STATE OF IDAHO)
County of KOOTENAI)ss

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CLERK OF DISTRICT COURT

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Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

BONHAM INVESTMENTS CORP., an Idaho Corporation, MICHAEL KEESE, and PATRICK FANNIN, *Plaintiffs*, vs. **STEPHEN P. PARKER and ESTRELLA PARKER, husband and wife and their marital community, and THE PARKER FAMILY TRUST,** *Defendants*.	Case No. **CV 2011 5952** **MEMORANDUM DECISION AND ORDER GRANTING PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION; and ORDER FOR MEDIATION**

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on plaintiffs Patrick Fannin (Fannin), Michael Keese (Keese) and Bonham Investments Corp. (Bonham), motion for preliminary injunction. Plaintiffs bring claims against defendant Stephen Parker (Parker) of injunctive relief, fraud in the inducement, corporate fraud regarding the patent application, breach of fiduciary duties, unjust enrichment, conversion and breach of contract. Complaint pp. 15-22. The Complaint names as defendants Estrella Parker (but only in her marital capacity, not as an actor in this case) and The Parker Family Trust, which apparently does not exist. Accordingly, all references to Parker are to Stephen Parker.

Fannin, Keese and Bonham entered into an agreement with defendant Stephen Parker (Parker), pursuant to which the parties were to develop a means of selling structured settlements through an online auction system. On July 22, 2011, Fannin and Keese filed their *pro se* Complaint (Fannin is an attorney and filed these pleadings

purporting to represent Bonham) and Motion for CR 65(b) TRO and CR 65(e) Preliminary Injunction. (It is unknown why the Idaho Rules of Civil Procedure, which are appropriately abbreviated as "I.R.C.P." pursuant to I.R.C.P. 87, are not used, and instead Fannin and Keese choose to abbreviate with "CR", which would be an incomplete abbreviation for the Idaho Criminal Rules pursuant to I.C.R. 2). In plaintiffs' motion for injunctive relief, plaintiffs seek to prevent Parker from: selling, transferring, or encumbering any intellectual property rights associated with the Provisional Patent Application filed with regard to the business method of selling structured settlements via online auction; communicating with the insurer making structured settlement payments to the parties' Hayden Lake Asset Trusts One and Two; conducting business through the Bonham Investment Corporation (Bonham); selling any Bonham stock; using in any way the confidential, proprietary trade secret information of Bonham; and competing or participating in the structured settlement business. Memorandum Supporting Motion for CR 65(b) TRO and CR 65(e) Preliminary Injunction, p. 15. On July 22, 2011, this Court denied plaintiffs' motion for a TRO, due to plaintiffs failure to comply with I.C. § 55109 and I.C. §§ 55-710 to 55-715 in regard to plaintiffs' affidavits, and because defendants were not provided any notice by plaintiffs. Order Denying CR65(b) TRO, p. 2. The Court also scheduled the hearing on plaintiffs' motion for preliminary injunction for August 22, 2011.

On August 3, 2011, plaintiffs filed an Affidavit of Michael Keese in Support of Motion for Preliminary Injunction, an Affidavit of Patrick Fannin in Support of Motion for Preliminary Injunction and a Memorandum Supporting Motion for CR 65(e) Preliminary Injunction. On August 4, 2011, plaintiffs filed a certificate of service that all those pleadings (filed on August 3, 2011) were served upon Parker. On August 10, 2011, counsel for defendants filed a Notice of Appearance. On August 15, 2011, counsel for

Bonham filed a Notice of Appearance and joinder in Fannin and Keese's motions. On August 18, 2011, an Affidavit of Steven Parker was filed, along with Defendants' Opposition to Plaintiffs' Motion for Preliminary Injunction. Also on August 18, 2011, plaintiffs Fannin and Keese filed: "Plaintiffs' Reply Brief, Request for Additional Preliminary Relief and Motion for Shortened Notice", a Supplemental Affidavit of Michael Keese in Support of Motion for Preliminary Injunction, a Third Supplemental Affidavit of Michael Keese in Support of Motion for Preliminary Injunction, and yet a different "Plaintiffs' Reply Brief." On August 19, 2011, plaintiffs Fannin and Keese filed a Third Supplemental Affidavit of Patrick Fannin in Support of Motion for Preliminary Injunction. Also, on August 19, 2011, Parker filed a "Corrected Defendants' Motion for Extension of Time in Which to File Opposition Brief".

The facts are largely in dispute by the parties. Parker created Bonham in February of 2005, filing articles of incorporation with the Secretary of State. In September of 2010, Keese and Parker purchased a structured settlement and created the Hayden Lake Asset Trust Number One to hold and/or re-sell the payments they acquired. *Id.,* p. 2. Parker argues this trust was his separate property and not a Bonham asset. Affidavit of Stephen Parker, p. 6, ¶ 21. Thereafter, Fannin, Keese, and Parker agreed to form a company to acquire and auction structured settlement payments; Parker alleges Keese and Fannin agreed to join his already-existing Bonham for this purpose. Memorandum Supporting Motion for CR 65(e) Preliminary Injunction, p. 3; Affidavit of Stephen Parker, p. 5, ¶ 14. Keese had served as registered agent for Bonham since 2005. Affidavit of Stephen Parker, p. 6, ¶ 25. The parties then purchased another structured settlement, and created Hayden Lake Trust Asset Number Two for that structured settlement. Memorandum Supporting Motion for CR

65(e) Preliminary Injunction, p. 4. Parker concedes Hayden Lake Trust Asset Number Two is a Bonham asset. Affidavit of Stephen Parker, p. 6, ¶ 21.

