

10-3-2011

## Grazer v. Jones Appellant's Brief Dckt. 38852

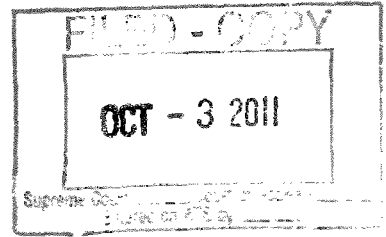
Follow this and additional works at: [https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs)

---

### Recommended Citation

"Grazer v. Jones Appellant's Brief Dckt. 38852" (2011). *Idaho Supreme Court Records & Briefs*. 3666.  
[https://digitalcommons.law.uidaho.edu/idaho\\_supreme\\_court\\_record\\_briefs/3666](https://digitalcommons.law.uidaho.edu/idaho_supreme_court_record_briefs/3666)

This Court Document is brought to you for free and open access by Digital Commons @ UIIdaho Law. It has been accepted for inclusion in Idaho Supreme Court Records & Briefs by an authorized administrator of Digital Commons @ UIIdaho Law. For more information, please contact [annablaine@uidaho.edu](mailto:annablaine@uidaho.edu).



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

ALLEN F. GRAZER, an individual,  
  
Plaintiff/Appellant,

v.

GORDON A. JONES, an individual;  
GORDON A. JONES, Personal Representative  
of THE ESTATE OF LINDA G. JONES,  
deceased; J&J LIVESTOCK, LLC, a Utah  
Limited Liability Company; and John Does 1-  
10,

Defendants/Respondents.

**APPELLANT'S BRIEF**

Docket No. 38852

APPEAL FROM THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN  
AND FOR FRANKLIN COUNTY

Honorable David C. Nye, District Judge, Presiding

Lane V. Erickson  
RACINE, OLSON, NYE, BUDGE &  
BAILEY, CHARTERED  
P.O. Box 1391  
Pocatello, ID 83204-1391  
Telephone: (208) 232 6101  
Facsimile: (208) 232-6109

Attorneys for Respondents

Lincoln W. Hobbs (ID Bar #07325)  
Margaret H. Olson (ID Bar #04680)  
HOBBS & OLSON, P.C.  
466 East 500 South, Suite 300  
Salt Lake City, UT 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

Attorneys for Appellant

## **PARTIES TO THE PROCEEDING**

### **Plaintiff/Appellee**

Allen F. Grazer

### **Defendants/Respondents**

Gordon A. Jones

Gordon A. Jones, Personal Representative of the Estate of Linda G. Jones, Deceased

J&J Livestock, LLC

## TABLE OF CONTENTS

Parties to the Proceeding.....	ii
Table of Authorities .....	iv
Statement of the Case .....	1
I.    Nature of the Case .....	1
II.   Course of Proceedings .....	3
III.  Statement of Facts.....	4
Issues Presented on Appeal.....	11
Attorney Fees on Appeal .....	11
Argument .....	11
1.    THE COURT ERRED IN HOLDING THAT PLAINTIFF FAILED TO TIMELY EXECUTE OR TO RENEW THE JUDGMENT .....	11
2.    THE COURT ERRED IN DENYING THE PLAINTIFF’S MOTION FOR SUMMARY JUDGMENT AND FOR WRIT OF EXECUTION .....	18
3.    THE COURT ERRED IN GRANTING JASON JONES’ RENEWED MOTION TO DISMISS .....	19
Conclusion .....	21
Addendum .....	

## TABLE OF AUTHORITIES

### Cases

<i>Bashor v. Beloit</i> , 20 Idaho 592; 119 P. 55 (1911) .....	17
<i>Caxton Printers v. Ulen</i> , 59 Idaho 688, 86 P.2d 468 .....	17
<i>G. &amp; R. Petroleum Inc. v. Clements</i> , 127 Idaho 119, 120, 898 P.2d 50 (1995).....	16
<i>Gilbert v. Nampa School District</i> , 104 Idaho 137; 637 P.2d 1 (Idaho 1983).....	16
<i>Platts v. Pacific First Federal Savings &amp; Loan Ass'n of Tacoma</i> , 62 Idaho 340, 343, 111 P.2d 1093, 1096 (1941) .....	17

### Statutes and Rules

<i>Idaho Code Ann.</i> §5-215 .....	17
<i>Idaho Code Ann.</i> §10-1110 .....	2, 12
<i>Idaho Code Ann.</i> §10-1111 .....	2, 12, 16
<i>Idaho Code Ann.</i> §10-1306 .....	13, 17
<i>Idaho Code Ann.</i> §11-101 .....	15
<i>Idaho Code Ann.</i> §11-105 .....	15, 17
<i>Idaho R. Civ. P. 1</i> .....	3
<i>Idaho R. Civ. P. 4(a)(2)</i> .....	3, 19, 20, 21

## **STATEMENT OF THE CASE**

### **I. NATURE OF THE CASE**

This action arose as part of an effort to collect a judgment entered against Defendant Gordon A. Jones by the Second District Court in Davis County, State of Utah. At the close of a bench trial in that case, the Judge indicated an intent to enter a substantial judgment on behalf of the Plaintiff, Allen F. Grazer, following a further submission of evidence on damages. At about this same time, Plaintiff and his counsel realized that Defendant Gordon A. Jones had transferred away his property, both within the State of Utah and in Idaho, in an effort to avoid collection of the judgment.

Based upon the discovery of Defendant Jones' attempts to fraudulently transfer property, the Plaintiff initially filed this action prior to the entry of the Utah judgment. The action originally included causes of action to set aside a quit-claim deed from Jones to J&J Livestock, LLC ("J&J"), which had been executed prior to the formation of J&J; the second cause of action sought to set that attempted transfer aside as fraudulent.

The Defendants' counsel responded to that Complaint by filing an Answer in which they denied the substantive allegations of the Plaintiff's Complaint; throughout the course of an intervening bankruptcy and until the filing of the Defendants' Answer to the Second Amended Complaint, the Defendants Gordon A. Jones and J&J Livestock were asserting that the deed was valid. Unless and until this issue was resolved by the court, the issuance of a Writ of Execution would have been futile.

Ultimately, following a number of delays in the case, including a bankruptcy, repeated

reassignments of judges, repeated withdrawals and re-appearances of counsel, and several vacated trial dates, the Defendants finally filed their Answer to the Second Amended Complaint on January 21, 2011. That Answer established, for the first time, that the Defendants had abandoned most of their futile defenses, clearing the way, in the Plaintiff's mind, for a Writ of Execution and/or Summary Judgment. That Motion was filed on February 11, 2011.

In their Answer, however, the Defendants also asserted, for the first time, that the Plaintiff's ability to execute on his Judgment was time barred due to the fact that the Plaintiff had also recorded a copy of the Utah judgment on August 1, 2005. (R. Vol. 1, p. 60.) While that judgment had, in fact, been recorded in Idaho, the action below was also pending, in an effort to establish the ownership of the property in question. Until the clarification of the ownership of the property, the issuance of a Writ of Execution on the Judgment would likely have been futile (by virtue of the lack of title ownership), or would have been challenged by the Defendants. Evidence of the Defendants' likely challenge to such an execution arises from the affirmative defenses raised in the January 2011 Answer, wherein they insisted that there were prerequisites to the issuance of a Writ of Execution which had not been met.

At about the same time as the Plaintiff was filing his Motion for Summary Judgment and Writ of Execution, Defendants asserted in their own Motion for Summary Judgment that the time limits for issuance of such Writs under Idaho Code Ann. §§10-1110 and 10-1111 had lapsed, in light of the fact that in excess of five years had occurred since the recordation of the Judgment. Their argument ignored the Idaho statutes and the case law which set forth that parties are not limited in their means for collecting a judgment and that ignored the fact that Plaintiff had been diligently seeking to collect the judgment even from before it was entered. No valid public

policy supports dismissal of the Plaintiff's claims based upon the lapse of time.

An additional matter in this appeal arises from the court's dismissal of causes of action asserted against Jason Jones who was named in the Plaintiff's Amended Complaint and the Plaintiff's Second Amended Complaint. The court dismissed Jason Jones by virtue of the lapse of too much time between the filing of the First Amended Complaint and the service of the Second Amended Complaint. In so doing, the court ruled, without any case law support, that the six month time limitation in Rule 4(a)(2) related back to the filing of the first Amended Complaint, rather than the filing of the Second Amended Complaint. This interpretation is not supported by the language of the Rules, and is not supported by public policy. There is no logical reason why the Plaintiff should have been precluded from filing and serving a Second Amended Complaint asserting causes of action which he clearly could have asserted in a separate action. That dismissal does not serve the ends of justice as required by Idaho R. Civ. P. 1(a). ("These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding.")

## **II. COURSE OF THE PROCEEDINGS**

This is an action filed in connection with the collection of a judgment entered in the State of Utah; the Plaintiff's Complaint was filed on May 12, 2005; action on the case was stayed for about a year following the Defendants' bankruptcy; Plaintiff thereafter filed an Amended Complaint pursuant to order of the court, a Second Amended Complaint pursuant to stipulation, and sought to file a Third Amended Complaint, leave for which was denied.

The court dismissed the Second Amended Complaint as to proposed Defendant Jason Jones on two occasions; Plaintiff also appeals the dismissal of that action.



Finally, the court granted Summary Judgment to the Defendants herein on April 1, 2011; the court's Judgment, Order and Decree was filed on April 26, 2011, and the Notice of Appeal herein was filed on June 1, 2011. Plaintiff appeals the court's granting of the Defendants' Summary Judgment, the court's denial of the Plaintiff's Motion for Summary Judgment, and the granting of the Motion to Dismiss Jason Jones.

### **III. STATEMENT OF FACTS**

1. On April 26-29, 2005, Judge Alphin of the Second District Court in Utah heard a civil case involving the Plaintiff, Allen F. Grazer, and the Defendant, Gordon A. Jones. On April 29, having previously dismissed Jones' claims, Judge Alphin declared his intention to award judgment in favor of Mr. Grazer. (R. Vol. 1, p. 4, ¶14; admitted in R. Vol. 1, p. 53.)

