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Grazer v. Jones Clerk's Record v. 4 Dckt. 38852

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Vol. 4 of 6

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

Docket No. 38852

ALLEN F. GRAZER

Plaintiff/Appellant

vs.

LAW CLERK

GORDON A. JONES et al

Defendants/Respondents

DAVID C. NYE District Judge

Appealed from the District Court of the SIXTH
Judicial District of the State of Idaho, in and for
FRANKLIN County.

LINCOLN HOBBS

Attorney for Appellants

LANE V. ERICKSON

Attorney for Respondents

Filed this FILED - COPY day of July, 2011

AUG 26 2011

Clerk

Deputy

Supreme Court Court of Appeals

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38852

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Docket No. 38852

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 Idaho State Bar #1745, #3791 and #7804

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Hampton
 DEPUTY

Attorneys for Defendant Linda G. Jones

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

ALLEN F. GRAZER, an individual,)
)
 Plaintiff,)

Case No. CV-2005-183

vs.)

AFFIDAVIT OF JASON JONES

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

STATE OF IDAHO)

:ss.

COUNTY OF FRANKLIN)

I, Jason Jones, being first duly sworn, depose and state the following facts are all true to the best of my knowledge and belief:

1. I am a defendant in the matter captioned above with the case number CV-2005-183, in the County of Franklin, State of Idaho.
2. My wife was served at my behalf with a summons and complaint along with various attachments on February 10, 2010 at my home at 3369 North Westside Highway,

FEB-19-2010 FRI 01:41 PM MERRILL & MERRILL

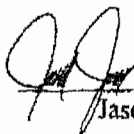
FAX NO. 208 232 2499

P. 06

Clifton, Idaho 83228

- 3. This residence, in Franklin County, Idaho, is the same residence I have maintained since well before I was added as a defendant in this matter on July 31, 2009.
- 4. Aside from an attempt to serve me at my in-laws' home the day before service actually took place, I am unaware of any attempts made for service on me or on my wife on my behalf.
- 5. Further your affiant saith naught.

DATED this 24 day of February, 2010.



Jason Jones

CERTIFICATE OF SERVICE

I, Jared A. Steadman, the undersigned, one of the attorneys for the Defendant, Jason Jones, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Affidavit of Jason Jones was this 24 day of February, 2010, served upon the following in the manner indicated below:

Lincoln W. Hobbs
Margaret H. Olson
HOBBS & OLSON, L.C.
466 E. 500 S., Ste #300
Salt Lake City, Utah 84111

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax

Lane V. Erickson
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204-1391

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax


Jared A. Steadman



Acknowledgment by Individual

State of Idaho County of Franklin

On this 24 day of February, 20 10 before me, Colleen Firth
Name of Notary Public

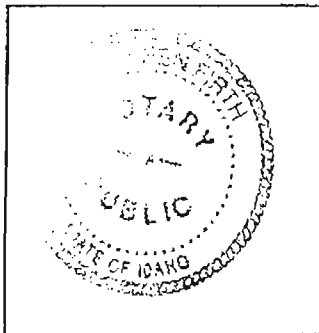
the undersigned Notary Public, personally appeared

Jason Jones
Name of Signer(s)

- Proved to me on the oath of _____
- Personally known to me
- Proved to me on the basis of satisfactory evidence ID DL U6263185D exp 7/15/2011
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth
(Signature of Notary Public)

My commission expires 06/10/2011

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Though the information in this section is not required by law, it may prevent fraudulent removal and reattachment of this form to another document and could prove valuable to persons relying on the document.

Description of Attached Document

Type or Title of Document attorney papers from Merrill & Merrill - Affidavit of Jason Jones

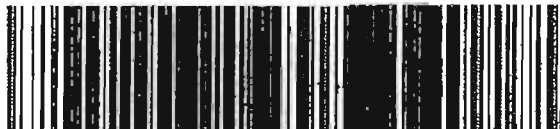
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Signer(s) Other Than Named Above Jared A Steadman



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 P.O. Box 991
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 Idaho State Bar #1745, #3791 and #7804

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FRANKLIN COUNTY CLERK

Hampton
 DEPUTY

Attorneys for Defendant Linda G. Jones

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE
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ALLEN F. GRAZER, an individual,)
)
 Plaintiff,)

Case No. CV-2005-183

vs.)

AFFIDAVIT OF BARBARA JONES

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

STATE OF IDAHO)

:SS.

COUNTY OF FRANKLIN)

I, Barbara Jones, being first duly sworn, depose and state the following facts are all true to the best of my knowledge and belief:

1. I am the wife of Jason Jones, a Defendant in the matter captioned above with the case number CV-2005-183, in the County of Franklin, State of Idaho.
2. I was served with a summons and complaint along with various attachments on February 10, 2010 at my home at 3369 North Westside Highway, Clifton, Idaho

FEB-19-2010 FRI 01:40 AM MERRILL & MERRILL


FAX NO. 208 2499

P. 04

83228

- 3. This residence, in Franklin County, Idaho, is the same residence I have maintained since well before he was added as a defendant in this matter on July 31, 2009.
- 4. Aside from an attempt to serve me at my in-laws' home the day before service actually took place, I am unaware of any attempts made for service on Jason or me on his behalf.
- 5. Attached hereto as Exhibit A is a true and correct copy of the summons, with which I was served on February 10, 2009.
- 6. Further your affiant saith naught.

DATED this 24 day of February, 2010.


 Barbara Jones

CERTIFICATE OF SERVICE

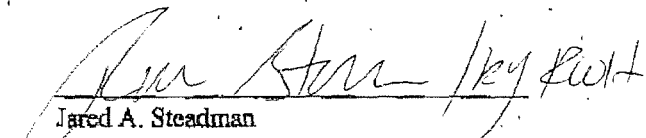
I, Jared A. Steadman, the undersigned, one of the attorneys for the Defendant, Jason Jones, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Affidavit of Barbara Jones was this 25th day of February, 2010, served upon the following in the manner indicated below:

Lincoln W. Hobbs
 Margaret H. Olson
 HOEBS & OLSON, L.C.
 466 E. 500 S., Ste #300
 Salt Lake City, Utah 84111

- U.S. Mail
- Hand Delivery
- Overnight Delivery
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Lane V. Erickson
 Racine, Olson, Nye, Budge & Bailey, Chtd.
 P.O. Box 1391
 Pocatello, ID 83204-1391

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax


 Jared A. Steadman

440



Acknowledgment by Individual

State of Idaho County of Franklin

On this 24 day of February, 20 10 before me, Colleen Firth
Name of Notary Public

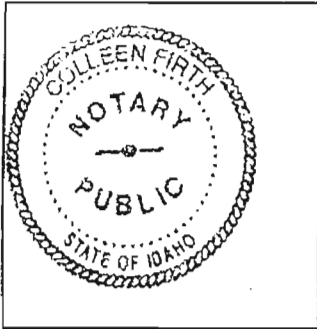
the undersigned Notary Public, personally appeared
Barbara Jones

Name of Signer(s)

- Proved to me on the oath of _____
- Personally known to me
- Proved to me on the basis of satisfactory evidence _____
(Description of ID)

to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged that he/she/they executed it.

WITNESS my hand and official seal.



Notary Seal

Colleen Firth
(Signature of Notary Public)

My commission expires 06/10/2011

Optional

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Type or Title of Document attorney papers from Merrill & Merrill - Affidavit of Barbara Jones

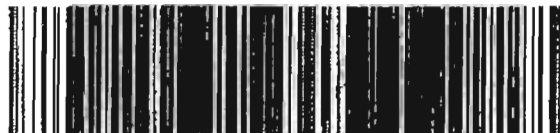
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Signer(s) Other Than Named Above
Jared A Steadman



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TIME: 1308 HC

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Title Process Server
Date _____ Time _____
P/S _____

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; JASON JONES, an
individual; J7J LIVESTOCK, LLC, a Utah
Limited Liability Company; and John Does 1-
10,

Defendants.

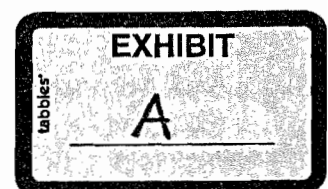
SUMMONS
(20 Day)
Jason Jones

Civil No. CV-2005-183

Judge David C. Nye

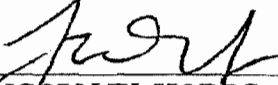
TO: DEFENDANT JASON JONES
3369 North Westside Highway
Clifton, ID 83228-5074

YOU ARE HEREBY SUMMONED and required to answer the attached Second Amended Complaint that has been filed with the above Court. Within twenty (20) days after service of this Summons, you must file your written answer with the clerk of the court at the following address: Clerk of the Court, Sixth Judicial District Court, 39 West Oneida, Preston, ID 83263, and you must mail or deliver a copy to Plaintiff's attorneys at the address listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the Second Amended Complaint.



DATED this 28 day of January, 2010.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff Allen F. Grazer

Dave R. Gallafent
 Kent L. Hawkins
 Jared A. Steadman
MERRILL & MERRILL, CHARTERED
 109 North Arthur - 5th Floor
 P.O. Box 991
 Pocatello, ID 83204-0991
 (208) 232-2286
 (208) 232-2499 Telefax
 Idaho State Bar #1745, #3791 and #7804

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Hampton
 DEPUTY

Attorneys for Defendant Linda G. Jones

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

ALLEN F. GRAZER, an individual,)	
)	
Plaintiff,)	Case No. CV-2005-183
)	
vs.)	
)	BRIEF IN SUPPORT OF MOTION TO
GORDON A. JONES, an individual;)	DISMISS
LINDA G. JONES, an individual; JASON)	
JONES, an individual; J&J LIVESTOCK,)	
LLC, a Utah Limited Liability Company;)	
and John Does 1-10,)	
)	
Defendants.)	

INTRODUCTION

Defendant Jason Jones moves this Court to dismiss the action filed by Plaintiff on the grounds that Plaintiff failed to effect proper service of process within the six month period prescribed in Rule 4(a)(2), Idaho Rules of Civil Procedure. Defendant files this brief in support of that motion and asks the court to dismiss Plaintiff's claim against Defendant Jason Jones without prejudice.

FACTS

Defendant Gordon A. Jones sued Plaintiff in Utah state court to recover monies he claimed were due and owing for services rendered as a general contractor in the construction of a residence for Plaintiff. The case proceeded under the designation of Davis County District Court Case No.

444

020700570CN. Plaintiff then filed a counterclaim against Gordon Jones for breach of contract. The result of the litigation was a sizable award granted to Plaintiff Allen Grazer. In the course of Plaintiff's collection of this judgment, he has filed the present lawsuit alleging among other things fraudulent transfers on the part of Defendants.

The initial complaint was filed with this court on May 12, 2005. After some amount of litigation and years of inactivity in the matter, Plaintiff filed an amended complaint. In the amended complaint, this Defendant, Jason Jones, was first listed. That complaint was filed on July 31, 2009. Several months later, on December 7, 2009, the second amended complaint was filed in this matter. This complaint more completely set out the allegations against this Defendant. Service in this matter was finally effected on February 10, 2010. The summons in this matter was not even issued until January 28, 2010.

LAW

The applicable statutory law in this case, as above mentioned, is the time limit for service upon a Defendant as prescribed by I.R.C.P. Rule 4(a)(2). That rule provides:

(2) *Time Limit for Service.* If a service of the summons and complaint is not made upon a defendant within six (6) months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the action shall be dismissed as to that defendant without prejudice upon the court's own initiative with 14 days notice to such party or upon motion.¹

According to Rule 4(a)(2), the Plaintiff bears the burden of showing good cause why service was not made within six months of the filing of the Complaint. The Idaho Supreme Court articulated the plaintiff's burden as follows:

Rule 4(a)(2) required the court to dismiss the action unless the [plaintiffs] demonstrated good cause for failure to timely serve the respondents. The relevant period of time on which to focus is the six months following the filing of the amended complaint-March 18 through September 18, 1994. By its terms, Rule 4(a)(2) imposes the burden of demonstrating good cause on the party who failed to effect timely service-in this case, the [plaintiffs].²

The Court should, therefore, focus on what Plaintiff or his counsel did in the six month period after filing his Complaint to timely serve Defendant Jason Jones. According to the Court file, Plaintiff filed his Amended Complaint, the first Complaint in which Jason Jones was named, on July

¹ I.R.C.P. Rule 4(a)(2).

² *Sammis v. Magnetek, Inc.*, 130 Idaho 342, 346 941 P.2d 314, 318 (1997).

31, 2009. Thus, the six month service period ended on January 31, 2010. According to the Affidavits of Jason Jones and Barbara Jones already filed with the court, the first time they were contacted by a process server in this matter was February 9, 2010.³

Additionally, as the court will note, the summons that was served on Defendant Jason Jones was not proper. It was not issued by the court as mandated by Idaho R. Civ. P. 4(b⁴). That rule says quite clearly that “the summons shall be signed by the clerk.”⁵ This summons was not properly issued and was not signed by the clerk. Indeed, a quick look at the repository shows that there has never been a summons issued for Jason Jones. That being the case, Defendants would argue that Jason Jones has still not been properly served.

The faulty summons was not even issued until three days prior to the expiration of the service period.⁶ And Defendant is unaware of any attempts at service prior to the expiration of that period. Defendant suggests that where no attempt at service was made prior to the expiration of the service period, this lack of effort cannot constitute good cause as to why service was not made within the six month period following the filing of the Complaint. The Idaho Court of Appeals held that disputes over the reasonableness of such efforts are “to be determined upon the proof offered and the diligence shown by the plaintiff in making such service, and must be decided by the court upon the facts as they are presented.”⁷ The *Hincks* case further stated the following factors are irrelevant to a good cause analysis: the *pro se* status of plaintiff, that the action will be time barred if dismissal is granted, lack of prejudice to the defendant from untimely service, prior notice of the claim to the defendant and the timing of the defendant’s motion to dismiss.⁸ Although the assessment of “reasonable efforts” is a factual one, the Idaho Supreme Court has articulated that, “[c]ourts will look to ‘factors outside a plaintiff’s control, such as sudden illness, natural catastrophe or evasion of service of process’ to determine whether Plaintiff satisfied the ‘good cause’ requirement.”⁹

³Jason Jones Aff.; Linda Jones Aff.

⁴Barbara Jones Aff., Exhibit A.

⁵Idaho R. Civ. P. 4(b)

⁶See Jason Jones Aff., Exhibit A.

⁷ *Hincks v. Neilson*, 137 Idaho 610, 612 51 P.3d 424 426 (Ct.App. 2002).

⁸ *Id.*

⁹ *Martin v. Hoblit* 133 Idaho 372, 377 987 P.2d 284, 289(1999).

Plaintiff made allegations of Defendant Jones' whereabouts in his Complaint. The allegation is that "Jason Jones is a resident of Franklin County, Idaho, lives on the Franklin County Property owned by Jones, and farms and/or raises cattle thereon."¹⁰ It is, therefore, quite clear that Plaintiff knew of Defendant Jason Jones' whereabouts well before the expiration of time for service. Indeed, the allegations were correct as to his whereabouts. Both Jason Jones and his wife Barbara resided on that property during that time period.¹¹ As above set out, those Complaints were filed on July 31, 2009, and December 7, 2009. Where the six months did not lapse until January 31, 2010, Plaintiff had plenty of time to effect service on Jason Jones, but did not. Indeed, there was nothing preventing Plaintiff from accomplishing service from the moment the Complaint was filed against Jason Jones on July 31, 2009. Yet as far as Defendants can tell, the summons was not issued until January 28, 2010, just three days before the expiration of the six months.¹² Plaintiff did not even file a motion to have the deadlines extended.

Clearly, Plaintiff could have taken additional steps to secure service within the period prescribed by law. As far as Defendant can tell, he attempted nothing until after the deadline had passed and waited until three days before the running of the service period before having a summons issued.¹³ It flies in the face of reason to allow Plaintiff to knowingly have six months to secure service and then make no attempt at service at all before the period lapses without any adverse consequences. Plaintiff's tardy service and lack of filing a motion to extend the time for service do not show the requisite diligence anticipated by the Idaho Rules or the Idaho appellate courts in interpreting Rule 4(a)(2).

Plaintiff's lack of effort to effect service even overshadows the negligence of other plaintiffs, whose cases have been dismissed for lack of timely service. In *Hoblit*, the Plaintiff's counsel waited until eleven days before the service period lapsed before delivering the summons and complaint to the sheriff for personal service. When the Sheriff attempted service, the defendant could not be found because he had left the State of Idaho and moved to Washington. In that case, the Plaintiff had compelling reasons for delaying service that are not present in the case before this Court. In

¹⁰ See Pl. First Amended Comp. ¶ 6; Pl. Second Amended Comp. ¶ 9.

¹¹ See Jason Jones Aff.; Barbara Jones Aff.

¹² See Barbara Jones Aff.

¹³ See Barbara Jones Aff. Exhibit A.

Hoblit, Plaintiff's counsel was involved in settlement negotiations with Defendant's insurer that appeared likely to result in settlement. Thus, Plaintiff's counsel waited until eleven days before the service period ran before attempting personal service and ultimately relying upon service by publication. The court found those efforts did not constitute "good cause" and the Plaintiff's untimely service resulted in dismissal of the case.¹⁴

The Idaho Supreme Court has recently dismissed a case where even more compelling acts by the plaintiff would justify an extension of the six month service requirement. In *Campbell v. Reagan*,¹⁵ the plaintiff had mailed a copy of the summons and complaint to the defendant and then, through her attorney, corresponded with the defendant's attorney during the six month period. During that time, the plaintiff's attorney granted the defendant's attorney the professional courtesy of not proceeding with the lawsuit until the defendant's attorney completed a busy season of trials. The plaintiff perceived that the parties were moving forward with the lawsuit and that defendant had no dispute with regard to service. However, the Idaho Supreme Court strictly applied Rule 4(a)(2) to uphold the dismissal of the plaintiff's case by stating that the plaintiff had not shown good cause as to why service was not made within the six month period.¹⁶

Defendant's counsel is personally aware of a case even more significantly on point that came before District Judge Ronald E. Bush for a Motion to Dismiss in 2007. On February 7, 2007, Judge Bush issued his Memorandum Decision and Order in the case of *Clark v. Bailey*, Sixth District, Bannock County Case No. CV-2006-2034 PI. In that case, the plaintiffs filed suit to recover for personal injuries in an automobile accident case on May 5, 2006. The plaintiffs attempted settlement negotiations with the defendant's insurer and thought settlement was imminent. However, when they had not settled the case by October of 2006, they delivered a copy of the summons and complaint to a process server. The process server received the summons and complaint on October 16, 2007, which was five months and eleven days into the six month service period. She attempted service at the addresses the plaintiffs had for both the defendant and the defendant's father, without finding the defendant at either address. The plaintiffs moved for an extension of time for service,

¹⁴ See *Hoblit*, 133 Idaho 372 (1999).

¹⁵ *Campbell v. Reagan*, 144 Idaho 254, 159 P.3d 891 (2007).

¹⁶ *Id.*

and were granted an extension through January 9, 2006. The plaintiffs obtained personal service on November 9, 2006. The defendant appeared through counsel and contested service on the grounds that plaintiffs had not made diligent, reasonable efforts sufficient to reach the level of good cause required for a Rule 4(a)(2) extension. The district court agreed, and ordered a dismissal of claims against that defendant.

