

5-6-2013

April Beguesse, Inc. v. Rammell Clerk's Record v. 2
Dckt. 40212

Follow this and additional works at: https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs

Recommended Citation

"April Beguesse, Inc. v. Rammell Clerk's Record v. 2 Dckt. 40212" (2013). *Idaho Supreme Court Records & Briefs*. 4151.
https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/4151

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact annablaine@uidaho.edu.

Vol 2 of 11

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

VOLUME II OF III

LAW CLERK

APRIL BEGUESSE, INC., an Idaho Corporation,

Plaintiff / Counterdefendant / Respondent

COPY

vs.

KENNETH RAMMEL, an individual, CHRISTA BEGUESSE, INC., an Idaho Corporation,

Defendants / Counterclaimants / Appellants

Appealed from the District Court of the Seventh Judicial

District of the State of Idaho, in and for Bonneville County

Hon. Joel E. Tingey, District Judge

David Alexander, RACINE OLSON NYE BUDGE BAILEY

PO Box 1391, Pocatello, ID 83204-1391

Attorney for Appellant

Jeffrey Brunson, BEARD ST. CLAIR GAFFNEY PA

2105 Coronado Street, Idaho Falls, ID 83404-7495

Attorney for Respondent

Filed this _____ day of _____, 20____

FILED - COPY
MAY - 6 2013
Clerk
Supreme Court _____ Court of Appeals _____ Deputy
Entered on AFD by _____

By _____

410212

IN THE SUPREME COURT OF THE STATE OF IDAHO

APRIL BEGUESSE, INC., an Idaho Corporation,
Plaintiff/Counterdefendant/Respondent,
vs.
KENNETH RAMMEL, an individual,
CHRISTA BEGUESSE, INC., an Idaho Corporation,
Defendants/Counterclaimants/Appellants.
and,
THE ESTATE OF CHRISTA BEGUESSE RAMMELL, by it qualified personal representative, Kenneth Rammell,
Defendant/Counterclaimant.

Case No. CV-2009-2767
Docket No. 40212
VOLUME II of III

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE JOEL E. TINGEY, District Judge.

Attorney for Appellant

Attorney for Respondent

David Alexander
RACINE OLSON NYE BUDGE BAILEY
PO Box 1391
Pocatello, ID 83204-1391

Jeffrey Brunson
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, ID 83404-7495

TABLE OF CONTENTS

	Page
ROA Report, printed December 28, 2013	Vol. I – 1
Complaint and Jury Demand, filed May 8, 2009.....	Vol. I – 19
Answer, Counterclaim, and Demand for Jury Trial, filed September 21, 2009.....	Vol. I – 33
Plaintiff’s Reply to Defendant, Christa Buguesse, Inc.’s Counterclaim, filed October 8, 2009 ..	Vol. I – 57
Protective Order, entered December 8, 2009.....	Vol. I – 61 A
Order to Amend Pleadings, entered February 10, 2010.....	Vol. I – 61 D
First Amended Complaint and Jury Demand, filed February 18, 2010	Vol. I – 62
Answer to Amended Complaint and Amended Counterclaim, and Demand for Jury Trial, filed March 11, 2010	Vol. I – 77
Plaintiff’s Reply to Defendants’ Amended Counterclaim, filed March 29, 2010.....	Vol. I – 92
Order for Telephonic Status Conference, entered March 31, 2010	Vol. I – 97 A
Order and Notice Setting Jury Trial, entered April 22, 2010.....	Vol. I – 97 C
Notice Regarding Requests for Admissions Deemed Admitted, filed May 24, 2010	Vol. I – 97 G
Amended Protective Order, entered July 12, 2010	Vol. I – 97 I
Minute Entry, dated October 8, 2010	Vol. I – 97 M
Memorandum Decision and Order, entered November 2, 2010	Vol. I – 98
Plaintiff’s Proposed Special Verdict Form, filed January 6, 2011	Vol. I – 120
Plaintiff’s Proposed Jury Instructions, filed January 6, 2011.....	Vol. I – 126
Defendants’ Proposed Jury Instructions and Special Verdict Form, filed January 10, 2011	Vol. I – 177
Minute Entry, dated January 11, 2011.....	Vol. II – 236 A
Order for Telephonic Status Conference, entered January 11, 2011.....	Vol. II – 236 D

Order Re: January 6, 2011 Hearing, entered January 28, 2011	Vol. II – 236 F
Order Re: January 11, 2011 Hearing, entered January 28, 2011	Vol. II – 236 H
Order and Notice Resetting Jury Trial, entered February 9, 2011	Vol. II – 236 K
Minute Entry, dated February 10, 2011	Vol. II – 236 M
Minute Entry, dated March 22, 2011	Vol. II – 236 O
Order on Motion to Consolidate, entered March 23, 2011	Vol. II – 236 Q
Minute Entry, dated April 21, 2011	Vol. II – 236 S
Order on Motion to Amend, entered April 22, 2011	Vol. II – 236 U
Second Amended Complaint and Jury Demand, filed May 10, 2011	Vol. II – 237
Order Shortening Time, entered September 7, 2011	Vol. II – 252 A
Plaintiff’s Proposed Jury Instructions, filed September 8, 2011	Vol. II – 253
Defendants’ Proposed Special Verdict Form, filed September 12, 2011	Vol. II – 307
Defendants’ Proposed Jury Instructions and Special Verdict Form, filed September 12, 2011	Vol. II – 312
Order on Motion in Limine, Vacating Trial, entered September 14, 2011	Vol. II – 322 A
Order for Telephonic Status Conference, entered September 11, 2011	Vol. II – 322 D
Amended Order and Notice Rescheduling Jury Trial, entered October 7, 2011	Vol. II – 322 F
Minute Entry, dated December 6, 2011	Vol. II – 322 H
<i>(Minute Entry was not located in the Court file; a copy was obtained from Jeffrey Brunson)</i>	
Minute Entry, dated March 20, 2012	Vol. II – 322 J
Plaintiff’s Objection to Defendants’ Proposed Jury Instructions and Special Verdict Form, filed April 3, 2012	Vol. II – 323
Minute Entry, dated April 6, 2012	Vol. II – 327 A
Minute Entry, dated April 9, 2012	Vol. II – 327 D

Answer to Second Amended Complaint, filed April 10, 2012	Vol. II – 328
Motion for Directive Verdict, dated April 12, 2012	Vol. II – 337
Minute Entry, dated April 10, 2011	Vol. II – 345
Jury Instructions	Vol. II – 365
Verdict Form, entered April 13, 2012	Vol. II – 409
Judgment Upon Verdict, entered April 18, 2012	Vol. II – 413
Affidavit of Counsel, filed April 30, 2012.....	Vol. III – 415
Defendants’ Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial, filed April 30, 2012	Vol. III – 419
Memorandum in Support of Defendants’ Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial, filed April 30, 2012.....	Vol. III – 421
Supplemental Affidavit of Counsel, filed May 1, 2012.....	Vol. III – 448
Plaintiff’s Memorandum in Opposition to Defendants’ Motion for JNOV or New Trial, for May 25, 2012	Vol. III – 463
Minute Entry, dated June 5, 2012.....	Vol. III – 491 A
Plaintiff’s Acceptance of Court’s Remittitur, filed June 12, 2012.....	Vol. III – 491 C
Order on Motion for JNOV or New Trial, entered June 12, 2012	Vol. III – 492
Supplemental Order on Motion for New Trial, entered June 12, 2012.....	Vol. III – 498
Order on Motion for Costs and Attorney Fees, entered June 19, 2012.....	Vol. III - 500
Amended Judgment, entered June 19, 2012	Vol. III – 504
Notice of Appeal, filed July 20, 2012.....	Vol. III – 506
Clerk’s Certificate of Appeal, dated July 30, 2012.....	Vol. III – 511
Amended Notice of Appeal, filed August 22, 2012.....	Vol. III – 513
Notice of Transcript Lodged, dated November 20, 2012.....	Vol. III – 518
Clerk’s Certification of Exhibits, dated December 28, 2012	Vol. III – 519

Amended Clerk’s Certification of Exhibits, dated May 1, 2013.....Vol. III – 520 A
Clerk’s Certificate, dated December 28, 2012.....Vol. III – 521
Certificate of ServiceVol. III – 523

INDEX

	Page
Affidavit of Counsel, filed April 30, 2012.....	Vol. III – 415
Amended Clerk’s Certification of Exhibits, dated May 1, 2013.....	Vol. III – 520 A
Amended Judgment, entered June 19, 2012.....	Vol. III – 504
Amended Notice of Appeal, filed August 22, 2012.....	Vol. III – 513
Amended Order and Notice Rescheduling Jury Trial, entered October 7, 2011.....	Vol. II – 322 F
Amended Protective Order, entered July 12, 2010.....	Vol. I – 97 I
Answer to Amended Complaint and Amended Counterclaim, and Demand for Jury Trial, filed March 11, 2010.....	Vol. I – 77
Answer to Second Amended Complaint, filed April 10, 2012.....	Vol. II – 328
Answer, Counterclaim, and Demand for Jury Trial, filed September 21, 2009.....	Vol. I – 33
Certificate of Service.....	Vol. III – 523
Clerk’s Certificate of Appeal, dated July 30, 2012.....	Vol. III – 511
Clerk’s Certificate, dated December 28, 2012.....	Vol. III – 521
Clerk’s Certification of Exhibits, dated December 28, 2012.....	Vol. III – 519
Complaint and Jury Demand, filed May 8, 2009.....	Vol. I – 19
Defendants’ Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial, filed April 30, 2012.....	Vol. III – 419
Defendants’ Proposed Jury Instructions and Special Verdict Form, filed January 10, 2011.....	Vol. I – 177
Defendants’ Proposed Jury Instructions and Special Verdict Form, filed September 12, 2011.....	Vol. II – 312
Defendants’ Proposed Special Verdict Form, filed September 12, 2011.....	Vol. II – 307
First Amended Complaint and Jury Demand, filed February 18, 2010.....	Vol. I – 62

Judgment Upon Verdict, entered April 18, 2012.....	Vol. II – 413
Jury Instructions	Vol. II – 365
Memorandum Decision and Order, entered November 2, 2010	Vol. I – 98
Memorandum in Support of Defendants’ Motion for Judgment Notwithstanding the Verdict or in the Alternative for New Trial, filed April 30, 2012.....	Vol. III – 421
Minute Entry, dated April 10, 2011	Vol. II – 345
Minute Entry, dated April 21, 2011	Vol. II – 236 S
Minute Entry, dated April 6, 2012.....	Vol. II – 327 A
Minute Entry, dated April 9, 2012.....	Vol. II – 327 D
Minute Entry, dated December 6, 2011	Vol. II – 322 H
<i>(Minute Entry was not located in the Court file; a copy was obtained from Jeffrey Brunson)</i>	
Minute Entry, dated February 10, 2011	Vol. II – 236 M
Minute Entry, dated January 11, 2011	Vol. II – 236 A
Minute Entry, dated June 5, 2012.....	Vol. III – 491 A
Minute Entry, dated March 20, 2012.....	Vol. II – 322 J
Minute Entry, dated March 22, 2011	Vol. II – 236 O
Minute Entry, dated October 8, 2010	Vol. I – 97 M
Motion for Directive Verdict, dated April 12, 2012	Vol. II – 337
Notice of Appeal, filed July 20, 2012.....	Vol. III – 506
Notice of Transcript Lodged, dated November 20, 2012.....	Vol. III – 518
Notice Regarding Requests for Admissions Deemed Admitted, filed May 24, 2010.....	Vol. I – 97 G
Order and Notice Resetting Jury Trial, entered February 9, 2011	Vol. II – 236 K
Order and Notice Setting Jury Trial, entered April 22, 2010.....	Vol. I – 97 C
Order for Telephonic Status Conference, entered January 11, 2011.....	Vol. II – 236 D

Order for Telephonic Status Conference, entered March 31, 2010	Vol. I – 97 A
Order for Telephonic Status Conference, entered September 11, 2011	Vol. II – 322 D
Order on Motion for Costs and Attorney Fees, entered June 19, 2012	Vol. III - 500
Order on Motion for JNOV or New Trial, entered June 12, 2012	Vol. III – 492
Order on Motion in Limine, Vacating Trial, entered September 14, 2011	Vol. II – 322 A
Order on Motion to Amend, entered April 22, 2011	Vol. II – 236 U
Order on Motion to Consolidate, entered March 23, 2011	Vol. II – 236 Q
Order Re: January 11, 2011 Hearing, entered January 28, 2011	Vol. II – 236 H
Order Re: January 6, 2011 Hearing, entered January 28, 2011	Vol. II – 236 F
Order Shortening Time, entered September 7, 2011	Vol. II – 252 A
Order to Amend Pleadings, entered February 10, 2010.....	Vol. I – 61 D
Plaintiff’s Acceptance of Court’s Remittitur, filed June 12, 2012.....	Vol. III – 491 C
Plaintiff’s Memorandum in Opposition to Defendants’ Motion for JNOV or New Trial, for May 25, 2012	Vol. III – 463
Plaintiff’s Objection to Defendants’ Proposed Jury Instructions and Special Verdict Form, filed April 3, 2012	Vol. II – 323
Plaintiff’s Proposed Jury Instructions, filed January 6, 2011.....	Vol. I – 126
Plaintiff’s Proposed Jury Instructions, filed September 8, 2011	Vol. II – 253
Plaintiff’s Proposed Special Verdict Form, filed January 6, 2011	Vol. I – 120
Plaintiff’s Reply to Defendant, Christa Buguesse, Inc.’s Counterclaim, filed October 8, 2009 ..	Vol. I – 57
Plaintiff’s Reply to Defendants’ Amended Counterclaim, filed March 29, 2010.....	Vol. I – 92
Protective Order, entered December 8, 2009.....	Vol. I – 61 A
ROA Report, printed December 28, 2013	Vol. I – 1

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

MINUTE ENTRY

Case No. CV-09-2767

On the 11th day of January, 2011, a Pretrial Conference, Plaintiff's motion in limine re: Masterson came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson and Mr. John Avondet appeared for and on behalf of the Plaintiff.

Mr. David Alexander appeared on behalf of the Defendants.

Mr. Avondet presented Plaintiff's motion in limine re: Masterson. Mr. Alexander presented argument in opposition to the motion in limine. Mr. Avondet presented rebuttal argument.

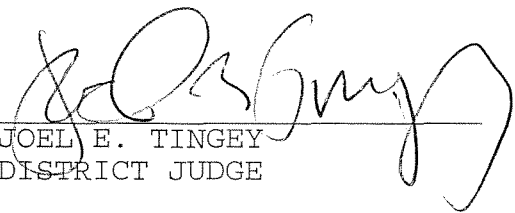
The Court granted the motion in limine. Mr. Masterson will not be allowed to testify regarding the value of the business.

He can testify about profits.

Mr. Brunson presented Plaintiff's motion for sanctions. Mr. Alexander argued in opposition to the motion. Mr. Brunson presented rebuttal argument. Mr. Alexander presented further argument.

The Court will not strike the pleadings. The Court will vacate the jury trial setting. The Court will take the motion for attorney fees under advisement.

A scheduling conference will be scheduled in a few weeks. Court was thus adjourned.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of January, 2011, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

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

11 JAN 11 A11:05

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

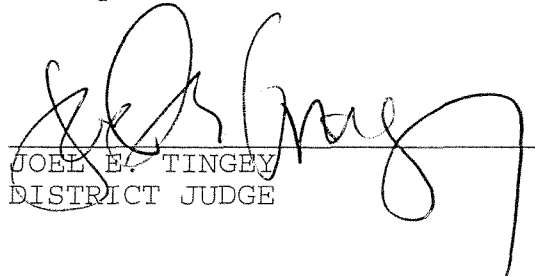
ORDER FOR TELEPHONIC
STATUS CONFERENCE
Case No. CV-09-2767

Pursuant to Rule 16, I.R.C.P., it is hereby ordered that a status conference be conducted by and between the Court and the counsel of record in regard to the above-entitled case on February 9, 2011, at 8:45 a.m.

It is further ordered that at least one of the attorneys for each party participating in said status conference have authority to enter into stipulations and to make admissions regarding all matters that the parties may reasonably anticipate being discussed. (See Rule 16 (b) and Rule 16 (c)). Counsel shall also be prepared to furnish the Court with available dates for a pre-trial conference and trial setting.

The Plaintiff is directed to initiate the telephone conference call to the Court. The telephone number is 529-1350 extension 1340.

Dated this 11 day of January, 2011


JOE E. TINGEY
DISTRICT JUDGE

236 D

CERTIFICATE OF SERVICE

I hereby certify that on the 11 day of January, 2011, that I mailed or hand delivered a true and correct copy of the foregoing document to the following:

RONALD LONGMORE

BY 
DEPUTY CLERK

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

BONNEVILLE COUNTY
IDAHO

11 JAN 28 P4:42

Jeffrey D. Brunson, ISB No. 6996
John M. Avondet, ISB No. 7438
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, ID 83404-7495
Tel: (208) 523-5171
Fax: (208) 529-9732
Email: jeff@beardstclair.com
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa
Beguesse, Inc., an Idaho corporation, The
Estate of Christa Beguesse Rammell, by its
qualified personal representative, Kenneth
Rammell,

Defendants/Counterclaimants.

Case No.: CV-09-2767

ORDER RE: JANUARY 6, 2011
HEARING

This matter having come before the Court by means of the Plaintiff's Motion for
Reconsideration, and hearing the parties' arguments and good cause having been found:

IT IS HEREBY ORDERED that the motion is GRANTED and that the Plaintiff's
constructive fraud claims in Count 3 of the Amended Complaint are reinstated consistent
with the Court's findings as to Count 2 of the Amended Complaint.

RECEIVED
JAN 20 2011

DATED: January 25, 2011.


District Judge

CLERK'S NOTICE OF ENTRY

I certify that on January 28, 2011, I served a true and correct copy of the

ORDER RE: JANUARY 6, 2011 HEARING upon the following as indicated below:

David E. Alexander
Racine Olson Nye Budge Bailey
PO Box 1391
Pocatello, ID 83204-139
Fax: 232-6109

U.S. Mail Hand-Delivered Facsimile

Jeffrey D. Brunson
Beard St. Clair Gaffney
2105 Coronado Street
Idaho Falls, ID 83404
Fax: 529-9732

U.S. Mail Hand-Delivered Facsimile


Clerk of the Court

BONNEVILLE COUNTY
IDAHO

11 JAN 28 P4:42

Jeffrey D. Brunson, ISB No. 6996
John M. Avondet, ISB No. 7438
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, ID 83404-7495
Tel: (208) 523-5171
Fax: (208) 529-9732
Email: jeff@beardstclair.com
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa
Beguesse, Inc., an Idaho corporation, The
Estate of Christa Beguesse Rammell, by its
qualified personal representative, Kenneth
Rammell,

Defendants/Counterclaimants.

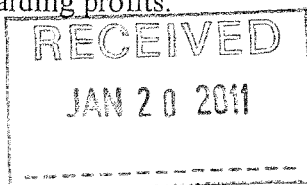
Case No.: CV-09-2767

ORDER REGARDING JANUARY 11,
2011 HEARING

This matter having come before the Court by means of Plaintiff's Motion in
Limine and Motion for Sanctions or, in the Alternative, for a Limited Continuance, and
having heard arguments and good cause having been shown,

IT IS HEREBY ORDERED that:

1. Plaintiff's motion in limine is granted. Mr. Masterson will not be allowed to
testify regarding value of the business. Mr. Masterson will be allowed to testify
regarding profits.



236 H

2. The current trial set for January 25, 2011 is vacated and will be rescheduled at a date convenient to the Court. Discovery will only be reopened on a limited basis to allow the Plaintiff to conduct discovery related to or arising out of the disclosure of the 1999 estate planning documents and to allow the Plaintiff to potentially bring additional claims against the Defendants. The Court will take the motion for attorney fees under advisement.

DATED: January 28, 2011.


