

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**

**GENE HYATT, successor trustee of the)
HYATT REVOCABLE LIVING TRUST,)**

Plaintiff,)

vs.)

**JOHN W. HYATT, and SHIRLEY M. HYATT,)
individually and as a marital community,)
REBEKAH A. HYATT and JOHN DOE)
HYATT, individually and as a marital)
community, JOHN W. HYATT as the)
trustee of record for CHURCH ROAD)
TRUST and BOB DOE and MARY DOE.)**

Defendants.)

Case No. **CV 2010 6541**

**MEMORANDUM DECISION AND
ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on "Plaintiff's Motion for Summary Judgment" filed on January 14, 2011. None of the defendants filed any written response to the motion for summary judgment. Instead, on February 8, 2011, defendant John W. Hyatt filed a pleading entitled: "Notice of Verified Claim, Notice of Understanding, Notice of Liability and Opportunity to Limit Your Exposure, Notice of Principal is Notice to Agent, Notice to Agent is Notice to Principal." At that same time on February 8, 2011, the following document was filed: "Ecclesiastic Deed Poll", replete with a blood stained fingerprint instead of a signature, with a copy shown going by John W. Hyatt to: the California Department of Public Health; United States Department of State; United States Department of Justice Attorney General of the United States; the Department of

Treasury (in San Juan, Puerto Rico); the Embassy of the Apostolic Nuncature of the Holy See; the Attorney General's Office (in London, England); Her Majesty the Queen (of England); and the Office of the Holy See Attn: Pope Benedict XVI.

Oral argument on the motion for summary judgment was held on February 16, 2011. Plaintiff was represented by Theron DeSmet, attorney at law. Defendant John W. Hyatt, defendant Shirley M. Hyatt and defendant Rebekah A. Hyatt each appeared *pro se*. No one appeared to represent defendant Church Road Trust. As set forth previously, John W. Hyatt cannot represent anyone other than himself *pro se*. The Idaho Supreme Court has stated: "We recognize the inherent right of a natural person to represent himself Pro Se, but this right does not extend to representation of other persons or corporations." *Weston v. Gritman Memorial Hospital*, 99 Idaho 717, 720, 587 P.2d 1252, 1255 (1978). In *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 215 P.3d 457 (2009), the Idaho Supreme Court adopted the rule that business entities must be represented by attorneys before the Idaho Industrial Commission; the rule applies equally to the practice of law before any judicial body. *Indian Springs*, 147 Idaho 737, 744-45, 215 P.3d 457, 464-65.

In sum, 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.

Id. In *Indian Springs, LLC*, the Idaho Supreme Court specifically noted that although individuals are permitted to represent their property interest in a *pro se* capacity, trustees may not do so. 147 Idaho 737,745, 215 P.3d 457, 465. "It is fairly well-established that a trustee's duties in connection with his or her office do not include the right to present an argument *pro se* in the courts." *Id.* John W. Hyatt may represent his individual interests, but cannot represent Church Road Trust in any capacity.

This Court has set forth the pertinent procedural and factual history in its January 14, 2011 “Memorandum Decision and Order Granting Plaintiff’s Motions: 1) Plaintiff’s Motion for Judicial Notice of Facts and Records, 2) Plaintiff’s Motion for Attorneys’ Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 and 3) Plaintiff’s Motion to Strike Pleadings/Filings and/or Motion to Dismiss”.

The Court will briefly discuss the two cases which have now been consolidated. The Court will discuss the two cases in the order in which they were filed. All three pending motions are filed in Kootenai County Case No. CV 2010 6541.

A. Kootenai County Case No. CV 2010 6541.

On July 30, 2010, judgment creditor Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, against judgment debtor, John W. Hyatt, filed an “Affidavit Regarding Filing a Foreign Judgment” in Kootenai County Case No. CV 2010 6541, the case assigned to the undersigned, Judge John Mitchell. That Affidavit of Michael Ramsden, attorney for Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, attached the April 29, 2010, California Superior Court in Los Angeles judgment (Order on Probate Code § 850 Petition for Return of Trust Property and Damages Filed by Gene Hyatt) requiring defendant John W. Hyatt to pay \$555,000.00 to Gene Hyatt as the successor trustee of the Hyatt Revocable Living Trust. The purpose of the Affidavit Regarding Filing a Foreign Judgment was to satisfy the requirements of Idaho Code § 10-1303 and for filing a foreign judgment in this matter. Affidavit Regarding Filing a Foreign Judgment, p. 2, ¶ 6. A Notice of Filing of Foreign Judgment was filed on July 30, 2010, as well. A Writ of Execution was issued and filed on August 12, 2010. On August 23, 2010, “John Walter Hyatt – Sui Juris and True Appointed Trustee – John Walter Hyatt” filed a “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt.” On September 16, 2010, Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust filed “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”, and an “Affidavit of Michael E. Ramsden in Support of Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”.

