

1-10-2012

# Goodspeed v. Shippen Clerk's Record v. 2 Dckt. 38829

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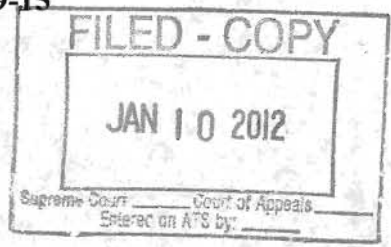
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IN THE  
**SUPREME COURT**  
OF THE  
**STATE OF IDAHO**  
VOLUME 2

LAW CLERK

**WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODPSEED, )  
 )  
Plaintiffs-Respondents, )  
 )  
-vs- )  
 )  
**ROBERT and JORJA SHIPPEN, )  
 )  
Defendants-Appellants, )****

**SUPREME COURT NO. 38829-2011**  
**Jefferson County**  
**Case No. CV-2009-15**



**CLERK'S RECORD ON APPEAL**

Appeal from the District court of the 7<sup>th</sup> Judicial District of the State of Idaho, in and for

**THE JEFFERSON COUNTY  
DISTRICT COURT  
GREGORY S. ANDERSON  
DISTRICT JUDGE**

**ATTORNEY FOR APPELLANT**

**ATTORNEY FOR RESPONDENT**

**Robin D. Dunn  
P.O. Box 277  
Rigby, ID 83442**

**Weston S. Davis  
P.O. Box 51630  
Idaho Falls, ID 83405-1630**

Filed this the 19 day of Sept, 2011

*Christine Boulter*  
Clerk of the District Court

*Nancy Andersen*  
By: Nancy Andersen  
Deputy



**COPY**

**38829**

Volume 2

IN THE SUPREME COURT OF THE STATE OF IDAHO

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODPSEED, )

Plaintiffs-Respondents, )

-vs- )

ROBERT and JORJA SHIPPEN, )

Defendants-Appellants, )

SUPREME COURT NO. 38829-2011

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Appeal from the District court of the 7<sup>th</sup> Judicial District of the State of Idaho, in and for

THE JEFFERSON COUNTY  
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GREGORY S. ANDERSON  
DISTRICT JUDGE

ATTORNEY FOR APPELLANT

ATTORNEY FOR RESPONDENT

Robin D. Dunn  
P.O. Box 277  
Rigby, ID 83442

Weston S. Davis  
P.O. Box 51630  
Idaho Falls, ID 83405-1630

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WESTON S. DAVIS, ESQ (ISB No. 7449)  
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490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 JAN 25 PM 3:14  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF DEPOSITION  
DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of Defendant, JORJA SHIPPEN, before a Certified Court Reporter in and for the State of Idaho on Wednesday, February 24, 2010, at 3:30 p.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation and all

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documents requested for production that have not yet been produced.

Additionally, you are requested to bring the following documents:

- All of your personal and business tax returns in which you have any interest for the past four (4) years and also produce your current pay stub(s) from all sources showing your year to date income.
- All corporate documents for any business in which you have any interest for the past four (4) years, including, but not limited to financial reports (including all digital files and accountings), annual meeting minutes, board meeting minutes, and board resolutions.
- For all assets you presently own or owned during or since January 1, 2006, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.
- For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt.
- All documents related to any and all insurance policies that may provide coverage for the issues in this matter, as identified in the Plaintiff's Complaint.
- Copies of all checks written by any of the named defendants for the construction of the Subject Real Property (3709 E. 319 N. Rigby, ID 83442).

DATED this 20 day of January, 2010.

  
WESTON S. DAVIS, ESQ.

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 JAN 25 PM 3:14  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF DEPOSITION  
DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of PAUL JENKINS, before a Certified Court Reporter in and for the State of Idaho on Friday, February 26, 2010, at 1:00 p.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

NOTICE OF DEPOSITION DUCES TECUM

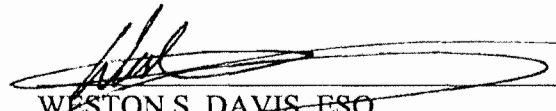
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The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation in his possession including but not limited to:

- Any documents in your possession regarding water levels (including but not limited to water surveys, district water level reports, and any test hole findings or notes) of the real property subdivision now commonly referred to as Woodhaven Creek, in Rigby, Idaho or of any property immediately surrounding said subdivision.
- All versions of the MLS listing in your possession for the Subject Real Property (3709 E. 319 N. Rigby, ID 83442) including dates of any modifications made to the MLS listing;
- Any and all documented conversations between you and the above named defendants in any capacity regarding the Subject Real Property;
- Any correspondence between you and the above named defendants in any capacity regarding the Subject Real Property.
- Any other documents (including videos, photographs, etc...) in your possession relating to the Subject Real Property.

DATED this 20 day of January, 2010.

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 20 day of January 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting  
525 Park Avenue  
P.O. Box 51020  
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

WESTON S. DAVIS, ESQ (ISB No. 7449)  
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490 Memorial Drive  
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Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

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DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
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WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
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Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
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husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF DEPOSITION  
DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of JUSTIN FULLMER, before a Certified Court Reporter in and for the State of Idaho on Thursday, February 25, 2010, at 11:00 a.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

NOTICE OF DEPOSITION DUCES TECUM

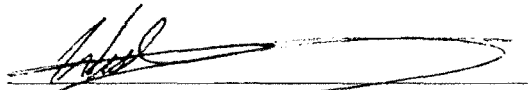
- 1

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The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation including but not limited to:

- Any plans, specifications, or designs in your possession regarding in the excavation of the Subject Real Property (3709 E. 319 N. Rigby, ID 83442);
- Copies of any and all checks or bank drafts made to you as compensation for your services to excavate or otherwise alter or improve the Subject Real Property and any of your business records reflecting these payments.

DATED this 20 day of January, 2010.

  
WESTON S. DAVIS, ESQ.

### CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 20 day of January 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting  
525 Park Avenue  
P.O. Box 51020  
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

L:\wsd\~ Clients\7411.1 Goodspeed\Not of Depo DT (Fullmer).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 JAN 25 PM 3:14  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF DEPOSITION  
DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of DAVE CHAPPLE, before a Certified Court Reporter in and for the State of Idaho on Friday, February 26, 2010, at 9:30 a.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

NOTICE OF DEPOSITION DUCES TECUM


- 1

250

The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation in his possession or in the possession of Winstar Realty including but not limited to:

- Any documents, including applications and listing notes, related to the listing for sale of the Subject Real Property (3709 E. 319 N. Rigby, ID 83442);
- All versions of the MLS listing for the Subject Real Property including dates of any modifications made to the MLS listing;
- Any and all documented conversations between you (or any other employee or representative of Winstar Realty) and the above named defendants in any capacity regarding the Subject Real Property;
- Any correspondence between you (or any other employee or representative of Winstar Realty) and the above named defendants in any capacity regarding the Subject Real Property.
- Any other documents (including videos, photographs, etc...) in your possession (or in the possession of Winstar Realty) relating to the Subject Real Property.

DATED this 20 day of January, 2010.

  
WESTON S. DAVIS, ESQ.



**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 20 day of January 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting  
525 Park Avenue  
P.O. Box 51020  
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 JAN 25 PM 3:15  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF DEPOSITION  
DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of WIN STAR REALTY through its agent/employee most knowledgeable about the sale of the Subject Real Property (3709 E. 319 N. Rigby, ID 83442) before a Certified Court Reporter in and for the State of Idaho on Friday, February 26, 2010, at 11:30 a.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane,

NOTICE OF DEPOSITION DUCES TECUM

- 1

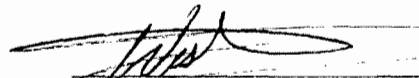
253

Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation in its possession including but not limited to:

1. Any documents, including applications and listing notes, related to the listing for sale of the Subject Real Property (3709 E. 319 N. Rigby, ID 83442);
2. All versions of the MLS listing for the Subject Real Property including dates of any modifications made to the MLS listing;
3. Any and all documented conversations between any employee or representative of Win Star Realty and the above named defendants in any capacity regarding the Subject Real Property;
4. Any correspondence between any employee or representative of Win Star Realty and the above named defendants in any capacity regarding the Subject Real Property.
5. Any other documents (including notes, videos, photographs, etc...) in your possession relating to the Subject Real Property.

DATED this 20 day of January, 2010.

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

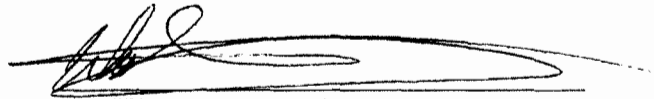
I hereby certify that I served a true copy of the foregoing document upon the following this 20 day of January 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting  
525 Park Avenue  
P.O. Box 51020  
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

255

AFFIDAVIT OF SERVICE ON AN INDIVIDUAL

STATE OF IDAHO

2010 JAN 25 PM 3:15

County of Bonneville

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Case No. 09-015

I, Sharon Ripon, do solemnly swear (or affirm) that the testimony  
(Process Server)

I shall give in the matter at issue shall be the truth, the whole truth, and nothing but the truth.

1. I am over the age of 18 years and am not a party to this action.

2. I served a copy of the subpoena & Notice of  
Deposition  
(Name of Document(s) Served)

in this action on Nicholas Shippen  
(Party Served) 1-21-10  
(Date of Service)

by delivery to Nicholas Shippen  
(Name of Person Who Received Process)

at 4101 E 325 N Rigby Idh  
(Address of Service)

(Check only one of the following):

personally.

said address being the usual dwelling or place of abode of said party. The person who received such process then was over the age of 18 and then resided at such address.

who is agent authorized by law or by appointment to receive service of process for said party.

3. Fee charged for this service: \$ 50.00

DATED: 1-22-10

Sharon Ripon  
(Signature)

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of Jan, 10



Jodi L. THURBER  
Notary Public for the State of Idaho  
Residing at: REXBURG, ID.  
Commission Expires: 11/20/15

256

AFFIDAVIT OF SERVICE ON AN INDIVIDUAL

STATE OF IDAHO

) 2010 JAN 25 PM 3:15

County of Bonneville

) ss. DISTRICT COURT  
) JEFFERSON COUNTY, IDAHO

Case No. 09015

I, Sharon Refon, do solemnly swear (or affirm) that the testimony  
(Process Server)

I shall give in the matter at issue shall be the truth, the whole truth, and nothing but the truth.

1. I am over the age of 18 years and am not a party to this action.

2. I served a copy of the Subpoena & Notice of  
deposition. (Name of Document(s) Served)

in this action on Gaul Jenkins on 1-21-10  
(Party Served) (Date of Service)

by delivery to Gaul Jenkins  
(Name of Person Who Received Process)

at 4429 E 336 N Reghey Idh  
(Address of Service)

(Check only one of the following):

personally.

— said address being the usual dwelling or place of abode of said party. The person who received such process then was over the age of 18 and then resided at such address.

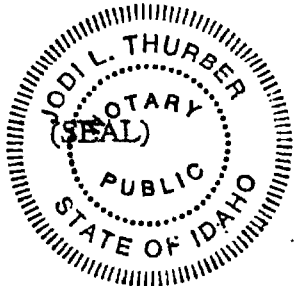
— who is agent authorized by law or by appointment to receive service of process for said party.

3. Fee charged for this service: \$ 50.00

DATED: 1-22-10

Sharon Refon  
(Signature)

SUBSCRIBED AND SWORN to before me this 22nd day of Jan, 10



Jodi L. THURBER  
Notary Public for the State of Idaho  
Residing at: REIBURG, ID.  
Commission Expires: 11/20/15

257

AFFIDAVIT OF SERVICE ON AN INDIVIDUAL

STATE OF IDAHO

2010 JAN 25 PM 3:15

County of Bonneville

JSS DISTRICT COURT  
PERSON COUNTY, IDAHO

Case No. 09-015

I, Sharon Ripon, do solemnly swear (or affirm) that the testimony  
(Process Server)

I shall give in the matter at issue shall be the truth, the whole truth, and nothing but the truth.

1. I am over the age of 18 years and am not a party to this action.

2. I served a copy of the subpoena & Notice of  
deposition  
(Name of Document(s) Served)

in this action on Justin Fullmer on 1-20-10  
(Party Served) (Date of Service)

by delivery to Justin Fullmer  
(Name of Person Who Received Process)

at 650 N 3225 E Merax Idh  
(Address of Service)

(Check only one of the following):

personally.

said address being the usual dwelling or place of abode of said party. The person who received such process then was over the age of 18 and then resided at such address.

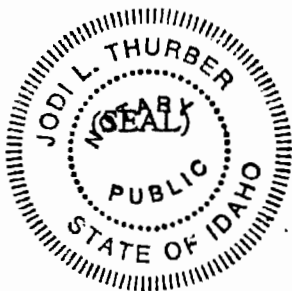
who is agent authorized by law or by appointment to receive service of process for said party.

3. Fee charged for this service: \$ 60.00

DATED: 1-22-10

Sharon Ripon  
(Signature)

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of Jan, 10



Jodi L. THURBER  
Notary Public for the State of Idaho  
Residing at: REXBURG, ID.  
Commission Expires: 11/20/15

158

AFFIDAVIT OF SERVICE ON AN INDIVIDUAL

STATE OF IDAHO

2010 JAN 25 PM 3:15

County of Bonneville

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Case No. 09-015

I, Sharon Nixon, do solemnly swear (or affirm) that the testimony  
(Process Server)

I shall give in the matter at issue shall be the truth, the whole truth, and nothing but the truth.

1. I am over the age of 18 years and am not a party to this action.

2. I served a copy of the Subpoena & Notice  
of deposition (Name of Document(s) Served)

Records in this action on Win Star Beatty on 1-20-10  
(Party Served) (Date of Service)  
by delivery to Claudia Clark  
(Name of Person Who Received Process)  
at 1655 Elk Creek Rd. Tropic, UT  
(Address of Service)

(Check only one of the following):

personally.

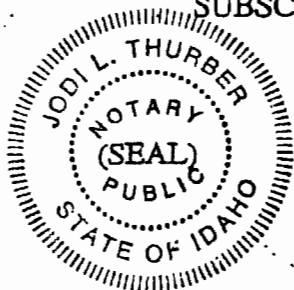
said address being the usual dwelling or place of abode of said party. The person who received such process then was over the age of 18 and then resided at such address.

who is agent authorized by law or by appointment to receive service of process for said party.

3. Fee charged for this service: \$ 35.00

DATED: 1-22-10 Sharon Nixon  
(Signature)

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of Jan, 10



Jodi L. THURBER  
Notary Public for the State of Idaho  
Residing at: REARICK, ID.  
Commission Expires: 11/20/15



AFFIDAVIT OF SERVICE ON AN INDIVIDUAL

STATE OF IDAHO

2010 JAN 25 PM 3:15

County of Bonneville

1st DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Case No. 09

I, Sharon Kyrton, do solemnly swear (or affirm) that the testimony  
(Process Server)

I shall give in the matter at issue shall be the truth, the whole truth, and nothing but the truth.

1. I am over the age of 18 years and am not a party to this action.

2. I served a copy of the Subpoena & Notice of  
deposition  
(Name of Document(s) Served)

in this action on Wane Chapple on 1-20-10  
(Party Served) (Date of Service)

by delivery to Wane Chapple  
(Name of Person Who Received Process)

at Key Bank Yellowstone av  
(Address of Service)

*Sharon Kyrton*

(Check only one of the following):

personally.

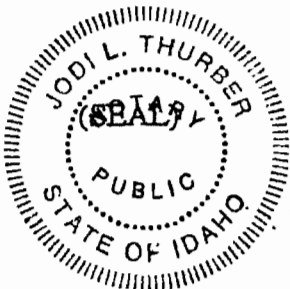
said address being the usual dwelling or place of abode of said party. The person who received such process then was over the age of 18 and then resided at such address.

who is agent authorized by law or by appointment to receive service of process for said party.

3. Fee charged for this service: \$ 4000.

DATED: 1-22-10 Sharon Kyrton  
(Signature)

SUBSCRIBED AND SWORN to before me this 22<sup>nd</sup> day of Jan, 10



Jodi L. THURBER  
Notary Public for the State of Idaho  
Residing at: REXBURG, ID.  
Commission Expires: 11/20/15

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

2010 JAN 26 AM 10:01  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

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

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )

Plaintiffs, )

vs. )


SHIPPEN CONSTRUCTION, INC., an )  
Idaho corporation, and ROBERT and )  
JORJA SHIPPEN, husband and wife, )  
d/b/a SHIPPEN CONSTRUCTION )  
ROBERT SHIPPEN, an individual; )  
and MARRIOT HOMES, LLC. )  
Defendants. )

Case No. CV 09-015

NOTICE OF SERVICE OF  
SUPPLEMENTAL RESPONSE  
FOR PRODUCTION OF  
DOCUMENTS

I HEREBY CERTIFY that the following document was served, by postage pre-paid mailing, to plaintiff's attorney, Weston S. Davis, Esq., P.O. Box 51630, Idaho Falls, Idaho 83405 together with a copy of this notice, on the 22<sup>nd</sup> day of January 2010:

- 1) *Defendants' Supplemental Response to Requests for Production of Documents.*

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

261

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

2010 JAN 26 AM 10:02  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

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

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )  
 )  
Plaintiffs, )

Case No. CV 09-015

vs. )

MOTION FOR PROTECTIVE  
ORDER

SHIPPEN CONSTRUCTION, INC., an )  
Idaho corporation, and ROBERT and )  
JORJA SHIPPEN, husband and wife, )  
d/b/a SHIPPEN CONSTRUCTION )  
ROBERT SHIPPEN, an individual; )  
and MARRIOT HOMES, LLC. )  
Defendants. )

I.R.C.P. 26(c)

COME NOW, the defendants, by and through the undersigned attorney and  
seek protective orders of the court for the following request for productions of  
documents:

REQUEST FOR PRODUCTION NO. 5: Produce all of your personal and  
business tax returns in which you have any interest for the past four (4) years and  
also produce your current pay stub(s) from all sources showing your year to date  
income.

20

REQUEST FOR PRODUCTION NO. 7: For all assets you presently own or owned during or since January 1, 2007, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.

REQUEST FOR PRODUCTION NO. 8: For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt.

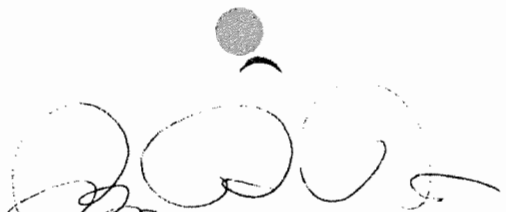
(c) Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matter relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information inclosed in sealed envelopes to be opened as directed by the court.

IRCP Rule 26, Discovery  
----- Excerpt from page 85.

The Requests for Production of Documents listed above are not calculated to lead to admissible evidence when the allegations of the complaint are for water/sub water damages and are designed to incur needless expense, are not calculated to lead to any admissible evidence and are designed to harass or annoy the defendants.

Dated this 22<sup>nd</sup> day of January, 2010.

2010




---

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

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am a duly licensed attorney for the State of Idaho, resident of and with my office at Rigby, Idaho; that I served a copy of the foregoing by mailing, with postage prepaid thereon, a true and correct copy thereof to the following person(s) this 22<sup>nd</sup> day of January, 2010.



---

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

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls, ID 83405

2010 JAN 29 PM 1:05  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE

STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON

WILLIAM SHAWN GOODSPEED, ETAL, )

Plaintiff, )

vs. )

SHIPPEN CONSTRUCTION, ETAL, )

Defendant. )

Case No. CV-2009-15

**ORDER FOR  
STATUS CONFERENCE**

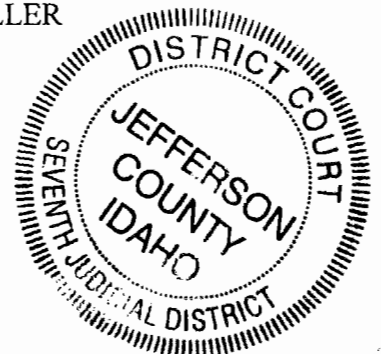
It appearing that the above action is at issue or is ready for further proceedings,

IT IS HEREBY ORDERED that counsel of record appear for a status conference on the 22<sup>nd</sup> day of February, 2010, at the hour of 1:30 p.m., before the Honorable Gregory W. Moeller, District Judge, in Courtroom 4 of the Jefferson County Courthouse to report on the status of this action and to schedule further proceedings.

A telephone conference may be held upon request of counsel. If counsel wish this matter be heard via telephone conference, counsel must advise the court at least 24 hours prior to the hearing date. Counsel requesting the telephone conference must contact opposing counsel, informing them of the request for the telephone conference and initiate the call.

DATED this 26<sup>th</sup> day of January, 2010.

GREGORY W. MOELLER  
District Judge



CERTIFICATE OF SERVICE

I hereby certify that on this 21<sup>st</sup> day of Jan, 2010, I did send a true and correct copy of the foregoing document upon the parties listed below by mailing, with the correct postage thereon; by causing the same to be placed in the respective courthouse mailbox; or by causing the same to be hand-delivered.

CHRISTINE BOULTER  
Clerk of the District Court  
Jefferson County, Idaho

By: N. Andersen ✓  
Deputy Clerk

Weston Davis, Esq.  
P.O. Box 51630  
Idaho Falls, ID 83405

Robin Dunn, Esq.  
Courthouse Box  
Rigby, Idaho

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 FEB -3 PM 1:32  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**SECOND MOTION TO COMPEL**

COME NOW Plaintiffs, through counsel of record, and move the Court to compel Defendants to answer Plaintiffs' Interrogatories and Requests for Production of Documents to Defendants which were served upon Defendants on or about the 12<sup>th</sup> day of May, 2009. More specifically, Plaintiffs move this Court to compel Defendants' responses over their objections to Plaintiffs' Requests for Production Numbers 5, 7, and 8.



Pursuant to Idaho Rule of Civil Procedure 37(a)(2), Plaintiff's counsel hereby certifies that he made a good faith attempt to confer with opposing counsel regarding the objections to discovery in this matter. Such efforts are evidenced by Exhibit "A" hereto attached.

In response, Defendants supplemented their discovery responses, apparently making some documents available to Plaintiffs at Defendants' counsel's office. See Exhibit "B" attached hereto. However, these supplemental responses came with the continued objection to Requests for Production No. 5, 7, and 8. Plaintiff's discovery requests specifically state as follows:

REQUEST FOR PRODUCTION NO. 5: Produce all of your personal and business tax returns in which you have any interest for the past four (4) years and also produce your current pay stub(s) from all sources showing your year to date income.

REQUEST FOR PRODUCTION NO. 7: For all assets you presently own or owned during or since January 1, 2007, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.

REQUEST FOR PRODUCTION NO. 8: For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt.

Defendants have objected to responding these discovery requests by asserting these requests are "not likely to lead to any issues for resolution before the Court" or that they "are not likely to lead to admissible evidence." Defendants also filed a Motion for Protective Order, currently on file with this Court, asserting that these requests are not reasonably calculated to lead to admissible evidence because this case deals with sub-water issues and therefore Plaintiffs' requests must somehow be intended to harass the Defendants.

While Defendants correctly identify this case involves sub-water issues, Defendants fail to recognize in their Motion for Protective Order Plaintiffs' allegations of fraud and alter-ego liability—both of which must allow Plaintiffs to review Defendant's financial records to discover

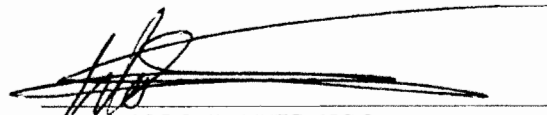
motive behind the fraudulent activity and to discover which Defendant entity(ies) or individual(s) are truly responsible for the construction of the subject real property. These issues are best discovered by reviewing Defendants' financial records and liabilities.

Notably, Plaintiffs have requested financial records for a period of four years to cover the year of construction of the residence and year the residence was also on the market. Plaintiffs have requested the subsequent years' information to discover how quickly the proceeds were spent and where they were spent to determine motive for fraudulent activity and the party(ies) responsible for the construction thereof. Thus, the requests are narrowly tailored to issues relevant to this action and must be compelled by this Court.

Pursuant to Idaho Rule of Civil Procedure 37(a)(2), Plaintiff's counsel hereby certifies that it again made a good faith attempt to confer with the opposing counsel of record regarding the objections to discovery in this matter and regarding their motion for protective order. Such efforts are evidenced by Exhibit "C" hereto attached. Plaintiffs have not received a response to said correspondence and therefore have necessarily filed this motion.

Additional attorney fees and court costs have been and continue to be incurred by Plaintiff as a result of Defendant's failure to comply with discovery requests. Plaintiff therefore requests an award of attorney fees on this motion.

DATED this 2 day of February, 2010.

  
WESTON S. DAVIS, ESQ.

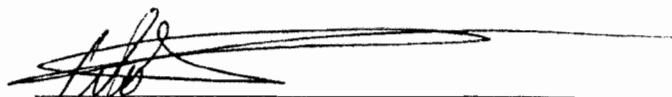
## CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 2 day of February 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

Hon. Gregory Moeller  
Madison County Courthouse  
P. O. Box 389  
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Motion to Compel2.wpd



# NELSON HALL PARRY TUCKER, P.A.

Attorneys & Counselors

490 Memorial Drive  
PO Box 51630  
Idaho Falls, ID 83405-1630  
Phone: (208) 522-3001  
Fax: (208) 523-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.com

Douglas R. Nelson  
Blake G. Hall  
Scott R. Hall  
Steven R. Parry  
Brian T. Tucker  
Wiley R. Dennert  
Sam L. Angell  
Weston S. Davis  
W. Joe Anderson  
(1923-2002)

*Sent Via Facsimile Transmission 208.745.8160*

January 12, 2010

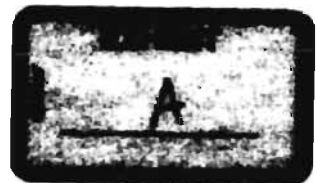
Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

I received your phone message and correspondence wherein you confirmed that Mr. Shippen believes he can litigate the case for less than he would expend through a settlement offer. Therefore, my clients will proceed to trial. This raises several issues:

1. I will need you to supplement your discovery responses to the extent more information and documents are available to you. You have objected to producing certain corporate records as being irrelevant or not in your possession. I will address each deficiency individually:
  - a. Requests for Production Nos. 2 and 3: We requested all documents in your possession relating in any way to the Subject Real Property or that you intend to introduce at trial or in support of any other motion. You have responded that your client is not in possession of any documents or that they are not aware of any documents at this time. I believe the Shippens will have a difficult time prevailing at trial without any documentation supporting their position. Please supplement this request.
  - b. Request for Production No. 5: We requested tax information for the past four (4) years. The Judge has held that for now, there appear to be grounds upon which to allege Shippen Construction is liable. As a result, information regarding the



internal workings of that company are relevant. Please, therefore, produce the taxes.


