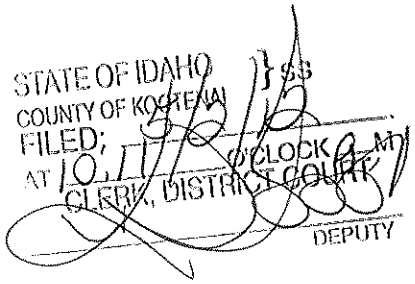

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

CAMP EASTON FOREVER, INC., an Idaho non-profit corporation; DANIEL EDWARDS, a minor, by and through, DANIEL EDWARDS' PARENT, as Guardian ad Litem; MATTHEW EDWARDS, a minor and through MATTHEW EDWARDS' PARENT, as Guardian ad Litem, SHIKAR SAFARI CLUB INTERNATIONAL FOUNDATION, EARL C. LUNCEFORD, J.R., in his capacity of Director of Shikar Safari Club International Foundation, DOES I thru 20, whose true names are unknown, Plaintiffs, v. INLAND NORTHWEST COUNCIL BOY SCOUTS OF AMERICA, a Washington non-profit corporation, and INLAND NORTHWEST COUNCIL ENDOWMENT PROPERTIES, LLC, Washington Limited Liability Company, Defendants.	**CASE NO. CV-2011-7873** MEMORANDUM DECISION AND ORDER RE: PLAINTIFFS' MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Scott W. Reed and Kathleen Landgraf Kolts, ATTORNEYS AT LAW, and Jeffery J. Crandall and April Marie Linscott, OWENS & CRANDALL, for Plaintiffs.

Michael Ramsden and Theron De Smet, RAMSDEN & LYONS, LLP, for Defendants.

I. FINDINGS OF FACT

This case involves the potential trade and/or sale of 421.65 acres, including 3,300 of frontage, currently known as Camp Easton, located in Gotham Bay, on Lake Coeur d'Alene, Kootenai County, Idaho. The property is currently owned by the Defendant Inland Northwest Council Endowment Properties, LLC, a holding company for the Defendant Inland Northwest Council of the Boy Scouts of America ("INCBSA"), a Washington non-profit corporation.

The Plaintiff Camp Easton Forever, Inc., is a "non-profit Idaho corporation created for the purpose of opposing the proposed sale of the Boy Scouts of America Camp Easton property . . . ." (Amended Complaint, p.2, ¶ 1.) The group consists of persons who have participated in the Boy Scouts of America in varying capacities, and/or have donated to the INCBSA. (Id. at 2, ¶¶ 2-3.) Daniel Edwards and Matthew Edwards are members of the Boy Scouts of America and have attended camps at Camp Easton. (Id. at 3, ¶¶ 4-5.) The Plaintiffs Shikar Safari Club International Foundation and its director Earl K. Lunceford, Jr. ("Shikar Safari Club") have made monetary donations to the INCBSA. (Id. at p.3, ¶¶ 6-8.)

According to the information presented by the parties, Camp Easton originated as the result of a land transfer on August 5, 1929, between F.W. Fitze and Lumire Fitze ("Fitze") and the Defendants' predecessor in interest, the Idaho Panhandle Council, Boy Scouts of America ("IPC"). (Exhibit A, Affidavit of Tim McCandless; Exhibit 2, Affidavit of

Paul N. Nemeck). According to the "Indenture" ("Deed") of that date, Fitze sold for ""the sum of one dollar and other valuable consideration" to IPC the following real property:

> *Lots 5 and 6 ad (sic) the south west quarter of the southeast quarter of Section 7, Township 49 North, Range 3 West Boise meridian, containing 132.60 acres more or less according to the Government Survey.*[1]

(Id.) Notably, the Deed states that the Fitze's "do grant, bargain, sell remise, release, alienate and confirm unto [IPC], and to his successors and assigns forever." (Id.) The Deed also states: "This property is donated and given to the Idaho Panhandle Council, Boy Scouts of America by F.W. Fitze and Lumira Fitze, his wife, for the use of the Boy Scouts of America." (Id.)

Since the transfer was completed in 1929, the IPC and INCBSA have used Camp Easton as a camp for the Boy Scouts of America members and INCBSA and IPC organizations have accepted monetary and additional land donations used to expand and improve Camp Easton. (Affidavit of Paul Nemeck.) Important to this present action, the Shikar Safari Club International Foundation, through its Director Earl C. Lunceford, Jr. donated a total of $45,000 as per a grant application to INCBSA in 2010 and 2011 for improvement of the Camp Easton archery and firing range. (Amended Complaint, p.7, ¶¶ 22-24.)