Honorable Joel Tingey

CLERK'S CERTIFICATE OF SERVICE

I certify that on January 28 2011, I served a true and correct copy of ORDER

GRANTING MOTION FOR LIMITED CONTINUANCE upon the following as

indicated below:

David E. Alexander
Racine Olson Nye Budge Bailey
PO Box 1391
Pocatello, ID 83204-139
Fax: 232-6109

U.S. Mail Hand-Delivered Facsimile

Jeffrey D. Brunson
Beard St. Clair Gaffney PA
2105 Coronado Street
Idaho Falls, ID 83404
Fax: 529-9732

U.S. Mail Hand-Delivered Facsimile

Clerk of the Court

By: 
Deputy Clerk

236 J

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

11 FEB -9 A10:56

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

ORDER AND NOTICE
RESETTING JURY TRIAL
Case No. CV-09-2767

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure,
the following pre-trial schedule shall govern all proceedings in
this case:

I. IT IS HEREBY ORDERED:

1. A Pre-trial Conference is scheduled for September 13, 2011 at 8:30 a.m.
2. Jury trial is scheduled for 10:00 a.m. on September 27, 2011. Trial may go into a second week. In that case the second week of trial will continue on Tuesday, October 4, 2011.
3. All deadlines remain in effect as outlined in the prior Order.

DATED this 9 day of February, 2011.



JOEL E. TINSEY
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 9 day of February, 2011, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

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

APRIL BEGUESS, INC. an Idaho Corporation,)	
)	
Plaintiffs,)	Case No. CV-2009-2767
vs.)	
)	MINUTE ENTRY
KENNETH RAMMELL ET AL.,)	
)	
Defendant.)	
<hr style="border: 0.5px solid black;"/>		

February 10, 2011, a Defendant’s Motion in Limine came on for hearing before the Honorable Joel E. Tingey, District Judge, in open Court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Ms. Rhonda Quintana, Deputy Court Clerk, were present.

Mr. Jeffrey D. Brunson appeared on behalf of the plaintiff.

Mr. David E. Alexander appeared on behalf of the defendant.

Mr. Alexander addressed the Court in support of the motion and presented argument.

The Court inquired of counsel regarding calculation of damages for the plaintiff.

Mr. Alexander responded in clarification and offered further argument in support.

Mr. Brunson offered argument in opposition to the motion.

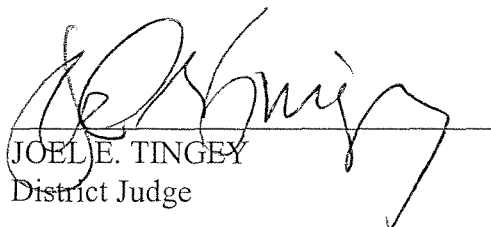
Mr. Alexander continued with argument in rebuttal.

The Court denied the motion but reopened discovery.

Mr. Brunson offered clarification regarding the deposition of the plaintiff regarding damages.

The Court so noted and admonished counsel to mediate.

Court was thus adjourned.



JOELLE TINGEY
District Judge

c: Jeffrey Brunson
David Alexander

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

MINUTE ENTRY

Case No. CV-09-2767

On the 22nd day of March, 2011, Plaintiff's motion to consolidate came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson appeared on behalf of the Plaintiff.

Mr. David Alexander appeared on behalf of the Defendants.

Mr. Brunson presented Plaintiff's motion to consolidate.

Mr. Alexander responded to the motion. Mr. Brunson presented rebuttal argument.

The Court will take the matter under advisement and issue a decision as soon as possible.

Court was thus adjourned.



JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 22 day of March, 2011, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

MS
Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

BONNEVILLE COUNTY
IDAHO

11 MAR 23 AIO:19

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

APRIL BEGUESSE, INC., an Idaho
Corporation,

Plaintiff/Counterdefendant,

vs.

KENNETH RAMMELL, an individual,
CHRISTA BEGUESSE, INC., an Idaho
Corporation, THE ESTATE OF CHRISTA
BEGUESSE RAMMELL, by it qualified
personal representative, Kenneth Rammell,

Defendants/Counterclaimant.

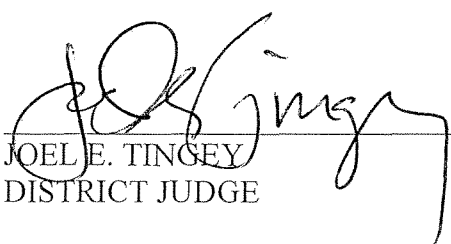
Case No. CV-09-2767

ORDER ON MOTION TO CONSOLIDATE

THIS MATTER is before the Court on Plaintiff's motion to consolidate this action with a probate action pending before the magistrate court. The Court, having reviewed the record and heard oral argument, and good cause appearing therefore;

IT IS HEREBY ORDERED that Plaintiff's motion to consolidate is denied. The Parties are however put on notice that this Court will not re-litigate issues addressed and determined by the magistrate court in the subject probate proceeding.

Dated this 23 day of March, 2011.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 23 day of March, 2011, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon, or by placement in the courthouse mailbox.

Jeffrey D. Brunson
BEARD ST. CLAIR GAFFNEY
2105 Coronado Street
Idaho Falls, ID 83404-7495

David E. Alexander
RACINE OLSON NYE BUDGE
P.O. Box 1391
Pocatello, ID 83204

Clerk of the District Court
Bonneville County, Idaho

By 
Deputy Clerk

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

MINUTE ENTRY

Case No. CV-09-2767

On the 21st day of April, 2011, Plaintiff's motion to amend complaint to add punitive damages came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson appeared on behalf of the Plaintiff.

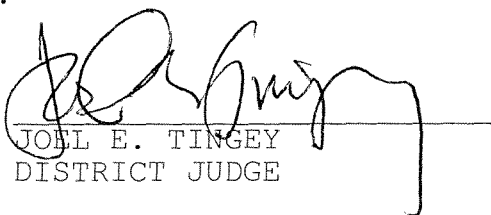
Mr. David Alexander appeared on behalf of the Defendants.

Mr. Brunson presented Plaintiff's motion to amend complaint.

Mr. Alexander responded to the motion. Mr. Brunson presented rebuttal argument.

The Court will take the matter under advisement and issue a decision as soon as possible.

Court was thus adjourned.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 21 day of April, 2011, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE

RLS
Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

BONNEVILLE COUNTY

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

11 APR 22 8:56

APRIL BEGUESSE, INC., an Idaho
Corporation,

Plaintiff/Counterdefendant,

vs.

KENNETH RAMMELL, an individual,
CHRISTA BEGUESSE, INC., an Idaho
Corporation, THE ESTATE OF CHRISTA
BEGUESSE RAMMELL, by it qualified
personal representative, Kenneth Rammell,

Defendants/Counterclaimant.

Case No. CV-09-2767

ORDER ON MOTION TO AMEND

THIS MATTER is before the Court on Plaintiff's motion to amend the complaint to include a claim for punitive damages. Following the hearing on the motion, the Court took the motion under advisement. Having reviewed the record, and weighed the evidence in the record, the Court finds that there is a reasonable likelihood of prevailing on a claim of fraud. Accordingly, Plaintiff's motion to amend the complaint to include a claim of punitive damages is granted. The Court reserves the right to make a determination at a later date as to whether the issue of punitive damages will be submitted to the jury.

IT IS SO ORDERED.

Dated this 22 day of April, 2011.



JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 22 day of April, 2011, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon, or by placement in the courthouse mailbox.

Jeffrey D. Brunson
BEARD ST. CLAIR GAFFNEY
2105 Coronado Street
Idaho Falls, ID 83404-7495

David E. Alexander
RACINE OLSON NYE BUDGE
P.O. Box 1391
Pocatello, ID 83204

Clerk of the District Court
Bonneville County, Idaho

By ms
Deputy Clerk

BONNEVILLE COUNTY

11 MAY 10 AM 8:20

Jeffrey D. Brunson, ISB No. 6996
 John M. Avondet, ISB No. 7438
 BEARD ST. CLAIR GAFFNEY PA
 2105 Coronado Street
 Idaho Falls, ID 83404-7495
 Tel: (208) 523-5171
 Fax: (208) 529-9732
 Email: jeff@beardstclair.com
 javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
 BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff,

vs.

Kenneth Rammell, an individual, Christa
 Beguesse, Inc., an Idaho corporation, The
 Estate of Christa Beguesse Rammell, by its
 qualified personal representative, Kenneth
 Rammell,

Defendants.

Case No.: CV-09-2767

SECOND AMENDED COMPLAINT
 AND JURY DEMAND

Plaintiff, April Beguesse, Inc., through its attorneys, alleges and complains
 against the Defendants as follows.

PARTIES

1. April Beguesse, Inc. (ABI) is an Idaho Corporation set up under the laws of
 the State of Idaho.

2. Kenneth Rammell (Rammell) is an individual residing in Bonneville County,
 Idaho.

3. Christa Beguesse, Inc. (CBI) is an Idaho Corporation set up under the laws of the State of Idaho.

4. The Estate of Christa Beguesse Rammell, by its personal representative, Kenneth Rammell, filed an application for informal probate in Bonneville County, Idaho on March 11, 2009, Case No. CV-09-1682.

JURISDICTION AND VENUE

5. This Court has jurisdiction over the Defendants pursuant to Idaho Code § 5-514.

6. Bonneville County is the proper venue for this action under Idaho Code § 5-404.

GENERAL ALLEGATIONS

7. In November 2001, April Beguesse (April) was contacted by her mother, Christa Beguesse (Christa), regarding the possibility of April taking over Christa's business, CBI. April traveled to Idaho Falls to discuss the possibility with Christa and Rammell.

8. CBI was in the type setting business.

9. April believed that Christa was the sole owner of CBI. Christa had been running her business for years before she married Rammell.

10. Rammell and Christa were both officers and directors in CBI.

11. Rammell and Christa told April that she could purchase and take over the business.

12. Rammell and Christa represented to April that CBI had a guaranteed self-sustaining contract with a customer.

13. Rammell and Christa represented to April that CBI owned a library of

proprietary files valued at over \$1,000,000.

14. Rammell and Christa represented to April that CBI owned a proprietary software program unique to CBI's business.

15. Rammell and Christa represented that CBI owned intellectual property.

16. Rammell and Christa indicated that they would sell the business for \$12,000 a month for eight years.

17. Rammell stated that they were being very generous and that April would be a fool not to accept the offer.

18. Initially, April worked for CBI as an employee.

19. In November 2003, April formed ABI.

20. Both Rammell and Christa indicated on many occasions that the assets of CBI would be left to April when Christa died.

21. In February 2004, ABI commenced making monthly payments to CBI for \$12,000 month.

22. ABI took ownership of all past and current debts of CBI and started operating the business. ABI paid all the bills including the monthly rent to a third party.

23. ABI purchased all new computers, printers, scanners, phone system, updated programs and hardware and updated the office furniture.

24. Rammell indicated that he had a contract that his brother had used for his business that Rammell had altered.

25. Christa had Rammell remove a clause in the contract that stated in the case of Christa's death payments would continue.

26. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.

27. Rammell and Christa represented to April that the payments would cease after Christa's death.

28. Rammell and Christa repeatedly made the representations alleged in the previous paragraphs.

29. Based on the representations of Rammell and Christa, April ultimately signed a document entitled "lease agreement". The purported agreement is between CBI and ABI and made effective January 1, 2004.

30. The purported agreement provides:

BUSINESS AND EQUIPMENT. For and in consideration of the promises set forth in this Lease and the payment of the rents specified in this Lease, Lessor leases, demises and rents unto the Lessee, and Lessee leases, demises and rents from Lessor, that certain business described in Exhibit 'A' attached hereto (the 'Business'), that certain equipment described in Exhibit 'B' attached hereto. (Such business and equipment identified in Exhibits 'A' and 'B', shall collectively be referred to herein as 'the Property', unless otherwise indicated.

31. Exhibits A and B attached to the purported agreement were completely blank.

32. The purported agreement required CBI to provide consulting services to ABI.

33. ABI continued making monthly payments to CBI in an amount of \$12,000 until November 1, 2008.

34. ABI also paid Christa for consulting and professional services.

35. On November 10, 2008, Christa died.

36. No will was discovered leaving CBI's assets to April.

37. A holographic paragraph was produced by Rammell that states all of Christa's possessions go to Rammell.

38. After visiting an attorney after her mother's death, April learned for the first time that the representations made by Rammell and Christa alleged in the previous paragraphs were false.

39. There was no guaranteed contract with a major customer. Rather, the customer could leave at any time.

40. The library referenced by Rammell and Christa is actually owned by the customer.

41. The referenced proprietary software program was a software program that could be purchased off the shelf.

42. On March 1, 2009, April moved to Nevada.

43. On March 11, 2009, Rammell applied for informal probate for Christa's estate in Bonneville County, Idaho, Case No. CV-09-1682.

44. On April 13, 2009, Christa's estate on behalf of CBI filed a complaint against ABI and April individually in Clark County, Nevada, Case No. A587645. The Nevada complaint seeks to enforce the purported agreement.

45. The Nevada case was dismissed.

COUNT ONE: DECLARATORY RELIEF

46. ABI incorporates and realleges all previous paragraphs.

47. Critical portions to the purported lease contract between ABI and CBI were left blank.

48. ABI and CBI did not form a lease contract because there was never mutual assent.

49. ABI and CBI did not form a lease contract because the purported agreement is missing essential terms.

50. ABI and CBI never contemplated a lease of the business but rather contemplated a purchase of certain CBI assets.

51. This Court has the power to declare that there is no lease contract between

ABI and CBI pursuant to Idaho Code § 10-1201.

52. ABI is an interested person as defined by Idaho Code § 10-1202.

53. This Court should declare that:

- a. ABI is under no continuing obligation to make payments to CBI;
- b. Monies previously paid by ABI to CBI should be refunded to ABI; and
- c. There is no enforceable lease contract between ABI and CBI.

54. Alternatively, the lease contract should be reformed to meet the intent of parties.

55. To the extent the Court finds an enforceable contract, the contract should be rescinded due to the defendants' fraudulent conduct and all monies paid should be refunded.

56. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT TWO: FRAUD

57. ABI incorporates and realleges all previous paragraphs.

58. The defendants acting individually and on behalf of CBI made numerous representations to ABI and April including but not limited to the following:

- a. Rammell and Christa represented to April that CBI had a guaranteed self-sustaining contract with a major customer.
- b. Rammell and Christa represented to April that CBI owned a library of proprietary files valued at over \$1,000,000.
- c. Rammell and Christa represented to April that CBI owned a proprietary software program unique to CBI's business.

Second Amended Complaint and Jury Demand Page 6

- d. Rammell and Christa represented that there was intellectual property unique to CBI.
- e. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.
- f. Rammell and Christa represented to April that the payments would cease after Christa's death.

59. The defendants failed to disclose that:

- a. There was no guaranteed contract and that the major customer could leave at any time for any reason.
- b. The library of proprietary files was in fact owned by the major customer and not CBI.
- c. That the software program utilized by CBI could be purchased off the shelf.
- d. That CBI did not own any intellectual property.
- e. That Rammell was an owner of CBI.

60. The statements and omissions of the defendants were false.

61. The statements and omissions of the defendants were material.

62. The defendants knew the statements and omissions were false.

63. The defendants intended that ABI rely on the false statements and omissions.

64. ABI and April did not know the statements and omissions were false.

65. ABI relied on the statements and omissions by signing the purported agreement and by paying \$12,000 a month to CBI from February 2004 to November 2008.

66. Such reliance by ABI was justifiable.

Second Amended Complaint and Jury Demand Page 7

243

67. As a result of the defendants' false statements and omissions, ABI has been damaged in an amount to be proven at trial.

68. The defendants' conduct constitutes affirmative fraud, fraud by omission, and fraud in the inducement.

69. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT THREE: CONSTRUCTIVE FRAUD

70. ABI incorporates and realleges all previous paragraphs.

71. The defendants and ABI had a relationship of trust and confidence because Christa, Rammell, and April were members of the same family and CBI and ABI were in contractual negotiations and ultimately signed an agreement.

72. The defendants breached this relationship of trust and confidence.

73. ABI is not required to establish that the defendants' knew their statement and omissions were false or that the defendants intended ABI rely on their false statements and omissions.

74. The defendants conduct constitutes constructive fraud.

75. As a result of the defendants' conduct, ABI has been damaged in an amount to be proven at trial.

76. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT FOUR: BREACH OF CONTRACT

77. ABI incorporates and realleges all previous paragraphs.

78. The defendants promised to sell or assign several assets of CBI to ABI in exchange for payment of \$12,000/month.

79. These assets include but are not limited to:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary files valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

80. The parties' exchange of promises constitutes a binding contract.

81. ABI substantially performed its obligations under the contract and is not in material breach.

82. The defendants materially breached the contract by failing to provide the agreed upon assets and failing to provide consulting services required under the contract.

83. The defendants conduct constitutes a failure of consideration.

84. The defendants conduct also constitutes a breach of the implied covenant of good faith and fair dealing.

85. The defendants' material breaches are the direct and proximate cause of damages to ABI.

86. ABI has suffered damages in an amount to be proven at trial.

87. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT FIVE: BREACH OF EXPRESS WARRANTY

88. ABI incorporates and realleges all previous paragraphs.

89. ABI and the defendants entered a contract for the sale of CBI's assets.

90. ABI substantially performed its obligations under the contract.

91. As part of the contract the defendants expressly represented and warranted that CBI could transfer the following assets:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary files valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

92. This warranty was a material term of the contract and its breach constitutes a material breach of the contract.

93. Pursuant to Idaho Code § 28-2-312, in every contract for sale there is a warranty of title that the title is good and its transfer is rightful.

94. Pursuant to Idaho Code §§ 28-2-313, 28-12-210, any affirmation of fact or promise made by the seller or lessor to the buyer or lessee, which relates to the goods and becomes part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

95. Pursuant to Idaho Code § 28-2-313, any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

96. Pursuant to Idaho Code § 28-12-211, there is a warranty that no other person holds a claim to or interest in the goods.

97. Contrary to the defendants' warranties, CBI could not transfer the assets because such assets did not exist or were not owned by CBI and the assets transferred, if any, did not conform.

98. The breach of warranty is the direct and proximate cause of damages to ABI.

99. ABI has suffered damages in an amount to be proven at trial.

100. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT SIX: BREACH OF IMPLIED WARRANTY

101. ABI incorporates and realleges all previous paragraphs.

102. ABI and the defendants entered a contract for the sale of CBI's assets.

103. ABI substantially performed its obligations under the contract.

104. As part of the contract the defendants impliedly warranted that CBI could transfer the following assets:

- a. a guaranteed contract with a major customer;
- b. a library of proprietary files valued at over a million dollars;
- c. a proprietary software program unique to CBI's business;
- d. other intellectual property.

105. This warranty was a material term of the contract and its breach constitutes a material breach of the contract.

106. As part of the contract, the defendants impliedly warranted that the assets to be transferred would be merchantable, that is to say that it would pass without objection in the trade under the contract description; that it would be fit for the ordinary purpose of such goods; and that it would conform to the promises or affirmations of fact made.

107. As part of the contract the defendants impliedly warranted that the assets was fit for a particular purpose, that is to say that the defendants knew the purpose for which ABI intended it and that the ABI was relying upon the defendants to furnish the

assets, and warranted thus impliedly warranted that the assets were suitable for that purpose.

108. Contrary to the defendants' warranties, CBI could not transfer the assets because such assets did not exist or were not owned by CBI and such assets did not conform or were not suitable for ABI's purposes.

109. The breach of warranty is the direct and proximate cause of damages to ABI.

110. ABI has suffered damages in an amount to be proven at trial.

111. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT SEVEN: UNJUST ENRICHMENT

112. ABI incorporates and realleges all previous paragraphs.

113. ABI provided a benefit to the defendants by paying \$12,000 a month from February 2004 to November 2008.

114. Because ABI did not get what was promised, it would be unjust for CBI to retain the benefit.

115. As a result of defendants' conduct, ABI has been damaged in an amount to be proven at trial.

116. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT EIGHT: QUASI-ESTOPPEL

117. ABI incorporates and realleges all previous paragraphs.

118. The defendants took the position that April would no longer make any payments after Christa's death.

119. Christa had Rammell remove a clause in the contract that stated in the case of Christa's death payments would continue.