On September 23, 2010, this Court issued its “Memorandum Decision and Order on: ‘Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt.’” That decision, in its entirety reads:

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John

Walter Hyatt”, filed August 23, 2010, and “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment” filed on September 16, 2010. Neither party has noticed their motions for a hearing.

On July 30, 2010, plaintiffs filed their “Notice of Filing Foreign Judgment”. The foreign judgment is dated April 29, 2010, is from California Superior Court of Los Angeles, and is in the amount of \$555,000.00 in favor of Gene Hyatt as successor trustee on behalf of the (plaintiff herein) Hyatt Revocable Living trust, and is against defendant John Walter Hyatt (defendant herein). On August 23, 2010, defendant John Walter Hyatt *pro se* filed his the “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, in response to plaintiff’s Notice of Filing Foreign Judgment. On September 16, 2010, plaintiffs filed “Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”, and “Affidavit of Michael E. Ramsden in Support of Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment”.

II. ANALYSIS.

In defendant John Walter Hyatt’s *pro se* “Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt”, John Walter Hyatt recognizes that this Court has jurisdiction over both parties (Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt, p. 2, ¶2), and John Walter Hyatt makes various complaints about his family’s dynamics (*Id.*, pp. 2-4, ¶¶ 1-11), and makes various allegations about improprieties in the California proceeding (*Id.*, pp. 4-6, ¶¶ 12-20). John Walter Hyatt “demands a SHOW CAUSE HEARING...” (*Id.*, p. 7), but has failed to notice such up for a hearing. John Walter Hyatt sets forth his versions of the authority for jurisdiction and remedies this Court possesses. *Id.*, pp. 8-9. However, John Walter Hyatt fails to cite I.C. § 10-2304, and he fails realize that the only vehicle available to this Court for a stay of execution is I.C. § 10-2304. Under that statute, the only means for this Court to grant a stay is “if the judgment debtor shows the district court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted...” John Walter Hyatt has alleged none of these things in his Counter-claim and Demand for Emergency Injunctive Relief and Demand for

Show Cause Hearing Presented by Affidavit of John Walter Hyatt. Additionally, plaintiffs are correct that: John Walter Hyatt's arguments are barred by *res judicata* (Plaintiff's Memorandum in Opposition to Defendant's Motion for Invalidity, Injunctive Relief and Stay of Execution on Foreign Judgment, pp. 4-5); John Walter Hyatt has not been deprived due process (*Id.*, pp. 5-6); John Walter Hyatt's pleading in this Idaho case is an unlawful collateral attack on the California proceeding and judgment (*Id.*, pp. 6-7); that John Walter Hyatt cannot assert a claim on behalf of others (*Id.*, pp. 7-8) and that John Walter Hyatt has failed to state a claim upon which relief can be granted. *Id.*, p. 7.

III. CONCLUSION AND ORDER.

For the reasons stated above, Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt must be denied.

IT IS HEREBY ORDERED THE Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt is hereby DENIED.

Memorandum Decision and Order on: "Counter-claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt", pp. 1-3.

On October 19, 2010, "John Walter Hyatt – Sui Juris and True Appointed Trustee – John Walter Hyatt" filed a plethora of other filings were made which do not comport with the Idaho Rules of Civil Procedure. All of these pleadings are signed by John Walter Hyatt. It is in this case in which all three motions are pending.

On December 28, 2010, the undersigned, who was at all times assigned to Kootenai County Case No. CV 2010 6541, signed an order consolidating Judge Simpson's case (Kootenai County Case No. CV 2010 8180) into CV 2010 6541.

