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Nebraska Judicial Branch

Case Summary

In the District Court of Sarpy County
 The Case ID is CI 08 0001629
 Keller LLC v. Joan Gearhart
 The Honorable William B Zastera, presiding.
 Classification: Miscellaneous Civil
 Filed on 09/11/2008
 This case is Closed as of 05/05/2014
 It was disposed as Uncontested Default

Parties/Attorneys to the Case

Party	Attorney
Plaintiff ACTIVE Keller LLC	William R Reinsch 545 Main St P O Box 489 Plattsmouth NE 68048 402-296-6996
Defendant ACTIVE Joan Gearhart 16515 Iske Drive Bellevue NE 68005	Thomas J Garvey 101 West Mission Bellevue NE 68005 402-291-8900

Judgment Information

On 07/30/2013 judgment of Judgment (General) was entered for \$10,360.00
 Judgment was satisfied on 03/05/2014
 The judgment creditor is William R Reinsch
 The judgment debtor is Joan Gearhart
 On 07/30/2013 judgment of District Court Costs were entered for \$168.03
 Judgment was satisfied on 03/05/2014
 The judgment creditor is William R Reinsch
 The judgment debtor is Joan Gearhart

Case Schedule Information

Hearing is scheduled
 for 05/05/2014 at 03:30 PM in room Sarpy District Courtroom #5
 hearing

Court Costs Information

Incurred By	Account	Date	Amount
Plaintiff	Petition	09/11/2008	\$35.00
Plaintiff	Filing Fee - State	09/11/2008	\$5.00

Incurring By	Account	Date	Amount
Plaintiff	Automation Fee	09/11/2008	\$6.00
Plaintiff	NSC Education Fee	09/11/2008	\$1.00
Plaintiff	Dispute Resolution Fee	09/11/2008	\$0.75
Plaintiff	Indigent Defense Fee	09/11/2008	\$3.00
Plaintiff	Uniform Data Analysis Fee	09/11/2008	\$1.00
Plaintiff	J.R.F.	09/11/2008	\$5.00
Plaintiff	Filing Fee-JRF	09/11/2008	\$2.00
Plaintiff	Legal Aid/Services Fund	09/11/2008	\$5.25
Plaintiff	Complete Record	09/11/2008	\$15.00
Defendant	Tape Transcription Fees	07/02/2010	\$16.75
Defendant	Bill of Exceptions	07/21/2010	\$406.25
Plaintiff	Service Fees	09/15/2008	\$18.38
Plaintiff	Service Fees	01/22/2010	\$20.03
Defendant	Service Fees	02/08/2010	\$23.38
Defendant	Service Fees	02/03/2010	\$20.42
Plaintiff	Service Fees	05/22/2012	\$22.69
Plaintiff	Service Fees	04/12/2013	\$20.98
Defendant	Service Fees	04/24/2013	\$6.11
Plaintiff	Sup Ct Filing Fee	06/10/2010	\$125.00
Plaintiff	Sup Ct Cost Bond	06/10/2010	\$75.00

Financial Activity

No trust money is held by the court
No fee money is held by the court

Costs for Recovery

Incurring By	Account	Date	Amount
Defendant	Tape Transcription Fees	07/02/2010	\$16.75

Payments Made to the Court

Receipt	Type	Date	For	Amount
9026936	Non-Monetary Rec	03/07/2014	Gearhart, Joan,	\$10,528.03
			Court Costs	\$168.03
			Judgment (General)	\$10,360.00

Receipt	Type	Date	For	Amount
9025543	Non-Monetary Rec	06/22/2011	Keller LLC	\$75.00
			Sup Ct Cost Bond	\$75.00
9025544	Non-Monetary Rec	06/22/2011	Gearhart, Joan,	\$16.75
			Tape Transcription Fee	\$16.75
342799	check	06/10/2010	Keller LLC	\$200.00
			Sup Ct Filing Fee	\$125.00
			Refund	\$58.25
			Holding Acct	\$16.75
321735	Check	09/11/2008	Keller LLC	\$79.00
			Petition	\$35.00
			Filing Fee - State	\$5.00
			Automation Fee	\$6.00
			NSC Education Fee	\$1.00
			Dispute Resolution Fee	\$.75
			Indigent Defense Fee	\$3.00
			Uniform Data Analysis	\$1.00
			J.R.F.	\$5.00
			Filing Fee-JRF	\$2.00
			Legal Aid/Services Fun	\$5.25
			Complete Record	\$15.00

Payments Made by the Court

Check	Date	To	Amount
200552	06/22/2011	Garvey, Thomas, J,	\$58.25
200553	06/22/2011	Sarpy County Treasurer	\$16.75
197934	06/11/2010	Nebraska Supreme Court	\$125.00

Register of Actions

05/05/2014 Journal Entry
 This action initiated by William B Zastera
 Court finds no matter pending; File ordered closed
 Image ID 000393024D59

03/11/2014 Receipt
 This action initiated by party Keller LLC
 The Plf's Atty receipts for atty fees of \$10,360.00 and costs of \$168.03

Image ID 000389446D59

03/05/2014 Order

This action initiated by William B Zastera
Order for Satisfaction of Judgment
Image ID 000387071D59

03/03/2014 Hearing

Arguments made on Motion for Satisfaction of Judgment & Attorney fees
Matter taken under advisement
Image ID 000386727D59

02/25/2014 App-Atty Fees/Reimburse Fees

This action initiated by party Keller LLC
Hearing set: 3/3/14 1:30 #5
Image ID N14056LDQD59

02/24/2014 Motion Filed

This action initiated by party Joan Gearhart
Hearing set: 3/3/14 1:30 #5
Image ID N14055K7VD59

02/10/2014 Trial/Hearing Scheduled

By agreement of Counsel, matter continued for hearing to 5/05/14 3:30pm
Image ID 000384671D59

01/09/2014 Notice-Take Deposition

This action initiated by party Keller LLC
Notice of Deposition of Patrick H. Poepsel will be taken at the office of
Thomas J. Garvey on 1/21/14
Image ID 000380581D59

01/09/2014 Notice Filed

This action initiated by party Keller LLC
Notice of Deposition of Dennis L. Whitfield and Jake Gearhart at the
office of Thomas J. Garvey on 1/21/14
Image ID 000380578D59

01/07/2014 Motion Filed

This action initiated by party Joan Gearhart
Hearing on Motion 02/10/2014 @ 3:30pm #5
Image ID N14007TTQD59

12/23/2013 Notice-Take Deposition

This action initiated by party Joan Gearhart
Depo upon Kurt Rohn on 12/30/2013 @ 2pm @ the office of Thompson,
Dreessen, & Dorner 10836 Old Mill Rd Omaha
Image ID N13357FAYD59

12/19/2013 Trial/Hearing Scheduled

On motion of PLF Counsel-hearing on Motion for Order to Satisfy Judgment
is continued to 2/10/14 3:30pm/Hearing date of 12/23/13 is canceled
Image ID 000377977D59

12/18/2013 Motion-Continuance

This action initiated by party Keller LLC
Hearing 12/23/2013 @ 1:30pm #5
Image ID 000377804D59

12/06/2013 Trial/Hearing Scheduled

PLF Motion-Continue hearing on Motion to Satisfy Judgment is granted/
Hearing is continued to 12/23/13 1:30pm/Hrg date of 12/09/13-CANCELED
Image ID 000375701D59

12/05/2013 Motion-Continuance
This action initiated by party Keller LLC
Hrng 12/09/2013 @ 1:30pm #5
Image ID 000376215D59

12/02/2013 Motion Filed
This action initiated by party Joan Gearhart
Hearing is set for 12/9/13 at 1:30pm #5
Image ID 000375575D59

11/22/2013 Journal Entry
This action initiated by William B Zastera
Having been under advisement, Motion to Extend Sanction Date is granted
DEF has 60 addtn'l days to comply with Court's previous Order
Image ID 000374019D59

11/18/2013 Hearing
Arguments made on Motion to Extend Sanctions date/Matter taken under
advisement
Image ID 000372617D59

11/06/2013 Motion-Additional Time
This action initiated by party Joan Gearhart
Hearing on Motion 11/18/2013 @ 1:30pm #5
Image ID N13310STJD59

07/30/2013 Order
This action initiated by William B Zastera
Crt having been under advisement finds, DEF having been found in contempt
allows fees to PLFs atty in the amount of \$10,360 plus \$168.03 costs
Image ID 000358539D59

07/24/2013 Journal Entry
This action initiated by William B Zastera
Court finds: Motion to Compel Entry is denied/Original finding & Order to
remain in full force & effect
Image ID 000357245D59

06/24/2013 Hearing
Arguments made on pending motions/Matter take under advisement
Image ID 000353159D59

06/17/2013 Motion-Compel
This action initiated by party Joan Gearhart
Hearing 06/24/2013 @ 1:30pm #5
Image ID N131689JND59

06/03/2013 App-Atty Fees/Reimburse Fees

This action initiated by party Keller LLC
Motion for Fees and Expenses Hearing 06/24/2013 @ 1:30pm #5
Image ID 000350560D59

