

FILED _____

AT _____ O'clock ____ M
CLERK, DISTRICT COURT

Deputy

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

STATE OF IDAHO,)
)
 Plaintiff,)
)
 vs.)
)
 STEPHEN ROBERT REILING,)
)
 Defendant.)
 _____)

Case No. **BON CRF 2011 3001**

**MEMORANDUM DECISION AND
ORDER DENYING SURETY'S
"MOTION FOR RECONSIDERATION
OF MOTION TO SET ASIDE
FORFEITURE AND EXONERATE
BOND AND THE AMENDED MOTIONS
TO SET ASIDE FORFEITURE AND
EXONERATE BOND"**

I. FACTUAL BACKGROUND.

This case is before the Court on a "Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing a Motion for Reconsideration," filed November 16, 2012, by surety Seneca Insurance Company (Seneca). To explain the status of the case at present, it is necessary to explain the background steps leading up to it. Seneca is not a party to this criminal lawsuit. At no time has Seneca moved to intervene pursuant to I.R.C.P. 24.

On June 10, 2011, a "Criminal Complaint" was filed in this case, charging Stephen Robert Reiling (Reiling) with two counts of Lewd Conduct With a Minor Under Sixteen Years of Age, a violation of I.C. § 18-1508, and on that same date, bond was set by

Magistrate Judge Barbara Buchanan at \$50,000.00. Criminal Complaint, pp. 1-2; Jail Information for Bonner County Sheriff's Office, p. 1. On June 13, 2011, bond was posted, listing Reiling as "principal" and "Seneca Insurance Company Inc.", as "firmly bound unto the Governor of the State of Idaho". Appearance Bond, p. 1. Stapled to that Appearance Bond is a "Power of Attorney" by Seneca listing "EZ Bail Bonds, P. O. Box 1413 Sandpoint, ID 83864" as Seneca's Executing Agent" on that Power of Attorney. *Id.* Naomi Wohali signed the Power of Attorney in her capacity as "Executing Agent", and Naomi Wohali signed the Appearance Bond as "Attorney in Fact." *Id.*

On July 28, 2011, an Information was filed by the State of Idaho (State) against Stephen Reiling (Reiling) for Lewd Conduct with a Minor Under 16. Information, p. 1. The trial for the case was originally set on December 12, 2011, before District Judge Verby. On December 7, 2011, an Order Continuing Trial was entered per the parties' stipulation and the trial was continued until the March 2012 trial calendar. December 7, 2011, Order Continuing Trial, p. 1. The trial was set for March 8, 2012. *Id.* Trial was again continued per another stipulation by the parties to the April trial calendar. January 20, 2012, Order Continuing Trial, p. 1. The case was then set for trial on April 5, 2012. *Id.* However, at a hearing on April 4, 2012, the day before trial, the trial was again continued, this time to June 11, 2012. April 4, 2012, Amended Notice of Trial, p. 1.

On June 11, 2011, nearly a year after the Information had been filed, Reiling failed to appear for his jury trial and a bench warrant for his arrest was entered. Bench Warrant, p. 1. That same day the Court forfeited the bond (\$50,000.00), and the Deputy Clerk of Court sent a "Notice of Forfeiture." Notice of Forfeiture, p. 1. Reiling has not been apprehended to this date. The Notice of Forfeiture is in the court file and is attached to Seneca's "Memorandum in Support of Motion for Reconsideration of Motion to Set Aside

Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing.” This is where the relevant activity regarding Reiling ends and the relevant activity regarding EZ Bail Bonds and Seneca begins.

On August 9, 2012, Seneca filed a Motion to Set Aside Forfeiture and Exonerate Bond, stating that Naomi Wohali of EZ Bail Bonds alone, not Seneca, received notice of the forfeiture on June 11, 2012, and further that Naomi Wohali had had her license suspended at the time of the forfeiture. Thus, notice should have gone to the surety, in this case Seneca. August 9, 2012, Motion to Set Aside Forfeiture, p. 1. That motion was signed by someone of the name “Cheryl,” whose title is simply “Representative for the Bail Agent.” *Id.* On September 5, 2012, the plaintiff State of Idaho, through the Bonner County Prosecuting Attorney, filed a response, simply stating that “the State defers to the judgment of the Court.” State’s Response, p. 1. On September 12, 2012, the Court entered its Order Denying the motion, stating:

. . . there has been no showing that the person named “Cheryl” who signed the motion as “Representative for the Bail Agent” is an attorney. There is no address for “Cheryl” and she is not identified with an Idaho State Bar number. If “Cheryl” is not a lawyer, she is practicing law without a license, in violation of Idaho Code § 3-104. Further neither EZ Bail Bonds nor Naomi Wohali-Tomlinson have intervened in this matter, and thus, have no standing to file this motion.

