

11-25-2011

Garrett v. Garrett Clerk's Record v. 1 Dckt. 38971

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vs. 103

(VOLUME 1)

LAW CLERK

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

JACK L. GARRETT,
an individual,

**Plaintiff-Counterdefendant-
Appellant,**

-vs-

THELMA V. GARRETT,
an individual,

**Defendant-Counterclaimant-
Respondent.**

Appealed from the District of the Third Judicial District
for the State of Idaho, in and for Canyon County

Honorable GREGORY M. CULET, District Judge

Rebecca A. Rainey
RAINEY LAW OFFICE
910 W. Main St., Ste. 258
Boise, Idaho 83702

Attorney for Appellant

Christ T. Troupis
TROUPIS LAW OFFICE
P. O. Box 2408
Eagle, Idaho 83616

Attorney for Respondent



38971

IN THE SUPREME COURT OF THE
STATE OF IDAHO

JACK L. GARRETT, an individual,)	
)	
Plaintiff-Counterdefendant-)	
Appellant,)	
)	Supreme Court No. 38971-2011
-vs-)	
)	
THELMA V. GARRETT, an individual,)	
)	
Defendant-Counterclaimant-)	
Respondent.)	

Appeal from the Third Judicial District, Canyon County, Idaho.

HONORABLE GREGORY M. CULET, Presiding

Rebecca A. Rainey, RAINEY LAW OFFICE, 910 W. Main St., Ste. 258,
Boise, Idaho 83702

Attorney for Appellant

Christ T. Troupis, TROUPIS LAW OFFICE, P. O. Box 2408,
Eagle, Idaho 83616

Attorney for Respondent

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Date		Judge
8/21/2009	New Case Filed-Other Claims	Gregory M Culet
	Summons Issued	Gregory M Culet
	Filing: A - All initial civil case filings of any type not listed in categories B-H, or the other A listings below Paid by: Moffatt Thomas Receipt number: 0411817 Dated: 8/21/2009 Amount: \$88.00 (Check) For: Garrett, Jack L (plaintiff)	Gregory M Culet
	Lis Pendens	Gregory M Culet
9/8/2009	Affidavit Of Service-Thelma 8-26-09	Gregory M Culet
9/14/2009	Filing: I1 - Initial Appearance by persons other than the plaintiff or petitioner Paid by: Lord, Stephen J (attorney for Garrett, Thelma V) Receipt number: 0416207 Dated: 9/14/2009 Amount: \$58.00 (Check) For: Garrett, Thelma V (defendant)	Gregory M Culet
	Notice Of Appearance-Stephen Lord for Def	Gregory M Culet
9/16/2009	Notice of Intent to Take Default	Gregory M Culet
9/24/2009	Answer	Gregory M Culet
10/8/2009	Notice Of Service of Plaintiff's First Set of Interrogatories and Requests for Production to Defendant (fax)	Gregory M Culet
11/18/2009	Plaintiff's Request For Trial Setting	Gregory M Culet
12/9/2009	Order for Response to Request for Trial Setting	Gregory M Culet
12/28/2009	Response To Request For Trial Setting	Gregory M Culet
1/7/2010	Hearing Scheduled (Jury Trial 08/17/2010 09:30 AM) 4 day	Gregory M Culet
	Hearing Scheduled (Pre Trial 06/23/2010 08:30 AM)	Gregory M Culet
	Order Setting Case for trial & PT	Gregory M Culet
2/4/2010	Motion to compel	Gregory M Culet
	Affidavit of nancy garrett	Gregory M Culet
	Notice Of Hearing 03/04/2010	Gregory M Culet
	Hearing Scheduled (Motion Hearing 03/04/2010 09:00 AM) pltf motn compel	Gregory M Culet
2/16/2010	Substitution Of Counsel	Gregory M Culet
3/1/2010	Defendants Motion file amended answer and counterclaim	Gregory M Culet
	Memorandum in support of motion	Gregory M Culet
	Notice Of Service	Gregory M Culet
	Notice Of Hearing 3/25/2010	Gregory M Culet
	Hearing Scheduled (Motion Hearing 03/25/2010 09:00 AM) def motn amend answer/counterclaim	Gregory M Culet
3/3/2010	Hearing result for Motion Hearing held on 03/04/2010 09:00 AM: Hearing Vacated pltf motn compel - per Tina from Moffatt Thomas	Gregory M Culet
	defendants reply to motion to compel	Gregory M Culet
3/4/2010	Notice vacate 3/4/2010 motion to compel	Gregory M Culet
	Amended Notice of Hearing 04/01/2010	Gregory M Culet
	Hearing Scheduled (Motion Hearing 04/01/2010 09:00 AM) def motn amend answer/counterclaim - moving to April 1, 2010	Gregory M Culet

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Date		Judge
3/9/2010	Notice Of Service	Gregory M Culet
3/26/2010	Stipulation rescheduling deadlines	Gregory M Culet
3/31/2010	Pltf's Notice of non-opposition to def's motion for leave to file amended answer and counterclaim (fax)	Gregory M Culet
4/1/2010	First Amended Answer affirmative defenses and counterclaim	Gregory M Culet
	Hearing result for Motion Hearing held on 04/01/2010 09:00 AM: District Court Hearing Held	Gregory M Culet
	Court Reporter: Debora Kreidler	
	Number of Transcript Pages for this hearing estimated: less than 100 pages	
	Hearing result for Motion Hearing held on 04/01/2010 09:00 AM: Interim Hearing Held def motn amend answer/counterclaim -	Gregory M Culet
	Hearing result for Motion Hearing held on 04/01/2010 09:00 AM: Motion Granted def motn amend answer/counterclaim -	Gregory M Culet
	Order Granting Defendant's Motion for Leave to File Amended Answer and Counterclaim	Gregory M Culet
4/19/2010	Notice Of Service	Gregory M Culet
4/28/2010	Counterdefendants answer to counterclaim	Gregory M Culet
4/29/2010	Notice Of Taking Deposition of Thelma V Garrett	Gregory M Culet
5/10/2010	Notice Of Service	Gregory M Culet
5/14/2010	Plt/CounterDefs Motion for Summary Judgment	Gregory M Culet
	Memorandum in support of Plt/CounterDefs Motion for Summary Judgment	Gregory M Culet
	Affidavit of Rebecca Rainey in support of Plt/CounterDefs Motion for Summary Judgment	Gregory M Culet
	Notice Of Hearing Re: Plt/CounterDefs Motion for Summary Judgment	Gregory M Culet
	Hearing Scheduled (Motion Hearing 06/18/2010 09:00 AM)	Gregory M Culet
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	Memorandum in Support of Defendant/Counterclaimant's Motion for Summary Judgment and in Opposition to Plaintiff/Counterdefendant's Motion for Summary Judgment	Gregory M Culet
	Notice Of Hearing on Defendant/Counterclaimant's Motion for Summary Judgment 6-18-10	Gregory M Culet
6/4/2010	Reply Memorandum in Suppt of Jack L Garrett's Motn for Summary Jdmt and Memo in Opposition to Thelma V Garrett's Motn for Summary Jdmt	Gregory M Culet
	Affidavit of John Garrett in Suppt of Plnt / Counter-Defn's Response to Defn / Counterclaimant's Motn for Summary Jdmt	Gregory M Culet
6/9/2010	Defendant's Reply Memorandum in Support of Defendant/Counterclaimant's Motion for Summary Judgment and in Opposition to Plaintiff/Counterdefendant's Motion for Summary Judgment	Gregory M Culet

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Date		Judge
6/18/2010	Hearing result for Motion Hearing held on 06/18/2010 09:00 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: more than 100 pages	Gregory M Culet
	Hearing result for Motion Hearing held on 06/18/2010 09:00 AM: Motion Held Plt/CounterDefs Motion for Summary Judgment-def/counterclaimants motn for summ judg	Gregory M Culet
	Hearing result for Motion Hearing held on 06/18/2010 09:00 AM: Motion Denied Plt/CounterDefs Motion for Summary Judgment-def/counterclaimants motn for summ judg-all motions denied	Gregory M Culet
6/23/2010	Hearing result for Pre Trial held on 06/23/2010 08:30 AM: Hearing Held by telephone	Gregory M Culet
6/25/2010	Hearing Scheduled (Conference - Telephone 08/16/2010 01:30 PM) Order on Pre-Trial Conference Mediation Ordered	Gregory M Culet Gregory M Culet Gregory M Culet
6/29/2010	Notice Of Service	Gregory M Culet
7/1/2010	Notice Of Service	Gregory M Culet
8/10/2010	defendants proposed findings of fact and conclusions of law proposed findings of fact and conclusions of law (fax)	Gregory M Culet Gregory M Culet
8/16/2010	Hearing result for Conference - Telephone held on 08/16/2010 01:30 PM: Hearing Vacated	Gregory M Culet
	Hearing result for Jury Trial held on 08/17/2010 09:30 AM: Hearing Vacated 4 day	Gregory M Culet
10/21/2010	Joint Request For Trial Setting	Gregory M Culet
11/2/2010	Hearing Scheduled (Conference - Telephone 11/10/2010 08:30 AM) scheduling conference Hearing Scheduled (Conference - Telephone 11/17/2010 08:30 AM) scheduling conference Notice Of Hearing	Gregory M Culet Gregory M Culet Gregory M Culet
11/3/2010	Notice Of Service	Gregory M Culet
11/17/2010	Hearing result for Conference - Telephone held on 11/17/2010 08:30 AM: District Court Hearing Held Court Reporter: None / held in chambers Number of Transcript Pages for this hearing estimated: scheduling conference	Gregory M Culet
	Hearing result for Conference - Telephone held on 11/17/2010 08:30 AM: Hearing Held scheduling conference - in chambers	Gregory M Culet
	Hearing Scheduled (Pre Trial 03/08/2011 08:30 AM) via telephone conference	Gregory M Culet
	Hearing Scheduled (Court Trial 04/11/2011 09:00 AM) Notice Of Hearing	Gregory M Culet Gregory M Culet
2/24/2011	Notice Of Taking Deposition of Garrett Longstreet (fax) Notice Of Taking Deposition of Tom Longstreet (fax)	Gregory M Culet Gregory M Culet

Other Claims

Date		Judge
3/8/2011	Hearing result for Pre Trial held on 03/08/2011 08:30 AM: Pre-Trial in Chambers via telephone conference	Gregory M Culet
3/10/2011	Notice Of Service	Gregory M Culet
	Defendant's Witness and Exhibit List	Gregory M Culet
3/11/2011	Order on Pretrial Conference	Gregory M Culet
4/5/2011	Jack Garrett's Witness and Exhibit List (fax)	Gregory M Culet
4/11/2011	Hearing result for Court Trial held on 04/11/2011 09:00 AM: District Court Hearing Held Court Reporter: Laura Whiting Number of Transcript Pages for this hearing estimated: more than 500 pages	Gregory M Culet
	Hearing result for Court Trial held on 04/11/2011 09:00 AM: Court Trial Started	Gregory M Culet
4/12/2011	Hearing result for Court Trial held on 04/11/2011 09:00 AM: Case Taken Under Advisement	Gregory M Culet
5/19/2011	Findings of Fact Conclusions of Law and Order	Gregory M Culet
6/1/2011	Judgment Quieting Title	Gregory M Culet
	Civil Disposition Judgment Quieting Title entered for: Garrett, Thelma V, Defendant; Garrett, Jack L, Plaintiff. Filing date: 6/1/2011	Gregory M Culet
	Case Status Changed: Closed	Gregory M Culet
6/3/2011	Defendant/Counterclaimants Motion for Award of Costs and Attorney's Fees	Gregory M Culet
	Affidavit of Christ Troupis in Support of Award of Costs and Attorneys Fees	Gregory M Culet
	Memorandum in Support of Award of Costs and Attorneys Fees	Gregory M Culet
	Notice Of Hearing on Defendant/Counterclaimants Motion for Award of Costs and Attorneys Fees 8-4-11	Gregory M Culet
	Hearing Scheduled (Motion Hearing 08/04/2011 09:00 AM) defs motn for costs and fees	Gregory M Culet
	Case Status Changed: Closed pending clerk action	Gregory M Culet
6/20/2011	Lis Pendens	Gregory M Culet
	Memorandum in Opposition to Motion for Costs and Atty fees	Gregory M Culet
7/13/2011	Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Rebecca A Rainey Receipt number: 0124008 Dated: 7/13/2011 Amount: \$101.00 (Check) For: Garrett, Jack L (plaintiff)	Gregory M Culet
	Appealed To The Supreme Court	Gregory M Culet
	Plt/counterdef Notice of Appeal	Gregory M Culet
	Bond Posted - Cash (Receipt 124017 Dated 7/13/2011 for 100.00) Clerks Record	Gregory M Culet
7/21/2011	Respondents Designation of Additional Documents to be Included in Clerk's Record on Appeal	Gregory M Culet
7/28/2011	Hearing Scheduled (Motion Hearing 10/06/2011 09:00 AM) defs motn for costs and fees	Gregory M Culet
	Amended Notice Of Hearing	Gregory M Culet
8/15/2011	Notice of Change of Frim and Address (fax) 000004	Gregory M Culet

Date: 10/13/2011

Time: 10:20 AM

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This Judicial District Court - Canyon County

ROA Report

User: RANDALL

Case: CV-2009-0008763-C Current Judge: Gregory M Culet

Jack L Garrett vs. Thelma V Garrett

Jack L Garrett vs. Thelma V Garrett

Other Claims

Date

Judge

9/27/2011

Second Amended Notice Of Hearing 11-3-11

Gregory M Culet

000005

F I L E D
A.M. 3:00 P.M.

AUG 21 2009

**CANYON COUNTY CLERK
K CANNON, DEPUTY**

Nancy J. Garrett, ISB No. 4026
Rebecca A. Rainey, ISB No. 7525
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
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24072.0000

Attorneys for Plaintiff

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT, an individual,

Plaintiff,

vs.

THELMA V. GARRETT, an individual,

Defendant.

Case No. CV-09-8763-C

COMPLAINT FOR PARTITION

COMES NOW Plaintiff Jack L. Garrett, by and through undersigned counsel or record, and for his cause of action and claim for relief against the above-named defendant, complains and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Plaintiff Jack L. Garrett is a resident of Canyon County, Idaho.

2. Defendant Thelma V. Garrett is a resident of Canyon County, Idaho.
3. This Court has jurisdiction over the parties, pursuant to Idaho Code

Section 5-514.

4. Venue is proper in Canyon County, Idaho, pursuant to Idaho Code 5-401.

GENERAL ALLEGATIONS

5. This action seeks the partition of real property located in Canyon County,

Idaho, more particularly described as follows:

The West Twenty-six and two-thirds (26 2/3) Acres of and located in the Southwest Quarter of the South East Quarter, (SW 1/4 of SE 1/4) Township Five North, Range Two West, Section 32, Boise Meridian, Canyon County, Idaho.

Described more fully, as follows: Commencing at the Southwest Corner of the Southeast Quarter, Section 32, Township Five North, Range Two West, Canyon County, Idaho: 53 1/3 Rods East, 80 Rods North, 53 1/3 Rods West, 80 Rods South, in above described land, together with their appurtenances.

Hereinafter referred to as the "Property."

6. By instrument dated June 18, 1990, recorded in Canyon County as Recorder's Instrument Number 9011325 and rerecorded to correct section as Recorder's Instrument Number 9019497, Alva L. Garrett quitclaimed his interest in the Property to Alva L. Garrett and Thelma V. Garrett, thereby creating a tenants in common interest in the Property.

7. By instrument dated February 14, 2006, recorded in Canyon County as Recorder's Instrument Number 2008012250, Alva L. Garret quitclaimed his interest in the Property to Jack L. Garrett.

8. By Instrument dated March 12, 2009, and recorded in Canyon County as Recorder's Instrument Number 2009012036, Thelma V. Garrett, as personal representative of the

Estate of Alva L. Garrett, granted all right title and interest in the Property held by Alva L. Garrett as of the date of his death, to Thelma V. Garrett.

9. Plaintiff has been required to retain the services of Moffatt, Thomas, Barrett, Rock & Fields, Chtd, in order to prosecute this action. If this matter is contested, Plaintiff is entitled to recover costs and reasonable attorneys' fees pursuant to Idaho Code §§ 6-501, *et. seq.*, 12-120, 12-121, and/or Rule 54 of the Idaho Rules of Civil Procedure.

