

ST. ANTHONY, FRIDAY, SEPTEMBER 25, 2009 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**DOUG CRUMP and AMY CRUMP, husband)
and wife,)**

Plaintiffs-Appellants,)

vs.)

TED BROMLEY dba RHINO LINING,)

Defendant-Respondent,)

Docket No. 35666

Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County. Hon. Joel E. Tingey, District Judge.

Smith, Driscoll & Associates, PLLC, Idaho Falls, for appellants.

Blaser, Sorensen & Oleson, Chtd., Blackfoot, for respondent.

Appellants Doug and Amy Crump (the Crumps) appeal from the district court's decision affirming the magistrate court's award of attorney fees and costs to Ted Bromley, d/b/a Rhino Lining, (Bromley) as the prevailing party. The Crumps originally filed suit against Bromley claiming damages to a drift boat allegedly caused by Bromley's business while installing a "Rhino" lining on the boat. Bromley denied liability and asserted a counterclaim seeking \$400 for the unpaid services. He then submitted an offer of judgment pursuant to Idaho Rule of Civil Procedure 68 for \$1,000, which the Crumps did not accept. Following the parties' motions for summary judgment, the district court denied the motions but ruled that repair costs for the boat were \$600. The parties subsequently stipulated to judgment in favor of the Crumps in the amount of \$200. The magistrate court found that Bromley was the prevailing party and awarded him attorney fees and costs. The Crumps appealed to the district court, which affirmed the magistrate court's decision.

On appeal, the Crumps argue that they are "by definition" the prevailing party in this case and that the magistrate and district courts erred in considering Rule 68 to determine prevailing party status.

ST. ANTHONY, FRIDAY, SEPTEMBER 25, 2009 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**VILARR RANSOM, as Trustee of the)
VILARR B. RANSOM REVOCABLE)
TRUST,)**

Plaintiff-Respondent,)

v.)

**TOPAZ MARKETING, L.P., and DENNIS)
LOWER,)**

Defendants-Appellants.)

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FARR WEST INVESTMENTS,)

Plaintiff-Respondent,)

v.)

**TOPAZ MARKETING, L.P., and MR. and)
MRS. DENNIS LOWER,)**

Defendants-Appellants.)

Docket No. 35494-2008

Appeal from the District Court of the Sixth Judicial District of the State of Idaho,
Franklin County. Hon. Don L. Harding, District Judge.

F. Randall Kline, Pocatello, for Plaintiffs-Respondents.

Kenneth E. Lyon, Jr., Pocatello, for Defendants-Appellants.

Topaz Marketing, L.P. and Mr. and Mrs. Dennis Lower (Topaz) appeal from an order denying a motion to disqualify without cause District Court Judge Don Harding after this Court remanded this case to Judge Harding following a previous appeal. *See Ransom v. Topaz Mktg., L.P.*, 143 Idaho 641, 152 P.3d 2 (2006). In ruling on the motion to disqualify, the district court applied the precedent of *Liebelt v. Liebelt*, 125 Idaho 302, 870 P.2d 9 (Ct. App. 1994), which holds that a remand for findings of fact based upon a previously tried record does not constitute a new trial for purposes of a motion to disqualify under I.R.C.P. 40(d)(1)(F). On appeal, rather than continuing to raise the

argument made below that the remand constituted a new trial, Topaz asserts the district court judge should have been disqualified under Rule 40(d)(1)(A).

Topaz also appeals from a judgment awarding property damages of \$26,600 to Respondent Farr West Investments (Farr West). While Topaz constructed an access road across an easement that it possesses upon Farr West's property, Topaz damaged areas of Farr West's land outside of the easement boundary. In the first trial in this case, the district court awarded Farr West the cost to restore the land to its pre-injury state – \$42,685. Upon appeal, this Court vacated that judgment and remanded the case to the district court to re-compute the damages, taking into account: (1) the difference between damages attributable to Topaz's permissible trespass to create or maintain an access road and damages attributable to excessive intrusion exceeding the scope of the easement; and, (2) the distinction between costs to repair temporary damage and an award of diminution in property value for permanent damages. Upon remand, the district court awarded no permanent damages and reduced temporary damages to \$26,600, Farr West's historical asking price for the property in question before the trespass occurred.

ST. ANTHONY, FRIDAY, SEPTEMBER 25, 2009 AT 11:10 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**JERRY LOSEE and JOCAROL LOSEE,)
husband and wife, and as members and)
employees of SKY ENTERPRISES, LLC, an)
Idaho limited liability company,)**

Plaintiffs-Respondents,)

v.)

**THE IDAHO COMPANY, an Idaho)
corporation, SKY ENTERPRISES, LLC, an)
Idaho limited liability company, and)
WILLIAM F. RIGBY, individually,)**

Defendants-Appellants.)

Docket No. 34887

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Honorable Peter D. McDermott, District Judge.

E.W. Pike & Associates, P.A., Idaho Falls, for appellants.

Nick L. Nielson and Craig R. Jorgensen, Pocatello, for respondents.

In September 2003, Jerry and JoCarol Losee entered into an Operating Agreement and Membership Interest Purchase Agreement with the Idaho Company to create Sky Enterprises, LLC. The purpose of Sky Enterprises was to manufacture and market the "Rite-Back" device, a product invented and patented by Jerry Losee. Shortly thereafter, the Idaho Company made \$135,000 in purported advances to Sky Enterprises that it claims gave it a 50% membership interest in Sky Enterprises under the Purchase Agreement. With the initial financing, the Losees commenced construction of a facility on their real property to manufacture the Rite-Back device. However, by July of 2004, the initial investment was nearly exhausted and the Losees approached the Idaho Company for additional financing. The Idaho Company agreed to advance up to \$261,000 to Sky Enterprises, but required the Losees to individually sign a promissory note and a deed of trust in favor of the Idaho Company, pledging their real property as security for the loan.

Over the next few months, the advances from the Idaho Company to the Losees were exhausted and the business relationship between the Losees and the Idaho Company deteriorated. Following subsequent mediation and various judicial proceedings, the

Losees filed a motion for partial summary judgment to quiet title to their real property arguing that the promissory note and deed of trust were invalid. The district court granted the Losees' motion for partial summary judgment and certified the order for immediate appeal. The Idaho Company now appeals to this Court, arguing: (1) that there were genuine issues of material fact making the grant of summary judgment improper, and (2) that the district court erred by failing to issue findings of fact and conclusions of law.