Defendants would be happy to provide this Court with a copy of Judge Bush's well-reasoned Memorandum Decision and Order if the Court desires to see the same.

CONCLUSION

This Court should grant Defendant's motion to dismiss for lack of service as provided for in Idaho Rule of Civil Procedure 4(a). Plaintiff cannot show any unreasonable acts by Defendant Jason Jones that prevented Plaintiff from obtaining service within the six month period allowed by law. Thus, the Court should exercise the authority given it by Rule 4(a)(2) and dismiss Plaintiff's cause of action against Defendant Jason Jones for untimely service without good cause for delay.

DATED this 25th day of February, 2010.

MERRILL & MERRILL, CHARTERED

By Jared A. Steadman
Jared A. Steadman
Attorneys for Defendant Jason Jones

CERTIFICATE OF SERVICE

I, Jared A. Steadman, the undersigned, one of the attorneys for the Defendant, Linda G. Jones, only, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Motion to Dismiss was this 25th day of February, 2010, served upon the following in the manner indicated below:

Lincoln W. Hobbs
Margaret H. Olson
HOBBS & OLSON, L.C.
466 E. 500 S., Ste #300
Salt Lake City, Utah 84111

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax

Lane V. Erickson
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204-1391

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax

Jared A. Steadman
Jared A. Steadman

FILED

10 MAR 23 PM 2:24

FRANKLIN COUNTY CLERK

K. Jones

DEPUTY

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; JASON JONES, an
individual; J&J LIVESTOCK, LLC, a Utah
Limited Liability Company; and John Does 1-
10,

Defendants.

**SUMMONS
(20 Day)
Jason Jones**

Civil No. CV-2005-183

Judge David C. Nye

TO: DEFENDANT JASON JONES
3369 North Westside Highway
Clifton, ID 83228-5074

YOU ARE HEREBY SUMMONED and required to answer the attached Second Amended Complaint that has been filed with the above Court. Within twenty (20) days after service of this Summons, you must file your written answer with the clerk of the court at the following address: Clerk of the Court, Sixth Judicial District Court, 39 West Oneida, Preston, ID 83263, and you must mail or deliver a copy to Plaintiff's attorneys at the address listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the Second Amended Complaint.

DATED this 23 day of March, 2010.

BY THE COURT:



K Jones

FILED

10 APR 19 AM 11:14

FRANKLIN COUNTY CLERK

M. Roberts
DEPUTY

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

**MEMORANDUM IN RESPONSE TO
MOTION TO DISMISS AND BRIEF IN
SUPPORT OF MOTION TO DISMISS
[OF DEFENDANT JASON JONES]**

Civil No. CV-2005-183

Judge David C. Nye

Comes now Allen F. Grazer ("Grazer") and submits the following Memorandum in Response to Motion to Dismiss Brief in Support of Motion to Dismiss [of Defendant Jason Jones].

STATEMENT OF FACTS

1. Grazer commenced this action against Defendants Gordon A. Jones, Linda G. Jones and J & J Livestock, LLC ("J & J") on May 13, 2005 regarding execution on and ownership issues related to certain farm property located in Franklin County, Idaho. A copy of the Warranty Deed conveying title to Gordon A. Jones and Linda G. Jones containing the legal description of the property (the "Franklin County Property") is attached as Exhibit "A."

2. This action was filed following the entry of a judgment against Defendant Gordon A. Jones in favor of Grazer in a Utah case commenced by Gordon A. Jones on November 1, 2002 against Grazer seeking to collect approximately \$17,000 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 Utah Case”).

3. This action was commenced by Grazer against Gordon A. Jones, Linda G. Jones and J & J seeking to execute on Grazer’s judgment in the Utah case and alleging, among other things, fraudulent conveyances of the interest of Gordon Jones in the Franklin County Property.

4. Based on the judgment against Gordon A. Jones in the Utah case, and in connection with the filing of this action, on May 13, 2005, a Lis Pendens was recorded with the Franklin County Recorder against the Franklin County Property notifying all parties that this action was pending and “affects title to specific real property or the right to possession of specific real property as identified in the complaint in this action.” The specific real property was identified as the Franklin County Property. A copy of the Lis Pendens is attached to the Second Amended Complaint as Exhibit “D.”

5. On June 30, 2005, an Answer to Grazer’s complaint was filed on behalf of the Defendants, Gordon A. Jones, Linda G. Jones and J & J after the granting of open-ended extensions of time to Jones’ counsel by counsel for Grazer to file an answer “in the second Utah lawsuit and the motions for injunctive relief and attachment [in the Idaho lawsuit].” Enclosing an Answer to the Idaho lawsuit, attorney for Jones, Shawn W. Potter wrote, “We appreciate you

professional courtesy and time extensions.” A copy of the letter from Shawn Potter, attorney for Defendants is attached as Exhibit “B.”

6. On August 5, 2005, after the filing of the Idaho Fraudulent Conveyance action, after the recording of the Lis Pendens and after the filing of the answer on behalf of Gordon Jones and Linda Jones Jason Jones filed a Notice of Interest against the Franklin County Property, claiming he was entitled to “receive a portion of the property...” A copy of the Notice of Interest is attached as Exhibit “C.”

7. On April 18, 2006, Defendant Gordon A. Jones filed bankruptcy in the United States Bankruptcy Court for the District of Utah, staying proceedings in all pending cases in which he was a defendant.

8. On April 19, 2007, The United States Bankruptcy Court approved a Settlement Agreement between the United States Bankruptcy Trustee and the plaintiff pursuant to which the Trustee abandoned any state court actions filed by Grazer against Gordon A. Jones and specifically authorizing Grazer to proceed with any state court action against Gordon A. Jones, including the “Idaho Fraudulent Transfer Action...and Grazer shall be deemed to have relief from the stay to pursue any and all state court remedies against the Debtor and such property.” A copy of the Settlement Agreement is attached to the Second Amended Complaint as Exhibit “F.”

9. On July 31, 2009, an Amended Complaint adding Jason Jones as a defendant was filed with the Court.

10. Grazer subsequently discovered that, just prior to the trial in the Utah Court, Gordon A. Jones and Linda G. Jones had transferred to Linda G. Jones and Jason Jones 66 shares

of stock in the Twin-Lakes Canal Company benefitting the Franklin County Property on March 7, 2005. Gordon A. Jones had previously denied that he owned any such water shares.

11. On November 2, 2009, Plaintiff filed a Motion to File Second Amended Complaint to determine the rights of Jason Jones in the Franklin County Property and to add the claim that the Water Shares had been fraudulently transferred.

12. On December 4, 2009, a stipulation was signed pursuant to “the Plaintiff and the Defendants, by and through their undersigned counsel, and hereby stipulate and agree that Plaintiff may file a Second Amended Complaint in the above-entitled matter.” A copy of the Stipulation is attached as Exhibit “D.”

13. The Second Amended Complaint was filed on December 4, 2009.

14. Jason Jones was served with the Second Amended Complaint on January 29, 2010.¹

ARGUMENT

POINT I

THE IDAHO RULES OF CIVIL PROCEDURE ALLOW FOR SERVICE OF A COMPLAINT WITHIN SIX MONTHS OF THE FILING OF THE COMPLAINT.

Under the provisions of the Idaho Rules of Civil Procedure, a complaint is to be served within six months after the complaint has been filed.

(2) Time Limit for Service.

If a service of the summons and complaint is not made upon a defendant within six (6) months after the filing of the complaint and the party on whose behalf such service was required cannot show good cause why such service was not made within that period, the

¹ Counsel for Grazer acknowledges that the Clerk of the Court should issue the Summons. The Summons has now been issued by the Clerk and is in the process of being served again on Jason Jones, together with the Second Amended Complaint.

action shall be dismissed as to that defendant without prejudice upon the court's own initiative with 14 days notice to such party or upon motion.²

As cited in the Brief of Defendant Jason Jones, the Idaho Supreme Court has noted “The relevant period of time on which to focus is the six months following the filing of the amended complaint...(Emphasis added).”³ In this action, the original action filed against Gordon A. Jones, Linda Jones and J&J was placed on hold during the pendency of the Gordon A. Jones bankruptcy case. Plaintiff was only allowed to proceed with this case after the approval of a settlement agreement with the United States Bankruptcy Trustee. An amended complaint was filed with this Court on July 31, 2009. Subsequently, Plaintiff discovered new evidence regarding the existence of water shares for the Franklin County Property and the transfer by Gordon A. Jones of his interest therein. Accordingly, a Second Amended Complaint was prepared, its filing stipulated to by counsel for Defendants and filed with the Court on December 4, 2009, less than six months after the filing of the Amended Complaint. When a pleading is amended, it takes the place of the original pleading.⁴ The Second Amended Complaint thus superseded the Amended Complaint. Serving the Amended Complaint after the filing of a Second Amended Complaint would have been not only a moot action, but would have been subject to objection by Defendant Jason Jones as not being the current complaint being prosecuted. Plaintiff has six months from December 4, 2009, the date of the filing of the Second Amended Complaint.

Additionally, even if this Court were to dismiss the Second Amended Complaint, the

² I.R.C.P. Rule 4(a)(2).

³ *Sammie v. Magnetek, Inc.*, 130 Idaho 342, 346P.2d 314, 318 (1997).

⁴ *Frieberger v. Am. Triticale*, 120 Idaho 239, 815 P.2d 437 (1991) citing *W.L. Scott v. Madras Aerotech*, 103 Idaho 736, 653 P.2d 791 (1982); *Billings v. Sisters of Mercy of Idaho*, 86 Idaho 485, 389 P.2d 224 (1964); *Casady v. Scott*,

dismissal would be only as to Defendant Jason Jones and without prejudice.⁵ The other defendants in the action were served long ago within any arguable time limits. Plaintiff would be free to file a Motion to file a Third Amended Complaint or commence a new action.

POINT II

**JUDICIAL ECONOMY WILL BE SERVED BY NOT DISMISSING THE
SECOND AMENDED COMPLAINT.**

Grazer is bringing this action to execute against the interests of Gordon A. Jones in the Franklin County Property and water shares, which benefit it in order to satisfy the valid judgment obtained in his favor against Defendant Gordon A. Jones in the Utah Case. The judgment was filed and recorded in Idaho and has attached to any and all property owned by Defendant Gordon A. Jones in the State of Idaho. At such time as a Writ of Execution is issued to sell the Franklin County Property and the water shares to sale, Defendant Jason Jones will be obligated to assert any claim he has of ownership therein to avoid having his interests, if any, sold at sale.⁶

40 Idaho 137, 237 P. 415 (1924); *Andrews v. Moore*, 14 Idaho 465, 94 P. 579 (1908).

⁵ I.R.C.P. Rule 4(a)(2). See footnote 2.

⁶ The sections of the Idaho Code relating to “Enforcement of Judgments in Civil Cases” and “Levy and Sale on Execution” provide:

11-102. FORM OF WRIT. The writ of execution must be issued in the name of the people, sealed with the seal of the court, and subscribed by the clerk, and be directed to the sheriff, and it must intelligently refer to the judgment, stating the court, the county where the judgment roll is filed, and if it be for money, the amount thereof, and the amount actually due thereon, and if made payable in a specified kind of money, or currency, the execution must also state the kind of money or currency in which the judgment is payable, and must require the sheriff substantially as follows:

(1) If it be against the property of the judgment debtor, it must require the sheriff to satisfy the judgment, with interest, out of the personal property of such debtor, and if sufficient personal property cannot be found, then out of his real property; or if the judgment be a lien upon real property, then out of the real property belonging to him on the day when the judgment was docketed, or at any time thereafter; or if the execution be issued to a county other than the one in which the judgment was recovered, on the day when the transcript of the docket was filed in the office of the recorder of such county, stating such day, or any time thereafter.

(2) If it be against real or personal property in the hands of the personal representatives, heirs, devisees, legatees, tenants, or trustees, it must require the sheriff to satisfy the judgment, with interest, out of such property.

Proceeding with the instant case will reduce time and expense to both Grazer and Defendant Jason Jones. The known claims related to conveyance, transfer and ownership of the Franklin County Property and the Water Shares are consolidated and set forth in the pending Second Amended Complaint.

CONCLUSION

The Second Amended Complaint, filed on December 4, 2009, superseded all prior pleadings. Pursuant to Rule 4(a) I.R.C.P., it can be served up to and through June 4, 2010. Judicial economy will be served by proceeding with this case in that the Notice of Interest of Jason Jones in the Franklin County Property and the water shares must be adjudicated in order for Jason Jones to retain his claimed ownership interest should a Writ of Execution issue to sell those items of property. Grazer respectfully requests that Jason Jones' Motion to Dismiss be denied.

IDAHO CODE ANN. § 11-102


And

11-301. EXECUTION OF WRIT. The sheriff must execute the writ against the property of the judgment debtor by levying on a sufficient amount of property if there be sufficient; collecting or selling the things in action, and selling the other property, and paying to the plaintiff or his attorney so much of the proceeds as will satisfy the judgment. Any excess in the proceeds over the judgment and accruing costs must be returned to the judgment debtor unless otherwise directed by the judgment or order of the court. When there is more property of the judgment debtor than is sufficient to satisfy the judgment and accruing costs within the view of the sheriff, he must levy only on such part of the property as the judgment debtor may indicate, if the property indicated be amply sufficient to satisfy the judgment and costs.

IDAHO CODE ANN. § 11-301.

DATED this 15 day of April, 2010.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff Allen F. Grazer

CERTIFICATE OF DELIVERY

I hereby certify that on the 15 day of April, 2010, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Dave R. Gallafent
Kent L. Hawkins
Jared A. Steadman
MERRILL & MERRILL CHARTERED
109 N Arthur – 5th Flr
P.O. Box 991
Pocatello, ID 83204-0991
Attorneys for Defendants Linda G. Jones and Jason Jones

Email
khawk@merrillandmerrill.com
 Mail
 Fax 208-232-2499
 Fed Ex
 Hand Delivery
 Personally Served

Lane V. Erickson
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391
Attorneys for Defendants Gordon A. Jones and J&J Livestock, LLC

Email lve@racinelaw.net
ltz@racinelaw.net
 Mail
 Fax 801-621-4436
 Fed Ex
 Hand Delivery
 Personally Served

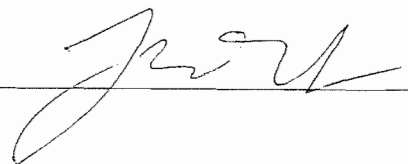


EXHIBIT "A"

460

219428 1-2

Recorded at the request of
Steven R Fuller

WARRANTY DEED

11:20
AM NOV 21 2002 PM

PR15004
FOR VALUE RECEIVED

V. ELLIOTT LARSEN, RECORDER
By Ruth K. Rawlin Deputy
FRANKLIN COUNTY, IDAHO

BERTIE WILLIAM WINWARD, III, and ELDA B. WINWARD, Grantors,

do hereby grant, bargain, sell and convey unto

GORDON A. JONES and LINDA G. JONES, husband and wife,

whose current address is: 235 West 1400 North, Bountiful, UT 84010
the Grantees, the following described premises in Franklin County, Idaho to wit:

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 26 SHARES OF THE CAPITAL STOCK OF TWIN LAKES CANAL COMPANY.

SUBJECT TO EASEMENTS AND RESTRICTIONS OF RECORD.

TO HAVE AND TO HOLD the said premises, with their appurtenances unto the Grantees, their heirs and assigns forever. And the said Grantors do hereby covenant to and with the said Grantees, that they are the owners in fee simple of said premises; that they are free from all encumbrances and that they will warrant and defend the same from all lawful claims whatsoever.

DATED: November 8, 2002.

Bertie William Winward III
BERTIE WILLIAM WINWARD, III

Elida B. Winward
ELDA B. WINWARD


219428 2-2

STATE OF IDAHO)

County of Franklin)

On this 8th day of November, 2002, before me, the undersigned a Notary Public in and for said State, personally appeared **BERTIE WILLIAM WINWARD, III** and **ELDA B. WINWARD**, known to me to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same.

STEVEN R. FULLER
NOTARY PUBLIC
STATE OF IDAHO


NOTARY PUBLIC for State of Idaho
Residing at: Preston, Idaho
Comm. Exp.: 2/19/05

462

EXHIBIT "B"

463

ROBERT F. BABCOCK
KENT B. SCOTT
BRIAN J. BABCOCK
JASON H. ROBINSON
SHAWN W. POTTER
COOY W. WILSON

ALSO ADMITTED IN IDAHO

WASHINGTON FEDERAL PLAZO
505 EAST 200 SOUTH
SUITE 300
SALT LAKE CITY, UTAH 84102

TELEPHONE (801) 531-7000
FACSIMILE (801) 531-7060

WWW.BABCOCKSCOTT.COM

RECEIVED
JUL - 5 2005

BY:-----

SHAWN W. POTTER
ATTORNEY AT LAW
EMAIL: SHAWN@BABCOCKSCOTT.COM

Thursday, June 30, 2005

VIA U.S. MAIL

Margaret Olson
Hobbs & Olson
525 South 300 East
Salt Lake City, UT 84111

RE: Grazer v. Jones, et al.

Dear Margaret:

I am responding to certain correspondence and telephone calls from your office. Thank you for providing the open-ended extension of time to file an answer in the second Utah lawsuit and the motions for injunctive relief and attachment. The Acceptance of Service is enclosed herein. I have also enclosed the Answer to the Idaho lawsuit. We appreciate your professional courtesy and time extensions. Under the circumstances our time is better spent in working toward a reasonable settlement of the overall dispute. If your understanding of this agreement is any different, please let me know.

I have looked into the area of creditor collections involving property held in joint tenancy. Joint tenants own equal undivided shares of the property. Under certain circumstances, a spouse may establish the property as sole and separate property. A creditor of one joint tenant can levy and attach to the debtor tenant's share of the undivided property. The attachment severs the joint tenancy and creates a tenancy in common among the remaining tenant and the creditor (or a purchaser from the creditor on execution sale). Either co-tenant may bring an equitable action for partition of the property, or if no equitable solution can be reached, for sale of the entire property and a distribution of the proceeds.

With the above as a legal framework, we can proceed with a discussion of the property owned by our clients.

Sincerely,
BABCOCK SCOTT & BABCOCK



Shawn W. Potter

Cc: Gordon Jones
Richard Barney
Enclosures

464

EXHIBIT "C"

230848

NOTICE OF INTEREST

NOTICE IS HEREBY GIVEN by JASON JONES that he claims an interest in and to the hereinafter described real property. This claim of interest is based upon improvements made, payments made and services rendered on the property. The agreed upon arrangement was that the undersigned would receive a portion of the property for compensation for the work performed.

The real property is located in Franklin County, State of Idaho, and more particularly described as follows: *owned by Gordon and Linda Jones*

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.

DATED this 12 day of August, 2005.

[Signature]
JASON JONES

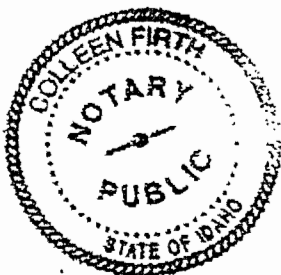
Recorded at the request of
Jason Jones

4:50
a.m. AUG 12 2005 p.m.

