

4-24-2012

Bald, Fat, & Ugly, LLC Clerk's Record Dckt. 39451

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LAW CLERK In the
SUPREME COURT
of the
STATE OF IDAHO

RICHARD ALAN KEANE and LISA C. KEANE; KEANE AND
CO. CONSTRUCTION, INC; R & L DEVELOPMENTS, LLC,

Claimants-Cross Respondents-Appellants,

v.

BALD, FAT & UGLY, LLC,

Respondent-Cross Claimant-Respondent on Appeal.

FILED - COPY
APR 24 2012
Supreme Court
Clerk on Appeal

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. 39451

ATTORNEY FOR CLAIMANTS-CROSS RESPONDENTS-APPELLANTS
JEFFREY A. THOMSON

ATTORNEY FOR RESPONDENTS-CROSS CLAIMANT-RESPONDENT ON APPEAL
DAVID RISLEY

39451

IN THE SUPREME COURT OF THE STATE OF IDAHO

RICHARD ALAN KEANE and LISA C.)
KEANE; KEANE AND CO.)
CONSTRUCTION, INC; R & L)
DEVELOPMENTS, LLC,)
)
)
)
Claimants-Cross Respondents-) SUPREME COURT NO. 39451
Appellants,)
)
Vs.)
)
BALD, FAT & UGLY, LLC,)
)
)
Respondent-Cross Claimant-)
Respondent on Appeal.)
)

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 Appellants
JEFFREY A. THOMSON
P O Box 1539
Boise, ID 83701

Counsel for Respondent
DAVID RISLEY
P O Box 1247
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

RICHARD ALAN KEANE and LISA C.)
 KEANE; KEANE AND CO.)
 CONSTRUCTION, INC; R & L)
 DEVELOPMENTS, LLC,)
)
)
 Claimants-Cross Respondent-)
 Appellants,)
)
 Vs.)
)
 BALD, FAT & UGLY, LLC,)
)
 Respondent-Cross Claimant-)
 Respondent on Appeal.)

SUPREME COURT NO. 39451

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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

RICHARD ALAN KEANE and LISA C.)	
KEANE; KEANE AND CO.)	
CONSTRUCTION, INC; R & L)	
DEVELOPMENTS, LLC,)	
)	
Claimants-Cross Respondents-)	SUPREME COURT NO. 39451
Appellants,)	
)	
Vs.)	INDEX
)	
BALD, FAT & UGLY, LLC,)	
)	
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Second Order for Continuance and Production of Documents filed December 6, 2010.....	89-93
Trial Memorandum filed September 9, 2011.....	168-177

Date	Code	User		Judge
11/20/2009	NCOC	KATHY	New Case Filed-Other Claims	Jeff M. Brudie
	APPL	KATHY	Application and motion for confirmation of arbitration award	Jeff M. Brudie
		KATHY	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Risley, David R (attorney for Keane & Co Construction LLC) Receipt number: 0345782 Dated: 11/23/2009 Amount: \$88.00 (Check) For: Keane, Richard Alan (plaintiff)	Jeff M. Brudie
	ATTR	PAM	Defendant: Bald Fat and Ugly LLC Attorney Retained David R Risley	Jeff M. Brudie
12/2/2009	NOTC	PAM	Notice of Application for Order Confirming Arbitration Award--Defendant/ Counter-Claimant	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 01/07/2010 10:00 AM) Application for Order Confirming Arbitration Award	Jeff M. Brudie
12/17/2009	MISC	PAM	Declaration of Attempted Service--Richard & Lisa Keane	Jeff M. Brudie
1/7/2010	MISC	PAM	**Hearing for 1-7-10 @ 10:00am is Moved-Judge ill**	Jeff M. Brudie
	CONT	PAM	Continued (Hearing 01/14/2010 10:00 AM) Application for Order Confirming Arbitration Award	Jeff M. Brudie
1/13/2010	MISC	PAM	**Natalie from Mr. Risley's Office Called--Hearing set for 1-14-10 @ 10:00am is Vacated**	Jeff M. Brudie
	HRVC	PAM	Hearing result for Hearing held on 01/14/2010 10:00 AM: Hearing Vacated Application for Order Confirming Arbitration Award	Jeff M. Brudie
	NTHR	PAM	Amended Notice of Hearing for Order Confirming Arbitration Award--1-14-10 @ 10:00am.	Jeff M. Brudie
	MISC	PAM	**Natalie from Mr. Risley's Office Called--The amended notice of hearing was sent out before she called and vacated--disregard and place in file--Hearing is OFF**	Jeff M. Brudie
	NOAP	PAM	Notice Of Appearance--Manderson L. Miles for Plaintiff Richard A. Keane, Lisa C. Keane; and Keane and Construction Inc.; and R & L Developments LLC and Counter-Respondent: Richard A. Keane and Lisa A. Keane; and R & L Developments LLC, Keane & Co. Construction Inc.; Keane Land Co; and Keane & Taylor LLC	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane, Richard A Attorney Retained Manderson L Miles	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane, Lisa C Attorney Retained Manderson L Miles	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane & Co Construction LLC Attorney Retained Manderson L Miles	Jeff M. Brudie

Date	Code	User		Judge
1/13/2010	ATTR	PAM	Plaintiff: R & L Developments LLC Attorney Retained Manderson L Miles	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane Land Co LLC Attorney Retained Manderson L Miles	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane & Taylor LLC Attorney Retained Manderson L Miles	Jeff M. Brudie
		PAM	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Knowlton & Miles PLLC Receipt number: 0001376 Dated: 1/20/2010 Amount: \$58.00 (Check) For: Keane & Co Construction LLC (plaintiff), Keane & Taylor LLC (plaintiff), Keane Land Co LLC (plaintiff), Keane, Lisa C (plaintiff), Keane, Richard A (plaintiff) and R & L Developments LLC (plaintiff)	Jeff M. Brudie
	MISC	PAM	**Appearance Fee paid by Plaintiffs/Counter-Defendants--Since no fee category--used I 1**	Jeff M. Brudie
1/14/2010		PAM	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Risley Law Office PLLC Receipt number: 0001399 Dated: 1/20/2010 Amount: \$1.00 (Check)	Jeff M. Brudie
	RTSV	PAM	Return of Service--Unservd--Lisa Keane	Jeff M. Brudie
	RTSV	PAM	Return Of Service--Served Richard: 12-28-09	Jeff M. Brudie
	RTSV	PAM	Return Of Service--Served Keane & Taylor LLC: 12-28-09	Jeff M. Brudie
	RTSV	PAM	Return Of Service--Unservd--R & L Development	Jeff M. Brudie
	RTSV	PAM	Return Of Service--Unservd--Keane Construction	Jeff M. Brudie
	RTSV	PAM	Return Of Service--Unservd--Keane Land Co LLC	Jeff M. Brudie
2/18/2010	APPL	PAM	Amended Application and Motion for Confirmation of Arbitration Award	Jeff M. Brudie
	MEMO	PAM	Memorandum in Support of Amended Application and Motion for Confirmation of Arbitration Award	Jeff M. Brudie
	AFFD	PAM	Affidavit of David R. Risley Re Attempted Service of Arbitration Confirmation Proceeding	Jeff M. Brudie
3/5/2010	HRSC	PAM	Hearing Scheduled (Hearing 03/18/2010 10:00 AM) Order Confirming Arbitration Award	Jeff M. Brudie
3/15/2010	CONT	JANET	Continued (Hearing 03/18/2010 10:30 AM) Order Confirming Arbitration Award	Jeff M. Brudie
3/16/2010	MISC	PAM	Reply to Application & Motion for Confirmation of Arbitration Award	Jeff M. Brudie

Date	Code	User		Judge
3/18/2010	MINE	PAM	Minute Entry Hearing type: Def's Mtn for Order Confirm Arbitration Awar Hearing date: 3/18/2010 Time: 10:38 am Courtroom: Court reporter: Carlton Minutes Clerk: PAM Tape Number: Crtrm 1 Plaintiff: Manderson Miles Defendant: David Risley	Jeff M. Brudie
	HRHD	PAM	Hearing result for Hearing held on 03/18/2010 10:30 AM: Hearing Held Order Confirming Arbitration Award	Jeff M. Brudie
	DCHH	PAM	Hearing result for Hearing held on 03/18/2010 10:30 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: less than 100 pages Order Confirming Arbitration Award	Jeff M. Brudie
3/19/2010	MISC	PAM	**Received Defendant's Proposed Order Confirming Arbitration Awards**	Jeff M. Brudie
3/24/2010	MISC	PAM	Response to Order Confirming Awards Plaintiffs	Jeff M. Brudie
5/3/2010	ORDR	PAM	Order Confirming Arbitration Awards	Jeff M. Brudie
	ORDR	PAM	Order Denying Bald, Fat & Ugly LLC's Attorney's Fees and Costs	Jeff M. Brudie
	DPHR	PAM	Disposition With Hearing	Jeff M. Brudie
	FJDE	PAM	Final Judgement, Order Or Decree Entered	Jeff M. Brudie
	STAT	PAM	Case Status Changed: Closed	Jeff M. Brudie
	CDIS	PAM	Civil Disposition entered for: Bald Fat and Ugly LLC, Defendant; Keane & Co Construction LLC, Plaintiff; Keane & Taylor LLC, Plaintiff; Keane Land Co LLC, Plaintiff; Keane, Lisa Carol, Plaintiff; Keane, Richard Alan, Plaintiff; R & L Developments LLC, Plaintiff. Filing date: 5/3/2010	Jeff M. Brudie
8/24/2010	APPL	PAM	First Application for Writ of Execution & First Affidavit of True Balance	Jeff M. Brudie
	APPL	PAM	Second Application for Writ of Execution & Second Affidavit of True Balance	Jeff M. Brudie
8/30/2010	MOTN	PAM	Motion to Withdraw – Manderson L. Miles for Claimants/Respondents Keane	Jeff M. Brudie
	AFFD	PAM	Affidavit in Support of Motion to Withdraw	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing on Motion to Withdraw -- 9-16-10 @ 10:00am	Jeff M. Brudie

Date	Code	User		Judge
8/30/2010	HRSC	PAM	Hearing Scheduled (Motion for Leave to Withdraw as Attorney 09/16/2010 10:00 AM) Claimants/Respondents Keane	Jeff M. Brudie
9/1/2010	ORDR	PAM	First Order for Writ of Execution	Jeff M. Brudie
	WRIT	PAM	First Writ of Execution (\$159,994.43)	Jeff M. Brudie
	ORDR	PAM	Second Order for Writ of Execution	Jeff M. Brudie
	WRIT	PAM	Second Writ of Execution (\$166,799.01)	Jeff M. Brudie
		PAM	Miscellaneous Payment: Writs Of Execution Paid by: Risley Law Office PLLC Receipt number: 0016048 Dated: 9/1/2010 Amount: \$4.00 (Check)	Jeff M. Brudie
9/2/2010	MISC	PAM	Non Opposition to Motion to Withdraw Respondent/Claimant	Jeff M. Brudie
9/16/2010	HRHD	PAM	Hearing result for Motion for Leave to Withdraw as Attorney held on 09/16/2010 10:00 AM: Hearing Held Plaintiff	Jeff M. Brudie
	DCHH	PAM	Hearing result for Motion for Leave to Withdraw as Attorney held on 09/16/2010 10:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: Less than 100 pages Plaintiff	Jeff M. Brudie
	MINE	PAM	Minute Entry Hearing type: Motion for Leave to Withdraw as Attorney Hearing date: 9/16/2010 Time: 10:55 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: PAM Tape Number: Crtrm #1 No one present. No opposition. Court addresses on record.	Jeff M. Brudie
	ORDR	PAM	Order Permitting Leave to Withdraw Manderson Miles for Keane etal	Jeff M. Brudie
	WRRT	PAM	Second Writ of Execution Returned NOT Satisfied	Jeff M. Brudie
9/22/2010	RTSV	PAM	Return Of Service -- Judgment NOT Satisfied -- American West Bank	Jeff M. Brudie
	MISC	PAM	Proof of Service -- Served Order Permitting Leave to Withdraw on Defendants by Certified Mail: 8-21-10	Jeff M. Brudie
10/12/2010	WRRT	PAM	First Writ of Execution Returned -- Not Satisfied	Jeff M. Brudie
10/13/2010	MISC	PAM	**Copy of Return Filed 10-12-10 -- was filed**	Jeff M. Brudie
10/14/2010	MOTN	PAM	Motion for Examination of Judgment Debtors --Defendant	Jeff M. Brudie

REGISTER OF ACTIONS

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Date	Code	User		Judge
10/14/2010	AFFD	PAM	Affidavit of David R. Risley in Support of Motion for Examination of Judgment Debtors	Jeff M. Brudie
10/19/2010	ORDR	PAM	Order Granting Motion for Examination of Judgment Debtors	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Debtor Examination 11/18/2010 10:00 AM)	Jeff M. Brudie
11/18/2010	STIP	PAM	Stipulation for Continuance of Examination of Judgment Debtors & Production of Documents -- 12-2-2010 @ 9:00am	Jeff M. Brudie
11/19/2010	CONT	PAM	Continued (Debtor Examination 12/02/2010 09:00 AM)	Jeff M. Brudie
	RTSV	PAM	Return Of Service -- Served Order Granting Motion for Examination of Debtor on Richard Keane: 11-15-10	Jeff M. Brudie
	RTSV	PAM	Return Of Service -- NO Found Service -- Lisa Keane	Jeff M. Brudie
	RTSV	PAM	Return Of Service -- UNABLE to Serve Keane & Co Construction	Jeff M. Brudie
	RTSV	PAM	Return Of Service -- UNABLE to Serve R & L Development	Jeff M. Brudie
11/22/2010	ORDR	PAM	Order for Continuance of Examination of Judgment Debtor & Production of Documents	Jeff M. Brudie
11/29/2010	NOAP	PAM	Notice Of Appearance -- Todd S. Richardson for Plaintiffs	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane, Richard Alan Attorney Retained Todd S. Richardson	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane, Lisa Carol Attorney Retained Todd S. Richardson	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane & Co Construction LLC Attorney Retained Todd S. Richardson	Jeff M. Brudie
	ATTR	PAM	Plaintiff: R & L Developments LLC Attorney Retained Todd S. Richardson	Jeff M. Brudie
12/2/2010	HRVC	PAM	Hearing result for Debtor Examination held on 12/02/2010 09:00 AM: Hearing Vacated	Jeff M. Brudie
12/3/2010	STIP	PAM	Second Stipulation for Continuance of Examination of Judgment Debtors & Production of Documents -- 12-9-10 @ 9:00am	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Debtor Examination 12/09/2010 09:00 AM)	Jeff M. Brudie
12/6/2010	ORDR	DEANNA	Second Order fro Continuance of Examination of Judgment Debtors and Production of Documents	Jeff M. Brudie
12/8/2010	MISC	PAM	**Mr. Risley's Office Called -- Hearing for 12-9-10 @ 9:00am is Vacated -- they will re-set**	Jeff M. Brudie
	HRVC	PAM	Hearing result for Debtor Examination held on 12/09/2010 09:00 AM: Hearing Vacated	Jeff M. Brudie

Date	Code	User	Judge
4/1/2011		KATHY	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: RISLEY LAW Receipt number: 0006215 Dated: 4/1/2011 Amount: \$1.00 (Check) Jeff M. Brudie
	MISC	PAM	Partial Satisfaction of Judgment (\$93680.90) Jeff M. Brudie
5/3/2011	APPL	PAM	Application for Writ of Execution (Arbitration Award No. 1) Jeff M. Brudie
	AFFD	PAM	Affidavit in Support of Writ of Execution Jeff M. Brudie
	MOTN	PAM	Motion for Award of Post-Judgment Attorney's Fees and Costs Pursuant jto Idaho Code § 12-120 (5) Jeff M. Brudie
	MEMO	PAM	Memorandum of Attorney's Fees and Costs for Award of Post-Judgment Attorney's Fees and Costs Pursuant to Idaho Code § 12-120(5) Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing Re Motion for Award of Post-Judgment Attorney's Fees and Costs Pursuant to Idaho Code § 12-120(5) -- 5-19-11 @ 10:00am Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 05/19/2011 10:00 AM) Respondent/Claimant's Motion for Award of Post-Judgment Attorney's Fees and Costs Jeff M. Brudie
		PAM	Miscellaneous Payment: Writs Of Execution Paid by: Risley Law Office PLLC Receipt number: 0008388 Dated: 5/6/2011 Amount: \$2.00 (Check) Jeff M. Brudie
5/4/2011	MOTN	PAM	Motion for Contempt (Arbitration Award No. 2) Jeff M. Brudie
	AFFD	PAM	Affidavit of Robert W. Blewett Re Motion for Contempt (Arbitration Award No. 2) Jeff M. Brudie
	AFFD	PAM	Affidavit of David R. Risley (Arbitration Award No. 2) Jeff M. Brudie
	NOTC	PAM	Notice to Appear 5-19-11 (Arbitration Award No. 2) Jeff M. Brudie
5/6/2011	NOTC	PAM	Amended Notice to Appear (Arbitration Award No. 2) -- Motion for Contempt -- 5-19-11 @ 10:00am Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 05/19/2011 10:00 AM) Respondent/Claimant's Motion for Contempt Jeff M. Brudie
5/9/2011	ORDR	PAM	Order for Writ of Execution (Arbitration Award No. 1) Jeff M. Brudie
	WRIT	PAM	Writ of Execution Issued (Arbitration Award No. 1) Jeff M. Brudie
5/17/2011	MOTN	PAM	Motion for Continuance -- Claimants/Respondents Jeff M. Brudie
	AFFD	PAM	Affidavit of Todd S. Richardson in Support of Motion for Continuance Jeff M. Brudie
	ORDR	PAM	Order for Continuance -- 5-26-11 @ 10:00am --Respondents/Claimants' Motion for Award of Post-Judgment Attorney's Fees and Costs Jeff M. Brudie

Date	Code	User		Judge
5/17/2011	CONT	PAM	Continued (Hearing 05/26/2011 10:00 AM) Respondent/Claimant's Motion for Contempt	Jeff M. Brudie
	CONT	PAM	Continued (Hearing 05/26/2011 10:00 AM) Respondent/Claimant's Motion for Award of Post-Judgment Attorney's Fees and Costs	Jeff M. Brudie
5/26/2011	HRHD	PAM	Hearing result for Hearing held on 05/26/2011 10:00 AM: Hearing Held Respondent/Claimant's Motion for Award of Post-Judgment Attorney's Fees and Costs	Jeff M. Brudie
	DCHH	PAM	Hearing result for Hearing held on 05/26/2011 10:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: Less than 100 pages Respondent/Claimant's Motion for Award of Post-Judgment Attorney's Fees and Costs	Jeff M. Brudie
	HRHD	PAM	Hearing result for Hearing held on 05/26/2011 10:00 AM: Hearing Held Respondent/Claimant's Motion for Contempt	Jeff M. Brudie
	DCHH	PAM	Hearing result for Hearing held on 05/26/2011 10:00 AM: District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: Less than 100 pages Respondent/Claimant's Motion for Contempt	Jeff M. Brudie
	MINE	PAM	Minute Entry Hearing type: Mtn Award fees & costs, mtn contempt Hearing date: 5/26/2011 Time: 10:05 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: PAM Tape Number: Crtrm #1 Plaintiff: Todd S. Richardson Defendant: David R. Risley	Jeff M. Brudie
6/6/2011	HRSC	JANET	Hearing Scheduled (Telephonic Scheduling Conference 06/23/2011 02:15 PM)	Jeff M. Brudie
	NOTC	PAM	Notice of Telephonic Scheduling Conference 6-23-11 @ 2:15pm	Jeff M. Brudie
	OPOR	PAM	Opinion & Order on Motion for Award of Post Judgment Attorney's Fees and Costs	Jeff M. Brudie
6/7/2011	MOTN	PAM	Motion for Order of Contempt and to Bar Filing of Affirmative Defenses (Arbitration Award No. 2)	Jeff M. Brudie
	AFFD	PAM	Affidavit of David R. Risley in Support of Motion for Order of Contempt and to Bar Filing of Affirmative Defenses (Arbitration Award No. 2)	Jeff M. Brudie
6/9/2011	RISC REGISTER OF	PAM PAM	ACTIONS Response to Motion for Contempt -- Claimants/Respondents	Jeff M. Brudie

Date	Code	User		Judge
6/23/2011	HRHD	PAM	Hearing result for Telephonic Scheduling Conference scheduled on 06/23/2011 02:15 PM: Hearing Held	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 07/26/2011 09:00 AM) Contempt	Jeff M. Brudie
7/6/2011	MOTN	PAM	Motion to Change Hearing Date -- Claimants/Respondents (7-26-11 @ 9:00am)	Jeff M. Brudie
	AFFD	PAM	Affidavit of Richard A. Keane in Support of Motion to Change Hearing Date	Jeff M. Brudie
7/11/2011	ORDR	PAM	Order to Change Hearing Date --(7-26-11 Hearing date Vacated -- a new date will be determined at a later time)	Jeff M. Brudie
	HRVC	PAM	Hearing result for Hearing scheduled on 07/26/2011 09:00 AM: Hearing Vacated Contempt	Jeff M. Brudie
7/13/2011	HRSC	JANET	Hearing Scheduled (Telephonic Scheduling Conference 08/03/2011 03:30 PM)	Jeff M. Brudie
		JANET	Notice Of Hearing	Jeff M. Brudie
8/3/2011	HRHD	PAM	Hearing result for Telephonic Scheduling Conference scheduled on 08/03/2011 03:30 PM: Hearing Held	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 09/09/2011 09:00 AM) Contempt Trial	Jeff M. Brudie
		PAM	Notice Of Contempt Trial -- 9-9-11 @ 9:00am	Jeff M. Brudie
9/8/2011	MEMO	PAM	Bald, Fat & Ugly, LLC's Contempt Trial Memorandum	Jeff M. Brudie
9/9/2011	MEMO	PAM	Trial Memorandum -- Claimants/Respondents	Jeff M. Brudie
	CTST	PAM	Hearing result for Hearing scheduled on 09/09/2011 09:00 AM: Court Trial Started Contempt Trial	Jeff M. Brudie
	MINE	PAM	Minute Entry Hearing type: Contempt Trial Hearing date: 9/9/2011 Time: 9:08 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: PAM Tape Number: Crtrm #1 Plaintiff: Todd S. Richardson	Jeff M. Brudie
	DCHH	PAM	Defendant: David R. Risley District Court Hearing Held Court Reporter: Linda Carlton Number of Transcript Pages for this hearing estimated: 195 pages	Jeff M. Brudie
10/31/2011	REGISTER OF ACTIONS	PAM	Findings Of Fact And Conclusions Of Law and Order on Court Trial for Contempt	Jeff M. Brudie

Date	Code	User		Judge
10/31/2011	DPHR	PAM	Disposition With Hearing	Jeff M. Brudie
	FJDE	PAM	Final Judgement, Order Or Decree Entered	Jeff M. Brudie
	STAT	PAM	Case Status Changed: Closed	Jeff M. Brudie
	CDIS	PAM	Civil Disposition entered for: Bald Fat and Ugly LLC, Defendant; Keane & Taylor LLC, Plaintiff; Keane Land Co LLC, Plaintiff; Keane, Lisa Carol, Plaintiff; Keane, Richard Alan, Plaintiff; Keane, Richard Alan, Plaintiff; Keane, Richard Alan, Plaintiff. Filing date: 10/31/2011	Jeff M. Brudie
11/15/2011	MOTN	PAM	Motion for Award of Attorney's Fees and Costs Pursuant to Idaho Code § 7-610, IRCP 54(e)(1), and IRCP 75(m) Re Trial for Contempt	Jeff M. Brudie
	AFFD	PAM	Affidavit of David R. Risley in Support of Motion for Award of Attorney's Fees and Costs Pursuant to Idaho Code § 7-610, IRCP 54(e)(1), and IRCP 75(m) Re Trial for Contempt	Jeff M. Brudie
	MEMO	PAM	Memorandum of Law in Support of Motion for Award of Attorney's Fees and Costs Pursuant to Idaho Code § 7-610, IRCP 54(e)(1), and IRCP 75(m) Re Trial for Contempt	Jeff M. Brudie
	MEMO	PAM	Memorandum of Attorney's Fees and Costs Pursuant to Idaho Code § 7-610, IRCP 54(e)(1), and IRCP 75 (m) Re Trial for Contempt	Jeff M. Brudie
	NTHR	PAM	Notice Of Hearing Re Motion for Award of Attorney's Fees and Costs Pursuant to Idaho Code § 7-610, IRCP 54(e)(1) and IRCP 75(m) Re Trial for Contempt -- 12-1-11 @ 10:00am	Jeff M. Brudie
	HRSC	PAM	Hearing Scheduled (Hearing 12/01/2011 10:00 AM) Respondent's Motion for Award of Attorney's Fees and Costs	Jeff M. Brudie
11/30/2011	NOTC	DEANNA	Notice of Association of Counsel	Jeff M. Brudie
	APSC	DEANNA	Appealed To The Supreme Court	Jeff M. Brudie
		DEANNA	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Richardson, Todd S. (attorney for Keane, Lisa Carol) Receipt number: 0019529 Dated: 11/30/2011 Amount: \$101.00 (Check) For: Keane & Taylor LLC (plaintiff)	Jeff M. Brudie
	BNDC	DEANNA	Bond Posted - Cash (Receipt 19530 Dated 11/30/2011 for 140.00)	Jeff M. Brudie
	BONC	DEANNA	Condition of Bond Reporter's transcript \$ 40.00, Clerk's record \$100.00 - estimates	Jeff M. Brudie
	MISC	DEANNA	Elam and Burke Filed an Association of Counsel with Todd Richardson. Paid fees for appeal	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane, Richard Alan Attorney Retained Jeffrey A Thomson	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane, Lisa Carol Attorney Retained Jeffrey A Thomson	Jeff M. Brudie

Date	Code	User		Judge
11/30/2011	ATTR	PAM	Plaintiff: Keane, Richard Alan Attorney Retained Jeffrey A Thomson	Jeff M. Brudie
	ATTR	PAM	Plaintiff: Keane, Richard Alan Attorney Retained Jeffrey A Thomson	Jeff M. Brudie
	NTAP	DEANNA	Notice Of Appeal	Jeff M. Brudie
12/1/2011	HRHD	PAM	Hearing result for Hearing scheduled on 12/01/2011 10:00 AM: Hearing Held Respondent's Motion for Award of Attorney's Fees and Costs	Jeff M. Brudie
	MINE	PAM	Minute Entry Hearing type: Defendant's Motion Attorney Fees and Costs Hearing date: 12/1/2011 Time: 10:04 am Courtroom: Court reporter: Linda Carlton Minutes Clerk: PAM Tape Number: Crtrm #1 Plaintiff: Todd Richardson Defendant: David Risley	Jeff M. Brudie
12/7/2011	WRRT	PAM	Writ Returned (Arbitration Award No. 1) Not Satisfied	Jeff M. Brudie
12/9/2011	WRRT	PAM	Writ Returned (Duplicate of 12-7-11 Return) Not Satisfied	Jeff M. Brudie
12/20/2011	SCRT	DEANNA	Supreme Court Receipt - Clerk's Record and Reporter's Transcript Suspended	Jeff M. Brudie
	SCRT	DEANNA	Supreme Court Receipt - Order Remanding to District Court	Jeff M. Brudie
1/5/2012	JDMT	PAM	Judgment	Jeff M. Brudie
	CDIS	PAM	Civil Disposition entered for: Bald Fat and Ugly LLC, Defendant; Keane & Taylor LLC, Plaintiff; Keane Land Co LLC, Plaintiff; Keane, Lisa Carol, Plaintiff; Keane, Richard Alan, Plaintiff; Keane, Richard Alan, Plaintiff; Keane, Richard Alan, Plaintiff. Filing date: 1/5/2012	Jeff M. Brudie
1/8/2012	OPOR	PAM	Opinion & Order on Motion for Attorney Fees and Costs	Jeff M. Brudie
1/9/2012	MISC	PAM	**Court Orders Attorney Fees in the amount of \$5000.00 to BF & U as prevailing party in its Motion for Contempt**	Jeff M. Brudie
	CDIS	PAM	Civil Disposition entered for: Bald Fat and Ugly LLC, Defendant; Keane & Taylor LLC, Plaintiff; Keane Land Co LLC, Plaintiff; Keane, Lisa Carol, Plaintiff; Keane, Richard Alan, Plaintiff; Keane, Richard Alan, Plaintiff; Keane, Richard Alan, Plaintiff. Filing date: 1/9/2012	Jeff M. Brudie
1/11/2012	REGISTER	DEANNA	Amended Notice of Appeal	Jeff M. Brudie

Date	Code	User		Judge
1/30/2012	SCRT	DEANNA	Supreme Court Receipt - Documents filed at the SC	Jeff M. Brudie
	SCRT	DEANNA	Supreme Court Receipt - Clerk's Record and Reporter's Transcript must be filed at SC by March 29, 2012	Jeff M. Brudie
	SCRT	DEANNA	Supreme Court Receipt - Amended Notice of Appeal filed at the SC	Jeff M. Brudie
2/10/2012	BNDO	DEANNA	Bond Converted to Other Party (Transaction number 187 dated 2/10/2012 amount 32.50)	Jeff M. Brudie

FILED

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PATTY O. WEEKS
CLERK OF THE DIST. COURT
DEPUTY

Patty O. Weeks

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2
3 DAVID R. RISLEY
4 RANDALL, BLAKE & COX, PLLC
5 P.O. Box 446
6 1106 Idaho Street
7 Lewiston, Idaho 83501
8 (208) 743-1234
9 (208) 743-1266 (Fax)
10 ISB No. 1789

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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

RICHARD A. KEANE and LISA C.)
KEANE and KEANE AND CO.)
CONSTRUCTION, INC. and R & L)
DEVELOPMENTS, L.L.C.,)
Plaintiff,)
and)
BALD, FAT & UGLY, L.L.C.)
Defendant.)
BALD, FAT & UGLY, LLC)
an Idaho Limited Liability Company,)
Counter-Claimant,)
v.)
RICHARD A. KEANE and LISA A.)
KEANE and R&L DEVELOPMENTS,)
LLC, an Idaho Limited Liability Company,)
KEANE AND CO. CONSTRUCTION,)
INC., a Idaho Corporation, KEANE LAND)
CO., LLC, an Idaho Limited Liability)
Company, and KEANE & TAYLOR, LLC,)
an Idaho Limited Liability Company,)
Counter-Respondent.)

CASE NO. CV09-02468

APPLICATION AND MOTION FOR
CONFIRMATION OF ARBITRATION
AWARD

Fee Category: A
Fee: \$88.00

12

1
2 COMES NOW, BALD, FAT & UGLY, LLC, an Idaho Limited Liability Company,
3 (hereinafter "BFU"), by and through its attorney of record, David R. Risley of Randall, Blake
4 & Cox, PLLC, and moves this Court pursuant to Idaho Code § 7-911 and Idaho Code § 7-916
5 for an Order confirming the Arbitration Awards entered on November 18, 2009, and hereby
6 alleges as follows:
7

8 1. Bald, Fat & Ugly, LLC is an Idaho Limited Company organized and existing
9 under and by virtue of the laws of the State of Idaho, is duly authorized to do business within
10 the State of Idaho, and maintains its principal place of business at Grangeville, Idaho.

11 2. Richard A. Keane and Lisa A. Keane (hereinafter collectively referred to as
12 "Keane") are husband and wife, and upon information and belief, are residents of Nez Perce
13 County, State of Idaho.
14

15 3. R&L Developments, LLC (hereinafter collectively referred to as "Keane") is
16 an Idaho Limited Liability Company is organized and existing under and by virtue of the laws
17 of the State of Idaho, is duly authorized to do business within the State of Idaho, and
18 maintains its principal place of business at Lewiston, Idaho.
19

20 4. Keane and Co. Construction (hereinafter collectively referred to as "Keane") is
21 an Idaho corporation organized and existing under and by virtue of the laws of the State of
22 Idaho, is duly authorized to do business within the State of Idaho, and maintains its principal
23 place of business at Lewiston, Idaho.
24

25 5. Keane Land Co., LLC (hereinafter collectively referred to as "Keane") is an
26 Idaho Limited Liability Company organized and existing under and by virtue of the laws of
27 the State of Idaho, is duly authorized to do business within the State of Idaho, and maintains
28 its principal place of business at Lewiston, Idaho.

1
2 6. Keane & Taylor, LLC (hereinafter collectively referred to as "Keane") is an
3 Idaho Limited Liability Company organized and existing under and by virtue of the laws of
4 the State of Idaho, is duly authorized to do business within the State of Idaho, and maintains
5 its principal place of business at Lewiston, Idaho.

6
7 7. The parties entered into a *Mediated Settlement Agreement* (hereinafter "MSA")
8 on or about June 8, 2005, with Lynden O. Rasmussen serving as mediator. After June 2005,
9 disputes arose between the parties as to the terms and conditions of the MSA.

10 8. On or about August 3, 2009, the parties entered into an *Agreement to Submit to*
11 *Arbitration* before Lynden O. Rasmussen.

12
13 9. This Court has jurisdiction under Idaho Code, Title 7, Chapter 9, and venue is
14 appropriate in Nez Perce County, Idaho, the agreed location of the arbitration, pursuant to
15 Idaho Code § 7-918.

16 10. After arbitration, Arbitration Awards were entered, a true copy of which is
17 attached hereto as Exhibit "A" and incorporated herein by reference as through fully set forth.
18 BFU was the prevailing party.

19
20 11. As to Award No. 1, the Arbitrator awarded BFU the sum of TWO HUNDRED
21 NINETY TWO THOUSAND NINE HUNDRED FORTY-ONE and 01/100 DOLLARS
22 (\$292,941.01), plus interest at \$66.57 per diem from October 1, 2009 until paid.

23
24 12. As to Award No. 2, the Arbitrator awarded BFU the sum of ONE HUNDRED
25 FIFTY NINE THOUSAND SEVEN HUNDRED SIXTY-TWO and 00/100 DOLLARS
26 (\$159,762.00) under certain restrictions as set forth in the Arbitration Awards.

27 13. Pursuant to Idaho Code § 7-911, the Court should enter an order confirming
28 the Arbitration Awards, and pursuant to Idaho Code § 7-914, judgment should be entered in

14

1
2 accordance herewith. Fees and costs should be awarded to BFU under Idaho Code, Title 7,
3 Chapter 9, and under Idaho Code §§ 12-120 and 12-121.

4 14. No party has applied under Idaho Code § 7-909 for a change or modification of
5 the award.

6 15. BFU is entitled to confirmation of the Arbitration Awards, together with costs
7 and attorney fees associated with the necessity of bringing this action and prejudgment
8 interest from October 1, 2009 until the date judgment is entered.
9

10 WHEREFORE, BFU respectfully prays, and does move the Court pursuant to Idaho
11 Code § 7-916, as follows:

12 1. The Court enter an order confirming the Arbitration Awards pursuant to Idaho
13 Code § 7-911.

