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Green River Ranches v. Silva Land Co. Appellant's Brief 2 Dckt. 43547

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IN THE SUPREME COURT OF THE STATE OF IDAHO

JACK MCCALL,

Plaintiff-Respondent

v.

MAX SILVA, an individual; and SILVA
DAIRY, LLC, an Idaho limited liability
company,

Defendants/Appellants.

Idaho Supreme Court
Consolidated Docket Nos.
43547-2015 and 43548-2015

Twin Falls County Consolidated
Case No. CV-2013-1263

APPELLANT'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL DISTRICT FOR TWIN FALLS COUNTY
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TABLE OF CONTENTS

TABLE OF CASES AND AUTHORITIES.....	2
STATEMENT OF CASE	3
A. Nature of the Case.	3
B. Course of Proceedings.	3
C. Statement of Facts.	6
ISSUES PRESENTED ON APPEAL	7
ARGUMENTS AND AUTHORITY	8
I. Standard of Review.	8
A. Pasture, Feed and Feed Conversion Issues.....	8
B. Attorney Fees.....	9
II. The District Court award to Mr. McCall for feed expenses of \$40,067.87 failed to factor in feed expenses incurred by Silva Dairy on behalf of Mr. McCall.....	9
III. The District Court’s award of \$413,953 for conversion of Mr. McCall’s feed by Silva Dairy was without legal foundation or adequate factual support.	11
A. The District Court wrongfully found feed conversion when the evidence clearly and unequivocally did not show the “wrongful dominion” necessary for conversion of personal property in Idaho.....	11
B. Mr. McCall never proved any of his dairy feed was “missing”.	16
1. McCall’s feed invoices contradict his alleged feed purchases.....	19
2. McCall’s Quickbooks records contradict his alleged feed purchases....	20
3. Mr. McCall’s calculation of his own feed usage was inaccurate.	23
4. Mr. McCall’s calculation of the value of feed was inaccurate.....	25
5. The District Court placed undue reliance on Mr. Onaindia.	26
IV. The District Court’s award of \$53,386.90 for pasture rent was improper.....	29
V. Silva Dairy is entitled to attorney fees and costs for the District Court action.	30
VI. Silva Dairy is entitled to attorney fees and costs on appeal.	31
CONCLUSION	31
CERTIFICATE OF SERVICE.....	32

TABLE OF CASES AND AUTHORITIES

Cases

<i>Harris, Inc. v. Foxhollow Const. & Trucking, Inc.</i> , 151 Idaho 761, 264 P.3d 400 (2011).....	8
<i>Keith A. Sims, dba Kasco of Idaho, LLC v. Jacobson</i> , 342 P.3d 907 (Idaho, 2015).....	9
<i>Medical Recovery Services, LLC v. Bonneville Billing & Collections, Inc.</i> , 157 Idaho 395, 336 P.3d 802 (2014)	14, 15
<i>Peasley Transfer & Storage Co. v. Smith</i> , 132 Idaho 732, 979 P.2d 605 (1999).....	16
<i>Taylor v. McNichols</i> , 149 Idaho 826, 243 P.3d 642 (2010)	14
<i>Torix v. Allred</i> , 100 Idaho 905, 606 P. 2d 1334 (1980).....	15
<i>Vanderwal v. Albar, Inc.</i> , 303 P.3d 175 (Idaho, 2013).....	8, 9

Other Authorities

<i>Black's Law Dictionary</i> , 6 th Edition (1990)	15
Idaho Code §§ 12-120 and 12-121	30, 31
Idaho App. R. 41(a).....	31
Idaho R. Civ. P. 54(d)(1)(A).....	30
Idaho R. Civ. P. 54(d)(1)(B).....	30
Idaho R. Civ. P. 54(e)(1)	30, 31
I.R.C.P. 15(b).....	30

STATEMENT OF CASE

A. Nature of the Case.

This is a commercial dispute involving the management of Respondent Mr. Jack McCall's (hereinafter "Respondent" or "McCall") dairy herd for nearly thirty months by the Appellant Silva Dairy, LLC¹ (hereinafter "Appellant" or "Silva Dairy"). This appeal in particular, concerns whether Mr. McCall is entitled to an offset against the management fee for pasture rent, feed expenses he paid on behalf of Silva Dairy, and dairy feed he claims was converted by Silva Dairy. In all three cases, the answer is "No". The Appellant requests that the District Court's findings on these points be overturned as both deficient under Idaho law and not well grounded in the facts.

B. Course of Proceedings.

In April of 2010, Jack McCall doing business as JT Livestock moved his milking cows onto a dairy facility (owned by Silva Land Company, LLC) to be managed by Silva Dairy. Augmented R. pp. 92-93 (2014 Memorandum Opinion²). Silva Dairy did so for approximately 30 months until August of 2012. R., p. 72 (2015 Memorandum Opinion).

¹ Silva Dairy, LLC is owned by the Silva family as is Silva Land Company, LLC.

² The Record in this matter consists of the following components:

- The Trial Transcript for the June 26 - 27, 2014 trial on liability (cited hereafter as "Tr. Vol. I").

- The Trial Transcript for the June 24 - 26, 2015 trial on damages and closing arguments on July 1, 2015 (cited as "Tr. Vol. II")

- The "Clerk's Limited Record on Appeal" provided by the District Court Clerk (cited as "R.").

- The trial exhibits provided by the District Court Clerk (cited as "R. Exhibits")

- The "Clerk's Augmented Record on Appeal" (cited as "Augmented R. Vol. I").

The parties never entered into a written or oral agreement as to how Silva Dairy would be compensated for managing the McCall herd. Augmented R. Vol. I, pp. 92-93 (2014 Memorandum Opinion).

In August of 2010, Silva Dairy filed for Chapter 12 bankruptcy and the plan of reorganization was confirmed October 21, 2011. Augmented R. Vol. I, p. 93, para. 4; p. 95, para. 1 (2014 Memorandum Opinion).

On or about March 26, 2013, Green River Ranches, LLC, an entity of which Jack McCall was a key owner, sued Silva Land Company, LLC and the various Silva family members individually in the Fifth District in and for the County of Twin Falls for a loan made in 2009. *Green River Ranches, LLC vs. Silva Land Company, LLC et al.*, Case No. CV-2013-1263. Augmented R. Vol. I, pp. 146-184 (Complaint for Claim & Delivery and for Damages).

This was the first of series of actions filed by Mr. McCall against the Silvas and/or their entities. He sued Silva Dairy, LLC and Max Silva in connection with the purchase of 101 cows. *McCall v. Max Silva et al.*, CV-2013-3154; Augmented R. Vol. I, pp. 146-184. He also filed an action against Silva Land Company, LLC for alleged mismanagement of his dairy herd, feed conversion, pasture rent and a 15 cow purchase. *Jack McCall dba JT Livestock v. Silva Land Company, LLC*, CV-2013-4732; Augmented R. Vol. I, pp. 232-236 (Complaint for Damages). He also pursued Max Silva individually in connection with a \$10,000 check. *Jack McCall v. Max Silva*, CV-2013-4728; Augmented R. Vol. I, pp. 146-150.

- The augmented record approved by this Court's Order on August 24, 2016 in response to Appellant's *Motion to Augment Record* (cited as "Augmented R. Vol. II").

Silva Dairy answered Mr. McCall's Complaint for the 101 cow purchase and counterclaimed against JT Livestock, a general partnership, Jack McCall personally, his other partners, and Green River Ranches, LLC for the management fee due for management of the JT Livestock herd. Augmented R. Vol. II, pp. 4-21 (Answer and Counter-Claim).

The U.S. Bankruptcy Court for the District Court allowed Silva Dairy to litigate its Counterclaim in the Fifth District Court for the District of Idaho, Twin Falls County, before the Honorable Randy J. Stoker, with simultaneous consideration of offsets claimed against Green River Ranches, LLC and those by Mr. McCall. Augmented R. Vol. I, pp. 90-91 (2014 Memorandum Opinion).

The various actions were consolidated by Order of the District Court. Augmented R. Vol. II, p. 1-3. The District Court further decided to conduct first a trial on liability which was held June 26 and 27, 2014. *See, generally*, Tr. Vol. I, June 26-27, 2014.

After the trial on liability, the State Court determined that Silva Dairy was not entitled to an undetermined management fee under either a theory of unjust enrichment or equitable estoppel. R. Vol. I, p. 16, fn. 7; pp. 19-20 (2014 Memorandum Opinion).

A trial to determine monetary damages was conducted June 24–26, 2015. *See, generally*, Tr. Vol. II, June 24-26, 2015.