10. Prior to commencement of this action, it was necessary for Plaintiff to procure a litigation guarantee. In doing so, Plaintiff incurred associated expenses for which Plaintiff should be properly reimbursed.

COUNT I
(Partition of the Property)

11. Plaintiff realleges paragraphs 1 – 9 as if fully set forth herein.

12. Plaintiff has expended considerable sums to preserve the Property and improve the same; such improvements have enhanced the properties and benefitted Defendant's and Plaintiff's interest in the Property.

13. On information and belief, the Property is capable of equitable and even partition between Plaintiff and Defendant and that partition can be made without great prejudice to their respective rights and interests.

14. In the alternative, the Property can be sold and the proceeds applied, as follows:

(a) To payment of the costs of this action, specifically including, but not limited to, the litigation guarantee referenced above;

(b) The payment of reasonable attorney fees incurred for the common benefit of the parties in this action; and

(c) Distribution of the residue among the owners of the Property according to their respective rights and interests in the Properties, with proper allowance for an increase in Plaintiff's share based upon the expenditure by Plaintiff of his funds to benefit the Property jointly owed by Plaintiff and Defendant.

WHEREFORE, Plaintiff requests judgment:

1. That Plaintiff and Defendant are the owners and holders of an undivided interest in the Property;

2. That the Property be partitioned in an equitable and even manner, according to the respective rights and interests of the parties therein;

3. That if an equitable and even partition of the Property cannot be had without material injury to the rights of the parties, that referee(s) be appointed pursuant to Idaho Code §§ 6-512 and/or 6-546, and the Property be sold and the proceeds applied as follows:

(a) To payment of the costs of this action, specifically including, but not limited to, the litigation guarantee referenced above;

(b) The payment of reasonable attorney fees incurred for the common benefit of the parties in this action; and

(c) Distribution of the residue among the owners of the Property according to their respective rights and interests in the Properties, with proper allowance for an increase in Plaintiff's share based upon the expenditure by Plaintiff of his funds to benefit the Property jointly owed by Plaintiff and Defendant.

4. For such other and further relief as the Court may deem just and equitable.

DATED this 21st day of August, 2009.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

By RLA
Rebecca A. Rainey – Of the Firm
Attorneys for Plaintiff

F I L E D
A.M. 1:50 P.M.

SEP 24 2009

CANYON COUNTY CLERK
J HEIDEMAN, DEPUTY

Stephen J. Lord
Attorney at Law
800 West State Street, Suite 200
Boise, Idaho 83702
Telephone (208) 342-3953
Facsimile (208) 343-3282
ISB #2662
Slatty@aol.com
Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT OF THE
STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT, an individual,)	
)	Case No. CV-09-8763-C
Plaintiff,)	
)	
vs.)	ANSWER
)	
THELMA V. GARRETT, an individual,)	
)	
Defendant.)	
_____)	

COMES NOW Defendant Thelma Garrett, and as and for an Answer to the Complaint in this matter, defends, alleges, and responds as follows:

1. Each and every allegation, statement, or conclusion contained in the Complaint for Partition that is not specifically admitted herein is denied.
2. Defendant admits the allegations contained in paragraphs 1, 2, 3, and 4 of the Complaint.
3. Defendant admits that there is a correct description of the property contained in paragraph 5.

ANSWER - 1

4. Defendant denies the conclusion contained in paragraph 6 that the instruments referred to in said paragraph create a tenancy in common interest in the property.

5. Defendant admits the recording of the instruments referenced in Complaint paragraph 7 and 8, but denies the validity of the instrument referenced in said paragraph 7.

6. Defendant re-alleges all prior responses to Complaint paragraphs 1-9.

7. Defendant denies that Plaintiff has expended any greater sums to preserve the property than Defendant.

8. Defendants have been required to engage the services of Stephen J. Lord, attorney at law, and should be entitled to receive their just costs and fees for the defense of this matter, which is substantially without merit.

AFFIRMATIVE DEFENSES

1. The interest of Plaintiff was obtained by fraud, duress, undue influence or other inequitable means.

2. The interest alleged to have been obtained by Plaintiff in this matter was obtained in violation of a Contract for Wills, a copy which is attached hereto, together with copies of the Wills to which the Contract for Wills applied.

3. It would be inequitable, under the circumstances, to partition the property on terms prayed for by Plaintiff.

4. Plaintiff has unclean hands and should be estopped from the equitable remedy of partition.

5. Defendant reserves and gives notice of her prerogative to amend to include a counterclaim for declaration of her rights under the contract for wills and to have the quitclaim by which Plaintiff acquired his interest avoided.

WHEREFORE, Defendant prays as follows:

1. Plaintiff take nothing by his Complaint.
2. This matter be dismissed.
3. Defendant be awarded her costs and fees in defense of this matter.

DATED This 21 day of September, 2009.




Stephen J. Lord

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing ANSWER was forwarded to the following parties by the method stated below on September 21, 2009.

U.S. Postal Service, Postage prepaid *and*
 Facsimile
 BY ELECTRONIC MAIL

Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chartered
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Facsimile (208) 385-5384
rar@moffatt.com



Stephen J. Lord
Attorney at Law

GIGRAY, MILLER, DOWNEN & WILPER

ATTORNEYS AT LAW
TELEPHONE 208-459-0091
9TH AND DRABORN STS. - P. O. BOX 840
CALDWELL, IDAHO 83409-0840

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CONTRACT FOR WILLS

THIS AGREEMENT, Made and entered into this 27th day of January, 1995, at Caldwell, Idaho, by and between ALVA L. GARRETT hereinafter referred to as husband, and THELMA V. GARRETT, hereinafter referred to as wife, both residing at Middleton, Canyon County, Idaho, WITNESSETH:

WHEREAS, Each of the parties hereto have children living who are the issue of former marriages of both parties, namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, children of the husband, and Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, children of the wife, and

WHEREAS, The parties hereto are desirous that their property, real, personal and mixed shall, after their deaths, pass in the manner as hereinafter set forth.

NOW, THEREFORE, For and in consideration of the mutual promises hereinafter made, it is agreed by and between the parties hereto as follows:

- 1. Each of the parties hereto have executed his or her Last Will and Testament, a copy of each is attached hereto, marked Exhibits "A" and "B" respectively, and by this reference made a part hereof.

1 2. The survivor agrees on his or her death to give,
 2 devise and bequeath his or her property in accordance with the
 3 provisions of his or her Will attached hereto marked Exhibits
 4 "A" or "B".

5 3. It is further understood and agreed that in the
 6 event of the remarriage of the survivor, any property acquired or
 7 accumulated by the survivor after said remarriage may be given,
 8 devised and bequeathed in any manner the survivor shall see fit.

9 4. This agreement cannot be changed, modified or
 10 discharged orally in whole or in part but may be only changed,
 11 modified or discharged by written agreement between the parties.

12 5. This agreement has been executed in two counter-
 13 parts and each of the executed counterparts is hereby declared to
 14 be an original for all legal purposes.

15 IN WITNESS WHEREOF, The parties hereto have hereunto
 16 set their hands and seals the day and year in this agreement
 17 first above written.

18
 19 Alva L. Garrett (SEAL)
 Alva L. Garrett

20 Thelma V. Garrett (SEAL)
 21 Thelma V. Garrett
 22
 23
 24

ATTORNEYS AT LAW
TELEPHONE 208-458-0091
9TH AND DARBORE STS. - P. O. BOX 640
CALDWELL, IDAHO 83606-0640

1 STATE OF IDAHO)
) ss.
2 County of Canyon)

3 On this 27th day of January, 1995, before me, the
4 undersigned, a Notary Public in and for said State, personally
5 appeared ALVA L. GARRETT, known to me to be the person whose name
6 is subscribed to the within instrument, and acknowledged to me
7 that he executed the same.

8 IN WITNESS WHEREOF, I have hereunto set my hand and
9 affixed my official seal the day and year in this certificate
10 first above written.

Elsie Aguilar
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires 1-28-2000

13 STATE OF IDAHO)
) ss.
14 County of Canyon)

15 On this 27th day of January, 1995, before me, the
16 undersigned, a Notary Public in and for said State, personally
17 appeared THELMA V. GARRETT, known to me to be the person whose
18 name is subscribed to the within instrument, and acknowledged to
19 me that she executed the same.

20 IN WITNESS WHEREOF, I have hereunto set my hand and
21 affixed my official seal the day and year in this certificate
22 first above written.

Elsie Aguilar
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires 1-28-2000

Last Will and Testament

OF

ALVA L. GARRETT

I, ALVA L. GARRETT, of Middleton, Canyon County, Idaho, over the age of twenty-one years and being of sound and disposing mind and memory, and not acting under duress, menace, fraud, or the undue influence of any person whomsoever, do make, publish and declare this my Last Will and Testament in manner following, that is to say:

FIRST: I direct that my body be decently buried with proper regard to my station in life and the circumstances of my estate.

SECOND: I direct that my personal representative hereinafter named, as soon as she has sufficient funds in her hands for that purpose, pay my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate.

THIRD: I declare that I am now married and leave surviving me my wife, Thelma V. Garrett, and my children by a former marriage, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, and the children of my wife by a former marriage, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz.

FOURTH: I hereby give and bequeath all items of tangible personal property contained in a written statement

/s/ ALVA L. GARRETT

prepared or to be prepared by me to the parties therein designated, and said written statement and list is hereby referred to by reference in this my Last Will and Testament and by this reference made a part hereof.

FIFTH: After the payment of my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate, I hereby give, devise and bequeath all the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my wife, Thelma V. Garrett.

SIXTH: In the event my wife, Thelma V. Garrett, shall have predeceased me, or we shall die as a result of a common accident, I hereby give, devise and bequeath all of the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my children by a former marriage, namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, and to the children of my wife by a former marriage, namely, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, share and share alike.

If any of said children shall have predeceased me and leave issue, his or her share shall go to his or her issue, and if more than one issue, then share and share alike to his or her

/s/ ALVA L. GARRETT

issue, and if any of said children shall have predeceased me and leave no issue, then his or her share shall go to said surviving children, share and share alike.

SEVENTH: I hereby nominate and appoint my wife, Thelma V. Garrett, as personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my wife, Thelma V. Garrett, is unable or unwilling to serve, I nominate and appoint my son, Jack A. Garrett, as first alternate personal representative of this my Last Will and Testament, and direct that he be not required to furnish any bond as such first alternate personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my son, Jack A. Garrett, is unable or unwilling to serve, I nominate and appoint my daughter, Eleanor J. Martin, as second alternate personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such second alternate personal representative, or bond in any capacity in connection with the probate of my estate.

EIGHTH: I hereby revoke all former wills and testamentary dispositions by me at any time heretofore made.

/s/ ALVA L. GARRETT

IN WITNESS WHEREOF, I, the said ALVA L. GARRETT, have set my hand to this, my Last Will and Testament contained on four sheets of paper, including the sheet on which the attestation certificate is concluded, upon each of which I have written my name at Caldwell, Idaho, this 27th day of January, 1995.

/s/ ALVA L. GARRETT

The foregoing instrument, consisting of four sheets of paper, including the sheet on which this attestation certificate is concluded, each of which was signed by the testator, in our presence was, at the date thereof, the 27th day of January, 1995, by the said ALVA L. GARRETT, signed and published as and for his Last Will and Testament in the presence of each of us, and each of us, who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereto.

/s/ WM. F. GIGRAY, JR.
Residing at Caldwell, Idaho

/s/ ELSIE AGUILAR
Residing at Caldwell, Idaho

STATE OF IDAHO)
) ss.
County of Canyon)

We, ALVA L. GARRETT, WM. F. GIGRAY, JR. and ELSIE AGUILAR, whose names are signed to the attached or foregoing instrument as testator and the witnesses, respectively, being first duly sworn, do hereby declare to the undersigned authority that we are all of lawful age; that the testator signed and executed the instrument as his Last Will and that he executed it as his free and voluntary act for the purposes therein expressed; that each of the witnesses, in the presence and hearing of the testator signed the Will as witness and that to the best of his or her knowledge the testator was of sound mind and under no constraint or undue influence.

/s/ ALVA L. GARRETT
Testator

/s/ WM. F. GIGRAY, JR.
Witness

/s/ ELSIE AGUILAR
Witness

Subscribed, sworn to and acknowledged before me by ALVA L. GARRETT, the testator, and subscribed and sworn to before me by Wm. F. Gigray, Jr. and Elsie Aguilar, witnesses, this 27th day of January, 1995.

Notary Public for Idaho
Residing at Caldwell, Idaho
My commission expires 1-21-97

Last Will and Testament

OF

THELMA V. GARRETT

I, THELMA V. GARRETT, of Middleton, Canyon County, Idaho, over the age of twenty-one years and being of sound and disposing mind and memory, and not acting under duress, menace, fraud, or the undue influence of any person whomsoever, do make, publish and declare this my Last Will and Testament in manner following, that is to say:

FIRST: I direct that my body be decently buried with proper regard to my station in life and the circumstances of my estate.

SECOND: I direct that my personal representative hereinafter named, as soon as he has sufficient funds in his hands for that purpose, pay my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate.

THIRD: I declare that I am now married and leave surviving me my husband, Alva L. Garrett, and my children by a former marriage, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, and the children of my husband by a former marriage, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp.

FOURTH: I hereby give and bequeath all items of tangible personal property contained in a written statement

/s/ THELMA V. GARRETT

prepared or to be prepared by me to the parties therein designated, and said written statement and list is hereby referred to by reference in this my Last Will and Testament and by this reference made a part hereof.

FIFTH: After the payment of my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate, I hereby give, devise and bequeath all the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my husband, Alva L. Garrett.

SIXTH: In the event my husband, Alva L. Garrett, shall have predeceased me, or we shall die as a result of a common accident, I hereby give, devise and bequeath all of the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my children by a former marriage, namely, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, and to the children of my husband by a former marriage, namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, share and share alike.

If any of said children shall have predeceased me and leave issue, his or her share shall go to his or her issue, and if more than one issue, then share and share alike to his or her

/s/ THELMA V. GARRETT

STATE OF IDAHO)
) ss.
County of Canyon)

We, THELMA V. GARRETT, WM. F. GIGRAY, JR. and ELSIE AGUILAR, whose names are signed to the attached or foregoing instrument as testatrix and the witnesses, respectively, being first duly sworn, do hereby declare to the undersigned authority that we are all of lawful age; that the testatrix signed and executed the instrument as her Last Will and that she executed it as her free and voluntary act for the purposes therein expressed; that each of the witnesses, in the presence and hearing of the testatrix signed the Will as witness and that to the best of his or her knowledge the testatrix was of sound mind and under no constraint or undue influence.

/s/ THELMA V. GARRETT
Testatrix

/s/ WM. F. GIGRAY, JR.
Witness

/s/ ELSIE AGUILAR
Witness

Subscribed, sworn to and acknowledged before me by THELMA V. GARRETT, the testatrix, and subscribed and sworn to before me by Wm. F. Gigray, Jr. and Elsie Aguilar, witnesses, this 27th day of January, 1995.

Notary Public for Idaho
Residing at Caldwell, Idaho
My commission expires 11-21-97

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/938-5584
Facsimile: 208/938-5482

FILED
9:19 A.M. P.M.

APR 01 2010

CANYON COUNTY CLERK
J DRAKE, DEPUTY

Attorney for Defendant/Counterclaimant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CANYON COUNTY

JACK L. GARRETT,

Plaintiff,

vs.

THELMA V. GARRETT,
An individual,

Defendant.

THELMA V. GARRETT,

Counterclaimant,

vs.

JACK L. GARRETT,

Counterdefendant.

Case No: CV OC 09-8763-C

FIRST AMENDED ANSWER
AFFIRMATIVE DEFENSES,
AND COUNTERCLAIM

COMES NOW the Defendant Thelma V. Garrett, by and through her counsel, Christ T. Troupis, and as and for her First Amended Answer to Plaintiff's Complaint on file herein admits, denies and alleges as follows:

1. Defendant admits the allegations of paragraphs 1, 2, 3, and 4 of the Complaint.
2. Defendant admits that the description of the real property set forth in Paragraph 5

of the Complaint is correct.