14 2. After confirmation of the Arbitration Awards, judgment be entered in favor of
15 BFU in the following amounts:
16

17 a. As to Award No. 1, the principal sum of TWO HUNDRED NINETY
18 TWO THOUSAND NINE HUNDRED FORTY-ONE and 01/100 DOLLARS
19 (\$292,941.01), plus interest at \$66.57 per diem from October 1, 2009 until paid.
20

21 b. As to Award No. 2, the principal sum of ONE HUNDRED FIFTY
22 NINE THOUSAND SEVEN HUNDRED SIXTY-TWO and 00/100 DOLLARS
23 (\$159,762.00) under certain restrictions as set forth in the Arbitration Award, plus
24 interest as allowed by law.
25

26 3. BFU be awarded its fees and costs in this action pursuant to Idaho Code § 7-
27 914, § 12-120, and § 12-121.
28

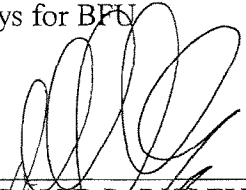
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4. The Court retain jurisdiction to enter such additional orders and take such additional action as is necessary to effectuate the Arbitration Awards and ensuing judgment.

5. For all other just relief.

DATED this 20th day of November, 2009.

RANDALL, BLAKE & COX, PLLC
Attorneys for BFU

By: 

DAVID R. RASLEY
ISB NO. 1789

16

EXHIBIT A

IN THE MATTER OF THE ARBITRATION BETWEEN:

RICHARD A. KEANE and LISA C.)	
KEANE, husband and wife;)	
R & L DEVELOPMENTS, LLC,)	
an Idaho limited liability company; and)	
KEANE AND CO. CONSTRUCTION,)	
INC., an Idaho corporation,)	
)	
Claimants,)	ARBITRATION
)	AWARDS
-and-)	
)	
BALD, FAT & UGLY, LLC,)	
an Idaho limited liability company,)	
)	
Respondent.)	

COMES NOW the undersigned Arbitrator and, pursuant to the terms and conditions of a certain Agreement to Submit to Arbitration dated August 3, 2009, and as amended by a certain letter dated October 21, 2009, copies of which are attached hereto and collectively identified as Attachment "1," and renders the following Awards:

Preliminary Comments

1. No attempt is made herein to recite the lengthy history of the disputes giving rise to this Arbitration, but certain comments are believed to be appropriate for the parties' better understanding of these Awards.

2. The Houston Professional Plaza LLC (Association) is not a party to this arbitration, and, as such, nothing contained herein is binding on that Association. However, the Association certainly has an interest in the project's exterior common area and, as acknowledged by the parties in the Mediated Settlement Agreement ("MSA"), an interest in the repairs thereto, including the scope of repairs as discussed later in this Award.

3. The parties hereto are now signatories to the MSA, which is dated June 8, 2005, a copy of which is attached hereto as Attachment "2." The undersigned acted as the Mediator for the parties in that matter.

4. Though subject to dispute on some issues, the MSA is clear and unambiguous on two (2) key points:

- a. Claimants (hereinafter sometimes "Keane") agreed to pay BFU the principal amount of \$180,000.00 together with interest thereon.
- b. Keane also agreed to the performance of remediation work in respect to the exterior common areas of the project. It was acknowledged in the MSA that the project included both Phases 1 and 2.

5. Though less clear in the MSA and, therefore, subject to dispute, there was not a specific agreement as to the undersigned being vested with the authority to award attorney fees to the prevailing party in the provided-for arbitration. Idaho law is very strict in respect to an arbitrator having authority to award attorney fees. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005); Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008). Additionally, the arbitration clause in the Multi-Party Sale and Exchange Agreement (BFU Tab 4) is specifically in reference to "arbitration to the American Arbitration Association," and this is not such a proceeding. Based on these findings and considerations and on various other factors, it is the conclusion of the undersigned that neither party is entitled to an award of attorney fees.

6. After a review of the exhibits of the parties, their briefings, final arguments, and after taking two days of testimony, it is the conclusion of the undersigned that the *best evidence* in the case as to the probable cost and scope of the agreed-to

remedial work is that certain estimate (BFU's Tab 6, Amended Bid) prepared by Progressive Engineering in the amount of \$229,887.00. That Bid appears to have been prepared by Progressive Engineering at the request of the Association and apparently with some input by the parties hereto, and that is the finding of the undersigned.

7. However, it was submitted during the hearing and was undisputed that the Association offered to pay Keane the sum of \$70,125.00 in exchange for his agreement to perform the work as outlined in Progressive's scope of work. Said action strongly indicates to the undersigned that a portion of the remedial work outlined by Progressive was not Keane's responsibility but was more in the nature of added work being requested by the Association. As such, it is the conclusion of the undersigned that Keane is only obligated to pay the sum of \$159,762.00 (\$229,887.00 less \$70,125.00) in respect to repair of the exterior common area as outlined in Progressive's scope of work.

8. Additionally, it was the testimony of the parties that BFU only has a one-third undivided interest (and, as such, a one-third responsibility) in respect to the exterior common area and, as such, it can be argued that Keane should only pay BFU one-third of said \$159,762.00. However, it is clear from the MSA that Keane agreed to perform remediation work for BFU in respect to the totality of the exterior common area. It is also clear that BFU has a protectable interest in said exterior common area. As such, it is the conclusion of the undersigned that Keane is obligated to BFU to pay the entirety of the said \$159,762.00 amount in respect to repair of the exterior common area. Other unit owners of the condominium, together with the Association itself, will, it appears, be benefited by Keane's payment of said estimated repair costs, but those parties and any such issues in respect to sharing in the repair costs are not before the undersigned.

9. In supplementation to paragraph 8 above, and for the purpose of protecting Keane from having to pay for the same repairs twice, it is the decision and direction of the undersigned that said repair costs (\$159,762.00) shall be paid by Keane jointly to BFU and its attorney, David Risley, and shall be held in trust by David Risley¹ for the express purpose of paying for all or a portion of the costs of repairing the exterior common area of the project as that work is outlined in Progressive's Amended Bid. If the repairs, as outlined in Progressive's Amended Bid, are performed for a cost less than \$229,887.00, any such savings shall be returned forthwith by Mr. Risley (or other trustee) to Keane, together with an accounting. If the repair costs exceed said \$229,887.00, Keane shall have no further liability for any additional costs, at least as to BFU.

10. It appears from the testimony of the parties that BFU's repair of the ADA area in question served a dual purpose, i.e., to satisfy the demands of BFU's new tenant and as a partial repair of the common area as discussed above. As such, it is the decision of the undersigned that Keane shall reimburse BFU for one-half of BFU's cost (\$35,363.33) in respect to that item of work, together with interest thereon.

11. Though the parties presented many other elements of damages and costs, it is the finding and conclusion of the undersigned that all other claimed damages of both parties were not proven to the reasonable satisfaction of the undersigned and, as such, are not recoverable.

12. The cost of the Arbitration shall be borne equally by the parties, and the below Award No. 1 addresses same.

¹ In the event Mr. Risley declines to act as trustee, upon application, the monies shall be paid over to a court appointed trustee.

AWARD

Based on the above, the undersigned makes the following two (2) separate

Awards:

Award No. 1.

1. An award of the principal sum of \$205,131.17, made up of the following amounts:

- a. The sum of \$180,000.00 as identified in the MSA.
- b. The sum of \$17,681.67 in respect to reimbursement of 50% of BFU's costs re the ADA area.
- c. The sum of \$7,449.50 in respect to reimbursement of BFU for arbitration costs/expenses.

2. In addition to the above, an award of interest in the sum of \$87,809.84, made up of the following amounts:

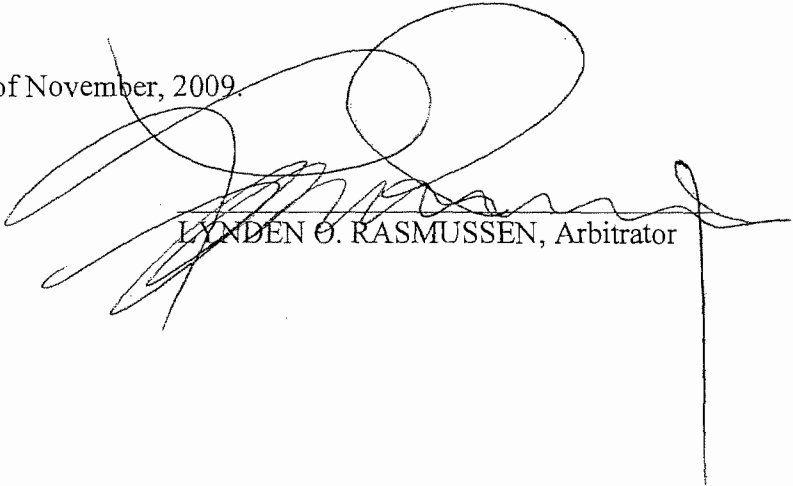
- a. Interest on the \$180,000.00 amount in the total amount of \$84,694.09 as of September 30, 2009.
- b. Interest on the partial reimbursement of the ADA cost in the total amount of \$3,115.84 as of September 30, 2009.
- c. Together with continuing per diem interest in the amount of \$66.57 from October 1, 2009 forward until this Award No. 1 is fully paid.

3. This Award No. 1 shall be to the benefit of BFU and payable by Keane.

Award No. 2.

- a. The sum of \$159,762.00 in respect to Keane's obligation to BFU regarding remediation of the exterior common area.
- b. No interest is awarded in respect to said amount.
- c. This Award No. 2 is expressly for the purpose of repairing the exterior common area as discussed above and, upon payment, shall be held in trust by BFU and its attorney, Mr. David Risley, as also discussed above.

DATED this 18th day of November, 2009.



LYNDEN O. RASMUSSEN, Arbitrator

172632

Agreement to Submit to Arbitration

AGREEMENT MADE ^{ON} August 3 ^{MLM}, 2009, between Bald, Fat & Ugly, LLC, an Idaho Limited Liability Company ("BFU"), and Richard A. and Lisa C. Keane, husband and wife of Lewiston, Idaho; R & L Developments, LLC, an Idaho Limited Liability Company; Keane and Co. Construction, Inc., an Idaho corporation:

The parties stipulate that certain controversies have arisen and exist between them, including the course of dealing with contractual relationships regarding the sale, purchase, construction, repair and related matters regarding the parties' interests in the HOUSTON PROFESSIONAL PLAZA located in Lewiston, Idaho.

The parties further stipulate that there are currently the following pending disputes:

1. Disputes regarding the terms, rights, and obligations of the parties relating to, and arising from, the Mediation Agreement reached June 8, 2005, a copy of which is attached hereto as Exhibit "A."
2. Disputes regarding issues before the American Arbitration Association ("AAA") under case number 77 721 Y 00416 06 SHST, including the cost and expenses of this arbitration. A copy of the pending Order under this case number is attached hereto as Exhibit "B."
3. Any additional disputes and differences between the parties that have arisen during the course of dealing between the parties.

HEREIN, COLLECTIVELY REFERRED TO AS THE "DISPUTES."

The parties, desire to submit all such DISPUTES to arbitration before Lynden O. Rasmussen, Winston & Cashatt Lawyers, Bank of America Financial Center, 601 W. Riverside, Suite 1900, Spokane, Washington 99201-0695.

1) Submission of Disputes

BFU and Keane agree to submit all DISPUTED claims, controversies, demands, disputes, differences, and matters, now pending between them, or contemplated by either of them, relating to or arising from the above-mentioned construction contract between owner and contractor and performance under the contract, to Lynden O. Rasmussen, who shall, subject to the provisions of this agreement, arbitrate all disputes between the parties, including, without limitation:

- A. Whether KEANE breached the terms of the Mediation Agreement reached June 8, 2005.

B. Whether BFU breached the terms of the Mediation Agreement reached June 8, 2005.

C. Whether KEANE breached his September 9, 2002, agreement for work performed in any manner, including, without limitation by failing to perform work under that agreement to the standard of skill practiced by qualified contractors in Lewiston, Idaho and whether KEANE failed to provide the quality of materials as called for in the plans and specifications relating to such agreement.

D. Damages for breach by KEANE of the terms and conditions by him to be performed under the terms of the Mediated Agreement.

E. Damages for breach by BFU of the terms and conditions by them to be performed under the terms of the Mediated Agreement.

F. Subject to an affirmative finding by the arbitrator, what amount of damages contractor owes owner or owner owes contractor by reason of such breach or nonperformance, as set forth below.

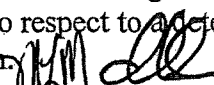
2) **Determination of Damages**

A. In determining damages, if any, owed by KEANE to BFU or BFU to Keane, the arbitrator is directed to assign to each item of substandard work, if any, an amount equal to the reasonable cost of correcting such item to conform to the general standard of skill or quality practiced by building contractors in Lewiston, Idaho, in performing the item in questions, and the total cumulative cost of all such items shall be the damages, if any, to which owner shall be entitled from Keane.

B. The parties stipulate that the above-stated proration of damages as to each such substandard work item, if any, is required of the arbitrators for the purpose of Keane's seeking recourse against any third persons or particular subcontractors, to the extent of any such damages contractor may suffer by virtue of an award being made by the arbitrators respecting such substandard work item, if any, pursuant to this agreement.

3) **Terms and Conditions of Arbitration**

A. The arbitrator shall have full power to make such regulations and to give such orders and directions as he shall deem expedient to respect to a determination of damages in the matters and differences referred to them.

by  September 14, 2009

B. Each of the parties shall, within _____ days from the effective date of this ~~agreement~~, furnish to the arbitrator, and a copy to the other party or his counsel, a statement in writing of the claims and objections that the claimant proposes to submit.

4) **Conduct and Rules of Hearing**

A. On a date convenient to the parties and the Arbitrator, the Arbitrator will convene an arbitration at the HOUSTON PROFESSIONAL PLAZA, Lewiston, Idaho. At such Arbitration, all documents submitted pursuant to paragraph 3A will be admitted as authentic, subject to arguments and evidence regarding credibility and relevance.

The Arbitrator will hear the testimony of BOB BLEWETT on behalf of BFU and RICHARD KEANE on behalf of KEANE and only such other witnesses as are mutually agreed by the parties.

The Rules of Evidence will be waived with regard to formal objections, but credibility of representations will be subject to the determination of the Arbitrator.

B. If a party shall default in any respect referred to in paragraph A above, the arbitrator may proceed with the arbitration in their discretion as if no such evidence were in existence, to the extent it may be favorable to the party in default.

C. The arbitrator may, in his absolute discretion, take as evidence any affidavit or declaration or writing concerning the matter in controversy, on condition that a copy has been given ^{by September 14, 2009} no less than _____ days previously to the party against whom the same is offered, but the person whose evidence is so taken shall be subject at any time to cross-examination by such party, if the party thinks fit to bring that person before the arbitrators.

5) **Duties of Arbitrators**

A. The arbitrator shall view the premises and shall inspect any plans and drawings and inspect any documents relating to the construction of the above-mentioned Houston Professional Plaza.

B. The arbitrator shall have full power to order mutual releases to be executed by the parties, and, if either of the parties fails to execute a release such orders shall have the effect of a release, and may be duly acknowledged as such.

C. If either party or a witness for either party shall fail to attend the arbitration hearing, after such written notice to such party as the arbitrators deem reasonable, the arbitrators may proceed in the absence of such party or witnesses without further notice.

6) **Parties to Cooperate**

Neither party shall unreasonably delay or otherwise prevent or impede the arbitration or the making of an award.

7) **Costs and Expenses**

All costs and expenses of the arbitration shall be borne and paid by the parties in equal shares.

8) **Parties Not to Commence Proceedings During Arbitrations; Effect of Award**

The parties agree that neither of them will, before or during such arbitration, commence or prosecute a civil action against the other relating to any of the matters in controversy, and that the award to be made by the arbitrators, or the umpire in case one is appointed, shall be valid and binding on the parties, and they agree to observe and perform each part of such orders.

All statutes of limitation and other limitation periods for any and all DISPUTES, between the parties will be tolled as of June 8, 2005, and shall not be time barred by any statute of limitation, laches, or other time limitation (whether statutory, equitable, contractual, or otherwise).

9) **Effect of Agreement**

This agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties.

10) **Notification of Award**

Any award made pursuant of this agreement is to be delivered in writing, and executed by the arbitrators, and delivered to Keane and BFU.

11) **Governing Law**

This agreement shall be governed by, construed, and enforced in accordance with the laws of Idaho.

Each party to this agreement has caused it to be executed at (place of execution), on the date indicated below.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year hereinabove first written.

Richard A. Keane & Lisa Keane




Richard A. Keane



Lisa C. Keane,

by Richard A. Keane, attorney-in-fact

R & L Developments, LLC



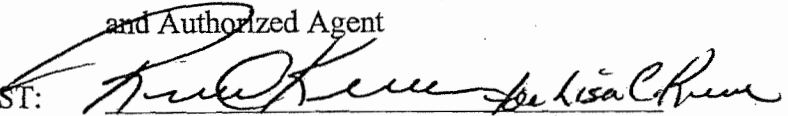
R & L Developments, LLC,
Authorized Agent

Keane & Co. Construction, Inc.



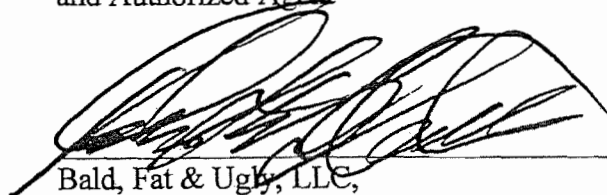
Keane & Co. Construction, Inc. – President
and Authorized Agent

ATTEST:



Keane & Co. Construction, Inc. – Secretary
and Authorized Agent

Bald, Fat & Ugly, LLC



Bald, Fat & Ugly, LLC,
Authorized Agent

RANDALL, BLAKE & COX, PLLC

LAWYERS

STEVE R. COX*
DAVID R. RISLEY*
SCOTT CRIPMAN*
KERRY A. WAGNER*

1106 IDAHO STREET
P.O. BOX 346
LEWISTON, ID 83501
(208) 743-1234

DERRICK A. ATER

WYNNE M. BLAKE
(1922-2006)

*LICENSED IN IDAHO AND WASHINGTON

TELEFAX - (208) 743-1266

RUSSELL S. RANDALL
(1908-2004)

E-mail: david@rbcoc.com

October 21, 2009

Manderson L. Miles
Knowlton & Miles
P. O. Box 717
Lewiston, ID 83501

VIA FACSIMILE (208) 746-0118

Re: *BFU/Keane*

Dear Mandy:

Just confirmed with Lyn's office that the submissions are not due until tomorrow.

Do we agree that with respect to the *Agreement to Mediate* we will submit an amended article two which will read:

2) Determination of Damages

a. Is amended to request that the arbitrator break out any award by category of damages claimed by the parties.

b. Is deleted by agreement.

As to the property on 17th Street, BFU will release the lien so long as the net proceeds are paid by the closing agent at closing to the Randall Blake and Cox PLLC Trust Account for payment to BFU as credit against sums due BFU by Keane.

As to the office condo, are we agreed that a no reserve sale is set on or about November 6, 2009, roughly a week before the sale by foreclosure. BFU does not agree to release its lien without payment in full of all sums due to BFU. However, if the sale price is reasonable, BFU will release its lien so long as the price paid at auction is reasonable and the net sale proceeds are paid into trust pending the outcome of this matter. If the parties cannot agree on whether the sales price is reasonable, then the parties should allow ~~leg~~ to make a final resolution of that issue. If no sale takes place, then Keane will pay the sums due to cure the default and avoid the foreclosure sale. Please let me know if these proposals are acceptable.

Yours very truly,

RANDALL BLAKE & COX, PLLC

DAVID R. RISLEY

DRR/nlh

cc: Bald, Fat & Ugly, LLC
APPLICATION & MOTION FOR CONFIRMATION OF AWARD

MEDIATED SETTLEMENT AGREEMENT

June 8, 2005

LOR Testing 1, 2, 3, 4, 5

Name: Keane Co. Construction and R & L Development
And Bald, Fat & Ugly

Paul This is the settlement agreement following mediation of the dispute that's mediated today, June 8, 2005, at the offices of Winston & Cashatt, the mediator being Lynden Rasmussen. Parties – persons present at this time include Paul Cressman, who is speaking at David Risley, counsel for BFU, Bob Blewett, April Smith, Lyn Rasmussen, Rick Keane and Rod Bond. It's the intent of this dictation to constitute the settlement agreement, subject to memorialization in writing. In the event the parties cannot agree upon the proper terms of settlement in writing, that matter will be resolved by Mr. Rasmussen. The terms of the settlement are as follows:

Paul There exists certain issues with respect to the title of the condominium units and those issues, it's agreed, will be jointly, the parties will jointly cooperate for resolution. David Risley will provide appropriate information for submittal to the Management Association or Condominium Owners' Association, whatever the proper terminology would be, to address those title issues, which include issues with respect to the location of the buildings on the subject property.

David The definition of common areas for all of Houston Professional Plaza and the compliance with the technical requirements of Idaho's condominium law, then that would be presented jointly to the Houston Professional Plaza Condominium Association with the request that the Condominium Declaration be amended to include that appropriate map, together with other definitions in the minus that would bring the Condominium Declaration into compliance with Idaho law and the project as built, if in such – there's such situation where the Association does not accept those changes or recommendations, the parties would jointly participate in the suit against the Association to resolve and correct those title issues. I will need maps from Mr. Keane as necessary to show the as built for purposes of amending that condominium map.

Deleted: Man 2

Deleted: Man 3

Paul

It is my understanding that you do have a December 15, 2005, map and to the extent there is a better map than that, we would provide it. If not, that would be the map that you would utilize. It is also my understanding that if we have any disagreements on these issues that we would present them for resolution to Mr. Rasmussen in accordance, well, that would be the resolution. With respect to issues on the common area, the, with regard to the common area that is in question and of which we are speaking, it is the exterior common area to the buildings. And the parties will cooperate and provide, the intent is that my clients would provide those areas in compliance with the applicable ADA standards and applicable City of Lewiston building code requirements. And to that end, the BFU folks will provide their engineering information on those subjects to date to us for our review and likely we will provide - we will solicit engineering assistance to hopefully reach an agreed scope of work between the engineers and between our respective clients to resolve this issue. If there is a dispute as to the proper scope of work, either between the parties or the respective engineers, and following whatever reasonable attempts either party believes is appropriate, and those efforts failing, those matters will also be presented to Mr. Rasmussen for resolution. Following the agreement on the scope of work or resolution by Mr. Rasmussen, that work would then be performed at the expense of my clients with an as built plan provided for the work, in question, stamped by a licensed engineer in the state of Idaho, presented to Mr. Risley's clients.

Paul With regard to an additional issue under the same category would be providing as built for buildings 2 and 3 and my clients would agree to provide that as well. With regard to additional parking...

Deleted: ing

David Before we move on to another issue and that's the settling issue to the south of buildings 2 and 3 that would be resolved as part of the repair and care of the common areas and the common areas would be of the Houston Professional Plaza, both Phase 1 and Phase 2.

Deleted: Man 4

Paul With regard to the settlement issue, that issue will be addressed by the parties and if they cannot resolve an appropriate fix suitable, then that issue would also be pretend to Mr. Rasmussen for resolution. With regard to additional parking spaces, my clients agree to provide four additional parking space, three located on the southeast corner of the development, or maybe four, if possible, in that area. If not, three in the southeast corner, and one in the northeast corner of the development.

Deleted: Man 3

David (Unintelligible) but I wanted to show you that.

Deleted: Man 4?

Deleted: Man 3

Paul

An additional term of the settlement would be that the parties, my clients would agree that the rock wall would be in compliance on the south side of the property with the applicable City of Lewiston requirements and in the event either of the parties disagree on that and are unable to resolve those differences with regard to any necessary fix, that issue would also be provided to Mr. Rasmussen for resolution.

Paul

At all times referenced in this settlement, it's the intent of the parties that the applicable ADA requirements and the applicable City of Lewiston requirements are those that would otherwise be applicable to these improvements that it is subject to this dispute.

Paul

The next term of this settlement is the payment of \$180,000 payable within six months by my clients. The first two months would be interest free and the last four months, if necessary or desirable by my clients, interest would accrue at the rate of 8% per annum. The entire amount would be payable within six months. This amount may be prepaid without any penalty whatsoever by my clients. This obligation will be secured by the two parcels of property that have presently been offered as additional collateral to remove an option and that will be further described in the written document.

Paul

With regard to all other claims between the parties, claims that are known or unknown, there is a mutual release by both parties of all claims. And finally, there is a confidentiality provision ably drafted by Mr. Risley and myself that would apply to the terms of this agreement, except as necessary to implement it. David, do you have anything else?

Deleted: _____

David

Mr. Rasmussen - he suggested that venue be at Winston & Cashatt and do you want that to be appealable, then it should be under the rules of the American Arbitration Association but not the auspices of the Association.

Paul

That's agreeable.

David

That way we can avoid costs.

Deleted: (unintelligible)

Paul

That's agreeable. And

David

He would have within his power to award costs and fees and his decisions would be, I suggest, non-appealable.

Paul

They would be appealable to whatever extent they would be appealable under the AAA rules.

David Ok. And we don't know long the work will stay in place. Is it acceptable to have the deed of trust stay in place until the work is done to cure the common areas?

Paul No. The issue would be resolved, the issue on the, at such time as the money's paid, the deed of trust would be released.

David What time of frame should (unintelligible).

David Let's go off the record here and talk about this cause...

Deleted: Paul

Paul It's apparently been agreed that the deed of trust on the two pieces of property to secure the \$180,000 will remain in place until such time as the work to be performed pursuant to this agreement by my clients is complete. Mr. Rasmussen, we would ask that you type this up, have your able staff do that, and provide each of us with a copy and Mr. Risley and I will prepare Mr. Bond the required written documentation and hopefully...

Deleted: i

???

Paul Hopefully we'll not need your assistance in that regard.

???

Paul In case this issue has not been covered earlier, the concept with regard to the external common area work coming in compliance with the applicable ADA and applicable City of Lewiston requirements would be that the as built, once provided, would be stamped by licensed engineer in the state of Idaho. I think I've already indicated and that as built drawing would be provided to Mr. Risley's clients. Is that your agreement?

Rick Keane That's right, and once that is provided in the disbursement, then its...

Deleted: Man ??

Paul Then the deeds of trust would be released.

Rick Keane that's your understanding?

Deleted: Man ??

David It's our intention of taking those as built and filing with the appropriate office of the City Works.

Deleted: Man ??

Deleted: Man

Paul

You can do with them what you like. That's our agreement. Anything else?"

LOR

Ah, yes. This is Lyn Rasmussen. I won't agree to accept responsibility to arbitrate the issues as defined herein and I want it clearly understood between the parties, among the parties hereto that this a binding and enforceable agreement and subject only to being, I mean it's not subject to being reduced to writing, but you people have agreement as we speak now. Correct?

Paul

We have an agreement as we speak now, but it is the intent that it will be put in writing and in the event of any disagreements over its terms, those will be resolved by you.

LOR

That's my understanding.

Paul

There's been a modification of what was stated earlier with regard to the confidentiality agreement, it has been agreed that BFU and Mr. Bob Blewett can disclose this agreement and its terms to the following banks:

Bob Blewett

No less than Banner, Panhandle State Bank, US Bank and Wells Fargo at the time.

Deleted: Man ??

Deleted: _____

Paul

Any other banks?

Bob Blewett

And Sterling Bank and, those are the main ones anyhow.

Deleted: Man ??

Deleted: _____

And Farm Credit. I've got a loan with them.

Deleted: [Crosstalk]

Paul

So those will be the only banks that'll be disclosed?

Bob Blewett

That's it, yeah.

Deleted: Man ??

Paul

At any point.

David

This agreement is disclosed to the bankers for the purposes of loan packages to go to different banks at different towns.

Deleted: Man ??

Deleted: (unintelligible)

Paul

It's been agreed that either party may disclose the terms of this agreement to their respective bankers. The other issue that may not have been added that I think that needs to be is before any improvements can be made or any changes to the common area - any improvements or changes to the

common areas, they must be presented to the applicable Association of the condominium and their written approval obtained in accordance with the terms of the Declaration and Idaho state law, which ever may be applicable or both. One final exception to the confidentiality provision the parties can disclose this agreement to Mister...Steve Lohman.

Paul Steve Lowman.

Deleted: Man ??

Paul Steve Lowman. And either party may resolve – may disclose the terms of this agreement to any accountant which they use. End of terms unless anybody wants to add anything else.

David I think you and I Paul can draft the confidentiality agreement, that allows for communications and to receive professional advice (unintelligible).

Deleted: Man ??

Deleted: _____

Deleted: _____

Deleted: _____

Paul Anything else? This ends the terms of the settlement. I'll go around the room and ask if the parties and their counsel and those present believe these are the terms of the settlement agreement, Paul Cressman speaking, acknowledges that these are the terms that the parties have agreed to.

Dave Dave Risley speaking, these are the terms that the parties have accepted.

Bob Blewett Bob Blewett and these are the terms as I understand from all this the parties' agree to.

April April Smith speaking and these are the terms of the agreement.

LOR You want me to speak to this also? I participated in this mediation and it appears these are the terms that the parties agree to.

Rick I'm Rick Keane and I believe these are the terms that we've agreed to.

Rod This is Rod Bond and I believe these are the terms we've agreed to.

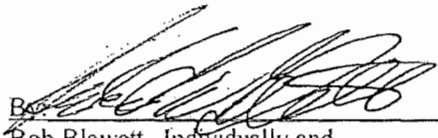
Paul There being nothing further, this concludes the terms of the settlement agreement.

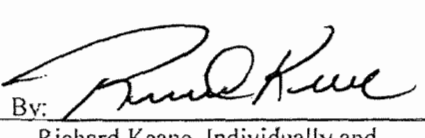
DATED this 3rd day of Nov., 2009

DATED this 13th day of Oct., 2009

Bald, Fat. & Ugly

Keane Company Construction

By: 

By: 

Bob Blewett, Individually and
As an Agent for BFU

Richard Keane, Individually and
As an Agent for Keane Co. Constr.

W

FILED

2010 FEB 18 PM 11 54

PATTY O. WEEKS
CLERK OF THE DIST COURT

James O. Weeks
DEPUTY

1
2
3 DAVID R. RISLEY
4 RISLEY LAW OFFICE, PLLC
5 P. O. Box 1247
6 1443 Idaho Street
7 Lewiston, ID 83501
8 (208) 743-5338
9 (208) 743-5307 (Fax)
10 david@risleylawoffice.com
11 ISB No. 1789

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 RICHARD A. KEANE and LISA C. KEANE,
15 and KEANE AND CO. CONSTRUCTION,
16 INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

17 Claimants,

18 and

AMENDED APPLICATION AND MOTION
FOR CONFIRMATION OF ARBITRATION
AWARD.

19 BALD, FAT & UGLY, L.L.C.,

20 Respondent.

21 BALD, FAT & UGLY, LLC,
22 an Idaho Limited Liability Company,

23 Claimant,

24 v.

25 RICHARD A. KEANE and LISA A.
26 KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

1 COMES NOW, BALD, FAT & UGLY, LLC, an Idaho Limited Liability Company,
2 (hereinafter "BFU"), by and through its attorney of record, David R. Risley of Risley Law
3 Office, PLLC, and moves this Court pursuant to Idaho Code § 7-911 and Idaho Code § 7-916 for
4 an Order confirming the Arbitration Awards entered on November 18, 2009 and affirmed on
5 January 20, 2010, and hereby alleges as follows:
6

7 1. Bald, Fat & Ugly, LLC is an Idaho Limited Company organized and existing
8 under and by virtue of the laws of the State of Idaho, is duly authorized to do business within the
9 State of Idaho, and maintains its principal place of business at Grangeville, Idaho.

10 2. Richard A. Keane and Lisa A. Keane (hereinafter collectively referred to as
11 "Keane") are husband and wife, and upon information and belief, are residents of Nez Perce
12 County, State of Idaho.
13

14 3. R&L Developments, LLC (hereinafter collectively referred to as "Keane") is an
15 Idaho Limited Liability Company is organized and existing under and by virtue of the laws of the
16 State of Idaho, is duly authorized to do business within the State of Idaho, and maintains its
17 principal place of business at Lewiston, Idaho.

18 4. Keane and Co. Construction (hereinafter collectively referred to as "Keane") is an
19 Idaho corporation organized and existing under and by virtue of the laws of the State of Idaho, is
20 duly authorized to do business within the State of Idaho, and maintains its principal place of
21 business at Lewiston, Idaho.
22

23 5. The parties entered into a *Mediated Settlement Agreement* (hereinafter "MSA") on
24 or about June 8, 2005, with Lynden O. Rasmussen serving as mediator. After June 2005,
25 disputes arose between the parties as to the terms and conditions of the MSA.
26

1 6. On or about August 3, 2009, the parties entered into an *Agreement to Submit to*
2 *Arbitration* before Lynden O. Rasmussen.

3 7. This Court has jurisdiction under Idaho Code, Title 7, Chapter 9, and venue is
4 appropriate in Nez Perce County, Idaho, the agreed location of the arbitration, pursuant to Idaho
5 Code § 7-918.

6 8. After arbitration, Arbitration Awards were entered, a true copy of which is
7 attached hereto as Exhibit "A" and incorporated herein by reference as through fully set forth.
8 BFU was the prevailing party.

9 9. On or about December 4, 2009, the Defendants made a *Motion to Amend*
10 *Arbitration Award*. This motion was considered by the Arbitrator and resulted in the affirmation
11 order clarifying the Arbitration Awards. A true and correct copy of the arbitrator's Clarification
12 Award is attached hereto as Exhibit "B" and incorporated herein by reference as through fully set
13 forth. BFU was the prevailing party.

14 10. As to Award No. 1, the Arbitrator awarded BFU the sum of TWO HUNDRED
15 NINETY TWO THOUSAND NINE HUNDRED FORTY-ONE and 01/100 DOLLARS
16 (\$292,941.01), plus interest eight percent (8%) from October 1, 2009 until paid.

17 11. As to Award No. 2, the Arbitrator awarded BFU the sum of ONE HUNDRED
18 FIFTY NINE THOUSAND SEVEN HUNDRED SIXTY-TWO and 00/100 DOLLARS
19 (\$159,762.00) under certain restrictions as set forth in the Arbitration Awards.

20 12. On or about December 22, 2009, the sum of ONE HUNDRED FORTY FOUR
21 THOUSAND FIFTY-THREE and 26/100 DOLLARS (\$144,053.26) was paid in partial
22 satisfaction of Award No. 1. The amount due and owing on Award No. 1 on December 22,
23
24
25
26

1 2009, including interest at eight percent (8%) from October 1, 2009 to December 22, 2009, was
2 TWO HUNDRED NINETY EIGHT THREE HUNDRED NINETY-NINE and 75/100
3 DOLLARS (\$298,399.75). After credit for partial payment of Award No. 1, this leaves due and
4 owing ONE HUNDRED FIFTY FOUR THREE HUNDRED FORTY-SIX and 49/100
5 DOLLARS (\$154,346.49), plus interest at eight percent (8%) from December 22, 2009 until
6 paid.
7

8 13. Judgment on Awards No. 1 and 2 have not been awarded.

9 14. Pursuant to Idaho Code § 7-911, the Court should enter an order confirming the
10 Arbitration Awards, and pursuant to Idaho Code § 7-914, judgment should be entered in
11 accordance herewith. Fees and costs should be awarded to BFU under Idaho Code, Title 7,
12 Chapter 9, and under Idaho Code §§ 12-120 and 12-121.
13

14 15. Except as set forth above, no party has applied under Idaho Code § 7-909 for a
15 change or modification of the award.

16 16. BFU is entitled to confirmation of the Arbitration Awards, together with costs and
17 attorney fees associated with the necessity of bringing this action and prejudgment interest from
18 October 1, 2009 until the date judgment is entered.
19

20 WHEREFORE, BFU respectfully prays, and does move the Court pursuant to Idaho
21 Code § 7-916, as follows:

22 1. The Court enter an order confirming the Arbitration Awards pursuant to Idaho
23 Code § 7-911.

