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Bagley v. Madison Real Property Appellant's Brief Dckt. 39799

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IN THE SUPREME COURT OF THE STATE OF IDAHO

NICHOLAS A. THOMASON, Appellant **Appeal No. 36086**

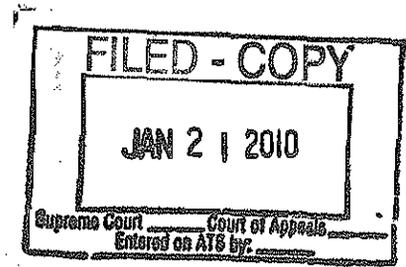
SANDRA K. THOMASON, Appellant **From CV-08-271**

BYRON T. THOMASON, Appellant

MARILYNN THOMASON, Appellant

v.

MADISON REAL PROPERTY, LLC.



APPELLANTS' FINAL BRIEF

Appealed from the District Court of the 7th Judicial District For and In
Madison County, Idaho.

**Honorable Judge Moss, Honorable Judge Woodland, Honorable
Judge Moeller (District Judges) and Honorable Magistrate
Judge Rammell.**

Pro-se Joint Appellants

(and)

Pro-se Joint Appellants

Nicholas A. Thomason

Byron T. Thomason

Sandra K. Thomason

Marilynn Thomason

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APPELLANTS' JOINT FINAL BRIEF

ISSUES BEFORE THE COURT

- I. ROA INCONSISTENCIES, PRE-STATEMENT OF APPELLANTS.
- II. DID THE RESPONDENT HAVE STANDING?
- III. DID THE DISTRICT COURT HAVE SUBJECT MATTER JURISDICTION?
- IV. DID THE COURT ABUSE ITS DISCRETION?
- V. ISSUES NOT ARGUED BEFORE THE LOWER COURT.

I. ROA INCONSISTENCIES, PRE-STATEMENT OF APPELLANTS

(See Separate Motion Augmenting Documents)

As noted in the appellants' joint opening brief, motion for augmentation of documents, and attached appendix to opening brief and reply brief, errors were noted as to the ROA / Documents received from the district court, (*see appellants' opening joint brief, page 18, lines 11-14*) noting a missing document, only to find upon receiving the respondent's response brief from its legal counsel, the errors in the 4 (four) volumes from the District Court are not limited to the one noted by the appellants. The respondent's response brief also notes issues regarding pagination problems (*see page 3 (three), footnote 1. "The Register of Action is located in Volume 1. of the Clerk's Record and is not paginated."*) The ROA, is located in volume 1 (one) after the first 11 (eleven) pages in volume 1 (one). The first sheet in volume one is the cover sheet, followed by the table of contents, sheets two through six (lacking any pagination) which are followed by the index consisting of 5 sheets, also lacking pagination, immediately followed by 7 sheets, also lacking pagination, noted as being a true and correct copy of the ROA in these cases, beginning

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with 4/4/2008 and ending with 8/17/2009, immediately followed by "PAGE 15" "COMPLAINT FOR PARTITION OF REAL PROPERTY AND FOR AN ACCOUNTING", (*see original delivered to the Idaho Supreme Court*). The records from the court are void of any reference to pages 1 through 5, furthermore, the court's table of contents references the ROA beginning on page 6 and going through 14, yet, there are only 7 pages to the ROA, a total of 7 additional pages noted, yet not delivered to the appellants. Additionally, the court records' make note to alpha numbered pages, that are misleading. (*See page 147A, noted on table of contents, June 16, 2008 minute entry, yet there is no page 147, yet there are two 148's but not noted as A and B.*)(*Page 216 appears missing, showing 214, 215, skipping 216 of the ROA in the bankruptcy, 03-42400-JDP. Pages 281, 283, 429, 476, 653, 715, 716 appear missing, 725 is only page one of the filing made on June 29, 2009, yet nowhere is page 725 noted in table of contents. 734A is listed under the table of contents, yet there is no 734A page only a 734. 794 is located on the back of 795, 796 on the back of 797, 798 on the back of 799, 800 on the back of 801, 802 on the back of 803, 804 on the back of 805, 806 on the back of 807, 808 on the back of 809, 810 on the back of 811, 812 on the back of 813, ending with document number 844 followed by three clerk's filings with the Idaho Supreme Court. To further the confusion being created by the improperly paged documents and the appellants' inability to follow the respondent's referencing and allegations, the counsel for the respondent alleges (*see page 3 of respondent's reply brief*) the following: "... filed a Notice of Appeal on October 1, 2008. R. Vol. 3., p. 284. This appeal was conditionally dismissed by the Supreme Court as untimely on October 16, 2008. ...R. Vol. 4., pp. 645, 672, 683."*

The documents delivered to each of the appellants (*see appellants' augmented appendix,*

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F.1-4; court show the appeal was denied for being interlogatory in nature, not untimely, raising the question as to whether appellants had been receiving the same documents from the courts as what was being filed in the district court and filed with and/or by the respondent's counsel. Appellants further need to notice to the Idaho Supreme Court that a possible violation in court's protocol as to recording and preserving records of actions and filings in these proceedings may have occurred as indicated by the ROA in these proceedings, (*see volume one, page 3 of 7 of the ROA*). Under court procedures, the ROA's are records of proceedings, hearings, filings, orders and minute entries entered and are to be protected from any possible changes so to maintain a correct and untainted record of events and filing in the exact order and at the exact time of occurrence, yet in this case, the ROA is evidence that such security had not occurred in these proceedings, seeing entries were being made and the ROA was being altered months after the events and filings had occurred, *noting the ROA, page 3 of 7, 10/17/2008* shows events/filings were being added, not as they occurred, but long after the events, as the ROA evidences, when the ROA lists the name of a judge, when in fact, the named alleged judge at the time had not been appointed as a judge for another 4 (four) months and was still a practicing attorney on 10/17/2008. Such events, in themselves, are cause for a motion for mistrial. The appellants reserve any and all rights, and object to any and all records being referenced to by respondent's counsel (now and in the future) unless each referenced document is augmented into the records of this court, allowing each appellants to take the referenced document to the district court and be shown the court's original so to compare the original with that which had been delivered to the appellants.

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II. DID THE RESPONDENT HAVE STANDING?

Respondent alleges it had and still has standing to sue for the division of land (land that is in a trust) rents from the land, payment of property taxes (which Madison County Tax Assessor, if had been joined as a party in these proceedings would have been barred by lache, estoppel and fraud), for legal fees and costs for having to bring suit and the prosecution of its alleged claims. Respondent's claim, that its complete address is only "...Rexburg, Idaho, 83440..." is fraudulent in itself, when counsel for the respondent (a.k.a. as owner, manager and organizer of the respondent) having not only intrinsic but extrinsic knowledge that its claim is fraudulent, made its fraudulent statement in an attempt to deceive with the hope the Idaho Supreme Court would rely on the its deceit, in an attempt to benefit from the deceit. *Respondent's Response Brief, page 16, "The evidence in the record is the contrary. The address on the deed in question is Madison Real Property, LLC, Rexburg, Idaho 83440."* As delivered to the lower court and currently showing updated Idaho Secretary of State's business records to the Idaho Supreme Court, (*appellants' augmented records, exhibit B.5-7, rebuttal evidence*) on March 17th, 2008, respondent and legal counsel (one in the same) filed with the Idaho Secretary of State its LLC's, business documents and application, showing the complete address of the respondent on the day the deeds were created (March 17th, 2008) (*see appellants' augmented appendix, B.1-7, rebuttal evidence*) was and still is 49 Professional Plaza, Rexburg, ID USA 83440. On its subsequent filings with the Idaho Secretary of State, its address remained 49 Professional Plaza, Rexburg, ID. On January 12, 2009, not only did the respondent continue to assert its complete mailing

