

2003

Mi Vida Enterprises and Mark A. Steen v. Nancy Ciddio Steen-Adams and Charles A. Steen III : Brief of Appellee

Utah Court of Appeals

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IN THE UTAH COURT OF APPEALS

MI VIDA ENTERPRISES, a Utah)	UTAH COURT OF APPEALS BRIEF UTAH DOCUMENT K F U 50 .A10 DOCKET NO. <u>20030022-CA</u>
corporation,)	
Plaintiff and Appellee)	
and)	
MARK A. STEEN, individually)	
and as personal representative of)	
the Estate of M.L. Steen)	
Defendant and Appellee)	
v.)	
NANCY CIDDIO STEEN-ADAMS and)	
CHARLES A. STEEN, III,)	
Defendant and Appellant.)	

Appellate No.: 20030022-CA

ANSWER BRIEF OF APPELLEE MI VIDA ENTERPRISES, INC.

ON APPEAL FROM A FINAL ORDER OF THE SEVENTH DISTRICT
COURT
HONORABLE LYLE ANDERSON, PRESIDING

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ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

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I. JURISDICTION

Mi Vida accepts the statement that this Court has jurisdiction.

II. STATEMENT OF ISSUES, STANDARD OF APPELLATE REVIEW, AND PRESERVATION OF ISSUES IN RECORD

A. The First Issue

1. Nancy Ciddio Steen-Adams (“Nancy”) asserts a factual issue prevented entry of summary judgment on many of her claims; however, this issue has been rendered moot and is barred by the doctrine of collateral estoppel and law of the case, since the Trial Court made independent factual findings after trial concerning the facts claimed by Nancy to be disputed and material.

2. If not so barred, then Mi Vida accepts the Statement of Issue.

3. Mi Vida agrees with the Standard of Review on Summary Judgment.

4. Mi Vida believes Appellants have misread the Rule on Briefs. Utah R.

App. P. Rule 24(a)(5) requires:

A statement of the issues presented for review, including for each issue: the standard of appellate review *with supporting authority*.

(emphasis added). Appellants have included the relevant citations supporting the standard of appellate review in paragraph a. under each issue. Under “Authority” for each issue, they appear to include authority they feel is relevant, not to the standard of review, but to the issue, which case law is more appropriately referenced in context of the Argument. Utah R. App. P. Rule 24(a)(9) provides in relevant part:

An Argument. The argument shall contain the contentions and reasons of the appellant with respect to the issues presented, including the grounds for reviewing any issue not preserved in the trial court, *with citations to the authorities, statutes, and parts of the record relied on.*")

Implicitly, Subdivision (a)(9) requires not just bald citation to authority but development of that authority and reasoned analysis based on that authority. *State v. Thomas*, 961 P.2d 299 (Utah 1998). Case law cited by the Appellants in the context of their Argument and developed in a reasoned analysis is addressed in that context.

5. The issue was properly preserved for appeal.

B. The Second Issue

1. The consolidation of the appeal of the Summary Judgment Order with the appeal of the Final Order after trial has rendered the propriety of the Court's 54(b) certification of the Summary Judgment Order moot since the appeal is no longer interlocutory in nature and could not be remanded to be heard in the context of the trial, which has already occurred.

2. Mi Vida does not believe the issue was properly preserved, but that, by delaying the appeal of the 54(b) certification and agreeing to the consolidation of the two appeals, Appellants have waived any objection to the review by this Court of the Summary Judgment Order.

C. The Third Issue

1. Mi Vida agrees with the Statement of Issue.

2. Standards of Review. Whether attorney fees are recoverable in an action is a question of law, which is reviewed for correctness. *Softsolutions v. Brigham Young Univ.*, 2000 UT 46, P12, 1 P.3d 1095 citing *Valcarce v. Fitzgerald*, 961 P.2d 305, 315 (Utah 1998). In contrast, once it is determined a statute provides for fees, it is within the discretion of the trial court to determine whether an action is asserted in bad faith, and therefore a review of such a determination is made under the clearly erroneous standard. See *Canyon Country Store v. Bracey*, 781 P.2d 414, 421 (Utah 1989).

Where attorneys fees are awarded as an element of damages (such as under an abuse of process claim in this case), findings of improper purpose and lack of merit are findings of fact, reviewed for clear error. *State v. Pena*, 869 P.2d 932, 935-936 (Utah 1994).

As long as there is a legitimate statutory or common law basis for awarding fees, the amount of the award is within the discretion of the court. *Chang v. Soldier Summit Dev.*, 2003 UT App 415, P24 (Utah Ct. App., 2003)

3. Properly cited authority will be addressed in context of the Argument.

4. This issue was properly preserved for appeal.

D. The Fourth Issue

1. Appellants' Fourth Statement of the Issue is self-contradicting; whereas the Statement of the Issue limits itself to the claims brought "in Colorado", the Statement also references "derivative claims." The Argument challenges over \$250,000 in fees awarded against Nancy and Charles, III. These are the fees

awarded for pursuit of the derivative claims in Utah as well as Colorado; consequently, Appellants may wish to revisit their own articulation of the “issue”.

2. Mi Vida disagrees with the Standard of Review stated by Appellants as being one of “correctness.” As stated above, the challenged fees involve derivative suits. U.C.A. §16-10a-740 provides, (6) “On termination of the derivative proceeding the court *may* order: (b) the plaintiff to pay...[attorney fees].”

When a statute, by its plain language, makes the award of attorneys fees discretionary, the appellate court reviews the trial court’s decision under an abuse of discretion standard. *See Chang v. Soldier Summit Dev., 2003 UT App 415, P26 (Utah Ct. App., 2003) (interpreting limited partnership derivative statute-- “Because the plain language of the statute makes the award of attorney fees discretionary, we review the trial court's decision under an abuse of discretion standard.”)*

However, the Trial Court’s authority to grant fees in a corporate derivative action *is* subject to a finding by the court that the proceeding was commenced or maintained: (i) without reasonable cause; or (ii) for an improper purpose.

The standard of review regarding the factual underpinnings and inferences derived therefrom, regarding these matters are to be reviewed for clear error, the “clearly erroneous” standard rather than the abuse of discretion:

Findings of fact are reviewed by an appellate court under the clearly erroneous standard. For a reviewing court to find clear error, it must decide that the factual findings made by the trial court are not adequately supported by the record, resolving all disputes in the evidence in a light most favorable to the trial court's determination.

State v. Pena, 869 P.2d 932, 935-936 (Utah, 1994)(citations omitted).

The application of the law (in this case the determination of whether the actions of Appellants were “improper” and/or taken “without reasonable cause”) to the facts determined to exist is more difficult and requires a “field of discretion” be carved out to account for the judge’s ability to assess the credibility of witnesses and assimilate the complexity of the matter before it. *Id.* at 938-939.

In the instant case, the statute itself prompts deference to the Trial Court, and the inquiry, is (i) complex; (ii) not the subject of former law setting forth factors; and (iii) based on judgments of credibility and observations that lie uniquely within the trial court’s domain. A highly deferential standard of review, for abuse of discretion is most appropriate.

3. Mi Vida agrees the issue was preserved.

E. The Fifth Issue

1. Statement of the Issue. The Appellants state their issue as follows:

“THE TRIAL COURT ERRED IN DETERMINING THAT UTAH LAW APPLIED TO CLAIMS BROUGHT BY APPELLANTS IN COLORADO RATHER THAN COLORADO LAW”

The problem with the Statement of Issue as formulated is that it attacks the original finding by Judge Anderson in ordering a Preliminary Injunction (*Rec. File #1, p. 171*), against the Dissident Shareholders (including your Appellants) from pursuing the Colorado Action. That Order was rendered moot by a Stipulation of the Parties filed April 27, 2001, *Rec. File 2, pp. 654 incorporating the Stipulation*

filed in the Colorado Action, Rec., File 2, pp. 626, et seq.; referenced in the Final Order and Judgment (hereinafter “Judgment”), App. #4, at p. 5 as “Stipulation II” and “Stipulation I” respectively), by which Nancy and Charles, III acknowledged jurisdiction of the Utah Court, and agreed to have their shares (if any) bought out under Utah law. The derivative claims were dismissed in Colorado without prejudice to restate them in the context of the Utah Action. *Id.* Thus, it is not really the determination that Utah law applies that is being challenged. Rather, what is being challenged is Judge Anderson’s basis for awarding fees, *i.e.*, his finding of “improper purpose,” and “lack of merit”. Therefore, Mi Vida prefers the statement of issue be phrased as follows:

**DID THE TRIAL COURT ERR IN FINDING APPELLANTS
MAINTAINED A NONMERITORIOUS LAWSUIT IN COLORADO
FOR AN IMPROPER PURPOSE**

Thus, the issue duplicates Issue Three. Appellants’ argument is really that Nancy and Charles, III relied on (i) Colorado law; and (ii) an Order of the Colorado Court in maintaining their action, and (iii) did so reasonably, negating a finding that their conduct was unreasonable or non-meritorious.

2. Standard of Review. Mi Vida does not agree with the Standard of Review stated by Appellants, because Mi Vida disagrees with the characterization of this issue as a “choice of law” issue. Choice of law decisions are reviewed for correctness; however, Judge Anderson’s finding of lack of merit and improper purpose are, as set forth above, the application of law to fact, with regard to which a more deferential standard, the “abuse of discretion” standard, is appropriate.

3. Mi Vida does not agree that the issue as stated, *i.e.*, a “choice of law” issue, was properly preserved. As noted above, any such direct argument was rendered moot by stipulation.

