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Bach v. Miller Clerk's Record v. 8 Dckt. 31716

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LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Vol. 8 of 13
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 this _____ day of _____, 20____

By _____ Clerk

By _____ Deputy

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Supreme Court Court of Appeals

Entered on ATS by:

Volume 8 of 10

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

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

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

and

Katherine Miller et. al.
Defendants

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

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

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

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

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

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

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

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

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

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

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

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

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7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO
04 MAR 18 P5:07

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

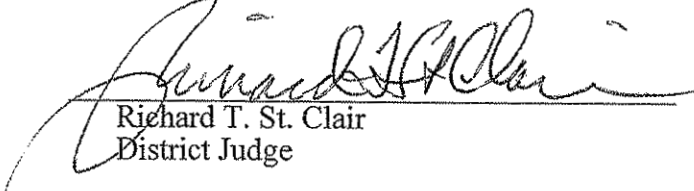
IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF TETON

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

Having reviewed the entire record relating to the Motion to Compel filed by Defendant Galen Woelk, individually & dba Runyan & Woelk, having heard oral argument on the motion on January 16, 2004, and finding good cause for granting the relief requested in the motion,

IT IS HEREBY ORDERED that Woelk's Motion to Compel is GRANTED. Plaintiff John N. Bach shall serve complete answers to Woelk's Interrogatory Nos. 1-2, 4-5, and 8-13.

DATED THIS 18th day of March, 2004.


Richard T. St. Clair
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 18th day of March, 2004, I caused to be served a true copy of the foregoing ORDER by the method indicated below, and addressed to each of the following:

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

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

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

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

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

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

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

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

Anne Broughton
1054 Rammell Mountain Road
Tetonia, ID 83452

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Pocatello, ID 83204-0100

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☐ Hand Delivered
☐ Overnight Mail
☐ Telecopy



Deputy 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, BOB)
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

FILED
11:54 *ell*
MAR 22 2004
TETON CO.
DISTRICT COURT

On the 16th day of March, 2004, Bach's motion to amend complaint to add punitive damages claims against defendants Woelk, Nickell, Hamblin and Hill, Bach's motion to strike portions of the Court's 22nd Order On Pending Motions, Bach's motion for reconsideration of the Court's 22nd Order, Bach's motion to amend portions of the Court's 22nd Order, Bach's motion to reconsider Court's oral discovery order on February 19, Bach's motion for relief from not answering Hills' discovery, Bach's motion for stay of Hills' summary judgment motion until after discovery is completed, Hills' motion to compel discovery from Bach, Hills' motion to deem admissions admitted by Bach, Hills' motion to strike portions of Bach's affidavit, Hills' motion for summary 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 by telephonic connection on behalf of Defendant Katherine Miller.

Mr. Jared Harris appeared on behalf of Defendants Bret and Debra Hill.

Mr. Jason Scott appeared by telephonic connection on behalf of Defendant Galen Woelk.

Mr. Greg Moeller appeared on behalf of Arlene Nickell.

No one appeared on behalf of other named defendants.

Mr. Bach presented his motion to amend complaint to add punitive damages claims against defendants Woelk, Nickell, Hamblin and Hills. Mr. Jason Scott argued in opposition to the motion. Mr. Moeller argued in opposition to the motion. Mr. Harris argued in opposition to the motion. Mr. Bach presented rebuttal argument.

The Court granted the motion to allow the complaint to be amended to add punitive damages action against Woelk, denied the motion as to Nickell, Hamblin and Hills.

Mr. Moeller was excused.

Mr. Bach presented his motion to strike portions of the Court's 22nd Order On Pending Motions, Bach's motion for reconsideration of the Court's 22nd Order and motion to amend portions of the Court's 22nd Order. Mr. Woelk argued in

opposition to the motion. Mr. Bach presented rebuttal argument.

The Court denied the motions.

Mr. Scott and Mr. Woelk were excused at this time.

Hearing recessed for morning break.

Hearing resumed at 10:20 a.m.

Mr. Bach presented his motion to reconsider Court's oral discovery order of February 19, Bach's motion for more time to answer Hills' discovery, Bach's motion for relief from not answering Hills' discovery, Bach's motion for stay of Hills' summary judgment motion until after discovery is completed.

Mr. Harris argued in opposition to Bach's motions. Mr. Harris presented Hills' motion to compel discovery from Bach, Hills' motion to deem admissions admitted by Bach, Hills' motion to strike portions of Bach's affidavit.

Mr. Bach presented rebuttal argument in support of his motions. Mr. Bach argued in opposition to the Hills' motions.

Mr. Harris presented rebuttal argument.


The Court granted Bach's motions in part and denied in part. Discovery provided to Bach was not adequate. The Court ordered the Hills to pay Bach \$400.00 for costs associated with the deposition. The Court prohibited the Hills from using any other documents at the time of trial than those already produced or on file in the court record. The Court overruled the Hills' objections to deposition questions based on attorney-client privilege with Alva Harris before the Hills were served with the federal lawsuit in July, 2001. The Court sustained the attorney-client objection as to communications after July, 2001. All

other relief was denied.

As to the Hills motions the Court granted the motions in part and denied in part. Mr. Bach is to file responses within 5 days to requested admissions. If he doesn't file responses the admissions will be deemed admitted. Mr. Bach is to provide copies of all exhibits or a detailed list of exhibits he believes Jared Harris has, and the names of all witnesses Bach intends to call at time of trial within 5 days. The Court denied the motion to strike Bach's affidavit. Discovery deadline will be extended to allow the Hills to take Bach's deposition.

The motion for summary judgment was continued to April 1, 2004, at 9:30 a.m. at the Bonneville County Courthouse.

Court was thus adjourned.



RICHARD T. ST. CLAIR
DISTRICT JUDGE

H:12bach/CC04-110@1205 full over to CC04-111

CERTIFICATE OF MAILING

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

RONALD LONGMORE


Deputy Court Clerk

John N. Bach
1958 S. Euclid Ave.
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Galen Woelk
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FAX (208) 354-8886

Jared Harris
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Blackfoot, ID 83221
FAX (208) 785

Craig L. Meadows
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Boise, ID 83701-1617
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Bart J. Birch
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FAX (208) 523-4474

Anne Broughton
1054 Rammell Mountain Road
Tetonia, ID 83452

001208

Teton Co

Jared M. Harris, Esq.
BAKER & HARRIS
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E-mail: bakerharrislaw@cableone.net
Idaho State Bar No. 4488

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY IDAHO

'04 MAR 22 P5:24

Attorneys for Defendants Bret & Deena R. Hill

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,

Case No. CV-02-208

v.

ORDER ON VARIOUS MOTIONS
HEARD ON MARCH 16, 2004

KATHERINE D. MILLER, aka
KATHERINE M. MILLER, Individually
& dba R.E.M., and CACHE RANCH,
ALVA A. HARRIS, Individually & dba
SCONA, INC., a sham entity, JACK LEE
McLEAN, BOB FITZGERALD,
Individually & dba CACHE RANCH,
OLY OLESEN, BOB BAGLEY & MAE
BAGLEY, husband and wife, BLAKE
LYLE, Individually & dba GRANDE
TOWING, and also GRANDE BODY &
PAINT, GALEN WOELK & CODY
RUNYAN, Individually & dba RUNYAN
& WOELK, ANN-TOY BROUGHTON,
WAYNE DAWSON, MARK LIPONIS,
EARL HAMLIN, STAND NICKELL,
BRET & DEENA R. HILL, DOES 1
through 30 Inclusive,

Defendants.

Orig

ORDER ON VARIOUS MOTIONS HEARD ON MARCH 16, 2004 - 1


001209

THIS MATTER having come before the Court on the 16th day of March 2004, on various motions of the Plaintiff John N. Bach (hereinafter "Bach") and Defendants Bret and Deena R. Hill, (hereinafter "Defendants Hill") and this Court, after having reviewed the motions, and arguments presented, and for good cause appearing, it is hereby ordered, adjudged and decreed as follows:

1. That Defendants Hill do not have an attorney/client privilege with Mr. Alva Harris prior to July 2001.
2. That Defendant Hill's Motion for Summary Judgment shall be heard on April 1, 2004, at 9:30 a.m.
3. That by March 21, 2004, Mr. Bach shall file his response to Defendant Hill's Request for Admissions by delivery of those responses to Mr. Harris' office in Blackfoot, Idaho.
4. That by March 21, 2004, Mr. Bach shall provide copies of all documents he intends to introduce or use as exhibits in the trial in this matter, provided that if Mr. Harris already has or should have copies of those documents, Mr. Bach can list but not produce those documents.
5. That by March 21, 2004, Mr. Bach shall submit to Mr. Harris a list of all witnesses Mr. Bach intends to call in the trial in this matter, including a description of what the witness will testify about.
6. That by March 21, 2004, Mr. Bach shall answer Defendant Hill's Interrogatory No. 18.
7. That Bach is awarded a \$400.00 fee as a sanction for Defendant Hill's failure to disclose additional documents.

8. That unless previously disclosed in discovery response, or submitted in connection with Defendant Hill's Motion for Summary Judgment, Defendant Hill's are prohibited from introducing additional documents into evidence in the Trial in this matter.

DATED this 22nd day of March, 2004.


The Honorable Judge Richard T. St. Clair

001211

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing Order on Various Motions Heard on march 16, 2004, was mailed by first class mail with prepaid postage and/or hand delivered and/or transmitted by facsimile this 12th day of March, 2004, to:

Attorneys Served:	Jared M. Harris BAKER & HARRIS 199 W Bridge PO Box 577 Blackfoot, ID 83221	() Mail
	John N. Bach 1858 S. Euclid Avenue San Marino, CA 91108 and P O Box 101 Driggs, ID 83422	() Mail
	Alva Harris PO Box 479 Shelley, ID 83274	() Mail
	Jason D. Scott HALLEY TROXELL ENNIS & HALLEY P O Box 100 Pocatello, ID 83204	() Mail
	Galen Woelk RUNYAN & WOELK P O Box 533 Driggs, ID 83422	() Mail
	David Shipman HOPKINS RODEN P O Box 51219 Idaho Falls, ID 83405-1219	() Mail
	Gregory Moeller P O Box 250 Rexburg, ID 83440-0250	() Mail
	Anne Toy-Broughton 1054 Rammell Mountain Road Tetonia, ID 83452	() Mail

CLERK OF THE DISTRICT COURT

By: ms
Deputy

001212

HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC
David H. Shipman, ISBN 4130
428 Park Avenue
P.O. Box 51219
Idaho Falls, Idaho 83405-1219
Telephone: 208-523-4445
Attorneys for Defendant Earl Hamblin

FILED
5:13 PM
MAR 23 2004
TETON CO.
DISTRICT COURT

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

JOHN N. BACH,

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
DISCLAIMER OF INTEREST IN
CERTAIN REAL PROPERTY AND
MOTION TO DISMISS

COMES NOW the Defendant, Earl Hamblin, by and through his attorneys
of record, HOPKINS RODEN CROCKETT HANSEN & HOOPES, PLLC, and hereby disclaims
pursuant to Idaho Code § 6-402 any and all interest he may have in and to certain real
property claimed by the Plaintiff, John N. Bach, in Counts II, III and IV of his Amended

DEFENDANT EARL HAMBLIN'S DISCLAIMER OF INTEREST IN CERTAIN
REAL PROPERTY AND MOTION TO DISMISS - 1

001213

Complaint dated September 27, 2002. Defendant Hamblin further moves to dismiss the remaining claims against him and in support of the Motion states the following:

1. In the Court's "Twenty Fourth Order on Pending Motions" dated March 2, 2004, the Court granted summary judgment in Defendant Hamblin's favor as to all counts in the Amended Complaint, except for the portions of Counts II, III and IV, which seek to quiet title against Mr. Hamblin. Mr. Hamblin has never claimed any interest in any property set forth in Counts II, III and IV and hereby formally renounces and disclaims any interest in and to such property.

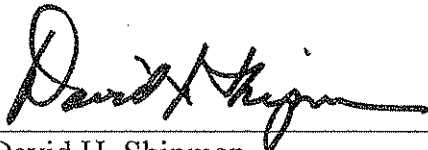
2. In light of this disclaimer and the Court's Order of March 2, 2004, there are now no pending matters at issue between John N. Bach and Defendant Earl Hamblin. Therefore, Defendant Hamblin seeks to have all remaining claims in this action formally and completely dismissed reserving only his right to seek attorneys fees and costs at the conclusion of this action.

3. Defendant Hamblin requests that this Motion be heard on an expedited basis and will not be submitting a Brief in support, but he requests oral argument for this Motion.

WHEREFORE, Defendant Hamblin requests that the Court dismiss Plaintiff's remaining claims in this action against Earl Hamblin pursuant to the disclaimer of interest filed herein.

DATED this 22nd day of March, 2004.


HOPKINS RODEN CROCKETT
HANSEN & HOOPES, PLLC

By 
David H. Shipman
Attorneys for Defendant Earl Hamblin

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 22nd day of March, 2004.



David H. Shipman

John N. Bach
1858 South Euclid Avenue
San Marino, CA 91108
Telefax Nos. 626-441-6673
208-354-8303

☒ U.S. Mail
☐ Overnight Delivery
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☒ Facsimile

Alva Harris
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Tetonia, ID 83452

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Gregory Moeller, Esq.
25 North 2nd East
P.O. Box 250
Rexburg, ID 83440-0250

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☐ Overnight Delivery
☐ Hand Delivery
☐ Facsimile

Date: 4/1/2004

Time: 03:01 PM

Seventh Judicial District - Teton County

Receipt

NO. 0022686

Received of: Miller, Katherine

\$ 32164.00

Thirty-Two Thousand One Hundred Sixty-Four and 00/100 Dollars

Case: CV-2002-0000208

Defendant: John Nicholas Bach vs. Katherine Miller, etal.

Cash bond: 32164.00

Check: 2498

Payment Method: Check

Nolan G. Boyle, Clerk Of The District Court

Clerk: PHYLLIS

Duplicate Reprinted: 1/21/2006 by PHYLLIS

By: _____
Deputy Clerk

001218

7TH JUDICIAL DISTRICT COURT
BONNEVILLE COUNTY, IDAHO

'04 APR 14 A10:48

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,)	
)	ORDER AMENDING STAY
)	ENTERED APRIL 13, 2004
vs.)	
)	
KATHERINE M. MILLER, et. al.,)	
)	
Defendant.)	

Katherine Miller having moved this Court for an Ex-Parte Order augmenting and amending the Stay ordered on April 13, 2004 and good cause appearing to preserve the status-quo to a date and time until all issues on Bach's motions are heard, IT IS HEREBY ORDERED AND THIS DOES ORDER AS FOLLOWS:

1. Miller's Motion is granted, this ORDER shall augment and attach to that ORDER STAYING ALL EXECUTION EFFORTS granted April 13th, 2004.

ORDER AMENDING STAY ENTERED APRIL 13, 2004

1

001219

APR 13 2004 11:18AM HP LASERJET 3200

2. Bach shall be restrained and refrain from doing any of the following acts while the Stay is in effect on the 87 acres in Teton County, located at MP 138;

- a. Mr. Bach shall not remove or modify any improvements now existing on the property.
- b. Mr. Bach from shall not damage or modify any improvements recently constructed on the property.
- c. Mr. Bach is restrained from making further improvements on the property, including but not limited to the building of fences, excavation or modifications to existing structures.

3. These Stay requirements shall be in affect until further order of the Court.

DATED this 14th day of April, 2004.


Judge Richard T. St. Clair

**CERTIFICATE OF ENTRY
BY MAIL, HAND DELIVERY OR FACSIMILE TRANSMISSION**

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

ORDER AMENDING STAY ENTERED APRIL 13, 2004

2

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

☐ Mail
☐ Hand Delivery
☒ Facsimile

Alva Harris
Box 479
Shelley, ID 83274

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☒ Facsimile

Judge Richard St.Clair, Chambers
605 N. Capital
Idaho Falls, ID 83402

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☐ Facsimile

Hawley, Troxell, Ennis & Hawley
Jason Scott, Esq.
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Pocatello, ID 83204

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Jared Harris, Esq.
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Blackfoot, ID 83221

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Anne Broughton
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Tetonia, ID 83452

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David H. Shipman
Bart J. Birch
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Gregory W. Moeller
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Rexburg, ID 83440-0250

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☐ Hand Delivery
☒ Facsimile

ms

, Clerk

Teton Co.

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

FILED

APR 19 2004

TETON CO.
DISTRICT COURT

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

MINUTE ENTRY
Case No. CV-2002-208

On the 12th day of April, 2004, Plaintiff's motion to continued trial date and Plaintiff's motion to vacate all deadlines 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 by telephonic connection on his own behalf as Plaintiff.

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

Mr. Jared Harris appeared by telephonic connection on behalf of Defendant Wayne Dawson.

Mr. David Shipman appeared on behalf of Defendant Earl

Hamblin.

Mr. Bach presented Plaintiff's motion to continue trial date and motion to vacate all deadlines. Mr. Jared Harris argued in opposition to the motions. Mr. Shipman argued in opposition to the motions. Mr. Scott opposed the motions.

The Court granted the motion to continue. The Court rescheduled Jury Trial for July 20, 2004, at the Teton County Courthouse.

The Court denied the motion to vacate deadlines. The Court will allow Mr. Bach until April 16, 2004 to file the transcript with the Court.

The Court granted a stay re: the Writ of Assistance until oral argument scheduled for April 27, 2004, at 9:00 a.m. in the Bonneville County Jail.

Court was thus adjourned.



RICHARD T. ST. CLAIR
DISTRICT JUDGE

A:16Bach/04-375@2160

CERTIFICATE OF MAILING

I certify that on the 14th day of April, 2004, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE


Deputy Court Clerk

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FAX (208) 357-3448

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Jared Harris
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Blackfoot, ID 83221
FAX (208) 785

Craig L. Meadows
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Boise, ID 83701-1617
FAX (208) 342-3829

Teton County Clerk
Teton County Courthouse
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Rexburg, ID 83440-0250
FAX (208) 356-0768

001224

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Bart J. Birch
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E-mail: bakerharrislaw@cableone.net
Idaho State Bar No. 4488

Attorneys for Defendants Bret & Deena R. Hill

ORIGINAL

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date April 19, 2004
Time 9:30
Deputy Clerk M. Southwick

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

JOHN N. BACH,

Plaintiff,

v.

**KATHERINE D. MILLER, aka
KATHERINE M. MILLER, Individually
& dba R.E.M., and CACHE RANCH,
ALVA A. HARRIS, Individually & dba
SCONA, INC., a sham entity, JACK LEE
McLEAN, BOB FITZGERALD,
Individually & dba CACHE RANCH,
OLY OLESEN, BOB BAGLEY & MAE
BAGLEY, husband and wife, BLAKE
LYLE, Individually & dba GRANDE
TOWING, and also GRANDE BODY &
PAINT, GALEN WOELK & CODY
RUNYAN, Individually & dba RUNYAN
& WOELK, ANN-TOY BROUGHTON,
WAYNE DAWSON, MARK LIPONIS,
EARL HAMLIN, STAND NICKELL,
BRET & DEENA R. HILL, DOES 1
through 30 Inclusive,**

Defendants.


Case No. CV-02-208

PRE-TRIAL ORDER

THIS MATTER having come before the Court on the 2nd day of April 2004, on various motions of the Plaintiff John N. Bach (hereinafter "Bach") and Defendants Bret and Deena R. Hill, (hereinafter "Defendants Hill") and this Court, after having reviewed the motions, and arguments presented, and for good cause appearing, it is hereby ordered, adjudged and decreed as follows:

1. That Plaintiff Bach shall be limited to those witnesses and exhibits provided to Defendants by April 6, 2004.

SO ORDERED this 19th day of April, 2004.


The Honorable Judge Richard T. St. Clair

CLERK'S CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a full, true and correct copy of the foregoing **PRE-TRIAL ORDER**, was mailed by first class mail with prepaid postage and/or hand delivered and/or transmitted by facsimile this 19th day of April, 2004, to:

Attorneys Served:

Jared M. Harris
BAKER & HARRIS
199 W Bridge
PO Box 577
Blackfoot, ID 83221

(☒) Mail

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

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Alva Harris
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Jason D. Scott
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David Shipman
HOPKINS RODEN
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Gregory Moeller
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Rexburg, ID 83440-0250

(☒) Mail

Anne Toy-Broughton
1054 Rammell Mountain Road
Tetonia, ID 83452

(☒) Mail

CLERK OF THE DISTRICT COURT

By: md
Deputy

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

FILED
3:00 PM
APR 20 2004

TETON CO.
MAGISTRATE COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

CASE NO: CV 02-208

Plaintiff &
Counterclaim
Defendant,

PLAINTIFF'S JOHN N. BACH'S

v.

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

Defendant &
Counterclaimant,
& ALL OTHER
DEFENDANTS.

FURTHER AFFIDAVIT IN SUPPORT
OF HIS CURRENT MOTIONS TO (1)
STRIKE ENTIRE ANSWER OF DEFEN-
DANTS 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 & RIG-
HTFUL OWNER THEREOF, ETC.: & (2)

Alternatively, IN OPPOSITION TO
DEFENDANTS HILLS' MOTION FOR SUM-
MARY JUDGMENT

PLAINTIFF REQUESTS A FULL HEARING ON
ALL MATTERS COVERED IN THIS AFFIDAVIT

STATE OF WYOMING,)

COUNTY OF TETON.)

ss

I, JOHN N. BACH, being duly placed under
OATH, give testimony herein of my own
personal knowledge, participation, witness
and observations as follows:

1. On two specific discovery ORDERS being granted by this
Court requiring further discovery from defendants Deena R. Hill
and Bret Hill and their attorenyes, both Alva Harris and Jared Harris,
plaintiff-affiant has still been frustrated, denied and precluded
from full and complete discovery. The latest such evasive and non-
compliant conduct, came not just from Deena R. Hill at her resumed
deposition of Mar. 24, 2004, but from their current counsel of re-
cord, Jared Harris. Attached hereto are sheets 2-15 of her deposition,
and from Exhibit 9 to her said deposition, copies of a CORRECTION COR-
Pt's Furthr Aff re (1) Mtns Ultmte Sanchs V Hills & (2) Opp S/J, etc. P. 1.

PORATE WARRANTY DEED, Teton recorded instrument 141455, signed by Jack Lee McLean on behalf of a void and fraudulently created Idaho Corporation, Targhee Powder Emporium, Inc, formed November 13 through 21, 2000 after McLean stolen affiant's \$15,000 on Novembr 14, 2000. and was charged thereafter with grand theft and bound over to the District Court for trial sometime in March, 2001. and of a CORPORATE WARRANTY DEED executed by SCONA, INC., to Bret B. Hill and Deena R. Hill, husband and wife, 195 N. Hwy #33 Driggs, ID 83422, excluding from such grant, " . .use regulations and restrictions, easements, rights-of-way, and encumbrances of record or established by user with respect thereto."

2. Affiant directs the Court's attention to those questions and request for production of documents which Deena R. Hill with the instruction of her said counsel, Jared Harris, refused to answer or produce, as required not just by the discovery rules and the prior two orders of this court, as well as the waiver of the attorney client privileges and work product privileges, and the crime and fraud exceptions of I.R.E. Rule 503(d)(1); claimed through client exception, as affiant is the grantee and assignee of Jack McLean's real propert interests and his estate/trust, per Rule 503(d)(2); breach of duty by Alva & Jared Harris, Rule 503(d)(3); attesting witness exception re both Alva Harris and Jared Harris, Rule 503(d)(4), joint clients exception, Rule 503(d)(5) and other exceptions re defense or claims of advice of counsel and/or client-litigant exceptions; such being set forth on pages:

- a) Sheet 10, Page 171, lines 2-25;
- b) Sheet 12, Page 182, line 2 through Sheet 13, P. 183: 11;
- c) Sheet 13, Page 183, line 19 through P. 184: 23;
- d) Sheet 14, Page 187, line 2 through P. 190:25;
- e) Sheet 15, Page 191, line 15 through P. 193:14; and

f) Sheet 16, Page 195, lines 3 through 17.

3. At page 197, Deena R. Hill, for herself and on behalf of her husband, Bret Hill when asked, lines 5-8, if they were making any claims to the adjacent 8.5 acres, answered:

"A. No. We're not making any claim to the 8.5. [acres]."

4. Separately filed herewith but simultaneously are a number of discovery and evidentiary admissions and confession motions, which plaintiff-affiant submits require this court to grant all of them on the entire record in all files in this action, the exhibits received during any evidentiary trials, hearings, or via all affidavits of plaintiff filed after June 19, 2003 to the present date.

5. In support of said current motions against the HILLS and their counsel, both Alva and Jared Harris, plaintiff-affiant cites and refers the Court to Federal Practice and Procedure by Wright & Graham, Vol. 24, Sections 5501 through 5506, pages 493-566 and the 2002 Pocket Part, section 506, Pages 207-220. These cited sections and the exception to the attorney client privileges, apply herein to have required earlier all discovery of all files by both Alva Harris and Jared Harris. Plaintiff-Affiant requests a full evidentiary hearing on his said motions and as well on the further filings herein, as to defendants HILLS' motion for summary judgment. Prior to said hearings, affiant will specifically address the particulars of said exceptions and rules of evidence as enumerated in said Volume 24 of Wright & Graham.

6. In further opposition to the defendants HILLS' motion for summary judgment, affiant states as follows in the paragraphs 7 through , infra.

