Court held that the separation agreement was a valid, binding contract under the then applicable state law (Ohio). Under the agreement, H had the primary and unconditional obligation to purchase W's stock. The Tax Court also concluded that the order purporting to correct the divorce decree was invalid under the then applicable state law, and therefore had no effect for federal tax purposes. However, even if the order was valid under state law, H received a constructive dividend as a result of the redemption, since the corporation had assumed H's obligation to purchase the stock before the order was issued. n46.1

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n46.1 Hayes, Mary, (1993) 101 TC No. 40.

The Ninth Circuit has held, however, that where a divorce decree provided for a personal obligation to purchase the wife's stock, but the divorce decree was modified by the divorce court to retroactively remove the

I-3600. Transfers Between Husband and Wife or Incident to Divorce.

A husband and wife are treated as a single economic unit with respect to transfers of their assets to one another. Accordingly, no gain or loss is recognized on such transfers or transfers between former spouses if incident to a divorce. (within one year)*

For a discussion of transfe. made incident to a divorce, see I-3612 et seq.

8:00 PM -

I have some "what ifs" tonight ....

What if I purchase the farthest west 20 acres and you purchase the next 20 acres?

[illegible]

What if in a year I decide to sell my 20 acres? How would I go about that?

What if - in a year I decide to keep my 20 acres & build a house? Do I ever get a deed in my name to that 20 acres? Who pays for the road to my 20 acres - the electric?

What if - what if - what if?

My previous experience with a long-term relationship has been rather unfavorable - it has created some trigger points inside of me.

I felt like a second-class citizen. Like what I said or wanted really didn't matter or count for much.

I felt invisible. I wanted to be listened to.

I wanted someone to cuddle with - at night watching TV or reading. I wanted someone to notice that I came to bed even if it was 3 hours later. I wanted someone to be happy to see me at night. I wanted to feel like I mattered.

When I was growing up I was continually criticized. I grew up in an atmosphere of negativity. The world was not a safe place out there. Life was almost something to be endured.

I'm learning that life with Ron with its facets of [illegible] criticism and [illegible] were actually in a [illegible] comfortable [illegible] because it was what I was used to.

I've chosen a different option now. I've chosen to learn a different way of life. I've chosen to grow and expand and explore.

There are many issues & things that are important to me now - things I'm not willing to compromise on.

I know I want my horses - I want to ride in the mountains - by the ocean - the prairie - anywhere! I want to camp overnight - I've never done that on horseback.

I know I want Yodot - and now Remey. I'm going to try & keep to one dog, although I've had at least four for 20+ years. But I want to travel now and it's easier with one dog rather than many.

My friends are important - I want the freedom to do things with them & call & visit whenever I want.

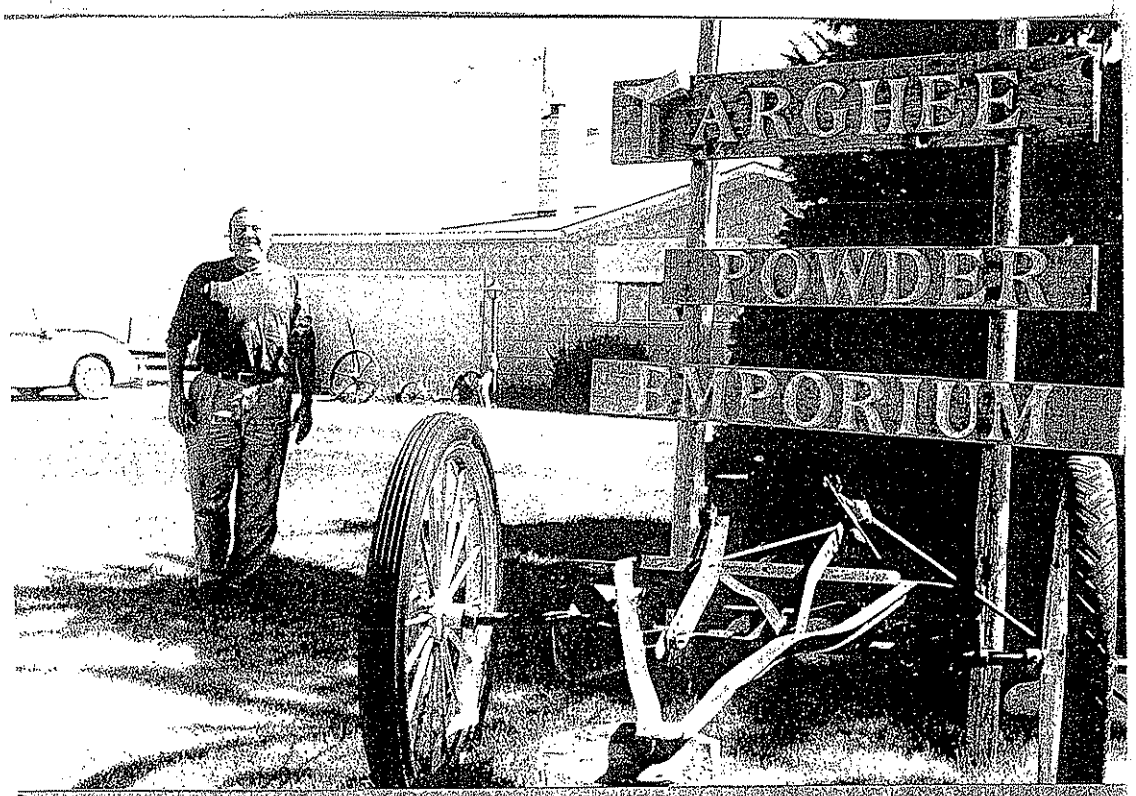
I want to contribute something to other people - that's why I'm working on with handicapped riding & the literacy program. I want to do something with children too. I feel like this will just evolve for me.

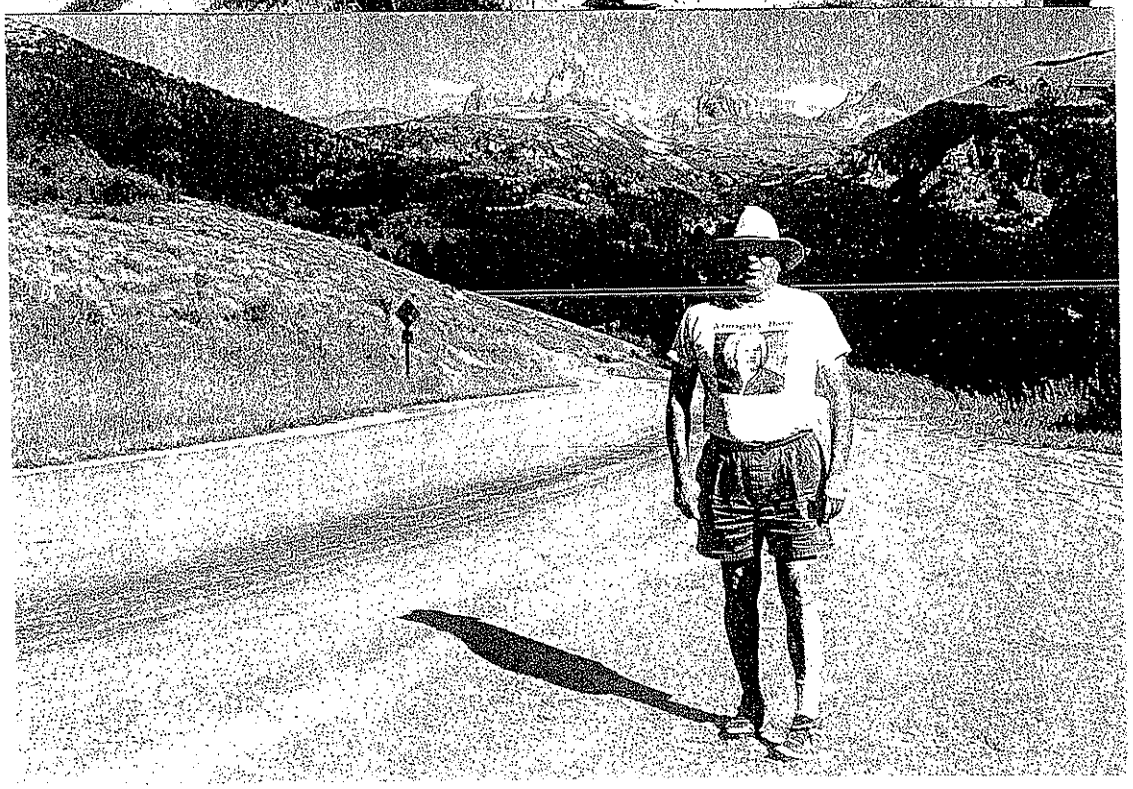
I'm learning to like myself more. I'm learning to share myself more. I'm beginning to open up more. I'm enjoying each day more.

I want a partner - a companion - a best friend someone I can share my journey with. I want my sexuality - it was gone for so many years but now I have it back, and I'm not willing to lose it or bury it again.

I don't have an agenda. I just want to keep growing & learning. Most of all I want to be kind. That's a very important quality that I want to nurture in myself.

This is me .... and I like you John .... and I'm scared, nervous, happy, excited .... all at the same time. Does any of this make sense?





4-11-96

PLAINTIFF'S EXHIBIT PX 98 Q
CV02-208
6-12-03

20,000 Road
20,000 Power
6,000 well
6,000 septic
10,000 basement
62,000
112,000 loss
174,000
15,000 barn
15,000 fence
204,000

1400
80
112000

plaintiffs' title to real property as against judgment liens claimed by defendants and plaintiffs appealed. The Supreme Court, Sullivan, J., held that where agreement of purchase and sale between purchasers' immediate grantors and grantors' grantors made no reference to agreement between immediate grantors and purchasers and was not conditioned in any way on existence or performance of the latter, and immediate grantor dealt with each of his opposite contracting parties at arm's length, there were two independent agreements of sale and immediate grantors did not serve as mere conduit for naked title, notwithstanding that both transactions were processed through the same escrow and simultaneously closed; thus, immediate grantors' interest was one to which outstanding judgment liens could attach.

Affirmed.

Opinion, Cal.App., 76 Cal.Rptr. 214, vacated.

Mosk, Acting C. J., and Tobriner, J., dissented.

1. Judgment ⇐780(5)

Where agreement of purchase and sale between purchasers' immediate grantors and grantors' grantors made no reference to agreement between immediate grantors and purchasers and was not conditioned in any way on existence or performance of latter and immediate grantor dealt with each of his opposite contracting parties at arm's length, there were two independent agreements of sale and immediate grantors did not serve as mere conduit for naked title, notwithstanding both transactions were processed through the same escrow and simultaneously closed; thus, immediate grantors' interest was one to which outstanding judgment liens could attach. West's Ann.Code Civ.Proc. § 674.

2. Trusts ⇐63¾

A resulting trust, like an express trust, is based on manifestation of intention of the person creating it.

3. Trusts ⇐72, 86

A resulting trust is not founded on the simple fact that money or property of one has been used by another to purchase property but is founded on a relationship between the two, on the fact that as between them, consciously and intentionally, one has advanced the consideration wherewith to make a purchase in name of the other; the trust arises because it is a natural presumption in such case that it was parties' intention that ostensible purchaser should acquire and hold property for one with whose means it was acquired.

4. Judgment ⇐780(5)
Trusts ⇐72

Where it was not shown that intention in using title insurer as escrow to process transfer of property from grantors to their grantees and from grantees to their purchasers, with simultaneous closings and payment of funds only by purchasers, with profit remitted to grantees and balance to grantors, was that grantees would be merely ostensible purchasers, failure to require grantees to advance funds of their own did not give rise to resulting trust and no fraud or wrongdoing could be imputed to grantees by "middleman" escrow's shortcut of crediting grantees with funds advanced and debiting grantees with balance due grantors; thus, interest of grantees was one to which outstanding judgment liens could attach. West's Ann.Code Civ.Proc. § 674.

Joseph L. Bortin, San Francisco, for plaintiffs and appellants.

Gerald R. Knecht, Joseph L. Fink, Knecht, Dingus, Fink & Boring, Joseph A. Kiernan, Joseph H. Inglese and Bruce M. Lubarsky, San Francisco, for defendants and respondents.

SULLIVAN, Justice.

In this action to quiet title, plaintiffs Adolfo and Consuaelo Majewsky appeal from a judgment which although declaring them to be the owners of certain real property, decreed that their interest therein

MAJ

was subject to judgment
defendants.[1] (Code Civ.

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was subject to judgment liens in favor of defendants.[1] (Code Civ.Proc. § 674.)[2]

The evidence which is uncontradicted discloses the following facts. On January 11, 1965, one Allen Waugh entered into an agreement in writing[3] with Irving and Beatrice Cuslidge to purchase from the latter a parcel of real property in San Francisco for $11,000. Waugh then endeavored to find a buyer who would pay $12,500 for the property. He approached Fuentes, a real estate broker, who was not interested but who referred him to Gummufsen, another broker.

Mr. Gummufsen contacted plaintiff Adolfo Majewsky, also a real estate broker, who indicated an interest in the property. He provided the latter with a preliminary title report showing that on January 11th the property was vested in Mr. and Mrs. Cuslidge and that it was not subject to any liens or encumbrances. Mr. Majewsky inspected the property, talked to the tenant and eventually informed Gummufsen that he would make an offer on the property. On January 23, 1965, Mr. and Mrs. Majewsky entered into an agreement in writing to purchase the property and improvements for $12,500. The agreement[4] was signed by Gummufsen "as agents for sellers."

An escrow was opened at First American Title Company which had issued the preliminary title report mentioned above. The title company's file for this particular escrow was received in evidence below and has been transmitted to this court. The file contains among other documents, copies of both the agreement of sale dated January 11th and the agreement dated January 23rd, as well as instructions by all of the parties. Mr. and Mrs. Cuslidge deposited in the escrow their deed to Allen and Dorothy Waugh with a demand for $11,000; Mr. and Mrs. Waugh deposited their deed to Mr. and Mrs. Majewsky with a demand for $12,500 and instructions to pay $11,000 on delivery of the Cuslidge deed, broker's commission and other charges and to remit the balance to them. Mr. and Mrs. Majewsky deposited the sum of $11,655.28 representing the balance[5] due on the purchase price and closing costs with instructions providing for the disbursement of all funds upon delivery of a deed and issuance of a standard form title insurance policy in the amount of $12,500 insuring title to be vested of record in their names subject only to taxes and assessments not delinquent.

