STATE OF IDAHO)
County of BONNER)ss

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AT_____ O'Clock _____M
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 BONNER

PURE HEALTH SOLUTIONS, INC, et al, *Plaintiffs*, vs. **RICHARD A. BOYD, aka ALAN BOYD, et ux, et al.** *Defendants*.	Case No. **S CV 2008 1684** **MEMORANDUM DECISION AND ORDER ON DEFENDANTS' (RICHARD BOYD AND SANDPOINT LANSCAPE DESIGN) MOTION FOR SUMMARY JUDGMENT**

I. PROCEDURAL HISTORY AND BACKGROUND.

On September 16, 2008, plaintiffs Pure Health Solutions, Inc. (PHSI), an Idaho Corporation, and Water Engineering Technologies, LLC, (WET) a Washington Limited Liability Company, filed a complaint against defendants, alleging that Brandy Boyd, while employed by PHSI as an accounting assistant, wrote checks to herself totaling over $90,000.00. These checks were alleged to have been written on the Water Engineering Technologies, LLC (WET) checking account. PHSI, an Idaho corporation, owns a majority stake in WET, a Washington limited liability corporation. Also on September 16, 2008, plaintiffs PHSI and WET also sought a writ of attachment pursuant to I.C. § 8-502(c)(3).

On October 1, 2008, this Court issued an Order to Show Cause (OSC) and the Writ of Attachment. Later in the day on October 1, 2008, defendants Richard and Brandy Boyd and Sandpoint Landscape & Design, objecting to the Writ of Attachment in

response to the OSC, filed affidavits. Following an October 2, 2008, hearing on the OSC, on October 7, 2008, this Court quashed the Writ of Attachment and ordered the items seized under that writ be returned to Richard and Brandy Boyd within twenty-four hours. The Court further ordered defendants were prohibited from selling any items listed on the original Writ of Attachment.

On November 4, 2008, plaintiffs PHSI and WET filed a Notice of Intent to Take Default for defendants' failure to file an answer or other affirmative pleading to plaintiff's complaint. Plaintiffs gave notice that default would be sought on November 10, 2008. On November 7, 2008, Brandy Boyd filed an answer, and on the same date, Richard Boyd and Sandpoint Landscape and Design filed a motion for enlargement of time to answer as they were seeking different counsel. This motion for enlargement of time was never noticed-up for hearing. On November 14, 2008, plaintiffs objected to the motion for enlargement, and on the same date, plaintiffs filed their Motion for Default against Richard Boyd and Sandpoint Landscape & Design. On November 17, 2008, Gary Amendola substituted as counsel for Richard Boyd and appeared for Sandpoint Landscape & Design and filed an answer for both. On January 9, 2009, this Court entered its Order Denying Motion for Default and Denying Motion for Enlargement of Time and Awarding Attorney Fees and Costs.

On May 22, 2009, defendants Richard Boyd and Sandpoint Landscape & Design filed their motion for summary judgment in favor of Richard Boyd and Sandpoint Landscape & Design, and for an Order of this Court dismissing Richard Boyd and Sandpoint Landscape & Design from this case. Plaintiffs PHSI and WET opposed the summary judgment motion and moved to continue hearing on defendants' Motion for Summary Judgment. This matter is currently set for a three-day jury trial commencing

on October 19, 2009.

