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Carpenter v. Turrell Appellant's Brief Dckt. 35576

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TABLE OF CONTENTS

INTRODUCTION 1

STATEMENT OF FACTS 2

SUMMARY OF THE PROCEEDINGS 8

ISSUES ON APPEAL 9

ARGUMENT 9

 A. Idaho’s Dead Man’s Statute.....9

 B. Tim Turrell Was A Personal Representative12

 C. A Claimant Cannot Backdoor The Dead Man’s Statute.....13

 F. A Judgment Against Tim Turrell Cannot Be Premised On
 Breach Of A Bailment Contract.....17

 G. Peggy Turrell Is Not Personally Liable to Carpenter.....18

TABLE OF AUTHORITIES

State Cases

Brenner v. Farm Bureau Mutual Insurance Company, 96 Idaho 311 (1974) 18

Estate of Miller, 134 Wn. App. 885 (2006) 10

Johnson v. Flatness, 70 Idaho 37 (1949)..... 10

Kolouch v. First Security Bank of Idaho, 128 Idaho 186 (App. 1996)..... 10, 14

Luzar v. Western Surety Co., 107 Idaho 693 (1984)..... 15

Authorities

Idaho Code § 15-3-104 16

Idaho Code § 15-3-1201 11

Idaho Code § 32-911 19

Idaho Code § 9-202 1, 2, 4, 8, 9, 10, 11, 13, 14, 15, 16, 17

Idaho Rule of Civil Procedure 15 18

Idaho Rule of Evidence 601(b) 10

Restatement of Torts 2nd, § 233(1) 15

INTRODUCTION

In April of 2007, defendant and appellant, Tim Turrell, believing that he was acting in a representative capacity on behalf of his father's estate, sold two modular buildings that had been sitting unused and unattended on his parents' property for almost four years. Mr. Turrell's father, Herbert Turrell, who died several years before, was a collector of what his wife of sixty years, Marian, called junk. Their property was littered with old cars, trucks, parts, scrap iron, several other moveable buildings and mountains of other materials. Due to his mother's deteriorating health and inability to see, Tim Turrell was tasked with clearing the property so that the property could be sold to fund nursing home care. The two modular buildings were just a portion of the junk Mr. Turrell needed to clear from the property to make it saleable. The sale for a price of \$3,500 saved the Turrell family trust from the expense of hauling them off to the dump.

Months after the sale of the buildings, plaintiff and respondent, James C. Carpenter ("Carpenter"), made claim that the buildings were his, that he had stored them on the Turrell property based on an oral agreement with Herbert and that Mr. Turrell owed him \$27,000, the value he place on the buildings. When Mr. Turrell responded that his claim was premised on an oral agreement with his father for which there was no corroborating evidence and thus barred by Idaho's Dead Man's Statute (IC § 9-202(3)) (Exhibit G), Carpenter filed a complaint in which he attempted an end-round that statutory bar by alleging that he had stored the buildings with the permission of Marian Turrell (R 9). At trial, Carpenter conceded the truth – that he had had no

dealings whatsoever with Marian Turrell concerning storage of the buildings and that his arrangement had been negotiated exclusively with Marian's deceased husband (Tr 65, L 1).

Following a one-day trial and over objection based on IC § 9-202(3), the trial court found that Carpenter had entered into an oral, gratuitous bailment contract with Herbert Turrell (R 71). Even though Carpenter had no independent evidence of his arrangement with Herbert, the trial court held that the Dead Man's Statute did not prevent Carpenter from proving his ownership of the buildings based solely on his own, uncorroborated testimony. The trial court also found that the Dead Man's Statute had no application to the claim before it since (1) no formal probate proceedings had been filed and (2), in any event, Tim Turrell was not being sued in his representative capacity. The trial court accordingly held that whether or not Tim Turrell knew of Carpenter's interest in the buildings at the time they were sold he was guilty of conversion.

This appeal followed.

STATEMENT OF FACTS

A. In General. In 1989, Herbert and Marian Turrell moved to a 5-acre parcel on West Yukon Road in Post Falls, Idaho (Tr 116, L 6). They had four adult sons, whose names in descending order of age are Terry, Tim, Tom and Tracy. Only Tim and Tracy lived locally. Both Terry and Tom lived hundreds of miles away in Seattle and Salt Lake City, respectively (Tr 104, L 5).

