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STATE OF NORTH DAKOTA

STATE OF NORTH DAKOTA
Supreme Court Case No. 20180285
McKenzie County Case No. ~~27-2013-CV-00141~~--
27-2016-CV-00530

Great Plains Royalty Corporation, a North Dakota Corporation,

Plaintiff/Appellant,

v.

Earl Schwartz Company, a North Dakota Partnership, Basin Minerals, LLC, a North Dakota Limited Liability Company, Sunbehm Gas, Inc., a North Dakota Corporation, and Kay Schwartz York, Kathy Schwartz Mau, and Kara Schwartz Johnson as the Co-Personal Representative of the Estate of Earl N. Schwartz,

Defendants/Appellees,

BRIEF OF APPELLEE SUNBEHM GAS, INC.

APPEAL FROM THE ORDER DENYING THE PLAINTIFF'S/APPELLANT'S MOTION TO AMEND REPLY TO COUNTERCLAIM ENTERED ON APRIL 18, 2018, FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER FOR JUDGMENT ENTERED ON MAY 17, 2018, JUDGMENT ENTERED ON MAY 30, 2018, AND NOTICE OF ENTRY OF JUDGMENT ENETERED ON MAY 31, 2018, IN DISTRICT COURT OF MCKENZIE COUNTY, CIVIL NO. 27-2016-CV-00530, BY THE HONORABLE DANIEL S. EL-DWEEK, PRESIDING

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JURISDICTIONAL STATEMENT

[¶ 1] The district court had jurisdiction to hear and try this case under Article VI, section 8 of the North Dakota Constitution and section 27-05-06 of the North Dakota Century Code. This Court has jurisdiction to hear this appeal under Article VI, section 6, of the North Dakota Constitution and section 28-27-01 of the North Dakota Century Code.

STATEMENT OF THE ISSUES

[¶ 2] Whether Defendants' quiet title claims were barred by previous Bankruptcy Court rulings.

[¶ 3] Whether the District Court properly held that Great Plains Royalty Corporation was divested of all its interest in the Subject Properties following its 1969 bankruptcy.

[¶ 4] Whether the District Court properly executed proposed Findings of Fact, Conclusions of Law, and Order for Judgment and a proposed Judgment after issuing only a two-page email regarding its disposition of the present quiet title matter.

STATEMENT OF THE CASE

[¶ 5] This case comes to the North Dakota Supreme Court on appeal from McKenzie County in the Northwest Judicial District. The case before the Court is a quiet title action wherein Sunbehm and ESCO seek to quiet title in their favor in lands in McKenzie County, Williams County, and Burke County. The District Court sitting in McKenzie County found that Sunbehm and ESCO's claim to title in the subject properties was superior to GPRC's claim to title. As a result, the District Court quieted title in favor of Sunbehm and ESCO. The present quiet title dispute stems from GPRC's bankruptcy liquidation action in 1969. The dispute arose regarding whether assets were properly identified and sold by the bankruptcy at GPRC's bankruptcy auction sale. Sunbehm and ESCO claim that the bankruptcy trustee sold all of GPRC's interest in the subject properties to Earl Schwartz who subsequently passed title to a Sunbehm and ESCO. The District Court agreed.

[¶ 6] In this Court's review of the District Courts quiet title ruling in favor of Sunbehm and ESCO, this Court must consider whether the District Court properly heard said quiet title claims. GPRC maintains that estoppel and claim preclusion should have prevented the District Court from hearing these issues. Sunbehm and ESCO disagree. North Dakota case law and the bankruptcy courts express denial to consider any quiet title claims prove that this quiet title action was properly before the District Court.

[¶ 7] This Court is also faced with review of whether the District Court properly reformed the link in the chain of title wherein the subject properties were passed from the bankruptcy trustee to Earl Schwartz, and then subsequently passed to Sunbehm and ESCO. Here, this Court should find that such reformation is aligned with North Dakota state statutes, North Dakota case law, and the facts of this case. Great Plains entered the

bankruptcy liquidation process over fifty years ago. Sunbehm and ESCO maintain that it is unlikely that the bankruptcy trustee sought anything other than complete liquidation of GPRC's bankruptcy estate. Even more unlikely is GPRC's claim that it somehow managed to retain title over fifty years after its bankruptcy liquidation. As a result, the District Court concluded that a mistake had been made and properly reformed the chain of title and quieting the same in favor of Sunbehm and ESCO. This Court should affirm the District Court's decision.