- c. Request for Production No. 6: We requested copies of corporate documents. You responded that the documents were in the possession of Mr. Dupree. Mr. Dupree will not likely produce any such documents due to his duty to maintain the confidentiality of his clients. Therefore, the burden will fall on Mr. Shippen to produce the requested documents.
- d. Requests for Production Nos. 5, 7 and 8: The solvency of the Defendants is very much relevant to the allegations of the complaint and therefore we request that you supplement the same.
- e. Request for Production No. 9: To the extent you have retained an expert witness, please supplement this request.
- f. Request for Production No. 14: Again, I find it difficult to believe there are no records in Mr. Shippen's possession or obtainable access relating to his subcontractors and the Subject Real Property. He does not have copies of any subcontractor bids, change orders, payments made to sub contractors for their work, etc.? Please have Mr. Shippen produce everything in his possession that is in anyway related to the subcontractors and the Subject Real Property.

If I have not obtained these requested documents from you in the next two weeks, I will file a Motion to Compel.

- 2. My assistant, Jodi Thurber, will be coordinating the time for depositions with your office in the near future. I presently anticipate three days for my depositions. We will consent to the depositions taking place at your office.
- 3. Also, please find enclosed a Note of Issue and Request for Trial Setting.

If you have any questions or concerns, please contact me.

Yours very truly,



Weston S. Davis, Esq.

cc: Client

L:\wsd\~ Clients\7411.1 Goodspeed\Dunn.Ltr11.wpd

2/12

**COPY**

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

Attorneys for Defendants

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

WILLIAM SHAWN GOODSPEED and)  
SHELLEE BETH GOODSPEED, )  
husband and wife, )  
)  
Plaintiffs, )

Case No. CV 09-015

vs. )

SUPPLEMENTAL RESPONSE  
FOR PRODUCTION OF  
DOCUMENTS

SHIPPEN CONSTRUCTION, INC., an)  
Idaho corporation, and ROBERT and )  
JORJA SHIPPEN, husband and wife, )  
d/b/a SHIPPEN CONSTRUCTION )  
ROBERT SHIPPEN, an individual; )  
and MARRIOT HOMES, LLC. )  
Defendants. )

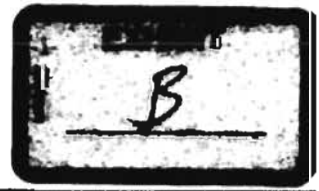
COMES NOW, the defendants, by and through their attorney of record, Robin

D. Dunn, and SUPPLEMENTS Requests for Production of Documents as follows:

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 2: Please produce all documents,

SUPPLEMENTAL RESPONSE TO REQUESTS FOR PRODUCTION OF DOCUMENTS



memoranda and other written or recorded records in your possession, or reasonably available to you, which relate in any manner to your answer in the foregoing interrogatories.

ANSWER TO REQUEST FOR PRODUCTION NO. 2: The agent for the various defendants has retrieved and attempted to reconstruct everything in his possession. The defendant is unaware of whether more documents exist as there has been a substantial lapse of time since the building of the home in question. These documents can be reviewed and/or copied at the law firm named above upon notice of an appropriate time convenient to counsel.

REQUEST FOR PRODUCTION NO. 3: Please produce any documents to be relied on or introduced in evidence by you at any pre-trial motion hearing or at the trial herein.

ANSWER TO REQUEST FOR PRODUCTION NO. 3: No documents actually pertain to the issue of alleged water damage; but the defendant would rely on any documents listed in Request # 2 above and/or located at governmental agencies or real estate brokers.

REQUEST FOR PRODUCTION NO. 5: Produce all of your personal and business tax returns in which you have any interest for the past four (4) years and also produce your current pay stub(s) from all sources showing your year to date income.

ANSWER TO REQUEST FOR PRODUCTION NO. 5: Objection. Tax returns are not likely to lead to any issues for resolution before the court. The named defendants, in fact, are improper parties. By separate document the undersigned

SUPPLEMENTAL RESPONSE TO REQUESTS FOR PRODUCTOIN OF DOCUMENTS -2-

2/11

requests a protective order of the court as tax returns are not likely to lead to any useful discovery.

REQUEST FOR PRODUCTION NO. 6: Produce all corporate documents for the past four (4) years, including, but not limited to financial reports, annual meeting minutes, board meeting minutes, and board resolutions.

ANSWER TO REQUEST FOR PRODUCTION NO. 6: All that exist are the original incorporation documents in the possession of Bill Dupree, Esq. in Rexburg, Idaho. Those records can be obtained by subpoena from Mr. Dupree but are not in the possession of the undersigned agent.

REQUEST FOR PRODUCTION NO. 7: For all assets you presently own or owned during or since January 1, 2007, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.

ANSWER TO REQUEST FOR PRODUCTION NO. 7: Objection, not likely to lead to admissible evidence. A protective order will be sought.

REQUEST FOR PRODUCTION NO. 8: For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt.

ANSWER TO REQUEST FOR PRODUCTION NO. 8: Objection, not likely to lead to admissible evidence. A protective order will be sought.

REQUEST FOR PRODUCTION NO. 9: If you have retained an expert witness, produce a copy of the expert's report, underlying data, raw data, tests, answers to questions submitted to expert by yourself or others, and any other information upon



which the expert relies in drawing his or her conclusion. Also produce a copy of the resume' for any expert(s).

ANSWER TO REQUEST FOR PRODUCTION NO. 9: None retained. The real estate brokers may be classified as experts in their field but are listed as lay witnesses.

Roger Warner would be an anticipated expert to be retained. He is a hydrologist. If retained, this answer would be supplemented. He has been asked informal questions but has not been formally retained or asked to prepare any reports at this point.

REQUEST FOR PRODUCTION NO. 14: Please produce all communications and documents with your contractors and subcontractors related to the property.

ANSWER TO REQUEST FOR PRODUCTION NO. 14: None are in the possession of these answering defendants other than the bids and documents identified in #2 and 3 above.

DATED this 22<sup>nd</sup> day of January, 2010.



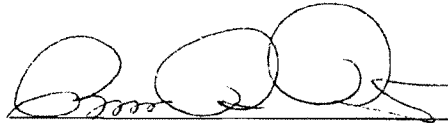
Robin D. Dunn, Esq.  
DUNN LAW OFFICES, PLLC

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am a duly licensed attorney for the State of Idaho, resident of and with my office at Rigby, Idaho; that I served a copy of the foregoing by mailing, with postage prepaid thereon, a true and correct copy thereof to the following

2/10

person(s) this 22<sup>nd</sup> day of January, 2010.



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

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls, ID 83405

2/11



# NELSON HALL PARRY TUCKER, P.A.

Attorneys & Counselors

490 Memorial Drive  
PO Box 51630  
Idaho Falls, ID 83405-1630  
Phone: (208) 522-3001  
Fax: (208) 523-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.com

Douglas R. Nelson  
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Brian T. Tucker  
Wiley R. Dennert  
Sam L. Angell  
Weston S. Davis  
W. Joe Anderson  
(1923-2002)

*Sent Via Facsimile Transmission 208.745.8160*

January 26, 2010

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

I received your Motion for Protective Order today. In fairness to the process outlined by I.R.C.P. 37(b), I thought I would supplement the reasoning for Requests for Production Nos. 5, 7, and 8 before filing a motion to compel in the hope we can reach a stipulation for protective order. Solvency is very much relevant to this case as the issues involve not only breach of contract but also fraud, which allows me to explore intent and motive. Intent and motive are very much affected by solvency and thus my request is highly relevant. I forgot to mention in my January 12, 2010 letter that another reason for the request of these documents is to discover more concrete evidence as to which entity(ies) and/or individual(s) were in fact involved in the contracting and construction of the subject real property. Certainly the payment of financial obligations would reveal which entity/individual was paying the bills for the construction of the house and all of the contractors who did so. To date, despite my discovery requests, my previous motions, and my January 12, 2010 request, you have not produced any of these documents to me or the Court to verify that Marriott Homes was in fact the entity that constructed the subject real property. You can probably understand my reluctance to therefore only name Marriott Homes as the lone defendant.

My concerns in the above requests then are twofold: (1) to establish who exactly the proper defendant is, and (2) to determine any outstanding motive to induce my clients into purchasing the subject real property. If, despite this letter, you continue to believe the requested information is not relevant, I will file my motion to compel on January 29, 2010.

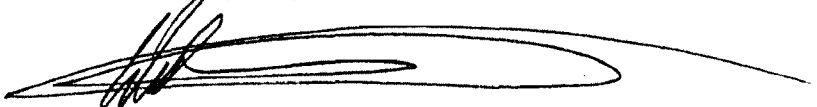


On the other hand, I am willing to consider a stipulation for a protective covenant of certain documents. As you are the party requesting the protective covenant, I believe it appropriate that you draft the proposed stipulation to inform what you think should be protected and how it should be dealt with at trial. In my opinion, everything I have requested is fair game and relevant at the time of trial. It is not, however, my intent to harass or annoy the Shippens, nor do I wish to seek irrelevant information merely to place a burden on the Defendants. However, I have a duty to fully discover those facts which relate to my clients' cause of action. Please notify me how you wish to proceed prior to January 29, 2010 or I will necessarily file my motion to compel.

Finally, you mentioned in your supplemental responses to discovery that your firm is in possession of several documents responsive to my Requests for Production. I am willing to come to your office on Wednesday or Thursday morning or Friday afternoon of this week to inspect them. If the documents are not voluminous, I would expect to be provided with a copy of the documents. Please have your office notify me as soon as possible what the best time would be for me to inspect these documents. If I have not received your response prior to Friday, January 29, 2010, I will seek your production of these documents to my firm in my motion to compel.

If you have any questions or concerns, please contact me.

Yours very truly,

A handwritten signature in black ink, appearing to read 'Weston S. Davis', with a long horizontal flourish extending to the right.

Weston S. Davis, Esq.

cc: Client

L:\wsd\~ Clients\7411.1 Goodspeed\Dunn.Ltr12.wpd

---

\* \* \* COMMUNICATION RESULT REPORT ( JAN. 26. 20 11:35AM ) \* \* \*

FAX HEADER: ANDERSON NELSON HALL SMITH

TRANSMITTED/STORED : JAN. 26. 2010 11:34AM  
FILE MODE OPTION

394 MEMORY TX

ADDRESS

G3 : 7458160

RESULT

OK

PAGE

2/2

REASON FOR ERROR  
E-1) HANG UP OR LINE FAIL  
E-2) NO ANSWER  
E-3) MAIL SIZE OVERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION**NELSON HALL PARRY TUCKER, P.A.**

Attorneys &amp; Counselors

460 Memorial Drive  
PO Box 51630  
Idaho Falls, ID 83405-1630  
Phone: (208) 622-9001  
Fax: (208) 622-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.comDouglas R. Nelson  
Blake G. Hall  
Scott R. Hall  
Steven R. Parry  
Brian T. Tucker  
Wiley R. Dannerst  
Sara L. Angell  
Weston S. Davis  
W. Joe Anderson  
(1923-2002)Sent Via Facsimile Transmission 208.745.8160

January 26, 2010

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

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WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254  
Attorneys for Plaintiff

2010 FEB -3 PM 1:32

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.


Defendants.

Case No.: CV-09-015

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on the 22<sup>nd</sup> day of February, 2010, at 1:30 p.m., of said day, or as soon thereafter as counsel can be heard in the above court, in Rigby, Jefferson County, Idaho, Plaintiff will call up for hearing Plaintiff's Second Motion to Compel before the Honorable Gregory Moeller, District Judge.

DATED this 2 day of February, 2010.

  
WESTON S. DAVIS, ESQ.

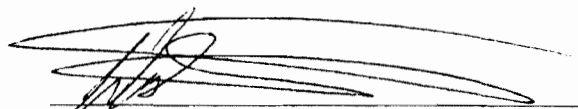
## CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 2 day of February 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

Hon. Greg Moeller  
Madison County Courthouse  
P. O. Box 389  
Rexburg, ID 83440

- Mailing
- Hand Delivery
- Fax
- Overnight Mail



WESTON S. DAVIS, ESQ.

DUNN LAW OFFICES, PLLC  
 Robin D. Dunn, Esq., ISB # 2903  
 Amelia A. Sheets, Esq., ISB #5899  
 P.O. Box 277  
 477 Pleasant Country Lane  
 Rigby, Idaho 83442  
 (208) 745-9202 (t)  
 (208) 745-8160 (f)  
[rdunn@dunnlawoffices.com](mailto:rdunn@dunnlawoffices.com)

2010 FEB 16 AM 9:16  
 DISTRICT COURT  
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

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

WILLIAM SHAWN GOODSPEED and )  
 SHELEE BETH GOODSPEED, )  
 husband and wife, )  
 )  
 Plaintiffs, )

Case No. CV 09-015

PLAINTIFFS' RENEWED  
 REQUEST FOR PROTECTIVE  
 ORDER(S)

vs. )

SHIPPEN CONSTRUCTION, INC., an )  
 Idaho corporation, and ROBERT and )  
 JORJA SHIPPEN, husband and wife, )  
 )  
 Defendants. )

COME NOW, the above-named defendants and renew its/their request for protective orders of the plaintiffs' discovery. This motion is brought pursuant to the following:

Protective Orders. Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matter relating to a deposition, the court in the district where the deposition is to be taken may make any order which justice requires to protect a party



or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery; (4) that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information inclosed in sealed envelopes to be opened as directed by the court.

**IRCP Rule 26, Discovery**

----- Excerpt from page 85.

In the instant case, the requests for various discovery have been disclosed to the plaintiffs and supplemented. Furthermore, the defendants have retrieved some information from the governmental entities in possession of the same. The defendants have done everything required by discovery procedures and have attempted to work with the plaintiffs by making all documents available that are in the possession of the defendants except as stated hereafter. Counsel for the plaintiff has reviewed and actually taken the original documents with the consent of defense counsel.

Protection is sought for the following:

Requests for Production of Documents numbered 5, 7 and 8.

The defendants are requesting information that is in the manner of a debtor's exam and hearing and not for the purpose of any meaningful trial or hearing discovery.

The complaint is primarily designed for sub-water and construction issues. Instead the

requests made are burdensome, expensive and not designed to lead to meaningful discovery.

For example: No. 5 requests all personal and business tax returns for 4 years. Such a request has nothing to do with the allegations of the complaint. Moreover, the defendants do not have these documents as the same are in the possession of their/its accountant. Tax returns would not lead to any productive discovery and are designed to learn of the defendants' private lifestyle and income. Moreover, the tax returns would be costly to obtain.

No. 7 requests ALL TITLES, REGISTRATIONS, BILLS OF SALE, etc. of the defendants. Such a request invades the personal sanctity of the defendants and would not lead to any useful purpose. The request is designed to annoy and harass the defendants. Also, it is nothing more than a debtor exam type of request. The court should intervene and protect the defendants against such abuse.

No. 8 requests ALL OUTSTANDING FINANCIAL OBLIGATIONS FOR THE PAST 4 YEARS. How could such a request assist lead to any useful information in a alleged faulty construction case.

The plaintiffs respond that they have alleged fraud and alter-ego liability. Such requests still would not lead to anything useful at trial and are simply designed to incur additional costs and to intimidate and harass the defendants.

Protection from such abuses is a necessity in this case.

The defendants would desire to present live testimony on these issues at hearing and are notifying the court and counsel of such a request.

Fees and costs are requested pursuant to rule.

DATED this 12<sup>th</sup> day of February, 2010.

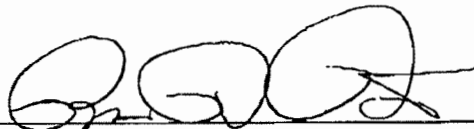


ROBIN D. DUNN  
ATTORNEY FOR DEFENDANTS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12<sup>th</sup> day of February, 2010, a true and correct copy of the foregoing was delivered to the following person(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission



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

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls ID, 83405

Chamber Copy:  
Hon. Gregory Moeller  
Rexburg, Idaho



DUNN LW OFFICES, PLLC  
 Robin D. Dunn, Esq., ISB #2903  
 Amelia A. Sheets, Esq., ISB #5899  
 P.O. Box 277  
 477 Pleasant Country Lane  
 Rigby, ID 83442  
 (208) 745-9202 (t)  
 (208) 745-8160 (f)

2010 FEB 16 AM 9:16  
 DISTRICT COURT  
 JEFFERSON COUNTY, IDAHO

Attorneys for the Defendants

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

WILLIAM SHAWN GOODSPEED and )  
 SHELEE BETH GOODSPEED, )  
 husband and wife, )

Case No. CV 09-015

Plaintiffs, )

NOTICE OF HEARING

vs. )

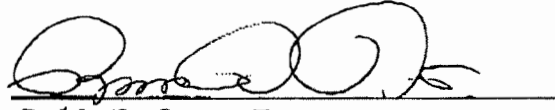
SHIPPEN CONSTRUCTION, INC., an )  
 Idaho corporation, et.al. )

Defendants. )

YOU ARE HEREBY NOTIFIED that a hearing on defendant's *MOTION FOR PROTECTIVE ORDER(S)* in the above-mentioned case has been set on the 22<sup>nd</sup> day of February, 2010, at 1:30 p.m., or as soon thereafter as counsel can be heard in the Jefferson County Magistrate Courtroom, Rigby, Idaho before the Honorable Gregory Moeller.

DATED this 12<sup>th</sup> day of February, 2010.

NOTICE OF HEARING



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

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 12<sup>th</sup> day of February, 2010, a true and correct copy of the foregoing was delivered to the following persons(s) by:

- Hand Delivery
- Postage-prepaid mail
- Facsimile Transmission



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

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls, ID 83405

Courtesy Copy To: Honorable Gregory Moeller  
Madison County Courthouse  
P.O. Box 389  
Rexburg, ID 83440

AFFIDAVIT OF SERVICE ON AN INDIVIDUAL

CV-2009-15

STATE OF IDAHO )

)ss.

County of Bonneville

2010 FEB 22 PM 9:40/15  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO  
Case No. 09-2015

I, Sharon Nifon, do solemnly swear (or affirm) that the testimony  
(Process Server)

I shall give in the matter at issue shall be the truth, the whole truth, and nothing but the truth.

1. I am over the age of 18 years and am not a party to this action.

2. I served a copy of the Subpoena  
(Name of Document(s) Served)

in this action on Billy B. Dupree Jr on 2-17-10  
(Party Served) (Date of Service)

by delivery to Billy B. Dupree Jr  
(Name of Person Who Received Process)

at 58 E 1st N Reburg Idh  
(Address of Service)

(Check only one of the following):

personally.

said address being the usual dwelling or place of abode of said party. The person who received such process then was over the age of 18 and then resided at such address.

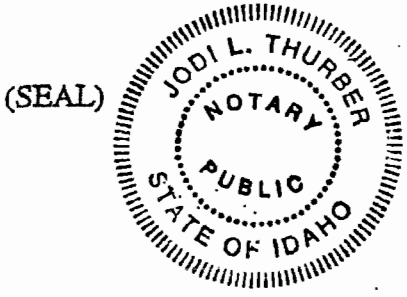
who is agent authorized by law or by appointment to receive service of process for said party.

3. Fee charged for this service: \$ 40.00

DATED: 2-18-10

Sharon Nifon  
(Signature)

SUBSCRIBED AND SWORN to before me this 18<sup>th</sup> day of Feb, 10



Jodi L. Thurber  
Notary Public for the State of Idaho  
Residing at: Reburg, ID  
Commission Expires: 11/20/15

2010 FEB 26 PM 2:04  
DISTRICT COURT - IDAHO

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

WILLIAM SHAWN GOODSPEED, ETAL, )	)	
	)	
Plaintiffs, )	)	Case No. CV-2009-15
	)	
vs. )	)	<b>MINUTE ENTRY ON</b>
	)	<b>STATUS CONFERENCE</b>
SHIPPEN CONSTRUCTION, ETAL, )	)	<b>AND MOTIONS</b>
	)	
Defendant. )	)	
_____ )	)	

February 22, 2010, at 3:00 P.M., a status conference, motion to compel and motion for renewed request for protective order(s) came on for hearing before the Honorable Gregory W. Moeller, District Judge, sitting in open court at Rigby, Idaho.

Mr. David Marlow, Court Reporter, and Ms. Nancy Andersen, Deputy Court Clerk, were present.

Mr. Dunn presented argument in support of motion for protective order.

Mr. Davis presented argument in objection to the motion for protective order.

Mr. Dunn responded.

The Court granted the motion for protective order as to Mr. and Mrs. Shappan and denied the motion as to all other defendants. As to number 5, all defendants must answer, and to number 7 and 8, only the entities need to answer.

Mr. Davis will prepare the order.

The parties then presented argument on motion to compel.

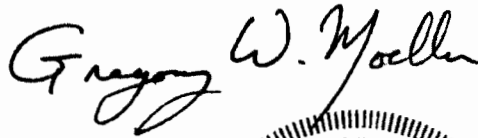
The Court will allow 30 days to comply with no sanctions.

11

The Court scheduled a Jury trial to begin at 1:30 p.m., on November 15 – 19, 2010, 1<sup>st</sup> setting, and September 28 – October 1, 2010, to begin at 9:00 a.m., 2<sup>nd</sup> setting. A pre-trial conference was scheduled for 1:30 p.m., August 23, 2010.

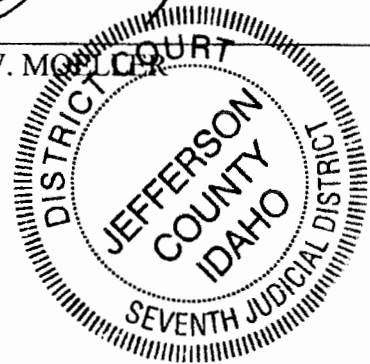
Counsel stated that the parties have already mediated.

Court was thus adjourned.



GREGORY W. MOELLER  
District Judge

c: Weston Davis, Esq.  
Robin Dunn, Esq.





2010 FEB 26 PM 2:04  
CLERK OF DISTRICT COURT - IDAHO

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

WILLIAM SHAWN GOODSPEED, ETAL, )  
)  
Plaintiffs, )  
)  
vs. )  
)  
SHIPPEN CONSTRUCTION, ETAL, )  
)  
Defendant. )  
\_\_\_\_\_ )

Case No. CV-2009-15

**ORDER SETTING TRIAL AND  
PRETRIAL CONFERENCE**

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following pre-trial schedule shall govern all proceedings in this case:

**I. IT IS HEREBY ORDERED<sup>1</sup>:**

1. A pre-trial conference shall be held at 1:30 P.M., on August 23, 2010.
2. A Jury trial shall commence at 1:30 P.M., on November 15 – 19, 2010, 1<sup>st</sup> setting, or 9:00 A.M., on September 28 – October 1, 2010, 2<sup>nd</sup> setting.
3. No later than ninety (90) days before the date set for trial, counsel shall disclose the names, addresses, and telephone numbers of expert witnesses that may be called to testify at trial.
4. All discovery shall be completed seventy (70) days prior to trial.<sup>2</sup>
5. All Motions for Summary Judgment must be filed sixty (60) days prior to trial in conformance with Rule 56(a), I.R.C.P.
6. All Motions for Summary Judgment must be heard at least twenty-eight (28) days prior to trial.

<sup>1</sup>The disclosure cut-off date, discovery completion date and motion dates are for the benefit of the Court in managing this case. They will be enforced at the Court's discretion. The disclosure date should not be relied on by the parties for discovery purposes. The disclosure, discovery and motion dates will not be modified by the Court without a hearing and assurance from the parties that the modification will not necessitate continuance of the trial.

<sup>2</sup> Discovery requests must be served so that timely responses will be due prior to the discovery cutoff date.

**II. IT IS FURTHER ORDERED** that each attorney shall, no later than fourteen (14) days before trial:

1. Submit a list of names to the court of persons who may be called to testify.
2. Submit a descriptive list of all exhibits proposed to be offered into evidence to the court indicating which exhibits counsel have agreed will be received in evidence without objection and those to which objections will be made, including the basis upon which each objection will be made.
3. Submit a brief to the court citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. If this is a jury trial, counsel shall submit proposed jury instructions to all parties to the action and the court. All requested instructions submitted to the court shall be in duplicate form as set out in Idaho Rule of Civil Procedure 51(a)(1).
5. Submit that counsel have in good faith tried to settle this action.
6. State whether liability is disputed.

**III. IT IS FURTHER ORDERED** that each attorney shall no later than seven (7) days before trial:

1. Submit any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.
2. Deposit with the clerk of the court all exhibits to be introduced, except those for impeachment. The clerk shall mark plaintiff's exhibits in numerical sequence as requested by plaintiff and shall mark all defendant's exhibits in alphabetical sequence as requested by defendant.
3. A duplicate set of all exhibits to be introduced, except those for impeachment, shall be placed in binders, indexed, and deposited with the clerk of the court.

**IV. IT IS FURTHER ORDERED** that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.
2. No exhibits shall be admitted into evidence at trial other than those disclosed, listed

and submitted to the clerk of the court in accordance with this order, except when offered for impeachment purposes or unless they were discovered after the last required disclosure.

3. This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice.
4. The court may impose appropriate sanctions for violation of this order.

DATED this 20<sup>th</sup> day of February, 2010.

*Gregory W. Moeller*  
\_\_\_\_\_  
GREGORY W. MOELLER  
District Judge



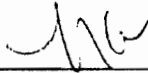
CERTIFICATE OF SERVICE

I hereby certify that on this 20<sup>th</sup> day of February, 2010, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Robin Dunn, Esq.  
Courthouse Box  
Rigby, Idaho

Weston Davis, Esq.  
P O Box 51630  
Idaho Falls, ID 83405

CHRISTINE BOULTER  
Clerk of the District Court  
Jefferson County, Idaho

  
\_\_\_\_\_  
Deputy Clerk

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

DISTRICT COURT  
BONNEVILLE

10 FEB 25 P 4:16

2010 MAR -3 PM 1:15

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**AMENDED NOTICE OF  
DEPOSITION DUCES TECUM**

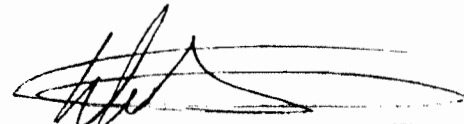
PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of DAVE CHAPPLE, before a Certified Court Reporter in and for the State of Idaho on Wednesday, March 4, 2010, at 1:00 p.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

The deponent shall produce and permit inspection and copying, at the time of the deposition

all records, documents or correspondence relating to the subject matter of this litigation in his possession or in the possession of Winstar Realty including but not limited to:

- Any documents, including applications and listing notes, related to the listing for sale of the Subject Real Property (3709 E. 319 N. Rigby, ID 83442);
- All versions of the MLS listing for the Subject Real Property including dates of any modifications made to the MLS listing;
- Any and all documented conversations between you (or any other employee or representative of Winstar Realty) and the above named defendants in any capacity regarding the Subject Real Property;
- Any correspondence between you (or any other employee or representative of Winstar Realty) and the above named defendants in any capacity regarding the Subject Real Property.
- Any other documents (including videos, photographs, etc...) in your possession (or in the possession of Winstar Realty) relating to the Subject Real Property.

