

5-6-2009

Black Diamond Alliance, LLC v. Kimball Clerk's Record v. 2 Dckt. 35189

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2 of 5

Supplemental Record

IN THE

volume 1 of 2

SUPREME COURT

OF THE

LAW CLERK

STATE OF IDAHO

BLACK DIAMOND ALLIANCE, LLC.

Plaintiff _____ *and*

Respondent _____
vs.

SHERRY KIMBALL

Defendant _____ *and*

Appellant _____

Appealed from the District Court of the Seventh _____ Judicial

District of the State of Idaho, in and for Bonneville _____ County

Hon. Gregory S. Anderson _____, District Judge

David A. Johnson, Esq.

P.O. Box 52251 Idaho Falls, ID 83405-2251

Attorney for Appellant

Kip Manwaring

P.O. Box 50271 Idaho Falls, ID 83405-0271

Attorney for Respondent

Filed this _____ day of _____, 20____

FILED - COPY
MAY 16 2000
Supreme Court _____ Court of Appeals _____
Entered on RTS by _____ Clerk

By _____ Deputy

351890 COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

BLACK DIAMOND ALLIANCE. LLC.,

Plaintiff/Respondent,

vs.

SHERRY KIMBALL,

Defendant/Appellant,

**SUPPLEMENTAL
CLERK'S RECORD ON APPEAL**

Appeal from the District Court of the
Seventh Judicial District of the State of Idaho,
in and for the County of Bonneville

HONORABLE Gregory S. Anderson, District Judge.

David A. Johnson, Esq.
WRIGHT, WRIGHT & JOHNSON
P.O. Box 50578
Idaho Falls, ID 83405-0578

Kipp L. Manwaring, Esq.
Attorney at Law
P.O. Box 50271
Idaho Falls, ID 83405-0271

Attorney for Appellant

Attorney for Respondent

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Date: 4/28/2009

Seventh Judicial District Court - Bonneville County

User: SHULTS

Time: 02:24 PM

ROA Report

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Case: CV-2007-0003806 Current Judge: Gregory S. Anderson

Black Diamond, LLC vs. Sherry Kimball, etal.

Black Diamond, LLC vs. Sherry Kimball, John Does I-x

Date	Code	User		Judge
4/27/2009		SHULTS	S.C. Acknowledgment of exhibits received.	Gregory S. Anderson
4/22/2009		WOOLF	Miscellaneous Payment: For Certifying The Same Additional Fee For Certificate And Seal Paid by: Just Law Office Receipt number: 0018211 Dated: 4/22/2009 Amount: \$1.00 (Cash)	Gregory S. Anderson
		WOOLF	Miscellaneous Payment: For Comparing And Conforming A Prepared Record, Per Page Paid by: Just Law Office Receipt number: 0018211 Dated: 4/22/2009 Amount: \$1.00 (Cash)	Gregory S. Anderson
4/8/2009		SHULTS	Clerk's Record on Appeal sent to S.C.	Gregory S. Anderson
4/3/2009	ORDR	LMESSICK	Order and Judgment of Costs on Execution	Gregory S. Anderson
3/23/2009	MISC	WOOLF	Objection to Clerk's Record/Request for Additional Documents	Gregory S. Anderson
3/20/2009	MINE	LMESSICK	Minute Entry	Gregory S. Anderson
3/19/2009	DCHH	LMESSICK	Hearing result for Motion held on 03/19/2009 10:00 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: Plaintiff's Motion for Costs on Execution of Judgment 50 pages	Gregory S. Anderson
	MISC	WOOLF	Objection to Clerk's Record	Gregory S. Anderson
3/12/2009	STJD	WILLIAMS	Satisfaction Of Judgment	Gregory S. Anderson
		WILLIAMS	Objectin to Motin for Costs on Execution of Judgment and Memorandum of Costs on Execution of Judgment	Gregory S. Anderson
3/10/2009		SHULTS	28 day letter expires 4-7-09	Gregory S. Anderson
		SHULTS	Clerk's record on appeal sent to both counsel on 3-10-09	Gregory S. Anderson
	TRAN	SHULTS	Transcript Filed by Konvalinka (hearing 10-2-08)	Gregory S. Anderson
3/9/2009	NOTH	WOOLF	Notice Of Hearing 3/19/2009 @ 10:00 AM	Gregory S. Anderson
	AFFD	WOOLF	Affidavit of Counsel in Support of Motion for Costs on Execution of Judgment	Gregory S. Anderson
	MEMO	WOOLF	Memorandum of Costs on Execution of Judgment	Gregory S. Anderson
	MOTN	WOOLF	Motion for Costs on Execution of Judgment	Gregory S. Anderson
3/5/2009	HRSC	QUINTANA	Hearing Scheduled (Motion 03/19/2009 10:00 AM) Plaintiff's Motion for Costs on Execution of Judgment	Gregory S. Anderson
3/3/2009	ORDR	SHULTS	Order to Reinstate Appellate Proceedings.	Gregory S. Anderson
2/17/2009	ORDR	LMESSICK	Order Re: Amended Motion for Costs and Fees and Motino for Bond on Appeal	Gregory S. Anderson
	MEMO	LMESSICK	Memorandum Decision Re: Amendeed Motion for Costs and Fees and Motion for Bond on Appeal	Gregory S. Anderson
2/12/2009	RTOS	DOOLITTL	Return Of Service 1-29-09 Another Writ of Ejectment & Writ of Restitution (Posted on Door)	Gregory S. Anderson

Date: 4/28/2009

Seventh Judicial District Court - Bonneville Cou

User: SHULTS

Time: 02:24 PM

ROA Report

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Case: CV-2007-0003806 Current Judge: Gregory S. Anderson

Black Diamond, LLC vs. Sherry Kimball, etal.

Black Diamond, LLC vs. Sherry Kimball, John Does I-x

Date	Code	User		Judge
2/10/2009	RTOS	DOOLITTL	Return Of Service 1-29-09 Writ of Ejectment & Writ of Restitution (POSTED ON DOOR)	Gregory S. Anderson
2/3/2009		SHULTS	Appellant's Notice of Withdrawal [of Motion for Stay].	Gregory S. Anderson
1/30/2009	JDMT	LMESSICK	Judgment	Gregory S. Anderson
1/26/2009		SHULTS	Stipulation for Stay	Gregory S. Anderson
		SHULTS	Motion to Stay-All Due Dates Suspended	Gregory S. Anderson
1/23/2009		SHULTS	Third Amended Notice of Appeal	Gregory S. Anderson
	NOTC	WOOLF	Third Amended Notice of Appeal	Gregory S. Anderson
1/22/2009		DOOLITTL	Miscellaneous Payment: Writs Of Execution Paid by: Charles C. Just Receipt number: 0003280 Dated: 1/22/2009 Amount: \$2.00 (Check)	Gregory S. Anderson
	WRIT	DOOLITTL	Writ Issued of Ejectment and Writ of Restitution Bonneville	Gregory S. Anderson
1/16/2009	MINE	LMESSICK	Minute Entry	Gregory S. Anderson
1/15/2009	DCHH	LMESSICK	Hearing result for Motion held on 01/15/2009 09:00 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: Motion for Bond on Appeal 50 pages Amended Motion for Costs and Fees	Gregory S. Anderson
	ORDR	LMESSICK	Order Re: MOtion for Summary Judgmnet	Gregory S. Anderson
1/12/2009		LMESSICK	Partial Summary Judgment	Gregory S. Anderson
1/2/2009		SHULTS	S.C. New Due Date 3-2-09	Gregory S. Anderson
12/29/2008		SHULTS	S.C. acknowledgment of Second Amended Notice of Appeal.	Gregory S. Anderson
12/19/2008		DOOLITTL	Objection to Amended Motion for Attorney Fees and Costs	Gregory S. Anderson
12/10/2008		WILLIAMS	Miscellaneous Payment: Writs Of Execution Paid by: Charles C. Just Receipt number: 0053629 Dated: 12/10/2008 Amount: \$2.00 (Check)	Gregory S. Anderson
	NOTH	WILLIAMS	Notice Of Hearing - 1/15/09 @ 9 a.m.	Gregory S. Anderson
	AFFD	WILLIAMS	Affidavit of Counsel in Support of Amended Motion for Costs and Fees	Gregory S. Anderson
	MOTN	WILLIAMS	Amended Motion for Costs and Fees	Gregory S. Anderson
	MEMO	WILLIAMS	Amended Memorandum of Costs	Gregory S. Anderson
	MOTN	WILLIAMS	Motion for Bond on Appeal	Gregory S. Anderson
12/8/2008	HRSC	LMESSICK	Hearing Scheduled (Motion 01/15/2009 09:00 AM) Motion for Bond on Appeal Amended Motion for Costs and Fees	Gregory S. Anderson
12/4/2008	BNDC	SHULTS	Bond Posted - Cash (Receipt 52715 Dated 12/4/2008 for 43.75)	Gregory S. Anderson
12/1/2008	NOTC	ROBBINS	Second Amended Notice of Appeal	Gregory S. Anderson

Black Diamond, LLC vs. Sherry Kimball, John Does I-x

Date	Code	User		Judge
10/24/2008	ORDR	LMESSICK	Order Re: Motion to Reconsider and Motion for Partial Summary Judgment	Gregory S. Anderson
	MEMO	LMESSICK	Memorandum Decision Re: Motion to Reconsider and MOTion for Partial Summary Judgment	Gregory S. Anderson
10/7/2008		DOOLITTL	Publication of the Deposition of Bradon K. Howell	Gregory S. Anderson
		DOOLITTL	Publication of the Deposition of Trent D. Tyler	Gregory S. Anderson
10/3/2008	MINE	LMESSICK	Minute Entry	Gregory S. Anderson
	DCHH	LMESSICK	Hearing result for Motion held on 10/02/2008 08:15 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: Motion to Reconsider 150 pages	Gregory S. Anderson
10/1/2008	MISC	WOOLF	Partial Publication of the Deposition of Bradon K. Howell	Gregory S. Anderson
	MISC	WOOLF	Partial Publication of the Deposition of Trent D. Tyler	Gregory S. Anderson
	RESP	WOOLF	Supplement to Response to P's Motion and Memorandum for Partial Summary Judgment	Gregory S. Anderson
	AFFD	WOOLF	Supplemental Affidavit of Sherry Kimball	Gregory S. Anderson
9/30/2008	AFFD	WOOLF	Affidavit of Counsel in Support of Reply to Response in Opposition to Motion for Summary Judgment	Gregory S. Anderson
	RESP	WOOLF	Reply to Response in Opposition to Motion for Summary Judgment	Gregory S. Anderson
9/19/2008	NOTC	WOOLF	Notice of Deposition and Subpoena - Black Diamond Alliance , LLC	Gregory S. Anderson
	NOTC	WOOLF	Notice of Deposition and Subpoena Duces Tecum - Just Law Office	Gregory S. Anderson
9/17/2008	AFFD	WOOLF	Affidavit of David A. Johnson (Second)	Gregory S. Anderson
	RESP	WOOLF	Response to P's Motion and Memorandum for Partial Summary Judgment	Gregory S. Anderson
9/5/2008	AFFD	DOOLITTL	Affidavit of Mary Glowacki	Gregory S. Anderson
	AFFD	DOOLITTL	Affidavit of Jerry Glowacki	Gregory S. Anderson
8/25/2008	MOTN	ROBBINS	Motion and Memorandum for Partial Summary Judgment	Gregory S. Anderson
	NOTH	ROBBINS	Notice Of Hearing 10/2/08 @ 8:15 am	Gregory S. Anderson
	AFFD	ROBBINS	Affidavit of Dick Fowler	Gregory S. Anderson
	AFFD	ROBBINS	Affidavit of Jeremy Bingham	Gregory S. Anderson
	AFFD	ROBBINS	Affidavit of Chad Murdock	Gregory S. Anderson
8/21/2008	RESP	WOOLF	Defendant's Response to Plaintiff's Motion for Reconsideration	Gregory S. Anderson
8/15/2008	HRSC	LMESSICK	Hearing Scheduled (Motion 09/04/2008 08:15 AM) Motion to Reconsider	Gregory S. Anderson
	NOTC	LMESSICK	Notice of Time for hearing	Gregory S. Anderson

Black Diamond, LLC vs. Sherry Kimball, John Does I-x

Date	Code	User		Judge
8/13/2008	AFFD	DOOLITTL	Affidavit of Counsel in Support of Motion for Reconsideration and 2nd Motion for Summary Judgment	Gregory S. Anderson
	MEMO	DOOLITTL	Memorandum in Support of Motion for Reconsideration	Gregory S. Anderson
7/14/2008	ORDR	SHULTS	S.C. Order Granting Motion to Suspend appeal (Stipulated)	Gregory S. Anderson
6/30/2008		SHULTS	S.C. Stipulated Motion to Suspend Appeal DUE DATE SUSPENDED	Gregory S. Anderson
6/16/2008		SHULTS	Balance Due letter sent 6-16-08 (due 6-30-08) (File returned to shelf)	Gregory S. Anderson
6/4/2008	MOTN	DOOLITTL	Motion to Reconsider	Gregory S. Anderson
5/15/2008	ORDR	LMESSICK	OrderRe: Motion to strike; Motion for Reconsideration; Motion for Order Quashing and Releasing Notice of Lis Pendens; and Motion for Costs and Fees	Gregory S. Anderson
	MEMO	LMESSICK	Memorandum Decision Re: Motion to strike; Motion for Reconsideration; Motion for Order Quashing and Releasing Notice of Lis Pendens; and Motion for Costs and Fees	Gregory S. Anderson
		SHULTS	S.C. DUE DATE 7-3-08	Gregory S. Anderson
		SHULTS	DOCKET # 35189	Gregory S. Anderson
		SHULTS	S.C. Acknowledgment of Appeal & Receipt for \$86.00	Gregory S. Anderson
5/1/2008	WRRT	WILLIAMS	Writ Returned	Gregory S. Anderson
4/24/2008		MCGARY	Amended Notice of Appeal	Gregory S. Anderson
4/18/2008		SHULTS	S.C. Notice sent to Mr. Johnson. Amended Appeal to be filed within 14 days (April 30) Serving Reporter.	Gregory S. Anderson
4/17/2008	HRVC	LMESSICK	Hearing result for Pretrial Conference held on 04/30/2008 09:00 AM: Hearing Vacated	Gregory S. Anderson
	HRVC	LMESSICK	Hearing result for Trial held on 05/06/2008 10:00 AM: Hearing Vacated	Gregory S. Anderson
	STATUS	LMESSICK	Case Status Changed: closed pending clerk action	Gregory S. Anderson
	DCHH	LMESSICK	Hearing result for Motion held on 04/17/2008 08:15 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: 50 pages	Gregory S. Anderson
4/4/2008	BNDC	SHULTS	Bond Posted - Cash (Receipt 13806 Dated 4/4/2008 for 100.00)	Gregory S. Anderson
	MISC	SHULTS	Notice of Appeal	Gregory S. Anderson
	MOTN	DOOLITTL	Motion to Enforce Judgment and Alternative Motion for Bond Pending Appeal	Gregory S. Anderson
	NOTH	DOOLITTL	Notice Of Hearing 4-17-08 @ 8:15 a.m.	Gregory S. Anderson

Black Diamond, LLC vs. Sherry Kimball, John Does I-x

Date	Code	User		Judge
4/4/2008	WRIT	LMESSICK	Writ Issued - Amended Writ of Ejectment and Writ of Restitution (Bonneville County)	Gregory S. Anderson
	WRIT	LMESSICK	Writ Issued - Writ of Ejectment and Writ of Restitution (Bonneville County)	Gregory S. Anderson
4/2/2008		TAWILLIAMS	Objection To Attorney Fees and Costs	Gregory S. Anderson
	NOTC	TAWILLIAMS	Notice of Appeal	Gregory S. Anderson
		TAWILLIAMS	Filing: T - Civil Appeals To The Supreme Court (\$86.00 Directly to Supreme Court Plus this amount to the District Court) Paid by: Kimball, Sherry (defendant) Receipt number: 0013572 Dated: 4/3/2008 Amount: \$15.00 (Check) For: Kimball, Sherry (defendant)	Gregory S. Anderson
4/1/2008	AFFD	LMESSICK	Affidavit of Lost Writ	Gregory S. Anderson
3/28/2008	NOTH	DOOLITTL	Notice Of Hearing 4-17-08 @ 8:15 a.m.	Gregory S. Anderson
3/27/2008	NOTH	DOOLITTL	Notice Of Hearing 4-17-08 @ 8:15 a.m.	Gregory S. Anderson
3/24/2008	MEMO	LMESSICK	Memorandum of Costs	Gregory S. Anderson
	MOTN	LMESSICK	Motion for Costs and Fees	Gregory S. Anderson
	NOTC	LMESSICK	Notice of Withdrawal of Motion to Allow Inspection of Premises	Gregory S. Anderson
3/20/2008	HRSC	LMESSICK	Hearing Scheduled (Motion 04/10/2008 08:00 AM) Motion to Quash and Release Lis Pendens Motion for Inspection of Premises Application for TRO	Gregory S. Anderson
3/18/2008	APPL	ANDERSEN	Application for Temporary Restraining Order (no proposed order included)	Gregory S. Anderson
	MOTN	ANDERSEN	Motion for Order Quashing and Releasing Notice of Lis Pendens	Gregory S. Anderson
	RESP	ANDERSEN	Response in Opposition to Motion for Reconsideration	Gregory S. Anderson
	AFFD	ANDERSEN	Affidavit of Counsel in Support of Motion for Inspection of Premises and Application for Temporary Restraining Order	Gregory S. Anderson
	MOTN	ANDERSEN	Motion for Inspection of Premises	Gregory S. Anderson
3/13/2008		LMESSICK	Writ of Ejection and Writ of Restitution	Gregory S. Anderson
		LMESSICK	Summary Judgment	Gregory S. Anderson
3/12/2008	MOTN	WILLIAMS	Motion for Reconsideration	Gregory S. Anderson
3/6/2008	MINE	LMESSICK	Minute Entry	Gregory S. Anderson
	DCHH	LMESSICK	Hearing result for Motion held on 03/06/2008 08:15 AM: District Court Hearing Held Court Reporter: Karen Konvalinka Number of Transcript Pages for this hearing estimated: 100 pages	Gregory S. Anderson
3/5/2008	AFFD	ROBBINS	Affidavit of David A Johnson (2)	Gregory S. Anderson

