

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF VERMONT

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In re:

Michael F. Montagne,  
Debtor.

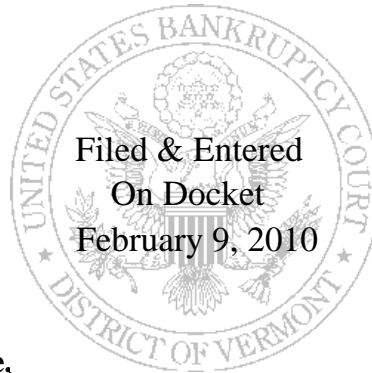
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Bourdeau Brothers, Inc.,  
Plaintiff,

v.

Michael F. Montagne, Diane Montagne,  
and Montagne Heifers, Inc.,  
Defendants.

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Chapter 12 Case  
# 08-10916

Adversary Proceeding  
# 08-1024

Appearances: *James Spink, Esq. and Mary Peterson, Esq., for Bourdeau Brothers, Inc.*  
*John R. Harrington, Esq. and Jess T. Schwidde, Esq., for Michael F. Montagne*

**AMENDED\* ORDER**

**GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO STRIKE MICHAEL MONTAGNE'S  
AFFIRMATIVE DEFENSES, DENYING PLAINTIFF'S REQUEST FOR ATTORNEY'S FEES  
AND SETTING DEADLINE FOR FILING OF TRIAL EXHIBITS**

For the reasons set forth in the memorandum of decision of even date, IT IS HEREBY ORDERED that

1. Bourdeau Brothers, Inc.'s motion to strike Michael Montagne's affirmative defenses of (A) unclean hands; (B) laches; (C) statute of limitations; (D) breach of contract by Plaintiff, including breach of contractual duty of good faith and fair dealing; (E) estoppel; (F) waiver; (G) duress; (H) illegality; (I) payment and/or set-off; (K) statute of frauds; (L) failure to state a claim upon which relief may be granted; (M) acquiescence; (N) failure to mitigate damages and failure to act in a commercially reasonable manner; (O) usury, in regard to charging interest in excess of that permitted by 9 VSA 41a; and (P) violation of the Vermont Licensed Lender Act waiver and/or estoppel, unclean hands, and failure to mitigate damages (doc. # 291) is granted;
2. Bourdeau Brothers, Inc.'s motion to strike Michael Montagne's affirmative defense of homestead exemption (J) is denied. In particular, Michael Montagne may present proof on the homestead exemption if (i) the Court determines Michael Montagne is liable for the BBI debt, and (ii) BBI seeks to levy on the attachment against property Michael Montagne asserts to be his homestead property; and
3. Bourdeau Brothers, Inc.'s request for attorney's fees is denied.

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\* The only substantive amendment is the additions of paragraph #5, setting the due date for trial exhibits.

IT IS FURTHER ORDERED that

4. because this memorandum of decision and order were issued after the parties' filing of a final pre-trial statement, and resolution of these outstanding issues may impact the parties' trial presentations, the parties shall file a stipulated, revised final pre-trial statement by **Wednesday, February 10, 2010, at 5:00 p.m.**; and
5. because the trial in this adversary proceeding will be held at Vermont Law School (rather than in a federal courtroom) and the Court thus needs copies of all exhibits in electronic format in advance of the trial, the parties shall file copies of all exhibits they intend to introduce at trial **by Thursday, February 11, 2010, at noon** (to accompany the stipulation as to facts and exhibits that is due by that same date and time, pursuant to the order entered on February 5, 2010 [doc. # 327]).

SO ORDERED.

Rutland, Vermont  
February 10, 2010



Colleen A. Brown  
United States Bankruptcy Judge