DATED this 23 day of February, 2010.

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 24 day of February 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting  
525 Park Avenue  
P.O. Box 51020  
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Dave Chapple  
Win Star Realty  
1655 Elk Creek Drive  
Idaho Falls, ID 83404

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box



WESTON S. DAVIS

L:\wsd\~ Clients\7411.1 Goodspeed\Not of Depo DT (Chapple).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT  
BONNEVILLE COUNTY, IDAHO

~~10 FEB 25 2010 MAR -3 PM 1:15~~

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**AMENDED NOTICE OF  
DEPOSITION DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of PAUL JENKINS, before a Certified Court Reporter in and for the State of Idaho on Wednesday, March 4, 2010, at 3:00 p.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

AMENDED NOTICE OF DEPOSITION DUCES TECUM

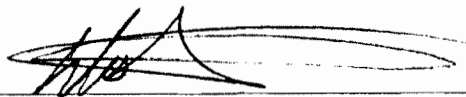
- 1



The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation in his possession including but not limited to:

- Any documents in your possession regarding water levels (including but not limited to water surveys, district water level reports, and any test hole findings or notes) of the real property subdivision now commonly referred to as Woodhaven Creek, in Rigby, Idaho or of any property immediately surrounding said subdivision.
- All versions of the MLS listing in your possession for the Subject Real Property (3709 E. 319 N. Rigby, ID 83442) including dates of any modifications made to the MLS listing;
- Any and all documented conversations between you and the above named defendants in any capacity regarding the Subject Real Property;
- Any correspondence between you and the above named defendants in any capacity regarding the Subject Real Property.
- Any other documents (including videos, photographs, etc...) in your possession relating to the Subject Real Property.

DATED this 23 day of February, 2010.

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 24 day of February 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277


- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting  
525 Park Avenue  
P.O. Box 51020  
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Paul Jenkins  
4429 E. 336 N.  
Rigby, ID 83442

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box



WESTON S. DAVIS

L:\awsd\~ Clients\7411.1 Goodspeed\Not of Depo DT (Jenkins).wpd

301

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

DISTRICT COURT  
BONNEVILLE

10 FEB 25 P 4:16

2010 MAR -3 PM 1:15  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**AMENDED NOTICE OF  
DEPOSITION DUCES TECUM**

PLEASE TAKE NOTICE that Plaintiffs, by and through their attorney of record, Nelson Hall Parry Tucker, P.A., will take the deposition on oral examination of NICHOLAS SHIPPEN, before a Certified Court Reporter in and for the State of Idaho on Wednesday, March 4, 2010, at 4:30 p.m., at the law offices of Robin D. Dunn, 477 Pleasant Country Lane, Rigby, Idaho, at which time and place you are invited to appear and cross-examine.

The deponent shall produce and permit inspection and copying, at the time of the deposition all records, documents or correspondence relating to the subject matter of this litigation and all


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documents requested for production that have not yet been produced.

Additionally, you are requested to bring the following documents:

- Any and all pay information regarding payment to you for the years 2006 and 2007 including, but not limited to, any and all pay stubs for the years 2006 and 2007, any and all W-2 tax forms reflecting your work for the years 2006 and 2007, any and all 1099 tax forms reflecting your work for the years 2006 and 2007, and any and all other tax documents reflecting your income for the years 2006 and 2007.
- Any and all documents in your possession regarding any flooding, water damage clean up, or water repair on the Subject Real Property (3709 E. 319 N. Rigby, ID 83442) including, but not limited to, phone messages, text messages, notes, correspondence, and digital or hard copy photographs.
- Any and all phone records for any of your phone numbers for the months of July 2006 through October of 2006.

DATED this 23 day of February, 2010.

  
WESTON S. DAVIS, ESQ.

303

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 24 day of February, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

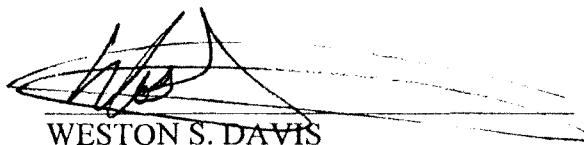
- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

T & T Reporting  
525 Park Avenue  
P.O. Box 51020  
Idaho Falls, ID 83405-1020

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Nick Shippen  
4101 E. 525 N.  
Rigby, ID 83442

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box



WESTON S. DAVIS

L:\awsdl- Clients\7411.1 Goodspeed\Not of Depo DT (Shippen (Nick)).wpd

2/24

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

2010 MAR 15 PM 4:51  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )  
 )  
Plaintiffs, )

Case No. CV 09-015

NOTICE OF SERVICE

vs. )

SHIPPEN CONSTRUCTION, INC., an )  
Idaho corporation, and ROBERT and )  
JORJA SHIPPEN, husband and wife, )  
 )  
Defendants. )

I HEREBY CERTIFY that the following document was served, by postage pre-paid mailing, to plaintiff's attorney, Weston S. Davis, Esq., P.O. Box 51630, Idaho Falls, Idaho 83405 together with a copy of this notice, on the 15<sup>th</sup> day of March, 2010:

- 1) *Defendants' First Discovery Requests to Plaintiffs*



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

# T&T REPORTING

Certified Court Reporting  
P.O. Box 51020  
Idaho Falls, Idaho 83405 - 1020

2010 APR -5 PM 2:05

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

March 16, 2010

Weston S. Davis, Esq.  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
P.O. Box 51630  
Idaho Falls, ID 83402

Re: State of Idaho, County of Jefferson  
GOODSPEED vs. SHIPPEN CONSTRUCTION, INC., et al.  
Case No.: CV-09-015  
Depositions of: Dave Chapple, Paul Jenkins, and Nicholas Shippen  
Taken on: March 4, 2010

Dear Mr. Davis:

Pursuant to Rule 30 (f) (1), I have enclosed the originals and the certified copies of the transcripts for the depositions taken in the above captioned matter. The E-Transcripts have been electronically sent.

Mr. Wilkinson has been sent certified copies of the transcripts for the depositions in the above captioned matter. The E-Transcripts have been electronically sent.

Mr. Chapple and Mr. Jenkins have waived the right to "Read and Sign." A copy of the transcript will be available at our office for Mr. Shippen to "Read and Sign."

If you have any questions, please contact our office.

Sincerely,



John Terrill

Enclosures

cc – Robin D. Dunn, Esq.  
Clerk of the Court  
File



# T&T REPORTING

Certified Court Reporting  
P.O. Box 51020  
Idaho Falls, Idaho 83405 - 1020

2010 APR -5 PM 2:05

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

March 12, 2010

Weston S. Davis, Esq.  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
P.O. Box 51630  
Idaho Falls, ID 83402

Re: State of Idaho, County of Jefferson  
GOODSPEED vs. SHIPPEN CONSTRUCTION INC., et al  
Case No.: CV-09-015  
Deposition of: Justin Fullmer  
Taken: February 25, 2010

Dear Mr. Davis:


Pursuant to Rule 30 (f) (1), I have enclosed the original and a certified copy of the transcript for the deposition taken in the above captioned matter. The E-Transcript has been electronically sent.

Mr. Dunn has been sent a certified copy of the transcript for the deposition taken in the above captioned matter. The transcript has been sent electronically.

The witness has waived the right to "Read and Sign."

If you have any questions, please contact our office.

Sincerely,

  
John Terrill

Enclosures

cc – Robin D. Dunn, Esq.  
Clerk of the Court  
File





# T&T REPORTING

Certified Court Reporting  
P.O. Box 51020  
Idaho Falls, Idaho 83405 - 1020

2010 APR -5 PM 2:05

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

March 5, 2010

Weston S. Davis, Esq.  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
P.O. Box 51630  
Idaho Falls, ID 83402

Re: State of Idaho, County of ~~Jefferson~~  
GOODSPEED vs. SHIPPEN CONSTRUCTION et al  
Case No.: CV-09-015  
Depositions of: Robert and Jorja Shippen  
Taken on: February 24, 2010

Dear Mr. Davis:

Pursuant to Rule 30 (f) (1), I have enclosed the originals and the certified copies of the transcripts for the depositions taken in the above captioned matter. The E-Transcripts have been electronically sent. I am also enclosing a binder with the exhibits in it.

Mr. Dunn has been sent certified copies of the transcripts, along with the Verification sheet for Mr. Shippen to obtain his signature, for the depositions in the above captioned matter. The E-Transcripts have been electronically sent. I have also enclosed a binder with the exhibits in it.

If you have any questions, please contact our office.

Sincerely,



For John Terrill

Enclosures

cc - Robin D. Dunn, Esq.  
Clerk of the Court  
File



WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 APR 16 PM 2:17  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015


**NOTICE OF SERVICE**

I HEREBY CERTIFY that on this 15 day of April 2010, I served upon Defendants,  
and their attorney of record Robin D. Dunn, Esq., ANSWERS TO DEFENDANTS' FIRST  
DISCOVERY REQUESTS by having a true and correct copy of same mailed by U. S. Mail,  
postage prepaid, to:



Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

Dated this 15 day of April 2009.

  
WESTON S. DAVIS, ESQ.

### CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 15 day of April 2009, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery on 4/15/10
- Fax on 4/14/10
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Notice of Service#2.wpd



FILED IN CHAMBERS AT REXBURG,  
MADISON COUNTY IDAHO.

Date: 4-30-10

Time 1:30

Rv Wood

2010 MAY -4 PM 1:16  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**ORDER ON PLAINTIFF'S  
MOTION TO COMPEL AND  
DEFENDANT'S RENEWED  
REQUEST FOR PROTECTIVE  
ORDER**

Plaintiffs and Defendants having appeared through counsel at the time and place set for hearing on Plaintiffs' Motion to Compel and Defendant's Renewed Request for Protective Order, and having presented oral argument on said motion,

IT IS HEREBY ORDERED, as follows:

ORDER ON PLAINTIFF'S MOTION TO COMPEL AND DEFENDANT'S  
RENEWED REQUEST FOR PROTECTIVE ORDER - 1

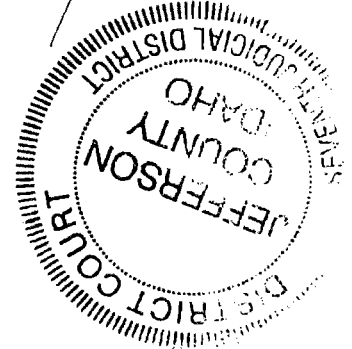
ORDER TO COMPEL: The defendants, Robert and Jorja Shippen, as individuals and as husband and wife, are hereby compelled to produce their personal tax returns to Plaintiff's counsel as requested in Plaintiffs' Request for Production No. 5 within thirty (30) days of the date of this order. The defendants, Shippen Construction, Inc. and Marriott Homes, LLC, are hereby compelled to fully respond to those documents as requested in Plaintiffs' Requests for Production Nos. 5, 7, and 8 within thirty (30) days of the date of this order.

PROTECTIVE ORDER: Until further order of this Court, the Defendants, Robert and Jorja Shippen, as individuals and as husband and wife, are not required to comply with Plaintiffs' Requests for Production Nos. 7 and 8. Upon a sufficient showing by Plaintiffs that they have good cause to further discover those personal matters of Robert and Jorja Shippen, Plaintiffs may subsequently move this Court to reconsider this protective order.

The Court deemed both motions were brought in good faith with a basis in law and therefore no costs or fees were awarded on this motion.

DATED this 22<sup>nd</sup> day of February, 2009

  
HONORABLE GREGORY W. MOELLER



**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on this 30 <sup>April</sup> day of ~~February~~, 2009, a true and correct copy of the foregoing Order was served upon the following by first class mail, postage prepaid, or by hand delivery:

WESTON S. DAVIS, ESQ  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

CLERK OF THE COURT

By: AWOOD  
Deputy Clerk

L:\wsd\~ Clients\7411.1 Goodspeed\Motion to Compel (Order2).wpd

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

2010 JUN 24 PM 4:16  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )

Plaintiffs, )

vs. )

SHIPPEN CONSTRUCTION, INC., an )  
Idaho corporation, and ROBERT and )  
JORJA SHIPPEN, husband and wife, )

Defendants. )

Case No. CV 09-015

NOTICE OF SERVICE

I HEREBY CERTIFY that the following document was served, by postage pre-paid mailing, to plaintiff's attorney, Weston S. Davis, Esq., P.O. Box 51630, Idaho Falls, Idaho 83405 together with a copy of this notice, on the 15<sup>th</sup> day of March, 2010:

- 1) *Defendants' Answers to Requests for Admissions 22-38 and Supplemental Interrogatory*



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



DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB #2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

2010 JUN 24 PM 4:16  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )  
 )  
Plaintiffs, )

Case No. CV 09-015

NOTICE OF TAKING DEPOSITION  
DUCES TECUM

vs. )

SHIPPEN CONSTRUCTION, INC., an )  
Idaho corporation, and ROBERT and )  
JORJA SHIPPEN, husband and wife, )  
 )  
Defendants. )

PLEASE TAKE NOTICE that ROBIN D. DUNN, ESQ., attorney for defendants, SHIPPEN CONTRUCTION, INC., and ROBERT and JORJA SHIPPEN, shall take the deposition duces tecum, upon oral examination, of WILLIAM SHAWN GOODSPEED, pursuant to the Idaho Rule of Civil Procedure, commencing at 9:00 o'clock a.m. on the 30<sup>th</sup> day of July, 2010, at the office of DUNN LAW OFFICES, PLLC, 477 Pleasant Country Lane, Rigby, Idaho, before a qualified court reporter and officer authorized to administer oaths.

Bring with you the following:

1. All exhibits intended for hearings or trial;
2. All payments on the subject property on Lot 7 Block 2, Woodhaven Creek Subdivision; and,





3. Plaintiffs' tax returns for the years 2005 to 2009.

DATED this 24<sup>th</sup> day of June, 2010.

DUNN LAW OFFICES, PLLC



Robin D. Dunn, Esq.  
Attorney for Defendant

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I am a duly licensed attorney for the State of Idaho, resident of and with my office at Rigby, Idaho; that I served a copy of the foregoing NOTICE OF TAKING DEPOSITION by facsimile and mailing, with postage prepaid thereon, a true and correct copy thereof to the following person(s) this 24<sup>th</sup> day of June, 2010.



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

T&T Reporting Service  
P. O. Box 51020  
Idaho Falls, ID 83405-1020

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls, ID 83405



DUNN LAW OFFICES, PLLC  
 Robin D. Dunn, Esq., ISB #2903  
 Amelia A. Sheets, Esq., ISB #5899  
 P.O. Box 277  
 477 Pleasant Country Lane  
 Rigby, ID 83442  
 (208) 745-9202 (t)  
 (208) 745-8160 (f)

2010 JUN 24 PM 4:16  
 DISTRICT COURT  
 JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
 MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and )  
 SHELLEE BETH GOODSPEED, )  
 husband and wife, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 SHIPPEN CONSTRUCTION, INC., an )  
 Idaho corporation, and ROBERT and )  
 JORJA SHIPPEN, husband and wife, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. CV 09-015

NOTICE OF TAKING DEPOSITION  
 DUCES TECUM

PLEASE TAKE NOTICE that ROBIN D. DUNN, ESQ., attorney for defendants, SHIPPEN CONTRUCTION, INC., and ROBERT and JORJA SHIPPEN, shall take the deposition duces tecum, upon oral examination, of SHELLEE BETH GOODSPEED, pursuant to the Idaho Rule of Civil Procedure, commencing at 9:00 o'clock a.m. on the 30<sup>th</sup> day of July, 2010, at the office of DUNN LAW OFFICES, PLLC, 477 Pleasant Country Lane, Rigby, Idaho, before a qualified court reporter and officer authorized to administer oaths.

Bring with you the following:

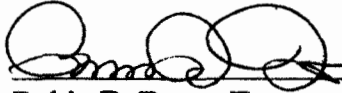
1. All exhibits intended for hearings or trial;
2. All payments on the subject property on Lot 7 Block 2, Woodhaven Creek Subdivision; and,



3. Plaintiffs' tax returns for the years 2005 to 2009.

DATED this 24<sup>th</sup> day of June, 2010.

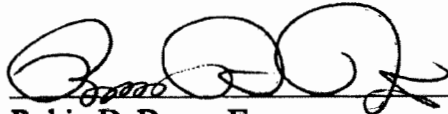
DUNN LAW OFFICES, PLLC



Robin D. Dunn, Esq.  
Attorney for Defendant

**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that I am a duly licensed attorney for the State of Idaho, resident of and with my office at Rigby, Idaho; that I served a copy of the foregoing NOTICE OF TAKING DEPOSITION by facsimile and mailing, with postage prepaid thereon, a true and correct copy thereof to the following person(s) this 24<sup>th</sup> day of June, 2010.



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

T&T Reporting Service  
P. O. Box 51020  
Idaho Falls, ID 83405-1020

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls, ID 83405



AFFIDAVIT OF SERVICE ON AN INDIVIDUAL

2010 JUL -1 PM 1:03  
DISTRICT CLERK  
JEFFERSON COUNTY, IDAHO

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

Case No. 0

I, Sharon Hefon do solemnly swear (or affirm) that the testimony  
(Process Server)

I shall give in the matter at issue shall be the truth, the whole truth, and nothing but the truth

1. I am over the age of 18 years and am not a party to this action.

2. I served a copy of the Subpoena  
(Name of Document(s) Served)

in this action on First American Title on 6-18-10  
(Party Served) (Date of Service)

by delivery to Shaney Swanson office Manager  
(Name of Person Who Received Process)  
at 110 N Clark Highway, Idaho  
(Address of Service)

(Check only one of the following):

personally.

\_\_\_\_\_ said address being the usual dwelling or place of abode of said party. The person who received such process then was over the age of 18 and then resided at such address.

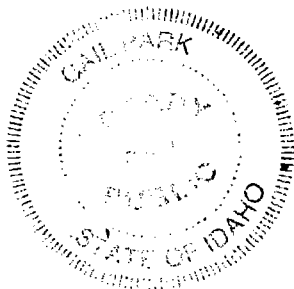
\_\_\_\_\_ who is agent authorized by law or by appointment to receive service of process for said party.

3. Fee charged for this service: \$ 4500

DATED: 6-21-10 Sharon Hefon  
(Signature)

SUBSCRIBED AND SWORN to before me this 21st day of Jun, 10

(SEAL)



Gail Park  
Notary Public for the State of Idaho  
Residing at: Shelley Idaho  
Commission Expires: 10-21-11

2010 JUL -1 PM 1:03  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**EXPERT WITNESS  
DISCLOSURES**

COMES NOW, Plaintiffs, William and Shellee Goodspeed, and hereby submit their  
Expert Witness Disclosures pursuant to the Scheduling Order, dated February 26, 2010, in the  
above referenced case. Plaintiffs intend to call the following expert witnesses:


**Robert Jon Meikle**  
Mountain River Engineering, Inc.  
1020 E. Lincoln Rd.  
Idaho Falls, ID 83401  
208.524.6175

Mr. Meikle will testify regarding the topography of the surrounding land and the depth of excavation on the subject real property.

**Mark Lieble**  
Mark Lieble Appraisal Services, Inc.  
172 N. Woodruff Ave  
Idaho Falls, ID 83406  
208.525.6060

Mr. Leible will testify regarding the current fair market value of the subject real property (with and without the house).

DATED this 30 day of June, 2010.

  
WESTON S. DAVIS, ESQ.

CERTIFICATE OF SERVICE

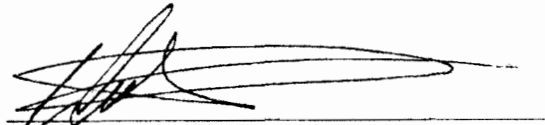
I hereby certify that I served a true copy of the foregoing document upon the following this 30 day of June 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax **208.745.8160**
- E-Mail
- Overnight Mail
- Courthouse Box

Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box



---

WESTON S. DAVIS, ESQ.

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 JUL 13 PM 2:12  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**OBJECTION TO NOTICES OF  
TAKING DEPOSITION DUCES  
TECUM FOR WILLIAM AND  
SHELLEE GOODSPEED**

COMES NOW, Plaintiffs, William and Shellee Goodspeed, and hereby object to the time and place set for the taking of their depositions as set forth in Defendants' June 24, 2010 Notice of Taking Deposition Duces Tecum of Shawn and Shellee Goodspeed.

Defendant's notices of deposition set the Plaintiff's depositions for July 30, 2010.

However, the discovery deadline is July 20, 2010, as presently set forth under the February 26,



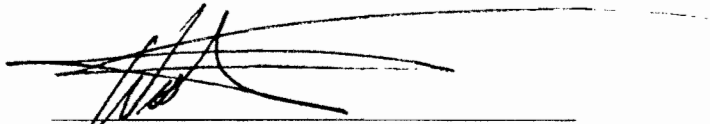
2010 Order Setting Trial and Pre-Trial Conference. Defendants therefore seek to take the deposition of Plaintiffs ten (10) days after the discovery deadline. As a result, Plaintiffs do not intend to appear for the time and place set for deposition under the deadlines as presently constituted since all discovery must be completed before July 20, 2010.

In addition to considering the deadlines set in February of this year, Plaintiffs have made themselves readily available for the taking of their depositions. Attached hereto as Exhibit "A" is evidence of such availability. Despite these several notices, Defendants have failed to notice up Plaintiffs' depositions in a timely manner.

Plaintiffs have made several attempts since receiving the notices to contact Defendants' counsel by telephone to arrange a new date or discuss a continuance. Such efforts to reach Defendants' counsel have been unsuccessful to date.

Without a continuance of the date of trial, Defendants' request for depositions is improper and Plaintiffs do not intend to appear.

DATED this 7 day of July, 2010.

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 7 day of July 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax **208.745.8160**
- E-Mail
- Overnight Mail
- Courthouse Box

Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Deposition (Objection).wpd



NELSON HALL PARRY TUCKER, P.A.

Attorneys & Counselors

490 Memorial Drive  
PO Box 51630  
Idaho Falls, ID 83405-1630  
Phone: (208) 522-3001  
Fax: (208) 523-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.com

Douglas R. Nelson  
Blake G. Hall  
Scott R. Hall  
Steven R. Parry  
Brian T. Tucker  
Wiley R. Dennert  
Sam L. Angell  
Weston S. Davis  
W. Joe Anderson  
(1923-2002)

SENT VIA FACSIMILE TRANSMISSION 208.745.8160

May 5, 2010

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

In response to your request, my clients are available to have their depositions taken on June 2 - June 13, 2010. Please notify me if any of these dates will work for you. I will attempt to obtain additional dates, but it will be difficult given Shawn's travel schedule.

Yours very truly,

Weston S. Davis, Esq.

cc: Clients

L:\wsd\~ Clients\7411.1 Goodspeed\Dunn.Ltr18.wpd



FAX HEADER: ANDERSON NELSON HALL SMITH

TRANSMITTED/STORED : MAY. 28. 2010 4:34PM  
FILE MODE OPTION

ADDRESS

RESULT

PAGE

213 MEMORY TX

G3 :7458160

OK

1/1

REASON FOR ERROR  
-1) HANG UP OR LINE FAIL  
-3) NO ANSWER  
-5) MAIL SIZE OVER

-2) BUSY  
-4) NO FACSIMILE CONNECTION



**NELSON HALL PARRY TUCKER, P.A.**

Attorneys & Counselors

490 Memorial Drive  
PO Box 51650  
Idaho Falls, ID 83405-1650  
Phone: (208) 822-3001  
Fax: (208) 523-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.com

Douglas R. Nelson  
Blake G. Hall  
Scott R. Hall  
Steven R. Parry  
Brian T. Tucker  
Wiley R. Dennert  
Sam L. Angell  
Weston S. Davis  
W. Joe Anderson  
(1923-2002)

**SENT VIA FACSIMILE TRANSMISSION 208.745.8160**

May 5, 2010

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

In response to your request, my clients are available to have their depositions taken on June 2 - June 13, 2010. Please notify me if any of these dates will work for you. I will attempt to obtain additional dates, but it will be difficult given Shawn's travel schedule.

Yours very truly,

Weston S. Davis, Esq.

cc: Clients

L:\wsd\ Clients\7411.1 Goodspeed\Dunn.Ltr18.wpd

NHPT

NELSON HALL PARRY TUCKER, P.A.

Attorneys & Counselors

490 Memorial Drive  
PO Box 51630  
Idaho Falls, ID 83405-1630  
Phone: (208) 522-3001  
Fax: (208) 523-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.com

Douglas R. Nelson  
Blake G. Hall  
Scott R. Hall  
Steven R. Parry  
Brian T. Tucker  
Wiley R. Dennert  
Sam L. Angell  
Weston S. Davis  
W. Joe Anderson  
(1923-2002)

SENT VIA FACSIMILE TRANSMISSION 208.745.8160

June 18, 2010

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

I have reviewed your June 9, 2010 discovery responses with respect to those documents Mr. Shippen agreed to produce in his deposition. After reviewing these documents, I cannot find the following documents:

- 2005 tax returns for Robert and Jorja Shippen (I presume neither Marriott Homes, LLC or Shippen Construction, Inc. filed in 2005 because they were both formed on 12/14/05, the end of the year).
- 2007 Marriott Homes, LLC partnership tax return.
- Documents responsive to the following Requests for Production, which the Court ordered for production on February 22, 2010:

REQUEST FOR PRODUCTION NO. 7: For all assets you presently own or owned during or since January 1, 2007, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.

REQUEST FOR PRODUCTION NO. 8: For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt..

I understand that a QuickBooks accounting was produced for 2006 and 2007 for Marriott Homes and Shippen Construction, and a 2008 accounting was produced for Marriott Homes, but that does not notify me of the loans and obligations incurred by the Shippens during those years. For example please produce the mortgage documents on their residence/vacation properties, vehicle loan documents, credit card documents, other consumer debt obligations, etc...

Also, please identify those assets owned by Shippen Construction, Inc. and Marriott Homes, LLC by producing the titles of that property owned in their names. Please promptly comply with this request. The Shippens have now been aware of this request since May 12, 2009 and were ordered to produce them over four months ago.