STATEMENT OF THE FACTS

[¶ 8] Plaintiff, Great Plains Royalty Corporation, (hereinafter, "Great Plains"), is a North Dakota Corporation whose principal office is located at 1212 Pin Oak Loop, PO Box 7201, Bismarck, ND 58507-7201. Great Plains was originally formed on August 6, 1958.

[¶ 9] Defendants, Earl Schwartz Company ("ESCO"), Basin Minerals, LLC ("Basin"), and Kay Schwartz York, Kathy Schwartz Mau, and Kara Schwartz Johnson, as co-personal representatives of the Estate of Earl N. Schwartz (collectively, the "Schwartz Defendants"). The Schwartz Defendants claim an interest as to the following property:

> Township 152 North, Range 95 West
> Section 24: NW1/4

("Property No. 2").

[¶ 10] Defendant, Sunbehm Gas, Inc. (hereinafter, "Sunbehm"), is a North Dakota Corporation whose principal office is located at 2819 S Broadway STE A, P.O. Box 608, Minot, ND 58702-0608. Sunbehm claims an interest only as to the following property:

> Township 152 North, Range 95 West
> Section 16: NW1/4

("Property No. 3").

[¶ 11] On April 12, 1968, Great Plains was the subject of an involuntary bankruptcy petition. On October 11, 1969, Great Plains switched to a voluntary liquidation. Great Plains's bankruptcy estate was administered by the bankruptcy trustee, Myron Atkinson (hereinafter, "Bankruptcy Trustee").

[¶ 12] On June 9, 1969, a Report of Sale and Petition for Order Confirming Sale (hereinafter, the "Report and Petition") was filed by the Honorable Gordon Thompson in Great Plains's bankruptcy proceeding. Pursuant to the Report and Petition, after soliciting bids for individual parcels, "the Trustee re-opened bidding for <u>all of the assets of the estate</u> and a bid of Two-Hundred Twenty-Five Thousand and no/100 Dollars ($225,000.00) was received from Earl Schwartz, of Kenmare, North Dakota, and upon receipt of said bid the Trustee invited other bids but none was forthcoming" (Emphasis Added) except for an unacceptable, conditioned bid from First Mortgage Investors, Inc. As a result, Earl Schwartz of Kenmare, North Dakota was declared to be the high bidder.

[¶ 13] Thereafter, on June 23, 1969, the Bankruptcy Court entered its Order Confirming Sale of Assets (hereinafter, "Order Confirming Sale"), to Earl Schwartz. Specifically, Paragraph 5 of the Order Confirming Sale states, "That, therefore, the Referee confirms the sale of <u>all of the assets</u> of the bankrupt corporation to Earl Schwartz of Kenmare, North Dakota, for the sum of $225,000.00, . . ." (Emphasis Added).

[¶ 14] Furthermore, Paragraph 7 of the Order Confirming Sale states,

> That the purchaser, Earl Schwartz, has entered into an agreement with Cardinal Petroleum Company, Billings, Montana, and Sunbehm Gas, Inc., Minot, North Dakota, to purchase certain properties included in the bankrupt estate and an assignment of the interest of the said Earl Schwartz has been made and the Referee approves the transfer of title on said properties directly from the bankrupt estate to the assignees.

[¶ 15] Among the property transferred to Earl Schwartz and SunBehm was a piece of property which has been referred to as Property No. 3 throughout this litigation and is more fully described as follows:

Township 152 North, Range 95 West
Section 16: NW¼

(hereinafter, "Property No. 3").

[¶ 16] On February 9, 1970, the Order Confirming Sale was partially amended stating, "That Section 5 of the Order of June 19, 1969, is hereby amended to read that the Referee confirms the sale of all of the assets of the bankrupt corporation included in the Notice of Sale to Earl Schwartz of Kenmare, North Dakota . . . ." Since that time, however, SunBehm has maintained an ownership interest and exercised control over a portion of Property No. 3 which previously belonged to Great Plains. Additionally, SunBehm has received the benefit of its ownership in Property No. 3 through oil and gas exploration and production.