Beginning in October of 2010, the parties began creating their business by researching and developing a website and auction software, retaining legal counsel, and working toward applying for a business method patent. Memorandum Supporting Motion for CR 65(b) TRO and CR 65(e) Preliminary Injunction, p. 4. Fannin and Keese allege they were named Secretary and Treasurer of Bonham, respectively, and "…Parker signed over to Fannin and Keese…" thirty-three percent each of Bonham's 1,000 shares each. *Id.,* p. 5. Specifically, plaintiffs claim:

> On October 13, 2010, Parker signed over to Fannin and Keese thirty-three percent each of Bonham's 1000 shares (or three hundred and thirty each) and pursuant to their negotiations giving Parker one extra percent, Parker received thirty four percent (or three hundred and forty shares). (Keese Dec., Fannin Dec., Ex. 11, Bonham resolution issuing shares to Fannin and Keese.)

Id., pp. 5-6, ¶ 30. Parker replies no stock certificates were ever issued to Fannin and Keese and that, although a corporate resolution *offering* shares was circulated on November 29, 2010, there is no record they accepted such. Affidavit of Stephen Parker, p. 7, ¶ 31. Indeed, the Bonham corporate resolution uses language of an offer:

> RESOLVED, on October 13, 2010, Stephen Parker as President and Chairman of Bonham Investments Corp. hereby offers ownership shares equal to 33% of the company's equity to Michael P. Keese as company Treasurer and corporate officer and also offers 33% ownership of the company's equity to Patrick Fannin as company Secretary and corporate officer. Stephen Parker will retain the remaining 34% of the company's equity.

Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, Exhibit 11. Parker claims no record exists of Fannin or Keese accepting and notifying Parker of the acceptance. Affidavit of Stephen Parker, p. 7, ¶ 31. Fannin claims Parker accepted as follows: "I provided a fully executed copy of the October 13, 2010 Bonham Corporate

Resolution wherein Michael Keese and I each received 33% of Bonham's shares to Bonham's corporate address located at 5618 E. Waverly Loop, Hayden Id 83835." Third Supplemental Affidavit of Patrick Fannin in Support of Motion for Preliminary Injunction, p. 2, ¶ 2. Also, at oral argument, Fannin pointed out that the October 13, 2010, corporate resolution of Bonham has signature lines for both Fannin and Keese which read: "Accepted by Michael Keese as Treasurer Bonham Investments Corp" and "Accepted by Patrick Fanning [sic] as Secretary Bonham Investments Corp", and a signature line for Parker which reads: "Attest: Stephen Parker as President and Chairman Bonham Investments Corp". Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, Exhibit 11.

Fannin and Keese contend that throughout the fall of 2010, and thereafter, Parker never claimed to personally own any intellectual property right related to the sought-after business method patent. Memorandum Supporting Motion for CR 65(e) Preliminary Injunction, p. 7. Parker argues he and Fannin had a verbal agreement as of October 2010, that Bonham and the business idea itself belonged solely to Parker. Affidavit of Stephen Parker, p. 8, ¶ 41.

Parker, Fannin, and Keese began discussing Bonham applying for a business method patent in October 2010. In March or April of 2011, the retained law firm submitted a provisional patent application on Bonham's behalf. Memorandum Supporting Motion for CR 65(e) Preliminary Injunction, p. 12, ¶ 66. The patent application lists Parker as sole inventor and owner of the intellectual property at issue, which Parker states was because he "was 100% shareholder, President, and Director of Bonham." Affidavit of Stephen Parker, p. 11, ¶ 65. As of May 2011, the parties were no longer able to work with one another; Fannin and Keese were upset Parker refused to assign the patent to Bonham, and Parker viewed Fannin and Keese's activities as

undermining his role as President, Director, and 100% shareholder of Bonham. Memorandum Supporting Motion for CR 65(b) TRO and CR 65(e) Preliminary Injunction, p. 12, ¶ 69; Affidavit of Stephen Parker, p. 12, ¶ 69. In May of 2011, Fannin and Keese noticed a meeting of corporate officers, at which meeting Fannin and Keese nominated and elected themselves as Chairman of the Board and Director for the Board of Directors, respectively. Memorandum Supporting Motion for CR 65(e) Preliminary Injunction, p. 76. Parker states he informed Fannin and Keese that, as they were officers of Bonham as opposed to shareholders or directors, they did not have the authority to appoint directors. Affidavit of Stephen Parker, p. 12, ¶ 75. After Fannin and Keese removed Parker as President of Bonham and filed paperwork with the Secretary of State to that effect, Parker filed documents "correcting the wrongful and illicit filings by Fannin and Keese." Affidavit of Stephen Parker, p. 12, ¶ 78.

At present, Bonham's bank accounts for the Hayden Lake Asset Trusts are under Parker's control, and payments and correspondence are no longer mailed to Keese's residence, which had served as Bonham's address since 2005. Fannin and Keese also allege Parker currently has improper control over Bonham's intellectual property, web page, software, and assets, including both trusts. Memorandum Supporting Motion for CR 65(e) Preliminary Injunction, p. 14. They seek injunctive relief preventing Parker from: selling, transferring, or encumbering any intellectual property rights associated with the Provisional Patent Application filed with regard to the business method of selling structured settlements via online auction; communicating with the insurer making structured settlement payments to the parties' Hayden Lake Asset Trusts One and Two; conducting business through the Bonham Investment Corporation (Bonham); selling any Bonham stock; using in any way the confidential, proprietary trade secret

information of Bonham; and competing or participating in the structured settlement business. Memorandum Supporting Motion for CR 65(e) Preliminary Injunction, p. 15.

Oral argument on the motion for preliminary injunction was held on August 22, 2011. Fannin, an attorney, appeared *pro se*. Keese appeared *pro se*. The attorney for Bonham was not present. When Bonham's attorney (F. Dayle Andersen) filed his Notice of Appearance on August 15, 2011, on behalf of Bonham, he also filed a Notice of Unavailability and Joinder in Motion Hearing". In that pleading, Bonham's attorney failed to explain why he would be unavailable for hearing, even telephonically which is allowed under the Idaho Rules of Civil Procedure. Parker's attorney was present in the courtroom and Parker was present telephonically.

At oral argument there were cross motions for shortening time, due to the plethora of pleadings filed by Fannin, Keese and Parker at the last minute.

