

10-3-2008

# Troupis v. Summer Clerk's Record v. 1 Dckt. 35449

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IN THE  
SUPREME COURT  
OF THE  
STATE OF IDAHO

CHRIST T. TROUPIS and MAUREEN D.  
TROUPIS, husband and wife,

PLAINTIFFS-RESPONDENTS.

vs.

D. SCOTT SUMMER and CHARLOTTE  
SUMMER,

DEFENDANTS-APPELLANTS.

WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION, and DOE's 1-10,  
inclusive,

DEFENDANT.

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

*Hon RONALD J. WILPER, District Judge*

D. SCOTT SUMMER /  
GILBERT L. NELSON

*Pro Se Appellant / Attorney for Appellant*

R. BRAD MASINGILL

*Attorney for Respondents*

FILED - COPY  
OCT - 3 2018  
Supreme Court Court of Appeals  
Entered on A/S by: \_\_\_\_\_

COPY

IN THE SUPREME COURT OF THE STATE OF IDAHO

CHRIST T. TROUPIS and MAUREEN D. TROUPIS,  
husband and wife,

Plaintiffs-Respondents,

vs.

D. SCOTT SUMMER and CHARLOTTE SUMMER,

Defendants-Appellants,

WELLS FARGO BANK NORTHWEST, NATIONAL  
ASSOCIATION, and DOE's 1-10, inclusive,

Defendant.

Supreme Court Case No. 35449

CLERK'S RECORD ON APPEAL

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

HONORABLE RONALD J. WILPER

D. SCOTT SUMMER  
GILBERT L. NELSON

ATTORNEYS FOR APPELLANTS

CALDWELL, IDAHO

R. BRAD MASINGILL

ATTORNEY FOR RESPONDENTS

WEISER, IDAHO

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Date	Code	User		Judge
10/3/2007	NCOC	CCTEELAL	New Case Filed - Other Claims	Patrick H. Owen
	COMP	CCTEELAL	Complaint Filed	Patrick H. Owen
	SMFI	CCTEELAL	Summons Filed (3)	Patrick H. Owen
	NOTC	CCTEELAL	Notice of Lis Pendens	Patrick H. Owen
10/22/2007	ANSW	CCTOONAL	Answer (D. Scott Summer and Charlotte Summer Pro Se)	Patrick H. Owen
10/25/2007	HRSC	CCHUNTAM	Hearing Scheduled (Status 12/05/2007 03:00 PM) In chambers schd conf	Patrick H. Owen
	MOTN	CCEARLJD	Motion for Summary Judgment	Patrick H. Owen
	AFFD	CCEARLJD	Affidavit of Christ Troupis in Support of MOTion for Summary Judgment	Patrick H. Owen
	MEMO	CCEARLJD	Memorandum in Support of Motion for Summary Judgment	Patrick H. Owen
	MISC	CCEARLJD	Statement of Material Facts in Support of Motion for Summary Judgment	Patrick H. Owen
	NOHG	CCEARLJD	Notice Of Hearing Re: Motion for Summary Judgment (11.26.07@3:30pm)	Patrick H. Owen
	HRSC	CCEARLJD	Hearing Scheduled (Motion for Summary Judgment 11/26/2007 03:30 PM)	Patrick H. Owen
11/14/2007	MISC	MCBIEHKJ	Verification of Answer to Complaint for Partition of Real Estate and Sale	Patrick H. Owen
	OBJE	MCBIEHKJ	Objection to Motion for Summary Judgment	Patrick H. Owen
	MOTN	MCBIEHKJ	Motion to Vacate and Reset Summary Judgment Hearing to Allow Discovery	Patrick H. Owen
11/19/2007	REPL	CCSTROMJ	Reply Memorandum in Support of Motion for Summary Judgment	Patrick H. Owen
11/26/2007	HRHD	CCHUNTAM	Hearing result for Motion for Summary Judgment held on 11/26/2007 03:30 PM: Hearing Held	Patrick H. Owen
12/3/2007	AFFD	CCMCLILI	Affidavit of R. Brad Masingill re:Stipulation for Auction Sale of Property	Patrick H. Owen
	MOTN	CCAMESLC	Motion and Stipulation Without Waiver of Jurisdictional Challenge STRICKEN FROM RECORD	Patrick H. Owen
	AFFD	CCAMESLC	Affidavit of Charlotte Summer Re: Sale of Property STRICKEN FROM RECORD	Patrick H. Owen
	HRSC	CCAMESLC	Notice of Hearing (Motion 12/19/2007 02:00 PM) STRICKEN FROM RECORD	Patrick H. Owen
12/5/2007	HRVC	CCHUNTAM	Hearing result for Motion held on 12/19/2007 02:00 PM: Hearing Vacated (PLEADINGS STRICKEN FROM RECORD)	Patrick H. Owen
	HRVC	CCHUNTAM	Hearing result for Status held on 12/05/2007 03:00 PM: Hearing Vacated In chambers schd conf	Patrick H. Owen
12/14/2007	AFOS	CCEARLJD	Affidavit Of Service 12.4.07	Patrick H. Owen
12/24/2007	AFFD	MCBIEHKJ	Affidavit of Mike Ridgeway	Patrick H. Owen

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Christ T Troupis, Maureen D Troupis vs. D Scott Summer, Charlotte Summer, Wells Fargo Bank Northwest, National Association

Date	Code	User		Judge
12/27/2007	MOTN	MCBIEHKJ	Motion for Disqualification	Patrick H. Owen
	ANSW	MCBIEHKJ	Answer and Counterclaim re Partition of Real Estate and Sale (Nelson for Charlotte Summer)	Patrick H. Owen
3/13/2008	ORDQ	CCBURGBL	Order Re: Motion for Disqualification	Patrick H. Owen
	CJWO	CCBURGBL	Notice of Reassignment to Judge Deborah Bail	Deborah Bail
3/17/2008	NOTC	CCAMESLC	Notice and Order of Recusal	Deborah Bail
	CHJS	CCAMESLC	Notice of Reassignment to Judge Wilper	Ronald J. Wilper
4/4/2008	NOTC	DCJOHNSI	Notice of Status Conf	Ronald J. Wilper
	HRSC	DCJOHNSI	Hearing Scheduled (Status 05/13/2008 03:45 PM)	Ronald J. Wilper
4/10/2008	MOTN	CCTEELAL	Motion for Summary Judgment	Ronald J. Wilper
	AFFD	CCTEELAL	Affidavit of Christ Troupis in Support of Motion for Summary Judgment	Ronald J. Wilper
	MEMO	CCTEELAL	Memorandum in Support of Motion for Summary Judgment	Ronald J. Wilper
	NOHG	CCTEELAL	Notice Of Hearing 5.12.08 @ 2 pm	Ronald J. Wilper
	HRSC	CCTEELAL	Hearing Scheduled (Motion for Summary Judgment 05/12/2008 02:00 PM)	Ronald J. Wilper
4/29/2008	MOTN	CCBARCCR	Motion to Vacate and Reset Summary Judgment Hearing	Ronald J. Wilper
	OBJT	CCBARCCR	Objection to Motion for Summary Judgment	Ronald J. Wilper
5/5/2008	AFFD	CCEARLJD	Second Supplemental Affidavit of Christ Troupis in Support of Motion for Summary Judgment	Ronald J. Wilper
	REPL	CCTOONAL	Reply to Defendants' Motion to Vacate and Reset Summary Judgment Hearing	Ronald J. Wilper
	AFFD	CCTOONAL	Supplemental Affidavit of Christ Troupis in Opposition to Motion to Vacate	Ronald J. Wilper
	REPL	CCTOONAL	Reply to Objection to Plaintiffs' Motion for Summary Judgment	Ronald J. Wilper
	AFFD	CCTOONAL	Supplemental Affidavit of Christ Troupis in Support of Motion for Summary Judgment	Ronald J. Wilper
5/12/2008	DCHH	DCJOHNSI	Hearing result for Motion for Summary Judgment held on 05/12/2008 02:00 PM: District Court Hearing Held Court Reporter: cromwell Number of Transcript Pages for this hearing estimated:50	Ronald J. Wilper
	HRVC	DCJOHNSI	Hearing result for Status held on 05/13/2008 03:45 PM: Hearing Vacated	Ronald J. Wilper
	MISC	DCJOHNSI	Request and Order to Dismiss-Wells Fargo Bank Only	Ronald J. Wilper
5/19/2008	MEMO	MCBIEHKJ	Memorandum in Support of Fees	Ronald J. Wilper
	AFFD	MCBIEHKJ	Affidavit of Christ Troupis	Ronald J. Wilper
	AFFD	MCBIEHKJ	Affidavit of Brad Masingill	Ronald J. Wilper

000004

Date: 9/2/2008

I d Judicial District Court - Ada County

User: CCLUNDMJ

Time: 02:59 PM

ROA Report

Page 3 of 3

Case: CV-OC-2007-17592 Current Judge: Ronald J. Wilper

Christ T Troupis, etal. vs. D Scott Summer, etal.

Christ T Troupis, Maureen D Troupis vs. D Scott Summer, Charlotte Summer, Wells Fargo Bank Northwest, National Association

Date	Code	User		Judge
5/21/2008	MISC	DCJOHNSI	Findings of Fact, Concl. of Law, Judgment	Ronald J. Wilper
	CDIS	DCJOHNSI	Civil Disposition entered for: Summer, Charlotte, Defendant; Summer, D Scott, Defendant; Wells Fargo Bank Northwest, National Association, Defendant; Troupis, Christ T, Plaintiff; Troupis, Maureen D, Plaintiff. Filing date: 5/21/2008	Ronald J. Wilper
	STAT	DCJOHNSI	STATUS CHANGED: Closed	Ronald J. Wilper
6/12/2008	ORDR	DCABBOSM	Order Granting Attorney's Fees and Costs	Ronald J. Wilper
7/2/2008	APSC	CCTHIEBJ	Appealed To The Supreme Court	Ronald J. Wilper
7/9/2008	REQU	CCTHIEBJ	Request For Additional Transcript	Ronald J. Wilper

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NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ FILED P.M. 12/1

OCT 03 2007

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

1 R. BRAD MASINGILL  
Attorney at Law  
2 27 W. Commercial Street  
P.O. Box 467  
3 Weiser, Idaho 83672  
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6 Email: [bmasingill@hotmail.com](mailto:bmasingill@hotmail.com)

7 IN THE DISTRICT COURT OF THE STATE OF IDAHO  
8 IN AND FOR THE COUNTY OF ADA

9 CHRIST T. TROUPIS and )  
10 MAUREEN D. TROUPIS, )  
Husband and Wife, )

11 Plaintiffs, )

12 vs. )

13 )  
14 D. SCOTT SUMMER and )  
15 CHARLOTTE SUMMER, )  
WELLS FARGO BANK NORTHWEST, )  
16 NATIONAL ASSOCIATION, )  
and DOE's 1-10, Inclusive, )

17 Defendants. )

Case No. **07** **00** 0717592

COMPLAINT FOR PARTITION  
OF REAL ESTATE AND SALE

18  
19 COME NOW THE PLAINTIFFS CHRIST TROUPIS AND MAUREEN TROUPIS,

20 Husband and Wife, by and through their attorney, R. BRAD MASINGILL, and for their

21 Complaint against the Defendants D. SCOTT SUMMER AND CHARLOTTE SUMMER,

22 Husband and Wife, AND WELLS FARGO BANK NORTHWEST, NATIONAL

23 ASSOCIATION and DOE's 1-10, allege as follows:

24 1.  
25

1 The Plaintiffs CHRIST T. TROUPIS and MAUREEN D. TROUPIS, hereinafter  
2 collectively referred to as "Troupis", are and at all times referred to in this Complaint were  
3 Husband and Wife and residents of the County of Ada, State of Idaho.

4 2.

5 The Defendants D. SCOTT SUMMER and CHARLOTTE SUMMER, hereinafter  
6 collectively referred to as "Summer", are and at all times referred to in this Complaint were  
7 Husband and Wife and residents of the County of Canyon, State of Idaho.

8 3.

9 The Defendant WELLS FARGO BANK NORTHWEST, NATIONAL ASSOCIATION  
10 is a Federal Chartered Banking Corporation organized under the laws of the United States and  
11 doing business in the State of Idaho with its registered office located at 1401 Shoreline Drive,  
12 Suite 2, Boise, Idaho 83702.

13 4.

14 Plaintiffs do not know the true names of Defendants Does 1 through 10, inclusive, and  
15 therefore sues them by those fictitious names. The names, capacities, and relationships of  
16 Defendants named as Does 1 through 10 will be alleged by amendment to this complaint when  
17 they are known. Plaintiff is informed and believes and on that basis alleges that each of the Doe  
18 Defendants claims, or may claim, some interest in the real property described in Paragraph 5 of  
19 this complaint.  
20

21 5.

22 Plaintiffs Troupis and Defendants Summer are co-owners of the real property located in  
23 Ada County, Idaho at 385 S. Locust Grove Road, Meridian, Idaho and legally described in  
24 Exhibit A attached hereto, less the portion of the property sold to Ada County for a Right of  
25

1 Way, described on Exhibit B attached hereto. Both of these Exhibits are incorporated herein by  
2 this reference.

3 6.

4 This action is brought pursuant to Idaho Code §6-501 et.seq. Partition is sought as to the  
5 fee simple estate in the real property. Plaintiffs' interest in the real property is a tenant in  
6 common with a 50% interest in the real property.

7 7.

8 Defendant Summer's interest in the property is a tenant in common with a 50% interest in  
9 the real property.

10 8.

11 Wells Fargo Bank Northwest, National Association holds an interest of record in the real  
12 property as a secured lienholder, which Plaintiffs believe will not be materially affected by this  
13 action since the real property has a fair market value substantially in excess of the sums owing to  
14 this Defendant and the principals have provided personal guarantys for repayment of any loan  
15 deficiency.  
16

17 9.

18 Prior to the commencement of this action, Plaintiffs were required to incur expenses for  
19 the common benefit of the co-owners in the total sum of \$40,152.54 to maintain the premises.  
20 Those expenses include payment of the real estate taxes assessed against the property, payment  
21 of principal and interest payments on the mortgage and line of credit secured by the real  
22 property, payment of insurance, utilities, and weed removal. These expenses will continue to  
23 accrue until the property is partitioned and sold. Under ordinary principles of equity and pursuant  
24 to Idaho Code §6-541, Plaintiffs are entitled to a compensatory adjustment between the  
25

1 respective co-owners to recoup these expenses incurred for the common benefit of the co-  
2 owners.

3 **10.**

4 A sale of the property is sought because a partition in kind cannot be made without great  
5 prejudice to the owners, for the following reasons: (1) The property is improved with a single  
6 residence that cannot be divided in kind. (2) Defendants Summer have been either unwilling or  
7 unable to contribute any sums toward the ongoing jointly owed maintenance expenses of the  
8 property for the past year, including the outstanding mortgage owed to Wells Fargo Bank. (3)  
9 Wells Fargo Bank has declared a default of its secured loan obligation that cannot be cured. (4)  
10 Wells Fargo Bank has offered to sell its Notes to either Guarantor; the offer expires on October  
11 16, 2007. Wells Fargo Bank has indicated its intent to sell the notes after October 16, 2007 to a  
12 third party who may then accelerate the loan balance and begin foreclosure proceedings on the  
13 property. Wells Fargo's letter issued on September 19, 2007 advising both guarantors of these  
14 facts is attached hereto as Exhibit C and incorporated herein by this reference.  
15

16 **11.**

17 Plaintiffs have sought the cooperation and participation of Defendants Summer in the  
18 voluntary sale of the property by auction, but Defendants Summer have failed or refused to  
19 cooperate. The property cannot be sold without the participation of all owners in executing sale  
20 and transfer documents. Defendants Summers' refusal to cooperate in the sale of the property  
21 have and will cause severe prejudice to Plaintiffs Troupis in that they have executed a personal  
22 guaranty and are at grave financial risk if the property is lost through foreclosure and there is a  
23 deficiency balance then owing to Wells Fargo Bank Northwest. Plaintiffs Troupis have no reason  
24 to believe that they would not be held entirely responsible for payment of that deficiency balance  
25

1 and have no reason to believe that Defendants Summer are either capable or willing to contribute  
2 equally in covering such a deficiency, should it occur.