[¶ 17] Great Plains initiated this litigation by way of a Summons and Complaint dated November 30, 2016, and filed on December 27, 2018. On August 23, 2017, Great Plains submitted an Amended Complaint. Great Plains's Amended Complaint sought to quiet title on three separate pieces of real property in McKenzie County. SunBehm only has an interest in the third property, which has been referred to as Property No. 3.

[¶ 18] On September 20, 2017, SunBehm submitted its Answer and Counterclaim to Great Plains's Amended Complaint. SunBehm maintains that it is a rightful owner of the mineral interest in question within Property No. 3 because Earl Schwartz purchased all of Great Plains's interest in Property No. 3 and subsequently transferred a portion of that interest to SunBehm.

[¶ 19] A two-day bench trial was held on January 9 and 10, 2018. At the bench trial, the Court heard testimony and received exhibits from all parties. The Court was also presented with expert testimony from each side.

[¶ 20] The Court issued a letter to all counsel on February 23, 2018, which outlined the Court's decision on the pending matters. The Court then assigned counsel for ESCO and Sunbehm to collaborate in drafting and submitting proposed Findings of Fact, Conclusions of Law, and Order for Judgment as well as a proposed Judgment. The Court signed its Findings of Fact, Conclusions of Law, and Order for Judgment on May 30, 2018. The Clerk of Court subsequently signed and filed the corresponding Judgment.

LAW AND ARGUMENT

[¶ 21] This Court is faced with three main issues on appeal. First, this Court should consider whether Sunbehm's and ESCO's action to quiet title in the subject properties was barred by the doctrines of estoppel or res judicata. In doing so, this Court should find that the Bankruptcy expressly denied ruling on any such quiet title action between the parties. As a result, the doctrines of estoppel or res judicata do not apply.

[¶ 22] Second, this Court should consider whether the District Court heard sufficient evidence to properly rule that it was the intent of the parties that ESCO and Sunbehm were to purchase all of GPRC's property at the 1969 bankruptcy sale. Here, this Court should find that sufficient evidence was presented to the District Court to allow the Court to make an appropriate rule to quiet title in ESCO and Sunbehm concerning their respective properties. This Court should review this issue under the clearly erroneous standard of review. The North Dakota Supreme Court has stated many times that its review of a District Court's Findings of Facts is subject to the clearly erroneous standard of review. Huebner

v. Furlinger, 2017 ND 145, ¶ 28, 896 N.W.2d 258. "A finding of fact is clearly erroneous only if it is induced by an erroneous view of the law, if no evidence exists to support it, or it, upon review of the entire evidence, [the North Dakota Supreme Court is] left with a definite and firm conviction a mistake has been made." Id. (citing Tormaschy v. Tormaschy, 1999 ND 131, ¶ 11, 596 N.W.2d 337).

[¶ 23] Third, this Court should dismiss GPRC's claims of impropriety regarding the Court's partial adoption of the Defendants' proposed Findings of Fact, Conclusions of Law, and Order for Judgment. Here, the Court will find support from both the North Dakota Rules of Court as well as prior case law.

[¶ 24] Ultimately, the District Court's findings, conclusions, and orders should not be reversed because no reversable mistakes were made. Therefore, this Court should affirm the District Court's Order quieting title in ESCO and Sunbehm as to the subject properties.

I. Sunbehm's and ESCO's claims to quiet title in the Subject Properties are not barred by the doctrines of estoppel and res judicata.

[¶ 25] The present dispute between Sunbehm, ESCO, and GPRC is a quiet title action based in North Dakota state law. Bankruptcy Adversary Proceedings Nos. 13-07018, 15-07013, and 16-07007 were all proceedings held in Bankruptcy court and subject to the Bankruptcy court's limited jurisdiction.

[¶ 26] Federal courts, including Bankruptcy courts, have limited jurisdiction and may only exercise the authority that flows from Article III of the Constitution and is conferred by federal statute. Ins. Corp. of Ir. Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982). Bankruptcy courts are further limited to hearing cases either "arising under" the Bankruptcy Code, "arising in" a Bankruptcy proceeding, or "relating to" a Bankruptcy proceeding. 28 U.S.C. § 1334. The Bankruptcy is well versed in what claims and issues

fall within its jurisdiction. In each of the Bankruptcy Adversary Proceedings concerning ESCO and GPRC, the Bankruptcy Court for the District of North Dakota declined to make any ruling on various quiet title and other state law claims and issues simply because the claims and issues were not within the Bankruptcy Court's jurisdiction.

