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DEPARTMENT OF
WATER RESOURCES

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*Also Admitted in California

June 17, 2010

Mr. John W. Homan
Office of the Attorney General
PO Box 83720
Boise Idaho 83720-0098

Re: Water Permit No. 37-7426; Application for Water Permit No. 37-8165
EBS No. 1762.6

Dear Mr. Homan:

I am writing on behalf of Bliss Valley Properties, LLC, and Magic MFG., Inc., with respect to the above referenced water permit and application for water permit. I am requesting on behalf of Bliss Valley Properties, LLC, and Magic MFG., Inc., that the ownership of the permit and application for permit be recognized by the Idaho Department of Water Resources as being in Magic MFG, Inc. I am further requesting that the permit and application for permit be disposed of by voiding Permit No. 37-7426 and by issuing a license in the name of Magic MFG., Inc., under Application for Permit No. 37-8165.

OWNERSHIP ISSUES

I have read your Memorandum to File dated November 14, 2006, regarding ownership of Water Rights Nos. 37-4040, 37-4041, 37-7426, 37-8165, 37-11069 and 37-11072. Those circumstances are modified since partial decrees have now been issued in the name of Bliss Valley Properties, LLC, on July 12th, 2007 for Water Rights Nos. 37-4040 and 37-4041.

The ownership of the remaining water rights previously referenced, as you note in the Memorandum, had been in litigation. The litigation involving the ownership of those rights has been concluded and any ownership issues have now been finally resolved.

Case No. CV-02-00142-BLW was originally brought in the United States District Court for

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the District of Idaho by Alfred J. Bianco as Plan Administrator to the Estate of Gaston & Snow as Plaintiff against Rolle Newton & Company, et al. In pertinent part the complaint sought to quiet title to real property and related water rights in Gooding County, Idaho, including the above referenced water rights. The plaintiff assigned its interest in the litigation to Pana-Tek, Inc., a California corporation. On April 22, 2003, the Honorable B. Lynn Winmill entered an order quieting title to the real property and related water rights (including permits of application) in Pana-Tek, Inc. A copy of the Judge's Memorandum Decision and Order is attached hereto as **EXHIBIT A**. Judge Winmill's comprehensive analysis of the issues raised regarding water rights is contained at pages 18-25 of the Memorandum Decision and Order. A copy of the Final Judgment quieting title in the real property, water rights, water permit and application is attached hereto as **EXHIBIT B**.

Rolle Newton & Company then appealed the District Court judgment to the 9th Circuit Court of Appeals. The 9th Circuit entered its decision on the appeal affirming the District Court in a Memorandum filed February 24, 2010, a copy of which is attached hereto as **EXHIBIT C**.

Meglon Domestic Non-Grantor Trust, through Petros Eliopoulos, also appealed the District Court judgment to the 9th Circuit. A motion to dismiss this appeal was filed by appellee Pangiotou based upon the 9th Circuit's decision in Rolle Newton (**EXHIBIT C**). In a decision filed May 17, 2010, the 9th Circuit dismissed the appeal for lack of jurisdiction, referencing its decision in the Rolle Newton matter. A copy of that Order is attached hereto as **EXHIBIT D**.

Judge Winmill ruled in an earlier case filed in United States District Court for the District of Idaho entitled Alford J. Bianco, as Plan Administrator for the Estate of Gaston and Snow, et al, Plaintiff vs Robert A. Erkins and Bernadine Erkins, Defendants, Case No. MS-5065, that the proceedings related to the Marshall's sale of the Erkins' real property in Jerome and Gooding Counties, which included the Gooding County real property and water rights previously referenced, was valid. Judge Winmill had refused to set aside or quash a writ of execution or to extinguish judgment liens on the property as the Erkins had requested. A copy of Judge Winmill's Memorandum Decision and Order, filed August 28, 2002, and the subsequent affirming ruling of the 9th Circuit Court of Appeals filed July 17, 2007, are attached hereto respectively as **EXHIBITS E AND F**. Thus, the proceedings by which Pana-Tek, Inc., acquired title to the real property and water rights in Gooding County in the Marshall's sale were upheld.

There is now no pending litigation of any kind involving the ownership of the water rights in question.

I note from Corey Skinner's Beneficial Use Field Report for Permit No. 37-8165 for an examination dated August 21, 2008, that change of ownership forms and/or assignment of permits, which were applicable to the above referenced water rights, may be already pending before the IDWR. By virtue of a Quitclaim Deed from Bliss Valley Properties, LLC, to Magic MFG., Inc.,

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recorded on October 7, 2009, as Instrument No. 232164, Gooding County, Idaho, a copy of which I have enclosed as **EXHIBIT G**, Magic MFG., Inc. is now the owner of the Gooding County real property and appurtenant water rights. I have also enclosed a copy of an additional Notice of Change in Water Right Ownership Form and an Assignment of Permit to Magic MFG., Inc., that have been filed with IDWR, copies of which are attached hereto collectively as **EXHIBIT H**.

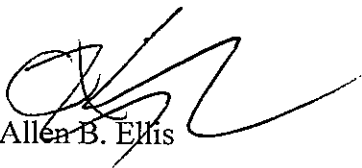
In view of the above discussion and the enclosures contained, IDWR should now be in a position to acknowledge change of ownership to the permit and the application for permit in Magic MFG., Inc. I would appreciate you confirming to me in return correspondence that the IDWR will now proceed to process the forms for change of ownership of the permit and application for assignment of permit.

DISPOSITION OF PERMIT 37-7426 AND PERMIT NO. 37-8165

Once the ownership of the water rights have been placed in Magic MFG., Inc., as requested, Magic MFG., Inc., concurs that Permit No. 37-7426 should be voided as previously proposed by the IDWR's Preliminary Order which was subsequently withdrawn in the face of the pending litigation over permit ownership. Magic MFG., Inc., further believes that a license should issue under Permit No. 37-8165 in accordance with the beneficial field report and recommendation of Corey Skinner dated the 21st day of August, 2008.

Thank you for your time and assistance in helping to bring these complicated matters to a final conclusion. Please let me know if you have questions, and I will respond as quickly as possible.

Very truly yours,


Allen B. Ellis

ABE:am
Enclosures

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

UNITED STATES COURTS
DISTRICT OF IDAHO

APR 22 2003

____ M. REC'D
LODGED _____ FILED _____

PANA-TEK, INC. a California corporation, as
successor by assignment from ALFRED J. BIANCO,
as Plan Administrator to the Estate of Gaston and
Snow,

Plaintiff,

v.

ROLLE NEWTON & COMPANY, Trustee of
COASTAL FOREIGN SECURITY TRUST; PETROS
G. ELIOPULOS, an individual, as Trustee of
LISSALIN ULTRA TRUST dated February 27, 2001,
and MEGLON DOMESTIC NON GRANTOR
TRUST dated February 27, 2001; GEO/PLEUROTUS
GROWERS LIMITED PARTNERSHIP; IDAHO
FIRST NATIONAL BANK also known as WEST
ONE BANK now known as U.S. BANK, NATIONAL
ASSOCIATION; ROBERT A. ERKINS and
BERNARDINE ERKINS, husband and wife; BLISS
VALLEY FOODS, INC., an Idaho corporation;
THOMAS G. WALKER and DONNA I. WALKER,
husband and wife; BARBOB LIMITED
PARTNERSHIP L.P., formerly known as TWO B
LIMITED PARTNERSHIP, an Arizona limited
partnership; CAPITAL GROUP, INC.;
CUNNINGHAM, LYONS & CABANNIS, S.C.; TEN
E LIMITED PARTNERSHIP, an Arizona limited
partnership; ROBERT RANDOLPH ERKINS; and
JOHN DOES I through X,

Defendants

ROLLE NEWTON & COMPANY, as Trustee of
COASTAL FOREIGN SECURITY TRUST, a foreign
trust,

Plaintiff,

v.

ALFRED J. BIANCO, as Plan Administrator to the
Estate of Gaston & Snow; IDAHO DEPARTMENT
OF WATER RESOURCES, ex rel. State of Idaho; and
JOHN DOES I through XXV,

Defendants.

Case No. CV-02-142-S-BLW ✓
(Lead Case)

MEMORANDUM DECISION
AND ORDER

Case No. CV-02-094-S-BLW
Case No. CV-02-095-S-BLW

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On April 11, 2003, the Court heard argument on Pana-Tek, Inc.'s Motion for Summary Judgment (Docket No. 70) and Rolle Newton & Company's Motion for Summary Judgment Dismissing Pana-Tek, Inc. (Docket No. 109). The Court has considered the argument of the parties and the entire record in this matter and now issues its decision.

I. Background

In April 2000, Alfred J. Bianco, as Plan Administrator for the bankruptcy estate of the Gaston & Snow law firm, obtained, in the Federal District Court for the Southern District of New York, a judgment against Robert and Bernardine Erkins in the amount of \$3.9 million (the "New York Judgment" or the "Judgment"). *See Bianco v. Erkins*, Case No. MS-00-5065.¹ At the time Mr. Bianco obtained the Judgment, he had assigned a portion of the Gaston & Snow estate's interest in the Judgment to Pana-Tek, Inc.,² but remained a nominal plaintiff in the New York action and thus the nominal holder of the \$3.9 million Judgment. *See Affidavit of George N. Panagiotou* (Docket No. 113)

¹ Pursuant to Federal Rule of Evidence 201, the Court *sua sponte* takes judicial notice of the Court's record in the case of *Bianco v. Erkins*, Case No. MS-00-5065. The Court will therefore deny as moot Rolle Newton's Motion to take Judicial Notice (Docket No. 122) of only certain pleadings in Case No. MS-00-5065.

² Mr. Bianco assigned the Gaston & Snow estate's interest in the New York Judgment to Pana-Tek and Tina Valcarengghi-Panagiotou. Subsequent to that time, on December 8, 2000, George Panagiotou, the principal and chief executive officer of Pana-Tek, was awarded all of Tina Valcarengghi-Panagiotou's interest in the New York Judgment, as well as any and all claims Tina Valcarengghi-Panagiotou may have against Pana-Tek. The remaining interest in the New York Judgment was and still is owned by Pana-Tek. *See Affidavit of George N. Panagiotou* (Docket No. 113) at ¶¶ 2, 3, and Exs. A, B.

("Panagiotou Aff.") at ¶¶ 2, 3, and Exs. A, B. After obtaining the Judgment, Mr. Bianco continued to prosecute the case in his nominal capacity. On June 6, 2000, he registered the Judgment in this Court. See *Bianco v. Erkins*, Case No. MS-00-5065. On June 14, 2000, a certified copy of the Judgment was recorded in Jerome County, Idaho, and on June 15, 2000, a certified copy of the Judgment was recorded in Gooding County, Idaho. See Affidavit of Rick Bernsen (Docket No. 4) ("Bernsen Aff.") at Ex. G; Affidavit of Andrea Humphries (Docket No. 73) ("Humphries Aff.") at Ex. F.

A. **Chain of Title of White Arrow Ranch and Devil's Corral**

On June 14 and 15, 2000, the dates on which the Judgment was recorded in Gooding and Jerome Counties, Robert and Bernardine Erkins (the "Erkins") owned, in fee simple, the real property known as White Arrow Ranch,³ which is located in Gooding

³ White Arrow Ranch is that real property located in Gooding County, Idaho, described as:

PARCEL NO. 1:

TOWNSHIP 4 SOUTH, RANGE 13, EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 30: W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;
SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

PARCEL NO. 2:

TOWNSHIP 4 SOUTH, RANGE 13, EAST OF THE BOISE MERIDIAN,
GOODING COUNTY, IDAHO

Section 30: NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$;
S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Section 31: N $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$

County, and the real property known as Devil's Corral,⁴ which is located in Jerome County. See Bernsen Aff. at ¶ 2; Humphries Aff. at ¶ 3. On February 12, 2002, the U.S. Marshal sold White Arrow Ranch and Devil's Corral, including all water rights appurtenant thereto, at public auction pursuant to a writ of execution to satisfy the New York Judgment out of real and personal property owned by the Erkins. Pana-Tek purchased these properties by means of a credit bid based on Pana-Tek's interest as assignee of an interest in the New York Judgment. See Bernsen Aff. at Ex. G; Humphries Aff. at Ex. F; Affidavit of Curtis D. McKenzie (Docket No. 75) ("McKenzie Aff.") at Exs. A, B; Panagiotou Aff. at ¶ 3, 4, 5, and Exs. A, B, C.

On June 22, 2000, shortly after the New York Judgment was recorded, the Erkins transferred their interest in White Arrow Ranch and Devil's Corral. See Bernsen Aff. at ¶ 2 and Ex. C; Humphries Aff. ¶ 4 and Ex. C.

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

Bernsen Aff. at ¶1 and Ex. A.

⁴ Devil's Corral is that real property located in Jerome County, described as:

Township 9 South, Range 18, East of the Boise Meridian, Jerome County, Idaho
Section 32: Lots 1, 2 and 6; S½ NE¼

According to the County Assessor's office, the above described property is commonly known as: Bare Land Jerome Idaho 83338.

Humphries Aff. at ¶ 1 and Ex. A.

MEMORANDUM DECISION AND ORDER - 4

1. White Arrow Ranch

As to White Arrow Ranch, the Erkins conveyed their interest to Two B Limited Partnership, LLP, by a quitclaim deed recorded June 22, 2000. *See* Bernsen Aff. at ¶ 2 and Ex. B. On July 14, 2000, a "corrected" quitclaim deed was recorded, "correcting" the grantee's name by changing it from Two B Limited Partnership, LLP, to Barbob Limited Partnership, LLP. *See id.* at ¶ 3 and Ex. C. In a quitclaim deed recorded on May 14, 2001, and re-recorded on May 16, 2001, the Barbob Limited Partnership conveyed its interest in White Arrow Ranch to the Lissalin Ultra Trust. *See id.* at ¶ 4 and Exs. D, E.

On December 17, 2001, a quitclaim deed was recorded conveying the interest of the Meglon Domestic Non Grantor Trust ("Meglon Trust") in White Arrow Ranch to Rolle Newton & Company, Trustee of the Coastal Foreign Security Trust. *See id.* at ¶ 5 and Ex. F. There is, however, no recorded instrument whereby the Lissalin Ultra Trust conveyed its interest in White Arrow Ranch to the Meglon Trust. *See id.* at ¶ 5.

On February 12, 2002, the U.S. Marshal conducted a sale pursuant to a writ of execution on the New York Judgment. At this sale, the White Arrow Ranch was sold at auction to Pana-Tek, Inc., as a credit purchaser and an assignee of the New York Judgment. *See id.* at Ex. G; McKenzie Aff. at Ex. A; Panagiotou Aff. at ¶ 5 and Ex. C. On February 19, 2003, the U.S. Marshal executed a Marshal's Deed, conveying to Pana-Tek, Inc., all right, title, interest and claim that Robert and Bernardine Erkins had in White Arrow Ranch, including any and all water rights appurtenant thereto. *See* Affidavit

of Lawrence G. Sirhall in Support of Rolle Newton's Motion for Summary Judgment ("Sirhall Aff.") (Docket No. 111) at Ex. C.

2. Devil's Corral

As to Devil's Corral, the Erkins conveyed their interest in this property in a quitclaim deed recorded on June 22, 2000, to Ten E Limited Partnership, LLP. *See* Humphries Aff. ¶ 4 and Ex. C. In a quitclaim deed recorded May 14, 2001, the Ten E Limited Partnership conveyed its interest in the property to Lissalin Ultra Trust. *See id.* at ¶ 5 and Ex. D.

On December 17, 2001, a quitclaim deed was recorded transferring the interest of the Meglon Trust in Devil's Corral to Rolle Newton & Company, Trustee of the Coastal Foreign Security Trust. *See id.* at ¶ 6 and Ex. E. There is, however, no recorded instrument whereby the Lissalin Ultra Trust conveyed its interest in Devil's Corral to the Meglon Trust. *See id.* at ¶ 6.

On February 12, 2002, the U.S. Marshal conducted a sale pursuant to a writ of execution on the New York Judgment. At this sale, Devil's Corral was sold at auction to Pana-Tek, Inc., as a credit purchaser and assignee of an interest in the New York Judgment. *See* Humphries Aff. at Ex. F; McKenzic Aff. at Ex. B; Panagiotou Aff. at ¶ 5 and Ex. C. On February 19, 2003, the U.S. Marshal executed a Marshal's Deed, conveying to Pana-Tek, Inc., all right, title, interest, and claim that Robert and Bernardine Erkins had in Devil's Corral, including any and all water rights appurtenant thereto. *See* Sirhall Aff. at Ex. B.