3. With respect to the allegations of Paragraph 6 of the Complaint, Defendant admits that on June 18, 1990, Alva L. Garrett quitclaimed his interest in the real property to Alva L. Garrett and Thelma V. Garrett and that the deed was recorded twice to correct a section, but Defendant denies that the legal effect of the deed was to create a tenants in common interest in the property. Defendant affirmatively alleges that the deed created a community interest in the property.
4. With respect to the allegations of Paragraph 7 of the Complaint, Defendant admits that the deed referred to was recorded, but denies the remaining allegations, including the purported legal effect of the deed.
5. Defendant admits the allegations of Paragraph 8.
6. Defendant denies the allegations of Paragraph 9 of the Complaint.
7. Defendant denies the allegations of Paragraph 10 of the Complaint.
8. With respect to the allegations of Paragraph 11 of the Complaint, Defendant re-alleges her answers to Paragraphs 1-9 set forth above.
9. Defendant denies the allegations of Paragraph 12 of the Complaint.
10. Defendant denies the allegations of Paragraph 13 of the Complaint.
11. Defendant denies the allegations of Paragraph 14 of the Complaint.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE FRAUD, DURESS, UNDUE INFLUENCE

As a first, separate and affirmative defense to the Plaintiffs' complaint, Defendant alleges that the quitclaim deed obtained by the Plaintiff from Alva L. Garrett was the product of fraud, duress, undue influence or other inequitable conduct on the part of the Plaintiff, and is therefore voidable.

SECOND AFFIRMATIVE DEFENSE
UNCLEAN HANDS

As a second, separate and affirmative defense to the Plaintiffs' complaint, Defendant alleges that the Plaintiff is guilty of unclean hands with respect to the means by which he obtained the quitclaim deed from Alva L. Garrett.

THIRD AFFIRMATIVE DEFENSE
STATUTORY INVALIDITY OF QUITCLAIM DEED

As a third, separate and affirmative defense to the Plaintiffs' complaint, Defendant alleges that the quitclaim deed from Alva L. Garrett to Jack L. Garrett purported to convey Alva L. Garrett's interest in real property which was the community real property of Alva L. Garrett and Thelma V. Garrett. Pursuant to Idaho Code §32-912, Alva L. Garrett did not have the legal capacity to convey the real property without the joinder and consent of Thelma V. Garrett in the conveyance. Jack L. Garrett is not a bona fide purchaser for value; knew that the property was held by the marital community of Alva L. Garrett and Thelma V. Garrett, and Jack L. Garrett had a confidential relationship with Alva L. Garrett at the time of the purported conveyance.

By reason of these facts, Jack L. Garrett received a void or voidable interest in the real property from the quitclaim deed, which is either void *ab initio* or voidable in this action.

RESERVATION OF ADDITIONAL AFFIRMATIVE DEFENSES

The statement of affirmative defenses in this Answer is without prejudice to the Defendant's right to allege additional defenses to which she may be entitled. Defendant reserves the right to amend this Answer to allege additional affirmative defenses that are disclosed or developed during the pendency of this case through pretrial discovery.

**COUNTERCLAIM
BY DEFENDANT THELMA V. GARRETT
AGAINST JACK L. GARRETT**

**FIRST CAUSE OF ACTION
QUIET TITLE**

1. On or about June 18, 1990, Alva L. Garrett ("Alva") conveyed certain real property located in Canyon County, Idaho to Alva L. Garrett and Thelma V. Garrett ("Thelma"). At the time of this conveyance, Alva and Thelma were husband and wife, having been married in 1978. The real property is described as follows:

"The West Twenty-Six and two-thirds (26 2/3) acres of land located in the Southwest Quarter of the South East Quarter, (SW ¼ of SE ¼) Township Five North, Range Two West, Section 32, Boise Meridian, Canyon County, Idaho.

Described more fully as follows: Commencing at the Southwest corner of the Southeast Quarter, Section 32, Township Five North, Range Two West, Canyon County, Idaho: 53 1/3 Rods East, 80 Rods North, 53 1/3 Rods West, 80 Rods South, in the above described land, together with their appurtenances."

hereinafter referred to as "the Property." A true and accurate copy of the deed conveying the property is attached hereto, marked Exhibit A, and incorporated herein by this reference.

2. From the date of their marriage and up to the date of Alva's death on March 3, 2008, Alva and Thelma resided on the property together as husband and wife.
3. On or about January 27, 1995, Alva and Thelma entered into a Contract for Wills whereby they expressed their intent that on each of their deaths they would give, devise and bequeath his or her property in accordance with the provisions of his or her will attached to the Contract. A true and accurate copy of that contract is attached hereto, marked Exhibit B, and incorporated herein by this reference.
4. At the time that Alva and Thelma executed the Contract for Wills, they owned and resided together on the property referred to herein. The subject matter of the

- Contract for Wills and Wills executed by each of them included the property referred to herein.
5. Two days after the death of Alva, on or about March 5, 2008, Counterdefendant Jack L. Garrett recorded a quitclaim deed from Alva purporting to convey his entire interest in the property referred to herein to Jack L. Garrett. A true and accurate copy of that deed is attached hereto as Exhibit C, and incorporated herein by this reference.
 6. On or about March 12, 2009, Thelma executed a Personal Representatives Deed with respect to the real property interest of Alva. At or about the time of the recording of that deed, Thelma first became aware of the existence and recording of the purported quitclaim deed to Jack L. Garrett. A true and accurate copy of the Personal Representatives Deed is attached hereto as Exhibit D, and incorporated herein by this reference.
 7. Thelma did not participate in the purported conveyance of Alva's interest in the real property referred to herein to Jack L. Garrett. Thelma had no knowledge of the execution of the quitclaim deed and did not consent to it.
 8. Idaho Code §32-912 provides in pertinent part that "neither the husband nor wife may sell, convey or encumber the community real estate unless the other joins in executing the sale agreement, deed or other instrument of conveyance by which the real property is sold, conveyed or encumbered..."
 9. By reason of these facts, the purported quitclaim deed to Jack L. Garrett executed only by Alva is null and void.
 10. The recording of the purported quitclaim deed to Jack L. Garrett has and continues to cloud the legal title of Thelma to the real property referred to herein.
 11. Jack L. Garrett has farmed the real property referred to herein since 2008 and has failed and refused to account to Thelma for the income generated from the

farming activity, or to pay over any portion of that income to her.

12. By reason of her ownership of the real property referred to herein, Thelma is entitled to a full accounting from Jack L. Garrett of all income generated from his farming activity since 2008, and to repayment of all sums earned by reason of his use of Thelma's property.
13. Thelma is entitled to have the Court enter its decree quieting title in her, declaring that she is the sole owner of the property, and that Counterdefendant Jack L. Garrett has no right, title or interest in and to the subject real property.
14. Thelma has been required to retain the services of Christ T. Troupis as her attorney to defend the partition action by Jack L. Garrett and to prosecute Thelma's quiet title claims. She is entitled to an award of her costs and attorneys fees incurred for the defense of this matter and the prosecution of her quiet title action in accordance with Idaho law.

PRAYER FOR RELIEF



WHEREFORE, Defendant/Counterclaimant prays as follows:

1. With respect to the Plaintiff's Complaint, that Plaintiff take nothing by his Complaint herein and that the same be dismissed;
2. That all adverse claims of Counterdefendant Jack L. Garrett be terminated by Decree of this Court, and that by such Decree, it be adjudged that the Counterdefendant has no right, title or interest in or to the described real property or any part thereof, and that the Counterclaimant is the owner of said real property and that the Counterdefendant Jack L. Garrett be forever barred from asserting any claims whatever in or to the real property, adverse to the Counterclaimant;

3. That Counterclaimant be awarded just compensation for the wrongful taking of her property by the Counterdefendant for the period from March 5, 2008 up to and including the date of entry of judgment in this case;
4. That the Defendant be awarded her attorney fees and costs incurred herein;
5. For such other and further relief as the Court deems just and proper.

Dated: February 26, 2010

TROUPIS LAW OFFICE P.A.

Christ T. Troupis, ISB# 4549
Attorney for Defendant/Counterclaimant

CERTIFICATE OF MAILING

I hereby certify that on this 26 day of February, 2010, I caused to be served a true and correct copy of the foregoing First Amended Answer and Counterclaim, by U.S.

Mail, first class, postage prepaid, addressed to the following:

Nancy Jo Garrett
Rebecca A. Rainey
Moffatt, Thomas, Barrett, Rock & Fields, Chtd.
101 S. Capitol Blvd, 10th Floor
P.O. Box 829
Boise, Idaho 83701



Christ T. Troupis

Order No:

9011325

QUITCLAIM DEED

FOR VALUE RECEIVED

Alva L. Garrett GRANTOR
 do hereby CONVEY, RELEASE, REMISE and FOREVER QUIT CLAIM
 unto Alva L. Garrett and Melma V. Garrett GRANTEE

whose current mailing address is _____ County, State of Idaho
 the following described real property located in _____
 more particularly described as follows: to wit:

The West Twenty-six and two-thirds (26 2/3) Acres of and located
 in Southwest Quarter of the South East Quarter, (SW 1/4 of SE 1/4) T1E
 Five North, Two West, Section 32 of B.M. Canyon County, Idaho

Described more fully, as follows:--Commencing at Section Corner
 53 1/3 Rods East, 80 Rods North,
 53 1/3 Rods West, 80 Rods South,
 in above described land.

Rerecorded to correct Section

9019497

RECORDED

90 OCT 24 PM 12 13

RECORDER
 HED J. KERR
 CANYON COUNTY RECORDER
 BY *Robert W.*

REQUEST: *Melma V. Garrett*
 TYPE: *Quitclaim*

REGISTERED
Melma V. Garrett
 TYPE: *Quitclaim*

BY: *W.D. [unclear]*
 CANYON COUNTY RECORDER

90 JUN 20 AM 11 18

RECORDED

9011325

together with their appurtenances.

Dated:

Alva L. Garrett

ALVA L. GARRETT

STATE OF IDAHO County of Canyon ss

On this 18th day of June
 in the year of 1990 before me, the undersigned, a Notary
 Public in and for said State, personally appeared Alva L. Garrett

known of identified to me to be the person whose name is sub-
 scribed to the within instrument, and acknowledged to me that he
 executed the same.

Signature

Kimberly A. Condon

Name

Caldwell

Residing at

My commission expires: 1-27-93

STATE OF IDAHO, COUNTY OF

I hereby Certify that this instrument was filed for record at the request of

at _____ minutes past _____ o'clock _____ m
 this _____ day of _____
 19____ in my office, and duly recorded in Book
 of Deeds at page _____

Ex-Officio Recorder

By

Fees \$
Mail to

Exhibit A

This form furnished courtesy of

STEWART TITLE OF IDAHO, 000033



ATTORNEYS AT LAW
TELEPHONE 208-451-1111
BOX 840
9TH AND DEARBORN STS. N
CALDWELL, IDAHO 83608-0840

1 CONTRACT FOR WILLS

2 THIS AGREEMENT, Made and entered into this 27th day of
3 January, 1995, at Caldwell, Idaho, by and between ALVA L.
4 GARRETT hereinafter referred to as husband, and THELMA V.
5 GARRETT, hereinafter referred to as wife, both residing at
6 Middleton, Canyon County, Idaho, WITNESSETH:

7 WHEREAS, Each of the parties hereto have children
8 living who are the issue of former marriages of both parties,
9 namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and
10 Marilyn E. Clapp, children of the husband, and Garret J.
11 Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, children
12 of the wife, and

13 WHEREAS, The parties hereto are desirous that their
14 property, real, personal and mixed shall, after their deaths,
15 pass in the manner as hereinafter set forth.

16 NOW, THEREFORE, For and in consideration of the mutual
17 promises hereinafter made, it is agreed by and between the
18 parties hereto as follows:

19 1. Each of the parties hereto have executed his or her
20 Last Will and Testament, a copy of each is attached hereto,
21 marked Exhibits "A" and "B" respectively, and by this reference
22 made a part hereof.

ATTORNEYS AT LAW
TELEPHONE 208-45 91
9TH AND DEARBORN STS. BOX 640
CALDWELL, IDAHO 83403-J-0640

1 2. The survivor agrees on his or her death to give,
2 devise and bequeath his or her property in accordance with the
3 provisions of his or her Will attached hereto marked Exhibits
4 "A" or "B".

5 3. It is further understood and agreed that in the
6 event of the remarriage of the survivor, any property acquired or
7 accumulated by the survivor after said remarriage may be given,
8 devised and bequeathed in any manner the survivor shall see fit.

9 4. This agreement cannot be changed, modified or
10 discharged orally in whole or in part but may be only changed,
11 modified or discharged by written agreement between the parties.

12 5. This agreement has been executed in two counter-
13 parts and each of the executed counterparts is hereby declared to
14 be an original for all legal purposes.

15 IN WITNESS WHEREOF, The parties hereto have hereunto
16 set their hands and seals the day and year in this agreement
17 first above written.

18
19 Alva L. Garrett (SEAL)
Alva L. Garrett

20 Thelma V. Garrett (SEAL)
Thelma V. Garrett

ATTORNEYS AT
TELEPHONE 208-45 81
9TH AND DEARBORN STS. BOX 640
CALDWELL, IDAHO 83416-0640

1 STATE OF IDAHO)
2 County of Canyon) ss.

3 On this 27th day of January, 1995, before me, the
4 undersigned, a Notary Public in and for said State, personally
5 appeared ALVA L. GARRETT, known to me to be the person whose name
6 is subscribed to the within instrument, and acknowledged to me
7 that he executed the same.

8 IN WITNESS WHEREOF, I have hereunto set my hand and
9 affixed my official seal the day and year in this certificate
10 first above written.

Elsie Aguilar
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires 1-28-2000

11 STATE OF IDAHO)
12 County of Canyon) ss.

13 On this 27th day of January, 1995, before me, the
14 undersigned, a Notary Public in and for said State, personally
15 appeared THELMA V. GARRETT, known to me to be the person whose
16 name is subscribed to the within instrument, and acknowledged to
17 me that she executed the same.

18 IN WITNESS WHEREOF, I have hereunto set my hand and
19 affixed my official seal the day and year in this certificate
20 first above written.

Elsie Aguilar
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires 1-28-2000

Last Will and Testament

OF

ALVA L. GARRETT

I, ALVA L. GARRETT, of Middleton, Canyon County, Idaho, over the age of twenty-one years and being of sound and disposing mind and memory, and not acting under duress, menace, fraud, or the undue influence of any person whomsoever, do make, publish and declare this my Last Will and Testament in manner following, that is to say:

FIRST: I direct that my body be decently buried with proper regard to my station in life and the circumstances of my estate.

SECOND: I direct that my personal representative hereinafter named, as soon as she has sufficient funds in her hands for that purpose, pay my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate.

THIRD: I declare that I am now married and leave surviving me my wife, Thelma V. Garrett, and my children by a former marriage, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, and the children of my wife by a former marriage, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz.

FOURTH: I hereby give and bequeath all items of tangible personal property contained in a written statement

/s/ ALVA L. GARRETT

prepared or to be prepared by me to the parties therein designated, and said written statement and list is hereby referred to by reference in this my Last Will and Testament and by this reference made a part hereof.

FIFTH: After the payment of my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate, I hereby give, devise and bequeath all the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my wife, Thelma V. Garrett.

SIXTH: In the event my wife, Thelma V. Garrett, shall have predeceased me, or we shall die as a result of a common accident, I hereby give, devise and bequeath all of the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my children by a former marriage, namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, and to the children of my wife by a former marriage, namely, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, share and share alike.

If any of said children shall have predeceased me and leave issue, his or her share shall go to his or her issue, and if more than one issue, then share and share alike to his or her

/s/ ALVA L. GARRETT

issue, and if any of said children shall have predeceased me and leave no issue, then his or her share shall go to said surviving children, share and share alike.

SEVENTH: I hereby nominate and appoint my wife, Thelma V. Garrett, as personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my wife, Thelma V. Garrett, is unable or unwilling to serve, I nominate and appoint my son, Jack A. Garrett, as first alternate personal representative of this my Last Will and Testament, and direct that he be not required to furnish any bond as such first alternate personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my son, Jack A. Garrett, is unable or unwilling to serve, I nominate and appoint my daughter, Eleanor J. Martin, as second alternate personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such second alternate personal representative, or bond in any capacity in connection with the probate of my estate.

EIGHTH: I hereby revoke all former wills and testamentary dispositions by me at any time heretofore made.