24 2. After confirmation of the Arbitration Awards, judgment be entered in favor of
25 BFU in the following amounts:
26

1 a. As to Award No. 1, the principal sum of ONE HUNDRED FIFTY FOUR
2 THREE HUNDRED FORTY-SIX and 49/100 DOLLARS (\$154,346.49), plus interest at
3 eight percent (8%) from December 22, 2009 until paid.
4

5 b. As to Award No. 2, the principal sum of ONE HUNDRED FIFTY NINE
6 THOUSAND SEVEN HUNDRED SIXTY-TWO and 00/100 DOLLARS (\$159,762.00)
7 under certain restrictions as set forth in the Arbitration Award, plus interest at eight
8 percent (8%) from November 18, 2009.

9 3. BFU be awarded its fees and costs in this action pursuant to Idaho Code § 7-914,
10 § 12-120, and § 12-121.

11 4. The Court retain jurisdiction to enter such additional orders and take such
12 additional action as is necessary to effectuate the Arbitration Awards and ensuing judgment.
13

14 5. For all other just relief.

15 DATED this 17th day of February, 2010.

16
17 RISLEY LAW OFFICE, PLLC
18 Attorney for Petitioner

19 By: 
20 DAVID R. RISLEY
21 ISB No. 1789
22
23
24
25
26

1 I HEREBY CERTIFY that a
2 true and correct copy of the *Amended*
3 *Application and Motion for*
4 *Confirmation of Arbitration Award*
5 served as indicated
6 on this 17th day of February, 2010,

7 Mailed
8 Hand Delivered
9 Faxed
10 Messenger

11 to the following:

12 Manderson L. Miles
13 Knowlton & Miles
14 P. O. Box 717
15 Lewiston, ID 83501

16 
17 _____
18 DAVID R. RISLEY
19
20
21
22
23
24
25
26

FILED

2011 MAY 3 PM 4 59

CLERK OF THE DISTRICT COURT

DEBRY

Handwritten signature/initials over the stamp

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

Claimants,

and

ORDER CONFIRMING ARBITRATION
AWARDS

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

THIS MATTER having come before the Court on Bald, Fat & Ugly, LLC's (hereinafter
referred to as "BFU") *Amended Application and Motion for Confirmation of Arbitration Award*,

1 and the BFU having been represented by David R. Risley of Risley Law Office, PLLC and
2 Richard A. Keane and Lisa A. Keane, husband and wife; R&L Developments, LLC, an Idaho
3 Limited Liability Company, and Keane and Co. Construction, Inc., an Idaho Corporation, having
4 been represented by Manderson L. Miles of Knowlton & Miles, and good cause appearing, now,
5 therefore,
6

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

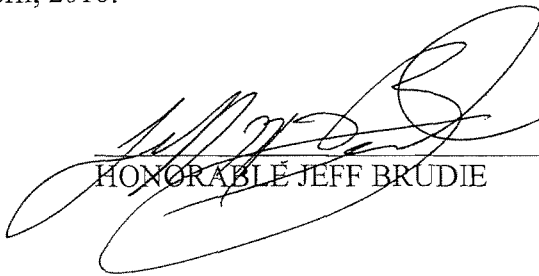
8 1. The *Arbitration Awards* dated November 18, 2009, a true copy of which is
9 attached as Exhibit "A," and the Clarification Order of the Arbitrator dated January 20, 2010, a
10 true copy of which is attached as Exhibit "B," is hereby confirmed pursuant to Idaho Code § 7-
11 914.
12

13 2. Bald Fat and Ugly LLC, have and recover from Richard A. Keane and Lisa A.
14 Keane, husband and wife; R&L Developments, LLC, an Idaho Limited Liability Company, and
15 Keane and Co. Construction, Inc., an Idaho Corporation, jointly and severally, a money judgment
16 in the sum of ONE HUNDRED FIFTY FOUR THREE HUNDRED FORTY-SIX and 49/100
17 DOLLARS (\$154,346.49), plus interest at eight percent (8%) from December 22, 2009 until
18 paid.
19

20 3. Bald Fat and Ugly LLC, have and recover from Richard A. Keane and Lisa A.
21 Keane, husband and wife; R&L Developments, LLC, an Idaho Limited Liability Company, and
22 Keane and Co. Construction, Inc., an Idaho Corporation, jointly and severally, a money judgment
23 in the sum of ONE HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED SIXTY-TWO
24 and 00/100 DOLLARS (\$159,762.00) under certain restrictions as set forth in the Arbitration
25 Award, plus interest at eight percent (8%) from November 18, 2009.
26

1 4. Jurisdiction is retained to enter such additional orders and take such additional
2 action as is necessary to effectuate the Arbitration Awards.

3 DATED this 30 day of April, 2010.

4
5
6 
7 HONORABLE JEFF BRUDIE

8
9 CLERK'S CERTIFICATE OF MAILING

10 I certify that on ~~April~~ ^{May} 3, 2010, at my direction, the foregoing *Order Confirming*
11 *Arbitration Awards* was served on the following in the manner shown:

12 Counsel for Claimants: (copy)

12 Manderson L. Miles [] Mailed, postage prepaid
13 Knowlton & Miles, PLLC [] Messenger
13 P.O. Drawer 717 [] Facsimile
14 Lewiston, ID 83501

15 Counsel for Respondent: (copy)

16 David R. Risley [] Mailed, postage prepaid
16 Risley Law Office, PLLC [] Messenger
17 P.O. Box 1247 [] Facsimile
17 Lewiston, ID 83501

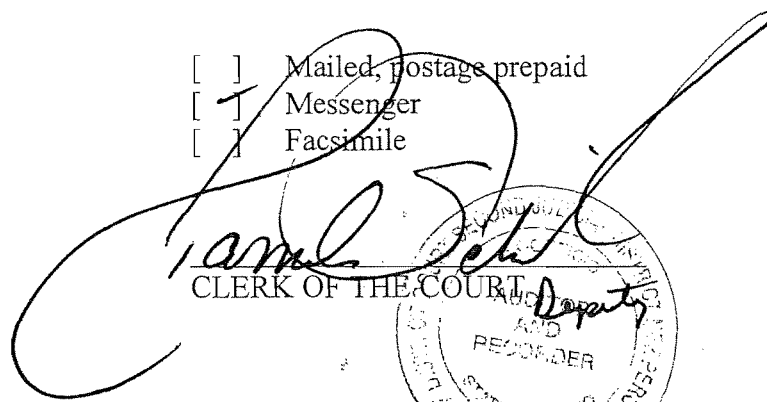
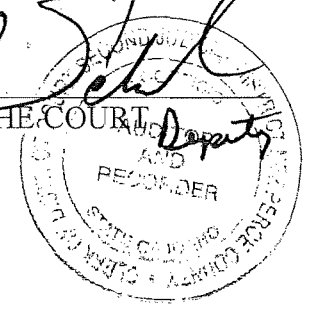
18
19 
20 CLERK OF THE COURT Deputy
21
22 

EXHIBIT A

IN THE MATTER OF THE ARBITRATION BETWEEN:

RICHARD A. KEANE and LISA C.)	
KEANE, husband and wife;)	
R & L DEVELOPMENTS, LLC,)	
an Idaho limited liability company; and)	
KEANE AND CO. CONSTRUCTION,)	
INC., an Idaho corporation,)	
)	
Claimants,)	ARBITRATION
)	AWARDS
-and-)	
)	
BALD, FAT & UGLY, LLC,)	
an Idaho limited liability company,)	
)	
Respondent.)	

COMES NOW the undersigned Arbitrator and, pursuant to the terms and conditions of a certain Agreement to Submit to Arbitration dated August 3, 2009, and as amended by a certain letter dated October 21, 2009, copies of which are attached hereto and collectively identified as Attachment "1," and renders the following Awards:

Preliminary Comments

1. No attempt is made herein to recite the lengthy history of the disputes giving rise to this Arbitration, but certain comments are believed to be appropriate for the parties' better understanding of these Awards.

2. The Houston Professional Plaza LLC (Association) is not a party to this arbitration, and, as such, nothing contained herein is binding on that Association. However, the Association certainly has an interest in the project's exterior common area and, as acknowledged by the parties in the Mediated Settlement Agreement ("MSA"), an interest in the repairs thereto, including the scope of repairs as discussed later in this Award.

3. The parties hereto are now signatories to the MSA, which is dated June 8, 2005, a copy of which is attached hereto as Attachment "2." The undersigned acted as the Mediator for the parties in that matter.

4. Though subject to dispute on some issues, the MSA is clear and unambiguous on two (2) key points:

- a. Claimants (hereinafter sometimes "Keane") agreed to pay BFU the principal amount of \$180,000.00 together with interest thereon.
- b. Keane also agreed to the performance of remediation work in respect to the exterior common areas of the project. It was acknowledged in the MSA that the project included both Phases 1 and 2.

5. Though less clear in the MSA and, therefore, subject to dispute, there was not a specific agreement as to the undersigned being vested with the authority to award attorney fees to the prevailing party in the provided-for arbitration. Idaho law is very strict in respect to an arbitrator having authority to award attorney fees. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005); Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008). Additionally, the arbitration clause in the Multi-Party Sale and Exchange Agreement (BFU Tab 4) is specifically in reference to "arbitration to the American Arbitration Association," and this is not such a proceeding. Based on these findings and considerations and on various other factors, it is the conclusion of the undersigned that neither party is entitled to an award of attorney fees.

6. After a review of the exhibits of the parties, their briefings, final arguments, and after taking two days of testimony, it is the conclusion of the undersigned that the *best evidence* in the case as to the probable cost and scope of the agreed-to

remedial work is that certain estimate (BFU's Tab 6, Amended Bid) prepared by Progressive Engineering in the amount of \$229,887.00. That Bid appears to have been prepared by Progressive Engineering at the request of the Association and apparently with some input by the parties hereto, and that is the finding of the undersigned.

7. However, it was submitted during the hearing and was undisputed that the Association offered to pay Keane the sum of \$70,125.00 in exchange for his agreement to perform the work as outlined in Progressive's scope of work. Said action strongly indicates to the undersigned that a portion of the remedial work outlined by Progressive was not Keane's responsibility but was more in the nature of added work being requested by the Association. As such, it is the conclusion of the undersigned that Keane is only obligated to pay the sum of \$159,762.00 (\$229,887.00 less \$70,125.00) in respect to repair of the exterior common area as outlined in Progressive's scope of work.

8. Additionally, it was the testimony of the parties that BFU only has a one-third undivided interest (and, as such, a one-third responsibility) in respect to the exterior common area and, as such, it can be argued that Keane should only pay BFU one-third of said \$159,762.00. However, it is clear from the MSA that Keane agreed to perform remediation work for BFU in respect to the totality of the exterior common area. It is also clear that BFU has a protectable interest in said exterior common area. As such, it is the conclusion of the undersigned that Keane is obligated to BFU to pay the entirety of the said \$159,762.00 amount in respect to repair of the exterior common area. Other unit owners of the condominium, together with the Association itself, will, it appears, be benefited by Keane's payment of said estimated repair costs, but those parties and any such issues in respect to sharing in the repair costs are not before the undersigned.

9. In supplementation to paragraph 8 above, and for the purpose of protecting Keane from having to pay for the same repairs twice, it is the decision and direction of the undersigned that said repair costs (\$159,762.00) shall be paid by Keane jointly to BFU and its attorney, David Risley, and shall be held in trust by David Risley¹ for the express purpose of paying for all or a portion of the costs of repairing the exterior common area of the project as that work is outlined in Progressive's Amended Bid. If the repairs, as outlined in Progressive's Amended Bid, are performed for a cost less than \$229,887.00, any such savings shall be returned forthwith by Mr. Risley (or other trustee) to Keane, together with an accounting. If the repair costs exceed said \$229,887.00, Keane shall have no further liability for any additional costs, at least as to BFU.

10. It appears from the testimony of the parties that BFU's repair of the ADA area in question served a dual purpose, i.e., to satisfy the demands of BFU's new tenant and as a partial repair of the common area as discussed above. As such, it is the decision of the undersigned that Keane shall reimburse BFU for one-half of BFU's cost (\$35,363.33) in respect to that item of work, together with interest thereon.

11. Though the parties presented many other elements of damages and costs, it is the finding and conclusion of the undersigned that all other claimed damages of both parties were not proven to the reasonable satisfaction of the undersigned and, as such, are not recoverable.

12. The cost of the Arbitration shall be borne equally by the parties, and the below Award No. 1 addresses same.

¹ In the event Mr. Risley declines to act as trustee, upon application, the monies shall be paid over to a court appointed trustee.

AWARD

Based on the above, the undersigned makes the following two (2) separate Awards:

Award No. 1.

1. An award of the principal sum of \$205,131.17, made up of the following amounts:
 - a. The sum of \$180,000.00 as identified in the MSA.
 - b. The sum of \$17,681.67 in respect to reimbursement of 50% of BFU's costs re the ADA area.
 - c. The sum of \$7,449.50 in respect to reimbursement of BFU for arbitration costs/expenses.

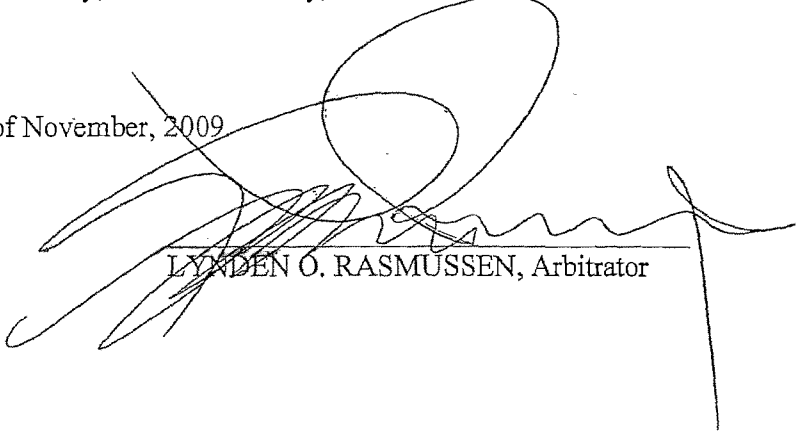
2. In addition to the above, an award of interest in the sum of \$87,809.84, made up of the following amounts:
 - a. Interest on the \$180,000.00 amount in the total amount of \$84,694.09 as of September 30, 2009.
 - b. Interest on the partial reimbursement of the ADA cost in the total amount of \$3,115.84 as of September 30, 2009.
 - c. Together with continuing per diem interest in the amount of \$66.57 from ~~October~~ October 1, 2009 forward until this Award No. 1 is fully paid.

3. This Award No. 1 shall be to the benefit of BFU and payable by Keane.

Award No. 2.

- a. The sum of \$159,762.00 in respect to Keane's obligation to BFU regarding remediation of the exterior common area.
- b. No interest is awarded in respect to said amount.
- c. This Award No. 2 is expressly for the purpose of repairing the exterior common area as discussed above and, upon payment, shall be held in trust by BFU and its attorney, Mr. David Risley, as also discussed above.

DATED this 18th day of November, 2009



LYNDEN O. RASMUSSEN, Arbitrator

172652

Agreement to Submit to Arbitration

AGREEMENT MADE ^{OK} August 3 ^{MZM}, 2009, between Bald, Fat & Ugly, LLC, an Idaho Limited Liability Company ("BFU"), and Richard A. and Lisa C. Keane, husband and wife of Lewiston, Idaho; R & L Developments, LLC, an Idaho Limited Liability Company; Keane and Co. Construction, Inc., an Idaho corporation:

The parties stipulate that certain controversies have arisen and exist between them, including the course of dealing with contractual relationships regarding the sale, purchase, construction, repair and related matters regarding the parties' interests in the HOUSTON PROFESSIONAL PLAZA located in Lewiston, Idaho.

The parties further stipulate that there are currently the following pending disputes:

1. Disputes regarding the terms, rights, and obligations of the parties relating to, and arising from, the Mediation Agreement reached June 8, 2005, a copy of which is attached hereto as Exhibit "A."
2. Disputes regarding issues before the American Arbitration Association ("AAA") under case number 77 721 Y 00416 06 SHST, including the cost and expenses of this arbitration. A copy of the pending Order under this case number is attached hereto as Exhibit "B."
3. Any additional disputes and differences between the parties that have arisen during the course of dealing between the parties.

HEREIN, COLLECTIVELY REFERRED TO AS THE "DISPUTES."

The parties, desire to submit all such DISPUTES to arbitration before Lynden O. Rasmussen, Winston & Cashatt Lawyers, Bank of America Financial Center, 601 W. Riverside, Suite 1900, Spokane, Washington 99201-0695.

1) Submission of Disputes

BFU and Keane agree to submit all DISPUTED claims, controversies, demands, disputes, differences, and matters, now pending between them, or contemplated by either of them, relating to or arising from the above-mentioned construction contract between owner and contractor and performance under the contract, to Lynden O. Rasmussen, who shall, subject to the provisions of this agreement, arbitrate all disputes between the parties, including, without limitation:

- A. Whether KEANE breached the terms of the Mediation Agreement reached June 8, 2005.

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B. Whether BFU breached the terms of the Mediation Agreement reached June 8, 2005.

C. Whether KEANE breached his September 9, 2002, agreement for work performed in any manner, including, without limitation by failing to perform work under that agreement to the standard of skill practiced by qualified contractors in Lewiston, Idaho and whether KEANE failed to provide the quality of materials as called for in the plans and specifications relating to such agreement.

D. Damages for breach by KEANE of the terms and conditions by him to be performed under the terms of the Mediated Agreement.

E. Damages for breach by BFU of the terms and conditions by them to be performed under the terms of the Mediated Agreement.

F. Subject to an affirmative finding by the arbitrator, what amount of damages contractor owes owner or owner owes contractor by reason of such breach or nonperformance, as set forth below.

2) **Determination of Damages**

A. In determining damages, if any, owed by KEANE to BFU or BFU to Keane, the arbitrator is directed to assign to each item of substandard work, if any, an amount equal to the reasonable cost of correcting such item to conform to the general standard of skill or quality practiced by building contractors in Lewiston, Idaho, in performing the item in questions, and the total cumulative cost of all such items shall be the damages, if any, to which owner shall be entitled from Keane.

B. The parties stipulate that the above-stated proration of damages as to each such substandard work item, if any, is required of the arbitrators for the purpose of Keane's seeking recourse against any third persons or particular subcontractors, to the extent of any such damages contractor may suffer by virtue of an award being made by the arbitrators respecting such substandard work item, if any, pursuant to this agreement.

3) **Terms and Conditions of Arbitration**

A. The arbitrator shall have full power to make such regulations and to give such orders and directions as he shall deem expedient to respect to a determination of damages in the matters and differences referred to them.

by September 14, 2009

B. Each of the parties shall, within _____ days from the effective date of this agreement, furnish to the arbitrator, and a copy to the other party or his counsel, a statement in writing of the claims and objections that the claimant proposes to submit.

4) **Conduct and Rules of Hearing**

A. On a date convenient to the parties and the Arbitrator, the Arbitrator will convene an arbitration at the HOUSTON PROFESSIONAL PLAZA, Lewiston, Idaho. At such Arbitration, all documents submitted pursuant to paragraph 3A will be admitted as authentic, subject to arguments and evidence regarding credibility and relevance.

The Arbitrator will hear the testimony of BOB BLEWETT on behalf of BFU and RICHARD KEANE on behalf of KEANE and only such other witnesses as are mutually agreed by the parties.

The Rules of Evidence will be waived with regard to formal objections, but credibility of representations will be subject to the determination of the Arbitrator.

B. If a party shall default in any respect referred to in paragraph A above, the arbitrator may proceed with the arbitration in their discretion as if no such evidence were in existence, to the extent it may be favorable to the party in default.

C. The arbitrator may, in his absolute discretion, take as evidence any affidavit or declaration or writing concerning the matter in controversy, on condition that a copy has been given no less than by September 14, 2009 days previously to the party against whom the same is offered, but the person whose evidence is so taken shall be subject at any time to cross-examination by such party, if the party thinks fit to bring that person before the arbitrators.

5) **Duties of Arbitrators**

A. The arbitrator shall view the premises and shall inspect any plans and drawings and inspect any documents relating to the construction of the above-mentioned Houston Professional Plaza.

B. The arbitrator shall have full power to order mutual releases to be executed by the parties, and, if either of the parties fails to execute a release such orders shall have the effect of a release, and may be duly acknowledged as such.

C. If either party or a witness for either party shall fail to attend the arbitration hearing, after such written notice to such party as the arbitrators deem reasonable, the arbitrators may proceed in the absence of such party or witnesses without further notice.

6) **Parties to Cooperate**

Neither party shall unreasonably delay or otherwise prevent or impede the arbitration or the making of an award.

7) **Costs and Expenses**

All costs and expenses of the arbitration shall be borne and paid by the parties in equal shares.

8) **Parties Not to Commence Proceedings During Arbitrations; Effect of Award**

The parties agree that neither of them will, before or during such arbitration, commence or prosecute a civil action against the other relating to any of the matters in controversy, and that the award to be made by the arbitrators, or the umpire in case one is appointed, shall be valid and binding on the parties, and they agree to observe and perform each part of such orders.

All statutes of limitation and other limitation periods for any and all DISPUTES, between the parties will be tolled as of June 8, 2005, and shall not be time barred by any statute of limitation, laches, or other time limitation (whether statutory, equitable, contractual, or otherwise).

9) **Effect of Agreement**

This agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties.

10) **Notification of Award**

Any award made pursuant of this agreement is to be delivered in writing, and executed by the arbitrators, and delivered to Keane and BFU.


11) **Governing Law**

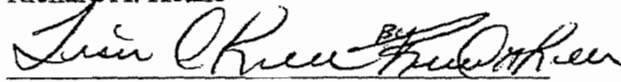
This agreement shall be governed by, construed, and enforced in accordance with the laws of Idaho.

Each party to this agreement has caused it to be executed at (place of execution), on the date indicated below.


IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year hereinabove first written.

Richard A. Keane & Lisa Keane


Richard A. Keane



Lisa C. Keane,
by Richard A. Keane, attorney-in-fact

R & L Developments, LLC



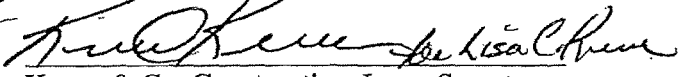
R & L Developments, LLC,
Authorized Agent

Keane & Co. Construction, Inc.



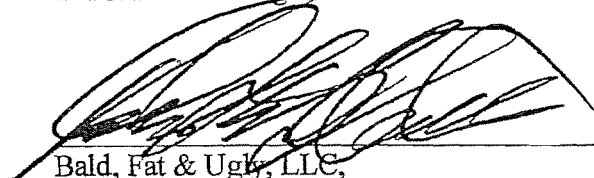
Keane & Co. Construction, Inc. – President
and Authorized Agent

ATTEST:



Keane & Co. Construction, Inc. – Secretary
and Authorized Agent

Bald, Fat & Ugly, LLC



Bald, Fat & Ugly, LLC,
Authorized Agent



RANDALL, BLAKE & COX, PLLC

LAWYERS

1106 IDAHO STREET

P.O. BOX 446

LEWISTON, ID 83501

(208) 743-1234

TELEFAX - (208) 743-1266

E-mail: david@rbcox.com

STEVE R. COX*
DAVID R. RISLEY*
SCOTT CHAPMAN*
KERRY A. WAJNER*

*LICENSED IN IDAHO AND WASHINGTON

DERRICK A. AYER

WYNNE M. BLAKE
(1922-2006)

RUSSELL S. RANDALL
(1903-2004)

October 21, 2009

Manderson L. Miles,
Knowlton & Miles
P. O. Box 717
Lewiston, ID 83501

VIA FACSIMILE (208) 746-0118

Re: *BFU/Keane*

Dear Mandy:

Just confirmed with Lynn's office that the submissions are not due until tomorrow.

Do we agree that with respect to the *Agreement to Mediate* we will submit an amended article two which will read:

2) Determination of Damages

a. Is amended to request that the arbitrator break out any award by category of damages claimed by the parties.

b. Is deleted by agreement.

As to the property on 17th Street, BFU will release the lien so long as the net proceeds are paid by the closing agent at closing to the Randall Blake and Cox PLLC Trust Account for payment to BFU as credit against sums due BFU by Keane.

As to the office condo, are we agreed that a no reserve sale is set on or about November 6, 2009, roughly a week before the sale by foreclosure. BFU does not agree to release its lien without payment in full of all sums due to BFU. However, if the sale price is reasonable, BFU will release its lien so long as the price paid at auction is reasonable and the net sale proceeds are paid into trust pending the outcome of this matter. If the parties cannot agree on whether the sales price is reasonable, then the parties should allow ~~leg~~ to make a final resolution of that issue. If no sale takes place, then Keane will pay the sums due to cure the default and avoid the foreclosure sale. Please let me know if these proposals are acceptable.

Yours very truly,


RANDALL, BLAKE & COX, PLLC

DAVID R. RISLEY

DRR/rlh

cc: Bald, Fat & Ugly, LLC

ORDER CONFIRMING ARBITRATION AWARDS

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MEDIATED SETTLEMENT AGREEMENT

June 8, 2005

LOR Testing 1, 2, 3, 4, 5

Name: Keane Co. Construction and R & L Development
And Bald, Fat & Ugly

Paul This is the settlement agreement following mediation of the dispute that's mediated today, June 8, 2005, at the offices of Winston & Cashatt, the mediator being Lynden Rasmussen. Parties – persons present at this time include Paul Cressman, who is speaking at David Risley, counsel for BFU, Bob Blewett, April Smith, Lyn Rasmussen, Rick Keane and Rod Bond. It's the intent of this dictation to constitute the settlement agreement, subject to memorialization in writing. In the event the parties cannot agree upon the proper terms of settlement in writing, that matter will be resolved by Mr. Rasmussen. The terms of the settlement are as follows:

Paul There exists certain issues with respect to the title of the condominium units and those issues, it's agreed, will be jointly, the parties will jointly cooperate for resolution. David Risley will provide appropriate information for submittal to the Management Association or Condominium Owners' Association, whatever the proper terminology would be, to address those title issues, which include issues with respect to the location of the buildings on the subject property.

David The definition of common areas for all of Houston Professional Plaza and the compliance with the technical requirements of Idaho's condominium law, then that would be presented jointly to the Houston Professional Plaza Condominium Association with the request that the Condominium Declaration be amended to include that appropriate map, together with other definitions in the minimus that would bring the Condominium Declaration into compliance with Idaho law and the project as built, if in such – there's such situation where the Association does not accept those changes or recommendations, the parties would jointly participate in the suit against the Association to resolve and correct those title issues. I will need maps from Mr. Keane as necessary to show the as built for purposes of amending that condominium map.

Deleted: Man 2

Deleted: Man 3

Paul

It is my understanding that you do have a December 15, 2005, map and to the extent there is a better map than that, we would provide it. If not, that would be the map that you would utilize. It is also my understanding that if we have any disagreements on these issues that we would present them for resolution to Mr. Rasmussen in accordance, well, that would be the resolution. With respect to issues on the common area, the, with regard to the common area that is in question and of which we are speaking, it is the exterior common area to the buildings. And the parties will cooperate and provide, the intent is that my clients would provide those areas in compliance with the applicable ADA standards and applicable City of Lewiston building code requirements. And to that end, the BFU folks will provide their engineering information on those subjects to date to us for our review and likely we will provide - we will solicit engineering assistance to hopefully reach an agreed scope of work between the engineers and between our respective clients to resolve this issue. If there is a dispute as to the proper scope of work, either between the parties or the respective engineers, and following whatever reasonable attempts either party believes is appropriate, and those efforts failing, those matters will also be presented to Mr. Rasmussen for resolution. Following the agreement on the scope of work or resolution by Mr. Rasmussen, that work would then be performed at the expense of my clients with an as built plan provided for the work, in question, stamped by a licensed engineer in the state of Idaho, presented to Mr. Risley's clients.

Paul With regard to an additional issue under the same category would be providing as built for buildings 2 and 3 and my clients would agree to provide that as well. With regard to additional parking...

Deleted: ing

David Before we move on to another issue and that's the settling issue to the south of buildings 2 and 3 that would be resolved as part of the repair and care of the common areas and the common areas would be of the Houston Professional Plaza, both Phase 1 and Phase 2.

Deleted: Man 4

Paul With regard to the settlement issue, that issue will be addressed by the parties and if they cannot resolve an appropriate fix suitable, then that issue would also be present to Mr. Rasmussen for resolution. With regard to additional parking spaces, my clients agree to provide four additional parking space, three located on the southeast corner of the development, or maybe four, if possible, in that area. If not, three in the southeast corner, and one in the northeast corner of the development.

Deleted: Man 3

David (Unintelligible) but I wanted to show you that.

Deleted: Man 4?

Deleted: Man 3

Paul An additional term of the settlement would be that the parties, my clients would agree that the rock wall would be in compliance on the south side of the property with the applicable City of Lewiston requirements and in the event either of the parties disagree on that and are unable to resolve those differences with regard to any necessary fix, that issue would also be provided to Mr. Rasmussen for resolution.

Paul At all times referenced in this settlement, it's the intent of the parties that the applicable ADA requirements and the applicable City of Lewiston requirements are those that would otherwise be applicable to these improvements that it is subject to this dispute.

Paul The next term of this settlement is the payment of \$180,000 payable within six months by my clients. The first two months would be interest free and the last four months, if necessary or desirable by my clients, interest would accrue at the rate of 8% per annum. The entire amount would be payable within six months. This amount may be prepaid without any penalty whatsoever by my clients. This obligation will be secured by the two parcels of property that have presently been offered as additional collateral to remove an option and that will be further described in the written document.

Paul With regard to all other claims between the parties, claims that are known or unknown, there is a mutual release by both parties of all claims. And finally, there is a confidentiality provision, ably drafted by Mr. Risley and myself that would apply to the terms of this agreement, except as necessary to implement it. David, do you have anything else?

Deleted:

David Mr. Rasmussen - he suggested that venue be at Winston & Cashatt and do you want that to be appealable, then it should be under the rules of the American Arbitration Association but not the auspices of the Association.

Paul That's agreeable.

David That way we can avoid costs.

Deleted: (unintelligible)

Paul That's agreeable. And

David He would have within his power to award costs and fees and his decisions would be, I suggest, non-appealable.

Paul They would be appealable to whatever extent they would be appealable under the AAA rules.

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David Ok. And we don't know long the work will stay in place. Is it acceptable to have the deed of trust stay in place until the work is done to cure the common areas?

Paul No. The issue would be resolved, the issue on the, at such time as the money's paid, the deed of trust would be released.

David What time of frame should (unintelligible).

David Let's go off the record here and talk about this cause...

Deleted: Paul

Paul It's apparently been agreed that the deed of trust on the two pieces of property to secure the \$180,000 will remain in place until such time as the work to be performed pursuant to this agreement by my clients is complete. Mr. Rasmussen, we would ask that you type this up, have your able staff do that, and provide each of us with a copy and Mr. Risley and I will prepare Mr. Bond the required written documentation and hopefully...

Deleted: i

???

Paul Hopefully we'll not need your assistance in that regard.

???

Paul In case this issue has not been covered earlier, the concept with regard to the external common area work coming in compliance with the applicable ADA and applicable City of Lewiston requirements would be that the as built, once provided, would be stamped by licensed engineer in the state of Idaho. I think I've already indicated and that as built drawing would be provided to Mr. Risley's clients. Is that your agreement?

Rick Keane That's right, and once that is provided in the disbursement, then its...

Deleted: Man ??

Paul Then the deeds of trust would be released.

Rick Keane that's your understanding?

Deleted: Man ??

David It's our intention of taking those as built and filing with the appropriate office of the City Works.

Deleted: Man ??

Deleted: Man

Paul You can do with them what you like. That's our agreement. Anything else?"

LOR Ah, yes. This is Lyn Rasmussen. I won't agree to accept responsibility to arbitrate the issues as defined herein and I want it clearly understood between the parties, among the parties hereto that this a binding and enforceable agreement and subject only to being, I mean it's not subject to being reduced to writing, but you people have agreement as we speak now. Correct?

Paul We have an agreement as we speak now, but it is the intent that it will be put in writing and in the event of any disagreements over its terms, those will be resolved by you.

LOR That's my understanding.

Paul There's been a modification of what was stated earlier with regard to the confidentiality agreement, it has been agreed that BFU and Mr. Bob Blewett can disclose this agreement and its terms to the following banks:

Bob Blewett No less than Banner, Panhandle State Bank, US Bank and Wells Fargo at the time.

Deleted: Man ??
Deleted: _____

Paul Any other banks?

Bob Blewett And Sterling Bank and, those are the main ones anyhow.

Deleted: Man ??
Deleted: _____

And Farm Credit, I've got a loan with them.

Deleted: [Crosstalk]

Paul So those will be the only banks that'll be disclosed?

Bob Blewett That's it, yeah.

Deleted: Man ??

Paul At any point.

David This agreement is disclosed to the bankers, for the purposes of loan packages to go to different banks at different towns.

Deleted: Man ??
Deleted: (unintelligible)

Paul It's been agreed that either party may disclose the terms of this agreement to their respective bankers. The other issue that may not have been added that I think that needs to be is before any improvements can be made or any changes to the common area - any improvements or changes to the

common areas, they must be presented to the applicable Association of the condominium and their written approval obtained in accordance with the terms of the Declaration and Idaho state law, which ever may be applicable or both. One final exception to the confidentiality provision the parties can disclose this agreement to Mister...Steve Lohman.

Paul Steve Lowman.

Deleted: Man ??

Paul Steve Lowman. And either party may resolve – may disclose the terms of this agreement to any accountant which they use. End of terms unless anybody wants to add anything else.

David I think you and I Paul can draft the confidentiality agreement, that allows for communications and to receive professional advice (unintelligible).

Deleted: Man ??

Deleted: _____

Deleted: _____

Deleted: _____

Paul Anything else? This ends the terms of the settlement. I'll go around the room and ask if the parties and their counsel and those present believe these are the terms of the settlement agreement, Paul Cressman speaking, acknowledges that these are the terms that the parties have agreed to.

Dave Dave Risley speaking, these are the terms that the parties have accepted.

Bob Blewett Bob Blewett and these are the terms as I understand from all this the parties' agree to.

April April Smith speaking and these are the terms of the agreement.

LOR You want me to speak to this also? I participated in this mediation and it appears these are the terms that the parties agree to.

Rick I'm Rick Keane and I believe these are the terms that we've agreed to.

Rod This is Rod Bond and I believe these are the terms we've agreed to.

Paul There being nothing further, this concludes the terms of the settlement agreement.


DATED this 3rd day of Nov., 2009

DATED this 13th day of Oct., 2009

Bald. Fat. & Ugly

Keane Company Construction



By: 

Bob Blewett, Individually and
As an Agent for BFU

Richard Keane, Individually and
As an Agent for Keane Co. Constr.