2. This action was commenced by the Plaintiff's filing of a Complaint (the "Original Complaint") on May 12, 2005. The Original Complaint contained two causes of action; a cause of action for declaratory judgment invalidating a quit claim deed which purported to transfer property from Gordon A. Jones to J&J Livestock, LLC ("J&J"), and an alternative cause of action to set the transfer aside, as fraudulent. (R. Vol. 1, p. 1.)

a. Paragraph 12 of the Original Complaint alleged that Jones had transferred his Franklin County, Idaho property to J & J on December 22, 2004, one week after the Utah Court had set the Utah matter for trial. (R. Vol. 1, p. 4, ¶12.)

b. The First Cause of Action of the Original Complaint sought to set aside the quit claim deed from Defendant Jones to J&J, as void ab initio. (R. Vol. 1, p. 5, ¶15-19.)

c. The Second Cause of Action of the Original Complaint sought to set aside

the transfer from Jones to J&J, based upon the fraudulent nature of the transfer. (R. Vol. 1, p. 5-7, ¶20-29.)

d. For relief under the Original Complaint, Plaintiffs sought “a declaratory order declaring the quit claim deed void ab initio and vesting title to the Franklin County property in Jones” (R. Vol. 1, p. 7, prayer ¶1); “For judgment avoiding the transfer of the Franklin County property... under the Uniform Fraudulent Transfer Act, I.C. 55-916(a).” (*Id.*, prayer ¶ 2), and “For a writ of attachment attaching the Franklin County property to satisfy Grazer’s judgment against Jones.” (*Id.*, prayer ¶3)

3. On July 8, 2005, “Defendants” filed an answer to the Plaintiff’s complaint. (R. Vol. 1, p. 52.) The Answer denied that the quit claim deed transferring the property was invalid (*Id* at p. 53, ¶18), and denied that “Grazer [was] entitled to an avoidance of the transfer to the extent necessary to satisfy his judgment.” (*Id* at p. 54, ¶27.) The Answer prayed that the “Complaint be dismissed with prejudice in its entirety [sic] that Plaintiff take nothing thereby” (*Id.*, prayer at ¶A).

4. Defendants thereafter stipulated to the issuance of a Writ of Attachment against the Property and, in light thereof, a Writ of Attachment was issued by this Court on August 5, 2005. (R. Vol. 1, p. 62.)

5. On November 22, 2005, the Court entered an Order allowing Plaintiff to amend his complaint, in accordance with the Motion and Memorandum filed therewith.<sup>1</sup> (R. Vol. 1, p.

---

<sup>1</sup> For inexplicable reasons, several pleadings filed by the Plaintiff do not appear in the Court’s record. While none of these missing documents are critical to the resolution of this dispute, they are included herein as part of an Addendum. The Motion and Memorandum to Amend are included as Exhibit “A” in the Addendum.

65.)

6. On April 13, 2006, the Utah Court in the case in which the Judgment was entered, ruled that the Judgment entered July 5, 2005 “effectively disposed of Mr. Grazer as a party as well as any of his claims against the plaintiffs [including the Defendant herein Gordon A. Jones] and the plaintiffs’ claims against him.” The court certified the July 2005 judgment as final, and augmented the prior judgment with an additional \$222,584.32.

7. On April 18, 2006, Gordon A. Jones filed a case under Chapter 7 of the Bankruptcy Code, staying further proceedings in this case. (R. Vol. 1, p. 69; *see also* R. Vol. 5, p. 598-600.)

8. On July 17, 2006, the Chapter 7 Bankruptcy Trustee removed this Action from the jurisdiction of Idaho to the jurisdiction of the Utah Bankruptcy Court. (R. Vol. 1, p. 68-71.)

9. In April 2007, the Chapter 7 Trustee and Grazer entered into an Agreement, approved by the United States Bankruptcy Court for the District of Utah abandoning this cause of action from the bankruptcy estate and specifically authorizing Grazer to proceed with his action to collect against the real property at issue herein (the “Property”). (R. Vol. 1, p. 87-97.) All property of the bankruptcy estate, specifically including the Franklin County property and the associated water shares and specifically including the action below, were abandoned from the bankruptcy estate to the Plaintiff. (Id at p. 92-93.) The bankruptcy court’s order specifically stated that “Grazer shall be entitled to fully pursue all his rights and claims against the aforesaid property in any State or Federal Court what [sic] would have jurisdiction absent the filing of the Debtor’s bankruptcy.” (*Id.* at p. 89-90.)

10. On January 20, 2009, an Order of Discharge was granted in the Gordon Jones

Bankruptcy. The Order provides “However, a creditor may have the right to enforce a valid lien, such as a mortgage or a security interest, against the debtor’s property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case.” (R. Vol. 4, p. 549, ¶18.)

11. No action to avoid the judgment lien of Grazer was commenced in the Gordon Jones Bankruptcy. (R. Vol. 4, p. 549, ¶19.)

12. On May 7, 2007, Grazer requested a Scheduling and Management Conference in this Case. (A copy of this request does not appear in the Court’s record. A true and correct copy of the Request, including Plaintiff’s counsel’s certificate of service, is included in the Addendum as Exhibit “B.”)

13. On December 26, 2007, Grazer again requested a Scheduling and Management Conference in this Case. (R. Vol. 1, p. 83.)

14. On January 2, 2008, Jones’ then-acting counsel withdrew. (R. Vol. 1, p. 104.) On February 4, 2008, Lane Erickson appeared on behalf of Gordon Jones, Linda Jones and J & J Livestock. (R. Vol. 1, p. 107.)

15. On March 13, 2008, the Court set this matter for trial on November 5 and 6, 2008 (R. Vol. 1, p. 112.)

16. On August 21, 2008, Lane Erickson filed a Motion to Withdraw. (R. Vol. 1, p. 117.)

17. On October 8, 2008, Judge Mitchell Brown disqualified himself; the matter was referred to the Administrative District Judge for reassignment (R. Vol. 1, p. 119); Judge McDermott referred the matter to Judge Dunn (R. Vol. 1, p. 120.); On October 22, 2008, Judge Dunn disqualified himself and again referred the matter to the Administrative Judge for

reassignment (R. Vol. 1, p. 121). On October 29, 2008, this matter was referred to Judge Nye. (R. Vol. 1, p. 123.)

18. On October 14, 2008, Kent Hawkins was substituted as counsel for Linda Jones. (This pleading is also omitted from the Court's file.)

19. On May 13, 2009, Lane V. Erickson filed a Motion to Dismiss on behalf of Jones supported by an Affidavit of Lane V. Erickson in which he stated that he was the attorney for Gordon A. Jones, noting that the case had been "assigned and reassigned to several judges who for various reasons disqualified themselves...." and further stating that the discharge granted in Jones' bankruptcy had discharged the debt. (R. Vol. 1, p. 124-34.)

20. On July 31, 2009, the parties' counsel appeared for argument on the Motion to Dismiss. The Amended Complaint was not in the Court's file, and Defendants' counsel (for Linda Jones and Gordon Jones) denied having received a copies. A copy for the Plaintiff's counsel was filed. Copies were made and distributed to Lane Erickson and Dave Gallafant (of Merrill & Merrill). At the request of Defendants' counsel, the hearing was vacated. In a Minute Entry and Order arising from that hearing, Mr. Erickson was advised to re-notice his motion, and the Court indicated it would "send out the standard form for getting [the case] on the Court's calendar for trial. (R. Vol. 2, p. 291-92.) That motion was never re-noticed.

21. On November 4, 2009, Plaintiff filed a Motion to File Second Amended Complaint (R. Vol. 2, p. 293); the Motion was stipulated to by all counsel (R. Vol. 3, p. 325); the Second Amended Complaint was filed on December 7, 2009. (R. Vol. 3, p. 329.)

22. Jason Jones was served with a copy of the Second Amended Complaint on February 10, 2010. (R. Vol. 3, p. 429.)

23. On February 26, 2010, Jared Steadman of Merrill & Merrill filed a Notice of Special Appearance on behalf of Jason Jones (R. Vol. 3, p. 432), and a Motion to Dismiss [the Second Amended Complaint]. (R. Vol. 3, p. 434.) That Motion was based upon allegations that the Summons had been improperly issued, and that it was not served in a timely fashion.

24. Jason Jones was once again served with a copy of the Second Amended Complaint, this time with a Summons which had been issued by the Court, on April 15, 2010. (R. Vol. 4, p. 473.)

25. On May 3, 2010, Jared Steadman filed a Second Notice of Special Appearance on behalf of Jason Jones (R. Vol. 4, p. 476), and a Renewed Motion to Dismiss [the Second Amended Complaint]. (R. Vol. 3, p. 434.)

26. On June 11, 2010, the Court dismissed the Second Amended Complaint as to Jason Jones. (R. Vol. 4, p. 480.)

27. On July 19, 2010, the attorneys for all parties submitted a Joint Statement Submitting Information for Scheduling Order stipulating to three trial dates with first setting to be in February, 2011. (R. Vol. 4, p. 492.)

28. On August 20, 2010, Judge David C. Nye entered a Scheduling Order, Notice of Trial Setting and Initial Pretrial Order setting the Trial in a 1<sup>st</sup> Setting commencing February 8, 2011. (R. Vol. 4, p. 501.)

29. On January 13, 2011, in a telephonic status conference requested by Defendants' attorney, Lane V. Erickson, the February 2011 trial dates were stricken and trial dates were set for March 29, 2011 – April 1, 2011. (R. Vol. 4, p. 532.)

30. On January 21, 2011, Defendants Gordon Jones (individually and as personal

representative of Linda G. Jones) and J & J Livestock, filed their Answer to Plaintiff's Second Amended Complaint. (R. Vol. 4, p. 534.) The Answer denied that the July 7, 2005 Judgment was final (*Id.* at ¶16), and contained a number of admissions that mooted much of the Plaintiff's Second Amended Complaint. The answer asserted that the Utah Judgment "was not a 'final judgment' upon which a valid Foreign Judgment can be issued (*Id.*, First Affirmative Defense), asserted that Plaintiff was "judicially estopped from claiming that the 'final judgment' of the Utah court was entered on any date other than April 13, 2006..." (*Id.*, Second Affirmative Defense), asserted that plaintiff could not "seek to execute against any of the Defendants' real property until such time as Plaintiff has fully satisfied each and every requirement set forth in I.C. § 11-102," (*Id.*, Third Affirmative Defense), asserted that "Plaintiff cannot seek the enforcement of any judgment it claims or any execution it derives therefrom...until such time as Plaintiff [established that the judgment had not been satisfied]." (*Id.*, Fourth Affirmative Defense.)

31. On February 11, 2011, Defendant Jones filed a "Pre-trial Brief, a/k/a Motion for Summary Judgment. (R. Vol. 4, p. 544.) On that same date, Plaintiff filed his Motion for Summary Judgment and for Issuance of Writ of Execution. (R. Vol. 5, p. 566.)

32. On February 16, 2011, the Court vacated the March 29, 2011 – April 1, 2011 trial setting. (R. Vol. 5, p. 649.)

33. On February 23, 2011, the Court issued a Notice of Taking Summary Judgment Under Advisement. (R. Vol. 5, p. 653.)

34. On February 25, 2011, Plaintiff filed a Notice of Intent to File Response to Defendant's Pre-Trial Brief aka Motion for Summary Judgment; Plaintiff's first awareness of the

filing of the Motion had arisen from the Court's Notice. (R. Vol. 5, p. 679.)

35. On March 7, 2011, Plaintiff filed a Combined Response to the Pre-trial Brief aka Motion for Summary Judgment (R. Vol. 6, p. 694); on March 21, 2011, Defendant filed his Reply. (R. Vol. 6, p. 758.)

36. On April 1, 2011, the Court filed its Decision on Motions for Summary Judgment (R. Vol. 6, p. 767); on April 26, 2011, the Court issued its Judgment, Decree and Order. (R. Vol. 6, p. 779.)

