

2003

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

Utah Court of Appeals

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Cynthia T. Kennedy, Thomas Finch; Attorneys for Appellee.

James M. Hult, Stephen S. Willis; Attorneys for Appellants.

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IN THE UTAH COURT OF APPEALS

MI VIDA ENTERPRISES, a Utah
Corporation,

Plaintiff and Appellee,

and

MARK A. STEEN, individually and as
personal representative of the Estate of
M.L. Steen,

Defendant and Appellee,

vs.

NANCY CIDDIO STEEN-ADAMS and
CHARLES A. STEEN, III;

Defendants and Appellants,

Appellate No.: 20030022

**UTAH COURT OF APPEALS
BRIEF**

**UTAH
DOCUMENT**

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DOCKET NO. 20030022

ADDENDUM TO BRIEF OF APPELLANTS

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

Cynthia T. Kennedy (Colorado)
Attorney for Plaintiff/Appellee
308 E. Simpson, Suite 102
Lafayette, CO 80026
Telephone: 303-604-1600

Thomas Finch (Colorado)
Attorney for Defendant/Appellee
885 Arapahoe Avenue
Boulder, CO 80302
Telephone: 303-449-7050

JAMES M. HULT (Colorado)
STEPHEN S. WILLS (Colorado)
Attorneys for Appellants
2338 Broadway
Boulder, CO 80304
Telephone: 303-447-1632

**FILED
UTAH APPELLATE COURTS**

AUG 30 2004

ORAL ARGUMENT AND PUBLISHED OPINION REQUESTED

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Tab 1

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DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO
Case Number 99-CV-1020 Division 2

ORDER RE DEFENDANTS' JOINT MOTION TO DISMISS VERIFIED
COMPLAINT

CHARLES A. STEEN, JR., JAYNE MARIE STEEN, NANCY CIDDIO STEEN-
ADAMS, MONICA LEE STEEN, CHARLES A. STEEN III, ANDREW KIRK STEEN,
JR., KAREN M. STEEN, and JENNIFER STEEN
Plaintiff,

v.

MI VIDA ENTERPRISES, INC., a Utah corporation, MARK ASHBY STEEN, JOHN
CHARLES STEEN, CHARLES A. STEEN, SOUTHERN CROSS PROSPECTING CO.,
a Colorado corporation, GOLD REEF MINING CO., INC., a Colorado corporation,
GOLD HILL MINES, INC., a Colorado corporation, GOLDEN TONTINE, LLC, a
Colorado limited liability company,
Defendants.

On November 9, 1999, the Court took the following actions in the above-
captioned case and directs the Clerk to enter these proceedings in the register of actions.

APPEARANCES: No parties appearing.

This matter comes before the Court on the Defendants' Joint Motion to Dismiss
Verified Complaint. The Plaintiffs filed a response in opposition. The Defendants filed a
reply. Having considered the parties' briefs and the applicable law, the Court enters the
following Ruling and Order.

I. STANDARD OF REVIEW

When reviewing a motion to dismiss, the Court must accept the material
allegations of the complaint as true and may not dismiss a claim unless the non-moving
party is not entitled to relief under any statement of facts. Douglas County Nat'l Bank v.
Pfeiff, 809 P.2d 1100 (Colo.App. 1991). If relief could be granted on the basis of the
facts stated in the complaint, then the complaint is sufficient. Schlitters v. State of
Colorado, 787 P.2d 656, 658 (Colo.App. 1990). The allegations contained in the
complaint must be viewed in the light most favorable to the plaintiff. Dunlap v. Colorado
Springs Cablevision, 829 P.2d 1286, 1291 (Colo. 1992). A Court may not consider
matters outside the allegations in the complaint when ruling on a motion to dismiss for
failure to state a claim. Id. at 1290. When matters outside of the pleadings are presented
to and not excluded by the Court, the motion shall be treated as one for summary

EXHIBIT

450

Cv No: 006700040

judgment and disposed of pursuant to C.R.C.P. 56. C.R.C.P. 12 (b).

The purpose of summary judgment is to permit the parties to pierce the formal allegations of the pleadings and to save the time and expense connected with trial. Because summary judgment is a drastic remedy, the Court may properly enter summary judgment only when there is no genuine issue about any material fact and the moving party is entitled to judgment as a matter of law. Pueblo W. Metro. Dist. v. Southeastern Colo. Water Conservancy Dist., 689 P.2d 594 (Colo. 1984). In determining whether summary judgment is proper, the non-moving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts, and all doubts must be resolved against the moving party. Jones v. Dressel, 623 P.2d 370 (Colo. 1981); Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992). Even where it is extremely doubtful that genuine issues of material fact exist, summary judgment is not appropriate. Mancuso v. United Bank of Pueblo, 818 P.2d 732 (Colo. 1991).

The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. C.R.C.P. 56(c); Continental Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987). The movant may satisfy this burden by demonstrating that there is an absence of evidence in the record to support the non-moving party's case. Id.; Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991). Once the movant makes a convincing showing that genuine issues of material fact are lacking, the opposing party cannot rest upon the mere allegations or denials in his or her pleadings, but must demonstrate by specific facts that a controversy exists. Sullivan v. Davis, 474 P.2d 218 (Colo. 1970).

II. FACTS

When viewed in the light most favorable to the Plaintiffs, the facts are as follows. In 1951, Defendant Charles A. Steen, Sr. ("Charles, Sr.") discovered what has been described as the largest uranium deposit in United States history. Through the 1950s and 1960s Charles, Sr. and his wife, M.L. Steen, now deceased, conducted successful mining businesses and invested in diverse businesses. However, by the late 1960s Charles, Sr. and M.L. found themselves in financial trouble. In 1968, the Internal Revenue Service ("IRS") seized large amounts of their assets, and they filed for Chapter 11 bankruptcy protection. In 1971, Charles, Sr. suffered a serious head injury that resulted in his inability to control his personal or business affairs. Since that time, Charles, Sr.'s son, Mark Ashby Steen ("Mark"), has controlled his affairs. Since the accident, Charles, Sr.'s four sons, Charles, Jr., Andy, John, and Mark, have engaged in a hostile family struggle over the assets that remained after the IRS and bankruptcy proceedings. The struggle has revolved around the family's corporation, Mi Vida Enterprises, Inc. ("Mi Vida").

Defendant Mi Vida is a closely held family corporation. Mi Vida is in the business of mining, acquiring land for mining projects, and developing real estate. Mi Vida was incorporated in Utah in 1973 and was authorized to conduct business in Colorado until 1992, when the Colorado Secretary of State revoked its certification. Mi Vida's authorization to conduct business in Colorado was subsequently reinstated, but was again revoked in 1995. Mi Vida re-registered as a foreign corporation in Colorado in

1997 and is currently in good standing. Mi Vida owns extensive real estate in Boulder County, Colorado and elsewhere. Because of the family infighting, Mi Vida has failed to make productive use of its assets. However, the assets, namely enormous property holdings, are estimated to be worth several million dollars.

Mi Vida conducts business from the home of Defendant Mark Steen in Longmont, Colorado. No shareholder meetings have been held since 1994. In their Complaint, the Plaintiffs contend that the stock of Mi Vida is held by the following individuals and in the following percentages:

- **Defendant Charles A. Steen, Sr.:** 500,000 shares representing 16.7% of Mi Vida. Charles, Sr. has served as president and director of Mi Vida throughout the relevant period. However, Charles, Sr. suffers from Alzheimer's disease. Because of his illness, he is unable to manage his business or personal affairs. His son, Defendant Mark Steen, with whom he lives, manages Charles, Sr.'s affairs.
- **Minnie Lee Holland Steen ("M.L."):** 500,000 shares representing 16.7% of Mi Vida. M.L. died on July 14, 1997, and was the wife of Charles, Sr. Her estate is currently being probated in the Boulder County District Court. Defendant Mark Steen is the personal representative of M.L.'s estate.
- **Defendant Mark Steen:** 500,000 shares representing 16.7% of Mi Vida. Since at least 1987, Mark has served as vice president, treasurer, and director of Mi Vida.
- **Defendant John Charles Steen ("John"):** 500,000 shares representing 16.7% of Mi Vida. Since at least 1987, John has served as secretary and director of Mi Vida. Because of an illness, Mark manages John's business affairs.
- **Plaintiff Charles A. Steen, Jr. ("Charles, Jr."):** 125,000 shares representing 4.2% of Mi Vida. Since 1987, Charles, Jr. has been a director of Mi Vida, although he has received no notice of directors' meetings or actions taken by the directors since 1994.
- **Plaintiff Jayne Marie Steen ("Jayne"):** 116,980 shares representing about 3.9% of Mi Vida. Jayne is the current wife of Charles, Jr.
- **Plaintiff Nancy Ciddio Steen-Adams ("Nancy"):** 250,000 shares representing 8.3% of Mi Vida. Nancy is the ex-wife of Charles, Jr.
- **Plaintiff Monica Lee Steen ("Monica"):** M.L. bequeathed 50,000 shares, representing 1.67% of Mi Vida, to Monica in her will. Monica is the adult daughter of Charles, Jr. and Nancy.
- **Plaintiff Charles A. Steen III ("Charles III"):** M.L. bequeathed 50,000 shares, representing 1.67% of Mi Vida, to Charles III in her will. Charles III is the adult son of Charles, Jr. and Nancy.
- **Andrew Kirk Steen ("Andy"):** 500,000 shares representing 16.7% of Mi Vida. Andy is the son of Charles, Sr. and M.L. His last known mailing address was in Switzerland but none of the Plaintiffs knows with certainty where he currently resides. Andy has been a director of Mi Vida since 1987, but has not participated as a director for at least twelve years.

- **Plaintiff Andrew Kirk Steen, Jr. ("Kirk")**: M.L. bequeathed 100,000 shares, representing 3.33% of Mi Vida, to Kirk in her will. Kirk is the adult son of Andy.
- **Plaintiff Karen M. Steen ("Karen")**: 4,010 shares representing .13% of Mi Vida. Karen is the minor daughter of Charles, Jr. and Jayne.
- **Plaintiff Jennifer Steen ("Jennifer")**: 4,010 shares representing .13% of Mi Vida. Jennifer is the minor daughter of Charles, Jr. and Jayne.
- **Ashley Victoria Steen ("Ashley")**: M.L. bequeathed 100,000 shares, representing 3.33% of Mi Vida, to Ashley in her will. Ashley is the minor daughter of Mark.
- **Tera Marie Holland ("Tera")**: M.L. bequeathed 150,000 shares, representing 5% of Mi Vida, to Tera in her will. Tera is M.L.'s sister and is currently living in a nursing home and cannot care for herself.
- **Karla Wright ("Karla")**: M.L. bequeathed 50,000 shares, representing 1.67% of Mi Vida, to Karla in her will. Karla is Tera's adult daughter.

The Plaintiffs assert that the recipients of M.L.'s bequests are the beneficial owners of their respective shares because those shares will pass by operation of law at the conclusion of the probate process.

Because Mark manages Charles, Sr.'s and John's business affairs, as well as serves as the personal representative of M.L.'s estate, he currently controls Mi Vida. Further, Mark controls the Board of Directors because of the five living directors, Mark controls his own vote and the votes of Charles, Sr. and John.

In June, 1992, Mark created three Colorado corporations, Gold Reef Mining Company, Inc. ("Gold Reef"), Southern Cross Prospecting Company, Inc. ("Southern Cross"), and Gold Hill Mines, Inc. ("Gold Hill"). Further, Mark created Golden Tontine, LLC ("Golden Tontine"), a Colorado limited liability company. These four companies are named as defendants and referred to collectively as the Mark Steen Companies. The Mark Steen Companies share the same Longmont, Colorado address as Mi Vida.

In their Complaint, the Plaintiffs, minority shareholders, assert six claims against the Defendants. First, the Plaintiffs claim a breach of fiduciary duty by Mi Vida's officers. Second, the Plaintiffs seek a declaratory judgment regarding diverted corporate opportunities and property. Third, the Plaintiffs request an accounting and a return of certain Mi Vida property. Fourth, the Plaintiffs wish to review certain corporate documents of Mi Vida. Fifth, the Plaintiffs request this Court to order an involuntary corporate dissolution of Mi Vida. Finally, the Plaintiffs request that a receiver be appointed. The Defendants' Motion to Dismiss seeks to dismiss all of these claims.

III. ARGUMENT

The Defendants first argue that this Court lacks subject matter jurisdiction to hear this case. The Defendants contend that Mi Vida's status as a Utah corporation operates to deprive this Court of authority to hear the case. The Defendants argue that neither Utah's

corporate code nor Colorado's corporate code authorizes the dissolution of Mi Vida or a receivership pursuant to dissolution. In further support of this position, the Defendants rely on C.R.S. § 7-101-104(11), which defines a corporation as "a corporation for profit which is not a foreign corporation." Motion ¶ 7. Thus, the Defendants conclude that the provisions in Colorado's corporate code that deal with dissolution of a corporation only implicate domestic corporations. Further, the Defendants cite Utah Code § 16-10a-102(11) and (19), which define "corporation" and "foreign corporation" the same way Colorado Revised Statutes define those terms. In addition, the Defendants cite Utah Code § 16-10a-1431, which states that any proceeding for dissolution by a shareholder "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 agent is or was located." The Defendants also argue that Mi Vida's bylaws bind the Plaintiffs to Utah as a venue and for choice of law. Finally, the Defendants argue that the Plaintiffs have not asserted facts to show an imminent threat of future harm that can be forestalled by the drastic remedy of involuntary dissolution. On these grounds, the Defendants argue that the Plaintiffs fifth and sixth claims, for involuntary dissolution and receivership, should be dismissed.

The Defendants next argue that certain of the Plaintiffs lack standing. The Defendants claim that Plaintiffs Monica Lee Steen, Charles III, and Andrew Kirk Steen, Jr. do not have, and have never had, any shares in Mi Vida. The Defendants contend that the Plaintiffs incorrectly claim that these three Plaintiffs are "beneficial" shareholders because they received their shares through bequests of M.L. Steen. The Defendants cite Utah Code § 16-10a-102(33), which defines "shareholder" as either a record owner or a "beneficial owner of shares to the extent recognized pursuant to section 16-10a-723." Motion ¶ 16. The Defendants contend that Utah Code § 16-10a-723 recognizes only those whose interests are registered in the name of the nominee if the corporation has such a procedure. The Defendants then conclude that because Mi Vida does not have such a procedure, these three Plaintiffs lack standing because the record owner of those shares is M.L. Steen.

The Defendants argue that the Plaintiffs fail to state a claim for the improper taking of a corporate opportunity. The Defendants argue that the Plaintiffs' contention that Mi Vida is deadlocked is fatal to their claim of taking of corporate opportunities. The Defendants state that there is no deadlock on their part, any deadlock has been created by Plaintiff Charles, Jr. in his capacity as a joint mortgage holder. The Defendants assert that the Plaintiffs' claim a taking of corporate opportunity as another ground for dissolution because they cannot prove actual deadlock. The Defendants contend that the Plaintiffs have failed to plead the two elements of taking of a corporate opportunity. First, the Plaintiffs must plead facts that allege in what way the opportunity in question belonged to the corporation. Second, the Plaintiffs must allege facts demonstrating that the corporation had the financial ability to consummate the opportunity. The Defendants argue that Mi Vida's tax returns, which the Plaintiffs have access to, prove that the corporation did not have sufficient funds to finance any of the opportunities taken by the Mark Steen Companies. The Defendants also complain that Plaintiff Charles, Jr. and his wife, Jayne, have engaged in the same types of taking of

corporate opportunities. Finally, the Defendants argue that the Plaintiffs taking of corporate opportunity claim is "incoherently stated and confused with other possible claims which are not properly pled." Motion § V.

The Defendants contend that the Plaintiffs should have asserted claims for a derivative action, a quiet title action, and/or a fraudulent conveyance action. In regard to the derivative action, the Defendants claim that the Plaintiffs did not comply with C.R.C.P. 23.1, which requires a plaintiff to make a written demand to a corporation before initiating a derivative suit.

Next, the Defendants assert that the Plaintiffs have failed to join indispensable parties. The Defendants argue that because the Plaintiffs should have pled claims for a derivative action, a quiet title action, and/or a fraudulent conveyance action, they have failed to join indispensable parties to those claims.

The Defendants argue that the Plaintiffs' breach of fiduciary duty claim is barred by the statute of limitations. Under both the Colorado Statutes and the Utah Code, claims for breach of fiduciary duty must be brought within three years. The Defendants object to several of the factual allegations asserted in the Plaintiffs' complaint in support of the breach of fiduciary duty claim. In particular, the Defendants argue that the Plaintiffs' allegations that the Steen library and mineral collection are Mi Vida assets wrongfully transferred to Mark are barred because these assets were owned by Charles, Sr. and M.L. when they filed for bankruptcy in 1968. The Defendants contend that these items became part of the bankruptcy estate and that they had to have been disposed of prior to the termination of the bankruptcy in 1979. The Defendants conclude that the Plaintiffs cannot now assert a claim for breach of fiduciary duty based on these items.

Additionally, the Defendants reject the Plaintiffs' argument that the Plaintiffs only recently discovered the factual information relating to land transfers underlying their claim for breach of fiduciary duty. Instead, the Defendants argue that the Plaintiffs must affirmatively state reasons for their failure to discover such facts earlier. The Defendants argue that because all real estate transfers must be recorded, the recordings of the alleged improper transfers of real estate put the Plaintiffs on constructive notice. The Defendants also assert that some of the Plaintiffs had actual knowledge of some of the transfers now complained of.

Next, the Defendants argue that the Plaintiffs' claim for an accounting fails to state a legally cognizable claim. The Defendants assert that the Plaintiffs have repeatedly refused to see that Mi Vida's accountant is paid, and if he were paid the Plaintiffs would have the accounting. Further, the Defendants argue that the Plaintiffs have no equitable right to an accounting of the Mark Steen Companies because they hold no equity interest in any of these entities.

Finally, the Defendants argue that the Plaintiffs' claim requesting that corporate documents be produced fails to state a claim. The Defendants claim that the Plaintiffs fail to identify what records exist and which are desired. Further, the Defendants contend that all but four of the documents requested by the Plaintiffs are financial documents.

available at the offices of Mi Vida's accountant, Mr. Snodgrass. The Defendants assert that the four documents that are not financial are in the possession of the Plaintiffs.

The Plaintiffs' response is as lengthy and detailed as the Defendants' motion. The Plaintiffs begin by arguing that the exhibits attached to the Defendants' motion are improper because there are no accompanying affidavits to authenticate the exhibits or to describe what facts the Defendants view as relevant. Because the Defendants did not furnish any affidavits, the Plaintiffs argue that the Defendants have failed to meet their burden under C.R.C.P. 56. The Plaintiffs further argue that their Verified Complaint, because it is verified, suffices to show that numerous issues of material fact exist which preclude the entry of summary judgment.

In response to the Defendants' claim that this Court lacks subject matter jurisdiction to hear this case, the Plaintiffs admit that Mi Vida is a Utah corporation, but deny that this fact deprives the Court of subject matter jurisdiction. The Plaintiffs argue that the Court has jurisdiction over their first through fourth claims: breach of fiduciary duty; declaratory judgment regarding diverted corporate opportunities; request for an accounting and return of Mi Vida property; and review of corporate documents. The Plaintiffs support this assertion by stating that because the corporate officers are all Colorado residents and reside in Boulder County, the Court has personal jurisdiction over them and thus Boulder County is the proper venue. Further, the Plaintiffs argue that jurisdiction is proper over the first four claims because these claims all involve actions taken by the Defendants in Colorado, diversion of corporate opportunities including land located in Colorado, and transactions that occurred in Colorado. In addition, the Plaintiffs contend that it is well established that shareholders of a foreign corporation may file derivative claims in a state in which the corporation is not incorporated. Finally, the Plaintiffs argue that Colorado case law supports their fourth claim for a review of corporate documents.

In regard to their fifth and sixth claims for involuntary dissolution and receivership, the Plaintiffs contend that this Court has discretion to assert jurisdiction. The Plaintiffs rely primarily on two cases, Ficor, Inc. v. McHugh, 639 P.2d 385 (Colo. 1982), and Jefferson Indus. Bank v. First Golden Bancorporation, 762 P.2d 768 (Colo.App. 1988). The Plaintiffs state that these cases interpreted the predecessor to the current Colorado corporate code as allowing application of the act to foreign corporations in certain circumstances. These circumstances include those where choice of law principles permit such application, where the foreign corporation has transacted substantial business in Colorado, and where policy considerations do not dictate a different conclusion. Although the Plaintiffs do not cite any Colorado cases directly on the issue of dissolution of a foreign corporation, they state that other jurisdictions have considered the issue. According to the Plaintiffs, these jurisdictions have found that jurisdiction could be properly exercised when the situation involves "strong ties to the forum, especially where the bulk of corporate assets are located there, the bulk of business has been done there, and corporate officers and directors are subject to the court's jurisdiction." Annotation, Dissolving or Winding Up Affairs of Corporation Domiciled in Another State, 19 A.L.R.3d 1279, 1285-86. Finally, the Plaintiffs rely on

Fletcher's Cyclopedic of the Law of Corporations to support their assertion that this Court has discretion to assert jurisdiction over Mi Vida's dissolution because some courts have "focused on convenience and equity rather than treating the issue as a question of power." Fletcher's at § 8579. The Plaintiffs consider all of these factors in relation to Mi Vida and conclude that this Court can, and should, use its discretion and exercise jurisdiction over their fifth and sixth claims.

The Plaintiffs argue that even if this Court declines to exercise its jurisdiction to hear the fifth and sixth claims, this Court may order Mi Vida's officers to seek dissolution in Utah and appoint a custodian over Mi Vida's assets in Colorado. Again, the Plaintiffs rely on Fletcher's, which states that if a court has jurisdiction over a corporation's officers the court may "make decrees and orders affecting the property of the corporation in other states and enforce obedience to them." Fletcher's at § 8561. Finally, the Plaintiffs state that "local courts may appoint receivers for the property and assets of a foreign corporation located in the state, and wind up the affairs of the foreign corporation so far as they are within the jurisdiction." Fletcher's at § 8579.

In response to the Defendants' statute of limitations argument, the Plaintiffs contend that all of their factual claims are within the statute of limitations. The Plaintiffs argue that because the Defendants admit in their motion that at least one of the Plaintiffs' factual claims is within the statute of limitations, none of the Plaintiffs' claims for relief can be dismissed on this ground. Further, the Plaintiffs argue that it is unclear when the statute of limitations began to run on their claims. The Plaintiffs assert that under the Utah Code, the statute does not begin to run until after their discovery of the facts upon which the claims are based. The Plaintiffs state that because there has been no shareholders meeting since 1994 and because no financial information exists for the last several years, they simply did not know what the corporate officers were doing with Mi Vida's assets and had no reason to know that the Mark Steen Companies existed. Additionally, the Plaintiffs agree with the Defendants that failure to hold shareholders meetings is alone not enough to compel dissolution, but argue that they thus had no basis for bringing any claims until they learned that the Mark Steen Companies had been formed and were active in mining and land transactions in Colorado. The Plaintiffs assert that they did not become aware of the Mark Steen Companies until June, 1998, when they read in a newspaper about a deal between ITEC Environmental Colorado, Inc. ("ITEC") and one of the Mark Steen Companies. The Plaintiffs conclude that because the complaint was filed a year after they discovered the newspaper articles, they have complied with the statute of limitations. Finally, the Plaintiffs argue that if there is a factual dispute about when the Plaintiffs knew or should have known about some of their claims, such a dispute is not properly resolved at this stage.

The Plaintiffs next assert that all the Plaintiffs are properly before the Court. Specifically, the Plaintiffs argue that Monica Lee Steen, Andrew Kirk Steen, Jr. and Charles III have standing because they are each to receive a percentage of the late M.L. Steen's shares in Mi Vida under her will, which is in probate in this Court. The Plaintiffs contend that this Court may take judicial notice of its own files which show that no one has challenged M.L.'s will in this regard. The Plaintiffs rely on American Jurisprudence,

Second, which states that “stock acquired by purchase or devise entitles a minority stockholder to bring such suit against the corporation although the stock had not been transferred on the books of the company in the name of the plaintiff.” 19 Am. Jur. 2d Corporations § 2771. Finally, the Plaintiffs argue that because Defendant Mark Steen is the personal representative of M.L. Steen any delay in registering Monica, Kirk, and Charles III as record shareholders can be attributed to him.

In regard to their diversion of corporate opportunity claim, the Plaintiffs argue that they have stated a proper claim. The Plaintiffs contend that there is a factual dispute that cannot be resolved in this motion about whether Mi Vida had the financial ability to consummate any of the opportunities. The Plaintiffs assert that they do not have tax returns or other financial information since 1994 and that the only financial document presented with the Defendants’ motion was a 1990 tax return.

The Plaintiffs argue that the Mark Steen Companies are properly named as defendants in this case. The Plaintiffs assert that if a corporate officer or director usurps a corporate opportunity, he or she will be deemed to hold the usurped property in constructive trust for the corporation. The Plaintiffs further argue that such a remedy is appropriate when an innocent third party has subsequently acquired an interest in the property. The Plaintiffs reason that because the Mark Steen Companies received Mi Vida property and opportunities and because the Mark Steen Companies were created in violation of Mark’s duty to Mi Vida, these companies are properly before the Court as defendants.

Next, the Plaintiffs argue that their fourth claim for a review of corporate documents is properly before the Court. The Plaintiffs contend that corporate statutes require that certain documents be kept by a corporation and require that the corporation make those documents available to shareholders upon request. The Plaintiffs point to their letters requesting such information and Mi Vida’s letter rejecting the same, which are attached to the complaint. Finally, the Plaintiffs state that Colorado courts have required foreign corporations to provide the requested documents and thus conclude that their fourth claim is proper.

The Plaintiffs state that they have complied with C.R.C.P. 23.1 in initiating a derivative suit. The Plaintiffs argue that their complaint demonstrates that the written demand required by Rule 23.1 would be futile because Mark, John, and Charles, Sr. control a majority of Mi Vida’s stock and its board of directors and are the individuals alleged to have breached their duties. The Plaintiffs conclude that because Colorado does not require a demand where it would be futile, they have properly filed a derivative suit.

In response to the Defendants’ contention that the Plaintiffs should have asserted claims based on fraudulent conveyance or quiet title, the Plaintiffs argue that it is not the proper role of the Defendants’ counsel to suggest the best claims available to the Plaintiffs. The Plaintiffs assert that they have properly pled their claims and it is those claims only that are subject to this motion. Similarly, the Plaintiffs argue that they have joined all the necessary parties for the claims in their complaint and that any parties

necessary for claims not asserted, but merely suggested by the Defendants, are not necessary or relevant.

IV. MERITS

The Defendants attached twelve exhibits to their motion to dismiss and six exhibits to their reply. The Court considered this evidence with regard to those claims to which the exhibits referred. The Court will thus treat those claims under the standards for summary judgment pursuant to the provisions of C.R.C.P. Rule 56. The Court will treat the claims that are not supported by any of the exhibits under the standard for motions to dismiss pursuant to the provisions of C.R.C.P. 12(b)(5).

A. SUBJECT MATTER JURISDICTION

The first issue presented by the Defendants is whether this Court has subject matter jurisdiction over the Plaintiffs' fifth and sixth claims for involuntary dissolution and the appointment of a receiver. The Defendants argue that this Court lacks such jurisdiction because Mi Vida is a Utah corporation. The exercise of subject matter jurisdiction over foreign corporations is unsettled; courts are divided, especially on the issue of the dissolution of a foreign corporation. There are no Colorado cases directly on point. The general rule has been that a court does not have jurisdiction to dissolve or wind up the affairs of a foreign corporation. The decisions that reach this conclusion reason that because the corporation is a creature of the state creating it, that state alone should terminate its legal existence. Annotation, Dissolving or Winding Up Affairs of Corporation Domiciled in Another State, 19 A.L.R.3d 1279, 1281.

More recently, other courts have held that it is in a court's discretion whether to exercise jurisdiction in the dissolution of a foreign corporation. These courts considered the presence of "strong ties to the forum, especially where the bulk of corporate assets are located there, the bulk of business has been done there, and corporate officers and directors are subject to the court's jurisdiction." *Id.* at 1285-86. In In Re Mercantile Guaranty Co., 238 Cal.App. 426 (Ct. App. 1965), the plaintiffs sought the winding up of a Delaware corporation that had its principal place of business in San Francisco. The Mercantile court relied on cases from several other jurisdictions in holding that "the question is not one of jurisdiction; it is rather whether the court can, should it assume jurisdiction, make its decree effective. In other words, not whether it has jurisdiction, but should it in its discretion exercise the inherent jurisdiction which it possesses." Mercantile, 238 Cal.App.2d at 432 (internal citations omitted). The Mercantile court went on to state, "the question of whether the local court should exercise jurisdiction over the foreign corporation [is] one of policy and expediency, and not of power." *Id.* (internal citations omitted). Finally, the Mercantile court cited Fletcher's Cyclopedia of Corporations, which states:

Most courts now hold that the question is not one of jurisdiction or power in the court of the state which is not the legal domicile of a foreign corporation, but it is a question rather of discretion in the court as to

whether considerations of public policy, efficiency, expedience and justice to all parties interested demand that jurisdiction be retained in the foreign court, or that it be declined under the rule of forum non conveniens

Id. at 433 (internal citations omitted).

The more recent New York case of In Re Application of Dohring, 537 N.Y.S.2d 767 (N.Y. Sup. Ct. 1989), summarized the trend in this area of law. In rejecting two earlier cases that held New York courts lacked jurisdiction to dissolve a foreign corporation, the Dohring court stated:

The rule followed in [the earlier cases of] Langfelder and Cohn has been subject to substantial modification in more recent cases, however. One federal appeals court has stated: "Though courts will not ordinarily interfere with the internal affairs of foreign corporations, they have jurisdiction to do so in the exercise of sound discretion." . . . This trend in the direction of expanding jurisdiction over foreign corporations was noted . . . in New York in 1964. While earlier courts had considered themselves jurisdictionally barred from entertaining lawsuits involving the internal affairs of foreign corporations, the more recent view was to regard the issue as one of convenience and discretion.

Dohring, 537 N.Y.S.2d at 769 (internal citations omitted). Finally, the Dohring court concluded "jurisdiction to resolve the internal disputes of foreign corporations may be far more readily exercised where the corporation's contacts with [the venue] are substantial." Id.

Similarly, there is a split in authority on whether a court may appoint a receiver over a foreign corporation's assets. Notwithstanding that a court may appoint a receiver of the local assets of a foreign corporation in order to prevent waste or dispersion of such assets, some courts have declined to exercise jurisdiction on the issue. 19 A.L.R.3d at 1284. Other courts have considered the issue to be one of discretion. These courts have held it proper to exercise jurisdiction over appointment of receiver claims when a substantial part of the corporation's assets, the business conducted, its officers, and books and records were within the forum. Id. at 1287; Dallasega v Victoria Amusement Enter., 43 F. Supp. 697 (M.D. Pa. 1942). In Hill v Dealers' Credit Union, 140 A. 569 (N.J. Ch. 1928), the court appointed a receiver over a foreign corporation to protect the shareholders. The court stated that although a court usually declines to exercise its equitable power to administer the internal affairs of a foreign corporation, the court does possess the discretion to assume jurisdiction. Id. at 571. Fletcher's Cyclopedia of Corporations states that "local courts may appoint receivers for the property and assets of a foreign corporation located in the state and wind up the affairs of such corporation so far as they are within the jurisdiction." Fletcher's § 8579.

The Court chooses to adopt the more recent trend in this area of the law, particularly because the decisions on which the Court relies are important jurisdictions.

Accordingly, this Court may exercise jurisdiction over the Plaintiffs' fifth and sixth claims in its discretion after considering the factors discussed above.

In the present case, all of Mi Vida's corporate officers are Colorado residents and thus subject to personal jurisdiction in this Court. Mi Vida's principal place of business and corporate records are located in Colorado. Further, except for some land located around Moab, Utah, Mi Vida's assets are located in Colorado. In particular, many of the events complained of by the Plaintiffs involved Mi Vida assets in the form of real property located in Colorado. Mi Vida has no corporate office in Utah. Essentially, Mi Vida is a Utah corporation in name only. In addition, because the Court has jurisdiction over the Plaintiffs' four other claims, it would be redundant and illogical to insist that the Plaintiffs bring suits in two different states when the facts giving rise to all the claims are the same.

The Defendants argument that Mi Vida's bylaws bind the Plaintiffs to Utah law and Utah as the proper forum is not supported by a copy of the bylaws or any other competent evidence to support that assertion.

Accordingly, the Defendants' motion to dismiss claims five and six for lack of subject matter jurisdiction is denied.

B. CHOICE OF LAW

Having determined that the exercise of subject matter jurisdiction over claims five and six is proper, the Court must next determine the proper choice of law. The choice of law depends on the type of relief requested. The Restatement (Second) of Conflict of Laws guides the Court's determination of the proper law to apply to the Defendants' Motion to Dismiss and to the Plaintiffs' original claims as presented in their Verified Complaint.

The Restatement distinguishes between different claims by and against corporations, officers, directors, and shareholders. The distinction lies between actions for dissolution on the one hand and all other actions, such as shareholder inspection of corporate records, the powers and liabilities of corporate officers and directors, defining who is a shareholder, and the internal affairs of a corporation on the other hand. Restatement § 299 *Termination or Suspension of Corporate Existence* states that the local law of the state of incorporation determines whether a corporation has been suspended or terminated. Therefore, Utah law governs the Plaintiffs' dissolution claim. The Utah Code states that a proceeding for dissolution "shall be brought in the district court of 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." U.C.A. § 16-10a-1431. That the Utah code requires a dissolution proceeding to be brought in a Utah court does not deny this Court the discretion to hear the facts underlying the claim for involuntary dissolution. The Involuntary dissolution is a drastic remedy. It is therefore possible, after hearing testimony and evidence on the Plaintiffs' dissolution claim, that this Court may determine involuntary dissolution is an inappropriate remedy; in such a case, the Court may order

alternative remedies under Colorado law. Dohring, 537 N.Y.S.2d at 769. Although the Court may not have the power to dissolve Mi Vida, it does have the power to “partition the property of a foreign corporation within the state, or to give other equitable relief founded on the court's power over the corporation officers or property within its jurisdiction.” 19 C.J.S. Corporations § 932 (1990). Alternatively, if the Court determines that involuntary dissolution is the proper remedy, it may order the Defendants to seek such dissolution in a Utah court. de Nunez v. Bartels, 727 So.2d 463 (La. Ct. App. 1998). Accordingly, the Court chooses to exercise its discretion to hear the factual allegations that underlie the claim and, if necessary, direct the Defendants to seek dissolution in Utah.

