

SUPERIOR COURT
YAVAPAI COUNTY ARIZONA

2005 JUL 12 PM 3:24

JEANNE INOKS, CLERK

BY: 

1 FAVOUR MOORE & WILHELMSSEN, P.A.
Post Office Box 1391
2 Prescott, AZ 86302-1391
Ph: (928)445-2444
3 David K. Wilhelmsen, #007112
Marguerite Kirk, #018054

4 Attorneys for Plaintiffs

5 **IN THE SUPERIOR COURT OF ARIZONA**

6 **COUNTY OF YAVAPAI**

7
8 **JOHN B. CUNDIFF and BARBARA C.)**
9 **CUNDIFF, husband and wife; BECKY NASH,)**
10 **a married woman dealing with her separate)**
11 **property; KENNETH PAGE and KATHRYN)**
12 **PAGE, as Trustee of the Kenneth Page and)**
13 **Kathryn Page Trust,)**

12 Plaintiffs,)

13 vs.)

14 **DONALD COX and CATHERINE COX,)**
15 **husband and wife,)**

15 Defendants.)

Case No. CV 2003-0399

Division 1

**PLAINTIFFS' MOTION TO
COMPEL PLAINTIFFS'
PRODUCTION OF DOCUMENTS
PURSUANT TO COURT'S
JANUARY 31, 2005 AND JUNE 29,
2005 RULINGS**

16
17 Plaintiffs, John and Barbara Cundiff, Becky Nash, and, Kenneth and Katheryn Page, by and
18 through undersigned counsel, hereby moves this Court for an order pursuant to Rule 37(a),
19 Ariz.R.Civ.Proc., compelling Defendants Donald and Catherine Cox to comply with this Court's
20 rulings of January 31, 2005 and June 29, 2005 ordering Defendants to disclose complete copies of
21 all tax returns from 2000 to 2004 including the documentation used in preparation of the partnership
22 returns. Defendants, without justifiable excuse, continue to refuse or otherwise fail to disclose the
23 records used in preparation of the partnership returns as ordered by this Court. Plaintiffs' further
24 request an award of attorney's fees and costs incurred in bringing this motion, and for such other relief
25 as the Court deems just and equitable.

26 ///

DLM

1 This motion is supported by the following memorandum of points and authorities and
2 supporting documents, separate statement of undersigned counsel in compliance with Rule 37(a)(2)(C)
3 filed concurrently with this motion, as well as the entire record in this proceeding.

4 RESPECTFULLY SUBMITTED this 12th day of July, 2005.

5 FAVOUR MOORE & WILHELMSSEN, P.A.

6
7 By: Marguerite Kirk
8 David K. Wilhelmsen
Marguerite Kirk

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I. Statement of Case**

11 On September 28, 2004, Plaintiffs filed their motion to compel moving this Court for an order
12 requiring Defendants to produce complete and accurate copies of their income tax returns from 1998
13 to the present. Subsequent to the matter being fully briefed to the Court by the parties, oral argument
14 was held on January 31, 2005. At the conclusion of oral argument, the Court granted Plaintiffs'
15 motion to compel and ordered Defendants to produce their income returns with all schedules within
16 30 days of the Court's order. Plaintiffs finally received Defendants' referenced tax returns with
17 attachments in April, 2005, after once again being forced to seek Court intervention to get the records.

18 On June 29, 2005, this Court ordered Defendants to disclose complete copies of *all* partnership
19 tax returns from 2000 to 2004 including "all business and financial documents, records, or the like
20 regarding the property that is the subject of this lawsuit used in the *preparation* of the partnership
21 returns."

22 Defendants have finally complied with the Court's order to provide Plaintiffs with the federal
23 partnership tax returns with schedules. However, Defendants' counsel now makes the incredible
24 claim that "there are no financial statements and *there was no documentation* used by the accountant
25 to prepare these tax returns." See, *letter from Defendants' counsel, July 8, 2005 (a true and correct*
26 *copy attached hereto as Exhibit "1")*. Defendants, and/or their counsel's, contention is highly suspect

1 in light of the Internal Revenue Code and regulation requirements which provide:

- 2 A. Code Sec. 6001- “every person liable for payment or for collection of any internal
3 revenue tax must keep such records as IRS may require.”;
- 4 B. Reg § 1.6001-1(e) - “The records must be retained for so long as their contents may
5 become material in the administration of any internal revenue law.”; and
- 6 C. Reg § 20.6001-1 - “. . . Records relating to the basis of property should be retained for
7 as long as they are needed in determining the basis of the original or replacement
8 property.”

