

2-19-2008

Borah v. McCandless Clerk's Record v. 1 Dckt. 34756

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COPY

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

BRENDA BORAH,
PLAINTIFF-RESPONDENT,

vs.

DANA MCCANDLESS, d/b/a THE GREAT
SNAKE RIVER LOG HOME COMPANY,
DEFENDANT-APPELLANT.

*Appealed from the District Court of the Fourth Judicial
District of the State of Idaho, in and for ADA County*

Hon KATHRYN A. STICKLEN, District Judge

ROBIN D. DUNN

Attorney for Appellant

GERY W. EDSON

Attorney for Respondent

FILED - COPY

FEB 19 2008

Supreme Court _____ Court of Appeals _____
Entered on ATS by: _____

IN THE SUPREME COURT OF THE STATE OF IDAHO

BRENDA BORAH,

Plaintiff-Respondent,

vs.

DANA MCCANDLESS, d/b/a THE
GREAT SNAKE RIVER LOG HOME
COMPANY,

Defendant-Appellant.

Supreme Court Case No. 34756

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Fourth Judicial District, in and for the County of Ada.

HONORABLE KATHRYN A. STICKLEN

ROBIN D. DUNN

ATTORNEY FOR APPELLANT

RIGBY, IDAHO

GERY W. EDSON

ATTORNEY FOR RESPONDENT

BOISE, IDAHO

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REGISTER OF ACTIONS.....3

Brenda Borah vs. Dana Mccandless

Date	Code	User		Judge
8/31/2005	NEWC	CCDWONCP	New Case Filed	Kathryn A. Sticklen
		CCDWONCP	Civil Complaint, More Than \$1000, No Prior Appearance	Kathryn A. Sticklen
	SMFI	CCDWONCP	Summons Filed	Kathryn A. Sticklen
10/3/2005		CCDWONCP	Defendant's Answer To Plaintiff's Complaint (robin Dunn For Dana Mccandless Dba The	Kathryn A. Sticklen
	CONT	CCDWONCP	Great Snake Rive Log Home Company) No Prior	Kathryn A. Sticklen
	CONT	CCDWONCP	Appearance	Kathryn A. Sticklen
10/4/2005	AFOS	CCEARLJD	Affidavit Of Service 9.22.05	Kathryn A. Sticklen
11/17/2005	NOTS	CCSHAPML	Notice Of Service	Kathryn A. Sticklen
5/31/2006	NDIS	CCKENNJA	Notice Of Intent To Dismiss	Kathryn A. Sticklen
6/5/2006	MOTN	CCBLACJE	Motion for Order Deeming Plaintiff's Requests for Admisssions	Kathryn A. Sticklen
	AFSM	CCBLACJE	Affidavit In Support Of Motion	Kathryn A. Sticklen
6/9/2006	NOTC	CCEARLJD	Notice of Hearing on Motion for Order Deeming Requests (7.13.06@4:30pm)	Kathryn A. Sticklen
6/12/2006	OBJT	CCEARLJD	Objection to Motion for Order Deeming Plaintiffs Requests for Admission	Kathryn A. Sticklen
6/15/2006	AFFD	CCDWONCP	Affidavit of Gery W Edson in Response to Defendant's Objection to Motion for Order Deeming Plaintiff's Requests for Admissions Admitted	Kathryn A. Sticklen
7/12/2006	NOTS	MCBIEHKJ	Notice Of Service	Kathryn A. Sticklen
7/13/2006	HRHD	CCKENNJA	Hearing result for Motion held on 07/13/2006 04:30 PM: Hearing Held Motion for Order Deeming requests	Kathryn A. Sticklen
8/15/2006	DEOP	CCKENNJA	Memorandum Decision & Order	Kathryn A. Sticklen
8/16/2006	HRSC	CCKENNJA	Hearing Scheduled (Status 09/21/2006 03:00 PM) Phone wtih stipulation	Kathryn A. Sticklen
9/21/2006	HRHD	CCKENNJA	Hearing result for Status held on 09/21/2006 03:00 PM: Hearing Held Phone wtih stipulation	Kathryn A. Sticklen
9/26/2006	HRSC	CCKENNJA	Hearing Scheduled (Pretrial Conference 12/07/2006 04:30 PM) By phone court to initiate call	Kathryn A. Sticklen
	HRSC	CCKENNJA	Hearing Scheduled (Court Trial 12/21/2006 09:00 AM) 2 Days	Kathryn A. Sticklen
12/8/2006	HRHD	CCKENNJA	Hearing result for Pretrial Conference held on 12/07/2006 04:30 PM: Hearing Held By phone court to initiate call	Kathryn A. Sticklen
12/11/2006	CONT	CCKENNJA	Hearing result for Court Trial held on 12/21/2006 09:00 AM: Continued 2 Days	Kathryn A. Sticklen
	HRSC	CCKENNJA	Hearing Scheduled (Court Trial 03/15/2007 09:00 AM) 2 Days	Kathryn A. Sticklen
	HRSC	CCKENNJA	Hearing Scheduled (Pretrial Conference 03/01/2007 04:30 PM) Phone	Kathryn A. Sticklen

000003

Brenda Borah vs. Dana Mccandless

Date	Code	User		Judge
3/1/2007	MISC	CCNAVATA	Plaintiff's Witness & Exhibit List	Kathryn A. Sticklen
	MISC	CCNAVATA	Plaintiff's Proposed Findings of Fact & Conclusions of Law	Kathryn A. Sticklen
	HRHD	CCKENNJA	Hearing result for Pretrial Conference held on 03/01/2007 04:30 PM: Hearing Held Phone	Kathryn A. Sticklen
3/19/2007	HRHD	CCKENNJA	Hearing result for Court Trial held on 03/19/2007 09:00 AM: Hearing Held 2 Days	Kathryn A. Sticklen
4/10/2007	MISC	CCBLACJE	Plaintiff's Post-Trial Brief	Kathryn A. Sticklen
4/12/2007	MISC	CCTEELAL	Defendant's Post Trial Argument	Kathryn A. Sticklen
5/31/2007	FIND	CCKENNJA	Findings Of Fact, conclusions of law and order	Kathryn A. Sticklen
6/11/2007	MOTN	CCEARLJD	Motion to Reconsider Portions of Memorandum Decision and or Amend and Notice of Hearing (07.26.07@4pm)	Kathryn A. Sticklen
6/13/2007	MOTN	CCWRIGRM	Plaintiffs Motion for Reconsideration of Courts Findings of Fact	Kathryn A. Sticklen
	MEMC	CCWRIGRM	Memorandum Of Costs And Attorney Fees	Kathryn A. Sticklen
	RSPN	CCWRIGRM	Response to Defendants Motion for Reconsideration	Kathryn A. Sticklen
	AFFD	CCWRIGRM	Affidavit of Gery W Edson	Kathryn A. Sticklen
6/27/2007	RSPS	CCEARLJD	Response to Motion for Reconsideration	Kathryn A. Sticklen
	OBJT	CCEARLJD	Objection to Requests for Costs and Attorney Fees	Kathryn A. Sticklen
7/11/2007	CDIS	CCKENNJA	Civil Disposition entered for: Mccandless, Dana, Defendant; Borah, Brenda, Plaintiff. order date: 7/11/2007	Kathryn A. Sticklen
7/26/2007	HRHD	CCKENNJA	Hearing result for Motion held on 07/26/2007 04:00 PM: Hearing Held Motion to Reconsider Portions of Memorandum Decision	Kathryn A. Sticklen
8/31/2007	DEOP	CCKENNJA	Memorandum Decision & Order	Kathryn A. Sticklen
10/4/2007	AMJT	CCKENNJA	Amended Judgment	Kathryn A. Sticklen
11/8/2007	APSC	CCTHIEBJ	Appealed To The Supreme Court	Kathryn A. Sticklen

Gery W. Edson
GERY W. EDSON, P.A.
300 W. Myrtle, Second Floor
P. O. Box 448
Boise, ID 83701-0448
Telephone: (208) 345-8700
FAX: (208) 389-9449
ID Bar No. 2984

11/15
AUG 11 2005
[Handwritten signature]

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH)
)
 Plaintiff,)
)
 vs.)
)
 DANA McCANDLESS,)
 dba The Great Snake River Log Home Co.,)
)
 Defendant.)
 _____)

CV OC 0506462 *
Case No.
COMPLAINT

COMES NOW, the Plaintiff, for a cause of action against the above-named Defendant, and complains and alleges as follows:

COUNT ONE

I.

Plaintiff is a resident of Seattle, Washington.

II.

Defendant is a resident of Grangeville, Idaho, and conducts a business known as "The Great Snake River Log Home Company" under an assumed business name.

III.

That Plaintiff and Defendant negotiated the terms of an agreement by which Defendant was

[Handwritten mark]

to provide custom cut logs to be used by Plaintiff to construct a residence in the State of Idaho.

IV.

That on or about April 29, 2004, the parties entered into an agreement whereby Defendant was to provide logs for the construction of a 1,600 square foot home of approximately 34' x 24' in dimension. A copy of said contract is attached hereto marked as Exhibit "A".

V.

The salient provisions of the contract were for Plaintiff to pay Defendant \$27,100 for all of the logs required and Plaintiff did make payment to Defendant for 70% of the purchase price. In addition, Defendant was to have made delivery of all logs no later than August 31, 2004. A copy of the check payable to The Great Snake River Log Home Company in the amount of \$16,975.00 is attached hereto and marked as Exhibit "B".

VI.

The Defendant breached the agreement by failing to deliver the logs after having accepted payment from Plaintiff.

VII.

That many of the logs which were delivered by Defendant were unusable or were damaged from weather conditions as a result of late delivery and were not capable of being incorporated into the structure.

VIII.

That Plaintiff made demand upon Defendant by letter dated June 24, 2005 to complete delivery of the logs necessary to complete the contract. A copy of the demand letter is attached hereto marked as Exhibit "C".

IX.

That Defendant has failed and refused to complete the terms of the contract, albeit more

than one year late.

X.

That Plaintiff has suffered damages as a result of Defendant's failure to deliver the logs required pursuant to the contract. A list of logs necessary to complete the contract was forwarded to Defendant by letter dated July 21, 2005. A copy of said letter is attached hereto marked as Exhibit "D".

XI.

That Defendant has failed and refused to respond to any of the demands made by Plaintiff.

XII.

That Plaintiff has obtained a bid for replacement logs to complete the contract breached by Defendant at a cost of \$25,324.80.

XIII.

The Plaintiff has also suffered damages in that Plaintiff has incurred interest charges on a loan taken for the purpose of constructing the residence. Interest on the Plaintiff's loan for the past year totals \$1,920 plus loan extension fees of \$741.35 from Farmers and Merchants State Bank for a total of \$2,661.35.

XIV.

Plaintiff has also suffered damages in that the interest rate payable on the loan for the structure has increased from 6.625% to 7.63%, at an additional cost of \$7,038 over the term of the loan.

XV.

Notwithstanding the demand on the part of Plaintiff, Defendant has refused, failed and neglected either deliver the logs required under the original contract or to pay the cost for "cover" to replace the logs not delivered on schedule.

XVI.

Plaintiff has been required to retain counsel to pursue her rights under the agreement and as such is entitled to the recovery of her attorney fees pursuant to Idaho Code §§12-120 and 12-121. A reasonable attorney for the bringing and prosecution of this claim would be \$7,000 if judgment is taken by default or for such further and additional sums as is allowed by the Court upon the trial of this cause.

COUNT TWO

I.

Plaintiff incorporates paragraphs I – XVI of said Complaint as though fully set forth herein.

II.

That the agreement described herein as Exhibit “A” constitutes a “sale of goods” as described by the Uniform Commercial Code; Idaho Code 28-2-101 et seq; and Idaho Code 28-2-105(1); Idaho Code 28-2-107.

III.

That as a result of Defendant’s breach of the agreement by failing to deliver the goods in the form of logs to Plaintiff on time or at all, defendant breached the agreement with Plaintiff.

IV.

That Plaintiff rightfully rejected those logs delivered by Defendant which were otherwise defective or damaged pursuant to Idaho Code §28-2-602.

V.

That Plaintiff is entitled to “cover” pursuant to Idaho Code §28-2-712 to replace and complete those goods which were required to be delivered by Defendant pursuant to the contract.

VI.

That Plaintiff’s cost to obtain “cover” is in the amount of \$25,324.80 and is the fair and

reasonable value for such goods.

VII.

That Plaintiff has also suffered incidental damages and is entitled to her costs pursuant to Idaho Code §28-2-710. That Plaintiff's incidental damages include accrued and accruing interest on her loan, additional interest charges, delivery charges and attorney fees as more particularly set forth in Count I.