Judge Stoker on July 16, 2015 issued a *Memorandum Opinion* determining that³:

- Silva Dairy, LLC was entitled to a management fee of \$204,977.65 for management of the McCall dairy herd. R., p. 77, para. 2.

³ The Court made other findings that are not relevant to this appeal.

- That McCall was entitled to an offset of \$52,386.90 against Silva Dairy, LLC for pasture rent. R., p. 78, para. 2.
- That McCall was entitled to an offset for feed purchased for Silva Dairy in the amount of \$40,067.87. R., p. 82, para. 2
- McCall was entitled to \$413,953 for feed “converted” by Silva Dairy. R., p. 85, para. 1.

C. Statement of Facts.

Silva Dairy managed the McCall herd from April of 2010 until August of 2012. R., p. 72 (2015 Memorandum Opinion).

During that time, the four Silva brothers, the principals of Silva Dairy, did everything from checking the herd, raising the calves, feeding the cows, nursing the cows, interacting with the nutritionist and veterinarian, maintaining the pens and more. *See, eg.*, Tr. Vol. II, p. 17, LL. 21 – p. 19, L. 1; p. 19, LL. 5-14; p. 22, LL. 20 – p. 26, LL. 7 (Max Silva, June 24, 2015).

In the initial months of managing the McCall herd, Silva Dairy purchased feed for the McCall herd and used its own feed on behalf of McCall’s cows. Tr. Vol. II, p. 31, LL. 22 – p. 32, LL. 13 (Max Silva, June 24, 2015).

In later 2011 and 2012, the nutritionist for Silva Dairy and Mr. McCall, Mike Vander Pol strove for consistency in the feed fed to both the Silva Dairy and McCall herds. He did so by mixing the feed purchased by both. Tr. Vol. II, p. 178, LL. 4 – p. 183, LL. 6; p. 186, LL. 9 – p. 189, LL. 10; p. 204, LL. 18 – p. 205, LL. 3 (Mike Vander Pol, June 24, 2015). Mr. McCall consulted with the nutritionists and was informed of the rations they were providing. Tr. Vol. II,

p. 402 LL. 17 – p. 403 LL.11 (Jack McCall, June 25, 2015).

In 2012, when Silva Dairy began pressuring Mr. McCall to pay for the management of his herd, both parties agreed that Silva Dairy, LLC would have the accounting firm of Cooper Norman prepare an estimate of the market value of the management fee. Tr. Vol. II, p. 32, LL.10-25 (Max Silva, June 24, 2015). When Mr. McCall was presented with a preliminary number from the accounting firm, he withdrew his herd from the Silva Land Company, LLC facility. Tr. Vol. II, p. 33, L. 6 – p. 34, L. 18 (Max Silva, June 24, 2015)

The actions before the Court arose thereafter.

ISSUES PRESENTED ON APPEAL

1. Did the district court error in entering judgment against Silva Dairy in favor of Mr. McCall in the amount of \$40,067.87 for feed in respect to Mr. McCall's \$55,000 claim?
2. Did the district court error in entering judgment against Silva Dairy in favor of Mr. McCall in the amount of \$413,953 for conversion of his feed?
3. Did the district court error in entering judgment against Silva Dairy in favor of Mr. McCall for pasture rent in the amount of \$55,386.90?
4. Did the district court error in not awarding Silva Dairy its attorney fees and costs against Mr. McCall?
5. Is Silva Dairy entitled to its attorney fees for this appeal?

ARGUMENTS AND AUTHORITY

I. Standard of Review.

The Court has before it two clusters of issues.

First, is the question of whether Mr. McCall is entitled to judgment for pasture and feed he asserts he purchased or was converted by Silva Dairy?

Second, is Silva Dairy entitled to its attorney fees?

The standard of review for each cluster is different.

A. Pasture, Feed and Feed Conversion Issues

First, on the pasture and feed purchase/conversion issues there are two differing standards of review, namely one for factual findings, and another for conclusions of law. The applicable standards of review for this Court are:

We review a district court's bench trial decisions to determine “whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law.” *Independence Lead Mines v. Hecla Mining Co.*, 143 Idaho 22, 26, 137 P.3d 409, 413 (2006). This Court will set aside findings of fact only when clearly erroneous. *Id.* We will not disturb findings supported by substantial and competent evidence, “even if the evidence is conflicting.” *Id.* “It is the province of the district court to weigh conflicting evidence and testimony and to judge the credibility of the witnesses.” *Thorn Springs Ranch, Inc. v. Smith*, 137 Idaho 480, 484, 50 P.3d 975, 979 (2002). We, therefore, liberally construe a trial court's findings “in favor of the judgment entered.” *Id.* (internal quotation marks omitted). When it comes to matters of law, however, we are not bound by the trial court's conclusions; this Court is free to “draw its own conclusions from the facts presented.” *Id.*

Harris, Inc. v. Foxhollow Const. & Trucking, Inc., 151 Idaho 761, 768, 264 P.3d 400, 407 (2011).

For assertions of factual errors, the particularized standard of review is:

Factual findings are not clearly erroneous if they are supported by substantial and competent evidence, which is evidence that a reasonable trier of fact could accept and rely upon in determining that such facts had been proved. *Elliott v. Verska*, 152 Idaho 280, 285, 271 P.3d 678, 683 (2012). An appellant must support assignments of error with citations to the parts of the transcript or record relied upon. I.A.R. 35(a)(6).

Vanderwal v. Albar, Inc., 303 P.3d 175, 180 (Idaho, 2013).

B. Attorney Fees

The second primary cluster is what standard of the review the Court should apply, if the previous items are determined in favor of Appellant, to the District Court's denial of attorney fees to Silva Dairy.

As this Court has recently noted on an award of attorney fees:

The trial court has discretion to award attorney fees and costs; that award is subject to review for an abuse of discretion. *Magleby v. Garn*, 154 Idaho 194, 196, 296 P.3d 400, 402 (2013). When we consider whether a trial court abused its discretion, the standard is whether the court perceived the issue as discretionary, acted within the outer boundaries of its discretion and consistently with the legal standards applicable to the specific choices available, and reached its decision by an exercise of reason. *Id.* at 196–97, 296 P.3d at 402–03.

Keith A. Sims, dba Kasco of Idaho, LLC v. Jacobson, 342 P.3d 907, 911 (Idaho, 2015).

II. The District Court award to Mr. McCall for feed expenses of \$40,067.87 failed to factor in feed expenses incurred by Silva Dairy on behalf of Mr. McCall.

The District Court awarded \$40,067.87 to Mr. McCall for feed he paid on behalf of Silva Dairy in 2010. R. Vol. I, pp. 81-82. There is no dispute that Mr. McCall paid those bills.

But, in awarding such to Mr. McCall, the District Court neglected to give weight to the abundant evidence that Silva Dairy paid for feed for Mr. McCall in an amount far in excess of

the amount awarded to Mr. McCall by the District Court. A review of the factual record justifies a reversal as clearly erroneous.

Here are the relevant portions of the factual record on that issue:

First, when Silva Dairy began managing the McCall dairy herd, Silva Dairy provided the corn silage, triticale and hay for the benefit of the McCall herd. Tr. Vol. II, p. 106, LL. 14 – p. 107, L. 1 (Max Silva, June 24, 2015).

Second, the value of such was substantial as Mr. McCall acknowledged:

- McCall testified that he did not pay for a substantial portion of the corn fed to his dairy herd in 2010 in the amount of approximately \$63,582. Tr. Vol. II, p. 414, LL. 15 – p. 415, LL. 2 (Jack McCall, June 25, 2015).
- He also testified that year that he did not pay for Scoular premix for his dairy herd in an amount of around \$59,051. Tr. Vol. II, p. 416, LL. 4-12 (Jack McCall, June 25, 2015).
- Mr. McCall also testified that he did not pay in 2010 for minerals or triticale. Tr. Vol. II, p. 416, LL. 15-24 (Jack McCall, June 25, 2015).
- Mr. McCall indicated that ground corn could have come from Silva Dairy. Tr. Vol. II, p. 414, LL. 15 – p. 415, LL. 11. (Jack McCall, June 25, 2015).
- Under questioning, Mr. McCall admitted that JT Livestock owed Silva Dairy \$146,000 for feed it did not pay for. Tr. Vol. II, p. 417, LL. 1-11⁴. – p. 415, LL.

⁴ Mr. McCall did assert that he was owed for alfalfa (Tr. Vol. II, p. 417, LL. 9-18 but that was not the basis of the District Court's finding on this issue.

11. (Jack McCall, June 25, 2015).