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address to be 49 Professional Plaza, Rexburg, ID 83440 USA, it further claims that (NO PO BOX) exists. (See appellants' augmented appendix, B.7-7, box no. 2, rebuttal evidence.) Even with the knowledge of the court's access to the truth as to the evidence presented to the lower court, as well as the evidence to the higher court, the respondent/counsel shows a lack of integrity when it continues on with its fraudulent claims as to the address of the respondent. **I.R.C.P. 60(b) (3) (2004)** allows the court *sua sponte* to set aside a judgment, **I.R.C.P. Rule 60(b)** allows a court to "relieve a party ... from a final judgment, order or proceeding" for various reasons, including under **I.R.C.P. Rule 60(b)** "... (3) for fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party.", **I.R.C.P. Rule 60(b) (3) (2004)**. **Rule 60(b)** further states that it "does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order or proceeding... or to set aside a judgment for fraud upon the court." **I.R.C.P. Rule 60(b) (6) (2004)**; *Compton v. Compton*, 101 Idaho 328, 333, 612 P.2d 1175, 1180 (1980); *Eliopoulos v. Idaho State Bank*, 129 Idaho 104, 108-09, 922 P.2d 401, 405-06 (Ct. App. 1996). Additionally, the U.S. Supreme Court has held that courts have the inherent power to investigate judgments obtained by fraud and may do so on behalf of all those affected, citing *Campbell, Idaho Supreme Court, Docket No. 29717, citing Universal Oil Products Co. v. Root Refining Co.*, 328 U.S. 575, 580 (1946). **I.R.C.P. Rule 17(a)** states "Every action shall be prosecuted in the name of the real party in interest." **I.R.C.P. Rule 17(b)** states: "The capacity of a party...to sue...shall be determined by the law of the state." *Damian v. Pina*, ID Ct. App., no. 24290, 1999, Opinion No. 17 (Feb. 23, 1999). Respondent's legal counsel filed an affidavit with the lower court on July

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11, 2008, evidencing the deeds violation of I.C. 55-601, (*see appellants' augmented appendix, E. 1-7; court docket of records, Vol. 2, pp. 156, 160-163, 172 and 173*) each document was before the lower court prior to the motion for Summary Judgment, held on August 18, 2008. The lower court had in its records, the appellants' joint response to the complaint, including the deeds, noted as exhibit 1 and 2 in response to complaint, (*see appellants' augmented appendix, G.1.4; court docket of records, Vol. 1, pp. 23-26, noting page 26.3(a), 4(a) and 27. 5(a).*) "This court does not have jurisdiction over the subject matter." Filed under sworn affidavit, (*see appellant's augmented appendix, G.5-7; court's record of documents, Vol. 1, pp. 37, 38 and 39, dated April 24, 2008.*) Under the laws and statutes of the state of Idaho, I.C. 55-601, the respondent was and is not the owner nor did it nor does it have any interest in the land or the trust, and as such, lacks standing to sue for the division of the land, rents from the land, attorney fees and costs for the prosecuting of the case, nor any other claim of relief sought by the respondent or its legal counsel for any party obtaining a benefit from its orders when standing and subject matter jurisdiction was lacking. The deeds lack any grantee's full and complete mailing address. Madison County 7th District Court, same presiding judge, has upheld I.C. 55-601 as well as the Idaho Supreme Court that Madison County, Idaho requires the grantee's full and complete mailing address to be on the deeds, citing *Riley, Idaho Ct. Appeal, Docket No. 31414(2006)* "As observed by the district court, I.C. 55-601 requires the name and complete mailing address of the grantee to appear on any instrument conveying real property." I.C. 55-601 requires the name and complete mailing address of the grantee to appear on any instrument conveying real property." As with *Riley, Idaho Ct. App. Docket, 31414 (2006)*, neither the

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grantors' nor the grantee's complete mailing address are listed on the deeds alleged as transferring interest to the respondent, nor any other document recorded in Madison County, Idaho. The deeds (*see appellants' augmented appendix, B.1-4; court docket of records Vol. 1, p. 72, Vol. 2, pp. 160-163, 172, 173*) list only a notation of the city and the state which this Court and the 7th District Court has upheld is insufficient to meet the requirements of I.C. 55-601. The respondent fails to cite any documents filed with the court or in the County of Madison, Idaho showing any filing of an address of the grantee on a survey or any other controlling documents. The appellants are unable to detect what claims he is making regarding his citing cases involving surveys, contracts, or for that matter any title report ever being filed in Madison County, Idaho that satisfies I.C. 55-601, (*see appellants' joint augmented appendix, D.1-3, rebuttal evidence*). The respondent's repeated claim of a title report and certificate to sue issued by First American Title may generate a claim the respondent/counsel for the respondent may have against First American Title, however, First American Title had never been made a party to these proceedings nor has the respondent provided any documentation to show a document exists, and that had been filed with the deeds that attaches a complete address of the respondent. Seeing the respondent's complete mailing address is identical to the respondents legal counsel office address, all documents even lack the complete mailing address of the grantors', voiding any possible claim that the grantors' address is identical to the respondents, therefore the deed complies with I.C. 55-601. However, the respondent does not make any such claim, the claims it makes are of an address on a undocumented survey, (*see respondent's brief, page 18*) and/or the grantee may have had a post office box, (*see respondent's brief, page 18*) and/or the

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respondent might be a municipality and if it were a municipality in Idaho, the city's name would be sufficient, (*see respondent's brief, page 18*) none of which apply in the issues before the Idaho Supreme Court nor were they claims before the District Court. The respondent claims it was a "bona-fide" purchaser of the land from its legal counsel and his wife, therefore having standing to sue. Under the laws and statutes of the State of Idaho, the respondent is not the owner nor has any interest in the land, trust nor rents under I.C. 55-601. Furthermore, I.R.C.P. Rule 17(a) and 17(b) state (respectfully) "Every action shall be prosecuted in the name of the real party...to sue...shall be determined by the law(s) of this state", citing "Damian v. Pina, Idaho Ct Appeal, no. 24290, 1999, Opinion No. 17 (Feb 23, 1999). (See Appellants' Joint Appeal Opening Brief, pp.1-47.)

III. DID THE COURT HAVE SUBJECT MATTER JURISDICTION?

The respondent's lack of standing (*see appellants' joint opening brief, pp 13-16*) left the District Court wanting jurisdiction when the (**respondent**) asserted it was a bona-fide purchaser and grantee to deeds from the grantors, even though the two and only deeds were in violation of I.C. 55-601. The issue of standing is jurisdictional and can be raised at any time and it is a fundamental tenant of American jurisprudence that a person (entity) wishing to invoke a court's jurisdiction must have standing. "Van Valkenberg v. Citizens for term limits, 135 Idaho 121, 124, 15P. 3d 1129, 1132, (2000); Hoppe v. McDonald 103, Idaho 33, 35, 644 P.2d, 355, 357 (1982)". The **doctrine of standing** focuses on the party seeking relief and not on the issue(s) the party wishes to have adjudicated, citing "Miles v. Idaho Co., 116, Idaho 635, 641, 778 P.2d, 757,