120. Rammell and Christa represented to April that CBI's assets would be bequeathed to her after Christa died.

121. Rammell and Christa represented to April that the payments would cease after Christa's death.

122. On November 10, 2008, Christa died.

123. No will was discovered leaving CBI's assets to April or ABI.

124. A holographic paragraph was produced by Rammell that states all of Christa's possessions go to Rammell.

125. ABI relied on the representations to its disadvantage.

126. It would be unconscionable to allow the defendants to maintain the inconsistent position that payments were to continue after Christa's death.

127. The defendants should be estopped from claiming that the payments must continue.

128. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

COUNT NINE: PUNITIVE DAMAGES

129. ABI incorporates and realleges all previous paragraphs.

130. The acts of the defendants constitute liability for fraud resulting from intentional, reckless, extreme, and outrageous conduct.

131. The defendants acted fraudulently with their misrepresentations to ABI about whether payments would cease upon Christa's death, representations made about the library of files, representing the status of the alleged proprietary software that was "transferred" to ABI as a part of the transaction, misrepresenting or failing to disclose the status of Ken Rammell's ownership interest in CBI, and their intentional failure to disclose and mislead ABI about the existence of various estate planning documents.

132. As a result of liability, resulting from intentional, reckless, extreme, and outrageous conduct, ABI is entitled to an award of punitive damages in an amount to be determined at trial.

133. ABI has been required to retain Beard St. Clair Gaffney PA in order to protect its rights. ABI is entitled to attorney fees pursuant to agreement, Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.

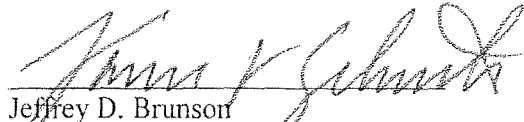
PRAYER FOR RELIEF

The Plaintiff prays for relief as follows:

1. Judgment against the defendants in an amount to be proven at trial.
2. A declaration that:
 - a. ABI is under no continuing obligation to make payments to CBI;
 - b. Monies previously paid by ABI to CBI should be refunded to ABI; and
 - c. There is no enforceable lease contract between ABI and CBI.
3. An order estopping the defendants from claiming payments should continue.
4. An award of attorney fees and costs pursuant to agreement Idaho Code §§ 12-120 and 12-121, Idaho Rule of Civil Procedure 54, or any other statute or provision.
5. An award of punitive damages in an amount to be determined at trial.
6. Any other relief the Court deems just and proper.

PURSUANT TO RULE 38 OF THE IDAHO RULES OF CIVIL PROCEDURE,
PLAINTIFF DEMANDS TRIAL BY JURY

Dated: May 9, 2011.

for 
Jeffrey D. Brunson
BEARD ST. CLAIR GAFFNEY PA
Attorney for Plaintiff

CERTIFICATE OF SERVICE

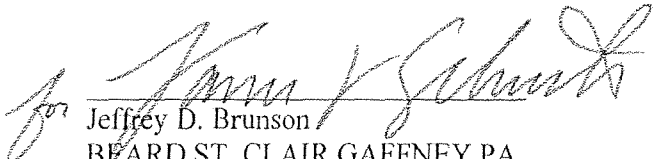
I certify that I am an attorney licensed in the State of Idaho, have my office located in Idaho Falls, Idaho and on May 9, 2011, I served a true and correct copy of the Second Amended Complaint and Jury Demand upon the following as indicated below:

David E. Alexander
Racine Olson Nye Budge Bailey
PO Box 1391
Pocatello, ID 83204-139
Fax: 232-6109

U.S. Mail Hand-Delivered Facsimile

Bonneville County Courthouse
605 N Capital Avenue
Idaho Falls, ID 83402
Fax: 529-1300

U.S. Mail Hand-Delivered Facsimile


Jeffrey D. Brunson
BEARD ST. CLAIR GAFFNEY PA
Attorney for Plaintiff

Jeffrey D. Brunson, ISB No. 6996
 John M. Avondet, ISB No. 7438
 BEARD ST. CLAIR GAFFNEY PA
 2105 Coronado Street
 Idaho Falls, ID 83404-7495
 Tel: (208) 523-5171
 Fax: (208) 529-9732
 Email: jeff@beardstclair.com
 javondet@beardstclair.com

BONNEVILLE COUNTY
 IDAHO
 11 SEP -7 A9:44

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
 BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa
 Beguesse, Inc., an Idaho corporation, The
 Estate of Christa Beguesse Rammell, by its
 qualified personal representative, Kenneth
 Rammell,

Defendants/Counterclaimants.

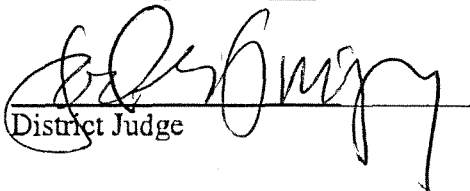
Case No.: CV-09-2767

ORDER SHORTENING TIME

This matter having come before this Court by and through the Motion to Shorten
 Time, and good cause having been shown:

IT IS HEREBY ORDERED that the hearing on the Motion for Protective Order
 shall be heard on Tuesday, September 13, 2011 at 8:30 a.m.

DATED: September 7, 2011.


 District Judge

REC'D
 SEP 06 2011

Order Shortening Time Page 1

252 A

CLERK'S NOTICE OF ENTRY

I certify that on September 7, 2011, I served a true and correct copy of the
ORDER SHORTENING TIME on the following by the method of delivery designated

below:

David E. Alexander
Racine Olson Nye Budge Bailey
PO Box 1391
Pocatello, ID 83204-139
Fax: 232-6109

U.S. Mail Hand-delivered Facsimile

Jeffrey D. Brunson
Beard St. Clair Gaffney PA
2105 Coronado Street
Idaho Falls, ID 83404
Fax: 529-9732

U.S. Mail Hand-delivered Facsimile

Clerk of the Court

2011 SEP -8 PM 4: 12

Jeffrey D. Brunson, ISB No. 6996
John M. Avondet, ISB No. 7438
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, ID 83404-7495
Tel: (208) 523-5171
Fax: (208) 529-9732
Email: jeff@beardstclair.com
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Plaintiff/Counterdefendant,

vs.

Kenneth Rammell, an individual, Christa
Beguesse, Inc., an Idaho corporation, The
Estate of Christa Beguesse Rammell, by its
qualified personal representative, Kenneth
Rammell,

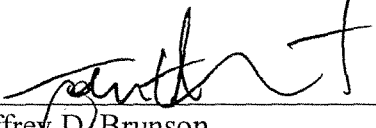
Defendants/Counterclaimants.

Case No.: CV-09-2767

PLAINTIFF'S PROPOSED JURY
INSTRUCTIONS

COMES NOW the Plaintiff, by and through its counsel of record, Jeffrey D. Brunson and the law firm, Beard St. Clair Gaffney PA, and submits the following proposed jury instructions.

DATED: September 8, 2011.



Jeffrey D. Brunson
John M. Avondet
Of Beard St. Clair Gaffney PA
Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

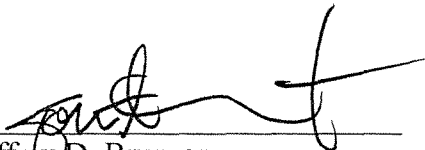
I certify that I am an attorney licensed in the State of Idaho, have my office located in Idaho Falls, Idaho and on September 8, 2011, I served a true and correct copy of PLAINTIFF'S PROPOSED JURY INSTRUCTIONS upon the following as indicated below:

David E. Alexander
Racine Olson Nye Budge Bailey
PO Box 1391
Pocatello, ID 83204-139
Fax: 232-6109

U.S. Mail Hand-Delivered Facsimile

Bonneville County Courthouse
605 N Capital Avenue
Idaho Falls, ID 83402
Fax: 529-1300

U.S. Mail Hand-Delivered Facsimile



Jeffrey D. Brunson
John M. Avondet
Of Beard St. Clair Gaffney PA
Attorneys for the Plaintiff

IDJI 1.20.1 – Burden of proof – preponderance of evidence

INSTRUCTION NO. 1

When I say that a party has the burden of proof on a proposition, or use the expression "if you find" or "if you decide," I mean you must be persuaded that the proposition is more probably true than not true.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 2

One of the named defendants in this case is The Estate of Christa Beguesse Rammell. Statements made by Christa Beguesse Rammell are attributable to The Estate of Christa Beguesse Rammell for purposes of this trial.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 1.20.2 – Burden of proof – clear and convincing evidence

INSTRUCTION NO. 3

When I say a party has the burden of proof on a proposition by clear and convincing evidence, I mean you must be persuaded that it is highly probable that such proposition is true. This is a higher burden than the general burden that the proposition is more probably true than not true.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 1.22 – Deposition testimony (Modified)

INSTRUCTION NO. 4

Certain evidence is about to be presented to you by deposition. A deposition is testimony taken under oath before the trial and preserved in writing. This evidence is entitled to the same consideration you would give had the witness testified from the witness stand.

You will only receive this testimony in open court. Although there is a record of the testimony you are about to hear, this record will not be available to you during your deliberations.

Comment:

The last sentence has been added to IDJI 124 to anticipate inquiry from the jury.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 1.24.1 – Circumstantial evidence without definition

INSTRUCTION NO. 5

Evidence may be either direct or circumstantial. The law makes no distinction between direct and circumstantial evidence. Each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 1.28 – Evidence admitted for limited purpose

INSTRUCTION NO. 6

In this case, certain evidence was admitted for a limited purpose. I called your attention to this when the evidence was admitted. I remind you that whenever evidence was admitted for a limited purpose, you must not consider such evidence for any purpose other than the limited purpose for which it was admitted.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 7

The plaintiff has the burden of proving each of the following propositions by clear and convincing evidence:

1. That the defendant stated a fact to the plaintiff;
2. The statement was false;
3. The statement was material;
4. The defendant either knew the statement was false or was unaware of whether the statement was true at the time the statement was made.
5. The plaintiff did not know that the statement was false;
6. The defendant intended for the plaintiff to rely upon the statement and act upon it in a manner reasonably contemplated;
7. The plaintiff did rely upon the truth of the statement;
8. The plaintiff's reliance was reasonable under all the circumstances;
9. The plaintiff suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to the plaintiff, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for the plaintiff on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has

not been proved by clear and convincing evidence, then your verdict should be for the defendant.

Comment:

A definition of materiality can be found in IDJI 6.08.5.

See Samuel v. Hepworth, Nungester & Lezamiz, Inc., 134 Idaho 84, P.2d 303 (2000); Watts v. Krebs, 131 Idaho 616, 962 P.2d 387 (1998); Magic Lantern Prods. Inc. v. Dolsot, 126 Idaho 805, 892 P.2d 480 (1995).

See also, Witt v. Jones, 111 Idaho 477, 722 P.2d 474 (1986); Umphey v. Sprinkel, 106 Idaho 700, 682 P.2d 1247 (1983); Faw v. Greenwood, 101 Idaho 387, 613 P.2d 1338 (1980); Smith v. King, 100 Idaho 331 597 P.2d 217 (1979); King v. McNeel, Inc., 94 Idaho 444, 489 P.2d 1324.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.01.1 – Elements of contract – introductory (*Modified*)

INSTRUCTION NO. 8

A contract is an agreement between two or more parties to do or not do something that is supported by consideration.

There are four elements to complete a contract. Every contract must have these four elements. The four elements are:

1. Competent parties;
2. A lawful purpose;
3. Valid consideration; and
4. Mutual agreement by all parties to all essential terms.

Comment:

The committee recommends that this instruction be used only where the jury actually needs a "lecture on contracts" The detailed instruction should usually be unnecessary, as only specific issues in dispute need be covered.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.05.2 – Material terms - offer and acceptance (*Modified*)

INSTRUCTION NO. 9

A contract may consist of an offer by one party that is accepted by another party.

An offer is any proposal that is intended to become binding upon the party making the offer if it is accepted by the party to whom it is directed.

An acceptance of an offer is an expression by the party to whom the offer was directed that accepts the offer in accordance with the terms of the offer.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.06.1 – Contract may be written or oral

INSTRUCTION NO. 10

A contract may be written or oral, or may contain both written terms and oral terms. So long as all the required elements are present, it makes no difference whether the agreement is in writing.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.06.5 – Oral contracts are binding

INSTRUCTION NO. 11

An oral agreement that contains all of the elements of a contract is a

binding contract.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.08.1 – Interpretation of contracts - intention of parties (*Modified*)

Note: The court must first decide whether determination of the intent of the parties is properly a jury issue. If it is not, obviously the instruction would not be given. Should the court determine that issue is properly before the jury, the following instruction may be appropriate:

INSTRUCTION NO. 12

The terms of the contract are in dispute as to the following provisions:

- Whether the defendants agreed to provide ABI with a library of files worth over one million dollars;
- Whether the defendants agreed to provide ABI with proprietary software owned by CBI;
- Whether the defendants agreed that payments by ABI would cease upon the death of Christa Beguesse.

You must determine what was intended by the parties as evidenced by the contract in this case. In making this determination you should consider, from the evidence, the following:

1. Any communications, conduct or dealings between the contracting parties showing what they intended and how they construed the doubtful language may be considered, provided that such may not completely change the agreement or construe one term inconsistently with the remainder of the terms.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.08.4 – Interpretation of contract - definition of material fact

INSTRUCTION NO. 13

A "material fact" is one which constitutes substantially the
consideration of the contract, or without which it would not have been made.

Comments:

Black's Law Dictionary (West Pub; Fifth Ed., 1979)

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.08.5 – Interpretation of contract - materiality

INSTRUCTION NO. 14

"Materiality" refers to the importance of the representation in determining the party's course of action. A representation is material if (a) a reasonable person would attach importance to its existence or nonexistence in determining a choice of action in the transaction in question, or (b) the maker of the representation knows or has reason to know that the recipient is likely to regard the matter as important in determining the choice of action, whether or not a reasonable person would so consider.

Comments:

Watts v. Krebs, 131 Idaho 616 (1998) (tort standard, referring to Restatement (Second) of Torts, Sections 538(2).)

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.09.1 – Amendments to contracts

INSTRUCTION NO. 15

A contract may be amended or modified by an agreement of the parties. This requires all of the elements of any other contract.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.10.1 – Breach of bilateral contract – general case – no affirmative defenses

INSTRUCTION NO. 16

The plaintiff has the burden of proving each of the following propositions:

1. A contract existed between plaintiff and defendant;
2. The defendant breached the contract;
3. The plaintiff has been damaged on account of the breach; and
4. The amount of the damages.

If you find from your consideration of all the evidence that each of the propositions required of the plaintiff has been proved, then you must consider the issue of the affirmative defenses raised by the defendant, and explained in the next instruction. If you find from your consideration of all the evidence that any of the propositions in this instruction has not been proved, your verdict should be for the defendant.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.11 – Material breach

INSTRUCTION NO. 17

A “material breach of contract,” as that term is used in these instructions, means a breach that defeats a fundamental purpose of the contract.

Comments:

Ervin Const. v. Van Orden, 125 Id. 695, 699 (1993)

Plaintiff’s Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.27.1 – Fraud (*Modified*)

INSTRUCTION NO. 18

To establish the defense of fraud, ABI has the burden proving by clear and convincing evidence each of the following propositions:

1. The defendants made a representation of a past or present fact;
2. The representation was false;
3. The represented fact was important;
4. The defendants knew the representation was false (or acted with a reckless disregard of the truth of the representation);
5. ABI was not aware of the falsity of the representation;
6. The defendants intended that ABI rely upon the representation in agreeing to enter into the contract;
7. ABI did rely upon the representation;
8. ABI's reliance was justified.

If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for ABI.

Comment:

Materiality is defined in Instruction 6.08.5

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 19

An action in constructive fraud exists when there has been a breach of a duty arising from a relationship of trust and confidence, as in a fiduciary duty. Examples of relationships from which the law imposes fiduciary obligations on the parties include when the parties are members of the same family and business partners. ABI has alleged that the defendants committed constructive fraud. ABI is not required to prove that the defendants had (1) knowledge of falsity of the representations made and (2) intent to induce reliance, since it is inferred directly from the relationship and the breach.

In proving a claim for constructive fraud, ABI has the burden proving by clear and convincing evidence each of the following propositions:

1. The defendants made a representation of a past or present fact;
2. The representation was false;
3. The represented fact was important to ABI;
4. ABI was not aware of the falsity of the representation;
5. ABI did rely upon the representation;
6. ABI's reliance was justified.
7. Damages

If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for ABI.

Taylor v. McNichols, 149 Idaho 826, 846 (Idaho 2010); *Country Cove Dev., Inc. v. Myron*, 143 Idaho 595, 601, 150 P.3d 288, 294 (2006).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 6.27.3 - Defense of non-disclosure (Modified)

INSTRUCTION NO. 20

A party is not obligated to perform a contract if that party establishes the defense of nondisclosure. To establish the defense of non-disclosure, ABI has the burden of proving each of the following propositions by clear and convincing evidence.

1. The defendants were aware of a fact vital to the essence of the contract;
2. ABI was unaware of the fact, and could not reasonably learn of it;
3. The defendants knew that ABI was unaware of the true fact and knew that disclosure of the true fact would correct a basic assumption upon which ABI was making the contract;
4. The defendants did not disclose the fact to ABI, intending that ABI would act in ignorance of the fact;
5. The failure to disclose the true fact amounts to a failure to act in good faith and in accordance with reasonable standards of fair dealing; [and]
6. ABI entered into the contract upon the reasonable assumption that the non-disclosed fact did not exist.

If you find from your consideration of all the evidence in the case that each of the foregoing propositions has been proved, your verdict should be for ABI.

Comment:

There is not definitive Idaho authority on point. This instruction is felt to be superior to the previous IDJI 651. *See*, Restatement (Second) of Contracts, Section 161; *obiter dicta* in Janinda v. Lanning, 87 Idaho 97 (1964).

The subject of duty to speak was tangentially addressed in Bethlahmy v. Bechtel, 91 Idaho 55, and Tusch Enterprises v. Coffin, 113 Idaho 37, with references to Restatement (Second) of Torts, Section 551. The committee feels the above instruction is consistent with those cases and the tort restatement, although cast in light of the Restatement of Contracts provisions.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 9.00 – Cautionary instruction on damages

INSTRUCTION NO. 21

By giving you instructions on the subject of damages, I do not

express any opinion as to whether the plaintiff is entitled to damages.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 9.03 – Damages for breach of contract – general format (Modified)

INSTRUCTION NO. 22

If the jury decides the plaintiff is entitled to recover from the defendant, the jury must determine the amount of money that will reasonable and fairly compensate the plaintiff for any of the following elements of damages proved by the evidence to have resulted from the defendant's conduct:

- The amounts paid by ABI to the defendants until the date of Christa Beguesse's death;
- The difference between the real value of the property purchased and that value which it would have had the representations been true.

Whether any of these elements of damage has been proved is for you to determine.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 23

Fraud may be established by silence when a defendant had a duty to speak.

Chiarella v. United States, 445 U.S. 222 (1980).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 24

A duty to speak “arises in situations where the parties do not deal on equal terms or where information to be conveyed is not already in possession of the other party.”

G&M Farms v. Funk Irr. Co., 119 Idaho 514, 808 P.2d 851 (1991).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 25

Fraud may be proved by direct or circumstantial evidence.

Idaho State Tax Comm'n v. Hautzinger, 137 Idaho 401, 404, 49 P.3d 206, 409 (2002).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 26

A party is under a duty to disclose if a fact known by one party and not the other is so vital that if the mistake were mutual the contract would be voidable, and the party knowing the fact also knows that the other does not know it.

Sowards v. Rathbun, 8 P.3d 1245 (Idaho 2000).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 2.30.2 – Proximate cause – “substantial factor,” without "but for" test. (Modified)

INSTRUCTION NO. 27

When I use the expression "proximate cause," I mean a cause that, in natural or probable sequence, produced the injury, the loss or the damage complained of. It need not be the only cause. It is sufficient if it is a substantial factor in bringing about the injury, loss or damage. It is not a proximate cause if the injury, loss or damage likely would have occurred anyway.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 9.13 – Present cash value

INSTRUCTION NO. 28

When I use the phrase “present cash value” as to any damage that may accrue in the future, I mean that sum of money determined and paid now which, when invested at a reasonable rate of interest, would be sufficient to pay the future damages at the time and in the amount the future damages will be incurred.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

IDJI 9.14 – Mitigation of damages

INSTRUCTION NO. 29

A person who has been damaged must exercise ordinary care to minimize the damage and prevent further damage. Any loss that results from a failure to exercise such care cannot be recovered.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 30

When considering a claim for constructive fraud, there is no need for the plaintiff to have proved the defendants' intent, i.e., knowledge of falsity or intent to induce reliance, since it is inferred directly from the relationship and the breach."