- I have not received Mr. Shippen's verification that Marriott Homes, LLC has been a registered contractor with the State of Idaho.
- I have not received the copies of the actual cleared checks from Marriott Homes, LLC for the payment of the work completed on the subject real property. The check numbers and dates issued are identified on the Custom Detail Transaction Report ("Num" column) and should therefore not be difficult to retrieve from the bank. (#'s 3015, 3038, 3041, 3050, 3051, 3052, 3055, 3057, 3059, 3062, 3063, 3066, 3068, 3069, 3073, 3079, 3080, 3083, 3085, 3101, 3108, 3110, 3111, 3113). Simply generating a report does not prove that Marriott Homes, LLC actually made the payments.
- I have not received the construction insurance policy information for Marriott Homes, LLC. You only sent the policy information for Shippen Construction, Inc.
- Finally, I find it difficult to believe that Mr. Shippen could obtain a loan on the subject real property without any documentation from the bank. If he borrowed from an existing line of credit, I presume the paperwork would be minimal, but it would still exist. A bank will not issue a second mortgage on his property without paperwork. Please have Mr. Shippen identify the nature of loan and produce evidence of this loan.

If these aforementioned documents do not exist, please have Mr. Shippen affirmatively state as such. I would appreciate your efforts to produce these documents shortly.

In an effort to verify which records do not exist, I have enclosed a few requests for admission to resolve the issue. I have also enclosed additional discovery requests for the defendants' timely response. I have made the requests as precise and possible to ensure a timely response.

As for the available dates of depositions, Shawn's employer must be given two weeks notice for

Shawn to return for a deposition on a Friday. Therefore, the parties must be deposed on a Friday with two weeks advance notice. I am not available the morning of July 9, 2010 or the morning of July 16, 2010. We had tried to give you advance notice available dates in a good faith effort to make my clients available. I again remind you that we intend to amend our complaint to add a claim for emotional distress. I have not filed to amend the complaint yet because I am awaiting the defendants' complete discovery responses to discover if additional amendments to the pleadings are necessary. However, I want to remind you of our intent to amend the complaint for emotional distress so that you are free to more fully discover these issues during the time of the depositions of my clients.

Please notify me if you have any questions.

Yours very truly,

A handwritten signature in black ink, appearing to read 'W.S. Davis', with a long horizontal flourish extending to the right.

Weston S. Davis, Esq.

Enclosures

cc: Clients

L:\wsd\~ Clients\7411.1 Goodspeed\Dunn.Ltr19.wpd

\* \* \* COMMUNICATION RESULT REPORT ( JUN. 18. 2010 1:36PM ) \* \* \*

FAX HEADER: NELSON\_PARRY

TRANSMITTED/STORED : JUN. 18. 2010 1:33PM  
FILE MODE OPTION

ADDRESS

RESULT

PAGE

453 MEMORY TX

G3 : 7458160

OK

15/15

REASON FOR ERROR  
R-1) HANG UP OR LINE FAIL  
R-2) NO ANSWER  
R-3) MAIL SIZE OVERE-2) BUSY  
E-4) NO FACSIMILE CONNECTION**NELSON HALL PARRY TUCKER, P.A.**

Attorneys &amp; Counselors

480 Memorial Drive  
PO Box 51630  
Idaho Falls, ID 83405-1630  
Phone: (208) 622-9001  
Fax: (208) 622-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.comDouglas R. Nelson  
Blake G. Hall  
Scott R. Hall  
Steven R. Parry  
Brian T. Tucker  
Wiley R. Dennert  
Sam L. Angell  
Weston S. Davis  
W. Joe Anderson  
(1923-2003)**SENT VIA FACSIMILE TRANSMISSION 208.745.8160**

June 18, 2010

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

I have reviewed your June 9, 2010 discovery responses with respect to those documents Mr. Shippen agreed to produce in his deposition. After reviewing these documents, I cannot find the following documents:

- 2005 tax returns for Robert and Jorja Shippen (I presume neither Marriott Homes, LLC or Shippen Construction, Inc. filed in 2005 because they were both formed on 12/14/05, the end of the year).
- 2007 Marriott Homes, LLC partnership tax return.
- Documents responsive to the following Requests for Production, which the Court ordered for production on February 22, 2010:

**REQUEST FOR PRODUCTION NO. 7:** For all assets you presently own or owned during or since January 1, 2007, produce all titles, registrations, bills of sale or other evidence of ownership and all receipts, invoices, or other documentation.

**REQUEST FOR PRODUCTION NO. 8:** For all outstanding financial obligations in the past four (4) years produce the current billing statements or other evidence of the debt and current balance of the debt.



WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 JUL 14 PM 1:58  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**MOTION TO CONTINUE TRIAL**

COME NOW Plaintiffs through counsel of record and move the Court to continue the above captioned trial currently scheduled to commence on September 28 - October 2, 2010 at 9:00 a.m., at the Jefferson County Courthouse, and reschedule the trial to a date and time convenient to the Court and counsel. This motion is made and based on the grounds and for the reasons listed below:

1. Plaintiffs have requested several documents from Defendants that have not yet

been fully produced. The production of these materials are vital to Plaintiffs' causes of action and must be produced prior to the end of the discovery deadline. Defendants have notified Plaintiffs on several occasions that these documents are forthcoming and are being produced to Plaintiffs in response to Plaintiffs' I.R.C.P. 37(b) meet and confer letters. Based upon Defendants' production of materials, albeit in pieces, Plaintiffs have not filed a Motion to Compel, as Defendants have assured the Plaintiffs that documentation continues to be forthcoming.

2. Plaintiffs desire to amend their complaint in response to those documents produced by Defendants, including a potential request for punitive damages. Because the documents have not been produced, Plaintiffs are not presently able to fully request an amendment to their pleadings.
3. Defendant's counsel has expressed his intent to disqualify Judge St. Clair, who is the senior judge recently appointed to preside at trial set for September 28 - October 1, 2010. Where a trial will likely be continued due to a disqualification of a judge, a delay to the proceedings is likely inevitable.

For the foregoing reasons, Plaintiffs would be prejudiced if trial for this matter is not continued. Therefore, Plaintiffs request that the trial for this matter be continued.

Plaintiffs give notice of their intent to present oral argument on this motion.

Dated this 13 day of July, 2010

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**


I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of July 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax *208.745.8160 7/12/10*
- E-Mail
- Overnight Mail
- Courthouse Box

Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Continue (Motion).wpd

2010 JUL 14 PM 1:58  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254  
Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

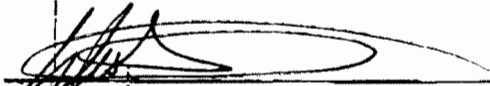

STIPULATION TO CONTINUE  
TRIAL

COMES NOW, Plaintiffs and Defendants, by and through counsel of record, and  
hereby stipulate to the trial of this matter, currently scheduled for September 28 - October 1,  
2010 at 9:00 a.m., be continued at a later date and time to be set forth by this Court.

7/13/10  
DATE

7-12-10  
DATE

L:\wsd\ Clients\7411.1 Goodspeed\Continue (Stipulation).wpd

  
WESTON S. DAVIS, ESQ.  
  
ROBIN D. DUNN, ESQ.

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
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Fax (208) 523-7254

2010 JUL 19 PM 2:35  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
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Plaintiffs,

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SHIPPEN CONSTRUCTION, INC., an Idaho  
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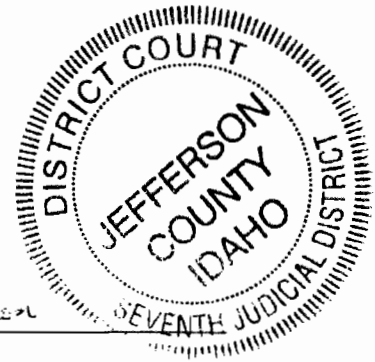
Defendants.

Case No.: CV-09-015

**ORDER CONTINUING TRIAL  
SETTING**

Based upon the parties's stipulation upon the record of this Court, IT IS HEREBY  
ORDERED that the trial set in the above referenced case for September 28 - October 1,  
2010 at 9:00 a.m., be continued until the 11<sup>th</sup> day of January, 2011 at  
10:00 p.m. at the Jefferson County Courthouse, Rigby, Idaho.

DATED this 16<sup>th</sup> day of July, 2010.



Trigun S. Anderson  
JUDGE

### CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 16<sup>th</sup> day of July, 2010, a true and correct copy of the foregoing Order was served upon the following by first class mail, postage prepaid, or by hand delivery:

WESTON S. DAVIS, ESQ  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
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- E-Mail
- Overnight Mail
- Courthouse Box

CLERK OF THE COURT

By: [Signature]  
Deputy Clerk

L:\wsd\~ Clients\7411.1 Goodspeed\Continue (Order).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 JUL 30 PM 1:33  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
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Plaintiffs,

vs.

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husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**SECOND MOTION TO AMEND  
COMPLAINT**

COME NOW Plaintiffs, William and Shellee Goodspeed, through counsel of record and  
move the Court to grant leave to amend their Complaint. A copy of the proposed amended  
Complaint is attached hereto as Exhibit "A".

After conducting initial discovery and inquiring into numerous documents of public  
record, it has been determined that:

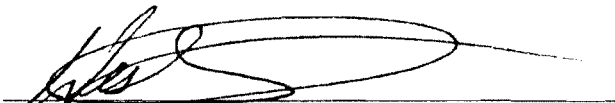
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- A. Robert and Jorja Shippen at all times were the record owners of the subject real property.
- B. That Plaintiff Shellee Beth Goodspeed has suffered emotional distress as a result of Defendants' actions.
- C. That Plaintiffs should be granted a damage award to reflect the purchase price of the Property and Plaintiff Shellee Beth Goodspeed should be granted a damage award for her claim for emotional distress.
- D. Upon further discovery, Plaintiff has been able to more clearly identify the issues for trial, refine the language generally discussed between the parties, identify those defendants who should maintain liability for said causes of action, and cluster together related contract and tort related causes of action. Plaintiff's complaint is therefore more clear regarding issues of liability.

WHEREFORE, Plaintiffs ask the Court to grant leave to amend the Complaint to more accurately define Plaintiffs' position and prayer for relief. Such a request does not prejudice Defendants as the trial in this matter has been continued and Defendants have been put on advance notice of this request prior to the time set for Plaintiff's depositions.

Plaintiffs request oral argument on this motion.

DATED this 29 day of July, 2010.

  
WESTON S. DAVIS, ESQ.

3/31



**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 29 day of July 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

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WESTON S. DAVIS, ESQ.

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7/29

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

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husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**SECOND AMENDED  
COMPLAINT**

COMES NOW Plaintiffs, as and for a claim for relief, plead and allege as follows:

1. That Plaintiffs, WILLIAM SHAWN and SHELLEE BETH GOODSPEED, are bona fide residents of the State of Idaho who reside in Jefferson County.
2. That Defendants, ROBERT and JORJA SHIPPEN, are a bona fide residents of the State of Idaho who reside in Jefferson County.
3. That Defendant, MARRIOTT HOMES, LLC, is an Idaho limited liability company



in good standing with the State of Idaho.

4. That Defendant, SHIPPEN CONSTRUCTION, INC., is an Idaho corporation in good standing with the State of Idaho.

5. That the subject property of this litigation, namely, 3709 East 319 North, Rigby, Idaho, is located in Jefferson County.

6. That both jurisdiction and venue are proper in this action.

7. That pursuant to Idaho Code § 6-2503, Plaintiff's served written notice of the ensuing claim on the construction professional, Shippen Construction, Inc., and Robert Shippen, by mailing a copy to Robert Shippen by certified mail on the Idaho corporation's registered agent. Attached hereto as Exhibit "A" is a copy of such attempt to comply with the Notice and Opportunity to Repair Act, together with a acknowledgment of receipt.

8. Plaintiffs received a letter from Dunn Law Offices, PLLC on November 19, 2008, which volunteers to accept service of a complaint against Defendants, lists defenses Defendants will raise if a complaint is filed (none of which notify Plaintiffs that they have allegedly attempted to sue the wrong entity), and fails to assert any willingness to repair or remedy the construction defect. Plaintiffs therefore have brought this action against Defendants in compliance with the Act.

9. That, upon information and belief, Marriott Homes, LLC is a closely held limited liability company wherein Robert and Jorja Shippen are the only members or constitute a majority of the members in the company. Additionally, Robert Shippen is the registered agent for Marriott Homes, LLC, and Marriot Homes, LLC shares the same physical address as Shippen Construction, Inc. Therefore, Marriott Homes, LCC was also on notice of the ensuing claim prior to its filing.

**COUNT ONE: BREACH OF EXPRESS WARRANTY**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

10. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 9 and further plead and allege as follows:

11. On June 17, 2007, Plaintiffs and Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) entered a real estate contract for the purchase and sale of a residence and real property commonly referred to as 319 N. 3709 E., Rigby, ID 83442 (hereinafter "the Property"). This purchase and sale agreement was amended on June 18, 2007 and then again on July 2, 2007.

12. The Purchase and Sale Contract expressly extended a standard builder's warranty on the Property for a minimum of one year, without further definition of that warranty.

13. Additionally, on August 8, 2006, Defendants, through its/their authorized agents, listed the Property for sale on the Multiple Listing Service (hereinafter "MLS") in Idaho.

14. That MLS listing specifically stated twice that the Property had never had sub water flooding issues.

15. That MLS listing also stated twice that the Builder would install a leaching system to give the buyer peace of mind against flooding.

16. The MLS listing served as an express warranty, warranting that the Property had never flooded and would not flood.

17. After the Plaintiffs' July 2, 2007 purchase of the Property, they learned from a neighbor that the Property's basement had flooded in August of 2006, contrary to the

representation in the MLS listing.

18. Despite the installment of a leaching system, the Property flooded again in August and September of 2007 (within the one year warranty period) and continues to flood frequently from sub-water today.

19. The express warranties were therefore breached to the extent the Defendants misrepresented that the house had not flooded and would not flood.

20. These express warranties were further breached when the house flooded in August and September of 2007 and thereafter, subsequent to the time of the sale.

21. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT TWO: BREACH OF THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING  
(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen  
d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

22. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 21 and further plead and allege as follows:

23. Implied in every contract is a covenant of good faith and fair dealing.

24. Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) represented to Plaintiffs that the Property Plaintiffs were about to purchase had not flooded, when in fact it had flooded.

25. Defendants further represented that a leaching system was installed to prevent snow run off and to give peace of mind against sub-water flooding.

26. Defendants breached its/their implied covenant of good faith and fair dealing by

misrepresenting the condition of and flooding history of the Property.

27. As a result of this breach, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT THREE: BREACH OF IMPLIED WARRANTY**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

28. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 27 and further plead and allege as follows:

29. Implied in every newly constructed residence lies an implied warranty of habitability extended by the builder. Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) therefore extended a implied warranty of habitability to Plaintiffs.

30. That implied warranty was breached when the residence flooded in August and September of 2007 and each time it has flooded thereafter.

31. Such continual flooding results in the uninhabitability of the entire residence.

32. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT FOUR: ALTER EGO / VEIL PIERCING**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

33. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 32 and 44 - 69 and further plead and allege as follows:

34. That Defendants Robert and/or Jorja Shippen maintain such a unity of interest in

defendants Shippen Construction, Inc. and in Marriott Homes, LLC that the individuality of such entities has ceased.

35. That the fiction of a separate existence between said Robert and/or Jorja Shippen and said defendant entities would result in an inequitable result, sanction a fraud, and/or promote injustice to the extent Robert and/or Jorja Shippen intend to rely on corporate or limited liability status solely as a shield against liability of the breaches and fraud heretofore mentioned.

36. Based on information and belief, the value of the Defendant entities has been filtered or siphoned to Robert and/or Jorja Shippen for personal use, rendering the viability of any judgment as enforceable only against Robert and/or Jorja Shippen.

37. That the damages and claims for liability sought forth against Marriott Homes, LLC and/or Shippen Construction, Inc., should be imposed upon Robert and/or Jorja Shippen under the theory of alter ego or corporate veil piercing.

**COUNT FIVE: UNJUST ENRICHMENT**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen;**  
**Robert and Jorja Shippen d/b/a Shippen Construction)**

38. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 37 and 44 -69 and further plead and allege as follows:

39. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) were unjustly enriched by obtaining the agreed upon purchase price of the residence of \$272,000, in exchange for a house that representedly had no history of flooding and upon guarantees that the house would not flood.

40. Plaintiffs detrimentally relied on Defendants' representations regarding the Property.

41. Because Defendants misrepresented the status of the house, Defendants obtained a higher purchase price for the house than they would have received had Defendants made the flooding disclosure. This resulted in unjust enrichment to the Defendants.

42. But for Defendants' misrepresentation, Plaintiffs would not have even purchased the Property.

43. That as a proximate result of Defendants' misrepresentations, Defendants were unjustly enriched in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT SIX: FRAUDULENT  
CONCEALMENT OF KNOWN DEFECT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

44. Plaintiffs hereby incorporate and re-allege paragraphs 1- 43 and further plead and allege as follows:

45. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly concealed the following facts from Plaintiffs:

- a) Defendants concealed the fact that the property had flooded prior to the sale by representing that it had not flooded.
- b) Defendants knowingly installed a sump pump under the false stated premise that it was intended for winter snow run off.
- c) Defendants fraudulently concealed the nature of the flooding by stating that flooding in 2007 was the result of a one time canal rupture.

46. The condition of the Property and these statements were material to the purchase of the Property and continued habitation of the Property.



47. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

48. Defendants intended for the Plaintiffs to rely on these statements.

49. Plaintiffs did in fact rely on these statements.

50. Plaintiffs' reliance was reasonable.

51. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT SEVEN: FRAUDULENT  
MISREPRESENTATION OF KNOWN FACT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

52. Plaintiffs hereby incorporates and re-allege paragraphs 1- 51 and further plead and allege as follows:

53. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly misrepresented the following facts to Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump was installed for winter snow runoff, when it was actually installed to remove sub- water.
- c) Defendants misrepresented that subsequent flooding in August of 2007 was the result of a nearby canal rupture.

54. These statements were material to the purchase of the Property.

55. At the time these statements were made, Defendants knew the statements were

false and Plaintiffs did not.

56. Defendants intended for the Plaintiffs to rely on these statements.

57. Plaintiffs did in fact rely on these statements.

58. Plaintiffs' reliance was reasonable.

59. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT EIGHT: FRAUD IN THE INDUCEMENT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

60. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 59 and further plead and allege as follows:

61. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly misrepresented the following facts from Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump/leaching system was installed for winter snow runoff, when it was actually installed to remove sub- water.

62. The condition of the Property and these statements were material to the purchase of the Property.

63. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

64. Defendants intended for the Plaintiffs to rely on these statements to induce Plaintiffs to purchase the property.

65. Plaintiffs did in fact rely on these statements.

66. Plaintiffs' reliance was reasonable.

67. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT NINE: NEGLIGENT AND INTENTIONAL INFLICTION  
OF EMOTIONAL DISTRESS**

**(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

68. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 67 and further plead and allege as follows:

69. As a direct and proximate result of the Defendants' fraudulent, intentional, and reckless conduct described above, Plaintiff, Shellee Beth Goodspeed, has suffered and will continue to suffer great emotional distress, pain, and suffering in an amount which cannot be presently ascertained, but which is in excess of the minimum jurisdictional amounts of the District Court.

**ATTORNEY'S FEES**

Plaintiffs have been required to retain an attorney to prosecute this action and are entitled to costs and attorney fees pursuant to Idaho Code §12-120 and §12-121 and I.R.C.P. 54. Further, Plaintiffs are entitled to attorneys fees pursuant to the parties' purchase and sale agreement of the Property. In the event this matter is taken by default, Plaintiffs are entitled to a reasonable attorney fee of \$2,500.00, and such additional amount in the event this matter is contested.

WHEREFORE, Plaintiff prays for judgment as follows:

A. That the contract for the sale of the Property be rescinded, with all title and obligations on the Property being reinstated to Defendants, relieving Plaintiffs of any future obligations on the Property;

B. That Plaintiffs be awarded damages equal to the purchase price of the Property;

C. That Plaintiffs additionally be awarded money damages in an amount to reflect their improvements on the property in an amount in excess of \$10,000 to be proven at trial;

D. That Plaintiffs additionally be awarded money damages in an amount to reflect Plaintiff's efforts to mitigate the damage to the Property as a result of the flooding;

E. That, in the event the contract is not rescinded, Plaintiffs receive damages in excess of \$10,000.00 in an amount to be proven at trial;

F. That in the event the contract is not rescinded, Defendants be ordered to repair and restore the Property to the extent reasonably possible to ensure continuing and uninterrupted habitability thereof;

G. For damages to Plaintiff, Shelley Goodspeed, for her claim for emotional distress in excess of \$10,000.00 in an amount to be proven at trial;

H. For attorneys fees in the amount of \$2,500.00 in the event this matter is taken by Default, and such additional amounts that may be incurred in the event this matter is contested; and

G. For such other relief as the Court deems just and proper.

DATED this \_\_\_\_ day of August, 2010.

---

WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this \_\_\_\_\_ day of August 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

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Bonneville County Courthouse  
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WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Complaint (Amended2).wpd

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Fax (208) 523-7254  
Attorneys for Plaintiff

2010 JUL 30 PM 1:33  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

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husband and wife, ROBERT and JORJA  
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Defendants.

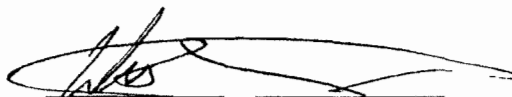
Case No.: CV-09-015

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on the 30th day of August, 2010, at 4:00 p.m.. of said day. or  
as soon thereafter as counsel can be heard in the above court, in Rigby, Jefferson County, Idaho,  
Plaintiffs will call up for hearing Plaintiffs' SECOND MOTION TO AMEND COMPLAINT before  
the Honorable Gregory Anderson, District Judge.

DATED this 29 day of ~~August~~, 2010.

*July*



WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 21 day of ~~August~~ <sup>July</sup>, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax **208.745.8160**
- E-Mail
- Overnight Mail
- Courthouse Box

Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Amend Complaint (NoH2).wpd

2010 AUG -3 PM 3:49

JEFFERSON COUNTY, IDAHO DISTRICT COURT

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

WILLIAM SHAWN GOODSPEED, ETAL, )
Plaintiffs, )
vs. )
SHIPPEN CONSTRUCTION, ETAL, )
Defendant. )

Case No. CV-2009-15
AMENDED
ORDER SETTING TRIAL AND
PRETRIAL CONFERENCE

Pursuant to Rule 16 of the Idaho Rules of Civil Procedure, the following pre-trial schedule shall govern all proceedings in this case:

I. IT IS HEREBY ORDERED<sup>1</sup>:

- 1. A pre-trial conference shall be held at 1:30 P.M., on December 13, 2010.
2. A Jury trial shall commence at 1:30 P.M., on January 11, 2010.
3. No later than ninety (90) days before the date set for trial, counsel shall disclose the names, addresses, and telephone numbers of expert witnesses that may be called to testify at trial.
4. All discovery shall be completed seventy (70) days prior to trial.
5. All Motions for Summary Judgment must be filed sixty (60) days prior to trial in conformance with Rule 56(a), I.R.C.P.
6. All Motions for Summary Judgment must be heard at least twenty-eight (28) days prior to trial.

II. IT IS FURTHER ORDERED that each attorney shall, no later than fourteen (14) days

<sup>1</sup>The disclosure cut-off date, discovery completion date and motion dates are for the benefit of the Court in managing this case. They will be enforced at the Court's discretion. The disclosure date should not be relied on by the parties for discovery purposes. The disclosure, discovery and motion dates will not be modified by the Court without a hearing and assurance from the parties that the modification will not necessitate continuance of the trial.

<sup>2</sup> Discovery requests must be served so that timely responses will be due prior to the discovery cutoff date.



before trial:

1. Submit a list of names to the court of persons who may be called to testify.
2. Submit a descriptive list of all exhibits proposed to be offered into evidence to the court indicating which exhibits counsel have agreed will be received in evidence without objection and those to which objections will be made, including the basis upon which each objection will be made.
3. Submit a brief to the court citing legal authorities upon which the party relies as to each issue of law to be litigated.
4. If this is a jury trial, counsel shall submit proposed jury instructions to all parties to the action and the court. All requested instructions submitted to the court shall be in duplicate form as set out in Idaho Rule of Civil Procedure 51(a)(1).
5. Submit that counsel have in good faith tried to settle this action.
6. State whether liability is disputed.

**III. IT IS FURTHER ORDERED** that each attorney shall no later than seven (7) days before trial:

1. Submit any objections to the jury instructions requested by an opponent specifying the instruction and the grounds for the objection.
2. Deposit with the clerk of the court all exhibits to be introduced, except those for impeachment. The clerk shall mark plaintiff's exhibits in numerical sequence as requested by plaintiff and shall mark all defendant's exhibits in alphabetical sequence as requested by defendant.
3. A duplicate set of all exhibits to be introduced, except those for impeachment, shall be placed in binders, indexed, and deposited with the clerk of the court.

**IV. IT IS FURTHER ORDERED** that:

1. Any exhibits or witnesses discovered after the last required disclosure shall immediately be disclosed to the court and opposing counsel by filing and service stating the date upon which the same was discovered.
2. No exhibits shall be admitted into evidence at trial other than those disclosed, listed and submitted to the clerk of the court in accordance with this order, except when

offered for impeachment purposes or unless they were discovered after the last required disclosure.

- 3. This order shall control the course of this action unless modified for good cause shown to prevent manifest injustice.
- 4. The court may impose appropriate sanctions for violation of this order.

DATED this 3<sup>rd</sup> day of August, 2010.

*Gregory S. Anderson*  
GREGORY S. ANDERSON  
District Judge



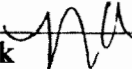
CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of ~~February~~ August, 2010, I did send a true and correct copy of the aforementioned Order upon the parties listed below by mailing, with the correct postage thereon, or by causing the same to be hand delivered.

Robin Dunn, Esq.  
Courthouse Box  
Rigby, Idaho

Weston Davis, Esq.  
P O Box 51630  
Idaho Falls, ID 83405

CHRISTINE BOULTER  
Clerk of the District Court  
Jefferson County, Idaho

Deputy Clerk 

257

# T&T REPORTING

Depositions - Videography - Video Conferencing  
P.O. Box 51020  
Idaho Falls, Idaho 83405 - 1020

2010 AUG -4 PM 1:31  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

August 3, 2010

Robin D. Dunn, Esq.  
DUNN LAW OFFICES  
P.O. Box 277  
Rigby, ID 83442-0276

Re: State of Idaho, County of Jefferson  
GOODSPEED vs. SHIPPEN CONSTRUCTION, INC.  
Case No.: CV-09-015  
Depositions of: Shellee Beth Goodspeed and William Shawn Goodspeed  
Taken on: July 30, 2010

Dear Mr. Dunn:

Pursuant to Rule 30 (f) (1), I have enclosed the originals and the certified copies of the transcripts for the depositions taken in the above captioned matter. The E-Transcripts have been electronically sent.