763 (1989)". The respondent's lack of standing to bring any complaint against the appellants, (see appellants' joint opening brief, pp. 1-47), left the District Court lacking subject matter jurisdiction. An absence of subject matter jurisdiction is not waivable and may be asserted at any stage of the proceedings, including on appeal, citing "*Smiley v. Kaiser*, 130 Idaho 909, 912, 950 P.2d 1248, 1251 (1997); *State v. Walsh*, 124 Idaho 714, 864 P.2d 160 (1993); *White v. Marty*, 97 Idaho 85, 88-89, 540 P.2d 270, 273-273 (1975) overruled on other grounds by *Carr v. Magistrate Court of the First Judicial Dist., in and for the County of Kootenai*, 108 Idaho 546, 700 P.2d 949 (1985). Jurisdiction over the subject matter has been variously defined as referring to (1) the nature of the cause of action and of the relief sought; (2) the class of cases to which the particular one belongs and the nature of the cause of action and of the relief sought; (3) the power of a court to hear and determine cases of the general class to which the particular one belongs; (4) both the class of cases and the particular subject matter involved; and (5) the competency of the court to hear and decide the case. Jurisdiction of a court over subject matter is essential, necessary, indispensable and an elementary prerequisite of judicial power. A court cannot proceed with a trial or make a judicial decision nor grant orders without such jurisdiction existing. It is elementary that the jurisdiction of the court over the subject matter of the action is the most critical aspect of the court's authority to act. Without it the court lacks any power to proceed; therefore, a defense based upon the lack of subject matter jurisdiction cannot be waived and may be asserted at anytime, citing *Matter of Green*, 313 S.E. 2d 193 (N.C. App. (1984)). The Seventh District Court and the Idaho Supreme Court, render the same decision under their

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authority in *Riley v. W.R. Holding, LLC*, 143 Idaho 116, 119, 138 P.3d 316, 319 (2006) and *Riley, Idaho Ct. App., Docket No. 31414 (2006)*, respectfully.

IV. ABUSE OF DISCRETION

In addition to the claims of abuse of discretion, as noted in the appellants' joint appeal brief, pages 1-47, the court abused its discretion when it failed to address the issue of lack of subject matter jurisdiction, (*see appellants augmented appendix, H.1-2: Court Dockets 148 and 149*) when it failed to address *sua sponte* subject matter jurisdiction, made a decision on June 17, 2008, denying appellants' motion to dismiss for lack of jurisdiction, claiming it had jurisdiction upon the land, yet ignoring the issue of subject matter jurisdiction, by failing to follow its former decisions and ignoring I.C. 55-601 and granted a summary judgment, lacking subject matter jurisdiction. *Riley v. W.R. Holding, LLC*, 143 Idaho 116, 119, 138 P.3d 316, 319 (2006). (*See appellants' jointly filed appeal brief, 1-47.*)

V. ISSUES NOT ARGUED NOR CITED BY RESPONDENT

Regarding the respondent's claim that two of the appellants had failed to file a notice of appeal, in itself if false. The issues being appealed arose from a lower court's multiple decisions, while lacking subject matter jurisdiction, including a decision from the hearing granting summary judgment on August 18, 2008, appealed by all parties, only then to have the Idaho Supreme Court dismiss the appeal as being from an interlocutory decision, all the appellants' notices of appeal stand as being appealed but premature. Regarding the documents/claims involving issues

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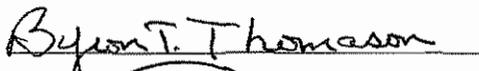
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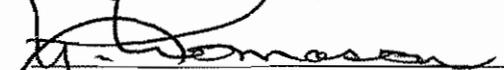
before the United States Ninth Circuit and the criminal complaint before the F.B.I., these issues are not nor have been argued in the lower court. This case only has to do with the deeds that violated I.C. 55-601, seeing the respondent claims it is not the grantors and is a mere "bona-fide" purchaser after the fact. The issues and claims in the respondent's reply brief that are currently before the Ninth Circuit Court of Appeals and/or are part of the criminal complaint filed with the F.B.I. are not nor have been argued in this case.

DATED this 19th day of January, 2010.


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APPELLANTS' JOINT FINAL BRIEF
Appeal No. 36036

11

B. Thomason, pro-se
M. Thomason, pro-se
485 N. 2nd E., 105-273
Rexburg, ID 83440
208-356-7069

NICHOLAS A. THOMASON AFFIDAVIT SHEET

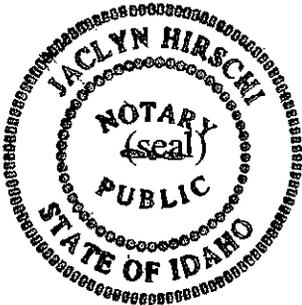
STATE OF IDAHO)
) ss.
County of Madison)

NICHOLAS A. THOMASON, being first sworn, deposes and says he jointly prepared these filings and the contents therein, No. 36086-2009, and state such are true and correct to the best of his knowledge, ability and belief, based on his own personal knowledge, and shall so testify, under the perjury of law, to such in any legal judicial court of law within these United States of America.

Nicholas A. Thomason

NICHOLAS A. THOMASON

SUBSCRIBED AND SWORN to before me this 19th day of January, 2010, upon verification as to the identity of the affiant.



Jaclyn Hirschi
Notary Public of Idaho
Residing at: Madison
Commission Expires: 9.12.11

N. Thomason, pro-se
S. Thomason, pro-se
5293 S. 4300 W.
Rexburg, ID 83440
208-356-5791

APPELLANTS' JOINT FINAL BRIEF
Appeal No. 36036

B. Thomason, pro-se
M. Thomason, pro-se
485 N. 2nd E., 105-273
Rexburg, ID 83440
208-356-7069

SANDRA K. THOMASON, AFFIDAVIT SHEET

STATE OF IDAHO)
) ss.
County of Madison)

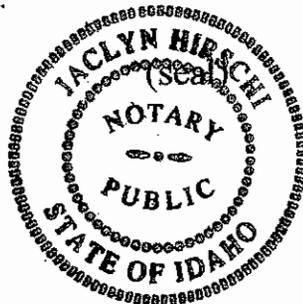
SANDRA K. THOMASON, first being sworn, deposes and says she jointly prepared these filings and the contents therein, No. 36086-2009, and state such are true and correct to the best of her ability, knowledge and belief based on her own personal knowledge and shall so testify, under the perjury of law, to such in any legal judicial court of law within these United States of America.

Sandra K. Thomason

SANDRA K. THOMASON

SUBSCRIBED AND SWORN to before me this 19th day of January, 2010 upon verification as to the identity of the affiant.

Jaclyn Hirschi
Notary Public for Idaho
Residing at: Madison
Commission Expires: 9-12-11



N. Thomason, pro-se
S. Thomason, pro-se
5293 S. 4300 W.
Rexburg, ID 83440
208-356-5791

APPELLANTS' JOINT FINAL BRIEF
Appeal No. 36036

B. Thomason, pro-se
M. Thomason, pro-se
485 N. 2nd E., 105-273
Rexburg, ID 83440
208-356-7069

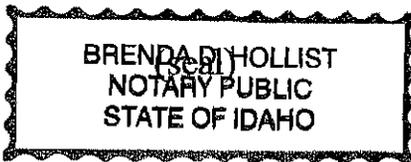
BYRON T. THOMASON'S AFFIDAVIT SHEET

STATE OF IDAHO)
) ss.
County of Madison)

BYRON T. THOMASON, being first sworn, deposes and says he jointly prepared these filings and the contents therein, No. 36086-2009, and state such are true and correct to the best of his knowledge, ability and belief, based on his own personal knowledge and shall so testify, under the perjury of law, to such, in any legal judicial court of law within these United States of America.

