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# Bagley v. Thomason Appellant's 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-2008-356</i></b>
	)	<b><i>“ACTION TO QUIET TITLE”</i></b>
<b>V.</b>	)	
	)	
<b>BYRON T. THOMASON</b>	)	Appeal 36041-2009 consolidated with
(deceased November 19, 2011) and	)	Appeal 37487-2010
<b>MARILYNN THOMASON,</b>	)	
(husband and wife),	)	
Defendants/Counterplaintiffs	)	
<b>APPELLANTS.</b>	)	
_____	)	

**APPELLANT’S OPENING BRIEF**

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  
485 N. 2<sup>nd</sup> E., 105-273  
Rexburg, Idaho 83440  
208-356-7069

Attorney for Respondents  
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SEP -

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### III. STATEMENT of the CASE

#### i. NATURE of the CASE

This appeal, second in case **CV-2008-359**, comes from the **(Respondents)**' civil action for quiet title-real property (*Final R. Vol.1, p.19-28*) which resulted in **(Respondents)**' spinoff case, **CV-2009-88**, for quiet title-watershares (*Final R. Vol.3, p.463-469*).

Case **CV-2008-359** also included **(Appellants)**' countercomplaint against both **(Respondents)** for breach of contract **(Expressed Sale Contract)** (*Final R. Vol.4, p.823-827*) (consisting of: a two (2) page sale contract/reconvey agreement **(Expressed Sale Contract)** for the sale of eleven and eight tenths (11.8) acres of bare land, excluding all chattel; a one (1) page reconvey security deed; and a two (2) page reconvey promissory installment note). **(Appellants)** also sought relief from damages resulting from the **(Respondents)** breach of contract, as well as, relief from **(Respondents)** acts of fraud, theft, libel, extortion, duress, threats, libel, and possible unjust enrichment upon the determination of the validity of the **(Expressed Sale Contract)** for if the court did rule the **(Expressed Sale Contract)** and **(Reconvey Agreement-338905)** was not enforceable, then the court had the discretion to rule on the **(Appellants)**' claims of unjust enrichment, and not before. (*Final R. Vol.1, p.65-73; Final R. Vol.4, p.854, L.1-6*)

As questioned by the **(Appellant)** (*Final R. Vol.3, p.404, L.5-8; Vol.4, p.840, L.19-20; p.841, L.1-14*) as to whether the district judges in fact authored the purported full and complete memorandums and orders, upon reviewing the inconsistencies evidenced in the records, affidavits, evidence, hearings, memorandums, final orders, violations to rules and statutes, as

disclosed herein and in the (**Appellant**)’s filings, it is believed the Justices, themselves, will more than likely ‘raise a brow’ as they contemplate if such notable district judges could have authored such erroneous decisions, memorandums and orders, abusing its discretion, in blatant violation and disregards of the United States Constitution and to the Rules and Statutes of the Great State of Idaho. (*Final R. Vol.3, p.404, L.1-8*)

However, due to the strict requirements in pleading fraud upon the court, the (**Appellants**) were required to evidence the fraud, **I.R.C.P. Rule 60(b)(1-6)**, in particularity. (*Final R. Vol.5, p.961, L.22-31; p.962, L.1-23; p.1037, L.3-8*)

## **ii. Course of Proceedings**

The case commenced May 6, 2008. The (**Appellant**) filed a countercomplaint on May 30, 2008, which included breach of contract from an expressed sales contract (**Expressed Sale Contract**) and (**Reconvey Agreement-338905**). The (**Respondents**) filed a motion for summary judgment and the court granted the motion and rendered its decision on November 14, 2008. The court lacked subject matter jurisdiction, due to the recorded (**Reconvey Agreement-338905**) was and remains in direct violation of **I.C. §55-601**.

The (**Respondents**) repeatedly filed for fees and costs, untimely, based on illegal court orders and without standing, yet the court abused its discretion, knowing it lacked jurisdiction over subject matter, the (**Appellant**)’s tenacious objections, and the Idaho Supreme Court stated fees and costs were not appropriate, evidencing the court’s severe abuse of discretion. (*Final R. Vol.4, p.846; Vol.5, 953-954*)

The court held a February 9, 2009 hearing and upheld its illegal court orders on March 9, 2009, knowing it lacked jurisdiction to do such and the hearing and orders violated the **(Appellants)** constitutional rights under the **14<sup>th</sup> Amendment-equal protection clause** (*Final R. Vol.5, p.958, 969, 988, 999, 1005*) knowing no motion or notice had been properly served, denying **(Appellants)** due process. (*Final R. Vol.4, p.718-734*)

The first appeal was taken and the Idaho Supreme Court issued its opinions on October 6, 2010, remanding the case back to the district court for further proceeding.

The court denied the **(Appellants)** all their motions, granted all relief to the **(Respondents)**, including fees and costs that were untimely filed, without standing and without jurisdiction of subject matter.. The district court rendered its final decisions on June 16, 2011 and further denied **(Appellants)** their motion for reconsideration, which the issues are now before the Idaho Supreme Court. This appeal encompasses all the court's multiple memorandums, decisions and orders.

### **iii. Statement of Facts**

At the threshold of **(Respondents)**' case, **CV-2008-359**, the sole recorded documents **(Reconvey Agreement-338905)**, self-authored by the **(Respondents)**, lacked the mandatory grantee address under **I.C. §55-601** (*Final R. Vol.3, p.407-409; Vol.4 p.638-637 and Vol.4, p.834-837*).

The court had intrinsic and extrinsic knowledge, the grantee(s) address(es) was lacking at the threshold of the case and the only legal authority the court had, with regards to the

(**Respondents**) claims for relief, was to dismiss the (**Respondents**)’ case against the (**Appellants**), pursuant to **I.C. §55-601** (*Final R. Vol.3, p.407, L.10-28*), **I.R.C.P. Rule 12(g)(4)** (*Final R. Vol.3, p.408, L.1-3*) and **I.R.C.P. Rule 17(a)** (*Final R. Vol.3, p.639, L.5*) knowing subject matter jurisdiction is not waivable by any party or any court and can be raised at any time (*Final R. Vol.3, p.505, L.14-23*).

Without subject matter jurisdiction, any and all orders, decisions and opinions rendered by the court were illegal and forever void, not merely voidable (*Final R. Vol. 3, p.408, L.4-14; Vol.3, p.506, L.14-25; p.507, L.1-20; p.585, L.12-25; p.586, L.1-5; Vol.4, p.833-837*) severely abusing the court’s discretion and authority. (*Final R. Vol.3, p.586, L.15-25, p.587, L.1-3; p.607*).

However, when a rule or statute states an act, thing or event “*can*” “*may*” “*might*” occur, the court has the discretion to weigh the evidence, the situation and determine what will serve justice fair and equitably. **I.R.C.P. Rule 52(a)** (*Final R. Vol.5, p.992, L.4-10*)

Because a court does have some discretion, the court walks a fine line when asserting its discretion. If a rule or a statute, however, requires the court to act in a particular manner, for example, a statute stating an act, thing or event “*must*” “*will*” “*shall*” occur, the court does not have the authority or power to exercise discretion, making it mandatory for the court to follow the rules and statutes as the Legislators intended the law to mean. (*Final R. Vol.5, p.968, L.27-31; p.969, L.1-10*)

A court abuses its discretion when a rule or statute required the court to act in a precise manner, and the court ignored the rule and/or statute. (*Final R. Vol.5, p.968, L.27-31; p.969, L.1-3*) as with the violation of **I.C. §55-601** which requires “*the grantee’s full and complete mailing address must be on...*” and **I.R.C.P. Rule 12(g)(4)** states “...whenever ...the court lacks subject matter jurisdiction...the court shall dismiss the action...” (*Idaho Supreme Court...opinion no.1, 2010, January 7, 2010*) (*Final R. Vol.3, p.408, L.1-3*)

The court abused its discretion when the court had intrinsic and extrinsic knowledge its judgments, memorandums and decisions were contrary to the evidence in the court records, manifesting an abuse of discretion. (*Final R. Vol.5, p.997, L.3-26, 998-1011*)

The district court abused its discretion when it denied (**Appellants**) motion for retrial/reconsideration, knowing there had not been a full and fair trial which resulted in a correct decision or ruling, and a new trial or reconsideration cannot be denied (*Final R. Vol.5, p.1010-1011*) without severely denying (**Appellants**) their constitutional rights of due process and equal protection under the law.