Mr. Davis has been sent certified copies of the transcripts for the depositions taken in the above captioned matter. The E-Transcripts have been electronically sent.

The witnesses waived their right to "Read and Sign."

If you have any questions, please contact our office.

Sincerely,



John Terrill

Enclosures

cc - Weston S. Davis, Esq.  
Clerk of the Court  
File

*W.S. Davis*

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

2010 AUG -4 PM 4:50  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

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

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )

Plaintiffs, )

vs. )

SHIPPEN CONSTRUCTION, INC., )  
et. al. )

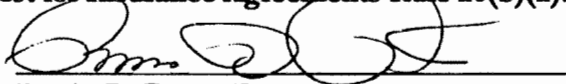
Defendants. )

Case No. CV 09-015

NOTICE OF SERVICE

I HEREBY CERTIFY that the following discovery document was served by  
facsimile, to plaintiff's attorney, Weston S. Davis, Esq., P.O. Box 51630, Idaho Falls, Idaho  
83405 together with a copy of this notice, on the 4<sup>th</sup> day of August, 2010:

- 1) Interrogatories 1-15; Requests for Production of Documents 1-6; Requests for Admissions 1-10; and Request for Insurance Agreements Rule 26(b)(2).



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

2/2/1

DUNN LAW OFFICES, PLLC  
 Robin D. Dunn, Esq., ISB # 2903  
 Amelia A. Sheets, Esq., ISB #5899  
 P.O. Box 277  
 477 Pleasant Country Lane  
 Rigby, Idaho 83442  
 (208) 745-9202 (t)  
 (208) 745-8160 (f)

2010 AUG -4 PM 4:50  
 DISTRICT COURT  
 JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
 MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and )  
 SHELLEE BETH GOODSPEED, )  
 husband and wife, )  
 )  
 Plaintiffs, )

Case No. CV 09-015  
 NOTICE OF SERVICE

vs. )

SHIPPEN CONSTRUCTION, INC., an )  
 Idaho corporation, and ROBERT and )  
 JORJA SHIPPEN, husband and wife, )  
 )  
 Defendants. )

I HEREBY CERTIFY that the following document was served, by facsimile, to  
 plaintiff's attorney, Weston S. Davis, Esq., P.O. Box 51630, Idaho Falls, Idaho 83405  
 together with a copy of this notice, on the 4<sup>th</sup> day of August, 2010:

- 1) *Defendants' Answers to Second Set of Interrogatories 21-32 and Requests for Production of Documents 18-21*



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

2010 AUG -4 PM 4:51  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)  
rdunn@dunnlawoffices.com

Attorneys for Defendants

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

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )  
 )  
Plaintiffs, )  
 )  
vs. )  
 )  
SHIPPEN CONSTRUCTION, INC., et )  
al. )  
 )  
Defendants. )  
\_\_\_\_\_ )

Case No. CV 09-015  
Exhibit List and Expert  
Disclosure

COMES NOW, defendants in the above-entitled matter, and give notice to the court  
and counsel of the following:

EXPERTS

1. Bill Dupree, Esq.: He would testify to the formation of the various entities named  
as defendants.

201

2. **Lyle Simmons, CPA: Rexburg, Idaho. He would testify to any accounting matters relevant to the pleadings herein.**

3. **Ray Keating, Health Dept.: Rigby, Idaho. He would testify to any septic, sewer and water issues regarding the pleadings herein.**

4. **Roger Warner, Hydrologist: Idaho Falls, Idaho. He would testify to all hydrology issues on the subject property relative to the pleadings herein.**

5. **All experts identified by the plaintiffs.**

#### **EXHIBITS**

1. **All exhibits listed by the plaintiffs.**
2. **All exhibits identified in depositions (Thus far 1-23).**
3. **Illustrative aids on liability and elements.**

**DATED this 4<sup>th</sup> day of August, 2010.**



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



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 4<sup>th</sup> day of August, 2009, a true and correct copy of the foregoing was delivered to the following person(s) by:

- Hand Delivery  
 Postage-prepaid mail  
 Facsimile Transmission



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

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls ID, 83405  
523-7254

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 AUG 10 PM 1:41  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF SERVICE**

I HEREBY CERTIFY that on this 6 day of August 2010, I served upon Defendants,  
and their attorney of record Robin D. Dunn, Esq., THIRD SET OF INTERROGATORIES,  
REQUESTS FOR ADMISSION, AND REQUESTS FOR PRODUCTION OF DOCUMENTS  
TO DEFENDANTS by having a true and correct copy of same mailed by U. S. Mail, postage  
prepaid, to:

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

Dated this 6 day of August 2010.



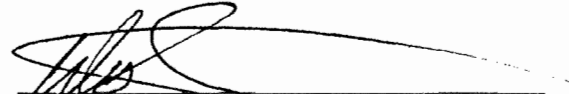
WESTON S. DAVIS, ESQ.

### CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 6 day of August 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Notice of Service#4.wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

2010 AUG 16 PM 1:01  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**THIRD MOTION TO COMPEL**

COME NOW Plaintiffs, through counsel of record, and move the Court to compel Defendants to answer Plaintiffs' Interrogatories and Requests for Production of Documents to Defendants. More specifically, Plaintiffs move this Court to compel Defendants' responses as follows:

1. Defendants have failed to identify the net profit received on the Subject Real Property as requested:

INTERROGATORY NO. 27: Please identify the amount of the net profit to Robert and Jorja Shippen for the sale of the subject real property. ("Net profit" shall be calculated as the purchase price of the subject real property less the costs of the sale paid by the Shippens, the cost of the land, the cost of subcontractor labor and materials, the costs of all material provided by Robert and Jorja Shippen, the property taxes paid on the subject real property, the amount paid to resolve any outstanding loans on the subject real property, and all interest accrued on the subject real property.)

ANSWER TO INTERROGATORY NO. 27: Income tax for year profit was \$26,537.00 for three (3) homes.

Defendants answered by lumping the net sum of all houses sold in the year 2007.

Thus, Plaintiffs do not have the information specifically requested regarding the subject real property, as conceivably the number produced could represent any number of profit scenarios for any of the three homes.

2. In May of 2009, Plaintiffs made the following request upon Defendants:

REQUEST FOR PRODUCTION NO. 5: Produce all of your personal and business tax returns in which you have any interest for the past four (4) years and also produce your current pay stub(s) from all sources showing your year to date income.

On February 22, 2010, this Court ordered Defendant produce these taxes by March 24, 2010. All of the ordered taxes have now been produced with the exception of Robert and Jorja Shippen's taxes for 2005.


3. In Interrogatory No. 4 and Request for Production No. 9, Plaintiffs requested a detailed summary of Defendants' experts' opinions/conclusions and a copy of their reports. Defendant has disclosed a number of experts but has not disclosed any details regarding the experts' conclusions or opinions. Plaintiffs cannot properly depose Defendants' experts if Defendants do not

disclose the requested information.

Pursuant to Idaho Rule of Civil Procedure 37(a)(2), Plaintiff's counsel hereby certifies that it again made a good faith attempt to confer with the opposing counsel of record regarding the objections to discovery in this matter and regarding their motion for protective order. Such efforts are evidenced by Exhibit "A" hereto attached. Plaintiffs have not received a response to said correspondence and therefore have necessarily filed this motion.

Additional attorney fees and court costs have been and continue to be incurred by Plaintiff as a result of Defendant's failure to comply with discovery requests. Further, in spite of this court's February 22, 2010 order, Defendants (Robert and Jorja Shippen) have still failed to produce their 2005 tax returns. Plaintiff therefore requests an award of attorney fees on this motion.

DATED this 13 day of August, 2010.

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

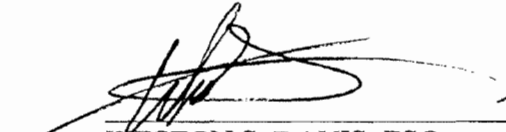
I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of August, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
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- Fax **208.745.8160**
- E-Mail
- Overnight Mail
- Courthouse Box

Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Motion to Compel3.wpd



# NELSON HALL PARRY TUCKER, P.A.

Attorneys & Counselors

490 Memorial Drive  
PO Box 51630  
Idaho Falls, ID 83405-1630  
Phone: (208) 522-3001  
Fax: (208) 523-7254  
e-mail: nhpt@nhptlaw.net  
www.nhptlaw.com

Douglas R. Nelson  
Blake G. Hall  
Scott R. Hall  
Steven R. Parry  
Brian T. Tucker  
Wiley R. Dennert  
Sam L. Angell  
Weston S. Davis  
Nathan R. Starnes  
W. Joe Anderson  
(1923-2002)

**SENT VIA FACSIMILE TRANSMISSION 208.745.8160**

August 6, 2010

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

RE: *Goodspeed v. Shippen*

Dear Mr. Dunn:

This letter stands to attempt to confer with you in good faith regarding your answers to our discovery requests pursuant to I.R.C.P. 37(a)(2). More specifically, with respect to Interrogatory No. 27, the Shippens have jumbled the information requested on the subject real property with three other properties. I already reviewed the number provided in their taxes, which is why I took the time to specifically spell out the what I meant by "net profit" with regard to the subject real property only. The Shippens' response is therefore non-responsive to the question.

Also, despite several requests, I still do not have the Shippen's 2005 taxes. Instead, all I have is a statement saying "believed to exist." Please produce these taxes with your supplemental response to Interrogatory No. 27.

I am in receipt of your Expert Disclosure list. I have not, however, received your expert's reports or a summary of your expert's conclusions or reports to the extent they exist. I requested this information in Interrogatory No. 4 and Request for Production No. 9. Please supplement these responses so I may determine if I must depose your experts prior to trial.

Additionally, with regard to Request for Production No. 20, you have represented that Marriott Homes did not have an insurance policy on the subject real property. I would expect in a response where there is mention the subject real property itself was insured, that I would receive





some information about who the insurance company was or who paid for the insurance. I am enclosing a new request for production that specifically makes that request.

Please provide your supplemental response to the aforementioned issues on or before August 11, 2010 or I will file a motion to compel this information. As I mentioned at the deposition, I have already sent five meet and confer letters to your office regarding outstanding documents. This is the sixth. I have been more than patient in awaiting full responses to our discovery requests and do not appreciate the piecemeal manner in which the Shippens have been producing evidence.

If you have any questions, please contact me.

Yours very truly,



Weston S. Davis, Esq.

Enclosures

L:\wsd\~ Clients\7411.1 Goodspeed\Dunn.Ltr23.wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254  
Attorneys for Plaintiff

AUG 16 PM 1:01  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on the 30<sup>th</sup> day of August, 2010, at 4:00 p.m., of said day, or as soon thereafter as counsel can be heard in the above court, in Rigby, Jefferson County, Idaho, Plaintiffs will call up for hearing Plaintiffs' Third Motion to Compel and Motion to Amend Complaint before the Honorable Gregory Anderson, District Judge.

DATED this 13 day of August, 2010.

  
WESTON S. DAVIS, ESQ.

377

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 13 day of August, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax **208.745.8160**
- E-Mail
- Overnight Mail
- Courthouse Box

Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

DUNN LAW OFFICES, PLLC  
 Robin D. Dunn, Esq., ISB #2903  
 Amelia A. Sheets, Esq., ISB #5899  
 P.O. Box 277  
 477 Pleasant Country Lane  
 Rigby, ID 83442  
 (208) 745-9202 (t)  
 (208) 745-8160 (f)

2010 AUG 23 AM 9:15  
 DISTRICT COURT  
 JEFFERSON COUNTY, IDAHO

rdunn@dunnlawoffices.com

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

WILLIAM SHAWN GOODSPEED and )  
 SHELEE BETH GOODSPEED, )  
 husband and wife, )  
 )  
 Plaintiffs, )

Case No. CV 09-015

DEFENDANTS' RESPONSE  
 TO THIRD MOTION TO  
 COMPEL; RESPONSE TO MOTION  
 TO AMEND COMPLAINT

vs. )

SHIPPEN CONSTRUCTION, INC., an )  
 Idaho corporation, ROBERT and )  
 JORJA SHIPPEN, husband and wife, )  
 ROBERT and JORJA SHIPPEN, d/b/a )  
 SHIPPEN CONSTRUCTION, ROBERT )  
 SHIPPEN, AND INDIVIDUAL, and )  
 MARRIOT HOMES, LLC )  
 )  
 Defendants. )

COMES NOW, defendants, by and through the undersigned attorney of record, and responds to that document entitled "*Third Motion to Compel.*" By answering this document, the Court should be aware when the term "third" is used, it sounds like the defendants have not complied with prior discovery. That is not the case. The first Motion to Compel dealt with discovery responses on Requests for Admission when there was a DEFENDANTS' RESPONSE TO THIRD MOTION TO COMPEL AND REQUEST TO AMEND COMPLAINT

change between various district judges in Jefferson County, Idaho. The defendants had not responded and responded accordingly. The second Motion to Compel dealt with protective orders of the defendants along with motions of plaintiff. The Court resolved those issues indicating that both parties had some responsibility in obtaining the appropriate discovery matters and granted some of the protective requests. Thus, the Court should be aware that the term "Third Motion to Compel" is not, in reality, indicative of the discovery between the parties herein. Both parties have attempted to work, one with the other, although not always agreeing on matters, have been cooperative.

The defendants would further respond that the plaintiffs have conducted numerous depositions of all defendants, of the prior property and developer of the real estate and have explored the individual lives of the defendants along with the corporate and LLC entities.

In fact, the defendants indicated that Marriott Homes, LLC was the proper party and made it known to the plaintiffs for proper party designation. It has also been alleged by the defendants that the individual parties as husband and wife are not responsible nor is the subcontractor, Shippen Construction, Inc. However, those issues will be left for jury responsibility.

In responding to the Third Motion to Compel, the defendants along with providing numerous depositions have supplied on an informal basis numerous responses to letters and 362 pages of documentation in this particular matter. Suffice it to say, for the nature of the case, more discovery has been completed in this particular case, for the type of allegations in the Complaint, than the undersigned has ever performed on any single case in the past 29 years. It is alleged and believed that the plaintiffs have caused needless discovery, although they are entitled to request as much information as possible, to the detriment of cost

DEFENDANTS' RESPONSE TO THIRD MOTION TO COMPEL AND REQUEST TO AMEND COMPLAINT

efficiency. That is not a criticism of the plaintiffs or counsel, but merely a fact of this particular matter. If the Court will review much of the discovery, it is focused on issues unrelated to water damage and/or breach of contract, but rather focused on individual lifestyles, assets and liability of all defendants, and other matters which are alleged to believe unrelated to proper discovery. The Court, in prior discovery has been very liberal, and has given some guidance and restrictions on some of the discovery; but, it seems unusual from the undersigned's perspective that much of the documentation and/or discovery requests have been unrelated to actual use for trial purposes.

In any event, there are three (3) inquiries before the court that have been repeatedly answered by defendants to plaintiffs without success.

#### HOME PROFIT

1. The plaintiffs' requested the profitability on the home which is the subject of this dispute. The defendants cannot provide such information as three (3) homes were built in such year and their accountant lumped all income and expenses on each of the three homes. Specifically, the defendants have answered that profit for the three (3) homes was \$26,537.00. The defendants are unable to give an exact number, for the subject home, with specificity for the purpose of this interrogatory and have in good faith answered as fully and completely as possible. The defendants do not know of any other method wherein they can give an exact accounting of the profitability on the home. Once again, this answer could possibility be related to damages, but certainly has nothing to do with liability in this particular case. The defendants know of no other way to more specifically respond to the discovery and have indicated to counsel in written form and verbally.

#### 2005 TAX RETURN

DEFENDANTS' RESPONSE TO THIRD MOTION TO COMPEL AND REQUEST TO AMEND COMPLAINT

2. The second request was for Robert and Jorja Shippen's individual tax return for the year 2005. Two (2) inquiries were made of their accountant in Rexburg to obtain the 2005 individual tax return. The defendants do not have their individual 2005 tax return and the accountant could not locate the same. The only possible way to obtain a 2005 income tax return would be through the Internal Revenue Service. The defendants cannot provide that which they do not have. Once again, the defendants have made best efforts to provide each and every document requested by plaintiffs herein. This Request cannot be answered more completely.

#### EXPERT REPORTS OF DEFENDANTS

The plaintiffs have asked for a detailed summary of defendants' expert opinion/conclusion and a copy of their reports. From the very commencement of this litigation, verbal notice was given along with written notice that the defendants intended to call Roger Warner, a Hydrologist, in this particular matter. The reason this request cannot be properly responded to without supplementation in the future is because of the lack of response, up to this point, of the plaintiffs' experts. Obviously, if there is nothing to rebut in the form of expert testimony, then Mr. Warner's testimony would be more limited. In all fairness to the plaintiffs, they have named their experts and still have some remaining time on their discovery before the defendants are entitled to such answers.

Mr. Warner, has been requested to prepare a written report and has not done so at this point in time. The defendants will supplement when that report is completed, but no such report exists and Mr. Warner has indicated he would try to prepare a report on water issues in this area of Jefferson County where the subject home is located. Without knowing the nature of the testimony of plaintiffs' experts, the defendants cannot properly respond at

DEFENDANTS' RESPONSE TO THIRD MOTION TO COMPEL AND REQUEST TO AMEND COMPLAINT

this point in time. The general nature of Mr. Warner's report has always been known to the plaintiffs which deals with water tables, sub-water, drainage and the like in the area of the subject home.

#### ATTORNEY FEES

Thus, it is alleged and believed that the plaintiffs have taken this matter out of context and are requesting attorney fees without proper basis. The defendants can do nothing more to answer these three (3) requests than that which has been set forth above. As such, it is alleged and believed that the defendants should be entitled to attorneys fees in this particular matter as they have in good faith answered each and every request of the plaintiffs even though disagreeing that many of the requests had any bearing on the litigation. It has been the practice of the undersigned to try to answer, to the best of his ability with his clients, even though disagreement exists over whether the same would lead to admissible evidence at trial. The undersigned has done everything possible on behalf of his clients to satisfy the demands of the plaintiffs. This response and the continuing requests for non-existent material and or current unavailability of material of the plaintiffs have lead to additional costs and fees for both parties and particularly the defendants herein. As always, some discovery may need to be supplemented but it is impossible to do so at the present time.

The time for discovery has not yet expired and supplementation is always a possibility. At this point in time, the defendants cannot respond any further than has already been indicated.

#### MOTION TO AMEND COMPLAINT

This is the second time the plaintiffs have attempted to amend their complaint.

DEFENDANTS' RESPONSE TO THIRD MOTION TO COMPEL AND REQUEST TO AMEND COMPLAINT



**Statute of Limitations.**

**Intentional or emotional infliction of emotional distress: Count Nine.**

**A tort claiming a personal injury must be commenced within two (2) years. (I.C. 5-219). The contract for sale in this case was dated June 17, 2007. (Amended Complaint par. 11 and Proposed amended complaint par. 11). The proposed second amended complaint date on the sale was June 17, 2007. The attempt to file the second amended complaint was dated July 29, 2010. In either event on time, the alleged tort is not timely and within the 2 year time period for statute of limitations.**

**A tort cannot be alleged from an allegation on breach of contract.**

**> [2]> [3] However, a claim for damages for emotional distress and mental anguish may be asserted in connection with the independent torts of negligent or intentional infliction of emotional distress. > Hatfield v. Max Rouse & Sons Northwest, 100 Idaho 840, 606 P.2d 944 (1980). In order for the tort of negligent infliction of emotional distress to lie, the actions of the defendant must have caused some physical injury to the plaintiff which accompanies the emotional distress. Id. In this case the Gills have not alleged they suffered any physical injury. Thus their claim cannot be considered as one for recovery of damages for the negligent infliction of emotional distress.**

**Gill v. Brown ,695 P.2d 1276, 107 Idaho 1137, , (Idaho App. 1985)**

**----- Excerpt from page 695 P.2d 1277.**

**The plaintiffs have alleged no physical injuries or damages to the plaintiff.**

**Furthermore, in deposition, Mr. Goodspeed indicates that the defendants did nothing to intentionally inflict emotional distress.**

**> [6] Based upon all of the above, we hold that in Idaho, when damages are sought for breach of a contractual relationship, there can be no recovery for emotional distress suffered by a plaintiff.**

**Brown v. Fritz, 699 P.2d 1371, 108 Idaho 357, (Idaho 1985)**

**----- Excerpt from page 699 P.2d 1377.**

**DEFENDANTS' RESPONSE TO THIRD MOTION TO COMPEL AND REQUEST TO AMEND COMPLAINT**

The tort of emotional distress is not available in contract cases.

Attorney fees are request pursuant to I.C. 12-123 on this attempted amendment to the complaint as no facts or law support this position.

**12-123. Sanctions for frivolous conduct in a civil case**

(1) As used in this section:

(a) "Conduct" means filing a civil action, asserting a claim, defense, or other position in connection with a civil action, or taking any other action in connection with a civil action.

(b) "Frivolous conduct" means conduct of a party to a civil action or of his counsel of record that satisfies either of the following:

(i) It obviously serves merely to harass or maliciously injure another party to the civil action;

(ii) It is not supported in fact or warranted under existing law and cannot be supported by a good faith argument for an extension, modification, or reversal of existing law.

ID ST Sec. 12-123, Sanctions for frivolous conduct in a civil case

----- Excerpt from page 6369.

**CONCLUSION**

The tree discovery issues have been addressed above.

The amendment to the complaint is without basis in law or in fact and should be denied.

DATED this 20<sup>th</sup> day of August, 2010.




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

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of August, 2010, a true and correct copy of the foregoing was delivered to the following persons(s) by:

- Hand Delivery  
 Postage-prepaid mail  
 Facsimile Transmission



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

Weston S. Davis, Esq.  
P.O. Box 51630  
Idaho Falls, ID 83405

Courtesy Copy To: Honorable Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital  
Idaho Falls, ID 83402

DUNN LAW OFFICES, PLLC  
 Robin D. Dunn, Esq., ISB #2903  
 Amelia A. Sheets, Esq., ISB #5899  
 P.O. Box 277  
 477 Pleasant Country Lane  
 Rigby, ID 83442  
 (208) 745-9202 (t)  
 (208) 745-8160 (f)

2010 AUG 23 AM 9:16  
 DISTRICT COURT  
 JEFFERSON COUNTY, IDAHO

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE  
 STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
 MAGISTRATE'S DIVISION

WILLIAM SHAWN GOODSPEED and )  
 SHELEE BETH GOODSPEED, )  
 husband and wife, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 SHIPPEN CONSTRUCTION, INC., )  
 et. al. )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

Case No. CV 09-015


AFFIDAVIT OF ROBIN D.  
 DUNN RULE RE: DISCOVERY

STATE OF IDAHO )  
 )ss  
 County of Jefferson )

ROBIN D. DUNN, being first duly sworn upon oath, states as follows:

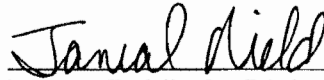
1. That he is the attorney for the named defendants in the above-captioned matter.
5. That various discovery requests were obtained in depositions that the undersigned attended. Attached as Exhibit A is a portion of the Deposition of Shellee Goodspeed which is incorporated herein by reference.

DATED this 20<sup>th</sup> day of August, 2010



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

SUBSCRIBED AND SWORN to before me this 20<sup>th</sup> day of August, 2010.



Notary Public for Idaho  
Residing at: *Lewisville*  
Commission: *11/3/11*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 20<sup>th</sup> day of August, 2010, a true and correct copy of the foregoing was delivered to the following persons(s) by:

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 Postage-prepaid mail  
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Robin D. Dunn, Esq.  
DUNN LAW OFFICES, PLLC

Weston S. Davis, Esq.  
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Idaho Falls, ID 83405

Courtesy Copy To: Honorable Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital  
Idaho Falls, ID 83402

DEPOSITION OF SHELLEE BETH GOODSPEED - 07/30/2010

SHEET 7 PAGE 25

PAGE 27

1 purpose of this litigation?  
 2 A. I think there's maybe something  
 3 missing. There should be a clean bill of health  
 4 before this date.  
 5 MR. DAVIS: Just flip through them page by  
 6 page and make sure they all carried through on the  
 7 fax machine. Go back to page 1.  
 8 Q. BY MR. DUNN: Page 1 is your cover  
 9 letter so you should be beginning with page 2.  
 10 MR. DAVIS: Go to the next page.  
 11 Q. BY MR. DUNN: So would those be the  
 12 pages you're relying upon for purposes of this  
 13 litigation?  
 14 A. Oh, I'm sorry. Here it is. Yes.  
 15 Q. In those documents it indicated you  
 16 might have some thyroid issues. Do you have any  
 17 thyroid issues?  
 18 A. Yes.  
 19 Q. And do you take any medications for  
 20 those thyroid issues?  
 21 A. Yes.  
 22 Q. And who is your treating physician?  
 23 A. I go to Community Care.  
 24 Q. And who at the -- just in general,  
 25 whoever shows up at Community Care?

1 A. Yes.  
 2 Q. And you haven't socialized with them?  
 3 A. No.  
 4 Q. You haven't done any extracurricular  
 5 activities with any of the defendants?  
 6 A. No.  
 7 Q. So all of your dealings would be  
 8 related to the purchase of this particular home  
 9 along with the documents associated therewith?  
 10 A. Would you state that one more time.  
 11 Q. So all of your dealings with the  
 12 defendants would be related to the contracts and  
 13 the associated documents relative to this home  
 14 sale?  
 15 A. Yes. I've ran into them a few times  
 16 at church, but, yes.  
 17 Q. You've also listed some experts in  
 18 this particular matter. Do you know who those  
 19 experts are?  
 20 A. Yes.  
 21 Q. And who are they?  
 22 A. Well, I know what they do. Yeah.  
 23 Q. Do you know their name?  
 24 A. My memory is not great on this whole  
 25 thing. I'm blocking the whole thing out. No, I

PAGE 26

PAGE 28

1 A. Uh-huh.  
 2 Q. Do you know of anything that the  
 3 defendants have done to intentionally cause you any  
 4 health issues?  
 5 A. They haven't hurt me intentionally.  
 6 It's the whole nondisclosure of my home and what to  
 7 do with the home that has caused me issues.  
 8 Q. So there's been no intentional acts by  
 9 any of the defendants towards you that you know of?  
 10 A. No.  
 11 Q. Have there been any negligent act  
 12 towards you by the defendants which you believe  
 13 have caused health issues?  
 14 A. Yes. Neglected to tell me about  
 15 flooding of the home.  
 16 Q. And that would be related to the  
 17 contract of purchase and sale of this agreement,  
 18 correct?  
 19 A. There was no disclosure in that  
 20 purchase and sale agreement.  
 21 Q. But my question is it would be related  
 22 to this transaction?  
 23 A. The sale of the home, yes.  
 24 Q. Which was contractual in nature,  
 25 correct?

