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RCPT # 93511 ✓

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Email: srs@hteh.com

Attorneys for Secured Creditors
David Vial and Bruce Comstock

UNITED STATES BANKRUPTCY COURT

DISTRICT OF IDAHO

(Moscow)

IN RE:)	
)	Bkcty. No. 03-21652
GERALD AND ONA LINDSEY,)	
)	Chapter 7
Debtors.)	
)	MOTION FOR RELIEF
)	FROM AUTOMATIC STAY
)	

David Vial ("Vial") and Bruce Comstock ("Comstock"), by and through their attorneys of record, Hawley Troxell Ennis & Hawley LLP, hereby move that Vial and Comstock be granted relief from automatic stay as to the real property more particularly described as:

Township 8 North, Range 39 East, M.D.B. & M. Section 13: Southeast Quarter (SE¼) of Southeast Quarter (SE¼), Section 24: Northeast Quarter (NE¼) of Northwest Quarter (NW¼), together with 20 annual acre feet of water from Cloverdale Creek being a portion of Proof #. V05320 filed with the State Engineer of the State of Nevada; specifically and expressly

reserving to seller any and all other water rights remaining under said
Proof # V05320

("Nevada Real Property"), based upon the following grounds.

1. On or about June 7, 2000, Gerald A. Lindsey ("Lindsey"), a Debtor herein, and Noel S. Tanner ("Tanner"), entered into an Agreement with Vial and Comstock, wherein Lindsey and Tanner purchased the entire 500 shares of Clara Bea, Inc. and all inventory of that company, which included 105 items of gold mining equipment, including a 1986 D7G Caterpillar Tractor. Pursuant to that Agreement, Lindsey and Tanner agreed to pay a down payment of \$25,000, with a balance of \$100,000 due January 15, 2001. In the Agreement, Lindsey and Tanner granted a lien on the Nevada Real Property to secure the remaining \$100,000 due and owing under the Agreement. Attached hereto as Exhibit A is a true and correct copy of the Promissory Note and Agreement.

2. The Agreement was recorded in the official records of Nye County, Nevada, as Instrument No. 495640 on June 29, 2000. Attached hereto as Exhibit B is a true and correct copy of the Nye County recorded document.

3. Lindsey and Tanner defaulted under the terms of the Agreement and failed to pay the \$100,000 payment due and owing to Vial and Comstock on January 15, 2001. Thus, Vial and Comstock filed an action against Lindsey and Tanner, and on June 9, 2003, received a Judgment against Lindsey and Tanner in the principal sum of \$137,961.25, with interest accruing thereon at the statutory rate. On June 26, 2003, the Judgment was duly recorded in the County of Idaho.

4. The Debtors have no equity in the Collateral. As of October 15, 2003, as set forth in the Proof of Claim filed in the Debtors' bankruptcy case, the Debtors owed Vial and Comstock the sum of One Hundred Fifty Thousand One Hundred Twenty-Five Dollars and

Twenty-Four Cents (\$150,125.24), which continues to accrue interest at \$27.21 per dicm, as well as attorney fees and costs. Vial and Comstock have received no payment on the Judgment. Upon information and belief, the fair market value of the Nevada Real Property is less than \$20,000. The Debtors set forth in their Bankruptcy Schedules a value of \$40,000 for the Nevada Real Property. Noel Tanner claims in his Bankruptcy Schedules filed in Alaska, that his interest is valued at \$40,000, but the value of the property in its entirety is \$80,000. Upon information and belief, the tax assessed value is substantially below the asserted values set forth by the Debtors.

5. Absent the filing of said Chapter 7 proceeding, Vial and Comstock would have foreclosed on their lien on the Nevada Real Property for Lindsey and Tanner's default of the Agreement. Unless this Court permits Vial and Comstock to proceed with an action to foreclose on its lien, Vial and Comstock will suffer great and irreparable damage and injury by reason of the fact that they are not receiving any payments. Vial and Comstock are entitled to relief from automatic stay pursuant to 11 U.S.C. § 362(d)(1) and/or § 362(d)(2).

6. Based on the failure to make any payments and the lack of equity in the Nevada Real Property, Vial and Comstock request the Court to find good cause to waive the ten (10) day stay period of the effectiveness of the Order under Federal Bankruptcy Rule 4001(a)(3).

