

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF SHOSHONE

HECLA LIMITED, a Delaware corporation,)
)
Plaintiff,)

v.)

MAX LARSON, KAREN HILL, JOHN DOE,)
PERSONAL REPRESENTATIVE OF THE)
ESTATE OF NORMA ZIMMER, LEMPI)
LARSON, WAINO LINDROOS, EMMA)
NELSON, EVA HILL, EINO WILLIAM)
LINDROOS, and all unknown heirs and)
devisees of the above persons, and all)
unknown owners, unknown heirs, and devisees)
of the named Defendants that may be)
deceased, unknown spouses of the Defendants)
that may be married, and all other persons)
claiming or who might claim any right, title,)
estate or interest in or lien or encumbrance)
adverse to, Plaintiff's ownership, or any cloud)
upon Plaintiff's title, to the real property)
described below, or any part thereof, whether)
such claim be present or contingent, with)
respect to:)

The subsurface mineral estate underlying the)
following described real property:)

Northeast Quarter (NE1/4) of Section)
Thirty-six (36), Township Forty-eight (48))
North, Range Five (5) East, B.M., Shoshone)
County, Idaho, (less right-of-way for railroad)
and other purposes) containing approximately)
142.5 acres;)

Defendants.)

CASE NO. CV-2011-441

ORDER RE: PLAINTIFF'S
MOTION FOR RECONSIDER-
ATION

William F. Boyd, RAMSDEN & LYONS, LLP, for Plaintiff Hecla Limited, LLC.

Mary V. York, HOLLAND & HART, LLP, for Defendants Max Larson, the Estate of Max Larson, Karen Hill, Mark Zimmer as Executor of the Estate of Norma Zimmer and Trustee of the Zimmer Survivor Trust.

I. SUMMARY OF PROCEDURE

The Plaintiff filed its "Petition for Declaratory Judgment" on July 11, 2011. The Defendants answered on September 9, 2011. The matter came before this Court on cross motions for summary judgment on December 14, 2011. This Court issued its "Memorandum Decision and Order Re: Hecla's Motion for Summary Judgment and Defendants' Motion for Summary Judgment" ("Opinion") on January 12, 2012, denying the Plaintiff's motion and granting the Defendants' motion. The Plaintiff timely filed a "Motion for Reconsideration" and "Brief in Support of Motion for Reconsideration" ("Plaintiff's Brief") on February 1, 2012, and submitted the "Affidavit of Michael K. Bransetter" ("Bransetter Affidavit") in support. The Defendants responded with a "Brief in Opposition to Hecla's Motion for Reconsideration," ("Defendants' Brief") and the Plaintiff filed a "Reply to Defendant's Opposition to Motion for Reconsideration" ("Plaintiff's Reply").

II. STANDARD

Rule 11(a)(2)(B) provides: "A motion for reconsideration of the trial court may be made at any time before the entry of final judgment" A party making a motion for reconsideration may present new facts, but the trial court is not required to search the record to determine if there is new information. Coeur d'Alene Mining Co. v. First National Bank, 118 Idaho 812, 800 P.2d 1026 (1990). Granting or denying a motion to reconsider is a discretionary decision. Johnson v. Lambros, 143 Idaho 468, 473, 147

P.3d 100, 105 (Ct. App. 2006), *citing* Watson v. Navistar Int'l Transp. Corp., 121 Idaho 643, 654, 827 P.2d 656, 667 (1992) and Slaathaug v. Allstate Ins. Co., 132 Idaho 705, 979 P.2d 107 (1999).

The Defendants have argued that it is not "good policy" to allow a party to withhold evidence during a summary judgment proceeding, and the present the evidence as "new evidence" in support of a motion for reconsideration. This Court agrees that such a tactic is a poor strategic choice that runs counter to the need for judicial economy. Regardless, Rule 11 and supporting case law do not allow this Court to ignore the information presented in support of a motion for reconsideration and therefore this Court will review the information provided by the Plaintiff.

III. ANALYSIS

The Plaintiff challenges this portion of this Court's January 12, 2012, Opinion:

In this case it is clear that multiple breaches of the Cortez Contract have occurred, but the breach material to the contract occurred upon failure of Selma and Gust's Heirs to "execute a good and sufficient deed to [Section 36] and deposit the same in escrow with the Idaho First National Bank, Wallace, Idaho." As set forth in Paragraph 2 of the Cortez Contract, the deal between Selma and S.K. Garrett was to sell the surface and the subsurface rights to Section 36, with Selma maintaining a life estate in ten acres of the property. Performance of Paragraph 10 forms a large part of the Cortez Contract because without execution of the deed, S.K. Garrett would not obtain any surface or subsurface rights to Section 36 and the remainder of the contract could not be performed by either party. Thus, execution of the deed "touches the fundamental purpose of the contract," the transfer of the property rights, and failure to execute the deed defeats the object of entering into the Cortez Contract, that being the exploration and mining of Section 36.