STATE OF IDAHO :
 : ss :
COUNTY OF FRANKLIN :

V. ELLIOTT LARSEN, RECORDER
By Camille Larsen Deputy
FRANKLIN COUNTY, IDAHO

SUBSCRIBED and sworn to before me this 12 day of August, 2005.



Colleen Firth
NOTARY PUBLIC *exp 06/10/2011*

466

EXHIBIT "D"

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.

**STIPULATION FOR FILING
SECOND AMENDED COMPLAINT**

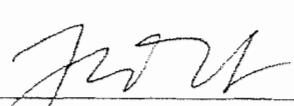
Civil No. CV-2005-183

Judge _____

Comes now the Plaintiff and Defendants, by and through counsel of record, and hereby stipulate and agree that Plaintiff may file a Second Amended Complaint in the above-entitled matter. A copy of the Second Amended Complaint is attached hereto.

DATED this 4 day of December, 2009.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff Allen F. Grazer

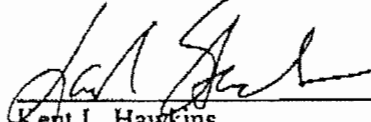
MERRILL & MERRILL, CHARTERED

Kent L. Hawkins
Attorneys for Defendant Linda G. Jones

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

Lane B. Erickson
Attorneys for Defendants Gordon A. Jones
and J&J Livestock, LLC

MERRILL & MERRILL, CHARTERED



Kent L. Hawkins

Attorneys for Defendant Linda G. Jones

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

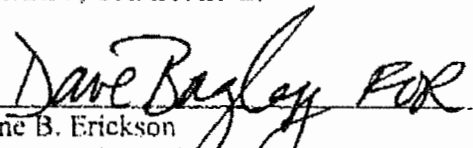
Lane B. Erickson

Attorneys for Defendants Gordon A. Jones
and J&J Livestock, LLC

MERRILL & MERRILL, CHARTERED

Kent L. Hawkins
Attorneys for Defendant Linda G. Jones

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED


Lane B. Erickson
Attorneys for Defendants Gordon A. Jones
and J&J Livestock, LLC

FILED

10 APR 28 AM 11:15

FRANKLIN COUNTY CLERK

K. Jones

DEPUTY

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

NOTICE REGARDING APRIL 30, 2010
HEARING

Civil No. CV-2005-183

Judge David C. Nye

Please take notice that the hearing in the above matter, scheduled for April 30, 2010 at 10:30 a.m. will be conducted in the Pocatello chambers of the Honorable David C. Nye; local counsel are encouraged and invited to attend the hearing at that location; counsel for the Plaintiff, who will be in Las Vegas, Nevada, will participate in the hearing by telephone, at (208) 236-7244.

DATED this 26 day of April, 2010.

HOBBS & OLSON, L.C.

LWH

LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff Allen F. Grazer

AFFIDAVIT OF SERVICE

State of IDAHO

County of Franklin

FILED
Sixth District Court

Case Number: CV-2005-183

10 APR 28 AM 11:15

Plaintiff:
ALLEN F. GRAZER

FRANKLIN COUNTY CLERK

vs.
Defendant:
GORDON A. JONES, LINDA G. JONES, JASON JONES, J7J LIVESTOCK, LLC

K Jones
DEPUTY

For: Lincoln W. Hobbs
HOBBS & OLSON, L.C.

Received by ANDERSON INVESTIGATIONS, INC. on the 30th day of March, 2010 at 5:40 pm to be served on **JASON JONES, 3369 NORTH WESTSIDE HIGHWAY, CLIFTON, ID 83228-5074**. I, LD Larsen, being duly sworn, depose and say that on the 15 day of April, 2010 at 9:45 pm., executed service by delivering a true copy of the **SUMMONS & SECOND AMENDED COMPLAINT** in accordance with state statutes in the manner marked below:

INDIVIDUAL SERVICE: Served the within-named person.

SUBSTITUTE SERVICE: By serving _____ as _____

POSTED SERVICE: After attempting service on ___/___ at _____ and on ___/___ at _____ to a conspicuous place on the property described herein.

OTHER SERVICE: As described in the Comments below by serving _____ as _____

NON SERVICE: For the reason detailed in the Comments below. The defendant is (is not) in the MILITARY service of the United States.

COMMENTS:

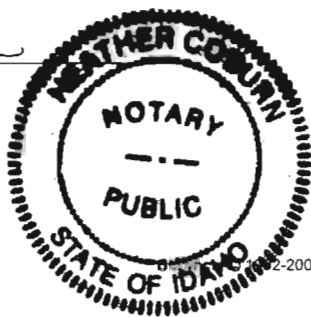
I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 15 day of April, 2010 by the affiant who is personally known to me.

[Signature]

PROCESS SERVER # _____
Appointed in accordance with State Statutes

[Signature]
NOTARY PUBLIC



ANDERSON INVESTIGATIONS, INC.
230 West 200 South
Suite 2302
Salt Lake City, UT 84101
(801) 619-1110
Our Job Serial Number: 2010001808

FILED

10 MAR 23 PM 2: 24

FRANKLIN COUNTY CLERK

K. Jones

DEPUTY

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

Server *Kip Larsen*
Title Process Server
Date 4-15-10 Time 7:45 pm
P/S *Same*

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; JASON JONES, an
individual; J&J LIVESTOCK, LLC, a Utah
Limited Liability Company; and John Does 1-
10,

Defendants.

SUMMONS
(20 Day)
Jason Jones

Civil No. CV-2005-183

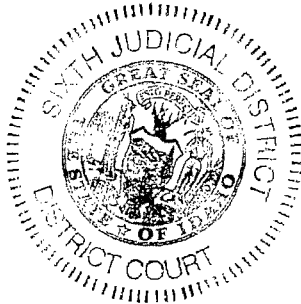
Judge David C. Nye

TO: DEFENDANT JASON JONES
3369 North Westside Highway
Clifton, ID 83228-5074

YOU ARE HEREBY SUMMONED and required to answer the attached Second Amended Complaint that has been filed with the above Court. Within twenty (20) days after service of this Summons, you must file your written answer with the clerk of the court at the following address: Clerk of the Court, Sixth Judicial District Court, 39 West Oneida, Preston, ID 83263, and you must mail or deliver a copy to Plaintiff's attorneys at the address listed above. If you fail to do so, judgment by default may be taken against you for the relief demanded in the Second Amended Complaint.

DATED this 23 day of March, 2010.

BY THE COURT:



K Jones

FILED

10 MAY -3 AM 10:43

FRANKLIN COUNTY CLERK

K Jones
DEPUTY

Dave R. Gallafent
Kent L. Hawkins
Jared A. Steadman
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #1745, #3791 and #7804

Attorneys for Defendant Linda G. Jones

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

ALLEN F. GRAZER, an individual,)
)
Plaintiff,)
)
vs.)
)
GORDON A. JONES, an individual;)
LINDA G. JONES, an individual;)
JASON JONES, an individual; J&J)
LIVESTOCK, LLC, a Utah Limited)
Liability Company; and John Does 1-10,)
)
Defendants.)
_____)

Case No. CV-2005-183

**SECOND NOTICE OF SPECIAL
APPEARANCE**

COMES NOW Jason Jones, and through his attorneys, Merrill & Merrill, Chartered, pursuant to I.R.C.P. 4(i), hereby gives notice of special appearance on behalf of said Defendant in said cause and controversy by said firm, to contest service and request that all documents and pleadings filed herein be duly and regularly served upon said attorneys at P.O. Box 991, Pocatello, Idaho, 83204.

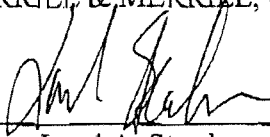
This Defendant hereby specifically appears for the sole purpose of moving to dismiss the present action pursuant to I.R.C.P. 12(b)(4), 12(b)(5) and 4(a)(2). This Defendant has already made that motion on improper service performed on February 10, 2010. This Defendant now makes his

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appearance pursuant to the second service on his client, which took place in April, 2010.

DATED this 3 day of May, 2010.

MERRILL & MERRILL, CHARTERED

By 
Jared A. Steadman
Attorneys for Defendant Linda Jones

CERTIFICATE OF SERVICE

I, Jared A. Steadman, the undersigned, one of the attorneys for the Defendant, Jason Jones, only, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Notice of Special Appearance was this 3 day of May, 2010, served upon the following in the manner indicated below:

Lincoln W. Hobbs
Margaret H. Olson
HOBBS & OLSON, L.C.
466 E. 500 S., Ste #300
Salt Lake City, Utah 84111

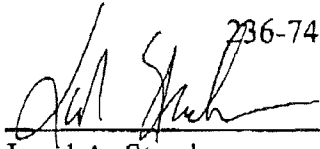
- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax 1-801-519-2999

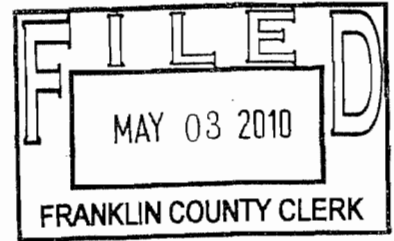
Lane V. Erickson
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204-1391

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax 232-6109

The Honorable David C. Nye

236-7418


Jared A. Steadman



Dave R. Gallafent
Kent L. Hawkins
Jared A. Steadman
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #1745, #3791 and #7804

Attorneys for Defendant Linda G. Jones

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

ALLEN F. GRAZER, an individual,)	
)	
Plaintiff,)	Case No. CV-2005-183
)	
vs.)	
)	DEFENDANT JASON JONES'
)	RENEWED MOTION TO DISMISS
GORDON A. JONES, an individual;)	
LINDA G. JONES, an individual; JASON)	
JONES, an individual; J&J)	
LIVESTOCK, LLC, a Utah Limited)	
Liability Company; and John Does 1-10,)	
)	
Defendants.)	
)	

COMES NOW Jason Jones, by and through his attorneys, Merrill & Merrill, Chartered, pursuant to Idaho R. Civ. P. 4(a)(2) and 12(b)(4) and (5) to hereby renew his motion to this Court to dismiss Plaintiff's cause of action against said Defendant for the reasons stated herein and further set forth in his Brief in Support of Defendant's Motion to Dismiss and the accompanying affidavits, filed with this Defendant's initial motion to dismiss.

Defendant's motion is based on Plaintiff's failure to provide service on Defendant within the time limit provided for in the Idaho Rules of Civil Procedure. Because Plaintiff served this Defendant a second time following this Defendant's initial notice of special appearance and motion to dismiss, this Defendant feels it necessary to submit this second motion to dismiss referring the

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court to all the arguments and facts set out in the brief, affidavits, and oral argument of the initial motion to dismiss.

WHEREFORE, this Defendant moves this Court for an Order of Dismissal of all claims against him on the grounds that proper service over him has not been obtained.

Oral Argument at the hearing of this matter has already taken place.

MERRILL & MERRILL, CHARTERED

By Jared A. Steadman
Jared A. Steadman
Attorneys for Defendant Linda Jones

CERTIFICATE OF SERVICE

I, Jared A. Steadman, the undersigned, one of the attorneys for the Defendant, Jason Jones, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing Motion to Dismiss was this 3 day of May, 2010, served upon the following in the manner indicated below:

Lincoln W. Hobbs
Margaret H. Olson
HOBBS & OLSON, L.C.
466 E. 500 S., Ste #300
Salt Lake City, Utah 84111

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax 1-801-519-2999

Lane V. Erickson
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204-1391

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax 232-6109

The Honorable David C. Nye
Sent by facsimile:

Jared A. Steadman 2367418
Jared A. Steadman

FILED

10 JUN 11 AM 11:13

FRANKLIN COUNTY CLERK

Hampton
DEPUTY

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

<p>ALLEN F. GRAZER, Plaintiff, vs. GORDON A JONES; LINDA G. JONES; JASON JONES,;J&J LIVESTOCK, LLC, a Utah Limited Liability Company; and John Does 1-10, Defendants.</p>	<p>Case No. CV-2005-183 DECISION ON MOTION TO DISMISS</p>
---	---

This matter came before this Court for a hearing on Defendant's Motion to Dismiss on April 30, 2010. The hearing took place in Bannock County telephonically in chambers pursuant to agreement of the parties. The Plaintiff, Allen Grazer was represented by Lincoln Hobbs telephonically. The Defendant, Jason Jones, was represented by Jared Steadman, who was present in chambers. Stephanie Morse, the Court Reporter, was present. The Court reviewed the documents submitted by the parties and heard oral argument from both parties. The Court took the matter under advisement and now issues its decision.

BACKGROUND AND PROCEDURAL HISTORY

Defendant Gordon Jones (Gordon) rendered services to Plaintiff Allen Grazer (Grazer) as a general contractor in the construction of Grazer's residence. On November 1, 2002, Gordon filed suit against Grazer in Davis County, Utah, to recover unpaid invoices that were claimed to be owed to Gordon. Grazer filed a counterclaim in which he alleged construction defects, negligence and breaches of contract and warranty. The result of the Utah case was a monetary award in favor of Grazer. The case before this Court is a result of Grazer's course of collecting the payment of that judgment as well as Grazer's allegations that Defendants participated in fraudulent transfers to prevent that collection.

This case commenced on May 12, 2005, when Grazer filed a Complaint against Gordon Jones, Linda Jones and J & J Livestock seeking collection of the judgment from the Utah case as well as alleging fraudulent transfers of interest by Gordon Jones regarding some Franklin County property.

Grazer recorded a *lis pendens* in Franklin County on May 13, 2005, in connection with the filing of this action. Grazer asserts that the recording notified all parties that this action was pending and affects title to specific real property or the right to possession of specific real property as identified in the complaint in this action. The specific real property has been named as the Franklin County property.¹ The validity or effect of the *lis pendens* is not at issue in this motion to dismiss.

¹ A copy of the *lis pendens* is attached to the Second Amended Complaint as Exhibit D.
Case No. CV-2005-183
Decision on Motion to Dismiss
Page 2 of 9

On June 30, 2005, an Answer was filed on behalf of Gordon Jones, Linda Jones and J & J Livestock. On April 18, 2006, Defendant Gordon Jones filed for bankruptcy in the United States Bankruptcy Court for the District of Utah, staying proceedings in all pending cases in which he was the Defendant. A year later, on April 19, 2007, the United States Bankruptcy Court approved a settlement agreement between the United States Bankruptcy Trustee and Grazer.

Two years later, on July 31, 2009, Grazer filed an Amended Complaint which added Jason Jones as a defendant. On November 2, 2009, Grazer filed a Motion to File Second Amended Complaint seeking to determine the rights of Jason Jones in the Franklin County property and to add a claim that water shares had been fraudulently transferred to Jason Jones. On December 4, 2009, a stipulation was signed by Plaintiff's counsel, Defendant Gordon Jones' counsel and Defendant Linda Jones' counsel allowing the Plaintiff to file a Second Amended Complaint.² Jason Jones was served with the Second Amended Complaint on February 10, 2010.

Jason Jones is now asking the Court to dismiss the Plaintiff's cause of action against him pursuant to I.R.C.P. 4(a)(2) and 12(b)(4) and (5) as he claims that the Plaintiff failed to serve him within the time limit provided by the Idaho Rules of Civil Procedure.

² Jason Jones was not a named party on this stipulation nor did he sign the stipulation. Additionally, the Court never ruled on the Motion to File Second Amended Complaint because of the stipulation.

STANDARD OF REVIEW

Rule 4(a)(2) requires a party to serve the summons and complaint within six months of filing the complaint. *Herrera v. Estay*, 146 Idaho 674, 679, 201 P.3d 647, 652 (2009). Unless a party can show good cause for failure to serve within those six months, a court must dismiss the action without prejudice. *Id.* citing I.R.C.P. 4(a)(2). A determination of whether good cause exists is a factual one. *Id.* citing *Nerco Minerals Co. v. Morrison Knudsen Corp.*, 132 Idaho 531, 533, 976 P.2d 457, 459 (1999). Consequently, when reviewing a decision dismissing a case under the rule, “the appropriate standard of review is the same as that used to review an order granting summary judgment.” *Herrera* quoting *Nerco Minerals Co. v. Morrison Knudsen Corp.*, 132 Idaho 531, 533, 976 P.2d 457, 459 (1999). Thus, the court must liberally construe the record in the light most favorable to the nonmoving party and must draw all reasonable inferences in that party’s favor. *Hincks v. Neilson*, 137 Idaho 610, 611, 51 P.3d 424, 425 (Ct. App. 2002), citing *Telford v. Mart Produce, Inc.*, 130 Idaho 932, 950 P.2d 1271 (1998). However, where there is no dispute as to the factual circumstances, our review consists of ascertaining the effect of applicable law on the undisputed facts. *Herrera* quoting *Martin v. Hoblit*, 133 Idaho 372, 987 P.2d 284 (1999).

DISCUSSION

Grazer directs the Court to case law that states that when a pleading is amended, the amended pleading takes the place of the original pleading. *Frieberger v. Am. Triticale*, 120 Idaho 239, 243, 815 P.2d 437, 441 (1991) citing *W.L.Scott v. Madreas*

Aerotech, 103 Idaho 736, 653 P.2d 791 (1982); *Billings v. Sisters of Mercy of Idaho*, 86 Idaho 485, 389 P.2d 224 (1964). The Court agrees with the Plaintiff and the precedent provided, however, *Frieberger* holds that the content of the amended pleading replaces the content of the original and it also discusses an amended pleading will “relate back” to the original pleading regarding timing issues under a statute of limitation. Unfortunately, for Grazer, the holdings in *Frieberger* do not directly relate to the issues in this case regarding service of process.

The issue now before the Court is whether the six month time period for service upon a party is renewed upon a Plaintiff’s filing of a Second Amended Complaint or whether the time begins to run at the filing of the First Amended Complaint.³

The First Amended Complaint was filed on July 31, 2009 and the Second Amended Complaint was filed on December 4, 2009. The six month requirement of service on the First Amended Complaint ended on January 31, 2010. Jason Jones was not served until February 9, 2010. *Jason Jones Aff.*; *Barbara Jones Aff.*; *Linda Jones Aff.* Grazer argues that because the Second Amended Complaint was filed within the time period for service of the First Amended Complaint, any service of the First Amended Complaint would have been moot. This may be true, but the real issue is whether the Second Amended Complaint needed to be served within the time period for service of the First Amended Complaint.

In the present case, the First Amended Complaint was filed on July 31, 2009 with permission by the Court. The Idaho Court of Appeals has held that the relevant period of

³ The First Amended Complaint is the first time that Jason Jones was named as a party.

time on which the courts will focus on in determining whether there was proper service is the six months following the filing the complaint. *Hansen v. Herrera*, 137 Idaho 787, 790, 53 P.3d 838, 841 (Ct. App. 2002). This Court interprets that holding as meaning six months following the filing of the first complaint that names the party for whom service is at issue. Thus, the Court will focus on the six month time period that took place following the filing of the First Amended Complaint, which runs from July 31, 2009 until January 31, 2010. Jason Jones was not served within those six months. Therefore, under Rule 4(a)(2), Grazer must show good cause why service was not made within that period. If Grazer cannot show good cause, the Court must dismiss the action as to Jason Jones.