/s/ ALVA L. GARRETT

IN WITNESS WHEREOF, I, the said ALVA L. GARRETT, have set my hand to this, my Last Will and Testament contained on four sheets of paper, including the sheet on which the attestation certificate is concluded, upon each of which I have written my name at Caldwell, Idaho, this 27th day of January, 1995.

/s/ ALVA L. GARRETT

The foregoing instrument, consisting of four sheets of paper, including the sheet on which this attestation certificate is concluded, each of which was signed by the testator, in our presence was, at the date thereof, the 27th day of January, 1995, by the said ALVA L. GARRETT, signed and published as and for his Last Will and Testament in the presence of each of us, and each of us, who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereto.

/s/ WM. F. GIGRAY, JR.
Residing at Caldwell, Idaho

/s/ ELSIE AGUILAR
Residing at Caldwell, Idaho

000040

STATE OF IDAHO)
) ss.
County of Canyon)

We, ALVA L. GARRETT, WM. F. GIGRAY, JR. and ELSIE AGUILAR, whose names are signed to the attached or foregoing instrument as testator and the witnesses, respectively, being first duly sworn, do hereby declare to the undersigned authority that we are all of lawful age; that the testator signed and executed the instrument as his Last Will and that he executed it as his free and voluntary act for the purposes therein expressed; that each of the witnesses, in the presence and hearing of the testator signed the Will as witness and that to the best of his or her knowledge the testator was of sound mind and under no constraint or undue influence.

/s/ ALVA L. GARRETT
Testator

/s/ WM. F. GIGRAY, JR.
Witness

/s/ ELSIE AGUILAR
Witness

Subscribed, sworn to and acknowledged before me by ALVA L. GARRETT, the testator, and subscribed and sworn to before me by Wm. F. Gigray, Jr. and Elsie Aguilar, witnesses, this 27th day of January, 1995.

Notary Public for Idaho
Residing at Caldwell, Idaho
My commission expires 1-21-97

000041

Last Will and Testament

OF

THELMA V. GARRETT

I, THELMA V. GARRETT, of Middleton, Canyon County, Idaho, over the age of twenty-one years and being of sound and disposing mind and memory, and not acting under duress, menace, fraud, or the undue influence of any person whomsoever, do make, publish and declare this my Last Will and Testament in manner following, that is to say:

FIRST: I direct that my body be decently buried with proper regard to my station in life and the circumstances of my estate.

SECOND: I direct that my personal representative hereinafter named, as soon as he has sufficient funds in his hands for that purpose, pay my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate.

THIRD: I declare that I am now married and leave surviving me my husband, Alva L. Garrett, and my children by a former marriage, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, and the children of my husband by a former marriage, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp.

FOURTH: I hereby give and bequeath all items of tangible personal property contained in a written statement

/s/ THELMA V. GARRETT

prepared or to be prepared by me to the parties therein designated, and said written statement and list is hereby referred to by reference in this my Last Will and Testament and by this reference made a part hereof.

FIFTH: After the payment of my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate, I hereby give, devise and bequeath all the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my husband, Alva L. Garrett.

SIXTH: In the event my husband, Alva L. Garrett, shall have predeceased me, or we shall die as a result of a common accident, I hereby give, devise and bequeath all of the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my children by a former marriage, namely, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, and to the children of my husband by a former marriage, namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, share and share alike.

If any of said children shall have predeceased me and leave issue, his or her share shall go to his or her issue, and if more than one issue, then share and share alike to his or her

/s/ THELMA V. GARRETT

issue, and if any of said children shall have predeceased me and leave no issue, then his or her share shall go to said surviving children, share and share alike.

SEVENTH: I hereby nominate and appoint my husband, Alva L. Garrett, as personal representative of this my Last Will and Testament, and direct that he be not required to furnish any bond as such personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my husband, Alva L. Garrett, is unable or unwilling to serve, I nominate and appoint my son, Thomas K. Longstreet, as first alternate personal representative of this my Last Will and Testament, and direct that he be not required to furnish any bond as such first alternate personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my son, Thomas K. Longstreet, is unable or unwilling to serve, I nominate and appoint my daughter, Cynthia A. Swartz, as second alternate personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such second alternate personal representative, or bond in any capacity in connection with the probate of my estate.

EIGHTH: I hereby revoke all former wills and testamentary dispositions by me at any time heretofore made.

/s/ THELMA V. GARRETT

000044

IN WITNESS WHEREOF, I, the said THELMA V. GARRETT, have set my hand to this, my Last Will and Testament contained on four sheets of paper, including the sheet on which the attestation certificate is concluded, upon each of which I have written my name at Caldwell, Idaho, this 27th day of January, 1995.

/s/ THELMA V. GARRETT

The foregoing instrument, consisting of four sheets of paper, including the sheet on which this attestation certificate is concluded, each of which was signed by the testatrix, in our presence was, at the date thereof, the 27th day of January, 1995, by the said THELMA V. GARRETT, signed and published as and for her Last Will and Testament in the presence of each of us, and each of us, who at her request and in her presence and in the presence of each other have subscribed our names as witnesses thereto.

/s/ WM. F. GIGRAY, JR.
Residing at Caldwell, Idaho

/s/ ELSIE AGUILAR
Residing at Caldwell, Idaho

STATE OF IDAHO)
) ss.
County of Canyon)

We, THELMA V. GARRETT, WM. F. GIGRAY, JR. and ELSIE AGUILAR, whose names are signed to the attached or foregoing instrument as testatrix and the witnesses, respectively, being first duly sworn, do hereby declare to the undersigned authority that we are all of lawful age; that the testatrix signed and executed the instrument as her Last Will and that she executed it as her free and voluntary act for the purposes therein expressed; that each of the witnesses, in the presence and hearing of the testatrix signed the Will as witness and that to the best of his or her knowledge the testatrix was of sound mind and under no constraint or undue influence.

/s/ THELMA V. GARRETT
Testatrix

/s/ WM. F. GIGRAY, JR.
Witness

/s/ ELSIE AGUILAR
Witness

Subscribed, sworn to and acknowledged before me by THELMA V. GARRETT, the testatrix, and subscribed and sworn to before me by Wm. F. Gigray, Jr. and Elsie Aguilar, witnesses, this 27th day of January, 1995.

Notary Public for Idaho
Residing at Caldwell, Idaho
My commission expires 11-21-97

000046

Blue

INSTRUMENT NO. 2008012250

QUITCLAIM DEED

For Value Received Alva L. Garrett, A Married Man,
his interest on this date

do hereby convey, release, remise and forever quit claim unto
Jack L. Garrett

whose address is: 10231 Purple Sage Rd Middleton, ID

Hereinafter called the Grantee, the following described premises situated in Canyon County, Idaho,
to-wit:

The West twenty six and two-thirds (26 2/3) Acres
located in the Southwest Quarter of the Southeast
Quarter (SW 1/4 of the SE 1/4), Township Five North, Range
Two West, Section thirty two (32), Boise Meridian,
Canyon County, Idaho

Described more fully: Commencing at the SW corner
of the SE 1/4, sec 32, T 5N, R 2W, Canyon County, Idaho
53 1/3 Rods East, 80 Rods North, 53 1/3 Rods West,
80 Rods South.

together with their appurtenances.

Dated: Feb 14 - 2006

Alva L. Garrett

REQUEST BY
TYPE: Quit Fee 6-00

John Garrett

WILLIAM H. BURST
CANYON COUNTY RECORDER
BY William H. Burst

2008 FEB 15 PM 1 16

RECORDED

2008012250

ACKNOWLEDGMENT

STATE OF IDAHO

COUNTY OF Canyon

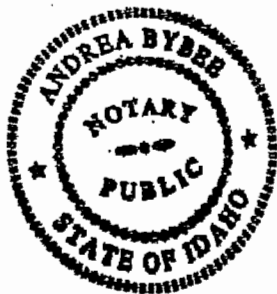
On this 14th day of February in the year of 2006, before me, the undersigned, a Notary Public in and for said State personally appeared Alva L. Garrett

known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they ~~he~~ executed the same as their ~~his~~ free act and deed for the uses, purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the said date.

(NOTARIAL SEAL)

Andrea Bybee
Notary Public, residing at Frutland, Id.
My commission expires: 6-5-08



INSTRUMENT NO.

2009012036

PERSONAL REPRESENTATIVE'S DEED

THIS DEED, is made by THELMA V. GARRETT, Grantor, as personal representative of the estate of ALVA L. GARRETT, deceased, to THELMA V. GARRETT, as Grantee, whose address is number 10338 E. Willis Road in the city of Middleton, Idaho 83644.

RECITALS

WHEREAS, Grantor is the qualified personal representative of the probate estate of ALVA L. GARRETT, filed as Probate Case No. CV 08 - 3732 C in the Canyon County District Court of Idaho; and

WHEREAS, the Grantee is legally entitled to inherit the below-described real property from the decedent;

GRANT OF CONVEYANCE

NOW THEREFORE, Grantor conveys and releases to Grantee all of the right, title, interest, and estate of the probate estate of ALVA L. GARRETT and also all of the right, title, interest, and estate that said probate estate may have acquired by operation of law or otherwise, in and to the following real property which is located at number 10338 E. Willis Road in the city of Middleton, Idaho, and which is more particularly described as follows:

The West twenty-six and two-thirds (26 2/3) acres of land located in the Southwest Quarter of the Southeast Quarter (SW 1/4 of the SE 1/4), Township 5 North, Range 2 West, Section 32, Boise Meridian, Canyon County, Idaho.

Described more fully as follows: Commencing at the Southwest corner of the Southeast Quarter, Section 32, Township 5 North, Range 2 West, Canyon County, Idaho,

53 1/3 Rods East, 80 Rods North, 53 1/3 Rods West, 80 Rods South, in the above-described land.

TO HAVE AND TO HOLD the above described premises, together with all appurtenances, unto the Grantee and the Grantee's heirs and assigns forever.

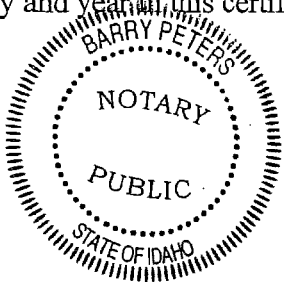
IN WITNESS WHEREOF, the Grantor has hereunto set her hand as of the 12th day of March, 2009.

Thelma V Garrett
THELMA V. GARRETT
Personal Representative

STATE OF IDAHO)
) ss.
County of Ada)

On this 12th day of March, 2009, before me, the undersigned, a Notary Public in and for the State of Idaho, personally appeared THELMA V. GARRETT, known to me to be both the person whose name is subscribed to the foregoing instrument and the personal representative of the probate estate of ALVA L. GARRETT, deceased, and acknowledged to me that she executed the same as the personal representative of said probate estate.

IN WITNESS WHEREOF, I have here unto set my hand and affixed by official seal the day and year in this certificate first above-written.



BP
Notary Public for Idaho
Residing at Eagle, Idaho
My commission expires: March 17, 2014

THELMA V. GARRETT Personal Representative's Deed 03.12.09

PERSONAL REPRESENTATIVE'S DEED – Page No. 2 of 2

REQUEST *Thelma Garrett*
TYPE *Deed* FEE *65* 000050

2009 MAR 12 PM 3 17
WILLIAM H. MURST
CANYON COUNTY RECORDER
BY *WILLIAM H. MURST*

RECORDED

2009012086

Nancy J. Garrett, ISB No. 4026
Rebecca A. Rainey, ISB No. 7525
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
njg@moffatt.com
rar@moffatt.com
24072.0000

Attorneys for Plaintiff/Counterdefendant

FILED
A.M. 10:10 P.M.
APR 28 2010 ✓
CANYON COUNTY CLERK
D. BUTLER, DEPUTY

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT, an individual,
Plaintiff,

vs.

THELMA V. GARRETT, an individual,
Defendant.

THELMA V. GARRETT,
Counterclaimant,

vs.

JACK L. GARRETT,
Counterdefendant.

Case No. CV-09-8763-C

**COUNTERDEFENDANTS' ANSWER
TO COUNTERCLAIM**

ORIGINAL

**COUNTERDEFENDANTS' ANSWER
TO COUNTERCLAIM - 1**

000051

Client:1618067.1

COMES NOW Counterdefendant, Jack L. Garrett, and hereby files this Answer to
Thelma V. Garrett's Counterclaim:

FIRST CAUSE OF ACTION
QUIET TITLE

1. Counterdefendant admits the allegations set forth in paragraphs 1 and 2 of the Counterclaim.

2. Counterdefendant lacks sufficient information and knowledge to either admit or deny the allegations contained in Paragraph 3 of the Counterclaim, and therefore denies the same.

3. Counterdefendant denies the allegations set forth in paragraph 4 of the Counterclaim.

4. Paragraph 5 of the counterclaim refers to quitclaim deed which speaks for itself and, therefore, no further response is required.

5. Counterdefendant lacks sufficient information and knowledge to either admit or deny the allegations contained in Paragraph 6 of the Counterclaim, and therefore denies the same.

6. Answering paragraph 7 of the Counterclaim, Counterdefendant admits only that the Thelma did not participate in the conveyance of Alva's interest in the real property. Counterdefendant lacks sufficient information and knowledge to either admit or deny the remaining allegations contained in Paragraph 7 of the Counterclaim, and therefore denies the same.

7. Paragraph 8 of the counterclaim refers to statute which speaks for itself and, therefore, no further response is required.

8. Counterdefendant denies the allegations contained in Paragraphs 9 and 10 of the Counterclaim.

9. Answering paragraph 11 of the Counterclaim, Counterdefendant admits only that he has farmed the property referred to herein but denies any duty to account to Counterclaimant for such farming activities.

10. Counterdefendant denies the allegations contained in Paragraphs 12, 13, and 14 of the Counterclaim.

PRAYER FOR RELIEF

11. With respect to Counterclaimant's Prayer for Relief in the Counterclaim, to the extent that any answer is required, Counterdefendant denies the allegations contained therein, denies that Counterclaimant has stated any valid cause of action, and denies that Counterclaimant is entitled to any of the relief requested therein.

RULE 11 STATEMENT

12. Counterdefendant has considered and believes that he may have additional defenses, but does not have enough information at this time to assert additional defenses under Rule 11 of the Idaho Rules of Civil Procedure. Counterdefendant does not intend to waive any such defenses and specifically asserts his intention to amend this answer if, pending research and after discovery, facts come to light giving rise to such additional defenses.

WHEREFORE, Counterdefendant prays for judgment as follows:

1. That this Court find that Counterdefendant has a valid ownership interest in 50% of the property;
2. That Counterclaimants prayer for quiet title be denied;

3. That Counterdefendant be awarded its reasonable attorney's fees and costs necessarily incurred in defending this action.

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

DATED this 27th day of April, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

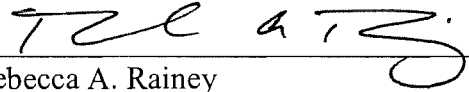
By Rebecca A. Rainey
Rebecca A. Rainey – Of the Firm
Attorneys for Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April, 2010, I caused a true and correct copy of the foregoing **COUNTERDEFENDANTS' ANSWER TO COUNTERCLAIM** to be served by the method indicated below, and addressed to the following:

Christ T. Troupis
Troupis Law Office, P.A.
1299 E. Iron Eagle, Suite 130
P.O. Box 2408
Eagle, ID 83616
Facsimile (208) 938-5482
Attorneys for Defendant/Counterclaimant

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Rebecca A. Rainey

F I L E D
A.M. 3:20 P.M.

MAY 14 2010

CANYON COUNTY CLERK
C DOCKINS, DEPUTY

Nancy J. Garrett, ISB No. 4026
Rebecca A. Rainey, ISB No. 7525
MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED
101 South Capitol Boulevard, 10th Floor
Post Office Box 829
Boise, Idaho 83701
Telephone (208) 345-2000
Facsimile (208) 385-5384
njg@moffatt.com
rar@moffatt.com
24072.0000

Attorneys for Plaintiff/Counterdefendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT, an individual,

Plaintiff,

vs.

THELMA V. GARRETT, an individual,

Defendant.

THELMA V. GARRETT,

Counterclaimant,

vs.

JACK L. GARRETT,

Counterdefendant.

