

4-29-2013

Cuevas v. Barraza Clerk's Record Dckt. 40516

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**IN THE
SUPREME COURT
OF THE
STATE OF IDAHO**

LAW CLERK

WILFRIDO CUEVAS,

Plaintiff-Respondent,

-vs-

**BERNARDINO BARRAZA, an
individual and spouse (if any),**

Defendant-Appellant,

And

**LIOTALDO GARZA, an individual and
spouse (if any), DOES I through X,
unknown claimants to the real
property described in exhibit "A",
commonly known as 29452 Pearl Road,
Parma, Idaho,**

Defendants.

**Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County**

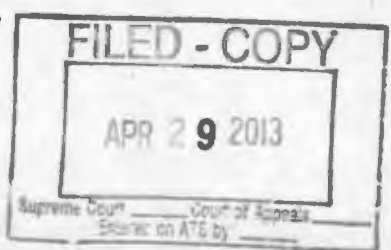
Honorable MOLLY J. HUSKEY, District Judge

**Robert Ward
HALL FRIEDLY & WARD
340 East 2nd North St.
Mountain Home, Idaho 83647**

Attorney for Appellant

**Rebecca A. Rainey
Rainey Law Office
910 W. Main St. Ste. 258
Boise, Idaho 83702**

Attorney for Respondent



40516

IN THE SUPREME COURT OF THE
STATE OF IDAHO

WILFRIDO CUEVAS,)	
)	
Plaintiff-Respondent,)	
)	Supreme Court No. 40516-2012
-vs-)	
)	
BERNARDINO BARRAZA, an individual)	
and spouse (if any),)	
)	
Defendant-Appellant,)	
And)	
)	
LIOBALDO GARZA, an individual and)	
spouse (if any), DOES I through X,)	
unknown claimants to the real property)	
described in exhibit "A", commonly known)	
as 29452 Pearl Road, Parma, Idaho,)	
)	
Defendants.)	

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE MOLLY J. HUSKEY, Presiding

Robert Ward, HALL, FRIEDLY & WARD, 340 East 2nd North St.,
Mountain Home, Idaho 83647

Attorney for Appellant

Rebecca A. Rainey, Rainey Law Office, 910 W. Main St., Ste. 258,
Boise, Idaho 83702

Attorney for Respondent

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Other Claims

Date		Judge
8/7/2009	New Case Filed-Other Claims	Gregory M Culet
	Summons Issued (2)	Gregory M Culet
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Rainey, Rebecca (attorney for Cuevas, Wilfrido Duran) Receipt number: 0408896 Dated: 8/7/2009 Amount: \$88.00 (Check) For: Cuevas, Wilfrido Duran (plaintiff)	Gregory M Culet
8/11/2009	Amended Summons Issued	Gregory M Culet
8/21/2009	Affidavit Of Service 8-16-09 (Bernardino)	Gregory M Culet
	Affidavit Of Service (8-12-09 Liobaldo)	Gregory M Culet
8/28/2009	Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Ward, Robert Receipt number: 0413144 Dated: 8/28/2009 Amount: \$58.00 (Check) For: Barraza, Bernardino Flores Jr (defendant)	Gregory M Culet
	Answer-Bernardino Barraza	Gregory M Culet
9/4/2009	Lis Pendens	Gregory M Culet
9/21/2009	Memorandum in Suppt of Plnt's Motn for Summary Jdmt	Gregory M Culet
	Affidavit of Rebecca A Rainey in Suppt of Plnt's Motn for Summary Jdmt	Gregory M Culet
	Affidavit of Wilfrido Cuev as in suppt of Plnt's Motn for Summary Jdmt	Gregory M Culet
9/22/2009	Plaintiff's Motion for Summary Judgment (fax)	Gregory M Culet
	Notice Of Hearing Re: Plaintiff's Motion for Summary Judgment 11-3-09 (fax)	Gregory M Culet
	Hearing Scheduled (Motion Hearing 11/03/2009 09:00 AM) plts motn for summ judg	Gregory M Culet
10/21/2009	Answering Brief in Opposition to Plaintiff's Motion for Summary Judgment	Gregory M Culet
	Affidavit of Bernardino Barraza	Gregory M Culet
	Objection and Motion to Strike	Gregory M Culet
10/27/2009	Plaintiff's Opposition to Defendant's Barraza's Objection and Motion to Strike	Gregory M Culet
	Reply Memorandum in Support of Plaintiff's Motion for Summary Judgment	Gregory M Culet
11/3/2009	Hearing result for Motion Hearing held on 11/03/2009 09:00 AM: District Court Hearing Held Court Reporter: Kim Saunders Number of Transcript Pages for this hearing estimated: less than 100 pages plts motn for summ judg	Gregory M Culet
	Hearing result for Motion Hearing held on 11/03/2009 09:00 AM: Hearing Held plts motn for summ judg	Gregory M Culet
	Hearing result for Motion Hearing held on 11/03/2009 09:00 AM: Motion Denied - Motion to Strike	Gregory M Culet
11/10/2009	Order Granting Plt Motion for Summary Judgment	Gregory M Culet
11/20/2009	Hearing Scheduled (Conference - Telephone 01/28/2010 11:00 AM) def's motion reconsider	Gregory M Culet
	Amended Notice of Hearing 01/28/2010 (fax)	Gregory M Culet

000001

Other Claims

Date		Judge
11/20/2009	Notice Of Hearing	Gregory M Culet
	Motion to reconsider and claify order granting pltf's motion for sumamry judgment (fax)	Gregory M Culet
12/3/2009	Motion for leave to file amended answer and counterclaim	Gregory M Culet
	Notice Of Hearing 01/28/2010	Gregory M Culet
12/7/2009	Mediation Order - Linda Copple-Trout	Gregory M Culet
12/16/2009	Stipulation for leave to file amended answer and counterclaim	Gregory M Culet
12/18/2009	Order for Leave to File Amended Answer & Counterclaim	Gregory M Culet
	Amended Answer & Counterclaim	Gregory M Culet
1/8/2010	answer to def barraza's counterclaim (fax)	Gregory M Culet
1/21/2010	Wilfrido cuevas Memorandum in opposition to barraza's motion to reconsider and/or clarify (fax)	Gregory M Culet
1/28/2010	Hearing result for Conference - Telephone held on 01/28/2010 11:00 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages def's motion reconsider/ defs motn amend answer/counterclaim	Gregory M Culet
	Hearing result for Conference - Telephone held on 01/28/2010 11:00 AM: Hearing Held def's motion reconsider/ defs motn amend answer/counterclaim	Gregory M Culet
	Hearing result for Conference - Telephone held on 01/28/2010 11:00 AM: Motion Denied def's motion reconsider/ defs motn amend answer/counterclaim	Gregory M Culet
4/29/2010	Plaintiff/Counterdefendant's Request For Trial Setting	Gregory M Culet
5/14/2010	Notice Of Service (fax)	Gregory M Culet
5/26/2010	Response to Request for Trial Setting	Gregory M Culet
6/11/2010	Order Setting Case for Trial and Pretrial	Gregory M Culet
	Hearing Scheduled (Court Trial 12/07/2010 09:30 AM) 2 Day	Gregory M Culet
	Hearing Scheduled (Pre Trial 10/12/2010 08:30 AM) Pretrial Conference	Gregory M Culet
7/9/2010	Stipulation re scheduling deadlines (fax)	Gregory M Culet
7/29/2010	Notice Of Service	Gregory M Culet
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8/31/2010	Notice Of Service of Plaintiff's Answers and Responses to Defendant Bernardino Barraza's Requests for Admission, First Set of Interrogaires, and Requests for Production of Documents	Gregory M Culet
	Memorandum in support of Wilfredo Cuevas Second Mo for Summary Judgment	Gregory M Culet
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	Affidavit of Rebecca A Rainey in support of Wilfredo Cuevas Second Motion for Summary Judgment	Gregory M Culet
	Notice Of Hearing RE: Wilfrido Cuevas Second Motion for Sum Judgment 9-30-10	Gregory M Culet

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Other Claims

Date		Judge
8/31/2010	Hearing Scheduled (Motion Hearing 09/30/2010 09:00 AM) Sum Judgment	Gregory M Culet
9/15/2010	Answering Brief in Opposition to Plaintiff's Second Motion for Summary Judgment	Gregory M Culet
	Affidavit of Robert Ward in Support of Defendant's Answering breif in opposition to plaintiffs second motion for summary judgment	Gregory M Culet
9/16/2010	Objection and Motion to Strike	Gregory M Culet
9/22/2010	Notice of Available and Unavailable Dates for Hearing (fax)	Gregory M Culet
9/23/2010	Hearing Scheduled (Pre Trial 10/14/2010 01:30 PM) Pretrial Conference	Gregory M Culet
	Hearing Scheduled (Motion Hearing 10/14/2010 01:30 PM) Sum Judgment	Gregory M Culet
	Plaintiff's Opposition to defendant barrazas objection and motion to strike (fax)	Gregory M Culet
	Reply Memorandum in support of wilfrido cuevas second motion for summary judgment (fax)	Gregory M Culet
	Amended Notice of Hearing 10-14-10	Gregory M Culet
9/29/2010	Notice Of Service	Gregory M Culet
10/13/2010	statement of theory, witness and exhibit list and written statement	Gregory M Culet
10/14/2010	Hearing result for Court Trial held on 12/07/2010 09:30 AM: Hearing Vacated 2 Day	Gregory M Culet
	Hearing result for Pre Trial held on 10/14/2010 01:30 PM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Pre Trial held on 10/14/2010 01:30 PM: Motion Held Pretrial Conference & Motion for Summary Judgment	Gregory M Culet
	Hearing result for Pre Trial held on 10/14/2010 01:30 PM: Motion Granted-Motion for Summary Judgment	Gregory M Culet
10/19/2010	Application for entry of default	Gregory M Culet
	Affidavit of Rebecca A Rainey in support of application for entry of default	Gregory M Culet
10/25/2010	Entry of Default and Order	Gregory M Culet
11/3/2010	Supplemental Memorandum Opposing Plaintiff's Second Motion for Summary Judgment	Gregory M Culet
11/9/2010	Plaintiff's response to supplemental memorandum opposing second motion for summary judgment (fax)	Gregory M Culet
11/12/2010	Motion ro reconsider order granting motion for summary judgement	Gregory M Culet
	Memorandum in support of motion to reconsider	Gregory M Culet
11/18/2010	Notice Of Hearing 12-2-10	Gregory M Culet
	Hearing Scheduled (Motion Hearing 12/02/2010 09:00 AM) Bernardino Barrazas motn to reconsider	Gregory M Culet
11/22/2010	Directive	Gregory M Culet

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Date		Judge
11/24/2010	Opposition to Motion to Reconsider Order Granting Plaintiffs Plaintiffs First Motion for Summary Judgment (fax)	Gregory M Culet
12/1/2010	Reply to Pltf's opposition to Motion to reconsider order granting Pltf's First motion for summary Jmt	Gregory M Culet
12/2/2010	Hearing result for Motion Hearing held on 12/02/2010 09:00 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Motion Hearing held on 12/02/2010 09:00 AM: Motion Held Bernardino Barrazas motn to reconsider	Gregory M Culet
12/15/2010	Hearing Scheduled (Conference - Telephone 12/20/2010 08:30 AM)	Gregory M Culet
	Order on Suppleental Argument RE Aummary Judgment and Motion for Reconsideration	Gregory M Culet
12/16/2010	Hearing result for Conference - Telephone held on 12/20/2010 08:30 AM: Hearing Vacated	Gregory M Culet
	Order granting Wilfrido Cuevas' Second Motion for Summary Judgment	Gregory M Culet
12/23/2010	Judgment	Gregory M Culet
	Civil Disposition entered for: Barraza, Bernardino Flores Jr, Defendant; Garza, Liobaldo, Defendant; Cuevas, Wilfrido Duran, Plaintiff. Filing date: 12/23/2010	Gregory M Culet
	Case Status Changed: Closed	Gregory M Culet
1/5/2011	Plaintiff's Memorandum of Costs (fax)	Gregory M Culet
	Affidavit of Mark C peterson in Support of Plaintiff's Memorandum of Costs (fax)	Gregory M Culet
1/19/2011	Objection to Pltf's Memorandum of Costs (fax)	Gregory M Culet
1/27/2011	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Ward, Robert (attorney for Barraza, Bernardino Flores Jr) Receipt number: 0085763 Dated: 1/27/2011 Amount: \$101.00 (Check) For: Barraza, Bernardino Flores Jr (defendant)	Gregory M Culet
	Bond Posted - Cash (Receipt 85765 Dated 1/27/2011 for 100.00) for clerks record	Gregory M Culet
	Case Status Changed: Closed pending clerk action	Gregory M Culet
	Notice of Appeal	Gregory M Culet
	Appealed To The Supreme Court	Gregory M Culet
2/10/2011	Plaintiff/Respondents Request for Additional Transcripts	Gregory M Culet
	Notice of Change of Firm and Address	Gregory M Culet
4/1/2011	Bond Posted - Cash (Receipt 102542 Dated 4/1/2011 for 626.00)	Gregory M Culet
6/15/2011	Motion for Order Settling Costs (fax)	Gregory M Culet
	Notice Of Hearing on Motion for Order Settling Costs 6-30-11 (fax)	Gregory M Culet
	Hearing Scheduled (Motion Hearing 06/30/2011 09:00 AM) plts motn for order settling costs	Gregory M Culet
6/24/2011	Stipulation to Appear telephonically for hearing on Plt Motion for Order settling Costs (fax)	Gregory M Culet