[¶ 27] In Bankruptcy Adversary Proceeding Case No. 15-07-013, Bankruptcy Judge, Shon Hastings, stated:

> Both Great Plains' claims and Defendants' counterclaims seeking a determination of the validity of property interests and quiet title remedies exist outside bankruptcy law. To determine the underlying fact and legal issues in this case, the Court must apply state law. The mechanics of the transfers by recorded deed (forged, altered, fraudulent or valid), the nature of the interests (oil, gas and other minerals) and the basis for the claimed interest (quit claim deed or adverse possession) are all governed by North Dakota law. Whether the Trustee had authority to transfer property after he was discharged and whether the bankruptcy court order approving the Trustee's asset sale included the mineral interests at issue may be determined by the state court.

(Order Dismissing Adversary Proceeing [sic], App. 480, 492).

[¶ 28] Further, the Bankruptcy Court, in Adversary Proceeding Case No. 16-07007, again declined jurisdiction concerning the parties quiet title claims. Here, the Bankruptcy Court stated: "Great Plains is asserting that the deeds the Trustee signed did or did not transfer certain property interests under North Dakota law. <u>These quiet title claims exist outside bankruptcy and are properly resolved by the North Dakota Courts.</u>" (Emphasis added). (Order Dismissing Adversary Proceeding, App. 498, 505-506).

[¶ 29] The clear language of the Bankruptcy Court's Orders show that the Bankruptcy Court not only acknowledges the existence of potential quiet title claims, but expressly

denies jurisdiction and subsequently any possible ruling on said claims. As a result, GPRC's arguments rooted in res judicata and claim preclusion are unfounded.

[¶ 30] Res judicata does not apply to the facts at hand. This Court has defined res judicata as "a valid, existing final judgment from a court of competent jurisdiction is conclusive with regard to claims raised, or those that could have been raised and determined, as to [the] parties and their privies in all other actions. Riverwood Commercial Park, L.L.C. v. Standard Oil Co., Inc., 2007 ND 36, ¶¶ 13-14, 729 N.W.2d 101 (ND 2007). As demonstrated above, the Bankruptcy Court did not have jurisdiction over the quiet title claims that were litigated in the present case. Moreover, the Bankruptcy Court explicitly denied making any type of ruling on the potential quiet title claims between the parties for exactly that reason. Therefore, Sunbehm and ESCO's quiet title claims are not barred by the doctrine of res judicata.

[¶ 31] Collateral estoppel, or issue preclusion, is not applicable to the current litigation. Again, this Court has recently explained collateral estoppel as barring the "relitigation of issues of either fact or law in a second action based on a different claim, which were necessarily litigated, or by logical necessary implication must have been litigated, and decided in the prior action." Id. Here, the Court can see that the issues surrounding the quiet title action at hand were not the same issues considered by the Bankruptcy Court in any of the three adversary proceedings. While there is some pause for concern regarding the "second action based on a different claim" language, said concern is quickly dismissed once the Court realizes that the specific quiet title issues at play were not "necessarily litigated". Finally, and most importantly, the quiet title issues were certainly not "decided in the prior action." This is evident by the Bankruptcy Court continually denying to make

any sort of ruling regarding the same. As a result, this Court should find that Sunbehm and ESCO's quiet title claims are not barred by collateral estoppel.

[¶ 32] Finally, claim preclusion is similarly not applicable to the present case. Regarding claim preclusion, this Court has explained: "[c]laim preclusion prevents parties and those in privity with them from raising legal theories, claims for relief, or defenses which could have been raised in the prior litigation, even though such claims were never actually litigated in the prior case." Id. This Court's analysis must return to the Bankruptcy Court's jurisdiction. The Bankruptcy Court declined jurisdiction over any quiet title claims. As a result, the parties' quiet title claims could not have been, and were not, considered by the Bankruptcy Court. Consequently, Sunbehm and ESCO's quiet title claims before North Dakota state courts are proper.

II. The District Court properly concluded that it was the intent of the parties to sell all of GPRC's assets to Earl Schwartz at the June 5, 1969 bankruptcy sale.