06/03/2013 Motion Filed
This action initiated by party Keller LLC
Motion to Clarify Order Hrng 06/24/2013 @ 1:30pm #5
Image ID 000350557D59

05/24/2013 Order-Contempt of Court
This action initiated by William B Zastera
DEF Iske Estate is found in contempt/Purge directive set in this order
Image ID 000348323D59

04/24/2013 Return-Subpoena-Civil

The document number is 00116530

Served 04/16/2013, Certified Mail
Image ID 000344686D59

04/23/2013 Hearing

Evidence received/Record is left open for purposes of obtaining core
sample report/Matter taken under advisement
Image ID 000344391D59

04/15/2013 Subpoena Issued on Barry McArdle

The document number is 00116530
EMAILED: admin@hjglawoffices.com
Image ID D00116530D59

04/15/2013 Praecipe-Subpoena

This action initiated by party Joan Gearhart
Issue Subpoena to B.M. by cert mail

Image ID 000342643D59

04/12/2013 Return-Subpoena-Civil

The document number is 00116456
Served 04/11/2013
Personal Service

Served by #465.
Image ID N13102EY3D59

04/10/2013 Subpoena Issued on Bob Matlock

The document number is 00116456
Image ID D00116456D59

04/10/2013 Praecipe-Subpoena Duces Tecum

This action initiated by party Keller LLC
Issue subpoena upon B.M. to appear on 04/23/2013 @ 1:30pm #6 by Sarpy

County Sheriff

Image ID 000342432D59

04/09/2013 Trial/Hearing Scheduled

By agreement of counsel, matter continued for full hrg on purge plan & co
ntempt to 4-23-13 1:30pm #5
Image ID 000342024D59

01/07/2013 Hearing

Purge Plan & Contempt is set for full hearing: 4/09/13 9am
Image ID 000328695D59

12/26/2012 Motion-Continuance

This action initiated by party Joan Gearhart
Amended Motion to Continue
Image ID N12361A99D59

12/17/2012 Motion-Continuance

This action initiated by party Joan Gearhart
Image ID N12352355D59

11/30/2012 Amended Notice of Hearing

This action initiated by party Joan Gearhart
Hearing on Motion for Show Cause reset for: 12/17/12 1:30 #5
Image ID N12335NWAD59

11/15/2012 Amended Notice of Hearing

This action initiated by party Joan Gearhart
Motion to Show Cause and Sanctions and Motion for Satisfaction of Judgment
Hearing 12/03/2012 @ 1:30pm #5

Image ID 000322462D59

10/22/2012 Hearing Date Cancelled
DEF having filed Motn-dismiss Show Cause/Hearing date 10/22/12-CANCELED
Image ID 000318253D59

10/22/2012 Motion-Dismis
This action initiated by party Joan Gearhart
Motion to Dismiss Show Cause
Image ID N12296L00D59

10/11/2012 Motion-Order to Show Cause
This action initiated by party Joan Gearhart
Motion to Show Cause
Image ID 000317614D59

10/11/2012 Affidavit
This action initiated by party Joan Gearhart

Affidavit to Show Cause
Image ID 000317617D59

10/11/2012 Order-Show Cause-Sheriff
This action initiated by William B Zastera
Show Cause hearing is set: 10/22/12 1:30pm
Image ID 000315709D59

09/24/2012 Hearing
Matter to be kept under advisement until 10-29-12, on previous hrg on
contempt
Image ID 000315275D59

09/17/2012 Motion-Continuance
This action initiated by party Joan Gearhart
Hearing on Motion continued to 09/24/2012 @ 1:30pm #5

Image ID N12261N5LD59

09/17/2012 Hearing Date Cancelled
Crt advised by atty, Hrg date 9-17-12 cancelled & continues matter pendin
g receipt of an Order
Image ID 000313355D59

08/28/2012 Motion Filed
This action initiated by party Joan Gearhart
Hearing is set for 9/17/12 at 1:30pm #5
Image ID 000311149D59

07/10/2012 Hearing
Full hrg on Contempt held/ Evidence rcvd/ Matter taken under advisement
Image ID 000302807D59

05/31/2012 Motion Filed
This action initiated by party Joan Gearhart
Hearing is set for 7/2/12 at 4pm #5
Image ID 000297933D59

05/31/2012 Filing Not Otherwise Specified
This action initiated by party Joan Gearhart
Denial
Image ID 000297936D59

05/22/2012 Return Filed
This action initiated by party Keller LLC

Served Def's Atty Thomas Garvey w/ Citation for Contemp on 05/19/2012 @
101 W Mission Ave by Sarpy County Sheriff Fees: \$22.69
Image ID 000296883D59

05/18/2012 Praecipe
This action initiated by party Keller LLC
Alias Praecipe to serve copy of Order of Contempt
Image ID 000291119D59

05/17/2012 Order-Show Cause-Sheriff
This action initiated by William B Zastera
Citation for Contempt hrg set: 6-11-12 1:30pm #5
Image ID 000294718D59

05/10/2012 Praecipe
This action initiated by party Keller LLC
Serve Joan Gearhart @ 16515 Iske Drive Bellevue Ne w/ Citation and Order
of Contempt
Image ID 000294712D59

05/10/2012 App-Contempt
This action initiated by party Keller LLC
Motion for Contempt
Image ID 000294715D59

05/10/2012 Affidavit
Affidavit of Robert Keller
Image ID 000294594D59

12/16/2011 Filing Not Otherwise Specified
Archive Box 169 B.O.E. filed 7-21-2010 Volumes 1 & 2

06/21/2011 Appl not perfected/declined-A statu

06/21/2011 Journal Entry
This action initiated by William B Zastera

Mandate received from Court of Appeals/Judgment entered in conformance
with Mandate
Image ID 000245312D59

06/20/2011 Mandate
This action initiated by party Joan Gearhart
Judgment rendered has been affirmed costs to be paid by the appellant
Court of Appeals No. A-10-000583
Image ID 000245365D59

05/10/2011 Opinion-Appellate Court
This action initiated by party Keller LLC
Court of Appeals No. A-10-0583
Image ID 000238752D59

07/21/2010 Bill of Exceptions

This action initiated by party Joan Gearhart
Bill of Exceptions Volumes I and II (Costs \$406.25)

07/02/2010 Transcript Issued
This action initiated by party Joan Gearhart
Transcript issued C.O.A. (Costs \$16.75)

06/21/2010 Hearing
Deft appears by atty T.Garvey on motion for supersedeas bond & motion is
withdrawn

06/10/2010 Motion Filed
This action initiated by party Joan Gearhart
Hearing on Motion set 6-21-10 @ 1:30 p.m.
Image ID 000186622D59

06/10/2010 Praecipe-BOE
This action initiated by party Joan Gearhart
Image ID 000186613D59

06/10/2010 Praecipe-Appeal Transcript
This action initiated by party Joan Gearhart
Image ID 000186619D59

06/10/2010 Notice-Appeal to Crt of Appeals
This action initiated by party Joan Gearhart
Image ID 000186616D59

06/07/2010 Hearing
Hrg on Motion for clarification/ Discussion had on the record

05/20/2010 Notice Issued on William R Reinsch

The document number is 00092407
Notice of Judgment for Plaintiff/Petitioner

05/20/2010 Notice Issued on Thomas Garvey
The document number is 00092406
Notice of Judgment for Plaintiff/Petitioner

05/18/2010 Motion Filed
This action initiated by party Joan Gearhart
Motion for Clarification Hearing 06/07/2010 1:30pm #5
Image ID 000183227D59

05/13/2010 Order
This action initiated by William B Zastera
Trial held 2/12/10/Court finds:Injunction to issue on behalf of PLF
requiring DEF to reestablish lateral support to 2 areas of PLF property

Image ID 000181657D59

02/12/2010 Trial
Trial held/Matter taken under advisement

02/08/2010 Return-Subpoena-Civil
The document number is 00089384
Served 02/05/2010, Sarpy County Sheriff
Personal Service
Image ID 000167703D59

02/03/2010 Return-Subpoena-Civil
The document number is 00089385
Served 02/02/2010, Sarpy County Sheriff
Personal Service
Served Joseph Olivo at 9701 Mitchell Rd on 2/2/10 by Sarpy Co Sheriff.