September 9, 2012, Order Denying Motion, p. 1.

On September 14, 2012, Seneca filed an “Amended Motion to Set Aside Forfeiture and Exonerate Bond” essentially again on the grounds of failure to notify Seneca of the forfeiture. 9-14-12 Amended Motion to Set Aside Forfeiture, p. 1. On September 21, 2012, the Court again entered an Order denying the amended motion, stating that its reasons for doing so are identical to those set forth in the September 12, 2012, Order. Order Denying

Amended Motion, p. 1. However, on September 20, 2012, Seneca had filed another “Amended Motion to Set Aside Forfeiture and Exonerate Bond.” September 20, 2012, Amended Motion to Set Aside Forfeiture, p. 1. A review of the court file shows a letter sent from “CJ Nemeth, Idaho General Agent for Bail USA/Seneca Insurance Company” to the “Clerk of Bonner County”, dated September 20, 2012, explaining that the first amended motion was submitted without realization that the original motion was denied and that the first amended motion should be disregarded. September 20, 2012, Letter, p. 1. On October 3, 2012, the court file reveals another communication was sent from CJ Nemeth of Seneca to the Court Clerk, stating that the September 20, 2012, amended motion was incomplete and attached the documents necessary to make it complete. October 3, 2012, Letter, p. 1.

On October 5, 2012, the Court again entered an Order denying the second amended motion, stating:

This second Amended Motion, like the previous two motions, was filed and signed by “Cheryl” (her last name is indecipherable) as a “Representative for the Bail Agent” and “Representative for Seneca/Bail USA.” There has, however, been no showing that this person named “Cheryl” is an attorney. There is no address for “Cheryl” and she is not identified with an Idaho State Bar Number. If “Cheryl is not a lawyer, she is practicing law without a license, in violation of Idaho Code § 3-104. **“The law in Idaho is that a business entity, such as a corporation, limited liability company, or partnership, must be represented by a licensed attorney before an administrative body or a judicial body.”** *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 744, 744-745, 215 P.3d 457, 464-465 (2009) . . .

Further, Seneca/Bail USA has not intervened in this case, and thus, has no standing to file this motion.

October 5, 2012, Order Denying Amended Motion, p. 2. (emphasis in original).

On November 16, 2012, Seneca filed a “Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing” and a “Memorandum in Support

of Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing”. These pleadings were prepared by an Idaho attorney on behalf of Seneca. As the State of Idaho has remained silent only to defer to the Court’s judgment on this matter in the past, is it not surprising that the State of Idaho, through the Bonner County Prosecutor’s office, failed to respond to this motion to reconsider by not filing a brief. Why the Bonner County Prosecuting Attorney should not want the Seneca bond to remain forfeited so that Seneca’s agents remain out actively looking for Reiling (in addition to the chance that Reiling meets a law enforcement officer who might realize there is an outstanding bench warrant from this Court), a person charged with two counts of Lewd Conduct With a Minor Under Sixteen Years of Age, will apparently remain a mystery.

Oral argument occurred on February 25, 2013. Counsel for Seneca argued, but such argument added nothing that had not been covered in the “Memorandum in Support of Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing”. The deputy prosecuting attorney representing the State of Idaho gave no argument.

II. STANDARD OF REVIEW.

Whether a sufficient excuse for the defendant’s failure to appear has been presented to the trial court, so as to forfeit or prevent the forfeiture of bail, is within the sound discretion of the trial court. *State v. Abracadabra Bail Bonds*, 131 Idaho 113, 116, 952 P.2d 1249, 1255 (1998). The motion to set aside such a forfeiture and exonerate bond should also be reviewed by an abuse of discretion standard.

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III. ANALYSIS.

A. Seneca has Failed to Intervene, but has “Appeared”.

At no time has Seneca sought to intervene in this criminal action. At no time has Seneca moved to file a motion to intervene pursuant to I.R.C.P. 24. While this failure is understandable in the early phases, when Seneca was being represented “Cheryl”, a lay person committing the crime of practicing law without a license, it is less understandable now that Seneca has counsel. At the present time, Seneca has filed a brief in this action, through an attorney licensed to practice in Idaho, but still has not filed an appearance and has not filed a motion to intervene. The action of Seneca’s attorney in filing this motion to reconsider might be a general appearance under I.R.C.P. 4(i)(1).

