

10-11-2012

# Bagley v. Thomason Appellant's Reply Brief Dckt. 39069

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

<b>TERRANCE F. BAGLEY and</b>	)	<b>(APPEAL NO. 39069-2011)</b>
<b>JOHN K. BAGLEY,</b>	)	(Previous Appeal No. 36041-2009)
Plaintiffs/Counterdefendants	)	
<b>RESPONDENTS,</b>	)	<b><i>From Case No. CV-2008-359</i></b>
	)	<b><i>“ACTION TO QUIET TITLE”</i></b>
<b>v.</b>	)	
	)	
<b>BYRON T. THOMASON</b>	)	Appeal 36041-2009 consolidated with
<b>(deceased November 19, 2011) and</b>	)	Appeal 37487-2010
<b>MARILYNN THOMASON,</b>	)	
(husband and wife),	)	
Defendants/Counterplaintiffs	)	
<b>APPELLANT.</b>	)	

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**APPELLANT’S CLOSING BRIEF**

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**Appealed from the District Court of the Seventh Judicial District for Madison County,  
State of Idaho**

**The Honorable Brent Moss, Honorable Don L. Harding, Honorable Gregory W. Moeller  
and Honorable Darren B. Simpson**

---

Byron T. Thomason, (Deceased Nov. 19, 2011)  
Marilynn Thomason, Appellant – Pro-se  
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### III. REBUTTAL and ARGUMENTS

As with the past four (4) years, the **(RESPONDENTS)** do not deny the only controlling documents in **(RESPONDENTS)** case **(CV-2008-359)** are the **(Expressed Sale Contract)** along with the **(Reconvey Agreement-338905)**. **(Appellant Brief p.7)** referencing **(Final R. Vol.4, p.823-827)** which are clear and unambiguous. **(Final R. Vol.3, p.409-410)**

Nor do **(Respondents)** deny, when **(Respondents)** filed for quiet title **(CV-2008-359)** instead of having the eleven and eight tenths (11.8) acres legally surveyed and recorded **(Respondents)** breached their contract. **(Final R. Vol.4, p.823, L.20-28)**, **(Final R. Vol. 3, p.412, L.8-20)**

**(Respondents)**' own brief to the Idaho Supreme Court **(Respondents Brief p.1, L.1-5)** evidences there was strictly a sale, there was no mortgage – only an option to Reconvey, as noted by the lower court, **(Appellant Brief, p.22-25)**, **(Final R. Vol. 5, p.993-997; p.1038, L.18-24; p.1039-1040)** and noted by the Idaho Supreme Court in *Bagley I.* **(Final R. Vol.3, p.454, footnote "1":**.

**(Respondents)** never deny the documents filed **(Final R. VOL.4, p.824-827)** at the threshold and throughout their case **(CV-2008-359)** were and are in direct violation of **I.C. statute 55-601 (Statutes of Fraud)**.

No Thomason, (deceased) and/or (living), **(Appellant)**, nor any **(Respondents)** ever asserted there existed or exists any binding, written and/or implied deed of trust. **(Final R. Vol5, p.1134-1137)** nor assert there is or was any mortgage; nor asserted there existed or exist any

debt, nor that (**Appellant**) or deceased Thomason, owes any funds to any (**Respondents**) and/or any other entity; nor was Thomason (deceased) and/or (**Appellant**) obligated and/or required to tender any payment and/or funds, at any time, to anyone and/or any entity, (**Final R. Vol.3, p.504, L.3-5**); (**Final R. Vol.5, p.1134-1137**) including the (**Respondents**).

(**Respondents**) never deny the deed (warranty and/or implied deed of trust) and recorded pages (**Reconvey Agreement-338905**) fail to conform to the requirements of **I.C. statutes 55-601**. (**Final R. Vol3, p.505-514**); (**Final R. Vol.5, p.1129-1130**)

*“Because a deed of trust involves an interest in real property, it must comply with the statutes of fraud (I.C. 55-601)” Ogden v Griffith, 236 P.3d 1249, 1253 (Idaho 2010); Ray v Frasure, 200 P.3d 1174, 1177 (Idaho 2009) “and a reconvey note and/or promissory note is not an instrument conveying an interest in real property.”*