EXHIBIT B

Spokane Office
Bank of America Financial Center
601 W. Riverside, Suite 1900
Spokane, Washington 99201-0695

Phone: (509) 838-6131
Fax: (509) 838-1416
website: www.winstoncashatt.com

Winston & Cashatt

L A W Y E R S

A Professional Service Corporation

*Winston & Cashatt has offices in Spokane, Washington
and Coeur d'Alene, Idaho*

January 20, 2010

Mr. David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501

Mr. Manderson L. Miles
Knowlton & Miles, PLLC
P.O. Drawer 717
Lewiston, ID 83501

Re: Keane, et al. v. Bald, Fat and Ugly, LLC
Ruling on Keane's Motion to Amend Arbitration Award

Gentlemen:

This letter is in respect to Keane's Motion to Amend Arbitration Award dated December 4, 2009. BFU filed its objections thereto by way of Mr. Risley's letter dated December 17, 2009. Keane's motion, per agreement of the parties and the undersigned, came on for telephonic hearing on January 19, 2010 at 2:00 pm. After hearing argument of counsel and, after again reviewing the filings of the parties, including the previously issued Arbitration Awards, I offer the following Ruling:

After due consideration of Keane's Motion and BFU's responses thereto, I am of the opinion that Keane's motion is, in essence, a motion "for the purpose of clarifying the award" as provided for under I.C. Section 7-909. Though Keane captioned the motion as a Motion for Reconsideration, I do not believe that I have authority to "reconsider" the previously issued Awards, and, if I did, I would not grant reconsideration nor would I amend the Awards. I believe and hereby find that the Awards are clear and unambiguous.

However, in an effort to explain the Awards to the Claimant (hereinafter Keane), I offer the following in respect to the three objections raised in Keane's Motion in the same order as presented. This will also confirm that Mr. Risley acknowledged during the telephonic hearing that he too considered the Awards to be clear and unambiguous.

C. Matthew Andersen *10*
Beverly L. Anderson
Courtney R. Beaudoin *10*
Robert P. Beschel
Kevin H. Breck *10*
Richard L. Cease
Christopher S. Crago
Patrick J. Cronin *10*
Kevin J. Curtis *CA*
Greg M. Devlin *10*

Stephen L. Farnell
David P. Gardner
Donald J. Gary, Jr. *CA*
Jeffrey A. Herbster *10*
Tim M. Higgins
Michael T. Howard *10*
Carl E. Hueber *10*
Nancy L. Isserlis *10*
Brian T. McGinn *10*
Kammi Mencke Smith *10*

Sean F. O'Quinn
Fred C. Pflanz
Lynden O. Rasmussen
James E. Reed
Richard W. Relyea
Elizabeth A. Tellessen *10*
Lawrence H. Vance, Jr. *10*
Lucinda S. Whaley
Merivether D. Williams *10* *CA*
Ryan D. Yahne *10* *CA*

Of Counsel
James P. Connelly

Retired
Leo J. Driscoll
Leo N. Cashatt *1910-1977*
Joseph J. Rekofke *1921-1997*
Patrick H. Winston *1901-1996*

ORDER CONFIRMING ARBITRATION AWARDS

All lawyers admitted in WA. Lawyers admitted in: CA, ID, MI and WY as indicated.

67

January 20, 2010

Page 2

1. The Award of \$159,762.00 (paragraph 7 of the Awards) is in the nature of a monetary Award in respect to the repair of the exterior common area. I did not order or direct that Keane perform (or even be allowed to perform) the work in question, and I leave that up to the parties to work out. This Award is to be paid jointly to BFU and its attorney as stated in paragraph 9 of the Awards, and is to be held in trust as also stated in that paragraph 9.
2. The Award of one-half of BFU's \$35,363.33 cost figure (\$17,681.67), as discussed in paragraph 10 of the Awards, is in respect to the ADA area and is a separate and distinct Award, and is in addition to the \$159,762.00 amount mentioned above. During oral argument, Mr. Miles acknowledged that he and his client now understand that portion of the Award and withdrew objection No. 2.
3. In respect to Keane's third objection (return of funds), it is noted that Paragraph 9 of the Awards obligates Mr. Risley (or other trustee) to return any savings "forthwith" together with an accounting. I believe that to be sufficient direction.

Keane's Motion is hereby Denied.

Dated this 20th day of January, 2010.



LYNDEN O. RASMUSSEN, Arbitrator

LOR:ch:179262

CV

FILED
2010 MAY 3 PM 5 01
EMILY A. REEB
CLERK OF THE DIST. COURT
James
DEPUTY

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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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

Claimants,

and

ORDER DENYING BALD, FAT & UGLY,
LLC'S ATTORNEY'S FEES AND COSTS

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

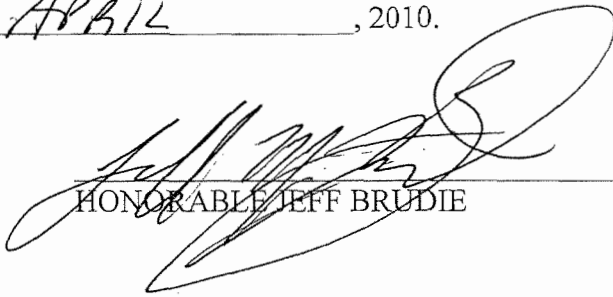
Respondents.

69

1 BASED UPON the *Order Confirming Arbitration Awards* entered in this Court on or
2 about 4/30/2010, 2010, and good cause appearing, now,
3 therefore,

4 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Bald, Fat & Ugly, LLC
5 is not awarded its fees and costs in this action.
6

7 DATED this 30 day of APRIL, 2010.

8
9
10 
11 HONORABLE JEFF BRUDIE

12 CLERK'S CERTIFICATE OF MAILING

13 I certify that on 5-3-10, 2010, at my direction, the
14 foregoing *Order Denying Bald, Fat & Ugly, LLC's Attorney's Fees and Costs* was served on the
15 following in the manner shown:

16 Counsel for Claimants: (copy)

17 Manderson L. Miles

Mailed, postage prepaid

18 Knowlton & Miles, PLLC

Messenger

P.O. Drawer 717

Facsimile

19 Lewiston, ID 83501

20 Counsel for Respondent: (copy)

21 David R. Risley

Mailed, postage prepaid

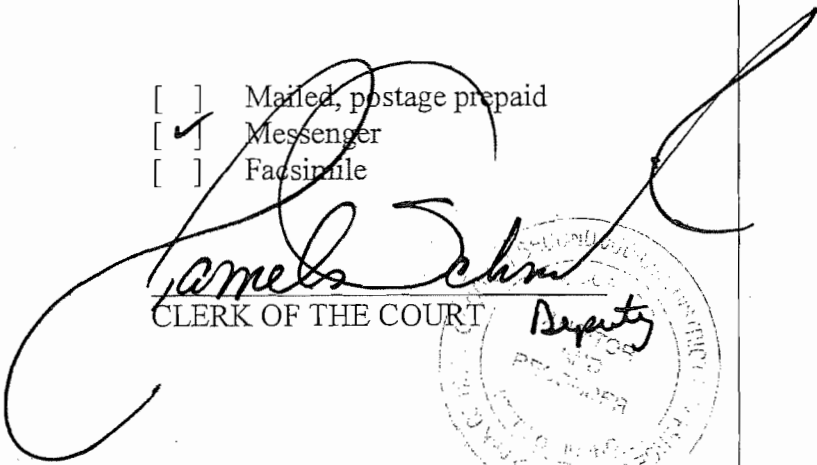
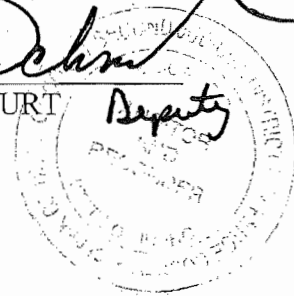
22 Risley Law Office, PLLC

Messenger

23 P.O. Box 1247

Facsimile

24 Lewiston, ID 83501

25 
26 CLERK OF THE COURT


FILED

2010 SEP 1 PM 1 08

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

Claimants,

FIRST ORDER FOR WRIT OF
EXECUTION

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

WHEREAS, BALD, FAT & UGLY, LLC, an Idaho Limited Liability Company
(hereinafter referred to as "BFU"), on the 30th day of April, 2010, recovered an *Order Confirming
Arbitration Awards* against RICHARD A. KEANE and LISA A. KEANE, husband and wife;

1 R&L DEVELOPMENTS, LLC, an Idaho Limited Liability Company, and KEANE AND CO.
2 CONSTRUCTION, INC., an Idaho Corporation, jointly and severally;

3 NOW, THEREFORE, IT IS HEREBY ORDERED that BFU's *First Application for Writ of*
4 *Execution and First Affidavit of True Balance* is hereby granted.

5 DATED this 1 day of SEPT, 2010.

6
7
8 
9 JUDGE

10 CLERK'S CERTIFICATE OF MAILING

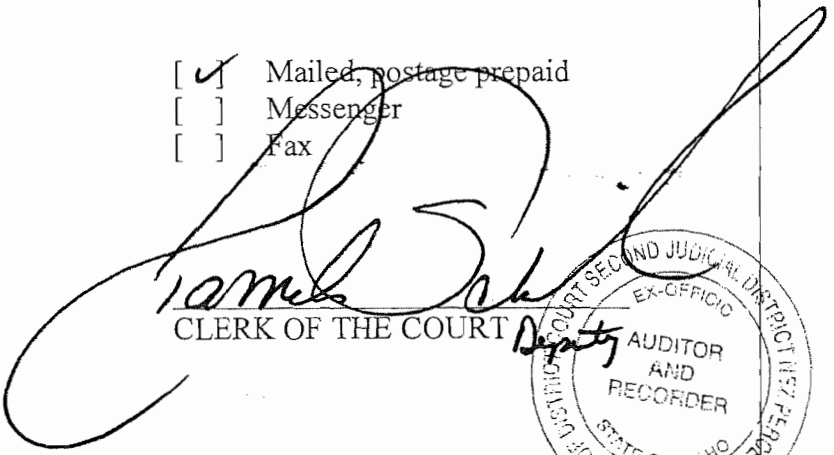
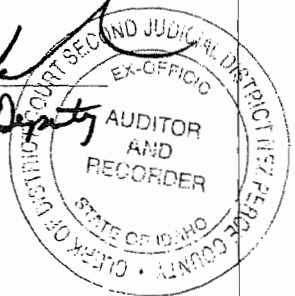
11 I certify that on September 1, 2010, at my direction, the foregoing *First*
12 *Order for Writ of Execution* was served on the following in the manner shown:

13 Counsel for BFU: (copy)
14 David R. Risley
15 Risley Law Office, PLLC
16 P.O. Box 1247
17 Lewiston, ID 83501

- 13 [] Mailed, postage prepaid
- 14 [] Messenger
- 15 [] Fax

16 Counsel for Keane: (copy)
17 Manderson L. Miles
18 Knowlton & Miles
19 P. O. Box 717
20 Lewiston, ID 83501

- 16 [] Mailed, postage prepaid
- 17 [] Messenger
- 18 [] Fax

21 
22 CLERK OF THE COURT
23 

COPY

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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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

Claimants,

FIRST WRIT OF EXECUTION

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

TO THE SHERIFF OF NEZ PERCE COUNTY OR ANY OTHER CONSTABLE
OR SHERIFF OF THE STATE OF IDAHO:

1 WHEREAS, on the 30th day of April, 2010, Bald, Fat & Ugly, LLC, an Idaho Limited
2 Liability Company recovered a judgment in the above-entitled court against RICHARD A.
3 KEANE and LISA A. KEANE, husband and wife; R&L DEVELOPMENTS, LLC, an Idaho
4 Limited Liability Company, and KEANE AND CO. CONSTRUCTION, INC., an Idaho
5 Corporation, jointly and severally, for the sum of ONE HUNDRED FIFTY NINE THOUSAND
6 NINE HUNDRED NINETY FOUR and 43/100 DOLLARS (\$159,994.43), plus interest at
7 5.625% or \$24.65 per diem as provided by I.C. § 28-22-104 from June 8, 2010 to the date of
8 execution.
9

10 WHEREAS, no sums have been collected or paid in satisfaction of this judgment.
11

12 THIS WRIT SHALL BE IN EFFECT UNTIL THE JUDGMENT
13 IS SATISFIED OR THE WRIT IS DISCHARGED AS
14 PROVIDED BY IDAHO CODE § 8-510. YOU WILL BE
15 NOTIFIED AT THE TIME OF SUCH SATISFACTION OR
16 DISCHARGE AFTER WHICH YOUR OBLIGATION UNDER
17 THE ATTACHED WRIT OF EXECUTION WILL CEASE.
18

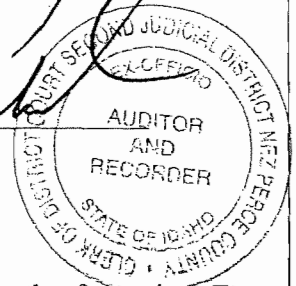
19 THIS IS, THEREFORE, TO COMMAND YOU that out of the personal property, and if
20 sufficient personal property cannot be found, then out of the real property of said Defendants in
21 your county, you levy and cause to be made by sale the sum of ONE HUNDRED FIFTY NINE
22 THOUSAND NINE HUNDRED NINETY FOUR and 43/100 DOLLARS (\$159,994.43), plus
23 interest at 5.625% or \$24.65 per diem as provided by I.C. § 28-22-104 from June 8, 2010 to the
24 date of execution, together with any costs that may accrue, and of this Writ make legal service
25 and due return within sixty (60) days of your receipt thereof.
26

1 WITNESS, the Honorable Jeff Brudie, Judge of the Second Judicial District of the State
2 of Idaho, in and for the County of Nez Perce.

3 ATTEST MY HAND and seal of said District Court this 1st day of September
4 2010.

5
6 CLERK OF THE COURT

7
8 By: [Signature]
9 Deputy



10 CLERK'S CERTIFICATE OF MAILING

11 I certify that on September 1, 2010, at my direction, the foregoing *First*
12 *Writ of Execution* was served on the following in the manner shown:

13 Counsel for BFU: (copy)

14 David R. Risley
15 Risley Law Office, PLLC
16 P.O. Box 1247
Lewiston, ID 83501

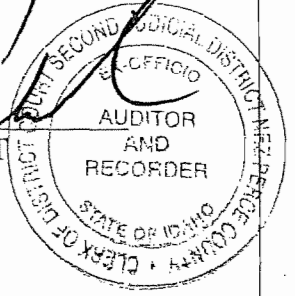
- Mailed, postage prepaid
- Messenger
- Fax

17 Counsel for Keane: (copy)

18 Manderson L. Miles
19 Knowlton & Miles
P. O. Box 717
Lewiston, ID 83501

- Mailed, postage prepaid
- Messenger
- Fax

20
21 [Signature]
22 CLERK OF THE COURT
23 Deputy

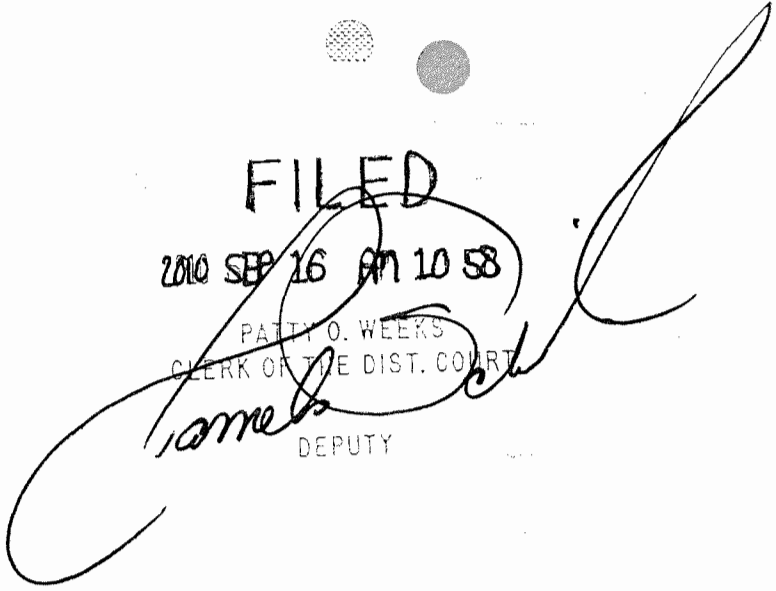


FILED

2010 SEP 16 AM 10 58

PATTY O. WEEKS
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

RICHARD A. KEANE and LISA C.
KEANE, and KEANE AND CO.
CONSTRUCTION, INC., AND R & L
DEVELOPMENTS, L.L.C.,

Claimants,

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability
Company, and KEANE AND CO.
CONSTRUCTION, INC., an Idaho
Corporation,

Respondents.

Case No.: CV09-02468

ORDER PERMITTING
LEAVE TO WITHDRAW

THIS MATTER having come before this Court on Thursday, September 16, 2010, at 10:00 a.m., for a hearing on a Motion filed by Manderson L. Miles, attorney of record for the Claimants/Respondents, seeking permission to withdraw as counsel for the Claimants/Respondents, RICHARD A. KEANE and LISA C. KEANE; R&L DEVELOPMENTS, LLC; and KEANE AND CO. CONSTRUCTION, INC., pursuant to Idaho Rules of Civil Procedure, Rule 11(b)(2). The Claimants/Respondents counsel of record, Manderson L. Miles, was present at the time of the hearing and good cause appearing therefore;

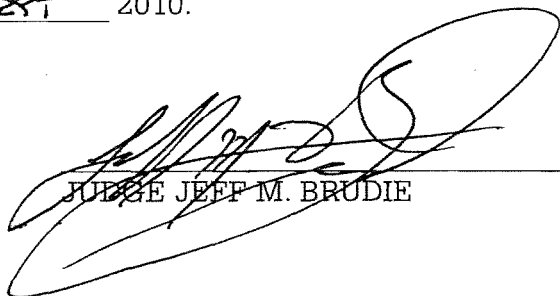
NOW THEREFORE, IT IS HEREBY ORDERED, as follows:

1. Manderson L. Miles is hereby granted and permitted leave to withdraw as the attorney of record the Claimants/Respondents, RICHARD A. KEANE and LISA C. KEANE; R&L DEVELOPMENTS, LLC; and KEANE AND CO. CONSTRUCTION, INC., effective September 16, 2010.

2. RICHARD A. KEANE and LISA C. KEANE; R&L DEVELOPMENTS, LLC; and KEANE AND CO. CONSTRUCTION, INC., the Claimants/Respondents herein, ARE HEREBY DIRECTED TO appoint another attorney to appear, or to appear in person by filing a written notice with the Court stating how they will proceed without an attorney, within twenty (20) days from the date of service or mailing of this Order. If you, RICHARD A. KEANE and LISA C. KEANE; R&L DEVELOPMENTS, LLC; and KEANE AND CO. CONSTRUCTION, INC., fail to file and serve an additional written appearance in this action, either in person or through a newly appointed attorney, within such twenty (20) day period, such failure shall be sufficient for grounds for entry of default and

default judgment against you without further notice.

DATED this 16 day of Sept 2010.



JUDGE JEFF M. BRUDIE

CERTIFICATE OF DELIVERY

I **HEREBY CERTIFY** that on this 16th day of September 2010, I caused a true and correct copy of the foregoing **Order Permitting Leave to Withdraw** to be:

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

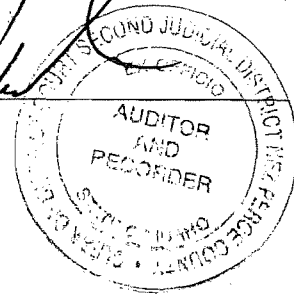
to the following:

David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501

Manderson L. Miles
KNOWLTON & MILES, PLLC
P.O. Drawer 717
Lewiston, ID 83501

CLERK OF THE DISTRICT COURT

By: 
Deputy/Clerk



FILED

2010 OCT 12 AM 9:44

State of Idaho
Nez Perce County Sheriff
Civil Division
Lewiston, ID 83501
PATRICIA WEEKS
CLERK OF THE DIST. COURT
DEPUTY

[Handwritten signature]

6:20 10/08/10

Defendant

RICHARD ALAN KEANE
35309 POWELL RD Lewiston, ID 83501
Served on: 14th day of September, 2010 by Dahl Doris
Served to: RICHARD & LISA KEANE - MAILED Defendant
35309 POWELL RD Lewiston, ID 83501

LISA CAROL KEANE
35309 POWELL RD Lewiston, ID 83501

KEANE CONSTRUCTION
247 Thain Road; #108 Lewiston, ID 83501
Served on: 14th day of September, 2010 by Dahl Doris
Served to: LISA KEANE ()
35309 POWELL RD Lewiston, ID 83501

R & L DEVELOPMENT
1519 Powers Avenue Lewiston, ID 83501
Served on: 14th day of September, 2010 by Dahl Doris
Served to: LISA KEANE - MAILED ()
247 THAIN RD Lewiston, ID 83501

Plaintiff

BALD, FAT & UGLY, LLC

Process Number: 10-C3078

Court Number: CV0902468

I, Dale Buttrey, of Nez Perce County Sheriff do hereby certify that I received the foregoing Writ of Execution on the 13th day of September, 2010, and that the undersigned served the same on the individual(s) as noted above.

JUDGMENT IS: NOT SATISFIED - RETURNED TO COURT.

Dated the 8th day of October, 2010

Fees:

Service: 120.00
Mileage: 0.00
Other : 0.00
Total : 120.00

Dale Buttrey,
Nez Perce County Sheriff, Idaho

BY: *[Signature]*
Authorized Representative
Civil Division

1 WHEREAS, on the 30th day of April, 2010, Bald, Fat & Ugly, LLC, an Idaho Limited
2 Liability Company recovered a judgment in the above-entitled court against RICHARD A.
3 KEANE and LISA A. KEANE, husband and wife; R&L DEVELOPMENTS, LLC, an Idaho
4 Limited Liability Company, and KEANE AND CO. CONSTRUCTION, INC., an Idaho
5 Corporation, jointly and severally, for the sum of ONE HUNDRED FIFTY NINE THOUSAND
6 NINE HUNDRED NINETY FOUR and 43/100 DOLLARS (\$159,994.43), plus interest at
7 5.625% or \$24.65 per diem as provided by I.C. § 28-22-104 from June 8, 2010 to the date of
8 execution.
9

10 WHEREAS, no sums have been collected or paid in satisfaction of this judgment.

11 THIS WRIT SHALL BE IN EFFECT UNTIL THE JUDGMENT
12 IS SATISFIED OR THE WRIT IS DISCHARGED AS
13 PROVIDED BY IDAHO CODE § 8-510. YOU WILL BE
14 NOTIFIED AT THE TIME OF SUCH SATISFACTION OR
15 DISCHARGE AFTER WHICH YOUR OBLIGATION UNDER
16 THE ATTACHED WRIT OF EXECUTION WILL CEASE.

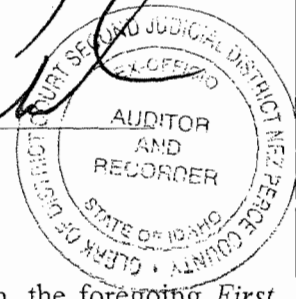
17 THIS IS, THEREFORE, TO COMMAND YOU that out of the personal property, and if
18 sufficient personal property cannot be found, then out of the real property of said Defendants in
19 your county, you levy and cause to be made by sale the sum of ONE HUNDRED FIFTY NINE
20 THOUSAND NINE HUNDRED NINETY FOUR and 43/100 DOLLARS (\$159,994.43), plus
21 interest at 5.625% or \$24.65 per diem as provided by I.C. § 28-22-104 from June 8, 2010 to the
22 date of execution, together with any costs that may accrue, and of this Writ make legal service
23 and due return within sixty (60) days of your receipt thereof.
24
25
26

1 WITNESS, the Honorable Jeff Brudie, Judge of the Second Judicial District of the State
2 of Idaho, in and for the County of Nez Perce.

3 ATTEST MY HAND and seal of said District Court this 1st day of September,
4
5 2010.

6 CLERK OF THE COURT

7
8
9 By: Jamesa Seab
Deputy



10 CLERK'S CERTIFICATE OF MAILING

11 I certify that on September 1, 2010, at my direction, the foregoing *First*
12 *Writ of Execution* was served on the following in the manner shown:

13 Counsel for BFU: (copy)

14 David R. Risley
15 Risley Law Office, PLLC
16 P.O. Box 1247
Lewiston, ID 83501

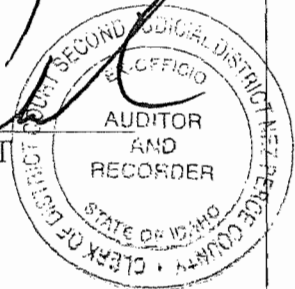
[] Mailed, postage prepaid
[] Messenger
[] Fax

17 Counsel for Keane: (copy)

18 Manderson L. Miles
19 Knowlton & Miles
P. O. Box 717
Lewiston, ID 83501

[] Mailed, postage prepaid
[] Messenger
[] Fax

20
21
22 Jamesa Seab
CLERK OF THE COURT
Deputy



FILED

2010 OCT 19 AM 11 40

DATE: 10.19.10
CLERK OF THE DISTRICT COURT

James [Signature]
DEPUTY

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

Claimants,

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

ORDER GRANTING MOTION FOR
EXAMINATION OF JUDGMENT
DEBTORS

1 It appearing from the *Affidavit of David R. Risley* that judgment was rendered in favor of
2 Bald, Fat & Ugly, LLC against RICHARD A. KEANE and LISA C. KEANE, KEANE AND
3 CO. CONSTRUCTION, INC. and R & L DEVELOPMENTS, L.L.C., on April 30, 2010, and
4 that execution thereon was thereafter returned unsatisfied, and Bald, Fat & Ugly, LLC having
5 petitioned the Court for an order, pursuant to Section 11-501, Idaho Code, requiring RICHARD
6 A. KEANE and LISA C. KEANE, individually, and as members, agents or representatives of
7 KEANE AND CO. CONSTRUCTION, INC. and R & L DEVELOPMENTS, L.L.C. to appear
8 before the Court and answer on oath concerning their property and means of paying the
9 judgment, and good cause appearing therefore;
10

11 NOW, THEREFORE, IT IS HEREBY ORDERED that RICHARD A. KEANE and LISA
12 C. KEANE, individually, and as members, agents, or representatives KEANE AND CO.
13 CONSTRUCTION, INC. and R & L DEVELOPMENTS, L.L.C., the judgment debtors, appear
14 before me or any other Judge of this Court at the Courtroom of this Court, at the Nez Perce
15 County Courthouse, Lewiston, Idaho, on Thursday, the 18th day of November, 2010, at the
16 hour of 10:00 a.m., and on such further days as I may name, to answer on oath concerning their
17 property and means of paying judgment.
18

19 AND FOR FAILURE TO COMPLY with this order, RICHARD A. KEANE and LISA
20 C. KEANE, individually, and as members, agents or representatives of KEANE AND CO.
21 CONSTRUCTION, INC. and R & L DEVELOPMENTS, L.L.C. shall be liable for contempt of
22 Court.
23

24 DATED this 19 day of October, 2010.

25
26 
JUDGE

FILED

2010 NOV 22 AM 11:06

PATTY O. WEEKS
CLERK OF THE DIST. COURT
amls
DEPUTY

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

Claimants,

ORDER FOR CONTINUANCE OF
EXAMINATION OF JUDGMENT
DEBTORS AND PRODUCTION OF
DOCUMENTS

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

The parties' *Stipulation for Continuance of Examination of Judgment Debtors and
Production of Documents* having come before this Court, and good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

86

1. Defendants' examined under oath concerning their property and their means of paying the judgment entered by this Court herein will be continued to December 2, 2010 at 9:00 a.m., at the Nez Perce County Courthouse, Lewiston, Idaho.

2. Defendants will supply by December 1, 2010 the following documentation to Plaintiff:

a. True and correct copies of any financial statements provided by Defendants to any bank or financial institution in the last 24 months immediately preceding November 1, 2010.

b. True and correct copies of the documents by which Millennium Trust LLC was organized or operated, including, without limitation, all Articles of Organization; Operating Agreements; agreements between members; and any contracts between Millennium Trust LLC and any third parties.

c. True and correct copies of the documents by which Uphill Ventures, LLC was organized or operated, including, without limitation, all Articles of Organization; Operating Agreements; agreements between members; and any contracts between Uphill Ventures LLC and any third parties.

d. True and correct copies of the contract dated September 22, 2000 by and between Thomas and Ida Keane as sellers and Richard and Lisa Keane as buyers.

DATED this 22 day of November, 2010.


JUDGE

CLERK'S CERTIFICATE OF MAILING

I certify that on November 22nd, 2010, at my direction, the foregoing *Order Granting Continuance of Examination of Judgment Debtors and Production of Documents* was served on the following in the manner shown:

Counsel for Plaintiffs: (copy)

David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501


- Mailed, postage prepaid
- Messenger
- Fax (208) 743-5338

Counsel for Defendants: (copy)

Todd S. Richardson
Attorney at Law
604 6th Street
Clarkston, WA 99403-2011

- Mailed, postage prepaid
- Messenger
- Fax (509) 758-3399

James J. [Signature]
CLERK OF THE COURT *Deputy*



FILED

2010 DEC 6 PM 1 09

PATTY WEEKS
CLERK OF THE DIST. COURT

DEPUTY

Handwritten signature/initials over the stamp area.

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

Claimants,

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

CASE NO. CV09-02468

SECOND ORDER FOR CONTINUANCE
OF EXAMINATION OF JUDGMENT
DEBTORS AND PRODUCTION OF
DOCUMENTS

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

The parties' *Second Stipulation for Continuance of Examination of Judgment Debtors
and Production of Documents* having come before this Court, and good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

1. Defendants' examination under oath concerning their property and their means of paying the *Order Confirming Arbitration Awards* entered by the Court herein will be continued to December 9, 2010 at 9:00 a.m. at the Nez Perce County Courthouse, Lewiston, Idaho.

2. Defendants will supply on or before close of business on December 2, 2010, the following documentation to the Plaintiff:

a. True and correct copies of any financial statements provided by Defendants to any bank or financial institution in the last 24 months immediately preceding November 1, 2010.

b. True and correct copies of the documents by which Millennium Trust LLC was organized or operated, including, without limitation, all Articles of Organization; Operating Agreements; agreements between members; and any contracts between Millennium Trust LLC and any third parties.

c. True and correct copies of the documents by which Uphill Ventures, LLC was organized or operated, including, without limitation, all Articles of Organization; Operating Agreements; agreements between members; and any contracts between Uphill Ventures LLC and any third parties.

d. True and correct copies of the contract dated September 22, 2000 by and between Thomas and Ida Keane as sellers and Richard and Lisa Keane as buyers.

3. The closing on the real property described on Exhibit "A" hereto is set for December 3, 2010, and shall be conducted and closed by Land Title Company on behalf of Keane. BFU will release its Deed of Trust and liens of judgment as to the parcel described on Exhibit "A" based upon the following understandings, terms and conditions:

a. The sales price is a reasonable fair market value for the property described on Exhibit A.

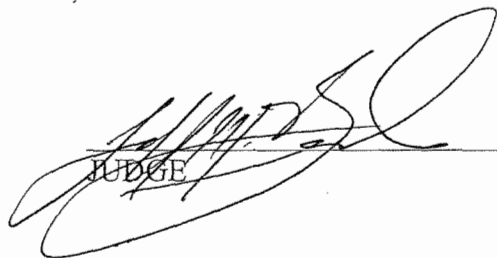
b. The property is subject to taxes, condominium charges, and liens and cannot be sold without paying those costs and costs of sale and closing.

c. The entire net proceeds from the sale, after costs of sale, taxes, condominium liens, and costs of closing, will be paid to the Risley Law Office, PLLC, Trust Account.

d. The payment of these funds will leave in full force and effect the *Order Confirming Arbitration Awards* dated April 30, 2010 and recorded under instrument no. 781283, records of Nez Perce County, Idaho, except that it will no longer be a lien upon the real property described on Exhibit "A" hereto.

e. The stipulation and the payment of the funds to the Risley Law Office, PLLC Trust Account will be without prejudice to the rights and claims of either party, with all matters at issue reserved pending further agreement or order of the Court.

DATED this 3 day of December, 2010.



JUDGE

CLERK'S CERTIFICATE OF MAILING

I certify that on December ____, 2010, at my direction, the foregoing *Second Order Granting Continuance of Examination of Judgment Debtors and Production of Documents* was served on the following in the manner shown:

Counsel for Plaintiffs: (copy)

David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501

[] Mailed, postage prepaid
[] Messenger
[] Fax (208) 743-5338

Counsel for Defendants: (copy)

Todd S. Richardson
Attorney at Law
604 6th Street
Clarkston, WA 99403-2011

[] Mailed, postage prepaid
[] Messenger
[] Fax (509) 758-3399

James J. Clark
CLERK OF THE COURT

Deputy

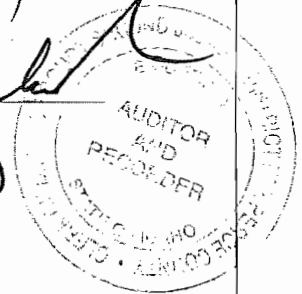


EXHIBIT A

Building No. 6, Unit 2, as shown on the Condominium Map for BRYDEN CANYON PROFESSIONAL CENTER appearing in the Records of Nez Perce County, Idaho as Instrument No. 482321, and as defined and described in that Condominium Declaration for Bryden Canyon Professional Center recorded November 20, 1984 in the records of Nez Perce County, Idaho, as Instrument No. 482321, and by Bylaws of Bryden Canyon Professional Center recorded as Instrument No. 482322, and as amended by Instrument Nos. 510292, 638887, and 638888, records of Nez Perce County, Idaho.

SUBJECT TO all matters, covenants, conditions, restrictions, easements and any rights, interests or claims which may exist by reason thereof, disclosed by the recorded plat of said subdivision, recorded November 20, 1984, as instrument number 482321, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status, or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

ALSO SUBJECT TO easement for electric distribution line and underground natural gas pipeline granted to Washington Water Power Company, recorded July 20, 1982 as Instrument No. 456710.

ALSO SUBJECT TO terms, provisions, covenants, conditions, restrictions, easements, charges, assessments and liens provided by Condominium Declaration, recorded November 20, 1984 as Instrument No. 482321, but omitting any covenant, condition or restriction based on race, color, religion, sex, handicap, familial status, or national origin, unless and only to the extent that the covenant, condition or restriction is exempt under title 42 United States Code, or relates to handicap, but does not discriminate against handicapped person.

ALSO SUBJECT TO First Amendment to Condominium Declarations for Bryden Canyon Professional Center, including the terms, conditions and provisions thereof, recorded April 22, 1987 under Instrument No. 510292.

ALSO SUBJECT TO Amended Condominium Map and Owner's Statement, including the terms, conditions and provisions thereof, recorded December 9, 1998 under Instrument No. 638887.

ALSO SUBJECT TO Second Amendment to Condominium Declarations for Bryden Canyon Professional Center, including the terms, conditions and provisions thereof, recorded December 9, 1998 under Instrument No. 638888.



FILED

2011 APR 1 PM 2 13

FATTY G. WEBB
CLERK OF THE DISTRICT COURT
Fatty G. Webb
DEPUTY

1
2
3
4 DAVID R. RISLEY
5 RISLEY LAW OFFICE, PLLC
6 P. O. Box 1247
7 1443 Idaho Street
8 Lewiston, ID 83501
9 (208) 743-5338
(208) 743-5307 (Fax)
10 david@risleylawoffice.com
11 ISB No. 1789

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 RICHARD A. KEANE and LISA C. KEANE,
15 and KEANE AND CO. CONSTRUCTION,
16 INC. and R & L DEVELOPMENTS, L.L.C.,

17 Claimants,

18 and

19 BALD, FAT & UGLY, L.L.C.,

20 Respondent.

21 BALD, FAT & UGLY, LLC,
22 an Idaho Limited Liability Company,

23 Claimant,

24 v.