B. Kootenai County Case No. CV 2010 8180.

On September 22, 2010, plaintiff Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust, filed the Complaint in CV 2010 8180, the case assigned to Judge Benjamin Simpson. That Complaint alleged that defendant John W. Hyatt is a trustee of the defendant Church Road Trust, which owns four parcels of real property located in Kootenai County, Idaho. Complaint, p. 2. Shirley Hyatt is alleged to be John W. Hyatt's wife, and Rebekah A. Hyatt is their daughter and is also alleged to own these four parcels. *Id.*, pp. 2, 4. The Complaint alleges that on April 29, 2010, California Superior Court in Los Angeles entered a Judgment requiring defendant John W. Hyatt to pay \$555,000.00 to Gene Hyatt as the successor trustee of the Hyatt Revocable Living Trust and return various specific property of Dorothy Hyatt. *Id.*, p. 3. Defendant John W. Hyatt neither paid the Judgment nor did he return the property. *Id.*

Plaintiff alleges the California Judgment establishes that defendants John W. Hyatt and Shirley Hyatt, in bad faith, intentionally and wrongfully stole Trust Assets from the Hyatt Revocable Living Trust and/or Dorothy Hyatt, and then John W. Hyatt and Shirley Hyatt used the stolen Trust Assets to acquire the Kootenai County real property. *Id.* Plaintiff Gene Hyatt, successor trustee of the Hyatt Revocable Living Trust then domesticated the Judgment and recorded it in the Records of Kootenai County so that it is a lien on defendant John W. Hyatt's real property in Kootenai County. *Id.* Plaintiff claims John W. Hyatt and Shirley Hyatt owned these parcels as one single parcel, then deeded the parcel to John W. Hyatt as trustee for the Church Road Trust, and then John W. Hyatt as trustee for the Church Road Trust divided the parcel into four parcels, and then on September 9, 2009, John W. Hyatt as trustee for the Church Road Trust conveyed the four parcels to his daughter Rebekah Hyatt. Plaintiff gave notice to defendants of a *lis pendens* action and sues defendants on theories of fraudulent conveyance, unjust enrichment, and conversion. *Id.*, pp. 5-7. Plaintiff seeks an order requiring the parcels be reconveyed to John W. Hyatt and then executed upon to satisfy the California Judgment. *Id.*, pp. 7-8. In the case originally before District Judge Ben Simpson, on October 21, 2010, John Walter Hyatt, Shirley Michelle Hyatt and Rebekah Ann Hyatt filed an "Answer, Counterclaim, Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt, Shirley Michelle Hyatt and Rebekah Ann Hyatt." Only John W. Hyatt signed that pleading, and as discussed above, he cannot represent his wife or his daughter. The Answer primarily claims there was a fraud upon the California court. Also on October 21, 2010, a plethora of other filings were made which do not comport with the Idaho Rules of Civil Procedure. On December 28, 2010, upon plaintiff's motion, Judge Simpson struck those pleadings and two others that were filed after October 21, 2010. Also, on December 28, 2010, the undersigned, who was at all times assigned to Kootenai County Case No. CV 2010 6541, signed an order consolidating Judge Simpson's case (Kootenai County Case No. CV 2010 8180) into CV 2010 6541.

Memorandum Decision and Order Granting Plaintiff's Motions: 1) Plaintiff's Motion for Judicial Notice of Facts and Records, 2) Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 and 3) Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss, pp. 1-7. In that decision, this Court granted Plaintiff's Motion for Judicial Notice of Facts and Records, granted Plaintiff's Motion to Strike Pleadings/Filings and/or Motion to Dismiss, and granted Plaintiff's Motion for Attorneys' Fees, Costs and Sanctions Pursuant to I.R.C.P. 11 as against John W. Hyatt only.

II. STANDARD OF REVIEW.

In considering a motion for summary judgment, the Court is mindful that summary judgment may properly be granted only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether any issue of material fact exists, this court must construe all facts and inferences contained in the pleadings, depositions, and admissions, together with the affidavits, if any, in the light most favorable to the non-moving party. I.R.C.P. 56(c); *Sewell v. Neilson, Monroe Inc.*, 109 Idaho 192, 194, 706 P.2d 81, 83 (Ct. App. 1985). A mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue for purposes of summary judgment. *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134, Idaho 84, 87, 996 P.2d 303, 306 (2002). Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence. *Smith v. Meridian Joint School District No. 2*, 128 Idaho 714, 718, 918 P.2d 583, 587 (1996). In any case which will be tried to the court, rather than to a jury, the trial judge is not constrained to draw inferences in favor of the party opposing a motion for summary judgment, but instead, can arrive at the most probable inferences to be drawn from uncontroverted evidentiary facts. *Riverside Dev. Co. v. Ritchie*, 103 Idaho 515, 518, 650 P.2d 657, 661, n. 1.