Herbert was a collector and trader. Over the course of many years, Herbert acquired numerous old cars and trucks, scrap metal, salvaged wood and out buildings that he stored on his property. Carpenter, who had known Herbert for 20 years and lived only a quarter mile away (Tr

18, L 18, 23) knew that Herbert bought, sold and traded (sometimes without cash being involved) over the years and had himself done deals with Herbert (Tr 59, L 9-24). At the time of Herbert's death, approximately 70 vehicles were located on the property (Tr 134, L 15).

Marian was not involved in Herbert's collection activities. Herbert made it plain to her long before that it was none of her business (Tr 107, L 19). She did, however, believe that everything in the yard belonged to her husband (Tr 109, L 10). Although Herbert had mentioned some buildings that he wanted to take to one of his son's property, Marian never saw the buildings (Tr 113, L 7).

In 1993, Herbert and Marian Turrell had the foresight to complete a modern estate plan. They executed a living trust, pour over wills, registered their trust with Kootenai County, and deeded their real and personal property to the trust (Exhibits H through N). Under the terms of the trust, Herbert and Marian were the initial trustees. On the death of the first spouse, the survivor would remain as the sole trustee and the personal representative of the deceased spouse's estate. Upon the death of the survivor or the survivor's incapacity, the responsibilities for managing the trust and serving as the personal representative would devolve to the sons starting with the oldest, Terry. Tim Turrell was next in line if Terry was unwilling or unable to assume the role of successor trustee.

By 2003, the health of both Herbert and Marian was such that Tim Turrell took had taken over responsibility for the managing the trust's finances. Herbert suffered from Parkinson's and trembled too much to do paperwork (Tr 116, L 11). Marian was losing her vision and was

legally blind (Tr 100, L 3, 15; 116, L 11). Tim took over at Terry's request because Terry lived in Seattle and was too far away for ongoing involvement (Tr 117, L 8, 22).

B. The Alleged Bailment Contract. Carpenter testified that he bought the buildings in question in May of 2003 for \$20,000, explaining that he had nothing to verify that claim since he paid in cash (Tr 16, L 24; 51, L 24). He testified that he planned in storing them on his own property, but that he found that he would have to remove his gates in order to do so (Tr 29, L 1). Over objection based on IC § 9-202(3), Carpenter was then permitted to testify that Herbert Turrell, noticing his plight, said "just bring them up to my house and leave them as long as you'd like" (Tr 29, L 1). Carpenter did so – leaving the buildings on the Turrell property for the next three and a half years.

Carpenter had no evidence whatsoever to corroborate his supposed arrangement with Herbert. Even his friend, David Boudier, who had helped to move the buildings on to the Turrell property and who had been a friend of Herbert for 30 years knew absolutely nothing about the arrangement Carpenter claimed (Tr 91, L 23).

Carpenter knew that there was lots of personal property scattered all over the Turrell acreage (Tr 53, L 6) and knew that Herbert was in ill health, suffering from Parkinson's (Tr 52, L 17; 54, L 12). Yet he did nothing to document his ownership of the buildings. He did not get anything signed by Herbert, did not put his name on the buildings, did not put a for sale sign on the buildings with his telephone number and did not even post the buildings with a copy of his alleged bill of sale (Tr 54, L 17, 23; 55, L 13). Carpenter did not claim anyone other than

Herbert was aware of their arrangement and conceded that no one looking at the buildings would have any way of knowing he owned them (Tr 55, L 8).

C. Subsequent Events. In 2003, Carpenter left his supposedly valuable buildings with someone he knew was in ill health without any way of proving that he had not sold or traded the buildings to Herbert. His failure to protect himself, however, got worse. In December of 2003, less than 7 months after he moved the buildings on the Turrell property, Herbert had a massive stroke that required him to be placed in a nursing home. Carpenter knew about the stroke (Tr 55, L 18; 56, L 1), yet, he still did nothing to make sure the family or anyone else looking at the buildings would know they were his (Tr 56, L 9; 57, L 14). He did not mark the buildings, did not ask Marian to sign anything, and did not even send Marian anything so that she would not be confused as to who owned the buildings (Tr 57, L 22; 58, L 1).