RULE 4001.2 NOTICE

7. Pursuant to Rule 4001.2 of the Local Bankruptcy Rules, and subject to Federal Bankruptcy Rule 9006, any party-in-interest opposing the motion must file and serve an objection thereto not later than seventeen (17) days after the date of service of the motion. The objection shall specifically identify those matters contained in the motion that are at issue and any other basis for opposition to the motion. **Absent the filing of a timely objection, the court**

may grant the relief sought without a hearing. As set forth in Rule 4001.2(d)(3), if an objection is filed to this relief motion, the objection must be served upon the movant and upon all parties receiving service of the motion. In accordance with Rule 4001.2(e)(1), a party opposing a motion shall contact the court's calendar clerk to schedule a preliminary hearing. At the time of filing the objection to a motion, the objecting party shall file and serve a notice of such hearing.

8. In addition, pursuant to Rule 4001.2 of the Local Bankruptcy Rules and 11 U.S.C. § 362(e),

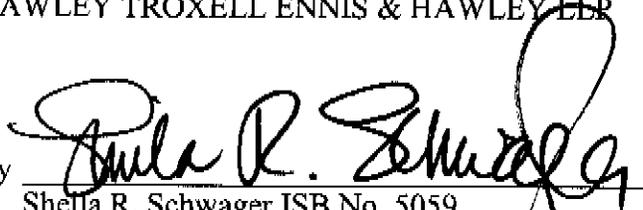
Thirty days after a request under subsection (d) of this section [362] for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final hearing and determination under subsection (d) of this section.

WHEREFORE, Vial and Comstock pray that they be granted relief from automatic stay as to the Nevada Real Property so that they may foreclose upon their lien pursuant to state law, and that they have such other and further relief as is just.

DATED THIS 27th day of September, 2004.

HAWLEY TROXELL ENNIS & HAWLEY LLP

By


Sheila R. Schwager ISB No. 5059
Attorneys for David Vial and Bruce Comstock

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of September, 2004, I caused to be served a true copy of the foregoing MOTION FOR RELIEF FROM AUTOMATIC STAY by the method indicated below, and addressed to each of the following:

Barry McHugh, Esq.
Bruce A. Anderson, Esq.
ELSAESSER JARZABEK ANDERSON
MARKS ELLIOTT & McHUGH, CHTD.
1400 Northwood Center Court
Coeur d'Alene, ID 83814

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Michael Ioanc
801 Woodside Road, Suite 14-404
Redwood City, CA 94061

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Gerald and Ona Lindsey
HC01 Box 109B
White Bird, ID 83554

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Julie Fowler
HC01 Box 109F
White Bird, ID 83554

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

J. Ford Elsaesser
Trustee
123 S. 3rd Ave.
Lake Plaza Building
Sandpoint, ID 83864

U.S. Mail, Postage Prepaid
 Hand Dclivered
 Overnight Mail
 Telecopy

Stephen B. McCrea, Esq.
Attorney at Law
P.O. Box 1501
Cocur d'Alene, ID 83814

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Thomas E. Moss
United State Attorney
WARREN S. DERBIDGE
Assistant United States Attorney
District of Idaho
P.O. Box 32
Boise, ID 83707
[Attorneys for the United States of America]

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Jennifer D. Auchterlonie
Trial Attorney, Tax Division
U.S. Department of Justice
P.O. Box 683, Ben Franklin Station
Washington, D.C. 20044-0683
[Attorneys for the United States of America]

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Clinton J. Henderson
Attorney at Law
604 Sixth Street
Clarkston, WA 99403

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Peter J. Cabbiness
2440 West Shaw Avenue, Suite 114
Fresno, CA 93711

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

U.S. Trustee
304 N. 8th Street, Rm 347
Boise, ID 83702

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Brit D. Groom
Attorney at Law
P.O. Box 218
Grangeville, ID 83530

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Danny Radakovich
Attorney at Law
1624 G. Street
Lewiston, ID 83501

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Glen Halliday
c/o 801 Woodside Road, Ste. 14-404
Redwood City, CA 94061

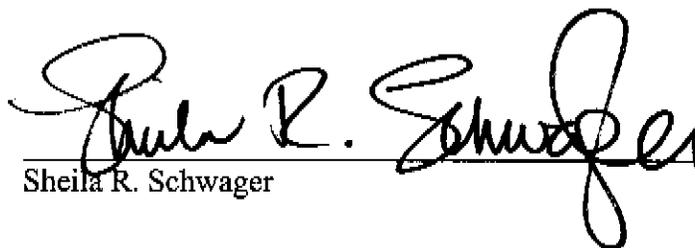
U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

Cornerstone Ranch, LLC
c/o Noel Tanner
P.O. Box 1430
Raound Mountain, NV 89045

Noel S. Tanner
P.O. Box 1389
Nome, AK 99762

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy

U.S. Mail, Postage Prepaid
 Hand Delivered
 Overnight Mail
 Telecopy


Sheila R. Schwager

TOT
BVF
NS
o.s.