But in all fairness, the final district judge, came into the case at a disadvantage. The first judge prematurely passed away, having a second judge help in the transition of appointing a new district judge, only to have the newly appointed district judge recuse himself, due to a conflict of interest, leaving the final judge coming to the court after the first appeal had been filed, after the evidence had been produced evidencing the (**Forge Documents**), after the notorious February 9<sup>th</sup> and March 9<sup>th</sup>, 2009 fraudulent hearings had occurred, illegal attorney fees and costs were self-

granted by a bogus court hearing and order, writs of executions were issued off the affidavit of the legal counsel, knowing the writs were in violation of Idaho Statutes and rules, the illegal writs were for a judgment of less than \$13,000, yet the confiscation of personal property, under the two writs, exceed \$375,000 in fair market value property, and was unaware the **(Expressed Sale Contract)** with the **(Reconvey Agreement-338905)** were the controlling document and not the **(Forged Document)**.

The court granted to the **(Respondents)** their prayers and more, and dismissed all the **(Appellants)** counterclaims against the **(Respondents)** in full, as well as, denying the **(Respondents)** their constitutional rights to a fair and unbiased trial from the threshold of the case, all the while, knowing the court lacked subject matter jurisdiction.

The history of the case's memorandums, decisions and orders began with **(Appellants)** motion to strike (*Final R. Vol.1 ROA Report: 07/03/2008*) set for hearing on September 8, 2008 (*Final R. Vol.1 ROA Report: 07/14/2008*).

**(Respondents)** filed for summary judgment-quiet title (*Final R, Vol.1 ROA Report: 08/08/2008*) set for hearing on September 8, 2008.

**(Appellants)** file their objection to quiet title (*Final R, Vol.1 ROA Report: 08/25/2008 and 08/25/2008*). **(Respondents)** failed to object or reply to **(Appellants)** motion to strike or rebuttal at oral argument.

On September 8, 2008 (*Final R., Vol.1, p.188-196*) the court rendered no decision on the **(Appellants)**' motion to strike, taking **(Appellants)**' motion under advisement (*Final R. Vol.1, p.188*), however, granted full relief to the **(Respondents)**, issuing its decision on November 14, 2008 and using the **(Respondents)**' misrepresented legal description in the complaint (*Final R. Vol.1, p.21, L.4: "...Thence N.1°W.361.5 FEET..."*) and not the recorded deed (*Final R. Vol.1, p.39, L.18: "N.1°05'W.361.50 FEET..."*) resulting in the court deleting coordinates from the legal description. The memorandum and order (*Final R. Vol.1, p.189-198*) also granted all water and fixtures appurtenant thereto, in direct violation to the **(Expressed Sale Contract)** as well as, relying on **(Forged Documents)** (*Final R. Vol.1, p.34, L#.8"*) to bury the **I.C. §55-601** defect in the recorded **(Reconvey Agreement-338905)** (*Final R. Vol.1, p.39-42*) which is void of any grantee(s) address, further granting the **(Respondents)** 80 acres not the 11.8 acres of Bare Land as the **(Expressed Sales Contract)** evidences, deliberately failing to weigh the conflicting evidence as required under **I.R.C.P. Rule 52(a)** (*Final R Vol.3 p.992, L.5-11*).

Over the course of the action, **(Respondents)** fail to serve proper and timely notice of hearings or file motions for fees and costs. The **(Respondents)** only, untimely, filed their memorandum for fees and costs on December 1, 2008, seventeen (17) days after the final judgment to quiet title (*Final R. Vol.1, ROA Report: 12/1/2008*) rendering any and all fees and costs, null and void.

**(Appellants)** timely file their appeal on December 22, 2008.

(**Respondents**) file their second motion for summary judgment, slander of title (*Final R. Vol.1, p.209-216*) though the ROA alleges a notice of hearing. (**Defendants**) scheduled a motion for summary judgment-slander of title on December 4, 2008, to be heard on January 26, 2009, however the (**Respondents**) fail to file any notice of hearing, motion or supporting brief until December 24, 2008 (*R.Vol.1, ROA Report, 12/4/2008...12/24/2008*) after the (**Appellants**) filed their first appeal on December 22, 2008 (*Final R. Vol.1, ROA Report: 12/22/2008*).

The District Court lost any possible jurisdiction, pending appeal.

Nevertheless, (**Respondents**) failed to file any notice of hearing. January 15, 2009, (**Respondents**) file a motion to amend complaint (*Final R. Vol.2, p.218-234*) with a hearing date set for January 26, 2009 at 10:00 a.m. At this point the court lacked not only subject matter jurisdiction due to the **I.C. §55-601** violation, but any claimed jurisdiction due to the filed notice of appeal. (*Final R. Vol.4, p.634-639*)

(**Respondents**)' continued to file motions for summary judgment – slander of title with supporting brief on December 24, 2008.

(**Respondents**) filed their motion to amend complaint on January 15, 2009 with a motion to shorten time, which was denied (*Final R. ROA Record; 1/15/2009*).

The ROA's also alleges a notice of hearing was claimed to be set for February 9, 2009 (*Final R. Vol.1, ROA "01-05-2009...Order to shorten time (received) (Denied): Hearing*



*Scheduled (Motion 02/09/2009 10:00 AM), the records evidence the actual “Notice Of Hearing...Plaintiffs’ Motion to Amend Complaint” was set for “Monday, January 26, 2009 at 10:00 a.m.:* dated January 14, 2009, filed with the court on January 15, 2009. (*Final R. Vol.2, p.233*)

The records (*Final R. Vol.2, p.235-237*) allege an “*Amended Notice of Hearing*, filed on “*January 20, 2009*” for “*Plaintiffs’ Motion to Amend Complaint*” set for “*February 9, 2009 at 10:00 a.m.*”, with a bogus certificate of hearing alleging notice was sent to (**Appellants**) on January 16, 2009, (*Final R. Vol.2, p.236-237*) with a proposed order to shorten time to “*Monday, January 26, 2009, at 10:00 a.m.*; Recorder’s Transcript “*March 9, 2009*” hearing on motion to amend complaint, (*Final R. Vol.4, p.718-729*) evidences otherwise:

*Vol.4, p.722, L.20-25: MR. S...:We all showed up for a hearing on January 26th. ... you ...were in Salmon...a trial went long...Well, February 9<sup>th</sup> was exactly two weeks after January 26<sup>th</sup>.*

*Vol.4, p.723, L.10-18: Had I even wanted to send her notice ...it would have been later than 14 days...I sent her a copy of Notice of Hearing simply as a courtesy ... I don’t disagree with her assertion that I sent my notice, when is it, like February 2<sup>nd</sup>...”*

*Vol.4, p.724, L.1-4: “...the only reason she received a notice at all is ...I felt like extending a courtesy to her in sending her that notice...”*

*Vol.4, p.724, L.8-13: "...good news for Mrs. T... is we've withdrew our Motion to Amend our Complaint, So we're sitting here, ...arguing about whether she got notice on a motion that we've withdrawn. That's why I say it's pointless..."*

*Vol.4, p.725, L.11-12: "THE COURT: The court should have sent notice out to both parties."*

*Vol.4, p.725, L.17-19: "THE COURT: I would indicate that at the hearing on the 9<sup>th</sup>, Mr. S... withdrew the request for amendment, so it's not pending."*

*Vol.4, p.725, L.22-24: "THE COURT ...So if that's the case, if there's no motion pending for a Motion to Amend the Complaint, what is pending right now before the Court?"*

*Vol.4, p.725, L.25: "MS. T...: All I know is that we currently have under appeal on this case and then—"*

*Vol.4, p.729, L.2-3: "THE COURT: I understand that...what is pending before this Court?"*

*Vol.4, p.726, L.4-5: "MS. T....: With regards to 08-359, I know of nothing else at this time."*

*Vol.4, p.726, L.11-19: "...THE COURT: All right. So there's no question, Mr. S..., would you just simply prepare an order for the Court indicating that you have withdrawn your*

*Motion to Amend and request the Court enter its order accordingly so there's no question at all as to that....There shouldn't be anything else hanging out there."*

*Vol.4, p.726, L.20: "MS. T...: I know nothing else."*

*Vol.4, p.726, L.21: "MR. S...: That's correct."*

The court issued a bench order to "Mr. S..." legal counsel for the **(Respondents)** "*Final R. Vol.4, p.726, L.11-15*" quoting: "*THE COURT: All Right. So there's no question, Mr. S..., would you just simply prepare an order for the Court indicating that you have withdrawn your Motion to Amend and request the Court enter its order accordingly so there's no question at all as to that.*"

The resulting order (recapped herein) entered on March 11, 2009 (*Final R. Vol.4, p.730-731*) is blatantly in contempt of the court's bench order, as well as the court, knowing it lacked any alleged jurisdiction, failed to reverse the fraudulent orders issued under the February 9, 2009 hearing, allegedly to hear a motion to amend, but rendering decisions on (untimely and unnoticed) fees and cost, as well as, (unnoticed and lack of any jurisdiction) for slander of title and subsequently, on March 11, 2009, dismissing the case in full while the case was under the Idaho Supreme Court's jurisdiction.