Black Diamond, LLC vs. Sherry Kimball, John Does 1-x

Date	Code	User	Judge
2/29/2008	NTOS	DOOLITTL	Notice Of Service (Defendant's Black Diamond's LLC Response to Plaintiff's Interrogatories and Requests for production of Documents)
	BRIF	DOOLITTL	Reply Brief Filed
	MOTN	DOOLITTL	Motion to Strike
2/21/2008	AFFD	DOOLITTL	Affidavit of Counsel
2/20/2008	MEMO	QUINTANA	Memorandum of Points and Authorities on Equitable Power of Court to Require Interim Payments
2/19/2008	ORPT	LMESSICK	Order Setting Pretrial Conference/trial
	MINE	LMESSICK	Minute Entry
	HRSC	LMESSICK	Hearing Scheduled (Trial 05/06/2008 10:00 AM)
	HRSC	LMESSICK	Hearing Scheduled (Pretrial Conference 04/30/2008 09:00 AM)
2/15/2008	MOTN	DOOLITTL	Motion to Continue Hearing
	RESP	DOOLITTL	Response to Motion and Memorandum for Summary Judgment
	AFFD	DOOLITTL	Affidavit of David A. Johnson
	AFFD	DOOLITTL	Affidavit of Sherry Kimball
	MOTN	DOOLITTL	Motion to Amend Caption
2/14/2008	NTOS	DOOLITTL	Notice Of Service (Defendant's Interrogatories and Requests for Production of Documents)
2/13/2008	HRHD	LMESSICK	Hearing result for Motion held on 02/13/2008 09:15 AM: Hearing Held Motion for Interim Payment
1/31/2008	NOTH	DOOLITTL	Notice Of Hearing 3-6-08 @ 9:15 a.m.
1/30/2008	HRSC	LMESSICK	Hearing Scheduled (Motion 03/06/2008 08:15 AM) Motion for Summary Judgment
1/18/2008	AFFD	DOOLITTL	Affidavit of Bradon K. Howell
	AFFD	DOOLITTL	Affidavit of remont Investment & Loan
	AFFD	DOOLITTL	Affidavit of First American Title
	AFFD	DOOLITTL	Affidavit of Counsel in Support of Motion for Summary Judgment
	MEMO	DOOLITTL	Memorandum in Support of Motion for Summary Judgment
	MOTN	DOOLITTL	Motion for Summary Judgment
1/17/2008	NOTC	LMESSICK	Notice of Hearing Motion for Interim Payments
1/15/2008	HRSC	LMESSICK	Hearing Scheduled (Motion 02/13/2008 09:15 AM) Motion for Interim Payment
1/8/2008	HRVC	LMESSICK	Hearing result for Motion held on 01/02/2008 10:30 AM: Hearing Vacated Motion for Interem Payment

Black Diamond, LLC vs. Sherry Kimball, John Does I-x

Date	Code	User		Judge
12/31/2007	MOTN	TAWILLIAMS	Motion To Shorten Time	Gregory S. Anderson
12/28/2007	MOTN	TAWILLIAMS	Motion To Continue Hearing	Gregory S. Anderson
12/14/2007	NOTH	PHILLIPS	Notice Of Hearing 1/2/08 @ 10:30 a.m.	Gregory S. Anderson
12/13/2007	NOTC	PHILLIPS	Notice of Compliance	Gregory S. Anderson
12/5/2007	HRSC	LMESSICK	Hearing Scheduled (Motion 01/02/2008 10:30 AM) Motion for Interem Payment	Gregory S. Anderson
12/3/2007	MOTN	WILLIAMS	Motion for Interim Payments	Gregory S. Anderson
11/27/2007	NOTC	WILLIAMS	Notice of Compliance	Gregory S. Anderson
11/20/2007		LMESSICK	Reply to Counterclaim	Gregory S. Anderson
	NOTC	LMESSICK	Notice of Service	Gregory S. Anderson
11/7/2007	ANSW	DOOLITTL	Answer and Counterclaim	Gregory S. Anderson
		DOOLITTL	Filing: J8B - Special Motions Counterclaim With Prior Appearance Paid by: Johnson, David A. (attorney for Kimball, Sherry) Receipt number: 0048070 Dated: 11/8/2007 Amount: \$14.00 (Check) For: Kimball, Sherry (defendant)	Gregory S. Anderson
		DOOLITTL	Filing: I1B - Civil Answer Or Appear. More Than \$1000 With Prior Appearance Paid by: Johnson, David A. (attorney for Kimball, Sherry) Receipt number: 0048070 Dated: 11/8/2007 Amount: \$14.00 (Check) For: Kimball, Sherry (defendant)	Gregory S. Anderson
11/5/2007	NOTC	PHILLIPS	3-Day Notice of Intent	Gregory S. Anderson
10/26/2007	NOAP	DOOLITTL	Defendant: Kimball, Sherry Notice Of Appearance David A. Johnson	Gregory S. Anderson
		DOOLITTL	Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: Kimball, Sherry (defendant) Receipt number: 0046446 Dated: 10/29/2007 Amount: \$58.00 (Check) For: Kimball, Sherry (defendant)	Gregory S. Anderson
10/18/2007	PPUB	WILLIAMS	Proof Of Publication - 9/18, 9/25, 10/2, 10/9/07	Gregory S. Anderson
	AFFD	WILLIAMS	Affidavit of Counsel	Gregory S. Anderson
	APPL	WILLIAMS	Application for Default Judgment	Gregory S. Anderson
9/12/2007	ORDR	LMESSICK	Order Authorizing Service by Publication	Gregory S. Anderson
8/29/2007	AFFD	LMESSICK	Affidavit of Counsel	Gregory S. Anderson
	MOTN	LMESSICK	Motion for Order Authorizing Service By Publication	Gregory S. Anderson
8/17/2007	COMP	DOOLITTL	Amended Verified Complaint Filed	Gregory S. Anderson
8/3/2007	RTOS	DOOLITTL	Return Of Service ***NOT FOUND*** Kherry Kimball	Gregory S. Anderson
7/25/2007	AFFD	PHILLIPS	Affidavit of Counsel	Gregory S. Anderson
	MOTN	PHILLIPS	Motion for Order Authorizing Service By Publication	Gregory S. Anderson

Date: 4/28/2009

Seventh Judicial District Court - Bonneville County

User: SHULTS

Time: 02:24 PM

ROA Report

Page 8 of 8

Case: CV-2007-0003806 Current Judge: Gregory S. Anderson

Black Diamond, LLC vs. Sherry Kimball, etal.

Black Diamond, LLC vs. Sherry Kimball, John Does I-x

Date	Code	User		Judge
7/6/2007		DOOLITTL	Filing: A1 - Civil Complaint, More Than \$1000 No Prior Appearance Paid by: Manwaring, Kipp L. (attorney for Black Diamond, LLC) Receipt number: 0028913 Dated: 7/6/2007 Amount: \$88.00 (Check) For: Black Diamond, LLC (plaintiff)	Gregory S. Anderson
	NOAP	DOOLITTL	Plaintiff: Black Diamond, LLC Notice Of Appearance Kipp L. Manwaring	Gregory S. Anderson
	NCOC	DOOLITTL	New Case Filed-Other Claims	Gregory S. Anderson
	SMIS	DOOLITTL	Summons Issued (2)	Gregory S. Anderson

20080221A

CIVIL# _____

CHARLES C. JUST, ESQ. - ISB 1779
KIPP L. MANWARING, ESQ. - ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

2008 MAY -1 PM 3:35
DIVISION
COUNTY

WARRANT#
2008 APR 21 PM 4:14
7TH JUDICIAL DISTRICT
BONNEVILLE COUNTY
SHERIFF'S OFFICE
IDAHO FALLS, IDAHO
RECEIVED

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)
)
 Plaintiff,)
 vs.)
)
 SHERRY KIMBALL, an Individual,)
 and JOHN DOES I-X,)
)
 Defendants.)

Case No. CV-07-3806

AMENDED
WRIT OF EJECTMENT AND
WRIT OF RESTITUTION

STATE OF IDAHO)
 : ss
County of Bonneville)

TO THE SHERIFF OF BONNEVILLE COUNTY, IDAHO:

Plaintiff, Black Diamond Alliance, LLC, was granted judgment against Defendant, Sherry Kimball, for possession of that certain real property located at 2746 West 17th South, Idaho Falls, Idaho and more particularly described as follows:

Lot 3, Block 2, New Sweden Estates, Division No. 1, to the city of Idaho Falls, Bonneville County, Idaho, according to the plat recorded March 30, 1978 as Instrument No. 573699.

Which judgment dated March 13, 2008, directed that Plaintiff, Black Diamond Alliance, LLC, have restitution of the premises and be restored to immediate possession. Therefore;

YOU ARE HEREBY COMMANDED to cause Defendant, Sherry Kimball, and all her goods and chattels to be forthwith removed from the premises at 2746 West 17th South, Idaho

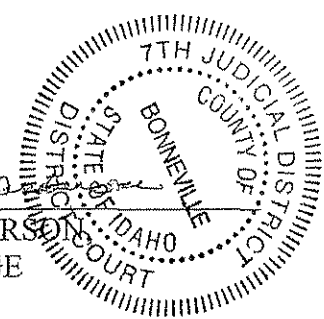
Falls, Bonneville County, Idaho, and Plaintiff is to have restitution and possession of the premises.

In the event the goods and chattels are not promptly removed, you are authorized and empowered to cause the same to be removed to a safe place for storage.

~~YOU ARE FURTHER COMMANDED~~ to levy on the goods and chattels of Defendant, Sherry Kimball, to satisfy all accruing costs of execution and make legal service and due return of this writ. J.S.C.

DATED this 4th ^{April} day of March, 2008.

Gregory B. Anderson
GREGORY ANDERSON
DISTRICT JUDGE

The seal is circular with a double-line border. The outer ring contains the text "7TH JUDICIAL DISTRICT" at the top and "COUNTY OF BONNEVILLE" at the bottom. The inner ring contains "STATE OF IDAHO" at the top and "DISTRICT COURT" at the bottom.

BONNEVILLE COUNTY
IDAHO
2008 JUN -4 AM 11:58

CHARLES C. JUST, ESQ. - ISB 1779
KIPP L. MANWARING, ESQ. - ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
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Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

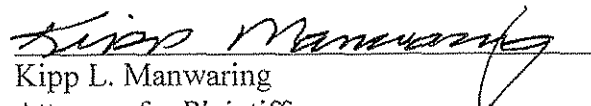
BLACK DIAMOND ALLIANCE, LLC,)	
an Idaho limited company,	)	Case No. CV-07-3806
)	
Plaintiff,)	
vs.)	
)	
SHERRY KIMBALL, an Individual,	)	MOTION TO RECONSIDER
and JOHN DOES I-X,)	
)	
Defendants.)	
)	

In accordance with I.R.C.P. 11(a)(2)(B), Plaintiff moves the court to reconsider its memorandum decision and order dated May 15, 2008.

This motion is based upon the pleadings of record and the transcript of the hearing on the motion for summary judgment held March 6, 2008.

Oral argument is requested.

Dated this 3rd day of June 2008.


Kipp L. Manwaring
Attorney for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3rd day of June 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: MOTION TO RECONSIDER

PARTIES SERVED: David A. Johnson
WRIGHT WRIGHT & JOHNSON
477 Shoup Avenue, Suite 109
PO Box 52251
Idaho Falls, Idaho 83405-2251
MAILED



Rebecca Manwaring
Legal Assistant

In the Supreme Court of the State of Idaho

BLACK DIAMOND ALLIANCE, LLC,)

Plaintiff-Respondent,)

v.)

SHERRY KIMBALL,)

Defendant-Appellant.)

ORDER GRANTING MOTION
TO SUSPEND APPEAL
(STIPULATED)

Supreme Court Docket No. 35189
Bonneville County Case No. 2007-3806

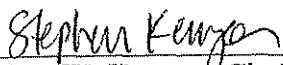
A MOTION TO SUSPEND APPEAL (STIPULATED) with attachment was filed by counsel for Appellant on June 18, 2008, requesting this Court to enter an Order suspending the appeal in this case as the District Court has granted Appellant's Motion for Reconsideration vacating the summary judgment. Further, Respondent has filed a Motion to Reconsider vacating the summary judgment, which has not been heard or determined. Therefore, good cause appearing,

IT HEREBY IS ORDERED that the MOTION TO SUSPEND APPEAL (STIPULATED) be, and hereby is, GRANTED and proceedings in this appeal are SUSPENDED until the District Court issues a ruling on the Respondent's Motion to Reconsider vacating the summary judgment.

IT FURTHER IS ORDERED that the District Court Clerk shall submit a certified copy of the District Court's Order on the Respondent's Motion to Reconsider vacating the summary judgment to this Court, at which time the due date for filing the Clerk's Record and Reporter's Transcript shall be reset.

DATED this 9th day of July 2008.

For the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record
District Court Clerk
Court Reporter Karen Konvalinka
District Judge Gregory S. Anderson

ORDER GRANTING MOTION TO SUSPEND APPEAL (STIPULATED) – Docket No. 35189

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

BONNEVILLE COUNTY
IDAHO

2008 AUG 13 PM 12:58

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

BLACK DIAMOND, LLC,)
)
Plaintiff,)
vs.)
)
SHERRY KIMBALL, an Individual,)
and JOHN DOES I-X,)
)
Defendants.)

Case No. CV-07-3806

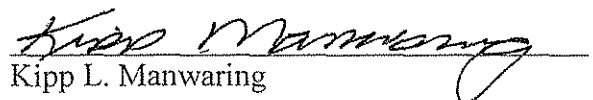
AFFIDAVIT OF COUNSEL IN
SUPPORT OF MOTION FOR
RECONSIDERATION AND SECOND
MOTION FOR SUMMARY JUDGMENT

STATE OF IDAHO)
)
ss.)
County of Bonneville)

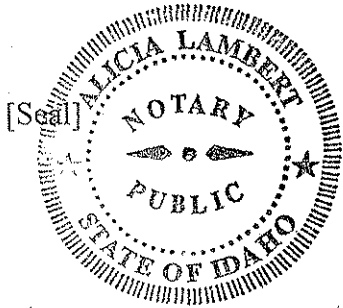
Kipp Manwaring, being first duly sworn under oath, deposes and states as follows:

1. I am a licensed attorney in the state of Idaho and represent Plaintiff in the above action.
2. Attached as Exhibit A and incorporated here by reference is a true and correct copy of pages 7 through 10 of the transcript of the hearing dated March 6, 2008.
3. Attached as Exhibit B and incorporated here by reference is a true and correct copy of Plaintiff's responses to Defendant's discovery requests.

Dated this 11th day of August 2008.


Kipp L. Manwaring

SUBSCRIBED AND SWORN to before me this 11th day of August 2008.



Alicia Lambert

Notary Public For Idaho
Residing At: Shelley
My Commission Expires: 05.24.11

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11th day of August 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED:

AFFIDAVIT OF COUNSEL

PARTIES SERVED:

David A. Johnson
WRIGHT WRIGHT & JOHNSON
477 Shoup Avenue, Suite 109
PO Box 52251
Idaho Falls, Idaho 83405-2251
MAILED

A Lambert

Alicia Lambert
Legal Assistant

Page 7

1 have the defense or the lack of discovery saying, well,
 2 we're not the trustee. We submit that as the
 3 attorneys, I mean, they have chose as to represent
 4 Black Diamond. They are also the trustee. They have
 5 the documents sitting in their file.
 6 Like, for example, one of the affidavits we
 7 filed in this case is my affidavit where I talk to
 8 Sandy Winn, who's one of their affiants, and she
 9 indicated she doesn't really recall anything, but the
 10 documents that she had that she turned over to Just Law
 11 Office. Those are records we want to get.
 12 We have now had an amendment of the caption.
 13 We haven't had an amendment of the complaint related to
 14 Black Diamond Alliance, LLC. Now LLC is not an entity
 15 that can act for itself. There are humans; there is
 16 individuals that act on behalf and there are persons
 17 involved. We want to know who the members, we want to
 18 know who the managers are in order to do the discovery
 19 on this case.
 20 As I indicated on the issue of the notice,
 21 frankly, it doesn't matter. If they don't have to give
 22 any notice of a postponement sale to the debtor, the
 23 case is going to be done, and I'm not going to play
 24 games of, you know, making them go for the formal
 25 amendment and that. So the Court can decide on that

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1 issue.
 2 But when they are saying in their reply brief
 3 such things as they are the highest bidder at a
 4 foreclosure sale with numerous other potential buyers
 5 present, that's a factual issue. That is what they
 6 won't provide the information to us. That would be
 7 contained in the documents from the title company that
 8 was sent to the trustee --
 9 THE COURT: What would be contained in the
 10 documents?
 11 MR. JOHNSON: I'm sure that's where they got
 12 the documents is the name of the individuals there. In
 13 their discovery response, they indicated who they
 14 indicated the other individuals there at this trustee
 15 sale. I believe that those could be material
 16 witnesses. They are discoverable.
 17 And when they also make the assertion that we
 18 have the burden of going forth and showing that it
 19 wasn't in good faith, you don't -- we're entitled to
 20 have reasonable discovery in this case, which we
 21 haven't got yet. Instead, we have this, well, Just Law
 22 Office is the trustee is not the same as Just Law
 23 Office as the representative of Black Diamond or Black
 24 Diamond Alliance.
 25 THE COURT: Well, you're kind of losing that

Page 9

1 one, because I think that's true. I don't think you
 2 can send a subpoena to a law firm and get the law
 3 firm's documents as opposed to their client's documents
 4 or in the context you're raising it. So I think if
 5 you're telling me they just have to give you whatever
 6 they've got, I think you're wrong.
 7 MR. JOHNSON: Well, okay --
 8 THE COURT: What you have to do is you have to
 9 send a subpoena duces tecum to Just Law Firm as an
 10 independent entity and say, or as trustee and say we
 11 want you to appear on such and such a day for a
 12 deposition and produce your documents. You just don't
 13 write them a letter and say because you represent Black
 14 Diamond, you got to cough up everything you got.
 15 MR. JOHNSON: And, frankly, I know we're not
 16 here on a motion to compel today, and the Court may be
 17 right. But when I got the documents recently it was a
 18 question of convenience. But, nevertheless, regardless
 19 of that, I don't have those documents available.
 20 THE COURT: Let me go back and clarify
 21 something you said -- I think you said in passing. Let
 22 me do it in the way of a question: If I find that the
 23 notice of a continuation given verbally at the first
 24 sale is sufficient, does that resolve the case?
 25 MR. JOHNSON: Yes.

Page 10

1 THE COURT: So can we hear that issue today?
 2 MR. MANWARING: Yes.
 3 MR. JOHNSON: Right.
 4 THE COURT: Okay. We'll hear that issue.
 5 We'll reserve for you to bring at a later time, if you
 6 need to, the issue of bonafide purchaser.
 7 MR. JOHNSON: Thank you, Your Honor.
 8 THE COURT: Okay. Mr. Manwaring?
 9 MR. MANWARING: Thank you, Your Honor.
 10 As the Court has identified, one of the main
 11 thrusts of the defendant's response and counterclaim
 12 here is that they did not receive notice of the
 13 postponed sale date. That is a legal issue. Again,
 14 the interplay of the notice requirements comes from
 15 Section 45-1506 of the Idaho Code. And that code
 16 section and, frankly, the case law that we have cited
 17 in our reply brief, directs that where there is not a
 18 bankruptcy that has stayed the original trustee's sale,
 19 but instead you simply have postponed that sale by
 20 direction of the beneficiary or otherwise, the notice
 21 for the postponed sale is complete when, at the time of
 22 the original sale, the trustee or its agent gives oral
 23 notice that the sale has been postponed and sets a new
 24 date and time for the postponed sale.
 25 The statute cited by the defendant claiming

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Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)	
	)	Case No. CV-07-3806
Plaintiff,)	
vs.)	
)	
SHERRY KIMBALL, an Individual,	)	PLAINTIFFS' RESPONSE TO
and JOHN DOES I-X,	)	DEFENDANT'S FIRST SET OF
	)	INTERROGATORIES AND
Defendants.	)	REQUESTS FOR PRODUCTION
	)	OF DOCUMENTS

TO: Defendant, Sherry Kimball, an Individual and her attorney of record,
David A. Johnson;

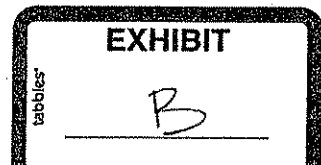
The Plaintiffs respond to Defendant's First Set Of Interrogatories And Requests
For Production of Documents as follows:

INTERROGATORY NO. 1: Please state the name, address and telephone
number of each and every person answering or consulted with to answer these
Interrogatories and/or responding to the Requests for Production.