F. The Sixth Issue

1. Mi Vida accepts the Sixth Statement of Issue.

2. Mi Vida accepts the Standard of Review as being the “abuse of discretion” standard. The challenge is to the factual basis for dismissing Nancy’s derivative claims for breach of fiduciary duty.

III. STATUTES

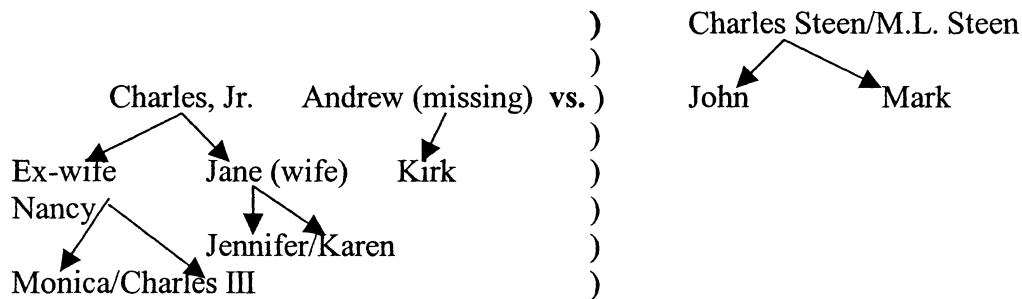
Utah Code Annotated, U.C.A. §16-10a-740; 16-10a-1434; §78-27-56.

IV. STATEMENT OF THE CASE

A. Response to “Procedural History”

Mi Vida agrees substantially with the “Procedural History” outlined by Appellants, with a few exceptions. Nancy claims the Steen family members “have been fighting over what was left [after the Steen bankruptcy in 1968 terminating in 1979] of the family fortune for decades.” This statement gives the wrong impression. The assets placed in the family corporation, Mi Vida, consisted of highly encumbered, mostly vacant land in Utah and Boulder County, Colorado. *Summary Judgment Order, App. #3 at p. 3.* The land in Colorado consisted of mining claims in the Gold Hill area of Boulder County, Colorado. *Id.* Since Mi Vida lacked funds, it sought partners to create a joint venture to mine its ore. *Judgment, App. #4, p. 8.* The project was referred to as the “Gold Hill Project.”

Of the six family members, two of the sons, Charles Jr., and Andrew, “[b]etween 1984 and 1987, engaged upon a public campaign to destroy the Gold Hill Project.” *Rec. File 7, p. 2079 S.J. App. #3*. The litigations (threatened or actual) have consistently forced the two elder Steens (later the Estate of M.L. Steen), and their two loyal sons, John and Mark, to defend against false allegations brought by some combination of persons related to Charles Jr. and/or Andrew. *Trans, Vol. 1, p. 255, ln 10-17*. The two Appellants in this case are Nancy, the ex-wife of Charles, Jr., and their son, Charles, III. The division of the parties was as follows:



Nancy’s legal battles began with her divorce in 1978, and continued when she attempted to break her husband, Charles, Jr.’s, spend-thrift trust in 1984 through 1986. *Tran. Vol. II, pp. 270-370*. In 1997, M.L.Steen died, precipitating a renewed interest on the part of Charles, Jr. and his family in the value of the family corporation. In 1999, Nancy participated in the commencement of the Colorado Action, an action requesting the appointment of a receiver and dissolution of the family corporation, *Mi Vida. Judgment, App. #4 at p. 3*. The Colorado Action, under the auspices of a “derivative suit”, also requested that the dissolution include a liquidation of assets belonging to numerous other companies,

and that Mi Vida be compensated by Mark Steen for various claims of breach of fiduciary duty, usurpation of corporate opportunity, etc. *Id.*

Nancy's description of the procedural happenings (*Brief at pp. 7-8*) in Colorado is substantially correct, except that the preliminary injunction was obtained in Utah in April of 2000, *Rec. at File 1, p. 171*, and the fraudulent bankruptcies were not exposed until May of 2000, resulting in a dismissal of the claims of the three fraudsters in July of 2000. *S.J. Exhibit 44, Rec. File 9 at 2815*.

Nancy's articulation of the procedural history in this Utah case is substantially correct. *Brief at pp. 8-10*.

B. Factual History

Appellants' statement that Mi Vida, "was formed to hold the assets that remained following the bankruptcy proceedings" of Charles A. Steen is only half-correct. Mi Vida was formed to hold *certain* of said assets, and M.L. Steen's interest in said assets. Other persons and entities purchased or swapped properties and debts out of the bankruptcy. *See e.g., Aff. of Nielsen, Rec. File 7, pp. 2094-2096, Aff. of Mark Steen, Id. pp. 2090-2093*. Mi Vida was organized on December 19, 1972 as a Utah corporation. *App. #3 at p. 3; Rec. File 7, p. 2098*. In 1974, the corporation was deeded real property in Grand County, Utah (the "Grand County Properties") and some mining claims in Boulder County, Colorado (the "Boulder County Properties"). The quitclaim deeds came from the bankruptcy trustee of the Charles A. Steen estate (after Court approval) *Id. at p. 2015 and 2112*, and from M.L. Steen (who incidentally, never was included in her husband's

bankruptcy). *Id.* at 2118. On April 10, 2000, when this case came before the Utah Trial Court on preliminary injunction, Mi Vida owned all but two small parcels of the Grand County Properties. *Rec. File 1, p. 98; App. #3, Rec. at 3045* (“*Mi Vida still owns virtually all of the properties conveyed to it in 1974. No complaint has been voiced about sales of small portions of the Grand County Properties in 1991 and 1994.*”)¹ At the time of the preliminary injunction hearing, Mi Vida *still* owned all of the Boulder County Properties. *Id.* The only income for Mi Vida during all these years has come from some rental income from the Grand County Properties, *Judgment, App. #4 at p. 8*, and some advances through the years from parties interested in partnering up to develop and mine the Boulder County Properties through grub-stake deals whereby some other party would pay for the privilege of mining and take a part of the profit. *Id. at 9*. Until 1994, Mi Vida could not sell its properties because of IRS liens and mortgages. *Id. at 11*. After that, it could not sell its properties because of internal shareholder disputes brought about by Charles, Jr. (Nancy’s ex-husband) and Andrew Steen. *Id.* Mi Vida never had funds to finance a mining operation. *Id. at 9*. Mi Vida never had funds to be purchasing any other properties.

Nancy was made an official shareholder of Mi Vida in 1987. *Id.* Prior to that, no shares had been issued. *S.J., App. #3 at p. 3*. On October 13, 2000, the date Nancy agreed to for the valuation of her shares, Mi Vida *still* owned the

¹ Thus, the transfer of the two small parcels are not in dispute in this case and shall not be included in the definition of “Grand County Properties”

Grand County Properties and the Boulder County Properties. *Id. at p. 4*. The properties were appraised as of that date, and when the Utah Trial Court valued Nancy's shares, the value of the properties was taken into consideration.

Judgment, App. #4 at p. 16.

Mi Vida never had any rights to any other property. Judge Anderson's thorough review of the facts: (1) in ruling on the preliminary injunction; *Rec. File 1, p. 92*; (2) on summary judgment *App. #3*; and (3) again at trial. *Judgment, App. #4*, confirm that no reasonable person would have asked this corporation to assert any rights to other properties or assets.

Nancy states as a "fact" that certain property, "was acquired by Mark Steen as agent for some type of business entity where Mi Vida was a joint venturer, partner, or general partner in a limited partnership." This was her litany throughout trial; however, the position was not borne out by the facts. In fact, the properties at issue were *not* acquired for Mi Vida, but a known entity—Cosmos Resources—which paid for them and had no obligation to convey the properties to Mi Vida. *Aff. of Knutson, Rec. File 7 at p. 2079, para c, p. 2086, para. 23, 24. ("In 1982 and 1983, Mark A. Steen, as an agent for Cosmos, and using money contributed by Cosmos, acquired properties in the Gold Hill area...")*². More importantly, the Trial Court found that *if* Mi Vida had any claim that it should own a portion of the properties (which would have been in exchange for transferring a portion of its

² Presumably this is the type of evidence in the record, which was to have been marshaled by Appellants.

own properties involved in the Gold Hill Project), any reasonable person would have been on notice as early as 1985 that no cross-conveyance was contemplated, and that properties acquired after that date by Mark Steen, as agent for Cosmos, were not being purchased for Mi Vida. *S.J., App. #3, p.12 (Rec. 3053)*. The sufficiency of the notice is addressed below. Any demand of a derivative nature for Mi Vida to assert such claims should have been made long, long ago.

Lastly, Nancy claims Mark Steen received a mortgage interest Mi Vida paid for. This is another red herring. Nancy agreed to be bought out as of a date certain. The challenged action occurred after that date and did not affect the balance sheet of Mi Vida on the valuation date. The Court's Order providing for a buy-out as of that date stripped Nancy of any standing as a shareholder to question the continued operations of Mi Vida, and the Court so found. *App. #4 at 19*.

The bottom line is that Nancy had an interest in Mi Vida, but she didn't just want to be bought out at her fair share of the assets (a value of \$261,086.88), she wanted millions, and to that end, engaged attorneys who ran up over \$600,000 in fees, *Trans. Vol .VI, p. 1474, ln 12-14.* , to prosecute a case against Mi Vida and Mark A. Steen, attempting to access Mr. Steen's personal assets and the assets of a number of companies Mark Steen had interests in, through claims of breach of fiduciary duty, fraud, etc. *See Counterclaims/Crossclaims, Rec. File 2 at p. 513*. Through her unfounded and unreasonable actions in two forums, Mi Vida and Mark A. Steen were damaged by having to pay their own attorneys. Ultimately they were awarded \$329,710 (which was a portion, not all) of their fees, set-off

against the buyout of \$261,086.88, for a positive judgment against Nancy in the amount of \$68,623.96. *Judgment, App. #4 at p. 36 (Rec. at 3724)*.

