

FILED \_\_\_\_\_

AT \_\_\_\_\_ O'Clock \_\_\_\_\_ M  
CLERK OF DISTRICT COURT

\_\_\_\_\_  
Deputy

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

**ROBERT KOBRICK and AMY KOBRICK, )  
husband and wife; and ROBERT )  
BURNETT and RITA BURNETT, husband )  
and wife, )**

*Plaintiffs,* )

vs. )

**SAWMILL POINT DEVELOPMENT INC., an )  
Idaho Corporation; GEORGE D. )  
HAMILTON and RITA HAMILTON, husband )  
and wife; ROBERT L. HAMILTON; )  
SYRINGA GROVE, LLC, an Idaho Limited )  
Liability Company, CHARLIE R. NIPP and )  
SUSAN NIPP, husband and wife; RYAN C. )  
NIPP and TERI NIPP husband and wife; )  
LOIS BRUCE, and SCHARELANT 7, LLC, )  
an Idaho Limited Liability Company, )**

*Defendants.* )

Case No. **CV 2011 2494**

**MEMORANDUM DECISION AND  
ORDER GRANTING IN PART AND  
DENYING IN PART SYRINGA  
GROVE DEFENDANTS' MOTION TO  
BIFURCATE**

**I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.**

This matter is before the Court on the "Syringa Grove Defendants' (1) Motion for Entry of Partial Summary Judgment and (2) Motion to Bifurcation" filed September 2, 2014. This case is currently set for jury trial beginning October 6, 2014.

On August 11, 2014, this Court issued its "Memorandum Decision and Order Granting in Part and Denying in Part Syringa Grove Defendants' Motion for Partial Summary Judgment", finding, among other things, that genuine issues of material fact remain as to whether (1) Defendant Charlie Nipp is the alter ego of Defendant Syringa

Grove, LLC (Syringa Grove); and (2) whether Lots 6 and 7 were fraudulently transferred to Defendant Lois Bruce by Syringa Grove. Memorandum Decision and Order Granting in Part and Denying in Part Syringa Grove Defendants' Motion for Partial Summary Judgment, pp. 21-31, 44-47. In light of this decision, the Syringa Grove Defendants (Syringa Grove, Charlie R. Nipp and Susan Nipp, Ryan C. Nipp and Teri Nipp, Lois Bruce, and Schalerant 7, LLC) filed the instant motion on September 2, 2014, seeking an order bifurcating the above mentioned claims for alter ego and fraudulent transfer from the negligence, trespassing and nuisance claims that remain scheduled for the October 6, 2014, jury trial. See Syringa Grove Defendants' (1) Motion for Entry of Partial Summary Judgment; and (2) Motion for Bifurcation. On September 3, 2014, the Sawmill Point Development Defendants joined in Syringa Grove Defendants' Motion to Bifurcate. See Defendants Sawmill Point Development's Joinder in Motion to Bifurcate. On September 9, 2014, the Plaintiffs filed "Plaintiffs' Memorandum in Response to Syringa Grove Defendants' (1) Motion for Entry of Partial Summary Judgment; and (2) Motion for Bifurcation" and "Plaintiffs' Memorandum in Response to Defendant Sawmill Point Development's Joinder in Motion to Bifurcate", objecting to the Motion for Bifurcation.

On September 15, 2014, this Court signed the "Partial Summary Judgment" as presented by counsel for the Syringa Grove defendants, thus, granting Syringa Grove defendants' Motion for Entry of Partial Summary Judgment. Oral argument on the Syringa Grove defendants' Motion to Bifurcate was held on September 16, 2014. For the reasons set forth below, the Motion to Bifurcate is granted in part and denied in part.

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## II. STANDARD OF REVIEW.

Idaho Rules of Civil Procedure 20(b) and 42(b) provide circumstances where separate trials may be ordered. Specifically, Idaho Rule of Civil Procedure 20(b) provides:

(b) Separate Trials. The court may make such orders as will prevent a party from being embarrassed, delayed, or put to expense by the inclusion of a party against whom the party asserts no claim and who asserts no claim against the party, and may order separate trials or make other orders to prevent delay or prejudice, and may direct a final judgment upon a claim of or against one or more parties in accordance with the provisions of Rule 54(b).

I.R.C.P. 20(b). Similarly, Idaho Rule of Civil Procedure 42(b) provides:

(b) Separate Trials. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Constitutions, statutes or rules of the court.

I.R.C.P. 42(b). “The decision of whether to order separate trials for any claims or issues is left to the sound discretion of the trial court.” *Armand v. Opportunity Mgmt. Co.*, 155 Idaho 592, 602, 315 P.3d 245, 255 (2013) (citing *Rueth v. State*, 103 Idaho 74, 80, 644 P.2d 1333, 1339 (1982)).