Counsel for Parker objected to the motion by Fannin and Keese for shortened notice, because they were asking for additional relief, and his client, Parker, had not had the opportunity to prepare an opposing affidavit to these new matters raised by Fannin and Keese. The additional relief sought by Fannin and Keese was that they be allowed to revoke Bonham's dissolution, or, to appoint a receiver; that Fannin and Keese be allowed to run Bonham; that Parker be ordered to refrain from filing any additional documents with the Idaho Secretary of State; that Parker be ordered to re-assign Bonham as the beneficiary for Hayden Lake Asset trust One and Two; that Fannin and Keese be allowed to appoint a trustee to collect the monthly payments from Metlife; that Parker disgorge funds wrongfully taken by Parker from Bonham; and that Parker be ordered not to publish derogatory remarks about Fannin and Keese. Reply Brief, Request for Additional Preliminary Relief and Motion for Shrotened Notice, p. 4-5. The Court overruled Parker's objection because Parker was available telephonically and

could testify at the hearing if Parker's counsel wished, and because these were all issues that were peculiarly within the knowledge of Parker, and not some other person or witness not available to testify at the hearing. Parker did testify. The motion to shorten time to in turn file the "Request for Additional Preliminary Relief" by Keese and Fannin was granted.

Parker filed a Motion for Extension of Time in Which to File an Opposition Brief, and noticed such up, but in doing so, did not clear in advance with the Court's Deputy Clerk whether there would be time for that motion to be heard. Control of is schedule rests with the Court, not counsel, as to what matters will be scheduled at any given time for hearing. Counsel cannot unilaterally piggy-back a motion on the time allocated for hearing by some other party (or the same party) to that litigation, without first asking the Court. The local rule reads: "Judges of the District Court: Each District Judge shall establish and control the calendaring of cases to be heard at times set aside for civil, criminal and special proceedings and for Law and Motion matters." Rules of the District Court and Magistrates Division for the First Judicial District, Rule 3. Counsel for Parker told the Court his experience with other judges in the district was "If it is already set for the same time, then, uh…" If, as advocated by Parker's attorney, other judges in this district have a different policy, then such a policy would be counter to the local rule. Such a policy would create complete chaos in allocating sufficient time for multiple hearings on multiple motions in a given case. As an example, this motion for preliminary injunction which was scheduled for one hour, took nearly two hours, due in part to Parker's objections to the motion by Fannin and Keese to raise new matters. Fannin and Keese had no objection to Parker's Motion for Extension of Time in Which to File Opposition Brief, so the motion was granted, and the Court reviewed Parker's brief.

II. STANDARD OF REVIEW.

The grant of an injunction is within the sound discretion of the Court. *White v. Coeur d'Alene Big Creek Mining Co.,* 56 Idaho 282, 55 P.2d 720 (1936); *Harris v. Cassia County,* 106 Idaho 513, 517, 681 P.2d 988, 992 (1984).

A preliminary injunction may be granted upon the following grounds:

> (1) When it appears by the complaint that the plaintiff is entitled to the relief demanded, and such relief, or any part thereof, consists in restraining the commission or continuance of the acts complained of, either for a limited period or perpetually.
>
> (2) When it appears by the complaint or affidavit that the commission or continuance of some act during the litigation would produce waste, or great or irreparable injury to the plaintiff.
>
> (3) When it appears during the litigation that the defendant is doing, or threatens, or is about to so, or is procuring or suffering to be done, some act in violation of the plaintiff's rights, respecting the subject of the action, and tending to render the judgment ineffectual.

I.R.C.P. 65(e) (subparts 4 and 6 are not applicable to this case). The Idaho Supreme Court has evaluated the proper standard for a trial court to consider in *Harris v. Cassia County,* holding that the party seeking the injunction has a burden of proving a right thereto. *Harris,* 106 Idaho 513, 681 P.2d 988 (1984). Idaho Rule of Civil Procedure 65(d) requires that every order granting an injunction shall set forth the reasons for its issuance, it shall be specific in terms, it shall describe in reasonable detail the act sought to be restrained, and it is binding only upon the parties to the action, their officers, agents, servants, employees, attorneys, and those persons in active concert or participation with them who receive actual notice by personal service or otherwise. I.R.C.P. 65(d).

Idaho Rule of Civil Procedure 65(e)(1) contains "entitled to the relief demanded" language. This Court, in *Moon et al. v. North Idaho Farmers Assoc., et al.,*

CV 2002 3890 (D. Ct. First District Kootenai County, Nov. 30, 2002), has stated that this language is frequently restated as a "substantial likelihood of success." *Moon,* CV 2002 3890 at 4. This substantial likelihood of success cannot exist where complex issues of law or fact exist which are not free from doubt. *Id; Harris,* 106 Idaho 513, 518, 681 P.2d 988, 992 ("The substantial likelihood of success necessary to demonstrate that appellant are entitled to the relief they demanded cannot exist where complex issues of law or fact exist which are not free from doubt."). In fact, "[i]t is this Court's opinion that there can be no substantial likelihood of success where there exist complex issues of law, the resolution of which are not free from doubt. This is especially true where the record before the Court is incomplete." *Id.* at 5. A "likelihood of success" and even a "good likelihood of success" are not sufficient. *Id.; Harris,* 106 Idaho 513, 518, 681 P.2d 988, 993. In *Moon,* this Court determined that citizen plaintiffs were not entitled to an injunction related to the farmers' burning of grass seed residue "due to the somewhat complex legal issues, the lack of complete record in some aspects, and because the matter is not free from doubt." *Moon,* CV 2002 3890 at 6. The record in *Moon* was incomplete because the citizen plaintiffs' medical records had only been disclosed to the farmers' counsel at the time of hearing. *Id.*

Idaho Rule of Civil Procedure 65(e)(2) requires that a preliminary injunction issue only in extreme cases where irreparable injury would result to the plaintiff if not granted. *Brady v. City of Homedale,* 130 Idaho 569, 572, 944 P.2d 704, 707 (1997) (a preliminary injunction is issued only in extreme cases where the right is very clear and it appears irreparable injury would result if the injunction were denied.) Ultimately, "[t]he requirements for the issuance of a permanent injunction are 'the likelihood of substantial and immediate irreparable injury and the inadequacy of remedies at law.'" *Easyriders*

Freedom F.I.G.H.T. v. Hannigan, 92 F.3d 1486, 1495 (9th Cir.1996) (quoting *American-Arab Anti-Discrimination Comm. v. Reno,* 70 F.3d 1045, 1066-67 (9th Cir.1995)).

