

IN THE SUPREME COURT  
STATE OF NORTH DAKOTA

20100216  
FILED  
IN THE OFFICE OF THE  
CLERK OF SUPREME COURT

DEC 14 2010

Linda A. Smestad,

Plaintiff-Appellee

vs.

Supreme Court No. 20100216

District Court No. 30-09-C-0648

Bruce G. Harris,

Defendant-Appellant

STATE OF NORTH DAKOTA

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**BRIEF OF DEFENDANT-APPELLANT**

APPEAL FROM MEMORANDUM OPINION, FINDINGS OF FACT,  
CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT, DATED MAY 6, 2010  
AND JUDGMENT DATED MAY 7, 2010

Morton County District Court  
South Central Judicial District  
The Honorable Robert O. Wefald, Presiding

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Bruce G. Harris, Pro-se  
900 2<sup>nd</sup> Street NE  
Mandan, North Dakota 58554  
Defendant-Appellant

***REFERENCE IS MADE TO THE LISTED CITATIONS THROUGHOUT THIS BRIEF FOR  
PURPOSES OF BREVITY WHEN REFERENCED, BOLD ITALICS ARE USED.***

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**Indiana Court of Appeals**

Semmes v. Gary National Bank, 262 N.E. 2d 529 (Ind. 1970)

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Coughlin Construction Company, Inc. v. Nu-Tec Industries, Inc., 755 N.W. 2d 867, (2008 N.D. 163)

EEE, Inc. v. Hanson, 318 N.W. 2d 101 (ND 1982)

Jones v. Billings County School Dist. #1, 568 N.W. 2d 477, (1997 ND 173, 16)

Corporation Creditors; See Statute of limitations also

Livingood v. Meece, 477 N.W.2d 183, 187 (N.D. 1991)

Mattco, Inc. v. Mandan Radio Ass'n., Inc., 224 N.W. 2d 822 (ND 1974)

Miller Enterprises, Inc. v. Dog N' Cat Pet Centers of America, Inc., 447 N.W.2d 639, 642 n.4 (N.D. 1989).

Quinn Distrib. Co. v. North Hill Bowl, 139 N.W. 2d 860 (ND 1966)

Red River Wings, Inc. v. Hoot, Inc., 751 N.W. 2d 206, 2008 (N.D. 117).

TMH Inc. v. Hurich, 292 N.W. 2d 580 (N.D.1980)

City of Bismarck v. Witzke, 709 N.W.2d 21 (2005 ND 170)

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**Kansas Court of Appeals**

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**Ohio Court of Appeals**

Megery v. Selymes, 235 N.E.2d 725 (Ohio Ct. App. 1967)

**Pennsylvania Superior Court**

Estate of Rozanski, 514 A. 2d 587, (Pa. Super. 1986)

**STATEMENT OF THE ISSUES**

- I. Did the trial court error in considering the following Findings of Fact,  
Conclusions of Law, and Order?
- A. Allowing Plaintiff's claims under the doctrine of *condition precedence* while disallowing Defendant's claim for compensation presenting similar evidence from similar sources considered credible for one party and not credible for the other party?
  - B. Ordering repayment of checks made out to three parties, Cash, OR Linda Smestad, OR to a corporation *not a party to these proceedings*, in which none of the three parties in question are parties named in the action?
  - C. When deciding on the credibility of the Plaintiff, based upon conflicting *testimony* given by Plaintiff, which clearly contradicts previous testimony given, statements made, and *discovery* provided by Plaintiff?
  - D. When reviewing and considering the Checks/Savings accounts transactions by Plaintiff relating to Oasis Water Systems, Inc. after the Court clearly stated that *items related to the corporation were disallowed* and then the Court later permitted them as valid debts in the Order?
  - E. In the conclusion that *use of a debit card for transactions and to obtain draw payments for an officer and director of the corporation* is "comingling of funds" and somehow *violates North Dakota law or Corporate Law*?
  - F. When the District Court Judge *permitted testimony to continue* after Defendant's objections to the same, relating to a corporation who was *not a party to this action*?

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- G. In determining that the Defendant was *unjustly enriched* while simultaneously ruling that funds provided by Plaintiff were loans, when the *evidence and testimony do not support both conclusions* and it was not demonstrated Defendant received *compensation for work* done for Plaintiff's family estates as acknowledged by both parties?
- H. Ruling that *oral contracts* for compensation mutually agreed upon by both parties and their witnesses that the *party receiving substantial estate appreciation* is permitted to *avoid the contracts* after receiving consideration from the performing party, that the Court determined "mutual sharing of burdens without any concern for compensation" contradicts the *formation of a contract*, and the affirming testimony given?
- I. Was *adequate consideration* and review of the case after the trial in that a.) The Memorandum was ruled on quickly after the trial was held on April 20, 2010 b.) After taking two days off work after the Judge rendered the Memorandum on April 22, 2010 c.) *Defendants case is misstated*, and in the Defendant's Counterclaim for *Defamation, Liable, Slander* were seriously neglected after multitudes of evidence and testimony were presented, d.) The *Judge did not address the portion of Defendants claim* relating to all family estates improved by the Defendant (no mention of two large projects for which witnesses appeared and affirmed work done), the *Judge erroneously stated* Plaintiff paid for all utilities e.) *Judge erroneously stated* funds provided for labor and materials for Plaintiff's estates improvements were for "the benefit of Harris" f.) *Judge falsely claimed Defendant's corporation was*

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*dissolved* “after the commencement of this action”, g.) “Harris *failed to prove measureable damages*”, h.) Judge Ordered return of “unspecified personal property items” which were clearly specified in Defendant’s Exhibits D-113 and D-114, and finally, i.) Judge wrongfully stated that that Defendant “found himself a trusting companion with access to substantial ready funds” is completely *untrue as evidenced by the Judges’ own examination of the Plaintiff* (transcript page 502 line 8 through 503 line 2) which revealed she did not have substantial money (until January or February 2008) when they met (May, 2007) but rather, she came into some money long after that (8-9 months later).

II. Has the Plaintiff’s counsel, who is both a judge and *an attorney, demonstrated disregard for North Dakota Rules of a.) Civil Procedure, b.) Evidence, c.) Discovery and d.) Professional Conduct* that the District Court relied on for the decision in this case as outlined below?