III. ANALYSIS.

A. Fraudulent Conveyance.

Plaintiff Gene Hyatt alleges the original grantee of the real property, the Church Road Trust, agrees the first conveyance was fraudulent under the Uniform Fraudulent Transfer Act (UFTA). Memorandum in Support of Plaintiff's Motion for Summary Judgment, p. 5. Gene Hyatt also argues the subsequent transfer, from the Church

Road Trust to Rebekah Hyatt, was also a fraudulent conveyance within the meaning of the UFTA. *Id.* Gene Hyatt states the fact that the conveyances were fraudulent has been conclusively established and no genuine issues of material fact exist in this regard because John Hyatt (individually and as trustee of the Church Road Trust), Shirley Hyatt, and Rebekah Hyatt, have failed to deny the request for admission served upon each of them. *Id.*, pp. 5-6.

Idaho Rules of Civil Procedure 36 (a) states:

Each matter of which an admission is requested shall be separately set forth. The matter is admitted unless, within 30 days after service of the request,...the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed under oath...

I.R.C.P. 36(a). Indeed, “[t]he conclusiveness of matters admitted pursuant to Rule 36(b) applies equally to admissions made affirmatively and those made by default.” *Deloge v. Cortez*, 131 Idaho 201, 204, 953 P.2d 641, 644 (Ct.App. 1998) (citing *Quiring v. Quiring*, 130 Idaho 560, 944 P.2d 695 (1997) and *American Auto. Ass’n v. AAA Legal Clinic*, 930 F.2d 1117, 1120 (5th Cir., 1991)).

Defendants John Hyatt, Shirley Hyatt and Rebekah Hyatt have not replied directly to the motion for summary judgment, but John Hyatt has filed a “Notice of Liability, Notice of Understanding, Notice of Liability and Opportunity to Limit Your Exposure, Notice to Principal is Notice to Agent, Notice to Agent is Notice to Principal”. Therein, John Hyatt asserts eighty-three statements under the heading “Verified Declaration and Affidavit and Statement of Material Facts”. Some of these statements of John Hyatt are that: Case CV 2010 6541 “is a false claim of title against of [sic] John Walter Hyatt, Shirley Michelle Hyatt, Rebekah Hyatt and their property”; Case CV 2010 6541 is based on fraud; no verified proof of superior claim of title against John Walter

Hyatt, Shirley Michelle Hyatt, Rebekah Ann Hyatt and their property exists in Case CV 2010 6541; that John Hyatt believes no proper personal service upon him in the California matter was effected; and John Hyatt believes “affiant competently expressed and provided proof of the fraud and fraud on the court to the court, and that the court has failed to act to investigate if there is fraud and fraud on the court and to repel any fraud.” Notice of Liability, Notice of Understanding, Notice of Liability and Opportunity to Limit Your Exposure, Notice to Principal is Notice to Agent, Notice to Agent is Notice to Principal, pp. 4-12. John Hyatt also makes unclear allegations that jurisdiction over Shirley Hyatt, Rebekah Hyatt, and himself is not proper. *Id.*

As mentioned above, under Idaho law, facts are liberally construed in favor of a party opposing a motion for summary judgment, and the party opposing summary judgment is given the benefit of all reasonable inferences which might reasonably be drawn from the evidence. *Farmer’s Ins. Co of Idaho v. Brown*, 97 Idaho 380, 544 P.2d 1150 (1976); *Straley v. Idaho Nuclear Corp.*, 94 Idaho 917, 500 P.2d 218 (1972). But,

This Court consistently has held that a genuine issue is not created by a mere scintilla of evidence; there must be evidence on which a jury could rely. Summary judgment is proper if the evidence before the court on the motion would warrant a directed verdict if the case were to go to trial. When the moving party presents materials which would entitle him to a directed verdict if presented at trial, the responding party may not hold back his evidence; he must present sufficient materials to establish a triable issue. Those materials must set forth the facts with particularity; for if general averments were sufficient the summary judgment procedure would lose its utility.

Johnson v. Gorton, 94 Idaho 595, 598, 495 P.2d 1, 4 (1972) (footnotes omitted); *Cook v. Soltman*, 96 Idaho 187, 525 P.2d 969 (1974).

The UFTA provides:

A transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor’s claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or

incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
2. intended to incur, or believed or reasonably should have believed that he or she would incur, debts beyond his or her ability to pay as they became due.

