

2010

John D. Jacob and Aqua Resources Unlimited v. Jerald L. Cross and Juniper Ridge : Reply Brief

Utah Court of Appeals

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Bryce D. Panzer; Brett N. Anderson; Blackburn & Stoll; Attorneys for Appellees.

Jerrold L. Cross; Defendants/ Appellants.

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IN THE UTAH COURT OF APPEALS

John D. Jacob and :
Aqua Resources Unlimited, LLC, :

Plaintiffs and Appellees, :

Case No. 20100992-CA

v. :

Jerrold L. Cross and :
Juniper Ridge, LLC, :

Defendants and Appellants. :

REPLY BRIEF OF APPELLANTS

Appeal from the decision of the Fourth Judicial
District Court of Utah County,
Judge Fred D. Howard presiding.

BRYCE D. PANZER
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JERROLD L. CROSS
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FILED
UTAH APPELLATE COURTS

MAR 19 2012

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IN THE UTAH COURT OF APPEALS

JOHN D. JACOB, and	:	
Aqua Resources Unlimited, LLC	:	
Plaintiffs and Appellees,	:	Case No. 20100992-CA
v.	:	
JERROLD L. CROSS, and	:	
Juniper Ridge, LLC.	:	
Defendants and Appellants.	:	

REPLY BRIEF OF APPELLANTS

JURISDICTION

In Appellee's Brief dated December 13, 2011, Appellee Jacob D. Jacob states for purposes of clarification of Juniper Ridge LLC, which is identified by Appellant Jerrold L. Cross in the Notice of Appeal and Brief. For clarification, Cross is appealing all action, including the action taken on Juniper Ridge LLC, for and in behalf of Juniper Ridge LLC, and is appealing all claims asserted by John D. Jacob, and is also appealing the ruling as manager. Therefore, Cross would still have authority under appeal in behalf of Juniper Ridge.

STATEMENT OF ISSUES PRESENTED ON RESPONSE
AND STANDARD OF REVIEW

Issue on Appeal No. 1: The fact is not whether the District Court erred in accepting and relying upon proffered testimony and evidence. The fact is the District Court did not address Cross, did not allow Cross to speak, and did not allow Cross to object to testimony and evidence. In fact Cross asked Appellee's attorney Bryce D. Panzer, if he was going to be allowed to challenge or to say anything in the Court, and Mr. Panzer said he did not know. Mr. Panzer knew that I was prepared to challenge, and he did not notify the Court of my wishes. Once again, the Judge Howard did not allow me to speak, nor did he ask if I had any statements, challenges, or evidence against Jacob's claims.

Issue on Appeal No. 2: Jacob presented false information to the Court. The fact still remains that Jacob presented fraudulent information to the District Court to get a judgment against Mr. Cross.

STATEMENT OF FACTS

Jacob has given a short history in the court case, and has brought up the point on

Motions for Sanction, where Cross failed to provide discovery and accounting to the Court. In fact, discovery and accounting was provided to Cross's attorneys and should have been provided to the Court. We were once again removed from the case. Cross requested of the Court time to get new counsel, and was denied, (Exhibit #1). Once again, at the hearing on November 10, 2010, Judge Howard refused to acknowledge Cross and give him his rights to challenge Jacob's evidence and to present his own. Whether or not Mr. Panzer notified Cross at a later trial on November 2, 2011, does not remedy the fact that Judge Howard entered a judgment against Cross and affected all of Cross's assets at the November 10, 2010 Hearing. The fact is, Judge Howard made his decisions based on fraudulent information. This also includes the fraudulent information as to the Escalade vehicle. The Escalade was a leased vehicle by the partnership and written off on taxes.

RELEVANT FACTS

Point No 1: On July 13, 2004, John D. Jacob signed a document, (Exhibit #2), in which he gave up all rights to the Indianola Ranch property. He also signed over the 25% interest in the Villages phases 1 - 4. He also paid the Escalade and other points of issue. Therefore, Jacob gave up all rights to anything which he filed a claim against Cross and other defendants. By this document, there should have been no case. Therefore, Jacob has no position in the assets.

Point No 2: While this action has been active, Jacob has fraudulently sold,

traded, and borrowed against many assets belonging to he and Cross without Mr. Cross's knowledge or approval. He has fraudulently sold and borrowed against water rights which did not exist. He has also presented fraudulent information in many Court hearings.

Point No 3: It has now come to our attention that the District Court, Judge Howard, has allowed Jacob, Mr. David Olsen, and their attorneys, Mr. Panzer and Mr. Schmutz, to remove the cash account from Zion's Bank of over \$2,000,000.00, and that it was moved to an account of Mr. Panzers. This action was taken and approved without any notification from the Court to Cross.