Two major happenings took place within that six month period, which are factors the Court can consider in determining good cause. First, on December 4, 2009, Grazer filed a Second Amended Complaint which was stipulated to on that same day, and second, on January 28, 2010, the summons was issued. The filing of the Second Amended Complaint was stipulated to by Allen Grazer, Gordon Jones, Linda Jones and J & J Livestock. The December 4, 2009 Stipulation Agreement did not name Jason Jones as a party.

The Plaintiff failed to serve Jason Jones within six months after filing the First Amended Complaint, which first named Jason Jones as a party. Indeed, there is nothing in the record to indicate that Grazer even made an attempt to serve Jason Jones within the six months. The Idaho Supreme Court has held that “[i]f a plaintiff fails to make any

attempt at service within the time period of the rule, it is likely that a court will find no showing of good cause.” *Campbell v. Reagan*, 144 Idaho 254, 258, 159 P.3d 891, 895 (2007), quoting *Martin v. Hoblit*, 133 Idaho 372, 377, 987 P.2d 284, 289 (1999). In *Campbell*, the plaintiff contested that good cause existed because the Defendant informally received a copy of the summons and complaint, hired an attorney and communicated with the plaintiff during the six month time period. However, the *Campbell* court held that the plaintiff did not demonstrate good cause for the failure to timely serve. *Id.* at 259, 159 P.3d at 896.

Grazer suggests that simply filing the Second Amended Complaint restarted the six month service period. However, when dealing with the allowance of amended and supplemental pleadings, the Court relies on Rule 15(a), which states:

[A] party may amend a pleading only by leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires...[a] party shall plead in response to an amended pleading within the time remaining for response to the original pleading or within ten (10) days after service of the amended pleading...

I.R.C.P. 15(a). This Court believes that this rule is indicative of the Supreme Court’s intent regarding service of amended pleadings. If the Defendant’s time to answer an Amended Complaint is only extended by a maximum of ten days, then the Plaintiff’s time period to serve the Amended Complaint should remain the same time period as service of the original Complaint. This Court does not accept the idea that a Plaintiff can double the time period for serving a party simply by filing an amended complaint on the last day allowed for service, or as in this case, during the last month for service.

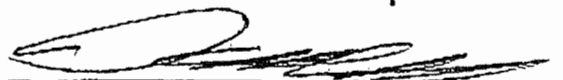
Again, there is no evidence that Plaintiff made an attempt of service on Jason before the January 31, 2010 time period expired. Additionally, the evidence in the present case does not meet the standard set in *Campbell* for establishing good cause for lack of timely service. Therefore, this Court finds that Plaintiff has not made a showing of good cause for failure to serve Jason Jones within the six months and as a result the Defendant Jason Jones' Motion to Dismiss without prejudice is granted.

CONCLUSION

The Plaintiff has not met the requirement of Rule 4(a)(2) for service of the summons and complaint upon the defendant within six months of the filing of the First Amended Complaint. Furthermore, the Plaintiff has not shown good cause as to the reason why service was not made within that time period. Therefore, the action against Jason Jones is dismissed without prejudice as the Court **GRANTS** Jason Jones' Motion to Dismiss.

IT IS SO ORDERED.

DATED: June 11, 2010.



DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 11 day of June, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Jared Steadman
Merrill & Merrill, Chartered
109 North Arthur - 5th Floor
P.O Box 991
Pocatello, ID 83204-0991

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Fax: 232-2499

Lincoln W. Hobbs
Margaret H. Olson
Hobbs & Olson, L.C.
466 East 500 South, Suite 300
Salt Lake City, Utah 84111

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Fax: 801-519-2999

Lane V. Erickson
Racine, Olson, Nye, Budge & Bailey
Chartered
P.O. Box 1391
Pocatello, ID 83204-1391

- U.S. Mail
- Overnight Delivery
- Hand Deliver
- Fax: 232-6109

Linda Hampton
Deputy Clerk

FILED

10 JUN 28 PM 1:07

FRANKLIN COUNTY CLERK

J Hampton
DEPUTY

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

ALLEN F. GRAZER,

Plaintiff,

vs.

GORDON A. JONES; LINDA G. JONES;
JASON JONES, J&J LIVESTOCK, LLC,
a Utah Limited Liability Company; and
JOHN DOES 1-10,

Defendants.

Case No: CV-2005-183

**ORDER FOR SUBMISSION OF
INFORMATION FOR SCHEDULING
ORDER**

An Amended Complaint was filed in this matter on the 31st day of July, 2009. The Defendant has now appeared and/or answered and the case is at issue.

IT IS HEREBY ORDERED, pursuant to I.R.C.P. 16, that the parties, through their counsel (or the parties themselves if self-represented), confer and submit to the Court, within fourteen (14) days of the date of this Order, a joint statement containing the following information:

- (1) Whether any service is still needed upon any unserved parties.
- (2) Whether motions to add new parties or otherwise amend the pleadings are contemplated.
- (3) Whether the parties currently contemplate or anticipate any pre-trial motions.

- (4) Whether the case presents any unusual time requirements for trial preparation.
- (5) The agreed amount of time required for trial.
- (6) Whether the case presents any unusual times requirements for discovery.
- (7) Whether any party requests court-ordered mediation.
- (8) Three stipulated trial dates, one no less than six (6) months and no more than nine (9) months from the date of this Order, and a second no less than nine (9) months and no more than twelve (12) months from the date of this Order, and a third no less than twelve (12) months and no more than fifteen (15) months from the date of this Order. These trial dates cannot be during the first full week of any month.


(9) Whether there are other matters conducive to determination of the action that the parties agree should be brought to the attention of the Court prior to entering a Scheduling Order.

The parties shall agree as to which party shall make the joint submission but, if they cannot agree, Plaintiff shall be responsible to make the submission.

Upon receipt of this joint submission the Court will issue an Order setting the matter for trial with appropriate dates for discovery, disclosure of witness, etc.

IT IS FURTHER ORDERED that if the parties do not file the stipulation required herein, within the fourteen (14) days set forth, the Court will set this matter for trial on a date available to the Court.

DATED this 28th day of June, 2010.



DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of June, 2010, I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

Jared Steadman
MERRILL & MERRILL
PO Box 991
Pocatello, ID 83204-0991

Faxed to: 232-2499

Lincoln W. Hobbs
Margaret H. Olson
HOBBS & OLSON, L.C.
466 East 500 South, Suite 300
Salt Lake City, UT 84111

Faxed to: (801) 519-2999

Lane V. Erickson
RACINE, OLSON, NYE, BUDGE
And BAILEY
PO BOX 1391
Pocatello, ID 83204-1391


Faxed to: 232-6109

Linda Hampton
Linda Hampton, Deputy Clerk

FILED

10 JUL 21 PM 12:06

FRANKLIN COUNTY CLERK


DEPUTY

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; JASON
JONES, an individual, J&J LIVESTOCK,
LLC, a Utah Limited Liability Company;
and John Does 1-10.

Defendants.

**JOINT STATEMENT
SUBMITTING INFORMATION FOR
SCHEDULING ORDER**

Case No. CV-2005-183

Judge David C. Nye

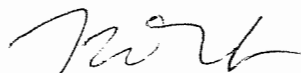
The parties hereto, through their counsel have jointly conferred and submit to the Court this Joint Statement containing the following information for a scheduling order:

1. Service on Unserved Parties. Service will need to be affected upon additional parties. Defendant, Linda G. Jones, is now deceased. On or before July 29, 2010, Plaintiff will file a Motion for leave to file a Third Amended Complaint to add as Defendants, the Estate of Linda G. Jones, her personal representative and her heirs, as their interests may be determined.

2. Motions to Add New Parties or Amendments. On or before July 29, 2010, Plaintiff will file a Motion for leave to file a Third Amended Complaint to add as Defendants, the Estate of Linda G. Jones, her personal representative and her heirs, as their interests may be determined.
3. Pre-trial Motions. The parties agree to reserve the right to file pre-trial motions.
4. Time for Trial Preparation. The parties agree that the case does not present any unusual time requirements for trial preparation.
5. Time Required for Trial. The parties agree that the time required for trial will be three (3) days.
6. Time Requirements for Discovery. The parties agree that the case does not present any unusual time requirements for discovery.
7. Mediation. Counsel for Defendants Gordon A. Jones and J & J Livestock, LLC requests court ordered mediation. Counsel for Plaintiff Allen F. Grazer agrees to mediate this case provided that any such mediation take place in the State of Utah as the underlying case on which the present action is based arose in and the judgment therein was rendered in the State of Utah. Counsel for the Defendant Linda G. Jones has indicated willingness to participate in mediation.
8. Stipulated Trial Dates. The parties agree to the following possible trial dates:
 - a. February 8, 2011 – February 10, 2011
 - b. May 17, 2011 – May 19, 2011
 - c. September 20 – September 22, 2011.
9. Other Matters. There are no other matters to be brought to the attention of the Court at this time prior to entering a Scheduling Order.

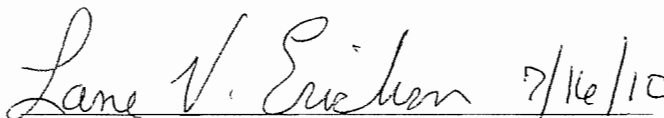
DATED this _____ day of July 2010.

HOBBS & OLSON, L.C.



Lincoln W. Hobbs
Margaret H. Olson, Of Counsel
Attorneys for Plaintiff Allen F. Grazer

RACINE, OLSON, NYE, BUDGE and BAILEY



Lane V. Erickson
Attorneys for Defendants Gordon A. Jones and
J & J Livestock, LLC

MERRILL & MERRILL

Jared Steadman
Attorneys for Linda G. Jones

DATED this _____ day of July 2010.

HOBBS & OLSON, L.C.

Lincoln W. Hobbs
Margaret H. Olson, Of Counsel
Attorneys for Plaintiff Allen F. Grazer

RACINE, OLSON, NYE, BUDGE and BAILEY

Lane V. Erickson 7/16/10
Lane V. Erickson
Attorneys for Defendants Gordon A. Jones and
J & J Livestock, LLC

MERRILL & MERRILL

Jared Steadman 7/17/10
Jared Steadman
Attorneys for Linda G. Jones

FILED

10 JUL 29 AM 9:44

FRANKLIN COUNTY CLERK

Hampton
DEPUTY

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; THE
ESTATE OF LINDA G. JONES, deceased
and her heirs as they may be determined;
SCOTT JONES; CHERYL
GUDMUNDSON; THE GORDON A. AND
LINDA G. JONES FAMILY TRUST
DATED 10-19-2004; JASON JONES, an
individual, J&J LIVESTOCK, LLC, a Utah
Limited Liability Company; and John Does
1-10,

Defendants.

**MOTION FOR LEAVE TO FILE
THIRD AMENDED COMPLAINT**

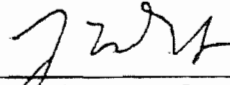
Case No. CV-2005-183

Judge David C. Nye

Plaintiff Allen F. Grazer, by and through counsel and pursuant to Idaho R. Civ. P. 15(a), moves the Court for leave to file its Third Amended Complaint attached hereto. This motion is based on the Memorandum submitted herewith, agreement of the parties and the Joint Statement Submitting Information for Scheduling Order signed by the parties.

DATED this 29 day of July, 2010.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff Allen F. Grazer

CERTIFICATE OF DELIVERY

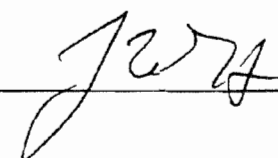
I hereby certify that on the 29 day of July, 2010, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Kent L. Hawkins
MERRILL & MERRILL CHARTERED
109 n Arthur – 5th Flr
P.O. Box 991
Pocatello, ID 83204-0991
Attorneys for Defendant Linda G. Jones

- Email
- Mail
- Fax 208-232-2499
- Fed Ex
- Hand Delivery
- Personally Served

Lane V. Erickson
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391
Attorneys for Defendants Gordon A. Jones and
J&J Livestock, LLC

- Email lve@racinelaw.net
- Email ltz@racinelaw.net
- Mail
- Fax 801-621-4436
- Fed Ex
- Hand Delivery
- Personally Served



FILED

10 JUL 29 AM 9:45

FRANKLIN COUNTY CLERK

Hampton

DEPUTY

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; THE
 ESTATE OF LINDA G. JONES, deceased
 and her heirs as they may be determined;
 SCOTT JONES; CHERYL
 GUDMUNDSON; THE GORDON A. AND
 LINDA G. JONES FAMILY TRUST
 DATED 10-19-2004; JASON JONES, an
 individual, J&J LIVESTOCK, LLC, a Utah
 Limited Liability Company; and John Does
 1-10,

Defendants.

**MEMORANDUM IN SUPPORT OF
 MOTION FOR LEAVE TO FILE
 THIRD AMENDED COMPLAINT**

Case No. CV-2005-183

Judge David C. Nye

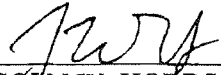
By and through counsel, Plaintiff hereby submits his Memorandum in Support of his
 Motion for Leave to file Third Amended Complaint.

ARGUMENT

Since this action was filed, Defendant Linda G. Jones has died and a probate action has been filed in the State of Utah identifying her heirs and devisees. The will of Linda G. Jones also names a family trust as her residual beneficiary. Plaintiff has named these heirs, devisees, the Trust and its beneficiaries as additional defendants having potential interests in the subject matter of this case. The rules provide that "leave shall be freely given when justice so requires." I.R.C.P. 15(a). The interests of the additional defendants may be affected and the additional defendants are, therefore, indispensable parties. Additionally, only limited discovery has been taken in the case thus far, there is no prejudice to the existing Defendants from this amendment.

DATED this 29 day of July, 2010.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff Allen F. Grazer

CERTIFICATE OF DELIVERY

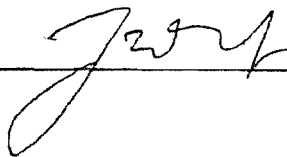
I hereby certify that on the 29 day of July, 2010, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Kent L. Hawkins
MERRILL & MERRILL CHARTERED
109 n Arthur – 5th Flr
P.O. Box 991
Pocatello, ID 83204-0991
Attorneys for Defendant Linda G. Jones

Email
 Mail
 Fax 208-232-2499
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 Personally Served

Lane V. Erickson
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391
Attorneys for Defendants Gordon A. Jones and
J&J Livestock, LLC

Email lve@racinelaw.net
ltz@racinelaw.net
 Mail
 Fax 801-621-4436
 Fed Ex
 Hand Delivery
 Personally Served



shall be submitted to the Court at least twenty-one (21) days prior to Trial, and shall contain or include:

(A). A statement that all exhibits to be offered at trial have been provided to all other parties and attaching an Exhibit List of all such exhibits. The Exhibit List shall indicate: (1) by whom the exhibit is being offered, (2) a brief description of the exhibit, (3) whether the parties have stipulated to its admission, and if not, (4) the legal grounds for objection. If any exhibit includes a summary of other documents, such as medical expense records, to be offered pursuant to I.R.E. 1006, the summary shall be attached to the Stipulation.

(B). A statement whether depositions or any discovery responses will be offered in lieu of live testimony, and a list of what will actually be offered, the manner in which such evidence will be presented, and the legal grounds for any objection to any such offer.

(C). A list of the names and addresses of all witnesses which each party intends to call to testify at trial, including anticipated rebuttal or impeachment witnesses. Expert witnesses shall be identified as such. The Stipulation should also identify whether any witnesses' testimony will be objected to in its entirety and the legal grounds therefore.

(D). A brief non-argumentative summary of the factual nature of the case. The purpose of the summary is to provide an overview of the case for the jury and is to be included in pre-proof instructions to the jury, unless found inappropriate by the Court.

(E). A statement counsel have, in good faith, discussed settlement unsuccessfully and/or completed mediation unsuccessfully, if mediation was ordered by the Court.

(F). A statement that all pre-trial discovery procedures under I.R.C.P. 26 to 37 have been complied with and all discovery responses supplemented as required by the rules to reflect facts known to the date of the Stipulation.

(G). A statement of all issues of fact and law which remain to be litigated, listing which party has the burden of proof as to each issue.

(H). A list of any stipulated admissions of fact, which will avoid unnecessary proof.

(I). A list of any orders requested by the parties which will expedite the trial.

(J). A statement as to whether counsel require more than 30 minutes per party for voir dire or opening statement and, if so, an explanation of the reason more time is needed.

4. **PRE-TRIAL MOTIONS:** All motions to join parties or amend the pleadings (except motions pertaining to punitive damages under I.C. §6-1604) must be filed and heard so as not to require the continuance or vacation of the trial date, and in no event less than ninety (90) days before trial. All motions for summary judgment and motions to add claims for

punitive damages pursuant to I.C. §6-1604 must be filed and served so as to be heard not later than sixty (60) days before trial. All other non-dispositive pre-trial motions (including, but not limited to motions *in limine* or motions which seek to challenge the admissibility or foundation of expert testimony) must be filed and scheduled for hearing not less than fourteen (14) days before trial. Exceptions will be granted infrequently, and only when justice so requires.

5. **MOTIONS FOR SUMMARY JUDGMENT:** All motions for summary judgment must be accompanied by a memorandum which includes a concise statement of each material fact upon which the moving party claims there is no genuine issue, and which shall include a specific reference to that portion of the record at or by which such fact is proven or established. Any party opposing a motion for summary judgment shall, not later than fourteen (14) days prior to hearing, serve and file any affidavits and opposing brief(s). The opposing brief shall identify the specific factual matters as to which the non-moving party contends there are genuine issues requiring denial of the motion, including a specific reference to the portion of the record which supports the claim that a genuine issue of fact exists. In ruling upon any summary judgment motion, the Court may assume that the facts as claimed by the moving party are conceded to exist without dispute except and to the extent the non-moving party shall have controverted them. Any reply brief must be lodged at least seven (7) days prior to hearing. Further, any objection to the admissibility of evidence must be in writing and shall be part of the response to the motion for summary judgment or in reply to the response in opposition to summary judgment. The failure to object in writing to the admissibility of evidence in support of or in response to summary judgment shall constitute a waiver as to any objection to the admissibility of evidence at the time of the hearing on summary judgment. Oral objections to the admissibility of evidence at the time of hearing on summary judgment will not be considered by the court.

6. **SCHEDULING AND HEARINGS.** Absent an order shortening time, all motions must be filed and served at least fourteen (14) days prior to hearing. A “judge’s copy” of any memoranda or affidavits should be provided for use by the court. Said “judge’s copy” shall be sent to the court at its chambers in Pocatello, Idaho. All such documents shall be clearly marked as “JUDGE’S COPY.” As a matter of courtesy, counsel are expected to contact the Court’s Deputy Clerk, Linda Hampton at (208) 852-0877 ext #46 to schedule hearings, and to confirm the availability of opposing counsel for proposed hearing dates. As an accommodation

to out-of-town counsel and parties, hearings on any pretrial motion (except motions for summary judgment or hearings at which testimony is to be offered) may be conducted by telephone conference call pursuant to I.R.C.P. 7(b)(4), in the discretion of the court. Counsel requesting a hearing by conference call will be responsible for arranging for placement of the call, and the cost thereof.