Nancy appeals the denial of the derivative claims and the assessment of fees. Her son, Charles, III, appeals the fees assessed against him proportionally for his participation in the Colorado Action.

V. SUMMARY OF THE ARGUMENT

Nancy has filed two appeals, which were consolidated into this appeal.

A. The First Appeal/Summary Judgment

In Case No. 2003-0022, Nancy appealed the entry of Summary Judgment against her on certain derivative claims brought by her on behalf of Mi Vida. Although that judgment was certified as final pursuant to Rule 56(b), Nancy successfully delayed that appeal so that the interlocutory judgment is presented at the same time as the appeal of the remainder of the case, rendering the 56(b) issue moot. *See Order of Consolidation dated February 20, 2004*. The primary issue in the Summary Judgment was whether Nancy had controverted the established facts sufficiently so as to create an issue of fact as to when she “knew or reasonably should have known” of the *facts underlying her claims*. Judge Anderson relied on Nancy’s participation through two different attorneys as early as 1987, plus information provided to her by the law firm of Sherman & Howard, including the notice and minutes of a 1991 shareholders’ meeting and, specifically, the information conveyed through a Milling Agreement, a copy of which was sent with the 1991 meeting notice, to establish that Nancy knew, or should have

known, of the facts underlying her claims, a long time ago, and that the three year statute of limitations had expired. The point in time when she came up with her theory of entitlement is simply *not* the point in time when the statute began to run.

Even then, Nancy was given a second opportunity to contest the fact of her receipt of information, individually and through her attorney/agents, or the sufficiency of that information to place her on notice of claims, in the trial on the merits. The information was relevant to her culpability for fees. The finding of the Court involves a determination of credibility, which was decided in favor of the attorney from Sherman & Howard (Rodney Knutson, Esq.), who stated that the information was sent, and against Nancy, who stated she did not receive the information. *Judgment, App. #4, at pp. 22-23, Rec. at 3710-11*. This finding would be collateral estoppel in any remand, should the first issue (controverted fact) be determined in favor of Nancy, and would negate (indeed render moot) the rationale behind a remand for any further proceedings.

Nor was this a case where the Trial Court found that a legitimate claim had been lost by time. The Trial Court went the extra step to analyze the claims themselves and opine on their merits. There was never a reasonable claim that Mark A. Steen had purchased property in trust for Mi Vida.

B. The Second Appeal/Attorneys Fees

The remaining issues raised by Nancy in this appeal attempt to whittle away at the award of attorneys fees against Nancy for her participation in the Colorado

Action and the Utah Action, and the small amount of fees awarded against Charles, III, her son, for his participation in the Colorado Action.

The Third and Fifth Issue³ address fees awarded for seeking dissolution of Mi Vida in Colorado. In 1999, Nancy and her cohorts, a collaboration of relatives from the Charles, Jr. and Andrew Steen side of the family commenced a lawsuit to have a receiver appointed to dissolve Mi Vida.

The problem was that Mi Vida is a Utah corporation, *Rec. at 2098*, and Utah law provides for exclusive jurisdiction in Utah for such proceedings. *U.C.A. §16-10a-1434. Appendix B*. The filing parties did not want Utah law to govern for a very specific reason—Utah law provides for a buyout of disgruntled minority shareholders. *Id.* The Utah Trial Court entered temporary restraining orders, which were ignored by the parties; the Utah Trial Court then enjoined the parties from proceeding with the receivership/ dissolution action. *Rec. File 1 at p. 171 et seq.* Eventually the Court found the attempt to use the Colorado forum to avoid the Utah buy-out statute to be an abuse of process. *Judgment, App. #4, at p. 30, Rec. at 3718*. Put simply, the Colorado Action was not used for the purpose intended, but for the wrongful purpose of evading Utah’s jurisdiction and laws, and depriving Mi Vida of its buyout rights.

While admitting that the question of whether Nancy and Charles, III abused the civil process or acted in bad faith are questions of fact to be reviewed for clear error, Nancy relies solely on an opinion in the Colorado Court whereby that court

³ See discussion of Statement of the Issues above.

failed to dismiss the case in Colorado early on (Fifth Issue). The weight to be accorded the Colorado opinion lies within the discretion of the Trial Court.

Nancy's Fourth Issue⁴ addresses the fees awarded for Nancy's participation in bringing derivative claims. In addition to the dissolution and receivership claims addressed above, Nancy brought "derivative claims" asserting Mi Vida owned, or had an interest in, ^{5174,} ~~the~~ Boulder County Properties, plus a laundry list of other assets and interests in other entities.

Nancy challenges the Trial Court's findings that the derivative claims were brought "without reasonable cause," and argues for application of a subjective rather than objective standard in applying the test. Further, Nancy argues that the entire action must have been brought without reasonable cause to justify any fees. As further analyzed below, it doesn't matter whether a subjective or objective test is used. This case is so egregious, that it is clear that the suit was without foundation, and Nancy knew it, or deliberately ignored information in her possession that would have led her to that conclusion. Nancy makes a very weak argument that there was some claim or portion thereof regarding the derivative matters that she had reasonable cause to bring, and that such a claim exonerates the outrageous misuse of the courts that occurred in this case; however, she is unable to point to any claim on which she succeeded. She could have brought a legitimate claim to have her shares in Mi Vida valued and bought out; however, she never did so, forcing Mi Vida to take affirmative action (this case) to stop the

⁴ See Statement of Issues regarding the scope of this issue.

wrongful dissolution in Colorado and force such a buy-out in Utah. The legitimate disputes regarding the valuation were not the same as the claims made in Colorado or in Counterclaim in this case, and no fees were awarded regarding those matters.

The Sixth issue raised is a catchall objection to the dismissal of those derivative claims that went to trial. Apparently the argument is not that Nancy should have been awarded damages in any specific amount, but that the evidence revealed an amorphous breach of fiduciary duty that should exonerate Nancy from liability for bringing all the claims she did, and relieve her from the attorneys fees assessed. As further analyzed below, the Trial Court was not convinced any compensable wrongdoing occurred on the part of Mark Steen or Mi Vida. New claims raised for the first time at trial (lack of accounting/the purchase of a deed of trust) and not properly pled, were dismissed, but analyzed on their merits anyway.

In summary, the record is replete with evidence establishing when Nancy first should have known of the facts underlying her claims, and with evidence that her claims lacked merit and were brought for an improper purpose—as leverage to force an unconscionable payout and an illegal and inappropriate liquidation, not only of the assets of Mi Vida, but those of numerous other entities. In a single word, the improper purpose was greed.

The findings of fact by the Trial Court are well-supported in the record. It was within the Trial Court’s discretion to find Nancy’s testimony less credible than that of the person she chose to attack—Mark Steen. *Judgment, App. #4, at p. 22, Rec.at3710* (“And where [Mark and Nancy are absolutely at odds as to what

happened] I find Mr. Steen's account to be more credible than Nancy Steen Adams' account.") The Court properly applied the laws of Utah and properly assessed fees against Nancy and Charles, III. The Trial Court did not abuse its discretion in awarding fees amounting to just about one-half of the fees Nancy's own attorneys purported to have spent on the case.

VI. ARGUMENT

THE FIRST ISSUE:

THE TRIAL COURT PROPERLY APPLIED THE STATUTE OF LIMITATIONS

A. The Granting of Summary Judgment Has Been Rendered Moot

The issue of when Nancy received notice of the facts underlying her claims, although determined initially on summary judgment, was re-adjudicated at trial in the context of determining her motives in bringing said claims. Nancy had a second, full and fair opportunity to litigate the issue.

"The judicial system's interest in finality and in efficient administration' dictates that, absent extraordinary circumstances, litigants should not be permitted to relitigate issues they had a fair opportunity to contest." *D'Aston v. Aston*, 844 P.2d 345, 352 (*Utah Ct. App.*, 1992)(*citations omitted*). Although the issue is usually raised in the context of a *denial* of summary judgment, any time an issue is subsequently decided at trial, an issue raised in summary judgment is rendered moot. *See e.g., Black v. Allstate Ins. Co.*, 2004 UT 66 (*Utah*, 2004). "When the estoppel is operative in proceedings in the same case, courts frequently speak in

terms of the law of the mandate or the law of the case rather than collateral estoppel but the underlying principle is the same." *D'Aston v. Aston*, 844 P.2d 345, 352 (Utah Ct. App., 1992).

