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**FILED**

JUN 27 2002

KEVIN E. O'BRIEN CLERK  
UNITED STATES  
BANKRUPTCY COURT  
FOR THE DISTRICT OF ARIZONA

UNITED STATES BANKRUPTCY COURT

DISTRICT OF ARIZONA

In Re	)	Chapter 11
DAVIS CHEVROLET, INC.,	)	No. B-97-12542-PHX-GBN
Debtor.	)	
<hr/>		
BEN HATCH,	)	Adversary No. 99-00531
Plaintiff,	)	
vs.	)	FINDINGS OF FACT,
UTE-KARIN REDING, et al.,	)	CONCLUSIONS OF LAW
Defendants.	)	AND ORDER
	)	
	)	

This proceeding, involving a civil complaint removed from the District Court of the Navajo Nation, Judicial District of Tuba City, Arizona, by defendants, was tried to the court as a bench trial on February 11-13, and April 3, 2002. Closing memoranda were subsequently filed. An interim order was entered on May 16, 2002, announcing the court's decision.

The court has considered the stipulated joint pretrial statement filed September 26, 2001, closing briefs, the declarations and testimony of witnesses, admitted exhibits and

1 the facts and circumstances of this proceeding. The following  
2 findings and conclusions are entered:

3 FINDINGS OF FACT

4 1. Davis Chevrolet, Inc. was a debtor in possession,  
5 having filed a voluntary Chapter 11 bankruptcy case in the  
6 District of Arizona on September 16, 1997. Debtor made a  
7 speaking motion to convert to a Chapter 7 liquidation on May 15,  
8 1998. Mins. of May 15, 1998, administrative docket no. ("Dk")  
9 98. The motion was granted that day. Id. At the time, an  
10 involuntary motion to convert the case to Chapter 7 by creditor  
11 General Motors Acceptance Corporation ("GMAC") was pending. Dk  
12 83.

13 2. Earlier on April 23, 1998, secured creditor GMAC  
14 filed an emergency motion for return of estate property and,  
15 inter alia, an examination of all of debtor's records. Dk 77.  
16 The attached affidavit of Mary Bradley, an unsecured creditor who  
17 resided next to the Davis Chevrolet dealership, reported that she  
18 personally observed Ben Hatch ("Hatch" or "plaintiff") and  
19 Jonathan Claw loading items from the dealership's parts  
20 department into a trailer during the evening of April 22, 1998.  
21 Id. at affidavit; see also Tr. of Apr. 23, 1998, at 2-8.  
22 Jonathan Claw is the son-in-law of Don Davis, debtor's president.  
23 Affidavit, supra.

24 Ben Hatch was debtor's sales manager. Since the  
25 automatic stay of 11 U.S. C. § 362(a) was ordered to lift as of  
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1 April 23, 1998, at 5:00 p.m.,<sup>1</sup> GMAC argued the reported  
2 activities were attempts to frustrate its collateral enforcement  
3 rights in debtor's parts inventory, furniture, fixtures,  
4 inventory vehicles, trailers and accounts receivable. GMAC  
5 motion, supra, at 3-5.

6 Movant sought entry of an order on an emergency basis  
7 requiring persons acting on behalf of debtor, including Ben  
8 Hatch, "Anita" [sic] Cunningham, Jonathan Claw and others to  
9 return debtor's property and records. Id. at 5. Additional  
10 requested relief included allowing creditor inspection of all  
11 books and records of debtor and all property and assets located  
12 at the dealership. Id.

13 3. An emergency hearing on the motion was conducted.  
14 Mins. of Apr. 23, 1998, Dk 76. Counsel for debtor, GMAC,  
15 creditor General Motors ("GM") and the unsecured creditors  
16 committee were present. Debtor did not oppose the inspection.  
17 The automatic stay was formally lifted in favor of GMAC. After  
18 an extensive number of interlineations were added, the court  
19 issued an April 23 order. Id.