Point 4: Also, Chris Schmutz, attorney for David Olsen and Hearthstone, had in his control water certificates in the Indianola Irrigation Company. Olsen has fraudulently transferred those certificates, without the knowledge of the Indianola Irrigation Company into a company called Redrock, and has taken out a loan against those water rights for over \$200,000.00, with Mr. Will Jones and his partners. Both of these assets are part of the assets under this appeal. How can a Court and attorneys remove or allow assets to be transferred or sold which are under appeal? Through communication through Defendant Mr. Olsen, he stated that he is being blackmailed by Jacob, concerning the Indianola Irrigation certificates.

Point 5: Cross received three documents in the above case on February 23, 2012:

1. Finding of Facts and Conclusion of Law
2. Judgment After Trial
3. Declaration of Bryce D. Panzer

Why did Cross receive these three documents in February, but not the documents relating to the above mentioned assets which have been removed from the case?

SUMMARY OF ARGUMENT

Cross appealed this case on all decisions made by Judge Howard in his judgment against Cross. Juniper Ridge is an asset of Cross's, and therefore, should be protected in Cross's appeal. Once again, Cross appealed and objected to the full judgment of Judge Howard in this matter. Cross still objects to the full judgment, (including that of Juniper Ridge), made by Judge Howard, in Cross's appeal. How does a Judge take an asset owned by Cross and cause a judgment from that asset, back against Cross calling it fraud, without allowing any evidence by Jacob to support his claims, or allowing Cross and Juniper Ridge LLC, to challenge Jacob's claims?

The Judgment removed Cross from Juniper Ridge without document of fact and the claim of fraud was never discussed, or proven at the November 8, 2010 hearing, but Judge Howard entered a judgment of fraud against Cross.

Assets are being removed and disposed of by Judge Howard's Court, attorneys, plaintiffs, and other defendants in this case, while an appeal is in place which covers those assets. Judge Howard's Court, has not provided documentation of this action to Defendant Cross.

ARGUMENT

POINT I

Judge Howard did not allow Cross the ability to present evidence and challenge Jacob on his evidence and claims.

POINT II

Judge Howard entered judgment against Cross far beyond the Indianola Ranch and the Escalade, without any evidence being presented by Jacob, and did not allow Cross to challenge or present evidence.

POINT III

Judge Howard entered a judgment of fraud in relationship to the Indianola Ranch without any evidence being presented by Jacob, and did not allow Cross to challenge or present evidence.

POINT IV

Judge Howard's Court is not providing Cross with all documents pertaining to the case.

POINT V

Judge Howard has allowed assets in excess of millions of dollars to be removed from this case, without notification to Cross.

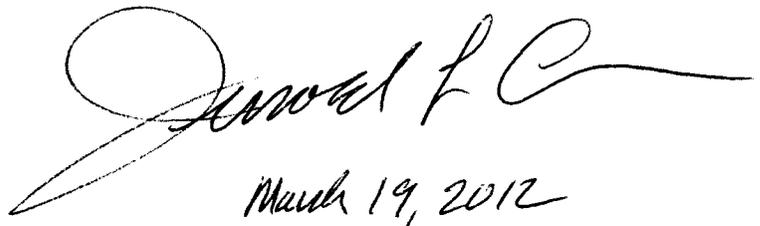
POINT VI

Assets are being fraudulently taken from the case and sold to other parties.

CONCLUSION

Judge Howard's Court and attorneys should preserve all assets in the case. Judge Howard's Court and attorneys should have provided Cross with all documents pertaining to the case. Judge Howard's Court should have allowed Cross to present evidence and to challenge Jacob's claims. The Judgment should be overturned in all aspects.

This case should be turned over to Utah State Attorney General's Office and the Securities Commission for criminal prosecution. There is much more to this case than what has been exposed through this appeals process.



Donald F. Cross
March 19, 2012

PROOF OF SERVICE

I hereby certify that I mailed two true and correct copies of the above and foregoing Reply to Brief of Appellant to counsel for the Plaintiffs/Appellees, Bryce D. Panzer, Attorney at Law, 257 East 200 South, Suite 800, Salt Lake City, Utah 84111, postage prepaid this 19 day of March 19, 2012.


Jerrold L. Cross
Defendants / Appellant

ADDENDUM

Exhibit # 1
Request of Court for Tim

John Jacob and Aqua Resources

v.