- A. Did **counsel improperly present Plaintiff’s Exhibit 8** at trial *without providing supportive evidence* for the spreadsheet document offered, and *denied Defendant and counsel of copies of the same at trial, and in post trial requests?*
- B. Did Plaintiff’s *attorney fail to provide supporting evidence, documentation, and foundation* as to why the dates in Exhibit 8 do not match the time frames outlined in testimony about renovation periods when Plaintiff’s estates were improved, and in the relevant time frames testified to by Plaintiff for work done and paid for by independent contractors to Plaintiff’s family estates?
- C. Did counsel act *deceitful* and/or *violate Rules of Civil Procedure* evading the

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*critical discovery and truthful testimony* for which Judgment was relied upon and rendered, specifically by; **a.) Submitting three different** disarrayed compilations of checks and statements in *discovery*; **b.) Subpoenaing** same critical *witness* as Defendant, Realtor Jeff Moser, and *then not calling him*; **c.) Calling incredible witness** Craig Keller while *knowing this witness was not creditable* by multiple accounts, (lawsuits) which Plaintiff and counsel were aware of (as a legal client), who was not an expert as implied by Plaintiff's counsel, and also a relative of the Plaintiff; and **d.)** By calling another witness, Mark Krebsbach, *implying his expertise knowing the lack thereof*, and who was also actually relative of the Plaintiff?

D. Did Plaintiff, in *Answers to Defendant's Interrogatories and Direct Examination provide non-responsive answers*, and by answering unasked questions, **confuse and deceive the Judge?**

E. Did *repeated presentation of irrelevant issues* by Plaintiff, after continuing objection of the Defendant, and after being directed by the Court to refrain from doing so, violate the *N.D. Rules of Civil Procedure* and impair Defendant's rights to a fair trial?

F. Does the *misconduct* alleged by the Defendant relating to the *disregard of Civil Procedure, Rules of Evidence, Rules of Discovery, and Rules of Professional Conduct, and Service of Execution* by officers of the District Court to Defendant's detriment merit sanctions or other reprimands available to this court?

III. Did Defense Council *breach fiduciary duty* by failing to *manage and properly present all evidence* in the Defendant's case while simultaneously defending two

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unrelated jury trial cases and additional undisclosed case load during the same time frame while *accepting fees to properly defend the Defendant?*

By *not presenting critical evidence* to the trial, did Defense counsel breach **fiduciary duty**?

By *failing to enter Motion in Limine* did Defense counsel underutilize Defendant's trust account resources?

At the end of trial, with over two hours left to present, and evidence that had not been presented, did Defense counsel *fail to properly defend and fully elaborate upon Defendant's case evidence and testimony?*

Does this Court investigate or offer a litigant any *relief* if his attorney *breaches fiduciary duty* as outlined above?

**STATEMENT OF CASE AND FACTS**

**DEFINITIONS:**

**14-02-01. General personal rights.** Every person, subject to the qualifications and restrictions provided by law, has the right of protection from..., ...personal insult, from defamation, and from injury to the person's personal relations.

**14-02-02. Defamation classified.** Defamation is effected by:

1. Libel; or
2. Slander.

**14-02-03. Civil libel defined.** Libel is a false and unprivileged publication by writing, Printing..., ... or other fixed representation to the eye, which exposes any person to hatred, contempt, ridicule, or obloquy, or which causes the person to be shunned or avoided, or which has a tendency to injure the person in the person's occupation.

**14-02-04. Civil slander defined.** Slander is a false and unprivileged publication other than libel, which:

1. Charges any person with crime, or with having been indicted, convicted, or punished for crime; ...,
3. Tends directly to injure the person in respect to the person's office, profession, trade, or business, either by imputing to the person general disqualifications in those



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*respects which the office or other occupation peculiarly requires, or by imputing something with reference to the person's office, profession, trade, or business that has a natural tendency to lessen its profits;*

*4. Imputes to the person impotence or want of chastity; or*

*5. By natural consequence causes actual damage.*

**N.D.C.C 14-02-05. Privileged communications.** A privileged communication is one made:

1. In the proper discharge of an official duty;...

3. In a communication, without malice, to a person interested therein by one who also is interested, or by one who stands in such relation to the person interested as to afford a reasonable ground for supposing the motive for the communication innocent, or who is requested by the person interested to give the information; and

4. By a fair and true report, without malice, of a judicial, legislative, or other public official proceeding, or of anything said in the course thereof...

**NORTH DAKOTA CENTURY CODE (NDCC) 27-13-01 DUTIES OF ATTORNEYS**

*A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;*

*(a) Every attorney and counselor at law shall (in part):*

*(b) 1. Maintain respect for courts of justice and judicial officers;*

*(c) 3. Perform faithfully the attorney's responsibilities as an officer of the court and protector of individual rights;*

*(d) 5. Work to make the legal system more accessible, responsive, and just;*

*(e) 6. Employ for purposes of maintaining the causes confided to the attorney, those mean only as are consistent with truth and honor, and never seek to mislead the judge or jury by any artifice or false statement of fact or law.*

**NORTH DAKOTA RULES OF ATTORNEY PROFESSIONAL CONDUCT**

**1.0 Terms;** *"Fraud" or "fraudulent" denotes conduct having a purpose to deceive and not merely negligent misrepresentation or negligent failure to apprise another of relevant information.*

**NORTH DAKOTA RULES OF ATTORNEY PROFESSIONAL CONDUCT**

**1.0 Terms Comment Fraud – [5]** *When used in these Rules, the terms "fraud" or "fraudulent" do not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. For purposes of these Rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform in order for the misrepresentation or failure to inform to constitute fraud.*

**NORTH DAKOTA RULES OF ATTORNEY PROFESSIONAL CONDUCT Scope [4]**

*... since the rules do establish standards of conduct for lawyers, a lawyer's violation of a rule may be evidence of breach of the applicable standard of conduct. Failure to comply with an obligation or prohibition imposed by a Rule is a basis for invoking the disciplinary process.*

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**RULE 3.4 FAIRNESS TO OPPOSING PARTY AND COUNSEL**

*A lawyer shall not: (a) unlawfully obstruct another party's access to evidence or unlawfully alter, destroy or conceal a document or other material potential evidentiary value....,*

**RULE 4.1 TRUTHFULNESS IN STATEMENTS TO OTHERS**

*In the course of representing a client a lawyer shall not make a statement to a third person of fact or law that the lawyer knows to be false. **Comment (Misrepresentation)** A lawyer is required to be truthful when dealing with others on a client's behalf ...*

*Misrepresentations can also occur by partially true but misleading (contd.) statements or omissions that are the equivalent of affirmative false statements. For misrepresentations by a lawyer other than in the course of representing a client, see Rule 8.4.*

**RULE 8.4 MISCONDUCT**

*It is professional misconduct for a lawyer to:*

- (a) violate or attempt to violate these Rules, knowingly assist or induce another to do so, or do so through the acts of another;*
- (b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;*
- (c) engage in conduct involving dishonesty, fraud, deceit, or misrepresentation that reflects adversely on the lawyer's fitness as a lawyer...;*
- (f) engage in conduct that is prejudicial to the administration of justice ....*

Bruce Harris and Linda Smestad entered into a personal companionship and an informal business relationship at a time that the parties cannot agree upon, but in no case later than June 2007 (transcript pg. 8, lines 18 and 19). The relationship ended tragically with great discord on or by December 1, 2008 (transcript pg.8, line 16,17).

