

6-3-2011

Dorion v. Keane Clerk's Record Dckt. 38519

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LAW CLERK

Vol. 1 p. 1

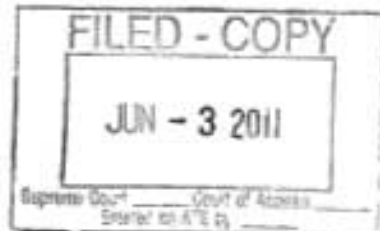
In the
SUPREME COURT
of the
STATE OF IDAHO

DAVE DORION,
PLAINTIFF-RESPONDENT,

v.

RICHARD KEANE and LISA KEANE, husband and wife,
KEANE LAND COMPANY, LLC, an Idaho Limited Liability
Company, KEANE AND CO.CONSTRUCTION, INC., an Idaho
Corporation,

DEFENDANTS-APPELLANTS.



CLERK'S RECORD ON APPEAL

Appealed from the District Court of the
Second Judicial District of the State of Idaho,
in and for the County of Nez Perce

The Honorable JEFF M. BRUDIE

Supreme Court No. 38519

ATTORNEY FOR PLAINTIFF-RESPONDENT
Douglas L. MUSHLITZ

ATTORNEY FOR DEFENDANTS-APPELLANTS
TODD S. RICHARDSON

38519

IN THE SUPREME COURT OF THE STATE OF IDAHO

DAVE DORION,)
)
)
 Plaintiff-Respondent,) SUPREME COURT NO. 38519
)
)
 v.)
)
)
 RICHARD KEANE and LISA KEANE,)
 husband and wife, KEANE LAND)
 COMPANY, LLC, an Idaho Limited)
 Liability Company, KEANE AND CO.)
 CONSTRUCTION, INC., an Idaho)
 Corporation,)
)
)
 Defendants-Appellants.)

CLERK'S RECORD

Appeal from the District Court of the Second Judicial District
of the State of Idaho, in and for the County of Nez Perce

BEFORE THE HONORABLE JEFF M. BRUDIE, DISTRICT JUDGE

Counsel for Appellant
Todd S. Richardson
604 Sixth St
Clarkston, WA 99403

Counsel for Respondent
Douglas L. Mushlitz
P O Drawer 285
Lewiston, ID 83501

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)	
)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 38519
)	
v.	)	TABLE OF CONTENTS
)	
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC, an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC., an Idaho)	
Corporation,)	
)	
Defendants-Appellants.)	

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Notice of Posting Bond filed January 6, 2010	77-80
Motion to Withdraw filed July 27, 2010	81-83
Affidavit in Support of Motion to Withdraw filed July 27, 2010	84-85
Opinion and Order on Defendants' Motion to Set Aside Default and Plaintiff's Motion for Entry of Default Judgment filed December 29, 2010	86-92
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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)	
)	
Plaintiff-Respondent,)	SUPREME COURT NO. 38519
)	
v.)	INDEX
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husband and wife, KEANE LAND)	
COMPANY, LLC, an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC., an Idaho)	
Corporation,)	
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Defendants-Appellants.)	

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Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User	Judge
2/24/2009	NCOC	TERESA	Jeff M. Brudie
		TERESA	New Case Filed-Other Claims
			Filing: A - Civil Complaint for more than \$1,000.00 Paid by: clark and feeney Receipt number: 0330363 Dated: 2/24/2009 Amount: \$88.00 (Check) For: Dorion, Dave (plaintiff)
	ATTR	TERESA	Jeff M. Brudie
			Plaintiff: Dorion, Dave Attorney Retained Douglas L Mushlitz
	ATTR	TERESA	Jeff M. Brudie
			Plaintiff: Dorion, Dave Attorney Retained Jonathan D Hally
	COMP	TERESA	Jeff M. Brudie
			Complaint Filed
	FSUM	TERESA	Jeff M. Brudie
			Summons Filed
3/5/2009	AFSV	PAM	Jeff M. Brudie
			Affidavit Of Service--Served Lisa Keane, Regsitered Agent for Keane Land Co. LLC: 3-3-09
	AFSV	PAM	Jeff M. Brudie
			Affidavit Of Service--Served Lisa Keane, Registered Agent for Keane and Co. Construction Inc. : 3-3-09
	AFSV	PAM	Jeff M. Brudie
			Affidavit Of Service--Served Lisa Keane, Individually: 3-3-09
	AFSV	PAM	Jeff M. Brudie
			Affidavit Of Service--Served Richard Keane: 3-3-09
3/24/2009	MOTN	PAM	Jeff M. Brudie
			Motion for Entry of Default
	AFNS	PAM	Jeff M. Brudie
			Affidavit Of Non-military Service
	AFDF	PAM	Jeff M. Brudie
			Affidavit For Default
	APDF	PAM	Jeff M. Brudie
			Application For Default
3/27/2009	MISC	PAM	Jeff M. Brudie
			Entry of Default
	MISC	PAM	Jeff M. Brudie
			Default
4/22/2009	NOAP	PAM	Jeff M. Brudie
			Notice Of Appearance--Defendants
	MOTN	PAM	Jeff M. Brudie
			Motion to Set Aside Default Judgment
	AFFD	PAM	Jeff M. Brudie
			Affidavit of Richard Keane
		PAM	Jeff M. Brudie
			Filing: 17 - All Other Cases Paid by: Knowlton & Miles PLLC Receipt number: 0333898 Dated: 4/23/2009 Amount: \$58.00 (Check) For: Keane, Richard A (defendant)
		PAM	Jeff M. Brudie
			Filing: 17 - All Other Cases Paid by: Knowlton & Miles PLLC Receipt number: 0334164 Dated: 4/28/2009 Amount: \$58.00 (Check) For: Keane, Richard A (defendant)
	ATTR	JANET	Jeff M. Brudie
			Defendant: Keane, Richard A Attorney Retained Manderson L Miles
	ATTR	JANET	Jeff M. Brudie
			Defendant: Keane, Lisa Attorney Retained Manderson L Miles
4/23/2009	REGISTER OF ACTIONS	PAM	Jeff M. Brudie
			Voided Receipt (Receipt# 333898 dated 4/23/2009)

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User		Judge
4/23/2009	MISC	PAM	**Filing Fee is \$58.00--Check was for \$88.00 Need new check for \$58.00**	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing--4-30-09 @ 10:00am Motion to Set Aside Default Judgment	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 04/30/2009 10:00 AM) Defendants' Motion to Set Aside Default Judgment	Jeff M. Brudie
4/27/2009	HRVC	JANET	Hearing result for Hearing held on 04/30/2009 10:00 AM: Hearing Vacated Defendants' Motion to Set Aside Default Judgment (Julie called from Doug Mushlitz's office, He is sending a stip to cont and will reset motion, if needed)	Jeff M. Brudie
4/30/2009	STIP	PAM	Stipulation to Continue Hearing Plaintiff's Motion for Entry of Default Judgment and Defendant's Motion to Set Aside Default be Continued to 5-14-09 @ 10:00am	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing on Motions 05/14/2009 10:00 AM) Plaintiff's Motion for Entry of Default Judgment & Defendant's Motion to Set Aside Default	Jeff M. Brudie
	ORDR	PAM	Order to Continue Hearing--5-14-09 @ 10:00am--Plaintiff's Motion for Default Judgment & Defendants' Motion to Set Aside Default	Jeff M. Brudie
5/12/2009	MEMO	PAM	Memorandum in Opposition to Motion to Set Aside Default Judgment--Plaintiff	Jeff M. Brudie
5/14/2009	ADVS	JANET	Hearing result for Hearing on Motions held on 05/14/2009 10:00 AM: Case Taken Under Advisement Plaintiff's Motion for Entry of Default Judgment & Defendant's Motion to Set Aside Default	Jeff M. Brudie
	MINE	JANET	Minute Entry Hearing type: Hearing on Motions Hearing date: 5/14/2009 Time: 10:02 am Court reporter: Carlton Audio tape number: C1	Jeff M. Brudie
5/21/2009	OPOR	PAM	Opinion & Order on Defendants' Motion to Set Aside Default	Jeff M. Brudie
	MISC	PAM	**Defendants' Motion to Set Aside Default is Granted**	Jeff M. Brudie
5/22/2009	MINE	PAM	Minute Entry Hearing type: Hearing on Motions Hearing date: 5/22/2009 Time: 3:15 pm	Jeff M. Brudie
5/27/2009	ANSW	PAM	Answer to Complaint	Jeff M. Brudie
	NOTD	PAM	Notice Of Service-defendant	Jeff M. Brudie
7/2/2009	NOTC	PAM	Notice of Issue and Request for Trial Setting--Plaintiff	Jeff M. Brudie
7/10/2009	MOTN	PAM	Motion for Temporary Restraining Order Plaintiff	Jeff M. Brudie
	AFFD	PAM	Affidavit of Dave Dorion	Jeff M. Brudie

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User		Judge
7/10/2009	MOTN	PAM	Motion to Shorten Time for Notice Required before Hearing--Plaintiff	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing--7-16-09 @ 10:00am Plaintiff's Motion for Temporary Restraining Order, Plaintiff's Motion to Shorten Time for Notice Required before Hearing	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing on Motions 07/16/2009 10:00 AM) Plaintiff's Motion to Shorten Time Plaintiff's Motion for TRO	Jeff M. Brudie
7/14/2009	ORDR	PAM	Order Shortening Time for Hearing and Setting Hearing--7-16-09 @ 10:00am--Motion for Temporary Restraining Order	Jeff M. Brudie
7/15/2009	MOTN	PAM	Motion in Opposition of Plaintiff's Request for Temporary Restraining Order	Jeff M. Brudie
	AFFD	PAM	Affidavit of Richard Keane	Jeff M. Brudie
7/16/2009	HRHD	PAM	Hearing result for Hearing on Motions held on 07/16/2009 10:00 AM: Hearing Held Plaintiff's Motion for TRO	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 08/25/2009 09:00 AM) Plaintiff's Motion TRO	Jeff M. Brudie
	DCHH	PAM	District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages	Jeff M. Brudie
	MINE	PAM	Minute Entry Hearing type: Plaintiff's Motion for TRO Hearing date: 7/16/2009 Time: 10:00 am Court reporter: Linda Carlton Minutes Clerk: Pamela Schneider Plaintiff: Douglas Mushlitz Defendant: Manderson Miles	Jeff M. Brudie
7/28/2009	NOTP	PAM	Notice Of Service-plaintiff	Jeff M. Brudie
7/29/2009	NOTP	PAM	Notice Of Service-plaintiff	Jeff M. Brudie
8/11/2009	MOTN	JANET	Motion to Strike	Jeff M. Brudie
	MEMO	JANET	Memorandum in Support of Motion	Jeff M. Brudie
8/25/2009	HRVC	PAM	Hearing result for Hearing held on 08/25/2009 09:00 AM: Hearing Vacated Plaintiff's Motion TRO Plf's Motion to Strike	Jeff M. Brudie
	STIP	PAM	Stipulation to Continue Hearing (Plaintiff's Motion to Strike and TRO)	Jeff M. Brudie
	ORDR	PAM	Order to Continue Hearing (Plaintiff's Motion to Strike and TRO)	Jeff M. Brudie
8/26/2009	NTHR	PAM	Amended Notice of Hearing--9-25-09 @ 9:00am--Plaintiff's Motion to Strike	Jeff M. Brudie

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User	Judge
8/26/2009	HRSC	PAM	Hearing Scheduled (Hearing 09/25/2009 09:00 AM) Plaintiff's Motion to Strike
8/31/2009	ORDR	PAM	Order to Continue Hearing on Plaintiff's Motion for Temporary Restraining Order to 9-25-09 @ 9:00am
9/2/2009	NOTD	PAM	Notice Of Service-defendant
9/4/2009	AFFD	PAM	Second Affidavit of Dave Dorion
	AFFD	PAM	Affidavit of Robin Turner
	AFFD	PAM	Affidavit of Joy Smith
	AFFD	PAM	Affidavit of Eldon Howard
9/15/2009	AFFD	JANET	Affidavit of Rick Keane
	AFFD	JANET	Affidavit of Lisa Keane
	AFFD	JANET	Affidavit of Savannah Keane
	AFFD	JANET	Affidavit of Houston Keane
9/22/2009	MEMO	JANET	Memorandum in Opposition of Restraining Order
9/24/2009	MISC	JANET	Reply Brief in Response to def's Memo in Opposition of Restraining Order
9/25/2009	MINE	JANET	Minute Entry Hearing type: Hearing on Motions Hearing date: 9/25/2009 Time: 9:05 am Courtroom: Court reporter: Nancy Towler Minutes Clerk: JANET Tape Number: C1 Jennifer Douglas Manderson Miles
	ADVS	JANET	Hearing result for Hearing on Motions held on 09/25/2009 09:00 AM: Case Taken Under Advisement Plaintiff's Motion to Strike Plaintiff's Motion for TRO
10/14/2009	NOTP	PAM	Notice Of Service-plaintiff
10/15/2009	OPOR	PAM	Opinion & Order on Plaintiff's Motion for Temporary Restraining Order
	MISC	PAM	**Plaintiff's Motion for Preliminary Injunction is conditionally Granted** Defendant may continue to seek a buyer for property. However, no purchase agreement may be entered into without prior approval of the Court**
	MISC	PAM	**Plaintiff must submit to the Court a surety bond in the amount of \$10,000.00**
11/2/2009	HRSC	PAM	Hearing Scheduled (Telephonic Scheduling Conference 11/12/2009 03:00 PM)
		PAM	Notice of Telephone Scheduling Conference--11-12-09 @ 3:00pm

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User	Judge
11/12/2009	HRHD	PAM	Hearing result for Telephonic Scheduling Conference held on 11/12/2009 03:00 PM: Hearing Held
	ORDR	PAM	Order Setting Case for Pre-trial Conference & Jury Trial
	HRSC	PAM	Hearing Scheduled (Pretrial Conference 04/29/2010 02:00 PM)
	HRSC	PAM	Hearing Scheduled (Jury Trial 05/10/2010 09:00 AM)
11/16/2009	NOTD	PAM	Notice Of Service-defendant
11/25/2009	HRSC	DONNA	Hearing Scheduled (Mediation 02/01/2010 09:00 AM)
12/14/2009	NOTD	PAM	Notice Of Service-defendant
1/5/2010	BNDC	PAM	Bond Posted - Cash (Receipt 177 Dated 1/5/2010 for 10000.00)
1/6/2010	NOTC	PAM	Notice of Posting Bond (\$10,000.00) by Plaintiff
1/27/2010	HRVC	DONNA	Hearing result for Mediation held on 02/01/2010 09:00 AM: Hearing Vacated JPG IS OUT OF THE OFFICE
1/29/2010	NOTD	PAM	Notice Of Service-defendant
2/8/2010	ORDR	PAM	Order Vacating Trial
	HRVC	PAM	Hearing result for Pretrial Conference held on 04/29/2010 02:00 PM: Hearing Vacated
	HRVC	PAM	Hearing result for Jury Trial held on 05/10/2010 09:00 AM: Hearing Vacated
2/9/2010	HRSC	DONNA	Hearing Scheduled (Scheduling Conference 03/03/2010 08:45 AM) Telephonic to set mediation
3/3/2010	HRHD	DONNA	Hearing result for Scheduling Conference held on 03/03/2010 08:45 AM: Hearing Held Telephonic to set mediation
	HRSC	DONNA	Hearing Scheduled (Mediation 04/05/2010 09:00 AM)
3/8/2010	ORDR	PAM	Order Scheduling Mediation (4-5-10 @ 9:00am with Judge Gaskill)
4/5/2010	HRHD	JANET	Hearing result for Mediation held on 04/05/2010 09:00 AM: Hearing Held
5/10/2010	HRSC	JANET	Hearing Scheduled (Telephonic Scheduling Conference 06/03/2010 01:45 PM)
	NTHR	PAM	Notice of Telephonic Scheduling Conference -- 6-3-10 @ 1:45pm
5/11/2010	MISC	PAM	**Terri from Mr. Miles' Office Called--Mr. Miles is on Vacation 6-3-10--She Asked for Tele Sched Conf to be Re-set**

REGISTER OF ACTIONS

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Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User		Judge
5/11/2010	HRVC	PAM	Hearing result for Telephonic Scheduling Conference held on 06/03/2010 01:45 PM: Hearing Vacated	Jeff M. Brudie
7/23/2010	HRSC	JANET	Hearing Scheduled (Telephonic Scheduling Conference 08/04/2010 02:45 PM)	Jeff M. Brudie
	NTHR	PAM	Notice of Telephonic Scheduling Conference -- 8-4-10 @ 2:45pm	Jeff M. Brudie
7/27/2010	MOTN	PAM	Motion to Withdraw -- Defendants	Jeff M. Brudie
	AFFD	PAM	Affidavit in Support of Motion to Withdraw	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing -- 8-5-10 @ 10:00am Defendants' Motion to Withdraw	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Motion for Leave to Withdraw as Attorney 08/05/2010 10:00 AM) Defendants	Jeff M. Brudie
7/30/2010	MISC	PAM	Non Opposition to Motion to Withdraw -- Plaintiff	Jeff M. Brudie
8/3/2010	HRVC	PAM	Hearing result for Telephonic Scheduling Conference held on 08/04/2010 02:45 PM: Hearing Vacated	Jeff M. Brudie
	MISC	PAM	**Scheduling Conference 8-4-10 @ 2:45pm is Vacated per Judge because of Defendants' Motion to Withdraw**	Jeff M. Brudie
8/5/2010	HRVC	JANET	Hearing result for Motion for Leave to Withdraw as Attorney held on 08/05/2010 10:00 AM: Hearing Vacated Defendants	Jeff M. Brudie
	ORDR	JANET	Order Permitting Leave to Withdraw	Jeff M. Brudie
8/10/2010	MISC	PAM	Proof of Service -- Order Permitting Leave to Withdraw Served by Certified Mail 8-9-10	Jeff M. Brudie
9/1/2010	MOTN	PAM	Motion for Entry of Default -- Plaintiff	Jeff M. Brudie
9/8/2010	MISC	PAM	Entry of Default	Jeff M. Brudie
9/17/2010	NOAP	PAM	Notice Of Appearance -- Defendants	Jeff M. Brudie
	ATTR	PAM	Defendant: R & L Developments LLC Attorney Retained Todd S. Richardson	Jeff M. Brudie
	ATTR	PAM	Defendant: Keane, Lisa Carol Attorney Retained Todd S. Richardson	Jeff M. Brudie
	ATTR	PAM	Defendant: Keane & Co Construction LLC Attorney Retained Todd S. Richardson	Jeff M. Brudie
	ATTR	PAM	Defendant: Keane & Co Construction LLC Attorney Retained Todd S. Richardson	Jeff M. Brudie
	MOTN	PAM	Motion to Set Aside Default -- Defendants	Jeff M. Brudie
	AFFD	PAM	Affidavit of Todd S. Richardson in Support of Motion to Set Aside Default	Jeff M. Brudie
10/14/2010	MISC	PAM	Objection to Motion to Set Aside Default and Motion for Attorneys Fees	Jeff M. Brudie
	MEMO	PAM	Memorandum in Opposition to Motion to Set Aside Default	Jeff M. Brudie