37. Plaintiff filed this appeal on June 1, 2011. (R. Vol. 6, p. 803.)

#### **ISSUES PRESENTED ON APPEAL**

1. The Court erred in granting Defendants' Motion for Summary Judgment, by holding that Plaintiff failed to timely execution or to renew the Judgment.

2. The Court erred in denying the Plaintiff's Motion for Summary Judgment and for Writ of Execution.

3. The Court erred in granting Jason Jones' renewed Motion to Dismiss.

#### **ATTORNEY FEES ON APPEAL**

Appellant claims attorney fees on this appeal, based upon the fact that the underlying Judgment, which Plaintiff seeks to enforce, provided for attorney fees incurred in connection with the collection thereof. (R., Vol. 3, p. 350.)

#### **ARGUMENT**

**1. THE COURT ERRED IN HOLDING THAT PLAINTIFF FAILED TO  
TIMELY EXECUTE OR TO RENEW THE JUDGMENT**

**a. Plaintiff's Action, Commenced Prior to the Entry of Judgment, Either**



**Tolled or Mooted Idaho Code Ann. 10-1111, to the Extent it is “Treated as a Statute of Limitations”.**

The basis for the court’s dismissal of the action arises from Idaho Code Ann. 10-1111, which provides as follows:

**§ 10-1111. RENEWAL OF JUDGMENT - LIEN**

(1) Unless the judgment has been satisfied, at any time prior to the expiration of the lien created by section 10-1110, Idaho Code, or any renewal thereof, the court which entered the judgment, other than a judgment for child support, may, upon motion, renew such judgment. The renewed judgment may be recorded in the same manner as the original judgment, and the lien established thereby shall continue for five (5) years from the date of judgment.

(2) Unless the judgment has been satisfied, and prior to the expiration of the lien created in section 10-1110, Idaho Code, or any renewal thereof, a court that has entered a judgment for child support may, upon motion, renew such judgment. The renewed judgment may be enforced in the same manner as the original judgment, and the lien established thereby shall continue for ten (10) years from the date of the renewed judgment.

The court’s reliance on this section was misplaced for several reasons; first and foremost, the Plaintiff’s action which was filed prior to the entry of the Judgment, and which was continuously pursued thereafter, tolled Section 10-1111. The Plaintiff’s action was filed in connection with an effort to execute upon the Judgment; the Plaintiff could not have executed upon his Judgment prior to January of 2011, because up to that time, the Defendants were contesting whether or not Defendant Gordon Jones even had any interest in the Franklin County property. It would have been impossible for the Plaintiff to execute upon the Judgment when the record title was, at best, clouded as to the ownership of the title.

None of the cases which were relied upon by the Defendants or the Plaintiff involved a situation such as this, where the Plaintiff had actually filed and had pending an action respecting the allegedly expired Judgment. While Plaintiff had never specifically requested that

the Court issue an execution prior to his filing his Motion for Summary Judgment and Writ of Execution (which promptly followed the first opportunity to be able to do so) it was implicit the entire time that the Plaintiff was seeking to clarify the status of title so that a Writ of Execution could ultimately be issued.

The various cases relied upon by the Defendants with respect to the statute of limitations note that while a judgment can be freely renewed, it must be renewed primarily to protect plaintiff against the claims of creditors who may rely upon the lapse of five years as an indication of the expiration of the judgment. There is no evidence that any creditors made such reliance in this case; furthermore, any reliance by any potential creditor upon the absence of an execution would have had to overlook the fact that there has been a Lis Pendens recorded throughout the entire duration of the lawsuit. (R. Vol. 1, p. 10.) As it is undisputed that a renewal of the Judgment would have been automatic and granted had it been explicitly sought, it would be an absurdity for the absence of specific request to allow the Judgment debtor to escape the liability imposed by the lien.

**b. Plaintiff's Action Was All Part of an "Attempt to Execute Upon the Judgment, and Was Specifically Allowed as an Alteration."**

The ability of the Plaintiff to obtain and pursue a Writ of Execution upon the docketed Judgment was only one of the remedies available to the Plaintiff under Idaho law. Idaho Code Ann. §10-1306 specifically provides that "The right of a creditor to bring an action to enforce his judgment instead of proceeding under this act remains unimpaired." Idaho Code Ann. §10-1306 is taken from the Uniform Enforcement of Foreign Judgment Act; this section specifically allows the Plaintiff to bring his action on the judgment, as he did, in a timely fashion

to pursue an alternative means to collect the Judgment.

At the time the Plaintiff's Complaint was filed, and until January 2011, pursuit of this action was necessary and appropriate for the Plaintiff to collect the Judgment. The Defendants had attempted to fraudulently transfer the property in question prior to the filing of the Complaint; additionally, the water shares associated with the property had also been fraudulently transferred. Plaintiff needed a court adjudication to clarify his right to execute upon the Franklin County Property up to and until the filing of the Defendants' Answer to the Second Amended Complaint. Furthermore, the Plaintiff sought (unsuccessfully, but subject to this Court's review) to join Jason Jones in the action in order to quiet title respecting a Notice of Interest, which Jason Jones asserts in the property. Extinguishment of Jason Jones' Notice of Interest is not a prerequisite to the enforcement of the Judgment, but will facilitate clear title in the event the title is executed upon.<sup>2</sup>

**c. Defendant Should be Estopped from Relying Upon the Plaintiff's Alleged Failure to Timely Execute, Based Upon Their Affirmative Defenses Asserting that Plaintiff Could Not Execute Upon the Judgment.**

In their Answer to the Second Amended Complaint the Defendants asserted the statute of limitations as a defense, but also asserted that:

- “Plaintiff is judicially estopped from claiming that the ‘Final Judgment’ of

---

<sup>2</sup> While it is not a technical prerequisite that Jason Jones' interests be clarified prior to execution, that would simplify the matter. In the event that this Court reverses the court's dismissal of the cause of action against Jason Jones, the Court can still remand the action as necessary, for clarification as to the Plaintiff's rights to execute upon his Judgment. For example, the Court could mandate the issuance of an injunction, but remand this matter for an opportunity for the Plaintiff to adjudicate the validity (or invalidity) of Jason Jones' purported interests.

the Utah court was entered on any date other than April 13, 2006, by reason of the Utah Court ruling dated April 13, 2006” (Answer to Plaintiff’s Second Amended Complaint, R. Vol. 4, p. 540, ¶39).<sup>3</sup>

- “Plaintiff cannot seek to execute against any of the Defendants’ real property pursuant to I.C. §§11-101 and 11-105” (*Id.*, R. Vol. 4, p. 541, ¶42).
- “Even if none of the other Affirmative Defenses existed, Plaintiff still could not seek to execute against of the Defendants’ real property until such time as Plaintiff has fully satisfied each and every requirement set forth in I.C. §11-102.” (R. Vol. 4, p. 541, ¶43.)
- “Plaintiff cannot seek the enforcement of any judgment it claims or any execution it derives therefrom against of the Defendants’ property, real or personal, in Idaho until such time as Plaintiff has fully satisfied the Court through an itemized accounting, that the property, monies, executions and the like that Plaintiff has already recovered and received in Plaintiff’s Utah court proceedings have not already fully satisfied the judgment claimed by Plaintiff.” (R., Vol. 4, p.541, ¶43.)

The Defendants’ inconsistent positions – asserting on the one hand that the Plaintiff did not execute on his Judgment in a timely fashion, and on the other hand that the Plaintiff could not have executed until certain matters were adjudicated – point out the inconsistencies of the position asserted by the Defendants. The Plaintiff sought diligently to collect the Judgment and obtain execution thereon from prior to the date of the Judgment itself.

---

<sup>3</sup> Of course had this assertion been upheld by the trial court, Plaintiff would have had up until April 13, 2011 – two months after he sought his Writ of Execution – to seek the Writ. Thus his February 11, 2011 would have been timely.

His efforts were thwarted by the actions of the Defendants and their counsel, actions which included withdrawing and reappearing, filing motions, but seeking continuances on the hearing date thereof, delaying the filing of an Answer to the Second Amended Complaint, and requests, at the eves of trial, for continuances thereof. The Defendants should not be allowed to benefit from their own efforts to delay this matter. *See Gilbert v. Nampa School District*, 104 Idaho 137; 637 P.2d 1 (Idaho 1983). (The clean hands doctrine stands for the proposition that “A litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue.”) While Defendants’ counsel’s conduct in this case is not particularly reprehensible, a cursory review of the record reveals that virtually all of the delay in conducting this action arose by virtue of the conduct and actions of the Defendants and their counsel, rather than by the inaction of the Plaintiff.

**d. Even Assuming the Plaintiff’s Judgment Lien Expired, the Judgment did not, and Plaintiff Should be Allowed to Continue to Pursue his Action on the Judgment.**

The Defendants argued, and the court accepted, that the expiration of the judgment lien under Idaho Code Ann. 10-1111 also would have terminated the Judgment itself. This is clearly not the case under Idaho or other law. The Defendants’ own cases state otherwise. In the case of *G. & R. Petroleum Inc. v. Clements*, 127 Idaho 119, 898 P.2d 550 (Idaho 1995), the Court held that the plaintiff was barred from renewing an Oregon judgment where the time for filing had lapsed prior to the filing of the judgment, but the court expressly recognized that “[A] judgment creditor holding a foreign judgment can choose between filing a

formal action in Idaho on that judgment, or simply filing it under the Uniform Act.” This is in accord with Idaho Code Ann. §10-1306. The Plaintiff in this case had six years, pursuant to Idaho Code Ann. §5-215 following the entry of judgment to file his action on the Judgment. He filed it prior to the Judgment.

Similarly, in the case of *Platts v. Pacific First Fed. Sav. & Loan Ass’n of Tacoma*, 62 Idaho 340, 111 P.2d 1093 (Idaho 1941), the court held that the expiration of a judgment lien would not preclude the collection of an underlying judgment. (“Expiration of the *lien* of a judgment does not extinguish the judgment. It simply terminates the statutory security.”) (*Id.* at 1096, citing *Bashor v. Beloit*, 20 Idaho 592, 119 P. 55 and *Caxton Printers v. Ulen*, 59 Idaho 688, 86 P.2d 468.) In *Bashor v. Beloit*, 20 Idaho 592, 119 P. 55 (Idaho 1911) the court stated: “Under our law the right to maintain an action on a judgment is not dependent upon the right to issue an execution thereon, but is dependent on and governed by the provisions of [former] Section 4051, limiting the time in which an action may be brought on an action.”

Idaho Code Ann. §11-105 provides that “In all cases other than the recovery for money, the judgment may be enforced or carried into execution after the lapse of five (5) years from the date of its entry, by leave of the court, upon motion, or by judgment for that purposes, founded upon supplemental proceedings.” Plaintiff’s action herein was to clarify the status of title, a judgment could be entered at any time.