ANSWER: Trent D. Tyler. He may be contacted through counsel, Just Law
Office.

INTERROGATORY NO. 2: Please state the name, address, telephone number,
and a brief description of the expected testimony of each and every witness you intend to
call at any hearing or trial in this case.

ANSWER: Object as to identity of witnesses. Without waiving that objection,
see the affidavits submitted in support of summary judgment. In addition, Trent D. Tyler
is the designated representative of Black Diamond Alliance, LLC.



INTERROGATORY NO. 3: Please state the name and address of each and every expert witness you intend to call at the trial in this matter, a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or deposition within the preceding four years.

ANSWER: No experts have been identified.

INTERROGATORY NO. 4: Please list and identify all exhibits which you intend or expect to introduce into evidence at any hearing or trial of this matter and state the name and address of the person presently in possession of such exhibits.

ANSWER: Exhibits have not been identified but will include all exhibits attached to the affidavit of Bradon Howell and the re-recorded trustee's deed attached to the affidavit of counsel.

INTERROGATORY NO. 5: Identify any and all members and managers of Black Diamond from January 1, 2006, to the present. For each person identified, indicate whether they were a member and/or manager.

ANSWER: All information is available through the Idaho Secretary of State's online service.

INTERROGATORY NO. 6: Describe each and every communication, conversation, and contact you had with the Trustee or any agent of the Trustee, prior to the June 12, 2007, Trustee's Sale. For each conversation or contact, state the date, the person conversing on behalf of Black Diamond, the person(s) to whom they spoke, (i.e. Trustee or agent of the Trustee) and the substance of each communication, conversation or contact.

ANSWER: None.

INTERROGATORY NO. 7: Describe any business, personal, social, or familial relationship between any member or manager of Black Diamond and the trustee or an agent of the trustee, from January 1, 2006, to the present. Your answer should specifically describe the relationship between Bradon Howell and Jayce K. Howell.

ANSWER: Black Diamond Alliance, LLC, (BDA), had no business relationships with the trustee or its agent. Bradon Howell and Jayce Howell are brothers.

INTERROGATORY NO. 8: Please state your opinion as to the value of the Subject Property and state your basis for such opinion.

ANSWER: Object. Value is not an issue in this action. Without waiving that objection, refer to the price bid at the trustee's sale.

INTERROGATORY NO. 9: Has Braden Howell ever had an interest in or received any interest in or any compensation from Black Diamond? If your answer is in the affirmative, describe in detail the interest, amount of compensation, and the reason for the interest or compensation.

ANSWER: No.

INTERROGATORY NO. 10: Identify all persons present at the May 29, 2007, Trustee's sale.

ANSWER: BDA was not present at the May 29, 2007 trustee's sale and has no knowledge of what other persons may have been present. BDA called the title company on May 29, 2007 prior to the time of the sale and learned the sale was going to be postponed

INTERROGATORY NO. 11: Identify all persons present at the June 12, 2007, Trustee's sale.

ANSWER: BDA is not certain of all persons who may have been present at the trustee's sale on June 12, 2007, but knows the following persons were present:

BDA

Dick Fowler

Jerry and Mary Gowacki

Chad Murdoch

Jeremy Bingham

INTERROGATORY NO. 12: Describe all communications between First American Title Company and the Trustee, between May 1, 2007, and July 1, 2007.

ANSWER: BDA cannot respond; it was not privy to any communications between First American Title Company and the Trustee.

INTERROGATORY NO. 13: Describe all communications between Fremont Investment & Loan and the Trustee, between May 1, 2007, and July 1, 2007.

ANSWER: BDA cannot respond; it was not privy to any communications between Fremont Investment & Loan and the Trustee.

REQUEST NO. 1: A copy of all documents and exhibits which could be introduced by Plaintiff at a hearing or trial of this matter.

RESPONSE: Copies of all exhibits were attached to the affidavit of Bradon Howell and affidavit of counsel previously delivered to you.

REQUEST NO. 2: A copy of all documents related to Black Diamond, from January 1, 2006, to the present, including:

- a. Articles of Organization
- b. Operating Agreement
- c. All amendments to the Articles of Organization
- d. Membership certificates or other documents related to ownership interest.
- e. All documents showing membership, ownership, and/or management.

RESPONSE: Articles of Organization are available through the Idaho Secretary of State's online service. Object as to all other documents. Legal existence of BDA is not at issue in this action and its internal documents are confidential.

REQUEST NO. 3: A copy of all documents related to the Trustee's sale of the Subject Property, including:

- a. Check, warrant, or other negotiable instrument showing your payment for the Subject Property.
- b. If payment was made via wire transfer or other means, all documents related to the account from which the funds were sent, including contracts related to such account, signature cards, etc.
- c. Documents in possession of the Trustee related to the receipt of the funds from Black Diamond.

RESPONSE:

- a. See attached copy of cashier's check.
- b. Not applicable.
- c. BDA is not in privy with the trustee and does not have possession of the trustee's records.

REQUEST NO. 4: A copy of all correspondence and communications between First American Title Company and the Trustee.

RESPONSE: BDA has no requested documents in its possession; it was not privy to any correspondence and communications between First American Title Company and the Trustee.

REQUEST NO. 5: A copy of all documents received from First American Title Company related to the Subject Property.

RESPONSE: BDA received no documents from First American Title Company.

REQUEST NO. 6: A copy of all documents related to the Subject Property, including all affidavits, notices, publications, correspondence, notes, etc., which have not otherwise been provided to Defendant.

RESPONSE: BDA is not currently aware of other documents in its possession relating to the subject property that have not already been provided as noted in response to Request No. 1.

REQUEST NO. 7: A copy of all documents exchanged between Fremont Investment & Loan and the Trustee.

RESPONSE: BDA has no requested documents in its possession; it was not privy to any documents exchanged between Fremont Investment & Loan and the Trustee.

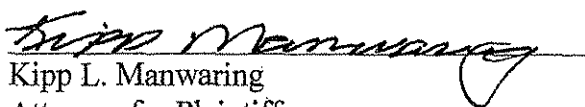
REQUEST NO. 8: A copy of all documents you relied on in answering the foregoing Interrogatories, to the extent the documents are not protected by privilege, including work-product and/or attorney-client privileges.

RESPONSE: See prior responses.

Dated this 26th day of February 2008.

Black Diamond Alliance, LLC

By: 
Trent D. Tyler, Member


Kipp L. Manwaring
Attorney for Plaintiff

CHARLES C. JUST, ESQ. – ISB 1779
 KIPP L. MANWARING, ESQ. – ISB 3817
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 381 Shoup Avenue
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 Telephone: (208) 523-9106
 Facsimile: (208) 523-9146

BONNEVILLE COUNTY
 IDAHO

2008 AUG 13 PM 12: 58

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF BONNEVILLE

BLACK DIAMOND, LLC,)	
	)	Case No. CV-07-3806
Plaintiff,)	
vs.)	
)	
SHERRY KIMBALL, an Individual,	)	MEMORANDUM IN SUPPORT
and JOHN DOES I-X,	)	OF MOTION FOR RECONSIDERATION
)	
Defendants.)	
)	

In granting Defendant’s motion for reconsideration the court determined there was an issue of fact as to whether Defendant was told the foreclosure sale was cancelled or postponed. At the March 6, 2008 hearing on Plaintiff’s motion for summary judgment counsel for Defendant stated:

As I indicated on the issue of the notice, frankly, it doesn’t matter. It (sic) they don’t have to give any notice of a postponement sale to the debtor, *the case is going to be done*, and I’m not going to play games of, you know, making them go for the formal amendment and that. So the Court can decide on that issue. (Transcript, p. 7, Ll. 20-25; p. 8, L. 1)(emphasis added).

Subsequently, the court clarified counsel’s position:

THE COURT: Let me go back and clarify something you said – I think you said in passing. Let me do it in the way of a question: *If I find that the notice of a continuation given verbally at the first sale is sufficient, does that resolve the case?*

MR. JOHNSON: Yes.

(Transcript, p. 9, Ll. 20-25)(emphasis added).

“A stipulation between counsel entered upon the minutes of the court is generally deemed binding upon the parties.” *Savage Lateral Ditch Water Users Association v. Sand Hollow Ditch Co., Ltd*, 125 Idaho 237, 245, 869 P.2d 554, 562 (1993), *citing*, I.C. § 3-202(1); *Singleton v. Pichon*, 102 Idaho 588, 589, 635 P.2d 254, 255 (1981).

At the hearing, counsel for Defendant clearly stated that the issue was related to postponement, and not cancellation, of the foreclosure sale. Moreover, counsel stipulated that resolution of that issue was dispositive. Nevertheless, Defendant’s motion for reconsideration ignored the prior stipulation and representation and claimed the basis was an understanding of cancellation and not postponement. Nowhere in counsel’s argument to the court on March 6, 2008 is the question raised of cancellation. Rather, the issue was couched in terms of *notice of postponement*.

Counsel’s stipulation on the record in open court is binding upon Defendant. Accordingly, disposition of the action rested upon the court’s construction of the applicable statute. Defendant cannot later avoid her position and seek relief from the binding stipulation.

Plaintiff’s motion for reconsideration should be granted and the court should re-enter summary judgment in Plaintiff’s favor.

Dated this 11th day of August 2008.



Kipp L. Manwaring
Attorney for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11th day of August 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: MEMORANDUM IN SUPPORT OF
MOTION FOR RECONSIDERATION

PARTIES SERVED: David A. Johnson
WRIGHT WRIGHT & JOHNSON
477 Shoup Avenue, Suite 109
PO Box 52251
Idaho Falls, Idaho 83405-2251
MAILED



Alicia Lambert
Legal Assistant



8 AUG 21 P4:44

David A. Johnson, Esq.
Wright, Wright & Johnson, PLLC
477 Shoup Avenue, Suite 109
P.O. Box 52251
Idaho Falls, ID 83405-2251
Telephone (208) 535-1000
Facsimile (208) 523-4400
Idaho State Bar No. 3319

Attorney for Defendant

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

BLACK DIAMOND ALLIANCE, LLC,

Plaintiff,

vs.

SHERRY KIMBALL,

Defendant.

Case No: CV-07-3806

**DEFENDANT'S RESPONSE TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION
(Dated June 3, 2008)**

David A. Johnson, attorney for Defendant Sherry Kimball (Kimball), hereby responds to Plaintiff Black Diamond Alliance, LLC's (Black Diamond) Motion for Reconsideration and Memorandum in Support of Motion for Reconsideration, as follows:

Black Diamond's argument is encapsulated on page 2 of its supporting memorandum, wherein it asserts that "[a]t the hearing, counsel for Defendant clearly stated that the issue was related to postponement, *and not cancellation*, of the foreclosure sale" (emphasis added). The emphasized portion is not false. There is

absolutely no indication that cancellation was not at issue in this case. Black Diamond is not correctly representing the record.

Further, the referenced statement is taken out of context. The statement was made during a discussion regarding Black Diamond's attorney's refusal to produce documents even though they acted as trustee. The point being made is the relevance of the requested documents. The context of the statement was that if no notice was required, then the case was required. Any usage of the word "postponement" was not to the exclusion of the fact that Kimball was told the sale was cancelled, as indicated in the pleadings. Use of the word "postponement" was not intended to narrow or change the issue or facts, but rather to indicate that the sale was put off until a later time. Kimball understood that the sale could be rescheduled if she did not comply with the agreement. Kimball also believed that she would receive notice of any subsequent sale.

Black Diamond asserts a stipulation was made that narrowed the case to adequacy of the Notice of postponed sale. Such assertion is out of context. Even at face value, the supposed stipulation would be the entire statement, including "[i]f they don't have to give any notice" Even under a postponement at the Trustee's sale, notice is required to be verbally announced.

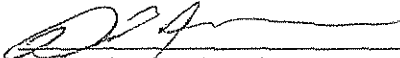
As to the colloquy between the Court and Defendant's counsel, the question and answer do not support Black Diamond's contention. In response to the Court's question "*[i]f I find that the notice of a continuation given verbally at the first sale is sufficient, does that resolve the case?*", Defendant's counsel answered in the affirmative. Such acknowledgment does not, nor was it intended to, stipulate or admit

that the sale was postponed versus cancelled, but rather determine what notice is required under the facts of this case.

In essence, Black Diamond is asserting that Kimball waived the cancellation argument. To constitute a waiver, the same must be a voluntary abandonment, renouncement, or surrender of that claimed privilege or right. There must be both the knowledge of the existing right and the intention to forgo the right. BLACK'S LAW DICTIONARY 1276 (7th abr. ed. 2000). Black Diamond's statement that Defendant's counsel "clearly stated" that cancellation was not the issue is "clearly" false. As the Court correctly identified, the issue of cancellation was sufficiently raised in the pleadings, particularly the pleadings related to the summary judgment, and was not waived.

If there was any misunderstanding at the March 6, 2008, hearing, the misunderstanding was clarified by the subsequent Motion for Reconsideration. Without authority cited, Black Diamond takes the position that once the word "postponement" was used, it is irrevocable. The Motion for Reconsideration was timely filed and can be used to correct the misspoken or incorrect understanding.

DATED: August 21, 2008.



WRIGHT, WRIGHT & JOHNSON, PLLC
David A. Johnson, Esq.

CERTIFICATE OF SERVICE

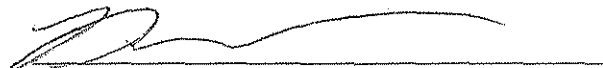
I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on August 21, 2008, I served a true and correct copy of the foregoing document, on the person or persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered by the following method:

Attorneys served:

Kipp L. Manwaring
Just Law Office
P.O. Box 50271
Idaho Falls, ID 83405-0271

Method of Service:

Mail


David A. Johnson, Esq.

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

2008 AUG 25 PM 3: 01

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

Attorneys for Plaintiff

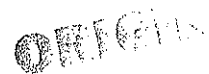
**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)	
	)	Case No. CV-07-3806
Plaintiff,)	
vs.)	
)	
SHERRY KIMBALL, an Individual,	)	MOTION AND MEMORANDUM
and JOHN DOES I-X,	)	FOR PARTIAL SUMMARY
	)	JUDGMENT
Defendants.)	
)	

In accordance with I.R.C.P. 56, Black Diamond Alliance, LLC, moves the court for its order granting summary judgment on the issue: Was Black Diamond Alliance, LLC, a bona fide purchaser for value at the nonjudicial foreclosure sale? This motion is based upon the pleadings of record, including all prior affidavits, and the affidavit of counsel, and the affidavits of Chad Murdoch, Dick Fowler, Jeremy Bingham, and Jerry Gowacki.

Facts

Black Diamond Alliance, LLC, has no business associations with Just Law Office, the trustee for the nonjudicial foreclosure sale. (*Affidavit of Counsel*, Exhibit B). Black Diamond Alliance, LLC, has no business associations with Braden Howell, a foreclosure technician at Just Law Office. (*Affidavit of Counsel*, Exhibit B). Black Diamond Alliance, LLC, was the highest bidder at the foreclosure sale and paid the trustee the full bid amount of \$112,500. (*Affidavit of Counsel*, Exhibit B; *Affidavits of Chad Murdoch, Dick Fowler, Jeremy Bingham, Jerry Gowacki*).



Other persons remained alert to the foreclosure sale of Defendant's property and attended the sale on the postponed date. (*Affidavits of Chad Murdoch, Dick Fowler, Jeremy Bingham, Jerry Gowacki*). Chad Murdoch, Dick Fowler, Jeremy Bingham, and Jerry Gowacki, all had potential interest as buyers at the foreclosure sale; however, Black Diamond Alliance, LLC, was the highest bidder. (*Affidavits of Chad Murdoch, Dick Fowler, Jeremy Bingham, Jerry Gowacki; Affidavit of First American Title*).

Argument

Sherry Kimball contends in her counterclaim that she has superior right, title, and interest to the subject real property. Black Diamond in reply maintains the affirmative defense of bona fide purchaser for value.

"As a general rule, a bona fide purchaser prevails against all adverse claimants, including the true owner. *Ogilvie v. Idaho Bank & Trust Co.*, 99 Idaho 361, 582 P.2d 215 (1978). In other contexts as well, a bona fide purchaser's rights have been held unassailable. *See* I.C. § 55-909. *Jahnke v. Mesa Equipment, Inc.*, 128 Idaho 562, 916 P.2d 1287(Ct. App. 1996).

"A bona fide purchaser is one who takes real property by paying valuable consideration and in good faith, i.e., without knowing of adverse claims. I.C. § 55-606; § 55-812. The theory behind the rule is to protect innocent purchasers and to allow them to obtain and convey unsullied interests. Generally, a person must take property through a 'conveyance' in order to be afforded the protective status of a bona fide purchaser." *Sun Valley Land and Minerals, Inc. v. Burt*, 123 Idaho 862, 853 P.2d 607(Ct. App. 1993).

Black Diamond paid valuable consideration for the subject property. Black Diamond had no notice of any adverse claim. The foreclosure sale was held publicly with other potential purchasers present. There was no collusion between Black Diamond and the trustee. After the sale, the trustee by trustee's deed conveyed title to Black Diamond. Accordingly, Black Diamond's was a bona fide purchaser for value and its title is paramount to Sherry Kimball's claims. Summary judgment should be entered in favor of Black Diamond.

Dated this 21st day of August 2008.

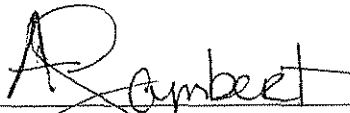

Kipp L. Manwaring
Attorney for Plaintiff

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 21st day of August 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: MOTION AND MEMORANDUM FOR
PARTIAL SUMMARY JUDGMENT

PARTIES SERVED: David A. Johnson
WRIGHT WRIGHT & JOHNSON
477 Shoup Avenue, Suite 109
PO Box 52251
Idaho Falls, Idaho 83405-2251
MAILED



Alicia Lambert
Legal Assistant

CHARLES C. JUST, ESQ. – ISB 1779
 KIPP L. MANWARING, ESQ. – ISB 3817
 JUST LAW OFFICE
 381 Shoup Avenue
 P.O. Box 50271
 Idaho Falls, Idaho 83405
 Telephone: (208) 523-9106
 Facsimile: (208) 523-9146

2008 AUG 25 PM 3:01

DISTRICT COURT
 MAGISTRATE DIVISION
 BONNEVILLE COUNTY
 IDAHO

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)
)
 Plaintiff,)
 vs.)
)
 SHERRY KIMBALL, an Individual,)
 and JOHN DOES I-X,)
)
 Defendants.)
 _____)

Case No. CV-07-3806

AFFIDAVIT OF
 DICK FOWLER

STATE OF IDAHO)
 ss.
 County of Bonneville)

Dick Fowler, being first duly sworn under oath, deposes and states as follows:


1. I am eighteen years of age or older and have personal knowledge of the facts and information contained in this affidavit.
2. I speculate in the local real estate market and watch for notices of foreclosure to determine whether a particular foreclosure may be economically advantageous.
3. I became familiar with the notice of foreclosure regarding the property that is the subject of this action.
4. From the notice I knew that First American Title Company in Idaho Falls was the designated agent for the trustee in crying the foreclosure sale.
5. On the date initially set in the note for the foreclosure, I contacted First American to determine if the sale would be held. I was informed that the sale was to be postponed for a given time period and made note of that new date.