REGISTER OF ACTIONS

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Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User		Judge
10/14/2010	AFFD	PAM	Affidavit of Douglas L. Mushlitz	Jeff M. Brudie
	MOTN	PAM	Motion for Entry of Judgment	Jeff M. Brudie
	AFFD	PAM	Affidavit of Dave Dorion in Support of Motion for Entry of Judgment	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing -- 10-28-10 @ 10:00am Plaintiff's Motion for Entry of Judgment	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 10/28/2010 10:00 AM) Plaintiff's Motion for Entry of Judgment	Jeff M. Brudie
10/27/2010	NOAP	PAM	Amended Notice of Appearance -- Defendants	Jeff M. Brudie
	MEMO	PAM	Memorandum in Support of Motion to Set Aside Default -- Defendants	Jeff M. Brudie
	MISC	PAM	Objection to Entry of Judgment	Jeff M. Brudie
	AFFD	PAM	Affidavit of Richard Keane in Support of Motion to Set Aside Default and in Opposition to Entry of Judgment	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing -- 11-18-10 @ 10:00am Defendants' Motion to Set Aside Default	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 11/18/2010 10:00 AM) Defendants' Motion to Set Aside Default	Jeff M. Brudie
10/28/2010	HRHD	PAM	Hearing result for Hearing held on 10/28/2010 10:00 AM: Hearing Held Plaintiff's Motion for Entry of Judgment	Jeff M. Brudie
	CONT	PAM	Hearing result for Hearing held on 10/28/2010 10:00 AM: Continued Plaintiff's Motion for Entry of Judgment	Jeff M. Brudie
	DCHH	PAM	Hearing result for Hearing held on 10/28/2010 10:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: Less than 100 pages Plaintiff's Motion for Entry of Judgment	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 11/18/2010 10:00 AM) Plaintiff's Motion for Entry of Judgment	Jeff M. Brudie
	MINE	PAM	Minute Entry Hearing type: Plaintiff's Motion for Entry of Judgment Hearing date: 10/28/2010 Time: 10:01 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: PAM Tape Number: Crtrm #1 Plaintiff: Douglas Mushlitz Defendant: Todd Richardson	Jeff M. Brudie

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User	Judge
11/9/2010		PAM	Jeff M. Brudie
			Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Clark & Feeney Receipt number: 0020034 Dated: 11/9/2010 Amount: \$9.00 (Check)
		PAM	Jeff M. Brudie
			Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Clark & Feeney Receipt number: 0020034 Dated: 11/9/2010 Amount: \$2.00 (Check)
11/18/2010	MINE	PAM	Jeff M. Brudie
			Minute Entry Hearing type: Hearing on Motions Hearing date: 11/18/2010 Time: 10:02 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: PAM Tape Number: Crtrm #3 Plaintiff: Douglas Mushlitz Defendant: Todd Richardson
	HRHD	PAM	Jeff M. Brudie
			Hearing result for Hearing held on 11/18/2010 10:00 AM: Hearing Held Plaintiff's Motion for Entry of Judgment
	HRHD	PAM	Jeff M. Brudie
			Hearing result for Hearing held on 11/18/2010 10:00 AM: Hearing Held Defendants' Motion to Set Aside Default
	DCHH	PAM	Jeff M. Brudie
			District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: Less than 100 pages
12/29/2010	OPOR	PAM	Jeff M. Brudie
			Opinion & Order on Defendants' Motion to Set Aside Default and Plaintiff's Motion for Entry of Default Judgment
	MISC	PAM	Jeff M. Brudie
			Defendants' Motion to Set Aside Default is Denied
	MISC	PAM	Jeff M. Brudie
			Plaintiff's Motion for Entry of Default Judgment is Granted
1/7/2011		PAM	Jeff M. Brudie
			Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Clark & Feeney Receipt number: 0000413 Dated: 1/7/2011 Amount: \$1.00 (Check)
1/14/2011	JDMT	PAM	Jeff M. Brudie
	CDIS	PAM	Jeff M. Brudie
			Civil Disposition entered for: Keane & Co Construction LLC, Defendant; Keane & Co Construction LLC, Defendant; Keane, Lisa Carol, Defendant; R & L Developments LLC, Defendant; Dorion, Dave, Plaintiff. Filing date: 1/14/2011
1/18/2011	BNDE	PAM	Jeff M. Brudie
			Cash Bond Exonerated (Amount 10,000.00)
	ORDR	PAM	Jeff M. Brudie
			Order of Bond Release
	STAT	PAM	Jeff M. Brudie
			Case Status Changed: closed

REGISTER OF ACTIONS

8

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User	Judge
2/4/2011		DIANE	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Todd S. Richardson Receipt number: 0002085 Dated: 2/7/2011 Amount: \$101.00 (Check) For: Keane & Co Construction LLC (defendant)
	BNDC	DIANE	Bond Posted - Cash (Receipt 2087 Dated 2/7/2011 for 100.00) Clerk's Record
	BONC	DIANE	Condition of Bond Clerk's Record Estimate
	STAT	DIANE	Case Status Changed: Closed pending clerk action
	BNDC	DIANE	Bond Posted - Cash (Receipt 2090 Dated 2/7/2011 for 100.00)
	APSC	DEANNA	Appealed To The Supreme Court
	NTAP	DEANNA	Notice Of Appeal
	BONC	DIANE	Condition of Bond Reporter's Transcript Estimate
2/14/2011	SCRT	DEANNA	Supreme Court Receipt Clerk's Record and Reporter's Transcript Suspended
	SCRT	DEANNA	Supreme Court Receipt - Order re: Amended Notice of Appeal
2/16/2011	NOTC	PAM	Notice of Association of Counsel --Jeffrey A. Thomson is Associating as Attorney of Record with Todd S. Richardson for Defendants
	ATTR	PAM	Defendant: R & L Developments LLC Attorney Retained Jeffrey A Thomson
	ATTR	PAM	Defendant: Keane, Lisa Carol Attorney Retained Jeffrey A Thomson
	ATTR	PAM	Defendant: Keane & Co Construction LLC Attorney Retained Jeffrey A Thomson
	ATTR	PAM	Defendant: Keane & Co Construction LLC Attorney Retained Jeffrey A Thomson
2/25/2011	SCRT	DEANNA	Supreme Court Receipt - Clerk's Certificate filed at the SC
3/1/2011	NTAP	DEANNA	Amended Notice Of Appeal
3/11/2011	SCRT	DEANNA	Supreme Court Receipt - Amended Clerk's Certificate Filed at the SC
	SCRT	DEANNA	Supreme Court Receipt - Clerk's Record and Reporter's Transcript must be served on the SC by May 11, 2011
3/14/2011	BNDO	DEANNA	Bond Converted to Other Party (Transaction number 478 dated 3/14/2011 amount 65.00)
	NOTC	DEANNA	Notice of Transcript Lodged
3/17/2011		TERESA	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: CLARK AND FEENEY Receipt number: 0005108 Dated: 3/17/2011 Amount: \$10.00 (Check)

REGISTER OF ACTIONS

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User	Judge
3/18/2011	MISC	PAM	Request for Additional Documents to be Added to the Clerk's Record Jeff M. Brudie
3/21/2011	MOTN	PAM	Rule 60(b) Motion for Relief from Final Judgment Jeff M. Brudie
	MEMO	PAM	Memorandum in Support of Rule 60(b) Motion for Relief from Judgment Jeff M. Brudie
	NTHR	PAM	Notice of Telephonic Hearing on Defendants' Rule 60(b) Motion for Relief from Final Judgment -- 4-7-11 @ 9:00am Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 04/07/2011 09:00 AM) Telephone -- Defs' Rule 60(b) Motion for Relief from Final Judgment Jeff M. Brudie
3/24/2011	BNDC	DEANNA	Bond Posted - Cash (Receipt 5646 Dated 3/24/2011 for 75.00) Jeff M. Brudie
	BONC	DEANNA	Condition of Bond Estimate for Clerk's Record Jeff M. Brudie
	BNDC	DEANNA	Bond Posted - Cash (Receipt 5647 Dated 3/24/2011 for 50.00) Jeff M. Brudie
	BONC	DEANNA	Condition of Bond Estimate for Reporter's Transcript Jeff M. Brudie
		PAM	Miscellaneous Payment: For Making Copy Of Any File Or Record By The Clerk, Per Page Paid by: Clark & Feeney Receipt number: 0005703 Dated: 3/24/2011 Amount: \$2.00 (Check) Jeff M. Brudie
3/31/2011	SCRT	DEANNA	Supreme Court Receipt - Request for Additional Documents to be added to Clerk's Record Jeff M. Brudie
	SCRT	DEANNA	Supreme Court Receipt - Clerk's Record and Transcript Due Date Reset Jeff M. Brudie
	MEMO	PAM	Memorandum in Opposition of Rule 60(b) Motion for Relief from Judgment -- Plaintiff Jeff M. Brudie
	AFFD	PAM	Affidavit of Mendy S. Maurer Jeff M. Brudie
4/4/2011	MEMO	PAM	Defendants' Reply Memorandum in Support of Rule 60(b) Motion for Relief from Judgment Jeff M. Brudie
	AFFD	PAM	Affidavit of Richard Keane Jeff M. Brudie
4/5/2011	MEMO	PAM	Reply Memorandum in Opposition of Rule 60(b) Motion for Relief from Judgment -- Plaintiff Jeff M. Brudie
4/7/2011	MINE	PAM	Minute Entry Hearing type: Defs' Rule 60(b) Mtn for Relief from Final Jdgmt Hearing date: 4/7/2011 Time: 9:11 am Courtroom: Court reporter: Minutes Clerk: PAM Tape Number: Plaintiff: Douglas Mushlitz Jeff M. Brudie

Dave Dorion vs. R & L Developments LLC, Lisa Carol Keane, Keane & Co Construction LLC, Keane & Co Construction LLC

Date	Code	User	Judge
4/7/2011	HRHD	PAM	Hearing result for Hearing held on 04/07/2011 09:00 AM: Hearing Held Telephone -- Defs' Rule 60(b) Motionf or Relief from Final Judgment
	DENY	PAM	Hearing result for Hearing held on 04/07/2011 09:00 AM: Motion Denied Telephone -- Defs' Rule 60(b) Motionf or Relief from Final Judgment
	DCHH	PAM	Hearing result for Hearing held on 04/07/2011 09:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: Less than 100 pages Telephone -- Defs' Rule 60(b) Motionf or Relief from Final Judgment
4/11/2011	ORDR	PAM	Order Denying Defendants' Rule 60(b) Motion for Relief from Final Judgment

FILED

2009 FEB 24 PM 12 05

CLERK OF THE DIST. COURT
Russ Wammann
DEPUTY

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DOUGLAS L. MUSHLITZ
ISB # 3452
JONATHON D. HALLY
ISB# 4979
CLARK and FEENEY
1229 Main Street
P.O. Drawer 285
Lewiston, ID 83501
Telephone: (208) 743-9516
Facsimile: (208) 746-9160
Idaho State Bar # 3452

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION

Plaintiff,

vs.

RICHARD KEANE and LISA KEANE,
husband and wife, KEANE LAND
COMPANY, LLC., an Idaho Limited
Liability Company, KEANE AND CO.
CONSTRUCTION, INC., an Idaho
corporation, and JOHN DOES 1- 5

Defendants.

) Case No. **CV09 00464**
)
) **COMPLAINT AND DEMAND FOR JURY**
) **TRIAL**
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COMES NOW the Plaintiff and for a cause of action against the Defendants complain and
allege as follows:

Case Assigned to:
JEFF M. STUBBS

COMPLAINT AND DEMAND FOR JURY TRIAL - 1

GENERAL ALLEGATIONS

1 1. Defendants RICHARD KEANE and LISA KEANE, husband and wife, are and have
2 been at all relevant times residents of Nez Perce County, Idaho.

3 2. Defendant KEANE LAND CO., LLC is a Idaho Limited Liability Company with its
4 principal office located in Nez Perce County, Idaho. The only members of said limited liability
5 company are Richard Keane and Lisa Keane.

6 3. Defendant KEANE AND CO. CONSTRUCTION, INC., is an Idaho corporation with
7 its principal office located in Nez Perce County, Idaho.

8 4. JOHN DOES 1-5 are unknown Defendants and will be identified with true names
9 and substituted as they are discovered.

10 5. On or about February 3, 2006, Richard Keane and Dave Dorion entered into an
11 Agreement for the development and construction of a triplex hanger to be constructed on certain real
12 property situate on the Lewiston Nez Perce County Regional Airport located in the City of Lewiston,
13 Nez Perce County, State of Idaho and more particularly described as:
14
15

16 Located in the Lewiston/Nez Perce County Airport in SE 1/4 of Section 18,
17 Township 35 North, Range 5 West, Boise Meridian, and more particularly described
as follows:

18 Commencing at a brass cap monument at the intersection of 5th Street and
19 Cedar Avenue; thence North 26°47'34" West, a distance of 145.64 feet to the TRUE
20 POINT OF BEGINNING; thence North 48° 36'25" West a distance of 90.00 feet;
thence North 41°36'25" East, a distance of 90.00 feet; thence South 41°23'35" West
21 to the True POINT OF BEGINNING, said parcel containing 22,500 square feet, more
or less.

22 Said real property is jointly owned by the City of Lewiston, a municipal corporation and Nez Perce
23 County, a political subdivision of the State of Idaho.

6. That prior to the above-referenced Agreement, Dave Dorion had acquired the right to develop the above-identified lot from Ms. Joy Smith whom, at that time, owned and/or controlled the leasehold rights to said real property.

7. That after acquiring the right to develop the lot, Dave Dorion did expend time and effort in designing a triplex airplane hanger to be constructed on the lot. The structure was to consist of three airplane hangers within a single building. It was Dave Dorion's intention to sell two of the hangers to fund the construction of the triplex hanger and then maintain ownership of the remaining unsold unit.

8. During the design process, Dave Dorion met with Richard Keene and the two agreed to enter into a joint venture to effectuate Dave Dorion's original intent. More particularly, Dave Dorion and Richard Keene agreed that they would construct the triplex hanger and would sell two hanger units and retain joint ownership of the third unit. The remaining hanger unit would be of sufficient size such that both Dave Dorion and Richard Keene could each store a plane in the unit. It was agreed that this remaining hanger would be remain jointly owned by Richard Keene and Dave Dorion but would effectively be partitioned and equipped with hanger doors on opposite sides of the unit so that each person would have access to their respective half of the hanger for their own use and enjoyment. As part of the Agreement, Keane and Company Construction, Inc., of which Richard Keene was the president, would act as the general contractor and would order a steel building kit. Dave Dorion, due to his experience in erecting steel buildings, would construct the building and would be paid twenty dollars (\$20.00) per hour for his labor, including his time in supervising the construction crew. Further, the Agreement was to use the funds from the sale of the

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two units to fund the construction of the triplex hanger with any remaining funds to be split equally between Dorion and Keane.

1
2 9. To effectuate the joint venture, Dave Dorion did complete the design of the triplex
3 unit and did locate two individuals who agreed to purchase two of the hanger units. In addition to
4 finding two buyers, Dave Dorion secured down payments totaling \$250,000 from said purchasers
5 which amount was equal to one-half the full purchase price. Said money was turned over to Richard
6 Keane to be used toward the construction of the triplex hanger.

7
8 10. In compliance with the Agreement, Dave Dorion did expend substantial labor and
9 services in the construction of the triplex hanger. Dorion completed construction of the triplex
10 hanger exterior and only needed to complete the construction of the back wall of the hanger unit that
11 was being retained by Dorion and Keane. Dorion was unable to complete the remaining construction
12 due to the fact that Richard Keane had failed to order the requisite construction materials despite
13 Dorion having provided Richard Keane, on three separate occasions, with a list of materials needed
14 to complete the construction.

15
16 11. Without warning or notice to Dorion, Richard Keane had a work crew complete the
17 construction of the remaining wall. Said construction enclosed the area that was designed to have
18 a hanger door and, thus, the remaining hanger unit was constructed such that it could no longer be
19 utilized by Dorion as agreed.

20
21 12. Without notice or approval from Dorion, Richard Keane did cause Keane Land
22 Company, LLC to execute the lease agreement for the above-identified real property in which the
23 triplex hanger was constructed. Moreover, Richard Keane then unlawfully excluded and continues
24 to unlawfully exclude Dorion from the premises, has failed to pay Dorion for his labor and services

1 in the construction of the triplex hanger; and has failed and refused to provide Dorion with an
2 accounting of the purchase money secured as well as the actual costs of construction for the purpose
3 of determining Dorion's share of the sale proceeds.

4 13. Defendant Keane's conduct was extreme, wanton, willful and oppressive, malicious,
5 and was an extreme deviation from reasonable standards of conduct and was performed with an
6 understanding of or disregard of their likely consequences.

7 **COUNT I.**
8 **BREACH OF CONTRACT**

9 14. The foregoing allegations are incorporated herein by reference as though fully set
10 forth.

11 15. Defendants actions constitute a material and fundamental breach of contract. As a
12 direct and proximate cause of said breach, Plaintiff has suffered damages in an amount in excess
13 of the TEN THOUSAND AND NO/100 DOLLARS (\$10,000.00) which the exact amount will be
14 proven at trial.

15 **COUNT II**
16 **SPECIFIC PERFORMANCE**

17 16. The foregoing allegations are incorporated herein by reference as though fully set
18 forth.

19 17. The property that is the subject matter of the Agreement constitutes property that is
20 unique and of special value to Plaintiff for which the Plaintiff cannot obtain a duplicate property on the
21 open market. Accordingly, Plaintiff cannot be adequately compensated by damages for the
22 Defendants' breach of contact, and therefore, Plaintiff has no plain, speedy, and adequate remedy at
23 law and is entitled to an order for specific performance.
24

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COUNT III
QUANTUM MERUIT/UNJUST ENRICHMENT

1 18. The foregoing allegations are incorporated herein by reference as though fully set
2 forth.

3 19. The Defendants benefitted from the labor and services performed by Plaintiff and are
4 fully aware of said benefit.

5 20. That Defendants have accepted and retained the benefit of Plaintiff's labor and
6 services and refused to compensate Plaintiff for said labor and services knowing that Plaintiff has
7 not been adequately compensated.