20 4. The order, inter alia, (1) required return of all  
21 property removed by debtor or its employees, including Ben Hatch  
22 and Juanita Cunningham, (2) allowed GM, GMAC and the official  
23 creditors committee to inspect all property and assets at the  
24  
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26 <sup>1</sup>Order of March 2, 1998, Dk 69A; mins. of Feb. 23, 1998 stay  
27 lift hearing. Dk 68.

1 dealership, and (3) authorized GM's counsel<sup>2</sup> to immediately  
2 remove, catalog and deliver all of debtor's books and records to  
3 debtor's Phoenix counsel. Dk 78.

4 5. At the April 23, 1998 hearing, the court sua  
5 sponte announced there had been an ex parte contact on the  
6 evening of April 22. GM counsel had called the court at home to  
7 seek an emergency hearing the next day. Hearing tr. at 11.  
8 Counsel was able to contact this judge through the intervention  
9 of another Phoenix bankruptcy judge. Cross-exam. test. of Donald  
10 L. Gaffney of Apr. 3, 2002.

11 6. During the hearing, the court inquired whether  
12 personal relations at the dealership were such that assistance in  
13 executing the order should be sought from the United States  
14 Marshal. Tr. at 27. Difficulties were not anticipated, although  
15 the unsecured creditors committee reported distrust and some ill  
16 will between former employees and debtor's officers. The  
17 committee's counsel had been in contact with Tribal police and  
18 the county sheriff's office and was assured officers would  
19 respond if necessary. Id. at 27-28.

20 Tensions included creditor GM's belief debtor was  
21 unduly influenced by the Ames Brothers' Ford dealership in  
22 Winslow, Arizona, and through relationships with debtor's  
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24 2GM's counsel explained he volunteered his firm's services  
25 to retrieve and transport the books and records because of his  
26 firm's size and resources, including a trained paralegal that had  
27 the background to accomplish the task. Tr. of Apr. 23, 1998  
28 hearing at 21-22. See also direct trial test. of Donald L.  
Gaffney of Apr. 3, 2002.

1 employees, such as plaintiff Ben Hatch and Juanita Cunningham.  
2 Gaffney direct and cross-exam. In addition, GMAC employee Newel  
3 F. Knight had been stationed at the dealership six days a week  
4 for two years, starting in 1996, because of debtor's failure to  
5 pay GMAC liens when vehicles were sold. This "out of trust"  
6 situation started before plaintiff Ben Hatch became Davis's sales  
7 manager. Knight direct test. of Feb. 11, 2002.

8 7. On Thursday, April 23, 1998, following entry of  
9 the order, GM's counsel instructed defendant Ute-Karin Reding, a  
10 law firm paralegal with ten years of experience, to immediately  
11 travel to the dealership, located on the Navajo Nation  
12 reservation. She was to retrieve, catalog and remove all  
13 records. She was given no instructions regarding the personal  
14 records of individuals at the property. Ms. Reding had twice  
15 before led a document search team. Her experience included the  
16 American Continental case, involving millions of documents  
17 located in a huge warehouse. Defendant Reding asked paralegal  
18 Karen Lyons to assist in the inspection and document retrieval.  
19 Since it was an emergency, the women borrowed clothing for the  
20 trip. Ms. Lyons started with the firm in December of 1997. She  
21 had never participated in a records search or received training  
22 on this subject. Her instructions were to take all documents and  
23 not exercise discretion. Lyons direct and cross-exam. test. of  
24 Feb. 12, 2002; Reding test. of April 3, 2002. Ms. Reding chose  
25 Ms. Lyons for this project because she had been defendant's  
26 assistant for four months and had originally been hired by  
27 defendant. Reding cross-exam.

1           8.     The paralegals arrived at the dealership on  
2 Thursday evening, April 23, at approximately 8:00 or 8:30 p.m.<sup>3</sup>  
3 after flying to Flagstaff, Arizona, from Phoenix and driving by  
4 rental car to Tuba City.     A moving van ordered by the law firm  
5 was parked outside the location with two professional movers.  
6 Lyons, Reding test., supra.