On November 29, 2011, the Plaintiffs filed an Amended Complaint and Class Action with this Court, asserting the following claims: 1) Constructive Trust, 2) Equitable Estopple/Waiver, 3) Declaratory Judgment, 4) Permanent Injunction, 5) Unjust Enrichment (Shikar Safari Club and Earl Lunceford only), 6) Fraud (Shikar Safari Club

[1] The property transferred by Fitze to IPC amounts to a portion (132.60 acres) of what is now Camp Easton (471.65). Camp Easton was expanded by additional land transfers, and based on the information provided by the parties in the affidavits, none of the deeds transferring the additional properties include language creating an express trust.

and Earl Lunceford only), and 7) Creation of Charitable Trust as a Matter of Law. The Plaintiffs seek a judgment that Camp Easton is held in charitable trust or a constructive trust, an injunction stopping the sale or transfer of Camp Easton, an order "estopping defendants under the circumstances alleged from negotiating the purchase and sale of Camp Easton," a determination that the Defendants Daniel Edwards and Matthew Edwards are representatives of a class, a determination that Camp Easton may only be used perpetually as a camp for boys, and money damages and restitution (Shikar Safari Club and Earl Lunceford only).

The Plaintiffs moved for partial summary judgment on March 12, 2012, seeking a determination on the claims of charitable trust and constructive trust only. The Defendants moved for summary judgment on all claims on March 20, 2012. Both parties supported their motions with affidavits and exhibits. The parties' cross-motions for summary judgment came before this Court on April 11, 2012 for oral argument. After hearing from both of the parties, this Court took the matter under advisement and now issues this decision.

II. LEGAL STANDARD

Idaho Rule of Civil Procedure 56(c) provides for summary judgment where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, based on the "pleadings, depositions, and admissions on file, together with any affidavits." Zumwalt v. Stephan, Balleisen & Slavin, 113 Idaho 822, 748 P.2d 405 (Ct. App. 1987). Once the moving party has properly supported the motion for summary judgment, the non-moving party must come forward with evidence which contradicts the evidence submitted by the moving party and which establishes the

existence of a material issue of disputed fact. Zehm v. Associated Logging Contractors, Inc., 116 Idaho 349, 775 P.2d 1191 (1988). "If the adverse party desires to serve opposing affidavits the party must do so at least 14 days prior to the date of the hearing. The adverse party shall also serve an answering brief at least (14) days prior to the date of the hearing." I.R.C.P. 56(c). If the record contains conflicting inferences or if reasonable minds might reach different conclusions, a summary judgment must be denied. Roell v. City of Boise, 130 Idaho 197, 938 P.2d 1237 (1997); Bonz v. Sudweeks, 119 Idaho 539, 808 P.2d 876 (1991).

Idaho Code § 10-1201 allows this Court to declare the "rights, status or other legal relations" of persons, and the declaration "may be either positive or negative in form and effect." The declaration shall have the same effect as a final judgment or decree. I.C. § 10-1201. A court "may refuse to enter a judgment or decree, where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." I.C. § 10-1206. The "purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations, and is to be liberally construed and administered. I.C. § 10-1212.

III. ANALYSIS

A. The Plaintiffs Camp Easton Forever, Inc. and Daniel Edwards and Matthew Edwards Lack Standing to Bring this Action

1. Camp Easton Forever, Inc. Lacks a Legally Recognizable Interest

In order to possess standing, either the organization or its members must face "immediate or threatened injury as a result of the challenged action of the sort that would make out a justiciable case had the members themselves brought suit." Selkirk-Priest Basin Ass'n, Inc. v. State ex rel. Batt, 128 Idaho 831, 833-34, 919 P.2d 1032,

1034-35 (1996) (internal citations omitted). The injury must be distinct and palpable and not be one suffered alike by all citizens in the jurisdiction. Miles v. Idaho Power Co., 116 Idaho 635, 641, 778 P.2d 737, 763; *see also,* Student Loan Fund v. Payette County, 125 Idaho 824, 828, 875 P.2d 236, 240 (Ct.App.1994) (stating that "an interest, as a concerned citizen, in seeing that the government abides by the law does not confer standing") and Boundary Backpackers v. Boundary County, 128 Idaho 371, 913 P.2d 1141 (1996).