As previously stated, personally knowing the integrity of the judge, for over twenty seven (27) years, if the judge had knowledge of the wording in the February 9, 2009 orders, granting

fees/costs and slander of title, the court knowing there was a violation to jurisdiction and due process, he would have had the **(Respondents)** legal counsel also include in the March 9, 2009 bench order, to reverse the two (2) orders issued on February 9, 2009.

Quoting the signed order: *“THIS CAUSE having come before the Court on Defendant’s Objection and Motion Scheduled and Heard on February 9, 2009, and M...T... appearing in person, and B...T... not appearing, and the Plaintiffs appearing by and through their attorney, L..J..S.. of the firm B...S...C, and the parties having both represented to the Court that there are no additional claims pending, and M...T...representing that she has filed an appeal to the Idaho Supreme Court on this Court’s judgment quieting title; and good cause appearing;*

*IT IS HEREBY ORDERED AND DECREED that the Court has now adjudicated all of the claims, rights and liabilities of the parties in this case and no additional matters are pending. Dated this 10 day of March, 2009. (Final R. Vol.1, p.275-276)*

The court and legal counsel for the **(Respondents)** acknowledge at the March 9, 2009 hearing, the court nor the **(Respondents)** made any timely notice to the **(Appellants)** for the February 9, 2009 hearing, but acknowledge an appeal had been filed, in which the district court lost jurisdiction to quiet title, yet dismissed the case, making those orders void as well as the order issued granting (untimely) attorney fees and costs, as well as, granting full immunity to all the **(Respondents)** from any liabilities, including the court and the legal counsel, all void due to violation of **(Appellants)** constitutional rights of due process when:

1.) The lacked subject matter jurisdiction voids all orders, memorandums and decisions (*Final R. Vol.5, p.958-960*);

2.) The memorandum for fees and costs were filed after the fourteen (14) day time limit had expired (*Final R. Vol.5, p.1130, L.21-25; p.1131, L.1-7*) the (**Appellants**) first appeal included any pending motion for fees and costs and Idaho Supreme Court entered its ruling on the fees and cost; (*Final R. Vol.3, p.473*)

3.) No notice of hearing was served on the fraudulent fees and costs;

4.) The court severely abused its discretion when it had intrinsic and extrinsic knowledge it lacked subject matter jurisdiction, the memorandum for fees and costs were filed after the fourteen (14) day time limit, the (**Appellants**) filed their appeal, including the alleged fees and costs, the court had intrinsic and extrinsic knowledge it based its decision off forged and altered documents submitted under the sworn affidavit of the legal counsel and not his clients, as well as, granted fees and costs, and a discharge from any and all liability.

In the court's records **I.R.C.P. Rule 60(b)** a new document surfaces for the very first time in these appeal records (*Final R. Vol.2, p.235-237*). A January 20, 2009 "*Amended Notice of Hearing...Plaintiffs' Motion to Amend Complaint*" surfaces, alleging, the (**Respondents**) were clairvoyant, and that the January 26, 2009 hearing, we all arrived at, except the judge, was never going to take place and it had been rescheduled 6 days before the January 26, 2009 hearing was

canceled which also included an attached motion to shorten time, but not for an alleged February 9, 2009 hearing (*Final R. Vol.2, p.235-237*) and not for fees and costs or slander of title, but for a motion to shorten time to the January 26, 2009 at 10:00 a.m. (*Final R. Vol.2, p.237*)).

In the March 9, 2009 transcript (*Final R. Vol. 4, p.718-729*), the judge and the **(Respondents)** are silent on any alleged notice being filed on January 20, 2009 for a new “amended” hearing set for February 9, 2009.

Based on the court’s final order issued on March 11, 2009, of which the **(Respondents)** failed to file any timely motion or memorandum for fees and costs, the court furthered its abuse of discretion and denied the **(Appellants)** a fair and just trial and equal protection under the United States Constitution-equal protection clause, including denying the **(Appellants)** due process, the court granted and had executed two (2) writs of execution (*Final R. Vol.1, ROA Report, 4/15/2009*) without notice to any **(Appellants)** of an alleged hearing for April 15, 2009 and the court denied the **(Appellants)** any claim of Exemption, even though while the personal property was being confiscated under illegal writs of execution and the **(Appellants)** evidenced with bills of sales, canceled checks, registrations for each item to the Madison County Sheriff’s deputy, Suzanne Bagley, the court denied the exemptions, including income producing equipment (*Final R. Vol.3, p.491-493*) as evidenced and never disputed by the **(Respondents)** (*Final R, Vol.4, p.769-776*) fulfilling the **(Respondents)** threats in particular (*Final R. Vol.4, p.773, L.29-34: L. “29-31...I was personally told by B... (RESPONDENTS) on April 21, 2008*

*at 4:15 p.m. if I did not surrender to the B ... my land, buildings and equipment and if I obtained 'legal counsel' "it would be detrimental not only to you, your farm, but also your children...not only will you lose everything you own, but it will cost your sons not only their inheritance, but it will affect them and cause them to suffer for the rest of their lives"...J...B...would see to it that 'we' were personally destroyed in the community.*

### **PROCEEDING AFTER SUPREME COURT OPINIONS**

Upon the court rendering its illegal court memorandum and order, granting summary judgment-quiet title, fees and costs and including a 54(b) certificate (*Final R. Vol.1, p.193-196*) the (**Appellants**) filed the first appeal (**36041-2009**) resulting in the Idaho Supreme Court consolidating the two (2) appeals (**36041-2009** and **37487-2010**) yet rendered two separate (2) opinions. (*Final R., Vol.3, p.453-461: (36041-2009)* and *p.463-466 (37487-2010)*).

The Idaho Supreme Court rendered its decision on the consolidated first appeals on October 6, 2010 (*Final R. Vol.3, p.453-461* and *Final R. Vol. 3, p.463-466*) stating that attorney fees and costs were not proper (*Final R. Vol. 3, p.459-460*) and further proceeding had to occur before a decision as to who the prevailing parties are (*Final R. Vol. 3. p.459, L.17-21, plus footnote #4*). The opinions speak for themselves.

The (**Respondents**) and their legal counsel(s) did not file any motion for reconsideration to the Idaho Supreme Court nor did they file any notice of appeal to the Supreme Court of the United States of America. After the ninety (90) day U.S. Supreme Court appeal time passed, the (**Appellants**) proceeded with their counterclaims against the (**Respondents**) and to have the

personal property returned back to the (**Appellants**) that was confiscated under the fraudulent and illegal writs of execution and orders. (*Final R. Vol. 3, p.472-478*) (**Appellants**) filed their motion for “...Reverse Writs of Execution, Possession of Real Property and Dismissal District Court Lacks Subject Matter Jurisdiction, Violation I.C. §55-601” (*Final R. Vol.3, p.472-479: “February 24, 2011 ...Motion to Reverse....District Court Lacks Subject Matter Jurisdiction I.C. §55-601”*)

The court abused its discretion when its memorandum in support of the Final June 16, 2011 contradicts the previous orders and memorandums:

The court abused its discretion when the issue of the (**Forged Documents**) and the (**Expressed Sale Contract**) and (**Reconvey Agreements-338905**) were presented to the court and the (**Respondents**) not only failed to produce any original document or a recorded copy of any page of the (**Forged Documents**) and the (**Respondents**) failed to submit any personal affidavit attesting the (**Forged Documents**) were not forged which (**Respondents**)’ legal counsel’s had attached under his exhibit “A”(Final R. Vol. 3, p.159-165). **I.R.C.P. Rule 52(a)**

The only evidence the (**Respondents**) and their legal counsels did produce is inconsistency in their own claims and exhibits and in the court orders: **I.R.C.P. Rule 52(a): *Bramwell v South Rigby Canal Co., 136 Idaho 648, 39 P.3d 588 (2001)***

Complaint Alleges:

(Final R. Vol.1, p.21, L.7): “7. Pursuant to said agreement...dated and recorded on July 20, 2007.”



