

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**

ALPHA HOLDINGS, LLC,

Plaintiff,

vs.

BETTY CHANEY, ET AL,

Defendants.

Case No. **CV 2012 7948**

**MEMORANDUM DECISION AND
ORDER DENYING DEFENDANTS'
AMENDED MOTION FOR
RECONSIDERATION**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

On December 30, 2013, the defendants Chaney et. al. (collectively Chaney) filed a "Motion for Reconsideration" of a portion of this Court's December 17, 2013, "Memorandum Decision and Order on Defendants' Request for Attorney Fees and Costs." On December 17, 2013, counsel for Chaney also filed an "Affidavit of Steven C. Wetzel in Support of Motion for Reconsideration of Award of Sanctions." On February 18, 2014, plaintiffs filed an "Amended Motion for Reconsideration", a "Memorandum in Support of Amended Motion for Reconsideration", an "Affidavit of Melanie Baillie in Support of Motion for Reconsideration" and an "Affidavit of Steven C. Wetzel in Support of Amended Motion for Reconsideration of Award of Sanctions." Counsel for plaintiff Alpha Holdings, LLC (Alpha) filed no responsive pleading.

A hearing was held on March 3, 2014, on Chaney's Amended Motion for Reconsideration. Counsel for Chaney was present in person and counsel for Alpha participated telephonically. At the conclusion of that hearing the Court took the

Amended Motion for Reconsideration under advisement.

Since that time this Court has re-read its Memorandum Decision and Order on Defendants' Request for Attorney Fees and Costs, and read all the above filed affidavits and motions on defendants' Amended Motion for Reconsideration.

II. STANDARD OF REVIEW.

A trial court's decision to grant or deny a motion for reconsideration is reviewed for an abuse of discretion. *Jordan v. Beeks*, 135 Idaho 586, 592, 21 P.3d 908, 914 (2001). A party making a motion for reconsideration is permitted to present new evidence, but is not required to do so. *Johnson v. Lambros*, 143 Idaho 468, 147 P.3d 100 (Ct.App. 2006). Similarly, the decision to grant or deny injunctive relief is in the sound discretion of the trial court and a decision to grant or deny an injunction will not be overturned absent a manifest abuse of that discretion. *O'Boskey v. First Fed. Sav. & Loan Assoc. of Boise*, 112 Idaho 1002, 1006, 739 P.2d 301, 305 (1987); *Price v. Grice*, 10 Idaho 443, 452, 79 P. 387, 390 (1904).

III. ANALYSIS.

Counsel for Chaney objects to this Court's decision which reads: "IT IS FUTHER ORDERED counsel for defendants Chaney pay \$5,000.00 as a sanction under I.R.C.P. 11(a)(1) to plaintiffs Alpha Holdings LLC." Memorandum Decision and Order on Defendants' Request for Attorney Fees and Costs, p. 38. Counsel for Chaney now claims "The sanctions apparently arise from the Defendants' counsel's explanation of 'beliefs,' which this Court determined were disparaging and not reasonably based on facts." Memorandum in Support of Amended Motion or Reconsideration, p. 5. Counsel for Chaney cannot hide behind their "beliefs." As this Court previously pointed out: "Idaho Rule of Civil Procedure mandates: 'The signature

of an attorney...constitutes a certificate that the attorney...has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it *is well grounded in fact...*' I.R.C.P. 11(a)(1). (italics added)."

Memorandum Decision and Order on Defendants' Request for Attorney Fees and Costs, p. 34. There were, and still have not been, any basis grounded in fact for Chaney's counsel's "beliefs", which were previously discussed by this Court:

(F) The time limitations imposed by the client or the circumstances of the case. Chaney claims:

...there are seven separate attorneys in four law firms who represented Mike Rai and his entities in this and the companion cases. It is believed these attorneys and firms have been funded by two insurance companies and association dues paid by all association members except Northwest Group and Alpha Equity (entities owned and controlled by Mike Rai). Defendants believe that there has been a concerted effort to financially break the defendants in order to maintain unfair and illicit control of the Association.

Memorandum in Support of Award of Attorney Fees and Costs, p. 6. No facts, no affidavit, no deposition testimony, no evidence of any kind has been submitted by Chaney to support this conspiracy theory. A re-examination of I.R.C.P. 11(a)(1) should be made by counsel for defendant Chaney. That rule mandates: "The signature of an attorney...constitutes a certificate that the attorney...has read the pleading, motion or other paper; that to the best of the signer's knowledge, information, and belief after reasonable inquiry it *is well grounded in fact...*" I.R.C.P. 11(a)(1). (italics added). The argument that, "Defendants believe that there has been a concerted effort to financially break the defendants in order to maintain unfair and illicit control of the Association", falls on deaf ears as defendants could have saved much time and attorney fee expense if at the beginning of the defense, counsel for defendant would have advanced the proper argument regarding I.C. § 55-1518. Idaho Rule of Civil Procedure 11(a)(1) allows the Court to impose a sanction. Specifically, it provides: "If a pleading, motion or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction..." This Court finds counsel for Chaney violated of I.R.C.P. 11(a)(1) by making accusatory and disparaging claims which were not "well grounded in fact", but rather were wholly unsupported by any facts via affidavit, deposition or other admissible evidence. As set forth in section "H" below, counsel for Chaney then blamed the death of a party upon this alleged but unsubstantiated bad conduct of Mike Rai, his attorneys and insurance companies. These transgressions were made by