Country Cove Dev., Inc. v. Myron, 143 Idaho 595, 601, 150 P.3d 288, 294 (2006).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 31

The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

Powers v. Am. Honda Motor Co., 139 Idaho 333, 335 (Idaho 2003)

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 32

When a buyer has goods that do not conform to express or implied warranties, the buyer keeps the goods and sues for the difference in the value of the goods as received and the value of the goods as warranted plus, in a proper case, any incidental damages and consequential damages.

Powers v. Am. Honda Motor Co., 139 Idaho 333, 335 (Idaho 2003)

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 33

ABI asserts that the defendants warranted that CBI could transfer to ABI certain assets including a library of proprietary files valued at over one million dollars and a proprietary software program unique to CBI's business.

A warranty is defined as a promise that something in furtherance of the contract is guaranteed by one of the contracting parties.

BLACK'S LAW DICTIONARY 7th Ed. 1581 (1999)

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 34

In every contract for sale there is a warranty of title that the title of the goods is good and the transfer rightful.

Idaho Code § 28-2-312.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 35

Any affirmation of fact or promise made by a seller to a buyer, which relates to the goods and becomes a part of the basis of the bargain creates an express warranty that the goods shall conform to the affirmation or promise.

Idaho Code § 28-2-313.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 36

Any description of the goods which is made part of the basis of the bargain creates an express warranty that the goods shall conform to the description.

Idaho Code Ann. § 28-2-313.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 37

There is a warranty that no other person holds a claim to or interest in the goods
as a matter of law.

Idaho Code Ann. § 28-12-211

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 38

Warranties may be express or implied.

An express warranty is a warranty created by words or actions of the seller.

Express warranties may be created by affirmations of fact or promises made by the seller to the buyer relating to the goods that becomes the basis of the bargain; (2) a description of the goods that becomes part of the basis of the bargain; or (3) a sample or model made part of the basis of the bargain.

An implied warranty arises because of the circumstances of the sale rather than a seller's express promise.

Idaho Code § 28-2-313; Black's Law Dictionary 7th Ed. 1582 (1999)

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 39

If you find by a preponderance of the evidence that the defendants expressly warranted that they were transferring a library of proprietary files valued over one million dollars and/or a proprietary software program unique to CBI's business to ABI, then your verdict should be for ABI.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 40

If you find by a preponderance of the evidence that the defendants did not have title to a library of proprietary files valued over one million dollars and/or a proprietary software program unique to CBI's business, then your verdict should be for ABI.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 41

ABI asserts that the defendants impliedly warranted that the assets to be transferred would be merchantable. This implied warranty means that the property is fit for the ordinary purpose for which it is used and that it would conform to the promises or affirmations of fact made by the defendants.

If you find by a preponderance of the evidence that the defendants impliedly warranted that the library of files and the proprietary software were warranted for a as merchantable, then your verdict should be for ABI.

Black's Law Dictionary 7th Ed. 1582 (1999)

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 42

ABI asserts that the defendants impliedly warranted that the assets were fit for a particular purpose. An implied warranty of fitness for a particular purpose means that if a seller has reason to know of the buyer's special purpose for the property, that the property is suitable for those purposes.

If you find by a preponderance of the evidence that the defendants impliedly warranted that the library of files and the proprietary software were warranted for a particular purpose, then your verdict should be for ABI.

Idaho Code § 28-2-315; Black's Law Dictionary 7th Ed. 1582 (1999).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 43

The term “consequential damages” is defined as losses that do not flow directly and immediately from an injurious act, but that result indirectly from the act.

Black’s Law Dictionary 7th Ed. 394 (1999).

Plaintiff’s Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 44

The term “incidental damages” is defined as “losses reasonably associated with or related to actual damages.”

Black’s Law Dictionary 7th Ed. 395 (1999).

Plaintiff’s Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 45

In order to prevail in a misappropriation action under the Idaho Trade Secrets Act, the defendants must show that a trade secret actually existed. Without a proven trade secret there can be no misappropriation even if ABI's action was wrongful. *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 734, 992 P.2d 175, 183 (1999).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 46

Information is only a trade secret if it derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure and use; and is the subject of effects that are reasonable under the circumstances to maintain its secrecy.

Idaho Code Ann. § 48-801(5)(a)-(b).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 47

One factor that may be considered when deciding if information constitutes a trade secret is “the ease or difficulty with which the information could be properly acquired or duplicated by others.”

RESTATEMENT (TORTS) § 757 cmt b (1939); *Basic Am., Inc. v. Shatila*, 133 Idaho 726, 735, 992 P.2d 175, 184 (1999).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 48

"Misappropriation" means:

(a) Acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or (b) Disclosure or use of a trade secret of another without express or implied consent by a person who:

(A) Used improper means to acquire knowledge of the trade secret; or

(B) At the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(i) Derived from or through a person who had utilized improper means to acquire it;

(ii) Acquired under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(iii) Derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(C) Before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

Idaho Code § 48-801

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 49

In this case, the defendants have asserted that ABI misappropriated its trade secrets by improper means and that such misappropriation has damaged the defendants.

In order to enter a verdict for the defendants, the defendants must demonstrate by clear and convincing evidence that ABI misappropriated trade secrets by improper means. If the defendants do not meet their burden, then your verdict must be for ABI.

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

INSTRUCTION NO. 50

The term “improper means” includes theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, or espionage through electronic or other means.

Idaho Code Ann. § 48-801(1).

Plaintiff's Requested Instruction

Given _____ Refused _____ Modified _____ Covered _____ Other _____

2011 SEP 12 PM 4:12

W. Marcus W. Nye (ISB#: 1629)
David E. Alexander (ISB#: 4489)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

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

April Beguesse, Inc. An Idaho Corporation,)
)
Plaintiff,)
)
vs.)
)
Kenneth Rammell, an individual, Christa ,)
Beguesse, Inc., an Idaho Corporation.)
Estate of Christa Beguesse Rammell, by its)
qualified personal representative, Kenneth)
Rammell,)
)
Defendants.)
_____)

Case No. CV-09-2767

**DEFENDANTS' PROPOSED SPECIAL
VERDICT FORM**

We, the Jury, answer the special interrogatories as follows:

PLAINTIFF'S CLAIMS

Fraud

Question No. 1: Did the Defendants commit fraud?

Answer to Question No. 1: Yes No

Constructive Fraud

Question No. 2: Did the Defendants commit constructive fraud?

Answer to Question No. 2: Yes No

Breach of Contract and Warranty, Library of Proprietary Files

Question No. 3: Did the plaintiff know or should it reasonably have known, on or before May 7, 2005, that it could not sell the library of files without its customer's permission?

Answer to Question No. 3: Yes No

If you answered Question No. 3 "Yes," please skip Questions 4 and 5 and continue on to Question 6. If you answered Question No. 3 "No," continue and answer Questions 4 and 5.

Question No. 4: Did the defendants breach a contract with plaintiff ABI relating to the library of proprietary files?

Answer to Question No. 4: Yes No

Question No. 5: Did the defendants breach a warranty with plaintiff ABI relating to the library of proprietary files?

Answer to Question No. 5: Yes No

Breach of Contract and Warranty, Proprietary Software

Question No. 6: Did the Plaintiff ABI prove each of the following facts with respect to the claims of breach of contract and breach of warranty relating to the proprietary software?

(1) That defendants made a false representation or concealment of a material fact with actual or constructive knowledge of the truth;

(2) that the plaintiff did not know or could not discover the truth;

(3) that the false representation or concealment was made with the intent that it be relied on;

and

(4) that the plaintiff relied and acted upon the representation or concealment to his prejudice, with the result that the plaintiff was unable to determine that the software was not proprietary before May 7, 2005.

Answer to Question No. 6: Yes No

If you answered Question No. 6 "Yes," please continue and answer Questions 7 and 8. If you answered Question No. 6 "No," skip Questions 7 and 8 and continue to the next section.

Question No. 7: Did the defendants breach a contract with plaintiff ABI relating to the proprietary software?

Answer to Question No. 7: Yes No

Question No. 8: Did the defendants breach a warranty with plaintiff ABI relating to the proprietary software?

Answer to Question No. 8: Yes No

PLAINTIFF'S DAMAGES

If you answered "Yes" to either Question 1, Question 2, Question 4, Question 5, Question 7 or Question 8, please answer Question 9. If you answered "No" to all of these questions, continue on to Question 10.

Question No. 9: What is the total amount of damages to plaintiff ABI proximately caused by the fraud, constructive fraud or breach of contract or warranty by the Defendants?

Answer: \$ _____

DEFENDANTS' COUNTERCLAIMS

Breach of Contract

Question No. 10: Did ABI breach a contract with any of the defendants?

Answer to Question No. 10: Yes No

Unjust Enrichment/Implied Contract

Question No. 11: Should the defendants recover from the plaintiff ABI on their claim of unjust enrichment or implied contract?

Answer to Question No. 11: Yes No

Misappropriation of Trade Secrets

Question No. 12: Did the plaintiff ABI misappropriate trade secrets belonging to one or more of the defendants?

Answer to Question No. 12: Yes No

If you answered "Yes" to Question 10, Question 11 or Question 12, please answer Question 13. If you answered "No" to all of them, please date and sign the verdict form in the spaces provided.

DEFENDANTS' DAMAGES

Question No. 13: What is the total amount of damages to the Defendants proximately caused by the breach of contract, unjust enrichment or implied contract, and/or misappropriation of trade secrets?

Answer: \$ _____

Date

Jury Foreperson

9/7 Tunge JB

BONNEVILLE COUNTY
IDAHO

2011 SEP 12 PM 4:12

David E. Alexander (ISB#: 4489)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

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

April Beguesse, Inc. An Idaho Corporation,)

Case No. CV-09-2767

Plaintiff,)

vs.)

**DEFENDANTS' PROPOSED JURY
INSTRUCTIONS AND SPECIAL
VERDICT FORM**

Kenneth Rammell, an individual, Christa ,)
Beguesse, Inc., an Idaho Corporation.)
Estate of Christa Beguesse Rammell, by its)
qualified personal representative, Kenneth)
Rammell,)

Defendants.)
_____)

COME NOW, THE Defendants, by and through counsel, and respectfully submit the following proposed substitute Jury Instructions Nos. 1a, 15a, 25a, and 32a, and Special Verdict Form, to be substituted for those previously submitted. This Defendant reserves the right to submit additional instructions at trial based upon issues that may arise during the course of the trial or after review of Plaintiff's proposed jury instructions.

DATED this 9th day of September, 2011.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 

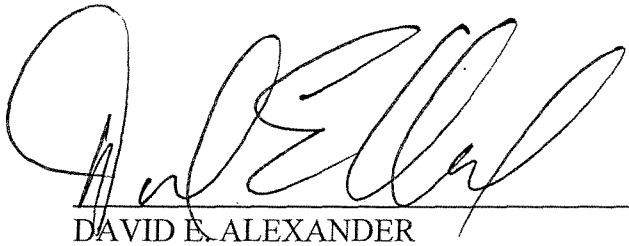
DAVID E. ALEXANDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the ___ day of September, 2011, I served a true, correct and copy of the above and foregoing document upon the following person(s) as follows:

Jeffrey D. Brunson
John M. Avondet
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 529-9732



DAVID E. ALEXANDER

INSTRUCTION NO. 1a

The following facts are not in dispute:

Plaintiff April Beguesse, Inc., (ABI) is an Idaho corporation fully owned by April Beguesse. Defendant Christa Beguesse, Inc., (CBI) is an Idaho corporation whose shares are owned by Defendants Kenneth J. Rammell and the Estate of Christa Beguesse-Rammell.

Christa Rammell and Kenneth Rammell were married in California in 1988, and they remained married until her death in November 2008. Christa was the mother from a previous marriage of April Beguesse. Kenneth Rammell was Christa's sole heir under a Last Will and Testament she wrote in September 2007.

Until January 2004, CBI operated a typesetting business located in Idaho Falls. Christa Beguesse started a typesetting business in California in the 1970s. In the early 1980s, she began typesetting law books for a California publisher called The Rutter Group. By the mid-1990s, The Rutter Group represented most of Christa's business. In 1996, she dissolved her California corporation, moved to Idaho Falls with Kenneth Rammell, and formed the Idaho corporation, Christa Beguesse, Inc., which is a party to this case. Kenneth and Christa were equal shareholders in the new corporation.

After the move to Idaho, CBI retained only one customer, The Rutter Group. CBI had no contract or binding agreement requiring The Rutter Group to use CBI's typesetting services. CBI continued to operate the typesetting business until it sold the business to April Beguesse, Inc. in January 2004.

In November 2001, Ken and Christa Rammell proposed to April Beguesse that she move to Idaho Falls and go to work for CBI in order to learn the business so she could take it over.

April did so and began working for CBI in January 2002. Christa taught April the operation of the business and made sure that the customer approved of the planned change in ownership. April Beguesse was aware that The Rutter Group was not obligated by contract to use her services, and could take its typesetting business to another provider at any time. By this time, The Rutter Group was owned by West Publishing, a division of Thomson Reuters Corporation, one of the largest publishing companies in the world.

In January 2004, the business began operating in the same location and with the same equipment, assets and employees under the ownership of ABI. Under the agreement entered into between ABI and CBI, ABI was to pay to CBI the sum of \$12,000.00 per month for eight years, and Christa Beguesse was to be available to ABI for consulting as needed.

ABI made those payments for four years and 10 months until Christa's death in November 2008. From January 2004 through December 2010, ABI had revenues from its one customer, The Rutter Group, of \$2,765,337.00. During that same time, out of those revenues, ABI made payments to CBI pursuant to the agreement in the amount of \$684,520.00. Also during that time, ABI paid salary, benefits and profits to April Beguesse in the amount of at least \$753,000.00.

ABI is still operating the typesetting business and doing work for The Rutter Group. It has lost none of the work it was doing for The Rutter Group before Christa's death, and has obtained new business since Christa's death. ABI has incurred no monetary damages as a result of the fraud, breach of contract and breach of warranty alleged in this case.

IDJI 1.07 – Facts not in dispute

GIVEN: _____

REFUSED : _____

MODIFIED: _____

COVERED: _____

OTHER: _____

INSTRUCTION NO. 15a

The terms of the contract are in dispute as to the following provisions:

Whether the parties agreed that the assets of the business to be transferred from Christa Beguesse, Inc. to April Beguesse, Inc., included (1) a library of files which ABI could later sell, and (2) a proprietary computer program, written by Christa Beguesse, that made incoming files flow easier and was specifically designed for the structure of the outline of the customer's books. (30(b)(6) depo, p. 83)

You must determine what was intended by the parties as evidenced by the contract in this case. In making this determination you should consider, from the evidence, the following:

1. The contract must be construed as a whole, including all of the circumstances giving rise to it, to give consistent meaning to every part of it.
2. Language must be given its ordinary meaning, unless you find from the evidence that a special meaning was intended.
3. Any communications, conduct or dealings between the contracting parties showing what they intended and how they construed the doubtful language may be considered, provided that such may not completely change the agreement or construe one term inconsistently with the remainder of the terms.
4. The contract should be construed to avoid any contradiction or absurdities.

Persons within a specialized field are deemed to have contracted with reference to any generally known and customarily accepted language in that field, unless you find from the evidence that this was not intended.

IDJI 6.08.1 – Interpretation of contracts - intention of parties

Given: _____
Refused: _____
Modified: _____
Covered: _____
Other: _____

INSTRUCTION NO. 25a

In this case the defendant has asserted certain affirmative defenses to the claim of fraud. The defendant has the burden of proof on each of the affirmative defenses asserted.

The Defendant has asserted that the claim of fraud is barred by the statute of limitations. The statute of limitations for fraud begins to run when the plaintiff knew or reasonably should have known of the facts constituting the fraud. You can infer that the plaintiff had actual knowledge of the facts constituting the fraud at the time that the plaintiff could have discovered the fraud by the exercise of due diligence.

If you find from your consideration of all the evidence that the plaintiff knew or reasonably should have known of the facts constituting the fraud on or before May 7, 2006, then your verdict should be for the defense. If you find from your consideration of all the evidence that any of these propositions have not been proved, then the defendant has not proved the affirmative defense in this case.

IDJI 6.10.4 - General contract – affirmative defenses

McCorkle v. Northwestern Mutual Life Ins. Co., 141 Idaho 550, 554-555 (App. 2005)

Given: _____
Refused: _____
Modified: _____
Covered: _____
Other: _____

INSTRUCTION NO. 32a

In this case the defendant has asserted certain affirmative defenses to the claims of fraud, breach of contract and breach of warranty. The defendant has the burden of proof on each of the affirmative defenses asserted.

The Defendant has asserted that the claims are barred by the doctrine of laches. "Laches" means the neglect to assert a right or a claim which, taken together with lapse of time and other circumstances, causes prejudice to the other party, such that it would be unfair to permit the plaintiff to bring the claim at this time.

If you find from your consideration of all the evidence that the doctrine of laches should apply, then your verdict should be for the defense. If you find from your consideration of all the evidence that laches not been proved, then the defendant has not proved the affirmative defense in this case.

IDJI 6.10.4 - General contract – affirmative defenses

BLACK'S LAW DICTIONARY 787 (5th ed. 1979)

Eldridge v. Idaho State Penitentiary, 54Idaho 213, 222 (1934)

Given: _____
Refused: _____
Modified: _____
Covered: _____
Other: _____

11 SEP 14 A 8:26

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

APRIL BEGUESSE, INC., an Idaho
Corporation,

Plaintiff/Counterdefendant,

vs.

KENNETH RAMMELL, an individual,
CHRISTA BEGUESSE, INC., an Idaho
Corporation, THE ESTATE OF CHRISTA
BEGUESSE RAMMELL, by it qualified
personal representative, Kenneth Rammell,

Defendants/Counterclaimant.

Case No. CV-09-2767

**ORDER ON MOTION IN LIMINE,
VACATING TRIAL**

THIS MATTER is before the Court on Plaintiff's Motion in Limine to preclude the proffered testimony of Defendant's expert witness Bruce Denney. Plaintiff argues that Denney was not timely identified by Defendant nor was his anticipated testimony timely disclosed. Plaintiff correctly argues that the disclosure of Denney was not within the time lines set by the Court. However, Plaintiff also bears some responsibility for the late disclosure and need for this additional testimony. There is little dispute that Plaintiff's current valuation of alleged damages is significantly different than the originally disclosed valuation of damages. While Defendant likely should have been more expeditious in preparing Denney as a witness and disclosing his testimony, the need for Denney only arose as a result of Plaintiff deciding at a relatively late date to change the method and manner by which alleged damages were going to be argued to the jury.

Additionally, a trial court should not impose a sanction that would prevent an adjudication of the case on the merits without considering lesser sanctions or alternatives. *Roe v. Doe*, 129 Idaho 663, 668, 931 P.2d 657, 662 (App.,1996). Plaintiff has made a conditional motion for continuance of the trial in the event Denney was allowed to testify. Plaintiff has argued that if Denney is not precluded from testifying, Plaintiff needs to depose Denney and possibly retain a rebuttal expert. Such a request is reasonable under the circumstances.

Accordingly, the Court determines that in the interests of a full and complete disclosure of witnesses, and a trial on the merits, Plaintiff's motion in limine is denied. Plaintiff's motion to continue the trial is granted. Discovery will be reopened but limited to discovery of Denney's opinions and the preparation and identification of any rebuttal expert, and the timely disclosure of such rebuttal expert's opinions by deposition or otherwise.¹

IT IS SO ORDERED.

Dated this 14 day of September, 2011.


JOEL E. TINGEY
DISTRICT JUDGE

¹ This ruling does not affect the Court's previous ruling as to the deposition of Kent Oseen.

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of September, 2011, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon, or by placement in the courthouse mailbox.