3 **12.**

4 As a direct and proximate result of the conduct of Defendants Summer as alleged  
5 above, including their refusal to cooperate in voluntary sale of the real property by auction,  
6 Plaintiffs have been required to retain the services of R. BRAD MASINGILL for  
7 representation in this action, and are entitled to reasonable attorney fees and costs herein.  
8  
9

10 **PRAYER**

11 **WHEREFORE, PLAINTIFFS PRAY** for relief and judgment against  
12 Defendants for:

- 13 1. A determination by the court that Plaintiffs Troupis and Defendants Summer  
14 are co-owners of the real property;
- 15 2. A determination by the court that no other persons have any interest in the real  
16 property, except for Wells Fargo Bank Northwest, National Association,  
17 which holds a deed of trust encumbering the real property;
- 18 3. An order and judgment that the real property be sold and that from the  
19 proceeds of the sale any encumbrance be paid, together with the costs and  
20 expenses of this action and the sale; that Plaintiffs Troupis be reimbursed all  
21 sums that they have incurred in maintaining the property, which totaled  
22 \$40,152.54 prior to the filing of this lawsuit, and the net proceeds then be  
23 divided between Plaintiffs Troupis and Defendants Summer in accordance  
24 with their respective interests;  
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- 4. For reasonable attorneys' fees incurred herein as allowed by law;
- 5. For costs, pursuant to Idaho Code §6-545; and
- 6. For such other and further relief as the court considers just and proper.

Dated: October 2, 2007.


  
\_\_\_\_\_  
R. BRAD MASINGILL,  
Attorney for Plaintiffs



EXHIBIT "A"

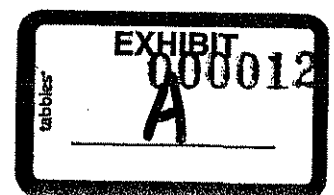
Beginning at the Southeast corner of the Northeast Quarter of the Northeast Quarter of Section 18, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, which is South along the East side of said Section 18 and along the center line of Locust Grove Road, 1329.2 feet from a bronze cap marking the Northeast corner of said Section 18; thence

South  $89^{\circ}11' 1/2''$  West along the South side of the Northeast Quarter of the Northeast Quarter of said Section 18 a distance of 438.7 feet to a steel pin; thence

North  $0^{\circ}55'$  East 149.0 feet to a steel pin; thence

North  $89^{\circ}11' 1/2''$  East 436.3 feet to a steel pin; thence

South 149.0 feet along the East side of said Section 18 to the REAL POINT OF BEGINNING.



Ada County Highway District  
Project No. 602012.0  
Locust Grove Road (Central/Bentley to Franklin)

EXHIBIT "A"

• Parcel 11 •  
Right-of-Way Take Description

A parcel located in the NE ¼ of the NE ¼ of Section 18, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

BEGINNING at a 5/8 inch diameter iron pin marking the southeasterly corner of said NE ¼ of the NE ¼ from which a brass cap monument marking the northeasterly corner of said NE ¼ of the NE ¼ bears N 0°31'11" E a distance of 1329.58 feet;

Thence N 0°31'11" E along the easterly boundary of said NE ¼ of the NE ¼ a distance of 149.00 feet to a point;

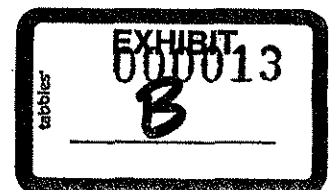
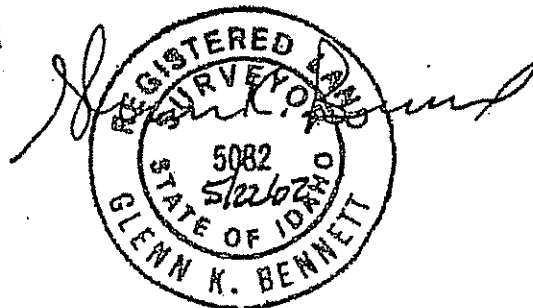
Thence leaving said easterly boundary S 89°39'19" W a distance of 48.01 feet to a point;

Thence S 0°31'11" W a distance of 149.00 feet to a point on the southerly boundary of said NE ¼ of the NE ¼;

Thence N 89°39'19" E along said southerly boundary a distance of 48.01 feet to the POINT OF BEGINNING.

This parcel contains 0.164 acres (7,152 square feet) and is subject to any easements existing or in use. Said parcel contains 0.086 acres (3,725 square feet) of existing Locust Grove Road prescriptive right-of-way.

Prepared by: Glenn K. Bennett, PLS  
Civil Survey Consultants, Incorporated  
May 22, 2002





Credit Management Group  
Idaho Office- MAC U1853-033  
3295 Elder Street, Suite 340  
Boise, ID 83705  
Ph: 208-393-4559  
Fax: 208-393-4533

September 19, 2007

Troupis & Summer, Chartered  
1299 E Iron Eagle, Ste. #130  
Eagle, ID 83616

D. Scott Summer  
5416 Tripple Court  
Nampa, ID 83687

Christ Troupis  
5934 N. Yaquina Headway  
Boise, ID 83714

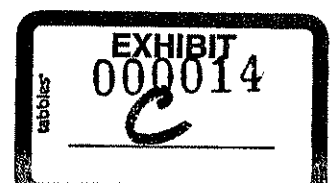
Re: Loans from Wells Fargo Bank, N.A. as successor in interest to Wells Fargo Bank Northwest, N.A. ("Wells Fargo").

Dear Mr. Summer and Mr. Troupis:

This letter is written in connection with the Promissory Note executed by Troupis & Summer, Chartered (the "Borrower") in the original amount of \$221,250.00 dated December 20, 2002 (the "Note") payable to Wells Fargo and the Business Line of Credit granted to Borrower in the amount of \$95,000 pursuant to a Loan Application and Agreement and Personal Guarantee dated November 29, 2001 (the "Line"). The Note is secured by a Deed of Trust dated December 20, 2002, recorded January 3, 2003 at Document Number 103001116 in the records of Ada County, Idaho (the "Deed of Trust") encumbering the real property known as 385 South Locust Grove Road, Meridian, ID 83642. The Line is also secured by the Deed of Trust pursuant to the Cross-Collateralization provision in the Deed of Trust. Repayment of the Note and Line are unconditionally jointly and severally guaranteed without limitation by Mr. Troupis and Mr. Summers (the "Guarantors").

No further advances are available under the Line due to the closing of the Borrower's business which constitutes a default under the Line, the Note, and the Deed of Trust.

Such default entitles Wells Fargo to accelerate all amounts due under the Line and the Note (collectively referred to herein as the "Notes"). The Bank has determined to forbear from accelerating the Notes and beginning any foreclosure action on the property while exploring the possible sale of the Notes and Deed of Trust. The Bank will agree to sell the Notes and Deed of Trust to either Guarantor upon request at a sale price equal to the amount of the outstanding principal balances on the Notes and any accrued interest as of



the date of closing, plus any collection costs, with payment to be made in cash or certified funds. The sale would be subject to the following conditions:

1. The closing date shall be no later than October 16, 2007;
2. The sale would be on a non-recourse basis without any representations or warranties;
3. The purchaser must purchase both Notes simultaneously;
4. The purchaser must execute a note sale agreement in a form and substance acceptable to the Bank.

The payoff balance of the Line as of September 19, 2007 is \$96,100.00. An updated payoff balance must be requested from the Bank for the specific date on which the Line is to be repaid or sold. The payoff of the Note as of September 19, 2007 is \$180,242.59. Per Diem interest of \$34.21 on the Note must be added for each day after September 19, 2007.

If the Notes are not kept current, the Bank shall be entitled to pursue any and all legal and equitable remedies available to it to enforce the collection of the Notes. Under the terms of the Notes, the Borrower is responsible for costs and reasonable attorney's fees incurred in such collection.

The events of default specified herein above are not intended to be a complete list of all present events of default nor of all actions which constitute breach of the Notes and the documents executed by the Borrower or Guarantors in connection therewith. The Bank reserves the right to assert and act in reliance upon any and all events of breach or default which have heretofore occurred (whether or not continuing), may presently exist, and may hereafter occur. This letter is not intended, and may not be construed as, an election of remedies by the Bank or a waiver of any other default now or hereafter existing on the Notes. All of the Bank's rights and remedies under the Notes and related documents are hereby expressly preserved.

The sale offer expires October 16, 2007. Should neither Guarantor elect to purchase the Notes by such date, the Bank will, at its option, seek a third party purchaser for the Notes. Feel free to contact me if you have any questions regarding the foregoing.

Sincerely,



Robert Stallsmith  
Vice President

000015





**Parcel 1:**

“Beginning at the Southeast corner of the Northeast Quarter of the Northeast Quarter of Section 18, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho, which is South along the East side of said Section 18 and along the center line of Locust Grove Road, 1329.2 feet from a bronze cap marking the Northeast corner of said Section 18; thence South 89 degrees 11 ½ ‘ West along the South side of the Northeast Quarter of the Northeast Quarter of said Section 18 a distance of 438.7 feet to a steel pin; thence North 0 degrees 55’ East 149.0 feet to a steel pin; thence North 89 degrees 11 1/2 ‘ East 436.3 feet to a steel pin; thence South 149.0 feet along the East side of said Section 18 to the Real Point of Beginning.”

With the exception of the following portion of the real property taken as a Right of Way by Ada County Highway District:

**Parcel 2:**

A parcel located in the NE ¼ of the NE ¼ of Section 18, Township 3 North, Range 1 East, Boise Meridian, Ada County, Idaho more particularly described as follows:

“Beginning at a 5/8 inch diameter iron pin marking the southeasterly corner of said NE ¼ of the NE ¼ from which a brass cap monument marking the northeasterly corner of said NE ¼ of the NE ¼ bears 0 degrees 31’ 11” E a distance of 1329.58 feet;

Thence N 0 degrees 31’ 11” E along the easterly boundary of said NE ¼ of the NE ¼ a distance of 149.00 feet to a point;

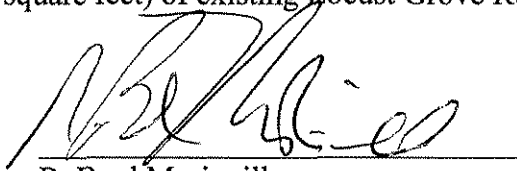
Thence leaving said easterly boundary S 89 degrees 39’ 19” W a distance of 48.01 feet to a point;

Thence S 0 degrees 31’ 11” W a distance of 149.00 feet to a point on the southerly boundary of said NE ¼ of the NE ¼;

Thence N 89 degrees 39’ 19” E along said southerly boundary a distance of 48.01 feet to the POINT OF BEGINNING.

This parcel contains 0.164 acres (7,152 square feet) and is subject to any easements exiting or in use. Said parcel contains 0.086 acres (3,275 square feet) of existing Locust Grove Road prescriptive right of way.

Dated: October 2, 2007

  
\_\_\_\_\_  
R. Brad Masingill  
Attorney for Plaintiffs

STATE OF IDAHO )

) ss.

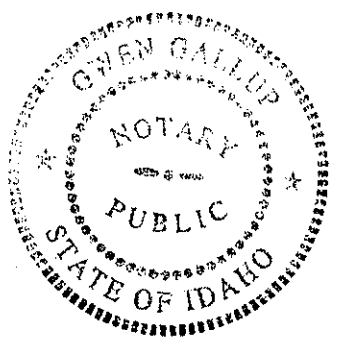
County of ~~Ada~~ *Washington*

R. Brad Masingill, being first duly sworn on oath, deposes and states as follows:

That he is the attorney for the Plaintiffs in the above-entitled action; that he has read the foregoing instrument, knows the contents thereof and the facts therein are true and correct based upon his personal knowledge and belief.

*R. Brad Masingill*  
R. Brad Masingill

SUBSCRIBED AND SWORN TO before me on this 2nd day of October, 2007.



*Gwen Gallup*  
Notary Public for Idaho  
Residing at *Wesley Id*  
My Commission expires: 7/30/2011





3.

Answering paragraph 1 of Plaintiffs' Complaint, answering Defendants admit said allegation.

4.

Answering paragraph 2 of Plaintiffs' Complaint, answering Defendants admit said allegation.

5.

Answering paragraph 3 of Plaintiffs' Complaint, answering Defendants admit said allegation.

6.

Answering paragraph 4 of Plaintiffs' Complaint, answering Defendants are without sufficient information to either admit or deny these allegations and therefore deny.

7.

Answering paragraph 5 of Plaintiffs' Complaint, answering Defendants admit said allegations.

8.

Answering paragraph 6 of Plaintiffs' Complaint, answering Defendants admit said allegations but specifically deny that Idaho Code §6-501 grants this Court jurisdiction over the subject matter.

9.

Answering paragraph 7 of Plaintiffs' Complaint, answering Defendants admit said allegation.

10.

Answering paragraph 8 of Plaintiffs' Complaint, answering Defendants admit said allegations.

11.

Answering paragraph 9 of Plaintiffs' Complaint, answering Defendants deny said allegations and deny the applicability of Idaho Code §6-541.

12.

Answering paragraph 10 of Plaintiffs' Complaint, answering Defendants admit that partition in kind cannot be made without great prejudice to the owners. Answering Defendants admit that the property is improved with a single office building (converted residence) that cannot be divided in kind. Answering Defendants deny subpart (2) of paragraph 10 of Plaintiffs' Complaint. Answering Defendants admit the remainder of paragraph 10 of Plaintiffs' Complaint.

13.

Answering paragraph 11 of Plaintiffs' Complaint, answering Defendants deny said allegations.

14.

Answering paragraph 12 of Plaintiffs' Complaint, answering Defendants deny said allegation and specifically allege that attorney R. Brad Masingill is a material witness to the facts and circumstances underlying Plaintiffs' claims herein and therefore should not represent Plaintiffs' in this litigation.

#### **AFFIRMATIVE DEFENSES AND COUNTER CLAIMS**

15.

Defendants D. Scott Summer and Charlotte Summer incorporate by reference herein each and every answer above in paragraphs 1 – 14 as if restated herein below in full.

16.

Defendants D. Scott Summer and Charlotte Summer alleged by way of affirmative defense and counter claims against Plaintiffs as follows:

17.

Plaintiff Christ T. Troupis was a partner and later employer of Defendant D. Scott Summer and wrongfully appropriated Partnership monies to him self, wrongfully increased certain mutually guaranteed debts and credit after the dissolution of the partnership, and failed to pay to D. Scott Summer wages earned as an employee. Therefore, D. Scott Summer is entitled to an equitable set-off of any monies claimed by Plaintiffs herein above an exact and equal share of any sale proceeds of the subject property.

18.

Plaintiff Christ T. Troupis has entered into several separate contracts to sell the subject property without first obtaining the approval of Defendants Summer and most recently entered into a contract for the auctioning of said property with terms unacceptable to Defendants Summer. Plaintiff Christ T. Troupis has obstructed Defendants Summer's attempts to participate in a reasonable sale of said property and therefore Christ T. Troupis has unclean hands in this matter and should be barred from the recovery and relief sought by way of Plaintiffs' Complaint.

**PRAYER**

**WHEREFORE, DEFENDANTS D. Scott Summer and Charlotte Summer** having answered each and every allegation of Plaintiffs complaint against them and having interposed affirmative defenses counter claims barring Plaintiffs claims herein, **PRAY** for relief and judgment against Plaintiffs as follows:

1. That Plaintiffs Complaint be dismissed with prejudice and that they take nothing by

way of their complaint;

2. A determination that attorney R. Brad Masingill either withdraw as counsel for Plaintiffs and or be Ordered to do so;

3. A determination by the court that Plaintiffs Troupis and Defendants Summer are co-owners of the real property, each with an equal 50% ownership interest therein;

4. A determination by the court that no other persons have any interest in the real property, except for Wells Fargo Bank Northwest, National Association, which holds a deed of trust encumbering the real property;

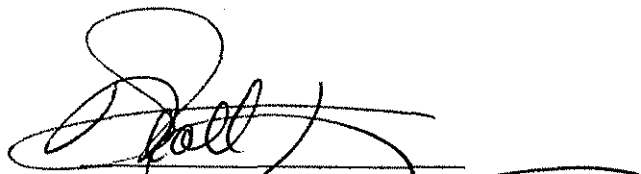
5. That the real property be sold under reasonable terms and conditions that protect the interests of each party to this litigation;

6. That Plaintiffs Troupis are not entitled to any distribution above an equal division of any sale proceeds beyond those required to satisfy the secured interests of Wells Fargo Bank Northwest, National Association, pursuant to the deed of trust it holds;

7. That Defendants Summer be awarded their reasonable costs of suit herein and should they later retain counsel, for an award of reasonable attorney fees;

8. For such other and further relief as the court deems just and proper.

Dated: October 22, 2007

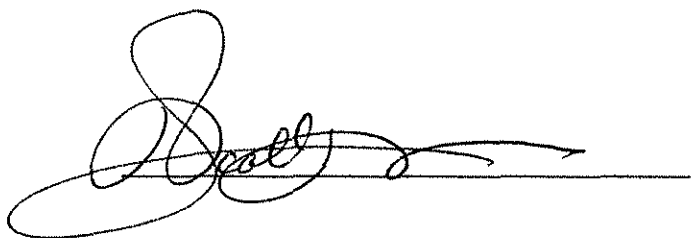
  
D. Scott Summer and Charlotte Summer,  
*Pro Se* Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22 day of October 2007, a true and correct copy of the foregoing Answer and Affirmative Defenses was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490

A handwritten signature in black ink, appearing to read "R. Brad Masingill", written over a horizontal line. The signature is stylized and cursive.