This case arose and was pursued as a case other than for the recovery of money; while Plaintiff’s ultimate goal is to recover money on the Judgment, Plaintiff needed, prior to doing so, to establish ownership of the property in the judgment debtor and set aside fraudulent transfers entered into by the Defendants. Plaintiff diligently pursued that action, and the lapse of

five years does not preclude the Court, upon the Plaintiff's Motion for Summary Judgment, to enforce the Judgment by execution or establish a new judgment following the lapse of five years. As it set forth in Point 2 below, the court should have granted the Plaintiff's Motion for Summary Judgment, issuing a Writ of Execution in light of the Defendants' ultimate concession in January of 2001, that title to the property rested in Gordon Jones and the execution was proper.<sup>4</sup>

**2. THE COURT ERRED IN DENYING THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND FOR WRIT OF EXECUTION**

**a. In response to Plaintiff's Motion, Defendants Relied Solely Upon Their Time Limitations Argument, Thereby Waiving All Other Defenses**

The Defendants' exclusive argument in Defendants' "Response to the Plaintiff's Motion for Summary Judgment and for Issuance of a Writ of Execution" related to the issues of the alleged timeliness of the execution and filing of the Judgment. Defendants did not respond to any of the Statement of Facts set forth in the Plaintiff's Memorandum of Points and Authorities in Support of Motion for Summary Judgment and Issuance of Writ of Execution, and thus all of those Facts were deemed admitted. They failed to raise any collateral attack on the validity of the Utah Judgment. Based thereon, and in the absence of any valid argument from the Defendants, the Plaintiff is entitled to an issuance of a Writ of Execution and the same should be ordered by this Court.

---

<sup>4</sup> Defendants' contrary affirmative defenses were waived by virtue of the Defendants' failure to raise those affirmative defenses in opposition to the Plaintiff's Motion for Summary Judgment. See Point 2, *Infra*.

**b. Assuming this Court Rejects Defendant's Timeliness Arguments, this Court Can and Should Mandate the Issuance of a Writ of Execution**

In light of the absence of any argument in contravention to the Plaintiff's Motion for Summary Judgment, other than the timeliness arguments, this Court should mandate the issuance of a Writ of Execution by the court below. There is no basis or reason to remand this action further, as this Court can rule, as a matter of law, in light of the undisputed facts, on the impropriety of the denial of the Motion for Summary Judgment below.<sup>5</sup>

**3. THE COURT ERRED IN GRANTING JASON JONES' RENEWED MOTION TO DISMISS**

The court below, in its Decision on Motion to Dismiss dated June 11, 2010, dismissed the Plaintiff's Amended Complaint against Jason Jones. Pursuant to Rule 4(a)(2), the dismissal without prejudice was the only option.

Counsel for Jason Jones appeared specially following the filing of the Second Amended Complaint and the service thereof, alleging that Rule 4(a)(2) required dismissal of the Second Amended Complaint. In so doing, Jason Jones' counsel argued, and the court accepted, that the timing restrictions with respect to the service of the Second Amended Complaint related back to the First Amended Complaint, despite the fact that the Second Amended Complaint had added new claims against Jason Jones. This creates an absurd result, as it mooted the Second Amended

---

<sup>5</sup> The Court's mandate for Writ of Execution, if such is issued, can and should encompass appropriate relief with respect to all issues raised by this appeal. Thus if the Court determines that the interest of Jason Jones can be adjudicated in the existing forum, the Court could remand those issues, but could allow for execution of the property subject to whatever interests can be substantiated by Jason Jones in the action below. Alternatively, the Court could allow the execution of the property, requiring Jason Jones, if he so desires, to assert his Notice of Interest against the Plaintiff or his successor in interest, once the property is sold.



Complaint as of its filing, at least insofar as the Second Amended Complaint alleged causes of action against Jason Jones.<sup>6</sup>

The Court's ruling granting the Motion to Dismiss commenced the six months for service back not to the Second Amended Complaint, which was served, but to the First Amended Complaint, which was never served, or sought to be served. The Court cited no case or judicial authority in that regard other than reliance upon the fact that Rule 15(a) allows a party ten days to respond to an amended pleading. The Court's analysis fails to explain how the time allowed for *answering* is relevant to the time allowed for *service*.

Rule 15(a), which provides for the amount of time for a party *who has been served* to respond, has no applicability to the amount of time for which a party has to be served. Rule 4(a)(2) is abundantly clear in referencing that the time period runs from this time of the service of the "Summons and Complaint" in question; in this case the Second Amended was the only Complaint to which Jason Jones was ever required to respond, and it was timely served within six months of its filing. The court improperly dismissed the action as to Jason Jones and this Court should reinstate it, as appropriate in connection with the Court's rulings on the other matter, and shall remand the matter for further determination as to the rights, if any, that Jason Jones has in the property.<sup>7</sup>

---

<sup>6</sup> Pursuant to Rule 4(a)(2), a summons related to the First Amended Complaint would have needed to be served on or before January 29, 2010. By that time, however, all of the parties present in the case had agreed to the inclusion of Jason Jones. It would have been a waste of all parties' resources to serve Jason Jones with the First Amended Complaint, only to thereafter re-serve the Second Amended Complaint.

<sup>7</sup> Again, should this Court mandate the Franklin County property can be executed upon, the Plaintiff/Appellant does not seek remand of this issue. Rather, Appellant seeks that the Court mandate a Writ of Execution; Plaintiff can and will execute on that property and will take the title of the property subject to the claims of Jason Jones as may be asserted in a collateral action.

The Court also had discretion, pursuant to Rule 4(a)(2), to allow for the service of the First Amended Complaint following six months for good cause shown. While this matter was not fully established below based upon the lack of any effort to serve the First Amended Complaint, there was good cause for failing to serve the First Amended Complaint. The First Amended Complaint had been filed in late July 2009; no one had placed any reliance upon or filed any pleadings in response to that Complaint prior to the stipulation of the Second Amended Complaint, and thus there was absolutely no prejudice from its lack of service upon Jason Jones. It would have been absurd for the First Amended Complaint to have been served upon Jason Jones, only to require him to file an answer to the Second Amended Complaint, to which all of the other parties had stipulated.

Furthermore, service of the First Amended Complaint seemed to be unnecessary, as Jason Jones' counsel's law firm had constructive notice of the Amended Complaint against him. The Amended Complaint was distributed to David Gallafant of the firm of Merrill & Merrill at the hearing on July 31, 2009; it was Mr. Gallafant's colleague at Merrill & Merrill, Jared Steadman who appeared later on, on behalf of Jason Jones. An attorney from the same firm that stipulated to the entry of the Second Amended Complaint later entered an appearance seeking to dismiss that Second Amended Complaint against a party named by stipulation, in the Second Amended Complaint. Clearly Jason Jones had knowledge of (or should have had knowledge of) his potential inclusion in the Complaint. At a minimum, the counsel at Merrill & Merrill who stipulated to the Second Amended Complaint had knowledge of and consented to his inclusion.

### **CONCLUSION**

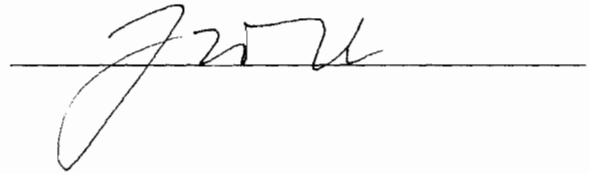
Plaintiff/Appellant respectfully requests that this Court review and reverse the Summary

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 30 day of September, 2011, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Lane V. Erickson  
RACINE, OLSON, NYE, BUDGE & BAILEY  
CHARTERED  
P.O. Box 1391  
Pocatello, ID 83204-1391  
Attorneys for Defendants/Respondents

- Email [lve@racinelaw.net](mailto:lve@racinelaw.net)
- [ltz@racinelaw.net](mailto:ltz@racinelaw.net)
- Mail
- Fax 801-621-4436
- Fed Ex
- Hand Delivery
- Personally Served



# ADDENDUM

# EXHIBIT A

MARGARET H. OLSON (ID BAR #04680)  
Of Counsel  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
466 East 500 South  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual;  
J&J LIVESTOCK, LLC, a Utah  
Limited Liability Company; and  
John Does 1-10,  
Defendants.

**MOTION TO AMEND COMPLAINT**

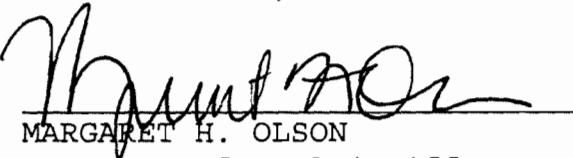
Civil No. CV-2005-183

Judge Don L. Harding

Plaintiff Allen F. Grazer, by and through counsel and pursuant to Idaho R. Civ. P. 15(a), moves the Court for leave to amend its Complaint filed herein.

DATED this 18 day of November, 2005.

HOBBS & OLSON, L.C.

  
MARGARET H. OLSON  
Attorneys for Plaintiff  
Allen F. Grazer

CERTIFICATE OF DELIVERY

I hereby certify that on the 18<sup>th</sup> day of November, 2005,  
I caused a true and correct copy of the foregoing to be mailed,  
first class, postage prepaid, to the following:

Shawn W. Potter, Esq.  
TESCH LAW OFFICES  
314 Main Street, #200  
P.O. Box 3390  
Park City, UT 84060-3390  
Fax 435-649-2561  
Attorney for Defendants

Kent B. Scott, Esq.  
BABCOCK, SCOTT & BABCOCK  
505 East 200 South, Suite 300  
Salt Lake City, UT 84102  
Fax No. 531-7060

Carvel R. Shaffer, Esq.  
SHAFFER LAW OFFICE, P.C.  
Key Bank Building  
562 South Main  
Bountiful, UT 84010  
Fax No. 298-1576

Linda B. Ogden

MARGARET H. OLSON (ID BAR #04680)  
Of Counsel  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
466 East 500 South  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

---

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

---

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual;  
J&J LIVESTOCK, LLC, a Utah  
Limited Liability Company; and  
John Does 1-10,  
Defendants.

**MEMORANDUM IN SUPPORT OF MOTION  
TO AMEND COMPLAINT**

---

Civil No. CV-2005-183

Judge Don L. Harding

---

By and through counsel, Plaintiff hereby submits his  
Memorandum in Support of his Motion to Amend Complaint.

**ARGUMENT**

Since this action was filed, Plaintiff has discovered other  
assets and conduct of Gordon Jones in his attempt to avoid the  
Utah Judgment. Jones made affirmative representations in the  
presence of the Utah trial judge that there was no water for his  
Idaho Ranch. Since that time Plaintiff has not only discovered

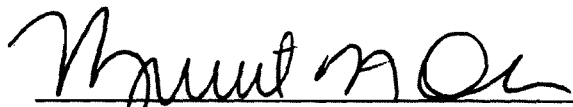


water shares in the Twin Lakes Canal Company, but learned that they were transferred to Jones' wife and son during the same period of time that significant assets were transferred out of Jones' name in Utah. The proposed amendment adds necessary parties (Jones' wife and son) and incorporates claims against them in the cause of action. A copy of the proposed Amended Complaint is attached hereto as Exhibit 'A'.