25 RICHARD A. KEANE and LISA A.
26 KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

PARTIAL SATISFACTION OF
JUDGMENT

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

1 For and in consideration of the sum of NINETY THREE THOUSAND SIX HUNDRED
2 EIGHTY and 90/100 DOLLARS (\$93,680.90), lawful money of the United States, to me in hand
3 paid by the above-named Defendants, partial satisfaction is hereby acknowledged of that certain
4 *Order Confirming Arbitration Awards* entered in the above-entitled Court in said action on the
5 30th day of April, 2010 and recorded under instrument number 781283, records of Nez Perce
6 County, Idaho, in favor of Plaintiffs herein against Defendants, RICHARD A. KEANE and
7 LISA A. KEANE, husband and wife; R&L DEVELOPMENTS, LLC, an Idaho Limited Liability
8 Company; and KEANE AND CO. CONSTRUCTION, INC., an Idaho Corporation, jointly and
9 severally, and the Clerk of the above-entitled Court is hereby authorized and directed to enter a
10 partial satisfaction of judgment of record in said action.
11

12
13 EXCEPT to the extent of NINETY THREE THOUSAND SIX HUNDRED EIGHTY and
14 90/100 DOLLARS (\$93,680.90) the judgments entered by the *Order Confirming Arbitration*
15 *Awards* remain in full force and effect.

16 DATED this 31st day of March, 2011.

17
18 RISLEY LAW OFFICE, PLLC
19 Attorney for Plaintiff

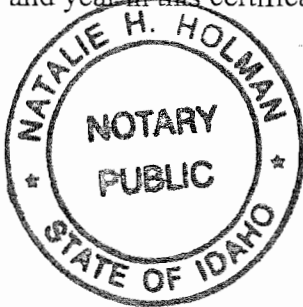
20
21 By: 

22 DAVID R. RISLEY
23 ISB NO. 1789
24
25
26

1 STATE OF IDAHO)
2 : ss.
3 County of Nez Perce)

4 On this 31st day of March, 2011, before me, the undersigned, a Notary Public in and for
5 said State, personally appeared DAVID R. RISLEY, known to me to be the person whose name
6 is subscribed to the within instrument and acknowledged to me that he executed the same.

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



9 Natalie H. Holman

10 Notary Public in and for the State of Idaho,
11 Residing in the State of Idaho or employed
12 In and Doing Business in the State of Idaho.
13 My Commission Expires: 9-1-2016

14 I HEREBY CERTIFY that a
15 true and correct copy of the
16 *Partial Satisfaction of Judgment*
17 was served as indicated
18 on this 1st day of April, 2011,

19 Mailed
20 Hand Delivered
21 Faxed
22 Messenger

23 to the following:

24 Todd S. Richardson
25 Attorney at Law
26 604 6th Street
Clarkston, WA 99403

27 Natalie H. Holman
28 Natalie H. Holman, Paralegal

WCS

FILED

2011 MAY 4 PM 12:05

ATTY O. WELLS
CLERK OF THE DISTRICT COURT

James
DEPUTY

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DAVID R. RISLEY
RISLEY LAW OFFICE, PLLC
P. O. Box 1247
1443 Idaho Street
Lewiston, ID 83501
(208) 743-5338
(208) 743-5307 (Fax)
david@risleylawoffice.com
ISB No. 1789

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

Claimants,

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

MOTION FOR CONTEMPT
(ARBITRATION AWARD NO. 2)

(ORAL ARGUMENT REQUESTED)

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

1 COMES NOW, Bald, Fat & Ugly, LLC, an Idaho Limited Liability Company
2 (hereinafter "BFU") by and through its undersigned attorney, David R. Risley of Risley Law
3 Office, PLLC, and moves the Court for an order holding RICHARD A. KEANE and LISA A.
4

5 KEANE and R&L DEVELOPMENTS, LLC, an Idaho Limited Liability Company, and
6 KEANE AND CO. CONSTRUCTION, INC., a Idaho Corporation (hereinafter collectively
7 referred to as "Keane"), in contempt of court for violating the *Order Confirming Arbitration*
8 *Awards* dated April 30, 2010.

9 The *Affidavit of Robert W. Blewett* filed concurrently herewith sets for the facts
10 constituting the alleged contempt.

11 Keane and their attorney were served with a copy of *Order Confirming Arbitration*
12 *Awards* and had actual knowledge of it.


13 Accordingly, BFU respectfully requests that this Court hold Keane, collectively, in
14 contempt of Court and impose upon them sanctions authorized pursuant to IRCP 75 as well as
15 BFU's attorney's fees and costs pursuant to IRCP 75(m).
16

17 Oral argument is requested.

18 DATED this 3rd day of May, 2011.

19
20 RISLEY LAW OFFICE, PLLC
Attorney for Bald, Fat & Ugly, LLC

21
22
23 By: _____

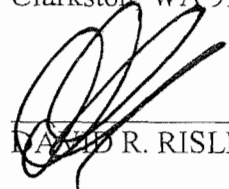

DAVID R. RISLEY
24 ISB NO. 1789
25
26

1 I HEREBY CERTIFY that a
2 true and correct copy of the
3 *Motion for Contempt* was
4 served as indicated on this
5 3rd day of May, 2011,

- 6 Mailed
- 7 Hand Delivered
- 8 Faxed
- 9 Messenger

10 to the following:

11 Todd S. Richardson
12 Attorney at Law
13 604 6th Street
14 Clarkston, WA 99403

15 

16 _____
17 DAVID R. RISLEY

W/...

FILED

2011 MAY 4 PM 12 05

PATTY O. WEEKS
CLERK OF THE DIST. COURT

James

DEPUTY

[Handwritten signature/initials]

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DAVID R. RISLEY
RISLEY LAW OFFICE, PLLC
P. O. Box 1247
1443 Idaho Street
Lewiston, ID 83501
(208) 743-5338
(208) 743-5307 (Fax)
david@risleylawoffice.com
ISB No. 1789

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

Claimants,

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

AFFIDAVIT OF ROBERT W. BLEWETT
RE MOTION FOR CONTEMPT

(ARBITRATION AWARD NO. 2)

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

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

4 ROBERT W. BLEWETT, being first duly sworn, upon his oath deposes and says that:

5 1. He is a member of Bald, Fat & Ugly, LLC (hereinafter "BFU"), and makes this
6 affidavit on BFU's behalf.

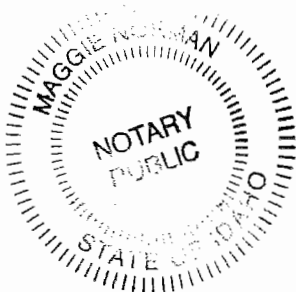
7 2. Keane has violated the portion of the *Order Confirming Arbitration Awards* by
8 not paying the required sum as ordered pursuant to paragraph 9 on page four.


9 3. Keane has attempted to circumvent the *Order Confirming Arbitration Awards* by
10 doing some of the work to be done with the required payment, but has not done so competently
11 or completely.

12 DATED this 3rd day of May, 2011.

13
14 
15 _____
16 ROBERT W. BLEWETT

17 SUBSCRIBED AND SWORN to before me this 3rd day of May, 2011.





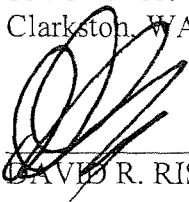
Notary Public in and for the State of Idaho,
Residing in the State of Idaho or employed
In and Doing Business in the State of Idaho.
My Commission Expires: 7-9-2016

1 I HEREBY CERTIFY that a
2 true and correct copy of the
3 *Affidavit of Robert W. Blewett*
4 was served as indicated on this
5 3rd day of May, 2011,

- 6 Mailed
- 7 Hand Delivered
- 8 Faxed
- 9 Messenger

10 to the following:

11 Todd S. Richardson
12 Attorney at Law
13 604 6th Street
14 Clarkston, WA 99403

15 
16 _____
17 DAVID R. RISLEY

N *CLW*

FILED

2011 MAY 4 PM 12 06

PATY O. WEEKS
CLERK OF THE DIST. COURT

James

DEPUTY

1
2
3
4 DAVID R. RISLEY
5 RISLEY LAW OFFICE, PLLC
6 P. O. Box 1247
7 1443 Idaho Street
8 Lewiston, ID 83501
9 (208) 743-5338
10 (208) 743-5307 (Fax)
11 david@risleylawoffice.com
12 ISB No. 1789

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

15 RICHARD A. KEANE and LISA C. KEANE,
16 and KEANE AND CO. CONSTRUCTION,
17 INC. and R & L DEVELOPMENTS, L.L.C.,

18 Claimants,

19 and

20 BALD, FAT & UGLY, L.L.C.,

21 Respondent.

22 BALD, FAT & UGLY, LLC,
23 an Idaho Limited Liability Company,

24 Claimant,

25 v.

26 RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

AFFIDAVIT OF DAVID R. RISLEY

(ARBITRATION AWARD NO. 2)

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

1 STATE OF IDAHO)
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DAVID R. RISLEY, being first duly sworn, upon his oath deposes and says that:

1. I am the attorney of record for Bald, Fat & Ugly, LLC (hereinafter "BFU").

2. On April 30, 2010, this Court entered an *Order Confirming Arbitration Awards* (hereinafter "Order"), a true and correct copy of which is attached hereto as Exhibit "A." A true copy was duly served upon the Defendants herein pursuant to the Clerk's Certificate of Mailing dated May 3, 2010.

3. On page four, paragraph 9, of Exhibit "A" to the Order entitled *Arbitration Awards* it reads as follows:

In supplementation to paragraph 8 above, and for the purpose of protecting Keane from having to pay for the same repairs twice, it is the decision and direction of the undersigned that said repair costs (\$159,762.00) shall be paid by Keane jointly to BFU and its attorney, David Risley, and shall be held in trust by David Risley for the express purpose of paying for all or a portion of the costs of repairing the exterior common area of the project as that work is outlined in Progressive's Amended Bid. If the repairs, as outlined in Progressive's Amended Bid, are performed for a cost less than \$229,887.00, any such savings shall be returned forthwith by Mr. Risley (or other trustee) to Keane, together with an accounting. If the repair costs exceed said \$229,887.00, Keane shall have no further liability for additional costs, at least as to BFU.

See, *Order Confirming Arbitration Awards*, p. 4 of Exhibit "A" entitled *Arbitration Awards*.

4. In addition, on page six of Exhibit "A" to the Order entitled *Arbitration Awards* it reads as follows:

1 Award No. 2.

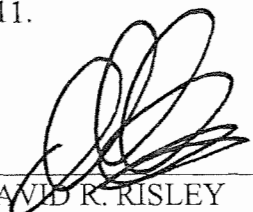
- 2 a. The sum of \$159,762.00 in respect to Keane's obligation to
3 BFU regarding remediation of the exterior common area.
- 4 b. No interest is awarded in respect to said amount.
- 5 c. This Award No. 2 is expressly for the purpose of repairing
6 the exterior common area as discussed above, and upon
7 payment, shall be held in trust by BFU and its attorney, Mr.
8 David R Risley, as also discussed above.

9 See, *Order Confirming Arbitration Awards*, p. 6 of Exhibit "A" entitled *Arbitration*
10 *Awards*.

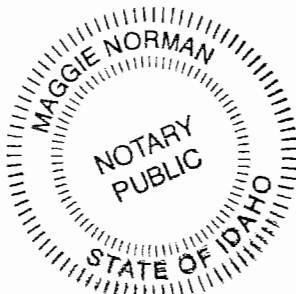
11 5. No part of the sums have been paid as ordered.


12 6. RICHARD A. KEANE and LISA A. KEANE and R&L DEVELOPMENTS,
13 LLC, an Idaho Limited Liability Company, and KEANE AND CO. CONSTRUCTION, INC., a
14 Idaho Corporation, and their attorney of record, was served with a copy of the *Order Confirming*
15 *Arbitration Awards* and had actual knowledge of it pursuant to the Clerk's Certificate of Mailing
16 executed on May 3, 2010.

17 DATED this 3rd day of May, 2011.

18 
19 _____
20 DAVID R. RISLEY

21 SUBSCRIBED AND SWORN to before me this 3rd day of May, 2011.



25 
26 Notary Public in and for the State of Idaho,
Residing in the State of Idaho or employed
In and Doing Business in the State of Idaho.
My Commission Expires: 7-9-2016

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I HEREBY CERTIFY that a true and correct copy of the *Affidavit of David R. Risley* was served as indicated on this 3rd day of May, 2011,

- Mailed
- Hand Delivered
- Faxed
- Messenger

to the following:

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



DAVID R. RISLEY

106

EXHIBIT A

INST. NO. 781283

FILED FOR RECORD
FEE 78.00 REC. BY David Risley
PO Box 1247
Lewiston ID

FILED

2010 MAY 3 PM 4 59

PATTY O. WEEKS
RECORDER, NEZ PERCE CO. ID.
BY R. Lewis DEPUTY

PATTY O. WEEKS
CLERK OF THE DIST. COURT
PAMELA SCHNEIDER
DEPUTY

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

Claimants,

and

ORDER CONFIRMING ARBITRATION
AWARDS

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

THIS MATTER having come before the Court on Bald, Fat & Ugly, LLC's (hereinafter
referred to as "BFU") *Amended Application and Motion for Confirmation of Arbitration Award,*

1 and the BFU having been represented by David R. Risley of Risley Law Office, PLLC and
2 Richard A. Keane and Lisa A. Keane, husband and wife; R&L Developments, LLC, an Idaho
3 Limited Liability Company, and Keane and Co. Construction, Inc., an Idaho Corporation, having
4 been represented by Manderson L. Miles of Knowlton & Miles, and good cause appearing, now,
5 therefore,
6

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

8 1. The *Arbitration Awards* dated November 18, 2009, a true copy of which is
9 attached as Exhibit "A," and the Clarification Order of the Arbitrator dated January 20, 2010, a
10 true copy of which is attached as Exhibit "B," is hereby confirmed pursuant to Idaho Code § 7-
11 914.
12

13 2. Bald Fat and Ugly LLC, have and recover from Richard A. Keane and Lisa A.
14 Keane, husband and wife; R&L Developments, LLC, an Idaho Limited Liability Company, and
15 Keane and Co. Construction, Inc., an Idaho Corporation, jointly and severally, a money judgment
16 in the sum of ONE HUNDRED FIFTY FOUR THREE HUNDRED FORTY-SIX and 49/100
17 DOLLARS (\$154,346.49), plus interest at eight percent (8%) from December 22, 2009 until
18 paid.
19

20 3. Bald Fat and Ugly LLC, have and recover from Richard A. Keane and Lisa A.
21 Keane, husband and wife; R&L Developments, LLC, an Idaho Limited Liability Company, and
22 Keane and Co. Construction, Inc., an Idaho Corporation, jointly and severally, a money judgment
23 in the sum of ONE HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED SIXTY-TWO
24 and 00/100 DOLLARS (\$159,762.00) under certain restrictions as set forth in the Arbitration
25 Award, plus interest at eight percent (8%) from November 18, 2009.
26

ORDER CONFIRMING ARBITRATION AWARDS--Page 2

AFFIDAVIT OF DAVID R. RISLEY

109

4. Jurisdiction is retained to enter such additional orders and take such additional action as is necessary to effectuate the Arbitration Awards.

DATED this 30 day of April, 2010.

JEFF M. BRUDIE

HONORABLE JEFF BRUDIE

CLERK'S CERTIFICATE OF MAILING

I certify that on ~~April~~ ^{MAY} 3, 2010, at my direction, the foregoing *Order Confirming Arbitration Awards* was served on the following in the manner shown:

Counsel for Claimants: (copy)

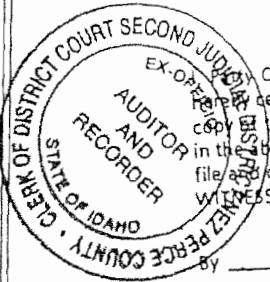
Manderson L. Miles	[] Mailed, postage prepaid
Knowlton & Miles, PLLC	[<input checked="" type="checkbox"/>] Messenger
P.O. Drawer 717	[] Facsimile
Lewiston, ID 83501	

Counsel for Respondent: (copy)

David R. Risley	[] Mailed, postage prepaid
Risley Law Office, PLLC	[<input checked="" type="checkbox"/>] Messenger
P.O. Box 1247	[] Facsimile
Lewiston, ID 83501	

PAMELA SCHNEIDER

CLERK OF THE COURT *Deputy*



P. O. Weeks, Clerk of the above entitled Court do hereby certify the foregoing to be a full, true and correct copy of the original in the above entitled cause as the same now appears on file of record in my office. Witness my hand and official seal this 6-3-2010

Patty O. Weeks
PATTY O. WEEKS, Clerk
By *Deputy*
Deputy

EXHIBIT A

IN THE MATTER OF THE ARBITRATION BETWEEN:

RICHARD A. KEANE and LISA C.)	
KEANE, husband and wife;)	
R & L DEVELOPMENTS, LLC,)	
an Idaho limited liability company; and)	
KEANE AND CO. CONSTRUCTION,)	
INC., an Idaho corporation,)	
)	ARBITRATION
Claimants,)	AWARDS
)	
-and-)	
)	
BALD, FAT & UGLY, LLC,)	
an Idaho limited liability company,)	
)	
Respondent.)	

COMES NOW the undersigned Arbitrator and, pursuant to the terms and conditions of a certain Agreement to Submit to Arbitration dated August 3, 2009, and as amended by a certain letter dated October 21, 2009, copies of which are attached hereto and collectively identified as Attachment "1," and renders the following Awards:

Preliminary Comments

1. No attempt is made herein to recite the lengthy history of the disputes giving rise to this Arbitration, but certain comments are believed to be appropriate for the parties' better understanding of these Awards.

2. The Houston Professional Plaza LLC (Association) is not a party to this arbitration, and, as such, nothing contained herein is binding on that Association. However, the Association certainly has an interest in the project's exterior common area and, as acknowledged by the parties in the Mediated Settlement Agreement ("MSA"), an interest in the repairs thereto, including the scope of repairs as discussed later in this Award.

3. The parties hereto are now signatories to the MSA, which is dated June 8, 2005, a copy of which is attached hereto as Attachment "2." The undersigned acted as the Mediator for the parties in that matter.

4. Though subject to dispute on some issues, the MSA is clear and unambiguous on two (2) key points:

- a. Claimants (hereinafter sometimes "Keane") agreed to pay BFU the principal amount of \$180,000.00 together with interest thereon.
- b. Keane also agreed to the performance of remediation work in respect to the exterior common areas of the project. It was acknowledged in the MSA that the project included both Phases 1 and 2.

5. Though less clear in the MSA and, therefore, subject to dispute, there was not a specific agreement as to the undersigned being vested with the authority to award attorney fees to the prevailing party in the provided-for arbitration. Idaho law is very strict in respect to an arbitrator having authority to award attorney fees. Moore v. Omnicare, Inc., 141 Idaho 809, 118 P.3d 141 (2005); Deelstra v. Hagler, 145 Idaho 922, 188 P.3d 864 (2008). Additionally, the arbitration clause in the Multi-Party Sale and Exchange Agreement (BFU Tab 4) is specifically in reference to "arbitration to the American Arbitration Association," and this is not such a proceeding. Based on these findings and considerations and on various other factors, it is the conclusion of the undersigned that neither party is entitled to an award of attorney fees.

6. After a review of the exhibits of the parties, their briefings, final arguments, and after taking two days of testimony, it is the conclusion of the undersigned that the *best evidence* in the case as to the probable cost and scope of the agreed-to

remedial work is that certain estimate (BFU's Tab 6, Amended Bid) prepared by Progressive Engineering in the amount of \$229,887.00. That Bid appears to have been prepared by Progressive Engineering at the request of the Association and apparently with some input by the parties hereto, and that is the finding of the undersigned.

7. However, it was submitted during the hearing and was undisputed that the Association offered to pay Keane the sum of \$70,125.00 in exchange for his agreement to perform the work as outlined in Progressive's scope of work. Said action strongly indicates to the undersigned that a portion of the remedial work outlined by Progressive was not Keane's responsibility but was more in the nature of added work being requested by the Association. As such, it is the conclusion of the undersigned that Keane is only obligated to pay the sum of \$159,762.00 (\$229,887.00 less \$70,125.00) in respect to repair of the exterior common area as outlined in Progressive's scope of work.

8. Additionally, it was the testimony of the parties that BFU only has a one-third undivided interest (and, as such, a one-third responsibility) in respect to the exterior common area and, as such, it can be argued that Keane should only pay BFU one-third of said \$159,762.00. However, it is clear from the MSA that Keane agreed to perform remediation work for BFU in respect to the totality of the exterior common area. It is also clear that BFU has a protectable interest in said exterior common area. As such, it is the conclusion of the undersigned that Keane is obligated to BFU to pay the entirety of the said \$159,762.00 amount in respect to repair of the exterior common area. Other unit owners of the condominium, together with the Association itself, will, it appears, be benefited by Keane's payment of said estimated repair costs, but those parties and any such issues in respect to sharing in the repair costs are not before the undersigned.

9. In supplementation to paragraph 8 above, and for the purpose of protecting Keane from having to pay for the same repairs twice, it is the decision and direction of the undersigned that said repair costs (\$159,762.00) shall be paid by Keane jointly to BFU and its attorney, David Risley, and shall be held in trust by David Risley¹ for the express purpose of paying for all or a portion of the costs of repairing the exterior common area of the project as that work is outlined in Progressive's Amended Bid. If the repairs, as outlined in Progressive's Amended Bid, are performed for a cost less than \$229,887.00, any such savings shall be returned forthwith by Mr. Risley (or other trustee) to Keane, together with an accounting. If the repair costs exceed said \$229,887.00, Keane shall have no further liability for any additional costs, at least as to BFU.

10. It appears from the testimony of the parties that BFU's repair of the ADA area in question served a dual purpose, i.e., to satisfy the demands of BFU's new tenant and as a partial repair of the common area as discussed above. As such, it is the decision of the undersigned that Keane shall reimburse BFU for one-half of BFU's cost (\$35,363.33) in respect to that item of work, together with interest thereon.

11. Though the parties presented many other elements of damages and costs, it is the finding and conclusion of the undersigned that all other claimed damages of both parties were not proven to the reasonable satisfaction of the undersigned and, as such, are not recoverable.

12. The cost of the Arbitration shall be borne equally by the parties, and the below Award No. 1 addresses same.

¹ In the event Mr. Risley declines to act as trustee, upon application, the monies shall be paid over to a court appointed trustee.

AWARD

Based on the above, the undersigned makes the following two (2) separate Awards:

Award No. 1.

1. An award of the principal sum of \$205,131.17, made up of the following amounts:

- a. The sum of \$180,000.00 as identified in the MSA.
- b. The sum of \$17,681.67 in respect to reimbursement of 50% of BFU's costs re the ADA area.
- c. The sum of \$7,449.50 in respect to reimbursement of BFU for arbitration costs/expenses.

2. In addition to the above, an award of interest in the sum of \$87,809.84, made up of the following amounts:

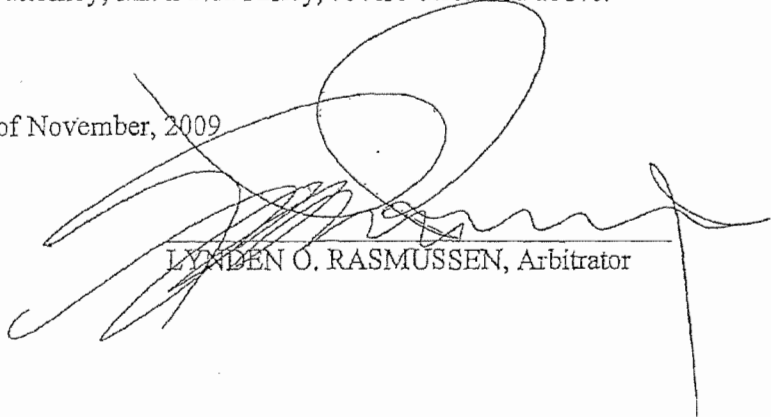
- a. Interest on the \$180,000.00 amount in the total amount of \$84,694.09 as of September 30, 2009.
- b. Interest on the partial reimbursement of the ADA cost in the total amount of \$3,115.84 as of September 30, 2009.
- c. Together with continuing per diem interest in the amount of \$66.57 from October 1, 2009 forward until this Award No. 1 is fully paid.

3. This Award No. 1 shall be to the benefit of BFU and payable by Keane.

Award No. 2.

- a. The sum of \$159,762.00 in respect to Keane's obligation to BFU regarding remediation of the exterior common area.
- b. No interest is awarded in respect to said amount.
- c. This Award No. 2 is expressly for the purpose of repairing the exterior common area as discussed above and, upon payment, shall be held in trust by BFU and its attorney, Mr. David Risley, as also discussed above.

DATED this 18th day of November, 2009



LYNDEN O. RASMUSSEN, Arbitrator

17252

Agreement to Submit to Arbitration

AGREEMENT MADE ^{OK} August 3 ^{MLM}, 2009, between Bald, Fat & Ugly, LLC, an Idaho Limited Liability Company ("BFU"), and Richard A. and Lisa C. Keane, husband and wife of Lewiston, Idaho; R & L Developments, LLC, an Idaho Limited Liability Company; Keane and Co. Construction, Inc., an Idaho corporation:

The parties stipulate that certain controversies have arisen and exist between them, including the course of dealing with contractual relationships regarding the sale, purchase, construction, repair and related matters regarding the parties' interests in the HOUSTON PROFESSIONAL PLAZA located in Lewiston, Idaho.

The parties further stipulate that there are currently the following pending disputes:

1. Disputes regarding the terms, rights, and obligations of the parties relating to, and arising from, the Mediation Agreement reached June 8, 2005, a copy of which is attached hereto as Exhibit "A."
2. Disputes regarding issues before the American Arbitration Association ("AAA") under case number 77 721 Y 00416 06 SHST, including the cost and expenses of this arbitration. A copy of the pending Order under this case number is attached hereto as Exhibit "B."
3. Any additional disputes and differences between the parties that have arisen during the course of dealing between the parties.

HEREIN, COLLECTIVELY REFERRED TO AS THE "DISPUTES."

The parties, desire to submit all such DISPUTES to arbitration before Lynden O. Rasmussen, Winston & Cashatt Lawyers, Bank of America Financial Center, 601 W. Riverside, Suite 1900, Spokane, Washington 99201-0695.

1) Submission of Disputes

BFU and Keane agree to submit all DISPUTED claims, controversies, demands, disputes, differences, and matters, now pending between them, or contemplated by either of them, relating to or arising from the above-mentioned construction contract between owner and contractor and performance under the contract, to Lynden O. Rasmussen, who shall, subject to the provisions of this agreement, arbitrate all disputes between the parties, including, without limitation:

A. Whether KEANE breached the terms of the Mediation Agreement reached June 8, 2005.

B. Whether BFU breached the terms of the Mediation Agreement reached June 8, 2005.

C. Whether KEANE breached his September 9, 2002, agreement for work performed in any manner, including, without limitation by failing to perform work under that agreement to the standard of skill practiced by qualified contractors in Lewiston, Idaho and whether KEANE failed to provide the quality of materials as called for in the plans and specifications relating to such agreement.

D. Damages for breach by KEANE of the terms and conditions by him to be performed under the terms of the Mediated Agreement.

E. Damages for breach by BFU of the terms and conditions by them to be performed under the terms of the Mediated Agreement.

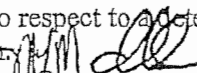
F. Subject to an affirmative finding by the arbitrator, what amount of damages contractor owes owner or owner owes contractor by reason of such breach or nonperformance, as set forth below.

2) Determination of Damages

A. In determining damages, if any, owed by KEANE to BFU or BFU to Keane, the arbitrator is directed to assign to each item of substandard work, if any, an amount equal to the reasonable cost of correcting such item to conform to the general standard of skill or quality practiced by building contractors in Lewiston, Idaho, in performing the item in questions, and the total cumulative cost of all such items shall be the damages, if any, to which owner shall be entitled from Keane.

B. The parties stipulate that the above-stated proration of damages as to each such substandard work item, if any, is required of the arbitrators for the purpose of Keane's seeking recourse against any third persons or particular subcontractors, to the extent of any such damages contractor may suffer by virtue of an award being made by the arbitrators respecting such substandard work item, if any, pursuant to this agreement.

3) Terms and Conditions of Arbitration

A. The arbitrator shall have full power to make such regulations and to give such orders and directions as he shall deem expedient to respect to a determination of damages in the matters and differences referred to them. 
by September 14, 2009

B. Each of the parties shall, within _____ days from the effective date of this agreement, furnish to the arbitrator, and a copy to the other party or his counsel, a statement in writing of the claims and objections that the claimant proposes to submit.

4) Conduct and Rules of Hearing

A. On a date convenient to the parties and the Arbitrator, the Arbitrator will convene an arbitration at the HOUSTON PROFESSIONAL PLAZA, Lewiston, Idaho. At such Arbitration, all documents submitted pursuant to paragraph 3A will be admitted as authentic, subject to arguments and evidence regarding credibility and relevance.

The Arbitrator will hear the testimony of BOB BLEWETT on behalf of BFU and RICHARD KEANE on behalf of KEANE and only such other witnesses as are mutually agreed by the parties.

The Rules of Evidence will be waived with regard to formal objections, but credibility of representations will be subject to the determination of the Arbitrator.

B. If a party shall default in any respect referred to in paragraph A above, the arbitrator may proceed with the arbitration in their discretion as if no such evidence were in existence, to the extent it may be favorable to the party in default.

C. The arbitrator may, in his absolute discretion, take as evidence any affidavit or declaration or writing concerning the matter in controversy, on condition that a copy has been given ^{by September 14, 2009} no less than _____ days previously to the party against whom the same is offered, but the person whose evidence is so taken shall be subject at any time to cross-examination by such party, if the party thinks fit to bring that person before the arbitrators.

5) Duties of Arbitrators

A. The arbitrator shall view the premises and shall inspect any plans and drawings and inspect any documents relating to the construction of the above-mentioned Houston Professional Plaza.

B. The arbitrator shall have full power to order mutual releases to be executed by the parties, and, if either of the parties fails to execute a release such orders shall have the effect of a release, and may be duly acknowledged as such.

C. If either party or a witness for either party shall fail to attend the arbitration hearing, after such written notice to such party as the arbitrators deem reasonable, the arbitrators may proceed in the absence of such party or witnesses without further notice.

6) Parties to Cooperate

Neither party shall unreasonably delay or otherwise prevent or impede the arbitration or the making of an award.

7) Costs and Expenses

All costs and expenses of the arbitration shall be borne and paid by the parties in equal shares.

8) Parties Not to Commence Proceedings During Arbitrations: Effect of Award

The parties agree that neither of them will, before or during such arbitration, commence or prosecute a civil action against the other relating to any of the matters in controversy, and that the award to be made by the arbitrators, or the umpire in case one is appointed, shall be valid and binding on the parties, and they agree to observe and perform each part of such orders.

All statutes of limitation and other limitation periods for any and all DISPUTES, between the parties will be tolled as of June 8, 2005, and shall not be time barred by any statute of limitation, laches, or other time limitation (whether statutory, equitable, contractual, or otherwise).

9) Effect of Agreement

This agreement shall bind and inure to the benefit of the respective heirs, personal representatives, successors, and assigns of the parties.

10) Notification of Award

Any award made pursuant of this agreement is to be delivered in writing, and executed by the arbitrators, and delivered to Keane and BFU.

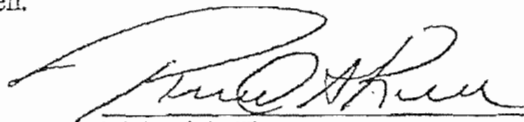
11) Governing Law

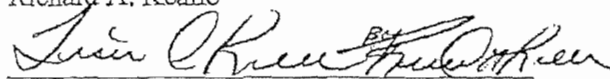
This agreement shall be governed by, construed, and enforced in accordance with the laws of Idaho.

Each party to this agreement has caused it to be executed at (place of execution), on the date indicated below.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year hereinabove first written.

Richard A. Keane & Lisa Keane


Richard A. Keane

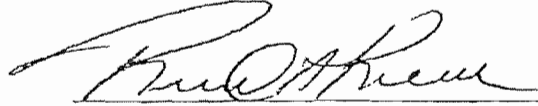

Lisa C. Keane,
by Richard A. Keane, attorney-in-fact

R & L Developments, LLC



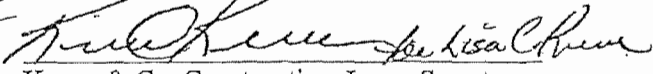
R & L Developments, LLC,
Authorized Agent

Keane & Co. Construction, Inc.



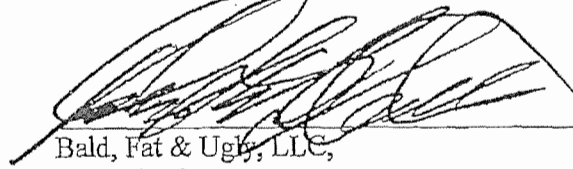
Keane & Co. Construction, Inc. - President
and Authorized Agent

ATTEST:



Keane & Co. Construction, Inc. - Secretary
and Authorized Agent

Bald, Fat & Ugly, LLC



Bald, Fat & Ugly, LLC,
Authorized Agent



RANDALL, BLAKE & COX, PLLC

LAWYERS

1106 IDAHO STREET

P.O. BOX 446

LEWISTON, ID 83501

(208) 743-1214

TELEFAX (208) 743-1286

E-mail: david@rbcok.com

DERRICK WYER

WYNNE M. BLAKE
(1922-2000)

RUSSELL S. RANDALL
(1988-2004)

STEVE R. COX*
DAVID R. RISLEY*
SCOTT CHAPMAN*
KERRY A. WAGNER*

*LICENSED IN IDAHO AND WASHINGTON

October 21, 2009

Manderson L. Miles,
Knowlton & Miles
P.O. Box 717
Lewiston, ID 83501

VIA FACSIMILE (208) 746-0118

Re: *BFU/Keane*

Dear Mandy:

Just confirmed with Lynn's office that the submissions are not due until tomorrow.

Do we agree that with respect to the *Agreement to Mediate* we will submit an amended article two which will read:

2) Determination of Damages

a. Is amended to request that the arbitrator break out any award by category of damages claimed by the parties.

b. Is deleted by agreement.

As to the property on 17th Street, BFU will release the lien so long as the net proceeds are paid by the closing agent at closing to the Randall Blake and Cox PLLC Trust Account for payment to BFU as credit against sums due BFU by Keane.

As to the office condo, are we agreed that a no reserve sale is set on or about November 6, 2009, roughly a week before the sale by foreclosure. BFU does not agree to release its lien without payment in full of all sums due to BFU. However, if the sale price is reasonable, BFU will release its lien so long as the price paid at auction is reasonable and the net sale proceeds are paid into trust pending the outcome of this matter. If the parties cannot agree on whether the sales price is reasonable, then the parties should allow Lynn to make a final resolution of that issue. If no sale takes place, then Keane will pay the sums due to cure the default and avoid the foreclosure sale. Please let me know if these proposals are acceptable.