RECEIVED

OCT 25 2007

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:17 P.M. \_\_\_\_\_

Ada County Clerk

OCT 25 2007

J. DAVID NAVARRO, Clerk  
By M. STROMER  
DEPUTY

R. BRAD MASINGILL  
Attorney at Law  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672  
Telephone #1(208)414-0665  
Fax #1(208)414-0490  
Email: [bmasingill@hotmail.com](mailto:bmasingill@hotmail.com)

IN THE DISTRICT COURT OF THE STATE OF IDAHO  
IN AND FOR THE COUNTY OF ADA

CHRIST T. TROUPIS and )  
MAUREEN D. TROUPIS, )  
Husband and Wife, )

Plaintiffs, )

vs. )

D. SCOTT SUMMER and )  
CHARLOTTE SUMMER, )  
WELLS FARGO BANK NORTHWEST, )  
NATIONAL ASSOCIATION, )  
and DOE's 1-10, Inclusive, )

Defendants. )

Case No. CV OC 0717592

MOTION FOR SUMMARY  
JUDGMENT

COME NOW THE PLAINTIFFS CHRIST TROUPIS AND MAUREEN TROUPIS,

by and through their attorney, R. BRAD MASINGILL, and hereby move this Honorable Court for a Summary Judgment for Partition and Sale, pursuant to Rule 56 of the Idaho Rules of Civil Procedure. This motion is made on the grounds that there are no genuine issues of material fact in dispute and Plaintiffs are entitled to judgment as a matter of law with respect to the issue of Partition and Sale of the Real Property and Compensation for payments advanced by Plaintiffs for the common benefit of the co-owners of the property.

1 This motion is based upon the pleadings, files and record herein, the Verified Complaint,  
2 the Affidavit of Christ T. Troupis filed in support of this Motion, the Statement of Material  
3 Facts, and the Memorandum in Support of Motion for Summary Judgment submitted herewith.

4 Oral Argument is requested.

5 Dated: October 23, 2007.

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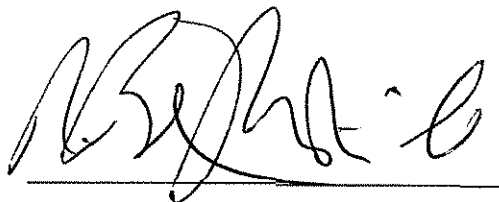
9 R. BRAD MASINGILL,  
Attorney for Plaintiffs

10  
11  
12 **CERTIFICATE OF SERVICE**

13 I HEREBY CERTIFY that on this 24<sup>th</sup> day of October, 2007, I served the  
14 foregoing document by facsimile as follows:

15  
16 D. Scott Summer  
Charlotte Summer  
17 c/o D. Scott Summer PLLC  
202 East Ash  
18 P.O. Box 1095  
Caldwell, ID 83605

Fax #: (208) 455-8696

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Ada County Clerk

1 R. BRAD MASINGILL  
2 Attorney at Law  
3 27 W. Commercial Street  
4 P.O. Box 467  
5 Weiser, Idaho 83672  
6 Telephone #1(208)414-0665  
7 Fax #1(208)414-0490  
8 Email: bmasingill@hotmail.com

OCT 25 2007

J. DAVID NAVARRO, Clerk  
By M. STROMER  
DEPUTY

7 IN THE DISTRICT COURT OF THE STATE OF IDAHO

8 IN AND FOR THE COUNTY OF ADA

9 CHRIST T. TROUPIS and )  
10 MAUREEN D. TROUPIS, )  
11 Husband and Wife, )

11 Plaintiffs, )

12 vs. )

14 D. SCOTT SUMMER and )  
15 CHARLOTTE SUMMER, )  
16 WELLS FARGO BANK NORTHWEST, )  
17 NATIONAL ASSOCIATION, )  
18 and DOE's 1-10, Inclusive, )

17 Defendants. )

Case No. CV OC 0717592

STATEMENT OF MATERIAL  
FACTS IN SUPPORT OF  
MOTION FOR SUMMARY  
JUDGMENT

19 COME NOW THE PLAINTIFFS CHRIST TROUPIS AND MAUREEN TROUPIS,

20 by and through their attorney, R. BRAD MASINGILL, and submits the following Statement of  
21 Material Facts in Support of Motion for Summary Judgment for Partition and Sale pursuant to  
22 Rule 56 of the Idaho Rules of Civil Procedure.

- 23 1. Plaintiffs Christ T. Troupis and Maureen D. Troupis are co-owners as tenants in  
24 common of the real property located at 385 S. Locust Grove Road, Meridian, Idaho  
25 with Defendants D. Scott Summer and Charlotte Summer. Plaintiffs Troupis own

STATEMENT OF MATERIAL FACTS IN SUPPORT OF  
MOTION FOR SUMMARY JUDGMENT 1

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1 50% interest in the property and Defendants Summer own 50% interest in the  
2 property. **Verified Complaint, Par. 5, 6, 7; Answer, Par. 7, 8, 9.**

3 2. Defendant Wells Fargo Bank Northwest is a secured lender on the real property co-  
4 owned by Plaintiffs Troupis and Defendants Summer. **Verified Complaint, Par. 8,**  
5 **Answer, Par. 10.**

6 3. The real property located in Ada County, Idaho at 385 S. Locust Grove Road,  
7 Meridian, Idaho is legally described in Exhibit A attached to the complaint, less the  
8 portion of the property sold to Ada County for a Right of Way, described on Exhibit  
9 B attached to the complaint. **Verified Complaint, Par. 5; Answer, Par. 7.**

10 4. From September 8, 2006 up to and including the present date, the Plaintiffs, Christ  
11 and Maureen Troupis, have been required to incur expenses for the common benefit  
12 of the co-owners in the total sum of \$40,560.54 to maintain the premises. Those  
13 expenses include payment of the real estate taxes assessed against the property,  
14 irrigation assessments, principal and interest payments on the mortgage and line of  
15 credit secured by the real property, insurance, utilities, and weed removal. A true and  
16 accurate summary of those expenses is attached to the Affidavit of Christ Troupis as  
17 Exhibit A. **Verified Complaint, Par. 9, Affidavit of Christ Troupis, Par. 4,**  
18 **Exhibit A to Affidavit of Christ Troupis.**

19 5. From September 8, 2006 to the present date, Defendants D. Scott Summer and  
20 Charlotte Summer have not contributed any monies to payment of the expenses of  
21 this real property, although Plaintiffs have made demands upon them for such  
22 contribution. **Affidavit of Christ Troupis, Par. 5.**  
23  
24  
25

1 6. The property expenses, including loan payments due to Wells Fargo Bank Northwest,  
2 have and will continue to accrue until the property is partitioned and sold. Plaintiffs  
3 cannot afford to continue to make these payments, and have not made the October  
4 payments. As a result, the payment due to Wells Fargo Bank Northwest on October  
5 13, 2007 in the amount of \$1,101.00 and the payment that was due to Wells Fargo  
6 Bank Northwest on October 20, 2007 in the amount of \$1,711.71 have not been  
7 made. True and accurate copies of those billings are attached to the Affidavit of  
8 Christ Troupis as Exhibits B and C, respectively. **Affidavit of Christ Troupis, Par.**  
9 **6; Exhibits B and C to Affidavit.**

10  
11 7. A partition in kind cannot be made without great prejudice to the owners for the  
12 following reasons: (1) The property is improved with a single residence that cannot  
13 be divided in kind. (2) Defendants Summer have not contributed any sums toward the  
14 ongoing jointly owed maintenance expenses of the property for the past year,  
15 including the outstanding mortgage owed to Wells Fargo Bank. Based on this fact, it  
16 is reasonable to assume that they will not make any future payments either. (3) Wells  
17 Fargo Bank has declared a default of its secured loan obligation that cannot be cured.  
18 (4) Wells Fargo Bank offered to sell its Notes to either Guarantor; that offer expired  
19 on October 16, 2007. Wells Fargo Bank has indicated its intent to sell the notes after  
20 October 16, 2007 to a third party who may then accelerate the loan balance and begin  
21 foreclosure proceedings on the property. Wells Fargo's letter issued on September 19,  
22 2007 advising both guarantors of these facts is attached to the Complaint as Exhibit  
23 C. **Verified Complaint, Par. 10, Exhibit C to Complaint; Answer, Par. 12;**  
24 **Affidavit of Christ Troupis, Par. 7.**  
25

1 8. Since the property cannot be partitioned in kind and the Wells Fargo Bank loan  
2 obligation must be satisfied in order to avoid a foreclosure, the Plaintiffs have filed  
3 this action requesting an order for sale of the property and a sale is mandated by  
4 Idaho law. **Verified Complaint, 11, 12; Affidavit of Christ Troupis, Par. 8.**

5 9. Plaintiffs have sought the cooperation and participation of Defendants Summer in the  
6 voluntary sale of the property by auction, but Defendants Summer have refused to  
7 consent to a voluntary sale of the property. The property cannot be sold without the  
8 participation of all owners in executing sale and transfer documents. **Verified**  
9 **Complaint, Par. 11; Affidavit of Christ Troupis, Par. 9.**

10 10. Defendants Summers' refusal to cooperate in the sale of the property have and will  
11 cause severe prejudice to Plaintiffs Troupis in that they have executed a personal  
12 guaranty and are at grave financial risk if the property is lost through foreclosure and  
13 there is a deficiency balance then owing to Wells Fargo Bank Northwest. Although  
14 both Plaintiffs Troupis and Defendants Summer are guarantors of the Wells Fargo  
15 loans, based on the failure of Defendants to contribute to making the Wells Fargo  
16 loan payments over the past year, Plaintiffs reasonably believe that they will  
17 ultimately be responsible for payment of any deficiency without contribution by  
18 Defendants Summer. **Verified Complaint, Par. 11; Affidavit of Christ Troupis,**  
19 **Par. 10.**

20  
21 Dated: October 23, 2007.

22  
23 

24 R. BRAD MASINGILL,  
25 Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24<sup>th</sup> day of October, 2007, I served the

foregoing document by facsimile as follows:

D. Scott Summer  
Charlotte Summer  
c/o D. Scott Summer PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605

Fax #: (208) 455-8696



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Ada County Clerk

OCT 25 2007

1 R. BRAD MASINGILL  
Attorney at Law  
2 27 W. Commercial Street  
P.O. Box 467  
3 Weiser, Idaho 83672  
4 Telephone #1(208)414-0665  
Fax #1(208)414-0490  
5 Email: bmasingill@hotmail.com

J. DAVID NAVARRO, Clerk  
By M. STROMER  
DEPUTY

7 IN THE DISTRICT COURT OF THE STATE OF IDAHO  
8 IN AND FOR THE COUNTY OF ADA

9 CHRIST T. TROUPIS and )  
10 MAUREEN D. TROUPIS, )  
Husband and Wife, )

11 Plaintiffs, )

12 vs. )

14 D. SCOTT SUMMER and )  
15 CHARLOTTE SUMMER, )  
16 WELLS FARGO BANK NORTHWEST, )  
and DOE's 1-10, Inclusive, )

17 Defendants. )

Case No. CV OC 0717592

NOTICE OF HEARING ON  
MOTION FOR SUMMARY  
JUDGMENT

18  
19 PLEASE TAKE NOTICE that hearing on Plaintiffs' Motion for Summary  
20 Judgment will be held on the 26<sup>th</sup> day of November, 2007, at 3:30 P.M., before the  
21 Honorable Patrick Owen in the above-entitled court located at 200 W. Front Street,  
22 Boise, Idaho.

23 DATED: This 24<sup>th</sup> day of October, 2007.



R. Brad Masingill  
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on the 24<sup>TH</sup> day of October, 2007, I served a true and correct copy of the foregoing Notice of Hearing by facsimile as follows:

D. Scott Summer  
Charlotte Summer  
c/o D. Scott Summer PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605

Fax #: (208) 455-8696



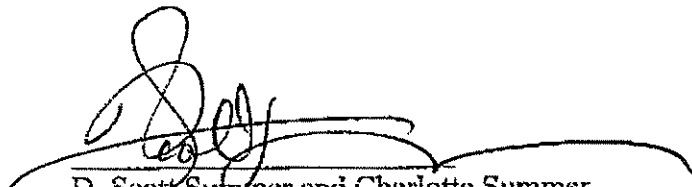
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Dated: November 13, 2007



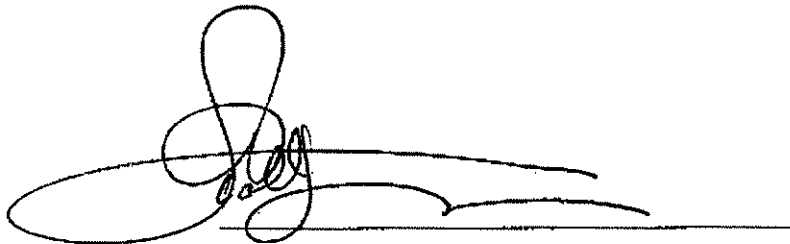
D. Scott Summer and Charlotte Summer,  
*Pro Se Defendants*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19 day of November 2007, a true and correct copy of the foregoing document was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490



**D. Scott Summer**  
**Charlotte Summer**  
**c/o D. SCOTT SUMMER, PLLC**  
 202 East Ash  
 P.O. Box 1095  
 Caldwell, ID 83605  
 Telephone: (208) 455-8692  
 Facsimile: (208) 455-8696  
*Pro Se Defendants*

9-15  
 FEB 14 2008  
 CLERK OF DISTRICT COURT

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

**CHRIST T. TROUPIS and** )  
**MAUREEN D. TROUPIS,** )  
**Husband and Wife,** )

**Plaintiffs,** )

**D. SCOTT SUMMER and** )  
**CHARLOTTE SUMMER,** )  
**WELLS FARGO BANK NORTHWEST,** )  
**NATIONAL ASSOCIATION,** )  
**and DOE's 1-10, Inclusive,** )

**Defendants.** )

**Case No. CV - OC - 0717592**

**OBJECTION TO MOTION FOR  
 SUMMARY JUDGMENT**

**COME NOW THE Defendants D. Scott Summer and Charlotte Summer, pro se, and**  
 hereby Object to Plaintiffs' Motion for Summary Judgment.

**IDAHO CODE §6-501 DOES NOT PROVIDE THE COURT WITH JURISDICTION**

At page 4 of Plaintiffs' Motion for Summary Judgment they cite the Court to Idaho Code §6-501. Interestingly, Plaintiffs and their counsel omit the limiting language of the cited statute as follows:

"... tenents in common, ... an action may be brought by ..."

The underlined ellipses portion reads in the statute as "... tenents in common, in which one

(1) or more of them have an estate of inheritance, or for life or lives, or for years, ...” In the case before the Court, neither party has “an estate of inheritance, or for life or lives, or for years” and therefore, this statute does not confer jurisdiction over this matter on the Court.

The Plaintiffs cited *George v. Tanner*, 108 Idaho 40, 696 P.2d 891 (1985), as support for their motion for summary judgment. *Tanner* stands against Plaintiffs motion. First, Plaintiffs claim of jurisdiction in this Court is based upon Idaho Code §6-501. The cited code does not provide jurisdiction. Second, the *Tanner* Court, as cited by Plaintiffs explicitly held *on the facts of that case*, that “the appropriate relief would be to order either sale or partition if the parties do not agree to an alternative mutually acceptable resolution.” *Id* at 43, *emphasis added*. Plaintiffs in this case have completely excluded Defendants from any decision in the proposed sale of the property, other than to present them with a “take it or leave it” option. Plaintiffs have refused to provide Defendants with copies of the monthly statements and Plaintiff Christ T. Troupis wrongfully diverted monies of the Troupis & Summer, Chtd. partnership to his own and sole use and benefit, thereby causing harm to Defendant D. Scott Summer and his spouse.

At page 5 of Plaintiffs Memorandum in Support of Motion for Summary Judgment, Plaintiffs claim, without citation to authority, that “Idaho law provides for an absolute right to partition jointly owned real property upon the request by one or more of the owners.” Without legal citation or other support for this bald conclusion of law, the Court should not give any credence to its claim.

#### **SHOULD THIS COURT HAVE JURISDICTION TO ORDER PARTITION AND SALE**

Defendants specifically deny that the cited statute confers jurisdiction on the Court to Order Partition and Sale of the subject property. However, should the Court have jurisdiction and authority to order such partition and sale, Defendants do not object to such partition and sale, so

long as it is done in a commercially reasonable manner and not controlled by the Plaintiffs as they have done so far in this dispute.