VIII.

That Plaintiff has established the market price for the non-delivered goods as evidenced by a bid obtained for replacement logs, a copy of which is attached hereto marked as Exhibit "E".

IX.

That Plaintiff's damages for non-delivery by Defendant are mandated by Idaho Code §28-2-713. Plaintiff has been required to pay for alternate delivery at a cost of \$1,431.

X.

Plaintiff has been required to retain counsel to pursue her rights under the agreement and as such is entitled to the recovery of her attorney fees pursuant to Idaho Code §§12-120 and 12-121. A reasonable attorney for the bringing and prosecution of this claim would be \$7,000 if judgment is taken by default.

WHEREFORE, Plaintiff prays for judgment against the above-named Defendant as follows:

1. For a money judgment against the Defendant in the amount of \$25,324.80 which represents "cover" to replace the goods identified under the contract;
2. For an award of Plaintiff's consequential and incidental damages including interest charges of \$1,920 plus loan extension fees of \$741.35 from Farmers and Merchants State Bank for a total of \$2,661.35;

3. For an award of Plaintiff's damages as a result of increased interest on the loan for her home in the amount of \$7,038;

4. For consequential damages for delivery of the replacement logs of \$1,431, for a total damage award of \$36,455.15;

5. For an award of Plaintiff's costs and disbursements incurred in this action;

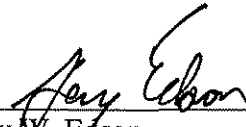
6. For an award of Plaintiff's attorney fees in the amount of \$7,000 in the event judgment is taken by default or for such additional and further amounts as to the Court seem just and equitable if this matter is contested; and

7. For such other and further relief as to this Court seems just and equitable in the premises.

Dated this 29th day of August, 2005.

GERY W. EDSON,

By



Gery W. Edson
Attorney for Plaintiff

VERIFICATION

STATE OF IDAHO)
) ss.
County of Ada)

Brenda Borah, being first duly sworn upon oath, deposes and states to the best of her knowledge:

That she is the Plaintiff in the above caption action and make this verification for and on behalf of herself, has read the foregoing Complaint, knows the contents thereof, and that the facts therein stated are true and correct to the best of her knowledge and belief.

Brenda L. Borah
Brenda Borah

SUBSCRIBED AND SWORN TO before me this 29th day of August, 2005.

Amy Eckman
Notary Public for the State of Idaho
Residing at Boise
My Commission expires: 1-12-06





NAME: Brenda Borah
 ADDRESS: 651 NW. 51st Street
 Seattle, WA. 98107
 PHONE: (206) 834-1231 WK
 789-4615 Am
 FAX:
 DATE: 4-29-04

DANA McCANDLESS
 OWNER

CONTRACT - LOG SHELL PROPOSAL #

The scope of work which the Contractor shall perform for the Customer shall be as follows:
 To provide log work only for a 1600 sq. ft. home. 34 x 24 wall height approximately 9' with 10" mean diameter logs using the full scribed, shrink-to-fit notch system. Contractor will provide all log walls, ridge, purlins, tie logs, posts, fasteners, any log work necessary for the completion of this house. Any variation from specified plan, by Customer, will require approval from Contractor and may result in an adjustment of the agreed payment of the Customer to the Contractor. *Attached Amendment.*

TOTAL GREAT SNAKE RIVER LOG HOME SHELL PRICE F.O.B. _____ *27,150.00 bill*
~~\$24,250.00~~

Customer will pay for shipping of logs from log yard to his property site. Customer will provide licensed crane for resetting of logs in Fairfield, Idaho.

Customer is also responsible for providing blueprints, engineering, insulation, spikes, staples, settling bolts, lumber, truss hardware, travel expense and accommodations for crew to reset house on your property site. *NA. Provided By Contractor DM.*

The following estimated costs for reassembly at your site are based upon average reset costs. Many variables can effect these costs, i.e. slope of ground, access road to site, local crane service prices, design complexity, local weather conditions.

GREAT SNAKE RIVER LOG HOMES will not be held liable for any cost overruns on any reset estimates.

ESTIMATED SHIPPING (cost) \$ _____

ESTIMATED CRANE FOR RESETTING (owner) \$ _____

A. PAYMENTS

The Customer agrees to pay to the Contractor the sum of:

27,100.00 *blb*
~~\$24,250.00~~

Twenty four thousand two hundred fifty dollars and 00/100.

Payment schedule as follows:

- 1. Initial Deposit and Original Log Purchase (70%) \$ 16,975.00.
- 2. 1 Payment of ^{10,125.00}~~\$7,275.00~~ Due upon delivery.

First payment will be paid in full before logs are allowed to be shipped to Customer's property. Log shell is sold F.O.B. Grangeville, Idaho.

Payments for drafting, engineering and any resetting materials provided, are to be made as the work of each of these items is completed and when billed to Customer by Contractor. Customer is responsible for payment directly to the shipper and crane service.

B. NOTES

Initial _____ Date _____

C. EXECUTION OF WORK:

All work shall be completed within _____ working days of actual commencement of construction, barring extreme weather conditions, and/or unusual extenuating circumstances, and shall be completed according to the approved plans and specifications.

D. HEIRS, SUCCESSORS OR ASSIGNS:

All the provisions of this contract shall also be binding upon the heirs, successors or assigns of either or both Contractor and Customer.

E. INSURANCE

While under construction at the log yard, all log work is fully covered by liability, fire, vandalism and theft insurance. Upon shipment, carrier must provide proof of cargo insurance. Upon delivery, insurance becomes the Customer's responsibility. We recommend consulting with your insurance agent.

F. LAW TO GOVERN

This agreement shall be governed by the Law in effect in the State of Idaho.

G. ARBITRATION

All claims or disputes between the parties shall be decided by arbitration in accordance with the Construction Industry Arbitration Rules of the American Arbitration Association currently in effect unless the parties mutually agree otherwise. The award rendered by the arbitrator shall be final, and judgement may be entered upon it in accordance with applicable law in any court of competent jurisdiction. In the event of arbitration or suit, the prevailing party shall be entitled to recover its costs of arbitration or suit including, but not limited to, reasonable attorney fees.

Upon signing this document, it becomes legal and binding to both parties.

Please initial and date pages 1 through 3, sign and have signature notarized on page 3 and return the original to GREAT SNAKE RIVER LOG HOMES.

In witness whereof the parties hereto have executed this agreement under seal, the day and year above written.

Subscribed and sworn to before me this day 12th day of August, 2004.

[Signature]
Notary Public

[Signature]
Customer

Residing at: _____
My Commission Expires: Aug 13, 2005

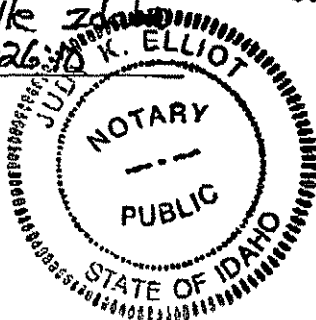
Customer

Subscribed and sworn to before me this day 22nd day of September, 2004.

[Signature]
Notary Public

[Signature]
Contractor

Residing at: Grangeville Idaho
My Commission Expires: 3-26-10



Contract Amendment:

To provide log work only for a 1600 sq. ft. home with a 34" x 24" wall height approximately 9' and approximate 45" wall in the loft with 10 : mean diameter logs using the full scribed, shrink-to-fit notch system. Contractor will provide all log walls (17 rounds), 34' length 16" or larger Ridge Beam, 2 ' 34' length 16" or larger Purlins (one on each side of the Main Ridge Beam), ½ logs for gable ends from the wall end to the ridge beam, tie logs, 14" or larger posts, fasteners (this includes spike system/Oly bolts and settling bolts), any log work necessary for the completion of this house. Snow load requirement of 125#. The loft (Second floor) joist include 24' length logs with approximately 3' 4-3/4" on center distance between. Any variation from specified plan, by customer, will require approval from Contractor and may result in an adjustment of the agreed payment of the customer to the Contractor.

Both parties need to approved any changes in writing.

Delivery Date: August 2004.



FARMERS & MERCHANTS
TELEBRANK (208) 658-0913 STATE BANK

101885

92-151/1241

REMITTER

SPENCER BUSH

DATE

Pay to the order of

CASH ON HAND

\$15,975.00

REGISTRATION NUMBER: 101885

DOLLARS

THIS DOCUMENT HAS A MICRO-PRINT SIGNATURE LINE, A HOLOGRAPHIC FOIL STRIP, AND CHLOROSTAIN PAPER; ABSENCE OF THESE FEATURES WILL INDICATE A COPY

CASHIER'S CHECK

Michelle Adams

⑈101885⑈ ⑈124101513⑈ ⑈5300536301⑈

000016
Exhibit B

LAW OFFICE OF

GERY W. EDSON, P.A.

A Professional Corporation

713 W. Franklin Street

Post Office Box 448

Boise, ID 83701-0448

Telephone (208) 345-8700

Facsimile (208) 389-9449

Email gedson@gedson.com

Licensed in Idaho (No. 2984)
and Utah (No. 5891)

July 21, 2005

Dana McCandless
The Great Snake River Log Home Company
P.O. Box 746
Grangeville, ID 83530

Re: Brenda Borah
Contract Dated April 29, 2004


Dear Mr. McCandless,

I have previously written to you advising of defaults in your contract with Brenda Borah. The deadline for responding to that letter was July 1st and has expired.

In a final effort to attempt and resolve this matter short of litigation, I am providing a list of the logs necessary to complete the contract. If I have no affirmative indication that you intend to fulfill your obligations under the contract and deliver the logs identified, I will not hesitate further to file suit against you. As I indicated in my initial correspondence, suit against you would result in personal liability as you have no entity protection. If I have no response to this letter in five (5) days, I will proceed with the suit accordingly. May I hear from you before then? or if not, proceed at your peril.

Very truly yours,

GERY W. EDSON, P.A.



Gery W. Edson

GWE/aw
cc: Brenda Borah

000017

Exhibit C

**Brenda Borah
Cabin Project**

List of Required Logs to complete the project.

Qty	Diameter	Length	Cope	Notch	Notch from End	
8	10"	20' 11"	Yes	1 Full, 1/2 Notch	1 Foot	
4	10"	23' 11"	Yes	1 Full, 1/2 Notch	4 Feet	
2	10"	21' 5"	Yes	1 Full, 1/2 Notch	2' 6"	
2	10"	20' 11"	Yes	Multiple Notch	1 Foot	(This log will go over the loft Joists.)
6	10"	15' 11"	Yes	1 Full, 1/2 Notch	1 Foot	
4	10"	18' 11"	Yes	1 Full, 1/2 Notch	4 Feet	
2	10"	17' 5"	Yes	1 Full, 1/2 Notch	2' 6"	
2	10"	15' 11"	Yes	Multiple Notch	1 Foot	(This log will go over the loft Joists.)
1	10"	36' 10"	No	2 Full	1 Foot	Joist Beam
12	10"	26' 10"	Yes	2 Full	1 Foot	
8	10"	26' 10"	No	3 Full	1 Foot	Loft Joists
3	10"	26' 10"	Yes	3 Full	1 Foot	Loft Joists Pylaster and wall
3	16"	23' 11"	No	None	None	Ridge Beam/Purlins
3	16"	18' 11"	No	None	None	Ridge Beam/Purlins

Posts:

2	12" +	12'	No	Top Notched
2	12" +	10'	No	Top Notched
2	12" +	11'	No	Top Notched
2	12" +	7'	No	Top Notched

The following list of logs will be cut in half for the gable end above the wall: (1/2 logs)
(Cut in half from top to middle of cope.)

1	10"	26'	Yes	No	N/A
1	10"	24'	Yes	No	N/A
1	10"	22'	Yes	No	N/A
1	10"	20'	Yes	No	N/A
1	10"	18'	Yes	No	N/A
1	10"	16'	Yes	No	N/A
1	10"	14'	Yes	No	N/A
1	10"	12'	Yes	No	N/A
1	10"	10'	Yes	No	N/A
1	10"	8'	Yes	No	N/A
1	10"	6'	Yes	No	N/A
1	10"	4'	Yes	No	N/A
1	10"	2'	Yes	No	N/A

Provide leveling bolts for the main floor purlin posts.