Nancy claims that she raised a material issue of fact in the summary judgment pleadings. The important facts were that "Mi Vida claimed no interest" in the properties being purchased by Mark Steen in his name, and that "Mark did not hold [the properties] in trust," for Mi Vida. *Summary Judgment, App. #3, at p. 14, ll.9-17, Rec. at 3055*. The evidence presented by Mi Vida on Summary Judgment regarding this issue consisted of the Affidavits of Rodney D. Knutson and Mark Steen. *Rec. File 7, p. 2074 et seq.*

At trial, the same issue—of when Nancy had knowledge of the facts underlying her claims—was relevant to the determination of Nancy's intentions and purpose in pursuing the derivative suit. Mi Vida called Rodney D. Knutson as a witness. *Trans. Vol. I at p. 83*. Rather than having Mr. Knutson re-state the subject matter of his affidavit, Nancy's counsel stipulated that his testimony would reflect the affidavit, *Id. p. 84, ll. 15-22*, and Mr. Knutson, after re-affirming his testimony as having been made on personal knowledge, *Id. at p. 85, ln. 11-86, ln. 1*, was tendered for cross-examination on the issues of notice and bad faith. *Id. at p. 182, ln 3 et seq. See p. 193, ln 3- p. 196* regarding notice specifically. The exhibits tendered on Summary Judgment were admitted at trial. *Id. at 89, 20-25*. The original spindles containing the correspondence sent by the law firm of

Sherman & Howard to Nancy (and other shareholders) were made available in the courtroom for inspection and use as rebuttal. *Id. at p. 90, ln. 10-14.*

The issue of whether Mark Steen acted as an agent for Cosmos Resources (as opposed to Nancy's position that he acted as an agent and held property in trust for Mi Vida) was addressed. *Id. pp. 197, ln 17- p. 209, ln 6.* Similarly, the issue of the other laundry list of assets (claims for mining properties in Alta, Utah, a geologic library, a valuable mineral collection, M.L. Steen's jewelry, her piano, and stock in various other Steen family corporations, etc.) was addressed. *Id at p. 129, ln 22-131, ln. 6.* Mr. Knutson testified Mi Vida had never had any interest in such assets. *Id.*

Nancy took the stand to challenge the statements of Knutson that she had received notice. *Trans., Vol. I at 272, et seq.; Vol. IV, p. 917, ln 8-24.* She identified the various attorneys she had hired over the years to investigate the value of any interest she might have in Mi Vida or through her divorce, and confirmed that the persons to whom Knutson had sent notices were, in fact, her attorneys. *Trans. Vol. 1. at 273, ln 2-5* (power of attorney to Lynn McKeever, Esq.), Ron Bacal, Esq., the divorce lawyer, *p. 279, ln 2-7.* She testified as to personal knowledge that some of the assets she now claimed belonged to Mi Vida had, in fact, been purchased by different corporations. *See e.g. Trans. p. 186, ln 12 (re Litigation Resources buying the library and the personal property).* An actual transcript had been made of the 1987 Shareholder's Meeting wherein the assets of the corporation were discussed in detail and false allegations of fraud

made against Charles A. Steen, Sr., Mark and John Steen. *Ex. T-1(duplicated as Ex. 410)*. Nancy was represented by no less than two attorneys at this meeting. *Id.*

Specifically regarding the receipt of the 1991 shareholder meeting notices, Rodney Knutson testified that he had sent such notice to Nancy through her attorney, Lynn McKeever, *Rec. File 7 at p. 2085, para. 18-19; Notice appears at 2274-2279*⁵. The attorney responded by requesting a buyout of Nancy's shares, 2235, which was addressed at that meeting. Mi Vida's response was sent to Nancy via her attorney, *Id. at 2239*. Yet Nancy claims she has no recollection of receiving notice of the meeting. *Trans. at Vol. IV, p. 922, ln 6-13*.

Nancy testified that she had contacted Rodney Knutson and given him an address, *Id. at ln. 16-21*. This is confirmed by Knutson's inclusion of a letter dated July 14, 1992 from Nancy giving him the Western Graphic address. *Rec. File 7, p. 2243*. Nancy agreed the address on the notice for 1994, *id at p. 2288, 2291*, comported to the address she had given Knutson. *Trans. Vol. VI, p. 915 ln 3—916, ln 7*. But Nancy claims that she never received the notice, and never thought to ask about a shareholder's meeting until 1999. The colloquy regarding Nancy's position on this matter appears at *Trans. p. 913, ln 16- p. 922, ln 22*. The Trial Court found, "But I believe [Nancy] received notice of the 1991 meeting. I believe she received notice of the 1994 meeting. But she wasn't interested anymore. *Judgment, App. #4, p. 10, Rec. at 3698*. And "I have been more persuaded of the

⁵ Again, these Summary Judgment Exhibits were re-introduced and entered into evidence at trial at Transcript, Vol. 1, p. 89 ln 21-25.

honesty of Mark Steen than of Nancy Steen Adams. There are two reasons for that. One of them is that, I just do not believe that Sherman & Howard would say they sent the 1994 shareholder meeting notice to her at an address she'd given to them when in fact they hadn't...." *Id. at p. 22-23.*

Nancy was given a full and fair opportunity to litigate the issue of when she was put on inquiry notice. She is precluded from requesting further opportunity to re-litigate the matter.

B. Appellants Failed to Marshall the Evidence

All the evidence identified above, as well as plenty more in the record, supports the Court's finding on Summary Judgment that Nancy received notice.

A determination concerning whether a party had notice or knowledge of a particular transaction or occurrence is a finding of fact and "will not be set aside unless clearly erroneous." In order to challenge findings of fact, the appellant must marshal all evidence supporting "the findings and then demonstrate that despite this evidence, the trial court's findings are so lacking in support as to be 'against the clear weight of the evidence.'"

4447 Assocs. v. First Sec. Fin., 889 P.2d 467, 471 (Utah Ct. App., 1995)(citations omitted.)

Nancy failed to marshal the evidence, much less analyze its import.

C. Nancy Did Not Sufficiently Controvert the Undisputed Evidence on Summary Judgment⁶

The primary issue in the Summary Judgment was whether Nancy had controverted the established facts sufficiently so as to create an issue of fact as to

⁶ The Appellate Court need only address this issue if the matter has not been rendered moot by trial or collateral estoppel.

when she “knew or reasonably should have known” of the *facts underlying her claims*. One need only look at the Affidavits and supporting documents supplied by Mi Vida, *Rec. File 7 and Reply, File 9, Rec. at 2770 et seq.* and the documents filed in response thereto (*Brief, Rec. File 9, 2706 et seq., and Exhibits, Vol. 8, pp. 2427, et seq.*) including the *Affidavit of Nancy, p. 2734*, to see why the Trial Court found Nancy had only successfully controverted facts no. 76 and 77 as set forth by Mi Vida . *Rec. File 6 at 2020*. Once confronted with admissible evidence, one may not rely simply on their allegations. *Utah Rule Civ. Pro. 56(e)*.

The most salient problem with the Affidavit of Nancy is that she fails to recognize one of the oldest precepts of law, that notice to one’s agent is notice to the principal. The law has recently been succinctly stated:

Under longstanding Utah law, "the knowledge of [an] agent concerning the business which he is transacting for his principal is to be imputed to his principal." A principal is imputed with "an agent's knowledge of matters within the scope of his or her authority [because] . . . it is presumed that such knowledge will be disclosed to the principal."

Wardley Better Homes & Gardens v. Cannon, 2002 UT 99, P16 (Utah, 2002)

(citations omitted).

Nancy’s Affidavit, while stating that she did not receive certain documents, does not direct itself to the testimony of Rodney Knutson that the information was sent, not to her directly, but to her attorneys⁷. *Rec. at 2734*. Thus, regarding the items sent before 1993, Knutson’s statements are uncontroverted, and the Court so

⁷ The record reveals that Lynn McKeever, Esq. was not only Nancy’s attorney, but her attorney-in-fact regarding Mi Vida. *SJ Exhibit 9, Record at 2180; identified in Knutson Affidavit at p.4, paragraph II.4.*

found. *S.J. at p. 3, App. #3, Rec. at 3044, 3053* (“Nancy, through her counsel, was kept fully informed of all of the Cosmos, Mi Vida, and Fraser dealings.”)

The Court found that Nancy did successfully controvert facts 76 and 77, regarding her receipt of the 1994 Shareholder Meeting Notice and 1993 materials; however, the Court found that neither fact, if found in favor of Nancy, would alter the running of the statute of limitations, because, “Even without further inquiring, a cursory reading of the 1991 Milling Contract between Mi Vida and COM, a copy of which was provided to Nancy’s counsel, would have alerted her that **Mark and Gold Hill Ventures had title, or contemplated taking title, to other claims in the area of the mill.**” The uncontroverted evidence was that this Milling Contract was provided to Nancy’s counsel along with the 1991 Notice of Special Shareholders Meeting, *Aff. of Knutson, p. 7 para. 14; SJ Exhibit 31,35 Rec. at 2274-2279 and 2293 respectively.*

Further, attendance at the 1987 shareholders meeting and receipt of letters sent out by Andrew and Charles in their campaign to destroy the Gold Hill Project, “especially the December 17, 1986 letter from Andrew to the State of Colorado,” would put a “reasonable shareholder” on “high alert for any evidence of shady dealing.” *S.J. p. 13, App. #3, Rec. 3054.* The evidence was that that letter (*S.J. Exhibit 47*) was produced by Nancy as having been sent to her prior to 1987.

Notably, the “evidence” relied on by Nancy for her theory that the property was purchased for “some type of entity,” so as to give Mi Vida some interest therein, is *all* dated prior to 1989. *Rec. 2707.*

D. Adequacy of the Notice

Nancy does not directly address the adequacy of the notice of the facts underlying her claims (the alleged “bad acts”) and engages in no analysis of the record on this matter; however, the issue is addressed in case this Court believes the issue was properly raised. If this Court finds that Appellants have not properly briefed the issue, it may decline to consider the matter. *See Utah R. App. P. 24(a)(9); Utah, in re S.A., 2001 UT App 308, P28 (Utah Ct. App., 2001;)* *Burns v. Summerhays, 927 P.2d 197, 199 (Utah Ct. App. 1996).*

1. The Alleged “Bad Acts”

The basic premise for Nancy’s claims was that Mark Steen ended up with assets she believed should have belonged, for one reason or another, to Mi Vida.

a. The Mining Claims. There is no controversy that the Cosmos Claims were placed in Mark Steen’s name in 1982 and 1983. *SJ Ex. 6, Rec. 2138; Rec. p. 2079 p. 2, par. c.* The Little and Rodgers Claims were acquired by Mark Steen and his brother John, and their partner, Mr. R.T. Heard, with their own funds, in 1990. *Id. at p. 9, para. 24, Rec. p. 2086; SJ Ex. 39.* Therefore, the relevant time is when Nancy knew, or should have known, that the properties were not titled in Mi Vida’s name, or that there was no intent on Mi Vida’s part to assert a right to them, or Mark’s to transfer title.

