

AUG 20 2014

CHRISTOPHER D. RICH, Clerk
By PATRICK McLAUGHLIN
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AUG 21 2014

DEPARTMENT OF
WATER RESOURCES

Attorney for Defendant Thomas Mecham Ricks

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

D. L. EVANS BANK,)

Plaintiff.)

vs.)

BALLENTYNE DITCH COMPANY,)
LIMITED; THOMAS MECHAM RICKS;)
GARY SPACKMAN, IN HIS OFFICIAL)
CAPACITY AS DIRECTOR OF THE)
IDAHO DEPARTMENT OF WATER)
RESOURCES; AARON RICKS, DIRECTOR)
OF BALLENTYNE DITCH COMPANY;)
SHAUN BOWMAN, DIRECTOR OF)
BALLENTYNE DITCH COMPANY; JOE)
KING, DIRECTOR OF BALLENTYNE)
DITCH COMPANY; STEVE SNEAD,)
DIRECTOR OF BALLENTYNE DITCH)
COMPANY.)

Defendants.)

Case No.: CV OC 1317406

**ANSWER OF DEFENDANT THOMAS M.
RICKS TO AMENDED COMPLAINT**

COMES NOW the Defendant Thomas M. Ricks ("Ricks"), by and through his
counsel of record, Chris M. Bromley of the firm, McHugh Bromley, PLLC, and as to the
Amended Complaint ("Amended Complaint") of the Plaintiff, D. L. Evans Bank ("DL
Evans") answers and responds as follows:

1. Ricks denies each and every allegation not specifically admitted herein:

PARTIES

2. In answer to Paragraph 1 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their truth or falsity:

3. In answer to Paragraph 2 of the Amended Complaint, Ricks admits the allegations contained therein:

4. In answer to Paragraph 3 of the Amended Complaint, Ricks admits the allegations contained therein:

5. In answer to Paragraphs 4 and 5 of the Amended Complaint, Ricks admits that Gary Spackman is the Director of IDWR. Ricks denies the remainder of the allegations for the reason he is without sufficient knowledge as to their truth or falsity; Ricks further states that Idaho law speaks for itself without interpretation by DL Evans.

6. In answer to Paragraphs 6 through 9 of the Amended Complaint, Ricks admits the allegations contained therein:

JURISDICTION

7. In answer to Paragraph 10 of the Amended Complaint, Ricks admits jurisdiction is proper in a district court. Ricks denies venue is proper in Ada County. Pursuant to Administrative Order of the Fifth Judicial District Court dated July 1, 2010, which implemented Idaho Supreme Court Administrative Order dated December 9, 2009, and set out procedural rules governing actions for declaratory judgments of decisions of IDWR, venue is proper in Twin Falls County. Furthermore, the Amended Complaint raises many substantive issues with the water rights owned by Defendant Ballentyne Ditch Company, Limited ("Ballentyne"). The water rights owned by Ballentyne were

issued as partial decrees by the Snake River Basin Adjudication District Court, and certified as final judgments in accordance with I.R.C.P. 54(b). Venue is therefore is proper in Twin Falls County, before the Snake River Basin Adjudication District Court. I.C. §§ 1-1603 & 1-1901.

COUNT I

8. In answer to Paragraph 11 of the Amended Complaint, Ricks admits the allegations contained therein:

9. In answer to Paragraph 12 of the Amended Complaint, Ricks admits the allegations contained therein:

10. In answer to Paragraph 13 of the Amended Complaint, Ricks denies the allegations contained therein and states the language in the deed of trust speaks for itself without interpretation by DL Evans:

11. In answer to Paragraph 14 of the Amended Complaint, Ricks denies the allegations contained therein. Ricks further states that the Snake River Basin Adjudication ("SRBA") partial decrees speak for themselves without interpretation by DL Evans:

12. In answer to Paragraph 15 of the Amended Complaint, Ricks admits that Ballentyne was incorporated on or about April 29, 1910, as an Idaho corporation, and denies all other allegations contained therein. Ricks further states that the bylaws, water rights, articles, stock certificates, and Idaho law speak for themselves without interpretation by DL Evans:

13. In answer to Paragraph 16 of the Amended Complaint, Ricks admits that the obligations owed under the subject note became due and payable on or about January

5. 2009, and that the obligations were not paid in full, and denies all other allegations contained therein:

14. In answer to Paragraph 17 of the Amended Complaint, Ricks admits that he has sought relief individually pursuant to the United States Bankruptcy Code on two occasions and one bankruptcy is currently pending in the United States Bankruptcy Court for the District of Idaho, Case No. 13-00264-TLM, and Ricks denies all other allegations contained therein:

15. In answer to Paragraph 18 of the Amended Complaint, Ricks admits that DL Evans initiated and/or rescheduled a non-judicial foreclosure proceeding against the property described in the subject deed of trust, and denies all other allegations contained therein:

16. In answer to Paragraph 19 of the Complaint, Ricks admits that on or about January 22, 2013, a non-judicial foreclosure sale was held by TitleOne Corporation relating to the deed of trust, and denies all other allegations contained therein:

17. In answer to Paragraph 20 of the Amended Complaint, Ricks admits that TitleOne Corporation issued a Trustee's Deed and a correction Trustee's Deed, and denies all other allegations contained therein:

18. In answer to Paragraph 21 of the Amended Complaint, Ricks denies the allegations contained therein:

19. In answer to Paragraph 22 of the Amended Complaint, Ricks denies the allegations contained therein:

20. In answer to Paragraphs 23 and 24 of the Amended Complaint, Ricks denies the allegations contained therein:

COUNT II

21. In answer to Paragraph 26 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their truth or falsity;

22. In answer to Paragraphs 27, 28, and 29 of the Amended Complaint, Ricks admits Ballentyne responded to DL Evans that it would not deliver water to DL Evans pursuant to the subject correction Trustee's Deed without a court order, and denies all other allegations contained therein;

23. In answer to Paragraph 30 of the Amended Complaint, Ricks denies the allegations contained therein because he is without sufficient knowledge as to their truth or falsity;

24. In answer to Paragraph 31 of the Amended Complaint, Ricks denies the allegations contained therein;

25. In answer to Paragraph 32 of the Amended Complaint, Ricks denies the allegations contained therein, as Idaho Code speaks for itself;

26. In answer to Paragraph 33 of the Amended Complaint, Ricks admits Ballentyne responded to DL Evans that it would not deliver water to DL Evans pursuant to the subject correction Trustee's Deed without a court order, and denies all other allegations contained therein;

27. In answer to Paragraph 34 of the Amended Complaint, Ricks denies the allegations contained therein;

COUNT III

28. In answer to Paragraph 36 of the Amended Complaint, Ricks denies the allegations contained therein:

29. In answer to Paragraph 37 of the Amended Complaint, Ricks admits that all assessments associated with shares held by Ricks in Ballentyne have been paid through 2013, and denies all other allegations contained therein:

30. In answer to Paragraph 38 of the Amended Complaint, Ricks admits that the water rights owned by Ballentyne were adjudicated by the Snake River Basin Adjudication District Court. Ricks denies all other allegations contained therein. Ricks further states that the bylaws, water rights, articles, stock certificates, and Idaho law speak for themselves without interpretation by DL Evans:

31. In answer to Paragraph 39 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their truth or falsity:

32. In answer to Paragraph 40 of the Amended Complaint, Ricks admits the allegations contained therein:

33. In answer to Paragraph 41 of the Amended Complaint, Ricks denies the allegations contained therein:

34. In answer to Paragraph 42 of the Amended Complaint, Ricks denies the allegations contained therein:

35. In answer to Paragraph 43 of the Amended Complaint, Ricks denies the allegations contained therein:

36. In answer to Paragraph 44 of the Amended Complaint, Ricks denies the allegations contained therein:

COUNT IV

37. In answer to Paragraphs 46 and 47 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their truth or falsity. Ricks further states that Idaho law speaks for itself without interpretation by DL Evans:

38. In answer to Paragraph 48 of the Amended Complaint, Ricks admits that Ballentyne is a "ditch company." Ricks denies all other allegations contained therein as Idaho law speaks for itself without interpretation by DL Evans;

39. In answer to Paragraph 49 of the Amended Complaint, Ricks admits Ballentyne does not own land. Ricks denies all other allegations contained therein;

40. In answer to Paragraph 50 of the Amended Complaint, Ricks denies whether "IDWR lists Ballentyne as the "current owner"" as he is without sufficient knowledge as to their truth or falsity. Ricks denies all other allegations contained therein as Idaho law speaks for itself without interpretation by DL Evans;

41. In answer to Paragraphs 51 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their truth or falsity. Ricks further states that Idaho law speaks for itself without interpretation by DL Evans:

42. In answer to Paragraph 52 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their

truth or falsity. Ricks further states that Idaho law speaks for itself without interpretation by DL Evans:

43. In answer to Paragraph 53 of the Amended Complaint, Ricks denies the allegations contained therein. Ricks further states the bylaws, water rights, articles, stock certificates, and Idaho law speak for themselves without interpretation by DL Evans:

44. In answer to Paragraph 54 of the Amended Complaint, Ricks admits he is aware of the request made by DL Evans to IDWR. Ricks denies all other allegations contained therein as the IDWR order speaks for itself without interpretation by DL Evans:

45. In answer to Paragraphs 55 and 56 of the Amended Complaint, Ricks denies the allegations contained therein. Ricks further states that Idaho law speaks for itself without interpretation by DL Evans:

46. In answer to Paragraphs 57 and 58 of the Amended Complaint, Ricks denies the allegations contained therein:

COUNT V

47. In answer to Paragraph 60 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their truth or falsity. Ricks further states that Idaho law speaks for itself without interpretation by DL Evans:

48. In answer to Paragraph 61 of the Amended Complaint, Ricks denies the allegations contained therein and affirmatively asserts that the bylaws, water rights, articles, and stock certificates speak for themselves without interpretation by DL Evans:

49. In answer to Paragraph 62 of the Amended Complaint, Ricks admits that Ballentyne is a corporation and has bylaws. Ricks denies all further allegations contained therein as the bylaws, water rights, articles, and stock certificates speak for themselves without interpretation by DL Evans;

50. In answer to Paragraph 63 of the Amended Complaint, Ricks denies the allegations contained therein. Ricks further states the bylaws, water rights, articles, stock certificates, and Idaho law speak for themselves without interpretation by DL Evans;

51. In answer to Paragraphs 64 and 65 of the Amended Complaint, Ricks denies the allegations contained therein for the reason he is without sufficient knowledge as to their truth or falsity. Ricks further states the bylaws, water rights, articles, stock certificates, and Idaho law speak for themselves without interpretation by DL Evans;

52. In answer to Paragraph 66 of the Amended Complaint, Ricks denies the allegations contained therein;

FIRST AFFIRMATIVE DEFENSE

53. Ricks asserts that DL Evans claims are barred from recovery based upon the doctrines of estoppel and waiver.

SECOND AFFIRMATIVE DEFENSE

54. DL Evans has failed to join an indispensable or necessary party.

THIRD AFFIRMATIVE DEFENSE

55. DL Evans never obtained a security interest or lien in the subject stock certificate issued by Ballentyne to Ricks, and, thus, DL Evans has no security interest or lien in such stock certificate or the rights attributable thereto.

FOURTH AFFIRMATIVE DEFENSE

56. That DL Evans never foreclosed upon the subject stock certificate issued by Ballentyne to Ricks, and DL Evans had no right to foreclose upon the same.

FIFTH AFFIRMATIVE DEFENSE

57. DL Evans failed to state a claim upon which relief may be granted.

SIXTH AFFIRMATIVE DEFENSE

58. DL Evans request for a court order requiring Ballentyne to transfer to DL Evans the stock certificate issued to Ricks is inappropriate, improper, and unlawful.

SEVENTH AFFIRMATIVE DEFENSE

59. DL Evans' amended complaint is barred by res judicata because it failed to seek judicial review of the June 12, 2013 preliminary order issued by IDWR, captioned, *In the Matter of the Petition Requesting a Determination of the Right to Use Water Under Shares of the Ballentyne Ditch Co., Ltd.* Said order became final by operation of law when DL Evan failed to seek reconsideration or request a hearing.

EIGHTH AFFIRMATIVE DEFENSE

60. DL Evans' amended complaint is barred by res judicata because it failed to object, respond, or otherwise participate in the water rights owned by Ballentyne, which were decreed in the SRBA and certified as final judgments in accordance with I.R.C.P. 54(b).

NINTH AFFIRMATIVE DEFENSE

61. DL Evans has been paid in full on the subject note pursuant to Idaho law, and, thus, has no further indebtedness allegedly secured by assets of Ricks, including, but not limited to, the subject stock certificate issued by Ballentyne.

TENTH AFFIRMATIVE DEFENSE

62. The subject stock certificate is personal property, and is specifically defined pursuant to the Idaho Commercial Code as a security. Thus, any alleged security interest or lien on such stock certificate must comply with the Idaho Commercial Code, and DL Evans has failed and refused to comply or satisfy the requirements imposed by the Idaho Commercial Code for obtaining a security interest in a security.

ELEVENTH AFFIRMATIVE DEFENSE

63. For arguendo, if DL Evans has a lien or security interest in the subject stock certificate, DL Evans has failed to perfect a security interest in such stock certificate pursuant to the Idaho Commercial Code.

TWELFTH AFFIRMATIVE DEFENSE

64. Ricks hereby reserves the right to assert additional defenses upon completion of discovery in this matter.

REQUEST FOR ATTORNEYS' FEES

65. Ricks hereby requests that he be awarded his costs and attorneys' fees incurred herein pursuant to applicable law, including, but not limited to, Idaho Code §§ 12-120 and 12-121.

WHEREFORE, the Defendant Thomas M. Ricks prays that the Amended Complaint be dismissed with prejudice, that DL Evans take nothing thereby, and that Ricks be awarded his attorneys' fees and costs in defending this matter.

DATED this 20th day of August, 2014.

MCHUGH BROMLEY, PLLC

A handwritten signature in black ink, appearing to read 'C. M. Bromley', written over a horizontal line.

CHRIS M. BROMLEY
Attorneys for Thomas M. Ricks

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of August, 2014, a true and correct copy of the foregoing document was served as follows:

Jason R. Naess Parsons Smith Stone Loveland & Shirley, LLP PO Box 910 Burley, ID 83318	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Delivery
John Homan Idaho Department of Water Resources PO Box 83720-0098 Boise, ID 83720	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Delivery
S. Bryce Farris Sawtooth Law Offices, PLLC PO Box 7985 Boise, ID 83707	<input checked="" type="checkbox"/> First Class Mail <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Facsimile <input type="checkbox"/> Overnight Delivery


CHRIS M. BROMLEY