

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

GENE HYATT, successor trustee of the)
HYATT REVOCABLE LIVING TRUST,)
)
Plaintiff,)
vs.)
)
JOHN W. HYATT, and SHIRLEY M. HYATT,)
individually and as a marital community,)
REBEKAH A. HYATT and JOHN DOE)
HYATT, individually and as a marital)
community, JOHN W. HYATT as the)
trustee of record for CHURCH ROAD)
TRUST and BOB DOE and MARY DOE.)
)
Defendants.)

Case No. **CV 2010 6541**

**MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
MOTIONS: 1) Plaintiff's Motion for
Judicial Notice of Facts and
Records, 2) Plaintiff's Motion for
Attorneys' Fees, Costs and
Sanctions Pursuant to I.R.C.P. 11
and 3) Plaintiff's Motion to Strike
Pleadings/Filings and/or Motion to
Dismiss**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on "Plaintiff's Motion for Judicial Notice of Facts and Records", "Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11" and "Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss." All these motions were filed by plaintiff on November 5, 2010.

None of the defendants filed any written response to any of these three motions.

Oral argument on the motions was held on January 12, 2011. Plaintiff was represented by Theron DeSmet, attorney at law. Defendant John W. Hyatt, defendant Shirley M. Hyatt and defendant Rebekah A. Hyatt each appeared *pro se*.

No one appeared to represent defendant Church Road Trust. John W. Hyatt cannot represent anyone other than himself *pro se*. The Idaho Supreme Court has

stated: “We recognize the inherent right of a natural person to represent himself *Pro Se*, but this right does not extend to representation of other persons or corporations.” *Weston v. Gritman Memorial Hospital*, 99 Idaho 717, 720, 587 P.2d 1252, 1255 (1978). In *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 215 P.3d 457 (2009), the Idaho Supreme Court discussed its holdings in two previous cases. In *White v. Idaho Forest Indus.*, 98 Idaho 784, 572 P.2d 887 (1977) and *Kyle v. Beco Corp.*, 109 Idaho 267, 707 P.2d 378 (1985), the Court adopted the rule that business entities must be represented by attorneys before the Idaho Industrial Commission; the rule applies equally to the practice of law before any judicial body. *Indian Springs*, 147 Idaho 737, 744-45, 215 P.3d 457, 464-65.

In sum, the law in Idaho is that a business entity, such as a corporation, limited liability company, or partnership, must be represented by a licensed attorney before an administrative body or a judicial body.

Id. In *Indian Springs, LLC*, the Idaho Supreme Court specifically noted that although individuals are permitted to represent their property interest in a *pro se* capacity, trustees may not do so. 147 Idaho 737,745, 215 P.3d 457, 465. “It is fairly well-established that a trustee’s duties in connection with his or her office do not include the right to present an argument *pro se* in the courts.” *Id.* John W. Hyatt may represent his individual interests, but cannot represent Church Road Trust in any capacity.

The Court will briefly discuss the two cases which have now been consolidated. The Court will discuss the two cases in the order in which they were filed. All three pending motions are filed in Kootenai County Case No. CV 2010 6541.

A. Kootenai County Case No. CV 2010 6541.

On July 30, 2010, judgment creditor Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, against judgment debtor, John W. Hyatt, filed an “Affidavit

Regarding Filing a Foreign Judgment” in Kootenai County Case No. CV 2010 6541, the case assigned to the undersigned, Judge John Mitchell. That Affidavit of Michael Ramsden, attorney for Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, attached the April 29, 2010, California Superior Court in Los Angeles judgment (Order on Probate Code § 850 Petition for Return of Trust Property and Damages Filed by Gene Hyatt) requiring defendant John W. Hyatt to pay \$555,000.00 to Gene Hyatt as the successor trustee of the Hyatt Revocable Living Trust. The purpose of the Affidavit Regarding Filing a Foreign Judgment was to satisfy the requirements of Idaho Code § 10-1303 and for filing a foreign judgment in this matter. Affidavit Regarding Filing a Foreign Judgment, p. 2, ¶ 6. A Notice of Filing of Foreign Judgment was filed on July 30, 2010, as well. A Writ of Execution was issued and filed on August 12, 2010. On August 23, 2010, “John Walter Hyatt – Sui Juris and True Appointed Trustee – John Walter Hyatt” filed a “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt.” On September 16, 2010, Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust filed “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”, and an “Affidavit of Michael E. Ramsden in Support of Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”.

On September 23, 2010, this Court issued its “Memorandum Decision and Order on: ‘Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt.’” That decision, in its entirety reads:

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the “Counter-claim and Demand

for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, filed August 23, 2010, and “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment” filed on September 16, 2010. Neither party has noticed their motions for a hearing.