Byron T. Thomason
BYRON T. THOMASON

SUBSCRIBED AND SWORN to before me this 19th day of January, 2010 upon verification as to the identity of the affiant.



Brenda D. Hollist
Notary Public for Idaho
Residing at: Rexburg
Commission Expires: 4/21/15

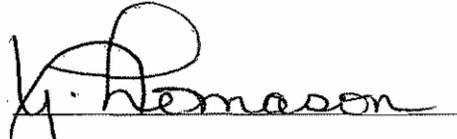
MARILYNN THOMASON'S AFFIDAVIT SHEET

STATE OF IDAHO)

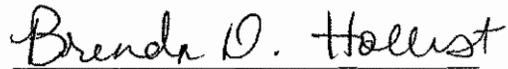
) ss.

County of Madison)

MARILYNN THOMASON, being first sworn, deposes and says she jointly prepared these filings and the contents therein, No. 36086-2009, and state such are true and correct to the best of her knowledge, ability and belief, based on her personal knowledge, and shall testify, under the perjury of law, to such in any legal judicial court of law within these United States of America.


MARILYNN THOMASON

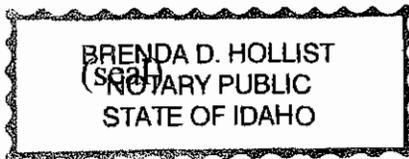
SUBSCRIBED AND SWORN to before me this 19th day of January, 2010, upon verification as to the identity of the affiant.



Notary Public of Idaho

Residing at: Rexburg

Commission Expires: 4-21-15



N. Thomason, pro-se
S. Thomason, pro-se
5293 S. 4300 W.
Rexburg, ID 83440
208-356-5791

APPELLANTS' JOINT FINAL BRIEF
Appeal No. 36036

15

B. Thomason, pro-se
M. Thomason, pro-se
485 N. 2nd E., 105-273
Rexburg, ID 83440
208-356-7069

CERTIFICATE OF SERVICE

I, NICHOLAS A. THOMASON, do certify the following entity(ies) and party(ies) have been served in the manner, as noted below, the Joint Appellants' FINAL BRIEF, postage pre-paid, this 19th day of January, 2010.

IDAHO SUPREME COURT

First Class U.S. Mail

Court of Appeal Clerk

451 W. State Street

Boise, Idaho 83702

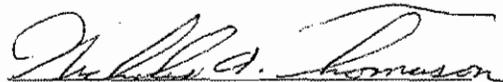
Attorney Wm. Forsberg

First Class U.S. Mail

49 Professional Plaza

Rexburg, Idaho 83440

DATED this 19th day of January, 2010.



Nicholas A. Thomason

N. Thomason, pro-se
S. Thomason, pro-se
5293 S. 4300 W.
Rexburg, ID 83440
208-356-5791

APPELLANTS' JOINT FINAL BRIEF
Appeal No. 36036

16

B. Thomason, pro-se
M. Thomason, pro-se
485 N. 2nd E., 105-273
Rexburg, ID 83440
208-356-7069

IN THE SUPREME COURT OF THE STATE OF IDAHO

NICHOLAS A. THOMASON, Appellant

APPEAL NO. 36086

SANDRA K. THOMASON, Appellant

From: CV-08-271

BYRON T. THOMASON, Appellant

MARILYNN THOMASON, Appellant

v.

MADISON REAL PROPERTY, LLC.

APPELLANTS' JOINT APPENDIX 2 OF 2 (E-H)

Appealed from the District Court of the 7th Judicial District For and In
Madison County, Idaho.

Honorable Judge Moss, Honorable Judge Woodland, Honorable
Judge Moeller (District Judges) and Honorable Magistrate
Judge Rammell.

Pro-se Joint Appellants

(and)

Pro-se Joint Appellants

Nicholas A. Thomason

Byron T. Thomason

Sandra K. Thomason

Marilynn Thomason

5293 S. 4300 W.

485 N. 2nd E., 105-273

Rexburg, Idaho 83440

Rexburg, Idaho 83440

(208) 356-5791

(208) 356-7069

William Forsberg (Legal Counsel for Respondent)

49 Professional Plaza

Rexburg, Idaho 83440

IN THE SUPREME COURT OF THE STATE OF IDAHO

NICHOLAS A. THOMASON, Appellant

APPEAL NO. 36086

SANDRA K. THOMASON, Appellant

From: CV-08-271

BYRON T. THOMASON, Appellant

MARILYNN THOMASON, Appellant

v.

MADISON REAL PROPERTY, LLC.

APPELLANTS' JOINT APPENDIX 2 OF 2 (E-H)

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Honorable Judge Moss, Honorable Judge Woodland, Honorable
Judge Moeller (District Judges) and Honorable Magistrate
Judge Rammell.

Pro-se Joint Appellants

(and)

Pro-se Joint Appellants

Nicholas A. Thomason

Byron T. Thomason

Sandra K. Thomason

Marilynn Thomason

5293 S. 4300 W.

485 N. 2nd E., 105-273

Rexburg, Idaho 83440

Rexburg, Idaho 83440

(208) 356-5791

(208) 356-7069

William Forsberg (Legal Counsel for Respondent)

49 Professional Plaza

Rexburg, Idaho 83440

APPELLANTS' APPENDIX INDEX
APPELLANTS' JOINT FINAL BRIEF
Volume 2 of 2

DOCUMENT REFERENCES IN APPELLANTS' FINAL BRIEF

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Appendix E.1-7 (Court Dockets Vol. 2 pp. 156,160-163, 172,173).....	6
Appendix F.1-4 (Court Dockets Vol. 4 pp. 672, 645, 646, 683).....	2
Appendix G.1-4 (Court Dockets Vol. 1, pp.23-26).....	6
Appendix G.5-7 (Court Dockets Vol. 1, pp. 37, 38, 39).....	6
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Rebuttal Evidence, Appellants' Appendix (D.1-3)	7

APPENDIX VOLUME 1 of 2 had been submitted to the Supreme Court and to respondent's legal counsel at the time of the filing of the Appellants' Joint Opening Brief. The appellants' motion to augment is being sent separate from the appellants' final brief and Volume 2 of 2.

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, resident of and with my office in Rexburg, Idaho; that I served a copy of the following described pleading or document on the attorneys and/or individuals listed below by hand delivery, by mailing with the correct postage thereon, or by facsimile, a true and correct copy thereof on this 11th day of July, 2008.