Nancy repeatedly focuses on a different point in time, claiming the statute only began to run when she allegedly “became aware” that the actions she knew about were “improper” so as to give rise to a claim.’ *Brief at 18.* In support of her

contention, she points to two paragraphs in her Affidavit stating she did not know that the actions were “improper” until 1997. *Id.* As noted by the Court, Nancy’s focus, “answers the wrong question.” *App. #3, p. 11, Rec. at 3052.* The proper inquiry on summary judgment was when she knew, or should have known, of the *facts underlying* her alleged claim. *Id. Warren v. Provo City Corp., 838 P.2d 1125 (Utah 1992).*

In 1999, when Nancy discovered Mark Steen’s properties were under contract to Boulder County and large sums of money were being discussed, then, and only then, did Nancy engage in a historical fishing expedition in an attempt to create a legal theory of entitlement and file suit. There seems to be no disagreement that the Court applied the correct three-year statute of limitations,

b. The Trial Court Correctly Found that the 1991 Milling Contract, along with the Historical Facts, Put Nancy on Notice

A determination concerning the effect of the notice presents a question of law, reviewed for correctness. *4447 Assocs. v. First Sec. Fin., 889 P.2d 467, 471 (Utah Ct. App., 1995).* Again, Nancy does not analyze the sufficiency of the notice in her brief, and this Appellate Court may decline to entertain any such argument.

Where shareholders receive sufficient information in the materials mailed to them to put them on notice of further inquiry into the fairness of specific transactions, the statute of limitations begins to run as of the date of the stockholders' meeting where such transactions are discussed and voted on.

United Park City Mines Co. v. Greater Park City Co., 870 P.2d 880, 887 (Utah,

1993). In *United Park*, the Utah Court relied on several earlier cases for the propositions that (1):

[T]here is no reason why the running of the statute with respect to a diversion of assets should be suspended when all parties affected thereby have knowledge thereof and full power under the law to pursue a remedy.

and (2):

Where the circumstances are such as to suggest to a person of ordinary intelligence the probability that he has been defrauded, the duty of inquiry arises, and if he omits that inquiry when it would have developed the truth, and shuts his eyes to the facts which call for investigation, knowledge of the fraud will be imputed to him.

The acquisitions and ownership of mining claims were acknowledged in the 1991 Milling Agreement. *Id. SJ Exhibit 35, p. 15*:

*Mi Vida may assign its rights [to use the mill] (i) To Mark A. Steen or his successor in interest as to **properties owned by Mark A. Steen** lying within the two (2) mile radius restriction imposed in this Agreement.*

Contrary to Nancy's "statement of fact" that certain property, "was acquired by Mark Steen as agent for some type of business entity where Mi Vida was a joint venturer, partner, or general partner in a limited partnership" the Milling Agreement states expressly, "No Agency Partnership or Joint Venture." *Id. at p. 12, Rec. at 2307.*

By the time that agreement was entered into, it is undisputed that the "grub-stake" deals with the Frasers and Cosmos had fallen apart. No partnerships or joint ventures were contemplated, and Mi Vida was simply looking to contract for access to the Mill belonging to the Frasers through their company, COM, Inc.

Knutson Affidavit at p. 4, In., Rec. File 7 at 2081.

If she didn't know before receipt of this information, Nancy was put on inquiry when she received the COM, Inc. Milling Contract (in its draft form prior to the meeting and executed form after the meeting) that Mi Vida did not claim any interest in the Mark Steen properties. *Id*, *S.J. Ex. 35*.

c. The Gold Hill Mill

In the Counterclaim, Nancy claimed Mi Vida owned the Gold Hill Mill and 50 acres surrounding it. *Rec. File 2 at p. 12. ¶33, Rec. at 524*. However, Mi Vida never owned the Mill or the 50 acres:

Q: You've already testified you have knowledge of Mi Vida's historical assets. Correct?

A: Yes, that's correct.

Q: Is there any factual basis for the allegation that Mi Vida ever owned the 50 acres, or the Gold Hill Mill?

A: No.

Testimony of Knutson, Trans. Vol. 1 at p.107, ln. 5-14. The Deed transferring the Gold Hill Mill to the Frasers (who had paid to build it) was presented at the 1987 Shareholders Meeting. *Vol. 7, Rec. 2151, and S.J.Ex. 8, Rec. 2175*. Any claim that Mi Vida should have owned this land and the building on it, should have been made within three years of that meeting.

d. The Personal Property

Many of Nancy's derivative claims to everything from grand pianos to marble quarries, flowed from a refusal to acknowledge that other entities were created by various parties to hold certain other assets. Yet other entities did own these assets from inception. *Affs. of Nielson and Steen, Vol. 7, Rec. at 2077, 2089*. And

Nancy's testimony revealed she had known of the other entities since their creation in the 1970's. *Trans. Vol. II at p. 308, ln. 2-6*:. On Summary Judgment, Nancy's counsel admitted, "Ms. Steen-Adams has been unable to develop *any* evidence relating to those claims other than the verified complaint of Charles Steen, Jr." (*Ex. L, Rec. File 8 at 2553*)(*emphasis added*). That exhibit states only, "I [Charles A. Steen, Jr.] am a Plaintiff in this case. I have read this Complaint, and the facts set forth therein are true to the best of my knowledge." Clearly, this was not an affidavit based on personal knowledge sufficient for Rule 56 purposes. Second, this is the very Complaint later verified by Ms. Adams directly, and rejected by the Colorado Court because of its known lack of veracity. *S.J. Ex. 44, Rec. File 9 at 2815, 2821* ("*Nancy's verification in essence does no more than verify facts that she knew or should have known are false.*")

Not a scintilla of evidence was produced to support these claims.

e. The ITEC Agreement

In 1998, Mi Vida entered into an agreement with other Gold Hill property owners allowing a Canadian company, ITEC Environmental of Colorado, Inc. ("ITEC"), to process its ores. The Trial Court did not believe the issue of the ITEC Agreement was clear enough for summary judgment. Consequently, this issue was reserved for trial. *App. #3, at p. 14, Rec. at 3055*.

Because the ITEC Agreement was entered into by Mi Vida within the statute of limitations, Nancy now takes the position, at p. 19 of her Appellate Brief that "the ITEC deal underlies all of the claims for relief."

The problem with defending this case has been that Nancy and her cohorts threw theories around at a rapid-fire pace, making it difficult to address them on the merits. Nancy has continued this method of attack in the appeal.

The ITEC deal was yet another “grub-stake” attempt by Mi Vida. Still strapped for operating funds, and looking for someone to resurrect the idea of exploiting its ore reserves, Mi Vida turned to the latest owner of the Gold Hill Mill. *Rec. 2081*. ITEC didn’t want to deal with Mi Vida, Mark A. Steen, and the various companies that owned land in the Gold Hill area. *Id.* It required the claims owners to create a new limited liability company to account for any ore that moved through the mill. The Golden Tontine, LLC, was created for this purpose. *Trans. Vol. 1, p. 104, ln 13-p. 105, ln. 20*. Mi Vida transferred no title to its claims, and reserved the right to full payment for any ore processed out of its claims. *Id.* Now look at the Counterclaims, for the basis of the “ITEC claim”:

Upon information and belief, ITEC purchased the Gold Hill Mill and about 50 acres of land in the Gold Hill area. These assets were owned mostly by Mi Vida...”

We have seen already that the Gold Hill Mill and the 50 acres were never owned by Mi Vida. Any interest Mi Vida may ever have had through a joint venture was extinguished by Deed in 1986. *S.J. Ex. 8, Rec. at 2175*. No countervailing affidavit or testimony was ever proffered. The other allegations were that Mi Vida’s land was transferred to Golden Tontine. As noted above, Golden Tontine was a conduit only. No title or land was transferred. Rodney Knutson, Esq. testified there was no actual ore processed to account for:

“Q: Do you have personal knowledge of the production that has come out of the Gold Hill mill?

A: There hasn’t been any.

Q: Okay. So there is nothing for Mi Vida to account—or nothing for Golden Tontine to account to Mi Vida for?

A: No, there’s not.

Q: And there is nothing for Mi Vida to account to its shareholders for deriving out of this?

A: No, there’s not.”

Trans. Vol I, p. 107, ll 22-25, p. 108, ll. 1-7.

The Trial Court itself cross-examined on the issue of the ITEC agreement. *Id.* at 110-112, *ln 17*. The Court’s concern was that all property owners had been relieved of the ITEC obligations, and perhaps Mi Vida was entitled to some of the compensation paid. Mr. Knutson made it clear that the only payment went to the property owners selling their claims (not Mi Vida) for being “carved out” of the ITEC deal. *Id.* The Court ultimately decided, “I didn’t hear enough evidence to persuade me that the ITEC claim is of any value to the corporation.” *App. #4, p. 14, Rec. p. 3702.*

Nancy’s attempt to bootstrap the stale claims from decades ago into the ITEC non-claim is simply an argument made out of desperation.

There is plenty of record support for the Court’s dismissal of the majority of the derivative claims on Summary Judgment, and the ITEC claims at trial.