*(Final R. Vol.1, p.20): “Complaint... 5. ...Agreement to Reconvey...Exhibit 1...the sum of \$141,563.05);*

*(Final R. Vol.1, p.24): “Complaint ...22. As set forth in the documents attached to the deed entitled “Promissory Installment Note” and in the Agreement to Reconvey...the sum of \$141,563.05...”;*

**Legal Counsel of (Respondents) Alleges:**

*(Final R. Vol.1, p.157, L.2-3): “2. I am competent to testify...from personal knowledge. 3. Attached as Exhibit A is a true and correct copy of the Agreement to Reconvey.*

*(Final R. Vol.1, p.159, L.8): “...\$147,225.58...”*

**(Respondents) Alleges:**

*(Final R. Vol.1, p.170-172): “Affidavit of T...B...; 2. I am competent to testify...from personal knowledge... 6. An Agreement to Reconvey ...for the \$141,563.05);*

*(Final R. Vol.1, p.40, L.2 and 11): “Date Aug 20, 2007”; “Principal Amount: \$147,225.58...”;*

**Court Alleges:**

*(Final R. Vol.2, p.374, L. III. Finding of Fact...1. On July 27, 2007...executed a warranty deed and an: Agreement to Reconvey...amount \$147,225.58...”;(Final R. Vol.3, p.416, L.17-30; )*

*(Final R. Vol.1, p.190, L. III. Discussion...for \$141,563.05...”*

Despite the fact the complaint, the legal counsel, the **(Respondents)** and the court are not even on the same page, the court granted the **(Respondents)** full relief on June 16, 2011 and denied the **(Appellants)** everything, claiming in its memorandum the **(Appellants)** presented no argument to support their claims, which resulted in the **(Appellants)** filing on June 20, 2011 (*Final R. Vol.3, p.402-421, plus exhibits A-T*) evidencing not only the previous filings since February 24, 2011, but the arguments presented to the court, timely.

**(Expressed Sale Contract) and (Reconvey Agreement-338905)**

The **(Appellants)** [grantors] and the **(Respondents)** [grantees] entered into the sole agreements to sell 11.8 acres of Bare Land with no chattel under an **(Expressed Sale Agreement)**, with a reconvey agreement being recorded to secure a required payment of \$141,563.05 **(Reconvey Agreement-338905)** (*Final R. Vol.3, p.406, L.2-31, p.407, L.1-7*).

The **(Appellants)** fully and completely evidenced, cited and argued the issue of the **(Expressed Sale Contract)** and **(Reconvey Agreement-338905)** (*Final R. Vol.3, p.409-410*) and that a court cannot revise a contract in order to change or make it better (*Final R. Vol.3, p.409-410; p.416, L.1-17*) when the court changed the legal description, added chattel, and converted the contract from Bare-Land to farm ground, including all buildings, sheds, improved lands, farm equipment, personal property, and granted the **(Respondents)** 80 acres not the 11.8 acres per the **(Expressed Sale Contract)**.

Further, the court failed to address the validity of the **(Expressed Sale Contract)** before entering its memorandums and orders (*Final R. Vol.3, p.416, L.17-30*) including to test the character of the contract, **I.C. §29-109** (*Final R. Vol.3, p.588*).

It was a severe abuse of the court's discretion to even entertain the **(Respondents)** motion for dismissal upon the pleading, in light of the conflicting evidence presented to the court, since the onset of the action, knowing the evidence was so compelling against the **(Respondents)** that near the last hour, the **(Respondents)** finally acknowledge to the court that the **(Expressed Sale Contract)** existed and because it did not state any deadline as to when the land had to be surveyed, the **(Respondents)** did not breach the contract. The **(Respondents)**' last attempt to put on their defense was in itself enough to bar the court's dismissal under the **(Respondents)**' motion for judgment on the pleadings. The court never closed the pleadings, in writing or verbally, but granted the **(Respondents)**' motion upon the pleadings in direct violation of **(I.R.C.P. Rule 12(c))** abusing the court's discretion. (*Final R. Vol.5, p.1009, L.7-26; p.1131, L.11-25; p. 1132-1133*)

The court further failed to properly apply the rule and statutes of the Great State of Idaho by ignoring the Idaho Rules of Evidence and the issues of the breach of contract by the **(Respondents)** at the onset, which the **(Appellants)** fully argued, cited and presented to the court. (*Final R. Vol.3, p.412, L.3-18*)

**Violation to I.C. §55-601, I.R.C.P. Rule 12(c); 12 (g); 17(a);**

The court severely abused its discretion, when it ignored well established laws, rules and case law, including its own prior decisions and orders (*Final R. Vol.3, p.505, L.5-13*) involving **I.C. §55-601** and when it deliberately refused to uphold the law or address the violation to **I.C. §55-601** at the threshold of the case.

Though the court had intrinsic and extrinsic knowledge the reconvey security deed and the three (3) attached reconveyance pages were defective in the (**Reconvey Agreement-338905**), each page being in direct violation of **I.C. §55-601**, lacking any grantee's full and complete mailing address, the court severely abused its discretion when it had intrinsic and extrinsic knowledge its' only recourse with regards to the (**Respondents**)' complaint and (**Respondents**) desired motions for summary judgment, including: quiet title-real property; slander of title, motion to dismiss upon the pleadings, attorney fees and costs, sanctions and motion for vexatious litigation, was to dismiss the (**Respondents**) motions, which it refused to do (*Final R. Vol.3, p.606; Final R. Vol.5, p.1128-1130, L.1-4*).

The court severely abused its discretion when it had intrinsic and extrinsic knowledge that any issuance of fees and costs under sanctions in violation to **I.C. §12-123(2)(6)(i-iii)** and **I.R.C.P. Rule 11** (*Final R. Vol.5, p.967, L.13-25; p.1130, L.5-25; p.1131, L.1-7*) are illegal and unjust.

The court further abused its discretion when it had intrinsic and extrinsic knowledge the (**Respondents**) lacked standing to sue (*Final R. Vol.3, p.587, L.12-19*) at the threshold of their case, not only because of the violation to **I.C. §55-601**, but also, the relief the (**Respondents**)

were seeking in their complaint, was for quiet title-real property, damages for trespass, slander of title, legal fees and costs, and the alternative, foreclosure with the right of possession, with a blanket prayer for anything else the court deems just and equitable (*Final R. Vol.1, p.26-28*) knowing the **(Respondents)**’ produced no rebuttal evidence, affidavit(s) or argument to the **(Expressed Sale Contract)** and its unambiguous language (*Final R. Vol.3, p.489* Note: The court docket is void of a page 488), evidencing the **(Respondents)**’ breached the **(Expressed Sale Contract)** (*Final R., Vol.3, p.616, L.1-11*) damaging the **(Appellants)** when **(Respondents)** filed suit against the **(Appellants)**’ instead of having the land surveyed, making the **(Respondents)**’ per the recorded **(Reconvey Agreement-338905)** liable for damages to the **(Appellants)** (*Final R. Vol.3, p.490, L.26-29: “Grantees shall pay any and all legal fees, court costs and any other damages incurred by the Grantor, or her surviving sons, due to the Grantees breach of these agreements. (End of Agreements)”*).

The **(Respondents)** never sought relief for breach of contract, fraud or ambiguity in the **(Expressed Sale Contract)** and/or the **(Reconvey Agreement-338905)**.