**PLAINTIFFS ARE NOT ENTITLED TO COMPENSATION FOR PAYMENTS  
ADVANCED FOR THE COMMON BENEFIT OF THE PROPERTY CO-OWNERS**

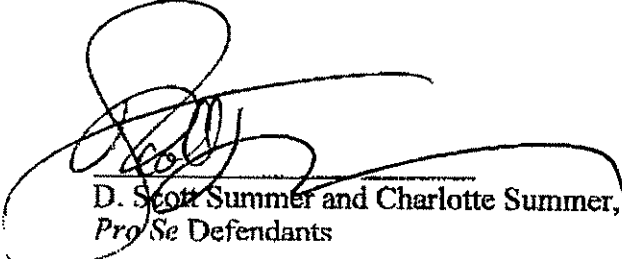
Plaintiffs cite the Court to Idaho Code §6-541 as support for their claim to "compensation for payments advanced for the common benefit of the property co-owners." However, jurisdiction of the Court pursuant to Idaho Code §6-541 depends on the Courts jurisdiction pursuant to Idaho Code §6-501. If, as argued by the Defendants above, IC§6-501 does not confer jurisdiction in this matter, IC§6-541 is likewise inapplicable. Additionally, a determination of "ordinary principles of equity" is in dispute, Plaintiffs claim they have made all payments, Defendants claim and deny that that is true in their verified answer to Plaintiffs complaint and further, Defendants claim in their verified answer that Defendant Christ T. Troupis wrongfully diverted monies that should have been paid to Defendant D. Scott Summer and therefore, Christ T. Troupis has unclean hands, owes monies to D. Scott Summer and is not entitled to any compensation for payments he may have made after wrongfully asserting control over the partnership accounts, mortgages and lines of credit to the absolute exclusion of the Defendants.

Further, the issue of payments made by the parties is at issue in this matter, the Defendants having filed a verification to their answer to Plaintiffs complaint.

**CONCLUSION**

Therefore, since Defendants have filed a verified answer to Plaintiffs complaint, and such verified answer is to be accorded the probative value of an affidavit, genuine issues exist for the trial of this matter and summary judgment must be denied. In addition, the issue of this Court's jurisdiction must be determined prior to any action on Plaintiffs complaint.

Dated: November 13, 2007



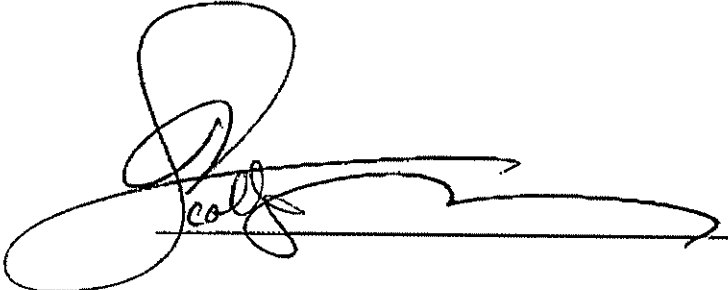
D. Scott Summer and Charlotte Summer,  
*Pro Se* Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of November 2007, a true and correct copy of the foregoing document was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490



**D. Scott Summer**  
**Charlotte Summer**  
**c/o D. SCOTT SUMMER, PLLC**  
 202 East Ash  
 P.O. Box 1095  
 Caldwell, ID 83605  
 Telephone: (208) 455-8692  
 Facsimile: (208) 455-8696  
*Pro Se Defendants*

NO. \_\_\_\_\_  
 AM 9:16 FILED \_\_\_\_\_  
 NOV 14 2007  
 J. DAVID NAVARRO, CLERK  
 KATHY J. BISHL, DEPUTY

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

**CHRIST T. TROUPIS and** )  
**MAUREEN D. TROUPIS,** )  
**Husband and Wife,** )  
 )  
**Plaintiffs,** )  
 )  
**D. SCOTT SUMMER and** )  
**CHARLOTTE SUMMER,** )  
**WELLS FARGO BANK NORTHWEST,** )  
**NATIONAL ASSOCIATION,** )  
**and DOE's 1-10, Inclusive,** )  
 )  
**Defendants.** )

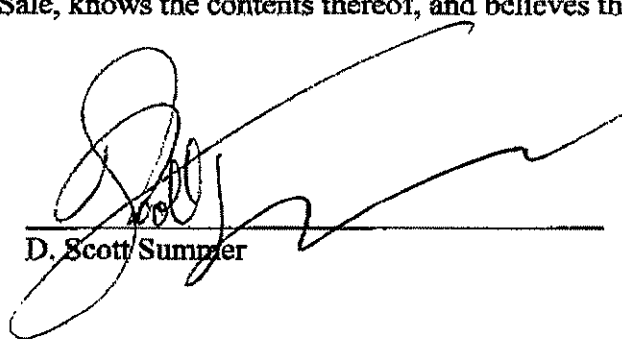
Case No. CV – OC – 0717592

**DEFENDANTS' VERIFICATION OF  
 ANSWER TO COMPLAINT FOR  
 PARTITION OF REAL ESTATE  
 AND SALE**

STATE OF IDAHO )  
 : ss.  
 County of Canyon )

**D. Scott Summer**, being first duly sworn, upon oath deposes and says:

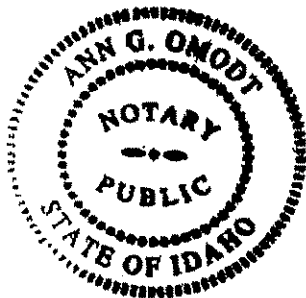
That he is a Defendant in the above-entitled action and that he has read the Answer to Complaint for Partition of Real Estate and Sale, knows the contents thereof, and believes the same to be true.

  
 \_\_\_\_\_  
 D. Scott Summer

**VERIFIED ANSWER and AFFIRMATIVE DEFENSES**

1  
**000041**

SUBSCRIBED AND SWORN to before me this 13<sup>th</sup> day of November, 2007.



Ann Omodt  
Notary Public for the State of Idaho  
Residing at: BOISE, ID  
My Commission Expires: 3/22/11

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13 day of November 2007, a true and correct copy of the foregoing Verification of Answer and Affirmative Defenses was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490

[Signature]

**ORIGINAL**

GILBERT L. NELSON, ISB # 6299  
GILBERT L. NELSON, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606  
Tel.: (208) 455-8692  
Fax: (208) 455-8696

NO. \_\_\_\_\_  
A.M. 9:45 FILED  
P.M. \_\_\_\_\_

DEC 27 2007

J. DAVID NAVARRO, Clerk  
by KATHY J. BIEHL  
DEPUTY

*Attorney for Defendant Charlotte Summer*

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

**CHRIST T. TROUPIS and** )  
**MAUREEN D. TROUPIS,** )  
**Husband and Wife,** )  
 )  
**Plaintiffs,** )  
 )  
**D. SCOTT SUMMER and** )  
**CHARLOTTE SUMMER,** )  
**WELLS FARGO BANK NORTHWEST,** )  
**NATIONAL ASSOCIATION,** )  
**and DOE's 1-10, Inclusive,** )  
 )  
**Defendants.** )

Case No. CV - OC - 0717592

**ANSWER TO COMPLAINT FOR  
PARTITION OF REAL ESTATE  
AND SALE & COUNTER CLAIM**

**COMES NOW THE Defendant Charlotte Summer, by and through Counsel and hereby  
Answer Plaintiffs' Complaint and asserts Affirmative Defenses as follows:**

1.

Answering Defendant Denies each and every allegation of Plaintiffs' Complaint not specifically admitted herein.

2.

The Complaint fails to state a claim against this answering Defendant upon which relief can be granted.

**ANSWER and AFFIRMATIVE DEFENSES**

1 000043



3.

Answering paragraph 1 of Plaintiffs' Complaint, answering Defendant admits said allegation.

4.

Answering paragraph 2 of Plaintiffs' Complaint, answering Defendant admits said allegation.

5.

Answering paragraph 3 of Plaintiffs' Complaint, answering Defendant admits said allegation.

6.

Answering paragraph 4 of Plaintiffs' Complaint, answering Defendant is without sufficient information to either admit or deny these allegations and therefore denies.

7.

Answering paragraph 5 of Plaintiffs' Complaint, answering Defendant admits said allegations.

8.

Answering paragraph 6 of Plaintiffs' Complaint, answering Defendant admits said allegations but specifically deny that Idaho Code §6-501 grants this Court jurisdiction over the subject matter.

9.

Answering paragraph 7 of Plaintiffs' Complaint, answering Defendant admits said allegation.

**10.**

Answering paragraph 8 of Plaintiffs' Complaint, answering Defendant admits said allegations.

**11.**

Answering paragraph 9 of Plaintiffs' Complaint, answering Defendant denies said allegations and denies the applicability of Idaho Code §6-541.

**12.**

Answering paragraph 10 of Plaintiffs' Complaint, answering Defendant admits that partition in kind cannot be made without great prejudice to the owners. Answering Defendant admits that the property is improved with a single office building (converted residence) that cannot be divided in kind. Answering Defendant denies subparts (2) and (3) and (4) of paragraph 10 of Plaintiffs' Complaint.

**13.**

Answering paragraph 11 of Plaintiffs' Complaint, answering Defendant denies said allegations.

**14.**

Answering paragraph 12 of Plaintiffs' Complaint, answering Defendant denies said allegation and specifically allege that attorney R. Brad Masingill is a material witness to the facts and circumstances underlying Plaintiffs' claims herein and has participated in the wrongful conversion of monies by Plaintiff Christ Troupis and therefore cannot Plaintiffs' in this litigation.

**AFFIRMATIVE DEFENSES AND COUNTER CLAIMS****15.**

Defendant Charlotte Summer incorporates by reference herein each and every answer above

in paragraphs 1 – 14 as if restated herein below in full.

**16.**

Defendants D. Scott Summer and Charlotte Summer alleged by way of affirmative defense and counter claims against Plaintiffs as follows:

**17.**

Plaintiff Christ T. Troupis was a partner and later employer of Defendant D. Scott Summer and wrongfully appropriated Partnership monies to him self, wrongfully increased certain mutually guaranteed debts and credit after the dissolution of the partnership, and failed to pay to D. Scott Summer wages earned as an employee. Therefore, D. Scott Summer is entitled to an equitable set-off of any monies claimed by Plaintiffs herein above an exact and equal share of any sale proceeds of the subject property.

**18.**

Plaintiff Christ T. Troupis has entered into several separate contracts to sell the subject property without first obtaining the approval of Defendants Summer and most recently entered into a contract for the auctioning of said property with terms unacceptable to Defendants Summer. Plaintiff Christ T. Troupis has obstructed Defendants Summer's attempts to participate in a reasonable sale of said property and therefore Christ T. Troupis has unclean hands in this matter and should be barred from the recovery and relief sought by way of Plaintiffs' Complaint.

**19.**

Defendants Summer have made payments of utilities, mortgage and business line of credit and are entitled to equitable reimbursement of their share of said payments, to be apportioned to the debts incurred prior to the legal or equitable dissolution of the Troupis and Summer partnership.

**20.**

Twelve monthly mortgage and business line of credit payments were made with the monies owned by the law firm of Troupis & Summer, Chtd., however, Plaintiffs have claimed that they personally made those payments, therefore, over half of the credit claimed by Plaintiffs herein is due and owing to the Defendants Summer.

**21.**

Defendant Charlotte Summer has been required to retain the services of Gilbert L. Nelson, PLLC to defend and represent her interests herein and should therefore be entitled to an award of reasonable attorney fees and costs incurred.

**PRAYER**

**WHEREFORE, DEFENDANT Charlotte Summer** having answered each and every allegation of Plaintiffs complaint against her and having interposed affirmative defenses and counter claims barring Plaintiffs claims herein, **PRAYS** for relief and judgment against Plaintiffs as follows:

1. That Plaintiffs Complaint be dismissed with prejudice and that they take nothing by way of their complaint;
2. A determination that attorney R. Brad Masingill is barred from representing Plaintiffs in this matter;
3. A determination by the court that Plaintiffs Troupis and Defendants Summer are co-owners of the real property, each with an equal 50% ownership interest therein;
4. A determination by the court that no other persons have any interest in the real property, except for Wells Fargo Bank Northwest, National Association, which holds a deed of trust encumbering the real property;
5. That the real property be sold under reasonable terms and conditions that protect the

interests of each party to this litigation;

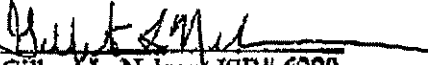
6. That Plaintiffs Troupis are not entitled to any distribution above an equal division of any sale proceeds beyond those required to satisfy the secured interests of Wells Fargo Bank Northwest, National Association, pursuant to the deed of trust it holds;

7. That any share of monies due Plaintiffs Troupis be and is subject to an offset in an amount equal to the monies Defendant Christ Troupis owes to the marital community of Defendants Summer;

8. That Defendants Summer be awarded their reasonable costs of suit herein and should they later retain counsel, for an award of reasonable attorney fees;

9. For such other and further relief as the court deems just and proper.

Dated: December 24, 2007

  
Gilbert L. Nelson, ISB# 6299,  
Counsel for Defendant Charlotte Summer

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LAW OFFICE

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LAW OFFICE

PAGE 08/10

PAGE 02/04


PAGE 02/04

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of December 2007, a true and correct copy of the foregoing Answer and Affirmative Defenses was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490

  
\_\_\_\_\_

**ORIGINAL**

NO. \_\_\_\_\_  
A.K. 8:45

DEC 27 2007

J. DAVID HARRIS, Clerk  
by KATHY J. BISHL  
Deputy

GILBERT L. NELSON, ISB # 6299  
GILBERT L. NELSON, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606  
Tel: (208) 455-8692  
Fax: (208) 455-8696

*Attorney for Defendant Charlotte Summer*

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

**CHRIST T. TROUPIS and  
MAUREEN D. TROUPIS,  
Husband and Wife,**

**Plaintiffs,**

**D. SCOTT SUMMER and  
CHARLOTTE SUMMER,  
WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
and DOE's 1-10, Inclusive,**

**Defendants.**

Case No. CV - OC - 0717592

**MOTION FOR DISQUALIFICATION  
PURSUANT TO IDAHO RULE OF  
CIVIL PROCEDURE**

COMES NOW THE Defendant Charlotte Summer, by and through Counsel and hereby  
Moves the Court for an Order Disqualifying the currently assigned Judge in this matter, this motion  
is made pursuant to Idaho Rule of Civil Procedure 40 (d)(1).

Dated: December 24, 2007

  
Gilbert L. Nelson, ISB# 6299,  
Counsel for Defendant Charlotte Summer

**MOTION FOR DISQUALIFICATION**

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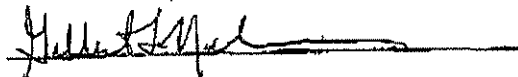
PAGE 04/04

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 26<sup>th</sup> day of December 2007, a true and correct copy of the foregoing Motion for Disqualification was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490





RECEIVED

FEB 20 2008 ROBERT L. NELSON, ISB # 6299

GILBERT L. NELSON, PLLC

Ada County 202 First Ash  
P.O. Box 1095  
Caldwell, ID 83606  
Tel.: (208) 455-8692  
Fax: (208) 455-8696

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MAR 13 2008

J. DAVID NAVARRO, Clerk  
By BRANDI BURGESS  
DEPUTY

*Attorney for Defendant Charlotte Summer*

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

**CHRIST T. TROUPIS and  
MAUREEN D. TROUPIS,  
Husband and Wife,** )

**Plaintiffs,** )

**D. SCOTT SUMMER and  
CHARLOTTE SUMMER,  
WELLS FARGO BANK NORTHWEST,  
NATIONAL ASSOCIATION,  
and DOE's 1-10, Inclusive,** )

**Defendants.** )

**Case No. CV – OC – 0717592**

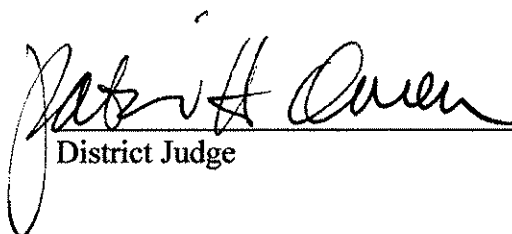
**ORDER RE: MOTION FOR  
DISQUALIFICATION PURSUANT TO  
IDAHO RULE OF CIVIL PROCEDURE**

ORIGINAL

Defendant Charlotte Summer's Motion For Disqualification Without Cause of the Honorable Patrick H. Owen having been duly and timely filed pursuant to Rule 40(d)(1) of the Idaho Rules of Civil Procedure;

IT IS HEREBY ORDERED and this does order that he Honorable Patrick H. Owen is disqualified from participation in this proceeding.