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Other Claims

Date		Judge
6/30/2011	Hearing result for Motion Hearing scheduled on 06/30/2011 03:00 PM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 06/30/2011 03:00 PM: Motion Held plts motn for order settling costs Moving to 3pm by phone	Gregory M Culet
	Hearing result for Motion Hearing scheduled on 06/30/2011 03:00 PM: Motion Granted plts motn for order settling costs Moving to 3pm by phone	Gregory M Culet
7/13/2011	Order Granting Settlement of Costs \$576.30	Gregory M Culet
8/15/2011	Notice of Change of Firm and Address (fax)	Gregory M Culet
9/16/2011	Judgment on Costs \$576.30 (favor of Plaintiff /Resp)	Gregory M Culet
9/26/2011	Motion to Correct Clerical Mistake (fax)	Gregory M Culet
10/21/2011	Amended Judgment of Costs \$576.30	Gregory M Culet
11/8/2011	Bond Converted (Transaction number 8264 dated 11/8/2011 amount 100.00)	Gregory M Culet
	Bond Converted (Transaction number 8265 dated 11/8/2011 amount 626.00)	Gregory M Culet
3/27/2012	Opinion (S C - Judgment Affirmed in Part/Vacated in Part & Remanded)	Gregory M Culet
6/6/2012	Remittitur	Gregory M Culet
6/11/2012	Hearing Scheduled (Conference - Status 07/05/2012 11:30 AM)	Molly J Huskey
	Notice Of Hearing 7-5-12	Gregory M Culet
7/5/2012	Change Assigned Judge	Molly J Huskey
	Hearing result for Conference - Status scheduled on 07/05/2012 11:30 AM: Hearing Held both attorney to appear by phone-Ward to set up	Molly J Huskey
	District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Molly J Huskey
	Hearing Scheduled (Further Proceeding 09/17/2012 09:45 AM) Hearing on briefing	Molly J Huskey
7/20/2012	Motion for Summary Judgment - Pltf (fax)	Molly J Huskey
	Memorandum in Support of Motion for Summary Judgment (fax)	Molly J Huskey
8/9/2012	Motion for Summary Judgment - Def (fax)	Molly J Huskey
	Memorandum in Support of Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment (fax)	Molly J Huskey
8/17/2012	Reply in support of Motion for Summary Judgment and Opposition to Barraza's Motion for Summary Judgment (fax)	Molly J Huskey
9/13/2012	Amended Notice Of Hearing 10-3-12 (fax)	Molly J Huskey
	Hearing Scheduled (Motion Hearing 10/03/2012 03:00 PM) Plt Mo sum Judgment	Molly J Huskey

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Other Claims

Date		Judge
9/17/2012	Hearing result for Further Proceeding scheduled on 09/17/2012 09:45 AM: Hearing Vacated Hearing on briefing	Molly J Huskey
10/3/2012	Hearing result for Motion Hearing scheduled on 10/03/2012 03:00 PM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: less than 100 pages	Molly J Huskey
	Hearing result for Motion Hearing scheduled on 10/03/2012 03:00 PM: Hearing Held Plt Mo sum Judgment	Molly J Huskey
	Hearing result for Motion Hearing scheduled on 10/03/2012 03:00 PM: Motion Held Plt Mo sum Judgment	Molly J Huskey
	Motion Granted Plt Mo sum Judgment-Plt to prepare order for Courts signature	Molly J Huskey
10/15/2012	Order Granting Plaintiffs Motion for Summary Judgment and Denying Defendants Motion for Summary Judgment	Molly J Huskey
11/26/2012	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Ward, Robert (attorney for Barraza, Bernardino Flores Jr) Receipt number: 0070309 Dated: 11/26/2012 Amount: \$109.00 (Check) For: Barraza, Bernardino Flores Jr (defendant)	Molly J Huskey
	Bond Posted - Cash (Receipt 70313 Dated 11/26/2012 for 100.00)	Molly J Huskey
	Notice of Appeal	Molly J Huskey
	Appealed To The Supreme Court	Molly J Huskey
11/29/2012	S C - Order Augmenting Appeal	Molly J Huskey
12/7/2012	S C - Order Remanding to District Court	Molly J Huskey
12/12/2012	Judgment	Molly J Huskey
	Civil Disposition entered for: Barraza, Bernardino Flores Jr, Defendant; Garza, Liobaldo, Defendant; Cuevas, Wilfrido Duran, Plaintiff. Filing date: 12/12/2012 Plaintiff's Summary Judgment	Molly J Huskey

IN THE SUPREME COURT OF THE STATE OF IDAHO

FILED
A.M. 2:30 P.M.

Docket No. 38493

MAR 27 2012

CANYON COUNTY CLERK
T RANDALL, DEPUTY

WILFRIDO CUEVAS,)
)
 Plaintiff-Counterdefendant-Respondent,)
)
 v.)
)
 BERNARDINO BARRAZA, an individual)
 and spouse (if any),)
)
 Defendant-Counterclaimant-Appellant,)
)
 and)
)
 LIOBALDO GARZA, an individual and)
 spouse (if any); DOES I THROUGH X,)
 UNKNOWN CLAIMANTS TO THE REAL)
 PROPERTY DESCRIBED IN EXHIBIT)
 "A", COMMONLY KNOWN AS 29452)
 PEARL ROAD, PARMA, IDAHO,)
)
 Defendants.)
)

Boise, February 2012 Term
 2012 Opinion No. 56
 Filed: March 22, 2012
 Stephen W. Kenyon, Clerk

Appeal from the District Court of the Third Judicial District of the State of Idaho, Canyon County. Honorable Gregory M. Culet, District Judge.

The judgment of the district court is affirmed in part, vacated in part, and the case is remanded for further proceedings.

Hall, Friedly & Ward, Mountain Home, for appellant.

Rebecca A. Rainey, P.A., Boise, for respondent.

J. JONES, Justice.

This appeal involves a decade-long fight over title to a piece of real property. Juan Cuevas allegedly agreed to sell the property to Bernardino Barraza in 2001. However, after Barraza failed to pay the purchase price, Juan filed a quiet title action against Barraza. Barraza defaulted. While Barraza was seeking to set aside the default, Juan quitclaimed the property to his relative, Wilfrido

Cuevas. Meanwhile, Barraza was successful in setting aside the default on appeal. On remand, Juan defaulted and the district court quieted title in Barraza. Wilfrido then filed the present quiet title action against Barraza, in which the district court found the default judgment against Juan void and quieted title in Wilfrido. For the reasons outlined below, we agree that the default judgment against Juan is void, but we vacate the summary judgment quieting title in Wilfrido as against Barraza.

**I.
FACTS AND PROCEDURAL HISTORY**

Juan Cuevas and Yrene Baez (hereinafter collectively referred to as “Juan”) jointly held title to real property commonly known as 29452 Pearl Road, Parma, Idaho, pursuant to a warranty deed recorded in Canyon County on June 15, 1993. In March 2001, Juan allegedly executed a written contract to sell the property to Bernardino Barraza and Liobaldo Garza (hereinafter collectively referred to as “Barraza”) for a total purchase price of \$80,000.¹

Barraza claims he paid a total of \$22,635 toward the purchase, but then the agreement fell apart. He asserts Juan agreed to repay him \$20,000 upon resale of the property if he would vacate the premises, which he did. Barraza claims Juan never repaid any money. In response, on May 6, 2002, Barraza recorded a claim of lien against the property, purportedly securing an “unpaid refund in the amount \$20,000.00 for the payments on Real estate Title.”²

Wilfrido Cuevas claims he began purchasing the property under an oral agreement with Juan in August of 2003. At that time he moved onto the property with his family, began making improvements to it, started paying the property taxes on it, and began making payments to Juan pursuant to the oral agreement.

On April 2, 2007, Juan filed a quiet title action against Barraza, seeking to clear his title of Barraza’s purported lien. Barraza failed to respond, and the district court entered a default judgment against him May 15, 2007, which was recorded May 17, 2007. On May 24, 2007, Barraza moved to set aside the default judgment, attaching his proposed Answer and Counterclaim—which included an affirmative request for the court to quiet title in his name—to his attorney’s affidavit in support of that motion.

¹ The alleged contract constitutes two handwritten pages—one in English (the English Document), one in Spanish (the Spanish Document). Because Baez’ signature does not appear on the contract, the parties dispute whether she was involved in this transaction.

² The lien was re-recorded on January 31, 2007.

Around June 13, 2007, Wilfrido claims he paid the remaining balance of the purchase price to Juan pursuant to their oral contract, based on his understanding that Juan had successfully quieted title. Juan executed a quitclaim deed transferring his interest to Wilfrido, and Wilfrido claims he researched the Canyon County land records to ensure title was clear before recording it on June 20, 2007.³

On June 25, 2007, the district court denied Barraza's motion to set aside the default judgment, and Barraza appealed. On June 25, 2008, the Court of Appeals issued an opinion vacating the default judgment and remanding the case. *Cuevas v. Barraza*, 146 Idaho 511, 198 P.3d 740 (Ct. App. 2008). The Court of Appeals held that (1) Barraza's poor English and mistaken belief that he was being represented by counsel constituted mistake or excusable neglect sufficient to set aside the judgment, and (2) the proposed Answer and Counterclaim served with Barraza's motion presented a meritorious breach of contract defense to the quiet title action. *Id.*

Following issuance of the Court of Appeals opinion, Barraza recorded a *lis pendens* against the property on August 6, 2008. On January 6, 2009, the Court of Appeals entered the Remittitur, and on January 15, 2009, the district court granted Juan's attorney leave to withdraw. Although a copy of the order granting leave to withdraw was mailed to Juan on January 23, 2009, Juan failed to appear. The district court entered default judgment quieting title in Barraza on March 17, 2009, and Barraza recorded the quiet title judgment on March 24, 2009.

After learning that he no longer held title to the property, Wilfrido filed a new suit against Barraza to quiet title on August 7, 2009, and Barraza answered. Wilfrido moved for summary judgment, arguing that the default judgment entered against Juan was void. The district court granted that motion, ruling from the bench that (1) the judgment was void for lack of notice because the Answer and Counterclaim was never properly filed or served on Juan and, (2) alternatively, Wilfrido could collaterally attack the judgment notwithstanding the doctrine of *res judicata* because he was not in privity with Juan.

³ Barraza claims that Wilfrido had several conversations with Barraza about the property and prior sale before Juan initiated his quiet title action. According to Barraza: Wilfrido told Barraza that he knew about the prior transaction but that Juan was planning to sell Wilfrido the property; Wilfrido called him to request copies of payments and documents Barraza had regarding the prior transaction; Wilfrido told Barraza that Barraza should demand a refund of his down payment from Juan so that Wilfrido could buy the property instead; and the two discussed retaining an attorney to ensure that Juan was dealing with them both fairly. Apparently, communication between the two then broke down. However, Wilfrido admits he was generally aware of the lawsuit and Barraza's recorded claim of lien. At summary judgment, Barraza swore that Wilfrido knew at the time he recorded his quitclaim deed about Barraza's claims on the property and, in fact, that was the reason Juan executed only a quitclaim deed.