On or about December 3 through 5, 2008, e-mail correspondences between the two parties indicated a rapid deterioration of the relationship, that the Defendants trust had been violated, and Defendant asked Plaintiff to remove all of her property out of all of their shared living and storage spaces. Plaintiff refused to do so, even upon threat of formal **eviction** by Defendant (Appendix Supplemental 1).

On December 5, 2008 the parties agreed Plaintiff should take her remaining property out of Defendant's home after making evacuation available to Plaintiff for a

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period of over two months. Plaintiff failed to remove her property and Defendant began noticing his *property disappearing* from his house and garage, and tools and *property* from Plaintiff's home was not being returned. Plaintiff had been allowed free access to all Defendants' home, shop, and garage until his property began missing, and all locks to all property and vehicles were then changed at Defendant's expense and direction. Defendant never had access to Plaintiff's house at any time after the feud began, or before for that matter.

During a period extending from October 10 through December 10, 2008, the Defendant had learned that the Plaintiff had *contacted his family by phone, e-mail and written letter*, contacted all of his co-workers, all of his friends, his mother's friends and *communicated* that Defendant owed over \$140,000, and was a *con man, cheat, alcoholic, gambler, womanizer, drug addict, and violent person, among other defaming and untrue statements* (D Exhibits 102, 103, 104). The Plaintiff was asked in writing to *refrain from further harassment defamation, libel, and/or slander*, and when that request was not honored, Defendant filed a Disorderly Conduct Restraining Order against Plaintiff on December 17, 2009.

Unknown to the Defendant, the Plaintiff wrote a *letter to the Defendant's ex-wife* in North Carolina which *resulted in a Restraining Order* against him there, and denial of visitation Appellant's children for over a year, until that matter was cleared up. The traumatic events in the Defendant's children's view that day will never be forgotten by them.

The Plaintiff also *wrote* Defendant's immediate family a *letter which resulted in disassociation and disinheritance* of Appellant by his family which was a *direct result of*

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*that letter.* The family discord that letter caused has still not been resolved, nor are any of them speaking to the Defendant since December 2008. The Plaintiff, when asked, did not deny any of the claims or writings were acts committed by her. It was later discovered that Plaintiff's attorney was covertly working with Defendant's family estate attorney (Appendix Supplemental 5) to provide harmful and untrue information leading to a change in Defendants receiving his inheritance as had been practiced by the family in previous years.

On December 25, 2008, while traveling to North Carolina to visit his children for Christmas, the time when the Defendant learned that Plaintiff had contacted his ex-wife, and *informed her by mail that HE HAD COME THER TO KILL HER* (Exhibit D-102). Defendant was greeted by the Wake County Sheriff's officers and served a Domestic Violence Restraining Order (Case No. CVD-21690, North Carolina, Appendix Supplemental pg. 3) *initiated* by Plaintiff and Defendant's ex-wife, *based solely upon a letter written* her by the Plaintiff as testified by the Plaintiff in the voluntarily dismissed legal action there. Defendant was denied visitation of his children for a period of over one year after this incident, and required to appear in Court three separate appearances with legal fees and travel costs exceeding \$33,000 to the Defendant (transcript 425 line 15, through pg. 426, 25).

The results of this *unjustified action*, the Plaintiff appeared as a witness on behalf of Defendant's ex-wife, the Plaintiff's *testimony was conflicting* and ultimately *impeached* by the Judge, and as a further result Defendant's ex-wife was charged with four counts of Criminal Contempt of Court. The Plaintiff fled through a rear door before being charged with Criminal Communication of a Threat in North Carolina by the bailiff.

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In District Court, on January 27, 2009, Case No. 08-09-C-90, Disorderly Conduct action was heard (Appendix document 1), Defendant was the Plaintiff in the Disorderly Conduct Hearing held by Bruce A. Romanick. This occurred after Defendant (Harris) became alarmed on December 5, 2008 when Plaintiff (Smestad), in ***attempting to take property owned by the Defendant***, showed up at his residence with a 20 gauge ***shotgun in hand***, screaming and ***making threats***, and demanding property owned by the Mr. Harris in front of witnesses.

A 911 (Appendix Supplemental 3) call was promptly made by the Defendant, and four Mandan Police officers responded. The Plaintiff explained to Mandan Police Officer Schaff that a "property exchange" was taking place, and that the shotgun was being returned, even though a shotgun had never been discussed by the two, and Defendant was not aware it was missing from his home. At that time, Plaintiff failed to offer any explanation to Police why she ***insisted in entering Defendant's home*** when the property intended for return was in Mr. Defendant's driveway, as Defendant had discussed with Police the previous day when asking them how to handle this hostile and unruly person. When the Police arrived, Plaintiff was informed by Police to gather up and load her property in the driveway, and leave. Plaintiff was escorted off the property by the Police. The properly registered ***gun*** is the property of the Defendant, and ***it was not returned*** to the Defendant as claimed by Plaintiff to Police on that day.

The Disorderly Conduct was dismissed because police had only prepared an initial report (Appendix Supplemental 3), and they had failed to put the gun in the initial report. Additionally Plaintiff's ***attorney claimed*** the dispute was ONLY over property, although the gun incident appeared in a later police (Appendix Supplemental 4) report

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after the Disorderly Conduct trial was over. In that action, the Judge gave Plaintiff a stern warning, told her she had no business talking with Mr. Harris' four witnesses and other friends; they obviously didn't want to hear from her; and to leave them alone.

In addition, at the Disorderly Conduct Restraining Order Hearing, Defendant learned that Plaintiff ***had filed altered and fraudulent Domestic Corporation Annual Reports with the North Dakota Secretary of State's office***, naming herself as an officer and director of the corporation without authorization or corporate resolution as required. Plaintiff's ***attorney stated as a fact that she was a director and officer of the corporation WHICH IS FALSE***, as no documents were ever found naming Plaintiff as a director, and the filings were determined to be defective by the Bismarck Police, Secretary of State, and Burleigh County State's Attorney, although NO ACTION WAS TAKEN BY ANY OF THESE PARTIES. ***PLAINTIFF'S COUNSEL MADE THESE FALSE STATEMENTS TO GAIN THE SYMPATHIES OF THE JUDGE, AND FURTHER FALSE STATEMENTS THAT THESE INCIDENTS WERE MERELY ATTEMPTS TO COLLECT PROPERTY AND A DEBT***, INCLUDING THE THREATENING LETTER TO DEFENDANT'S EX-WIFE. Plaintiff claimed in mail correspondence to loath the Defendant, and acted as outlined out of spite and malice toward Defendant in these many events.