Fee: \$20.42
Image ID 000167215D59

02/01/2010 Subpoena Issued on Dan Thiessen
The document number is 00089386

02/01/2010 Subpoena Issued on Joseph Olivo

The document number is 00089385

02/01/2010 Subpoena Issued on Louis Savi
The document number is 00089384

01/29/2010 Praecipe-Subpoena
This action initiated by party Joan Gearhart
Issue Subpoena: Louis Savi 3601 Duffer Crt Omaha to appear on 2/12/10
@10:30 #5

Image ID 000166598D59

01/29/2010 Praecipe-Subpoena
This action initiated by party Joan Gearhart
Issue Subpoena: Joseph Olivo 9701 Mitchell Rd Papillion to appear on
2/12/10 @10:30 #5
Image ID 000166595D59

01/29/2010 Praecipe-Subpoena
This action initiated by party Joan Gearhart
Issue Subpoena: Dan Thiessen 3512 E Mckelvie Plattsmouth to appear on
2/12/10 10:30 #5
Image ID 000166592D59

01/25/2010 Cert-Service
This action initiated by party Joan Gearhart

Image ID 000165821D59

01/22/2010 Return-Subpoena-Civil
The document number is 00089044
Served 01/21/2010, Sarpy County Sheriff
Personal Service
Served Donald O Heine personally on 01/21/2010 @ 1820 Hillcrest Dr by
Sarpy County Sheriff Fees: \$20.03
Image ID 000165840D59

01/20/2010 Subpoena Issued on Donald O. Heine
The document number is 00089044

01/19/2010 Praecipe-Subpoena
This action initiated by party Keller LLC
Issue subpoena upon Donald O. Heine 1820 Hillcrest Drive Bellevue Ne to

appear on 02/12/2010 9am #5
Image ID 000164806D59

09/25/2009 Hearing Date Cancelled
By reason of scheduling conflict, Trial continued to 2-12-2010 9am/ Trial
date of 10-30-09 cancelled

08/17/2009 Hearing Date Cancelled
By agreement counsel-Motion for 'Jury View' is sustained/Hearing date of
8/17/09 is canceled

08/10/2009 Motion Filed
This action initiated by party Joan Gearhart
Hearing 08/17/2009 1:30pm #1
Image ID 000141331D59

07/20/2009 Hearing
Motion-continue granted/ Matter continued to 10-30-09 9am #1/ Hrg date
of 9-2-09 cancelled

07/09/2009 Motion-Continuance

Hearing This action initiated by party Keller LLC
07/20/2009 1:30pm #1
Image ID 000136866D59

07/08/2009 Notice-Take Deposition
This action initiated by party Keller LLC
Deposition of Donald O. Heine will be taken on 7/20/09 at 9am at the
office of Thomas J. Garvey
Image ID 000136579D59

05/27/2009 Trial/Hearing Scheduled

Trial set: 9-2-09 9am #1

05/05/2009 Notice Issued on William R Reinsch
The document number is 00082525
Notice of Judgment

05/05/2009 Notice Issued on Thomas Garvey
The document number is 00082524
Notice of Judgment

05/04/2009 Order
This action initiated by William B Zastera
Opinion & Order/ DEFS Motion-summary judgment is overruled & denied/ PLFS
Motion-summary judgment is overruled & denied
Image ID 000127161D59

04/20/2009 Hearing
Evidence received on Motion for Summary Judgment/Matter taken under
advisement

04/09/2009 Amended Notice of Hearing
This action initiated by party Joan Gearhart
Amended Hearing set: 4/20/09 1:30 #1
Image ID 000123993D59

04/09/2009 Order
This action initiated by William B Zastera
Order placing case on Court's civil Jury Trial Progression Docket
Image ID 000124033D59

03/30/2009 Response
This action initiated by party Joan Gearhart

Image ID 000121669D59

03/30/2009 Cert-Readiness Trial
This action initiated by party Joan Gearhart
Image ID 000121672D59

03/24/2009 Order
This action initiated by William B Zastera
Opinion & Order/DEF Motion for leave to withdraw Answers to Request for
admissions is granted/DEF has 10 days to answer Request for Admissions
Image ID 000120601D59

03/23/2009 Hearing
Arguments made on Motion for leave to answer Request for Admission out of
time/Matter taken under advisement

03/10/2009 Motion Filed
This action initiated by party Joan Gearhart
Motion for Leave to Withdraw Answers to Requests for Admission Deemed

Admitted and Notice Hearing set 3/23/09 at 1:30pm #1
Image ID 000118417D59

01/29/2009 Hearing Date Cancelled
By notice PLF Counsel-all Motions are continued till further notice
Hearing date of 1/30/09 is canceled

01/06/2009 Hearing Date Cancelled
On Crt's own motion, Motion-Summary Judgment cont to 1-30-09 9am #1/ Hrg
date of 1-9-09 cancelled

12/30/2008 Cert-Service
This action initiated by party Keller LLC

Copy of Affidavit in Support of Plaintiff's Motion for Summary Judgment
was served to Atty for Def on 12/29/08
Image ID 000106401D59

12/30/2008 Motion-Summary Judgment
This action initiated by party Keller LLC
Hearing set 1/9/09 at 9am #1
Image ID 000106404D59

12/30/2008 Affidavit-Support of Motion
This action initiated by party Keller LLC
Affidavit of William R. Reinsch
Image ID 000106398D59

12/23/2008 Notice-Hearing
This action initiated by party Joan Gearhart

Amended Notice of hearing on Motion-summary judgment set: 1-9-09 9am #1
Image ID 000105851D59

12/19/2008 Motion-Summary Judgment
This action initiated by party Joan Gearhart
Hearin 01/02/09 9am #1
Image ID 000105656D59

12/03/2008 Cert-Service
This action initiated by party Keller LLC
Served Def w/ Plf's Interrogatories and Request for Production of Docs by
US mail on 12/02/2008
Image ID 000102985D59

11/13/2008 Answer
This action initiated by party Joan Gearhart

Image ID 000099885D59

10/31/2008 Order
This action initiated by William B Zastera
Having been under advisement-DEF's Motion to dismiss is denied
Image ID 000094737D59

10/24/2008 Hearing
Arguments made on Motion-dismissed/Matter take under advisement

10/10/2008 Motion-Dismiss
This action initiated by party Joan Gearhart
Hearing set: 10/24/08 9am
Image ID 000095919D59

09/15/2008 Return Summons/Alias Summons

The document number is 00076791

Served 09/13/2008, Sarpy County Sheriff
Personal Service
Served Joan Gearhart on 09/13/2008 @ 16515 Iske Dr by Sarpy County
Sheriff Fees: \$18.38
Image ID 000091131D59

09/11/2008 Summons Issued on Joan Gearhart
The document number is 00076791

09/11/2008 Praecipe-Summons/Alias
This action initiated by party Keller LLC
Issue Summons to Joan Gearhart at 16515 Iske Drive, Bellevue, NE by Sarpy
County Sheriff
Image ID 000090797D59

09/11/2008 Demand for Jury Trial
NOT A PLEADING

09/11/2008 Complaint-Praecipe
This action initiated by party Keller LLC
Image ID 000090794D59

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, L.L.C.
a Limited Liability Company,

Plaintiff

vs.

JOAN GEARHART,
Personal Representative of
the Estate of James Iske

Defendant

CASE NO. CI08- 1629

COMPLAINT

FILED
CLERK OF DISTRICT COURT
SARPY COUNTY, NEBRASKA
SEP 11 11:00 AM
2008

COMES NOW, the Plaintiff, Keller, L.L.C., hereinafter referred to as plaintiff and for its cause of action against the Defendant, states and alleges as follows:

1. That the Plaintiff is a Nebraska limited liability company formed pursuant to Nebraska law with its principal place of business being at 15802 S. 36th Street, Sarpy County, Nebraska 68123.

2. That the Plaintiff is the record title holder to the following described real property:

The North Half of the Southeast Quarter, and the Northeast Quarter of the Southwest Quarter of Section Twenty, Township Thirteen North, Range Thirteen East of the 6th P.M., Sarpy County, Nebraska.

All the real estate described above, for the purposes of this Complaint, shall be referred to herein as the "Keller Farm" or "Plaintiff's property."

3. That the Defendant, Joan Gearhart, is the Personal Representative of the Estate of James Iske.



000090794D59

4. That the Defendant, Joan Gearhart, as Personal Representative of the Estate of James Iske, deceased and is the record title owner of certain real property, consisting of forty acres, legally described as follows:

SW ¼ SE ¼ of Section Twenty, Township Thirteen, Range Thirteen, East of the 6th P.M., Sarpy County, Nebraska. "Defendant's property."

5. That the Defendant's above mentioned property, and the Plaintiff's above mentioned property, abut each other.

6. That James Iske, profited from, and entered into an agreement to allow quarry operations on the above mentioned land.

7. That the Plaintiff's land was in its natural state and condition prior to the commencement of quarrying activities.

8. That said quarry operations did commence resulting in large amounts of earth and limestone rock being removed, disturbed, and displaced.

9. That the quarry operations were ended by the Defendant's predecessor in title, but that the Defendant allows, and the decedent had allowed soil erosion to occur on Defendant's property.

10. That the continuing erosion and removal of lateral support to the Plaintiff's has undermined the natural stability of the land and earth located on the Plaintiff's land.

11. That as a result of the Defendant's failure to provide lateral support, the Plaintiff has, and continues to lose large amounts of soil and earth, placing farming operations in jeopardy.

12. That the Plaintiff has the absolute right of lateral support of land to be kept in its natural condition from adjoining property owners.

13. That the Defendant has a non-delegable duty to prevent injury to adjacent land from the removal of lateral support and has neglected to fulfill this duty.

14. That the injury caused by the removal of the lateral support is continuous, repetitive, and ongoing.

15. That the right of Plaintiff is clear, the damage sustained by the Plaintiff is irreparable, and the remedy at law inadequate to prevent a failure of justice.