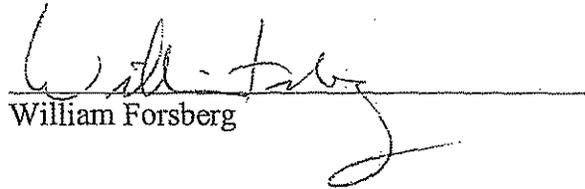
Byron Thomason (X) Mail
485 North 2nd East () Hand Delivery
Rexburg, Idaho 83440 () Facsimile (208) 356-4536
() Personal Service

Marilynn Thomason (X) Mail
485 North 2nd East () Hand Delivery
Rexburg, Idaho 83440 () Facsimile (208) 356-4536
() Personal Service

Nicholas A. Thomason (X) Mail
5293 South 4300 West () Hand Delivery
Rexburg, Idaho 83440 () Facsimile
() Personal Service

Sandra K. Thomason (X) Mail
5293 South 4300 West () Hand Delivery
Rexburg, Idaho 83440 () Facsimile
() Personal Service

Jay A. Kohler (X) Mail
Attorney at Law () Hand Delivery
482 Constitutional Way, Suite 313 () Facsimile (208) 524-3619
Idaho Falls, ID 83402 () Personal Service


William Forsberg

E. 1 of 7

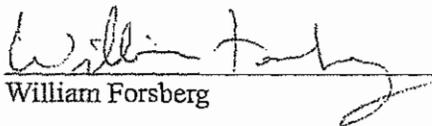
WARRANTY DEED

For Value Received, William Forsberg and Colleen Forsberg, husband and wife, the grantors, do hereby grant, bargain, sell and convey unto Madison Real Properties, LLC, Rexburg, Idaho, 83440, grantee, and to grantee's successors and assigns forever, all grantors' one third undivided interest in and to the following described real estate located in Madison County, Idaho:

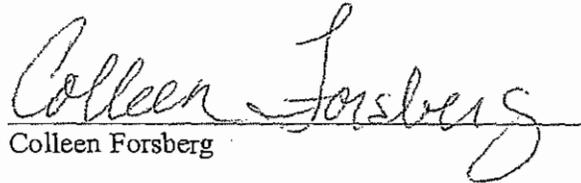
See attached description

Together with all improvements, water, water rights, ditches, ditch rights, easements, hereditaments and appurtenances thereto. And the said grantors do hereby covenant for themselves, their heirs and assigns to and with the said grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, grantors have hereunto subscribed their names to this instrument this 17 day of March, 2008.



William Forsberg

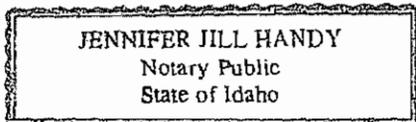


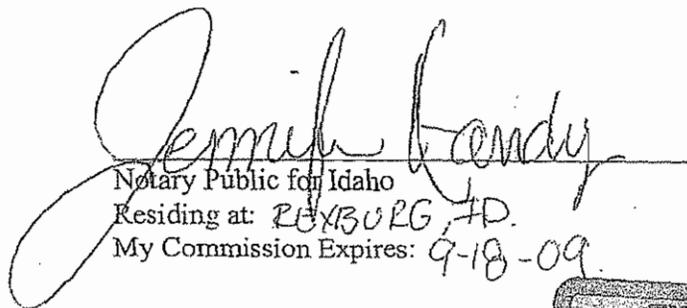
Colleen Forsberg

STATE OF IDAHO)
) ss
County of Madison)

On this 17 day of March, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William Forsberg and Colleen Forsberg, known to me to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same.

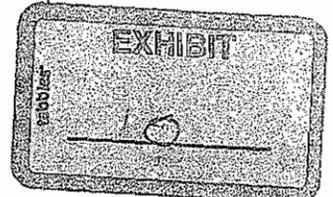
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

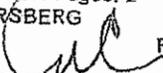




Notary Public for Idaho
Residing at: REXBURG, ID.
My Commission Expires: 9-18-09

EX 2-7



Instrument # 344434
REXBURG, MADISON, IDAHO
3-19-2008 04:07:00 No. of Pages: 2
Recorded for : WILLIAM FORSBERG
MARILYN R. RASMUSSEN
Ex-Officio Recorder Deputy  Fee: 6.00

Description of Property

Township 5 North, Range 39 E.B.M., Madison County, Idaho
Section 2: SE1/4SW1/4; SW1/4SE1/4

EXCEPT: Commencing at the NW corner of the SE1/4SE1/4 of Section 2, Township 5 North, Range 39 East, Boise Meridian, Madison County, Idaho, and running thence W. 54 feet; thence S. 673 feet; thence E. 54 feet; thence N. 673 feet to the point of beginning.

ALSO EXCEPT: Commencing at a point that is S. 3935.88 feet from the SE corner of Section 34, Township 6 North, Range 39 E.B.M., Madison County, Idaho, and running thence W. 260.00 feet; thence N. 260.00 feet; thence E. 260.00 feet; thence S. 260.00 feet to the point of beginning. ALL of the above described land is contained in the SE1/4SW1/4 of said Section 2, Township 5 North, Range 39 East, Boise Meridian, Madison County, Idaho.

Contains 1.55 acres less the County road right-of-way.
This property also contains 70 foot Case Well.

ALSO EXCEPT: Commencing at the S1/4 corner of said Section 2 (said point is an aluminum cap on a 5/8" steel rod) and running thence N. 89°27'12" W. 782.00 feet along the section line, more or less, to a county road right-of-way; thence N. 0°16'48" W. 1082.00 feet to the True Point of Beginning; thence E. 650.00 feet; thence N. 0°16'48" W. 272.00 feet to a county road; thence W. 650.00 feet to a county road intersection; thence S. 0°16'48" E. 272.00 feet to the True Point of Beginning.

ALSO EXCEPT: county roads.

AND

Together with 6 shares of the capital stock of the Liberty Park Irrigation Co., and together with all appurtenances.

EX 3-7

CORRECTED WARRANTY DEED

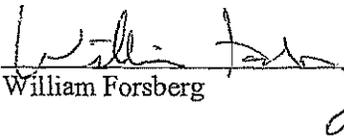
(This deed corrects Instrument number 344434 to adjust the Grantee by listing the correct name of LLC)

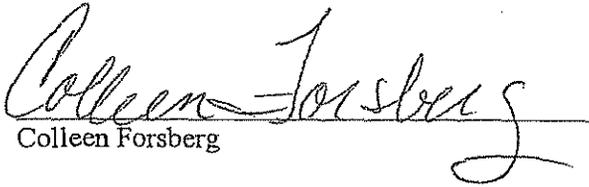
For Value Received, William Forsberg and Colleen Forsberg, husband and wife, the grantors, do hereby grant, bargain, sell and convey unto Madison Real Property, LLC, Rexburg, Idaho, 83440, grantee, and to grantee's successors and assigns forever, all grantors' one third undivided interest in and to the following described real estate located in Madison County, Idaho:

See attached description

Together with all improvements, water, water rights, ditches, ditch rights, easements, hereditaments and appurtenances thereto. And the said grantors do hereby covenant for themselves, their heirs and assigns to and with the said grantee, that they are the owners in fee simple of said premises; that said premises are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

IN WITNESS WHEREOF, grantors have hereunto subscribed their names to this instrument this 4 day of April, 2008.


William Forsberg

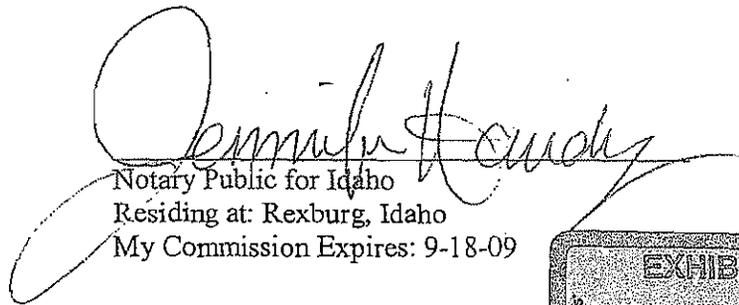

Colleen Forsberg

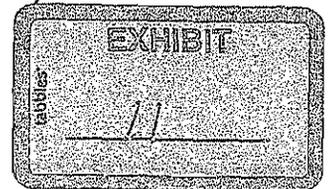
STATE OF IDAHO)
) ss
County of Madison)

On this 4 day of April, 2008, before me, the undersigned, a Notary Public in and for said County and State, personally appeared William Forsberg and Colleen Forsberg, known to me to be the persons whose names are subscribed to the within and foregoing instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, the day and year in this certificate first above written.