7. **DISCOVERY AND DISCOVERY DISPUTES:** The Court will not entertain any discovery motion unless accompanied by a written certification signed by counsel, which confirms that a reasonable effort has been made to voluntarily resolve the dispute with opposing counsel. A party's obligation to fully and timely respond to discovery requests is distinct from any obligation imposed by this Order, and no party may rely upon this Order or any deadline it imposes as justification for failing to timely respond to discovery requests or to supplement prior responses.

8. **DISCOVERY CUT-OFFS:** Absent a stipulation to the contrary, all discovery shall be propounded and served such that responses are due no later than thirty (30) days before trial. Any supplemental responses a party is required to make pursuant to I.R.C.P. 26(e) or the terms of an earlier discovery request shall also be served at least thirty (30) days before trial. Any supplementation of discovery required by the rule shall be made in a timely manner.

9. **WITNESS DISCLOSURES:** Each party shall disclose the existence and identity of intended or potential expert or lay witnesses to the extent required by interrogatories or other discovery requests propounded by another party. **There is no independent duty to disclose expert or lay witnesses except as required to adequately respond to discovery requests or supplement prior responses.** If discovery requests seeking disclosure of expert witnesses and the information required to be disclosed pursuant to I.R.C.P. Rule 26(b)(4)(A)(i) are propounded, a plaintiff upon whom such requests are served shall, in good faith, disclose the existence and identity of potential or intended expert witnesses, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than one hundred-twenty (120) days before trial. A defendant upon whom such requests are served shall, in good faith, identify any potential or intended expert witnesses, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than seventy-five (75) days before trial.

Any party upon whom discovery is served who intends or reserves the right to call any expert witness in rebuttal or surrebuttal shall, in good faith, identify such experts, including the disclosures required by I.R.C.P. Rule 26(b)(4)(A)(i) at the earliest opportunity, and in no event later than forty-two (42) days before trial. Any party upon whom discovery requests are served seeking disclosure of lay witnesses shall, in good faith, disclose the identity of all such witnesses at the earliest opportunity, and in no event later than forty-two (42) days before trial. Absent a showing of good cause and a lack of unfair prejudice to any other party, any witness who has not been timely disclosed will not be permitted to testify at trial.

10. **EXHIBITS AND EXHIBIT LISTS:** When and to the extent required to respond to interrogatories, requests for production or other discovery requests propounded by another party, a party must identify and disclose any documentary, tangible or other exhibits that party intends or reserves the right to offer at trial. Absent a showing of good cause and a lack of unfair prejudice to all other parties, any exhibit which has not been timely disclosed will be excluded. Without regard to whether discovery concerning a party's exhibits has been propounded, not less than seven (7) days prior to trial, each party shall: (A) lodge with the Clerk a completed exhibit list in the form attached to this order (Exh. 1 attached) together with one complete, duplicate marked set of that party's proposed exhibits for the Judge's use during trial; and (B) deliver to counsel for each other party a copy of the completed exhibit list and duplicate copy of that party's marked exhibits. The exhibit list and duplicate copies need not include exhibits which will be offered solely for the purpose of impeachment. Unless otherwise ordered, the plaintiff shall identify exhibits beginning with number "101," and the defendant shall utilize exhibits beginning with number "201."

11. **TRIAL BRIEFS:** The Court encourages (but does not require) the submission of trial briefs which address important substantive or evidentiary issues each party expects to arise during trial. Any trial briefs shall be prepared, exchanged between the parties, and lodged with the Clerk (with copies to Chambers in Soda Springs, Idaho) at least ten (10) days prior to trial.

12. **PROPOSED FINDINGS AND CONCLUSIONS:** If the trial is to the Court without a jury, each party shall, within fourteen (14) days after trial, file with the Clerk (with copies to Chambers in Pocatello, Idaho) and serve upon all other parties Proposed Findings of Fact and Conclusions of Law which support that party's position concerning the appropriate resolution of the case.

13. **REQUEST TO VACATE TRIAL SETTING:** Any party requesting *or stipulating* to vacate a trial setting must submit a specific written statement concerning the reasons for the request, and must certify, in writing, that the request or stipulation has been discussed with the parties represented by counsel. An order granting a request to vacate or continue a trial setting may be conditioned upon terms (including orders that the requesting party or attorney reimburse other parties or their attorneys for attorneys fees incurred for preparation which must be repeated or expenses advanced in anticipation of the trial setting which cannot be avoided or recovered). An order vacating or continuing a trial setting shall not serve to alter the deadlines set forth in this order, and unless otherwise stipulated or ordered, the specific calendar dates associated with any deadlines shall be adjusted in reference to the new or amended trial date.


14. **LODGING AT RESIDENT CHAMBERS:** **“All” documents filed shall include the Court on the Certificate of Mailing, with courtesy copies mailed or faxed (but not both) to the Court’s chambers in Pocatello, Idaho. Address: PO Box 4165, Pocatello, ID 83205, FAX 236-7418.**

16. **SANCTIONS FOR NON-COMPLIANCE:** A failure to comply with this order or the deadlines it imposes in a timely manner subject a non-compliant party and/or counsel to an award of sanctions pursuant to I.R.C.P. 16(i) and/or other applicable rules, statutes or case precedent.

17. All meetings and/or hearings with the Court shall be scheduled in advance with the Court’s Clerk, Linda Hampton, by calling 852-0877 ext #46. No hearing shall be noticed without contacting the Clerk.

Notice is hereby given, pursuant to I.R.C.P. 40(d)(1)(G), that an alternate judge may be assigned to preside over the trial of this case, if the currently presiding judge is unavailable. The list of potential alternative judges is: (1) Honorable Mitchell W. Brown; (2) Honorable Stephen S. Dunn; (3) Honorable Robert Naftz; (4) Honorable Peter D. McDermott; (5) Honorable William H. Woodland and (6) Honorable Don L. Harding.

DATED: this 20th day of August, 2010.


DAVID C. NYE
District Judge

CERTIFICATE OF MAILING/SERVICE

The undersigned certifies that on the 20th day of August, 2010, she caused a true and correct copy of the foregoing SCHEDULING ORDER, NOTICE OF TRIAL, SETTING AND INITIAL PRETRIAL ORDER to be served upon the following persons in the following manner:

PLAINTIFF ATTORNEY:

Margaret H. Olson
HOBBS & OLSON L.C.
Salt Lake City UT 84111
(801) 519-2999

Faxed

Lincoln Hobbs
525 South 300 East
Salt Lake City UT 84111
(801) 519-2999

DEFENDANT ATTORNEY:

Lane V. Erickson
PO Box 1391
Pocatello ID 83204-1391
232-6109

Faxed

Jared A Steadman
PO Box 991
Pocatello ID 83204
232-2499

Faxed

V. ELLIOTT LARSEN, Clerk

by: Linda Hampton
Linda Hampton, Deputy Clerk

EXHIBIT LIST

DAVID C. NYE, DISTRICT JUDGE
LINDA HAMPTON, DEPUTY CLERK
STEPHANIE MORSE, COURT REPORTER

CASE NO. CV-2005-183

DATE: _____

CASE: Grazer vs. Jones et al

NO	DESCRIPTION	DATE	ID	OFFD	OBJ	ADMIT

FILED

10 SEP -1 PM 4:46

FRANKLIN COUNTY CLERK

K Jones DEPUTY

Dave R. Gallafent
Kent L. Hawkins
Jared A. Steadman
MERRILL & MERRILL, CHARTERED
109 North Arthur - 5th Floor
P.O. Box 991
Pocatello, ID 83204-0991
(208) 232-2286
(208) 232-2499 Telefax
Idaho State Bar #1745, 3791, 7804

Attorneys for Defendant Linda G. Jones

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

ALLEN F. GRAZER, an individual,)
)
Plaintiff,)
)
vs.)
)
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.)
_____)

Case No. CV-05-183

**DEFENDANT LINDA G. JONES'
JOINDER IN OBJECTION TO
MOTION TO DISMISS**

COMES NOW the Defendant, Linda G. Jones, by and through her counsel of record, Merrill & Merrill, Chartered, and hereby joins in Defendant, Gordon A. Jones' objection to Plaintiff's Motion to Amend. In addition to joining in the objection, Defendant Linda Jones submits the following arguments and claims made therein as support for her and Gordon Jones' dismissal.

- 1) Although a court is to give consent to amend pleadings freely, it must not do so if such an amendment would be futile. *See inter alia Maroun v. Wyreless Systems, Inc.*, 141 Idaho 604, 611-612. Here, the complaint enumerates no cause of action against the heirs at all except that they are heirs of the decedent Ms. Jones. The addition of the estate and the removal of Ms. Jones from the suit is logical and would have

509


warranted no objection; however, adding all heirs as defendants though there is no cause of action against them and though their interests must already be represented by the personal representative of the estate is, as Defendant Gordon Jones pointed out, is simply a tax on judicial economy. It will require each heir to retain counsel and will muddy the already murky waters of this lawsuit further. These are not indispensable parties. The estate will be adequately represented by the personal representative, who will owe a fiduciary duty to the heirs.

- 2) Where Jason Jones has already been dismissed from this case, it appears this may simply be an attempt to circumvent his dismissal. The Plaintiff will have no concern about the statute of limitations because there is no cause of action here. He would be listed simply because he has an interest in the property and the Plaintiff will be able to proceed as if the dismissal had never taken place. The court cannot allow this.

For these reasons and those articulated by Defendant Gordon Jones, Defendant Linda Jones requests that this court deny Plaintiff's motion to amend his complaint.

DATED this 1 day of September, 2010.

MERRILL & MERRILL, CHARTERED

By 
Jared A. Steadman
Attorneys for Defendant Linda G. Jones

CERTIFICATE OF SERVICE

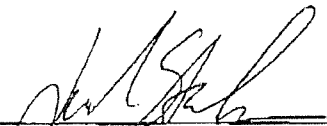
I, Jared A. Steadman, the undersigned, one of the attorneys for the Defendant, Linda G. Jones, only, in the above-referenced matter, do hereby certify that a true, full and correct copy of the foregoing was this 1 day of ^{September} ~~August~~, 2010, served upon the following in the manner indicated below:

Lincoln W. Hobbs
Margaret H. Olson
HOBBS & OLSON, L.C.
466 E. 500 S., Ste #300
Salt Lake City, Utah 84111

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax

Lane V. Erickson
Racine, Olson, Nye, Budge & Bailey, Chtd.
P.O. Box 1391
Pocatello, ID 83204-1391

- U.S. Mail
- Hand Delivery
- Overnight Delivery
- Telefax



Jared A. Steadman

FILED

10 SEP 10 PM 4:24

FRANKLIN COUNTY CLERK

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

K Jones
DEPUTY

ALLEN F. GRAZER, an individual,

Plaintiff,

vs

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

Defendant.

Case No. CV-05-183

MINUTE ENTRY AND ORDER

This matter came before the Court on September 2, 2010 on Plaintiffs' Motion for Leave to File Amended Complaint. Lincoln Hobbs appeared telephonically on behalf of the Plaintiffs. Lane Erickson appeared telephonically on behalf of Defendant, Gordon Jones and Jared Steadman appeared on behalf of the Defendant, Linda Jones. Stephanie Morse acted as court reporter.

The Court having reviewed the filings heard argument from counsel. After presentation of the argument the Court DENIED the motion.

IT IS SO ORDERED.

DATED 2nd day of September, 2010.



DAVID C. NYE
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 10 day of September, 2010, I mailed/served/faxed a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):

Method of Service:

Lincoln W. Hobbs
Attorney for Plaintiff

Faxed: (801) 519-2999

Lane V. Erickson
Attorney for Defendant G. Jones

Faxed: 232-6109

Jared Steadman
Attorney for Defendant L. Jones

Faxed: 232-2499

BY: Linda Hampton
Linda Hampton, Deputy

ANSACTION REPORT

P.01/01

SEP/10/2010 04:19 PM

FAX (TX)

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TRANSACTION REPORT

SEP/10/2010 04:20 PM

FAX (TX)

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ANSACTION REPOB

P.01/01

SEP/10/2010/ 04:21 PM

FAX (TX)

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ANSACTION REPORT

SEP/10/2010 04:22 PM

FAX (TX)

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FILED

10 SEP 20 PM 1:21

FRANKLIN COUNTY CLERK

K. Jones

DEPUTY

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; GORDON A.
JONES, PERSONAL REPRESENTATIVE
OF THE ESTATE OF LINDA G. JONES,
deceased and her heirs as they may be
determined; J&J LIVESTOCK, LLC, a
Utah Limited Liability Company; and John
Does 1-10,

Defendants.

**MOTION TO SUBSTITUTE
GORDON A. JONES,
PERSONAL REPRESENTATIVE
OF THE ESTATE OF
LINDA G. JONES, deceased**


Civil No. CV-2005-183
Judge David C. Nye

Plaintiff, Alan F. Gazer ("Grazer"), pursuant to Rule 25(a)(1), I.R.C.P. moves this Court for an Order substituting Gordon A. Jones, personal representative of the Estate of Linda G. Jones, deceased (the "Estate") and her heirs as they may be determined, as a defendant in the place and stead of Linda G. Jones, deceased, and for the issuance of a Notice of Hearing on this Motion to be served on the personal representative of the estate in accordance with Rule

25(a)(1), I.R.C.P. This Motion is supported by a Memorandum of Points and Authorities submitted herewith.

DATED this 17 day of September, 2010.

HOBBS & OLSON



LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff, Allen F. Grazer

CERTIFICATE OF DELIVERY

I hereby certify that on the 17 day of September, 2010, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Dave R. Gallafent
Kent L. Hawkins
Jared A. Steadman
MERRILL & MERRILL CHARTERED
109 N Arthur – 5th Flr
P.O. Box 991
Pocatello, ID 83204-0991
Attorneys for Defendants Linda G. Jones and
Jason Jones

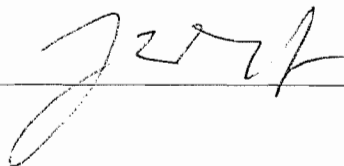
Email khawk@merrillandmerrill.com
 Mail
 Fax 208-232-2499
 Fed Ex
 Hand Delivery
 Personally Served

Lane V. Erickson
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
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Pocatello, ID 83204-1391
Attorneys for Defendants Gordon A. Jones and J&J
Livestock, LLC

Email lve@racinelaw.net
 Mail
 Fax 801-621-4436
 Fed Ex
 Hand Delivery
 Personally Served

David J. Shaffer
SHAFFER LAW OFFICE
562 South Main Street
Bountiful, UT 84010
Attorneys for the Estate of Linda G. Jones in
Utah Case No. 103700100

Email Shaffer@qwest.net
 Mail
 Fax 801-621-4436
 Fed Ex
 Hand Delivery
 Personally Served



FILED

10 SEP 20 PM 1:21

FRANKLIN COUNTY CLERK

K. Jones

DEPUTY

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; GORDON A.
JONES, PERSONAL REPRESENTATIVE
OF THE ESTATE OF LINDA G. JONES,
deceased and her heirs as they may be
determined; J&J LIVESTOCK, LLC, a
Utah Limited Liability Company; and John
Does 1-10.

Defendants.

**MEMORANDUM IN SUPPORT
OF MOTION TO SUBSTITUTE
GORDON A. JONES, PERSONAL
REPRESENTATIVE OF THE ESTATE
OF LINDA G. JONES, deceased**

Civil No. CV-2005-183
Judge David C. Nye

Plaintiff, Alan F. Gazer ("Grazer"), submits this Memorandum of Points and Authorities in Support of his Motion to Substitute Gordon A. Jones, Personal Representative of the Estate of Linda G. Jones, as defendant in the above captioned matter in the place and stead of Linda G. Jones, deceased.

STATEMENT OF FACTS

1. Linda G. Jones died on February 18, 2010.

2. Gordon A. Jones was appointed personal representative of the Estate of Linda G. Jones on March 31, 2010 in the case of *In the Estate of Linda G. Jones, deceased* (the "Estate"), Case No. 103700100 in the Second Judicial District Court, Farmington District, Davis County, State of Utah.

3. Grazer timely filed a claim against the Estate on July 20, 2010.

4. Grazer filed a Motion to File Third Amended Complaint in this Action to add the Estate and the heirs of Linda G. Jones as parties.

5. On September 2, 2010, this Court denied Grazer's Motion to Amend.

ARGUMENT

SUBSTITUTION OF GORDON A. JONES AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF LINDA G. JONES AND HER HEIRS AS THEY MAY BE DETERMINED IS APPROPRIATE.

Rule 25(a)(1), I.R.C.P. provides:

If a party dies and the claim is not thereby extinguished, the court may order substitution of the proper parties. The motion for substitution may be made by the successors or representatives of the deceased party or by any party and together with the notice of hearing, shall be served on the parties as provided in Rule 5 and upon persons not parties in the manner provided in Rule 4 for the service of a summons. If substitution is not made within a reasonable time, the action may be dismissed as to the deceased party.


In this action, the claims asserted against Linda G. Jones deal with property ownership – the title to real property located in Franklin County, Idaho, the legal description of which is attached as Exhibit "A", and title to water shares held in the Twin Lakes Canal Company. Linda G. Jones, the decedent, held a title interest to both the real property and the water shares at issue. These claims regarding the title interest have devolved to the Estate. The claims of Grazer against the title interests are still pending and have yet to be adjudicated. Accordingly, it is

appropriate under Rule 25(a) for the personal representative to be substituted as a defendant in this matter.

Therefore, Grazer asks that this Court issue a Notice of Hearing to be served together with this Motion on the personal representative of the Estate in accordance with Rule 25(a)(1) I.R.C.P. Grazer further asks that at the time and place set for hearing on this Motion that the relief sought herein be granted.

DATED this 17 day of September, 2010.

HOBBS & OLSON



LINCOLN W. HOBBS
MARGARET H. OLSON
Attorneys for Plaintiff, Allen F. Grazer

CERTIFICATE OF DELIVERY

I hereby certify that on the 17 day of September, 2010, I caused a true and correct copy of the foregoing to be served upon the following in the manner indicated:

Dave R. Gallafent
Kent L. Hawkins
Jared A. Steadman
MERRILL & MERRILL CHARTERED
109 N Arthur – 5th Flr
P.O. Box 991
Pocatello, ID 83204-0991
Attorneys for Defendants Linda G. Jones and
Jason Jones

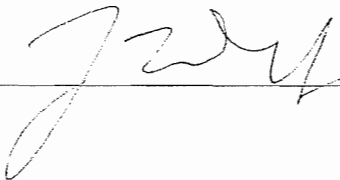
- Email khawk@merrillandmerrill.com
- Mail
- Fax 208-232-2499
- Fed Ex
- Hand Delivery
- Personally Served

Lane V. Erickson
RACINE, OLSON, NYE, BUDGE & BAILEY
CHARTERED
P.O. Box 1391
Pocatello, ID 83204-1391
Attorneys for Defendants Gordon A. Jones and J&J
Livestock, LLC

- Email lve@racinelaw.net
- Mail
- Fax 801-621-4436
- Fed Ex
- Hand Delivery
- Personally Served

David J. Shaffer
SHAFFER LAW OFFICE
562 South Main Street
Bountiful, UT 84010
Attorneys for the Estate of Linda G. Jones in
Utah Case No. 103700100

- Email Shaffer@qwest.net
- Mail
- Fax 801-621-4436
- Fed Ex
- Hand Delivery
- Personally Served



The specific real property affected by the action is located in Franklin County, State of Idaho and is 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.