On July 30, 2010, plaintiffs filed their “Notice of Filing Foreign Judgment”. The foreign judgment is dated April 29, 2010, is from California Superior Court of Los Angeles, and is in the amount of \$555,000.00 in favor of Gene Hyatt as successor trustee on behalf of the (plaintiff herein) Hyatt Revocable Living trust, and is against defendant John Walter Hyatt (defendant herein). On August 23, 2010, defendant John Walter Hyatt *pro se* filed his the “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, in response to plaintiff’s Notice of Filing Foreign Judgment. On September 16, 2010, plaintiffs filed “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”, and “Affidavit of Michael E. Ramsden in Support of Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”.

II. ANALYSIS.

In defendant John Walter Hyatt’s *pro se* “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, John Walter Hyatt recognizes that this Court has jurisdiction over both parties (Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt, p. 2, ¶2), and John Walter Hyatt makes various complaints about his family’s dynamics (*Id.*, pp. 2-4, ¶¶ 1-11), and makes various allegations about improprieties in the California proceeding (*Id.*, pp. 4-6, ¶¶ 12-20). John Walter Hyatt “demands a SHOW CAUSE HEARING...” (*Id.*, p. 7), but has failed to notice such up for a hearing. John Walter Hyatt sets forth his versions of the authority for jurisdiction and remedies this Court possesses. *Id.*, pp. 8-9. However, John Walter Hyatt fails to cite I.C. § 10-2304, and he fails realize that the only vehicle available to this Court for a stay of execution is I.C. § 10-2304. Under that statute, the only means for this Court to grant a stay is “if the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted...” John Walter Hyatt has alleged none of these things in his Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt. Additionally, plaintiffs are correct that: John Walter Hyatt’s arguments are barred by *res judicata* (Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment, pp. 4-5); John Walter Hyatt has not been deprived due process (*Id.*, pp. 5-6); John Walter Hyatt’s pleading in this Idaho case is an unlawful collateral attack on the California

proceeding and judgment (*Id.*, pp. 6-7); that John Walter Hyatt cannot assert a claim on behalf of others (*Id.*, pp. 7-8) and that John Walter Hyatt has failed to state a claim upon which relief can be granted. *Id.*, p. 7.

III. CONCLUSION AND ORDER.

For the reasons stated above, Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt must be denied.

IT IS HEREBY ORDERED THE Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt is hereby DENIED.

Memorandum Decision and Order on: “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, pp. 1-3.

On October 19, 2010, “John Walter Hyatt – Sui Juris and True Appointed Trustee – John Walter Hyatt” filed a plethora of other filings were made which do not comport with the Idaho Rules of Civil Procedure. All of these pleadings are signed by John Walter Hyatt. It is in this case in which all three motions are pending.

On December 28, 2010, the undersigned, who was at all times assigned to Kootenai County Case No. CV 2010 6541, signed an order consolidating Judge Simpson’s case (Kootenai County Case No. CV 2010 8180) into CV 2010 6541.

B. Kootenai County Case No. CV 2010 8180.

On September 22, 2010, plaintiff Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, filed the Complaint in CV 2010 8180, the case assigned to Judge Benjamin Simpson. That Complaint alleged that defendant John W. Hyatt is a trustee of the defendant Church Road Trust, which owns four parcels of real property located in Kootenai County, Idaho. Complaint, p. 2. Shirley Hyatt is alleged to be John W. Hyatt’s wife, and Rebekah A. Hyatt is their daughter and is also alleged to own these four parcels. *Id.*, pp. 2, 4. The Complaint alleges that on April 29, 2010, California Superior Court in Los Angeles entered a Judgment requiring defendant John W. Hyatt

to pay \$555,000.00 to Gene Hyatt as the successor trustee of the Hyatt Revocable Living Trust and return various specific property of Dorothy Hyatt. *Id.*, p. 3. Defendant John W. Hyatt neither paid the Judgment nor did he return the property. *Id.* Plaintiff alleges the California Judgment establishes that defendants John W. Hyatt and Shirley Hyatt, in bad faith, intentionally and wrongfully stole Trust Assets from the Hyatt Revocable Living Trust and/or Dorothy Hyatt, and then John W. Hyatt and Shirley Hyatt used the stolen Trust Assets to acquire the Kootenai County real property. *Id.* Plaintiff Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust then domesticated the Judgment and recorded it in the Records of Kootenai County so that it is a lien on defendant John W. Hyatt's real property in Kootenai County. *Id.* Plaintiff claims John W. Hyatt and Shirley Hyatt owned these parcels as one single parcel, then deeded the parcel to John W. Hyatt as trustee for the Church Road Trust, and then John W. Hyatt as trustee for the Church Road Trust divided the parcel into four parcels, and then on September 9, 2009, John W. Hyatt as trustee for the Church Road Trust conveyed the four parcels to his daughter Rebekah Hyatt. Plaintiff gave notice to defendants of a *lis pendens* action and sues defendants on theories of fraudulent conveyance, unjust enrichment, and conversion. *Id.*, pp. 5-7. Plaintiff seeks an order requiring the parcels be reconveyed to John W. Hyatt and then executed upon to satisfy the California Judgment. *Id.*, pp. 7-8. In the case originally before District Judge Ben Simpson, on October 21, 2010, John Walter Hyatt, Shirley Michelle Hyatt and Rebekah Ann Hyatt filed an "Answer, Counterclaim, Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt, Shirley Michelle Hyatt and Rebekah Ann Hyatt." Only John W. Hyatt signed that pleading, and as discussed above, he cannot represent his wife or his daughter. The Answer primarily