Gust's Heirs similarly breached the Cortez Contract after they adopted it in the 1955 Agreement. It is undisputed that Gust's Heirs not only refused to execute the required deed to transfer the surface and subsurface rights to the Cortez Corp., but also that Gust's Heirs sold at least the surface rights to the entirety of Section 36 to a third party. Because of the action and inaction of Gust's Heirs, neither Paragraph 2,

the transfer of the property, nor Paragraph 10, the execution of the deed, occurred. The importance of the execution of the deed to the Cortez Corp., as well as Hecla Limited, is apparent in Exhibits E and F of the York Affidavit. These letters show that Gust's Heirs failed to perform even when the Cortez Corp. and Hecla Limited demanded performance. Thus, it is upon the failure of Gust's Heirs to perform their obligation to execute a deed to Section 36 in the Cortez Contract and the sale of Section 36 to a third party after entry of the 1957 Decree settling Gust's Heir's interest in Section 36.

The Cortez Corp. and subsequently Hecla Limited were clearly aware that Gust's Heirs failed to perform their obligations under the Cortez Contract, but did nothing to seek enforcement of the Cortez Contract until the year 2011. Thus, more than five years has passed since Gust's Heirs refused to perform the Cortez Contract and sold Section 36 to a third party. As a result, Hecla Limited's petition and the claims therein is barred by the limitations set forth in I.C. § 5-216.

(Opinion, p.12).

The Plaintiff argues that the underlined portions of this Court's Opinion are incorrect as there is no evidence that the five children of Gust Lindroos ("Five Children") "refused" to sign a deed or to put the deed in escrow, but they were merely "tardy" and "slow to act," and that some of the Five Children may have executed deeds and placed the deeds in escrow. The Plaintiff also argues that because the Five Children included a reference to the Cortez Agreement in the 1962 deed transferring Section 36 to Florence Angle it can be inferred that deeds from some of the five children of Gust Lindroos were executed and placed in escrow. The Plaintiff provides evidence in the form of the Branstetter Affidavit in support. According to the Branstetter Affidavit, there are multiple letters that raise an inference that possibly some of the Five Children executed deeds in 1958 or thereafter, and that the deeds were placed in escrow because the Plaintiff paid out monies and performed certain work on the adjacent parcel of property (Nystrum property) and on Section 36. The Plaintiff also provides documentation that shows that

when the Five Children transferred the property to Florence Angle (a third party) they made the transfer subject to the Coretz Agreement and the 1955 Agreement.

The Defendants, however, correctly note that the Plaintiff has not produced any evidence of a deed executed by one of the Five Children, and Exhibits E and F to the York Affidavit show that as of 1958, no deeds had been submitted. The Defendants are also correct that the documentation provided by the Plaintiff in support of the Plaintiff's Motion for Reconsideration merely shows that between 1958 and 1962, the Cortez Company and Hecla made multiple attempts to obtain deeds from the Five Children, but were unsuccessful. While the Plaintiff relies on the April 4, 1959, letter from Emma Nelson, this letter does not reference a "deed" but instead references an "affidavit." (Exhibit E, Branstetter Affidavit.) Additionally, it is notable that Hecla conducted exploration on Section 36 during this time and in 1959 determined that "the results of the exploration were not favorable and Hecla has terminated the contract with Cortez." (Exhibit B, Branstetter Affidavit.)

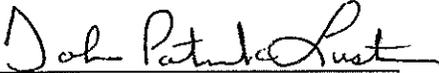
This Court sees no reason to reconsider its previous decision. Whether the Five Children "refused" to sign deeds, simply did not sign deeds, or were "tardy" in signing deeds, the fact remains that the Plaintiff has not shown that any deeds were executed at any time. The Plaintiff's evidence merely invites this Court to make an inference that some of the Five Children may have considered signing deeds. However, this is a thinly veiled attempt to place the burden on the Defendants to prove a negative: that the deeds were never signed by the Five Children. However, it is incumbent on the Plaintiff to present evidence that the deeds exist and were placed in escrow in order to survive

the Defendants' motion for summary judgment. The Plaintiff has not met this burden. As a result, the Plaintiff's Motion for Reconsideration must be denied.

I. CONCLUSION

The Plaintiff's Motion for Reconsideration is hereby DENIED.

DATED this 30th day of April, 2012



John Patrick Luster
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ORDER RE: PLAINTIFF'S MOTION FOR RECONSIDERATION was sent by U.S. Mail, postage prepaid, sent by facsimile transmission, or sent by interoffice mail on the _____ day of April, 2012 to the following:

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PEGGY WHITE
Clerk of the District Court

By: _____
Deputy Clerk