The District Court had clear evidence that Silva Dairy paid Scoular Company during 2010. *See, e.g.*, R. Exhibits, SD23, pp. 2, 3, 4, 5, 6, 7, 8, 10, 11, 14 and 15⁵ (because of difficulty of reading the version in the record, courtesy copies are attached and highlighted).

By Mr. McCall's own testimony, he received at the least feed paid for by Silva Dairy that amounted to, by his own admission, at least \$122,633. That is three times the amount that the District Court awarded to Mr. McCall for feed he paid for on behalf of Silva Dairy.

The Court should overturn the District Court's ruling on this issue as clearly erroneous.

III. The District Court's award of \$413,953 for conversion of Mr. McCall's feed by Silva Dairy was without legal foundation or adequate factual support.

The District Court awarded \$413,953 to Mr. McCall for alleged conversion of his feed. R. pp. 82-85. But, the feed at issue was used with permission, which bars a finding of conversion under applicable Idaho law. Moreover, even if this particular fact pattern amounted to conversion, the evidence before the District Court was insufficient to determine that any McCall feed was actually "missing" at the time the McCall herd departed.

A. The District Court wrongfully found feed conversion when the evidence clearly and unequivocally did not show the "wrongful dominion" necessary for conversion of personal property in Idaho.

On February 10, 2015, the District Court set the trial on liability for June 24 through 26, 2015. R., p. 39 (Order on Pending Motions and Petitions and Pre-Trial Order). The second item

⁵ The total amount is \$161,722.12 when bounced checks are considered.

set for trial was “[l]iability regarding the amount, if any, of McCall’s herd mismanagement⁶ and conversion of feed claims against Silva Dairy, LLC.” *Id.* (emphasis added).

The District Court, before the June 2015 trial on liability, issued a *Final Pretrial Order* that set the following issue for trial: “Has Silva Dairy converted some of the dairy feed supplied by McCall, and if so, what is the value of that?” R. p. 44 (emphasis added).

Before the June 2015 trial, Silva Dairy filed a *Defendants/Counterclaimants’ Joint Pre-Trial Brief* with Mr. Max Silva which specifically addressed the conversion issue, citing Idaho law requiring “wrongful dominion.” R., pp. 58-59.

Of note, this claim of feed conversion against Silva Dairy was one that Mr. McCall never pled in his original Complaint⁷ against Silva Dairy nor was it included in his Answer to Appellant’s Counterclaim⁸. Mr. McCall did file a *Complaint for Damages* against Silva Land Company, LLC and John Does I through X that did have a feed conversion claim and he sought to amend to name Silva Dairy as a named party but leave to amend was denied by the District Court⁹.

⁶ This was an issue Mr. McCall did not pursue at trial.

⁷ Mr. McCall’s *Complaint for Claim and Delivery and for Damages* consists of three counts, all involving the purchase of 101 cows. Augmented R. Vol. I, pp. 146-184, in particular pp. 146-152.

⁸ Mr. McCall’s *Reply to Counterclaim and Answer to Third Party Complaint* includes the following affirmative defenses: 1) Failure to state a claim upon which relief may be granted, 2) An assertion that Silva Dairy, LLC is not the real party in interest, 3) Doctrine of Unclean Hands, 4) Promissory Estoppel, 5) Equitable Estoppel, 6) Judicial Estoppel, and 7) A reservation of the right to amend and assert additional affirmative defenses. Augmented R., Vol. II, pp. 26-27.

⁹ The referenced Complaint is not part of the record before the Court. But, the District Court in its August 14, 2014 Memorandum Opinion on liability summarized the causes of action as being against Silva Land Company only for 1) mismanagement of McCall’s dairy herd, 2)

The basis of the purported borrowing was the swapping of dairy feed between Mr. McCall and Silva Dairy. The various feeds were mixed between the Silva Dairy herd and the McCall dairy herd as specified by the nutritionist but each herd had unique rations. Tr. Vol I, p. 50, LL. 4 – p. 52, LL. 18 (Max Silva, June 24, 2015).

Mr. McCall benefited from the swapping. For instance, as noted above, Silva Dairy provided triticale and other feed to the McCall herd. Tr. Vol. II, p. 106, LL. 14 – p. 107, LL. 1 (Max Silva, June 24, 2015). Mr. McCall’s nutritionist on August 29, 2011 sent an email to Mr. McCall noted that he “did not figure any hay for dry cows because silvas have plenty of Triticale Hay for both dairies”. R. Exhibits, SD22.

In later 2011 and 2012, the nutritionist for Silva Dairy and Mr. McCall, Mike Vander Pol strove for consistency in the feed fed to both herds by mixing the feed purchased by both Silva Dairy and Mr. McCall. Tr. Vol. II, p. 178, LL. 4-19; p. 179 LL. 13 – p. 183, LL. 6; p. 186, LL. 9 – p. 189, LL. 10; p. 204, LL. 18 – p. 205 LL. 3 (Mike Vander Pol, June 24, 2015)

Mr. McCall consulted with his nutritionists and was informed of the rations they were providing. Tr. Vol. II, p. 402, LL. 17 – p. 403, LL.11 (Jack McCall, June 25, 2015); *also see* R. Exhibits, SD22.

conversion of McCall’s cattle feed, 3) a claim for pasture rent and 4) a damages for the sale of 15 cows. Augmented R. Vol. I, p. 90. But, Mr. McCall’s *Motion to Amend Complaint or in the Alternative, Motion to Substitute Named Defendants for John Does* to include Silva Dairy is. Augmented R. Vol. I, pp. 38-40. The District Court denied that motion with respect to Silva Dairy. Tr. Vol. I, June 26, 2014, p. 13 LL.1-20. Oddly enough, when the District Court ruled on the broad issue of liability in 2014, it specified that “any mismanagement and/or conversion claims related to the management of McCall’s herd must be against Silva Dairy.” Augmented R. Vol. I, p. 103, para. 1.

It is critical that the Court understand that the evidence at trial showed that this swapping was authorized by Mr. McCall's nutritionists and known by Mr. McCall.

As a consequence, the District Court found:

At the outset it is important to note that McCall's claim is not truly one of conversion. Technically, conversion requires proof that a defendant took or kept a plaintiff's property without a right to do so. Silva Dairy did not do that. Rather, McCall's claim is that Silva Dairy "failed to return borrowed property." This is a form of conversion that would support McCall's damage claim if proved.

R. p. 83, para. 2 (2015 Memorandum Opinion) (emphasis added).

Yet, despite that fact pattern, the District Court in a section of its *Memorandum Opinion* labeled "McCall Conversion Claim" found that Mr. McCall's conversion claim amounted to at least \$413,953. R., p. 85 (2015 Memorandum Opinion). The determination of the District Court is inconsistent with Idaho law and should be overturned.

In Idaho, the law governing conversion of personal property such as dairy feed is well established:

'Conversion' has been defined as 'a distinct act of dominion wrongfully asserted over another's personal property in denial [of] or inconsistent with [the] rights therein.'" *Luzar v. Western Sur. Co.*, 107 Idaho 693, 692 P.2d 337, 340 (Idaho, 1984) *citing* *Torix v. Allred*, 100 Idaho 905, 910, 606 P.2d 1334, 1339 (1980). "This definition can be broken down into three elements which are required for a claim of conversion to be valid: (1) that the charged party wrongfully gained dominion of property; (2) that property is owned or possessed by plaintiff at the time of possession; and (3) the property in question is personal property.

Taylor v. McNichols, 149 Idaho 826, 846, 243 P.3d 642, 662 (2010).

The Idaho Supreme Court has stated that the elements of conversion set out in *Taylor* are conjunctive, thus all three elements must be met. *Medical Recovery Services, LLC v. Bonneville*

Billing & Collections, Inc., 157 Idaho 395, 336 P.3d 802 (2014), Footnote 3. Therefore, McCall had to prove that Silva Dairy wrongfully gained dominion over his feed.

Wrongful is defined as “[i]njurious, heedless, unjust, reckless, unfair; it implies the infringement of some right, and may result from disobedience to lawful authority.” *Black’s Law Dictionary*, 6th Edition (1990). Borrowing, as the District Court found, by its very definition implies or connotes permission or consent to use by the borrower from the owner of the property. See *Id.* (“The term may be used to express the idea of receiving something from another for one’s own use.”); *dictionary.cambridge.org* (“to get or receive something from someone with the intention of giving it back after a period of time”); *www.merriam-webster.com* (“to receive with the implied or expressed intention of returning the same or an equivalent”).