8 21. That Defendants have been unjustly enriched by Plaintiff's work to the detriment of
9 Plaintiff.

10 22. That Plaintiff is entitled to the reasonable value for his labor and services expended
11 in the improvement of the property described above. The reasonable value of the services furnished
12 and unpaid for which Defendants are unjustly enriched is in an amount to be proven at trial,
13 estimated for the purpose of this pleading at \$10,450.00. In addition to the reasonable value of
14 services, Plaintiff is entitled to prejudgement interest at the rate of 12 percent per annum.
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COUNT IV
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

18 23. Plaintiff realleges and incorporates by reference all the foregoing allegations as if
19 fully stated herein.

20 24. At all times relevant hereto, Defendants Keane were under a duty of good faith and
21 fair dealing to Plaintiff.
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26 **COMPLAINT AND DEMAND FOR JURY TRIAL - 6**

1 25. Defendants Keane's actions impaired a benefit of the contract which was to be
2 enjoyed by Plaintiff and constituted a breach of said Defendants' covenant of good faith and fair
3 dealing.

4 26. Plaintiff was damaged as a direct and proximate cause of Defendants Keane's breach
5 of covenant of good faith and fair dealing in an amount in excess of the jurisdictional limits of the
6 Magistrate Court, the exact amount of which will be proven at trial.

7 **COUNT V**
8 **BREACH OF FIDUCIARY DUTY**

9 27. The foregoing allegations are incorporated herein by reference as though fully set
10 forth.

11 28. At all relevant time, Defendants Keane owed a fiduciary duty to Plaintiff.

12 29. Defendants Keane's wrongful, self-dealing conduct constitutes a breach of said
13 fiduciary duties.

14 30. As a direct and proximate cause of said breaches of fiduciary duty, Plaintiff has
15 suffered damages and will continue to suffer injury in an amount in excess of the jurisdictional

16 **COUNT VI.**
17 **DECLARATORY JUDGMENT**

18 31. The foregoing allegations are incorporated herein by reference as though fully set
19 forth.

20 32. A dispute has arisen between Plaintiff and Defendants as to the ownership interests
21 of the triplex hanger and the leasehold interests of the real property described above. That, pursuant
22 to the Uniform Declaratory Judgment Act, Idaho Code §10-1201, et. seq. Plaintiff seeks a judgement
23 declaring that the Plaintiff is entitled to one-half ownership interest in the triplex hanger and has a
24 leasehold interest in the underlying property, is entitled to one-half the profits from the sale and/or
25

leasing of airplane hanger units, and is entitled to use the unsold hanger unit as agreed upon by the parties as set forth above. Further, Plaintiff seeks a judgment declaring that Dorion and the Defendants did engage in a joint venture and/or partnership with regard to the construction and ownership of the triplex airplane hanger.

INJUNCTION

33. Plaintiff has been advised that the Defendants have been contemplating and intend on selling their interests in the triplex hanger and sell and/or assign the leasehold interests in the real property to one or more third parties. By reason of the Defendants' actions, Plaintiff has suffered and will continue to suffer extreme hardship and actual and impending irreparable monetary damage if the Defendants are allowed to sell the personal property and/or sell or assign leasehold interest in the real property during the pendency of this action.

34. The Plaintiffs have no adequate or speedy remedy at law to prevent the sale of the personal property or the sale, assignment, and/or transfer of the leasehold interest during the pendency of this matter other than injunctive relief which the Plaintiff requests as part of the relief sought hereby.

ATTORNEY FEES

35. It has been necessary for the Plaintiffs to employ the Law Office of Clark and Feeney, Lewiston, Idaho, to represent them in this action. Plaintiffs are entitled to costs and attorney fees pursuant to Idaho Code Sections 12-120 and 12-121.

NOTICE

Defendants are hereby notified that the Plaintiff shall file at pretrial hearing a Motion to Amend under Idaho Code Section 6-1604 to add a prayer for punitive damages.

WHEREFORE the Plaintiff requests judgment against the Defendant as follows:

1. For damages in an amount in excess of the jurisdiction of the Magistrate's Division in an amount to be proven at trial.

COMPLAINT AND DEMAND FOR JURY TRIAL - 8

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2. For the issuance of an Order to compel an accounting.
 3. For an Order enjoining Defendants from transferring any interest in the personal property and the leasehold interest in the real property described within the lawsuit.
 4. For an award of reasonable attorney fees and costs of suit.
 5. For such further relief as the Court deems just and equitable.

DATED this 23 day of February, 2009.

CLARK and FEENEY

By: 

Douglas L. Mushlitz, a member of the firm.
Attorneys for Plaintiffs.

DEMAND FOR JURY TRIAL

10 Plaintiffs demand a jury trial of all issues in this cause and will not stipulate to a jury of less
11 than twelve (12).

12 DATED on this 23 day of February, 2009.

13 CLARK and FEENEY

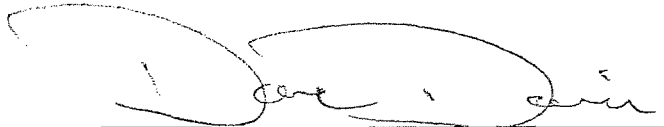
14 By: 

Douglas L. Mushlitz, a member of the firm.
Attorneys for Plaintiff.

STATE OF IDAHO)
) ss.
1 County of Nez Perce)

2 DAVE DORION, being first duly sworn on oath, deposes and says:

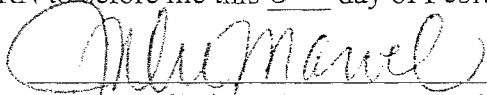
3 I am one of the Plaintiffs herein. I have read the foregoing instrument, know the contents
4 thereof, and the facts stated therein are true to the best of my knowledge, information, and belief.
5

6 

7 DAVE DORION

8
9 SUBSCRIBED AND SWORN to before me this 23 day of February, 2009.




Notary Public in and for the State of Idaho
Residing at: Lewiston
My commission expires: 3/22/11

FILED

2009 MAR 24 PM 4 38

PATTY O. WEEKS
CLERK OF THE DIST. COURT

Patty Weeks
DEPUTY

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DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208) 743-9516
Idaho State Bar # 2963

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,	)	Case No. CV09-00464
)	
Plaintiff,)	
)	
vs.	)	MOTION FOR ENTRY OF DEFAULT
)	
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC., an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC., an Idaho)	
corporation, and JOHN DOES 1- 5)	
)	
Defendants.)	

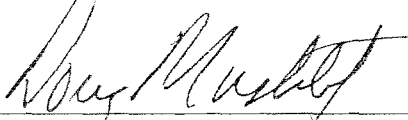
Defendants in this action having been served as shown by the Affidavits of Service filed herein, the defendants having failed to file a written appearance or appear within the requisite twenty days, the defendants having failed to answer the plaintiff's Complaint and the time for answering having expired, the defendants not being entitled to the benefits of the Servicemembers Civil Relief Act of 2003.

MOTION FOR ENTRY OF DEFAULT 1

Comes now the plaintiff and moves the Court for an order that the default of the defendants
in the above entitled matter be entered according to law, and that Orders be entered granting
plaintiff's Complaint as against said defendants.

DATED this 24th day of March, 2009.

CLARK and FEENEY

By 
Douglas L. Mushlitz, a member of the
firm. Attorneys for Plaintiff.

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Non-Military Affidavit
Affidavit for Default
Application for Default
FILED

2009 MAR 24 PM 4 38

PATTY O. WEEKS
CLERK OF THE DIST. COURT

[Signature]
DEPUTY

DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208) 743-9516
Idaho State Bar # 3452

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,	)	Case No. CV09-00464
)	
Plaintiff,	)	NON MILITARY AFFIDAVIT,
	)	AFFIDAVIT FOR DEFAULT,
vs.	)	APPLICATION FOR DEFAULT,
	)	AND DEFAULT
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC., an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC., an Idaho)	
corporation, and JOHN DOES 1- 5)	
)	
Defendants.)	

STATE OF IDAHO)
) ss.
County of Nez Perce)

DOUGLAS L. MUSHLITZ, being first duly sworn, deposes and says:

Non-Military Affidavit

That I am the attorney for the above named plaintiff in the above-entitled action, and that the above-named defendant upon information and belief, is not in the military service of the United States of America or any nation with which the United States of America is allied as defined by or

NON-MILITARY AFFIDAVIT,
AFFIDAVIT FOR DEFAULT,
APPLICATION FOR DEFAULT,
AND DEFAULT

24

1 within the meaning of the Servicemembers Civil Relief Act of 2003 and laws amendatory thereof
2 and supplemental thereto or under orders to report for induction for any such service; that upon
3 information and belief, the last known addresses for said defendants are as follows:

4 Richard Keane
5 Lisa Keane
6 35309 Powell Rd
7 Lewiston ID 83501

8 Keane and Co. Construction Inc.
9 35309 Powell Rd
10 Lewiston ID 83501

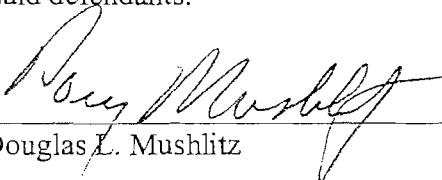
11 Keane Land Co. LLC
12 247 Thain Rd Suite 108
13 Lewiston ID 83501

14 Affidavit for Default

15 Said plaintiff by his Complaint on file herein seeks affirmative relief against the above-
16 mentioned defendants. Said defendants were served on March 3, 2009. More than twenty days has
17 elapsed since service was made.

18 Said defendants, whose defaults are sought, have failed to plead herein or answer or
19 otherwise defend as to said Complaint or to appear herein by any motion, notice, or any other
20 appearance of any kind whatsoever.

21 This affidavit is made under the Idaho Rules of Civil Procedure, Rule 55(a), for the purpose
22 of obtaining an entry of default of the said defendants.

23 
24 _____
25 Douglas L. Mushlitz

26 NON-MILITARY AFFIDAVIT,
AFFIDAVIT FOR DEFAULT,
APPLICATION FOR DEFAULT,
AND DEFAULT

SUBSCRIBED AND SWORN to before me this 24th day of March, 2009

Default
FILED



Julie Marvel
Notary Public in and for the state
of Idaho, residing at Lewiston therein
My commission expires: 3/27/11
James Schwan
DEPUTY

2009 MAR 27 AM 11 35

PATRICIA L. WEEKS
CLERK OF THE DIST. COURT

Application for Default

TO THE CLERK OR JUDGE OF THE ABOVE-ENTITLED COURT:

Please enter the default of the above-named defendants in the above-entitled cause, for failure to plead in the above-entitled cause in any way as required by law and the Idaho Rules of Civil Procedure.

DATED this 24 day of March, 2009.

CLARK and FEENEY

By *Douglas L. Mushlitz*
Douglas L. Mushlitz, a member of
the firm. Attorneys for Plaintiff.

Default

It appearing that the above-named defendants, each and all of said defendants, are in default for failure to appear in the above-entitled action as required by law and the Idaho Rules of Civil Procedure,

DEFAULT, is hereby entered as against the said defendant.

DATED this 27 day of March, 2009.

Julie Marvel
JUDGE

NON-MILITARY AFFIDAVIT,
AFFIDAVIT FOR DEFAULT,
APPLICATION FOR DEFAULT,
AND DEFAULT

26

FILED

2009 APR 22 PM 4 08

PATTI C. WELLS
CLERK OF THE DIST. COURT
Patti C. Wells
DEPUTY

Manderson L. Miles, ISB No.: 1422
KNOWLTON & MILES, PLLC
312 Seventeenth Street
Post Office Drawer 717
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Facsimile: (208) 746-0118

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,	)	Case No.: CV09-00464
)	
Plaintiff,)	
)	
v.	)	MOTION TO SET ASIDE
	)	DEFAULT JUDGMENT
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC, an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC, an Idaho)	
corporation, and JOHN DOES 1-5,)	
)	
Defendants.)	
)	

COME NOW the above-named Defendants, Richard Keane and Lisa Keane, husband and wife, KEANE LAND COMPANY, LLC, an Idaho Limited Liability Company, Keane and Co. Construction, Inc., an Idaho corporation, by and through their attorney of record, Manderson L. Miles, of the law firm of Knowlton & Miles, PLLC, and hereby moves the Court for an order setting aside default judgment in the above matter. This


MOTION TO SET ASIDE
DEFAULT JUDGMENT

motion is made pursuant to I.R.C.P. 55(c) and based upon the records and files herein and upon the supporting affidavit filed herewith.

ORAL ARGUMENT IS REQUESTED.

DATED this 22^d day of April, 2009.

KNOWLTON & MILES, PLLC

By 
Manderson L. Miles

CERTIFICATE OF DELIVERY

I HEREBY CERTIFY that on this 22^d day of April, 2009, I caused a true and correct copy of the foregoing **Motion to Set Aside Default Judgment** to be:

- Hand delivered by providing a copy to Valley Messenger Service
- Mailed postage prepaid
- Certified mailed
- Faxed

to the following:

Douglas L. Mushlitz
CLARK and FEENEY
1229 Main Street
P.O. Drawer 285
Lewiston, ID 83501

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KNOWLTON & MILES, PLLC

By: 

A Member of the Firm

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DAVE KEENE
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

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Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,	)	Case No.: CV09-00464
)	
Plaintiff,)	
)	
v.	)	AFFIDAVIT OF RICHARD KEANE
)	
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC, an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC, an Idaho)	
corporation, and JOHN DOES 1-5,)	
)	
Defendants.)	
)	

STATE OF IDAHO)
: ss.
County of Nez Perce)

RICHARD KEANE, being first duly sworn upon oath deposes and says:

I am a defendant in the above-entitled matter. I am competent to testify herein and make this affidavit from personal knowledge.

After I was served with the Summons and Complaint, I thought I had secured an attorney to represent me; however, there was a mis-communication and the attorney had not been retained to defend me, my wife, and the companies listed in the above-referenced caption.

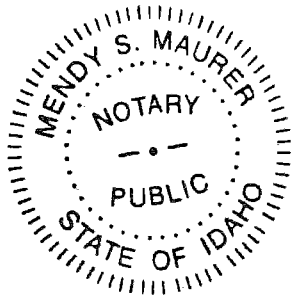
I feel I have a good defense and would like to defend this matter.

DATED this 22 day of April, 2009.



Richard Keane

SUBSCRIBED and SWORN to before me this 22^d day of April, 2009.



NOTARY PUBLIC for the State of Idaho
Residing at Boziston, therein.
My Commission Expires: 07/01/11

FILED

2009 MAY 12 PM 4 29

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IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,

Case No. CV09-00464

Plaintiff,

vs.

**MEMORANDUM IN OPPOSITION
TO MOTION TO SET ASIDE
DEFAULT JUDGMENT**

RICHARD KEANE and LISA KEANE,
husband and wife, KEANE LAND
COMPANY, LLC., an Idaho Limited
Liability Company, KEANE AND CO.
CONSTRUCTION, INC., an Idaho
corporation, and JOHN DOES 1- 5

Defendants.

COMES NOW the plaintiff herein by and through his undersigned counsel of record and in response to the defendant's Motion to Set Aside Default Judgment, hereby sets forth argument, points, and authorities, as follows:

I. DISCRETION AND STANDARD

When weighing and deciding defendant's *Motion to Set Aside Default Judgment*, this Court has discretion, and should apply a liberal standard to that request.

"The decision to grant or deny a motion to set aside a default judgment is committed to the sound discretion of the trial court and a decision will not be disturbed on appeal in the absence of an abuse of discretion."

Olson v. Kirkham, 111 Idaho 34, 38 720 P.2d 217, 221 (Ct.App.1986).

MEMORANDUM IN OPPOSITION TO MOTION
TO SET ASIDE DEFAULT JUDGMENT

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“In determining whether to set aside a default judgment, [the Court] must apply a standard of liberality rather than strictness and give the party moving to vacate the default the benefit of a genuine doubt.”

Johnson v. Pioneer Title Company of Ada County, 104 Idaho 727, 733 662 P.2d 1171, 1177(Ct.App.1983).

II. APPLICATION OF RULE 55(c)

Defendant has moved to set aside entry of default pursuant to Rule 55(c):

Setting Aside Default Judgment. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

The Idaho Court of Appeals, in dicta, noted with approval the following, with respect to the “good cause” standard: “...the Rule 55(c) “good cause” standard is more lenient than the Rule 60(b) standards...” *McFarland v. Curtis*, 123 Idaho 931, 936, 854 P.2d 274, 279 (Ct.App.1993). When deciding a Rule 55(c) motion to set aside entry of default, there are “several factors to consider. The primary considerations are whether the default was willful, whether setting aside the default would prejudice the opponent, and whether a meritorious defense has been presented.” *Citations omitted*. *Id.* In this case, even application of a lenient standard will not afford relief to the defendant. It is unknowable from defendant’s affidavit whether defendant’s conduct was willful. While entry of default will probably work prejudice to the defendant, no defense, and certainly no meritorious defense, has been presented. Defendant has failed to show good cause for vacating the entry of default, and the entry of default should stand.

III. APPLICATION OF RULE 60(b)

In the alternative, defendant must meet the requirements of Rule 60(b), I.R.C.P, which is summarized as follows:

MEMORANDUM IN OPPOSITION TO MOTION
TO SET ASIDE DEFAULT JUDGMENT

1 Upon a showing of good cause, I.R.C.P. 60(b)(1) provides for relief from a judgment
2 on the basis of mistake. (*citation omitted*). For the mistake to be excusable, the parties
3 must establish how the mistake occurred and who made the mistake. (*citation*
4 *omitted*). The mistake must be one of fact and not of law (*citation omitted*), and is
5 determined by examining what a reasonably prudent person would do under similar
6 circumstances. (*citations omitted*).

7
8 *Thomas v. Thomas*, 119 Idaho 709,711, 809 P.2d 1188, 1190 (Ct.App.1991)

9 Our Supreme Court has said that relief from a final judgment pursuant to I.R.C.P.
10 60(b)(1) is available where the record shows: that the mistake or inadvertence of
11 counsel was not a result of carelessness; or that the allegedly mistaken fact was not
12 previously available; or that its absence could not have been discovered by the
13 exercise of due diligence; or that there were exceptional circumstances which
14 precluded the appellant from discovering its absence prior to the original hearing.
15 (*citation omitted*)

16 *Id.* At 1191-1192, 712-713.