Upon the closing of the escrow $11,014.18 was paid to the Cuslidges, $1,109.25 to the Waughs, $375 as commission to the broker and $156.85 to the title company. The deed from the Cuslidges to the Waughs was recorded immediately before the deed from the Waughs to the Majewskys.

Mr. Majewsky repaired and improved the property. When he decided to sell it in September 1965, he ordered a preliminary title report and learned for the first time that the property had been conveyed to him by the Waughs and that his title was subject to judgment liens against the Waughs

1. Defendants are: Empire Construction Co. Ltd.; Glens Falls Insurance Company (assignee of Empire); United California Bank; and Anderson & Perkins, Inc.

2. Code of Civil Procedure, section 674 provides in pertinent part that an "abstract of the judgment or decree of any court of this State, including a judgment of any court sitting as a small claims court, or any court of record of the United States * * * may be recorded with the recorder of any county and from such recording the judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, * * *"

3. A printed form adopted by the San Francisco Real Estate Board and entitled "Uniform Agreement of Sale and Deposit Receipt."

4. A printed form of Uniform Agreement of Sale and Deposit Receipt identical with that used in the Waugh-Cuslidge transaction (see fn. 3, *ante*). The January 23d agreement however nowhere contains the names of either the Cuslidges or Waughs.

5. After receiving credit for their deposit of $1,000 paid on execution of the deposit receipt dated January 23, 1965.

amounting to approximately $50,000. The Majewskys had never heard of the Waughs before. Shortly thereafter they commenced the instant action.[6]

The trial court found and concluded that the subject property was purchased by the Waughs from the Cuslidges for a valuable consideration; that it was then sold by the Waughs to the Majewskys for a valuable consideration; that the only cash deposited in the escrow was that of Majewskys'; that neither Allen nor Doris Waugh acted as trustee for the Majewskys in the purchase and sale transactions; that the judgment liens attached during the period of ownership of the property by the Waughs; and that although plaintiffs Majewsky were the owners, their interest in the property was subject to the liens and plaintiffs were not entitled to a decree quieting title as against such liens. Judgment was entered accordingly.

Since the controlling facts of the controversy are clear and undisputed, and susceptible of but one rational inference, the crucial issue confronting us is one of law. (See Baugh v. Rogers (1944) 24 Cal.2d 200, 206, 148 P.2d 633; cf. Mah See v. North American Acc. Ins. Co. (1923) 190 Cal. 421, 426, 213 P. 42.) We must determine whether the liens of the judgments against the Waughs attached to the property during the brief, indeed minute, period of time in which Mr. and Mrs. Waugh held title. Contending that no liens attached, plaintiffs argue that the Waughs were trustees or mere conduits;[7] that having no money of their own invested in the property but rather "using" that of plaintiffs, the Waughs "had no right to control the title" but could only "pass it on to plaintiffs"; and that since they had only "naked title" no liens attached. We find no basis in law or in the record for such a claim and have concluded that the decision of the trial court should be upheld. We affirm the judgment.

[1] We think that the uncontradicted evidence establishes, as indeed the trial court determined, that there were here two separate and independent sales of the property, based upon two separate agreements of sale, supported by separate considerations and effectuated by separate conveyances. Apart from the Majewsky agreement of January 23rd and regardless of its continued vitality, eventual performance or sudden demise, the agreement of purchase and sale entered into between the Cuslidges and the Waughs had its own exclusive and individual existence. It made no reference to the later agreement; nor was it conditioned in any way upon the existence or performance of the latter. By the terms of the January 11th agreement, Waugh was bound to purchase the property for the stipulated consideration. There was nothing to prevent his deposit of his own funds in order to carry out the agreement; he could have discharged his obligations as buyer under this agreement leaving a longer interval of time to discharge his obligation as seller under the later agreement. Indeed, if for some reason the later agreement could not be performed, Waugh would nevertheless remain bound to the Cuslidges and required to perform his agreement with them according to its terms, and at the time of performance to pay them the stipulated $11,000 for their deed.

The clear facts of this case show that Waugh contracted to buy from the Cuslidges and then contracted to sell to the Majewskys so that he could make a profit. These were two separate sales in which he participated first as buyer and then as seller; he dealt with each of his opposite contracting parties at arm's length. He was

6. Plaintiffs inform us that they have already received payment from the title insurance company to the extent of the latter's liability under the policy of title insurance issued plaintiffs but assert that their actual loss exceeds the proceeds of the policy.

7. Plaintiffs assert "The Waughs were express, resulting or constructive trustees, only; or mere conduits, through which title passed." However, as we explain *infra*, plaintiffs confine themselves to the point that the facts give rise to a resulting trust.

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in no way different from countless others who acquire property in the hope of reselling it at a profit. There is simply nothing in the record before us which makes these two transactions one or which transmogrifies Waugh, the entrepreneur, acting for his own gain, into Waugh, the trustee, acting in the interest of another.

Nor did these two separate transactions whose individual entities had been already established, become coalesced by being processed in a single escrow or with a simultaneous closing.

The facts of the instant case exemplify what has been called a "middleman" escrow. "A, as seller, and B, as purchaser, give separate instructions to X, escrow holder, for the sale and purchase of Blackacre for $10,000. B, as seller, and C, as purchaser, give separate instructions to X, escrow holder, for the sale of Blackacre for $15,000. B, of course, is acquiring the land from A and reselling it to C at a $5,000 profit. *There are technically two escrows*; but the escrow holder is the same, the two escrows are to be closed together, and the instructions are often kept in the same portfolio." (Ogden's California Real Property Law (1956), § 21.4(4) (c), p. 904, italics added.) [8]

In sum, Mr. and Mrs. Waugh, pursuant to the agreement dated January 11, 1965 with Mr. and Mrs. Cuslidge, acquired the subject property as their own, albeit with the objective in view of reselling it at a profit. At the time of such acquisition there were, and prior thereto had been, judgments outstanding against the Waughs of which abstracts had been properly recorded in San Francisco. Upon recordation of such abstracts with the county recorder each "judgment or decree becomes a lien upon all the real property of the judgment debtor, not exempt from execution, in such county, *owned* by him at the time, *or which he may afterward and before the lien expires, acquire.* * * *" (Code Civ.Proc. § 674, italics added.) It is manifest that when the Cuslidges delivered their deed to the Waughs, the latter *acquired* the subject property as the actual owners on their own behalf,[9] and not in trust or as agents on behalf of any other person or persons. At the instant of such acquisition, the existing liens attached. To ignore their operative effect because the Waughs immediately conveyed to plaintiffs, would be to frustrate the purpose of the statute and emasculate its provisions by conditioning their efficacy upon the length of time the judgment debtor owned the property. The above statute took effect the *instant* the judgment debtor acquired the property irrespective of how long he might decide to hold it.

8. The confidential character of the multiple instructions in a "middleman" escrow provides additional proof that it actually consists of two escrows. The above cited authority continues: "The rules applicable to disclosure of escrow instructions in this case are as follows:

"A is entitled to see B's instructions relative to the purchase from A, but he is not entitled to information as to the instructions between B and C.

"B is entitled to see the instructions of either A or C.

"C is entitled to see only the instructions of B concerning the sale from B to C. (*Farmer, Escrows*, p. 74.)

"X, the escrow holder, is under no legal duty—in fact, it would be a breach of confidence—to inform A or C as to the terms or existence of the escrow to which either is not a party, assuming that the instructions do not expressly demand such information. (Blackburn v. McCoy, 1 C.A. 2d 648 [37 P.2d 153]; Shiver v. Liberty Building-Loan Assn., 16 Cal.2d 296 [106 P.2d 4], remarks of J. Carter at p. 308.)" (Ogden, op. cit. *supra.*)

9. Since, as we have explained, the Waughs became the actual owners of the property, they did not take mere "naked" title. We therefore find inapplicable plaintiffs' authorities cited for the propositions that "the lien of a judgment does not attach to a naked title but only to the judgment debtor's interest in the real estate; and if he has no interest, though possessing the naked title, then no lien attaches. [Citation.]" (Davis v. Perry (1932) 120 Cal.App. 670, 676, 8 P.2d 514, 517; see also Iknoian v. Winter (1928) 94 Cal.App. 223, 225, 270 P. 999.)

Nevertheless plaintiffs contend that all of the foregoing conclusions must yield to trust principles brought into play by the circumstance that the Waughs in acquiring the property "used" the Majewskys' money without the latter's knowledge or consent. As we have said, plaintiffs do not advance a precise thesis, being content with the scattershot attack that the "Waughs were express, resulting *or* constructive trustees, only." (Italics added.) However, plaintiffs make no argument that there was an express trust in the instant case, as it seems obvious they cannot (see Rest.2d Trusts, §§ 2, 23), and we need not consider the point.

[2, 3] All that we can glean from plaintiffs' briefs is the semblance of an argument that the Waughs' use of the Majewsky money gave rise to a resulting trust. But a resulting trust, like an express trust, is based on the manifestation of intention of the person creating it. (Rest.2d Trusts, § 1, com. e, p. 5; see also 4 Witkin, Summary of Cal.Law (7th ed. 1960) Trusts, § 80, p. 2964; 5 Scott, Trusts (3d ed. 1967), § 404.2, p. 3215; § 440.1, p. 3315.) Contrary to plaintiffs' apparent position here, a "resulting trust is not founded on the simple fact that money or property of one has been used by another to purchase property. It is founded on a relationship between the two, on the fact that as between them, *consciously and intentionally,* one has advanced the consideration wherewith to make a purchase in the name of the other. The trust arises because it is the natural presumption in such a case that it was their *intention* that the ostensible purchaser should acquire and hold the property for the one with whose means it was acquired." (Lezinsky v. Mason Malt W. D. Co. (1921) 185 Cal. 240, 251, 196 P. 884, 890, italics added; see also Berniker v. Berniker (1947) 30 Cal.2d 439, 447, 182 P.2d 557; Seabury v. Costello (1962) 209 Cal.App.2d 640, 645, 26 Cal. Rptr. 248; Baskett v. Crook (1948) 86 Cal.App.2d 355, 362, 195 P.2d 39; Treager v. Friedman (1947) 79 Cal.App.2d 151, 167–168, 179 P.2d 387; Owings v. Laugharn (1942) 53 Cal.App.2d 789, 792, 128 P.2d 114.) Plaintiffs have not directed our attention to any facts in the present record satisfying the requisite fact of intention. McGee v. Allen (1936) 7 Cal.2d 468, 60 P.2d 1026 and Mercantile Collection Bureau v. Roach (1961) 195 Cal.App. 2d 355, 15 Cal.Rptr. 710, cited in support of their claim of a resulting trust are distinguishable on their facts, involve transactions manifesting the requisite intention of the parties, and, therefore require no detailed consideration.

Apart from the bare assertion quoted above, plaintiffs make no argument and furnish no authorities in support of a claim that the Waughs' use of the money gave rise to a constructive trust. Since plaintiffs do not press the point, we do not feel obliged to treat it in detail.

The general rule (subject to exceptions not here pertinent) is that "Where a transfer of property is made to one person and the purchase price is paid by another, a resulting trust arises in favor of the person by whom the purchase price is paid, * * *" (Rest.2d Trusts, § 440, p. 393.) This rule "is applicable not only where the purchase price is paid directly to the vendor by a person other than the transferee, but also where the purchase price is paid to the vendor by the transferee with money or other property belonging to another person with the consent of the other person. Thus, when a transfer of property is made to one person and the purchase price thereof is paid by him with money or other property belonging to another person with the consent of the latter, a resulting trust arises in his favor." (Rest.2d Trusts, § 440, com. h, p. 395.) Comment h, however, continues: "If the other person did not consent to the use of his money or other property in making the purchase, or did not consent that the property purchased should be transferred to the transferee, a constructive trust and not a resulting trust arises." (Accord, Fulton v. Jansen (1893) 99 Cal. 587, 590–591, 34 P. 331; 5 Scott, op. cit. *supra*, § 404.2; Bogert, Trusts (2d ed. 1964), § 451, at 498–499.)

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The judgment is

McCOMB, PET
concur.

[4] Under the last theory, it is conceivable that, in some instances, a person wrongfully using the money of another to acquire title to property would be under the equitable duty to convey it to the former in order to prevent unjust enrichment. (Rest., Restitution, § 160; see also Bainbridge v. Stoner (1940) 16 Cal.2d 423, 428–429, 106 P.2d 423; 5 Scott, op. cit. *supra*, § 404.2.) We do not perceive however and plaintiffs do not establish from the record, that the Waughs wrongfully converted or appropriated the Majewskys' funds and used them to acquire the property within the principles of constructive trusts. Indeed, we would say that the Waughs did not convert or appropriate the funds at all. It is only when the entire middleman escrow, after being closed, is viewed in retrospect that one may say that *in effect* the Waughs used the funds. But the establishing of a single escrow was due solely to a decision and practice of the title company, apparently a settled and accepted practice in the title insurance field (see Ogden, op. cit. *supra*), and not due to any act, much less scheme, of the Waughs. The escrow files show that Mr. and Mrs. Majewsky's money was paid to the title company. Presumably in this type of escrow where the title company is called upon to make a simultaneous closing of actually two escrows, the title company in taking seller's instructions from the Waughs *on the same day* as it took buyer's instructions from the Majewskys' (along with the purchase price) took the "short-cut" of crediting the Waughs with the $12,500 coming from the Majewskys' and debiting them with the $11,000 due the Cuslidges. We cannot impute fraud or wrongdoing to the Waughs, or conclude that they were unjustly enriched, merely because the title company employed such adjustments without requiring the Waughs to deposit cash of their own for their purchase of the property.

The judgment is affirmed.

McCOMB, PETERS and BURKE, JJ., concur.

MOSK, Acting Chief Justice (dissenting).

I dissent.

The majority search for a resulting trust and fail to find the parties "consciously and intentionally" entered into a trust relationship. What they overlook is that under these circumstances, an intention is *presumed* by operation of law. Since 1872, Civil Code, section 853 has provided "When a transfer of real property is made to one person, and the consideration therefor is paid by or for another, a trust is presumed to result in favor of the person by or for whom such payment is made."

This is precisely the kind of case in which such presumption should be invoked in order to avoid a gross miscarriage of justice. The "transfer of real property" referred to in section 853 was initially made to Waugh, but "the consideration therefor," also as provided in that section, was paid entirely by the plaintiff. No funds other than those of the plaintiff were deposited in the single escrow used in this transaction.