(**Respondents**) note **I.C. §6-401 and 6-418**, but fail to support, cite and/or argue anything with regards to **I.C. §6-401** and/or **§6-418**. *“When issues presented on appeal are not supported by propositions of law, citation to legal authority and/or argument they will not be considered by [the] Court.” Langley v State, 126 Idaho 781, 784, 890 P.2d 732, 735 (1995)*

Courts must construe the (**Expressed Sale Contract**) and (**Reconvey Agreement-338905**) (**Appellant Brief, p.7**); (**Final R. Vol.4, p.823-827**) *“...as a whole and consider it in its entirety to determine whether it is reasonably subject to conflicting interpretation ...”* which the lower court abused its discretion by refusing to do so. *Murr v Selag Corp., 747 P.2d 1302, 1310*

*(Idaho 1987); (Appellant Brief p.27, L.14-20, p.28); (Final R. Vol.5, p.994, L.20-26 and p.995-1000)*

The sole requirement and duty of any (deceased) Thomason or **(Appellant)** after the **(Expressed Sale Contract)** and **(Reconvey Agreement-338905)** **(Appellant Brief p.7, p.6-10); (Final R. Vol.4 , p.823, L.21-28)** was to “...execute a new deed...: and only after the **(Respondents)** had the 11.8 acres surveyed and recorded, which **(Respondents)** deliberately failed to do. However, when **(Respondents)** filed their fraudulent complaint **(CV-2008-359)** **(Respondents)** breached the contract. When **(Respondents)** used their complaint **(CV-2008-359)**, using the court to grant **(Respondents)** relief, **(Respondents)** fraudulently wantonly, deliberately and maliciously severely damaged the **(Appellant)** as well as doing it when the court lacked subject matter jurisdiction due to the violation of **I.C. § 55-601. Hoffman v SV Comp., Inc. 102 Idaho 187, 190, 628 P.2d 218, 221 (1981) citing 72 Am. Jur. 2d Statutes of Fraud statutes 285 and 513 (1974)** In *Bagley I* the Idaho Supreme Court stated in pertinent part: “*We express no opinion...regarding the failure to comply with I.C. § 55-601...*” **(Final R. VOL.3, p.455, footnote “3”)** but goes on to say “*The ... grantees...mailing address...must appear....*” **(Final R. Vol.3, p.456 “B”)**

**(Respondents)** further fail in their defense of “*law of the case*” **(Respondents Brief, p.6, L.8-21)** when such a defense only becomes valid when, among other considerations, the issues sought to be precluded were fully decided in a prior (separate) litigation and/or there was a final judgment on the merits in the prior litigation, knowing *Bagley II* was solely to quiet title to water



shares with different parties. *Stoddard*, 147 Idaho at 190-191, 207 P.3d at 166-167 quoting *Hindmarsh v Mock*, 138 Idaho 92-94, 57 P.3d 803, 804 (2002) and *Ticor Title Co. v Stanion*, 144 Idaho 119, 125-127, 157 P.3d 613, 618-620 (2007) Any order granting summary judgment is merely interlocutory and subject to being revised and/or reversed pursuant to **I.R.C.P. Rule 11(a)(2)(B)**. *Idaho First National Bank v Davis Steed & Assocs.*, 121 Idaho 356, 361, 825 P.2d 79, 84 (1992) “Because there is yet no final judgment in the action...interlocutory judgments (are) subject to being revised or vacated.” *Baker v Pendry*, 98 Idaho 745, 748, 572 P.2d 179, 182 (1977); **(I.R.C.P. Rule 54(b)(1))**

As argued and cited in **(Appellant Brief p.7-13, 25-28, 3-32, 40-43) (Final R. Vol.5, p.958...)** under the **14<sup>th</sup> Amendment Equal Protection Clause of the United States Constitution** the **(Appellant)** is entitled to be treated equally within the judicial process, which includes have the rules and statutes enforced. “A dismissal without leave to amend is improper unless the court concludes it is beyond doubt that the [counter] complaint could not be saved by any amendment.” *Harris v Amgen, Inc.* 573 F.3d 728, 737 (9<sup>th</sup> Cir. 2009) “The issue is not whether the [party] will prevail but whether he is entitle to offer evidence to support the claims.” *Diaz v Int’l Longshore and Warehouse Union, Local 13*, 474 F.3d 1202, 1205 (9<sup>th</sup> Cir 2008) *(citations omitted)* The court improperly claim the **(Appellant)** failed to support its claims **(Final R. Vol.3, p.439 “C” and p.440 “D”)**, forcing the **(Appellant)** to evidence the error to the court **(Final R. Vol.3, p.401-420, exhibits A-T)** **(Note the clerk court’s dockets are void of any pages 533-583).**