17 Defendant appears to be relying on an argument of mistake; he suggests in his *Affidavit* that
18 he “thought [he] had secured an attorney to represent [him]; however, there was a mis-
19 communication and the attorney had not been retained to defend [him]...” *Affidavit of Richard*
20 *Keane*, Page 2. While this is a mistake of fact, defendant again fails to meet the requirements of the
21 Rule. Defendant has not established exceptional circumstances, or even proffered evidence of how
22 the mistake occurred, who made the mistake, or that a reasonably prudent person in his position
23 would have made the same mistake. He has not shown a lack of carelessness, or that the failure to
24 file a responsive pleading could not have been discovered by due diligence. His conclusory, self-
25 serving affidavit, devoid of elaboration or detail about the facts of his mistake or what his defense
26 might be, utterly fails to meet the Requirements of Rule 60(b).

27 Defendant also states in his Affidavit that he “feel[s]” that he has a “good defense,” and that
28 he would “like to defend this matter.”

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MEMORANDUM IN OPPOSITION TO MOTION
TO SET ASIDE DEFAULT JUDGMENT

1 “When moving to set aside a default judgment, the moving party must not only meet
2 the requirements of I.R.C.P. 60(b) but must also plead facts which, if established,
3 would constitute a defense to the action. It would be an idle exercise for the court to
4 set aside a default if there is in fact no real justiciable controversy. The defense
5 matters must be detailed. Once a default has been entered the pleading of a defensive
6 matter must go beyond the mere notice requirements that would be sufficient if pled
7 before default. Factual details must be pled with particularity.”

8 *Idaho State Police ex rel. Russell v. Real Property Situated in County of Cassia*, 144 Idaho 60, 63,
9 156 P.3d 561, 564 (2007) (*underlining added*). Clearly, Defendant’s statements and feelings do not
10 constitute facts, which, if established, would constitute a defense to this action. It would be an idle
11 exercise, and an abuse of discretion, for this Court to vacate the entry of default, given the lack of
12 required pleadings.

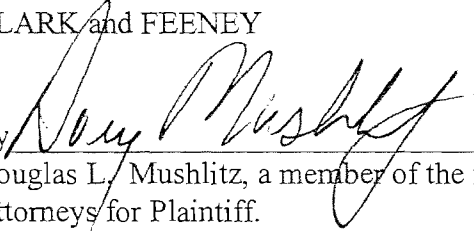
13 **IV. CONCLUSION**

14 This Court is bound by a discretionary, liberal standard when making a determination on
15 defendant’s Motion to Set Aside Entry of Default. Even when a liberal, discretionary standard is
16 applied to this Motion, defendant has failed to show good cause, a reasonable mistake, or to plead
17 particular facts which would constitute a meritorious defense to the underlying action. Therefore,
18 that Motion should be denied.

19 WHEREFORE, the plaintiff prays that the defendant’s Motion to Set Aside Default Judgment
20 be denied.

21 DATED this 12th day of May, 2009.

22 CLARK and FEENEY

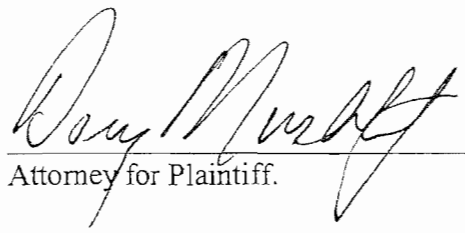
23 By 
24 Douglas L. Mushlitz, a member of the firm.
25 Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 15th day of May, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

MANDERSON MILES
KNOWLTON & MILES
312 17TH STREET
LEWISTON ID 83501

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)



Attorney for Plaintiff.

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PATTY O. WEEKS
CLERK OF THE DIST. COURT
P. Weeks
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)
)
 Plaintiff,)
)
 v.)
)
 RICHARD KEANE and LISA KEANE,)
 husband and wife; KEANE LAND)
 COMPANY, LLC., an Idaho Limited)
 Liability Company, KEANE AND CO.)
 CONSTRUCTION, INC., an Idaho)
 Corporation, and JOHN DOES 1-5)
)
 Defendants.)
)
 _____)

CASE NO. CV09-00464

OPINION AND ORDER
ON DEFENDANTS' MOTION
TO SET ASIDE DEFAULT

This matter is before the Court on Defendants' Motion to Set Aside Default. The Court heard oral argument on this matter May 14, 2009. Plaintiff was represented by attorney Jonathon D. Hally. Defendants were represented by attorney Manderson L. Miles. The Court, having read the motion and the brief filed by the Plaintiff, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

PROCEDURAL BACKGROUND

On February 24, 2009, Plaintiffs filed their Complaint in the above-entitled matter. On March 3, 2009, copies of the Complaint and Summons were personally served upon Richard Keane and Lisa Keane in their personally capacity and upon Lisa Keane as the registered agent for Keane Land Company, LLC and Keane and Co. Construction.¹ No answer or other pleading having been filed on behalf of the Defendants, Plaintiffs filed a Motion for Entry of Default on March 24, 2009 and was entered by the Court on March 27, 2009. However, no judgment of default has been entered.

On April 22, 2009, a Notice of Appearance, Motion to Set Aside Default Judgment and Affidavit of Richard Keane were filed in the matter. In his affidavit, Defendant Richard Keane stated that, after he was served with the Complaint and Summons, he thought he had retained an attorney to represent him, his wife and his businesses but, due to a miscommunication, the attorney had not been retained. The Defendant's affidavit went on to state he believes he has a good defense and he would like the opportunity to defend against the claims. On May 12, 2009, Plaintiffs filed a brief opposing the Defendants' motion to set aside the default that had been entered. The Court heard oral arguments from counsel on the motion on May 14, 2009.

STANDARD OF REVIEW

A trial court's refusal to set aside a default judgment is reviewed under an abuse of discretion standard. *Suits v. Nix*, 141 Idaho 706, 708, 117 P.3d 120, 122 (2005). The decision will be upheld if it appears that the trial court (1) correctly perceived the issue as discretionary, (2) acted within the boundaries of its discretion and consistent with the applicable legal standards, and (3) reached its determination through an exercise of reason. *Flood v. Katz*, 143 Idaho 454, 456-57, 147 P.3d 86, 88-89 (2006).

¹ Affidavits of Service for each of the named Defendants were filed on March 5, 2009.

The applicable legal standard is set forth in I.R.C.P. 60(b), which allows a default judgment to be set aside where it resulted from, inter alia, excusable neglect or mistake of fact. A determination under Rule 60(b) turns largely on questions of fact to be determined by the trial court, whose factual findings will be upheld unless they are clearly erroneous. Nevertheless, because judgments by default are not favored, relief should be granted in doubtful cases in order to decide the case on the merits. *Suitts*, 141 Idaho at 708, 117 P.3d at 122. If the trial court applies the facts in a logical manner to the criteria set forth in Rule 60(b), while keeping in mind the policy favoring relief in doubtful cases, the court will be deemed to have acted within its discretion. *Id.*; see *Shelton v. Diamond Int'l. Corp.*, 108 Idaho 935, 938, 703 P.2d 699, 702 (1985).

Idaho State Police v. Real Property in Cassia County, 144 Idaho 60, 62 156 P.3d 561 (2007).

Conduct constituting excusable neglect is that which would be expected of a reasonably prudent person under the same circumstances. *LeaseFirst v. Burns*, 131 Idaho 158, 953 P.2d 598 (1998).

ANALYSIS

In their motion, Defendants seek to have the default set aside pursuant to Idaho Rule of Civil Procedure 55(c), which reads, "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Plaintiff contends Defendant Richard Keane's affidavit is insufficient for the Court to grant the motion to set aside the default, asserting Defendant failed in his affidavit to present a meritorious defense. In support of his position, Plaintiff cites the Court to *McFarland v. Curtis*, 123 Idaho 931, 854 P.2d 274 (Ct.App.1993). Defendants, on the other hand, contends courts are to be more lenient in granting a motion to set aside where no default judgment has been entered and no unfair prejudice to the non-moving party will result. The arguments of the parties present the Court with two questions: (1) is the standard to set aside an entry of default under Rule 55(c) different than the standard to set aside a judgment of default under Rule 60(b)

and, (2) when moving to set aside an entry of default must the moving party present a meritorious defense.

This Court, as did the Court of Appeals in *McFarland v. Curtis*, finds I.R.C.P. 55(c) clearly establishes one standard to set aside an entry of default and another standard to set aside a judgment of default. Where an order of default has been entered but a default judgment has not, a party moving to have default set aside must meet a 'good cause' standard. When a default judgment has been entered by the Court, then the party moving to have it set aside must meet the more stringent standards established in I.R.C.P. 60(b).²

The wording of the rule [I.R.C.P. 55] requires only "good cause" to set aside an entry of default, while requiring satisfaction of the Rule 60(b) requirements to set aside a default judgment. . . . Rule 60(b) provides in part: "[t]he court may relieve a party or his legal representative from a final judgment, order, or proceeding for ... mistake, inadvertence, surprise, or excusable neglect...." (Emphasis added.) The clerk's entry of default is not a final judgment or order, unlike the default judgment. *Coon v. Grenier*, 867 F.2d 73, 76 (1st Cir.1989) (citing *Phillips v. Weiner*, 103 F.R.D. 177, 179 (D.Me.1984)).

In addition to the wording of the rules which indicate different standards, other courts have held that the required showing to set aside a default is lower or more lenient than that required to set aside a default judgment. *See generally* 10 Wright, Miller & Kane, Federal Practice and Procedure: Civil 2d §§ 2681-2702 (1983). A more lenient approach in these cases is consistent with the application of the policy that cases should be decided on their merits. *Coon v. Grenier*, 867 F.2d at 76. Also, at the earlier stage of entry of default where no judgment has

² Rule 60(b) provides: "On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), (3) and (6) not more than six (6) months after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. Such motion does not require leave from the Supreme Court, or the district court, as the case may be, as though the judgment has been affirmed or settled upon appeal to that court. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding, or to set aside, as provided by law, within one (1) year after judgment was entered, a judgment obtained against a party who was not personally served with summons and complaint either in the state of Idaho or in any other jurisdiction, and who has failed to appear in said action, or to set aside a judgment for fraud upon the court."

been proven, a liberal approach is less likely to create unfair prejudice to the non-moving party or disrupt the court's calendar. *Id.* The courts which have held that the Rule 55(c) "good cause" standard is more lenient than the Rule 60(b) standards have set forth several factors to consider. The primary considerations are whether the default was willful, whether setting aside the default would prejudice the opponent, and whether a meritorious defense has been presented.

McFarland v. Curtis, 123 Idaho 931, 935-936, 854 P. 2d 274 (Ct.App.1993).

The *McFarland* Court, while finding the standard in Rule 55(c) more lenient than the standard in Rule 60(b), nevertheless found a meritorious defense must be presented by the moving party under either standard.³ In the instant matter, Defendant Keane has presented the Court with an affidavit that is extremely short on details. Any presentation of a meritorious defense in his affidavit is weak at best. Nevertheless, it is only one of three factors the Court must consider.

First, the Court must decide whether the Defendants' default was willful. Again, while severely lacking in specificity, Defendant Keane indicates in his affidavit that he believed he had secured an attorney to represent him but, because of a miscommunication, the attorney had not been retained. Default was entered in the instant matter thirty (30) days after the filing of the Complaint. Approximately three weeks after default was entered, and less than two months after the Defendants were served with a Complaint and Summons, counsel for Defendant Keane filed a Notice of Appearance, Motion to Set Aside and Affidavit of Defendant Keane. In light of the relatively quick response of the Defendants after entry of default, the Court finds the failure of the Defendants to timely respond was not a willful omission. Next, the Court must examine whether any prejudice to the Plaintiff would result if the default is set aside. Here, the Court

³ The *McFarland* Court noted that its findings regarding Rule 55 and Rule 60(b) standards were only dicta.

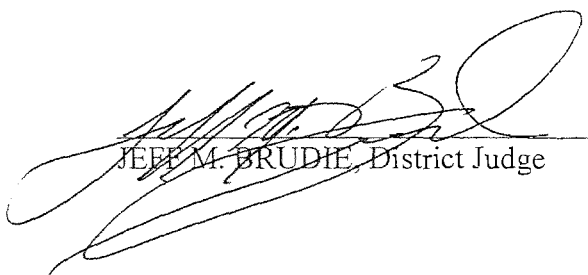
finds no prejudice would result. As lawsuits go, the instant matter is still in its infancy, having been filed less than three months ago.

The Court finds the Defendants have shown good cause for setting aside the default. Based on the facts presented, although minimal at best, the Court finds the Defendants did not willfully allow default to occur, that little if any prejudice to the Plaintiff will result by setting aside the default, and that the Defendants believe they can present a meritorious defense. In the instant matter, the Court finds default unfavorable and that the better course is for the case to be decided on the merits.

ORDER

Defendants' Motion to Set Aside Default is hereby GRANTED.

Dated this 21 day of May 2009.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER was:

hand delivered via court basket, or


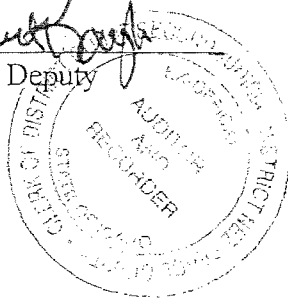
mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 25 day of May 2009, to:

Douglas Mushlitz
Lewiston, ID 83501

Manderson Miles
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By:


Deputy


FILED

2009 MAY 27 PM 12 21

PATTY A. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

Manderson L. Miles, ISB No.: 1422
KNOWLTON & MILES, PLLC
312 Seventeenth Street
Post Office Drawer 717
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Facsimile: (208) 746-0118

Attorneys for Defendant

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,	)	Case No.: CV09-00464
)	
Plaintiff,)	
)	
v.	)	ANSWER TO COMPLAINT
)	
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC, an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC, an Idaho)	
Corporation, and JOHN DOES 1-5,)	
)	
Defendants.)	
)	

COMES NOW, the Defendants, Richard Keane and Lisa Keane, husband and wife, Keane Land Company, LLC, an Idaho Limited Liability Company, Keane and Co. Construction, Inc., an Idaho Corporation, and John Does 1-5, by and through their attorney of record, Manderson L. Miles, of the Law Firm of Knowlton and Miles, PLLC, and respectfully answers the Plaintiff's Complaint. Defendants deny all allegations not

specifically admitted as follows:

GENERAL ALLEGATIONS

1. Defendant Admits paragraphs 1 - 4.
2. Defendant Denies paragraph 5, there was no agreement.
3. Defendant Denies paragraphs 6 and 7.
4. Defendant Admits that Dave Dorion was to work on construction of the building and would be paid twenty dollars (\$20) per hour for his labor, including his time in supervising the construction crew; however, Defendant Denies the remainder of the allegation in paragraph 8.
5. Defendant Denies paragraph 9.
6. Defendant Admits that Dave Dorion did expend substantial labor in the construction of the triplex hanger and was paid for his labor; however, he Denies the remainder of paragraph 10.
7. Defendant Denies paragraphs 11 - 13.

COUNT I.
BREACH OF CONTRACT

Defendant Admits in part and Denies as previously answered and re-plead in paragraph 14, but denies the allegations set forth in paragraph 15.

COUNT II.
SPECIFIC PERFORMANCE

Defendant Denies in part and Admits in part, as previously answered and re-plead in paragraph 16, but denies allegations set forth in paragraph 17.

COUNT III.
QUANTUM MERUIT/UNJUST ENRICHMENT

Defendant Admits in part and Denies as previously answered and re-plead in paragraph 18. Defendant Denies all allegations set forth in paragraphs 19 - 22.

COUNT IV.
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

Defendant Denies all allegations in paragraphs 23 - 26.

COUNT V.
BREACH OF FIDUCIARY DUTY

Defendant Denies all allegations contained in paragraphs 27 - 30.

COUNT VI.
DECLARATORY JUDGMENT

Defendant Denies all allegations set forth in paragraphs 31 - 32.

INJUNCTION

Defendant Denies allegations set forth in paragraphs 33 and 34.

ATTORNEY FEES

Defendant Denies paragraph 35.

AFFIRMATIVE DEFENSES

Plaintiff fails to state a claim for which relief may be granted, I.R.C.P. 12(b)(6);

Plaintiff's allegations fail to state a claim upon which relief can be granted.

Pursuant to I.C. § 9-503 - Indispensable Evidence – Statute of Frauds

Defendant affirmatively alleges that plaintiff's cause of action claiming an interest and ownership in real property is not in writing, nor was it evidenced by a written memorandum thereof, as required, in order to be enforceable under the provisions of the

statute of frauds, I.C. § 9-503.

Rick Keane and Lisa Keane, husband and wife, individually

In paragraph 12 of the Plaintiff's Complaint and Demand for Jury Trial, the Plaintiff alleges that Richard Keane caused Keane Land Company, LLC, to execute the lease agreement[...]. The Defendants' Rick Keane and Lisa Keane actions were conducted under the businesses, a corporation and a limited liability company. Rick and Lisa Keane, husband and wife, should be dismissed as named parties.

ATTORNEY FEES

Due to this action being brought against them, the Defendants have had to employ the law firm of Knowlton & Miles, PLLC, to represent them in this matter. Defendants are entitled to costs and fees pursuant to I.C. § 12-120 and I.C. § 12-121.

DATED this 27 day of May, 2009.

KNOWLTON & MILES, PLLC

By: 

Manderson L. Miles

CERTIFICATE OF DELIVERY

I **HEREBY CERTIFY** that on this _____ day of May, 2009, I caused a true and correct copy of the foregoing **Answer to Complaint** to be:

- Hand delivered by providing a copy to Valley Messenger Service
- Mailed postage prepaid
- Certified mailed
- Faxed

to the following:

Douglas L. Mushlitz
CLARK and FEENEY
1229 Main Street
P.O. Drawer 285
Lewiston, ID 83501

Jonathon D. Hally
CLARK and FEENEY
1229 Main Street
P.O. Drawer 285
Lewiston, ID 83501

KNOWLTON & MILES, PLLC

By: 

A Member of the Firm

clh

FILED

2009 JUL 10 PM 4 46

DEPUTY CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

1 DOUGLAS L. MUSHLITZ
2 CLARK and FEENEY
3 Attorneys for Plaintiff
4 The Train Station, Suite 201
5 13th and Main Streets
6 P. O. Drawer 285
7 Lewiston, Idaho 83501
8 Telephone: (208) 743-9516
9 Idaho State Bar # 3452

7 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
8 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

8 DAVE DORION,)
9)
10 Plaintiff,)
11 vs.)
12 RICHARD KEANE and LISA KEANE,)
13 husband and wife, KEANE LAND)
14 COMPANY, LLC., an Idaho Limited)
15 Liability Company, KEANE AND CO.)
16 CONSTRUCTION, INC., an Idaho)
17 corporation, and JOHN DOES 1- 5)
18 Defendants.)