Following limited discovery, Wilfrido again moved for summary judgment, seeking to quiet title in the property and arguing that Barraza did not have a viable unjust enrichment claim against Wilfrido. The district court also granted this second motion, ruling from the bench that (1) Barraza failed to establish a valid claim against the property, and (2) Barraza did not unjustly enrich Wilfrido. The district court denied Barraza's motion to reconsider and entered judgment quieting title in Wilfrido's name. Barraza timely appealed.

**II.
ISSUES ON APPEAL**

- I. Did the district court err in ruling that Barraza's default judgment against Juan is void or, alternatively, that the judgment is not precluded from attack by *res judicata*?
- II. Did the district court err in quieting title in Wilfrido free and clear of any interest claimed by Barraza?
- III. Did the district court err in ruling that Barraza did not have a viable unjust enrichment claim against Wilfrido?
- IV. Is either party entitled to attorney fees?

**III.
DISCUSSION**

A. Standard of Review

“On appeal from the grant of a motion for summary judgment, this Court applies the same standard used by the district court originally ruling on the motion.” *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). Summary judgment is appropriate where “the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” I.R.C.P. 56(c). “[A]ll reasonable inferences that can be drawn from the record are to be drawn in favor of the nonmoving party,” and disputed facts will be liberally construed in favor of the nonmoving party. *Mackay*, 145 Idaho at 410, 179 P.3d at 1066. However, the nonmoving party cannot rely on mere speculation, and a scintilla of evidence is insufficient to create a genuine issue of material fact. *Van v. Portneuf Med. Center*, 147 Idaho 552, 556, 212 P.3d 982, 986 (2009). This Court reviews questions of law *de novo*. *Martin v. Camas County ex rel. Bd. of Comm'rs*, 150 Idaho 508, 511, 248 P.3d 1243, 1246 (2011).

B. The district court correctly found the prior default judgment against Juan to be void for lack of notice.

In granting Wilfrido's first motion for summary judgment, the district court found the prior default judgment quieting title in Barraza to be void because Barraza's Answer and Counterclaim requesting that relief was never filed with the court nor served on Juan, except as an attachment to his attorney's affidavit supporting the motion to set aside. On appeal, Barraza argues that the Answer and Counterclaim was either (1) properly filed and served pursuant to I.R.C.P. 5 along with the motion to set aside, or (2) deemed filed and served by virtue of the Court of Appeals' references to, and reliance upon, it in the opinion. Wilfrido responds that simply attaching a proposed pleading to an affidavit supporting a motion, even when the motion and affidavit are properly filed and served, does not constitute filing and service of that pleading. Wilfrido also argues that the Court of Appeals' decision could not operate to deem the Answer and Counterclaim filed.

Generally, "final judgments, *whether right or wrong*, are not subject to collateral attack." *Kukuruzza v. Kukuruzza*, 120 Idaho 630, 632, 818 P.2d 334, 336 (Ct. App. 1991) (emphasis original). However, a void judgment can be attacked at any time by any person adversely affected by it. *Burns v. Baldwin*, 138 Idaho 480, 486, 65 P.3d 502, 508 (2003). This Court "narrowly construe[s] what constitutes a void judgment." *Hartman v. United Heritage Prop. & Cas. Co.*, 141 Idaho 193, 197, 108 P.3d 340, 344 (2005).

In order for a judgment to be void, there must generally be some jurisdictional defect in the court's authority to enter the judgment, either because the court lacks personal jurisdiction or because it lacks jurisdiction over the subject matter of the suit. *Puphal v. Puphal*, 105 Idaho 302, 669 P.2d 191 (1983). A judgment is also void where it is entered in violation of due process because the party was not given notice and an opportunity to be heard. *Prather v. Loyd*, 86 Idaho 45, 382 P.2d 910 (1963) ...

Id. (quoting *McGrew v. McGrew*, 139 Idaho 551, 558, 82 P.3d 833, 840 (2003)). *See also Meyers v. Hansen*, 148 Idaho 283, 191, 221 P.3d 81, 89 (2009). Here, it appears that the district court declared the judgment void because Juan was not given adequate notice of Barraza's affirmative claim to quiet title, due to Barraza's failure to adhere to the I.R.C.P. 5 filing and service requirements.

Rule 5(a) requires that "every pleading subsequent to the original complaint ... shall be served upon each of the parties affected thereby." Further, Rule 5(d) states that "[a]ll papers after

the complaint required to be served upon a party shall be filed with the court either before service or within a reasonable time thereafter.” Finally, Rule 5(e)(1) provides that filing with the court requires filing with the judge or clerk, at which point “[t]he judge or clerk shall indorse upon every pleading and other paper the hour and minute of its filing.”

Although this Court has not specifically addressed the issue, the Court of Appeals has held that service and filing of a motion for leave to file a counterclaim, even where the proposed counterclaim is attached, is not the equivalent of service and filing of the counterclaim itself. *Viafax Corp. v. Stuckenbrock*, 134 Idaho 65, 70, 995 P.2d 835, 840 (Ct. App. 2000). The *Viafax* court reasoned:

As *Viafax* argues, receipt of the motion gave it notice only that it could object to a counterclaim being filed and that the motion might be granted. It remained possible that the court would deny the motion, even without an objection from *Viafax*, or that *Stuckenbrock* would abandon the effort. Filing and service of the counterclaim itself could be properly accomplished only *after* permission had been obtained from the court. Such service was never performed.

In short, *Viafax* was never served with a pleading that it was obliged to answer in order to avoid the risk of a default judgment.

Id. (citations omitted).

Although the *Viafax* court was addressing a motion for relief from judgment under Rule 60(b)(4), which requires a showing of “surprise,” the concept of “surprise” is virtually identical to lack of notice. *See id.* Thus, we find the same logic applies to the present case. The only time Barraza presented the Answer and Counterclaim to Juan and the district court was as an attachment to the affidavit in support of his motion to set aside the default judgment. It was not filed with the clerk with its own file stamp pursuant to Rules 5(d) and (e)(1), or served on Juan pursuant to Rule 5(a). Thus, Juan only received notice that he could oppose the motion to set aside rather than notice of an obligation to respond to the affirmative request for relief in Barraza’s pleading.

The civil rules are designed to ensure that each party receives adequate notice and opportunity to be heard. Compliance with Rule 5, in particular, goes to the heart of the notice requirement, and we cannot find that Juan received due process where Barraza’s responsive pleading was not individually filed or served in compliance with that rule. Further, the Court of Appeals decision to vacate the default judgment merely permitted Barraza to file and serve the Answer and Counterclaim on Juan; it did not—nor could it—“deem” the pleading filed and served.

Thus, the district court in the present case was correct that the prior default judgment against Juan is void.

The parties also dispute the district court's alternative ruling that, even if the prior judgment is not void, it is not precluded from attack by *res judicata* because Wilfrido is not Juan's privy. However, because we agree that the prior judgment is void for lack of notice, we need not address the propriety of the district court's alternative ruling.

C. The district court erred in quieting Wilfrido's title on summary judgment because Barraza demonstrated factual issues as to whether Wilfrido took title subject to a statutory claim by Barraza.

Turning to Wilfrido's second motion for summary judgment, the district court held that Barraza had failed to establish a legally valid claim against the property and therefore quieted title in Wilfrido's name. According to the court, "If a lien is improperly filed as a mechanics lien and the lien is not one otherwise recognized by law, then the lien is a nonconsensual common law lien and is properly subject to a court order removing the lien, Idaho Code § 45-1703." Barraza argues that he established a valid interest in the property and that Wilfrido had notice of his claim so he cannot be a bona fide purchaser. Wilfrido responds that he is the presumptive owner of the property by virtue of the quitclaim deed he received from Juan and that he took title to the property free from any valid claim of Barraza. He asserts that Barraza was unable to show that he held a valid, enforceable interest in the property prior to the recording of the deed.

While the parties spar back and forth over issues that are not particularly relevant—whether the district court should have considered evidence of the oral contract between Juan and Wilfrido to purchase the property, whether Barraza's contract with Juan satisfied the statute of frauds, and whether Barraza was entitled to specific performance of that contract⁴—the pertinent question is whether Barraza presented competent evidence of a legally recognizable claim against the property

⁴ Although Barraza asserts he is entitled to specific performance of the contract he entered into with Juan in March of 2001, the record discloses several seemingly insurmountable obstacles to such a claim. First and foremost, an examination of Barraza's counterclaim fails to disclose a claim for specific performance. Even if he had alleged such a claim, it is not readily apparent that the contract between the parties complies with the statute of frauds, particularly the requirement that the contract must "either contain a sufficient description of the real property or refer to an external record containing a sufficient property description." *Ray v. Frasure*, 146 Idaho 625, 629, 200 P.3d 1174, 1178 (2009). Neither the Spanish Document nor the English Document contains a legal description of the property. The Spanish Document ends with words translated as, "We need the Ranch's address." The English Document merely describes the ranch as "29452 Pearl Rd., Parma, ID 83660." There are a number of other potential infirmities, such as the lack of Baez' signature on either version of the contract, unclear payment terms, potential application of laches, and no showing that Barraza made a tender of the balance of the purchase price, among other things. Suffice it to say that this is simply not a viable claim and need not be dealt with further here.

so as to withstand summary judgment. The record clearly discloses genuine issues of material fact as to whether Barraza asserted a legally recognized lien against the property and, if so, whether Wilfrido took subject to that lien.

Although Barraza does not specifically identify his claim against the property as a “vendee’s lien,” his claim certainly appears to fit the elements of that type of statutory lien. A vendee’s lien is described in I.C. § 45-804, as follows:

One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

In his claim of lien, which was recorded twice—May 6, 2002, and January 31, 2007—before the quitclaim deed from Juan to Wilfrido, Barraza asserted a lien for “unpaid refund in the amount of \$20,000.00 for the payments on Real estate Title.” The lien claim attached and incorporated a valid legal description of the property. We recently held in *Benz v. D.L. Evans Bank No. 37814*, 152 Idaho 215, ___, 268 P.3d 1167, 1175 (2012), that “it is the payment to the owner of any part of the purchase price of the real property under an agreement of sale that creates the lien.” Barraza’s claim of lien indicates that the \$20,000 payment had been made on or before January 5, 2002, so presumably the statutory lien attached at or prior to that date. It should be noted that the lien is created upon the payment of any part of the purchase price and is not dependent upon the recording of a written document. The claim of lien filed by Barraza in this case does, however, constitute evidence bearing on the question of what notice may have been imparted to subsequent purchasers of the property.

Besides asserting that Barraza established no credible claim against the property, Wilfrido asserts that he was a bona fide purchaser. The pertinent statute is I.C. § 45-803, which provides, “The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value.” In *Benz* we held that “good faith,” as used in this statute, means without “actual or constructive knowledge of the applicable lien.” *Id.* at ___, 268 P.3d at 1180. Barraza asserts in his affidavit that Juan was aware of the \$20,000 claim he asserted against the property and that Juan knew it was money that had been paid toward the purchase price of the property. In an affidavit, Wilfrido acknowledged that he was aware Juan had brought a suit against Barraza “because of a \$20,000 claim of lien that was filed against the property.” Certainly, the recording and re-recording of the written claim of lien

would have put Wilfrido on notice of Barraza's claim. Wilfrido may have questioned the validity of the claim, but he certainly was aware of it and therefore could not be a good faith purchaser under I.C. § 45-803.