After this series of events, the Defendant learned that Plaintiff had ***forged*** her name on bank documents that implied the two of them SHARED THE SAME LAST NAME, and additionally, ownership of the Defendant's company account, which, without ***corporate resolution***, and approval of cosigner, the refinancing of the corporations equity line attached to the corporation's account is impossible. THE BANK



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WAS NOTIFIED, AS WERE BISMARCK POLICE, AND NO ACTION WAS TAKEN BY EITHER (Appendix Supplementary 5 VOLUNTARY STATEMENT OF BRUCE HARRIS to Police).

On January 24, 2009 Plaintiff (Smestad, Defendant in this action) filed an Affidavit of Respondent Linda Ann Smestad (Appendix document 1). In this document the Appellant States when and how the Plaintiff (Smestad) and Defendant (Harris) met, that the two were involved in a business and personal partnership, that the Plaintiff became involved in the Defendant's corporation. The money transaction between them was alleged to have come from Plaintiff's (Smestad's) recent inheritance, although ***no evidence of the inheritance was offered to the court, and when they met, she did not have an inheritance until the following year.*** Plaintiff testified that funds for her house project were stopped by her in May 2008. The relationships ended between the two in October, 2008.

On August 13, 2009, Plaintiff, by and through her attorney , filed Civil Complaint with the District Court, Case No. 30-09-C-0648 against Bruce G. Harris (Appendix document 3). The Complaint stated that "business-related funds were provided..., [and that] ...Plaintiff would be reimbursed the full amount," (Appendix document 3). The contested funds were allegedly issued to both Oasis Water Systems, Inc. Bruce G. Harris for totaled the amount of \$112,067.39, and were allegedly used for Mr. Harris' personal benefit (transcript pg. 20, line 5 through 8). Plaintiff also asked for personal items owned by Appellant including a 14 ft. fishing boat, tools, hardware items, electronics, clothing, household items, and various personal belongings ***WHILE NEGLECTING TO ESTABLISH ADVERSE OWNERSHIP CLAIMED.***



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On March 17, 2009, through legal counsel, Defendant filed an Answer and Counterclaim, executed March 17, 2009, after long threats by Plaintiff to file suit began in October, 2008 (Appendix Supplemental 6, e-mails). A copy of the Answer & Counterclaim (Appendix document 13) was sent to Appellee's Council Charles R. Isakson, Attorney at Law, P.O. Box 1258 Bismarck, ND 58502-1258.

The *filing a claim* so was so *delinquent* as to cause Defendant to file a *Demand to File Complaint* on August 12, 2009 (Appendix document 5.). On August 12, 2009 Defendant filed a Demand to File Complaint pursuant to Rule 4(C)(3) of the North Dakota Rules of Civil Procedure after Plaintiff had threatened to file suit for over nine months in her writings.

On August 14, 2009 Plaintiffs counsel filed a Motion/Brief for Injunctive Relief (Appendix document 17) pursuant to the provisions of N.D.C.C. Chapter 32-06. This order was filed to *prevent items owned by the corporation from being sold, WHO WAS NOT A PARTY TO THE SUIT*, to prevent disposal of corporate assets which were not part of the suit, prior to the court's decision. N.D.C.C. Section 32-06-02(3) provides for an injunction in such circumstances, *WITH SIMULTANEOUS CASH BOND FOR THE AMOUNT OF THE INJUNCTIVE RELIEF SOUGHT*, which Plaintiff's attorney neglected to post. *Motion was improperly filed* without bond and was DENIED (Appendix document 17.). On October 1, 2009 a copy of Plaintiff's Answers to Defendant's Interrogatories and Request for Production of Documents was entered into the District Court. This document was properly filed with the Court on October 15th 2009. An Affidavit of Service by Mail was issued on January 18, 2010 for this item.

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On November 3, 2009 Plaintiff's counsel wrote Defendant's counsel letter (Appendix pg.) citing Rule 37(a)(2) of the North Dakota Rules of Civil Procedure states that the Interrogatories and *requests for Production of Documents was inadequately answered failure of Defendant's counsel to provide requested documents.* Defendant's counsel listed the *inconsistencies, failure to answer questions and failure to produce documentations, and after even further delay by Plaintiff's counsel, was granted a Motion to Compel* (Appendix document 17.), and a date specific Order was entered in behalf of Appellant.

At that time, correction of facts was submitted with regard to Defendant's corporation named Oasis Water Systems, Inc. It was stated that any moneys owed to the Plaintiff, IF ANY was offset by the moneys owed to the Defendant. On April 9, 2009 Plaintiff filed a Reply to Counterclaim (Appendix document 4) denying all claims in the Counterclaim.

On April 12 2010 the Plaintiff's counsel filed a Plaintiff's Trial Brief (Appendix document 34) In this the Plaintiff claims loans amounting to \$112,067.39 for loans contrary to previous claims in the amount of \$114,00 (Appendix Disorderly Conduct Transcript Excerpts, pg. 36, line 12).

The Defendant cited *Statute of Frauds* applied to this case and Plaintiff's claim, per N.D.C.C. Section 9-06-04 stating the situation should fall under TMH Inc. v. Hurich, 292 N.W.2d 580 (N.D. 1980) in which the claim could not be allowed. The Defendant filed Defendant's Trial Brief on April 10, 2010 (Appendix document 35). It was stated in the brief that the alleged "loans" made during September 2007 through December 2008 were not loans because of evidence and testimony the funds provided were for

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improvements done to the property of the Plaintiff and her family's estates. Defendant further cited the statute of frauds as Plaintiff *offered no evidence* of Defendant *entering into a contract* as would be required for a transaction of the amount of the claim, and Plaintiff could show *no evidence of Defendant's intent to provide equity* in Defendant's corporation as claimed by Plaintiff. Defendant relied upon *lack of contractual agreements* as required for the amounts under the trial Court's consideration. Plaintiff relied upon a *theory of comingling of funds without stating any particulars how that was determined by Plaintiff's counsel*. Plaintiff *ultra ego* relating to case law about a corporation whose controlling shareholders who were partners of a franchise slighted the interests of minority shareholders who were liability partnerships and somehow mixed funds given them by investors to be considered comingling by the investors, a *very confusing, irrelevant, and unrelated case* failing to prove corporation and owner inseparable, and inequitable result as Defendant ended up with nothing but lawyer bills and scrutiny from every imaginable aspect of life. Furthermore, Plaintiff failed to act on breach of partnership agreement as one had not been drafted, wrongful dissolution, breach of fiduciary duty, as none occurred, elements of fraud missing, in violation of the business judgment rule, and proceeded directly to a summary judgment which was denied the Defendant (transcript

For defense they chose *Condition Precedent* for not having to pay for the eight months of work done on Plaintiff's house, two months of work at her brothers, and three months done for her relative with the four four-plex properties worked on in North Bismarck that went unpaid for by Plaintiff assuming the contract.