Yours very truly,

RANDALL BLAKE & COX, PLLC

DAVID R. RISLEY

DRE/rlh

cc: Bald, Pat & Ugly, LLC

MEDIATED SETTLEMENT AGREEMENT

June 8, 2005

LOR Testing 1, 2, 3, 4, 5

Name: Keane Co. Construction and R & L Development
And Bald, Fat & Ugly

Paul This is the settlement agreement following mediation of the dispute that's mediated today, June 8, 2005, at the offices of Winston & Cashatt, the mediator being Lynden Rasmussen. Parties - persons present at this time include Paul Cressman, who is speaking at David Risley, counsel for BFU, Bob Blewett, April Smith, Lyn Rasmussen, Rick Keane and Rod Bond. It's the intent of this dictation to constitute the settlement agreement, subject to memorialization in writing. In the event the parties cannot agree upon the proper terms of settlement in writing, that matter will be resolved by Mr. Rasmussen. The terms of the settlement are as follows:

Paul There exists certain issues with respect to the title of the condominium units and those issues, it's agreed, will be jointly, the parties will jointly cooperate for resolution. David Risley will provide appropriate information for submittal to the Management Association or Condominium Owners' Association, whatever the proper terminology would be, to address those title issues, which include issues with respect to the location of the buildings on the subject property.

David The definition of common areas for all of Houston Professional Plaza and the compliance with the technical requirements of Idaho's condominium law, then that would be presented jointly to the Houston Professional Plaza Condominium Association with the request that the Condominium Declaration be amended to include that appropriate map, together with other definitions in the minutes that would bring the Condominium Declaration into compliance with Idaho law and the project as built, if in such - there's such situation where the Association does not accept those changes or recommendations, the parties would jointly participate in the suit against the Association to resolve and correct those title issues. I will need maps from Mr. Keane as necessary to show the as built for purposes of amending that condominium map.

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Paul

It is my understanding that you do have a December 15, 2005, map and to the extent there is a better map than that, we would provide it. If not, that would be the map that you would utilize. It is also my understanding that if we have any disagreements on these issues that we would present them for resolution to Mr. Rasmussen in accordance, well, that would be the resolution. With respect to issues on the common area, the, with regard to the common area that is in question and of which we are speaking, it is the exterior common area to the buildings. And the parties will cooperate and provide, the intent is that my clients would provide those areas in compliance with the applicable ADA standards and applicable City of Lewiston building code requirements. And to that end, the BFU folks will provide their engineering information on those subjects to date to us for our review and likely we will provide -- we will solicit engineering assistance to hopefully reach an agreed scope of work between the engineers and between our respective clients to resolve this issue. If there is a dispute as to the proper scope of work, either between the parties or the respective engineers, and following whatever reasonable attempts either party believes is appropriate, and those efforts failing, those matters will also be presented to Mr. Rasmussen for resolution. Following the agreement on the scope of work or resolution by Mr. Rasmussen, that work would then be performed at the expense of my clients with an as built plan provided for the work, in question, stamped by a licensed engineer in the state of Idaho, presented to Mr. Risley's clients.

Paul With regard to an additional issue under the same category would be providing as built for buildings 2 and 3 and my clients would agree to provide that as well. With regard to additional parking...

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David Before we move on to another issue and that's the settling issue to the south of buildings 2 and 3 that would be resolved as part of the repair and care of the common areas and the common areas would be of the Houston Professional Plaza, both Phase 1 and Phase 2.

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Paul With regard to the settlement issue, that issue will be addressed by the parties and if they cannot resolve an appropriate fix suitable, then that issue would also be pretend to Mr. Rasmussen for resolution. With regard to additional parking spaces, my clients agree to provide four additional parking space, three located on the southeast corner of the development, or maybe four, if possible, in that area. If not, three in the southeast corner, and one in the northeast corner of the development.

Deleted: Man 3

David (Unintelligible) but I wanted to show you that.

Deleted: Man 4?

Paul

An additional term of the settlement would be that the parties, my clients would agree that the rock wall would be in compliance on the south side of the property with the applicable City of Lewiston requirements and in the event either of the parties disagree on that and are unable to resolve those differences with regard to any necessary fix, that issue would also be provided to Mr. Rasmussen for resolution.

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Paul

At all times referenced in this settlement, it's the intent of the parties that the applicable ADA requirements and the applicable City of Lewiston requirements are those that would otherwise be applicable to these improvements that it is subject to this dispute.

Paul

The next term of this settlement is the payment of \$180,000 payable within six months by my clients. The first two months would be interest free and the last four months, if necessary or desirable by my clients, interest would accrue at the rate of 8% per annum. The entire amount would be payable within six months. This amount may be prepaid without any penalty whatsoever by my clients. This obligation will be secured by the two parcels of property that have presently been offered as additional collateral to remove an option and that will be further described in the written document.

Paul

With regard to all other claims between the parties, claims that are known or unknown, there is a mutual release by both parties of all claims. And finally, there is a confidentiality provision, ably drafted by Mr. Risley and myself that would apply to the terms of this agreement, except as necessary to implement it. David, do you have anything else?

Deleted: _____

David

Mr. Rasmussen -- he suggested that venue be at Winston & Cashatt and do you want that to be appealable, then it should be under the rules of the American Arbitration Association but not the auspices of the Association.

Paul

That's agreeable.

David

That way we can avoid costs.

Deleted: (unintelligible)

Paul

That's agreeable. And

David

He would have within his power to award costs and fees and his decisions would be, I suggest, non-appealable.

Paul

They would be appealable to whatever extent they would be appealable under the AAA rules.

David Ok. And we don't know long the work will stay in place. Is it acceptable to have the deed of trust stay in place until the work is done to cure the common areas?

Paul No. The issue would be resolved, the issue on the, at such time as the money's paid, the deed of trust would be released.

David What time of frame should (unintelligible).

David Let's go off the record here and talk about this cause...

Deleted: Paul

Paul It's apparently been agreed that the deed of trust on the two pieces of property to secure the \$180,000 will remain in place until such time as the work to be performed pursuant to this agreement by my clients is complete. Mr. Rasmussen, we would ask that you type this up, have your able staff do that, and provide each of us with a copy and Mr. Risley and I will prepare Mr. Bond the required written documentation and hopefully...

Deleted: i

???

Paul Hopefully we'll not need your assistance in that regard.

???

Paul In case this issue has not been covered earlier, the concept with regard to the external common area work coming in compliance with the applicable ADA and applicable City of Lewiston requirements would be that the as built, once provided, would be stamped by licensed engineer in the state of Idaho. I think I've already indicated and that as built drawing would be provided to Mr. Risley's clients. Is that your agreement?

Rick Keane That's right, and once that is provided in the disbursement, then its...

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Paul Then the deeds of trust would be released.

Rick Keane that's your understanding?

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David It's our intention of taking those as built and filing with the appropriate office of the City Works.

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Deleted: Man

Paul You can do with them what you like. That's our agreement. Anything else?"

LOR Ah, yes. This is Lyn Rasmussen, I won't agree to accept responsibility to arbitrate the issues as defined herein and I want it clearly understood between the parties, among the parties hereto that this a binding and enforceable agreement and subject only to being, I mean it's not subject to being reduced to writing, but you people have agreement as we speak now. Correct?

Paul We have an agreement as we speak now, but it is the intent that it will be put in writing and in the event of any disagreements over its terms, those will be resolved by you.

LOR That's my understanding.

Paul There's been a modification of what was stated earlier with regard to the confidentiality agreement, it has been agreed that BFU and Mr. Bob Blewett can disclose this agreement and its terms to the following banks:

Bob Blewett No less than Banner, Panhandle State Bank, US Bank and Wells Fargo at the time.

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Deleted:

Paul Any other banks?

Bob Blewett And Sterling Bank and, those are the main ones anyhow.

Deleted: Man ??
Deleted:

And Farm Credit, I've got a loan with them.

Deleted: [Cross/alk]

Paul So those will be the only banks that'll be disclosed?

Bob Blewett That's it, yeah.

Deleted: Man ??

Paul At any point.

David This agreement is disclosed to the bankers for the purposes of loan packages to go to different banks at different towns.

Deleted: Man ??
Deleted: (unintelligible)

Paul It's been agreed that either party may disclose the terms of this agreement to their respective bankers. The other issue that may not have been added that I think that needs to be is before any improvements can be made or any changes to the common area -- any improvements or changes to the

common areas, they must be presented to the applicable Association of the condominium and their written approval obtained in accordance with the terms of the Declaration and Idaho state law, which ever may be applicable or both. One final exception to the confidentiality provision the parties can disclose this agreement to Mister... Steve Lohman.

Paul Steve Lowman.

Deleted: Man ??

Paul Steve Lowman. And either party may resolve – may disclose the terms of this agreement to any accountant which they use. End of terms unless anybody wants to add anything else.

David I think you and I Paul can draft the confidentiality agreement that allows for communications and to receive professional advice (unintelligible).

Deleted: Man ??

Deleted: _____

Deleted: _____

Deleted: _____

Paul Anything else? This ends the terms of the settlement. I'll go around the room and ask if the parties and their counsel and those present believe these are the terms of the settlement agreement, Paul Cressman speaking, acknowledges that these are the terms that the parties have agreed to.

Dave Dave Risley speaking, these are the terms that the parties have accepted.

Bob Blewett Bob Blewett and these are the terms as I understand from all this the parties' agree to.

April April Smith speaking and these are the terms of the agreement.

LOR You want me to speak to this also? I participated in this mediation and it appears these are the terms that the parties agree to.

Rick I'm Rick Keane and I believe these are the terms that we've agreed to.

Rod This is Rod Bond and I believe these are the terms we've agreed to.

Paul There being nothing further, this concludes the terms of the settlement agreement.

DATED this 3rd day of Nov., 2009 DATED this 13th day of Oct., 2009

Bald, Fat. & Ugly

Keane Company Construction



By: 

Bob Blewett, Individually and
As an Agent for BPU

Richard Keane, Individually and
As an Agent for Keane Co. Constr.

781283

EXHIBIT B

781283

Spokane Office
Bank of America Financial Center
601 W. Riverside, Suite 1900
Spokane, Washington 99201-0695

Phone: (509) 838-6131
Fax: (509) 838-1416
website: www.winstoncashatt.com

Winston & Cashatt

L A W Y E R S

A Professional Service Corporation

*Winston & Cashatt has offices in Spokane, Washington
and Coeur d'Alene, Idaho*

January 20, 2010

Mr. David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501

Mr. Manderson L. Miles
Knowlton & Miles, PLLC
P.O. Drawer 717
Lewiston, ID 83501

Re: Keane, et al. v. Bald, Fat and Ugly, LLC
Ruling on Keane's Motion to Amend Arbitration Award

Gentlemen:

This letter is in respect to Keane's Motion to Amend Arbitration Award dated December 4, 2009. BFU filed its objections thereto by way of Mr. Risley's letter dated December 17, 2009. Keane's motion, per agreement of the parties and the undersigned, came on for telephonic hearing on January 19, 2010 at 2:00 pm. After hearing argument of counsel and, after again reviewing the filings of the parties, including the previously issued Arbitration Awards, I offer the following Ruling:

After due consideration of Keane's Motion and BFU's responses thereto, I am of the opinion that Keane's motion is, in essence, a motion "for the purpose of clarifying the award" as provided for under I.C. Section 7-909. Though Keane captioned the motion as a Motion for Reconsideration, I do not believe that I have authority to "reconsider" the previously issued Awards, and, if I did, I would not grant reconsideration nor would I amend the Awards. I believe and hereby find that the Awards are clear and unambiguous.

However, in an effort to explain the Awards to the Claimant (hereinafter Keane), I offer the following in respect to the three objections raised in Keane's Motion in the same order as presented. This will also confirm that Mr. Risley acknowledged during the telephonic hearing that he too considered the Awards to be clear and unambiguous.

C. Matthew Andersen ¹⁰
Beverly L. Anderson
Courtney R. Beaudoin ¹⁰
Robert P. Beschel
Kevin H. Breck ¹⁰
Richard L. Cease
Christopher S. Crago
Patrick J. Cronin ¹⁰
Kevin J. Curtis ¹⁰
Greg M. Devlin ¹⁰

Stephen L. Farnell
David R. Gardner
Donald J. Gary, Jr. ¹⁰
Jeffrey A. Herbstet ¹⁰
Tim M. Higgins
Michael T. Howard ¹⁰
Carl E. Hueber ¹⁰
Nancy L. Issetlis ¹⁰
Brian T. McGinn ¹⁰
Kammi Mencke Smith ¹⁰

Sean F. O'Quinn
Fred C. Pfanz
Lynden O. Rasmussen
James E. Reed
Richard W. Relyea
Elizabeth A. Tellessen ¹⁰
Lawrence H. Vance, Jr. ¹⁰
Lucinda S. Whaley
Meriwether D. Williams ^{10 107}
Ryan D. Yalite ^{10 101}

Of Counsel
James P. Connelly

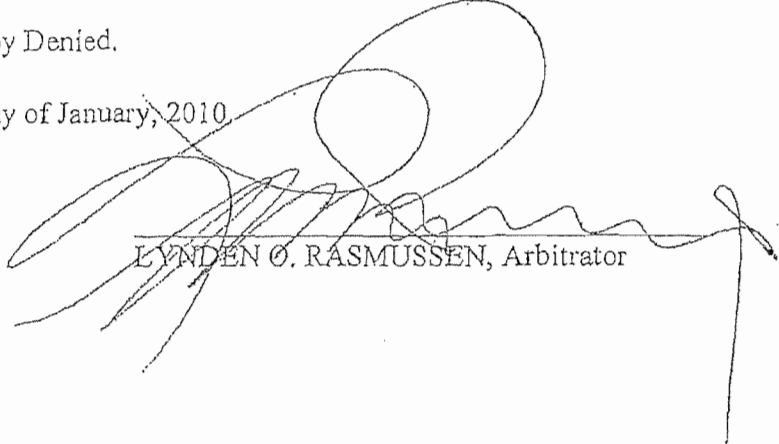
Retired
Leo J. Driscoll
Leo N. Cashatt ¹⁹¹⁶⁻¹⁹¹⁷
Joseph J. Reko?ke ¹⁹²¹⁻¹⁹²⁷
Patrick H. Winston ¹⁹⁰⁴⁻¹⁹⁰⁶

January 20, 2010
Page 2

1. The Award of \$159,762.00 (paragraph 7 of the Awards) is in the nature of a monetary Award in respect to the repair of the exterior common area. I did not order or direct that Keane perform (or even be allowed to perform) the work in question, and I leave that up to the parties to work out. This Award is to be paid jointly to BFU and its attorney as stated in paragraph 9 of the Awards, and is to be held in trust as also stated in that paragraph 9.
2. The Award of one-half of BFU's \$35,363.33 cost figure (\$17,681.67), as discussed in paragraph 10 of the Awards, is in respect to the ADA area and is a separate and distinct Award, and is in addition to the \$159,762.00 amount mentioned above. During oral argument, Mr. Miles acknowledged that he and his client now understand that portion of the Award and withdrew objection No. 2.
3. In respect to Keane's third objection (return of funds), it is noted that Paragraph 9 of the Awards obligates Mr. Risley (or other trustee) to return any savings "forthwith" together with an accounting. I believe that to be sufficient direction.

Keane's Motion is hereby Denied.

Dated this 20th day of January, 2010.



LYNDEN O. RASMUSSEN, Arbitrator

LOR:ch:179262

Wca

FILED

2011 MAY 6 PM 12 10

PATY O. WELLS
CLERK OF THE DIST. COURT

Connelly
Sch

DEPUTY

DAVID R. RISLEY
RISLEY LAW OFFICE, PLLC
P. O. Box 1247
1443 Idaho Street
Lewiston, ID 83501
(208) 743-5338
(208) 743-5307 (Fax)
david@risleylawoffice.com
ISB No. 1789

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

Claimants,

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

AMENDED NOTICE TO APPEAR

(ARBITRATION AWARD NO. 2)

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

1 NOTICE: YOU HAVE BEEN SUED BY THE ABOVE-NAMED PETITIONER,
2 BALD, FAT & UGLY, LLC. THE COURT MAY ENTER JUDGMENT AGAINST YOU
3 WITHOUT FURTHER NOTICE UNLESS YOU RESPOND. READ THE INFORMATION
4 BELOW.

4 TO: RICHARD A. KEANE and LISA A. KEANE, R&L DEVELOPMENTS, LLC, an
5 Idaho Limited Liability Company, and KEANE AND CO. CONSTRUCTION, INC., a Idaho
6 Corporation.

6 You are hereby notified that a *Motion for Contempt* with supporting affidavits have been
7 filed against you. You are hereby notified that you must appear and answer the charge of
8 contempt on the 19th day of May, 2011, at 10:00 a.m., the Nez Perce County Courthouse,
9 Lewiston, Idaho, to answer the charge of contempt.
10

11 DATED this 5th day of May, 2011.

12 RISLEY LAW OFFICE, PLLC
13 Attorney for Bald, Fat & Ugly, LLC

14
15 By: 
16 DAVID R. RISLEY
17 ISB NO. 1789
18
19
20
21
22
23
24
25
26

1 I HEREBY CERTIFY that a
2 true and correct copy of the
3 *Amended Notice to Appear*
4 was served as indicated on this
5 5th day of May, 2011,

- 6 Mailed
- 7 Hand Delivered
- 8 Faxed (509) 758-3399
- 9 Messenger

10 to the following:

11 Todd S. Richardson
12 Attorney at Law
13 604 6th Street
14 Clarkston, WA 99403

15 
16 _____
17 DAVID R. RISLEY

136

FILED

2011 MAY 9 PM 2 31

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

CASE NO. CV09-02468

Claimants,

ORDER FOR WRIT OF EXECUTION

and

(ARBITRATION AWARD NO. 1)

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

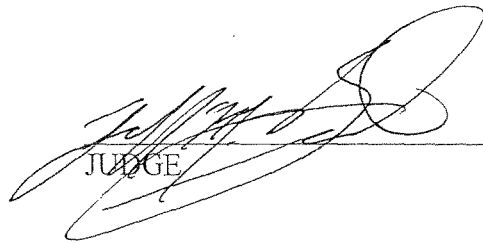
Respondents.

WHEREAS, BALD, FAT & UGLY, LLC, an Idaho Limited Liability Company
(hereinafter referred to as "BFU"), on the 30th day of April, 2010, recovered an *Order Confirming
Arbitration Awards* against RICHARD A. KEANE and LISA A. KEANE, husband and wife;

1 R&L DEVELOPMENTS, LLC, an Idaho Limited Liability Company, and KEANE AND CO.
2 CONSTRUCTION, INC., an Idaho Corporation, jointly and severally;

3 NOW, THEREFORE, IT IS HEREBY ORDERED that BFU's *Application for Writ of*
4 *Execution (Arbitration Award No. 1)* is hereby granted.

5 DATED this 9 day of May, 2011.

6
7
8 
9 JUDGE

10 CLERK'S CERTIFICATE OF MAILING

11 I certify that on May 9th, 2010, at my direction, the foregoing *Order for Writ of*
12 *Execution* was served on the following in the manner shown:

13 Counsel for BFU: (copy)

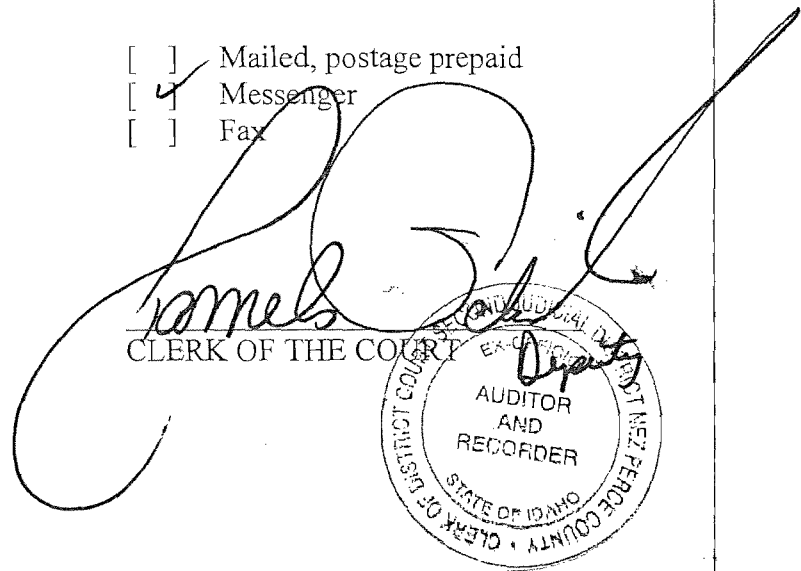
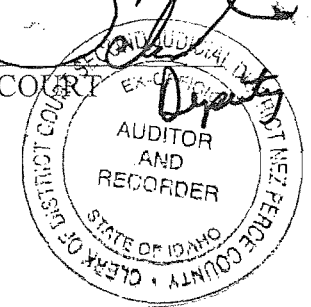
14 David R. Risley
15 Risley Law Office, PLLC
16 P.O. Box 1247
Lewiston, ID 83501

[] Mailed, postage prepaid
[] Messenger
[] Fax

17 Counsel for Keane: (copy)

18 Todd S. Richardson
19 Attorney at Law
20 604 6th Street
21 Clarkston, WA 99403-2011

[] Mailed, postage prepaid
[] Messenger
[] Fax

22 
23 CLERK OF THE COURT
24 

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 Claimants/Respondents

FILED
2011 MAY 17 PM 4 15
PATTY OWEEKS
CLERK OF THE DIST. COURT
DEPUTY
James [Signature]

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

RICHARD A. KEANE and LISA C. KEANE,)
and KEANE AND CO. CONSTRUCTION, INC.,)
and R & L DEVELOPMENTS, L.L.C.,)
Claimants,)
and)
BALD, FAT & UGLY, L.L.C.,)
Respondent.)

CASE NO. CV09-02468

ORDER FOR CONTINUANCE

BALD, FAT & UGLY, L.L.C.,)
an Idaho Limited Liability Company,)
Claimant,)
v.)
RICHARD A. KEANE and LISA A. KEANE, and)
R & L DEVELOPMENTS, LLC, an Idaho)
Limited Liability Company, and KEANE AND)
CO. CONSTRUCTION, INC., an Idaho)
Corporation,)
Respondents.)

THIS MATTER came before this honorable Court by way of counsel for Claimants/


Respondents, Richard A. Keane and Lisa A. Keane, and R & L Developments, LLC, and Keane and Co. Construction, Inc.'s Motion for a continuance of the hearing on Respondents/Claimants' Motion for Award of Post-Judgment Attorney's Fees and Costs, currently scheduled for Thursday, May 19, 2011 at the hour of 10:00 a.m.

The court having reviewed the documents, and good cause appearing,

NOW, THEREFORE, IT IS HEREBY ORDERED, that:

Counsel for Claimants/Respondents' Motion for Continuance is hereby granted, and the hearing on Respondents/Claimants' Motion for Award of Post-Judgment Attorney's Fees and Costs will be continued to May 26, at 10:00 a.m., at the Nez Perce County Courthouse, Lewiston, Idaho.

DATED this 17 day of May, 2011.



JUDGE

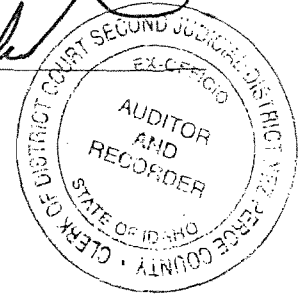
CLERK'S CERTIFICATE OF MAILING

I certify that on May 17th, 2011, at my direction, the foregoing *Order for Continuance*, was served on the following by Valley Messenger Service:

David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501

Todd S. Richardson
Law Offices of Todd S. Richardson, PLLC
604 Sixth Street
Clarkston, WA 99403

James B. Sch...
CLERK OF THE COURT



FILED
2011 JUN 6 PM 1 18

PAUL D. 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

RICHARD A. KEANE and LISA C. KEANE,)
and KEANE AND CO. CONSTRUCTION,)
INC., and R&L DEVELOPMENTS, LLC,)

Claimants,

and

BALD, FAT & UGLY, LLC,

Respondent,

BALD, FAT & UGLY, LLC, an Idaho
Limited Liability Company,

Claimnant,

v.

RICHARD A. KEANE and LISA A. KEANE)
and R&L DEVELOPMENTS, LLC, an Idaho)
Limited Liability Company, and KEANE)
AND CO. CONSTRUCTION, INC. an Idaho)
Corporation,)

Respondents.

CASE NO. CV09-02468

OPINION AND ORDER
ON MOTION FOR AWARD OF
POST JUDGMENT ATTORNEY'S
FEES AND COSTS

This matter is before the Court on Motion for Award of Post-Judgment Attorney's Fees and Costs Pursuant to Idaho Code § 12-120(5) filed by Respondent/Claimant Bald, Fat & Ugly LLC. The Court heard oral arguments on the matter on May 26, 2011. Claimants/Respondents Keanes, Keane Construction and R&L Developments were represented by attorney Todd S. Richardson. Respondent/Claimant was represented by attorney David R. Risley. The Court, having read the motion, affidavits and brief filed by Respondent/Claimant Bald, Fat & Ugly LLC, having heard oral arguments of counsel, and being fully advised in the matter, hereby renders its decision.

Idaho Code § 12-120(5) reads, "In all instances where a party is entitled to reasonable attorney's fees and costs under subsection (1), (2), (3) or (4) of this section, such party shall also be entitled to reasonable post-judgment attorney's fees and costs incurred in attempting to collect on the judgment. Such attorney's fees and costs shall be set by the court following the filing of a memorandum of attorney's fees and costs with notice to all parties and hearing." In the instant matter, Claimants/Respondents Keanes filed no objection to the Motion for Post Judgment Fees and Costs nor did they present any arguments specific to the memorandum of fees and costs during oral arguments. Rather, Keanes et al. merely argued that they wanted more time to do discovery to determine whether all the requested amounts were valid. The Court finds the time to make specific objections to the requested post judgment fees and costs was prior to the date set for hearing. The Keanes et al. having failed to timely file any objection, the Court finds the amounts requested for post judgment fees and costs reasonable and subject to award pursuant to I.C. § 12-120(5).

ORDER

Respondent/Claimant Bald, Fat & Ugly LLC's Motion for Award of Post Judgment Attorney's Fees and Costs Pursuant to I.C. § 12-120(5) is hereby GRANTED.

Respondent/Claimant Bald, Fat & Ugly LLC is hereby awarded post judgment attorney fees and costs in the amount of \$11, 146.40.

Dated this 6 day of June 2011.


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 6th day of June, 2011, to:

Todd Richardson
604 Sixth St
Clarkston, WA 99403

David Risley
PO Box 1247
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: *[Signature]*
Deputy



FILED

2011 JUN 7 PM 12 09

PATTY O. WEEKS

[Handwritten signature]

DEPUTY

1
2
3
4 DAVID R. RISLEY
5 RISLEY LAW OFFICE, PLLC
6 P. O. Box 1247
7 1443 Idaho Street
8 Lewiston, ID 83501
9 (208) 743-5338
(208) 743-5307 (Fax)
10 david@risleylawoffice.com
11 ISB No. 1789

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 RICHARD A. KEANE and LISA C. KEANE,
15 and KEANE AND CO. CONSTRUCTION,
16 INC. and R & L DEVELOPMENTS, L.L.C.,

17 Claimants,

18 and

19 BALD, FAT & UGLY, L.L.C.,

20 Respondent.

21 BALD, FAT & UGLY, LLC,
22 an Idaho Limited Liability Company,

23 Claimant,

24 v.

25 RICHARD A. KEANE and LISA A.
26 KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

MOTION FOR ORDER OF CONTEMPT
AND TO BAR FILING OF AFFIRMATIVE
DEFENSES

(ARBITRATION AWARD NO. 2)

(ORAL ARGUMENT REQUESTED)

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

146

1 COMES NOW, Bald, Fat & Ugly, LLC, an Idaho Limited Liability Company, by and
2 through its undersigned attorney, David R. Risley of Risley Law Office, PLLC, and moves the
3 Court for an order of contempt as prayed for in this proceeding on the ground that no defenses
4 have been timely filed as required by IRCP 75(g) and such defenses are now time-barred.
5

6 This motion is based on the *Affidavit of David R. Risley* filed concurrently herewith and
7 the pleadings and filings herein.

8 Oral argument is requested.

9 DATED this 6th day of June, 2011.

10 RISLEY LAW OFFICE, PLLC
11 Attorney for Bald, Fat & Ugly, LLC

12
13
14 By:  _____

15 DAVID R. RISLEY
16 ISB NO. 1789
17
18
19
20
21
22
23
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25
26

1 I HEREBY CERTIFY that a
2 true and correct copy of the
3 *Motion for Order of Contempt*
4 *and to Bar Filing of Affirmative*
5 *Defenses* was served as indicated
6 on this 6th day of May, 2011,

7 Mailed
8 Hand Delivered
9 Faxed
10 Messenger

11 to the following:

12 Todd S. Richardson
13 Attorney at Law
14 604 6th Street
15 Clarkston, WA 99403

16 
17 _____
18 DAVID K. RISLEY
19
20
21
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26

FILED

2011 JUN 7 PM 12:00

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

DEPUTY

DAVID R. RISLEY
RISLEY LAW OFFICE, PLLC
P. O. Box 1247
1443 Idaho Street
Lewiston, ID 83501
(208) 743-5338
(208) 743-5307 (Fax)
david@risleylawoffice.com
ISB No. 1789

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC. and R & L DEVELOPMENTS, L.L.C.,

Claimants,

and

BALD, FAT & UGLY, L.L.C.,

Respondent.

BALD, FAT & UGLY, LLC,
an Idaho Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A.
KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

AFFIDAVIT OF DAVID R. RISLEY IN
SUPPORT OF MOTION FOR ORDER OF
CONTEMPT AND TO BAR FILING OF
AFFIRMATIVE DEFENSES

(ARBITRATION AWARD NO. 2)

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

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

4 DAVID R. RISLEY, being first duly sworn, upon his oath deposes and says that:

5 1. I am the attorney of record for Bald, Fat & Ugly, LLC (hereinafter "BFU").

6 2. I appeared in Court on May 26, 2011 in these contempt proceedings wherein the
7 alleged contemnor, appearing through counsel, denied the pending contempt allegations.

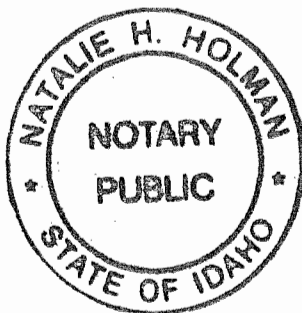
8 3. Pursuant to IRCP 75(g) the alleged contemnor has seven (7) days from the date of
9 appearance to file any affirmative defenses.

10 4. No such filing has taken place as of the date of the execution of this affidavit.

11 DATED this 6th day of June, 2011.

12 
13 _____
14 DAVID R. RISLEY

15
16 SUBSCRIBED AND SWORN to before me this 6th day of June, 2011.



Natalie H. Holman
Notary Public in and for the State of Idaho,
Residing in the State of Idaho or employed
In and Doing Business in the State of Idaho.
My Commission Expires: 9-1-2016

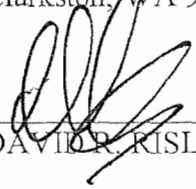
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I HEREBY CERTIFY that a true and correct copy of the *Affidavit of David R. Risley* was served as indicated on this 6th day of June, 2011,

- Mailed
- Hand Delivered
- Faxed
- Messenger

to the following:

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



DAVID R. RISLEY

151

[Handwritten mark]

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

FILED
2011 JUN 9 PM 2 26
PATRICIA WOODS
CLERK OF DISTRICT COURT
[Signature]

Attorney for Claimants/Respondents

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

RICHARD A. KEANE and LISA C. KEANE,)
and KEANE AND CO. CONSTRUCTION, INC.,)
and R & L DEVELOPMENTS, L.L.C.,)
)
Claimants,)
)
and)
)
BALD, FAT & UGLY, L.L.C.,)
)
Respondent.)

CASE NO. CV09-02468

_____)
BALD, FAT & UGLY, L.L.C.,)
an Idaho Limited Liability Company,)
)
Claimant,)

RESPONSE TO
MOTION FOR CONTEMPT

v.)
)
RICHARD A. KEANE and LISA A. KEANE, and)
R & L DEVELOPMENTS, LLC, an Idaho)
Limited Liability Company, and KEANE AND)
CO. CONSTRUCTION, INC., an Idaho)
Corporation,)
Respondents.)

COME NOW Richard A. Keane and Lisa C. Keane, Keane and Company Construction,
Inc., and R & L Developments, L.L.C., hereinafter referred to as "Keane", by and through their

RESPONSE TO MOTION
FOR CONTEMPT - 1

152

undersigned attorney, Todd S. Richardson, of The Law Offices of Todd S. Richardson, PLLC, and hereby respond to Respondent/Counter-Claimant, Bald, Fat and Ugly LLC's Motion for Contempt as follows:

On May 26, 2011, a hearing was held in this matter, in which a verbal denial was entered on the record. Undersigned counsel asked the Court for all responsive pleadings to be due fourteen (14) days thereafter; the court so ordered. The responses are therefore due on or before June 9, 2011.

Keane responds as follows:

1) Keane acknowledges having received the order confirming the arbitration award, and that they had actual knowledge thereof.

2) Keane denies the specific allegation of contempt as alleged in Paragraph #2, of the Affidavit of Robert W. Blewett, and by way of further answer, alleges the affirmative defense that Keane was unable to comply with paragraph 9 on page 4 and did not willfully fail to comply. Keane further alleges that among the reasons Keane was unable to comply with the terms of paragraph 9 on page 4, were that the actions of Robert W. Blewett and Bald, Fat and Ugly, LLC, and their attorney, David Risley, specifically prevented Keane from having the ability to comply therewith.

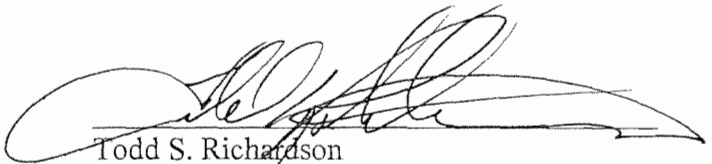
Keane denies the specific allegation in Paragraph #3, of the Affidavit of Robert W. Blewett, and further answers by stating that the work was done by Keane, and was done competently and completely, as can and will be demonstrated at a trial or hearing herein.

Keane specifically alleges that Robert W. Blewett and Bald, Fat and Ugly, LLC, lack

standing to bring this action, and hereby move for the dismissal of this action for that lack of standing.

Keane further requests, pursuant to I.R.C.P 75(m), that the court award attorney fees against Bald Fat & Ugly, LLC, and Robert W. Blewett, jointly and severally.

DATED this 9 day of June, 2011.

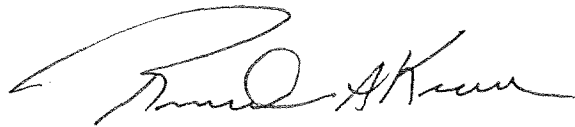


Todd S. Richardson
Attorney for Claimants/Respondents

STATE OF WASHINGTON)
) ss
County of Asotin)

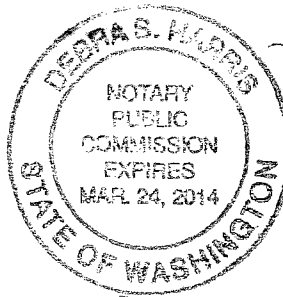
RICHARD A. KEANE, being first duly sworn on oath, deposes and says:

That I am the Claimant/Respondent in the above entitled matter. I have read the foregoing Response to Motion for Contempt, and know the contents thereof, and believe the same to be verily true.



Richard A. Keane

SUBSCRIBED AND SWORN to before me this 9 day of June, 2011.