THE SECOND ISSUE:

THE ISSUE OF 56(b) CERTIFICATION IS MOOT

Although the Summary Judgment was certified as final pursuant to Rule 56(b), Nancy successfully delayed that appeal so that the interlocutory judgment is

presented at the same time as the appeal of the remainder of the case, rendering the 56(b) issue moot. *See Order of Consolidation dated February 20, 2004.*

THIRD AND FOURTH ISSUES:

THE TRIAL COURT PROPERLY FOUND THE COMMENCEMENT OF DISSOLUTION PROCEEDINGS IN COLORADO TO BE WITHOUT MERIT AND FOR IMPROPER PURPOSE

A. The Basis for the Court's Determination.

Nancy and Charles III challenge the Trial Court's award of fees for their participation in bringing the Dissolution and Receivership portions of the Colorado Action. The Court awarded fees in proportion to the percentage of Mi Vida's shares represented in bringing that action. Simply put, Nancy and her cohorts knew Mi Vida was a Utah corporation, knew of the buyout provisions for disgruntled shareholders under Utah law, and decided they would have better leverage in achieving their goals if an action to dissolve and for appointment of a Receiver was brought in Colorado, where no such buyout rights existed. The Trial Court recognized that these fees:

Do not technically fall under the derivative statute, and must be based on an abuse of process, Rule 11 or §78-27-56 basis. And I find that there was an improper purpose and a lack of merit to the pursuit of the Colorado litigation in Colorado.

Judgment, App. #4, p. 30, Rec. at 3718.

Nancy and Charles, III challenge the findings and award of fees in Issues Three and Five; however, the two duplicate the argument that there was case law to support their filing in Colorado. They bolster this argument in Issue Five, bringing

to this Court's attention that Mi Vida was not successful on a Motion to Dismiss in Colorado. The argument is that, since the Dissident Shareholders were able to convince the Colorado Court that it had jurisdiction, that their filing there must have had merit. However, the Colorado Opinion was only one of many facts taken into consideration by the Trial Court in its award of fees. The weight to be given that opinion is for the Trial Court to determine, and must be tempered by other facts, such as the evidence in the Colorado Action that the Complaint upon which the Motion to Dismiss was based, was itself dismissed as being fraudulent, and that Nancy's attempt to verify a similar version of the fraudulent complaint was rejected by the Colorado Court. *Rec. at 2815.*

B. The Improper Purpose Was To Avoid the Utah Buyout Rights

The Utah Code is extremely clear that Utah retains exclusive jurisdiction in dissolution proceedings for its corporations:

§16-10a-1431. Procedure for judicial dissolution

(1)A proceeding brought by any other party [other than the attorney general] named in Section 16-10a-1430 shall be brought in the district court of the county in this state where the corporation's principal office or, if it has no principal office in this state, its registered office is or was last located.

Utah provides for a corporation to have the right, upon request for dissolution, to simply buy-out the dissident shareholder. *U.C.A. §16-10a-1434*. Colorado has no such buy-out rights.

An Appellate Court relates the facts and "all reasonable inferences that may be drawn therefrom in a light most favorable to the verdict." *State v. Hamilton, 2003*

UT 22, P2 (Utah, 2003); State v. Dunn, 850 P.2d 1201, 1212 (Utah 1993); accord State v. Dibello, 780 P.2d 1221, 1224 (Utah 1989). In the instant case, the Court inferred that the purpose of bringing the dissolution proceeding in Colorado was to avoid the buy-out rights. This inference is supported in the record by the hundred or so pages of briefs filed by the Dissenting Shareholders claiming that they were not subject to the buy-out, or to Utah jurisdiction, *Rec. Vol. 1, pp. 184 to 290*, and by the numerous references to Utah law in the Colorado pleadings, with the notable exception of the buy-out provisions. *Exhibits B-1 and B-2.*

The fact that the Colorado Court denied a motion to Dismiss is simply one of many facts that the Trial Court reviewed in its analysis. In fact, that Order was brought to the Court's attention at the first hearing on Preliminary Injunction:

Mi Vida asked the Colorado court to dismiss the Colorado action. The Colorado court declined to do so, noting that it was required to accept the pleadings at face value. ***The assertions in those pleadings differ significantly from the evidence presented to this court....***

Ruling on Preliminary Injunction, Rec. File 1 at p. 96 (emphasis added.)

The Colorado court properly relied on the veracity of the allegations in the Complaint in the context of a motion to dismiss. Again, the Complaint at issue was later dismissed for *lack* of veracity. *S.J. Ex. 44 File 9, Rec. at 2821.* The ruling simply had no bearing once the actual facts were before the Utah Court. As a humorous aside, one of the "facts" upon which the Boulder, Colorado Court based its determination of jurisdiction was that Moab, Utah is a town "close-by the

Colorado border.” *Exhibit B-1*. It would seem Utah has reason to jealously guard its jurisdiction and its borders.

C. The Award of Fees is Supported by Statute and Case Law

As noted above, since the requests for dissolution and receivership in Colorado do not fall under the category of “derivative” claims, the Court noted its authority to award fees under Rule 11, abuse of process and U.C.A. §78-27-56. The legal authority for awarding fees was presented in Mark Steen’s Trial Brief, *Rec., File 11, p. 3620, 3634* and Mi Vida’s Trial Brief *at 3585,3606*. The Court’s award may be affirmed under several analyses.

1. Abuse of Process.

“Abuse of Process” occurs when legal process is used for an improper purpose, to accomplish an end not lawfully obtainable, or to compel someone to do some collateral thing he could not legally be compelled to do.

Houghton v. Foremost Fin. Servs. Corp., 724 F.2d 112, 116 (10th Cir. 1983).

The Dissident Shareholders could not lawfully dissolve Mi Vida without triggering buy-out rights. They attempted to use the Colorado court to avoid that consequence.

2. Attorneys Fees Pursuant to §78-27-56

Utah Code Ann. § 78-27-56 (1996) provides, "in civil actions, the court *shall* award reasonable attorney's fees to a prevailing party if the court determines that the action . . . was without merit and not brought . . . in good faith. It is within the discretion of the trial court to determine whether an action is asserted in bad

faith, and we therefore review such a determination under the clearly erroneous standard.” See *Canyon Country Store v. Bracey*, 781 P.2d 414, 421 (Utah 1989).

Claims without merit are those which are "frivolous" or "of little weight or importance having no basis in law or fact." *Cady v. Johnson*, 671 P.2d 149, 151 (Utah 1983). For purposes of §78-27-56, the terms "lack of good faith" and "bad faith" are synonymous. To establish bad faith, one or more of the following must be ***lacking***: "(1) An honest belief in the propriety of the activities in question; (2) no intent to take unconscionable advantage of others; (3) no intent to, or knowledge of the fact that the activities in question will, [sic] hinder, delay or defraud others." *Baldwin v. Burton*, 850 P.2d 1188, 1199 (Utah, 1993).

Under §78-27-56, a finding of bad faith is dependent upon a party's subjective belief or intent. *Valcarce v. Fitzgerald*, 961 P.2d 305, 315-16 (Utah 1998). Judge Anderson’s findings of “improper purpose” and “without reasonable cause” support the finding:

It was not reasonable to file [the dissolution/ receivership] in Colorado. It was not reasonable to seek that relief at all, when the plain relief of having your shares valued was available...

Judgment, App.# 4 pp.28 and 30.

Judge Anderson found, as to the majority of claims, that, “they never should have been asserted.” *Id. p. 28, Rec. 3716*. As to Nancy’s subjective intent, the Court found Nancy’s testimony incredible, *Id. at p. 23, Rec. 3711*, and describes her as a “very interested client with whom [her attorneys] were in frequent

communication,” who had, “shown a great deal of interest even before the filing of the lawsuit.”

I do not believe this portrayal of herself as someone who was simply invited by Charles, Jr. to join in a lawsuit at the last second...She was very interested and very forward and aggressive before that time. I thought she was very well up to date and involved with [the decision to file and make claims in Colorado] and well informed of those.” *Id.*

Thus, whether viewed as abuse of process or under §78-27-56, the Court did not abuse its discretion in awarding fees for the dissolution effort in Colorado.

FOURTH ISSUE

NANCY HAD NO REASONABLE CAUSE TO ASSERT THE DERIVATIVE CLAIMS AGAINST MI VIDA

Nancy’s fourth issue addresses the Court’s award of fees for the Derivative claims, both in Colorado and in Utah. The statute, U.C.A. §16-10a-740, provides:

On termination of the derivative proceedings the court may order:

(b)[The shareholders] to pay the [defending parties] reasonable expenses, including counsel fees incurred in defending the proceeding, if it finds that the proceeding was commenced or maintained:

- (i) without reasonable cause; or
- (ii) for an improper purpose; or

Incurred because of the filing of a pleading, motion or other paper, if:

- (i) not well grounded in fact, after reasonable inquiry; or
- (ii) not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and
- (ii) interposed for an improper purpose, such as to
 - (A) harass;
 - (B) cause unnecessary delay; or
 - (C) cause needless increase in the cost of litigation.

Significantly, the Court had noted in its Preliminary Injunction Ruling:

[T]he Court questions whether the Dissident Shareholders will prevail on their derivative or direct claims. Mi Vida does not appear to be a corporation that has ever conducted an active business. Moreover, it does not appear that any of the real estate initially conveyed to Mi Vida has been disposed of under suspicious circumstances.

Rec. File 1, p. 98. Consequently, Nancy was on notice in April of 2000 that her claims did not appear to have any substance. Years later, the final trial on the merits would bear out that original finding. Indeed, Mi Vida still owns the real estate initially conveyed to it, and still has no active business.