Idaho Rule of Civil Procedure 65(e)(3) pertains to the situation where the party opposing the preliminary injunction is doing something against the moving party that violates the moving party's rights "…tending to render the judgment ineffectual." Idaho Rule of Civil Procedure 65(e)(3) appears to have been interpreted by the Idaho Supreme Court only once in *Gilpin v. Sierra Nevada Consol. Mining Co.,* 2 Idaho 696, 703, 23 P. 547, 549 (1890). *Gilpin* dealt with whether an injunction regarding a mine in Shoshone County should have been denied by the district court. The Idaho Supreme Court held: "To remove the ore from the mine, and leave but a worthless shell to be contended for, would certainly have a 'tendency to render ineffectual' any judgment which the plaintiff might recover." *Id.* It should be noted that in *Gilpin* the Idaho Supreme Court reversed the district court's denial of a preliminary injunction, and itself ordered a preliminary injunction, not even remanding the issue back to the trial court. 23 P. 547, 552. The requirement of Idaho Rule of Civil Procedure 65(e)(2) that an injunction cannot "have the effect of giving to the party seeking the injunction all the relief sought in the action" does not apply to Idaho Rule of Civil Procedure 65(e)(3). Thus, an injunction granting all relief requested could issue under this ground.

III. ANALYSIS: Fannin, Keese, and Bonham's Right to Injunctive Relief Under Idaho Rule of Civil Procedure 65(e).

A. Positions of the Parties.

While intensive on the "facts", the memorandum of all parties is sparse on the applicable law. Fannin and Keese argue irreparable harm would inure to them if the injunction were not to issue in their favor. Memorandum Supporting Motion for CR 65(e) Preliminary Injunction, p. 16. Bonham, through counsel, has joined in the

arguments of Fannin and Keese. Despite being majority shareholders (66% of Bonham), Fannin and Keese have been "stripped…of all rights and ownership of a company of which they rightfully own a majority." *Id.,* p. 17. They argue loss of a company's good will alone suffices to warrant injunctive relief, and "the damage Parker could cause is certainly greater than the mere loss of good will"; but, no citation to authority is given by Fannin and Keese for this proposition. *Id.* Fannin and Keese go on to argue they are likely to succeed on the merits of this case at trial, citing their ownership as evinced by a signed corporate resolution, citing Bonham's proprietary interest in its business methods which Fannin claims to have in large part created, and citing Parker's purported breach of the fiduciary duty he owed Bonham. *Id.,* pp. 17-18. Finally, Fannin and Keese note the relief requested would require no more than that Parker comply with legal obligations and refrain from further engaging in illegal and improper activity. *Id.* Parker responds simply that numerous questions of fact and law remain, precluding a grant of injunctive relief to Plaintiffs. Defendants' Opposition to Preliminary Injunction, pp. 1, 2.

B. Parker's Credibility.

First, this Court must determine the appropriateness of making credibility determinations on a preliminary injunction. Parker testified at the August 22, 2011, hearing. Had this case been submitted only upon affidavits, credibility would not likely have become an issue.

While injunctive relief, especially temporary restraining orders, are often sought via the submission of affidavits (upon which credibility determinations are difficult), testimony under oath occurs at preliminary injunction hearings as well. In the case of *Moon v. North Idaho Farmers Association,* Kootenai County Case No. CV 2002 3890, extensive testimony was taken, and this Court made credibility determinations based

upon that testimony. That case was taken up on appeal, on the constitutionality of a statute that was passed subsequent to the preliminary injunction. *Moon v. North Idaho Farmers Association,* 140 Idaho 536, 96 P.3d 637 (2004). Thus, the Idaho Supreme Court noted this Court heard testimony at the preliminary hearing (140 Idaho 536, 539, 96 P.3d 637, 640), but did not address the appropriateness of credibility determinations in a preliminary injunction hearing.

This Court raises the question because in *Hollinger International, Inc. v. Black,* 844 A.2d 1022, 1060 (Del.Ch. 2004), at footnote 80, the Delaware Chancery Court held: "Prior case law suggests that this court cannot issue a preliminary injunction requiring redemption of a shareholder rights plan unless the court finds that the injunction is warranted based on undisputed facts. *City Capital Assocs. Ltd. P'ship v. Interco Inc.,* 551 A.2d 787, 795 (Del.Ch.1988)." A review of *City Capital Associates* shows that its holding would only be limited to situations where the injunctive relief awarded "affirmative relief", "final relief" and ""relief that could not later be effectively reversed following trial." 551 A.2d 787, 795. This Court finds none of those factors exist in the present case. And, in any event, *Hollinger* implicitly overrules this point in *City Capital Associates*.

42 Am. Jur. 2d Injunctions § 242 certainly indicates the taking of testimony and making credibility determinations is proper. The question as to whether credibility determinations are appropriate at a preliminary injunction hearing begs another question: "Why take testimony at preliminary injunction hearing if you are not going to make credibility determinations?"

This Court finds it is appropriate to make credibility determinations regarding Parker's testimony. However, those credibility determinations are primarily relevant only as to the breach of contract claims, and not all that relevant regarding the quantum

meruit claims. That is because even Parker in his testimony and in his affidavit, essentially admits that Keese, Fannin and Bonham are entitled to quantum meruit relief in this lawsuit. And Parker has done nothing to contradict what Keese and Fannin claim Parker has been doing to Bonham, the only substantial asset in this litigation.