The plaintiff paid $12,500 into escrow, presumably to the property owners, the Cuslidges. He was unaware that Waugh intended to, or did, acquire any interest in the property. At no time did he consent to Waugh acquiring any interest in the property. To now saddle plaintiff with liens for some $50,000 worth of Waugh's indebtedness—approximately four times the value of the property—merely because Waugh acquired a theoretical transitory title is the ultimate in exalting form over substance.

Conceivably we could find a constructive trust here. However, these facts more properly qualify as a textbook illustration of a resulting trust. By definition a resulting trust arises from a transfer of property under circumstances indicating that the parties did not intend the transferee to take a beneficial interest. (Rest., Trusts, §§ 404, 440, 456.) It cannot be denied that no one intended Waugh to acquire any interest in the property. Wit-

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned hereby certify this date, Nov. 6, 2003, that I did mail copies of the foregoing document, in separate envelopes with first class postage affixed thereto, to each of the following persons at the stated addresses:

Judge Richard T. St. Clair
605 N. Capital Ave
Bonneville Courthouse
Idaho Falls, ID 83402

Galen Woelk
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Alva Harris
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David Shipman
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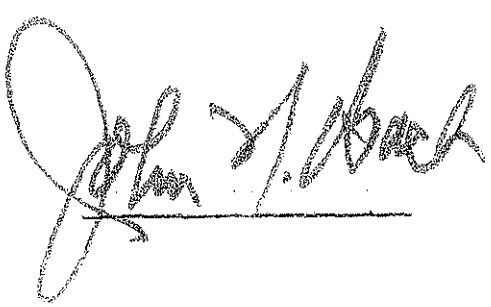
Gregory Moeller
P.O. Box 250
Rexburg, ID 83440

Ann-Toy Broughton
1054 Rammel Mtn Road
Tetonia, Id 83452.

DATED: Nov. 6, 2003



HTEH

NOV 13 2003

Jason D. Scott, ISB No. 5615
HAWLEY TROXELL ENNIS & HAWLEY LLP
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TETON CO.
MAGISTRATE 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, Plaintiff, vs. KATHERINE D. MILLER, aka KATHERINE M. MILLER, Individually and dba R.E.M., et al., Defendants.	Case No. CV-02-0208 DISCLAIMER OF INTEREST

PLEASE TAKE NOTICE that Defendant Galen Woelk, individually & dba Runyan & Woelk, has never claimed, and hereby disclaims, any right, title, and interest in and to any of the real property referenced in the Second Claim for Relief, Third Claim for Relief, and Fourth Claim for Relief asserted in Plaintiff John N. Bach's First Amended Complaint in this action.

DATED this 10th day of November, 2003.

Galen Woelk

000950

STATE OF IDAHO)
) ss.
County of Teton)

On this 16th day of November, 2003, before me, Julie A. Shapiro, a Notary Public in and for said State, personally appeared Galen Woelk, known or identified to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

JULIE A. SHAPIRO NOTARY PUBLIC STATE OF IDAHO

Julie A Shapiro
Notary Public for Idaho
Residing at Victor
My commission expires 11/23/07

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of November, 2003, I caused to be served a true copy of the foregoing DISCLAIMER OF INTEREST by the method indicated below, and addressed to each of the following:

John N. Bach P.O. Box 101 Driggs, ID 83422	X U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy
Alva Harris P.O. Box 479 Shelley, ID 83274	X U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy
Galen Woelk Runyan & Woelk, P.C. P.O. Box 533 Driggs, ID 83422	X U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy
Jared M. Harris Baker & Harris P.O. Box 577 Blackfoot, ID 83221	X U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy
Anne Broughton 1054 Rammell Mountain Road Tetonia, ID 83452	X U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy
David H. Shipman Hopkins Roden Crockett Hansen & Hoopes, PLLC P.O. Box 51219 Idaho Falls, ID 83405-1219	X U.S. Mail, Postage Prepaid ____ Hand Delivered ____ Overnight Mail ____ Telecopy

Jason D. Scott

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Tel: (626) 799-3146
(Seasonal Address: P.O.
Box 101, Driggs, ID 83422)
Plaintiff & Counterclaim Defendant
Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff &
Counterclaim
Defendant,

v.

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

Defendant &
Counterclaimant,
et al.,

/

CASE NO: CV 02-208
PLAINTIFF & COUNTERCLAIM DEFENDANT JOHN N. BACH'S SUPPLEMENTAL BRIEF NO. 1. IN SUPPORT OF HIS MOTIONS FILED NOVEMBER 6, 2003

A FULL HEARING IS REQUESTED & REQUIRED
DATE OF HEARING: Dec. 5, 2003
TIME OF HEARING: 9 a.m or T/A
PLACE: TETON COUNTY COURTHOUSE
89 N. Main, Driggs, ID.

This PLAINTIFF & COUNTERCLAIM DEFENDANT JOHN N. BACH'S Supplemental BRIEF NO. 1, is offered in further support of all his motions filed, November 6, 2003. Emphasis herein will be on a topical or outline of egregiously judicial mistakes, errors, neglects, deliberate violations of plaintiff's procedural and due process rights and equal protection rights and the ongoing predisposed mindset via corrupt, fraudulent and void rulings, which made a complete Draconian mockery and denial of justice to JOHN N. BACH.

1. The unassailable facts, events and developments, are already set forth in plaintiff's affidavits, all of them, on file herein; From the filing of the initial complaint it was clear that any main claim or claims was that of quiet title, partition, partnership dissolution and resolution, all claims issues clearly in equity, to

be tried solely by the court, as existed not only at common law, but mandated by I.C. sections 6-414 and 6-415, et seq, and the numerous cases cited by plaintiff from the Idaho Supreme Court, especially Loomis v. Union Pac R.R. Co. 97 Idaho 341, 544 P.2d 299, 304, citing a long list of Idaho cases clearly limiting all issues even jointed therewith, per I.C. sec. 6-414, to be tried solely by the court. (See Supp'l Aff of J.N.B., filed July 16, 2003, pages 8-14) The requirements of IRCP, Rule 65 mandated the court to retain, remember and apply thereafter at any further hearings of whatever nature and most certainly, at court trial upon all issues joined therewith, per sec. 6-414, all the testimony of plaintiff and all evidence received during his testimony and proceedings held on August 13, and 15, 2003. [1st Amended Complt, Par 4, P. 3]

2. In Plaintiff's FIRST AMENDED COMPLAINT filed Sept. 27, 2002, he further incorporated all of said testimony, exhibits and evidence specifically and most emphatically per Par. 4, c), [P. 6];

> "Plaintiff refers to his initial complaint herein and his affidavits filed with the court in support of his requested relief of temporary restraining order, his further testimony and evidence presented in two separate days of hearing, August 13 and 15, 2002, and incorporates the same herein, further requesting judicial knowledge be taken by the court of all of such presentations by plaintiff, as well as the transcribed oral ruling of the court and it's preliminary injunction of August 16, 2002." [Emphasis added]

The evidence presented on said 2 days showed and established unquestionably the application, governing and controlling terms of the SETTLEMENT AGREEMENT, Quit Claim Deeds and Easement Agreement, all one package, of October 3, 1997, wherein per an Affidavit by Katherine Miller, in USDC, Idaho CV 99-014, she testified under oath, to defeat plaintiff JOHN N. BACH's claims therein, of her failure of consideration, fraud and his rescission of said SETTLEMENT AGREEMENT and integral documents, that she had never breached them, at all times honored them, and that both she and JOHN BACH, individually and as

nominee for Targhee Powder Emporium, Inc., his dba, via said SETTLEMENT AGREEMENT had resolved all claims between them arising or in any way related to their purchase of their respective 40 acres from the Harrops and the jointly owned strip of 110 feet by ½ mile.(See Supp'l Aff, July 16, 2003, Par 15, pp 15-19, & Pt's EX 96.) Such Miller's Affidavit, Plt's EX 96 in evidence, further has Miller's confession that she was aware of the doctrine of resulting and constructive trusts, as such claims were made by JOHN BACH against her and such claims were settled per said documents executed Oct. 3, 1997 and recorded that same day.

3. The ONLY TRUE ISSUES FOR THE COURT TO DECIDE WERE THOSE OF THE CRIMES COMMITTED BY THE NAMED CODEFENDANTS AGAINST PLAINTIFF, including not only Miller, McLean, Fitzgerald, Oleson, Lyle, Bagleys, Dawsons and counsel, ALVA A. HARRIS, GALEN WOELK, CODY RUNUAN, and ROY C. MOULTON. There were no counterclaims in equity that Miller could raise against plaintiff, as she had exhausted and previously had determined her actions/claims, adequately and completely at law, not only in said USDC, Cv 99-014, but in Teton CV 95-47, 01-59, and CV 00-76. The required findings the court should have made, were that of criminality, fraud and intentional, hateful, malicious and spiteful actions and torts, by all of said defendants against JOHN BACH. Any and all other claims of Miller were barred by the statute of limitations, the estoppel doctrines, res judicata, collateral estoppel, issue preclusion, judicial estoppel and quasi estopppel as well as promissory estoppel shown by the evidence as earl as Aug 13 and 15, 2002, all evidence of which was and remains uncontradicted. Moreover, Miller's claims if any had been totaly discharged in John Bach's Chapter 13 Bankruptcy proceeding in Northern Calif., and no machinations or professed jurisdiction or contrived discretion

by Judge St. Clair elevated him to a federal judgship position, for which he was never nominated, advised or consented and most certainly never confirmed or sworn to assume a federal court's absolute and exclusive jurisdiction over said Chapter 13, discharge of Miller and DAWSONS'-McLean's and Liponis' claims of any and every sort. (Pt's Trial Briefs 2 and 3, filed May 30, 2003, and June 2, 2003, and 40235 Washington Street Corpration v. Lusard 9th Cir. May 23, '03, entire opinion attached to said Brief No. 3.)

4. From the time of plaintiff's filing of his FIRST AMENDED COMPLAINT, Judge St. Clair became not just an advocate for Miller and all other defendants but a provocateur & purveyor of misapplied legal principles and even contrived unsupported prejudiced actions, rulings and eventually a void JUDGMENT and NINETEENTH ORDER on October 23,2003 & even before that per wholly void and unsupported, distorted of all evidence and the law, FINDINGS OF FACT AND CONCLUSIONS OF LAW, initially dated June 31, 2003, (June only has 30 days) and never filed with the Court clerk in Teton County as required by Idaho statutes and rules of court, civil procedure, etc. Plaintiff per his Affidavits filed July 9, 2003, Supplemental Affidavit filed July 16, 2003, his FURHTER MEMO. BRIEF, filed Oct. 1, '03 & incorporated in to & as part of his recent Affidavit filed, November 6, 2003, which latest affidavits were not addressed in any contra or opposing response memo briefs by Miller or her counsel, but simply left for Judge St. Clair to intercede and contest as their personal counsel. It is one thing for a party's attorney to fail to file any authoritative refuting brief and it is another thing, wholly improper for the court, to not accept such failure as a stipulation, if not confession and admissions of the correctness of plaintiff's filed affidavits and motions, but reveals such parties' reliance upon the judge to argue for their clients

and rule unconstitutionally in a matter of required advocacy or admission of liability; Judge St. Clair has a contrary mindset toward plaintiff, who he seems to require not only to be accurately specific, but, without any allowable basis of entitlement to justice, relief or redress per said Judge's intendments of protecting codefendants and their counsel who are exempt from his judicial requirements of administering justice equally to all. The court is specifically cited to the latest Affidavit filed Nov. 6, 2003, unopposed and uncontradicted or negated , and particularly, the analysis, arguments and authorities cited (latter also unrefuted) Pages 4, through 17, and the attached copies of Plaintiff's EXHIBITS Nos., 103, 104, 95, 97, 98A and 98B, which are still marked for identification but which should not be received in evidence for all purposes herein and particularly in granting plaintiff's motions per 50(b); 60(b)(1),(2),(3) & (4); 59(a), 1, 2, 3, 5, 6 and 7; and Rule 59(e). It primarily should be emphasized that the mistake, inadvertence, surprise or excusable neglect re Rule 60(b)(1) need not be that of plaintiff, but has been more than ambly shown to be that not only of Miller, her many counsel, and even witnesses, but the Court, Judge St. Clair. Sines v. Blaser, 98 Idaho 435, 566 P.2d 758 (1977)

5. But most egregiously overlooked by the Court, is the fact, besides allowing a jury trial upon issues solely to be tried by the court, was and is, it still has no equity jurisdiction to grant Miller any relief upon her frviolous, wholly without merit, vexatious and deliberately harassing claims. Not only the Judgement, Nineteenth ORDER, but also the FINDINGS OF FACT AND CONCLUSIONS OF LAW, and all rulings, orders or decisions of Judge St. Clair, as precursors or any claimed substantiations thereof, are "VOID" and deprive this Court of equity intervention, as Miller had utilized, waived and is

is estopped on all raised grounds by plaintiff, to proceed upon previous complete and adequate legal remedies which she cannot reassert. (See Affidavit, filed Nov. 6, 2003, Par 19, P. 8, through Par. 17, P. 17.) Catledge v. Transport Tire Co., 107 Idaho 602, 691 P.2d 1217 (1984); Morris v. Thompson , 130 Idaho 138, 937 P.2d 1212 (1997); Highland Enters. Inc. v. Barker, 133 Idaho 330, 986 P.2d 995 (1999).

6. The jury trial itself was a travesty of justice to plaintiff-s procedural and substantive rights of due process and equal protection, as has been set forth in his Affidavit of July 9, 2003, Pp 5-(Par 3(a)-(i), P. 9, and further supplemented per all Pt's Affiavits and Memoranda filed thereafter to date hereof. The court and counsel, are cited to page 7, Aff. of July 9, 2003, and Conley v. Wittlesey . 126 Idaho 630, 888 P.wd 804, 808-01 and all arguments on that page as to the deliberate and misleading jury instructions of Judge St. Clair, and his deliberate refusal and failure not only to not give all of plaintiff's jury instructions, submitting, especially numbers 1 and 19, but in conjunction therewith, even if a jury were properly empanelled to try any issues at law, which it was not, Judge St. Clair further refused and intentional discriminated against plaintiff by not ruling, in granting his motion for a complete directed verdict, which verdict and complete judgment was and still is required in plaintiff's favor on all counts and claims, and against Miller on all her unfounded and without merit counterclaims.