1 don't remember their name offhand.  
 2 Q. Okay. So what type of things do these  
 3 experts do that you've hired?  
 4 A. A land surveyor.  
 5 Q. Okay.  
 6 A. And the other one would be a home  
 7 appraiser.  
 8 Q. Okay. So do you have any other  
 9 experts that you know of who would testify in this  
 10 matter?  
 11 A. No.  
 12 Q. Now, what is the purpose of a land  
 13 surveyor in conjunction with this lawsuit, if you  
 14 know?  
 15 MR. DAVIS: Again, I'll just object, as it  
 16 would call for a legal conclusion. You can answer  
 17 if you know.  
 18 THE WITNESS: They were getting the  
 19 elevation of how deep the home was dug.  
 20 Q. BY MR. DUNN: And the purpose of an  
 21 appraiser for this home is related to this  
 22 litigation in what respect?  
 23 A. The value of our home.  
 24 Q. Do you know of any other experts at  
 25 this point that you have retained to assist you in

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
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Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
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**FILED IN CHAMBERS**  
*at Idaho Falls*  
*Bonneville County*  
*Honorable Gregory S. Anderson*  
Date AUGUST 25 2010  
Time \_\_\_\_\_  
Deputy Clerk [Signature]

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, and ROBERT and JORJA  
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**AFFIDAVIT IN SUPPORT OF  
REPLY TO DEFENDANT'S  
RESPONSE TO THIRD MOTION  
TO COMPEL; RESPONSE TO  
MOTION TO AMEND  
COMPLAINT**

STATE OF IDAHO            )  
                                      : ss.  
County of Bonneville        )

WESTON S. DAVIS, ESQ., being first duly sworn upon oath, deposes and states as follows:


1. I am the attorney for Plaintiffs in the above entitled matter.
2. Attached hereto as Exhibit "A" is a true and correct copy of an excerpt from the deposition transcript of Robert Shippen.
3. Attached hereto as Exhibit "B" is a true and correct copy of and excerpt from the

AFFIDAVIT IN SUPPORT OF REPLY TO DEFENDANT'S RESPONSE TO THIRD MOTION TO COMPEL;  
RESPONSE TO MOTION TO AMEND COMPLAINT - 1

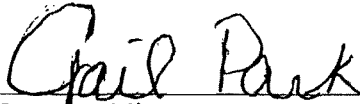
75

deposition transcript of Shellee Goodspeed.

DATED this 25 day of August, 2010

  
WESTON S. DAVIS, ESQ.

SUBSCRIBED AND SWORN to before me this 25 day of August, 2010.

  
Notary Public  
Residing at: Shelley, Idaho  
Commission expires: 10-21-11

**CERTIFICATE OF SERVICE**


I hereby certify that I served a true copy of the foregoing document upon the following this \_\_\_ day of August, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Honorable Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Reply (Compel and Amend - Affidavit).wpd



1 working on the property with a Marriott LLC check?

2 A Yes.

3 Q Did you pay any contractors with a  
4 personal check?

5 A No.

6 (Exhibit 1 marked.)

7 BY MR. DAVIS:

8 Q Mr. Shippen, I'm handing you what's been  
9 marked as Exhibit Number 1. Do you recognize this  
10 document?

11 A Yes.

12 Q Can you tell me a little bit about how  
13 this was formed.

14 Is this a QuickBooks ledger?

15 A Yes.

16 Q When was this generated?

17 A When you asked for it.

18 Q Okay. So if you look at the top left  
19 corner of Exhibit A, excuse me, Exhibit 1, you see it  
20 looks like it says January 22nd, 2010?

21 A Yes.

22 Q Is that about the time you would have  
23 generated it?

24 A Unless the date was wrong in my  
25 computer.



1 Q Okay. Then it says under the top three  
2 lines there, Marriott Homes, LLC custom transaction  
3 detail report, October 2005 through March 2007. Do  
4 you see that?

5 A Yes.

6 Q When did you start using QuickBooks for  
7 Marriott Homes, LLC?

8 A I don't know the exact date.

9 Q Okay. Were you using it at the time  
10 that you were building the house?

11 A Yes.

12 Q Okay. When did you input information  
13 into QuickBooks?

14 A As far as --

15 Q As far as this house is concerned, when  
16 did you input this information? Was it done --

17 A When I received the bill, I put the  
18 information in and print the check or the invoice,  
19 whatever you want to call it.

20 Q Usually we would consider that in the  
21 regular course of business.

22 Is that what you're saying, as you  
23 receive these invoices, they're going to show up in  
24 this accounting?

25 A Yes.

1 Q Okay. Who is in charge of keeping these  
2 records and inputting the documents?

3 A I am.

4 Q Does Shippen Construction, Incorporated  
5 have a separate similar accounting system?

6 A Yes.

7 Q Is this something that's just generated  
8 at the click of a button, Exhibit 1?

9 Is this hard to do or is this just a  
10 custom printout then, of data that's already in the  
11 computer?

12 A Yes.

13 Q Okay. All right.

14 On the -- so this wouldn't be hard to  
15 produce a similar report for Shippen Construction,  
16 Incorporated; is that correct?

17 A Correct.

18 Q Okay. Would you be willing to produce  
19 the same report -- I think I've already requested  
20 these but just for clarity under the deposition here,  
21 then, are you willing to produce this same report for  
22 2006 and 2007 for Shippen Construction?

23 A If it's required.

24 Q If you look at this statement here,  
25 starting from left to right, there are about seven or

1 A. Yes.

2 Q. I presume where Mr. Dunn asked you if  
3 Mr. Exhibit No. \*-23 reflected your complete  
4 medical records for this claim, you have other past  
5 medical records prior to what's been produced;  
6 would that be a fair statement?

7 A. That would be a fair statement.

8 Q. Do you continue to have -- I just have  
9 a few more questions. Then we'll be done.

10 A. Okay.

11 Q. Do you still suffer these  
12 manifestations?

13 A. Yes.

14 Q. So do you foresee whether or not  
15 you'll be attending the doctor's office again for  
16 these types of symptoms?

17 A. Yeah. I'm scheduled to go in next  
18 week.

19 Q. So there may still be future medical  
20 records coming?

21 A. Yes.

22 Q. Then Mr. Dunn also asked you if the  
23 Shippens intentionally caused this emotional  
24 distress. Do you believe that the Shippens knew  
25 about the flooding prior to selling the home?



1 A. Yes.

2 MR. DAVIS: Okay. That's all I have.

3 MR. DUNN: No questions.

4 (The deposition concluded at

5 9:53 a.m.)

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Attorneys for Plaintiff

*FILED IN CHAMBERS*  
*at Idaho Falls*  
*Bonneville County*  
*Honorable Gregory S. Anderson*  
Date AUGUST 25, 2010  
Time \_\_\_\_\_  
Deputy Clerk [Signature]

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**REPLY TO DEFENDANT'S  
RESPONSE TO THIRD MOTION  
TO COMPEL; RESPONSE TO  
MOTION TO AMEND  
COMPLAINT**

COME NOW, Plaintiffs, and reply to Defendants' Response to Third Motion to Compel;  
Response to Motion to Amend Complaint.

**MOTION TO COMPEL**

Plaintiffs labeled their motion to compel third motion to compel because this is the third  
motion to compel they have filed in this case. Plaintiffs specifically ask in this motion for three

REPLY TO DEFENDANT'S RESPONSE TO THIRD MOTION TO COMPEL;  
RESPONSE TO MOTION TO AMEND COMPLAINT - 1

2010

things, which Defendants have now taken the time to answer for fully in their response to the Motion to Compel. However, several issues remain outstanding:

1. Home Profit. Prior to filing their response to this motion, Defendants have never stated they have made an attempt or verified that they have made an attempt to separate the proceeds of the subject real property from the sales of other houses. The entirety of their response was disclosed in Plaintiff's Third Motion to Compel. Plaintiffs now claim in their response that they are unable to do so. However, Plaintiffs have also produced detailed Quickbook ledgers for invoices on the subject real property without disclosing the amount of the invoices paid or the amount of any deposits made on the subject real property. Yet they claim in their response to this motion that they do not know how their accountant came to a net profit. Considering the Quickbooks accounting produced, this information would certainly be within their realm of knowledge unless an accountant did all of the bookkeeping on the construction and sale of the subject real property. Mr. Shippen stated in his deposition that he did the accounting. *See Affidavit of Weston S. Davis, Exhibit "A"*.

Based on the discovery produced, Defendants cannot ascertain the profit on the subject real property, or whether the subject real property even sold for a profit without more information from Defendants. Where Quickbooks information is available to Defendants, Defendants at least owe a duty to Plaintiffs to state that after reviewing their Quickbooks ledger and all other materials available to them they are unable to determine the net profit. Where defendants only sold three homes that year, if the Defendants recall an estimated profit on the home, Defendants should disclose that estimated number as an estimate.

The amount of profit on the subject real property is relevant for purposes of

liability as it relates to perpetuating fraud and a breach of good faith and fair dealing to salvage a loss or near loss on the property.

2. 2005 Tax Return. Again, prior to filing this motion, Defendants have never affirmatively stated that they cannot find their 2005 tax returns nor have they indicated their efforts to find the same. The I.R.S. has tax records available for seven years and Plaintiffs have not identified their efforts to get in contact with the I.R.S. to obtain these records. Signing a release, while an alternative to producing the taxes, will inevitably cause a delay in obtaining the records and will likely take as much of the Defendants' time as simply requesting a copy of their 2005 taxes from the I.R.S.. Furthermore, this Court ordered Defendants to produce these taxes on February 22, 2010 and to produce them by March 24, 2010—over five (5) months ago. Defendants still have not produced these taxes, despite the Court order. Sanctions are therefore appropriate to include attorneys fees and a striking the responsive pleadings of Defendants.

3. Expert Reports of Defendants. If Defendants anticipate hiring expert witnesses short of Plaintiffs hiring similar expert witnesses, Defendants must give Plaintiffs adequate time to review Defendant's expert reports prior to the time of trial so Plaintiffs may depose Defendants' expert witnesses. If Defendants are only disclosing expert names under the wait and see approach to discover whether Plaintiffs intend to call expert witnesses, Defendants should state that the experts have been contacted and are anticipated to testify on Defendants' behalf in rebuttal to Plaintiff's expert witnesses to the extent such are called. Such does not appear to be the case where in the Plaintiff's July 30, 2010 deposition, Defendants attempted to discover expert witnesses regarding damages and Plaintiffs disclosed that they did not presently intend to call any expert witnesses other than those already disclosed. One week later, on August 4, 2010,



Defendants filed an Expert Witness Disclosure disclosing a hydrologist, when Plaintiffs have not named a hydrologist. Notably, both parties have listed Ray Keating as a potential expert witness.<sup>1</sup> In any event, the Defendants obviously appear to have identified a purpose of their expert witnesses. To the extent no such reports exist at this time, Defendants should affirmatively state as such but still specify in detail what they expect their expert witnesses to testify to in the event that expert witnesses is called.

For example, in the Expert Disclosure filed by Defendants on August 4, 2010, Defendants list Ray Keating as an expert that “would testify to any septic, sewer and water issues regarding the pleadings.” Defendants list Roger Warner as a hydrologist who “would testify to all hydrology issues on the subject property relative to the pleadings herein.” Neither of these disclosures reference conclusions or information that would help Plaintiffs identify the Defendants’ experts’ opinions as they relate to this case. Expert opinions should not be introduced at the time of trial to ambush Plaintiffs. Accordingly, I.R.C.P. 26(b)(4) permits as follows:

Discovery of facts known and opinions held by experts expected to testify, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial, may be obtained by interrogatory and/or deposition, including:

(A) (i) A complete statement of all opinions to be expressed and the basis and reasons therefore; the data or other information considered by the witness in forming the opinions; any exhibits to be used as a summary of or support for the opinions; any

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<sup>1</sup> Plaintiffs named Ray Keating as a potential expert on April 14, 2010. Plaintiffs’ counsel spoke with Mr. Keating personally on February 10, 2010. Defendants’ first disclosure of Mr. Keating was on August 4, 2010. Defendants stated in their Answers to Interrogatory No. 4, on July 15, 2009, and Supplemental Answers on January 22, 2010, that no expert witnesses were contemplated but a hydrologist familiar with the area would be anticipated. Plaintiffs later discovered the hydrologist was Roger Warner. The first disclosure of Ray Keating as an expert for Defendants was made on August 4, 2010 in their Expert Witness Disclosures. A motion to exclude Mr. Keating’s testimony on behalf of the Defendants is anticipated in light of Plaintiff’s conversation and discussion with Ray Keating in anticipation of hiring Mr. Keating as an expert witness.

qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years; the compensation to be paid for the testimony; and a listing of any other cases in which the witness has testified as an expert at trial or by deposition within the preceding four years.

Plaintiffs cannot depose Defendants' experts the day after the discovery deadline. For that reason, Defendants must disclose more information regarding their witnesses or notify Plaintiffs that they do not intend to call expert witnesses, reserving the right to supplement as the case progresses.

Plaintiffs are not aware of Roger Warner's reports, specific or general. To the extent Plaintiffs have reviewed any water table surveys, they certainly are not aware that such reports were generated by Roger Warner. Defendants have not produced any water table information for Plaintiffs' review.

4. Attorneys fees. It should be noted by this Court that Defendant's Response to this Third Motion to Compel contains some information not previously disclosed to Plaintiffs regarding the status of the 2005 taxes, the ability to separate profits, and information regarding the intentions of the parties. Such information could have been shared in response to Plaintiff's meet and confer letter but was not. As a result, Plaintiffs were necessarily required to file this motion. Even in light of Defendants' response to this motion, information is still missing. Therefore, an award of fees on behalf of Plaintiffs is appropriate.

## MOTION TO AMEND COMPLAINT

### A. Statute of Limitations

As a preliminary matter, Plaintiffs recognize that a claim for emotional distress is contingent upon a valid tort claim, and not by contract.

However, Plaintiffs have listed several tort claims which were included in the original and first amended complaints: (1) Fraudulent Concealment of a Known Defect, (2) Fraudulent Misrepresentation of a Known Fact, and (3) Fraud in the Inducement.

Therefore, the question on the motion to amend is whether the statute of limitations has run. The statute of limitations begins running for purposes of emotional distress “at the time the tortious conduct ceases” pursuant to the continuing tort doctrine. *Johnson v. McPhee*, 147 Idaho 455, 463, 210 P.3d 563, 571 (Ct. App 2009) citing *Curtis v. Firth*, 123 Idaho 598, 603, 850 P.2d 749, 754 (1993). “Each day creates a separate cause of action.” *Id.*

Regardless, I.C.R.P. 15(c) allows for an amendment of the pleadings to relate back to the date of the original pleading: “Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading.” In this case, in both the original and first Amended Complaint, Defendants were put on notice of Plaintiff’s tortious conduct. The claim for emotional distress arises from that same tortious conduct.

Idaho case law has further interpreted this rule.

If a party is put on notice by the original complaint, an amendment to cure a defective pleading should not be prohibited unless the noticed party would be unduly prejudiced in maintaining its defense. One of the purposes of Rule 15 is to allow amendments to expand or cure defective pleadings. [6 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE §§ 1497-1498 at 489-516 (1971)]. It

is well settled that, in the interest of justice, courts should favor liberal grants of leave to amend. *Wickstrom v. North Idaho College*, 111 Idaho 450, 725 P.2d 155 (1986); *Markstaller v. Markstaller*, 80 Idaho 129, 326 P.2d 994 (1958); C. LEWIS, IDAHO PRE-TRIAL CIVIL PROCEDURE, V-1 to -2 (1982)

*Herrera v. Conner*, 111 Idaho 1012, 1017, 729 P.2d 1075, 1080 (Ct. App. 1986).

This case is different from those where a plaintiff was precluded from introducing a new cause of action in tort based on new factual allegations, where previously only principles of contract had been alleged. See *Black Canyon Raquetball Club, Inc. v. Idaho First Nat'l Bank*, 119 Idaho 171, 804 P.2d 900 (1991).

In this case, a number of torts were disclosed in the original and first amended complaint and the claim for emotional distress arises from that same fraudulent conduct of Defendants. Had Plaintiffs only alleged a breach of contract cause of action and more than two years later attempted to amend the pleadings to add a claim of tort and emotional distress based on new factual allegations, a different discussion would be necessary.

Furthermore, Defendants would not be prejudiced by the amendment. In this case, Plaintiffs also informed Defendants well in advance of the deposition of their intent to amend for emotional distress. Defendants' counsel even deposed Plaintiff, Shelle Goodspeed, regarding her medical condition as it relates to emotional distress. Therefore Defendants have not be prejudiced by the proposed amendment for intentional and negligent infliction of emotional distress.

**B. Intentional Infliction of Emotional Distress**

Finally, Defendants claim Plaintiff should be precluded from alleging an claim for intentional infliction of emotional distress, by attaching a portion of Plaintiff, Shellee

Goodspeed's deposition transcript. However, further review of other portions of Shellee's deposition reveals that she did not fully understand Mr. Dunn's question as it related a legal conclusion:

[EXAMINATION BY MR. DAVIS . . .]

- 22. Q. Then Mr. Dunn also asked you if the
- 23. Shippens intentionally caused this emotional
- 24. distress. Do you believe that the Shippens knew
- 25. About the flooding prior to selling the home?
- 1. A. Yes.

*Affidavit of Weston S. Davis, Exhibit "B"* filed concurrently herewith. Therefore, Ms.

Goodspeed believed that while the result may not have been intentional, the conduct was. A claim for intentional infliction of emotional distress requires the following elements be shown:

- 1. The conduct must be intentional or reckless;
- 2. The conduct must be extreme and outrageous;
- 3. There must be a causal connection between the conduct and the emotional distress; and
- 4. The emotional distress must be severe.

*Estate of Becker v. Callahan*, 140 Idaho 522, 96 P.3d 623 (2004). Thus, the focus is on the conduct, not the intended result. Here, the Defendants sold a home that they knew had flooded from subwater and represented in the MLS listing that the house had never had subwater issues. This was an intentional, extreme, and outrageous misrepresentation regarding the biggest purchase of an average person's life. As a result, Ms. Goodspeed has suffered severe emotional distress.

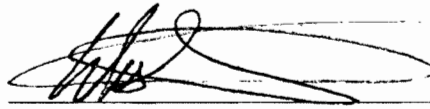
Defendants assert that because the result was not intentional, there is no claim for a plea for intentional infliction of emotional distress. The test, however, focuses on the conduct itself.

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Therefore, Ms. Goodspeed's answer and any confusion regarding the legal theory on her claim for damages should not preclude her from amending her complaint and making her case to the Court.

While Defendants may argue Ms. Goodspeed's statements apparently conflict, such an issue should only be addressed before the finder of fact, the jury. However, Plaintiffs assert that Defendant's attempt to presently impede an amending the complaint as it relates to an intentional infliction of emotional distress is improper

DATED this 25 day of August 2010



WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

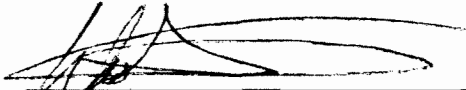
I hereby certify that I served a true copy of the foregoing document upon the following this 25 day of August, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Honorable Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
\_\_\_\_\_  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Reply (Compel and Amend).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

RECEIVED  
DISTRICT COURT OF IDAHO  
JEFFERSON COUNTY  
SEP 3 3 14 PM '10

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF SERVICE**

I HEREBY CERTIFY that on this 3 day of September 2010, I served upon  
Defendants, and their attorney of record Robin D. Dunn, Esq., ANSWERS TO DEFENDANTS'  
SECOND SET OF REQUESTS FOR ADMISSION by having a true and correct copy of same  
mailed by U. S. Mail, postage prepaid, to:

7/10



Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

Dated this 3 day of September 2010.

  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 3 day of September 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Notice of Service#4.wpd

49

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**ORDER ON PLAINTIFF'S  
MOTION TO COMPEL AND  
MOTION TO AMEND  
COMPLAINT**

Plaintiffs and Defendants having appeared through counsel at the time and place set for  
hearing on Plaintiffs' Third Motion to Compel and Motion to Amend Complaint, and having  
presented oral argument on said motion,

IT IS HEREBY ORDERED, as follows:

ORDER ON PLAINTIFF'S MOTION TO COMPEL AND DEFENDANT'S  
RENEWED REQUEST FOR PROTECTIVE ORDER - 1

**FILED IN CHAMBERS  
at Idaho Falls  
Bonneville County**

Honorable Gregory S. Anderson

Date September 17, 2010

Time 9:54am

Deputy Clerk [Signature]

FILED IN DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF JEFFERSON  
2010 SEP 20 PM 1:24

**ORDER TO COMPEL**

1. Defendants are required to submit any construction documents (invoices) not previously produced as it relates to the costs incurred in the construction of the subject real property; any closing statements provided to Robert and Jorja Shippen on the subject real property; and copies of all labor checks paid by the Shippens on the subject real property so that Plaintiffs may determine the profit margin of the subject real property.

2. Robert and Jorja Shippen, are hereby compelled to sign a release for Plaintiffs to obtain Robert and Jorja Shippen's personal tax returns for the year 2005. Alternatively, the Shippens may make a request for the taxes from the I.R.S. and produce the taxes themselves in lieu of signing a release.

3. Defendants are compelled to disclose that information known regarding the scope of the intended expert testimony and produce those reports as they are generated.

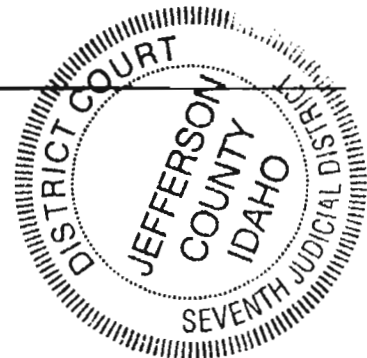
Production of the foregoing shall occur within fourteen (14) days of the date of this order.

**ORDER ALLOWING AMENDMENT**

The court will permit the Second Amended Complaint to be filed with this court, with the exception of the claims for intentional and negligent infliction of emotional distress which are precluded by the statute of limitations.

DATED this 15 day of September, 2010

  
JUDGE



Approved as to form and content



ROBIN D. DUNN

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that on this 17<sup>th</sup> day of September, 2010, a true and correct copy of the foregoing Order was served upon the following by first class mail, postage prepaid, or by hand delivery:


WESTON S. DAVIS, ESQ  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

CLERK OF THE COURT

By:   
Deputy Clerk

L:\wsd\~ Clients\7411.1 Goodspeed\Motion to Compel (Order3).wpd

DUNN LAW OFFICES, PLLC  
Robin D. Dunn, Esq., ISB # 2903  
Amelia A. Sheets, Esq., ISB #5899  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, Idaho 83442  
(208) 745-9202 (t)  
(208) 745-8160 (f)

2010 SEP 22 AM 8:15

DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Defendants

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

WILLIAM SHAWN GOODSPEED and )  
SHELLEE BETH GOODSPEED, )  
husband and wife, )

Plaintiffs, )

vs. )

SHIPPEN CONSTRUCTION, INC., an )  
Idaho corporation, and ROBERT and )  
JORJA SHIPPEN, husband and wife, )  
d/b/a SHIPPEN CONSTRUCTION )  
ROBERT SHIPPEN, an individual; )  
and MARRIOT HOMES, LLC. )  
Defendants. )

Case No. CV 09-015

NOTICE OF SERVICE OF  
SUPPLEMENTAL RESPONSE  
ON EXPERT DISCOVERY

I HEREBY CERTIFY that the following document was served, by postage pre-paid mailing, to plaintiff's attorney, Weston S. Davis, Esq., P.O. Box 51630, Idaho Falls, Idaho 83405 together with a copy of this notice, on the 20<sup>th</sup> day of September, 2010:

- 1) *Defendants' Supplemental Response to Discovery on Expert-Interrogatory Number 4.*



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

4/25/1

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 SEP 23 PM 1:02  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**SECOND AMENDED  
COMPLAINT**

COMES NOW Plaintiffs, as and for a claim for relief, plead and allege as follows:

1. That Plaintiffs, WILLIAM SHAWN and SHELLEE BETH GOODSPEED, are bona fide residents of the State of Idaho who reside in Jefferson County.
2. That Defendants, ROBERT and JORJA SHIPPEN, are a bona fide residents of the State of Idaho who reside in Jefferson County.
3. That Defendant, MARRIOTT HOMES, LLC, is an Idaho limited liability company

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in good standing with the State of Idaho.

4. That Defendant, SHIPPEN CONSTRUCTION, INC., is an Idaho corporation in good standing with the State of Idaho.

5. That the subject property of this litigation, namely, 3709 East 319 North, Rigby, Idaho, is located in Jefferson County.

6. That both jurisdiction and venue are proper in this action.

7. That pursuant to Idaho Code § 6-2503, Plaintiff's served written notice of the ensuing claim on the construction professional, Shippen Construction, Inc., and Robert Shippen, by mailing a copy to Robert Shippen by certified mail on the Idaho corporation's registered agent. Attached hereto as Exhibit "A" is a copy of such attempt to comply with the Notice and Opportunity to Repair Act, together with a acknowledgment of receipt.

8. Plaintiffs received a letter from Dunn Law Offices, PLLC on November 19, 2008, which volunteers to accept service of a complaint against Defendants, lists defenses Defendants will raise if a complaint is filed (none of which notify Plaintiffs that they have allegedly attempted to sue the wrong entity), and fails to assert any willingness to repair or remedy the construction defect. Plaintiffs therefore have brought this action against Defendants in compliance with the Act.

9. That, upon information and belief, Marriott Homes, LLC is a closely held limited liability company wherein Robert and Jorja Shippen are the only members or constitute a majority of the members in the company. Additionally, Robert Shippen is the registered agent for Marriott Homes, LLC, and Marriot Homes, LLC shares the same physical address as Shippen Construction, Inc. Therefore, Marriott Homes, LCC was also on notice of the ensuing claim prior to its filing.

**COUNT ONE: BREACH OF EXPRESS WARRANTY**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

10. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 9 and further plead and allege as follows:

11. On June 17, 2007, Plaintiffs and Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) entered a real estate contract for the purchase and sale of a residence and real property commonly referred to as 319 N. 3709 E., Rigby, ID 83442 (hereinafter "the Property"). This purchase and sale agreement was amended on June 18, 2007 and then again on July 2, 2007.

12. The Purchase and Sale Contract expressly extended a standard builder's warranty on the Property for a minimum of one year, without further definition of that warranty.

13. Additionally, on August 8, 2006, Defendants, through its/their authorized agents, listed the Property for sale on the Multiple Listing Service (hereinafter "MLS") in Idaho.

14. That MLS listing specifically stated twice that the Property had never had sub water flooding issues.

15. That MLS listing also stated twice that the Builder would install a leaching system to give the buyer peace of mind against flooding.