7           9.     Ms. Cunningham, officer manager for Davis  
8 Chevrolet since 1996, had been asked by Ben Hatch to meet the  
9 creditor's paralegals that evening. She agreed to do so, and  
10 returned to the dealership at 7:00 p.m., after working 8:00 a.m.  
11 to 5:00 p.m. that day. She lived in a trailer directly behind  
12 the dealership. Direct test. of Feb. 11 and 12, 2002. That  
13 afternoon, she learned from debtor's attorney, S. Matt Collins,  
14 that a secured creditor was expected to arrive to conduct an  
15 emergency retrieval of debtor's records. She was instructed by  
16 Collins to be cooperative. She was disgusted that she was  
17 required to wait at the dealership from 7:00 to 9:00 or 9:30  
18 p.m., until the Phoenix paralegals arrived. Direct test. of Feb.  
19 12, 2002.

20           10.    Although aware of the impending records search,  
21 Ben Hatch did not remain at the dealership Friday evening.  
22 Instead, he left the site for his Winslow home around 5:00 p.m.  
23 on April 23, to begin preparing for an annual Ford barbecue the  
24 following Saturday. He traditionally cooked for the event. His

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26           3Juanita Cunningham, who was waiting for the paralegals at  
27 the dealership, places their arrival at around 9:30 p.m. Direct  
28 test. of Feb. 11, 2002.

1 brother, Marvin Hatch, owned the Ford dealership in Winslow.  
2 Hatch previously worked for this dealership, known as Ames  
3 Brothers Ford. He became acting sales manager for Davis  
4 Chevrolet in September of 1996, and permanent sales manager in  
5 March or April of 1997, at the request of Don Davis, debtor's  
6 owner.

7 To save expenses, plaintiff Hatch lived in an upstairs  
8 room at the dealership Monday through Friday. He normally  
9 returned to his Winslow home on weekends. Plaintiff had no  
10 written lease with debtor for this room. Information about the  
11 arrangement did not appear in the bankruptcy records. However,  
12 GMAC employees Newell F. Knight and Rich Johnson knew of the  
13 private room. No evidence was presented which established that  
14 any of the present defendants had knowledge of the existence of  
15 plaintiff's private room prior to the search of April 23, 1998.  
16 Test. of Newell F. Knight; test. of Cynthia Yazzie; Feb. 11, 2002  
17 test. of Juanita Cunningham; cross-exam. of S. Matt Collins; Feb.  
18 12, 2002 test. of Ben Hatch.

19 11. Hatch kept personal papers in his room, as well  
20 as copies of debtor's business records, such as "recap" sheets.  
21 Hatch testified he kept overnight, in his room, cash from  
22 debtor's daily business operations. He claims to also have kept  
23 personal cash in his private room in amounts ranging from nearly  
24 zero to \$30,000 under a mattress.<sup>4</sup> By October of 1996, he  
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26 <sup>4</sup>Direct test. of Feb. 12, 2002. His February 13 testimony  
27 was a range of cash under his mattress of \$800 to \$30,000.

1 alleges he possessed \$55,000 in cash that he buried in his  
2 backyard in Winslow. This money was accumulated, plaintiff  
3 testified, by a \$49,000 loan secured by a second mortgage on his  
4 home, assorted loans from his brother's businesses, including  
5 Ames Brothers Ford, cash draws from credit cards and personal  
6 savings. The original purpose of placing the second mortgage  
7 was to finance construction of a separate residence constructed  
8 of straw bales. The loan proceeds were not used for this  
9 purpose, however. When he needed cash, plaintiff testified he  
10 would return to his Winslow home and retrieve it from his  
11 backyard, where it was kept in one hundred dollar bills in a  
12 buried glass jar.