000018

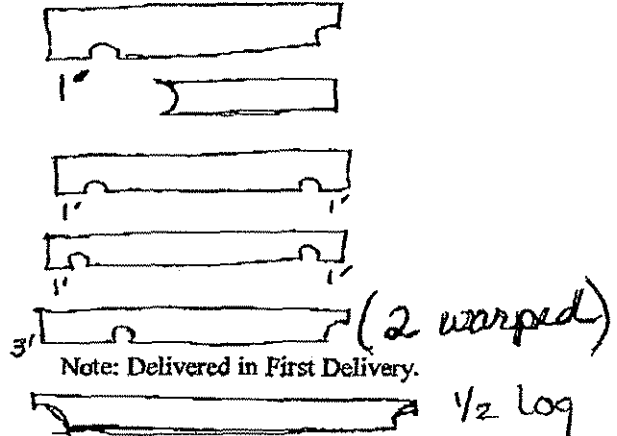
Exhibit A

**BORAH'S BEAR DEN
ROYAL ELK VALLEY SUBDIVISION BLK 1 LOT 11**

List of Logs on Site:

10" logs

Qty	Length	Notch	Cope	End to Full Notch
4	15' 11"	1/2 Notch, 1 Full Notch	Yes	1 foot
4	10' 11"	Posts	No	N/A
1	14' 10"	2 Full Notch	No	1 foot
1	20' 11"	2 Full Notch	Yes	1 foot
3	17' 11"	1/2 Notch, 1 Full Notch	Yes	3 feet
2	26' 10"	Half log for Gable ends	Yes	Last Log

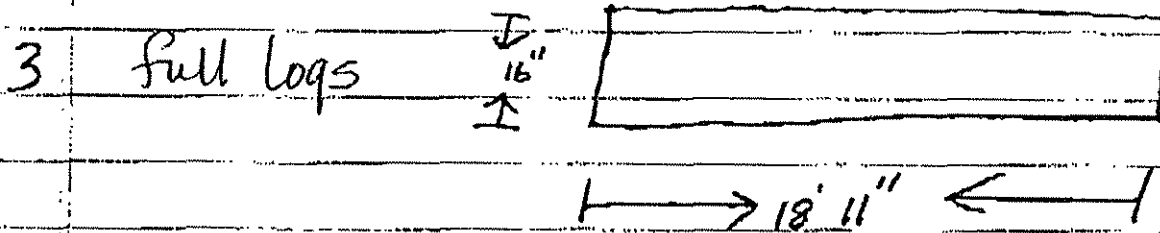
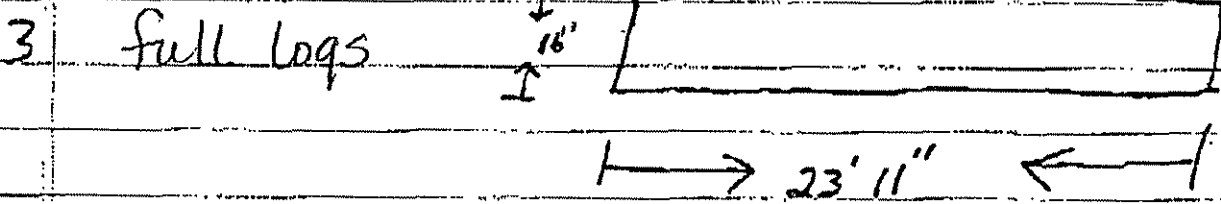


Unknown logs:

1	13' 5"	No Notch	Yes
1	14'	No Notch	Yes
1	14' 7"	No Notch	Yes
1	14' 5"	No Notch	Yes
1	14' 6"	No Notch	Yes
1	14' 2-1/2"	No Notch	Yes
1	16' 5"	1/2 Notch	Yes
1	14' 4"	Straight Log (Post)	No



Ridge Beam + Purlins



logs Required for 1/2 log Gable Ends

- 1- 26' with cope
- 1- 24' "
- 1- 22' "
- 1- 20' "
- 1- 18' "
- 1- 16' "
- 1- 14' "
- 1- 12' "
- 1- 10' "
- 1- 8' "
- 1- 6' "
- 1- 4' "
- 1- 2' "

Front Room + Kitchen

8 w/cope

20' 11"



4 w/cope

23' 11"



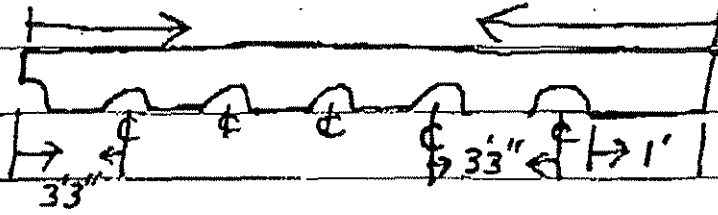
2 w/cope

21' 5"



2' 6"

2 w/cope



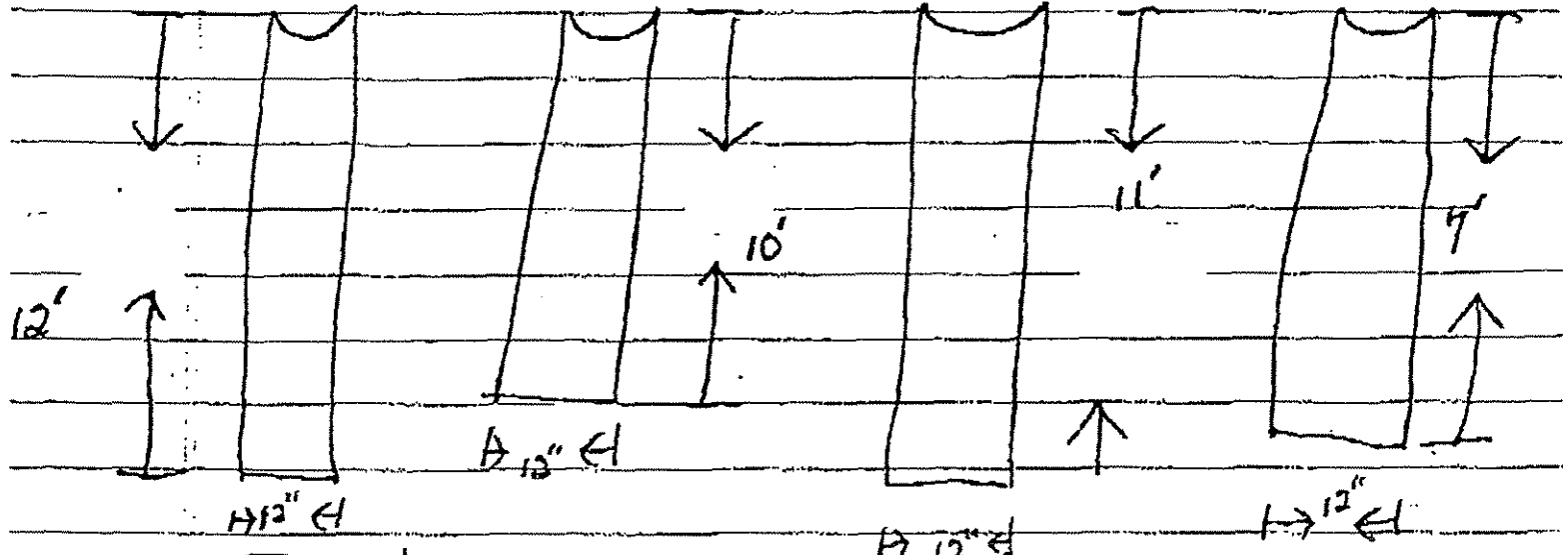
Posts

(2)

(2)

(2)

(2)



Full logs

Bedrooms

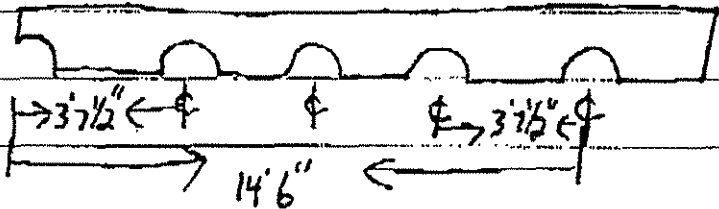
6 w/cope

15' 11"



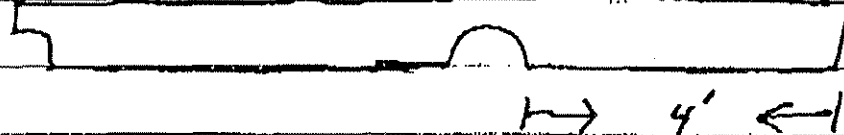
2 (over loft Joist) w/cope

15' 11"



4 w/cope

18' 11"



2 w/cope

17' 5"



1 no Cope 36' 10" Joist Beam

36' 10"



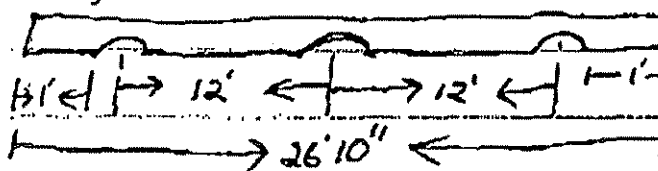
12 26' 10" Cope

26' 10"



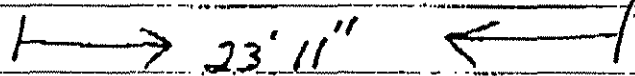
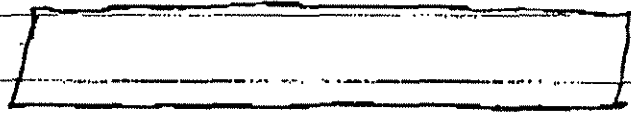
8 - no Cope (Floor Joist)

3 - Cope (two ends and one pylaster)

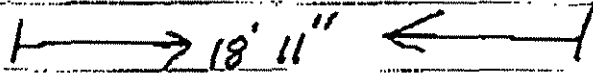
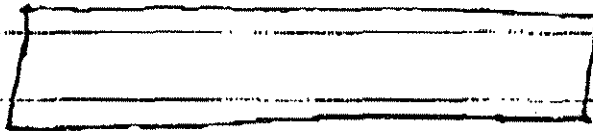
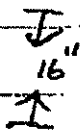


Ridge Beam + Purlins

3 full logs



3 full logs



logs Required for 1/2 log Gable Ends

1- 26' with cope

1- 24' "

1- 22' "

1- 20' "

1- 18' "

1- 16' "

1- 14' "

1- 12' "

1- 10' "

1- 8' "

1- 6' "

1- 4' "

1- 2' "

Western Spirit Log Homes, Inc.

P.O. Box 1199
Corvallis, MT 59828-1199

Invoice

DATE	INVOICE #
8/3/2005	473

BILL TO
Brenda Borah 651 NW 51st Street Seattle, WA 98107

P.O. NO.	TERMS	JOB NUMBER
	50% down w/progr...	

ITEM	QUANTITY	DESCRIPTION	RATE	AMOUNT
Logs	80	This invoice is for dry, dead-standing Lodgepole Pine/ Englemann Spruce mix, lathed and precut and notched as per list received on 7-25-05. Price includes peeling. 12" diameter posts w/ end notch -- 2@7ft, 2@10ft, 2@11ft, 2@12ft	14.25	1,140.00
Logs	72	16" diameter purlins 3@24ft	29.10	2,095.20
Logs	57	16" diameter purlins 3@19ft	24.10	1,373.70
Logs		10" diameter misc, precut/notched lengths as follows:		
Logs	246	10" diameter -- 2@16ft, 2@18ft, 4@19ft, 6@17ft	11.15	2,742.90
Logs	350	10" diameter -- 10@21ft, 2@22ft, 4@24ft	14.65	5,127.50
Logs	621	10" diameter -- 23@27ft	16.65	10,339.65
Logs	37	10" diameter -- 1@37ft	22.65	838.05
Log Siding	90	10" diameter half logs -- misc lengths	7.90	711.00
Log Siding	92	10" diameter half logs -- 1@20ft, 1@22ft, 1@24ft, 1@26ft	10.40	956.80
		F.O.B. Corvallis, Mt (Hamilton area)		
		Payment terms are 50% at contract, 25% at start of job and balance before delivery/pick-up of logs		
It's a pleasure having you as our customer!			Total	\$25,324.80

A service charge of 1.5% per month which is an ANNUAL PERCENTAGE RATE of 18% applicable to all past due accounts.

Phone #	Fax #	E-mail	Web Site
406-961-3299	406-961-4760	christina@westernspiritloghomesinc.com	www.westernspiritlog

Exhibit 000024 E

**Branda Borah
Cabin Project**

List of Required Logs to complete the project.