B. Liens and Encumbrances

On June 14 and 15, 2000, the dates on which the Judgment was recorded in Jerome and Gooding Counties, both White Arrow Ranch and Devil's Corral were subject to the following leases and/or encumbrances.

I. White Arrow Ranch

a. August 1, 1984, Lease to Geo/Pleurotus

The Erkins leased a portion of White Arrow Ranch to the GEO/Pleurotus Growers Limited Partnership ("GEO/Pleurotus") in a lease dated August 1, 1984, and recorded October 18, 1985 ("August 1984 Lease"). See Bernsen Aff. at ¶ 6 and Ex. G. GEO/Pleurotus mortgaged this lease to Idaho First National Bank, subsequently known as West One Bank, and now known as U.S. Bank, National Association, by a First Mortgage and Security Agreement dated and recorded August 24, 1984. *Id.*

The August 1984 Lease was assigned to Bliss Valley Foods, Inc., by an Assignment of Lease Agreement dated September 12, 1985, and recorded October 18, 1985. *Id.* An Assumption of Liabilities Agreement between Geo/Pleurotus and Bliss Valley Foods regarding the August 1984 Lease also was recorded on October 18, 1985.

On February 10, 1986, a Collateral Assignment dated August 24, 1984, was recorded, with Geo/Pleurotus, the Erkins, and Thomas G. Walker and Donna I. Walker as assignors, and Idaho First National Bank as assignee. *Id.* On February 12, 1986, a Collateral Assignment of Leasehold Interest was recorded, with Bliss Valley Foods as the

assignor and Idaho First National Bank as assignee. *Id.*

In a disclaimer of interest filed with the Court on July 17, 2002, Thomas G. Walker and Donna I. Walker disclaimed all right, title, interest, claim, and demand that they may have in White Arrow Ranch. *See* Disclaimer of Interest (Docket No. 31).

b. March 1, 1985, Lease

Robert Erkins entered into a lease agreement dated March 1, 1985, in which he agreed to lease White Arrow Ranch to Robert Randolph Erkins for a term of forty-nine years. *See* McKenzie Aff. at Ex. D. This lease was never recorded. *See id.*; Bernsen Aff. at ¶ 6.

c. Encumbrances Recorded after the New York Judgment was Recorded

On February 11, 2002, Rolfe Newton recorded a Notice of Pendency of Action in Gooding County. This notice relates to an action filed in state court to determine ownership of water rights associated with White Arrow Ranch. *See* Bernsen Aff. ¶ 6 and Ex. G. The state court action has since been removed to this Court and consolidated into the present action.

2. Devil's Corral

The Erkins mortgaged Devil's Corral to Capital Group, Inc., and Cunningham, Lyons & Cabannis, S.C. ("Cunningham"), by a mortgage recorded February 2, 1996. *See* Humphries Aff. at ¶ 7 and Ex. F. Capital Group executed a Satisfaction of Mortgage for the Erkins on March 4, 1996. *See* McKenzie Aff. at ¶ 3 and Ex. C. The satisfaction of mortgage has not, however, been recorded. A disclaimer of interest was recorded on

November 26, 2002, in which Cunningham disclaimed all interest in Devil's Corral. *See* Humphries Aff. at ¶ 7 and Ex. F.

C. Quiet Title Actions

On March 28, 2002, Pana-Tek filed this quiet title action, seeking a declaration from the Court that Pana-Tek owns in fee simple, and is entitled to quiet and peaceful possession of, White Arrow Ranch and Devil's Corral, and all appurtenant water rights and applications. *See* Second Amended Complaint to Quiet Title (Docket No. 28). On February 11, 2002, Rolle Newton filed actions in state court, seeking a declaration that the water rights associated with White Arrow Ranch and the unperfected water right application associated with Devil's Corral were not appurtenant to the respective properties and were not, therefore, conveyed with the properties when they were sold at the U.S. Marshal's sale on February 12, 2002. *See* CV-02-094-S-BLW, Notice of Removal (Docket No. 1); CV-02-095-S-BLW, Notice of Removal (Docket No. 1). The state court actions were subsequently removed to this Court and consolidated into the present action. *See* CV-02-094-S-BLW, Notice of Removal (Docket No. 1) and Order of Consolidation (Docket No. 29); CV-02-095-S-BLW, Notice of Removal (Docket No. 1) and Order of Consolidation (Docket No. 24).

On December 6, 2002, Pana-Tek moved for summary judgment. *See* Motion for Summary Judgment (Docket No. 70). On March 21, 2003, Rolle Newton moved for summary judgment, seeking to dismiss Pana-Tek from this action. *See* Motion for Summary Judgment Dismissing Pana-Tek (Docket No. 109). The Court held a hearing on

the pending motions on April 11, 2003, and took all pending motions under advisement. The Court now issues its decision on the pending motions.

II. Summary Judgment Standard

Rule 56 of the Federal Rules of Civil Procedure mandates entry of summary judgment where the moving party demonstrates the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A fact is "material" when, under the governing substantive law, it could affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A "genuine issue" of material fact arises if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id.* Where the case turns on a mixed question of fact and law and the only disputes relate to the legal significance of undisputed facts, the controversy collapses into a question of law suitable to disposition on summary judgment. *Union Sch. Dist. v. Smith*, 15 F.3d 1519, 1523 (9th Cir. 1994); *Graham v. City of Chicago*, 828 F.Supp. 576, 583 (N.D. Ill. 1993).

III. Discussion

A. Rolle Newton & Company's motion for summary judgment dismissing Pana-Tek, Inc., from the litigation (Docket No. 109)

Rolle Newton argues that Pana-Tek should be dismissed from the action because "there is no entity which can hold the title to the Jerome County and Gooding County realty" and that the Court cannot, therefore "grant the Quiet Title relief sought by Pana-

Tek." *See* Brief in Supp. Mot. Sum. Judg. at 2. In support of its argument, Rolle Newton points to the facts that on November 22, 2002, Pana-Tek filed a certificate of dissolution with the State of California, and the U.S. Marshal's deeds conveying White Arrow Ranch and Devil's Corral to Pana-Tek are dated February 19, 2003. *See id.* at 3.

Pana-Tek was incorporated under the laws of California. The Court must therefore look to California law to determine whether Pana-Tek retains the capacity to pursue this quiet title action. *See* Fed. R. Civ. P. 17(b) ("The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized.").

Under California law, a corporation that has been dissolved "continues to exist for the purpose of winding up its affairs, prosecuting and defending actions by or against it and enabling it to collect and discharge obligations, dispose of and convey its property and collect and divide its assets" Cal. Corp. Code § 2010(a). Pana-Tek was assigned its interest in the New York Judgment in 1998. *See* Panagiotou Aff. at ¶¶ 2, 3, and Exs. A, B, C. The New York Judgment was executed upon when the U.S. Marshal sold White Arrow Ranch and Devil's Corral to Pana-Tek at a public auction held on February 12, 2002. Pana-Tek purchased these properties by means of a credit bid based on Pana-Tek's interest in the New York Judgment. *See* Bernsen Aff. at Ex. G; Humphries Aff. at Ex. F; McKenzie Aff. at Exs. A, B; Panagiotou Aff. at ¶ 5 and Ex. C. In March 2002, Pana-Tek filed this action to quiet title to White Arrow Ranch and Devil's Corral.

Thus, by the time Pana-Tek filed its certificate of dissolution in November 2002,

Pana-Tek already had been assigned its interest in the New York Judgment, had purchased White Arrow Ranch and Devil's Corral at public auction by means of a credit bid, and had filed this action to quiet title to White Arrow Ranch and Devil's Corral. Pana-Tek's continued pursuit of this quiet title action, and formal receipt of title to White Arrow Ranch and Devil's Corral by deeds issued by the U.S. Marshal on February 12, 2003, after the redemption period had expired, are all activities that a corporation is entitled to engage in after dissolution. *See* Cal. Corp. Code § 2010(a).

Based on the record before the Court, Pana-Tek has standing to continue to pursue this action. Rolle Newton's Motion for Summary Judgment seeking dismissal of Pana-Tek will therefore be denied.

B. Pana-Tek, Inc.'s Motion for Summary Judgment (Docket No. 70)

On June 14 and 15, 2000, certified copies of the New York Judgment were recorded in both Gooding County and Jerome County. Upon the recording of the Judgment, the Judgment became a lien on all real property then owned by the Erkins in either Gooding County or Jerome County. *See* Idaho Code § 10-1110 ("A transcript or abstract of any judgment or decree of any court of this state or any court of the United States . . . may be recorded with the recorder of any county of this state . . . and from the time of such recording . . . the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county.").

1. Ownership Interest in White Arrow Ranch and Devil's Corral

At the time the Judgment was recorded, the Erkins owned, in fee-simple, both

White Arrow Ranch and Devil's Corral. *See* Bernsen Aff. at ¶ 2; Humphries Aff. at ¶ 3. Thus, upon the recording of the Judgment on June 14 and 15, 2000, the Judgment became a lien against the Erkins' fee simple interest in both White Arrow Ranch and Devil's Corral, and the Erkins' conveyances of White Arrow Ranch and Devil's Corral to Barbob Limited Partnership, LLP, and Ten E Limited Partnership, on June 22, 2000, and all subsequent conveyances of these properties were made subject to the judgment lien. *See First Nat'l Bank v. Hays*, 61 P.2d 287, 288 (Idaho 1900); *Fulton v. Duro*, 687 P.2d 1367, 1372-73 (Idaho Ct. App. 1984).

On February 12, 2002, the U.S. Marshal sold White Arrow Ranch and Devil's Corral to Pana-Tek at public auction pursuant to a writ of execution to satisfy the New York Judgment. The sale of White Arrow Ranch and Devil's Corral to Pana-Tek extinguished the ownership interests of the Erkins and their successors in interest. The only interest retained by the Erkins and their successors in interest was a right of redemption which expired on February 12, 2003, one year after the date of the Marshal's sale. *See* Idaho Code § 11-402 ("The judgment debtor or redemptioner may redeem the property from the purchaser within one (1) year after the sale, if the real property sold consisted of a tract of land of more than twenty acres. . . ."); *Frisby v. Clapier*, 834 P.2d 881, 881-82 (Idaho Ct. App. 1992); Fed. R. Civ. P. 69(a) ("The procedure on execution, in proceedings supplementary to and in aid of a judgment . . . shall be in accordance with the practice and procedure of the state in which the district court is held."). Neither the Erkins nor their successors in interest exercised their right of redemption prior to

February 12, 2003. Accordingly, based on the undisputed evidence before the Court, title to White Arrow Ranch and Devil's Corral vests in Pana-Tek, as the purchaser at the Marshal's Sale. *See Frisby*, 834 P.2d at 883 ("[T]itle would vest, after the expiration of the redemption period, in . . . the purchaser at the foreclosure sale.").

2. Status of Encumbrances, Liens, and Other Non-Ownership Interests in the Properties

The Court must now determine whether title vests in Pana-Tek subject to any lien, encumbrance, or other non-ownership interest in the properties.

a. White Arrow Ranch

(1) August 1984 Lease

The Erkins leased a portion of White Arrow Ranch to GEO/Pleurotus in a lease dated August 1, 1984, and recorded October 18, 1985; GEO/Pleurotus mortgaged this lease to Idaho First National Bank, subsequently known as West One Bank, and now known as U.S. Bank, National Association, by a First Mortgage and Security Agreement dated and recorded August 24, 1984; the August 1, 1984, Lease was assigned to, and the liabilities of the Lease were assumed by, Bliss Valley Foods in an Assignment of Lease Agreement and an Assumption of Liabilities Agreement between Geo/Pleurotus and Bliss Valley Foods, both of which were recorded on October 18, 1985; a Collateral Assignment regarding the August 1984 Lease was recorded on February 10, 1986, with Geo/Pleurotus, the Erkins, and Thomas G. Walker, Jr. and Donna I. Walker as assignors, and Idaho First National Bank as assignee; and a Collateral Assignment regarding the August 1984 Lease was recorded on February 12, 1986, with Bliss Valley Foods as the

assignor and Idaho First National Bank as assignee.

Thus, the individuals and entities that may have an interest in White Arrow Ranch by virtue of the August 1984 Lease are: (1) Idaho First National Bank, (2) West One Bank, (3) U.S. Bank, National Association, (4) Geo/Pleurotus, (5) Bliss Valley Foods, and (6) Thomas G. Walker and Donna I. Walker.

As to Idaho First National Bank, West One Bank, and U.S. Bank, National Association, these entities have failed to appear in this action and default was entered against these three entities on August 28, 2002. *See* Entry of Default (Docket No. 44). As to Thomas G. Walker and Donna I. Walker, both of these individuals have disclaimed all right, title, interest, claim, and demand that they may have in White Arrow Ranch, in a disclaimer of interest filed with the Court on July 17, 2002. *See* Disclaimer (Docket No. 31).

Geo/Pleurotus also has failed to appear in this action and default was entered against it on August 28, 2002. *See* Entry of Default (Docket No. 44). Moreover, Geo/Pleurotus no longer has any interest in the August 1984 Lease because it assigned all of its interest in the Lease to Bliss Valley Foods when it entered into the Assignment of Lease Agreement and the Assumption of Liabilities Agreement recorded on October 18, 1985.

Bliss Valley Foods, Geo/Pleurotus's successor in interest, has not filed an opposition to Pana-Tek's Motion for Summary Judgment. Moreover, the evidence in the record indicates that no payments have been made by Bliss Valley Foods, as required

under the August 1984 Lease, since at least 1988. *See* Pana-Tek's Mem. Supp. Sum. Judg. (Docket No. 71) Ex. A (Declaration of John C. Burke: "I am President of Bliss Valley Growers . . . Bliss Valley Growers, Inc., is the assignee of the lessee's interest under [the August 1984 Lease]. . . Bliss Valley Growers, Inc., has not paid any rent on the lease since 1988."); MS-00-5065, Docket No. 235 (Erkins' Memorandum Opposing Motion for Writ of Possession: "Lessee's interest in [White Arrow Ranch] is held by Bliss Valley Growers, Inc. Bliss Valley Growers, Inc. has not paid any rent since 1988.");⁵ Bliss Valley Foods has not denied that it is in material breach of the August 1984 Lease, and that Pana-Tek, as the owner of White Arrow Ranch and the Erkins' successor in interest under the August 1984 Lease, is entitled to have the Lease terminated. The Court will therefore grant Pana-Tek's request to have the August 1984 Lease terminated.

Because all interest in White Arrow Ranch arising out of the August 1984 Lease has either been abandoned, disclaimed, or terminated, the August 1984 Lease does not give any individual or entity any right or interest in White Arrow Ranch.

(2) March 1, 1985, Lease

⁵ The only assignment in the record of the August 1984 Lease is to Bliss Valley Foods. The only evidence in the record indicates that Bliss Valley Foods and Bliss Valley Growers are one and the same entity. *See* Affidavit of Teresa A. Hill (Docket No. 76) at Ex. F (Robert and Bernardine Erkins' Bankruptcy Petition, stating that Bliss Valley Growers Inc. "was formerly named Bliss Valley Foods Inc."). Therefore, for the purposes of examining whether payments have been made under the August 1984 Lease, and whether Bliss Valley Foods has any interest in White Arrow Ranch, the Court will treat "Bliss Valley Foods" and "Bliss Valley Growers" as one and the same.

Robert Erkins entered into a lease agreement dated March 1, 1985, in which he agreed to lease White Arrow Ranch to Robert Randolph Erkins for a term of forty-nine years. *See* McKenzie Aff. at Ex. D. The undisputed evidence before the Court demonstrates that this lease was never recorded and was never signed by Bernardine Erkins. *See id.*; Bernsen Aff. at ¶ 6; MS-00-5065, Test. Robert Randolph Erkins at 1/17/03 Evid. Hr'g (admitting that the March 1, 1985, Lease was never recorded and was not signed by Bernardine Erkins).