6. On the date for the postponed sale, I contacted First American and discovered the sale would take place. I personally went to First American's office to observe and possible participate in the sale.

7. A few others were present for the foreclosure sale, including an agent of Black Diamond Alliance, LLC.


8. The lender's credit bid was set forth by the crier of the sale. Black Diamond made a bid. I do not recall if others present made a bid. Based upon Black Diamond's highest bid, the property was sold to Black Diamond.

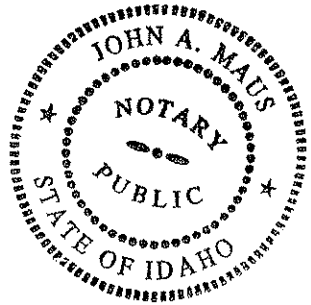
Dated this 15th day of August 2008.


Dick Fowler

SUBSCRIBED AND SWORN to before me this 15th day of August 2008.

[Seal]


Notary Public For Idaho
Residing At: Shelley
My Commission Expires: 05.24.11



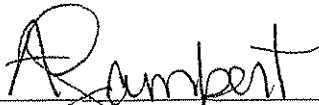
my comm. expires
6/30/08

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 11th day of August 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: AFFIDAVIT OF DICK FOWLER

PARTIES SERVED: David A. Johnson
 WRIGHT WRIGHT & JOHNSON
 477 Shoup Avenue, Suite 109
 PO Box 52251
 Idaho Falls, Idaho 83405-2251
 MAILED



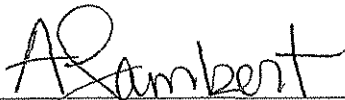
Alicia Lambert
Legal Assistant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20th day of August 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: AFFIDAVIT OF DICK FOWLER

PARTIES SERVED: David A. Johnson
 WRIGHT WRIGHT & JOHNSON
 477 Shoup Avenue, Suite 109
 PO Box 52251
 Idaho Falls, Idaho 83405-2251
 MAILED



Alicia Lambert
Legal Assistant

CHARLES C. JUST, ESQ. — ISB 1779
KIPP L. MANWARING, ESQ. — ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

2008 AUG 25 PM 3:01

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)
)
Plaintiff,)
vs.)
)
SHERRY KIMBALL, an Individual,)
and JOHN DOES I-X,)
)
Defendants.)
_____)

Case No. CV-07-3806

AFFIDAVIT OF
JEREMY BINGHAM

STATE OF IDAHO)
ss.)
County of Bonneville)

Jeremy Bingham, being first duly sworn under oath, deposes and states as follows:

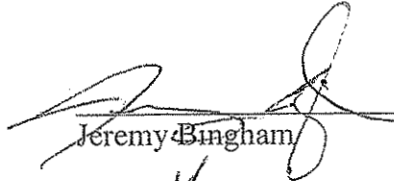
1. I am eighteen years of age or older and have personal knowledge of the facts and information contained in this affidavit.
2. I speculate in the local real estate market and watch for notices of foreclosure to determine whether a particular foreclosure may be economically advantageous.
3. I became familiar with the notice of foreclosure regarding the property that is the subject of this action.
4. From the notice I knew that First American Title Company in Idaho Falls was the designated agent for the trustee in crying the foreclosure sale.
5. On the date initially set in the note for the foreclosure, I contacted First American to determine if the sale would be held. I was informed that the sale was to be postponed for a given time period and made note of that new date.

6. On the date for the postponed sale, I contacted First American and discovered the sale would take place. I personally went to First American's office to observe and possible participate in the sale.

7. A few others were present for the foreclosure sale, including an agent of Black Diamond Alliance, LLC.

8. The lender's credit bid was set forth by the crier of the sale. Black Diamond made a bid. I do not recall if others present made a bid. Based upon Black Diamond's highest bid, the property was sold to Black Diamond.

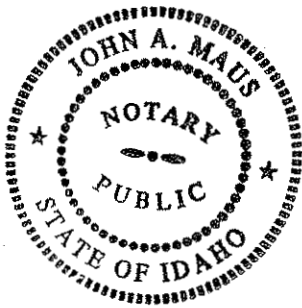
Dated this 12th day of August 2008.

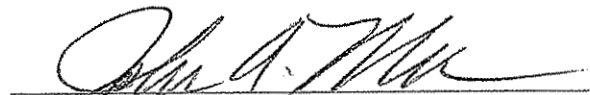


Jeremy Bingham

SUBSCRIBED AND SWORN to before me this 12th day of August 2008.

[Seal]





Notary Public For Idaho
Residing At: Idaho Falls, ID
My Commission Expires:

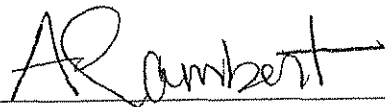
6/30/09

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20th day of August 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: AFFIDAVIT OF JEREMY BINGHAM

PARTIES SERVED: David A. Johnson
 WRIGHT WRIGHT & JOHNSON
 477 Shoup Avenue, Suite 109
 PO Box 52251
 Idaho Falls, Idaho 83405-2251
 MAILED



Alicia Lambert
Legal Assistant

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

2008 AUG 25 PM 3:01

DISTRICT COURT
MAGISTRATE DIVISION
BONNEVILLE COUNTY
IDAHO

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)
)
 Plaintiff,)
 vs.)
)
 SHERRY KIMBALL, an Individual,)
 and JOHN DOES I-X,)
)
 Defendants.)
)

Case No. CV-07-3806

AFFIDAVIT OF
CHAD MURDOCK

STATE OF IDAHO)
 ss.
County of Bonneville)

Chad Murdock, being first duly sworn under oath, deposes and states as follows:

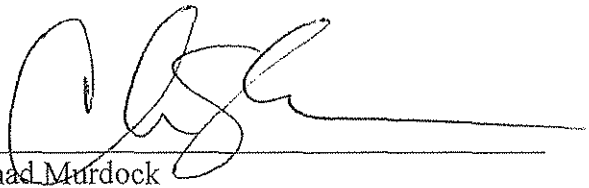
1. I am eighteen years of age or older and have personal knowledge of the facts and information contained in this affidavit.
2. I speculate in the local real estate market and watch for notices of foreclosure to determine whether a particular foreclosure may be economically advantageous.
3. I became familiar with the notice of foreclosure regarding the property that is the subject of this action.
4. From the notice I knew that First American Title Company in Idaho Falls was the designated agent for the trustee in crying the foreclosure sale.
5. On the date initially set in the note for the foreclosure, I contacted First American to determine if the sale would be held. I was informed that the sale was to be postponed for a given time period and made note of that new date.

6. On the date for the postponed sale, I contacted First American and discovered the sale would take place. I personally went to First American's office to observe and possible participate in the sale.


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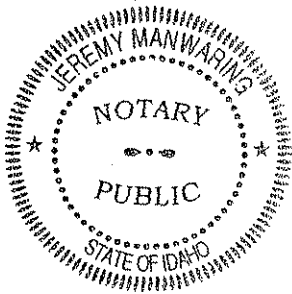
Dated this 13 day of August 2008.


Chad Murdock

SUBSCRIBED AND SWORN to before me this 11th day of August 2008.



[Seal]



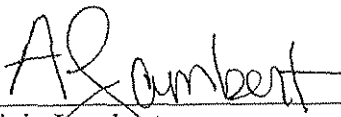
Notary Public For Idaho
Residing At: Shelley
My Commission Expires: ~~05-24-11~~ 9-26-09

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 20th day of August 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: AFFIDAVIT OF CHAD MURDOCK

PARTIES SERVED: David A. Johnson
 WRIGHT WRIGHT & JOHNSON
 477 Shoup Avenue, Suite 109
 PO Box 52251
 Idaho Falls, Idaho 83405-2251
 MAILED



Alicia Lambert
Legal Assistant

BONNEVILLE COUNTY
IDAHO

2000 SEP -5 PM 3:31

CHARLES C. JUST, ESQ. - ISB 1779
KIPP L. MANWARING, ESQ. - ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

BLACK DIAMOND, LLC,)
)
 Plaintiff,)
 vs.)
)
 SHERRY KIMBALL, an Individual,)
 and JOHN DOES I-X,)
)
 Defendants.)
)

Case No. CV-07-3806

AFFIDAVIT OF
MARY GLOWACKI

STATE OF IDAHO)
 ss.
County of Bonneville)

Mary Glowacki, being first duly sworn under oath, deposes and states as follows:

1. I am eighteen years of age or older and have personal knowledge of the facts and information contained in this affidavit.
2. I speculate in the local real estate market and watch for notices of foreclosure to determine whether a particular foreclosure may be economically advantageous.
3. I became familiar with the notice of foreclosure regarding the property that is the subject of this action.
4. From the notice I knew that First American Title Company in Idaho Falls was the designated agent for the trustee in crying the foreclosure sale.
5. On the date initially set in the note for the foreclosure, I contacted First American to determine if the sale would be held. I was informed that the sale was to be postponed for a given time period and made note of that new date.

6. On the date for the postponed sale, I contacted First American and discovered the sale would take place. I personally went to First American's office to observe and possible participate in the sale.

7. A few others were present for the foreclosure sale, including an agent of Black Diamond Alliance, LLC.

8. The lender's credit bid was set forth by the crier of the sale. Black Diamond made a bid. I do not recall if others present made a bid. Based upon Black Diamond's highest bid, the property was sold to Black Diamond.

Dated this 1st day of ~~August~~ September 2008.

Mary Glowacki
Mary Glowacki

SUBSCRIBED AND SWORN to before me this 1st day of ~~August~~ September 2008.

J. K. Taylor

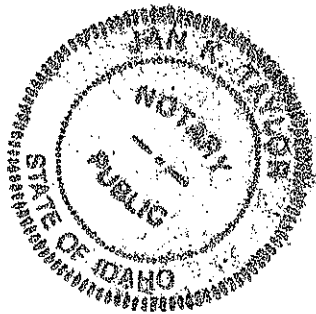
Notary Public For Idaho

Residing At:

My Commission Expires:

Residing in Rexburg, ID
Commission Expires: 1-31-09

[Seal]



CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3rd day of September 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: AFFIDAVIT OF MARY GLOWACKI

PARTIES SERVED: David A. Johnson
 WRIGHT WRIGHT & JOHNSON
 477 Shoup Avenue, Suite 109
 PO Box 52251
 Idaho Falls, Idaho 83405-2251
 MAILED



Alicia Lambert
Legal Assistant

CHARLES C. JUST, ESQ. – ISB 1779
 KIPP L. MANWARING, ESQ. – ISB 3817
 JUST LAW OFFICE
 381 Shoup Avenue
 P.O. Box 50271
 Idaho Falls, Idaho 83405
 Telephone: (208) 523-9106
 Facsimile: (208) 523-9146

BONNEVILLE COUNTY
 IDAHO
 2008 SEP -5 PM 3:31

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
 STATE OF IDAHO, COUNTY OF BONNEVILLE

BLACK DIAMOND, LLC,)	
	)	Case No. CV-07-3806
Plaintiff,)	
vs.)	
)	
SHERRY KIMBALL, an Individual,	)	AFFIDAVIT OF
and JOHN DOES I-X,	)	JERRY GLOWACKI
)	
Defendants.)	

STATE OF IDAHO)
 ss.
 County of Bonneville)

Jerry Glowacki, being first duly sworn under oath, deposes and states as follows:


1. I am eighteen years of age or older and have personal knowledge of the facts and information contained in this affidavit.
2. I speculate in the local real estate market and watch for notices of foreclosure to determine whether a particular foreclosure may be economically advantageous.
3. I became familiar with the notice of foreclosure regarding the property that is the subject of this action.
4. From the notice I knew that First American Title Company in Idaho Falls was the designated agent for the trustee in crying the foreclosure sale.
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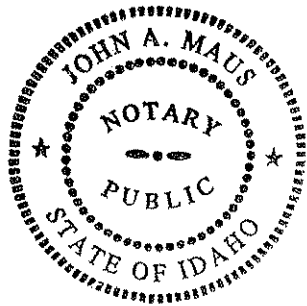
Dated this 29th day of August 2008.

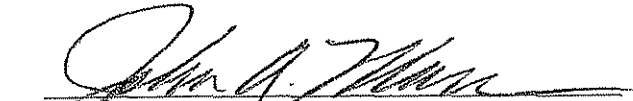


Jerry Glowacki

SUBSCRIBED AND SWORN to before me this 29th day of August 2008.

[Seal]





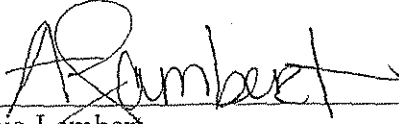
Notary Public For Idaho
Residing At: Idaho Falls, ID
My Commission Expires: 6/30/09

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 3rd day of September 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED: AFFIDAVIT OF JERRY GLOWACKI

PARTIES SERVED: David A. Johnson
WRIGHT WRIGHT & JOHNSON
477 Shoup Avenue, Suite 109
PO Box 52251
Idaho Falls, Idaho 83405-2251
MAILED



Alicia Lambert
Legal Assistant

BONNEVILLE COUNTY
IDAHO

2008 SEP 17 PM 4:37

David A. Johnson, Esq.
Wright, Johnson, Tolson & Wayment, PLLC
477 Shoup Avenue, Suite 109
P.O. Box 52251
Idaho Falls, ID 83405-2251
Telephone (208) 535-1000
Facsimile (208) 523-4400
Idaho State Bar No. 3319

Attorney for Defendant

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

BLACK DIAMOND, LLC,

Plaintiff,

vs.

SHERRY KIMBALL, et al.

Defendant.

Case No: CV-07-3806

**AFFIDAVIT OF DAVID A. JOHNSON
(SECOND)**

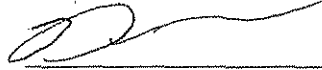
STATE OF IDAHO)
 : ss.
County of Bonneville)

David A. Johnson, being first duly sworn, deposes and says:

1. I am the attorney for Defendant Sherry Kimball in this matter.
2. I make this Affidavit based upon my own knowledge, information, and belief.
3. Attached hereto as Exhibit A is the original Plaintiff's Response to Defendant's First Set of Interrogatories and Request for Production of

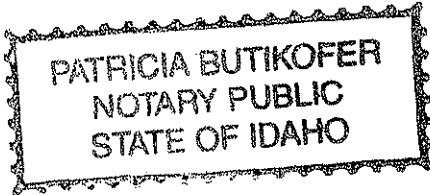
Documents, which was received by my office on February 28, 2008.

DATED: September 17, 2008.



David A. Johnson

SUBSCRIBED AND SWORN to before me on September 17, 2008.



Notary Public for Idaho
Commission expires: 4/23/2010

CERTIFICATE OF SERVICE

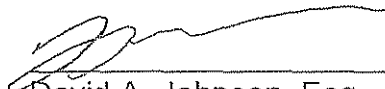
I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on September 17, 2008, I served a true and correct copy of the foregoing document, on the person or persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered by the following method:

Person/Attorney Served:

Kipp L. Manwaring
Just Law Office
P.O. Box 50271
Idaho Falls, ID 83405-0271

Method of Service:

Facsimile 208-523-9146



David A. Johnson, Esq.

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

RECEIVED

FEB 20 2008

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE

BLACK DIAMOND, LLC,)	
	)	Case No. CV-07-3806
Plaintiff,)	
vs.)	
)	
SHERRY KIMBALL, an Individual,	)	PLAINTIFFS' RESPONSE TO
and JOHN DOES I-X,	)	DEFENDANT'S FIRST SET OF
	)	INTERROGATORIES AND
Defendants.	)	REQUESTS FOR PRODUCTION
	)	OF DOCUMENTS

TO: Defendant, Sherry Kimball, an Individual and her attorney of record,
David A. Johnson;

The Plaintiffs respond to Defendant's First Set Of Interrogatories And Requests
For Production of Documents as follows:

INTERROGATORY NO. 1: Please state the name, address and telephone
number of each and every person answering or consulted with to answer these
Interrogatories and/or responding to the Requests for Production.

ANSWER: Trent D. Tyler. He may be contacted through counsel, Just Law
Office.

INTERROGATORY NO. 2: Please state the name, address, telephone number,
and a brief description of the expected testimony of each and every witness you intend to
call at any hearing or trial in this case.

ANSWER: Object as to identity of witnesses. Without waiving that objection,
see the affidavits submitted in support of summary judgment. In addition, Trent D. Tyler
is the designated representative of Black Diamond Alliance, LLC.

INTERROGATORY NO. 3: Please state the name and address of each and every expert witness you intend to call at the trial in this matter, a complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or deposition within the preceding four years.

ANSWER: No experts have been identified.

INTERROGATORY NO. 4: Please list and identify all exhibits which you intend or expect to introduce into evidence at any hearing or trial of this matter and state the name and address of the person presently in possession of such exhibits.

ANSWER: Exhibits have not been identified but will include all exhibits attached to the affidavit of Bradon Howell and the re-recorded trustee's deed attached to the affidavit of counsel.

INTERROGATORY NO. 5: Identify any and all members and managers of Black Diamond from January 1, 2006, to the present. For each person identified, indicate whether they were a member and/or manager.

ANSWER: All information is available through the Idaho Secretary of State's online service.

INTERROGATORY NO. 6: Describe each and every communication, conversation, and contact you had with the Trustee or any agent of the Trustee, prior to the June 12, 2007, Trustee's Sale. For each conversation or contact, state the date, the person conversing on behalf of Black Diamond, the person(s) to whom they spoke, (i.e. Trustee or agent of the Trustee) and the substance of each communication, conversation or contact.

ANSWER: None.

INTERROGATORY NO. 7: Describe any business, personal, social, or familial relationship between any member or manager of Black Diamond and the trustee or an agent of the trustee, from January 1, 2006, to the present. Your answer should specifically describe the relationship between Bradon Howell and Jayce K. Howell.

ANSWER: Black Diamond Alliance, LLC, (BDA), had no business relationships with the trustee or its agent. Bradon Howell and Jayce Howell are brothers.

INTERROGATORY NO. 8: Please state your opinion as to the value of the Subject Property and state your basis for such opinion.

ANSWER: Object. Value is not an issue in this action. Without waiving that objection, refer to the price bid at the trustee's sale.

INTERROGATORY NO. 9: Has Braden Howell ever had an interest in or received any interest in or any compensation from Black Diamond? If your answer is in the affirmative, describe in detail the interest, amount of compensation, and the reason for the interest or compensation.

ANSWER: No.

INTERROGATORY NO. 10: Identify all persons present at the May 29, 2007, Trustee's sale.

ANSWER: BDA was not present at the May 29, 2007 trustee's sale and has no knowledge of what other persons may have been present. BDA called the title company on May 29, 2007 prior to the time of the sale and learned the sale was going to be postponed

INTERROGATORY NO. 11: Identify all persons present at the June 12, 2007, Trustee's sale.

ANSWER: BDA is not certain of all persons who may have been present at the trustee's sale on June 12, 2007, but knows the following persons were present:

BDA
Dick Fowler
Jerry and Mary Gowacki
Chad Murdoch
Jeremy Bingham

INTERROGATORY NO. 12: Describe all communications between First American Title Company and the Trustee, between May 1, 2007, and July 1, 2007.

ANSWER: BDA cannot respond; it was not privy to any communications between First American Title Company and the Trustee.

INTERROGATORY NO. 13: Describe all communications between Fremont Investment & Loan and the Trustee, between May 1, 2007, and July 1, 2007.

ANSWER: BDA cannot respond; it was not privy to any communications between Fremont Investment & Loan and the Trustee.