9 Without Defendants’ compliance with this Court’s order to provide Plaintiffs with the
10 underlying permanent records, there is no way of establishing the inventory, rent, depreciation, cost
11 of labor, gross revenue, farming income, buildings, mortgages, insurance, utilities, equipment rental
12 and the like are attributable to Prescott Valley Growers operations on the subject property located in
13 Coyote Springs Ranch.

14 Defendants cannot simply claim that no underlying documents used in the preparation of the
15 partnership tax returns relates to their operation at the Coyote Springs Ranch location. Such an
16 argument is contradicted by documents previously disclosed by Defendants as well as their own
17 testimony. For instance, the partnership tax return indicates that the purchase and exclusive use for
18 business purposes of a bobcat in February 2002. *See, 2004 Asset Detail Report attached to Prescott*
19 *Valley Growers federal 2004 partnership income tax return (a copy attached hereto as Exhibit “2”).*
20 The cost of this section 179 asset is listed at \$37,109.00, *which identically matches the purchase*
21 *receipt for the item disclosed by Defendants’ in their initial disclosure statement as evidence of*
22 *equipment used by Defendants on the subject property. See, receipt for purchase of bobcat, February*
23 *28, 2002 attached to Defendants’ initial disclosure statement (a copy attached hereto as Exhibit “3”).*
24 Similarly, Defendants’ section 179 depreciated assets attached to their partnership tax returns indicate
25 the exclusive business use of a well in October, 2000. *See, Exhibit 2.* This is matches the approximate
26 time when Defendants filed their request to drill a well for residential purposes with the Arizona

1 Department of Water Resources. *See, Defendant Catherine Cox's verified application to drill well for*
2 *residential purposes filed with the Arizona Department of Water Resources, June 26, 2000 (a copy*
3 *attached hereto as Exhibit "4").* During her deposition, Catherine Cox testified that a well was drilled
4 on the subject property in August 2000. *See, Deposition transcript for Catherine Cox, June 22, 2004*
5 *at p.49, lines 20-23 (a copy attached hereto as Exhibit "5").* Clearly, there are underlying documents
6 in Defendants' control or possession that would support their claim for depreciating these and other
7 assets located on the Coyote Springs Ranch property as set forth in their partnership tax returns. To
8 merely claim that "there was no documentation used by the accountant to prepare these [partnership]
9 tax returns" defies credibility, reason, Defendants' own testimony, disclosed documents, and federal
10 law on the maintenance of supporting documents to a business tax return.

11 Defendants and/or their counsel's continuing failure and neglect to produce the documentation
12 used in preparation of the partnership income tax returns is detrimental to Plaintiffs' ability to prepare
13 for the upcoming trial.

14 **II. Defendants' Continuing Failure to Comply with the Court's**
15 **Order to Produce the Documentation Used in Preparation of their Income Tax Returns**
16 **is a Violation of Rule 37(d), Ariz.R.Civ.Proc.**

17 Defendants purposeful and inexcusable neglect in producing the documentation used in
18 preparation of their partnership tax returns, despite this Court's order, leads to the compelling
19 inference that Defendants are purposefully failing to disclose "unfavorable information." Rule 37(d)
20 provides:

21 ***A party's or attorney's knowing failure to timely disclose damaging or unfavorable***
22 ***information shall be grounds for imposition of serious sanctions*** in the court's
discretion up to and including dismissal of the claim or defense.

23 *Id. (emphasis added).*

24 In this case, Defendants' pattern of first strenuously objecting to the disclosure of the
25 information, coupled with their failure to abide by the Court's January 31, 2005 order to produce
26 complete copies of their tax returns, and now their failure to abide by the Court's June 29, 2005 order

1 to produce "all business and financial documents, records, or the like . . . used in the preparation of
2 the partnership returns" mandates that the Court sanction Defendants in accordance with Rule 37(d).
3 Plaintiffs request that this sanction include an award of attorney fees to them for the expense incurred
4 in bringing this motion, together with additional monetary sanctions. Plaintiffs further request that
5 in the event Defendants fail to produce the documents within 3 days of the Court's decision on this
6 motion, that the Court enter as a sanction under Rule 37(d) a finding that Defendants are engaged in
7 a commercial or business activity in violation of the restrictive covenants. The trial on the matter
8 would then proceed solely on Defendants' affirmative defense of abandonment.