[¶ 33] A Bankruptcy sale advertising property "as is" may include more property than what is described in the bankruptcy notice of sale. Bankruptcy courts have concluded that where property is advertised for sale "as is", the property conveyed will be that actually held by the trustee, whether or not such property is accurately described in a notice thereof. Matter of A.H. – R.S. Coal Corp., 8 B.R. 455, 458 (Bankr. W.D. Pa. 1981).

[¶ 34] In Matter of A.H.-R.S. Coal Corp, the Bankruptcy Court considered the bankruptcy sale of a Model 2400 Lima crane shovel. Id. at 456. The shovel, along with other property, was advertised "as is" in the bankruptcy notice of sale. Id. at 457. After purchasing the shovel at the bankruptcy auction, the buyer discovered that the shovel was actually a Model 2000 Lima crane shovel and that various parts were missing from the shovel. Id. The Bankruptcy Court determined that the property was advertised "as is". Id. at 458. As a

result, the doctrine of caveat emptor applied and the buyer assumed either the risk or reward that derived from his purchase. Id.

[¶ 35] Similarly, the property sold by the Bankruptcy Trustee in GPRC's bankruptcy also advertised the property for sale "as is". It remains undisputed that the Report of Sale and Petition for Order Confirming Sale indicated that Earl Schwartz purchased "all of the assets" of GPRC, and that Trustee Atkinson was selling GPRC's interest "as is". Further, Trustee Atkinson was appointed as trustee for the purpose of liquidating GPRC's estate in its entirety. The "as is" designation along with the specific purpose of GPRC's bankruptcy liquidation serve as irrefutable evidence that all of GPRC's interests where not only intended to be sold at the bankruptcy auction, but, in fact, were sold at the bankruptcy auction.

[¶ 36] Finally, it would have been inequitable for the District Court to quiet title in GPRC almost 50 years after its bankruptcy. Sunbehm's chain of title is rooted in the Bankruptcy Trustee. When Great Plains became subject to the bankruptcy proceedings, the Bankruptcy Trustee took control of all of Great Plains's assets. From there, Great Plains went through Chapter 7 Bankruptcy liquidation. In accordance with a bankruptcy liquidation, Great Plains's assets were sold at auction. Before its assets could be sold, however, its assets needed to be identified. Unfortunately, the Bankruptcy Trustee had a difficult time identifying Great Plains's assets. This was due to Great Plains's poor records and unwillingness to assist the Bankruptcy Trustee with the identification of its assets. As a result, the Bankruptcy Trustee identified what he could to be sold. However, because of the inability to properly identify all of Great Plains's assets, and the Bankruptcy Trustee's

desire to finalize the bankruptcy, the Bankruptcy Trustee put all of the Great Plains's assets for sale at auction, whether identified or not.

[¶ 37] Furthermore, Property No. 3 was included in the Notice for Sale regarding Great Plains's bankruptcy estate. The issue is whether the Notice of Sale and subsequent auction sold an overriding royalty interest, a royalty interest, or a mineral interest in Property No. 3. Sunbehm argued, and the District Court agreed, that Great Plains should not be allowed to benefit nearly 50 years after it refused to cooperate with the Bankruptcy Trustee in identifying its assets. Great Plains did not provide sufficient records, mineral deeds, or any other information to identify which property it owned at the time of the bankruptcy petition. Because Great Plains did not cooperate, the District Court agreed that Great Plains should not be able to come back nearly 50 years later to benefit from its improper actions.

A. The District Court properly reformed the Bankruptcy Trustee's conveyances and quieted title in ESCO and Sunbehm.

[¶ 38] The effect of the District Court's Order is reformation of the chain of title to alleviate any problem in the transfer of title from the Bankruptcy Trustee to ESCO and Sunbehm. The District Court was correct in doing so. While the District Court's Order does not detail its reformation, the District Court's language suggests that the transfer was reformed by way of mutual mistake.

[¶ 39] A district court's ability to reform title based upon mutual mistake has most recently been considered by the Supreme Court in the case of Goodall v. Monson, 2017 ND 92, 893 N.W. 2d 774. In Goodall, one party agreed to sell to another party all of its interest; however, the interest was incorrectly described in the deed prepared by the attorney involved so the Court reformed the deed to correspond with the parties' intent based upon a mutual mistake.