claims there was a fraud upon the California court. Also on October 21, 2010, a plethora of other filings were made which do not comport with the Idaho Rules of Civil Procedure. On December 28, 2010, upon plaintiff's motion, Judge Simpson struck those pleadings and two others that were filed after October 21, 2010. Also, on December 28, 2010, the undersigned, who was at all times assigned to Kootenai County Case No. CV 2010 6541, signed an order consolidating Judge Simpson's case (Kootenai County Case No. CV 2010 8180) into CV 2010 6541.

II. ANALYSIS

A. Plaintiff's Motion for Judicial Notice of Facts and Records.

Plaintiff simply requests this Court take judicial notice of Kootenai County Civil Case No. CV 2010 8180, and its contents, a case previously assigned to District Judge Ben Simpson. On December 28, 2010, this Court consolidated that case into this case, CV 2010 6541. Not only is such motion appropriate, granting such motion is mandatory under Idaho Rule of Evidence 201(d). The Court GRANTED Plaintiff's Motion for Judicial Notice of Facts and Records at oral argument.

B. Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss.

Plaintiff moves to strike seventeen different pleadings filed in this case by defendant John W. Hyatt, up to this point in time. All of these pleadings were filed on October 19, 2010, and all are similar to the numerous pleadings filed in the case assigned to Judge Simpson, which were filed in that case two days later, on October 21, 2010. John W. Hyatt is the only signatory on these pleadings filed in CV 2010 6541. The Court has reviewed these pleadings and finds that they are appropriate to being stricken under I.R.C.P. 12(f) and 12(b). The Court finds such documents to be not only an attempt at harassment, but are in fact harassment. John W. Hyatt alleges felony

crimes have been committed by a wide variety of people, including those attorneys presently representing the plaintiff in this Idaho action, which in Kootenai Case No. CV 2010 6541 (the case in which the motion to strike is pending before this Court) is simply an action to register a foreign judgment. John W. Hyatt provides no substance for those claims. John W. Hyatt's pleadings are a sham. The pleadings are not in accordance with the Idaho Rules of Civil Procedure. None on the petitions, request for judicial notice or motions have been noticed up for hearing, so defendant John W. Hyatt has filed these documents yet not requested this Court to even take action upon these pleadings, further illustrating the harassing nature of these pleadings. Finally, on December 28, 2010, District Court Judge Simpson granted a similar motion to strike similar pleadings in CV 2010 8180. No cogent argument as to why these pleadings should not be stricken was given by any of the three individual defendants at the January 12, 2011, oral argument. The Court took this motion under advisement at the conclusion of oral argument on January 12, 2011. Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss is GRANTED. All seventeen pleadings listed in Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss, pp. 1-2, are stricken.

C. Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11.

Plaintiff requests attorney fees pursuant to I.R.C.P. 11(a)(1), based upon plaintiff needing to bring the above two motions to defend against John W. Hyatt's pleadings that the Court has now stricken. The Court has reviewed the Affidavit of Theron DeSmet in Support of Plaintiff's Memorandum of Fees Awarded for Plaintiff's Motion to Strike and or Dismiss Pleadings, and finds the amount of attorney fees sought to be proper and in accordance with I.R.C.P. 54, and the Court finds no reason to depart

upward or downward under consideration of all factors in I.R.C.P. 54(e)(3)(A)-(L). Accordingly, attorney fees in the amount requested are awarded. No cogent argument was made at oral argument by any of the defendants on this motion. At the conclusion of oral argument, this Court took this motion under advisement. Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 is GRANTED as against John W. Hyatt only (as he is the only signatory on these pleadings).

An Order in the appropriate form for this motion has been presented by counsel for plaintiff and will be signed by the Court.

III. ORDER.

IT IS HEREBY ORDERED Plaintiff's Motion for Judicial Notice of Facts and Records is GRANTED, as stated at oral argument.

IT IS FURTHER ORDERED Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss is GRANTED.

IT IS FURTHER ORDERED Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 is GRANTED, as against John W. Hyatt only, and a separate Order has been signed.

Entered this 14th day of January, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of January, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>	<u>Pro se</u>	
Michael E. Ramsden		John Walter Hyatt	Rebekah Ann Hyatt
Theron DeSmet	664-5884	11341 N. Church Road Rathdrum, ID 83858	11341 N. Church Road Rathdrum, ID 83858
		Michelle Hyatt	
		11341 N. Church Road	

Rathdrum, ID 83858

Jeanne Clausen, Deputy Clerk