For the remainder of Herbert's life, Carpenter did nothing to distinguish his buildings from the mountain of other items Herbert had stored on his property (Tr 58, L 10). Carpenter conceded again that while Herbert, the only other witness to his claimed bailment contract lay in a nursing home, no one looking at the buildings would know he had or claimed any interest therein (Tr 59, L 6). By then, Carpenter had moved from his nearby home and no longer lived near the Turrells (Tr 62, L 7).

Even after Herbert died on January 9, 2005, Carpenter did nothing to document his ownership (Tr 62, L 17). Knowing that Tim Turrell was trying to clear his parents' property to make it saleable Carpenter made no effort in the following 2 years to remove the buildings, to

insure the Turrell family agreed the buildings were his, or to verify leaving the buildings where they were was still acceptable (Tr 66, L24; 62, L13).

D. The Sale. In November of 2006, almost 2 years after his father died, Tim Turrell was still in the process of clearing his parents' property of the junk his father had collected. He considered the buildings Carpenter later claimed no differently (Tr 136, L 5; 150, L 4). They were filled with papers, broken furniture, and bits of particle board (Tr 140, L 3).

Mr. Turrell, believing he was acting as the successor trustee (Tr 141, L 22), thought the buildings would cost more to haul away than they were worth (Tr 161, L 20). He would have given them away to someone who would remove them from the property (Tr 162, L 11). However, two individuals who were looking at some of the vehicles Tim Turrell was trying to sell on behalf of the trust offered him \$1,750 for each of the buildings (Tr 161, L 17 – 163, L 3). Mr. Turrell accepted the offers and deposited the money from the sales in the trust's bank account, not keeping a penny for himself (Tr 141, L 8, 19).

Five months later, Carpenter called Tim Turrell and demanded that he be paid \$27,000 (Tr 127, L 5).

E. Disputed Testimony. Carpenter claimed that a year or so after Herbert's death and approximately a year before the buildings were sold Tim Turrell telephoned him to give him the name of a potential buyer for one of the buildings (Tr 45, L8). Though he claimed he told Tim Turrell what he wanted for the buildings in that conversation, Carpenter admitted he did not

tell Tim the buildings were his and conceded that Tim never said he understood Carpenter owned the buildings (Tr 68, L 3, 19).

Tim Turrell denied that conversation ever took place (Tr 150, L 22- 151, L 4). Instead, he testified that in March of 2005 his mother was assaulted on her property (Tr 124, L 3). Several months later his nephew chased two people off of the property who claimed to be looking at the buildings and mentioned Carpenter. Tim Turrell, because he was trying to clean up the property that even Carpenter described as a junkyard (Tr 70, L16), located Carpenter's cell phone number in his father's records. He called and left a message on his voice mail to please call if he had any interest or knowledge about the buildings (Tr 153, L 8). Carpenter never returned the call (Tr 154, L 24).

Because of his mother's deteriorating health, Tim and his brothers were in a hurry to clean the property in order to sell it to fund nursing care (Tr 154, L 1). Had Carpenter called to claim he owned the buildings, Tim Turrell naturally would have demanded that Carpenter remove them from the property to avoid the cost of hauling them away (Tr 155, L 11). Since the buildings were made of vinyl and had asbestos siding, Tim was not sure what to do with the buildings (Tr 150, L 8), so the buildings sat for almost another year until Tim received unsolicited offers to buy them.

Despite the total absence of logic that Tim Turrell would sell property he knew was not his father's for pennies on the dollar and subject himself (and perhaps his mother) to this type of claim when he could have resolved his quandary with the buildings by simply demanding

Carpenter remove them from the property at his own expense, the trial court accepted Carpenter's version of his conversation with Tim Turrell (R 70).

SUMMARY OF THE PROCEEDINGS

Carpenter filed his complaint in August of 2007 naming Tim Turrell and his wife as the only defendants (R 8). The complaint contained a single cause of action that alleged that Tim Turrell had converted his buildings.