Case No. CV-09-8763-C

**PLAINTIFF/COUNTERDEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

COMES NOW Plaintiff/Counterdefendant Jack L. Garrett ("Jack"), by and through his attorney of record, and moves this Court, pursuant to Rule 56 of the Idaho Rules of Civil Procedure, for entry of an order of summary judgment as follows:

1. Declaring that Jack and defendant/counterclaimant Thelma V. Garrett ("Thelma") hold their respective interests in the property that is the subject of the above-captioned matter as tenants in common, with each party owning an undivided one-half interest to tenants in common.

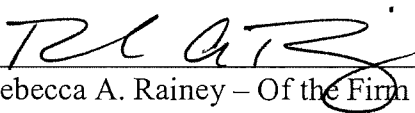
2. Ordering the appointment of a referee, pursuant to Idaho Code Section 6-513, to divide the property according to the respective rights of the parties.

This motion is supported by all pleadings on file in this matter, the Memorandum in Support of Jack L. Garrett's Motion for Summary Judgment, and the Affidavit of Rebecca A. Rainey filed concurrently herewith.

Plaintiff/Counterdefendant requests oral argument on this motion.

DATED this 14th day of May, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

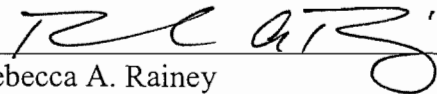
By 
Rebecca A. Rainey – Of the Firm
Attorneys for Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2010, I caused a true and correct copy of the foregoing **PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Christ T. Troupis
Troupis Law Office, P.A.
1299 E. Iron Eagle, Suite 130
P.O. Box 2408
Eagle, ID 83616
Facsimile (208) 938-5482
Attorneys for Defendant/Counterclaimant

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Rebecca A. Rainey

FILED
A.M. 3:20 P.M.

MAY 14 2010

CANYON COUNTY CLERK
C DOCKINS, DEPUTY

Nancy J. Garrett, ISB No. 4026
Rebecca A. Rainey, ISB No. 7525
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24072.0000

Attorneys for Plaintiff/Counterdefendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT, an individual,
Plaintiff,

vs.

THELMA V. GARRETT, an individual,
Defendant.

THELMA V. GARRETT,
Counterclaimant,

vs.

JACK L. GARRETT,
Counterdefendant.

Case No. CV-09-8763-C

**MEMORANDUM IN SUPPORT OF
PLAINTIFF/COUNTERDEFENDANT'S
MOTION FOR SUMMARY
JUDGMENT**

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COMES NOW Plaintiff/Counterdefendant Jack Garrett (“Jack”), by and through his attorney of record, and hereby files the following memorandum in support of his motion for summary judgment:

I. INTRODUCTION

The above-captioned matter and the present motion for summary judgment present a deceptively simple legal question: what is the legal status of property held by a husband (“Alva”), as his sole and separate property, when he quitclaims the property to himself and his wife (“Thelma”). Well-settled Idaho law establishes that the gift of an interest in property from one spouse to the other creates a separate property interest in the grantee. Where that gift is from one spouse to both spouses, it creates a separate property in each grantee, where the spouses hold their respective separate property interest as tenants in common. Because Alva’s interest in the property was his separate property, he had the legal right to convey it to his son, Jack, without Thelma’s consent.

The answer, affirmative defenses, and counterclaims submitted by defendant/counterclaimant set forth issues of fraud, duress, undue influence, breach of a contract for wills, and other theories that fail to address the central issue. Moreover, Thelma has no evidence to support any of her affirmative defenses and, accordingly, there is no basis to defeat Alva’s grant of his interest in the property to his son, Jack. As the following demonstrates, Jack and Thelma hold the property as tenants in common and it is appropriate and necessary for this Court to enter an order appointing a referee to partition the property.

II. LEGAL AUTHORITY

In *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988), the Idaho Supreme Court adopted the summary judgment standard announced by the United States

Supreme Court in *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Thus, under Idaho law, “[t]he moving party is entitled to judgment when the nonmoving party fails to make a showing sufficient to establish the existence of an element essential to that party’s case on which that party will bear the burden of proof at trial.” *Badell*, 115 Idaho at 102, 765 P.2d at 127. As the court stated in *Jarman v. Hale*, 122 Idaho 952, 842 P.2d 288 (Ct. App. 1992):

A party opposing a motion for summary judgment has the burden of presenting sufficient evidence to establish a triable issue which arises from the facts, and a genuine issue of fact is not created by a mere scintilla of evidence. . . . Summary judgment is proper if the evidence before the court on the motion would warrant a directed verdict if the case were to go [to] trial. *Id.* Further, *a nonmoving party’s failure to make a showing sufficient to establish the existence of an element essential to that party’s case, on which that party will bear the burden of proof at trial, requires the entry of summary judgment. Celotex Corp. v. Catrett, supra; see also I.R.C.P. 56(c). “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 nonmoving party’s case necessarily renders all other facts immaterial.” Celotex Corp. v. Catrett, 477 U.S. at 322-23, 106 S.Ct. at 2552.*

Jarman, 122 Idaho at 955-56, 842 P.2d at 291-92 (citation omitted), *overruled on other grounds by Puckett v. Verska*, 144 Idaho 161, 158 P.3d 937 (2007). *See also Nelson v. Anderson Lumber Co.*, 140 Idaho 702, 707, 99 P.3d 1092, 1097 (Ct. App. 2004) (“The language and reasoning of *Celotex* ha[ve] been adopted in Idaho.”); *Nelson v. City of Rupert*, 128 Idaho 199, 202, 911 P.2d 1111, 1114 (1996); *Olsen v. J. A. Freeman Co.*, 117 Idaho 706, 720-21, 791 P.2d 1285, 1299-1300 (1990); *Garzee v. Barkley*, 121 Idaho 771, 774, 828 P.2d 334, 337 (Ct. App. 1992).

A motion for summary judgment should not be regarded with disfavor as the United States Supreme Court stated in *Celotex*:

[s]ummary judgment procedure is properly regarded not as a disfavored procedural shortcut, but rather as an integral part of the Federal Rules as a whole, which are designed “to secure the just, speedy and inexpensive determination of every action.”

Celotex, 477 U.S. at 317 (citation omitted). In opposing the motion, “a mere scintilla of evidence or slight doubt as to facts’ is not sufficient to create a genuine issue for purposes of summary judgment.” See *Samuel v. Hepworth, Nungester & Lezamiz, Inc.*, 134 Idaho 84, 996 P.2d 303, 307 (2000), citing *Harpole v. State*, 131 Idaho 437, 439, 958 P.2d 594, 596 (1998). The nonmoving party “must respond to the summary judgment motion with specific facts showing there is a genuine issue for trial.” *Id.*, citing *Tuttle v. Sudenga Indus., Inc.*, 125 Idaho 145, 150, 868 P.2d 473, 478 (1994).

III. STATEMENT OF UNDISPUTED FACTS

1. Alva and Thelma Garrett were married in 1976. Affidavit of Rebecca A. Rainey (“Rainey Aff.”), Ex. A (Deposition of Thelma V. Garrett, May 5, 2010 (“Thelma Depo.”) at 25:5-7).

2. It was a second marriage for each of them. Rainey Aff., Ex. A (Thelma Depo. at 6:13-15; 9:14-15).

3. Alva had four children from a prior marriage. Rainey Aff., Ex. A (Thelma Depo. at 9:16-22).

4. Thelma had three children from a prior marriage. Rainey Aff., Ex. A (Thelma Depo. at 7:6-12).

5. The members of the combined family had a relatively normal and otherwise cordial step-family relationship. Rainey Aff., Ex. A (Thelma Depo. at 49:22 - 50:11).

6. At the time Alva and Thelma were married, Alva held title to three significant pieces of real estate: the Middleton Place, comprised of approximately 80 acres (which is the subject of this action for partition); the Willow Creek Place, approximately 640 acres (one section); and the Round Valley Property, approximately 80-100 acres. Rainey Aff.

Ex. A (Thelma Depo. 16:20 – 17:21); Rainey Aff., Ex. B (Deposition of Jack Garrett, May 5, 2010 (“Jack Depo.”) at 19:21 – 20:12).

7. During his marriage to Thelma, Alva transferred title to the Willow Creek Place and the Round Valley Property to various entities for various business transactions. At the time of his death, Alva did not hold any interest in either the Willow Creek Place or the Round Valley Property. Rainey Aff., Ex. A (Thelma Depo. at 20:5-7; 18:19-21).

8. At the time Alva and Thelma were married, Thelma owned a home in Middleton. Rainey Aff., Ex. A (Thelma Depo. at 17:22 – 18:6).

9. Shortly after her marriage to Alva, Thelma deeded the Middleton home to her three children. The children sold the home and no longer hold title to it. Rainey Aff., Ex. A (Thelma Depo. at 23:10 – 24:4).

10. In and around 1990, Jack began farming the Middleton Place. Rainey Aff., Ex. B (Jack Depo. at 32:16-19).

11. When Jack began farming the Middleton Place, he gave his father approximately \$10,000.00. Rainey Aff., Ex. B (Jack Depo. at 31:15-19).

12. Of that \$10,000.00, \$8,000.00 constituted an advance on rent that Jack was to pay for farming the Middleton Place, which was the rate of approximately \$100.00 per acre. Rainey Aff., Ex. B (Jack Depo. at 32:8-15).

13. The remaining \$2,000.00 was a loan and Alva and Thelma executed a promissory note, dated March 21, 1990, to evidence such loan. Rainey Aff., Ex. B (Jack Depo. at 31:19 – 32:4).

14. Sometime thereafter, Alva encountered additional financial difficulty and elected to sell 53 acres of the Middleton Place, keeping 26 2/3 acres in his name. Rainey Aff., Ex. A (Thelma Depo. at 22:4-23).

15. Jack continued farming the remaining 26 2/3 acres and continues to do so today. Rainey Aff., Ex. B (Jack Depo. at 32:20 - 33:13).

16. On June 20, 1990, Alva recorded a quitclaim deed conveying his interest in the remaining 26 2/3 acres of the Middleton Place to himself and Thelma V. Garrett. Rainey Aff., Ex. C.

17. Alva and Thelma prepared the 1990 Quitclaim Deed themselves. Rainey Aff., Ex. A (Thelma Depo. at 53:13-25).

18. Alva did not consult an attorney regarding the 1990 Quitclaim Deed. Rainey Aff., Ex. A (Thelma Depo. at 53:13-25).

19. On January 27, 1995, Alva and Thelma executed a contract for wills and reciprocal wills, whereby each agreed to leave all of their property to the survivor and the survivor would leave all property to the couple's seven children, in equal shares. Rainey Aff., Ex. D.

20. On February 14, 2006, Alva executed a quitclaim deed conveying his interest in the Middleton Place to his son, Jack. Rainey Aff., Exhibit E.

21. Shortly after the 2006 Quitclaim Deed was executed, John, Alva's other son and Jack's brother, contacted Jack and told him the 2006 Quitclaim Deed had been executed and that it was being held in the family's property records relating to the Middleton Place. Rainey Aff., Ex. B (Jack Depo. at 49:3 - 50:8).

22. Alva passed away on March 3, 2008. Rainey Aff., Ex. A (Thelma Depo. at 4:22 – 5:1).

23. On March 5, 2008, John caused the 2006 Quitclaim Deed to be recorded in Canyon County as Instrument No. 2008012250. Rainey Aff., Ex. B (Jack Depo. at 50:12-25).

24. At the time Alva executed the 2006 Quitclaim Deed, he was still able to drive a car. Rainey Aff., Ex. A (Thelma Depo. at 46:14-16; 52:9-11).

25. At the time Alva executed the 2006 Quitclaim Deed, he was still writing checks on his and Thelma's account and Thelma trusted him to do so. Rainey Aff., Ex. A (Thelma Depo. at 46:7 – 51:1-3).

26. Alva's mental condition never deteriorated to the point where he did not remember his wife and family. Rainey Aff., Ex. A (Thelma Depo. at 51:20 – 52:1).

27. At the time Alva executed the 2006 Quitclaim Deed, he and Thelma were living together at the Middleton Place. Rainey Aff., Ex. A (Thelma Depo. at 50:12-18).

28. At the time Alva executed the 2006 Quitclaim Deed, he was not working with Jack, nor were he and Jack spending any more time together than was usual for their relationship. Rainey Aff., Ex. A (Thelma Depo. at 50:19-25).

29. Jack was not active in the preparation or the recording of the 2006 Quitclaim Deed. Rainey Aff., Ex. B (Jack Depo. at 48:6 – 49:2).

30. Jack did not have a disposition to exert undue influence over his father. Rainey Aff., Ex. A (Thelma Depo. at 54:1-10).

31. Thelma and Alva never executed a formal marriage settlement agreement. Rainey Aff., Ex. A (Thelma Depo. at 34:20 – 35:7).

IV. ARGUMENT

A. Thelma and Jack Each Currently Hold an Undivided One-Half Interest in the Middleton Place as Tenants in Common.

1. At the time of his marriage to Thelma, Alva owned the Middleton Place as his sole and separate property.

Idaho is a community property state. The characterization of property as the separate property of one spouse or the property of the marital community depends on “when it was acquired and the source of funds used to purchase it.” *Kraly v. Kraly*, 208 P.3d 281, 285, 147 Idaho 299, 303 (2009). “All property of either the husband or the wife owned by him or her before marriage . . . shall remain his or her sole and separate property.” IDAHO CODE § 32-903. It is undisputed in this matter that Alva owned the Middleton Place prior to his marriage to Thelma. Accordingly, at the time of the parties’ marriage, the Middleton Place is properly characterized as Alva’s sole and separate property.

2. The 1990 Quitclaim Deed conveyed Alva’s separate property interest in the Middleton Place to an undivided one-half interest as Alva’s separate property and a one-half interest as Thelma’s separate property.

Thelma contends that by the 1990 Quitclaim Deed, Alva intended to transmute his separate property interest in the Middleton Place into community property. This contention is not supported by Idaho law.

“Transmutation is a broad term used to describe arrangements between spouses which change the character of property from separate to community and vice versa.” *Stockdale v. Stockdale*, 102 Idaho 870, 872, 643 P.2d 82, 84 (1982) (quoting W. REPPY & W. DEFUNIAK, COMMUNITY PROPERTY IN THE UNITED STATES 421 (1975)). Although a husband and wife may transmute property at any time during marriage, they must conform with statutory formalities for doing so. *Reed v. Reed*, 137 Idaho 53, 59, 44 P.3d 1108, 1114 (2002) (citing *Wolford v. Wolford*,

117 Idaho 61, 66, 785 P.2d 625, 630 (1990)). The party alleging the transmutation has the burden of proving the transmutation.” *Id.* (citing *Wolford*, 117 Idaho at 66, 785 P.2d at 630). The Idaho Supreme Court has expressly held that “the separate or community character of real property may be altered only in the manner provided or permitted by statute.” *Stockdale*, 102 Idaho at 873, 643 P.2d at 85 (emphasis added).

In Idaho, transmutation of real property requires that spouses execute a formal marriage settlement agreement. *See* IDAHO CODE §§ 32-916 and 32-917. Idaho Code Section 32-917 sets forth the statutory requirements for a marriage settlement agreement transmuting real property: It requires a (i) a contract, (ii) in writing, (iii) executed and acknowledged or proved in like manner as conveyances of land are required to be executed and acknowledged or proved. The 1990 Quitclaim Deed is not a contract and does not, therefore, satisfy the requirements of Idaho Code Section 32-917. Thelma testified that she and Alva did not enter into any contract or agreement regarding the manner in which their property would be owned:

Q. (By Ms. Rainey): Did you and Alva ever prepare any sort of agreement where it discussed how your property would be owned, like community property, or separate property?

A. (By Thelma Garrett): Well, we -- yes, we had a will.

* * *

Q. Other than the will, did you have any other agreements discussing how the property would be owned between the two of you?

A. No.

Statement of Undisputed Facts (“SOF”) ¶ 31 (Thelma Depo. 34:20 – 35:7). Consistent with her deposition testimony, Thelma has not produced any contract meeting the formalities of a marriage settlement effective to transmute Alva’s separate property interest into community

property. Rainey Aff., Exhibit F. Accordingly, the default rules of Idaho law govern the separate/community characterization of the Middleton Place.

The three relevant sections of Idaho Code that resolve this issue are Sections 32-902(2), 55-104, and 55-508. They provide as follows:

Property conveyed by one spouse to the other shall be presumed to be the sole and separate estate of the grantee and only the grantor spouse need execute and acknowledge the deed or other instrument of conveyance notwithstanding the provisions of section 32-912, Idaho Code.