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On April 19-20 2010 this case was heard by Robert O. Wefald, District Judge in the District Court of South Central Judicial District. The Judge listened intently but in frustration and confusion to the Plaintiff for nearly a day and a half, and listened disinterestedly seeming annoyed and combative of Defendant and counsel.

On April 22, 2010 a copy of the Memorandum Opinion, Findings of fact, Conclusion of Law, and Order for Judgment excluding all Appellant's claims, was sent to both parties Legal Council for review. The Memorandum contained a number of unfounded *conclusions, faulted facts, and self derived evidences constituting further abuse of discretion*. The Defense cites Livinggood v. Meece, 477 N.W.2d 183, 187 (N.D. 1991); Miller Enterprises, Inc. v. Dog N' Cat Pet Centers of America, Inc., 447 N.W.2d 639, 642 n.4 (N.D. 1989) and other cases in response to the Memorandum by the Judge when asked to do so.

A response to Judge Wefald was requested by the Judge, and made on May 5, 2010 by Defendant's counsel. This letter stated many issues that were contained in the Memorandum. Defense counsel cited N.D.C.C § 09-01-11, Zimbelman v. Loh, 539 N.W.2d 67 (N.D. 1995). A detailed listing of the checks awarded and reasons for questionable beneficiaries of the funds, and contradictory conclusions made by the Court that Oasis was not named in this suit but checks for Oasis were being allowed in the Order. The letter continues by stating that the *Court failed to consider evidence* in the Defendant's counter claim in its entirety.

On May 5, 2010 an electronic communication was sent to Judge Wefald, from Plaintiff's counsel, and counsel for Defendant. Plaintiff's Counsel asks the court to consider six addition checks and the division of a cadet tractor & tiller as the same as van

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and generator. Defendant's counsel argues *that the corporation is not a party to the suit*, several checks were made out to Plaintiff endorsed for cash by same.

On May 7, 2010 the final Memorandum Opinion, Findings of fact, Conclusion of Law, and Order for Judgment was filed with the court. In this the Judge states the case facts on page one paragraph one. It was stated on page seven paragraph one that a van and generator in the name of Oasis were actually joint property ***contrary to evidence, testimony and discovery***. The Court declared the items will be sold and the net proceeds divided equally. There were no net proceeds as the van was in major body and mechanical disrepair, and Defendant was left to repair it and try to sell it. After months of diligent sales efforts and repair bills, the van finally was traded in to the only person that would take it, in trade.

The presiding Judge noted a ***conspicuous lack of evidence and nonexistence of written contract*** complicated decisions to prove moneys were loans, but concluded the funds were not gifts. In the Counterclaim the Defendant provided evidence of paying mutual living expenses ***contrary to the Judge's statements. The testimony was allowed by Plaintiff, and denied to the Defendant.*** Both parties sought reimbursement for ***expenses and rents, but no evidence was shown to establish any had been paid by Plaintiff to Defendant.***

It was established by the District Court that during the time the two parties were involved with each other, an ***informal partnership*** was formed. The actions in the Summons and Complaint and the corresponding Counterclaim were both seeking relief to ***dissolve said partnership***. By making no statement in the Memorandum with regard to the conclusion of the partnership, Plaintiff's relationship if any to the Defendant's

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corporation, those very large matters have gone unresolved at the Defendant's great expense and inconvenience. It was established; Defendant entered into an oral agreement to assist on renovations to Plaintiff's home, the home of her brother, and multiple four-plex properties owned by another relative.

Defendant is seeking moneys promised and not paid during a one year period extending from September 2007 until September 2008. Defendant's claim included time and use of tools, expertise, and equipment for improvements done to Plaintiff's personal estate, and the estates of family members.

Statements and evidence of the *defamation, slander, libel, fraud and deceit* were brought to the Court's attention relating to the Plaintiff's *verbal statements, writings, statements, web site postings, and forging her name on legal and financial documents*. Those issues also have gone without resolution to Defendant's detriment.

In conclusion, Plaintiff requested the personal property consisting of tools and equipment used in the improvements to the Plaintiff's estates be returned. The District *Court ordered the return* of these items. The value of these items was in excess of \$7,539.00 in tools and equipment, and \$139.00 for the youth firearm as reported to Bismarck Police Department. They deferred the charges back to the Civil Court for action, as did the office of the Burleigh County State's Attorney. The Court erroneously Ordered that joint property be sold and the net proceeds divided without establishing joint ownership of a generator, and that the personal living expenses be removed.

The Plaintiff failed to return the tools or the business and tax records of the corporation, and the youth firearm belonging to Defendant's children, all to the great present and future detriment of Defendant. The corporation's records and the

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whereabouts of the federally protected firearm remain unknown, and unaddressed by the District Court. On May 10, 2010 a subsequent Judgment was filed.

The total amount of relief sought by Defendant was \$457,539.00, including \$50,000.00 for each 5 counts of Libel and slander, totaling \$250,000.00 and \$50,000.00 each of three counts of fraud amounting to \$150,000, reimbursement for personal property valued at \$7,539.00, and wages or reimbursement testified to by Defendant of \$50,000.00, and attorneys fees and trip charges amounting to in excess of \$120,000.00.

It was corresponded in four writings and testified by Appellee having possession of the Appellant's Company's financial records and ***refused to produce the documents, even after Motion to Compel was granted by the Court.*** It was confirmed that N.D.C.C. § 9-06-04 applies to this case by virtue of no written contract between the parties. Defendant asks that the Appellant show proof of written contract required by N.D.C.C. § 9-06-03 or grounds for litigations be dismissed.

The next question of law was that during the trial, Plaintiff's testimony to the effect that home improvements would be repaired and that there was an agreement that \$50,000.00 would be paid to the Appellant for his time, expertise, effort, use of tools and equipment, and materials. There was also evidence and testimony of the work done on the Appellant's brother's home and other family member's estates (transcript pg. 138 line 21 to pg. 140 line 7), (transcript pg. 365 line 2 through pg. 366 line 21).