Dated this 10<sup>th</sup> day of March, 2008.

  
District Judge

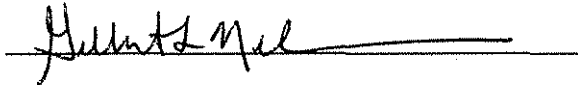
CERTIFICATE OF SERVICE

I HEREBY certify that on this 18<sup>th</sup> day of February, 2008, I caused to serve a true and correct copy of the foregoing by hand delivery upon the following:

D. Scott Summer  
PO Box 1095  
Caldwell, ID 83606

And via facsimile upon the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672  
Fax: (208) 414-0490



CLERK'S CERTIFICATE OF SERVICE

I HEREBY certify that on this 13 day of <sup>March</sup>~~February~~, 2008, I caused to serve a true and

correct copy of the foregoing by U. S. Mail postage pre-paid upon the following:

Gilbert L. Nelson  
PO Box 1095  
Caldwell, ID 83606

D. Scott Summer  
PO Box 1095  
Caldwell, ID 83606

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

**J. DAVID NAVARRO**

Brandi Bourz  
Clerk

**ORIGINAL**

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
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APR 10 2008

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

1 **R. BRAD MASINGILL**  
2 **Attorney at Law**  
3 **27 W. Commercial Street**  
4 **P.O. Box 467**  
5 **Weiser, Idaho 83672**  
6 **Telephone #1(208)414-0665**  
7 **Fax #1(208)414-0490**  
8 **Email: bmasingill@hotmail.com**

9  
10 **IN THE DISTRICT COURT OF THE STATE OF IDAHO**  
11 **IN AND FOR THE COUNTY OF ADA**

12 **CHRIST T. TROUPIS and** )  
13 **MAUREEN D. TROUPIS,** )  
14 **Husband and Wife,** )

15 **Plaintiffs,** )

16 **vs.** )

17 **D. SCOTT SUMMER and** )  
18 **CHARLOTTE SUMMER,** )  
19 **WELLS FARGO BANK NORTHWEST,** )  
20 **NATIONAL ASSOCIATION,** )  
21 **and DOE's 1-10, Inclusive,** )

22 **Defendants.** )

**Case No. CV OC 0717592**


**MOTION FOR SUMMARY  
JUDGMENT**

23 **COME NOW THE PLAINTIFFS CHRIST TROUPIS AND MAUREEN TROUPIS,**  
24 **by and through their attorney, R. BRAD MASINGILL, and hereby move this Honorable Court**  
25 **for a Summary Judgment, pursuant to Rule 56 of the Idaho Rules of Civil Procedure. This**  
26 **motion is made on the grounds that there are no genuine issues of material fact in dispute and**  
27 **Plaintiffs are entitled to judgment as a matter of law with respect to the issue of disbursement of**  
28 **the proceeds of sale of Real Property and Contribution for payments advanced by Plaintiffs for**  
29 **the common benefit of the co-owners of the property.**

1 This motion is based upon the pleadings, files and record herein, the Verified Complaint,  
2 the Memorandum in Support of Motion for Summary Judgment and Affidavit of Christ T.  
3 Troupis filed herewith in support of this Motion, and the prior Motion for Summary Judgment,  
4 Memorandum in Support of Motion for Summary Judgment, Statement of Material Facts and  
5 Affidavit of Christ T. Troupis filed on October 24, 2007.

6 Oral Argument is requested.

7 Dated: March 27, 2008.

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10   
11 R. BRAD MASINGILL,  
12 Attorney for Plaintiffs

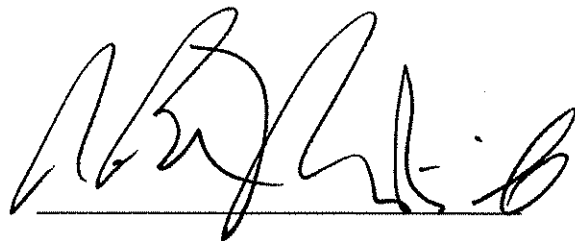
13  
14 **CERTIFICATE OF SERVICE**

15 I HEREBY CERTIFY that on this 9<sup>th</sup> day of APRIL ~~March~~, 2008, I served the foregoing

16 document by first class mail, postage prepaid, addressed as follows:

17  
18 D. Scott Summer  
19 D. Scott Summer PLLC  
20 202 East Ash  
21 P.O. Box 1095  
22 Caldwell, ID 83605

23 Gilbert Nelson  
24 Gilbert L. Nelson, PLLC  
25 202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606



**ORIGINAL**

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 10:53 P.M. \_\_\_\_\_

APR 10 2008

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

1 **R. BRAD MASINGILL**  
2 **Attorney at Law**  
3 **27 W. Commercial Street**  
4 **P.O. Box 467**  
5 **Weiser, Idaho 83672**  
6 **Telephone #1(208)414-0665**  
7 **Fax #1(208)414-0490**  
8 **Email: bmasingill@hotmail.com**

9  
10  
11 **IN THE DISTRICT COURT OF THE STATE OF IDAHO**  
12 **IN AND FOR THE COUNTY OF ADA**

13 **CHRIST T. TROUPIS and** )  
14 **MAUREEN D. TROUPIS,** )  
15 **Husband and Wife,** )

16 **Plaintiffs,** )

17 **vs.** )

18 **D. SCOTT SUMMER and** )  
19 **CHARLOTTE SUMMER,** )  
20 **WELLS FARGO BANK NORTHWEST,** )  
21 **NATIONAL ASSOCIATION,** )  
22 **and DOE's 1-10, Inclusive,** )

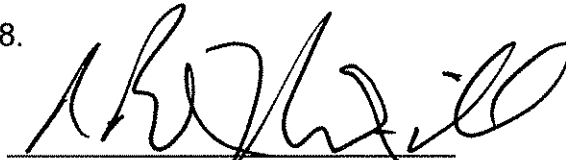
23 **Defendants.** )

**Case No. CV OC 0717592**

**NOTICE OF HEARING ON  
MOTION FOR SUMMARY  
JUDGMENT**

24  
25  
26 **PLEASE TAKE NOTICE** that hearing on Plaintiffs' Motion for Summary  
27 Judgment will be held on the 12<sup>th</sup> day of May, 2008, at 2:00 P.M., before the Honorable  
28 Ronald Wilper in the above-entitled court located at 200 W. Front Street, Boise, Idaho.

29 **DATED:** This 9<sup>th</sup> day of April, 2008.



**R. Brad Masingill**  
**Attorney for Plaintiffs**

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 9th day of April, 2008, I served the foregoing

document by first class mail, postage prepaid, addressed as follows:

D. Scott Summer  
D. Scott Summer PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605

Gilbert Nelson  
Gilbert L. Nelson, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606



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APR 29 2008

Gilbert L. Nelson
GILBERT L. NELSON, PLLC
202 East Ash
P.O. Box 1095
Caldwell, ID 83605
Telephone: (208) 455-8692
Facsimile: (208) 455-8696

J. DAVID NAVARRO, Clerk
By C BARCLAY
CLERK

Attorney for Defendant Charlotte Summer

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

CHRIST T. TROUPIS and
MAUREEN D. TROUPIS,
Husband and Wife,
Plaintiffs,
D. SCOTT SUMMER and
CHARLOTTE SUMMER,
WELLS FARGO BANK NORTHWEST,
NATIONAL ASSOCIATION,
and DOE's 1-10, Inclusive,
Defendants.

Case No. CV - OC - 0717592

MOTION TO VACATE AND RESET
SUMMARY JUDGMENT HEARING

COMES NOW THE Defendant Charlotte Summer, by and through Counsel Gilbert L. Nelson of GILBERT L. NELSON, PLLC, and hereby moves the Court to Vacate and Reset the currently set hearing of this matter. Defendant Charlotte Summer has been out of the state and will not return to Idaho until May 5, 2008 and therefore counsel has been unable to respond to Plaintiffs' Motion for Summary Judgment.

Dated: April 29, 2008

Gilbert L. Nelson
Attorney for Defendant Charlotte Summer

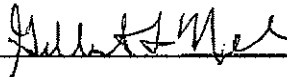


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 29, 2008, a true and correct copy of the foregoing document was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490

  
\_\_\_\_\_

NO. \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. **3:20**

APR 29 2008

**D. Scott Summer**  
**c/o D. SCOTT SUMMER, PLLC**  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605  
Telephone: (208) 455-8692  
Facsimile: (208) 455-8696  
*Pro Se Defendant*

J. DAVID NAVARRO, Clerk  
By C BARCLAY  
DEPUTY

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

**CHRIST T. TROUPIS and** )  
**MAUREEN D. TROUPIS,** )  
**Husband and Wife,** )  
 )  
**Plaintiffs,** )  
 )  
**D. SCOTT SUMMER and** )  
**CHARLOTTE SUMMER,** )  
**WELLS FARGO BANK NORTHWEST,** )  
**NATIONAL ASSOCIATION,** )  
**and DOE's 1-10, Inclusive,** )  
 )  
**Defendants.** )

**Case No. CV – OC – 0717592**  
**OBJECTION TO MOTION FOR  
SUMMARY JUDGMENT**

**COME NOW THE Defendant D. Scott Summer, *pro se*, and hereby Objects to Plaintiffs'**

**Second Motion for Summary Judgment.**

**I.**

**PLAINTIFFS' SUIT IS NOW MOOT**

Plaintiffs brought this action pursuant to Idaho Code §6-501 for partition of real property.  
(See paragraph 6 of Plaintiffs complaint.) That real property has been sold, no partition can be had  
and the Court has no subject matter jurisdiction over the parties' money. The suit must be  
dismissed.

**II.****PLAINTIFFS ARE NOT ENTITLED TO THE "COMPENSATION" REQUESTED**

1. Business Line of Credit Payments claim. Plaintiffs claim that they are entitled to reimbursement of payments made on the line of credit. However, the line of credit was Troupis & Summer, Chtd debt. Plaintiffs claim for reimbursement of any payments made on that debt is a claim against Troupis & Summer, Chtd and not the Defendants herein.

2. Plaintiffs Mortgage Payments Claim. If Plaintiffs are entitled to any compensation or reimbursement, it would be limited to 50% of mortgage payments made less 100% of any tax advantage they have taken regarding those payments. *See Andrews v. Grover*, 66 Idaho 742, 168 P.2d 821 (1946) and *Werry v. Goodman*, 78 Idaho 298, 301 P.2d 1111 (1956).

3. Plaintiffs have no equitable claim. Plaintiffs' claims are based upon IC §6-501, 6-541, and "ordinary principals of equity." Plaintiffs are not entitled to relief under the cited Idaho code sections and Plaintiffs bad acts preclude refuge in equity. Specifically, Plaintiff Christ Troupis converted Troupis & Summer, Chtd assets to his sole use and benefit in operating Troupis Law Office from August 2005 until the end of July 2006.

Contrary to Christ Troupis' claim that D. Scott Summer continued to be employed by Troupis & Summer, Chtd from August 2005 to July 2006, that law office ceased to exist and or operate in August 2005. *See exhibit C to Troupis affidavit, page 2, paragraph VIII.* At the moment of the suspension of Scott Summer, Christ Troupis began operating a sole law practice under an assumed business name, Troupis Law Office.

Christ Troupis employed Defendant D. Scott Summer as a legal assistant in Troupis Law Office. Christ Troupis stated to Idaho State Bar counsel Brad Andrews that D. Scott Summer

would be employed as a legal assistant in his law office. Christ Troupis used the assets of Troupis & Summer, Chtd to run his sole and individual law practice. D. Scott Summer was never paid for any work rendered to Troupis Law Office, his only income was that owed to him due to his pre-existing interest and right in Troupis & Summer, Chtd assets. Plaintiff Maureen Troupis directly benefited from and shared in Christ Troupis' wrongful conversion of Troupis & Summer, Chtd assets and in Troupis Law Office's failure to pay wage and benefits to its employee, Defendant D.

Plaintiffs cannot come before the Court with unclean hands and pray for equitable relief.

### III.

#### **DEFENDANTS' OFFSET CLAIMS ARE AGAINST PLAINTIFFS**

Plaintiffs attempt to characterize Defendants claims as being against Troupis & Summer, Chtd. That is not so, Plaintiff Christ Troupis wrongfully converted assets from Troupis & Summer, Chtd to his sole and private use. Further, Christ Troupis employed D. Scott Summer as a legal assistant in his sole law practice, Troupis Law Office and failed to ever compensate his employee. Those claims are not against Troupis & Summer, Chtd, they are against Christ Troupis based upon his individual and separate conduct. Upon return to Idaho, Defendant will supplement to the Court numerous letters confirming the above, signed by Plaintiff Christ Troupis.

As husband and wife, both Christ and Maureen Troupis shared in the profits and benefits realized by the wrongful conduct of Christ Troupis. Therefore, Defendants claims herein can be asserted against both Plaintiffs.

### IV.

#### **DIVISION OF SALE PROCEEDS IS NOT PROPERLY BEFORE THIS COURT**

Section C at page 8 of Plaintiffs memorandum rightly states that "[t]his lawsuit was brought to partition and sell real property co-owned by these parties." That property has been sold and the

Court cannot partition and or otherwise determine ownership interests. As is evident from the pleadings before this Court, it is undisputed that the ownership of the real property that was sold and now therefore the ownership of the sale proceeds is 50% in the Troupis Plaintiffs and 50% in the Summer Defendants.


Therefore, if the net sale proceeds are \$114,202.92, \$57,101.46 of that money is the sole and separate property of Defendants Summer. Plaintiffs' claims to any portion thereof are claims directly against D. Scott and Charlotte Summer and not claims against ownership interest in real property which has been sold and is no longer subject to this suit.

#### CONCLUSION

Note Regarding Affidavit. Defendant has filed a motion to extend time within which to respond to Plaintiffs' Motion for Summary Judgment as both Defendants are out of state and will not return to Idaho until May 5, 2008. Therefore, Defendant is unable to file an affidavit at this time due to not having any access to the files and documents needed in order to respond and attach to an affidavit. Upon return on May 5, 2008, Defendant will promptly file a supporting affidavit.

Therefore, since Plaintiffs suit has been made moot by the voluntary sale of the real property subject to the suit, this litigation should be dismissed. Further, even if Plaintiffs claims were not mooted by the property sale, Plaintiffs are not entitled to any unequal, equitable and or statutory "compensation" or taking of the Summer Defendants' absolute ownership interest of and in \$57,101.46 of the net sale proceeds.

Dated: April 29, 2008

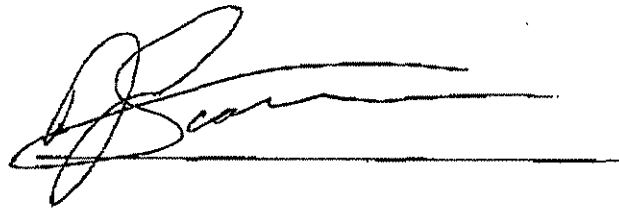
  
\_\_\_\_\_  
D. Scott Summer,  
*Pro Se* Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on April 29, 2008, a true and correct copy of the foregoing document was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490

A handwritten signature in black ink, appearing to read "R. Brad Masingill", is written over a horizontal line. The signature is stylized and cursive.

RECEIVED

MAY 05 2008

NO. 10:27 FILED P.M.

MAY 05 2008

Ada County Clerk

**R. BRAD MASINGILL**  
**Attorney at Law**  
**27 W. Commercial Street**  
**P.O. Box 467**  
**Weiser, Idaho 83672**  
**Telephone #1(208)414-0665**  
**Fax #1(208)414-0490**  
**Email: bmasingill@hotmail.com**

J. DAVID NAVARRO, Clerk  
By A TOONE  
DEPUTY

**IN THE DISTRICT COURT OF THE STATE OF IDAHO**

**IN AND FOR THE COUNTY OF ADA**

**CHRIST T. TROUPIS and** )  
**MAUREEN D. TROUPIS,** )  
**Husband and Wife,** )

**Plaintiffs,** )

**vs.** )

**D. SCOTT SUMMER and** )  
**CHARLOTTE SUMMER,** )  
**WELLS FARGO BANK NORTHWEST,** )  
**NATIONAL ASSOCIATION,** )  
**and DOE's 1-10, Inclusive,** )

**Defendants.** )

**Case No. CV OC 0717592**

**REPLY TO DEFENDANTS' MOTION  
TO VACATE AND RESET  
SUMMARY JUDGMENT HEARING**

**COME NOW THE PLAINTIFFS CHRIST TROUPIS AND MAUREEN TROUPIS,**

**Husband and Wife,** by and through their attorney, R. BRAD MASINGILL, and reply to  
Defendants' Motion to Vacate and Reset the Summary Judgment Hearing as follows:

**I.**

**DEFENDANTS' MOTION MUST BE DENIED BECAUSE  
IT IS A REQUEST FOR A CONTINUANCE  
THAT DOES NOT COMPLY WITH IRCP RULE 56(f)**

**REPLY TO DEFENDANTS' MOTION  
TO VACATE AND RESET SUMMARY JUDGMENT HEARING**

000066

1 Both Defendants filed a one-page motion for a continuance which they denominated a  
2 "Motion to Vacate and Reset Summary Judgment Hearing." The summary judgment hearing is  
3 presently set for May 12, 2008 and Defendants' opposition to it was required to be filed by April  
4 28, 2008. Defendants did not file any affidavits in opposition to the motion, or in support of their  
5 request for a continuance.