Jerrold Cross and Juniper Ridge

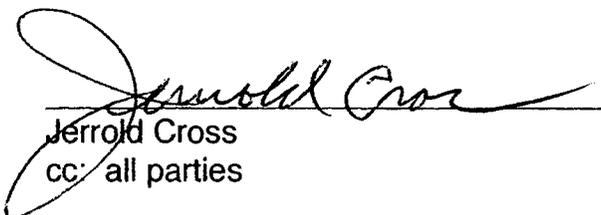
Civil No. 070400563

Judge Howard:

John Jacob and Aqua Resources appear to have filed to dismiss the claims of Jerrold Cross and Juniper Ridge in the above case because of failure to comply with discovery requirements. My latest attorneys in this case have withdrawn from representing me. My understanding was that I had provided my attorney's from the law firm of Shumway, Van & Hansen with all information requested by John Jacob. I also provided the requested documents through the law firm of Holland & Hart approximately one and half years ago. I also sent all requested personal tax documents provided by my accountant, dating back into the 1990's, approximately one month ago to Mr. Jacob's attorney. I do not know why the attorneys have not provided the requested documents that were given them. I will check with the attorneys to see why discovery has not been provided.

I am attempting to acquire new legal counsel. I request that you do not order that my claims be dismissed without allowing me to determine what I need to do to comply with the discovery requirements, which I feel have already provided to both of the law firms working on the case.

Sincerely,


Jerrold Cross
cc: all parties

July 1 2010
Date

Chris L. Schmutz
SCHMUTZ & MOHLMAN, LLC
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Bountiful, UT 84010

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Provo, UT 84604

Richard D. Allen
2975 West Executive Parkway, #509
Lehi, UT 84043

1

From: "Richard G. Allen" <rallen@lawyer.com>
Subject:
Date: July 1, 2010 3:06:07 PM MDT
To: "Jerry Cross" <jc09@comcast.net>
Cc: <schaub005@aol.com>, <gary@bangerterhomes.com>
▶ 1 Attachment, 22.0 KB

Jerry:

When we met with you regarding assigning your interests in the lawsuit that your previous attorneys had filed against Hearthstone and Dave Olsen under your indemnity agreement, we also discussed the situation with the John Jacob litigation. I told you that I believed the judge would probably dismiss all of your claims if you did not respond to the latest request for sanctions filed by John Jacob for failure to provide the requested discovery. You indicated that you believed you had provided your previous attorneys with the information being requested. I told you that if you filed something with the court indicating that you thought you had provided the information and that you would find out what needed to be provided, the Court may not may not dismiss the case and would work with you on the discovery if you tried to comply.

You requested that I send some suggested language of what you could send to the court. Since you agreed to assign your interest in the other case, I agreed I would send something that may work. The attached language is something that you could print on your own letterhead and file with the court that may cause the court to not dismiss your claims if you start trying to provide the requested discovery. The attached document is a Word document. You can change this any way you want to or not use it. I have not done any research and I am not very familiar with the case so I make to assurances that the suggested language will prevent the court from dismissing your claims. He probably has discretion so you need to follow up and try to provide the requested information.

By drafting this language I am not undertaking to represent you. As I have indicated, I cannot represent you at the same time I am representing Lake Forest and Colco.

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I am checking with my attorneys to see why the discovery has not been provided. I request that you don't order that my claims be dismissed without allowing me to determine what I need to do to comply with the discovery requirements.

Sincerely

Exhibit # 2
Transfer of Assets

July 13, 2004

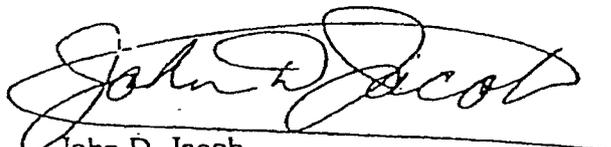
Dave Olsen
Fax - 801-794-9669
Office - 801-794-9559

Dear Dave,

You gave me a settlement offer and per your request I am writing this letter to provide you with my counter offer for a complete and final settlement.

- I will sign over the Indianola property to Dave Olsen and Jerry Cross.
- I will sign over my 25% interest in the profits of The Villages Phases I-IV to Dave Olsen and Jerry Cross, this will also include the \$200,000 that
- Hearthstone has promised to pay back to the John D. Jacob Company from the closing on Phases I-IV.
- I will pay for Jerry Crosses Cadillac.
- I will buy a Cadillac EXT for Dave Olsen.
- I will make sure the Parowan ground is free and clear and returned to Jerry Cross.

It is my belief that I can complete each of these offers within six months; however, you will provide me with the time necessary to complete these offers. When his agreement is accepted, it will be a final and complete settlement between myself and Jerry Cross and any entities involved on either side.


John D. Jacob

 6-13-04
David W. Olson