Qty	Diameter	Length	Cope	Notch	Notch from End	
8	10"	20' 11"	Yes	1 Full, 1/2 Notch	1 Foot	
4	10"	23' 11"	Yes	1 Full, 1/2 Notch	4 Feet	
2	10"	21' 5"	Yes	1 Full, 1/2 Notch	2' 8"	
2	10"	20' 11"	Yes	Multiple Notch	1 Foot	(This log will go over the loft Joists.)
6	10"	18' 11"	Yes	1 Full, 1/2 Notch	1 Foot	
4	10"	18' 11"	Yes	1 Full, 1/2 Notch	4 Feet	
2	10"	17' 5"	Yes	1 Full, 1/2 Notch	2' 8"	
2	10"	18' 11"	Yes	Multiple Notch	1 Foot	(This log will go over the loft Joists.)
1	10"	36' 10"	No	2 Full	1 Foot	Joist Beam
12	10"	28' 10"	Yes	2 Full	1 Foot	
8	10"	26' 10"	No	3 Full	1 Foot	Loft Joists
3	10"	28' 10"	Yes	3 Full	1 Foot	Loft Joists Plaster and wall
3	18"	23' 11"	No	None	None	Ridge Beam/Purlins
3	18"	18' 11"	No	None	None	Ridge Beam/Purlins

Posts:

2	12" +	12'	No	Top Notched
2	12" +	10'	No	Top Notched
2	12" +	11'	No	Top Notched
2	12" +	7'	No	Top Notched

The following list of logs will be cut in half for the gable end above the wall: (1/2 logs)
(Cut in half from top to middle of cope.)

1	10"	26'	Yes	No	N/A
1	10"	24'	Yes	No	N/A
1	10"	22'	Yes	No	N/A
1	10"	20'	Yes	No	N/A
1	10"	18'	Yes	No	N/A
1	10"	16'	Yes	No	N/A
1	10"	14'	Yes	No	N/A
1	10"	12'	Yes	No	N/A
1	10"	10'	Yes	No	N/A
1	10"	8'	Yes	No	N/A
1	10"	6'	Yes	No	N/A
1	10"	4'	Yes	No	N/A
1	10"	2'	Yes	No	N/A

Provide leveling bolts for the main floor purlin posts.

RECEIVED

OCT 03 2005

DUNN & CLARK, P.A.
Robin Dunn, Esq., Ada County Clerk
Stephen J. Clark, Esq., ISB #2961
Penny North Shaul, Esq., ISB #4993
P.O. Box 277
240 South 5th West
Rigby, ID 83442
(208) 745-9202 (t)
(208) 745-8160 (f)

[Handwritten signature]
OCT 03 2005
J. DANIEL AMARFEO, Clerk
[Handwritten signature]

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,)
)
 Plaintiff,)
)
 vs.)
)
 DANA McCANDLESS, d/b/a)
 THE GREAT SNAKE RIVER)
 LOG HOME COMPANY,)
)
 Defendant.)
 _____)

ll
Case No. CV-05-6462

DEFENDANT'S ANSWER
TO PLAINTIFF'S COMPLAINT

Category: I.1.a.
Filing Fee: \$52.00

COMES NOW, Defendant, Dana McCandless d/b/a The Great Snake River Log Home Company, and answers that Complaint on file herein, by through the undersigned attorney of record, Robin D. Dunn, as follows:

I

Venue is improper in Ada County and should be moved to the county of the defendant's residence namely Idaho County.

II

The Complaint on file herein fails to state a cause of action for which relief may be granted to pursuant to IRCP, Rule 12(b)(6).

III

The defendant denies each and every allegation of the Complaint on file herein unless specifically admitted hereafter.

IV

In answer to the specific allegations of the Complaint on file herein, the defense enters as follows:

COUNT ONE

I.

Admit.

II.

Admit.

III.

Admit.

IV.

Deny contract was entered into on April 29, 2004. The contract was signed by McCandless on September 22, 2004 after receipt from plaintiff.

V.

Admit, that the monetary amounts contained therein are correct and deny the balance. The delivery date could not be August 31, 2004 as the contract was not completed until September 22, 2004. No delivery date existed.

VI.

Deny.

VII.

Deny.

VIII.

Admit, that a demand letter was sent to the defendant.

IX.

Deny.

X.

Admit, that a list was sent to the defendant, but deny the balance thereof.

XI.

Deny.

XII.

Neither admit nor deny as this answering defendant is without information.

XIII.

Deny.

XIV.

Deny.

XV.

Deny.

XVI.

It is apparent the plaintiff has hired counsel, but deny the additional provisions thereof.

COUNT TWO

I.

Defendant re-alleges those answers set forth previously.

II.

Neither admit nor deny as the same asks for a legal conclusion.

III.

Deny.

IV.

Deny. Plaintiff left the logs uncovered for over one year.

V.

Deny.

VI.

Deny.

VII.

Deny.

VIII.

Admit, that the plaintiff attached an Exhibit E, but deny that it is relevant.

IX.

Deny.

X.

Admit, that the plaintiff has retained counsel, but deny the balance thereof.

FIRST AFFIRMATIVE DEFENSE

One half of the logs were placed in the care of the plaintiff. The balance to fulfill the balance was beyond the control of the plaintiff and consequences thereof. As such, the defendant attempted alternate means of delivery which were unacceptable to plaintiff.

SECOND AFFIRMATIVE DEFENSE

Plaintiff is legally estopped from asserting damages herein.

THIRD AFFIRMATIVE DEFENSE

Defendant is ready, willing and able to completely comply with the contract herein as agreed between the parties. Delivery of the second one-half of logs can be accomplished but the plaintiff refuses. No final delivery date was set.

FOURTH AFFIRMATIVE DEFENSE

Defendant needs to conduct discovery to allege further affirmative defenses and specifically reserves the right to amend this answer for the further and necessary affirmative defenses based upon discovery.


FIFTH AFFIRMATIVE DEFENSE

Defendant has been forced to respond to the allegations contained in the Complaint and has hired the undersigned attorney and law firm to represent his interests herein. As such, the defendant requests reasonable attorney fees pursuant to statute, rule and law developed in the State of Idaho.

WHEREFORE, the defendant having fully answered the Complaint on file herein prays for relief as follows:

1. That the Complaint on file be dismissed and the plaintiff take nothing thereby;
2. For a reasonable award of attorney fees to the defendant; and
3. For all further and just relief as is proper.

DATED this 29th day of September, 2005.



 Robin D. Dunn, Esq.
 DUNN & CLARK

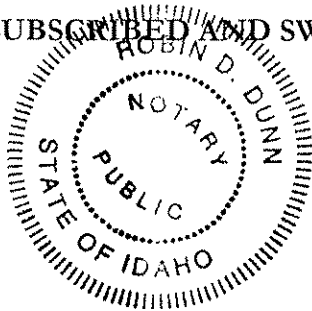
STATE OF IDAHO)
 ss.
 COUNTY OF JEFFERSON)


Dana McCandless, being duly sworn upon oath, states that he has read the foregoing answer and verily believes the contents to be true and accurate except as to those matters on information and belief. As to those matters, he believes the answers to be correct.

Dated this 29th day of September, 2005.


Dana McCandless

SUBSCRIBED AND SWORN to before me this 29th day of September, 2005.





Notary Public for Idaho
Residing at Rigby, Idaho
Commission: 10/01/10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 29th day of September, 2005, a true and correct copy of the foregoing was delivered to the following person(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission


Robin D. Dunn, Esq.
DUNN & CLARK

Gery W. Edson, Esq.
P.O. Box 448
Boise, ID 83701-0448

Session: STICKLEN071306
Session Date: 2006/07/13
Judge: Sticklen, Kathryn A.
Reporter: Anderson, Leslie

Division: DC
Session Time: 08:03

Courtroom: CR501

Clerk(s):
Kennedy, Jennifer

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case Number: CVOC0506462
Plaintiff: BORAH, BRENDAN
Plaintiff Attorney: Edson, Gary
Defendant: MCCANDLESS, DANA
Co-Defendant(s):
Pers. Attorney: Crane, Tracy
State Attorney:
Public Defender:

2006/07/13

16:32:36 - Operator
Recording:
16:32:36 - New case
MCCANDLESS, DANA
16:33:12 - Judge: Sticklen, Kathryn A.
Case called. Id's counsel.
16:33:24 - Judge: Sticklen, Kathryn A.
Reviewed material.
16:33:48 - Plaintiff Attorney: Edson, Gary
Argues motion to the court
16:41:25 - Pers. Attorney: Crane, Tracy
Court inquires; Gary Edson addresses the court.
16:47:18 - Pers. Attorney: Crane, Tracy
Repsonds in opposition
16:50:45 - Judge: Sticklen, Kathryn A.

Inquires further.

16:50:50 - Pers. Attorney: Crane, Tracy
Responds further and elaborates.

16:54:27 - Judge: Sticklen, Kathryn A.
Comments further

16:54:34 - Pers. Attorney: Crane, Tracy
Continues to argue in oppsotion & to request for fees

16:56:13 - Pers. Attorney: Crane, Tracy
Request 10 days to re answer.

16:56:51 - Plaintiff Attorney: Edson, Gary
Final argument. Court comments.

17:00:05 - Judge: Sticklen, Kathryn A.
Takes under advisment.

17:02:17 - Operator
Stop recording:

AUG 15 2006

J. DAVID MATTHEWS, Clerk
EV. *[Signature]*
DEPUTY

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,

Plaintiff,

vs.

DANA McCANDLESS,
dba The Great Snake River Log Home Co.,

Defendant.

Case No. CV-OC-0506462

MEMORANDUM DECISION
AND ORDER

The Plaintiff Borah's Motion for Order to Deem Plaintiff's Requests for Admissions Admitted, came before this Court for hearing on the 13th day of July, 2006. At this hearing the Court denied Plaintiff Borah's motion and took under advisement whether Borah was entitled to an award of attorney fees. For the reasons that follow, Plaintiff Borah's request shall be denied.

During oral arguments for this matter and in Plaintiff's Affidavit in Support of Motion for Order Deeming Requests for Admissions Admitted, Plaintiff's counsel argued that Borah was entitled to an award of attorney fees for bringing this motion pursuant to I.R.C.P. 37 (a)(4). There is no language in I.R.C.P. 37 (a)(4) indicating that a party is entitled to an award of attorney fees for the opposing party's failure to respond to requests for admission. Rather, pursuant to I.R.C.P 37 (c), a party is entitled to attorney fees only:

[Handwritten mark]


1 if a party fails to admit the genuineness of any document or the truth of any matter
2 as requested under Rule 36, and if the party requesting the admissions thereafter
3 proves the genuineness of the document or the truth of the matter, the requesting
4 party may apply to the court for an order requiring the other party to pay reasonable
5 expenses incurred in making that proof, including reasonable attorney's fees.

6 Further, there is no need to file a motion to deem requests for admission admitted; Rule 36
7 itself states that the matters requested are deemed admitted if no timely denial is made.