This Court finds Parker to not be credible for the following reasons:

Keese submitted an IRS Form 2553, executed by Parker, Keese and Fannin. Third Supplemental Affidavit of Michael Keese in Support of Motion for Preliminary Injunction, Exhibit 1. According to Keese:

> Attached hereto is a true and correct copy of an IRS document wherein Parker signed within penalty of perjury that he and parker family trust owned 34% of Bonham. That document reflects that I, along with Fannin, own the remaining 66% of Bonham. I personally hand delivered this document to Parker and presumably he mailed it to the IRS.

Id., p. 2, ¶ III. Parker was asked by his attorney: "Is there such a thing as a Parker Family Trust?" Parker's vague, deceptive and (eventually) responsive answer was:

> Yeah, um, as president, the transfer of any shares would've been signed by me and by Pat Fannin. There were no certificates transferred. I have the single certificate that was issued in 2005 and that certificate represents a thousand shares of stock. No other certificates were created. No other certificates were transferred from me as an individual to, um, my trust, the trust was never created. The only reason for the trust was, for the trust to have the ability to prevent me from having the three percent and additionally it was to allow for Fannin and Keese to have the, um, money to put in. Once they put in the money they would've gotten their shares so none of those things happened. Those were all just things that Fannin was trying to do but could not do because he didn't want to put the money in the company.

The fact that Parker was willing to sign such a document, whether he sent it into the IRS or not, for the purpose of defrauding a lender in order to get a loan, speaks volumes of Parker's lack of credibility before this Court. Parker admitted at the hearing under oath there was no Parker Family Trust ("the trust was never created"), but on an IRS

document, on March 14, 2011, Parker signed his name twice (once individually and once as trustee), on the IRS Form 2553 under the heading which reads:

> Shareholders' Consent Statement.
> Under penalties of perjury, we declare that we consent to the election of the above-named corporation to be an S corporation under section 1362(a) and that we have examined this consent statement, including accompanying schedules and statements, and to the best of our knowledge and belief, it is true, correct, and complete. We understand our consent is binding and may not be withdrawn after the corporation has made a valid election. (Sign and date below.)

Third Supplemental Affidavit of Michael Keese in Support of Motion for Preliminary Injunction, Exhibit 1. At the August 22, 2011, hearing Parker testified he signed this document that way (3% individually and 31% as the trustee of the Parker Family Trust) because he had bad credit and could not be listed as owning that much of Bonham in his individual capacity. Thus, Parker is willing to lie, under penalty of perjury, to the IRS. Parker is willing to lie in order for someone (Parker says it was Keese and Fannin) to obtain a loan. Parker's excuse for fraudulently signing this document is that it was Fannin's banker-buddy who told him to do it. That is an excuse? Parker has no credibility. Then, on cross examination, Parker was asked:

> Q. [by Fannin]: And did you notice up above where it says that you're signing under penalty of perjury?
> A. [by Parker] The understanding I had with that document is that the penalty of perjury was to make the election from a C corp to a S corp.
> Q. Okay. That was your understanding?
> A. Right. That's what the document is to do is to simply, um, change the corporate status from a C corp to a S corp.
> Q. Okay. Would you agree it does have language in there that you were signing under penalty of perjury?
> A. I agree that its something I'm changing from a C corp to a S corp, correct.

Parker's evasive answers do nothing to inure his credibility with the Court. Parker's evasive answers make absolutely no sense.

Parker's claims that he owns all of Bonham are not supported by this IRS document. This is because both Keese and Fannin signed the document four days and

seven days, respectively, after Parker signed it, but in context and per Parker's own testimony it is obvious that Parker signed it knowing it would be completed by Keese and Fannin.

Parker's claims that he owns all of Bonham are not supported by the October 13, 2010, Bonham corporate resolution which all three signed:

> RESOLVED, on October 13, 2010, Stephen Parker as President and Chairman of Bonham Investments Corp. hereby offers ownership shares equal to 33% of the company's equity to Michael P. Keese as company Treasurer and corporate officer and also offers 33% ownership of the company's equity to Patrick Fannin as company Secretary and corporate officer. Stephen Parker will retain the remaining 34% of the company's equity.

Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, Exhibit 11. Parker never discussed this corporate resolution in his testimony at the October 13, 2010, hearing.

Parker was cross-examined as to his explanation about several emails that were presented as evidence. Parker's answers as to those emails were as evasive as his answers regarding the IRS document.

This Court finds Parker to not be credible.

C. Analysis of the Evidence and the Law.

1. Introduction.

> An injunction is considered an extraordinary remedy that should be exercised sparingly and cautiously. It is a drastic remedy that should be used only when legal rights are unlawfully invaded or legal duties are willfully or wantonly neglected. The relief should be awarded only in clear cases that are reasonably free from doubt and when necessary to prevent irreparable injury. The complainant has the burden of proving the facts that entitle him or her to relief.
>
> If the parties are in dispute as to legal rights, or if the rights at issue are doubtful, a preliminary injunction will ordinarily not be granted until such rights are established. However, a factual dispute will not bar the granting of a preliminary injunction that is needed to preserve the status quo if the party to be enjoined will suffer no great hardship as a result of its issuance.

> Injunctive relief will not be granted merely to allay fears and apprehensions or to soothe the anxieties of the parties.

42 AM.JUR.2D *Injunctions* § 17 (2011).

Fannin and Keese are correct that Idaho courts have enjoined practices which could harm another's business or good will. In *King's of Boise, Inc. v. M.H. King Co.,* 88 Idaho 267, 398 P.2d 942 (1965), the Idaho Supreme Court enjoined a variety department store's use of the name "King's" as deceptively similar to that of the plaintiff, holding use of the name without words to distinguish its name from that of the plaintiff was enjoinable. What remains unclear is how case law dealing with the enjoining of deceptive or fraudulent use of proprietary business names, terms or symbols is applicable here. *See e.g. American Home Benefit Ass'n v. United American Benefit Ass'n,* 63 Idaho 754, 125 P.2d 1010 (1942) (involving non-profit's suit to enjoin use of deceptively similar name of respondent). The hurdles faced by Fannin and Keese include factual questions not limited to: what role Fannin and Keese played in Bonham; whether Hayden Lake Asset Trust Number One was a Bonham asset or belonged to Parker individually; and whether Fannin and Keese were shareholders or had merely been offered shares which they never accepted.