16. That demand has been made to the Defendant requesting affirmative action to resolve this issue and none has been forthcoming.

WHEREFORE, the Plaintiff prays that upon final hearing the Court, determines that the Plaintiff has an absolute right to lateral support of land and orders a mandatory injunction requiring the Defendant to affirmatively replace and maintain the earth and limestone rock that was removed to provide adequate lateral support to the Plaintiff's land.

Keller, L.L.C.,
Plaintiff

By: 

WILLIAM R. REINSCH # 15464
Reinsch Slattery & Bear, P.C., L.L.O.
545 Main Street
P.O. Box 489
Plattsmouth, NE 68048
(402-296-6996)

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

**KELLER, L.L.C.,
a Limited Liability Company**

Plaintiffs,

vs.

**JOAN GEARHART, Personal Rep.
of the Estate of James Iske**

Defendants.

DOC. CI08 PAGE 1629

ORDER

FILED
SARPY COUNTY
DISTRICT COURT
2010 MAY 13 PM 3:58
Clerk of District Court

This matter having been tried to the Court on the 12th day of February, 2010, with the record having been kept open for the Court to view the premises, which occurred on April 21st, and now comes on for ruling.

In it's operative complaint, the Plaintiff seeks a mandatory injunction, requiring the Defendant to re-establish lateral support along two areas of the south boundary of the Plaintiff's property where erosion has occurred.

By it's answer, the Defendant has raised several defenses, being:

1. Laches,
2. Unclean hands,
3. Issue preclusion by reason of a prior suit,
4. Failure to file a claim pursuant to 30-2483.

The Court has received into evidence Exhibit 9, which is a stipulation of facts entered into by the Parties and after evidence.

ANALYSIS

The premier case in Nebraska on the requirements to provide lateral support is McKinney vs. Bonanza Sirloin Pit, Inc. 195 Neb 325.

In this case the Supreme Court held the right of lateral support of land in it's natural state is inalienable and a landowner who excavates near the property line owes a nonnegotiable duty to prevent injury to adjacent land.

From the evidence it is clear the land of the Plaintiff is in the natural state, except for conservation terracing, which in the Court's opinion did not affect natural flow of water from the Plaintiff's property to the Defendant's property.



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These facts create a prima facie case that the Plaintiff is entitled to the relief sought, absent proof of one or more of the defenses of the Defendant.

LACHES

The defense of laches is not favored in the law and will be sustained only if the litigant has been guilty of inexcusable neglect and prejudice results from the neglect, Venice vs. Oehm 582 NW2d 615; Dulton-Lainson Co. vs. Continental Ins. Co. 716 NW2d 87.

The evidence before this Court on this issue is as follows:

1. Quarrying operation ceased upon the Defendant's land in the 1980's.
2. Subsequent to the cessation of the quarrying operation, and because of the natural flow of drainage water, erosion began to creep back toward the common boundary of the properties in two areas.
3. It was not until 2004 that the erosion crossed over the boundary line onto the Plaintiff's property.
4. The Plaintiff filed his complaint in September, 2008.

Defendant claims because it was aware of the erosion on the Defendant's land for approximately 28 years and failed to do something on his land to stop the erosion, he is guilty of laches.

The problem with the argument is, the Plaintiff owed no duty to the Defendant to change the natural water course off of Plaintiff's land.

Secondly, the right of action of the Plaintiff did not accrue until the erosion passed upon the land of the Plaintiff in 2004.

This Court cannot say the four year delay in filing this action was inexcusable, neglect, or prejudicial the Defendant

Thus, the Defense of laches is not applicable to these facts and is rejected.

It is further noted, had the Plaintiff elected to bring an action for damages in lieu of one for injunctive relief, the applicable statute of limitation would not have run.

UNCLEAN HANDS

The Defendant has raised the defense of unclean hands, to the extent, since the Defendant did nothing to mitigate his possible damage he is barred from bringing this action.

The requirements to prevail on its claim are the action of the Plaintiff were willful and the conduct was fraudulent, illegal or unconscionable. (Viochoskie vs. Viochoskie 215 Nebr 775).

The evidence presented to this Court does not rise to the level required, and defense of unclean hands is rejected by this Court.

ISSUE PRECLUSION OR COLLATERAL ESTOPPEL

The Defendant's defense of issue preclusion is based upon the following evidence:

1. The Plaintiff's predecessor in title sued City Wide Rock, a lessee of the Defendant's predecessor in title in 1972.
2. That as part of its claim, the Plaintiff sought damages for failure to provide lateral support.
3. Pursuant to Exhibit 47, the jury returned a verdict for the Plaintiff in the amount of \$2,000.00.

The first issue to be decided by the Court is that of privity between the parties, Plaintiff and Defendant, for the reason, on the face of the complaint the parties are not the same to determine issue procedure or collateral estoppel, ie:

The lawsuit in 1972 was between Henry J. Keller Jr. and Mary Ann Keller vs. City Wid Rock and Excavating Co., a Corporation. The current Plaintiff is Keller L.L.C. and Defendant is Joan Gearhart, Personal Representative of James Iske.

Thus, to prevail on it's defense, the Defendant must first show there was both privity between Henry Keller and Mary Keller and Keller L.L.C., and also between City Wide Rock and James Iske.

Privity is defined as "mutual or successive relationships of the same right of property", Black's Law Dictionary, which was adopted by our Supreme Court in Gottach vs. Bank of Stapelliton 235 Neb 816.

The evidence shows the Plaintiff in this action, Keller, L.L.C., is the successive title holder of the land of Henry and Mary Keller, which was the subject of suit in 1972, and the Defendant as P.R. of the Estate of James Iske succeeds to his interest and at the time of the previous suit, James Iske was the lessor of the land in question.

It is the opinion of this Court that as successor in title, Keller L.L.C. was in privity with prior litigants and that the lessor/lessee relationship between the Defendants and City Wide Rock also creates privity of parties.

The Defendant now must satisfy the other three prongs for the existence of the doctrine of collateral estoppel or issue preclusion:

1. The identical issue was decided in a prior action.

In the 1972 suit, Ex. 47, the Amended Petition in paragraph V of it's First Cause of Action allege:

“Plaintiffs allege that as a further proximate result of said quarrying operations and blasting, Defendant has removed the lateral support from the Plaintiff’s land, causing the same to be eroded and broken away.”

In paragraph 8 of it’s Amended Complaint, the Plaintiff sought monetary damages to it’s land in the amount of \$5,000.00.

In the current suit, Plaintiff seeks a mandatory injunction requiring the Defendant to provide lateral support due to areas of erosion along the south boundary of the property, which did not exist at the time of the previous suit in 1972.

On the face of the pleadings, it would appear the request for damages for the loss of lateral support in the 1972 suit were identical to the relief sought here, and the same were fully litigated.

Our Supreme Court has determined in Steward vs. Hichtman 254 Neb 992, that though the issues may be identical, if there is a significant factual change, the doctrine of collateral estoppel is not applicable.

The evidence before this Court shows what is considers to be a significant factual change on the issue decided in 1972 and the relief requested in this litigation.

In 1972 the erosion did not exist on the land of the Plaintiff and the same took 32 years to reach the Plaintiff’s land.

It is further the opinion of the Court, the cause of action to provide lateral support would not be enforceable until 2004 when the support began to fail on the Plaintiff’s property, which is a significant change in fact.

The Court is of the opinion that the relief sought in both suits make reference to lateral support, the significant change in facts from the initial suit, and this suit precludes the application of collateral estoppel or issue preclusion.

D. Failure to file a claim in the James Iske Estate pursuant to 30-2483, bars the action.

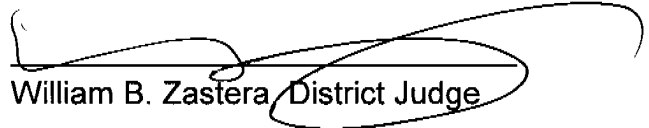
This issue having been previously been ruled on by the Court on the Defendant’s Motion to Dismiss, wherein the Court overruled the Motion the same is likewise found to be without merit.

The Court having determined that the defense raised by the Defendant are non-meritorious defenses, finds for the Plaintiff.

WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED by this Court that a mandatory injunction is to issue on behalf of the Plaintiff, requiring the Defendant to re-establish lateral support to the two areas of the Plaintiff's property wherein the support has failed and encroached upon Plaintiff's land.

Dated this 13th day of May, 2010.

By the Court


William B. Zastera, District Judge

DOCKET: CI 08-1629

TITLE: KELLER L. VS. JOAN GEARHART, PERSONAL REPRESENTATIVE OF ESTATE OF ISKE

ACTION: MISCELLANEOUS CIVIL

FILED: SEPTEMBER 11, 2008

DATE

JUDGE'S MINUTES

JAN A.D. 2010

to page 2
2/12/10

Plaintiff appears with Counsel, Mr. Wm. Reinsch, Defendant appears with Counsel, Mr. Tom Garvey. Matter proceeds to trial. Record remains open for view by the Court. Matter taken under advisement.