Torix v. Allred provides analogous facts to the current case and provides guidance and precedence regarding the wrongful dominion element of conversion. *Torix v. Allred*, 100 Idaho 905, 606 P. 2d 1334 (1980). In *Torix v. Allred* the defendant possessed plaintiff’s cattle as a bailee for the purpose of feeding them in preparation for marketing and sale. *Id.* at 909-910, 1338-1339. The Court noted then that “conversion requires a “distinct act of dominion wrongfully exerted over another’s personal property in denial or inconsistent with his rights therein”” *Id.* at 910, 1339. Because plaintiff had placed the cattle in the defendant’s possession and specifically authorized defendant to sell those cattle, the Court found that the trial court correctly concluded that the defendant had not wrongfully exerted dominion over the plaintiff’s cattle. *Id.* Similarly, in the instant case, there is no indication of wrongful dominion by Silva Dairy.

Further, “[c]onversion, being a wrongful and tortious act, cannot originate in the exercise of a legal right.” *Peasley Transfer & Storage Co. v. Smith*, 132 Idaho 732, 743, 979 P.2d 605, 616 (1999). The Court also has stated that if “possession of property was not acquired by a tortious taking or the possessor does not appropriate or use the property in a fashion to indicate a claim thereto adverse to the owner, then no evidence of a conversion exists . . .” *Id.* at 743-744, 616-617.

Here, the evidence was uncontested that the feed at issue was provided to Silva Dairy at the direction by Mr. McCall’s own nutritionist. Such was done with Mr. McCall’s permission.

Such authorized transfer, under Idaho law, does not amount to conversion. The District Court’s finding on this issue should be overturned as inconsistent with well-established Idaho law.

B. Mr. McCall never proved any of his dairy feed was “missing”.

Even if the Court were to determine that the District Court’s finding on conversion was valid under Idaho law, the factual record relied upon by the District Court is clearly erroneous and should be overturned on that basis.

The District Court’s finding of feed conversion was reduced to a specific number of \$413,953. The District’s Court’s reasoning justifying that finding was:

After deducting the ending inventory--\$386,047-and using his lower number---800,000-the Court finds that Silva Dairy converted at least \$413,953 of McCall's feed.

The Court recognizes that Silva Dairy asserts that these calculations are faulty because McCall had other cattle during this period and that some of the claimed gross feed expenditures were for those cattle. (See Silva Dairy Ex. 25, p. 89)

McCall unequivocally testified to the contrary and stated that his feed purchases were only for the cattle at Silva Dairy. Even if the Court were to find that some of the \$2.6 million feed purchases were for other cattle, that expenditure is de minimus and would not change the Court's findings. The amount of the conversion claim--\$413,953—shall be offset against Silva Dairy's management fee claim.

R., p. 85, para. 1-2 (2015 Memorandum Opinion).

That finding goes against the weight of the evidence in that the claim of feed purchases of \$2.6 million by Mr. McCall contradicts the evidentiary record. Moreover, in order to show missing feed, calculations regarding feed consumption by the McCall herd must also be supported. Both elements fail under scrutiny.

First, the basis for the claim of “missing feed” was a chart prepared by Mr. McCall himself. R. Exhibits, McCall Exhibit 132. Mr. McCall’s expert witness which the District Court relied upon heavily was Mr. Rick Onaindia and he testified that he utilized that chart in his determination. Tr. Vol. II, p. 268, LL. 12-22 (Rick Onaindia, June 25, 2015). For the District Court’s reliance on Mr. Onaidia’s testimony, see R., pp. 84-85 (2015 Memorandum Opinion).

McCall Exhibit 132 purports to show the dairy feed that Mr. McCall purchased for his herd during the period of Silva Dairy management, the amount of feed consumed by his herd and the amount of feed he had when the parties separated. From those calculations, he calculated, at the bottom of the first page that \$1,267,911.34 in feed had been converted by Silva Dairy. R. Exhibits, McCall Exhibit 132, McCall_001509 (bottom of page, second column from the right).

Mr. McCall testified at trial concerning his preparing of McCall Exhibit 132:

BY MR. MESERVY:

Q Okay. Mr. McCall, would you look at Exhibit 132, please. First of all, if you could just identify that for us.

A Without verifying every page in the exhibit, this is the feed summary information that I put together on feed that was relevant to the JT Dairy in Buhl.

Q For what purpose did you prepare this document?

A I prepared this document to go through and calculate arithmetically how much feed should have been in my ending inventory at the dairy when I left there in August or on this date. It was September of 2012 that I calculated it to.

Q Can you tell us how you put this together, please.

A What it is is you go to these feed sheet pages, and they were derived from the nutritionist's feed recommendations, and I took all of the nutritionist's recommendation sheets that I have available to me and calculated by the number of cows how much feed those cattle should have consumed during those various time frames based on that ration that had been developed by the nutritionist.

Q And what were you trying to prove or establish by doing that?

A I was trying to figure out, of all the feed I'd purchased, how much of that feed my cows should have consumed.

Q Okay. And is that provided for in Exhibit 132?

A Yes.

Tr. Vol. II, p. 339, LL.16 – p. 340, LL. 13 (Jack McCall, June 25, 2015). *Also, e.g.*, Tr. Vol. II, p. 340, LL. 14 – p. 342, L. 1 (Jack McCall, June 25, 2015).

McCall Exhibit 132 is somewhat difficult to understand but there is a clarifying document available to the Court. In discovery, Mr. McCall produced a last page to the report in McCall Exhibit 132 that enumerates the basis of the numbers included in that exhibit. R. Exhibits, SD34, p. 107.

The key parts of that chart can be summarized as follows:

<u>Purchases</u>	
Apr to Dec 2010	\$416,040.36
CY 2011	\$1,731,401.02
Jan to August 2012	\$1,176,084.85
	\$3,323,526.23
<u>Feed Usage + Shrink</u>	\$342,638.15
Apr to Dec 2010	\$771,301.77
CY 2011	\$555,627.00
Jan to August 2012	\$1,669,566.92
Ending Inventory	(\$386,047.80)
Unaccounted for Feed	\$1,267,911.51

See R. Exhibits, SD34, p. 107.

Overall, Mr. McCall asserts he purchased during the applicable period \$3,323,526.23 in dairy feed. He also claims, factoring in shrink, that his cows consumed \$1,669,566.92 in feed and that he had \$386,047.80 in feed at the time his cows departed. From that, he determined that \$1,267,911.51 in feed was missing. Tr. Vol. II, p. 299, LL. 16-23 (Jack McCall, June 25, 2015).

Given the critical role McCall Exhibit 132 played in informing the opinion of Mr. Onaindia, on which the District Court relied, it important to determine whether that exhibit and the analysis was supported by credible evidence. And, the evidence is overwhelming that it was not and the conclusions that flowed from that document are unfounded. That justifies reversing the District Court's decision on this issue.

1. McCall's feed invoices contradict his alleged feed purchases.

First, with respect to dairy feed actually purchased by Mr. McCall, one source of

evidence is the invoices produced in discovery by Mr. McCall. R. Exhibits, SD28, SD29 and SD30. Those invoices were summarized a series of exhibits provided by Silva Dairy at trial. R. Exhibits, SD31, SD32 and SD33. The total invoice numbers for each time period are:

<u>Purchases</u>	
Apr to Dec 2010	\$278,876.53
CY 2011	\$777,236.95
Jan to August 2012	<u>\$694,240.42</u>
	\$1,750,353.90

When those numbers are laid side-by-side with Mr. McCall’s numbers contained in McCall Exhibit 132, the asserted feed purchases contained in that exhibit are called into significant question:

<u>Purchases</u>	<u>Mr. McCall’s Exhibit 132</u>	<u>McCall Invoices</u>
Apr to Dec 2010	\$416,040.36	\$278,876.53
CY 2011	\$1,731,401.02	\$777,236.95
Jan to August 2012	\$1,176,084.85	\$694,240.42
	\$3,323,526.23	\$1,750,353.90
DIFFERENCE: (\$1,573,172.33)		

If one subtracts that number from Mr. McCall’s purported conversion number of \$1,267,911.51, the impact would be to show a surplus of McCall feed in the amount of \$305,260.82. That would mean none of the “missing” feed was actually missing.

2. McCall’s Quickbooks records contradict his alleged feed purchases.

At trial, Mr. McCall tried to explain the invoices away by claiming that not all of his purchases are reflected in that some purchased feed was not invoiced. Tr. Vol. II, p. 341, L. 23 – p. 342, L. 25 (Jack McCall, June 25, 2015). He testified he primarily relied on his check register,

ie. his Quickbooks records¹⁰, to compute his dairy feed purchases. Tr. Vol. II, p. 341, L. 18 – p. 342, L. 1 (Jack McCall, June 25, 2015).