2. Breach of Contract Claims.

This Court finds that even though Parker has submitted evidence that is contrary to plaintiffs' evidence, the Court has found Parker not credible. The Court finds a substantial likelihood of success on the merits that there was consideration, that there was an offer and acceptance of that offer in the October 13, 2010, resolution of Bonham, signed by Parker, Keese and Fannin. Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, Exhibit 11. There was a meeting of the minds such as to support plaintiffs' contractual claims. From a breach of contract standpoint, the

above questions (what role Fannin and Keese played in Bonham; whether Hayden Lake Asset Trust Number One was a Bonham asset or belonged to Parker individually; whether Fannin and Keese were shareholders or had merely been offered shares which they never accepted; and whether Fannin and Keese knew of Parker's claimed intellectual property rights in the Bonham business idea) do not preclude the Court from determining that Fannin and Keese have a clear and protectable right. Exactly "what role Fannin and Keese played in Bonham" is not determinative of the breach of contract claim. "Whether Hayden Lake Asset Trust Number One was a Bonham asset or belonged to Parker individually" is relevant to damages, but is not determinative of the breach of contract claim. "Whether Fannin and Keese were shareholders or had merely been offered shares which they never accepted" this Court finds is answered by the document itself. The October 13, 2010, corporate resolution of Bonham, has signature lines for both Fannin and Keese which read: "Accepted by Michael Keese as Treasurer Bonham Investments Corp" and "Accepted by Patrick Fanning [sic] as Secretary Bonham Investments Corp", and a signature line for Parker which reads: "Attest: Stephen Parker as President and Chairman Bonham Investments Corp". Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, Exhibit 11. (underlining added). The language, especially the underlined portions show Fannin and Keese accepted Parker's offer Parker, and it shows Parker *knows* they accepted that offer. Parker's arguments that no shares changed hands and that no money changed hands is of no import.

With regard to the claim of Fannin and Keese that, combined, they have 66% ownership of Bonham shares, Parker argued at oral argument on August 22, 2011, the corporate resolution was a mere offer of stock, contemplating a cash purchase of stock by Fannin and Keese, and that in the absence of consideration, no stock in fact

transferred. First of all, there is *nothing* in the express language in the corporate resolution of Bonham, which Parker signed, that specifies the stock is limited to a cash purchase. As mentioned above, that resolution reads:

> RESOLVED, on October 13, 2010, Stephen Parker as President and Chairman of Bonham Investments Corp. hereby offers ownership shares equal to 33% of the company's equity to Michael P. Keese as company Treasurer and corporate officer and also offers 33% ownership of the company's equity to Patrick Fannin as company Secretary and corporate officer. Stephen Parker will retain the remaining 34% of the company's equity.

Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, Exhibit 11. Second, as Fannin and Keese argued, their work on and for Bonham constituted consideration. Under I.C. § 30-1-621(2), a board of directors may issue shares for consideration consisting of tangible or intangible property, including cash, promissory notes, services performed, or other securities of the corporation. Fannin and Keese are also correct in noting no stock certificate need be issued for shares to transfer, as Fannin argued at the August 22, 2011, hearing. *See,* I.C. § 30-1-625(1) "Shares may but need not be represented by certificates."

As to their breach of contract claims, plaintiffs have proven "substantial likelihood of success" on their breach of contract claims, as required by *Harris,* 106 Idaho 513, 518, 681 P.2d 988, 993. The issue of the availability of alternative remedies at law poses a problem for plaintiffs. It is entirely unclear how, were plaintiffs to succeed on the merits of their contractual claims, money damages would fail to make them whole. However, as noted below, there is evidence Parker is acting such as to liquidate the only asset Parker might have with which to pay any judgment.

3. Quantum Meruit Claims.

At oral argument, Parker's attorney conceded the value of services performed and/or monies invested by Fannin and Keese, stating they are entitled to "some

quantum meruit." Parker's attorney stated: "…and at the same time my client does not take the position that these two individuals have no right of equitable relief here. There's certainly some justification for quantum meruit, but there was no offer and acceptance of the purchase of these stock shares." Incredibly, Parker's attorney makes the argument that there is no consideration yet there is justification for quantum meruit relief. This Court finds the money put in and work by Fannin and Keese that Parker acknowledges create the quantum meruit claim are the same money and work that provide consideration for the breach of contract claim. The Court has already found a likelihood of success on the merits that there was consideration, that there was an offer and acceptance of that offer in the October 13, 2010, resolution of Bonham, signed by Parker, Keese and Fannin. Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, Exhibit 11. While Parker disputes the amount of the money put in and the value of the work performed, he acknowledges the money contributed and work performed by Fannin and Keese.

Thus, there is no dispute that Keese and Fannin have some equitable interest in Bonham. Parker concedes he and Keese agreed to enter into an agreement with the owner of a guaranteed stream of structured settlement payments, and placed that agreement or asset into Hayden Lake Trust Asset Number One. Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, pp. 5, 6, 11, ¶¶ 6, 7, 8, 9, 49; Affidavit of Stephen Parker, pp. 2, 9, ¶¶ 6, 7, 8, 9, 49. Parker concedes Hayden Lake Trust Asset Number Two is a Bonham asset. Affidavit of Stephen Parker, p. 6, ¶ 21. Parker concedes Fannin and Keese have performed work for Bonham. Parker concedes Fannin and Keese have put money into Bonham, although not in the amounts Fannin and Keese claim. Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunction, p. 7, ¶¶ 21, 22; Affidavit of Stephen Parker, pp. 5, 6, ¶¶ 21, 22.

Thus, plaintiffs have proven "a clear and protectable right" as to their equitable interest in Bonham.