Following trial, and over defense objection based on IC § 9-202(3), the trial court found that:

1. Carpenter had a gratuitous bailment relationship with Herbert and Marian Turrell despite the fact Carpenter admitted that he had had no communications whatsoever with Marian concerning ownership of the buildings or his free storage thereof (R 71).
2. Marian Turrell and her agent, Tim Turrell, were grossly negligent in selling the buildings (R 72).
3. IC § 9-202(3) was "not relevant" because Carpenter was not making a claim against "Marianne Turrell or the Estate of Herbert Turrell" (R 72).
4. Tim Turrell assumed dominion and control of the buildings and permanently deprived Carpenter of possession of the buildings by selling them to third parties (R 72).
5. Whether Tim Turrell was aware of Carpenter's ownership of the buildings and whether Carpenter ever demanded possession be returned were not relevant (R 72-73).

The trial court then concluded that the buildings were worth \$18,000 and ordered judgment for Carpenter.

ISSUES ON APPEAL

1. Is Idaho's Dead Man's Statute applicable when no formal probate proceeding is pending?
2. Is Idaho's Dead Man's Statute applicable in claims against personal representatives of a decedent other than executors and administrators?
3. Can application of Idaho's Dead Man's Statute be avoided simply by claiming the personal representative is being sued in his individual capacity?
4. Can a claimant who could not recover possession of personal property against a decedent's estate because of the application of Idaho's Dead Man's Statute nevertheless recover possession of that property from a decedent's heirs after the decedent's estate is settled?
5. Was the trial court's finding of "gross negligence" permitted by the pleadings or supported by the evidence?
6. Was judgment properly entered against Peggy Turrell in the complete absence of any claim or evidence that she was involved in the conversion alleged?

ARGUMENT

A. Idaho's Dead Man's Statute. This appeal presents issues concerning the application of IC § 9-202(3) which have never been addressed by this Court - whether Idaho's "Dead Man's Statute" applies to trustees under a living trust and whether that statute applies

when no formal probate is initiated. The trial court concluded that the protection of § 9-202(3) was available only to personal representatives formally appointed by a court.

IC § 9-202(3) (or rather its predecessor) was adopted in the 1800s to prevent fraudulent claims against the estate of a deceased person who was no longer around to defend himself. Its provisions are “positive, plain and mandatory” (Johnson v. Flatness, 70 Idaho 37, 42 (1949)). Section 9-202(3)¹ “excludes evidence ... in an action against the personal representative of a deceased person” (Kolouch v. First Security Bank of Idaho, 128 Idaho 186, 194 (App. 1996)) “upon a claim or demand against the estate ... arising from “any communication or agreement not in writing, occurring before the death of such deceased person” (9-202(3)).

The purpose of the Dead Man’s Statute is “to prevent parties from giving self-serving testimony about conversations or transactions with the deceased” that cannot be contradicted (Estate of Miller, 134 Wn. App. 885, 890 (2006)). While extrinsic evidence and the testimony of disinterested witnesses to the conversations or events giving rise to the claim can be presented, the interested party to the “communication or agreement” is not permitted absence such testimony to testify as to what the decedent said or promised since to do so would allow opportunistic claimants to make uncorroborated and fraudulent claims against the estate of someone who can no longer defend himself.

IC § 9-202(3) thus precludes testimony by a party in interest who does not have independent verification or proof from testifying in an action against a decedent’s “executor or administrator” as to any claim against the estate based on any agreement or communication with

¹ Section 9-202(3) is repeated and affirmed in IRE 601(b).

the decedent. The language of § 9-202(3) was enacted long before the term “personal representative” was used to describe the function of one acting on behalf of a decedent’s estate, the adoption of small estate administration procedures in which no personal representative is formally appointed (IC § 15-3-1201 et seq.) or the common use of living trusts to avoid probate all together.

The rationale behind § 9-202(3) exists regardless of the formal appointment of an executor or administrator to wind up a decedent’s estate and affairs. A claim based on an oral agreement where the only two witnesses are the plaintiff and the decedent should be treated no differently in cases where the personal representative is formally appointed, the estate is so small the law deems it can be distributed without court supervision, or the decedent had the foresight to put his assets in trust.