Judge

5/13/10

Order signed and entered. Bailiff to mail copy of Order to Counsel.


Judge

IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL

KELLER, L.L.C. v. GEARHART

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
AND MAY NOT BE CITED EXCEPT AS PROVIDED BY NEB. CT. R. APP. P. § 2-102(E).

FILED
SARPY COUNTY
DISTRICT COURT

11 MAY 10 AM 10:44

Carol Kerner
CLERK DISTRICT COURT

KELLER, L.L.C., APPELLEE,
v.
JOAN GEARHART, PERSONAL REPRESENTATIVE
OF THE ESTATE OF JAMES ISKE, APPELLANT.

FILED

MAY 10 2011

CLERK
NEBRASKA SUPREME COURT
COURT OF APPEALS

Filed May 10, 2011. No. A-10-583.

Appeal from the District Court for Sarpy County: WILLIAM B. ZASTERA, Judge.
Affirmed.

Thomas J. Garvey for appellant.

William R. Reinsch, of Reinsch, Slattery, Bear & Minahan, P.C., L.L.O., for appellee.

INBODY, Chief Judge, and IRWIN and MOORE, Judges.

IRWIN, Judge.

I. INTRODUCTION

Keller, L.L.C., a limited liability company, brought an action against Joan Gearhart, personal representative of the estate of James Iske, seeking a mandatory injunction for lateral support of property owned by Keller. Gearhart raised several defenses, including Keller's failure to file a claim against decedent's estate, laches, unclean hands, and collateral estoppel. The district court for Sarpy County rejected Gearhart's defenses and granted Keller a mandatory injunction directing Gearhart to provide lateral support to Keller's land. Gearhart appeals. For the reasons that follow, we affirm the judgment of the trial court.

II. BACKGROUND

The property of James Iske, the decedent, was once used as a quarry, and large amounts of earth and limestone were removed from that property, causing erosion to occur. Keller owns



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property adjacent to decedent's land and alleges the erosion to decedent's property removed lateral support to Keller's property and that the erosion invaded Keller's land in 2004.

Decedent died on April 21, 2008, and Gearhart was appointed personal representative of his estate. On September 11, Keller filed a complaint against Gearhart, as the personal representative of decedent's estate, requesting a mandatory injunction requiring Gearhart to provide lateral support to Keller's land. Keller did not file a claim in the estate proceedings.

Gearhart filed a motion to dismiss the complaint, claiming that Keller failed to file a claim against decedent's estate pursuant to Neb. Rev. Stat. § 30-2485 (Reissue 2008). The trial court denied the motion to dismiss. Gearhart subsequently filed an answer generally denying the material allegations in the complaint and asserting the defenses of laches, unclean hands, and collateral estoppel, and again alleging that Keller failed to file a claim against the estate pursuant to § 30-2485.

Following trial, the trial court entered an order rejecting Gearhart's defenses, and finding that Keller is entitled to the relief sought, thereby issuing a mandatory injunction on behalf of Keller, requiring Gearhart to "reestablish lateral support to the two areas of [Keller's] property wherein the support has failed and encroached upon [Keller's] land." This appeal followed.

III. ASSIGNMENTS OF ERROR

Gearhart assigns that the trial court erred in (1) failing to grant her motion to dismiss based on Keller's failure to file a claim against the estate in the pending probate action, (2) rejecting her laches defense, (3) rejecting her unclean hands defense, (4) rejecting her claim of collateral estoppel, and (5) awarding Keller a mandatory injunction.

IV. ANALYSIS

1. LACK OF CLAIM AGAINST DECEDENT'S ESTATE

Gearhart first argues that Keller's action is a "claim" under the probate code and that because Keller had not filed a claim against decedent's estate in the probate matter, Keller's suit is now time barred by § 30-2485. We disagree with Gearhart's argument. The concept of a claim under the Nebraska Probate Code does not include an equity action seeking an injunction and specific performance. An equity action seeking an injunction and specific performance is not litigable in the ordinary course of probate administration, but must be prosecuted in a court of original and general equitable jurisdiction and powers, i.e., a district court. We find no merit to Gearhart's argument.

Keller is seeking injunctive relief for the continuing and ongoing loss of lateral support of its land, which is an equitable action. The Nebraska Supreme Court has specifically determined that equitable actions are not "claims" and are outside the purview of probate administration. In *In re Estate of Layton*, 212 Neb. 518, 323 N.W.2d 817 (1982), the Supreme Court considered whether a request for specific performance on a contract entered into by a decedent was a claim against the estate. The court found that the action was not a claim against the estate, but, rather, that it was a separate equitable action. The court stated, "It follows that such a claim is not litigable in the ordinary course of probate administration, but must be prosecuted, if at all, in a court of original and general equitable jurisdiction and powers, the executor or administrator being a proper but not in all instances a necessary party. . . ." *Id.* at 522, 323 N.W.2d at 819.

Similarly, in *Eggers v. Rittscher*, 247 Neb. 648, 529 N.W.2d 741 (1995), the court held that an equity action in which the plaintiff was seeking an injunction and specific performance of an oral contract did not constitute a claim under the Nebraska Probate Code and thus was not time barred.

While there is no dispute that Keller did not file a claim against decedent's estate in the probate proceeding, such is of no consequence. We conclude that Keller's action is not properly considered a "claim" under the probate code, but, rather, is an equitable action seeking injunctive relief. Accordingly, it was not necessary for Keller to file a claim against decedent's estate and the claim was properly brought in the district court. This assignment is without merit.

2. LACHES

Gearhart next asserts that the trial court erred in rejecting laches as a defense against Keller's cause of action. We conclude that Keller's delay in filing the cause of action was not legally inexcusable or sufficient to invoke the defense of laches, because the record indicates that the delay was only a period of approximately 4 years, Keller sought to resolve the controversy during those 4 years, and there was no prejudice to the estate as a result of the delay. We find no merit to Gearhart's assertions on appeal.

Courts of equity have inherent power to refuse relief after an inexcusable delay when not to do so would work an injustice. *Merz v. Seeba*, 271 Neb. 117, 710 N.W.2d 91 (2006). What constitutes laches depends on the circumstances of the case. *Id.* Laches does not result from the mere passage of time, but from the fact that during the lapse of time, circumstances changed such that to enforce the claim would work inequitably to the disadvantage or prejudice of another. *Dutton-Lainson Co. v. Continental Ins. Co.*, 271 Neb. 810, 716 N.W.2d 87 (2006). The defense of laches is not favored in Nebraska, and it will be sustained only if a litigant has been guilty of inexcusable neglect in enforcing a right to the prejudice of his adversary. *Id.*

Gearhart argues that Keller's claim is barred by laches because Keller was aware of the erosion occurring on decedent's property and moving toward Keller's property line as far back as 2001 and did not bring an action until 2008. However, the erosion that began on decedent's property did not cross over the boundary line onto Keller's property until 2004. Therefore, although Keller may have been aware of the erosion creeping toward its property since 2001, Keller's right of action did not accrue until the erosion passed upon Keller's land in 2004. Keller filed its complaint in September 2008. During the period of delay, Keller did not just sit on its rights, but, rather, explored possible solutions. During that interim, Keller consulted with a licensed engineer to seek possible solutions to the erosion problem and contacted decedent in an attempt to try to resolve the erosion problem. Further, nothing in the record indicates that circumstances had changed in such a way that Gearhart has been disadvantaged or prejudiced by the delay.

We conclude that the 4-year delay in filing the action was not legally inexcusable or sufficient to invoke the defense of laches. As such, the trial court did not err in rejecting laches as a defense, and we find no merit to this assignment of error.

3. UNCLEAN HANDS

Gearhart next asserts that the trial court erred in rejecting the defense of unclean hands. Gearhart argues that Keller's action is barred by this defense based on Keller's inaction and failure to remedy the erosion occurring on its land. Under the doctrine of unclean hands, a person who comes into a court of equity to obtain relief cannot do so if he or she has acted inequitably, unfairly, or dishonestly as to the controversy in issue. *Myhra v. Myhra*, 16 Neb. App. 920, 756 N.W.2d 528 (2008). We find no evidence in the record of any inequitable, unfair, or dishonest actions by Keller that would justify invoking the unclean hands defense. As such, we find no error in the trial court's rejecting of Gearhart's unclean hands defense. This assigned error is without merit.

4. COLLATERAL ESTOPPEL

Gearhart next asserts that the trial court erred in rejecting her claim of collateral estoppel. Gearhart based her defense of collateral estoppel on the fact that in 1972, Keller's predecessors in title brought suit against a lessee of decedent's predecessor in title and the entity operating the rock quarry on decedent's property. Keller's predecessors claimed that the quarry operations had damaged their land by removing lateral support and depositing rocks thereon, that they had lost crops, and that their farm machinery had been damaged in an attempt to harvest the crops. The plaintiffs sought money damages for the existing damage in the amount of \$9,150. A jury returned a general verdict in favor of the plaintiffs in the amount of \$2,000. We conclude that this prior action did not collaterally estop Keller from bringing the present action.