REQUEST NO. 1: A copy of all documents and exhibits which could be introduced by Plaintiff at a hearing or trial of this matter.

RESPONSE: Copies of all exhibits were attached to the affidavit of Bradon Howell and affidavit of counsel previously delivered to you.

REQUEST NO. 2: A copy of all documents related to Black Diamond, from January 1, 2006, to the present, including:

- a. Articles of Organization
- b. Operating Agreement
- c. All amendments to the Articles of Organization
- d. Membership certificates or other documents related to ownership interest.
- e. All documents showing membership, ownership, and/or management.

RESPONSE: Articles of Organization are available through the Idaho Secretary of State's online service. Object as to all other documents. Legal existence of BDA is not at issue in this action and its internal documents are confidential.

REQUEST NO. 3: A copy of all documents related to the Trustee's sale of the Subject Property, including:

- a. Check, warrant, or other negotiable instrument showing your payment for the Subject Property.
- b. If payment was made via wire transfer or other means, all documents related to the account from which the funds were sent, including contracts related to such account, signature cards, etc.
- c. Documents in possession of the Trustee related to the receipt of the funds from Black Diamond.

RESPONSE: a. See attached copy of cashier's check.
b. Not applicable.
c. BDA is not in privy with the trustee and does not have possession of the trustee's records.

REQUEST NO. 4: A copy of all correspondence and communications between First American Title Company and the Trustee.

RESPONSE: BDA has no requested documents in its possession; it was not privy to any correspondence and communications between First American Title Company and the Trustee.

REQUEST NO. 5: A copy of all documents received from First American Title Company related to the Subject Property.

RESPONSE: BDA received no documents from First American Title Company.

REQUEST NO. 6: A copy of all documents related to the Subject Property, including all affidavits, notices, publications, correspondence, notes, etc., which have not otherwise been provided to Defendant.

RESPONSE: BDA is not currently aware of other documents in its possession relating to the subject property that have not already been provided as noted in response to Request No. 1.

REQUEST NO. 7: A copy of all documents exchanged between Fremont Investment & Loan and the Trustee.

RESPONSE: BDA has no requested documents in its possession; it was not privy to any documents exchanged between Fremont Investment & Loan and the Trustee.

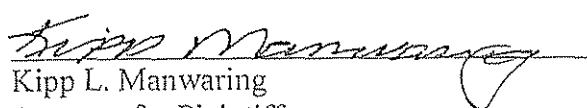
REQUEST NO. 8: A copy of all documents you relied on in answering the foregoing Interrogatories, to the extent the documents are not protected by privilege, including work-product and/or attorney-client privileges.

RESPONSE: See prior responses.

Dated this 26th day of February 2008.

Black Diamond Alliance, LLC

By: 
Trent D. Tyler, Member


Kipp L. Manwaring
Attorney for Plaintiff

CASH ON HAND

0026676

REMITTEE: **Bank of America** (Bank of America, N.A. Member FDIC)

DATE: 3/17/2007

AMOUNT: **125,000.00**

FOR DEPOSIT ONLY

125,000.00

JOE/EP

AUTHORIZED SIGNATURE

0026676 03172007 98012071020

BONNEVILLE COUNTY
IDAHO

2008 SEP 17 PM 4:37

David A. Johnson, Esq.
Wright, Johnson, Tolson & Wayment, PLLC
477 Shoup Avenue, Suite 109
P.O. Box 52251
Idaho Falls, ID 83405-2251
Telephone (208) 535-1000
Facsimile (208) 523-4400
Idaho State Bar No. 3319

Attorney for Defendant

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

BLACK DIAMOND, LLC,
Plaintiff,

vs.

SHERRY KIMBALL, et al.
Defendant.

Case No: CV-07-3806

**RESPONSE TO PLAINTIFF'S
MOTION AND MEMORANDUM FOR
PARTIAL SUMMARY JUDGMENT**

David A. Johnson, attorney for Defendant Sherry Kimball (Kimball), hereby responds to Plaintiff Black Diamond, LLC's (Black Diamond) Motion for Partial Summary Judgment filed on or about August 21, 2008, as follows:

FACTS IN DISPUTE

Kimball disputes that Black Diamond Alliance, LLC, was a bona fide purchase in good faith. The following facts support Kimball's position:

1. Braden Howell was an employee and agent of Just Law Office, the Trustee who handled the foreclosure sale which is the subject of this litigation.
2. Braden Howell is the brother to Jayce K. Howell, the manager of Black Diamond.
3. Noticeably absent is any affidavit or other sworn testimony from Black Diamond in support of its own motion filed herein. There is no affidavit in which Black Diamond identifies what information it had and from whom.
4. Each of the identical affidavits filed by Black Diamond (Glowacki, Murdock, Bingham, and Fowler) states that each of affiant :
 - a. Did not attend the first scheduled trustee's sale. Rather, they learned, by their initiated contact with the Trustee's designated crier the date of the sale. (Paragraph 5 of each Affidavit.)
 - b. Are real estate speculators, particularly foreclosure sales, and have peculiar knowledge about the system. (Paragraph 2 of each Affidavit.)
 - c. Apparently felt it could be financially advantageous to attend the sale, but none of them submitted the bid even though the market value (see Affidavit of Sherry Kimball) was substantially less than the sale price of the property.
 - d. Failed to identify the amount of the creditor's bid and how Black Diamond's bid differed. (Paragraph 8 of each Affidavit.)

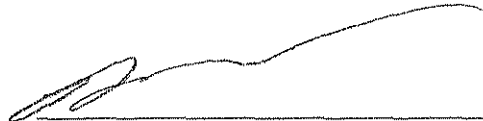
As indicated in Kimball's first response memorandum regarding summary judgment, Black's Law Dictionary states that a bona fide purchaser for value is "[o]ne who purchases legal title to real property without actual or constructive notice of any infirmities, claims, or equities against the title." BLACK'S LAW DICTIONARY 1001 (7th abr. ed. 2000). If a purchaser is on inquiry notice of a potential defect of statutory notice requirements, they cannot qualify as a bona fide purchaser. *Federal Home Loan Mort. Corp v. Appel*, 143 Idaho 42 137 P.2d 429, at 434 (2006) . In *Federal Home*, referencing *Shearer v. Allied Live Oak Bank*, 758 S.W.2d 940 (Texas Ct. App. 1988), reasonable or inquiry notice can originate from circumstances related to the sale. Idaho follows this law. "One who purchases property is put on notice of title disputes that a reasonable investigation would reveal. *Duff v. Seubert*, 110 Idaho 865, 870, 719 P.2d 1125, 1130 (1985)." *Anderson v. Rex Hayes Family Trust*, 185 P.3d 253, 255 (2008). See also *Steward v. Good*, 754 P.2d 150 (Wash. 1998).

Whether or not a party is a bona fide purchaser is a mixed question of law and fact, usually determined at trial. *Hudesman v. Foley*, 73 Wash.2d 880, 889-91, 441 P.2d 532 (1968). Black Diamond and the others at the sale were speculators in real estate intended to take advantage of the misfortunes of others. Black Diamond apparently is implicitly arguing that Black Diamond and the other speculators were similarly situated as far as notice. This implicit argument is that, because other persons at the sale could be classified as bona fide purchasers, so should Black Diamond. Black Diamond has presented no affidavits or supporting documents in which it is stated where they obtained knowledge about the sale. Even if there was no formal

business relationship between Just Law Office/Braden Howell and Black Diamond/Jayne Howell, the logical inference is that Black Diamond was aware of information from Braden Howell as to Kimball's ownership interest and attempts to avoid losing her property which was the reason for the cancellation of the first sale.

The fact that there were other bidders at the Trustee's sale does not establish that the sale was properly conducted, which fact would have been known either actually or by way of constructive notice under the circumstances.

DATED: September 17, 2008



WRIGHT, JOHNSON, TOLSON &
WAYMENT, PLLC
David A. Johnson, Esq.

CERTIFICATE OF SERVICE

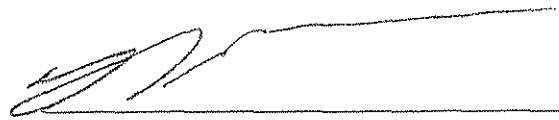
I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on September 17, 2008, I served a true and correct copy of the foregoing document, on the person or persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered by the following method.

Person/Attorney Served:

Kipp L. Manwaring
Just Law Office
P.O. Box 50271
Idaho Falls, ID 83405-0271

Method of Service:

208-523-9146



David A. Johnson, Esq.

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

2007 JUN 17 10:17

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)	
	)	Case No. CV-07-3806
Plaintiff,)	
vs.)	
)	
SHERRY KIMBALL, an Individual,	)	REPLY TO RESPONSE IN
and JOHN DOES I-X,	)	OPPOSITION TO MOTION FOR
	)	SUMMARY JUDGMENT
Defendants.)	
)	

Black Diamond Alliance, LLC, replies as follows to Kimball’s response in opposition to the pending motion for summary judgment.

Kimball recently deposed Bradon Howell of Just Law, Inc., and Trent Tyler of Black Diamond. Pertinent portions of those depositions are attached as Exhibits to the affidavit of counsel in support of this reply.

According to the testimony of Bradon Howell, he had no business relations with Black Diamond and no contact with Black Diamond. (*Affidavit of Counsel*, Exhibit A, p. 8, ll. 8-16). Howell did not have contact with Black Diamond relating to the Kimball foreclosure sale. (*Affidavit of Counsel*, Exhibit A, p. 24, ll. 20-25; p. 25, ll. 1-2).

Howell further testified that Franklin Bank directed him to postpone the initial trustee’s sale date scheduled for May 19, 2007. (*Affidavit of Counsel*, Exhibit A, p. 12, ll. 2-25; p. 13, ll. 1-21).

Trent Tyler testified that Black Diamond learned of the Kimball foreclosure through published notices of default in the Post Register. (*Affidavit of Counsel*, Exhibit B, p. 11, ll. 17-25; p. 12, ll. 1-16; p. 25, ll. 3-19). Tyler attended the postponed sale date on June 12, 2007 after

CERTIFICATE OF MAILING

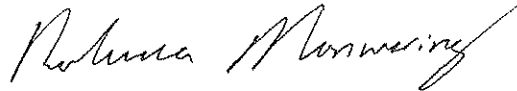
I HEREBY CERTIFY that on the 30th day of September 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED:

REPLY TO RESPONSE IN OPPOSITION
TO MOTION FOR SUMMARY JUDGMENT

PARTIES SERVED:

David A. Johnson
WRIGHT, WRIGHT & JOHNSON
477 Shoup Avenue, Suite 109
PO Box 52251
Idaho Falls, Idaho 83405-2251
MAILED



~~Alicia Lambert~~
Legal Assistant

CHARLES C. JUST, ESQ. – ISB 1779
KIPP L. MANWARING, ESQ. – ISB 3817
JUST LAW OFFICE
381 Shoup Avenue
P.O. Box 50271
Idaho Falls, Idaho 83405
Telephone: (208) 523-9106
Facsimile: (208) 523-9146

SEP 30 2008

Attorneys for Plaintiff

**IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT
STATE OF IDAHO, COUNTY OF BONNEVILLE**

BLACK DIAMOND, LLC,)
)
Plaintiff,)
vs.)
)
SHERRY KIMBALL, an Individual,)
and JOHN DOES I-X,)
)
Defendants.)

Case No. CV-07-3806

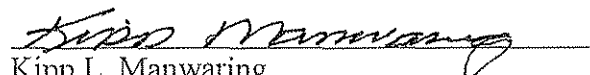
AFFIDAVIT OF COUNSEL IN
SUPPORT OF REPLY TO RESPONSE
IN OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

STATE OF IDAHO)
) ss.
County of Bonneville)

Kipp Manwaring, being first duly sworn under oath, deposes and states as follows:

1. I am a licensed attorney in the state of Idaho and represent Plaintiff in the above action.
2. Attached as Exhibit A and incorporated here by reference is a true and correct copy of portions of the deposition of Bradon Howell.
3. Attached as Exhibit B and incorporated here by reference is a true and correct copy of portions of the deposition of Trent Tyler.

Dated this 30th day of September 2008.


Kipp L. Manwaring
Attorney for Plaintiff

SUBSCRIBED AND SWORN to before me this 30th day of September 2008.

[Seal]



Alicia Lambert

Notary Public For Idaho
Residing At: Shelley
My Commission Expires: 05.24.11

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on the 30th day of September 2008, a true and correct copy of the foregoing document was served upon the person or persons named below, in the manner indicated.

DOCUMENT SERVED:

AFFIDAVIT OF COUNSEL

PARTIES SERVED:

David A. Johnson
WRIGHT WRIGHT & JOHNSON
477 Shoup Avenue, Suite 109
PO Box 52251
Idaho Falls, Idaho 83405-2251

MAILED

A Lambert

Alicia Lambert
Legal Assistant

1 that. Because of that, sometimes you may anticipate
 2 a question before the question is completed. But
 3 just make sure that you wait until the end of the
 4 question to answer so we don't talk over each other?
 5 Okay?
 6 A Sure.
 7 Q Okay?
 8 A Uh-huh.
 9 Q The next one is to make sure that your
 10 answers are clear and definitive. Particularly
 11 avoid things like Uh-huh or Huh-hu or yeah -- those
 12 in particular causes fits for the deposition
 13 transcript later on.
 14 A Okay.
 15 Q If there are other issues that come up
 16 as we take this deposition, I will raise them at
 17 this time -- or at that time.
 18 Finally, if you need to correct
 19 something or you have an epiphany-type experience and
 20 you want to clarify it, you may want to make a mental
 21 note at the end of that question and answer, and we
 22 can come back at some point and clarify because I
 23 want to make sure that we're clear.
 24 Okay?
 25 A Okay.

1 Q And the brothers that were affiliated
 2 with that business?
 3 A Dustin Howell. Jayce, J.A.Y.C.E.
 4 Howell.
 5 Q And you probably know where I am headed
 6 with the next question. Where is Jayce Howell
 7 currently, as far as the physical location?
 8 A I am not sure.
 9 Q Okay. Do you know if he is -- well, I
 10 mean do you know where he resides?
 11 A As far as business or --
 12 Q Residential.
 13 A Yes.
 14 Q Okay. I assume you have contact from
 15 time to time with him?
 16 A Yes.
 17 Q Do you know what business he is
 18 affiliated with?
 19 A No.
 20 Q Do you know whether he has any business
 21 known as Black Diamond Alliance?
 22 A Yes.
 23 Q And what is your knowledge about that
 24 business?
 25 A Good standing.

1 Q What is your current employment.
 2 A Foreclosure specialist/office manager.
 3 Q Whom are you employed with?
 4 A Just Law Office.
 5 Q How long have you been with Just Law
 6 Office?
 7 A Nine to ten years.
 8 Q Okay. And have you had other
 9 occupations or pursuits at any time during that nine
 10 to ten years?
 11 A Yes.
 12 Q And what were they?
 13 A Realtor.
 14 Q Okay. And was there a particular
 15 brokerage that you were affiliated with?
 16 A High Desert Realtors.
 17 Q And did you ever have any family
 18 members that were associated with High Desert
 19 Realtors?
 20 A Yes.
 21 Q And who was that?
 22 A I have a father and two brothers
 23 affiliated.
 24 Q And your father is who?
 25 A Kerry Howell.

1 Q Well, I was going to say: Is that a
 2 review of the Secretary of State records or your
 3 personal view?
 4 (Trent Tyler, Jayce Howell and Dustin Howell
 5 entered the deposition room.)
 6 MR. JOHNSON: Welcome, gentlemen.
 7 BY MR. JOHNSON:
 8 Q Have you ever had any involvement with
 9 Black Diamond Alliance?
 10 A I don't understand the question.
 11 Q What is the nature of your contact then
 12 with Black Diamond Alliance?
 13 A None.
 14 Q You have never had any business
 15 association?
 16 A No.
 17 Q Okay. Now in conjunction with your
 18 title as foreclosure specialist, what type of duties
 19 and responsibilities do you have?
 20 A Set up, conduct trustee sales
 21 throughout the state of Idaho.
 22 Q Okay. Tell me about the process in
 23 general terms.
 24 A File, receive first legal action, set a
 25 sale. Conduct the sale -- all per lender's

A

1 instructions.

2 Q Okay. Now the term "crier", does that

3 mean anything to you?

4 A That would usually be a title company

5 in our case who conducts the trustee sale on our

6 behalf in the county where the property is located.

7 Q Do you typically attend a trustee --

8 A No. Sorry.

9 Q Rule number one, first one --

10 A Sorry.

11 Q No, you are fine. Do you usually

12 attend the trustee sale?

13 A No.

14 Q Is there a particular person that is

15 employed by the trustee that attends the sale?

16 A No.

17 Q And what was -- what is the reason that

18 you work with title companies?

19 A They provide title work. Title

20 insurance. It's convenient for our office as we do

21 them throughout the state of Idaho.

22 Q Okay. And as far as information, how

23 is it conveyed from a customer on whom you are

24 providing a trustee sale? How does that come to you

25 in general terms?

1 A It's an on-line based correspondence

2 for the vendor and servicer.

3 Q Okay. Method of communication?

4 A Correct.

5 Q Okay. The vendor being the note

6 holder?

7 A The vendor -- we would be the vendor.

8 Q Okay. And what would be the person who

9 had the note, what would be their title?

10 A I guess servicer.

11 Q Okay. Make sure that we have got --

12 A I would say we're the trustee and they

13 are the client.

14 Q Okay. I am not going to ask you

15 questions about each step of the foreclosure process

16 because I am not too sure how much it really has

17 bearing. I have seen the documents.

18 I want to go to approximately the end

19 part of May of 2007. And you were aware that there

20 was a trustee sale that I believe was scheduled for

21 the 30th -- or what was the original date of the

22 trustee sale? I can't remember if it was the 29th or

23 the 30th.

24 A The original sale date was set for May

25 29, 2007 at 11:00 o'clock a.m. at First American

1 A I am not sure I understand the

2 question.

3 Q Well, I mean do you get a particular

4 company that provides you business or is it various

5 sources?

6 A We do have established clients, yes.

7 Q Okay. Now maybe we can turn our

8 attention to Sherry Kimball's foreclosure sale. Are

9 you familiar with that particular matter?

10 A Yes.

11 Q When was the first time you became

12 involved with that particular transaction?

13 A January 8th, 2007.

14 Q Okay. And how was it that you became

15 involved in this particular situation?

16 A A foreclosure referral from Fremont

17 Investment and Loan was sent to us.

18 Q How did that information come to you?

19 A You know I think it was via an

20 over-night express.

21 Q Okay. I have noticed that in some of

22 the documents there is a VIP portal.

23 A Yes.

24 Q What is that?

25

1 Title Company on Jennie Lee in Idaho Falls.

2 Q Did that sale take place?

3 A No.

4 Q Why not?

5 A Postponed per lender's instructions.

6 Q How did those instructions come to you?

7 A Verbally on the phone.

8 Q Okay. Tell me about the conversation.

9 Who did you speak with?

10 A Sarah at Fremont.

11 Q Now do you keep any notes or journals

12 on these particular type of matters?

13 A Phone calls?

14 Q The question was: Journals or notes.

15 A Yes.

16 Q And what is the nature of the notes

17 that you keep?

18 A Just written in my file basically. I

19 mean, there is some on-line things that I can print

20 out. But in this particular case I believe it was a

21 last minute thing that they decided to do, so they

22 had called.