But, the numbers in McCall’s Quickbooks records do not track with Exhibit 132 either.

For instance, Mr. McCall’s 2010 Quickbooks Profit & Loss shows under “Dairy Cattle Expense”, a subcategory for “Feed Expense” totaling \$231,508.63. R. Exhibits, SD39, p. 1.

But there is a separate line item not under “Dairy Cattle Expense” for “Feed Expense” of \$262,933.76. R. Exhibits, SD 39, p. 1. At least a substantial portion of that category is unrelated to feed expenses incurred during the period of management by Silva Dairy or assignable to non-dairy cattle.

For instance, one item for \$96,095.67 is identified as “Clear Creek winter of Cows and heifers jack paid”. Silva Dairy Exhibit SD39, pg. 21. Since dairy cows don’t winter, that entry seems unrelated to the dairy herd¹¹.

A January 5, 2010 amount of \$13,823.61 is indicated as “Oct. ’09 thru 12/31/09 Feed Expenses”. R. Exhibits, SD39, p. 23. Another for \$33,177.80 is designated as a “January through March 2010 Feed Bill”. *Id.* Additional items of \$700.00, \$6,543.08 and \$3,852.70 all bear dates of 1/05/2010. R. Exhibits, SD39, pp. 22-23. All these dates are before the placement of Mr. McCall’s dairy herd under Silva Dairy’s care which occurred in late April or early May of

¹⁰ Various witnesses, including Mr. McCall, referred to the “check register”, “P & L”, “profit and loss statements” and “Quickbooks” somewhat interchangeably. All such references are to the exhibits bearing the title “JT Livestock Profit & Loss” for 2010, 2011 and 2012. *See* R. Exhibits, SD39, SD40, and SD41. For convenience, all will be referred to as “Quickbooks records” or “Profit & Loss” hereafter.

¹¹ In fact, there was substantial testimony at trial that Mr. McCall had a separate beef herd in that time frame. Such will be discussed below.

2010. Augmented R. Vol. I, p. 93, para. 2 (2014 Memorandum Opinion). Thus, of the amounts on the 2010 Profit & Loss under “Feed Expense” (separate from the category of “Dairy Cattle Expense”) those amounts, totaling \$154,192.86, cannot be feed expenses incurred by Mr. McCall in connection with the Silva Dairy management of his herd. As such, those amounts cannot be counted as part of Exhibit 132’s analysis.

Similarly, Mr. McCall’s 2011 Quickbooks Profit & Loss is even more puzzling. It purports to show a total of \$1,101,529.90 in “Feed Expenses” under “Dairy Cattle Expense”. SD40, pg. 1. That is a full \$629,871.12 less than Mr. McCall’s Exhibit 132 amount for that year.

Likewise, Mr. McCall’s 2012 Quickbooks Profit & Loss shows “Total Feed Expenses” of \$771,769.21. SD41, pg. 1. That is \$404,315.64 less than provided for in Exhibit 132 for that year. Taking these items fully into account allows for the creation of the following chart:

<u>Purchases</u>	<u>Mr. McCall’s Exhibit 132</u>	<u>McCall Quickbooks Records</u>
Apr to Dec 2010	\$416,040.36	\$231,508.63 ¹²
CY 2011	\$1,731,401.02	\$1,101,529.90
Jan to August 2012	\$1,176,084.85	\$771,769.21
	\$3,323,526.23	\$2,104,807.74
DIFFERENCE: (\$1,218,718.49)		

Subtracting the adjusted Quickbooks records numbers from Mr. McCall’s purported conversion number of \$1,267,911.51 contained in Exhibit 132 generates a “shortage” of only \$49,193.02.

Overall, the documentary basis for Mr. McCall’s calculations are shaky at best and do not support the District Court’s finding on feed conversion.

¹² Only counting the category labeled “Dairy Cattle Expense”, specifically the subcategory labeled “Feed Expense”.

3. Mr. McCall's calculation of his own feed usage was inaccurate.

As noted above, McCall Exhibit 132 in addition to calculated feed purportedly purchased by Mr. McCall, also generates numbers for the feed his cows supposedly consumed during the period of the Silva Dairy management of the McCall herd. *See, generally*, R. Exhibits, McCall 132.

To do so, Mr. McCall testified that he used the feed sheets he had from his nutritionists to calculate what his cows should have consumed. Tr. Vol. II, p. 340, LL. 1-8 (Jack McCall, June 25, 2015). In preparing Exhibit 132, Mr. McCall testified that used a nutritionist recommendation for each month. *See, e.g.*, Tr. Vol. II, p. 357, LL. 20 – p. 359, LL. 18. So, for instance, the second page of Exhibit 132 shows the calculation for April of 2010 for feed fed to the McCall cows is predicated on a 6/9/2010 feed ration. R. Exhibits, McCall 132, McCall_001510. McCall testified that he did not have all the feed rations and used the ones he had available. Tr. Vol. II, p. 362, LL. 10-25. (Jack McCall, June 25, 2015).

As a consequence, this is the overall picture of the feed rations contained in McCall Exhibit 132:

Feed Ration	Months Applied To
6/9/2010	April, June, July 2010 ¹³
7/30/2010	August 2010 ¹⁴
8/13/2010	Second Half of August 2010 ¹⁵
9/3/2010	September 2010 ¹⁶

¹³ R. Exhibits, McCall 132, McCall_001510-McCall_001513.

¹⁴ *Id.* at McCall_001514.

¹⁵ *Id.* at McCall_001515.

¹⁶ *Id.* at McCall_001516.

10/5/2010	October 2010 ¹⁷ November 2010
11/22/2010	Part of November, December of 2010 and January of 2011 ¹⁸
2/07/2011	February 2011 ¹⁹
3/1/2011	March, April 2011 ²⁰
4/28/2011	May 2011 ²¹
5/13/2011	June - December 2011, January - April 2011 ²²
5/3/2012	May 2012 ²³ June 2012
7/3/2012	July 2012 ²⁴
7/10/2012	August 2012 ²⁵

The fact that McCall Exhibit 132's feed consumption by Mr. McCall herd is based on this limited number of rations is inherently problematic.

Mr. McCall's own expert witness testified that feed rations change in the operation he manages 8-10 times a year. Tr. Vol. II, p. 291, LL. 15-25 (Rick Onaindia, June 25, 2016).

Mr. Vander Pol²⁶, one of Mr. McCall's nutritionists, testified that Mr. McCall's assigned feed rations in Exhibit 132 were wildly inconsistent with the feed rations he prescribed. Tr., Vol. II, p. 614, LL. 22 - 610: LL. 4 - p. 622, LL. 10 (Mike Vander Pol, June 26, 2015). When asked

¹⁷ *Id.* at McCall_001517-McCall_001518.

¹⁸ *Id.* at McCall_001519 - McCall_001519, McCall_0015122.

¹⁹ *Id.* at McCall_001523.

²⁰ *Id.* at McCall_001524 - McCall_001525.

²¹ *Id.* at McCall_001526.

²² *Id.* at McCall_001527 - McCall_001538.

²³ *Id.* at McCall_001540 - McCall_001541.

²⁴ *Id.* at McCall_001542

²⁵ *Id.* at McCall_001543.

²⁶ Mr. Vander Pol was the nutritionist for Silva Dairy from October 2011 and for JT Livestock from October 2011 through August 2012. Tr., Vol. II, p. 609, LL. 21 - 610: LL. 4 (Mike Vander Pol, June 26, 2015).

if the McCall tables were an accurate reflection of his actual rations he testified: “They’re not accurate, no.” Tr., Vol. II, p. 622, LL. 7-11 10 (Mike Vander Pol, June 26, 2015).

The evidentiary record demonstrates that the feed consumption figures calculated by Mr. McCall --- and relied upon by Mr. Onaindia – were inaccurate in terms of the feed that was fed to the McCall herd. Again, this demonstrates flawed inaccuracy of Exhibit 132.

4. Mr. McCall’s calculation of the value of feed was inaccurate.

Mr. McCall’s nutritionist, Mike Vander Pol also testified that commodity prices are “extremely volatile”. Tr. Vol. II, p. 194, LL. 4-6 (Mike Vander Pol, June 24, 2015). During the period that Silva Dairy managed the McCall herd, Vander Pol testified that commodity prices moved around substantially. Tr. Vol. II, p. 194, LL. 18 – p. 195, LL. 10 (Mike Vander Pol, June 24, 2015).