In Idaho, "a lease for years is an estate in real property and its transfer requires the signature and acknowledgment of both husband and wife or it is void (not voidable) and unenforceable." *Kays v. Brack*, 350 F. Supp. 1243, 1246 (D. Idaho 1972); *see* Idaho Code § 32-912. The 1985 Lease is a "lease for years in an estate in real property" that was held by Robert Erkins and Bernardine Erkins, as husband and wife. The lack of Bernardine Erkins' signature and acknowledgment on the lease is therefore fatal and renders the lease void and unenforceable. *See Kays*, 350 F. Supp. at 1246; Idaho Code § 32-912. Accordingly, the March 1, 1985, Lease is void and does not give Robert Randolph Erkins, or any other individual or entity, any right or interest in White Arrow Ranch.

(3) Encumbrances Recorded after the New York Judgment was Recorded

On February 11, 2002, Rolle Newton recorded a Notice of Pendency of Action in Gooding County. *See* Bernsen Aff. ¶ 6 and Ex. G. This notice relates to the state court action regarding the water rights associated with White Arrow Ranch that has been

removed to this Court and consolidated into the present action. Resolution of what, if any, water rights Pana-Tek obtained when it purchased White Arrow Ranch at the U.S. Marshal's sale will therefore be resolved in this action.

b. Devil's Corral

As to encumbrances on and interests in Devil's Corral, the Erkins mortgaged Devil's Corral to Capital Group, Inc. ("Capital Group"), and Cunningham, Lyons & Cabannis, S.C. ("Cunningham"), by a mortgage recorded February 2, 1996. *See* Humphries Aff. at ¶ 7 and Ex. F. A disclaimer of interest in which Cunningham disclaimed any interest in Devil's Corral was recorded on November 26, 2002. *See* Humphries Aff. at ¶ 7 and Ex. F. Capital Group has failed to appear in this action and default was entered against it on February 27, 2003. *See* Entry of Default (Docket No. 106). Moreover, Capital Group executed a Satisfaction of Mortgage for the Erkins on March 4, 1996. *See* McKenzie Aff. at ¶ 3 and Ex. C.

Because all interests in Devil's Corral arising out of the mortgage recorded February 2, 1996, have either been disclaimed or terminated, that mortgage does not give any individual or entity any right or interest in Devil's Corral.

3. Water Rights

The final issue the Court must address is what, if any, water rights Pana-Tek obtained when it purchased White Arrow Ranch and Devil's Corral at the U.S. Marshal's sale. This inquiry requires the Court to first determine the nature of the water rights associated with Devil's Corral.

The Devil's Corral "water rights" consist of an unperfected application for water rights and an agreement with the Idaho Water Resource Board regarding the unperfected application. The parties are in disagreement as to whether this unperfected application and agreement constitute real property or personal property, and whether the unperfected application and agreement are appurtenant to Devil's Corral. The parties have not cited any authority, and the Court has been unable to locate any authority, addressing whether an unperfected water right application and associated agreement are personal as opposed to real property, and whether such an application and agreement are considered appurtenant to, and therefore pass with the conveyance of, the property with which they are associated.⁶

Real property is defined as "[r]eal or immovable property consist[ing] of: Land; that which is affixed to land; that which is incidental to or appurtenant to land; *that which is immovable by law*. . . ." Black's Law Dictionary 1218 (6th ed. 1990) (emphasis added). Both Pana-Tek and Rolfe Newton have acknowledged that the unperfected application and agreement have no value or use whatsoever other than on Devil's Corral; that the unperfected application and agreement may never ripen into water rights; that the unperfected application and agreement can be perfected, if at all, only through the

⁶ Rolfe Newton submitted the affidavit of L. Glen Saxton for the proposition that the unperfected application is not real property or a water right appurtenant to the land. See Aff. L. Glen Saxton (Docket No. 93) at ¶ 6. However, the Court finds the questions of whether an unperfected application is real, as opposed to personal, property, and whether an unperfected application is appurtenant to the land, to be legal, rather than factual, questions. The questions are therefore for the Court to determine.

appropriation and beneficial use of water on *Devil's Corral*; and that the unperfected application and agreement cannot be moved to other land, i.e., they are "immovable by law." The Court finds, based on the undisputed evidence before it, that the unperfected application and agreement fall within the definition of "real property" and are, or at least were prior to 1998, appurtenant to Devil's Corral. *Cf. Church v. Meadow Springs Ranch Corp.*, 659 P.2d 1045, 1048 (Utah 1983) (in quiet title action, declining to reach question of whether an unperfected application to appropriate water was appurtenant to, and therefore passed with conveyance of, land because plaintiff had failed to meet its burden of demonstrating that it had a right superior to that of the defendant in the unperfected application).

The Court must now determine whether the White Arrow Ranch and Devil's Corral water rights were appurtenant to, and therefore transferred with the conveyance of, White Arrow Ranch and Devil's Corral at the U.S. Marshal's Sale. As discussed previously, upon the recording of the New York Judgment on June 14 and 15, 2000, the Judgment became a lien on *all* real property interests the Erkins had in White Arrow Ranch and Devil's Corral, including any rights appurtenant to those properties. Thus, the relevant time period for determining whether there were rights appurtenant to, and that therefore passed with, the conveyance of White Arrow Ranch and Devil's Corral, is June 14 and 15, 2000. Any right appurtenant to the properties on those dates passed to Panatuck with the conveyance of the properties.

"[I]t is well established that a water right is an appurtenance to the land on which

it has been [used] and will pass by conveyance of the land." *Russell v. Irish*, 118 P. 501, 502 (Idaho 1911); see Idaho Code § 42-220. A conveyance of the land will "carry with it the water right appurtenant to the land at the time of the conveyance, *unless* it was specifically reserved in the deed or it could be clearly shown that it was known to both parties that the water right was not intended to be conveyed." *Id.* (emphasis added); see *Hunt v. Bremer*, 276 P. 964, 965 (Idaho 1929).

A conveyance of land by forced sale, such as by foreclosure or marshal's sale, is treated in the same manner as a voluntary conveyance and accordingly passes all rights appurtenant to the land conveyed, including appurtenant water rights. See *Federal Land Bank of Spokane v. Union*, 29 P.2d 1009, 1010 (Idaho 1934) (holding that Bank, which acquired land through foreclosure on a mortgage, was entitled to the full water rights that were appurtenant to the land); see also *Hays*, 61 P. at 288; *Fulton*, 687 P.2d at 1372-73. The burden of overcoming the presumption that the water rights were appurtenant to, and therefore passed with the conveyance of the land on which they were used, is on Rolle Newton. See *Federal Land Bank*, 29 P.2d at 1010.

Rolle Newton contends that in December 1998, the Erkins transferred the water rights associated with White Arrow Ranch and Devil's Corral to the "Erkins Trust." According to Rolle Newton, this transfer of the water rights "severed" the water rights from the properties such that the water rights were no longer appurtenant to, and did not therefore transfer with a conveyance of, the properties. In support of its contentions, Rolle Newton cites to the Affidavit of Bernardine Erkins.

Mrs. Erkins states in her affidavit that on December 24, 1998, she and her husband, Robert Erkins, "assigned all water rights and/or agreements with the State of Idaho relating to our real property in Jerome and Gooding Counties to the Erkins Trust." Affidavit of Bernardine Erkins ("B. Erkins Aff.") (Docket No. 95) at ¶ 8. Attached to Mrs. Erkins' affidavit are copies of assignments, made by the Erkins to the "Erkins Trust," of the water rights associated with White Arrow Ranch and Devil's Corral. *See* B. Erkins Aff. at Ex. C.. The assignments show a date of December 24, 1998. The assignments were not, however, recorded, nor were they notarized. *See id.*

In response to Pana-Tek's challenge to the existence and validity of the Erkins Trust, Rolfe Newton has submitted the Supplemental Affidavit of Lawrence Sirhall, which includes a copy of a document entitled "Trust Agreement." *See* Supplemental Affidavit of Lawrence Sirhall (Docket No. 118) ("Supp. Sirhall Aff."). This agreement is dated April 28, 1971, and Mr. Sirhall states in his affidavit that he has personal knowledge of the information contained in his affidavit, including his statement that the agreement attached to his affidavit is "a true and correct copy of the Erkins Trust Agreement." *Id.* However, as Pana-Tek points out, Mr. Sirhall is not a signatory on the trust agreement and could not have advised anyone who is because the agreement was executed more than thirteen years before Mr. Sirhall was admitted to practice law. This agreement cannot, therefore, be authenticated by Mr. Sirhall based on personal knowledge. *See Orr v. Bank of Am.*, 285 F.3d 764, 774 & n.8 (9th Cir. 2002) ("A document can be authenticated [based on personal knowledge] by a witness who wrote it,

signed it, used it, or saw others do so.") Accordingly, the trust agreement attached to Mr. Sirhall's supplemental affidavit is unauthenticated and "cannot be considered in a motion for summary judgment." *Id.* at 773. Thus, there is no evidence in the record that a valid trust called the "Erkins Trust" was formed in 1971, nor is there any evidence that the "Erkins Trust," if validly formed in 1971, remained in existence on December 24, 1998, the date on which the purported transfer of water rights occurred.

Even if the Court assumes, for purposes of its decision, that the agreement attached to Mr. Sirhall's supplemental affidavit is indeed a copy of the trust agreement for the Erkins Trust, that the trust was validly formed in 1971 and was still in existence in 1998, and that the Erkins did indeed transfer the White Arrow Ranch and Devil's Corral water rights to the Erkins Trust in 1998, the Court finds Rolle Newton has failed to overcome the presumption that the water rights were appurtenant to the White Arrow Ranch and Devil's Corral on the date the judgment lien was recorded.

First, it is undisputed that the Erkins Trust is a revocable trust. The trust agreement specifically provides that the grantors/settlers, Robert and Bernardine Erkins, reserve all right and power jointly to amend or modify the trust agreement, and that either of the grantors may, at any time before the death of the other grantor, revoke the trust agreement entirely. See Supp. Sirhall Aff. at Ex. A, pg. 10.

"[P]roperty held in [a revocable] trust is subject to the claims of creditors of the settlor . . . if the same property belonging to the settlor . . . would be subject to the claims of the creditors, taking account of homestead rights and other exemptions." 3 Restmt.

Trusts § 25(e). "This result is not dependent on the trust being 'illusory' or 'testamentary,' or on the transfer being a fraudulent conveyance, but is based on the sound public policy of basing the rights of creditors on the substance rather than the form of the debtor's property rights." *Id.* Thus, the mere fact that the water rights may have been transferred into the Erkins Trust does not protect those rights from the creditors of the Erkins. In fact, for purposes of determining the rights of creditors, such as Pana-Tek, the fact that the water rights were held in the name of the Erkins Trust is irrelevant; the water rights are treated as owned by Robert and Bernardine Erkins.

Second, the undisputed evidence in the record demonstrates that after the purported 1998 transfer, the Erkins continued to consider the water rights as their own, to use the water rights in the same manner and location as before the purported transfer, and to treat the water rights as appurtenant to the respective properties. In a deposition held on May 2, 2001, Robert Erkins stated, in response to a question of how the water rights on White Arrow Ranch were held, that the water rights are held "[i]n the name of my wife and myself." *See* Supplemental Affidavit of Teresa A. Hill (Docket No. 100) ("Supp. Hill Aff.") at Ex. B, p. 32. In the Erkins' bankruptcy schedules, which were dated August 31, 2000, and signed by both Bernardine and Robert Erkins, the Erkins did not list the White Arrow Ranch water rights as a separate asset from White Arrow Ranch; listed White Arrow Ranch as being "transferred" into the Erkins Revocable Trust on June 21, 2000; and listed Devil's Corral and the "Devil's Corral water rights" as being "transferred" into the Erkins Revocable Trust on June 21, 2000. *See* Affidavit of Teresa A. Hill (Docket

No. 76) ("Hill Aff.") at Ex. F, Schedule C. Finally, the claims filed in the Snake River Basin Adjudication ("SRBA"), as well as the records at the Idaho Department of Water Resources, continue to list the Erkins as the owners of the water rights and White Arrow Ranch and Devil's Corral as the locations of use. *See* Supp. Hill Aff. at Exs. C-G.

Rolle Newton does not dispute that the Erkins have continued to use and treat the water rights as their own, and that neither the manner in which the water rights were used, or the location of use, changed after the purported 1998 transfer. In fact, the only evidence Rolle Newton has submitted to support its contention that the water rights were severed from, and were therefore no longer appurtenant to, White Arrow Ranch and Devil's Corral, is the purported 1998 assignment to the Erkins Trust. This scintilla of evidence is simply insufficient to meet Rolle Newton's burden.

Viewing the evidence before the Court in the light most favorable to Rolle Newton, the Court holds that, as a matter of law, Rolle Newton has not met its burden of overcoming the presumption that the water rights were appurtenant to White Arrow Ranch and Devil's Corral on the date the judgment lien was recorded. Accordingly, the Court holds that the water rights were appurtenant to and passed to Pana-Tek with the conveyance of White Arrow Ranch and Devil's Corral.

4. Joinder of all Parties in Interest

Rolle Newton contends that Pana-Tek has failed to join all real parties in interest because Meglon Domestic Non Grantor Trust has not been joined as a plaintiff. However, Meglon Trust is, indeed, a party to this action. Moreover, Rolle Newton's

contention relies on the assumption that Meglon Trust will be allowed to join in the execution proceeding, MS-00-5065. This Court has denied Meglon Trust's attempt to join in the execution proceeding, thereby negating the assumption upon which Rolle Newton's argument relies.

ORDER

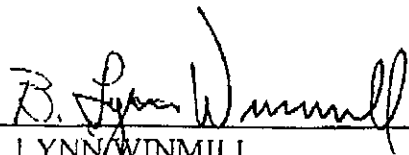
NOW THEREFORE IT IS HEREBY ORDERED that Pana-Tek, Inc.'s Motion for Summary Judgment (Docket No. 70) is GRANTED.

IT IS FURTHER ORDERED that Rolle Newton & Company's motion for summary judgment dismissing Pana-Tek, Inc. (Docket No. 109) is DENIED.

IT IS FURTHER ORDERED that Rolle Newton & Company's Motion to Vacate Hearing on Plaintiff's Motion for Summary Judgment (Docket No. 108) is DENIED as moot.

IT IS FURTHER ORDERED that Rolle Newton & Company's Motion to take Judicial Notice (Docket No. 122) is DENIED as moot.

Dated this 22nd day of April, 2003.



B. LYNN WINMILL
Chief Judge, United States District Court

dkh

United States District Court
for the
District of Idaho
April 23, 2003

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:02-cv-00142

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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✓
____ Chief Judge B. Lynn Winmill
____ Judge Edward J. Lodge
____ Chief Magistrate Judge Larry M. Boyle
____ Magistrate Judge Mikel H. Williams

Visiting Judges:
____ Judge David O. Carter
____ Judge John C. Coughenour
____ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 4-23-03

BY: [Signature]
(Deputy Clerk)

EXHIBIT B

UNITED STATES COURTS
DISTRICT OF IDAHO

MAY - 9 2003

RECEIVED
FILED

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Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PANA-TEK, INC., a California corporation,
as successor by assignment from ALFREDO J.
BLANCO, as Plan Administrator to the Estate
of Gaston & Snow,

Plaintiffs,

v.

ROLLE NEWTON & COMPANY, Trustee of
the COASTAL FOREIGN SECURITY
TRUST; PETROS G. ELIOPULOS, an
individual, as Trustee of the LISSALIN
ULTRA TRUST dated February 27, 2001 and
the MEGLON DOMESTIC NON GRANTOR
TRUST dated February 27, 2001;
GEO/PLEUROTUS GROWERS LIMITED
PARTNERSHIP; IDAHO FIRST NATIONAL
BANK also know as WEST ONE BANK now
known as U.S. BANK, NATIONAL
ASSOCIATION; ROBERT A. ERKINS and
BERNARDINE M. ERKINS, husband and
wife; BLISS VALLEY FOODS, INC., an
Idaho corporation; THOMAS G. WALKER
and DONNA I. WALKER, husband and wife;
BARBOB LIMITED PARTNERSHIP LLP,
formerly known as TWO B LIMITED
PARTNERSHIP, an Arizona limited
partnership; CAPITAL GROUP, INC.;
CUNNINGHAM, LYONS & CABANNIS,
S.C., TEN E LIMITED PARTNERSHIP, an

Case No. CV-02-142-S-BLW ✓

~~PROPOSED~~ FINAL JUDGMENT

~~PROPOSED~~ FINAL JUDGMENT

Boise-156323.1 0010224-00001

Page 1 of 4

131

Arizona limited partnership; Robert Randolph Erkins; and JOHN DOES I through X,

Defendants.