6 **A. The motion is not supported by affidavit and therefore must be denied.**

7 Requests for continuance of summary judgment hearings are governed exclusively by  
8 IRCP Rule 56(f) which states:  
9

10 ***"Should it appear from the affidavits*** of a party opposing the motion that the party  
11 cannot for reasons stated present by affidavit facts essential to justify the party's  
12 opposition, the court may refuse the application for judgment or may order a continuance  
to permit affidavits to be obtained or depositions to be taken or discovery to be had or  
may make such other order as is just."

13 In *Golay v. Loomis*, 118 Idaho 387, 797 P.2d 95 (1990), the Supreme Court held that it  
14 would have been improper for the District Court to grant a motion for continuance of a summary  
15 judgment hearing where the motion for continuance was not supported by affidavit. The Court  
16 declared:

17 "The district court also held that the magistrate did not abuse his discretion by not  
18 continuing the hearing or accepting sworn testimony from Loomis. The district court  
wrote:

19 No abuse of discretion has been shown by appellant for a number of reasons. First of all,  
20 the record shows that appellant did not even request a continuance. Secondly, even had a  
21 continuance been requested, it would have been improper for the magistrate to grant it  
under the rules of procedure. Rule 56(f) provides:

22 **When affidavits are unavailable in summary judgment proceedings.**-Should it appear  
23 *from the affidavits of a party opposing the motion* that he cannot for reasons stated  
24 present by affidavit facts essential to justify his opposition, the court may refuse the  
25 application for judgment or may order a continuance to permit affidavits to be obtained  
or depositions to be taken or discovery to be had or make such other order as is just.  
Idaho Rules of Civil Procedure, Rule 56(f). (Emphasis added.)



1 Rule 56(f) clearly requires a party who is unable to present affidavits which factually  
2 justify his opposition to the motion to state *by affidavit* the reasons he is unable to oppose  
3 the motion by use of affidavits. Appellant presented no affidavits in opposition of the  
4 motion and presented no affidavit which stated his reasons for not being able to oppose  
5 he motion by affidavit. [Citing, *Prather v. Industrial Investment Corporation*, 91 Idaho  
6 682, 429 P.2d 414 (1967).]

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....  
[T]he magistrate did not abuse his discretion by not continuing the hearing or refusing to  
allow appellant to present oral testimony or swear to the truth of the contents of his  
answer.”

Likewise, the Supreme Court in *Prather v. Industrial Investment Corp.*, 91 Idaho 682, 429  
P.2d 414 (1967) held:

“At the hearing on respondents' motion for summary judgment, appellant introduced no  
affidavits or other documents to contradict respondents' showing, see Idaho R.Civ.P.,  
56(e), nor did he present an affidavit containing reasons, if any there were, why he was  
then unable to state by "affidavit facts essential to justify his position." Idaho R.Civ.P.,  
56(f). Considering appellant's failure to raise any question of material fact, and this  
record's absence of any issue, the trial court properly entered summary judgment in favor  
of all the respondents. Idaho R.Civ.P., 56(e); *Fike v. Bauer*, 90 Idaho 442, 412 P.2d 819  
(1966); *Boesiger v. DeModena*, 88 Idaho 337, 344, 399 P.2d 635, 639 (1965).

**B. The motion should be denied because it is untimely and unsigned.**

Plaintiffs' motion for summary judgment is set for hearing on May 12, 2008. The  
Defendants' opposing affidavits and answering brief were required to be served “at least 14 days  
*prior to* the date of the hearing,” I.R.C.P. Rule 56(c), and therefore, were due on April 28, 2008.  
The Defendants' motion to continue and Objection to Motion for Summary Judgment were  
served on April 29, 2008, which was 13 days prior to the hearing.

Moreover, neither of Defendant Scott Summer's motions served on Plaintiffs' counsel  
were signed by Summer. Plaintiffs are unaware whether Scott Summer signed the copies he filed  
with the court. Because they were not signed, the motions should not have been accepted for  
filing, and should be stricken if they were accepted for filing. I.R.C.P. Rule 11(a)(1) requires  
that:



1 hearing, he reversed himself and advised the Court that he did not represent her and she hadn't  
2 been served. When the property was finally sold, these Defendants refused to allow the escrow  
3 check to be deposited into a blocked account. Instead, the check has been sitting at escrow since  
4 April 15, 2008, even though the escrow officer advised Summer that the title company would  
5 have to pay the funds to the State if they remained unclaimed. Supplemental Affidavit of Christ  
6 Troupis.

7  
8 Defendants have given no just cause for delay in resolving this case by entry of summary  
9 judgment. Moreover, further delay may result in irreparable harm to the Plaintiffs because there  
10 is an imminent danger that the funds held at escrow may escheat to the State of Idaho unless this  
11 dispute is resolved and they are distributed.

12 **CONCLUSION**

13 Based upon the foregoing, Defendants' Motions for continuance should be denied and the  
14 Court should grant Plaintiffs' motion for summary judgment.

15 Dated: May 1, 2008.

16  
17  
18   
19 \_\_\_\_\_  
20 R. BRAD MASINGILL,  
21 Attorney for Plaintiffs  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this \_\_\_/\_\_\_ day of May, 2008, I served the foregoing

document by first class mail, postage prepaid, addressed as follows:

D. Scott Summer  
D. Scott Summer PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605

Gilbert Nelson  
Gilbert L. Nelson, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606



A handwritten signature in black ink, appearing to read 'D. Scott Summer', is written over a horizontal line.

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MAY 05 2008

J. DAVID NAVARRO, Clerk  
By AYOONE  
DEPUTY

1 **R. BRAD MASINGILL**  
2 **Attorney at Law**  
3 **27 W. Commercial Street**  
4 **P.O. Box 467**  
5 **Weiser, Idaho 83672**  
6 **Telephone #1(208)414-0665**  
7 **Fax #1(208)414-0490**  
8 **Email: bmasingill@hotmail.com**

9  
10  
11 **IN THE DISTRICT COURT OF THE STATE OF IDAHO**  
12  
13 **IN AND FOR THE COUNTY OF ADA**

14 **CHRIST T. TROUPIS and** )  
15 **MAUREEN D. TROUPIS,** )  
16 **Husband and Wife,** )  
17  
18 **Plaintiffs,** )  
19  
20 **vs.** )  
21  
22 **D. SCOTT SUMMER and** )  
23 **CHARLOTTE SUMMER,** )  
24 **WELLS FARGO BANK NORTHWEST,** )  
25 **NATIONAL ASSOCIATION,** )  
**and DOE's 1-10, Inclusive,** )  
**Defendants.** )

**Case No. CV OC 0717592**

**REPLY TO OBJECTION TO  
PLAINTIFFS' MOTION  
FOR SUMMARY JUDGMENT**

**COME NOW THE PLAINTIFFS CHRIST TROUPIS AND MAUREEN TROUPIS,**

**Husband and Wife,** by and through their attorney, R. BRAD MASINGILL, and submit the following Reply Memorandum in Support of their Motion for Summary Judgment for Contribution and Division of Proceeds of Sale.

**I.**

**THE LAWSUIT IS NOT MOOT  
BECAUSE THE SALE PROCEEDS  
HAVE NOT BEEN PARTITIONED BY THE COURT**

AH

1 Defendants make the ridiculous assertion that because the property has now been sold  
2 that this lawsuit is moot. An issue is moot "if it does not present a real and substantial  
3 controversy that is capable of being concluded through judicial decree of specific relief." *State v.*  
4 *Rogers*, 140 Idaho 223, 226, 91 P.3d 1127, 1130 (2004) (citing *ISEEO II*, 128 Idaho at 281-282,  
5 912 P.2d at 649). Thus, an issue is moot "if a favorable judicial decision would not result in any  
6 relief or the party lacks a legally cognizable interest in the outcome." *Rogers*, 140 Idaho at 227,  
7 91 P.3d at 1131 (citations omitted).

8  
9 This lawsuit was instituted not only to get the jointly owned property sold, but to  
10 determine the respective interests of the parties and to distribute the proceeds of sale in  
11 accordance with those interests. Thus, the Complaint alleges at Paragraph 9:

12 "Prior to the commencement of this action, Plaintiffs were required to incur expenses for  
13 the common benefit of the co-owners in the total sum of \$40,152.54 to maintain the  
14 premises. Those expenses include payment of the real estate taxes assessed against the  
15 property, payment of principal and interest payments on the mortgage and line of credit  
16 secured by the real property, payment of insurance, utilities, and weed removal. These  
17 expenses will continue to accrue until the property is partitioned and sold. Under ordinary  
18 principles of equity and pursuant to Idaho Code §6-541, Plaintiffs are entitled to a  
19 compensatory adjustment between the respective co-owners to recoup these expenses  
20 incurred for the common benefit of the co-owners."

21 The amount Plaintiffs are entitled to recoup is now \$52,453.65 as set out in Paragraph 5  
22 of the Affidavit of Christ Troupis submitted with the Plaintiffs' motion. The additional \$12,000  
23 was paid by Plaintiffs during this lawsuit because, apart from one payment, the Defendants  
24 refused to contribute proportionately to payment of any of the monthly installments on the  
25 secured debt against the property. Notwithstanding this fact, the Defendants have the temerity to  
claim that Plaintiffs are not entitled to recoup any of these monies from the sale proceeds and  
now claim that the issue is moot. Until the Court determines how the proceeds of sale should be  
distributed and orders that distribution, this case is not moot.

1 In a partition action, the Court is authorized and required to determine the interests of the  
2 parties in the property and make an appropriate division and distribution of sale proceeds. Thus,  
3 Idaho Code §6-513 and §6-522 provide:

4 **“§ I.C. §6-513 DUTIES OF REFEREES.**

5 **In making the partition the referees must divide the property and allot the several**  
6 **portions thereof to the respective parties**, quality and quantity relatively considered,  
7 according to the respective rights of the parties as determined by the court, pursuant to  
8 the provisions of this chapter, designating the several portions by proper landmarks, and  
9 may employ a surveyor with the necessary assistants to aid them.

10 **I.C. §6-522 DISTRIBUTION OF PROCEEDS.**

11 The **proceeds of sale** and the securities taken by the referees, or any part thereof, **must**  
12 **be distributed by them to the persons entitled thereto**, whenever the court so directs.  
13 But in case no direction be given, all of such proceeds and securities must be paid into  
14 court or deposited therein, or as directed by the court.”

15 **II**

16 **THE PLAINTIFFS ARE ENTITLED**  
17 **TO THE COMPENSATION REQUESTED**

18 **A. Defendants’ objection does not create any issue of material fact because it is not**  
19 **supported by any evidentiary showing.**

20 The party opposing the motion may not merely rest on the allegations contained in the  
21 pleadings; rather, evidence by way of affidavit or deposition must be produced to contradict the  
22 assertions of the moving party. *Ambrose ex.rel. Ambrose v. Buhl Joint School Dist. No. 412*, 126  
23 Idaho 581, 887 P.2d 1088 (Ct. App. 1995)

24 Rule 56(e) provides in pertinent part:

25 “When a motion for summary judgment is made and supported as provided in this rule,  
an adverse party may not rest upon the mere allegations or denials of the party’s  
pleadings, but the party’s response, by affidavits or as otherwise provided in this rule,  
must set forth specific facts showing that there is a genuine issue for trial. If the party  
does not so respond, summary judgment, if appropriate, shall be entered against the  
party.”

1 No affidavits were filed by either of the Defendants in opposition to the motion.

2 Therefore summary judgment should be granted.

3 **B. Plaintiffs are entitled to reimbursement for payments made on the secured line**  
4 **of credit.**

5 Defendants assert that the Wells Fargo secured line of credit was a business debt and  
6 therefore, the Plaintiffs are not entitled to reimbursement for payments they made on the debt.  
7 What Defendants glibly ignore is the fact that this debt was the joint debt of the individual  
8 parties, and was fully secured by the jointly real property. Wells Fargo threatened to foreclose on  
9 its deed of trust and the line of credit collaterally secured by the deed of trust. See Exhibit B to  
10 Affidavit of Brad Masingill dated 12/3/07. The balance due on both secured debts was paid out  
11 of the sale escrow with the consent of all parties. See Exhibit A to Affidavit of Christ Troupis  
12 dated 3/31/08.

13 The Plaintiffs made payments on the secured line of credit solely to preserve the jointly  
14 owned property and prevent a foreclosure. Thus, Defendants were benefited by the making of  
15 these payments and Plaintiffs are entitled to full reimbursement for them.  
16

17 The Plaintiffs and the Defendants were jointly obligated on the Wells Fargo Bank loans.  
18 They had an equal ownership interest in the real property and therefore an equal obligation to  
19 pay its taxes and maintenance expenses. The Troupis Plaintiffs have contributed more than their  
20 proportionate share of these joint expenses and are entitled to reimbursement from the sale  
21 proceeds based on ordinary principles of equity. This right has been discussed in 59A Am Jur 2d,  
22 Partition, §154, p. 114:

23 "When tenants in common or joint tenants seek partition, the equitable doctrine of  
24 contribution is applied to settle outstanding claims relating to the property. When one  
25 cotenant pays more than his or her share, equity imposes on each cotenant the duty to  
contribute a proportionate share. Among the expenditures that have been considered  
reasonably necessary for the care, upkeep and preservation of property are: real estate



1 taxes, insurance, payments of principal and interest on mortgage, bookkeeping services  
2 and accounting fees, costs for the protection and preservation of title...”

3 Further, Idaho Code §6-541 provides: “...And in all cases the court has power to make  
4 compensatory adjustment between the respective parties according to the ordinary principles of  
5 equity.”

6 **C. Plaintiffs are entitled to reimbursement of all mortgage payments made.**

7 Defendants argue that Plaintiffs are only entitled to reimbursement for 50% of the  
8 mortgage payments they made. That is only true if the 50% is paid from the Defendants’ portion  
9 of the proceeds after a division of proceeds is made. If Plaintiffs are reimbursed prior to division  
10 of the proceeds, they are entitled to recoup 100% of payments they advanced.

11 Nor is there any merit to Defendants contention that the amount reimbursed is to be  
12 reduced by the ‘tax advantage’ Plaintiffs obtained. First, Defendants have made no showing that  
13 there was any ‘tax advantage.’ Second, the cases cited by Defendants do not refer to ‘tax  
14 advantages’ or any other setoff or reduction of reimbursement. Third, there is no tax advantage  
15 because any tax deduction that Plaintiffs received in the year that payments were made would  
16 have to be recaptured in the year that Plaintiffs are reimbursed. Fourth, consistent with  
17 Defendants’ reasoning, the Plaintiffs should also recoup interest on the monies they advanced  
18 over the 18 month period until those funds are reimbursed.  
19

20 **D. Defendants have not established any defense to Plaintiffs’ reimbursement claim.**

21 Scott Summer makes unsupported conclusory allegations that he was not paid for work as  
22 a paralegal and therefore is entitled to an equitable offset from the sale proceeds. These claims  
23 are not sufficient to raise an issue of fact. As the Idaho Supreme Court noted in *Goodman v.*  
24 *Lothrop*, 143 Idaho 622, 151 P.3d 818 (2007):  
25

1 "However, conclusory assertions unsupported by specific facts are insufficient to raise a  
2 genuine issue of material fact precluding summary judgment. See *State v. Shama Res.*  
3 *Ltd. P'ship*, 127 Idaho 267, 271, 899 P.2d 977, 981 (1995); *Nanney v. Linella, Inc.*, 130  
4 Idaho 477, , 480, 943 P.2d 67, 70 (Ct. App. 1997).

5 "In this instance, the Appellants' claim of duress fails because it lacks specific factual  
6 allegations from which a court could infer that the mediator engaged in wrongful conduct  
7 that overcame Lothrop's ability to exercise her free will. Absent the assertion of such  
8 specific supporting facts, the allegation of duress in this case does not bar the district  
9 court's grant of summary judgment."