This is not to say that Wilfrido may not have defenses against Barraza's claim. We do not opine on that issue, as it has not been presented on appeal. What is apparent is that the district court erred in quieting title in favor of Wilfrido as against Barraza because genuine issues of fact existed as to whether or not Barraza had asserted a legitimate claim against the property. The district court erred in determining that Barraza's claim of lien was not authorized by statute and "constitutes a nonconsensual common law lien, and is invalid and unenforceable," citing I.C. § 45-1702. A vendee's lien is authorized by statute and, therefore, does not fit the description of a nonconsensual lien. Barraza presented sufficient evidence of a vendee's lien to survive summary judgment. The judgment, insofar as it quiets title in Wilfrido against Barraza, is vacated and the case is remanded to determine the issue of Barraza's rights, if any, under I.C. § 45-803.

D. The district court correctly ruled that Barraza did not have a viable unjust enrichment claim against Wilfrido.

The district court summarily dismissed Barraza's unjust enrichment claim against Wilfrido. On appeal, Barraza argues that his improvements and down payment on the property unjustly enriched Wilfrido. Wilfrido argues that those items, even if causing incidental benefit to Wilfrido, were not intended for Wilfrido.

A claim for unjust enrichment requires "that (1) a benefit is conferred on the defendant by the plaintiff; (2) the defendant appreciates the benefit; and (3) it would be inequitable for the defendant to accept the benefit without payment of the value of the benefit." *Teton Peaks Investment Co. v. Ohme*, 146 Idaho 394, 398, 195 P.3d 1207, 1211 (2008). However, the alleged recipient must also be the intended beneficiary. *Hettinga v. Sybrandy*, 126 Idaho 467, 471, 886 P.2d 772, 776 (1994). Accordingly, "[r]ecovery for unjust enrichment is unavailable if the benefits [to the recipient] were created incidentally by [the claimant] in pursuit of his own financial advantage." *Id.*

As Wilfrido argues, while Barraza alleged he made improvements to the property, and that his down payment somehow reduced Wilfrido's purchase price, he failed to demonstrate that either the improvements or the money were intended to benefit Wilfrido. Indeed, Barraza makes no assertion that those benefits were created for any other purpose than his own financial gain, and they only incidentally benefited Wilfrido, if at all. Thus, the district court correctly dismissed

Barraza's unjust enrichment claim on summary judgment.

E. Neither party is entitled to attorney fees.

Both parties argue for attorney fees on appeal. Barraza argues for fees under I.C. §§ 12-120 and -121. Wilfrido not only seeks attorney fees under I.C. § 12-121, but also sanctions under I.A.R. 11.2. However, because there was no contract or commercial transaction between Wilfrido and Barraza, and because Barraza did not bring a frivolous appeal, we find no basis to award fees.

**IV.
CONCLUSION**

For the reasons outlined above, we affirm the district court's judgment finding Barraza's prior default judgment against Juan void for lack of notice. However, we vacate the district court's quiet title judgment against Barraza. We remand for further proceedings with regard to the vendee's lien issue. We decline to award costs or attorney fees to either party.

Chief Justice BURDICK, and Justices EISMANN, W. JONES and HORTON CONCUR.

In the Supreme Court of the State of Idaho

F I L E D
A.M. 3:50 P.M.

JUN 06 2012

CANYON COUNTY CLERK
T RANDALL, DEPUTY

WILFRIDO CUEVAS,)
)
 Plaintiff-Counterdefendant-)
 Respondent,)
 v.)
)
 BERNARDINO BARRAZA, an individual and spouse)
 (if any),)
)
 Defendant-Counterclaimant-)
 Appellant,)
)
 and)
)
 LIOBALDO GARZA, an individual and spouse (if)
 any); DOES I THROUGH X, UNKNOWN)
 CLAIMANTS TO THE REAL PROPERTY)
 DESCRIBED IN EXHIBIT "A", COMMONLY)
 KNOWN AS 29452 PEARL ROAD, PARMA,)
 IDAHO.)
)
 Defendants.)

REMITTITUR

Supreme Court Docket No. 38493
Canyon County Court # 2009-8175

TO: THIRD JUDICIAL DISTRICT, COUNTY OF CANYON.

The Court having announced its Opinion in this cause March 22, 2012, and having denied Respondent's Petition for Rehearing on June 4th, 2012; therefore,

IT IS HEREBY ORDERED that the District Court shall forthwith comply with the directive of the Opinion, if any action is required.

DATED this 4th day of June, 2012.

Stephen Kaye

 Clerk of the Supreme Court
 STATE OF IDAHO

cc: Counsel of Record
District Court Clerk
District Judge
Publisher(s)

F I L E D
A.M. 4:15 P.M.

JUL 20 2012

CANYON COUNTY CLERK
K CANO, DEPUTY

Rebecca A. Rainey, ISB No. 7525
Amy A. Lombardo, ISB No. 8646
RAINEY LAW OFFICE
910 West Main Street, Suite 258
Boise, Idaho 83702
Telephone (208) 258-2061
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rar@raineylawoffice.com
aal@raineylawoffice.com

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual, et
al.

Defendant.

Case No. CV 09-8175

**MOTION FOR SUMMARY
JUDGMENT**

COMES NOW Plaintiff Wilfrido Cuevas, by and through its counsel of record, Rainey Law Office, and hereby moves this court, pursuant to Rule 56(c) Idaho Rules of Civil Procedure, for entry of summary judgment, on the grounds that any potential vendee's lien claimed by defendant Bernardino Barraza is barred by the statute of limitations. This Motion is supported by a memorandum filed contemporaneously herewith.

MOTION FOR SUMMARY JUDGMENT- 1

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Oral Argument is requested.

DATED this 20th day of July, 2012.

RAINEY LAW OFFICE



Rebecca A. Rainey -- of the firm
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July 2012, I caused a true and correct copy of the foregoing **MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward
HALL, FRIEDLY & WARD
340 E. 2nd North Street
Mountain Home, ID 83647
Facsimile: (208) 587-3144

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Rebecca A. Rainey

MOTION FOR SUMMARY JUDGMENT- 2

000019

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aal@raineylawoffice.com

Attorneys for Plaintiff

FILED
A.M. P.M.

JUL 20 2012

CANYON COUNTY CLERK
K CANO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual, et
al.

Defendant.

Case No. CV 09-8175

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, Plaintiff Wilfrido Cuevas ("Wilfrido"), by and through his attorney of record, Rainey Law Office, and hereby files this memorandum in support of his motion for summary judgment:

I. INTRODUCTION

This case involves a dispute over property in Parma, Idaho, that has been in litigation for more than five years and involved two lawsuits. It now comes back to this Court on remand from the Supreme Court of Idaho. The only issue left to determine is whether Bernardino Barraza ("Barraza") has a valid and enforceable vendee's lien, pursuant to Idaho Code § 45-803.

MEMORANDUM IN SUPPORT MOTION FOR SUMMARY JUDGMENT- 1

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Cuevas v. Barraza, No. 38493, slip op. at 9 (Idaho March 22, 2012). Assuming, arguendo, that a vendee's lien exists, the statute of limitations bars Barraza from enforcing such lien.

II. STATEMENT OF UNDISPUTED FACTS

1. Barraza made a payment on or before January 5, 2002.¹ *Cuevas v. Barraza*, No. 38493, slip op. at 8 (Idaho March 22, 2012).²
2. Barraza filed a claim of lien on May 6, 2002.³
3. Wilfrido filed suit to quiet title on August 7, 2009. *See Register of Action*.

III. STANDARD OF REVIEW

Summary judgment is appropriate if the pleadings, depositions, admissions on file, and affidavits show there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. *McGilvray v. Farmers New World Life Ins. Co.*, 136 Idaho 39, 46, 28 P.3d 380, 387 (2001). The facts must be construed in the light most favorable to the nonmoving party. *Brown v. Caldwell School Dist. No. 132*, 127 Idaho 112, 115, 898 P.2d 43, 46 (1995). "I.R.C.P. 56(e) provides that the adverse party may not rest upon mere allegations in the pleadings, but must set forth by affidavit specific facts showing there is a genuine issue for trial." *Gem State Ins. Co. v. Hutchinson*, 145 Idaho 10, 13, 175 P.2d 172, 175 (2007). If the nonmoving party fails to establish a genuine issue of material fact as to the existence of an essential element to that party's case, Rule 56, Idaho Rules of Civil Procedure, mandates entry of

¹ The Supreme Court opinion states, "Barraza's claim of lien indicates that the \$20,000 payment had been made on or before January 5, 2002, so presumably the statutory lien attached at or prior to that date. It should be noted that the lien is created upon the payment of any part of the purchase price and is not dependent upon the recording of a written document."

² Wilfrido accepts and adopts as written all facts addressed by the Idaho Supreme Court in its decision, for purposes of this Motion for Summary Judgment only, and incorporates the same herein.

³ The same was recorded again on January 31, 2007.

summary judgment. *Sparks v. St. Luke's Reg'l Med. Ctr. Ltd.*, 115 Idaho 505, 509, 768 P.2d 768, 772 (1988).

IV. ARGUMENT

A. **Summary Judgment is appropriate because any vendee's lien is time barred.**

The statute of limitations bars Barraza from enforcing a vendee's lien as a matter of law.

Idaho Code § 45-804 establishes a vendee's lien:

45-804. Lien of purchaser of real property. One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

Assuming, *arguendo*,⁴ that a vendee's lien does exist, such lien is barred by any possible statute of limitations that might apply. While no Idaho court of appellate review has decided what limitations period applies to a vendee's lien, because there were more than seven years between the filing of Barraza's claim of lien and the commencement of this action, there is no limitations period long enough under Idaho law to save the alleged claim of lien.

Of all potential limitations periods that might apply two stand out as potentially appropriate: (1) the three-year limitations period for an action upon a liability created by statute, Idaho Code § 5-218(1), or (2) a limitations period "borrowed" from the underlying obligation. See *Blankenship v. Myers*, 97 Idaho 356, 371, 544 P.2d 314, 329 (1975); *Rogers v. Crockett*, 41 Idaho 336, 344, 238 P. 894, 896 (1925) (each noting that a **vendor's** lien can be enforced against a vendee only so long as an action can still be brought against the buyer for the unpaid purchase

⁴ Critically, in this matter the Idaho Supreme Court affirmed the District Court's conclusion that there was not a valid agreement by and between Barraza and Juan Cuevas for the sale of the Property. In the concurring opinion of *Shepherd v. Dougan*, 58 Idaho 543, 76 P.2d 442 (1937), it was noted that a vendee's lien cannot exist absent a valid agreement for the sale of property, although that issue has not been squarely presented to any Idaho court of appellate review.

price). In this case, the District Court concluded and the Supreme Court affirmed Wilfrido's arguments that any and all claims that Barraza attempted to bring were invalid and/or unenforceable. *Cuevas v. Barraza*, No. 38493, slip op. at 5-9 (Idaho March 22, 2012). Accordingly, there is no possible claim underlying Barraza's alleged vendee's lien from which a limitation may be borrowed.

The Supreme Court also noted that the undisputed facts show when a vendee's lien (if any) would have been created: "the \$20,000 payment had been made on or before January 5, 2002, so presumably the statutory lien attached at or prior to that date." *Cuevas v. Barraza*, No. 38493, slip op. at 8 (Idaho March 22, 2012). Accordingly, in order to enforce the vendee's lien, suit would have had to commence on or before January 5, 2005. The present action was not filed until August 7, 2009; the former action (between Juan Cuevas and Barraza) was filed on April 2, 2007. *Cuevas v. Barraza*, No. 38493, slip op. at 2 (Idaho March 22, 2012). There simply was not an action filed within any limitations period that could apply to the claim of a vendee's lien. Accordingly, summary judgment disposing of the single issue remaining in this case is appropriate.

B. The Supreme Court's decision affirms the District Court's judgment in all other respects and no other issues remain to be decided.

Previously, the District Court granted summary judgment in favor of Wilfrido on two separate summary judgment motions. On the first motion, the District Court ruled that a prior default judgment quieting title in Barraza was void and that res judicata did not bar Wilfrido from collaterally attacking such judgment. *Id.* at 3. On the second motion, the District Court quieted title in Wilfrido on the grounds that Barraza had not established a valid claim. The District Court also rejected Barraza's unjust enrichment claim. *Cuevas v. Barraza*, No. 38493, slip op. at 4 (Idaho March 22, 2012).