ROLLE NEWTON & COMPANY, as Trustee of COASTAL FOREIGN SECURITY TRUST, a foreign trust,

Plaintiff,

v.

ALFRED J. BIANCO, as Plan Administrator to the Estate of Gaston & Snow; IDAHO DEPARTMENT OF WATER RESOURCES, ex rel. State of Idaho; and JOHN DOES I through XXV,

Defendants,

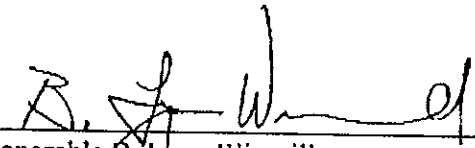
Case No. CV-02-094-S-BLW

Case No. CV-02-095-S-BLW

The court having issued its Memorandum Decision and Order granting Pana-Tek, Inc.'s Motion for Summary Judgment on April 22, 2003, and having denied all other motions then pending in this action, and good cause appearing therefore:

IT IS HEREBY ORDERED that fee title to that property, together with any and all water rights, applications, permits and agreements appurtenant thereto, described in the attached Exhibit A is quieted in plaintiff Pana-Tek, Inc., free and clear of any liens, claims, or encumbrances of any sort.

Dated this 9th day of May, 2003.



Honorable B. Lynn Winnill,
Chief Judge, United States District Court

EXHIBIT A

Gooding County Real Property:

Parcel No. 1:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $S\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$; $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $NW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$;

Together with all water rights appurtenant thereto, including, but not limited to, specifically, Idaho Water Rights Nos. 37-11072, 37-4041, 37-7426, and 37-8165.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $NE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$; $E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$; $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $SW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$;

Section 31: $N\frac{1}{2}NE\frac{1}{4}$; $SE\frac{1}{4}NE\frac{1}{4}$;

Together with all water rights appurtenant thereto, including, but not limited to, specifically, Idaho Water Rights Nos. 37-11072, 37-4041, 37-7426, and 37-8165.

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

Jerome County Real Property:

Township 9 South, Range 18, East of the Boise Meridian, Jerome County, Idaho

Section 32: Lots 1, 2 and 6; $S\frac{1}{2}NE\frac{1}{4}$

Together with all water rights appurtenant thereto, including the State of Idaho Department of Water Resources Application for Permit No. 36-7999, and the Agreement between Robert A. Erkins and Bernardine M. Erkins and the State of Idaho, Idaho Water Resource Board dated September 1, 1981.

dkh

United States District Court
for the
District of Idaho
May 12, 2003

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:02-cv-00142
1:02-cv-00094
1:02-cv-00095

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

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✓
____ Chief Judge B. Lynn Winmill
____ Judge Edward J. Lodge
____ Chief Magistrate Judge Larry M. Boyle
____ Magistrate Judge Mikel H. Williams

Visiting Judges:

____ Judge David O. Carter
____ Judge John C. Coughenour
____ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 5-12-03

BY: *[Signature]*
(Deputy Clerk)

EXHIBIT C

FILED

NOT FOR PUBLICATION

FEB 24 2010

UNITED STATES COURT OF APPEALS

**MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

ALFRED J. BIANCO, as Plan
Administrator to the Estate of Gaston &
Snow,

Plaintiff - Appellee,

v.

ROLLE NEWTON & COMPANY,
Trustee of the Coastal Foreign Security
Trust,

Defendant - Appellant.

No. 03-35431

D.C. Nos. CV-02-00142-BLW

CV-02-094

CV-02-095

MEMORANDUM *

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Submitted November 2, 2009**

Portland, Oregon

Before: FISHER and PAEZ, Circuit Judges, and MOSKOWITZ, District Judge.***

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

***The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

Rolle Newton & Company (“Rolle Newton”) appeals an order by the district court granting summary judgment in favor of Pana-Tek, Inc. (“Pana-Tek”) and denying Rolle Newton’s cross motion for summary judgment. We review an order granting summary judgment de novo, Universal Health Servs., Inc. v. Thompson, 363 F.3d 1013, 1019 (9th Cir. 2004), and a finding concerning joinder for abuse of discretion. Disabled Rights Action Comm. v. Las Vegas Events, Inc., 375 F.3d 861, 879 (9th Cir. 2004). We affirm.

We have jurisdiction over this appeal because Rolle Newton’s notice of appeal became effective after the district judge denied its motion for reconsideration. Fed. R. App. P. 4(a)(4)(B)(i). Pana-Tek’s subsequently filed motion for an order supplementing the order on reconsideration did not affect this court’s jurisdiction. *See id.*

Any rights Rolle Newton may have claimed were extinguished upon Pana-Tek’s purchase of the properties at the Marshal’s sale. A judgment against the initial owners of White Arrow Ranch and Devil’s Corral was perfected and recorded prior to the conveyances at issue. Rolle Newton’s claim to ownership results from a post-judgment chain of conveyances and is subject to the judgment lien. See First Nat’l Bank of Lewiston v. Hays, 61 P. 287, 288 (Idaho 1900); see

also Fulton v. Duro, 687 P.2d 1367, 1372-73 (Idaho Ct. App. 1984), aff'd 700 P.2d 14 (Idaho 1985).

Rolle Newton has no standing to challenge Pana-Tek's water rights at White Arrow Ranch and Devil's Corral. If, as Rolle Newton argues, the water rights were severed prior to recording of the judgment liens, then transfers to Rolle Newton did not include those rights. If the water rights were not severed, then they were subject to the judgment lien and were conveyed to Pana-Tek at the Marshal's sale. Rolle Newton is thus a third party to any dispute concerning the water rights and lacks standing. See, e.g., Serena v. Mock, 547 F.3d 1051, 1054 (9th Cir. 2008).

The district court acted within its discretion in finding that Pana-Tek joined all interested parties. Under Idaho law, a trust is not a separate legal entity, see Indian Springs, LLC v. Indian Springs Land Inv., LLC, 215 P.3d 457, 464 (Idaho 2009), so Pana-Tek properly named the trustees in their official capacity, rather than individual trusts. Moreover, Meglon Domestic Non Grantor Trust does not retain an interest in the judgment.

AFFIRMED.

EXHIBIT D

FILED

UNITED STATES COURT OF APPEALS

MAY 17 2010

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

PANA-TEK, INC., a California
corporation as successor by assignment
from Alfred J. Bianco, as Plan
Administrator of the Estate of Gaston &
Snow,

Plaintiff - Appellee,

v.

ROLLE NEWTON & COMPANY,
Trustee of the Coastal Foreign Security
Trust; et al.,

Defendants,

and

MEGLON DOMESTIC NON-GRANTOR
TRUST, dated February 27, 2001, Petros
Eliopoulos, Trustee,

Defendant - Appellant.

No. 09-35976

D.C. No. 1:02-cv-00142-BLW
District of Idaho,
Boise

ORDER

Before: LEAVY, RAWLINSON and CALLAHAN, Circuit Judges.

Appellee's opposed motion to dismiss this appeal for lack of jurisdiction is granted. *See Bianco v. Rolle-Newton & Co.*, No. 03-35431, 2010 WL 638347, slip op. at 1 (9th Cir. Feb. 24, 2010); *see also Valley Forge Christian College v.*

KKC/MOATT

COPY TO John J. ...
ON 5-18-10

Americans United for Separation of Church & State, Inc., 454 U.S. 464, 471-472 (1982).

DISMISSED.

EXHIBIT E

U.S. COURTS

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF IDAHO

2002 AUG 28 P 2:31

REC'D. FILED
CAMERON S. DURKE,
CLERK, IDAHO

ALFRED J. BIANCO, as Plan
Administrator to the Estate of Gaston &
Snow,

Plaintiff,

v.

ROBERT A. ERKINS, and
BERNADINE ERKINS,

Defendants.

Case No. MS 5065

**MEMORANDUM DECISION AND
ORDER**

The Court has before it Intervenor's Motion to Set Aside Marshall's Sale (Docket No. 182); Defendants' Motion to Set Aside Marshall's Sale (Docket No. 201); Plaintiff's Motion for Order Setting Value of the Use and Occupation of Property and Requiring Defendants to Pay Rent or Deliver Possession of Property to Plaintiff (Docket No. 149); Plaintiff's Motion for Examination of Defendants in Proceedings Supplementary to Execution (Docket No. 151); Defendants' Motion to Limit Debtor's Exam (Docket No. 194); Defendants' Motion for Additional Time to Submit Affidavits and Respond and/or Move Regarding Plaintiff's Motion for Examination of Defendants in Proceedings Supplemental to Execution (Docket No. 166); Plaintiffs' Motion for Certification of Facts Showing Contempt and Order to Show Cause Why Defendants Should Not Be Held in Contempt of Court (Docket No. 130); Plaintiff's Motion for Attorney Fees (Docket No. 169); and Plaintiff's Bill of Costs (Docket No. 171).

I. Jurisdiction over Pending Motions

On February 7, 2002, Defendants filed a Notice of Appeal to the Ninth Circuit Court

MEMORANDUM DECISION AND ORDER - 1

of Appeals with respect to this Court's Order dated February 6, 2002; this Court's Order dated November 14, 2001; the Magistrate Court's Order, Report and Recommendation dated July 20, 2001; and the Magistrate Court's Orders dated August 15, 2000, and August 16, 2000. (Docket No. 140.)

One day later, on February 8, 2002, Intervenor represented by Grant Burgoyne filed a Notice of Appeal to the Ninth Circuit with respect to this Court's Order dated February 6, 2002; this Court's Order dated November 14, 2001; and the Magistrate Court's Order, Report and Recommendation dated July 20, 2001. (Docket No. 138.) On March 6, 2002, Intervenor represented by Lawrence Sirhall filed a substantially similar Notice of Appeal. (Docket No. 155.)

To assist the Court in determining its jurisdiction over the pending motions in light of the filing of the notices of appeal, the Court authorized the parties to submit briefs addressing the jurisdictional issue. The Court has reviewed the briefs and relevant authority and concludes that the Court retains jurisdiction over these pending motions.

"The filing of a notice of appeal is an event of jurisdictional significance - it confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal." *Griggs v. Provident Consumer Discount Co.*, 459 U.S. 56, 58 (1982). This does not, however, mean that the district court is divested of *all* jurisdiction over the case. To the contrary, there are a number of matters over which the district court retains jurisdiction. "A district court may, for example, retain jurisdiction to correct clerical errors or clarify its judgment pursuant to Fed. R. Civ. P. 60(a). A district court may retain jurisdiction when it has a duty to supervise the status quo during the pendency of an appeal, or in aid of execution of a judgment that has not been superseded."

MEMORANDUM DECISION AND ORDER - 2

Stein v. Wood, 127 F.3d 1187, 1189 (9th Cir. 1997) (citations omitted); see *In the Matter of Thorpe*, 655 F.2d 997, 998 (9th Cir. 1981). A district court also retains jurisdiction to award attorneys' fees and costs, see *Masalosalo by Masalosalo v. Stonewall Ins. Co.*, 718 F.2d 955, 957 (9th Cir. 1983) ("The district court retained the power to award attorneys' fees after the notice of appeal from the decision on the merits had been filed."), and to enforce its orders through contempt sanctions or otherwise. See *Kelley v. C.I.R.*, 45 F.3d 348, 351 n.5 (9th Cir. 1995) ("Thus, while a federal district court may be deprived of jurisdiction over a case upon the timely filing of a notice of appeal, it would still retain a limited equitable jurisdiction to enforce its orders."); *Meinhold v. United States Dep't of Defense*, 34 F.3d 1469, 1480 n.14 (9th Cir. 1994) (holding that despite appeal, district court had jurisdiction to issue an amended order to clarify its original injunction and to supervise compliance in the wake of motion for contempt); *Hoffman v. Beer Drivers & Salesmen's*, 536 F.2d 1268, 1276 (9th Cir. 1976) ("[A]n appeal from a contempt order would not affect the court's jurisdiction to issue further contempt orders based on subsequent violations of the basic injunctive order."); *Sekaquaptewa v. MacDonald*, 544 F.2d 396, 406 (9th Cir. 1976) (holding that absent a stay, district courts have the authority to enforce their orders while an appeal is pending).

The motions pending before this Court all relate either to the Court's enforcement of its orders, the Court's award of attorneys' fees and costs, or the Court's aid in the execution of a judgment. The Court therefore concludes that it retains jurisdiction to decide these pending motions.

II. Intervenors' and Defendants' Motions to Set Aside Marshall's Sale (Docket Nos. 182 and 201)

MEMORANDUM DECISION AND ORDER - 3

A. Intervenors' Motion to Set Aside Marshall's Sale (Docket No. 182)

Intervenors move to set aside the February 12, 2002, Marshall's sale, contending (1) that their due process rights were denied because they did not receive actual notice of the sale, and (2) that the Marshall and/or Plaintiff failed to comply with the requirements of Idaho Code § 11-302(2) regarding notice. The Court will deny this motion.

First, Intervenors' had notice of, an opportunity to participate in, and indeed did participate in the proceedings leading up to the Court's November 13, 2001, Order, in which the Court denied any claims by Intervenors in, and granted the Plaintiff the right to execute upon, the personal property sold at the February 12, 2002, Marshall's Sale. These proceedings afforded Intervenors the process to which they were entitled prior to the sale or other disposition of the property. *See, e.g., Dusenbery v. United States*, 534 U.S. 161 (2002); *Mennonite Board of Missions v. Adams*, 462 U.S. 791, 800 (1983); *Mullane v. Chertral Hamover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Once the Court authorized Plaintiff to execute upon the property, Intervenors were not entitled to personally receive any further notice regarding the sale or other disposition of the property.¹

Second, Plaintiff complied with the notice requirement of Idaho Code § 11-302. Section 11-302 does not require, as Intervenors contend, that notice be published *every day* for at least one week, but not more than two weeks, prior to the sale. Rather, the statute requires only that the notice be published once, and that this publication must occur at least one week,

¹ Defendants have adopted the argument of Intervenors on this issue. The Court notes that Defendants also were given notice of, the opportunity to participate in, and did indeed participate in the proceedings leading up to the Court's November 13, 2002, Order in which the Court authorized Plaintiff to execute upon the personal property ultimately sold at the February 12, 2002, Marshall's Sale. Thus, Defendants received the process to which they were entitled. Once the Court authorized Plaintiff to execute upon the property, Defendants were not entitled to personally receive any further notice regarding the sale or other disposition of the property.

but not more than two weeks, prior to the sale.

Finally, even assuming that Plaintiff failed to comply with the publication requirements of § 11-302, the remedy sought by Intervenorors – the setting aside of the Marshall's Sale – is not available. See Idaho Code § 11-303 (providing that an officer selling without the notice prescribed in § 11-302 "forfeits \$500 to the aggrieved party, in addition to his actual damages"); *Nixon v. Triber*, 595 P.2d 1093, 1094 (Idaho 1979) (holding that a "district court erred in setting aside the execution sale because I.C. § 11-303 provides the exclusive remedy for failure to comply with the notice provisions of I.C. § 11-302").

B. Defendants' Motion to Set Aside Marshals' Sale (Docket No. 201)

Defendants move to set aside the February 12, 2002, Marshals' Sale, contending (1) that the Sale should be set aside because Defendants did not receive personal notice as required by Idaho Code § 11-304, and (2) that the Sale should be set aside because the notice violated Federal Rule of Civil Procedure 5(b).² The Court disagrees, and will deny the Motion.

First, Idaho Code § 11-304 does not require that personal notice be given to the judgment debtor; this section simply provides that if the judgment debtor is present, the judgment debtor may direct the order in which the property is sold. The method in which notice must be given is set out in Idaho Code § 11-302 and, as discussed previously, the notice given by Plaintiff complied with this section's requirements.

Second, Federal Rule of Civil Procedure 5(b) is inapplicable. Execution is controlled by Federal Rule of Civil Procedure 69, which provides, in relevant part, that the procedure on

² Defendants' joinder in the argument raised by Intervenorors regarding the alleged due process violation has been discussed previously.

execution "shall be in accordance with the practice and procedure of the state in which the district court is held" As discussed previously, the requirements of the Idaho Code on sale of property were complied with.