The rules provide that "leave shall be freely given when justice so requires." I.R.C.P. 15(a). Since only limited discovery has been taken in the case thus far, there is no prejudice to the existing Defendants from this amendment. A proposed Order is submitted herewith.

DATED this 18 day of November, 2005.

HOBBS & OLSON, L.C.

  
MARGARET H. OLSON  
Attorneys for Plaintiff  
Allen F. Grazer

CERTIFICATE OF DELIVERY

I hereby certify that on the 18<sup>th</sup> day of November, 2005,  
I caused a true and correct copy of the foregoing to be mailed,  
first class, postage prepaid, to the following:

Shawn W. Potter, Esq.  
TESCH LAW OFFICES  
314 Main Street, #200  
P.O. Box 3390  
Park City, UT 84060-3390  
Fax 435-649-2561  
Attorney for Defendants

Kent B. Scott, Esq.  
BABCOCK, SCOTT & BABCOCK  
505 East 200 South, Suite 300  
Salt Lake City, UT 84102  
Fax No. 531-7060

Carvel R. Shaffer, Esq.  
SHAFFER LAW OFFICE, P.C.  
Key Bank Building  
562 South Main  
Bountiful, UT 84010  
Fax No. 298-1576

  
\_\_\_\_\_

# EXHIBIT A



# EXHIBIT B

7  
/  
1  
2  
/  
2  
0  
0  
5  
5  
0  
0  
7  
5  
C:\msc\000550075

231395 1-4

**FILED**  
JUL 11 2005  
SECOND  
DISTRICT COURT

LINCOLN W. HOBBS, ESQ. (4848)  
MARGARET H. OLSON, ESQ. (6296)  
TAMARA K. PRINCE, ESQ. (5224)  
HOBBS & OLSON, L.C.  
Attorneys for Defendant/Counterclaim  
Plaintiff Allen F. Grazer  
525 South 300 East  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
FARMINGTON DEPARTMENT, STATE OF UTAH

GORDON JONES, an individual; and  
RICHARD BARNEY, an individual,  
  
Plaintiffs,

v.

ALLEN GRAZER, an individual,  
  
Defendant.

ALLEN F. GRAZER,  
  
Counterclaim Plaintiff.

v.

GORDON A. JONES; and RICHARD  
BARNEY,  
  
Counterclaim Defendants.

GORDON JONES, an individual; and  
RICHARD BARNEY, an individual;  
  
Third Party Plaintiffs.

v.

**JUDGMENT AGAINST  
COUNTERCLAIM DEFENDANTS  
GORDON A. JONES AND RICHARD  
BARNEY**

Recorded at the request of

HOBBS & OLSON

\_\_\_\_\_ a.m. SEP 23 2005 p.m. 3:15

V. ELLIOTT LARSEN, RECORDER  
By Shauna Geddes Deputy  
FRANKLIN COUNTY, IDAHO

Civil No. 020700570 CN

Judge Michael G. Allphin

4685 (01) Judgment of Counterclaim - De's

JUDGMENT ENTERED

BY K

Judgment against Counterclaim Defendants Gordon A



JD18539733

020700570

NU-TREND ELECTRIC COMPANY,

7  
/ 1  
2  
/ 2  
0  
0  
0  
5  
0  
0  
7  
6  
T. J. HARRIS

R W DESIGN, INC., a Utah corporation;  
ROBERT W. SPEIRS PLUMBING, INC.,  
a Utah corporation; SCOTT SESSIONS, an  
individual; and NU-TREND ELECTRIC  
COMPANY, a Utah corporation.

Third Party Defendants.

The above-entitled matter was tried before The Honorable Michael G. Allphin on April 26 through 29, 2005. Plaintiffs were represented by their counsel, David A. Van Dyke and Kent B. Scott; Defendant was represented by his counsel, Lincoln W. Hobbs and Tamara K. Prince.

Having heard the testimony, having reviewed the exhibits offered to and received by the Court, and having considered the law, and the Court having entered Findings of Fact and Conclusions of Law on June 17, 2005.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Defendant Allen F. Grazer be awarded judgment against Gordon A. Jones and Richard Barney, jointly and severally, in the amount of \$1,585,000.00 plus additional consequential damages of \$40,669.97 for the contractor's fee, \$ 31,062.50 for payments to Vanel for repairs, \$9,968.41 for moving and storage expenses, \$133,512.61 for reasonable attorney's fees and costs through May 31, 2005, \$1,783.12 for direct legal costs through April 24, 2005, \$1,457.81 for direct legal costs after April 24, 2005, \$7,305.00 paid to expert Matthew Roblez, P.E., and prejudgment interest in the amount of \$75,968.45 through June 22, 2005 for a total amount of \$1,886,727.87;

2. Together with interest at the at the prejudgment rate accruing at the rate of \$70.59 until the date of judgment;





7  
/ 1  
2 / 2  
0 0 0  
5 5 5  
0 0 0  
8 7 0  
7 1 2 2 2 0 0 0 0 0 0 7 0

**CERTIFICATE OF DELIVERY**

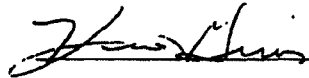
I hereby certify that on the 1 day of July, 2005, I caused a true and correct copy of the foregoing to be sent via facsimile and to be and mailed, first class, postage prepaid, to the following:

David A. Van Dyke, Esq.  
2900 West Highway 24  
Post Office Box 17  
Teasdale, UT 84773  
Attorney for Plaintiffs/Counterclaim  
Defendants/Third Party Plaintiffs  
Gordon A. Jones and Richard Barney  
FAX #435-425-3329

Kent B. Scott, Esq.  
BABCOCK, SCOTT & BABCOCK  
505 East 200 South, Suite 300  
Salt Lake City, UT 84102  
Co-Counsel for Plaintiffs/Counterclaim  
Defendants/Third Party Plaintiffs  
Gordon A. Jones and Richard Barney  
FAX #531-7060

Stephen F. Noel, Esq.  
SMITH KNOWLES P.C.  
4723 Harrison Blvd., Suite 200  
Ogden, UT 84403  
Attorneys for Third-Party Defendants  
R W Design, Inc. and Robert W. Speirs  
Plumbing, Inc.  
FAX #476-0399

Nu-Trend Electric Company  
57 West 200 North  
Bountiful, UT 84010  
Third-Party Defendant *Pro Se*  
  
Scott Sessions  
289 West Tobe Drive  
Centerville, UT 84014  
Third-Party Defendant *Pro Se*

  
\_\_\_\_\_

# EXHIBIT C

LINCOLN W. HOBBS, ESQ. (4848)  
MARGARET H. OLSON, ESQ. (6296)  
TAMARA K. PRINCE, ESQ. (5224)  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
525 South 300 East  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

---

IN THE SECOND JUDICIAL DISTRICT COURT OF DAVIS COUNTY  
FARMINGTON DEPARTMENT, STATE OF UTAH

---

ALLEN F. GRAZER,  
Plaintiff,

v.

GORDON A. JONES and LINDA G. JONES,  
husband and wife; RICHARD H. BARNEY  
and RENAE CARNON BARNEY, husband  
and wife; THE LINDA G. JONES FAMILY  
PARTNERSHIP; and JOHN DOES 1-10,  
Defendants.

**COMPLAINT**

Civil No. \_\_\_\_\_

Judge \_\_\_\_\_

---

Plaintiff hereby complains of Defendants as follows:

1. This is an action under the Uniform Fraudulent Transfer Act, Title 26, Chapter 5 of the Utah Code. In anticipation of judgment, Defendants Gordon A. Jones and Richard H. Barney transferred real property located in Davis County, Utah, to their wives and to a "family partnership". This action seeks to avoid the transfer, attach the property, and enjoin further disposition by Defendants of the Davis County property or of other property.

### **PARTIES AND JURISDICTION**

2. Plaintiff Allen F. Grazer is an individual residing in Davis County, State of Utah.
3. Defendants Gordon A. Jones and Linda G. Jones are husband and wife residing in Davis County, State of Utah.
4. Defendants Richard H. Barney and Renae Carnon Barney are husband and wife residing in Davis County, State of Utah.
5. On information and belief, Defendant Linda G. Jones Family Partnership is a Utah entity; however, no registration exists with the Utah Department of Commerce. On information and belief Linda G. Jones is a partner of Linda G. Jones Family Partnership.
6. Jurisdiction over Defendants is proper under Utah Code Ann. § 78-3-4 (2000).
7. Venue is proper in this county under Utah Code Ann. § 78-13-1 (1953).

### **GENERAL ALLEGATIONS**

8. Beginning in August 24, 2000, Gordon A. Jones and Richard H. Barney owned an Apartment Building in Davis County, Utah. The real property is identified as Parcel No. 07-031-0075 with the following legal description:

BEGINNING AT A POINT 82.50 FEET WEST ALONG THE NORTH LINE OF A STREET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 12, PLAT "A", FARMINGTON TOWNSITE SURVEY, IN THE CITY OF FARMINGTON, THENCE WEST 32.5 FEET; THENCE NORTH 00°04'38" WEST 65.00 FEET; THENCE NORTH 45°02'19" WEST 42.46 FEET; THENCE WEST 85.00 FEET TO THE WEST LINE OF PROPERTY CONVEYED IN WARRANTY DEED IN BOOK 984 AT PAGE 838 IN THE RECORDS OF DAVIS COUNTY, UTAH; THENCE NORTH 00°04'38" WEST 153.86 FEET, MORE OR LESS, TO THE NORTH LINE OF LOT 2 OF SAID BLOCK 12; THENCE NORTH 89°59'37" EAST 263.00 FEET ALONG SAID NORTH LINE OF LOT 2 TO THE WEST LINE OF A STREET; THENCE SOUTH 00°04'38" EAST

156.00 FEET ALONG SAID STREET; THENCE WEST 115.00 FEET, MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF SAID LOT 1; THENCE SOUTH 00°04'38" EAST 92.89 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 07-031-0075

SUBJECT TO: County and/or City Taxes not delinquent, Bonds and/or Special Assessments not delinquent and Covenants, Conditions, Restrictions, Rights-of-Way, Easements, and Reservations now of Record.

(hereinafter "the Apartment Building").

9. Upon information and belief, by August of 2001, Gordon A. Jones, Linda G. Jones, and Richard H. Barney owned real property in Davis County, Utah. The real property is identified as Parcel Nos. 06-027-0007 and 06-027-0008.