On appeal, the Supreme Court affirmed each and every claim that was raised by the parties and decided by the District Court. The only matter remaining on remand is whether the judgment quieting title was improper because of a previously unspecified vendee's lien. The Supreme Court noted that: "[a]lthough Barraza does not specifically identify his claim against the property as a 'vendee's lien,' his claim certainly appears to fit the elements of that type of statutory lien." *Cuevas v. Barraza*, No. 38493, slip op. at 8 (Idaho March 22, 2012). As discussed above, if a vendee's lien existed, any applicable statute of limitations has run and, therefore, bars any such lien claim.

V. CONCLUSION

As the foregoing demonstrates, the statute of limitations bars any claim of "vendee's lien" that Barraza might have and there are no other issues for this Court to address on remand. Accordingly, summary judgment is appropriate, and title to the Property should be quieted in Wilfrido's name.

DATED this 20th day of July, 2012.

RAINEY LAW OFFICE



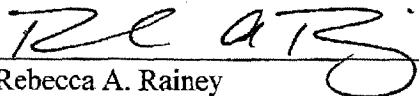
Rebecca A. Rainey – of the firm
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 20th day of July 2012, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward
HALL, FRIEDLY & WARD
340 E. 2nd North Street
Mountain Home, ID 83647
Facsimile: (208) 587-3144

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Rebecca A. Rainey

ROBERT WARD
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Facsimile: (208) 587-3144
Idaho State Bar Number 4442

FILED
A.M. 3:00 P.M.

AUG - 9 2012
CANYON COUNTY CLERK
K CANO, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual
and spouse (if any), LIOBALDO GARZA, an
individual and spouse (if any); DOES I
THROUGH X, UNKNOWN CLAIMANTS
TO THE REAL PROPERTY DESCRIBED
IN EXHIBIT "A", COMMONLY KNOWN
AS 29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

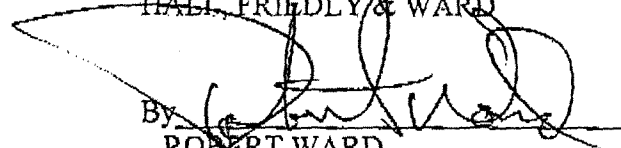
Case No. CV09-8175

DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT

COMES NOW Defendant, Bernardino Barraza, by and through his attorney of record, Robert Ward, of the firm Hall, Friedly & Ward, and pursuant to Rule 56, Idaho Rules of Civil Procedure, moves this Court for summary judgment that Defendant, Bernardino Barraza, has a \$20,000.00 vendee's lien against the real property and that Plaintiff, Wilfrido Cuevas, should pay Defendant, Bernardino Barraza, the \$20,000.00 or the property should be sold by the sheriff to satisfy the lien.

This Motion is supported by the pleadings on record in this matter, and the Memorandum in Support of Motion for Summary Judgment filed herewith.

DATED this 9 day of August, 2012.

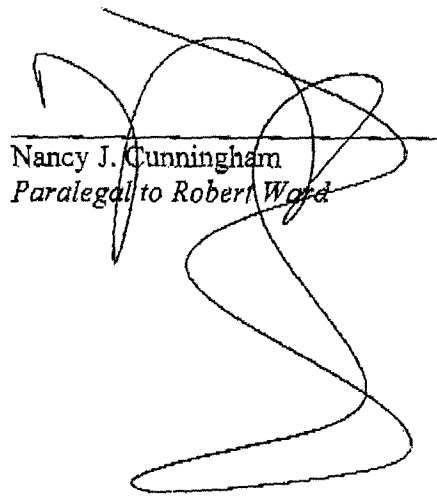
HALL FRIEDLY & WARD

 By _____
 ROBERT WARD
 Attorney for Bernardino Barraza

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 9 day of August, 2012, I caused to be served a true and correct copy of the foregoing Defendant's Motion for Summary Judgment, by the method indicated below, addressed to the following:

REBECCA A. RAINEY
 RAINEY LAW OFFICE
 910 WEST MAIN STREET, SUITE 258
 BOISE, ID 83702
 FAX: (208) 473-2952

- U.S. Mail
- Hand Delivered
- Overnight Mail
- FAX



 Nancy J. Cunningham
 Paralegal to Robert Ward

F I L E D
A.M. 3:50 P.M.

ROBERT WARD
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Idaho State Bar Number 4442

AUG - 9 2012

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IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual
and spouse (if any), LIOBALDO GARZA, an
individual and spouse (if any); DOES I
THROUGH X, UNKNOWN CLAIMANTS
TO THE REAL PROPERTY DESCRIBED
IN EXHIBIT "A", COMMONLY KNOWN
AS 29452 PEARL ROAD, PARMA, IDAHO,

Defendants.

Case No. CV09-8175

MEMORANDUM IN SUPPORT
OF BERNARDINO BARRAZA'S
MOTION FOR SUMMARY
JUDGMENT AND IN
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT

The above-named defendant, by and through his attorneys of record, Hall, Friedly & Ward, submits this memorandum in support of the defendant Bernardino Barraza's Motion for Summary Judgment and in opposition to the plaintiff's Motion for Summary Judgment.

I. PROCEDURAL HISTORY AND FACTS

This case is on remand from the Supreme Court of Idaho who overturned the granting of the plaintiff's Motion for Summary Judgment by the district judge, finding that there was sufficient evidence to support a claim by Bernardino Barraza for a vendee's lien against the real property. See *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 343 (2012).

MEMORANDUM IN SUPPORT OF BERNARDINO BARRAZA'S MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT- 1

II. FACTS

All facts referred to in this memorandum are found in the Facts and Procedural section of *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337 (2012), and in the affidavits and pleadings on file with this court.

III. STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, affidavits, and discovery documents before the court indicate that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. Idaho R. Civ. P. 56(c); *Baxter*, 135 Idaho at 170, 16 P.3d at 267. The moving party carries the burden of proving the absence of a genuine issue of material fact. *Baxter*, 135 Idaho at 170, 16 P.3d at 267.

In construing the record on a motion for summary judgment, all reasonable inferences and conclusions must be drawn in favor of the party opposing summary judgment. *Student Loan Fund of Idaho, Inc. v. Duerner*, 131 Idaho 45, 49, 951 P.2d 1272, 1276 (1997). The nonmoving party, however, "may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or ... otherwise ..., must set forth specific facts showing that there is a genuine issue for trial." Idaho R. Civ. P. 56(e); *Baxter*, 135 Idaho at 170, 16 P.3d at 267. "A mere scintilla of evidence is not enough to create a genuine issue of fact," but circumstantial evidence may suffice. *Tingley v. Harrison*, 125 Idaho 86, 89, 867 P.2d 960, 963 (1994); *Doe v. Durtschi*, 110 Idaho 466, 470, 716 P.2d 1238, 1242 (1986). Still, the evidence offered in support of or in opposition to a motion for summary judgment must be admissible. *Bromley v. Garey*, 132 Idaho 807, 811, 979 P.2d 1165, 1169 (1999).

Banner Life Ins. Co. v. Mark Wallace Dixson Irrevocable Trust, 147 Idaho 117, 123, 206 P.3d 481, 487 (2009).

IV. ISSUES

1. **Whether Bernardino Barraza has a vendee's lien against the real property.**
2. **Whether the statute of limitations bars Bernardino Barraza from enforcing the lien.**

V. ARGUMENT

1. **Bernardino Barraza has a vendee's lien on the real property and his vendee's**

lien is fully enforceable against the plaintiff.

In 1887, the territorial legislature created statutory vendor's and vendee's liens, which are now codified as Idaho Code sections 45-801 and 45-804. ...

Section 45-804 states,

One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

In 1887, the territorial legislature also enacted what is now codified as Idaho Code section 45-803, which states:

The liens of vendors and purchasers of real property are valid against every one claiming under the debtor, except a purchaser or encumbrancer in good faith and for value.

Benz v. D.L. Evans Bank, 152 Idaho 215, 268 P.3d 1167, 1177 (2012).

Bernardino Barraza clearly has a vendee's lien. Bernardino Barraza had an agreement with Juan Cuevas to purchase the real property which is the subject of this litigation. Bernardino Barraza paid to Juan Cuevas over \$20,000.00 toward the purchase of the property and occupied the real property. Juan Cuevas later approached Bernardino Barraza and requested him to vacate the property and said that if Bernardino Barraza would vacate the property, Juan Cuevas would refund to him the \$20,000.00 down payment once the real property was sold to another purchaser. *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 339 (2012). Bernardino Barraza vacated the property and filed a lien to notify the world that he had an interest in the property "in the amount of \$20,000.00 for the payments on Real Estate Title." *Id.* Juan Cuevas filed a Quiet Title Action on April 2, 2007, to remove the lien that Bernardino Barraza filed. *Id.* At no time prior to the Quiet Title Action did Juan Cuevas deed the real property or record any transfer of ownership to the property. *Id.* See also the affidavits of the parties on file with the court.

This clearly created a vendee's lien in favor of Bernardino Barraza on the real property. The consideration of the agreement, the transfer of the real property to Bernardino Barraza by Juan Cuevas, failed because Juan Cuevas failed to transfer the property or refund the \$20,000.00 as promised. Bernardino Barraza could not technically collect the \$20,000.00 from Juan Cuevas until Juan Cuevas had re-sold the property as the parties agreed, but this did not lessen Bernardino Barraza's interest or claim in the real property.

Therefore, Bernardino Barraza was acting well within in his rights to notify the world by recording his lien, but he could not enforce the lien until Juan Cuevas failed to refund the \$20,000.00 to Bernardino Barraza. Moreover, the vendee's lien is valid against the plaintiff because he was not a purchaser in good faith, and the plaintiff was specifically held by the Supreme Court of Idaho to have actual knowledge of Bernardino Barraza's lien/claim. See *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 343 (2012).

For all of the reasons stated above, Bernardino Barraza had a vendee's lien on the real property and the lien was valid against the plaintiff.

2. The statute of limitations has not run on the vendee's lien because the statute of limitations on Bernardino Barraza's underlying claim for failure of consideration/breach of contract by Juan Cuevas has not run.

The Supreme Court of Idaho established in *Blankenship v. Myers*, the rule for determining the statute of limitations on a vendor's lien, which would apply to the vendee's lien that is established by the same statute. The Supreme Court stated:

The vendor's lien is a lien created by statute, I.C. § 45-801, to protect the unsecured seller of real property by giving him rights in the property sold, subject to the rights of a good faith purchaser for value as provided in I.C. § 45-803, when he has no other collateral to secure payment for the property. This statutory lien codified the common law rule which established a vendor's lien under similar circumstances. At common law the vendor's lien generally could be enforced

against the vendee as long as the vendor could still bring an action against the buyer for the unpaid purchase price. See 77 Am.Jur.2d, Vendor & Purchaser, s 462, p. 588 (1975). An action for enforcement of a vendor's lien and an action for the unpaid purchase price are so interrelated that it is reasonable to conclude that the legislature intended that the statute of limitations for the lien claim would run only when the statute of limitations runs to bar the claim for the debt. We adopt the following language of the Supreme Court of California in the case of *Finnell v. Finnell*, 156 Cal. 589, 105 P. 740 (1909), in which the California court, which construed a vendor's lien statute substantially identical to Idaho's, stated:

'The right of a vendor to enforce his lien continues, unless waived, so long as an action can be commenced for the purchase money . . . ' 105 P. at 744.

... We conclude that as long as the claim is not barred, the lien is not barred.

Blankenship v. Myers, 97 Idaho 356, 370-71, 544 P.2d 314, 328-29 (1975). Therefore, following the logic of the Supreme Court in *Blankenship* the statute of limitations on the vendee's lien in this matter is enforceable so long as the statute of limitations on Bernardino Barraza's claim for the \$20,000.00 has not run.

The statute of limitations for a written contract in Idaho is five years. I.C. § 5-216. The statute of limitations on an oral contract in Idaho is four years. I.C. § 5-217. Bernardino Barraza's claim arises from a written contract with Juan Cuevas for the purchase of the real property at issue in this litigation. The contract was subsequently modified by the parties when Juan Cuevas told Bernardino Barraza that if he vacated the real property, Juan Cuevas would refund \$20,000.00 to Bernardino Barraza when Juan Cuevas sold the property to another party. The underlying contract was in writing, but the modification was oral. Because Bernardino Barraza's claim was based upon a written contract, the statute of limitations should be five years, but even if a court determines that because the modification to the contract was oral, Bernardino Barraza's claims are based upon an oral contract, the statute of limitations to pursue Bernardino Barraza's claim is four years.