I.C. § 55-913 (1). The UFTA defines a “creditor” as any person who has a claim and a “debtor” as a person who is liable on a claim. I.C. §§ 55-910 (4); (6). Because John Hyatt (individually and as trustee of the Church Road Trust), Shirley Hyatt, and Rebekah Hyatt have failed to deny the request for admission served upon each of them, Gene Hyatt is correct in that has been conclusively established the conveyances were fraudulent and no genuine issues of material fact exist on this issue. Memorandum in Support of Plaintiff’s Motion for Summary Judgment, pp. 5-6. At this juncture, none of the defendants have set forth sufficient evidence to establish a triable issue on the question of whether they transferred property with the intent to hinder, delay or defraud their judgment creditor, plaintiff Gene Hyatt.

B. Liability of the Marital Community.

Similarly, Gene Hyatt argues the matters deemed admitted pursuant to the failure of defendants to deny any proffered requests for admission establish the fact that John and Shirley Hyatt wrongfully took \$185,000.00 to purchase real property and all defendants continue to receive the benefit of living there. Memorandum in Support of Plaintiff’s Motion for Summary Judgment, p. 7. Gene argues John and Shirley Hyatt’s wrongful acts resulted in the California Judgment, “which was a debt that was incurred during the existence of the Hyatt marital community and incurred for the benefit of the

marital community.” *Id.*

In *Twin Falls Bank & Trust v. Holley*, 111 Idaho 349, 723 P.2d 893 (1986), the Idaho Supreme Court wrote:

Essentially, the community property system merely makes additional resources (community property) available to a creditor from which to seek satisfaction of unpaid debt. Thus, under the community property system in Idaho and I.C. § 32-912 which has established a rule of co-equal management of community assets or property, when either member of the community incurs a debt for the benefit of the community, the property held by the marital community becomes liable for such a debt and the creditor may seek satisfaction of his unpaid debt from such property. *Simplot v. Simplot*, 96 Idaho 239, 526 P.2d 844 (1974).

111 Idaho 349, 352-53, 723 P.2d 893, 896-97. Although she has made no effort to meet this burden, the burden is on Shirley Hyatt to prove that real property levied on as community property under a judgment against her husband was her own separate property. *Prescott v. Snell*, 50 Idaho 644, 299 P. 1079 (1931). As above, none of the defendants have set forth sufficient materials to establish a triable issue on the question of whether the John and Shirley Hyatt marital community is jointly and severally liable for satisfaction of the California Judgment.

C. Conversion and Unjust Enrichment.

Gene Hyatt argues the defendants exercised control and dominion over the Hyatt Revocable Living Trust property, and, even after entry of a Judgment ordering return of the property, they have failed to do so. Thus, Gene Hyatt claims defendants have converted the property of the Hyatt Revocable Living Trust. Memorandum in Support of Plaintiff’s Motion for Summary Judgment, pp. 7-8. Similarly, defendants’ retention of the benefit of living on the property in question and of using the trust property amounts to unjust enrichment. *Id.*, p. 8. The Hyatt Revocable Living Trust now asks this Court to prove damages relating to their claims of conversion and unjust enrichment at trial. *Id.*

Conversion has been defined by the Idaho Supreme Court as:

...any distinct act of dominion wrongfully exerted over another's personal property in denial or inconsistent with his rights therein, such as a tortuous taking of another's chattels, or any wrongful exercise of authority, personally or by procurement, over another's goods, depriving him of the possession, permanently or for an indefinite time.

Klam v. Koppel, 63 Idaho 171, 179, 118 P.2d 729, 732 (1941). Conversion normally will not lie for misappropriation of money, unless it can be described or defined as a specific chattel. *Warm Springs Properties, Inc. v. Andora Villa, Inc.*, 96 Idaho 270, 271-72, 526 P.2d 1106, 1107-08 (1974). Similarly, "real property cannot be converted, when a fixture is severed and removed, it is impressed with its character as personalty and can be the subject of an action for conversion." 18 AM.JUR.2d *Conversion* § 18 (2010). Unjust enrichment involves: (1) a benefit being conferred upon the defendant by the plaintiff, (2) appreciation by the defendant of the benefit, and (3) acceptance of the benefit under circumstances in which it would be inequitable to allow the defendant to retain the benefit without payment of the value of the benefit. *Aberdeen-Springfield Canal Co. v. Peiper*, 133 Idaho 82, 88, 982 P.2d 917, 923 (1999).