Under the doctrine of collateral estoppel, also known as issue preclusion, an issue of ultimate fact that was determined by a valid and final judgment cannot be litigated again between the same parties or their privities in any future lawsuit. *Amanda C. v. Case*, 275 Neb. 757, 749 N.W.2d 429 (2008). Collateral estoppel is applicable where (1) an identical issue was decided in a prior action, (2) the prior action resulted in a judgment on the merits which was final, (3) the party against whom the doctrine is to be applied was a party or was in privity with a party to the prior action, and (4) there was an opportunity to fully and fairly litigate the issue in the prior action. *Id.*

We first must determine whether the issue before the court in the present case is identical to the issue decided in the 1972 action. In the 1972 action, the plaintiffs sought damages for the loss of lateral support as a direct and proximate result of the quarrying operations going on at the time. They sought other damages as well. In the present case, Keller seeks a mandatory injunction based on erosion of its land that has taken place over a period of years after the quarrying operation ceased and has caused loss of lateral support. Such erosion is due to the prior quarrying operations altering the natural surface and the associated drainage ways of the land.

For the purposes of applying the doctrine of collateral estoppel, an issue is considered to be the "identical issue" in the absence of a significant factual change. *Stewart v. Hechtman*, 254 Neb. 992, 581 N.W.2d 416 (1998). We determine, as the trial court did, that there is a significant factual change between the issue decided in 1972 and the issue and relief requested in the present litigation. In 1972, the loss of lateral support was directly caused by the quarrying operations going on at the time. In the present case, the loss of lateral support was caused by a change in natural drainageways resulting in continual erosion on Keller's property. Further, the areas of

erosion on Keller's property that are at issue in the instant case were not present at the time of the lawsuit in 1972. The erosion did not cross the Keller's property boundary until 2004, 32 years after Keller's predecessor's action. Thus, the present cause of action to provide lateral support was not enforceable until 2004 when the erosion began on Keller's property. Although the relief sought in both actions makes reference to lateral support, there is a significant change in facts from the 1972 action such that the issues in the two actions are not identical. This precludes the application of collateral estoppel. As such, we find that the trial court did not err in rejecting collateral estoppel as a defense. This assigned error is without merit.

5. MANDATORY INJUNCTION

Finally, Gearhart asserts that the trial court erred in ordering a mandatory injunction in favor of Keller, requiring Gearhart to reestablish lateral support to Keller's property. We find no merit to this assertion.

Nebraska has long recognized a cause of action for the loss of lateral support to one's land. The right of lateral support for land in its natural condition is a mutual and reciprocal right between the adjoining owners, which is not dependent on any question of care or negligence. *McKamy v. Bonanza Sirloin Pit, Inc.*, 195 Neb. 325, 237 N.W.2d 865 (1976). A landowner who excavates close to the boundary line owes the nondelegable duty to prevent injury to adjacent lands from the removal of lateral support. *Id.* Stated differently, an excavating owner is liable, irrespective of negligence, for damages caused by depriving of lateral support adjoining land in its natural state, even though an independent contractor performed the work, if the damage was a necessary consequence of the excavation. *Crnkovich v. Scaletta*, 203 Neb. 22, 277 N.W.2d 416 (1979). For a landowner claiming the loss of lateral support to prevail, he or she has the burden of establishing that his or her land was in its natural state and that a removal of lateral support had caused damage to it. *McKamy v. Bonanza Sirloin Pit, Inc.*, *supra*.

The evidence shows that Keller's land was in its natural state and condition prior to the commencement of quarrying activities. The record contains the opinion of a civil engineer, who stated that prior to any excavation, the area was "very typical of the alternating drainageways and ridges caused by erosion of the loess soils that overlay the glacial deposits and bedrock that has occurred since the Pleistocene age." The parties agreed to this opinion in the stipulated facts submitted to the trial court. Further, a geotechnical engineer indicated that the property in question was in its natural state and condition prior to the quarrying operation and associated excavation. The parties also stipulated that prior to any quarrying activities, both parties' land was typical for the area in that the land had alternating drainageways and ridges caused by erosion of the loess soils.

The evidence also shows that decedent's removal of lateral support caused damage to Keller's property. A quarrying operation took place on decedent's land for a number of years, and large amounts of earth and limestone rock were removed, disturbed, and displaced from decedent's land during that time. The removal of soils during the quarrying operations altered the natural surface and the associated drainageways. The alterations that were made on decedent's land did not account for adequate means for surface drainage from the higher elevation of Keller's land to the lower elevation of decedent's land, resulting in a steep cliff. Soil erosion began and has continued to occur on decedent's property, resulting in the cliff moving toward

and onto Keller's land. By 2004, the erosion crossed the boundary line between the two properties and entered Keller's land, thereby damaging Keller's property. The removal of lateral support will continue to damage Keller's property if nothing is done.

Based on the evidence before us, we conclude that the trial court did not err in ordering a mandatory injunction on behalf of Keller, requiring Gearhart to reestablish lateral support to Keller's property. Gearhart's assignment of error is without merit.

V. CONCLUSION

We conclude that the trial court did not err in denying Gearhart's motion to dismiss on the basis that Keller failed to file a claim against decedent's estate or in rejecting Gearhart's defenses at trial which included Keller's failure to file a probate claim against the estate, laches, unclean hands, and collateral estoppel. Further, the trial court did not err in granting Keller a mandatory injunction directing Gearhart to provide lateral support to Keller's land. Accordingly, the judgment of the district court is affirmed.

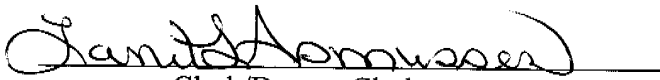
AFFIRMED.

THE STATE OF NEBRASKA, ss.

I hereby certify that I have compared the foregoing copy of an opinion filed by this Court with the original on file in my office and that the same is a correct copy of the original.

IN TESTIMONY WHEREOF, I have hereunto set my hand and caused to be affixed the Seal of this Court, in the City of Lincoln.




Clerk/Deputy Clerk

COURT OF APPEALS NO.	A-10-0583
TRIAL TRIBUNAL NO.	CI08-1629
DATE OPINION FILED	May 10, 2011
DATE OPINION CERTIFIED	May 10, 2011

Date: June 14, 2011

NEBRASKA COURT OF APPEALS MANDATE

To: Sarpy County District Court, Nebraska

WHEREAS, in a late action in your court, captioned:

Keller, L.L.C. v. Gearhart

you rendered judgment.

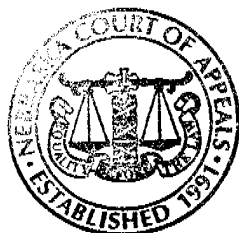
And, WHEREAS, defendant Joan Gearhart, Personal Representative of the Estate of James Iske, prosecuted an appeal to this court.

ON CONSIDERATION WHEREOF, the judgment which you rendered has been affirmed by the Court of Appeals.

NOW, THEREFORE, you shall, without delay, proceed to enter judgment in conformity with the judgment and opinion of this court.

Costs of this appeal are to be paid by appellant and are taxed at \$125.00.

WITNESS the Honorable Everett O. Inbody, Chief Judge, and the seal of this court.



Lanet S. Asmussen
Clerk, Court of Appeals

Jan Culver
Deputy Clerk

Court of Appeals No.

A-10-000583

Trial Tribunal No.

CI08-1629

Date Opinion Issued

05/10/11

COSTS IN THE COURT OF APPEALS

Cost Due Clerk, Court of Appeals	\$	-0-
Paid by District Court Clerk	\$	50.00
Automation Fee Paid	\$	8.00
Uniform Data Analysis Fee Paid	\$	1.00
Dispute Resolution Fee Paid	\$.75
Docket/Judges Retirement Fee Paid	\$	50.00
NSC Education Fee Paid	\$	1.00
Indigent Defense Fee Paid	\$	3.00
Judges Retirement Fee Paid	\$	6.00
Legal Services Fee Paid	\$	5.25

Total Cost \$ 125.00



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IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, L.L.C.
a Limited Liability Company,

Plaintiff

vs.

JOAN GEARHART,
Personal Representative of
the Estate of James Iske

Defendant

CI08-1629

AFFIDAVIT

FILED
SARPY COUNTY
DISTRICT COURT
2012 MAY 10 AM 10:54
J. L. GEARHART

STATE OF NEBRASKA)
)ss.
COUNTY OF CASS)

The undersigned being first duly sworn on oath, deposes and states as follows:

1. Affiant's name is Robert Keller, I am over eighteen years of age and of sound mind.

2. Affiant herein states that he is one of the managing members of the Plaintiff herein, Keller L.L.C.

3. Affiant further states that this Court entered its Order dated May 13, 2010 in this matter, which Order was appealed to the Nebraska Court of Appeals and on June 14, 2011 said Court affirmed this Court's Order of a mandatory injunction against this Defendant, to wit:

"WHEREFORE IT IS ORDERED, ADJUDGED AND DECREED by this Court that a mandatory injunction is to issue on behalf of the Plaintiff, requiring the Defendant to re-establish lateral support to the two areas of the Plaintiff's property wherein the support has failed and encroached upon Plaintiff's land."