III. Plaintiff's Motion for Order Setting Value for the Use and Occupation of Property and Requiring Defendants to Pay Rent or Deliver Possession of Property to Plaintiff (Docket No. 149)

Plaintiff moves the Court to set the value for the use and occupation of the real property known as the White Arrow Ranch ("Ranch") that plaintiff purchased at the February 12, 2002, sale. Defendants do not deny that Plaintiff is entitled to receive compensation under Idaho Code § 11-407 for the use and occupation of the Ranch, but dispute the amount which Plaintiffs are entitled to receive.

A. Ranch Residence

Defendants do not dispute that the rental value of the primary residence on the Ranch is the \$750 per month requested by Plaintiff. The Court will therefore set the value of the primary residence at \$750 per month.

B. Property Subject to August 1, 1984, Lease

The August 1, 1984, lease agreement provides for a lease of 50 acres of the Ranch property. The lease provides for a term of forty-nine years, commencing on August 1, 1984, and ending on July 31, 2033, and provides for rent based on a percentage of gross sales. The lease also provides a minimum rent to be paid of \$1,000 per acre per year for land use plus \$.50 per square foot per year for land area occupied by geothermally heated growing structures. With the leasehold totaling 50 acres, and the structure used for growing mushrooms being 42,000 square feet, the minimum rent of the facility is \$50,000 (50 acres at \$1,000 per acre) plus \$21,000 (42,000 square feet at \$.50 per square foot), for a total of

MEMORANDUM DECISION AND ORDER - 6

\$71,000 per year. This breaks down to a minimum monthly rent of \$5,916.67 for the property subject to the August 1, 1984, lease agreement. The Court will therefore set the minimum rent for this portion of the Ranch at \$5,916.67 per month, and order that Defendants pay to Plaintiffs this minimum monthly rent. The Court will, however, allow the parties to submit additional evidence and briefing to assist the Court in determining the rent due under the percentage rent provisions of the lease agreement; whether the rent due under the percentage rate provisions exceeds the minimum rent due; and whether the lessee is in material breach of the lease agreement.

C. Mobile Home

Defendants contend that the mobile home located on the Ranch is property not belonging to Defendants and was not part of the February 12, 2002, Marshall's Sale. In particular, Defendants have submitted an affidavit stating that the mobile home belongs to John and Melanie Burk. Plaintiff does not dispute ownership of the mobile home, but contends that if the mobile home is not part of the Ranch, Plaintiff should have the authority to have the mobile home removed and, until removed, Plaintiff is entitled to the value of the use and occupation of the real property on which the mobile home sits and which is being used by the tenants in possession of the mobile home.

The Court finds that Plaintiff is entitled to, at minimum, the value of the use and occupation of Plaintiff's land by the tenants in possession of the mobile home. The Court will allow the parties to submit additional evidence and briefing to assist the Court in determining the value of the use and occupation of the land by the tenants in possession of the mobile home, the ownership of the mobile home, and whether Plaintiff is entitled to have the mobile home removed from the Ranch.

MEMORANDUM DECISION AND ORDER - 7

D. Property Subject to March 1, 1985, Lease

Defendants contend that the value of this land must be set by taking into consideration a lease of the land to Randolph Erkins. The lease dated March 1, 1985, provides for a lease to Randolph Erkins of approximately 320 acres of land, subject to the August 1, 1984, lease discussed above. The March 1, 1985, lease, which does not provide for any periodic lease payment and appears to provide for only a single payment of \$50, is for a term of forty-nine years commencing on March 1, 1985, and ending on February 31, 2034. The lease allows for the tenant to use the land and the water in a consumptive manner, including the water from the hot springs.

The Court will allow the parties to submit additional evidence and briefing on the issue of the binding effect of the March 1, 1985, lease on Plaintiff, and the rent Plaintiff is entitled to receive, under Idaho Code § 11-407, for the property subject to this lease.

IV. Plaintiff's Motion for Examination of Defendants in Proceedings Supplementary to Execution (Docket No. 151); Defendants' Motion to Limit Debtor's Exam (Docket No. 194); and Defendants' Motion for Additional Time to Submit Affidavits and Respond and/or Move Regarding Plaintiff's Motion for Examination of Defendants in Proceedings Supplemental to Execution (Docket No. 166)

Plaintiff's counsel has indicated to the Court that he may be able to obtain the information needed from Defendants via written discovery and that a debtor's examination may not, therefore, be required. In light of this development, the Court will at this time deny the Motion for Examination of Defendants (Docket No. 151) without prejudice to the motion being refiled if Plaintiff is unable to obtain the needed information through other discovery methods. The Court also will deny without prejudice to refileing Defendants' Motion to Limit Debtor's Exam (Docket No. 194) and deem moot Defendants' Motion for Additional Time (Docket No. 166).

MEMORANDUM DECISION AND ORDER - 8

V. Plaintiff's Motion for Certification of Facts Showing Contempt and Order to Show Cause Why Defendants Should Not Be Held in Contempt of Court (Docket No. 130)

The Court will grant in part Plaintiff's Motion for Certification of Facts Showing Contempt of Court and Order to Show Cause Why Defendants Should Not Be Held in Contempt of Court. The Court will order Defendants to show cause, within twenty (20) days of the date of this Order, why they should not be held in contempt of court for violating the Court's August 15, 2000, Order, when on February 27, 2001, Defendants effectuated the transfer, by quitclaim deed, of their real property located in Jerome and Gooding Counties for \$20 to a trust controlled by their legal assistant, Petros G. Eliopoulos.

VI. Plaintiff's Motion for Attorney Fees (Docket No. 169)

Plaintiff moves the Court for an award of attorneys' fees pursuant to Idaho Code § 12-120(3) and (5). Defendants and Intervenor object to an award of fees contending (1) that the motion for attorneys' fees is untimely and (2) Plaintiff has failed to establish that the amount of attorneys' fees sought is reasonable.

A. Timeliness of Motion

Defendants and Intervenor contend that Plaintiff's Motion for Attorneys' Fees is untimely because it was not filed within fourteen days of the order of the Court. The Court is unpersuaded.

Although Local Rule 45.3(b) does require that motions for attorneys' fees be filed within fourteen days after entry of the "final judgment," Plaintiff is not seeking an award, in this Court, of fees as prevailing party of any final judgment entered by this Court, but rather is seeking an award of fees under the provision of Idaho Code § 12-120(5), for *postjudgment attorneys' fees and costs incurred in attempting to collect on a judgment.*

MEMORANDUM DECISION AND ORDER - 9

Specifically, on April 6, 2000, Plaintiff obtained a judgment in the United States District Court for the District of New York. This judgment was for legal services provided Defendants by the law firm of Gaston & Snow who represented Defendants in connection with commercial litigation in the state of Idaho. Since that time, Plaintiff, Plan Administrator of the Estate of Gaston & Snow, has been attempting to collect on that New York judgment.

On June 6, 2000, Plaintiff certified the New York judgment with this Court, thereby initiating the present action to enforce and collect on the New York judgment. The Court finds Plaintiff is entitled, under Idaho Code § 12-120(5), to recover the reasonable attorneys' fees incurred in the present action to enforce and collect on the New York judgment.

As to the timeliness of Plaintiff's motion for attorneys' fees, I.C. § 12-120 does not address the time within which a motion for postjudgment fees must be filed and the provision of Local Rule 54.2, requiring that a motion for recovery of fees be filed within fourteen days of the "final judgment," is simply inapplicable because, as discussed previously, the attorneys' fees at issue here were not incurred to obtain a "final judgment," but rather were incurred in an effort to enforce and collect on a final judgment.

It is clear that Plaintiff will continue to incur postjudgment fees in attempting to collect on the New York judgment until that judgment is satisfied. There is, however, nothing that precludes the Court from awarding the attorneys' fees incurred to date by Plaintiff, and the Court notes that such an award will not prejudice Plaintiff from seeking reasonable attorneys' fees incurred subsequently in Plaintiffs' continuing efforts to enforce and collect on the New York judgment.

In conclusion, the Court finds Plaintiff's Motion for Attorneys' Fees under I.C. § 12-120(5) to be timely filed.

MEMORANDUM DECISION AND ORDER - 10

B. Reasonableness of Attorneys' Fees

The Court has reviewed the affidavit of Plaintiff's counsel submitted in support of the motion for attorneys' fees, and considered the objections filed by Defendants and Intervenor. The Court finds that Plaintiff has sufficiently supported the time expended by counsel in pursuing enforcement and collection of the New York judgment, that the time expended by counsel in representing Plaintiff in this postjudgment proceeding was reasonable and necessary, and that the hourly rates charged by counsel are reasonable. The Court will therefore award Plaintiff attorneys' fees in the amount of \$180,321.50.

C. Apportionment of Fees

The Court has closely reviewed the entire record in this matter and finds, based on the filings of Intervenor, the positions taken by Intervenor, and the time records of Plaintiff's counsel, that 11% of the total attorney fee liability should be apportioned to Intervenor. The Court will therefore find Defendants to be liable for 89% of the attorneys' fees awarded Plaintiff, and Intervenor to be liable for 11% of the attorneys' fees awarded.

VII. Plaintiff's Bill of Costs (Docket No. 171)

For the same reasons that Plaintiffs' Motion for Attorneys' Fees is deemed to be timely, so is Plaintiffs' Bill of Costs deemed to be timely filed. The Clerk of the Court is directed to tax costs in this matter and to apportion 89% of Plaintiff's allowable costs to Defendant and 11% of Plaintiff's allowable costs to Intervenor.

VIII. Court's Order to Show Cause Why Intervenor Should Not Be Held in Contempt of Court

In an Order entered on March 11, 2002, the Court ordered Defendants and Intervenor, including Robert Randolph Erkins, to turn over to Plaintiff's counsel the original and any

MEMORANDUM DECISION AND ORDER - 11

copies of Plaintiff's correspondence file inadvertently left at Defendants' residence. On May 21, 2002, this Court issued an Order in which it noted that Intervenor Robert Randolph Erkins had acted in defiance of and in violation of the Court's Order by not only reading the confidential correspondence file, but also by providing copies of the confidential information contained in the file to other individuals for review, and filing a motion for reconsideration which contained and relied upon the confidential information contained in the file. The Court ordered Robert Randolph Erkins to show cause, within twenty days of the May 21, 2002, Order, why he should not be held in contempt of Court for violating the Court's Order entered on March 11, 2002. Robert Randolph Erkins has failed to respond to the Court's Order to show cause. The Court finds the record sufficient to hold Robert Randolph Erkins in civil contempt of court and will impose sanctions on him in the amount of \$5,000.00.

ORDER

NOW THEREFORE IT IS HEREBY ORDERED that Intervenor's and Defendants' Motions to Set Aside Marshall's Sale (Docket Nos. 182 and 201) are DENIED.

IT IS FURTHER ORDERED that Plaintiff's Motion for Order Setting Value for the Use and Occupation of Property and Requiring Defendants to Pay Rent or Deliver Possession of Property to Plaintiff (Docket No. 149) is hereby GRANTED. The value of the primary residence on the Ranch is set at \$750 per month; the minimum rent for the portion of the Ranch that is subject to the August 1, 1984, lease, is set at \$5,916.67 per month.

IT IS FURTHER ORDERED that the parties shall submit additional evidence and briefing not to exceed ten (10) pages, on the following issues:

- (1) The amount of rent due under the percentage rent provisions of the August 1, 1984, lease agreement; whether the rent due under the percentage rent

MEMORANDUM DECISION AND ORDER - 12 .

provisions exceeds the minimum rent due; and whether the lessee is in material breach of the lease agreement.

(2) The value of the use and occupation of the land by the tenants in possession of the mobile home; the ownership of the mobile home; and whether Plaintiff is entitled to have the mobile home removed from the Ranch.

(3) The binding effect of the March 1, 1985, lease on Plaintiff, and the rent Plaintiff is entitled to receive, under Idaho Code § 11-407, for the property subject to this lease.

IT IS FURTHER ORDERED that Plaintiff's Motion for Examination of Defendants (Docket No. 151) is DENIED without prejudice to the motion being refiled if Plaintiff is unable to obtain the needed information through other discovery methods.

IT IS FURTHER ORDERED that Defendants' Motion to Limit Debtor's Exam (Docket No. 194) is DENIED without prejudice.

IT IS FURTHER ORDERED that Defendants' Motion for Additional Time (Docket No. 166) is DENIED as moot.

IT IS FURTHER ORDERED that Plaintiff's Motion for Certification of Facts Showing Contempt of Court (Docket No. 130) is GRANTED in part and DENIED in part. The Court orders Defendants to show cause, within twenty (20) days of the date of this Order, why they should not be held in contempt of court for violating the Court's August 15, 2000, Order when on February 27, 2001, Defendants effectuated the transfer, by quitclaim deed, of their real property located in Jerome and Gooding Counties for \$20 to a trust controlled by their legal assistant, Petros G. Eliopoulos.

IT IS FURTHER ORDERED that Plaintiff's Motion for Attorneys' Fees (Docket

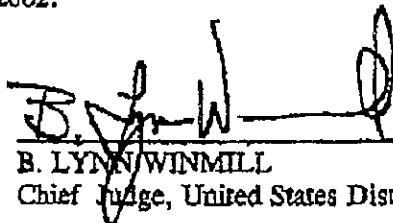
MEMORANDUM DECISION AND ORDER - 13

No. 169) is GRANTED. Attorneys' fees in the amount of \$180,321.50 shall be awarded to Plaintiff. Defendants shall be assessed \$160,486.13 (89% of the total fee award); Intervenor shall be assessed \$19,835.37 (11% of the total fee award).

IT IS FURTHER ORDERED that the Clerk of the Court shall tax costs against Defendants and Intervenor, apportioning 89% of Plaintiff's total allowable costs to Defendants and apportioning the remaining 11% of Plaintiff's total allowable costs to Intervenor.

IT IS FURTHER ORDERED that Robert Randolph Erkins is held to be in civil contempt of court and is ordered to pay to the Court sanctions in the amount of \$5,000.00.

DATED this 26th day of August, 2002.


B. LYNN WINMILL
Chief Judge, United States District Court

MEMORANDUM DECISION AND ORDER - 14

EXHIBIT F

RECEIVED

JUL 19 2007

Ellis, Brown & Shells, Chartered

NOT FOR PUBLICATION

FILED

JUL 17 2007

UNITED STATES COURT OF APPEALS

CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFRED J. BIANCO, as Plan Administrator
to the Estate of Gaston & Snow; GEORGE
PANAGIOTOU,

Plaintiffs - Appellees,

v.

ROBERT A. ERKINS; BERNARDINE
ERKINS,

Defendants - Appellants.

No. 02-35218

D.C. No.

MC-00-05065-BLW/LMB

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho.
B. Lynn Winmill, District Judge, Presiding

Argued and Submission Deferred November 6, 2003**
Submitted July 13, 2007
Seattle, Washington

Before: WARDLAW, GOULD, and PAEZ, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

** Proceedings in this case were stayed pursuant to 11 U.S.C. § 362 pending the outcome of bankruptcy proceedings.

{ Robert and Bernardine Erkins (“the Erkins”) appeal the district court’s decision not to quash the writ of execution and extinguish the judgment liens on the Erkins’ real property located in Jerome and Gooding Counties in the State of Idaho. Appellee Bianco had sought to levy upon this real property in an effort to execute a judgment entered in his favor against the Erkins. Although the property has since been sold pursuant to the district court’s order, the Erkins seek “an order quashing the writ of execution and extinguishing the judgment liens.” The Erkins make no further prayer for relief. }

On December 27, 2001, the district court issued a writ of execution on the Erkins’ real property. The Erkins moved for reconsideration of the district court’s order and to enjoin the U.S. Marshal’s sale of the property. On February 6, 2002, the district court denied both motions, noting that because the Erkins had not posted a supersedeas bond that would have preserved the status quo pending appeal, the sale could proceed:

Given the Court’s decision to deny [the Erkins’] and [the Erkins’ children’s]¹ motions to reconsider, the Court will also deny their motions to stay as they relate to

¹ In a separate memorandum disposition, filed on December 24, 2003, we resolved the claims of the Erkins’ children—Intervenors in a consolidated matter—to the various items of personal property seized by the U.S. Marshals from the Erkins’ real property.