9 **III. Conclusion**

10 Therefore, Plaintiffs respectfully request that this Court enter *another* order requiring
11 Defendants to produce all business and financial documents, records, or the like used in the
12 preparation of the partnership returns to the extent the documents relate to the subject property.
13 Plaintiffs also request that this Court award them their attorney's fees incurred in attempting to resolve
14 this discovery dispute with Defendants' counsel, and in the bringing of this motion to compel, together
15 with an additional monetary sanction against Defendants and/or their counsel for their abusive conduct
16 on this issue and unjustifiable defiance of the Court's previous order.

17 DATED this 12th day of July, 2005.

18 FAVOUR MOORE & WILHELMSSEN, P.A.

19
20
21 By: Marguerite Kirk
David G. Wilhelmsen
Marguerite Kirk
22 Post Office Box 1391
23 Prescott, Arizona 86302-1391
Attorneys for Plaintiffs

24 ///

25 ///

26 ///

1 Original of the foregoing
filed this 12th day of July,
2 2005, with:

3 Clerk, Superior Court of Arizona
Yavapai County
4 Prescott, Arizona
86302

5
6 A copy hand-delivered this 12th day
of July, 2005 to:

7 Honorable David L. Mackey
Division One
8 Superior Court of Arizona
Yavapai County
9 Prescott, Arizona
86302

10
11 and, a copy hand-delivered this
12th day of July, 2005 to:

12 Mark Drutz
Jeffrey Adams
13 MUSGROVE, DRUTZ & KACK, P.C.
1135 Iron Springs Road
14 Prescott, Arizona 86302
Attorneys for Defendants Cox

15

16

17

By: Marguerite Kirk
David K. Wilhelmsen
Marguerite Kirk

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21

22

23

24

25

26

EXHIBIT 1

MUSGROVE, DRUTZ & KACK, P.C.
ATTORNEYS AT LAW
POST OFFICE BOX 2720, PRESCOTT, ARIZONA 86302-2720

JAMES B. MUSGROVE
MARK W. DRUTZ
THOMAS P. KACK
GRANT K. MCGREGOR
JOHN G. MULL
JEFFREY R. ADAMS
CATHY L. KNAPP
SHARON SARGENT-FLACK

PRESCOTT OFFICE
1135 IRON SPRINGS ROAD
PRESCOTT, ARIZONA 86305

PRESCOTT VALLEY OFFICE
3001 MAIN STREET, SUITE 2C
PRESCOTT VALLEY, ARIZONA 86314

TELEPHONE
(928) 445-5935
(928) 445-5980 (FAX)

TELEPHONE
(928) 775-9565
(928) 775-9550 (FAX)

July 8, 2005

File No. 9449-1

VIA HAND DELIVERY

David K. Wilhelmsen
FAVOUR MOORE & WILHELMSSEN, P.A.
Post Office Box 1391
Prescott, Arizona 86302

Re: Cundiff v. Cox
Yavapai County Superior Court Cause No. CV 2003-0399

Dear Dave:

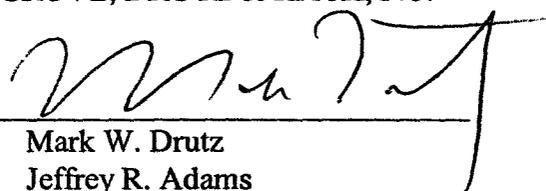
Enclosed please find U.S. Federal and State Tax Returns for the years 2001-2004 for Prescott Valley Growers.

There are no financial statements and there was no documentation used by the accountant to prepare these tax returns.

If you should have any questions, please call.

Sincerely,

MUSGROVE, DRUTZ & KACK, P.C.