Case No. CV09-00464

**MOTION FOR TEMPORARY
RESTRAINING ORDER**

17 COMES NOW the Plaintiff, Dave Dorion, by and through his attorney of record, Douglas
18 L. Mushlitz, and pursuant to I.R.C.P. 65(b)(1), respectfully moves that a Temporary Restraining
19 Order restraining and enjoining the defendants and his agents during the pendency of this action or
20 Order restraining and enjoining the defendants and his agents during the pendency of this action or
21 until further order of this court from transferring, selling, mortgaging, or encumbering, the airplane
22 hanger which is the subject of this litigation and located on certain real property situate at the
23 Lewiston Nez Perce County Regional Airport located in the City of Lewiston, Nez Perce County,
24 State of Idaho more particularly described as:

26 MOTION 1

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Located in the Lewiston/Nez Perce County Airport in SE 1/4 of Section 18, Township 35 North, Range 5 West, Boise Meridian, and more particularly described as follows:

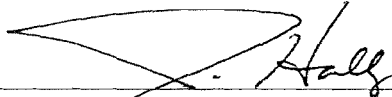
Commencing at a brass cap monument at the intersection of 5th Street and Cedar Avenue; thence North 26°47'34" West, a distance of 145.64 feet to the TRUE POINT OF BEGINNING; thence North 48° 36'25" West a distance of 90.00 feet; thence North 41°36'25" East, a distance of 90.00 feet; thence South 41°23'35" West to the True POINT OF BEGINNING, said parcel containing 22,500 square feet, more or less.

This Motion is based on the verified allegations of Plaintiff's Complaint; and the Affidavit of Dave Dorion filed herewith. Plaintiff will suffer immediate and irreparable injury, loss, or damage; and/or be denied some or all of the relief he seeks in this action if such Motion is not granted.

Plaintiff requests hearing and oral argument.

DATED this 10 day of July, 2009.

CLARK and FEENEY

By  _____
Douglas L. Mushlitz, a member of
the firm. Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of July, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Manderson Miles
Knowlton & Miles
312 17th Street
Lewiston ID 83501

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX) 7-10-09

 _____
Attorney for Plaintiff.

over

FILED

2009 JUL 10 PM 4 46

PATTY S. NEELS
CLERK OF THE DIST. COURT
Patty S. Neels
DEPUTY

DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,) Case No. CV09-00464

Plaintiff,)

vs.)

**AFFIDAVIT OF
DAVE DORION**

RICHARD KEANE and LISA KEANE,
husband and wife, KEANE LAND
COMPANY, LLC., an Idaho Limited
Liability Company, KEANE AND CO.
CONSTRUCTION, INC., an Idaho
corporation, and JOHN DOES 1- 5

Defendants.)

STATE OF IDAHO)
County of Nez Perce) ss.

I, DAVE DORION after being first duly sworn on oath, depose and say:

1. That I am the plaintiff above named

2. In a conversation with Gary Peters today, Gary told me that Rick had tried to sell the hangar to him last week (Rick called Gary three weeks ago, and then a week later, to follow up). During one of these conversations, Gary asked Defendant whether the property was involved in litigation, and that he had heard that Defendant was partners with David Dorion with respect to the triplex hangar. Defendant told him that the property was not involved in litigation, and that Gary should keep it "hush hush" that Defendant was trying to sell it. Rick said "I own it free and clear, and I can sell it." Gary declined to purchase the hangar.

AFFIDAVIT OF DAVE DORION

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3. I fear that the defendant will transfer, sell, mortgage or encumber the triplex hanger at issue in this matter.

4. The sale of said hanger would cause me to suffer substantial and possibly irreparable harm.

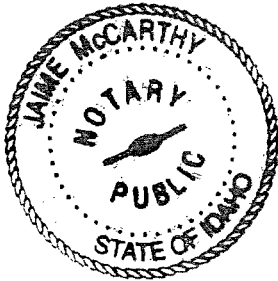
5. I am requesting that this court issue a Restraining Order, restricting and prohibiting the defendant from transferring, selling, mortgaging, encumbering, secreting, or removing any property from the triplex hanger located at the Lewiston Nez Perce County Regional Airport.

6. Further your affiant sayeth naught.

Dave Dorion

DAVE DORION

SUBSCRIBED and SWORN to before me this 9th day of July, 2009.



Jaime McCarthy

Notary Public in and for the State
of Idaho, residing at Lewiston therein.
My Commission expires: 3-20-10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of July, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Manderson Miles	<input type="checkbox"/>	U.S. Mail
Knowlton & Miles	<input checked="" type="checkbox"/>	Hand Delivered
312 17 th Street	<input type="checkbox"/>	Overnight Mail
Lewiston ID 83501	<input checked="" type="checkbox"/>	Telecopy (FAX) 7-10-09

[Signature]

Attorney for Plaintiff.

52

DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452

FILED

2009 SEP 4 PM 3 10

FACILITY CLERK
DEPUTY
[Signature]
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,

Case No. CV09-00464

Plaintiff,

SECOND AFFIDAVIT OF
DAVE DORION

vs.

RICHARD KEANE and LISA KEANE,
husband and wife, KEANE LAND
COMPANY, LLC., an Idaho Limited
Liability Company, KEANE AND CO.
CONSTRUCTION, INC., an Idaho
corporation, and JOHN DOES 1- 5

Defendants.

STATE OF IDAHO

)

County of Nez Perce

) ss.
)

I, DAVE DORION after being first duly sworn on oath, depose and say:

1. That I am the Plaintiff above named

2. In the winter of 2005-2006, I obtained the development rights from Joy Smith on the subject property at the Lewiston-Nez Perce County Airport ("Airport"). She had decided not to proceed with build a hangar on the subject property, and I was acquainted with her, because I did the remodeling on the hangar she purchased instead.

3. In the winter or spring of 2006, I met with Robin Turner, the Airport Manager. We discussed what needed to be done, which included measuring the lot, determining the size of the hangar, and sending that plan along with a letter and a form to the Federal Aviation Administration ("FAA"), all of which Robin and I did.

SECOND AFFIDAVIT OF DAVE DORION

4. I contacted Rick to see if he would be interested in partnering with me on my hangar. Rick had a contractor's license, and I had reason to believe he might be looking for a hangar. He was interested, and after a discussion of the possibilities, we decided to build a triplex hangar, sell two of the units to pay for the cost of the project, and share a third unit. Further terms that we agreed to are detailed in the Complaint.

5. Rick Keane and I visited with Robin Turner about the project, and I explained to Robin that I would be building the hangar and that Rick Keane and/or one of his businesses would take care of the business and financing end of the project.

6. I went looking for buyers. Bob Payne heard that I was looking, and we met for lunch. I asked Bob Payne to contact Rick Keane in order to complete a sale on the project.

7. Eldon Howard also learned that I was looking for buyers, and he contacted me. We also met for lunch, discussed the details of the hangar, and made a handshake deal. I then met with both Eldon Howard and Rick Keane, in order to introduce them, and so that Eldon could make arrangements for a down payment.

8. Between September and November of 2006, I did excavation and concrete for the hangar project. Rick Keane ordered the steel building kit, and I started actual construction. Beginning in January of 2007, I worked on the hangar project five or more days a week, through April of 2007. Beginning in May of 2007, I had to work on another job, I worked on the hangar project about three days a week (on the weekends, etc,), through September of 2007 (Memorial Day Weekend), at which point I was unable to continue working, because the project was out of materials.

9. During the last third of the hangar project, I supplied Rick Keane with a building materials list, for items that I needed in order to complete construction. I supplied this list three times, and at no time did Rick Keane purchase the remaining materials so that I could finish the work..

10. I submitted my hours to Rick Keane, pursuant to our agreement. From the beginning of May through the end of my work on the hangar proejct, Rick Keane did not pay me for my hours. Rick told

me that he was not able to pay me, because he was out of money and needed to obtain a payment from Eldon Howard before he could pay me

11. I supplied the hangar project with the following equipment: a Clark Forklift and a Six Yard International dump truck, which I used to complete the hangar project. This equipment was essential to the construction of the hangar project, due to the height of the building and the amount of material that had to be moved off the lot, following excavation.

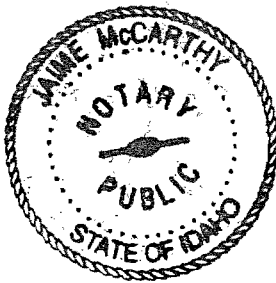
12. Toward the end of the project, Rick installed an overhead door on our shared unit of the hangar. I asked Rick why he had done that, because I thought it was weird, since we didn't have an overhead door in the plans. Rick Keane just said, "Oh, I thought you probably wanted one in there."

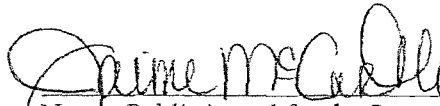
13. At one point in the Autumn of 2007, I became frustrated with the fact that I had not been paid, pursuant to our agreement, and told Rick that we needed to "settle up." Rick told me that I needed to "come to [his] office, and that we were "not settling it the way that [I wanted]." Since that conversation, I have not been paid, I have been locked out of the triplex hangar, and this litigation ensued.

14. Further your affiant sayeth naught.


DAVE DORION

SUBSCRIBED and SWORN to before me this 4th day of September, 2009.



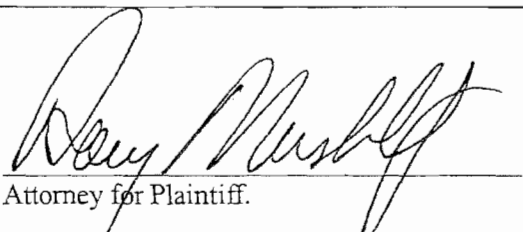

Notary Public in and for the State
of Idaho, residing at Lewiston therein.
My Commission expires: 3 2010

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of September, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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Manderson Miles	<input type="checkbox"/>	U.S. Mail
Knowlton & Miles	<input checked="" type="checkbox"/>	Hand Delivered
312 17 th Street	<input type="checkbox"/>	Overnight Mail
Lewiston ID 83501	<input type="checkbox"/>	Telecopy (FAX)



Attorney for Plaintiff.

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WCL

FILED

2009 SEP 4 PM 3 10

PATTY S. WEEKS

Patty Weeks

DEPUTY

1 DOUGLAS L. MUSHLITZ
 2 CLARK and FEENEY
 3 Attorneys for Plaintiff
 4 The Train Station, Suite 201
 5 13th and Main Streets
 6 P. O. Drawer 285
 7 Lewiston, Idaho 83501
 8 Telephone: (208)743-9516
 9 Idaho State Bar # 3452

6 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 7 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

7 DAVE DORION,) Case No. CV09-00464
 8)

9 Plaintiff,)

10 vs.)

**AFFIDAVIT OF
 ROBIN TURNER**

11 RICHARD KEANE and LISA KEANE,)
 12 husband and wife, KEANE LAND)
 13 COMPANY, LLC., an Idaho Limited)
 14 Liability Company, KEANE AND CO.)
 15 CONSTRUCTION, INC., an Idaho)
 16 corporation, and JOHN DOES 1- 5)

15 Defendants.)

17 STATE OF IDAHO)
 18) ss.
 19 County of Nez Perce)

19 I, ROBIN TURNER, after being first duly sworn on oath, depose and say:

- 20 1. I am over the age of eighteen, and competent to testify regarding the following facts.
 21 2. I am the Lewiston-Nez Perce County Airport Manager, and I handle such matters as
 22 development rights and leases on airport properties.
 23 3. There are two ways to obtain rights on lease properties at the Airport. The first is to
 24 be placed on a waiting list for land that is "development ready" (i.e. that property already has
 25

26 AFFIDAVIT OF ROBIN TURNER 1

57

1 infrastructure installed). The second is to make an offer on land that is not development-ready. That
2 offer must be accepted by the City of Lewiston, Nez Perce County and the Federal Aviation
Administration ("FAA").

3 4. In October of 2005, Joy Smith made an offer to develop some of the property that
4 is the subject of this litigation "subject property." As best I can recall, the offer included a
5 provision for her to install a waterline and hydrant to provide fire protection for the subject property
6 and use an existing taxiway (infrastructure) adjacent to the subject property, with the right to place
7 a hangar, and to receive a pro rata contribution from future developers benefitting from the
8 waterline. This offer was recommended for acceptance by the airport commission.
9


10 5. In the March 2006 timeframe, Joy Smith informed me that she was transferring her
11 development rights to Dave Dorion. Dave Dorion developed a preliminary plan for the hangar on
12 the subject property. I provided Dave with a cover letter (dated March 15, 2006, which letter is
13 attached to this Affidavit as Exhibit A) which was to be sent to the FAA along with the required
14 FAA Form 7460-1, Notice of Proposed Construction.
15

16 7. I thereafter met with both Dave Dorion and Rick Keane, together. I then learned that
17 they would be building the hangar together. My impression at that time was that Dave Dorion and
18 Rick Keane were partners on this project, but I did not ask for or obtain details about that
19 relationship at that time. My further impression was that Dave Dorion was going to do the actual
20 building of the hangar, and that Rick Keane was going to do the business and financing end of the
21 project.
22

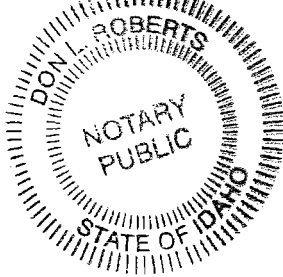
23 8. I thereafter dealt with Rick Keane on the paper work, including the lease. After
24 several iterations, Rick Keane requested that Keane Land Co. be placed on the lease document as
25 the lessor. I do not know why Keane Land Company is the only name appearing on the lease, and
26


I did not ask questions about this at the time.

9. Further your affiant sayeth naught.


ROBIN TURNER

SUBSCRIBED and SWORN to before me this 4th day of August, 2009.

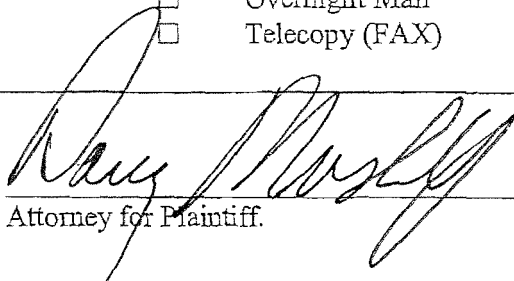



Notary Public in and for the State
of Idaho, residing at Lewiston therein.
My Commission expires: 11/6/09

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of August, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Manderson Miles	<input type="checkbox"/>	U.S. Mail
Knowlton & Miles	<input checked="" type="checkbox"/>	Hand Delivered
312 17 th Street	<input type="checkbox"/>	Overnight Mail
Lewiston ID 83501	<input type="checkbox"/>	Telecopy (FAX)


Attorney for Plaintiff.

Lewiston-Nez Perce County
REGIONAL AIRPORT

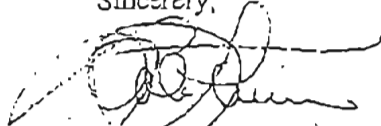
March 15, 2006

Federal Aviation Administration
NW Mountain Region
1601 Lind Ave., SW
Renton, WA 98055-4056

Dear Sirs:

The purpose of letter is to advise you that I'm aware of Mr. Dave Dorion's intent to build a hangar on this airport. It is consistent with our airport layout plan, so please process his Notice of Proposed Construction accordingly.

Sincerely,



Robin L. Turner, AAE
Airport Manager

AFFIDAVIT OF ROBIN TURNER LWS

406 Burrell Ave., Suite 301 • Lewiston, Idaho 83501-4597
(208) 746-7962 • Fax 208-798-0591 • E-mail: lwsairport@lewiston.com • www.lcairport.net

EXHIBIT A

60

Week

FILED

2009 SEP 4 PM 3 10

PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty O. Weeks
DEPUTY

DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,) Case No. CV09-00464
)
Plaintiff,)
)
vs.) **AFFIDAVIT OF**
) **JOY SMITH**

RICHARD KEANE and LISA KEANE,)
husband and wife, KEANE LAND)
COMPANY, LLC., an Idaho Limited)
Liability Company, KEANE AND CO.)
CONSTRUCTION, INC., an Idaho)
corporation, and JOHN DOES 1- 5)
)
Defendants.)
)

STATE OF IDAHO)
) ss.
County of Valley)

I, JOY SMITH, after being first duly sworn on oath, depose and say:

1. Prior to 2006, I was the lessee, with development rights at a certain lot at the
Lewiston Nez Perce County Airport, now particularly described as:

Located in the Lewiston/Nez Perce County Airport in SE 1/4 of Section 18,
Township 35 North, Range 5 West, Boise Meridian, and more particularly described
as follows:
Commencing at a brass cap monument at the intersection of 5th Street and
Cedar Avenue; thence North 26°47'34" West, a distance of 145.64 feet to the TRUE

AFFIDAVIT OF JOY SMITH 1

POINT OF BEGINNING; thence North 48° 36'25" West a distance of 90.00 feet; thence North 41°36'25" East, a distance of 90.00 feet; thence South 41°23'35" West to the True POINT OF BEGINNING, said parcel containing 22,500 square feet, more or less.

At that time, the ~~lot~~^{lot} was smaller, but the location of the lot was the same as described above.

2. In anticipation of developing this site, I had obtained survey work, and applied for and received FAA approval to build a hangar. I spent about \$1500.00 for this preliminary ground work.

3. At about this time, I hired Dave Dorion to do some unrelated remodeling work for me. Also during this time period, I decided to buy a different hangar at the Lewiston-Nez Perce County Airport, that needed some remodeling. This saved me the work, hassle and expense of developing the other lot, mentioned above.

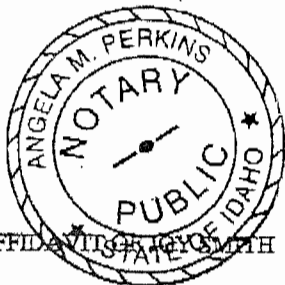
4. I transferred my leasehold and development rights to Dave Dorion after buying the other hangar. Dave Dorion offered to pay me for those rights, but I knew that he was a "working guy," and decided not to charge him for those rights.

5. I communicated to Robin Turner, Airport Manager, my intent to transfer those leasehold and development rights to Dave Dorion.

6. Further your affiant sayeth naught.

Joy I Smith
JOY SMITH

SUBSCRIBED and SWORN to before me this 2nd day of ~~August~~^{September}, 2009.