8 Based on the foregoing, Plaintiff Borah's request for attorney fees is denied.

9 IT IS SO ORDERED.

10 Dated this 14th day of August 2006.

11 
12 Kathryn A. Sticklen
13 District Judge
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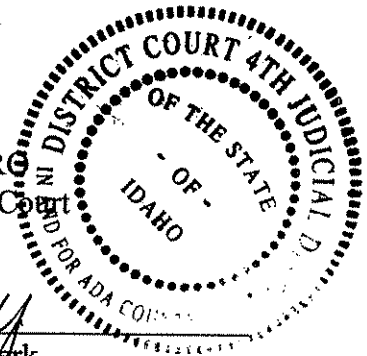
CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record in this cause in envelopes addressed as follows:

GERY W EDSON
GERY W EDSON PA
300 W MYRTLE, SECOND FLOOR
POST OFFICE BOX 448
BOISE IDAHO 83701-0448

DUNN & CLARK PA
ROBIN D DUNN
STEPHEN J CLARK
PENNY NORTH SHAUL
POST OFFICE BOX 277
240 SOUTH 5TH WEST
RIGBY IDAHO 83442

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho



Date: 8-15-06

By J. Kennedy
Deputy Clerk

Session: STICKLEN031907
Session Date: 2007/03/19
Judge: Sticklen, Kathryn A.
Reporter: Anderson, Leslie

Division: DC
Session Time: 08:51

Courtroom: CR502

Clerk(s):
Kennedy, Jennifer

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: CVOC0506462
Plaintiff: BORAH, BRENDA
Plaintiff Attorney: Edson, Gary
Defendant: MCCANDLESS, DANA
Co-Defendant(s):
Pers. Attorney: Dunn, Robin
State Attorney:
Public Defender:

2007/03/19

09:01:42 - Operator
Recording:
09:01:42 - New case
MCCANDLESS, DANA
09:02:08 - Judge: Sticklen, Kathryn A.
Case called. Id's counsel present.
09:02:21 - Plaintiff Attorney: Edson, Gary
Begins with opening statement.
09:06:56 - Pers. Attorney: Dunn, Robin
Reserves opening statement, request witness excluded.
09:07:13 - Plaintiff Attorney: Edson, Gary
Responds and comments.
09:07:57 - Plaintiff Attorney: Edson, Gary
Addresses exhibits
09:08:26 - Pers. Attorney: Dunn, Robin

No objection to admission and comments further re: damage.
09:09:02 - Plaintiff Attorney: Edson, Gary
Plaintiffs exhibit list 29 & 30 summary exhibits.
09:09:19 - Pers. Attorney: Dunn, Robin
Adds 23-30 are damages exhibits.
09:09:33 - Judge: Sticklen, Kathryn A.
Clarifies, counsel comment further.
09:10:56 - Judge: Sticklen, Kathryn A.
Plaintiff's Admits exhibits
09:11:46 - Plaintiff Attorney: Edson, Gary
Calls, Brenda Borah sworn Direct examination of witness.
10:15:11 - Pers. Attorney: Dunn, Robin
Objection, Court sustained.
10:15:19 - Plaintiff Attorney: Edson, Gary
Continues Direct examination of witness.
10:19:05 - Pers. Attorney: Dunn, Robin
Objection, court comments.
10:19:12 - Plaintiff Attorney: Edson, Gary
Continues Direct examination of witness.
10:19:18 - Pers. Attorney: Dunn, Robin
Objection non responsive.
10:19:32 - Plaintiff Attorney: Edson, Gary
Continues Direct examination of witness.
10:21:03 - Pers. Attorney: Dunn, Robin
Question in aid of objection
10:21:56 - Plaintiff Attorney: Edson, Gary
Continues Direct examination of witness. Court comments
10:25:46 - Pers. Attorney: Dunn, Robin
Objection to "on time"
10:25:51 - Plaintiff Attorney: Edson, Gary
Continues Direct examination of witness.
10:33:06 - General:
Comments re: Home depot receipts.
10:34:44 - Pers. Attorney: Dunn, Robin
Request to reserve cross while in direct examination.
10:35:00 - Judge: Sticklen, Kathryn A.
Takes a break.
10:35:13 - Operator
Stop recording: (On Recess)
10:53:29 - Operator
Recording:
10:53:29 - Record
MCCANDLESS, DANA
10:53:36 - Judge: Sticklen, Kathryn A.
Resumes
10:53:40 - Plaintiff Attorney: Edson, Gary
Calls Clifford Borah sworn Direct examination of witness.
11:02:30 - Pers. Attorney: Dunn, Robin

000038

Cross-examination of the witness.
11:09:35 - Plaintiff Attorney: Edson, Gary
Redirect examination.
11:11:52 - Pers. Attorney: Dunn, Robin
Intends to call this witness in case in cheif.
11:12:00 - Pers. Attorney: Dunn, Robin
Direct examination of witness (Clifford Borah).
11:12:53 - Plaintiff Attorney: Edson, Gary
Cross-examination of the witness.
11:13:14 - Judge: Sticklen, Kathryn A.
Witness excused.
11:13:20 - Plaintiff Attorney: Edson, Gary
Other witnesses may be rebuttal, satisfied to rest.
11:14:07 - Pers. Attorney: Dunn, Robin
Beings opening statement.
11:18:25 - Pers. Attorney: Dunn, Robin
Calls Mr. McCandless sworn Direct examination of witness.
11:22:37 - Plaintiff Attorney: Edson, Gary
Objection, counsel comment.
11:22:47 - Pers. Attorney: Dunn, Robin
Continues Direct examination of witness.
11:58:44 - Plaintiff Attorney: Edson, Gary
Objection calls for speculation; court sustains.
11:58:55 - Pers. Attorney: Dunn, Robin
Continues Direct examination of witness.
11:59:38 - Judge: Sticklen, Kathryn A.
Take the break at noon.
11:59:50 - Operator
Stop recording: (On Recess)
13:15:32 - Operator
Recording:
13:15:32 - Record
MCCANDLESS, DANA
13:15:41 - Judge: Sticklen, Kathryn A.
Resumes
13:15:51 - Judge: Sticklen, Kathryn A.
Inquires re: time schedule for today.
13:16:15 - Judge: Sticklen, Kathryn A.
Mr. McCandless retakes the stand.
13:16:35 - Pers. Attorney: Dunn, Robin
Continues Direct examination of witness.
13:50:15 - Plaintiff Attorney: Edson, Gary
Objects, court sustains.
13:50:20 - Pers. Attorney: Dunn, Robin
Continues Direct examination of witness.
14:06:20 - Plaintiff Attorney: Edson, Gary
Cross-examination of the witness.
14:22:12 - Pers. Attorney: Dunn, Robin

Objects re: mainling or serving it
14:22:24 - Plaintiff Attorney: Edson, Gary
Coninues Cross-examination of the witness.
14:42:23 - Judge: Sticklen, Kathryn A.
Inquires to stopping place.
14:42:31 - Judge: Sticklen, Kathryn A.
Return tomorrow @ 9 am.
14:43:52 - Operator
Stop recording:

Session: STICKLEN032007
Session Date: 2007/03/20
Judge: Sticklen, Kathryn A.
Reporter: Anderson, Leslie

Division: DC
Session Time: 08:35

Courtroom: CR502

Clerk(s):
Kennedy, Jennifer

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0001

Case Number: CVOC0506462
Plaintiff: BORAH, BRENDA
Plaintiff Attorney: Edson, Gary
Defendant: MCCANDLESS, DANA
Co-Defendant(s):
Pers. Attorney: Dunn, Robin
State Attorney:
Public Defender:

2007/03/20

08:59:52 - Operator

Recording:

08:59:52 - New case

MCCANDLESS, DANA

09:00:20 - Judge: Sticklen, Kathryn A.

Court Trial day 2

09:00:27 - Judge: Sticklen, Kathryn A.

Mr. McCandless retakes the stand still under oath

09:00:41 - Plaintiff Attorney: Edson, Gary

Cross-examination of the witness.

09:02:46 - Pers. Attorney: Dunn, Robin

Objection and elaborates.

09:03:02 - Plaintiff Attorney: Edson, Gary

Responds; Court comments.

09:03:56 - Plaintiff Attorney: Edson, Gary

Continues Cross-examination of the witness.
09:16:07 - Pers. Attorney: Dunn, Robin
Objection and elaborates.
09:16:10 - Plaintiff Attorney: Edson, Gary
Responds, court comments.
09:16:24 - Plaintiff Attorney: Edson, Gary
Continues Cross-examination of the witness.
09:34:04 - Pers. Attorney: Dunn, Robin
Redirect examination.
09:44:23 - Plaintiff Attorney: Edson, Gary
Objection, foundation
09:44:53 - Pers. Attorney: Dunn, Robin
Re asks question.
09:45:04 - Pers. Attorney: Dunn, Robin
Starts over and continues Redirect examination.
10:01:36 - Judge: Sticklen, Kathryn A.
Comments re: re-cross.
10:02:02 - Judge: Sticklen, Kathryn A.
Witness steps down.
10:02:12 - Pers. Attorney: Dunn, Robin
Calls, Plaintiff Ms. Borah for cross examination..
10:02:52 - Pers. Attorney: Dunn, Robin
Begins examination.
10:16:30 - Plaintiff Attorney: Edson, Gary
Objects
10:16:36 - Judge: Sticklen, Kathryn A.
Over rules
10:16:39 - Pers. Attorney: Dunn, Robin
Continues examination.
10:27:43 - Judge: Sticklen, Kathryn A.
Take break.
10:27:54 - Operator
Stop recording: (On Recess)
10:51:39 - Operator
Recording:
10:51:39 - Record
MCCANDLESS, DANA
10:51:46 - Plaintiff Attorney: Edson, Gary
Cross-examination of the witness.
10:56:14 - Pers. Attorney: Dunn, Robin
No objeciton. Court admits exhibit 31.
10:56:23 - Plaintiff Attorney: Edson, Gary
Continues Cross-examination of the witness.
11:01:54 - Pers. Attorney: Dunn, Robin
Renews objection and elaborates, court overrules.
11:02:03 - Plaintiff Attorney: Edson, Gary
Continues examination
11:08:15 - Pers. Attorney: Dunn, Robin

Question that were on direct examination, already asked.
11:08:26 - Judge: Sticklen, Kathryn A.
Sustained.
11:08:28 - Plaintiff Attorney: Edson, Gary
Continues examination
11:10:01 - Pers. Attorney: Dunn, Robin
Question in aid of objection
11:10:58 - Plaintiff Attorney: Edson, Gary
If can continues
11:11:05 - Pers. Attorney: Dunn, Robin
States objection
11:11:16 - Plaintiff Attorney: Edson, Gary
Addresses the court. court comments further.
11:12:26 - Plaintiff Attorney: Edson, Gary
Continues examination
11:14:56 - Pers. Attorney: Dunn, Robin
Further examination
11:16:33 - Judge: Sticklen, Kathryn A.
Witness steps down.
11:16:42 - Pers. Attorney: Dunn, Robin
No further witnesses.
11:16:50 - Judge: Sticklen, Kathryn A.
Inquires to rebuttal.
11:16:54 - Plaintiff Attorney: Edson, Gary
No rebuttal
11:16:59 - Judge: Sticklen, Kathryn A.
Further inquires how to submit.
11:17:12 - Plaintiff Attorney: Edson, Gary
Submit them now.
11:17:16 - Pers. Attorney: Dunn, Robin
Like to submit in writing and waive oral argument.
11:17:40 - Plaintiff Attorney: Edson, Gary
Client would prefer to be heard today.
11:18:07 - Pers. Attorney: Dunn, Robin
Further addresses position.
11:18:24 - Pers. Attorney: Dunn, Robin
Request 10 days
11:18:29 - Plaintiff Attorney: Edson, Gary
Leaving Firday back on the first of April.
11:18:49 - Judge: Sticklen, Kathryn A.
Inquires to april 10th.
11:19:04 - Judge: Sticklen, Kathryn A.
Mail them on or before April 10, 2007.
11:19:59 - Operator
Stop recording:

NO. _____
A.M. _____
MAY 31 2007
J. DAVID _____
By _____

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,

Plaintiff,

vs.

DANA McCANDLESS ,
dba The Great Snake River Log Home Co.,

Defendant.

Case No. CV-OC-0506462D

FINDINGS OF FACT,
CONCLUSIONS OF LAW
AND ORDER

This case came before the Court for trial. Having heard the testimony of the witnesses, reviewed the exhibits admitted, and considered the oral and written submissions of the parties, the Court enters the following findings of fact, conclusion of law, and order.

FINDINGS OF FACT

1. Plaintiff Brenda Borah (Borah) is the owner of a lot in Royal Elk Subdivision in Camas County, Idaho. In March 2004 she began to explore sources of supply for logs to build a cabin on her lot. One of the suppliers she contacted was the Great Snake River Log Home Company, owned by Defendant Dana McCandless (McCandless).

2. Borah intended to build the home with the help of her relatives, rather than buying a prebuilt home or having a contractor construct it. Borah and McCandless discussed the procurement of the necessary logs and other items such as ridge beam and purlins. On March 29, 2004, McCandless indicated that one truck load should be sufficient to deliver the package for the

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1 cabin. On April 21 McCandless indicated that the package could be delivered in July if the order
2 was placed in April. (Exhibit 2)

3 3. A pre-printed contract (Exhibit 3), provided by McCandless, consisting of three pages
4 and dated April 29, 2004, set forth the price of \$24,250.00. The price was subsequently changed
5 to \$27,100.00, and required an "initial deposit and original log purchase (70%)" of \$16,975.00.
6 The terms were FOB Grangeville, Idaho, with Borah to pay for shipping to the Camas County site.
7 No date for delivery was set in the written contract. This contract was not signed by the parties
8 until August 12, 2004, by Borah and September 22, 2004, by McCandless. The parties dispute the
9 date the contract was formed, but the Court finds that the contract was finalized no later than June
10 3, 2004, when Borah's check for the full amount of the deposit was accepted by McCandless.
11 (Exhibit 4).
12

13 4. McCandless was obtaining the logs for Borah's cabin from an associate who owed him
14 money and was supplying the logs in lieu of payment. McCandless testified that the contract price
15 to Borah was based on \$10.00 per lineal foot. On or about June 3, 2004, Borah asked about a
16 delivery date in August and McCandless indicated that the logs would probably be delivered in
17 early August, but possibly sooner. (Exhibit 5).
18

19 5. McCandless was unable to deliver any of the logs until September 2004. He made a
20 delivery on September 17, and again on September 23, 2004, but the deliveries were only part of
21 the logs needed. Another delivery was made on October 30, 2004, but it too was only a partial
22 delivery. Ultimately only 1,404 lineal feet of logs were delivered. On October 30 McCandless
23 also brought a lift truck to help stack the logs. However, because he did not advise Borah of this
24 delivery date, other work at the site prevented the assembly of the logs at that time.
25

1 6. After the October 30, 2004 delivery, the weather prevented completion of the cabin in
2 2004. Borah incurred costs for labor and materials to winterize the unfinished cabin in the amount
3 of \$632.79. These costs were within the contemplation of the parties at the time of contacting
4 because McCandless was aware that Borah wanted the cabin "dried in" before the winter. In
5 addition, some of the delivered logs were damaged by weather or otherwise. Only 1,302 lineal feet
6 of McCandless's logs were actually used.