By: 

Mark W. Drutz
Jeffrey R. Adams

MWD/jf
Enclosures

EXHIBIT 2

2004 ASSET DETAIL REPORT

86-0708195

Description	Date Acqd	Cost	Bus. Use	Spec. 179+	Basis	Method	Rec. Per. Cv	Prior Depr.	Current Depr.	AMT Depr.	Next Year	Gain/Loss	Sales Price	Exp & Adj	Date Sold
Equipment	06/99	2600	100		2600	MACRS	5.0 HY	2451	149	2600					
GMC 2000	06/99	40000	100		40000	MACRS	5.0 HY	37696	2304	40000					
Shed, Pump, T	06/99	19000	100			MACRS	7.0 HY	19000		19000					
		61600			42600			59147	2453	61600					
In Service Year: 2000															
Building	01/00	34978	100		34978	MACRS	39.0 MM	2691	897	3588	897				
Truck	12/00	17116	100			MACRS	7.0 HY	17116							
Truck	09/00	1500	100			MACRS	5.0 HY	1500							
Jack Hammer	03/00	1819	100		435	MACRS	7.0 HY	1683	39	301	39				
Well	10/00	18739	100		18739	FARM	15.0 HY	5762	1299	6827	1167				
		74152			54152			28752	2235	10716	2103				
In Service Year: 2001															
Trencher	10/01	3141	100			FARM	7.0 HY	3141							
Greenhouse	08/01	2000	100		2000	FARM	10.0 HY	664	200	864	175				
Fence	07/01	4718	100			FARM	7.0 HY	4718							
Refrigerator	09/01	1073	100			FARM	7.0 HY	1073							
Building	01/01	14027	100		14027	FARM	39.0 MM	1537	480	1425	462				
Jack Hammer	03/01	800	100			FARM	7.0 HY	800							
		25759			16027			11933	680	2289	637				
In Service Year: 2002															
Building	09/02	36283	100		36283	MACRS	39.0 MM	1201	930	2131	930				
Truck	02/02	37109	100		9176	MACRS	7.0 HY	31491	1605	9096	1146				
		37109			13109	MACRS	7.0 HY	29083	2293		1637				

STATE INFO: 37109

2004 ASSET DETAIL REPORT

86-0708195

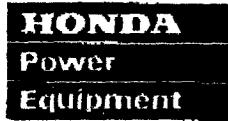
Description	Date Acqd	Cost	Bus. Use	Spec. 179+	Basis	Method	Rec. Per. Cv	Prior Depr.	Current Depr.	AMT Depr.	Next Year	Gain/Loss	Sales Price	Exp & Adj	Date Sold
Truck	03/02	26287	100		18401	MACRS	5.0 HY	17454	3533	18401	2120				
STATE INFO:		26287			26287	MACRS	5.0 HY	13669	5047		3028				
Shed	07/02	1476	100		1033	MACRS	7.0 HY	844	181	1025	129				
STATE INFO:		1476			1476	MACRS	7.0 HY	572	258		184				
Well	07/02	12568	100		8798	MACRS	7.0 HY	7182	1539	8721	1099				
STATE INFO:		12568			12568	MACRS	7.0 HY	4874	2198		1570				
Water Tank	07/02	1487	100		1041	MACRS	7.0 HY	850	182	1032	130				
STATE INFO:		1487			1487	MACRS	7.0 HY	576	260		186				
Fence and Pl	07/02	28417	100		19892	MACRS	7.0 HY	16240	3479	19719	2485				
STATE INFO:		28417			28417	MACRS	7.0 HY	11020	4970		3549				
In Service Year: 2003		143627			94624			75262	11449	60125	8039				
99 Ford Truc	10/03	21500	100			MACRS	5.0 HY	21500							
89 Ford Truc	01/03	6400	100		4480	MACRS	5.0 HY	2816	1434	4250	860				
STATE INFO:		6400			6400	MACRS	5.0 HY	1280	2048		1229				
In Service Year: 2004		27900			4480			24316	1434	4250	860				
Pump	06/04	20985	100			MACRS	7.0 HY								
Form Totals:		600708			20985			428850	22565	299543	15320				

EXHIBIT 3

Bobcat of Yavapai

Serving Central Arizona Since 1984

Sales • Service • Rental • Parts



8466 E. Long Mesa Dr.
Prescott Valley, AZ 86314

Bill To:

P.V. Growers
Attn Jim

Ship To:

Mt Fort # 15
759-9672

PA 759-2701

Date:	Sales Rep	Quote	Retail Order	Job Request
	TONY		<input checked="" type="checkbox"/>	

Qty	Description	Unit Pr	Total
1	893 Bobcat H/A/C loaded		31900
1	100" max Bucket w/cutting edge		1165
1	80" H Bucket		700
	Program Fee 0.90 24 mo		500

Subtotal	34,265.00
Tax	2,843.99
Bal Due	37,108.99

Customer Signature

Bobcat of Yavapai Signature

Phone: 820-759-9672

Fax: 820-759-9672

Down
Payment
\$7108.99



Loader Delivery Report

Bobcat Company
PO Box 128
Gwinner, North Dakota 58040

DEALER NUMBER and NAME: Bobcat of Yavapai INVOICE: 52011245 SERIAL NO.: 883 MODEL: 816
6406 E Longmasa P.V. AZ 86314 ENGINE SERIAL NO.:

CUSTOMER: PRIVATE OWNER TRANSACTION: 1. CASH SALE
 2. DEALER RENTAL 6. G.S.A. 2. FINANCED, B.F.S. 3. RPO/RPT
 4. NAT. ACCT. 5. OTHER 4. B.F.S. LEASE 5. FINANCED OTHER
 6. REGIONAL ACCT 7. V-PROGRAM 6. LEASED OTHER
 8. MUNICIPALITIES

CUSTOMER IS:
 First Time *SSL Owner
 First Time *SSL Owner Traded
 Other Equip
 Previous *SSL Owner
 Replaced OR
 Added To 753
 Bobcat Models 753
 Traded No Trade
 Competition
 Brand _____
 Traded No Trade
 *SSL - OF ANY MAKE

PLEASE PRINT CUSTOMER: P.V. Grower's
 MAILING ADDRESS: 6750 N Robert Rd
 CITY: Prescott Valley STATE: AZ ZIP: 86314 COUNTY: Yavapai
 COUNTRY: US MARKET: A APPLICATION: 35 DELIVERY DATE: 2/25/02
 CONTACT NAME: _____ CONTACT PHONE: _____ CONTACT E-MAIL ADDRESS: _____
 ADVANTAGE CLUB NO. 60114616461 NAME Tony Hillen ADD CUST NAME TO WORKSAVER

WARNING
 Never misuse the machine. Do not modify Guards, Seat Belt, Seat Bar or the Bobcat Interlock Control System (BICS). This can cause injury or death.

- The following items are to be checked as they are explained or shown to the Owner/Operator by the Dealer at time of delivery:
- Explain delivery packet (Operation and Maintenance Manual, Safety Manual and Warranty Brochure) when given to Owner/Operator.
 - Advise that dealer is the source for operator training, the Bobcat Skid Steer Loader Operator Training Course, and Service Safety Training Course, review of job requirements and recommended loader and attachment usage.
 - Explain capabilities and restrictions of loader and attachments for job usage, as identified by Owner/Operator.
 - Review Safety Signs (Decals), Operation and Maintenance Manual and Safety Manual. Explain Operator's Handbook fastened to machine.
 - Show how to enter and exit loader safely, with lift arms down, brake set and engine off. Use hand grabs, bucket steps and safety tread.
 - Demonstrate use and maintenance of seat belt and seat bar. Explain availability of seat bar for previous models.
 - Explain function of seat bar control interlocks that require operator to lower seat bar.
 - Explain Bobcat Interlock Control System (BICS) with "Press to Operate" button. Explain by-pass for lift lock valve and traction lock override.

- Demonstrate how to start, stop, turn and park the loader. Also show how to fill, carry and dump the bucket or use other attachments.
- Explain use of operator cab which is a Rollover and Falling Object Protective Structure. Explain availability of ROPS for all previous models. DO NOT modify or remove operator cab.
- Explain the use of the rear window opening of the loader as an emergency exit. DO NOT modify this opening or approve equipment which blocks this exit.
- Explain availability of Enclosures and Special Application Kits to restrict material from entering cab openings.
- Advise availability of other accessories, such as: Lift Arm Support Device, Single Point Lift, Horn, Back-Up Alarm, Work Lights and Flashing Lights.
- Explain that rated operating capacity of the loader and attachment is specified for safety and stability.
- Explain the need & availability of bucket types and sizes for use with different materials. Explain availability of other attachments such as backhoes, breakers, grapples, rakes, etc.
- Explain recommended fueling and lubricating procedure.
- Advise never to use the loader in an environment with explosive dust or gases or with flammable material near exhaust.
- Review maintenance procedure on Service Schedule decal and in Operation and Maintenance Manual. Explain use of lift arm support device.
- Explain "Warranty Policy" and limitations to Owner/Operator. Warranty Statement printed in Operation and Maintenance Manual and Warranty Brochure enclosed in delivery packet.
- Explain "Protection Plus" extended warranty program.