10 *Accord, Northwest Bec-Corp. v. Home Living Serv.*, 136 Idaho 835, 839, 41 P.3d 263,  
11 267 (2002).

12 "However, the nonmoving party must submit more than just conclusory assertions that  
13 an issue of material fact exists to withstand summary judgment."

14 Summer has the burden of proof on his claim to equitable offset. Yet he has made  
15 nothing more than a series of unsupported assertions in his Objection. He has not submitted an  
16 iota of evidence to support his claims. Therefore his claims should be disregarded and summary  
17 judgment should be granted. *Baxter v. Craney*, 135 Idaho 166, 16 P.3d 263 (2000)

18 **E. Summer is barred from making claims for reimbursement by reason of his own  
19 inequitable conduct.**

20 Scott Summer contends that Troupis & Summer Chtd. ceased to exist when Summer was  
21 suspended from the practice of law in August 2005 to July 2006. He also claims that he was  
22 never paid for work he did for Christ Troupis as his personal legal assistant while Summer was  
23 suspended from the practice of law. Summer's claims are submitted without any evidentiary  
24 support, and they are entirely belied by the evidence in the record. Moreover, Summer's own  
25 inequitable conduct in his financial relationship to the law office during and prior to his  
suspension bar any equitable claims he has made related to the law office in this case.

First, Scott Summer cites the Troupis & Summer Articles of Incorporation, Paragraph  
VIII as support for his claim that the corporation ceased to exist when he was suspended from  
the practice of law. The claim is utter nonsense. The corporate charter states:

1 "VIII

2 **If any person, shareholder, agent or employee** of this corporation who has been  
3 rendering legal services to the public **becomes legally disqualified to render such**  
4 **professional services within this state** or accepts employment that, pursuant to existing  
5 law, places restrictions or limitations upon his rendering of such services, **he shall sever**  
6 **all employment with, and financial interests in, this corporation forthwith."**

7 When Scott Summer lost his license to practice law, the Corporation continued to exist,  
8 but Scott Summer was required by the corporate charter to "sever all employment with, and  
9 financial interests in, this corporation forthwith." Summer breached his fiduciary duties to the  
10 corporation and other shareholder, Christ Troupis, when he failed to do that. Instead, from  
11 August 2005 through July, 2006, Summer continued to take compensation out of the Troupis &  
12 Summer, Chtd. bank account. He took \$15,000 in draws in 2005 after his suspension and  
13 \$22,500 in draws in 2006 and officer salary of \$3,940.50 in 2006. In fact, he took \$18,440.50  
14 more out of the Troupis & Summer law office bank account than Troupis received during the  
15 same period although Troupis was the only attorney working in the office. See Affidavit of  
16 Christ Troupis, Par. 11-13.

17 During his suspension, Scott Summer also took checks payable to Troupis Law Office  
18 representing hourly fees earned by Christ Troupis and Summer deposited those fees into the  
19 Troupis & Summer Law Office bank account. During this period, over \$53,000 in Troupis'  
20 hourly fees were so deposited. In one case, Christ Troupis complained to Summer that although a  
21 \$6,528 fee was received in the mail from a Troupis client for Troupis' hourly work, that Summer  
22 had deposited it into the Troupis & Summer account. In response, Summer stated in an email to  
23 Troupis, "As to Dr. B.....s payment, I brought that client into this office."

24 Dr. B.... became a client of Troupis in May, 2006, during Summer's suspension.  
25 Summer's claim was that he was entitled to a portion of Troupis' hourly fees because he had  
solicited the referral of Dr. B's business. Although Troupis explained to Summer that Summer's

1 claim violated the State Bar Rules on division of fees with a suspended attorney and referral fees  
2 to nonlawyers (See Rule 7.2, Idaho Rules of Professional Conduct), the money was never  
3 returned. Supplemental Affidavit of Christ Troupis.

4 Because fees earned exclusively by Troupis were earned during the period of Summer's  
5 suspension, but deposited in the Troupis & Summer, Chtd. bank account, the monies that  
6 Summer withdrew during that period included fees in which he was not entitled by law to share.  
7 Nonetheless, no accounting or reimbursement was ever made by Summer to Troupis for those  
8 fees.

9  
10 During the same time period, Summer paid his personal expenses for his bar prosecution  
11 to the Idaho State Bar as well as attorneys fees for his defense in the bar prosecution from the  
12 law office bank account. Those expenses totaled \$6,913.71 and included the following sums:

13	7/13/06 Idaho State Bar	\$2,266.41
14	8/9/05 Grober & Hart, Lawyers	\$1,000.00
15	10/18/05 Dan Grober	\$2,858.54
16	1/6/06 Dan Grober	\$ 326.41
17	2/8/06 Dan Grober	\$ 327.40
18	3/29/06 Dan Grober	\$ 75.99
19	4/20/06 Dan Grober	\$ 58.96

20  
21 Following the closure of the office, Troupis obtained and reviewed the corporate  
22 financial records and discovered that Summer had used the office account to pay for all of his  
23 prior personal legal bills connected with his bar prosecution. These fees and expenses totaled in  
24 excess of \$60,000. Summer did not include payment of these fees in his personal income and did  
25

1 not reimburse the law office for its payment of these personal expenses. Supplemental Affidavit  
2 of Christ Troupis in Support of Motion for Summary Judgment.

3 The doctrine of unclean hands allows "a court to deny equitable relief to a litigant on the  
4 ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as  
5 to the controversy at issue." *Sword v. Sweet*, 140 Idaho 242, 251, 92 P.3d 492, 501 (2004). Scott  
6 Summer's conduct in asserting a right to receive compensation for soliciting clients and the use  
7 of legal fees earned by Troupis during Summer's suspension from law practice to pay his  
8 personal fees, fines and expenses was inequitable, unfair, dishonest and potentially fraudulent, as  
9 well as a violation of his suspension order. At a minimum, this conduct constitutes a bar to any  
10 equitable claim raised by Summer in this case.

11  
12 **F. Defendants do not have the right to file a late affidavit.**

13 As an afterthought to his Objection, Scott Summer advises the Court that he was unable  
14 to comply with the Idaho Rules of Civil Procedure and file a timely affidavit because he and his  
15 wife 'are out of state.' Rule 56(f) is clear and compliance with it is mandatory. Summary  
16 judgment is properly granted where the opposing party fails to file timely affidavits in opposition  
17 to a motion for summary judgment or fails to file an affidavit setting out reasons that affidavits in  
18 opposition cannot be filed. Plaintiff objects to any late filing of affidavits by Summer and  
19 herewith moves to strike any such attempted filing.

20  
21 **III**

22 **PLAINTIFFS SHOULD RECOVER**  
23 **THEIR ATTORNEYS' FEES FROM DEFENDANTS**  
24 **BECAUSE THEIR OPPOSITION IS FRIVOLOUS**

25 The Defendants have failed to timely oppose summary judgment with Affidavits, but  
instead have made lame excuses for their failure to comply with the clear requirements of the

1 Rules of Civil Procedure. They have repeatedly attempted to delay and obstruct the resolution of  
2 this case and their intransigence now threatens the loss of the escrow proceeds. Defendants  
3 continue to make unsupported slanderous assertions in the face of Scott Summer's own  
4 duplicitous and deceitful conduct. This Court has ample authority under Rule 11 and the Court's  
5 general equitable jurisdiction to award Plaintiffs their reasonable attorneys fees necessitated  
6 solely because of the dilatory and obstructive tactics of the Defendants. Plaintiffs herewith  
7 request such an award.  
8

9 **CONCLUSION**

10 For the foregoing reasons, summary judgment should be granted and the Court should  
11 order reimbursement to Plaintiffs and Defendants for monies they each have advanced for the  
12 common benefit of the parties, distribution of the remaining net proceeds to the parties, and  
13 payment of Plaintiffs' attorneys fees by Defendants from their portion of the net proceeds.

14 Dated: May 1, 2008.

15  
16  
17 

18 R. BRAD MASINGILL,  
19 Attorney for Plaintiffs  
20  
21  
22  
23  
24  
25

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this   1   day of ~~April~~<sup>MAY</sup>, 2008, I served the foregoing

document by first class mail, postage prepaid, addressed as follows:

D. Scott Summer  
D. Scott Summer PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605

Gilbert Nelson  
Gilbert L. Nelson, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606



A handwritten signature in black ink, appearing to read 'P. B. Nelson', is written over a horizontal line.

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MAY 12 2008

By J. DAVID NAVARRO, Clerk  
INGA JOHNSON  
DEPUTY

1 **R. BRAD MASINGILL**  
Attorney at Law  
2 27 W. Commercial Street  
P.O. Box 467  
3 Weiser, Idaho 83672  
4 Telephone #1(208)414-0665  
5 Fax #1(208)414-0490  
Email: [bmasingill@hotmail.com](mailto:bmasingill@hotmail.com)

6  
7 **IN THE DISTRICT COURT OF THE STATE OF IDAHO**  
8 **IN AND FOR THE COUNTY OF ADA**

9 **CHRIST T. TROUPIS and** )  
10 **MAUREEN D. TROUPIS,** )  
Husband and Wife, )  
11 **Plaintiffs,** )

Case No. CV OC 0717592

12 vs. )

**REQUEST FOR DISMISSAL  
OF DEFENDANT WELLS  
FARGO BANK NORTHWEST  
AND ORDER OF DISMISSAL  
AS TO THAT DEFENDANT ONLY**

13 )  
14 **D. SCOTT SUMMER and** )  
**CHARLOTTE SUMMER,** )  
15 **WELLS FARGO BANK NORTHWEST,** )  
**NATIONAL ASSOCIATION,** )  
16 **and DOE's 1-10, Inclusive,** )  
17 **Defendants.** )

18  
19 **COMES NOW THE PLAINTIFFS CHRIST T. TROUPIS and MAUREEN D.**

20 **TROUPIS,** by and through their attorney of record, R. Brad Masingill, and hereby request that  
21 the Court enter the dismissal of Defendant WELLS FARGO BANK NORTHWEST,  
22 NATIONAL ASSOCIATION from this lawsuit. This request is based upon the fact that the real  
23 property upon which Defendant Wells Fargo had a lien has been sold, Defendant's lien has been  
24 paid in full and a full reconveyance has been issued by it.  
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The remaining issues relate solely to the distribution of the proceeds of sale and concern only the Plaintiffs and Defendants Summer.

DATED: This 12<sup>th</sup> day of May, 2008.



R. Brad Masingill  
Attorney for Plaintiffs

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**ORDER OF DISMISSAL**

Upon the request of Plaintiff and good cause appearing therefore,  
IT IS HEREBY ORDERED that Defendant Wells Fargo Bank Northwest, National Association  
is hereby dismissed as a party to this action.

Dated: 5-11-08

  
\_\_\_\_\_  
District Court Judge

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 12<sup>th</sup> day of ~~April~~<sup>May</sup>, 2008, I served the foregoing

document by first class mail, postage prepaid, addressed as follows:

D. Scott Summer  
D. Scott Summer PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605

Gilbert Nelson  
Gilbert L. Nelson, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606



RECEIVED

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NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. 11:15 P.M. \_\_\_\_\_

MAY 21 2008

J. DAVID NAVARRO, Clerk

By INGA JOHNSON  
DEPUTY

Ada County Clerk  
1 R. BRAD MASINGILL  
Attorney at Law  
2 27 W. Commercial Street  
P.O. Box 467  
3 Weiser, Idaho 83672  
Telephone #1(208)414-0665  
4 Fax #1(208)414-0490  
5 Email: bmasingill@hotmail.com

7 IN THE DISTRICT COURT OF THE STATE OF IDAHO

8 IN AND FOR THE COUNTY OF ADA

9 CHRIST T. TROUPIS and )  
10 MAUREEN D. TROUPIS, )  
Husband and Wife, )

11 Plaintiffs, )

12 vs. )

14 D. SCOTT SUMMER and )  
15 CHARLOTTE SUMMER, )  
16 WELLS FARGO BANK NORTHWEST, )  
NATIONAL ASSOCIATION, )  
and DOE's 1-10, Inclusive, )

17 Defendants. )

Case No. CV OC 0717592

FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
JUDGMENT

18  
19 THIS MATTER came on to be heard on the Plaintiffs' motion for summary judgment.  
20 on the 12<sup>th</sup> day of May, 2008, at 2:00 P.M., before the Honorable Ronald J. Wilper, in the above-  
21 entitled court. Plaintiffs appeared by their attorney, R. Brad Masingill, and Christ Troupis was  
22 present. Defendants, D. Scott Summer and Charlotte Summer, did not appear but advised the  
23 Court by phone at approximately 1:55 p.m. that they would not appear.

24 The Court reviewed all of the memoranda and affidavits submitted, and noted that  
25 Defendants, D. Scott Summer and Charlotte Summer did not file any affidavits or present

1 evidence in opposition to the Plaintiffs' claims. **Thereupon**, the Court made the following  
2 findings of fact and conclusions of law:

3 **FINDINGS OF FACT**

- 4 1. Plaintiffs, Christ T. Troupis and Maureen D. Troupis (hereinafter individually and  
5 collectively referred to as "Christ and Maureen"), were co-owners as tenants in  
6 common of the real property located at 385 S. Locust Grove Road, Meridian, Idaho  
7 with Defendants, D. Scott Summer and Charlotte Summer (hereinafter individually  
8 and collectively referred to as "Scott and Charlotte"). Christ and Maureen owned a  
9 50% interest in the property and Scott and Charlotte owned a 50% interest in the  
10 property.  
11
- 12 2. The real property was sold on March 20, 2008, and escrow closed on that date at  
13 Transnation Title & Escrow in Boise, Idaho. Defendant, Wells Fargo Bank  
14 Northwest, was a secured lender on the real property co-owned by "Christ and  
15 Maureen" and "Scott and Charlotte". Wells Fargo was paid off from the sale  
16 proceeds. The Court has entered its dismissal from this matter.  
17
- 18 3. The net proceeds of the sale payable to Christ and Maureen and Scott and Charlotte  
19 were \$114,202.92.  
20
- 21 4. From September 8, 2006, up to and including the present date, for maintenance of the  
22 premises, Christ and Maureen were required to incur expenses for the common  
23 benefit of the co-owners in the total sum of \$52,453.65. Those expenses included  
24 payment of the real estate taxes assessed against the property, irrigation assessments,  
25 principal and interest payments on the mortgage, and line of credit secured by the real  
property, insurance, utilities, and weed removal.

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- 1 5. Scott and Charlotte were directly benefited by Christ and Maureen's payment of the  
2 foregoing expenses. Scott and Charlotte have not contested the amount expended by  
3 Christ and Maureen.
- 4 6. On or about December 6, 2007, Scott and Charlotte made one payment on the secured  
5 debt owed to Wells Fargo Bank in the sum of \$5,611.42.
- 6 7. At the property closing, Christ and Maureen requested reimbursement of the  
7 foregoing sums they advanced for the common benefit of the parties and the property.  
8 However, Scott and Charlotte refused to consent to any reimbursement and refused to  
9 consent to distribution of any of the proceeds of sale. As a result, the sale proceeds  
10 have not been disbursed.
- 11 8. Scott and Charlotte alleged various equitable claims against Christ and Maureen with  
12 respect to the division of the sale proceeds, but Scott and Maureen filed no affidavits  
13 in opposition to Christ and Maureen's motion for summary judgment and failed to  
14 present any evidence in support of their claims.
- 15 9. Christ and Maureen filed affidavits and presented evidence in support of their claim  
16 that Scott and Charlotte were guilty of unclean hands with respect to the business  
17 transactions upon which Scott and Charlotte alleged their equitable claims. Scott and  
18 Charlotte did not present any evidence or affidavits in response to Christ and  
19 Maureen's proof on this issue.

20  
21  
22 **BASED ON THE FOREGOING FINDINGS OF FACT**, the Court renders the  
23 following **CONCLUSIONS OF LAW AND JUDGMENT**:

- 24 1. There is no legal cause to delay disbursement of the escrow proceeds and  
25 reimbursement of monies advanced by Christ and Maureen.

