

NO.20160313

STATE OF NORTH DAKOTA

IN SUPREME COURT

SNAPS Holding Company,
a North Dakota corporation,

Plaintiff and Appellee
and Cross-Appellant

v.

Jim Leach and Elizabeth Leach,
and

Defendants, Appellants,
and Cross-Appellees

Darlene Leach, Steve Leach, Frank A. Barber,
Sherry Barber, Dennis J. Meyer, Jerry Nelson,
Marjo Nelson, Kathy Hegland, Michael Hegland,
Rebecca Soloway, William Ockert, Delores Reznechek,
John Bergstrom, Janice Scott, John W. Scott,
and all other shareholders of IDA of Moorhead Corporation,
as listed on Exhibit A, attached hereto and made a
part hereof by reference

Defendants and Appellees

Appeal from Judgment of Cass County District Court, East Central Judicial
District, Judge Steven L. Marquart, entered on August 15, 2016

~~Second-Corrected~~ Petition of Appellant Jim Leach for Rehearing

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SNAPS Holding Company v. Leach, et al.
Appeal No. 20160313

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[1] Jim Leach, Appellant, hereby petitions to the North Dakota Supreme Court for a rehearing on this matter. This Corrected Petition is in substitution for the Petition filed on June 21, pursuant to the request of the Supreme Court Clerk's Office. Pursuant to Rule 40, N.D. R. App. P., petitioner states, with particularity, each point of law or fact that the petitioner believes the Court has overlooked or misapprehended.

[2] Petitioner appeals from the decision of the Court on the following grounds:

I. Res judicata precludes SNAPS from enforcing its claims against Jim Leach.

[3] The North Dakota Supreme Court correctly analyzed the doctrine of res judicata as barring courts from relitigating claims in order to promote the finality of judgments. See, Decision, ¶ 28, citing *Lucas v. Porter*, 2008 ND 160, ¶ 16, 755 N.W.2d 288. In this case, however, the Court distinguished the rulings of the Arizona courts prohibiting enforcement of the judgment by asserting that SNAPS' lawsuit was not an attempt to collect on the Danuser judgment. Decision, ¶ 34. It certainly was an outgrowth of the Danuser judgment, and was, indeed, an attempt to collect on the Danuser judgment.

[4] In this case, the Arizona courts have held that the judgment issued by this Court and transcribed to the State of Arizona, could not be used to collect against Jim Leach, on the grounds that both A.R.S. §12-2501(C) and N.D.C.C. § 32-38-01(3) prohibit contribution among intentional tortfeasors,

and therefore, allowing IDA to obtain contribution from Leach, its co-intentional joint tortfeasor was prohibited. The court also ruled that SNAPS exercised total control over the management and activities of IDA and was the alter ego of IDA, and thus the judgment was “unenforceable by SNAPS [and IDA] against Leach in the State of Arizona.” Decision, ¶ 30.

[5] The district court in this case correctly concluded that res judicata barred SNAPS’ claims against Leach and that the issues and the parties were the same in the Arizona action and the North Dakota action. In both actions, it was SNAPS attempting to collect on the Danuser judgment [against Leach]. The Stock Purchase Agreement was raised or could have been raised in the Arizona proceeding. Id., ¶ 33.

[6] This Court distinguished by stating that the SNAPS lawsuit here was not an attempt to collect on the Danuser judgment. Rather, it was an attempt to collect SNAPS claims arising out of the Danuser judgment. The attempts by this Court to distinguish the two are not logical, and should be reversed.

[7] Since the Arizona court has previously ruled that the judgment may not be pursued against Jim Leach in the State of Arizona, the Court cannot state that the judgment, essentially, can be pursued against Jim Leach in this action (which has now been domesticated to the State of Arizona), and pursued under that basis. This is a run around and contradictory to the integrity of the Arizona Courts.

CONCLUSION

[8] For the foregoing reasons, Jim Leach respectfully requests this Court to reconsider these issues as noted above.

Dated this 22nd day of June, 2017.

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s/ Paul A. Sortland

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**ATTORNEY FOR APPELLANT
JIM LEACH**

CERTIFICATE OF COMPLIANCE

[9] The undersigned hereby certifies that said brief complies with N.D. R. App. P. 32 in that the brief was prepared with Century Schoolbook, size 12-point font, proportional typeface and that the total number of words is 801 from the portion of the brief entitled "Introduction" through the signature block. The word count was calculated using "Corel WordPerfect X8" word processing software, which also counts abbreviations as words.

Dated this 22nd day of June, 2017.

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**ATTORNEY FOR APPELLANT
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Plaintiff/Respondent,

vs.

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Darlene Leach, Steve Leach,
Frank A. Barber, Sherry Barber,
et al.,

Defendants,

and

Jim Leach and Elizabeth Leach,

Defendants/Appellants.

CERTIFICATE OF SERVICE

Cass County File No.:
09-2014-CV-03605

Appeal File No. 20160313

STATE OF MINNESOTA)

) ss.

COUNTY OF HENNEPIN)

I hereby certify that on June 22, 2017, the following documents:

A. Second Corrected Petition of Appellant Jim Leach for Rehearing

were served by electronic mail to the following:

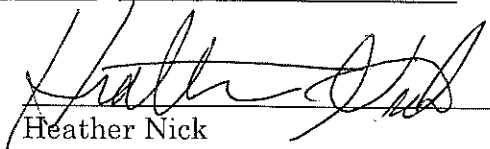
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Subscribed and sworn to before me
this 22nd day of June, 2017.

Notary Public


Heather Nick