Regardless of whether the statute of limitations is four or five years, the statute of limitations has not expired in either event. The statute of limitations for a breach of contract does not begin to run until the time of the breach. This issue was addressed very clearly in the previous *Cuevas v. Barraza* by the Court of Appeals.

A cause of action for breach of contract accrues upon breach for limitations purposes. See *Simons v. Simons*, 134 Idaho 824, 830, 11 P.3d 20, 26 (2000); *Skaggs v. Jensen*, 94 Idaho 179, 180, 484 P.2d 728, 729 (1971). The five-year statute of limitation for Barraza to bring this breach of contract claim began to run when Barraza became aware of the breach. The breach alleged in Barraza's answer occurred when Cuevas filed the instant quiet title action—April 2, 2007.

Cuevas v. Barraza, 146 Idaho 511, 517, 198 P.3d 740, 746 (Ct. App. 2008). "The instant quiet title action" referred to by the Court of Appeals was the quiet title action that Juan Cuevas filed against Bernardino Barraza rather than selling the property to a third party and paying Bernardino Barraza the \$20,000.00 that Juan Cuevas owed to Bernardino Barraza.

Therefore, the statute of limitations did not begin to run until April 7, 2007. The plaintiff in this action filed his quiet title action on August 7, 2009. Bernardino Barraza timely filed his Answer, and filed an Amended Answer and Counterclaim on 12/18/2009. See Register of Action. Therefore, without taking into consideration whether the time that the first *Cuevas v. Barraza* was up on appeal, and the time that Bernardino Barraza was the owner of title of the real property, tolled the statute of limitations, Bernardino Barraza preserved his claim by timely filing his Amended Answer and Counterclaim.

The plaintiff may argue that Bernardino Barraza did not allege in his Amended Answer and Counterclaim that he had a vendee's lien. However, this is irrelevant because Bernardino Barraza did set forth in his Amended Answer and Counterclaim all of the conduct, transactions, or occurrences that comprise the claim of a vendee's lien. Indeed, it was from these very allegations that Bernardino Barraza set forth and the Supreme Court held that there was

sufficient evidence of a vendee's lien to survive summary judgment. *Cuevas v. Barraza*, 152 Idaho 890, 277 P.3d 337, 343 (2012). Indeed, that is why this case was remanded. Because the Supreme Court of Idaho set aside Bernardino Barraza's quiet title judgment as owner of the property, and held that he has a vendee's lien instead, Bernardino Barraza may, if necessary, amend his pleadings by leave of the court to include his claim for the vendee's lien and to foreclose on the vendee's lien, and those claims would relate back to the date of Bernardino Barraza's Answer and Counterclaim for purposes of the statute of limitations. Rule 15(c) of the Idaho Rules of Civil Procedure states:

Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.

Therefore, the statute of limitations has not run because Bernardino Barraza filed his claim with the court well within the four or five year statute of limitations.

VI. CONCLUSION

For all of the reasons stated above, Bernardino Barraza has a vendee's lien against the real property at issue in this case. The lien is not barred by the statute of limitations, and this Court should deny the plaintiff's Motion for Summary Judgment and grant Bernardino Barraza's Motion for Summary Judgment and find as a matter of law that Bernardino Barraza has a \$20,000.00 lien against the real property and that the plaintiff should pay to Bernardino Barraza the \$20,000.00 or grant the sale of the real property by the sheriff to satisfy the lien.

DATED this 9th day of August, 2012.

HALL, FRIEDLY & WARD

By 

ROBERT WARD

Attorney for Bernardino Barraza

MEMORANDUM IN SUPPORT OF BERNARDINO BARRAZA'S MOTION FOR SUMMARY JUDGMENT
AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT- 7

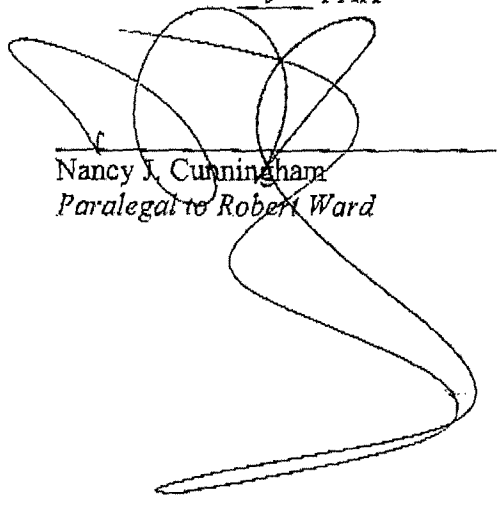
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 9th day of August, 2012, I caused to be served a true and correct copy of the foregoing Memorandum in Support of Bernardino Barraza's Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment, by the method indicated below, addressed to the following:

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FILED
A.M. 3:30 P.M.

AUG 17 2012

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual, et
al.

Defendant.

Case No. CV 09-8175

**REPLY IN SUPPORT OF MOTION
FOR SUMMARY JUDGMENT AND
OPPOSITION TO BARRAZA'S
MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, Plaintiff Wilfrido Cuevas ("Wilfrido"), by and through his attorney of record, Rainey Law Office, submits this reply brief in support of his motion for summary judgment, and in opposition to Barraza's motion for summary judgment, and states as follows:

**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION
TO BARRAZA'S MOTION FOR SUMMARY JUDGMENT - 1**

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I. INTRODUCTION

This case was remanded by the Idaho Supreme Court to determine a single issue: what rights, if any, does Barraza have under a vendee's lien theory under Idaho Code § 45-803. In accordance with this Court's briefing schedule, Wilfrido moved for summary judgment arguing that if any vendee's lien ever did exist, the statute of limitation bars Barraza from enforcing such lien. In opposition, Barraza asserts that the limitations period for enforcing such lien does not run until the limitations period for the underlying contract action that gives rise to the vendee's lien begins to run. This argument highlights the fundamental flaw in Barraza's vendee's lien theory: there was not a valid contract underlying Barraza's alleged vendee's lien. Because there is not an underlying contract, there cannot be a vendee's lien. To recognize a vendee's lien under the undisputed facts of this case would wholly circumvent the statute of frauds.

II. ARGUMENT

A. Barraza does not have a vendee's lien.

The Supreme Court remanded this case for a determination of whether Barraza had a vendee's lien under Idaho Code Section 45-804, which provides:

One who pays to the owner any part of the price of real property, under an agreement for the sale thereof, has a special lien upon the property, independent of possession, for such part of the amount paid as he may be entitled to recover back, in case of a failure of consideration.

This statutory section requires three things for a vendee's lien to exist: (i) payment of a portion of the purchase price for real property by the vendee to the vendor, (ii) such payment is made "under an agreement for the sale [of the real property]"; and (iii) a failure of consideration: i.e., the real property is not conveyed in accordance with the agreement for sale.

**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION
TO BARRAZA'S MOTION FOR SUMMARY JUDGMENT - 2**

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No Idaho court of appellate review has directly addressed the question of whether an invalid and unenforceable agreement for the sale of real property is sufficient to give rise to a vendee's lien. However, in the case of *Shepherd v. Dougan*, (ultimately decided on a resulting trust theory), Justice Ailshie's dissenting opinion for rehearing and modification makes a compelling argument that the "agreement" contemplated by Idaho Code Section 45-804 must be a valid, enforceable agreement.

As I read and understand this statute, it is intended to apply to cases of contract for the purchase of real property and is meant to protect the vendee, where he makes a payment on an agreed purchase price; and for some reason or other the vendor either is unable to give a title or refuses to comply with his agreement to do so, and the consideration for the contract fails.

58 Idaho 543, 564, 76 P.2d 442, 450 (1937).

A contract for sale or a deed, which are absolutely void from the beginning because of the fact that the vendor is entirely lacking in power and authority to transfer the premises, cannot be the foundation for a vendee's lien any more than they could be the foundation for any other legal or equitable interest in the premises.

Id. at 567, 76 P.2d at 452 (quoting *O'Neill v. Bennett*, 49 S.D. 524, 207 N.W. 453) (italics omitted). The principles espoused by Justice Ailshie should be adopted by this Court: a void, invalid, and unenforceable contract is not the type of "agreement" contemplated by Idaho Code Section 45-508 and cannot, therefore, serve the basis of a vendee's lien.

In this matter, it has been established that Barraza did not have a valid and enforceable contract for the purchase of the property that would satisfy the second requirement of Idaho Code Section 45-508. This Court previously held that the alleged contract by and between Barraza and Juan Cuevas was void and unenforceable because it did not comply with the statute of frauds. Tr. Vol. I, p. 96, L. 22 – p. 97, L. 10. (attached hereto as Appendix A for the Court's

**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION
TO BARRAZA'S MOTION FOR SUMMARY JUDGMENT - 3**

convenience). The Idaho Supreme Court strongly indicated that it agreed with this Court's prior conclusion in that regard:

[I]t is not readily apparent that the contract between the parties complies with the statute of frauds, particularly the requirement that the contract must 'either contain a sufficient description of the real property or refer to an external record containing a sufficient property description.' *Ray v. Frasure*, 146 Idaho 625, 629, 200 P.3d 1174, 1178 (2009). Neither the Spanish Document nor the English Document contains a legal description of the property. The Spanish Document ends with words translated as, 'We need the Ranch's address.' The English Document merely describes the ranch as '29452 Pearl Rd., Parma, ID 83660.' There are a number of other potential infirmities, such as the lack of Baez' signature on either version of the contract, unclear payment terms, potential application of laches, and no showing that Barraza made a tender of the balance of the purchase price, among other things.

Cuevas v. Barraza, No. 38493, slip op. at 7, n. 4 (Idaho March 22, 2012). Indeed, all of Barraza's references to the Supreme Court's opinion for the proposition that an "agreement" or "contract" existed overstate the Supreme Court's position, as those references more accurately referred to an "alleged agreement" or "alleged contract." Because Barraza cannot establish that he had a valid and enforceable agreement for the sale of the property, he cannot satisfy the statutory requirements of a vendee's lien.

B. Statute of Limitations Bars any Vendee's Lien Theory

Barraza's attempts to save the vendee's lien theory from being barred by a limitations period highlight the fundamental errors with his argument that an invalid, unenforceable contract can give rise to a vendee's lien: namely, if his theory were adopted, a vendee's lien would effectively circumvent the statute of frauds.

In this matter, Barraza argues that there are two possible “agreements” that give rise to his vendee’s lien. First, the invalid and unenforceable written agreement for the purchase and sale of the property (five year limitations period), and second, the oral modification of that written agreement, which provided for a refund of the money paid, if and when Juan Cuevas sold the property to a third party (four year limitations period). He then argues that his cause of action for the vendee’s lien does not accrue until his cause of action for breach of either of these contracts accrued. For the reasons that follow, Barraza’s attempts to borrow the accrual dates from the causes of action for breach of either of these alleged agreements is misplaced and does not provide an accrual date on his vendee’s lien.

Barraza cannot borrow the accrual date for breach of the alleged written agreement because, as discussed at length herein, the alleged written agreement is void for failure to satisfy the statute of frauds. As Barraza correctly notes, a cause of action for breach of contract accrues upon default or breach of the contract. However, if the contract is void, then there can never be an event of default or breach of that void contract: Barraza cannot “borrow” the date of accrual from a cause of action that does not exist; this Court cannot pretend that a breach of a void contract could exist in order to create an accrual date for a vendee’s lien. Accordingly, the void and unenforceable written agreement cannot be the underlying contract by which the limitations period on Barraza’s alleged vendee’s lien claim is measured.