[Federal Rule of Civil Procedure] 62(b), which permits a stay pending disposition of motions for new trial or to alter or amend a judgment. With respect to [the Erkins'] and [their children's] motions to stay, as they relate to an appeal, Rule 62(d) provides that a claimant may post a bond at or after the filing of a notice of appeal, and such a stay is effective when the bond is approved. Neither [the Erkins] nor [their children] have produced such a bond in this case, nor have they shown any intention to do so. Therefore, the Court will deny the motions.

The foreclosure sale took place as scheduled on February 12, 2002. The real property lying at the heart of the Erkins' appeal was sold in accordance with the district court's February 6, 2002 memorandum decision and order.

{ Because the property has been sold, and because no claim for damages was asserted in the district court, the Erkins' claim to the property is moot. } "A controversy is moot, and therefore nonjusticiable, when it is no longer 'ongoing,' or where the court is no longer capable of 'affect[ing] the rights of litigants in the case before [it].'" *DiLoreto v. Downey Unified Sch. Dist. Bd. of Educ.*, 196 F.3d 958, 963 n.1 (9th Cir. 1999) (alterations in original).

We decline to review the district court's ruling on the Erkins' due process claims relating to the notice procedures followed for Bianco's execution of his judgment against the Erkins, because the appeal has been rendered moot by the sale of the property.

[When mootness occurs during the pendency of the appeal, the proper course is to vacate the district court's opinion and remand the case for dismissal. *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950). We therefore **VACATE** the district court's decision and **REMAND** with instructions to dismiss.]

EXHIBIT G

Instrument # 232164

GOODING, GOODING, IDAHO

10-7-2009 02:58:06 No. of Pages: 2

Recorded for : WILLIAMS MESERVY & LOTH SPEICH, L

DENISE M. GILL Fee: 6.00

Ex-Officio Recorder Deputy

QUITCLAIM DEED

FOR VALUE RECEIVED, **BLISS VALLEY PROPERTIES, L.L.C.**, an Idaho limited liability company, hereinafter called the "Grantor", does hereby remise, release, and forever quitclaim unto **MAGIC MFG., INC.**, 716 B East 4900 North, Buhl, Idaho 83316, hereinafter called the "Grantee", the following described premises, in Gooding County, Idaho, to-wit:

Parcel No. 1:

Township 4 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 30: W1/2NW1/4SE1/4NE1/4; S1/2SE1/4NE1/4; W1/2NW1/4NE1/4SE1/4;
SW1/4NE1/4SE1/4; NW1/4SE1/4SE1/4;

Together with any and all water rights appurtenant thereto.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: NE1/4SE1/4NE1/4; E1/2NE1/4SE1/4; E1/2NW1/4SE1/4NE1/4;
S1/2SE1/4SE1/4; E1/2NW1/4NE1/4SE1/4; SW1/4SE1/4; NE1/4SE1/4SE1/4;

Section 31: N1/2NE1/4; SE1/4NE1/4;

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

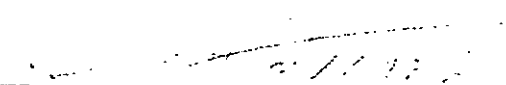
Together with any and all water rights appurtenant thereto.

TO HAVE AND TO HOLD the premises, with their appurtenances unto said Grantee, and the Grantee's successors and assigns forever.

DATED this 29th day of September, 2009.

"GRANTOR"

BLISS VALLEY PROPERTIES, L.L.C.



GEORGE PANAGIOTOU, Member

QUITCLAIM DEED

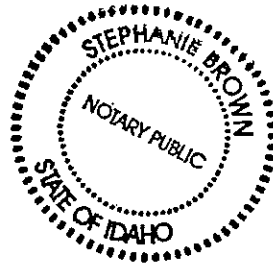
-1-

\\Server\share\data\Panagiotou\Magic Mfg., Inc\QUITCLAM Bliss Valley Properties.doc

STATE OF IDAHO)
SS:
County of Jerome)

On this 29th day of September, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GEORGE PANAGIOTOU, Member of BLISS VALLEY PROPERTIES, L.L.C., an Idaho limited liability company, known to me to be such member and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of the company.

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



Stephanie Brown
NOTARY PUBLIC
Residing at: Jerome, ID
Commission Expires: 10/16/12

EXHIBIT H

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES
ASSIGNMENT OF APPLICATION FOR PERMIT
To change the ownership of an application for permit

I, Pana-Tek, Inc., hereby assign to Magic MFG., Inc.
Current Applicant New Applicant(s)
of, 716-B East 4900 North, Buhl, Idaho 83316
Full address including city, state and ZIP Phone

All my right, title, and interest in and to Application for Permit No(s). 37-8165
to appropriate the public waters of the State of Idaho.

OR (for partial assignments)

The following described portion of my right, title, and interest in and to Application for Permit No(s).
_____, to appropriate the public waters of the State of Idaho.

Describe in detail the portion of the application for permit assigned, listing the number of acres in each
40 acre subdivision, point of diversion location, and amount of the water in cubic feet per second.

Does the new applicant own the property at the:

Point of Diversion? ☒ Yes ☐ No

Place of Use? ☒ Yes ☐ No

If no, describe the arrangement enabling the new applicant to access the point of diversion and/or the
place of use: _____

Made this _____ day of _____, 2010.

Signature of Current Applicant	Title (if applicable)	Signature of Current Applicant	Title (if applicable)
--------------------------------	-----------------------	--------------------------------	-----------------------

State of Idaho)
County of _____)ss

On this _____ day of _____, 20____, personally appeared before me the signer(s) of the above
instrument, who duly acknowledged to me that he/she/they executed the same.

SEAL

Notary Public

My commission expires: _____

UNITED STATES COURTS
DISTRICT OF IDAHO

MAY - 9 2003

RECEIVED
FILED

J. Walter Sinclair, ISB No. 2293
e-mail: jwsinclair@stoel.com
Curtis D. McKenzie, ISB No. 5591
e-mail: cdmckenzie@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PANA-TEK, INC., a California corporation,
as successor by assignment from ALFRED J.
BLANCO, as Plan Administrator to the Estate
of Gaston & Snow,

Plaintiffs,

v.

ROLLE NEWTON & COMPANY, Trustee of
the COASTAL FOREIGN SECURITY
TRUST; PETROS G. ELIOPULOS, an
individual, as Trustee of the LISSALIN
ULTRA TRUST dated February 27, 2001 and
the MEGLON DOMESTIC NON GRANTOR
TRUST dated February 27, 2001;
GEO/PLEUROTUS GROWERS LIMITED
PARTNERSHIP; IDAHO FIRST NATIONAL
BANK also know as WEST ONE BANK now
known as U.S. BANK, NATIONAL
ASSOCIATION; ROBERT A. ERKINS and
BERNARDINE M. ERKINS, husband and
wife; BLISS VALLEY FOODS, INC., an
Idaho corporation; THOMAS G. WALKER
and DONNA I. WALKER, husband and wife;
BARBOB LIMITED PARTNERSHIP LLP,
formerly known as TWO B LIMITED
PARTNERSHIP, an Arizona limited
partnership; CAPITAL GROUP, INC.;
CUNNINGHAM, LYONS & CABANNIS,
S.C., TEN E LIMITED PARTNERSHIP, an

Case No. CV-02-142-S-BLW ✓

~~PROPOSED~~ FINAL JUDGMENT

~~PROPOSED~~ FINAL JUDGMENT

Boise-156323.1 0010224-00001

Page 1 of 4

131

Arizona limited partnership; Robert Randolph
Erkins; and JOHN DOES I through X,

Defendants.

ROLLE NEWTON & COMPANY, as Trustee of
COASTAL FOREIGN SECURITY TRUST, a
foreign trust,

Plaintiff,

v.

ALFRED J. BIANCO, as Plan Administrator to
the Estate of Gaston & Snow; IDAHO
DEPARTMENT OF WATER RESOURCES, ex
rel. State of Idaho; and JOHN DOES I through
XXV,

Defendants,

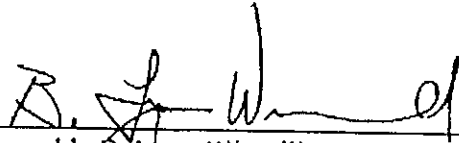
Case No. CV-02-094-S-BLW

Case No. CV-02-095-S-BLW

The court having issued its Memorandum Decision and Order granting Pana-Tek, Inc.'s Motion for Summary Judgment on April 22, 2003, and having denied all other motions then pending in this action, and good cause appearing therefore:

IT IS HEREBY ORDERED that fee title to that property, together with any and all water rights, applications, permits and agreements appurtenant thereto, described in the attached Exhibit A is quieted in plaintiff Pana-Tek, Inc., free and clear of any liens, claims, or encumbrances of any sort.

Dated this 9th day of May, 2003.



Honorable B. Lynn Winnill,
Chief Judge, United States District Court

EXHIBIT A

Gooding County Real Property:

Parcel No. 1:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $S\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$; $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $NW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$;

Together with all water rights appurtenant thereto, including, but not limited to, specifically, Idaho Water Rights Nos. 37-11072, 37-4041, 37-7426, and 37-8165.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $NE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$; $E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$; $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $SW\frac{1}{4}SE\frac{1}{4}$; $NE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$;

Section 31: $N\frac{1}{2}NE\frac{1}{4}$; $SE\frac{1}{4}NE\frac{1}{4}$;

Together with all water rights appurtenant thereto, including, but not limited to, specifically, Idaho Water Rights Nos. 37-11072, 37-4041, 37-7426, and 37-8165.

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

Jerome County Real Property:

Township 9 South, Range 18, East of the Boise Meridian, Jerome County, Idaho

Section 32: Lots 1, 2 and 6; $S\frac{1}{2}NE\frac{1}{4}$

Together with all water rights appurtenant thereto, including the State of Idaho Department of Water Resources Application for Permit No. 36-7999, and the Agreement between Robert A. Erkins and Bernardine M. Erkins and the State of Idaho, Idaho Water Resource Board dated September 1, 1981.

United States District Court
for the
District of Idaho
May 12, 2003

dkh

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:02-cv-00142
1:02-cv-00094
1:02-cv-00095

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Curtis D McKenzie, Esq. 1-208-389-9040
STOEL RIVES
101 S Capitol Blvd #1900
Boise, ID 83702-5958

J Walter Sinclair, Esq. 1-208-389-9040
STOEL RIVES
101 S Capitol Blvd #1900
Boise, ID 83702-5958

Dale G Higer, Esq.
STOEL RIVES
101 S Capitol Blvd #1900
Boise, ID 83702-5958

Lawrence G Sirhall, Esq. 1-208-342-2676
PO Box 1112
Boise, ID 83701

John F Magnuson, Esq. 1-208-667-0500
PO Box 2350
Coeur d'Alene, ID 83816

H James Magnuson, Esq. 1-208-666-1700
PO Box 2288
Coeur d'Alene, ID 83814

✓
____ Chief Judge B. Lynn Winmill
____ Judge Edward J. Lodge
____ Chief Magistrate Judge Larry M. Boyle
____ Magistrate Judge Mikel H. Williams

Visiting Judges:
____ Judge David O. Carter
____ Judge John C. Coughenour
____ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

Date: 5-12-03

BY: *[Signature]*
(Deputy Clerk)

FILED

NOT FOR PUBLICATION

FEB 24 2010

UNITED STATES COURT OF APPEALS

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

FOR THE NINTH CIRCUIT

ALFRED J. BIANCO, as Plan
Administrator to the Estate of Gaston &
Snow,

Plaintiff - Appellee,

v.

ROLLE NEWTON & COMPANY,
Trustee of the Coastal Foreign Security
Trust,

Defendant - Appellant.

No. 03-35431

D.C. Nos. CV-02-00142-BLW
CV-02-094
CV-02-095

MEMORANDUM*

Appeal from the United States District Court
for the District of Idaho
B. Lynn Winmill, Chief District Judge, Presiding

Submitted November 2, 2009**
Portland, Oregon

Before: FISHER and PAEZ, Circuit Judges, and MOSKOWITZ, District Judge.***

*This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

**The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

***The Honorable Barry Ted Moskowitz, United States District Judge for the Southern District of California, sitting by designation.

Rolle Newton & Company (“Rolle Newton”) appeals an order by the district court granting summary judgment in favor of Pana-Tek, Inc. (“Pana-Tek”) and denying Rolle Newton’s cross motion for summary judgment. We review an order granting summary judgment de novo, Universal Health Servs., Inc. v. Thompson, 363 F.3d 1013, 1019 (9th Cir. 2004), and a finding concerning joinder for abuse of discretion. Disabled Rights Action Comm. v. Las Vegas Events, Inc., 375 F.3d 861, 879 (9th Cir. 2004). We affirm.

We have jurisdiction over this appeal because Rolle Newton’s notice of appeal became effective after the district judge denied its motion for reconsideration. Fed. R. App. P. 4(a)(4)(B)(i). Pana-Tek’s subsequently filed motion for an order supplementing the order on reconsideration did not affect this court’s jurisdiction. *See id.*

Any rights Rolle Newton may have claimed were extinguished upon Pana-Tek’s purchase of the properties at the Marshal’s sale. A judgment against the initial owners of White Arrow Ranch and Devil’s Corral was perfected and recorded prior to the conveyances at issue. Rolle Newton’s claim to ownership results from a post-judgment chain of conveyances and is subject to the judgment lien. See First Nat’l Bank of Lewiston v. Hays, 61 P. 287, 288 (Idaho 1900); see

also Fulton v. Duro, 687 P.2d 1367, 1372-73 (Idaho Ct. App. 1984), aff'd 700 P.2d 14 (Idaho 1985).

Rolle Newton has no standing to challenge Pana-Tek's water rights at White Arrow Ranch and Devil's Corral. If, as Rolle Newton argues, the water rights were severed prior to recording of the judgment liens, then transfers to Rolle Newton did not include those rights. If the water rights were not severed, then they were subject to the judgment lien and were conveyed to Pana-Tek at the Marshal's sale. Rolle Newton is thus a third party to any dispute concerning the water rights and lacks standing. See, e.g., Serena v. Mock, 547 F.3d 1051, 1054 (9th Cir. 2008).

The district court acted within its discretion in finding that Pana-Tek joined all interested parties. Under Idaho law, a trust is not a separate legal entity, see Indian Springs, LLC v. Indian Springs Land Inv., LLC, 215 P.3d 457, 464 (Idaho 2009), so Pana-Tek properly named the trustees in their official capacity, rather than individual trusts. Moreover, Meglon Domestic Non Grantor Trust does not retain an interest in the judgment.

AFFIRMED.

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case IDWR will produce new water right number(s) for the split(s).

Water Right No(s)	Adjudication Claim No(s)	Split(s)	Water Right No(s)	Adjudication Claim No(s)	Split(s)
37-7426					
37-11069					
37-11072					

2. The following **REQUIRED** information must be submitted with this form:
- A. The appropriate **FILING FEE**. See instructions for fee amounts.
 - B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
 - C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are on file with the county Planning and Zoning or Recorder's Office).
- OR**
- D. If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency or equivalent **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s)	PANA-TEK, INC.
	412 SAN PABLO 200
	CAMARILLO, CA 93012
4. New Owner/Claimant(s)	MAGIC, MFG., INC.
	Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
New Mailing Address	716-B EAST 4900 NORTH
City, State and ZIP Code	BUHL, ID 83316
New Telephone Number	() Email:

5. Date you acquired the property _____
6. If the change in ownership affects the entire water right for each water right or adjudication claim number listed in line 1, then skip this line and go to line 7. If the change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. Fill in the appropriate spaces in the box(es) below to describe your water right(s) after the change (you may copy this page, if necessary). If your quantity of water is greater than a proportionate split, you must attach documentation to show justification for a larger amount. If you are not sure how to identify your portion of the original water right or adjudication claim records, please contact the nearest IDWR office for assistance.

DESCRIPTION OF YOUR PORTION OF WATER RIGHT (If the right will not be split, skip this area and proceed to line 7)		
Water Use	Diversion Rate or Volume (cubic feet per second or acre-feet per annum)	Description (acres, number and type of stock, homes, etc)
Water Right and/or Adjudication Claim Number		
Irrigation		
Stock		
Domestic		
Other		
Totals		
Water Right and/or Adjudication Claim Number		
Irrigation		
Stock		
Domestic		
Other		
Totals		
Water Right and/or Adjudication Claim Number		
Irrigation		
Stock		
Domestic		
Other		
Totals		

For Snake River Basin Adjudication Claims: Please attach a Notice of Appearance completed by your attorney, if you wish IDWR to correspond with him/her for all matters related to your claims.