Angela M Perkins
Notary Public/in and for the State of Idaho, residing at New Meadows therein.
My Commission expires: 7/6/10

AFFIDAVIT OF JOY SMITH

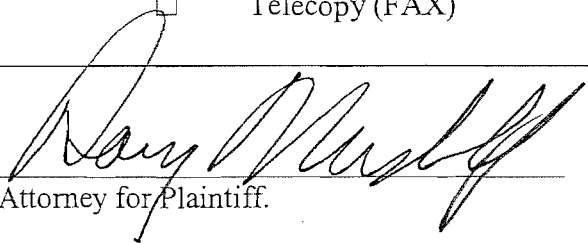
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CERTIFICATE OF SERVICE

1 I HEREBY CERTIFY that on the 14th day of August, 2009, I caused to be served a true
2 and correct copy of the foregoing document by the method indicated below, and addressed to the
3 following:

4 Manderson Miles
5 Knowlton & Miles
6 312 17th Street
7 Lewiston ID 83501

- U.S. Mail
 Hand Delivered
 Overnight Mail
 Telecopy (FAX)

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9 Attorney for Plaintiff.

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Clerk

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PATTY O. WEEKS
CLERK OF THE DIST. COURT
Patty O. Weeks
DEPUTY

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DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,) Case No. CV09-00464
)
Plaintiff,)

vs.) **AFFIDAVIT OF**
) **ELDON HOWARD**

RICHARD KEANE and LISA KEANE,)
husband and wife, KEANE LAND)
COMPANY, LLC., an Idaho Limited)
Liability Company, KEANE AND CO.)
CONSTRUCTION, INC., an Idaho)
corporation, and JOHN DOES 1- 5)
)
Defendants.)

STATE OF IDAHO)
) ss.
County of Nez Perce)

I, ELDON HOWARD, after being first duly sworn on oath, deposes and says:
1. I am over the age of eighteen, and competent to testify regarding the following matters.
2. In late March, 2006, while in Lewiston, Idaho for an unrelated matter, I learned in a

1 conversation with Dave Dorion, that he was planning to build three airplane hangars at the
2 Lewiston-Nez Perce County Airport, and in the location I was interested in buying a hangar. In that
3 discussion, I asked Mr. Dorion if I could buy one of the hangars. He agreed, and we made a
4 handshake deal for me to buy, and he to sell one unit to me.

5 3. I went back to Oregon, then came back to Lewiston on or mid April, 2006, When I got
6 into town, I contacted Mr. Dorion, and asked about the status of the hangar project. Mr. Dorion told
7 me that a Rick Keane was going to build it under his company. I met with Rick and Dave for
8 breakfast, and learned in that conversation that Mr. Dorion had secured the landlease from Joy
9 Smith, and that Mr. Dorion and Mr. Keane were joint venturers on this project.

10 4. In that conversation, and in several conversations after that day, Mr. Keane said to me,
11 "Dave and I are partners on this. We're going to build this under the umbrella of my construction
12 company. Dave is going to run the project, be the fellow on the ground, and I am going to front the
13 money for this." Mr. Keane and Mr. Dorion explained to me that one reason for putting this job
14 under Mr. Keane's construction company was because Mr. Keane was, and Mr. Dorion was not a
15 licensed general contractor.

16 5. Mr. Keane further informed me that the end goal of the construction project was to have
17 "joint ownership with Dave, from the proceeds of the other hangars."

18 6. In addition to other costs, on June 6, 2006, I entered a purchase and sale agreement with
19 Mr. Keane for \$191,000.00.

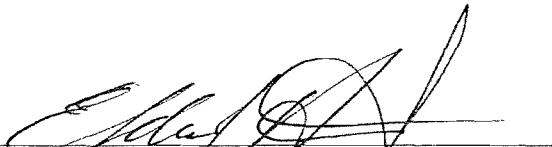
20 7. Towards completion of the project, in November, 2007, I was speaking with Mr. Keane
21 in front of the newly-constructed hangar. Mr. Dorion approached Mr. Keane, and said, "Hey, we
22 need to settle up." Mr. Keane said to Mr. Dorion, "Hey, you need to come to my office. We're not
23 settling it the way that you want." Mr. Dorion was clearly upset, and I thought that a fist fight was
24
25

going to develop, but Mr. Dorion walked away.

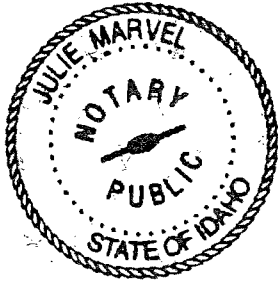
1 8. In another conversation about the apparent dispute that had developed between Mr. Keane
2 and Mr. Dorion, I was in front of my house, talking with my electricians, when Mr. Keane, who
3 stopped by, and was also having a conversation with an electrician, said to me, "Hey, I want to
4 explain what's going on with Dave Dorion." I replied, "You two need to work this out, and I don't
5 want to hear it."

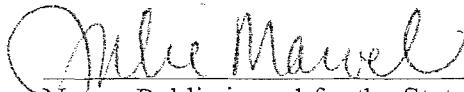
6 9. Mr. Dorion continued to work on the project, and as far as I can tell, did a great job.

7
8 10. We experienced some delays on the completion of the project, and when I refused to pay
9 until final completion, Mr. Keane filed a foreclosure action against me. That case has since settled
10 in a manner that was acceptable to me. I do not believe that any irritation I may have experienced
11 over the foreclosure action has affected my memory or recollection of the conversations that I
12 witnessed between Mr. Dorion and Mr. Keane.

13
14
15 
ELDON HOWARD

16 SUBSCRIBED and SWORN to before me this 24th day of August, 2009.



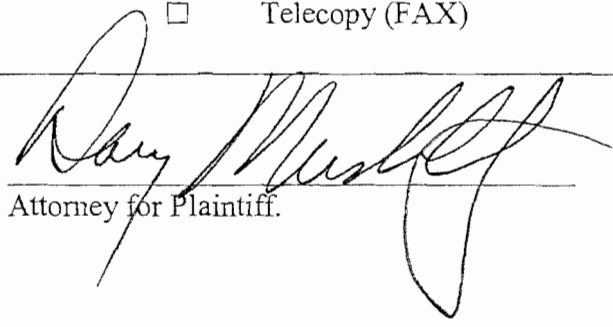

Notary Public in and for the State
of Idaho, residing at Lewiston therein.
My Commission expires: 3/22/11

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of August, 2009, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Manderson Miles	<input type="checkbox"/>	U.S. Mail
Knowlton & Miles	<input checked="" type="checkbox"/>	Hand Delivered
312 17 th Street	<input type="checkbox"/>	Overnight Mail
Lewiston ID 83501	<input type="checkbox"/>	Telecopy (FAX)



Attorney for Plaintiff.

FILED

2009 OCT 15 AM 9 35

PATTY O. WEEKS
CLERK OF THE DIST. COURT

James
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,

Plaintiff,

v.

RICHARD KEANE and LISA KEANE,
husband and wife; KEANE LAND
COMPANY, LLC., an Idaho Limited
Liability Company, KEANE AND CO.
CONSTRUCTION, INC., an Idaho
Corporation, and JOHN DOES 1-5

Defendants.

CASE NO. CV09-00464

OPINION AND ORDER
ON PLAINTIFF'S MOTION
FOR TEMPORARY
RESTRAINING ORDER

This matter is before the Court on Plaintiff's Motion for Temporary Restraining Order.

The Court heard oral arguments on this matter on September 25, 2009. Plaintiff was represented by attorney Jennifer Douglass. Defendants were represented by attorney Manderson L. Miles.

The Court, having read the motion, briefs and affidavits filed by the parties, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

PROCEDURAL BACKGROUND

Plaintiff contends he and Defendant Richard Keane entered into an agreement in February 2006 to jointly develop and construct a triplex airplane hangar on leasehold property at the Lewiston, Idaho airport. Plaintiff contends he acquired a leasehold right to certain property at the airport and, after acquiring the leasehold, entered into a joint venture with Defendant Richard Keane wherein they agreed to the following: (a) Defendant Keane would provide financing to construct a triplex airplane hangar on the leasehold acquired by Plaintiff; (b) Plaintiff would provide the labor to construct the hangar; (c) Plaintiff would receive an hourly wage for his labor; (d) upon completion, two of the hangars would be sold to recover the costs of construction; (e) Plaintiff Dorion and Defendant Keane would retain co-ownership of the third hangar, which would be constructed to provide separate access and hangar space for two airplanes. Plaintiff contends that to effectuate the joint venture, he designed the hangar to be constructed and found buyers for the two hangars that would be sold. Plaintiff contends that just before completion of the hangar, Defendant Keane failed to provide materials to finish construction and, without notice to Plaintiff, brought in a crew to complete construction on the third hangar in a manner that did not allow for storage of two airplanes. Defendant Keane then excluded Plaintiff from the hangar premises and refused to pay him for his labor and services.

On February 24, 2009, Plaintiff filed the above-entitled Complaint against Defendants asserting claims for breach of contract, specific performance, unjust enrichment, breach of the covenant of good faith and fair dealing, breach of fiduciary duty, and declaratory judgment.¹ On July 10, 2009, Plaintiff filed a Motion for Temporary Restraining Order seeking to prevent

¹ A default was entered in the matter after Defendants failed to timely file an Answer due to a miscommunication with their attorney. However, the Court granted Defendants' subsequent motion to set aside the default, allowing the case to move forward.

Defendants from selling or transferring ownership of the airplane hangar and real property leasehold that is at issue. A number of affidavits were filed by the parties along with briefing in support of each party's position. Counsel for the parties presented oral arguments to the Court relative to the motion on September 25, 2009, after which the Court took the matter under advisement.

STANDARD ON MOTION FOR RESTRAINING ORDER

Plaintiff filed his motion as one for a temporary restraining order pursuant to I.R.C.P. 65(b). However, because notice was provided to Defendants and a hearing was held, there can be no temporary restraining order. *See Rowland v. Kellogg Power & Water Co.*, 40 Idaho 216, 227, 233 P. 869 (1925). Rather, the issue must be analyzed as a motion for preliminary injunction under I.R.C.P. 65(e), which reads in relevant part:

A preliminary injunction may be granted in the following cases:

(1) When it appears by the complaint that the plaintiff is entitled to relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.

(2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.

(3) When it appears during the litigation that the defendant is doing, or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

I.R.C.P. 65(e) [in relevant part].

The Court recognizes that the granting or denying of injunctive relief is a matter of discretion vested in trial courts and that such discretion should not be abused. *Harris v. Cassia County*, 106 Idaho 513, 517, 681 P.2d 988 (1984).

ANALYSIS

(A) TEMPORARY INJUNCTION

Defendants contend Plaintiff must show by clear and convincing evidence that he holds an ownership interest in the leasehold and hangar before he can be granted a preliminary injunction. The burden as asserted by Defendants may be applicable to proving the merits of Plaintiff's claims, but it is not the burden required for a preliminary injunction under I.R.C.P. 65(e). "It has been held that questions of title to real estate will not be passed upon although rights will be protected *pendent lite* even though the title is doubtful." *Rowland v. Kellogg Power & Water Co.*, 40 Idaho 216, 225, 233 P. 869 (1925). In the instant matter, Plaintiff asserts in his Complaint that he will be irreparably harmed if Defendants are allowed to sell or transfer ownership of the hangar and leasehold, as it is unique property that cannot be duplicated on the open market.

I.R.C.P. 65(e) is written in disjoined subparts that provide three separate and distinct grounds on which a preliminary injunction may be granted. Applicable in the instant case based on Plaintiff's Complaint is I.R.C.P. 65(e)(2), which provides for the grant of a preliminary injunction "when it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff." When a preliminary injunction is sought under Rule 65(e)(2), the burden on the plaintiff is to show "great or irreparable injury". Rule 65(e)(2) does not require a plaintiff to show he is likely to prevail on the merits nor is the burden one of clear and convincing evidence, as asserted by Defendants.

The property at issue is unique property, making the analysis somewhat more complicated. The real property on which the triplex hangar is built is not available for private

ownership, as it is owned by the City of Lewiston and Nez Perce County as part of the Lewiston-Nez Perce County Airport. However, specific portions of the airport's property may be leased and development rights may be obtained upon approval by the City of Lewiston, Nez Perce County and the Federal Aviation Administration ("FAA").

Robin Turner, the manager at the airport, handles leases and development rights on the airport property. Turner filed an affidavit stating that in October 2005, Joy Smith made an offer to the airport commission, which they approved, to develop the land where the hangar at issue was later constructed. In March 2006, Turner was informed by Smith that she was transferring her lease and development rights to Dave Dorion. A preliminary plan for a hangar was then developed by Dorion and Turner provided him with a cover letter to send to the FAA along with his preliminary plan. Some time after that, Turner met with Dorion and Keane and learned they would be building the hangar together. It was Turner's understanding from her conversation with Dorion and Keane that Keane would be handling the business and financial portion of the project and Dorion would do the actual building of the hangar. Turner subsequently dealt with Keane on the lease, who requested Keane Land Company be listed as the lessor.

Joy Smith filed an affidavit in which she states she held the leasehold and development rights to the airport property now at issue until 2006, when she transferred the rights to Dave Dorion. Finally, an affidavit was filed by Eldon Howard in which he states he learned Dave Dorion was building an airplane hangar at the Lewiston-Nez Perce County Airport. Howard asked Dorion if he could purchase one of the hangars and Dorion agreed to the sale.

Approximately a month later, Howard met with Dorion and Keane for breakfast where he learned Dorion had secured the leasehold and development rights from Joy Smith and that Dorion and Keane would be constructing the hangar as a joint venture. Howard states further in

his affidavit that during subsequent conversations with Rick Keane, Keane referred to Dave Dorion as his partner in the hangar project, stating Dorion was acting as the man on the ground while Keane, through his construction company, was acting as the licensed general contractor and financial backer for the project.

Defendants contend Plaintiff has provided no evidence that he holds or is entitled to any ownership rights in the hangar or the leasehold, as he has provided no written documents supporting his claim. Defendants argue that the failure of Plaintiff to provide clear and convincing evidence of an ownership right in the hangar or leasehold, especially in light of Keane Construction Company being listed as the lessor, along with Plaintiff's failure to provide any financing for the project, should result in Plaintiff's preliminary injunction being denied. Plaintiff contends in his Complaint and in oral argument that Keane Construction Company is named as lessor as a result of Rick Keane's unlawful acts and, because of those unlawful acts, Plaintiff will suffer irreparable harm if the hangar and leasehold rights are transferred by sale or other means prior to Plaintiff having an opportunity to prove the merits of his claims.

The Court finds that an agreement to enter into a joint venture may be oral in nature and need not be reduced to writing to be valid and enforceable. *See Trees v. Kersey*, 138 Idaho 3, 56 P.3d 765 (2002); *Rowley v. Fuhrman*, 133 Idaho 105, 982 P.2d 940 (1999); *Thorn Creek Cattle Association, Inc. v. Bonz*, 122 Idaho 42, 830 P.2d 1180 (1992); *C.H. Leavell & Co. v. Grafe & Associates, Inc.*, 90 Idaho 502, 414 P.2d 873 (1966); *Harvey v. Brown*, 80 Idaho 379, 330 P.2d 982 (1958). At this juncture in the proceedings, the question the Court must answer is not whether Plaintiff has presented sufficient evidence to prove his claims, but whether Plaintiff has shown he will be irreparably harmed if Defendant Keane is allowed to sell or otherwise transfer ownership of the hangar and leasehold during the pending litigation. The Court finds the

Plaintiff has met his burden. The property is of a unique character not available on the open market. If Defendant Keane is allowed to sell or otherwise transfer ownership of the property and Plaintiff later prevails on the merits of his claims, Plaintiff would be unable to recover the ownership right he has in the property.

The Court, having found a preliminary injunction appropriate in the instant matter, nevertheless recognizes that Plaintiff Dorion and Defendant Keane have both expressed a desire to sell the remaining hangar. Neither party should, however, be allowed to unilaterally divest the other of the property given that ownership remains in question. Therefore, the parties may continue to seek a buyer for the property but any sale must have prior approval from the Court.

(B) BOND

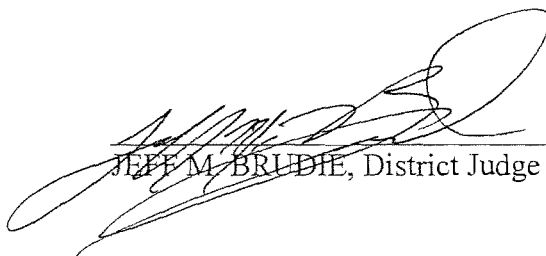
Defendants request the Court require Plaintiff to submit a surety bond pursuant to I.R.C.P. 65(c) in the event the Court enters a preliminary injunction. Rule 65(c) provides for a security bond in an amount the Court deems proper for the payment of costs, reasonable attorney's fees and damages for any wrongful restraint. In the instant matter, Defendant Keane will suffer no damages as a result of the grant of a preliminary injunction. There is no dispute that Defendant Keane holds at minimum co-ownership in the hangar. Under the injunction, Defendant Keane's desire to sell the hangar will not be thwarted, but will simply be subject to approval by the Court. Therefore, the surety bond need only cover costs and attorney's fees that may be reasonably incurred should Defendant Keane be found to have been wrongfully enjoined or restrained. The Court finds a reasonable sum for bond to be \$10,000.00.

ORDER

Plaintiff's Motion for Preliminary Injunction is hereby conditionally GRANTED.
Defendant may continue to seek a buyer for the property. However, no purchase agreement may be entered into without prior approval of the Court.

Plaintiff must submit to the Court a surety bond in the amount of \$10,000.00.

Dated this 15 day of October 2009.



JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION & ORDER was:

hand delivered via court basket, or *Messenger Service*

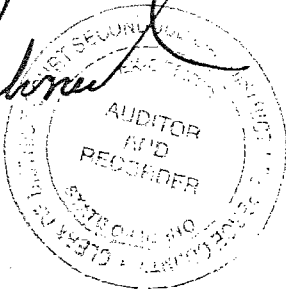
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 15th day of October 2009, to:

Douglas L. Mushlitz
PO Drawer 285
Lewiston, ID 83501

Manderson Miles
312 17th St
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: *[Signature]*
Deputy



FILED

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PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
Patty O. Weeks
DEPUTY

DOUGLAS L. MUSHLITZ
JENNIFER B. DOUGLASS
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,) Case No. CV09-00464
)
Plaintiff,)

vs.) **NOTICE OF POSTING**
) **BOND**
)

RICHARD KEANE and LISA KEANE,)
husband and wife, KEANE LAND)
COMPANY, LLC., an Idaho Limited)
Liability Company, KEANE AND CO.)
CONSTRUCTION, INC., an Idaho)
corporation, and JOHN DOES 1- 5)
)
Defendants.)

COMES NOW, the undersigned attorney of record, and hereby represents that on this date, she did deposit with the Nez Perce County Court Clerk, an Official Check, drawn upon Potlatch No. 1 Federal Credit Union, in the amount of Ten Thousand Dollars (\$10,000.00), payable to the order of Nez Perce County, and referencing David R. Dorion, as bond, pursuant to the Opinion and Order entered in this matter on October 15, 2009. A true and correct copy of that check, along with a true and correct copy of the Receipt, received from the Nez Perce County Clerk, is attached to this Notice and incorporated by reference.