The **(Appellants)** cited and argued the issue of the grantee(s) address being void on any recorded document. (*Final R. Vol.3, p.407-409; p.412, L.21-24; p.12, L.19-22; p.505, L.4-21; p.506-509; p.510; p.512-514; Final R. Vol.4, p.691-694*)

The **(Respondents)** did attempt to allege that the documents submitted under the **(Respondents)** legal counsel’s affidavit, “Exhibit A and B”, in the alternative was a mortgage, however, the **(Respondents)** clearly attested themselves in the **(Respondent-TKB)** it was a sale,

as well as, the complaint alleged it was a sale. However, the legal counsel for the **(Respondents)** knew his complaint was unverified, and knew he could argue the alternative, but when the complaint and the affidavits of his clients were evidencing it was a sale, the counsel's continued allegation were deliberately meritless. (*Final R. Vol.5, p.1001, L.3-7*) as argued by the **(Appellants)** (*"The Idaho Supreme Court held in **Bergen v Joanson, 21 Idaho 619, 123 Pac.484**: "In an action for the purpose of declaring a deed a mortgage, the evidence to support the claim of the plaintiff must be clear and satisfactory, and show the intent of the parties to be that the instrument is security for a debt and not a conveyance based on a contract to sell with the option to repurchase."*)

A deed that lacks the full and complete mailing address of the grantee, in violation of **I.C. §55-601**, does not convey any interest to the grantee. Before the court can determine if a conveyance had been made, that is not in violation of **I.C. §55-601**, the court must first consider whether the agreements of the parties meet the requirements set forth in the relevant statutes. (*Final R. Vol.4, p.836*)

The court severely abused its discretion when it granted the **(Respondents)** their motion to dismiss, under **I.R.C.P. Rule 12(c)** having intrinsic and extrinsic knowledge not only did the court lack subject matter jurisdiction, a motion to dismiss under **I.R.C.P. Rule 12(c)** was inappropriate, as argued and cited by the **(Appellants)** (**I.R.E. Rule 301**) in their filings (*Final R. Vol.3, p.531; Vol.5, p.998-999; p.1131-1133*) and the orders are in direct violation to the court opinions and laws and rules (*Final R. Vol.3, p.584-585*) and the **(Respondents)** continued to file

documents that totally misrepresent not only the facts, but orders, rules and laws, forcing (**Appellants**) and the court to trudge through them all. (*Final R. Vol.3, p.532-594* \*NOTE: the court's docket, vol.3, is void of any pages 533-583, yet 532 is the direct page before page 584, as filed by the (**Appellants**) on April 7, 2011)

**I.R.C.P. Rule 17(a)** allows for a party to amend a complaint when it is evidence a third party had damaged the party seeking to join a third party, when the issues are all directly related to the original complaint, as argued by the (**Appellants**) (*Final R. Vol.3, p.604-612; Final R. Vol.4, p.639; p.694*) However, the court denied the (**Appellants**) the right to join the party helping the (**Respondents**) destroy personal property in the possession of the (**Appellants**).

#### Forged Documents

The court refused to address the validity of the (**Expressed Sale Contract**) while it attempted to grant relief under multiple theories by the (**Respondents**), **desperately hoping one will stick:** including, the deed is absolute on its face, there was a mortgage, the (**Express Sale Contract**) was replaced with documents "Exhibit A" – "Exhibit 1" (**Forged Documents**) (*Final R. Vol.3, p.404, L.18-30, p.405, L.1-18*) **I.R.C.P. Rule 60(b)(6)** (*Final R. Vol.4, p.841, L.10-20; p.842-843*) , the (**Appellants**) are barred by res judicata (*Final R. Vol.3, p.416, L.1-16*), the sale was not for 11.8 acres but 80 acres per the recorded security deed under the (**Reconvey Agreement-338905**).

The (**Appellants**) evidence of the (**Forged Documents**) (*Final R. Vol.1, p.32-36 and p.157-165*) submitted under the sworn affidavit (**I.R.C.P. Rule 56(e); I.R.E. 801**) (*Final R. Vol.5,*

p.952, L.9-22) **6<sup>th</sup> Amendment** which allows every person to put on a defense, but not in violations of **I.R.E.**, including **I.R.E., Rules 403, 412, 603, 801, 801(d), 801(e) and 804** (*Final R. Vol.5, p.953, L.1-17; p.1000-1003*) which is evidenced when the **(Respondents)** legal counsel submitted his affidavit attesting to “Exhibit A”, while the **(Respondents)** who simultaneously submits an affidavit, but never attests to the documents (*Final R. Vol.1, 170-172*) which the **(Respondents)** allege are the controlling documents under the motion for summary judgment (*Final R. Vol.1. p.151-156*) with only the claim the **(Respondents)** are referencing the **(Forged Documents)** and never submitted to their authenticity under their sworn affidavit.

#### **Fraudulent Summary Judgment, Judgment on Pleadings and Attorney**

#### **Fees/Costs/Sanctions and Clean Hands Doctrine**

The court granted multiple summary judgments, including untimely fees and costs, as well as, fees and costs under sanctions against the **(Appellants)**, in direct violation to Idaho Laws and Rules, as the **(Appellants)** evidenced, cited and argued (*Final R. Vol.3, p.413-416; p.476; p.482-484; p.510, L.22-24; p.511-513; Final R. Vol.4, p.633-640; p.686-691*), including the allegation that **(Appellants)** waived any rights (*Final R. Vol.3, p.415, L.5-31; p.416*) and are barred by res judicata (*Final R. Vol.3, p.415, L.19; p.416, L.1-16*) and are moot (*Final R. Vol.3, p.414; 417, L.1-9*) and (*Final R. Vol.4, p.637*) “...the defense for lack of jurisdiction over subject matter is never waived (**I.R.C.P. Rule 12(h)**); purported judgments entered by any court without jurisdictions over subject matter are forever void and as such are subject to collateral attack, and are not entitled to recognition in any state under the full faith and credit clause of the US



*Constitution (Restatement of Judgments, §7 (1942). In addition, any judge who acts without subject matter jurisdiction over subject matter may be held personally liable for all damages in civil actions.” Stump v Sparkman, 435 U.S. 349, 98 S. Ct., 1099, 55 L.Ed 2d 311 (1978); Bradley v Fisher, 13 Wall 335, 20 L.Ed 646 (1871); Coeur’d Alenes Lead Co. v Kingsbury, 56 Idaho 475, 489-90, 55 P.2d 1307, 1313 (1936) Ailshie, J., spec concur.) “A court’s lack of subject matter jurisdiction cannot be waived by any party”, United States v Cotton, 535 U.S. 625, 630 (2002); State v Rogers, 140 Idaho 223, 227-28, 91 P.3d 1127, 1131-32 (2004), “...and parties cannot consent to the court’s assumption of jurisdiction through conduct or acquiescence not be estopped from asserting its absence.”*

*In Fairway Development Co. v Bannock County, 119 Idaho 121, 125, 804 P.2d 294, 298 (1990) “Accordingly a party may assert a lack of subject matter jurisdiction for the first time on appeal.” Idaho State Insurance Fund v Turner, 130 Idaho 190, 191, 938 P.2d 1228, 1229 (1997) (Final R. Vol.4, p.637-638)*

The **(Appellants)** evidence to the court, citing and arguing the **(Respondents)** and their legal counsel acted in violation of the “**Clean Hands Doctrine**”, not only during the case, but the **(Respondents)** entered into their litigation with unclean hands (*Final R. Vol.3, p.417, L.15-31, p.418, L.1-14; Final R. Vol.4, p.852, L.10-20; p.853, L.1-8*) and the “**Equitable Doctrine**” theory allows a court to deny equitable relief to a litigant on the grounds that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy at issue (*Final R. Vol.3, p.589, L.24-25; p.590, L.1-9*) which included the parties legal counsel.

On May 9, 2011, the (**Appellants**) evidenced to the court, with the court recorder's actual complete transcript, filed in the court dockets (*Final R. Vol.4, p.718-729*) (**Respondents**)' legal counsel's deliberate, malicious, and fraudulent acts regarding the February 9, 2009 and March 9, 2009 hearings, led the court to severely abused its discretion by deliberately ignoring the evidence, violating "**Rules of Evidence-direct connection doctrine**" (*Final R. Vol.5, p.1000, L.20-25*) and denying (**Appellants**) motions, from February 24, 2011 through June 16, 2011, dismissing (**Appellants**) counterclaims, denying (**Appellants**) equal protection under the law and rules of the **United States Constitution 6<sup>th</sup> and 14<sup>th</sup> Amendment – equal protection clause** and Idaho. (*Final R. Vol.5, p.990-991, p.999-1005*)

The (**Appellants**) evidenced (*Final R. Vol.4, p.742-775*) the level of threats and harm being done at the hands of the (**Respondents**) as well as the deliberate and fraudulent filings of the (**Respondents**), the (**Appellants**) sought to have the court review the evidence and determine if sanctions were appropriate against the (**Respondents**) and their legal counsel for violation to **I.R.C.P Rule 11(a)(1)** (*Final R. Vol.4 p.688, L.1-6; p.756, L.1-11*) as well as, being in violation of **I.R.E. Rule 401** (*Final R. Vol.5, p.1035, L.10-26*). The court repeatedly postponed the (**Appellants**)' scheduled hearings, never entering any response or rulings addressing (**Appellants**)' evidence.