7. In the summer of 1999 while seasonally living in Driggs, affiant was the manager of a coed softball team, with a major sports

member , among other team members, Travis Thompson. Again in the summer of 2000, affiant managed said same team, with Travis Thompson. As a result of such contact, affiant became quite familiar and conversant with Travis Thompson, after any games involved in said summer league, and discussed with him the stay order of the Sacramento Bankruptcy Court, on all of affiant's properties and especially that at 195 N. Hwy 33, Driggs, ID. On several occasions affiant was asked by Travis if he would get such 195 N. Hwy property back after the bankruptcy and affiant indicated that no sale could take place as such stay order made any and all sale efforts, seizures or lien sales, "VOID." There were other discussions had about other affiant's properties, possible developments and financing difficulties, etc.

8. During the time of the prosecution by Alva Harris of Teton CV 98-025, in which Judge Wood, held that Alva Harris could not proceed against affiant due to said stay order, affiant became also acquainted and conversant with a number of deputy clerks of Teton County, one such being Nora Rigby, who on several occasions, would not only talk with affiant about the IRS sale, the bankruptcy stay order, but on many occasion while driving along Hwy 33, when affiant was in the front yard or doing work in the driveway of said address she would waive and acknowledge affiant as most residents of Teton Valley do when they know one another; Nora Rigby knew of the cloud on title and affiant's claims to the ownership of said one acre lot with home at 195 N. Hwy 33, Driggs.

9. Even into later 2000 affiant had conversations with Nora Rigby about said real property at 195 N. Hwy 33, and what affiant was going to do with or about it.

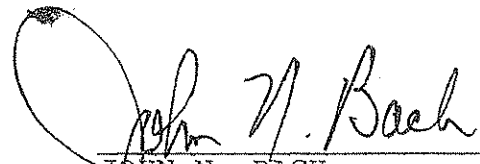
10. After the void sale by the I.R.S. re said home and lot, affiant had numerous contacts with various managers of Alliance Title, especially Stacy Stewart, such title insurance's office being some 135 plus feet across the street from the Teton County Courthouse steps where the sale took place. Affiant discussed with Stacy Stweart the existence and effect of his bankruptcy stay order, and it's voiding any and all sale efforts of his properties in Teton County. In addition, to such discussions, affiant knew from having sued and even represented title insurance companies, that when any person filed for bankruptcy, such information was imparted to not just credit bureaus, title companies and their subsidiaries and even to recording offices in various adjacent counties. Espeically when an I.R.S. lien was recorded, sale notices given and published, etc., such information was readily communicated and reported to said credit agencies, title companies and recorded in clerk or recorders' offices and even to tax assessors and collectors offices.

11. Affiant's prior legal practice, further made him aware that title companies, kept their own internal records of claims made, asserted or advanced against real properties in counties, even though such claims or documents made not be part of an official recorded document with the Clerk or Recorder's office; that there are a number of other intitle companies files information and ways to review and ascertain title clouds, impairments or clouds, the most easily available is that of "title plants or geographical title plants" records, maps and files, which is/are required tools and means used in the title insurance industry to supplement county records and show title history to specific parcels or legal descriptions advanced in documents. Said title plants are used in Eastern Idaho and were accessible to defendants HILLS via Alliance Title.

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12. Affiant by the current discovery denials, evasions and refusals of the HILLS and both their counsel, Alva and Jared Harris, have not just perpetrated crimes, frauds and other torts, jointly and severally against affiant and attempted to steal said real property @ 195 N. Hwy 33, but have presented by their said tortious actions, statements both in court and outside, "Sp^oilation Evidence" which must be further discovered and/or produced despite any claims of attorney client or work product privileges, all of which have been waived and/or do not exist. The evidence of not just the HILLS' credibility, lying, falsehoods, and manufacture of untrue evidence, but that of their counsel, Alva and Jared Harris, in the preparation of falsehoods and other frauds, and suppression, spoliation, etc. of the truth and evidence of such truth, is relevant and materials per I.R.E., especially Rules 401-403 and 806, at not just the time of trial herein, but during affiant's current ultimate discovery sanctions orders and even, in opposition to the HILLS' summary judgment motions, not to ignore the HILLS acceptance, condonation, ratification and joint complicity in compounding such spoiliations. HILLS and even both Harris' "misplaced expectations of confidence or trust in an accomplice [or other joint parties and actors] are not constitutionally protected." U.S. v. Quinones (8th C.A., 1975) 516 F.2d 1302, 1309, citing Hofa v. U.S. 385 U.S. 293, 302, 87 S. Ct. 408, 17 L. Ed. 2d 374 (1966).

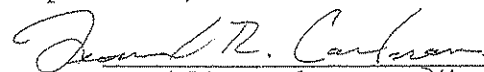



JOHN N. BACH

I, the undersigned NOTARY PUBLIC OF WYOMING, do hereby attest, subscribe and verify that on this date, JOHN N. BACH, appeared before me, placed under oath and gave the foregoing testimony affixing his personal signature in my presence and witnessing thereof.

SUBSCRIBED AND AFFIRMED BEFORE ME THIS April 16, 2004.

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Residing in the State of Wyoming

DEPOSITION OF DEENA R. HILL - 03/24/04

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1 court's order of March 16th, 2004?
 2 A. Saying what?
 3 Q. I mean, have you been shown a copy of
 4 any order?
 5 A. Yes.
 6 Q. Okay. And you understand that there is
 7 no attorney-client as regards Mr. Alva Harris as of
 8 July 1st, 2001?
 9 A. Yes.
 10 Q. Okay. I want to make sure I understand
 11 this as clearly as I can. You talked only to
 12 Mr. Harris, Alva Harris, about the sale of the house?
 13 A. Yes.
 14 Q. And that was on the phone?
 15 A. My husband talked to Alva Harris on the
 16 phone.
 17 Q. Okay.
 18 A. The first time I ever talked to
 19 Alva Harris was in person.
 20 Q. Okay. And when? I'm sorry.
 21 A. It was in person.
 22 Q. And what date was that?
 23 A. I don't know an exact date. I would say
 24 late January, early February of 2001.
 25 Q. 2000 or 2001?

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1 on that price.
 2 Q. Was the house still cluttered with files
 3 and books and some leftovers?
 4 A. Yes.
 5 Q. Okay. Did you go through the house
 6 again?
 7 A. We went through the upstairs. We didn't
 8 go downstairs.
 9 Q. Was there any discussion as to how soon
 10 the house would be cleared or cleaned to remove all
 11 of these items?
 12 A. I believe he said that within the next
 13 few weeks he would have somebody.
 14 Q. Okay. Did you discuss with him, "Why
 15 are these things here? Why are all these files,
 16 these books, these boxes, even some prints on the
 17 wall, why are they here?" Did you ask him that?
 18 A. No. I believe he mentioned that he got
 19 the house at an auction because the last person had
 20 lost it.
 21 Q. I'm sorry? Because the last person --
 22 A. Had lost it.
 23 Q. Okay. Did he tell you what kind of an
 24 auction?
 25 A. He might have said IRS auction, I don't

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1 A. 2001.
 2 Q. Okay. And where was that conversation?
 3 A. That was at the house.
 4 Q. Okay. And the time of day, roughly?
 5 A. I don't remember -- afternoon.
 6 Q. Okay. That's not a guess, that's your
 7 best recollection?
 8 A. That's my best recollection.
 9 Q. Do you know how the meeting came about
 10 that it was at the house?
 11 A. No, I don't recall.
 12 Q. Okay. Who was present besides yourself
 13 and Mr. Alva Harris?
 14 A. I believe my husband was there, and I
 15 think that's all.
 16 Q. And the nature of that meeting? I mean,
 17 what was the reason for it?
 18 A. We were still discussing a price and
 19 discussing the work that needed to be done to the
 20 house.
 21 Q. And what discussion was there about the
 22 price?
 23 A. Originally, he had asked for \$120,000,
 24 then we had offered \$90,000, and then he had
 25 countered with \$110,000, I think, and then we decided

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1 know.
 2 Q. Did you ask him any questions about that
 3 auction, when it was held and where?
 4 A. No.
 5 Q. Have you ever been to any kind of an
 6 auction?
 7 A. Family reunion auction.
 8 Q. Pardon me?
 9 A. Family reunion auctions and fund-raiser
 10 auctions.
 11 Q. I mean, like the sale of a car?
 12 A. No.
 13 Q. Sale of a horse?
 14 A. No.
 15 Q. Sale of tack equipment?
 16 A. No.
 17 Q. Sale of a house?
 18 A. No.
 19 Q. Did you subscribe in the two years 1997
 20 and 1998 to the Teton Valley News?
 21 A. No.
 22 Q. Did you subscribe to the Idaho Falls
 23 Post Register?
 24 A. No.
 25 Q. Are you aware of how many instances

1 there must be of publication in the local paper, a
2 general daily publication, before an IRS sale can be
3 held?

4 A. No.

5 Q. All right. When Mr. Alva Harris told
6 you about that he had bought it at an auction, you
7 believe an IRS auction, did you ask him where that
8 was held?

9 A. No.

10 Q. Did you ask him who was involved?

11 A. No.

12 Q. Okay. Now, your husband has testified
13 that in going back and forth in front of 195 North
14 Highway 33, he had seen the Targhee Powder Emporium
15 sign out there. Had you also seen that sign?

16 A. Yes, I had.

17 Q. In fact, that sign was still there when
18 you and Mr. Alva Harris met at the house and talked,
19 wasn't it?

20 A. Yes.

21 Q. In fact, you removed some fir trees that
22 were to the east of the sign after you moved in,
23 didn't you?

24 A. Yes.

25 Q. Okay. Did you remove the sign itself,

1 Q. Now, did you ask her that after we
2 recessed your deposition to find out where she was?

3 A. No.

4 Q. How did you just come up with that,
5 because --

6 A. Well, I knew that's where she was.

7 Q. Okay. Maybe I didn't ask the question,
8 but what was her last day at work at the clerk
9 recorder's office before she went on that mission?

10 A. I think it was August 2000.

11 Q. Have you talked to her since your
12 deposition, the first session?

13 A. Yes, I have.

14 Q. And did you talk to her about this case?

15 A. Briefly.

16 Q. What did you talk to her about?

17 A. I just asked her what she knew about the
18 land and stuff, and she said she didn't really know
19 much of anything about it.

20 Q. She didn't know much of anything. Is
21 that what she told you?

22 A. She said that you were in the courthouse
23 a lot.

24 Q. I'm sorry?

25 A. She said that you came into the

1 because it was still there?

2 A. I think we did. It was all tangled
3 up -- it was broken and tangled up with some
4 Christmas lights. And when we cleaned up the yard,
5 we got rid of all that stuff.

6 Q. I'm sorry?

7 A. When we cleaned up the yard, we got rid
8 of all that stuff.

9 Q. So even after the escrow closed, that
10 sign was still there. Correct?

11 A. Yes.

12 Q. Okay. Did you try to find out anything
13 about that entity Targhee Powder Emporium?

14 A. No.

15 Q. Did you ask Mr. Alva Harris?

16 A. No.

17 Q. Did you go down to the courthouse and
18 ask anybody like Nora Rigby, your mother-in-law?

19 A. No. She was actually out of town. She
20 was on a mission.

21 Q. When?

22 A. From October of that same year -- no,
23 October of 2000 until March of 2002, I believe.

24 Q. Where was she on a mission?

25 A. New Mexico.

1 courthouse a lot.

2 Q. Okay. Anything else in particular about
3 Mr. Bach coming into the courthouse?

4 A. No.

5 Q. Okay. Did she ever tell you she sat in
6 as a clerk on some of the law matters involving
7 John N. Bach and Alva A. Harris?

8 A. No.

9 Q. What else did she tell you when you
10 talked about it?

11 A. We didn't talk about it that much.

12 Q. Well, who brought up the subject?

13 A. Me. I just told her some of the
14 questions that you had asked and just that you were
15 wondering why I hadn't gone in to her at the
16 courthouse and asked her about the house before I
17 bought it.

18 Q. And did she then tell you, "Well, I was
19 on a mission"? Is that when she reminded you she was
20 gone?

21 A. Yeah. That's when I -- I think I
22 remembered. I said, "Oh, yeah, you were gone then."

23 Q. Your husband says he used to go in there
24 almost daily to see his mother. Did you go with him?

25 A. No.

1 Q. Now, the key times that I want to focus
2 on are the years 1997, 1998, and 1999. She worked in
3 the clerk's office, didn't she?
4 A. Yes, she did.
5 Q. And what was her title?
6 A. Clerk. I don't know.
7 Q. Deputy clerk? I mean, she was she --
8 A. I don't know.
9 Q. Okay. Let me see if we just can
10 verbally visualize something. The courthouse, which
11 is about two blocks away, has a ramp and stairs that
12 go up to the front doors. Would you agree with me on
13 that?
14 A. Yes.
15 Q. And as soon as you open up the door,
16 immediately to the left, not even ten feet, is the
17 entry to the clerk's office, the clerk recorder's.
18 Is that correct?
19 A. Correct.
20 Q. Okay. And when there was something to
21 be sold, such as a sheriff's sale, an IRS sale, a
22 foreclosure of taxes, on the pane of glass, as you
23 walk up to the courthouse, on the left-hand side
24 facing you, is where they posted the sale, the dates,
25 and the times, and what items were going to be

1 A. Right into the clerk's office.
2 Q. Okay. And that was to visit Nora?
3 A. Yes.
4 Q. All right. And what would you talk to
5 her generally about when you were there?
6 A. We would just talk about what was going
7 on in our lives, and I'd usually bring the kids in to
8 see her.
9 Q. Now, in the year 2001, do you remember
10 coming in and talking to her about wanting to buy a
11 house?
12 A. No.
13 Q. In the year 2000, the same thing,
14 wanting to buy a house?
15 A. No.
16 Q. The year 1999?
17 A. No.
18 Q. From all the papers that you have
19 delivered, it appears the closing date was
20 March 23rd, 2001. Is that correct?
21 A. I guess so.
22 Q. All right. So, now, we have a
23 parameter, up to July 1, of 2000 -- which is April,
24 May, June, and then July 1 -- you're still dealing
25 with Mr. Alva A. Harris, aren't you?

1 auctioned off. Isn't that correct?
2 A. I guess so. I don't pay attention to
3 those things.
4 Q. You never checked any of those?
5 A. No.
6 Q. Okay. In 1997, '98, '99 -- and we can
7 take it in separate years -- how many times on an
8 average would you go to the courthouse per year?
9 A. Per year?
10 Q. Per year, ma'am.
11 A. 50.
12 Q. Pardon?
13 A. 50.
14 Q. Each year?
15 A. Yes.
16 Q. Okay. And would that average also
17 continue in the year 2000 and 2001?
18 A. Maybe a little bit less frequently.
19 Q. How less frequent? I want to give you
20 all the opportunity --
21 A. 25 times, maybe.
22 Q. So over two times a month, going in and
23 out of that courthouse. Right?
24 A. Yes.
25 Q. Right past the clerk's office?

1 A. Yes.
2 Q. Because there was another problem of
3 refinancing with you and your husband on that house,
4 wasn't there?
5 A. There wasn't a problem.
6 Q. Well, there was something that had to be
7 overcome. Wasn't that a problem?
8 A. No.
9 Q. Tell us why you used the Beards for the
10 loan.
11 A. We didn't even know we were using the
12 Beards. We went through Anchor Mortgage. We went
13 into Anchor Mortgage. We said, "Travis, there's a
14 house we want to buy. Could you check our credit and
15 see if we can afford \$110,000?" He did that; he
16 said, "Yes." And then we said, "We're going to have
17 to do some fixing up on this home. What can we
18 qualify for?"
19 Q. And did you tell him which house it was?
20 A. Not at that time.
21 Q. Did you eventually before March 23rd,
22 2001?
23 A. Yes, I believe so.
24 Q. What did you tell him about the house?
25 A. We said that we were buying the house.

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1 We said that it had sat empty for several years and
2 that it needed a lot of work and that we were going
3 to need quite a bit of money to fix it up.
4 Q. And what did he tell you?
5 A. He said, "Don't worry about it. Go
6 ahead and do the repairs that need done, and you
7 should be able to -- you shouldn't have any trouble
8 getting financing."
9 Q. Did he tell you whose house that was?
10 A. He mentioned Layne Price.
11 Q. Did he tell you the history of that
12 house?
13 A. No.
14 Q. What did he say about Layne Price owning
15 that house?
16 A. He said, "Oh, the old Layne Price
17 place."
18 Q. And, at that time, after talking to
19 Travis, did you go see Mr. Layne Price?
20 A. No.
21 Q. Did you know who he was?
22 A. I think we had to get an escrow or we
23 had to put \$500 down or something, a retainer, maybe.
24 I don't know.
25 Q. Earnest money, as they call it?

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1 several different banks, we were eager to get into
2 the house to start working on it, and we needed to be
3 able to pay that money to Alva before we went in and
4 started work on the house.
5 And the paperwork seemed like it was
6 taking forever because we were excited. And Travis
7 said, "There's another route we can go. There are
8 private people in the community who loan money
9 through the mortgage company at a higher rate of
10 interest, who will do construction loans for a short
11 period of time," and asked if we would be interested
12 in that.
13 Q. Okay. But did he contact the Beards and
14 ask them for money -- let me finish my question, and
15 you've give a verbal rather than a shrug -- or did
16 you go or your husband go to the Beards and say,
17 "Hey, can you loan us the money on sort of a take-out
18 construction loan?"
19 A. My husband and I never discussed the
20 purchase of this house with Wayne or Jerrine Beard,
21 never. We went through the mortgage company, and we
22 didn't even realize that it was Wayne and Jerrine
23 until the day we signed the papers. In fact, we were
24 surprised. We said, "Why is their name on this?"
25 And they said, "Oh, well, they're the private lender

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1 A. Earnest money.
2 Q. Okay. So did you walk into the title
3 company and talk to Layne?
4 A. No. I gave the check to Travis, and
5 Travis took it over.
6 Q. Had you signed any agreement by that
7 time?
8 A. I think we had. I think we had agreed
9 with Alva that the sale price would be \$110,000.
10 Q. I have two documents -- actually, three,
11 that were marked. And taking the first example,
12 Exhibit No. *-007 for identification, I'm going to
13 read it into the record. To Whom It May Concern,
14 this letter is to clarify our loan package. We
15 purchased this property in March of 2001 with money
16 from a construction loan.
17 Was that from the Beards? I'll stop
18 right there.
19 A. It was through Anchor Mortgage from the
20 Beards.
21 Q. Okay. Explain to me why the Beards,
22 rather than a bank or Anchor Mortgage itself, would
23 come up with the money.
24 A. Because after we had filled out all of
25 our loan applications, and he was going through

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1 that loans money through Anchor Mortgage."
2 Q. Is it your testimony here today at this
3 moment that Travis set that all up?
4 A. Yes.
5 Q. And before you signed the loan papers,
6 was there a preliminary title report on the property?
7 Do you know what a preliminary title report is?
8 A. No, I don't know what that is.
9 Q. All right. Had you already signed the
10 escrow instructions on the property --
11 A. I --
12 Q. -- by the time you got the money from
13 the Beards?
14 A. I believe we had.
15 Q. After you signed the loan papers with
16 the Beards, did you talk to them? They're family,
17 aren't they?
18 A. We didn't talk to them -- I saw Jerrine;
19 maybe it was around Easter time. And she mentioned
20 that she was glad she could help us out. That's all
21 she said. She said that Travis called her to ask if
22 it would be okay that he lend their money to us, and
23 she said, Sure. I'd love to help them out."
24 Q. Okay. So Easter of 2001 was the first
25 time you talked with Jerrine about that loan.

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SHEET 6 PAGE 155

1 Correct?
 2 A. Yes.
 3 Q. After your deposition the last time, did
 4 you go talk to them or call them on the phone or make
 5 contact in any way?
 6 A. She called me. And I guess she had
 7 heard that we had had a deposition, and she called
 8 and just kind of asked how everything was going.
 9 Q. What did you tell her?
 10 A. I told her that you thought that we were
 11 in some big conspiracy against you.
 12 Q. What else did you tell her?
 13 A. I just told her the questions that you
 14 had asked.
 15 Q. What did she say?
 16 A. And she said that she had never talked
 17 to you about it and that once she found out that
 18 Wayne had talked to you, that she didn't want
 19 anything to do with it. She didn't want anything to
 20 do with using you for an attorney or for going after
 21 the IRS.
 22 Q. She told you that?
 23 A. Uh-huh.
 24 Q. Did she tell you what years she might
 25 have had that feeling or opinion?

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1 Corrine Morgan?
 2 A. No.
 3 Q. Did she tell you anything about that
 4 after your deposition?
 5 A. No.
 6 Q. All right. Did she tell you how many
 7 times she called the house at 195 North Highway 33 to
 8 speak with John Bach before she delivered the
 9 offering of Christmas cookies?
 10 A. No.
 11 Q. How long did you talk to her about this?
 12 A. Five minutes.
 13 Q. And where was that?
 14 A. On the phone.
 15 Q. Which day after your deposition?
 16 A. Probably two weeks.
 17 Q. Did you call her, and then she returned
 18 your call?
 19 A. No.
 20 Q. Or had your husband tried to reach
 21 Wayne Beard?
 22 A. I don't know what my husband did. I
 23 just know that Jerrine called one day.
 24 Q. Did you know that your husband was
 25 trying to reach Wayne and talk to him after the

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1 A. No.
 2 Q. Did you read my affidavit in opposition
 3 to your motion for summary judgment?
 4 A. Yes.
 5 Q. Do you remember the statement in there
 6 that Jerrine came over just before Christmas with a
 7 plate full of cookies and talked with myself at that
 8 address, 195 North Highway 33?
 9 A. I read that.
 10 Q. Did you discuss that with her? Did you
 11 say, "Hey, Jerrine" or "Aunt" or "Auntie, did this
 12 take place? Were you over there?" Did you ask her
 13 that?
 14 A. No, I didn't ask her that.
 15 Q. Did she talk about that at all?
 16 A. She -- all she said is that her and
 17 Wayne got in an argument about him getting involved
 18 with you.
 19 Q. With me?
 20 A. Yes.
 21 Q. Did she mention Corrine Morgan?
 22 A. No.
 23 Q. Did she mention any of the 13 parties
 24 that were named as plaintiffs in a lawsuit in which
 25 her husband assigned all his claims to myself and

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1 depositions had recessed?
 2 A. No.
 3 Q. So, in short, Jerrine was pretty
 4 perturbed toward John Bach about what? What was she
 5 upset about?
 6 A. She just didn't want to be listed with
 7 you in any lawsuits.
 8 Q. Okay. Did she tell you she had a
 9 conversation with Mr. John Bach way back in 1998
 10 where Mr. Bach told her, "Don't worry. I don't have
 11 your assignment of claims. It's just your
 12 husband's"? Did she tell you that?
 13 A. No.
 14 Q. Did she tell you what kind of lawsuit
 15 this was that she didn't want to be involved in?
 16 A. No.
 17 Q. Now, in regards to this lawsuit, again,
 18 as to the affidavit that I filed in opposition, I
 19 attached some pages out of that lawsuit. Did you
 20 review those?
 21 A. I think I did.
 22 Q. Okay. And did you discuss that with her
 23 at any point, this conversation?
 24 A. No.
 25 Q. Did you talk to her after that,

DEPOSITION OF DEENA R. HILL - 03/24/04

SHEET 7 PAGE 159

1 two weeks after your deposition recessed until today,
2 about that lawsuit?
3 A. No.
4 Q. Did she deny that her husband had signed
5 an assignment of all claims to Corrine Morgan and
6 John Bach?
7 A. No, I don't think we discussed that.
8 Q. Okay. Did you discuss the fact that her
9 husband had reviewed about three, four drafts of that
10 complaint and approved every one of them?
11 A. No.
12 Q. Have you talked anything about with
13 David Wayne Beard about this?
14 A. No.
15 Q. Why not?
16 A. Because I don't -- I don't really talk
17 to Wayne that much. In fact, the last time I talked
18 to him has probably been a couple of years.
19 Q. Is there some bad feelings or --
20 A. No.
21 Q. Well, I'm sorry for the interruption. I
22 left off with Exhibit *-007, reading the first
23 sentence. Let me read it again -- actually, the
24 first two sentences. This letter is to clarify our
25 loan package.

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1 A. To explain it to our mortgage company,
2 what steps we had taken up to that point.
3 Q. What was the problem with the title's
4 chain?
5 MR. HARRIS: If you know.
6 THE WITNESS: I don't know.
7 Q. BY MR. BACH: That's your signature down
8 there, isn't it?
9 A. Yes, it is.
10 Q. And your husband's?
11 A. Yes.
12 Q. And also the initials, is that also his.
13 B.H.?
14 A. Yes.
15 Q. Where was this signed?
16 A. Probably -- I don't know for sure. It
17 was either at the title company or the mortgage
18 company.
19 Q. Had you already got the \$110,000 loan
20 from the Beards?
21 A. Yes.
22 Q. And was it more than \$110,000?
23 A. It was -- \$153,000 was the original loan
24 amount.
25 Q. How do you interpret Scona, Inc.

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1 We purchased this property in March of
2 2001 with money from a construction loan. The money
3 was lent to us by Wayne and Jerrine Beard. The
4 property financing was originally going to be through
5 a construction loan with U.S. Bank. This is why
6 there was Scona, Inc. showing on the title in
7 February.
8 February of what year?
9 A. I don't know.
10 Q. It continues. Scona, Inc. foreclosed on
11 the property, so that may be why the title chain is a
12 little strange. Did you type that sentence?
13 A. I don't think I did.
14 Q. There's no date on it. Do you know when
15 this was signed? This is Plaintiff's *-007 for
16 identification.
17 A. I believe this was signed before we
18 applied for our final loan.
19 Q. Can you pinpoint the month and the year?
20 A. The month?
21 Q. Yes.
22 A. Probably May of 2001.
23 Q. Who prepared this?
24 A. I believe it was Anchor Mortgage.
25 Q. Why?