Restatement §§ 301- 310 include discretionary language that allows a court to apply its own local law in place of the law of the state of incorporation in dealing with issues other than dissolution. Section 302 addresses issues with respect to powers and liabilities of a corporation and states that

- (1) Issues involving the rights and liabilities of a corporation . . . are determined by the local law of the state which, with respect to the particular issue, has the most significant relationship to the occurrence and the parties under the principles stated in section 6.¹
- (2) The local law of the state of incorporation will be applied to determine such issues, except in the unusual case where, with respect to the particular issue, some other state has a more significant relationship to the occurrence and the parties, in which event the local law of the other state will be applied.

Comment g to Restatement § 302 states that “it is in situations where the corporation has little contact with the state of its incorporation that the local law of some other state is most likely to be applied.”

Restatement § 309 *Directors' or Officers' Liability* states that the local law of the state of incorporation will be applied, except where “some other state has a more significant relationship under the principles stated in section 6 to the parties and the transaction, in which event the local law of the other state will be applied.” Id. Comment c to Restatement § 309 states that acts such as seizing a corporate opportunity can “practicably be decided differently in different states.”

¹ Section 6 of the Restatement articulates general choice-of-law principles:

- (1) A court, subject to constitutional restrictions, will follow a statutory directive of its own state on choice of law.
- (2) When there is no such directive, the factors relevant to the choice of the applicable rule of law include
 - (a) the needs of the interstate and international systems,
 - (b) the relevant policies of the forum,
 - (c) the relevant policies of other interested states and the relative interests of those states in the determination of the particular issue,
 - (d) the protection of justified expectations,
 - (e) the basic policies underlying the particular field of law,
 - (f) certainty, predictability and uniformity of result, and
 - (g) ease in the determination and application of the law to be applied.

Because the actions complained of by the Plaintiffs have a “significant relationship” to Boulder County, this Court can properly apply Colorado law to the Plaintiffs’ claims for breach of fiduciary duty, declaratory judgment regarding diverted corporate opportunities, request for an accounting and return of Mi Vida property, review of corporate documents, and appointment of a receiver. Accordingly, the Court will apply the relevant portions of the Colorado Business Corporations Act in considering these five claims.

C. STANDING

Colorado law also governs the Defendants’ argument that M.L.’s grandchildren lack standing. Restatement § 303 *Shareholders* states that:

The local law of the state of incorporation will be applied to determine who are shareholders of a corporation except in the unusual case where, with respect to the particular issue, some other state has a more significant relationship under the principles stated in section 6 to the person involved and the corporation, in which event the local law of the other state will be applied.

Comment e to § 303 states that “ courts, upon the death of a shareholder, would usually determine questions of inheritance to his shares by the law that would be applied by the courts of the state where the shareholder was domiciled at the time of his death.” M.L. Steen was domiciled in Colorado when she died. As a result, the Court will apply Colorado law in determining whether her grandchildren are shareholders who thus have standing in this case. Accordingly, the Defendants’ reliance on the Utah Code section relating to beneficial owners is misplaced. In contrast, Colorado law applies. C.R.S. § 7-107-402(1) addresses actions by shareholders. It states:

No action shall be commenced by a shareholder in the right of a domestic corporation, and no action shall be commenced in this state by a shareholder in the right of a foreign corporation, unless the plaintiff was a shareholder of the corporation at the time the transaction of which the plaintiff complains or the plaintiff is a person upon whom shares or voting trust certificates thereafter devolved by operation of law from a person who was a shareholder at such time.

Further, C.R.C.P. Rule 23.1 states that in a derivative action brought by a shareholder, the complaint must “allege that the plaintiff was a shareholder or member at the time of the transaction of which he complains or that his membership thereafter devolved on him by operation of law.”

There is no dispute that M.L. Steen bequeathed shares of Mi Vida to Monica, Charles III, and Kirk. The question therefore becomes whether the three grandchildren satisfy C.R.S. § 7-107-402(1) and C.R.C.P. Rule 23.1. The Plaintiffs correctly state that

this Court may take judicial notice of its own files. Linker v Linker, 470 P.2d 882 (Colo. 1970). The grandchildren will become record shareholders of Mi Vida stock by operation of law upon the conclusion of the probate case; they thus have a clear interest in this case and its underlying claims. The issue then becomes whether the grandchildren have standing even though the probate process is not yet complete and they have thus not yet actually received their shares through devolution of law. The purpose of C.R.S. § 7-107-402(1) and C.R.C.P. 23.1 is to protect the interests of shareholders who are not yet record shareholders but have an undisputed right to and interest in shares of a corporation. American Jurisprudence, Second explains the interest necessary or sufficient for a plaintiff to maintain a derivative suit:

In order that one may be considered a stockholder for the purpose of asserting the right of a minority shareholder to sue for the dissolution of the corporation, it is not strictly essential that a certificate of stock be issued to him; it is sufficient for this purpose of he has subscribed and paid for the stock. Stock acquired by purchase or devise entitles a minority stockholder to bring such a suit against the corporation although the stock had not yet been transferred on the books of the company in the name of the plaintiff.

19 Am.Jur.2d § 2771. It is clear from this section that a plaintiff in a derivative action need not be a record shareholder. It is enough that the plaintiff will become a record shareholder by purchase or devise. Again, there is no dispute that the grandchildren will become record shareholders at the conclusion of the probate case. A denial of standing would thus not be based on any substantive legal reasoning but would instead rest on the timing of the probate process. Such a denial would be arbitrary and contrary to the intent of both C.R.S. § 107-402(1) and C.R.C.P. 23.1. As a result, the Court determines that all three grandchildren have standing to participate in this derivative suit. Accordingly, the Defendant's motion to dismiss Monica, Charles III. and Kirk for lack of standing is denied.

D. TAKING OF CORPORATE OPPORTUNITY CLAIM

The Defendants argue that the Plaintiffs have failed to state a claim for the taking of corporate opportunities because they did not state the two necessary elements of the claim, namely that the opportunities complained of belonged to Mi Vida and that Mi Vida had the financial ability to realize the opportunities. The Defendants go on to refer to two exhibits to support their argument that the Plaintiffs cannot satisfy the second element and that the Court should thus dismiss the claim. The Defendants seem to request that the Court simultaneously consider their assertion under both a motion to dismiss standard and a motion for summary judgment standard. In other words, the Defendants' motion attempts to obtain dismissal of the Plaintiffs' claim for taking of corporate opportunity for failure to state claim under C.R.C.P. 12(b)(5). Alternatively, the Defendants seek to have the Court, should it determine that the Plaintiffs properly stated a claim for taking of corporate opportunity, rule that the claim fails because there is no genuine issue of material fact in dispute.

The Court can determine the threshold issue of whether the Plaintiffs failed to state a claim by excluding the Defendants' exhibits from its consideration. The Court thus treats the Defendant's motion for failure to state a claim under the standards for dismissal under C.R.C.P. 12(b)(5). If the Court finds that the Plaintiffs have properly stated the claim for taking of corporate opportunity, it may then consider the Defendants' exhibits in making its determination on summary judgment pursuant to C.R.C.P. 56.

The Defendants rely on Astarte, Inc. v. Pacific Indus. Sys., Inc., 865 F. Supp. 693 (D. Colo. 1994) and Three G Corp. v. Daddis, 714 P.2d 1333 (Colo. App. 1986) for their assertion that the two elements must be plead. The Defendants misstate the holdings of these two cases. Further, neither Astarte nor Three G involved the sufficiency of the pleadings or a motion to dismiss; each of those cases involved proceedings later in the case, after discovery.

The Astarte court discussed what facts must be proven at trial to prevail on a taking of corporate opportunity claim. The Three G court explained the legal standards for a taking of corporate opportunity claim but did not hold that a plaintiff's complaint must specifically state that the corporation had both an actual or expectancy interest and that the corporation had the financial ability to take advantage of that interest. Therefore, Astarte and Three G are not useful in assessing the sufficiency of the Plaintiffs' complaint under C.R.C.P. 12(b)(5). In their complaint, the Plaintiffs allege that Mark Steen caused the Mark Steen Companies to compete directly with Mi Vida or to acquire properties and opportunities that belonged to Mi Vida. Verified Complaint ¶¶ 28-34. Because no technical forms of pleadings are required, the Plaintiffs' complaint satisfies Colorado's notice pleading requirements. C.R.C.P. 8(a) and (e). That there remain factual disputes to be resolved regarding Mi Vida's ability to consummate those opportunities does not defeat the properly stated claim for relief. Accordingly, the Defendants' motion to dismiss the Plaintiffs' claim of taking of corporate opportunity for failure to state a claim is denied.

Once it is determined that the Plaintiffs have properly asserted their claim for taking of corporate opportunity, the Court must determine if that claim can be resolved based on the Defendants' exhibits under the standards for summary judgment. The Defendants assert that Mi Vida lacks the financial resources to consummate any of the opportunities the Plaintiffs claim were improperly taken. The Defendants argue that the Plaintiffs have known this fact based on Mi Vida tax returns, which the Defendants attach to their motion. Defendants' Motion Exhibit D. The Defendants also argue that the Plaintiffs have known of Mi Vida's financial inability to realize such opportunities for some time. In support of this assertion, the Defendants state that the Plaintiffs regularly received copies of Mi Vida's tax returns. The Defendants attach as an exhibit a 1990 letter to shareholders from Mi Vida's counsel. That letter states that it included copies of Mi Vida's 1986, 1987, and 1988 tax returns, as well as a copy of a letter from the Utah State Tax Commission certifying that Mi Vida filed all tax returns required and paid all taxes due in 1990. Defendants' Motion Exhibit E. In their response, the Plaintiffs assert that the last tax return furnished to them, like the tax return attached as Exhibit D, is from

1990 The Plaintiffs argue that Mi Vida may or may not have the financial resources to take advantage of corporate opportunities, but that they cannot present facts to prove this element of the taking of corporate opportunity claim until the Defendants provide more information.

The Court may properly enter summary judgment only when there is no genuine issue about any material fact and the moving party is entitled to judgment as a matter of law. Pueblo W. Metro. Dist. v. Southeastern Colo. Water Conservancy Dist., 689 P.2d 594 (Colo. 1984). Once the movant makes a convincing showing that genuine issues of material fact are lacking, the opposing party cannot rest upon the mere allegations or denials in his or her pleadings, but must demonstrate by specific facts that a controversy exists. Sullivan v. Davis, 474 P.2d 218 (Colo. 1970). The Court must make the determination whether a genuine issue of material fact exists. Churchey v. Adolph Coors Co., 759 P.2d 1336 (Colo. 1988).

Here, the Defendants provide a 1990 tax return to prove that there is no material issue of fact regarding Mi Vida's financial ability to consummate corporate opportunities. The Court does not accept that an almost decade-old tax return demonstrates the nonexistence of material facts on this issue. Therefore, the Defendants have failed to carry their initial burden and the motion for summary judgment on this issue is denied.

E. ALTERNATIVE CLAIMS AND FAILURE TO JOIN INDISPENSIBLE PARTIES

The Defendants' argument that the Plaintiffs should have, but failed to, make claims for a derivative action, a quiet title action, and/or a fraudulent conveyance action is groundless. The Plaintiffs did assert a derivative action claim. That the Plaintiffs chose not to assert claims for a quiet title action and/or a fraudulent conveyance action is irrelevant. The Defendants' subsequent argument that the Plaintiffs failed to join indispensable parties depending on which of the non-asserted claims should have been claimed is equally meritless. It is not the Court's role, nor is it opposing counsel's role, to insist a party bring certain claims. With regard to the Plaintiffs derivative action claim, the Defendants state that because the Plaintiffs did not first make a written request upon Mi Vida to initiate such an action on their behalf pursuant to C.R.C.P. 23.1 the derivative suit is improper. However, C.R.C.P. 23.1 also states that such a demand is not necessary if it would be futile. Nuesteter v. District Court, 675 P.2d 1 (Colo. 1984), stated that the futility of a demand under C.R.C.P. 23.1 is "patent" where "both the directors and the majority of shareholders who have the ability to cause [a corporation] to seek relief are the very persons alleged to have committed the wrongs sought to be remedied." *Id.* at 7. The Plaintiffs' complaint asserts facts, taken as true for this motion, that demonstrate such a demand would be futile. Accordingly, the Defendants' motion with regard to these three arguments is denied.

F. STATUTE OF LIMITATIONS

The Defendants contend that the Plaintiffs' claim for breach of fiduciary duty is barred by the statute of limitations. The Defendants rely on two arguments, namely that the Plaintiffs were charged with constructive notice of the allegedly improper land transactions and that the Plaintiffs had actual notice of the transactions complained of. The Defendants claim that the events complained of were the conveyance of real property, which must be written and recorded in order to be effective, and that such recordation is "notice to all the world." Defendants' Reply at 10. The Defendants conclude that the Plaintiffs were on constructive notice of the events as far back as the early 1990s and that the statute of limitations thus precludes the Plaintiffs' claims for breach of fiduciary duty and taking of corporate opportunity. However, the Defendants misconstrue the law on constructive notice. Colorado courts have consistently held "that record of a deed is constructive notice to all the world is too broad an enunciation of the doctrine. Such record is constructive notice only to those who are bound to search for it, as subsequent purchasers of the mortgagees, and all others who deal with it on the credit of the title in line of which the recorded deed belongs." Smith v. Russell, 80 P. 474 (Colo.App. 1905); Rose v. Dunklee, 56 P. 342 (Colo.App. 1899); Grecò v. Pullara, 444 P.2d 383 (Colo. 1968); Villa Nat'l Bank v. Green, 478 P.2d 681 (Colo.App. 1970). Because the Plaintiffs were not in the chain of title in the transactions they complain of, they are not charged with constructive notice, and the Court thus rejects the Defendants' argument on this issue.

The Defendants also argue that the Plaintiffs had actual notice as early as 1991 of some of the transactions of which they complain. To support this argument, the Defendants include copies of notice and minutes of a special shareholders meeting held in 1991. The minutes of that meeting reflect that a certain contract between Mi Vida and Colina Oro Molino, Inc. was ratified. The documents presented by the Defendants also include a proxy designation and proxy vote by Plaintiff Charles Steen, Jr. to ratify the contract. In addition, the Defendants also include an excerpt from the contract. The one page excerpt includes language stating that Mi Vida may assign its rights under the contract to several individuals and entities, including:

- (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; and/or
- (ii) to the Gold Hill Ventures, Ltd., limited partnership (a limited partnership which the parties agree is not yet fully formed) as to properties currently owned by Gold Hill Ventures, Ltd. or which properties are currently scheduled for contribution to said entity upon its formation.

Defendants' Reply Exhibit E. The Defendants claim that this reference to Gold Hill Ventures, Ltd., which became one of the Mark Steen Companies, is actual notice that precludes claims based on all of the acts of the Mark Steen Companies. However, even assuming that the 1991 meeting and Colina contract did constitute actual notice of the formation of a company by Mark Steen and possible wrongful activities by such

company, the meeting and contract cannot be construed as actual notice of any of the subsequent acts complained of by the Plaintiffs. If anything, the 1991 meeting and contract provided only actual notice that if Mark Steen and any of his companies were to engage in such activities again in the future, he would undertake such activities in the same manner he did in 1991, namely at a properly called shareholders meeting at which the shareholders had an opportunity to vote on the contract. In contrast, the subsequent acts complained of by the Plaintiffs were not undertaken in this fashion. Instead, no shareholders meetings have been held since 1994.

The one page of the Colina contract that the Defendant included for the Court's consideration is just one small piece of the entire factual context in which that contract was ratified. Without more, the mere fact that the contract was approved does not show actual notice. As a result, the Court determines that the question of whether the 1991 meeting and contract provided actual notice is one to be resolved by the fact finder. If the fact finder concludes that actual notice was provided, then the facts presented by the Plaintiffs on this issue cannot support successful claims for breach of fiduciary duty or taking of corporate opportunity. Further, the Defendants concede that the Plaintiffs have properly pled the ITEC deal, a deal that underlies all of their claims for relief. Because the Plaintiffs have pled the facts underlying the ITEC deal within the statute of limitations, none of the Plaintiffs' claims for relief can be dismissed. Accordingly, the Defendants' motion to dismiss the Plaintiffs' claims on the grounds of the statute of limitations is denied.

G. CLAIMS FOR AN ACCOUNTING AND FOR PRODUCTION OF CORPORATE DOCUMENTS

The Defendants' argue that the Plaintiffs' claim for an accounting fails to state a legally cognizable claim. The Defendant's motion then goes on to state "while it is indeed possible to request equitable relief and, to this end an accounting . . . this is not the situation here." Defendants' Motion ¶ 61. The Defendants do not reference any exhibits to support their argument. The Court thus treats the issue under the standards for dismissal pursuant to C.R.C.P. 12(b)(5). The Defendants argue factual issues such as whether Mi Vida's accountant has been paid. It is clear that the Defendant recognizes that a claim for an accounting is legally cognizable. The Defendants' efforts to argue the facts underlying this claim are inappropriate and will not be considered by the Court. The Plaintiffs stated a proper claim for an accounting in their complaint. Accordingly, the Defendants' motion to dismiss the Plaintiffs' claim for an accounting is denied.

Similarly, the Defendants argue that the Plaintiffs fail to state a claim for the production of corporate documents. Again, the Defendants reference no exhibits relating to this argument, so the Court utilizes the dismissal standards pursuant to C.R.C.P. 12(b)(5) in deciding the issue. C.R.S. § 7-116-101 provides for the inspection of corporate records by shareholders if the shareholder makes a written request. In their Verified Complaint the Plaintiffs assert that they made such written request upon Mi Vida's corporate counsel and that Mi Vida did not provide responsive or complete records. Verified Complaint ¶¶ 39-43. In their fourth claim for relief, the Plaintiffs have

stated a proper claim for review of corporate documents. Verified Complaint ¶¶ 61-64. Accordingly, the Defendants' motion to dismiss the Plaintiffs' fourth claim for relief is denied.

V. CONCLUSION

Accordingly, the Defendant's Joint Motion to Dismiss Verified Complaint is hereby **DENIED**.

BY THE COURT

A handwritten signature in black ink, appearing to be 'Roxanne Bailin', written over a horizontal line.

Roxanne Bailin, District Court Judge

cc: Finch
Knutson
Reiman

The above and foregoing were placed into
the normal mailing process to the persons
or attorneys indicated

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By: KVB

Tab 2

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DISTRICT COURT, COUNTY OF BOULDER, STATE OF COLORADO
Case Number 99-CV-1020 Division 2

**ORDER RE DEFENDANT MI VIDA'S MOTION TO DISMISS VERIFIED
COMPLAINT and RENEWED MOTION OF SOUTHERN CROSS PROSPECTING
COMPANY, INC., GOLD REEF MINING COMPANY, INC., GOLD HILL MINES, INC.,
AND GOLDEN TONTINE, LLC, TO DISMISS VERIFIED COMPLAINT**

CHARLES A. STEEN, JR., JAYNE MARIE STEEN, NANCY CIDDIO STEEN-ADAMS,
MONICA LEE STEEN, CHARLES A. STEEN III, ANDREW KIRK STEEN, JR., KAREN M.
STEEN, and JENNIFER STEEN
Plaintiff,

v.

MI VIDA ENTERPRISES, INC., a Utah corporation, MARK ASHBY STEEN, JOHN
CHARLES STEEN, CHARLES A. STEEN, SOUTHERN CROSS PROSPECTING CO., a
Colorado corporation, GOLD REEF MINING CO., INC., a Colorado corporation, GOLD HILL
MINES, INC., a Colorado corporation, GOLDEN TONTINE, LLC, a Colorado limited liability
company,
Defendants

On July 13, 2000, the Court took the following actions in the above-captioned case and
directs the Clerk to enter these proceedings in the register of actions.

APPEARANCES: No parties appearing.

This matter comes before the Court on the Defendant Mi Vida's Motion to Dismiss
Verified Complaint and on Defendants Southern Cross Prospecting Company, Inc., Gold Reef
Mining Company, Inc., Gold Hill Mines, Inc., and Golden Tontine, LLC's Renewed Motion to
Dismiss Verified Complaint. The Plaintiffs filed a combined response in opposition. The
Defendants filed a joint reply. Having considered the parties' briefs and the applicable law, the
Court enters the following Ruling and Order.

I. STANDARD OF REVIEW

When reviewing a motion to dismiss, the Court must accept the material allegations of
the complaint as true and may not dismiss a claim unless the non-moving party is not entitled to
relief under any statement of facts. Douglas County Nat'l Bank v. Pfeiff, 809 P.2d 1100
(Colo.App. 1991). If relief could be granted on the basis of the facts stated in the complaint, then
the complaint is sufficient. Schlitters v. State of Colorado, 787 P.2d 656, 658 (Colo.App. 1990).
The allegations contained in the complaint must be viewed in the light most favorable to the
plaintiff. Dunlap v Colorado Springs Cablevision, 829 P.2d 1286, 1291 (Colo. 1992). A Court

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may not consider matters outside the allegations in the complaint when ruling on a motion to dismiss for failure to state a claim. Id. at 1290. When matters outside of the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of pursuant to C.R.C.P. 56. C.R.C.P. 12 (b).

The purpose of summary judgment is to permit the parties to pierce the formal allegations of the pleadings and to save the time and expense connected with trial. Because summary judgment is a drastic remedy, the Court may properly enter summary judgment only when there is no genuine issue about any material fact and the moving party is entitled to judgment as a matter of law. Pueblo W. Metro. Dist. v. Southeastern Colo. Water Conservancy Dist., 689 P.2d 594 (Colo. 1984). In determining whether summary judgment is proper, the non-moving party is entitled to the benefit of all favorable inferences that may reasonably be drawn from the undisputed facts, and all doubts must be resolved against the moving party. Jones v. Dressel, 623 P.2d 370 (Colo. 1981); Casebolt v. Cowan, 829 P.2d 352 (Colo. 1992). Even where it is extremely doubtful that genuine issues of material fact exist, summary judgment is not appropriate. Mancuso v. United Bank of Pueblo, 818 P.2d 732 (Colo. 1991).

The burden of establishing the nonexistence of a genuine issue of material fact is on the moving party. C.R.C.P. 56(c); Continental Air Lines, Inc. v. Keenan, 731 P.2d 708 (Colo. 1987). The movant may satisfy this burden by demonstrating that there is an absence of evidence in the record to support the non-moving party's case. Id.; Civil Serv. Comm'n v. Pinder, 812 P.2d 645 (Colo. 1991). Once the movant makes a convincing showing that genuine issues of material fact are lacking, the opposing party cannot rest upon the mere allegations or denials in his or her pleadings, but must demonstrate by specific facts that a controversy exists. Sullivan v. Davis, 474 P.2d 218 (Colo. 1970).

II. FACTS¹

When viewed in the light most favorable to the Plaintiffs, the facts are as follows. In 1951, Defendant Charles A. Steen, Sr. ("Charles, Sr.") discovered what has been described as the largest uranium deposit in United States history. Through the 1950s and 1960s Charles, Sr. and his wife, M.L. Steen, now deceased, conducted successful mining businesses and invested in diverse businesses. However, by the late 1960s Charles, Sr. and M.L. found themselves in financial trouble. In 1968, the Internal Revenue Service ("IRS") seized large amounts of their assets, and they filed for Chapter 11 bankruptcy protection. In 1971, Charles, Sr. suffered a serious head injury that resulted in his inability to control his personal or business affairs. Since that time, Charles, Sr.'s son, Mark Ashby Steen ("Mark"), has controlled his affairs. Since the accident, Charles, Sr.'s four sons, Charles, Jr., Andy, John, and Mark, have engaged in a hostile family struggle over the assets that remained after the IRS and bankruptcy proceedings. The struggle has revolved around the family's corporation, Mi Vida Enterprises, Inc. ("Mi Vida").

Defendant Mi Vida is a closely held family corporation. Mi Vida is in the business of mining, acquiring land for mining projects, and developing real estate. Mi Vida was incorporated in Utah in 1973 and was authorized to conduct business in Colorado until 1992,

¹ Because the Court included a detailed and lengthy recitation of the facts of this case in its November 9 Order, it will only include a limited factual recitation in this order.

when the Colorado Secretary of State revoked its certification. Mi Vida's authorization to conduct business in Colorado was subsequently reinstated, but was again revoked in 1995. Mi Vida re-registered as a foreign corporation in Colorado in 1997 and is currently in good standing. Mi Vida owns extensive real estate in Boulder County, Colorado and elsewhere. Because of the family infighting, Mi Vida has failed to make productive use of its assets. However, the assets, namely enormous property holdings, are estimated to be worth several million dollars.

Mi Vida conducts business from the home of Defendant Mark Steen in Longmont, Colorado. No shareholder meetings have been held since 1994.

Because Mark manages Charles, Sr.'s and John's business affairs, as well as serves as the personal representative of M.L.'s estate, he currently controls Mi Vida. Further, Mark controls the Board of Directors because of the five living directors, Mark controls his own vote and the votes of Charles, Sr. and John.

In June, 1992, Mark created three Colorado corporations, Gold Reef Mining Company, Inc. ("Gold Reef"), Southern Cross Prospecting Company, Inc. ("Southern Cross"), and Gold Hill Mines, Inc. ("Gold Hill"). Further, Mark created Golden Tontine, LLC ("Golden Tontine"), a Colorado limited liability company. These four companies are named as defendants and referred to collectively as the Mark Steen Companies. The Mark Steen Companies share the same Longmont, Colorado address as Mi Vida.

In their Complaint, the Plaintiffs, minority shareholders, assert six claims against the Defendants. First, the Plaintiffs claim a breach of fiduciary duty by Mi Vida's officers. Second, the Plaintiffs seek a declaratory judgment regarding diverted corporate opportunities and property. Third, the Plaintiffs request an accounting and a return of certain Mi Vida property. Fourth, the Plaintiffs wish to review certain corporate documents of Mi Vida. Fifth, the Plaintiffs request this Court to order an involuntary corporate dissolution of Mi Vida. Finally, the Plaintiffs request that a receiver be appointed.

In the present motions, the Defendants seek dismissal of the complaint. On November 9, 1999, the Court denied a prior motion to dismiss the complaint ("November 9 Order").

III. ARGUMENT

The Defendants argue that Plaintiffs Charles A. Steen, Jr. ("Charles, Jr.") and his wife, Jayne Steen ("Jayne") were discharged in bankruptcy on March 29, 1999. The Defendants contend that because this action was commenced after that date, neither Charles, Jr., nor Jayne has any interest as shareholders of Mi Vida pursuant to 11 U.S.C. §§ 541, 542, and 544, because their shares became part of the bankruptcy estate. The Defendants argue that each claim in this action derives from an asserted shareholder status and thus conclude that Charles, Jr., and Jayne lack standing and must be dismissed from the case.

The Defendants also argue that the only verification of the complaint is that of Charles, Jr. The Defendants assert that C.R.C.P 23.1 provides that a derivative action may only be brought by "one or more shareholders" and requires verification of the complaint by a plaintiff-

shareholder. The Defendants argue that there are no direct actions in this suit; the suit is completely a derivative one. Because the Defendants contend that Charles, Jr., lacks standing because of his bankruptcy status the Defendants argue that Charles, Jr., had no capacity as a shareholder to verify the complaint. The Defendants conclude that the complaint thus fails in its entirety.

The Defendants contend that several of the remaining plaintiffs, namely Monica Steen, Charles A. Steen III, and Andrew Kirk Steen, Jr., do not have actual shareholder status, but instead only have an inchoate right to receive shares as beneficiaries of the M.L.'s estate. However, the Defendants assert that because of the lack of assets in the Steen probate estate and the necessity to pay out creditors, the personal representative would have to apply to the Court to liquidate the shares. The Defendants rejects the Court's holding in the November 9 Order that these grandchildren have standing. In contrast, the Defendants argue that it is the personal representative, Mark, who has standing in this case. Because the Defendants argue that these plaintiffs lack standing, they conclude that these grandchildren do not satisfy the requirements of C.R.C.P. 23.1 that the plaintiffs "fairly and adequately represent" the interest of other minority shareholders.

Next, the Defendants argue that Plaintiffs Karen Steen and Jennifer Steen are minors and thus lack standing.

Finally, the Defendants argue that Plaintiff Nancy Ciddio Steen-Adams holds 8.3% of Mi Vida's shares and thus does not fairly and adequately represent the interests of other minority shareholders.

In their response, the Plaintiffs first argue that the complaint encompasses direct as well as derivative claims. Specifically, the Plaintiffs argue that their complaint contains a direct claim for breach of fiduciary duty.

The Plaintiffs next argue that the discharge in bankruptcy does not justify dismissal of the suit's derivative claims. The Plaintiffs contend that Charles, Jr.'s verification of the complaint is proper because C.R.C.P. 23.1 does not require that the verifier be a shareholder at the time the complaint is filed. The Plaintiffs assert that Charles, Jr., was a shareholder at the time of the events forming the basis of the complaint. The Plaintiffs conclude that Charles, Jr., could properly verify the factual allegations contained in the complaint.

With regard to Charles, Jr., and Jayne's discharge in bankruptcy, the Plaintiffs argue that such discharge does not automatically strip these two plaintiffs of standing because the bankruptcy trustee may or may not wish to pursue the derivative claims on behalf of the bankruptcy estate. The Plaintiffs concede that "a valid legal question may exist as to whether the claims being pursued here belong to Charles, Jr. and Jayne or their bankruptcy estate," but assert that "that question must be settled in the Bankruptcy Court." Plaintiffs' Response at 4.

The Plaintiffs next contend that Nancy Steen-Adams may verify the complaint if the Court determines that Charles, Jr.'s verification is not sufficient. The Plaintiffs argue that Nancy has personal knowledge of most of the facts alleged in the complaint and that she knows about

the remaining facts based on information gained through publicly available information. The Plaintiffs contend that Nancy's interest sufficiently represents the interests of the other minority shareholders. Further, the Plaintiffs argue that Colorado cases hold that only one derivative plaintiff may proceed, even when the one plaintiff is representing him or herself.

The Plaintiffs reject the Defendants' attack on the standing of the other Plaintiffs. First, the Plaintiffs argue that the Court has already ruled that Plaintiffs Monica Steen, Charles III, and Andrew Kirk have standing. Second, the Plaintiffs argue that Plaintiff Karen Steen is no longer a minor, and thus has standing. Finally, the Plaintiffs assert that Plaintiff Jennifer Steen, although she is a minor, does not lack standing based simply on that fact. Instead, the Plaintiffs contend that Jennifer's parents may represent her interest or the Court may appoint a guardian ad litem to represent her in this case.

In their joint reply, the Defendants expand on their argument that Charles, Jr., and Jayne lack standing.² The Defendants cite bankruptcy case law to support their argument that these two plaintiffs lost standing once the discharge in bankruptcy was entered. The Defendants argue that these Plaintiffs bear the burden of showing that the bankruptcy trustee "abandoned" the claim, which they have failed to show. The Defendants argue that these Plaintiffs have failed to show that the trustee abandoned the claim. The Defendants thus conclude that only the bankruptcy trustee has standing to prosecute the claims of this case. The Defendants also contend that Charles, Jr., and Jayne did not disclose their Mi Vida stock holdings on their bankruptcy schedule, deeming the stock holdings unadministered as a matter of law.

The Defendants next assert that the bankruptcy trustee should not be substituted in this case for several reasons. First, the Defendants argue that this Court is without jurisdiction to substitute the trustee because Plaintiffs Charles, Jr., and Jayne filed for bankruptcy before this suit was filed. The Defendants thus argue that these Plaintiffs lacked standing from the start of this suit because they were not shareholders when the case was filed. Second, the Defendants argue that the trustees' rights are not necessarily co-extensive with those of Charles, Jr., Jayne, and Monica. The Defendants rely on Mi Vida's bylaws, which state that upon the filing of bankruptcy by any shareholder, the corporation has the opportunity to purchase the shares at book value. The Defendants conclude that the trustee thus has the right to payment from Mi Vida, but does not have the right to become a shareholder as such. Third, the Defendants argue that the trustee is not likely to submit himself to the counterclaims in this suit, making substitution improper.

With regard to Monica Steen's inheritance of Mi Vida shares, the Defendants argue that "Monica's rights in the [M.L.'s probate] estate were 'legal or equitable interests,' as of the date of [M.L.'s] death, which were then subsequently transferred to the trustee in her individual [bankruptcy] case when she filed her Chapter 7 petition." Defendants' Reply at 7. The Defendants conclude that because three of the plaintiffs filed voluntary bankruptcy petitions without disclosing their interests in Mi Vida, they all lack standing.

² The Defendants also contend that Plaintiff Monica Steen also filed for voluntary bankruptcy, and thus incorporate their arguments concerning Charles, Jr. and Jayne to apply to Monica.

With regard to the verification of the complaint, the Defendants argue that the verification is a fraud upon the Court. Specifically, the Defendants assert that the complaint states, (1) as of February 6, 1991, Charles, Jr., held and still holds 125,000 shares of Mi Vida stock and that he held his shares during which the actions complained of occurred, (2) since at least 1991, Jayne has been and still is the owner of 116,980 shares of Mi Vida, and (3) Monica claims a right to inherit shares in Mi Vida. The Defendants contend that all of these alleged facts, verified to in the complaint, are false.

The Defendants assert that before the Court can proceed with a derivative suit, it must be assured that the plaintiff or some other person has investigated the charges and found them to have substance. The Defendants argue that the misrepresentations in the complaint are simply re-verified by Nancy, who knows or should have known that some important facts alleged in the complaint are false. The Defendants state, "Regarding the most essential facts – ownership of the shares, on which everything else hangs – the Complaint has already been proved false." Defendants' Reply at 9.