The **(Respondents)** fail to evidence any issue that is not legitimate in **(Appellant's)** appeal and "...when there is even one triable issue of fact or of law attorney fees may not be awarded, even if the party does not prevail and/or asserts other issues that are not reasonable , are without merit and/or are deemed frivolous..." . *Thomason v Madsen, 142 Idaho 635, 639, 132 P.3d 392, 396 (2006); McGrew v McGrew, 139 Idaho 551, 562, 82 P.3d 833, 844 (2003)*

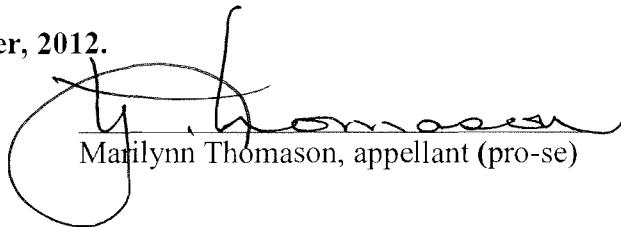
#### **IV. CONCLUSION**

The **(Respondents)** and their legal counsels fail to bring to the court any legal defense and/or argument that would entitled them to any legal and/or just relief.

#### **V. PRAYER / RELIEF**

**(APPELLANT)** stands on its' prays to the Justices of the Idaho Supreme Court as stated in her Opening Brief.

**Dated this 11th day of October, 2012.**



Marilynn Thomason, appellant (pro-se)

#### **VI. AFFIDAVIT**

STATE OF IDAHO )

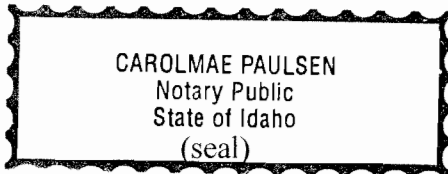
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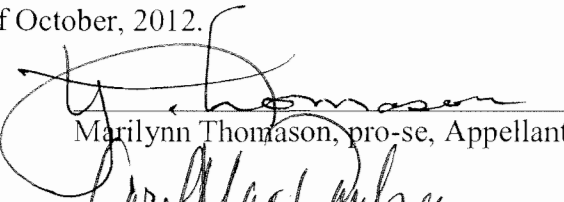
County of Madison )

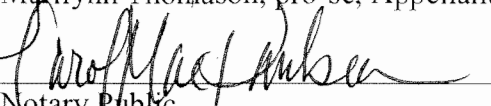
The **APPELLANT**, Marilyn Thomason, upon first being sworn and deposed, being of legal age and of sound mind and body, does state from personal and independent knowledge, the **APPELLANT's** attached **CLOSING BRIEF**, including **APPELLANT's** statements, citations and arguments, are true and correct to the best of

her personal belief and knowledge, and she shall defend such to the fullest extent of the law.

DATED this 11th day of October, 2012.



  
Marilynn Thomason, pro-se, Appellant

  
Notary Public

Residing at: Madison County

Commission Expires: 8-7-14

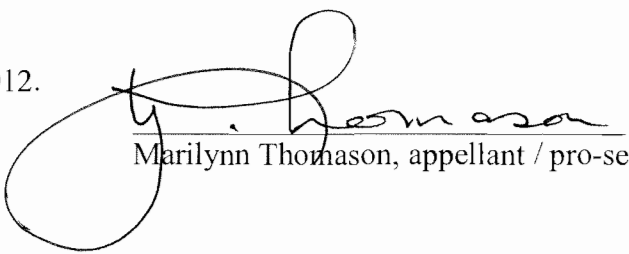
### VII. CERTIFICATE OF MAILING

I, Marilyn Thomason, do certify a true and correct copy of **(APPELLANT)'S OPENING BRIEF and APPENDIX** has been served on the following parties / entities in the manner noted below on this 11th day of October, 2012:

BEARD ST. CLAIR GAFFNEY PA  
Lance Schuster  
2105 Coronado Street  
Idaho Falls, ID 83404

U.S. First Class Pre-paid Mail

Dated this 11th day of October, 2012.

  
Marilynn Thomason, appellant / pro-se