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1 foreclosed on the property, so that may be why the
2 title chain is a little strange? Did they foreclose
3 on you? I mean, had you failed to pay Scona?
4 A. No.
5 Q. Do you have explanation for that
6 sentence?
7 A. Well, I guess it means that the house
8 was foreclosed on, then the title went to Scona, and
9 then we purchased the house from Scona.
10 Q. And you say this came from
11 Anchor Mortgage, Travis Thompson?
12 A. Travis -- I guess. I think so. I don't
13 remember. We --
14 Q. Again, Mrs. Hill, the last time we were
15 here, I got the impression that Travis was involved
16 only to the point of saying, "Why don't you look for
17 private funding or sources of loan," and the Beards
18 came in. Now, I'm receiving clear information that
19 Mr. Travis Thompson at Anchor Mortgage was involved
20 to the hilt. And they were your agent, weren't they,
21 both Travis and Anchor Mortgage?
22 MR. HARRIS: I object to the extent you're
23 calling for a legal conclusion.
24 Q. BY MR. BACH: Would you answer that,
25 please?

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SHEET 8 PAGE 163

1 A. Our agent?
2 Q. Yes. You know what an agent is?
3 A. He was getting us our mortgage.
4 Q. Okay. He was working for you, wasn't
5 he?
6 A. Well, yeah.
7 Q. Okay. And you went to him; you said,
8 "Help us, Travis," didn't you?
9 A. We went to him and said, "We need
10 financing."
11 Q. Okay. So you were asking for his
12 assistance. Correct?
13 A. That's his job.
14 Q. You were asking for his assistance -- I
15 didn't ask whether it was his job -- is that correct?
16 A. We asked for his assistance in getting a
17 loan.
18 Q. Thank you.
19 Okay. This continues. This is
20 Plaintiff's No. *-007 for identification. Since we
21 bought it we have completely remodeled and completed
22 the basement. It continues. The original appraisal
23 was done subject to us making improvements. We have
24 since made some changes and have had a new appraisal.
25 We are looking to pay off Anderson Lumber for \$3,500

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1 Q. You're assuming that. Right? Is that
2 correct? You're not sure?
3 A. It was sometime in May that we were
4 working on our final mortgage, closing on your final
5 mortgage.
6 Q. Okay. What was your understanding on
7 what Exhibit *-008 for identification was going to be
8 used?
9 A. It was used to explain to the mortgage
10 company who was giving us the money, what the money
11 they were giving us was going to be used for.
12 Q. Which mortgage company is this now?
13 It's not Anchor. Right?
14 A. Countrywide.
15 Q. Pardon?
16 A. Countrywide.
17 Q. Okay. It's not U.S. Bank either, is it?
18 A. No.
19 Q. Okay. Is that who you finally
20 refinanced through?
21 A. Is Countrywide?
22 Q. Yeah.
23 A. Yes.
24 Q. When did that refinancing go through?
25 A. That was June of 2001.

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1 and the Beards' loan for \$158,400. Please call our
2 broker if you have any questions.
3 Who is your broker?
4 A. Travis Thompson.
5 Q. Thank you.
6 The other one, Exhibit *-008 for
7 identification, again, is To Whom It May Concern, no
8 date. It starts out this letter is to address our
9 contract with Bret and Deena Hill. We loaned them
10 153,000 at 12 percent simple interest. The interest
11 is accruing daily at \$50.30. The current pay off is
12 \$158,331.95 through July 6th, 2001. Feel free to
13 contact us if you have further questions. Thank you,
14 then typed David Wayne and Jerrine Beard, but they
15 don't sign it.
16 I'm showing you that exhibit. Is that
17 your signature?
18 A. Yes.
19 Q. And is that your husband's signature?
20 A. Yes.
21 Q. Who prepared that?
22 A. I assume it was Anchor Mortgage.
23 Q. What time, what month, and what year?
24 A. The same time as the other one, probably
25 May of 2001.

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1 Q. Now, for a moment I'm going to digress,
2 just to keep in numerical sequences the exhibits,
3 Exhibit *-009 for identification. This was taken out
4 of the packet that was left by you, although not
5 delineated or identified, but within the documents.
6 The whole stack of those documents is right here.
7 They've been kept in the same order.
8 It starts out with a warranty deed, and
9 it has 25 pages, including that warranty deed. It is
10 stapled. The staple has not been removed, as I
11 received it from Copy Cabin. I want you to look
12 through that, and then I have a series of questions.
13 Just familiarize yourself with what the documents
14 are.
15 A. Okay.
16 Q. Have you reviewed those documents before
17 in that compilation?
18 A. Yes.
19 Q. At what time?
20 A. I received a copy of these about the
21 same time you did, I assume.
22 Q. I'm sorry?
23 A. I received a copy of these that were
24 filed by my attorney.
25 Q. When did you receive those?

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1 A. A month or two ago. I'm not sure of the
2 exact date.

3 Q. And which attorney are you referring to,
4 Alva or --

5 A. Jared Harris.

6 Q. Now, I want to show you something on
7 this entire exhibit. We haven't marked the pages,
8 and I won't. But it has, the last two pages, a
9 corporate warranty deed, and it says that this
10 indenture made -- it looks like the 9th day of March,
11 2001. Is that your deed?

12 MR. HARRIS: If you know.

13 THE WITNESS: I don't know.

14 MR. BACH: Before we go any further, let's
15 have this marked as Plaintiff's No. *-010 for
16 identification.

17 (Exhibit *-010 was marked.)

18 Q. BY MR. BACH: Have you seen this before?
19 And this is on First American Title Company -- it's
20 an invoice T-8537, type date February 28, 2001.
21 That's Plaintiff's *-010 for identification.

22 A. I don't recall seeing this.

23 Q. At any time?

24 A. No.

25 Q. Now, this was in the package of

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1 lenders extended, there's a crossout; eagle
2 protection owners N/A; eagle protection loan N/A, on
3 the property described on attached Order No. T8537.

4 And, as you've already clarified, that's your and
5 your husband's initials?

6 A. Yes.

7 Q. Okay. Was Mr. Alva Harris present when
8 you signed this?

9 A. I don't recall. I don't think so.

10 Q. Pardon me?

11 A. I don't think so.

12 Q. Okay. It then continues. It says, Free
13 of encumbrances except, and then there's paragraphs
14 numbered 1 and 2. And after that it says, I have
15 read the above referenced preliminary title
16 commitment and approve the policy of title insurance
17 to be issued as required by instructions to include
18 the above vesting and exceptions, buyers initials.
19 That's also your initials and your husband's?

20 A. Yes.

21 Q. Okay. I'm going to represent to you
22 that I do not have a complete title insurance policy
23 as that paragraph referenced in this stack. There
24 are parts of pages, but there is not the entire
25 policy. Do you know where that is? You should have

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1 material. I just pulled it out from that stack in
2 front of you. Even when you picked these up at the
3 title company, you never reviewed this particular
4 document, Plaintiff's *-010?

5 A. No.

6 MR. BACH: Let's have a two-page document
7 marked as Plaintiff's *-011.

8 (Exhibit *-011 was marked.)

9 Q. BY MR. BACH: Would you review this
10 two-page document? It's says Escrow Instructions,
11 Purchase. It appears to have yours and your
12 husband's initials and Alva Harris's in several spots
13 and signatures on the last page.

14 A. Okay.

15 Q. Are those your initials on the first
16 page --

17 A. Yes.

18 Q. -- in those two spots?

19 And to be accurate as we can, it's the
20 upper one-third. It's says, Buyers initials, You are
21 authorized and instructed to issue the specified
22 title insurance policy or policies, in the specified
23 amounts to-wit. It says, Owners standard \$110,000;
24 owners extended N/A -- I take it that's
25 nonapplicable -- lenders standard, again, N/A;

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1 it at home.

2 A. I have produced everything I have at
3 home.

4 Q. To avoid any confusion, so we can
5 expedite matters and not run back and forth to the
6 court -- which we may have to, anyway -- do I have
7 your permission to go get the copy of it from
8 Layne Price, the title insurance policy issued?

9 MR. HARRIS: If you want to take their
10 deposition, you can do so.

11 MR. BACH: Pardon me?

12 MR. HARRIS: If you want to take their
13 deposition, you can do so.

14 MR. BACH: No. You had to produce it. I'm
15 trying to help you, Mr. Harris. I'm asking your
16 client, do I have her permission? If I have to get a
17 subpoena, I will, and then move for further
18 sanctions.

19 Q. BY MR. BACH: Do I have your permission?

20 A. You can get whatever is of public
21 record.

22 Q. Title insurance is not of public record,
23 ma'am. So I take it your answer is, no, you will not
24 give consent, even though you were to have produced
25 that title insurance policy?

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1 A. I produced what I had.
2 Q. What you have is not complete, ma'am.
3 I'm just trying to expedite. I'm asking you a second
4 time, do I have your permission to do that, just to
5 get a copy of the title insurance?
6 A. I guess.
7 Q. Thank you.
8 MR. HARRIS: You don't have to give him
9 permission.
10 Q. BY MR. BACH: Now, let me cover
11 something else with you, in this same document --
12 MR. HARRIS: If he wants to get it, he can
13 talk to a judge about it.
14 THE WITNESS: Okay. I'd rather you talk to
15 the judge about it. I don't want to give you
16 permission to go through any more of my personal
17 things.
18 Q. BY MR. BACH: And that's after your
19 attorney prompted you. Is that right, ma'am?
20 I think the court reporter got the
21 conversation on the record. I hope he does. He's
22 supposed to take everything that's being said by any
23 of us.
24 MR. BACH: Okey-dokey. Very obstructionist,
25 Mr. Harris, very.

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1 Q. Okay. What do you remember him telling
2 you in these phone conversations, these two or three?
3 A. I believe they were just conversations
4 keeping him updated as to where our financing was and
5 whether or not we were still interested in the
6 property.
7 Q. What was the exact date that you can
8 recall that the price was agreed upon? You said you
9 were at 120 -- he was, and you were at 90. When did
10 it become 110?
11 A. Mid February.
12 Q. What day in February?
13 A. I don't know, the middle of February.
14 Q. Well, here we have what looks to be like
15 an invoice, and that's what it says it is, from First
16 American to Alva Harris. It's dated the last day of
17 February, this being -- 2001 being a non-leap year.
18 Had you already reached terms with Mr. Harris?
19 A. Yes.
20 Q. Had you already signed an agreement with
21 Mr. Harris?
22 A. I believe so.
23 Q. And was that agreement somehow faulty?
24 A. No.
25 Q. Because it wasn't until -- and I'm

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1 Q. BY MR. BACH: On No. *-011 for
2 identification, is that your signature on the second
3 page below which is typed the address P.O. Box 600,
4 Driggs?
5 A. Yes.
6 Q. Did you read this document carefully
7 before you signed it?
8 A. I reviewed it. I didn't -- yes.
9 Q. Have you ever given notice to anybody,
10 Mr. Harris, the title company, any lenders, that you
11 rescind or set this aside, that it's not what you
12 agreed to?
13 A. No.
14 Q. Okay. Prior to July 1st, 2001, how many
15 times had you talked with Mr. Alva Harris?
16 A. Three or four.
17 Q. Okay. One you told us was at the house.
18 Correct?
19 A. Yes.
20 Q. Where were the others?
21 A. By phone conversation.
22 Q. And I asked you this partially, but I
23 want to make sure head on, you never kept any notes
24 of phone conversations with Mr. Alva Harris?
25 A. No.

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1 showing you now Plaintiff's *-010. Here's
2 Plaintiff's *-011, and we're three weeks away on
3 March 21st when we get the final escrow instructions.
4 Do you see the dilemma? Why would a title company
5 send a cost invoice to the seller unless the deal had
6 closed and then later on it was set aside and
7 renegotiated by No. *-011 three weeks later? Does
8 that refresh your recollection?
9 A. No. It makes sense to me. We agreed on
10 the price. We got title insurance. We got
11 financing.
12 Q. Do you know how a title company
13 operates, ma'am?
14 A. Not really.
15 Q. By law they cannot charge until the
16 escrow closes. If they charge a party a fee, it's
17 generally a precursor, precondition, the escrow has
18 closed or is closing that day.
19 So if that were true on those
20 assumptions, the escrow was set to close
21 February 28th, 2001. But it obviously didn't close,
22 because on Plaintiff's *-011 for identification,
23 three weeks later you reach the final written escrow
24 instructions by all parties. Can you explain any of
25 that further?

1 A. No.
 2 Q. Okay. Isn't it, in fact, true that
 3 Travis Thompson told you that there is a question of
 4 John Bach's claim on this property?
 5 A. No.
 6 Q. Isn't it further true that
 7 Mr. Alva Harris indicated to you that he had to get a
 8 judgment of default on that property to get title to
 9 it?
 10 A. No.
 11 Q. Did he ever tell you that?
 12 A. No.
 13 Q. Let's go back to Exhibit No. *-009,
 14 which you said this portion was given to you by your
 15 current attorney, Jared Harris?
 16 A. Yes.
 17 Q. And do you recall where? Was it given
 18 to you at your home?
 19 A. I believe it was sent in the mail as
 20 part of the summary judgment.
 21 Q. Just these 25 pages by themselves or
 22 others?
 23 A. I believe there were others, too.
 24 Q. Okay. How many others?
 25 A. I don't -- I don't know.

1 involving that property? To clarify, the property is
 2 195 North Highway 33.
 3 MR. HARRIS: I'm going to object to the
 4 extent you're calling for information protected by
 5 the attorney-client privilege. If you want to ask
 6 pre-July of 2001 --
 7 MR. BACH: She has been ordered and you have
 8 been ordered there is no attorney-client privilege
 9 with your dad prior to July 1st, 2001.
 10 MR. HARRIS: And if you want to --
 11 Q. BY MR. BACH: So limited to that date,
 12 who first told you about the bankruptcy proceeding?
 13 MR. HARRIS: So limited to that date.
 14 THE WITNESS: Okay. As to that date, I
 15 don't recall hearing about a bankruptcy. I remember
 16 hearing about a foreclosure.
 17 Q. BY MR. BACH: An IRS foreclosure.
 18 Right?
 19 A. Yes.
 20 Q. Okay. And that was the first
 21 conversation you had with Mr. Harris over the phone.
 22 Right?
 23 A. Not the first.
 24 Q. The second or third?
 25 A. Probably.

1 Q. Within this document there is a copy --
 2 well, I have to count the pages. It starts with the
 3 12th page, 12th, 13th, 14th, and 15th. It says
 4 default judgment. It was received August 19, 1999 by
 5 the Teton County Clerk Recorder's stamp. It was
 6 filed August 19th, 1999 at the request of
 7 Alva A. Harris at 10:30 a.m.
 8 Did you review that default judgment
 9 carefully when you got the papers?
 10 A. Yes, I did look it over.
 11 Q. Pardon me?
 12 A. Yes, I did look it over.
 13 Q. Did any of that concern you, any of the
 14 other documents, those four and the documents within
 15 that total exhibit? We're referring to No. *-009.
 16 A. No, it didn't concern me.
 17 Q. Did you ever talk to Mr. Alva Harris
 18 about the information in those documents after you
 19 got them?
 20 A. No.
 21 Q. Now, in the certification of questions,
 22 you were asked -- I'm going to pick up with No. 2 --
 23 quote, Even up to this date -- I'm reading it, but
 24 let me include even up to this date today -- who
 25 first told you about the bankruptcy proceeding

1 Q. Did Mr. Harris ever tell you that he
 2 used Scona, Inc. as a shield, he would have an
 3 investor say that he wanted to buy at an IRS sale so
 4 he would give Mr. Harris the money and Mr. Harris
 5 would put it in Scona, Inc.'s bank account? Did he
 6 ever tell you that?
 7 MR. HARRIS: And I object to the extent
 8 you're asking questions about conversations she had
 9 with Mr. Harris after July 2001.
 10 THE WITNESS: I don't -- I never had that
 11 conversation.
 12 Q. BY MR. BACH: At any time?
 13 A. No.
 14 Q. Okay. Because we said after you got
 15 these documents in No. *-009 for identification, that
 16 you got from Jared Harris, you never talked to
 17 Alva Harris at all about the information contained in
 18 there?
 19 A. No.
 20 Q. You weren't angered? You weren't upset?
 21 A. No.
 22 Q. Okay. The next question, it says:
 23 "Question: So is it blind faith now,
 24 Mrs. Hill, that whatever these two gentlemen,
 25 Mr. Alva Harris and Mr. Jared Harris, have done for

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1 you is okay by you? You don't question them. Is
2 that it?"
3 And I think you answered. You said:
4 "Answer: Yes. As far as I know, I
5 trust them.
6 "Question: Thank you. You trust them
7 and you accept what they do on your behalf. Right?
8 "Answer: Yes."
9 The next question, which you didn't
10 answer:
11 "Question: Okay. Even if it was wrong,
12 you accept it. Is that true?"
13 Would you answer that one, please?
14 A. If they were doing something wrong, no,
15 I wouldn't accept it.
16 Q. How do you know until you ask them?
17 A. I guess I wouldn't.
18 Q. Okay. But you have accepted unconcerned
19 whether they're doing anything wrong. Is that right?
20 A. Yes.
21 Q. Thank you.
22 The next question, which is No. 4,
23 Mrs. Hill -- I'm reading it -- quote, I don't mean to
24 demean you, but you're a grown-up. You have had four
25 children. You sound like you have a good head on

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1 education and also work experience. At
2 you, you read documents very quickly,
3 to me, very thoroughly. Do you do the
4 sort of your policy or trade? Anything you sign, you
5 read carefully, don't you?
6 A. Not that carefully.
7 Q. Well, on this property, you did, didn't
8 you?
9 A. No. I glanced over it when I went to
10 sign the papers at the title company.
11 Q. And the title company is First American,
12 Layne Price?
13 A. Yes.
14 Q. But he wasn't there?
15 A. No, he was not the closing agent.
16 Q. Was Jerrilee Brower there?
17 A. I believe it was Lesa Bott that --
18 Q. I'm sorry?
19 A. Lesa Bott that went over the closing
20 documents with us.
21 Q. Okay. By the way, have you seen my
22 further answers to interrogatories sent by your
23 attorney to me?
24 A. Have I seen your answers?
25 Q. Yes, ma'am.

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1 your shoulders. You can't bury your head in the sand
2 when you're in a lawsuit. You have to make the
3 decisions. Your attorney doesn't testify for you.
4 You testify for you, not even for your husband. You
5 testify.
6 Name me one instance in which you've
7 told your attorneys that they couldn't act for you.
8 MR. HARRIS: Again, the same objection, to
9 the extent you're calling for anything protected by
10 attorney-privilege after July of 2001.
11 THE WITNESS: After July 2001?
12 Q. BY MR. BACH: Well, they weren't your
13 attorneys?
14 A. After July 2001?
15 Q. Before July 1, 2001, they were not your
16 attorneys?
17 A. And I wasn't aware of anything that they
18 had done before then.
19 Q. Okay. You weren't aware of anything?
20 A. (Nonverbal response.)
21 MR. HARRIS: You need to answer audibly.
22 Q. BY MR. BACH: You were 21 years of age
23 or more on March 23, 2001. Correct?
24 A. Yes.
25 Q. You told us of your background and

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1 A. No.
2 Q. Okay. Are you aware that I intend to
3 call that gentleman right next to you as a witness
4 against you?
5 A. No.
6 Q. So the next question with that is as
7 follows: In that regard, has Mr. Jared Harris ever
8 told you that he may have to testify and therefore
9 cannot be your attorney in this case? Has he told
10 you that?
11 MR. HARRIS: And I object to the extent
12 you're calling for information --
13 MR. BACH: That has nothing to do with the
14 privilege.
15 Q. BY MR. BACH: Has he told you that he
16 may not --
17 MR. HARRIS: Mr. Bach --
18 THE REPORTER: You guys are going to have
19 to not talk over each other.
20 MR. BACH: I'm sorry. Okay.
21 MR. HARRIS: I object to the extent you're
22 calling for information which is protected by
23 attorney-client privilege. You are asking for a
24 conversation between she and her counsel, and I'm
25 instructing her not to answer.

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1 MR. BACH: Are you aware of the case before
2 the Idaho Supreme Court right now under submission
3 that Greg Moeller argued March 5 on the conflict of
4 interest between attorneys such as you in almost a
5 similar position? Are you?
6 MR. HARRIS: It's not my deposition,
7 Mr. Bach.
8 MR. BACH: So I take it that won't be
9 answered?
10 MR. HARRIS: That's correct.
11 MR. BACH: All right.
12 Q. BY MR. BACH: No. 6: "Question" -- and
13 this pertains to answers to interrogatories -- "did
14 you write out your answers and then send them to
15 Mr. Alva Harris?" I'm not asking for the contents.
16 Do you ever remember writing down answers to
17 Mr. Alva Harris?
18 A. No.
19 Q. Okay. I had marked during your
20 deposition -- and I read only a portion of your
21 answer, and it led to a question. And in order to
22 get pick it up, I'm going to have to read it in
23 sequence, and the question was by myself.
24 "I'm going to read only your portion of
25 your answer. Quote, Defendants Hill had a

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1 repeats that.
2 I'll go to No. 9, and it reads as
3 follows, my question to you: "There's really no
4 answer to" -- this is Interrogatory No. 2 -- "other
5 than it says defendants will testify to their
6 acquisition of the property, lack of knowledge of any
7 adverse claim to their property, and their actions
8 towards plaintiffs.
9 Did you write that out?
10 MR. HARRIS: Objection.
11 Q. BY MR. BACH: Was that your work
12 product, thought process?
13 MR. HARRIS: Objection. Same objections,
14 attorney-client privilege.
15 Q. BY MR. BACH: I'd like an answer to
16 that. I never asked for anybody other than yours.
17 Is that your work product? Is that your work effort?
18 MR. HARRIS: You're asking for what she --
19 you're asking for correspondence between she and her
20 attorney.
21 MR. BACH: Counsel, I've put the question.
22 Don't restate it for me. Don't obfuscate. Don't
23 convolute. If your client doesn't want to answer,
24 that's fine. You tell her that. But I'd like an
25 answer. I'm here waiting.

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1 conversation with Alva Harris regarding the potential
2 purchase of the property located at 195 North
3 Highway 33, Driggs, Idaho. Thereafter
4 Defendants Hill were contacted by Jack McLean
5 regarding the potential purchase of the property.
6 "Mr. McLean showed Defendants Hill the
7 house that they purchased. The closing was done
8 through First American Title Company. In the spring
9 of 2002, Ms. Katherine Miller informed us that
10 plaintiff had recorded a document regarding title to
11 our property."
12 And I asked you, "Is that what you wrote
13 out, or is that what was presented to you for your
14 signature by your attorneys?"
15 MR. HARRIS: And I have the same objection.
16 Q. BY MR. BACH: I want to state this, this
17 does not cover the attorney-client privilege. It
18 covers a work product privilege that has never been
19 asserted. You've obviously given the answer, those
20 statements I've just read to you, so they're a matter
21 of public record. I just want to know, did you write
22 those out or did someone do it for you?
23 MR. HARRIS: And I have the same objection.
24 MR. BACH: Okay.
25 Q. BY MR. BACH: The next question just

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1 MR. HARRIS: Okay. So I don't understand
2 your question. Can you rephrase your question?
3 MR. BACH: My question stands.
4 Q. BY MR. BACH: Will you answer it,
5 please?
6 MR. HARRIS: I'll just have the question
7 read back.
8 THE WITNESS: Repeat the question.
9 Q. BY MR. BACH: I'll read it again.
10 "Question: There's really no answer to
11 your Interrogatory No. 2, other than it says
12 defendants will testify to their acquisition of the
13 property, lack of knowledge of any adverse claim to
14 their property, and their actions toward the
15 plaintiffs." Did you write that paragraph out?
16 A. No, I did not.
17 Q. Was that your thought process, your work
18 product, those lines I just read?
19 A. Yes.
20 Q. Are you aware of what duty Idaho cases
21 put on a prospective buyer to check the claims
22 against a property they may be purchasing?
23 A. No.
24 Q. Regardless of who may have said it, did
25 you go see anyone to inquire about that?

1 A. No.
2 Q. No. 10, "Interrogatory No. 3 -- and I'm
3 going to read this." I'm reading this right now from
4 the questions certified. It says, quote, Give in
5 full, precise, and exacting details the names,
6 addresses, telephone numbers, and employments of all
7 witness you may call, and what you know or expect
8 each witness to testify, refute, impeach, or deny any
9 testimony of plaintiff. Further state if you have
10 any form of recorded or given statement from each
11 witness and provide copies of such statements with
12 your answer.

13 "Your answer is as follows: Defendant
14 Alva Harris, P.O. Box 479, Shelley, will testify as
15 to the sale of the property, quiet title action,
16 status of title, and Defendants Hill's lack of
17 participation in the purported conversation."

18 Who told you he was going to do that?

19 MR. HARRIS: Objection to the extent the
20 question calls for information covered by
21 attorney-client privilege if you're asking about the
22 conversations she had --

23 Q. BY MR. BACH: Who told you that?

24 MR. HARRIS: So if you can answer that
25 without disclosing discussion with one of your

1 for information covered by --

2 Q. BY MR. BACH: I really suggest you get
3 independent counsel.

4 MR. HARRIS: -- the attorney-client
5 privilege.

6 THE REPORTER: You guys are really
7 getting -- one at a time. I'm sorry.

8 THE WITNESS: Well, I would have got that
9 information from my attorney.

10 Q. BY MR. BACH: Which one?

11 A. Jared Harris.

12 Q. But he was talking to his dad as a
13 witness, not as your previous attorneys. So I want
14 to know where are the written statements of
15 Mr. Alva Harris that have not been delivered to me
16 about what he's going to testify to in this case as a
17 witness, not as an attorney witness, as a percipient
18 witness individually, for Scona Inc., or any other
19 buyer or investor he had in Scona? Why haven't those
20 been delivered to me?