Jeffrey D. Brunson
BEARD ST. CLAIR GAFFNEY FAX 529-9732
2105 Coronado Street
Idaho Falls, ID 83404-7495

David E. Alexander
RACINE OLSON NYE BUDGE FAX 232-6109
P.O. Box 1391
Pocatello, ID 83204

Clerk of the District Court
Bonneville County, Idaho

By MS
Deputy Clerk

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

11 SEP 20 P2:16

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

ORDER FOR TELEPHONIC
STATUS CONFERENCE
Case No. CV-09-2767

Pursuant to Rule 16, I.R.C.P., it is hereby ordered that a status conference be conducted by and between the Court and the counsel of record in regard to the above-entitled case on October 7, 2011, at 8:45 a.m.

It is further ordered that at least one of the attorneys for each party participating in said status conference have authority to enter into stipulations and to make admissions regarding all matters that the parties may reasonably anticipate being discussed. (See Rule 16 (b) and Rule 16 (c)). Counsel shall also be prepared to furnish the Court with available dates for a pre-trial conference and trial setting.

The Plaintiff is directed to initiate the telephone conference call to the Court. The telephone number is 529-1350 extension 1340.

Dated this 20 day of September, 2011

/S/HON. JOEL E. TINGEY
JOEL E. TINGEY
DISTRICT JUDGE

322 D

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of September, 2011, that I mailed or hand delivered a true and correct copy of the foregoing document to the following:

RONALD LONGMORE

BY *ms*
DEPUTY CLERK

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

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

11 OCT -7 P3:17

APRIL BEGUESSE, INC., an Idaho)
corporation,)
)
Plaintiff,)
)
vs.)
)
KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)
)
Defendants.)
)

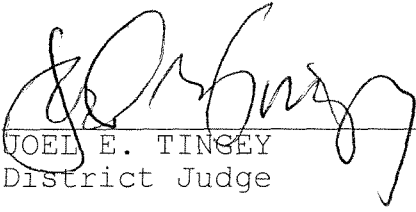
AMENDED ORDER AND NOTICE
RESCHEDULING JURY TRIAL
Case No. CV-09-2767

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure,
the following pre-trial schedule shall govern all proceedings in
this case:

I. IT IS HEREBY ORDERED:

1. A Pre-trial Conference is scheduled for March 20, 2012 at 8:45 a.m.
2. Jury trial is scheduled for 10:00 a.m. on April 10, 2012. Trial may go 4-5 days which may continue into a second week. In that case the second week of trial will continue on Tuesday, April 17, 2012.
3. All deadlines remain in effect as outlined in the prior Order.

DATED this 7 day of October, 2011.



JOEL E. TINGEY
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 7 day of October, 2011, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

Brunson

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)
)
Plaintiff,)
)
vs.)
)
KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)
)
Defendants.)
)

MINUTE ENTRY
Case No. CV-09-2767

On the 6th day of December, 2011, Plaintiff's motion for reconsideration came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson appeared for and on behalf of the Plaintiff.

Mr. David Alexander and Mr. Aaron Crary appeared on behalf of the Defendants.

Mr. Brunson presented Plaintiff's motion for reconsideration. Mr. Alexander presented argument in opposition to the motion. Mr. Brunson presented rebuttal argument.

The Court granted the motion for reconsideration. Mr. Brunson will prepare a proposed Order for the Court's signature.

Court was thus adjourned.

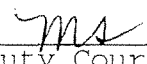


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 6 day of January, 2011, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

MINUTE ENTRY

Case No. CV-09-2767

On the 20th day of March, 2012, a Pretrial Conference came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

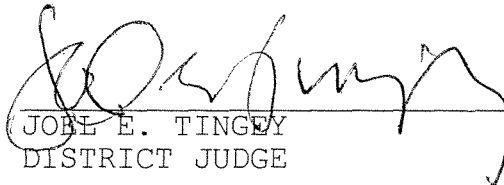
Mr. Jeff Brunson appeared for and on behalf of the Plaintiff.

Mr. David Alexander appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.

Trial is scheduled for April 10, 2012. There is a motion in limine scheduled for April 6th. No unusual questions of law are expected. Trial is scheduled to last 4-5 days. Counsel will advise the Court regarding witnesses to be called and exhibits to be used at least one week prior to trial. The Court will summon

50 prospective jurors. Each side will have 4 peremptory challenges. Jury instructions are due one week prior to trial. Counsel should be prepared to advise the other party which witnesses will be called for the next day.

Court was thus adjourned.


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 20 day of March, 2012, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE


Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

REQUEST FOR JURY
(CIVIL)

BONNEVILLE COUNTY
IDAHO

Judge: Joel E. Tingey

12 MAR 20 P12:39

Title of Case: April Beguesse, Inc., an Idaho Corporation v. Kenneth Rammell, etal.
Case No. CV-2009-0002767

Date and Time Trial to Begin: Tuesday, April 10, 2012 at 10:00 AM

Number of Jurors to be Summoned: 50

Magistrate or District? DISTRICT

Courtroom: To Be Announced


Time for Jurors to Report for Orientation: 9:30 a.m.

Expected Number of Trial Days: 4-5

Plaintiff's Counsel: Michael Gaffney/Jeff Brunson @ Beard St. Clair (Box)

Defendant's Counsel: W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

Date: Tuesday, March 20, 2012



Marlene Southwick, Deputy Clerk

03/15
Tina

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO
12 APR -3 PM 4:07

Jeffrey D. Brunson, ISB No. 6996
John M. Avondet, ISB No. 7438
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, ID 83404-7495
Tel: (208) 523-5171
Fax: (208) 529-9732
Email: jeff@beardstclair.com
javondet@beardstclair.com

Attorneys for Plaintiff

**DISTRICT COURT SEVENTH JUDICIAL DISTRICT
BONNEVILLE COUNTY IDAHO**

April Beguesse, Inc., an Idaho Corporation,

Case No.: CV-09-2767

Plaintiff/Counterdefendant,

PLAINTIFF'S OBJECTION TO
DEFENDANTS' PROPOSED JURY
INSTRUCTIONS AND SPECIAL
VERDICT FORM

vs.

Kenneth Rammell, an individual, Christa
Beguesse, Inc., an Idaho corporation, The
Estate of Christa Beguesse Rammell, by its
qualified personal representative, Kenneth
Rammell,

Defendants/Counterclaimants.

The plaintiff, April Beguesse, Inc. (ABI), through counsel of record, Beard St. Clair Gaffney PA, respectfully objects to Defendant's Proposed Jury Instructions and Special Verdict Form dated September 9, 2011. ABI objects to the entire set of jury instructions and special verdict form and more specifically objects as follows.

- Special Verdict Form – the proposed special verdict form is incomplete and does not cover all of the Plaintiff's claims. The proposed special verdict form is vague

Plaintiff's Objection to Defendants' Proposed Jury Instructions and Special Verdict Form

Page 1
323

and confusing as to Plaintiff's claims and over-simplifies the Defendant's claims.

- No. 1a (substitute for 1) – contains facts which are in dispute and is overbroad and unnecessary.
- No. 3 – should not be given because the Court has already determined that the contract in question is ambiguous and that extrinsic evidence is appropriate. This instruction would confuse the jury.
- No. 5 – does not accurately state elements of constructive fraud. The instruction as stated is confusing and unclear. Reference to jury verdict form is confusing.
- No. 6 – instruction has potential to cause confusion to the jury by referencing jury verdict form.
- No. 9 – is cumulative and has potential to cause confusion to the jury.
- No. 10 – instruction has potential to cause confusion to the jury by referencing jury verdict form.
- No. 11 – this instruction combines unjust enrichment and implied contract. This instruction misstates elements of unjust enrichment and implied contract and is confusing.
- No. 12 – this instruction is confusing and does not accurately state elements of misappropriation of trade secrets.
- No. 13 – this instruction is cumulative and confusing.
- No. 14 - this instruction is confusing, does not correctly state the elements of breach of warranty, and inclusion of the term “so-called” suggests that it is not a viable claim.
- No. 15a (replacing 15) – this instruction does not include all of the disputed terms

nor does it correctly state the terms which are disputed.

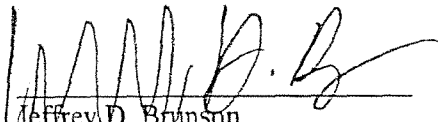
- No. 16 – this instruction does not correctly state the law or how the contract should be interpreted based on the Court’s previous ruling regarding the contract.
- No. 17 – this instruction is confusing and unnecessary.
- No. 20 – this instruction is unnecessary and confusing. What the terms of the contract are in dispute and this instruction makes it seem one-sided.
- No. 21 – this instruction is unnecessary and confusing. What the terms of the contract are in dispute and this instruction makes it seem one-sided.
- No. 23 – this instruction is unnecessary and confusing. This instruction is not proper in light of the Court’s previous ruling regarding the contract.
- No. 25a (replacing 25) – this instruction does not correctly state the elements of statute of limitations, is overbroad, and is confusing.
- No. 27 – this instruction is overbroad, confusing, and unnecessary. This instruction suggests that a written contract is necessary by stating “the precise language of the contract”.
- No. 28 – this instruction is unnecessary.
- No. 29 – this instruction is cumulative and unnecessary.
- No. 30 – this instruction does not correctly state the requirements for the statute of limitations defense. This instruction incorrectly computes the time deadline. This instruction is confusing and is unclear as to which claim or claims it applies to. This instruction is cumulative.
- No. 31 – this instruction is confusing, does not adequately state the law, and does not correctly refer to the Court’s ruling.

Plaintiff’s Objection to Defendants’ Proposed Jury Instructions and Special Verdict Form
Page 3

325

- No. 32a (replacing 32) – this instruction misstates the law of laches and confuses laches with the statute of limitations. This instruction is confusing and cumulative.
- No. 34 – this instruction is cumulative and there should be one instruction that applies to both parties. This instruction includes improper elements of damage and is confusing.
- No. 35 – this instruction includes improper elements of damage and is confusing.
- No. 38 - this instruction is unnecessary and confusing. This instruction does not accurately state the Court’s decision or the law.
- No. 39 – this instruction is confusing and cumulative.
- No. 40 – this instruction is overbroad and confusing. It is unclear whose defense or claim it is referring to.

DATED: April 3, 2012.


 Jeffrey D. Brunson
 John M. Avondet
 Of Beard St. Clair Gaffney PA
 Attorneys for the Plaintiff

CERTIFICATE OF SERVICE

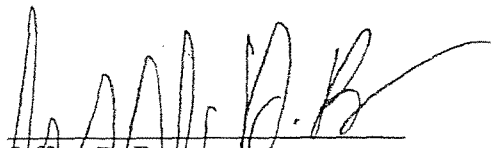
I certify that I am an attorney licensed in the State of Idaho, have my office located in Idaho Falls, Idaho and on April 3, 2012, I served a true and correct copy of PLAINTIFF'S OBJECTION TO DEFENDANTS' PROPOSED JURY INSTRUCTIONS AND SPECIAL VERDICT FORM upon the following as indicated below:

David E. Alexander
Racine Olson Nye Budge Bailey
PO Box 1391
Pocatello, ID 83204-139
Fax: 232-6109

U.S. Mail Hand-Delivered Facsimile

Bonneville County Courthouse
605 N Capital Avenue
Idaho Falls, ID 83402
Fax: 529-1300

U.S. Mail Hand-Delivered Facsimile



Jeffrey D. Brunson
John M. Avondet
Of Beard St. Clair Gaffney PA
Attorneys for the Plaintiff

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

MINUTE ENTRY
Case No. CV-09-2767

On the 6th day of April, 2012, Plaintiff's motion in limine re: Denney and renewed motion in limine re: April Beguesse tax information, and Defendants' motion to withdraw deemed admission admitted came before the Honorable Joel E. Tingey, District Judge, in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson appeared for and on behalf of the Plaintiff.

Mr. David Alexander appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.


Mr. Brunson presented Plaintiff's motion in limine re: Bruce Denney and renewed motion in limine re: April Beguesse tax information. Mr. Alexander presented argument in opposition to

Plaintiff's motions in limine and presented Defendants' motion to withdraw deemed admissions admitted. Mr. Brunson presented opposition to Defendants' motion to withdraw and presented rebuttal argument. Mr. Alexander presented rebuttal argument.

Mr. Brunson advised that there may be a potential problem regarding a witness, Janell Racine, who has had recent surgery and may not be available to testify. Mr. Alexander stated that he does not believe she has any pertinent information to the trial.

The Court denied the motion in limine re: Denney. The Court granted the motion in limine re: April Beguesse tax returns. The Court denied the motion to withdraw admissions as to 11, 12 and 13; granted as to 18 and 19.

Court was thus adjourned.



JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 6 day of April, 2012, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)

Plaintiff,)

vs.)

KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
its qualified personal)
Representative, Kenneth)
Rammell,)

Defendants.)

MINUTE ENTRY

Case No. CV-09-2767

On the 9th day of April, 2012, Janelle Racine's motion to quash subpoena came before the Honorable Joel E. Tingey, District Judge, by telephonic connection in open court at Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson appeared for and on behalf of the Plaintiff.

Mr. David Alexander appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.

Mr. Gary Cooper appeared as counsel of record for Janelle Racine.

Mr. Cooper presented Ms. Racine's motion to quash subpoena. Mr. Brunson presented argument in opposition to the motion to

quash. Mr. Alexander joined in support of the motion to quash. Mr. Cooper presented rebuttal argument in support of the motion to quash.

The Court denied the motion to quash. The Court granted a protective order and will require a deposition in place of trial testimony.

Court was thus adjourned.



JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of April, 2012, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

03/15
TINNEY

W. Marcus W. Nye (ISB#: 1629)
David E. Alexander (ISB#: 4489)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY, IDAHO

12 APR 10 PM 5:00

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

APRIL BEGUESSE, INC., an Idaho Corporation,
Plaintiff,
vs.
KENNETH RAMMELL, an individual,
CHRISTA BEGUESSE, INC., an Idaho Corporation, ESTATE OF CHRISTA BEGUESSE RAMMELL, by its qualified personal representative, Kenneth Rammell.
Defendants.

Case No. CV-09-2767

ANSWER TO SECOND AMENDED COMPLAINT

COME NOW the Defendants, KENNETH RAMMELL individually and as personal representative of the ESTATE OF CHRISTA BEGUESSE RAMMELL, and CHRISTA BEGUESSE, INC., an Idaho corporation, by and through their attorney of record, Marcus W. Nye of the firm of Racine, Olson, Nye, Budge & Bailey, Chartered, and in response to the Second Amended Complaint and Jury Demand ("Second Amended Complaint") of the Plaintiff filed herein, admit, deny and allege as follows:

FIRST DEFENSE

The Second Amended Complaint herein fails to state a claim upon which relief can be granted against these Defendants, and should be dismissed.

SECOND DEFENSE

1. Defendants deny each and every allegation of the Second Amended Complaint not specifically admitted herein.

2. Defendants admit the allegations of paragraphs 1 through 8 of the Second Amended Complaint.

3. In response to paragraph 9 of the Second Amended Complaint Defendants deny that “April believed that Christa was the sole owner of CBI” and admits that Christa had been running her business for years before she married Rammell.

4. Defendants admit the allegations of paragraph 10 of the Second Amended Complaint.

5. Defendants deny the allegations of paragraphs 11 through 15 of the Second Amended Complaint.

6. In response to paragraph 16 of the Complaint, Defendants state that a contract was entered into between Christa Beguesse, Inc. and April Beguesse, Inc., the terms of which contract speak for themselves.

7. Defendants admit the allegations of paragraphs 17, 18 and 19 of the Complaint.

8. Defendants deny the allegations of paragraph 20 of the Complaint.

9. Defendants admit the allegations of paragraphs 21 and 22 of the Complaint.

10. Defendants are without sufficient information to form a belief as to the truth of the allegations of paragraph 23 of the Complaint, and therefore deny the same.

11. Defendants deny the allegations of Paragraph 24 of the Second Amended Complaint.

12. Defendants deny the allegations of paragraph 25 of the Complaint, and state further that the contract speaks for itself.

13. Defendants deny the allegations of paragraphs 26, 27 and 28 of the Complaint.

14. In response to paragraph 29, Defendants deny that April signed the contract “based on the representations of Rammell and Christa.” Defendants admit that April signed a contract entitled “Lease Agreement” between CBI and ABI, effective January 1, 2004.

15. In response to paragraphs 30 and 31 of the Complaint, Defendant states that the alleged contract speaks for itself.

16. The Defendants admit the allegations of paragraphs 32 through 37, and specifically aver that a holographic Will was found.

17. Defendants deny the allegation of paragraph 38.

18. In response to paragraph 39 of the Second Amended Complaint, to the extent that it alleges the existence of a contract between CBI and a customer, said contract speaks for itself.

19. In response to paragraph 40 of the Second Amended Complaint, Defendants deny ever having made reference to a “library” owned by CBI, or any representations contrary to the facts. To the extent that this paragraph 40 may make allegations regarding the typesetting working files for the customer’s products, the Defendants deny the allegation that these files are owned by the customer.

20. Defendants deny the allegations of paragraph 41 of the Second Amended Complaint.

21. Defendants admit the allegations of paragraphs 42 through 45 of the Second Amended Complaint.

COUNT 1: DECLARATORY RELIEF

22. In response to paragraph 46 of the Second Amended Complaint, the Defendants restate their responses to paragraphs 1 through 45.

23. Defendants deny the allegations of paragraphs 47 through 51.

24. Defendants admit the allegations of paragraph 52 of the Complaint.

25. Defendants deny the allegations of paragraphs 53 to 56 of the Complaint.

COUNT 2: FRAUD

26. In response to paragraph 57 of the Complaint, Defendants restate their responses to paragraphs 1 through 56.

27. Defendants deny the allegations of paragraphs 58 through 69.

COUNT 3: CONSTRUCTIVE FRAUD

28. In response to paragraph 70 of the Second Amended Complaint, Defendants restate their responses to paragraphs 1 through 69.

29. Defendants deny the allegations of paragraphs 71 through 76 of the Complaint.

COUNT 4: BREACH OF CONTRACT

30. In response to paragraph 77 of the Second Amended Complaint, Defendants restate their responses to paragraphs 1-76.

31. Defendants deny the allegations of paragraph 78 and 79.

32. In response to paragraph 80 of the Second Amended Complaint, Defendant admits that the parties entered into a binding contract, pursuant to which the parties performed from January 2004 until November 2008, and that the terms of the contract speak for themselves.

33. In response to paragraph 81 of the Second Amended Complaint. Defendant admits that ABI substantially performed its obligations under the contract until November 2008, at which

time it ceased performing under the contract, and is currently in material breach thereof.

34. Defendants deny the allegations of 82 through 87 of the Second Amended Complaint.

COUNT 5: BREACH OF EXPRESS WARRANTY

35. In response to paragraph 88 of the Complaint, Defendants restate their responses 1 through 87.

36. Defendants deny the allegations of paragraph 89 of the Second Amended Complaint.

37. In response to paragraph 90, Defendants allege that Plaintiff is now in material breach of its obligations under the contract.

38. Defendants deny the allegations of paragraphs 91 and 92.

39. In response to paragraphs 93 through 96 of the Second Amended Complaint, the Idaho Statutes referenced therein speak for themselves and are the best evidence of the statutory requirements. Said paragraphs do not otherwise appear to require a response from the Defendants.

40. Defendant deny the allegations of paragraphs 97 through 100.

COUNT 6: BREACH OF IMPLIED WARRANTY

41. In response to paragraph 101 of the Second Amended Complaint, Defendants restate their responses to paragraphs 1 through 100.

42. Defendants deny the allegations of paragraph 102.

43. In response to paragraph 103, Defendants admit that ABI substantially performed its obligations under the contract through November 2008, but since that time is in material breach of the contract.

44. Defendants deny the allegations of paragraphs 104 through 111.

COUNT 7: UNJUST ENRICHMENT

45. In response to paragraph 112 of the Second Amended Complaint, Defendants restate their responses to paragraphs 1 through 111.

46. In response to paragraph 113, Defendants admit that ABI paid Defendants \$12,000.00 per month for February 2004 to November 2008. Defendants deny all other allegations of paragraph 113.