13           At the time of the April document search, plaintiff  
14 asserts he had \$10,000 each in two envelopes and a single  
15 envelope with \$9,000 under his mattress in his private room.  
16 Although at least a portion of this \$29,000 cash sum came from  
17 plaintiff's backyard, he did not list his yard as a source of the  
18 funds in his interrogatory answer number six. See ex. E at 2.  
19 Plaintiff has no explanation for failing to provide this  
20 information in his interrogatory answer. He denies using the  
21 backyard buried cash as a convenient explanation for sources of  
22 the missing \$29,000. He buried money because he does not trust  
23 banks, although he maintained both a checking and a savings  
24 account in a bank. While not trusting banks, he kept as much as  
25 \$30,000 in a bank savings account for several months. Hatch  
26 test. of Feb. 12, 13, 2002. His bank was a mile from the  
27 dealership. Cunningham cross-exam. of Feb. 12, 2002. The court



1 does not find plaintiff's testimony credible concerning the  
2 existence and source of the missing funds.

3 12. Although plaintiff was an employee of Davis  
4 Chevrolet, holding no ownership interest, he nonetheless started  
5 in October 1996, making undocumented, interest-free loans to the  
6 dealership. None of these transactions were reported to the  
7 bankruptcy court in debtor's monthly financial reports<sup>5</sup> or  
8 through compliance with Fed. Bankr. R. 4001(c). If the  
9 dealership was short of funds for a parts delivery, office staff  
10 would ask Hatch for between \$200 and \$2,500 to pay the delivery  
11 agent. He also advanced cash for debtor's payroll in an  
12 unrecalled amount. Cunningham test. of Feb. 12, 2002.

13 Some of plaintiff's short-term loans were in cash.  
14 Others were in the form of personal checks. Toward the end of  
15 debtor's operations, plaintiff and office manager Cunningham were  
16 paid in cash. Nine days before the document seizure, plaintiff  
17 received a \$12,000 check drawn on debtor's bank account. Ex. 18.  
18 Although Ms. Cunningham signed the check, she does not recall why  
19 it was issued to plaintiff. Shortly before the document seizure,  
20 Don Davis wrote an April 20, 1998 letter--allowing plaintiff to  
21 take title to a vehicle in exchange for payments benefiting  
22 debtor. Ex. 5; Hatch test. of Feb. 13, 2002. Ms. Cunningham,  
23 who was responsible for preparing the financial records for  
24 debtor's monthly bankruptcy reports, does not know why she did  
25 not report these transactions. Plaintiff stated to her that he

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26  
27 <sup>5</sup>Cunningham cross-exam. of Feb. 12, 2001.

1 had provided approximately \$21,000 in cash to debtor in 1998 to  
2 purchase a pickup truck for resale. Ms. Cunningham was not  
3 personally involved in the transaction; she was only told about  
4 it later. Test. of Feb. 12, 2002.

5 Plaintiff testified he would be repaid for his loans  
6 in one to two weeks. Direct test. of Feb. 12, 2002. He did not  
7 keep written records of his loans. Instead, he kept the accounts  
8 in his head. Plaintiff denies the testimony of his own witness,  
9 Juanita Cunningham, that he kept written records of his loans.  
10 Hatch's brother Marvin also supplied cash to plaintiff from Ames  
11 Brothers Ford to help debtor. Hatch claims to have used his own  
12 cash to obtain cashier's checks for debtor's business, but has no  
13 independent evidence to establish this.

14 Plaintiff's affidavit of June 8, 1998 states that on  
15 April 21, 1998 he wrote a check for \$11,090 to purchase a 1996  
16 Ford truck titled in his own name. Ex. 6, at 2, para. f. It is  
17 his testimony that he deposited \$11,000 in cash to cover this  
18 check and still had \$29,000 in remaining cash that he left in his  
19 private room two days later. Hatch test. of Feb. 13, 2002.

20 Ms. Cunningham kept a paper record of plaintiff's  
21 loans to debtor in her desk. Test. of Feb. 11, 2002. However,  
22 these records were removed during the document search and not  
23 returned. Test. of Feb. 12, 2002. As a consequence, plaintiff  
24 cannot produce independent documentary evidence of large amounts  
25 of personal cash maintained in the private room.



