

STATE OF IDAHO } ss  
 COUNTY OF KOOTENAI }  
 FILED: 8/9/12  
 AT 205 O'CLOCK P.M.  
 CLERK, DISTRICT COURT  
 Wanda Butler  
 DEPUTY

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

**CASE NO. CV-2011-7873**

CAMP EASTON FOREVER, INC., an )  
 Idaho non-profit corporation; DANIEL )  
 EDWARDS, a minor, by and through, )  
 DANIEL EDWARDS' PARENT, as )  
 Guardian ad Litem; MATTHEW )  
 EDWARDS, a minor and through )  
 MATTHEW EDWARDS' PARENT, as )  
 Guardian ad Litem, SHIKAR SAFARI )  
 CLUB INTERNATIONAL FOUNDATION,) )  
 EARL C. LUNCEFORD, J.R., in his )  
 capacity of Director of Shikar Safari Club) )  
 International Foundation, DOES I thru )  
 20, whose true names are unknown, )

**DECISION RE: PLAINTIFFS'  
 MOTION TO RECONSIDER**

Plaintiffs, )

v. )

INLAND NORTHWEST COUNCIL BOY )  
 SCOUTS OF AMERICA, a Washington )  
 non-profit corporation, and INLAND )  
 NORTHWEST COUNCIL ENDOW- )  
 MENT PROPERTIES, LLC, Washington )  
 Limited Liability Company, )

Defendants. )

Scott W. Reed and Kathleen Landgraf Kolts, ATTORNEYS AT LAW, and Jeffery J. Crandall and April Marie Linscott, OWENS & CRANDALL, for Plaintiffs.

Michael Ramsden and Theron De Smet, RAMSDEN & LYONS, LLP, for Defendants.

The Plaintiffs seek reconsideration of this Court's May 2, 2012, "Memorandum Decision and Order Re: Plaintiff's Motion for Partial Summary Judgment and Defendants' Motion for Summary Judgment" ("May 2, 2012 Order"). Idaho Rule of Civil Procedure 11(a)(2)(B) provides: "A motion for reconsideration of the trial court may be made at any time before the entry of final judgment . . . ." A party making a motion for reconsideration may present new facts, but the trial court is not required to search the record to determine if there is new information. Coeur d'Alene Mining Co. v. First National Bank, 118 Idaho 812, 800 P.2d 1026 (1990). Granting or denying a motion to reconsider is a discretionary decision. Johnson v. Lambros, 143 Idaho 468, 473, 147 P.3d 100, 105 (Ct. App. 2006), *citing* Watson v. Navistar Int'l Transp. Corp., 121 Idaho 643, 654, 827 P.2d 656, 667 (1992) and Slaathaug v. Allstate Ins. Co., 132 Idaho 705, 979 P.2d 107 (1999).

The Plaintiffs presented "new" information for this Court to consider by filing the "Affidavit of Shikar Safari Club International Foundation Grant" and "Affidavit Re: Specified Request for Earl Lunceford, March 2008," as well as a "Memorandum of Law in Support of Plaintiff's Motion for Reconsideration." The Defendants responded with "Defendants' Opposition to Plaintiffs' Motion for Reconsideration." The Plaintiff filed a "Reply to Defendants' Opposition to Plaintiffs' Motion for Reconsideration" and the "Affidavit of Kathlene Landgraf Kolts in Support of Plaintiffs' Reply to Defendants' Opposition to Plaintiffs' Motion for Reconsideration."

The parties presented argument on July 18, 2012, and this Court took the matter under advisement. This Court, after carefully reviewing the record and arguments of the parties, and otherwise being fully advised, enters the following order:

**I. Camp Easton Forever, Inc., Lacks a Legally Recognizable Interest**

On reconsideration, Camp Easton Forever, Inc., essentially argues that the organization has standing because they are beneficiaries of a “charitable trust by operation of law.” However, as found and concluded in this Court’s May 2, 2012, Order, such a conclusion would first require a finding that a charitable trust exists, and this Court concluded otherwise. Additionally, even if this Court concluded that a charitable trust existed, the asserted injury remains a “generalized grievance at best,” because Camp Easton Forever, Inc., has failed to provide proof on reconsideration of any injury that is not also suffered by other adjacent property owners, donors, and former or current members of the INCBSA who are not part of the organization, and there remains no assertion of a loss of a legally recognizable asset such as money or property. This Court, then, denies the Plaintiffs’ Motion for Reconsideration regarding whether Camp Easton Forever, Inc., has standing to pursue its claims.