10. Upon information and belief, by August of 2001, Gordon A. Jones Construction owned real property in Davis County, Utah. The real property is located at 1440 North 1445 West, Bountiful City in Davis County, Utah with the following legal description:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 1071.04 FEET AND EAST 305.30 FEET FROM THE CENTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH OD21M31S WEST 501.36 FEET; THENCE EAST 100.00 FEET; THENCE SOUTH OD21M31S EAST 501.36 FEET TO THE NORTH LINE OF A 50 FOOT RIGHT OF WAY; THENCE WEST 100.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO THE FOLLOWING DESCRIBED REIGHT OF WAY: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF HOWARD STREET AND THE NORTH LINE OF LELAND M. ARGYLE PROPERTY AT A POINT 1072.50 FEET SOUTH AND 295.675

FEET WEST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 14, AND RUNNING THENCE WEST 2569.5 FEET; THENCE NORTH 50 FEET; THENCE EAST 2569.50 FEET; THENCE SOUTH 50 FEET TO THE POINT OF BEGINNING.

ALSO, TOGETHER WITH AND SUBJECT TO A RIGHT OF WAY FROM THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY RUNNING SOUTH OVER THE LAND RESERVED FOR ROAD, TO THE DAVIS COUNTY SEWAGE DISPOSAL ROAD.

11. Upon information and belief, by August of 2001, Gordon A. Jones dba Gordon A. Jones Construction owned real property in Davis County, Utah. The real property is identified as Parcel Nos. 06-027-0014 and 06-027-0015 with the following legal description:

PARCEL 1:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT SOUTH 1071.04 FEET AND EAST 33.00 FEET FROM THE CENTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 501.36 FEET; THENCE EAST 169.17 FEET; THENCE SOUTH 0°21'31" EAST 501.36 FEET TO THE NORTH LINE OF A 500 FOOT RIGHT OF WAY; THENCE WEST 172.30 FEET TO THE POINT OF THE BEGINNING.

TOGETHER WITH AND SUBJECT TO THE FOLLOWING DESCRIBED RIGHT OF WAY: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF HOWARD STREET AND THE NORTH LINE OF LELAND M. ARGYLE PROPERTY AT A POINT 1072.50 FEET SOUTH AND 295.675 FEET WEST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 14, AND RUNNING THENCE WEST 2569.5 FEET; THENCE NORTH 50 FEET; THENCE EAST 2569.40 FEET; THENCE SOUTH 50 FEET TO THE POINT OF BEGINNING.

ALSO, TOGETHER WITH AND SUBJECT TO A RIGHT OF WAY FROM THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY, RUNNING SOUTH OVER THE LAND RESERVED FOR ROAD, TO THE DAVIS COUNTY SEWAGE DISPOSAL ROAD (06-027-0014).

PARCEL 2:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT SOUTH 1071.04 FEET AND EAST 205.30 FEET FROM THE CENTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND RUNNING THENCE NORTH 0°21'31" WEST 501.36 FEET; THENCE EAST 100.00 FEET; THENCE SOUTH 0°21'31" EAST 501.36 FEET TO THE NORTH LINE OF A 50 FOOT RIGHT OF WAY; THENCE WEST 100.00 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH AND SUBJECT TO THE FOLLOWING DESCRIBED RIGHT OF WAY: BEGINNING AT THE INTERSECTION OF THE WEST LINE OF HOWARD STREET AND THE NORTH LINE OF LELAND M. ARGYLE PROPERTY AT A POINT 1072.50 FEET SOUTH AND 295.675 FEET WEST FROM THE NORTHEAST CORNER OF THE SOUTHEAST QUARTER OF SAID SECTION 14, AND RUNNING THENCE WEST 2569.5 FEET; THENCE NORTH 50 FEET; THENCE EAST 2569.50 FEET; THENCE SOUTH 50 FEET TO THE POINT OF BEGINNING.

ALSO, TOGETHER WITH AND SUBJECT TO A RIGHT OF WAY FROM THE SOUTHWEST CORNER OF THE ABOVE DESCRIBED PROPERTY, RUNNING SOUTH OVER THE LAND RESERVED FOR ROAD, TO THE DAVIS COUNTY SEWAGE DISPOSAL ROAD (06-027-0015).

SUBJECT TO EASEMENTS, RIGHTS, RESERVATIONS, RESTRICTIONS AND RIGHTS OF WAY, COVENANTS, TAXES AND ASSESSMENTS APPEARING OF RECORD OR ENFORCEABLE IN LAW OR EQUITY.

(collectively the real property in paragraphs 9, 10, and 11 of this Complaint are hereinafter the "Condemned Parcels").

12. Commencing in 1993 Gordon A. Jones and Richard H. Barney, as general contractor, built a home for Grazer in Davis County, Utah.

13. On November 1, 2002, Jones and Barney initiated litigation against Grazer seeking to collect approximately \$42,000.00 of unpaid invoices. Grazer counterclaimed alleging

construction defects, negligence, and breaches of contract and warranty. This action is known as *Gordon Jones and Richard Barney v. Allen Grazer*, Second District Court, Davis County, Farmington Department, State of Utah, Case No. 020700570 CN (“the Civil Case”).

14. On or about March 3, 2005, a Final Order of Condemnation was recorded with the Davis County Recorder against the Condemned Parcels, as Entry No. 2055978 in Book 3738 at Page 296 of Official Records, and Gordon A. Jones Construction, Gordon Jones Construction, Gordon A. Jones, Linda G. Jones, and Richard H. Barney received \$178,000.00 on or about February 11, 2005 as payment on the judgment. The Final Order of Condemnation was entered in an action known as *Utah Department of Transportation v. Gordon A. Jones Construction*, Second District Court, Davis County, Farmington Department, State of Utah, Case No. 010700265 (“the Condemnation Case”).

15. Shortly after receiving the proceeds from the Condemnation Case, on or about March 8, 2005, the Trust Deed Note to Barnes Banking Company was paid in full on the Apartment Building and a Deed of Reconveyance was recorded with the Davis County Recorder on or about March 18, 2005 as Entry No. 2059773 in Book 3748 at Page 670 of Official Records.

16. Upon information and belief, the proceeds from the Condemnation Case, in the condemnation of the Condemned Parcels, were used to pay off the Trust Deed Note on the Apartment Building.

17. On April 26-29, 2005 Judge Allphin of the Second District Court in Utah heard the Civil Case. On April 26, 2005 Judge Allphin dismissed the claims brought by Jones and Barney and ruled in favor of Grazer on Jones’ and Barney’s claims. On April 29, 2005 Judge



Allphin declared his preliminary intention to award judgment in favor of Grazer and against Jones and Barney on Grazer's counterclaim. That judgment has not yet been entered, pending arguments by counsel respecting the amount of damages to be awarded.

**CLAIM FOR RELIEF**

(Fraudulent Transfer)

18. Grazer realleges and incorporates by reference paragraphs 1 through 17 above.

19. Gordon A. Jones and Richard H. Barney executed a quit claim deed, on or about May 6, 2005, transferring the Apartment Building to their wives Linda G. Jones and Renae Carnon Barney within days of Judge Allphin's announcement of his intended verdict in the Civil Case.

20. At the same time, Gordon A. Jones' wife, Linda G. Jones, quit claimed her interest in the Apartment Building to the Linda G. Jones Family Partnership.

21. Gordon A. Jones and Richard H. Barney transferred the Apartment Building to their wives, and Linda G. Jones transferred the Apartment Building to her family partnership, with actual intent to hinder, delay, and defraud Grazer in the collection of a judgment.

22. Linda G. Jones and Renae Carnon Barney are definitionally "insiders" for purposes of the Uniform Fraudulent Transfer Act, Utah Code Ann. § 25-6-2(7)(a)(i). Similarly, the Linda G. Jones Family Partnership is an insider under Utah Code Ann. § 25-6-2(7)(a)(iii).

23. At the time of the quit claim deeds, Defendants had actual knowledge of Judge Allphin's intended verdict and believed or reasonably should have believed that a judgment was imminent.

24. On information and belief, Linda G. Jones, Renae Carnon Barney, and the Linda G. Jones Family Partnership did not receive a reasonably equivalent value in exchange for the transfer to them.

25. Grazer is entitled to an avoidance of the transfer to the extent necessary to satisfy his judgment.

26. This Court should attach the Apartment Building pursuant to Utah Code Ann. § 25-6-8(b).

27. Defendants and each of them should be enjoined from further disposing of property, real and personal, held in Davis County, State of Utah, or elsewhere.

28. Upon information and belief, pursuant to the provisions of the parties' contract, Mr. Grazer is entitled to reasonable attorney's fees and costs in pursuing this action.

29. The Defendants' fraudulent transfers were not in good faith. Pursuant to Utah Code Ann. § 78-27-56, Mr. Grazer is entitled to reasonable attorney's fees to be awarded for the use and benefit of his counsel.

WHEREFORE Plaintiff prays for relief as follows:

A. For judgment avoiding the transfer of the Apartment Building from Gordon A. Jones and Richard H. Barney to their wives and to the Linda G. Jones Family Partnership under the Uniform Fraudulent Transfer Act, Utah Code Ann. § 25-6-8(1)(a)(1988).

B. For a writ of attachment attaching the Apartment Building to satisfy Grazer's judgment against Gordon A. Jones and Richard H. Barney.

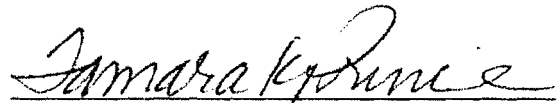
C. For an injunction prohibiting Gordon A. Jones and Richard H. Barney from further disposing of property, real and personal, held in Davis County, State of Utah, and elsewhere.

D. For attorneys' fees and costs.

E. For such other and further relief as this Court deems just and equitable.

DATED this 14<sup>th</sup> day of May, 2005.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS

MARGARET H. OLSON

TAMARA K. PRINCE

Attorneys for Plaintiff Allen F. Grazer

**Plaintiff's address:**

ALLEN F. GRAZER  
1685 South Stone Hollow Court  
Bountiful, UT 84010-1069

MARGARET H. OLSON (ID BAR #04680)  
Of Counsel  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
466 East 500 South  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

---

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

---

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual;  
J&J LIVESTOCK, LLC, a Utah  
Limited Liability Company; and  
John Does 1-10,  
Defendants.