On June 8, 2011, the (**Respondents**) began to aggressively go after the (**Appellants**), their children and their property: setting fire to lands at 9:30 p.m. (*Final R. Vol.5, p.937, L.3*), personal property (**Respondents**), (*Final R. Vol.5, p.1025-1028; p.898-899; p.888, L.26-30*;

p.927, L.17-24; ;) throwing personal property out of (**Appellants**)' sheds and setting them on fire, removing from the shed and transporting the personal property to undisclosed location(s), accosting the (**Appellants**) on county roads and in the (**Appellants**)' driveway, by backing up their pickups, when they happened to be in front of the (**Appellants**), at a hasty pace, placing the (**Appellants**) children and (**Appellants**) in harm's way, by forcing the (**Appellants**) to place their vehicle into reverse so to prevent from being slammed into by the (**Respondents**)' pickups or pushed into the canals (reported to the Madison County Sheriff's Office), resulting in the (**Appellants**) seeking protection from the court by petitioning for a TRO (*Final R. Vol.4, p.781-830*) which the court denied but then dismissed the case on June 16, 2011(*Final R. Vol.4, p.706-713, p.742-755*) one week later, at the request of (**Respondents**)' motion on the pleadings, **I.R.C.P. Rule 12(c)** (*Final R. Vol.2, p.337-342*). Note: Though the minute entry states, "5C MOTION" (*Final R. Vol.2, p.348, L.19*) no such motion or request was made, as such the "5C" appears to be an innocent typo.

### **Constitutional Violations, Bias, Failure to Uphold the Rules and Laws**

The court then ignored the (**Appellants**) filings after the first appeal had been decided and entered a final judgment on June 16, 2011, three (3) years after the court had intrinsic and extrinsic knowledge the court lacked subject matter jurisdiction from the threshold of the case.

The (**Appellants**) evidenced, cited and argued how the illegal court memorandums, orders and procedures directly violated the (**Appellants**) rights under the **United States Constitution – 14<sup>th</sup> Amendment – equal protection clause**, Idaho Rules and Idaho Statutes,

and by denying the (**Appellants**) due process. (*Final R. Vol.3, p.416, L.19-31; Vol.3, p.472-47; p.475-476; Final R. Vol.5, p.999, L.6-16s*)

### **Threats, Damages, Libel and Extortion**

The records further evidence due to the breach of contract and the fraud and violations to the (**Appellants**) legal rights under the law, the (**Appellants**) had been not only judicially abused, but severely financially damaged. (*Final R. Vol.3, p.410, L.7-20*)

On June 13, 2011, the (**Appellants**) filed their objection to the dismissal of the case (*Final R. Vol.4, p.832-871*) evidencing the error in the court's decision, to no avail, resulting in the court, ultimately granting the (**Respondents**) motion for sanctions against the (**Appellants**) (*Final R. Vol.4, p.872-883*) and further court action attempting to have the (**Appellants**) deemed vexatious litigants.

The (**Appellants**) filed for a motion for reconsideration, detailing the violations in the rules of evidence, state law, state rules and violation to the (**Appellants**)' constitutional rights (*Final R. Vol. 5, p.946-957; p.990-1029*) resulting in the (**Appellants**) also filing their objections to fees and costs, under sanctions against the (**Appellants**) (*Final R. Vol. 5, p.957-969*). (**Respondents**) responded to the (**Appellants**) motion against (**Respondents**) for sanctions, failing again in produce the original document to prove (**I.R.E. Rule 1003**) the signature they claim is the female (**Appellant**)'s signed on July 20, 2007 on the (**Forged Documents**), yet the (**Appellants**) not only provided the evidence the (**Forged Documents**) were created after the fact, and how the (**Respondents**) deliberately concealed the fax information at the top of the

**(Forged Documents)** from the original that was in the possession of **(Respondent-JKB)**. (*Final R. Vol.5, L.1030-1033*) The actual notary has already come forward and provided the evidence and a sworn statement that the signature of the female **(Appellant)** on (*Final R. Vol.1, p.109*) is an exact copy, to the signature the notary witnessed in June, 2006 at First American Title Company, in connection with a sale to a Greg Fullmer.

The **(Appellants)** delivered to the court (*Final R. Vol.3, p.494*) the full and complete copy of the **(Forge Document)** which appears to have part of the top of the page unreadable, so attached to this brief is a clear photo copy of the page, evidencing again, the document was faxed to the **(Respondents)** on July 20, 2007, at 11:59 a.m. after the **(Expressed Sale Contract)** and **(Reconvey Agreement-338905)** was entered into, signed, notarized and the **(Appellants)** could not have entered into the **(Forged Documents)** because they were at the Madison County Recorder's Office and the female **(Appellant)** did not see either of the **(Respondents)** until the following year, when **(Respondents)** were found in the **(Appellants)** private residence attached garage, with flashlights, after the **(Respondents)** had broken into the **(Appellants)** locked garage.

### **FRAUD**

**(Appellants)** evidence, cited and argued how the **(Respondents)** and their legal counsels, through fraud and trickery duped the district court, initially (*Final R. Vol.3, p.405, L.19-30, p.406, L.1-2; p.410, L.7-30; p.411-412*) and due to the fact fraud had not only been done by the **(Respondents)** but also by the **(Respondents)** legal counsel **(I.R.C.P. Rule 60(b)(6) Fraud**

Upon the Court through bogus hearings, exhibits, affidavits, as well as, court orders failing to depict the hearings and evidence filed in the court records, by the court itself, which the (Appellants) fully and completely argued, cited and evidenced. (*Final R. Vol.3, p.410, L.21-30; p.411; p.498-504;*

#### **IV. ISSUES on APPEAL**

The (APPELLANT) presents before the Justices of the Idaho Supreme Court the issues:

1. **Did the court have jurisdiction over the subject matter?**
2. **Did the (Respondents) have standing?**
3. **Did the court abuse its discretion?**
4. **Did the court deny the (Appellants) equal protection under the rules and statutes of the Great State of Idaho and the United States Constitution?**

#### **V. APPEAL FEES and COSTS**

##### **A. APPEAL COSTS for the (APPELLANT) is APPROPRIATE:**

(APPELLANT) is pro-se and as a prevailing party would not be entitled to attorney fees, however, under **I.C. §12-120** (APPELLANT) would be entitled to necessary costs and expenses incurred to fully and completely defend and put on a case against the (Respondents) including defending all the (Appellant's) rights at the appeal level.

##### **B. APPEAL FEES and COSTS are not APPROPRIATE for (RESPONDENTS):**

Because the (Appellants) were frivolously and unjustly sued by the (Respondents) and the (Appellants) had been forced to defend all their legal rights, allowed them under the United

States Constitution, the Idaho Constitution and all the rules and Statutes of the Great State of Idaho Judicial structure, which allows and requires the **(Appellants)** to put on a good defense, and in the cases where fraud and fraud upon the court **I.R.C.P. Rule 60(b)(6)** (*Final R. Vol.3, p.841, L.10-20; p.842-843*) as argued, the laws and rules, requires a preponderance of evidence to be presented, not a mere scintilla, and argued and cited with particularity, the **(Appellants)** defense at the lower court and the appeal level were necessary and reasonable to protect all the **(Appellants)** legal rights against the complaint(s) and subsequent filings, motions and actions initiated by the **(Respondents)** which were not only brought while the **(Respondents)** and their legal counsel had intrinsic and extrinsic knowledge the court lacked subject matter jurisdiction, due to the violation to **I.C. §55-601**, but **(Respondents)** brought, pursued and defended their case(s) frivolously, unreasonable, fraudulently and without merit from the onset, with the sole intent to harass, harm and inflict unnecessary duress, pain, financial loss and embarrassment (*Final R. Vol.4, p.846, L.5-12*) leaving the **(Respondents)** void of any rights or entitlement to fees, costs or sanctions under **I.C. §§12-120 through 123**. (*Final R. Vol.5, p.846, L.5-8; p.953, L.18-24; p.963*)

## **VI. ARGUMENTS**

### **1. The District Court did not have jurisdiction over the subject matter.**

Idaho Code §55-601 provides:

“Idaho Code...requires the grantee’s full and complete mailing address must be on all deeds...” (*Final R. Vol.3, p.408, 834-838, 849, 850*)

A deed that lacks the full and complete mailing address of the grantee, in violation of I.C. §55-601, the deed does not convey any interest to the grantee. As observed by the (7<sup>th</sup>) district court, Madison County, Idaho.