JENNIFER JILL HANDY
Notary Public
State of Idaho


Notary Public for Idaho
Residing at: Rexburg, Idaho
My Commission Expires: 9-18-09



Instrument # 344898

REXBURG, MADISON, IDAHO
4-4-2008 02:52:00 No. of Pages: 2
Recorded for : FORSBERG LAW OFFICES
MARILYN R. RASMUSSEN
Ex-Officio Recorder Deputy 

Fee: 6.00

Ex 4-9

Description of Property

Township 5 North, Range 39 E.B.M., Madison County, Idaho
Section 2: SE1/4SW1/4; SW1/4SE1/4

EXCEPT: Commencing at the NW corner of the SE1/4SE1/4 of Section 2, Township 5 North, Range 39 East, Boise Meridian, Madison County, Idaho, and running thence W. 54 feet; thence S. 673 feet; thence E. 54 feet; thence N. 673 feet to the point of beginning.

ALSO EXCEPT: Commencing at a point that is S. 3935.88 feet from the SE corner of Section 34, Township 6 North, Range 39 E.B.M., Madison County, Idaho, and running thence W. 260.00 feet; thence N. 260.00 feet; thence E. 260.00 feet; thence S. 260.00 feet to the point of beginning. ALL of the above described land is contained in the SE1/4SW1/4 of said Section 2, Township 5 North, Range 39 East, Boise Meridian, Madison County, Idaho.

Contains 1.55 acres less the County road right-of-way.
This property also contains 70 foot Case Well.

ALSO EXCEPT: Commencing at the S1/4 corner of said Section 2 (said point is an aluminum cap on a 5/8" steel rod) and running thence N. $89^{\circ}27'12''$ W. 782.00 feet along the section line, more or less, to a county road right-of-way; thence N. $0^{\circ}16'48''$ W. 1082.00 feet to the True Point of Beginning; thence E. 650.00 feet; thence N. $0^{\circ}16'48''$ W. 272.00 feet to a county road; thence W. 650.00 feet to a county road intersection; thence S. $0^{\circ}16'48''$ E. 272.00 feet to the True Point of Beginning.

ALSO EXCEPT: county roads.

AND

Together with 6 shares of the capital stock of the Liberty Park Irrigation Co., and together with all appurtenances.

Ex 5-9

Assignment of Rights

Agreement made at Rexburg, Idaho this 17th day of March, 2008, between William Forsberg and Colleen Forsberg, referred to herein as "assignor," and Madison Real Property, LLC a limited liability company duly organized and existing under the laws of the State of Idaho, referred to herein as "assignee," witness:

Whereas, assignor has owned a one-third undivided interest in the real estate described in Exhibit A, referred to herein as the Farmstead property since October 30, 2001; and

Whereas, the co-owners of the property have been in possession and have used and profited from their use of the Farmstead property and assignor has not received any share of the profits and rents from the property and has received no accounting of the same; and

Whereas, assignee will pursue an accounting of the use of the Farmstead by the co-owners along with an action for partition.

Now therefore, in consideration of the covenants herein and other good and valuable consideration, receipt of which is acknowledged, it is hereby stipulated and agreed as follows:

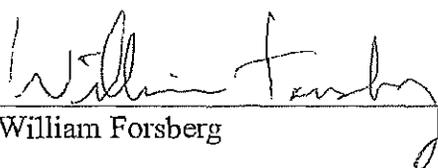
Assignment

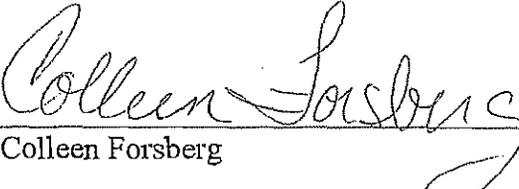
1. Assignor hereby assigns and sets over all their rights to share in the rents and profits from the use of the Farmstead Property by the co-owners including the period of time from October 30, 2001 to date.

2. Assignee agrees to pursue all rights of Assignor in the Farmstead property, including the right to an accounting and a share of all income and benefit from the use of the property as well as a partition of the property.

IN WITNESS WHEREOF, the parties have caused their names to be subscribed, all as of the date set forth herein.

Assignor:


William Forsberg


Colleen Forsberg

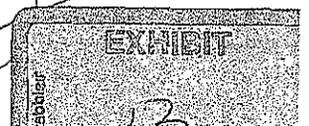
Assignee:

Madison Real Property, L.L.C.

By:


Its

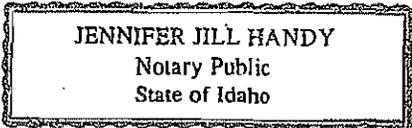
Ex 6-7



STATE OF IDAHO)
)ss.
County of Madison)

On this 17th day of March, 2008, personally appeared before me, a Notary Public, William Forsberg and Colleen Forsberg, known or identified to me (or proved to me on the oath of Jennifer Handy), to be the persons who executed the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



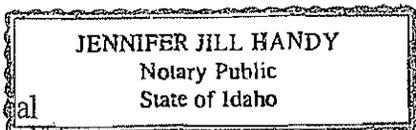
Jennifer Handy
Notary Public for Idaho
Residing at: REXBURG, ID.
My Commission Expires: 9-18-09

Seal

STATE OF IDAHO)
)ss.
County of Madison)

On this 17th day of March, 2008, personally appeared before me, a Notary Public, William Forsberg, an officer of Madison Real Property, LLC, known or identified to me (or proved to me on the oath of Jennifer Handy), to be the President of the company, the person who executed the within instrument on behalf of the company, and acknowledged to me that such company executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

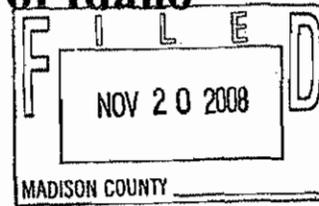


Jennifer Handy
Notary Public for Idaho
Residing at: REXBURG, ID.
My Commission Expires: 9-18-09

Seal

Ex 7-7

In the Supreme Court of the State of Idaho



BYRON T. THOMASON, MARILYNN)
THOMASON, NICHOLAS A.)
THOMASON,)

Defendants-Appellants,)

v.)

MADISON REAL PROPERTY, LLC,)

Plaintiff-Respondent.)

ORDER DISMISSING APPEAL

Supreme Court Docket No. 35737-2008

Madison County District Court No.

CV 2008-271

Ref. No. 08S-422

On October 15, 2008, an Order Conditionally Dismissing Appeal was issued by this Court as it appears the Notice of Appeal is not from an appealable order or judgment; however, Appellants were allowed to file a response showing good cause why this appeal should not be dismissed. Thereafter, a RESPONSE AND OBJECTION TO SUPREME COURT'S DECISION OF APPEAL, JOINTLY FILED, CLAIMS DECISIONS APPEAR NOT TO BE FROM FINAL DECISIONS with attachments was filed by Appellants on October 21, 2008. Therefore, good cause appearing,

IT HEREBY IS ORDERED that this appeal be, and hereby is, DISMISSED.

DATED this 13th day of November 2008.

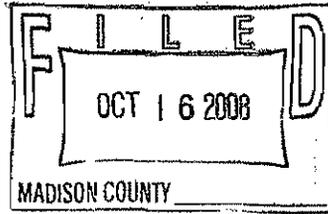
By Order of the Supreme Court

Handwritten signature of Stephen W. Kenyon.

Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Judge William H. Woodland

In the Supreme Court of the State of Idaho



MADISON REAL PROPERTY, LLC,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 BYRON T. THOMASON and MARILYNN)
 THOMASON, husband and wife, and)
 NICHOLAS A. THOMASON,)
)
 Defendants-Appellants,)
)
 and)
)
 SANDRA THOMASON and JAY A. KOHLER,)
)
 Defendants.)

**ORDER CONDITIONALLY
DISMISSING APPEAL**

**SUPREME COURT NO. 35737
Madison County Case No. CV2008-271**

The Notice of Appeal, which was filed October 1, 2008 in the District Court from Findings of Fact, Conclusions of Law and Order Granting Partial Summary Judgment entered August 22, 2008, appears not to be from a final appealable Order or Judgment from which a Notice of Appeal may be filed under I.A.R., 11. Therefore, after due consideration and good cause appearing,

IT HEREBY IS ORDERED that the NOTICE OF APPEAL be, and hereby is, CONDITIONALLY DISMISSED because it appears it is not from a final appealable Order or Judgment; however, the Appellant may file a RESPONSE with this Court within twenty-one (21) days from the date of this Order, which shall show good cause, if any exists, why this appeal should not be dismissed.

IT FURTHER IS ORDERED that proceedings in this appeal are SUSPENDED until further notice.

F. 2-4

DATED this 15th day of October 2008.

For the Supreme Court

Dorothy Beaver for
Stephen W. Kenyon, Clerk

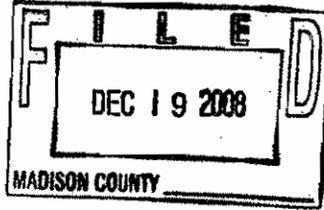
cc: Counsel of Record
District Court Clerk
District Court Reporter

ORDER CONDITIONALLY DISMISSING APPEAL
PAGE 646

AL - NO. 35737

F.3-4

In the Supreme Court of the State of Idaho



BYRON T. THOMASON and MARILYNN)
THOMASON, husband and wife, and)
NICHOLAS A. THOMASON,)
)
Defendants-Appellants,)
)
v.)
)
MADISON REAL PROPERTY, LLC,)
)
Plaintiff-Respondent.)

REMITTITUR

NO. 35737

CV08-271

TO: SEVENTH JUDICIAL DISTRICT, COUNTY OF MADISON.

The Court having entered an Order dismissing this appeal November 13, 2008;
therefore,

IT IS HEREBY ORDERED that the appeal herein from the Judgment of the
District Court be, and hereby is, DISMISSED.

DATED this 11th day of December, 2008.

Stephen Kemper

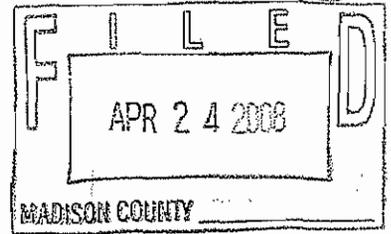
Clerk of the Supreme Court
STATE OF IDAHO

cc: Counsel of Record
District Court Clerk
District Judge

F.4-4

BYRON T. THOMASON, pro-se
MARILYNN THOMASON, pro-se
485 N. 2nd E. (105-273)
Rexburg, Idaho 83440

Telephone (208)256-7069
Facsimile: (208) 356-4536



**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON**

MADISON REAL PROPERTY, LLC)
)
Plaintiff,)
)
vs.)
)
BYRON T. THOMASON and)
MARILYNN THOMASON, husband)
and wife, and NICHOLAS A.)
THOMASON and SANDRA)
THOMASON, husband and wife,)
and JAY KOHLER,)
)
Defendants,)

Case No. CV-08-271

**DEFENDANTS, BYRON T.
THOMASON and MARILYNN
THOMASON'S FIRST RESPONSE
TO PLAINTIFF'S COMPLAINT
WITH SUPPORTING AFFIDAVITS.**

Fees: *IDA \$58⁰⁰*

PROPERTY ALLEGED AS BEING PART OF THESE PROCEEDING

Township 5 North, Range 39 E.B.M., Madison County, Idaho

Section 2: SE1/4SW1/4; SW1/4SE1/4

EXCEPT: Commencing at the NW corner of the SE1/4SE1/4 of Section 2,
Township 5 North, Range 39 East, Boise Meridian, Madison County, Idaho,
and running thence W. 54 feet; thence S. 673 feet; thence E. 54 feet;
thence N. 673 feet to the point of beginning.

G-1-7
~~9-1-7~~

ALSO EXCEPT: Commencing at a point that is S. 3935.88 feet from the SE corner of Section 34, Township 6 North, Range 39 E.B.M., Madison County, Idaho, and running thence W. 260.00 feet; thence N. 260.00 feet; thence E. 260.00 feet; thence S. 260.00 feet to the point of beginning. All of the above described land is contained in the SE1/4SW1/4 of said Section 2, Township 5 North, Range 39 East, Boise Meridian, Madison County, Idaho.

Contains 1.55 acres less the county road right-of-way.
This property also contains 70 foot Case Well.

ALSO EXCEPT: Commencing at the S1/4 corner of said Section 2 (said point is an aluminum cap on a 5/8" steel rod) and running thence N. 89 27' 12" W. 782.00 feet along the section line, more or less, to a county road right-of-way; thence N. 0 16'48" W. 1082.00 feet to the True Point of Beginning; thence E. 650.00 feet; thence N. 0 16'48" W. 272.00 feet to a county road; thence W. 650.00 feet to a county road intersection; thence S. 0 16'48" E. 272.00 feet to the True Point of Beginning.

ALSO EXCEPT: county roads.

COMES NOW the named defendants in these proceedings, BYRON T. THOMASON, individually and acting pro-se, and MARILYNN THOMASON, individually and acting pro-se, do hereby appear and make their first responds to the allegations and submit evidence as affirmative defense to claims alleged by the named plaintiff.

These appearances are filed jointly only for the sole purpose to spare this Court and all parties of interest from redundant and voluminous exhibits, filings, and notices. No joint filings or appearances are done with implied or expressed claim or assertion that any person acting pro-se is being counseled, acting as counsel or in any way directing or encouraging any individual and or entity to act as a group or single body.

FIRST RESPONSES TO ALLEGATIONS
JURISDICTION

ALLEGATION 1

1. That at all times material hereto, plaintiff, Madison Real Property, LLC was

and is a limited liability company organized and operating under laws of the state of Idaho with its primary place of business in Madison County, Idaho.

RESPONSE TO ALLEGATION 1

1.a. Denied, at no time has plaintiff provided any documentation as to the organization of plaintiffs LLC.

1.b. Denied, at no time has plaintiff provided any documentation as to who plaintiff is, who owns plaintiff, how plaintiff obtained any claim to land alleged as being 1/3 co-ownership in land described in these proceeding.

1.c. Any and all other claims and or allegations, stated and/or implied are hereby denied. Upon discovery, defendants reserve all rights to amend these responses.

ALLEGATION 2

2. That at all times material hereto, defendants, were and are residents of Madison County, Idaho.

RESPONSE TO ALLEGATION 2

2.a. Byron T. Thomason and Marilyn Thomason do not deny.

2.c. Any and all other claims and or allegations, stated and/or implied are hereby denied. Upon discovery, defendants reserve all rights to amend these responses.

