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Attorney for Defendant

04-229-S-BLW
CANCELL STURKE
CLERK IDAHO

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF IDAHO

RECUPEROS, LLC, an Idaho limited liability company,)
)
)
 Plaintiff,)
)
 vs.)
)
 AMERICAN FOOD STORES, LLC, a)
 California limited liability company,)
)
 Defendant.)
 _____)

Civil No. 04-229-S-BLW

MOTION TO STRIKE PORTIONS
OF BRIAN NAEVE'S AFFIDAVIT
IN SUPPORT OF MOTION FOR
PRELIMINARY INJUNCTION

COMES NOW the Defendant, American Food Stores, LLC, by and through R. Wade Curtis, of the firm of Belnap & Curtis, PLLC, pursuant to the Federal Rules of Evidence and objects to and moves this Court to Strike portions of the Affidavit of Brian Naeve submitted in support of Plaintiff's Motion for Preliminary Injunction.

ORIGINAL

In his affiant in paragraph 9, Mr. Naeve makes certain statements that are inadmissible under the Federal Rules of Evidence.

The contents of paragraph 9 as a whole do not consist of a recitation of facts but consists of opinion and speculation.

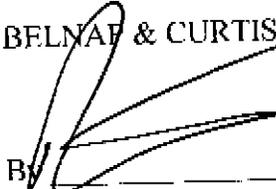
The first sentence is an improper legal conclusion to which the Affiant is not qualified to testify. This Court will determine from admissible facts, if the Plaintiff has any, what if any irreparable harm has been occasioned by the existence of the lis pendens.

The remainder of the paragraph is a speculative veiled attempt without reciting any specific facts to boot strap the Plaintiff into some claim of damage. If actual facts are presented by the Plaintiff, the Court is qualified to determine what actions required by the alleged buyer are additional, expansive and time-consuming. Further, without the express statements of the title company and the alleged buyer, the Court is unable to determine if those concerns are grave or amount to an extraction of additional financial and contractual concessions.

Appraently, form the full text of pagrapgh 9, the sale is still on and except for the present case and motion, the Plaitnff is not incuding any adaitonal expense that they can otherwise speak to specifical and precisely.

DATED this 22 day of June, 2004.

BELNAP & CURTIS, PLLC

By 
R. Wade Curtis of the Firm
Attorneys for the Defendants

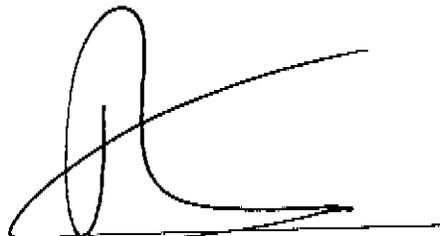
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22 day of June, 2004, I caused to be served a true and correct copy of the above and foregoing document by the method indicated below, and addressed to the following:

- MAILED
- FAXED -- 385-5384
- HAND DELIVERED
- OVERNIGHT DELIVERY

Attorney(s) and/or Individual(s) Served:

Michael O. Roe
Post Office Box 829
Boise, Idaho 83701


R. WADE CURTIS