47. Defendants deny the allegations of paragraphs 114 through 116 of the Complaint.

COUNT 8: QUASI-ESTOPPEL

48. In response to paragraph 117 of the Second Amended Complaint, Defendant restates its responses to paragraphs 1 through 116.

49. Defendants deny the allegations of paragraphs 118 through 121 of the Second Amended Complaint.

50. Defendants admit the allegation of paragraphs 122 through 123 of the Second Amended Complaint.

51. In response to Paragraph 124 of the Second Amended Complaint, Defendants aver that a holographic will was produced.

52. Defendant deny the allegations of paragraphs 125 through 128 of the Second Amended Complaint.

COUNT 9: PUNITIVE DAMAGES

53. In response to paragraph 129 of the Second Amended Complaint, Defendant restates its responses to paragraphs 1 through 128.

54. Defendant deny the allegations of paragraphs 130 through 133 of the Second

Amended Complaint.

FIRST AFFIRMATIVE DEFENSE

The claims of the Plaintiff are barred by the applicable statutes of frauds, including but not limited to Idaho Code § 9-505, § 15-2-701, and § 28-2-201.

SECOND AFFIRMATIVE DEFENSE

The claims of the Plaintiff are barred by the applicable of statutes of limitations, including but not limited to I.C. § 5-216, § 5-217, § 5-218, and §§ 15-3-801, *et seq.*

THIRD AFFIRMATIVE DEFENSE

Plaintiff's claims for declaratory judgement, fraud, constructive fraud, breach of contract, breach of express and implied warranties and unjust enrichment and quasi-estoppel are barred by the doctrine of laches.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims are barred by the doctrine of waiver.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff should be estopped from denying its obligations and duties under the contract.

SIXTH AFFIRMATIVE DEFENSE

Defendants expressly disclaimed in the contract all express and implied warranties.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's claims should be barred by Plaintiff's material breach of the contract at issue in this matter.

ATTORNEY FEES

Defendants have been required to retain the services of the law firm of Racine, Olson, Nye,

Budge & Bailey, Chtd., and are entitled to a reasonable fee therefor pursuant to Idaho Code, including, but not limited to, I.C. §§ 12-120(3) and 12-121 and paragraph 17 of the Lease Agreement between the parties.

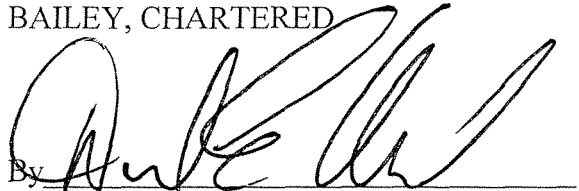
WHEREFORE, Defendants pray that judgment be entered in this action declaring the respective rights and duties of the parties, dismissing the Plaintiff's complaint with prejudice, awarding the Defendants their reasonable attorney's fees and costs, and granting Defendants such other and further relief as is just under the circumstances.

JURY DEMAND

Defendant Kenneth Rammel, individually and as personal representative of the estate of Christa Beguesse Rammel, and Defendant CBI hereby request a trial by jury on all issues so triable.

Dated this 15th day of April, 2012

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
DAVID B. ALEXANDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 6th day of March, 2010, I served a true, correct and copy of the above and foregoing document upon the following person(s) as follows:

Jeffrey D. Brunson
John M. Avondet
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

- U.S. Mail, postage prepaid
- Hand Delivery
- Overnight Mail
- Facsimile (208) 529-9732



DAVID-E. ALEXANDER

W. Marcus W. Nye (ISB#: 1629)
 David E. Alexander (ISB#: 4489)
 RACINE, OLSON, NYE,
 BUDGE & BAILEY, CHARTERED
 P.O. Box 1391
 Pocatello, Idaho 83204-1391
 Telephone: (208)232-6101
 Fax: (208)232-6109

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

APRIL BEGUESSE, INC., an Idaho Corporation,
 Plaintiff,
 vs.
 KENNETH RAMMELL, an individual,
 CHRISTA BEGUESSE, INC., an Idaho Corporation, ESTATE OF CHRISTA BEGUESSE RAMMELL, by its qualified personal representative, Kenneth Rammell.
 Defendants.

Case No. CV-09-2767

MOTION FOR DIRECTIVE VERDICT

COME NOW the Defendants, KENNETH RAMMELL individually, (“Mr. Rammell”) and as personal representative of the ESTATE OF CHRISTA BEGUESSE RAMMELL, (“the Estate”) and CHRISTA BEGUESSE, INC., an Idaho corporation, (“CBI”) by and through their attorney of record, David E. Alexander, pursuant to Rule 50(a) of the Idaho Rules of Civil Procedure, and hereby submit their Motion for Directive Verdict and move this Court for an order granting said motion against Plaintiff, APRIL BEGUESSE, INC., (“ABI”) based on the following grounds:

INTRODUCTION

1. Based on this Court's prior rulings and the evidence presented in ABI's case in chief, the only allegedly fraudulent representations/omissions made by Mr. Rammell, Christa Beguesse Rammell ("Christa") and CBI to April Beguesse ("April"), are the following:

- that CBI owned a library of proprietary titles valued at over \$1,000,000;
- that CBI owned proprietary PageMaker software unique to CBI's business;
- that Christa had made a will; and
- that the Defendants failed to disclose that Mr. Rammell was an owner of CBI at the time ABI took over CBI.

2. As to ABI's breach of contract and warranty claims, the only two parties to the contract are ABI and CBI. Mr. Rammell, individually, and the Estate cannot be liable for a contract to which they were not parties.

3. Based on this Court's prior rulings and the evidence presented in ABI's case in chief, the only breach of contract and warranty claims that remain against CBI are that CBI allegedly failed to provide ABI the following assets:

- A library of proprietary files valued at over \$1,000,000 and
- Proprietary PageMaker software unique to CBI's business.

4. Besides ABI's punitive damages and request for attorney fees and costs, no other claims exist against any of the Defendants in this case for any other reason other than what is stated above.

CLAIMS AGAINST THE ESTATE OF CHRISTA BEGUESSE RAMMELL

Fraud Claims Against The Estate

5. ABI's fraud claims against the Estate must fail because the Court ruled and repeatedly instructed the jury that, pursuant to Idaho Code § 9-202 and Rule 601(b) of the Idaho Rules of Evidence, ABI is precluded from offering evidence of any representation made by Christ against the

Estate.

6. ABI's fraud claims against the Estate must fail.

Breach of Contract and Warranty Claims Against The Estate

7. The Estate is not a party to the contract. Therefore, ABI's breach of contract and warranty claims against the Estate must fail.

8. Without a shred of evidence offered against the Estate, any and all claims made by ABI against it, must fail, including ABI's punitive damages claim and request for attorney fees and costs.

CLAIMS AGAINST THE KEN RAMMELL, INDIVIDUALLY

Fraud Claims Against Kenneth Rammell

9. "To successfully bring an action for fraud, a plaintiff must establish the existence of the following elements: (1) a statement or a representation of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent that there be reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) justifiable reliance; and (9) resultant injury." *Mannos v. Moss*, 143 Idaho 927, 931 (2007). All nine elements must be proven by clear and convincing evidence. *Kuhn v. Coldwell Banker Landmark, Inc.*, 150 Idaho 240, 250 (2010).

Representations Regarding The Titles, Their Value and PageMaker

10. ABI has failed to show that it was ignorant of the falsity of Mr. Rammell's representation to ABI that CBI owned a certain library of titles and their value. April admitted at trial that she knew prior to purchasing CBI that CBI did not own the copyrights to the titles. April also admitted that, without owning the copyrights, ABI could not sell the titles. If the titles cannot

be sold, they have no value except as they are part of the business relationship with the Rutter Group. ABI therefore knew that these representations, if they were made, were false. The evidence is undisputed that Plaintiff could sell *the business* with the permission of the customer that owns the files, which permission has never been sought or denied.

11. Also, as the Court previously determined, Plaintiff was aware that it needed the permission of the customer, which could take its typesetting work to another vendor at any time. Therefore, it is undisputed that Plaintiff was aware of the falsity of, or could not justifiably rely on, any alleged misstatements as to the value or ownership of the “library of files.”

12. ABI has also failed to show that it relied and/or justifiably relied on Mr. Rammell’s representations to ABI regarding the proprietary software.

13. In particular, April repeatedly testified that Mr. Rammell knew nothing about typesetting. Mr. Rammell agreed. His background was in accounting and his limited involvement in CBI was in preparing financial and tax information approximately one day a month. When ask what was Mr. Rammell’s involvement in CBI, April stated, “Not a thing.”

14. When ask which of Mr. Rammell’s representations ABI relied on in purchasing CBI, April stated, “Not one iota.” Although April later stated that Mr. Rammell had concurred with Christa’s alleged representations, it is clear that ABI did not rely on Mr. Rammell’s representations regarding the library of titles, their value and PageMaker.

15. Even if ABI did rely on his representations, such is completely unjustifiable given that all the parties concede that Mr. Rammell knows nothing about typesetting, had extremely limited involvement in CBI and that April had worked extensively for CBI for approximately 15 years prior to purchasing it. No reasonable juror could find otherwise.

16. The only evidence of false representations made by Mr. Rammell was that he misrepresented the value of the “library of files.” With respect to all other fraud claims, either the misrepresentations were made by Christa Rammell, or the Plaintiff admits she did not rely on Mr. Rammell’s statements.

Representations Regarding The Existence of Christa’s Will

17. ABI has failed to show that Mr. Rammell’s representation were false regarding the existence of Christa’s will. The Court stated on page 12, of its Memorandum Decision and Order, that “fraud cannot be based upon the mere failure to perform a promise.” (*citing Gillespie v. Mountain Park Estates, L.L.C.*, 142 Idaho 671, 673-674 (2006)). However, an exception to this general rule applies when “the promise was accompanied by statements of existing fact which show the promisor’s ability to perform the promise and those statements were false.” *Id.* The evidence at trial is undisputed that at the time that ABI and CBI entered into their contract, Christa did in fact have a will (the “1999 will”). April also testified the 1999 will was revoked by Christa’s execution of a new will in 2007. ABI’s claim of fraud based on Christa’s non-existing will is barred because the will actually existed and any representations that a will existed were true.

The Plaintiff presented no evidence regarding the contents of any will, so there is no fraud issue created by such evidence. The Plaintiff presented vague evidence that April Beguesse believed the will contained a term of the contract; however, this is merely evidence of a dispute as to the terms of the contract, and is not itself a fraud claim. Either the agreement included a provision that payments would cease on the death of a particular individual, or it did not.

Failure to Disclose Mr. Rammell’s Ownership Interest in CBI

18. ABI has failed to show that Mr. Rammell’s omission concerning his ownership

interest in CBI was material to ABI its decision to purchase CBI. April offered conclusory testimony that she would not have bought the business, which has generated more than \$3,000,000 in revenues since 2004 and has paid her almost \$1,000,000, if she had known that Mr. Rammell was a part owner of CBI. However, she failed to explain why she would turn down such an opportunity to own a self-sustaining business because of Mr. Rammell's ownership of shares in the selling corporation. No evidence, much less clear and convincing evidence, has been presented to the jury that this omission was material.

19. ABI's fraud claims against Mr. Rammell, individually, must fail.

Breach of Contract and Warranty Claims Against Kenneth Rammell

20. Mr. Rammell, individually, is not a party to the contract. Therefore, ABI's breach of contract and warranty claims against Mr. Rammell, individually, must fail.

21. Without any right to recover against Mr. Rammell, individually, any and all claims made by ABI against him, individually, must fail, including ABI's punitive damages claim and request for attorney fees and costs.

CLAIMS AGAINST CBI

Fraud Claims Against CBI

22. ABI has failed to present a prima facie case for fraud against CBI.

23. The same arguments stated in Mr. Rammell's individual section above are incorporated herein by reference as if set forth in full, and apply to Mr. Rammell in his capacity as an owner and agent of CBI.

24. The same arguments stated in Mr. Rammell's section above are incorporated herein by reference as if set forth in full, and apply to Christa and the Estate in her/its capacity as an owner

and agent/former owner and agent of CBI, excepting only paragraphs 13 through 15. For all other paragraphs, Christa's name is hereby substituted in the place of Mr. Rammell.

25. ABI has failed to show that it was ignorant of the falsity of Mr. Rammell's representation to ABI that CBI owned proprietary PageMaker software. On page 11, of its Memorandum Decision and Order, dated November 2, 2010, this Court stated, "Whether the software used in the business was proprietary or available to the public would reasonably have an effect on the purchase price of the business." April repeatedly testified at trial that anyone could buy PageMaker (for \$600) off the shelf and that April had used PageMaker throughout her career. ABI knew Mr. Rammell's representations were false.

26. ABI's fraud claim against CBI must fail.

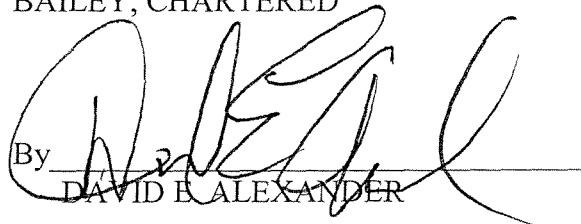
Breach of Contract and Warranty Claims Against CBI

27. The only claims that remain against CBI are ABI's breach of contract and warranty claims.

ORAL ARGUMENT is hereby requested, in which evidence and testimony may be presented.

Dated this 12th day of April, 2012

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
DAVID E. ALEXANDER

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12th day of April, 2010, I served a true, correct and copy of the above and foregoing document upon the following person(s) as follows:

Jeffrey D. Brunson
John M. Avondet
BEARD ST. CLAIR GAFFNEY PA
2105 Coronado Street
Idaho Falls, Idaho 83404-7495

U.S. Mail, postage prepaid
 Hand Delivery
 Overnight Mail
 Facsimile (208) 529-9732

DAVID E. ALEXANDER

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

APRIL BEGUESSE, INC., an Idaho)
corporation,)
)
Plaintiff,)
)
vs.)
)
KENNETH RAMMELL, an individual)
CHRISTA BEGUESSE, INC., an)
Idaho corporation, ESTATE of)
CHRISTA BEGUESSE RAMMELL, by)
Its qualified personal)
Representative, Kenneth)
Rammell,)
)
Defendants.)

MINUTE ENTRY
Case No. CV-09-2767

On the 10th day of April, 2011, a jury trial convened in open court in the Centennial Courtroom before the Honorable Joel E. Tingey, District Judge, in Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson and Ms. Lindsey Lofgren appeared on behalf of the Plaintiff. Plaintiff April Beguesse was present at counsel table.

Mr. David Alexander and Mr. Jason Flaig appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.

Prior to court convening, the jury panel viewed a film regarding jury service.

Upon inquiry from the Court, the parties stated they are

ready to proceed.

This being the time for the appearance of the jury, the Jury Commissioner called the roll and the following jurors were present: Ariel Lea Jackson, Stephen Maria, Tessa Thurber, Lawrene Freckleton, Linda ford, Janet Corson-Stanton, Kay Vindel, Raymond Canuel, Rhett Garner, John Howze, Melinda Brewer, Sterling Madsen, Matt Morgan, Steven Hansen, Richard Schmude, Allison Honeycutt, Taylor Evans, Anne Howell, Luke Doman, Timothy Young, Kristina Ott, Debbie Empey, Richard Kennedy, Jeremy Miller, Rebeca Hagen, Teri Bachman Kotansky, Jessica Keck, Linda Rhodes, Michael Stewart, Frank Greenough Jr., Lita Thornock, Zachary Buckland, Elizabeth Olsen, Daniel Taylor, Douglas Meeks, Lee Parsons, Deanna Forbes, Lou Ann Souba, Allison Gottwalt, Stacy Thorngren, Deven Lewis, Tyler Zufelt, Chad Webb, Jennifer Bird, Cameron Dennett, Diana Alquicira, Lynn Moore, Michael Kelsch, Karl Willumson, Jessica Brammer, Laurie Pena, Katherine Owens, Teo Cutler, Barry Lewis, Jasmine Gellings-Peterson.

The following jurors, being duly summoned, failed to answer the roll call: Janie Mason, Linda Evans, Kerry Weber, and Larae Cook.

Under the direction of the Court, the initial jury panel of 23 took their place in the jury box.

The Court introduced the court staff, counsel and the parties.

The Court advised the jury panel regarding voir dire and

challenges for cause.

Under the direction of the Court, the clerk administered the oath of voir dire to the jurors as to their qualifications to serve at this term as well as to serve in this cause now pending.

The Court conducted voir dire examination. Matt Morgan seat #14 was excused. Teri Kotansky was called to take seat #14. Lawrence Freckleton seat #4 was excused. Ms. Jessica Keck was called to take seat #4. Jeremy Miller seat #19 was excused. Linda Rhodes was called to take seat #19. Kristina Ott was excused from seat #23. Michael Stewart was called to fill seat #23. Taylor Evans seat #18 was excused. Frank Greenough Jr was called to fill seat #18. Richard Schmude seat #16 was excused. Lita Thornock was called to fill seat #16. Luke Doman seat #21 was excused. Zachary Buckland was called to fill seat #21.

Mr. Brunson conducted voir dire examination on behalf of the Plaintiff. Mr. Brunson passed the panel for cause.

Mr. Alexander conducted voir dire examination.

Trial recessed for a morning break.

Trial continued at 11:10 a.m. with all parties resent.

Mr. Alexander continued voir dire examination. Mr. Alexander passed the panel for cause.

The Court instructed the jury panel regarding peremptory challenges.

Mr. Brunson exercised 5 peremptory challenges on behalf of the Plaintiff.

Mr. Alexander exercised 5 peremptory challenges on behalf of the Defendants.

The Court dismissed those jurors challenged or not called to serve in this cause. Upon inquiry from the Court, counsel accepted the jury panel as seated.

The following jurors were sworn to well and truly try this cause: Stephen Maria, Linda Ford, Richard Kennedy, Janet Corson-Stanton, Katy Mejia, John Howze, Melinda Brewer, Sterling Madsen, Teri Kotansky, Allison Honeycutt, Frank Greenough Jr., Timothy Young, and Michael Stewart.

The Court advised the jury regarding trial procedure and instructed the jury prior to releasing them for noon break. Trial will resume at 1:10 p.m. The jury was led from courtroom.

Court and counsel met to review the proposed jury instructions.

Mr. Brunson advised that he has not been provided exhibits from Mr. Alexander. Mr. Alexander will provide the exhibits prior to start of trial this afternoon.

Trial recessed.

On the 10th day of April, 2011, a jury trial reconvened in open court in Courtroom III before the Honorable Joel E. Tingey, District Judge, in Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson and Ms. Lindsey Lofgren appeared on behalf of the Plaintiff. Plaintiff April Beguesse was present at counsel table.

Mr. David Alexander and Mr. Jason Flaig appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.

The jury was not present.

The Court advised counsel that it would be including the instruction on corporate parties with the preliminary jury instructions to the jury.

Mr. Brunson presented Plaintiff's motion to exclude witnesses. Mr. Alexander opposed the motion.

The Court granted the motion and will exclude all witnesses with the exception of non-party witnesses.

The jury was brought into the courtroom. All members of the jury were present. The Court conducted a roll call of the jury.

The Court addressed the jury panel and then read preliminary instructions nos. 1-13.

Mr. Brunson presented Plaintiff's opening statement.

Mr. Alexander presented Defendant's opening statement.

Ms. April Beguesse was called as a witness, placed under oath and took the witness stand. Mr. Brunson inquired of Ms. Beguesse.

Argument without the presence of the jury was requested. The jury was led from the courtroom.

Mr. Brunson presented argument re: objection under 601(b).

Mr. Alexander responded to the motion. Mr. Brunson presented rebuttal argument. Further argument was heard.

Trial recessed.

Trial continued at 2:50 p.m. with Court and counsel present. The jury was not present.

The Court made its ruling.

The jury was brought into the courtroom at 2:56 p.m. Roll call of the jury was waived.