7. The arrogant disdain and failure of applying both the true facts herein and the applicable law by Judge St. Clair is no more exemplified than as set forth in Plaintiff's Supplement Affidavit, filed July 16, 2003, pages 4-20 and especially, but not exclusvely paragraphs 12-18, pp 12-19. Let's look at paragraph 12 thereof, which paragraph has not been refuted by either Miller, her counsel

or even Judge St. Clair in any counteraffidavit, document nor during oral arguments last presented before him in Idaho Falls:

> "12. The clear fact and conclusion that Judge St. Clair did not review any of the exhibits admitted before seeking to effect his biased and prejudiced findings of fact and findings is revealled by the facts which he flagrantly miscited, distorts and even conjures up to support said utterly erroneous and without substantial or materials evidence to supprt [his] findings. By way of example is finding "4," which fails to consider or accept the clear uncontracted evidence found in Plaintiff's EXHIBITS 5, 6, 6A, 7 and 12, which proved, and established that the VASA N. BACH Family was executed, established on June 15, 1993(over 9 months after the property at 195 N. Hwy 33 was purchased by Affiant in the dba name of Targhee Powder Emporium, Unltd), his mother was the initial trustee until September 27, 1997, on that date she signed the Consent Agreement of Succeeding Trustee, that being affiant (Ex. 5, 2d page); and on October 1, 1997, affiant Assigned and Transferred All Interests, etc., per said trust in Targhee Powder Emporium, Inc., Unltd, & Ltd., to himself, (EX 6) which assets, etc., were clearly stated to be his per Schedule A. Paragraph 5 of the Vasa N. Bach Family Trust, EX 5., and such being further reaffirmed per the Confirmation of All Rights, etc., document being EX 6A. Affiant's mother did not die "in December, 2000," but on "December 11, 2002" as shown by the County of [L.A.] Death Certificate, with obituary article and memorial service program, comprising EX. 12. Comparing the aforesaid proven facts and dates, further with said grossly misstated finding "4" more than shows the deliberate machinations of Judge St. Clair; such without any evidenitary basis in fact finding, reveasl the extent to which Judge St. Clair set out to distrot, manufacture and wholly contrive all other findings and conclusion contrary to affiant's clear and overwhelmingly undispute evidence, requiring the granting of complete quiet title to all 87 acres and the total denial of Miller's affirmative defenses and all her cunterclaims."

8. Nor can the described "rankled" or "ranklings" evidence and law which Judge St. Clair refuses to follow, apply or acknowledge as controlling in plaintiff's favor (Pt's most recent Aff., Nov 6, 2003, pp. 8-17) complete judgment against Miller and all codefendants, be otherwise described than prejudice, bias and despising mindset by said Judge against plaintiff. As stated, in par. 11, page s 10-11, of said Affid., filed Nov. 6, 2003: "Because estoppel as a doctrine

> is concerned with the acts of parties [here Miller, her counsel, agents and codefendants], as opposed to the legality of the corporation itself, we think the better rule is that the corporation by estoppel doctrine may be employed even when the corporation has not achieved de facto existence. [5]" (5. Id at Sec. 3902)

6. Additionally, we recognize decisional law to the effect that a person who conveys real property to an association as a corpor-

ation cannot avoid the conveyance by denying the corporate existence of the grantee. 8 Fletcher, supra note 4, sec. 3958. Bukacek v. Pell City Farms, Inc. 286 Ala. 141, 237 So. 2d 851 (1970) cert. denied, 401 U.S. 910, 91 S. Ct. 872, 27 L. Ed 2d 809 (1971); Jolley v. Idaho Securities, Inc., 90 Idaho 373, 414 P.2d 879, 888 (1966)."

How is it Judge St. Clair who was a political nominee for a vacancy on the Idaho Supreme Court did not know about the Jolley case, the further existence of it's citation and following in Willis v. City of Valdez 546 P.2d 570, in existence since 1976, nor, how could he not be knowledgeable or aware of the W. M. Fletcher, Cyclopedia of the Law of Private Corporations??? Judge St. Clair went more than out of the way in granting a number of defendants-in-defaults' motions that they may question and intrude upon plaintiff's hearings for damages, and other relief in his noticed default judgment hearings. Judge St. Clair found an obscure and inapplicable lower court case in an encyclopedia on federal procedures, which is also speciously applied by Judge St. Clair. What is next, for the machinations and inappropriatenesses of Judge St. Clair in this multiple claims action??? See also Hawe v. Hawe (1965) Idaho Supreme Court decision, 406 P.2d 106, 109-111, cited to this court, see page 10 of Aff., of Nov. 6, 2003, which further reveals the gross, deliberate errors of law and distortion of the evidence herein by Judge St. Clair.

9. The portions which plaintiff has identified as to other portions of the NINETEENTH ORDER which is sought to be reconsidered, are further, supported by this brief and all referenced affidavits and memoranda filed herein by plaintiff. The integrity of this Court is not longer a focus, but, the need for another judge to be assigned to restore that lost integrity, and commensurate therewith the vacating of all rulings, findings, conclusions, judgments and orders of Judge St. Clair, which refuse to grant justice and

proper relief and redress, as required to plaintiff and counterclaim defendant JOHN N. BACH. The evidence presented even by Miller's pleafull testimony of being a "victim" and of being defrauded by plaintiff; is more than simply not true nor proven; Miller's entire evidence was that"of protect me because I and my attorneys'who advised me, represented me and drew the agreements which I entered into with plaintiff, but which I now want ignored and forgotten, did not give me personal satisfaction in my vendetta and vengefulness, plus greed" in getting back at plaintiff. The plaintiff's said Exhibits 103, 104, 95a0b, 97a-d, 98a and 98b, which should now be admitted, establish the manipulations, obfuscations and distortions of reality that Miller daily perpetrates and has perpetrated, perjuriously and otherwise, upon the court and plaintiff. The attached decision of Majewsky v. Empire Construction Co., 467 P.2d 547, 550-552, further supports and establishes that plaintiff did not defraud, nor even violate any fiduciary duties or obligations to Miller, the latter of which there were none, and that what "RANKLES" both Judge St. Clair and Miller, is that plaintiff properly and businesswise legally offered to Miller the most westerly 40 acres, without any wrongdoing, nor any basis for any actions or involvement of equity whatseover, even if the court had equity jurisdiction herein, which it does and did not have whatsoever. As stated in Majewsky and most applicable herein: "The clear facts of this

> case show that . . . These were two separate sales in which he participated first as buyrer and then as seller; he dealt with each of his opposite contracting parties at arm's length. He was in no way different from countless others who acquire property in the hope of reselling it at a profit. There is simply nothing in the record before us which makes these two transaction one or which transmorgrifies Waugh, the enreprenuer acting for his own gain, into Waugh, the trustee, acting in the interest of another."

DATED: Nov. 20, 2003

John N. Bach

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned hereby certify this date, Nov. 20, 2003, that I did mail copies of the foregoing document, in separate envelopes with first class postage affixed thereto, to each of the following persons at the stated addresses:

Judge Richard T. St. Clair
605 N. Capital Ave
Bonneville Courthouse
Idaho Falls, ID 83402

Galen Woelk [PERSONAL DELIVERY TO HIS LAW OFFICE]
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Driggs, Idaho 83422

Alva Harris
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Jared Harris
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Blackfoot, ID 83221

Jason Scott
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David Shipman
P.O. Box 51219
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Gregory Moeller
P.O. Box 250
Rexburg, ID 83440

Ann-Toy Broughton
1054 Rammel Mtn Road
Tetonia, Id 83452.

DATED: Nov. 20, 2003

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
Plaintiff & Counterclaim
Defendant PRO SE

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff,

v.

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

Defendants & [Miller] Counter-claim defendant.

_____/

CASE NO. CV 02-208

PLAINTIFF & COUNTERCLAIM DEFENDANT JOHN N. BACH'S SUPPLEMENTAL BRIEF NO. 2., IN SUPPORT OF HIS MOTIONS FILED NOVEMBER 6, 2003.

Date of Hearing: Dec. 5, 2003
Time of Hearing: 9 a.m. or T/A
Place: Teton County Courthouse
89 N. Main St., Driggs,

As of the date and time of this Supplemental Brief No. 2., no opposition, no counteraffidavits and no memorandum briefs by defendant MILLER's counsel or by defendant ANN-TOY BROUGHTON, pro se, have been filed or received by plaintiff. Such silence, and absence of any response, opposition and or positions against plaintiff's said motions filed November 6, 2003, must be considered and utilized by the court, as but firm, unequivocal admissions and stipulation to the merits of all his said motions and that such requires the court to grant in full, in each and every particular, said plaintiff's motions.

Again, Plaintiff, objects, to any effort or intrusions of Judge St. Clair, to become or serve, in any manner or consideration, as counsel for Miller or Broughton, and, that he exercise his requisite duties, by granting all of plaintiff's motions. The abuses of Miller and all defendants and their counsel in relying

on Judge St. Clair to do their jobs in representing their clients and to save their "legal chestnuts" even in any showing of judicial spirit for the forthcoming holidays, it more than an abomination of judicial misuse of powers, discretion and responsibilities. It is but an absolute perversion of plaintiff's rights of due process and equal protection.

I. CORRECTIONS OF TYPING ERRORS IN PLAINTIFF'S SUPPLEMENTAL BRIEF NO. 1., filed NOV. 20, 2003

Plaintiff's said SUPPLEMENTAL BRIEF NO. 1., filed November 20, 2003 had certain inadvertent and patently excusable typing errors, which are corrected hereby as follows:

a) Page 5, 13th line from the top, underlined, wherein such line reads: "identification but which should not be received in evidence for all. .", is corrected as to the word "not" therein, which should be and is changed to the word "now" [continuing] received in evidence for all purposes herein. ." (NOTE: See P. 9, line 10th line, the sentence which states: "The plaintiff's said EXHIBITS 103, 104, 95 a- b., 97a-d 98a and 98b, which should now be admitted, establish the machinations, obfuscations and distortions of reality that Miller daily perpetrates and has perpetrated, perjuriously and otherwise, upon the court and the plaintiff. . .")

b) Page 5, third line from the bottom, the last word "or" is hereby corrected to be and read: "of".

II. OTHER LEGAL PRINCIPLES AND APPLICATIONS OF AUTHORITITIES WHICH REQUIRE THE GRANTING OF ALL PLAINTIFF'S MOTIONS.

9. [Continuing in numerical sequence, that point "8." Page 7, Supplemental Brief No. 1;] MILLER has absolutely no recoverable damages under any of her counterclaims, not only because they were all barred, outlawed and frivolous as a matter of law, but, further, because, even had she a claim for common law fraud, which she did not, her damages were only that of her out of pocket losses, to wit, what she paid for the westerly 40 acres, subtracted by the figure of what was, if in fact there was

the lower fair market value of said 40 acres. But as the Court has correctly finally concluded, plaintiff could set whatever price he wanted or sought for the sale of said 40 acres. And as Miller admitted in her EXHIBIT 96, such was an "equitable price". But, per the adulterated fiction of Miller's claim which she convolutedly pursued frivolously, she never presented any evidence of such out of pocket expenses whatsoever. Her equity claim of resicssion was barred, because, as stated, previously, she had more than an adequate remedy at law, which she not only timely failed to state and prosecute, in USDC, CV 99-014, but is forever barred by Rule 13(a); and further, by the doctrines of judicial estoppel, claim and issue preclusion, quasi estoppel, etc., and most unrefutably, the Settlement Agreement Terms and Deeds of October 3, 1997. See and incorporated herein is PLAINTIFF & COUNTERCLAIM DEFENDANT JOHN N. BACH'S SPECIAL MEMORANDUM BRIEF & INITIAL ARGUMENT RE ELECTION OF REMEDIES DOCTRINE IN IDAHO; WAIVER OF EQUITY CLAIMS BY DEFENDANT MILLER, and FAILURE OF MILLER TO SHOW INADEQUATE REMEDIES AT LAW, IF SUCH LAW CLAIMS WERE NOT ALREADY BARRED.; see especially pages 2-5; also: C. H. Leavell & Co. v. Grafe Associates , 90 Idaho 502, 414 P.2d 873; Motu v. Schultz (1964) 86 Idaho 531, 388 P.2d 1002 (Promissory estoppel is substitute for lack of consideration wherein injustice would otherwise result.-[such especially applying herein to hold and find Plaintiff and Miller in a management partnership on terms plaintiff testified to, and submitted affidavits on file herein, as to his become the sole owner of the most westerly 40 acres, initially deed to Miller, as a single woman.].) As stated previously in plaintiff's briefs, neither the Court, Judge St. Clair, can award any damages, not even $500.00 to Miller under any of her claims.

11. Nor can the court's, Judge St. Clair's, refusal to recognize the fudiciary relationship and attendant duties, MILLER had with plaintiff, in not taking any advantages of him, either by said VOID Nov. 21, 2003 WARRANTY DEEDS, nor in denyin the existence, terms and facts of said management partnership, with plaintiff of the most westerly acres, which he is now the sole surviving, and proper owning partner of all said westerly 40 acres, and all parcels of the jointly owned 110 foot wide previously held joint property parcels. (See said SPECIAL MEMORANDUM BRIEF, etc., cited and incorporated herein per "10", supra)

12. Most egregiously, prejudicially a reversible error, is this court's refusal, Judge St. Clair's illegal protectivism, to refuse Plaintiff's right to prosecute his Idaho R.I.C.O. claims. Said Idaho state RICO claim was not decided nor barred by any ruling or order of Judge Nelson, in USDC, CV 01-266-E-TGN. Judge Nelson, once finding that all pendent Idaho claims and actions could be prosecuted in the Teton County District Seven Court, had no jurisdiction over the parties or subject matter to determine the validity or lack thereof of said RICO IDAHO CLAIMS OF PLAINTIFF. Judge St. Clair's corrupt legal blessings and santuary to the defendants herein, and especially ALVA HARRIS' involvements, complicities and L.D.S. high priest status, by denying the viability and provability of said Idaho RICO claim is revealing of all his VOID DRACONIAN ORDERS and the JUDGMENT of October 21, 2003.

Further points, authorities and citations will be provided in oral arguement by plaintiff.