A review of the pleadings shows that Camp Easton Forever, Inc.'s alleged injury, the sale and/or trade of Camp Easton, is at best a generalized grievance. Camp Easton Forever, Inc.'s affidavits do not establish a peculiar or personal injury that is different than that suffered by any other member of the INCBSA, adjacent property owners, and former donors to the INCBSA, if the sale or land trade is an injury at all. The affidavits indicate that particular members of the INCBSA, adjacent property owners, and donors believed that because INCBSA used Camp Easton as a camp for boy scouts since 1929, they would like the property to be used for the same purpose in perpetuity. However, this Court notes that not all the members of INCBSA are members of Camp Easton Forever, Inc. Also, not all the adjacent property owners or former donors to Camp Easton Forever, Inc. are members of Camp Easton Forever, Inc. Additionally, there is no asserted loss of money or property. Thus, there is no "distinct palpable injury" shared in substantially equal measure by all or a large class of citizens. See Miles v. Idaho Power Co., 116 Idaho at 641, 778 P.2d at 763.

Accordingly, because the only purpose for Camp Easton Forever, Inc. is to oppose the otherwise lawful sale or trade of Camp Easton (*see discussion at III.B.*

infra), and there is no distinct or palpable injury, Camp Easton Forever, Inc. lacks standing to pursue its claims. As a result, the Defendants' Motion for Summary Judgment must be granted, and the Amended Complaint as to counts 1, 2, 3, 4, and 7, must be dismissed.

2. The Plaintiffs Did Not Seek to Certify Daniel Edwards or Matthew Edwards as Representatives of a Putative Class as per I.R.C.P. 23(c)

Idaho Rule of Civil Procedure 23 governs class actions. Subsection (c)(1) requires that "as soon as practicable after the commencement of an action brought as a class action, the court shall determine by order whether it is to be so maintained." It is standard legal practice to seek certification of a putative class by motion to the court.

In this case, the Plaintiffs went to great lengths to include numerous allegations in the Amended Complaint regarding Daniel Edwards and Matthew Edwards as representatives of a putative class (Amended Complaint, pp.8-11, ¶¶ 27-30), but the Plaintiffs never sought certification of the class as per I.R.C.P. 23(c)(1). Given that this case was initiated on September 29, 2011, amended in November 2011, and the motions for summary judgment were not filed until March 2012, the Plaintiffs had ample time to seek certification of the class. However, because the Plaintiffs never sought certification, there is no putative class that has standing. As a result, Daniel Edwards and Matthew Edwards have no standing to proceed. This Court, then, must grant the Defendants' Motion for Summary Judgment and dismiss the Amended Complaint as to Daniel Edwards and Matthew Edwards for lack of standing and class certification.

B. No Charitable or Constructive Trust Exists as a Matter of Law in this Case

Even though this Court has concluded that the Plaintiffs do not have standing as to claims 1, 2, 3, 4, and 7, this Court could not grant the Plaintiffs the claimed relief as

per the Plaintiffs' Motion for Partial Summary Judgment because no constructive or charitable trust exists as a matter of law.

Regarding the Plaintiffs' assertion that the property is held in a constructive trust, this Court finds that as a matter of law, a constructive trust cannot apply to the facts of this case. The constructive trust alternative was explained recently in Taylor v. Maile:

> A constructive trust, or as frequently called an involuntary trust, is a fiction of equity, devised to the end that the equitable remedies available against a conventional fiduciary may be available under the same name and processes against one who through fraud or mistake or by any means ex maleficio acquires property of another. *Id.* at 167. *See,* also, *Gillespie v. Seymour,* 14 Kan.App.2d 563, 796 P.2d 1060, 1065 (1990) ("if the trustee fails or refuses to act, the beneficiary can sue the third party." quoting *Ehret v. Ichioka,* 247 Cal.App.2d 637, 645, 55 Cal.Rptr. 869 (1967)).

142 Idaho 253, 261, 127 P.3d 156, 164 (2005). In this case, there is no assertion or supporting fact that IPC fraudulently or mistakenly acquired Fitze's property. Thus, there is no reason to impose the equitable remedy of a constructive trust.

Regarding the Plaintiffs' claim that Camp Easton is held in a "charitable trust as a matter of law," this Court also cannot grant the Plaintiffs' any of the relief sought.

First, the Plaintiffs want this Court to look beyond the contents of the Deed to a set of minutes kept by the IPC on May 18, 1929, ("Minutes") where Fitze and IPC discussed the transfer of the property, and conclude that Minutes and Deed together show Fitze's intention to place Camp Easton in a trust for perpetuity, for the benefit of the Boy Scouts of America, to be managed by the IPC. While the law may provide for the existence of such a trust if the settlor's intent is proven by "clear and convincing evidence," (Vaughan v. First Fed. Sav. & Loan Ass'n, 85 Idaho 266, 276, 378 P.2d 820, 826, *citing* Bierau v. Bohemian Building, Loan & Savings Ass'n, 205 Md. 456, 109 A.2d 120. See 89 C.J.S. Trusts § 42a, p. 770. (1963)), this Court cannot consider the Minutes

because, as pointed out by the Defendant, the doctrine of merger bars such an exercise.