As to the "no adequate remedy at law", the following applies both to plaintiffs' equitable claims as well as the breach of contract claims. There is no dispute that Parker has seized Bonham and is acting in a way that is detrimental to Keese and Fannin's equitable interest. Parker admits he has no money. Affidavit of Stephen Parker, p. 2, ¶ 5. There is evidence that Parker has difficulty obtaining credit, and a permissible inference by this Court is that difficulty obtaining credit may be due to Parker having few assets which he owns free and clear. Thus, it is quite possible that Parker is wasting the only asset that could be used to compensate Keese and Fannin for their equitable interest in Bonham. Thus, plaintiffs have proven that as to their equitable interest in Bonham, they could "suffer irreparable harm if the injunction were not issued". Due to Parker's illiquid situation, plaintiffs have proven that as to their equitable interest and their breach of contract claims, there is "no adequate remedy at law". A judgment against the proverbial "turnip" is worth about the recycling value of the paper upon which it is printed.

4. Conclusion.

It is plaintiffs' burden to demonstrate four things: (1) a clear and protectable right, (2) suffering irreparable harm if the injunction were not issued, (3) no adequate remedy at law, and (4) a likelihood of success on the merits. *See* 43A C.J.S *Injunctions* § 29 (2011). At the present time, as far as breach of contract is concerned, Fannin, Keese and Bonham have proved a substantial likelihood of proving all of the foregoing at trial. At the present time, as far as a quantum meruit recovery, Fannin, Keese and Bonham have proved a substantial likelihood of proving all of the foregoing at trial.

IV. FANNIN'S CONTINUED PARTICIPATION AS AN ATTORNEY.

Plaintiff Patrick K. Fannin is an Idaho Attorney. Affidavit of Patrick K. Fannin in Support of Motion for Preliminary Injunctionm p. 2, ¶ 2.

At the outset of this litigation commenced on July 22, 2011, and until August 15, 2011, Fannin represented the Bonham corporation.

A corporation cannot represent itself in Court. 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 discussed its holdings in two previous cases. In *White v. Idaho Forest Indus.,* 98 Idaho 784, 572 P.2d 887 (1977) and *Kyle v. Beco Corp.,* 109 Idaho 267, 707 P.2d 378 (1985), the 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.*

While Fannin, as an attorney, can satisfy the requirement that Bonham be represented by an attorney, doing so causes Fannin to run afoul of the Idaho Rules of Professional Conduct, the rules governing Idaho lawyers.

Under those rules, an attorney can represent an organization. I.R.P.C. 1.13. However, the comment to that rule specifically provides there is no change to I.R.P.C. 1.8, the rule concerning "Conflict of Interest" and "Concurrent Clients", just because an organization or corporation is involved. I.R.P.C. 1.13, Comment 6. Because Fannin represented both himself and Bonham, Fannin automatically ran afoul of the prohibition that: "A lawyer shall not acquire a proprietary interest in the cause of action or subject matter of litigation the lawyer is conducting for a client…" I.R.P.C. 1.8(i). Because Fannin represented both himself and Bonham, there is simply no way for Fannin to comply with I.R.P.C. 1.8(g): "A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients…" Since Parker is a member of Bonham, Fannin's representation of Bonham ran afoul of I.R.P.C. 1.7(a)(1) and (2) "Conflict of Interest: Current Clients", and the exceptions to that rule found in subsection (b) do not apply.

Setting aside the conflicts with Bonham, Fannin had a conflict at the outset of this litigation and continues to have a conflict representing himself. The day litigation began, Fannin filed an affidavit. Fannin is thus a witness. Under I.R.C.P. 3.7, "A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness, unless…" Fannin is not just "likely" to be a witness, he will certainly be a witness. The word "trial" is not defined in the Idaho Rules of Professional Conduct. However, trial appears to be construed as something different than an evidentiary hearing. I.R.C.P. 77(b). What is clear is Fannin cannot be an attorney at trial in this matter.

The next inquiry is what is the undersigned's obligation? The undersigned is still a lawyer. Under I.R.P.C. 8.3, "A lawyer who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate professional authority." The Court finds the act of Fannin representing Bonham does not raise a substantial question as to Fannin's honesty or his trustworthiness. However, this Court finds it does raise a substantial question as to Fannin's fitness as a lawyer. This Court finds *any* attorney should know he cannot represent himself individually *and* as the attorney for an organization of which he is a member and owner, in litigation against another member and owner of that organization. The Idaho Code of Judicial Conduct, Cannon 3.D., reads:

> D. Disciplinary Responsibilities. Judges are encouraged to bring instances of unprofessional conduct by judges or lawyers to their attention in order to provide them opportunities to correct their errors without disciplinary proceedings; but the judges should file reports thereof with the Commission of the Idaho State Bar or with the Judicial Council, as appropriate, when no such remedial action is promptly undertaken, or if the violations are flagrant or repeated.

The court finds it unnecessary to report Fannin to the Idaho State Bar Association at this time. While Fannin's actions have raised a substantial question as to Fannin's fitness as a lawyer, Fannin's actions in representing Bonham are not *repeated*. Fannin is no longer Bonham's attorney. This Court cannot find Fannin's actions are *flagrant*. As stated above, this Court finds any attorney *should* know he cannot represent himself individually and as the attorney for an organization for which he is a member and owner, in litigation against another member and owner of that organization, but obviously Fannin *did not know*. Ignorance arises to a negligent act, not a flagrant act. The Court can think of no advantage to be gained by Fannin representing Bonham. In fact, all that has occurred is the creation of confusion in this litigation and disgrace upon Fannin.

The Court can see no disadvantage posed to Parker, and Parker's counsel did not even raise the issue.

However, given this past transgression, if Fannin remains as attorney even for himself, and testifies at *any* hearing, not just trial, this Court will report Fannin to the Idaho State Bar Association.