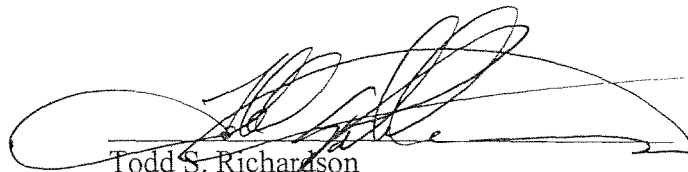


Debra S Harris
Notary Public in and for State of WA
Residing at Orofino, Idaho
My Commission Expires 3/24/14

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 9 day of June, 2011, I caused a true and correct copy of the foregoing document to be delivered via facsimile and hand-delivery, to the following:

David R. Risley
Attorney at Law
1443 Idaho Street
Lewiston, Idaho 83501
FAX# (208) 743-5307



Todd S. Richardson
Attorney for Claimants/Respondents

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

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4 DAVID R. RISLEY
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10 david@risleylawoffice.com
11 ISB No. 1789

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 RICHARD A. KEANE and LISA C. KEANE,
15 and KEANE AND CO. CONSTRUCTION,
16 INC. and R & L DEVELOPMENTS, L.L.C.,

17 Claimants,

18 and

19 BALD, FAT & UGLY, L.L.C.,

20 Respondent.

21 BALD, FAT & UGLY, LLC,
22 an Idaho Limited Liability Company,

23 Claimant,

24 v.

25 RICHARD A. KEANE and LISA A.
26 KEANE and R&L DEVELOPMENTS,
LLC, an Idaho Limited Liability Company,
and KEANE AND CO. CONSTRUCTION,
INC., a Idaho Corporation,

Respondents.

CASE NO. CV09-02468

BALD, FAT & UGLY, LLC'S CONTEMPT
TRIAL MEMORANDUM

RISLEY LAW OFFICE, PLLC
LEWISTON, IDAHO

1 Bald Fat & Ugly, LLC (hereafter "BFU"), through counsel of record, David R. Risley of
2 Risley Law Office, PLLC, respectfully submits this Brief in support of its Motion for Contempt
3 and in anticipation of the contempt trial in this matter against Richard A. Keane and Lisa A.
4 Keane and R&L Developments, LLC, and Keane and Co. Construction, Inc. (collectively
5 "Keane"). The Court should enter a judgment of contempt against Keane and impose sanctions
6 appropriate to coerce compliance with the Court's prior order, which confirmed the arbitration
7 award in favor of BFU, and which was willfully violated by Keane.
8

9 I.

10 SUMMARY

11 At its most simple focus, the issue here is that Keane was ordered by this Court to pay
12 \$159,762.00 into a trust account for BFU. Keane did not do this, and is in contempt.
13

14 Once the money was in trust, the money could be used to pay for work that Keane was
15 obligated by contract to perform for BFU. The work was to repair defects in the common areas
16 of the Houston Professional Plaza (hereafter "HPP").

17 Keane was not entitled to or obligated to do the work, but was obligated to pay for it.

18 Keane did not pay the money into the trust fund, as admitted by Mr. Keane.
19

20 Keane did contract with the HPP to do work that was similar to, but not the same as, the
21 obligation owed to HPP. Keane and HPP are now in a dispute where HPP (like BFU before it) is
22 complaining that Keane has not done what they agreed to do.
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II.

BACKGROUND

The facts of this matter are as set forth in BFU's Motion for Contempt and supporting affidavits. In brief summary, BFU received arbitration awards in its favor and against Keane on November 18, 2009. BFU made application to this Court for confirmation of the arbitration awards on November 20, 2009; Keane responded to BFU confirmation request on March 16, 2010.

This Court entered an Order Confirming Arbitration Awards on May 3, 2010. The arbitration award was based, in part, upon a mediated settlement agreement in which Keane fully consented on June 8, 2005. This Court's Order Confirming Arbitration Awards required Keane to undertake certain actions, including placing funds in the Risley Law Office, PLLC trust account and fully performing construction and repair work on the property at issue. Keane has willfully failed to comply with the order, despite the ability to do so.

Of critical importance is that the arbitrator's decision was based on Keane's obligation to repair the common areas of Houston Professional Plaza (hereafter "HPP") in accordance with a very carefully detailed list of work prepared by Terry Nab of Progressive Engineering.

The HPP work has not all been done and the money to do that work has not been paid into the Risley Law Office, PLLC trust account as ordered by this Court.

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III.

CONTEMPT PROCEDURE

Idaho Rule of Civil Procedure 75 governs procedure all **civil** contempt proceedings. IRCP 75. (Emphasis added.)

1 The parties to the contempt are the parties to the judgment that was disobeyed by the
2 party obligated to perform—in this case Keane.

3 Keane's filings admitted receipt of the Order; admitted that the proper notifications had
4 been given by the Court, and admitted that they had paid no money into the Risley Law Office,
5 PLLC trust account as required by the Court's order.
6

7 The procedural requirements of Rule 75 have been met.

8 **IV.**

9 **CONTEMPT STANDARD**

10 The Court must find contempt by a preponderance of the evidence. IRCP 75(j). Since
11 the Court's order was to pay money into the Risley Law Office, PLLC trust account, and since
12 Keane has failed to do so and admits failing to do so, BFU has met this burden.
13

14 Keane has the burden of proving any affirmative defenses by a preponderance of the
15 evidence. IRCP 75(h)(2).

16 **V.**

17 **EXISTENCE OF CONTEMPT**

18 Idaho Code § 7-601 provides definitions regarding what constitutes contempt. In this
19 case, the most directly applicable definition is “[d]isobedience of any lawful judgment, order or
20 process of the court.” I.C. § 7-601(5).
21

22 Notably, the Court is not limited by the statutory authority in the exercise of the contempt
23 power, because, “[w]hile this power has been recognized by statute, Title 7, chapter 6, I.C., its
24 source lies in the Constitution, ID. Const. art. 5, § 2, and the common law.” *Marks v. Vehlow*,
25 105 Idaho 560, 566 (1983); see also, *Watson v. Weick (In re Weick)*, 142 Idaho 275, 278 (2005).
26

1 Keane has not denied that they have completely failed to comply with the clear and specific
2 requirements of this Court's Order requiring them to deposit \$159,762.00 in David Risley's trust
3 account.

4
5 To issue civil contempt sanctions, the Court must find "by a preponderance of the
6 evidence, that all of the elements of contempt have been proven and that the contemnor has the
7 present ability to comply with the order violated, or with that portion of it required by the
8 sanction." IRCP 75(j). The Court must make specific findings of fact regarding these matters.
9 IRCP 75(k).

10 To establish contempt, the Court must find Keane disobeyed the order willfully, which
11 requires "'an indifferent disregard of duty' or 'a remissness and failure in performance of a duty'
12 but not a 'deliberately and maliciously planned dereliction of duty.'" *Id.* Though ultimately
13 required for a contempt finding, "willfulness" need not be alleged in the initiating affidavit to
14 begin contempt proceedings. *Muthersbaugh v. Neumann*, 133 Idaho 677, 680 (Ct. App. 1999).

15
16 The Keanes, and Mr. Keane in particular, are very wealthy. Their failure to pay was not
17 a function of lack of wealth, but a decision on their part to disregard the order and attempt an
18 alternative more to their liking.

19
20 Instead of paying to do the work correctly, Keane has done some, but not all, of the work
21 and is now attempting to avoid contempt by that stratagem.

22 VI.

23 BFU HAS STANDING

24 BFU has standing to bring this contempt action because it is the party requesting that
25 Keane be held in contempt for failing to comply with this Court's confirmation order. "Standing
26

1 is a subcategory of justiciability, and the standing inquiry is focused on the party seeking relief.
2 *Martin v. Camas Cnty.*, 150 Idaho 508, ___, 248 P.3d 1243, 1248 (2011); *see also, Taylor v. AIA*
3 *Services, Inc.*, 2011 Opinion No. 97, filed September 7, 2011, in the Supreme Court of the State
4 of Idaho, Docket No. 36916.

5
6 BFU had a contract wherein Keane promised to do certain work. He defaulted in that
7 duty but once again agreed to do the work in the 2005 mediation. He once again defaulted which
8 led to the arbitration.

9 The arbitrator, apparently cognizant of Keane's track record, ordered Keane to pay for
10 the work to be done, not to do it himself. Fool me once, shame on you; fool me twice.....

11
12 **VII.**

13 **AFFIRMATIVE DEFENSES**

14 In civil proceedings such as these, it is **not** a defense that Keane was allegedly unable to
15 comply with the order at the time of a past violation of the order; rather, Keane's defense based
16 on inability must be that they lack the **present** inability to comply with the order. IRCP 75(h).
17 (Emphasis added.) Keane bears the burden of proving affirmative defenses by a preponderance
18 of the evidence. IRCP 75(h)(2). The Idaho Court of Appeals has gone further, saying the
19 "burden of proving **plainly and unmistakably** that compliance is impossible rests with the
20 contemnor." *Nab v. Nab*, 114 Idaho 512, 517 (Ct. App. 1988) (Emphasis added). Further,
21 Keane may not simply allege an all-or-nothing inability to comply and must show good faith
22 efforts, because "[u]nder our law, inability to comply is not a defense unless the contemnor
23 complied to the extent of his ability." *Watson v. Weick (In re Weick)*, 142 Idaho 275, 282
24 (2005).
25
26

1 Keane in fact has the present ability to comply and cannot meet their burden of proving
2 “plainly and unmistakably that compliance is impossible.” *Nab v. Nab*, 114 Idaho 512, 517 (Ct.
3 App. 1988). Moreover, Keane has not even made attempts at partial compliance, and, therefore,
4 the inability is not even available to be alleged as a defense, because they failed to comply “to
5 the extent of his ability.” *Watson v. Weick (In re Weick)*, 142 Idaho 275, 282 (2005).
6

7 Additionally, Keane failed to raise these defenses in their June 9, 2011 Response to
8 Motion for Contempt. Affirmative defenses must have been raised by Keane in a written
9 response within seven (7) days after denial of the contempt charge. IRCP 75(h). Keane failed to
10 raise these defenses; therefore, such defenses are waived, and the Court should decline to take
11 evidence or hear argument regarding these affirmative defenses.
12

13 VIII.

14 SANCTIONS AND PENALTIES

15 The sanction or penalty imposed under a contempt order is committed to the discretion of
16 the trial court. *Steiner v. Gilbert*, 144 Idaho 240, 243 (2007). All civil contempt sanctions are
17 conditional and intended to coerce compliance – they may be avoided or discontinued by doing
18 what the contemnor failed to previously do, as opposed to being unavoidable punishment for past
19 conduct. IRCP 75(a). Any other sanctions would be criminal as defined by the Rule. IRCP
20 75(a)(7).
21

22 Civil, coercive incarceration is clearly an available remedy under the statutory authority,
23 so long as it is conditional pending compliance with the underlying order. See, I.C. § 7-611 and
24 IRCP 75(a)(6). The Court’s extra-statutory authority also extends to other types of sanctions that
25 may be imposed to coerce compliance, again due to the Court’s constitutional and common law
26

1 contempt power. *Marks v. Vehlow*, 105 Idaho 560, 567 (1983); see also, *Steiner v. Gilbert*, 144
2 Idaho 240, 247 (2007). So, for example, the Court may additionally impose daily monetary fines
3 pending compliance. *Marks v. Vehlow*, 105 Idaho 560, 567 (1983). Similarly, a court may enter
4 injunctive relief as a sanction for civil contempt. *Steiner v. Gilbert*, 144 Idaho 240, 247 (2007).
5 Summarized, the Court has broad discretion to impose "reasonable sanctions that are not
6 specifically articulated in Title 7, Chapter 6." *Id.* Note that this rule in no way limits the Court's
7 authority to enter an infinite variety of underlying orders for which it originally had authority;
8 rather, this rule simply requires that the means used by the Court to coerce compliance with its
9 underlying order must be reasonable.
10

11 The Court may consider the contemnor's history and conduct, outside the alleged
12 contemptuous conduct at issue, in determining the proper sanction for the contemptuous conduct.
13 *In re Williams*, 120 Idaho 473, 482 (1991). The anticipated evidence will show that Keane
14 transferred assets to limited liability companies subsequent to the entry of the Court's Order
15 Confirming Arbitration Awards in an apparent attempt to avoid compliance with the Order and
16 in avoidance of BFU as a creditor. Additionally, Keane willfully failed to comply with the
17 original contract and failed to comply with their consented-to agreement reached via mediation.
18 Clearly, Keane feels little compulsion to comply with their legal, agreed-to, and Court-ordered
19 responsibilities, and severe contempt sanctions will be necessary to coerce compliance.
20
21

22 IX.

23 AWARD OF INTEREST

24 On November 18, 2009, the arbitrator ordered Keane to deposit \$159,762.00 in the trust
25 account of David Risley, attorney for BFU. This has not been done. No interest was added to
26

1 that sum up to the date of the award. No ruling was made on the obligation to pay interest after
2 the date of award.

3
4 On May 3, 2010, this award was confirmed by judgment of this Court. The Court should
5 order, in addition to the principal sum and fees, that Keane should pay interest on this sum.

6 It is BFU's position that I.C. § 28-22-104 fixes that rate of interest at 12% from
7 November 18, 2009 until paid.

8 In the alternative, the Court may treat the arbitrator's order as a judgment and impose
9 interest at the judgment rate then in effect, of 5.625%, from that date until paid.

10
11 **X.**

12 **ATTORNEY'S FEES**

13 Attorney fees may be awarded as follows: "the court may award the prevailing party
14 costs and reasonable attorney fees under Idaho Code § 7-610, regardless of whether the court
15 imposes a civil sanction, a criminal sanction, or no sanction. The procedure for awarding such
16 costs and fees shall be as provided in Rule 54(e) of the Idaho Rules of Civil Procedure, except
17 that the determination of the prevailing party shall be based upon who prevailed in the contempt
18 proceeding rather than in the civil action as a whole." IRCP 75(m). Idaho Code § 7-610 simply
19 authorizes an award of fees and costs to the prevailing party without further guidance regarding
20 those fees and costs (along with identifying the available criminal sanctions). The Court should
21 find that BFU is the prevailing party, even if these contempt proceedings result in compliance
22 without imposition of sanctions. Therefore, the Court should award BFU costs along with
23 reasonable attorney fees in an amount determined under IRCP 54(e).
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XI.

CONCLUSION

Keane refused to comply with their agreed-upon responsibilities at least three separate times, including continued refusal after this Court's Order compelling them to do so. Their refusal to comply with the Court's order was willful, and they have the present ability to comply. The Keanes have always had the ability to comply but refused and diverted assets in an attempt to avoid their duties, evidencing the need for severe sanctions. The Court should find Keane in contempt and issue civil, coercive sanctions as necessary to coerce Keane's full respect and compliance for this Court's authority as expressed in its Order.

DATED this 8th day of September, 2011.

RISLEY LAW OFFICE, PLLC
Attorney for Bald, Fat & Ugly, LLC

By: 

DAVID R. RISLEY

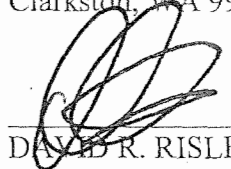
ISB NO. 1789

1 I HEREBY CERTIFY that a
2 true and correct copy of the
3 *Bald, Fat & Ugly, LLC's*
4 *Trial Memorandum* was
5 served as indicated on this
6 8th day of September, 2011,

7 Mailed
8 Hand Delivered
9 Faxed
10 Messenger

11 to the following:

12 Todd S. Richardson
13 Attorney at Law
14 604 6th Street
15 Clarkston, WA 99403

16 
17 _____
18 DAVID R. RISLEY
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Cv

Todd S. Richardson, ISBA # 5831
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PATTY O. WEEKS
CLERK OF THE DISTRICT COURT
Patty Weeks
DEPUTY

Attorney for Claimants/Respondents

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

RICHARD A. KEANE and LISA C. KEANE,)
and KEANE AND CO. CONSTRUCTION, INC.,)
and R & L DEVELOPMENTS, L.L.C.,)
Claimants,)
and)
BALD, FAT & UGLY, L.L.C.,)
Respondent.)

CASE NO. CV09-02468

_____))
BALD, FAT & UGLY, L.L.C.,)
an Idaho Limited Liability Company,)
Claimant,)
v.)
RICHARD A. KEANE and LISA A. KEANE, and)
R & L DEVELOPMENTS, LLC, an Idaho)
Limited Liability Company, and KEANE AND)
CO. CONSTRUCTION, INC., an Idaho)
Corporation,)
Respondents.)

TRIAL MEMORANDUM

COME NOW Richard A. Keane and Lisa C. Keane, Keane and Company Construction,
Inc., and R & L Developments, L.L.C., hereinafter referred to as "Keane", by and through their

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undersigned attorney, Todd S. Richardson, of The Law Offices of Todd S. Richardson, PLLC, and hereby submits this memorandum of authorities.

Background Facts

Keane developed property in Lewiston, Idaho, which would become known as the Houston Professional Plaza. The development came in stages and sales to purchasers occurred over a period of years. On August 26th, 2002 Houston Professional Plaza LLC was formed.

This matter went to arbitration in late 2009. The arbitrator, Lynden Rasmussen, made two separate awards. Award number one was a money judgment for the benefit of BFU and payable by Keane. Award number two, the sum of \$159,762, was expressly for the purpose of repairing the exterior common area of HPPLLC.

On December 22, 2009, Keane made the first payment against these awards to Dave Risley, the attorney for BFU; that payment was for \$144,053.26 and came from the sale of some of the Keane property.

On March 11, 2010, Keane proposed a settlement to BFU which would have resolved both awards. BFU rejected the settlement offer.

On September 10, 2010, HPPLLC hired a Keane to do the work which was the subject of award number two. At this time BFU still had ownership of the buildings two and three in the Plaza and therefore were members of the LLC.

On October 27, 2010 Bob Blewett on behalf of BFU signed a warranty deed conveying BFU's interest in buildings two and three to a third-party.

By December 1, 2010, Keane had initially completed the work called for in the contract and Terry Nab of Progressive Engineering sent his first letter confirming the work was complete.

On December 3, 2010 another \$93,680.90 was paid by Keane to Risley against the awards.

In April of 2011, Terry Nab accepted for the second time the work, completed by Keane. On April 28, after meeting with Steve Lohman, Terry nab provided to Rick Keane a final punch list. Keane completed the work on that punch list, and on June 8 Terry nab sent his third letter confirming Keane had completed the work.

On July 1, 2011, another \$45,000 was paid by Keane to Risley against the awards.

Risley and BFU now bring this action for contempt.

ISSUES

A. Standing.

Arbitrator Rasmussen made two separate awards; one belonging to BFU, and one for the benefit of HPP LLC. It is undisputed that BFU has standing as to the award which was a money award for BFU's benefit. Standing as to award number two, which was expressly for the purpose of repairing the exterior common area of HPPLLC, is a different matter.

Houston Professional Plaza LLC is a valid limited liability company under the laws of the state of Idaho. As such, it is a valid legal entity having rights under law to own, transfer and convey property or authorize members to do so on its behalf (I.C. §30-6-302); to sue and be sued (I.C. §30-6-105); to contract (I.C. §30-6-104); and so forth. BFU, up until they sold their interest in October of 2010, was a member of Houston Professional Plaza limited liability company. Though BFU owned buildings two and three, they did not own the exterior common areas; that was owned by HPPLLC. In October of 2010, when they sold their interest in buildings 23, they

also negotiated away their membership in the LLC.

Houston Professional Plaza LLC was a necessary and indispensable party in any action involving the exterior common areas of the Plaza. An indispensable party has been defined as follows:

... An indispensable party is one having an interest in the controversy of such a nature that a final decree cannot be made without affecting that interest.

59 Am Jur 2d §13.

The Am Jur commentators went on to state:

much of the discussion pertaining to indispensable parties involves the right of absentees. Thus, it is been held that for an absent person to be indispensable he must have a direct interest in the litigation; and if this interest is such that it cannot be separated from that of the parties to the suit, if the court cannot render justice between the parties in his absence, if the decree will have an injurious effect upon his interest, or if the final determination of the controversy in his absence will be inconsistent with equity and good conscience, he is an indispensable party. [Footnote omitted]

Id. The commentators even make the relevant observation that: "one title to real estate is in question, all claimants of record title are indispensable parties." [Footnote omitted.] (*Id.*)

It is beyond question that the arbitration award, affected the interest of the LLC in the exterior common areas. Though couched as a monetary award, it was a directive that certain work would be accomplished; modifications of the exterior common areas which would affect all members of the LLC. Houston Professional Plaza was unrepresented at the arbitration. Mr. Risley and BFU were not authorized to act on behalf of of the LLC.

BFU sought to force changes to HPPLLC property. But BFU did not have the power to force HPP L LC to accept or agree to the changes that were sought. Even though Mr. Blewett representing BFU sat on the HPP LLC board he was unable to force them to do his bidding; to

accept his plan for changes and accept his rejection of Keane as a contractor. Despite Blewett's efforts, HPPLLC contracted with Keane to do work different in scope than that which Blewett/BFU sought to have done. Two months later, BFU sold their interest and was left with no interest in HPP LLC or any of the buildings in the Plaza.

Having established that an indispensable party was absent from the arbitration, we now turn to look further into the issue of standing. Idaho courts have engaged in a number of discussions about standing. In *Martin v. Camas County*, 150 Idaho 508, 248 P.3d 1243 (2011), the court notes that standing is a jurisdictional issue. (*Id.* at 511). Citing to other cases, the court quotes:

it is a fundamental tenet of American jurisprudence that a person wishing to invoke a courts jurisdiction must have standing. Standing is a preliminary question to be determined by this court before reaching the merits of the case. The doctrine of standing is a subcategory of justiciability. ... To satisfy the case or controversy requirement of standing, a litigant must allege or demonstrate an injury in fact and a substantial likelihood the relief requested will prevent or redress the claimed injury. This requires a showing of the distinct culpable injury and fairly traceable causal connection. Between the claimed injury and the challenged conduct. But even if a showing can be made of an injury in fact, standing may be denied when the asserted harm is a generalized grievance shared by all or a large class of citizens.

Id. at 1248.

In *Student Loan Fund of Idaho, Inc. v. Payette County*, 125 Idaho 824 (Idaho App. 1994), the court explained:

the doctrine of standing focuses not upon the merits or character of the issues sought to be adjudicated a rather upon the party seeking relief. [Citation omitted] standing presents essentially a question of the plaintiffs "qualification" to bring the action. A helpful explanation of the criteria for standing was presented in *Duke Power Company v Carolina Env. Study Group*, 438 U.S. 59, 72, 98 S.Ct. 2620, 2630, 57 L.Ed.2d 595 (1978), and adopted by our Supreme Court in *Miles*.

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The essence of the standing inquiry is whether the party seeking to invoke the court's jurisdiction has "alleged such a personal stake in the outcome of the controversy as to shore the concrete adversariness which sharpens the presentation upon which the court so depends for illumination of difficult constitutional questions." As refined by subsequent reformation, this requirement of "personal stake" has come to be understood to require not only "distinct help bowl injury" to the plaintiff, but also a "fairly traceable those quote causal connection between the claimed injury and the challenged conduct.

Id. at 826.

Even if BFU had a "personal stake in the outcome of the controversy" at the time of the arbitration, they abandoned it one they sold their interest in the property and the LLC. Properly understood, any "personal stake" in this matter was held by HPPLLC, not BFU. Even if we were to assume for sake of argument that BFU had such a personal stake at the time of the arbitration, they have it undoubtedly sold it and lost such a stake.

One example to help us focus the analysis is that of a limited liability company. An LLC has the authority to sue on its own behalf, or on behalf of its members (*see: United Food and Commercial Workers Union Local 751 v Brown Group, Inc.*, 517 U.S. 544, 116 S.Ct. 1529, 134 L.Ed. 2d 758 (1996); *see also: 6 Am Jur 2d §55*). But, unless the LLC takes specific action to make a special grant of authority, the member does not have the right to sue on behalf of the LLC (*I.C. §30-6-302*). It seems clear that the reason is that an injury to a member is not the same as an injury to the company; and the company, which has a duty to all members, must make litigation decisions within that framework rather than by allowing any member to pull them into any litigation.

In the instant case, the exterior common areas are owned by the company, not by the individual members. Mr. Blewett was not authorized by the company to initiate this action, nor

to force modification of company property. The company was an indispensable party because it is their property. BFU did not have standing and any tenuous standing they may have had evaporated with the sale of their interests.

Standing is jurisdictional. Since BFU does not have standing, their action in this regard must be dismissed.

B. The Law Does Not Require the Doing of a Useless Thing.

This maxim was recently recited by the Idaho Court of Appeals (*see: State v. Rupert*, 146 Idaho 742, 202 P.3d 1288 (Idaho App. 2009)). It has been cited by the United States Supreme Court and courts from across the land. Seeking to compel a useless act is a waste of judicial resources, and the parties' time and money. Courts should not countenance such actions.

A useless thing is what BFU is seeking to require of Keane.

In Award No. 2, the arbitrator ordered Keane to pay money into Risley's Trust account to secure payment of the work ordered. Later, in a clarification he stated that Keane was neither obligated nor entitled to perform the work; yet he could not require or prohibit Keane from doing the work as it was HPPLLC's choice to make as to who they hired, and they were not made a party. HPPLLC chose to hire Keane, and it then became his contractual duty to perform the work. He did the work; it was accepted (three times no less) by the engineer chosen by HPPLLC (who happened to be the same engineer accepted by the arbitrator).

Now, BFU seeks to compel Keane to pay money into the Risley Trust account to secure payment for work which has been completed contractor and accepted by the engineer. It is a useless thing to require that Keane put money into the Risley Trust Account only to require that Risley "forthwith" return it to Keane, as required by the Arbitration Agreement.

BFU's action is a waste of judicial resources, and the parties' time and money.

C. Burden of Proof regarding affirmative defenses.

The Idaho rules are clear and concise regarding the burden of proof to establish an affirmative defense: "in order to prevent the civil sanction from being imposed, the respondent must prove the affirmative defense by preponderance of the evidence."

D. Contempt Standard

"Contempt is an extraordinary proceeding and should be approached with caution."

Watson v. Weick, 142 Idaho 275, 281 (2005).

Again, reviewing the rules we see: "In order to impose a civil sanction, the court must find, by a preponderance of the evidence, that all the elements of contempt have been proven and that the contemnor has the present ability to comply with the order violated" (IRCP 75(j).)

According to Rule 75(k) the court "shall make specific findings of fact. In order to impose ... a civil sanction ..., the findings must include the facts upon which the court bases its determination that the contemnor has the present ability to comply with the order violated, or with that portion of it required by the sanction."

The *Watson* court further establishes a willfulness standard.

First, applying a willful standard is consistent with the jurisprudence of this state and the majority of other states. See generally, 17 Am.Jur.2d Contempt §§ 23-25 Contempt (2004). To begin, this Court has long recognized implicitly that one's violation of a court order must be willful to justify an order of contempt. *Phillips v. Dist. Court of the Fifth Judicial Dist.*, 95 Idaho 404, 406, 509 P.2d 1325, 1327 (1973) ("when [a support order is] made specific by the judgment or order of a court of competent jurisdiction, he may be imprisoned in contempt proceedings for a willful failure to perform."); *Nordick v. Sorensen*, 81 Idaho 117, 132, 338 P.2d 766, 775 (1959) ("The testimony also clearly shows a course of willful and

persistent violation, on the part of both defendants, of the district court's restraining order ... by virtue thereof, factually, the district court was justified in adjudging defendants and each of them in contempt of its order."); *Potlatch Lumber Co. v. Bd. of Commissioners of Latah County*, 29 Idaho 516, 520, 160 P. 260, 262 (1916) ("We are satisfied that the commissioners used their best judgment in fixing the levy for general road purposes, and no evidence was offered that would justify this court in reaching the conclusion that the commissioners willfully and intentionally disobeyed the directions of this court, as set out in the writ of mandate, and that they are not guilty of a civil contempt of this court."). Additionally, the Court of Appeals has explicitly determined that a district court has the power to hold in contempt any person who willfully disobeys a specific and definite order of the court. *Conley v. Whittlesey*, 126 Idaho 630, 636, 888 P.2d 804, 810 (Ct.App.1995) (citing *Gifford v. Heckler*, 741 F.2d 263, 265 (9th Cir.1984)); see also *Sivak v. State*, 119 Idaho 211, 214, 804 P.2d 940, 943 (Ct.App.1991); *State v. Tanner*, 116 Idaho 561, 564, 777 P.2d 1234, 1237 (Ct.App.1989).

Second, contempt is an extraordinary proceeding and should be approached with caution. This Court has recognized contempt is an extraordinary proceeding. *Phillips*, 95 Idaho at 405, 509 P.2d at 1326. This inherent power must be exercised with great caution. See *Hampton v. Hampton*, 303 Minn. 500, 229 N.W.2d 139, 140-41 (1975). The contempt power is

readily susceptible of abuse and fraught with danger not only to personal liberties but to the respect and confidence which our courts must maintain. Although such a power is universally recognized as essential to an orderly and effective administration and execution of justice, it should be exercised with utmost caution.

People v. Bernard, 75 Ill.App.3d 786, 31 Ill.Dec. 617, 622, 394 N.E.2d 819 (1979). Since a contempt citation is a "potent weapon, courts rightly impose it with caution." *Joshi v. Prof. Health Servs., Inc.*, 817 F.2d 877, 879 n. 2 (D.C.Cir.1987). Imposing a willful standard ensures that courts cannot abuse their inherent contempt power. It also ensures that courts only impose such an extraordinary remedy when the alleged contemnor has wrongfully disobeyed a court order.

Watson, at 280-81, 127 P.3d 178, 183-84.

E. Attorney Fees

"[T]he court may award the prevailing party costs and reasonable attorney fees under Idaho Code §7-610...." (ICRP 75(m)).

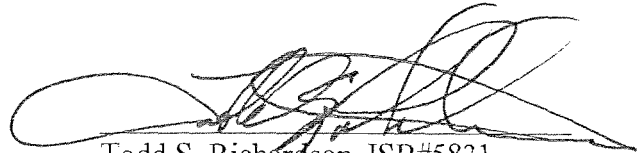
Conclusion

Keane has made payments. Keane offered resolutions, which were rejected. Keane bid on and obtained the contract to perform the work which was the subject of Award No. 2, and it has been accepted three times by the engineer tasked with doing so.

The flip side of that coin is the BFU has rejected reasonable offers to resolve this. BFU sold their interest, and therefore their standing in regards to Award No. 2, and now lacks the necessary standing to proceed. And now BFU is seeking to have this Court require a useless thing: the payment of money for work that is complete and the money must therefore be returned forthwith.

Keane is not in contempt, and this Court should so find and award attorney fees and costs to Keane for having to defend this action.

DATED this 8th day of September, 2011.



Todd S. Richardson, ISB#5831
Attorney for Keane

I HEREBY CERTIFY that on the 9th day of September, 2011, I caused a true and correct copy of the foregoing to be delivered via facsimile to the following:

David Risley
Attorney at Law
208-743-5307



FILED

2011 OCT 31 AM 11 15

PATTY O. WELLS
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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC., and R & L DEVELOPMENTS, L.L.C.,

Claimants

and

BALD, FAT & UGLY, LLC,

Respondent.

BALD, FAT & UGLY, LLC, an Idaho
Limited Liability Company,

Claimnant,

v.

RICHARD A. KEANE and LISA A. KEANE
and R&L DEVELOPMENTS, LLC, an Idaho
Limited Liability Company, and KEANE
AND CO. CONSTRUCTION, INC. an Idaho
Corporation,

Respondents.

CASE NO. CV09-02468

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER ON COURT
TRIAL FOR CONTEMPT

This matter came before the Court for trial on September 9, 2011 after Respondent/Claimant Bald, Fat & Ugly, LLC filed a Motion for Order of Contempt and to Bar filing of Affirmative Defenses. Claimants/Respondents Keanes, Keane Construction and R&L Developments (hereinafter "Keane") were represented by attorney Todd S. Richardson. Respondent/Claimant Bald, Fat & Ugly, LLC (hereinafter "BF&U") was represented by attorney David R. Risley. The Court, having considered the record in this matter, the testimony presented, the arguments and exhibits submitted by the parties, the applicable law, and being fully advised in the matter, hereby renders its Findings of Fact, Conclusions of Law, and Order.

FACTUAL AND PROCEDURAL BACKGROUND

The above-entitled matter has been the subject of long and protracted proceedings. Nevertheless, for purposes related to the matters now before the Court, the conflict between the parties began in November 2009, when Respondent/Claimant Bald, Fat & Ugly, LLC (hereinafter "BF&U") filed an Application and Motion for Confirmation of Arbitration Award. On February 18, 2010, an Amended Application and Motion for Confirmation of Arbitration Award was filed after several attempts to serve the Application and Motion on Keane was unsuccessful.¹ On March 16, 2010 Keane filed a Reply to Application and Motion for Confirmation of Arbitration Award.

The parties, who interpreted portions of the Arbitration Award differently, returned to the Arbitrator for clarification of the November 18, 2010 Arbitration Award. The Arbitrator issued the requested clarification on January 20, 2010.² On May 3, 2010, the Court entered an Order

¹ Movant's Exhibit 6.

² Exhibit B as attached to Movant's Exhibit 1.

Confirming Arbitration Award. The Court's Order acknowledged and confirmed the arbitrator's award, which consisted of two separate awards as follows: (a) Award #1 in the amount of \$205,131.17 payable by Keane to BF&U and, (b) Award #2 in the amount of \$159,762.00 payable by Keane into a trust to be held by David Risley, attorney for BF&U, subject to the conditions contained in the arbitration award.

On May 3, 2011, BF&U filed an Affidavit in Support of Writ of Execution acknowledging receipt of \$93,680.90 by way of execution of writs against assets owned by Keane and further acknowledging the amounts were applied to Arbitration Award #1, leaving a balance due against Award #1 of \$72,333.49. In July 2011, Keane paid BFU another \$45,000.00 directing that the funds be applied to Award #1. No other payments have been made by Keane.

On May 4, 2011, BF&U filed a Motion for Contempt as to Award #2. On May 26, 2011, a hearing on the Motion was held by the Court. At the hearing, Keane denied the contempt allegation and indicated to the Court his intent to file affirmative defenses pursuant to I.R.C.P. 75(h). The Court set the contempt matter for trial at a subsequent scheduling conference.

STANDARD ON MOTION FOR CONTEMPT

Contempt issues are governed by Rule 75 of the Idaho Rules of Civil Procedure. In order for a court to impose a civil sanction for contempt, a trial before the court must be held, wherein a movant must prove by a preponderance of the evidence all the elements of contempt and that the contemnor has the present ability to comply with the violated order. I.R.C.P. 75(i) and (j). Contempt as alleged in the instant matter is defined by statute as "disobedience of any lawful judgment, order or process of the court." I.C. § 7-601(5). In order to assert an affirmative defense to the allegation of contempt, a written response setting forth the defense must be filed

within seven (7) days after entry of a plea denying the contempt charge. I.R.C.P. 75(h).

Following trial in the matter, a court must make specific written findings of fact, reciting the conduct upon which the contempt violation rests, the facts upon which the court bases its determination that the contemnor has the present ability to comply with the violated order, and the sanction to be imposed. I.R.C.P. 75(k) and (l).