21 A. There are no documents.

22 Q. How do you know that?

23 A. Well, I don't have them. And I wouldn't
24 know where they were if there were any. And I don't
25 think there are any.

1 counsel, you can answer the question.

2 Q. BY MR. BACH: Well, let me put it to you
3 very straight. You got socked with 400 bucks, and I
4 hope you're going to pay that off, so I don't have to
5 go in for a contempt citation.

6 The court has found that there is no
7 attorney-client privilege up to July 1st, 2001.
8 Everything in that answer to interrogatory has to be
9 before July 1st, 2001, because all the documents that
10 are marked, especially No. *-010 for identification,
11 all of these, with the exception of *-011, but up to
12 *-010, are all before July 1st, 2001. No
13 attorney-client privilege, no work product privilege.
14 That man may expose to you more citations of costs.

15 I want to know where you got that
16 information, that that's what Mr. Alva Harris is
17 going to do individually, as a representative of
18 Scona, as a seller, all before July 1st, 2001. Where
19 did you get that?

20 MR. HARRIS: So do you understand my
21 previous objection?

22 And I make the same objection --

23 Q. BY MR. BACH: Your attorney just put you
24 right in the corner, right in a box.

25 MR. HARRIS: -- to the extent you're calling

1 Q. But when you signed this answer to
2 interrogatories, did you ascertain from your counsel
3 where are these statements of Mr. Alva Harris? Did
4 you ask that of Mr. Jared Harris?

5 A. No.

6 MR. HARRIS: Objection to the extent you're
7 calling for conversations between she and her
8 counsel, attorney-client privilege.

9 MR. BACH: Counsel, I'll tell you right now,
10 you've spun me. You've spun me. You've spun the
11 court. You are in a required disclosure, and, that
12 is, if you have any kind of notes, if you have any
13 kind of statements, if you have any kind of
14 recording, any kind of memo or file, on what your
15 father is going to testify to, I'm entitled to see
16 it. And I take it you won't produce that. Is that
17 right, sir?

18 MR. HARRIS: I'm not answering your
19 questions in this deposition. It's not my
20 deposition.

21 Q. BY MR. BACH: Okay. I'm going to try to
22 complete this, all right, so that we have no loose
23 ends. But I don't know that this whole deposition
24 will be completed, because I really see a setup on
25 spinning me and the court by your counsel.

DEPOSITION OF DEENA R. HILL - 03/24/04

SHEET 15 PAGE 191

1 There was a question also that was put
2 to you as No. 10 -- excuse me, No. 11. I misspoke.
3 It says, "Also, Interrogatory No. 4, it
4 says, Give in full, precise, and exacting details all
5 promises, conditions, agreements, or understandings,
6 or discussions, et cetera, you have had reached or
7 are operating under with Alva A. Harris."
8 Let's limit that up to your July 1st,
9 2001. Have you told me all of those agreements, all
10 of those conditions, all of those understandings?
11 A. Yes, to the best of my knowledge.
12 Q. Pardon me?
13 A. Yes, I have.
14 Q. All right. Thank you.
15 All right. Then No. 12, this is a
16 certified question, "Then you were to set forth in
17 full and exacting detail all facts, data,
18 information, and circumstances, et cetera, upon which
19 you base or have stated any denials of any form,
20 plus, also identifying what documents, materials,
21 deeds, or other records support your denials, and
22 under what categories such may be found,
23 re: production of documents, and if not so produced,
24 why not, and where -- it says are (sic) such
25 documents, materials, et cetera, to be located."

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1 I'm still reading from the certified
2 question, "Here's your answer. In response to
3 Request for Admission No. 1, Hills deny the request
4 because they did not have any knowledge of
5 plaintiff's Chapter 13 bankruptcy proceedings.
6 "Now, you've already told me you did not
7 know some of the principles of law of notice. Has
8 anybody -- regardless of who they are, has anybody
9 ever told you that there is direct or actual notice
10 or there is constructive or indirect notice and both
11 of them, both of those categories of notification,
12 bind you to what's of record?"
13 Has anybody told you that, first, up
14 July 1st, 2001?
15 A. No.
16 Q. Anybody told you that after that date to
17 the present day?
18 MR. HARRIS: Object to extent the question
19 calls for information protected by the
20 attorney-client privilege.
21 Q. BY MR. BACH: Exclude what
22 Mr. Jared Harris may have told you. Has anybody else
23 told you that?
24 MR. HARRIS: Or Mr. Alva Harris? Do you
25 want to exclude him, too?

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1 MR. BACH: Pardon?
2 MR. HARRIS: Do you want to e
3 Mr. Alva Harris, because she was represented
4 after July 1st, '01?
5 MR. BACH: Oh, no. No. Because after you
6 substituted out, no.
7 THE WITNESS: I won't answer after July
8 2001.
9 MR. HARRIS: Now, only as to your attorneys.
10 If you can answer outside of your attorneys, you can
11 answer the question.
12 MR. BACH: Counsel, you got your client into
13 that dither, but that's okay. We'll take it up with
14 the court.
15 Q. BY MR. BACH: Question No. 14 was asked
16 of you in the last deposition.
17 "Question: Do you still think you don't
18 have a conflict with Mr. Alva Harris," up to
19 July 1st, 2001?
20 A. No, I didn't feel I had a conflict.
21 Q. You don't feel he may have failed to
22 disclose truthfully all claims against that property?
23 A. As far as I knew then, no.
24 Q. As far as you know now?
25 A. As far as I know now, I do feel like

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1 there are things that I wasn't fully aware of.
2 Q. And that Mr. Alva Harris, up to
3 July 1st, 2001, did not come clean with you. Is that
4 right?
5 A. I wouldn't word it like that.
6 Q. How would you word it?
7 A. That in the home buying process, there
8 were things that I was not aware of.
9 Q. And he should have told you. Is that
10 right?
11 A. No. I feel like he told me.
12 Q. Mrs. Hill, I'm not in a position to
13 advise you, but I'm going to give you this alternate
14 question. Let's suppose you're told by the court you
15 were to inquire further about the condition of claims
16 on title of that property and you say, "But I relied
17 on Mr. Alva Harris," and Mr. Harris says, "Oh, I told
18 Mrs. Hill it was an IRS sale, there was a
19 foreclosure, I had to boot the former owner out under
20 a legal action, and I told her all of that," don't
21 you think you'd have a conflict with what he was
22 saying and what you say he was saying?
23 A. Yes.
24 Q. And now you're having the gentleman next
25 to you, which is his son, and what I use as a coverup

DEPOSITION OF DEENA R. HILL - 03/24/04

SHEET 16 PAGE 195

1 extending these deceptions, don't you think you have
2 a conflict with Mr. Jared Harris?

3 Let me put it this way: Without telling
4 us, has he, in writing, told you what a conflict
5 consists of and what the Idaho Rules of Professional
6 Conduct require him to do?.

7 A. No.

8 MR. HARRIS: Object to the extent you're
9 calling for information covered by the
10 attorney-client privilege.

11 Q. BY MR. BACH: So you have not signed any
12 agreement with him waiving any conflicts or any
13 claims against him, have you, Mr. Jared Harris?

14 MR. HARRIS: Same objection.

15 Q. BY MR. BACH: Would you answer that,
16 please?

17 A. No, I won't.

18 Q. Okay. Now, I overlooked one particular
19 question. I did it because there's a provision in
20 Plaintiff's No. *-011. Plaintiff No. *-011 on the
21 second page has general provisions as you agree to
22 with First American Title Company. And I stand
23 corrected. It's above that. It's in the first
24 carryover paragraph.

25 It reads, quote, I hereby agree to hold

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1 this deed, any shares in the Grand Teton Canal
2 Company. Isn't that true?

3 A. I don't know. If it's in our deed, then
4 it's in our deed.

5 Q. The last time that you were here, I
6 asked you and I asked your husband, are you making
7 claims to the adjacent 8.5 acres? Think very
8 carefully, because if you are and if you're claim is
9 without merit --

10 A. No. We're not making any claim to the
11 8.5.

12 Q. Okay. Do you still have property on
13 that 8.5 acres?

14 A. Do we have property?

15 Q. Yes. Do you have equipment and what
16 have you or materials or your children's play toys or
17 even portable corrals on it?

18 A. We don't have corrals on it. We do have
19 a snowmobile that broke down on it.

20 Q. Okay. And the only person that gave you
21 permission to do that was Mr. Alva Harris. Right?

22 A. Yes.

23 Q. Okay. Permission has been terminated by
24 myself. There is a default judgment against
25 Mr. Alva Harris. He has no interest in that 8.5 plus

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1 you harmless from the failure of the transfer of
2 water to myself regardless of the reason or cause.
3 If any transfer of water is being done, it is an
4 accommodation for me. I understand that you have not
5 made a search of the water rights to this land. I
6 further understand that you are not making any
7 representation and warranty concerning said water
8 rights.

9 Now, if you want to read that to
10 yourself to make sure I read it accurately, the first
11 paragraph up at the top.

12 A. Here? Okay.

13 Q. Did Mr. Layne Price tell you what water
14 rights, if any, went with the one acre?

15 A. No.

16 Q. Did anybody?

17 A. No.

18 Q. In fact, as I look at --

19 A. I believe there was a paper that said
20 that they transfer the land with all water right, or
21 there's something --

22 Q. Well, that's in the corporate warranty
23 deed, which is instrument No. 141785, which was part
24 of this Exhibit *-011 for identification. Okay?

25 But you were not conveyed, according to

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1 acres. I do. So I'd like to have --

2 A. Do you have that in paper?

3 Q. Yes, ma'am. And your attorney has it,
4 because he was representing his dad when the judgment
5 was issued against his father. He'll clue you in.
6 All right?

7 But I'm telling you personally, in case
8 he doesn't, I don't want any claims on that 8.5
9 acres. I want everything removed ASAP. Is that all
10 right?

11 A. That's fine.

12 Q. Okay. Two other questions and then
13 we'll conclude. The last time we were here, you and
14 your husband had a difference of statements of fair
15 market value of that house. But regardless of which
16 value we found, both of you have testified you have
17 no equity in it. What you owe is what the relative
18 value of that house is. Is that still your testimony
19 today?

20 A. Yes.

21 Q. Okay. Number two, have you put on
22 notice the most recent borrower of John N. Bach's
23 claim that you could not have loaned on that property
24 because of a void title? Have you put them on
25 notice?

DEPOSITION OF DEENA R. HILL - 03/24/04

SHEET 17 PAGE 199

1 A. Put who on notice?
 2 Q. Your lender.
 3 A. No.
 4 Q. Why not?
 5 A. Because nothing has been decided yet.
 6 Q. Thank you.
 7 I conclude subject to the motions I'll
 8 bring before Judge St. Clair. Thank you very much.
 9 Thank you, Mrs. Hill.
 10 (The deposition concluded at 10:30 a.m.)
 11 -00000-

PAGE 201

REPORTER'S CERTIFICATE

STATE OF IDAHO)
 COUNTY OF BONNEVILLE) ss.

I, Daniel E. Williams, CSR, RPR, and Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined DEENA R. HILL, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and verbatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this 31st of March, 2004.

Daniel E. Williams
 Idaho CSR No. 686,
 Notary Public in and for
 the State of Idaho.

My Commission Expires: 02/10/09

Page 201

PAGE 200

VERIFICATION

STATE OF)
) ss.
 COUNTY OF)

I, DEENA R. HILL, say that I am the witness referred to in the foregoing deposition, taken the 24th day of March, 2004, consisting of pages numbered 135 to 201; that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any, as noted.

Page	Line	Should Read	Reason
------	------	-------------	--------

DEENA R. HILL

Subscribed and sworn to before me this
 day of 2004, at , Idaho.

(Seal) Notary Public for Idaho
 My Commission Expires

Page 200

RECEIVED

FEB 22 2001

TETON CO., ID
CLERK RECORDER

141455

CORRECTION CORPORATE WARRANTY DEED

THIS INDENTURE, Made this 22nd day of February, 2001, between

TARGHEE POWDER EMPORIUM, INC., an Idaho Corporation, doing
business as Targhee Powder Emporium, Unltd,

as Seller, and

Scona, Inc., an Idaho Corporation
P. O. Box 479
Shelley, Idaho 83274

as Buyer,

Instrument # 141455
DRIGGS, TETON, IDAHO
2001-02-22 04:20:30 No. of Pages: 2
Recorded for: HARRIS, ALVA
NOLAN G. BOYLE Fee: 6.00
Ex-Officio Recorder Deputy M. Wade
Index to: DEED, CORPORATION WARRANTY

WITNESSETH, That Seller, having been hereunto duly authorized by resolution of its Board of Directors, and for the furtherance of a good and valuable corporate purpose, and, in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, lawful money of the United States of America, to it in hand paid by Buyer, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey and confirm unto Buyer, and to its heirs and assigns forever, all Grantors undivided interest in and to the following described real estate situated in the County of Teton, State of Idaho, to-wit:

Lot 1, Block 1, Teton Peaks view, Division 1, as per the recorded plat thereof, Teton County, Idaho.

Together with 20 shares of Grand Teton Canal Company and all mineral, gas, oil and geothermal rights now owned by Seller.

Together with all water and water rights, ditches and ditch rights, improvements, hereditaments and appurtenances thereto, however evidenced, and subject to all covenants and restrictions, applicable building and zoning ordinances,

141455

001251

use regulations and restrictions, easements, rights-of-way, and encumbrances of record or established by user with respect thereto.

IN WITNESS WHEREOF, the Seller has caused its corporate name to be hereto subscribed by its Vice-President in pursuance to said resolution the day and year first above written.

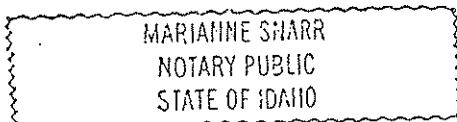
TARGHEE POWDER EMPORIUM, INC.

By: Jack Lee McLean
It's Vice- President.

STATE OF IDAHO)
: ss.
County of Teton)

On this 22nd day of November, 2000, before me, the undersigned, a Notary Public for Idaho, personally appeared, Jack Lee McLean, known to me to be the Vice-President of Targhee Powder Emporium, Inc., doing business under the assumed business name of Targhee Powder Emporium, Ltd, the corporation that executed the within instrument and acknowledged to me that he subscribed his name for and in behalf of said corporation.

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



(SEAL)

Marianne Sharr
Notary Public for Idaho
Residing at: VICTOR, Idaho
My Comm. Expires: 11/19/05

STATE OF IDAHO }
County of Teton } ss.
I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of the original thereof, on file in my office

Dated Nov 22, 2000
David L. Baker
Ex-Officio Auditor & Recorder
Clerk of the District Court

By M. Sharr

141455

001252

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

RECEIVED

FEB 27 2001

TETON CO., ID
CLERK RECORDER

Instrument # 141485

DRIGGS, TETON, IDAHO

2001-02-28

11:56:29 No. of Pages: 1

Recorded for: FIRST AMERICAN

COLAN G. BOYLE

Fee: 3.00

Ex-Officio Recorder Deputy

Index to RELEASE

141485

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

SCONA, INC., an Idaho Corp.,

Plaintiff,

vs.

TARGHEE POWDER EMPORIUM UNLTD
as nominee of John N. Bach, Defendant

Defendant.

CASE NO. CV-98-025

RELEASE OF NOTICE OF LEVY
AND ATTACHMENT OF REAL
PROPERTY

141485

Full satisfaction of the levy and attachment as detailed in Teton County recording #139972 is hereby acknowledged by the Plaintiff and Plaintiff hereby authorizes and directs the Clerk of the Court to enter full satisfaction of record concerning said Levy and Attachment, and Plaintiff does hereby release all the real property described therein from its Levy and Attachment, as stated in said instrument No. 139972 records of Teton County, Idaho.

Dated this 23 day of February, 2001.

Scona, Inc.

by: Alva A. Harris, Director

State of Idaho)

County of Bingham)

On this 23 day of February, 2001, before me, the undersigned, a Notary Public in and for said State, personally appeared Alva A. Harris, known to me to be a Director of Scona, Inc., whose name is subscribed to the within RELEASE OF NOTICE OF LEVY AND ATTACHMENT OF REAL PROPERTY and acknowledged to me that he executed the same for said corporation.

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

KATHY COOK
NOTARY
PUBLIC
STATE OF IDAHO

Notary Public for Idaho

Residing at: Shelley, Idaho

My Comm. expires: 10-27-06 001253

STATE OF IDAHO

County of Teton

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of the original thereof, on file in my office

Dated

Jan 27, 2004

Notary Public
Ex-Officio Auditor & Recorder
Clerk of the District Court

By

T- 8537

141785

RECEIVED

MAR 2 2001

CLERK OF DISTRICT COURT

Instrument # 141785
DRIGGS, TETON, IDAHO
2001-03-23 10:25:26 No. of Pages: 2
Recorded for : FIRST AMERICAN
NOLAN G. BOYLE Fee: 6.00
Ex-Officio Recorder Deputy M. Wade
Index to DEED CORPORATION WARRANTY

CORPORATE WARRANTY DEED

THIS INDENTURE, Made this 9th day of March, 2001, between

SCONA, INC., an Idaho Corporation,

as Grantor, and

Bret B. Hill and Deena R. Hill, husband and wife,
195 North Highway #33
Driggs, ID 83422

as Grantees,

WITNESSETH, That Grantor, having been hereunto duly authorized by resolution of its Board of Directors, and for the furtherance of a good and valuable corporate purpose, and, in consideration of the sum of TEN AND NO/100 (\$10.00) DOLLARS, lawful money of the United States of America, to it in hand paid by Grantees, the receipt whereof is hereby acknowledged, has granted, bargained, sold, and by these presents does grant, bargain, sell, convey and confirm unto Grantees, and to their heirs and assigns forever, all the following described real estate situated in the County of Teton, State of Idaho, to-wit:

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

Street address: 195 N Hwy 33, Driggs, Idaho

Together with all water and water rights, ditches and ditch rights, improvements, hereditaments and appurtenances thereto, however evidenced, and subject to all covenants and restrictions, applicable building and zoning

ordinances, use regulations and restrictions, easements, rights-of-way, and encumbrances of record or established by user with respect thereto.

IN WITNESS WHEREOF, the Grantor has caused its corporate name to be hereto subscribed by its President in pursuance to said resolution the day and year first above written.

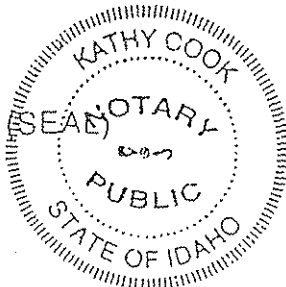
SCONA, INC.

By: [Signature]
It's President.

STATE OF IDAHO)
 : ss.
County of Bingham)

On this 9 day of March, 2001, before me, the undersigned, a Notary Public for Idaho, personally appeared Alva A. Harris, known to me to be the President of SCONA, INC., the corporation that executed the within instrument and acknowledged to me that he subscribed his name for and in behalf of said corporation.

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



[Signature]
Notary Public for Idaho
Residing at: Shelley, Idaho
My Comm. Expires: 10-27-04

STATE OF IDAHO }
County of Teton } ss

I HEREBY CERTIFY that the above and foregoing is a full, true and correct copy of the original thereof, on file in my office

Dated Jan 22, 2001
[Signature]
Ex-Officio Auditor & Recorder
Clerk of the District Court

001255

111195

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date April 21, 2004
Time 1:50 pm
Deputy Clerk M Southwick

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

JOHN N. BACH,

Plaintiff,

vs.

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

Defendants.

Case No. CV-02-208

**TWENTY SIXTH ORDER
ON PENDING MOTIONS**

Pending before the Court are the following motions:

1. defendant Arlene Nickell's motion to dismiss quiet title claims in counts two, three and four, filed on March 8, 2004;
2. defendant Earl Hamblin's motion to dismiss quiet title claims in counts two, three and four, filed on March 22, 2004;

3. defendant Earl Hamblin's motion for attorney fees and costs, filed on March 10, 2004;

4. plaintiff John Bach's motion to substitute John Bach as grantor or assignee of all defendant Jack McLean's property, motion to confess judgment against McLean, and motion to amend and confirm default judgment against defendant Alva Harris and other defaulted defendants, all filed on March 15, 2004;

5. plaintiff John Bach's motion to file second amended complaint to allege new causes of action in counts one, five, six, seven, nine, ten, eleven, and twelve, motion to reconsider the Court's Twenty Fourth Order on Pending Motions, and motion to amend findings of fact, conclusions of law and judgment dated October 23, 2003, all filed on March 16, 2004; and

6. defendants Hills' motion to exclude as trial witnesses Jared Harris and Judge St. Clair.

These motions were orally argued by the parties during a hearing on April 2, 2004. At the hearing plaintiff Bach was granted leave to file affidavits and a brief in opposition to the Hills' motion to exclude trial witnesses by April 7th. At a hearing on April 12th, this deadline was enlarged to April 16, 2004. No additional affidavits or brief was filed by plaintiff Bach.

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

I. ANALYSIS

Nickel's and Hamblin's motions to dismiss are supported by written disclaimers as to any interests in the property described in counts two, three and four of Bach's amended complaint. Bach filed no written opposition to these motions. At oral argument Bach stated he did not object to dismissing the quiet title claims in these counts as to Nickell and Hamblin because of their formal disclaimers. Therefore the motions to dismiss must be granted.

Hamblin's motion for attorney fees and costs is premature, as noted by Bach's objection, since no final judgment has been entered. Therefore, decision on the motion will be deferred until after final judgment is entered.

Plaintiff Bach's motion to substitute himself as grantor or assignee of all defendant Jack McLean's property is brought under Rules 17, 19, 24 and 25, I.R.C.P., based on the fact that Jack McLean died in December, 2003. Bach's motion to confess judgment against McLean presupposes that his Rule 25 motion will be granted. Attorney Alva Harris filed a memorandum and

affidavit of counsel objecting to the motion. Rule 17 does not apply in this case. Bach is the real party plaintiff in interest. No other person has been shown to be a party plaintiff. Rule 19 does not apply in this case. The motion does not identify any non-party to be joined, either voluntarily or involuntarily. Rule 24 does not apply to this case. No non-party has filed any motion to intervene, either for intervention of right or permissive intervention. Rule 25 does apply, but the motion and hearing notice have not been served upon Jack McLean's daughters as required by Rule 25(a), and Rule 4. Therefore these motions must be denied.

Since it appears that Jack McLean was a citizen of Canada leaving surviving children that do not reside in Idaho and McLean had interests in real property in Idaho that are subject to an ancillary probate in Teton County, Idaho, this Court will only allow a person properly appointed as a personal representative or special administrator by the Magistrate Court in Teton County and issued proper letters testamentary or letters of administration by such Court, to file in this case any future Rule 25 motion for substitution for Jack McLean deceased.

Plaintiff John Bach's motion to amend his default judgment against Alva Harris and other defaulted defendants seeks to have

such default judgment declare that Bach owns an undivided two-thirds (rather than one-third) interest in the Drawknife property and that Bach owns an undivided one-half interest (rather than one-fourth interest) in the Peacock property. This motion is based on deeds that Bach prepared and signed as either as a trustee of McLean's trust or a power of attorney signed by McLean, that were not factually pleaded in the first amended complaint that was served on McLean, and a default judgment cannot be based on facts not contained in the amended complaint served on the defaulted party. Therefore, it must be denied.

Plaintiff John Bach's motion to file a second amended complaint, motion to reconsider the Twenty Fourth Order on Pending motions, and motion to amend findings of fact, conclusions of law and judgment entered in favor of defendant Katherine Miller on October 23, 2003, all seek to allege a quiet title claim based on adverse possession as to the 47 acres quieted to defendant Katherine Miller. The period time that Bach would allege he adversely claimed this property was from 1994 through 2003 when Miller filed her answer and counterclaim. At oral argument Bach stated that he did not wish to amend his claims as against the defaulted defendants, but rather as to only defendants Miller, Woelk, Nickell and Hamblin.

Rule 15, I.R.C.P., and cases applying this Rule require the trial court to liberally apply its sound discretion and to grant such amendments, even after a trial, absent prejudice to the opposing parties. Rule 15(b) is the controlling provision as to amending the counts against defendant Miller, and Bach argues that Miller impliedly consented to trial of this claim during the trial in June, 2003. During that trial evidence was admitted concerning payment of taxes and the actions and conversations between Miller and Bach over possession of such property. At oral argument on this motion Bach stated that he "did not recognize this until just recently." In fact, Bach's multiple motions following the June, 2003 trial have never mentioned that adverse possession was tried at the June, 2003 trial.

The trial court has wide discretion in permitting amendments of pleadings to conform to the proof at trial under Rule 15(b). *Smith v. King*, 100 Idaho 331, 597 P.2d 217 (1979); *Obray v. Mitchell*, 98 Idaho 533, 567 P.2d 1284 (1977). Since Mr. Bach, this Court, and Mrs. Miller did not know Mr. Bach's adverse possession cause of action was being tried in June, 2003, it would be impossible for Mrs. Miller to have consented to trial of such cause of action within the meaning of Rule 15(b). Therefore, the motion cannot be granted as to Miller.