## III. ANALYSIS.

### **A. Plaintiff’s Alter Ego Claim Against Charlie Nipp is an Equitable Issue and Must be Bifurcated From the October 6, 2014, Jury Trial.**

The Syringa Grove Defendants contend that as issues of alter ego and veil-piercing are equitable issues, “the Plaintiffs [are] not entitled to a trial by jury on [these] claims against Charlie Nipp, [and] inclusion of the same, in an otherwise complicated case (with multiple parties and claims), will not be conducive to judicial efficiency or economy.” Syringa Grove Defendants’ (1) Motion for Entry of Partial Summary

Judgment; and (2) Motion for Bifurcation, p. 4 (emphasis in original). The Syringa Grove Defendants claim that if the jury finds in favor of Syringa Grove on the remaining claims, there would be no need for a trial on any claims against Charlie Nipp. *Id.* They maintain that removing the alter ego claims against Charlie Nipp from the October 6, 2014, jury trial will promote judicial economy and the interests described in Idaho Rule of Civil Procedure 42(a). *Id.*, p. 5.

The Sawmill Point Defendants agree that judicial economy will be served by removing the alter ego claims against Charlie Nipp from the October 6, 2014, jury trial. Syringa Grove Defendants' (1) Motion for Entry of Partial Summary Judgment; and (2) Motion for Bifurcation, p. 2. Moreover, they contend that "it is prejudicial to lump Sawmill into the mix with Nipp . . . on the alter ego claims . . . ." *Id.*

In response, the Plaintiffs Robert and Amy Kobrick and Robert and Rita Burnett maintain they have no objection to the Court deciding whether Charlie Nipp is an alter ego of Syringa Grove but "believe this is an issue that must be decided after the trial on October 6, 2014, so that the Court can decide this issue after all of the evidence relevant to the issue has been presented." Plaintiffs' Memorandum in Response to Syringa Grove Defendants' (1) Motion for Entry of Partial Summary Judgment; and (2) Motion for Bifurcation, p. 2. It appears as though, rather than have a separate court trial following the October 6, 2014, jury trial, the Plaintiffs seek to introduce evidence on the alter ego claims at the jury trial to aid the Court in making its decision, but not have that issue presented to the jury. *Id.*

In *Wandering Trails, LLC v. Big Bite Excavation, Inc.*, 156 Idaho 586, 329 P.3d 368 (2014), the Idaho Supreme Court clarified its position on whether alter ego and veil-piercing claims are questions for the jury or equitable issues to be tried by the court.

*Wandering Trails, LLC*, 156 Idaho 586, \_\_\_\_, 329 P.3d 368, 373 (2014). Finding the latter, the Court held :

[T]he trial court is responsible for determining factual issues that exist with respect to this equitable remedy and for fashioning the equitable remedy. However, the district court has the discretion to empanel an advisory jury. Even if the district court empanels an advisory jury, it is required to either accept or reject the advisory jury's findings of fact when making its own findings of fact. In the event a district court accepts the advisory jury's findings of fact, the district court must incorporate those findings into its own findings of fact. Though a court is permitted to empanel an advisory jury, it is never required to do so.

156 Idaho 586, \_\_\_\_, 329 P.3d 368, 373-74.

In this case there is no dispute that the issue of whether Syringa Grove is the alter ego of Charlie Nipp is an equitable issue to be decided by this Court. The Court will need to decide that issue if the jury finds in favor of the plaintiffs on the remaining issues for trial and awards damages. Only then will the Court determine whether Charlie Nipp was the alter ego of Syringa Grove. Pursuant to I.R.C.P. 42(b), the Court, exercising its discretion, orders the alter ego issue bifurcated from the October 6, 2014, trial. The Court, exercising its discretion, decides that an advisory jury is not likely to be helpful to the Court, would take additional time and not be in the interest of judicial economy, and allows the Court to most rapidly schedule a court trial immediately following a favorable jury verdict on the underlying issues of liability and damage theories of negligence, negligence per se, nuisance and trespass. The parties will need to make a request of the Court outside the presence of the jury in order to introduce any evidence or solicit any testimony regarding the alter ego claims at the jury trial. That specific issue is not relevant to the plaintiffs' claims against Syringa Grove defendants or the Sawmill Point Development defendants. This Court finds a separate trial on the alter ego claim will be conducive to expedition and economy, pursuant to I.R.C.P. 42(b).

**B. The Issue of Whether Lots 6 and 7 Were Fraudulently Transferred to Lois Bruce Should Not be Bifurcated from the October 6, 2014, Jury Trial.**

The Syringa Grove defendants argue that pursuant to Idaho Rule of Civil Procedure 42(b), the fraudulent transfer issue should be bifurcated from the October 6, 2014, jury trial because the primary issues that remain for trial “merit extensive evidentiary proceedings before a jury.” Syringa Grove Defendants’ (1) Motion for Entry of Partial Summary Judgment; and (2) Motion for Bifurcation, p. 5. They further claim that “[i]f the jury finds for Defendant Syringa Grove, then there will be no necessity of proceeding further with the claims under the Uniform Fraudulent Conveyances Act.” *Id.* Finally, they argue that failure to remove the fraudulent conveyance issue from the October 6, 2014, trial could confuse the jury. *Id.*