1 method to reach him over the weekend.<sup>6</sup> He failed to check to see  
2 if any of debtor's books and records were in his room before he  
3 left. Cross-exam. of Feb. 13. The court does not find this  
4 testimony and conduct credible.

5 14. During that weekend, Hatch was visited at his  
6 Winslow home by GMAC employee Newell F. Knight on Saturday.  
7 Knight informed plaintiff that his private room had been  
8 searched. Plaintiff did nothing concerning the search and did  
9 not return to the Tuba City dealership earlier than his usual  
10 Monday arrival time. Although he did not return to the  
11 dealership earlier than usual, he did request Knight accompany  
12 him to his private room to see if his money was still there.  
13 Cross-exam., id.; test. of Newell F. Knight of Feb. 11. The  
14 court does not find this conduct credible.

15 15. Upon her arrival on Thursday night, defendant  
16 Reding discovered a locked upstairs room. Ms. Cunningham  
17 informed her that it was plaintiff's private room. Ms.  
18 Cunningham denied having a key. Following telephonic contact  
19 with attorney Gaffney, she learned a locksmith was coming to  
20 unlock the door. Ms. Cunningham testified she asked to be  
21 present when the door was unlocked, even though she had been  
22 given no instructions regarding Hatch's room. Reding direct;

23 \_\_\_\_\_  
24 6Since Hatch left no instructions with Ms. Cunningham  
25 regarding his room, nor provided a way to contact him over the  
26 weekend, she called plaintiff's brother to report defendant  
27 Reding was attempting to enter and search the locked room. Test.  
28 of Feb. 12. Plaintiff spoke to his brother at the Saturday  
barbecue, but cannot recall if he was told Ms. Cunningham was  
trying to reach him. Hatch direct test. of Feb. 13.

1 Cunningham cross-exam. of Feb. 12. Ms. Reding saw no reason to  
2 include a "neutral" person when she finally entered the private  
3 room. At this time, Ms. Cunningham was very angry. Reding, id.  
4 Ms. Cunningham was "disgusted" she had waited at the dealership  
5 more than two hours Thursday evening for the paralegals to  
6 arrive. She had to cancel personal appointments for Friday and  
7 Saturday, felt she was mistreated and had verbal confrontations  
8 with defendant. Cunningham test. of Feb. 12. Because of what  
9 she viewed as Ms. Cunningham's interference and lack of  
10 cooperation, defendant threatened to call for law enforcement  
11 assistance to induce Ms. Cunningham to "back off." Reding  
12 direct. Commercial mover Thomas Gruislak witnessed a lack of  
13 cooperation from Ms. Cunningham. Gruislak test.

14           Given the personal animosity, the lack of authority of  
15 Ms. Cunningham to represent Hatch's interests, and the fact Ms.  
16 Reding was operating under a court order,<sup>7</sup> the court does not  
17 find the lack of a representative of debtor or plaintiff to be  
18 included in the search of the private room to be unreasonable  
19 under the circumstances.

20           16. During the Thursday evening initial inspection,  
21 Ms. Reding discovered a much greater number of documents to be  
22 removed than expected. The commercial mover estimated it would  
23 take two to three days. Reding cross-exam. Yet, Ms. Cunningham  
24

25 \_\_\_\_\_  
26           7As noted, supra, Ms. Cunningham was a named party, directed  
27 by the order to return any estate property she might have  
28 removed. Finding of fact no. 4, Dk 78.