The Defendants argue that the Court should reject the complaint and its verification for several reasons. First, the Defendants contend that the allegations in the complaint are not plausible. The Defendants rely on the Utah court's ruling to support this argument. Second, the Defendants argue that this action was brought not only to harm the corporation, but to dissolve it. Third, the Defendants assert that there is no adequate justification for moving forward on "information and belief" because important alleged facts in the complaint have been shown to be false.

The Defendants next argue that the Plaintiffs have produced no evidence to contradict Mark Steen's affidavit that there will be insufficient assets in M.L.'s estate to pay off creditors if the Mi Vida shares are simply distributed. The Defendants argue that it is uncontroverted that the liabilities of M.L.'s estate exceed the non-stock assets available for liquidation. The Defendants conclude that the Court's November 9 Order as it relates to the inheritance of stock and standing must be reconsidered.

The Defendants contend that the minor plaintiff Jennifer Steen lacks standing to sue in her own name. The Defendants argue that although the Plaintiffs argue that a guardian ad litem or next friend may sue on her behalf, the Plaintiffs fail to move for the appointment of such a guardian. The Defendants reject the Plaintiffs' assertion that Charles, Jr., and Jayne, Jennifer's parents, may appear in a representative capacity because Mi Vida has asserted claims against these two individuals for corporate takings and tortious activities, which place them in conflict with Jennifer's interests.

Finally, the Defendants argue that the remaining minority shareholders are not representative. The Defendants contend that the rule for determining whether a shareholder can adequately represent a corporation in a derivative suit has been adopted from the class representations rule: (1) the plaintiff's attorney must be qualified, experienced, and generally able to conduct the proposed litigation, and (2) the plaintiff must not have interests antagonistic to those of the class. The Defendants assert that the potential beneficiaries (Andy, Jr. and Charles, III) do not adequately represent the shareholder class because they are interested in

increasing their share of the inheritance. The Defendants argue that that remaining shareholders, Nancy, Karen, and Jennifer, “have an interest in collecting on the claims of Mi Vida from whatever source. Their totally divergent interests are antagonistic and the conflict prevents them from standing in a representative capacity in a derivative action.” Defendants’ Reply at 16. The Defendants thus conclude that the remaining plaintiffs are Nancy and Karen, who collectively hold 8.43% of Mi Vida stock. The Defendants argue that their interests are divergent from the 9.77% held by bankruptcy trustees because Nancy and Karen are “presently fighting liquidation of their interests whereas the trustees are statutorily compelled to pursue such remedies.” *Id.* at 17.

IV. MERITS

A. Verification of Complaint

C.R.C.P. 23.1 provides in pertinent part:

In a derivative action brought by one or more shareholders or members to enforce a right of a corporation . . . the complaint shall be verified and shall allege that the plaintiff was a shareholder . . . at the time of the transaction of which he complains or that his share or membership thereafter devolved on him by operation of law. . . . The derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of the shareholders or members similarly situated in enforcing the right of the corporation or association. . . .

The rule only provides that the plaintiff-verifier have been a shareholder at the “time of the transaction of which he complains.” The complaint in this action alleges actions taken by the Defendants beginning in the late 1980s and continuing until the present.

Charles, Jr., and Jayne filed their Chapter 7 bankruptcy petition on November 18, 1998. Even assuming that the stock became a part of the bankruptcy estate in late 1998,³ Charles, Jr. was in fact still a shareholder for the majority of the “time of the transaction of which he complains” occurred. Accordingly, Charles, Jr., could properly verify the complaint pursuant to C.R.C.P. 23.1. The fact that the shares may have become property of the bankruptcy estate in late November, 1998, does thus not render Charles, Jr.’s verification insufficient or improper.

Although Charles, Jr., technically may verify the complaint, the Court agrees with the Defendants that he misrepresented important facts regarding his and Jayne’s Mi Vida holdings. Whether the misrepresentation was intentional or not, the Court cannot accept the verification of such misrepresentations. Further, the Court agrees with the Defendants that Nancy’s verification does not cure the defect because at the time she verified the complaint – May 26, 2000 – the fact of Charles, Jr.’s and Jayne’s bankruptcy petitions had been disclosed for 25 days. Thus, Nancy’s verification in essence does no more than verify facts that she knew or should have known are false. Although the Court finds that the verifications are insufficient, it will permit the Plaintiffs fifteen days to file a proper verification.

³ Charles, Jr. and Jayne did not list their Mi Vida shares in their bankruptcy schedule.

B. Effect of Bankruptcy Proceedings – Standing of Plaintiffs Charles, Jr., Jayne, and Monica Steen

In the present case, plaintiffs Charles, Jr. and Jayne filed for bankruptcy on November 18, 1998, and the discharge in bankruptcy was granted on March 29, 1999. Plaintiff Monica Steen filed for Chapter 7 bankruptcy on October 9, 1998, and the discharge was granted on January 25, 1999. The verified complaint was filed on July 6, 1999.

The commencement of a bankruptcy case creates an estate comprised of all legal or equitable interests of the debtor in property. 11 U.S.C. § 541. Causes of action belonging to the debtor are property of the estate, and only the trustee has standing to assert them. See Black v. First Federal Savings & Loan Ass'n, 830 P.2d 1103 (Colo.App. 1992), citing Folz v. BancOhio Nat'l Bank, 88 B.R. 149 (S.D. Ohio 1987); see also In re Alexander, 980 P.2d 659 (Okla. 1999); In re Smith, 640 F.2d 888 (7th Cir. 1981); In re FBN Food Serv., Inc., 185 B.R. 265 (N.D. Ill. 1995); In re U.S. Marketing Concepts, Inc., 113 B.R. 487 (Bankr. N. D. Ind. 1990); Lambert v. Fuller Co., 122 B.R. 243 (E.D. Pa. 1990). However, a trustee is not bound to accept a cause of action that does not offer the promise of a benefit to the estate. Black, citing 11 U.S.C. § 554(a). The bankruptcy Court may order the trustee to abandon such property. Id., citing 11 U.S.C. § 554(b). If the bankruptcy court orders property to be abandoned, title reverts to the debtor. Id., citing Barletta v. Tedeschi, 121 B.R. 669 (N.D.N.Y. 1990).

Courts in other jurisdictions have held that where a debtor files for bankruptcy and then subsequently files a civil action, the cause of action asserted in the lawsuit becomes the property of the bankruptcy estate and the debtor no longer has standing to sue. For example, in Cable v. Ivy Tech State College, 200 F.3d 467 (7th Cir. 1999), after filing for Chapter 7 bankruptcy, the plaintiff sued his former employer under the Americans with Disabilities Act for alleged injuries that occurred before his bankruptcy. Id. at 469-70. Although the plaintiff subsequently converted his case from Chapter 7 to Chapter 13, the court addressed the rights of a debtor to file a suit after filing for bankruptcy. In discussing the differences between Chapter 7 and Chapter 13 bankruptcy, the court stated:

Chapter 7 establishes a much more radical solution to indebtedness, requiring the liquidation of the debtor's property, to which end Congress granted the trustee broad powers without interference from the debtor. The trustee has sole authority to dispose of property, including managing litigation related to the estate. See 11 U.S.C. sec sec 541(a)(1), 704(1). . . . In [Chapter 7] liquidation proceedings, only the trustee has standing to prosecute or defend a claim belonging to the estate. See In re New Era, 135 F.3d 1206, 1209 (7th Cir. 1998) (holding that Chapter 7 trustee has exclusive right to represent debtor in court); see also Lambert v. Fuller Co., 122 B.R. 243, 245 (E.D. Pa. 1990); Gulley v. Winnebago County Forest Preserve Dist., 1992 U.S. Dist. LEXIS 11639 No. 91- C20231, 1992 WL 185938 (N.D. Ill. May 7, 1992); In re Davis, 158 B.R. 1000, 1002 (Bankr. N.D. Ind. 1993). . . . Chapter 7, . . . in contrast to Chapters 11 and 13, does not recognize the legal entity debtor-in-possession.

Id. (emphasis in original), see also Richardson v. United Parcel Serv., 195 B.R. 737 (E.D. Mo. 1996) (because the chose in action remained estate property and had not been abandoned pursuant to 11 U.S.C. § 554, it had to be pursued for the benefit of the estate).

Although causes of action become part of the bankruptcy estate and may only be asserted by the trustee, this is not the case where the trustee abandons the property pursuant to 11 U.S.C. § 554. As stated in In re Davis, 158 B.R. 1000 (Bankr. N.D. Ind. 1993):

The cause of action against defendants arose from an alleged pre-petition violation of the FDCPA. Property of the estate encompasses “all legal and equitable interests of the debtor in property as of the commencement of the case,” which includes causes of action. It is a debtor's duty to file a schedule of assets existing at the time the petition for relief is filed. Even though Debtors failed to list the cause of action as an asset, it nevertheless became property of the estate pursuant to [11 U.S.C.] § 541(a)(1). After notice and a hearing, property may be abandoned from the estate by the trustee or upon request of a party in interest. 11 U.S.C. §§ 554 (a) and (b). However, in this case the Debtors’ cause of action was never abandoned from the estate under either §§ 554(a) or (b). Any scheduled property not administered at the time of the closing of the case is abandoned to the debtor and deemed administered. 11 U.S.C. § 554(c). This section explicitly provides that it applies only to property that has been scheduled, and it is not enough that the trustee learns of property through other means. Since Debtors’ cause of action was not scheduled, § 554(c) is not applicable and the cause of action was not deemed administered and abandoned. Property of the estate that has not been expressly abandoned or administered by the trustee at the time the case is closed remains property of the estate. 11 U.S.C. § 554 (d). Consequently, the cause of action was initially property of the estate, and remained property of the estate even though the case was closed.

Id. (internal case law citations omitted).

In the present case, the filing of the two bankruptcy petitions and the subsequent discharges in bankruptcy occurred in temporal proximity to the filing of the verified complaint. Thus, it is a reasonable inference that the causes of action asserted in the present suit existed at the time of the creation of the bankruptcy estates. Consistent with the holding in Davis, then, the causes of action in this case as asserted by Charles, Jr., Jayne, and Monica are only properly asserted by the respective bankruptcy trustee, unless either trustee abandoned the claims pursuant to 11 U.S.C. § 554.

The party seeking to demonstrate abandonment bears the burden of persuasion. Mele v. First Colony Life Ins. Co., 127 B.R. 82 (D.D.C. 1991). Property may be abandoned by implication where the debtor has listed the property in the appropriate bankruptcy filing. See id.; 11 U.S.C. § 554(c). However, under § 554(d), unadministered property will remain in the bankruptcy estate unless it has been expressly abandoned under other provisions of § 554. See id. In the present case, none of the three bankrupt Plaintiffs listed his or her causes of action against

the Defendants in their bankruptcy schedules. Unlisted assets are not deemed abandoned. In Re Cundiff, 227 B.R. 476 (Bankr. App. 6th Cir. 1998). Thus, the causes of action constitute unadministered property and remain property of the bankruptcy estate. As a result, only the trustees have standing to pursue this action.

The Plaintiffs have not moved to substitute the trustees for the bankrupt Plaintiffs. The Plaintiffs concede that there is valid legal question regarding whether the claims belong to the bankruptcy estate or to the individual Plaintiffs. Further, because Charles, Jr., Jayne, and Monica failed to disclose their Mi Vida shares on their bankruptcy petitions, that property was unadministered and remains part of the bankruptcy estate. The shares were a part of the bankruptcy estate from the start of this suit. Thus, these three Plaintiffs lacked standing from the start of this action. Based on the foregoing discussion, the Court finds that Charles, Jr., Jayne, and Monica lack standing in this case. Accordingly, they are dismissed as plaintiffs in this case.⁴

C. Standing of Plaintiffs Charles III and Kirk Steen

In its November 9 Order, the Court addressed the issue of the standing of M.L.'s grandchildren, who are scheduled to receive shares of Mi Vida under her will. The Court held:

There is no dispute that M.L. Steen bequeathed shares of Mi Vida to Monica, Charles III, and Kirk. The question therefore becomes whether the three grandchildren satisfy C.R.S. § 7-107-402(1) and C.R.C.P. Rule 23.1. The Plaintiffs correctly state that this Court may take judicial notice of its own files. Linker v. Linker, 470 P.2d 882 (Colo. 1970). The grandchildren will become record shareholders of Mi Vida stock by operation of law upon the conclusion of the probate case; they thus have a clear interest in this case and its underlying claims. The issue then becomes whether the grandchildren have standing even though the probate process is not yet complete and they have thus not yet actually received their shares through devolution of law. The purpose of C.R.S. § 7-107-402(1) and C.R.C.P. 23.1 is to protect the interests of shareholders who are not yet record shareholders but have an undisputed right to and interest in shares of a corporation. American Jurisprudence, Second explains the interest necessary or sufficient for a plaintiff to maintain a derivative suit:

In order that one may be considered a stockholder for the purpose of asserting the right of a minority shareholder to sue for the dissolution of the corporation, it is not strictly essential that a certificate of stock be issued to him; it is sufficient for this purpose that he has subscribed and paid for the stock. Stock acquired by purchase or devise entitles a minority stockholder to bring such a suit against the corporation although the stock had not yet been

⁴ These three Plaintiffs may have a remedy by requesting that their bankruptcy estates be reopened and further requesting the respective trustees be substituted as plaintiffs in this case or by requesting the trustees to formally abandon these claims. The Court does not by this order take a position regarding whether it can or will substitute the trustees.

transferred on the books of the company in the name of the plaintiff.

19 Am.Jur.2d § 2771. It is clear from this section that a plaintiff in a derivative action need not be a record shareholder. It is enough that the plaintiff will become a record shareholder by purchase or devise. Again, there is no dispute that the grandchildren will become record shareholders at the conclusion of the probate case. A denial of standing would thus not be based on any substantive legal reasoning but would instead rest on the timing of the probate process. Such a denial would be arbitrary and contrary to the intent of both C.R.S. § 107-402(1) and C.R.C.P. 23.1. As a result, the Court determines that all three grandchildren have standing to participate in this derivative suit. Accordingly, the Defendant's motion to dismiss Monica, Charles III, and Kirk for lack of standing is denied.

November Order at 14-15. The Defendants ask the Court to reconsider this ruling based on an affidavit by Mark Steen stating that M.L.'s estate does not have sufficient assets to satisfy its liabilities, and thus the grandchildren will not receive the Mi Vida shares. However, until the probate estate is closed, it is not certain that the shares will need to be liquidated to satisfy the creditors of M.L.'s estate. Thus, the grandchildren continue to have standing in this matter.⁵

D. Standing of Plaintiffs Karen Steen and Jennifer Steen

The Plaintiffs assert in their response that Karen Steen is no longer a minor. Although the Plaintiffs have not moved to amend their complaint to reflect this fact, the Court accepts the assertion by counsel. The Plaintiffs do not contest that Plaintiff Jennifer Steen is a minor. The Plaintiffs properly state that a guardian ad litem may pursue her rights, but have not moved for the appointment of such a guardian. The Plaintiffs have fifteen days to file the appropriate motions to cure these two defects.

E. The Remaining Plaintiffs

Although the Court has dismissed Plaintiffs Charles, Jr., Jayne, and Monica, the following Plaintiffs remain: Nancy Ciddio Steen-Adams, Charles Steen, III, Andrew Kirk Steen, Jr., Karen Steen, and Jennifer Steen. Mi Vida is a very small closely held corporation. Of the fifteen shareholders of Mi Vida, three are defendants and eight are plaintiffs.⁶ Thus a majority of the minority shareholders have attempted to assert claims in this suit. This is not a situation involving a large, publicly held corporation where one or a few disgruntled minority shareholders assert a derivative suit without the support of the other hundreds or thousands of minority shareholders. The Court thus finds that these Plaintiffs adequately represent the

⁵ Plaintiff Monica Steen, although she has standing as a grandchild who will become a record shareholder, is nonetheless dismissed from this action based on her discharge in bankruptcy. See Section IV.B., *supra*.

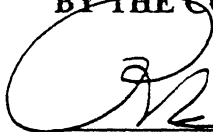
⁶ The shareholders who are not parties to this actions are: (1) Andrew Kirk Steen, whose whereabouts are unknown; (2) Ashley Victoria Steen, minor daughter of Defendant Mark Steen; (3) Tera Marie Holland, who is M.L.'s sister and who will receive shares representing 5% of Mi Vida through M.L.'s bequest; and (4) Karla Wright, Tera's adult daughter who will receive shares representing 1.67% of Mi Vida through M.L.'s bequest.

shareholder interests. Thus, the Court denies the Defendants' motion to dismiss the complaint in its entirety.

V. CONCLUSION

Accordingly, the Defendant's Joint Motion to Dismiss Verified Complaint is hereby **GRANTED IN PART AND DENIED IN PART.**

BY THE COURT



Roxanne Bailin, District Court Judge

cc: Finch
Knutson
Reiman

and foregoing were placed into
normal mailing process to the persons
attorneys indicated

JUL 13 2000

By: KVB

Tab 3

SEVENTH DISTRICT COURT
Grand County

Keith H. Chiara, #0621
Chiara Law Offices
98 North 400 East
P.O. Box 955
Price, Utah 84501
(435) 637-7011
Local Counsel for Mi Vida Enterprises, Inc.

FILED SEP 16 2002
Cynthia T. Kennedy, CO #14076
Kennedy & Kennedy, P.C. CLERK OF THE COURT
308 E. Simpson Street, #102
Lafayette, CO 80026 Deputy
(303) 604-1600
Atty for Mi Vida Enterprises, Inc.

Allan Thorpe, Esq. #3254
P.O. Box 1238
Castle Dale, Utah 84573
Local Counsel for Mark A. Steen

Thomas Finch, Esq. CO #14076
885 Arapahoe Ave.
Boulder, CO 80302
Attorney for Mark A. Steen

IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR

GRAND COUNTY, STATE OF UTAH

MI VIDA ENTERPRISES, Inc. Plaintiff, vs. MAXINE S. BOYD, et al. Defendants. and NANCY CIDDIO STEEN-ADAMS; CHARLES A. STEEN III and ANDREW KIRK STEEN, Jr.; Counterclaim and Cross-Claimants vs. MI VIDA ENTERPRISES, INC. and MARK ASHBY STEEN	Civil No: 000-700-040 Judge Lyle Anderson
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Findings of Fact, Conclusions of Law and Final Order

THIS MATTER came before the Court on the Motion of Mi Vida Enterprises, Inc., ("Mi Vida"), Mark A. Steen ("Mark") and John C. Steen ("John") to dismiss the claims of defendant Nancy Ciddio Steen-Adams ("Nancy")

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set out in her pleading filed on January 30, 2001. Mi Vida was represented by its Colorado counsel, Cynthia T. Kennedy, Esq. and its local counsel, Keith H. Chiara, Esq. Mark and John were represented by Thomas J. Finch, Esq. Colorado counsel and Allen Thorpe, Esq. as local counsel. Nancy was represented by James M. Hult, Esq. and Stephen S. Wills, Esq. (as Colorado counsel admitted *pro hac vice*) and Randal L. Meek, Esq. (as local counsel). Although oral argument was initially requested and a hearing scheduled for May 23, 2002, the parties eventually stipulated to waive oral argument and submit for decision on the filed memoranda. THIS ORDER is entered pursuant to Rule 4-504 of the Utah Rules of Judicial Administration based on the written Ruling of the Court issued July 10, 2002.

THE COURT MAKES THE FOLLOWING FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND ORDERS:

A. The Uncontroverted Facts

The Summary Judgment Motion was accompanied by a detailed statement of facts supported by affidavit. Nancy attempted to controvert a number of those statements. However, her efforts to do so simply by stating that she disagrees cannot be honored. Neither can her reliance on the verified pleadings of Charles A. Steen, Jr. ("Junior"). A party resisting summary judgment is not entitled to rest on pleadings, but must come forward with specific averments contradicting specific facts asserted by the moving party. The court agrees with Mi Vida that Nancy has only successfully controverted Mi Vida's statements of fact nos. 76 and

77, having to do with materials sent and notice given in 1993 and 1994. The events of 1993 and 1994 referred to in statements of fact nos. 76 and 77 are not crucial to resolution of this dispute. Based on the uncontroverted facts, the Court makes the following findings:

Mi Vida was organized on December 19, 1972 , as a Utah corporation, by the filing of articles of incorporation. However, no organizational meeting was held, no bylaws were adopted, and no shares were issued at that time. The apparent purpose of the corporation was to own real estate that had belonged in part to Charles Steen, Sr. and in part to his wife, M.L. Steen. Charlie Steen was the subject of bankruptcy proceedings in Nevada at the time. The bankruptcy court, on February 1974, approved the transfer of patented and unpatented mining claims in Boulder County, Colorado, and certain parcels of land in Grand County, Utah (the "Grand County Properties") to Maxine Boyd ("Boyd"). Boyd is Charlie Steen's sister.

On August 5, 1974, Charlie Steen's trustee in bankruptcy and M.L. Steen conveyed the Boulder Properties and the Grand County Properties to Mi Vida, not Boyd. They were conveyed subject to Boyd's mortgage on the Boulder Properties and the Grand County Properties. There was also a mortgage in favor of a trust for Charlie Steen's children. The properties were further encumbered by an IRS lien for unpaid taxes. No one has explained why Mi Vida took title from the bankruptcy estate, rather than Boyd, as the court had ordered. This court presumes that some accommodation between Charlie Steen's family and Boyd was reached,

pursuant to which Boyd retained a security interest in exchange for allowing Mi Vida to hold title. It was intended that Mi Vida be owned by members of Charlie Steen's family.

The bankruptcy transfer did not extinguish any liens. It was not likely in 1974 that Mi Vida's equity in the Boulder Property and Grand County Properties was positive. However, the passage of time has extinguished the IRS liens and the amount or validity of the Boyd security interest is also in question, which means that the assets of Mi Vida are now worth fighting over, and the family of Charlie Steen is doing just that.

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.

Mi Vida concedes that Nancy is entitled to benefit as a shareholder from the present value of the Boulder Properties and the Grand County Properties. What is sought to resolve by the present motion is whether other assets were derived from the bankruptcy or the Steen family, and whether Nancy is entitled to benefit from mining claims in Boulder County, Colorado, that were purchased in 1982 and 1983 (the "Cosmos Claims") title to which was taken in the name of Mark A. Steen ("Mark"), the vice president of Mi Vida, and certain other mining claims in Boulder County, Colorado, that were purchased in 1990 (the "Little and Rodgers Claims"), title to which was also taken in Mark's name. The Cosmos Claims and the Little and Rodgers Claims were sold to Boulder County, Colorado,

in 2001. At the same time, Golden Tontine, L.L.C., a joint venture composed of Mi Vida and other entities, released Boulder County from certain obligations it might have under an Agreement Regarding Surface Resources dated June 6, 1998. The total price paid by Boulder County was \$2.7 million. Nancy claims that Mi Vida is entitled to a portion of that payment, and that the value of that payment should be included in the price of her shares, which Mi Vida is obligated to purchase from her.

Nancy became a shareholder in Mi Vida by means of her marriage to Charlie Steen's son, Charles Steen, Jr. ("Junior"). By March 31, 1986, Nancy and Junior had divorced, and Nancy had been awarded one-half of Junior's shares in Mi Vida. On April 1, 1986, Nancy appointed Lynn McKeever ("McKeever"), an attorney in Albuquerque, New Mexico, as her attorney in fact to bring into her possession any assets awarded to her in the divorce. At that time, McKeever made an inquiry of the trustee of the trust for Charlie Steen's children, which had held a mortgage on some or all of Mi Vida's property.

On February 5, 1987, the law firm of Sherman and Howard was engaged to analyze the ownership of Mi Vida and to notice a meeting to shareholders. A meeting was called for May 2, 1987, to discuss issuing stock in Mi Vida and to discuss a joint venture involving the Boulder County Properties. The notice calling for that meeting proposed the issuance of shares to Nancy, which would make her the owner of one-twelfth of Mi Vida. McKeever and another attorney, Anita Mosely ("Mosely") attended the May 2, 1987, meeting on Nancy's behalf.

By the 1987 meeting, Mark had used money of Cosmos Resources, Inc. (“Cosmos”) to purchase the Cosmos Claims. The total purchase price of the Cosmos Claims was about \$500,000. Mi Vida and Cosmos had entered into the Gold Hill Venture Agreement in March, 1983. Mi Vida was to contribute its Boulder County Properties, free of encumbrances. Cosmos was to contribute \$4 million, some of which was to be used to purchase additional mining claims, which the Court assumes were the Cosmos Claims, some of which was to be used to prepare the Boulder County Properties (and the Cosmos Claims) to be mined, and some of which was to be used to construct a mill. The agreement provided for a sharing of ownership of the mining claims to be included in the venture; Mi Vida and Cosmos would each acquire a 40% interest in the shares owned (or acquired) by the other.

The only cash contribution by Mi Vida to the joint venture with Cosmos was \$23,000. Mark maintains that this was repaid to Mi Vida. The Cosmos-Mi Vida joint venture did not result in the construction of a mill. By late 1984, it became clear that Cosmos lacked the resources to construct the mill. Cosmos and Mi Vida then became involved in discussions with Richard and Gwen Fraser (the “Frasers”), old friends of Charlie Steen.

Although Cosmos, Mi Vida and the Frasers never signed any joint venture or partnership agreement, draft agreements were circulated and the Frasers contributed money for the construction of a mill. The mill was actually constructed on two mining claims, the Oscar and Good Enough claims, which

were part of the Cosmos Claims. Construction of the mill was completed by 1987. By that time, Cosmos had contributed \$1.3 million to the effort, and the Frasers had invested \$2.1 million, of which \$1.5 million had gone into constructing the mill. The Frasers asked for, and received, a quitclaim deed conveying the Oscar and Good Enough claims to secure their investment. That deed was signed both by Mark, and by Charlie Steen, as president of Mi Vida, the general partner of Gold Hill Ventures.

Junior, and Andrew K. Steen (“Andrew”), another son of Charlie Steen, began writing letters to numerous individuals and government agencies, including the Frasers, alleging fraud and criminal conduct by Mark. They particularly mentioned concern about the ownership of mining claims and the mill. The Frasers eventually retained a lawyer, who wrote a letter repudiating the limited partnership involving the Frasers, Cosmos and Mi Vida. The Frasers then recorded the deed to the Oscar and Good Enough claims, on which the mill had been built.

A verbatim transcript of the 1987 meeting of Mi Vida’s shareholders has been prepared and portions have been provided to the court. The deed covering the Oscar and Good Enough Claims was included in the discussion. McKeever and Mosely participated actively in the meeting. The level of distrust between Junior and Mark, each involved with a separate faction among Mi Vida’s shareholders, is evident from the transcript. No one who attended that meeting could have been unaware of the Gold Hill Venture Agreement, the dealings with

the Frasers, Mark's purchase of the Cosmos Claims, or Junior's belief (supported by Andrew), that Mark was engaging in some kind of shady dealing.

Nancy was not elected to Mi Vida's board, but she was issued shares representing one-twelfth of Mi Vida. The shareholders also agreed that shareholders would be permitted to attend directors' meetings. From that point on, counsel for Mi Vida provided extensive information about corporate dealings and meetings to Nancy, initially through counsel, and after July 14, 1992, directly to Nancy.

After the Frasers repudiated the limited partnership, Mi Vida continued discussing with Cosmos and the Frasers the possibility of a new agreement. It was logical that the Frasers, as owners of a mill, would want to make a deal with Cosmos and Mi Vida, owners of mining claims in the same area. By the time Mi Vida's shareholders met in 1989, a limited partnership agreement had been signed by Mi Vida and Cosmos, and sent to the Frasers for signature. That potential agreement was discussed at the 1989 meeting. Junior continued to question the integrity of Mark at that meeting.

The Frasers ultimately refused to sign the limited partnership agreement with Cosmos and Mi Vida. However, in February, 1991, Mi Vida finally signed a milling contract with Colino Ore Molino, Inc. ("COM"), the corporation formed by the Frasers to own the mill. This contract afforded Mi Vida an opportunity to have any ores mined from its properties processed at the mill. By that time, Mark and another son of Charlie Steen ("John") had purchased the Little and Rodgers

Claims. They did not purchase these claims with Mi Vida funds. This purchase was disclosed at the 1991 shareholders meeting of Mi Vida.

COM's mill eventually fell into disrepair. Mi Vida never gathered sufficient resources to develop the Boulder County properties, and no commercial quantities of ore were ever milled for Mi Vida at COM's mill. In 1992, Mark created three companies to take title to the claims he had acquired. The Cosmos Claims were deeded to Gold Hill Mines, Inc.¹

In 1998, ITEC Environmental Colorado, Inc. ("ITEC") purchased the mill. Mi Vida, Gold Hill Mines, Inc., Gold Reef Mining Company, and Southern Cross Prospecting Company then formed a limited liability company called Golden Tontine, L.L.C. ("Tontine") in order to act as one in dealing with ITEC.

B. Nancy's Rule 56(f) Motion

Consideration of the motion (the "Summary Judgment Motion") is complicated by Nancy's request pursuant to Rule 56(f), U.R.C.P. (the "Rule 56(f) Request") and her motion to clarify discovery schedule filed on April 12, 2002, (the "Discovery Motion") to which Mi Vida has objected.

Nancy maintains that she may be able to gather information by deposing Mark, Durrell Nielson, Rodney Knutson and Richard Harris, that will permit her to controvert facts which support Mi Vida's claim for summary judgment. She wants to depose Mark to find out what entities he created to receive funds from Cosmos Resources and the Frasers, and what he did with that money. She wants

¹ It is not the responsibility of this court to determine why claims purchased originally for Cosmos were deeded to Gold Hill Mines, Inc. Mark has, however, included an explanation of this in his memoranda. Gold Hill Mines is apparently owned by original owners and creditors of Cosmos.

to depose Durrell Nielson and Rodney Knutson to ask them about portions of their affidavits which she disputes. Finally, she wishes to depose Richard Harris, expecting to hear from him that Mark acquired certain properties (presumably the Cosmos Claims and/or the Little and Rodgers Claims) on behalf of Mi Vida, or a joint venture of which Mi Vida was a partner.

All of the additional discovery sought by Nancy bears on the question of whether Nancy has or ever had a claim against Mark. None of the proposed discovery would bear on the question of whether she lost a possibly valid claim by sitting on it. Accordingly, the court turns first to an analysis of Mi Vida's claim that Nancy's claims are barred by the applicable statute of limitations or by laches. As further set forth below, the Court decides this matter on the issue of the statute of limitations. Consequently, the Rule 56(f) request is denied because Nancy has not identified any facts she wishes to discover bearing on the limitations issues. The parties apparently agree that Mark can still be deposed. It is not clear to the court that Nancy still desires to depose Durrell Neilson, Rodney Knutson and Richard Harris. The Discovery Motion is denied without prejudice to renew it with a showing of how their testimony will aid resolution of the remaining issues.

C. The Statute Of Limitations

Mi Vida initially pled the wrong statute of limitations. Mi Vida has now moved to amend to plead the correct statute. That motion is unopposed. The Court has granted that motion by separate written order dated April 30, 2002 and

proceeds to analyze the limitation issues based on the applicable three year statute, which is Section 78-12-27, Utah Code.

Nancy filed her pleading in this case on January 30, 2001. An earlier pleading in a related case in Colorado, dismissed on the condition that it could be reasserted here, was filed on or about June 8, 1999. Thus, any cause of action based on facts known to Nancy before June 8, 1996 is barred by the statute of limitations. In addition, under *Stewart v. K&S Co.*, 591 P.2d 433 (Utah 1979), any cause of action based upon wrongs which Nancy should have discovered before June 8, 1996, in the exercise of reasonable diligence, is also barred.

Nancy contends that her cause of action to recover a portion of the proceeds of the sale of the Cosmos Claims and the Little and Rodgers Claims to Boulder County, Colorado, did not arise until May 2001. This answers the wrong question. The question is when did Nancy know, or when should she have known, that Mi Vida itself asserted no ownership interest in those properties, or that Mark was not holding those properties for Mi Vida.

Nancy's memorandum never identifies the point at which she became aware of facts supporting a claim against Mark as an officer of Mi Vida. She maintains that she could not sue until after the Cosmos Claims and Little and Rodgers Claims were sold to Boulder County, but she obviously felt aggrieved before that because she filed a lawsuit in Colorado in 1999. Absent any evidence from Nancy about when she became aware of the facts supporting her claim, the Court is forced to look to evidence in the record about the business dealing of Mi

Vida concerning those properties, and the disclosures to shareholders about those dealings.

The Gold Hill Venture Agreement draws a clear distinction between the Cosmos Claims and the Boulder County Properties. Even if the venture had proved profitable and permanent, Mi Vida's interest in the Cosmos Claims would have been only 40%. It would also have been required, in exchange, to give up 40% of the Boulder County Properties. Given the ultimate failure of the Gold Hill Venture Agreement to reach a point of profitability, it is debatable whether Mi Vida and Cosmos would have entitled to assert this cross-ownership. What is not debatable, however, is that neither entity did assert this entitlement. It is also plain that anyone who had inquired about this as early as 1985, would have been told that there were no cross-conveyances and that none were planned.

The course eventually selected by Mi Vida, of retaining full ownership of the Boulder County Properties, while gaining no ownership of the Cosmos Claims, does not appear unreasonable in view of the uncontroverted fact that Cosmos had contributed virtually all of the cash to the venture, and had lost two mining claims, the Oscar and the Good Enough, to the Frasers. Had Mi Vida made such a demand, it is unlikely that it could have been sustained. Nancy, through her counsel, was kept fully informed of all of the Cosmos, Mi Vida, and Fraser dealings. It is likely that counsel did not inquire about ownership of the Cosmos Claims because she considered it unreasonable to assert such a claim. Had she considered it reasonable to assert such a position, she should have asked whether

Mi Vida agreed. Even without 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.