Mr. McCall’s own expert witness, Mr. Onaindia, also testified that during the same time period that commodity prices varied, in particular corn and premixes by a full \$120 a ton. Tr. Vol. II, p. 292, LL. 1-18 (Rick Onaindia, June 25, 2015).

Yet, in McCall Exhibit 132, Mr. McCall, in order to compute projected feed consumption for his dairy cows, calculated feed prices as having flat numbers for the entire time period of 30 months. Such can be understood by going the first page of McCall Exhibit 132. The top row has the following Price/Ton for the various commodities for 2010:

Commodity	Price/Ton
Alfalfa	\$200.00
Corn Silage	\$52.00
Ground Corn	\$300.00
Scolar/Batch Mix	\$378.00

J&T Mineral/E Booster	\$1,600.00
Straw	\$60.00
Triticale Silage	\$35.00

R. Exhibits, McCall Exhibit 132, McCall_001509.

The same numbers are repeated for 2011 (second row) and for 2012 (third row). *Id.*

This is important because commodity prices varied sharply during the time period at issue. For instance, Mr. McCall’s number for ground corn is a flat \$300/ton for the full 30 month period despite Mr. Onaindia’s testimony that during the time period the variance was a significant \$120/ton. His number for Mix (ie. pre-mix) is \$378/ton despite Mr. Onaindia’s testimony that the variance was equivalent during the applicable 30 month period to that for ground corn.

The failure by Mr. McCall to factor in the variation in commodity prices undermines the fundamental integrity of the numbers he used for the value of his projected consumption by his dairy herd. Given these calculations were the basis of Mr. Onaindia’s testimony which was relied on by the District Court, this is another justification for overturning the District Court’s finding.

5. The District Court placed undue reliance on Mr. Onaindia.

In calculating the purported feed conversion, the District Court gave significant weight to Mr. Onaindia, writing that it found his testimony “**extremely credible**” (emphasis in original). R., p. 85 para. 1 (2015 Memorandum Opinion).

The weight given by the District Court to Mr. Onaindia is not supported by the record:

- Mr. Onaindia is the CFO for Bettencourt Dairy which has received loans (the largest was over \$78 million) through Clear Creek Land & Mortgage, a

company of which Mr. McCall is an owner. Tr. Vol. II, p. 290, LL. 20 – p. 291, LL. 6 (Rick Onandia, July 25, 2015). That is a significant conflict that the District Court brushed aside. R., p. 85, para. 1 (2015 Memorandum Opinion).

- Mr. Onandia “verified” McCall Exhibit 132 with respect to feed purchases by looking at Mr. McCall’s Quickbooks records and invoices. Tr. Vol. II, p. 269, LL. 22 – p. 271, LL. 23 (Rick Onandia, July 25, 2015). As noted above, that basis is flawed.
- Mr. Onandia’s testimony as to feed purchased by Mr. McCall was based upon Mr. McCall’s own analysis of his feed usage, ie. Exhibit 132. Tr. Vol. II, p. 269, LL. 12-21 (Rick Onandia, July 25, 2015). That data was inaccurate.
- Yet, he claimed he could say with “confidence” what the McCall feed purchases were and the cost to feed the McCall herd. Tr. Vol. II, p. 275, LL. 25 – p. 276, LL. 2 (Rick Onaindia, July 25, 2015). That is inconsistent with the full record.

Further, Mr. Onaindia gave vigorous testimony that he thought Silva Dairy’s feed purchases were low during the applicable period (implying that Silva Dairy must have relied on McCall feed). Tr. Vol. II, p. 281, LL. 14 – p. 283, LL. 19 (Rick Onaindia, June 25, 2015).

But, the explanation for this point was provided at trial and contradicts his assumptions. Silva Dairy self-raised much of its own feed, including not quite 700 tons of hay each year, 1500 to 3000 tons each year of triticale and 5,000 to 6,000 tons of corn. Tr. Vol. II, p. 604, LL. 17 – p.

605, LL. 16 (Tony Silva, June 26, 2015). The nutritionist Mr. Vander Pol, who worked for both Mr. McCall and Silva Dairy, testified that Silvas grow most of their own hay. Tr. Vol. II, p. 209, LL. 8-9 (Mike Vander Pol, June 24, 2015). The simple answer to Mr. Onaindia's suspicion that Silva Dairy didn't buy enough feed is that Silva Dairy raised it.

Finally, Mr. Onaindia was handicapped by the fact that Mr. McCall withheld key information from him. Onaindia testified that he was never informed that Mr. McCall also had beef cattle during the time he had his dairy herd. Tr. Vol. II, p. 313, LL. 25 – p. 314, L. 6 (Rick Onandia, July 25, 2015). And, the evidence shows that herd required feed.

Though denied by Mr. McCall, the evidence is substantial that he had another beef herd that also consumed feed during the 30 months Silva Dairy managed his dairy herd:

- Mr. McCall's previous partner in JT Livestock, Terry Hollifield, testified that he and Mr. McCall had a beef cattle herd in 2010 and 2011. Tr. Vol. II, p. 517, LL.16 – p. 518, LL. 21 (Terry Hollifield, June 26, 2015). In his deposition Mr. Hollifield testified that the McCall/Hollifield beef herd existed until 2012. Tr. Vol. II, p. 535, LL.19 – p. 536, LL. 14 (Terry Hollifield, June 26, 2015).
- Mr. McCall's beef herd manager, Ray Broner, testified that he oversaw the McCall beef herd in 2010, 2011 and 2012. Tr. Vol. II, p. 595, LL. 3-19 (Ray Broner, June 26, 2015).
- Mr. McCall's tax return for 2010 shows several hundred cattle being held as of December 31, 2010 that had been purchased in 2009. *See* R. Exhibits, SD 24, pgs. 52, specifically under "Prior MACRS".

- Mr. McCall’s tax return for 2011 shows several hundred cattle being sold in 2011 that were acquired in 2009. *See* R. Exhibits, SD 25, pgs. 63-64.
- Mr. McCall’s Quickbooks Profit & Loss for 2010 shows \$326,847.09 in income for “Self Raised LS”. SD 39, pg. 1.
- Mr. McCall’s Quickbooks Profit & Loss for 2011 shows \$338,944.25 in income for “Gain on Cattle resold”. SD 40, pg. 1.
- Mr. Broner testified that, during the winter, from October/November to May/June, the beef cows were fed hay and minerals. Tr. Vol. II, p. 595, LL. 21 – p. 596, LL. 24 (Ray Broner, June 26, 2015).

This is another factor undermining the District Court’s finding on feed conversion.

IV. The District Court’s award of \$53,386.90 for pasture rent was improper.

After the June 2015 trial on damages, the District Court transferred an obligation from Max Silva to Silva Dairy in the amount to \$53,386.90 for pasture rent. R., p. 77-78 (2015 Memorandum Opinion). This was a reversal of the District Court’s previous decision in 2014 after the trial on liability where it found Mr. Max Silva liable for the pasture rent. Augmented R., p. 103 (2014 Memorandum Opinion).

The District Court had previously issued an Order on February 20, 2015 setting for trial the issue of “[t]he amount owed by [Max] Silva to McCall for pasture rent” R., p. 39 (Order on Pending Motions and Petitions and Pre-Trial Order). That was reinforced by the District Court’s *Final Pretrial Order* which set for trial: “What is the amount of monies owed by Max Silva for pasturing cattle on McCall’s property?” R., p. 44 (Final Pretrial Order).

This determination is problematic because Mr. McCall attempted to amend the Complaint containing the pasture claim to include Silva Dairy but was such was specifically denied at the 2014 trial by the District Court. Augmented R. Vol. I, pp. 38-40 (*Motion to Amend Complaint or in the Alternative, Motion to Substitute Named Defendants for John Does*); Tr. Vol. I, p. 13, LL. 1-20.

The allocation of the pasture rent to Silva Dairy is inconsistent with I.R.C.P. 15(b), which provide for amendments during and after trial. There is simply nothing in the record showing an objection that evidence was put forth not within the scope of the pleadings nor any form of consent by Silva Dairy as required by I.R.C.P. 15(b) to amend pleadings.

This claim should be denied in total in that the District Court erred in reassigning it to Silva Dairy without complying with the mechanical requirements of I.R.C.P. 15(b) to have an amendment to the pleadings.

V. Silva Dairy is entitled to attorney fees and costs for the District Court action.

Idaho Code §§ 12-120 and 12-121 provide the statutory basis, in this instance, to award attorney fees to the prevailing party. Similarly, Idaho R. Civ. P. 54(d)(1)(A) provides for similar treatment for court costs.