Treating personal representatives of living trusts or small estates differently than one appointed in a formal probate proceeding also makes no sense. A trustee of a living trust, whose obligation is to wind up a decedent’s affairs and distribute the assets of the trust to its beneficiaries, could find himself being held personally liable to third parties who would not have been permitted to testify as to some secret deal or arrangement he had with the decedent long after the trustee has discharged his duties. For example, a trustee who takes office upon the death of the settlor has a fiduciary obligation to the beneficiaries of the trust to comply with the terms of the trust agreement. If those terms requires the trust estate to be liquidated and distributed to the beneficiaries and the trustee does so, he could find himself being personally sued for conversion years after he is has discharged his responsibilities by someone claiming

without any corroborating evidence that some asset the trustee sold based on the good faith belief it was part of the trust estate that he was the true owner. If that were permitted, this Court would be sending a signal to all successor trustees of living trusts that the office should be declined since they could be personally sued for the tort of conversion until the statute of limitations expires. Likewise, heirs who may want to avoid the expense of going to court by employing the statutorily authorized small estates administration procedures should also be warned not to bother since they too could be personally liable for years for conversion based on fraudulent claims of ownership unless the estate is formally probated.

This Court should accordingly hold that the legislative intent to protect a decedent's estate from uncorroborated claims whether or not the estate is subject to a formal probate and whether or not the personal trustee is a successor trustee of an estate planning trust.

B. Tim Turrell Was A Personal Representative. The trial court dismissed Tim Turrell's claim that he was acting as the personal representative of his father's estate when he sold the buildings (R 56). Its rationale for doing so was that Tim Turrell was (1) not the personal representative in that Marian and Terry were named before him and (2) Tim had not been appointed by the court in a formal probate proceeding (R 55-56). Neither finding is supported by law or evidence.

First, the evidence was undisputed that Marian and Terry were either incapable or declined to accept the role of personal representative either of Herbert's estate or as successor trustee of the family trust. Marian was elderly, in poor health and virtually blind. Terry Turrell lived hundreds of miles away in Seattle. Tim accordingly took over what would otherwise have

been Marian's and Terry's roles (Tr 106, L 18; 117, L 22) and no evidence was offered to the contrary.

Second, no formal appointment from a court is necessary to confirm someone as a successor trustee to a living trust and a personal representative need not be appointed in small estates (or where the sole beneficiary is the surviving spouse) in order to wind up the affairs of a decedent's estate. The successor trustee or the heirs who assume responsibility for distributing the assets of the decedent as provided by law are still personal representatives regardless of whether a court is involved.

The trial court thus labeled Tim Turrell as an agent for his mother instead of a personal representative of his father's estate. In doing so, the trial court erroneously assumed that those roles were mutually exclusive. They are not. Tim Turrell could still be acting on behalf of his mother in clearing the property to make it saleable and at the same time be a personal representative of his father's estate in disposing of his assets.

If IC § 9-202(3) protects personal representatives other than those formally appointed by a court in a probate proceeding, the evidence established without contradiction that Tim Turrell should receive its protections.

C. A Claimant Cannot Backdoor The Dead Man's Statute. The trial court also found that a claimant could avoid application of § 9-202(3) by simply not making a demand against the estate or suing the personal representative in that capacity (R 59). Citing cases for the general proposition that the testimonial bar of § 9-202(3) does not apply in cases not brought against the executor or administrator and that do not involve a claim against the estate (R 56), the trial court

concluded that Carpenter had successfully eluded the statute by suing Tim Turrell as an individual.

The trial court's conclusion is a triumph of form over substance. By the trial court's reasoning, a claimant whose testimony would be barred under § 9-202(3) if he brought a claim against the estate to recover possession of personal property could sue the personal representative in his individual capacity for the tort of conversion after the personal representative, in discharge of his statutory duties, either sold or distributed that asset.

One cannot avoid the application of § 9-202(3) simply by deciding not to name the estate or allege that the defendant was acting in a representative capacity. Thus, for example, in *Kolouch v. First Security Bank of Idaho*, *supra*, this Court held that the testimonial bar applied despite the fact no action against the estate was pending. In *Kolouch*, a personal representative tried to justify her use of estate funds to pay for the defense of an action in which she had a personal interest by claiming she had an oral agreement with the decedent to fund that litigation. The Court held that even though there was technically no action pending against the estate, a proceeding against the estate would have been required had she (wearing two hats) first presented and then rejected her own claim.