While the rules of intervention apply to civil matters, as this is a motion for reconsideration, which is only provided under the civil rules of procedure (I.R.C.P. 60(b)), it would seem appropriate that a motion to intervene would be warranted. Seneca finds itself in between a rock and a hard place, as there is no “motion to reconsider” under the Idaho Criminal Rules, and Seneca has not complied with the Idaho Rules of Civil Procedure by intervening. Giving all benefit of the doubt to Seneca, the Court finds Seneca has appeared in this criminal action, and, somehow, can bring a motion to reconsider in that criminal case.

B. Seneca has Standing to File a Motion Relating to the Bail Bond.

A bail bond agreement is a suretyship contract between the state on one side and an accused or his or her surety on the other side, whereby the surety guarantees the appearance of an accused. *State v. Abracadabra Bail Bonds*, 131 Idaho 113, 116k, 952 P.2d 1249, 1252 (Ct.App. 1998). While it is not specifically addressed in the body of the opinion, it is instructive to note that in the *Abracadabra* opinion, the bonding agency,

Abracadabra, was listed as a “real party in interest” in the caption. 131 Idaho 113, 113, 952 P.2d 1249, 1249. That, coupled with the fact that the State of Idaho Court of Appeals heard the case, with the bonding agency as the appellant, indicates that the bonding agency had standing to bring the issue of bond exoneration. This same pattern has occurred in other cases as well, including *State v. Plant*, 130 Idaho 130, 937 P.2d 442 (Ct.App. 1997); *State v. Vargas*, 141 Idaho 485, 111 P.3d 621 (Ct.App. 2005); *State v. Best*, 145 Idaho 993, 188 P.3d 935 (Ct.App. 2008). As the issue before this Court also involves exoneration of a bond, under *Abracadabra*, Seneca has standing to file the “Motions to Set Aside Forfeiture” as well as the “Motion for Reconsideration.” To the extent that Judge Verby in his October 5, 2012, Order Denying Second Amended Motion to Set Aside forfeiture and Exonerate Bond, found Seneca to not have standing, that finding alone is reversed on reconsideration by this Court.

C. Seneca Failed to Provide Any Admissible Evidence That There Was a Failure to Comply With I.C. § 19-2915(2).

Idaho Code § 19-2915(2) states:

(2) The clerk shall provide the *person posting bail* written notice of the order of forfeiture by mailing notice within five (5) business days of the order of forfeiture to the last known address of the *person posting bail* or *that person’s designated agent*.

I.C. § 19-2915(2)(emphasis added).

The “Notice of Forfeiture of Surety Bond” filed on June 11, 2012, has two entities listed with two separate addresses listed for each of those entities. Notice of Forfeiture of Surety Bond, p. 1. One of those entities is: “EZ BAIL BONDS, Naomi Y. Wohali, P.O. Box 1413, Sandpoint, ID 83864”, and the other is “Seneca Insurance Co. Inc., 160 Water St., New York NY 10038”. *Id.* The Deputy Clerk signed a certificate of mailing on that Notice of Forfeiture of Surety Bond, certifying that on June 11, 2012, notification was mailed by

her to the “above named bail agent at the *address listed above.*” *Id.* (emphasis added).

While it can be argued that the “bail agent” mentioned is Naomi Wohali only, an argument may also be made that notice was mailed to both entities, as both addresses are “listed above.” *Id.*

Arguments of Seneca’s counsel alone don’t carry the day for Seneca. There has been absolutely no evidence set forth by Seneca that Seneca did not receive such notice, as indicated by the Notice of Forfeiture.

Seneca, in its supporting memorandum, takes issue with the Court’s Orders denying the amended motions to set aside forfeiture, stating simply that “[t]he Notice of Forfeiture was *not* mailed to SENECA by the Deputy Clerk pursuant to the Notice of Forfeiture Certificate of Mailing.” Memorandum in Support of Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing, pp. 4-5. This Court simply cannot make *assumptions* about the validity of counsel for Seneca’s arguments without admissible proof being submitted by Seneca.

Seneca has filed multiple Motions to Set Aside Forfeiture (through some lay person named “Cheryl” who was committing a crime practicing law without a license), and more recently, through a licensed attorney, filed a Motion for Reconsideration and a supporting memorandum, but *at no time has Seneca filed an affidavit by a Seneca agent* (or any other person for that matter) *stating that Seneca failed to receive the notice.* There is no admissible evidence to contravene the indication on the Notice of Forfeiture (which *is* in the record before this Court) indicating that notice *may* have been sent to Seneca as well as to Wohali. Keep in mind this is Seneca’s motion; it is Seneca’s burden. It gets worse for Seneca. Counsel for Seneca apparently fails to realize that Judge Verby has already

made a factual finding on this issue. The first two sentences of Judge Verby's "Order Denying Second Amended Motion to Set Aside Forfeiture and Exonerate Bond" filed October 5, 2012, are as follows:

A Notice of Forfeiture of Surety Bond was issued by the Court on June 11, 2012. The Notice of Forfeiture was mailed to Seneca Insurance Company on June 11, 2012, at the address listed for notice on the Idaho Department of Insurance website.