**II. The Plaintiffs Did Not Seek Certification of the Class**

The Plaintiffs argue on appeal that they did not have time to certify the alleged class of which the Plaintiffs Daniel Edwards and Matthew Edwards are the proposed representatives. The record belies this argument, as it is clear that the Plaintiffs filed the Amended Complaint on November 29, 2011, and then filed a motion for summary judgment on March 12, 2012. Thus, it appears that the Plaintiffs had at least four months to file a motion to certify the class as required by I.R.C.P. 23. This Court, then,

denies the Plaintiffs' Motion for Reconsideration in regards to whether Daniel Edwards and Matthew Edwards are representative of a class and therefore have standing to pursue any claims in this case.

### **III. No Charitable or Constructive Trust Exists as a Matter of Law in this Case**

The Plaintiffs assert that real estate law does not apply to 1) a case involving a parcel of real estate and 2) a legal document transferring the subject real estate from F.W. Fitze and Lumire Fitze ("Fitze") to the Defendants' predecessor in interest, the Idaho Panhandle Council, Boy Scouts of American ("IPC"). This Court finds this argument unpersuasive. As stated in the May 2, 2012, Order the legal fiction of a constructive trust does not apply to this case because there is no allegation or proof that IPC acquired Camp Easton from Fitze by any "mistake or Fraud," as is required. In fact, the Plaintiffs argue quite the opposite, asserting that there was no mistake or fraud because the parties acted in a particular matter for over eighty years after the real estate transfer occurred. Additionally, the Plaintiffs cannot overcome the legal doctrines of merger and the statute of frauds which specifically apply to real estate transactions such as the transaction between Fitze and IPC because the transaction is the transfer of the subject real property between two persons via a written deed. Thus, this Court concludes that it applied the correct law, real estate law, to this matter.

While the Plaintiffs direct this Court to the cases from other jurisdictions to support their legal theory that a Court can create a charitable trust from a multitude of documents, this Court did in fact review the cases and determined they are not applicable because 1) the cases apply to personal property, not real estate, 2) the cases do not stand for the proposition that an Idaho court can create a fictive trust,

based on the course of performance of the parties, and 3) the cases consider the transfer of property as a gift, not fee simple transactions for consideration. Thus, this Court finds no reason to apply the cases presented by the Plaintiffs.

Lastly, while the Plaintiffs argue that they were not able to conduct sufficient discovery in this case prior to the summary judgment motion filed by the Defendants, the record in this case shows that the Plaintiffs sought discovery, obtained discovery, and initiated the cross summary judgment proceeding by moving for summary judgment on this very claim first. Thus, if the Plaintiffs were prepared to moved for summary judgment on this claim, the Plaintiffs were surely in possession of enough information to defend a cross motion for summary judgment. This Court, then, finds no reason to reconsider the law as applied to the facts of this case. The Plaintiffs' Motion for Reconsideration, then, is denied.

#### **IV. Shikar Safari Club's Unjust Enrichment Claim is Barred**


This Court has considered the Plaintiffs' additional pleadings regarding the Shikar Safari Club's unjust enrichment claim. However, the additional information, which it appear was in the possession of the Plaintiffs at the time the Plaintiffs responded to the Defendants' motion for summary judgment, is unhelpful because in order for this Court to apply the equitable remedy of unjust enrichment, there must be no other adequate legal remedy. Here, despite the newly provided information, it appears that Shikar Safari Club may sue INCBSA for breach of contract or under the terms of the grant. Thus, there are other adequate legal remedies, despite the additional information provided by the Plaintiffs. Thus, this Court must deny the Plaintiffs' Motion for Reconsideration.

**V. Shikar Safari Club's Fraud Claim is Not Supported**

The Plaintiffs also provide additional evidence in regards to the Shikar Safari Club's fraud claim. However, as stated in this Court's May 2, 2012, Order the Plaintiff must show a genuine issue of material fact exists on each element of a fraud claim to survive summary judgment. Here the Plaintiff has failed to do so. In particular, there is no evidence that the INCBSA or any representative thereof ever had knowledge that at the time the grant was applied for and accepted that the INCBSA would in fact sell Camp Easton, and no evidence that the funds will not be used by the INCBSA to improve Camp Easton.

BASED ON THE FOREGOING, the Plaintiffs Motion for Reconsideration of this Court's May 2, 2012, Order is hereby DENIED.

DATED this 9<sup>th</sup> day of August, 2012.

  
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John Patrick Luster  
District Judge

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing DECISION RE: MOTION TO RECONSIDER was sent by U.S. Mail, postage prepaid, sent by facsimile transmission, or sent by interoffice mail on the 9th day of August 2012 to the following:

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CLIFFORD T. HAYES  
Clerk of the District Court

By: Wanda Butler  
Deputy Clerk

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