The Sawmill Point defendants maintain judicial economy will be served by removing the fraudulent transfer claims from the October 6, 2014, jury trial. Syringa Grove Defendants’ (1) Motion for Entry of Partial Summary Judgment; and (2) Motion for Bifurcation, p. 2. Moreover, they contend that “it is prejudicial to lump Sawmill into the mix . . . on the . . . fraudulent conveyance claims.” *Id.*

In response, plaintiffs object to holding a separate trial on the fraudulent transfer claims. Plaintiffs’ Memorandum in Response to Syringa Grove Defendants’ (1) Motion for Entry of Partial Summary Judgment; and (2) Motion for Bifurcation, p. 3. In support of this, plaintiffs claim, “Defendants reliance on IRCP 20(b) is misplaced as that rule must be read in conjunction with IRCP 20(a), which pertains to permissive joinder of parties. There is ‘no permissive joinder’ issue in this motion, and IRCP 20(b) is inapplicable in decided this motion.” *Id.* Moreover, plaintiffs maintain that while a separate trial may be more convenient for the defendants, it would be less convenient and less economical for the plaintiffs. *Id.* According to the plaintiffs, pursuant to

I.R.C.P. 1, the “just, speedy and inexpensive determination’ of this matter will be had if all claims are submitted to the jury through a single trial . . . .” *Id.*, pp. 4-5. As such, plaintiffs request the Court deny the Syringa Grove defendants’ motion. *Id.*, p. 5.

The Court, in its discretion, denies the Syringa Grove defendants’ request to bifurcate the fraudulent transfer issue from the October 6, 2014, jury trial. Unlike the alter ego issue discussed above, this is a legal question for the trier of fact, like the remaining issues (negligence, negligence per se, nuisance, and trespass) to be tried on October 6, 2014. Having a separate trial for the claim of fraudulent conveyance does not promote the interests set forth in I.R.C.P. 42(b). Moreover, the parties have set forth no specific analysis as to how they would be prejudiced if this evidence were presented to the jury.

While the issue of fraudulent conveyance is a clear and distinct issue from the claims of negligence, nuisance and trespass, there would naturally be some evidence that would be presented to the jury on both the issue of fraudulent conveyance and the main issues of negligence, nuisance and trespass. For example, even in the trial on the main issue of negligence, nuisance and trespass, there would need to be testimony about the individuals who were involved with the two corporate entities, who owned what property to begin with, and who was anticipated to own the property at the completion of the development, the purpose for the development and the reason for the creation of these entities. Certainly, there will be some additional testimony presented that is specific to the alleged fraudulent conveyance, but such testimony should be limited to the testimony of the individual parties, and not be a subject of expert testimony. While that additional testimony might not pertain in any way to the Sawmill Point defendants, it is quite often the case in a jury trial where there will be testimony

that might not be pertinent to a given party. The burden to the Sawmill Point defendants as a result of such trial time is comparatively small.

The Court has considered the possibility of bifurcating the actual jury trial into two parts, to have the jury decide the issues of negligence/nuisance/trespass, and if the jury's verdict is favorable to plaintiffs in this liability and damage aspect, then the same jury could be presented with evidence of alleged fraudulent conveyance and then decide that issue. Certainly there is some judicial economy to such an outcome. But because this Court anticipates the amount of trial time needed for the issue of alleged fraudulent conveyance to be relatively quite small as compared to the liability and damages portion of the trial, it seems any economy is outweighed by all the evidence coming in via each pertinent witness at one time while that witness is on the stand.

While the Syringa Grove defendants argue that arguing this issue to the jury with the negligence and trespassing issues "might promote juror confusion", the Court can set forth clear jury instructions to avoid that possibility. The Court's experience with juries involving complicated cases is that they can, with proper instruction, compartmentalize and understand what evidence is being presented for what issues. In interest of time and economy, and cognizant that this is a matter vested in this Court's discretion, the Court finds the fraudulent transfer issue should be tried before the jury on October 6, 2014.

#### **IV. CONCLUSION AND ORDER.**

For the reasons set forth above, the Court grants the Syringa Grove defendants' Motion to Bifurcate in part and denies that motion in part.

IT IS HEREBY ORDERED the Syringa Grove defendants' Motion for Entry of Partial Summary Judgment is GRANTED.

IT IS FURTHER ORDERED the Syringa Grove defendants' Motion to Bifurcate is



GRANTED as to plaintiffs' claims of alter ego. Those claims will be tried to the Court if there is a verdict in favor of the plaintiffs following the October 6, 2014, jury trial.

IT IS FURTHER ORDERED the Syringa Grove defendants' Motion to Bifurcate is DENIED as to plaintiffs' claims of fraudulent conveyance.

Entered this 16<sup>th</sup> day of September, 2014.

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John T. Mitchell, District Judge

**Certificate of Service**

I certify that on the \_\_\_\_\_ day of September, 2014, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

<u>Lawyer</u>	<u>Fax #</u>		<u>Lawyer</u>	<u>Fax #</u>
Julie Simaytis	208-806-0210			
John F. Magnuson	667-0500			
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Jeanne Clausen, Deputy Clerk