1           18.       When defendant Reding initially entered  
2 plaintiff's locked room, it appeared neat and tidy. She observed  
3 documents and papers, but did not read them, given her  
4 instructions to collect all records. Saturday morning, April 25,  
5 Ms. Reding unlocked the room and instructed Ms. Lyons and Eric,  
6 from the moving company, to search the room as a team. She  
7 instructed paralegal Lyons to collect all documents, as it was  
8 not their job to differentiate. She did not remain in the room,  
9 but returned downstairs to supervise search, collection and  
10 inventory activities in the rest of the dealership. When  
11 informed the bedroom search was completed, she locked the room.  
12 She opened the room one last time, as the team was departing,  
13 with Tom Gruislak to ensure it was in order. She might have  
14 stepped in to straighten the bedspread. She did not personally  
15 supervise the private room search as she had no prior information  
16 that a large amount of cash was kept there. Further, she trusted  
17 Ms. Lyons, whom she had hired for the firm and was busy with the  
18 job of cataloging and removing more than 450 boxes of documents  
19 from the rest of the dealership. Additional challenges were  
20 posed by tensions with Ms. Cunningham and a bomb threat on the  
21 dealership, which required a complete evacuation and search of  
22 the premises by the Navajo Tribal Police. She denies testimony  
23 of Ms. Cunningham that she returned alone to the private room  
24 several times.

25           The creditor team searched all desks and cabinets.  
26 Ms. Reding first introduced herself to debtor's employees on  
27 Friday morning, made the court's search order available and  
28



1 allowed employees to remove their personal records and property  
2 in boxes, after the boxes were searched. At the time, she was  
3 unaware plaintiff's personal papers had been removed from his  
4 private room and packed. She would have provided plaintiff the  
5 same opportunity to remove his personal property and cash, had he  
6 chosen to be present during the search. Reding test. The court  
7 finds this testimony credible.

8 19. She returned to Phoenix and assembled the records  
9 at her law firm. Id., Gaffney test. Access to the records was  
10 provided to other parties. Ultimately, they were removed by the  
11 Arizona Department of Revenue.

12 The two new locksmith keys were given to Ms.  
13 Cunningham by defendant as the team departed. Defendant denies  
14 Ms. Cunningham's testimony that she refused the keys and  
15 defendant instead placed them on plaintiff's downstairs desk.<sup>8</sup>  
16 Had Ms. Cunningham refused the keys, defendant would have taken  
17 them with her to Phoenix. Because of her prior experience with  
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19 8Ms. Cunningham's testimony that she refused to accept the  
20 keys to plaintiff's room is difficult to credit, given her  
21 previous actions to protect the room's privacy, even without  
22 instructions or authorization from plaintiff: She called debtor's  
23 attorney Collins to object to the proposed unlocking of the room  
24 by a locksmith, she requested to be present during the room's  
25 search, she requested to look inside a box containing material  
26 removed from the room, she wrote an April 25, 1998 letter to the  
27 court complaining, inter alia, of the search of the room and she  
28 called plaintiff's brother Marvin on Saturday in an attempt to  
alert plaintiff to the room's search. Test. of Feb. 12; Ex. 3,  
at 1-2. Strangely, although protective of the room, she did not  
check to verify the door was locked on Saturday after the search  
team left and she was locking the dealership. Strangest of all,  
she never thought to alert defendant Reding that plaintiff kept  
cash in his room. Test.

1 large-scale record retrieval, defendant insisted that all  
2 searches at the dealership were conducted in teams, to avoid  
3 charges of theft or damage.

4 When she discovered the locked room, she notified  
5 attorney Gaffney. He subsequently advised her that the  
6 bankruptcy court had authorized entry into the locked room and he  
7 had arranged for a locksmith. Reding cross-exam.; Gaffney direct  
8 test.

9 20. At a hearing the following Monday, April 27,  
10 1998, the court sua sponte reported an emergency ex parte contact  
11 with attorney Gaffney, which resulted in the court's verbal  
12 authorization to enter the locked room. Mins. of Apr. 27, 1998;  
13 Apr. 27, 1998 tr. at 3, 6-8, 11-12, 15; Dk 79; Gaffney test.

14 21. When plaintiff returned to work Monday morning,  
15 he immediately went to his room with Newell Knight. He testified  
16 he found the room unlocked and in a disheveled condition. His  
17 \$29,000 was missing, he claims.