In the Judgment, Judge Anderson particularly noted the heightened duty of a shareholder who, by virtue of asserting a derivative suit, usurps the usual function of the corporate directors and officers, and thereby places themselves in a fiduciary relationship to the corporation. *App. #4, p. 25, Rec. at 3713:*

There is good reason for [the derivative fee statute] to be a more lenient⁸ standard than the generally applicable standard of Rule 11 or 78-27-56. Ordinarily, the corporation is supposed to make its own decisions through its democratic process. I don't want to be a shareholder of a corporation whose decisions are made by a judge after a lawsuit. So there has got to be a presumption of validity to all of the actions of the directors and officers, and you have to get over that presumption in order to proceed at all. And if you allege those kinds of things without having any reasonable basis for

⁸ Judge Anderson's position is supported by case law. In *White v. Banes*, 116 N.M. 611, 615, 866 P.2d 339 (N.M. 1993) the New Mexico court, interpreting its own derivative fees law, cited 2 Model Business Corp. Act Ann §7.46 cmt (1984) "The derivative action is sufficiently different from the dissenters' rights situation to justify a different and less onerous test for imposing cost on the plaintiff." See also, *Cohen, Executrix, et al. v. Beneficial Industrial Loan Corp*, 337 U.S. 541, 549-550, 69 S. Ct. 1221, 93 L. Ed 1528 (1949) ("a stockholder who brings suit on a cause of action derived from the corporation assumes a position, not technically as a trustee perhaps, but one of a fiduciary character.... The Federal Constitution does not oblige the state to place its litigating and adjudicating processes at the disposal of such a representative, at least without imposing standards of responsibility, liability and accountability...")

doing so, and thereby inflict legal costs on the corporation, it is no comfort to the remaining shareholders that you have your own legal costs. They are still going to suffer...

Nancy argues that fees under this statute should be subject, not to a more lenient standard than §78-27-56, but to a stricter and narrower construction, and that it should be limited to instances where the party bringing the suit, “subjectively knew at the time the suit was filed that the complaint was groundless.” Additionally, Nancy claims the entire action must have been brought without grounds. In other words, it is okay to bring a million dollar lawsuit if you have a viable one-dollar claim, and as long as you subjectively didn’t know your claims were bad on the day of filing, if you find out they are groundless the next day, you are still immune from liability for prosecuting the groundless claims.

The amendment of the statute effective May 1, 2000 [prior to the initiation of the derivative claims proceeding in Utah], contradicts both these positions and reveals a legislative intent to broaden, *not* narrow the construction of this statute. By adding language making it improper to commence “or maintain” an unreasonable suit, the legislature revealed an intent not to base fees simply on the state of affairs or subjective belief of the proponent as of the date of filing. This would also appear to be a rejection of the “frivolous and groundless filing” standard. Similarly, the “improper purpose” along with other grounds for fees was added. Here, the Court found both a lack of reasonable cause and improper purpose.

Nancy ignores the improper purpose basis and argues for a strict and narrow construction of the statute, limiting assessment of fees to instances where the entire action is brought without grounds.

For this argument, Nancy relies on a commentary in the Model Business Corporation Act that “the ‘action’ language was purposely chosen.” *Brief at p. 28*. Nancy fails to note the word “action” does not appear in the Utah statute. Not only was the word not “purposely chosen,” it was quite deliberately *not* chosen. The chosen word was “proceeding.” A “proceeding” is a prescribed mode of action for carrying into effect a legal right.” *Black’s Law Dictionary, Revised 4th Ed., 1973*. In the instant case, the statute directs itself only to “derivative” proceedings. Thus, for example, this statute did not apply (and the Court so found) to the dissolution and receivership causes of action. Under Nancy’s theory, since there is no prohibition in bringing direct and derivative claims in the same action, any person wishing to avoid fees could simply bring additional claims. Utah’s law does not lend itself to such manipulation.

Second, Nancy fails to note that her entire Counterclaims and Cross-Claims (constituting her “action”) in the Utah case, *were* dismissed as groundless, without merit, and as barred by the statute of limitations. She did not succeed on a single claim. Her defense of Mi Vida’s Complaint to establish a buy-out value is quite another matter. She did succeed in influencing the Trial Court on several issues of valuation; however, those matters are distinct from, and do not influence the finding that the claims as asserted in the derivative action were all resolved against

Nancy. *See Judgment, App. #4 at p. 27, Rec. at 3715* (“As I balance the effort that went into the valuation questions on [Nancy’s] side with the effort that went into the valuation on the corporation’s side, neither of them should receive anything from the other with respect to valuation efforts. That was a draw.”)

As to the subjective vs. objective standard, it is assumed Utah would apply a subjective standard, as it has with the attorney fee statute. *See analysis above.* Nancy’s knowledge, aggression and participation are well documented. Her unorthodox attempts to use the press *Trans. Pp. 97, ln 10-101, n. 15*, the estate of M.L. Steen, in which she had no interest, to misrepresent herself (claiming she was still married to Charles, Jr. to access his trust, and later claiming to be entitled to investigate the oil interests of Charles Steen, Sr. through his wife’s estate), are all supported in the record. Nancy and Nancy alone pursued the derivative claims in Utah. The Court emphasized that he’d “heard no evidence of any careful scrutiny by Nancy Adams of [Charles, Jr.’s] allegations.” *App. #4, p. 24, Rec. at 3712.* “In fact, the next thing that I see in the record is a full blown acceptance of all his allegations. When reminded some of those are patently false, she drops those that are patently false and accepts all the others.” *Id.* The Court then noted that Nancy was given an opportunity to drop the derivative actions and avoid all liability for fees. *Id.* As the only remaining plaintiff, Nancy determined to move forward. The Court properly assessed fees against her for doing so.

SIXTH ISSUE:

THE COURT'S DISMISSAL OF THE FIDUCIARY AND DERIVATIVE CLAIMS IS SUPPORTED BY THE RECORD

In this last-ditch effort to show wrongdoing on the part of Mark Steen, Nancy claims (1)“Mark Steen failed to provide an accounting to Nancy...” Nancy did bring a claim for accounting in the Colorado Action, *See Exhibit B-1 and B-12*; however, when that case was dismissed, she agreed any claim not re-stated in Utah would be dismissed with prejudice. *Rec., File 2, pp. 626, et seq.* No claim for accounting appears in the Utah Counterclaims. *Rec. File 2 at p. 513* (*Counterclaim; Ex.U-4*). The Court specifically found that the ~~Complaint~~ ^{Counterclaim} stated no claim for accounting, as such. *Trans. Vol 3, p. 744, ln 744 (Mr. Hult’s objection on the record follows in lengthy colloquy)*. Nor, as stated above, was there anything to account for that was not accounted for at trial. *See Trans. Vol. III, p. 756, Court: [Mark] is being required, during this trial, to make an accounting.”*

(2) “[Mark] advanced money to select shareholders and other relatives without charging interest”. *Brief at 32*. Monies advanced were not a “claim” as such, *See Counterclaim*, but a matter of the adjustment of shareholder advances taken into consideration in calculating the value of Nancy’s interest in Mi Vida. *See Judgment, App. #4 at p. 16 (Assets include shareholder advanced with 8% interest)*. Nancy was given the benefit of attributed interest in the calculation. *Id.*

(3) “[Mark] failed to hold shareholder meetings after 1994. No damages to the corporation or Nancy was found to have accrued as a result of the lack of shareholder meetings after 1994. *App. #4, p. 15, Rec. 3703.*

(4)[Mark] failed to properly communicate the business of the corporation to Nancy Steen-Adams. There was no business of the corporation to communicate, since all Mi Vida had was vacant land. *Judgment at p. 9, Rec. at 3697.* After 1994, there was no point in trying to get consensus. *Id. at p. 11, Rec. at 3699.*

(5) [Mark] misled the trial court and counsel for Nancy Steen-Adams when he personally took an assignment of Charles, Jr.’s interest in the Continental Bank and Trust note and mortgage. The last four or five pages of the Brief are dedicated to convincing this court that the undersigned counsel “misled” the Trial Court as to the nature of the Stipulation being entered into in the Bankruptcy proceedings of Charles, Jr., that this constitutes a “breach of fiduciary duty” and absolves Nancy of her liability for fees. Nancy relies on a Motion (App. #11), portions of a transcript (App. #10) and the Bankruptcy Motion (App. #7) and Order (#8).

This “claim” is also references in Nancy’s statement in the “Factual History”:

[Nancy] alleged in her complaint that a certain financial instrument which was represented by Mi Vida’s counsel as bought by Mi Vida out of the bankruptcy court for the benefit of the shareholders was actually paid for by Mi Vida, but transferred to Mark Steen for no consideration.

Brief at p. 13. Nancy mischaracterizes the record and the facts. Nancy filed a Counterclaim and Cross-Claims (not a Complaint) dated January 31, 2001, *Rec. at 513*, which references no such instrument. *Rec. File 2, p. 513 et seq.* Now look at

the dates on the documents she references. The “offensive” transfer occurred in May of 2001, months after the pleading was filed, and more than six months after the Valuation Date. Nancy agreed to have her shares bought out as of **October 13, 2000**. Stipulation II, *Rec. File 2, pp. 654*. The valuation of her shares was to (and did) occur as if a snapshot of the corporation was taken on that date. Once the Court determined the value of Nancy’s shares, her shareholder status was extinguished. *Utah Code Ann. § 16-10a-1434(6)*. Judge Anderson found:

I think these folks [Nancy] made a good deal on October 13, knowing that a transaction would occur, but not providing that that transaction would affect the price. And therefore what happened after that date seems to me ought to be clearly irrelevant....It is irrelevant.

See Trans. Vol. IV at p. 1032, ln 19-25.