Referenced documents indicate that the Appellant "loaned" the monies to the Defendant's Corporation alleging "equity" in the corporation which was found to be untrue by the Judges Memorandum and Defendant's testimony, and ***lack of any supportive evidence that stocks would be issued contrary to the corporations twelve***



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*year history of being closely held, single party ownership and equity, and lack of bylaws and/or resolutions supporting that allegation. Evidence of forged documents* implicating Plaintiff which are support *allegations by Defendant that Plaintiff was the secretary/treasurer of the corporation* was at issue which went *un-addressed* by the District Court at trial leaving a *number of other legal issues initiated by the Plaintiff for the Defendant to clear up with the Secretary of State, Job Service North Dakota, and Workforce Safety and Insurance*, who the Plaintiff has previously experienced noncompliance issues with, and cause to show response to for false complaints filed against Defendant's corporation. This has been brought to Plaintiff and counsels attention in the form of a subpoena from the North Dakota Office of Administrative Hearings which they also first *avoided service* of, and later *ignored completely*.

Additional unsupported allegations were made by the Plaintiff who had filed a *frivolous claim for wages* of \$197,000.00 were owed by Defendant owed to the North Dakota Department of Labor for a sixteen month period. This is questionable in that the Plaintiff was working full time for the City of Bismarck as an Engineering Technician III and in addition a part time job with J.C. Penny's at the time, leaving very little if any time to make these sorts of income claims in the referenced time frames.

It was argued that the Defendant would state that the loans were to his company and since the company was not named they should not apply but Red River Wings, Inc v. Hoot, Inc., 751 N.W.2d 206, 2008 N.D. 117 counters this due to "alter ego doctrine" which failed to be established. It has also been established that "piercing of the corporate veil would be unwarranted in this instance" through Coughlin Construction Company, Inc. v. Nu-Tec Industries, Inc., 755 N.W.2d 867, 2008 N.D. 163.

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In the Memorandum, paragraph two, the judge states partial fact and opinion in regard to the draft request and response by both party's counsel. On page two the judge states that the Defendant owned Oasis Water Systems, Inc. He acknowledged that while both parties were in a relationship they were not married to each other.

While the Court briefly reviewed the evidence it found that the Plaintiff was more credible in the testimony given, but ***stated no reason*** why. In the Memorandum, page three, paragraph two, the court acknowledges the dissolution of Oasis was on February 9, 2009 prior to the COMPLAINT action being filed, which filing actually occurred on or about August 13, 2009, and that the relationship broke up in October of 2009, contrary to the statement that this occurred in December, 2009.

In the Memorandum on pg. 3, paragraph 3, the court makes mention that the Plaintiff believed that the Defendant was going to repay the money when he became rich through Oasis (Defendant's corporation). In this paragraph the Court's decision was based on credibility not facts in evidence.

In the Memorandum page 4, paragraph 1, the Court states that utilities, cable TV, food, vacations, storage, etc are necessities that would have had to be paid regardless of the relationship and that those expenses are disallowed after hearing Plaintiff's testimony, and denying Defendant's testimony regarding the same.

In the Memorandum on page 3, paragraph 4, the Court states the work done on job sites/personal homes was done as part of the relationship and not subjected to wages, which Plaintiff and Defendant clearly contradicted by testimony in trial.

In the Memorandum on page 4, paragraph three and page 5, paragraph 1, (a continuance of the same paragraph) the court points out that the Plaintiff wrote the words

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“equity loan” on the checks made out to the Defendant and his company. Since there was never any intent on giving the Plaintiff equity in the company as stated by the Court, this made little sense. The Court declared the monies were not gifts. The court found that they were loans, based solely upon Plaintiff’s testimony.

In the Memorandum on page 5, paragraphs 2 and 3, the Court acknowledges the claim that the Defendant’s company Oasis was not a party in this case and therefore cannot be tried in this action. The Court cites Jones v. Billings County School Dist. #1, 1997 ND 173, ¶16,568N.W.2d 477, discussing the assets of dissolving a corporation.

The Court then decided that a list of checks totaling to some \$30,025.00 was “loaned” to the Defendant. *The Court goes on to advise Plaintiff that another action is possible, which is highly inappropriate of a Judge to give a party legal advice in trial which is another clear abuse of discretion.*

On page 7, paragraph 2 the Court addressed the Counterclaim of Libel and slander, breach of contract, unjust enrichment, fraud and deceit, and conversion with exceptionally light emphasis, stating a failure in burden of proof. Full evidence and testimony were provided, but completely ignored.

**ARGUMENT**

**1.) Conflicting Memorandum and Opinion from the District Court. Imbalanced and disproportional Condition Precedence consideration given the Plaintiff by Judge.**

As a person of a non-litigatory background, this case resembled a dual brawl scenario. In one brawl, an instigator acting in new and unfamiliar acts of civil disobedience and guerilla warfare tactics is surrounding and attacking a skilled but naïve

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craftsman and companions by clubbing him repeatedly with social indignation. In a second but nearby battlefield a powerful autocrat and a second less powerful authoritarian who share a common authority or pose within the community join to combat the underling who attempts to restore the dignity and estate of the naïve worker bee whose reputation and estate have been destroyed by the instigator. This is the climate and culture of the battlefields.

While going through the motions of the appearance of giving a fair shake in this case, the **Judge challenged the Defendant's counsel from the onset**, denying but also suggested the appropriateness of a motion in limine (transcript pg. 3, line 3), after granting a motion to compel when differing, inconsistent, and changed exhibits were provided by Plaintiff. The judge ordered a conference at Plaintiff's counsel's office, and after the conference was held, and all exhibits were agreed to, Defendant's counsel brought to the attention of the Court that the Plaintiff had switched exhibits required in Discovery for a third time at trial, which went unaddressed by the judge. The judge demonstrated indifference (transcript pg. 3, lines 19 through 21)(transcript pg. 18, line 1-2) to this fact which reasonably embarrassed Defendant's counsel (transcript pg. 419, lines 14 to pg. 420 line 5)in the first five minutes of trial, and one would reasonably infer misconduct by the judge by his statements.