I.C. §55-601 requires the name and complete mailing address of the grantee to appear on any instrument conveying real property. *Riley v WR Holding, LLC, 143 Idaho 116, 119, 138 P.3d 316, 319 (2006)*; *Riley Idaho Supreme Court, docket no. 31414 (2006) (Final R. Vol.3, p.506, L.1-25)* *Smiley v Kaiser, 130 Idaho 909, 912, 950 P.2d 1248, 1251 (1997)* and “...Jurisdiction must be addressed prior to reaching the merits of the case...” *Bach v Miller, 144 Idaho 142, \_\_, 158 P.3d 305, 207-08 (2007)*

The district court was obligated to dismiss the case, especially when the **(Respondents’)** evidence, in support of their alleged standing was a **(Forged Document)** (*Final R. Vol.3, p.501-502*) submitted under the affidavit of the **(Respondents’)** legal counsel, never attested to as being true and correct by either **(Respondents)** and had been fully evidenced to the court and all parties, showing the signature of the **(Appellant)** had been forged and the documents had not been created until after the **(Appellants)** signed the true and correct final **(Expressed Sale Contract)** and the filed **(Reconvey Agreement-338905)** (*Final R. Vol.3, p.501-504*). (See Appendix A for a true, clear and correct copy of the first page of the **(Forged Document)** compared to the **(Forged Document)** submitted under the sworn personal affidavit of **(Respondents)** legal counsel in support of **(Respondents)** motion for summary Judgment. (*Final R. Vol.1, p.104*) which is fully and completely void of the upper fax information as evidenced at



the summary judgment-quiet title 09/08/2008 hearing by (Appellants) and again to the current district judge (*Final R. Vol.3, p.494*) on March 11, 2011).

“The absence of subject matter jurisdiction is not waivable, and may be asserted at any stage of any proceeding.” **Smiley v Kaiser, 130 Idaho 909, 912, 950P.2d 1248, 1251 (1997)** and as such, under **I.R.C.P. Rule 61** “...a court cannot disregard any error or defect in any proceeding which affects the substantial rights of the parties... **Idaho Power Co. v Cogeneration, Inc. docket no. 24865 (July 13, 2000)**

“Any orders, judgments and decisions rendered when the court lacks subject matter jurisdiction renders all orders, decisions and judgments void, not merely voidable” **Prather v Loyd, 86 Idaho 45, 382 P.2d 910** making illegal orders forever void.

A deed in violation of **I.C. §55-601** is a nullity and vests no title to real property to a grantee. “*To convey any interest in real property the deed must include the grantee’s name and complete mailing address, I.C. §55-601, Idaho Supreme Court, 31414, June 6, 2006, Boise, February 2006-Term.*”

**2. The (Respondents) did not and do not have standing to sue.**

**I.R.C.P. Rule 17(a)** provides:

“*A plaintiff must have standing to institute an action at the commencement of the suit.*” *Joytime Distribs. & Amusement Co. v State, 338 S.C. 634, 528 S.E. 2d 647 (1999); Sloan v Greenville County, 356 S.C. 531, 590 S.E. 2d 338 (Ct. App 2003)* “*A real party in interest is one who has a real or material interest in real property as opposed to one who has only a*

*nominal or technical interest in the action.” Huff v Jennings, 319 S.C. 142, 148, 459 S.E. 2d (Ct App 1995) (Final R. Vol.4, p.639)*

**3. The District Court Abused Its Discretion.**

**Idaho Rules of Civil Procedures Rule 12(g)(4)** provide:

“When it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the case.” *United States Supreme Court, Kontrick v Ryan, 540 U.S. 443, 455 (2004)* and upheld under Idaho Statutes, Rules and Authorities by the *Idaho Supreme Court, docket no. 26895, opinion 55, July 17, 2003 (Rogers-Appellant); Idaho Supreme Court, docket no. 35441, opinion no.1, 2010 (January 7, 2010) (Peterson-Appellant); Smalley v. Kaiser, 130 Idaho 909, 912, 950 P.2d 1248, 1251 (1997) (Final R. Vol.4, p.639, L.12-20)*

“A court’s “abuse of discretion” is determined by a three part test which asks whether the district court (1) correctly perceived the issue as one of discretion; (2) acted within the outer boundaries of its discretion and consistently with the legal standings applicable to the specific choices available to it; (3) reached its decisions by an exercise of reason.” *Sun Valley Potato Grower, Inc. v Texas Refinery Corp, 139 Idaho 761, 765, 86 P.3d 475, 479 (2004)*” quoting from *Idaho Supreme Court docket no. 32726 – Ada County Highway (Final R. Vol.5, p.968, L.27-31; p.969, L.1-10)*

The district court abused its discretion when it only had jurisdiction to grant relief to the **(Appellants)** for the **(Respondents)**' deliberate breach of contract to the **(Expressed Sale Contract)** and for damages per the recorded **(Reconvey Agreement-338905)**.

The district court severely abused its discretion when it had intrinsic and extrinsic knowledge the **(Respondents)** lacked standing to sue, the court lack jurisdiction of subject matter with regards to the **(Respondents)** prayers for relief of summary judgments, quiet title, slander of title, motion to dismiss, attorney fees and costs, judgments and resulting writs of executions, sanctions against the **(Appellants)**, possession of real and personal property, knowing the court deliberately ignored United States Rules and Statutes, Idaho Rules and Statutes, established case law and its own previous rulings, as well as, its intrinsic and extrinsic knowledge the court solely relied on the **(Forged Documents)** submitted under the sworn affidavit of the **(Respondents)**' legal counsel's personal affidavit in supported of the first summary judgment – quiet title, totally and abusively ignoring the verified evidence of the true and only binding contracts **(Expressed Sale Contract)** and **(Reconvey Agreement-338905)**.

The District Court abused its discretion by failing to weigh conflicting evidence, including the **(Appellants)** original documents **(Expressed Sale Contract)** and **(Reconvey Agreement-338905)** with the **(Respondents)** **(Forged Documents)**

**I.R.E. Rule 1003:** provides:

*“A duplicate is admissible ...unless (1) a genuine question is raised as to the authenticity or continuing effectiveness of the original or (2) in the circumstance it would be unfair to admit the duplicate in lieu of the original.” (Final R, Vol.5, p.1003-1004)*

When the court had the evidence the **(Forged Documents)** were in fact forged and had been used solely to support the court’s decision in granting the **(Respondents)** all their summary judgments, attorney fees and costs, including sanctions, the court severely abused its discretion, resulting in a manifestation of abuse. *(Final R. Vol. 5, p.1010)*

The court severely abused its discretion when the evidence was so conflicting, as stated previously in this brief, the evidence being provided by the **(Respondents)** was conflicting with the evidence being provided by their legal counsel, as well as, the court’s orders and the court’s own memorandums were conflicting with the **(Respondents)** and with their legal counsel’s allegation. **Idaho Rule 52(a)** *(Final R. Vol.5, p.992, L.4-10)* **Bramwell v South Rigby Canal Co., 136 Idaho 648, 39 P.3d 588 (2001)**

**4. The court violated the (Appellants) US Constitutional Rights under the Equal Protection Clause of the 14<sup>th</sup> Amendment.**

The court knowingly continued to abuse its discretion by denying the **(Appellants)** equal protection under the **14<sup>th</sup> Amendment of the U.S. Constitution, equal protection clause** by not dismissing the **(Respondents)** case and voiding any and all relief to the **(Respondents)**. *Reed v Reed in 1971 no.704, argued October 19, 1971-decided November 22, 1971, US Supreme Court (404-US 71)* *“Equal protection is not only available between man v women, but also*

*attorney v pro-se.*” “When a litigant has ‘a fundamental interest at stake’ he/she has right to access the court’s for redress.” *Rodriquez v Cook, 169 F.3d 1176, 1180 (9<sup>th</sup> Cir 1999) citing M.L.B. v S.L.J., 519 US 102 (1996)* “The purpose of the equal protection clause of the fourteenth amendment is to ‘secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasional by express terms of a statute or by its improper execution through duly constituted agents.” *Village of Willowbrook v Olech 528 US 562, 564 (2000)* “...All persons in similar circumstances shall be treated alike...” *F.S. Rayster Guano Co. v Virginia 253 US 412, 415 (1920)*

The court has abused its discretion by not ensuring the **(Appellants)** are granted equal protection under the U.S. Constitution and the Idaho Statutes and Rules.