Idaho Code § 32-902(2).

Every interest created in favor of several persons in their own right is an interest in common . . . unless acquired as community property.

Idaho Code § 55-104.

Every interest in real estate granted or devised to two (2) or more persons . . . constitutes a tenancy in common, unless expressly declared in the grant or devise to be otherwise.

Idaho Code § 55-508.

Reading these three sections together, the rule that applies to the 1990 Quitclaim Deed is as follows: property conveyed by one spouse to both spouses is presumed to be the sole and separate property of the grantee(s) and is an interest in common, constituting a tenancy in common, unless the interest was (i) acquired as community property or (ii) expressly declared in the grant or devise to be otherwise.

In this matter, the undisputed evidence shows that the Middleton Place was not acquired as community property. The Middleton Place was acquired by Alva, prior to his marriage to Thelma, and was held as his sole and separate property. SOF ¶ 6. The undisputed evidence also shows that the grant, the 1990 Quitclaim Deed, does not expressly declare that the

Middleton Place is to be held by Alva and Thelma as anything other than tenants in common. SOF ¶ 16. Indeed, the grant states only that the property is quitclaimed to Alva L. Garrett and Thelma V. Garrett—it does not even go so far as to identify them as “husband and wife.” Rainey Aff., Ex. C.

Because Alva and Thelma did not enter into a marriage settlement agreement and because the 1990 Quitclaim Deed does not otherwise satisfy any of the requirements to establish that it created a community property interest, Alva and Thelma’s interest in the 1990 Quitclaim Deed was that of tenants in common, where each spouse held their respective interest as their sole and separate property. *See In re Estate of Cooke*, 96 Idaho 48, 58, 524 P.2d 176 (1974) (“If a true joint tenancy exists . . . each spouse owns his or her respective interest as separate property.”) (citations omitted). Accordingly, the 1990 Quitclaim Deed created a tenancy in common, where both Alva and Thelma held their respective interests as their sole and separate property.

3. The 2006 Quitclaim Deed conveyed Alva’s undivided one-half separate property interest in the Middleton Place to Jack.

Because the 1990 Quitclaim Deed created a tenancy in common between Thelma and Alva, with each party holding their respective interest as their sole and separate property, either party was at liberty to dispose of their interest without the consent or agreement of the other. Alva did so with the 2006 Quitclaim Deed conveying his interest in the Middleton Place to Jack. Accordingly, pursuant to the 2006 Quitclaim Deed, whereby Alva’s separate property tenancy in common interest was conveyed to Jack, the current ownership of the property is that Jack and Thelma hold title to the Middleton Place as tenants in common.

B. No Evidence of Fraud, Duress, Undue Influence, Unclean Hands or Other Inequitable Conduct.

For her affirmative defenses, Thelma Garrett has raised fraud, duress, undue influence, unclean hands and, generally, inequitable conduct by Jack. There is no evidence to support any of these allegations.

1. Fraud.

Thelma has raised fraud as one of her affirmative defenses. Answer, Affirmative Defenses and Counterclaim at 2 (First Affirmative Defense). Under the Idaho Rules of Civil Procedure, all averments of fraud must be stated with particularity. I.R.C.P. 9(b). The elements necessary to establish fraud under Idaho law are as follows: (1) a statement of fact; (2) its falsity; (3) its materiality; (4) the speaker's knowledge of its falsity; (5) the speaker's intent to induce reliance; (6) the hearer's ignorance of the falsity; (7) reliance by the hearer; (8) the hearer's right to rely; and (9) consequent and proximate injury. *Country Cove Development, Inc. v. May*, 143 Idaho 595, 600, 150 P.3d 288, 293 (2006). Thelma has failed to plead any of these elements with particularity. Moreover, Thelma admitted in her interrogatory responses that she is unaware of the facts relating to the manner in which Jack obtained his interest in the property. Rainey Aff., Exhibit F (Answers to Plaintiff's First Set of Interrogatories and Requests for Production to Defendant at 4-5 (Answer to Interrogatory No. 7)). Because Thelma failed to plead fraud with particularity, and because Thelma is otherwise unable to identify any facts supporting her affirmative defense of fraud, Jack is entitled to summary judgment on the same.

2. Duress.

Thelma has also pled the affirmative defense of duress. Under Idaho law, the party claiming duress must establish three elements: "(1) that one side involuntarily accepted the terms of another; (2) that circumstances permitted no other alternatives; and (3) that said

circumstances were the result of the coercive acts of the opposite party.” *Country Cove v. May*, 143 Idaho 595, 599 (2006) (citing *Lomas & Nettleton Co. v. Tiger Enters.*, 99 Idaho 539, 542, 585 P.2d 949, 952 (1978)). Thelma has failed to adduce any evidence supporting her affirmative defense of duress. Plaintiff’s Discovery Responses at 4-5. Rainey Aff., Ex. F (Answers to Plaintiff’s First Set of Interrogatories and Requests for Production to Defendant, dated February 26, 2010, Interrogatory No. 7). Jack is entitled to summary judgment on the same.

3. Undue Influence.

Undue influence is defined as “domination by the guilty party over the testator to such an extent that his free agency is destroyed and the will of another person substituted for that of the testator.” *King v. MacDonald*, 90 Idaho 272, 279, 410 P.2d 969, 973 (1965) (citing *In re Eggan’s Estate*, 86 Idaho 328, 386 P.2d 563 (1963)). Generally speaking, there are four elements necessary to prove a claim of undue influence: “(1) a person who is subject to undue influence; (2) an opportunity to exert undue influence; (3) a disposition to exert undue influence; and (4) a result indicating undue influence.” *Gmeiner v. Yacte*, 100 Idaho 1, 7, 592 P.2d 57, 63 (1979). In this matter, Thelma cannot produce any evidence supporting any of the four elements of undue influence.

a. Alva was not subject to undue influence.

The evidence in the record does not indicate that Alva was a person who was subject to undue influence at the time the quitclaim deed was executed. The following has been said about whether an individual is subject to undue influence:

Because of the inevitable problems in establishing the subjective state of mind of a decedent, it is said to be the most difficult element to establish. The court will look closely at transactions where unfair advantage appears to have been taken of one who is aged, sick or enfeebled. In particular, the court will manifest concern for a grantor who has been proven incapable of handling

his or her own business affairs, who is illiterate, or who has undergone marked deterioration of mind and body shortly before the grant, or who has suffered the trauma of recent death in the family.

Id. Other than that the grantor was advancing in age at the time of the transfer, none of these factors are present in this case. Though he was forgetful with respect to things such as pinochle, Alva was always aware of his wife and family. SOF ¶ 26. He was still driving a car as of February 14, 2006. SOF ¶ 24. For nearly one and one-half years following the execution of the 2006 Quitclaim Deed, up until the time he entered the hospital some six months before his death, Alva was still able to write checks on the couple's account and his wife trusted him to do so. SOF ¶ 25. There is simply no evidence to suggest that Alva was susceptible to undue influence.

b. Jack did not have an opportunity to exert undue influence.

The evidence in the record also does not indicate that Jack, the grantee of the quitclaim deed, had an opportunity to exert undue influence over his father. Idaho courts have opined that “[t]his element is the easiest to establish.” *Gmeiner* at 8, 592 P.2d at 64. “Very frequently, the beneficiary will be found to have lived with the testator or grantor. Nothing much can be made of this fact because while it points to an influencer who has a better opportunity, the same set of facts also may suggest that the bequest was natural and the testator was not unfairly taken advantage of.” *Id.* In this case, the very common fact pattern that often presents an opportunity to exert undue influence is not present—Alva did not live with Jack. Rather, at the time of the conveyance, Alva lived with his wife, Thelma. SOF ¶ 27. Jack was not living in the house with Alva and Thelma, Jack was not working with Alva, and Jack did not have any more involvement with Alva than they had in the past. SOF ¶ 28.

c. Jack did not have a disposition to exert undue influence.

There is no evidence to suggest that Jack had a disposition to exert undue influence. The primary consideration with respect to this element is whether the grantee was active in the preparing and execution of the deed. *Id.* It is undisputed that Jack was not active in the preparation or the recording of the deed.¹ SOF ¶ 29. There was no animosity between Jack and Thelma, the challenger to the deed, that would suggest he would pressure Alva into recording the deed in his favor. SOF ¶ 5. Indeed, Thelma admitted that she did not have any specific examples of actions taken by Jack that would indicate that he was capable, or had a disposition to, exercise undue influence and, further, that she would be surprised if he had coerced Alva into doing anything. SOF ¶ 30.

d. A result that appears to be unnatural, unjust or irrational.

Finally, there is no evidence of a result suggesting undue influence. “A result is suspicious if it appears ‘unnatural, unjust or irrational.’” *Gmeiner* at 7, 592 P.2d at 63 (quoting *In re Lunders’ Estate*, 74 Idaho 448, 451, 362 P.2d 1002 (1953)). However, “[a] grantee may be particularly deserving by reason of long years of care and the fact that ‘the grantor was motivated by affection or even gratitude does not establish undue influence.’” *Id.* (quoting *Mollendorf v. Derry*, 95 Idaho 1, 3, 501 P.2d 199, 201 (1972)). In this case, the reason given for Alva granting the farm to Jack is that Jack had been farming the land for nearly 16 years, beginning in or around 1990. SOF ¶¶ 10 & 15. During the time he farmed the Middleton Place, Jack made significant expenditures for the maintenance and upkeep of the property and there was an

¹ The participation of Jack’s brother, John, and Alva’s failure to consult independent counsel in the preparation and recording of the quitclaim deed is insignificant at best. Evidence shows that Alva was comfortable with this type of legal procedure as he and Thelma had previously prepared and recorded the 1990 Quitclaim Deed without the advise of counsel. SOF ¶¶ 16 – 18.

understanding between Jack and his father that Jack would, one day, receive the farm. Rainey Aff., Ex. A (Jack Depo., 52:8 – 53:2).

In sum, the quitclaim deed from Alva to his son, Jack, is not the product of undue influence. Alva was not susceptible to undue influence, Jack did not have the opportunity or disposition to exert undue influence, Jack was not active in the preparation and recording of the deed, and the result—Jack obtaining his father’s interest in property that Jack had farmed for years and made substantial expenditures on—is natural, just, and fair. Accordingly, Thelma’s affirmative defense of undue influence must fail as a matter of law.

V. CONCLUSION

As the foregoing demonstrates, the 2006 Quitclaim Deed is a valid conveyance of Alva’s undivided one-half separate property interest in the Middleton Place to his son, Jack. The 2006 Quitclaim Deed was not the product of fraud, duress, undue influence or any other improper or inequitable conduct. Therefore, Jack holds title to an undivided one-half interest in the Middleton Place and Thelma holds title to the other undivided one-half interest. Accordingly, Jack respectfully requests that this Court grant his motion for summary judgment declaring he and Thelma as tenants in common on the Middleton Place and appoint a referee, pursuant to Idaho Code Section 6-513, to divide the property according to the respective rights of the parties.

DATED this 14th day of May, 2010.

MOFFATT, THOMAS, BARRETT, ROCK &
FIELDS, CHARTERED

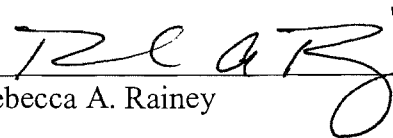
By Rebecca A. Rainey
Rebecca A. Rainey – Of the Firm
Attorneys for Plaintiff/Counterdefendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2010, I caused a true and correct copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF/COUNTERDEFENDANT'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Christ T. Troupis
Troupis Law Office, P.A.
1299 E. Iron Eagle, Suite 130
P.O. Box 2408
Eagle, ID 83616
Facsimile (208) 938-5482
Attorneys for Defendant/Counterclaimant

- U.S. Mail, Postage Prepaid
- Hand Delivered
- Overnight Mail
- Facsimile



Rebecca A. Rainey

FILED
A.M. 3:20 P.M.

MAY 14 2010

CANYON COUNTY CLERK
C DOCKINS, DEPUTY

Nancy J. Garrett, ISB No. 4026
Rebecca A. Rainey, ISB No. 7525
MOFFATT, THOMAS, BARRETT, ROCK &
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101 South Capitol Boulevard, 10th Floor
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Attorneys for Plaintiff/Counterdefendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT, an individual,
Plaintiff,

vs.

THELMA V. GARRETT, an individual,
Defendant.

Case No. CV-09-8763-C

**AFFIDAVIT OF REBECCA RAINEY IN
SUPPORT OF PLAINTIFF/COUNTER-
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

THELMA V. GARRETT,
Counterclaimant,

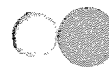
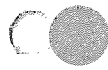
vs.

JACK L. GARRETT,
Counterdefendant.

**AFFIDAVIT OF REBECCA RAINEY IN SUPPORT OF PLAINTIFF/COUNTER-
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT - 1**

Client:1637593.1

000079



STATE OF IDAHO)
) ss.
 COUNTY OF ADA)

Rebecca A. Rainey, having been duly sworn upon oath, deposes and states as follows:

1. I am an attorney for Plaintiff/Counterdefendant in the above-captioned matter and, as such, have personal knowledge of the facts contained herein.

2. Attached hereto as Exhibit A are true and correct copies of excerpts from the Deposition of Thelma V. Garrett, taken on May 5, 2010.

3. Attached hereto as Exhibit B are true and correct copies of excerpts from the Deposition of Jack L. Garrett, taken on May 5, 2010.

4. Attached hereto as Exhibit C is a true and correct copy of the Quitclaim Deed between Alva and Thelma Garrett, dated June 20, 1990.

5. Attached hereto as Exhibit D are true and correct copies of the contract for wills and corresponding reciprocal wills of Alva and Thelma Garrett, dated January 27, 1995.

6. Attached hereto as Exhibit E is a true and correct copy the Quitclaim Deed executed by Alva Garrett conveying his interest in the Middleton Place to his son, Jack, dated February 14, 2006.

7. Attached hereto at Exhibit F is a true and copy of an excerpt from Answers to Plaintiff's First Set of Interrogatories and Requests for Production to Defendant, dated February 26, 2010.

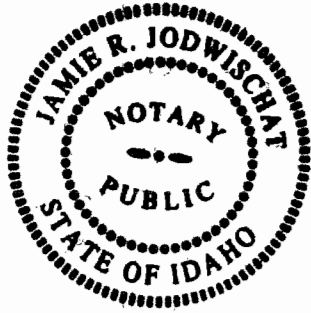
Further your affiant sayeth not.

DATED this 14th day of May, 2010.

Rebecca A. Rainey
Rebecca A. Rainey

SUBSCRIBED AND SWORN to before me this 14th day of May, 2010.

Jamie R. Jodwischat
NOTARY PUBLIC FOR IDAHO
Residing at boise, ID
My Commission Expires 5-23-12

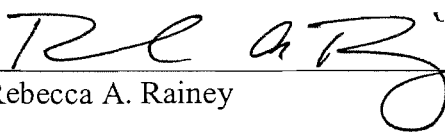


CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of May, 2010, I caused a true and correct copy of the foregoing **AFFIDAVIT OF REBECCA RAINEY IN SUPPORT OF PLAINTIFF/COUNTER-DEFENDANT'S MOTION FOR SUMMARY JUDGMENT** to be served by the method indicated below, and addressed to the following:

Christ T. Troupis
Troupis Law Office, P.A.
1299 E. Iron Eagle, Suite 130
P.O. Box 2408
Eagle, ID 83616
Facsimile (208) 938-5482
Attorneys for Defendant/Counterclaimant

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Rebecca A. Rainey

EXHIBIT A

000083

Client:1570015.1

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT,)
)
 Plaintiff,) Case No. CV OC 09-8763-C
)
 vs.)
)
 THELMA V. GARRETT,)
)
 Defendant.)
)
 _____)

DEPOSITION OF THELMA V. GARRETT

MAY 5, 2010

REPORTED BY:

MARIA D. GLODOWSKI, CSR No. 725, RPR

Notary Public

1 THELMA V. GARRETT,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:
4

5 EXAMINATION

6 BY MS. RAINEY:

7 Q. Could you please state your name and your
8 address for the record.

9 A. Thelma Garrett. 10338 East Willis, Middleton,
10 Idaho.

11 Q. And, Thelma, how long have you lived at that
12 address?

13 A. Thirty-four years.

14 Q. Okay. And have you -- who lives at that
15 address with you?

16 A. No one.

17 Q. Do you live there alone currently?

18 A. In the house? Yes.

19 Q. Okay. And have you lived alone there at that
20 address since your husband's death?

21 A. Yes.

22 Q. Okay. And when -- and your husband was Alva
23 Garrett, correct?

24 A. Yes.

25 Q. And when did he pass away?

1 A. March 3rd, '08 -- 2008.

2 Q. Okay. Thelma, have you ever had your
3 deposition taken before?

4 A. No.

5 Q. Okay. I'm sure that your attorney talked to
6 you a little bit about how this process was going to
7 occur, and what we're going to do. But I'm going to go
8 over a few of those ground rules with you, again, simply
9 so that we have them on the record, and that you and I
10 make sure that we understand each other. Okay?