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4. Affiant further states that he is familiar with the property adjoining the Defendant's property and areas deprived of the lateral support and holes have not been filled and lateral support is lacking.

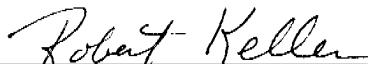
5. Affiant further states that an agent contractor of the Defendant has made some attempt to satisfy the Order requiring the re-establishment of the lateral support but that further efforts to complete the work have ceased and it appears to the Affiant that no further attempts to comply with this Court's Order are being made by the Defendant or her agents.

6. Affiant further states that Plaintiff has allowed complete access over and across the Plaintiff's property as necessary for any contractor of the Defendant.

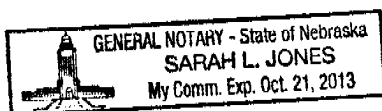
7. Affiant further states that the lack of lateral support from the Defendant is a continuous and ongoing harm to the property of the Plaintiff.

8. Affiant further states that the failure and refusal on the part of the Defendant to comply with the Order to re-establish later support is willful and contumacious violation of this Court's Order.

FURTHER AFFIANT SAYETH NOT.


Robert Keller

SUBSCRIBED and sworn to before me this 8th day of May, 2012.




NOTARY PUBLIC

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, L.L.C.,
A Limited Liability Company,

Plaintiff,

vs.

JOAN GEARHART,
Personal Representative of the
Estate of JAMES ISKE,

Defendant.

CASE NO CI08 - 1629

MOTION

FILED
SARPY COUNTY
DISTRICT COURT
2012 MAY 31 AM 9:55
Clerk of District Court

COMES NOW the Defendant, Joan Gearhart, Personal Representative of the Estate of James Iske, by and through her attorney, Thomas J. Garvey, and moves the Court for Order satisfying the injunction judgment in the above captioned matter for the reason that, with the consent and knowledge and direction of the engineer of the Plaintiff, the Defendant has abided by the Order in restoring the lateral support for the real estate in question as well as can be achieved under the circumstances.

JOAN GEARHART, Personal Representative of
the Estate of James Iske, Defendant,

By:

Thomas J. Garvey
Thomas J. Garvey #11448
101 W Mission Ave
Bellevue, NE 68005
(402) 291-8900
Attorney for Defendant

NOTICE OF HEARING

TO: KELLER, LLC, Plaintiff and their attorney, William Reinsch:

You are hereby notified that the above Motion will be called up for hearing on the 2nd day of July, 2012, at 4:00 a.m./p.m., before the Honorable William Zastera, in the District Court of Sarpy County, Nebraska.



000297933D59

Thomas J. Garvey

CERTIFICATE OF SERVICE

This is to certify that I mailed a copy of the above Motion to William R. Reinsch, 545 Main Street, P. O. Box 489, Plattsmouth, NE 68048, in the U.S. Mail, postage prepaid, this 31 day of June, 2012.

Thomas J. Jolley

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, L.L.C.,
a Limited Liability Company,

Plaintiff,

vs.

JOAN GEARHART,
Personal Representative of
the Estate of James Iske,

Defendant.

CASE NO CI 08 - 1629

MOTION

FILED
SARPY COUNTY
DISTRICT COURT
2012 AUG 28 AM 8:27
CLERK DISTRICT COURT

COMES NOW the Defendant, Joan Gearhart, by and through her attorney, Thomas J. Garvey, and moves the Court for an Order Continuing the Show Cause hearing and the Court's decision on the Plaintiff's Show Cause and the Defendant's Motion for Satisfaction of Judgment until the end of October, 2012, in order to allow the parties to resolve the matter to abide by the Court's decision and to minimize the potential destruction of the Plaintiff's crops currently in the fields.

JOAN GEARHART, Defendant,

By: Thomas J. Garvey
Thomas J. Garvey #11448
101 W. Mission Ave.
Bellevue, NE 68005
(402) 291-8900
Attorney for Defendant

NOTICE OF HEARING

TO: KELLER L.L.C., a Limited Liability Company, Plaintiff and their attorney, William R. Reinsch:

✓ You are hereby notified that the above Motion will be called up for hearing on the 17th day of September, 2012, at 1:30 p.m., before the Honorable William Zastera, in the District Court of Sarpy County, Nebraska.

Thomas J. Garvey



CERTIFICATE OF SERVICE

This is to certify that I mailed a true and correct copy of the above Motion to William R. Reinsch, 545 Main Street, Plattsmouth, NE 68048, in the U.S. Mail, postage prepaid, this 27 day of August, 2012.

Shirley J. Gandy

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, L.L.C.,
a Limited Liability Company,

Plaintiff,

vs.

JOAN GEARHART,
Personal Representative of
the Estate of James Iske,

Defendant.

CASE NO CI 08 - 1629

AFFIDAVIT TO SHOW CAUSE

FILED
SARPY COUNTY
DISTRICT COURT
2012 OCT 11 AM 9:45

STATE OF NEBRASKA)

)ss

COUNTY OF SARPY)

Joan Gearhart, being first duly sworn on oath, deposes and states as follows:

1. The Affiant is the Defendant and Personal Representative of the Estate of James Iske in the above captioned matter.
2. That pursuant to the Court Order, the Defendant was ordered to remedy an erosion problem at the southern boundary of the Plaintiff's property abutting the Defendant, James Iske Estate property, located in Sarpy County, Nebraska.
3. That the Plaintiff was instructed by the Court to assist with allowing the Defendant to remedy the erosion problem and Defendant was also guaranteed assistance by the attorney for the Plaintiff.
4. That on or about the 9th day of October, 2012, the soy beans on the Plaintiff's property in question was harvested except for 2 or 3 rows of soy beans abutting the area where the erosion construction-berm was to be conducted constructively preventing Defendant access to the area in question and precluding the Defendant from abiding by the Court Order.

Further Affiant Saith Not.

Joan Gearhart
Joan Gearhart

SUBSCRIBED and sworn to before me this 10 day of October, 2012.

JACQUELINE G. MCGINNIS
GENERAL NOTARIAL
SEAL
STATE OF NEBRASKA
Commission Expires
July 9, 2014

Jacqueline G. McGinnis
Notary Public

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER L.L.C.,)	CASE NO CI 08 - 1629
a Limited Liability Company,)	
)	
Plaintiff,)	
)	
vs.)	MOTION TO DISMISS SHOW CAUSE
)	
JOAN GEARHART,)	
Personal Representative of)	
the Estate of James Iske,)	
)	
Defendant.)	

COMES NOW the Defendant, Joan Gearhart, by her attorney, Thomas J. Garvey, and moves the Court for an order dismissing the show cause hearing, without prejudice, now set for October 22, 2012 and/or October 29, 2012, in the above captioned matter, for the reason that the parties have reconciled their difficulties.

WHEREFORE Defendant prays for an order of this Court dismissing the show cause hearing, without prejudice, now set for October 22, 2012 and/or October 29, 2012.

JOAN GEARHART, Personal
Representative of the Estate
of James Iske, Defendant,

By: /s/Thomas J. Garvey
Thomas J. Garvey #11448
101 W Mission Ave
Bellevue, NE 68005
(402) 291-8900
Attorney for Defendant

CERTIFICATE OF SERVICE

This is to certify that I mailed a copy of the above Motion to William Reinsch, 545 Main St, P O Box 489, Plattsmouth, NE 68048, in the U S Mail, postage prepaid, on this 17th day of October, 2012.

/s/ Thomas J. Garvey

Trial Docket

Page 4

CASE SUMMARY

DISTRICT COURT - SARPY COUNTY NEBRASKA

CASE NUMBER

DOC. CI 08 PAGE 1629

PLAINTIFF-PETITIONER

KELLER, LLC
A LIMITED LIABILITY COMPANY

V.

DEFENDANT-RESPONDENT

JOHN GEARHART, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JAMES ISKE

ATTORNEYS

WILLIAM R. REINSCH

TOM GARVEY

INITIAL INFORMATION

PROGRESSION SUMMARY

DATE FILED September 11, 2008

ANSWER DAY - DEFENDANT

JUDGE ASSIGNED Zastera

INITIAL CONFERENCE

TYPE OF CASE

DISCOVERY TO BE COMPLETED

MISCELLANEOUS CIVIL

PRETRIAL CONFERENCE

READY FOR TRIAL

TRIAL DATE

SUBMITTED TO COURT

FINAL DECISION

DATE

JAN A.D. 2013

4/9/13

By agreement of Counsel, matter continued for full hearing on purge plan and contempt to APRIL 23, 2013 at the hour of 1:30 p.m. in District Courtroom #5.

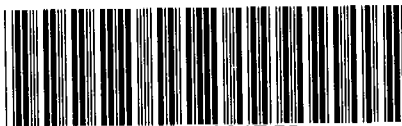
, Judge

000342024D59

4/23/13

Plaintiff appears with Counsel, Mr. Wm. Reinsch, Defendant appears with Counsel, Mr. Tom Garvey. Evidence received. Record left open for purposes of obtaining core sample report and the Court's inspection of the property. Matter taken under advisement.

