

BOISE, WEDNESDAY, AUGUST 17 AT 8:50 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

DONNELLY PREHN and DWIGHT)	
BANDAK,)	
)	
Plaintiff-Respondents,)	
)	Docket No. 42465
v.)	
)	
THE SOURCE STORE, LLC; THE)	
SOURCE, LLC; MICHAEL L. HODGE II,)	
GEORGE M. BROWN; and)	
CHRISTOPHER CLAIBORNE,)	
)	
Defendants-Appellants.)	
)	

Appeal from the District Court of the Fourth Judicial District of the State of Idaho, Ada County. Hon. Patrick H. Owen, District Judge.

Davison, Copple, Copple & Copple, Boise, for appellants.

Smith Horras, P.A., Boise, for respondents.

In an appeal out of Ada County, the Source Store LLC (“Source 1”), Michael L. Hodge, George M. Brown, and Christopher Brown (collectively “Appellants”) appeal the district court’s finding that Hodge breached his fiduciary duty to Source 1 and its members and the district court’s decision not to hear Appellant’s Joint Motion to Dismiss the derivative claims of Donnelly Prehn and Dwight Bandak (collectively “Respondents”) on behalf of Source 1. Appellants argue that: (1) the district court erred in refusing to hear its Joint Motion to Dismiss; (2) if the district court correctly refused to hear the Appellant’s Joint Motion to Dismiss, the district court erred in holding that Hodge breached his fiduciary duty to Source 1 and its members; and (3) if the district court correctly refused to hear the Appellant’s Joint Motion to Dismiss, the district court erred in awarding Respondents attorney’s fees.

BOISE, WEDNESDAY, AUGUST 17, 2016 AT 10:00 A.M.

IN THE SUPREME COURT OF THE STATE OF IDAHO

**VICTORIA H. SMITH, by and through her
attorney in fact, Vernon K. Smith, by and
through his Durable and Irrevocable Power
of Attorney,**

Plaintiff-Appellant-Cross Respondent,

v.

**TREASURE VALLEY SEED COMPANY,
LLC, and DON TOLMIE, in is individual
capacity, and as owner, representative and
authorized agent of Treasure Valley Seed Co.,
LLC,**

**Defendants-Respondents-Cross
Appellants.**

Docket No. 42596

Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Richard D. Greenwood, District Judge.

Law Office of Vernon K. Smith, Boise, for appellant.

Eismann Law Offices, Nampa, for respondents.

“Victoria H. Smith, by and through her attorney, Vernon K. Smith,” appeals the Ada County district court’s award of attorney fees to Treasure Valley Seed Company, LLC (herein after known as TVC) and Don Tolmie. Smith argues the district court abused its discretion because it did not enter proper written findings in support of the award pursuant to Idaho Code 12-121 and I.R.C.P. 54(e)(2). Smith also argues that the district court abused its discretion when it found that his claim was unreasonable and without foundation because: (1) a misperception of law is not unreasonable conduct, and (2) an award cannot be made if any legitimate issue is present. TVS maintains that the district court did not abuse its discretion in awarding attorney’s fees. TVS requests that the Court accept a transcript of the hearing on the memorandum of costs in lieu of written findings. TVS argues that the transcript clearly shows the basis of the district court’s decision and reasoning which is the purpose of the rule requiring written findings. Alternatively, TVC requests this Court to remand the case back to the district court to enter written findings. TVC further asserts that the district court correctly granted fees because Smith’s action was unreasonable and without foundation because it was not warranted by existing law. TVC requests attorney’s fees on the appeal pursuant to Idaho Code section 12-121 and I.R.C.P. 54(e)(2) and that the fees be assessed against counsel.