Rule 15(a) is the provision that applies to filing a second amended complaint against defendants Woelk, Nickell and Hamblin, because there has been no trial evidence for a pleading to conform to as to such defendants. Trial is scheduled for April 20, 2004. If the new cause of action to be added as to counts one, five, six, seven, eight, nine, ten, eleven and twelve, it would obviously prejudice defendants Woelk, Nickell and Hamblin, if they were required to go to trial in less than two weeks. Such prejudice could be avoided by a continuance. However, this case has been pending for nearly two years already. This Court entered a partial judgment quieting title to the 47 acres in Mrs. Miller in October, 2003. Since then Mr. Bach has filed multiple motions that have been briefed, argued, decided, and reconsidered by this Court relating to several counts. Mr. Bach was aware of all the facts constituting the newly raised adverse possession cause of action well before the June, 2003 trial. Just because it just dawned on him in March, 2004, that such facts might support a new legal theory, it would not be proper to allow this amendment so close to trial. See *Hinkle v. Winey*, 126 Idaho 993, 895 P.2d 594 (App. 1995).

Plaintiff John Bach's motion to reconsider the Court's Twenty Fourth Order on Pending Motions and his motion to amend the findings, conclusions and judgment of October 23, 2003, are

dependent on this Court's granting leave to file a second amended complaint. No new facts or new law are cited. Therefore these motions must be denied.

The defendants Hills' motion to exclude as trial witnesses listed by plaintiff Bach argues that Jared Harris would be precluded from continuing to represent the Hills if he was forced to testify, and it is improper for the presiding judge to be a witness. During argument, plaintiff Bach could not identify any expected testimony from Jared Harris or Judge St. Clair that could not be elicited from other witnesses. Rule 605, I.R.E., provides that "[t]he judge presiding at the trial may not testify in that trial as a witness. Therefore, the Hills' motion must be granted.

II. ORDER

Based on the foregoing analysis and the record, this Court concludes; and

NOW THEREFORE, IT IS HEREBY ORDERED that


1. defendant Arlene Nickell's motion to dismiss quiet title claims in counts two, three and four is GRANTED;
2. defendant Earl Hamblin's motion to dismiss quiet title claims in counts two, three and four is GRANTED;
3. defendant Earl Hamblin's motion for attorney fees and costs will be decided after a final judgment is entered;

4. plaintiff John Bach's motion to substitute John Bach as grantor or assignee of all defendant Jack McLean's property, motion to confess judgment against McLean, and motion to amend and confirm default judgment against defendant Alva Harris and other defaulted defendants are all DENIED;

5. plaintiff John Bach's motion to file second amended complaint to allege new causes of action in counts one, five, six, seven, nine, ten, eleven, and twelve, motion to reconsider the Court's Twenty Fourth Order on Pending Motions, and motion to amend findings of fact, conclusions of law and judgment dated October 23, 2003, and all DENIED; and

6. defendants Hills' motion to exclude as trial witnesses Jared Harris and Judge St. Clair is GRANTED.

Dated this 21st day of April, 2004.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
1858 S. Euclid Avenue
San Marino, CA 91108
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(TELEFAX & MAIL)

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Telefax No. 208-357-3448 (TELEFAX & MAIL)

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Runyan & Woelk, P.C.
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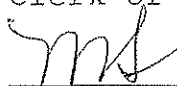
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Idaho Falls, ID 83405-1219 (TELEFAX & MAIL)

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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 April 21, 2004
Time 2:06 pm
Deputy Clerk M. Southwick

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

JOHN N. BACH,

Plaintiff,

vs.

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

Defendants.

Case No. CV-02-208

**TWENTY SEVENTH ORDER
ON PENDING MOTIONS**

I. INTRODUCTION

On September 27, 2002, plaintiff John Bach (hereafter
"Bach") filed an amended complaint against defendants Bret Hill
and Deena Hill ("the Hills") and several other defendants. The
amended complaint alleges twelve causes of action. Set forth
below are the counts directed against the Hills.

Counts 2 and 3 request quiet title, damages and injunctive relief for the one acre parcel with residence located at 195 N. Highway 33 and the 8.5 acres surrounding it. Count 5 seeks damages for slander of title; count 6 seeks damages for intentional interference with contracts, business relations, and economic expectancies. Count 9 seeks damages for conversion of real and personal property, including the business name of Targhee Powder Emporium, Inc., Ltd., or Unltd. Count 10 seeks damages based on a violation of the Idaho Racketeering Act (RICO). Bach requested a jury trial.

The Hills filed an answer on June 4, 2003.

On February 2, 2004, the Hills filed a motion for summary judgment under Rule 56, I.R.C.P. The motion was supported by the affidavit of counsel Jared Harris, the affidavits of Deena Hill and Bret Hill, and a legal memorandum. Hearing on the motion was continued under Rule 56(f) for completion of discovery by the affected parties. On March 2, 2004, Bach filed an affidavit in opposition. On March 3, 2004, the Hills filed a reply memorandum, and on March 10, 2004, Bach filed a memorandum in opposition. Oral argument was heard on April 1, 2004. At oral argument, Bach was granted 7 days to file a transcript of the depositions of the Hills. On April 16, 2004, Bach filed a

transcript of Deena Hill's deposition, and another affidavit of John Bach.

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

II. STANDARD OF REVIEW

A motion for summary judgment "shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), I.R.C.P.; *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-17, 808 P.2d 851, 853-54 (1991); *Burgess v. Salmon River Canal Co.*, 119 Idaho 299, 307, 805 P.2d 1223, 1231 (1991); *Thompson v. City of Idaho Falls*, 126 Idaho 587, 590, 887 P.2d 1094, 1097 (Ct.App.1994).

If an action will be tried to a jury, all controverted facts are liberally construed in favor of the non-moving party. *Tusch Enters. v. Coffin*, 113 Idaho 37, 40, 740 P.2d 1022, 1025 (1987); *Doe v. Durtschi*, 110 Idaho 466, 469, 716 P.2d 1238, 1241 (1986) (rehearing denied). Moreover, the court draws all reasonable factual inferences and conclusions in favor of the non-moving party. *Farm Credit Bank of Spokane v. Stevenson*, 125

Idaho 270, 272, 869 P.2d 1365, 1367 (1994); *Harris v. State, Dept. of Health & Welfare*, 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992) (rehearing denied).

Where the party moving for summary judgment is not required to carry the burden of proof at trial, the moving party may show that no genuine issue of material fact exists by establishing the absence of evidence on an element that the non-moving party will be required to prove at trial. *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct.App.1994). Once that burden has been met, by either an affirmative showing of the moving party's evidence or by a review of the non-moving party's evidence, the burden shifts to the non-moving party to establish that a genuine issue for trial does exist. *Id.*

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

Rule 56(e), I.R.C.P., requires that both supporting and

opposing affidavits be made on personal knowledge, set forth facts that would be admissible in evidence, and show affirmatively that the affiant is competent to testify to the matters stated therein. Moreover, inadmissible opinions or conclusions do not satisfy the requirements for proof of material facts. *Hecla Mining Co. v. Star-Morning Co.*, 122 Idaho 778, 783-786, 839 P.2d 1192, 1197-1200 (1992); *Evans v. Twin Falls County*, 118 Idaho 210, 213, 796 P.2d 87, 90 (1990), cert. denied, 498 U.S. 1086, 111 S.Ct. 960, 112 L.Ed. 2d 48 (1991); *Gardner v. Evans*, 110 Idaho 925, 930, 719 P.2d 1185, 1190, (1986), cert. denied, 479 U.S. 1007, 107 S.Ct. 645, 93 L.Ed. 2d 701 (1986).

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

III. STATEMENT OF MATERIAL FACTS

Construing the admissible evidence and drawing reasonable

inferences in favor of the non-moving party, the Court finds the following admissible material facts not genuinely in issue and relevant to the pending motion for summary judgment that are stated in sworn affidavits, depositions, testimony at previous hearings, and in exhibits previously admitted at hearings or that would be admissible in a future trial between Bach and the Hills.

Bach owns an undivided one-half interest in 8.5 acres of real property in Teton County described in count two of the amended complaint, with the other undivided one-half interest owned by Wayne Dawson. Bach owns an undivided one-third interest in 33 acres of real property called the "Drawknife property" (with defendants Jack McLean and Mark Liponis claiming one-third interests) described in count four. Bach also owns an undivided one-fourth interest in 40 acres of real property called the "Peacock property" (with defendants Jack McLean and Wayne Dawson, and Bach's sister Diane Cheyovich claiming one-fourth interests) also described in count four.

On September 24, 1992, by warranty deed recorded as instrument number 111053, Layne and Cindy Price conveyed a one acre lot with house located at 195 North Highway 33, Driggs, Idaho to Targhee Powder Emporium, Unltd., at P. O. Box 101 Driggs, ID 83422. (Ex. 1 to Jared Harris Aff.) Targhee Powder

Emporium, Unltd, was a business name used by John N. Bach to acquire this real property and other real property in Teton County, Idaho. P. O. Box 101, Driggs, ID 83422 was Bach's address in years 1992 and thereafter until at least 2003.

On April 7, 1995, and March 13, 1996, the Internal Revenue Service recorded three federal tax liens, as instrument numbers 119637, 119638 and 123214 against both the one acre parcel and the adjacent 8.5 acres, based on approximately \$96,000.00 in delinquent federal income taxes and penalties owed by Targhee Powder Emporium, Unltd., as nominee of John N. Bach, for years 1990 through 1993. (Exs. 2, 3 & 4 to Jared Harris Aff.)

On August 5, 1997, the Internal Revenue Service sold at public auction to Scona, Inc. the one acre and house located at 195 N. Highway 33, Driggs, ID, and recorded a Certificate of Sale to that effect as instrument number 12719. (Ex. 5 to Jared Harris Aff.) On October 29, 1998, the Internal Revenue Service conveyed the one acre property to Scona, Inc. by Quitclaim Deed recorded as instrument number 132023. (Ex. 6 to Jared Harris Aff.)

In September, 1998, Bach and other plaintiffs filed an action in the U. S. District Court for the District of Idaho entitled *Koreen Morgan, et. al. v. Federal Agencies and Officer of the Internal Revenue Service*, case number CV-98-383-E-BLW

alleging that the Internal Revenue Service tax sale in Teton County in August, 1997, and other tax sales were void. (Ex. 4 to Deena Hill's deposition, attached to Bach's Aff. of March 2, 2004). Bach did not provide any evidence that Judge Winmill set aside this particular August, 1997 tax sale by the I. R. S. to Scona, Inc.

On July 22, 1999, a default judgment was entered by District Judge Ted Wood in Teton County Case CV-98-025 entitled Scona, Inc. v. Targhee Powder Emporium, Unltd., as nominee of John N. Bach, quieting title in the one acre property to Scona, Inc. and against Targhee Powder Emporium, Untld, as nominee of John N. Bach, and a copy of said judgment was mailed to Bach's address at P. O. Box 101, Driggs, ID 83422. (Ex. 8 to Jared Harris Aff.) The judgment was not set aside, nor appealed.

On March 4, 2001, Scona, Inc. conveyed the one acre and house to the Hills by Warranty Deed recorded as instrument number 141785. (Ex. 10 to Jared Harris Aff.) The Hills paid Scona, Inc. \$60,000.00. (Deena Hill Aff. ¶ 4); Bret Hill Aff. ¶4)

On December 16, 2002, in the U. S. District Court for the District of Idaho, Case No. CV-01-266-E-TGN, entitled John N. Bach v. Teton County, et. al., Judge Thomas G. Nelson entered an order denying Bach's motion in that case to amend his complaint

to add defendants Hills in place of Brad and Susan Hill who were defendants in the federal action. (Order at p. 4) Judge Nelson stated the following explanation of his ruling:

The Court's previous orders (see Docket nos. 241 and 259) have dismissed Plaintiff's [Bach] claims relating to the tax lien sale [in Teton County, Idaho]. The dismissals included Scona, Inc., Alva Harris, and Tom Christensen, who were alleged to be purchasers from the United States. The individuals who purchased the property from the original purchasers, whoever they are, are entitled to dismissal of Plaintiff's [Bach] claims for the same reasons as the original purchasers. Accordingly, the action shall be dismissed with prejudice as to Brad and Susan Hill and would be dismissed with prejudice as to Bret and Deena Hill if Plaintiff [Bach] were allowed to add them. Thus, allowing Plaintiff [Bach] to add Bret and Deena Hill as named defendants would be futile, and the Court denies the Plaintiff's [Bach] request. (Order at pp. 4-5)

IV. ANALYSIS

Defendant Hill's motion for summary judgment seeks dismissal with prejudice all causes of action alleged against them by Bach's first amended complaint. These causes of action would be in count two seeking quiet title to Bach's one-half interest in the 8.5 acres, count three seeking quiet title to the one acre and house at 195 N. Highway 33, count five seeking damages for slander of Bach's title to these properties and also the Drawknife and Peacock properties, count 6 seeking damages for intention interference with contracts, business relations and economic opportunities, count nine seeking damages for

conversion of property, and count 10 seeking damages under the Idaho RICO Act.

Pages 1 through 14 of Bach's amended complaint set forth 14 paragraphs that include general allegations, consisting of some admissible "facts" and some inadmissible conclusions. The allegations that relate to the Hills are set forth here, and will be discussed in greater detail when each count is considered.

Paragraph 1 is a general description of Bach. Paragraph 2 mentions each of the defendants by name, and states that each of them, "acting in capacities as co principals, perpetrators, participants, mutual agents, servants/employees, representatives and conspirators for each other and all defendants . . . to destroy, damage, injure, harm and inflict losses upon plaintiff, his health, person, his properties, investments, holdings and business pursuits."

The complaint skips paragraph 3, moving directly from paragraph 2 on page 2, to paragraph 4 on page 3. Paragraph 4 states that all defendants have prejudiced prospective jurors of Teton County by "defamatory/derogatory statements, criminal acts, intimidation, etc."

Paragraph 5 claims that all defendants have acted with the common objective of removing Bach from Teton County with the

"purpose and objective to discriminate, harass, intimidate, oppress, defraud, steal and deprive plaintiff of his real and personal properties, and his health, well being and even life, because of his ancestry and national origin heritage, family customs and practices, being a first American generation born son of Montenegrin immigrant parents. . . ."

The second paragraph 5, on page 4 of the amended complaint, describes generally the properties at issue in this case. In paragraph 5(b) on page 5 of the amended complaint, Bach alleges that the Hills purchased the one acre parcel located at 195 N. Highway 33 through a void deed, and in contravention of a Chapter 13 bankruptcy stay and thus do not have title to the property.

Paragraph 8(e) on page 9 of the amended complaint alleges that all defendants "stole, misappropriated and converted plaintiff's dba business names/entities... ."

Paragraph 14 alleges that all defendants have joined in receiving and transferring illegal, void warranty deeds, on or about November 21, 2000, and transferring Bach's property interests and ownership in two separate investments, joint ventures comprising over 21 acres and through "the U.S. Mails, telephones [sic] calls to and from then and all said defendants, effect [sic] interstate commerce, criminally and receive stolen

properties of plaintiff, so as to further ratify, condone and accept all of said other defendants' illegal, criminal and tortious actions upon plaintiff."

In his objection to the Hills' motion for summary judgment, Bach asks that the Court consider facts in all other testimony he has given, especially on December 5, 2003, all affidavits to date, exhibits received during the jury trial and all other pleadings, and all matters of record herein.

The parties requested a jury trial, however the causes of action alleging quiet title and injunctive relief must be decided by the court with or without advisory findings by a jury.

The Hills' motion for summary judgment attacks the elements of each of plaintiff Bach's causes of action, and it was supported by copies of recorded instruments, a default judgment, and a federal court order, and their affidavits denying doing any of the acts allegedly causing Bach damages. Thus the burden of producing admissible facts to support the elements of the six causes of action against the Hills falls on Bach.

The Hills produced no admissible facts negating any element of Bach's allegations as to ownership of the 8.5 acres alleging quiet title. Therefore, summary judgment cannot be granted to the Hills as to the title alleged in count two.

As to the remaining causes of action, the Court will analyze them separately.

Counts Two - Damages to 8.5 acres.

Bach seeks restraining and injunctive relief quieting title to the 8.5 acres he co-owns with Wayne Dawson.

The Hills have disclaimed any interest in this property. As set forth above, the property was sold at the 1997 tax sale to Scona, Inc. The Hills did not purchase this property when they purchased the parcel at 195 N. Hwy 33. They are in no way claiming any interest in this property.

Bach's amended complaint provides no admissible evidence showing that the Hills in any way damaged this property. Subsequent to the Hill's filing their motion for summary judgment, Bach filed two briefs in support of his arguments, dated March 2, 2004, and March 10, 2004. In the March 2, 2004 brief, Bach alleges that the Hills did in fact know of the bankruptcy stay, and purchased their property in violation of this stay. However, he makes no allegations that the Hills in any way trespassed upon, or damaged the 8.5 acres surrounding their parcel.

In his March 10, 2004 brief, Bach again alleges that the sale to the Hills violated the bankruptcy stay and was thus

void. Again, he provides no admissible evidence that the Hills in any way damaged the surrounding 8.5 acres.

Thus, in light of the Hill's disclaimer of interest in the property, and the utter lack of evidence that the Hills in any way damaged the 8.5 acre parcel, summary judgment is entered as to Count Two.

Count Three - Quiet title to the one acre parcel at 195 N. Hwy 33 and Damages.

Regarding the one acre parcel and house Bach seeks to quiet title on in count three, the material facts establish that the Hills purchased such property by warranty deed for \$60,000 from Scona, Inc., in March, 2001. This followed a July, 1999 judgment entered by Judge Wood in Teton County case number CV-98-025 quieting title against Bach's nominee Targhee Powder Emporium, Unltd. Having notice of the judgment and not getting it set aside or reversed on appeal, Bach is bound by such judgment.

Next, Bach correctly sought a federal court decision from Judge Winmill in September, 1998, as his allegation that the tax sale of this property to Scona, Inc. was void in case CV-98-383. However, Bach evidently did not prevail on that claim in such federal action, because he supplied no order or judgment signed by Judge Winmill setting aside the tax sale. Further, Bach is bound by the December, 2002 order by Judge Nelson in the federal case CV-01-266-E-TGN, wherein Judge Nelson held that Bach could

TWENTY SEVENTH ORDER ON PENDING MOTIONS

not set aside the Internal Revenue's tax sale to Scona, Inc. for purposes of claims against Bret and Deena Hill later acquiring an interest in the property.

It is well settled that collateral estoppel or issue preclusion will act as a bar if (1) the party against whom the earlier decision is asserted had full and fair opportunity to litigate the issue in the earlier case; (2) the issue decided in the earlier litigation was identical to the issue presented in the present case; (3) the issue sought to be precluded was actually decided in the earlier litigation; (4) there was a final judgment on the merits in the prior litigation; and (5) the party against whom the issue is asserted was a party to the earlier litigation. *Western Industrial & Environmental Sciences, Inc. v. Kaldveer Associates, Inc.*, 126 Idaho 541, 544-545, 887 P.2d 1048, 1051-1052 (1994); *Anderson v. City of Pocatello*, 112 Idaho 176, 731 P.2d 171 (1987); See *Hindmarsh v. Mock*, 138 Idaho 92, 57 P.3d 803 (2002) (Discussing similar factors applying to *res judicata* or claim preclusion).

Bach was in privity with his nominee Targhee Powder Emporium, Unltd., the defendant in Teton County case number CV-98-025, and Bach was the plaintiff in federal court case number CV-01-266-E-TGN. The validity of Scona, Inc.'s title to the one acre and house located at 195 N. Highway 33, Driggs, Idaho

purchased from the Internal Revenue at the August, 1997 tax sale was an issue in both cases, and was decided adversely to Bach. Bach is collaterally estopped from relitigating that issue in this case against the Hills, who are successors in title to Scona, Inc. While Bach argues in this case that Judge Wood's judgment was void for lack of jurisdiction and that this Court can so find, Bach provides no authority to support such argument. Judge Wood had jurisdiction, and Bach could have proved an affirmative defense that the tax sale was void, but he did not.

Further, even if Bach were not collaterally estopped to contest the validity of the tax sale, this Court had previously held in this case with respect to Bach's causes of action, or affirmative defenses to counterclaims, relating to other defendants, that the Federal Bankruptcy Court action in California never took jurisdiction over these properties in Teton County, Idaho. Bach never disclosed in to the Bankruptcy Court or its appointed Chapter 13 Trustee any interest in any Teton County real property. Bach listed only real property in Butte County, Idaho near Atomic City. Despite the fact that this action has been pending since July, 2002, and Bach has urged several times that the bankruptcy automatic stay precluded claims by several defendants and invalidated the Internal

Revenue Service tax sale, Bach has never reopened his bankruptcy case to request relief from the Federal Bankruptcy Court in California.

Thus, this Court must grant summary judgment to the Hills as to count three.

Count Five - Slander of title

Bach claims that his "titles were slandered, clouded, impaired in economic development and deprived of all monetary increase in fair market value to all of said real properties . . . as to completely deprive him of not only any monetary sale, development or economic use/benefits therefrom but, but further [sic], denied him extension of credit, bank and other financial institutions loans, assistance and/or aid."

In paragraph 14 of his amended complaint, Bach alleges that "all defendants" have received void warranty deeds for property that rightfully belongs to Bach. However, the Hills do not possess a deed granting them any property described in Bach's amended complaint other than the one acre and house at 195 North Highway.

Thus, the Court must grant summary judgment to the Hills as to count five.

Count Six - Interference with the existence of contractual, business relations and economic expectancies

Bach alleges that all defendants "did intentional [sic],

deliberately and fraudulently interfere, obstruct and impede plaintiff in his business and contractual relationships, contracts, investments and economic benefits, opportunities and reasonable advantages" to be derived from his ownership and use of the properties, investments and joint ventures, and also "deprived him of continuing in good name, reputation and stead with other investors, joint ventures and/or participants in similar acquisitions." He seeks monetary damages and injunctive relief against further interference with his business pursuits. He references all previous paragraphs.

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

Again, Bach provides no admissible evidence that Hills knew of or interfered with any existing or future contracts, business relations, or economic expectancies of Bach, except those based on Bach's ownership of the one acre and house at 195 North Highway, in order to create a genuine issue in the face of the

Hills denying such actions in their affidavits supporting their motion for summary judgment.

Thus, the Court must grant summary judgment to the Hills as to count six.

Count Nine - Conversion of moneys and property

Bach alleges that "all defendants did convert, misappropriate, utilize and steal said plaintiff's moneys, properties, real and personalty, as well as legal claims," impeded access to the courts, and "further did convert, destroy and misappropriate illegally and criminally his personal business names, identities and recognition" Bach seeks damages for all losses. Bach incorporates all prior paragraphs.

From the affidavits and testimony filed by Bach, the Court understands that Bach is referring to \$15,000.00 withdrawn from the Liponis Emporium Trust bank account, \$14,800 paid to Scona, Inc., to satisfy a judgment it recovered against Bach, and certain trailers, motor vehicles, liquor, and other personal property taken by defendants Fitzgerald and Lyle, and the business names of Targhee Powder Emporium, Inc., Ltd., and Unltd.

The Hills have provided proof that they have owned the one acre parcel and house at 195 North Highway since March 2001, and

Bach has failed to show any admissible evidence to show that the Hills have converted any other property Bach alleges in the amended complaint.

Thus, the Court must grant summary judgment to the Hills as to count nine.

Counts Ten -- Violations of the Idaho RICO Act

In count 10 Bach alleges that all of the actions set forth in the general paragraphs, as well as all previous counts, constitute a "racketeering enterprise," a group of individuals, using entities, "which over the last three years did commit more than two required predicate criminal acts, all in violation of Idaho Code sections 18-7802 through 18-7805." Am. Com., pg. 22. Such crimes include "perjury, subornation of perjury, extortion, theft . . ., falsifying of documents and evidence, . . . bribery" *Id.* Bach's deposition, affidavits, and testimony at hearings provide no other specific facts to support these allegations as to the Hills.

Bach alleges that all defendants engaged in several instances of racketeering conduct over the last three years, which would make them liable under the Idaho Racketeering Act, I.C. §§ 18-7801 through 18-7805. I.C. §18-7803 sets out several acts which constitute "racketeering activities." Under I.C. §18-7804, it is unlawful for any person who has received any

proceeds derived directly or indirectly from a pattern of racketeering activity to use or invest, directly or indirectly, any part of the proceeds to acquire any interest in or establish any enterprise or real property.

Bach alleges that all defendants committed perjury and subornation of perjury, which is racketeering conduct under I.C. §18-7803. However, Bach provides no specific allegations against the Hills in particular, or even against the defendants as a group. He provides no dates or specific instances of perjury. The same holds true for Bach's allegations of falsifying documents, intimidating witnesses, extortion and bribery.

Bach alleges that all defendants committed theft of his property via the void deeds, the \$15,000, as well as improvements on Bach's property, vehicles, and trailers. This is the only section where he provides any specifics at all. He provides a date for the deeds, as well as a date for the alleged conversion of his money.

However, no admissible evidence shows that the Hills themselves acted as Bach concludes in his allegations. Bach provided no admissible evidence to establish that that any other person acted at the direction of, or with the permission and knowledge of the Hills in doing anything to damage Bach.

Thus, the Court must grant summary judgment for the Hills as to count ten.

V. ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that

1. Defendants Hills' motion for summary judgment is GRANTED IN PART, and the first amended complaint is dismissed with prejudice as to defendants Hills, except that portions of count two seeking to quiet title against the Hills as to the 8.5 acres.