AGREEMENT

This agreement by and between David B. Vial and Bruce Comstock of the Clara Bea, Inc. and Gerald A. Lindsey and Noel S. Tanner, individuals, for the purchase of the Clara Bea, Inc.

For the value of:

- \$25,000.00 (Check #6295⁹³ dated 6-7-00 from Searchlight account)
 - Balance due of \$100,000.00 due January 15, 2001.
- Lien on Cornerstone Ranch LC property for \$100,000.00 until payment of the \$100,000.00 balance due or until the Cornerstone Ranch is deeded to David B. Vial and Bruce Comstock. See Exhibit A.

Gerald A. Lindsey and Noel S. Tanner will purchase the entire 500 shares of Clara Bea, Inc. (tax ID # 93-0807070) with 202 outstanding and 298 in treasury.

David B. Vial
David B. Vial

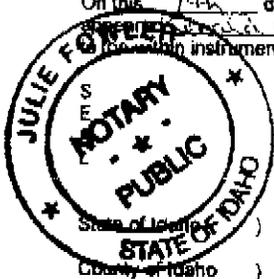
Gerald A. Lindsey
Gerald A. Lindsey

Bruce Comstock
Bruce Comstock

Noel S. Tanner
Noel S. Tanner

State of Idaho)
County of Blaine) s.s.

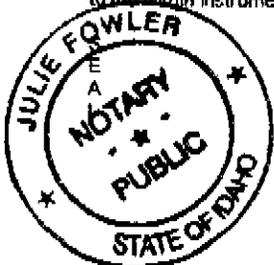
On this 7th day of June, in the year of 2000, before me Julie Fowler, a notary public, personally appeared David B. Vial, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Julie Fowler
Notary Public
My Commission Expires: 3-15-05

State of Idaho)
County of Idaho) s.s.

On this 7th day of June, in the year of 2000, before me Julie Fowler, a notary public, personally appeared Bruce Comstock, David B. Vial, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Julie Fowler
Notary Public
My Commission Expires: 3-15-05

EXHIBIT A

EXHIBIT "A"

MM
ONE
J. A. P.
(Signature)

TOWNSHIP 8 NORTH, RANGE 39 EAST, M.D.B &M.

Section 13: Southeast Quarter (SE1/4) of Southeast Quarter (SE1/4)

Section 24: Northeast Quarter (NE1/4) of Northwest Quarter (NW1/4)

Together with 20 annual acre feet of water from Cloverdale Creek being a portion of Proof #V05320 filed with the State Engineer of the State of Nevada: specifically and expressly reserving to SELLER any and all other water rights remaining under said Proof #V05320.

EXPRESSLY EXCEPTING AND RESERVING any and all range rights, AUMS, range water rights, grazing leases, permits, licenses, or preferences existing, connected or appurtenant to said land

ASSESSOR'S PARCEL NUMBER FOR 1998 - 1999: 01-521-05
01-521-06

June 9, 2000

495640

Nye County Records
200 West 10th
Pahrump, NV 89040

To Whom It May Concern:

Enclosed please find a copy of the lien documents to be filed against Cornerstone Ranch, LC. Legal description was as follows:

Tract 1 North, Range 29 East, MDBAM
Section 13, T-121-05 Southeast Quarter (SE1/4) of Southeast Quarter (SE1/4)
Section 24, T-121-06 Northeast Quarter (NE1/4) of Northwest Quarter (NW1/4)

This request is in accordance of your policy.

If you have any questions in regard to this request feel free to contact David B. Vial at (253) 851-3991.

[Handwritten signature]

David B. Vial
253-851-3991

I, David B. Vial, in the year of 2000, before me Nancy Greig, a Notary Public, personally known to me to be the person whose name is subscribed to the within and acknowledged to me that he executed the same.

[Handwritten signature: Nancy Greig]
Notary Public
My Commission Expires: 9-19-02



[Handwritten signature: Bruce W. Comstock]
Bruce W. Comstock
1707 Kirkpatrick Rd.
Medford, OR 97501

Place of Origin

[Handwritten signature: Holly Miller]

I, Bruce W. Comstock, in the year of 2000, before me Holly Miller, a notary public, personally known to me to be the person whose name is subscribed to the within and acknowledged to me that he executed the same.