AFFIDAVIT OF SERVICE

State of IDAHO

County of Franklin

FILED

Sixth District Court

Case Number: CV-2005-183

10 DEC 13 AM 11:56
FRANKLIN COUNTY CLERK
JH
DEPUTY

Plaintiff:

ALLEN F. GRAZER

vs.

Defendant:

GORDON A. JONES, LINDA G. JONES, JASON JONES, J7J
LIVESTOCK, LLC

For: Margaret H. Olson
HOBBS & OLSON, L.C.

Received by ANDERSON INVESTIGATIONS, INC. on the 28th day of October, 2010 at 10:29 am to be served on GORDON A. JONES, 3369 NORTH WESTSIDE HIGHWAY, CLIFTON, UT 83228-5074. I, Tamy Kilpack, being duly sworn, depose and say that on the 8 day of November, 2010 at 3:42 p.m., executed service by delivering a true copy of the NOTICE OF TELEPHONICE HEARING, MOTION TO SUBSTITUTE GORDON A. JONES, PERSONAL REPRESENTATIVE OF THE ESTATE OF LINDA G. JONES, MEMORANDUM IN SUPPORT OF MOTION, SECOND AMENDED COMPLAINT in accordance with state statutes in the manner marked below:

INDIVIDUAL SERVICE: Served the within-named person.

SUBSTITUTE SERVICE: By serving _____ as _____.

POSTED SERVICE: After attempting service on ___/___ at _____ and on ___/___ at _____ to a conspicuous place on the property described herein.

OTHER SERVICE: As described in the Comments below by serving _____ as _____.

NON SERVICE: For the reason detailed in the Comments below.

The defendant () is is not in the MILITARY service of the United States.

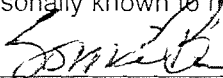
COMMENTS:

Age _____ Sex M F Race _____ Height _____ Weight _____ Hair _____ Glasses Y N

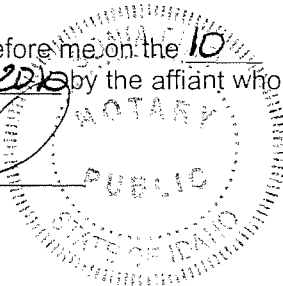
AFFIDAVIT OF SERVICE for CV-20-03

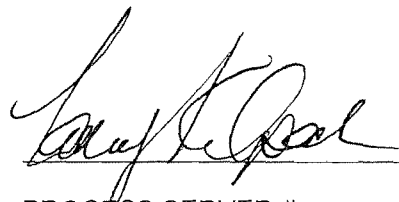
I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 10
day of November, 2016 by the affiant who
is personally known to me.



NOTARY PUBLIC





PROCESS SERVER # _____
Appointed in accordance with State Statutes

ANDERSON INVESTIGATIONS, INC.
230 West 200 South
Suite 2302
Salt Lake City, UT 84101
(801) 619-1110
Our Job Serial Number: 2010005566

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

Server Tamy Kilpack
Title Process Server
Date 11/8/10 Time 3:44P
P/S Gordon A. Jones

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; JASON JONES, an
individual; J&J LIVESTOCK, LLC, a Utah
Limited Liability Company; and John Does 1-
10.

Defendants.

**NOTICE OF TELEPHONIC
HEARING**

Civil No. CV-2005-183

Judge David C. Nye

Notice is hereby given that the Plaintiff's Motion to Substitute Gordon A. Jones, Personal Representative of the Estate of Linda G. Jones, deceased has been set for a telephonic hearing on Wednesday, November 24, 2010 at 10:00 a.m. (telephone number 208-236-7244). Judge Nye has agreed to have counsel participate by telephone; Plaintiff's counsel will be making arrangements for a call to counsel and the Court in the event that the other counsel wish to participate by telephone. Counsel wishing to participate by telephone should advise Plaintiff's counsel by 5:00 p.m. on Friday, November 19, 2010, of the phone number at which they can be reached at 10:00 on Wednesday, November 24.

DATED this 28 day of October, 2010.

HOBBS & OLSON, L.C.



LINCOLN W. HOBBS

MARGARET H. OLSON

Attorneys for Plaintiff Allen F. Grazer


Lane V. Erickson (ISB#: 5979)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorney for Defendant Gordon A. Jones

FILED

10 DEC 22 AM 10:54

FRANKLIN COUNTY CLERK


DEPUTY

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

ALLEN F. GRAZER, an individual,

Plaintiff,

vs.

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.


Case No. CV-05-183

NOTICE OF APPEARANCE

COMES NOW Lane V. Erickson of the law offices of RACINE, OLSON, NYE, BUDGE & BAILEY, CHARTERED, and hereby gives notice of the entry of his appearance as attorney of record for and on behalf of the Defendant GORDON A. JONES, Personal Representative of the ESTATE OF LINDA G. JONES, deceased, in the above-referenced proceeding, for all purposes and any further proceeding herein.

DATED this 21st day of December, 2010.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
LANE V. ERICKSON

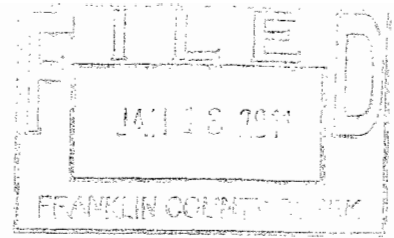
CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2010, I caused a true, correct and complete copy of the foregoing document to be served by U.S. first-class mail, postage prepaid, upon the following unless a different method of service is indicated:

Lincoln Hobbs
Margaret Olson
HOBBS & OLSON, LC
466 East 500 South, Suite 300
Salt Lake City, Utah 84111
Attorneys for Plaintiff

Kent L. Hawkins
MERRILL & MERRILL CHARTERED
P.O. Box 991
Pocatello, Idaho 83204-0991
Attorney for Defendant Linda G. Jones


LANE V. ERICKSON



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

ALLEN F. GRAZER, an individual,
Plaintiff,

Case No. CV-05-183

vs

MINUTE ENTRY AND ORDER

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

Defendant.

This matter came before the Court on January 13, 2011 for a status hearing. Lincoln Hobbs appeared for and on behalf of the Plaintiff and Lane Erickson appeared for and on behalf of the Defendants. All parties appeared telephonically including the Court. No court reporter was present nor was this hearing recorded.

After discussion between the parties the Court vacated the trial currently set for February 8, 2011 and set the Court Trial to begin on March 29 through April 1, 2011 beginning at 9:00 a.m. The Court further indicated that any motions are to be filed no later than February 11, 2011 with an additional two weeks for any response. All discovery demands are to be made by January 21, 2011. Defendants' Answer must be filed by January 21, 2011.

IT IS SO ORDERED.

DATED: January 13, 2011


DAVID C. NYE
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on January 14, 2011, I mailed/served/faxed a true copy of the foregoing document on the attorney(s)/person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

Attorney(s)/Person(s):

Method of Service:

Lincoln W. Hobbs
Attorney for Plaintiff

Faxed: (801) 519-2999

Lane V. Erickson
Attorney for Defendant G. Jones

Faxed: 232-6109

BY: Linda Hampton
Linda Hampton, Deputy

Lane V. Erickson (ISB#: 5979)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

FILED
11 JAN 21 PM 12:02
FRANKLIN COUNTY CLERK
[Signature]
DEPUTY

Attorney for Defendant Gordon A. Jones

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

ALLEN F. GRAZER, an individual,

Plaintiff,

vs.

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.

Case No. CV-05-183

**ANSWER TO PLAINTIFF'S
SECOND AMENDED COMPLAINT**

COMES NOW the above named Defendants, GORDON A. JONES, an individual; GORDON A. JONES, personal representative of THE ESTATE OF LINDA G. JONES, deceased; and J&J Livestock, LLC, a Utah limited liability company, (hereafter collectively referred to as "Defendants" unless specified otherwise), by and through their attorney of record, LANE V. ERICKSON, and hereby Answer the Second Amended Complaint of Plaintiff, ALLEN F. GRAZER, an individual, (hereafter "Plaintiff"). In providing this Answer to

ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Page 1

Plaintiff's Second Amended Complaint Defendants do not provide any answer to any allegations set forth in Plaintiff's Second Amended Complaint as they relate to the Defendant Jason Jones, who by previous Court Order was dismissed as a Defendant from the present action. Having stated such, Defendants Answer Plaintiff's Second Amended Complaint as follows:

FIRST DEFENSE

1. In answering each of the allegations of the Plaintiff's Complaint, as specified herein, Defendants collectively deny each and every allegation not specifically admitted in this Answer.

ANSWER TO COMPLAINT

2. Answering paragraphs 1, 2 and 3 of Plaintiff's Second Amended Complaint, Defendants deny each and every allegation set forth therein and further deny that Plaintiff has the right to seek partition of the Franklin County property.

PARTIES AND JURISDICTION

3. Answering paragraph 4 of Plaintiff's Second Amended Complaint, Defendants are without any personal knowledge concerning said allegations and therefore deny the same.

4. Answering paragraph 5 of Plaintiff's Second Amended Complaint, Defendants admit that Gordon Jones and Linda Jones were husband and wife and that at one time they did reside in Davis County, State of Utah. However, as acknowledged by a previous Court Order, Linda Jones passed away and Gordon Jones as the personal representative of Linda Jones' estate is now substituted into this litigation in Linda Jones' place. Further Gordon Jones no longer resides in Davis County, State of Utah but rather resides in Idaho. Finally, Defendants admit that

Defendants own real property in Franklin County, State of Idaho and for convenience of this litigation will refer to said property as the Franklin County property.

5. Answering paragraphs 6 & 7 of Plaintiff's Second Amended Complaint, Defendants admit that Gordon and Linda Jones acquired the Franklin County property by Warranty Deed on November 8, 2002. Defendants further admit that certain water rights, which were appurtenant to the Franklin County property, were obtained by Gordon and Linda Jones jointly in the amount of 66 water shares of the Twin Lakes Canal Company. Defendants deny that said water rights and/or shares were obtained solely by Gordon Jones.

6. Answering paragraphs 8 & 9 of Plaintiff's Second Amended Complaint, Defendants admit the same.

7. Answering paragraphs 10 & 11 of Plaintiff's Second Amended Complaint, Defendants refer Plaintiff to the introductory paragraph above and therefore deny the same.

8. Answering paragraph 12 of Plaintiff's Second Amended Complaint, Defendants admit that J&J Livestock, LLC was a Utah limited liability company formed in the state of Utah and that its status as an active entity expired on April 5, 2007. Defendants deny the remaining allegation of paragraph 12 of Plaintiff's Second Amended Complaint.

9. Answering paragraph 13 of Plaintiff's Second Amended Complaint, Defendants deny that J&J Livestock, LLC has any interest in the Franklin County property.

10. Answering paragraph 14 of Plaintiff's Second Amended Complaint, Defendants deny that any interest other than those of the parties in this case exist and therefore deny the same.

11. Answering paragraph 15 of Plaintiff's Second Amended Complaint, Defendants admit that the Court has jurisdiction over this matter but denies that such jurisdiction arises from I.C. 6-501.

12. Answering paragraph 16 of Plaintiff's Second Amended Complaint, Defendants admit that venue is proper before this Court but deny that such venue arises from I.C. 6-504.

GENERAL ALLEGATIONS

13. Answering paragraph 17 of Plaintiff's Second Amended Complaint, Defendants admit the same.

14. Answering paragraphs 18, 19, 20, 21, 22, 23, and 24 of Plaintiff's Second Amended Complaint, Defendants admit the same.

15. Answering paragraph 25 of Plaintiff's Second Amended Complaint, Defendants deny the same.

16. Answering paragraphs 26 and 27 of Plaintiff's Second Amended Complaint, Defendants deny the allegations set forth therein in part. Defendants admit that on July 7, 2005, Judge Allphin entered a document purporting to be a "judgment" in the sum of \$1,886,727.87 in the Utah proceedings, a copy of which is attached to Plaintiff's Second Amended Complaint as Exhibit "B". However, Defendants deny that this was a final judgment. Further the document attached to Plaintiff's Second Amended Complaint as Exhibit "C" bears no filing stamp and thus Defendants deny the allegations of paragraph 27 concerning the Utah proceedings. Defendants admit that the present action was filed on May 11, 2005.

17. Answering paragraph 28 of Plaintiff's Second Amended Complaint, Defendants admit that Plaintiff recorded the Lis Pendens described therein but deny that Plaintiffs had a legal basis or any authority for doing so.

18. Answering paragraph 29 of Plaintiff's Second Amended Complaint, Defendants admit that the Franklin County property was deeded to Gordon Jones and Linda Jones. Defendants deny the remaining allegations in paragraph 29 of Plaintiff's Second Amended Complaint.

19. Answering paragraph 30 of Plaintiff's Second Amended Complaint, Defendants deny the same.

20. Answering paragraph 31 of Plaintiff's Second Amended Complaint, Defendants admit that Plaintiff took the actions alleged and admit that the document attached as Exhibit "E" thereto is entitled Notice of Foreign Judgment and that it was recorded as alleged. Defendants deny that Plaintiff had authority for any such actions.

21. Answering paragraphs 32 and 33 of Plaintiff's Second Amended Complaint, Defendants deny the same and state that no amount is now due to Plaintiff by Defendants.

22. Answering paragraph 34 of Plaintiff's Second Amended Complaint, Defendants refer Plaintiff to the introductory paragraph above and therefore deny the same.

23. Answering paragraphs 35, 36, 37, 38, 39, 40, 41, 42, 43, and 44 of Plaintiff's Second Amended Complaint, Defendants admit the same.

24. Answering paragraph 45 of Plaintiff's Second Amended Complaint, Defendants deny the same.

ANSWER TO FIRST CLAIM FOR RELIEF

25. Answering paragraph 46 of Plaintiff's Second Amended Complaint, Defendants restate and incorporate by reference its admissions and denials set forth more fully above.

26. Answering paragraphs 47, 48 and 49 of Plaintiff's Second Amended Complaint, Defendants deny the same and state that said claim for relief is moot pursuant to the allegations and admissions set forth in paragraph 29 of Plaintiff's Second Amended Complaint.

ANSWER TO SECOND CLAIM FOR RELIEF

27. Answering paragraph 50 of Plaintiff's Second Amended Complaint, Defendants restate and incorporate by reference its admissions and denials set forth more fully above.

28. Answering paragraphs 51, 52, 53, 54, 55, and 56 of Plaintiff's Second Amended Complaint, Defendants refer Plaintiff to the introductory paragraph above and therefore deny the same.

ANSWER TO THIRD CLAIM FOR RELIEF

29. Answering paragraph 57 of Plaintiff's Second Amended Complaint, Defendants restate and incorporate by reference its admissions and denials set forth more fully above.

30. Answering paragraphs 58, 59, and 60 of Plaintiff's Second Amended Complaint, Defendants deny the same and state that said claim for relief is moot pursuant to the allegations and admissions set forth in paragraph 29 of Plaintiff's Second Amended Complaint.

31. Answering paragraphs 61 and 62 of Plaintiff's Second Amended Complaint, Defendants deny same.

32. Answering paragraphs 63 and 64 of Plaintiff's Second Amended Complaint, Defendants refer Plaintiffs to the introductory paragraph above and therefore deny the same.

33. Answering paragraphs 65, 66, 67, 68, 69, 70 and 71 of Plaintiff's Second Amended Complaint, Defendants deny the same.

ANSWER TO FOURTH CLAIM FOR RELIEF

34. Answering paragraph 72 of Plaintiff's Second Amended Complaint, Defendants restate and incorporate by reference its admissions and denials set forth more fully above.

35. Answering paragraphs 73, 74, 75, 76, 77, 78, 79, and 80 of Plaintiff's Second Amended Complaint, Defendants deny the same.

ANSWER TO FIFTH CLAIM FOR RELIEF

36. Answering paragraph 81 of Plaintiff's Second Amended Complaint, Defendants restate and incorporate by reference its admissions and denials set forth more fully above.

37. Answering paragraphs 82, 83, and 84 of Plaintiff's Second Amended Complaint, Defendants deny the same.

FIRST AFFIRMATIVE DEFENSE

38. Any foreign judgment Plaintiff claims to have obtained based upon the allegation of a Utah judgment being entered on July 5, 2005, is invalid because by the Plaintiff's own admissions, and the Utah Court's rulings said judgment was not a "final judgment" upon which a valid Foreign Judgment can be issued pursuant to the application of I.C. §§ 10-1301 *et seq.*

SECOND AFFIRMATIVE DEFENSE

39. Plaintiff is judicially estopped from claiming that the "final judgment" of the Utah court was entered on any date other than on April 13, 2006, by reason of the Utah Court ruling dated April 13, 2006.

THIRD AFFIRMATIVE DEFENSE

40. Any judgment lien that could have existed in favor of Plaintiff under a Foreign Judgment, if any ever did validly exist, has expired pursuant to the application of I.C. §§ 10-1110 and 10-1111, and can no longer be enforced.

FOURTH AFFIRMATIVE DEFENSE

41. Any judgment Plaintiffs obtained in Utah was only against Defendant Gordon Jones individually. Due to the bankruptcy court's issuance of an Order of Discharge, which Plaintiff admits in paragraphs 43 and 44 of its Second Amended Complaint was entered by the Bankruptcy Court on or about January 20, 2009, Plaintiff cannot in the present action further seek to recover any of Defendant Gordon Jones' remaining unsecured debt.

FIFTH AFFIRMATIVE DEFENSE

42. Plaintiff cannot seek to execute against any of the Defendants' real property pursuant to I.C. §§ 11-101 and 11-105.

SIXTH AFFIRMATIVE DEFENSE

42. Even if none of the other Affirmative Defenses existed, Plaintiff still 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.

SEVENTH AFFIRMATIVE DEFENSE

43. Plaintiff cannot seek the enforcement of any judgment it claims or any execution it derives therefrom against any 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's court proceedings have not already fully satisfied the judgment claimed by Plaintiff.

EIGHTH AFFIRMATIVE DEFENSE

44. Plaintiff cannot seek a partition of the property as Plaintiff is not a joint tenant or co-owner of the real property.

NINTH AFFIRMATIVE DEFENSE

45. The doctrines of laches and estoppel apply to prevent Plaintiffs from further pursuing any claims against the Defendants.

REQUEST FOR ATTORNEYS' FEES

46. The Defendants assert that they are entitled to recover attorney fees from Plaintiff under the facts and circumstances of this case under the statutes of the State of Idaho and the rules of the Supreme Court governing filing and prosecution of claims including but not limited to I.C. §§ 120-120, 12-121 and Rule 54 of I.R.C.P.

WHEREFORE, the Defendants pray judgment against the Plaintiff as follows:

1. That the Plaintiffs' Complaint be dismissed and that they take nothing thereby;
2. That the answering Defendants recover all their reasonable attorneys' fees and costs incurred in the defense of this action as determined by the Court;
3. For such other and further relief as the Court deems proper under these circumstances.

DATED this 21st day of January 2011.