, Judge



000344391D59

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

**KELLER, LLC., a Limited
Liability Company**

Plaintiffs,

vs.

**JOHN GEARHART, Personal
Representative for the Estate of
JAMES ISKE**

Defendants.

DOC. CI08 PAGE 1629

ORDER

FILED
SARPY COUNTY
DISTRICT COURT
2013 MAY 24 AM 9:42
Clerk District Court

This matter was before this Court on the Application of the Plaintiff to hold the Defendant in Contempt for failure to comply with the Order of this Court, requiring the Defendant to re-establish lateral support to the Plaintiff's property.

Plaintiff appeared with Counsel, Mr. William Reinsch, Defendant appeared with Counsel, Mr. Tom Garvey, evidence was received on April 23, 2013, with the Court viewing the property on May 17, 2013, and by agreement receiving Exhibits ~~73~~ & ~~74~~.

After review of the evidence, it is the opinion of this Court that except for one item, lateral support has been re-established, this being the installment of a 5-ft. beam extending south from the property line.

This being said, the Court finds the Iske Estate to be in contempt, and shall determine that it may purge itself by within 180 days of the date of this Order, install the beam as required.

Should the Defendant fail to perform such function, a fine of \$100.00 per day shall be imposed upon the Estate until completion.

IT SO ORDERED.

Dated this 24th day of May, 2013.

By the Court

William B. Zastera, District Judge



Trial Docket

Page 4

CASE SUMMARY

DISTRICT COURT - SARPY COUNTY NEBRASKA

CASE NUMBER

DOC. CI 08 PAGE 1629

PLAINTIFF-PETITIONER

KELLER, LLC
A LIMITED LIABILITY COMPANY

V.

DEFENDANT-RESPONDENT

JOHN GEARHART, PERSONAL
REPRESENTATIVE OF THE ESTATE OF
JAMES ISKE

ATTORNEYS

WILLIAM R. REINSCH

TOM GARVEY

INITIAL INFORMATION

PROGRESSION SUMMARY

DATE FILED September 11, 2008

ANSWER DAY - DEFENDANT

JUDGE ASSIGNED Zastera

INITIAL CONFERENCE

TYPE OF CASE

DISCOVERY TO BE COMPLETED

MISCELLANEOUS CIVIL

PRETRIAL CONFERENCE

READY FOR TRIAL

TRIAL DATE

SUBMITTED TO COURT

FINAL DECISION

DATE

JAN A.D. 2013

4/9/13

By agreement of Counsel, matter continued for full hearing on purge plan and contempt to **APRIL 23, 2013** at the hour of 1:30 p.m. in District Courtroom #5.

, Judge

4/23/13

Plaintiff appears with Counsel, Mr. Wm. Reinsch, Defendant appears with Counsel, Mr. Tom Garvey. Evidence received. Record left open for purposes of obtaining core sample report and the Court's inspection of the property. Matter taken under advisement.

, Judge

000344391D59

5/24/13

Order signed and entered. Bailiff to mail copy of Order to Counsel.

, Judge

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, LLC

Plaintiffs,

vs.

**JOHN GEARHART,
Personal Representative of
THE ESTATE OF JAMES ISKE**

Defendants.

DOC. CI08 PAGE 1629

ORDER

FILED
SARPY COUNTY
DISTRICT COURT
2013 JUL 30 PM 4:31
Clerk District Court

The Court having taken under advisement on the 24th day of June, 2013, the request for fees in the contempt action, filed heretofore by Plaintiff's Counsel.

The Court having considering the same, and the Defendant having been found in contempt, allows fees to Plaintiff's Counsel in the amount of \$10,360.00, plus \$168.03 in costs.

IT IS SO ORDERED.

Dated this 30th day of July, 2013

By the Court

William B. Zastera, District Judge



✓

✓

Title: KELLER, LLC, A LIMITED LIABILITY COMPANY v. JOHN GEARHART, PERSONAL, REPRESENTATIVE

DATE

JUDGE'S MINUTES

JAN A.D. 2013

6/24/2013

Plaintiff appears with counsel, William Reinsch and Defendant appears with counsel, Thomas Garvey, on several motions. Arguments made. Matter taken under advisement.

Judge

7/24/13

The Court having taken under advisement the Motion to Compel Entry, finds the same should be and is hereby denied. The Court's original finding and Order to remain in full force and effect. Bailiff to mail copy of entry to Counsel.

Judge

000357245D59

7/30/13 Order signed and entered. Bailiff to mail copy of Order to Counsel.

Judge

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, L.L.C.,
a Limited Liability Company,

Plaintiff,

vs.

JOAN GEARHART,
Personal Representative of the Estate of
JAMES ISKE,

Defendant.

CASE NO. CI 08 - 1629

ORDER

FILED
SARPY COUNTY
DISTRICT COURT
Clerk District Court

2014 MAR -5 PM 4:33

THIS MATTER comes before the Court on Defendant's Motion for satisfaction of the judgment entered herein and the Court, being fully advised in the premises, finds that said Motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant is found to have satisfied the judgment entered the 13th day of May, 2010, in the above captioned matter, requiring it to reestablish lateral support.

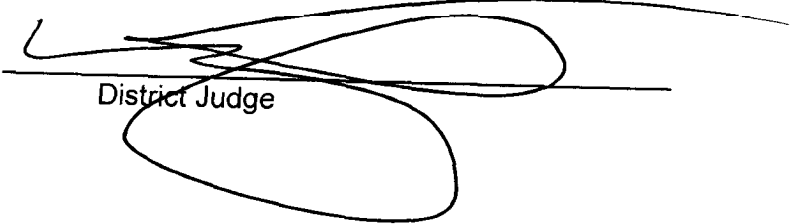
IT IS FURTHER ORDERED that Plaintiff forthwith satisfies or withdraws its claim in the matter of the Estate of James E Iske, in the County Court of Sarpy County, Nebraska.

IT IS FURTHER ORDERED that Defendant is found to have purged herself from the Order of May 24, 2013 and the same show cause action be and is hereby dismissed.

IT IS FURTHER ORDERED that each party shall pay their own costs and attorney fees.

Signed this 4th day of March, 2014.

BY THE COURT:


District Judge

Prepared & Submitted by:

Thomas J Garvey #11448
Attorney for the Defendant
101 W Mission Avenue
Bellevue NE 68005
(402) 291-8900



000387071D59

Title: KELLER LLC, A LIMITED LIABILITY COMPANY v. JOAN GEARHART, PERSONAL REPRESENTATIVE
DATE JUDGE'S MINUTES

JAN A.D. 2013

2/10/14

✓ By agreement of counsel matter continued to
May 5, 2014 at 3:30 p.m.

, Judge

3/3/14

✓ Plaintiff appears by Counsel Mr. Wm. Reinsch, Defendant appears with
Counsel, Mr. Tom Garvey, on Motion for Satisfaction of Judgment, and
attorney's fees. Arguments made. Matter taken under advisement.

, Judge

3/4/14

Order for Satisfaction of Judgment signed and entered. Bailiff to mail copy
of entry to Counsel.

, Judge

IN THE DISTRICT COURT OF SARPY COUNTY, NEBRASKA

KELLER, LLC,
Plaintiffs,

Vs.

JOHN GEARHART,
Personal Representative of
THE ESTATE OF JAMES ISKE,
Defendants.

CI08-1629

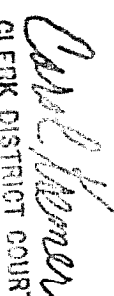
RECEIPT

The undersigned hereby receipts for payment of the attorney fees in the amount of \$10,360.00 and costs advanced in the amount of \$168.03 in said matter.

Dated this 10 day of March, 2014.

REINSCH, SLATTERY, BEAR & MINAHAN,
P.C., L.L.O.

By: 

FILED
SARPY COUNTY
DISTRICT COURT
2014 MAR 11 PM 1:50

CLERK DISTRICT COURT



Title: KELLER LLC, A LIMITED LIABILITY COMPANY v. JOAN GEARHART, PERSONAL REPRESENTATIVE
DATE JUDGE'S MINUTES2014
JAN A.D. 2013

2/10/14

✓ By agreement of counsel matter continued to
May 5, 2014 at 3:30 p.m.

, Judge

3/3/14

✓ Plaintiff appears by Counsel Mr. Wm. Reinsch, Defendant appears with
Counsel, Mr. Tom Garvey, on Motion for Satisfaction of Judgment, and
attorney's fees. Arguments made. Matter taken under advisement.

, Judge

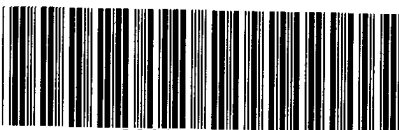
3/4/14

X Order for Satisfaction of Judgment signed and entered. Bailiff to mail copy
of entry to Counsel.

, Judge

5/5/14

✓ No matter pending, file ordered closed.



000393024D59

, Judge