23 Q Okay. And so when they called, this

24 Sarah, what did Sarah tell you?

25 A Postpone the sale -- I believe it was

1 two weeks -- for possible forbearance.
 2 Q Now are there any notes related to this
 3 telephone call?
 4 A Just what I have in my file, yeah. But
 5 it's my notes.
 6 Q And what are your notes? If I could
 7 look at those.
 8 A Per Sarah at Fremont. Postponed
 9 6-12-07. It's right here.
 10 Q As far as the 6-12-07, is that the date
 11 that you created?
 12 A Yes.
 13 Q Okay. I want to just walk through to
 14 make sure I understand. She said to postpone it two
 15 weeks.
 16 A I believe that was the timeframe they
 17 were giving her. Yes. And you can't conduct a
 18 trustee sale on a Saturday -- so I believe that is
 19 why the 12th was the initial date -- or on the
 20 weekend. So it had to be during the week. So that
 21 is how that fell into place.
 22 Q All right. Now during that same time
 23 period, did you have any contact with Sherry
 24 Kimball?
 25 A No.

1 A No.
 2 Q All right. Let's talk about that
 3 conversation.
 4 A Okay.
 5 Q Tell me what you recall about how it
 6 was made? Was it an in-person conversation? A
 7 telephone conversation?
 8 A She had called and said that someone
 9 had put something on her door and she wanted to know
 10 what was going on. I said -- I basically gave her
 11 the run down that we had postponed the sale
 12 previously and it went up for auction.
 13 I was told, I think from her -- she had
 14 told me that she had until X day -- I don't recall
 15 the day -- to come up with X amount of funds, and I
 16 believe it was 3,000, and then they would accept them
 17 and cancel the sale; "them" being Fremont.
 18 And per Fremont, they received some of
 19 the funds but not all of them. And therefore
 20 proceeded with the sale. Sent me a new bid. And it
 21 was conducted on the 12th of June.
 22 MR. JOHNSON: I know you are probably
 23 confused and rather than going back, let me
 24 indicate to you and perhaps show you some of your
 25 records.

1 Q She reports that she called and talked
 2 to someone which she believes she thinks was you to
 3 make sure that the sale was cancelled --
 4 A Okay.
 5 Q -- for that day.
 6 A I don't recall.
 7 Q Do you have a recollection?
 8 A No.
 9 Q Do you ever recall having any contact
 10 with Sherry Kimball?
 11 A Yes.
 12 Q And when would that have been?
 13 A I think it was post-foreclosure sale.
 14 Q Would there be a specific date that you
 15 could --
 16 A After the 12th of June.
 17 Q Okay. Would it be on June 12th, June
 18 --
 19 A No. I don't recall.
 20 Q All right. You are really running over
 21 me. Okay.
 22 A Got yeah. No problem.
 23 Q Okay. Do you have any notes that would
 24 indicate the contact that you had with Sherry
 25 Kimball?

1 In fact let's just have this one
 2 marked.
 3 (Exhibit 1 marked)
 4 BY MR. JOHNSON:
 5 Q Mr. Howell -- well, let's see. I guess
 6 it is marked as number one. Do you recognize this
 7 document?
 8 A Uh-huh.
 9 Q What is this document?
 10 A Looks like bidding instructions.
 11 Q Okay. Is this something that you
 12 received from the servicer?
 13 A Yes.
 14 Q I want you to look down at the bottom
 15 where it has a suspense balance of \$3,000.
 16 A Yes.
 17 Q The date of it being June 6?
 18 A Yes.
 19 Q Let me represent to you that I don't
 20 think that there is a factual dispute that Sherry
 21 Kimball gave \$3,000 dollars --
 22 A Okay.
 23 Q -- to Fremont --
 24 A Okay.
 25 Q -- on May 29 in order to get the

1 the property.
 2 Q All right. And I assume all of those
 3 were done for the May 29, 2007 sale?
 4 A That's correct.
 5 Q Was there anything placed on the county
 6 records related to the June 12th, 2007 sale?
 7 A No.
 8 Q Was there anything put in the newspaper
 9 related to the June 12, 2007 sale?
 10 A No.
 11 Q Was there anything put on the property
 12 related to the June 12, 2007 sale?
 13 A No.
 14 Q Are you aware of anything you did or
 15 anyone else did in order to provide any type of
 16 notice as to when the new sale would take place?
 17 A No.
 18 Q Now I have seen an affidavit from
 19 Sandy -- I can't remember her last name off the top
 20 of my head -- from First American indicating that
 21 she announced the new date at the time of the
 22 original sale which is the May 29th, 2007 sale.
 23 Do you know whether or not there was any
 24 document sent from you -- from First American to you
 25 to indicate that was in fact done?

1 A Yes. I do have the results of the
 2 sale. And quite honestly I think she even gave me
 3 an attendance sheet which I usually do not keep. I
 4 don't know if they have that on their records. But
 5 I do have the results of the sale with the third
 6 party information.
 7 Q Is that on the trustee "cry" sale?
 8 A That's correct.
 9 Q And it has basically on the second page
 10 who the successful bidder was?
 11 A That's correct.
 12 Q And the sales price?
 13 A That's correct.
 14 Q Is there any other documents -- you
 15 talked about an attendance sheet. Do you have an
 16 attendance sheet?
 17 A No, sir.
 18 Q Was there an attendance sheet?
 19 A I believe so.
 20 Q Where is this attendance sheet?
 21 A I did not keep it.
 22 Q Is there any other documents besides
 23 that that has been thrown away?
 24 A Not that I am aware of, no.
 25 Q And what was the reason for throwing

1 A I don't believe so.
 2 Q Is there any notes or any type of
 3 log or journal that First American Title sent to
 4 you.
 5 A No.
 6 Q Typically, what documents does First
 7 American send to you if a sale has been postponed or
 8 cancelled?
 9 A Typically the e-mail kind of covers all
 10 those bases. They keep it on their calendar and I
 11 keep it on my calendar, and we're on the same page.
 12 Q But most of it, the communications are
 13 via e-mail?
 14 A That's correct.
 15 Q Now as far as the sale that is actually
 16 conducted itself -- particularly this sale on
 17 June 12, 2007 -- did you attend that sale?
 18 A No.
 19 Q Do you know who attended the sale?
 20 A Not entirely, no.
 21 Q Do you receive any documents or any
 22 types of communication from your crier, and
 23 particularly the crier in this particular instance,
 24 as far as how the sale went, who attended and what
 25 the bids were?

1 away the attendance sheet?
 2 A It's usually not needed. I mean, it's
 3 more paper in my file. I really did not think it
 4 was relevant.
 5 Q How voluminous is this attendance
 6 sheet? Is it a single sheet?
 7 A Yes.
 8 Q And I guess my question is: Why were
 9 you concerned about not keeping a single sheet of
 10 paper?
 11 A No reason.
 12 Q And you indicate that is the only sheet
 13 that was thrown away.
 14 A No, there is a cover letter also.
 15 Q Okay. After Sherry Kimball's contact
 16 with you, what other actions, if any, were you
 17 involved in in relation to this trustee sale?
 18 A I contacted my client on the matter
 19 and then proceeded to prepare the trustee's deed.
 20 Q During any of this time period, did you
 21 have any contact with Black Diamond Alliance?
 22 A Not that I am aware of, no.
 23 Q Did you have any contact with Jayce
 24 Howell related to the foreclosure sale?
 25 A Not that I am aware of, no.

1 Q Or Trent Tyler?
 2 A No, sir. No, sir.
 3 Q And apparently you prepared a trustee's
 4 deed, or someone in Just Office did?
 5 A That's correct.
 6 Q And what did you do with that trustee's
 7 deed.
 8 A It was sent for recording.
 9 (technical difficulty)
 10 BY MR. JOHNSON:
 11 Q Mr. Howell, I believe the question I
 12 was asking you, you talked about you sent it for
 13 recording. The question was: Were you sending that
 14 directly to the recorder or to another entity?
 15 A The title company, which conducted the
 16 trustee sale.
 17 Q And they are the ones that record the
 18 deed?
 19 A That's correct.
 20 Q Okay. And where does the deed go back
 21 after it's recorded?
 22 A To our office.
 23 Q Okay. And what do you do with that?
 24 A Prep our final letter, make copies.
 25 Send the policy and the trustee's deed out to the

1 recall a specific conversation.
 2 A From what I understand or remember I
 3 told them they could accept the funds and cancel the
 4 foreclosure sale, or they could hold the funds in
 5 suspense I believe and not apply them, therefore,
 6 our default is valid and they could proceed with the
 7 sale.
 8 And or they could just send the funds
 9 back to the borrower and tell her it's not enough to
 10 reinstate the loan.
 11 Q Send what funds?
 12 A The \$3,000.
 13 Q Okay. You are not talking about the
 14 \$112,500?
 15 A No, sir. Sherry Kimball's money.
 16 Q Okay. And what did they choose to do?
 17 A Proceed with the sale and send the
 18 funds back.
 19 Q Now as far as an accounting of the
 20 funds, how does the trustee do so? I mean when you
 21 have -- first of all, it was -- as I understand this
 22 property sold for \$112,500.
 23 A That's correct.
 24 Q How were those funds applied?
 25 A It looks like \$109,669.80 went to

1 successful bidder and or client, whichever.
 2 Q And could you tell me the date in which
 3 the trustee's deed was sent to Black Diamond?
 4 A To Black Diamond?
 5 Q Yes.
 6 A June 15.
 7 Q Okay. Do you know the date of
 8 recording?
 9 A June 14th.
 10 Q And if I understand correctly the
 11 conversation that you had with Sherry Kimball took
 12 place either before the recording or the delivery of
 13 the trustee's deed to Black Diamond?
 14 A That's correct.
 15 Q Okay. Now I want to go back to -- when
 16 Sherry Kimball contacted you you contacted Fremont?
 17 A Correct.
 18 Q And was there any discussion about
 19 having another trustee sale conducted?
 20 A Possibly, yes, there was. I kind of
 21 told them their options or what they could do.
 22 Q Okay. Go into detail if you would.
 23 And I know you can't remember everything. But you
 24 are more fortunate than some people. Sometimes we
 25 have them go back five or six years to have them

1 Fremont Investment and Loan.
 2 Q Go ahead. We'll go with the flow.
 3 A And then our funds -- our fees and
 4 costs were paid in full.
 5 Q And is there a document that shows what
 6 your fees and costs were?
 7 A No, because we did not have to do a
 8 final bill. We just pulled our funds out of there.
 9 Q Okay. Well, I guess the question is:
 10 How did you determine how much you were owed?
 11 A The fees and costs are on the file from
 12 the foreclosure.
 13 Q Okay. And would it be easier if we
 14 just took a photocopy of that?
 15 A Probably.
 16 MR. JOHNSON: Okay. May I?
 17 (Exhibit 2 marked)
 18 BY MR. JOHNSON:
 19 Q Mr. Howell, you have been handed what
 20 has been marked for deposition purposes as Exhibit
 21 2.
 22 Is that a correct copy of stickers on
 23 the front of your file.
 24 A Yes.
 25 Q All right. And this is what reflects

1 we collect information off of each of those
 2 newspapers for our tracking.
 3 **Q Okay. Are there any Internet services**
 4 **or companies that you access to look for foreclosed**
 5 **property that are being subject to a foreclosure?**
 6 **A** Not that I am aware of. Dustin Howell
 7 who -- really that is his job in the business is the
 8 individual that really collects all that data off of
 9 the newspapers. I never heard of us looking on the
 10 Internet for -- I know there is a number of sites
 11 that exist but nothing really substantial.
 12 **Q Another name surfaced. Dustin Howell.**
 13 **Apparently, he is an employee.**
 14 **A** That's correct.
 15 **Q With Black Diamond Alliance?**
 16 **A** That's correct.
 17 **Q What is his title?**
 18 **A** Assistant maybe. Professional
 19 assistant. He doesn't really have a title. He
 20 is -- like I said he tracks properties. He also
 21 has an active real estate license. So he knows
 22 values of what homes are selling for in the market.
 23 He can go out and drive a property and
 24 determine off of the public notice of what that
 25 opening sale or what the default amount is. Is it a

1 **A** What would I interpret the Kimball
 2 property to mean?
 3 **Q Besides a derogatory concept because of**
 4 **this litigation.**
 5 **A** Now, it's not a very good deal.
 6 **Q I mean as far as where it's located for**
 7 **example.**
 8 **A** West 17th Street. That's how I would
 9 always refer to it. 17th Street is how I would
 10 always refer to it.
 11 **Q Out in New Sweden is probably the best**
 12 **way to refer to that. Is that correct?**
 13 **A** That's correct.
 14 **Q So when I refer to the Kimball house,**
 15 **is there any confusion on your part?**
 16 **A** No.
 17 **Q Okay. So in regards to that particular**
 18 **property, when or how did you first become familiar**
 19 **with this property?**
 20 **A** I recall the first time I was familiar
 21 with it. Dustin and I were driving around looking
 22 at properties. And on a regular basis he would
 23 update his tracking list off of the published
 24 notices of default. He would go and drive each
 25 property specifically.

1 property that we're interested in continuing to
 2 track? So just his professional skills in knowing
 3 the value that allows us to do our -- you know each
 4 of us, our day-to-day jobs.
 5 **Q Now is there any other persons that are**
 6 **either owners or officers or employees of Black**
 7 **Diamond Alliance besides Jayce, you and Dustin?**
 8 **A** No -- excuse me. We have had other --
 9 we have had other employees before Dustin that did
 10 his same job.
 11 **Q Okay.**
 12 **MR. JAYCE HOWELL:** Wives?
 13 **MR. MANWARING:** I would like to insert
 14 in the record a question that came up from Jayce
 15 Howell, whether wives should be included in
 16 there. For purposes of this deposition I think
 17 the answer will stand.
 18 **MR. JOHNSON:** Sure. And to me at this
 19 point in time I don't see the relevance to that.
 20 We understand that a clarification has been made
 21 with Jayce indicating that. Thanks.
 22 **BY MR. JOHNSON:**
 23 **Q Let's go to the Kimball property**
 24 **itself. When I say "the Kimball property", what**
 25 **would you interpret that or define that as?**

1 Any property that he felt had a decent
 2 amount of equity versus what the notice of default
 3 amount was we would go and drive those properties
 4 together where he did not have you know a capability
 5 of making the final decision as far as purchasing
 6 the home.
 7 If there was one that looked like it
 8 was a possible good deal he would map those out. We
 9 would go get in the car. Drive around together.
 10 And look at each one of those properties
 11 individually.
 12 I recall looking at that home and
 13 comparing it to what was on record of default. And
 14 obviously agreeing that there was enough equity in
 15 there to continue to track the progress of that
 16 foreclosure.
 17 **Q Okay. Did you make an estimate of**
 18 **value?**
 19 **A** I am sure I did.
 20 **Q Do you know what it would be?**
 21 **A** I know at that time we considered
 22 around \$145,000.
 23 **Q Okay. That was when?**
 24 **A** Probably at least a month and a half
 25 before the sale. Sometime early in April, May area.

1 calendar on my desk, you know possibly on my outlook
 2 express calendar, in windows -- you know I don't
 3 know that a hundred percent. But some type of
 4 notation.
 5 I know that -- again, that was Dustin's
 6 job to track foreclosure sales. So he had you
 7 know -- I am sure he had it in his notes some where.
 8 Q Okay. And did anything transpire
 9 between May 29, 2007 to June 11 the day before the
 10 second sale?
 11 A Anything regarding this property?
 12 Q That's correct.
 13 A Not that I recall at all.
 14 Q Okay. So let's go to June 12, 2007.
 15 A Okay.
 16 Q You tell me when we should pick up the
 17 events of that day as it relates to the Kimball
 18 property.
 19 A In the morning, got a cashier's check
 20 ready. Make sure the sale is actually going to
 21 happen. Find out what the opening bid is going to
 22 be so we can make sure to bring enough money. And
 23 if that opening bid still leaves a margin for our
 24 company, then we show up at the sale.
 25 Q Okay. Did you make any of those

1 have been other people there. I don't know that for
 2 sure. Obviously it has been a while ago. These
 3 people I know very well because I have seen them on
 4 a number of occasions, so they stick in my mind.
 5 MR. JOHNSON: Okay. I believe Madam
 6 Reporter would like to know how to spell
 7 Glowacki.
 8 THE WITNESS: I believe it is
 9 G.L.O.W.A.C.K.I.
 10 On occasion -- I will just add this --
 11 -- you know I have in the past on occasion made
 12 the phone calls myself to Sandy Winn. Hey,
 13 Sandy, you know is this sale open.
 14 In my other entity Tykinderen, I am --
 15 I will buy property sometimes without my partner.
 16 Jayce does the same thing in another entity that
 17 he has. So standard practice is that just to
 18 make the phone call and say: Is it happening
 19 today.
 20 If it is happening today, what is the
 21 opening bid. Sometimes they have the opening
 22 bid. Sometimes they don't have the opening bid,
 23 and then you just basically --
 24 BY MR. JOHNSON:
 25 Q As far as the sale -- and I am familiar

1 contacts with the title company to determine if the
 2 sale was going and what the initial bid would be?
 3 A Me personally, no.
 4 Q I assume Dustin did it again?
 5 A That's correct.
 6 Q And got the numbers?
 7 A That's correct.
 8 Q Okay. Are you the individual that went
 9 to the sale?
 10 A I am.
 11 Q Tell me what transpired there. First
 12 of all who did you note that was there?
 13 A Dustin was with me. Jeremy Bingham was
 14 at the sale who is a real estate agent that also has
 15 bought and sold foreclosures. Jerry and Mary
 16 Glowacki were there who we see on a number of
 17 occasions. Chad Murdoch was there. Sandy Winn
 18 cried the sale.
 19 And then Dick Fowler actually came into
 20 the sale just after she had opened -- or after she
 21 had started her opening remarks.
 22 I remember he came in late and was
 23 sitting down right to the left of me.
 24 Q Okay.
 25 A Other than that -- I mean there may

1 somewhat with the practice. So usually you have a
 2 big, long reading?
 3 A Yes.
 4 Q And do you recall a big, long reading?
 5 A Yes.
 6 Q And may I make the assumption that you
 7 really don't pay much attention --
 8 A You know --
 9 Q -- except for the dollar amount.
 10 A The dollar amount. But I mean
 11 obviously you know you pick out some of the
 12 terminology. You know they make no guarantees as
 13 far as what the property -- the shape of the
 14 property -- some of those things that they can't
 15 guarantee.
 16 Then obviously at the end they state
 17 after you buy the property that you would be given a
 18 trustee's deed.
 19 Q Okay. So after -- and you did hear
 20 Sandy Winn -- and that is W.I. or W.Y.N.N.
 21 A W.Y. I believe.
 22 MR. JAYCE HOWELL: It is W.I.
 23 THE WITNESS: Sorry. It's W.I.
 24 BY MR. JOHNSON:
 25 Q Okay. Do you recall her doing that

1 recitation or that long statement?
 2 A Yes.
 3 Q And do you recall what the original bid
 4 was?
 5 A The original bid or the opening bid?
 6 Q Opening bid.
 7 A Not off of memory. But I do have the
 8 paper that shows the opening bid was \$111,072.60.
 9 Q Okay. Tell me what you recall about
 10 what happened from that point.
 11 A Oddly enough or funny enough, just
 12 before the sale we were talking about my birthday
 13 had just passed on June 5th. And so we were talking
 14 about happy birthday and so on and so forth.
 15 Other than that, just small talk
 16 between you know the purchasers there at the sale.
 17 She came in and opened the sale. I believe I put in
 18 the first bid above the opening amount. There was a
 19 few subsequent bids.
 20 We put in a bid at that time. Nobody
 21 else bid. When she closed the bid, I remember a few
 22 of the people saying happy birthday.
 23 Q Okay. So there was some bidding going
 24 on besides yourself?
 25 A Yes.