Ms. April Beguesse retook the witness stand subject to direct examination by Mr. Brunson. Plaintiff's Exhibit 7 - 1/07/01 letter from C. Beguesse to Rutter - was marked, offered and admitted without objection. Plaintiff's Exhibit 9 - 12/22/03 letter from C. Beguesse to Rutter - was marked, offered and admitted without objection. Plaintiff's Exhibit 14 - ABI codes and instructions - was marked, offered, and admitted without objection. Plaintiff's Exhibit 2 - lease agreement dated 1/01/04 - was marked, offered, and admitted.

Argument without the presence of the jury was requested. The Court instructed the jury prior to excusing them for break. The jury was led from the courtroom.

Mr. Brunson presented argument in support of the line of questioning. Mr. Alexander presented argument in opposition. Further argument was heard. The Court ruled that it will take it on a question by question basis.

Trial recessed.

350

Trial continued at 4:02 p.m. with all parties present. Roll call of the jury was waived.

Ms. April Beguesse retook the witness stand subject to direct examination by Mr. Brunson.

The Court instructed the jury prior to releasing them for the evening. Trial will continue at 9:00 a.m. on Wednesday, April 11, 2012. Trial was in recess for the evening.

On the 11th day of April, 2011, a jury trial reconvened in open court in Courtroom III before the Honorable Joel E. Tingey, District Judge, in Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson and Ms. Lindsey Lofgren appeared on behalf of the Plaintiff. Plaintiff April Beguesse was present at counsel table.

Mr. David Alexander and Mr. Jason Flaig appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.

Ms. April Beguesse retook the witness stand. Ms. Beguesse was still under oath. Mr. Alexander inquired on direct examination. Defendants' Exhibit B - cash flow estimate - was marked, offered and admitted. Defendants' Exhibit A - list of publications by Rutter Group - was marked, offered and admitted.

Trial recessed for morning break.

Trial resumed at 10:16 a.m. with all parties present. The jury was present. Roll call of the jury was waived.

Ms. Beguesse retook the witness stand subject to cross-examination by Mr. Alexander.

The Court instructed the jury before recessing for a morning break.

Trial continued at 11:28 a.m. with all parties present. The jury was present. Roll call was waived.

Mr. Alexander continued cross-examination of Ms. April Beguesse. Plaintiff's Exhibit 1 - ABI payment ledger - was marked, offered and admitted.

Mr. Brunson inquired on redirect examination. Ms. Beguesse was excused from the witness stand.

The Court instructed the jury prior to recessing for lunch break. Trial will resume at 1:00 p.m.

Trial resumed at 1:06 p.m. with all parties and jury present.

Mr. Stephen Martin was called as a witness on behalf of the Plaintiff. Mr. Martin was placed under oath and took the witness stand. Mr. Brunson inquired on direct examination. Plaintiff's Exhibit 45 - Stephen Martin's handwritten notes - was marked, offered and admitted. Mr. Alexander cross-examined. Mr. Brunson inquired on redirect examination. Mr. Martin was excused from the witness stand.

Ms. Linda Diamond Raznick was called as a witness by deposition transcript. Ms. Lindsey Lofgren read the responses of

Ms. Raznick. Mr. Brunson inquired on direct examination. Mr. Alexander cross-examined by deposition. Mr. Brunson inquired on redirect examination. The witness was excused.

Trial recessed for an afternoon break.

Court and counsel met in the courtroom for argument without the presence of the jury at 2:12 p.m.

Mr. Brunson advised that his next witness would be Rick Trulson. Mr. Alexander presented an objection to calling Mr. Trulson. Mr. Brunson presented argument in support calling Mr. Trulson. Mr. Alexander presented rebuttal argument. The Court ruled that Mr. Trulson could not be called at this time.

The jury was brought into the courtroom at 2:25 p.m.

Mr. Kenneth Rammell was placed under oath and took the witness stand. Mr. Brunson inquired of Mr. Rammell on direct examination. Plaintiff's Exhibit 27a - Schedule K-1 Christa Beguesse 2000 tax return - was marked, offered, objection raised, objection overruled, and admitted. Volume 1 of the Deposition of Kenneth Rammell was published. Volume 2 of the Deposition of Kenneth Rammell was published.

Mr. Alexander cross-examined Mr. Rammell.

Trial recessed for an afternoon break. The jury was led from the courtroom.

Trial resumed at 3:51 p.m. with all parties present. The jury was present.

Mr. Alexander continued cross-examination of Mr. Rammell.

Mr. Brunson inquired on redirect. Mr. Rammell was excused from the witness stand.

Ms. Renee Trulson Heller was called as a witness by deposition transcript. Ms. Lindsey Lofgren read the responses of Ms. Heller. Mr. Brunson inquired on direct examination. Mr. Alexander moved to strike the testimony of Ms. Heller. The Court overruled the motion. The witness was excused.

The Court instructed the jury prior to releasing them for the evening. Trial will resume at 10:00 a.m. on Thursday, April 12, 2012. Trial was in recess for the evening.

On the 12th day of April, 2011, a jury trial reconvened in open court in Courtroom III before the Honorable Joel E. Tingey, District Judge, in Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson and Ms. Lindsey Lofgren appeared on behalf of the Plaintiff. Plaintiff April Beguesse was present at counsel table.

Mr. David Alexander and Mr. Jason Flaig appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.

The jury was not present.

Mr. Alexander presented an oral motion to exclude witness Rick Trulson. Mr. Brunson presented argument in opposition to the

motion to exclude. Further argument was heard.

The Court ruled that Mr. Trulson will be allowed to testify but it cannot be specific.

The jury was brought into the courtroom at 10:23 a.m. All members of the jury were present. Roll call of the jury was waived.

Mr. Rick Trulson was placed under oath and took the witness stand. Mr. Brunson inquired of Mr. Trulson on direct examination. Mr. Trulson was excused from the witness stand.

Plaintiff rested.

Mr. Brunson requested argument without the presence of the jury. The Court instructed the jury before they were released for a morning break while the Court conducted business.

Mr. Brunson presented a motion to submit the issue of punitive damages to the jury. The Court denied the motion for punitive damages.

Mr. Alexander presented Defendants' motion for directed verdict. Mr. Brunson presented argument in opposition to the motion. Mr. Alexander presented rebuttal argument.

The Court denied the motion in part and granted the motion in part.

Trial was in recess.

Trial continued at 11:24 a.m. with all parties present. The jury was present. Roll call of the jury was waived.

Mr. Stephen Hall was placed under oath and took the witness

stand. Mr. Alexander inquired of Mr. Hall. Mr. Hall was excused from the witness stand.

Mr. Kenneth Rammell was recalled to the witness stand. Mr. Rammell was still under oath. Mr. Alexander inquired of Mr. Rammell. Mr. Brunson cross-examined. Mr. Alexander inquired on redirect examination. Mr. Rammell was excused from the stand.

The Court instructed the jury prior to releasing them for lunch break. Trial will continue at 1:15 p.m. The jury was led from the courtroom.

Trial resumed at 1:20 p.m. with all parties present. All members of the jury were present.

Mr. Alexander advised that Defendants rested.

Mr. Brunson rested rebuttal. Mr. Brunson requested argument without the presence of the jury.

The Court instructed the jury prior to conducting a recess. The Court advised the jury that Court and counsel will be working on jury instructions and it may take a while. The members of the jury were instructed to return by 2:30 p.m. The jury was led from the courtroom.

Mr. Brunson presented Plaintiff's motion for directed verdict as to counterclaims. Mr. Alexander presented argument in opposition to the motion. Mr. Brunson presented rebuttal argument.

The Court will dismiss counts 2 and 4; will not dismiss count 3.

Trial was in recess.

Due to computer problems the jury was excused at 2:30 p.m. and instructed to return on Friday, April 13, 2012 at 9:00 a.m.

Court reconvened at 4:05 for the purpose of the jury instruction conference. Present were the Court, counsel and court personnel. The jury was not present.

The Court noted the Court's proposed instructions were provided to counsel earlier and, upon inquiry from the Court, counsel stated they have had an opportunity to review the proposed instructions. Preliminary instructions 1-13 were read to the jury at the start of trial.

The parties went through each instruction individually. The Court will take the objections under advisement and making modifications as necessary. Mr. Brunson advised for the record that he objected to all instructions provided and not given. Mr. Alexander advised for the record that he objected to all instructions provided and not given.

Final instructions will be provided to counsel in the morning. We will go over them again prior to going before the jury.

Court recessed at 5:00 p.m.

On the 13th day of April, 2011, a jury trial reconvened in open court in Courtroom III before the Honorable Joel E. Tingey, District Judge, in Idaho Falls, Idaho.

Mr. Jack Fuller, Court Reporter, and Mrs. Marlene Southwick, Deputy Court Clerk, were present.

Mr. Jeff Brunson appeared on behalf of the Plaintiff. Plaintiff April Beguesse was present at counsel table.

Mr. David Alexander appeared on behalf of the Defendants. Defendant Kenneth Rammell was present at counsel table.

The jury was not present.

Court and counsel met for a supplemental jury instruction conference. Mr. Brunson brought up objections to the equitable stopper instruction, 34.5, 35 and the verdict form. Mr. Brunson advised for the record that he objected to all instructions provided and not given. Mr. Alexander advised for the record that he objected to all instructions provided and not given.

Trial recessed.

Trial continued at 9:18 a.m. with all parties present. All members of the jury were present.

The Court read the final jury instructions.

Mr. Brunson presented Plaintiff's closing argument.

The Court instructed the jury prior to conducting a morning recess. The jury was led from the courtroom.

Trial continued at 10:41 a.m. with all parties present. All members of the jury were present.

Mr. Alexander presented Defendants' closing argument.

Mr. Brunson presented rebuttal argument.

Ms. Allison Honeycutt was chosen as the alternate juror. The

Court thanked Ms. Honeycutt for her jury service and excused her.

Under the direction of the Court, the Bailiff was administered the oath by the Clerk.

The jury retired at 11:47 a.m. for deliberation in the charge of the Bailiff.

Court recessed at 11:47 a.m.

Court reconvened at 5:04 p.m. in open court. Counsel waived roll call of the jury.

Upon being asked by the Court, the jury foreman stated they had arrived at a verdict and handed the verdict to the Bailiff who delivered it to the Court. Under the direction of the Court, the clerk read and filed the verdict as follows:

APRIL BEGUESSE, INC., an Idaho corporation,)	
)	
Plaintiff,)	
)	
vs.)	VERDICT FORM
)	Case No. CV-09-2767
)	
KENNETH RAMMELL, an individual)	
CHRISTA BEGUESSE, INC., an Idaho corporation, ESTATE of)	
CHRISTA BEGUESSE RAMMELL, by)	
Its qualified personal Representative, Kenneth Rammell,)	
)	
Defendants.)	

We, the jury answer the interrogatories in the Verdict From as follows:

SECTION 1 - PLAINTIFF'S CLAIMS

Question No. 1: Are Plaintiff's claims of fraud barred by the statute of limitations?

Answer: Yes ___ No X

Question No. 2: Did Kenneth Rammell commit fraud?

Answer: Yes X No ___

Question No. 3: Did Christa Beguesse, Inc. commit fraud?

Answer: Yes X No ___

Question No. 4: Did Christa Beguesse commit fraud?

Answer: Yes No

If you answered "yes" to questions 2, 3 or 4, answer Question No. 5. If you answered "no" to questions 2, 3 and 4, proceed to Question No. 6.

Question No. 5: What is the total amount of damages to Plaintiff proximately caused by the fraud?

\$ 354,000.00

Question No. 6: Is Plaintiff's breach of contract and warranty claim as to a library of files barred by the statute of limitations?

Answer: Yes No

Question No. 7: Did Christa Beguesse, Inc. breach its contract and/or warranty with Plaintiff as to a library of files?

Answer: Yes No

If you answered "yes" to Question No. 7, proceed to Question No. 8. If you answered "no" to Question No. 7, proceed to Question No. 9.

Question No. 8: what is the total amount of damages to Plaintiff proximately caused by the breach of contract and/or warranty, not otherwise awarded above?

\$ 190,013.00

Question No. 9: Is Plaintiff's breach of contract and warranty claim as to proprietary software barred by the statute of limitations?

Answer: Yes No

Question No. 10: Did Christa Beguesse, Inc. breach its contract and/or warranty with Plaintiff as to proprietary software?

Answer: Yes No

If you answered "yes" to Question No. 10, proceed to Question No. 11. If you answered "no" to Question 10, proceed to Question No. 12.

Question No. 11: What is the total amount of damages to Plaintiff proximately caused by the breach of contract and/or warranty as to proprietary software, not otherwise awarded above?

\$

SECTION II - CBI'S CLAIM

Question No. 12: Did April Beguesse, Inc. breach its contract with Christa Beguesse, Inc.?

Answer: Yes No

If you answered "yes" to Question No. 12, answer Question No. 13. If you answered "no" to Question 12, sign the verdict form and inform the bailiff that you are done.

Question No. 13: What is the total amount of damages to Christa Beguesse, Inc., proximately cause by the breach of contract?

\$

DATED this 13th day of April, 2012

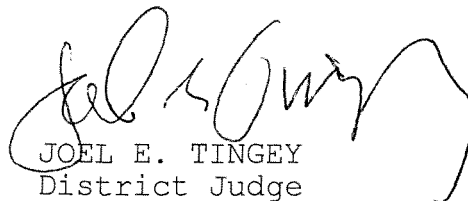
/s/ John Howze _____ Foreman

Upon inquiry from the Court, the jury panel stated that this is in fact their verdict.

Upon inquiry from the Court, counsel stated they do wish to have the jury polled. The Court inquired of each member of the jury to which they replied that it was their verdict.

The Court read a final jury instruction and thanked and excused the jurors at 5:10 p.m.

Court was thus adjourned at 5:10 p.m.



JOEL E. TINGEY
District Judge

CERTIFICATE OF SERVICE

I hereby certify that on the 16 day of April, 2012, I caused a true and correct copy of the foregoing document to be delivered to the following:

RONALD LONGMORE



Deputy Court Clerk

Jeffrey D. Brunson
John M. Avondet
2105 Coronado Street
Idaho Falls, ID 83404-75495

W. Marcus W. Nye
David E. Alexander
PO Box 1391
Pocatello, ID 83204-1391

PEREMPTORY CHALLENGES

PLAINTIFF:

1. ~~Keck~~ Jessica Keck ~~OK~~
2. Raymond Canuel ~~OK~~
3. Debbie Empey ~~OK~~
4. Linda Rhodes ~~OK~~
5. Rebecca Hagen ~~OK~~

DEFENDANT:

1. Steven Hansen ~~OK~~
2. ~~Raymond~~ Anne Howell ~~OK~~
3. Zachary Buckland ~~OK~~
4. Lita Thorneck ~~OK~~
5. Rhett Garner ~~OK~~

EXHIBIT LIST

CASE NAME: BEGUESSE v. RAMMELL

JUDGE: Joel E. Tingey

CASE NUMBER: CV-09-2767

DATE: 4/10/12

CLERK: M. Southwick

TYPE OF PROCEEDING: JURY TRIAL

WITNESS	DESCRIPTION	NUMBER	MARKED	OFFERED	OBJECTED	ADMITTED
	1/7/01 ltr C. Beguesse to Rutter	7	X	X	None	Yes
	12/22/03 ltr C. Beguesse to Rutter	9	X	X	None	Yes
	ABI codes/instru	14	X	X	None	Yes
	Lease agrmt 1/1/04	2	X	X	None	Yes
	Cash flow estimate	B	X	X	None	Yes
	List of publications by Rutter Group	A	X	X	None	Yes
	ABI pymt ledger	1	X	X	None	Yes
	S. Martin handwritten notes	45	X	X	None	Yes
	Christa Beguesse 2000 K-1 tax return	27a	X	X	Yes	Yes
	Vol 1 Ken Rammell depo published					
	Vol 2 Ken Rammell depo published					

JURY INSTRUCTION NO. 1

Now that you have been selected and sworn as the jury to try this case, I want to go over with you what will be happening. To start the trial, I will read to you some of the instructions as to the law that applies in this case. The attorney for the plaintiff or plaintiffs will make an opening statement, and then the attorney for the defendant or defendants may make an opening statement. The attorney for the defendant or defendants may save his opening statement until later. The opening statement is intended to inform you about the party's case, and what is claimed by a party, and what evidence the party intends to produce for you. However, the opening statement is not evidence.

After the opening statements, each party offers evidence to support their respective claims. The plaintiff or plaintiffs proceed first and offer all of their evidence in support of their claims. Then the defendant or defendants proceed to offer all of their evidence in support of their defenses. Thereafter, the plaintiff or plaintiffs may, but are not required to, offer evidence to rebut the evidence presented by the defendant or defendants.

After all of the evidence has been presented, I will read to you the rest of your instructions. In those instructions I will tell you what the law is and will tell you what you will have to decide.

Then the trial concludes with the closing arguments of the attorneys for both sides. Finally, you will be taken to the jury room where you can deliberate on your verdict in privacy.

JURY INSTRUCTION NO. 2

These instructions define your duties as members of the jury and the law that applies to this case.

Your duties are to determine the facts, to apply the law set forth in these instructions to those facts, and in this way to decide the case. In so doing, you must follow these instructions. You must consider them as a whole, not picking out one and disregarding others. Neither sympathy nor prejudice should influence you in your deliberations. Faithful performance by you of these duties is vital to the administration of justice.

In determining the facts, you may consider only the evidence admitted in this trial. This evidence consists of the testimony of the witnesses, the exhibits offered and received, and any stipulated or admitted facts. As the sole judges of the facts, you must determine which of the witnesses you believe, what portion of their testimony you accept, and what weight you attach to it.

The production of evidence in court is governed by rule of law. At times during the trial, I may sustain an objection to a question without permitting the witness to answer it or to an offered exhibit without receiving it into evidence. I will do this when the question calls for testimony that was not admissible or when the exhibit itself was inadmissible. In reaching your decision, you may not consider such a question or exhibit or speculate as to what the answer or exhibit would have shown. In addition, where an answer is given or an exhibit received, I may instruct that it be stricken from the record, that you disregard it and that you dismiss it from your minds. I will do this when it becomes apparent that the evidence was inadmissible only after it had been presented to you. In reaching your decision, you may not consider this testimony or

exhibit. Except as explained in this instruction, none of my rulings are intended by me to indicate any opinion concerning the evidence in this case.

The arguments and remarks of the attorneys involved in this case are intended to help you in understanding the evidence and applying the instructions, but they are not themselves evidence. If any argument or remark has no basis in the evidence, then you should disregard it. However, there are two exceptions to this rule: (1) an admission of fact by one attorney is binding on his party; and (2) stipulations of fact by all attorneys are binding on all parties.

The law does not require you to believe all of the evidence admitted in the course of the trial. As the sole judges of the facts, you must determine what evidence you believe and what weight you attach to it. In so doing, you bring with you to this courtroom all of the experience and background of your lives. In your everyday affairs, you determine for yourselves whom you believe, what you believe and how much weight you attach to what you are told. The same considerations that you use in your everyday dealings in making these decisions are the considerations which you should apply in your deliberations.

In evaluating the testimony, you should consider such items as: the interest, bias or prejudice of any witness in the outcome of this case; the age and appearance of the witness and the manner in which the witness gives his or her testimony; the opportunity that the witness had to observe the facts about which he or she testified; the contradiction, if any, of a witness's testimony by other evidence; any statements made by the witness at other times that are inconsistent with his or her present testimony; any evidence regarding a witness's general reputation for truth, honesty or integrity; and any felony conviction of a witness.

In evaluating the exhibits, you should consider such items as: the circumstances under which the exhibit was prepared; and the probability that the exhibit accurately reflects what it is intended to show in light of the other evidence of the case.

JURY INSTRUCTION NO. 3

If during the trial I may say or do anything which suggests to you that I am inclined to favor the claims or position of any party, you will not permit yourself to be influenced by any such suggestion. I will not express nor intend to express, nor will I intend to intimate, any opinion as to which witnesses are or are not worthy of belief; what facts are or are not established; or what inferences should be drawn from the evidence. If any expression of mine seems to indicate an opinion relating to any of these matters, I instruct you to disregard it.

JURY INSTRUCTION NO. 4

If you wish, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. You should not let note-taking distract you so that you do not hear other answers by witnesses. When you leave at night, please leave your notes in the jury room. If you do not take notes, you should rely on your own memory of what was said and not be overly influenced by the notes of other jurors. In addition, you cannot assign to one person the duty of taking notes for all of you.