Oral argument was held on June 23, 2009. At the end of oral argument on plaintiffs' motion to continue the hearing on summary judgment, this Court denied the motion to continue. Plaintiffs claimed they had not yet conducted any expensive, "meaningful discovery" based on the testimony of Richard Boyd at the October 2, 2008, hearing on the Order to Show Cause. Motion to Continue Hearing on Defendants' Motion for Summary Judgment, p. 2. Defendants object to the Plaintiffs' Motion to Continue as "the fact is that the Plaintiffs have had nine (9) months to conduct extensive and inexpensive discovery in this case through the use of Interrogatories and Requests for Production. There is no justification for a continuance of the upcoming hearing." Objection to Motion to Continue Hearing on Defendants' Motion for Summary Judgment, p. 2. The decision to grant or deny a continuance is vested in the sound discretion of the trial court. *State v. Ward,* 98 Idaho 571, 574, 569 P.2d 916, 919 (1977). Here, plaintiffs have not shown good cause why the Court should continue hearing on the Motion for Summary Judgment filed by Richard Boyd and Sandpoint Landscape & Design. That motion was filed and noticed for hearing on May 22, 2009. Plaintiffs did not address their failure to engage in discovery extensively during the interim between the motion having been filed and hearing on summary judgment a month later. Further, plaintiffs have not, per Rule 56(f), stated reasons in their pleading opposing summary judgment for their inability to present by affidavit facts essential to justify their opposition. Finally, plaintiffs submitted a Memorandum in Support of its Objection to Defendants' Motion for Summary judgment and an Objection to Defendants' Statement of Material Facts as to which there are no Genuine Issues of Dispute. Counsel for plaintiffs could articulate no prejudice at oral argument. *See* I.R.C.P. 61. Deferring

discovery is something plaintiffs' counsel chose to do at his own peril.

The Court then heard argument on the motion for summary judgment filed by Richard Boyd and Sandpoint Landscape & Design. At the conclusion of oral argument on the motion for summary judgment, this Court granted the motion as it pertains to Sandpoint Landscape & Design.

Counsel for defendant Brandy Boyd did not participate in the oral argument on June 23, 2009, and filed no written pleadings as to the motion for summary judgment or the motion to continue the summary judgment.

II. STANDARD OF REVIEW.

Idaho Rule of Civil Procedure 56 requires 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).

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III. ANALYSIS.

A. Sandpoint Landscape & Design.

Defendants Sandpoint Landscape & Design move for summary judgment as to any claims for liability against it because "Plaintiffs have failed to identify any facts that would support a claim for liability against Sandpoint Landscape & Design." Memorandum in Support of Defendants' Motion for Summary Judgment, pp. 4-5. As to Sandpoint Landscape & Design, plaintiffs admit Sandpoint Landscape & Design is not a named defendant in any of the six causes of action listed in the Complaint, "[h]owever, this is merely due to the fact that Sandpoint Landscape & Design is not a separate legal entity from the Defendants, Brandy Boyd and Alan Boyd." Objection to Defendants' Statement of Material Facts, p. 2, ¶ 1. In *Youngblood v. Higbee,* 145 Idaho 665, 182 P.3d 1199 (2008), the Idaho Supreme Court upheld summary judgment in favor of the franchisor where the passenger failed to allege how the franchisor could be held liable for the acts of its franchisee. 145 Idaho 665, 669, 182 P.3d 1199, 1203 ("the complaint lacks any allegation that through agency law the defendant, as the franchisor, would be held liable for the actions of its franchisee.") Although factually distinguishable, the reasoning in *Youngblood* reiterates that a Complaint must always contain a short, plain statement of a claim upon which relief can be granted, or fail. 145 Idaho 665, 668, 182 P.3d 1199, 1202. Here, Sandpoint Landscape & Design is named at ¶ 4 of the Complaint as "an assumed business name of the aforementioned Defendants." Complaint, p. 2, ¶ 4. There has been no allegation regarding Sandpoint Landscape & Design's liability for the acts complained of. Thus, summary judgment (and likely dismissal of) in favor of Sandpoint Landscape & Design is certainly proper.

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B. Richard Boyd.

Richard Boyd makes two arguments as to why he is entitled to summary

judgment: (1) the conspiracy to commit fraud claim must fail because the facts fail to show any "agreement" between Brandy and Richard Boyd to accomplish the unlawful objective of embezzlement; and (2) plaintiffs' unjust enrichment claim must fail because they are unable to provide this Court with facts demonstrating that Richard Boyd received a benefit from plaintiffs, that he appreciated the benefit, and that he was unjustly enriched by it. *Id.,* pp. 5-8.