The record establishes Gene Hyatt has properly set forth claims of conversion regarding personal property items listed in the California Judgment: Dorothy Hyatt's wedding ring, Topaz ring, Amethyst ring, gold pocket watch, furniture, furnishings, crystal, china, and computers. Additionally, Gene Hyatt has set forth a claim for unjust enrichment for the defendants' remaining in real property purchased with the \$185,000.00 taken from the Hyatt Revocable Living Trust. Defendants have not set forth sufficient materials to establish a triable issue on the question of whether they are liable for conversion or unjust enrichment.

D. Statements Made at Oral Argument.

At oral argument on February 16, 2011, John Hyatt repeatedly stated since this Court refused to answer his questions, that he interpreted this Court's silence to be acknowledgement of John Hyatt's claim that this Court lacks personal and subject matter jurisdiction. At each hearing, this Court has informed each of the defendants that this Court cannot give legal advice. There is no reason for this Court to answer John Hyatt's questions when the reason for the hearing was to hear the parties' positions on plaintiff's motion for summary judgment.

John Hyatt also made arguments that the plaintiff and this Court had not sent copies of pleadings to John Hyatt at his correct address, which Hyatt now claims to be:

JOHN WALTER HYATT, Estate
Trust Recipient Number 983157-342158-103015
Nation Idaho.
General Post-Office
Church Road –one-one-three-four-one.
Rathdrum, Hyatt Province.
United States Minor, Outlying Islands.
Near. [83858-9998]
Telephone: (208) 687-0493

Notice of Hearing, filed February 17, 2011, p. 1. However, at the beginning of the litigation, John Hyatt insisted under penalty of perjury that the following was his correct mailing address:

c/o 11341 N. Church Rd.
Rathdrum, (83858) Idaho

Counter-Claim and Demand for Emergency Injunctive Relief and Demand for Show Cause Hearing Presented by Affidavit of John Walter Hyatt, page 13, filed August 23, 2010. All pleadings by the Court have been sent to 11341 N. Church Rd., Rathdrum, ID 83858. While John Hyatt claimed at oral argument he had no notice, he admitted looking at the Court file to see what pleadings had been filed by plaintiff. Recently, all mailings to each of the defendants has been returned to the clerk of the court with

“Return to Sender Void Location” handwritten on the envelope. Unfortunately for defendants, one cannot avoid service in this fashion. In *Rodell v. Nelson*, 113 Idaho 945, 947, 750 P.2d 966, 968 (Ct.App. 1988), the Idaho Court of Appeals held the district court was justified in not setting aside a default judgment, and finding that the defendant refused service, where a process server was attacked by dogs as he attempted to serve a copy of an order for the withdrawal of defendant’s attorney and where a certified mailing to the defendant was returned unclaimed. The Idaho Court of Appeals held:

It is a well-settled general principle that a person has no right to shut his eyes or ears to information and then to say that he lacked notice of the avoided facts. As a corollary to that principle, a person may not avoid the effect of a written notice by refusing service of the notice.

Id. It is no legal defense for John Hyatt to provide the Court and his opponent with the following address: 11341 N. Church Rd., Rathdrum, Idaho, and then later refuse to accept mailings to that address, claiming to have some other address in the “outlying islands” near Rathdrum.

At oral argument John Hyatt argued that he wants a jury trial. However, at no time has he or any other party demanded such. John Hyatt’s failure to follow I.R.C.P. 38 results in a waiver of his right to demand a jury.

At oral argument, both John Hyatt and Shirley Hyatt complained of the fraud that was allegedly perpetrated upon the California court by plaintiff. The problem is none of the defendants have come up with any cogent legal argument as to why this Court would be the appropriate forum to retry those issues decided by a California judge.

IV. CONCLUSION AND ORDER.

For the reasons stated above, no genuine issue of material fact exists, plaintiff is entitled to judgment as a matter of law and plaintiff’s motion for summary judgment must

be granted.

IT IS HEREBY ORDERED plaintiff's Motion for Summary Judgment is GRANTED.

Entered this 1st day of March, 2011.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of March, 2011, 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>Pro se</u>	
Michael E. Ramsden		John Walter Hyatt	Rebekah Ann Hyatt
Theron DeSmet	664-5884	11341 N. Church Road	11341 N. Church Road
		Rathdrum, ID 83858	Rathdrum, ID 83858
		Michelle Hyatt	
		11341 N. Church Road	
		Rathdrum, ID 83858	

Jeanne Clausen, Deputy Clerk