No distinction exists in this case. Carpenter's conversion theory is premised on a contract he allegedly had with Herbert Turrell. If Carpenter could not recover possession of the buildings from the estate because his testimony would be inadmissible under § 9-202(3), he should not be able to recover possession from an heir to whom the buildings were distributed (if

that had been the case) or sue the personal representative as an individual on the theory that he is neither making a claim against the estate or suing the personal representative in that capacity.

D. The “Immediate Possession” Element Of Conversion Is Missing. Proof that a claimant is entitled to immediate possession of the property allegedly converted is an essential element of the tort of conversion (Luzar v. Western Surety Co., 107 Idaho 693, 696 (1984)). Similarly, an agent who disposes of personal property cannot be held liable for conversion unless the claimant had the right to immediate possession from the agent’s principal or master Restatement of Torts 2nd, § 233(1)). Without proof of such a right, a claim against either the agent or the principal must fail.

Here, and regardless of the capacity in which Tim Turrell was acting and regardless of whether he was directly protected by § 9-202(3), Carpenter failed to prove that he was entitled to immediate possession of the buildings when they were sold in late 2006. On the days each were sold, the buildings were located the Turrell property, as they had been for going on 4 years. No evidence was produced that Herbert had ever attempted to convey the buildings to the trust. The buildings thus remained in Herbert’s estate unless and until Carpenter could prove otherwise.

In late 2006, almost 2 years after Herbert died, Carpenter would not have had the right to enter upon the property and remove the buildings or legally demand that the buildings be returned to him. Herbert was dead and Carpenter’s only proof of ownership (i.e. that he had not sold or traded the buildings to Herbert) was his own, self-serving testimony about a gratuitous bailment contract. If Carpenter wanted possession of the buildings over the objection of Herbert’s heirs, he would have had to petition for the appointment of a personal representative

and then commence a legal action to recover possession (IC § 15-3-104). If he had done so and his only proof (as it was at trial here) was his own uncorroborated testimony, Carpenter's bid for return of the buildings (i.e. possession) would have been denied for failure of proof because of the testimonial proscriptions of § 9-202(3).

Carpenter thus would not have been legally entitled to possession on the date the buildings were supposedly converted because he could not establish his ownership thereof or the terms under which Herbert held possession. If Carpenter could not have recovered possession against Herbert's estate, he cannot prove he was entitled to immediate possession from the principal such that he can recover against the agent, Tim Turrell.

E. Putting The Foregoing In Perspective. Summarizing or putting the foregoing into an easily understandable perspective is best done by example:

a. If Tim Turrell had been approached after his father's death by someone claiming that he owned the 1942 Buick rusting out in the field and that Herbert had been holding it for him free of charge pursuant to an oral agreement (for which he had no independent verification), could Mr. Turrell be held liable for conversion if he refused to let the claimant haul the vehicle away?

b. If the 1942 Buick was still in the field, could that claimant successfully sue the estate of Herbert Turrell to establish his ownership and recover possession?

c. If the Turrell family had decided it was necessary to formally probate the estate of Herbert Turrell and Tim Turrell had been appointed his father's personal representative (after his mother and older brother declined), could he be successfully sued for conversion if he

sold the 1942 Buick after rejecting a claim based on an oral contract for which there was no independent proof?

d. If the answer to the foregoing question was no, does it make logical sense that the claimant could successfully avoid § 9-202(3) by making the simple claim that “I am not suing you as the personal representative or making a claim against the estate, I am suing you as an individual”?

e. If the court appointed personal representative of Herbert Turrell’s estate rejected a claim to the 1942 Buick and commissioned an auctioneer to sell the vehicle, could the auctioneer be held liable for conversion even though the personal representative was immune under § 9-202(3)?

f. If the Buick was the only asset in Herbert’s estate, would the family have to formally probate his estate (i.e. ignore the provisions of the trust and the small estate administration procedures that would avoid that expense) in order to be able to avoid liability to the claimant for rejecting his claim under the authority of § 9-202(3)?

g. If the personal representative of Herbert Turrell’s estate made a distribution of the 1942 Buick in kind to an heir, could the heir be sued for conversion by the claimant if he or she sold the Buick or refused a demand from the claimant for its delivery?

Based on the rationale of § 9-202(3), the answer to all of the foregoing should be “No”.