Yet, as so often in this case, it is necessary to give a detailed account to vindicate Mark Steen. In May of 2000, it was discovered that Charles, Jr. and his wife had filed for bankruptcy some time earlier (1999) and not listed their shares in Mi Vida, making those shares and any claims these individuals had against Mi Vida, assets of their bankruptcy estate under the authority of a Trustee.

During the pendency of the Utah Action, Mi Vida exercised a right to purchase the shares under its Bylaws, at book value, by tendering a first payment, and a promissory note to the Trustee. *App. 10, Trans., p. 15, ln 12-15*. Thus, in determining value, Nancy’s shareholdership was increased proportionally, and in the valuation, the debt outstanding on the valuation date appeared as a liability. *App. #4, at 18, Rec. at 3706*.

Prior to October 13, 2000 valuation date, Mi Vida had engaged in negotiations with the Trustee regarding compromising their mutual claims. At a hearing on October 12, 2000, it was represented to the Court by counsel for Mi Vida that a final settlement with the Trustee had been reached: “As a matter of fact, I just had the Trustee’s final offer to me faxed to your Court this morning, and we will be moving forward on that.” The Final Settlement document is attached as an Exhibit to the Order Approving Compromise, App. #8. It provided for a settlement of all claims, for a sum certain, with an “overbid procedure” whereby anyone could overbid by increasing the settlement price by 5%. *Id. at p. 3.*

Mi Vida was given three options upon closing: (1) receive a quit claim of the properties; (2) receive an assignment of the Charles, Jr. mortgage interest (an undivided interest in a Deed of Trust; or (3) request an assignment to a third party of the Deed of Trust. The Order Approving the Compromise did not occur until March 1, 2001, and the closing sometime thereafter. Upon closing, for reasons of its own which are complex and involve the impact on litigation ongoing with other parties (*i.e.* Maxine Boyd and her assigns), and the amount of funds advanced by Mark A. Steen, *Trans. Vol IV, p. 1019, ln 19-1023*, Mi Vida chose the third option, and, at closing, the mortgages were assigned to Mark Steen. Nancy now claims that this was a breach of fiduciary duty. The matter did not come up as a “breach of fiduciary duty” claim during the time Nancy was a shareholder, but after she had agreed to be bought out. It was not addressed as a “claim” but in the analysis of Mi Vida’s balance sheet for purposes of valuing Nancy’s shares. *Judgment,*

App. #4, p. 18-19, Rec. at 3706-07. By agreeing to a buy-out date, Nancy waived any rights to causes of action which arose after that date.

On the Valuation Date, Mi Vida's funds were locked in an account with the Court, and she was credited with those undispersed funds in the Judgment, *App. #4, p. 19, Rec. at 3707* (“[T]he restricted cash on the asset side of the balance sheet stays there”). On the Valuation Date, Mi Vida clearly owed Charles, Jr. money under the Deed of Trust, which appeared on the liabilities side of the balance sheet created by Judge Anderson, *Id.* The amount of the Deed of Trust was a contested question of fact, and there is support in the record for the Court's determination of the amount; in fact, the Court used Nancy's calculation of the amount owing. *Id. at p. 20, Rec. 3708.*

(6) [Mark] mismanaged the funds Mi Vida received from the sale of the three acres of Mi Vida's land in Moab. This is a silly argument. The argument is that money was “lent” to certain shareholders and not others. Interest owed Mi Vida was computed in valuing the advances, so Nancy's only claim was that she wasn't given a loan that she would have to pay back. “And then, what do I do about it? Well, is she entitled to a shareholder loan she now must repay? What's the point of that?” *Judgment, App. #4 at p. 14, Rec. 3702.* The Trial Court's analysis runs from p. 11, Rec. 3699- where it found that it was Charles, Jr., Nancy's “co-perpetrator” (the Court's adjective, *id. at p. 27, Rec. at 3715,*) that refused to accept payment on his mortgage and demanded that the proceeds of the 1994 sale be distributed as “loans,” *id.* to its conclusion that Nancy's concern over

this issue was feigned. The Court found Nancy would have known of the intent to distribute if she had paid attention to the 1994 shareholder's notice, which she received⁹. *Id. at p. 14, Rec. at 3702*. Most importantly, the Court noted Nancy did not cross-claim against her ex-husband, Charles, Jr., the "architect" behind this "skullduggery," but rather, joined with him the dissolution action. *Id.* Mi Vida had actually commenced a lawsuit in 1994 to force the correct distribution of the proceeds, *Exhibit J-1 through J-9*; however, capitulated in a settlement in order to preserve the sale of the property. *Id.* The Court's finding that the settlement did not constitute a breach of fiduciary duty and was not unreasonable given "how long a law suit would take" *App. #4 at p. 12, Rec. 3700*, is well within its discretion.

(7) Lapse of Corporate Registration, Late-Filed Taxes. No damage to any party was proved by these lapses on Mi Vida's part. *App. #4 at p. 15, Rec. 3703*. The corporate status was reinstated, and since Nancy had agreed to a buy-out based on a date certain, October 13, 2000, Mi Vida's actions after that time are not relevant.

(8) Failure to Notify Nancy, "of the expiration of the IRS lien." This matter was not addressed specifically in the Counterclaims or the Trial; however, it is implicit in the Trial Court's finding that Nancy received notice of the 1994 shareholder's meeting, that she had notice of the expiration of the lien, since the sale of property was contemplated in that Notice, *S.J. Ex 34, Rec. at 2288*, ("To

⁹ Although not specifically addressed by the Court, the finding of Notice in 1994 would also place any claim for breach of fiduciary duty on this matter outside the three year statute of limitations since the action was not commenced until 1999.

ratify and approve the sale of the Company's property in Moab Utah...") and no sale could have occurred had there not been a change in status of the property.

VII. Request for Fees On Appeal

Mi Vida respectfully suggests that the arguments made on this appeal have no better basis in fact or law than did the original derivative claims. The examination of Nancy is most revealing in this regard. *Trans. Vol.II, p. 303, et seq.* Claiming assets belonged to Mi Vida out of a 1968 bankruptcy, Nancy took no action to try and obtain the bankruptcy records before making allegations of ownership. *Trans. Vol.II, p. 348, ln 21-349, ln 12.* Having failed to get money from her husband's spendthrift trust in 1986, *id. p. 308, ln. 21- p. 311, ln. 11-13,* Nancy failed to even review the documents provided to her in the context of that lawsuit when she included some 3.5 million dollars (her value) of assets in her Counterclaims. *Id. at 314, ln 10-18.* She failed to contact her earlier attorneys to verify the basis for her claims. *Id. at 316.* Based on an "internet article" saying the Steen family had sold some land, she claimed 2.4 million dollars belonged to Mi Vida. *Id. at 359, ln 21-360, ln 8; 368, ln 1-4.* The claims were groundless and frivolous at the Trial Court level, and they remain groundless and frivolous. Rule 33 of the Utah Appellate Rules provides:

(a) Damages for delay or frivolous appeal. Except in a first appeal of right in a criminal case, if the court determines that a motion made or appeal taken under these rules is either frivolous or for delay, it shall award just damages, which may include single or double costs, as defined in Rule 34, and/or

reasonable attorney fees, to the prevailing party. The court may order that the damages be paid by the party or by the party's attorney.

(b) Definitions. For the purposes of these rules, a frivolous appeal, motion, brief, or other paper is one that is not grounded in fact, not warranted by existing law, or not based on a good faith argument to extend, modify, or reverse existing law....

Consequently, it is requested the matter be remanded for inclusion of attorneys' fees on appeal in the Judgment.

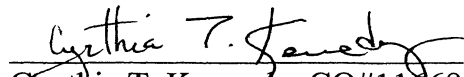
VIII. CONCLUSION

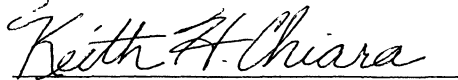
Given the lack of any ongoing business in Mi Vida, the lack of income and the obvious lack of diversion of corporate assets (Mi Vida still owns the Grand County Properties and the Boulder County Properties) or usurpation of corporate opportunity, what is this case about? Nancy, Charles, III and others claiming shareholder status, asserted that Mi Vida *should* own millions of dollars worth of other assets and properties, not because they could prove that Mi Vida purchased, or could have purchased, or had a right to purchase such assets or properties, but because they claim Mark Steen, as an officer of Mi Vida, *should have* purchased the properties for Mi Vida with other people's money, including his own. Nancy admits that this theory of entitlement didn't dawn on her until some nine to fifteen years after the various transfers. Apparently Nancy would have us believe that during those fifteen long years she was relying on Mark Steen to use his own funds and the funds of other companies in which she had no interest, to buy properties for Mi Vida, itself a non-operating company with encumbered assets.

The three factors Judge Anderson found important in assessing the fees were:

(1) Nancy's personal involvement and knowledge in the pursuit of the claims; (2) the fact that the claims were derivative in nature, invoking Nancy's own duties as a minority shareholder not to waste corporate assets in frivolous endeavors; and (3) the fact that Nancy had an opportunity, when bringing the case to Utah, to review her claims once again, and avoid the assessment of fees. There is simply no justification, under any analysis, for Nancy's persistent refusal to accept a buy-out of her minority shares based on the actual assets of Mi Vida. It was well within the discretion of the Court to assess fees against her for her unsuccessful attempts to enlarge her claim.

Dated this 9th day of November, 2004.


Cynthia T. Kennedy, CO#11668


Keith H. Chiara, #0621

Certificate of Mailing

I hereby certify that, on this 10th day of November, 2004, a true and correct copy of the foregoing Answer Brief of Mi Vida Enterprises, Inc. was placed in the United States mail, postage prepaid, properly addressed to the following:

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