Plaintiffs reply that numerous issues of material fact remain in dispute. Memorandum in Support of Objection to Defendants' Motion for Summary Judgment, p. 4. Plaintiffs argue whether Richard Boyd had an agreement with Brandy Boyd to forge signatures and embezzle funds remains in dispute, as does whether he was unaware that Brandy Boyd was forging and embezzling (this issue of fact is necessarily tied to the question of whether Brandy Boyd ever told Richard Boyd of the forgeries and embezzlement). *Id.,* pp. 4-5. Plaintiffs also point out for the Court that defendants bear the burden of showing an absence of disputed material facts, that issues of witness credibility should be decided by the trier of fact, and that summary judgment is inappropriate where a party's intent is an element of the cause of action (which is the case with the fraud alleged in the instant matter). *Id.,* pp. 5-6. Richard Boyd in his briefing has properly set forth the elements of law regarding the civil conspiracy and unjust enrichment issues.

1. Civil Conspiracy to Commit Fraud.

The essence of a civil conspiracy cause of action is the civil wrong committed as the objective of the conspiracy, not the conspiracy itself. *McPheters v. Maile,* 138 Idaho 391, 395, 64 P.3d 317, 321 (2003). The agreement to defraud that is the foundation of a conspiracy charge must be demonstrated by specific evidence. *Mannos v. Moss,* 143

Idaho 927, 935, 155 P.3d 1166, 1174 (2007). And, where a claim of fraud does not exist, no claim of a civil conspiracy to commit fraud can rest upon it. *See McPheters,* 138 Idaho 391, 395, 64 P.3d 317, 321. Thus, to demonstrate the act of Richard Boyd constituted a civil wrong, plaintiffs must not only make a showing of the elements of fraud, but must also offer specific evidence of Richard Boyd agreeing to or planning to defraud. At the present time, there are no issues of material fact as to Richard Boyd's knowledge of Brandy Boyd's actions and "agreement" to defraud.

A fraud claim must be proved by clear and convincing evidence at trial. *Country Cove Development, Inc. v. May,* 143 Idaho 595, 600, 150 P.3d 288, 293 (2006).

> Nine elements must be proved to sustain an action for fraud: (1) a statement of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent to induce reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) the hearer's right to rely; and (9) consequent and proximate injury. *Lettunich v. Key Bank Nat'l Ass'n,* 141 Idaho 362, 368, 109 P.3d 1104, 1110 (2005). The party alleging fraud must plead with particularity the factual circumstances constituting fraud, I.R.C.P. 9(b), and ultimately each of the elements must be proven by clear and convincing evidence. *G & M Farms v. Funk Irrigation Co.,* 119 Idaho 514, 518, 808 P.2d 851, 855 (1991). Even so, "traditional I.R.C.P. 56(c) summary judgment principles and standards govern the granting of summary judgment on the issues of fraud and intentional misrepresentation." *Id.* To prevail on this appeal the Abells need to show that they have presented sufficient evidence to create a material issue of fact as to each element.
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> The district court ruled that "[t]he facts alleged by [the Abells] to constitute fraud-that being a threat or dire prediction by Treva to coerce [the Abells] into executing the note and deed of trust-are not of the type normally associated with allegations of fraud in the inducement." The district court held that the statements made by Treva were merely opinions or predictions about future events, rather than statements of a past or existing fact, and that the Abells were not justified in relying on the statement because it spoke to future events and because they had ample time to investigate the representations before they executed the contract over a year later.
>
> "Fraud is never presumed. All of the essential elements thereof must be established by ... clear and convincing evidence, especially where the integrity of a written instrument is assailed." *Barron v. Koenig,* 80 Idaho 28, 39, 324 P.2d 388, 394 (1958). To survive summary judgment, the

> Abells need only prove a triable issue of fact, but they have not met that burden.

While there is evidence the Richard Boyd may have received the benefit of plaintiffs' monies of which Brandy Boyd defrauded plaintiffs (see discussion on unjust enrichment, *infra*), plaintiffs have submitted no direct evidence of fraud on the part of Richard Boyd. Both Richard Boyd and Brandy Boyd have submitted affidavits indicating Richard Boyd did not know of Brandy Boyd's deeds against plaintiffs.