JURY INSTRUCTION NO. 5

A witness who has special knowledge in a particular matter may give his or her opinion on that matter. In determining the weight to be given such opinion, you should consider the qualifications and credibility of the witness and the reasons given for his or her opinion. You are not bound by such opinion. Give it the weight, if any, to which you deem it entitled.

JURY INSTRUCTION NO. 6

Evidence may be either direct or circumstantial. Direct evidence is evidence that directly proves one of the facts on which a party has the burden of proof in the case, without resorting to inference. Circumstantial evidence is evidence that indirectly proves one of the facts on which a party has the burden of proof in the case, by means of proving one or more facts from which the fact at issue may be inferred.

The law makes no distinction between direct and circumstantial evidence as to the degree of proof required; each is accepted as a reasonable method of proof and each is respected for such convincing force as it may carry.

JURY INSTRUCTION NO. 7

Certain evidence may be admitted for a limited purpose. At the time this evidence is admitted you will be instructed as to the limited purpose for which it is admitted. Do not consider such evidence for any purpose except the limited purpose for which it is admitted.

JURY INSTRUCTION NO. 8

Certain evidence may be presented to you by deposition. A deposition is testimony taken under oath before the trial and preserved in writing or upon videotape. This evidence is entitled to neither more nor less consideration than you would give the same testimony had the witness testified here in the courtroom.

JURY INSTRUCTION NO. 9

From time to time during the trial it may become necessary for me to talk with the attorneys out of the hearing of the jury, either by having a conference at this bench when the jury is present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is not to keep relevant information from you, but to decide how certain evidence is to be treated under the rules of evidence and to avoid confusion and error.

We will, of course, do what we can to keep the number and length of these conferences to a minimum. I may not always grant an attorney's request for a conference. Do not consider my granting or denying a request for a conference as any indication of my opinion of the case or what your verdict should be.

JURY INSTRUCTION NO. 10

It is important that as jurors and officers of this court you obey the following instructions at any time you leave the jury box, whether it be for recesses of the court during the day or when you leave the courtroom to go home at night.

First, do not talk about this case either among yourselves or with anyone else during the course of the trial. In fairness to all of the parties, you should keep an open mind throughout the trial and not form or express an opinion about the case. You should only reach your decision after you have heard all the evidence, after you have heard my final instructions and after the final arguments. You may discuss this case with the other members of the jury only after it is submitted to you for your decision. All such discussion should take place in the jury room.

Second, do not let any person talk about this case in your presence. If anyone does talk about it, tell them you are a juror on the case. If they won't stop talking, report that to the bailiff as soon as you are able to do so. You should not tell any of your fellow jurors about what has happened.

Third, during this trial do not talk with any of the parties, their lawyers or any witnesses. By this, I mean not only do not talk about the case, but do not talk at all, even to pass the time of day. In no other way can all parties be assured of the fairness they are entitled to expect from you as jurors.

Fourth, during this trial do not make any investigation of this case or inquiry outside of the courtroom on your own. Do not go to any place mentioned in the testimony without an explicit order from me to do so. You must not consult any books, dictionaries, encyclopedias or any other source of information unless I specifically authorize you to do so.

Fifth, do not read about the case in the newspapers. Do not listen to radio or television broadcasts about the trial. You must base your verdict solely on what is presented in court and not upon any newspaper, radio, television or other account of what may have happened.

JURY INSTRUCTION NO. 11

During your deliberations, you will be entitled to have with you in the jury room my instructions concerning the law that applies to this case, the exhibits that have been admitted into evidence and any notes taken by you in the course of the trial proceedings.

The instructions are part of the official court record. For this reason please do not alter them or mark on them in any way.

The instructions are numbered for convenience in referring to specific instructions. There may or may not be gaps in the numbering of the instructions. If there are gaps, you should not concern yourselves about such gaps.

INSTRUCTION NO. 12

Any statement by me identifying a claim of a party is not evidence in this case. I have advised you of the claims of the parties merely to acquaint you with the issues to be decided.

JURY INSTRUCTION NO. 13

The corporations involved in this case are entitled to the same fair and unprejudiced treatment that an individual would be under like circumstances. You should decide this case with the same impartiality that you would use in deciding a case between individuals.

INSTRUCTION NO. 20

Certain evidence was presented to you by deposition or other prior testimony. This testimony was taken under oath before the trial and preserved in writing. This evidence is entitled to the same consideration you would give had the witnesses testified from the witness stand.

JURY INSTRUCTION NO. 21

In this case, certain evidence was admitted for a limited purpose. Specifically, the testimony of April Beguesse as to statements made by Christa Beguesse may not be considered as evidence in supporting a claim against the Estate of Christa Beguesse. Such evidence however may be used for any other purpose.

JURY INSTRUCTION NO. 22

An oral agreement that contains all of the elements of a contract is a binding contract.

JURY INSTRUCTION NO. 23

A contract may be amended or modified by an agreement of the parties. This requires all of the elements of any other contract.

JURY INSTRUCTION NO. 24

The plaintiff and Defendant Christa Beguesse, Inc. have each claimed that the other breached a contract. The burden of proving each of the following propositions rests with the party asserting the breach:

1. A contract existed between parties;
2. The other party breached the contract;
3. The party has been damaged on account of the breach; and
4. The amount of the damages.

If you find from your consideration of all the evidence that each of the propositions have been proved by the party asserting the breach, then your verdict on this issue should be in favor of that party. If you find from your consideration of all the evidence that any of the propositions in this instruction has not been proved by the party asserting the breach, your verdict should be for the other party.

JURY INSTRUCTION NO. 25

The terms of the oral agreement between Christa Beguesse, Inc., and April Beguesse, Inc., are in dispute. You must determine what was agreed to by the parties. In making this determination you should consider, from the evidence, the following:

1. The contract must be construed as a whole, including all of the circumstances giving rise to it, to give consistent meaning to every part of it.

2. Language must be given its ordinary meaning, unless you find from the evidence that a special meaning was intended.

3. Any communications, conduct or dealings between the contracting parties showing how they construed the contract may be considered, provided that such may not completely change the agreement or construe one term inconsistently with the remainder of the terms.

4. The contract should be construed to avoid any contradiction or absurdities.

Persons within a specialized field are deemed to have contracted with reference to any generally known and customarily accepted language in that field, unless you find from the evidence that this was not intended.

This Court previously ruled that the "Lease Agreement" (Exhibit 2) is not an enforceable contract. However, that document may be evidence as to the actual agreement entered into by the Parties.

JURY INSTRUCTION NO. 28

An express warranty is a warranty created by words or actions of the seller. Express warranties may be created by affirmations of fact or promises made by the seller to the buyer relating to the goods that becomes the basis of the bargain; (2) a description of the goods that becomes part of the basis of the bargain; or (3) a sample or model made part of the basis of the bargain.

With regard to Plaintiff's claim for breach of warranty as to a library of files and proprietary software, Plaintiff has the burden of proof on each of the following propositions:

1. That CBI made a warranty as part of the sale of the business;
2. That CBI breached the warranty;
3. That ABI was damaged on account of the breach; and
4. The amount of damages.

An affirmation merely of the value of the goods or a statement purporting to be merely the seller's opinion or commendation of the goods does not create a warranty.

If you find from your consideration of all the evidence that each of these propositions has been proved, then you should find for ABI on this issue. If you find from your consideration of all the evidence that each of these propositions has not been proved, then you should find for CBI on this issue.

JURY INSTRUCTION NO. 29

With regard to Plaintiff's claim of fraud, the plaintiff has the burden of proving each of the following propositions by clear and convincing evidence:

1. That the defendants stated a fact to the plaintiff;
2. The statement was false;
3. The statement was material;
4. The defendants either knew the statement was false or were unaware of whether the statement was true at the time the statement was made.
5. The plaintiff did not know that the statement was false;
6. The defendants intended for the plaintiff to rely upon the statement and act upon it in a manner reasonably contemplated;
7. The plaintiff did rely upon the truth of the statement;
8. The plaintiff reliance was reasonable under all the circumstances;
9. The plaintiff suffered damages proximately caused by reliance on the false statement.
10. The nature and extent of the damages to the plaintiff, and the amount thereof.

If you find from your consideration of all the evidence that the elements of fraud have been proved by clear and convincing evidence, then your verdict should be for the plaintiff on this issue. If you find from your consideration of all the evidence that any of the foregoing propositions has not been proved by clear and convincing evidence, then your verdict should be for the defendants.

INSTRUCTION NO. 29.1

The term “agent” refers to a person authorized by another, called the “principal,” to act for or in the place of the principal. The principal is responsible for any act of the agent within the agent’s scope of authority.

JURY INSTRUCTION NO. 30

When I say that a party has the burden of proof on a proposition, or use the expression “if you find” or “if you decide,” I mean you must be persuaded that the proposition is more probably true than not true.

JURY INSTRUCTION NO. 31

When I say a party has the burden of proof on a proposition by clear and convincing evidence, I mean you must be persuaded that it is highly probable that such proposition is true. This is a higher burden than the general burden that the proposition is more probably true than not true.

JURY INSTRUCTION NO 32

A “material breach of contract,” as that term is used in these instructions, means a breach that defeats a fundamental purpose of the contract.

JURY INSTRUCTION NO. 33

When I use the expression “proximate cause,” I mean a cause that, in natural or probable sequence, produced the injury, the loss or the damage complained of. It need not be the only cause. It is sufficient if it is a substantial factor in bringing about the injury, loss or damage. It is not a proximate cause if the injury, loss or damage likely would have occurred anyway.

JURY INSTRUCTION NO. 34

"Materiality" refers to the importance of the alleged representation in determining the party's course of action. A representation is material if (a) a reasonable person would attach importance to its existence or nonexistence in determining a choice of action in the transaction in question, or (b) the person making the representation knows or has reason to know that the recipient is likely to regard the matter as important in determining the choice of action, whether or not a reasonable person would so consider.

JURY INSTRUCTION NO. 34.1

Under the applicable statute of limitations, Plaintiff was required to file its complaint of fraud within three years from the date the Plaintiff knew or reasonably should have known of the facts constituting the alleged fraud. Actual knowledge will be inferred if the allegedly aggrieved party could have discovered the fraud by the exercise of due diligence. It is for you to determine whether the claims of fraud are barred by the statute of limitations.

JURY INSTRUCTION NO. 34.2

The statute of limitations for Plaintiff's alleged breach of contract and warranty claim regarding a library of files is four years and begins to run from the time ABI knew of the Rutter Group's claim of ownership interest in the library of files. It is for you to determine whether the statute of limitations bars the breach of contract and warranty claim as to library of files.

The statute of limitations for Plaintiff's alleged breach of contract and warranty claim regarding proprietary software is four years and begins to run from the time the Parties entered into the contract. Plaintiff's complaint, filed on May 8, 2009, was filed more than four years after that alleged breach of contract. The doctrine of estoppel may apply to bar the application of the statute of limitations to this claim.

Plaintiff bears the burden of proving the elements of estoppel which are as follows:

- (1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth;
- (2) that the party asserting estoppel did not know or could not discover the truth;
- (3) that the false representation or concealment was made with the intent that it be relied upon; and
- (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice.

Even if the elements of estoppel are met thereby barring the application of the statute of limitations, that bar does not last forever. Instead, it lasts only for a reasonable time after the party asserting estoppel discovers or reasonably could have discovered the truth. Once the party claiming estoppel discovers the truth with respect to the alleged misrepresentations upon which the estoppel is based, that party must act with due diligence in asserting the claim.

Estoppel does not bar the application of the statute of limitations when plaintiff learned of an allegedly concealed fact within adequate time to bring a lawsuit prior to the running of the statute of limitations.

It is for you to determine whether estoppel applies barring the application of the statute of limitations to the breach of contract and warranty claim as to proprietary software.

JURY INSTRUCTION NO. 36

By giving you instructions on the subject of damages, I do not express any opinion as to whether any party is entitled to damages.

JURY INSTRUCTION NO. 37

If the jury decides that ABI is entitled to recover from CBI for breach of contract or fraud, the jury must determine the amount of money that will reasonably and fairly compensate ABI for any damages proved by the evidence to have resulted from the breach or fraud.

JURY INSTRUCTION NO. 36

If the jury decides that CBI is entitled to recover from ABI for breach of contract, the jury must determine the amount of money that will reasonably and fairly compensate CBI for any damages proved by the evidence to have resulted from the breach.

INSTRUCTION NO. 39

If you decide for the plaintiff on the question of liability with respect to its breach of warranty claim, you must then fix the amount of money which will reasonably and fairly compensate ABI for its damages. The measure of damages for breach of warranty is the difference at the time and place of acceptance between the value of the goods accepted and the value they would have had if they had been as warranted, unless special circumstances show proximate damages of a different amount.

Whether any of these elements of damage has been proved by the evidence is for you to determine.

JURY INSTRUCTION NO. 40

A party is not entitled to duplicative damages. For example, the same damages which may be awarded for a breach of contract may not again be awarded for breach of warranty or fraud.

JURY INSTRUCTION NO. 401

A person who has been damaged must exercise ordinary care to minimize the damage and prevent further damage. Any loss that results from a failure to exercise such care cannot be recovered.

JURY INSTRUCTION NO. 40.2

Even though Plaintiff's claims may be barred by a statute of limitations, damages proximately arising from such claims may nevertheless be used to offset damages asserted in CBI's counterclaim. Accordingly, regardless of your finding as to the application of the statute of limitations, you will be asked to determine whether CBI committed fraud and/or breached a contract or warranty and any damages arising therefrom.

JURY INSTRUCTION NO. 41

I have outlined for you the rules of law applicable to this case and have told you of some of the matters which you may consider in weighing the evidence to determine the facts. In a few minutes counsel will present their closing remarks to you, and then you will retire to the jury room for your deliberations.

The attitude and conduct of jurors at the beginning of their deliberations are important. It is rarely productive for a juror, at the outset, to make an emphatic expression of his opinion on the case or to state how he intends to vote. When one does that at the beginning, his sense of pride may be aroused; and he may hesitate to change his position, even if shown that it is wrong. Remember that you are not partisans or advocates, but are judges. For you, as for me, there can be no triumph except in the ascertainment and declaration of the truth.

Consult with one another. Consider each other's views; and deliberate with the objective of reaching an agreement, if you can do so without disturbing your individual judgment. Each of you must decide this case for yourself; but you should do so only after a discussion and consideration of the case with your fellow jurors.

JURY INSTRUCTION NO. 42

On retiring to the jury room, select one of your number as a foreperson, who will preside over your deliberations.

A verdict may be reached by three-fourths of your number, or nine of you. As soon as nine or more of you shall have agreed upon a verdict, you should fill it out, and have it signed. If your verdict is unanimous, your foreperson alone will sign it; but if nine or more, but less than the entire jury, agree, then those so agreeing will sign the verdict.

As soon as you have completed and signed the verdict, you will notify the bailiff, who will then return you into open court.

JURY INSTRUCTION NO. 43

If it becomes necessary during your deliberations to communicate with me, you may send a note signed by one or more of you to the bailiff. You should not try to communicate with me by any means other than such a note.

During your deliberation, you are never to reveal to anyone how the jury stands on any of the questions before you, numerically or otherwise, unless requested to do so by me.

INSTRUCTION NO. 44

Members of the Jury: In order to return a verdict, it is necessary that at least three-fourths of the jury agree. Your verdict must represent the considered judgment of each juror agreeing to it.

It is your duty, as jurors, to consult with one another and to deliberate with a view to reaching an agreement, if you can do so without violence to individual judgment. Each of you must decide the case for yourself, but do so only after an impartial consideration of the evidence with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of evidence solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

You are not partisans. You are judges – judges of the facts. Your sole interest is to ascertain the truth from the evidence in the case.

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

APRIL BEGUESSE, INC., an Idaho
corporation,

Plaintiff,

vs.

KENNETH RAMMEL, an individual,
CHRISTA BEGUESSE, INC., an Idaho
Corporation, ESTATE OF CHRISTA
BEGUESSE RAMMELL, by its personal
representative, Kenneth Rammell,

Defendants, Counterclaimant.

Case No. CV-09-2767

VERDICT FORM

We, the jury answer the interrogatories in the Verdict Form as follows:

SECTION 1 – PLAINTIFF’S CLAIMS

Question No. 1: Are Plaintiff’s claims of fraud barred by the statute of
limitations?

Answer: Yes _____ No

Question No. 2: Did Kenneth Rammell commit fraud?

Answer: Yes No _____

Question No. 3: Did Christa Beguesse, Inc. commit fraud?

Answer: Yes No _____

Question No. 4: Did Christa Beguesse commit fraud?

Answer: Yes No _____

If you answered "yes" to questions 2, 3 or 4, answer Question No. 5. If you answered "no" to questions 2, 3, and 4, proceed to Question No. 6.

Question No. 5. What is the total amount of damages to Plaintiff proximately caused by the fraud?

\$ 354,000.00

Question No. 6: Is Plaintiff's breach of contract and warranty claim as to a library of files barred by the statute of limitations?

Answer: Yes _____ No

Question No. 7. Did Christa Beguesse, Inc. breach its contract and/or warranty with Plaintiff as to a library of files?

Answer: Yes No _____

If you answered "yes" to Question No. 7, proceed to Question No. 8. If you answered "no" to Question No. 7, proceed to Question No. 9.

Question No. 8. What is the total amount of damages to Plaintiff proximately caused by the breach of contract and/or warranty, not otherwise awarded above?

\$ 190,013.00

Question No. 9. Is Plaintiff's breach of contract and warranty claim as to proprietary software barred by the statute of limitations?

Answer: Yes _____ No

Question No. 10. Did Christa Beguesse, Inc. breach its contract and/or warranty with Plaintiff as to proprietary software?

Answer: Yes No _____

If you answered "yes" to Question No. 10, proceed to Question No. 11. If you answered "no" to Question 10, proceed to Question No. 12.

Question No. 11. What is the total amount of damages to Plaintiff proximately caused by the breach of contract and/or warranty as to proprietary software, not otherwise awarded above?

\$ 0

SECTION II - CBI'S CLAIM.

Question No. 12. Did April Beguesse, Inc. breach its contract with Christa Beguesse, Inc.?

Answer: Yes _____ No

If you answered "yes" to Question No. 12, answer Question No. 13. If you answered "no" to Question 12, sign the verdict form and inform the bailiff that you are done.

Question No. 13. What is the total amount of damages to Christa Beguesse, Inc., proximately caused by the breach of contract?

\$ _____

Dated this 13th day of April, 2010
John S. Howze
Foreman

John S. Howze

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

APRIL BEGUESSE, INC., an Idaho
Corporation,

Plaintiff/Counterdefendant,

vs.

KENNETH RAMMELL, an individual,
CHRISTA BEGUESSE, INC., an Idaho
Corporation, THE ESTATE OF CHRISTA
BEGUESSE RAMMELL, by it qualified
personal representative, Kenneth Rammell,

Defendants/Counterclaimant.

Case No. CV-09-2767


JUDGMENT UPON VERDICT

THIS MATTER having gone to trial on April 10-13, 2012, and the jury having returned a verdict, and good cause appearing therefore;

IT IS HEREBY ORDERED AND ADJUDGED that Plaintiff shall have judgment against defendants, joint and several, in the amount of \$354,000.

IT IS FURTHER ORDERED AND ADJUDGED that in addition to the foregoing, Plaintiff shall have judgment against Defendant Christa Beguesse, Inc., in the amount of \$190,013. Interest shall accrue on the foregoing amounts at the statutory rate. Pursuant to the jury verdict, the counterclaim of Defendant Christa Beguesse, Inc is dismissed with prejudice.

Dated this 17 day of April, 2012


JOEL E. TINGEY
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I hereby certify that on this 17 day of April, 201~~2~~, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon, or by placement in the courthouse mailbox.

Jeffrey D. Brunson
BEARD ST. CLAIR GAFFNEY
2105 Coronado Street
Idaho Falls, ID 83404-7495

David E. Alexander
RACINE OLSON NYE BUDGE
P.O. Box 1391
Pocatello, ID 83204

Clerk of the District Court
Bonneville County, Idaho

By ms
Deputy Clerk