There is even less basis for assuming that the Little and Rodgers Claims were purchased for Mi Vida. There is no evidence that funds from Mi Vida purchased the Little and Rodgers Claims. No agreement, draft or signed, grants Mi Vida even a prospective interest in those claims. This court doubts that Nancy ever considered the Little and Rodgers Claims part of Mi Vida, but had she so considered them, the exercise of reasonable diligence would have led her to inquire about their conveyance to Mi Vida. In view of the rancor between shareholders, the expressed distrust of Mark by Andrew and Junior, especially the December 17, 1986, letter from Andrew to the State of Colorado, a reasonable shareholder would have been on high alert for any evidence of shady dealing.

This Court agrees with Mi Vida that Nancy probably did not pursue those leads because the value of her interest in Mi Vida was questionable at the time. The real estate was still burdened by the IRS lien, Boyd's mortgage, and the mortgage in favor of the trust for Charlie Steen's children. Similarly, it would not have been obvious whether Mi Vida was advantaged by asserting ownership of 100% of the Boulder County Properties, or by giving up 40% of the Boulder County Properties to Cosmos (or its successor), in exchange for 40% of the Cosmos Claims.

One important purpose for statutes of limitations is to encourage people to assert their claims when they first arise. This facilitates settlement, for it may still be possible to unwind certain transactions. “Waiting to see” whether a claim, through valid, is worth a pittance or a fortune, should be discouraged. In this case, had Nancy asserted in 1987 that Mi Vida and Cosmos should execute cross-conveyances, they might well have agreed in order to avoid conflict. Now that the Cosmos Claims have been sold to Boulder County for the lion’s share of \$2.7 million, the record owners understandably disagree.

This court is convinced that the material facts, about which there is no genuine issue, establish that the statute of limitations on the claim that Mi Vida owned a share of the Cosmos Claims and the Little and Rodgers Claims, expired long before June 8, 1999, because Nancy, with the exercise of reasonable diligence, based upon knowledge she had or was charged with, would have discovered that Mi Vida claimed no interest in those properties and that Mark did not hold them in trust for Mi Vida, long before June 8, 1996. Mi Vida and Mark are therefore entitled to summary judgment excluding those properties from the valuation of Nancy’s shares.

D. The ITEC Agreement

The issues with respect to the ITEC Agreement are less clear. This has not been as thoroughly briefed by the parties, but it appears that Mi Vida, through Tontine, is a party to the ITEC Agreement. If Tontine has a right to compensation

by releasing some rights under that agreement, it would seem reasonable for the compensation to be shared with Mi Vida and therefore its shareholders.

E. Nancy's Claims to Personality

Reference appears in the Counterclaim, Crossclaim and Third-Party Complaint filed by Nancy to certain other "valuable assets" she claims may be owned by Mi Vida or to which Mi Vida may have some claim, including some interest in the following entities or assets: (a) Utex Exploration; (b) Grand Deposit Mining Company; (c) CASCO; (d) CASEX; (e) New Park Mining Company; (f) Steen Mining Company; (g) Litigation Resources, Inc. (h) Steen Minerals, Inc. (i) Steen Investment Company; (j) oil and gas production in Oklahoma and New Mexico; (k) patented mining claims in Alta, Utah; (l) a library of mining books and papers; (m) a mineral collection; (n) grand piano; (o) furniture; (p) jewelry; (q) art objects; or (r) any interest in a marble quarry.

It appears from the allegations and uncontroverted facts that each of these claims, if legitimate, arose at or around the time of the incorporation of Mi Vida or within a few years thereafter; consequently, any claim thereto is barred by the statute of limitations on the same rationale discussed above regarding the mining claims.

WHEREFORE, Summary Judgment is Granted in Part and Denied in Part. It is hereby Ordered that, pursuant to U.R.C.P. 56 (a) Judgment be and hereby is entered on behalf of Mi Vida Enterprises, Inc. and Mark A. Steen and against

Nancy Ciddio Steen-Adams on the Counterclaim, Cross Claim and Third Party Complaint insofar as those pleadings make any claim to:

(1) any interest in the following entities or assets: (a) Utex Exploration; (b) Grand Deposit Mining Company; (c) CASCO; (d) CASEX; (e) New Park Mining Company; (f) Steen Mining Company; (g) Litigation Resources, Inc. (h) Steen Minerals, Inc. (i) Steen Investment Company; (j) oil and gas production in Oklahoma and New Mexico; (k) patented mining claims in Alta, Utah; (l) a library of mining books and papers; (m) a mineral collection; (n) grand piano; (o) furniture; (p) jewelry; (q) art objects; or (r) any interest in a marble quarry;

(2) the Gold Hill Mill, the Oscar Lode and Good Enough Lode in Boulder County, Colorado;

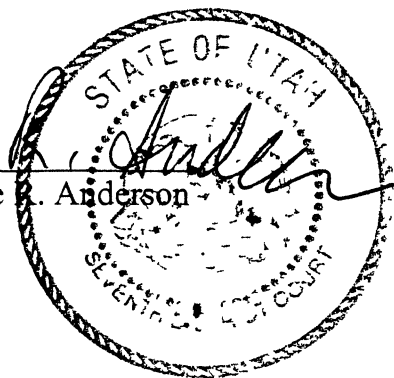
(3) the claims acquired by Cosmos Resources, Inc. conveyed to Gold Hill Mines, Inc. as further described on Exhibit A hereto;

(4) the claims acquired by Mark A. Steen, John C. Steen and R.T. Heard from the Little and Rodgers families and conveyed to Gold Reef Mining Company and Southern Cross Prospecting Company as further described on Exhibit B hereto;

said claims, whether individual or derivative on behalf of Mi Vida Enterprises, Inc., be and hereby are dismissed with prejudice. Nancy Ciddio Steen-Adams remains free to claim the value of her share ownership should include an analysis of the rights of Mi Vida pursuant to the ITEC Agreement and Golden Tontine Operating Agreement.

Dated this 16th day of September, 2002.

Lyle R. Anderson
Judge Lyle R. Anderson



APPROVED AS TO FORM:

Thomas J. Finch, Esq. CO #14076
885 Arapahoe Ave.
Boulder, CO 80302
(303) 449-7050
Attorney for Mark A. Steen

James M. Hult, Esq. #9027
Stephen S. Wills, Esq.
2338 Broadway, Suite 100
Boulder, CO 80304
(303) 447-1632
Attorneys for Nancy Steen-Adams

Cynth T. Kennedy

Cynthia T. Kennedy, CO #11668
308 ½ E. Simpson Street
Lafayette, CO 80026
(303) 604-1600/ Attorney
for Mi Vida Enterprises, Inc.

APPROVED AS TO FORM:

Thomas J. Finch, Esq. CO #14076
885 Arapahoe Ave.
Boulder, CO 80302
(303) 449-7050
Attorney for Mark A. Steen

James M. Hult, Esq. #9027
Stephen S. Wills, Esq.
2838 Broadway, Suite 100
Boulder, CO 80304
(303) 447-1632
Attorneys for Nancy Steen-Adams

Cynthia T. Kennedy
Cynthia T. Kennedy, CO #11668
308 ½ E. Simpson Street
Lafayette, CO 80026
(303) 604-1600/ Attorney
for Mi Vida Enterprises, Inc.

Sent By: THOMAS J FINCH;

To: KENNEDY

At: 303-441601

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Page 1

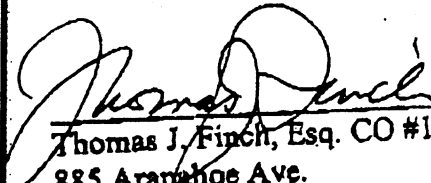
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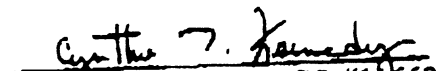
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Page 22/22

APPROVED AS TO FORM:


Thomas J. Finch, Esq. CO #14076
885 Arapahoe Ave.
Boulder, CO 80302
(303) 449-7050
Attorney for Mark A. Steen


Cynthia T. Kennedy, CO #11668
308 1/2 E. Simpson Street
Lafayette, CO 80026
(303) 604-1600/ Attorney
for Mi Vida Enterprises, Inc.

James M. Hult, Esq. #9027
Stephen S. Wills, Esq.
2338 Broadway, Suite 100
Boulder, CO 80304
(303) 447-1632
Attorneys for Nancy Steen-Adams

Exhibit A

The Cosmos Claims

The following patented and unpatented mining claims located in the County of Boulder, State of Colorado:

Emmet
Alamakee
Repeater
Red Cloud
Mystic
Comet
Cold Spring
Cold Spring 2
Washington
Star
Gold Ring
Hog Back
Huberty
Deserted Star
Make Shift
Mascotte
Mendaro
Gay Deceiver
Gay Deceiver Mill Site
Herbert Spencer
Mucho
Paris
Paris Mill Site
Twinn Mill Site
Bordeaux
Bordeaux Mill Site
Grange Mill Site
Oro Cache
Lansing Mill Site
Columbia
Golden Gate
Eureka
Little Alice
New Discovery
Minnie
Lilly

Sadie
Emily
Minneapolis
Cash No. 2
Time Load
Morning Glory Lode
Morning Glory Annex
Thunderbolt
Columbia
War Eagle
Reindeer
Grey Eagle
Eagle's Nest
Rocky Eagle
Lion
Alice
Last Chance
Camera
Little Giant
Morning Star
Emeline Star
Aspen
Grand Crossing
Bob Tail
Colorado
Side Show
IXL Lode
Prince Arthur Load
Bonanza
Mattie
Boston
Hillside
Mammoth
Mentor
Boss of the Hill
Evening Star
Evening Star No. 2
Maude S.
Maude S. No. 2

Exhibit B
Claims Acquired from the Littles and Rodgers

All in the County of Boulder, State of Colorado:

Auriferous Lode
Bobby Lode
Corning Tunnel Millsite
Creole No. 1 Lode
Dick Cragg Lode
Esslinger Lode
Excelsior Lode
Frank Lode
Franklin Lode
Gold Rush Lode
Golden Age Lode
Golden Crown Lode
Lansing Lode
Lone Star Lode
Lost Boy Lode
Mack Lode
Maxon Lode
Mount Sterling Lode
Ocean Wave Lode
Peacock Lode
Ready Cash Lode (northeasterly ½)
Saint Joe Lode
Thorndike Lode
Van Buren Lode
Yellow Jacket No. 2 Lode

Alturas Lode (2/3/ undivided interest)
Keystone State Lode (1/2 undivided interest)
Twin Millsite

Block 11, Lots 10, 11, 12, 13, 14, 15, 16, 17, & 18
Gold Hill Town Lots, Gold Run Street

Black Cloud Lode
Bluff Lode
Bullion Lode
Corona Millsite
Credit Mobilier Lode

George E. Hall Lode
George Henry Lode
Georgie Lode
Gold Hill Lode
Gold Key Load
Grover Lode
Hillside Lode
Hub Lode
Kentucky Lode
Klondike Load
Negaunee Lode
No Name Lode
Pilgrim Lode
Procunier Lode
Rowland Lode
Silverton Lode
Sunset Lode
York Lode

Excelsior Millsite
Knox Lode (easterly 1300 feet)
Little Pittsburg Lode
Prussian Lode
Prussian Millsite
Twin Lode
Lillie of the West Lode
Slide Lode
Spur Lode

Chicago Lode
Fifty-Nine Lode
Knox Lode (westerly 200 feet)
Scott Lode

Tab 4

SEVENTH DISTRICT COURT
Grand County

FILED SEP 30 2003

BY CLERK OF THE COURT
Deputy

Keith H. Chiara, #0621
Chiara Law Offices
98 North 400 East
P.O. Box 955
Price, Utah 84501
(435) 637-7011
Local Counsel for Mi Vida Enterprises, Inc.

Cynthia T. Kennedy, CO #11668
Kennedy & Kennedy, P.C.
308 E. Simpson Street, #102
Lafayette, CO 80026
(303) 604-1600
Atty for Mi Vida Enterprises, Inc.

IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR

GRAND COUNTY, STATE OF UTAH

MI VIDA ENTERPRISES, Inc. Plaintiff, vs. MAXINE S. BOYD, et al. Defendants. and NANCY CIDDIO STEEN-ADAMS; CHARLES A. STEEN III and ANDREW KIRK STEEN, Jr.; Counterclaim and Cross-Claimants vs. MI VIDA ENTERPRISES, INC. and MARK ASHBY STEEN	FINAL ORDER AND JUDGMENT Civil No: 000-700-040 Judge Lyle Anderson
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THIS MATTER came before the Court for trial April 14, 15 and 16,
continued to May 21, 22 and 23, 2003. Mi Vida was represented by its Colorado
counsel, Cynthia T. Kennedy, Esq. and its local counsel, Keith H. Chiara, Esq.

Defendants Mark A. Steen (“Mark”), individually and as a representative of the Estate of M.L. Steen, were represented by Thomas J. Finch, Esq. as Colorado counsel and Allen Thorpe, Esq. as local counsel. Nancy Steen Adams (“Nancy”) and Charles A. Steen, III (“Charles III”) were represented by James M. Hult, Esq. and Stephen S. Wills, Esq. as Colorado counsel and Mr. Chase Kimball, Esq. as local counsel.

THIS ORDER is entered pursuant to Rule 4-504 of the Utah Rules of Judicial Administration based on the oral ruling of the Court dated May 21, 2003, and constitutes the findings of fact, conclusion of law and judgment of this Court.

I. Introduction

After the majority of claims made by dissident shareholders were dismissed on summary judgment, this matter went to trial on the valuation of shares, the remaining derivative claims, and the corporations’ and its officer’s counterclaims for attorneys fees and costs. To understand the references of the court, some historical background is required.

A. The Players.

The players (however aligned) consist of members, or one-time members of the family of Charles A. Steen (“Charlie Steen”). Charlie and his wife, M.L. Steen (now deceased) had four sons: John C. Steen (“John”), Charles A. Steen, Jr. (“CAS, Jr.” or “Junior”), Andrew K. Steen (“Andy”) and Mark A. Steen (“Mark”). Junior married Eleanor Ruth Ciddio (now Eleanor Ruth Ciddio Steen Adams a/k/a Nancy) (“Nancy”) in 1968 and was divorced in 1978. The couple had two

children: Monica Steen ("Monica") and Charles A. Steen, III ("Charles, III"). Junior remarried Jayne Steen ("Jayne") and had two children: Karen and Jennifer. Andy, one of the original four brothers, had a son, Andrew K. Steen, Jr. ("Kirk"). Upon the death of M.L. Steen, Mark A. Steen ("Mark") the youngest of the four brothers, became the representative of his mother's estate. Maxine Boyd is Charlie's sister, and an aunt of the four Steen brothers. Mi Vida is a Utah corporation which was incorporated in 1974 to take title to certain real property interests from the Charles A. Steen bankruptcy and from M.L. Steen.

B. The Colorado Action

Eight of the individuals identified above (Junior, his wife Jayne and their two children Karen and Jennifer, along with his ex-wife Nancy and their two children, Monica and CAS, III, and Kirk), claiming to be shareholders of Mi Vida, commenced an action in Boulder County, Colorado against Mi Vida, *et al.*, as civil action no. 99 CV 1020-2 (the "Colorado Action") as a shareholder's derivative action. The Colorado Action, *inter alia*, requested the appointment of a receiver to dissolve Mi Vida. Monica, CAS, III and Kirk claimed shareholder status as potential beneficiaries of the undistributed estate of M.L. Steen.

The derivative claims were asserted against Charlie Steen and two of his sons, John and Mark, as officers of the corporation, as well as Southern Cross Prospecting Company, Inc., Gold Reef Mining Company, Inc., Gold Hill Mines, Inc. and Golden Tontine, LLC (the corporations are collectively referred to hereinafter as the "Colorado Companies").

C. The Boyd Action

Maxine Boyd, claiming to be a creditor of Mi Vida, commenced a lawsuit against Mi Vida, et al. as Civil No: 9907-145 in this Seventh Judicial District, Grand County, Utah. Claiming that the Colorado Action impaired her rights, Boyd requested a temporary restraining order issue restraining the eight putative shareholders from their attempts to dissolve the Utah corporation or have a receiver appointed. Mi Vida joined in that request and, after hearing, a series of restraining orders were issued. Certain funds, which had been held in an attorney's trust account, in the approximate amount of \$110,000, were interpled into the Court and eventually released to Mi Vida for payment of taxes and for other purposes. Eventually Mi Vida settled its disputes with Maxine Boyd and a Court Approved Settlement Agreement (the "Boyd Settlement") was approved and made an order of this Court.

D. This Action

This case was commenced directly by Mi Vida as a corporation, requesting, *inter alia*, an Order of preliminary injunction enjoining the putative shareholders from taking further action to dissolve or have a receiver appointed for the corporation elsewhere than in Utah. Mi Vida also requested it be allowed to purchase the shares of any of the putative shareholders found to be legitimate shareholders of the company, and for its fees and costs in defending the various claims made against it and its officers. By Order dated May 10, 2000, this Court

entered a preliminary injunction restraining the putative shareholders from pursuing the dissolution or receivership action in Colorado.

E. Dismissal of the Colorado Action

Eventually, the Colorado Action was dismissed as to Junior, his wife Jayne, and his daughter Monica, when it was discovered they had filed for and received discharges in bankruptcy while failing to list their shareholder interests (or potential interest in the case of Monica) as assets.

Thereafter, by a document filed in the Colorado Action entitled Stipulation for Dismissal of Action (“Stipulation I”) dated October 13, 2000, Nancy, Charles, III and Andrew K. Steen (the “Dissident Shareholders”) agreed to have their shares (if any) bought out by Mi Vida pursuant to U.R.C. §78-10a-1434 in context of this proceeding, with October 13, 2000 as the date of valuation. By virtue of the Stipulation, the derivative claims asserted in Colorado were dismissed without prejudice to reassert them in Utah. Monica contested jurisdiction over her person in Utah, and this Court entered an Order on granting a motion to dismiss—retaining jurisdiction over Monica only insofar as Mi Vida was requesting a determination of her shareholder status and the right to set off amounts in the event of her potential inheritance of shares. Stipulation I provided that any claim not reasserted in Utah would be dismissed with prejudice, including the claims of Mi Vida and Mark Steen for fees.

Stipulation I was incorporated into a stipulation entered into in this proceeding and made an Order of the Court on June 5, 2001 (“Stipulation II”).

Stipulation II provided for the dismissal of the Colorado companies, Charlie and John Steen, in exchange for the agreement of Mi Vida to increase the proportional amount any Dissident Shareholder would receive from the corporation to include any recovery against these companies or officers.

F. The Claims

The parameters of the matter before the Court are defined by the Complaint of Mi Vida dated March 28, 2000 and the Amended Complaint dated August 15, 2001, and Nancy's Answer, Counterclaim, Cross Claim and Third Party Complaint. The Court granted the Motion to Amend on September 17, 2001. Maxine Boyd was dismissed by Court Order dated October 9, 2002 as a result of the Settlement of the Boyd case referenced above.

Certificates of Default entered on 6/26/00 with regard to four named defendants, *i.e.*, Charles A. Steen, Jr. ("Junior"); Jayne Marie Steen ("Jayne"); Karen M. Steen ("Karen"); and Jennifer Steen ("Jennifer")¹. Andrew K. Steen ("Andy") was dismissed voluntarily by Mi Vida, on Notice pursuant to U.R. Civ. Pro. 41(a) (no service having been achieved) dated 9/24/02 and his claims against the corporation are the subject matter of Civil Action 02-07-00143 pending before this District.

By filing an Answer, Cross-Claim and Third Party Complaint on January 31, 2001, Nancy, CAS III and Kirk re-asserted the derivative claims. By Order

¹ The defaults entered upon the original Complaint and the extent of Mi Vida's recourse against these defendants is circumscribed by that pleading.

dated 11/06/01, the Court determined that CAS, III and Kirk, claiming to be shareholders as beneficiaries pursuant to the undistributed estate of M.L. Steen, had no standing as present shareholders of the corporation. Thus, their claims for shares or a positive recovery were dismissed. That left Nancy as the sole shareholder pursuing derivative claims. The Court retained jurisdiction over CAS, III and Kirk for purposes of Mi Vida's positive claims for attorneys fees, and over Monica to the extent any claim for attorneys fees could be off-set against any claim for shares.

Mi Vida's action against Kirk on its remaining claims were stayed by a bankruptcy filing, Case No. BK-N-02-51171-GWZ, United States Bankruptcy Court, District of Nevada.

II. Historical Facts Relevant To the Matters Left for Trial

Mi Vida was created in 1974. At the time it was created, if we are going to talk about reasonable business judgment, it may be that reasonable business judgment was to do nothing because Mi Vida had Real estate in Moab, Utah at a time when Moab, Utah was not a particularly prosperous place, some mining claims in Boulder, Colorado at a time when Boulder, Colorado was becoming a less likely place for people to find mining a friendly, neighborly thing to do. And, all of those properties were burdened by an obligation to Maxine Boyd, an obligation to the four brothers (both of which were secured by deeds of trust on the real estate) and then a lien to the Internal Revenue Service.

The likelihood of anything ever coming from this--if I had been asked in 1974 to advise someone I would have said, "Don't waste any time on this. Don't waste any money on this. Just leave it alone. Your only hope of anything good happening is if the IRS lien never forecloses and their lien expires."

Well, some effort was placed into this corporation making some things happen with it in two areas. One was in renting of the Mi Vida Restaurant—the old Steen family home at the top of the cliff here in Moab, a famous landmark in the valley--and that generated a little bit of money; not enough to make anybody rich and not enough to support fully one person, but enough to maybe keep the property taxes paid and maybe enough to make the life of Charlie Steen a little less miserable.

The other thing is maybe, maybe these mining claims in Boulder do have some potential and that was the one area where, if you wanted to dream that something could happen that would make it possible to pay off the IRS or make the IRS go away, it would be that, because if you actually can produce economically, profitably minerals from a piece of property, it really doesn't matter what the value is per acre.

And so, that was pursued, (I'm not sure it was reasonable to expend any energy on that) but it was pursued and it was pursued, by the evidence I've heard, primarily by Mark Steen. And he did that with some money he had received from other assets to try to get other people interested and then to go into a partnership with Mi Vida.

But Mi Vida really had nothing but these mining claims to contribute. There was not enough generated income. Even if you saved up for ten years all the rental income it would not be enough for Mi Vida to really get into production itself—so they were looking for a deep pocket.

And the 1987, 89 and 91 shareholder meeting minutes reflect the efforts to pursue those options. And I've read those excerpts provided to me and I've read the associated documents. I did so in connection with the Summary Judgment Motion. I read them again as we were trying this case.

None of those efforts ever panned out and generated enough money to persuade the IRS to go away. And I'm not going to get into all the reasons why they never panned out. I would have projected they wouldn't pan out if I'd been asked about it at the start, I think. Because about that same time I was practicing law and advising people who were going after gold that they were wasting their money.

But, hope springs eternal, and it certainly was not inappropriate for this corporation to pursue really the only avenue that it had for emerging from its cocoon.

By 1987, Nancy had become an official shareholder. She may have been entitled to shares ten years earlier. Her frustration in trying to collect on the assets that her ex-husband had promised her in her divorce is understandable.

He promised her all these things and it turned out they were things he couldn't promise her and she sees him benefiting from them nonetheless. It must have been very exasperating to her.

But she finally, at least with respect to Mi Vida Enterprises, she actually gets shares issued and she hires lawyers and lawyers go to at least one meeting—they were at the '87 meeting--I don't know if they showed up at the '89 meeting also—and they would get a report on what was going on. We have hopes of this great thing happening.

And the other thing that was obvious from the minutes is that there was great conflict and distrust between the shareholders and directors.

If I were the lawyer for Nancy Adams, I would have told her after those 1987 and 1989 shareholder meetings, you know it doesn't look like these folks are ever going to get together enough to do something and if they do get together to do something, these are all very high risk projects. They may never pan out into anything.

And the conduct of Nancy after that time suggests that that is the kind of advice she got, because she stopped paying attention to Mi Vida Enterprises.

But I believe she received notice of the 1991 meeting. I believe she received notice of the 1994 meeting. But she wasn't very interested anymore. She'd put quite a bit of effort to get something out of it and hadn't gotten anything out of it and had probably been told that she wasn't likely to ever get anything out of it.

Then, the single most crucial event in the post-1974 history of Mi Vida Enterprises occurs in 1993 or 1994 when the IRS fails to renew its lien, or maybe it was unable legally to renew its lien and all of a sudden the hardened portion of the cocoon surrounding Mi Vida is shattered and Mi Vida is now something that actually has the prospect of doing something without striking it rich on a gold mine or a gold mill. They actually have assets that can be sold.

Now, they still had an obligation to Maxine Boyd, which had accrued interest or had expired because of the statute of limitations and lack of payments we don't know which, and the debt to the four boys.

In the meantime, in these intervening twenty years, whatever scraps of money that were available from renting the restaurant had gone mostly to help the oldest brother and the mother and father, who were shareholders of the corporation, and some payments had been made to Maxine Boyd, I think.

But when they sold property in 1994 in Moab, they needed to deal with Maxine Boyd because she had a mortgage, and they needed to deal with the four brothers because they had a mortgage. The simplest thing to do would have been, as much as possible, to pay those off.

Interestingly, CAS, Jr. did not want to be paid off on the mortgage but he wanted to be paid as a shareholder the same proportion he would have received as a mortgage holder. I don't think that was fair. I don't think that was fair to anybody else. I don't think that was a reasonable way to proceed. But, he had

leverage because they could not make a sale without him signing off on it and who knows how long a law suit would take to eliminate his unwillingness to sign.

So, they cut a deal and it meant that advances or loans to shareholders were made, but it turned out it was only to shareholders that had exceptional leverage. It was those who held the note secured by a mortgage: it was Maxine Boyd, though the amount she got was not proportional to her leverage. She's always been a soft touch, I think. And then some payments go to Tera Wright and M.L. and Charlie Steen. They are really in no preferred position at all, legally. But, it is understandable in a family corporation that they would do that. And I don't think it would have been reasonable for the people controlling Mi Vida to think that this would be something Nancy Steen Adams would find unacceptable or offensive given her interest expressed later in the Denver Post Article in the care of M.L. and Charlie Steen.

So, it is hard to fault the corporation for giving a little favorable treatment to some shareholders that maybe legally are not in a strong position, but morally, ethically, emotionally you might feel a strong bond to. These are the people without whom there probably would have been none of the rest.

And then some years go by. Three years later, M.L. Steen dies. And there is some conflict about that. Apparently not everyone benefits equally from her will, but it turns out it is her will, and that's enforced. But in the process, Nancy begins to become aware that maybe Mi Vida is worth something.

And I'm not clear on where all the source of this information was—whether it was from before M.L.'s death from M.L., whether it was from Junior, but she begins to recognize the possibility of some value there. And she's pretty aggressive in pursuing that through the M.L. Steen estate, even though she's not a beneficiary of the estate.

Then, Junior comes to her with his views, his perceptions of what is going on with Mi Vida, and she becomes persuaded. I think she was already inclined to want to pursue these things. It is evident she was already inclined to do so, but she's convinced that the best way for her to try to get something out of Mi Vida is to join with him in his efforts through Reiman & Bayaz, Denver attorneys, in a lawsuit against Mi Vida, its officers and the Colorado companies.

III. The Derivative Claims

A. The Summary Judgment

The greatest bulk of the controversy arose out of Nancy's claim that the value of her shares should be enhanced by the value of the derivative claims, most of which were dismissed on summary judgment entered September 16, 2002. Reference is made to that final order regarding the nature of the claims, the discussion of the merits, and the ultimate determination that, if valid claims had ever existed, they were barred by the relevant statute of limitations.

B. The Remaining Derivative Claims

At trial, Nancy argued that certain breach of fiduciary duty claims, and a claim arising out an agreement by and between Mi Vida and ITEC Environmental

of Colorado, had survived the summary judgment. Whatever is left of the ITEC claim is gone now. I didn't hear enough evidence to persuade me that the ITEC claim is of any value to the corporation. The claim is dismissed.

Then there are the breach of fiduciary duty claims. To the extent the claims arise from the transactions that were dealt with on summary judgment, the claims were included in that analysis and fail by application of the statute of limitations.

Nancy then claims that disproportionate loans were made to shareholders. It was true that disproportionate advances were made to shareholders in 1994 and some disproportionate advances of much less magnitude had been made before that time; but, Nancy would have known of these if she had paid attention to the notice she was given.

More importantly, to me, it is interesting that she jumps into this lawsuit with Junior, who is, more than anyone else, the architect of these disproportionate advances in 1994. Now, Junior isn't here to defend himself, so maybe he's being painted more darkly than in all fairness he should be, but I have only the evidence I do, and the evidence I do have is that he was the architect—the genius—behind this “skullduggery” and it doesn't seem to bother her so much that she won't participate with him in the lawsuit against this corporation. This does not seem to be number one on her agenda. She overlooks what he did to her in her pursuit of these other claims against the corporation. 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?

The only way I might order her relief from that aspect is if I were to say that she's entitled to recover something for having pursued that because it brought the corporation to its senses, which is discussed in the context of the award of fees below. But as to positive recovery on the claim itself, there will be no award and the claim is dismissed.

The only other breaches Nancy claims are that the officers let Mi Vida's registration expire, the corporation wasn't in good standing for awhile, and it didn't file some tax returns. These claims for breach of fiduciary duty have no damage and therefore no remedy, and there should be no recovery for that.

The amount of legal effort it would have taken to get this corporation to stay in good standing and get its tax returns filed, was pretty minimal. With each of them, I am left with the question...with each of them, the evidence does persuade me that everything was not according to Hoyle in this corporation but this is not EXXON either and its not Enron either. Mark Steen did not take a bunch of stock options and end up controlling 90% of the corporation instead of 10% of the corporation. Their registration expired, they weren't in good standing for awhile, they didn't file some tax returns. I think those were all things that were easily remedied simply by a letter and cooperation of the shareholders. If that had been the only complaint, this lawsuit would have been disposed of perhaps before it was filed.

So, to the extent they had not already been disposed of by Summary Judgment in this case, Nancy's claims are dismissed.

IV. The Valuation

By the time the matter came to trial, the only shareholder remaining was Nancy, and she had agreed, by Stipulation, to have her shares valued and purchased pursuant to U.R.C. §16-10a-1434.

A. Assets

The assets of Mi Vida Enterprises are:

(1) \$1,493.55 cash in the bank on October 13, 2000.

(2) The shareholder advances receivable calculated by Mr. Snodgrass at \$455,882.70. As I understand it is a calculation at 8% interest without compounding interest on interest. And I accept that.

(3) The Vehicle was undisputed at \$16,621.32

(4) The appraised value of the Moab property is \$3,400,000

(5) The appraised value of the Colorado property is \$330,000

(6) Restricted Cash of \$36,698.59²

Nancy has asked me to place an additional value on the Colorado property because of the possibility of additional mineral values. I read the appraisal as appraising those acres at their highest and best use as residences to be sold to people to build homes and I think any use of the mineral estate is inconsistent with

² See discussion under Liabilities below.

that and would result in elimination of the \$330,000 value. I am placing no additional value for the possibility of mineral interest.

B. Liabilities. On the liability side, I've heard no contradictory evidence of:

(1) accounts payable of \$222,141.98 or

(2) the note payable to Bank one on the vehicle of \$ 16,621.32 .

(3) note payable to Knutson--Responding to my signal that I did not think that interest should be compounded on interest on the Knutson Legal Fee Note, Mr. Snodgrass changed the amount of that to \$ 66,160.44 and Nancy seems to have accepted that, so I am finding that is the amount of that liability.

(4) Andrew Steen Payable. There does not appear to be a contest that advances from Andrew Steen in the amount of \$ 69,505.25, that is with accrued interest , are appropriate.

(5) Boyd Note. With respect to the note payable to Maxine Boyd, I think \$570,500 is now the legal amount owing under the Note to Maxine Boyd pursuant to the Stipulation made with Maxine Boyd. It might have been a great deal more; possibly the statute of limitations had run on that. It might have been zero. It was reasonable for Mi Vida to make a compromise settlement, and under that compromise settlement it is my opinion that the amount owing to her as of October 13, 2000 was \$570,500.

(6) Purchase of Junior's Shares. The Note payable to the Charles Steen bankruptcy estate (\$19,251.75) and the note payable regarding the Charles Steen bankruptcy estate (\$6,417.25) totaling \$25,669.00 for the purchase of CAS, Jr.

shares in Mi Vida are obviously appropriate debts of the corporation since by doing so it managed to benefit every shareholder and increased the proportional interest of each shareholder, including Nancy, so I accept those numbers as listed in Mr. Snodgrass' balance sheet.

(7) The Mine Production advances—all the testimony about that is that those are to be paid out of production from mines. And, I think you've already got my opinion as to whether I think production ever will or should occur from these properties in Colorado and it apparently is not due unless there is production and then only out of production. So it is not a liability that Mi Vida will probably ever have to pay. Not even properly treated in my mind as a liability but as a possible charge against a potential asset—that potential asset I presently value at 0. So, I eliminate that item from the liability side of the balance sheet.

(8) Liability on the CB&T Note. \$388,344.58. I have heard quite a bit of controversy about the purchase of Junior's share in the Continental Bank, later Moore Trust, promissory note which ultimately became held by each of the brothers individually—no longer held in trust.

I listened to ten minutes of the October 12th hearing. I looked at the documents from the bankruptcy court. I heard testimony that the bankruptcy court documents, drafts, before they'd been approved or been signed by Mi Vida, were shown to Mr. Sander before the October 12th hearing.

And I find from that that it was contemplated, that Mr. Sander would have been aware from the reference in the ten minutes I heard on October 12, that the

deal included the “claims of CAS, Jr. also including a mortgage.” The only mortgage CAS, Jr. had was the Continental Bank & Trust mortgage. So, if Mr. Sander saw the settlement documents, the most appropriate finding here is that Nancy, through her attorney, had an opportunity to say we want to benefit from that transaction, and that she didn’t. In fact, from some of the things that are stated in the Trustee’s report to the bankruptcy court there was an opportunity for Nancy to benefit solely, entirely. She could have gone and made a bid for CAS, Jr.’s share of the note. Bids were invited from Reiman & Bayaz early on, or was it from Bart Bailey? William Jennings and Bart Bailey. Correspondence from Jeff Reinman. “Two months with no response forthcoming from Mr. Bailey and Mr. Jennings.” Now that it looks like a good deal the way the evidence is now, I don’t think it is fair to permit her to benefit from something she elected not to benefit from, or to take the risk on, at that time.