Affidavit of Brandy A. Boyd, pp. 2-3, ¶¶ 5-8, filed May 22, 2009; Affidavit of Richard A. Boyd, p. 2, ¶ 3-5, filed October 1, 2008 (text quoted *infra* in discussion on unjust enrichment). Plaintiffs have produced no evidence to the contrary. Accordingly, no fraudulent statements can be attributed to Richard Boyd, no knowledge of false statements can be attributed to Richard Boyd, there is no evidence Richard Boyd intended plaintiffs to rely on anything he said or did, let alone proof of the rest of the fraud elements.

Granted, because plaintiffs have without good reason failed to engage in discovery prior to defendants' motion for summary judgment, plaintiffs do not have any direct evidence to support their claims of civil conspiracy to commit fraud. We are at a juncture similar to that found in *Hines v. Hines,* 129 Idaho 847, 934 P.2d 20 (1987). In that case, the Idaho Supreme Court stated:

> We note at the outset that William claims that the district court erred because it imposed a heightened standard of proof by requiring him to prove his fraud claim by clear and convincing evidence. We agree. On at least two occasions in the written opinion, the district court stated that the burden on William was to prove fraud by clear and convincing evidence. This Court's opinions make it very clear that, for purposes of summary judgment, that is not the burden on the nonmoving party. *See Thomson v. Idaho Ins. Agency, Inc.,* 126 Idaho 527, 531, 887 P.2d 1034, 1038 (1994); *Tingley v. Harrison,* 125 Idaho 86, 89, 867 P.2d 960, 963 (1994); *Harris v. Idaho Dep't. of Health & Welfare,* 123 Idaho 295, 298, 847 P.2d 1156, 1159 (1992). It appears that the district court applied this higher standard

> in determining whether Linda's statements she made during the April 1992 telephone conversation were true, in analyzing whether William relied upon them, and in concluding that William had not controverted Linda's affidavit, in which she states that all three statements were true. We agree that, when the moving party establishes the absence of an element of the nonmoving party's case, the burden shifts to the nonmoving party. *See Badell v. Beeks,* 115 Idaho 101, 765 P.2d 126 (1988). However, to the extent the district court held William to a clear and convincing evidence standard after Linda established the absence of an element of William's fraud claim, the district court erred.
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> In an attempt to demonstrate that Linda's statements were not true, William's expert witness in accounting filed three affidavits and supporting financial calculations. The district court summarily struck the first affidavit, explained in a fair amount of detail his reasons for disregarding the second, and summarily disregarded the third as irrelevant and inconsistent with the second. We have determined that it was error for the district court to disregard at least the second affidavit and have concluded that the second affidavit presents a genuine issue of material fact that precludes the granting of summary judgment.
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> In the second affidavit, William's expert challenges the manner in which the corporation was showing its profits and losses. He particularly focuses on the characterization of certain of Linda's personal expenses as business expenses, the propriety of certain loans that Linda apparently withdrew from the corporation, the manner in which the corporation booked depreciation expenses, and Linda's salary draw, which was in excess of the amount set forth in the property settlement agreement. We believe this demonstrates a genuine issue of material fact as to whether the corporation and Linda were being honest in their financial calculations when Linda told William that the corporation was showing a loss every month.

129 Idaho 847, 854-53, 934 P.2d 20, 25-26. Obviously, at summary judgment it is improper to hold plaintiffs to the clear and convincing evidence standard. However, Richard Boyd, the moving party on this summary judgment motion, has established "…the absence of an element [several elements] of the nonmoving party's [plaintiffs'] case, the burden shifts to the nonmoving party." *Id.* Plaintiffs have wholly failed to meet that burden. While this is a jury trial, and the credibility of the parties is certainly an issue (*Sohn v. Foley,* 125 Idaho 168, 868 P.2d 496 (Ct.App. 1994) (it is not the place of the trial judge to assess credibility of the parties at summary judgment), motions for summary judgment are decided upon *facts shown,* not upon facts that might have been