DATED this 5th day of January, 2010.

CLARK and FEENEY

By Jennifer B. Douglass
Jennifer B. Douglass an associate of
the firm. Attorneys for Plaintiff.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of January, 2010, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Manderson Miles
Knowlton & Miles
312 17th Street
Lewiston ID 83501

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)

Jennifer B. Douglass
Attorney for Plaintiff.

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Second Judicial District Court - Nez Perce County

NO. 0000177

Receipt

Received of: Potlatch Cr. Union/Clark & Feeney

\$ 10000.00

Ten Thousand and 00/100 Dollars

Case: CV-2009-0000464

Plaintiff: Dave Dorion vs. R & L Developments LLC, etal.

Cash bond: 10000.00

Check: 581892 Bank: Potlatch Cr. Union
Payment Method: Check
Amount Tendered: 10000.00


Patty O. Weeks, Clerk Of The District Court

By: _____
Deputy Clerk

NOTICE OF POSTING BOND

Clerk: PAM

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 **POTLATCH No 1**
FEDERAL CREDIT UNION

"Your Community Credit Union"
P.O. BOX 897 • 654 SOUTHWAY • LEWISTON, ID 83501-0897

Ref: DAVID R. DORION

Official Check

NO. 581892

ISSUED BY: MONEYGRAM PAYMENT SYSTEMS, INC.
P.O. BOX 9476, MINNEAPOLIS, MN 55490

DRAWEE: FIRST REGIONAL BANK, LOS ANGELES, CA

Date: 11 DEC 09

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NEZ PERCE COUNTY *****

\$10,000.00

TEN THOUSAND DOLLARS ONLY

NEZ PERCE COUNTY

DRAWER: POTLATCH FEDERAL CREDIT UNION

Chris Loreth

OFFICIAL SIGNATURE

⑈ 581892⑈ ⑆ 122037760⑆ 0160011855985⑈ 99

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CLERK OF DISTRICT COURT
Handwritten signature
DEPUTY

Manderson L. Miles, ISB No.: 1422
KNOWLTON & MILES, PLLC
312 Seventeenth Street
Post Office Drawer 717
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Facsimile: (208) 746-0118

Attorney for Defendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,	)	Case No.: CV09-00464
)	
Plaintiff,)	
)	
v.	)	MOTION TO WITHDRAW
)	
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC, an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC, an Idaho)	
Corporation, and JOHN DOES 1-5,)	
)	
Defendants.)	
)	

COMES NOW, Manderson L. Miles, of the law firm of Knowlton & Miles, PLLC, and hereby moves the Court, pursuant to Rule 11(b)(2) of the Idaho Rules of Civil Procedure to permit Manderson L. Miles to withdraw as attorney for the Defendants in the above-entitled action.

81

This motion is made and based upon the grounds that the defendants, Richard Keane and Lisa Keane, Keane Land Company, LLC, and Keane and Co. Construction, Inc., and have had a breakdown in attorney client relationship that cannot be reconciled, as evidenced in the enclosed Affidavit.

DATED this 27th day of July 2010.

KNOWLTON & MILES, PLLC

By: 

Manderson L. Miles

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of July 2010, I caused a true and correct copy of the foregoing **Motion to Withdraw** to be:

- Hand delivered by providing a copy to Valley Messenger Service
- Mailed postage prepaid
- Certified mailed
- Faxed

to the following:

Douglas L. Mushlitz
1229 Main Street
Lewiston, ID 83501

KNOWLTON & MILES, PLLC

By: 

A Member of the Firm

FILED

2010 JUL 27 PM 4 05

PATRY O. ...
CLERK OF THE ...
[Signature]
DEPUTY

Manderson L. Miles, ISB No.: 1422
KNOWLTON & MILES, PLLC
312 Seventeenth Street
Post Office Drawer 717
Lewiston, Idaho 83501
Telephone: (208) 746-0103
Facsimile: (208) 746-0118

Attorney for Defendants

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)
)
Plaintiff,)
)
v.)
)
RICHARD KEANE and LISA KEANE,)
husband and wife, KEANE LAND)
COMPANY, LLC, an Idaho Limited)
Liability Company, KEANE AND CO.)
CONSTRUCTION, INC, an Idaho)
Corporation, and JOHN DOES 1-5,)
)
Defendants.)
_____)

Case No.: CV09-00464

AFFIDAVIT IN SUPPORT OF
MOTION TO WITHDRAW

STATE OF IDAHO)
 : ss.
County of Nez Perce)

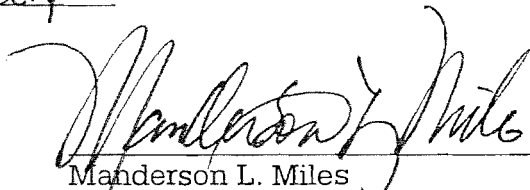
MANDERSON L. MILES, being first duly sworn, upon oath, deposes and says:

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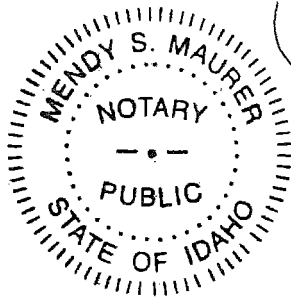
1. I am the attorney for the defendants, Richard Keane and Lisa Keane, Keane Land Company, LLC, and Keane and Co. Construction, Inc., in the above-referenced matter.
2. The defendants and I have not come to an agreement of how to settle this matter; or to pay for trial costs, which has caused a breakdown in attorney-client relationship.
3. Based on the breakdown in our attorney client relationship, I feel I am unable to properly represent my client in this matter and request the court grant my motion to withdraw.

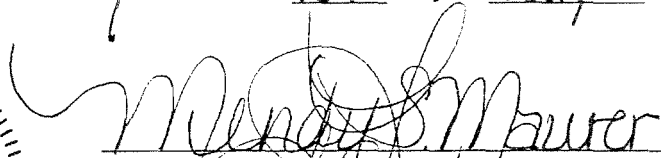
FURTHER, YOUR AFFIANT SAITH NAUGHT.

DATED this 27th day of July 2010.


Manderson L. Miles

SUBSCRIBED and SWORN TO before me this 27th day of July 2010.




NOTARY PUBLIC for the State of Idaho
Residing at Garfield, therein.
My Commission Expires: 04/01/14

FILED
 2010 DEC 29 PM 3 03
 PATTY C. HENNING
 CLERK OF THE DIST. COURT
 DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)
)
 Plaintiff,)
)
 v.)
)
 RICHARD KEANE and LISA KEANE,)
 husband and wife; KEANE LAND)
 COMPANY, LLC., an Idaho Limited)
 Liability Company, KEANE AND CO.)
 CONSTRUCTION, INC., an Idaho)
 Corporation, and JOHN DOES 1-5)
)
 Defendants.)
)

CASE NO. CV09-00464
 OPINION AND ORDER
 ON DEFENDANTS' MOTION
 TO SET ASIDE DEFAULT
 AND PLAINTIFF'S MOTION
 FOR ENTRY OF DEFAULT
 JUDGMENT

This matter is before the Court on Defendants' Motion to Set Aside Default and Plaintiff's Motion for Entry of Judgment. The Court heard oral arguments on the matters on November 18, 2010. Plaintiff was represented by attorney Douglas L. Mushlitz. Defendants were represented by Todd S. Richardson. The Court, having read the motions, affidavits and briefs of the parties, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

FACTUAL AND PROCEDURAL BACKGROUND

Plaintiff filed the above-entitled Complaint on February 24, 2009. Defendant Lisa Keane, wife of Defendant Richard Keane and the registered agent for Keane Land Company, LLC and Keane and Co. Construction, Inc., was personally served for each of the named Defendants on March 5, 2009. On March 24, 2009, when no notice of appearance or Answer had been filed, Plaintiff filed a Motion for Entry of Default, which was entered by the Court on March 27, 2009.

On April 22, 2009, nearly one month after default had been entered, a Notice of Appearance and Motion to Set Aside Default was filed by Defendants. The Motion to Set Aside was set for hearing and, after hearing arguments on the Motion, on May 21, 2009 the Court entered an Order setting aside the Order of Default.

On May 27, 2009 Defendants filed an Answer. In July 2009, Plaintiff filed a motion for a temporary restraining order and the parties filed briefs and affidavits in support and in opposition to the motion. On October 15, 2009, the Court entered an Order conditionally granting Plaintiff's motion for a temporary restraining order and requiring Plaintiff to submit a \$10,000.00 surety bond in the matter.

Plaintiff submitted the ordered security bond and the matter was set for trial to commence May 10, 2010. However, on February 8, 2010 an Order Vacating Trial was entered by the Court and on March 8, 2010 the Court entered an Order Scheduling Mediation. On July 27, 2010, counsel for Defendant Keane filed a Motion to Withdraw. Plaintiff filed a notice of non-opposition to the motion and, on August 5, 2010 an Order Permitting Leave to Withdraw was entered by the Court.¹

¹ On August 10, 2010, Proof of Service was filed in the matter, stating that on August 9, 2010, Richard Keane was personally served with the Order Permitting Leave to Withdraw, service being made on Richard Keane in his personal capacity as Defendant, for his wife Lisa Keane, and as agent for Keane Land Company, LLC and Keane and Co. Construction, Inc.

On August 30, 2010, Defendant's current counsel phoned counsel for Plaintiff and informed him Defendant Keane had contacted him earlier in the day and that Keane 'might' retain him as counsel. The currently retained attorneys for the parties, however, have different memories of the substance of the conversation. Noting that the deadline for Defendant to file a notice of appearance in the case was the next day, Defendant's yet un-retained counsel requested Plaintiff delay filing a motion for default until Defendant Keane decided whether or not to retain him. Plaintiff's counsel asserts Defendant's counsel stated he would contact Plaintiff's counsel within twenty-four (24) hours and let him know if he had, or had not, been retained. Defendant's counsel informed the Court he had no memory of telling Plaintiff's counsel he would contact him in twenty-four (24) hours but instead believed Plaintiff's counsel would wait 'a reasonable' amount of time before filing for default. Defendant's current counsel concedes: (1) there was no agreement that Plaintiff's counsel would contact him before seeking a default and, (2) Defendant Keane delayed retaining him until well after the default was entered and, as a result, he did not contact Plaintiff's counsel again until mid September.

On September 1, 2010, approximately one month after counsel for Defendants withdrew from the case, and without any notice of appearance filed by new counsel, Plaintiff again filed a Motion for Entry of Default. On September 8, 2010, an Entry of Default was ordered by the Court. On September 17, 2010, approximately ten days after Default was entered, Defendants' current counsel filed a Notice of Appearance and Motion to Set Aside Default. On October 14, 2010, Plaintiff filed an Objection to Defendant's Motion to Set Aside and filed a Motion for Entry of Judgment.

STANDARD ON MOTION TO SET ASIDE DEFAULT

The decision to grant or deny a motion to set aside a default is within the discretion of the trial court and will not be disturbed absent a finding of an abuse of the court's discretion. *Bach v. Miller*, 148 Idaho 549, 552, 224 P.3d 1138 (2010). A trial court acts within its discretion if: (1) the court correctly understands the issue to be one of discretion; (2) the court acts within the outer bounds of its discretion; and (3) the court reaches its decision on the motion through the exercise of reason. *Id.* The legal standard for a motion to set aside a default or default judgment under I.R.C.P. 55(c) is either "for good cause shown" or the grounds found in I.R.C.P. 60(b), which allows default judgment to be set aside for, among other things, mistake, inadvertence, or excusable neglect. *Id.* If there has been an entry of default, but no entry of a default judgment, then I.R.C.P. 55(c) is the applicable standard and requires a showing of good cause. *McFarland v. Curtis*, 123 Idaho 931, 935, 854 P.2d 274 (Ct.App.1993). If a default judgment has been entered, then the party seeking to have a default judgment set aside must meet the standards found in I.R.C.P. 60(b). *Id.*

ANALYSIS

In the instant matter, there has been no entry of default judgment. Therefore, Defendant must show good cause and a meritorious defense in order to have this second entry of default set aside. "A defaulted party may petition the court to set aside an entry of default for good cause shown. Idaho R. Civ. P. 55(c). One of the requirements of good cause is the showing of a meritorious defense." *Bach v. Miller*, 148 Idaho 549, 552-553, 224 P.3d 1138 (2010)(cites omitted).

This is not the first time Defendant has sought to have default set aside in this matter. When the Court set aside the default in 2009, it found Defendant's affidavit was weak at best in presenting a meritorious defense. The affidavit filed in support of his current motion to set aside offers no additional facts that would allow the Court to find Defendant has shown a meritorious defense. However, even if the Court were to find Defendant has offered sufficient facts so as to have presented a meritorious defense, the Court is unable to find Defendant has shown good cause to set aside the second Entry of Default.

In 2009, Defendant presented as good cause for setting aside the entry of default his belief that he had retained counsel to represent him but, because of a miscommunication, he had not retained counsel and only discovered the problem after default had been entered. Now, some sixteen (16) months later Defendant Keane seeks to have a second Entry of Default set aside, despite acknowledging his failure to timely retain new counsel as required by the Court's Order, but asserting, through his new counsel, that he had obtained an additional indefinite extension of time in which to hire an attorney.

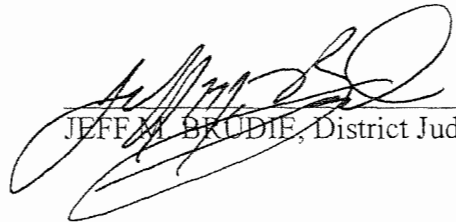
The Court finds Defendant Keane has failed to show good cause to set aside the current Entry of Default. While Defendant Keane may not have understood the need to timely address the lawsuit in the beginning, it should have been blatantly apparent after the first default was entered. Instead, Defendant simply neglected the matter, not once but twice, with the consequence being entry of default. Defendant Keane's excuse was plausible once, but not twice. The lawsuit has been pending for nearly two years, during which time Plaintiff has made every effort to prosecute the matter while Defendant has failed to take the matter seriously and has chosen instead to neglect the lawsuit, addressing it only after defaults have been entered.

ORDER

Defendants' Motion to Set Aside Default is hereby DENIED.

Plaintiff's Motion for Entry of Default Judgment is hereby GRANTED. Plaintiff shall submit to the Court an Entry of Default Judgment for the Court's signature.

Dated this 29 day of December 2010.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing OPINION AND ORDER was:

hand delivered via court basket, or *Messenger Service*

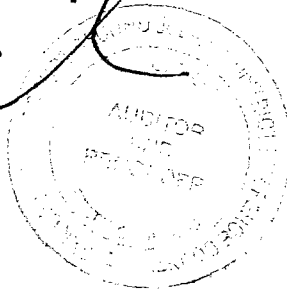
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 29th day of December, 2010, to:

Douglas L. Mushlitz
PO Drawer 285
Lewiston, ID 83501

Todd Richardson
604 6th St
Clarkston, WA 99403

PATTY O. WEEKS, CLERK

By *[Signature]*
Deputy



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DOUGLAS L. MUSHLITZ
CLARK and FEENEY
Attorneys for Plaintiff
The Train Station, Suite 201
13th and Main Streets
P. O. Drawer 285
Lewiston, Idaho 83501
Telephone: (208)743-9516
Idaho State Bar # 3452

FILED
2011 JAN 14 AM 7 08
CLERK OF DISTRICT COURT
James [Signature]

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,) Case No. CV09-00464
)
)
Plaintiff,)
)
vs.) **JUDGMENT**
)
)
RICHARD KEANE and LISA KEANE,)
)
husband and wife, KEANE LAND)
COMPANY, LLC., an Idaho Limited)
Liability Company, KEANE AND CO.)
CONSTRUCTION, INC., an Idaho)
corporation, and JOHN DOES 1- 5)
)
Defendants.)

This Court having previously entered an Entry of Default against the above named Defedants on September 8, 2010; the Defendants having then subsequently filed herein a Motion to Set Aside Default; the Plaintiff having then thereafter filed a Motion for Entry of Judgment; said motions having come on before this Court for hearing and argument, and the Court having taken the matter under advisement; the Court having entered herein on December 29, 2010, its Opinion and Order on Defendant's Motion to Set Aside Default and Plaintiff's Motion for Entry of Judgment; by its said Order this Court having denied Defendants' Motion to Set Aside Default, and having granted Plaintiff's Motion for Entry of Judgment; and good cause appearing therefore;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, DECLARED AND DECREED
as follows:

JUDGMENT

1. Declaratory Judgment. Plaintiff Dave Dorion is, and is hereby declared to be, a lawful one-half (1/2) owner and tenant in common with Defendants Richard A. Keane, Lisa Keane, and/or R&L Developments, LLC, and/or Keane and Co. Construction, an Idaho Corporation, in the following described real and personal property:

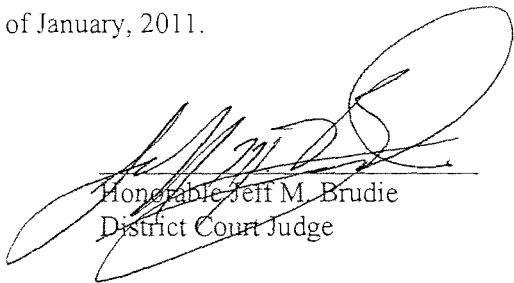
The Triplex Airplane Hangar building located at the Lewiston-Nez Perce County Regional Airport, at 406 Burrell Avenue, Lewiston, Nez Perce County, Idaho, Building E28, Unit C, and the leasehold interest in and to the real property upon which such Hangar is located, more particularly described as follows:

Located in the Lewiston/Nez Perce County Airport in SE 1/4 of Section 18, Township 35 North, Range 5 West, Boise Meridian, and more particularly described as follows:

Commencing at a brass cap monument at the intersection of 5th Street and Cedar Avenue; thence North 26°47'34" West, a distance of 145.64 feet to the TRUE POINT OF BEGINNING; thence North 48° 36'25" West a distance of 90.00 feet; thence North 41°36'25" East, a distance of 90.00 feet; thence South 41°23'35" West to the True POINT OF BEGINNING, said parcel containing 22,500 square feet, more or less.

2. Monday Judgment. Plaintiff Dave Dorion is hereby awarded a Judgment against the Defendants Richard A. Keane, Lisa A. Keane, R& L Developments, LLC, and Keane and Co. Construction, Inc., in the amount of Ten Thousand, Two Hundred and Twenty Dollars (\$10,220.00), together with interest at the lawful rate from the date hereof, until paid.