7 7. In early November 2004 Borah prepared what has been referred to by the parties as the
8 "standstill agreement," (Plaintiffs' Exhibit 16, pp 38, 39) in which she proposed a final delivery
9 date of June 1, 2005, for the remainder of the log package. McCandless never responded to this
10 proposal until March 14, 2005, when he indicated the logs could be delivered by May 15, 2005.
11 When this did not occur, the parties continued to discuss delivery dates. Although McCandless
12 testified that he was willing and able to provide the remaining logs by the end of June 2005, he did
13 not do so allegedly because of a demand letter from Borah's counsel. However, Borah rented
14 equipment to continue the construction of the cabin in early July 2005 at a cost of \$1,245.79.
15 Borah then contracted with Western Spirit Log Homes in August 2005 to purchase the logs
16 necessary to complete the cabin at a cost of \$25,324.80 plus shipping. (Plaintiffs' Exhibit 27).
17
18

19 8. Borah also incurred additional interest charges on her construction loan and a higher
20 interest rate on her permanent financing of the cabin. However, McCandless was unaware of
21 Borah's financial arrangements. The Court finds that these expenses were not within the
22 contemplation of the parties as a result of any breach of the contract.

23 9. The contract provides for an award of costs and attorney fees to the prevailing party.
24
25
26

CONCLUSIONS OF LAW

1
2
3 1. This case involves the sale of goods and is subject to Article 2 of the Uniform
Commercial Code, Title 28, Chapter 2, Idaho Code.

4
5 2. Pursuant to Idaho Code § 28-2-309(1), when a contract for the sale of goods does not
6 contain the time for shipment or delivery, the time shall be a reasonable time. Idaho Code § 28-1-
7 204 provides the framework for determining what is a reasonable time, that is, the nature, purpose,
8 and circumstances of the required action. In addition, in *Anderson & Nafziger v. G.T. Newcomb,*
9 *Inc.*, 100 Idaho 175, 27 UCC Rep.Serv. 21, 595 P.2d 709, the court indicated that the factors to be
10 considered were the nature of the goods, the extent of the seller's knowledge of the buyer's
11 intentions, transportation conditions, and the nature of the market. Here, there was nothing
12 particularly unique about the goods, except that McCandless thought he could get them at a
13 reduced cost. McCandless was aware that Borah wanted the cabin "dried in" before winter of
14 2004. He had indicated on several occasions that the logs could be delivered in order to meet this
15 deadline. Again in 2005, McCandless indicated the remaining logs could be delivered by May 15,
16 2005, but again failed to deliver even by July 1, 2005. McCandless did not make delivery within a
17 reasonable time and therefore breached the contract without excuse.

18
19 3. Borah is entitled to damages pursuant to Idaho Code § 28-2-711, which provides:

20 **§ 28-2-711. Buyer's remedies in general--Buyer's security interest in rejected**
21 **goods**

22 (1) Where the seller fails to make delivery or repudiates or the buyer
23 rightfully rejects or justifiably revokes acceptance then with respect to any goods
24 involved, and with respect to the whole if the breach goes to the whole contract
(section 28-2-612), the buyer may cancel and whether or not he has done so may in
addition to recovering so much of the price as has been paid

25 (a) "cover" and have damages under the next section as to all the goods
26 affected whether or not they have been identified to the contract; or

1 (b) recover damages for nondelivery as provided in this chapter (section 28-
2-713).

2 Idaho Code § 28-2-712 provides the measure of damages:

3 **§ 28-2-712. "Cover"--Buyer's procurement of substitute goods**

4 (1) After a breach within the preceding section the buyer may "cover" by
5 making in good faith and without unreasonable delay any reasonable purchase of or
6 contract to purchase goods in substitution for those due from the seller.

7 (2) The buyer may recover from the seller as damages the difference
8 between the cost of cover and the contract price together with any incidental or
9 consequential damages as hereinafter defined (section 28-2-715), but less expenses
10 saved in consequence of the seller's breach.

11 (3) Failure of the buyer to effect cover within this section does not bar him
12 from any other remedy.

13 The cost of cover by Western Spirit was \$25,324.80. The remaining price on the
14 Borah/McCandless agreement was \$22,116.24 (based on the cost of usable logs actually delivered
15 of \$12,043.24¹, plus the balance due on the original contract of \$10,125.00). The difference is
16 \$3,208.56.

17 4. Borah is also entitled to incidental and consequential damages pursuant to Idaho Code §
18 28-2-715 for equipment rental of \$1,245.79 and labor and expenses of winterization in the amount
19 of \$632.79.

20 5. The other equipment charges incurred by Borah were, and would have been, incurred in
21 the actual construction of the cabin and are not recoverable. The interest and finance charges she
22 claims are also not recoverable.

23
24
25 ¹ Borah overpaid for the logs actually delivered and used by \$4,913.00, which was taken into account in calculating
26 the damages, rather than using the full contract price.


1 6. Borah is the prevailing party and is entitled to costs and attorney fees upon filing of a
2 timely memorandum of costs and attorney fees.
3

4 **ORDER**

5 Borah is entitled to judgment in the amount of \$5,087.14. Plaintiff's counsel shall prepare
6 and circulate an appropriate judgment for review by the Court and opposing counsel.
7

8 IT IS SO ORDERED.

9 Dated this 31st day of May 2004.

10 
11 Kathryn A. Sticklen
12 District Judge
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CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER as notice pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record in this cause in envelopes addressed as follows:

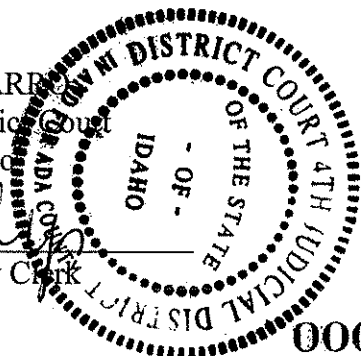
GERY W EDSON
GERY W EDSON PA
338 E BANNOCK STREET
POST OFFICE BOX 448
BOISE IDAHO 83701-0448

ROBIN DUNN
STEPHEN J CLARK
PENNY NORTH SHAUL
DUNN & CLARK PA
POST OFFICE BOX 277
240 SOUTH 5TH WEST
RIGBY IDAHO 83442

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

Date: 5-31-07

By J. Kennedy
Deputy Clerk



00049

JUL 11 2007

J. DAVID NAVARRO, Clerk
By J KENNEDY
DEPUTY

Gery W. Edson
GERY W. EDSON, P.A.
338 E. Bannock St.
P. O. Box 448
Boise, ID 83701-0448
Telephone: (208) 345-8700
Fax: (208) 389-9449
Email: gedson@gedson.com
ID Bar No. 2984

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH)	
)	Case No. CVOC0506462
Plaintiff,)	
)	
vs.)	JUDGMENT
)	
DANA McCANDLESS,)	
dba The Great Snake River Log Home Co.,)	
)	
Defendant.)	
_____)	

THIS MATTER having come before the Court upon the trial of the cause which was heard without a jury and tried to the Court on March 19 and 20, 2007; and the Court having previously submitted its Findings of Fact and Conclusions of Law and Order dated May 31, 2007;

IT IS ORDERED AND THIS DOES ORDER that:

- Judgment be entered in favor of Plaintiff and against Defendant, Dana McCandless, dba The Great Snake River Log Home Company, in the amount of \$5,087.14.

Dated this 10th day of July, 2007.

Kathryn A. Sticklen
Kathryn A. Sticklen, District Judge

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CERTIFICATE OF SERVICE

I hereby certify that on this 4 day of June, 2007, I served a true and correct copy of the foregoing by the method(s) indicated below, to the following parties:

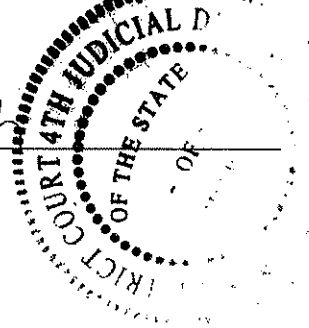
Gery W. Edson
Gery W. Edson, P.A.
338 E. Bannock St.
P.O. Box 448
Boise, ID 83701
Facsimile (208) 389-9449

U.S. Mail Overnight Mail Facsimile E-Mail Attachment Hand Delivery

Robin Dunn
Stephen J. Clark
Penny North Shaul
DUNN & CLARK, P.A.
P.O. 277
240 South 5th West
Rigby, ID 83442
Facsimile (208) 745-8160

U.S. Mail Overnight Mail Facsimile E-Mail Attachment Hand Delivery

J. Kennedy
Clerk of the Court



00051

Session: STICKLEN072607
Session Date: 2007/07/26
Judge: Sticklen, Kathryn A.
Reporter: Anderson, Leslie

Division: DC
Session Time: 15:04

Courtroom: CR502

Clerk(s):
Kennedy, Jennifer

State Attorneys:

Public Defender(s):

Prob. Officer(s):

Court interpreter(s):

Case ID: 0003

Case Number: CVOC05-06462
Plaintiff: BORAH, BRENDA
Plaintiff Attorney: Edson, Gary
Defendant: MCCANDLESS, DANA
Co-Defendant(s):
Pers. Attorney: Dunn, Robin
State Attorney:
Public Defender:

2007/07/26

16:09:29 - Operator
Recording:
16:09:29 - New case
MCCANDLESS, DANA
16:10:06 - Judge: Sticklen, Kathryn A.
Case called. Reviews motions.
16:10:15 - Pers. Attorney: Dunn, Robin
Argues position.
16:15:21 - Plaintiff Attorney: Edson, Gary
Responds and argues position
16:20:37 - Pers. Attorney: Dunn, Robin
Responds and addresses briefly
16:23:13 - Plaintiff Attorney: Edson, Gary
Argues position on the plaintiff's motion
16:25:42 - Judge: Sticklen, Kathryn A.

Clarifies, Mr. Edson continues
16:28:54 - Pers. Attorney: Dunn, Robin
Responds and argues in opposition.
16:33:07 - Plaintiff Attorney: Edson, Gary
Responds in opposition
16:37:19 - Judge: Sticklen, Kathryn A.
Inquires to cost
16:37:34 - Plaintiff Attorney: Edson, Gary
Argues position re: costs.
16:39:37 - Pers. Attorney: Dunn, Robin
Argues objection to the court.
16:41:46 - Plaintiff Attorney: Edson, Gary
Final argument.
16:43:48 - Pers. Attorney: Dunn, Robin
Responds further. Article written and elaborates.
16:45:19 - Judge: Sticklen, Kathryn A.
Will review this and issue a decision.
16:45:38 - Operator
Stop recording:

AUG 31 2007

J. DAVID NAVARRO, Clerk
By *Marka Dyke*
DEPUTY

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,

Plaintiff,

vs.

DANA McCANDLESS ,
dba The Great Snake River Log Home Co.,

Defendant.

Case No. CV-OC-0506462D

MEMORANDUM DECISION
AND ORDER

This case came before the Court on Plaintiff Brenda Borah's (Borah's) and Defendant Dana McCandless' (McCandless') motions for reconsideration concerning the Court's May 31, 2007, findings of fact, conclusions of law, and order, and the issues of costs and attorney fees. For the reasons that follow, Borah's motion to reconsider will be granted in part and denied in part, and McCandless' motion to reconsider will be granted in part and denied in part. Borah will be granted costs and attorney fees.

