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

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**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 REPLY BRIEF

Docket No. 38852

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

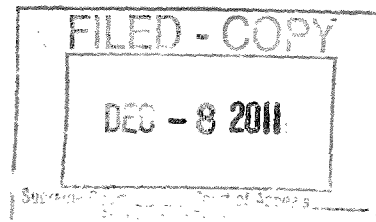
Honorable David C. Nye, District Judge, Presiding

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

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REPLY TO RESPONDENTS' STATEMENT OF FACTS

Several of the facts as asserted in the Respondents' "Statement of the Facts" are either unsupported by the record or incomplete. Appellant replies to and supplements these facts as follows:

Page 7 of the Jones' Brief asserts that Grazer's recollection of the judgment and related documents was an affirmative affirmation that he "had obtained a judgment 'lien' against the Respondents' Franklin Property on September 23, 2005," referencing the Second Amended Complaint. While Grazer did include that allegation in his Second Amended Complaint, that referenced Second Amended Complaint was not filed until December 7, 2009. (R. @329.) As of the time of filing of Grazer's original Complaint, a judgment had not yet been entered in Utah and the property was titled in the name of J & J Livestock, LLC. (R. @4, ¶ 12.) The original Complaint sought to have the Court declare the Quit Claim Deed to J & J Livestock void and declare title to the property in Gordon and Linda Jones, who had previously received the property pursuant to a Warranty Deed. (R. @1-8.) The Respondents, including the Joneses and J & J Livestock, denied that the Quit Claim Deed was void; they asserted this position until the filing of their Answer to Second Amended Complaint, on January 21, 2011. Even in that Answer, they denied the allegations of the Quit Claim Deed's invalidity, although they did concede the issue was moot. (R. @539, ¶26.)

The Joneses' Brief asserts at page 8 that the bankruptcy settlement agreement allowed Grazer to pursue his lien; the Statement of Facts omits that the same settlement agreement specifically allowed Grazer to continue to pursue the fraudulent transfer action which had been

Grazer disputes this; the Joneses' total disregard and failure to respond to the Grazer's arguments respecting the Uniform Enforcement of Foreign Judgment Act creates an inference that Jones has no response to this argument.

ARGUMENT

1. THE APPROPRIATE STANDARD OF REVIEW IS "FREE REVIEW."

Point 1 of the Respondents' Brief sets forth the general standard of review respecting summary judgments. The appropriate standard of review for this Court, however, in reviewing the propriety of the judgment below is a "free review," in light of the fact that the court's decision was based upon a statutory interpretation. *State v. Doe*, 147 Idaho 326, 208 P.3d 730 (Idaho 2009) ("This Court exercises free review over the interpretation of the statute and its application to the facts.") (*Id.* @ 327, 731.)

2. APPELLANT COULD NOT HAVE EXECUTED ON HIS FOREIGN JUDGMENT WITHOUT FILING AND PURSING THIS ACTION.

In their arguments to the trial court below, and in connection with their arguments before this Court, the Joneses have ignored the fact that the filing of the Appellant's action was a mandatory prerequisite to any effort to execute upon the judgment lien. As of the time of the recordation of the various judgment-related documents, title to the property was asserted to be vested in J & J Livestock, LLC. Grazer's original Complaint sought to set aside this fraudulent transfer. Following the filing of the Complaint, the property was transferred back to Gordon and Linda Jones, but the pursuit of the fraudulent transfer course of action was still required in light of the Respondent's continued assertion that the earlier transfer was not void (*see*, Answer @ ¶18, denying fraudulent nature of transfer.) (R. @53.) and in order to secure the priority of the

of any court of this state or any court of the United States...” Pursuant to this statute, Appellant had a lien on the Franklin County property at such time as it was properly transferred back to Gordon and Linda Jones pursuant to 10-1110. That lien continued at least through 2010. Respondents, however, were still challenging the existence of that lien by asserting the validity of the Quit Claim Deed.

Respondents’ contention that Appellant had a right or obligation under Section 10-1111 to renew the judgment is contrary to the language of that statute. That statute provides that the lien claimant could seek renewal of the judgment from “the court which entered the judgment...” Conceivably then, Appellant could have filed a motion in Utah to renew the Utah judgment, but that was unnecessary in light of the fact that the Utah judgment will continue for eight years after its entry (Utah Code Ann. §78B-2-311), and thus such a motion to renew would have been premature. Quite clearly Section 10-1111 was inapplicable in this case. The renewal of the judgment in the Idaho Court was not possible under 10-1111; Appellant’s only option in light of the Respondents’ assertions as to ownership of the property was to pursue the action to establish the invalidity of the attempted transfers. Only if and when the court set aside the fraudulent transfers could the property be executed upon; Appellant acted at all times reasonably and promptly in seeking to establish the title.³ For these reasons the court’s judgment must be reversed, and Appellant must be allowed, pursuant to ICA 10-1306, to have title established, and that he can execute upon it.

³ Appellant filed his Motion for Summary Judgment and for Issuance of Writ of Execution on February 11, 2011, only one month after it became feasible, in light of the Answer to Appellant’s Second Amended Complaint. (R. @566.)

CERTIFICATE OF DELIVERY

I hereby certify that on the 23 day of November, 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
- ltz@racinelaw.net
- Mail
- Fax 801-621-4436
- Fed Ex
- Hand Delivery
- Personally Served