16. The MLS listing served as an express warranty, warranting that the Property had never flooded and would not flood.

17. After the Plaintiffs' July 2, 2007 purchase of the Property, they learned from a neighbor that the Property's basement had flooded in August of 2006, contrary to the



representation in the MLS listing.

18. Despite the installment of a leaching system, the Property flooded again in August and September of 2007 (within the one year warranty period) and continues to flood frequently from sub-water today.

19. The express warranties were therefore breached to the extent the Defendants misrepresented that the house had not flooded and would not flood.

20. These express warranties were further breached when the house flooded in August and September of 2007 and thereafter, subsequent to the time of the sale.

21. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT TWO: BREACH OF THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING**

**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen  
d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

22. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 21 and further plead and allege as follows:

23. Implied in every contract is a covenant of good faith and fair dealing.

24. Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) represented to Plaintiffs that the Property Plaintiffs were about to purchase had not flooded, when in fact it had flooded.

25. Defendants further represented that a leaching system was installed to prevent snow run off and to give peace of mind against sub-water flooding.

26. Defendants breached its/their implied covenant of good faith and fair dealing by

misrepresenting the condition of and flooding history of the Property.

27. As a result of this breach, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT THREE: BREACH OF IMPLIED WARRANTY**

**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

28. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 27 and further plead and allege as follows:

29. Implied in every newly constructed residence lies an implied warranty of habitability extended by the builder. Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) therefore extended a implied warranty of habitability to Plaintiffs.

30. That implied warranty was breached when the residence flooded in August and September of 2007 and each time it has flooded thereafter.

31. Such continual flooding results in the uninhabitability of the entire residence.

32. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT FOUR: ALTER EGO / VEIL PIERCING**

**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

33. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 32 and 44 - 69 and further plead and allege as follows:

34. That Defendants Robert and/or Jorja Shippen maintain such a unity of interest in

defendants Shippen Construction, Inc. and in Marriott Homes, LLC that the individuality of such entities has ceased.

35. That the fiction of a separate existence between said Robert and/or Jorja Shippen and said defendant entities would result in an inequitable result, sanction a fraud, and/or promote injustice to the extent Robert and/or Jorja Shippen intend to rely on corporate or limited liability status solely as a shield against liability of the breaches and fraud heretofore mentioned.

36. Based on information and belief, the value of the Defendant entities has been filtered or siphoned to Robert and/or Jorja Shippen for personal use, rendering the viability of any judgment as enforceable only against Robert and/or Jorja Shippen.

37. That the damages and claims for liability sought forth against Marriott Homes, LLC and/or Shippen Construction, Inc., should be imposed upon Robert and/or Jorja Shippen under the theory of alter ego or corporate veil piercing.

**COUNT FIVE: UNJUST ENRICHMENT**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen;**  
**Robert and Jorja Shippen d/b/a Shippen Construction)**

38. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 37 and 44 -69 and further plead and allege as follows:

39. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) were unjustly enriched by obtaining the agreed upon purchase price of the residence of \$272,000, in exchange for a house that representedly had no history of flooding and upon guarantees that the house would not flood.

40. Plaintiffs detrimentally relied on Defendants' representations regarding the Property.

41. Because Defendants misrepresented the status of the house, Defendants obtained a higher purchase price for the house than they would have received had Defendants made the flooding disclosure. This resulted in unjust enrichment to the Defendants.

42. But for Defendants' misrepresentation, Plaintiffs would not have even purchased the Property.

43. That as a proximate result of Defendants' misrepresentations, Defendants were unjustly enriched in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT SIX: FRAUDULENT  
CONCEALMENT OF KNOWN DEFECT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

44. Plaintiffs hereby incorporate and re-allege paragraphs 1- 43 and further plead and allege as follows:

45. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly concealed the following facts from Plaintiffs:

- a) Defendants concealed the fact that the property had flooded prior to the sale by representing that it had not flooded.
- b) Defendants knowingly installed a sump pump under the false stated premise that it was intended for winter snow run off.
- c) Defendants fraudulently concealed the nature of the flooding by stating that flooding in 2007 was the result of a one time canal rupture.

46. The condition of the Property and these statements were material to the purchase of the Property and continued habitation of the Property.

47. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

48. Defendants intended for the Plaintiffs to rely on these statements.

49. Plaintiffs did in fact rely on these statements.

50. Plaintiffs' reliance was reasonable.

51. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT SEVEN: FRAUDULENT  
MISREPRESENTATION OF KNOWN FACT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

52. Plaintiffs hereby incorporates and re-allege paragraphs 1- 51 and further plead and allege as follows:

53. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly misrepresented the following facts to Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump was installed for winter snow runoff, when it was actually installed to remove sub- water.
- c) Defendants misrepresented that subsequent flooding in August of 2007 was the result of a nearby canal rupture.

54. These statements were material to the purchase of the Property.

55. At the time these statements were made, Defendants knew the statements were

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false and Plaintiffs did not.

56. Defendants intended for the Plaintiffs to rely on these statements.

57. Plaintiffs did in fact rely on these statements.

58. Plaintiffs' reliance was reasonable.

59. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT EIGHT: FRAUD IN THE INDUCEMENT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

60. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 59 and further plead and allege as follows:

61. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly misrepresented the following facts from Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump/leaching system was installed for winter snow runoff, when it was actually installed to remove sub- water.

62. The condition of the Property and these statements were material to the purchase of the Property.

63. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

64. Defendants intended for the Plaintiffs to rely on these statements to induce Plaintiffs to purchase the property.

65. Plaintiffs did in fact rely on these statements.

66. Plaintiffs' reliance was reasonable.

67. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

#### ATTORNEY'S FEES

Plaintiffs have been required to retain an attorney to prosecute this action and are entitled to costs and attorney fees pursuant to Idaho Code §12-120 and §12-121 and I.R.C.P. 54. Further, Plaintiffs are entitled to attorneys fees pursuant to the parties' purchase and sale agreement of the Property. In the event this matter is taken by default, Plaintiffs are entitled to a reasonable attorney fee of \$2,500.00, and such additional amount in the event this matter is contested.

WHEREFORE, Plaintiff prays for judgment as follows:

A. That the contract for the sale of the Property be rescinded, with all title and obligations on the Property being reinstated to Defendants, relieving Plaintiffs of any future obligations on the Property;

B. That Plaintiffs be awarded damages equal to the purchase price of the Property;

C. That Plaintiffs additionally be awarded money damages in an amount to reflect their improvements on the property in an amount in excess of \$10,000 to be proven at trial;

D. That Plaintiffs additionally be awarded money damages in an amount to reflect Plaintiff's efforts to mitigate the damage to the Property as a result of the flooding;

E. That, in the event the contract is not rescinded, Plaintiffs receive damages in excess

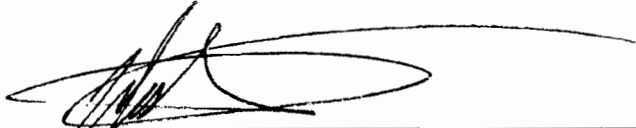
of \$10,000.00 in an amount to be proven at trial;

F. That in the event the contract is not rescinded, Defendants be ordered to repair and restore the Property to the extent reasonably possible to ensure continuing and uninterrupted habitability thereof;

G. For attorneys fees in the amount of \$2,500.00 in the event this matter is taken by Default, and such additional amounts that may be incurred in the event this matter is contested; and

I. For such other relief as the Court deems just and proper.

DATED this 22 day of September, 2010.

  
\_\_\_\_\_  
WESTON S. DAVIS, ESQ.



**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 22 day of September 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax **208.745.8160**
- E-Mail
- Overnight Mail
- Courthouse Box

Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
\_\_\_\_\_  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Complaint (Amended2).wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 SEP 23 PM 1:02  
DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**NOTICE OF SERVICE**

I HEREBY CERTIFY that on this 22 day of September 2010, I served upon  
Defendants, and their attorney of record Robin D. Dunn, Esq., ANSWERS TO DEFENDANTS'  
SECOND SET OF DISCOVERY REQUESTS by having a true and correct copy of same mailed  
by U. S. Mail, postage prepaid, to:

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

Dated this 22 day of September 2010.

  
WESTON S. DAVIS, ESQ.

### CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 22 day of September 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

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- Courthouse Box

  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Notice of Service#5.wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
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Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254  
Attorneys for Plaintiff

2010 SEP 29 PM 2:09  
JEFFERSON COUNTY, IDAHO

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

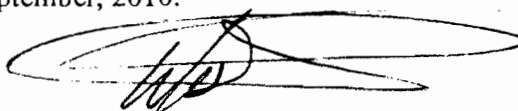
Defendants.

Case No.: CV-09-015

**NOTICE OF HEARING**

PLEASE TAKE NOTICE that on the 18<sup>th</sup> day of October, 2010, at 1:30 p.m., of said day, or as soon thereafter as counsel can be heard in the above court, in Rigby, Jefferson County, Idaho, Plaintiffs will call up for hearing Plaintiffs' MOTION FOR LEAVE TO AMEND COMPLAINT TO ADD A CLAIM FOR PUNITIVE DAMAGES before the Honorable Gregory Anderson, District Judge.

DATED this 28 day of September, 2010.



WESTON S. DAVIS, ESQ.

4/28

**CERTIFICATE OF SERVICE**

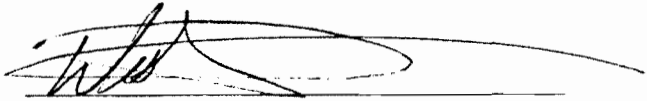
I hereby certify that I served a true copy of the foregoing document upon the following this 18 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
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Idaho Falls, ID 83402

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- Overnight Mail
- Courthouse Box



WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Punitive Damages (NoH).wpd

11/10/10

WESTON S. DAVIS (I.S.B. # 7449)  
NELSON HALL PARRY TUCKER, P.A.  
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Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

2010 SEP 29 PM 2:10  
JEFFERSON COUNTY, IDAHO

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**MOTION FOR LEAVE TO  
AMEND COMPLAINT TO ADD  
CLAIM FOR PUNITIVE  
DAMAGES**

COMES NOW Plaintiffs William Goodspeed and Shellee Goodspeed, by and through counsel of record, and hereby moves the Court pursuant to Idaho Code § 6-1604(2) for leave to amend their Second Amended Complaint to include a claim for punitive damages against Defendants Robert and Jorja Shippen.

Attached hereto as Exhibit "A" is a proposed Third Amended Complaint, which reflects said request for punitive damages.

MOTION FOR PUNITIVE DAMAGES - I

4/24

This motion is supported by the memorandum in support and affidavits filed herewith. Oral argument is requested.

DATED this 26 day of September, 2010.

  
WESTON S. DAVIS

### CERTIFICATE OF SERVICE

I hereby certify that I served a true copy of the foregoing document upon the following this 26 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

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- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

L:\wsd\~ Clients\7411.1 Goodspeed\Mot.Punitive.Damages.wpd

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**THIRD AMENDED COMPLAINT**

COMES NOW Plaintiffs, as and for a claim for relief, plead and allege as follows:

1. That Plaintiffs, WILLIAM SHAWN and SHELLEE BETH GOODSPEED, are bona fide residents of the State of Idaho who reside in Jefferson County.
2. That Defendants, ROBERT and JORJA SHIPPEN, are a bona fide residents of the State of Idaho who reside in Jefferson County.
3. That Defendant, MARRIOTT HOMES, LLC, is an Idaho limited liability company



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in good standing with the State of Idaho.

4. That Defendant, SHIPPEN CONSTRUCTION, INC., is an Idaho corporation in good standing with the State of Idaho.

5. That the subject property of this litigation, namely, 3709 East 319 North, Rigby, Idaho, is located in Jefferson County.

6. That both jurisdiction and venue are proper in this action.

7. That pursuant to Idaho Code § 6-2503, Plaintiff's served written notice of the ensuing claim on the construction professional, Shippen Construction, Inc., and Robert Shippen, by mailing a copy to Robert Shippen by certified mail on the Idaho corporation's registered agent. Attached hereto as Exhibit "A" is a copy of such attempt to comply with the Notice and Opportunity to Repair Act, together with a acknowledgment of receipt.

8. Plaintiffs received a letter from Dunn Law Offices, PLLC on November 19, 2008, which volunteers to accept service of a complaint against Defendants, lists defenses Defendants will raise if a complaint is filed (none of which notify Plaintiffs that they have allegedly attempted to sue the wrong entity), and fails to assert any willingness to repair or remedy the construction defect. Plaintiffs therefore have brought this action against Defendants in compliance with the Act.

9. That, upon information and belief, Marriott Homes, LLC is a closely held limited liability company wherein Robert and Jorja Shippen are the only members or constitute a majority of the members in the company. Additionally, Robert Shippen is the registered agent for Marriott Homes, LLC, and Marriot Homes, LLC shares the same physical address as Shippen Construction, Inc. Therefore, Marriott Homes, LCC was also on notice of the ensuing claim prior to its filing.

**COUNT ONE: BREACH OF EXPRESS WARRANTY**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

10. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 9 and further plead and allege as follows:

11. On June 17, 2007, Plaintiffs and Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) entered a real estate contract for the purchase and sale of a residence and real property commonly referred to as 319 N. 3709 E., Rigby, ID 83442 (hereinafter "the Property"). This purchase and sale agreement was amended on June 18, 2007 and then again on July 2, 2007.

12. The Purchase and Sale Contract expressly extended a standard builder's warranty on the Property for a minimum of one year, without further definition of that warranty.

13. Additionally, on August 8, 2006, Defendants, through its/their authorized agents, listed the Property for sale on the Multiple Listing Service (hereinafter "MLS") in Idaho.

14. That MLS listing specifically stated twice that the Property had never had sub water flooding issues.

15. That MLS listing also stated twice that the Builder would install a leaching system to give the buyer peace of mind against flooding.

16. The MLS listing served as an express warranty, warranting that the Property had never flooded and would not flood.

17. After the Plaintiffs' July 2, 2007 purchase of the Property, they learned from a neighbor that the Property's basement had flooded in August of 2006, contrary to the

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representation in the MLS listing.

18. Despite the installment of a leaching system, the Property flooded again in August and September of 2007 (within the one year warranty period) and continues to flood frequently from sub-water today.

19. The express warranties were therefore breached to the extent the Defendants misrepresented that the house had not flooded and would not flood.

20. These express warranties were further breached when the house flooded in August and September of 2007 and thereafter, subsequent to the time of the sale.

21. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT TWO: BREACH OF THE IMPLIED COVENANT  
OF GOOD FAITH AND FAIR DEALING**

**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen  
d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

22. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 21 and further plead and allege as follows:

23. Implied in every contract is a covenant of good faith and fair dealing.

24. Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) represented to Plaintiffs that the Property Plaintiffs were about to purchase had not flooded, when in fact it had flooded.

25. Defendants further represented that a leaching system was installed to prevent snow run off and to give peace of mind against sub-water flooding.

26. Defendants breached its/their implied covenant of good faith and fair dealing by

*4/24*

misrepresenting the condition of and flooding history of the Property.

27. As a result of this breach, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT THREE: BREACH OF IMPLIED WARRANTY**

**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

28. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 27 and further plead and allege as follows:

29. Implied in every newly constructed residence lies an implied warranty of habitability extended by the builder. Defendants (Robert Shippen; and/or Robert and Jorja Shippen, husband and wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Marriott Homes, LLC; and/or Shippen Construction, Inc.) therefore extended a implied warranty of habitability to Plaintiffs.

30. That implied warranty was breached when the residence flooded in August and September of 2007 and each time it has flooded thereafter.

31. Such continual flooding results in the uninhabitability of the entire residence.

32. As a result of this flooding, Plaintiffs have suffered damages in an amount in excess of \$10,000, which shall be proven at trial.

**COUNT FOUR: ALTER EGO / VEIL PIERCING**

**(Defendants: Robert Shippen; Robert and Jorja Shippen; Robert and Jorja Shippen d/b/a Shippen Construction; Marriott Homes, LLC; and Shippen Construction, Inc.)**

33. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 32 and 44 - 69 and further plead and allege as follows:

34. That Defendants Robert and/or Jorja Shippen maintain such a unity of interest in

1/30

defendants Shippen Construction, Inc. and in Marriott Homes, LLC that the individuality of such entities has ceased.

35. That the fiction of a separate existence between said Robert and/or Jorja Shippen and said defendant entities would result in an inequitable result, sanction a fraud, and/or promote injustice to the extent Robert and/or Jorja Shippen intend to rely on corporate or limited liability status solely as a shield against liability of the breaches and fraud heretofore mentioned.

36. Based on information and belief, the value of the Defendant entities has been filtered or siphoned to Robert and/or Jorja Shippen for personal use, rendering the viability of any judgment as enforceable only against Robert and/or Jorja Shippen.

37. That the damages and claims for liability sought forth against Marriott Homes, LLC and/or Shippen Construction, Inc., should be imposed upon Robert and/or Jorja Shippen under the theory of alter ego or corporate veil piercing.

**COUNT FIVE: UNJUST ENRICHMENT**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen;**  
**Robert and Jorja Shippen d/b/a Shippen Construction)**

38. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 37 and 44 -69 and further plead and allege as follows:

39. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) were unjustly enriched by obtaining the agreed upon purchase price of the residence of \$272,000, in exchange for a house that representedly had no history of flooding and upon guarantees that the house would not flood.

40. Plaintiffs detrimentally relied on Defendants' representations regarding the Property.

4/30

41. Because Defendants misrepresented the status of the house, Defendants obtained a higher purchase price for the house than they would have received had Defendants made the flooding disclosure. This resulted in unjust enrichment to the Defendants.

42. But for Defendants' misrepresentation, Plaintiffs would not have even purchased the Property.

43. That as a proximate result of Defendants' misrepresentations, Defendants were unjustly enriched in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT SIX: FRAUDULENT  
CONCEALMENT OF KNOWN DEFECT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

44. Plaintiffs hereby incorporate and re-allege paragraphs 1- 43 and further plead and allege as follows:

45. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly concealed the following facts from Plaintiffs:

- a) Defendants concealed the fact that the property had flooded prior to the sale by representing that it had not flooded.
- b) Defendants knowingly installed a sump pump under the false stated premise that it was intended for winter snow run off.
- c) Defendants fraudulently concealed the nature of the flooding by stating that flooding in 2007 was the result of a one time canal rupture.

46. The condition of the Property and these statements were material to the purchase of the Property and continued habitation of the Property.

47. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.

48. Defendants intended for the Plaintiffs to rely on these statements.

49. Plaintiffs did in fact rely on these statements.

50. Plaintiffs' reliance was reasonable.

51. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT SEVEN: FRAUDULENT  
MISREPRESENTATION OF KNOWN FACT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

52. Plaintiffs hereby incorporates and re-allege paragraphs 1- 51 and further plead and allege as follows:

53. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly misrepresented the following facts to Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump was installed for winter snow runoff, when it was actually installed to remove sub- water.
- c) Defendants misrepresented that subsequent flooding in August of 2007 was the result of a nearby canal rupture.

54. These statements were material to the purchase of the Property.

55. At the time these statements were made, Defendants knew the statements were

*4/22*

false and Plaintiffs did not.

56. Defendants intended for the Plaintiffs to rely on these statements.

57. Plaintiffs did in fact rely on these statements.

58. Plaintiffs' reliance was reasonable.

59. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT EIGHT: FRAUD IN THE INDUCEMENT  
(Defendants: Robert Shippen; Robert and Jorja Shippen;  
Robert and Jorja Shippen d/b/a Shippen Construction)**

60. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 59 and further plead and allege as follows:

61. Defendants (Robert and Jorja Shippen, husband or wife; and/or Robert and Jorja Shippen d/b/a Shippen Construction; and/or Robert Shippen) knowingly misrepresented the following facts from Plaintiffs:

- a) Defendants misrepresented in their MLS listing that the Property had never flooded prior to the sale, when in fact it had.
- b) Defendants misrepresented that a sump pump/leaching system was installed for winter snow runoff, when it was actually installed to remove sub- water.

62. The condition of the Property and these statements were material to the purchase of the Property.

63. At the time these statements were made, Defendants knew the statements were false and Plaintiffs did not.



64. Defendants intended for the Plaintiffs to rely on these statements to induce Plaintiffs to purchase the property.

65. Plaintiffs did in fact rely on these statements.

66. Plaintiffs' reliance was reasonable.

67. As a proximate result of Defendants' misrepresentations, Plaintiffs suffered damages in excess of \$10,000.00, in an amount to be proven at trial.

**COUNT NINE: PUNITIVE DAMAGES**  
**(Defendants: Robert Shippen; Robert and Jorja Shippen;**  
**Robert and Jorja Shippen d/b/a Shippen Construction)**

68. Plaintiffs hereby incorporate and re-allege paragraphs 1 - 67 and further plead and allege as follows:

69. The acts of the defendants constitute liability for fraud and further constitute intentional, deliberate, reckless, outrageous, and/or grossly negligent conduct.

70. As a result of Defendant's conduct, Plaintiffs have been damaged in an amount to be proven at trial.

71. Plaintiffs are entitled to an award of punitive (exemplary) damages against Defendants to deter Defendants from future fraudulent, intentional, deliberate, reckless, outrageous, and/or grossly negligent conduct as outlined above.

72. Punitive damages should be awarded against Defendants in excess of \$10,000.00, in an amount to be decided by the jury.

**ATTORNEY'S FEES**

Plaintiffs have been required to retain an attorney to prosecute this action and are entitled to costs and attorney fees pursuant to Idaho Code §12-120 and §12-121 and I.R.C.P. 54. Further,

Plaintiffs are entitled to attorneys fees pursuant to the parties' purchase and sale agreement of the Property. In the event this matter is taken by default, Plaintiffs are entitled to a reasonable attorney fee of \$2,500.00, and such additional amount in the event this matter is contested.

WHEREFORE, Plaintiff prays for judgment as follows:

A. That the contract for the sale of the Property be rescinded, with all title and obligations on the Property being reinstated to Defendants, relieving Plaintiffs of any future obligations on the Property;

B. That Plaintiffs be awarded damages equal to the purchase price of the Property;

C. That Plaintiffs additionally be awarded money damages in an amount to reflect their improvements on the property in an amount in excess of \$10,000 to be proven at trial;

D. That Plaintiffs additionally be awarded money damages in an amount to reflect Plaintiff's efforts to mitigate the damage to the Property as a result of the flooding;

E. That Plaintiffs be awarded punitive damages in excess of \$10,000 for Defendants' conduct;

F. That, in the event the contract is not rescinded, Plaintiffs receive damages in excess of \$10,000.00 in an amount to be proven at trial;

G. That in the event the contract is not rescinded, Defendants be ordered to repair and restore the Property to the extent reasonably possible to ensure continuing and uninterrupted habitability thereof;

H. For attorneys fees in the amount of \$2,500.00 in the event this matter is taken by Default, and such additional amounts that may be incurred in the event this matter is contested; and

I. For such other relief as the Court deems just and proper.

DATED this \_\_\_\_\_ day of October, 2010.

\_\_\_\_\_  
WESTON S. DAVIS, ESQ.

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this \_\_\_\_\_ day of October 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

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Hon. Gregory Anderson  
Bonneville County Courthouse  
605 N. Capital Ave.  
Idaho Falls, ID 83402

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\_\_\_\_\_  
WESTON S. DAVIS, ESQ.

L:\wsd\~ Clients\7411.1 Goodspeed\Complaint (Amended3).wpd

6/2/10

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2010 SEP 29 PM 2:10  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**MEMORANDUM IN SUPPORT OF  
MOTION FOR LEAVE TO  
AMEND COMPLAINT TO ADD  
CLAIM FOR PUNITIVE  
DAMAGES**

COMES NOW Plaintiffs, William Shawn Goodspeed and Shellee Beth Goodspeed, by and through counsel of record, and hereby submit their memorandum in support of motion for punitive damages.

**FACTS / PROCEDURAL HISTORY**

The dispute in question arises over misrepresentations made by Robert and Jorja Shippen to Shawn and Shellee Goodspeed over sub-water issues occurring at a residence (hereinafter “the

47

subject real property”) located in Woodhaven Creek Estates in Jefferson County, Idaho.

Defendants Robert and Jorja Shippen have lived in Jefferson County for roughly thirty years and have been familiar with high sub-water issues in Jefferson County during the time they have lived there. *Affidavit of Weston S. Davis, Ex “B” Robert Shippen Depo. Tr. p. 20:14-18, 28:2-18, 136:6-9; Affidavit of Weston S. Davis, Ex “C” Jorja Shippen Depo Tr. p. 10:25 - 11:9.* The Shippens understand the sub-water in Jefferson County rises toward the surface of the land as a result of farmers irrigating their crops. *Id.*

On or about August 20, 2005, Robert and Jorja Shippen purchased a lot in Woodhaven Creek Estates (Lot 7 Block 2, the subject real property) from Paul Jenkins. *See Affidavit of Weston S. Davis, Exhibit “A” (Deed of Trust).* Paul Jenkins reminded Robert Shippen of the high sub-water at the time the Shippens purchased the subject real property. *Affidavit of Weston S. Davis, Ex “E” Paul Jenkins Depo. Tr. pp.23:3-16; 26:7-15.* Robert admits he was aware of high sub-water in Woodhaven Creek Estates prior to building the residence on the subject real property. *Robert Shippen Depo. Tr. p. 24:5 - 25:16.*

On May 8, 2006, Robert Shippen obtained a building permit for the subject real property. *Robert Shippen Depo. Tr. Ex “7”.* Defendants Robert Shippen and/or Marriott Homes, LLC and/or Shippen Construction, Inc. then began construction on the subject real property. At no time did Mr. Shippen or his entities hire a hydrologist or engineer to diagnose whether sub-water would be a problem for the construction of a residence on the subject real property. *Id.* at p. 103:25 - 104:7. However, Mr. Shippen was concerned enough about the sub-water levels that, during the construction of the residence in the months of June or July of 2006, he dug a test hole in the walk out area of the basement to watch the sub-water levels. *Id.* p. 131:22 - 132:12.