[¶ 40] In the present case, the District Court found convincing evidence that pointed to a mistake having been made during the transfer of the Subject Properties from the Bankruptcy Trustee to ESCO and Sunbehm. The District Court considered that at GPRC's bankruptcy sale, the property was advertised "as is". The District Court considered that the Report of Sale, Petition for Order Confirming Sale, and Order Confirming Sale of Assets (Nunc Pro Tunc) each indicated that Earl Schwarts had purchased "all of the assets" of GPRC. Finally, the District Court considered that the Bankruptcy Trustee was tasked with liquidating all of the assets of GPRC. These facts, when combined, brought the District Court to conclude that "it was the intent of [the Bankruptcy Trustee] and Earl Schwartz to sell and buy, respectively, all of the assts held by GPRC at the time of its bankruptcy during the sale occurring on June 5, 1969." (Findings of Fact, Conclusions of Law, and Order for Judgment, ¶ 17, App. 793, 801). Further, the District Court reasoned that is could "ascertain no appropriate reason for [the Bankruptcy Trustee] to have deliberately withheld property from the sale to Earl Schwartz." Id. As a result, the District Court properly concluded that title in the Subject Properties should be quieted in ESCO and Sunbehm as successors in interest to Earl Schwartz. For the same reasons of reformation and mutual mistake, this Court should affirm the District Court's ruling.

III. The District Court did not err by adopting Defendants' proposed Findings of Facts, Conclusions of Law, and Order for Judgment.

[¶ 41] GPRC takes issue with the length and specifics of the District Court's Findings of Fact, Conclusions of Law, and Order for Judgment. GPRC argues that the Findings of Fact, Conclusions of Law, and Order for Judgment amounted to thirteen pages after the Court made its ruling known in a two-page email to the parties' counsel. However, it is not

uncommon for the Court to adopt, in whole or in part, a proposed Findings of Fact, Conclusions of Law, and Order for Judgment rather than draft its own.

[¶ 42] The North Dakota Rules of Court even allude to this practice by stating: "[p]reparation of proposed findings of fact and conclusions of law under N.D.R.Civ.P. 52(a) may be assigned by the court to one or more parties. . . . The court must thereafter enter findings of fact and conclusions of law as it may deem appropriate." N.D.R.Ct. Rule 7.1(b)(1). Further, a court's adoption of a party's entire findings and conclusions is not, by itself, reason to reverse the district court's decision. Smith Enterprises, Inc. v. In-Touch Phone Cards, Inc., 2004 ND 169, ¶ 11, 685 N.W.2d 741.

[¶ 43] Nonetheless, the District Court did not fully adopt the Defendants' proposed Findings of Facts, Conclusions of Law, and Order for Judgment. A quick comparison between the proposed Findings of Facts, Conclusions of Law, and Order for Judgment (App. 782) and the Findings of Fact, Conclusions of Law, and Order for Judgment actually entered by the District Court (App. 793) will show that the District Court modified and eliminated over two-and-one-half pages. As a result, this Court should not reverse the District Court's opinion based upon GPRC's claims regarding the length, drafting, or details of the Court's adopted Findings of Fact, Conclusions of Law, and Order for Judgment.

CONCLUSION

[¶ 44] For the reasons stated above, this Court should affirm the District Court's decision quieting title in favor of the Defendants in the Subject Properties.

Dated this 27th day of December, 2018.

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CERTIFICATE OF COMPLIANCE

[¶ 45] The undersigned hereby certifies, in compliance with N.D.R.App.P. 32(a)(8)(A), that the *Brief of Appellee Sunbehm Gas, Inc.* was prepared with Times New Roman proportional typeface, 12 pt. font, and the total number of words in the above Brief, including footnotes, but excluding words in the cover page, table of contents, table of authorities, jurisdictional statement, statement of the issues, signature block, certificate of service and this certificate of compliance, totals 3,929 words.

Dated this 27th day of December, 2018.

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CERTIFICATE OF SERVICE

[¶ 46] I, Jon Bogner, certify that I served the following document(s) as indicated below:

1. **Brief of Appellee Sunbehm Gas, Inc.;**
2. **Certificate of Service.**

On December 27, 2018, by sending a true and correct copy thereof by electronic means only to the following email address which, to the best of my knowledge, is the actual email address of the person intended to be served, to wit:

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