The above delivery information has been explained to me. I understand the operation and maintenance of this machine. I also acknowledge the warranty conditions and limitations as outlined in my copy of the warranty statement.

Owner/Operator Signature X [Signature] Date _____
 Dealer Representative Signature X [Signature] Date 2/28/02

SECURITY AGREEMENT
(Condition of Sale Contract)

The undersigned Buyer, meaning the buyers jointly and severally ("Buyer"), having been quoted both a time sale price and cash sale price, and in purchase and hereby purchase from the undersigned seller ("Seller") for the time sale price shown below, under the terms and conditions of this agreement, the following described property (herein, with all present and future attachments, accessories, replacement parts, repairs and maintenance, referred to as "Equipment"):

1 BOBCAT SKID STEER LOADER 883 6/11 \$20,112.45
HVAC, ACS, 100 IN, 80 IN CEAT

ID# 200202210353201

The Equipment will be used primarily for: business or commercial use other than farming operations; farming operations. When not in use, the Equipment will be kept at: **6750 N ROBERT RD PRESCOTT VALLEY AZ 86314**. When in use, will be used only in the following State(s):

INSURANCE COVERAGE

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED IN THIS AGREEMENT

PHYSICAL DAMAGE INSURANCE COVERING THE COLLATERAL IS REQUIRED; however, Buyer has the option of furnishing the required insurance through an agent or broker of Buyer's choice.

Buyer requests and authorizes Seller to obtain insurance coverage for the purpose of "All Risk" insurance (Fire, extended coverage, theft and collision and containing exclusions from coverage applicable to Seller) on the Equipment for the period from the date of this Agreement, and for the premium of 0.00 with a \$ _____ deductible.

Buyer has obtained the required coverages through:

Bob Cullison
(Agent's Name and Address)

Best Deal 276 E
(Name of Insurance Company)
Phone # 602 932 4420

Buyer hereby authorizes Seller and any assignees to access to any insurance policies affiliated with Seller or any assignees and information relating to contract or policy of insurance which is primary or first priority insurance coverage against physical damage to the Equipment.

CREDIT INSURANCE, if included, is not a factor in the approval of credit, is not required by the Seller and is for the term of the credit only.

Buyer desires Credit Insurance; Premium \$ 0.00
(Same charge and in 410) - OTHER CHARGES)

Buyer hereby requests and authorizes Seller to obtain Credit Insurance, if checked above, to the extent the cost thereof is included in item 4(d) Other Charges.

Buyer does not want Credit insurance.

BUYER: _____ DATE: _____
Selling the above described equipment, and any credit insurance shown only that portion of the purchase price does not cover any co-buyer.

Description of Trade-In:

Gross Allowance	_____
Less Amount Owing To:	_____
Trade-In (Net Allowance)	\$ <u>0.00</u>

(Enter above and in 2(b) - DOWN PAYMENT)

1. CASH SALE PRICE	_____
2. (a) Cash Down Payment	\$ <u>7,100.00</u>
(b) Trade-in (See above)	\$ <u>0.00</u>
(c) Net Rental Credit	\$ <u>0.00</u>
TOTAL DOWN PAYMENT (a + b + c)	_____
3. UNPAID BALANCE OF CASH SALE PRICE (1 Minus 2)	\$ <u>30,000.00</u>
4. OTHER CHARGES	
(a) Physical Damage Insurance	\$ <u>0.00</u>
(b) Credit Insurance	\$ <u>0.00</u>
(c) Official Fees	\$ <u>0.00</u>
(d) Other (Describe)	\$ <u>0.00</u>
TOTAL OTHER CHARGES (a + b + c + d)	_____
5. PRINCIPAL BALANCE (3+4)	_____
6. FINANCE CHARGE	_____
7. UNPAID TIME BALANCE (5+6)	\$ <u>30,000.00</u>
8. TIME SALE PRICE (1+4+6)	\$ <u>31,100.00</u>

Buyer and Seller agree that the finance charge is to be paid in A.R. based upon a 12 month year of 30 day months.