Under Idaho R. Civ. P. 54(e)(1) a prevailing party is entitled to attorney fees when such an award is provided by any statute or contract.

“Prevailing Party” is defined by Idaho R. Civ. P. 54(d)(1)(B) which provides:

Prevailing Party. In determining which party to an action is a prevailing party and entitled to costs, the trial court must, in its sound discretion, consider the final judgment or result of the action in relation to the relief sought by the respective

parties. The trial court may determine that a party to an action prevailed in part and did not prevail in part, and on so finding may apportion the costs between and among the parties in a fair and equitable manner after considering all of the issues and claims involved in the action and the resulting judgment or judgments obtained.

If this Court grants relief with respect to the \$40,067.87 and \$413,953 feed related issues, the impact will be that Silva Dairy's judgment for the management fee will still stand without offset, justifying an award of attorney fees and costs under Idaho Code §§ 12-120 and 12-121 and Idaho R. Civ. P. 54(e)(1).

VI. Silva Dairy is entitled to attorney fees and costs on appeal.

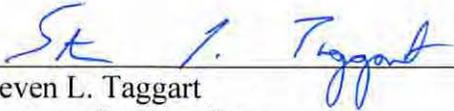
Silva Dairy believes it is entitled to attorney fees for this appeal pursuant to Idaho App. R. 41(a).

CONCLUSION

For these reasons, this Court should reverse the District Court on the issues enumerated above and remand the case for further proceedings below.

DATED this 2nd day of September, 2016.

MAYNES TAGGART PLLC



Steven L. Taggart
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 2, 2016, I mailed two true and correct copies of the foregoing document to the designated parties as follows:

Via U.S. Mail First Class Prepaid

Bradley J. Dixon
Givens Pursley LLP
601 W Bannock Street
P.O. Box 2720
Boise, ID 83701-2720

Via U.S. Mail First Class Prepaid

Nathan M. Olsen, Esq.
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402

BY:



Theresa G. Carson

EDVA DAIRY LLC
500 E. 10th St.
Mankato, MN 56001
5-1-10
\$24,000.00
The Order Company
Tomb - Mutual of MN
1011050-0124103224

DDA Debits - 5/4/2010

EDVA DAIRY LLC
500 E. 10th St.
Mankato, MN 56001
5-1-10
\$24,000.00
The Order Company
Tomb - Mutual of MN
1011050-0124103224

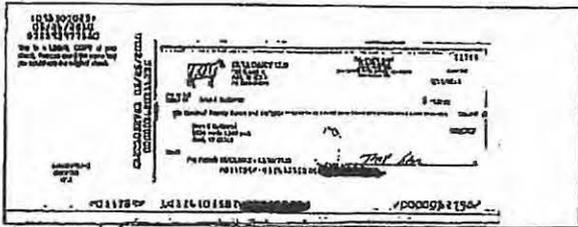
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EDVA DAIRY LLC
5/3/10
SIMA Dairy
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1011050-00334

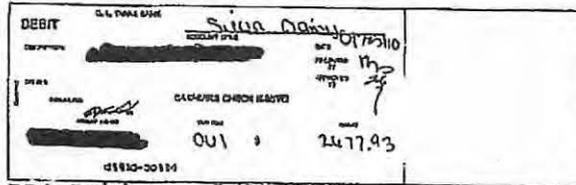
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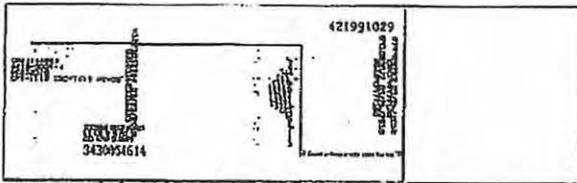
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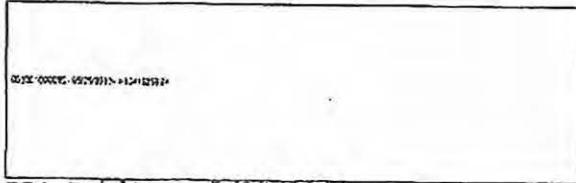
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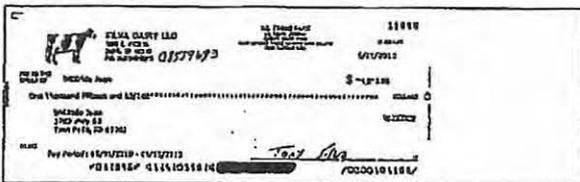
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DDA Debits - 5/27/2010



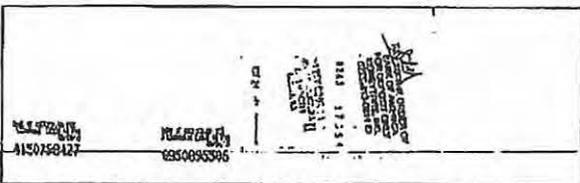
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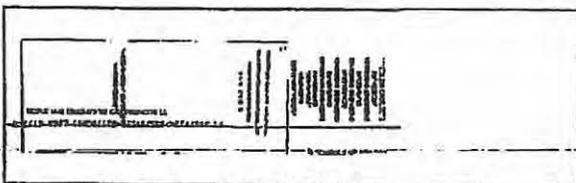
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DDA Debits - 5/25/2010



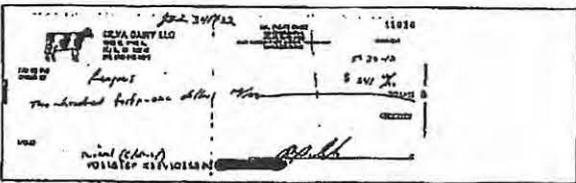
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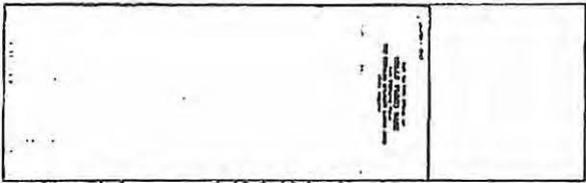
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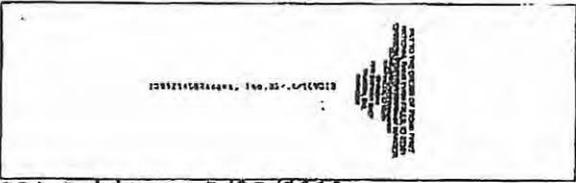
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DDA Debits - 5/25/2010



DDA Debits - 5/26/2010



DDA Debits - 5/25/2010

DDA Debits - 7/9/2010

DDA Debits - 7/8/2010

DDA Debits - 7/9/2010

DDA Debits - 7/8/2010

SELVA DAIRY LLC
12318

Falm Bureau \$ 760.00

Three four hundred dollars

039514-11

DDA Debits - 7/16/2010

SELVA DAIRY LLC
12318

The Smiley Company \$ 700.00

Seven hundred five hundred dollars

Had account open

DDA Debits - 7/14/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/16/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/14/2010

CHECKED DEPOSIT

Silva Dairy LLC \$ 2000.00

Pay share

\$ 2000.00

DDA Credits - 7/16/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/12/2010

SELVA DAIRY LLC
12318

Check \$ 2,000.00

DDA Credits - 7/16/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/12/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/14/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/9/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/14/2010

SELVA DAIRY LLC
12318

DDA Debits - 7/9/2010

ALVA DAIRY LLC
1202 E. FORD
RFD, PO BOX
PO BOX 1054872

8-20-10

DEBIT
RAT
\$ 1113.00

TONY SILVA

DDA Debits - 8/31/2010

DEBIT
Alva Dairy LLC
Cashiers Check
TO: The Scoular Company
for blended corn

8/13/10

061 6261.55

DDA Debits - 8/13/2010

DEBIT

DDA Debits - 8/31/2010

DEBIT

DDA Debits - 8/13/2010

DEBIT

NOT SUFFICIENT FUNDS

DDA Debits - 8/25/2010

DEBIT
Silva Dairy
To Scoular
8/11/10

061 7459.64

DDA Debits - 8/11/2010

DEBIT

DDA Debits - 8/25/2010

DEBIT

DDA Debits - 8/11/2010

ALVA DAIRY LLC
1202 E. FORD
RFD, PO BOX
PO BOX 1054872

8-20-10

DEBIT
Land a Life
\$ 321.00

File of 2007

DDA Debits - 8/20/2010

DEBIT

DDA Debits - 8/11/2010

DEBIT

DDA Debits - 8/20/2010

DEBIT

DDA Debits - 8/11/2010

Silva Dairy, LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

OUTSTANDING 10000
 CHECK NO. 101
 DATE 8-26-10
 \$ 100.00

TO THE ORDER OF Walt Whitfield
 \$ 100.00

FOR Payroll Tom Silva

\$100.00 8/26/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 101
 DATE 8-26-10
 \$ 1,015.85