DATED: December 3, 2003

John N. Bach

JOHN N. BACH, Plaintiff & Counterclaim Defendant Pro Se.

CERTIFICATE OF SERVICE BY MAIL

I, the undersigned hereby certify this date, December 3, 2003, that I did mail copies of the foregoing document, in separate envelopes with first class postage affixed thereto, to each of the following persons at the stated addresses:

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DATED: Dec 3, 2003

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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, Plaintiff, vs. KATHERINE D. MILLER, aka KATHERINE M. MILLER, Individually and dba R.E.M., et al., Defendants.	Case No. CV-02-0208 REQUEST FOR PRETRIAL CONFERENCE

Pursuant to I.R.C.P. 16(d), Defendant Galen Woelk, individually & dba Runyan & Woelk ("Woelk") requests that the Court schedule a pretrial conference in connection with the trial scheduled for January 27, 2003. Woelk has no objection to the pretrial conference being held in Bonneville County if that location would be more convenient for the Court.

000968

DATED THIS 12th day of December, 2003.

HAWLEY TROXELL ENNIS & HAWLEY LLP

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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12th day of December, 2003, I caused to be served a true copy of the foregoing REQUEST FOR PRETRIAL CONFERENCE by the method indicated below, and addressed to each of the following:

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Jason D. Scott

000071

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date December 23, 2003
Time 2:30 pm
Deputy Clerk MSouthwick

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 **ADDITIONAL FINDINGS OF FACT AND CONCLUSIONS OF LAW**

I. PROCEDURAL BACKGROUND OF THE CASE

On September 27, 2002, plaintiff John N. Bach ("Bach") filed a first amended complaint against defendant Katherine Miller ("Miller") and several other defendants, seeking as to Miller a decree quieting title to four tracts of real property comprising approximately 87 acres in Teton County, Idaho and seeking other

relief not pertinent to these additional findings and conclusions.

On March 17, 2003, Miller filed an answer and counterclaim against Bach seeking a decree quieting title or imposing a constructive trust on the same four tracts of property in Teton County, Idaho based on fraud and breach of fiduciary duty, and seeking other relief not pertinent to these additional findings and conclusions.

On April 7, 2003, Bach filed an answer denying Miller's counterclaim and alleged as affirmative defenses 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 counterclaim 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.

Both parties requested a jury trial. However, in a pretrial

order, this Court ordered that it would be the trier of fact as to the statutory and equitable claims and counterclaims of both parties involving title to the 87 acres in Teton County, with any relevant findings of the jury being advisory only. The jury trial was held from June 10 through June 19, 2003.

On July 1, 2003, this Court entered findings of fact and conclusions of law, concluding inter alia that Miller was entitled to a decree quieting title to the 87 acres as against Bach if she elected such remedy in lieu of $127,456.73 in damages awarded her by the jury on her fraud and breach of fiduciary duty counterclaims. This Court also concluded that Bach did not prove any defenses to Miller's counterclaims for quieting of title.

On July 8, 2003, Miller elected to receive a decree of quiet title in lieu of the jury's verdict of damages based on fraud and breach of fiduciary duty by Bach. On October 23, 2003, this Court entered a partial judgment quieting title to the 87 acres in favor of Miller and against Bach. A court trial was scheduled for December 5, 2003, pursuant to I. C. §§ 6-414 through 417 for Miller and Bach to present evidence as to the value of improvements installed on the 87 acres by Bach in good faith.

On December 5, 2003, Bach and Miller appeared and presented the testimony of John Bach and Katherine Miller and several exhibits. In addition, the parties requested the Court to consider other testimony and exhibits admitted in earlier evidentiary hearings and trials. The Court solicited from both

parties proposed findings of fact and conclusions of law, and the Court granted leave for both parties to provide written argument.

On December 17, 2003, Miller filed a memorandum of law arguing that Bach's improvements were not installed in "good faith." On December 19, 2003, Bach served a memorandum of law and proposed findings seeking $508,000.00.

Based on the evidence admitted at all evidentiary hearings and trials, including the Court's evaluation of the credibility of the witnesses' testimony and the exhibits, pursuant to Rule 52(a), I.R.C.P., the Court makes the following additional findings of fact and conclusions of law pursuant to I. C. §§ 6-414 through 417 from a preponderance of the evidence.

II. ADDITIONAL FINDINGS OF FACT

27. With a couple minor exceptions discussed below, at various times from 1994 and before Miller served her March, 2003 counterclaim seeking to quiet title to the 87 acres, Bach installed various improvements on the four tracts of real property, all situated in Township 5 North, Range 45 East, Boise Meridian, Teton County, Idaho, more particularly described as:

> 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 "6.63 acre access strip").

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

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

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 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, comprising 3.3 acres more or less (hereafter "3.3 acre access strip").

These improvements were installed while Bach occupied such real property under color of title, because Bach was operating under the name of Targhee Powder Emporium, Inc. which was not legally formed under the corporate law of any state at the time by him, and because the deeds to the subject property from the Harrops and Miller showed Targhee Powder Emporium, Inc. as an owner of said property. Further under the terms of the Settlement Agreement and Easement Agreement and the associated deeds entered into between Bach and Miller on October 3, 1997, Bach had the express or implied consent of Miller to install such improvements.

28. Although the jury found in June, 2003, that Bach breached his fiduciary duty to Miller, as her agent for investing her $127,000, and fraudulently induced Miller to invest her money in acquiring her interest in the above described real property

based on false statements of fact that Targhee Powder Emporium, Inc. was a corporation and that it was paying a like amount for a like interest in said property, Bach could reasonably rely on the title created by October 3, 1997 instruments and earlier deeds from the Harrops, until March 17, 2003, when Miller filed her counterclaim to quiet title to the property in her name and thus disavowing the October 3, 1997 instruments. Bach had actualn notice of Miller's title claim when he read Miller's counterclaim in March, 2003. Therefore, Bach acted in good faith until March, 2003, not withstanding the jury's June, 2003 verdict, Miller's post verdict election to have a constructive trust on the real property in lieu of damages, or this Court's resulting partial judgment quieting title to Miller.

29. The improvements were described by Bach and a summary of such improvements is contained in Bach's exhibit 201. The approximate location of such improvements on the four specifically described tracts of real property is shown on Bach's exhibit 202 and Miller's exhibit AAAA.

30. On the 6.63 acre access strip from Highway 33 going west to the 3.3 acre access strip, Bach installed a steel and wood front gate with a side gate entrance adjacent to Highway 33 at a cost of $2,500. Much of the gate was installed before March, 2003, but some of it was upgraded in July or August, 2003 while Bach was repairing some damage done to the gate. Miller intends to remove this gate. However the gate is useful to Miller in

keeping trespassers out of the property and livestock contained within the property. Bach derived some use from this improvement before title being quieted against him, and in the absence of proof to the contrary it is obvious that the present value of this improvement to the overall real property is $1,500.

31. Also on the 6.63 acre access strip Bach improved the road with a gravel base at a cost of $1,500. Miller does not intend to remove the gravel base, and it would be impractical to do so. Absent proof to the contrary, the present value of this improvement to the overall property is $1,500.

32. Also on the 6.63 acre access strip, Bach improved the roadway and partially on adjacent property to the south, then owned by the Harrops, Bach improved the ditch draining a pond on the access strip into ponds on the Harrop property that drained onto ponds on the East 40 acres. Also Bach improved the pond on the East 40 acres. The total cost of these improvements was $18,500. Despite Bach's efforts these improvements were not completely successful to optimize the irrigation of the East 40 acres, and it will be necessary to expend additional money to install additional culverts under the roadway if that source of irrigation is to be used. However, the roadway was improved and both parties received benefit from it. These improvements cannot practically be removed. From the parties' evidence it is difficult to determine how much of the $18,500 was attributed to labor and how much to materials, or how much was attributed to

roadwork and how much to ditch and pond work. It is difficult to determine how much benefit Bach received from the pond and ditch work before title was quieted against him, and it is difficult to determine what benefit Miller or subsequent owners of the property will derive from it. Absent proof to the contrary, the present value of these improvements to the overall property is $9,250.

33. On the East 40 acres, Bach installed a building pad at a cost of $5,000. On and around this pad Bach installed a wood structure that he bought for $4,000, a foundation collar comprised of used 24 foot long railroad bridge timbers that he bought for $14,000, and 19 posts that were 22 to 24 feet long that he self harvested from the forest having an estimated value of $10,000. Bach paid $10,000 to others to install the bridge timbers and posts. The total estimated cost to Bach for this improvement was $43,000. Bach intended to spend additional amounts to finish this improvement into a combination barn, house, and private sporting lodge. In the spring of 2003, this building was involved in a fire. Bach alleged that Miller and several other defendants in this lawsuit caused the fire. Because the fire damages and Bach's resulting allegations did not occur within sufficient time for pleadings to be amended nor discovery to be completed Bach was allowed by the Court to initiate a separate lawsuit to recover damages for such improvement. Miller intends to remove this improvement and seeks an offset as to the

cost of removal, but provided no proof as to the cost of such removal. Neither party presented any proof as to the present value of this improvement to the overall property. Unless Miller or a subsequent owner of the property intends to restore the partially burned posts and bridge timber foundation and then build on the same floor plan, it would have no present value. Common sense establishes that an ordinary property owner who desires to build a barn and house on this property is going to use his own design for a floor plan, and is going to build at his own favorite location on this property, and would not likely use a partially constructed and partially burned structure. Absent proof to the contrary, this improvement has no present value to the overall property. Had it not been burned, the likelihood of it having some present value may have been different.

34. On the East 40 acres, Bach installed a large corral with heavy duty posts, rails, gates and a horse wind barrier at a cost of $10,000, and also a round horse breaking pen constructed of 10 foot pressure treated posts and log rails at a cost of $5,000. Miller does not intend to keep these improvements. Bach derived some use from these improvements. Absent proof to the contrary, these improvements have a present value to the overall property of $5,000.

35. Between the East 40 acres and the West 40 acres, Bach installed a separation fence constructed in different segments, some of posts and wire, and some of posts and rails. He also

strengthened an existing fence at the southwest corner of the East 40 acres with posts and rails. He also replaced damaged poles and posts on fences along the south and north boundaries of the properties. He also repaired part of the fence and gate at the north end between the 6.63 and 3.3 access strips. All of these improvements cost Bach $7,250. Most of this work was done before this action was filed, but some of the work was done afterward. Neither party presented any proof as to the cost of the work done after Miller served her March, 2003 counterclaim seeking to quiet title against Bach. Bach derived some use of these improvements. Miller intends to remove the north end part of the fence between the access strips. A subsequent owner may or may not want fences and gates between the access strips, but probably would want a fence between the East 40 acres and the West 40 acres. Absent proof to the contrary, the present value to the overall property of these fences and gates is $6,000.

36. Also on the East 40 acres, Bach planted 5 blue spruce trees at a cost of $300, and 12 willow trees with a few lilac bushes at a cost of $480. Property owners enjoy trees and bushes. Absent proof to the contrary, the present value to the overall property of the trees and bushes is $300. Bach also placed decorative rock at a cost of $400. Property owners are fickle about decorative rock, and they have different tastes in the types, colors and sizes of such rock. Absent proof to the contrary, the present value to the overall property of the

decorative rock is $100.

37. Although Bach has had access to the East 40 acres and both access strips at all times since the filing of Miller's counterclaim, he has expressed no desire at any time to remove any of the improvements. Removal of the fences and gates, roadwork, ditch work and pond work would materially injure the overall property value and is impractical. However, since Miller does not want the barn, house and sporting lodge improvement, the corral and the round horse breaking pen, the trees, or the decorative rocks, nor any other personal property belonging to Bach; and because such items could be removed with little if any material damage to the overall property, Bach may remove those items within a reasonable time. Given the nature of these removable improvements, a reasonable time for Bach to remove them is 30 days. If Bach does not remove such items within 30 days, then such items shall belong to Miller as provided by I. C. § 6-416 by paying the reasonable present value as found above.

38. After 30 days from the date of these additional findings and conclusions, the total present value to the overall 87 acres added by all improvements found herein to be installed in good faith by Bach, but not removed by him as permitted under I. C. § 6-414, still located on the 87 acres can be computed mathematically. Pursuant to I. C. § 6-416, a reasonable time for Miller to pay the adjusted present value of improvements is until November 30, 2004.

39. Based on evidence admitted during the jury trial to the effect that $5,000 per acre is a reasonable value of unimproved land in Teton County during 2003, the value of the East 40 acres (less Miller's one half interest in the northerly 3.3 acre access strip thereon), and Bach's one half interest in the 6.63 acre access strip is valued in the total amount of $210,000, without any the above described improvements installed by Bach.

III. CONCLUSIONS OF LAW

11. This Court has continuing subject matter jurisdiction to determine the value of the real property and improvements described in the above findings of fact. See Idaho Code § 6-415.

12. Where an occupant of real estate has color of title thereto, and in good faith has made valuable improvements thereon, and afterwards in a proper action is found not to be the owner, he may elect after such action is filed to exercise his right to remove such improvements, if such can be done without injury to the real estate. See Idaho Code § 6-414. The statute does not state when the occupant must remove such improvements, so by implication it must be within a reasonable time given the nature of the removable improvements.

13. An occupant has color of title if he has occupied a tract of real estate and at any time during such occupancy made any valuable improvements thereon with the knowledge of or express or implied consent of the real owner. See Idaho Code § 6-417. Bach was an occupant under color of title to the East 40

acres, the 6.63 acre access strip and the 3.3 acre access strip.

14. An occupant acts in good faith if he has a good faith belief in his own title and the absence of any notice that another may be challenging his title. Fouser v. Paige, 101 Idaho 294, 297, 612 P.2d 137, 140 (1980). There is a split among the jurisdictions as to what constitutes notice of the true owner's title such as to defeat good faith. Id. Some require actual notice, but others require only constructive notice, and the Supreme Court of Idaho has not addressed whether constructive notice is enough, because it was unnecessary in Fouser in order to decide the case. Id. at 297-298. The Court holds that actual notice is necessary. To adopt a constructive notice element, which the Legislature could have placed in I. C. § 6-414 or 417 but chose not to, would inject unnecessary uncertainty and complexity into applying the Idaho betterment statute; and it would increase the amount of litigation for no legitimate reason.