Page 1 of 2 of Security Agreement, ID# 200202210353201, between **PRESCOTT VALLEY SHOWERS**

EXHIBIT 4

RECEIVED

JUN 13 2000

8270315

Y.C.E.S. PRESSGOTT

ARIZONA DEPARTMENT OF WATER RESOURCES
GROUNDWATER MANAGEMENT SUPPORT SECTION
MAIL TO: P. O. BOX 458, PHOENIX, ARIZONA 85001-0458
FOR MORE INFORMATION CALL: MONICA ORTIZ 602-417-2600

RECEIVED
JUN 26 2000
GROUNDWATER MGT

PLEASE COMPLETE ALL ITEMS IN THE BOX BELOW DOWN TO COUNTY OR LOCAL AUTHORITY ENDORSEMENT. IF WATER FROM THE PROPOSED WELL (LISTED BELOW) WILL BE USED FOR DOMESTIC PURPOSES ON A PARCEL OF LAND 20 OR FEWER ACRES, THE APPLICABLE COUNTY OR LOCAL HEALTH AUTHORITY MUST ENDORSE ALL ITEMS IN THE BOX BEFORE SUBMISSION TO THE DEPARTMENT OF WATER RESOURCES. ITEMS C, D, E, AND F MAY BE AVAILABLE FROM YOUR COUNTY ASSESSOR'S OFFICE.

A. Catherine Cox 6750 N. Robert Road, Prescott Valley AZ 86313
 LANDOWNER'S NAME CURRENT MAILING ADDRESS CITY STATE ZIP

B. TELEPHONE NO. 520-775-4813 COUNTY ASSESSOR'S PARCEL ID INFORMATION: YAVAPAI COUNTY

C. WELL LOCATED IN Yavapai COUNTY D. 103 01 069F E. 20.03
 BOOK MAP PARCEL # OF ACRES OFFICIAL SEAL OR STAMP ENVIRONMENTAL SERVICES WELL SITE REVIEW DESK REVIEW ONLY

WELL/LAND LOCATION (MUST BE COMPLETED AS REQUESTED):
 F. SW 1/4 NE 1/4 SE 1/4 OF SECTION 25 TOWNSHIP 15 N RANGE 1 E
 10AC 40AC 160AC COUNTY OR LOCAL AUTHORITY ENDORSEMENT EHS DATE 7/13/00

G. CHECK ONE: RECOMMEND APPROVAL _____; INSUFFICIENT INFORMATION TO MAKE A DETERMINATION ; VARIANCE REQUIRED _____ (EXPLANATION ATTACHED)

H. DATE 7/13/00 AUTHORIZED SIGNATURE [Signature] TITLE EHS II

1. OWNER OF WELL:
Catherine Cox
 NAME
6750 N. Robert Road
 CURRENT MAILING ADDRESS
Prescott Valley AZ 86313
 CITY STATE ZIP
 TELEPHONE NUMBER 520-775-4813

6. LESSEE OF LAND OF WELL SITE:
Same AS 1
 NAME
 CURRENT MAILING ADDRESS
 CITY STATE ZIP
 TELEPHONE: _____

9. PLACE OF USE (LEGAL DESCRIPTION OF LAND):
SW 1/4 NE 1/4 SE 1/4 SECTION 25
 10AC 40AC 160AC
 TOWNSHIP 15 N RANG 1 EW

2. ACTION REQUESTED:
 DRILL NEW WELL DEEPEN _____
 MODIFY _____ REPLACE _____

7. PRINCIPAL USE OF WATER: (BE SPECIFIC)
Domestic

10. TYPE OF WELL (CHECK ONE):
 EXEMPT NON-EXEMPT _____

WELL REGISTRATION NO 55- _____

8. OTHER USES OF WATER: (BE SPECIFIC).

11. CHECK ONE:
 RESIDENTIAL STOCKWATER _____
 OTHER _____

FOR A REPLACEMENT WELL PROVIDE:
 MAX. CAPACITY OF THE ORIGINAL WELL
 _____ GALLONS PER MINUTE;