1 the following day.
 2 I don't remember exactly. Dustin and I
 3 drove out to the Kimball property. Knocked on the
 4 door. No answer. And so we left a flier that
 5 stated that we had purchased the home. Went on with
 6 our daily business.
 7 Then you know I think my next -- our
 8 next really anything to do with it that went further
 9 than that was never being able to get a hold of
 10 Sherry. Leaving messages. Going to try to, you
 11 know, see where she was at; or get her out or what
 12 her intentions were. And it has proceeded into
 13 this.
 14 Q Do you know whether she ever responded
 15 and contacted you in relation to that note that you
 16 left on her door?
 17 A She eventually did respond, not to me
 18 personally, but to Dustin. I don't recall how long
 19 it took when she responded. I do recall having a
 20 few appointments set up supposedly with you at this
 21 office, and none of those ever came to pass.
 22 Q Mr. Tyler, is there any answers to any
 23 of the questions that I asked that you would like to
 24 clarify?
 25 A Maybe I could read through your

1 Q I mean, it looks like the opening bid
 2 was \$111,072 where it ended up. Were you guys tight
 3 or something, going a hundred bucks an increment?
 4 A Yes. I mean if it's not specified that
 5 you have to go up a certain amount -- we seen people
 6 bid them -- I mean, yeah. Some sales are
 7 ridiculous.
 8 Some of them they set an amount. You
 9 have to bid up by a thousand dollars. That was not
 10 the case that I am aware of in this.
 11 Q Okay.
 12 A When you are trying to make money every
 13 dollar counts.
 14 Q Okay. So apparently there are people
 15 that did a few bids between -- when you got up to
 16 \$112,500, that was it. You got it?
 17 A I got it.
 18 Q Okay. What was the next event that you
 19 can recall in relation to this property? I mean,
 20 obviously you gave them the check and those type of
 21 things.
 22 A Wrote out the check. And really just
 23 waited for a trustee's deed. Waited to see when it
 24 would be recorded. And get the property. I believe
 25 it was that day after the sale. It could have been

1 questions.
 2 Q You are welcome to look at this. But
 3 there were no questions in there. It's just kind of
 4 points that I wanted to make.
 5 A Maybe I would just reiterate that as --
 6 -- you know as property investors you know we rely
 7 heavily on public notice, following up on a daily
 8 basis on what property is doing, what they are going
 9 for and tracking those things.
 10 Obviously we're in this business to
 11 make a profit. And the only way you can make a
 12 profit in this business is to be on top of your game
 13 and you know be making wise decisions and Saying:
 14 Okay, let's track these. If there is profit there,
 15 we'll go forward and proceed. If there is not, we
 16 dump them.
 17 But other than that, really no. You
 18 know we proceeded in business the same way that we
 19 have for six years now. And there is really no
 20 difference to that.
 21 Q Anything else?
 22 A I don't think so.
 23 MR. JOHNSON: Nothing further.
 24 MR. MANWARING: Just a couple of
 25 questions to make sure we're clear.

1 EXAMINATION
 2 BY MR. MANWARING.
 3 Q When Black Diamond found out about this
 4 property, did it find out through publication?
 5 A Yes.
 6 Q Did Black Diamond get any information
 7 about this sale of the Kimball property from a
 8 Bradon Howell?
 9 A No.
 10 Q At the time of the sale on June 12 did
 11 Black Diamond have any knowledge or information
 12 about negotiations between Fremont and Sherry
 13 Kimball?
 14 A I am sorry. Would you repeat that.
 15 Q Yes. At the time of the sale on
 16 June 12 did Black Diamond have any knowledge or
 17 information about any negotiations between Fremont
 18 and Sherry Kimball?
 19 A No.
 20 Q At the time of the sale on June 12th
 21 did Black Diamond have any knowledge or information
 22 that the sale itself had any defects as it relates
 23 to notice to Sherry Kimball?
 24 A No.
 25 Q From your experience was the trustee's

1 If it has been postponed make a note of
 2 it, so that when it does pop up again, we're
 3 prepared to go and buy if we're interested.
 4 Q Were you aware of any other notice
 5 besides - of the June 12, 2007 sale - besides
 6 somebody calling the title company and getting that
 7 date? In other words, did you see anything in the
 8 newspaper -- anything on the property?
 9 A No.
 10 MR. JOHNSON: Okay.
 11
 12
 13 (Deposition concluded at 10:20 a.m.)
 14
 15
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 25

1 sale that was conducted on June 12 conducted
 2 properly?
 3 A Yes.
 4 Q Apparently Black Diamond was the
 5 highest bidder at that sale.
 6 A Yes. That is true.
 7 Q Okay.
 8 MR. MANWARING: No further questions.
 9 EXAMINATION
 10 BY MR. JOHNSON:
 11 Q Do you know the reason why the sale
 12 that was scheduled for May 29, 2007 did not take
 13 place.
 14 A I do now. I did not at the time, no.
 15 Q Did you have any reason given to you as
 16 to why it was not held on that particular date?
 17 A No. Typically when you call and find
 18 out if the sale is being cried or is going to happen
 19 that day, they just simply say it has been postponed
 20 or cancelled.
 21 In this case, no, it has been postponed
 22 until further date. They don't - we don't ask and
 23 they don't tell. It's just if it cancels, great.
 24 We'll write it off our books and go on to next
 25 property.

VERIFICATION

STATE OF _____
 COUNTY OF _____

I, TRENT TYLER, say that I am the witness referred to in the foregoing deposition, taken the 24th day of September, 2008, consisting of pages numbered 4 to 27, that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any as noted.

Page	Line	Should Read	Reason
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

TRENT TYLER _____

Subscribed and sworn to before me this _____ day of _____, 200_, at _____.

(Seal) _____
 Notary Public for Idaho
 My Commission Expires _____

A

BONNEVILLE COUNTY

9-11-07 10:36

David A. Johnson, Esq.
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Idaho State Bar No. 3319

Attorney for Defendant

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

BLACK DIAMOND, LLC,
Plaintiff,

vs.

SHERRY KIMBALL, et al.
Defendant.

Case No: CV-07-3806

SUPPLEMENTAL AFFIDAVIT OF
SHERRY KIMBALL

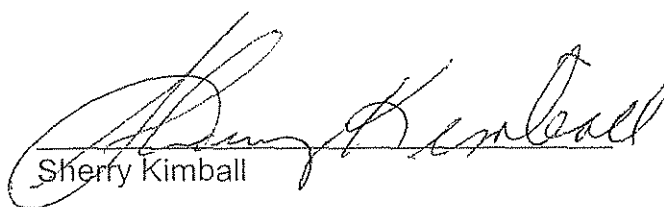
STATE OF IDAHO)
 : ss.
County of Bonneville)

Sherry Kimball, being first duly sworn, deposes and says:

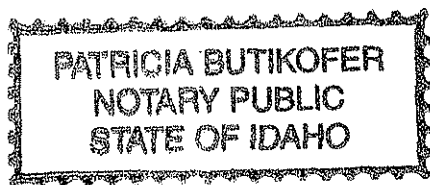
1. I am the Defendant in this matter.
2. I make this Affidavit based upon my own knowledge, information and belief.
3. As I stated in a previous affidavit, I first discovered the Trustee's Sale had taken place on June 12, 2007, when, on June 13, 2007, I received a


brochure and a Post-It® note from Black Diamond indicating they had purchased the house and real property. On June 13, 2007, I contacted Dustin Howell, of Black Diamond, whose name was on the brochure and note, and Bradon Howell, an employee of Just Law Office. I informed both of the them that the sale should not have taken place because I was promised more time before the sale would be conducted.

DATED: September 30th, 2008


Sherry Kimball

SUBSCRIBED AND SWORN to before me on September 30, 2008.




Notary Public for Idaho
Commission expires: 4/23/2010

CERTIFICATE OF SERVICE

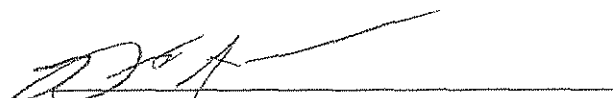
I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on September 30, 2008, I served a true and correct copy of the foregoing document, on the person or persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered by the following method:

Person/Attorney Served:

Kipp L. Manwaring
Just Law Office
P.O. Box 50271
Idaho Falls, ID 83405-0271

Method of Service:

Facsimile 523-9146


David A. Johnson, Esq.

David A. Johnson, Esq.
Wright, Johnson, Tolson & Wayment, PLLC
477 Shoup Avenue, Suite 109
P.O. Box 52251
Idaho Falls, ID 83405-2251
Telephone (208) 535-1000
Facsimile (208) 523-4400
Idaho State Bar No. 3319

Attorney for Defendant

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

BLACK DIAMOND, LLC,
Plaintiff,

vs.

SHERRY KIMBALL, et al.
Defendant.

Case No: CV-07-3806

SUPPLEMENT TO RESPONSE TO
PLAINTIFF'S MOTION AND
MEMORANDUM FOR PARTIAL
SUMMARY JUDGMENT

David A. Johnson, attorney for Defendant Sherry Kimball (Kimball), hereby supplements her Response to Plaintiff's Motion and Memorandum for Partial Summary Judgment as follows:

FACTS

Recent depositions have confirmed that both the Trustee and Black Diamond were aware of the Notice's inadequacy prior to the Notice of Trustee's Sale being

delivered. The events, starting with the Trustee's sale, took place in accordance with the following time line:

1. June 12, 2008
 - a. Trustee's Sale took place.
2. June 13, 2008:
 - a. Black Diamond placed a brochure and note on Kimball's door indicating they bought her house at the Trustee's sale.
 - b. Kimball called Just Law Office (Trustee) and informed them of lack of notice of the Trustee's sale.
 - c. Kimball called Black Diamond and notified them of the lack of notice of the Trustee's sale.
3. June 14, 2008:
 - a. Just Law Office called Fremont Investment and gave options, including the option to conduct another trustee's sale.
 - b. Fremont Investment instructed Trustee to process the Trustee's Deed to Black Diamond
4. June 15, 2008:
 - a. Trustee's Deed was sent to Black Diamond.

Further, the Deposition of Trent D. Tyler revealed that other real estate speculators, including those providing Affidavits herein on behalf of Black Diamond, allowed Black Diamond to have the bid based upon Tyler's recent birthday, indicating that the bids were influenced by a potential gifting.

DISCUSSION

The fact that the both Black Diamond and the Trustee were aware of the defect in notice prior to the delivery of the Trustee's deed causes the loss of bona fide purchaser status. In the previous Response, Kimball discussed inquiry notice. The facts, as now substantiated by deposition, take away the bona fide purchaser status. Gross inadequacy in price, coupled with an irregularity in the process of the foreclosure sale, serves as a basis for setting the sale aside.

California has held that:

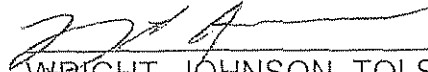
Where there is no irregularity in a nonjudicial foreclosure sale and the purchaser is a bona fide purchaser for value, a great disparity between the sales price and the value of the property is not a sufficient ground for setting aside the sale. (*Lancaster Security Inv. Corp. v. Kessler* (1958) 159 Cal. App. 2d 649, 655, 324 P.2d 634.) However, an irregularity in the nonjudicial foreclosure sale coupled with a gross inadequacy of price may be sufficient to set aside the sale, where the conclusive presumption does not come into effect because the trust deed has not yet been delivered. (*Whitman v. Transtate Title Co.*, *supra*, 165 Cal. App. 3d at pp. 322-323.)

Moeller v. Lien, 25 Cal. App. 4th 822, 30 Cal. Rptr.2d 777 (Cal. App. Dist.2 06/07/1994).

Other cases in support of the above proposition include *Long Beach Mortgage Corp. v. Bebble*, 985 So.2d 611 (Fla. App. 06/11/2008) and *Lake Hillsdale Estates, Inc. v. Charles R. Galloway, Individually & as Trustee for Louisiana Savings Association, Beneficiary*, 473 So. 2d 461 (Miss. 07/24/1985).

The facts also show a gifting of the bid to Black Diamond, based upon the familiarity with each other of the persons attending the Trustee's sale and the fact that a benefit was provided to Black Diamond based upon Trent Tyler's birthday.

DATED: September 30, 2008



WRIGHT, JOHNSON, TOLSON &
WAYMENT, PLLC
David A. Johnson, Esq.

CERTIFICATE OF SERVICE


I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on September 30, 2008, I served a true and correct copy of the foregoing document, on the person or persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered by the following method.

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Facsimile 523-9146



David A. Johnson, Esq.

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

BLACK DIAMOND, LLC,)	
)	
Plaintiff,	)	Case No. CV-2007-3806
vs.)	
	)	MINUTE ENTRY
SHERRY KIMBALL, an individual,)	
and JOHN DOES I-X,)	
)	
Defendants.)	
_____)	

October 2, 2008, at 8:15 A.M., plaintiff's motion to reconsider came on for hearing before the Honorable Gregory S. Anderson, District Judge, sitting in open court at Idaho Falls, Idaho.

Ms. Karen Konvalinka, Court Reporter, and Ms. Lettie Messick, Deputy Court Clerk, were present.

Mr. Kipp Manwaring appeared on behalf of the plaintiff. Mr. David Johnson appeared on behalf of the defendant.

Mr. Manwaring presented argument supporting the motion to reconsider and second motion for partial summary judgment.

Mr. Johnson argued in opposition to plaintiff's motions.

Mr. Manwaring presented additional argument supporting the motions.

The Court will allow counsel 7 days to submit additional transcripts for the Court's consideration.

Court was thus adjourned.

Gregory S. Anderson
GREGORY S. ANDERSON
District Judge

c: Kipp Manwaring
David Johnson

BONNEVILLE COUNTY
IDAHO

2008 OCT -7 PM 4: 33

David A. Johnson, Esq.
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Attorney for Defendant

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF
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BLACK DIAMOND, LLC,

Plaintiff,

vs.

SHERRY KIMBALL, et al.

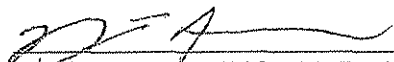
Defendant.

Case No: CV-07-3806

PUBLICATION OF THE
DEPOSITION OF TRENT D. TYLER

David A. Johnson, attorney for Defendant Sherry Kimball, pursuant to Idaho Rules of Civil Procedure 32, for purposes of Summary Judgment/Motion for Reconsideration, hereby requests the Court to publish the attached Deposition of Trent Tyler taken September 24, 2008.

DATED: October 7, 2008



WRIGHT, JOHNSON, TOLSON &
WAYMENT, PLLC
David A. Johnson, Esq.

1- PUBLICATION OF THE DEPOSITION OF TRENT D. TYLER

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on October 2, 2008, I served a true and correct copy of the foregoing document (without the deposition transcript), on the person(s) listed below by causing the same to be delivered by the following method:

Person/Attorney Served:

Kipp L. Manwaring
Just Law Office
P.O. Box 50271
Idaho Falls, ID 83405-0271

Method of Service:

Facsimile 523-9146



David A. Johnson, Esq.

Transcript of the Testimony of:
Trent Tyler

Date: September 24, 2008
Volume: I

Case: BLACK DIAMOND v. KIMBALL, ET AL.

Printed On: October 2, 2008

T&T Reporting
Phone:208/529-5491
Fax:208/529-5496
Email:tntreport@ida.net
Internet: www.tandtreport.com

DEPOSITION OF TRENT D. TYLER,

BE IT REMEMBERED that the deposition of TRENT D. TYLER, was taken by the attorney for the Defendant, at the offices of Wright, Johnson, Tolson & Wayment, located at 477 Shoup Avenue, Idaho Falls Idaho, before Karla Steed, Court Reporter and Notary Public, in and for the State of Idaho, on Wednesday, the 24th day of September, 2008 commencing at the hour of 9:50 a.m., in the above-entitled matter.

A P P E A R A N C E S

For the Plaintiff:

JUST LAW OFFICE
BY: KIPP L. MANWARING
381 Shoup Avenue, Suite 210
Post Office Box 50271
Idaho Falls, Idaho 83402
(208) 782-2300
kipp@manwaringlaw.com

For the Defendant:

WRIGHT, JOHNSON, TOLSON & WAYMENT
BY: DAVID A. JOHNSON
477 Shoup Avenue, Suite 109
Post Office 52251
Idaho Falls, Idaho 83405-0578
e-mail dj@ida.net

Also Present: Bradon Howell
Jayce Howell
Dustin Howell

I N D E X
E X A M I N A T I O N

WITNESS

TRENT D. TYLER

EXAMINATION BY

PAGE

MR. JOHNSON 4, 26

MR. MANWARING 25

Reporter's Note: No exhibits.

1 (The deposition of Trent D. Tyler proceeded at 9:50
2 a.m. as follows:)

3 TRENT D. TYLER

4 produced as a witness at the instance of the
5 Defendant, having been first duly sworn, was
6 examined and testified as follows:

7 EXAMINATION

8 BY MR. JOHNSON:

9 Q Mr. Tyler, have you had a chance to sit
10 down with Mr. Manwaring before this hearing to go
11 through what a deposition is about?

12 A No.

13 Q All right. Have you ever had your
14 deposition taken before?

15 A No.

16 Q You probably observed the last
17 deposition you were in, but you were not here for
18 some basic instructions. This is an opportunity for
19 me to ask questions that you answer under oath.

20 It's important that you take the time
21 to reflect on your answer and to answer truthfully
22 and correctly. There is no time clock. You can
23 take as much time as you want -- preferrably it
24 doesn't kill us in waiting.

25 But, nevertheless, I want you to make

1 sure that you understand the question before you
2 answer it. If you answer it, I will have to assume
3 that you understood the question and you would be
4 accountable for that question in subsequent
5 proceedings.

6 Because of it being recorded, it's
7 important that we don't talk over each other. I
8 talk a little bit slower in depositions because of
9 it being recorded and trying to make myself
10 basically look better for the record.

11 It's difficult for our court reporter
12 if you start answering a question before the
13 question has been completed. And I try to reframe
14 from asking the next question before you complete
15 your answer to the previous question.

16 If you ever believe that I am cutting
17 you off, raise your hand or indicate otherwise and I
18 will be happy to make sure that I await my turn.

19 The next rule is, make sure that you
20 answer audibly and clearly. Yeses or no's are a
21 good way to answer versus Uh-huh or hu-huh or
22 yeah -- are words that are are very difficult for
23 our court reporter.

24 You will have an opportunity, if you
25 choose to do so, to read and to sign this deposition

1 afterwards. And I would certainly encourage you to
2 do so to make sure that it's an accurate record.