15. Miller is the real owner of the East 40 acres, the 6.63 acre access strip and the 3.3 acre access strip.

16. The real owner of the real property as found in a quiet title action may take the property to the exclusion of the occupant having made good faith improvements under color of title, if such occupant does not exercise his right to remove improvements without injury to the real property, by paying such occupant the value of such improvements as found by the court. See Idaho Code § 6-416. The "value of such improvements" is not

the construction cost of such improvements, but rather is the amount by which the true owner's real property is enhanced by such improvements, less any mesne rents. See Annot., 24 ALR.2d 11, § 15; Hayes v. Davis, 30 N.E.2d 521 (Ill.App. 1940).

17. If Bach removes none of the improvements within 30 days after entry of these additional findings and conclusions, Miller shall be entitled to a writ of assistance putting her in exclusive possession of all 87 acres upon payment to Bach of $23,650. If Bach removes some of the improvements that this Court found can be done without material injury to the property, then Miller's payment shall be reduced by the present value that such improvements Bach timely removed had to the overall property, as found by this Court in the additional findings 31, 32 and 34 set out above. Miller shall have until November 30, 2004 to pay Bach for the improvements, under the provisions of I. C. § 6-416

DATED this 23 rd day of December, 2003.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of December, 2003, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

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RONALD LONGMORE
Clerk of Court

Deputy Court Clerk

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date 1/5/04
Time 1:30 pm
Deputy Clerk MSouthwick

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 **DEFAULT JUDGMENT AGAINST WAYNE DAWSON**

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

On December 20, 2002, Dawson was personally served with the summons and a copy of Bach's first amended complaint. On January 27, 2003, the Clerk entered Dawson's default. Thereafter the Court denied Dawson's motion to set aside default, and two motions for reconsideration, but allowed Dawson to participate as to damages claims in a default evidentiary hearing under Rule 55(b(2), I.R.C.P.

The Court having taken as true the well pleaded factual allegations in Bach's first amended complaint as against Dawson; and the Court having determined in its previous orders that Bach has no interest in the 87 acres described in the first count, and the Court having quieted title in the name of Miller as to such property; and the Court having determined that the tenth count alleging violation of the Idaho RICO Act is barred by an order dismissing with prejudice the same count in Bach's federal action entitled John N. Bach v. Teton County, et. al., CV-01-266-E-TGN; and the Court noting that I. C. § 6-1604 prohibits recovery of punitive damages without first obtaining leave of court to amend one's complaint based on evidence of malicious, wanton and willful conduct; and the Court noting that default judgments cannot be entered for relief not pleaded in the complaint served on the defaulted defendant; and the Court having noted that several of Bach's counts contain only conclusions as to what

Dawson did or did not do rather than "well pleaded facts"; and Court having taken evidence as to Bach's alleged damages on the 5th day of December, 2003; and the Court having made its own assessment as to the credibility of all witnesses and exhibits; and the Court having reviewed the legal authorities in the post hearing memoranda filed by both Bach and Dawson; and the Court noting that Rule 55(a) provides that "findings of fact and conclusions of law are unnecessary in support of a judgment by default;" and the Court having reviewed the legal authorities submitted by Bach as to remedies of partners and/or joint owners of real property; and the Court being fully advised in the premises:

WHEREFORE, by virtue of the law and by the reasons of the premises aforesaid, it is ordered and adjudged pursuant to Rule 58(a), I.R.C.P. as follows:

IT IS HEREBY ORDERED that:

1. As to counts two, three and four of Bach's first amended complaint seeking a decree quieting title against Dawson, Bach shall have judgment against Dawson decreeing that Dawson has no title to, or interest in, the Drawknife 40 acres in Teton County; further Dawson has only an undivided one-half interest in the 8.5 acres adjacent to 195 North Highway 33 in Teton County; and further Dawson has only an undivided one-fourth interest in the Peacock 40 acres in Teton County.

2. As to counts five, six, seven, nine, eleven and twelve seeking damages, plaintiff Bach shall have judgment against Dawson for $5,000.00, being those damages proximately caused by all acts of Dawson established by "well pleaded factual allegations" as to Dawson alleged in the complaint and by testimony at all evidentiary hearings and in affidavits on file in this action;

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

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

DATED this 5th day of January, 2004.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
1858 S. Euclid Avenue
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Telefax No. 208-357-3448 (TELEFAX & MAIL)

Galen Woelk
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Anne Broughton
1054 Rammell Mountain Road
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David Shipman
P. O. Box 51219
Idaho Falls, ID (COURTHOUSE BOX)

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

RONALD LONGMORE
Clerk of Court
M Southwick
Deputy Court Clerk

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 **TWENTIETH ORDER ON PENDING MOTIONS**

Pending before the Court is defendant Miller's motion for continuance of hearings on motions involving Miller scheduled for January 16, 2004, based on counsel for Miller being outside the United States.

Having determined that the Court is empaneling a grand jury during the afternoon of January 16, 2004, and that because of the previously scheduled pretrial conference and other motions being heard the morning of January 16th between other parties may likely prevent hearing the Miller motions anyway; and counsel's unavailability being good cause; and the Miller motions can be heard following the jury trial probably on February 4, 5 or 6th;

NOW THEREFORE, IT IS HEREBY ORDERED that

1. Defendant Miller's motion for continuance of hearing is GRANTED; and

2. Previously filed motions involving defendant Miller now scheduled by the parties for hearing on January 16, 2004, shall be heard following entry of a jury verdict in the trial between other parties commencing January 27, 2004, which will probably be during the first week of February, 2004.

DATED this 6th day of January, 2004.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

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RONALD LONGMORE
Clerk of Court

Deputy Court Clerk

JOHN N. BACH
1858 S. Euclid Avenue
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Tel: (626) 799-3146
Plaintiff & counterclaim
Defendant-Appellant Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff/Counterclaim Defendant & Appellant,

v.

KATHERINE D. MILLER, aka KATHERINE M. MILLER, dba R.E.M. and CACHE RANCH, et al.,

Defendants/Counterclaimant & Respondents,

and

ALVA A. HARRIS, Individually & dba SCONA, INC., a sham entity, JACK LEE McLEAN, BOB FITZGERALD, Individually & dba CACHE RANCH, OLY OLESEN, BOB BAGLEY, MAY BAGLEY, BLAKE LYLE, Individually & dba GRANT WOTING and also GRAND BODY & PAINT, GALEN WOELK & CODY RUNYAN, Individually and dba RUNYAN & WOELK, ANN-TOY BROUGHTON, WAYNE DAWSON, MARK LIPONIS, EARLY HAMBLIN, STAN NICKELL, BERT & DEENA R. HILL and DOES 1 through 30, Inclusive.

Defendants-Respondents.

IDAHO SUPREME COURT
NO: 30294

TETON COUNTY CASE
NO: CV 02-208

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 DEFDENT & 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, Jan. 6, 2004, Judge St. Clair, issued a TWENTIETH ORDER, see attached copy, continuing all such motion to the 1st week, Feb., 2004

AMENDED APPEAL From RULINGS, ORDERS, DECISIONS

FINDINGS OF FACT & CONCLUSIONS OF LAW and PARTIAL JUDGMENT of October 21, 2003 by the HONORABLE RICHARD T. ST. CLAIR, ASSIGNED, of the SEVENTH JUDICIAL DISTRICT, TETON COUNTY

The Parties, pro se, and counsel of record are set forth, with addresses on pages 3-4, fnfra.

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date January 6, 2004
Time 3:07
Deputy Clerk [signature]

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 TWENTIETH ORDER ON PENDING MOTIONS

Pending before the Court is defendant Miller's motion for continuance of hearings on motions involving Miller scheduled for January 16, 2004, based on counsel for Miller being outside the United States.

Having determined that the Court is empaneling a grand jury during the afternoon of January 16, 2004, and that because of the previously scheduled pretrial conference and other motions being heard the morning of January 16th between other parties may likely prevent hearing the Miller motions anyway; and counsel's unavailability being good cause; and the Miller motions can be heard following the jury trial probably on February 4, 5 or 6th;

NOW THEREFORE, IT IS HEREBY ORDERED that

1. Defendant Miller's motion for continuance of hearing is GRANTED; and

2. Previously filed motions involving defendant Miller now scheduled by the parties for hearing on January 16, 2004, shall be heard following entry of a jury verdict in the trial between other parties commencing January 27, 2004, which will probably be during the first week of February, 2004.

DATED this 6th day of January, 2004.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of January, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following person:

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Rexburg, ID 83440-0250 (TELEFAX & MAIL)

RONALD LONGMORE
Clerk of Court

Deputy Court Clerk

AMENDED NOTICE OF APPEAL

This Amended Notice of Appeal, is from that JUDGMENT of OCTOBER 21, 2003, (& TWENTIETH ORDER, Dec. 23, 2004), also ORDER of October 21, 2003; FINDINGS OF FACT & CONCLUSIONS OF LAW, THIRD through TWENTIETH ORDERS; A SPECIAL JURY VERDICT and ALL denials of JOHN BACH's post trial motions, re disqualification for cause, the Honorable RICHARD T. ST. CLAIR, from hearing or presiding over all or any matters, herein, and further, MOST RECENT TWENTIETH ORDER, Jan. 6, 2004,& REFUSING/DELAYING TO HEAR MOTIONS TO SET ADIE: prior orders, rulings and decisions by said Judge and for amelioration from all other prior ORDERS. Said judgment, orders, findings, etc., violate the 14th amendment to wit, wherein any portions or particular separate ORDERS, etc., are adverse, against or deny the relief therein sought by Plaintiff and Counterclaim Defendant JOHN N. BACH.

PRELIMINARY STATEMENT OF ISSUES APPEAL:

1. The JUDGEMENT and NINETEENTH ORDER of October 21, 2003, is VOID becuase of:

a) The Disqualification of Judge Richard T. St. Clair, both as a matter of law and facts.

b) Said JUDGEMENT and ORDER are void due to the Court's lack of subject matter jurisdiction of the barred, frivolous and utterly specious claims of MILLER's Counterclaim, as a matter of law and undeniable facts, barred by the doctrines:

i) Miller's waiver of all adequate remedies at law and all equitable remedies, per the SETTLEMENT AGREEMENT of October 1, 1997 with QUITCLAIM DEEDS and EASEMENT AGREEMENT of same date, executed between her and Plaintiff/Counterclaim Defendant recorded on same date of execution and repeatedly ratified, reaffirmed, condoned & quoted to by MILLER, until or about, November 13, 2000;

ii) All Miller's claims against APPELLANT BACH were barred by the discharge of herself, a listed creditor, and all other creditors, in JOHN N. BACH's Chapter 13, Bankruptcy Proceeding, U.S.D.C. Bankruptcy Court, Eastern District of California, Sacramento

No. 97-31941-A-13, ORDER and JUDGEMENT of DISCHARGE entered December 28, 2002, and until then, at all times in effect, from August 4, 1997 until discharge was an automatic stay order, with said U.S. BANKRUPCTY COURT having exclusive jurisdiction over any and all claims by MILLER, frivolously asserted in her Counterclaim in this action.

iii) COMPLETE SUMMARY JUDGMENT on all of Plaintiff's CLAIMS per his FIRST AMENDED COMPLAINT, and his defenses and affirmative defenses to MILLER'S COUNTERCLAIM should have been granted as both a matter of law and of undisputed facts, not only against MILLER, but all other named defendants most of whom, had defaults entered against them. There was no validly presented(properly verified of Miller's own knowledge)&counter-affidavits to Plaintiff's/Counterclaim Defendant's properly executed affidavits, requests for judicial notice, and receipt into evidence of prior actions, wherein, MILLER

- failed to raise mandatory counterclaims, which by judicial estoppel, res judicata, issue preclusion, claim preclusion, and other forms of estoppel, voided/barred any counterclaims herein.SEE USDC, ID, CV 99-014
- was further barred, and had all counterclaims voided due to her dismissal not only of a specious action filed previously in Teton CV 00-76, but, most appliedly by Judge Moss' DISMISSAL WITH PREJUDICE OF ALL HER CLAIMS, in second wholly specious verifed complaint filed by MILLER agains JOHN N. BACH, in Teton CV 01-59.
- Along with all other named defendants, most of who had defaults entered against them, were an admitted enterprise or group of associates constituting an Idaho R.I.C.O., entity which voided even further, the utterly void and grand theft uses by MILLER and all other named defendants' criminal theft of Plaintiff's corporate and other dba names of TARGHEE POWDER EMPORIUM, Inc., and Unltd and Ltd., which MILLER & all defendants misappropriate and stole, along with over $15,000.00 of Plaintiff's moneys from his agency account, such theft being in falsified void warranty deeds stealing plaintiff's rights, interests and ownership of four (4) joint ventures, of plaintiff's ownership of over 124 acres therein, and deeding such ownership to MILLER, and codefendants DAWSON, Mc LEAN, LIPONIS, ALVA A. HARRIS & his sham corporation, SCONA, INC.
- Was barred by all other affirmative defenses asserted by Plaintiff, also as matters of

6. All and any further issues on appeal as provided by I.A.R. Rule 17, (f), especially as to the TWENTIETH ORDER, et al.

JURISDICTIONAL STATMENTS.

Although Plaintiff's FIRST AMENDED COMPLAINT has multiple claims against multiple defendants, the lower Court has already issued FINDINGS OF FACT AND CONCLUSIONS OF LAW, wholly contrived, without evidentiary factual support or legal basis or authorities, via the FOURTH through TWENTIETH ORDERS, especially invacating all terms of the TEMPORARY INJUNCTION, allowing MILLER the issuance of a writ of possession on the most westerly 40 acres, which are in a terminated partnehip with plaintiff and her, allowing her to enter upon, do whaterver she desires upon the most easterly 40 acres which has always been owned by plaintiff, and also the 110 foot strip by one-half mile which is jointly owned by plaintiff and MILLER, subject to their partnership agreement. The Court has by the NINETEENTH ORDER quieted title to MILLER on all said 87 acres of said parcels and left Plaintiff to the lawless activites, pursuits and conduct of MILLER and codefendants, against whom the Temporary Injunction issued in the first place. to prevent and restrain all said defendants from such criminal and tortious destruction of plaintiff's improvements, personalty and possession of all of said 87 acres, possession of which per their SETTLEMENT AGREEMENT and deeds of October 3, 1997 and said terminated partnerhip, he has had exclusive posssession, use and control.