7. Signature(s) of New Owner(s) or Claimant(s) _____
 (title if applicable) _____
 (title if applicable) _____

IT IS IMPORTANT TO FILE THIS COMPLETED FORM AT THE APPROPRIATE IDWR OFFICE, WITH PAYMENT OF THE FILING FEE AND THE OWNERSHIP DOCUMENT(S), AS REFERRED TO IN LINE 2.

For IDWR Office Use Only:

Received by _____	Date _____	Receipt Amt. _____
Received by _____	Date _____	Receipt No. _____
Processed by _____ AJ	Date _____	WR _____ Date _____

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**INSTRUCTIONS FOR FILING
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP**

This form has been prepared to assist all claimants and owners of water rights to comply with the requirements of Sections 42-248 and 42-1409(6), Idaho Code. All claimants and owners of water rights are required to notify the Department of Water Resources (IDWR) of any change in mailing address or change in ownership of all or part of a water right. In addition, all purchasers of water rights within a pending general adjudication area must inquire whether a notice of claim has been filed and, if not, shall file a notice of claim if necessary. Please attach additional sheets to the form if you require additional space to describe or explain any of the questions on the form.

Effective July 1, 2000, the Idaho Legislature amended Section 42-248, Idaho Code to include a provision for fees to file a Notice of Change in Water Right Ownership. Please see details at Line 8, below, to determine if fees are required for your filing.

Separate brochures are available from IDWR describing the adjudication of water rights and the requirement to notify IDWR of changes in ownership. Please contact your nearest IDWR office if you would like more information or need help completing this form (a list of our offices are listed on page 2 of these instructions), or call 1-800-451-4129. Water right information can be found on the Department's website using the "On-Line Data" search at: www.idwr.idaho.gov.

LINE INSTRUCTIONS:

1. If there are water rights associated with the property, **the seller should be able to provide you with the water right or adjudication claim number(s).** Corresponding water right and adjudication claim numbers should be listed next to each other on the form. You may have purchased only a portion of the water right(s) held by the seller. If so, the water right(s) held by the seller may need to be "split" to provide you your share of each right. Indicate if a split is required by checking in the space provided next to each water right.

If you receive water from a municipal provider, an irrigation district or other water delivery organization, where the water rights are held by the organization, please do not use this form to record a change. You may need to contact the water delivery organization to determine if any action is necessary.

If you or the seller believes there are water rights for the property but the numbers are unknown, you may wish to contact IDWR for assistance in identifying the water rights for the property in question. If adjudication claims for the rights are required and have not been filed, IDWR will so advise you.

2. IDWR cannot process this change without documentation of ownership. The preferred types of documentation are listed. Contact IDWR if you have difficulty obtaining this information. **Do not** obtain a new survey for purposes of this form before contacting IDWR.
3. Please provide the name and address of the former owner/claimant(s) of the water right(s).
4. Enter the name, mailing address, and telephone numbers of the new owner/claimant(s) and indicate the relationship between multiple owners by using the connector "and", "or", or "and/or" as indicated on your deed or other evidence of ownership

5. Provide the date the property in question was acquired. This may be the date of "closing" in the case of a real estate transaction or the date of court order for other types of ownership changes.
6. You may have purchased only a portion of the water right(s) held by the seller. If this change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. For each water right requiring a split between owners, fill in the appropriate spaces. Copy the page as many times as necessary to fully describe each water right after the change. Include documentation as necessary to describe nonstandard agreements or arrangements regarding division of the water right(s). **If the water right(s) will not be split, skip line 6 and go to line 7.**
7. The new owner(s) must sign the form in the space(s) provided. If someone other than the owner signs the notice, evidence of authority to sign for the owner must be attached. If the new owner is a corporation or other organization, the person signing the notice must be an officer of the corporation or otherwise have authority to sign for the organization and must include their title with the signature.
8. The Legislature has waived the fee to file a Notice of Change in Water Right Ownership for any water right pending in a general water right adjudication such as the Snake River Basin Adjudication. This waiver ends when a partial decree is issued for the water right that has been claimed. For water rights not pending in a general adjudication, the filing fee is \$25 per water right, except for those water rights that will be divided as a result of the change in ownership. The filing fee for division of a water right is \$100 per water right to be divided.
9. When complete, retain a copy and **file the original form with the IDWR office nearest you, with copies of your ownership documents and the appropriate filing fee:**

IDWR Northern Region
7600 Mineral Dr., Suite 100
Coeur d'Alene, ID 83815
(208) 762-2800

IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190

IDWR Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718
(208) 525-7161

IDWR Southern Region
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380
(208) 736-3033

- OR -

IDWR State Office
322 East Front St
Sixth Floor
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4800

Instrument # 232164

GOODING, GOODING, IDAHO

10-7-2009 02:58:06 No. of Pages: 2

Recorded for : WILLIAMS MESERVY & LOTHSPREICH, L

DENISE M. GILL Fee: 6.00

Ex-Officio Recorder Deputy

QUITCLAIM DEED

FOR VALUE RECEIVED, **BLISS VALLEY PROPERTIES, L.L.C.**, an Idaho limited liability company, hereinafter called the "Grantor", does hereby remise, release, and forever quitclaim unto **MAGIC MFG., INC.**, 716 B East 4900 North, Buhl, Idaho 83316, hereinafter called the "Grantee", the following described premises, in Gooding County, Idaho, to-wit:

Parcel No. 1:

Township 4 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 30: W1/2NW1/4SE1/4NE1/4; S1/2SE1/4NE1/4; W1/2NW1/4NE1/4SE1/4;
SW1/4NE1/4SE1/4; NW1/4SE1/4SE1/4;

Together with any and all water rights appurtenant thereto.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: NE1/4SE1/4NE1/4; E1/2NE1/4SE1/4; E1/2NW1/4SE1/4NE1/4;
S1/2SE1/4SE1/4; E1/2NW1/4NE1/4SE1/4; SW1/4SE1/4; NE1/4SE1/4SE1/4;

Section 31: N1/2NE1/4; SE1/4NE1/4;

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

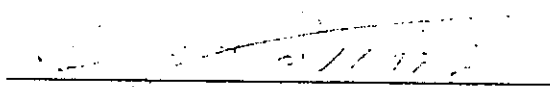
Together with any and all water rights appurtenant thereto.

TO HAVE AND TO HOLD the premises, with their appurtenances unto said Grantee, and the Grantee's successors and assigns forever.

DATED this 29th day of September, 2009.

"GRANTOR"

BLISS VALLEY PROPERTIES, L.L.C.



GEORGE PANAGIOTOU, Member

QUITCLAIM DEED

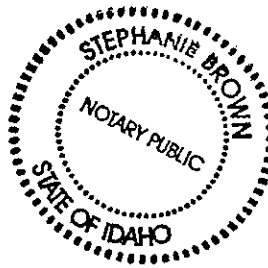
-1-

\\Server\share\data\Panagiotou\Magic Mfg., Inc\QUITCLAM Bliss Valley Properties.doc

STATE OF IDAHO)
SS:
County of Jerome)

On this 29th day of September, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GEORGE PANAGIOTOU, Member of BLISS VALLEY PROPERTIES, L.L.C., an Idaho limited liability company, known to me to be such member and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of the company.

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



Stephanie Brown
NOTARY PUBLIC
Residing at: Jerome, ID
Commission Expires: 10/16/12

Instrument # 226589

GOODING, GOODING, IDAHO

5-27-2008 10:25:16 No. of Pages: 2

Recorded for : PANAGIOTOU, GEORGE

DENISE M. GILL Fee: 6.00

Ex-Officio Recorder Deputy

QUITCLAIM DEED

FOR VALUE RECEIVED, **GEORGE PANAGIOTOU**, hereinafter called the "Grantor", does hereby remise, release, and forever quitclaim unto **BLISS VALLEY PROPERTIES, LLC**, an Idaho limited liability company, 756 Lynnmere Drive, Thousand Oaks, California 91360, hereinafter called the "Grantee", the following described premises, in Gooding County, Idaho, to-wit:

Parcel No. 1:

Township 4 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 30: W1/2NW1/4SE1/4NE1/4; S1/2SE1/4NE1/4; W1/2NW1/4NE1/4SE1/4;
SW1/4NE1/4SE1/4; NW1/4SE1/4SE1/4;

Together with any and all water rights appurtenant thereto.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: NE1/4SE1/4NE1/4; E1/2NE1/4SE1/4; E1/2NW1/4SE1/4NE1/4;
S1/2SE1/4SE1/4; E1/2NW1/4NE1/4SE1/4; SW1/4SE1/4; NE1/4SE1/4SE1/4;

Section 31: N1/2NE1/4; SE1/4NE1/4;

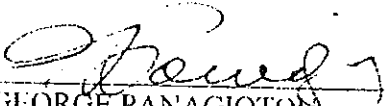
EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

Together with any and all water rights appurtenant thereto.

TO HAVE AND TO HOLD the premises, with their appurtenances unto said Grantees, and the Grantees' heirs and assigns forever.

DATED this 23rd day of May, 2008.

"GRANTOR"



GEORGE PANAGIOTOU

QUITCLAIM DEED

-1-

\\Server\share\data\Panagiotou\Bliss Valley Properties- White Arrow Ranch\2008 QUITCLAM.doc

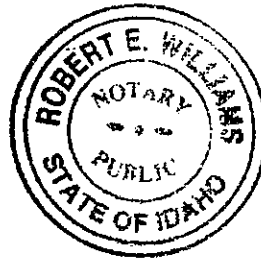
STATE OF IDAHO)
 ss:
County of Jerome)

On this 23rd day of May, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GEORGE PANAGIOTOU, known to me to be the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same.

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



NOTARY PUBLIC for _____
Residing at: Jene
Commission Expires: 6/27/11



Recorded at the request of:

Benoit, Alexander, Harwood,
High & Butler, L.L.P.

126 Second Avenue North
P.O. Box 366
Twin Falls, Idaho 83303-0366

Send tax notices to:

George Panagiotou
412 Calle San Pablo #200
Camarillo, CA 93012

Instrument # 201340

GOODING, GOODING, IDAHO

2003-08-23

09:23:57 No. of Pages: 2

Recorded for : BENOIT, ALEXANDER, HARWOOD

HELEN EDWARDS

Ex-Officio Recorder Deputy

Fee: 6.00

SPACED OUT
SPACE ABOVE FOR RECORDER'S USE

QUITCLAIM DEED

FOR VALUE RECEIVED PANATEK, INC., a California corporation, hereby conveys, releases, remises and forever quitclaims unto GEORGE PANAGIOTOU whose address is 412 Calle San Pablo #200, Camarillo, CA 93012, all right, title and interest in and to the following described premises situated in Gooding County, Idaho:

Parcel No. 1:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}; S\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}; W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4};$
 $SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}; NW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4};$

Together with any and all water rights appurtenant thereto.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $NE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}; E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}; E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4};$
 $S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}; E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}; SW\frac{1}{4}SE\frac{1}{4}; NE\frac{1}{4}$
 $SE\frac{1}{4}SE\frac{1}{4};$

Section 31: $N\frac{1}{2}NE\frac{1}{4}; SE\frac{1}{4}NE\frac{1}{4};$

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as Microfilmed Instrument Number 23545, Gooding County records.

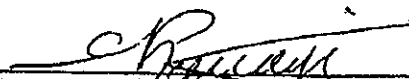
Together with any and all water rights appurtenant thereto.

QUITCLAIM DEED - 1

(B-288\Quitclaim Deed - Panatek to George\jra\ks)

DATED this 19 day of June, 2003.

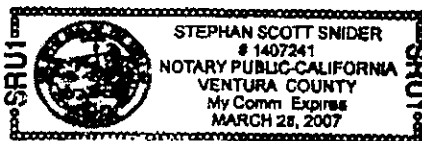
PANATEK, INC.,

By 
GEORGE PANAGIOTOU - Non-Member Manager

STATE OF CALIFORNIA)
County of Ventura) ss.

On this 19 day of June, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared GEORGE PANAGIOTOU, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same.

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




NOTARY PUBLIC
Residing at: Camarillo, CA
My Commission Expires: MAR 28, 2007

UNITED STATES MARSHAL'S DEED

This Indenture, is made and entered into this 19th day of February, 2003 between Patrick E. McDonald, the United States Marshal for the District of Idaho (hereinafter referred to as United States Marshal) in his official capacity, and Pana-Tek, Inc. a California corporation whose address is 412 San Pablo, Unit 200, Camillo, CA 93012.

Witnesseth, that on the 6th day of April, 2000, in the United States District Court for the Southern District of New York, Case No. 99 Civil 9343 (JSR), Plaintiff, Alfred J. Bianco, as Plan Administrator to the Estate of Gaston & Snow, recovered a judgment against Robert A. Erkins and Bernardine Erkins, Defendants, in the amount of \$3,915,206.35. A certified copy of the judgment was filed with the United States District Court of the District of Idaho on the 6th day of June, 2000.

That on the 16th day of June, 2000 the United States District Court for the District of Idaho, issued a Writ of Execution directing the United States Marshal to collect that judgment.

That on the 22nd day of June, 2000, the United States Marshal did levy the same Writ upon a certain tract or parcel, hereinafter described.

That the same tract or parcel of land was first advertised for sale by the United States Marshal according to law, then sold at a public sale at the steps of the Gooding County, Idaho courthouse, to Pana-Tek, Inc. a California corporation, successor by assignment to Plaintiff herein, who bid the highest and best bid in the amount of \$1,900,000.00.

Now therefore, I Patrick E. McDonald, United States Marshal, by virtue of my office and according to law, in consideration of \$1,900,000.00 credit bid made by Pana-Tek, Inc. a California corporation, successor by assignment to Plaintiff herein, grant, bargain and sell all right title, interest and claim which Robert A. Erkins and Bernardine Erkins, Defendants, had in the following tract or parcel of land:

Parcel No. 1:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

United States Marshal's Deed
Boise-153238.1 0010224-00001

Instrument # 199320
GOODING, GOODING, IDAHO
2003-02-25 09:06:08 No. of Pages: 3
Recorded for : STOEL RIVES LLP
HELEN EDWARDS
Ex-Officio Recorder Deputy *[Signature]*

Page 1 of 3

Section 30: W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; W $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; NW $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Together with any and all water rights appurtenant thereto.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: NE $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ NE $\frac{1}{4}$; S $\frac{1}{2}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$; E $\frac{1}{2}$ NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; SW $\frac{1}{4}$ SE $\frac{1}{4}$; NE $\frac{1}{4}$ SE $\frac{1}{4}$ SE $\frac{1}{4}$;

Section 31: N $\frac{1}{2}$ NE $\frac{1}{4}$; SE $\frac{1}{4}$ NE $\frac{1}{4}$;

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

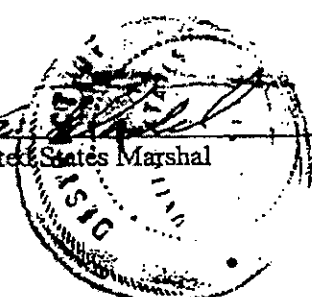
Together with any and all water rights appurtenant thereto.

To have and to hold, together, with appurtenances thereto, to Pana-Tek, Inc. a California corporation and to its successors and assigns.

In Witness Whereof, I have hereby set my hand and seal this 19th day of February, 2003.

Patrick E. McDonald
United States Marshal
District of Idaho

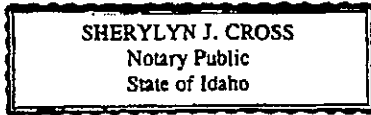
By: 
Deputy United States Marshal



STATE OF IDAHO)
) ss.
County of Ada)

On this 19th day of February, 2003, before me, the undersigned, a Notary Public in and for said State, personally appeared Patrick E. McDonald, known or identified to me to be the Deputy United States Marshal for the District of Idaho that executed said instrument, and acknowledged to me that such Deputy United States Marshal for the District of Idaho executed the same.