Allegation 3

3. The real property which is the subject of this action for partition is located exclusively in Madison County, Idaho.

RESPONSE TO ALLEGATION 3

3.a. Denied. This court does not have jurisdiction over the subject matter. The property described in these proceedings, are lands in dispute in the Greg V. Thomason and the Diana (Maycock) Thomason chapter 7, liquidation estate, Bankruptcy Case 03-42400, Adversary Case 04-6134 of which plaintiffs owner and counsel, William Foresberg was party to. In addition, William Foresberg is currently named a officer of the court that has aided Greg V. Thomason and Diana (Maycock) Thomason in committing fraud on the court. Fraud on the court had been filed in the bankruptcy proceedings and is still pending. No decision has yet been received by the defendants, Byron Thomason and/or Marilyn Thomason from the Department of Justice, the B.A.P. nor the District Court.

3.b. Fraud claims filed and bankruptcy dockets filed in the Greg V. Thomason and Diana (Maycock) Thomason chapter 7, liquidation case, 03-42400 and 04-6134 will be supplied to this court and all parties concerned only if it would serve justice and this court so requires. This is being done solely to protect any rights of the innocent.

3.c. Any and all other claims and/or allegations, stated and/or implied are hereby denied. Upon discovery, defendants reserve all rights to amend these responses.

ALLEGATION 4

4. This court has jurisdiction over the subject matter of this case pursuant to Idaho Code, S 1-705.

RESPONSE TO ALLEGATION 4

4.a. Denied. This court does not have jurisdiction over the subject matter. The property described in these proceedings, are lands in dispute in

these responses.

DATED THIS 24th of April, 2008.

Byron T. Thomason pro-se

Byron T. Thomason, pro-se

Marilynn Thomason pro-se

Marilynn Thomason, pro-se

STATE OF IDAHO)
)ss.
County of Madison)

I, Byron T. Thomason, being first duly sworn upon my oath swear my statements and responses in this FIRST RESPONSE TO COMPLAINT CV-08-271 are true and correct to the best of my knowledge, belief and my ability,

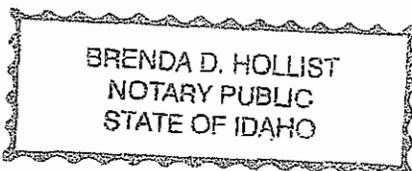
1. I have personal knowledge in these matters.,
2. I am fully competent to testify in these matters.
3. I am over the legal age of an adult.
4. I am a citizen of the United States of America.
5. I am and have been a full time resident of Madison County, Idaho.
6. I am a named defendant in these proceedings.
7. I am represented in these matters, pro-se.
8. I have personally prepared these responses (jointly filed) so to relieve this court and all parties concerned from redundancy in exhibits, filings and motions.
9. In the event that I have any claims and/or responses that are not redundant to other parties, I shall respond and serve individually.
10. I at no time have acted, advised, counseled and/or represented any other person and/or entity in these matters.
11. I reserve all rights to add additional evidence and affidavits as discovery discloses.
12. Further, your affiant saith naught.

DATED this 21st day of April, 2008.

Byron T. Thomason, pro-se
Byron T. Thomason, pro-se

SUBSCRIBED AND SWORN to before me this 24th day of April, 2008.

(seal)



Brenda D. Hollist
Notary Public for Idaho
Residing at: Rexburg
Commission expires: 4-21-2009

6-7

AFFIDAVIT OF MARILYNN THOMASON, Pro-Se

STATE OF IDAHO)
)ss.
County of Madison)

I, MARILYNN THOMASON, being first duly sworn upon my oath swear my statements and responses in this FIRST RESPONSE TO COMPLAINT CV-08-271 are true and correct to the best of my knowledge, belief and my ability,

1. I have personal knowledge in these matters.,
2. I am fully competent to testify in these matters.
3. I am over the legal age of an adult.
4. I am a citizen of the United States of America.
5. I am and have been a full time resident of Madison County, Idaho.
6. I am a named defendant in these proceedings.
7. I am represented in these matters, pro-se.
8. I have personally prepared these responses (jointly filed) so to

relieve this court and all parties concerned from redundancy in exhibits, filings and motions.

9. In the event that I have any claims and/or responses that are not redundant to other parties, I shall respond and serve individually.

10. I at no time have acted, advised, counseled and/or represented any other person and/or entity in these matters.

11. I reserve all rights to add additional evidence and affidavits as discovery discloses.

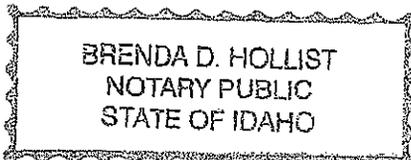
12. Further, your affiant saith naught.

DATED this 24th day of April, 2008.

Marilynn Thomason
Marilynn Thomason, pro-se

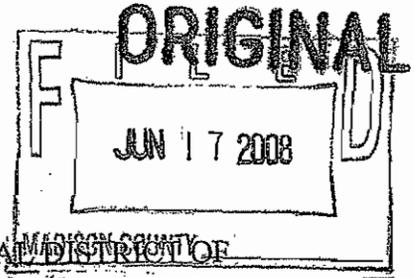
SUBSCRIBED AND SWORN to before me this 24th day of April, 2008.

(seal)



Brenda D. Hollist
Notary Public for Idaho
Residing at: Payson
Commission expires: 4.21.2009

G.7-7



IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF MADISON

MADISON REAL PROPERTY, LLC,

Plaintiff,

vs.

BYRON T. THOMASON and MARILYN
THOMASON, husband and wife, and
NICHOLAS A. THOMASON and
SANDRA THOMASON, husband and wife,
and JAY A. KOHLER,

Defendants.

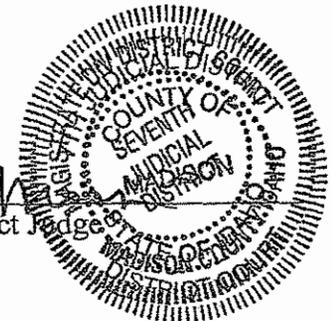
CASE NO. CV-2008-271

**ORDER DENYING DEFENDANTS
MARILYNN AND BYRON
THOMASONS' MOTION TO DISMISS**

THE MOTION TO DISMISS filed by defendants Marilynn Thomason and Byron Thomason having come on regularly for hearing, the court having considered the evidence submitted by the parties' and their arguments, and the court finding that there is jurisdiction over the real estate that is the subject matter of this action and that the real estate in question is located in Madison County, Idaho, and no basis for dismissal exists in the record, the defendants, Marilynn and Byron Thomasons' Motion to Dismiss is denied.

Dated this 17 day of June, 2008.

Brent J. Moss
Brent J. Moss, District Judge



H.1-2

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the **Order Denying Defendants Marilyn and Byron Thomason's Motion to Dismiss** on the attorneys and/or individuals listed below by hand delivery or by mailing with the correct postage thereon on this 17 day of June, 2008.

William Forsberg
Forsberg Law Offices, Chtd.
49 Professional Plaza
Rexburg, Idaho 83440

Mail
 Hand Delivery

Byron Thomason
485 North 2nd East
Rexburg, Idaho 83440

Mail
 Hand Delivery

Marilynn Thomason
485 North 2nd East
Rexburg, Idaho 83440

Mail
 Hand Delivery

Nicholas A. Thomason
5293 South 4300 West
Rexburg, Idaho 83440

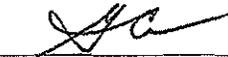
Mail
 Hand Delivery

Sandra K. Thomason
5293 South 4300 West
Rexburg, Idaho 83440

Mail
 Hand Delivery

Jay A. Kohler
Attorney at Law
482 Constitutional Way, Suite 313
Idaho Falls, ID 83402

Mail
 Hand Delivery



Deputy Clerk

H.2-2