CONCLUSIONS OF LAW

(A) MOTION TO BAR AFFIRMATIVE DEFENSES AS UNTIMELY

The Court must first address the portion of BF&U's motion that seeks to bar as untimely Keane's filing of affirmative defenses. Counsel for Keane contends the Court extended his time to file affirmative defenses from seven (7) days to fourteen (14) days. BF&U's attorney contends his notes do not indicate the Court allowed the additional time. In order to address the matter, the Court has reviewed and taken judicial notice of the audio recording of the hearing held on May 26, 2011. At the hearing, counsel for Keane entered a denial of the contempt allegation and informed the Court he intended to file affirmative defenses pursuant to I.R.C.P. 75(h), stating the rule allowed him fourteen (14) days to submit his filing. In response, the Court acknowledged the entry of Keane's denial and indicated to the parties that the matter would be set for trial. However, there was no discussion between the Court and the parties regarding Rule 75(h) and no request for an extension of time was ever made by Keane's counsel.

Rule 75(h) provides that affirmative defenses to a contempt claim must be entered within seven (7) days, not fourteen (14) days as stated by Keane's counsel at the May 26, 2011 hearing. It is the responsibility of attorneys to seek leave from the Court for additional time if unable to comply with a rule. In the instant matter, Keane did not request additional time from the Court.

Rather, counsel for the Keane merely misstated the time limit set by the Rule. Pursuant to Rule 75(h), any affirmative defenses were required to be filed by June 2, 2011. Keane did not file affirmative defenses until June 9, 2011. Therefore, the pleading of any affirmative defenses was untimely for failure to comply with I.R.C.P. 75(h).

(B) STANDING

Keane contends BF&U is without standing to bring a contempt motion as BF&U sold the real property at issue after the arbitrator entered his arbitration awards. BF&U concedes it sold its interest in the real property and as a result is no longer a member of the Houston Professional Plaza LLC Association. However, BF&U contends that a condition of the sale requires BF&U to insure the repair work to the common area is completed to the benefit of the buyer.³ Keane offered no evidence disputing BF&U's testimony on this fact.

When deciding the issue of standing, the focus must be on the individual, not the issue being adjudicated.

“An inherent duty of any court is to inquire into the underlying interest at stake in a legal proceeding.” *Miller v. Martin*, 93 Idaho 924, 926, 478 P.2d 874, 876 (1970). In every lawsuit there must be a justiciable interest cognizable in the courts as a precondition to any party maintaining a lawsuit. *See id.* “Standing is that aspect of justiciability focusing on the party seeking a forum rather than on the issues he wants adjudicated.” *Bentel v. County of Bannock*, 104 Idaho 130, 135, 656 P.2d 1383, 1388 (1983) (quoting *Life of the Land v. Land Use Commission of the State of Hawaii*, 63 Haw. 166, 623 P.2d 431, 438 (Haw.1981)). Stated more precisely, “[t]he doctrine of standing focuses on the party seeking relief and not on the issues the party wishes to have adjudicated.” *Miles v. Idaho Power Co.*, 116 Idaho 635, 641, 778 P.2d 757, 763 (1989).

In order to fulfill the standing requirement, the plaintiff must “ ‘allege such a personal stake in the outcome of the controversy’ as to warrant *his* invocation of the court's jurisdiction.” *Bentel*, 104 Idaho at 135-36, 656 P.2d at 1388-89 (quoting *Life of the Land*, 623 P.2d at 438) (emphasis in original). The party seeking to invoke the court's jurisdiction must allege such a personal stake in the

³ Movant's Exhibit 4, pages 7-8 at ¶ (d)(i) and ¶ (d)(iv).

outcome of the controversy as to assure the concrete adversariness which sharpens the presentation upon which the court so depends. *See Miles*, 116 Idaho at 641, 778 P.2d at 763 (quoting *Duke Power Co. v. Carolina Env. Study Group*, 438 U.S. 59, 72, 98 S.Ct. 2620, 2630, 57 L.Ed.2d 595 (1978)). This “personal stake” requirement demands that the plaintiff allege a distinct palpable injury to himself. *See id.*

Bowles v. Pro Indiviso, Inc., 132 Idaho 371, 375, 973 P.2d 142 (1999).

BF&U has standing to bring the instant contempt motion. BF&U had a property interest in the common area and, therefore, had a personal stake in the outcome of the litigation which sought a remedy for Keane’s failure to repair the common area. While BF&U sold the real property after the arbitration award was entered, but before the instant motion for contempt, BF&U continues to have a personal stake in the matter, as a condition of the sale requires BF&U to insure the repairs to the common area are completed to the benefit of the buyer.

(C) CONTEMPT

Trial courts are vested with the judicial power of contempt to vindicate their jurisdiction and proper function. *Marks v. Vehlow*, 105 Idaho 560, 566, 671 P.2d 473, 479 (1983). The contempt power has its source in the Idaho Constitution, *Id.* Const. art. V, § 2, and the common law. *Vehlow*, 105 Idaho at 566, 671 P.2d at 479; *McDougall v. Sheridan*, 23 Idaho 191, 128 P. 954 (1913) (inherent contempt power). This power is also recognized by statute. *Vehlow*, 105 Idaho at 566, 671 P.2d at 479. As provided in I.C. § 1-1603(4), every court has the power to compel obedience to its orders. *See also* I.C. § 1-1901 (every judicial officer has the power to compel obedience to its lawful orders); I.C. § 1-1902 (“For the effectual exercise of the powers conferred under [I.C. § 1-1901], a judicial officer may punish for contempt.”); I.C. §§ 7-601 to -614 (Contempts).

State v. Abracadabra Bail Bonds, 131 Idaho 113, 119, 952 P.2d 1249 (Ct.App.1998).

The Arbitrator entered two Awards on November 18, 2009. Award #1 requires Keane to pay a monetary award of \$205,131.17 to BF&U. Award #2 requires Keane to pay \$159,762.00 for the express purpose of repairing the exterior common area of the Houston Professional Plaza LLC, with payment to be made jointly to BF&U and its attorney, David Risley, who must hold

the funds in trust and return any of the funds not expended on the repairs. Keane acknowledges having received the Court's Order confirming the arbitration award but denies the allegation of contempt. Keane contends that, rather than pay the funds designated in Award #2, Keane completed repairs of the exterior common area after entering into a contract with the Houston Professional Plaza LLC Association.

There are two facts that are fatal to Keane's claim that he is not in contempt. Following the Arbitrator's decision, Keane filed a motion to reconsider, which the Arbitrator found to be a motion for clarification.⁴ On January 20, 2010, Arbitrator Rasmussen sent a letter to counsel for the parties wherein he stated in regards to Award #2, "I did not order or direct that Keane perform (or even be allowed to perform) the work in question, and I leave that up to the parties to work out."⁵ Keane and BF&U at no time entered into an agreement that would allow Keane to perform the common area repair. Rather, Keane entered into an agreement with the Houston Professional Plaza LLC Association (hereinafter "Association") to perform certain work. The Association was not a party to the Arbitration and, therefore, any agreement Keane had with the Association has no import on the Arbitration Award. Regardless of any work Keane did based on a contract with the Association, Keane remains obligated under the Court's Order to pay Award #2 subject to the conditions placed on the funds by the Arbitrator.

The second fact fatal to Keane's claim is that the work he performed has not been approved by the Association as complete or correct.⁶ The Court was presented with evidence that there remain repairs that are incomplete or are not in compliance with the plan for the common area. Therefore, Keane has not paid Award #2 nor has the award been made moot due

⁴ Exhibit B to the Order Confirming Arbitration Awards entered May 3, 2010.

⁵ Exhibit B to the Order Confirming Arbitration Awards entered May 3, 2010. Early in the litigation, Keane was given the opportunity to complete the repairs but had failed to do so.

⁶ Movant's Exhibit 7.

to the work having been performed. BF&U has shown by a preponderance of the evidence that Keane is in contempt of the Court's Order confirming the arbitration award.

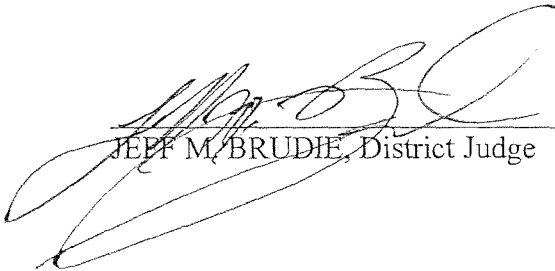
BF&U has the additional burden of showing Keane currently has the ability to comply with the order of the Arbitrator and the Court's confirmation of the Arbitrator's award. BF&U presented evidence through the testimony of Richard Keane showing Keane owns real property and other assets, including an airplane, airplane hangar, and motorhome, that have a combined value of nearly \$3 million and that Keane has done little to liquidate some of his assets in order to meet his obligation toward Award #2. BF&U has shown by a preponderance of the evidence that Keane has the current ability to pay Arbitration Award #2 but has not done so.

Based on the evidence presented, the Court finds by a preponderance of the evidence that Richard A. and Lisa C. Keane, Keane and Company Construction, Inc., and R&L Developments, L.L.C. have the ability to pay into the trust fund account of attorney David Risley \$159,762.00 as Arbitration Award #2, the funds to be used to pay for repairs to the common area of the real property known as Houston Professional Plaza, L.L.C. The Court further finds Richards A and Lisa C. Keane, Keane and Company Construction, Inc., and R&L Developments, L.L.C. have not paid the amount of Award #2, nor have any payments whatsoever been made toward the amount due in Award #2. Therefore, Richard A. and Lisa C. Keane, Keane and Company Construction, Inc. and R&L Developments, L.L.C. are in contempt of the Court's Order confirming the arbitration awards.

ORDER

It is hereby the Order of the Court that Respondent Keane shall pay Award #2 in full and in compliance with the direction of the Arbitrator within thirty (30) days of the signing of the Courts Finding of Facts, Conclusions of Law, and Order.

Dated this 31 day of October 2011.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER was:

✓ hand delivered via court basket, or *Messenger Services*

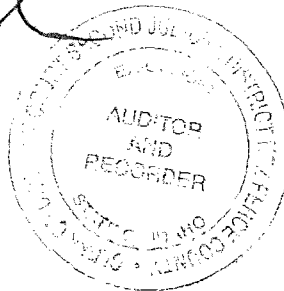
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 31st day of October, 2011, to:

Todd Richardson
604 Sixth St
Clarkston, WA 99403

David Risley
PO Box 1247
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: *Amels*
Deputy



ORIGINAL

Jeffrey A. Thomson
ELAM & BURKE, P.A.
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P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
jat@elamburke.com
ISB #3380

FILED

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PATTY O. WILSON
CLERK OF THE DISTRICT COURT
Patty O. Wilson
DEPUTY

Attorneys for Richard A. Keane, et al.

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC., and R & L DEVELOPMENTS, L.L.C.,

Case No. CV09-02468

Claimants,

NOTICE OF APPEAL

vs.

BALD, FAT & UGLY, LLC,

Respondent.

BALD, FAT & UGLY, LLC, an Idaho
Limited Liability Company,

Claimant,

vs.

RICHARD A. KEANE and LISA C. KEANE,
and R & L DEVELOPMENTS, L.L.C., an
Idaho Limited Liability Company, and
KEANE AND CO. CONSTRUCTION, INC.,
an Idaho Corporation,

Respondents.

TO: The above named Respondent Bald, Fat & Ugly, LLC and its attorneys of record, David R. Risley, and to the Clerk of the above entitled Court:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Richard A. Keane and Lisa C. Keane, and Keane and Co. Construction, Inc., and R & L Developments, L.L.C., appeal against the above named Respondent to the Idaho Supreme Court from the Findings of Fact, Conclusions of Law and Order on Court Trial for Contempt, entered in the above entitled action on the 31st day of October, 2011, Honorable Judge Jeff M. Brudie presiding.

2. That the Appellants have a right to appeal to the Idaho Supreme Court, and the judgments and orders described in paragraph 1 above are appealable orders under and pursuant to Rule 11(a)(4) and (7) of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal, as currently identified and which the Appellants intend to assert are:

(a) The District Court erred in striking Appellants' affirmative defenses to the contempt; and

(b) The District Court erred in finding Appellants in contempt of the court's order confirming arbitration awards.

4. No order has been entered sealing all or any portion of the record.

5(a). Is a reporter's transcript requested? Yes.

5(b). The Appellants request the preparation of the following portions of the reporter's transcript:

(a) Motion Hearing held on May 26, 2011.

Appellants request that the transcript be prepared in compressed format as specified in Idaho Appellate Rule 26.

6. The Appellants request the following documents to be included in the Clerk's Record in addition to those automatically included pursuant to Rule 28 of the Idaho Appellate Rules:

- (a) First Writ of Execution (\$159,994.43) filed September 1, 2010;
- (b) First Writ of Execution Returned -- Not Satisfied filed October 12, 2010;
- (c) Partial Satisfaction of Judgment (\$93680.90) filed April 1, 2011;
- (d) Motion for Contempt (Arbitration Award No. 2) filed May 4, 2011;
- (e) Affidavit of Robert W. Blewett Re Motion for Contempt (Arbitration Award No. 2) filed May 4, 2011;
- (f) Affidavit of David R. Risley (Arbitration Award No. 2) filed May 4, 2011;
- (g) Amended Notice to Appear (Arbitration Award No. 2) -- Motion for Contempt filed May 6, 2011;
- (h) Motion for Order of Contempt and to Bar Filing of Affirmative Defenses (Arbitration Award No. 2) filed June 7, 2011;
- (i) Affidavit of David R. Risley in Support of Motion for Order of Contempt and to Bar Filing of Affirmative Defenses (Arbitration Award No. 2) filed June 7, 2011;
- (j) Response to Motion for Contempt -- Claimants/Respondents filed June 9, 2011;
- (k) Bald, Fat & Ugly, LLC's Contempt Trial Memorandum filed September 8, 2011; and
- (l) Trial Memorandum -- Claimants/Respondents filed September 9, 2011.

7. All documents, charts or pictures offered or admitted as exhibits at the contempt trial on September 9, 2011.

8. I certify that:

- (a) A copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address said below:

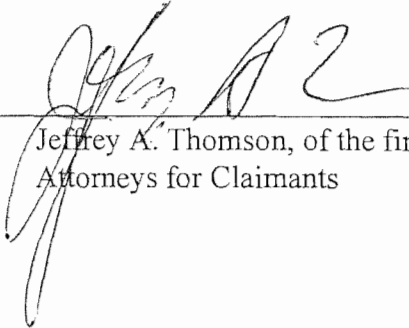
Reporter: Linda L. Carlton
Address: 425 Warner
Lewiston, ID 83501

- (b) The clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript;
- (c) The estimated fee for preparation of the Clerk's Record has been paid;
- (d) The appellate filing fee has been paid; and
- (e) Service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 29 day of November, 2011.

ELAM & BURKE, P.A.

By: _____


Jeffrey A. Thomson, of the firm
Attorneys for Claimants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29 day of November, 2011, I caused a true and correct copy of the foregoing document to be served as follows:

David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501

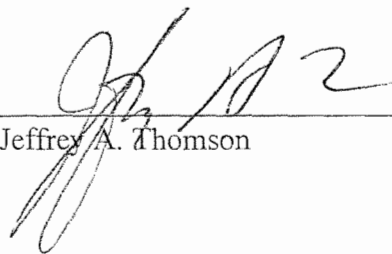
U.S. Mail
 Hand Delivery
 Federal Express
 Facsimile -- (208) 743-5307

Todd S. Richardson
Law Offices of Todd S. Richardson, PLLC
604 6th Street
Clarkston, WA 99403

U.S. Mail
 Hand Delivery
 Federal Express
 Facsimile -- (509) 758-3399

Linda L. Carlton
Court Reporter to Judge Brudie
425 Warner
Lewiston, ID 83501

U.S. Mail
 Hand Delivery
 Federal Express
 Facsimile



Jeffrey A. Thomson

FILED

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PATTY O. R. ...
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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC., and R & L DEVELOPMENTS, L.L.C.,

Claimants

v.

BALD, FAT & UGLY, LLC,

Respondent.

BALD, FAT & UGLY, LLC, an Idaho
Limited Liability Company,

Claimnant,

v.

RICHARD A. KEANE and LISA A. KEANE
and R&L DEVELOPMENTS, LLC, an Idaho
Limited Liability Company, and KEANE
AND CO. CONSTRUCTION, INC. an Idaho
Corporation,

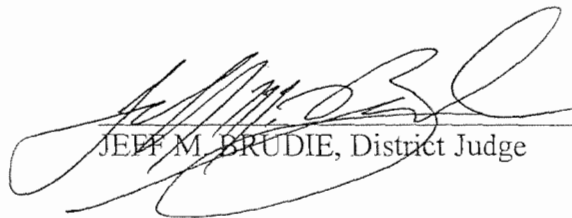
Respondents.

CASE NO. CV09-02468

JUDGMENT

It is hereby the Judgment of the Court that Richard A. and Lisa C. Keane, Keane and Co. Construction, Inc., and R&L Developments, LLC are in contempt of the Court's Order confirming arbitration awards. It is further the Judgment of the Court that Richard A. Keane shall pay Arbitrator's Award #2 (\$159,762.00) in full and in compliance with the direction of the Arbitrator, and shall do so within thirty (30) days of the signing of the Court's Finding of Facts, Conclusions of Law, and Order.

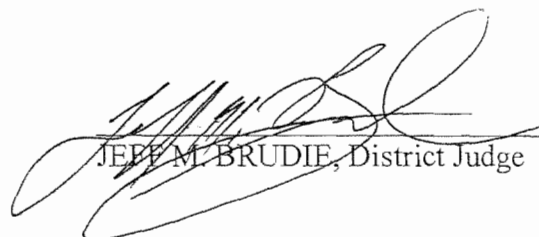
Dated this 5 day of January 2012.


JEFF M. BRUDIE, District Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above Judgment, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the Court has determined that there is no just reason for delay of the entry of a final judgment and that the Court has and does hereby direct that the above judgment shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated this 5 day of January 2012.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing Judgment was:

hand delivered via court basket, or *Murray Service*

_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 5th day of January, 2012, to:

Todd Richardson
604 Sixth St
Clarkston, WA 99403

** Faxed to: Nicole
Jeffrey Thomson
(208) 384-5844
1-5-12
2:28 PM PS*

David Risley
PO Box 1247
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: *[Signature]*

Deputy



FILED

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PATTY D. ...
CLERK OF THE ... COURT

James

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC., and R & L DEVELOPMENTS, L.L.C.,

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BALD, FAT & UGLY, LLC,

Respondent.

BALD, FAT & UGLY, LLC, an Idaho
Limited Liability Company,

Claimant,

v.

RICHARD A. KEANE and LISA A. KEANE
and R&L DEVELOPMENTS, LLC, an Idaho
Limited Liability Company, and KEANE
AND CO. CONSTRUCTION, INC. an Idaho
Corporation,

Respondents.

CASE NO. CV09-02468
OPINION AND ORDER
ON MOTION FOR
ATTORNEY FEES AND
COSTS

This matter came before the Court on Motion for Award of Attorney's Fees and Costs Pursuant to Idaho Code § 7-610, I.R.C.P. 54(e)(1), and I.R.C.P. 75(m) Re Trial for Contempt filed by Respondent/Claimant Bald, Fat & Ugly. Claimants/Respondents Keanes, Keane

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Construction and R&L Developments (hereinafter "Keane") are represented by attorney Todd S. Richardson, who was scheduled to attend the hearing by phone but could not be reached. Respondent/Claimant Bald, Fat & Ugly, LLC (hereinafter "BF&U") was represented by attorney David R. Risley. The Court, having read the motion, affidavit and briefing filed by Respondent/Claimant, having considered the record in the matter, and being fully advised, hereby renders its Opinion and Order.

ANALYSIS

Where a statute or rule provides that a court may award attorney fees to the prevailing party in an action, the decision to grant or deny the request is a discretionary decision to be made by the court. *Medical Recovery Services, LLC v. Jones*, 145 Idaho 106, 175 P.3d 795 (Ct.App.2007). Respondent/Claimant BF&U seeks an award of fees and costs as the prevailing party in its contempt proceeding filed against Keanes. Idaho Code § 7-610 provides in relevant part that "the court in its discretion, may award attorney's fees and costs to the prevailing party." In addition, Rule 75(m) of the Idaho Rules of Civil Procedure provides:

In any contempt proceeding, the court may award the prevailing party costs and reasonable attorney fees under Idaho Code § 7-610, regardless of whether the court imposes a civil sanction, a criminal sanction, or no sanction. The procedure for awarding such costs and fees shall be as provided in Rule 54(e) of the Idaho Rules of Civil Procedure, except that the determination of the prevailing party shall be based upon who prevailed in the contempt proceeding rather than in the civil action as a whole.

I.R.C.P. 75(m).

In the instant action, BF&U was the prevailing party, as it was the finding of the Court that Keane was in contempt of the Court's Order confirming the Arbitrator's Award #2. In determining the amount of attorney fees to award, if any, courts are to consider the following factors:

In the event the court grants attorney fees to a party or parties in a civil action it shall consider the following factors in determining the amount of such fees:

- (A) The time and labor required.
- (B) The novelty and difficulty of the questions.
- (C) The skill requisite to perform the legal service properly and the experience and ability of the attorney in the particular field of law.
- (D) The prevailing charges for like work.
- (E) Whether the fee is fixed or contingent.
- (F) The time limitations imposed by the client or the circumstances of the case.
- (G) The amount involved and the results obtained.
- (H) The undesirability of the case.
- (I) The nature and length of the professional relationship with the client.
- (J) Awards in similar cases.
- (K) The reasonable cost of automated legal research (Computer Assisted Legal Research), if the court finds it was reasonably necessary in preparing a party's case.
- (L) Any other factor which the court deems appropriate in the particular case.

I.R.C.P. 54(e)(3).

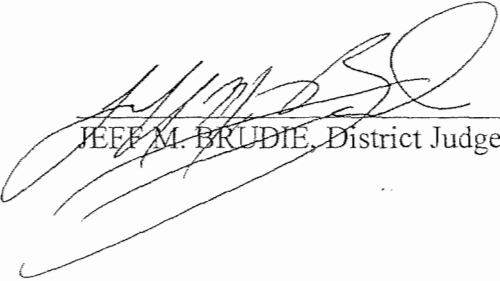
The Court, after consideration of the above factors, finds BF&U should be awarded a reasonable amount of attorney fees for work directly related to the contempt motion. However, the Court finds not all of the fees sought by BF&U are directly related to the contempt motion. In the breakdown of fees provided by BF&U in its Memorandum of Attorney's Fees and Costs, a number of the billed fees are related to collecting on the judgment and are, therefore, not directly related to the contempt motion. Therefore, after consideration of the factors listed in I.R.C.P. 54(e)(3), the Court finds reasonable attorney fees for prosecuting the contempt motion will be awarded in the amount of \$5,000.00.

BF&U also seeks costs in the amount of \$380.00, which the Court declines to award. The costs listed are clearly related to efforts to collect on the judgment and are not directly related to the contempt motion.

ORDER

Attorney fees in the amount of \$5,000.00 are hereby awarded to BF&U as the prevailing party in its Motion for Contempt.

Dated this 9 day of January 2012.


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 9th day of January, 2012, to:

Todd Richardson
604 Sixth St
Clarkston, WA 99403

Jeffrey A. Thomson
Elam & Burke PS
PO Box 1539
Boise, ID 83701

David Risley
PO Box 1247
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: *[Signature]*
Deputy



Jeffrey A. Thomson
ELAM & BURKE, P.A.
251 E. Front St., Ste. 300
P.O. Box 1539
Boise, Idaho 83701
Telephone: (208) 343-5454
Facsimile: (208) 384-5844
jat@elamburke.com
ISB #3380

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

Attorneys for Richard A. Keane, et al.

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC., and R & L DEVELOPMENTS, L.L.C.,

Case No. CV09-02468

Claimants,

vs.

BALD, FAT & UGLY, LLC,

Respondent.

AMENDED NOTICE OF APPEAL

BALD, FAT & UGLY, LLC, an Idaho
Limited Liability Company,

Claimant,

vs.

RICHARD A. KEANE and LISA C. KEANE,
and R & L DEVELOPMENTS, L.L.C., an
Idaho Limited Liability Company, and
KEANE AND CO. CONSTRUCTION, INC.,
an Idaho Corporation,

Respondents.

NOTICE OF APPEAL - 1

AMENDED NOTICE OF APPEAL

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TO: The above named Respondent Bald, Fat & Ugly, LLC and its attorneys of record, David R. Risley, and to the Clerk of the above entitled Court:

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants, Richard A. Keane and Lisa C. Keane, and Keane and Co. Construction, Inc., and R & L Developments, L.L.C., appeal against the above named Respondent to the Idaho Supreme Court from the Judgment ~~Findings of Fact, Conclusions of Law and Order on Court Trial for Contempt~~, entered in the above entitled action on the 5th ~~31st~~ day of January, 2012 ~~October, 2011~~, Honorable Judge Jeff M. Brudie presiding. (See Exhibit A attached hereto.)

2. That the Appellants have a right to appeal to the Idaho Supreme Court, and the judgments ~~and orders~~ described in paragraph 1 above is ~~an~~ appealable judgment ~~orders~~ under and pursuant to Rule 11(a)(14) and (47) of the Idaho Appellate Rules.

3. A preliminary statement of the issues on appeal, as currently identified and which the Appellants intend to assert are:

(a) The District Court erred in striking Appellants' affirmative defenses to the contempt; and

(b) The District Court erred in finding Appellants in contempt of the court's order confirming arbitration awards.

4. No order has been entered sealing all or any portion of the record.

5(a). Is a reporter's transcript requested? Yes.

5(b). The Appellants request the preparation of the following portions of the reporter's transcript:

(a) Motion Hearing held on May 26, 2011.

Appellants request that the transcript be prepared in compressed format as specified in Idaho Appellate Rule 26.

NOTICE OF APPEAL - 2

AMENDED NOTICE OF APPEAL

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6. The Appellants request the following documents to be included in the Clerk's Record in addition to those automatically included pursuant to Rule 28 of the Idaho Appellate Rules:

- (a) First Writ of Execution (\$159,994.43) filed September 1, 2010;
- (b) First Writ of Execution Returned -- Not Satisfied filed October 12, 2010;
- (c) Partial Satisfaction of Judgment (\$93680.90) filed April 1, 2011;
- (d) Motion for Contempt (Arbitration Award No. 2) filed May 4, 2011;
- (e) Affidavit of Robert W. Blewett Re Motion for Contempt (Arbitration Award No. 2) filed May 4, 2011;
- (f) Affidavit of David R. Risley (Arbitration Award No. 2) filed May 4, 2011;
- (g) Amended Notice to Appear (Arbitration Award No. 2) -- Motion for Contempt filed May 6, 2011;
- (h) Motion for Order of Contempt and to Bar Filing of Affirmative Defenses (Arbitration Award No. 2) filed June 7, 2011;
- (i) Affidavit of David R. Risley in Support of Motion for Order of Contempt and to Bar Filing of Affirmative Defenses (Arbitration Award No. 2) filed June 7, 2011;
- (j) Response to Motion for Contempt -- Claimants/Respondents filed June 9, 2011;
- (k) Bald, Fat & Ugly, LLC's Contempt Trial Memorandum filed September 8, 2011; and
- (l) Trial Memorandum -- Claimants/Respondents filed September 9, 2011.

7. All documents, charts or pictures offered or admitted as exhibits at the contempt trial on September 9, 2011.

8. I certify that:

- (a) A copy of this Amended Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address said below:

NOTICE OF APPEAL – 3

AMENDED NOTICE OF APPEAL

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Reporter: Linda L. Carlton
Address: 425 Warner
Lewiston, ID 83501

- (b) The clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript;
- (c) The estimated fee for preparation of the Clerk's Record has been paid;
- (d) The appellate filing fee has been paid; and
- (e) Service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 10 day of January, 2012.

ELAM & BURKE, P.A.

By: _____

Jeffrey A. Thomson, of the firm
Attorneys for Claimants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10 day of January, 2012, I caused a true and correct copy of the foregoing document to be served as follows:

David R. Risley
Risley Law Office, PLLC
P.O. Box 1247
Lewiston, ID 83501

U.S. Mail
 Hand Delivery
 Federal Express
 Facsimile -- (208) 743-5307

Todd S. Richardson
Law Offices of Todd S. Richardson, PLLC
604 6th Street
Clarkston, WA 99403

U.S. Mail
 Hand Delivery
 Federal Express
 Facsimile -- (509) 758-3399

Linda L. Carlton
Court Reporter to Judge Brudie
425 Warner
Lewiston, ID 83501

U.S. Mail
 Hand Delivery
 Federal Express
 Facsimile



Jeffrey A. Thomson

NOTICE OF APPEAL - 5

AMENDED NOTICE OF APPEAL

205

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PATTY C. WELLS
CLERK OF THE DIST. COURT

Tomuel

DEPUTY

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

RICHARD A. KEANE and LISA C. KEANE,
and KEANE AND CO. CONSTRUCTION,
INC., and R & L DEVELOPMENTS, L.L.C.,

Claimants

v.

BALD, FAT & UGLY, LLC,

Respondent.

BALD, FAT & UGLY, LLC, an Idaho
Limited Liability Company,

Claimnant,

v.

RICHARD A. KEANE and LISA A. KEANE
and R&L DEVELOPMENTS, LLC, an Idaho
Limited Liability Company, and KEANE
AND CO. CONSTRUCTION, INC. an Idaho
Corporation,

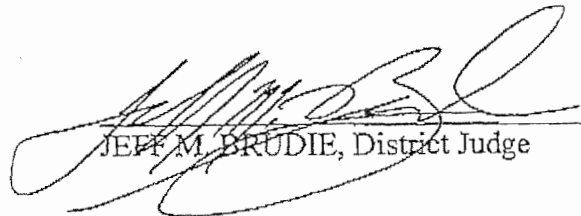
Respondents.

CASE NO. CV09-02468

JUDGMENT

It is hereby the Judgment of the Court that Richard A. and Lisa C. Keane, Keane and Co. Construction, Inc., and R&L Developments, LLC are in contempt of the Court's Order confirming arbitration awards. It is further the Judgment of the Court that Richard A. Keane shall pay Arbitrator's Award #2 (\$159,762.00) in full and in compliance with the direction of the Arbitrator, and shall do so within thirty (30) days of the signing of the Court's Finding of Facts, Conclusions of Law, and Order.

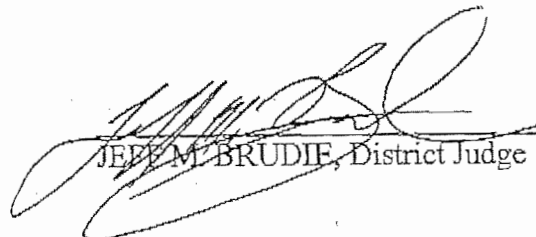
Dated this 5 day of January 2012.


JEFF M. BRUDIE, District Judge

RULE 54(b) CERTIFICATE

With respect to the issues determined by the above Judgment, it is hereby CERTIFIED, in accordance with Rule 54(b), I.R.C.P., that the Court has determined that there is no just reason for delay of the entry of a final judgment and that the Court has and does hereby direct that the above judgment shall be a final judgment upon which execution may issue and an appeal may be taken as provided by the Idaho Appellate Rules.

Dated this 5 day of January 2012.


JEFF M. BRUDIE, District Judge

CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing Judgment was:

hand delivered via court basket, or *Murray Service*

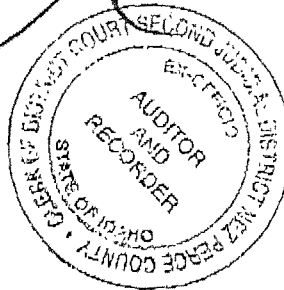
_____ mailed, postage prepaid, by the undersigned at Lewiston, Idaho, this 5th day of January, 2012, to:

Todd Richardson
604 Sixth St
Clarkston, WA 99403

David Risley
PO Box 1247
Lewiston, ID 83501

PATTY O. WEEKS, CLERK

By: *James O. Weeks*
Deputy



Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
1	Movant's Exhibit #1 -- Order Confirming Arbitration Awards Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Risley, David R		
2	Movant's Exhibit #2 -- Amended Bid HPP LLC Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Risley, David R		
3	Movant's Exhibit #3 -- Letter from Terry Nab PE to Steve Lohman and Gary Jones Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Risley, David R		
4	Movant's Exhibit #4 -- Agreement of Purchase and Sale between Bald, Fat & Ugly LLC and Van Duyn Properties LLC Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Risley, David R		
5	Movant's Exhibit #5 -- Partial Satisfaction of Judgment Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Risley, David R		
6	Movant's Exhibit #6 -- Amended Application and Motion for Confirmation of Arbitration Award Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Risley, David R		
7	Movant's Exhibit #7 -- Letter to Keane & Co. Construction Inc. Attention: Richard Keane dated 6-17-11 Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Risley, David R		
8	Defendant's Exhibit #1 -- Letter from Terry W. Nab of Progressive Engineering Group Inc. to Houston Plaza Condominium Association c/o Lohman Accounting dated 12-1-10 Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Richardson, Todd S.		
9	Defendant's Exhibit #2 -- Letter from Terry Nab to Steve and Gary Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Richardson, Todd S.		
10	Defendant's Exhibit #3 -- Letter from Todd S. Richardson to David Risley dated: 6-29-11 Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Richardson, Todd S.		
11	Defendant's Exhibit #4 -- Balance and interest amounts from award on original MSA within the arbitration to balance as of 7-1-11 Admitted: 9-9-11	Admitted	To Deanna on appeal 12		
		Assigned to:	Richardson, Todd S.		

Exhibit Summary

Case: CV-2009-0002468

Richard Alan Keane, etal. vs. Bald Fat and Ugly LLC

Sorted by Exhibit Number

Number	Description	Result	Storage Location Property Item Number	Destroy Notification Date	Destroy or Return Date
12	Defendant's exhibit #5 -- Letter from Rick Keane dba R & L Developments LLC to Mandy Miles, Dave Risley and Bob Blewett dated 3-11-10 Ref: Arbitration Settlement Agreement Admitted: 9-9-11 (Contempt Trial)	Admitted	To Deanna on appeal 12		
		Assigned to:	Richardson, Todd S.		
13	Defendant's Exhibit #6 -- Construction Contract	Admitted	To Deanna on appeal 12		
	Admitted: 9-9-11 (Contempt Trial)	Assigned to:	Richardson, Todd S.		
14	Defendant's Exhibit #7 -- List of Additional Items Added to Progressive Engineering's December 1, 2010 Final List to Complete	Admitted	To Deanna on appeal 12		
	Admitted: 9-9-11 (Contempt Trial)	Assigned to:	Richardson, Todd S.		

1. That no additional exhibits were marked for identification or admitted into evidence during the course of this action other than the exhibits listed in the Certificate of Exhibits.

IN WITNESS WHEREOF I have hereunto set my hand and affixed the seal of said court this 5 day of March 2012.

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

RICHARD ALAN KEANE and LISA C.)	
KEANE; KEANE AND CO.)	
CONSTRUCTION, INC; R & L)	
DEVELOPMENTS, LLC,)	
)	
Claimants-Cross Respondents-)	SUPREME COURT NO. 39451
Appellants,)	
)	
Vs.)	CERTIFICATE OF SERVICE
)	
BALD, FAT & UGLY, LLC,)	
)	
Respondent-Cross Claimant-)	
Respondent on Appeal.)	

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 delivered by USPS to Jeffrey A. Thomason,
P O Box 1539, Boise, ID 83701 and hand delivered to David Risley, P O
Box 1247, Lewiston, ID 83501

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the
seal of the said Court this 9th day of March 2012.

PATTY O. WEEKS
CLERK OF THE DISTRICT COURT

DEANNA P. GRIMM

By _____
Deputy Clerk