The relevant considerations of the merger doctrine as it applies to a real estate purchase agreement and deed were recently reaffirmed in Belstler v. Sheler:

> [T]he acceptance of a deed to premises generally is considered as a merger of the agreements of an antecedent contract into the terms of the deed, and any claim for relief must be based on the covenants or agreements contained in the deed, not the covenants or agreements as contained in the prior agreement. [*Jolley,* 90 Idaho at 382, 414 P.2d at 884.]
>
> However, "[t]here is a generally recognized exception to the foregoing rule which exception relates to collateral stipulations of the contract, which are not incorporated in the deed." *Id.* If a stipulation makes reference to title, possession, quantity or emblements of land it will generally be considered to inhere to the subject matter of a warranty deed, and shall be considered merged and, thus, not a collateral stipulation. *Id.* at 383, 414 P.2d at 885.

151 Idaho 819, 264 P.3d 926, 930-31 (2011), reh'g denied (Dec. 29, 2011).

In this case, Deed was executed and delivered by Fitze to IPC. Nowhere in the Deed is a trust mentioned. The plain language of the Deed is that Fitze, for consideration, transferred fee simple title to the property to IPC, and that the land was for the use of the Boy Scouts of America. This language is unambiguous, and not subject to "more than one reasonable interpretation." Pinehaven Planning Bd. v. Brooks, 138 Idaho 826, 829, 70 P.3d 664, 667 (2003). The Deed is silent as to any other agreement of the parties, and therefore any other agreement merged into the Deed. As a result, this Court cannot look to any collateral source or stipulation as evidence of the intent of the parties at the time of the transfer.

Notably, the Deed does not contain a reversion, does not create or mention a trust, trustee, or beneficiary, does not restrict further alienation of the property, and does

not otherwise restrict the use of the property. Had the parties desired to do so, then they could have included such language in the Deed.

While the Belster case identifies an exception for collateral stipulations and agreements, the Minutes presented by the Plaintiffs do not amount to a collateral stipulation between either Fitze and a third party (presumably the Boy Scouts), or IPC and a third party, as is required. Therefore, the exception identified in the Belstler case does not apply to this case.

Moreover, even if the Minutes and the Deed together show Fitze's intent to create a trust for the benefit of the Boy Scouts of America, such an agreement between Fitze and IPC violates the statute of frauds set forth in I.C. § 9-505(4):

> In the following cases the agreement is invalid, unless the same or some note or memorandum thereof, be in writing and subscribed by the party charged, or by his agent. Evidence therefore, of the agreement cannot be received without the writing or secondary evidence of its contents:
> . . . .
>
> 4. An agreement for the . . . sale, of real property, or of an interest therein, and such agreement, if made by an agent of the party sought to be charged, is invalid, unless the authority of the agent be in writing, subscribed by the party sought to be charged.

The Minutes are not signed by Fitze or IPC, but merely contain a type written name of the IPC board secretary. (Ex. 1, Aff. Nemeck.) As a result, even if this Court could review the Minutes and accept the collateral information in addition to the unambiguous Deed, the agreement would be prohibited by the statute of frauds.

This Court recognizes that the parties behaved in a certain manner in regards to the property for an extensive period of time. However, it is telling that during that same period the property could have been placed in an express trust, but neither the IPC nor the INCBSA chose to execute an express trust. Thus, even if the Plaintiffs had

standing, and even if this Court could consider the Minutes as a collateral source as to the intent of the parties, and even if the agreement did not violate the statute of frauds, this Court could not grant the Plaintiffs' Motion for Summary Judgment on the facts presented because the simple course of action would have been to place Camp Easton in an express trust. On the other hand, given the legal bars presented by the Defendants (doctrine of merger, statute of frauds) and the unambiguous language of the Deed, this Court must grant the Defendants' Motion for Summary Judgment and dismiss the Plaintiffs' claims.

C. Shikar Safari Club's Unjust Enrichment Claim is Barred

Recently in the case of Stevenson v. Windermere Real Estate/Capital Group, Inc., 38121, 2012 WL 987522 (Idaho Mar. 22, 2012), the Idaho Supreme Court reiterated the standard for an unjust enrichment claim:

> Unjust enrichment exists where "(1) there was a benefit conferred upon the defendant by the plaintiff; (2) appreciation by the defendant of such benefit; and (3) acceptance of the benefit under circumstances that would be inequitable for the defendant to retain the benefit without payment to the plaintiff for the value thereof." *Vanderford Co., Inc. v. Knudson,* 144 Idaho 547, 558, 165 P.3d 261, 272 (2007) (citing *Aberdeen–Springfield Canal Co. v. Peiper,* 133 Idaho 82, 88, 982 P.2d 917, 923 (1999)). "The substance of an action for unjust enrichment lies in a promise, implied by law, that a party will render to the person entitled thereto that which in equity and good conscience belongs to the latter." *Smith v. Smith,* 95 Idaho 477, 484, 511 P.2d 294, 301 (1973).