**ORDER TO AMEND COMPLAINT**

---

Civil No. CV-2005-183

Judge Don L. Harding

---

Based upon Plaintiff Allen F. Grazer's Motion to Amend  
Complaint the Memorandum in Support of the Motion to Amend  
Complaint filed herein, and good cause appearing therefore,

IT IS HEREBY ORDERED, that Plaintiff be allowed to amend  
the Complaint previously filed in this matter in the manner set  
forth in the (proposed) Amended Complaint attached to the  
Memorandum.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

BY THE COURT:

---

DISTRICT COURT JUDGE

CERTIFICATE OF DELIVERY

I hereby certify that on the 18<sup>th</sup> day of November, 2005,  
I caused a true and correct copy of the foregoing to be mailed,  
first class, postage prepaid, to the following:

Shawn W. Potter, Esq.  
TESCH LAW OFFICES  
314 Main Street, #200  
P.O. Box 3390  
Park City, UT 84060-3390  
Fax 435-649-2561  
Attorney for Defendants

Kent B. Scott, Esq.  
BABCOCK, SCOTT & BABCOCK  
505 East 200 South, Suite 300  
Salt Lake City, UT 84102  
Fax No. 531-7060

Carvel R. Shaffer, Esq.  
SHAFFER LAW OFFICE, P.C.  
Key Bank Building  
562 South Main  
Bountiful, UT 84010  
Fax No. 298-1576

Linda B. Ogden

# Transmission Report

Date/Time 11-21-2005 11:23:29 a.m.  
Local ID 1 801 +519+2999  
Local ID 2

Transmit Header Text HOBBS AND OLSON, LC  
Local Name 1 HOBBS AND OLSON, LC  
Local Name 2

This document : Confirmed

Document size : 8.5"x11"

Total Pages Scanned : 37

Total Pages Confirmed : 37

No.	Job	Remote Station	Start Time	Duration	Pages	Line	Mode	Job Type	Results
001	344	12085472147,4685	11:16:17 a.m. 11-21-2005	00:06:03	37/37	1	EC	HS	CP26400

**Abbreviations:**

HS: Host send

PL: Polled local

MP: Mailbox print

TU: Terminated by user

HR: Host receive

PR: Polled remote

CP: Completed

TS: Terminated by system

G3: Group 3

WS: Waiting send

MS: Mailbox save

FA: Fail

RP: Report

EC: Error Correct

# HOBBS & OLSON L.C.

Attorneys at Law

525 South 300 East  
Salt Lake City, Utah 84111

Telephone (801) 519-2555  
Facsimile (801) 519-2999

## FACSIMILE TRANSMISSION

**To:** Honorable Don L. Harding

**At:** SIXTH JUDICIAL DISTRICT COURT JUDGE  
Soda Springs, Idaho

**Fax No.:** 208-547-2147 (4685)

**FROM:** Margaret H. Olson, Esq.  
Of Counsel

**DATE:** November 21, 2005

**RE:** *Allen F. Grazer v. Gordon A. Jones, et al.*  
Franklin County, Idaho Court No. CV-2005-183

**TOTAL NO. OF PAGES (Including Cover Page):** 37

**COMMENTS:** Please see the following:

1. **Motion to Amend Complaint**
2. **Memorandum in Support of Motion to Amend Complaint**
3. **Order to Amend Complaint**

**ORIGINAL(s) TO FOLLOW BY MAIL:** [ x ] Yes – mailed to Clerk on 11/18/05 [ ]  
No

---

### IMPORTANT NOTICE

The documents and information transmitted with this cover sheet may be privileged and confidential. If you are not the intended recipient, or a person responsible for delivery of this material to the intended recipient, you are hereby notified that your review, distribution, or copying of this information is prohibited. If you have received this material in error, please notify us immediately at the telephone number listed above, and avoid dissemination of the contents of this document.



RECORDED  
JAN 16 2007

NOV 22 2005

BY:.....

MARGARET H. OLSON (ID BAR #04680)  
Of Counsel  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
466 East 500 South  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual;  
LINDA G. JONES, an individual;  
J&J LIVESTOCK, LLC, a Utah  
Limited Liability Company; and  
John Does 1-10,  
Defendants.

ORDER TO AMEND COMPLAINT

Civil No. CV-2005-183

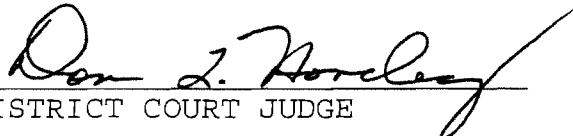
Judge Don L. Harding

Based upon Plaintiff Allen F. Grazer's Motion to Amend  
Complaint the Memorandum in Support of the Motion to Amend  
Complaint filed herein, and good cause appearing therefore,

IT IS HEREBY ORDERED, that Plaintiff be allowed to amend  
the Complaint previously filed in this matter in the manner set  
forth in the (proposed) Amended Complaint attached to the  
Memorandum.

DATED this 22<sup>nd</sup> day of November, 2005.

BY THE COURT:

  
\_\_\_\_\_  
DISTRICT COURT JUDGE

CERTIFICATE OF DELIVERY

I hereby certify that on the 18<sup>th</sup> day of November, 2005,  
I caused a true and correct copy of the foregoing to be mailed,  
first class, postage prepaid, to the following:

Shawn W. Potter, Esq.  
TESCH LAW OFFICES  
314 Main Street, #200  
P.O. Box 3390  
Park City, UT 84060-3390  
Fax 435-649-2561  
Attorney for Defendants

Kent B. Scott, Esq.  
BABCOCK, SCOTT & BABCOCK  
505 East 200 South, Suite 300  
Salt Lake City, UT 84102  
Fax No. 531-7060

Carvel R. Shaffer, Esq.  
SHAFFER LAW OFFICE, P.C.  
Key Bank Building  
562 South Main  
Bountiful, UT 84010  
Fax No. 298-1576

Linda B. Ogden

# EXHIBIT B

LINCOLN W. HOBBS (ID BAR # 07325)  
MARGARET H. OLSON (ID BAR #04680)  
Of Counsel  
HOBBS & OLSON, L.C.  
Attorneys for Plaintiff Allen F. Grazer  
466 East 500 South, Suite 300  
Salt Lake City, Utah 84111  
Telephone: (801) 519-2555  
Facsimile: (801) 519-2999

---

IN THE SIXTH JUDICIAL DISTRICT COURT  
IN AND FOR FRANKLIN COUNTY, STATE OF IDAHO

---

ALLEN F. GRAZER, an individual,  
Plaintiff,

v.

GORDON A. JONES, an individual; LINDA  
G. JONES, an individual; J&J LIVESTOCK,  
LLC, a Utah Limited Liability Company; and  
John Does 1-10,  
Defendants.

**REQUEST FOR SCHEDULING AND  
MANAGEMENT CONFERENCE**

---

Civil No. CV-2005-183

Judge Don L. Harding


---

Comes now Allen F. Grazer (hereinafter "Grazer") and hereby requests that the Court schedule a Management Conference in the above-entitled matter.

This matter was stayed as to Gordon A. Jones pursuant to his filing of a bankruptcy petition on April 18, 2006; pursuant to an Order of the United States Bankruptcy Court dated April 19, 2007, a copy of which is attached hereto as Exhibit "A", the property of that debtor has been abandoned, and the automatic stay has been lifted. This matter thus can and should proceed.

DATED this 7 day of May, 2007.

HOBBS & OLSON, L.C.

  
\_\_\_\_\_  
LINCOLN W. HOBBS  
Attorneys for Plaintiff Allen F. Grazer

**CERTIFICATE OF DELIVERY**

I hereby certify that on the 7 day of May, 2007, I caused a true and correct copy of the foregoing to be mailed, first class, postage prepaid, to the following:

Shawn W. Potter, Esq.  
TESCH LAW OFFICES  
314 Main Street, #200  
P.O. Box 3390  
Park City, UT 84060-3390  
Fax 435-649-2561  
Attorney for Defendants

Kent B. Scott, Esq.  
BABCOCK, SCOTT & BABCOCK  
505 East 200 South, Suite 300  
Salt Lake City, UT 84102  
Fax No. 531-7060

Joseph M. Covey, Esq.  
Ronald G. Russell, Esq.  
PARR WADDOUPS BROWN GEE &  
LOVELESS  
185 South State Street, Suite 1300  
Salt Lake City, UT 84111  
Co-Counsel for Gordon A. Jones

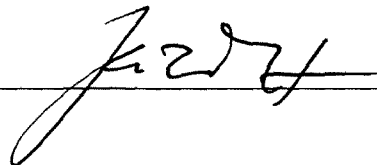
  
\_\_\_\_\_

Exhibit “A”

The below described is SIGNED.

Dated: April 19, 2007



JUDITH A. BOULDEN  
U.S. Bankruptcy Judge



Peter W. Billings, A0330  
FABIAN & CLENDENIN  
A Professional Corporation  
Twelfth Floor  
215 South State Street  
P.O. Box 510210  
Salt Lake City, Utah 84151  
Telephone: 531-8900  
e-mail: pbillings@fabianlaw.com

Attorneys for Gary E. Jubber, Chapter 7 Bankruptcy Trustee

Julie A. Bryan (Bar No. 4805)  
COHNE, RAPPAPORT & SEGAL, P.C.  
257 East 200 South, Suite 700  
Salt Lake City, UT 84111  
Telephone: (801) 532-2666  
Facsimile: (801) 532-1813  
e-mail: julie@crslaw.com

Attorneys for Allen F. Grazer

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

In re:

GORDON A. JONES,  
Debtor.

Bankruptcy No. 06-21277 JAB  
(Chapter 7)

**ORDER APPROVING SETTLEMENT  
AGREEMENT AND AUTHORIZING  
TRUSTEE'S ABANDONMENT OF  
PROPERTY OF ESTATE**



*The Trustee's Motion to Approve Settlement Agreement and For Order*

*Authorizing Abandonment of Property of Estate* filed by Gary E. Jubber, Chapter 7 Trustee

("Trustee") on February 16, 2007 ("Motion") came on for hearing before the Honorable Judith A. Boulden on March 28, 2007. Peter W. Billings, Fabian & Clendenin, appeared on behalf of the Trustee. Joseph M.R. Covey, Parr, Waddoups, Brown, Gee & Loveless appeared for the Debtor. Julie A. Bryan, Cohne, Rappaport & Segal and Lincoln W. Hobbs, Hobbs & Olson appeared for Allen Grazer. David J. Shaffer, Shaffer Law Offices, P.C. appeared for the Estate of Richard Barney. Other appearances, if any, were noted on the record

The Court having reviewed the pleadings on file, admitting evidence and hearing arguments presented, entered detailed findings of fact and conclusions of law on the record, which findings and conclusions are incorporated herein, and include, but are not limited to, the following:

**FINDINGS AND CONCLUSIONS:**

1. Gordon A. Jones, d/b/a J&J Livestock, d/b a Gordon Jones Construction, L.C. (the "Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code on April 18, 2006, commencing Case Number 06-21277 (the "Bankruptcy Case") in the United States Bankruptcy Court for the District of Utah ("Bankruptcy Court"). Gary Jubber (the "Trustee") is the duly appointed and acting Chapter 7 Trustee of the Debtor's bankruptcy estate.
2. That notice of the Motion and the hearing thereon was properly given to the Debtor and all parties-in-interest as required under the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.

3. Objections to the Motion were filed by the Debtor and by the Estate of Richard Barney. The Objections are overruled.
4. The Settlement Agreement was negotiated at arms' length and in good faith.
5. The Trustee's entry into the Settlement Agreement as a fair, reasonable and proper exercise of the Trustee's business judgment.
6. The Settlement Agreement and the relief requested in the Motion are reasonable, fair, equitable and in the best interest of the estate and its creditors.
7. That in considering this matter, the Court has reviewed and applied the standards set forth in the case of In re Kopexa Realty Venture Co., 213 B.R. 1020, 1022 (10th Cir. BAP 1997).