In the trial, the **judge first disallowed any claim** the Plaintiff voiced for monies provided to the Defendant's corporation (transcript pg. 34, lines 20-24), (transcript pg. 473, line 23 through pg. 474 to pg. 474, line 13) **and then later** in his memorandum **accepts the claims**, and proceeds to scold Defendants attorney with language calculated to offend (memo. Pg.1, last line, and pg. 2, line 1), after it was pointed out that the Judge

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demonstrated bias in applying Condition Precedence (transcript pgs. 369 through 371), and pointed out factual errors in the checks and amounts in dispute, Ordering reimbursement entitled to Plaintiff (memo. Pg. 6, lines 15 through 17, involving 8 checks previously disallowed, and 4 checks for "cash" drafted and endorsed by Plaintiff, and 1 check to a law firm which Defendant's evidence disproved, and was claimed by Plaintiff to be another transaction relating to the corporation as evidenced on the face of the check. **The Judge also accepts testimony and evidence of the Plaintiff, and denies that of the Defendant** for same claim categories (transcript pg. 420, lines 16 to 19). Clearly this Finding is erroneous and demonstrates abuse of the Court's discretion.

The **Judge** went on to **ignore obvious inconsistencies** by Plaintiff (transcript beginning pg. 39, line 13 and ending transcript pg. 44, line 21) claiming fraud and deceit, contradicting earlier testimony (AGREEMENT FOR \$200,000 transcript pg. 496, lines 15 through 20). The **Judge** showed his annoyance with Defendant's attorney by **speaking** to him in a **derogatory fashion** (transcript pg. 30, line 8) (transcript pg. 44, line 8) (transcript pg. 179, line 15) when he pointed out the inconsistencies.

This **annoyed attitude demonstrated by the Judge** continued on throughout the trial (transcript pg. 164, lines 14 through 24) while Defendant's attorney attempted to ascertain the Plaintiff's defective basis for the claim. The Judge went so far as to answer for the Plaintiff (transcript page 164, lines 23 and 24) (transcript pg. 420, lines 4-5).

The judge was **abrupt, anxious**, and somewhat **apprehensive** (transcript pg. 2 lines 11 through 19) **about the witnesses**, and in a hurry to be done with them before examination was finished (transcript pg. 349, lines 9 through 15) and took a condescending tone (transcript pg. 481, line 25) (transcript pg. 420, lines 4-5) toward

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Defense attorney. This occurred after allowing multitudes of irrelevant evidence (transcript pg. 34, lines 20 through 24) presented by Plaintiff and counsel.

**Confusion** filled the Courtroom toward the end of the monotonous trial, as expressed by the Judge (transcript pg. 480, line 24 through page 481, line 5) over straight forward questions by Plaintiff and answers by Defendant (transcript pg. 480, lines 3-22) and the Judge began misstating the Defendant's testimony (transcript pg. 481, lines 3 and 4) which was critical evidence in the foundation of Defendant's Counterclaim. The Judge seemed unwilling to accept Defendant's evidence files as evidence, although clear documentation was provided (transcript pg. 518, line 16 through pg. 520, line 12), while accepting Plaintiff's testimony over Defendant's (transcript pg. 520 line 13 through pg. 521 line 6).

In the Memorandum, the Judge Orders a **double jeopardy payment** for a generator that was established to be paid for by Defendant, discovery went undisputed with production of the receipt, and then the Order includes both the sale of and split of net proceeds thereof a generator long gone before the Order (memo. Pg. 6, FOF #4), and additionally orders repayment of the whole some (RE; transcript pg. 88, lines 21 to 25, through pg. 89, line 4) (memo. Pg. 7, line 10) which is clearly erroneous.

In summary of this point, the **Judge acted peculiar toward the Defendant, and even more so to defense attorney**, but spent endless hours listening to the Plaintiffs disarray of manufactured "facts" some of which were disallowed by the judge by lip service (transcript pg. 420, lines 13-14) and relatives **unrelated testimonies**. There was very little evidence toward a close personal relationship as stated in the Memorandum; there was strong evidence of a companionship and business relationship between the two

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parties rather than the intimate, romantic blindness imagined by this Judge (memo pg. 3 lines 11 through 13) in which Plaintiff was enamored by Defendant, which was not presented in evidence.

Furthermore, it was not established through evidence that the Defendant's corporation was in need of money, (memo pg. 3, line 23) as Defendant had a line of credit established in testimony, and the notion that was done out of the relationship with one another directly contradicts the Plaintiff's own testimony that she agreed to pay him back. The relationship ended when the Defendant caught Plaintiff who had been advertising for new partners throughout the entire relationship was discovered, not when Plaintiff refused to provide funds for her home remodel as erroneously stated by the Judge. **The Judge failed to limit the testimony and evidence to the relevant issues and clearly abused his discretion** as is required (transcript pg. 367 line 19 through pg. 371, line 21).

The Memorandum of the Judge who worked across the street from the Plaintiff for over 30 years, and the Plaintiffs counsel is also a Municipal Court Judge which clouded the District Court proceeding greatly, but, we went through the motions of an impartial trial.

**Conflicting and Contradictory testimony by Defendant.**

Numerous conflicting and contradictory statements and evidence by Plaintiff exist, too many to list, and so many as to require a compilation of them. To illustrate the alleged perjuries, the following table has been prepared for ease in review:

Key: T= District Court Transcript      DCT = Disorderly Conduct Transcript  
DCAFF = Disorderly Conduct Affidavit of Defendant

**Misstated Fact**

**Source**

**Contradictory Source**



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Start of Corporation	T p. 12, l. 15 to 25 T p. 417, l. 24 to Pg. 418, l. 12	N.D.C.C. S Corps. Secretary of State Filings
Secretary Treasurer Job	T p.13, l. 3 to14	D.C.T. p.2, l. 20, 21
Generator funds	T p. 88, l. 24 to	T pg. 7 l. 10
Alleged funds for child support	T p.177, l. 8 to 23	T pg. L.
Possession and keeping of	T. p. 177, l. 24 to	T pg.179, l. 23
Company records undisputed	pg. 180 l.16 T pg. 258, l. 18 to 25 through pg. 260, l. 3 T pg. 369, l. 12 to Pg. 371, l. 13	D Exhibit 105-109
No agreement to reimburse	T pg. 199 l. 23 to pg. 200 l. 3	T pg. 200 l. 3
Who payee party on checks?	T pg. 204, l. 2 to 8	T pg. 204, l. 9
Funds for double jeopardy	T pg. 214, l. 23-24	Memo. pg. 8, tem 11
generator transaction		
Who responsible for storage unit rents attempting to collect?	T. pg. 239, l. 16 to pg. 240, l. 1	P Exhibits 1-8
Number of buildings done	T. pg. 248, l. 4	T pg. 248, l. 3
for relative Krebsbach's estate improvements		
Unsupported statements in Disorderly Conduct	DCT pg. 45, l. 3 to pg. 46, l. 1 and T. pg. 258, l. 13 to	Nonresponsive
Differing amounts allegedly owed	DCT pg. 36, l. 12	
False statement to gain Court's sympathy	DCT pg. 36 l. 9	No evidence supporting
(\$13,000)		
Condition Precedence established for both parties	T pg. 369, l. 10-11, and14 to 16, and l. 23 to pg. 370, l. 10	No evidence supporting
Failure to establish contract or loans between the parties	T pg. 369, l. 22 to pg. 370, l. 10	No evidence