RACINE, OLSON, NYE, BUDGE
& BAILEY, CHARTERED

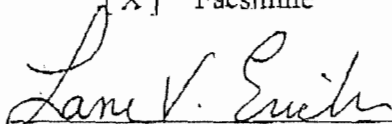
By Lane V. Erickson
LANE V. ERICKSON

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of January 21, 2011, I served a true and correct copy of the above and foregoing document to the following person(s) as follows:

Lincoln W. Hobbs
Margaret H. Olson
Hobbs & Olson, L.C.
466 East 500 South, Suite 300
Salt Lake City, Utah 84111
801 519-2999

- U.S. Mail
- Postage Prepaid
- Hand Delivery
- Overnight Mail
- Facsimile



 LANE V. ERICKSON

Lane V. Erickson (ISB#: 5979)
RACINE, OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorney for Defendant Gordon A. Jones

ORIGINAL

11 FEB 11 AM 9:40

FRANKLIN COUNTY CLERK

DEPUTY

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

ALLEN F. GRAZER, an individual,

Plaintiff,

vs.

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.

Case No. CV-05-183

**DEFENDANTS' PRE-TRIAL BRIEF
a/k/a
MOTION FOR SUMMARY
JUDGMENT**

COMES NOW, the above-named Defendants GORDON A. JONES, an individual; GORDON A. JONES, Personal Representative of the ESTATE OF LINDA G. JONES, deceased, (hereafter collectively referred to herein as "Jones") by and through it's attorney of record, Lane V. Erickson, and pursuant to the Court's Minute Entry and Order dated January 13, 2011, and Rule 56 of the I.R.C.P., hereby enters Defendants' Pre-Trial Brief a/k/a Motion for Summary Judgment.

PROCEDURE AND BACKGROUND OF CASE

The present matter is set for a Court Trial which is scheduled to begin on Tuesday, March 29, 2011, and will continue for four (4) days until Friday, April 1, 2011.

In a pre-trial hearing, the Court recognized that many, if not all of the issues present in this case might be resolved by the application of the law to undisputed facts. For this reason, the Court entered its Minute Entry and Order dated January 13, 2011, wherein the Court indicated that each party could file its Pre-Trial Brief setting forth the undisputed facts and any applicable law. The Court stated it would treat said pleadings as Motions for Summary Judgment. Each party is granted two weeks in which to respond to the other party's Pre-Trial Brief.

This pleading is hereby submitted as Jones' Pre-Trial Brief.

RELIEF SOUGHT BY DEFENDANTS

Jones seeks to have the Court enter an Order summarily dismissing the present litigation. When Idaho law is applied to the undisputed facts of this case, the Plaintiff cannot claim to have a valid judgment or judgment lien in Idaho upon which to proceed. Additionally, even if the judgment were somehow still valid, Plaintiff failed to execute within the time allowed. Further, Plaintiff is not allowed to file a new judgment or create a new judgment lien due to the application of Idaho law and the Discharge Order that was entered in Jones' favor in the bankruptcy proceedings. As a result, all of the causes of action set forth in Plaintiff's Second Amended Complaint no longer exist.

The remainder of this Pre-Trial Brief will be a statement of the undisputed facts and the application of Idaho law to those facts.

UNDISPUTED FACTS OF THIS CASE

The undisputed facts in this case come mainly from the pleadings on the record before this Court including Plaintiff's Second Amended Complaint, the exhibits Plaintiff attached thereto, and Jones' Answer to Plaintiff's Second Amended Complaint. Some of the undisputed facts also come from pleadings and correspondence that Plaintiff relies upon or acknowledged from the state and federal cases that occurred in Utah. The undisputed facts are as follows:

1. On November 8, 2002, the Jones' received real property in Franklin County, Idaho consisting of an excess of 200 acres (hereafter the "Franklin Property"), by warranty deed. The warranty deed was recorded on November 12, 2002, as Franklin County Recorder's Instrument No. 219428. The legal description set forth on page 4 of Plaintiff's Second Amended Complaint accurately describes the Franklin Property. (See Plaintiff's Second Amended Complaint paragraph 17.)

2. Jones initiated litigation in Utah to collect from the Plaintiff monies Jones believed were due and owing for building Plaintiff a home. This case was designated as Utah state court, Davis County Case No. 020700570. (See Plaintiff's Second Amended Complaint paragraphs 18 and 19.)

3. Plaintiff countersued and on December 15, 2004, the Judge in the Utah case scheduled a trial in the matter for April 26-29, 2005. (See Plaintiff's Second Amended Complaint paragraphs 19, 20 and 21.)

4. On December 22, 2004, Jones transferred the Franklin Property by quitclaim deed to J&J Livestock, LLC. Said quitclaim deed was recorded on December 27, 2004, as Franklin County Recorder's Instrument No. 228503. (See Plaintiff's Second Amended Complaint paragraph 22 and Exhibit "A" attached thereto.)

5. J&J Livestock, LLC was formed by Jones in the state of Utah on December 28, 2004. (See Plaintiff's Second Amended Complaint paragraph 23.)

6. On March 7, 2005, Jones transferred water shares that are appurtenant to the Franklin Property to Linda Jones and Jason Jones. (See Plaintiff's Second Amended Complaint paragraph 24.)

7. The Utah, Davis County case went to trial. Utah District Court Judge Allphin dismissed the claims brought by Jones and on April 29, 2005, declared his intention to award judgment in favor of Plaintiff and against Defendant Gordon Jones. (See Plaintiff's Second Amended Complaint paragraph 26.)

8. On May 11, 2005, Plaintiff filed his complaint in this action commencing the present case. (See Plaintiff's Second Amended Complaint paragraph 28.)

9. A document, purporting to be a judgment was entered by Judge Allphin in the Utah, Davis County case on July 7, 2005, against Defendant Gordon Jones in the amount of \$1,886,727.87. (See Plaintiff's Second Amended Complaint paragraph 26 and Exhibit "B".)

10. On July 15, 2005, Jones transferred the Franklin Property by quitclaim deed from J&J Livestock LLC back to the Jones' individually. Said quitclaim deed was recorded on July 29, 2005, as Franklin County Recorder's Instrument No. 230638. (See Plaintiff's Second Amended Complaint paragraph 29 and Affidavit of Lane V. Erickson (hereafter "Erickson Affidavit") Exhibit "1".)

11. On August 1, 2005, Plaintiff filed a Notice of Filing Foreign Judgment, and the Affidavit of Margaret H. Olson re: Foreign Judgment in the present litigation. (See Plaintiff's Second Amended Complaint paragraph 31 and Exhibit "E".)

12. On September 23, 2005, Plaintiff recorded its Notice of Filing Foreign Judgment as Franklin County Recorder's Instrument No. 231394. Plaintiff also recorded the document issued by Judge Allphin in the Utah state court proceedings purporting to be a Judgment in the sum of \$1,886,727.87. Said document was recorded as Franklin County Recorder's Instrument No. 231395. (See Plaintiff's Second Amended Complaint paragraph 31 and Exhibit "E".)

13. By reason of having recorded the documents attached to its Second Amended Complaint as Exhibit "E", Plaintiff alleges to have obtained a judgment lien against the Franklin Property on September 23, 2005. (See Plaintiff's Second Amended Complaint paragraph 31 and Exhibit "E".)

14. On April 18, 2006, Defendant Gordon Jones filed a Chapter 7 bankruptcy in Utah. On January 31, 2007, the Chapter 7 Bankruptcy Trustee and Plaintiff entered in a Settlement Agreement concerning among other things Plaintiff's litigation in Idaho against Jones for fraudulent transfers. (See Plaintiff's Second Amended Complaint paragraphs 35, 36, and 37 and Exhibit "G".)

15. The Settlement Agreement states in pertinent part:

The Trustee stipulates and agrees that Grazer has a valid, enforceable security interest in the [therein described] property of Debtor's bankruptcy [including the Franklin Property]. . . . Upon the Effective Date of the Agreement, . . . any and all property of the Debtor's bankruptcy estate of any kind whatsoever, known or unknown, tangible and intangible, including, but not limited to real property . . . personal property . . . causes of action . . . [including] the Idaho Fraudulent Transfer Action . . . shall be deemed abandoned and no longer property of the Debtor's bankruptcy estate and Grazer shall be deemed to have relief from the stay to pursue any and all state court remedies against the Debtor and such property.

The Settlement Agreement further states that Plaintiff is entitled to fully pursue all his rights and claims against the aforesaid property, which rights and claims are not altered, amended or affected in any way by this Agreement or by the filing of the Debtor's bankruptcy case. Further,

the Settlement Agreement states that it is binding on Jones. (See Plaintiff's Second Amended Complaint paragraph 38, 39, and 40 and Exhibit "G".)

16. The Settlement Agreement was approved by the Bankruptcy Court in an Order dated April 19, 2007. (See Plaintiff's Second Amended Complaint paragraph 41 and the "second" Exhibit "G".)

17. The Order described above, indicates that by reason of the filing of the Notice of Foreign Judgment, and the stipulation of the chapter 7 Trustee, Plaintiff had a security interest in the Franklin Property. (See Plaintiff's Second Amended Complaint paragraph 42 and the "second" Exhibit "G".)

18. On January 20, 2009, Bankruptcy Judge Judith A. Boulden issued an Order granting a discharge of all of Defendant Gordon Jones's unsecured debt. This Order of Discharge "prohibits any attempt to collect from [Jones] a debt that has been discharged. . . . However, a creditor may have the right to enforce a valid lien such as a mortgage or security interest, against the debtor's property after bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. (See Plaintiff's Second Amended Complaint paragraphs 43 and 44 and Exhibit "H".)

19. The judgment lien that Plaintiff alleges to have obtained against the Franklin Property on September 23, 2005, was not avoided in the bankruptcy case. Additionally, the filing of the Notice of Foreign Judgment in Idaho by Plaintiff was not avoided in the bankruptcy case. (See Plaintiff's Second Amended Complaint paragraph 45.)

20. More than five (5) years have passed since Plaintiff filed its Notice of Filing Foreign Judgment on August 1, 2005, and Plaintiff has never filed any motion of any sort with this Court or any court in Idaho to renew its alleged judgment or to seek execution thereon. (See

Docket Report for the present case dated January 28, 2011, attached to the Erickson Affidavit as Exhibit “2”.)

21. More than five (5) years have passed since Plaintiff recorded the document issued by Judge Allphin in the Utah state court proceedings purporting to be a Judgment in the sum of \$1,886,727.87. Said document was recorded as Franklin County Recorder’s Instrument No. 231395 on September 23, 2005. Plaintiff has not renewed its recording of this document in any way.

22. All of the causes of action in Plaintiff’s Second Amended Complaint are dependent upon the existence of its Foreign Judgment. (See Second Amended Complaint Claims for Relief.)

ISSUES PRESENTED

By reason of the undisputed facts listed above, the following issues are presented to the Court for resolution through the application of Idaho law:

- Did Plaintiff’s Foreign Judgment and Judgment lien lapse?
- Has Plaintiff satisfied Idaho’s requirements for execution on a judgment?

APPLICATION OF LAW

I. STANDARD OF REVIEW

Summary Judgment is appropriate when “. . . the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to Judgment as a matter of law.” State v. Rubbermaid, 129 Idaho 353 (1996) citing to McCoy v. Lions, 120 Idaho 765, 769 (1991).

Once the moving party establishes the absence of a genuine issue, the burden shifts to the nonmoving party to make a showing of the existence of a genuine issue of material fact on the

elements challenged by the moving party. Thomson v. Idaho Ins. Agency, Inc., 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994). It is well settled in Idaho that in order to create a genuine issue of material fact, the party opposing the motion must present more than just a conclusory assertion that an issue of material fact exists. Coghlan, 987 P.2d at 312-13, Van Velson Corp. v. Westwood Mall Assoc., 126 Idaho 401, 406, 884 P.2d 414, 419, (1994). “Rather, the [opposing party] must respond to the summary judgment motion with specific facts showing that there is a genuine issue for trial.” Coghlan, 987 P.2d at 312-13; Tuttle v. Sudenga Indus., Inc., 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

The non-moving party has the obligation of establishing the existence of each element essential to any claims they have made in which they bear the burden of proof at trial. This obligation has been imposed by the United States Supreme Court in applying Rule 56(c) of the Federal Rules of Civil Procedure in the case of Cellotex Corp. v. Catrett, 477 U.S. 317 (1986). The Idaho Supreme Court has adopted Cellotex in the application of Idaho Rules of Civil Procedure 56(c). See Badell v. Beeks, 115 Idaho 101,102 (1998). In Cellotex, Justice Renquist wrote for the majority and explained:

The plain language of Rule 56(c) mandates the entry of Summary Judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. In such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the non-moving party’s case necessarily renders all other facts immaterial. The moving party is entitled to a Judgment as a matter of law . . . 477 U.S. at 322-323.

As a result of Cellotex, the Plaintiff in this case cannot raise merit-less claims to defeat Summary Judgment. Rather the Plaintiff must introduce or point to facts in the record that support each element of each claim asserted in Plaintiff’s Second Amended Complaint.

Essentially, the facts of the present case are admitted to by the Plaintiff in his Second Amended Complaint. By application of Idaho law, the Plaintiff's foreign judgment and judgment lien lapsed and can no longer be pursued by Plaintiff. Additionally, even if the foreign judgment and judgment lien were still valid, Plaintiff has entirely failed to satisfy the requirements necessary to allow him to execute on his alleged foreign judgment. For these reasons, all of Plaintiff's claims in his Second Amended Complaint fail, there are no remaining valid causes of action for Plaintiff to pursue, and this litigation should be dismissed.

II. PLAINTIFF'S FOREIGN JUDGMENT AND JUDGMENT LIEN HAVE LAPSED

Both the foreign judgment and the judgment lien Plaintiff claims to hold have lapsed by operation of Idaho law. A judgment lien is purely a creature of statute and does not exist in the body of our common law. Messenger v. Burns, 86 Idaho 26, 29, 383 P.2d 913, 914 (1963). A judgment lien is created in Idaho by recording it with the county recorder. I.C. § 10-1110. "The lien resulting from recording of a judgment other than for support of a child continues five (5) years from the date of the judgment." I.C. § 10-1110. At any time prior to the expiration of the lien created by section 10-1110, the court which entered the judgment, may *upon motion*, renew such judgment. I.C. § 10-1111 (Italics added). 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. Id.

Once it has been correctly filed a foreign judgment becomes enforceable as an Idaho judgment as of the date of filing pursuant to I.C. § 10-1302. G.&R Petroleum, Inc., v. Clements, 127 Idaho 119, 120, 898 P.2d 50, 51 (1995). Upon recording, such a judgment becomes a lien

upon real property. Westmark Federal Credit Union v. Smith, 116 Idaho 474, 476, 776 P.2d 1193, 1195 (1989).

However, Idaho courts “view I.C. § 10-1111 to be in the nature of a statute of limitations; it sets the time limit for a judgment creditor to take action to renew the judgment and its judgment lien.” Smith v. Smith, 131 Idaho 800, 802, 964 P.2d 667, 669 (Ct. App. 1998). If no motion is filed by the judgment creditor within the time prescribed then both the judgment and the judgment lien lapse or expire. G.&R Petroleum, 127 Idaho at 121, 898 P.2d at 52. Even if a motion is properly filed and the judgment is renewed there is a clear statutory mandate that, in order for a renewed judgment lien to be acquired and perfected, the renewed judgment itself must be recorded. I.C. § 10-1111. A lien simply does not exist if the judgment, or renewed judgment, has not been recorded. Amato v. The United States of America, et al, 94 F. Supp.2d 1077, 1081 (Dist. Idaho). This reasoning is supported by longstanding Idaho case law which holds, “that a judgment lien lapses under the statute creating it, at the expiration of five years from the date it is docketed.” Id., (citing, Platts, v. Pacific First Federal Savings & Loan Ass’n of Tacoma, 62 Idaho 340, 343 111 P.2d 1093, 1096 (1941)).

The facts in the present case are not in dispute. Plaintiff has pleaded these facts in his Second Amended Complaint and the Exhibits attached thereto. Doing so has created a record for this Court to review. Through his Second Amended Complaint, Plaintiff admits to these facts on the record before the Court.

The undisputed facts are that on August 1, 2005, Plaintiff filed a Notice of Filing Foreign Judgment, and the Affidavit of Margaret H. Olson re: Foreign Judgment in the present litigation. On September 23, 2005, Plaintiff recorded its Notice of Filing Foreign Judgment as Franklin County Recorder’s Instrument No. 231394. (See Plaintiff’s Second Amended Complaint

paragraph 31 and Exhibit "E".) On this same date Plaintiff also recorded the document issued by Judge Allphin in the Utah state court proceedings purporting to be a Judgment in the sum of \$1,886,727.87. Said document was recorded as Franklin County Recorder's Instrument No. 231395. (See Plaintiff's Second Amended Complaint paragraph 31 and Exhibit "E".) By reason of having recorded the documents attached to his Second Amended Complaint as Exhibit "E", Plaintiff alleges to have obtained a judgment lien against the Franklin Property on September 23, 2005. (See Plaintiff's Second Amended Complaint paragraph 31 and Exhibit "E".)

Plaintiff failed to file a motion with this Court, within five years of August 1, 2005 to renew the judgment it claims to have obtained. (See Erickson Affidavit Exhibit "2" Court Docket Report.) Therefore, even if the Foreign Judgment Plaintiff claims to have obtained were at one time valid, this judgment has now lapsed by operation of Idaho law and no longer exists. As a result, even if Plaintiff did have a valid judgment lien at one time, this lien has also lapsed and the Franklin Property is no longer bound by any judicial lien in favor of Plaintiff.

When Plaintiff learns that its judgment and judgment lien have expired Plaintiff may argue that it somehow has the right to file a new foreign judgment and obtain a new judgment lien. However, this is not the case. As Plaintiff has admitted in its Second Amended Complaint, due to the Order of Discharge entered in Defendant Gordon Jones's bankruptcy proceedings, Plaintiff is only entitled to pursue *valid and enforceable security interests* which would not have been discharged by the bankruptcy. (See Plaintiff's Second Amended Complaint paragraphs 35-44 and Exhibits "G" "second" "G" and "H".) Because Plaintiff does not have a valid judgment lien in Idaho the bankruptcy Order of Discharge by its own terms prevents Plaintiff from obtaining one.

In summary, based upon the record created by Plaintiff's Second Amended Complaint any valid foreign judgment and judgment lien that Plaintiff may have enjoyed in Idaho have now lapsed. They cannot now be renewed nor can a new judgment or judgment lien be obtained. For these reasons, Plaintiff cannot proceed with any of the causes of action in his Second Amended Complaint against Jones and this case should be summarily dismissed.

III. FAILURE TO PROCEED WITH EXECUTION

Even if Plaintiff's alleged foreign judgment and judgment lien had not lapsed, Plaintiff has still failed to proceed with a timely execution. Execution upon a judgment in Idaho is controlled by statute. Except for child support, the party in whose favor judgment is given may, at any time *within five (5) years after the entry thereof*, have a writ of execution issued for its enforcement. I.C. § 11-101 (Italics added). Under this statute a judgment creditor may delay taking out execution against his debtor, as long as this statute permits him to claim the issuance of execution. *Stewart v. Slater*, 61 Idaho 628, 629 105 P.2d 729 (1940). In all cases, *other than for the recovery of 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 purpose, founded upon supplemental pleadings. I.C. § 11-105 (Italics added).