DATED this 21st day of April, 2004.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of April, 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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1858 S. Euclid Avenue
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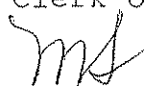
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Gregory Moeller
P. O. Box 250
Rexburg, ID 83440-0250 (TELEFAX & MAIL)

RONALD LONGMORE
Clerk of Court

Deputy Court Clerk

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date May 6, 2004
Time 1:55pm
Deputy Clerk M. Southwick

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

JOHN N. BACH,

Plaintiff,

vs.

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

Defendants.

Case No. CV-02-208

**TWENTY EIGHTH ORDER
ON PENDING MOTIONS**

Pending before the Court are the following motions filed on
April 8, 2004:

1. plaintiff John Bach's motion to quash writ of
assistance issued by the clerk on April 1, 2004;
2. plaintiff Bach's motion for return of possession of
all 87 acres to Bach; and

TWENTY EIGHTH ORDER ON PENDING MOTIONS

1

001289

3. plaintiff Bach's motion for 21 days to remove his personal property from 46.6 acres.

On April 13, 2004, this Court entered an order staying enforcement of the clerk's writ of assistance, and amended such stay order on April, 14, 2004.

On April 10, 2004, plaintiff Bach filed a supplemental memorandum in support of his three motions, and on April 26, 2004, defendant Katherine Miller filed a memorandum in opposition to the three motions. A hearing was held on April 27, 2004, and leave was granted to plaintiff Bach to file a reply memorandum within 5 days. On May 3, 2004, Bach's reply memorandum was filed.

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

1. Motion to Quash Writ of Assistance.

On July 1, 2003, following trial this Court entered findings of fact and conclusions of law, concluding that under the counterclaim and evidence Miller could elect to take a decree quieting title in Miller as to the 46.6 acres, referred to as the easterly 40 acres and the 6.6 acre access strip, in lieu of \$127,456.73 in damages awarded her by the jury. On July 8, 2003, Miller filed an election to receive a decree of quiet

title in lieu of the jury's verdict of damages.

Also July 8, 2003, Miller filed a motion for a writ of assistance to direct the Teton County Sheriff to remove Bach and his personal property from the 87 acres (being the aforesaid 46.6 acres and also the westerly 40 acres previously deeded to Miller by the Harrops). Bach objected to the motion, arguing that Miller waived, or was estopped from quieting title, because she pursued her damages remedy in the jury trial. He further objected on the basis of I.C. §6-414, arguing that this Court had not fixed the reasonable value of improvements installed by Bach on the easterly 40 acres and the 6.6 acre access strip. On October 8, 2003, a hearing was held on this motion and others.

On October 23, 2003, this Court entered a partial judgment quieting title to the 87 acres in favor of Miller and against Bach, and enjoining Bach from claiming any right, title or interest in said property, except as to any improvements installed in good faith by Bach on the eastern 40 acres and the 6.6 acre access strip. On December 5, 2003, a court trial was held pursuant to I.C. §§6-414 through 417 for Miller and Bach to present evidence as to the value of the improvements installed by Bach in good faith on the easterly 40 acres and the 6.6 acre access strip.

On December 23, 2003, this Court entered Additional Findings of Fact and Conclusions of Law, and held that \$23,650 was the reasonable value of Bach's improvements installed in good faith. Further, this Court held that if Bach failed to remove the improvements made on the property within 30 days of December 23, 2003, Miller would be entitled to a writ of assistance putting her in exclusive possession of all 87 acres upon payment to Bach of \$23,650.

On January 5th and 6th, 2004, Miller filed several motions. Two of these motions were her motion to amend the Additional Findings of Fact and Conclusions of law and the motion to clarify when Miller could obtain a writ of assistance and what parcels the writ would pertain to. In this Court's Twenty Second Order on Pending Motions, dated February 12, 2004, this Court clarified its Additional Findings and stated that Miller would be entitled to a writ of assistance removing Bach from the easterly 40 acres and 6.6 acre access strip only after Miller either paid Bach \$23,650 for his improvements before November 30, 2004, or posting a bond for 136% of that amount if she intended to appeal. This Court's reasoning was as follows:

"because Bach will have security for the value of his improvements up to the bond amount if neither appeal, or after the appeal is concluded if either party appeals. So long as Miller does not post the bond or pay Bach for the improvements, I.C. §6-414 clearly prohibits a writ of assistance, and pursuant to I.C. §6-414 Miller and Bach

will become tenants in common as to the 46.6 acres after November 30, 2004. Bach's bond for appeal of the final judgment will probably be 136% of the 46.6 acres total value of \$210,000.00 plus Miller's damages of \$500.00 and court costs." (Id. at pp. 15-16)

On April 1, 2004, Miller posted a cash bond of \$32,164 with the clerk of court and obtained a writ of assistance directing the Teton County Sheriff to remove plaintiff Bach and his personal property from the 87 acres quieting in Miller's name. From the parties' oral argument, it appears that the Sheriff has not personally served Bach with this writ, and neither party has filed a Sheriff's return of service.

There are four arguments presented by Bach's motion, as follows.

- a. **Miller obtained the writ of assistance ex parte from the clerk of court and without notice to Bach.**

Bach relies on *Williams v. Sherman*, 35 Idaho 169, 205 Pac. 259 (1922). *Williams* held that it was reversible error for the clerk of court to issue an *ex parte* writ of assistance to a purchaser of foreclosed real estate against the mortgagor in possession, because the rights of the parties may have changed between the decree of mortgage foreclosure and the application for the writ. As observed in *Williams*, a purchaser of foreclosed real property may not obtain a writ of assistance until after the one year redemption period following sale of the property and issuance of a Sheriff's Certificate of Sale.

However, *Williams* is distinguishable from this case, because this case involves issuing a writ of assistance to enforce a quiet title decree under Miller's counterclaim, not to enforce a mortgage foreclosure decree. There is no one year redemption period applicable to quiet title decrees.

Further Rule 70, I.R.C.P., states in pertinent part:

When any order or judgment is for the delivery of possession, the party in whose favor it is entered is entitled a writ of execution or assistance upon application to the clerk.

The Idaho Rules of Civil Procedure were first promulgated in 1958, some 35 years after *Williams*. Had the Idaho Supreme Court intended to retain the prior notice and motion to the court requirement of *Williams*, it would not placed into Rule 70 the words "upon application to the clerk," but rather that Court would have stated "upon motion to the court" or words to that effect. Obviously, the Supreme Court intended that an *ex parte* application would be made to the clerk for the writ of assistance, and the clerk would read the "order or judgment" to see if it ordered the party in possession to deliver possession to the applicant before issuing the writ. Under Rule 70, the fact that an *ex parte* application without notice to the clerk is the procedure specified, the party in possession can always get a court hearing if it contests the writ of assistance, by filing a motion to quash, as was done by plaintiff Bach in this case.

Further, Miller in fact has complied with Williams even if it was still good law, since Miller originally gave Bach notice in July, 2003, when she filed her motion for writ of assistance. Miller's motion generated objections by Bach, at least two motion hearings, a court trial under I. C. §6-414, and at least two decisions and Additional Findings and Conclusions by this Court. This Court's Twenty Second Order stated that Miller could obtain a writ of assistance under certain circumstances, namely by posting a bond to protect Bach's interest under I. C. §6-414 in the 46.6 acres should Miller's threatened appeal of this Court's finding as to the reasonable value of Bach's good faith improvements prove to be fruitless.

Therefore, this argument in support of the motion is without merit.

b. Miller had no affidavit attached to the writ.

Bach next argues that the writ of assistance does not have an attached affidavit. Bach cites no authority supporting this argument. Nothing in Rule 70, I.R.C.P., requires that any affidavit be filed with the clerk, nor attached to a writ of assistance. Therefore, Bach's argument that no affidavit was attached is without merit.

c. No bond need be attached to the writ.

Bach next argues that no surety bond was attached to the writ of assistance. Although the copy of the clerk's writ of assistance issued April 1st refers to an attach surety bond, there is no evidence that a surety bond was filed. At the hearing Miller's counsel represented that she posted a \$32,164 cash bond with the clerk on April 1st. Bach does not dispute that Miller posted the cash with the clerk. Since the clerk has the cash bond, subject to disposition of \$23,650 plus accrued interest to Bach if he prevails on Miller's appeal as to the amount of improvements found under I. C. § 6-414, there is no prejudice to Bach by reason of no cash receipt being attached to the writ.

Therefore, this argument has no merit.

d. No final judgment or order certified under Rule 54(b) has been entered.

Bach's main argument is that since a writ of assistance is like a writ of execution on a money judgment, that it cannot be issued until either a final judgment is entered or a Rule 54(b) certificate is entered on an interlocutory order granting possession. There is no Idaho case law resolving this issue. Bach cites *U. S. v. One Douglas A-26B Aircraft*, 662 F.2d 1372 (11th Cir. 1981); and *Korgan v. Walsleben*, 874 P.2d 1334 (Ore.App. 1994) in support of his argument.

In opposition, Miller argues that Bach's motion is really a second motion for reconsideration of this Court's Twenty Second Order that allowed Miller to obtain a writ of assistance, or alternatively, that a writ of assistance under Rule 70 does not require the final judgment or Rule 54(b) certificate required of writs of execution under Rule 69 because the Court in equity can safeguard the party in possession's rights.

The Idaho Supreme Court has held that a writ of assistance "is a form of process issued by a court of equity to transfer the possession of property, and more specifically lands, the title or right to which it has previously adjudicated" *Eagle Rock Corp. v. Idamont Hotel Co.*, 60 Idaho 639, 647, 95 P.2d 838, 841 (1939); *Pro Indiviso, Inc. v. Mid-Mile Holding Trust*, 131 Idaho 741, 746, 963 P.2d 1178, 1183 (1998). It has held further that

The sole question to be determined on the motion [for writ of assistance] is whether applicant has a right, as against the party in possession to use the writ to obtain possession. In the absence of any claim of an independent paramount title, the only question on such application is whether the decree has or has not been complied with.

Eagle Rock at 648, 95 P.2d at 841; *Pro Indiviso* at 746, 963 P.2d at 1183.

In the present case, the issue of the title to the 87 acres has already been adjudicated in favor of Miller. The westerly

TWENTY EIGHTH ORDER ON PENDING MOTIONS 9

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40 acres were deeded to Miller by the Harrops, and Bach's first count in his amended complaint seeking to obtain title based on breach of an oral partnership agreement or breach of fiduciary duty was not proved by the evidence. As to the easterly 40 acres and 6.6 acre access strip quieted to Miller in October, 2003, Miller has complied with the requirements of I. C. § 6-414 clarified by the Twenty Second Order by posting a bond in the amount of 136% of the amount of improvements installed by Bach on the easterly 40 acres and the 6.6 access strip.

The *Douglas A-26B Aircraft* case is distinguishable. In that case the U.S. Customs Department was ordered to deliver an airplane it had seized during an alleged marijuana smuggling activity back to its owner. When the airplane owner accepted delivery he discovered the airplane had deteriorated while in the custody of the Customs Department, and sought a post judgment order requiring the Customs Department to "restore the airplane" to its earlier condition when first seized. The airplane owner cited Rules 60(b) and 70, F.R.C.P. The district court denied both motions, and the 11th Circuit affirmed. The case had nothing to do with whether a writ of assistance could issue to enforce an interlocutory order.

The *Korgan* case by the Oregon Court of appeals is also distinguishable. It was a tort action against an attorney for

making a false statement in an affidavit filed in support of a writ of assistance in a previous case, and a tort action for wrongfully obtaining a writ of assistance against the attorney's client who purchased the plaintiffs' property at a land contract foreclosure sale. In *Korgan* the appellate court noted that the writ of attachment was wrongfully issued four days before the foreclosure judgment was entered in the court record. It did not decide the issue presented to this Court.

Rule 69, I.R.C.P., sets forth the process for a writ of execution. It states that no writ of execution shall be issued on a partial judgment which is not certified under Rule 54(b). However, there is no such language in Rule 70. Had the Idaho Supreme Court intended that a writ of assistance could not issue based on an interlocutory order for possession, it would have inserted language into Rule 70 that required a final judgment or a Rule 54(b) certificate. Alternatively, it would have made the procedure for writs of assistance a part of Rule 69 with its final judgment or Rule 54(b) certificate requirements applicable to both writs. There must be a reason why the Idaho Supreme Court promulgated a separate rule for writs of assistance without the final judgment requirement. This Court cannot rewrite Rule 70 to add requirements the Supreme Court elected not to impose.

The power of a court to issue a writ of assistance arises from its equitable powers. Thus, a court in equity has the power to decide when it will issue, what strings will be attached to a writ of assistance, and under what circumstances it may be stayed.

Clearly there is no reason to require Miller to wait for a final judgment to have Bach removed from her westerly 40 acres. Under the facts Bach had no basis to be on this property after October, 2003. There is no reason to continue the *ex parte* stay entered on April 13th as to this property.

As to the easterly 40 acres and the 6.6 acre access strip Bach had been in possession under color of title for many years until this Court's October, 2003 partial judgment was entered. It did not make any sense to certify the October, 2003 partial judgment and several other interlocutory orders under Rule 54(b), when requested several months ago, because a final trial was scheduled to timely resolve all remaining claims. However, this Court has been unable to enter a final judgment because there are still pending claims against defendants Jack McLean (deceased during this proceedings) and Galen Woelk whose jury trial was postponed at the request of Mr. Bach. There is no reason to deprive Miller from possession of the property to wait

for unrelated claims to be resolved. This Court has required that Miller post a bond before the clerk may issue a writ of assistance to protect Bach's interest in the improvements on the easterly 40 acres and the 6.6 acre access strip. If Bach wishes to continue the present *ex parte* stay on serving the writ of assistance as to such property, he has the option of posting a bond in the amount of 136% of the value of such property found earlier by this Court to be \$210,000.

Therefore, this Court must deny the motion to quash the writ of assistance.

2. Bach's motion for return of 87 acres.

Since the Sheriff has not served the writ of assistance on Bach, there is no basis to order the Sheriff to return any property to Bach. There is no evidence that the Sheriff took any personal property into its possession.

Therefore, the motion to return property must be denied.

3. Bach's motion for 21 days to remove personal property.

In his third motion, Bach seeks alternative relief of 21 days to remove his personal property. In opposition Miller argues that Bach has previously had a 30 day period to remove his personal property, and has abandoned his property.

Bach previously had a 30 day period to remove improvements that could be removed without damaging the real property. While

he was not specifically granted permission to remove his personal property, there was nothing that prevented him from removing his personal property during such 30 day period, nor for the months before and after such 30 day period. Nonetheless it is in the best interest of the parties and also the Teton County Sheriff to have Mr. Bach removing his personal property rather than the Sheriff doing it for him.

Therefore, Bach shall have 21 days from the date of this order to remove his personal property from the 46.6 acres, so long as he gives at least five (5) days written notice in advance to the Sheriff of Teton County and Miller as to what he plans to remove, when he plans to remove it, and how he plans to remove it. Only such items described in Bach's three day notice shall be removed.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED that

1. plaintiff Bach's motion to quash the writ of assistance is DENIED;

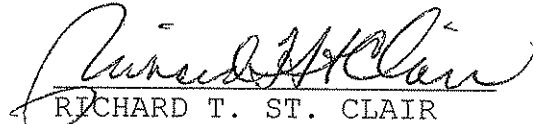
2. plaintiff Bach's motion for return of possession of all 87 acres is DENIED;

3. plaintiff Bach's motion for 21 days from the date of this order to remove his personal property is GRANTED, conditioned on Bach providing at least five (5) days written

notice to the Teton County Sheriff and Miller as to what, when and how he is planning to remove such property; and

4. the *ex parte* stay on the Sheriff's serving the writ of assistance issued on April 1st is QUASHED.

DATED this 6th day of May, 2004.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of May, 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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Galen Woelk
Runyan & Woelk, P.C.
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Telefax No. 208-354-8886 (TELEFAX & MAIL)

Jason Scott
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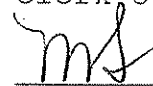
Anne Broughton
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Idaho Falls, ID 83405-1219 (MAIL)

Gregory Moeller
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Rexburg, ID 83440-0250

(MAIL)

RONALD LONGMORE
Clerk of Court

A handwritten signature in cursive script, appearing to read 'ms', is written over a horizontal line.

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

FILED
MAY 03 2004
TETON CO.
DISTRICT COURT

On the 27th day of April, 2004, Bach's motion to strike, vacate writ of assistance, motion for return of possession of 87 acres, motion granting Plaintiff at least twenty-one days from ruling to remove property, motion for immediate stay of writ of assistance 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.

The Court previously granted a stay regarding the writ of

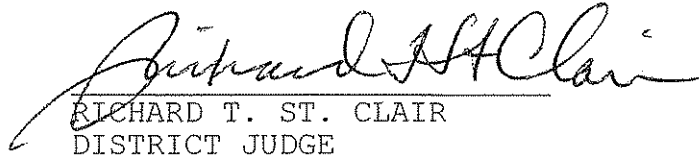
assistance.

Mr. Bach presented motion to strike, vacating writ of assistance. Mr. Woelk argued in opposition to the motion to vacate writ of assistance. Mr. Bach presented rebuttal argument.

(Tape 04-498 full continued on tape 04-507.) Mr. Woelk presented further argument.

The Court will allow five days to file additional briefing. The Court will then consider the matter submitted and issue a decision.

Court was thus adjourned.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

H:18bach.writ/04-498@1029 full over to 04-507

CERTIFICATE OF MAILING

I certify that on the 27th day of April, 2004, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE


Deputy Court Clerk

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Anne Broughton
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Tetonia, ID 83452

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date July 6, 2004
Time 8:25
Deputy Clerk M. Southwick

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

JOHN N. BACH,

Plaintiff,

vs.

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

Defendants.

Case No. CV-02-208

**TWENTY NINTH ORDER
ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court are the following motions filed on
May 21, 2004:

1. defendant Galen Woelk's motion for partial summary
judgment on Fifth Count; and

2. defendant Galen Woelk's motion to strike or dismiss Thirteenth Count;

Defendant Woelk's motion for partial summary judgment was supported by the affidavit of counsel with attached copies of Bach's Chapter 13 bankruptcy petition and schedules filed on August 4, 1997 in the U. S. Bankruptcy Court (Eastern District for California) in case 97-31942-A-13, unpublished decision in *Zimmerman v. Jayo*, U.S. Bankruptcy Court (Idaho) in case 00-20322 (adversary case 01-6080) dated February 3, 2003 (Myers, J.), warranty deed from Zamona Casper to Targhee Powder Emporium, Unlimited and Wayne Dawson dated October 26, 1992, warranty deed from Layne and Cindy Price to Targhee Powder Emporium, Ltd., dated September 24, 1992, warranty deed from Teton West Corporation to Targhee Powder Emporium, Ltd., and others dated June 9, 1994, and warranty deed from Mark Ottmer to Targhee Powder Emporium, Ltd., and others dated August 5, 1994. Woelk also filed on that date a legal memorandum in support of his motion.

On June 9, 2004, plaintiff John Bach filed an opposition memorandum and affidavit in opposition to the motion for partial summary judgment. Attached were copies of an undated letter from Dr. Siobhan McNully to Woelk, a letter from Woelk to Teton Co. prosecutor Laura Lowery dated November 30, 2000, letters from

Woelk to Mark Liponis dated January 15th and April 6th, 2001, and a letter from Woelk to defendant Jack McLean dated April 5, 2001.

On June 17th, defendant Woelk filed a reply memorandum in further support of the motion for partial summary judgment.

Woelk also filed a legal memorandum in support of his motion to strike or dismiss the Thirteenth Count. No affidavits were filed in support of, or in opposition to, this motion. Bach filed no opposition memorandum as to this motion.

On June 24, 2004, the Court heard oral argument on both motions. Having considered the motions, affidavits filed in support and in opposition, the record in this case consisting of testimony at hearings and trials, affidavits and excerpts of depositions, the legal memoranda filed by the parties, and the oral arguments of the parties or their counsel, this Court renders the following decision on the pending motions.

II. STANDARDS FOR DECISION

By this reference, the Court incorporates the legal standards for determining motions for partial summary judgment as set forth in previous memorandum decisions in this case.

If matters outside the complaint are presented to the Court as to a motion to dismiss for failure to state a claim upon which relief can be granted under Rule 12(b)(6), I.R.C.P., the

motion must be treated as a motion for summary judgment. *Masi v. Seale*, 106 Idaho 561, 682 P.2d 102 (1984).

III. MATERIAL FACTS

Between 1992 and 2000, plaintiff John Bach acquired interests in real estate in Teton County, Idaho through use of the business names Targhee Powder Emporium, Unlimited, Targhee Powder Emporium, Ltd., and Targhee Powder Emporium, Inc. However, Bach never filed articles of incorporation with any Secretary of State for these corporations, nor did he file assumed business name certificates in Idaho disclosing interest in these businesses. Although Bach used these three corporation or business names, he treated all property interests acquired in those names as his own property.

In November, 2000, some of the defendants in this action incorporated Targhee Powder Emporium, Inc., through the Idaho Secretary of State's office. However, Bach had no stock interest in that corporation, nor was he an officer or director of such corporation. Bach did not assist this 2000 corporation in acquiring any interest in any real property, and he had no control over the operation of such corporation.

On October 26, 1992, by warranty deed from Zamona Casper, Bach acquired an undivided one half interest in 8.5 acres in Teton County, with defendant Dawson acquiring the other one half

interest. In the warranty deed Bach used the name Targhee Powder Emporium, Unlimited. However, there was no such entity, and Bach treated this property interest as his own.

On June 9, 1994, by warranty deed from Teton West Corporation, Bach acquired an undivided one-fourth interest in 40 acres in Teton County known as the "Peacock Property" with the Jack Lee McLean Family Trust, the Cheyovich Family Trust, and the Dawson Family Trust acquiring undivided one-fourth interests. In the warranty deed Bach used the name Targhee Powder Emporium, Ltd. However there was no such entity, and Bach treated this property interest as his own.

On August 5, 1994, by warranty deed from Mark Ottmer, Bach acquired an undivided one-third interest in 40 acres in Teton County known as the "Drawknife Property" with the Basin Creek Medical, P.C. Pension and Profit Sharing Plans, and the Jack Lee McLean Family Trust acquiring undivided one-third interests. In the warranty deed Bach again used the name Targhee Powder Emporium, Ltd., but it was still a non-existent entity.

On August 4, 1997, Bach filed a chapter 13 bankruptcy petition in U. B. Bankruptcy Court in the Eastern District of California, along with schedules of his assets. Bach's schedules as originally filed and later amended and supplemented did not list any interest in any real property in the state of Idaho,

except 5 acres near Atomic City, Idaho. The Bankruptcy Court approved Bach's chapter 13 plan. Bach satisfactorily satisfied his chapter 13 plan, and he was discharged from further liability to creditors with approved claims participating in the chapter 13 plan. The bankruptcy case was closed. There is no evidence that Bach's trustee in bankruptcy ever knew about Bach's interest in real property in Teton County, that his trustee administered any Teton County property, nor that the trustee abandoned any Teton County property from the bankruptcy estate.

Bach's Fifth Count seeks damages from defendant Woelk for slandering his title to five parcels of real property in Teton County. In previous decisions, this Court concluded that defendant Miller owns the 86.6 acre parcel and that defendants Bret and Deena Hill own the 1 acre parcel described in the Fifth Count.

In a previous decision this Court concluded that there were admissible facts, although conflicting, from which a jury could find that defendant Woelk slandered Bach's title to the 8.5 acres, and the Peacock and Drawknife properties. There are no new facts as to defendant Woelk's actions relevant to the slander of title allegations in the Fifth Count.

IV. ANALYSIS

A. Motion for Summary Judgment on Fifth Count

Defendant Woelk's motion for summary judgment seeks dismissal of the Fifth Count of the amended complaint on two grounds. First, because previous decisions of this Court have held that Miller owns the 86.6 acre parcel and Bret and Deena Hill own the 1 acre parcel. Second Bach lacks standing to sue for slander of title to the 8.5 acres, the Peacock property and the Drawknife property because those are assets owned by the trustee appointed in his California bankruptcy estate. Woelk cites in support of this second argument 11 U.S.C. § 541(a)(1); *Lopez v. Specialty Rests. Corp*, 283 B.R. 22(9th Cir. BAP 2002); and *Zimmerman v. Jayo*, U.S. Bankruptcy Court (Idaho), 00-20322 (adversary case 01-6080) unpublished decision dated February 3, 2003 (Myers, J.).

In opposition, plaintiff Bach argues that Woelk's motion does not comply with the requirements of Rule 11(a)(2), I.R.C.P., for reconsideration and is merely a "rehash" of the same motion that was denied earlier. He further argues that this Court has quieted title in Bach as against several other defendants as to the 8.5 acres, the Peacock property and the Drawknife property. He further argues that this Court has no subject matter jurisdiction to decide what assets are in a

bankruptcy estate. He further argues that his former bankruptcy trustee has no interest in these properties because his creditors were satisfied out of the sale of his California real property and the trustee distributed \$25,000 to Bach when the case was closed.

Rule 11(a)(2)(B), I.R.C.P., provides that a motion for reconsideration of any interlocutory order may be made at any time before the entry of final judgment. The motion is not a "rehash" of the same arguments ruled on when Woelk's earlier motion for summary judgment was denied. Since Woelk's motion raises new facts in this Court later decisions quieting title against Bach as to Miller's 86.6 acres and the Hills' 1 acre, and raises a new legal argument as bankruptcy law, it is proper to entertain Woelk present motion.