DATED this 13 day of January, 2011.


Honorable Jeff M. Brudie
District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of January, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

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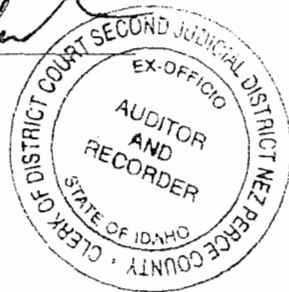
DOUGLAS L. MUSHLITZ
CLARK AND FEENEY
P O DRAWER 285
LEWISTON ID 83501

- U.S. Mail
- Hand Delivered *Messenger Service*
- Overnight Mail
- Telecopy (FAX)

TODD RICHARDSON
ATTORNEY AT LAW
604 6TH STREET
CLARKSTON WA 99403

- U.S. Mail
- Hand Delivered *Messenger Service*
- Overnight Mail
- Telecopy (FAX)

[Handwritten Signature]
 Clerk/Deputy



JUDGMENT

TODD S. RICHARDSON, ISBA#5831
LAW OFFICES OF TODD S. RICHARDSON, PLLC
604 Sixth Street
Clarkston, Washington 99403
(509) 758-3397, phone
(509) 758-3399, fax

Attorney for Defendant

FILED

2011 FEB 4 PM 4 34

PATTY O. WELLS
CLERK OF THE DIST. COURT
Patty Wells
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)

Plaintiff)

vs)

RICHARD KEANE and LISA KEANE,)

husband and wife, KEANE LAND)

COMPANY,LLC, an Idaho Limited Liability)

Company, KEANE AND CO.)

CONSTRUCTION, INC., an Idaho)

corporation, and JOHN DOES 1-5,)

Defendants.)

Case No. CV09-00464

NOTICE OF APPEAL

TO: PLAINTIFF, DAVE DORION, and
DOUGLAS L. MUSHLITZ, his attorney,

TO: CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, Richard Keane and Lisa Keane, Keane Land Company, LLC, and Keane and Co. Construction, Inc., appeal against the above named Plaintiff to the Idaho

NOTICE OF APPEAL

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Supreme Court from the final judgment, entered in the above entitled action on the 14th day of January, 2011, the Honorable Judge Brudie presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or order described in paragraph 1 above are appealable orders under and pursuant to Rule 11 (c)(1) I.A.R. and Rule 11 (c)(8) I.A.R.

3. The issues on appeal are as follows:

All issues of fact and law, including:

a) Whether the Court erred in refusing to set aside default and in granting default judgment..

4 (a) A reporter's transcript is requested. The preliminary hearing transcript has previously been prepared.

4 (b) The appellant requests the preparation of the entire reporter's standard transcript as defined in Rule 25(a), I.A.R..

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

a) All pleadings, motions, affidavits, and court records from 9/1/10 to 1/1/11.

6. I certify:

a) That a copy of this notice of appeal has been served on the reporter.

(b)(1) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript

(b)(2) That the appellants are exempt from paying the estimated transcript fee because they are needy persons and qualify for the transcript at public expense.

(c)(1) That the estimated fee for preparation of the clerk's or agency's record has been paid.

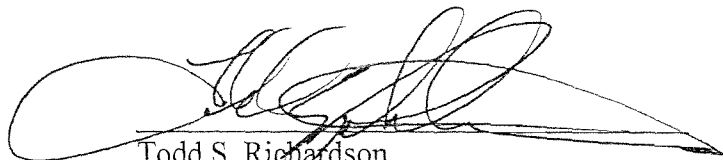
(c)(2) That the appellants are exempt from paying the estimated fee for the preparation of the record because they are needy persons and qualify for this at public expense.

(d)(1) That the appellate filing fee has been paid.

(d)(2) That the appellants are exempt from paying the appellate filing fee because pursuant to Rule 23(8), I.A.R. there is no fee.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED THIS 4 day of February, 2011.



Todd S. Richardson
Attorney for Appellants

Certificate of Delivery

I hereby certify that a true and correct copy of the foregoing order was delivered to the following, via messenger service:

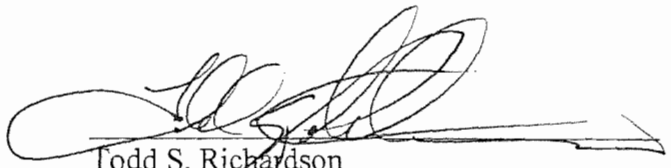
Douglas L. Mushlitz
Attorney at Law
Law Offices of Clark & Feeney
The Train Station, Suite 201
13th and Main Street
Lewiston, ID 83501

Linda Carlton
Court Reporter
c/o Nez Perce County District Court
Lewiston, ID 83501

and that a true and correct copy of the foregoing was placed in the U.S. Mail, postage pre-paid, to:

Lawrence Wasden
Attorney General
Room 210
State Capitol
Boise, Idaho 83720-0010

on this 4 day of February, 2011.


Todd S. Richardson
Attorney for Appellants

TODD S. RICHARDSON, ISBA#5831
LAW OFFICES OF TODD S. RICHARDSON, PLLC
604 Sixth Street
Clarkston, Washington 99403
(509) 758-3397, phone
(509) 758-3399, fax

Attorney for Defendant

FILED

2011 MAR 1 AM 10 08

PATTY O. WELLS
CLERK OF THE DISTRICT COURT
Patty O. Wells
DEPUTY

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)
)
Plaintiff)

Case No. CV09-00464

vs)

RICHARD KEANE and LISA KEANE,)
husband and wife, KEANE LAND)
COMPANY, LLC, an Idaho Limited Liability)
Company, KEANE AND CO.)
CONSTRUCTION, INC., an Idaho)
corporation, and JOHN DOES 1-5,)
)
Defendants.)

AMENDED
NOTICE OF APPEAL

TO: PLAINTIFF, DAVE DORION, and
DOUGLAS L. MUSHLITZ, his attorney,

TO: CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named appellants, Richard Keane and Lisa Keane, Keane Land Company, LLC,
and Keane and Co. Construction, Inc., appeal against the above named Plaintiff to the Idaho

AMENDED
NOTICE OF APPEAL

Supreme Court from the final judgment, entered in the above entitled action on the 14th day of January, 2011, the Honorable Judge Brudie presiding.

2. That the party has a right to appeal to the Idaho Supreme Court, and the judgment or order described in paragraph 1 above are appealable orders under and pursuant to Rule 11 (c)(1) I.A.R. and Rule 11 (c)(8) I.A.R.

3. The issues on appeal are as follows:

All issues of fact and law, including:

- a) Whether the Court erred in refusing to set aside default and in granting default judgment.

4. The appellants request the preparation of the following portions of the reporter's transcript in electronic format : The entire reporter's standard transcript of the motion hearing, held in this matter on November 18, 2010, as defined in Rule 25(a), I.A.R.

5. The appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.:

- a) All pleadings, motions, affidavits, and court records from 9/1/10 to 1/1/11.

6. I certify:

a) That a copy of this notice of appeal has been served on the reporter.

(b)(1) That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript

(b)(2) That the appellants are exempt from paying the estimated transcript fee because they are needy persons and qualify for the transcript at public expense.

(c)(1) That the estimated fee for preparation of the clerk's or agency's record has been paid.

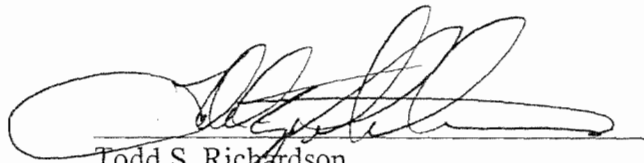
(c)(2) That the appellants are exempt from paying the estimated fee for the preparation of the record because they are needy persons and qualify for this at public expense.

(d)(1) That the appellate filing fee has been paid.

(d)(2) That the appellants are exempt from paying the appellate filing fee because pursuant to Rule 23(8), I.A.R. there is no fee.

(e) That service has been made upon all parties required to be served pursuant to Rule 20 and the attorney general of Idaho pursuant to Section 67-1401(1), Idaho Code.

DATED THIS 1 day of March, 2011.



Todd S. Richardson
Attorney for Appellants

Certificate of Delivery

I hereby certify that a true and correct copy of the foregoing order was delivered to the following, via messenger service:

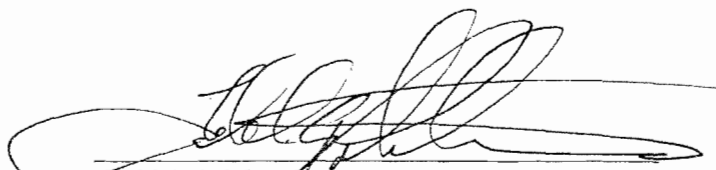
Douglas L. Mushlitz
Attorney at Law
Law Offices of Clark & Feeney
The Train Station, Suite 201
13th and Main Street
Lewiston, ID 83501

Linda Carlton
Court Reporter
c/o Nez Perce County District Court
Lewiston, ID 83501

and that a true and correct copy of the foregoing was placed in the U.S. Mail, postage pre-paid, to:

Lawrence Wasden
Attorney General
Room 210
State Capitol
Boise, Idaho 83720-0010

on this 1 day of March, 2011.



Todd S. Richardson
Attorney for Appellants

FILED

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PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
[Signature]
DEPUTY

1
2 DOUGLAS L. MUSHLITZ
3 CLARK and FEENEY
4 Attorneys for Plaintiff
5 P. O. Drawer 285
6 Lewiston, Idaho 83501
7 Telephone: (208) 743-9516
8 dln@clarkandfeeney.com
9 Idaho State Bar # 3452

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12 IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE
13 STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

14 DAVE DORION,)
15)
16 Plaintiff/Respondent,)
17)
18 vs.)
19)
20 RICHARD KEANE and LISA KEANE,)
21 husband and wife, KEANE LAND)
22 COMPANY, LLC., an Idaho Limited)
23 Liability Company, KEANE AND CO.)
24 CONSTRUCTION, INC., an Idaho)
25 corporation, and JOHN DOES 1- 5)
26 Defendants/Appellants.)

Case No. CV09-00464

**REQUEST FOR ADDITIONAL
DOCUMENTS TO BE ADDED
TO THE CLERK'S RECORD**

TO: THE ABOVE NAMED APPELLANTS, AND THE APPELLANT'S ATTORNEY, AND THE
REPORTER AND CLERK OF THE ABOVE ENTITLED COURT:

NOTICE IS HEREBY GIVEN, that the Respondent in the above-entitled proceeding hereby
requests pursuant to Rule 19, I.A.R., the inclusion of the following material in the reporter's
transcript, and the clerk's record, in addition to that required to be included by the I.A.R. and the

REQUEST FOR ADDITIONAL DOCUMENTS
TO BE ADDED TO THE CLERK'S RECORD 1

notice of appeal. Any additional transcript is to be provided in

hard copy

electronic format

both

1. Clerk's Record, as follows:

03/24/2009 Motion for Entry of Default
Affidavit of Non-Military Service
Affidavit for Default
Application for Default

04/22/2009 Motion to Set Aside Default Judgment
Affidavit of Richard Keane

05/12/2009 Memorandum in Opposition to Motion to Set Aside Default Judgment

07/10/2009 Motion for Temporary Restraining Order
Affidavit of Dave Dorion

09/04/2009 Second Affidavit of Dave Dorion
Affidavit of Robin Turner
Affidavit of Joy Smith
Affidavit of Eldon Howard

07/27/2010 Motion to Withdraw- Defendants (Mandy Miles)
Affidavit in Support of Motion to Withdraw (Mandy Miles)

01/06/2010 Notice of Posting Bond (\$10,000.00) by Plaintiff

2. Reporter's Transcript, as follows:

05/14/2009 Hearing on Plaintiff's Motion for Entry of Default.

- a. A transcript has not been made (audio tape no. C1)
- b. Linda Carlton, Court Reporter 425 Warner
Lewiston, Idaho 83501
- c. Estimated number of pages: 15

The clerk of the district court has been paid the estimated fee of \$50 for preparation of the reporter's transcript. The estimated fee of \$75 for preparation of the clerk's record has been paid.

This motion is made on the grounds and for the reasons that the above documents and

REQUEST FOR ADDITIONAL DOCUMENTS
TO BE ADDED TO THE CLERK'S RECORD 2

1 hearing transcript were not included in the Amended Clerk's Record submitted in this matter and
2 are essential to a full understanding of the issues on appeal. This motion is based on the pleadings
3 and records of the above-entitled action.

4 I certify that a copy of this request for additional transcript has been served on each court
5 reporter of whom a transcript is requested, as named below at the addresses set forth above, and that
6 the estimated number of additional pages being requested is as set forth above. I further certify that
7 this request for additional record has been served upon the clerk of the district court and upon all
8 parties required to be served pursuant to Rule 20

9 DATED THIS 17th day of March, 2011.

10 CLARK and FEENEY

11 By Douglas L. Mushlitz
12 Douglas L. Mushlitz, a member of the
13 firm. Attorneys for Plaintiff/Respondent.

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25 REQUEST FOR ADDITIONAL DOCUMENTS
26 TO BE ADDED TO THE CLERK'S RECORD 3

CERTIFICATE OF SERVICE

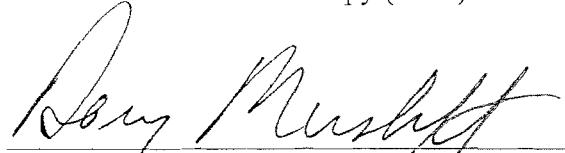
I HEREBY CERTIFY that on the 18 day of March, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

Todd Richardson
Attorney at Law
604 6th Street
Clarkston WA 99403

- U.S. Mail (postage prepaid)
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)

Linda Carlton
Court Reporter
425 Warner
Lewiston, Idaho 83501

- U.S. Mail (postage prepaid)
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)



Attorney for Plaintiff/Respondent.

REQUEST FOR ADDITIONAL DOCUMENTS
TO BE ADDED TO THE CLERK'S RECORD 4

FILED

2011 APR 11 AM 10 21

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT
STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

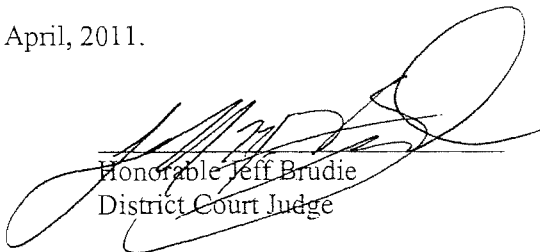
DAVE DORION,)
)
 Plaintiff,)
 vs.)
)
 RICHARD KEANE and LISA KEANE,)
 husband and wife, KEANE LAND)
 COMPANY, LLC., an Idaho Limited)
 Liability Company, KEANE AND CO.)
 CONSTRUCTION, INC., an Idaho)
 corporation, and JOHN DOES 1- 5)
)
 Defendants.)

Case No. CV08-00464 T.D. DIST. COURT
 James
 DEPUTY
**ORDER DENYING DEFENDANT'S
 RULE 60(b) MOTION FOR RELIEF
 FROM FINAL JUDGMENT**

THIS MATTER having come on duly before this Court on Thursday, April 7, 2011, upon the Defendants' Rule 60(b) Motion for Relief from Final Judgment, the plaintiff appeared by his attorney of record; the defendant appeared by his attorneys of record; the Court having received and reviewed pre-hearing submissions of the parties, including briefing and affidavits; the Court having received argument from counsel at the time of the hearing; the Court having announced its findings of fact, conclusions of law, and decision on the record in open Court at the conclusion of the hearing; the Court having properly considered the matter and good cause appearing therefore;

THE COURT FINDS AND CONCLUDES that the defendants' Rule 60(b) Motion for Relief from Final Judgment should be, and the same hereby is DENIED.

DATED this 11 day of April, 2011.


 Honorable Jeff Brudie
 District Court Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11th day of April, 2011, I caused to be served a true and correct copy of the foregoing document by the method indicated below, and addressed to the following:

TODD RICHARDSON
ATTORNEY AT LAW
604 6TH STREET
CLARKSTON WA 99403

- U.S. Mail
- Hand Delivered *Messenger Service*
- Overnight Mail
- Telecopy (FAX)


JEFFREY A. THOMSON
ELAM & BURKE PA
P O BOX 1539
BOISE ID 83501

- U.S. Mail
- Hand Delivered
- Overnight Mail
- Telecopy (FAX)

DOUGLAS L. MUSHLITZ
CLARK AND FEENEY
P O DRAWER 285
LEWISTON ID 83501

- U.S. Mail
- Hand Delivered *Messenger Service*
- Overnight Mail
- Telecopy (FAX)

[Handwritten Signature]
Clerk/Deputy



IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)
)
)
Plaintiff-Respondent,) SUPREME COURT NO. 38519
)
)
)
v.) CLERK'S CERTIFICATE
)
)
)
RICHARD KEANE and LISA KEANE,)
husband and wife, KEANE LAND)
COMPANY, LLC, an Idaho Limited)
Liability Company, KEANE AND CO.)
CONSTRUCTION, INC., an Idaho)
Corporation,)
)
)
Defendants-Appellants.)

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that the foregoing Clerk's Record in the above-entitled cause was compiled and bound by me and contains true and correct copies of all pleadings, documents, and papers designated to be included under Rule 28, Idaho Appellate Rules, the Notice of Appeal, any Notice of Cross-Appeal, and additional documents that were requested.

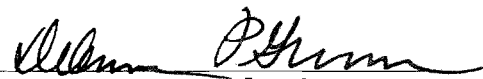
I further certify:

1. That no exhibits were marked for identification or admitted into evidence during the course of this action.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the
seal of said court this 20 day of April 2011.

PATTY O. WEEKS, Clerk

By



Deputy Clerk

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DAVE DORION,)	
)	
Plaintiff-Respondent,	)	SUPREME COURT NO. 38519
)	
v.	)	CERTIFICATE OF SERVICE
)	
RICHARD KEANE and LISA KEANE,)	
husband and wife, KEANE LAND)	
COMPANY, LLC, an Idaho Limited)	
Liability Company, KEANE AND CO.)	
CONSTRUCTION, INC., an Idaho)	
Corporation,)	
)	
Defendants-Appellants.)	

I, DeAnna P. Grimm, Deputy Clerk of the District Court of the Second Judicial District of the State of Idaho, in and for the County of Nez Perce, do hereby certify that copies of the Clerk's Record and Reporter's Transcript were hand delivered to Todd S. Richardson, 604 Sixth St., Clarkston, WA 99403 and to Douglas L. Mushlitz, P O Drawer 285, Lewiston, ID 83501, this 28 day of April 2011.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 28 day of April 2011.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEANNA P. GRIMM

By _____
Deputy Clerk