But the Court's issuance of JUDGMENT, possibly per IRCP, Rule 58, but not per Rule 54(a) or 54(b), has created a utterly unauthorized and void JUDGMENT and ORDERS, and further ORDERS, per hearing set for Dec. 5, 2003, all day. Plaintiff has twice

moved for a Rule 54(b) Certificate of Final Judgement, but Judge St. Clair will not hear such motions. Appellant's has brought other motions to vac the JUDGMENT quieting title and/ or reinstating the interlocutory/preliminary injunction, but Judge St. Clair has proven not only unresponsive but, further, encouraging of further attacks and violations of plaintiff and his said real and personal properties.

The provisions of I.A.R., Rule 17, (e)(2) provides and allow for premature filing of Notice of Appeal, but the particular pleading status, orders, judgment and facts of this case, require that all such ORDERS and JUDGMENTS and inactions be considered as, viewed and determine to be final and appealable. This Honorable Court is referred to Petitioner JOHN N. BACH's PETITION FOR WRIT OF MANDATE AND/OR PROHIBITION, etc., filed Sept, 19, 2003, IDAHO SUPREME COURT, docket No. 30009 , with all EXHIBITS 1 through 14, attached. Said petition was denied.

PLAINTIFF HEREBY MOVES/REQUESTS, per I.A.R., Rule 44 that per said rule's provisions, the Idaho Supreme Court consider said JUDGMENT and 4th-20th ORDERS, final appealable ORDERS and JUDGMENT, and call up the entire file of the Court, Teton County, in this action, with all Exhibits, admitted or marked for identification, and BIFURCATE THIS APPEAL into two (2) parts, the first part re the basis or grounds asserted which show that the acts, rulings, orders, determinations and JUDGEMENT of Judge St. Clair were and are VOID; such grounds if upheld as VOID would require a full remand with directions from the Idaho Supreme Court; the second part, would be those issues which are unsupported by the evidence, testiomonies, exhibits, etc., and/or incorrect statements of law, which cannot justify or support any discretion, should such discretion have existed, to uphold the rulings, orders and judgment

DESIGNATION OF COURT REPORTERS' TRANSCRIPT

Appellant does request and hereby designates the preparation of a court reporters' transcript, standard transcript per RULE 25, in compressed format described/per Rule 26. Per the Idaho Supreme Court's ORDER RE FINAL JUDGMENT, appellant herein indicates by date and title the hearings to be included in said reporters' transcript:

1.	August 13, 2002	First day of hearing on Plaintiff's Application for Preliminary Injunction
2.	August 15, 2002	Second day of hearing on Plaintiff's Application for Preliminary Injunction Including Granting Order & Injunction Provisions In Open Court
3.	September 9, 2002	Evidentiary Hearing on Plaintiff's Motions to Recuse/ Disqualify as Defendant Miller's Counsel, Galen Woelk and his law firm, Runyan & Woelk
4.	October 9, 2002 & November 26, 2002	Two half days of testimony arguments re Plaintiff's Motions re Contempt v. Dfts Miller, Harris, Fitzgerald, Lyle, etc.& other motions.
5.		Arguments on Plt's & Dfts' Miller's/ Woelk's Motions re Summary Judgment, and other motions, etc.
6.	May 30, 2003	Final Pretrial Conference Hearing.
7.	June 10, 2003	First Day of Trial-Jury Selection
8.	June 11, 2003	Second Day of Trial
9.	June 12, 2003	Third Day of Trial
10.	June 13, 2003	Fourth Day of Trial
11.	June 16, 2003	Fifth Day of Trial
12.	June 17, 2003	Sixth Day of Trial

13, June 18, 2003 — Seventh Day of Trial

14. June 19, 2003 — Eighth Day of Trial

NOTE: All trial days transcriptions to include everything placed on record, not just testimonies of parties or witnesses, but all proceedings, outside of presence of the jury, review of instructions, proposed, etc., motions argued or matters placed before court for rulings, before or outside jury's presence, etc.

15. August 15, 2003 — Full Arguments on Plaintiff's Motions to Disqualify, Recuse Judge St. Clair and for Amelioraton and all other motions

17. October 8, 2003 — Arguments on All parties' multple motions, etc.

18. December 5, 200 — Full day of testimony re issues of award of value of improvements made by plaintiff on 86.5 acres, plus damages against dft Dawson, re default judgment by Court, etc.

DESIGNATION OF CLERK'S RECORD, PER RULE 28 & ADDITIONAL DOCUMENTS, MATERIALS TO BE INCLUDED THEREIN.

Appellant requests and designates the clerk's record to include those automatically included pursuant to Rule 28, and further documents, if not already included within said Rule 28, and per said Supreme Court's December 22, 2003 ORDER RE FINAL JUDGMENT:

1. All clerk's minutes of all the aforesaid hearings held on the designated dates, supra, pages9-10, from on August 13, 2002 through and including December 5, 2003.

2. All exhibits offered or marked for identification on and during all said hearings, so held from on August 13, 2002 through and on December 5, 2003, even those marked for identification.

3.	July 23, 2002	COMPLAINT, AFFIDAVIT OF Plt JNB, and PLT'S BRIEF in SUPPORT OF RESTRAINING ORDER & OSC re PRELIMINARY INJUNCTION
4.	July 25, 2002	ORDER RESTRAINING ALL DFTS & OSC, re PRELIMINARY INJUNCTION
5.	August 8, 2002	RETURN OF SERVICE UPON KATH. MILLER, JACK McLEAN, ALVA A. HARRIS, SCONA, INC., BOB & MAY BAGLEY & OLE OLESON
6.	August 16, 2002	ORDER re Issuance of Prel. Injtn, & PRELIMINARY INJUNCTION
7.	September 3 & 4, 2002	PLT'S MTNS RE ORDER DISQUALIFYING-RECUSING GALEN WOELK, from representing DFT MILLER or ANY DFT, FOR FULL AMELIORATION & SANCTIONS along with PLT's BRIEF
8.	September 27, 2002	FIRST AMENDED COMPLAINT
9.	November 19, 2002	PLT'S OBJECTIONS, ALONG WITH MOTION TO STRIKE DEFENDANT MILLER'S APPLICATION TO MODIFY PREL. INJC'T'N & OPPOSITION & REQUEST-SANCTIONS
10.	November 26, 2002	PLT'S OBJECTIONS, MTN TO STRIKE & OPPOSITION TO DFTS (Harris, Fitzgerald, Lyle, Olson & Miller etc., Mtn of Nov. 8, 2002, etc.
11.	November 26, 2002	AFFIDAVIT OF JOHN N. BACH RE: FURTHER DEVELOPMENTS, ACTS OF DFTS WHICH SUPPORT FINDING OF CONTEMPT AGAINST ALL DFTS, ETC.
12.	March 17, 2003	ANSWER, COUNTERCLAIM AND JURY DEMAND OF DEFENDANT KATHERINE MILLER, with SUMMONS issued & all Return of Services thereon.
13.	April 4, 2003	PLT & COUNTERCLAIM DFT'S JNB ANSWER & AFFIRMATIVE DEFENSES TO COUNTERCLAIMS OF K. MILLER.
14.	April 18, 2003	AFFIDAVIT OF JOHN N. BACH, In Support of His Motions for SUMM. JUDGMT &/Or Summ Adjd'n Rule 56 et seq.
15.	April 18, 2003 through June 10,2003	All & any documents filed, whatsoever by all/any party and court. especially including Plt's Trial Briefs & Jury Instr't'ns.

16. June 10, 2003 through June 19, 2003 — All jury instructions given to Jury at any stage of the jury trial

17. June 19, 2003 — Jury Special Verdict & Interrogatories Form

18. June 31, 2003 — FINDINGS OF FACTS AND CONCLUSIONS OF LAW, purporedly filed "June 31,2003, in Chambers, Bonneville County, along with any original actually filed in Teton County

NOTE: (The copy sent Plaintiff with said stamped June 31, 2003 date, had two pages missing; plaintiff requests exact copy of these FINDINGS/CONCLUSIONS, as filed in both TETON COUNTY AND BONNEVILLE COUNTY without any corrections or late additions thereto, after June 31, or July 1, 2003)

19. July 9, 2003 — Plt & Counterclaim Dft JNB's Ntce of Mtn & Aff re D.Q. of Judge St. Clair,(along with other Mtns therewith)

20. July 16, 2003 — SUPP'L AFF. of JOHN N. BACH, In SUPPORT OF HIS MTNS TO DQ JUDGE ST CLAIR & ALL OTHER MTNS filed July 9, 2003, July 3, 2003, etc.

21. August 8, 2003 — Plt & C/Claim Dft's JNB Rply to MILLER'S OBJNS TO BACH'S MTN TO JUDGE ST. CLAIR & MEMO IN SUPPORT

22. All ORDERS, DENOMINATED THIRD THROUGH TWENTIETH, the latter being dated, January 6, 2004, but especially including the FINAL PRETRIAL ORDER OF MAY 30, 2003,

a) Aug. 28, 2003. . . .SEVENTEENTH ORDER ON PENDING MTNS
b) Sept. 9, 2003. . . .EIGHTEENTH ORDER on PENDING MTNS
c) Oct. 23, 2003. . . .NINETEENTH ORDER on PENDING MTNS
d) Jan. 6, 2004 . . . .TWENTIETH ORDER on PENDING MTNS

23. October 21, 2003 (also Oct 23, 2003) — ORDER and JUDGMENT

24. From October 7, 2003 through — (Starting with) PLT'S & C/CLAIM DFT JNB'S SPECIAL SPECIAL MEMO BRIEF & INITIAL ARGUMENT RE ELECT"N OF REMEDIES DOCTRINE IN IDAHO, etc

NOTE. . .(Include all and only, Plaintiff's motions, affidavits, memo briefs, or filings, etc.)

25. January 7, 2004. . . .(through) PLT & C/Claim Dft JNB's

MTNS RE ORDER STRIKING ALL ANSWERS OF DFTS BRET & DEENA R. HILL, PRECLUDING ANY EVIDENCE BEING OFFERED BY SAID DFTS & SANCTIONS, ETC.

Appellant reserves unto himself his further rights to futther amend or modify said clerk's record designations, especially in view of statements/orders, set forth in pages 2 through 4, supra, as well as to move this Honorable Court, to augment or supplement said clerk's record and/or the reporters' transcript on appeal.

Appellant renews his request for EXTRAORDINARY APPELLATE PROCEDURE relief, per I.A.R., Rule 44, as requested and sought, per his original NOTICE OF APPEAL, page 8, thereof.

CERTIFICATION

I, JOHN N. BACH, hereby certify that on Jan. 12, 2004, I did mail copies of this AMENDED NOTICE OF APPEAL, to:

1.	Judge Richard T. St. Clair, 605 N. Capital Ave.	Idaho Falls, ID 83404
2.	Ross Oviat, CSR	605 N. Capital Ave., Idaho Falls, ID 83404
3.	Galen Woelk	P.O. Box 533, Driggs, ID 83422
4.	Alva A. Harris	P.O. Box 479, Shelly, ID 83274
5.	Jared Harris	P.O. Box 577, Blackfoot, ID 83221
6.	Jason Scott	P.O. Box 100, Pocatello, ID 83204
7.	David Shipman	P.O. Box 51219, Idaho Falls, 83404
8.	Gregory Moeller	P.O. Box 250, Rexburg, ID 83440
9.	Ann-toy Broughton	1054 Rammel Mountain Road Tetonia, ID 83452

DATED: January 12, 2004

JOHN N. BACH, Plaintiff, Counter-claim Defendant & Appellant Pro Se
1858 S. Euclid Ave., San Marino CA 91108 (Tel: (626) 799-3146)

001003

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
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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/Counterclaim Defendant, vs. KATHERINE D. MILLER, aka KATHERINE M. MILLER, Individually and dba R.E.M., et al., Defendants/Counterclaimants.	Case No. CV-02-208 DEFENDANT, EARL HAMBLIN'S EXHIBIT LIST

COMES NOW the Defendant, Earl Hamblin, by and through his attorneys, and respectfully submits the following exhibit list:

Defendant Earl Hamblin's Exhibit No.	Description	Stip.	Offered	Admit
	Any exhibits offered by the other parties and admitted by the Court			
	Any documents or things which Plaintiff may produce in discovery			

DATED this 12th day of January, 2004.

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By _____ (for)
David H. Shipman
Attorney for Plaintiffs

CERTIFICATE OF SERVICE BY MAIL, HAND DELIVERY
OR FACSIMILE TRANSMISSION

I hereby certify that a true and correct copy of the foregoing document was on this date served upon the person(s) named below, at the address(es) set out below their name, either by mailing, overnight delivering, hand delivering or by telecopying to them a true and correct copy of said document in a properly addressed envelope in the United States mail, postage prepaid; by overnight delivery, postage prepaid; by hand delivery to them; or by facsimile transmission.

DATED this 12th day of January, 2004.

By _____ (for)
David H. Shipman

John N. Bach P.O. Box 101 Driggs, ID 83422 Telefax Nos. 626-441-6673 208-354-8303	X U.S. Mail Overnight Delivery Hand Delivery Facsimile
Alva Harris P.O. Box 479 Shelley, ID 83274 Telefax No. 208-357-3448	X U.S. Mail Overnight Delivery Hand Delivery Facsimile
Galen Woelk RUNYAN & WOELK, P.C. P.O. Box 533 Driggs, ID 83422 Telefax No. 208-354-8886	X U.S. Mail Overnight Delivery Hand Delivery Facsimile
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Plaintiff & Counterclaim
Defendant Pro Se

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

Plaintiff &
Counterclaim
Defendant,

v.

KATHERINE D. MILLER, aka
KATHERINE M. MILLER,

Defendant &
Counterclaimant,

& ALL OTHER
DEFENDANTS.

_____/

CASE NO. CV 02-208

PLAINTIFF JOHN N. BACH'S PRETRIAL STATEMENT OF OBJECTIONS & REQUESTS, ETC., Per IRCP, Rule 16(c), 16(d), etc.

Hearing Date; Jan 16, 2004
Time: 9 a.m.
Place: Bonneville County Courthouse, Idaho Falls, Idaho.

Plaintiff JOHN N. BACH hereby submits his individual PRETRIAL STATEMENT OF OBJECTIONS and REQUESTS to the reset PRETRIAL CONFERENCE, January 16, 2004, 2 9a.m., in Bonneville County Courthouse, Idaho Falls, to Driggs, Idaho.