3 Q Let's start by your stating your name
4 in full?

5 A Trent D. Tyler.

6 Q And where do you reside?

7 A Rigby, Idaho.

8 Q Okay. And what is your date of birth?

9 A 

10 Q Are you affiliated with any business or
11 employment?

12 A Yes.

13 Q What type of business are you, or
14 businesses, are you involved in?

15 A Owner of a mortgage company -- half
16 owner of a mortgage company.

17 Q Okay.

18 A Owner or half owner of a real estate
19 company that we buy and sell property.

20 Q Is that Black Diamond Alliance?

21 A Yes.

22 Q Okay.

23 A I also have another entity that I am a
24 hundred percent owner in, Tykinderen LLC.

25 Q What type of business is that in?

1 A Same. Real estate investing.

2 Q Okay. Let's focus in on Black Diamond
3 Alliance.

4 A Okay.

5 Q Apparently you are not the sole
6 proprietor, or the sole owner of that property -- or
7 that business?

8 A No. Fifty percent.

9 Q And who are the other participants?

10 A Jayce Howell is my partner in both
11 Legacy Mortgage and Black Diamond.

12 Q Anyone else?

13 A NO. That is it.

14 Q What is the purpose or business
15 function of Black Diamond Alliance?

16 A Other than to make money?

17 Q Other than this case.

18 A Really looking for an opportunity in
19 real estate to buy and sell or to invest -- buy and
20 hold for a long term and sell. We have owned rental
21 properties in the past. That is -- you know that is
22 really the main scope of the business is looking for
23 the opportunity to invest in real estate for a
24 profit.

25 Q And as part of the investments, do you

1 look at distressed properties?

2 A Yes.

3 Q What types of distressed properties do
4 you look at?

5 A All scopes. Commercial. Single family
6 dwellings. Multi-family units. Bare ground. You
7 name it. I think we probably looked at it as far as
8 real state.

9 Q Do you prescribe to any services that
10 provide notice or publication services --

11 A Yes.

12 Q Rule number two.

13 A I am sorry.

14 Q It's all right. Mr. Howell got two
15 strikes as well.

16 Anyway. Let me ask the question again.

17 A Yes.

18 Q Do you have any types of notification
19 or publication services that you are involved in?

20 A Yes.

21 Q What would those be?

22 A The Post Register, Jefferson Star, The
23 Standard Journal. They are all newspapers that
24 publish public notice. As we buy properties in
25 Madison County, Jefferson County, Bonneville County

1 we collect information off of each of those
2 newspapers for our tracking.

3 Q Okay. Are there any Internet services
4 or companies that you access to look for foreclosed
5 property that are being subject to a foreclosure?

6 A Not that I am aware of. Dustin Howell
7 who -- really that is his job in the business is the
8 individual that really collects all that data off of
9 the newspapers. I never heard of us looking on the
10 Internet for -- I know there is a number of sites
11 that exist but nothing really substantial.

12 Q Another name surfaced. Dustin Howell.
13 Apparently, he is an employee.

14 A That's correct.

15 Q With Black Diamond Alliance?

16 A That's correct.

17 Q What is his title?

18 A Assistant maybe. Professional
19 assistant. He doesn't really have a title. He
20 is -- like I said he tracks properties. He also
21 has an active real estate license. So he knows
22 values of what homes are selling for in the market.

23 He can go out and drive a property and
24 determine off of the public notice of what that
25 opening sale or what the default amount is. Is it a

1 property that we're interested in continuing to
2 track? So just his professional skills in knowing
3 the value that allows us to do our -- you know each
4 of us, our day-to-day jobs.

5 Q Now is there any other persons that are
6 either owners or officers or employees of Black
7 Diamond Alliance besides Jayce, you and Dustin?

8 A No -- excuse me. We have had other --
9 we have had other employees before Dustin that did
10 his same job.

11 Q Okay.

12 MR. JAYCE HOWELL: Wives?

13 MR. MANWARING: I would like to insert
14 in the record a question that came up from Jayce
15 Howell, whether wives should be included in
16 there. For purposes of this deposition I think
17 the answer will stand.

18 MR. JOHNSON: Sure. And to me at this
19 point in time I don't see the relevance to that.
20 We understand that a clarification has been made
21 with Jayce indicating that. Thanks.

22 BY MR. JOHNSON:

23 Q Let's go to the Kimball property
24 itself. When I say "the Kimball property", what
25 would you interpret that or define that as?

1 A What would I interpret the Kimball
2 property to mean?

3 Q Besides a derogatory concept because of
4 this litigation.

5 A Now, it's not a very good deal.

6 Q I mean as far as where it's located for
7 example.

8 A West 17th Street. That's how I would
9 always refer to it. 17th Street is how I would
10 always refer to it.

11 Q Out in New Sweden is probably the best
12 way to refer to that. Is that correct?

13 A That's correct.

14 Q So when I refer to the Kimball house,
15 is there any confusion on your part?

16 A No.

17 Q Okay. So in regards to that particular
18 property, when or how did you first become familiar
19 with this property?

20 A I recall the first time I was familiar
21 with it. Dustin and I were driving around looking
22 at properties. And on a regular basis he would
23 update his tracking list off of the published
24 notices of default. He would go and drive each
25 property specifically.

1 Any property that he felt had a decent
2 amount of equity versus what the notice of default
3 amount was we would go and drive those properties
4 together where he did not have you know a capability
5 of making the final decision as far as purchasing
6 the home.

7 If there was one that looked like it
8 was a possible good deal he would map those out. We
9 would go get in the car. Drive around together.
10 And look at each one of those properties
11 individually.

12 I recall looking at that home and
13 comparing it to what was on record of default. And
14 obviously agreeing that there was enough equity in
15 there to continue to track the progress of that
16 foreclosure.

17 Q Okay. Did you make an estimate of
18 value?

19 A I am sure I did.

20 Q Do you know what it would be?

21 A I know at that time we considered
22 around \$145,000.

23 Q Okay. That was when?

24 A Probably at least a month and a half
25 before the sale. Sometime early in April, May area.

1 Q Okay. And I am sure that every company
2 has what they consider their proprietary
3 calculations. I don't plan on going there because I
4 think everyone -- it's kind of like to me a dry rub
5 in barbeque. Everybody uses the same ingredient but
6 their's is different. But never-the-less, I will
7 certainly respect that. Okay.

8 But basically as far as what you
9 calculated you believed that there was some margin
10 of profit that could be made?

11 A Yes.

12 Q So did you decide to attend the trustee
13 sale?

14 A Yes. To further track the progress of
15 the sale and then -- just as a record we track
16 hundreds over the years.

17 And only so many of them actually make
18 it to a sale which is a lot of the reason that
19 Dustin goes out and weeds -- you know some of the
20 ones that don't have any equity, obviously you don't
21 want to follow and track and spend all that time to
22 either, one, have it not happen; or, two, if it
23 happens there is really not any money to be made for
24 our side of business any way.

25 Q Sure.

1 A Obviously at that time I said, yes,
2 let's track this. And you know as it moves forward
3 we -- if it goes to sale most definitely we would be
4 there to purchase.

5 Q And I assume that there is a lot of
6 attrition of those trustee sales either by deeds of
7 lieu of foreclosure and so forth, is that correct?

8 A You know I don't know always what
9 happens on the other side of the transaction. Yeah,
10 either -- I would not guess a deed in lieu of very
11 often either. They you know brought it current by
12 selling the home, getting it refinanced -- possibly
13 a family member. Who knows.

14 Q Now is there a particular group of
15 individuals that you have found are common that you
16 see at these trustee sales?

17 A Yes.

18 Q Tell me about what your observations
19 have been. How big of a group. How many.

20 A Really depends on the sale. I mean
21 it's never an exact, you know, there is this many
22 people. We haven't been to a trustee sale since the
23 Kimball property. Really depends on the sale.

24 Sometimes there would be ten people in
25 the room. Sometimes there would be two people in

1 the room. And so you know a lot of real estate
2 investors. It's based on: Do they have cash at
3 that moment. And if you got money to buy, then you
4 go to the sale. And if you don't have money to buy
5 then you don't.

6 Sometimes we would go to the sale just
7 to see what happens.

8 Q Okay. And when you are going to bid
9 you bring a cashier's check with you?

10 A That's correct.

11 Q And so did you go to -- let me
12 represent the first original sale date was May 29,
13 2007.

14 Did you go to the trustee sale that was
15 scheduled for that day?

16 A No.

17 Q And why not?

18 A Standard practice again. In the
19 morning if there is a sale that we're tracking or
20 wanting to go to, Dustin will call the title company
21 or whoever is crying the sale. Find out first and
22 foremost is the sale going to happen. And if the
23 sale is going to happen, is there an opening bid.

24 Q Okay.

25 A He called -- he called and was given

1 notice that the sale had been postponed.

2 Q Okay. But apparently this is
3 information that was conveyed to you --

4 A Yes.

5 Q -- by Dustin?

6 A Yes. I am not trying to interrupt you.
7 But it happened -- in the heat of buying and selling
8 foreclosures happened three times a week. Where in
9 the mornings we would discuss: Are we going to buy
10 today and how much money do we need.

11 And so it was a regular occurrence that
12 we would check in with one another and find out you
13 know: Do we really need to show up and do we really
14 need to go get money.

15 Q The stressful days are the ones that
16 you show up with the check, right?

17 A For sure.

18 Q Okay. So when did you become aware
19 that there was a trustee sale that was scheduled for
20 June 12, 2007?

21 A I am sure it would be when Dustin
22 called me and said that the home had been postponed
23 until June 12.

24 Q I assume that some sort of notation --

25 A Yes. Probably put it you know on my

1 calendar on my desk, you know possibly on my outlook
2 express calendar, in windows -- you know I don't
3 know that a hundred percent. But some type of
4 notation.

5 I know that -- again, that was Dustin's
6 job to track foreclosure sales. So he had you
7 know -- I am sure he had it in his notes some where.

8 Q Okay. And did anything transpire
9 between May 29, 2007 to June 11 the day before the
10 second sale?

11 A Anything regarding this property?

12 Q That's correct.

13 A Not that I recall at all.

14 Q Okay. So let's go to June 12, 2007.

15 A Okay.

16 Q You tell me when we should pick up the
17 events of that day as it relates to the Kimball
18 property.

19 A In the morning, got a cashier's check
20 ready. Make sure the sale is actually going to
21 happen. Find out what the opening bid is going to
22 be so we can make sure to bring enough money. And
23 if that opening bid still leaves a margin for our
24 company, then we show up at the sale.

25 Q Okay. Did you make any of those

1 contacts with the title company to determine if the
2 sale was going and what the initial bid would be?

3 A Me personally, no.

4 Q I assume Dustin did it again?

5 A That's correct.

6 Q And got the numbers?

7 A That's correct.

8 Q Okay. Are you the individual that went
9 to the sale?

10 A I am.

11 Q Tell me what transpired there. First
12 of all who did you note that was there?

13 A Dustin was with me. Jeremy Bingham was
14 at the sale who is a real estate agent that also has
15 bought and sold foreclosures. Jerry and Mary
16 Glowacki were there who we see on a number of
17 occasions. Chad Murdoch was there. Sandy Winn
18 cried the sale.

19 And then Dick Fowler actually came into
20 the sale just after she had opened -- or after she
21 had started her opening remarks.

22 I remember he came in late and was
23 sitting down right to the left of me.

24 Q Okay.

25 A Other than that -- I mean there may

1 have been other people there. I don't know that for
2 sure. Obviously it has been a while ago. These
3 people I know very well because I have seen them on
4 a number of occasions, so they stick in my mind.

5 MR. JOHNSON: Okay. I believe Madam
6 Reporter would like to know how to spell
7 Glowacki.

8 THE WITNESS: I believe it is
9 G.L.O.W.A.C.K.I.

10 On occasion -- I will just add this --
11 -- you know I have in the past on occasion made
12 the phone calls myself to Sandy Winn. Hey,
13 Sandy, you know is this sale open.

14 In my other entity Tykinderen, I am --
15 I will buy property sometimes without my partner.
16 Jayce does the same thing in another entity that
17 he has. So standard practice is that just to
18 make the phone call and say: Is it happening
19 today.

20 If it is happening today, what is the
21 opening bid. Sometimes they have the opening
22 bid. Sometimes they don't have the opening bid,
23 and then you just basically --

24 BY MR. JOHNSON:

25 Q As far as the sale -- and I am familiar

1 somewhat with the practice. So usually you have a
2 big, long reading?

3 A Yes.

4 Q And do you recall a big, long reading?

5 A Yes.

6 Q And may I make the assumption that you
7 really don't pay much attention --

8 A You know --

9 Q -- except for the dollar amount.

10 A The dollar amount. But I mean
11 obviously you know you pick out some of the
12 terminology. You know they make no guarantees as
13 far as what the property -- the shape of the
14 property -- some of those things that they can't
15 guarantee.

16 Then obviously at the end they state
17 after you buy the property that you would be given a
18 trustee's deed.

19 Q Okay. So after -- and you did hear
20 Sandy Winn -- and that is W.I. or W.Y.N.N.

21 A W.Y. I believe.

22 MR. JAYCE HOWELL: It is W.I.

23 THE WITNESS: Sorry. It's W.I.

24 BY MR. JOHNSON:

25 Q Okay. Do you recall her doing that

1 recitation or that long statement?

2 A Yes.

3 Q And do you recall what the original bid
4 was?

5 A The original bid or the opening bid?

6 Q Opening bid.

7 A Not off of memory. But I do have the
8 paper that shows the opening bid was \$111,072.60.

9 Q Okay. Tell me what you recall about
10 what happened from that point.

11 A Oddly enough or funny enough, just
12 before the sale we were talking about my birthday
13 had just passed on June 5th. And so we were talking
14 about happy birthday and so on and so forth.

15 Other than that, just small talk
16 between you know the purchasers there at the sale.
17 She came in and opened the sale. I believe I put in
18 the first bid above the opening amount. There was a
19 few subsequent bids.

20 We put in a bid at that time. Nobody
21 else bid. When she closed the bid, I remember a few
22 of the people saying happy birthday.

23 Q Okay. So there was some bidding going
24 on besides yourself?

25 A Yes.

1 Q I mean, it looks like the opening bid
2 was \$111,072 where it ended up. Were you guys tight
3 or something, going a hundred bucks an increment?

4 A Yes. I mean if it's not specified that
5 you have to go up a certain amount -- we seen people
6 bid them -- I mean, yeah. Some sales are
7 ridiculous.

8 Some of them they set an amount. You
9 have to bid up by a thousand dollars. That was not
10 the case that I am aware of in this.

11 Q Okay.

12 A When you are trying to make money every
13 dollar counts.

14 Q Okay. So apparently there are people
15 that did a few bids between -- when you got up to
16 \$112,500, that was it. You got it?

17 A I got it.

18 Q Okay. What was the next event that you
19 can recall in relation to this property? I mean,
20 obviously you gave them the check and those type of
21 things.

22 A Wrote out the check. And really just
23 waited for a trustee's deed. Waited to see when it
24 would be recorded. And get the property. I believe
25 it was that day after the sale. It could have been

1 the following day.

2 I don't remember exactly. Dustin and I
3 drove out to the Kimball property. Knocked on the
4 door. No answer. And so we left a flier that
5 stated that we had purchased the home. Went on with
6 our daily business.

7 Then you know I think my next -- our
8 next really anything to do with it that went further
9 than that was never being able to get a hold of
10 Sherry. Leaving messages. Going to try to, you
11 know, see where she was at; or get her out or what
12 her intentions were. And it has proceeded into
13 this.

14 Q Do you know whether she ever responded
15 and contacted you in relation to that note that you
16 left on her door?

17 A She eventually did respond, not to me
18 personally, but to Dustin. I don't recall how long
19 it took when she responded. I do recall having a
20 few appointments set up supposedly with you at this
21 office, and none of those ever came to pass.

22 Q Mr. Tyler, is there any answers to any
23 of the questions that I asked that you would like to
24 clarify?

25 A Maybe I could read through your

1 questions.

2 Q You are welcome to look at this. But
3 there were no questions in there. It's just kind of
4 points that I wanted to make.

5 A Maybe I would just reiterate that as --
6 -- you know as property investors you know we rely
7 heavily on public notice, following up on a daily
8 basis on what property is doing, what they are going
9 for and tracking those things.

10 Obviously we're in this business to
11 make a profit. And the only way you can make a
12 profit in this business is to be on top of your game
13 and you know be making wise decisions and Saying:
14 Okay, let's track these. If there is profit there,
15 we'll go forward and proceed. If there is not, we
16 dump them.

17 But other than that, really no. You
18 know we proceeded in business the same way that we
19 have for six years now. And there is really no
20 difference to that.

21 Q Anything else?

22 A I don't think so.

23 MR. JOHNSON: Nothing further.

24 MR. MANWARING: Just a couple of
25 questions to make sure we're clear.

1 EXAMINATION

2 BY MR. MANWARING.

3 Q When Black Diamond found out about this
4 property, did it find out through publication?

5 A Yes.

6 Q Did Black Diamond get any information
7 about this sale of the Kimball property from a
8 Bradon Howell?

9 A No.

10 Q At the time of the sale on June 12 did
11 Black Diamond have any knowledge or information
12 about negotiations between Fremont and Sherry
13 Kimball?

14 A I am sorry. Would you repeat that.

15 Q Yes. At the time of the sale on
16 June 12 did Black Diamond have any knowledge or
17 information about any negotiations between Fremont
18 and Sherry Kimball?

19 A No.

20 Q At the time of the sale on June 12th
21 did Black Diamond have any knowledge or information
22 that the sale itself had any defects as it relates
23 to notice to Sherry Kimball?

24 A No.

25 Q From your experience was the trustee's

1 sale that was conducted on June 12 conducted
2 properly?

3 A Yes.

4 Q Apparently Black Diamond was the
5 highest bidder at that sale.

6 A Yes. That is true.

7 Q Okay.

8 MR. MANWARING: No further questions.

9 EXAMINATION

10 BY MR. JOHNSON:

11 Q Do you know the reason why the sale
12 that was scheduled for May 29, 2007 did not take
13 place.

14 A I do now. I did not at the time, no.

15 Q Did you have any reason given to you as
16 to why it was not held on that particular date?

17 A No. Typically when you call and find
18 out if the sale is being cried or is going to happen
19 that day, they just simply say it has been postponed
20 or cancelled.

21 In this case, no, it has been postponed
22 until further date. They don't -- we don't ask and
23 they don't tell. It's just if it cancels, great.
24 We'll write it off our books and go on to next
25 property.

1 If it has been postponed make a note of
2 it, so that when it does pop up again, we're
3 prepared to go and buy if we're interested.

4 Q Were you aware of any other notice
5 besides -- of the June 12, 2007 sale -- besides
6 somebody calling the title company and getting that
7 date? In other words, did you see anything in the
8 newspaper -- anything on the property?

9 A No.

10 MR. JOHNSON: Okay.

11

12

13 (Deposition concluded at 10:20 a.m.)

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VERIFICATION

STATE OF _____)
)
 COUNTY OF _____)

I, TRENT TYLER, say that I am the witness referred to in the foregoing deposition, taken the 24th day of September, 2008, consisting of pages numbered 4 to 27, that I have read the said deposition and know the contents thereof; that the same are true to my knowledge, or with corrections, if any as noted.

Page	Line	Should Read	Reason
_____	_____	_____	_____
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 TRENT TYLER

Subscribed and sworn to before me this _____ day
 of _____, 200_, at _____.

(Seal)

 Notary Public for Idaho
 My Commission Expires _____

REPORTER'S CERTIFICATE

STATE OF IDAHO)
) ss.
 COUNTY OF BONNEVILLE)

I, Karla Steed, RPR, RMR, CSR, and Notary Public in and for the State of Idaho, do hereby certify:

That prior to being examined TRENT TYLER, the witness named in the foregoing deposition, was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named and thereafter reduced to typewriting under my direction, and that the foregoing transcript contains a full, true and vebatim record of said deposition.

I further certify that I have no interest in the event of the action.

WITNESS my hand and seal this _____ day of _____, 2008.

 Karla Steed
 Idaho CSR No. 755
 Notary Public in and for
 the State of Idaho

My Commission Expires: 8-21-12