shown. *Verbillis v. Dependable Appliance Co.,* 107 Idaho 335, 337, 689 P.2d 227, 229 (Ct.App. 1984), (italics added), citing *Barton v. Cannon,* 94 Idaho 422, 489 P.2d 1021 (1971). Plaintiffs have come forth with no "*facts*" regarding their fraud claim against Richard Boyd. 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). Plaintiffs have not provided even a "mere scintilla" of evidence regarding their fraud claim against Richard Boyd. Conclusory statements in an affidavit do not provide the Court with specific, admissible facts in order to prevent the entry of summary judgment. *Hecla Mining Co. v. Star-Morning Mining Co.,* 122 Idaho 778, 839 P.2d 1192 (1992). Plaintiffs argue no less than four times that Brandy Boyd is a "convicted felon", thus, implying her testimony cannot be believed. Plaintiffs' Memorandum in Support of its Objection to Defendants' Motion for Summary Judgment, pp. 4-7. First, this is a rather odd claim by plaintiffs, because it is the very truth of the matters that made up the confession in the felony which form the underlying civil cause of action against Brandy Boyd. Plaintiffs' Complaint reads:

> On the morning of August 15, 2008, the Defendant, Brandy Boyd met with members of the Sandpoint Police Department ("Detectives"), at the Plaintiffs' corporate office, and confessed to the Detectives that she had embezzled, converted, and forged checks from the WET account.

Complaint for Fraud, Embezzlement, Conversion, Conspiracy, Forgery, and Unjust Enrichment, pp. 4-5, ¶ 19. Second, even if the Court were to ignore Brandy Boyd's claims because she is a convicted felon (yet accept her confession to police), plaintiffs fail to present any evidence to contradict Richard Boyd's affidavit. Certainly, nothing in Richard Boyd's testimony contradicts that affidavit. Affidavit of Letitia Tognotti in Support of Defendants' Motion for Summary Judgment, . p. 9-25.

2. Unjust Enrichment.

Unjust enrichment requires: (1) that a benefit is conferred upon defendant by plaintiff; (2) appreciation by the defendant of the benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without paying value therefore. *Gibson v. Ada County,* 142 Idaho 746, 759, 133 P.3d 1211, 1224 (2006); *Aberdeen-Springfield Canal Co. v. Peiper,* 133 Idaho 82, 88, 982 P.2d 917, 923 (1999). To show Richard Boyd was not unjustly enriched, defendants would have to demonstrate that no issues of material fact exist surrounding whether or not he "appreciated" the benefit of Brandy Boyd's embezzlement such that his acceptance thereof would be unjust.

Brandy Boyd has filed an affidavit, in which she states:

> 5. In the spring of 2006, I started writing checks to myself from the Water Engineering Technology account (the WET account) which was a part of the monies that my responsibilities as a bookkeeper for PHSI entailed. I would deposit the checks in my separate account at Panhandle State Bank in Sandpoint. I did not discuss this plan with Richard A. Boyd. In fact, I decided to tell him nothing. I knew that as long as I used my separate account, Richard would know nothing about what I was doing. Indeed, I never discussed writing checks to myself out of the WET account with Richard until after it came to light and I was charged with counts of embezzlement and forgery.
>
> 6. In May 2006, I started writing checks to myself from the WET account and continued to do so for the next couple of years. I don't know the exact number of checks that I wrote or the exact amount of money that I took, but I have no reason not to believe that it was about 84 checks and the amount of money I took was about $90,000.00.
>
> 7. Richard Boyd and I have always had separate bank accounts. Richard took care of the business account. I took care of bills and household expenses from my separate account. As I said, I deposited the monies I took from the WET account into my separate bank account. I spent the money over time for bills and household expenses.
>
> 8. The monies in my account were accessible only by me. None of the money was ever used to purchase any of the property identified in paragraph 17 of the Complaint for Fraud, Embezzlement, Conversion, Conspiracy, Forgery, and Unjust Enrichment.