Federal courts have exclusive jurisdiction of all bankruptcy cases involving a debtors' bankruptcy petition. *Matter of Wood*, 825 F.2d 90 (5th Cir.1987); *Stevenson v. Prairie Power Co-Op, Inc.*, 118 Idaho 52, 57, 794 P.2d 641, 646 (App.1989). However, Idaho state courts have concurrent jurisdiction with federal courts to adjudicate proceedings falling under 28 U.S.C. § 1334(b), including state common law causes of action. See *Stevenson, supra*. (Affirming state district court decision on breach of contract claim of chapter

11 debtor). Had Bach reopened his California bankruptcy case, his former chapter 13 trustee could have decided to either join in this action or abandon the Teton County properties, or institute an adversary proceedings against Woelk in federal court. However, the bankruptcy case has not been reopened. In any event, this Court has subject matter jurisdiction to decide whether the common law tort cause of action of slander of title as alleged in the Fifth Count, and to decide who has standing to sue on such cause of action.

When this Court entered previous decisions quieting title in favor of plaintiff Bach as to the 8.5 acres, the Peacock property and the Drawknife property, against various other defendants, many of whom were in default, no issue of Bach's lack of standing was raised. When this Court entered previous decisions quieting title in favor of Miller and the Hills as to the 86.6 acres and the 1 acre properties against Bach, no issue of the bankruptcy estate's owning these properties was raised. It is doubtful that any decision this Court has entered could have any binding effect against Bach's former chapter 13 bankruptcy trustee.

The material facts establish that Bach did not disclose his ownership interests any Teton County, Idaho to the federal bankruptcy court in California or his chapter 13 trustee through

the asset schedules filed with the bankruptcy court. All property of a debtor becomes property of the bankruptcy estate as of the date of filing a petition in bankruptcy in federal bankruptcy court. *Lopez, supra.* at 28. In this case all of Bach's interest in Teton County real property became property of his California bankruptcy estate on August 4, 1997. That included the Miller 86.6 acres, the Hills' 1 acre, the 8.5 acres, the Peacock property, and the Drawknife property. Property that is not abandoned nor administered remains the property of the bankruptcy estate, even after the bankruptcy case is closed. *Lopez, supra.* at 28. Unscheduled property remains in the bankruptcy estate after the case is closed. *Pace v. Battley*, 146 B.R. 562, 564-566 (9th Cir. BAP 1992), *aff'd* 17 F.3d 395 (9th Cir.1994). In *Jayo, supra.*, Chief Idaho Bankruptcy Judge Myers held that a previously discharged bankruptcy debtor who did not schedule her interest in a real estate mortgage during the administration of her bankruptcy case had no standing, as a matter of law, to sue to foreclose the mortgage in a later proceeding because her interest in the mortgage was still an asset of the closed bankruptcy estate. In *Marks v. Benson*, 62 Wash. App. 178, 813 P.2d 180 (App.1991), the Washington Court of Appeals held that a previously discharged bankruptcy debtor who then held a seller's assigned interest in

a real estate sales contract had no standing to sue the purchasers for delinquent payments accruing after the bankruptcy was closed, as a matter of law, because the assigned sales contract was not scheduled with the bankruptcy court.

Since only the owner of real property can sue for slander of his title, and since Bach's undivided interest in the 8.5 acres, the Peacock property, and the Drawknife property remain owned by his former bankruptcy trustee as assets of the bankruptcy estate, then it follows as a matter of law that Bach has no standing to sue Woelk for damages caused by slandering the title to such properties as alleged in the Fifth Count.

Therefore, partial summary judgment must be granted dismissing the Fifth Count of the amended complaint.

B. Motion to Strike or Dismiss Thirteenth Count

Woelk's motion to strike or dismiss the Thirteenth Count is brought pursuant to Rule 12, I.R.C.P., and argues that this Court only allowed Bach to amend his pleadings to obtain punitive damages from Woelk based on the malicious harassment count, as opposed to all counts previously pleaded and some addition federal statutory violations newly added by the Thirteenth Count.

In opposition, Bach argues that this Court did not restrict punitive damages recovery to the malicious harassment count.

Having recalled its previous oral in court ruling on Bach's motion to add a prayer for punitive damages, and Woelk motion to require Bach to add another count to allege facts supporting his punitive damages claim, and having recalled the evidence in affidavits and testimony previously heard, this Court concludes that Bach has sufficient facts, which if admitted during the jury trial, may allow recovery of punitive damages if he recovers against Woelk for conversion and malicious harassment. Evidence of financial worth of Woelk likely will not be admitted until a second phase of the jury trial, and only if the jury finds in the first trial phase that Woelk is liable to Bach for damages for conversion and malicious harassment.

Therefore, Woelk's motion should be granted in part and denied in part, and all allegations in the Thirteenth Count seeking punitive damages under any cause of action except conversion and malicious harassment are dismissed with prejudice.

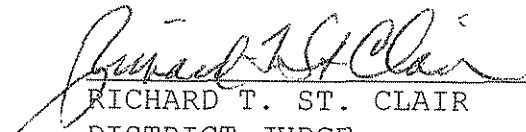
V. CONCLUSION AND ORDER

Based on the foregoing analysis, this Court concludes and IT IS HEREBY ORDERED that:

1. defendant Galen Woelk's motion for partial summary judgment on Fifth Count is GRANTED; and

2. defendant Galen Woelk's motion to strike or dismiss Thirteenth Count is GRANTED IN PART, and DENIED IN PART, with all allegations seeking punitive damages based on any claims other than conversion and malicious harassment being dismissed with prejudice.

DATED this 6th day of July, 2004.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of July , 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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Gregory Moeller
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(MAIL)

RONALD LONGMORE
Clerk of Court


Deputy Court Clerk

FILED IN CHAMBERS

at Idaho Falls

Bonneville County

Honorable Richard T. St. Clair

Date June 24, 2004

Time 11:15

Deputy Clerk M. Southwick

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

JOHN N. BACH,

Plaintiff,

v.

KATHERINE D. MILLER, aka
KATHERINE M. MILLER, Individually
& dba R.E.M., and CACHE RANCH,
ALVA A. HARRIS, Individually & dba
SCONA, INC., a sham entity, JACK
LEE McLEAN, BOB FITZGERALD, Ind-
ividually & dba CACHE RANCH, OLE
OLESEN, BOB BAGLEY & MAE BAGLEY,
husband and wife, BLAKE LYLE, In-
dividually & dba GRANDE TOWING and
also GRANDE BODY & PAINT, GALEN
WOELK & CODY RUNYAN, Individually
& dba RUNYAN & WOELK, ANN-TOY
BROUGHTON, WAYNE DAWSON, MARK
LIPONIS, EARL HAMBLIN, STAN NICKELLS,
BRET & DEENA R. HILL, DOES 1
through 30, Inclusive,

Defendants.

CASE NO. CV 02-208

JUDGMENT AGAINST
DEFENDANTS BRET HILL
and DEENA R. HILL,
on SECOND COUNT and
FOURTH COUNT OF FIRST
AMENDED COMPLAINT, GRANT-
ING QUIET TITLE JUDGMENT
IN FAVOR OF PLAINTIFF
JOHN N. BACH, and PERMAN-
ENT INJUNCTION IN HIS FAVOR
RE THE REAL PROPERTIES &
INTERESTS QUIETED TO/IN
HIM AS TO SAID SECOND &
FOURTH COUNTS.

On February 23, 2004, this Court filed an AMENDED JUDGMENT AGAINST WAYNE DAWSON, and on February 27, 2004 a DEFAULT JUDGMENT AGAINST ALVA A. HARRIS, SCONA, INC., BOB FITZGERALD, OLE OLESEN and BLAKE LYLE. This judgment supplements both of said judgments by reason of the disclaimer of any rights, interests, claims, titles or equities whatsoever, by defendants BRET HILL and his wife, DEENA R. HILL, in those real properties, which plaintiff JOHN N. BACH, per his FIRST AMENDED COMPLAINT, SECOND COUNT and FOURTH COUNT, seeks to have title and all interests quieted in him, to the complete exclusion and assertions of any interests by defendants BRET HILL and DEENA R. HILL.

JUDG. AGAINST DFTS BRET & DEENA R. HILL ON SECOND & FOURTH COUNTS 1.

601325

The Court having heard the matter of defendants BRET HILL and DEENA R. HILL's complete disclaimer and waiver of all any claims to said real properties and interests attendant thereto, to said real properties within said SECOND and FOURTH COUNT, and noting that "FINDINGS OF FACT AND CONCLUSIONS OF LAW" are unnecessary where defendants BRET HILL and DEENA R. HILL consent to and request said judgment by said complete disclaimer and waiver of all/any claims to said real properties, and the Court being fully advised in the premise:

WHEREFORE, by virtue of the law and by the reason of the premises aforesaid, it is ORDER, ADJUDGED and DECREED:

1. As to the SECOND COUNT OF THE FIRST AMENDED COMPLAINT, seeking a decree quieting title and a permanent injunction against defendants BRET HILL and DEENA R. HILL, plaintiff JOHN N. BACH, shall have and is granted judgment against these said defendants, BRET HILL and DEENA R. HILL, hereby decreeing that BRET HILL and DEENA R. HILL, have no title, no interest, claims nor any equities whatsoever, in, the following real property in Teton County, Idaho, more particularly described as:

"The 8.5 more or less acres adjacent to 195 N. North Highway 33, north of Driggs, described as:

Lot 1, Block 1, Teton Peaks View, Division 1, as per the record plat thereof, Teton County, Idaho. Together with 20 shares of Grand Teton Canal Company and all mineral, gas, oil and geothermal rights appurtenant thereto, LESS, approximately 1 acre on the East side of Highway 33, North of Driggs, Idaho, with the address of 195 N. Highway 33, Driggs, Idaho, which 1 acre has no water shares of the Grand Teton Canal Company, beginning at the NW corner of Lot 1, Block 1, Teton Peaks View, Division 1, Teton County, Idaho according to said recorded plat; running thence South 200 feet; thence East 220 feet; thence North 200 feet; then West 200 feet to the point of beginning.

2. As to the FOURTH COUNT OF THE FIRST AMENDED COMPLAINT, seeking a decree quieting title and a permanent injunction

against defendants BRET HILL and DEENA R. HILL, plaintiff JOHN N. BACH shall have and is granted judgment against these said defendants, bret hill and DEENA R. HILL, hereby decreeing that BRET HILL and DEENA R. HILL have no title to, no interest, no claims nor any equities whatsoever, in the further real property and joint ventures thereof/therewith of:

a) The DRAWKNIFE 33 acre property, described as follows:
SE1/4SW1/4 of Section 35, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho,
LESS a tract beginning at the SE corner of the SW1/4 of Section 35, Township 6 North, Range 45 EBM: running thence North 516 feet; thence West 295 feet; thence South 516 feet; thence East 295 feet to the point of beginning, acres in Teton County, Idaho; or

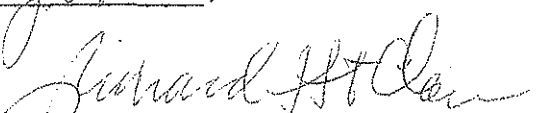
b) The PEACOCK 40 acre property, described as follows:

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

3. Defendants BRET HILL and DEENA R. HILL are forever, permanently enjoined, restrained and precluded from trespassing, entering upon, storing, placing or leaving upon each of said three real properties described herein, the 8.5+ acres, the DRAWKNIFE 33+ acres and the PEACOCK 40 acres, their persons, any personal properties, objects, items or making any further claims thereto or against each of said real properties, herein quieted to JOHN N. BACH. The HILLS' agents & attorneys are also so restrained.

4. Any application or memorandum of costs and/or fees, etc., shall be determined hereafter upon Rule 54, I.R.C.P., et seq.

DATED: this 24th, day of June, 2004


RICHARD T. ST. CLAIR

001327

CERTIFICATE OF SERVICE

I hereby certify that on the 24th day of June, 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

Msouthwick
Deputy Court Clerk

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

FILED

4:05

JUN 30 2004

TETON CO.
DISTRICT COURT

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

MINUTE ENTRY
Case No. CV-2002-208

On the 24th day of June, 2004, Defendant Woelk's motion for partial summary judgment on Count Five of the Amended Complaint and motion to strike or dismiss Count Thirteen 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. Craig Meadows appeared on behalf of Defendant(s) Galen Woelk dba Runyan & Woelk.

Mr. Meadows presented Defendant Woelk's motion for partial summary judgment and Count Five of the amended complaint. Mr.

Bach argued in opposition to the motion. Mr. Meadows presented rebuttal argument.

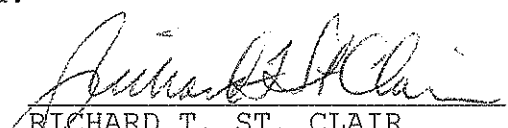
The Court will take the matter under advisement and issue an opinion as soon as possible.

Mr. Meadows presented Defendant Woelk's motion to strike or dismiss Count Thirteen. Mr. Bach argued in opposition to the motion. Mr. Meadows presented rebuttal argument.

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

Mr. Bach advised the Court that his wife has been diagnosed with stomach cancer and is tentatively scheduled for surgery on July 19, 2004. Mr. Bach may move the Court to continue the trial. The Court will consider a continuance upon appropriate motion.

Court was thus adjourned.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

A:26bach/791@1630

CERTIFICATE OF MAILING

I certify that on the 24th day of June, 2004, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE



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'04 JUL 14 A8:04

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
HAMBLIN, STAN NICKELL, BRET HILL
& DEENA R. HILL, and DOES 1
through 30, Inclusive,

Defendants.

Case No. CV-02-208

**THIRTIETH ORDER
ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court are the following motions:

1. plaintiff John Bach's motion to reconsider the Twenty Eighth Order, motion to substitute plaintiff as party defendant for Jack McLean (deceased in December, 2003), motion for hearing on default judgment against McLean, and motions for sanctions

THIRTIETH ORDER ON PENDING MOTIONS

1

001334

against Alva Harris, filed on June 17, 2004;

2. Lynn McLean's motion to dismiss the amended complaint pursuant to Rule 25(a)(1), I.R.C.P., and motions for sanctions, filed on July 6, 2004; and

3. plaintiff Bach's motion to continue jury trial, filed on July 8, 2004.

These motions were not supported by any affidavits containing any admissible facts. These motions were argued on July 13, 2004. At the hearing Mr. Bach submitted exhibits showing the Lynn McLean had been appointed as the personal representative of Jack McLean by the magistrate for Teton County on April 4, 2004 in case CV-04-136. Alva Harris appearing as attorney for Lynn McLean stated that Ms. McLean had accepted the appointment and taken the oath of office. Mr. Bach's exhibit established that on June 23, 2004, he had Ms. McLean served with a copy of his motion to substitute party defendant.

Having considered plaintiff Bach's motion for reconsideration of the Twenty Eighth Order, this Court concludes that he is actually seeking reconsideration of the Twenty Sixth Order wherein this Court held that Rule 25(a)(1) is the proper Rule to apply when a party defendant dies during a civil action and the plaintiff's cause of action survives such death. Rule 25(a)(1) states:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.

As pointed out in the Twenty Sixth Order, Rules 17, 19 and 24 do not apply. The additional authorities cited and argued by plaintiff Bach are unpersuasive and inapplicable. The motion for reconsideration must be denied.

Plaintiff Bach's motion to substitute himself as party defendant cannot be granted under Rule 25(a)(1) because Mr. Bach is not the successor or personal representative of Jack McLean. As proved by the application for informal probate of will in estate proceedings CV-04-136, the successors of Jack McLean are his daughters Lynn McLean and Paula Ehrler, and the personal representative is Lynn McLean. Lynn McLean was properly served under Rule 4 with a copy of the motion to substitute, and she has now appeared by counsel Alva Harris. Therefore this Court must grant the motion in part and substitute for defendant Jack McLean (deceased in December, 2003) his personal representative Lynn McLean, but otherwise deny Bach's motion. Bach's motion for a hearing on damages for entry of default judgment under Rule 55(b)(2) must be granted, and a hearing date may be scheduled

THIRTIETH ORDER ON PENDING MOTIONS 3

with notice to defendant Lynn McLean. The motion for sanctions is without merit.

Lynn McLean's motion to dismiss the complaint under Rule 25(a)(1) is based on Bach's not timely moving to substitute a successor or personal representative for Jack McLean. There is no prescribed time for moving for substitution. The parties have not briefed any cases in Idaho or other jurisdictions having construed this rule. A clerk's default had been entered against McLean before his death. McLean was represented by counsel, who moved unsuccessfully to set aside the default. The same attorney filed the informal probate proceedings for Lynn McLean. It is true that Mr. Bach, as a creditor, could have filed a petition with the magistrates' division for appointment of himself or someone else as personal representative or special administrator of McLean's estate. However, he would have had to serve the petition on Lynn McLean, who has a higher priority for appointment than a creditor. It is likely that had Bach petitioned the magistrate's court earlier the result would have been the same and taken about the same amount of time as waiting for Lynn McLean to apply. There is no prejudice to Lynn McLean from the delay. Her ability to set aside the clerk's default passed with Jack McLean's unsuccessful attempts, and she still has the right to participate in the damages hearing before a

default judgment is entered, and to file an appeal. Lynn McLean's motion to dismiss must be denied. Her motion for sanctions is without merit.

For the reasons stated at the hearing on July 13th, Bach's motion to continue must be denied.

Based on the foregoing analysis, this Court concludes and IT IS HEREBY ORDERED that:

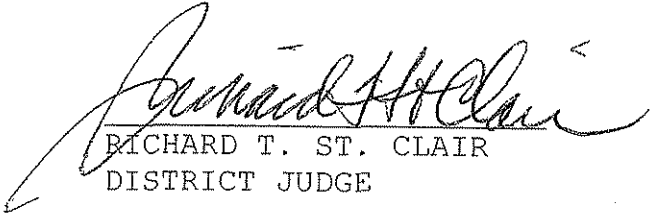
1. plaintiff John Bach's motion to reconsider the Twenty Eighth Order (actually Twenty Sixth Order) is DENIED, his motion to substitute plaintiff as party defendant for Jack McLean (deceased in December, 2003) is DENIED as to substituting plaintiff, but GRANTED as to substituting Lynn McLean, as personal representative of the Estate of Jack McLean, his motion for hearing on default judgment against Lynn McLean, as personal representative, is GRANTED, and his motion for sanctions against Alva Harris is DENIED;

2. Lynn McLean's motion to dismiss the amended complaint pursuant to Rule 25(a)(1), I.R.C.P. is DENIED, and her motion for sanctions is DENIED;

3. plaintiff Bach's motion to continue jury trial is DENIED;

4. Lynn McLean, as personal representative of the Estate of Jack McLean, is substituted as a party defendant in place of defendant Jack McLean (deceased in December, 2003).

DATED this 14th day of July, 2004.



RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of July , 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
1858 S. Euclid Avenue
San Marino, CA 91108
Telefax No. 626-441-6673 (TELEFAX & MAIL)

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

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

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

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

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

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

(MAIL)

RONALD LONGMORE
Clerk of Court


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

FILED
1:55 PM
JUL 21 2004
TETON CO.
DISTRICT COURT

On the 14th day of July, 2004, Plaintiff's motion to reconsider the motion to continue jury trial came before the Honorable Richard T. St. Clair, District Judge, in open court at Idaho Falls, Idaho.

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

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

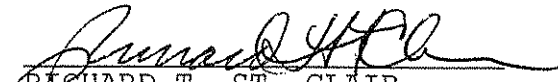
Mr. Craig Meadows appeared on behalf of Defendant(s) Galen Woelk dba Runyan & Woelk.

Mr. Bach presented his motion to reconsider motion to continue trial. Mr. Meadows does not oppose the continuance.

The Court granted the motion and will vacate the trial

scheduled for July 20, 2004, in Teton County.

Court was thus adjourned.



RICHARD T. ST. CLAIR
DISTRICT JUDGE

A:Bach.mine

CERTIFICATE OF MAILING

I certify that on the 14th day of July, 2004, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE


Deputy Court Clerk

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

Anne Broughton
1054 Rammell Mountain Road
Tetonia, ID 83452

FILED

AUG 16 2004

TIME: 3:20 PM Jm
TETON CO. DISTRICT COURT

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,

CASE NO: CV 02-208

Plaintiff &
Counterclaim
Defendant,

AFFIDAVIT OF PLAINTIFF
JOHN N. BACH, IN OPPOSI-
TION TO DEFENDANTS' GALEN
WOELK, individually & dba
RUNYAN & WOELK'S MOTION
FOR SUMMARY JUDGMENT ON
REMAINING COUNTS, and TO
AFFIDAVIT OF GALEN WOELK
& AFFIDAVIT OF JASON SCOTT

v.

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

and

REQUEST FOR JUDICIAL NOTICE
OF PENDING TETON ACTIONS

Defendant &
Counterclaimant,
et al.,

I, JOHN N. BACH, being duly placed under oath do hereby
testify of my own personal knowledge, participation, involvements,
witnessing and understanding to the facts, events, occurrences and
activities testified herein, all in opposition to the defendants'
GALEN WOELK'S, individually & dba RUNYAN & WOELK'S MOTION FOR SUM-
MARY JUDGMENT ON REMAINING COUNTS, and to the AFFIDAVITS OF GALEN
WOELK and JASON SCOTT.

1. Affiant has read and reviewed the current summary judgment
motions along with the offered affidavits of GALEN WOELK and JASON
SCOTT, and objects to each of the same upon each and all of the
following basis, upon which separate basis and joint objections, moves
to strike, preclude and quash any and all said affidavits use, receipt

into evidence or for any consideration whatsoever to hear, let alone support said defendants' current summary judgment motion:

A. This court neither has subject matter jurisdiction nor in personam jurisdiction over any bankruptcy proceeding involving previously JOHN N. BACH. In Re Gruntz, 202 F.3d 1074, 1082 (9th, 2000)

B. The defendants neither have standing nor capacity whatsoever herein to either direct, indirectly nor even inferently have this court assume to legislate, over Congress' exclusive legislative and constitutional authority, any state jurisdictions over admittedly after acquired moneys and claims or causes of actions at law and equity by JOHN N. BACH, which moneys were acquired and rightly held by JOHN N. BACH, individually and personally and to all exclusionary jurisdictions and prosecution of relief for damages sought against the defendants herein.

C. The Chapter 13 bankruptcy proceeding in Eastern District of California (Sacramento) released funds directly to JOHN N. BACH as his own individually held and rightfully to be used, spent and/or invested purposes, as has been proven and is binding upon this Court per Plaintiff's EXHIBITS 1-15, admitted Aug. 13 & 15, 2002. There is no basis in fact nor law, that holds nor precludes JOHN N. BACH from using said moneys so received from said Chapter 13 bankruptcy trustee, nor from borrowing upon said moneys nor borrowing from any friends or other agreeable and willing individuals, banks or entities, which extend to him any credit, accomodation or terms of any loans personally to him, after he has filed said petition and his Chapter 13, repayment plan approved. Defendants have utterly failed to present any facts, and least of all any laws, federal statutes or authorities, relevant, controlling nor in exacting point to even allow said defendants the standing or capacities to make such motion currently.

D. Defendants' said current motion along with said offered affidavits and the BRIEF offered in support thereof, are replete with inadequate foundational showing, of irrelevant and/or hearsay documents, replete with speculations, conjectures and inadmissible conclusions, legal assumptions and canards of purported fact and law or applicable authorities. Such frivolous, bad faith and vexations, without legal basis, fact or authority presentation requires this court to sanction said defendants and their counsel, by striking said affidavits, motions and brief, along with imposing monetary sanctions per IRCP, Rule 11(a)(1) and 56(b) through (e). Affiant seeks further monetary sanctions of at least \$1,500.00 as and for his time, paralegal, research, investigation and drafting, typing, copying, mailing costs, expenses, etc. Affiant has spent over 15 hours reviewing not just said defendants' documents currently filed but his records, the court files, exhibits and other records, notes and even recordings of the Attorney General's interviews of the defendants herein.

E. Affiant further objects to said defendants' counsel speculative and unsupported conclusions through the current BRIEF, especially footnotes 1 and 2, on page 3 thereof which state inadequate, inaccurate conclusions, opinions and distortive and untrue factual developments. Affiant has averred and is claiming that said defendants converted more than just his \$15,000.00 borrowed from his personal friend Sanford I. Beck of Davis, CA., and that had he not been deprived of his said moneys and funds, he was further converted of his rights, properties, holdings and other possessions, including those destroyed by the arson fire on March 24, 2003, which Geno Knight testified in the jury trial of June 11, 2003, etc., that he overheard both Blake Lyle and Bob Fitzgrealld dissuacing and planning to start and with it kill Affiant. Both of said defendants have been and were then represented

AFF. of JNB re OPP to Dft Woelk's S/J Rem'n'g Claims P. 3.

both by GALEN WOELK, individually & dba RUNYAN & WOELK and also by ALVA Harris herein. WOELK's representation of LYLE & FITZGERALD was revealed herein at the evidentiary hearing on affiant's application to hold said defendants along with HARRIS and others, including WOELK in contempt for violations of the PRELIMINARY INJUNCTION of August 16, 2002.

F. No prior orders from this Court have made any rulings nor could they, that would in any manner support the bringing let alone granting of said defendants' current motions.

2. Affiant's testimony given during the jury trial of June 11, 2003, et seq, must be considered and given total application without contradiction by any of said defendants' current affidavits or said specious BRIEF's arguments. Affiant was cross examined by GALEN WOELK himself after affiant gave specific instances, well after said Chapter 13 proceedings termination of the spiteful acts, statements and assaults and batteries upon him by GALEN WOELK, especially in and outside the immediate areas of the Teton County Courthouse, but WOELK never took the stand nor produced any witnesses to refute, or disprove such tortious conduct nor has he done so in any statement or measure, whatsoever in his current affidavit. WOELK's current motion and his counsel's specious avoidances and deliberate misstatement of such evidence presented not only requires the striking and denial of said motions but the full granting of sanctions herein as requested by Affiant.