**IT IS HEREBY ORDERED:**

1. The Motion is granted and the Settlement Agreement is approved;
2. The Trustee is authorized to execute such documents as may be necessary and appropriate to effect, implement and consummate the Settlement Agreement. Except for the reserves set forth in the Settlement Agreement, the Trustee is authorized to abandon all property of the estate, as provided in the Settlement Agreement, and Grazer shall be deemed to have relief from the stay to pursue any and all state court remedies with respect to such property. Upon the Effective Date of the Settlement Agreement, the property that has been abandoned or for which Grazer has obtained relief from stay shall no longer be considered property of the Debtor's bankruptcy estate. Grazer shall be entitled to fully pursue all his rights and claims against the

aforesaid property in any State or Federal Court what would have jurisdiction absent the filing of the Debtor's bankruptcy; and

3. The property abandoned and/or for which Grazer has obtained relief from the automatic stay shall include but not be limited to the following:

A. **Estate's Interests in real property (along with all improvements and fixtures attached thereto), including, but not limited to the following:**

- (i) The Mountain View Apartments of Farmington located at 175 East State Street, Farmington, Utah (the "Apartments"), more particularly described as follows:

BEGINNING AT A POINT 82.50 FEET WEST ALONG THE NORTH LINE OF A STREET FROM THE SOUTHEAST CORNER OF LOT 1, BLOCK 12, PLAT "A", FARMINGTON TOWNSITE SURVEY, IN THE CITY OF FARMINGTON, THENCE WEST 32.5 FEET; THENCE NORTH 00°04'38" WEST 65.00 FEET; THENCE NORTH 45°02'19" WEST 42.46 FEET; THENCE WEST 85.00 FEET TO THE WEST LINE OF PROPERTY CONVEYED IN WARRANTY DEED IN BOOK 984 AT PAGE 838 IN THE RECORDS OF DAVIS COUNTY, UTAH; THENCE NORTH 00°04'38" WEST 153.86 FEET, MORE OR LESS, TO THE NORTH LINE OF LOT 2 OF SAID BLOCK 12; THENCE NORTH 89°59'37" EAST 263.00 FEET ALONG SAID NORTH LINE OF LOT 2 TO THE WEST LINE OF A STREET; THENCE SOUTH 00°04'38" EAST 156.00 FEET ALONG SAID STREET; THENCE WEST 115.00 FEET; MORE OR LESS, TO THE WEST LINE OF THE EAST HALF OF SAID LOT 1; THENCE SOUTH 00°04'38" EAST 92.89 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 07-031-0075

Parcels of real property located in Davis County, Utah, including:

Tax Parcel I.D. No. 06-027-0006, with the following legal description:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET; FT CENTER OF SAID SECTION 14, THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 166.0 FEET; THENCE SOUTH 0°21'31" EAST 502.14 FEET; THENCE WEST 169.17 FEET TO AN EXISTING FENCE; THENCE ALONG SAID EXISTING FENCE 501.35 FEET TO THE POINT OF BEGINNING.

("West Bountiful Parcel 6").

- (iii) Two Tax Parcel Nos. 06-027-01 17, 0123 (fka 06-027-0007) and 06-027-01 16, 0122, 0123 (fka 06-027-0008), with the following legal descriptions:

A PART OF SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89°43'58" EAST 166.02 FEET FROM CENTER OF SAID SECTION 14, THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 00°21'31" EAST 502.61 FEET; THENCE WEST 100 FEET; THENCE NORTH 502.14 FEET TO THE POINT OF BEGINNING. (Parcel No. 06-027-0117, 0123 (fka 06-027-0007))

A PART OF SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE MERIDIAN; BEGINNING ON SAID RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD SAID POINT BEING SOUTH 68.33 FEET AND EAST 33 FEET AND NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 366.02 FEET FROM CENTER OF SAID SECTION 14, THENCE SOUTH 89°43'58" WEST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0°21'31" EAST 502.61 FEET; THENCE EAST 100 FEET; THENCE NORTH 0°21'31" WEST 503.08 FEET TO THE POINT OF BEGINNING.

(Parcel No. 06-027-01 16, 0122, 0123 (fka 06-027-0008))

("West Bountiful Parcels 7 and 8"); and

- (iv) Tax Parcel No. 06-027-01 18, 024, 0125 (fka 06-027-0009), with the following legal description:

A PART OF THE SOUTHEAST QUARTER OF SECTION 14, TOWNSHIP 2 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE SOUTH RIGHT OF WAY LINE OF AN EXISTING GRAVEL ROAD, SAID POINT BEING SOUTH 68.33 FEET AND EAST 399.02 FEET FROM THE CENTER OF SAID SECTION 14 AND RUNNING THENCE NORTH 89°43'58" EAST ALONG AN EXISTING FENCE 100 FEET; THENCE SOUTH 0°21'31" EAST 503.55 FEET; THENCE WEST 100 FEET; THENCE NORTH 0°21'31" WEST 503.08 FEET TO THE POINT OF BEGINNING. (Parcel No. 06-027-01 18, 024, 0125 (fka 06-027-0009))

("West Bountiful Parcel 9").

- (v) Real property located in ~~Sanpete~~ Sanpete County, Utah, more particularly described as follows: LOT 3, SEC J, INDIAN RIDGE RANCH, CONT. 1.13 AC
- (vii) Real property and improvements located at or about 3369 No. Westside Hwy, Clifton, Idaho (the "Idaho Ranch"), more particularly described as follows:

COMMENCING AT A POINT 53-3/4 RODS NORTH OF THE SOUTHEAST CORNER OF THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO, AND RUNNING THENCE WEST 240 RODS, THENCE NORTH 53-3/4 RODS, THENCE EAST 240 RODS; THENCE SOUTH 53-3/4 RODS TO THE PLACE OF BEGINNING.

EXCEPTING AND RESERVING A RIGHT-OF-WAY FOR ANY AND ALL IRRIGATION DITCHES AND CANALS, AND PUBLIC ROADS NOW EXISTING OR IN USE UPON AND ACROSS SAID PREMISES, AND

EXCEPTING AND RESERVING THEREFROM A STRIP OF LAND 3 RODS WIDE ALONG THE EAST SIDE OF THE ABOVE-DESCRIBED LAND.

ALSO, THE SOUTH HALF OF THE SOUTHWEST QUARTER, THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER, AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 34, TOWNSHIP 14 SOUTH, RANGE 38 EAST OF THE BOISE MERIDIAN, FRANKLIN COUNTY, IDAHO.

TOGETHER WITH 36 SHARES OF THE CAPITAL STOCK OF TWIN LAKES CANAL COMPANY.

TAX SERIAL NO:  
ADDRESS:

SUBJECT TO easements, restrictions, covenants and rights of way appearing of record or enforceable in law or equity.

**B. Personal Property or intangibles of the Debtor's bankruptcy estate of any kind whatsoever including but not limited to:**

- (i) accounts receivable;
- (ii) vehicles and equipment that have not been liquidated as part of the Debtors bankruptcy estate.
- (iii) The interest of the Debtor in any entity which the Debtor held (and may still hold) including but not limited to Gordon Jones Construction LLC.

C. Causes of Action or Claims including but not limited to:

- (i) A fraudulent transfer action against Gordon A. Jones, Linda G. Jones, and J&J Livestock, LLC in the Sixth Judicial District Court in and for Franklin County, Idaho, commencing Civil Action No. CV-2005-183 (the "Idaho Fraudulent Conveyance Action"). The Idaho Fraudulent Conveyance Action which may now be pursued by Grazer in the Idaho Court in which it was filed or in any other Court with proper jurisdiction.
- (ii) An action in the Second District Court of Davis County, State of Utah against the Debtor, Linda G. Jones, Richard Barney and Renae Carnon Barney, and the Linda G. Jones Family Partnership, which causes of action were amended in the Amended Complaint dated January 5, 2006 against these Defendants and Jason Jones; GS Jones Construction, Inc.; J&J Livestock, LLC; Cheryl J. Gudmundson; G. Scott Jones; Richilyn Woodin, and Rochelle C. Barney (the "Utah Fraudulent Transfer Action"). The Utah Fraudulent Transfer Action may be pursued by Grazer in the Utah Second District Court of Davis County in which it was filed or in any other Court with proper jurisdiction.
- (iii) Fraudulent Conveyance Actions or any other action that could have been filed by a creditor prior to the filing of the Debtors bankruptcy case, or by the Trustee after the filing of the Debtor's bankruptcy case, to recover property owed to the Debtor or transferred to third parties by the Debtor. Such actions may be pursued by Grazer in any court with proper jurisdiction.

4. The Trustee shall dismiss Adversary Proceeding No 06-2449 filed by the Trustee.

Dismissal of that adversary proceeding shall in no way affect or prejudice the claims or causes of action for denial of discharge under 11 U.S.C. §§ 523 and 727 set forth by Grazer against the Debtor in Adversary Proceeding No. 06-02411.

APPROVED AS TO FORM:



---

Joseph M. R. Covey  
Parr Waddoups Brown Gee & Loveless  
Attorneys for Debtor, Gordon A. Jones

---

David J. Shaffer  
Attorneys for Richard Barney

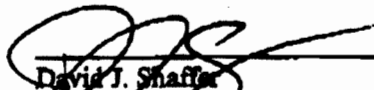
[END OF DOCUMENT]



**APPROVED AS TO FORM:**

---

**Joseph M. R. Covey**  
**Parr Waddoups Brown Gee & Loveless**  
**Attorneys for Debtor, Gordon A. Jones**



---

**David J. Shaffer**  
**Attorneys for Richard Barney**

**[END OF DOCUMENT]**

**CLERK OF THE COURT CERTIFICATE OF MAILING**

The undersigned hereby certifies that a true and correct executed copy of the foregoing  
**ORDER APPROVING SETTLEMENT AGREEMENT AND AUTHORIZING  
TRUSTEE'S ABANDONMENT OF PROPERTY OF ESTATE** was mailed, postage fully  
prepaid, this \_\_\_\_ day of April, 2007 to the following:

United States Trustee  
Ken Garff Building  
405 South Main Street  
Suite 300  
Salt Lake City, UT 84111

Peter W. Billings  
Gary E. Jubber  
P.O. Box 510210  
Salt Lake City, UT 84151

Gordon A. Jones  
235 West 1400 North  
Bountiful, UT 84010

Joseph M. R. Covey  
Parr Waddoups Brown Gee & Loveless  
185 South State Street  
Suite 1300  
Salt Lake City, UT 84111-1536

Linda G. Jones  
235 West 1400 North  
Bountiful, UT 84010

Julie Bryan  
Cohne, Rappaport & Segal  
257 E. 200 S., Ste. 700  
Salt Lake City, UT 84111

Lincoln W. Hobbs  
Hobbs & Olson  
466 East 500 South  
Suite 300  
Salt Lake City, UT 84111

David J. Shaffer  
Key Bank Building  
562 South Main Street  
Bountiful, UT 84010