counsel for Chaney, not by the Chaney defendants themselves. Thus, these transgressions will not result in a reduction of fees owed by Alpha to the Chaney defendants. However, this Court imposes a \$5,000.00 sanction under I.R.C.P. 11(a)(1) against counsel for the Chaney defendants, to be paid to Alpha, the target of the unsubstantiated accusations made by counsel for those Chaney defendants.

* * *

(H) The undesirability of the case. Chaney claims:

This case would not have been taken by many attorneys, and the current Defendants' attorneys have often questioned the wisdom of involvement in this case. This case is complex and difficult because in representing six Defendants in an emotionally charged case that really began as what the Defendants saw as a reach of the Declarant's/ Association's duties in failing to provide basic maintenance. The protection of individuals being devastated by the actions of Alpha Holdings, and its owner Mike Rai, has cause great concern for Defendants' counsel. One client died during the pendency of these matters, which Defendants' counsel believes occurred as a result of the stress created by this litigation. Ray Vezina died from an overdose of his medication. Counsel, in visiting Mr. Vezina before his death, found him to be in emotional turmoil and literally shaking over whether he would lose his home in this litigation.

Memorandum in Support of Award of Attorney Fees and Costs, pp. 6-7. Alpha did not respond to this issue in briefing or in oral argument. Once again, what defendants' counsel provides is his "belief", but this time it is not just the belief of the evil conspiracy between Mike Rai, his attorneys and insurance companies; now it is counsel's "belief" as to the cause of death of a party. Counsel for the Chaney defendants should hope his own "belief" is wrong, given the fact that a proper argument regarding the effect of I.C. § 55-1518 upon the lien amount and foreclosure action would have resulted in this case concluding many months earlier.

Memorandum Decision and Order on Defendants' Request for Attorney Fees and Costs, p. 34.

Counsel for Chaney now relies on *Golden Eagle Distribution, Corp. v. Burroughs Corp.*, 801 F.2d 1531, 1540-41 (9th Cir. 1986), for the proposition that "Rule 11 does not apply to the mere making of a frivolous argument", and "The Rule permits the imposition of sanctions only when the "pleading, motion, or other paper itself is

frivolous, not when one of the arguments in support of a pleading or motion is frivolous.” Memorandum in Support of Amended Motion for Reconsideration, p. 6. Even a literal reading of the portion of *Golden Eagle* cited by Chaney causes this Court to deny Chaney’s Motion for Reconsideration, because there was not “one” argument that was frivolous, there were two: the argument regarding Mr. Vezina’s death due to this litigation, and the argument that this is a conspiracy by insurance companies. A complete reading *Golden Eagle* makes it all the more clear it should not be used to grant Chaney’s Motion for Reconsideration. The trial court in *Golden Eagle* found the arguments of counsel “misleading”. 801 F.2d 1531, 1534. In the present case, the arguments are beyond misleading, Chaney’s counsel’s statements blame the death of a party on this litigation and blame the litigation on a conspiracy by the insurance companies. These claims are simply frivolous. They are baseless. The fact that this Court has taken into account the fact that Chaney prevailed in other aspects of this case and is instead focusing on these two sanctionable acts, is evidence by the comparatively small amount of attorney fees imposed as a sanction, \$5,000.00.

Finally, it appears that even after being sanctioned, counsel for Chaney is remains simply unable to take responsibility for what they have done. Counsel for Chaney feel the fault is not in counsel, but in the Court: “Counsel apologizes for the tenor of the statements that were offensive to the Court.” Memorandum in Support of Amended Motion for Reconsideration, p. 6. Note that counsel does not apologize for what counsel stated, but instead for the “tenor” of what was stated, and how it was taken by the Court. “Although defense counsel regrets that this Court was offended by the statements...” is another example. *Id.*, p. 8.

IV. CONCLUSION AND ORDER.

For the reasons set forth above;

IT IS HEREBY ORDERED the Chaney defendants' Amended Motion to Reconsider is DENIED. It remains ordered that counsel for defendants Chaney pay \$5,000.00 as a sanction under I.R.C.P. 11(a)(1) to plaintiffs Alpha Holdings LLC.

Entered this 30th day of March, 2014.

John T. Mitchell, District Judge

Certificate of Service

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

Lawyer
Peter J. Smith

Fax #
664-4125

| **Lawyer**
Steven C. Wetzel

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664-1684

Jeanne Clausen, Deputy Clerk