Order Denying Second Amended Motion to Set Aside Forfeiture and Exonerate Bond, p. 1. Not only has Seneca failed to produce any admissible *evidence* to support its counsel's naked *argument* that Seneca did not receive notice of the forfeiture, Seneca has failed to produce any evidence that would support its motion for reconsideration of a factual finding made by a District Judge which is now the law of the case.

Thus, on evidentiary and factual grounds, Seneca's Motion for Reconsideration must be denied.

D. Even if Seneca Had Proof That Seneca Failed to Receive Notice of Forfeiture, Seneca Fails to Recognize That There Was Complete Compliance With I.C. § 19-2915(2).

Seneca's Motion for Reconsideration also fails on the merits for a more obvious and irrefutable reason. Again, the applicable statute, Idaho Code § 19-2915(2) reads:

(2) The clerk shall provide the *person posting bail* written notice of the order of forfeiture by mailing notice within five (5) business days of the order of forfeiture to the last known address of the *person posting bail* or *that person's designated agent*.

I.C. § 19-2915(2). (emphasis added). Seneca has taken ample effort to explain that at the time of the bond forfeiture Wohali was no longer a license bail agent in Idaho, and, thus, notice should have gone to Seneca, the surety, rather than Wohali. Memorandum in Support of Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and

Conditional Request for Hearing, pp. 5-6. However, what Seneca has not explained is how I.C. § 19-2915(2) has been violated when the statute reads, as emphasized above, that notice must be mailed to 1) the person posting bail or 2) that person's designated agent. The statute does not say that notice must be mailed to *both* the person posting bail and the designated agent. The statute is written in the disjunctive, not the conjunctive. There is nothing in the record, as no affidavits were filed, to state that Wohali was not Seneca's agent at the time the bond was written. There has been argument that Wohali was not Seneca's agent when the bond was forfeited, but again, no evidence. While there have been exhibits filed as attachments to memorandum, there have been no affidavits verifying or authenticating those exhibits, and those exhibits were not offered as evidence to be admitted; thus, this Court will not consider them. But even if Seneca could muster this evidence, Seneca completely overlooks the uncontroverted fact that Wohali was the person who posted bail in this case, making her a designated agent. Seneca's own "Power of Attorney", printed on Seneca's own form, lists Naomi Wohali as Seneca's "Executing Agent." Without evidence to show to the contrary, Wohali is legally considered to be Seneca's designated agent for purposes of I.C. § 19-2915(2). Indeed, even the first sentence of Seneca's argument in its brief reads: "On June 10, 2011, Bond S50-01709499 was posted in this matter by Naomi Wohali-Tomlinson ("Wohali") of EZ Bail Bonds on behalf of SENECA." Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing, p. 2.

It is worth noting that this issue is not new to the Idaho Supreme Court. However, it has never been squarely addressed by the Idaho Supreme Court. In *Leader v. Reiner*, 143 Idaho 635, 151 P.3d 831 (2007), the Court was faced with the issue of whether it is the

surety or the bail bond agent who is entitled to notice of bond forfeiture. However, as the issue was not raised in the district court, the Idaho Supreme Court declined to consider it on appeal. Thus, it is up to this Court to apply the statute to the facts. Based on the above analysis, this Court finds Seneca has not shown that Wohali was not Seneca's designated agent at the time of the notice. Thus, Seneca's Motion for Reconsideration must fail on the those grounds as well.

IV. ORDER.

IT IS HERBY ORDERED THAT Seneca's "Motion for Reconsideration of Motion to Set Aside Forfeiture and Exonerate Bond and the Amended Motions to Set Aside Forfeiture and Exonerate Bond and Conditional Request for Hearing" is DENIED. The bond in this case remains forfeited. The bench warrant remains outstanding.

DATED this 26th day of February, 2013

JOHN T. MITCHELL District Judge

CERTIFICATE OF MAILING

I hereby certify that on the _____ day of February, 2013 copies of the foregoing Order were mailed, postage prepaid, or sent by facsimile or interoffice mail to:

Bonner County Prosecuting Attorney –
Susan Campbell, Attorney for Seneca

CLERK OF THE DISTRICT COURT
BONNER COUNTY

BY: _____
Deputy