3. Defendants' argument as set forth in said BRIEF, pages 4-7, deliberately overlook and misstate the evidence admissible and law, legal authorities, etc., which allow WOELK's after the first act of malicious harassment and conversion, that show a continued

001340

pattern, habit, custom and directly maliciously repeated and recurring tortious acts by WOELK, his agents, representative and clients, FITZGERALD, LYLE, McLEAN and MILLER, in committing, jointly and severally, but consistently and diabolically, said conversions, malicious harassment, etc., and which more than factually and legally justify the award of punitive damages.

4. Defendants' current motion is patently a plea for this Court, Judge St. Clair to again intervene as an advocate and personal biased attorney for and on behalf of said defendants and to allow repeated frivolous and without merit motions on said claims of Affiant for summary judgment without any factual, standing or having capacity presentations, let alone apart from any applicable or controlling statutes or legal authorities.

5. Affiant is still taking care of his wife after her major surgery for removal of life threatening cancer tumor from her stomach and a bleeding spleen, Such care and attention as to her personal and health needs have taken priority and deprived if not incapacitated affiant from more completely responding and opposition herein. Affiant request leave and permission to file supplemental affidavits and briefs in opposition within ten (10) days prior to hearing herein which hearing he requests and objects to being anywhere else but in Driggs, Teton Courthouse.

DATED: August 16, 2004



JOHN N. BACH

001350

VERIFICATION OF AFFIANT'S SIGNATURE

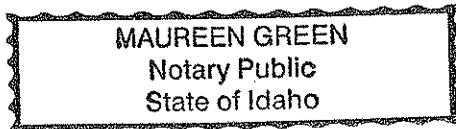
STATE OF IDAHO)

SS

COUNTY OF TETON)

I, the undersigned NOTARY of Idaho, hereby acknowledge, attest and verify, that JOHN N. BACH, personally appeared before me, known to me by such name, was placed under oath and gave the foregoing written testimony after which he signed his name and signature in my immediate presence and witness thereof, this August 16, 2004 at Driggs, Teton County, Idaho.

(NOTARY SEAL)



Maureen Green
NAME/SIGNATURE OF NOTARY

Teton Co.
ADDRESS

08/05/08
COMM'N EXPIRES:

REQUEST FOR JUDICIAL NOTICE OF TETON
COUNTY CV 01-33 & 01-205, Entire Files

Plaintiff requests this Court to take full judicial notice and receive into evidence in opposition to defendants' current summary judgment motions, JOHN N. BACH's motions and affidavits, as well as verified COUNTERCLAIMS, all filed in Teton CV actions 01-33 and 01-205, copies of which are in the possession of the Clerk's office in Driggs, and which Plaintiff herein will be presenting at time of hearing/argument on said defendants current motions for summary judgment.
DATED: August 16, 2004

CERTIFICATE OF SERVICE BY MAIL: I, the undersigned certify that on Aug. 16, 2004, I did mail copies of the foregoing Affidavit, in separate envelopes to Judge St. Clair, jointly to Jason Scott & Craig Meadows and to Galen Woelk, at their addresses of record herein, as their being the only interested parties to the current motion.

001351

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date August 18, 2004
Time 11:30
Deputy Clerk M. Southwick

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

JOHN N. BACH,

Plaintiff,

vs.

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

Defendants.

Case No. CV-02-208

**THIRTY FIRST ORDER
ON PENDING MOTIONS**

I. INTRODUCTION

Pending before the Court is the following motion:

1. plaintiff John Bach's motion to extend time to remove
personal property.

Having considered plaintiff Bach's motion, the affidavits
in support and affidavits in opposition, written briefs, oral

THIRTY FIRST ORDER ON PENDING MOTIONS

1

001352

argument, and the record on file, the Court issues the following order on the pending motion.

In its Twenty Eighth Order, this Court granted Bach 21 days from the date of said order to remove his personal property, conditioned on Bach providing at least five (5) days written notice to the Teton County Sheriff and Miller as to what, when and how he was planning to remove such property.

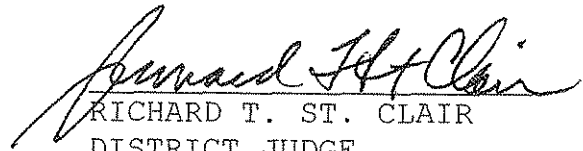
Bach provided such notice, however counsel for Miller then protested with his own letter to the Sheriff, and due to arguments among the parties Bach was unable to remove all of his unattached personal property pursuant to the Twenty Eighth Order.

While Miller would like to keep Bach from re-entering the property again, it appears that there is little prejudice to Miller by allowing Bach, under supervision from the Teton County Sheriff, to remove the rest of his unattached personal property which is located on approximately 5 acres surrounding the "sporting lodge" and consists of antique implements, 2 wood burning stoves, a sawmill hopper, tools, 2 tool boxes, angle iron square, paneling and lumber for interior use, iron watering troughs, motor vehicle wheels, and miscellaneous small items.

THEREFORE, IT IS HEREBY ORDERED that plaintiff Bach's motion to extend time to remove personal property is GRANTED,

and Bach is allowed 21 days from the date of this order to remove his personal property, conditioned on Bach providing at least five (5) days written notice to the Teton County Sheriff and Miller as to what, when and how he is planning to remove such property;

DATED this 18th day of August, 2004.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of August, 2004, I certify that a true and correct copy of the foregoing document was mailed, telefaxed or hand delivered to the following persons:

John N. Bach
1858 S. Euclid Avenue
San Marino, CA 91108
Telefax No. 626-441-6673 (TELEFAX & MAIL)

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

Alva Harris
P. O. Box 479
Shelley, ID 83274
Telefax No. 208-357-3448 (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
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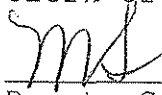
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Gregory Moeller
P. O. Box 250
Rexburg, ID 83440-0250 (MAIL)

RONALD LONGMORE
Clerk of Court


Deputy Court Clerk

FILED

JOHN N. BACH
1858 S. Euclid Avenue
San Marino, CA 91108
Tel: (626) 799-3146
(Idaho Local: P.O. box 101
Driggs, ID 83422
Plaintiff Pro Se

SEP 03 2004

TIME 4:45 PM
TETON CO. DISTRICT COURT

SEVENTH JUDICIAL DISTRICT COURT, IDAHO, TETON COUNTY

JOHN N. BACH,

CASE NO: CV 02-208

Plaintiff,

PLAINTIFF JOHN N. BACH'S
MEMORANDUM RE COURT'S INQUIRY
OF EFFECT OF DISCHARGE IN BANK-
RUPTCY OF DEBTORS PROPERTY NOT
UTILIZED BY TRUSTEE FOR CREDITORS

v.

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

Defendants.

Plaintiff JOHN N. BACH, per the permission granted him by Judge St. Clair submits this brief memorandum re the court's inquiry of what effect there is by a discharge order in bankruptcy of the debtor's properties not utilized by the trustee when the debtor's creditors are paid and the bankruptcy Chapter 13 proceeding is closed.

The Court has now received a certified copy of JOHN N. BACH's Chapter 13 bankruptcy plan which was approved by the bankruptcy court and completed both per its terms all successfully. The Court also received into evidence a duplicate original of DECLARATION OF JOHN N. BACH, IN OPPOSITION TO DEFENDANTS' UNITED STATES, ETC., MOTION TO DISMISS, etc., filed May 30, 2002 in U.S.D.C., Idaho, CV-01-236-E-TGN, to which was attached as the last exhibit, JOHN BACH's STATEMENT OF FINANCIAL AFFAIRS, 6 pages, filed in his California, Chapter 13 bankruptcy proceeding, which per parts 4 and 16 thereof, he listed his financial and managerial rights, interests, etc., in several trusts' joint ventures in Idaho, especially by the names of "Targhee Powder Emporium, Unltd, Ltd & Inc. & Bach/Cheyovich's family trusts, spendthrift, j/v[joint ventures], etc., 92-present" and gave his then Calif. & Driggs, ID. addresses.

JOHN N. BACH, not only paid his bankruptcy creditors but got money back, over some \$23,000.00, and upon his creditors being dis-

discharged he had completed his Chapter 13 Plan and the same date, September 28, 2001 an ORDER DISCHARGING JOHN N. BACH with certificate of mail was filed/recorded. (See Dockter entries 31-32, EXHIBIT A, to Affidavit of Jason D. Scott.) The immediate and irrefutable effects of said ORDER was (1) all said trusts' and joint ventures disclosures, listings and assets are automatically deemed abandoned to JOHN N. BACH, per uu USCA sec. 554(c); with all primary rights of ownership and possession going in and to JOHN N. BACH, (In re Perry, D.C.M., 29 B R 787, affirmed Riggs National Bank of Wash., D.C. v. Perry, 729 F.2d 982; and (2) said ORDER is a permanent injunction against all creditors precluding all creditors from seeking to pursue any suits against discharged petitioner debtor with the express voiding effect, that such discharge ORDER voids any judgment at any time obtained to extent in derogation of automatic stay, and determining, differently from said bankruptcy court, the personal liability or property interests of petitioner debtor then discharged. Such voiding effect applies even if such discharge of such debtor were waived. 11 U.S.C. section 524(a)(1) Noble v. Yingling, D.C. Dela., 29 B. R. 998. appeal after remand 37 B.R. 647. In re Pavelich, 229 B.R. 777 (9th Cir 1999) amended 2-22-99

Thus, despite this court being without jurisdiction to now, even consider defendants WOELKS' RUNYAN'S and WOELK's current motion for summary judgment on remaining counts, which motion is totally spurious, without merit and vexatious, this Court's prior ORDERS in granting the defendants HILLS summary judgment is void, moreover, the default judgment against defendants ALVA HARRIS & SCONA, INC., must be amended, so that both said judgments or orders therefor, return the real property at 195 N. Hwy 33, Driggs, to plaintiff, that plaintiff be awarded as damages against HARRIS & SCONA, as set forth in plaintiff's AFFIDAVIT filed Feb. 3, 2004, especially the damages per paragraph 7, A., subparts 2, 3, 4, 5, 6, 7, etc., part 7, A., totally just along damages in the sum of \$218,750.00.

The Court's jurisdiction and power to grant the defendants' current summary judgment motions is nonexistence, and moreover, JOHN N. BACH is further entitled to have the court on it's own motion, per the cited 11 USCA sections 554(c), 524(a)(1) et seq. vacate and void its prior partial summary judgment for WOELK and RUNYAN.

DATED: Sept. 3, 2004

CERTIFICATE OF SERVICE BY MAIL: I the undersigned certify this Sept 3, 2004, that I mail a copy of this document to each of the following at their addresses of record: Judge St. Clair; Jason Scott/Craig Meadows; Alva Harris & Galea Woelk.

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).)
)

FILED
3:30 PM
SEP 07 2004
TETON CO.
MAGISTRATE COURT

MINUTE ENTRY
Case No. CV-2002-208

On the 31st day of August, 2004, Woelk's fourth motion for summary 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. Jason Scott appeared on behalf of Defendant(s) Galen Woelk dba Runyan & Woelk.

Mr. Scott presented Woelk's fourth motion for summary judgment. Mr. Bach presented argument in opposition to the motion. Mr. Scott presented rebuttal argument.

The motion was taken under advisement.

Court was thus adjourned.

A handwritten signature in cursive script, appearing to read "Richard T. St. Clair", written over a horizontal line.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

H:36Bach/1192@1685; 2004-1159@0

CERTIFICATE OF MAILING

I certify that on the 31st day of August, 2004, I
caused a true and correct copy of the foregoing document to
be delivered to the following:

RONALD LONGMORE


Deputy Court Clerk

John N. Bach
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Teton County Clerk
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001360.

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

Anne Broughton
1054 Rammell Mountain Road
Tetonia, ID 83452

Date: 2/10/2007

Time: 10:23 AM

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Seventh Judicial District - Teton County

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

User: PHYLLIS

Hearing type:	Motions	Minutes date:	09/10/2004
Assigned judge:	Richard T. St. Clair	Start time:	02:02 PM
Court reporter:		End time:	02:02 PM
Minutes clerk:	PHYLLIS HANSEN	Audio tape number:	CV 134

Parties: John N Bach

Tape Counter: 1474

J calls Case
P - housecleaning matters; filed; joint venture, partnership doesn't need to be registered
Rule 17 A under Idaho Statute when partner dies, interest does not go to personal
representative
Would go to remaining partners
Have objection to Harris appearing as counseling for Lynn McLean
2 - there are three cases in front of Judge Shindurling
CV 01-33 15000 stolen by mclean and harris
01-255 - two paintings
01-265 - peacock property Requested if those files could be here
Want court to take full judicial notice and receive all three files into evidence
Host of vexacious cases files
Also seeking under all and each that he has violated the unfair business practices
third request - limited by counsel James Archibald to not enter that area
In prelim, Lyle gave testimony, made certain statements that he had permission in writing
to go on either propertyies with whome ever they wanted and do whatever they wanted
That is why Lyle wa on the property
Asking for permanent injunction
Would like to have that portion of the testimony submitted to the court
Have Archibald submit affidavit
It impacts on the continuum of the crazed posse
Entrance of permanent injunction
Will conclude Harris has no standing

Tape Counter: 1880

Bach takes affirmation
Takes witness stand
400 N 152 E Tetonia
Live on 40 acres known as Peacock
5 horses, 3 dogs
Single wide mobile home
Peacock Property
Road is on my property - semi private road;
DA - object to testimony - not alleged in amended complaint and not prayed for
Scope of damages in the default matter in limited solely to the complaint
If it's not in the prayer, we don't have to respond to it
Should be dismissed as being without the scope and the prayer

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Date: 2/10/2007

Seventh Judicial District - Teton County

User: PHYLLIS

Time: 10:23 AM

Minutes Report

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Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2072

J will sustan in part and deny in part
sustain as to any testimony that is desigend to establish liability
libility will be determined byt the complaint
This is for damages
Will ovverrule the damages objection

Tape Counter: 2117

Paragraph 24 speaks for itself
he ommitted something
No hiddden aspect to it
Court is overlooking the fact that the law of California is to be applied to the two pieces of
property

Tape Counter: 2262

.DA responds - no reference to any partnership interest
cannot be discussed here
If it's not in the prayer, it doesn't exist
None of what he asks for should be heard here today

001363

Date: 2/10/2007

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Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 2363

P responds

J - reporter can't take down two people talking at once

Not heard anythin about damages

I;ve already made my ruling

Limit evidence to damages

Will allow as exhibits partnership agreements

Will allow as briefing

Already ruled on Count 1 that Miller owns the property

P - think a most neoconservative view

Offer exhibit

J - EX 301 ADMITTED

Peacock

EX 302 ADMITTED

Drawknife

Ex 303 ADMITTED

Warranty

Ex 304 ADMITTED

McLean begged me to come in to thise joint ventures

DA - objects no foundation Sustained

J - how did damage 8.5 acres

had to beg for loans

Lost \$30000 actual cash

lost potetntial sales to potential buyer Willing to pay quarter of a million acres

Hills claimed owend by Harris

All attributed to McLean who spread the disparaging statements

Lodge and barn would ha ve been in opration with a year

Told could have generated \$100,000

Unairness as to confusion as to what I owned

I can't market that property

Damages are the current value

Spent over \$32,000 putting the trailer on that property in order to make those development

Day after got all clearances, P&Z said don't own the property

They cited the wrong code section

Still waiting for verification that building permit which was p ulled by Nye after all improvements made

Have investors standing by ready to come in to put in a lodge or a hotel

Either Red Lion or

Close to a Million dollars profit to myself

Can generate possible another millin and quarter, a million and a half

Tape Counter: 3147

have copy of taped interview with kenneth stringfield

asking the court receive this a statement of admissios

Harris admitted he never saw the joint venture agreements

DA - objects damges by mcLean Sustained

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Seventh Judicial District - Teton County

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Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 3300

PX 305 Marked offered ADMITTED Tape of interview with Ken Stiringfield
Had I had that money, I never would have had the arson fire
DA objects
J don't need to hear your foundation
DA object overruled no standing
WOuld have been able to borrow a minimum of \$100,000 cash with no collateral
DA object hearsay sustained
I know how to research law and I do know what a crook is
DA object speculationn sustained
DA objects - those assets belonged to Ms. Miller overruled

Tape Counter: 3684

P - J has entered three default judgments
in those two Feb 23 and Feb 27 - siad no onterest by any of those defendant's other than
McLean
then have to issue order that entitled to
DA objects overruled
No one has done anything to improve those lands
Done it at my own expense
DA objects Sustained lack of relevance

Tape Counter: 3853

P quotes from EX 301
Feel I am muzzled
J ? P lot of damages are from lost opportunities
\$15,000 to \$25,000 to repair damages
McLean alloesed others to utilize driveway to my exclusion
Are you claimimng McLean did any physical damages
P - he excluded me from going on itHe confronted me three times
DA objects not alleged
What period of time - 9 months through august 2001
DA objects hearsay overruled
DA objects - hearsay sustained

Tape Counter: 4198

J reviews counts covered
Tangible property
DA objects - any attempt to connect any other parties sustained to evryone but mcLean

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Date: 2/10/2007

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Seventh Judicial District - Teton County

User: PHYLLIS

Minutes Report

Case: CV-2002-0000208

John Nicholas Bach vs. Katherine Miller, etal.

Selected Items

Tape Counter: 4589

DA - X P
Not good relationship with McLean
Objection - irrelevant and immaterial
J would overrule objection
He was the owner of the trust
never had direct knowledge of termination
P objections overruled
Are you practicing law
Move to strike as non responsive
I drafted as a paralegal
Why did you allege breach of contract
Move to strike may answer one at a time
Are you filing an action against your principle
Move to strike
I own at least 1/3 of the Peacock property and the Drawknife property
argumentative, harrassing overruled
Move to strike non responsive sustained

Tape Counter: 5046

DA - Ex 301
Where are any of those intersts alleged in your complaint as you owning any of those
properties
Do you have anything in your possession that shows you were denied
Receipts
P - object to request for productions
move to strike - not going to strike
P - didn't bring them with me
I was a precipient witness
No documents in court to prove any elements of damages
Move to strike - sustained as argumentative
P asked and answered, argumentative sustained
We recognize you as the owner of this
DA objects sustained

Tape Counter: 5480

P - still want to offer evidence
J going to sustain This is going up on appeal
P - ask court to make one express finding that I haven't filed quiet title
J - you pleaded Quiet Title
Like finding Uniform Partnership Act applies
J - not familiar with those that a joint venture is basically a partnership
And that McLean has no interest
J can't make any findings without reading the particualr sections

Tape Counter: 5700

Tape Counter: 5767

J will take under advisement
P - here is the well-drilling bill and receipts
DA - objects
J have marked at Ex 306687

001366

FILED IN CHAMBERS
at Idaho Falls
Bonneville County
Honorable Richard T. St. Clair
Date September 21, 2004
Time 4:00
Deputy Clerk M. Southwick

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

JOHN N. BACH,

Plaintiff,

vs.

KATHERINE D. MILLER aka
KATHERINE M. MILLER, ALVA
HARRIS, Individually & dba
SCONA, INC., JACK LEE McLEAN,
BOB FITZGERALD, OLE OLESEN, 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
HAMBLIN, STAN NICKELL, BRET HILL
& DEENA R. HILL, and DOES 1
through 30, Inclusive,

Defendants.

Case No. CV-02-208

DEFAULT JUDGMENT AGAINST
LYNN McLEAN, AS PERSONAL
REPRESENTATIVE OF THE ESTATE
OF JACK LEE McLEAN

On September 27, 2002, plaintiff John N. Bach ("Bach") filed
a first amended complaint against defendants Alva Harris
("Harris"), Scona, Inc. ("Scona"), Jack Lee McLean ("McLean"),
Bob Fitzgerald ("Fitzgerald"), Ole Olesen ("Olesen"), Blake Lyle
("Lyle") and several other defendants, seeking as to these
defendants a decree quieting title to several tracts of real
property in Teton County, Idaho, and seeking compensatory
DFT. JUDG. AGAINST McLEAN

damages.

The first amended complaint was served by mail on attorney Harris, and on November 12, 2002, defendants Harris, Scona, Fitzgerald, Olesen and Lyle filed a motion to strike the first amended complaint. On January 10, 2003, the Court denied this motion. On January 21, 2003, these defendants and defendant McLean (appearing through counsel Harris) filed a motion to dismiss the first amended complaint under Rule 12(b)(8), I.R.C.P. On March 4, 2003, the Court denied this motion. On March 19, 2003, the Clerk entered these defendants' default. Thereafter the Court denied these defendants' motion to set aside default, but allowed these defendants to participate in a default evidentiary hearing on damages under Rule 55(b)(2), I.R.C.P., originally scheduled for December 5, 2003.

Defendant McLean died a few days before the damages hearing. The damages hearing was continued. On April 4, 2004, Lynn McLean was appointed by the Magistrate for Teton County as personal representative for the estate of Jack Lee McLean, and she accepted such appointment in June, 2004. On July 14, 2004, by this Court's Thirtieth Order, Lynn McLean, acting as personal representative, was substituted as a party defendant in this action pursuant to Rule 25(a)(1), I.R.C.P.

The evidentiary hearing on damages was held on September 10, 2004, and plaintiff Bach presented testimony, a written legal

brief, and exhibits 301 through 306. Defendant McLean did not appear at the hearing. However, her counsel of record Alva Harris appeared and cross examined Bach, but called no witnesses.

The Court having taken as true the well pleaded factual allegations in Bach's first amended complaint as against defendant McLean; 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 defendant McLean did or did not do, both individually and in concert with other defendants, rather than "well pleaded facts"; and the Court concluding from evidence at several hearings that defendant McLean acted in concert with other defaulted defendants **only** in threatening injury to Bach, converting and damaging some of Bach's money and tangible

DFT. JUDG. AGAINST McLEAN 3

personal property, and harassing Bach; and

The Court having taken evidence as to Bach's alleged damages on the 3rd day of February, 2004, and also on September 10, 2004; and the Court having made its own assessment as to the credibility of all witnesses and exhibits; and the Court having concluded that Idaho Code § 53-325 was repealed effective July 1, 2001 (over one year before the filing of this action), and that the joint ventures described in Exhibits 301 and 302 ended upon the closing of escrow for the purchase of the Drawknife and Peacock properties and the delivery of deeds specifying that title to said real properties was to be in undivided interests in the individual names of the joint ventures, rather than in the name of the joint venture; 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 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 defendant McLean, Bach shall have judgment against defendant McLean decreeing that:

a. said defendant McLean shall have no title to, or
DFT. JUDG. AGAINST McLEAN

interest in, the following real property in Teton County, Idaho:

(1) the 8.5 acres adjacent to 195 North Highway 33
north of Driggs, described as follows:

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

(2) the 1 acre parcel located at 195 North Highway 33
north of Driggs, described as follows:

A tract beginning at the SE corner of the SW1/4 of Section 35, Township 6 North, Range 45 EBM; running thence North 516 feet; thence West 295 feet; thence South 516 feet; thence East 295 feet to the point of beginning.

b. said defendant McLean shall have only an undivided one-third interest in the Drawknife 33 acre real property in Teton County, Idaho, described as follows:

SE1/4SW1/4 of Section 35, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho,
LESS a tract beginning at the SE corner of the SW1/4 of Section 35, Township 6 North, Range 45 EBM; running thence North 516 feet; thence West 295 feet; thence South 516 feet; thence East 295 feet to the point of beginning. acres in Teton County, Idaho.

c. said defendant McLean shall have only an undivided one-fourth interest in the Peacock 40 acre real property in Teton County, Idaho, described as follows:

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

2. As to counts five, six, nine, eleven and twelve seeking damages, considering the "well pleaded factual allegations" alleged in the amended complaint and the testimony and exhibits at all evidentiary hearings and in affidavits on file in this action, plaintiff Bach shall have judgment against these defendants as follows:

a. For slander of title under count five, \$5,000.00 against defendant McLean, jointly and severally, with defendants Scona and Harris;

b. For intentional interference with contracts, business relations and economic expectancies under count six, \$5,000.00 against defendant McLean;

c. For breach of fiduciary duty under count seven, \$1.00;

d. For conversion of money and business names under count nine, \$15,000.00 against defendant McLean, jointly and severally with defendants Harris and Scona; for conversion and damage to tangible personal property under count nine \$5,000.00 against defendant McLean, jointly and severally with defendants Harris, Scona, Fitzgerald and Lyle, being those damages proximately caused by all acts of such defendants;

e. For malicious prosecution and abuse of process under count eleven, \$5,000.00 against defendant McLean, jointly and severally with defendants Harris and Scona, being those damages proximately caused by all acts of such defendants;

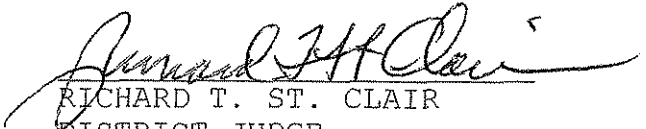
f. For malicious harassment under count twelve, \$5,000.00

against defendant McLean, jointly and severally with defendants Harris, Scona, Fitzgerald, Olesen and Lyle, being those damages proximately caused by all acts of such defendants;

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 claims against defendant McLean; 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 21st day of September, 2004.


RICHARD T. ST. CLAIR
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of September, 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