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Funds from inheritance were made known or available to Smestad	DCAFF pg. 1 statement 4	T pg. 502, l. 13 to 25
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False Credentials		
To gain sympathies		
From the Court		
I am an engineer	DCT pg. 37, l. 2	
I am a Project Engineer	T pg. 6, line 5	
I am an Engineering Tech III		T pg. 6, l. 1

**2.) False or Objectionable Assertions, Improper Conduct and Deceit by  
Plaintiff's counsel. Neglect and Derelict of Duty of Officer of the Court by  
Appellant's counsel.**

Counsel for Plaintiff made false statements to the Court in the Disorderly Conduct action against his client to imply an authority explaining her actions was present when one was not (director of Defendant's corporation) (Disorderly transcript pg. 17, lines 3-18). Plaintiff and attorney threatened to file a law suit for a period of more than ten months, forcing Defendant to file a Demand to file complaint (Appendix. 5).

Counsel then filed an improper and frivolous Motion for Injunction (Appendix Pg.1 Entry 6). The attorney proceeded to ignore Rules of Discovery until Compelled (Appendix pg. entry 28). He appeared with the Plaintiff and answered questions for her to Bismarck and Mandan Police department in the investigation of the crimes she repeatedly committed, (Appendix, Supplemental 3). He then subpoenaed witnesses on Defendant's witness list (transcript pg. 469 line 13 through pg. 470 line 12) attempted to improperly cross examine Defendant (transcript pg. 469, line 13 through pg. 470, line 12) under the theory of a defective subpoena he attempted to serve. He "snuck" Plaintiff's Exhibit 8 in

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after failing to provide it or supportive evidence of it in Discovery, and that ended up being critical evidence in the Judge's decision.

After the trial, counsel then went on to file a defective Execution (Appendix page 5, entry 59) without serving the Defendant, and followed up with a defective Levy (Appendix pg. 6, entry 61), wasting the Court and Sheriff's time. Counsel has improperly forwarded correspondences to Defendant's withdrawn attorney (Appendix entry 62), and has neglected and ignored correspondence from Pro Se Defendant. This attorney has demonstrated a conspicuous disregard for the Court and Defendant's rights, and should be sanctioned.

**Breach of Fiduciary Duty by Defendants Counsel.**

Although Plaintiff's attorney made progress through the trial preparation process nearly impossible, Defendants attorney diligently worked through the days of the trial proceeding. Unfortunately for the Defendant, his attorney also had taken on two jury trials in a one week period, and other undisclosed cases simultaneously, which overtaxed his time to prepare. To compensate for the attorney's lack of time, Defendant prepared his own witness list. Defendant diligently demanded bank records from a very reluctant bank Defendant's company banked with, although the records could have been more easily subpoenaed, instead counsel chose to speak to the bank's attorney instead, on Defendant's trust account funds, and tell Defendant to supply his own records. Defendant spent over 200 hours time in the last two weeks before trial, and spent the entire weekend in the attorneys office, with his own assistant, summarizing bank records, preparing, sorting, and numbering the exhibits, obtaining and getting subpoenas served, and establishing and reviewing time lines with the attorney. The Defendant was forced to

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supply the additional efforts, or go to trial unprepared by the account of his attorney. Before trial, a Motion in Limine would have been highly appropriate, but neglected by Defendant's counsel for whatever reason. Counsel was trying to crunch the case the Sunday night before trial (transcript pg. 222, line 21to 23). Defendant was also crunching for his counsel's requested Exhibit "reconciling" the Plaintiff's second check exhibit presented. When the Plaintiff offered in testimony that the value of the improvements promised to Defendant were in the amount of \$50,000 that was not pursued any further in trial.

**Discovery of additional fraud, defamation, and breach of fiduciary duty with significance to merit remanding of this case and a new trial, or introduction of new evidence, and verification of Plaintiff's evidence by reasons of perjury and deceit.**

**CONCLUSION**

The Supreme Court should reverse the inappropriate findings of the District Courts abuse of discretion and clearly erroneous findings to as far extent as appropriate. This case needs to be remanded to a different venue for a) an impartial Trial where Plaintiff's counsel is not a Judge in the District, b) inclusion of all evidence, and a ruling based upon all evidence, c) conclusion of matters of law presented, and to bring closure to Defendant's open issues stated herein. The Plaintiff and attorney should be sanctioned for forgoing the outlined processes as stated in this Brief. Attorney's fees for their flagrant disregard of the law should be awarded Defendant and future sanctions for noncompliance should be outlined by the Supreme Court.

Dated this 13<sup>th</sup> day of December 2010.

  
Bruce G. Harris, Pro-se  
900 Second Street NE  
Mandan, ND 58554

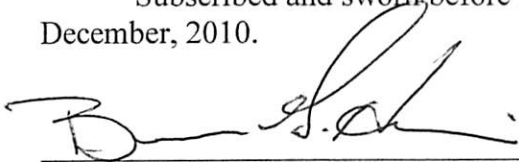
**AFFIDAVIT OF SERVICE BY CERTIFIED MAIL**  
**APPELLANT'S APPENDIX AND SUPREME COURT BRIEF**

The undersigned, Bruce G. Harris, Appellant on Appeal in North Dakota Supreme Court Case No. 20100216, dated December 13, 2010, such Appeal was filed with The Clerk of the District Court on July 6, 2010, do hereby swear and attest that I am a resident of Morton County, North Dakota, I am at least 18 years of age, and that at approximately 6:00 p.m. and on the 13<sup>th</sup> day of December, 2010, I deposited a true copies of the Appellant's Appendix and Brief on Appeal in this case, and securely enclosed it in an envelope with United States Mail Service Certified Postage duly prepaid, for each Plaintiff listed, at the Mandan North Dakota United States Post Office, and filed it electronically to \_\_\_\_\_ on the same date.

Plaintiff Name and Address:

Charles Isakson  
103 South Third Street  
Bismarck, ND 58502-1258

Subscribed and sworn before me in Morton County, North Dakota this 13<sup>th</sup> day of December, 2010.



\_\_\_\_\_  
Bruce G. Harris

 12/13/10  
My commission expires: \_\_\_\_\_

State of ND  
County of Morton  
(SEAL)