In late July, 2006, Daniel Fohrenck of Xcel Construction was framing the residence on the

MEMORANDUM IN SUPPORT OF MOTION FOR PUNITIVE DAMAGES - 2

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subject real property when he noticed standing sub-water by the basement patio. *Affidavit of Daniel Fohrenck*. When Daniel approached Robert Shippen and told him about the standing sub-water problem, Robert said he knew about it and that he was going to install a leaching system to prevent the sub-water from being an issue to the homeowner. *Id.*

As the property was being constructed, on or about August 10, 2006, Robert Shippen retained Winstar Realty to list the subject real property for sale on the open market. *Affidavit of Weston S. Davis, Ex "F" Dave Chapple Depo. Tr. p. 38:11-16, Ex "11"*. Dave Chapple, the Defendants' realtor created an MLS listing based solely on the representations of Robert Shippen. *Id.* at pp. 37:13 - 40:18; 57:18-20. That MLS listing specifically states as follows:

PUBLIC INFO: . . . \*\* THERE HAS BEEN CONCERN ABOUT SUB WATER IN JEFFERSON COUNTY, HOWEVER THIS HOME HAS NOT HAD SUB ISSUES AND TO GIVE THE BUYER PEACE OF MIND BUILDER WILL INSTALL A LEACHING SYSTEM AROUND HOME AND PROVIDE 1 YEAR WARRANTY ON CONSTRUCTION\*\*

PRIVATE INFO: There has been some concerns about sub water in Jefferson County. This particular home has never had sub issues but to give the buyer peace of mind the builder is going to install a leaching system with a drainage field from the east side to the west side of the home to prevent the possibility of there every [sic] being any sub issues.

*Id.* p. 38:11-16, Ex. "11". The MLS listing was not altered beyond what Dave Chappel placed in the MLS listing. *Id.* p. 18:23 - 19:3.<sup>1</sup> Robert Shippen provided and consented to the MLS language about the sub-water issues and the leaching system:

- Q. Okay, and is this a true and correct copy of the MLS listing for this – for the property?
- A. Uh-huh
- Q. Is that a yes?
- A. Yes, sorry.
- Q. Okay. If you'll look under – I have a copy of it in here.  
[ . . . ]

---

<sup>1</sup>There are no restrictions on the public viewing the "private info" section. *Id.* at p. 68:15-23.

- Q. If you look under public info, see about two – two stars halfway through the document, then it says: There has been --
- A. Uh-huh
- Q. –it says: There has been concern about subwater in Jefferson County; however, this home has not had sub issues and to give the buyer peace of mind builder will install a leaching system around the home and provide a one-year warranty on construction.
- Where did you obtain that information?
- A. Where did I obtain the information?
- Q. Yes, it says in here: This home has not had any sub issues.
- A. Conversations with the builder.
- Q. Okay. As well as this builder will install a leaching system for peace of mind, would that have also come from the builder?
- A. Through discussions we both had.
- Q. And by “the builder” would those have been conversations with Robert Shippen?
- A. Yes.
- [ . . . ]
- Q. [ . . . ] anything written in the private information, that would have been written by you upon information you obtained from Robert Shippen; is that correct.?
- A. Correct.

*Id.* at pp. 38:11 - 40:18. *See also Id.* at pp. 51:20 - 52:20.

On or about September 1 - 4, 2006 (Labor Day Weekend), less than a month after listing the house, sub-water emerged from a test hole near the basement area, flooded the area around outside of the basement, and eventually rose into the basement of the subject real property to a depth of approximately 1 - 2 inches—a fact Robert Shippen personally witnessed. *Robert Shippen Depo. Tr.* p. 134:15 - 136:9; *Affidavits of Eric and Amy Geisler*. After observing the flooding, Robert Shippen then told his wife, Jorja Shippen that the house had flooded. *Jorja Shippen Depo. Tr.* p. 25:2-13. Prior to the sale of the residence, Robert Shippen also told his son that the basement of the subject real property had flooded from sub-water. *Affidavit of Weston S. Davis, Ex “D” Nicholas Shippen Depo. Tr.* pp. 22:18 - 23:22.

However, during the entire time the subject real property was listed for sale, neither Robert nor Jorja Shippen contacted Dave Chapple to notify him that the information in the MLS listing was untrue or that the house had flooded. *Chapple Depo. Tr.* pp. 41:23 - 42:5; *Jorja Shippen Depo. Tr.* p. 32:21 - 33:1. The language regarding the sub-water was never removed from the MLS listing. *Chapple Depo. Tr.* at pp. 49:13 - 50:5. Mr. Shippen was aware that he could change the MLS listing—he filled out a change form on January 2, 2007 to extend the expiration date of his listing. *Id.* p. 43:17 - 44:10, Ex “20”, p.3. He did not do so with regard to the sub-water statements.

In about late May/early June of 2006, Shawn and Shellee Goodspeed, then residents of Tennessee, began looking at properties to purchase in Eastern Idaho. *Shawn Goodspeed Depo. Tr.* p. 4:22 - 5:5. They obtained a copy of the MLS listing for the subject real property from their realtor shortly before they went to look at the subject real property. *Id.* at 19:14-22. At no time during their walk throughs of the subject real property did Robert Shippen or his real estate agent notify the Goodspeeds that the subject real property had flooded. *Id.* at 23:17-25. The Goodspeeds relied on the MLS representation; they did not want to even consider houses that had flooded. *Id.*

In fact, during the walk through when Robert Shippen was present, he told them that the leaching system was merely a precautionary measure in the event of a fast snow melt or rain running back toward the residence’s back porch. *Affidavits of Shawn and Shellee Goodspeed.* The Goodspeeds who are not from Jefferson County, Idaho, relied on the representations of the sellers. *Id.*

The Shippens understood that the Goodspeeds were going to reside at the subject real property as their primary residence and that there was no notice in the contract for sale that notified the Goodspeeds that the house would not be of quality construction. *Robert Shippen Depo Tr.* p. 159:14-21; *Jorja Shippen Depo Tr.* p. 30:24 - 31:19. Robert Shippen has conceded that subwater,

*[Handwritten signature]*



while it may not affect the structural integrity of the home, impedes livability. *Robert Shippen Depo Tr.* p. 102:23 - 103:5.

Due to the Shippens misrepresentations and failure to correct the same, the Goodspeed are now the victims of fraud, confined to a house that frequently floods which impedes the habitability of the house.

### ARGUMENT

Plaintiffs are entitled to an amendment of their complaint to include a claim for punitive damages because there is a reasonable likelihood that they will be able to prove sufficient facts at trial to establish an award of punitive damages. Under Idaho law a court must allow an amendment to the pleadings to state a prayer for punitive damages if:

. . . the moving party has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages.

*Seininger Law Office, P.A. v. North Pacific Ins. Co.*, 145 Idaho 241, 249, 178 P.3d 606, 614 (2008); citing *I.C.* § 6-1604(2).

Further, “[i]t is well established in [the State of Idaho] that punitive damages may be awarded when the Defendant has committed fraud.” *Umphrey*, 106 Idaho at 710, 682 P.2d at 1257. *Accord Walston v. Monsumental Insurance Co.*, 129 Idaho 211, 923 P.2d 456 (1996). “Additionally, exemplary damage awards are appropriate when the defendant is engaged in deceptive business practices operated for profit posing danger to the general public.” *Id.* In this case, Defendants committed fraud by misrepresenting the prior sub water history on the subject real property in an effort to cause a sale. As a result, Plaintiffs have alleged numerous counts of fraud: (1) Fraudulent Concealment of a Known Defect; (2) Fraudulent Misrepresentation of a Known Fact; and (3) Fraud in the Inducement.

Amending for punitive damages requires a showing of (1) a bad act and (2) a bad state of mind. *Id.*

**A. Robert and Jorja Shippen Committed a Bad Act/Omission.**

With regard to showing a bad act/omission, the movant must show that “the defendant acted in a manner that was an extreme deviation from reasonable standards of conduct, that the act was performed by the defendant with an understanding of or disregard for its likely consequences.” *Id.* 145 Idaho at 250, 178 P.3d at 615.

In this case, Robert and Jorja Shippen understood that they were undertaking the building of a residence intended for human habitation. They were both aware of the long sub-water history in Jefferson County; not only in the surrounding area, but also in the subdivision where they built the residence. Prior to construction, they did not hire experts to assess an excavation depth. Robert Shippen was apparently concerned enough about the sub-water in the area that he dug a test hole by the walk out basement to watch the sub-water. Before listing the house, Robert Shippen was aware of standing sub-water rising from one of his test holes by the basement, which he acknowledged in his conversation with Dan Fohrenck. Despite this notice, Robert Shippen supplied the following information to his realtor for purposes of marketing the subject real property still to the general public on the multiple listing service:

PUBLIC INFO: . . . \*\* THERE HAS BEEN CONCERN ABOUT SUB WATER IN JEFFERSON COUNTY, HOWEVER THIS HOME HAS NOT HAD SUB ISSUES AND TO GIVE THE BUYER PEACE OF MIND BUILDER WILL INSTALL A LEACHING SYSTEM AROUND HOME AND PROVIDE 1 YEAR WARRANTY ON CONSTRUCTION\*\*

PRIVATE INFO: There has been some concerns about sub water in Jefferson County. This particular home has never had sub issues but to give the buyer peace of mind the builder is going to install a leaching system with a drainage field from the east side to the west side of the home to prevent the possibility of there every [sic] being any sub issues.

During Labor Day Weekend of 2006, less than a month after the MLS listing was posted, Robert Shippen personally witnessed the subject real property's basement flood from sub-water. Robert then told Jorja and his son about the sub-water flooding. Despite Robert's existing representations in the MLS listing, neither he nor Jorja ever contacted Dave Chappel to amend the MLS listing to disclose the sub-water flooding. The only change Robert Shippen requested after the fact of the flooding was to extend the listing date. Robert, who was personally present during the Goodspeed walk through, further failed to disclose the fact of the flooding to the Goodspeeds, who were relying on the representations made in the MLS listing and instead stated the true purpose of the system was to protect against snow melt and rain.

Robert and Jorja Shippen failed to disclose the flooding and subwater issues known to them. Furthermore, their affirmative representation to the public regarding the sub-water was false. Listing a property as something it is not is a deviation from reasonable standards of conduct.

Due to the fact that sub-water in a basement impedes liveability, Robert and Jorja Shippen acted with an understanding or disregard for the likely consequences of the misrepresentation.

As a result of this failure to inform the Goodspeeds, the Goodspeeds now live in a residence that frequently floods and is therefore not fit for human habitation.

**B. Robert and Jorja Shippen Had a Bad State of Mind.**

Again, to amend for punitive damages, the moving party must also show a "bad state of mind." In showing a bad state of mind, the movant must show "the defendant acted with an extremely harmful state of mind, whether or not that state be termed 'malice, oppression, *fraud*, or gross negligence'; 'malice, oppression, wantonness'; or simply 'deliberate or willful.'" *Umphrey v. Sprinkel*, 106 Idaho 700, 710, 682 P.2d 1247, 1257 (1983); *Doe v. Cutter Biological*, 844 F. Supp. 602, 610 (D. Idaho 1994) (*citations omitted*).

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Considering Robert and Jorja Shippen's prior knowledge of sub-water in the area, coupled with the warning from Paul Jenkins, Daniel Fohrenck, and with Robert Shippen's personal observations of the sub-water problem on the property before it was sold, the affirmative MLS statement claiming the property had not had any sub-water issues was a direct misrepresentation. In light of the clear contrast between the knowledge held by the Shippens and the statement made to the public on the MLS listing, such MLS statements could not be made in good faith, but instead could only be made fraudulently, with deliberateness, or with extremely gross negligence.

Furthermore, in light of the Labor Day flooding of 2006, less than one month after the MLS listing was made but nearly ten months before the time the house was sold, the Shippen's failure to update this listing to the public and to the Goodspeeds further conveys fraudulent intent, deliberateness, and extremely gross negligence. Such is especially the case where Robert Shippen was familiar with the process for filling out an MLS change form request some seven (7) months prior to the sale to extend the expiration date of the sale, but he failed to do so with regard to the disclosing the flood and sub-water.

The Shippens knew the statements in the MLS listing were false at the time they were made and shortly thereafter. They therefore acted with a bad state of mind in not only misrepresenting the sub-water on the property, but also in refraining from modifying their misrepresentation after the house flooded.

#### CONCLUSION

In light of the foregoing, Plaintiffs respectfully request that this Court grant leave for Plaintiffs to amend their complaint to include a claim for punitive damages.

DATED this 28 day of September, 2010.


  
WESTON S. DAVIS

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 28 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

L:\wsd\~ Clients\7411.1 Goodspeed\Mot.Punitive.Damages.Memo.wpd

WESTON S. DAVIS (I.S.B. # 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

FILED  
SEP 29, 2010  
JEFFERSON CO. MAGISTRATE  
DISTRICT COURT

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**AFFIDAVIT OF DANIEL  
FOHRENCK**

STATE OF IDAHO            )  
                                      : ss.  
County of Bonneville        )

DANIEL FOHRENCK, being duly sworn upon oath, deposes and says as follows:

1. I am the owner of Xcel Construction, LLC.
2. I was hired to do the framing work on Lot 7, Block 2, Woodhaven Creek Estates, Jefferson County, Idaho (hereinafter "the subject real property") in the year 2006.


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3. In June and July of 2006, I was framing the residence on the subject real property when I noticed standing sub-water by the basement patio.

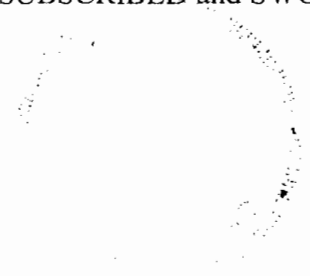
4. I approached Robert Shippen and told him about the standing sub-water problem.

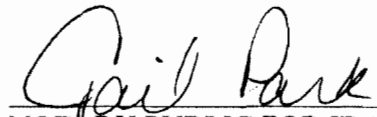
5. Mr. Shippen said he already knew about it and that he was going to install a sub-pump to prevent the sub-water from being an issue to the homeowner.

DATED this 27 day of September, 2010

  
DANIEL FOHRENCK

SUBSCRIBED and SWORN TO before me this 27 day of September 2010.



  
NOTARY PUBLIC FOR IDAHO  
Residing at: Shelley, Idaho  
My Commission Expires: 10-21-11

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 28 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

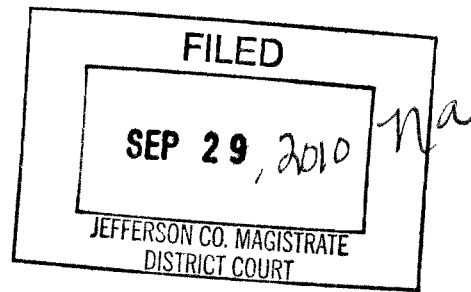
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- Hand Delivery
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- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

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WESTON S. DAVIS (I.S.B. # 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254



Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**AFFIDAVIT OF WILLIAM  
SHAWN GOODSPEED IN  
SUPPORT OF MOTION TO  
AMEND FOR PUNITIVE  
DAMAGES**

STATE OF \_\_\_\_\_ )  
: ss.  
County of \_\_\_\_\_ )

WILLIAM SHAWN GOODSPEED, being duly sworn upon oath, deposes and says as  
follows:

1. I am one of the Plaintiffs in the aforementioned matter.

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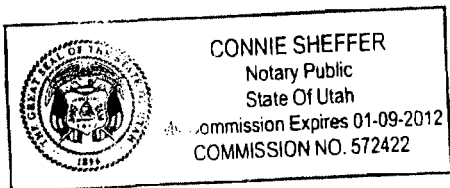
2. Prior to purchasing Lot 7, Block 2 Woodhaven Creek Estates, Jefferson County, Idaho (hereinafter "the subject real property") I resided with my wife and family in Tennessee.
3. I am not from Jefferson County, Idaho.
4. During the walk throughs of the subject real property when Robert Shippen was present, he told us that the leaching system was merely a precautionary measure in the event of a fast snow melt or rain running back toward the residence's back porch.
5. At no time prior to our purchase of the subject real property did Mr. Shippen ever disclose to me that the subject real property had actually had sub-water issues or flooding.
6. I therefore relied on the representations in the MLS listing that the house had not had any sub-water issues and on Mr. Shippen's representations that the purpose of the sump pump was to prevent snow melt and rain from running into the basement.

DATED this 23 day of September, 2010

*W. Shawn*

WILLIAM SHAWN GOODSPEED

SUBSCRIBED and SWORN TO before me this 23 day of September 2010.



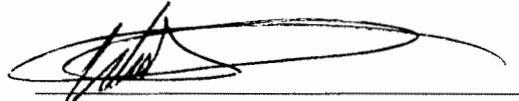
*Connie Sheffer*  
NOTARY PUBLIC FOR Utah  
Residing at: Moab, Ut  
My Commission Expires: 1/9/2012

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 26 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box



WESTON S. DAVIS

L:\wsd\~ Clients\7411.1 Goodspeed\Mot.Punitive.Damages.(Affidavit - Shawn).wpd

2010 SEP 29 PM 2:10  
JEFFERSON COUNTY, IDAHO

WESTON S. DAVIS (I.S.B. # 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, ROBERT and JORJA SHIPPEN,  
husband and wife, ROBERT and JORJA  
SHIPPEN, dba SHIPPEN CONSTRUCTION,  
ROBERT SHIPPEN, an individual, and  
MARRIOTT HOMES, LLC.

Defendants.

Case No.: CV-09-015

**AFFIDAVIT OF SHELLEE  
GOODSPEED IN SUPPORT OF  
MOTION TO AMEND FOR  
PUNITIVE DAMAGES**

STATE OF IDAHO            )  
                                          : ss.  
County of \_\_\_\_\_ )

SHELLEE GOODSPEED, being duly sworn upon oath, deposes and says as follows:

1. I am one of the Plaintiffs in the aforementioned matter.
2. Prior to purchasing Lot 7, Block 2 Woodhaven Creek Estates, Jefferson County,

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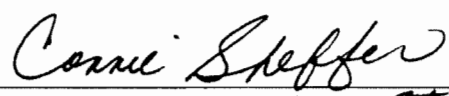
Idaho (hereinafter "the subject real property") I resided with my husband and family in Tennessee.

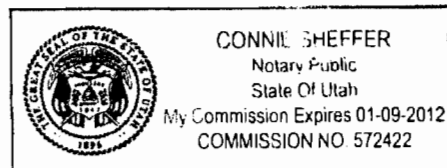
3. I am not from Jefferson County, Idaho.
4. During the walk throughs of the subject real property when Robert Shippen was present, he told us that the leaching system was merely a precautionary measure in the event of a fast snow melt or rain running back toward the residence's back porch.
5. At no time prior to our purchase of the subject real property did Mr. Shippen ever disclose to me that the subject real property had actually had sub-water issues or flooding.
6. I therefore relied on the representations in the MLS listing that the house had not had any sub-water issues and on Mr. Shippen's representations that the purpose of the sump pump was to prevent snow melt and rain from running into the basement.

DATED this 23 day of September, 2010

  
SHELLEE BETH GOODSPEED

SUBSCRIBED and SWORN TO before me this 23 day of September 2010.

  
NOTARY PUBLIC FOR ~~IDAHO~~ Utah  
Residing at: Moab, Ut  
My Commission Expires: 11/9/2012

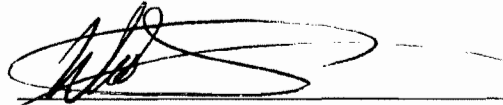


**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 26 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
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- Overnight Mail
- Courthouse Box



WESTON S. DAVIS

L:\wsd\~ Clients\7411.1 Goodspeed\Mot.Punitive.Damages.(Affidavit - Sheilee).wpd

455

WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

2010 SEP 29 PM 2:10  
CLERK OF DISTRICT COURT  
JEFFERSON COUNTY, IDAHO

Attorneys for Plaintiff

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, and ROBERT and JORJA  
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**AFFIDAVIT OF ERIC GEISLER**

STATE OF IDAHO )  
: ss.  
County of BONNEVILLE

ERIC GEISLER, being first duly sworn upon oath, deposes and states as follows:

1. I am of sound mind to testify and make the following statements based upon my personal recollection and knowledge of the facts herein stated.
2. I reside at 324 N. 3718 E., Rigby, Idaho 83442 and am married to Amy Geisler.
3. I am a neighbor of the plaintiffs, Shawn and Shellee Goodspeed, who reside at

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319 N. 3709 E. , Rigby, ID 83442, hereinafter the "Subject Real Property".

4. I moved with my family into our present residence in May of 2006. Our house was the second house built in the neighborhood.

5. Because we my wife and I were made aware of sub-water issues in the area, we would occasionally monitor other construction properties and excavation sites in the subdivision to see if we could observe the height of the water table. We were concerned water would enter our residence.

6. One day in the late summer or early fall of 2006, I drove past the subject real property and noticed a friend of mine working on the subject real property. I stopped to talk to him.

7. At that time, the subject real property was nearing completion (foundation poured, house framed, basement sheet rocked, house partially to mostly sided). There were still piles of dirt around the house from the excavation of the foundation of the house and the land had not been graded.

8. As I was talking to my friend, I noticed that a basement patio had been roughly excavated for the subject real property, about six inches below the concrete floor line of the basement. I was able to observe partially the foundation of the subject real property through the excavated hole.

9. In the excavated hole, I saw water standing below the level of the concrete basement pad. The water was touching the foundation of the house. At that time, the water appeared to be three (3) or four (4) inches shy of reaching the level where water would enter the subject real property. The water had not entered the house at that time.

10. Do to my concern about the water table effecting my own house, I continued to watch the water at the subject real property over a period of a couple of weeks, to see if the water level continued to rise. The water remained and was gradually rising.

11. One day, about two weeks after I initially noticed the ground water, my wife, Amy, and I were driving around the subject real property on a four wheeler. As we circled around the back of the house, I again saw the ground water standing in the excavated hole.

12. Additionally, by that time, the water level had risen over the foundation and covered the basement porch area.

13. I then noticed a glare through a window pane of the basement door.

14. I approached an open window of the subject real property and observed that there was water inside the basement of equal level as the water outside. I leaned into the window and stuck my finger into the water on the floor of the basement to see how deep the water was. By the time my finger touched the concrete floor in the basement, the ground water came up to my second knuckle. I therefore estimate the water was one and a half (1 ½) to two (2) inches deep at the time I stuck my finger in the water.

15. My wife and I then left the house, and I immediately called Robert Shippen's son, Nick Shippen, who was working for his dad at the time. I knew Nick because both Nick and I lived in the boundaries for the same church ward. I told Nick there was water in the basement of the house his Dad was building across from my residence and that he should come look at it.

16. Nick stated that his father, Robert Shippen, was out of town on vacation. Shortly thereafter, Nick's truck showed up at the subject real property. I did not talk to Nick about the flood water after Nick left. I am not aware, what steps, if any were taken to remove the water.



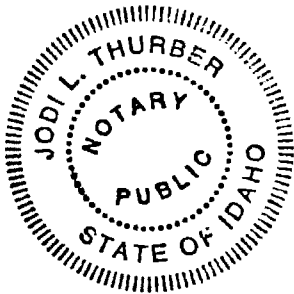
17. The aforementioned occurrences were the only incidents of flooding inside the residence I personally observed on the subject real property prior to the Goodspeed's purchase of the subject real property.

18. Approximately two months after the Goodspeeds moved in, I told them to watch the basement because it had flooded before. The Goodspeeds appeared to be shocked by the news of my statement about the flooding..

DATED this 21 day of January, 2010

Eric Geisler  
ERIC GEISLER

SUBSCRIBED AND SWORN to before me this 21 day of January, 2010.



Jodi L. THURBER  
Notary Public  
Residing at: REXBURG, ID.  
Commission expires: 11/20/15

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 27 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box

  
WESTON S. DAVIS

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WESTON S. DAVIS, ESQ (ISB No. 7449)  
NELSON HALL PARRY TUCKER, P.A.  
490 Memorial Drive  
Post Office Box 51630  
Idaho Falls, Idaho 83405-1630  
Telephone (208) 522-3001  
Fax (208) 523-7254

Attorneys for Plaintiff

2010 SEP 29 PM 2:10  
JEFFERSON COUNTY, IDAHO

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

WILLIAM SHAWN GOODSPEED and  
SHELLEE BETH GOODSPEED, husband and  
wife,

Plaintiffs,

vs.

SHIPPEN CONSTRUCTION, INC., an Idaho  
corporation, and ROBERT and JORJA  
SHIPPEN, husband and wife,

Defendants.

Case No.: CV-09-015

**AFFIDAVIT OF AMY GEISLER**

STATE OF IDAHO )  
: ss.  
County of BONNEVILLE

AMY GEISLER, being first duly sworn upon oath, deposes and states as follows:

1. I am of sound mind to testify and make the following statements based upon my personal recollection and knowledge of the facts herein stated.

2. I reside at 324 N. 3718 E., Rigby, Idaho 83442 and am married to Eric Geisler.

3. I am a neighbor of the plaintiffs, Shawn and Shellee Goodspeed, who reside at

319 N. 3709 E. , Rigby, ID 83442, hereinafter the "Subject Real Property".

4. I moved with my family into our present residence in May of 2006. Our house was the second house built in the neighborhood.

5. One day, about two weeks after my husband initially noticed the ground water, he and I were driving around the subject real property on a four wheeler. As we circled around the back of the house, I saw ground water standing in an excavated hole for a basement patio.

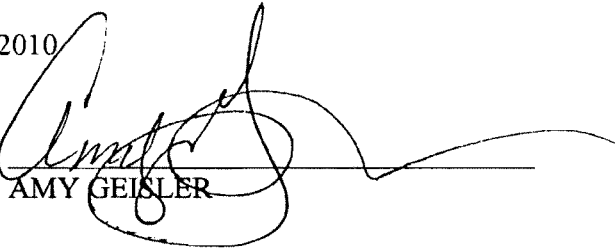
6. By that time, the water level had risen over the foundation and covered the basement porch area.

13. I then noticed a glare through a window pane of the basement door.

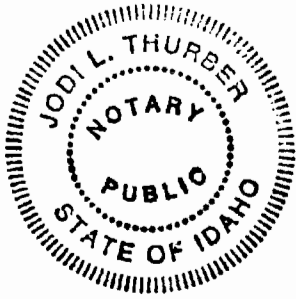
14. I approached an open window of the subject real property with my husband and observed that there was water inside the basement of equal level as the water outside. I then observed Eric lean into the window and stick his finger into the water on the floor of the basement to see how deep the water was. By the time his finger touched the concrete floor in the basement, the ground water came up to his second knuckle. I therefore estimate the water was one and a half (1 ½) to two (2) inches deep at the time Eric stuck his finger in the water.

15. The aforementioned occurrence was the only incident of flooding inside the residence I personally observed on the subject real property prior to the Goodspeed's purchase of the subject real property.

DATED this 21 day of January, 2010

  
AMY GEISLER

SUBSCRIBED AND SWORN to before me this 21 day of January, 2010.



Jodi L. THURBER

Notary Public

Residing at: REYBURG, ID.

Commission expires: 11/20/15

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true copy of the foregoing document upon the following this 28 day of September, 2010, by hand delivery, mailing with the necessary postage affixed thereto, facsimile, or overnight mail.

Robin D. Dunn  
P.O. Box 277  
477 Pleasant Country Lane  
Rigby, ID 83442-0277

- Mailing
- Hand Delivery
- Fax
- E-Mail
- Overnight Mail
- Courthouse Box



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WESTON S. DAVIS

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