So that means the restricted cash on the asset side of the balance sheet stays there, but I am not subtracting from the liability side, the amount owing to Junior.

By my calculations, however, the amount that Mr. Snodgrass placed on the liability side for the note to the four boys is too high. Once again the problem of interest on interest. That promissory note does say, “interest on the entire balance.” But before that, it says, “interest on the unpaid principal balance.” I read the promissory note in its entirety and came away unconvinced that it was authorizing interest to be compounded.

Now, this compound interest thing is, no pun intended, interesting. If you actually make the payments when you are supposed to make them, compounding occurs as a natural consequence of having made the payments because your payments go first to pay interest and then to pay principal. If you make no payments at all, in the absence of explicit language in the promissory note saying that every year, whether you make the payment or not, we are going to compound the interest, I don't think the law requires calculating interest on accrued interest. So, that's my view of the law. The best calculation in all the exhibits I found on the subject of the shareholder trust, or the note to the four boys, or the Continental Bank and Trust Note (whatever we call it) is that provided in 631 by Nancy. That does not appear to compound interest. It appears to give credit for all the payments, and it starts out with an amount on June 30, 1980, which appears to have been accepted by many of the principals at that time. And Exhibit 631 says that the amount owing on October 13, 2000 to the four boys was **\$388,344.58**, so I'm plugging in that amount on the liability side of the balance sheet under the category note payable shareholders' trust.

C. Value.

When I add up these numbers, I get a total liability of \$1,358,942.57. I get a total assets of \$4,240,696.16, for an equity of \$2,881,753.59. Both parties agree that Nancy owns 9.06% of the shares. By arithmetic calculation that is **\$261,086.91**. That's what her shares are worth.

I've been asked to reduce the value of her shares in recognition that [the balance sheet doesn't state anywhere] that the real estate if it is sold will have to be sold paying someone a brokerage commission and that I should say the brokerage commission would be 10%. Well, I don't know whether the brokerage commission would be 6% or 8% or 10%. Moreover, there are assets of this corporation in the amount less than Nancy's share of the corporation, that would not involve the sale of any real estate.

They have also asked me to take into account that capital gains taxes would have to be paid on the sale of the property. I would make the same point about that—we don't know that real estate would have to be sold in order to pay her. There's a second point on that. My understanding of the law with respect to corporate dissolution and liquidation is that, if the corporation makes the decision to liquidate or dissolve itself, and it chooses to do so all at one time, and pay whatever is left to the shareholders, that this double taxation, being taxed on the corporate level and then again at the shareholder level, can be eliminated. I think it is a 351 liquidation. That is what was originally asked for by Nancy and her cohorts. And Mi Vida is within its rights to say it doesn't want to do that, but it keeps telling me all it has is real estate. So, I find myself asking if all it has is real estate, what is the problem with doing that? It just doesn't want to and it doesn't have to if it doesn't want to—that's Utah law. But, because it doesn't want to and doesn't have to doesn't mean that Nancy ought to be required to reimburse them

for a tax they choose to pay by virtue of their decision not to liquidate and make a liquidating distribution to all shareholders.

So, the value of her share in Mi Vida, is not going to be reduced by any allowance for real estate commissions or income taxes that would have to be paid by the corporation upon the sale of some of its property.

V. Attorneys Fees

A. Credibility

I really am pretty clear about what happened to this corporation, as set forth in the Historical facts above. But, I need to tell you, first of all, with regard to items which are contradicted, what I believe the truth to be. Some of the conflict between what the two antagonists here, Mark Steen and Nancy Steen Adams, say, can be attributed to perspective and perception and spin—that does not amount to dissembling. They just see things differently. They have looked at this from a different perspective for a long time. They have different things that matter to them. That's understandable and I am not inclined to treat either of them harshly because of that, but there are a few things where I just have to decide what I think because they [Mark and Nancy] are absolutely at odds as to what happened.

And where that is the case, I find Mr. Steen's account to be more credible than Nancy Steen Adams' account. Now, I do not pretend any particular genius in discerning the truth. The only thing that I can bring to this process is that I don't really care who wins in this case, but as I've listened, I have been more persuaded of the 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, and I do not believe that she was so uninvolved in the decisions that Reiman & Bayaz [her attorneys] made in late 1998 and early 1999 as she claims in her testimony in this court, because of what I see in the billing sheets of Reiman & Bayaz. She may not have been the client they say they saw the most, but she appears to be a very interested client with whom they were in frequent communication, and what's more, she'd shown a great deal of interest even before the filing of the lawsuit.

So, I do not believe this portrayal of herself as someone who was simply invited by Charles Jr. to join in at the lawsuit at the last second before the filing because it looked like the best chance to get money. She was very interested and very forward and aggressive before that time. I thought she was very well up to date and involved with those decisions and well informed of those.

B. Additional Facts Bearing on Fee Issues

It turns out that Junior really wasn't in a very good position to be claiming his Mi Vida stock because he filed bankruptcy and failed to list it as an asset; failed to list Mi Vida's debt to him as an asset, and discharged all of his obligations.

By accident, Mi Vida found out about that and consequences followed, the most important of which was that Junior no longer had anything to gain from participating in this lawsuit.

Nancy has a choice to make at this time: does she go on with the lawsuit, does she abandon it entirely, or does she view the lawsuit in a different light?

I would expect that, after an ex-husband who cheated you out of your share of two assets he promised you in a divorce and then comes to you with a way to get money on the third asset you got out of the divorce, turns out have been fraudulent, that all of his allegations would be perceived as deserving a very careful scrutiny.

But I've heard no evidence of any careful scrutiny by Nancy Adams of Junior's allegations. In fact, the next thing that I see in the record is a full blown acceptance of all his allegations. When reminded that some of those are patently false, she drops those that are patently false and accepts all the others.

Then, she changes lawyers. There is a pause in the litigation. Everybody has a chance to kind of clear their heads and consider everything. A decision is made to bring the lawsuit entirely to Utah.

I could have stopped that. From a personal level if I could have stopped it; I would have. I would have been happy to have you folks litigate the derivative issues in Colorado, and for me to be left with just the valuation issues and the Maxine Boyd mortgage.

But there was an opportunity to drop the derivative actions and proceed in Utah simply as a dissident shareholder buyout, and it was contemplated in the Settlement Agreement that a new analysis of all that would be undertaken—an examination of that—and it would be freshly looked at and a decision would be

made. And, if the decision was made not to pursue the derivative allegations, then any complaint that Mi Vida or Mark Steen might have had over what had happened in Colorado (or even what had happened to that point in Utah) would have been dropped and we would simply proceed with this case as a valuation case.

Nancy made a decision to go forward with the derivative claims and that opened up again the right of Mi Vida to assert that it was entitled to recover its fees from her.

VI. Discussion on Fees

And now I have to decide whether I think attorneys fees should be awarded to Mi Vida or to Mark Steen. I guess Mi Vida has to pay Mark Steen's attorneys fees—everything really is to Mi Vida, for these different aspects of the litigation that were pursued by Nancy.

The most lenient standard for Mi Vida is the standard under the derivative action statute which says that if it turns out a shareholder did not have reasonable cause for a derivative action that attorney fees should be awarded to the corporation.

There is good reason for that to be a more lenient 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 processes. 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 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. On the other hand, if you are doing something that is helpful to the corporation, that is actually benefiting the other shareholders, then they shouldn't get a free ride on your efforts—they should have to pay a portion of your attorneys fees—and so that is why Nancy is claiming attorneys fees in this case. She wants me to award her attorneys fees because of the benefit that all of the remaining shareholders of the corporation are getting, and they shouldn't be permitted to piggy-back on her.

A. Nancy's Rights to Recover Fees. All of Nancy's derivative claims were dismissed; the corporation and the remaining shareholders got no benefit as a result of that; so, unless it turns out I am wrong on appeal, that's no benefit to the corporation, and I have to proceed on the assumption that I was right. If I proceed on any other assumption, I should change my decision. So, all of the effort she's put into the derivative action, she shouldn't recover her attorneys fees for.

Then we have Nancy's efforts to value the corporation. How did they benefit the other shareholders? Her efforts to get a fair valuation of the shares of the corporation. Well, what benefit is there there? She persuaded me that the shareholder advances had to carry interest. She persuaded me that the mine production advances were not a bona fide liability of the corporation. She

persuaded me that the amount payable to the four boys was too high by approximately \$300,000. She persuaded me that the amount owing to Knutson was too high.

She asserted some things that I didn't accept and imposed costs on the corporation of asserting the contrary, successfully. I also think it is likely that, if that is all that this case had been about, the corporation would have readily agreed to those demands. They may have been playing hardball on those simply because she was also playing hardball. So, in the end, I am persuaded that, as I balance the effort that went into the valuation questions on her 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.

Next is the issue of the disproportionate loans to shareholders. Should Nancy be entitled to recover her fees for prosecuting a claim that produced no positive recovery? Or perhaps she's entitled not to have to pay anything for what the corporation spent to defend that because it is indefensible conduct. I don't think she can get credit for the time she spent while she was involved with Junior, because he was a co-perpetrator with the corporation. She should have distanced herself from him if that was something she seriously pursued. I can't imagine that we could even dissect or tease out of the billings if there was any effort on the part of Reiman & Bayaz on that issue because any effort at all would have immediately disclosed that he was as complicit as the corporation in any of that. I think the

most I can do for her is to call that a draw as well, and not allow the corporation to recover from her anything it spent to defend against that.

B. Mi Vida's Attorneys Fees for the Dissolution, Receivership and Derivative Claims.

1. The Legal Basis. As I sit back and analyze the question, was there reasonable cause to ask this corporation to be placed in receivership, was there reasonable cause to ask for this corporation to be liquidated, was there reasonable cause to assert that one of the directors or one of the officers had spirited away assets belonging to the corporation, recognizing that this is an area where shareholders ought to proceed with caution because of the risk of inflicting injury on other shareholders if they suspect too much? I —this is the hardest part of my decision—but I think it was not reasonable. It was not reasonable for Charles Junior and Nancy and Monica to claim what they did when they filed the lawsuit in mid-1999 seeking liquidation and a receivership of this corporation. It was not reasonable to file it in Colorado. It was not reasonable to seek that relief at all, when the plain relief of having your shares valued was available. I do not think it was reasonable for them to have asserted the derivative claims they asserted. It is easy for me to reach that conclusion with regard to all of those derivative that were asserted except the Little and Rogers, Cosmos Resources claims, those claims that I ended up having to rule on summary judgment. The rest of the claims never should have been asserted. They are simply a matter of allowing one's suspicions to run away with oneself. They should never have been asserted in the first place,

obviously to me. And clearly should not have been asserted after the settlement agreement where it was agreed that everything would be resolved in Utah. I won't say anything more about those.

The dispute that I actually ended up resolving on the motion for summary judgment is the one I have had to examine in most detail. I have tried to look at it from the perspective of Nancy and Charles Junior, but mostly from Nancy's perspective. Is it reasonable to believe that this corporation owns these mining claims in 1999 when your basis for your belief are discussions about an agreement at a shareholder's meeting in 1987 and 1989, agreements that were to lead to production and profits, when you know that production and profits never followed? When, if you are paying attention to the 1991 minutes, that it is obvious that that has been unraveled?

It might have been reasonable to think, back then, that the corporation had a right to those things: that is, in 1987 or 1989 or 1991 or 1992, or 1994 maybe still to some extent, that the corporation had a right to those things. But to believe in 1999, after what has expired previously, to believe that the corporation has a right to those things and could assert it despite the passage of so much time, I do not think is reasonable. You are supposed to...there is a reason for the statute of limitations, and the reason for statutes of limitation is not just to cheat people who wait too long. The reason for statutes of limitation is we all need to know, with the things that we do, if there is someone who is aggrieved by what we do, within a reasonable amount of time so we can remember what it is about, or undo it before

it is too late, undo it at a time when the damage is not too horrendous, so that people don't get to take a wait and see attitude—wait to see whether it turns out be worth a lot of money. So, I don't think it was reasonable to believe in 1999 that they could pursue these claims about these events that had occurred in 1987 and 1989.

And obviously that was the concern of the attorneys right off the bat, and it gives me some pause that someone apparently as expert as Mr. Reiman thought he could go ahead with this. But, I'm not ...I have to evaluate it by my lights, and by my lights, it was not reasonable, to pursue, not with this corporation particularly with the history it had had. So, I am going to award Mi Vida its fees for defending against the derivative claims.

Assessing fees for the attempt to dissolve Mi Vida in Colorado and for the appointment of a receiver against this Utah corporation, 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.

2. The Allocation. Who is responsible for those? We've talked about joint and several liability. I believe that, with respect to the events that occurred when Junior was a litigant, that those are his responsibility with respect to his proportional share. and that that was taken into account when the settlement was reached with his bankruptcy trustee. The corporation said it had claims it was asserting against Junior, but those were rolled into the price that was paid for his

interest in the note and the interest in the corporation. So Nancy is only responsible for those expenses incurred before the departure of Junior from the litigation that are proportional to her interest, which was 35.714% of the 2,758,020 shares represented in the Colorado Action. To the extent Monica becomes a shareholder of Mi Vida, Mi Vida has the right to set off Monica's proportional share (7.143%) of the fees incurred in the Colorado Action. Default judgment entered against Jennifer & Karen and they did not participate in the trial. Each has a .573% participation percentage and Mi Vida may offset their proportional share from the purchase price of their shares. Charles, III was a participant in the Colorado Action with a 7.143 % participation, and because he entered this case and submitted to the jurisdiction of this Court, judgment will enter against him for his percentage participation.

For the fees incurred in the Utah Action, Nancy is solely responsible.

C. Mark Steen's Fees

1. Right to Indemnification. Initially in the Colorado Action, Mark Steen and Mi Vida were both represented by Thomas J. Finch, Esq. After the Dissident Shareholders threatened to disqualify Mr. Finch, separate counsel was obtained for the corporation. Mark Steen now seeks indemnification from Mi Vida for his fees and Mi Vida does not contest that it is liable pursuant to Utah law for such indemnification. Judgment shall enter against Mi Vida and in favor of Mark A. Steen in the amount of \$162,965.17. Mark Steen is also entitled to reimbursement

from the Corporation for any advances made to pay for the costs and fees of Mi Vida. He has not asked that judgment enter on these amounts at this time.

2. Defense of the Derivative Claims.

Mark Steen incurred fees for which Mi Vida is statutorily liable; consequently, those fees are included in Mi Vida's damages. Nancy objects to the duplication of fees since both Mi Vida and Mark Steen had not only separate counsel, but local counsel as well. In the context of the Colorado Action, the Dissident Shareholders threatened to disqualify Thomas J. Finch, Esq. who initially undertook to represent both the officer and the corporation. Likewise, several times during the course of litigation, Nancy objected to Mi Vida's role in defending against the derivative actions. As noted in earlier orders, Nancy was prohibited from doing so by her entering into Stipulation II which placed Mi Vida in the role of an indemnitor of any judgment which Nancy might receive under the derivative claims; consequently, Mi Vida had standing to defend those claims.

I cannot fault Mi Vida and Mark Steen for having a lawyer for each of them when that is something that the dissenting shareholders initially insisted upon and as a conceptual matter is required. You'd have to really stipulate to separate counsel, and I wish that had been done here. But I have no evidence that this is something that Nancy Steen raised at any earlier point, to say "hey, you know, I don't want to have to pay for two lawyers if I eventually have to pay for this so I'll agree that whatever conflict of interest there may be between the corporation and

Mark Steen, we'll address that in court. We're not going to bother the lawyers with them. That one lawyer can represent both of them."

As to local counsel, I think it is necessary to have local counsel here as a general principal. I think it has a stabilizing effect on lawyers from out of state who probably are never going to see me again; that they are with lawyers who probably are going to have to see me again. And in hindsight, it might have been better for everybody to get Utah lawyers. Probably the learning curve that they ended up going through would have been less expensive than the expense of having additional local counsel and the expense of traveling these great distances for the hearings and the trial. But nobody knew that at when the matter was started, and it was hoped that something short of this day would lead to a resolution. And I can't fault the parties for that--can't fault people for hoping they will be able to resolve the dispute short of coming into a court and having a judge do it. So I am going to award fees incurred by Mark Steen in the categories in which fees are awarded and for both Mark Steen and Mi Vida for local counsel's work in those categories.

D. Amounts.

a) Colorado. Mi Vida produced evidence of \$66,524 as the amount incurred in defending the Colorado Action. This amount shall be proportionally allocated as provided for above, with Nancy's proportional share of Mi Vida's fees at \$23,749.70.

b) The Maxine Boyd Case. Mi Vida is asking for \$11,808 for its involvement in obtaining a temporary restraining order preventing the Dissident Shareholders from pursuing their dissolution and receivership actions in Colorado and \$2958 in fees incurred by Mi Vida in its successful effort to obtain access to the corporate funds in the Court registry Those were both separate and apart from the derivative action. I would award those amounts under the same theory—pursuit for an improper purpose of the Colorado Action, and resisting, for an improper purpose, access of the corporation to money. So, those are \$11808 and \$2958, and I will award those to Mi Vida.

c) The Derivative Claims. Mi Vida is also seeking for its defense of the derivative action \$103, 467.00. I'm going to award that as well.

d) Fees on Fees. For pursuit of its fees, \$9,187.50. I think if you are entitled to fees, you are entitled to pursue fees. But I have to discount that for the fact that they didn't get all the fees they did pursue. So, I will reduce that amount to \$7,000, which I think is a roughly proportional reduction.

e) Trial Preparation and Attendance. Then, for the trial preparation and attendance, which were not included in the earlier breakdown, Mi Vida is asking me to make a rough apportionment of 75% for the derivative action, for pursuit of fees for the derivative action as opposed to valuation. That sounds about right from what I have seen of Mi Vida's efforts in this court. The 75% comes out to a total of \$19,755 for Mi Vida's out-of-state counsel and \$7796.25 for local counsel, for a total of \$27,551.25 for Mi Vida.

before that date, and \$14,076.39 after, for a full award of \$14,485.03 in costs against Nancy, and \$83.40 against Charles, III and Monica (set-off only).

VIII. Set Off

Mi Vida's obligation to purchase the shares of Nancy, Karen and Jennifer will be off-set against any judgment in Mi Vida's favor. Thus, the judgment in favor of Eleanor Ruth Ciddio Steen Adams and against Mi Vida Enterprises, Inc. for the value of her shares in the amount of \$261,086.88, will be offset by the judgment in favor of Mi Vida Enterprises, Inc. and against Eleanor Ruth Ciddio Steen Adams in the amount of \$329,710.

WHEREFORE, judgment shall enter as follows:

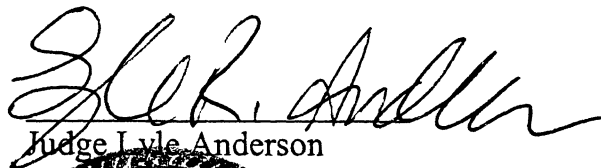
In favor of of Mi Vida Enterprises, Inc. and against Eleanor Ruth Ciddio Steen Adams in the amount of \$68,623.96, to accrue interest at the statutory rate. Ms. Adams shall, within ten (10) days of the entry of this order, return the original shares of Mi Vida. Effective immediately, Mi Vida may cancel the shares of Eleanor Ruth Ciddio Steen on its books.

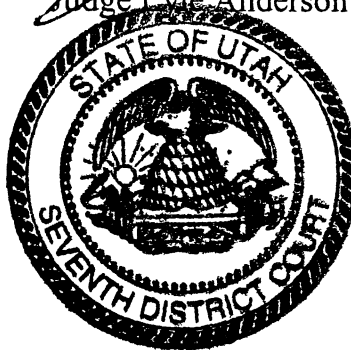
In favor of Mi Vida Enterprises, Inc. and against Charles A. Steen, III in the amount of \$8,950.55.

In favor of Mi Vida Enterprises, Inc. and against Monica Steen as an off-set only in the event she, her successors or assigns claims any interest in Mi Vida, in the amount of \$8,950.55.

Mi Vida Enterprises, Inc. has ninety (90) days from the date of this order to purchase the shares of Karen and Jennifer by sending them funds by check in the amount of \$3292.00 each, by certified mail, return receipt requested, to their last known address. Upon mailing the funds, Mi Vida may cancel the shares on the books of the company.

Dated this 20th day of September, 2003.


Judge Lyle Anderson



Tab 5

VRANESH AND RAISCH, LLC

ATTORNEYS AT LAW

JERRY W. RAISCH
JOHN R. HENDERSON
MICHAEL D. SHIMMIN
EUGENE J. RIORDAN
PAUL J. ZILIS
DOUGLAS A. GOULDING

1720 4TH STREET, SUITE 200

P. O. BOX 871

BOULDER, COLORADO 80306

TELEPHONE 303/443-6151

TELECOPIER 303/443-9586

GEORGE VRANESH (RETIRED)

GREGORY J. CLIFTON

THOMAS MORRIS

August 9, 1994

VIA UPS

Bart J. Bailey, Esq.
Bradford, Brady & Rasmussen, P.C.
389 North University Avenue
Provo, UT 84601

Re: Steen Family Matters

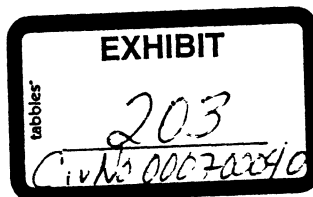
Dear Bart:

I have received a written authorization from Mark Steen to execute the additional disbursement checks (copy attached) and here enclose checks for Charles, Jr., Charles Jr. for the benefit of Andy Steen, and Maxine Boyd.

Because I am in the middle of two weeks of depositions, I am not able to make a lengthy reply to your letter. I do note that I will be in a Pretrial Conference on the 24th, but available on the 25th of August.

You refer in your letter to my report concerning the prospective Federal income tax liability for Mi Vida for the year of sale. As I pointed out, this was merely a restatement of the preliminary report that Mi Vida's accountant has given to Mark; I had Mark re-confirm this with the accountant. Unless the accountant was simply wrong, this information was accurate. I have recommended that the accountant be called upon to make a written report to the parties as part of preparing the 1993-94 year taxes.

I feel that I must continue to express concern to the Mi Vida Directors and the other family members on a number of items. I believe that the disbursements made to date, and those made in the future, must be rationalized based on the status of the recipient, either as a mortgage holder and/or shareholder and/or as a contractee. To the extent that disbursements are made to shareholders or third parties, the interests of all shareholders must be protected, and all shareholders should be treated fairly and in similar fashion.



Brad J. Bailey, Esq.
August 9, 1994
Page 2

The corporation should also act to properly credit the funds against corporate obligations, whether they be payments on Notes or contractual commitments. A determination should be made as to whether payments are due to persons based on their status as shareholders, in order to assure consistent, uniform and fair treatment based on that status.

Until such time as we might resign, you and I have agreed to act as "stakeholders" for the Mi Vida funds from property sales at Mcab, of which the first recently occurred. We act as directed by Charles, Jr. and Mark acting jointly. The Mi Vida directors must still be aware, however, of the likely existence of fiduciary obligations in directing you and I to sign checks and to thereby disburse funds on behalf of the corporation.

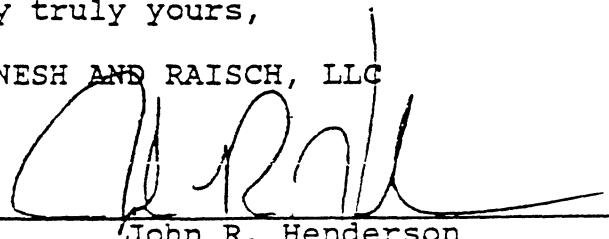
I have never undertaken to give Mi Vida advice in the corporate realm, and would defer to Rodney Knutson in this arena. Still, I cannot emphasize strongly enough just how unavoidable fiduciary obligations are in dealing with issues of corporate management and shareholder treatment. I would recommend that you consult with counsel as to how to treat these matters, and to learn the extent of your obligations to each other and to other shareholders.

I hope to be able to communicate at greater length when I emerge from litigation.

Very truly yours,

VRANESH AND RAISCH, LLC

By



John R. Henderson

JRH

Attachments

cc: Steen Family Members
Rodney D. Knutson, Esq.
w/o attachments

Tab 6

Keith H. Chiara #0621
Chiara Law Offices
98 North 400 East
P.O. Box 955
Price, UT 84501
Telephone (435) 637-7011

SEVENTH DISTRICT COURT
Grand County

FILED NOV 15 2000

CLERK OF THE COURT

BY _____ Deputy

IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR
GRAND COUNTY, STATE OF UTAH

MAXINE S. BOYD,

Plaintiff,

vs.

MI VIDA ENTERPRISES, a Utah
Corporation, CHARLES A. STEEN, SR.,
CHARLES A. STEEN JR., ANDREW K.
STEEN, JOHN C. STEEN, MARK A.
STEEN and JOHN DOES 1-20,
Defendants,

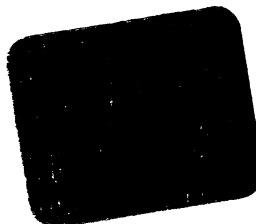
REVISED ORDER FOR DIRECTION
OF MONIES HELD IN REGISTRY OF
THE COURT

Civil No. 9907-145

Judge Lyle Anderson

THIS MATTER, having come before the Court on the Motion of Mi Vida Enterprises, Inc. for the use of funds currently held in the registry of the Court in this action, and the matter having come on before the Court for hearing on October 12, 2000 and the Court having determined that the funds should be released for the specific purpose of settling matters between Mi Vida and the bankruptcy estate of Charles A. Steen, Jr. and Jayne Steen;

Exhibit 633



FILED
NOV 15 2000

IT IS HEREBY ORDERED, that the Clerk of the Court release the funds by making one check in the amount of \$31,637.62 payable to Theodor C. Albert, Chapter 7 Trustee of the estate of In re Charles Augustus Steen and Jayne Marie Steen, at the following address:

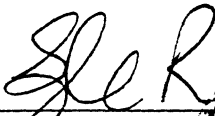
Theodor C. Albert, Chapter 7 Trustee
In re Charles A. Steen and Jayne M. Steen
P.O. Box 1860
Costa Mesa, CA 92628

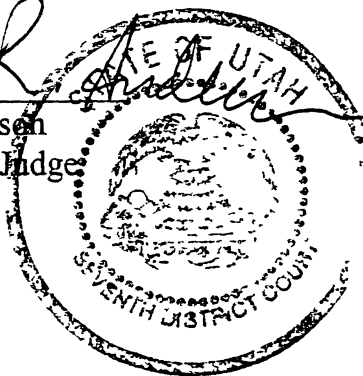
IT IS FURTHER ORDERED, that the remaining funds, if any, be sent to Mi Vida's counsel, Cynthia T. Kennedy, for application toward the obligation already incurred by Mi Vida Enterprises, Inc. in the amount of \$6417.25 plus accrued interest to the date of payment, which funds were borrowed to make the first installment on the purchase the shares of Charles A. Steen. The check should be made payable to:

Cynthia T. Kennedy, Esq.
308 E. Simpson Street, #102
Lafayette, CO 80026

Any funds not used for such purposes will be escrowed by Ms. Kennedy for future payments on the obligation to the Trustee to purchase the shares.

Dated this 15th day of November, 2000.


Lyle A. Anderson
District Court Judge



Tab 7

ORIGINAL

FILED

1 ALBERT, WEILAND & GOLDEN, LLP

Philip E. Strok #169296

2 Saar Swartzon #198732

650 Town Center Drive, Suite 1350

3 Costa Mesa, California 92626

Telephone: (714) 966-1000

4 Facsimile: (714) 966-1002

5 Attorneys for

Theodor C. Albert, Chapter 7 Trustee

01 FEB -6 PM 3:33

CLERK U.S. BANCY COURT
CENT. DIST. OF CALIF.

DEPUTY

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

11 In re

Case No. SA 98-26644 LR

12 CHARLES STEEN and JAYNE MARIE
13 STEEN,

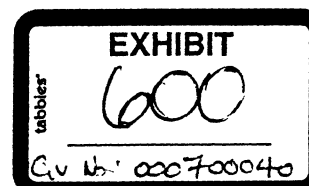
Chapter 7 Case

14 MOTION FOR ORDER APPROVING
 15 COMPROMISE OF CONTROVERSY WITH
 16 MI VIDA ENTERPRISES, INC.
 17 PURSUANT TO FEDERAL RULE OF
 18 BANKRUPTCY PROCEDURE 9019;
 19 MEMORANDUM OF POINTS AND
 20 AUTHORITIES; DECLARATIONS OF
 21 THEODOR C. ALBERT AND SAAR
 22 SWARTZON IN SUPPORT THEREOF

17 Debtors.

18 [No Hearing required Pursuant to Local
 19 Bankruptcy Rule 9013-1(7)(a)(xiii)]

20
 21 Theodor C. Albert, the chapter 7 trustee for the estate of Charles Steen and
 22 Jayne Marie Steen ("Debtors"), moves this Court for an order authorizing the
 23 Trustee to compromise a controversy with Mi Vida Enterprises, Inc. ("Mi Vida"), a
 24 Utah corporation, pursuant to Federal Rule of Bankruptcy Procedure 9019. This
 25 motion ("Motion") is based upon the notice of motion, the following memorandum of
 26 points and authorities and the declarations of Theodor C. Albert and Saar Swartzon.



38

MOTION

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2

3 **I. FACTUAL BACKGROUND**

4 On January 19, 1999 ("Petition Date"), the Debtors filed a voluntary petition
5 for relief under chapter 7 of the United States Bankruptcy Code (the "Bankruptcy
6 Case"). Theodor C. Albert was subsequently appointed the chapter 7 trustee
7 ("Trustee") of the Bankruptcy Case.

8

9 **A. Trustee's No Asset Report**

10 Upon investigation and diligent inquiry by the Trustee, the Trustee determined
11 that there were no assets or property of the estate to administer. Accordingly, on
12 January 27, 1999, the Trustee requested that his no asset report be approved and
13 that the Trustee be discharged from office and the Bankruptcy Case closed as a no
14 asset case. The Debtors received their discharge on March 29, 1999 and the
15 Bankruptcy Case was subsequently closed.

16

17 **B. Reopening of the Bankruptcy Case**

18 Subsequent to the Bankruptcy Case closing, the Trustee received additional
19 information regarding undisclosed assets and requested that the Trustee's report be
20 withdrawn and that the Bankruptcy Case be reopened for further administration of
21 undisclosed assets. The undisclosed assets are comprised of the following:

22 1. A one-fourth interest in a note and mortgage of which the
23 Debtors are a beneficiary and Mi Vida is the obligor, with the one-fourth interest
24 valued at approximately \$60,202.76 as of the Petition Date;

25 2. A claim by the Debtors to an assignment of mortgages from a
26 third party, Ms. Maxine Boyd ("Boyd"); and

27 3. Claims the Debtors have as a shareholders against Mi Vida or its
28 officers and directors, individually or derivatively.

1 Boyd is a third party that claims a right to all real property of Mi Vida or in the
2 alternative, to damages of over \$19 million. Pursuant to information provided to the
3 Trustee, if Boyd is successful on her damages claim, her recovery would far exceed
4 any and all assets of Mi Vida.

5
6 **C. Mi Vida Enterprises, Inc.**

7 Mi Vida is a closely held family corporation in the business of mining,
8 acquiring land for mining projects and developing real estate. It was started by
9 Charles and M.L. Steen, and their four sons, one of which is the Debtor, Charles
10 Steen. Pursuant to information received by the Trustee, it appears that Mi Vida was
11 incorporated in Utah in or about 1973. Mi Vida owns real estate in Boulder County,
12 Colorado and elsewhere. Mi Vida has been the scene of hostile family struggles over
13 various assets of the corporation between numerous individuals, mostly family
14 members, including the Debtors. The Debtors, collectively, own approximately 8.1 %
15 of Mi Vida.

16 The Trustee was originally contacted by the attorney for Mi Vida on or about
17 May 18, 2000, concerning the fact that the Debtor apparently had not been entirely
18 forthcoming on his schedules concerning his interests in Mi Vida. Counsel also
19 alerted the Trustee that Mi Vida might have an interest in buying the estate's claim,
20 as an alternative to litigation. In response, the Trustee was visited by Bart J. Bailey
21 and William T. Jennings, Utah attorneys aligned with litigation interests adverse to
22 Mi Vida, who attempted to explain the convoluted history and Debtor's peripheral
23 involvement. The Trustee encouraged Mr. Bailey and Mr. Jennings to "make an
24 offer" as an alternative to the estate negotiating with and selling to Mi Vida through
25 counsel who had originally contacted the Trustee. The Trustee also received
26 correspondence from Jeff Reiman, Esq., of Reiman & Bayaz, P.C., Denver attorneys
27 aligned with Debtors and other family members in a case against Mi Vida in
28 Colorado.

1 After about two months with no response forthcoming from Mr. Bailey and
2 Mr. Jennings, the Trustee attempted to employ Reiman & Bayaz, P.C., located in
3 Colorado to represent the estate in the litigation pending in Utah and Colorado. This
4 effort proved fruitless as it developed not only that the fee demanded was too high
5 but also (the Trustee later learned from Mi Vida's counsel) Mr. Reiman was
6 prevented by various conflicts from immediate representation of the estate on any
7 basis.

8 The Trustee formulated the opinion that the complicated and protracted
9 maelstrom of litigation already pending concerning Mi Vida would be something to
10 avoid both from the perspectives of delay (the cases had already been ongoing for
11 years) and from the perspective of expense (there was otherwise little or no money
12 with which to finance litigation in the estate). While joining the litigation might
13 potentially recover more money, the Trustee is concerned that the creditor body
14 (only about \$80,000 approx.) might prefer a percentage recovery as a sure thing
15 within a reasonable time. The better part of valor dictated that the best possible
16 deal should be struck with Mi Vida, who seemed the only party both financially able
17 and inclined to seek a realistic business solution to the estate's claims.