The second alleged contract, the oral modification to the written agreement, is equally problematic. First and foremost, if a written contract is void and unenforceable, an oral modification to that void contract is a legal nullity. Alternatively, assuming the alleged oral modification could stand alone as an independent contract, it is not the type of contract that gives

**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION
TO BARRAZA’S MOTION FOR SUMMARY JUDGMENT - 5**

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rise to a vendee's lien. The vendee's lien statute provides that money be paid pursuant to a contract for the sale of real property. The alleged oral modification was not a contract for the sale of real property; it was an agreement for the payment of \$20,000.00 upon the vendor's sale of the property to a third party. On its face, this type of agreement does not meet the requirements of a vendee's lien. Accordingly, breach of an alleged oral contract that does not give rise to a vendee's lien cannot establish the accrual of a cause of action for a vendee's lien.

In his effort to save the alleged vendee's lien from being time barred, Barraza improperly combines contracts and theories. While the limitations period for a vendee's lien runs concurrent with the underlying contract that gives rise to the vendee's lien, such rule cannot apply when there is no underlying contract. Similarly, Barraza cannot look to a contract which does not give rise to a vendee's lien and borrow the accrual date for breach of that contract to save a vendee's lien. Because Barraza cannot point to a valid, enforceable contract that gives rise to his vendee's lien, he cannot borrow the accrual date for breach of any contract to save his claim for a vendee's lien. Accordingly, as set forth in Cuevas's opening brief, even if this Court concludes that Barraza can have lien rights in the absence of a valid agreement for the sale of real property, then such lien rights arise, and a cause of action accrues, at the time the money was paid. Under the undisputed facts of this case, such limitations period ran on January 5, 2005, approximately four and a half (4 ½) years before the present lawsuit was filed. Barraza's vendee's lien, if any, is barred by the statute of limitations.

**REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION
TO BARRAZA'S MOTION FOR SUMMARY JUDGMENT - 6**

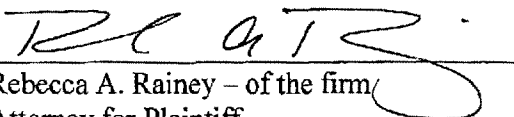
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III. CONCLUSION

For the foregoing reasons, Wilfrido respectfully requests that this Court enter an order granting his motion for summary judgment and denying Barraza's motion for summary judgment.

DATED this 17th day of August, 2012.

RAINEY LAW OFFICE

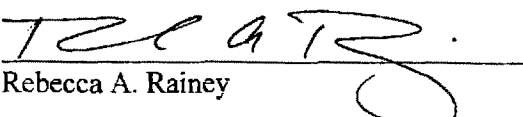

Rebecca A. Rainey – of the firm/
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 17th day of August 2012, I caused a true and correct copy of the foregoing **REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO BARRAZA'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward
HALL, FRIEDLY & WARD
340 E. 2nd North Street
Mountain Home, ID 83647
Facsimile: (208) 587-3144

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile


Rebecca A. Rainey

REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AND OPPOSITION TO BARRAZA'S MOTION FOR SUMMARY JUDGMENT - 7

APPENDIX A

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1 discussions. So that's obviously gone on.

2 What it appears in this case is, from
3 my -- at least from what I've seen at this stage
4 of the proceeding is that Mr. Juan Cuevas and
5 Yrene Baez had been engaged in negotiate -- in
6 contractual relations and/or activities with both
7 of these individuals on this property. So now
8 that they're here in conflict, I have to plug in
9 the rules of law to determine who stands in
10 priority with this property. And I've indicated
11 at this stage it's up to Mr. Barraza to overcome
12 the legal presumption that Wilfrido was the owner
13 of the property.

14 By doing so, the first step is
15 demonstrating a legally recognizable claim to the
16 property. I believe the standard is by evidence
17 that is clear, satisfactory, and convincing.
18 But -- and that's more applicable at trial than in
19 the present instance, because we're in summary
20 judgment. So there needs to be a genuine issue of
21 fact in that regard.

22 All right. There is a number of facts
23 that were presented in this case on behalf of
24 Mr. Barraza. It is sufficient to note that
25 Mr. Barraza contends -- and so I'm looking at

1 to, at best, a breach of contract, or at least
2 conversion. Unless a lien is authorized by
3 statute, consented to by the owner, imposed by a
4 court, or of the type commonly used in a
5 commercial transaction, it constitutes a
6 nonconsensual common law lien, and is invalid and
7 unenforceable. And this is also pursuant to
8 45-1702 Idaho Code. I think it's also followed up
9 by 1703 et sequitur.

10 The case of Browning -- I'm not sure of
11 this; I can't read my writing here -- versus, it
12 starts with a G, the second name, but it's 140
13 Idaho 598, 599 through 600. It's a court of
14 appeals decision from 2004. Also holds that.

15 If a lien is improperly filed as a
16 mechanics lien and the lien is not one otherwise
17 recognized by law, then the lien is a
18 nonconsensual common law lien and is properly
19 subject to a court order removing the lien, Idaho
20 Code 45-1703. And also there's the case of
21 Maxwell versus Twin Falls Canal Company, 49 Idaho
22 806.

23 But I want to talk about the Spanish
24 document. Now, that's in the record. But neither
25 the Spanish document or the English document,

1 these facts in a light most favorable to him --
2 that Juan Manuel Cuevas sold the real property
3 commonly known as 29452 Pearl Road in Parma,
4 Idaho, and it was pursuant to a written contract.

5 Now, the written contract appears to be
6 in the form of the English document, but there's
7 also three documents that have been presented in
8 the record. One referred to as an English
9 document, a Spanish document, and then there's
10 also a lien. That on May 6th, 2002, Mr. Barraza,
11 the defendant, recorded a lien with the Canyon
12 County recorder's office against the real
13 property.

14 Now, I'll note. The lien states that
15 it is for \$20,000 reimbursement due Mr. Barraza
16 from Juan and Yrene. But Mr. Barraza has
17 testified that the lien was filed because
18 Juan Manuel Cuevas failed to transfer title on the
19 property to him. So there's an acknowledgement
20 there that Juan never conveyed title of the
21 property, or Juan and Yrene never conveyed title
22 of the property to Mr. Barraza.

23 I want to talk first about the lien.
24 45-501 et sequitur of Idaho Code are not
25 applicable to establish a lien for what amounts

1 based on what I've got before the court today,
2 satisfy the statute of frauds. Again, I've cited
3 9-503 Idaho Code. Holds that no estate or
4 interest in property can be created, granted,
5 assigned, et cetera, otherwise done by operation
6 of law or a conveyance, other than instrument in
7 writing subscribed by the party creating,
8 et cetera.

9 The statute of frauds requires the
10 writing contain an adequate legal description of
11 the property. I'm citing Callies versus O'Neal,
12 147 Idaho 841 and other cases, Ray versus Frasure
13 for example. And it's -- requires that the
14 description adequately describe the property so
15 that it is possible for someone to identify
16 exactly what property the seller is conveying to
17 the buyer. A description is adequate if the
18 quantity, identity, or boundaries of the property
19 can be determined from the face of the instrument,
20 or by reference to extrinsic evidence to which it
21 refers.

22 Now, the Spanish document does not
23 satisfy the statute of frauds, because it is not
24 subscribed by the party allegedly conveying the
25 property, nor does it contain an adequate legal

1 description of the property. The English document
2 does not have the signature of Yrene Baez, and the
3 only reference to Yrene is that -- her name on the
4 document. It's spelled with an I, as opposed to a
5 Y for Yrene. I'm not sure that's significant, but
6 there's no signature by her. The English document
7 contains the street address of the property, but
8 under that Callies versus O'Neal case, 147 Idaho
9 841 at 848, the street address is insufficient and
10 does not satisfy the statute of frauds.

11 So here's where it -- this is my
12 tentative ruling, but I'll indicate how I'll
13 proceed when we're done. It does not appear that
14 having first of all established this first part
15 dealing with the quitclaim deed, what it conveys
16 and where it places Mr. Wilfrido Cuevas, the
17 record is no -- there's insufficient record before
18 this court to show that there's any legally
19 recognizable claim to the property.

20 Certainly Mr. Barraza has a claim
21 against Wilfrido and Yrene -- I mean against Juan
22 and Yrene. That there's no legally recognizable
23 claim that Mr. Barraza has to the property that
24 can overcome this presumption, and Wilfrido is the
25 holder of the record title. So it would appear

1 to require for an unjust enrichment recovery that
2 the plaintiff confers some benefit on the
3 defendant which would be unjust for the defendant
4 to retain.

5 Okay. The issues and the arguments
6 here about the money that Mr. Barraza may have
7 paid to Mr. Juan Cuevas and Yrene, there's no
8 indication that any of that benefitted
9 Wilfrido Cuevas. On the issue of improvements to
10 the real property, there's no evidence before the
11 court to indicate that there -- that that has
12 occurred or that that has benefitted
13 Mr. Wilfrido Cuevas. That may be an area that --
14 oh, I'll get back to this in a moment.

15 All right. So the -- here's my
16 tentative ruling, then. And I use that term --
17 I've listened to your arguments; I've done
18 preparation of it; I looked at what I saw to be
19 the issues; I've made inquiries about what I saw
20 to be questions I had. They've been answered by
21 both sides. And I believe as I sit here that the
22 plaintiff is entitled to summary judgment on both
23 the quiet title and unjust enrichment claim.

24 Now, it is not lost on me that this
25 case is of significant issue and value to

1 then that summary judgment should be granted on
2 the motion quieting title in the property to
3 Wilfrido Cuevas,

4 Regarding the unjust enrichment claim,
5 the elements that Mr. Barraza conferred a benefit
6 to Wilfrido Cuevas, that Wilfrido appreciated the
7 benefit, that it would be inequitable for Wilfrido
8 to accept the benefit without payment of the value
9 of such benefit. The measure of damages of unjust
10 enrichment is the value of the benefit bestowed
11 upon the defendant, which inequity would be unjust
12 to retain without recompense to the plaintiff.
13 Or, in this case, to Mr. Barraza.

14 I discussed earlier during arguments,
15 but in the case of Hayden Lake Fire Protection
16 District versus Alcom, 141 Idaho 388 at 406, they
17 cite and review the Beco Construction case. And
18 they note: The court discussed a number of other
19 Idaho cases involving unjust enrichment claims,
20 and noted that in each of these cases, the
21 plaintiff and defendant had a contractual
22 relationship or a claim to real property which
23 were the underlying reasons for the unjust
24 enrichment or quasi-contract claims between the
25 parties. The court recognized that it continues

1 Mr. Barraza and Mr. Wilfrido Cuevas. That this is
2 probably their biggest asset that they would have,
3 this piece of property, and that they're not in
4 here because they think they're not entitled to
5 recovery. I think both sides are very sincere,
6 they believe they are right, and -- in this case.
7 And that they've already spent a lot of money and
8 their time and effort, as well as their expenses
9 to get this litigated.

10 So that's my tentative ruling. I'm
11 going to vacate the trial date. Now, if I have
12 misapplied the law to this or been unfair, in
13 terms of what you perceive the plaintiff's
14 argument to be, Mr. Ward, I will wait 30 days
15 before I issue -- I'm going to direct that Ms. --
16 well, let me pursue it this way. You always have
17 the right to file a motion to reconsider. But
18 I've looked at the arguments of the plaintiff, and
19 I think that they raise those issues in their
20 argument: The issue of the claims that could
21 exist against the property, the deeds -- or the
22 two written statements or agreements, and the
23 lien.

24 So I think that that's been addressed
25 in there. But I think if that has been

F I L E D
A.M. 4:40 P.M.

OCT 15 2012

CANYON COUNTY CLERK
T. CRAWFORD, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff,

vs.

BERNARDINO BARRAZA, an individual, et
al.

Defendant.

Case No. CV 09-8175

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT and DENYING
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

THIS MATTER, having come before the Court on July 20, 2012, pursuant to the Motion for Summary Judgment filed by Plaintiff Wilfrido Cuevas ("Cuevas") and a cross-motion for summary judgment filed by Defendant Bernardino Barraza ("Barraza"), both motions having been fully brief by the parties, oral argument on the motions was held on October 3, 2012 with Rebecca A. Rainey appearing on behalf of Plaintiff and Robert Ward appearing on behalf of Barraza. Based upon the argument of the parties and the pleadings on file with the Court, the finding and conclusions rendered by the Court at such hearing, and good cause appearing therefore,

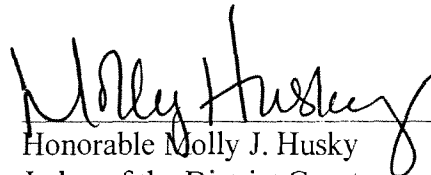
**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1**

000046

IT IS HEREBY ORDERED, and this does order, that Plaintiff's Motion for Summary Judgment is **GRANTED**.