The facts and procedural history of this case are set forth in the above referenced findings of fact, conclusions of law, and order. Borah's motion to reconsider raises three issues. First, Borah argues that the Court misapplied the standard of cover set forth in I.C. § 28-2-712 of the Uniform Commercial Code concerning item three in its conclusions of law. In item three, the Court recognized in a footnote that Borah overpaid for the logs actually delivered by \$4,913.00,

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1 and concluded that the remaining price on the Borah/McCandless agreement was \$22,116.24
2 (based on the cost of usable logs actually delivered of \$12,043.24, plus the balance due on the
3 original contract of \$10,125.00, leaving a difference of \$3,208.56. Borah argues that in arriving at
4 this conclusion, the Court applied the wrong standard to determine Borah's amount of damages
5 and maintains that the Court should have added the sum of the overpayment, \$4,913.00, with the
6 costs of cover as set forth in I.C. § 28-2-712. Borah further asserts that the Court attempted to
7 "mix and match" the contract price with the concept of cover, and cannot ignore the actual funds
8 spent out of pocket to obtain the logs to complete the cabin, which included Borah's initial deposit
9 of \$16,975.00, plus the cost of cover for the replacement of the logs, \$25,324.80, which brought
10 the sum of the actual costs to obtain the logs to \$42,299.80. Next, Borah reasons that the balance
11 due under the original contract of \$10,125.00 should have been deducted from the \$42,299.80,
12 which would have provided Borah the correct damage award in the amount of \$32,174.80. Borah
13 maintains that the Court must also take into account the \$4,913.00 overpayment for the logs
14 actually received and add the \$4,913.00 to the \$32,174.80 cost of cover to ensure that the formula
15 employed takes into account all the directives set forth in I.C. § 28-2-712.
16

17
18 In response, McCandless asserts that Borah's position on cover misinterprets the law and
19 he argues that cover should not have been an issue in this particular matter since McCandless was
20 purchasing logs for a price less than could be obtained in any other market. Further, McCandless
21 maintains that he had no way of controlling cover and was willing to complete the job if Borah had
22 paid the delivery charges previously incurred.

23 As previously noted in the Court's May 31, 2007, findings of fact, conclusions of law, and
24 order, Borah is entitled to damages pursuant to I.C. § 28-2-711, which provides:
25

1 **28-2-711. Buyer's remedies in general -- Buyer's security interest in rejected**
2 **goods.**

3 (1) Where the seller fails to make delivery or repudiates or the buyer rightfully
4 rejects or justifiably revokes acceptance then with respect to any goods involved,
5 and with respect to the whole if the breach goes to the whole contract (section 28-2-
6 612), the buyer may cancel and whether or not he has done so may in addition to
7 recovering so much of the price as has been paid

8 (a) "cover" and have damages under the next section as to all the goods
9 affected whether or not they have been identified to the contract; or

10 (b) recover damages for nondelivery as provided in this chapter (section 28-2-
11 713).

12 Idaho Code § 28-2-712 provides the measure of damages:

13 **28-2-712. "Cover" -- Buyer's procurement of substitute goods.**

14 (1) After a breach within the preceding section the buyer may "cover" by making in
15 good faith and without unreasonable delay any reasonable purchase of or contract to
16 purchase goods in substitution for those due from the seller.

17 (2) The buyer may recover from the seller as damages the difference between the
18 cost of cover and the contract price together with any incidental or consequential
19 damages as hereinafter defined (section 28-2-715), but less expenses saved in
20 consequence of the seller's breach.

21 (3) Failure of the buyer to effect cover within this section does not bar him from
22 any other remedy.

23 Upon reconsideration, the Court concurs with Borah that it misapplied the above stated standard
24 for cover and has recalculated the damages to address the alleged previous computational errors.

25 The total contract price was \$27,100.00. The cost of cover by Western Spirit was \$25,324.80. On
26 May 28, 2004, Borah tendered a cashier's check in the amount of \$16,975.00 as a seventy percent
(70%) deposit on her log purchase, effectively reducing the remaining balance due on the
Borah/McCandless contract to \$10,125.00. However, the record establishes only 1404 total lineal

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1 feet of the logs McCandless actually delivered were usable, which had a value of \$12,986.32.¹

2 Therefore, to properly account for the cost of usable logs, the Court should have calculated cover
3 damages by deducting the \$12,986.32 from the total contract price, equaling \$14,113.68, and then
4 deducting the \$14,113.68 from the \$25,324.80 cost of cover, to provide Borah \$11,211.12 in cover
5 damages. Next, because Borah paid McCandless a \$16,975.00 deposit, which left \$10,125.00
6 owing on the contract, Borah effectively overpaid by \$3,988.68. The overpayment must be added
7 to Borah's \$11,211.12 cover damages, which would provide her recovery on this item in the
8 amount of \$15,199.80. The Court notes that McCandless never contended at trial that American
9 Spirit Log Home's charges were unreasonable. The Court is not "mixing and matching" because
10 the concept of cover relates to the difference between the cost of what was actually covered and
11 the contract price.

12
13 Second, Borah argues that the Court's findings must also be modified to take into account
14 all of the equipment rental charges incurred in the normal course of construction of the cabin
15 beyond the one charge from July 1, 2004, through July 8, 2004, in the amount of \$1,245.79. Borah
16 cites and relies upon Exhibits 13, 14, and 15 to establish the charges she incurred as a direct result
17 of McCandless' breach, and Borah asserts that she should be allowed recovery on all of these
18 charges as incidental and consequential damages in accordance with I.C. § 28-2-712. In response,
19 McCandless maintains that the equipment rental charges were never included under the parties'
20 contract, and that the Court correctly concluded that Borah should be held responsible for these
21 charges.
22

23
24 ¹ The cover damages have been recalculated based on McCandless' argument regarding Exhibit 26 as noted on P.7 of
25

1 As previously held by this Court, Borah is entitled to incidental and consequential damages
2 pursuant to I.C. § 28-2-718, which provides:

3 **28-2-715. Buyer's incidental and consequential damages.**

4 (1) Incidental damages resulting from the seller's breach include expenses
5 reasonably incurred in inspection, receipt, transportation and care and custody of
6 goods rightfully rejected, any commercially reasonable charges, expenses or
7 commissions in connection with effecting cover and any other reasonable expense
8 incident to the delay or other breach.

9 (2) Consequential damages resulting from the seller's breach include
10 (a) any loss resulting from general or particular requirements and needs
11 of which the seller at the time of contracting had reason to know and
12 which could not reasonably be prevented by cover or otherwise; and
13 (b) injury to person or property proximately resulting from any breach of
14 warranty.

15 To recap, the Court previously awarded incidental and consequential damages for the sum of
16 \$1,245.79 for equipment rental, and \$632.79 for expenses in relation to winterization of the logs,
17 finding that the other equipment charges would have been incurred anyway had McCandless
18 fulfilled the contract. Having considered the arguments here, the Court denies the motion for
19 reconsideration on this issue.

20 Finally, Borah moves the Court to reconsider its denial of her claims for interest and
21 finance charges she incurred through Farmers & Merchants Bank for her construction loan. Borah
22 cites to *Magic Valley Foods, Inc. v. Sun Valley Potatoes, Inc.*, 134 Idaho 785, 792, 10 P.3d 734,
23 741 (2000) as instructive for the proposition that prejudgment interest is permitted when damages
24 are liquidated and ascertainable by a mathematical process. McCandless argues that the finance
25 and interest charges Borah incurred were not his responsibility and that there was no privity of

26 this opinion.

1 contract between McCandless and any banking institution who loaned money on Borah's behalf.

2 Further McCandless asserts that he had no knowledge of Borah's financing arrangements.

3 The Court is not persuaded by Borah's arguments because the record demonstrates that
4 McCandless was unaware of Borah's financial arrangements, and the additional interest and
5 finance charges Borah incurred on the construction loan were not within the contemplation of the
6 parties' agreement. Further, since the damages were not readily ascertainable or liquidated,
7 prejudgment interest may not be awarded. See *Dillon v. Montgomery*, 138 Idaho 614, 618, 67
8 P.3d 93, 97 (2003) citing *Rosecrans v. Intermountain Soap & Chemical Co., Inc.*, 100 Idaho 785,
9 788, 605 P.2d 963, 966 (1980). Finally, the Court notes that the interest and finance charges on
10 Borah's loans are not the same thing as prejudgment interest on the damages awarded. Therefore,
11 Borah's motion for reconsideration concerning the interest and finance charges she incurred is
12 denied.
13

14 McCandless' motion for reconsideration also raises three issues. First, McCandless
15 moves the Court to reconsider the delivery and shipping charges he incurred to transport the logs
16 to Borah. Specifically, McCandless asserts that he billed, and was not paid for, delivery and
17 shipping expenses in the amount of \$3,351.00. Second, McCandless argues that he was not given
18 credit for the three-man crew he hired to assist him in the attempted setup of Borah's home, which
19 cost setup fees in the sum of \$2,255.00. Finally, McCandless argues that the actual lineal feet of
20 logs Borah used totaled 1302 feet, which equated to \$13,020 instead of the \$12,043.24 the Court
21 relied upon, thus entitling him to a credit of \$976.76.
22

23 In response, Borah argues that McCandless is not entitled to recovery in the amount of
24 \$3,351.00 for the delivery and shipping charges incurred because only one load for the delivery of
25

1 logs was contemplated under the parties' contract. Further, Borah contends that McCandless is
2 attempting to collect more than three times the delivery charge, which is outside the scope of the
3 parties' agreement, and that such recovery is effectively barred by the Court's findings of fact.

4 Next, Borah argues that McCandless is not entitled to recover any setup charges for his three-man
5 crew on the basis that she never agreed to pay such charges and received an e-mail notice of
6 McCandless' intent to charge these fees only one day prior to the parties' scheduled delivery date.

7 Finally, Borah argues that McCandless' attempt to insert a claim for a credit in the amount of
8 \$976.76 for the 102 lineal feet of un-used logs is without foundation and unsupported by the
9 record.
10

11 While it is uncontroverted that Borah was responsible for the shipping and delivery of the
12 logs, the parties' contract implied that there would only be one delivery of logs since the
13 agreement specifically stated that the remaining payment in the amount of \$10,125.00 was due
14 upon delivery. The testimony also supports the fact that one or, at the most, two deliveries were
15 discussed by the parties at the time of contracting. McCandless provided no itemization of the
16 delivery costs he incurred, and therefore the Court could not calculate the amount he might have
17 been entitled to receive under the contract.
18

19 As to the cost of the crew McCandless brought to the site, there is no basis for an award of
20 this item. The contract did not require McCandless to provide such services. McCandless did not
21 consult with Borah, and/or Borah did not agree to the hiring of this crew. Indeed Borah indicated
22 she would not be available for delivery at the time. Finally, Borah received no benefit from
23 McCandless' voluntary act of bringing that crew because it did not do any work on construction of
24 the cabin.
25

1 The Court looked again at the calculation of the logs used or useable. The Court intended
2 to give McCandless credit for all the useable logs delivered, 1404 lineal feet, but mistakenly used
3 the calculation from Plaintiff's Exhibit 26 for 1302 feet. Thus, the correct cost of useable logs is
4 \$12,986.32 and the correct overpayment amount is \$3,988.68, as reflected above.

5 Based on the calculations, the judgment should total \$17,078.38.

6 **COSTS AND ATTORNEY FEES**

7
8 As originally noted, Borah is entitled to her costs and attorney fees as provided in the
9 contract.² She is entitled to costs as a matter of right pursuant to Rule 54(d)(1)(C), I.R.C.P.,
10 \$82.00 for the filing fee, \$95.00 for service of process, and \$37.35 for the costs of trial exhibits,
11 for a total of \$214.35. The balance of the costs for binders, etc., are discretionary and will be
12 denied, there being no showing that these costs were exceptional and should be assessed against
13 McCandless. See Rule 54(d)(1)(D), I.R.C.P.

14 The Court has also reviewed the itemization of attorney fees incurred, as well as the rate of
15 \$150.00 per hour, in light of the other factors set forth in Rule 54(e)(3), I.R.C.P. McCandless,
16 other than suggesting that Borah was not the prevailing party or that the fees should be adjusted to
17 reflect the relationship between Borah's demand and actual recovery, is that Borah's attorney bills
18 in units of a quarter of an hour rather than a tenth. The usual hourly billing in this area is in tenths
19 of an hour. However, the Court went back through the itemized billings and found no instance in
20 which a quarter hour charge was unreasonable. It further noted that most of the entries were in full
21
22
23

24 _____
25 ² This was not, as Borah contends, a commercial transaction.