I. PREFACE: None of defense counsel have endeavored to compl: with I.R.C.P., Rule 16(d). Contrarily, such defense counsel, starting in the late afternoon of December 5, 2003, knowing that some of them had refused to continue the hearings that day due to plaintiff's elder sister in critical hospice cancer care conditions in Northern California, inundated plaintiff with a barrage of motions and attempts a discovery requests.

From approximately 4:15 p.m., Dec. 5, 2003 until late night December 17, 2003, Plaintiff was out of Idaho and also away from his California San Marino home, in caring for his sister who passed away, then aiding family members with funeral and interment arrangements, attendance and traveling back to Idaho. Plaintiff was not able to receive any of his San Marino, mail or faxes until Dec. 16, 2003 The distance from San Marino, to Trinidad, CA., is over 12 hour drive and the drive from San Marino, to Driggs, is over a 14 hour drive.

The profusement of last minute activities by defense counsel to obstruct and preclude plaintiff from timely, meaningful access to their motions and discovery requests, coupled with this Court's Nineteenth and Twentieth Orders, appear more than further deliberately calculated to oppress and disadvantege plaintiff in the assertion of his remaining claims. Such remaining claims, are more than further impacted, prejudicially and corruptly against plaintiff's request for the issuance of a Certificate of Judgement per IRCP, Rule 54(b) which would then stay all proceedings herein, per the Notice of Appeal, filed herein, December 4, 2003, augmented by his AMENDED NOTICE OF APPEAL, filed January 12, 2004, per the Idaho Supreme Court;s ORDER-FINAL JUDGMENT, dated December 22, 2003. This Court, Judge St. Clair and defense counsel have had a copy of said AMENDED NOTICE OF APPEAL served upon them, and from said document's statements and the further orders and JUDGMENT RE DEFAULT against WAYNE DAWSON, it is very clear, that this Court, Judge St. Clair, again, egregiously and vexat-

tiously, without jurisdiction, he has legislated new statutes, laws and principles, in his findings, etc., re valuations of plaintiff's improvements on the said 86.5 acres at M/P. 138, totally ignored evidence, made findings without any factual or legal basis, apparently engendered by his "ranklings" because of plaintiff's objections and opposition to Miller's motion that he conduct a view of said 86.5 acres. Add to that the recently issued skewed DEFAULT JUDGMENT involving WAYNE DAWSON, by Judge St. Clair compared to the holding of CEMENT Masons'-Employers Trust v. Davis, 107 Idaho 1131, 695 P.2d 1270, 1271 ("while I.R.C.P. 55(b)(2) vests the court with discretion to conduct such hearings, or order such references as are necessary in order to determine the amount of damages for which a party is liable, that Rule does not permit the court to ignore the long-established precept that on default all well pleaded factual allegations in the complaint are deemed admitted.Wrigth & Miller, Federal Pracice and Procedure, &2688, p. 444 (2d ed. 1983)." [Emphasis added), it is clear that plaintiff cannot receive any fair and impartial hearing, or objective mindset by Judge St. Clair.(Cf Cement, supra, p. 1272)

II. BOTH THE PRETRIAL CONFERENCE AND THE CURRENT TRIAL DATE, SHOULD BE VACATED, RESCHEDULED, AS IT IS NOT READY FOR TRIAL, AND MOST SIGNIFICANTLY, THE CERTIFICATE OF PARTIAL JUDGMENT PER RULE 54(b) SHOULD BE SIGNED, FILED, EFFECTUATING PLAINTIFF"S APPEAL AND THE STAY OF ALL FURTHER PROCEEDINGS BEFORE JUDGE ST. CLAIR.

At the obvious risks of not only the aforesaid statement failing on unlistening ears, but, also drawing further the displeased ire of Judge St. clair and adverse prejudicial rulings against plaintiff, it is judicially prudent, less costly and less convoluted, not to mention

consistent with I.R.C.P., Rule 1, that the Court, issue immediately said Rule 54(b) Certificate of Partial Judgment effecting said appeal.

Even the consideration of subcategories "(10) & (11)" to be discussed at the PRETRIAL CONFERENCE, per Rule 16(c), call for the issuance of said Rule 54(b) CERTIFICATE. Alternatively, subcategories "(3), (4), (5) and (6)" of Rule 16(d) would more than justify under the current status of this action, to refer the remaining issues to an utterly neutral, unbiased and open mindset "MASTER."

The remaining issues are neither ready for trial, nor have all indispensible and necessary parties brought before the court Court, to wit, the Teton Canal Company and the Idaho Departments of Water Resources and Water Quality (IRCP, Rules 17, 24, et seq.) Plaintiff requests that he be allowed to amend his FIRST AMENDED COMPLAINT as to those defendants not in defaults and to add the above indispensible and necessary parties. (I.R.C.P., Rule 15 et seq.)

Further, basis justifying the issuance of said Rule 54(b) Certificate, is that the defendants in default can file, if they so wish, cross appeals, and further waste of time, and fractured legal applications as to the remaining multiple parties will be avoided and the applicable lawful rulings, if any, upheld on appeal.

Lastly, the motions for discovery, compelling such, particularly against Alva Harris, and the Hills, even with Alva Harris substituting himself out, replaced by his son, Jared Harris, will present further problesm, not only to complete timely and unequivocal discovery from both of them, but Jared Harris, is a witness which plaintiff intends to call along with Alva Harris, his father,

even if the court is still going through with a jury trial on the quiet title action against defendants BRET & DEENA R. HILL. Any such jury trial should not restrict nor muzzle plaintiff's rights to complete and adequate voir dire of the prospective jurors, nor have imposed further unconstitutional limitations of time, on his opening statement, arguments or cross examination of defendants and their witnesses. Plaintiff still maintains that he cannot get a fair and impartial jury selected in Teton County, and the preparation of the reporter's transcript of said jury selection of June 10, 2003, is very clear evidence of such poisoning of the prospective jurors by defendants, even if Judge St. Clair cannot recall such answers of the prospective jurors which were more than prejudiced, they infected the entire panel. A JURY WAS NOT IN ORDER FIRSTLY.

Moreso, disabling is the fact, that Stan Nickell's estate doesn't have a properly duly appointed personal representative, there is no estate opened, no petition by his wife, to be so appointed, and no period for filingof creditors' claims to be disavowed/denied and to allow plaintiff's claims against his estate to go forward. Weisenthal v. Goff, (1941) 120 P.2d 248, 215; Dowd v. Dowd's Estate , (1941) 108 P.2d 287, 289-291, also in dissent,p. 295-96; Burns v. Skogstad, (1949) 206 P.2d 765, 767-769. The current appearances purportedly by Arlene Nickells, without a duly issued order from a probate court, appointing her executrix or administratrix is a fraud, a sham and a deception upon plaintiff and this court.

The defendants' Hamblin's & Nickell's motions for summary judgment are without adeaute notice, improper documents not under proper execution of penalty of perjury, nor of the signors own person knowledge. Said motions are wholly lacking in compliance

with IRCP, Rule 56(b),(d), (e) and replete with hearsay, speculative statements and conclusions all without adequate showing of foundations or authentications of the best evidence documents, etc. Such two motions for summary judgment are again a sham and deceptive fraud upon which seek to cloud and have the court avoid the previous affidavits filed by Earl Hamblin, the Hills, and Alva A. Harris, herein, not to mention the evidence already presented and admitted for consideration to the first jury, which will impact greatly plaintiff's presentation of evidence, a second time, when such should have been presented all at one time.

LASTLY, there is no prejudice to any of the defendants herein to plaintiff's request herein, other than solely, and invidiously to plaintiff, for the issuance of said Certificate per Rule 54(b). Even defendant's limited opposition to such certificate's issuance is solely of disagreement to the form, the specific wording thereof, which she requests be identical to the form/wording thereof suggested by Rule 54(b). Thus, there is no opposition whatseover to said certificate's issuance.

DATED: January 14, 2004

John N. Bach

JOHN N. BACH, Pro Se

CERTIFICATE OF FAX AND MAIL SERVICE: I the undersigned, hereby certify that on this date, Jan. 14, 2004, I faxed a copy of this document to Judge St. Clair, @ (208) 529-1300) and mailed copies in separate envelopes with first class postage prepaid, addressed to Galen Woelk, Jason Scott, Alva Harris, Jared Harris, David Shipman, Gregory Moeller and Ann-Toy Broughton, at their addresses given of record herein.

DATED: January 14, 2004

John N. Bach

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.

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 16th day of January, 2004, Plaintiff Bach's motion to certify partial judgment and nineteenth order on pending motions as final under Rule 54(b), Plaintiff Bach's motion to reconsider portions 1, 2, 3, 4, 5, 10 and 11 of the Nineteenth Order on pending motions, Defendant Hamlin's motion for summary judgment, Defendant Estate of Nickell's motion for summary judgment, Defendant Woelk's motion to compel discovery under Rule 37 against Bach, Plaintiff Bach's motion to compel discovery under Rule 37 against Woelk and motion to continue trial, Plaintiff Bach's motion to strike answer under Rule 37 against Woelk, Defendant Hills' motion to shorten time and motion to bifurcate quiet title counts, Plaintiff Bach's motion to amend complaint, and pretrial conference 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. Craig Meadows appeared on behalf of Defendant(s) Galen Woelk dba Runyan & Woelk.

Mr. Jared Harris appeared on behalf of Defendant Wayne Dawson and the Hills.

Mr. Alva Harris appeared on behalf of Defendant(s) Harris, Fitzgerald, Lyle, Olson, Scona, Inc., and McLean.

Mr. David Shipman appeared on behalf of Defendant Earl Hamlin.

Mr. Greg Moeller appeared on behalf of the Estate of Stan Nichell.

Mr. Bach presented Plaintiff's motion to certify partial judgment and nineteenth order on pending motions as final under Rule 54(b). Mr. Jared Harris argued in opposition to the motion. Mr. Meadows objected to the motion. Mr. Moeller argued in opposition. Mr. Shipman joined in objection to the motion. Mr. Bach presented rebuttal argument.

The Court denied the motion.

Mr. Bach presented his motion to reconsider portions 1, 2, 3, 4, 5, 10 and 11 of the Nineteenth Order on pending motions. Mr. Jared Harris argued in opposition to the motion. Mr. Shipman

opposed the motion. Mr. Meadows joined in opposition to the motion. Mr. Bach presented rebuttal argument. The Court denied the motion.

Mr. Shipman presented Defendant Hamlin's motion for summary judgment. Mr. Bach argued in opposition to the motion. Mr. Shipman presented rebuttal argument. The Court will take the matter under advisement. Mr. Bach will have until January 20th to file documents. The Court will consider the matter submitted after January 20th.

Mr. Moeller presented Defendant Estate of Nickell's motion for summary judgment. Mr. Bach argued in opposition to the motion. Mr. Moeller presented rebuttal argument. Mr. Bach presented further argument. The Court will take the matter under advisement and issue an opinion as soon as possible.

Hearing recessed for morning break.

Hearing resumed at 11:10 a.m. with all parties present.

Mr. Meadows presented Defendant Woelk's motion to compel discovery under Rule 37 against Bach. Mr. Bach argued in opposition to the motion. Mr. Meadows presented rebuttal argument. The Court granted the motion and ordered that the discovery be responded to completely within 10 days. Mr. Meadows will prepare a proposed order for the Court's signature.

Mr. Bach presented Plaintiff Bach's motion to compel discovery under Rule 37 against Woelk and motion to continue trial. Mr. Meadows argued in objection to the motion. Mr. Bach presented rebuttal argument. The Court granted the motion in part. Mr. Bach will prepare proposed order for the Court's

signature.

Mr. Bach presented his motion to strike Hill's answer under Rule 37. Mr. Jared Harris advised that he had supplied new interrogatories/answers two days ago. The Court will hold its decision in abeyance to allow Mr. Bach time to review the new info.

Mr. Jared Harris presented Defendant Hills' motion to shorten time and motion to bifurcate quiet title counts. Mr. Bach argued in opposition to the motion. The Court denied the motion.

Mr. Bach presented his motion to continue trial. Mr. Jared Harris did not oppose the motion. Mr. Meadows stood mute on the issue. Mr. Moeller did not oppose the motion. Mr. Shipman argued in opposition to the motion.

The Court granted the motion to continue trial and reset the matter for jury trial on April 20, 2004, at 10:00 a.m. at the Teton County Courthouse. Pretrial conference was reset for April 2, 2004, at 9:30 a.m. at the Bonneville County Courthouse.

Court was thus adjourned.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

A:3Bach/CC04-9 full>CC04-10-1764 - full>CC04-11 - full>CC04-12

CERTIFICATE OF MAILING

I certify that on the 16th day of January 2004, I caused a true and correct copy of the foregoing document to be delivered to the following:

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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 **TWENTY FIRST ORDER ON PENDING MOTIONS**

Pending before the Court is John Bach's motions requesting that a partial judgment entered on October 23, 2003, the court's nineteenth order on pending motions also entered on October 23, 2003, and a partial default judgment entered on January 5, 2004, all be certified under Rule 54(b), I.R.C.P., so an appeal can be

taken to the Idaho Supreme Court. Also pending before the Court is plaintiff Bach's motion to reconsider the nineteenth order on pending motions under Rule 11(a), I.R.C.P. Also pending before the Court is defendants Bret and Deena Hills' motion to bifurcate trial on the quiet title claims from trial on the damages claims.

The foregoing motions were all orally argued on January 16, 2004. On the record the Court orally ruled on said motions, and explained its reasoning.

Having determined that it would be an abuse of discretion to grant the Rule 54(b) motions, because there remain unresolved claims among the parties, and the moving party did not establish "no just reason for delay" as required by Rule 54(b), I.R.C.P.; having also determined that it would be an abuse of discretion to grant the Rule 11(a) motion, because the moving party presented no new facts and no persuasive additional pertinent legal authority; having also determined that it would be an abuse of discretion to grant the motion to bifurcate trials, because it would require additional expense to the parties in having two trials instead of one and be a waste of judicial resources;

NOW THEREFORE, IT IS HEREBY ORDERED that plaintiff Bach's motions for certification under Rule 54(b), I.R.C.P., and motion

to reconsider under Rule 11(a), I.R.C.P., are both DENIED; and defendants Hills' motion to bifurcate trials is DENIED.

DATED this 16th day of January, 2004.

RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of January, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

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RONALD LONGMORE
Clerk of Court
M Southwick
Deputy Court Clerk