IT IS HEREBY FURTHER ORDERED, and this does order, that Defendant's Motion for Summary Judgment is **DENIED**.

DATED this 15th day of October, 2012.



Honorable Molly J. Husky
Judge of the District Court

**ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND
DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 2**

000047

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 15 day of October 2012, I caused a true and correct copy of the foregoing **ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT** and **DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Robert Ward
HALL, FRIEDLY & WARD
340 E. 2nd North Street
Mountain Home, ID 83647
Facsimile: (208) 587-3144

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile

Rebecca A. Rainey
Rainey Law Office
910 W. Main Street, Ste. 258
Boise, ID 83702
Facsimile: (208) 473-2952

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Clerk of the Court

FILED
A.M. 1:30 P.M.

NOV 26 2012

CANYON COUNTY CLERK
SB DEPUTY

ROBERT WARD
HALL, FRIEDLY & WARD
Attorneys for Appellant Bernardino Barraza
340 East 2nd North Street
Mountain Home, Idaho 83647
Telephone: (208) 587-4412
Facsimile: (208) 587-3144
Email: Robert@hfvlaw.com
Idaho State Bar Number 4442

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS, an individual,

Plaintiff/Respondent,

vs.

BERNARDINO BARRAZA, an individual
and spouse (if any), LIOBALDO GARZA, an
individual and spouse (if any); DOES I
THROUGH X, UNKNOWN CLAIMANTS
TO THE REAL PROPERTY DESCRIBED
IN EXHIBIT "A", COMMONLY KNOWN
AS 29452 PEARL ROAD, PARMA, IDAHO,

Defendants/Appellant.

Case No. CV09-8175

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, Wilfrido Cuevas, AND THE RESPONDENT'S
ATTORNEY, Rebecca A Rainey, Rainey Law Office, 910 W. Main Street, Suite 258, Boise,
Idaho, 83702, AND TO THE CLERK OF THE ABOVE-ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Bernardino Barraza, appeals against the above-named Respondent to the Idaho Supreme Court from the Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment entered in the above-entitled action on the 15th day of October, 2012, Honorable Molly J. Husky presiding.

2. That the Appellant has a right to appeal to the Idaho Supreme Court, and the Order described in paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(1) I.A.R.

3. A preliminary statement of the issues on appeal which the Appellant then intends to assert in the appeal; provided, any such list of issues on appeal shall not prevent the Appellant from asserting other issues on appeal.

a. The district court erred in granting Plaintiff's Motion for Summary Judgment and denying Defendant, Bernardino Barraza's, Motion for Summary Judgment.

4. No order has been entered sealing all or any portion of the record.

5. No transcript is necessary since this case was decided in its entirety on summary judgment.

6. The Appellant requests the following documents to be included in the clerk's record in addition to those automatically included under Rule 28, I.A.R.

a. Plaintiff's Motion for Summary Judgment filed on July 20, 2012

b. Plaintiff's Memorandum in Support of Motion for Summary Judgment filed on July 20, 2012

c. Defendant's Motion for Summary Judgment filed on August 9, 2012

d. Defendant's Memorandum in Support of Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment filed on August 9, 2012

e. Plaintiff's Reply in Support of Motion for Summary Judgment and Opposition to Barraza's Motion for Summary Judgment filed on August 17, 2012

7. Civil cases only. The Appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court: None.

8. I certify:

a. That a copy of this notice of appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below: None.

b. That the clerk of the district court has not been paid an estimated fee for preparation of the reporter's transcript since no transcript is requested.

c. That the estimated fee for preparation of the clerk's record has been paid.

d. That all appellate filing fees have been paid.

- e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED THIS 21 day of November, 2012.

HALL, FRIEDLY & WARD

By 

ROBERT WARD

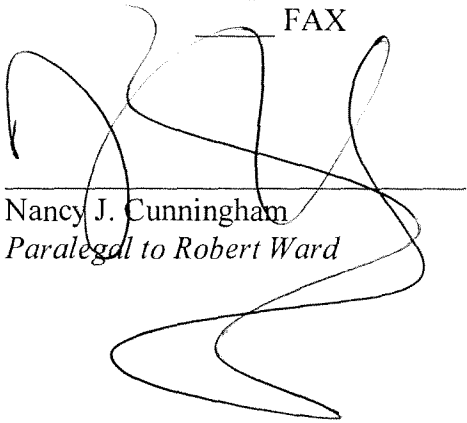
Attorneys for the Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that upon the 21 day of November, 2012, I caused to be served a true and correct copy of Notice of Appeal by the method indicated below, addressed to the following:

REBECCA A. RAINEY
RAINEY LAW OFFICE
910 W. MAIN STREET, SUITE 258
BOISE, ID 83702
FAX: (208) 473-2952

U.S. Mail
 Hand Delivered
 Overnight Mail
 FAX


Nancy J. Cunningham

Paralegal to Robert Ward

In the Supreme Court of the State of Idaho

F L E D
A.M. P.M.

NOV 29 2012

CANYON COUNTY CLERK
T RANDALL, DEPUTY

WILFRIDO CUEVAS,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 BERNARDINO BARRAZA, an individual)
 and spouse (if any),)
)
 Defendant-Appellant,)
)
 and)
)
 LIOBALDO GARZA, an individual and)
 spouse (if any), DOES I through X, unknown)
 claimants to the real property described in)
 exhibit "A", commonly known as 29452 Pearl)
 Road, Parma, Idaho,)
)
 Defendants.)

ORDER AUGMENTING APPEAL

Supreme Court Docket No. 40516-2012
Canyon County Docket No. 2009-8175

A Clerk's Record and Reporter's Transcript was filed May 3, 2011, in appeal No. 38493, *Cuevas v. Barraza*; therefore, good cause appearing,

IT HEREBY IS ORDERED that the Appeal Record in this case shall be AUGMENTED to include the Court File, Reporter's Transcript, and Clerk's Record filed in prior appeal No. 38493.

IT FURTHER IS ORDERED that the District Court Clerk shall prepare and file a LIMITED CLERK'S RECORD with this Court, which shall contain the documents requested in the Notice of Appeal, together with a copy of this Order, but shall not duplicate any document included in the Clerk's Record filed in prior appeal No. 38493. The LIMITED CLERK'S RECORD shall be filed with this Court after settlement.

ORDER AUGMENTING APPEAL – Docket No. 40516-2012

DATED this 29th day of November, 2012.

For the Supreme Court

Dorothy Beaman for
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk

In the Supreme Court of the State of Idaho

FILED
10:20 A.M. P.M.

DEC 07 2012

CANYON COUNTY CLERK
T RANDALL, DEPUTY

WILFRIDO CUEVAS,)
)
 Plaintiff-Respondent,)
)
 v.)
)
 BERNARDINO BARRAZA, an individual)
 and spouse (if any),)
)
 Defendant-Appellant,)
)
 and)
)
 LIOBALDO GARZA, an individual and)
 spouse (if any), DOES I through X, unknown)
 claimants to the real property described in)
 exhibit "A", commonly known as 29452 Pearl)
 Road, Parma, Idaho,)
)
 Defendants.)

ORDER REMANDING TO DISTRICT COURT

Supreme Court Docket No. 40516-2012
Canyon County Docket No. 2009-8175

This appeal is from the District Court's ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT and DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT filed October 15, 2012. It appears that a final judgment set forth on a separate document, as required by Idaho Rules of Civil Procedure 54(a) and 58(a), has yet to be entered. Therefore, good cause appearing,

IT HEREBY IS ORDERED that pursuant to Idaho Appellate Rules 11(a), 13.3, and 17(e)(2), the above-entitled matter be, and hereby is, REMANDED to the District Court and proceedings in this appeal shall be SUSPENDED to allow for the entry of a final judgment, without analysis or a record of prior proceedings. Upon entry of the final judgment by the District Court, the District Court Clerk is directed to transmit a certified copy of the judgment to this Court at which time this appeal shall proceed.

DATED this 6th day of December, 2012.

For the Supreme Court

Stephen Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
District Court Judge

000055

FILED
1102 A.M. P.M.

DEC 12 2012

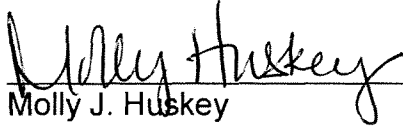
CANYON COUNTY CLERK
DEPUTY
KLL

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

<p>WILBRIDIO CUEVAS, an individual, Petitioner, vs. BERNARDINO BARRAZA, an individual, et al, Respondent.</p>	<p>CASE NO. CV09-8175 JUDGMENT</p>
---	---

The Plaintiff's Motion for Summary Judgment is GRANTED and Defendant's Motion for Summary Judgment is DENIED.

Dated this 12th day of December, 2012.


Molly J. Huskey
District Judge

CERTIFICATE OF SERVICE

The undersigned certifies that on 12 day of December, 2012, s/he served a true and correct copy of the original of the foregoing ORDER on the following individuals in the manner described:

- upon counsel for plaintiff:

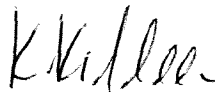
Rebecca Ann Rainey
RAINEY LAW OFFICE
910 W Main St, Ste 258
Boise, ID 83702-5750

- upon counsel for defendant:

Robert Ward
HALL FRIEDLY & WARD
340 E. 2nd North Street
Mountain Home, Idaho 83647

and/or when s/he deposited each a copy of the foregoing ORDER in the U.S. Mail with sufficient postage to individuals at the addresses listed above.

CHRIS YAMAMOTO,
Clerk of the Court

By: 
Deputy Clerk of the Court

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS,)	
)	
Plaintiff-Respondent,)	
)	Case No. CV-09-08175*C
-vs-)	
)	CERTIFICATE OF EXHIBIT
BERNARDINO BARRAZA, an individual)	
And spouse (if any),)	
)	
Defendant-Appellant,)	
And)	
)	
LIOBALDO GARZA, etal.,)	
)	
Defendants.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the following is being sent as an exhibit:

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 13 day of February, 2013.

CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon.

By:  Deputy

CERTIFICATE OF EXHIBIT

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS,)	
)	
Plaintiff-Respondent,)	
)	Case No. CV-09-08175*C
-vs-)	
)	CERTIFICATE OF CLERK
BERNARDINO BARRAZA, an individual)	
and spouse (if any),)	
)	
Defendant-Appellant,)	
And)	
)	
LIOBALDO GARZA, etal.,)	
)	
Defendants.)	

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that the above and foregoing Record in the above entitled cause was compiled and bound under my direction as, and is a true, full correct Limited Record of the pleadings and documents requested.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 13 day of February, 2013.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By:  Deputy

CERTIFICATE OF CLERK

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

WILFRIDO CUEVAS,)
)
 Plaintiff-Respondent,)
)
 -vs-)
)
 BERNARDINO BARRAZA, an individual)
 And spouse (if any),)
)
 Defendant-Appellant,)
 And)
)
 LIOBALDO GARZA, etal.,)
)
 Defendants.)

Supreme Court No. 40516-2012
CERTIFICATE OF SERVICE

I, CHRIS YAMAMOTO, Clerk of the District Court of the Third Judicial District of the State of Idaho, in and for the County of Canyon, do hereby certify that I have personally served or had delivered by United State's Mail, postage prepaid, one copy of the Clerk's Limited Record to the attorney of record to each party as follows:

Robert Ward, HALL, FRIEDLY & WARD
Rebecca A. Rainey, RAINEY LAW OFFICE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court at Caldwell, Idaho this 13 day of February, 2013.

CHRIS YAMAMOTO, Clerk of the District
Court of the Third Judicial
District of the State of Idaho,
in and for the County of Canyon.

By: *J. Kendall* Deputy

CERTIFICATE OF SERVICE