18 22. Ms. Cunningham does not know whether anyone  
19 actually took plaintiff's cash. She does not know why plaintiff  
20 would keep nearly \$30,000 in cash in his room when his bank was  
21 less than a mile away. Cross-exam. Plaintiff Hatch does not  
22 know who took his \$29,000. Test. of Feb. 13. He denies stating  
23 to investigating Tuba City police officers that he was  
24 principally making a theft report so he could make a \$29,000  
25 insurance claim. Test., but cf. Ex. 10, at 2.

26 23. On July 20, 1999, defendants Snell & Wilmer,  
27 L.L.C., Reding, GMAC and GM removed to United States Bankruptcy

1 Court plaintiff's lawsuit TC-CV-094-99 previously filed in the  
2 Navajo Judicial District Court. Adversary Dk 1.

3 24. On November 17, 1999, the court conducted oral  
4 argument on plaintiff's motion to remand the proceeding to the  
5 tribal court. Mins. of Nov. 17, 1999, adversary Dk 27; hearing  
6 Tr., Dk 28. While refusing to rule that the tribal court would  
7 lack jurisdiction over this suit by a non-Indian against other  
8 non-Indians, the court nevertheless denied the remand request.  
9 Tr. of Nov. 17, 1999, at 2-8. The court concluded it had  
10 jurisdiction to determine whether, as plaintiff charged,  
11 defendants exceeded or abused either the court's order or the  
12 access the court granted to enter private property for a search.  
13 The court found an overriding interest in determining whether its  
14 orders were violated or exceeded. Tr. at 7. The court also  
15 found it had the necessary factual background, through the  
16 pending bankruptcy case, to handle this factually complex matter.  
17 Finally, the court concluded tribal courts would not have a  
18 superior interest in resolving the litigation, as no tribal  
19 members or tribal operations were implicated. Id. at 7-8.

20 25. At a May 18, 2000 oral argument on cross-motions  
21 for summary judgment, the court concluded its order of April 23,  
22 1998 conferred quasi-judicial immunity on the remaining  
23 defendants. Tr. of May 18, 2000, at 18, Dk 53. However, the  
24 court reserved for trial factual issues (1) whether this immunity  
25 should be limited due to the possible negligence of Ms. Reding in  
26 conducting the search, specifically, in her absence from the  
27 private room during its search, and (2) whether the obtrusiveness







1 the record at the April 27 hearing, which again was not held ex  
2 parte. The court reaffirms its earlier conclusion that these  
3 contacts were permissible, given the special circumstances of  
4 this case.

5 7. Defendants' cross-motion for summary judgment  
6 established a prima facie case for quasi-judicial immunity. To  
7 rebut this case and prevail on the elements remaining in his  
8 complaint, plaintiff had to establish a case of negligence,  
9 either directly or through the circumstantial evidence theory of  
10 res ipsa loquitur. The burden of proof for all negligence  
11 actions, except medical malpractice, is a preponderance of the  
12 evidence. Harvest v. Craig, 195 Ariz. 521, 990 P.2d 1080, 1082  
13 (Ariz. App. 1999). The court concludes plaintiff failed to meet  
14 this burden.

15 ORDER

16 1. The court finds for all defendants and against  
17 plaintiff. Plaintiff's complaint and cause of action will be  
18 dismissed, with prejudice.

19 2. Defendants' cross-motion for summary judgment is  
20 granted. Defendants' speaking motion for judgment on partial  
21 findings is denied as moot.


22 3. Defendants will serve and lodge a proposed  
23 judgment within five days of the date of this order. Plaintiff

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1 will have five days from service to object to its form.

2 ORDERED ACCORDINGLY.

3 DATED this 27<sup>th</sup> day of June, 2002.


4   
5 \_\_\_\_\_  
6 George B. Nielsen, Jr.  
United States Bankruptcy Judge

7 Copy mailed the 28<sup>th</sup> day  
8 of June, 2002, to:

9 Thaddeus G. Baker, Jr.  
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18 By   
19 Deputy Clerk

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