In the present case, even if Plaintiff still had a valid judgment, the record reflects that Plaintiff has taken no action to execute upon any such judgment within five (5) years after said judgment was entered. The judgment was entered on August 1, 2005. (See Plaintiff's Second Amended Complaint paragraph 26 and Exhibit "E".) The Court docket in the present litigation is devoid of any motions from Plaintiff seeking any sort of writ of execution of any sort. (See Erickson Affidavit Exhibit "2".) The record also reflects that the judgment Plaintiff is relying

upon is a "money judgment". (See Plaintiff's Second Amended Complaint paragraphs 26 and 32 and Exhibit "E".) Because he made no effort to file a motion or to obtain an Order from the Court allowing execution on the judgment within five (5) years, Plaintiff is stopped from doing so by application of Idaho law.

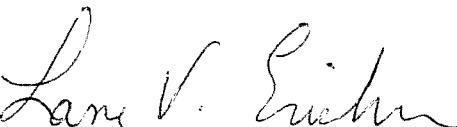
In summary, by his own admissions, and the record before the Court Plaintiff has failed to proceed with or obtain any valid execution on the judgment he claims to have. The applicable law now prevents Plaintiff from doing so. For these reasons, Plaintiff cannot proceed with any of the causes of action in his Second Amended Complaint and this case should be summarily dismissed in favor of Jones.

CONCLUSION

Plaintiff made no attempt to renew either the judgment or the judgment lien he relies upon in his Second Amended Complaint. Additionally, Plaintiff made no effort to proceed with or obtain any valid execution on this judgment. Through these failures Plaintiff's judgment and judgment lien lapsed and are no longer valid pursuant to Idaho statutes, and Plaintiff is now barred by statute from seeking any execution. For these reasons, all of the causes of action contained in Plaintiff's Second Amended Complaint fail and this matter should be dismissed summarily in favor of Jones.

DATED this 10th Day of February, 2011.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By: 
LANE V. ERICKSON
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2011, I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following at, unless a different method of service is indicated:

Margaret Olson
Lincoln Hobbs
HOBBS & OLSON, LC
525 South 300 East
Salt Lake City, Utah 84111
801 519-2999 Fax
Attorneys for Plaintiff


LANE V. ERICKSON

**ORIGINAL
FILED**

11 FEB 11 AM 9:40

FRANKLIN COUNTY CLERK

JH

DEPUTY

Lane V. Erickson (ISB#: 5979)
RACINE. OLSON, NYE,
BUDGE & BAILEY, CHARTERED
P.O. Box 1391
Pocatello, Idaho 83204-1391
Telephone: (208)232-6101
Fax: (208)232-6109

Attorney for Defendant Gordon A. Jones

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

ALLEN F. GRAZER, an individual,

Plaintiff,

vs.

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.

Case No. CV-05-183

**AFFIDAVIT OF
LANE V. ERICKSON IN SUPPORT
OF
DEFENDANTS' PRE-TRIAL BRIEF
a/k/a
MOTION FOR SUMMARY
JUDGMENT**

STATE OF IDAHO)
 : ss
County of Bannock)

LANE V. ERICKSON, after first being duly sworn on oath, deposes and states as follows:

1. Affiant is the attorney for Defendants GORDON A. JONES, an individual; GORDON A. JONES, Personal Representative of the ESTATE OF LINDA G. JONES, deceased, (hereafter collectively referred to herein as "Jones").

2. Attached hereto as Exhibit "1" is a true and correct copy of a Quit-Claim Deed dated July 15, 2005, and recorded on July 29, 2005, as Franklin County Recorder's Instrument No. 230638, wherein J&J Livestock LLC, as grantor, transfers to Gordon A. Jones and Linda G. Jones, husband and wife, the real property described therein which in this litigation has been identified to be the "Franklin Property."

3. Attached hereto as Exhibit "2" is a true and correct copy of the Court Docket Report for the present litigation dated January 28, 2011, which shows and sets forth the dates any pleadings, orders or documents were filed and/or entered in the present litigation.

FURTHER SAITH AFFIANT NAUGHT.

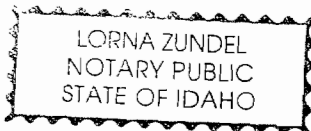
DATED this 10th day of February, 2011.

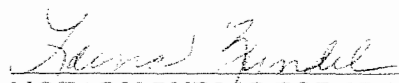


LANE V. ERICKSON

SUBSCRIBED AND SWORN TO before me on this 10th day of February, 2011.

(SEAL)





NOTARY PUBLIC FOR IDAHO
Residing at: Hoquiam
Commission expires: 4-10-2012

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2011, I caused a true, correct and complete copy of the foregoing document to be served by first class mail, upon the following at, unless a different method of service is indicated:

Margaret Olson
Lincoln Hobbs
HOBBS & OLSON, LC
525 South 300 East
Salt Lake City, Utah 84111
801 519-2999 Fax
Attorneys for Plaintiff


LANE V. ERICKSON

230638

Recorded at the request of

HOBBES & OLSON

a.m. JUL 28 2005 p.m. 2:45

Mail Tax Notice To:
Gordon & Linda Jones
235 West 1400 North, Bountiful, UT 84010

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

QUIT-CLAIM DEED

J&J LIVESTOCK L.L.C., Grantor of Davis County, State of Utah, hereby QUIT CLAIMS to GORDON A. JONES and LINDA G. JONES, husband and wife, for the sum of TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION, the following described tract of land in Franklin County, State of Idaho:

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.

WITNESS the hand of said Grantor(s) this 15 day of July, 2005.

J&J LIVESTOCK L.L.C.

Gordon A. Jones
By: GORDON A. JONES, Manager

Linda G. Jones
By: LINDA G. JONES, Manager

STATE OF UTAH

COUNTY OF DAVIS

On the 15 day of JULY, 2005, personally appeared before me GORDON A. JONES and LINDA G. JONES as managers of J&J LIVESTOCK, L.L.C., who duly acknowledged they are the signers of the foregoing Deed.

[Signature]
NOTARY PUBLIC

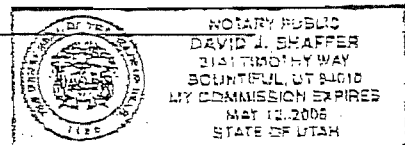


EXHIBIT "1"

Case Number Result Page

Franklin

1 Cases Found.

Case: CV-2005-0000183 District Filed: 05/12/2005 Subtype: Other Claims Judge: David C. Nye Status: Reopened 02/04/2008
 Defendants: J & J Livestock, LLC Jones, Gordon A. Jones, Jason Jones, Linda G.
 Plaintiffs: Grazer, Allen F.

Pending hearings:	Date/Time	Judge	Type of Hearing
	03/29/2011 9:00 AM	David C. Nye	Court Trial
	05/17/2011 9:00 AM	David C. Nye	Court Trial
	09/20/2011 9:00 AM	David C. Nye	Court Trial

Register Date of actions:

- 05/12/2005 New Case Filed - Other Claims
Filing: A1 - Civil Complaint, More Than \$1000 No Prior
- 05/12/2005 Appearance Paid by: Hobbs & Olson, LC Receipt number: 0001351 Dated: 5/12/2005 Amount: \$77.00 (Check)
- 05/12/2005 Plaintiff: Grazer, Allen F. Appearance Margaret H. Olson
- 05/12/2005 Lis Pendens
- 05/15/2005 Application for Prejudgment Writ of Attachment
- 05/15/2005 Notice of Hearing
- 05/15/2005 Memorandum in Support of Application for Prejudgment Writ of Attachment
- 05/23/2005 Acceptance of Service
- 05/23/2005 Affidavit of Allen F. Grazer in Support of Prejudgment Writ of Attachment
- 05/30/2005 Summons issued: Gordon A. Jones/ Shawn Potter Esquire
Hearing Scheduled (Hearing Scheduled 07/28/2005 01:30 PM) Plaintiff's Application for Prejudgment Writ of Attachment
- 07/01/2005 Filing: I1A - Civil Answer Or Appear. More Than \$1000 No Prior Appearance Paid by: J & J Livestock, LLC (defendant) Receipt number: 0001986 Dated: 7/8/2005 Amount: \$52.00 (Check)
- 07/08/2005 Summons - Gordon Jones
- 07/22/2005 Memorandum in Opposition to Plaintiff's Motion for Injunctive Relief and Prejudgment Writ of Attachment
- 07/27/2005 Hearing result for Hearing Scheduled held on 07/28/2005 01:30 PM: Hearing Vacated Plaintiff's Application for Prejudgment Writ of Attachment
- 07/28/2005 Stipulation for Prejudgment Writ of Attachment and Injunction
- 08/01/2005 Filing: S1 - Filing Foreign Judgment Judgment Creditor Paid by: Olson, Margaret H. (attorney for Grazer, Allen F.) Receipt number: 0002259 Dated: 8/1/2005 Amount: \$7.00 (Check)
- 08/01/2005 Notice Of Filing Foreign Judgment
- 08/01/2005 Affidavit of Margaret H. Olson re: Foreign Judgment
- 08/22/2005 Prejudgment Writ of Attachment and Injunction
- 08/22/2005 Case Status Changed: closed
- 11/21/2005 Notice of Change of Address
- 11/21/2005 Case Status Changed: reopened
- 11/21/2005 Motion to Amend Complaint

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EXHIBIT "2"

11/21/2005 Memorandum in Support of Motion to Amend Complaint
11/22/2005 Order to Amend Complaint
05/30/2006 Notice of Withdrawal of Counsel-Shawn Potter for Jones
07/19/2006 Notice of Removal of Civil Action by Trustee
07/19/2006 Case Status Changed: closed pending clerk action
01/08/2007 Notice of Removal of Civil Action by Trustee-Jubber
01/08/2007 Order Remanding Adversary Proceeding-Certified Copy
12/28/2007 Request for Scheduling and Management Conference-Olson
01/02/2008 Notice of Withdrawal of Counsel
02/04/2008 Defendant: Jones, Gordon A. Appearance Lane V. Erickson
02/04/2008 Defendant: Jones, Linda G. Appearance Lane V. Erickson
02/04/2008 Defendant: J & J Livestock, LLC Appearance Lane V. Erickson
02/04/2008 Notice Of Appearance - Lane Erickson
02/12/2008 Hearing Scheduled (Status 03/13/2008 03:00 PM)
03/13/2008 Hearing result for Status held on 03/13/2008 03:00 PM: Hearing Held
03/21/2008 Hearing Scheduled (Bench Trial 11/05/2008 09:00 AM) afternoon of 6th if needed
03/21/2008 Hearing Scheduled (Bench Trial Pretrial 10/09/2008 01:30 PM)
05/16/2008 Plaintiff's Disclosure of Witness-Hobbs
08/06/2008 Hearing result for Bench Trial Pretrial held on 10/09/2008 01:30 PM: Continued
08/06/2008 Hearing Scheduled (Bench Trial Pretrial 10/23/2008 01:30 PM)
08/06/2008 AMENDED Notice of Hearing
08/18/2008 Hearing Scheduled (Motion to Withdraw 09/11/2008 01:45 PM) Motion to Withdraw Attorney-Lane Erickson
08/21/2008 Motion to Withdraw as Attorney of Record-Erickson
08/21/2008 Notice of Hearing for Motion to Withdraw as Attorney of Record-Erickson
09/10/2008 Withdrawal of Motion to Withdraw as Attorney of Record-Erickson
10/01/2008 Change Assigned Judge (batch process)
10/07/2008 Administrative Order of Reference
10/07/2008 Hearing Scheduled (Bench Trial 11/05/2008 09:00 AM)
10/10/2008 Change Assigned Judge
10/10/2008 Administrative Order of Reference
10/15/2008 Defendant: Jones, Linda G. Appearance Kent Lee Hawkins
10/15/2008 Substitution Of Counsel-Hawkins
10/24/2008 Order of Reference
11/04/2008 Change Assigned Judge
05/13/2009 Defendant Gordon A. Jones' Motion to Dismiss-Erickson
05/13/2009 Affidavit of Lane V. Erickson in Support of Defendant Gordon A. Jones' Motion to Dismiss-Erickson
05/13/2009 Defendant Gordon A. Jones' Motion to Dismiss-Erickson
05/13/2009 Affidavit of Lane V. Erickson in Support of Defendant Gordon A. Jones' Motion to Dismiss-Erickson
06/10/2009 Memorandum in Opposition to Gordon A. Jones' Motion to Dismiss-Hobbs
06/19/2009 Defendant Gordon A. Jones' Reply to Memorandum in Opposition and Motion for Sanctions-Erickson
06/19/2009 Supplemental Affidavit of Lane V. Erickson-Erickson
06/23/2009 Hearing Scheduled (Motion 07/31/2009 02:00 PM)
06/25/2009 Notice of Hearing-Erickson

Defendant Linda G. Jones' Joinder in Motion to Dismiss-

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07/02/2009 Gallafent

07/22/2009 Memorandum in Opposition to Linda G. Jones' Joinder in Motion to Dismiss-Hobbs

07/22/2009 Plaintiff's Memorandum in Opposition to Defendant Gordon A. Jones' Motion for Sanctions-Hobbs
Court Minutes Hearing type: Motion to Dismiss Hearing date: 7/31/2009 Time: 2:13 pm Courtroom: Court reporter:

07/31/2009 Stephanie Morse Minutes Clerk: Linda HAMPTON Tape Number: Plaintiff: Lincoln Hobbs Mr. Jones: Lane Erickson Mrs. Jones: Dave Gallafent

07/31/2009 Hearing result for Motion held on 07/31/2009 02:00 PM: District Court Hearing Held Court Reporter: Stephanie Morse Number of Transcript Pages for this hearing estimated: less than 100 pages

07/31/2009 AMENDED Complaint

07/31/2009 Defendant: Jones, Linda G. Appearance Dave Robert Gallafent

08/21/2009 Minute Entry And Order

11/04/2009 Motion to File Second Amended Complaint-Hobbs

11/04/2009 Memorandum in Support of Motion to File Second Amended Complaint-Hobbs

11/13/2009 Hearing Scheduled (Motion 11/24/2009 09:30 AM)

11/30/2009 Notice of Hearing

12/07/2009 Stipulation for Filing Second Amended Complaint-Hobbs

12/07/2009 Second Amended Complaint-Hobbs

02/25/2010 Affidavit of Service-Jason Jones

02/26/2010 Defendant: Jones, Jason Appearance Jared A Steadman
Filing: 11 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Steadman, Jared A (attorney for Jones, Jason) Receipt number: 0000582 Dated: 2/26/2010 Amount: \$58.00 (Check) For: Jones, Jason (defendant)

02/26/2010 Notice of Special Appearance-Steadman

02/26/2010 Defendant Jason Jones' Motion to Dismiss-Steadman

02/26/2010 Affidavit of Jason Jones-Steadman

02/26/2010 Affidavit of Barbara Jones-Steadman

02/26/2010 Brief in Support of Motion to Dismiss-Steadman

03/04/2010 Hearing Scheduled (Motion to Dismiss 03/24/2010 10:30 AM)

03/08/2010 Hearing result for Motion to Dismiss held on 03/24/2010 10:30 AM: Continued Motion to Dismiss Defendant

03/08/2010 Hearing Scheduled (Motion to Dismiss 04/30/2010 10:30 AM)

03/09/2010 Notice of Hearing on Defendant Jason Jones' Motion to Dismiss-Gallafent

03/23/2010 Summons Issued
Memorandum in Response to Motion to Dismiss and Brief in Support of Motion to Dismiss (Of Defendant Jason Jones)-Hobbs

04/19/2010 Notice Regarding April 30, 2010 Hearing-Hobbs

04/28/2010 Affidavit of Service

04/30/2010 Hearing result for Motion to Dismiss held on 04/30/2010 10:30 AM: Hearing Held

05/03/2010 Second Notice of Special Appearance-Steadman

05/03/2010 Defendant Jason Jones' Renewed Motion to Dismiss-Steadman

05/11/2010 Decision on Motion to Dismiss

06/28/2010 Order for Submission of Information for Scheduling Order

07/21/2010 Joint Statement Submitting Information for Scheduling

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Order-Hobbs

07/29/2010 Motion for Leave to File Third Amended Complaint-Hobbs

07/29/2010 Memorandum in Support of Motion for Leave to File Third Amended Complaint-Hobbs

08/20/2010 Hearing Scheduled (Court Trial 02/08/2011 09:00 AM)

08/20/2010 Hearing Scheduled (Court Trial 05/17/2011 09:00 AM)

08/20/2010 Hearing Scheduled (Court Trial 09/20/2011 09:00 AM)

08/20/2010 Scheduling Order, Notice of Trial Setting, and Initial Pretrial Order

08/25/2010 Hearing Scheduled (Motion 09/02/2010 10:30 AM)

08/25/2010 Notice of Hearing

09/01/2010 Defendant Linda G. Jones' Joinder in Objection to Motion to Dismiss-Steadman
Court Minutes Hearing type: Motion Hearing date: 9/2/2010
Time: 10:42 am Courtroom: Court reporter: Stephanie Morse

09/02/2010 Minutes Clerk: Linda HAMPTON Tape Number: Lincoln Hobbs - telephone Layne Erickson - telephone Jared Steadman
Hearing result for Motion held on 09/02/2010 10:30 AM:
District Court Hearing Held Court Reporter: Dorothy Snarr
Number of Transcript Pages for this hearing estimated: less than 100 pages

09/20/2010 Motion to Substitute Gordon A. Jones, Personal Representative of the Estate of Linda G. Jones, Deceased-Hobbs

09/20/2010 Memorandum in Support of Motion to Substitute Gordon A. Jones, Personal Representative of the Estate of Linda G. Jones, deceased-Hobbs

10/25/2010 Hearing Scheduled (Motion 11/24/2010 10:00 AM) In Bannock County

11/08/2010 Notice of Telephonic Hearing

11/15/2010 Called Lincoln Hobbs' office to change Judge Nye's number to Franklin County.
Court Minutes Hearing type: Motion Hearing date: 11/24/2010 Time: 10:08 am Courtroom: Court reporter: Minutes Clerk: Linda HAMPTON Tape Number: Lincoln Hobbs Lane Erickson

11/24/2010

12/13/2010 Affidavit of Service

12/13/2010 Affidavit of Service

12/22/2010 Notice Of Appearance - Lane Erickson

01/10/2011 Notice of Telephonic Status Conference

01/11/2011 Hearing Scheduled (Scheduling Conference 01/13/2011 09:00 AM)

01/13/2011 Continued (Court Trial 03/29/2011 09:00 AM)
Hearing result for Scheduling Conference held on 01/13/2011 09:00 AM: Hearing Held - telephonically not recorded

01/13/2011 Minute Entry And Order

01/21/2011 Notice of Service of Defendants' First Set of Discovery to Plaintiff-Erickson

01/21/2011 Answer to Plaintiff's Second Amended Complaint-Erickson

01/24/2011 Answer to Plaintiff's Second Amended Complaint-Erickson

01/24/2011 Notice of Service of Defendants' First Set of Discovery to Plaintiff-Erickson

Connection: Secure

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