In this case, Plaintiff Shikar Safari Club asserts that it donated a total of $45,000 to Camp Easton for the improvement of the archery and firing ranges, as per a grant application from Camp Easton. The donations occurred in two installments, and according to the affidavits presented, Shikar Safari Club believed that the funds would be used to improve Camp Easton in its current location.

While this Court concludes that the INCBSA accepted the funds from the Shikar Safari Club and therefore a benefit was conferred, this Court cannot conclude that there was an "appreciation" by INCBSA or "acceptance of the benefit under circumstanced that would be inequitable for the defendant to retain the benefit." This is because there is no information regarding whether the archery and firing range at Camp Easton was improved with the funds, whether Shikar Safari Club has demanded the return of the funds under the terms of the grant, or that Camp Easton will in fact be sold or traded such that the INCBSA will not use the funds as agreed by the parties.

Moreover, as pointed out by INCBSA, equity cannot lie where there is an adequate legal remedy. Mannos v. Moss, 143 Idaho 927, 935, 155 P.3d 1166, 1174 (2007). Shikar Safari Club can demand the return of the funds and sue under the terms of the grant or allege breach of an agreement between it and INCBSA. Because there is another adequate remedy at law, Shikar Safari Club's claim for unjust enrichment cannot lie. As a result, this Court must grant the Defendants' Motion for Summary Judgment and dismiss Shikar Safari Club's unjust enrichment claim.

D. Shikar Safari Club's Fraud Claim is Not Supported

In order to recover on a claim of fraud, a plaintiff must prove nine elements:

> Nine elements must be proved to sustain an action for fraud: (1) a statement of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent to induce reliance; (6) the hearer's ignorance of the falsity of the statement; (7) reliance by the hearer; (8) the hearer's right to rely; and (9) consequent and proximate injury. *Lettunich v. Key Bank Nat'l Ass'n,* 141 Idaho 362, 368, 109 P.3d 1104, 1110 (2005). The party alleging fraud must plead with particularity the factual circumstances constituting fraud, I.R.C.P. 9(b), and ultimately each of the elements must be proven by clear and convincing evidence. *G & M Farms v. Funk Irrigation Co.,* 119 Idaho 514, 518, 808 P.2d 851, 855 (1991). Even so, "traditional I.R.C.P. 56(c) summary judgment principles and standards govern the granting of summary judgment on the issues of

> fraud and intentional misrepresentation." *Id.* To prevail on this appeal the Abells need to show that they have presented sufficient evidence to create a material issue of fact as to each element.

Country Cove Dev., Inc. v. May, 143 Idaho 595, 600, 150 P.3d 288, 293 (2006). "Fraud is never presumed. All of the essential elements thereof must be established by ... clear and convincing evidence, especially where the integrity of a written instrument is assailed." Barron v. Koenig, 80 Idaho 28, 39, 324 P.2d 388, 394 (1958).

Here the Plaintiffs provided no evidence in support of their claim on each of the elements of fraud. There is no affidavit from Shikar Safari Club or from any person involved in dispersing the funds to INCBSA. Instead, the Plaintiffs have made mere allegations that the INCBSA represented that the organization would use funds as per a grant application submitted to Shikar Safari Club to improve the archery and firing range. There is no evidence that this did not occur or that it will not occur. As a result, due to the lack of evidence presented by the Shikar Safari Club, this Court must grant the Defendants' Motion for Summary Judgment as per I.R.C.P. 56(e) and dismiss the claim of fraud.

IV. CONCLUSIONS

The Plaintiffs' Motion for Partial Summary Judgment is hereby DENIED. The Defendants' Motion for Summary Judgment is hereby GRANTED, and the Plaintiffs' Amended Complaint and Class Action is hereby DISMISSED with prejudice.

DATED this 2nd day of May, 2012.

John Patrick Luster
District Judge

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MEMORANDUM DECISION AND ORDER RE: PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DEFENDANT'S MOTION FOR SUMMARY JUDGMENT was sent by U.S. Mail, postage prepaid, sent by facsimile transmission, or sent by interoffice mail on the 2nd day of May, 2012 to the following:

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