18 Mi Vida claims that there are outstanding issues as to Debtors' liability to
19 Mi Vida for (1) shareholder advances in the amount of approximately \$32,263 as of
20 the Petition Date and (2) Debtors' liability for penalties and interest on taxes,
21 tortious interference and breach of fiduciary duty arising out of, but not limited to,
22 the commencement of a dissolution and malicious receivership action against
23 Mi Vida in the State of Colorado which claims are subject matter of two cases
24 currently pending in the State of Utah; Maxine S. Boyd v. Mi Vida Enterprises, Inc.,
25 et al., Civil No. 99 07-00145 PR (the "Maxine Boyd Case 1"), and Mi Vida
26 Enterprises, Inc. v. Maxine Boyd, et al., Civil No. 00 07-00040 (the "Maxine Boyd
27 Case 2"). As such, Mi Vida claims a right to set off any amounts allegedly due to
28 the Debtors.

1 **D. Withdrawal of Trustees's Report**

2 Pursuant to the application of Trustee and withdrawal of Trustee's report, an
3 order was entered on June 19, 2000 by the Bankruptcy Court reopening the
4 Bankruptcy Case to allow the Trustee to administer the undisclosed assets.
5

6 **II. TERMS OF THE COMPROMISE**

7 The parties wish to settle their differences without the expense, inconvenience
8 and uncertainty of litigation and, therefore, the parties have entered into a settlement
9 agreement ("Settlement Agreement"). A copy of the executed Settlement
10 Agreement between the Trustee, on behalf of the estate, and Mi Vida is attached
11 hereto as Exhibit "1." A summary of the salient terms of the agreement provide
12 that:

- 13 A. The Settlement Agreement is subject to the
14 Bankruptcy Court's approval;
- 15 B. On or before the 10th calendar day after entry of
16 final order of the Bankruptcy Court approving the
17 Settlement Agreement (the "Effective Date"), Mi
18 Vida agrees to pay to the Trustee \$31,637.62
19 ("Settlement Funds") in full settlement of any
20 potential claims the estate may have relating to
21 Mi Vida;
- 22 C. After the Effective Date and payment of the
23 Settlement Funds and subject to certain overbid
24 procedures as more particularly set forth below,
25 upon written notice by Mi Vida, the Trustee agrees
26 to (1) execute and deliver to Mi Vida a quit claim
27 deed to all of Mi Vida's real property and (2) execute
28 a partial release of trust mortgage releasing any and
 all claims of the estate to the trust mortgage
 ("Option 1"). At the option of Mi Vida, the Trustee
 shall, within a reasonable period of time, in lieu of
 Option 1, execute an assignment of trust note and
 mortgage documents ("Option 2") or execute an
 assignment of the Boyd Notes and Mortgages, to
 any third party Mi Vida chooses ("Option 3"). Such
 quit claim deed and any and all transfers and
 assignments made pursuant to either Option 1,
 Option 2 or Option 3 are on a "as-is," "where-is,"
 basis without any warranty or representation of any
 kind concerning the value and enforceability of any
 rights as against any third party.

1 D. The parties shall execute mutual releases for one
2 another with respect to all claims between the
3 parties.

4 The Settlement Agreement is subject to the right of the Trustee to accept any
5 overbids for the purchase of any and all claims of the estate against Mi Vida (the
6 "Overbid Purchase") so long as the initial overbid is in the form of cash only and
7 exceeds the amount of Settlement Funds by 5% (the "Overbid Price").
8 Notwithstanding the Overbid Purchase, Mi Vida shall not be precluded from
9 overbidding the Overbid Price for the Overbid Purchase. Additionally, in the event of
10 a successful overbid, the Overbid Purchase would be subject to any and all defenses
11 and counterclaims whatsoever of Mi Vida.

12 **III. THE SETTLEMENT AGREEMENT IS THE BEST INTEREST OF THE ESTATE**
13 **AND IS AUTHORIZED BY RULE 9019 OF THE FEDERAL RULES OF**
14 **BANKRUPTCY PROCEDURE**

15 Federal Rule of Bankruptcy Procedure 9019 provides in part that the Court
16 may approve a compromise upon the proper motion by the Trustee and after a
17 hearing on notice to the Debtor, all creditors, and all interested parties.

18 Federal Rule of Bankruptcy Procedure 9019(a) provides "on motion by trustee
19 and after notice and a hearing, the court may approve a compromise of settlement.
20 Notice shall be given to the creditors, the United States Trustee, the Debtor and
21 indenture trustees as provided in Rule 2002 and to any other entity as the Court may
22 direct."

23 The Trustee does not anticipate opposition to this Motion and requests that
24 this Motion be approved without a hearing pursuant to Local Bankruptcy Rule
25 9013-1(7)(a)(xiii) to save administrative costs.
26
27
28

1 The standards to be applied to the approval of any settlement include:

- 2 1. The probability of success on the litigation on its merits;
3 2. The difficulties in collection on a judgment;
4 3. The complexity of litigation involved, and the expense,
5 inconvenience or delay occasioned by litigation; and
6 4. The interest of creditors.

7 In re A&C Properties, 784 F.2d 1377, 1380-81 (9th Cir. 1986) cert. den. Martin v.
8 Robinson, 479 U.S. 854 107 S.Ct. 189 (1999).

9 Although the Court is to consider the range of results in litigation, the Court's
10 assessment does not require resolution of the issues, but only their identification, so
11 that the reasonableness of the settlement may be evaluated. (Emphasis added) In re
12 Hermitage, Inc., 66 B.R. 71, 72 (Bankr. D. Colo. 1996).

13 (1) Probability of Success on Litigation

14 The probability of success on the litigation is unknown. The Trustee is
15 confident that the Debtor does own a one-fourth interest claim in the Mi Vida note,
16 but is uncertain about the validity of assignment of mortgages from Boyd and
17 potential claims against Mi Vida and/or its officers personally or derivatively.
18 Nevertheless, the uncertainties of litigation, especially in light of the defenses raised
19 by Mi Vida, may spell defeat for the Trustee in any adversary proceeding. A defeat
20 would cost the estate's creditors any chance of recovering any funds. The estate
21 would once again be deemed a no asset estate and there would be no distribution to
22 the creditors.

23 The issues presented would involve countless hours and significant sums to
24 litigate, all without the certainty of success. The Trustee would be required to
25 litigate issues involving contract, assignment and corporate law, based upon the
26 laws of the states of Colorado and Utah.

27

28

1 (2) Complexity of Litigation and Expense

2 Though the issues in this case are not necessarily novel, the litigation would
3 be complex in that any claims the Trustee would assert would necessarily be based
4 upon the laws of the states of Utah and Colorado, requiring the Trustee to hire
5 experienced out of state counsel. Moreover, the Trustee would need to contend
6 with the various defenses asserted by Mi Vida including, but not limited to, Mi Vida's
7 right to set off any amounts claimed for shareholder advances and their claim for the
8 Debtors' tortious interference and breach of fiduciary duties pursuant to the filing of
9 a dissolution and malicious receivership action. These factual and legal issues lead
10 to significant uncertainty as to the outcome of any litigation and the Trustee's
11 probability of success.

12 Based upon Mi Vida's defenses, extensive discovery would be required,
13 constituting a time consuming and financial burden to the Debtor's estate. Mi Vida
14 intends to vigorously defend any action brought by the Trustee and offensively
15 assert counterclaims against the Debtors. All of these factors would cause
16 administrative expenses to escalate to the detriment of estate creditors.
17 Accordingly, a settlement of these issues is the most appropriate action to resolve
18 this matter for the benefit of all parties.

19 (3) Interest of Creditors

20 Unless the Trustee is successful in the prospective litigation, it is certain that
21 no creditor would receive a distribution. These claims represent the sole asset of the
22 estate and the only reason the Trustee sought to reopen the Bankruptcy Case. The
23 Settlement funds will provide the estate with funds that may result in a significant
24 distribution to the creditors, all of whom were scheduled to receive nothing if the
25 Bankruptcy Case remained closed. Now, for the first time, the creditor's have the
26 opportunity to receive a distribution from the estate. Clearly, the Settlement
27 Agreement is in the best interest of the creditors.
28

1 IV. THE SETTLEMENT AGREEMENT IS FAIR AND REASONABLE AND IS IN THE
2 BEST INTEREST OF THE ESTATE

3 Based upon the foregoing, the Trustee believes that the compromise with
4 Mi Vida is in the best interest of the estate and the creditors and the Trustee
5 respectfully requests an order authorizing the Trustee to enter into the Settlement
6 Agreement and approving the terms of the Settlement Agreement as agreed upon by
7 the parties.

8
9 V. CONCLUSION

10 WHEREFORE, the Trustee respectfully requests this Court to enter an order:

11 1. Authorizing the Trustee to enter into the Settlement Agreement
12 attached hereto as Exhibit "1;"

13 2. Approving the terms of the Settlement Agreement;

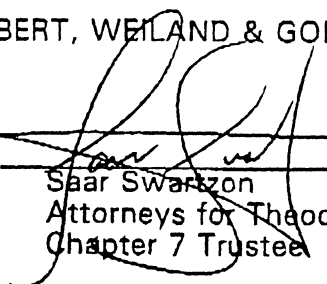
14 3. Authorizing the Trustee to execute any and all documents
15 necessary to effectuate the terms of the Settlement Agreement; and

16 4. Granting such other and further relief as the Court may deem
17 necessary and proper.

18
19
20 DATED: February 6, 2001

Respectfully submitted,

ALBERT, WEILAND & GOLDEN, LLP

21
22 By: 
23 Saar Swartzon
24 Attorneys for Theodor C. Albert,
25 Chapter 7 Trustee
26
27
28

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Decl. of
T. Albert

DECLARATION OF THEODOR C. ALBERT

I, Theodor C. Albert, declare:

1. I am the chapter 7 trustee of the estate of Charles Steen and Jayne Marie Steen ("Debtors"). I am submitting this declaration in support of a motion for order approving compromise of controversy with Mi Vida Enterprises. All terms defined in the motion shall be incorporated herein by reference. I know each of the following facts to be true of my personal knowledge and, if called upon as a witness, I could and would competently testify with respect thereto.

2. On January 19, 1999, the Debtors filed a voluntary petition for relief under chapter 7 of the Bankruptcy Code. I was subsequently appointed chapter 7 trustee of the Debtor's chapter 7 case.

3. Though I investigated and inquired into the whereabouts of any property and assets of the Debtor, I determined that there were no assets or property of the estate to administer.

4. Pursuant thereto, on January 27, 1999, I requested that the Trustee's report be approved and that I be discharged from office and the Bankruptcy Case closed as a no asset case.

5. Pursuant to my request and the Trustee's report, the Debtors received their discharge on March 29, 1999 and the Bankruptcy Case was subsequently closed.

6. Subsequent to the Bankruptcy Case closing, I received additional information regarding undisclosed assets and requested that the Trustee's report be withdrawn and that the Bankruptcy Case be reopened for further administration of these undisclosed assets. The undisclosed assets are comprised of three distinct parts.

(1) A one-fourth interest in a note and mortgage of which the Debtors are a beneficiary and Mi Vida is the obligor, with the one-fourth interest valued at

1 approximately \$60,202.76 as of the Petition Date;

2 (2) A claim by the Debtors to an assignment of a certain mortgage from a third
3 party known as Ms. Maxine Boyd ("Boyd"); and

4 (3) Claims that the Debtors have as a shareholders against Mi Vida or its officers
5 and directors, individually or derivatively.

6 7. Boyd is apparently a third party that claims the right to all real property
7 of Mi Vida, or in the alternative, to damages over \$19 million. Pursuant to
8 information provided to me, if Boyd is successful on her damages claim, her recovery
9 would far exceed any and all assets of Mi Vida.

10 8. In corresponding with counsel for Mi Vida, I have been informed that Mi
11 Vida claims that there are a number of outstanding issues as to the Debtor's liability
12 to Mi Vida for (1) certain shareholder advances in the amount of approximately
13 \$32,263 as of the petition date and (2) the Debtors' liability for penalties and
14 interest on taxes, tortious interference and breach of fiduciary duty arising out of but
15 not limited to the commencement of a certain dissolution or malicious receivership
16 action against Mi Vida in the State of Colorado which claims are the subject matter
17 of two cases currently pending in the State of Utah. Additionally, Mi Vida, according
18 to their counsel, claims a right to set off any amounts due to the Debtors.

19 9. The parties desire to settle their differences without the expense,
20 inconvenience and uncertainty of litigation. As set forth in the Motion, the litigation
21 would be complex, expensive to litigate and time consuming. I have carefully
22 reviewed the strengths and weaknesses of our case with my counsel and negotiated
23 the proposed settlement to maximize the assets for the creditors in light of: (1) the
24 probability of success on the merits; (2) the complexity of litigation, the expense
25 inconvenience and delay and (3) various other legal and factual issues relating to this
26 matter. These factors are discussed in more detail in the attached motion.

27 10. I have reviewed the Settlement Agreement attached hereto as Exhibit
28 "1" and believe that the terms contained therein are fair and reasonable and in the

1 best interest of the estate. If I am unsuccessful in pursuing an action on behalf of
2 the Debtors, it is unlikely that there would be any distribution to creditors since this
3 case was previously closed as a no asset case and only reopened when the
4 undisclosed assets were discovered. These assets will provide the estate with funds
5 that may result in a significant distribution to creditors. A settlement of all claims
6 between the estate and Mi Vida is a reasonable way to resolve the matter for the
7 benefit of all parties.

8 I declare under penalty of perjury that the foregoing is true and correct.

9 Executed this 6th day of February, 2001, at Costa Mesa, California.

10
11 
12 THEODOR C. ALBERT

04/11/2003 14:03 7145670016

Decl. of
S. Swartzon

DECLARATION OF SAAR SWARTZON

I, Saar Swartzon, declare:

1. I am an associate of the law firm of Albert, Weiland & Golden, LLP, attorneys of record for Theodor C. Albert, the chapter 7 trustee of the estate of Charles Steen and Jayne Marie Steen ("Debtors"). I am licensed to practice before this Court and the courts of the State of California. I am submitting this declaration in support of a motion for order approving compromise of controversy with Mi Vida Enterprises. All terms defined in the motion shall be incorporated herein by reference. I know each of the following facts to be true of my own personal knowledge and, if called as witness, I could and would competently testify with respect thereto.

2. I have personally reviewed all documents relating to the issues discussed in the Motion and I am thoroughly familiar with both the factual and legal claims supporting the Trustee's position.

3. I am also thoroughly familiar with both the factual and legal claims supporting Mi Vida's position and have been informed by Mi Vida's counsel that Mi Vida intends to vigorously defend any and all claims of the Trustee and pursue counter claims against the Debtors based upon actions taken by them. To litigate these issues would be complex and expensive for the estate. Based upon the specific facts and legal claims the Trustee would need to assert, the Trustee would need to hire out of state counsel to proceed under the laws of the states of Utah and Colorado. Additionally, the Trustee would be required to take extensive discovery and spend a significant amount of time investigating the claims. Necessary discovery may very well require subpoenas to several individuals outside of the State of California. This discovery will be time consuming and a financial burden to the Debtors' estate.

4. The numerous factual and legal issues lead to a significant uncertainty as to the outcome of any litigation and the Trustee's probability of success.

5. Both the Trustee and Mi Vida have indicated an intention to vigorously protect their respective positions. Administrative expenses will continue to mount to the detriment of unsecured creditors. Moreover, no distribution of the estate's assets to creditors will occur unless the Trustee is successful in the litigation. Accordingly, a settlement of all claims between the estate and Mi Vida is a reasonable way to resolve the matter for the benefit of all parties.

6. Attached hereto as Exhibit "1" is a true and correct copy of the Settlement Agreement.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of February, 2001, at Cos La Mesa, California.

~~SAAR SWARTZON~~

Tab 8

ORIGINAL

ALBERT, WEILAND & GOLDEN, LLP
 Philip E. Strok #169296
 Saar Swartzon #198732
 650 Town Center Drive, Suite 1350
 Costa Mesa, California 92626
 Telephone: (714) 966-1000
 Facsimile: (714) 966-1002

Attorneys for Theodor C. Albert, Chapter 7 Trustee

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

SANTA ANA DIVISION

In re

CHARLES STEEN and JAYNE MARIE
 STEEN,

Debtors.

Case No. SA 98-26644 LR

Chapter 7 Case

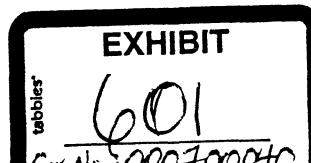
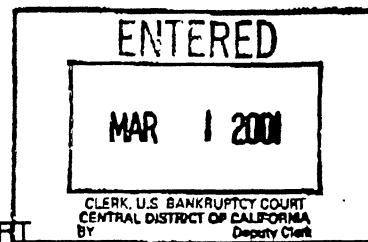
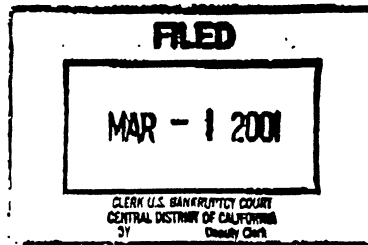
**ORDER APPROVING COMPROMISE
 WITH MI VIDA ENTERPRISES, INC.
 PURSUANT TO FEDERAL RULE OF
 BANKRUPTCY PROCEDURE 9019**

[No Hearing required Pursuant to Local
 Bankruptcy Rule 9013-1(7)(a)(xiii)]

Based on the Motion of Theodor C. Albert, the chapter 7 trustee ("Trustee") of the estate of Charles Steen and Jayne Marie Steen ("Debtors") for an order authorizing the Trustee to compromise a controversy with Mi Vida Enterprises, Inc. ("Motion"), the notice of Motion, the declaration of Saar Swartzon regarding lack of opposition to the Motion, and good cause appearing therefrom,

IT IS ORDERED that:

1. The Motion is granted;
2. The Trustee is authorized to enter into the Settlement Agreement attached hereto as Exhibit "1" and incorporated herein by reference;



DECLARATION

1 3. The terms of the Settlement Agreement are approved;

2 4. The Trustee is authorized to execute any documents or take any actions
3 reasonably necessary to effectuate the terms of the Settlement Agreement.

4

5 DATED: March 1, 2001

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THE HONORABLE LYNNE RIDDLE,
United States Bankruptcy Judge

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is made, executed and entered into by and between the following parties, each of whom is individually referred to as a "**Party**", and all of whom are collectively referred to as the "**Parties**":

1. Theodor C. Albert, solely in his capacity as chapter 7 trustee of the estate of In re Charles Augustus Steen and Jayne Marie Steen.

2. Mi Vida Enterprises, Inc. ("**Mi Vida**"), a Utah corporation.

R E C I T A L S:

A. On January 19, 1999, Charles Augustus Steen and Jayne Marie Steen (collectively the "**Debtor**") filed a voluntary petition for relief under chapter 7 of the United States Bankruptcy Code (SA 98-26644 LR) (the "**Bankruptcy Case**").

B. Theodor C. Albert ("**Trustee**") was subsequently appointed the chapter 7 trustee in the Bankruptcy Case.

C. Upon investigation and diligent inquiry by the Trustee into the whereabouts of property and assets of the Debtor, the Trustee determined that there was no property or assets in the estate. Pursuant thereto, on January 27, 1999, the Trustee requested that the Trustee's report ("**Report**") be approved and that the Trustee be discharged from office as the Bankruptcy Case was a no asset case.

D. Pursuant to the Trustee's Report, the Debtor was discharged from the Bankruptcy Case on March 29, 1999 (the "**Discharge**") and the Bankruptcy Case was closed.

E. Subsequently, the Trustee received additional information regarding an undisclosed asset and requested that the Trustee's Report be withdrawn and that the Bankruptcy Case be reopened for further administration of the undisclosed asset.

F. The undisclosed asset was made up of three distinct parts: (1) a one-fourth interest in a note and mortgage of which the Debtor is a beneficiary and on which Mi Vida is the obligor, with the one-fourth interest being valued at \$60,202.76 as of January 19, 1999; (2) a claim by the Debtor to an assignment of mortgages from a third party, Ms. Maxine Boyd ("**Boyd**"); and (3) claims the Debtor had as a shareholder against Mi Vida or its officers or directors individually or derivatively.

G. Boyd is a third party that claims a right to all real property of Mi Vida or in the alternative to damages of over \$19 million which if granted, would far exceed any and all assets of Mi Vida.

H. Mi Vida claims that there is an outstanding issue as to the Debtor's liability to Mi Vida for (1) shareholder advances in the amount of \$32,263 as of January 19, 1999 and (2) Debtor's liabilities for penalties and interest on taxes, tortious interference and breach of fiduciary duty arising out of, but not limited to, the commencement of a dissolution and receivership action against Mi Vida in the State of Colorado which

claims are the subject matter of two cases currently pending in the State of Utah: Maxine S. Boyd v. Mi Vida Enterprises, Inc., et al., Civil No. 9907-00-145 PR (the "**Maxine Boyd Case 1**") and Mi Vida Enterprises, Inc. v. Maxine S. Boyd, et al., Civil No. 0007-00-040 (the "**Maxine Boyd Case 2**"). As such, Mi Vida claims a right to set-off to any amount allegedly due the Debtor pursuant to Recital F.

I. Pursuant to the application of Trustee and the withdrawal of Trustee's Report, an order was entered on June 19, 2000 by the Bankruptcy Court reopening the Bankruptcy Case.

J. The Parties desire pursuant to this Agreement to once and forever settle any and all present and future claims, disputes, allegations and defenses of any kind or nature that any Party may have against any other Party, which may result from, relate to, or otherwise arise in connection with any matters referenced in this Agreement.

K. "**Effective Date**" is defined as the tenth calendar day after entry of a Final Order of the Bankruptcy Court approving this Agreement. An order becomes a "**Final Order**" after 10 days of entry of the order, unless there is a notice of appeal filed within 10 days and a stay pending appeal is obtained. No Effective Date shall occur if the Bankruptcy Court denies approval of the Motion.

PURSUANT TO THE FOREGOING RECITALS and for good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties covenant, agree and declare as follows:

ARTICLE 1. **APPROVAL OF AGREEMENT BY COURT**

1.1. Obligation of Parties to Seek Approval of Agreement. Each Party shall in good faith exercise all reasonable efforts which may be required of such Party to cause the bankruptcy court ("**Bankruptcy Court**") in the Bankruptcy Case to issue a final binding order approving this Agreement, including without limitation promptly executing and delivering any motions or declarations or other items of support that may be reasonably required in connection therewith. Notice of the hearing before said Court seeking the approval of this Agreement shall be served on all of the creditors in the Bankruptcy Case.

1.2. Remainder of Agreement Contingent Upon Court Approval. All of the terms of this Agreement, with the sole exception of the terms set forth in this Article 1, are contingent upon the issuance of a final binding order by the Bankruptcy Court in the Bankruptcy Case approving the Agreement. If this Agreement is not approved pursuant to Section 1.1, then this Agreement shall automatically terminate and be of no further force or effect.

ARTICLE 2.
TERMS OF SETTLEMENT

2.1. Payment of Settlement Funds to Trustee. On or before the Effective Date, Mi Vida agrees to pay \$31,637.62 ("**Settlement Funds**") to the Trustee in full settlement of any potential claim the estate (the "**Estate**") may have relating to Mi Vida.

2.2. Deposit of Funds. Mi Vida agrees to deposit into the client trust account of Trustee's attorneys, Albert, Weiland & Golden, LLP ("**AWG**"), the Settlement Funds, on or before the execution of this Agreement by Mi Vida. The Deposit will be held in the AWG client trust account pending Bankruptcy Court approval of the Agreement. The Settlement Funds are non-refundable unless the Bankruptcy Court fails to approve the Agreement and Mi Vida is in compliance with § 1.1 supra.

2.3. Trustee's Duties to Mi Vida. After the Effective Date, payment of the Settlement Funds, and subject to § 2.4 infra, upon written notice by Mi Vida, the Trustee agrees to: (1) execute and deliver to Mi Vida a quitclaim deed to all of Mi Vida's real property and (2) execute a partial release of trust mortgage, releasing any and all claims of the Estate to the trust mortgage ("**Option 1**"). At the option of Mi Vida, the Trustee shall, within a reasonable period of time, in lieu of Option 1, execute an assignment of trust note and mortgage documents ("**Option 2**") or execute an assignment of the Boyd notes and mortgages, to any third party Mi Vida chooses ("**Option 3**"). Such quitclaim deed and any and all other transfers and assignments pursuant to either Option 1, Option 2 or Option 3 are on an "as-is, where-is" basis without any warranty or representation concerning the value or enforce ability of any rights as against any third parties. Mi Vida shall prepare, in a form mutually acceptable to all Parties, any required documents to comply with this § 2.3.

2.4. Overbid Procedure. This Agreement is subject to the right of the Trustee to accept overbids for the purchase of any and all claims of the Estate against Mi Vida (the "**Overbid Purchase**") so long as the initial overbid is in the form of cash only and exceeds the amount of Settlement Funds by five percent (5%) (the "**Overbid Price**"). Notwithstanding an Overbid Purchase, Mi Vida shall not be precluded from overbidding the Overbid Price for the Overbid Purchase. Additionally, in the event of a successful overbid, the Overbid Purchase would be subject to any and all defenses and counterclaims whatsoever of Mi Vida.

ARTICLE 3.
RELEASE OF CLAIMS

Subject to the overbid procedure in § 2.4 supra and upon the Effective Date and only after compliance by Mi Vida with §§ 1.1, 2.1 through 2.3 supra, the following releases shall be effective:

3.1. Definition of a Claim for Purposes of this Article. For purposes of this Article 3, "**Claim**" shall mean and refer to any claims, demands, rights, obligations, duties, debts, liens, encumbrances, levies, contracts, agreements, promises, covenants, understandings, damages, injuries, actions, causes of action, expenses, costs, charges, attorneys' fees, judgements, orders and liabilities of any kind, whether in law, equity or otherwise, whether known or unknown, and whether or not concealed or hidden.

3.2. Release of Claims by Mi Vida. On the Effective Date and after receipt of the Settlement Funds, except for: (a) obligations which are created pursuant to this Agreement; (b) Claims, if any, which arise by reason of any breach or default of this Agreement; and (c) Claims, if any, which arise due to acts, errors or omissions which occur subsequent to the effective date of this Agreement: Mi Vida for and on behalf of themselves and their respective successors, assigns, grantees and administrators (collectively, the "**Releasing Parties**"), hereby now and forever release, discharge and promise not to sue the Estate and Trustee, individually and in his representative capacity, or any administrators, attorneys, heirs, successors, executors, trustees or assigns of said Parties (collectively, the "**Released Parties**"), from any and all Claims which said Releasing Parties may now own or hold, or have at any time prior hereto owned or held, or may in the future own or hold, against said Released Parties, resulting from, arising out of, or otherwise relating in any way to, the acts, errors, omissions, business, affairs, dealings and conduct relating to or arising out of the Bankruptcy Case or the facts cited in recitals A - J, including without limitation, the specific matters and disputes referenced in this Agreement. It is the intention of the Releasing Parties that by executing this Agreement, this Agreement shall be effective as a complete and absolute bar to each and every Claim which is referenced in this Agreement. In furtherance of this intention, the Releasing Parties hereby waive any and all rights and benefits conferred upon the Releasing Parties pursuant to the provisions of Section 1542 of the California Civil Code, which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.3. Release of Claims by Trustee. On the Effective Date and after receipt of the Settlement Funds, except for: (a) obligations which are created pursuant to this Agreement; (b) Claims, if any, which arise by reason of any breach or default of this Agreement; and (c) Claims, if any, which arise due to acts, errors or omissions which occur subsequent to the effective date of this Agreement; the Trustee for and on behalf of the Estate, (collectively, the "**Releasing Party**"), hereby now and forever releases, discharges and covenants not to sue Mi Vida or any officers, directors, employees, members, agents, affiliates, administrators, attorneys, heirs, successors, executors, trustees or assigns of said Parties (collectively, the "**Released Parties**"), with respect to any and all Claims, the acts, errors, omissions, business, affairs, dealings and conduct relating to or arising out of the Bankruptcy Case or the facts cited in recitals A - J, including without limitation, the specific matters and disputes referenced in this Agreement. It is the intention of the Releasing Parties that by executing this Agreement, this Agreement shall be effective as a complete and absolute bar to each and every Claim referenced in this Agreement. In furtherance of this intention, the Releasing Parties hereby waive any and all rights and benefits conferred upon the Releasing Parties pursuant to the provisions of Section 1542 of the California Civil Code, which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.4. Binding Effect. To the fullest extent permitted by law, the terms of this Agreement, including all benefits derived by any Party pursuant to the terms of this Agreement, shall be binding on all of the Parties and on all of the creditors in the Bankruptcy Case.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES

4.1. Legal Capacity to Contract. Each Party represents that, subject to the entry of an order by the Bankruptcy Court approving of this Agreement pursuant to Section 1.1, it has the requisite power, authority and legal capacity to make, execute, enter into and deliver this Agreement and to fully perform its duties and obligations under this Agreement, and that neither this Agreement nor the performance by such Party of any duty or obligation under this Agreement will violate any other contract, agreement, covenant or restriction by which such Party is bound.

4.2. No Prior Assignments. Each Party represents that it has not pledged, transferred or assigned to any third party any right, interest, claim, or cause of action being transferred, conveyed, released or compromised pursuant to this Agreement, and such Party shall indemnify all other Parties from and against any third party claim asserting such an pledge, transfer or assignment of any such right, interest, claim or cause of action.

4.3. No Undisclosed Inducements. Each Party represents that it executed and entered into this Agreement in reliance solely upon its own independent investigation and analysis of the facts and circumstances, and that no representations, warranties or promises other than those set forth in this Agreement were made by any Party or any employee, agent or legal counsel of any Party to induce said Party to execute this Agreement.

4.4. No Admission of Liability. This Agreement has been negotiated and executed for the purpose of settling the various disputes described herein and obtaining the release of any known, suspected or unknown claims that the Releasing Parties may have against the Released Parties with respect to the various disputes described herein. The execution of this Agreement by any Party does not constitute, infer or evidence the truth of any claim, the admission of any liability, the validity of any defense or the existence of any circumstance or fact which could constitute a basis for any claim, liability or defense, other than for the purpose of enforcing the terms and provisions of this Agreement.

4.5. Representation by Counsel. Each Party represents that it has acted pursuant to the advice of legal counsel of its own choosing in connection with the negotiation, preparation and execution of this Agreement, or that it was advised to obtain the advice of such legal counsel, had ample opportunity to obtain the advice of such legal counsel and willfully declined to obtain the advice of such legal counsel.

4.6. Truth and Accuracy of Representations and Warranties. Each of the representations, warranties and covenants set forth in this Agreement shall be, and the Party making the same shall cause them to be, true and correct as of the time of execution of this Agreement and as of the time of the entry by the Court pursuant to Section 1.1 of the order approving this Agreement.

4.7. Survival. Each of the statements, certifications, representations, warranties, covenants, disclosures, disclaimers, waivers and other agreements contained in this Agreement shall survive the execution of this Agreement, the payment of any settlement consideration provided for in this Agreement, and the dismissal of any legal actions referenced in this Agreement.

**ARTICLE 5.
GENERAL TERMS AND PROVISIONS:**

5.1. Entire Agreement. This Agreement shall constitute the sole and entire agreement between the Parties with respect to the settlement of disputes and release of claims provided for herein. Any and all prior or contemporaneous agreements and negotiations, whether oral or written, with respect to the subject matter of this Agreement, are hereby superseded. No employee or agent of any Party has authority to orally modify any term or condition of this Agreement, or to make any representation or agreement other than as contained in this Agreement. Unless any representation or agreement is contained in this Agreement or is added pursuant to a written agreement executed by all Parties, it shall not be binding nor otherwise affect the validity of this Agreement.

5.2. Amendment of Agreement. No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by each Party hereto.

5.3. Construction of Agreement. The provisions of this Agreement shall be liberally construed to effectuate the intended settlement of the disputes and the release of all related claims. Section headings have been inserted for convenience only and shall not be given undue consideration in resolving questions of construction or interpretation. For purposes of determining the meaning of, or resolving any ambiguity with respect to, any word, phrase, term or provision of this Agreement, each Party shall be deemed to have had equal bargaining strength in the negotiation of this Agreement and equal control over the preparation of this document, such that neither the Agreement nor any uncertainty or ambiguity herein shall be arbitrarily construed or resolved against any Party under any rule of construction.

5.4. Further Assurances. Each Party shall promptly execute any and all instruments and documents and take all other actions, including without limitation the payment of money, that may be required to effectuate the contemplated settlement and release.

5.5. Gender and Quantitative Use. Wherever the context of this Agreement may so require, the gender shall include the masculine, feminine and neuter, and the quantitative usage of any word, term or phrase shall include the singular and plural.

5.6. Enforcement of Agreement. Each Party to this Agreement shall have the right to enforce by proceedings at law or in equity all of the terms and provisions of this Agreement, including without limitation the right to prosecute proceedings at law or in equity against the person(s) who have violated or who are attempting to violate any of such terms or provisions, to enjoin such person(s) from doing so, to cause such violation to be remedied, and/or to recover damages for such violation.

5.7. Waiver. The failure by any Party to enforce any term or provision of this Agreement shall not constitute a waiver of the right to enforce the same term or provision, or any other term or provision, thereafter. No waiver by any Party of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any

other provision of this Agreement, whether or not similar, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

5.8. Severability. In the event that any term or provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, then the remaining portions of this Agreement shall nonetheless remain in full force and effect, unless such portion of the Agreement is so material that its deletion would violate the obvious purpose and intent of the Parties.

5.9. Litigation Costs and Attorneys' Fees. If any Party(s) shall commence legal proceedings against any other Party(s) to enforce the provisions of this Agreement or to declare any rights or obligations under this Agreement, then the prevailing Party(s) shall recover from the losing Party(s) its/their costs of suit, including attorneys' fees, as shall be determined by the court.