TO THE ORDER OF Walt Whitfield
 \$ 1,015.85

FOR Payroll Tom Silva

0 - \$1,015.85 - 8/30/2010

CHECKING DEPOSIT
 DATE 8/26/10
 \$ 92,000.00

TO THE ORDER OF Silva Dairy, LLC
 \$ 92,000.00

\$92,000.00 8/26/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 108
 DATE 8-28-10
 \$ 1,306.99

TO THE ORDER OF Valley Co-op
 \$ 1,306.99

FOR Payroll Tom Silva

0 - \$1,306.99 - 8/31/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 102
 DATE 8-26-10
 \$ 1,239.27

TO THE ORDER OF Heriberto Sanchez C.
 \$ 1,239.27

FOR Payroll Tom Silva

0 - \$1,239.27 - 8/27/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 103
 DATE 8-27-10
 \$ 2,000.00

TO THE ORDER OF Heriberto Sanchez C.
 \$ 2,000.00

FOR Payroll Tom Silva

92 - \$2,000.00 - 8/30/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 103
 DATE 8-27-10
 \$ 2,500.00

TO THE ORDER OF Clinda Silva
 \$ 2,500.00

FOR Payroll Tom Silva

0 - \$2,500.00 - 8/27/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 93
 DATE 8-26-10
 \$ 3,700.00

TO THE ORDER OF May Silva
 \$ 3,700.00

FOR Payroll Tom Silva

93 - \$3,700.00 - 8/31/2010

CHECKS ADVISORY OF CHANGE
 DATE 8/27/10
 \$ 80,622.91

TO Silva Dairy
 \$ 80,622.91

0 - \$8,062.91 - 8/27/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 94
 DATE 8-26-10
 \$ 1,500.00

TO THE ORDER OF John Silva
 \$ 1,500.00

FOR Payroll Tom Silva

94 - \$1,500.00 - 8/27/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 107
 DATE 8-27-10
 \$ 231.00

TO THE ORDER OF Tom Silva
 \$ 231.00

FOR Payroll Tom Silva

0 - \$231.00 - 8/30/2010

Silva Dairy LLC
 1202 S 410th St
 P.O. Box 111
 541-5077

CHECK NO. 95
 DATE 8-26-10
 \$ 1,250.00

TO THE ORDER OF Elio Silva
 \$ 1,250.00

FOR Payroll Tom Silva

95 - \$1,250.00 - 8/27/2010

CHECKING
STATE OF ALABAMA
OFFICE OF CHECKS

Deposit from Alabam
Cadviser Check

TO Silva Dairy LLC

AMOUNT \$ 1498064

ACCOUNT NO. 009
ACCOUNT NAME 75035489

⑆0311⑆0000⑆ 09

\$16,950.54 9/23/2010

CHECKING
STATE OF ALABAMA
OFFICE OF CHECKS

To Robbie CC #28902 + fee
Madison Silver And to Super Co.

TO Silva Dairy LLC

AMOUNT \$ 14449.00

ACCOUNT NO. 043
ACCOUNT NAME 75035489

⑆0311⑆0000⑆ 043

0 - \$14,449.00 - 9/2/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/2/10

AMOUNT 92,000.00

NAME MAY SILVA

⑆0311⑆0000⑆ 009

\$92,000.00 9/2/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/3/10

AMOUNT 9.65

NAME Tom B.

⑆0311⑆0000⑆ 009

0 - \$9.65 - 9/3/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/4/10

AMOUNT 105,000.00

NAME Silva Dairy LLC

⑆0311⑆0000⑆ 009

\$105,000.00 9/21/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/3/10

AMOUNT 3,999.39

NAME Idaho power

⑆0311⑆0000⑆ 009

0 - \$3,999.39 - 9/3/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/1/10

AMOUNT 2,000.00

NAME Tom B.

⑆0311⑆0000⑆ 009

0 - \$2,000.00 - 9/1/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/7/10

AMOUNT 69.17

NAME Lee's Radiator

⑆0311⑆0000⑆ 009

0 - \$69.17 - 9/7/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/2/10

AMOUNT 38.33

NAME Rush Trucks

⑆0311⑆0000⑆ 009

0 - \$38.33 - 9/2/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/7/10

AMOUNT 325.00

NAME Lee's Radiator

⑆0311⑆0000⑆ 009

0 - \$325.00 - 9/7/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/2/10

AMOUNT 6,174.74

NAME Silva Dairy LLC

⑆0311⑆0000⑆ 009

0 - \$6,174.74 - 9/2/2010

CHECKING DEPOSIT
STATE OF ALABAMA
OFFICE OF CHECKS

DATE 9/7/10

AMOUNT 347.04

NAME Silva Dairy LLC

⑆0311⑆0000⑆ 009

0 - \$347.04 - 9/7/2010

113

4114 Dairy LLC
12408 9100 N
8401 51 8510
347-5077

DATE 8/31/10

AMOUNT \$ 500.00

TO: Five Hundred Dollars

FOR: Trust

1124 10 25094

0 - \$500.00 - 9/7/2010

09/20/10

75035489-1024 Blue Ac.

Per Maximino Silva to Scatter Company
North on file.

AMOUNT \$ 8204.14

TO: Silva Dairy LLC

43113-00004

0 - \$8,204.14 - 9/20/2010

09/08/10

400

TO: Mr. Hollister Silva

43113-00004

0 - \$4.00 - 9/8/2010

9-21-10

Silva Dairy

ACCOUNT NO. 75035489

Silva Dairy Company LLC \$1000.00

TO: Six Hundred Dollars

1124 10 25094

0 - \$6,600.00 - 9/21/2010

09/08/10

7986.36

TO: Maximino Silva

43113-00004

0 - \$7,986.36 - 9/8/2010

9/24/10

8308.69

TO: Silva Dairy

43113-00004

0 - \$8,308.69 - 9/24/2010

09/09/10

450.00

TO: Scatter Company

43113-00004

0 - \$450.00 - 9/9/2010

09/01/10

500.00

TO: Scatter Company

43113-00004

99 - \$500.00 - 9/1/2010

09/13/10

7978.19

TO: Silva Dairy LLC

43113-00004

0 - \$7,978.19 - 9/13/2010

09/07/10

52.23

TO: Scatter Company

43113-00004

1001 - \$52.23 - 9/7/2010

9/16/10

187.10

TO: Scatter Company

43113-00004

0 - \$187.10 - 9/16/2010

9-2-10

646.50

TO: Scatter Company

43113-00004

1002 - \$646.50 - 9/3/2010

9/14/10
 1248 910 N
 202 3rd St
 373-5077

113

AMOUNT DEDUCTIBLE ONLY

FOR \$500.00

DATE 9/7/2010

TO: Tony Silva

0 - \$500.00 - 9/7/2010

ISSUED BY: 09/20/10

AMOUNT \$ 8204.14

DATE 9/20/2010

TO: Silva Dairy LLC

0 - \$8,204.14 - 9/20/2010

AMOUNT \$ 400

DATE 9/8/2010

TO: for Halverson Sales

0 - \$4.00 - 9/8/2010

NAME: Silva Dairy

ACCOUNT NO: 2025184

DATE: 9-21-10

AMOUNT \$ 6600.00

TO: Silva Dairy Company LLC

DATE: 9/21/2010

0 - \$6,600.00 - 9/21/2010

AMOUNT \$ 7986.36

DATE 9/8/2010

TO: for Halverson Sales

0 - \$7,986.36 - 9/8/2010

AMOUNT \$ 8308.69

DATE 9/24/2010

TO: Silva Dairy

0 - \$8,308.69 - 9/24/2010

AMOUNT \$ 450.00

DATE 9/9/2010

TO: Ball

0 - \$450.00 - 9/9/2010

AMOUNT \$ 500.00

DATE 9/1/2010

TO: Ball

99 - \$500.00 - 9/1/2010

AMOUNT \$ 7978.19

DATE 9/13/2010

TO: Silva Dairy LLC

0 - \$7,978.19 - 9/13/2010

AMOUNT \$ 52.23

DATE 9/7/2010

TO: Ball

1001 - \$52.23 - 9/7/2010

AMOUNT \$ 187.10

DATE 9/16/2010

TO: Ball

0 - \$187.10 - 9/16/2010

AMOUNT \$ 646.50

DATE 9/3/2010

TO: Tony Silva

1002 - \$646.50 - 9/3/2010

SD23