1 hours, in which case the fractional rate would make no difference. The Court finds that the fees
2 requested in the amount of \$18,312.00 are reasonable.

3 Borah is awarded costs and attorney fees totaling \$18,526.00.

4 IT IS SO ORDERED.

5 Dated this 31st day of August 2007.

6
7 ~~Christy~~ ^(KAS) Kathryn A. Sticklen
8 Kathryn A. Sticklen
9 District Judge
10
11
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CERTIFICATE OF MAILING

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, one copy of the MEMORANDUM DECISION AND ORDER as notice pursuant to Rule 77(d) I.R.C.P. to each of the attorneys of record in this cause in envelopes addressed as follows:

GERY W EDSON
GERY W EDSON PA
338 E BANNOCK STREET
POST OFFICE BOX 448
BOISE IDAHO 83701-0448

ROBIN DUNN
STEPHEN J CLARK
PENNY NORTH SHAUL
DUNN & CLARK PA
POST OFFICE BOX 277
240 SOUTH 5TH WEST
RIGBY IDAHO 83442

J. DAVID NAVARRO
Clerk of the District Court
Ada County, Idaho

Date: Aug. 31, 2007

By Shirley Lyke
Deputy Clerk

RECEIVED

SEP 17 2007

Ada County Clerk
Gery W. Edson

GERY W. EDSON, P.A.
338 E. Bannock St.
P. O. Box 448
Boise, ID 83701-0448
Telephone: (208) 345-8700
Fax: (208) 389-9449
Email: gedson@gedson.com
ID Bar No. 2984

NO. _____ FILED _____
A.M. _____ P.M. _____

OCT 04 2007

J. DAVID NAVARRO, Clerk
By **J KENNEDY**
DEPUTY

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH)	
)	Case No. CVOC0506462
Plaintiff,)	
)	AMENDED
vs.)	JUDGMENT
)	
DANA McCANDLESS,)	
dba The Great Snake River Log Home Co.,)	
)	
Defendant.)	
_____)	

THIS MATTER having come before the Court upon cross motions for reconsideration by both Plaintiff and Defendant, and the Court having entered its Memorandum Decision and Order dated August 31, 2007 which constituted the Court's Findings of Fact and Conclusions of Law and as a result thereof, amends it prior Judgment dated July 11, 2007 as follows:

IT IS ORDERED AND THIS DOES ORDER that judgment be entered in favor of Plaintiff and against Defendant for damages in the amount of \$17,078.38 and for an award of Plaintiff's costs pursuant to Idaho Rule of Civil Procedure 54(d)(1)(C) in the amount of \$214.35, and for an award of Plaintiff's attorney fees in the amount of \$18,312.00, for a total award of costs and attorney fees of \$18,526.35 for a combined judgment in favor of Plaintiff in the amount of

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\$35,604.73.

This Judgment shall supersede the Court's prior Judgment of July 11, 2007.

Dated this 3rd day of ~~September~~ ^{October}, 2007.

Kathryn A. Sticklen
Kathryn A. Sticklen, District Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 4 day of ~~September~~ ^{October}, 2007, I served a true and correct copy of the foregoing by the method(s) indicated below, to the following parties:

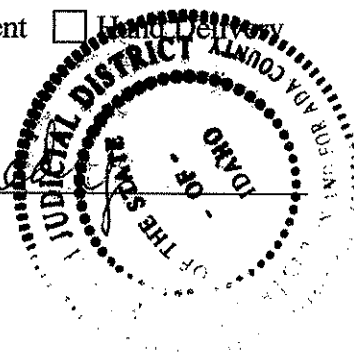
Gery W. Edson
Gery W. Edson, P.A.
338 E. Bannock St.
P.O. Box 448
Boise, ID 83701
Facsimile (208) 389-9449

U.S. Mail Overnight Mail Facsimile E-Mail Attachment Hand Delivery

Robin Dunn
Stephen J. Clark
Penny North Shaul
DUNN & CLARK, P.A.
P.O. 277
240 South 5th West
Rigby, ID 83442
Facsimile (208) 745-8160

U.S. Mail Overnight Mail Facsimile E-Mail Attachment Hand Delivery

Menna
Clerk of the Court



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RECEIVED

NOV 08 2007

NO. _____ FILED 4:00
A.M. _____ P.M.

Ada County Clerk
Dunn Law Offices, PLLC.
Robin D. Dunn, Esq., ISB No. 2903
Penny North Shaul, Esq., No. 4993
Amy Sheets, Esq., ISB No. 5899
P.O. Box 277
477 Pleasant Country Lane
Rigby, ID 83442
(208) 745-9202 (t)
(208) 745-8160 (f)

NOV 08 2007

J. DAVID NAVARRO, Clerk
By BRADLEY J. THIES
DEPUTY

rdunn@dunnlawoffices.com

Attorneys for Defendant

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,)	Case No. CV-OC-0506462D
)	
Plaintiff/Respondent,)	
)	
vs.)	NOTICE OF APPEAL
)	
DANA McCANDLESS, d/b/a)	I.A.R. 17
THE GREAT SNAKE RIVER)	
LOG HOME COMPANY,)	
)	
Defendant/Appellant.)	
_____)	

TO: THE ABOVE NAMED RESPONDENTS; AND THE CLERK OF THE
ABOVE ENTITLED COURT.

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellants appeal against the above named respondents to the Idaho Supreme Court from the final Amended Judgment, entered in the above entitled action on the 3rd day of October, 2007, the Honorable Kathryn A. Sticklen, presiding.
2. The appellants have a right to appeal to the Idaho Supreme Court, and the

judgment described in paragraph 1 above is an appealable order under and pursuant to Rule 11(a)(1) I.A.R.

3. The issues on appeal include but are not limited to the following:
 - a. Did the District Court incorrectly rule on a breach of contract by the appellant.
 - b. Did the District Court fail to apply the terms of the contract between the parties.
 - c. Did the District Court inappropriately and incorrectly apply the doctrine of "cover".
 - d. Did the District Court incorrectly rule that the respondent was the prevailing party given that the respondent did not meet the request in the pleadings.
 - e. Did the District Court err by incorrect findings of fact and application of conclusions of law.
 - f. Did the District Court err by issuing inconsistent findings that do not support the conclusions of law.
 - g. Did the District Court err by including oral statements and conclusions outside the four corners of the contract.
 - h. Did the District Court err by relying upon inadmissible evidence.
 - i. Did the District Court err by entering a judgment against Defendants which contained relief on behalf of Plaintiffs not specified or authorized by the District Court's Conclusions of Law, and not supported by the evidence.

- j. Are Defendants entitled to an award of attorneys' fees and costs as the prevailing party against Plaintiff pursuant to IRCP 54 and I.C. §12-120(3)?
4. No order has been entered sealing all or any portion of the record.
5. A reporter's transcript is requested. The appellants request the preparation of the following portions of the reporter's transcript: all hearings and proceedings from the trial dates.
6. The appellants request that the following documents be included in the clerk's record in addition to those automatically included under Rule 28, I.R.A:
- Any minute entries-
 - All Exhibits Admitted-
7. The undersigned certifies:
- a. That a copy of the notice of appeal has been served on the reporter;
 - b. That the appellant has made contact with the clerk of the district court and is in the process of obtaining the estimated fee for preparation of the reporter's transcript;
 - c. That the estimated fee for preparation of the clerk's record has been paid;
 - d. That appellate filing fee has been paid; and
 - e. That service has been made upon all parties required to be served pursuant to Rule 20.

DATED this 7th day of November, 2007.



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of November, 2007, a true and correct copy of the foregoing was delivered to the following persons(s) by:

Hand Delivery

xx Postage-prepaid mail

_ Facsimile Transmission



Robin D. Dunn, Esq.
DUNN LAW OFFICES, PLLC

Ada County Clerk
Clerk of the District Court
200 W. Front Street
Boise, ID 83702-7300

Ada County Reporter
Leslie Anderson
200 W. Front Street
Boise, ID 83702-7300

Gery W. Edson, Esq.
Attorney for Respondents
P.O. Box 448
Boise, ID 83701

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,

Plaintiff-Respondent,

vs.

DANA MCCANDLESS, d/b/a THE
GREAT SNAKE RIVER LOG HOME
COMPANY,

Defendant-Appellant.

Supreme Court Case No. 34756

CERTIFICATE OF EXHIBITS

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the
State of Idaho in and for the County of Ada, do hereby certify:

That the attached list of exhibits is a true and accurate copy of the exhibits being
forwarded to the Supreme Court on Appeal.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said
Court this 17th day of January, 2008.

J. DAVID NAVARRO
Clerk of the District Court

By _____
Deputy Clerk

SEAL
MARGARET LUNDQUIST

CERTIFICATE OF EXHIBITS

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IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

Kathryn A. Sticklen/J. Kennedy
District Judge/ Clerk

Page 1 of 2

JURY TRIAL

Brenda Borah,

Plaintiff,

vs.

Dana McCandless,

Defendant.

EXHIBIT LIST

Case No. CVOC0506462

Plaintiff's Attorney: Gery Edson
Defendant's Attorney: Robin Dunn

By:	No	Description	Status	Date
Pltf	1.	3/31/04 Email	Admit	3/19/07
	2.	4/21/04 Email	Admit	3/19/07
	3.	Contract	Admit	3/19/07
	4.	Cashier's Check 16,975.00	Admit	3/19/07
	5.	6/3/04 Email	Admit	3/19/07
	6.	7/23/04 Email Re: Delivery Schedule	Admit	3/19/07
	7.	8/30/04 Email Deliver Date no later 9/21/04	Admit	3/19/07
	8.	8/31/04 Email Re: Delivery Date	Admit	3/19/07
	9.	Itemization of logs	Admit	3/19/07
	10.	Copy of Satellite phone invoice	Admit	3/19/07
	11.	Photo of Cabin Progression	Admit	3/19/07
	12.	Invoice from Big Sky Rentals	Admit	3/19/07
	13.	Invoice from Big Sky Rentals	Admit	3/19/07
	14.	Invoice from Cardinal Construction	Admit	3/19/07
	15.	Invoice from United Rentals	Admit	3/19/07
	16.	Plaintiff's 1 st set of request for admissions	Admit	3/19/07
	17.	Def. Answers of plaintiff request	Admit	3/19/07
	18.	Invoice for costs of winterization	Admit	3/19/07
	19.	Itemization of labor charges	Admit	3/19/07
	20.	3/14/05 Email	Admit	3/19/07
	21.	Plaintiff's letter 3/20/05	Admit	3/19/07
	22.	Timeline	Admit	3/19/07

23.	6/24/05 Demand letter	Admit	3/19/07
24.	List of logs required	Admit	3/19/07
25.	7/21/05 follow up letter	Admit	3/19/07
26.	Spreadsheet calculating log shortage	Admit	3/19/07
27.	Purchase Agreement Contract	Admit	3/19/07
28.	Loan Documents	Admit	3/19/07
29.	Interest calculation by Farmers & Merchants	Admit	3/19/07
30.	Plaintiff's damage calculation	Admit	3/19/07
31.	Contract-stand still agreement	Admit	3/20/07

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,

Plaintiff-Respondent,
vs.

DANA MCCANDLESS, d/b/a THE
GREAT SNAKE RIVER LOG HOME
COMPANY,

Defendant-Appellant.

Supreme Court Case No. 34756

CERTIFICATE OF SERVICE

I, J. DAVID NAVARRO, the undersigned authority, do hereby certify that I have personally served or mailed, by either United States Mail or Interdepartmental Mail, one copy of the following:

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

to each of the Attorneys of Record in this cause as follows:

ROBIN D. DUNN
ATTORNEY FOR APPELLANT
RIGBY, IDAHO

GERY W. EDSON
ATTORNEY FOR RESPONDENT
BOISE, IDAHO

J. DAVID NAVARRO
Clerk of the District Court

Date of Service: JAN 18 2008

By MARGARET LUNDQUIST
Deputy Clerk

CERTIFICATE OF SERVICE

000'73

IN THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT OF
THE STATE OF IDAHO, IN AND FOR THE COUNTY OF ADA

BRENDA BORAH,

Plaintiff-Respondent,

vs.

DANA MCCANDLESS, d/b/a THE
GREAT SNAKE RIVER LOG HOME
COMPANY,

Defendant-Appellant.

Supreme Court Case No. 34756

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, 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 and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed on the 8th day of November, 2007.

J. DAVID NAVARRO
Clerk of the District Court

By MARGARET LUNDQUIST
Deputy Clerk

CERTIFICATE TO RECORD

000'74