11 A. Okay.

12 Q. Okay. You understand that you've just taken
13 the oath, which is the same oath that you would take if
14 you were testifying in court, correct?

15 A. Yes.

16 Q. Okay. As we sit here today, is there anything
17 that would prevent you from testifying truthfully and
18 accurately?

19 A. No.

20 Q. Okay. Are you on any type of medication that
21 affects your ability to remember things?

22 A. No.

23 Q. As we start moving through this deposition, you
24 will begin to be able to anticipate what I'm going to ask
25 you and you'll be inclined to answer before I finish my

1 questions. It's very important for the court reporter
2 that we wait for each other to finish questions and finish
3 answers so that we're not talking over each other. Can I
4 get your agreement to try to do that with me?

5 A. Yes.

6 Q. Okay. The other thing that people tend to do
7 in these depositions is to slip into the habit of nodding
8 or giving nonverbal answers such as uh-huh or huh-uh.
9 I'll try to remind you as we move through if that begins
10 to happen that we need audible answers to the questions.
11 Can I get your agreement to try to do that?

12 A. Yes.

13 Q. Okay. Thelma, prior to your marriage to Alva,
14 were you married before?

15 A. Yes.

16 Q. How many times were you married previously?

17 A. Once.

18 Q. Okay. And what was your former husband's name?

19 A. James Longstreet.

20 Q. Okay. And how did that marriage end?

21 A. He died.

22 Q. In what year did James die?

23 A. I can't remember.

24 Q. That's fine. That's another rule. I don't
25 want you to guess on anything. But if there's something

1 that you don't remember, it's perfectly fine to let me
2 know that you don't remember --

3 A. Well, I just --

4 Q. -- and we'll just move on from there.

5 A. Yeah. Okay.

6 Q. And did you have any children with James?

7 A. Yes.

8 Q. How many children?

9 A. Three.

10 Q. Three. And what were their names?

11 A. Garrett Longstreet, and Tom Longstreet, and
12 Cynthia Longstreet.

13 Q. And are all of those children still living
14 today?

15 A. Yes.

16 Q. Where does Garrett live?

17 A. Boise.

18 Q. Okay. And approximately how old is Garrett?

19 A. Sixty-two.

20 Q. And where does Tom live?

21 A. Tom lives beside me in Willis Road.

22 Q. Is that on property that you own?

23 A. Yes.

24 Q. Okay. And how long has Tom lived on that
25 property that you own?

1 Q. Okay.

2 A. Or the last one.

3 Q. But none of them live at home?

4 A. No.

5 Q. Okay. Does Tom's wife live at that property
6 with him?

7 A. Yes.

8 Q. And where does Cynthia live?

9 A. In Nampa.

10 Q. And is she married?

11 A. Yes.

12 Q. Does she own the home that she lives in?

13 A. Yes.

14 Q. Prior to his marriage to you, was Alva married?

15 A. Yes.

16 Q. And did Alva have children from his former
17 marriage?

18 A. Yes.

19 Q. And how many children did Alva have from his
20 former marriage?

21 A. He had four. He had three, and then one
22 adopted.

23 Q. Okay. And those children, it's my
24 understanding, were Jack, John, Marilyn, and Eleanor --

25 A. Right.

1 A. Twelve. Oh, when he moved out?

2 Q. Yes.

3 A. Or was it -- when he left high school, but I
4 don't remember the age.

5 Q. Okay. And where did he go to live at the time
6 he left?

7 A. To Pete Peterson's.

8 Q. He lived with Pete Peterson after he left?

9 A. Yes.

10 Q. And what about Marilyn? How old was she when
11 she left your home with Alva?

12 A. Well, she must have been -- I don't remember.

13 Q. What were the circumstance of her leaving the
14 home?

15 A. Well, she had graduated from high school --

16 Q. Okay.

17 A. -- gotten a job and, you know --

18 Q. Ready to live on her own?

19 A. Right.

20 Q. Okay. At the time you married Alva the first
21 time, what real property did he own?

22 A. He owned property -- at Willow Creek he owned a
23 section.

24 Q. Okay.

25 A. And then he owned property at Round Valley.

1 Q. Did he own any other property at the time you
2 were married?

3 A. Well, the home place.

4 Q. And when you say the home place, that's the
5 place that's involved --

6 A. Yes.

7 Q. -- in this lawsuit --

8 A. Uh-huh.

9 Q. -- correct?

10 A. Yeah. There was 80 there.

11 Q. And that's in Middleton?

12 A. Yes. Well, it was a short 80.

13 Q. How large was the Willow Creek property at the
14 time you were married?

15 A. A section.

16 Q. Okay. And what about the Round Valley
17 property?

18 A. Well, that, I don't remember.

19 Q. Okay. Did he own any other real property at
20 the time you were married?

21 A. No.

22 Q. Did you own any real property at the time you
23 married Alva?

24 A. Yes.

25 Q. What real property did you own?

1 A. I owned a house in Middleton.

2 Q. And what was the address of that property?

3 A. 14 West Main -- or, wait a minute. No, I'm
4 sorry, 11 West Main.

5 Q. 11 West Main?

6 A. Yeah, 11.

7 Q. Did you own any other real property at the time
8 you married Alva?

9 A. No.

10 Q. Did you own a car at the time you married Alva?

11 A. Yes.

12 Q. Just one?

13 A. Yes.

14 Q. And what kind of car was it?

15 A. A Dodge, I think. No, I'm sorry. I think it
16 was a Ford.

17 Q. Okay.

18 A. You know, I can't remember for sure.

19 Q. That's fine. At the time of his death, did
20 Alva still own that section of property at Willow Creek?

21 A. No.

22 Q. What happened to it?

23 A. Well, his son John, he went into real estate,
24 and he told his dad that, oh, he was going to invest it in
25 Rexburg property and he was going to make a million

1 A. Yes.

2 Q. Okay. Did you object to him doing anything
3 with that property?

4 A. No.

5 Q. The Round Valley property, did Alva own that at
6 the time of his death?

7 A. No.

8 Q. And what happened to the Round Valley property?

9 A. Well, John was involved again.

10 Q. Okay.

11 A. And he just -- they sold lots. But I don't
12 know, it just -- it seemed like the minute he was
13 involved -- and most of the lots were his.

14 Q. Were --

15 A. John's.

16 Q. John's.

17 A. For like, I don't know, some expenses or
18 something. I don't know. So we didn't get very many. We
19 only had to -- sold very few, a couple or so.

20 Q. Now, was the Round Valley property turned into
21 a subdivision?

22 A. Yes.

23 Q. Okay.

24 A. Yes, it was divided.

25 Q. Okay. And is it your understanding that John

1 place, that Middleton place that you have now, it was
2 approximately 80 acres at the time you were married?

3 A. Yes.

4 Q. And is it still 80 acres today?

5 A. No.

6 Q. How many acres is it today?

7 A. It's around 27.

8 Q. And what happened to the --

9 A. To that?

10 Q. -- other 53 acres?

11 A. Well, after -- we just didn't have any money
12 from any of the properties that John had dealings with.
13 And Alva had a loan at the bank, and they just said they
14 were going to come and foreclose on us and that they
15 were -- then they would take the property and sell it, and
16 if they got enough out of it to pay the debt, then, you
17 know, we'd be fine. But if they didn't, we'd still owe,
18 and we wouldn't have a roof over our heads.

19 And so my husband and I, we talked -- we
20 thought, well, we would just try selling some of it to pay
21 the debt off so we would at least have a roof over our
22 heads, you know. And so that's what happened to it, to
23 pay the debt.

24 Q. What was the debt -- the loan of the bank for?

25 A. Oh, it was for taking -- for a car we had

1 purchased. And it was for going back and forth to Texas
2 with horses and things like that.

3 Q. What was the amount of the loan at the bank?

4 A. Eighteen thousand.

5 Q. Was it for anything -- was it used for anything
6 other than a car purchase and the trips to Texas for the
7 horses?

8 A. Well, it probably -- no, I think that's what it
9 was mostly for. Yes, that's what it was for.

10 Q. Okay. Do you still own the Middleton home that
11 you had when you married Alva?

12 A. No.

13 Q. What happened to the Middleton home?

14 A. I signed it over to the children.

15 Q. To whose children?

16 A. To my children.

17 Q. Okay. And when did you do that?

18 A. Oh, shortly after we were married.

19 Q. And do those children own that home equally?
20 Do they still own it?

21 A. No.

22 Q. Okay. Did they sell it?

23 A. I don't know what they did with it.

24 Q. All right. Did you give it to them in equal
25 parts as equal owners?

1 A. Yes.

2 Q. And that was just to your three children,
3 correct?

4 A. Yes. Well, Round Valley, Alva gave his
5 children five acres -- he gave them the deed of five acres
6 each at Round Valley.

7 Q. Was that before or after you married him?

8 A. Before.

9 Q. At the time you gave your children the
10 Middleton home, did Alva give anything to his children of
11 equal value?

12 A. At that time?

13 Q. Correct.

14 A. No.

15 Q. Okay. Did you give them the Middleton home
16 because Alva had previously given his children part of
17 that Round Valley property?

18 A. No.

19 Q. Okay. Do you know how Alva became the owner of
20 the home place?

21 A. He purchased it I think from -- well, I'm not
22 sure. I don't know.

23 Q. You don't know if he purchased it, or inherited
24 it?

25 A. No. He purchased -- he said he purchased it.

1 I think it was from his mother-in-law. I'm not -- I'm not
2 sure. I don't know.

3 Q. Did Alva work on the farm?

4 A. He was -- he rented it out.

5 Q. Was he renting it out in -- what year were you
6 married, 1976?

7 A. Yes.

8 Q. Okay. When you were married in '76, was he
9 renting the farm out at that time?

10 A. Yes.

11 Q. Okay. At what price was he renting it out?

12 A. I don't know. I don't remember.

13 Q. Do you recall to whom he was renting it?

14 A. Pete Peterson.

15 Q. Do you recall when he stopped renting the farm
16 to Pete Peterson?

17 A. No.

18 Q. I understand that at some point Jack began
19 renting the farm?

20 A. Yes, and I can't remember when.

21 Q. Okay. Was there a renter between Pete Peterson
22 and Jack? Was there somebody that rented it --

23 A. No.

24 Q. So it went from Pete renting it to Jack renting
25 it?

1 Q. Okay. You know what I mean when I say a
2 premarital agreement? Or it's sometimes referred to as a
3 prenuptial agreement.

4 A. Yes, I don't remember.

5 Q. Okay. Did you -- do you recall having those
6 discussions with Alva, discussions regarding whether you
7 should enter into a prenuptial agreement?

8 A. No, I don't remember.

9 Q. As we sit here today, are you aware of a
10 prenuptial agreement between yourself and Alva?

11 A. I don't remember -- no.

12 Q. Did you ever have a power of attorney for Alva?

13 A. I don't remember.

14 Q. Prior to his death, did he execute -- or did he
15 grant you a power of attorney for anything?

16 A. No, I don't remember.

17 Q. Okay. Do you know whether he granted anybody a
18 power of attorney for anything?

19 A. I don't remember.

20 Q. Did you and Alva ever prepare any sort of
21 agreement where it discussed how your property would be
22 owned, like community property, or separate property?

23 A. Well, we -- yes, we had a will.

24 Q. Okay. Other than the will, did you have any
25 agreements to --

1 A. No.

2 Q. -- and you have to let me finish my question.

3 A. Oh, sorry.

4 Q. Other than the will, did you have any other
5 agreements discussing how the property would be owned
6 between the two of you?

7 A. No.

8 Q. Okay. Let's talk about that will. Tell me the
9 circumstances that led to you and Alva going to have this
10 will prepared.

11 A. Well, we just wanted to have a will.

12 Q. Okay. Do you recall when you went to have it
13 prepared?

14 A. Isn't the will dated?

15 Q. Yes.

16 A. Yeah, I don't remember.

17 Q. Okay. Let's look -- we actually used that in
18 a -- exhibit in the last deposition.

19 MR. TROUPIS: Yeah, it was No. 2.

20 MS. RAINEY: I just don't want to duplicate
21 exhibits if we don't have to.

22 MR. TROUPIS: Good idea.

23 Q. (BY MS. RAINEY) The court reporter is handing
24 you what was marked Exhibit No. 2 in the last deposition.
25 Do you recognize this document?

1 A. Yes.

2 Q. Okay. Right up until the time that he passed
3 away, was he able to write checks on your checking
4 account?

5 A. Well, no, not after he'd gone to the hospital,
6 no.

7 Q. Immediately prior to the time he had gone to
8 the hospital, could he write checks on the checking
9 account?

10 A. Yes.

11 Q. Okay. Did you trust him to write checks on the
12 checking account at that time?

13 A. Yes.

14 Q. Okay. Right before he went into the hospital,
15 was Alva able to drive?

16 A. Well, he -- yes, I think so.

17 Q. Okay.

18 A. It was --

19 Q. Did he drive himself during that time?

20 A. No.

21 Q. Okay.

22 A. Most of the time I did.

23 Q. Okay. Was there other people that he would
24 rely on to take him from place to place?

25 A. No.

1 Q. It was generally you?

2 A. Yes.

3 Q. Okay. Do you recall how long it had been that
4 he hadn't been driving himself?

5 A. No, I -- no.

6 Q. Okay. Do you recall when he stopped driving
7 himself and you sort of took over driving
8 responsibilities?

9 A. No.

10 Q. Prior to the time he went into the hospital,
11 did you have to help Alva take care of himself, bathe
12 himself, for example?

13 A. No.

14 Q. Could he feed himself?

15 A. Yes.

16 Q. Okay. How was his memory prior to the time he
17 went into the hospital?

18 A. Well, he could remember real well when he was
19 younger and things he did, but he would kind of forget,
20 you know, the present.

21 Q. Okay. Was he ever diagnosed with Alzheimer's?

22 A. No.

23 Q. Okay. Was he ever diagnosed with dementia?

24 A. I didn't even really ask the doctor about that.

25 Q. Okay. Did he take any medications to help his

1 of independent counsel. How do you know -- or do you know
2 that Alva did not see an attorney with regard to that
3 Quitclaim Deed?

4 A. I don't.

5 Q. You don't know?

6 A. (Nonverbal response.)

7 Q. So if Alva had seen an attorney, you would not
8 be aware of that?

9 A. No.

10 Q. Okay. Alva didn't say anything to you about
11 seeing an attorney?

12 A. No.

13 Q. And, in fact, Alva didn't say anything to you
14 about the fact that he was doing it --

15 A. No.

16 Q. -- in the first place?

17 A. No.

18 Q. Okay. What was your relationship like with
19 Jack at the time you -- during the time he lived in the
20 house with you and Alva right after you were married?

21 A. Fine.

22 Q. Okay. Did your relationship with Jack ever
23 change to where it wasn't fine, or was it always
24 relatively normal?

25 A. Normal.

1 Q. Okay. Did you have a difficult relationship
2 with any of Alva's children?

3 A. No.

4 Q. Did Alva have a difficult relationship with any
5 of your children?

6 A. What?

7 Q. Did Alva have a difficult relationship with any
8 of your children?

9 A. Oh, no. Huh-uh.

10 Q. Okay.

11 A. No.

12 Q. The Quitclaim Deed that we've been talking
13 about was executed on February 14th of 2006. Was Alva
14 living in the home with you at that time?