12. IS THE PROPOSED WELLSITE WITHIN 100 FEET OF A SEPTIC TANK SYSTEM, SEWER DISPOSAL AREA, LANDFILL, HAZARDOUS MATERIALS OR PETROLEUM STORAGE AREAS AND TANKS?
 YES _____ NO

DISTANCE FROM THE ORIGINAL WELL:
 _____ FEET

FOR DEPARTMENT USE ONLY
 REGISTRATION NO. 55-582021
 DATE FILED 6-26-00
 FILE NO. B05-025 DAC
 AMA/TNA Prescott
 W/S 05 S/B 01
 PROCESSED BY [Signature]
 DATE MAILED 7-23-00

13. DRILLING FIRM:
 NAME Dewey Drilling & Pump Services, LLC.
 MAILING ADDRESS 620 S. Hwy 69, P.O. Box 131
 CITY Dewey AZ 86327 ZIP _____
 TELEPHONE NO. 520-692-0484
 DWR LICENSE NUMBER 653
 ROC LICENSE CATEGORY _____

3. CONSTRUCTION WILL START ABOUT:
 MONTH July YEAR 2000

4. TYPE OF CASING FOR PROPOSED WELL:
 SURFACE CASING: Steel
 DIAMETER: 7" DEPTH: 20'

DOWNHOLE CASING: PVC
 DIAMETER: 4 1/2" DEPTH: 500'

5. DESIGN PUMP CAPACITY:
10 GALLONS PER MINUTE

RECEIVED
JUL 20 2000
GROUNDWATER MGT

I STATE THAT THIS NOTICE IS FILED IN COMPLIANCE WITH A.R.S. § 45-506, IS COMPLETE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AND THAT I UNDERSTAND THE LIMITATIONS AND CONDITIONS SET FORTH ON THE REVERSE SIDE OF THIS FORM.

14. TYPE OR PRINT NAME AND TITLE Catherine Cox
 15. SIGNATURE OF LANDOWNER/LESSEE OF WELLSITE [Signature]
 16. DATE 6/13/00

EXHIBIT 5

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA

DEPOSITION OF:

CATHERINE COX

JOHN B CUNDIFF and BARBARA C.)
CUNDIFF, husband and wife;)
ELIZABETH NASH, a married woman)
dealing with her separate)
property; KENNETH PAGE and)
KATHRYN PAGE, as Trustee of the)
Kenneth Page and Kathryn Page)
Trust,)

Plaintiffs,)

vs.)

DONALD COX and CATHERINE COX)
husband and wife,)

Defendants,)

Case No. CV 2003-0399

PURSUANT TO NOTICE, the deposition of CATHERINE COX, called for examination by Counsel for the Plaintiffs, was taken at the offices of FAVOUR, MOORE & WILHELMSSEN, 1580 Plaza West Drive, Prescott, Arizona, beginning at the approximate hour of 9:58 a.m., on Tuesday, June 22, 2004, before Ashlee Mangum, Certified Court Reporter #50612, a Registered Professional Reporter, within and for the State of Arizona.

LOTT REPORTING, INC.

316 North Alarcon Street
Prescott, Arizona 86301
928.776.1169

CC-11

1 Q. Did you keep all of those documents as they were
2 received by you at time of closing?

3 A. Yes, I did.

4 Q. Where is that file located, ma'am?

5 A. In my house.

6 Q. The one here locally?

7 A. In Coyote Springs.

8 Q. Do you recall receiving a Declaration of
9 Restrictions?

10 A. I did not receive that.

11 Q. How do you know, ma'am?

12 A. Because I have been asked about that since then
13 and I have looked through those papers and have not
14 found any evidence of that.

15 Q. After you purchased the Coyote Springs property,
16 what did you do with it?

17 A. We started making payments on it.

18 Q. Okay. In terms of developing the property for
19 use, what did you do first?

20 A. In the beginning, it was about -- It was not
until August of 2000 that we drilled our water well.

21 Q. Was that the first thing that you did?

22 A. Yes, it is. I believe electricity was put in
about the same time.

23 Q. Between the time of purchase of the property in