5.10. Governing Law. This Agreement is made under and shall be construed in accordance with and governed by the laws of the State of California, without giving effect to the principles of conflicts of law. All Parties consent to the jurisdiction of the United States Bankruptcy Court - Central District of California, Santa Ana Division, for the purpose of resolving any disputes which may arise under this Agreement. If for any reason said Bankruptcy Court shall decline to accept such jurisdiction, then the Parties shall be deemed to have consented to the jurisdiction of California Courts and to venue in Orange County, California.

5.11. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which is an original, and all of which together constitute one and the same agreement.

5.12. Inurement. This Agreement shall inure to the benefit of and be fully binding upon each of the Parties and upon their respective heirs, executors, successors, assigns and grantees.

5.13. Notices. Any payments to be made or any notices or other communications to be given pursuant to this Agreement shall be delivered to the appropriate Party at the address shown below, until written notice of a different address is given by such Party in accordance with this Section. Any payments to be made pursuant to this Agreement shall be deemed made only upon actual receipt. Any notices or other communications must be in writing. Any notices or other communications given by personal service shall be deemed to have been received upon delivery. Any notices or other communications given by first class mail, postage prepaid, addressed to the address required by this Section, shall be deemed to have been received three Business Days following the deposit thereof with the United States Post Office. Any notices or other communications given by overnight courier service shall be deemed to have been received on the date of delivery confirmed by the courier service. Any notice given by facsimile transmission shall be deemed to have been received on the date upon which the recipient's facsimile machine electronically confirms the receipt of such notice, provided that a copy of any such notice given by facsimile transmission shall also be sent to the recipient by first class mail, postage prepaid, addressed to the address required by this Section. Telephone numbers, if listed below, have been listed for convenience purposes only, and not for the purposes of giving notice pursuant to this Agreement.

THEODOR C. ALBERT, TRUSTEE
P.O. Box 1860
Costa Mesa, CA 92628
Telephone: (714) 966-1000

A COPY OF ANY NOTICE TO THE TRUSTEE MUST ALSO BE SENT TO:

Albert, Weiland & Golden, LLP
Attention: Saar Swartzon
650 Town Center Drive - Suite 1350
Costa Mesa, California 92626
Telephone: (714) 966-1000
Facsimile: (714) 966-1002

A COPY OF ANY NOTICE TO THE TRUSTEE MUST ALSO BE SENT TO:

MI VIDA ENTERPRISES

Mi Vida Enterprises, a Utah corporation
Attention: Mark A. Steen, Vice President

A COPY OF ANY NOTICE TO MI VIDA MUST ALSO BE SENT TO:

Kennedy & Kennedy, P.C.
Attention: Cynthia T. Kennedy
308 E. Simpson Street, Suite 102
La Fayette, CO 80026
Telephone: (303) 604-1600
Facsimile: (303) 604-1601

[SIGNATURE PAGE FOLLOWS]


OCT 16. 2000 2:39PM

ALBERT WEILAND & GOLDEN LLP

NO. 5776 P. 3

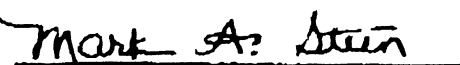
THE UNDERSIGNED PARTIES TO THIS AGREEMENT have made, executed and entered into this Agreement.

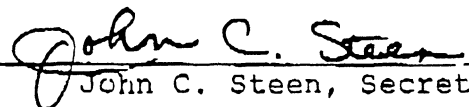
"Trustee"

By: 
Theodor C. Albert, solely in his
capacity as chapter 7 trustee of
the estate of Charles A. Steen and Jayne M. Steen

"Mi Vida Enterprises, Inc."

Mi Vida Enterprises, Inc., a Utah corporation:

By: 
Mark A. Steen
Vice President

By: 
John C. Steen, Secretary

THE UNDERSIGNED PARTIES TO THIS AGREEMENT have made, executed and entered into this Agreement.

"Trustee"

By: _____
Theodor C. Albert, solely in his
capacity as chapter 7 trustee of
the estate of Charles A. Steen and Jayne M. Steen

"Mi Vida Enterprises, Inc."

Mi Vida Enterprises, Inc., a Utah corporation:

By: _____
Charles A. Steen
Vice President

By: _____

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 650 Town Center Drive, Suite 1350, Costa Mesa, California 92626

On February 26, 2001, I served the foregoing documents described as ORDER APPROVING COMPROMISE OF CONTROVERSY WITH MI VIDA ENTERPRISES, INC. PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019 on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

X (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Costa Mesa, California.

— (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

— (VIA TELECOPY) I caused the above-mentioned document(s) to be telecopied to the parties named on the attached list.

— (BY FEDERAL EXPRESS) I caused such envelope to be delivered via Federal Express.

Executed on February 26, 2001, at Costa Mesa, California.

— (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Deanna Morris

Deanna Morris
Signature

SERVICE LIST

U.S. Trustee
Ronald Reagan Federal Bldg.
411 W. 4th St., Suite 9041
Santa Ana, CA 92701-8000

Charles Augustus Steen
Jayne Marie Steen
8416 San Carlos Way
Buena Park, CA 90620
Debtors

Andrew H. Lund, Esq.
Law Office of Andrew H. Lund
354 West Ocean Blvd.
Long Beach, CA 90802
Atty. for Debtors

Cynthia T. Kennedy, Esq.
Kennedy & Kennedy, P.C.
308 E. Simpson Street, Suite 102
Lafayette, CO 80026
Attys. for Mi Vida Enterprises

NOTE TO THE USERS OF THIS FORM:

Physically attach this form as the last page of the proposed Order or Judgment.
Do not file this form as a separate document.

(Short Title)

Chapter 7 Case Number

IN RE CHARLES STEEN

SA 98-26644 LR

NOTICE OF ENTRY OF JUDGMENT OR ORDER
AND CERTIFICATE OF MAILING

TO ALL PARTIES IN INTEREST ON THE ATTACHED SERVICE LIST:

1. You are hereby notified that a judgment or order entitled (specify):

ORDER APPROVING COMPROMISE WITH MI VIDA ENTERPRISES, INC. PURSUANT TO
FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019

was entered on (specify date): MAR - 1 2001

2. I hereby certify that I mailed a copy of this notice and a true copy
of the order or judgment to the persons and entities on the attached
service list on (specify date):

MAR - 1 2001

DATED: MAR - 1 2001

Jon D. Ceretto
Clerk of the Bankruptcy Court

By: Denise M. Brattillo
Deputy Clerk

SERVICE LIST

U.S. Trustee
Ronald Reagan Federal Bldg.
411 W. 4th St., Suite 9041
Santa Ana, CA 92701-8000

Charles Augustus Steen
Jayne Marie Steen
8416 San Carlos Way
Buena Park, CA 90620
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Andrew H. Lund, Esq.
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354 West Ocean Blvd.
Long Beach, CA 90802
Atty. for Debtors

Cynthia T. Kennedy, Esq.
Kennedy & Kennedy, P.C.
308 E. Simpson Street, Suite 102
Lafayette, CO 80026
Attys. for Mi Vida Enterprises

Saar Swartzon, Esq.
Albert, Weiland & Golden, LLP
650 Town Center Drive, Suite 1350
Costa Mesa, CA 92626
Attys. for Chapter 7 Trustee

SETTLEMENT AGREEMENT

This Settlement Agreement ("**Agreement**") is made, executed and entered into by and between the following parties, each of whom is individually referred to as a "**Party**", and all of whom are collectively referred to as the "**Parties**":

1. Theodor C. Albert, solely in his capacity as chapter 7 trustee of the estate of In re Charles Augustus Steen and Jayne Marie Steen.
2. Mi Vida Enterprises, Inc. ("**Mi Vida**"), a Utah corporation.

RECITALS:

A. On January 19, 1999, Charles Augustus Steen and Jayne Marie Steen (collectively the "**Debtor**") filed a voluntary petition for relief under chapter 7 of the United States Bankruptcy Code (SA 98-26644 LR) (the "**Bankruptcy Case**").

B. Theodor C. Albert ("**Trustee**") was subsequently appointed the chapter 7 trustee in the Bankruptcy Case.

C. Upon investigation and diligent inquiry by the Trustee into the whereabouts of property and assets of the Debtor, the Trustee determined that there was no property or assets in the estate. Pursuant thereto, on January 27, 1999, the Trustee requested that the Trustee's report ("**Report**") be approved and that the Trustee be discharged from office as the Bankruptcy Case was a no asset case.

D. Pursuant to the Trustee's Report, the Debtor was discharged from the Bankruptcy Case on March 29, 1999 (the "**Discharge**") and the Bankruptcy Case was closed.

E. Subsequently, the Trustee received additional information regarding an undisclosed asset and requested that the Trustee's Report be withdrawn and that the Bankruptcy Case be reopened for further administration of the undisclosed asset.

F. The undisclosed asset was made up of three distinct parts: (1) a one-fourth interest in a note and mortgage of which the Debtor is a beneficiary and on which Mi Vida is the obligor, with the one-fourth interest being valued at \$60,202.76 as of January 19, 1999; (2) a claim by the Debtor to an assignment of mortgages from a third party, Ms. Maxine Boyd ("**Boyd**"); and (3) claims the Debtor had as a shareholder against Mi Vida or its officers or directors individually or derivatively.

G. Boyd is a third party that claims a right to all real property of Mi Vida or in the alternative to damages of over \$19 million which if granted, would far exceed any and all assets of Mi Vida.

H. Mi Vida claims that there is an outstanding issue as to the Debtor's liability to Mi Vida for (1) shareholder advances in the amount of \$32,263 as of January 19, 1999 and (2) Debtor's liabilities for penalties and interest on taxes, tortious interference and breach of fiduciary duty arising out of, but not limited to, the commencement of a dissolution and receivership action against Mi Vida in the State of Colorado which

claims are the subject matter of two cases currently pending in the State of Utah: Maxine S. Boyd v. Mi Vida Enterprises, Inc., et al., Civil No. 9907-00-145 PR (the "**Maxine Boyd Case 1**") and Mi Vida Enterprises, Inc. v. Maxine S. Boyd, et al., Civil No. 0007-00-040 (the "**Maxine Boyd Case 2**"). As such, Mi Vida claims a right to set-off to any amount allegedly due the Debtor pursuant to Recital F.

I. Pursuant to the application of Trustee and the withdrawal of Trustee's Report, an order was entered on June 19, 2000 by the Bankruptcy Court reopening the Bankruptcy Case.

J. The Parties desire pursuant to this Agreement to once and forever settle any and all present and future claims, disputes, allegations and defenses of any kind or nature that any Party may have against any other Party, which may result from, relate to, or otherwise arise in connection with any matters referenced in this Agreement.

K. "**Effective Date**" is defined as the tenth calendar day after entry of a Final Order of the Bankruptcy Court approving this Agreement. An order becomes a "**Final Order**" after 10 days of entry of the order, unless there is a notice of appeal filed within 10 days and a stay pending appeal is obtained. No Effective Date shall occur if the Bankruptcy Court denies approval of the Motion.

PURSUANT TO THE FOREGOING RECITALS and for good and valuable consideration, the receipt and adequacy of which is acknowledged, the Parties covenant, agree and declare as follows:

ARTICLE 1. **APPROVAL OF AGREEMENT BY COURT**

1.1. Obligation of Parties to Seek Approval of Agreement. Each Party shall in good faith exercise all reasonable efforts which may be required of such Party to cause the bankruptcy court ("**Bankruptcy Court**") in the Bankruptcy Case to issue a final binding order approving this Agreement, including without limitation promptly executing and delivering any motions or declarations or other items of support that may be reasonably required in connection therewith. Notice of the hearing before said Court seeking the approval of this Agreement shall be served on all of the creditors in the Bankruptcy Case.

1.2. Remainder of Agreement Contingent Upon Court Approval. All of the terms of this Agreement, with the sole exception of the terms set forth in this Article 1, are contingent upon the issuance of a final binding order by the Bankruptcy Court in the Bankruptcy Case approving the Agreement. If this Agreement is not approved pursuant to Section 1.1, then this Agreement shall automatically terminate and be of no further force or effect.

ARTICLE 2. TERMS OF SETTLEMENT

2.1. Payment of Settlement Funds to Trustee. On or before the Effective Date, Mi Vida agrees to pay \$31,637.62 ("**Settlement Funds**") to the Trustee in full settlement of any potential claim the estate (the "**Estate**") may have relating to Mi Vida.

2.2. Deposit of Funds. Mi Vida agrees to deposit into the client trust account of Trustee's attorneys, Albert, Weiland & Golden, LLP ("**AWG**"), the Settlement Funds, on or before the execution of this Agreement by Mi Vida. The Deposit will be held in the AWG client trust account pending Bankruptcy Court approval of the Agreement. The Settlement Funds are non-refundable unless the Bankruptcy Court fails to approve the Agreement and Mi Vida is in compliance with § 1.1 supra.

2.3. Trustee's Duties to Mi Vida. After the Effective Date, payment of the Settlement Funds, and subject to § 2.4 infra, upon written notice by Mi Vida, the Trustee agrees to: (1) execute and deliver to Mi Vida a quitclaim deed to all of Mi Vida's real property and (2) execute a partial release of trust mortgage, releasing any and all claims of the Estate to the trust mortgage ("**Option 1**"). At the option of Mi Vida, the Trustee shall, within a reasonable period of time, in lieu of Option 1, execute an assignment of trust note and mortgage documents ("**Option 2**") or execute an assignment of the Boyd notes and mortgages, to any third party Mi Vida chooses ("**Option 3**"). Such quitclaim deed and any and all other transfers and assignments pursuant to either Option 1, Option 2 or Option 3 are on an "as-is, where-is" basis without any warranty or representation concerning the value or enforceability of any rights as against any third parties. Mi Vida shall prepare, in a form mutually acceptable to all Parties, any required documents to comply with this § 2.3.

2.4. Overbid Procedure. This Agreement is subject to the right of the Trustee to accept overbids for the purchase of any and all claims of the Estate against Mi Vida (the "**Overbid Purchase**") so long as the initial overbid is in the form of cash only and exceeds the amount of Settlement Funds by five percent (5%) (the "**Overbid Price**"). Notwithstanding an Overbid Purchase, Mi Vida shall not be precluded from overbidding the Overbid Price for the Overbid Purchase. Additionally, in the event of a successful overbid, the Overbid Purchase would be subject to any and all defenses and counterclaims whatsoever of Mi Vida.

ARTICLE 3. RELEASE OF CLAIMS

Subject to the overbid procedure in § 2.4 supra and upon the Effective Date and only after compliance by Mi Vida with §§ 1.1, 2.1 through 2.3 supra, the following releases shall be effective:

3.1. Definition of a Claim for Purposes of this Article. For purposes of this Article 3, "**Claim**" shall mean and refer to any claims, demands, rights, obligations, duties, debts, liens, encumbrances, levies, contracts, agreements, promises, covenants, understandings, damages, injuries, actions, causes of action, expenses, costs, charges, attorneys' fees, judgements, orders and liabilities of any kind, whether in law, equity or otherwise, whether known or unknown, and whether or not concealed or hidden.

3.2. Release of Claims by Mi Vida. On the Effective Date and after receipt of the Settlement Funds, except for: (a) obligations which are created pursuant to this Agreement; (b) Claims, if any, which arise by reason of any breach or default of this Agreement; and (c) Claims, if any, which arise due to acts, errors or omissions which occur subsequent to the effective date of this Agreement: Mi Vida for and on behalf of themselves and their respective successors, assigns, grantees and administrators (collectively, the "**Releasing Parties**"), hereby now and forever release, discharge and promise not to sue the Estate and Trustee, individually and in his representative capacity, or any administrators, attorneys, heirs, successors, executors, trustees or assigns of said Parties (collectively, the "**Released Parties**"), from any and all Claims which said Releasing Parties may now own or hold, or have at any time prior hereto owned or held, or may in the future own or hold, against said Released Parties, resulting from, arising out of, or otherwise relating in any way to, the acts, errors, omissions, business, affairs, dealings and conduct relating to or arising out of the Bankruptcy Case or the facts cited in recitals A - J, including without limitation, the specific matters and disputes referenced in this Agreement. It is the intention of the Releasing Parties that by executing this Agreement, this Agreement shall be effective as a complete and absolute bar to each and every Claim which is referenced in this Agreement. In furtherance of this intention, the Releasing Parties hereby waive any and all rights and benefits conferred upon the Releasing Parties pursuant to the provisions of Section 1542 of the California Civil Code, which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.3. Release of Claims by Trustee. On the Effective Date and after receipt of the Settlement Funds, except for: (a) obligations which are created pursuant to this Agreement; (b) Claims, if any, which arise by reason of any breach or default of this Agreement; and (c) Claims, if any, which arise due to acts, errors or omissions which occur subsequent to the effective date of this Agreement; the Trustee for and on behalf of the Estate, (collectively, the "**Releasing Party**"), hereby now and forever releases, discharges and covenants not to sue Mi Vida or any officers, directors, employees, members, agents, affiliates, administrators, attorneys, heirs, successors, executors, trustees or assigns of said Parties (collectively, the "**Released Parties**"), with respect to any and all Claims, the acts, errors, omissions, business, affairs, dealings and conduct relating to or arising out of the Bankruptcy Case or the facts cited in recitals A - J, including without limitation, the specific matters and disputes referenced in this Agreement. It is the intention of the Releasing Parties that by executing this Agreement, this Agreement shall be effective as a complete and absolute bar to each and every Claim referenced in this Agreement. In furtherance of this intention, the Releasing Parties hereby waive any and all rights and benefits conferred upon the Releasing Parties pursuant to the provisions of Section 1542 of the California Civil Code, which states as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM, MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

3.4. Binding Effect. To the fullest extent permitted by law, the terms of this Agreement, including all benefits derived by any Party pursuant to the terms of this Agreement, shall be binding on all of the Parties and on all of the creditors in the Bankruptcy Case.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES

4.1. Legal Capacity to Contract. Each Party represents that, subject to the entry of an order by the Bankruptcy Court approving of this Agreement pursuant to Section 1.1, it has the requisite power, authority and legal capacity to make, execute, enter into and deliver this Agreement and to fully perform its duties and obligations under this Agreement, and that neither this Agreement nor the performance by such Party of any duty or obligation under this Agreement will violate any other contract, agreement, covenant or restriction by which such Party is bound.

4.2. No Prior Assignments. Each Party represents that it has not pledged, transferred or assigned to any third party any right, interest, claim, or cause of action being transferred, conveyed, released or compromised pursuant to this Agreement, and such Party shall indemnify all other Parties from and against any third party claim asserting such an pledge, transfer or assignment of any such right, interest, claim or cause of action.

4.3. No Undisclosed Inducements. Each Party represents that it executed and entered into this Agreement in reliance solely upon its own independent investigation and analysis of the facts and circumstances, and that no representations, warranties or promises other than those set forth in this Agreement were made by any Party or any employee, agent or legal counsel of any Party to induce said Party to execute this Agreement.

4.4. No Admission of Liability. This Agreement has been negotiated and executed for the purpose of settling the various disputes described herein and obtaining the release of any known, suspected or unknown claims that the Releasing Parties may have against the Released Parties with respect to the various disputes described herein. The execution of this Agreement by any Party does not constitute, infer or evidence the truth of any claim, the admission of any liability, the validity of any defense or the existence of any circumstance or fact which could constitute a basis for any claim, liability or defense, other than for the purpose of enforcing the terms and provisions of this Agreement.

4.5. Representation by Counsel. Each Party represents that it has acted pursuant to the advice of legal counsel of its own choosing in connection with the negotiation, preparation and execution of this Agreement, or that it was advised to obtain the advice of such legal counsel, had ample opportunity to obtain the advice of such legal counsel and willfully declined to obtain the advice of such legal counsel.

4.6. Truth and Accuracy of Representations and Warranties. Each of the representations, warranties and covenants set forth in this Agreement shall be, and the Party making the same shall cause them to be, true and correct as of the time of execution of this Agreement and as of the time of the entry by the Court pursuant to Section 1.1 of the order approving this Agreement.

4.7. Survival. Each of the statements, certifications, representations, warranties, covenants, disclosures, disclaimers, waivers and other agreements contained in this Agreement shall survive the execution of this Agreement, the payment of any settlement consideration provided for in this Agreement, and the dismissal of any legal actions referenced in this Agreement.

**ARTICLE 5.
GENERAL TERMS AND PROVISIONS:**

5.1. Entire Agreement. This Agreement shall constitute the sole and entire agreement between the Parties with respect to the settlement of disputes and release of claims provided for herein. Any and all prior or contemporaneous agreements and negotiations, whether oral or written, with respect to the subject matter of this Agreement, are hereby superseded. No employee or agent of any Party has authority to orally modify any term or condition of this Agreement, or to make any representation or agreement other than as contained in this Agreement. Unless any representation or agreement is contained in this Agreement or is added pursuant to a written agreement executed by all Parties, it shall not be binding nor otherwise affect the validity of this Agreement.

5.2. Amendment of Agreement. No modification of, deletion from, or addition to this Agreement shall be effective unless made in writing and executed by each Party hereto.

5.3. Construction of Agreement. The provisions of this Agreement shall be liberally construed to effectuate the intended settlement of the disputes and the release of all related claims. Section headings have been inserted for convenience only and shall not be given undue consideration in resolving questions of construction or interpretation. For purposes of determining the meaning of, or resolving any ambiguity with respect to, any word, phrase, term or provision of this Agreement, each Party shall be deemed to have had equal bargaining strength in the negotiation of this Agreement and equal control over the preparation of this document, such that neither the Agreement nor any uncertainty or ambiguity herein shall be arbitrarily construed or resolved against any Party under any rule of construction.

5.4. Further Assurances. Each Party shall promptly execute any and all instruments and documents and take all other actions, including without limitation the payment of money, that may be required to effectuate the contemplated settlement and release.

5.5. Gender and Quantitative Use. Wherever the context of this Agreement may so require, the gender shall include the masculine, feminine and neuter, and the quantitative usage of any word, term or phrase shall include the singular and plural.

5.6. Enforcement of Agreement. Each Party to this Agreement shall have the right to enforce by proceedings at law or in equity all of the terms and provisions of this Agreement, including without limitation the right to prosecute proceedings at law or in equity against the person(s) who have violated or who are attempting to violate any of such terms or provisions, to enjoin such person(s) from doing so, to cause such violation to be remedied, and/or to recover damages for such violation.

5.7. Waiver. The failure by any Party to enforce any term or provision of this Agreement shall not constitute a waiver of the right to enforce the same term or provision, or any other term or provision, thereafter. No waiver by any Party of any term or provision of this Agreement shall be deemed or shall constitute a waiver of any

other provision of this Agreement, whether or not similar, nor shall any such waiver constitute a continuing waiver unless otherwise expressly provided in writing.

5.8. Severability. In the event that any term or provision of this Agreement is held by any court of competent jurisdiction to be illegal, invalid or unenforceable for any reason, then the remaining portions of this Agreement shall nonetheless remain in full force and effect, unless such portion of the Agreement is so material that its deletion would violate the obvious purpose and intent of the Parties.

5.9. Litigation Costs and Attorneys' Fees. If any Party(s) shall commence legal proceedings against any other Party(s) to enforce the provisions of this Agreement or to declare any rights or obligations under this Agreement, then the prevailing Party(s) shall recover from the losing Party(s) its/their costs of suit, including attorneys' fees, as shall be determined by the court.

5.10. Governing Law. This Agreement is made under and shall be construed in accordance with and governed by the laws of the State of California, without giving effect to the principles of conflicts of law. All Parties consent to the jurisdiction of the United States Bankruptcy Court - Central District of California, Santa Ana Division, for the purpose of resolving any disputes which may arise under this Agreement. If for any reason said Bankruptcy Court shall decline to accept such jurisdiction, then the Parties shall be deemed to have consented to the jurisdiction of California Courts and to venue in Orange County, California.

5.11. Counterparts. This Agreement may be executed in any number of identical counterparts, each of which is an original, and all of which together constitute one and the same agreement.

5.12. Inurement. This Agreement shall inure to the benefit of and be fully binding upon each of the Parties and upon their respective heirs, executors, successors, assigns and grantees.

5.13. Notices. Any payments to be made or any notices or other communications to be given pursuant to this Agreement shall be delivered to the appropriate Party at the address shown below, until written notice of a different address is given by such Party in accordance with this Section. Any payments to be made pursuant to this Agreement shall be deemed made only upon actual receipt. Any notices or other communications must be in writing. Any notices or other communications given by personal service shall be deemed to have been received upon delivery. Any notices or other communications given by first class mail, postage prepaid, addressed to the address required by this Section, shall be deemed to have been received three Business Days following the deposit thereof with the United States Post Office. Any notices or other communications given by overnight courier service shall be deemed to have been received on the date of delivery confirmed by the courier service. Any notice give by facsimile transmission shall be deemed to have been received on the dated upon which the recipient's facsimile machine electronically confirms the receipt of such notice, provided that a copy of any such notice given by facsimile transmission shall also be sent to the recipient by first class mail, postage prepaid, addressed to the address required by this Section. Telephone numbers, if listed below, have been listed for convenience purposes only, and not for the purposes of giving notice pursuant to this Agreement.

THEODOR C. ALBERT, TRUSTEE
P.O. Box 1860
Costa Mesa, CA 92628
Telephone: (714) 966-1000

A COPY OF ANY NOTICE TO THE TRUSTEE MUST ALSO BE SENT TO:

Albert, Weiland & Golden, LLP
Attention: Saar Swartzon
650 Town Center Drive - Suite 1350
Costa Mesa, California 92626
Telephone: (714) 966-1000
Facsimile: (714) 966-1002

A COPY OF ANY NOTICE TO THE TRUSTEE MUST ALSO BE SENT TO:

MI VIDA ENTERPRISES

Mi Vida Enterprises, a Utah corporation
Attention: Mark A. Steen, Vice President

A COPY OF ANY NOTICE TO MI VIDA MUST ALSO BE SENT TO:

Kennedy & Kennedy, P.C.
Attention: Cynthia T. Kennedy
308 E. Simpson Street, Suite 102
La Fayette, CO 80026
Telephone: (303) 604-1600
Facsimile: (303) 604-1601

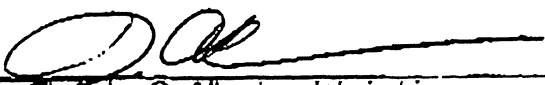
[SIGNATURE PAGE FOLLOWS]

OCT. 16. 2000 2:39PM A TRT WEILAND & GOLDEN LLP

NO. 5776 P. 3

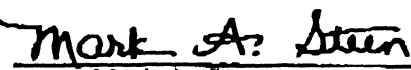
THE UNDERSIGNED PARTIES TO THIS AGREEMENT have made, executed and entered into this Agreement.

"Trustee"

By: 
Theodor C. Albert, solely in his
capacity as chapter 7 trustee of
the estate of Charles A. Steen and Jayne M. Steen

"Mi Vida Enterprises, Inc."

Mi Vida Enterprises, Inc., a Utah corporation:

By: 
Mark A. Steen
Vice President

By: 
John C. Steen, Secretary

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ORANGE

I am employed in the County of Orange, State of California. I am over the age of 18 and not a party to the within action; my business address is 650 Town Center Drive, Suite 1350, Costa Mesa, California 92626

On February 6, 2001, I served the foregoing documents described as MOTION FOR ORDER APPROVING COMPROMISE OF CONTROVERSY WITH MI VIDA ENTERPRISES, INC. PURSUANT TO FEDERAL RULE OF BANKRUPTCY PROCEDURE 9019; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATIONS OF THEODOR C. ALBERT AND SAAR SWARTZON IN SUPPORT THEREOF on the interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

SEE ATTACHED SERVICE LIST

X (BY MAIL) I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Costa Mesa, California.

— (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the offices of the addressee.

— (VIA TELECOPY) I caused the above-mentioned document(s) to be telecopied to the parties named on the attached list.

— (BY FEDERAL EXPRESS) I caused such envelope to be delivered via Federal Express.

Executed on February 6, 2001, at Costa Mesa, California.

— (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

X (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Deanna Morris

Deanna Morris
Signature

SERVICE LIST

U.S. Trustee
Ronald Reagan Federal Bldg.
411 W. 4th St., Suite 9041
Santa Ana, CA 92701-8000

Charles Augustus Steen
Jayne Maria Steen
8416 San Carlos Way
Buena Park, CA 90620
Debtors

Andrew H. Lund, Esq.
Law Office of Andrew H. Lund
354 West Ocean Blvd.
Long Beach, CA 90802
Atty. for Debtors

Cynthia T. Kennedy, Esq.
Kennedy & Kennedy, P.C.
308 E. Simpson Street, Suite 102
Lafayette, CO 80026
Attys. for Mi Vida Enterprises

Tab 9

Mi Vida Enterprises, Inc.

Schedule of Loans to and from Stockholders with Unpaid Interest

	<u>Year End</u> <u>6/30/1984</u>	<u>Year End</u> <u>6/30/1985</u>	<u>Year End</u> <u>6/30/1986</u>	<u>Year End</u> <u>6/30/1987</u>	<u>Year End</u> <u>6/30/1988</u>	<u>Year End</u> <u>6/30/1989</u>	<u>Year End</u> <u>06/30/90</u>	<u>Year End</u> <u>06/30/91</u>	<u>Year End</u> <u>06/30/92</u>
Date Tax Return Signed By Preparer (note 3)	1/4/1985	8/22/1986	1/31/1987	11/19/1989	12/4/1989	12/6/1989	3/23/1992	3/24/1992	5/4/1994
Days Beyond Maximum Extended Due Date (note 6)	0	160	0	614	264	0	374	9	415
Loans to Stockholders Per Exhibit A-3									
<u>Stockholder's Name</u>									
Charles A Steen, Sr (note 1)	5,038	5,805	8,307	2,790	2,790	2,890	2,890	2,890	2,890
M L Steen Estate (note 1)	8,893	11,160	22,764	12,764	12,964	13,054	13,054	13,064	13,064
John C Steen (note 1)		200	6,752	10,793	9,560	9,660	9,660	9,660	9,660
Andrew Steen (note 1)	(9,719)	(819)	(6,173)	(2,959)	(6,292)	(6,292)	(6,292)	(6,292)	(6,292)
Mark A Steen (note 1)	10,722	3,739	(32)	157	652	110	3,084	7,124	10,999
Nancy Steen-Adams (notes 1, 2)									
A Total For All Stockholders Per Exhibit A-3	14,936	20,086	31,618	23,545	19,674	19,421	22,396	26,446	30,321
B Total Loans To Stockholders per Tax Returns (note 3)	68,135	77,368	64,156	49,743	53,488	53,746	56,720	60,760	64,635
C Total Loans From Stockholders per Tax Returns (note 3)	(21,043)	(17,285)	(6,173)	(6,292)	(6,292)	(6,292)	(6,292)	(6,292)	(6,292)
D Net Loans To Stockholders per Tax Returns (B-C)	47,092	60,083	57,983	43,451	47,196	47,454	50,428	54,468	58,343
E Cumulative Unpaid Interest Income at 12% (note 7)	1,792	9,217	17,281	24,569	33,181	42,857	54,052	67,074	82,124
F Net Loans To Stockholders Plus Unpaid Interest (D + E)	48,884	69,300	75,264	68,020	80,377	90,311	104,480	121,542	140,467

Notes.

- 1 Information obtained from Exhibit A-3 received 3/28/03
- 2 Information obtained from Nancy Steen-Adams
- 3 Information obtained from Mi Vida Enterprises, Inc 's U S Income Tax Returns
- 4 Per Mark Steen, U S Income Tax Returns have not been prepared or filed for this year
- 5 Information is from line A during the years when income tax returns have not been filed
- 6

The maximum extended due date to file a domestic corporation's U S Income Tax Return for a year ending June 30th is March 15th of the following year Per I R C Reg 1 6072-2(a) the corporate income tax return of a domestic U S corporation is due on or before the 15th day of the 3rd month after the close of its taxable year Per I R C Reg 1 6081-3(a) a domestic U S corporation shall be allowed an automatic extension of time to the 15th day of the 6th month following the month in which falls the date prescribed for the filing of its income tax return

- 7 Interest rate is equal to the rate on the note payable to Rodney Knutson, Esq , which is also unsecured



Mi Vida Enterprises, Inc.
Schedule of Loans to and from Stockholders with Unpaid Interest

	Year End <u>06/30/93</u>	Year End <u>06/30/94</u>	Year End <u>06/30/95</u>	Year End <u>06/30/96</u>	Year End <u>06/30/97</u>	Year End <u>06/30/98</u>	Year End <u>6/30/1999</u> Note 4	Year End <u>06/30/00</u> Note 4	<u>10/13/00</u>	% of Total 10/13/2000 Loans
Date Tax Return Signed By Preparer (note 3)	7/18/1994	3/5/1995	10/10/1996	1/16/2000	2/10/2001	2/14/2001	Not Filed	Not filed		
Days Beyond Maximum Extended Due Date (note 6)	125	0	209	1037	1063	702	1125	760		
Loans to Stockholders Per Exhibit A-3										
Stockholder's Name										
Charles A Steen, Sr (note 1)	3,090	31,715	37,955	43,405	43,405	58,130	62,000	63,625	63,625	22 78%
M L Steen Estate (note 1)	13,064	38,189	44,929	68,279	72,404	72,404	72,404	72,404	72,404	25 92%
John C Steen (note 1)	(1,440)	17,710	25,810	37,415	48,815	67,765	83,910	95,135	98,335	35 20%
Andrew Steen (note 1)	(6,292)	8,708	12,708	12,708	12,708	12,708	12,708	12,708	12,708	4 55%
Mark A Steen (note 1)	18,964	25,290	34,110	48,539	44,832	57,906	60,766	29,666	32,266	11 55%
Nancy Steen-Adams (notes 1, 2)										0 00%
A. Total For All Stockholders Per Exhibit A-3	27,386	121,612	155,512	210,345	222,164	268,913	291,787	273,537	279,337	100 00%
B. Total Loans To Stockholders per Tax Returns (note 3)	61,700	185,946	227,846	273,951	260,770	307,518	Note 4	Note 4	Note 4	
C. Total Loans From Stockholders per Tax Returns (note 3)	(6,292)	(6,292)	(6,292)	(6,292)	(6,292)	(6,292)	Note 4	Note 4	Note 4	
D. Net Loans To Stockholders per Tax Returns (B-C)	55,408	179,654	221,554	267,659	254,478	301,226	Note 5	Note 5	Note 5	
E. Cumulative Unpaid Interest Income at 12% (note 7)	98,628	132,022	174,451	227,504	285,342	355,730	433,432	518,268	546,025	
F. Net Loans To Stockholders Plus Unpaid Interest (D + E)	154,036	311,676	396,005	495,163	539,820	656,956	725,219	791,806	825,362	

Tab 10

ORIGINAL TRANSCRIPT

IN THE SEVENTH DISTRICT COURT - MOAB, COUNTY
GRAND COUNTY, STATE OF UTAH

FILED

FILED - 3/1/04

* * * * *

BY

[Signature]

MI VIDA ENTERPRISES, a Utah
corporation,

vs.