## **VII. CONCLUSION / RELIEF**

(RESPONDENTS) entered into a written contract with the (Appellant) for the purchase of 11.8 acres of bare land under an **(Expressed Sale Contract)** and **(Reconvey Agreement-338905)**. The (RESPONDENTS) self authored the deed and documents violating **I.C. §55-601** leaving the district court lacking in subject matter jurisdiction.

The **(Respondents)** breached the **(Expressed Sale Contract)** multiple times, including when the **(Respondents)** filed suit against the **(Appellants)** instead of having the 11.8 acres surveyed and the surveyed recorded in Madison.

Due to **(Respondents)**’ deliberate breaches, the **(Defendants)** severely damaged the **(Appellant)** and the **(Appellant)**’s family.

The statutes and rules required the **(Respondents)** case against the **(Appellants)** to have been immediately dismissed. The **(Respondents)** case was not dismissed, but was fraudulently, deliberately, wantonly and maliciously used to severely bring financial, physical and emotion harm to the **(Appellant)** and the **(Appellants)** family, with the sole intent and purpose to severely damage, harass, embarrass, and bludgeon the **(Appellant)**.

The **(Appellant)** is entitled to relief from all judgments, as well as, having all lands, personal property, rents, USDA payments, and profits immediately, completely and fully restored and all damages paid by the **(Respondents)** to the **(Appellant)**.

#### **PRAYER / RELIEF**

**(APPELLANT)** does pray to the Justices of the Idaho Supreme Court for the following relief:

- 1.) To immediately **REVERSE** and **VOID** all District Court orders, decisions, judgments, writs of executions, opinions and memorandums that granted any relief to the **(RESPONDENTS)** and/or their legal counsel(s) in these case(s);
- 2.) To **GRANT** to the **(APPELLANT)** immediate possession and clear title of ownership to all lands, buildings, irrigation equipment and crops;
- 3.) To **ORDER (RESPONDENTS)** to jointly and to immediately **RETURN** and **RESTORE** any and all real property and personal property **(RESPONDENTS)** and/or their family members/agents/employees/renters/sheriff department had removed and/or had taken

from and within the (APPELLANT'S) real property, including (APPELLANT'S) family members' personal property;

4.) To **ORDER** the (RESPONDENTS) to jointly and to immediately pay full and complete restitution to the (APPELLANT) for any and all damages incurred by the (APPELLANT) and the (APPELLANT)'s family;

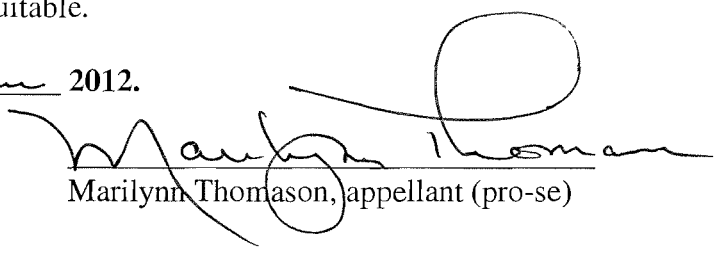
5.) To **REMAND** back to the District Court (APPELLANT)'s case (CV-2008-359) against (RESPONDENTS) for (APPELLANT) to immediately proceed against (RESPONDENTS) for any and all other damages, including punitive damages, arising from theft of crops, theft of personal property, theft of land and financial damages;

6.) To **GRANT** to (APPELLANT) all reasonable and allowed costs;

7.) To **DENY** (RESPONDENTS) and their legal counsel(s) any and all relief;

8.) To **GRANT TO** (APPELLANT) any and all other relief allowed under the rules and statutes of the Great State of Idaho, the United States of America and what relief the Idaho Supreme Justices seem fair, just and equitable.

Dated this 20<sup>th</sup> day of June 2012.

  
Marilynn Thomason, appellant (pro-se)

VII AFFIDAVIT

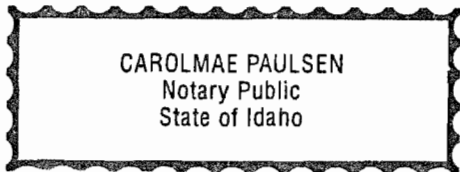
STATE OF IDAHO     )  
  )ss.  
County of Madison    )

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 **OPENING BRIEF** and **APPENDIX**, 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 20<sup>th</sup> day of June, 2012.

Marilyn Thomason  
Marilyn Thomason, pro-se, Appellant  
Carol Mae Paulsen  
Notary Public  
Residing at: Madison County  
Commission Expires: 8-7-14

(seal)





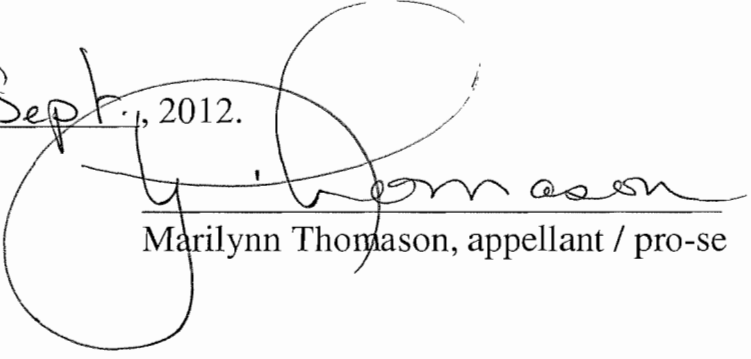
**IX. CERTIFICATE OF MAILING**

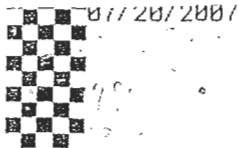
I, Marilyn Thomason, do certify a true and correct copy of  
**(APPELLANT)'S OPENING BRIEF and APPENDIX** has been served on the  
following parties / entities in the manner noted below on this 4th day of  
Sept., 2012:

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

U.S. First Class Pre-paid Mail

Dated this 3rd day of Sept., 2012.

  
Marilynn Thomason, appellant / pro-se



### AGREEMENT TO RECONVEY

This agreement is made and entered into this 20<sup>th</sup> day of July, 2007, by and between Marilyn L. Thomason, hereinafter referred to as "Thomason," and Terrence F. Bagley and John K. Bagley, hereinafter collectively referred to as "Bagley."

### RECITALS

1. Bagley has paid on behalf of Thomason certain debt owed by Thomason to third parties in the amount of ONE HUNDRED FORTY-ONE THOUSAND FIVE HUNDRED SIXTY-THREE AND 05/100 DOLLARS (~~\$141,563.05~~). *147,225.58* *Yehon 7-20-07*
2. In consideration of Bagley's payment of ~~\$141,563.05~~, *147,225.58* as described in Paragraph 1 of these Recitals, Thomason has conveyed to Bagley certain real property located in Madison County, State of Idaho, legally described as follows:

Tract 1: A parcel of land located in the Northwest 1/4 of Section 7, Township 5 North, Range 39 E.B.M., Madison County, Idaho, described as follows: Beginning at the Northwest corner of said Section 7 and running thence along the North Section Line South 89 degrees 29' 35" East 1373.07 feet; thence South 1 degree 40' 47" East 1361.13 feet; thence North 89 degrees 49' 41" West 1372.73 feet to the West Section of said Section 7; thence North 1 degree 40' 47" West 1369.17 feet to the point of beginning. Except County road. Less the following described property: Beginning at a point that is 920.50 feet North 89 degrees 29' 35" East of the Northwest corner of Section 7, Township 5 North, Range 39 E.B.M., Madison County, Idaho. Said point is a BLM brass cap and running thence South 1 degree 05' 00" East 361.50 feet; thence South 89 degrees 29' 35" East 361.50 feet; thence North 1 degree 05' 00" West 361.50 feet; North 89 degrees 29' 35" West 361.50 feet to the point of beginning.

Tract 2: A Parcel of Land located in the NW 1/4 of Section 7, Township 5 North, Range 39 E.B.M., Madison County, Idaho, described as follows: Beginning at a point on the North Section Line that is 1373.07 feet S. 89 degrees 29' 35" E. of the NW Corner of said Section 7 and running thence S. 1 degree 40' 47" E. 1361.13 feet; thence S. 89 degrees 49' 41" E. 1257.59 feet; thence N. 1 degree 5' 25" W. 1353.31 feet to the North Section Line; thence along said Section Line N. 89 degrees 29' 35" W. 1271.78 feet to the Point of Beginning. Except County Road.

3. The parties desire that Thomason be given the opportunity to repurchase from Bagley the land described in Paragraph 2 (the "Property") of these Recitals upon the terms and conditions herein.

Appendix 1

EX-12-14  
EX-C