F. A Judgment Against Tim Turrell Cannot Be Premised On Breach Of A Bailment Contract. The trial court concluded that Herbert and Marian Turrell entered into a gratuitous bailment contract with Carpenter in May of 2003 and then held that both Marian and Tim Turrell

were “grossly negligent” for selling the buildings (R 71-72). The trial court’s Memorandum of Decision is unclear if those conclusions were an alternative theory upon which it awarded judgment against Tim Turrell and his wife. If they were, judgment based thereon cannot stand against Tim Turrell for two reasons.

First, neither negligence nor the breach of a bailment contract were issues in the case. Carpenter’s complaint alleges one cause of action – conversion (R 8). A bailment contract was not mentioned in the complaint. At no time before, during or after trial did Carpenter seek to amend his complaint under IRCP 15 (a) or (b) to add those theories. Even in his Post-Trial Brief (which the parties exchanged simultaneously) did not ask the trial court for relief (R28). Carpenter mentioned a bailment contract for the sole purpose of describing how Herbert Turrell’s possession of the buildings occurred. A cause of action that was never pled, never briefed, and never argued should not be the surprise basis of a judgment.

Second, Tim Turrell could not be held liable for breach of the bailment contract since he was not, as the trial court so found, one of the bailees. Whether or not supported by substantial evidence, the trial court found that Carpenter’s contract with Herbert and Marian. If that contract was breached by their agent, the only claim for breach is against the bailees, not the agent (Brenner v. Farm Bureau Mutual Insurance Company, 96 Idaho 311, 313 (1974).

G. Peggy Turrell Is Not Personally Liable to Carpenter. The judgment entered by the Court states names Tim Turrell’s wife, Peggy Turrell as a judgment debtor. Including her in the judgment, however, was improper.

Carpenter's complaint contains no charging allegations against her. Instead, Carpenter alleged only that the actions of Tim Turrell "benefited the marital community" (R 8). At trial, Carpenter offered no evidence whatsoever that Mrs. Turrell was involved in any way with the sale of the buildings.

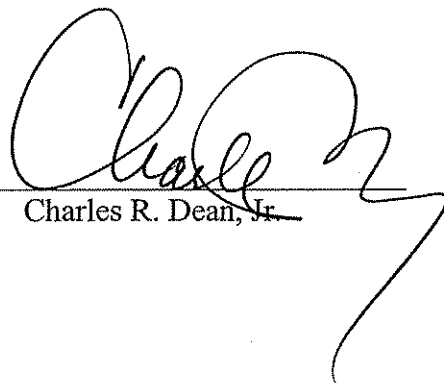
Under IC § 32-911, the separate property of the wife is not liable for debts incurred by her husband. Whether or not the community is responsible for any liability that may ultimately befall Tim Turrell in this matter, his wife is not personally responsible such that her community property can be subjected to execution. Allowing her to remain as a judgment debtor would give Carpenter the ability to enforce the judgment against property § 32-911 is exempt from execution in debts like the one at issue in this case.

Respectfully submitted.

Dated: November 14, 2008

Dean & Kolts

By

A handwritten signature in black ink, appearing to read "Charles R. Dean, Jr.", written over a horizontal line. The signature is stylized and cursive.

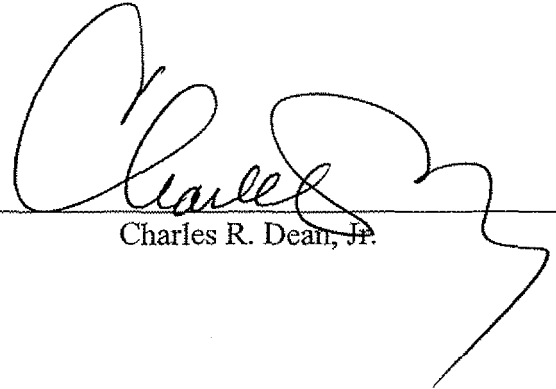
Charles R. Dean, Jr.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November 2008, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

James A. Racon
Attorney at Law
1424 Sherman Avenue Suite 300
Coeur d'Alene, Idaho 83814

- U.S. MAIL
- FEDEX GROUND
- HAND DELIVERED
- OVERNIGHT MAIL
- FACSIMILE



Charles R. Dean, Jr.