Affidavit of Brandy A. Boyd, pp. 2-3, ¶¶ 5-8, filed May 22, 2009. Quite some time ago,

on October 1, 2008, Richard A. Boyd filed an affidavit which states:

> 3. The Affidavit [of James S. Macdonald] is false, as the funds that were paid to Mr. Powell were not paid from any funds that my wife is accused to have taken. They were from my mother, who transferred them directly to Mr. Powell's Trust Account via check.
> 4. At no time have we sold any vehicles or assets, nor do I anticipate selling any vehicles or assets.
> 5. The actions of Pure Health Solutions, Inc., an Idaho Corporation and Water Engineering Technologies, LLC a Washington limited liability company, based upon a false affidavit, have caused damage to my business since I am unable to accomplish various jobs, due the seizure of a flatbed trailer. It will continue to cause unnecessary hardship to my family and myself. I am requesting that the items seized by immediately returned to me and that I not be required to pay my attorney's fees in challenging this writ of execution.

Affidavit of Richard A. Boyd, p. 2, ¶ 3-5, filed October 1, 2008.

To dispute defendants' claim that Richard Boyd knew nothing of Brandy Boyd's actions, plaintiffs point only to the argument of Brandy Boyd's attorney at her sentencing that "[t]here were some spending decisions made in her family which placed their consumption well beyond their means to pay for it." Objection to Defendants' statement of Material Facts not in Dispute, Exhibit 1, p. 7, ll. 22-25. Plaintiffs, having not engaged in discovery, simply argue: (1) during the period of time Brandy engaged in the embezzlement, she and Richard Boyd acquired 10 vehicles according to a title record search with the Idaho Department of Transportation; and (2) Brandy Boyd's Affidavit is all that supports defendant's allegations regarding Richard Boyd's knowledge of/acquiescence in her embezzlement and she is a convicted felon. As argued by plaintiffs, Idaho Courts hold:

> It is a familiar rule that, on summary judgment, the district court is not permitted to weigh the evidence or to resolve controverted factual issues. *American Land Title Ins.Co. v. Idaak,* 105 Idaho 600, 601, 671 P.2d 1063, 1064 (1983). Further, if the pleadings, admissions, depositions and affidavits raise any question of credibility of witnesses or weight of the evidence, the motion for summary judgment should be denied. *Altman v. Arndt,* 109 Idaho 218, 221, 706 P.2d 107, 110 (Ct.App. 1985).

Carman v. Carman, 114 Idaho 551, 554, 758 P.2d 710, 713 (Ct.App. 1988) (Finding issues of material fact precluded summary judgment where "a conclusion cannot be reached without weighing the opposing evidence, together with determining the credibility of the affiants and the witnesses.")

However, as to unjust enrichment against defendant Richard Boyd, there is circumstantial evidence that during the period of time that a lot of money was embezzled, the marital community of Richard and Brandy Boyd acquired several vehicles. Even setting aside the vehicles, Brandy Boyd stated in her affidavit:

> I took care of bills and household expenses from my separate account. As I said, I deposited the monies I took from the WET account into my separate bank account. I spent the money over time for bills and household expenses.

Affidavit of Brandy A. Boyd, p. 3, ¶ 7. Thus, there is certainly an issue of fact as to the elements of unjust enrichment. Because this Court will not weigh the credibility of the affiants and witnesses on summary judgment, and questions regarding Richard Boyd's knowledge and acquiescence remain, summary judgment as to unjust enrichment is improper.

IT IS HEREBY ORDERED plaintiffs' motion to continue the hearing on the motion for summary judgment filed by defendants Richard Boyd and Sandpoint Landscape & Design is DENIED.

IT IS FURTHER ORDERED the motion for summary judgment filed by defendant Richard Boyd is DENIED as to plaintiffs' claim of unjust enrichment, because disputed issues of material fact remain.

IT IS FURTHER ORDERED the motion for summary judgment filed by defendant Richard Boyd is GRANTED as to plaintiffs' claim of civil conspiracy to commit fraud, as

no disputed issues of material fact remain.

IT IS FURTHER ORDERED the motion as for summary judgment filed by defendant Sandpoint Landscape & Design is GRANTED.

Entered this 13th day of July, 2009.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of July, 2009, 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 #
James S. Macdonald	208-263-0759	Todd M. Reed	208-263-4438
Gary I. Amendola	765-1046		

_____
Deputy Clerk