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



Sheryllyn J. Cross
Notary Public in and for the State of Idaho.
Residing at Boise, Idaho
My commission expires: 12/16/08



UNITED STATES COURTS
DISTRICT OF IDAHO

MAY - 9 2003

RECEIVED
FILED

J. Walter Sinclair, ISB No. 2293
e-mail: jwsinclair@stoel.com
Curtis D. McKenzie, ISB No. 5591
e-mail: cdmckenzie@stoel.com
STOEL RIVES LLP
101 S Capitol Boulevard, Suite 1900
Boise, ID 83702-5958
Telephone: (208) 389-9000
Facsimile: (208) 389-9040

Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO

PANA-TEK, INC., a California corporation,
as successor by assignment from ALFRED J.
BIANCO, as Plan Administrator to the Estate
of Gaston & Snow,

Plaintiffs,

v.

ROLLE NEWTON & COMPANY, Trustee of
the COASTAL FOREIGN SECURITY
TRUST; PETROS G. ELIOPULOS, an
individual, as Trustee of the LISSALIN
ULTRA TRUST dated February 27, 2001 and
the MEGLON DOMESTIC NON GRANTOR
TRUST dated February 27, 2001;
GEO/PLEUROTUS GROWERS LIMITED
PARTNERSHIP; IDAHO FIRST NATIONAL
BANK also know as WEST ONE BANK now
known as U.S. BANK, NATIONAL
ASSOCIATION; ROBERT A. ERKINS and
BERNARDINE M. ERKINS, husband and
wife; BLISS VALLEY FOODS, INC., an
Idaho corporation; THOMAS G. WALKER
and DONNA I. WALKER, husband and wife;
BARBOB LIMITED PARTNERSHIP LLP,
formerly known as TWO B LIMITED
PARTNERSHIP, an Arizona limited
partnership; CAPITAL GROUP, INC.;
CUNNINGHAM, LYONS & CABANNIS,
S.C., TEN E LIMITED PARTNERSHIP, an

Case No. CV-02-142-S-BLW ✓

~~PROPOSED~~ FINAL JUDGMENT

~~PROPOSED~~ FINAL JUDGMENT

Boise-156323.1 0010224-00001

131
Page 1 of 4

Arizona limited partnership; Robert Randolph
Erkins; and JOHN DOES I through X,

Defendants.

ROLLE NEWTON & COMPANY, as Trustee of
COASTAL FOREIGN SECURITY TRUST, a
foreign trust,

Plaintiff,

v.

ALFRED J. BIANCO, as Plan Administrator to
the Estate of Gaston & Snow; IDAHO
DEPARTMENT OF WATER RESOURCES, ex
rel. State of Idaho; and JOHN DOES I through
XXV,

Defendants,

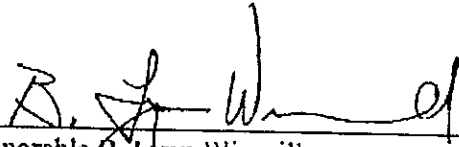
Case No. CV-02-094-S-BLW

Case No. CV-02-095-S-BLW

The court having issued its Memorandum Decision and Order granting Pana-Tek, Inc.'s
Motion for Summary Judgment on April 22, 2003, and having denied all other motions then
pending in this action, and good cause appearing therefore:

IT IS HEREBY ORDERED that fee title to that property, together with any and all water
rights, applications, permits and agreements appurtenant thereto, described in the attached
Exhibit A is quieted in plaintiff Pana-Tek, Inc., free and clear of any liens, claims, or
encumbrances of any sort.

Dated this 9th day of May, 2003.



Honorable B. Lynn Winmill,
Chief Judge, United States District Court

EXHIBIT A

Gooding County Real Property:

Parcel No. 1:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $W\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $S\frac{1}{2}SE\frac{1}{4}NE\frac{1}{4}$; $W\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $SW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $NW\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$;

Together with all water rights appurtenant thereto, including, but not limited to, specifically, Idaho Water Rights Nos. 37-11072, 37-4041, 37-7426, and 37-8165.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: $NE\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $E\frac{1}{2}NE\frac{1}{4}SE\frac{1}{4}$; $E\frac{1}{2}NW\frac{1}{4}SE\frac{1}{4}NE\frac{1}{4}$; $S\frac{1}{2}SE\frac{1}{4}SE\frac{1}{4}$; $E\frac{1}{2}NW\frac{1}{4}NE\frac{1}{4}SE\frac{1}{4}$; $SW\frac{1}{4}SE\frac{1}{4}$; $NE\frac{1}{4}SE\frac{1}{4}SE\frac{1}{4}$;

Section 31: $N\frac{1}{2}NE\frac{1}{4}$; $SE\frac{1}{4}NE\frac{1}{4}$;

Together with all water rights appurtenant thereto, including, but not limited to, specifically, Idaho Water Rights Nos. 37-11072, 37-4041, 37-7426, and 37-8165.

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

Jerome County Real Property:

Township 9 South, Range 18, East of the Boise Meridian, Jerome County, Idaho

Section 32: Lots 1, 2 and 6; $S\frac{1}{2}NE\frac{1}{4}$

Together with all water rights appurtenant thereto, including the State of Idaho Department of Water Resources Application for Permit No. 36-7999, and the Agreement between Robert A. Erkins and Bernardine M. Erkins and the State of Idaho, Idaho Water Resource Board dated September 1, 1981.

United States District Court
for the
District of Idaho
May 12, 2003

dkh

* * CLERK'S CERTIFICATE OF MAILING * *

Re: 1:02-cv-00142
1:02-cv-00094
1:02-cv-00095

I certify that I caused a copy of the attached document to be mailed or faxed to the following named persons:

Curtis D McKenzie, Esq. 1-208-389-9040
STOEL RIVES
101 S Capitol Blvd #1900
Boise, ID 83702-5958

J Walter Sinclair, Esq. 1-208-389-9040
STOEL RIVES
101 S Capitol Blvd #1900
Boise, ID 83702-5958

Dale G Higer, Esq.
STOEL RIVES
101 S Capitol Blvd #1900
Boise, ID 83702-5958

Lawrence G Sirhall, Esq. 1-208-342-2676
PO Box 1112
Boise, ID 83701

John F Magnuson, Esq. 1-208-667-0500
PO Box 2350
Coeur d'Alene, ID 83816

H James Magnuson, Esq. 1-208-666-1700
PO Box 2288
Coeur d'Alene, ID 83814

✓
____ Chief Judge B. Lynn Winmill
____ Judge Edward J. Lodge
____ Chief Magistrate Judge Larry M. Boyle
____ Magistrate Judge Mikel H. Williams

Visiting Judges:

____ Judge David O. Carter
____ Judge John C. Coughenour
____ Judge Thomas S. Zilly

Cameron S. Burke, Clerk

date: 5-12-03

BY: *[Signature]*
(Deputy Clerk)

STATE OF IDAHO

DEPARTMENT OF WATER RESOURCES

NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP

Please print or type. Attach pages with additional information. Instructions are included at the end of this form. Incomplete forms will be returned.

1. Please list the water right number(s) and/or adjudication claim number(s) (if any) for each water right to be changed. List just the adjudication claim number if there is no corresponding water right record on file with the department. Indicate, by checking in the space provided (under the "split" heading), if the change in ownership is limited to a portion of a water right in which case IDWR will produce new water right number(s) for the split(s).

Water Right No(s)	Adjudication Claim No(s)	Split(s)	Water Right No(s)	Adjudication Claim No(s)	Split(s)
37-4040					
37-4041					

2. The following **REQUIRED** information must be submitted with this form:
- A. The appropriate **FILING FEE**. See instructions for fee amounts.
 - B. A copy of the most recent **DEED, TITLE POLICY, CONTRACT OF SALE** or other legal document indicating your ownership of the property and water right(s) or claim(s) in question, **WITH ATTACHED LEGAL DESCRIPTION**.
 - C. Either of the following (if necessary to clarify division of water rights or other complex property descriptions):
PLAT OF PROPERTY or **SURVEY MAP** clearly showing the location of the point(s) of diversion and place of use of your water right(s) and/or adjudication claim(s) (these are on file with the county Planning and Zoning or Recorder's Office).
- OR**
- D. If your water right(s) and/or adjudication claim(s) is for ten or more acres of irrigation, you must submit a USDA Farm Service Agency or equivalent **AERIAL PHOTO** with the irrigated acres outlined and point(s) of diversion clearly marked. The **AERIAL PHOTO** should be submitted in place of the **PLAT OF PROPERTY** or **SURVEY MAP**.

3. Name and Address of Former Owner/Claimant(s)	Bliss Valley Properties, LLC
	756 Lynnmere Dr.
	Thousand Oaks, CA 91360
4. New Owner/Claimant(s)	Magic MFG., Inc.
	Name Connector (Check one): ☐ and, ☐ or, ☐ and/or
New Mailing Address	716-B East 4900 North
City, State and ZIP Code	Buhl, ID 83316
New Telephone Number	() Email:

STATE OF IDAHO
DEPARTMENT OF WATER RESOURCES

**INSTRUCTIONS FOR FILING
NOTICE OF CHANGE IN WATER RIGHT OWNERSHIP**

This form has been prepared to assist all claimants and owners of water rights to comply with the requirements of Sections 42-248 and 42-1409(6), Idaho Code. All claimants and owners of water rights are required to notify the Department of Water Resources (IDWR) of any change in mailing address or change in ownership of all or part of a water right. In addition, all purchasers of water rights within a pending general adjudication area must inquire whether a notice of claim has been filed and, if not, shall file a notice of claim if necessary. Please attach additional sheets to the form if you require additional space to describe or explain any of the questions on the form.

Effective July 1, 2000, the Idaho Legislature amended Section 42-248, Idaho Code to include a provision for fees to file a Notice of Change in Water Right Ownership. Please see details at Line 8, below, to determine if fees are required for your filing.

Separate brochures are available from IDWR describing the adjudication of water rights and the requirement to notify IDWR of changes in ownership. Please contact your nearest IDWR office if you would like more information or need help completing this form (a list of our offices are listed on page 2 of these instructions), or call 1-800-451-4129. Water right information can be found on the Department's website using the "On-Line Data" search at: www.idwr.idaho.gov.

LINE INSTRUCTIONS:

1. If there are water rights associated with the property, **the seller should be able to provide you with the water right or adjudication claim number(s).** Corresponding water right and adjudication claim numbers should be listed next to each other on the form. You may have purchased only a portion of the water right(s) held by the seller. If so, the water right(s) held by the seller may need to be "split" to provide you your share of each right. Indicate if a split is required by checking in the space provided next to each water right.

If you receive water from a municipal provider, an irrigation district or other water delivery organization, where the water rights are held by the organization, please do not use this form to record a change. You may need to contact the water delivery organization to determine if any action is necessary.

If you or the seller believes there are water rights for the property but the numbers are unknown, you may wish to contact IDWR for assistance in identifying the water rights for the property in question. If adjudication claims for the rights are required and have not been filed, IDWR will so advise you.

2. IDWR cannot process this change without documentation of ownership. The preferred types of documentation are listed. Contact IDWR if you have difficulty obtaining this information. **Do not** obtain a new survey for purposes of this form before contacting IDWR.
3. Please provide the name and address of the former owner/claimant(s) of the water right(s).
4. Enter the name, mailing address, and telephone numbers of the new owner/claimant(s) and indicate the relationship between multiple owners by using the connector "and", "or", or "and/or" as indicated on your deed or other evidence of ownership

5. Provide the date the property in question was acquired. This may be the date of "closing" in the case of a real estate transaction or the date of court order for other types of ownership changes.
6. You may have purchased only a portion of the water right(s) held by the seller. If this change in ownership divides the water right(s) among multiple owners, you must describe, in detail, your portion of each water right after the change. For each water right requiring a split between owners, fill in the appropriate spaces. Copy the page as many times as necessary to fully describe each water right after the change. Include documentation as necessary to describe nonstandard agreements or arrangements regarding division of the water right(s). **If the water right(s) will not be split, skip line 6 and go to line 7.**
7. The new owner(s) must sign the form in the space(s) provided. If someone other than the owner signs the notice, evidence of authority to sign for the owner must be attached. If the new owner is a corporation or other organization, the person signing the notice must be an officer of the corporation or otherwise have authority to sign for the organization and must include their title with the signature.
8. The Legislature has waived the fee to file a Notice of Change in Water Right Ownership for any water right pending in a general water right adjudication such as the Snake River Basin Adjudication. This waiver ends when a partial decree is issued for the water right that has been claimed. For water rights not pending in a general adjudication, the filing fee is \$25 per water right, except for those water rights that will be divided as a result of the change in ownership. The filing fee for division of a water right is \$100 per water right to be divided.
9. When complete, retain a copy and **file the original form with the IDWR office nearest you, with copies of your ownership documents and the appropriate filing fee:**

IDWR Northern Region
7600 Mineral Dr., Suite 100
Coeur d'Alene, ID 83815
(208) 762-2800

IDWR Eastern Region
900 N. Skyline Dr., Suite A
Idaho Falls, ID 83402-1718
(208) 525-7161

IDWR Western Region
2735 Airport Way
Boise, ID 83705-5082
(208) 334-2190

IDWR Southern Region
1341 Fillmore St., Suite 200
Twin Falls, ID 83301-3380
(208) 736-3033

- OR -

IDWR State Office
322 East Front St
Sixth Floor
P.O. Box 83720
Boise, ID 83720-0098
(208) 287-4800

Instrument # 232164

GOODING, GOODING, IDAHO

10-7-2009 02:58:06 No. of Pages: 2

Recorded for : WILLIAMS MESERVY & LOTHSPREICH, L

DENISE M. GILL

Fee: 6.00

Ex-Officio Recorder Deputy

QUITCLAIM DEED

FOR VALUE RECEIVED, **BLISS VALLEY PROPERTIES, L.L.C.**, an Idaho limited liability company, hereinafter called the "Grantor", does hereby remise, release, and forever quitclaim unto **MAGIC MFG., INC.**, 716 B East 4900 North, Buhl, Idaho 83316, hereinafter called the "Grantee", the following described premises, in Gooding County, Idaho, to-wit:

Parcel No. 1:

Township 4 South, Range 13 East of the Boise Meridian, Gooding County, Idaho

Section 30: W1/2NW1/4SE1/4NE1/4; S1/2SE1/4NE1/4; W1/2NW1/4NE1/4SE1/4;
SW1/4NE1/4SE1/4; NW1/4SE1/4SE1/4;

Together with any and all water rights appurtenant thereto.

Parcel No. 2:

Township 4 South, Range 13, East of the Boise Meridian, Gooding County, Idaho

Section 30: NE1/4SE1/4NE1/4; E1/2NE1/4SE1/4; E1/2NW1/4SE1/4NE1/4;
S1/2SE1/4SE1/4; E1/2NW1/4NE1/4SE1/4; SW1/4SE1/4; NE1/4SE1/4SE1/4;

Section 31: N1/2NE1/4; SE1/4NE1/4;

EXCEPTING a parcel of land for highway purposes as set forth in Deed to Bliss Highway District, dated December 1, 1967, recorded December 6, 1967 as microfilmed Instrument Number 23545, Gooding County records.

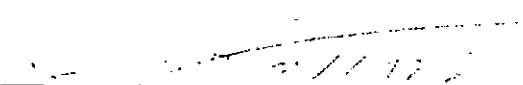
Together with any and all water rights appurtenant thereto.

TO HAVE AND TO HOLD the premises, with their appurtenances unto said Grantee, and the Grantee's successors and assigns forever.

DATED this 29th day of September, 2009.

"GRANTOR"

BLISS VALLEY PROPERTIES, L.L.C.



GEORGE PANAGIOTOU, Member

QUITCLAIM DEED

-1-

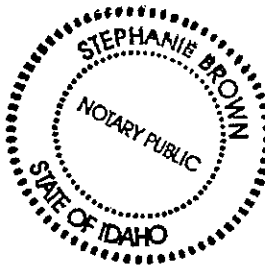
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STATE OF IDAHO)

County of Jerome)

On this 29th day of September, 2009, before me, the undersigned, a Notary Public in and for said County and State, personally appeared GEORGE PANAGIOTOU, Member of BLISS VALLEY PROPERTIES, L.L.C., an Idaho limited liability company, known to me to be such member and the person whose name is subscribed to the within and foregoing instrument, and who acknowledged to me that he executed the same on behalf of the company.

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



Stephanie Brown
NOTARY PUBLIC
Residing at: Jerome, ID
Commission Expires: 10/16/12