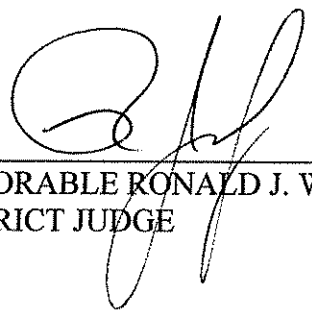
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- 1           2. There is no issue of material fact with respect to Christ and Maureen's claims and  
2           they are entitled to judgment as a matter of law.
- 3           3. Defendants, D. Scott Summer and Charlotte Summer have not filed a counterclaim.
- 4           4. Judgment is entered in favor of Plaintiffs, Christ T. Troupis and Maureen D. Troupis,  
5           and against Defendants, D. Scott Summer and Charlotte Summer.
- 6           5. Plaintiffs, Christ T. Troupis and Maureen D. Troupis, are the prevailing parties in this  
7           action as to all claims.
- 8           6. As prevailing parties, Plaintiffs, Christ T. Troupis and Maureen D. Troupis, are  
9           awarded their costs of suit incurred herein and directed to file a memorandum of  
10          costs.
- 11          7. The proceeds of sale on deposit at Transnation Title & Escrow are herewith ordered  
12          to be distributed to Plaintiffs' attorney, R. Brad Masingill, for deposit into his Client  
13          Trust Account and subsequent disbursement in accordance with this Court Order.
- 14          8. Plaintiffs, Christ T. Troupis and Maureen D. Troupis, are entitled to recover from the  
15          gross real property sale proceeds, the sum of \$52,453.65, which they expended for the  
16          common benefit of the parties, and are entitled to recover interest on such  
17          expenditures from the date they were made. The accrued interest to May 15, 2008 is  
18          \$4,972.05.
- 19          9. Defendants, D. Scott Summer and Charlotte Summer, are entitled to recover from the  
20          gross real property sale proceeds, the sum of \$5,611.42, which they expended for the  
21          common benefit of the parties, and are entitled to recover interest on such expenditure  
22          from the date it was made. The accrued interest to May 15, 2008 is \$247.94.
- 23
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10. After the deduction of the above sums, the remaining net proceeds of sale shall be divided and one-half (1/2) of the proceeds shall be distributed to Plaintiffs. The other one-half (1/2) of the proceeds shall be distributed to Defendants after deduction of Plaintiffs' costs and such attorneys' fees, if any, that are awarded by the Court.

Dated: May <sup>20~~1~~</sup>, 2008.

  
\_\_\_\_\_  
HONORABLE RONALD J. WILPER  
DISTRICT JUDGE



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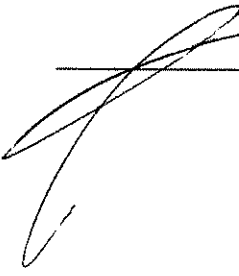
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 21 day of May, 2008, I served the foregoing

Findings of Fact, Conclusions of Law and Judgment by first class mail, postage prepaid,  
addressed as follows:

D. Scott Summer  
D. Scott Summer PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605

Gilbert Nelson  
Gilbert L. Nelson, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83606

  
\_\_\_\_\_  
J. DAVID NAVARRO  
INGA JOHNSON

JUN 12 2008

J. DAVID NAVARRO, Clerk  
By *[Signature]* DEPUTY

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

CHRIST T. TROUPIS and MAUREEN D.  
TROUPIS, husband and wife,

Plaintiff,

vs.

D. SCOTT SUMMER and CHARLOTTE  
SUMMER, WELLS FARGO BANK  
NORTHWEST NATIONAL  
ASSOCIATION and DOE'S 1-10,  
Inclusive,

Defendant.

Case No. CVOC 0717592

ORDER GRANTING ATTORNEY'S  
FEES AND COSTS

On May 21, 2008, this Court entered its Findings of Fact, Conclusions of Law and Judgment in favor of the Plaintiffs and against the Defendants. Plaintiffs now request attorney's fees and costs.

Costs are hereby awarded to the Plaintiffs in the amount of one hundred sixty-eight dollars (\$168.00). Reasonable attorney's fees in the amount of thirteen thousand nine hundred and twenty dollars (\$13,920.00) are also awarded to the Plaintiffs, for a total award of attorney's fees and costs in the amount of fourteen thousand eighty-eight dollars (\$14,088.00).

IT IS SO ORDERED.

Dated this 11<sup>th</sup> day of June, 2008.

*[Signature]*  
\_\_\_\_\_  
Ronald J. Wilper  
District Judge

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CERTIFICATE OF SERVICE

I, J. David Navarro, the undersigned authority, do hereby certify that I have mailed, by United States Mail, on this 12<sup>th</sup> day of June 2008, one copy of the foregoing as notice pursuant to Rule 77(d) I.C.R. to each of the attorneys of record in this cause in envelopes addressed as follows:

R. Brad Masingill  
ATTORNEY AT LAW  
PO Box 467  
Weiser, ID 83672

D. Scott Summer  
ATTORNEY AT LAW  
202 E Ash  
PO Box 1095  
Caldwell, ID 83605

Gilbert L. Nelson  
GILBERT L. NELSON, PLLC  
PO Box 1095  
Caldwell, ID 83606

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

By   
Deputy Clerk

NO. \_\_\_\_\_ FILED \_\_\_\_\_  
A.M. \_\_\_\_\_ P.M. 4:11

JUL 02 2008

J. DAVID NAVARRO, Clerk  
By A. GARDEN  
DEPUTY

**D. Scott Summer**  
c/o D. SCOTT SUMMER, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605  
Telephone: (208) 455-8692  
Facsimile: (208) 455-8696  
*Pro Se Defendant*

**Gilbert L. Nelson**  
GILBERT L. NELSON, PLLC  
202 East Ash  
P.O. Box 1095  
Caldwell, ID 83605  
Telephone: (208) 455-8692  
Facsimile: (208) 455-8696  
*Attorney for Charlotte Summer*

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

**CHRIST T. TROUPIS and** )  
**MAUREEN D. TROUPIS,** )  
**Husband and Wife,** )  
 )  
**Plaintiffs-Respondents,** )  
 )  
**D. SCOTT SUMMER and** )  
**CHARLOTTE SUMMER,** )  
**WELLS FARGO BANK NORTHWEST,** )  
**NATIONAL ASSOCIATION,** )  
**and DOE's 1-10, Inclusive,** )  
 )  
**Defendants-Appellants.** )

Case No. CV – OC – 0717592

**NOTICE OF APPEAL**

**TO: THE ABOVE NAMED RESPONDENTS, CHRIST T. TROUPIS and MAUREEN D. TROUPIS and their Attorney R. BRAD MASINGILL and THE CLERK OF THE ABOVE ENTITLED COURT.**

**NOTICE IS HEREBY GIVEN THAT:**

- 1. The above named appellants D. Scott Summer, *pro se*, and Charlotte Summer,

through counsel, Gilbert L. Nelson, appeal against the above named respondents to the Idaho Supreme Court from the FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT, entered in the above entitled action on May 21, 2008, Honorable Ronald J. Wilper, presiding.

2. The Appellants have a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is appealable under and pursuant to Rule 11 (a)(1) of the Idaho Appellate Rules.

3. This appeal involves both issues of law and fact. Issues of law shall include whether the District Court had jurisdiction over the matter and whether the District Court properly construed and applied Idaho Statutory laws and the factual issues shall include whether or not the District Court improperly found that there were no issues of fact when it entered summary judgment.

4. No Order has been issued sealing any part of the record.


5. No reporter's transcript is requested.


6. Appellants request that in addition to those documents automatically included under Rule 28, I.A.R., the entire pleadings file be included in the clerk's record.

7. I certify:

- a. That a copy of this notice of appeal has been served on the reporter.
- b. That the clerk of the district court shall be paid the estimated fee for preparation of the clerk's record upon receipt from the clerk of that estimate.
- c. That the appellant filing fee has been paid.
- d. That service has been made upon all parties required to be served pursuant to Rule 20.

Dated: July 2, 2008

  
D. Scott Summer, ISB#5364

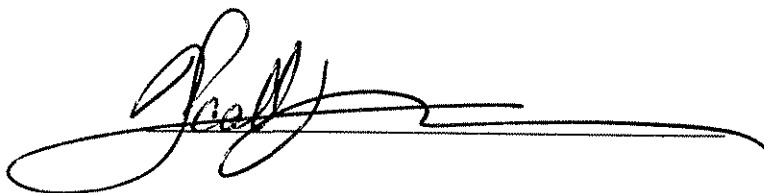
  
Gilbert L. Nelson, ISB#

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 2 day of July, 2008, a true and correct copy of the foregoing NOTICE OF APPEAL was served via facsimile on the following:

R. BRAD MASINGILL  
27 W. Commercial Street  
P.O. Box 467  
Weiser, Idaho 83672

Fax: (208) 414-0490

A handwritten signature in black ink, appearing to read "R. Brad Masingill", with a long horizontal flourish extending to the right.

JUL 09 2008

J. DAVID NAVARRO, Clerk  
By KATHY J. BIEHL  
DEPUTY

1 R. BRAD MASINGILL  
Attorney at Law  
2 27 W. Commercial Street  
P.O. Box 467  
3 Weiser, Idaho 83672  
Telephone #1(208)414-0665  
4 Fax #1(208)414-0490  
5 Email: bmasingill@hotmail.com

6  
7 IN THE DISTRICT COURT OF THE STATE OF IDAHO  
8 IN AND FOR THE COUNTY OF ADA

9 CHRIST T. TROUPIS and )  
10 MAUREEN D. TROUPIS, )  
Husband and Wife, )

Case No. CV OC 0717592

11 Plaintiffs-Respondents. )

REQUEST FOR ADDITIONAL  
TRANSCRIPT

12 vs. )

13 )  
14 D. SCOTT SUMMER and )  
CHARLOTTE SUMMER, )  
15 Defendants-Appellants. )

16  
17 TO: THE ABOVE-NAMED APPELLANTS AND THE PARTY'S ATTORNEY, AND THE  
18 REPORTER OF THE ABOVE ENTITLED COURT:

19 NOTICE IS HEREBY GIVEN, that the Respondents in the above entitled proceeding  
20 hereby request pursuant to Rule 19, I.A.R., the inclusion of the following material in the Reporter's  
21 Transcript in addition to that required to be included by the I.A.R. and the notice of appeal:  
22

23 1. Reporter's Transcript:

24 The entire reporter's standard transcript as defined by I.A.R. Rule 25(a), including  
25 the hearings conducted on November 26, 2007, December 3, 2007, and May 12, 2008.


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2. I certify that a copy of this request was served upon the reporter of the district court and upon all parties required to be served pursuant to Rule 20.

Dated this 9<sup>th</sup> day of July, 2008.

  
\_\_\_\_\_  
R. Brad Masingill  
Attorney for Respondents

000099



1 CERTIFICATE OF SERVICE

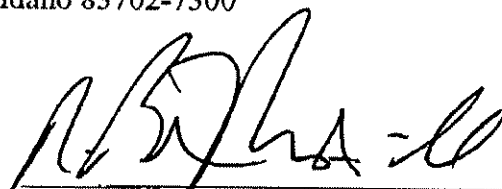
2 I HEREBY CERTIFY that on this 9<sup>th</sup> day of July, 2008, I served the foregoing  
3 document, Request for Additional Transcript, by first class mail, postage prepaid, addressed as  
4 follows:  
5

6 D. Scott Summer  
7 D. Scott Summer PLLC  
8 202 East Ash  
9 P.O. Box 1095  
10 Caldwell, ID 83605

11 Gilbert Nelson  
12 Gilbert L. Nelson, PLLC  
13 202 East Ash  
14 P.O. Box 1095  
15 Caldwell, ID 83606

16 Kasey Redlich, Court Reporter  
17 To Hon. Patrick H. Owen  
18 Ada County Courthouse  
19 200 W. Front Street  
20 Boise, Idaho 83702-7300

21 Dianne Cromwell, Court Reporter  
22 To Hon. Ronald J. Wilper  
23 Ada County Courthouse  
24 200 W. Front Street  
25 Boise, Idaho 83702-7300



R. Brad Masingill, Attorney for Respondents

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

CHRIST T. TROUPIS and MAUREEN D. TROUPIS,  
husband and wife,

Plaintiffs-Respondents,

vs.

D. SCOTT SUMMER and CHARLOTTE SUMMER,

Defendants-Appellants,

WELLS FARGO BANK NORTHWEST, NATIONAL  
ASSOCIATION, and DOE's 1-10, inclusive,

Defendant.

Supreme Court Case No. 35449

CERTIFICATE OF EXHIBITS

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

There were no exhibits offered for identification or admitted into evidence during the course of this action.

I FURTHER CERTIFY, that the following documents will be submitted as EXHIBITS to the Record:

1. Affidavit of Christ Troupis in Support of Motion for Summary Judgment, filed October 25, 2007.
2. Memorandum in Support of Motion for Summary Judgment, filed October 25, 2007.
3. Reply Memorandum in Support of Motion for Summary Judgment, filed November 19, 2007.
4. Affidavit of R. Brad Masingill Re: Stipulation for Auction Sale of Property, filed December 3, 2007.
5. Affidavit of Service, filed December 14, 2007.
6. Affidavit of Mike Ridgeway, filed December 24, 2007.
7. Affidavit of Christ Troupis in Support of Motion for Summary Judgment, filed April 10, 2008.
8. Memorandum in Support of Motion for Summary Judgment, filed April 10, 2008.
9. Supplemental Affidavit of Christ Troupis in Support of Motion for Summary Judgment, filed May 5, 2008.
10. Supplemental Affidavit of Christ Troupis in Opposition to Motion to Vacate Hearing on Summary Judgment Motion, filed May 5, 2008.

CERTIFICATE OF EXHIBITS

000101

# In the Supreme Court of the State of Idaho

CHRIST T. TROUPIS and MAUREEN D. TROUPIS, husband and wife,  
Plaintiffs-Respondents,  
v.  
D. SCOTT SUMMER and CHARLOTTE SUMMER, husband and wife,  
Defendants-Appellants,  
and  
WELLS FARGO BANK NORTHWEST, National Association, and DOES 1-10, inclusive,  
Defendants.

ORDER GRANTING MOTION TO AUGMENT THE RECORD

Supreme Court Docket No. 35449-2008  
Ada County District Court No. OC 0717592.

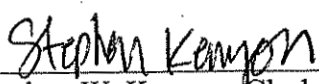
A MOTION TO AUGMENT THE RECORD AND STATEMENT IN SUPPORT THEREOF was filed by counsel for Appellants on April 24, 2009. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Appellants' MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the documents listed below, file stamped copies of which accompanied this Motion, as EXHIBITS:

1. Memorandum in Support of Motion for Summary Judgment, file-stamped April 10, 2008.

DATED this 30 of April 2009.

For the Supreme Court

  
Stephen W. Kenyon, Clerk

cc: Counsel of Record

11. Second Supplemental Affidavit of Christ Troupis in Support of Motion for Summary Judgment, filed May 5, 2008.
12. Memorandum in Support of Plaintiffs' Attorneys fee Affidavit, filed May 19, 2008.
13. Affidavit of Christ Troupis in Support of Attorney Fee Award and Calculation of Interest on Payments Advanced by the Parties, filed May 19, 2008.
14. Affidavit of R. Brad Masingill Re; Attorney's Fees and Costs, filed May 19, 2008.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the said Court this 2<sup>nd</sup> day of September, 2008.

J. DAVID NAVARRO  
Clerk of the District Court

By MARGARET LUNDQUIST  
Deputy Clerk

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

CHRIST T. TROUPIS and MAUREEN D. TROUPIS,  
husband and wife,

Plaintiffs-Respondents,

vs.

D. SCOTT SUMMER and CHARLOTTE SUMMER,

Defendants-Appellants,

WELLS FARGO BANK NORTHWEST, NATIONAL  
ASSOCIATION, and DOE's 1-10, inclusive,

Defendant.

Supreme Court Case No. 35449

CERTIFICATE OF SERVICE

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

CLERK'S RECORD AND REPORTER'S TRANSCRIPT

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

D. SCOTT SUMMER  
GILBERT L. NELSON

ATTORNEYS FOR APPELLANTS

CALDWELL, IDAHO

R. BRAD MASINGILL

ATTORNEY FOR RESPONDENTS

WEISER, IDAHO

J. DAVID NAVARRO  
Clerk of the District Court

Date of Service: SEP 03 2008

By MARGARET LUNDQUIST  
Deputy Clerk

CERTIFICATE OF SERVICE

000103

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

CHRIST T. TROUPIS and MAUREEN D. TROUPIS,  
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Defendants-Appellants,

WELLS FARGO BANK NORTHWEST, NATIONAL  
ASSOCIATION, and DOE's 1-10, inclusive,

Defendant.

Supreme Court Case No. 35449

CERTIFICATE TO RECORD

I, J. DAVID NAVARRO, Clerk of the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, do hereby certify that the above and foregoing record in the above-entitled cause was compiled and bound under my direction as, and is a true and correct record of the pleadings and documents that are automatically required under Rule 28 of the Idaho Appellate Rules, as well as those requested by Counsels.

I FURTHER CERTIFY, that the Notice of Appeal was filed in the District Court on the 2<sup>nd</sup> day of July, 2008.

J. DAVID NAVARRO  
Clerk of the District Court

By MARGARET LUNDQUIST  
Deputy Clerk

SEAL