[Handwritten signature: Holly Miller]
Notary Public
My Commission Expires: 8-22-2003



Official Records Nye County Nevada
Requested By: Bruce Comstock
6/23/00 9:21 AM
Norma Lydon Recorder 495640
Fee: \$7.00 State \$ Dep: 10

EXHIBIT B

Handwritten initials and signature
D.B.

AGREEMENT

This agreement by and between David B. Vial and Bruce Comstock of the Clara Bea, Inc. and Gerald A. Lindsey and Noel S. Tanner, individuals, for the purchase of the Clara Bea, Inc.

For the value of:

- \$25,000.00 (Check #6298⁹³ dated 6-7-00 from Searchlight account)
 - Balance due of \$100,000.00 due January 15, 2001.
- Lien on Cornerstone Ranch LC property for \$100,000.00 until payment of the \$100,000.00 balance due or until the Cornerstone Ranch is deeded to David B. Vial and Bruce Comstock. See Exhibit A.

Gerald A. Lindsey and Noel S. Tanner will purchase the entire 500 shares of Clara Bea, Inc. (tax ID # 93-0807070) with 202 outstanding and 298 in treasury.

David B. Vial
David B. Vial

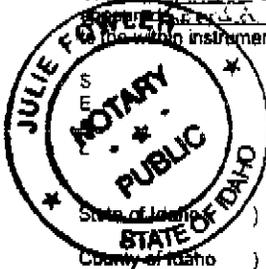
Gerald A. Lindsey
Gerald A. Lindsey

Bruce Comstock
Bruce Comstock

Noel S. Tanner
Noel S. Tanner

State of Idaho)
County of Blaine) S.S.

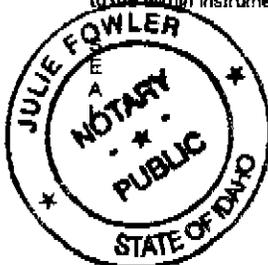
On this 7th day of June, in the year of 2005, before me Julie Fowler, a notary public, personally appeared David B. Vial, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Julie Fowler
Notary Public
My Commission Expires: 3-15-05

State of Idaho)
County of Idaho) S.S.

On this 7th day of June, in the year of 2005, before me Julie Fowler, a notary public, personally appeared Bruce Comstock, David B. Vial, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.



Julie Fowler
Notary Public
My Commission Expires: 3-15-05

Handwritten notes

EXHIBIT "A"

WMS
BMC
J. a. P.
(Signature)

TOWNSHIP 8 NORTH, RANGE 39 EAST, M.D.B &M.

Section 13: Southeast Quarter (SE1/4) of Southeast Quarter (SE1/4)

Section 24: Northeast Quarter (NE1/4) of Northwest Quarter (NW1/4)

Together with 20 annual acre feet of water from Cloverdale Creek being a portion of Proof #V05320 filed with the State Engineer of the State of Nevada; specifically and expressly reserving to SELLER any and all other water rights remaining under said Proof #V05320.

EXPRESSLY EXCEPTING AND RESERVING any and all range rights, AUMS, range water rights, grazing leases, permits, licenses, or preferences existing, connected or appurtenant to said land

ASSESSOR'S PARCEL NUMBER FOR 1998 - 1999: 01-521-05
01-521-06

June 9, 2000

Nye County Records
P.O. Box 1111
Tonopah, NV 89040

To whom it may Concern:

Enclosed please find a copy of the lien documents to be filed against Cornerstone Ranch, LC. Legal description is as follows:

Township 8 North, Range 39 East, MDB&M
Section 13: 1-521-05 Southeast Quarter (SE1/4) of Southeast Quarter (SE1/4)
Section 24: 1-521-06 Northeast Quarter (NE1/4) of Northwest Quarter (NW1/4)

Please record in accordance of your policy.

If there are any questions in regard to this request feel free to contact David B. Vial at (253) 851-3991.

David B. Vial
10508 Fawn Dr. N. W.
Gig Harbor, WA 98332

State of Washington

County of _____

On this _____ day of _____, in the year of 2000, before me _____, a notary public, personally appeared _____, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Notary Public

My Commission Expires: _____

Bruce W. Comstock
47067 Kirkpatrick Rd.
Pendleton, OR 97801

State of Oregon

County of _____

On this _____ day of _____, in the year of 2000, before me _____, a notary public, personally appeared _____, personally known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

Notary Public

My Commission Expires: _____