IV. CONCLUSION AND ORDER.

IT IS HEREBY ORDERED, for the reasons set forth above, the Court exercise its discretion and grants the request for injunctive relief pursuant to I.R.C.P. 65(e) as follows:

IT IS FURTHER ORDERED Fannin, Keese and Bonham, collectively, pursuant to I.R.C.P. 65(c), are required to provide surety upon a bond or undertaking in the amount of Ten Thousand Dollars ($10,000.00). This bond must be posted no later than 5:00 p.m. on Friday, August 26, 2011. This preliminary injunction is not in force until such bond or undertaking has been deposited with the Clerk of Court, and notice given to Parker through Parker's attorney.

IT IS FURTHER ORDERED Fannin and Keese are shareholders and equitable owners of Bonham. Whether Parker has forfeited his shares of Bonham as a result of his actions is an issue for trial.

IT IS FURTHER ORDERED Parker, his agents, servants, employees, attorneys, and all persons in active concert and in participation with him, are enjoined from:

1. Encumbering, selling, transferring or gifting any intellectual property rights contained in the Provisional Patent Application that Parker filed or had filed on his behalf.

2. Communicating with MetLife regarding Hayden Lake Asset Trust One and Hayden Lake Asset Trust Two.

3. Changing the location of where MetLife sends structured settlement payments to Hayden Lake Asset Trust One and Hayden Lake Asset Trust Two, from the location where those checks have always previously been sent: 5618 E. Waverly Loop, Hayden, ID 83835.

4. Conducting any further business with, through or for Bonham, including entering into any contracts, taking any loans or otherwise conducting any business in any way relating to Bonham.

5. Selling, transferring or encumbering any of Bonham's stock.

6. Copying, disclosing, divulging, making use of, capitalizing in any way on, developing, marketing, or selling services or offerings based upon, or otherwise appropriating any of Bonham's proprietary, confidential and/or trade secret information, which Parker has or has had in his possession, custody or control.

7. Competing or participating in the structured settlement business against Bonham.

8. Filing or publishing additional documents or comments with the Idaho Secretary of State or other entities about Bonham, Fannin or Keese.

IT IS FURTHER ORDERED Parker is to:

1. Immediately (no later than five days from the date of this Order) resign as trustee by signing the documents attached as Exhibit Three to Fannin's Affidavit, and re-assign Bonham as the beneficiary for Hayden Lake Asset Trust One and Hayden Lake Asset Trust Two by signing the documents attached as Exhibit Two to Fannin's Affidavit, and turn them over to the receiver.

2. Immediately (no later than five days from the date of this Order) disgorge all funds taken from Bonham, which there is a substantial likelihood will be proven as the beneficiary of Hayden Lake Asset Trust One and Hayden Lake Asset Trust Two, in the

amount of $2,911.85, and pay such to the receiver.

3. If Parker receives the September, 2011, payments from MetLife before the paperwork is changed as described in this Order, Parker is ordered to turn those payments over to the receiver.

IT IS FURTHER ORDERED Fannin, Keese and Bonham are ordered to revoke Bonham's dissolution by filing the necessary papers with the Idaho Secretary of State.

IT IS FURTHER ORDERED Parker is ordered to not publish any derogatory remarks or comments about Fannin, Keese or Bonham, and Fannin and Keese are ordered not to publish any derogatory remarks or comments about Parker.

IT IS FURTHER ORDERED a receiver is appointed pursuant to I.C. § 8-601(1), to be paid by Bonham, to run the day-to-day affairs of Bonham, collect the monthly payments from MetLife for Bonham, and collect the above amounts from Parker ordered by this Court. If there are no funds within Bonham, the costs of the receiver shall be borne equally by Keese, Fannin and Parker.

IT IS FURTHER ORDERED the parties shall meet and confer and agree upon the identity of the receiver by no later than 5:00 p.m. on Monday, August 29, 2011. The parties shall prepare and present an order to the Court for the appointment of that person as receiver. If the parties are unable to agree as to the identity of the receiver by that time, the parties, in a joint letter to the Court shall notify the Court of that fact, submitted along with a proposed order appointing the receiver (name left blank) by no later than 5:00 p.m. on Monday, August 29, 2011, and the Court shall select the receiver.

IT IS FURTHER ORDERED as set forth on the record in Court on August 22, 2011, this action is presently at issue and scheduled for trial on FEBRUARY 27, 2011. A review of the file in this matter and no objection by any party at the August 22, 2011, hearing, this Court finds pursuant to I.R.C.P. 16(k), this case is an appropriate case for

mediation.

THEREFORE IT IS FURTHER ORDERED that:

1. The parties and counsel shall in good faith mediate this matter until it is either resolved or the mediator determines the matter is at an impasse.
2. The parties shall meet and confer and agree upon the identity of the mediator by no later than September 6, 2011. If the parties are unable to agree as to the identity of the mediator, the parties, in a joint letter to the Court shall notify the Court of that fact, by no later than the end of business on September 6, 2011, and the Court shall select a mediator.
3. The parties shall provide to the mediator such information, position statements or settlement materials as requested by the mediator.
4. The mediation must be completed no later than October 22, 2011**.**
5. Each counsel shall have his or her client (or a representative of such client having full settlement authority) present at the scheduled mediation so that the possibility of settlement may be fully explored.
6. The parties shall pay a pro rata share of the costs of the mediator. I.R.C.P. 16(k)(8).
7. If resolution or partial resolution is accomplished the resolution must at a minimum be placed on the record. The preferred alternative is a written agreement signed by the parties is filed with the Court. In any dispute involving real property, the agreed upon settlement terms must be set forth in writing, signed by the parties and filed with the Court (a statement on the record is insufficient).
8. Failure to comply with this Order for Mediation may result in the imposition of sanctions, including without limitation those identified in I.R.C.P. 16(i).

Entered this 24th day of August, 2011.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of August, 2011, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	**Fax #**	**Lawyer**	**Fax #**
Patrick Fannin	1 509 328-8205	James Bendell	888 701-2147
F. Dayle Anderson	1 509 340-3954		

Pro se
Michael Keese
5618 Waverly Loop
Hayden, ID 83835
FAX: 208 772-2272

_____
Jeanne Clausen, Deputy Clerk