MAXINE BOYD, et al.

:
:
:
:
:
:
:
:
:
:

No. 000700040

* * * * *

ORAL ARGUMENTS/STATUS CONFERENCE

October 12, 2000

* * * * *

BE IT REMEMBERED, that the above-captioned
cause came on to be heard on this, the 12th day of
October, 2000, before the Honorable Lyle R. Anderson,
Judge presiding, when and where the following
proceedings were had, to wit:

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UTAH APPELLATE COURTS

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Oral Arguments/Status Conference * October 12, 2000

APPEARANCES

For the Plaintiff Mi Vida Enterprises:

Cynthia T. Kennedy
Attorney at Law
308 E. Simpson Street
Suite 102
Lafayette, Colorado 80026

Keith Chiara
Attorney at Law
P.O. Box 955
Price, Utah 84501
Mark Steen
Pro Se
P.O. Box 1523
Longmont, Colorado 80502

For the Defendants and Counterclaimants:

Monica Lee Steen; Andrew Kirk, Jr.; Eleanor Ruth Ciddio
Steen-Adams, aka Nancy Steen-Adams; and Charles A.
Steen, III:

Kristine Rogers
Attorney at Law
2338 Broadway
Suite 110
Boulder, Colorado 80304

Chip Sander
Bostrom, Sands & Sander

COURT REPORTING FIRM: Citicourt Reporting Services
Debra A. Dibble; C.S.R., R.P.R.
50 S. Main Street
920 Key Bank Tower
Salt Lake City, Utah 84144
(801) 532-3441
www.citicourtreporting.com

Oral Arguments/Status Conference * October 12, 2000

1 P R O C E E D I N G S

2 THE BAILIFF: All rise.

3 The Seventh District Court in and for Grand
4 County, State of Utah, is now in session, the Honorable
5 Judge Lyle R. Anderson presiding.

6 THE COURT: Folks, your files reach up over
7 the top of the bar here. And now we're going to be
8 working on another stack of files, I guess.

9 We were supposed to have a hearing today to
10 discuss, I guess, where we're going in this case. And
11 also, there are some requests from the corporation.

12 We've got actually two cases; Mi Vida
13 Enterprises against Maxine Boyd and shareholders of the
14 corporation; and then Maxine Boyd against Mi Vida
15 Enterprises and shareholders of the corporation.

16 Well, let's -- first let's find out who's
17 who here. We've got lots of -- some -- lots of
18 familiar faces, and some new faces.

19 Start over here?

20 MR. CHIARA: Keith Chiara, attorney for
21 Mi Vida Corporation.

22 THE COURT: All right.

23 MR. STEEN: Mark Steen appearing pro se for
24 himself.

25 MS. KENNEDY: Cynthia Kennedy, for Mi Vida

Oral Arguments/Status Conference * October 12, 2000

1 Enterprises. I am pro hac vice counsel.

2 THE COURT: Okay. And you've already gone
3 through that process, haven't you --

4 MS. KENNEDY: Yes.

5 THE COURT: -- Miss Kennedy?

6 MS. ROGERS: And I'm Kristine Rogers, for --
7 see if I can remember all of these names.

8 Nancy Steen, Monica Steen, Charles the III,
9 and Andrew Steen. Is that accurate?

10 And, Your Honor, this is Rick Sander.

11 If I could just take a second to explain.

12 Originally there was -- there were Jeff
13 Reiman and Marcy Bayaz who were representing these same
14 individuals as plaintiffs in the Colorado action. They
15 have dissolved their partnership. Mr. Sander is taking
16 over in Colorado.

17 And we've moved to have him admitted pro hac
18 vice in this case.

19 The status on that is the documents -- the
20 necessary documents have been filed with the Utah State
21 Bar.

22 My secretary hand carried them yesterday to
23 the Utah State Bar. I was already in Grand County.

24 I spoke to her this morning. She's faxing
25 down to -- to your clerks, the documents that she filed

Oral Arguments/Status Conference * October 12, 2000

1 with the Utah State Bar, as well as an order for your
2 signature. And we can produce the originals and we'll
3 file the originals within the week.

4 Based on that, I would ask that you allow
5 Mr. Sander to address the Court as though he had been
6 admitted pro hac vice, because he has a lot of the
7 information.

8 He's worked very diligently with regard to
9 the Colorado case. And I think this Court needs to be
10 aware of what's going on in Colorado because it
11 directly affects the Utah case.

12 THE COURT: Anybody here have a problem with
13 Mr. Sander talking?

14 MS. KENNEDY: We have no problem at all,
15 Your Honor.

16 THE COURT: Okay. All right. Thank you.

17 MS. ROGERS: And seated to my far right is
18 Nancy Steen-Adams.

19 THE COURT: Okay.

20 I'm trying to see her on the list here.

21 You represent Andrew, Monica, and Nancy
22 Steen-Adams.

23 MR. SANDER: Your Honor, on the caption I
24 think it says Eleanor Ruth Ciddio Steen. And that's
25 Nancy Adam Steen.

Oral Arguments/Status Conference * October 12, 2000

1 THE COURT: Oh, okay. Eleanor Ruth.

2 You go by Nancy, huh? I can understand
3 that.

4 And so we don't have John C.; Jayne Marie;
5 Charles A.; Andrew Kirk, Jr.; Karen M; Jennifer; or
6 Charles A., Sr.; or Jr. represented here.

7 True?

8 MS. KENNEDY: Your Honor, we filed motions
9 for default against four of those individuals:
10 Charles, Jr.; Jayne; Karen; and Jennifer. So there
11 are -- there are clerks' defaults in the record for
12 those four, regarding the Mi Vida case.

13 And I believe there's a motion outstanding
14 for Mr. Jennings to withdraw representing Charles Jr.
15 in the Maxine Boyd case.

16 So those matters are sort of outstanding.
17 But that's the status of those.

18 THE COURT: Okay.

19 MS. ROGERS: Your Honor, could we have
20 clarification into as to what capacity Mark Steen is
21 appearing pro se? It's my understanding that --

22 THE COURT: The only way he could be
23 appearing pro se is for himself. That's the only
24 capacity.

25 MS. ROGERS: Well, I understand that.

Oral Arguments/Status Conference * October 12, 2000

1 But that would then necessarily require us
2 to understand what capacity other attorneys are
3 representing him, or if he's unrepresented by counsel.
4 And I think that's a little confusing.

5 MS. KENNEDY: He's not represented by
6 counsel. I represent Mi Vida, as does Mr. Chiara.

7 Does that --

8 THE COURT: All right. Who wants to talk
9 first?

10 MR. SANDER: If I may, Your Honor.

11 THE COURT: Okay.

12 What do you want to talk about, Mr. Sander?

13 MR. SANDER: Well, I wanted to give Your
14 Honor, if I may, a status update on the Boulder case,
15 and how that impacts, probably, what we're going to do
16 today.

17 THE COURT: Okay.

18 MR. SANDER: Three weeks ago I had never
19 heard of the Steen family, and didn't know anything
20 about this case and I was asked to take a look at it.
21 And when I looked at the Boulder action, and this
22 action, and had some conversation with counsel, had
23 some conversations with prior counsel for my clients,
24 it seemed to me that it made sense to consolidate the
25 action in Utah.

Oral Arguments/Status Conference * October 12, 2000

1 with regard to the others.

2 What happened in this case was, as we went
3 to serve people in this case, our investigators found
4 several bankruptcies. Charles Jr. had filed bankruptcy
5 with his wife Jayne in California, and as had Monica.

6 As a result, we brought a motion to dismiss
7 those individuals as plaintiffs in the Boulder case,
8 because they clearly lacked standing.

9 They had not disclosed their purported share
10 ownership in their respective bankruptcies, and the law
11 is pretty clear, if you don't disclose an asset in a
12 bankruptcy. Even though the bankruptcy may be
13 discharged and closed, that that asset still is
14 retained by the trustee, to be opened in the future
15 eventuality that that asset materializes.

16 Well, that's the case that we have here.

17 So they were dismissed as plaintiffs for
18 lack of standing, and shareholders in Mi Vida.

19 The impact in this case, default judge -- or
20 the clerk's default had already entered, and since we
21 weren't aware of the bankruptcies at that time, that
22 clerk's default is probably negated with regard to any
23 pre-petition charges against those individuals, because
24 the automatic stay would have prevented us from moving
25 forward.

Oral Arguments/Status Conference * October 12, 2000

1 But with regard to claims that arose after
2 the finding of their bankruptcies, which Mi Vida's
3 claims -- has claims for the wrongful bringing of the
4 Colorado action, would still be before this Court.

5 I contacted the trustee for Charles, Jr. and
6 Jayne's bankruptcy, because the bylaws of Mi Vida allow
7 the corporation to buy out, at book value, the shares.
8 And we have a stipulation now with that trustee to buy
9 out both the shares of Jayne and Charles, Jr., at book
10 value. Which is much reduced, I would think, from fair
11 value, although we don't know fair value yet.

12 And that money, or that purchase price has
13 been tendered in the form of a first payment and a
14 promissory note. And it -- it's around \$26,000 for the
15 purchase of their shares.

16 Now, that purchase benefits all of the other
17 shareholders, as you can imagine, because, pro rata,
18 they own more of the corporation once those shares come
19 back in.

20 We have also negotiated with that trustee to
21 buy out any claims that Charles, Jr. may have against
22 Mi Vida. And that includes what you may recall as the
23 wayward conveyance from Maxine Boyd. She had assigned
24 her claims to Charles, Jr. through some sort of strange
25 machinations.

Oral Arguments/Status Conference * October 12, 2000

1 THE COURT: Mm-hmm.

2 MS. KENNEDY: This settlement with that
3 trustee will then bring those back into our control.
4 Putting us then in a position where we can deal
5 directly with Maxine Boyd, as opposed to having to
6 litigate her conveyance of those -- or assignment of
7 her interests to Charles, Jr.

8 There also were -- there was a mortgage that
9 Charles, Jr. held on some Mi Vida property. There was
10 some shareholder advances that had been made.

11 We did a calculation of all of the various
12 counterclaims and claims and came up with a compromise
13 figure, which is around \$32,000. So we have around a
14 \$57,000 compromise with the bankruptcy trustee.

15 Now, we've just reached that in the last
16 couple of days.

17 As a matter of fact, I just had the
18 trustee's final offer to me faxed to your Court this
19 morning. But it's acceptable to Mi Vida, and we will
20 be moving forward on that.

21 THE COURT: Now, this is -- this is for
22 the --

23 MS. KENNEDY: It purchases the shares of
24 Charles, Jr. and Jayne, and brings them back into the
25 corporation.

Oral Arguments/Status Conference * October 12, 2000

1 And it resolves all claims of Charles, Jr.
2 against Mi Vida, and Charles, Jr. -- including Charles,
3 Jr.'s ownership or assignment of the Maxine Boyd notes.

4 THE COURT: Okay. And that's for \$26,000 --
5 or that's for \$57,000 total.

6 MS. KENNEDY: Yes.

7 THE COURT: And that includes the 26,000 to
8 buy out the shares?

9 MS. KENNEDY: Yes. Exactly.

10 And we'll get to this later because that's
11 why we need access to the money, or the funds that are
12 in the registry of the Court, is to, in part, pay
13 that -- those amounts, and settle those accounts.

14 And I think it's a great deal. I think
15 we've made some -- some good in-road in terms of
16 cleaning up some of the messes, including -- as I say,
17 it's a first step to moving forward on Maxine Boyd.

18 There's the complication of the Monica Boyd
19 bankruptcy, because Monica -- well, Nancy Ciddio Steen
20 owns one -- currently, one-sixth of the shares, and we
21 have not ever disputed that.

22 The other three that are appearing here
23 today, Kirk -- we'll call him Kirk, or the -- or Andy,
24 Jr., and Charles the III, and Monica, all claim an
25 interest in the corporation by virtue of the death of

Oral Arguments/Status Conference * October 12, 2000

1 I am going to author -- I will authorize, in
2 concept, then, the borrowing of the money, and instruct
3 you to try to reach an agreement as to what amount
4 should be borrowed.

5 If not, we'll have a telephone conference,
6 and I'll resolve that dispute.

7 I'm going to authorize the corporation to
8 make these expenditures.

9 I'm going to release the money from the
10 Court registry and authorize the corporation to use the
11 money to buy out the interests, the bankruptcy -- from
12 the bankruptcy trustees.

13 Also, to pay litigation fees in unrelated
14 cases.

15 Also, to pay property taxes.

16 And to pay its litigation fees in this case,
17 with respect to the valuation and buy out, subject to
18 submitting an application.

19 I will authorize the corporation's attorneys
20 to redact information where they consider there is a
21 privilege that's applicable.

22 And permit the dissident shareholders to
23 object.

24 To guide you in deciding whether to object
25 or not, Mr. Sander, I would suggest to you that at this

Tab 11

Keith H. Chiara #0621
Chiara Law Offices
98 North 400 East
P.O. Box 955
Price, UT 84501
Telephone (435) 637-7011

SEVENTH JUDICIAL DISTRICT COURT
GRAND COUNTY, UTAH
FILED AUG 9 2007
CLERK OF DISTRICT COURT

Cynthia T. Kennedy, Colo. #11668
Kennedy & Kennedy, P.C.
308 E. Simpson Street, Ste. 102
Lafayette, Co 80026
Telephone: (303) 604-1600
Attorneys for Defendant Mi Vida Enterprises

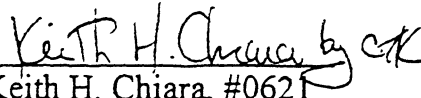
IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR
GRAND COUNTY, STATE OF UTAH

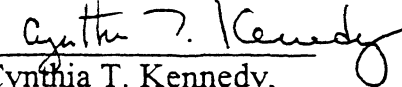
<p>MAXINE S. BOYD,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MI VIDA ENTERPRISES, a Utah Corporation, ET AL</p> <p>Defendants,</p>	<p>DEFENDANT MI VIDA'S MOTION TO ACCESS FUNDS IN THE REGISTRY OF THE COURT</p> <p>Civil No: 9907-00-145 PR Judge: Lyle R. Anderson</p>
<p>MI VIDA ENTERPRISES, a Utah Corporation,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MAXINE S. BOYD, ET AL.</p> <p>Defendants,</p>	<p>PLAINTIFF MI VIDA'S MOTION TO BORROW AGAINST LAND</p> <p>Civil No: 0007-00-040 Judge: Lyle R. Anderson</p>

COMES NOW Plaintiff, Mi Vida Enterprises, Inc., a Utah corporation (hereinafter "Mi Vida") by and through its attorneys, Keith H. Chiara and Cynthia T. Kennedy, and, pursuant to the earlier Ruling and Order of Preliminary Injunction, requests this Court enter an order granting Mi Vida access to the funds in the registry of the Court and granting authority to borrow against its Utah land. Because the request is for action pursuant to the Ruling and Order of Preliminary Injunction entered in the above-captioned cases, which were consolidated for the purpose of the injunction hearing, this motion is brought under the caption of the consolidated action and all parties are served with a copy of the requests.

A Memorandum in Support of this Motion is filed herewith.

Respectfully submitted this 8th day of August, 2000.


Keith H. Chiara, #0621
Attorney for Plaintiff
Mi Vida Enterprises, Inc.


Cynthia T. Kennedy,
Colo. #11668
Attorney for Plaintiff
Mi Vida Enterprises, Inc.

Certificate of Mailing

The undersigned hereby certifies that a true and correct copy of the foregoing Motion and copy of Proposed Order was served this 8th day of August, 2000 by placing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows:

Christopher Edward, Esq.
Attorney for Maxine S. Boyd
P.O. Box 386
55 South 300 West, Suite 1
Hurricane, UT 84737

William Jennings, Esq.
Troon Park Building
584 S. State Street
Orem, Utah 84058

Bart Bailey, Esq.
Bailey, Taylor & Waldron
Troon Park Building
584 South State Street
Orem, UT 84058

Charles A. Steen, Jr.
Jayne Marie Steen
Karen M. Steen
Jennifer Steen
8416 San Carlos Way
Buena Park, California 90620

Kristine M. Rogers, Esq.
712 Judge Building
8 East Broadway (300 So.)
Salt Lake City, UT 84111

Cynthia T. Kennedy

Keith H. Chiara #0621
Chiara Law Offices
98 North 400 East
P.O. Box 955
Price, UT 84501
Telephone (435) 637-7011

SEVENTH JUDICIAL DISTRICT COURT
GRAND COUNTY

FILED AUG 09 2000

CLERK OF THE COURT
BY _____

Cynthia T. Kennedy, Colo. #11668
Kennedy & Kennedy, P.C.
308 E. Simpson Street, Ste. 102
Lafayette, Co 80026
Telephone: (303) 604-1600
Attorneys for Defendant Mi Vida Enterprises

IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR
GRAND COUNTY, STATE OF UTAH

<p>MAXINE S. BOYD,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MI VIDA ENTERPRISES, a Utah Corporation, ET AL</p> <p>Defendants,</p>	<p>PROPOSED ORDER ON MOTION TO ACCESS FUNDS IN THE REGISTRY OF THE COURT</p> <p>Civil No: 9907-00-145 PR Judge: Lyle R. Anderson</p>
<p>MI VIDA ENTERPRISES, a Utah Corporation,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MAXINE S. BOYD, ET AL.</p> <p>Defendants,</p>	<p>PROPOSED ORDER ON PLAINTIFF MI VIDA'S MOTION TO BORROW AGAINST LAND</p> <p>Civil No: 0007-00-040 Judge: Lyle R. Anderson</p>

THIS MATTER, having come before the Court on the Motions of Mi Vida Enterprises, Inc. ("Mi Vida"), a Utah corporation for access to the funds currently in the registry of the Court in the above-captioned matter, and for authority of this Court to borrow funds against land owned by the corporation for specific purposes;

IT IS HEREBY ORDERED, that the Clerk of the Court is hereby ordered to issue a check in the full amount of the funds in the registry of the Court made payable to Mi Vida Enterprises, Inc., and hand-delivered or mailed to Keith H. Chiara, Esq., counsel for Mi Vida, at P.O. Box 955, Price, Utah 84501;

IT IS FURTHER ORDERED, that Mi Vida is authorized to borrow against its Utah property to the extent necessary to pay its ongoing creditors, including attorneys, and for the purpose of negotiating and purchasing the buyout of other minority shareholders of Mi Vida.

Dated this ____ day of August, 2000.

Lyle R. Anderson, District Court Judge

Keith H. Chiara #0621
Chiara Law Offices
98 North 400 East
P.O. Box 955
Price, UT 84501
Telephone (435) 637-7011

CLERK OF THE COURT
GRAND COUNTY, UTAH
FILED AUG 09 2003

Cynthia T. Kennedy, Colo. #11668
Kennedy & Kennedy, P.C.
308 E. Simpson Street, Ste. 102
Lafayette, Co 80026
Telephone: (303) 604-1600
Attorneys for Defendant Mi Vida Enterprises

IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR
GRAND COUNTY, STATE OF UTAH

<p>MAXINE S. BOYD,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MI VIDA ENTERPRISES, a Utah Corporation, ET AL</p> <p>Defendants,</p>	<p>MEMORANDUM IN SUPPORT OF DEFENDANT MI VIDA'S MOTION TO ACCESS FUNDS IN THE REGISTRY OF THE COURT</p> <p>Civil No: 9907-00-145 PR Judge: Lyle R. Anderson</p>
<p>MI VIDA ENTERPRISES, a Utah Corporation,</p> <p>Plaintiff,</p> <p>vs.</p> <p>MAXINE S. BOYD, ET AL.</p> <p>Defendants,</p>	<p>MEMORANDUM IN SUPPORT OF PLAINTIFF MI VIDA'S MOTION TO BORROW AGAINST LAND</p> <p>Civil No: 0007-00-040 Judge: Lyle R. Anderson</p>

COMES NOW Plaintiff, Mi Vida Enterprises, Inc., a Utah corporation (hereinafter “Mi Vida”) by and through its attorneys, Keith H. Chiara and Cynthia T. Kennedy, and requests this Court grant Mi Vida access to the funds in the registry of the Court and to borrow against its Utah land for specific purposes outlined below. Because the request is for action pursuant to the Ruling and Order of Preliminary Injunction entered in the above-captioned cases, which were consolidated for the purpose of the injunction hearing, this motion is brought under the caption of the consolidated action and all parties are served with a copy of the requests.

I. Mi Vida Needs Access to the Funds in the Registry of the Court for the Purpose of Buying the Shares Formerly belonging to Charles, Jr. and Jayne

Charles Steen Jr. (“Charles, Jr.”) and Jayne Marie Steen (“Jayne”), prior to their bankruptcy filing on December 15, 1998¹, were shareholders of Mi Vida, collectively holding 241,980 shares of common stock, or approximately 8.1%. The bankruptcy filing of Charles Steen Jr. and Jayne resulted in the transfer of any shareholder interest to their Chapter 7 bankruptcy estate even though Charles, Jr. and Jayne failed to divulge their Mi Vida equity holdings. *A copy of the bankruptcy pleadings is attached as Exhibit A.*

The bankruptcy filing has had several effects on the ongoing litigation. First, a Motion to Dismiss Charles, Jr. and Jayne from the Colorado Action was granted.

¹ This fact was only discovered by Mi Vida in May of 2000 after independent investigation and was never affirmatively disclosed by Charles, Jr. or Jayne.

A copy of this order is attached as Exhibit B. The Colorado Court correctly found that the shares and any rights associated therewith (i.e., shareholder direct and derivative claims) belonged to the trustee. Second, the filing triggered a buyout under the corporate bylaws, which allows Mi Vida to purchase the shares at book value. A copy of the relevant portion of the Bylaws is attached as Exhibit C. A complete copy was presented to the Court at the preliminary injunction hearing of April 10, 2000.

Since Mi Vida's purpose in this lawsuit is to address the dissention amongst its shareholders and buyout certain minority shareholders, including Charles, Jr. and Jayne, there is no question that it would be in the best interest of the corporation and the creditors of Mi Vida for the corporation to exercise its rights to buyout these shares. Mi Vida did contact the Bankruptcy Trustee by letter dated May 24, 2000 and made its election to buyout the shares. The Bylaws require a payment be made by Mi Vida by August 24, 2000. *Id.*

The book value of the shares is currently being determined by the accountant for Mi Vida. Furthermore, negotiations are being conducted with the Trustee for the estate of Charles, Jr. and Jayne to resolve any other claims and counterclaims in the context of the buy-out.² It is in the best interest of Mi Vida to resolve any and all claims by and between itself and these former shareholders. Specifically,

² Both the known claims against Charles, Jr. and a request for a determination of the claims in favor of Charles, Jr. against Mi Vida were brought in this lawsuit. Both Charles, Jr. and Jayne were properly served and failed to timely respond. A clerk's default has entered against them. A determination of the pre-petition claims is currently stayed by the bankruptcy pursuant to 11 U.S.C. §362; however, the pre-petition claims and the proper amount of set-off are the proper subject of a settlement with the trustee.

Charles, Jr. claimed to own by transfer certain mortgages held by Maxine Boyd. *The purported assignments were tendered as exhibits at the Preliminary Injunction Hearing.* The interest of Charles, Jr. in such mortgages, if any, also became an asset in the bankruptcy and may be resolved in the context of a settlement. This will enable Mi Vida to deal directly with Maxine Boyd on the mortgages free of any assignment asserted by Charles, Jr.

Thus, it is in Mi Vida's interest to move forward with the buyout under the Bylaws. As made clear in the Preliminary Injunction Hearing and as found by this Court in its Order of Preliminary Injunction, Mi Vida has little income and its only liquid asset is the account in the registry of the Court. Mi Vida asks for these funds to be made available to it for the purchase of the shares. No party in either of the above-captioned suits other than Mi Vida has made any claim to the funds in the registry of the Court, and it is undisputed that the funds were the result of a sale of Mi Vida's property. The Settlement Agreement governing the use of the proceeds is in evidence before this Court in conjunction with the Motion for Order Requiring Deposit with the Court in the Maxine Boyd case dated January 28, 2000. That agreement allows for the use of the proceeds as "necessary to protect and preserve the assets of Mi Vida." If the funds are not released, Mi Vida will lose an opportunity to acquire the stock and claims formerly owned by Charles, Jr. and Jayne at a reasonable value. Clearly the action will inure to the benefit of Mi Vida's creditors (including Boyd) and the remaining shareholders.

Maxine Boyd, upon whose insistence the funds were originally deposited, has asked only that the funds be disbursed or withdrawn only for the benefit of Mi Vida or to preserve the property of Mi Vida. The contemplated use benefits Mi Vida.

II. Mi Vida Requests the Ability to Borrow Against the Utah Land

In the context of the preliminary injunction, Mi Vida stipulated that there would be no sales of real estate without approval of the Court. Although there is no specific restriction against Mi Vida encumbering its property, Mi Vida wishes to comply with the spirit of its stipulation as well as the word, and requests the Court grant it specific authority to borrow against the Utah properties.

The Court should grant such action for several reasons:

A. The Preliminary Injunction has been Rendered Moot

The Preliminary Injunction has been rendered moot. Upon motion of Mi Vida, based on the bankruptcy filing of Charles, Jr. and Jayne, those Plaintiffs were dismissed from the Colorado Action and a new Verified Complaint was filed. This new Complaint contains no claim for dissolution or receivership on behalf of any of the remaining Colorado plaintiffs; *see Exhibit D*; consequently, the issues involved in the preliminary injunction (restraining the pursuit in Colorado of dissolution and receivership claims) have become moot. No claims against Mi

Vida have been made by its shareholders in the actions pending before this Court³.

The only claims asserted against Mi Vida are those of Maxine Boyd. Maxine Boyd comes to this Court as a creditor, with an uncertain claim. *See Ruling on Motions for Preliminary Injunction at 7 ("Boyd's claims are murky")*.

There is no legal basis for depriving Mi Vida of its funds and access to its assets. Absent a pre-judgment attachment pursuant to U.R.C.P. 64, a creditor must await judgment before impacting the assets of a debtor.

B. The Funds are Necessary to Benefit Mi Vida, Facilitate the Settlement and Pay Creditors

The Court funds (approximately \$40,000) will be insufficient to complete the buyout of the shares and compromise of claims with the trustee in bankruptcy for the estates of Charles, Jr. and Jayne⁴. Additionally, Mi Vida is negotiating with other dissident shareholders for a buyout, based either on a negotiated price or a value placed on the shares by this Court. As noted above, voiding the suspect transfers of the Maxine Boyd claim is the first step in Mi Vida's efforts to finding a resolution for its dissident shareholders.

³ Clerk's default has entered against Charles, Jr., Jayne, and their two daughters in Civil Action No. 00700040 (which is binding on the two bankrupts regarding post-petition claims, *i.e.*, those arising after December of 1998). The remaining Dissident Shareholders have contested jurisdiction by filing motions to dismiss. Curiously, they have not submitted the motions for decision. Because Mi Vida recognizes the need for dealing with the Maxine Boyd claim prior to valuation of minority shares, the corporation is in no hurry regarding the other defendants. Mi Vida views its potential settlement with the bankruptcy trustee as the first necessary step in resolving the shareholder situation.

⁴ Mi Vida anticipates a settlement in the approximate amount of \$70,000, based on the amount of claims in the Charles, Jr. and Jayne Steen bankruptcy.

Additionally, paying its creditors is in the best interest of Mi Vida. Mi Vida has incurred attorneys fees occasioned by the (now known to be) completely fraudulent assertions of Charles, Jr. and Jayne, who did not even have legal shareholder status (recall Charles, Jr. was the only one verifying the original Colorado Complaint, *see Preliminary Injunction Exhibit C*). Mi Vida has been successful in ferreting out the truth, in tracking and serving difficult defendants, in obtaining the injunction, in obtaining dismissals of all claims brought against it by Charles, Jr. and Jayne, and in obtaining a dismissal of all claims brought by any party for dissolution or receivership. Mi Vida's needs to pay its counsel to continue in the effort to effectuate a buyout of the remaining Dissident Shareholders.

WHEREFORE, Mi Vida Enterprises, Inc., a Utah corporation, requests that it be granted immediate access to the funds in the registry of the Court to be used for the purchase of the shares formerly owned by Charles A. Steen, Jr. and Jayne Marie Steen in context of a settlement of all claims with their bankruptcy trustee. Further, Mi Vida requests that it be granted the ability to mortgage and borrow against its Utah properties for the purpose of adding funds to the settlement with the bankruptcy trustee, paying its creditors and buying out dissident shareholders.

Respectfully submitted this 8 day of August, 2000.

Keith H. Chiara GK
Keith H. Chiara, #0621
Attorney for Plaintiff
Mi Vida Enterprises, Inc.

Cynthia T. Kennedy
Cynthia T. Kennedy,
Colo. #11668
Attorney for Plaintiff
Mi Vida Enterprises, Inc.

Certificate of Mailing

Memo reading
The undersigned hereby certifies that a true and correct copy of the foregoing ~~motion~~ was served this 8th day of August, 2000 by placing a copy of the same in the United States Mail, first-class postage prepaid, addressed as follows:

Christopher Edward, Esq.
Attorney for Maxine S. Boyd
P.O. Box 386
55 South 300 West, Suite 1
Hurricane, UT 84737

William Jennings, Esq.
Troon Park Building
584 S. State Street
Orem, Utah 84058

Bart Bailey, Esq.
Bailey, Taylor & Waldron
Troon Park Building
584 South State Street
Orem, UT 84058

Charles A. Steen, Jr.
Jayne Marie Steen
Karen M. Steen
Jennifer Steen
8416 San Carlos Way
Buena Park, California 90620

Kristine M. Rogers, Esq.
712 Judge Building
8 East Broadway (300 So.)
Salt Lake City, UT 84111

Synthia J. Kennedy

Tab 12

SEVENTH DISTRICT COURT
Grand County

Keith H. Chiara, #0621
Chiara Law Offices ^{FILED}

98 North 400 East

P.O. Box 955

Price, Utah 84501

(435) 637-7011

Local Counsel for Mi Vida Enterprises, Inc.

DEC 03 2002

CLERK OF THE COURT

Deputy

Cynthia T. Kennedy, CO #11668

Kennedy & Kennedy, P.C.

308 E. Simpson Street, #102

Lafayette, CO 80026

(303) 604-1600

Atty for Mi Vida Enterprises, Inc.

IN THE SEVENTH JUDICIAL DISTRICT COURT, IN AND FOR

GRAND COUNTY, STATE OF UTAH

MI VIDA ENTERPRISES, Inc.

Plaintiff,

vs.

MAXINE S. BOYD, et al.

Defendants.

and

NANCY CIDDIO STEEN-ADAMS;

CHARLES A. STEEN III and

ANDREW KIRK STEEN, Jr.;

Counterclaim and Cross-Claimants

vs.

MI VIDA ENTERPRISES, INC. and

MARK ASHBY STEEN

ORDER

CERTIFYING F SUMMARY
JUDGMENT AS FINAL

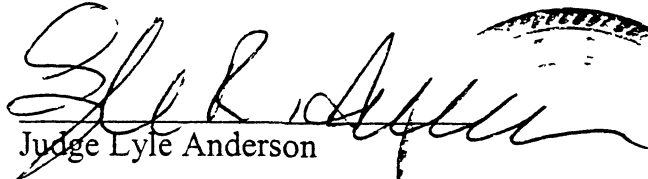
Civil No: 000-700-040


Judge Lyle Anderson

THIS MATTER, having come before the Court on the Motion of Plaintiff,
Mi Vida Enterprises, Inc. ("Mi Vida") on a Motion to Certify Summary Judgment
as Final, and the Court finding there is no just reason for delay;

IT IS HEREBY ORDERED, that the Findings of Fact, Conclusions of Law and Final Order entered by this Court on September 16, 2002 be deemed a final judgment pursuant to Rule 54(b) of the Utah Rules of Civil Procedure. The Clerk of the Court is hereby directed to enter the judgment as final.

Dated this 3rd day of December, 2002.


Judge Lyle Anderson



CERTIFICATE OF NOTIFICATION

I certify that a copy of the attached document was sent to the following people for case 000700040 by the method and on the date specified.

METHOD	NAME
Mail	THOMAS J FINCH ATTORNEY DEF 885 ARAPAHO BOULDER, CO 80302
Mail	JAMES M HULT ATTORNEY DEF 2338 BROADWAY BOULDER CO 80304
Mail	CYNTHIA T. KENNEDY ATTORNEY PLA 308 EAST SIMPSON ST., STE. 102 LAFAYETTE CO 80026
Mail	RANDAL L MEEK ATTORNEY 935 EAST 7220 SOUTH SUITE D-100 MIDVALE UT 84047-0000
Mail	KRISTINE M ROGERS ATTORNEY DEF 712 JUDGE BLDG 8 EAST BROADWAY SALT LAKE CITY UT 84111
Mail	ALLEN THORPE ATTORNEY DEF P.O. Box 1238 Castle Dale UT 84513
Mail	RICHARD G SANDER ATTY Bostrom Sands & Sander 1625 Broadway, Suite 2100 Denver CO 80202

Dated this 3 day of Dec, 2012.

Case No: 000700040
Date: Dec 03, 2002

Lu B. Fletcher
Deputy Court Clerk