15 A. Yes.

16 Q. Was anybody else living in the house with the
17 two of you?

18 A. No.

19 Q. Was Alva working with Jack at that time? Did
20 they work together?

21 A. No.

22 Q. Okay. Did they have any more involvement with
23 each other during that time frame than they had in past
24 years?

25 A. No.

1 Q. Were you and Alva together handling the
2 family's finances in February of 2006?

3 A. Yes.

4 Q. Okay. Do you know whether Jack had control
5 over any aspect at all of Alva's life at that time?

6 A. No.

7 Q. Can you tell me what Alva's mental condition
8 was in February of 2006?

9 A. No.

10 Q. Why not?

11 A. Well, I -- he was -- I don't know quite how to
12 answer that. He would kind of not remember sometimes.

13 Q. What kind of things would he not remember? Did
14 he always --

15 A. Well, we --

16 Q. Oh.

17 A. We would go play pinochle and then he couldn't
18 remember quite -- the cards, you know, and things like
19 that.

20 Q. Okay. Did he always know who you were?

21 A. Yes.

22 Q. Okay.

23 A. Yes. He wasn't that bad, no.

24 Q. Okay. And he always knew who his children
25 were?

1 A. Yes.

2 Q. Okay.

3 A. Yes.

4 Q. How was he physically at that time?

5 A. Well, he was -- he was getting tired, you know.

6 Q. Right.

7 A. He was fine.

8 Q. I know it's difficult to put this -- that
9 specifically into a time frame, but do you recall whether
10 or not he was driving then in 2006?

11 A. Yes. I think -- yes.

12 Q. You think he was still driving?

13 A. Yes. But I know people were complaining about
14 that he was kind of all over the road.

15 Q. So he might not have been driving well?

16 A. Something like that.

17 Q. Okay. How did you find out about the Quitclaim
18 Deed?

19 A. When we went into probate and then Bill Gigray
20 found -- announced it -- found it.

21 Q. Okay. And were you surprised?

22 A. Shocked.

23 Q. Have you talked with any of your children about
24 the Quitclaim Deed since you found it?

25 A. Yes.

1 Q. Okay. And which of your children have you
2 discussed it with?

3 A. All.

4 Q. Okay. Have you discussed it with any of Alva's
5 children?

6 A. No.

7 Q. Why haven't you discussed it with Alva's
8 children?

9 A. Well, I don't know.

10 Q. Okay. Do you still keep in touch with Alva's
11 children?

12 A. Yes.

13 Q. When you and Alva did the Quitclaim Deed where
14 he granted property to himself and you --

15 A. Yes.

16 Q. -- did you see an attorney in conjunction with
17 that?

18 A. No.

19 Q. He just did that on his own?

20 A. Yes.

21 Q. Do you know who prepared it? Did he prepare
22 it?

23 A. We prepared it.

24 Q. You prepared it together?

25 A. Yes.

1 Q. In your opinion, do you believe that Jack
2 coerced Alva into executing that Quitclaim Deed?

3 A. I don't know.

4 Q. All right. Do you have any specific examples
5 of things that Jack had done in the past that would
6 indicate to you that he might coerce Alva into doing
7 something like that?

8 A. No.

9 Q. Would you be surprised if Jack coerced him?

10 A. Yes.

11 Q. One of the things that's been recommended at
12 some point in this lawsuit is that the property be
13 partitioned so that Jack has the land that he's been
14 farming and you have the home place and a few acres with
15 the outbuildings. Are you familiar with that proposal?

16 A. No.

17 Q. Has it ever been discussed with you that the
18 property be divided in that manner?

19 A. No.

20 MS. RAINEY: Okay. Would you mark this as
21 Exhibit 7, please.

22 (Deposition Exhibit No. 7 was
23 marked for identification.)

24 Q. (BY MS. RAINEY) Okay. I'm showing you what
25 has just been marked as Exhibit 7. Do you recognize this

1
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REPORTER'S CERTIFICATE

I, MARIA D. GLODOWSKI, CSR No. 725, Certified
Shorthand Reporter, certify;

That the foregoing proceedings were taken before
me at the time and place therein set forth, at which time
the witness was put under oath by me;

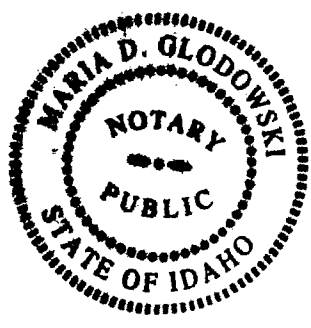
That the testimony and all objections made were
recorded stenographically by me and were thereafter
transcribed by me, or under my direction;

That the foregoing is a true and correct record
of all testimony given, to the best of my ability;

I further certify that I am not a relative or
employee of any attorney or party, nor am I financially
interested in the action.

IN WITNESS WHEREOF, I set my hand and seal this
10th day of May, 2010.

Maria D. Glodowski



MARIA D. GLODOWSKI, CSR, RPR
Notary Public
P.O. Box 2636
Boise, Idaho 83701-2636

My Commission expires August 21, 2015.

EXHIBIT B

Client:1570015.1

000109

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF CANYON

JACK L. GARRETT,)
)
 Plaintiff,) Case No. CV OC 09-8763-C
)
 vs.)
)
 THELMA V. GARRETT,)
)
 Defendant.)
)
 _____)

DEPOSITION OF JACK GARRETT

MAY 5, 2010

REPORTED BY:

MARIA D. GLODOWSKI, CSR No. 725, RPR

Notary Public

1 JACK GARRETT,
2 first duly sworn to tell the truth relating to said
3 cause, testified as follows:

4 (Deposition Exhibit Nos. 1, 2, 3, 4, and 5 were
5 marked for identification.)

6
7 EXAMINATION

8 BY MR. TROUPIS:

9 Q. Could you please state your name and your
10 address for the record.

11 A. Jack L. Garrett, at 10231 Purple Sage Road,
12 Middleton, 83644. Idaho, I guess. Yeah.

13 Q. Right. I think I figured that out. Okay.
14 Jack, have you ever had your deposition taken before?

15 A. No.

16 Q. Okay. I'm sure you've talked to your attorney
17 and she's explained to you what we're doing here today.
18 But just so that we have it on the record, I'd like to
19 just give you a few of the ground rules so that we're all
20 on the same page.

21 A. Okay.

22 Q. The court reporter has just given you the same
23 oath that you would be taking if you were to testify in
24 court. And today I'm going ask you some questions
25 pertaining to the lawsuit that we're involved in between

1 A. Yes.

2 Q. And how long have you known him?

3 A. Probably about 37 years.

4 Q. Do you have a good relationship with him?

5 A. I guess, yes.

6 Q. Have you ever done any business with him?

7 A. No, not to my recall.

8 Q. Okay. And Tom Longstreet, you've known him
9 about the same time?

10 A. I knew him probably 32 years.

11 Q. Okay. Have you ever done any business with
12 him?

13 A. Yes.

14 Q. Okay. What kind?

15 A. He bought some cows from me.

16 Q. Okay. And Cynthia Swartz, I guess you've never
17 known her since you were living in the same home for that
18 period of time?

19 A. And I don't believe I've done any business with
20 her.

21 Q. Okay. Now, when -- in 1976, do you remember
22 how many pieces of real estate that your father owned?

23 A. He had three ranches, basically.

24 Q. Okay. Could you tell me -- or describe them by
25 name.

1 A. The one was the Middleton place, which was
2 80 acres at that time.

3 Q. Okay.

4 A. One called the Willow Creek place. And it was,
5 I think, rented and deeded ground. It was 1500,
6 2,000 acres maybe. And then he had the -- what we call
7 Round Valley property.

8 Q. Okay.

9 A. And it was 80 or a hundred acres.

10 Q. Okay. And when Alva died, he had the -- he had
11 27 acres on the Middleton property; is that right?

12 A. Yes.

13 Q. All right. Now, I understand that -- it's my
14 understanding that your brother John had various business
15 dealings with your father over the years having to do with
16 these parcels of real estate, is that correct, or not?

17 A. Yeah.

18 Q. Okay. So could you tell me what happened first
19 to the Willow Creek property. That's that 1500 to
20 2,000-acre piece you just mentioned.

21 A. They traded it -- or my dad traded it for a
22 motel.

23 Q. Okay.

24 A. And I'm not sure of the exact details. He
25 put -- he got -- put up the property and got a share of

1 together with your dad would have been about what year?

2 A. I don't -- late -- I don't know.

3 Q. Okay. That's fine. It's been a long time.

4 A. Yeah.

5 Q. Okay. I may have these a little out of order.

6 Could you take a look at what I've marked Exhibit 3, which
7 is the promissory note? No. 3. There we go. And could
8 you identify this -- it appears to be a promissory note
9 signed by Alva and Thelma Garrett dated December 31 -- or,
10 no, dated March 21, 1990, payable to you; is that right?

11 A. Yes.

12 Q. And could you tell me a little bit about the
13 circumstances. How did this note get -- you know, what
14 was the purpose of this note?

15 A. He needed money to make a payment. And the
16 actual amount I gave him -- yeah, I'm not sure -- 8 to
17 10,000.

18 Q. Okay.

19 A. I believe it was around \$10,000. And the
20 breakdown of that would have been approximately 8,000 for
21 rent and then 2,000 --

22 Q. Two thousand loan?

23 A. Two thousand loan.

24 Q. Okay.

25 A. The rent was advanced on the -- on the rent.

1 That was the first year I started renting.

2 Q. Okay.

3 A. And that was to make the payment on the place
4 because he was behind.

5 Q. All right. So was this note done before the
6 53 acres was sold off?

7 A. Yes.

8 Q. So at this point in time there was 80 acres,
9 correct?

10 A. Correct.

11 Q. And so the \$8,000 rent was for 80 acres?

12 A. Yeah.

13 Q. So that's roughly a hundred dollars an acre?

14 A. Yeah. It's actually about 75 acres, 'cause you
15 got the house, yeah.

16 Q. Okay. And you were renting the -- so you were
17 doing the farming -- you were farming this 80 acres -- or
18 the 75 acres from 1990 -- or in 1990, right?

19 A. Correct.

20 Q. Did you continue to farm it from 1990 right up
21 until now?

22 A. No.

23 Q. Okay.

24 A. Not the 80.

25 Q. Okay. Well, the 80 was sold off at some

1 point --

2 A. Yeah.

3 Q. -- around then, '90, '91, something like that,
4 correct?

5 A. Yes.

6 Q. Once the 80 was sold off, did you continue to
7 farm the remaining tillable property?

8 A. Yes.

9 Q. All right. Which is 23 -- 20 --

10 A. Two or three acres.

11 Q. -- 2 or 3 acres. And have you done that
12 since -- I mean, continuously every year since 1990?

13 A. Yes.

14 Q. And going back to this promissory note. Was it
15 paid back?

16 A. No.

17 Q. Okay. I notice there's a note handwritten on
18 here that says 12/16/91, \$1758 paid, with a JG. Are those
19 your initials?

20 A. Yes.

21 Q. All right. So did you -- do you -- I know this
22 is way long ago, but do you remember receiving that back?

23 A. What that was -- yes, it came back to me.

24 Q. Okay.

25 A. That was a -- we raised sugar beets and I told

1 Q. (BY MR. TROUPIS) Did your father have any --
2 make any conversation -- or have any -- did your father
3 mention having any -- did he make any reference to this
4 document, or any other agreement that he had with Thelma?

5 A. Not to this, no.

6 Q. Okay. When your father in 2000 -- in 2000 --
7 or take a look -- I'm sorry. Take a look at Exhibit 5,
8 which is the Quitclaim Deed. Now -- and you've seen this
9 document before, right?

10 A. Yes.

11 Q. And is it signed by your father, Alva Garrett?

12 A. Looks like it.

13 Q. Was it signed on or about February 14, 2006?

14 A. To the best of my knowledge.

15 Q. And is this the Quitclaim Deed that John, your
16 brother, prepared?

17 A. I wasn't there.

18 Q. Okay. Do you know whether or not -- do you
19 know who prepared it?

20 A. I believe it was John.

21 Q. Okay. Would you recognize his printing?

22 A. No.

23 Q. Okay. When your father signed this -- were you
24 present when he signed this instrument?

25 A. No.

1 Q. No. Who was, if you know?

2 A. I wasn't there.

3 Q. Okay. When did you first learn that your
4 father had signed a Quitclaim Deed to you -- signed this
5 Quitclaim Deed to you?

6 A. Shortly after it was signed.

7 Q. Okay. So sometime in February of 2006 you
8 found out about it?

9 A. I believe it was longer than that, but I don't
10 recall the date.

11 Q. Sometime in 2006?

12 A. Yes.

13 Q. And did you find out -- who did you find it out
14 from?

15 A. First it was from John.

16 Q. Okay. Did you ever -- when did you -- were you
17 ever given the actual original Quitclaim Deed by your
18 brother John?

19 A. No.

20 Q. Did your father ever give you the Quitclaim
21 Deed?

22 A. No.

23 Q. So was it ever in your possession?

24 A. Kind of.

25 Q. Could you explain.

1 A. It was in this file.

2 Q. Okay.

3 A. And the file was at my brother's house.

4 Q. Okay.

5 A. And it had been at my house. And then it
6 was -- he had it.

7 Q. Okay. So it was in your brother's possession?

8 A. Yes.

9 Q. All right. You never asked your brother for it
10 while your father was living?

11 A. No.

12 Q. Okay. And my understanding is it was -- it
13 bears a recording date of March 5, 2008; is that right?
14 It's right down here.

15 A. March -- yes.

16 Q. And your father died two days earlier, March 3,
17 2008?

18 A. Correct.

19 Q. Okay. So it was recorded two days after your
20 father died?

21 A. Correct.

22 Q. Did you take it in for recording?

23 A. No.

24 Q. Do you know whether your brother John did?

25 A. Yes, I believe it was him.

1 Q. Well, that's normal. Okay. Is it fair to say
2 that when this Quitclaim Deed was signed, there was no
3 money changing hand between you and your father?

4 A. That's correct.

5 Q. Okay. You didn't make any payment to him to
6 get this deed, correct?

7 A. No.

8 Q. And the monies that are referred to on
9 Exhibit 4, the value of work that you did on the farm, did
10 you provide this work with the expectation that you would
11 get the farm?

12 A. Yes.

13 Q. Okay. So did you have an agreement with your
14 father that in exchange for doing this work you're going
15 to give me this farm?

16 A. Yes.

17 Q. Okay. Could you -- was that in writing?

18 A. No.

19 Q. Was it a verbal agreement with your dad?

20 A. Yes.

21 Q. Okay. And do you know when you entered into
22 that agreement?

23 A. Probably around 1990.

24 Q. Okay. Would you characterize that as a firm
25 agreement, or kind of a loose understanding that you had

1 between you and your dad, or something else?

2 A. I'd say it was a firm understanding.

3 Q. Okay. But he didn't set a specific price, I
4 want this much in exchange for this property? Did you
5 agree on a price?

6 A. No.

7 Q. Okay. When this deed was -- well, you didn't
8 have this deed prepared. Did you ever meet with your
9 father at an attorney's office to discuss the transfer of
10 the property to you?

11 A. No.

12 Q. In the answer to interrogatory number five you
13 said that there was an appointment made at the Deford Law
14 Office in Nampa?

15 A. That's correct.

16 Q. And was your father -- were the Defords
17 representing your father in any other matters?

18 A. No.

19 Q. Were they representing you in any matters?

20 A. No.

21 Q. John?

22 A. No.

23 Q. Did any of you have any prior relationship with
24 the Defords -- Deford Law Office?

25 A. No.

1 REPORTER'S CERTIFICATE

2 I, MARIA D. GLODOWSKI, CSR No. 725, Certified
3 Shorthand Reporter, certify;

4 That the foregoing proceedings were taken before
5 me at the time and place therein set forth, at which time
6 the witness was put under oath by me;

7 That the testimony and all objections made were
8 recorded stenographically by me and were thereafter
9 transcribed by me, or under my direction;

10 That the foregoing is a true and correct record
11 of all testimony given, to the best of my ability;

12 I further certify that I am not a relative or
13 employee of any attorney or party, nor am I financially
14 interested in the action.

15 IN WITNESS WHEREOF, I set my hand and seal this

16 10th day of May, 2010.

17 Maria D. Glodowski



18 MARIA D. GLODOWSKI, CSR, RPR

19 Notary Public

20 P.O. Box 2636

21 Boise, Idaho 83701-2636

22
23
24 My Commission expires August 21, 2015.

EXHIBIT C

000123

Client:1570015.1

Order No.

9011325

QUITCLAIM DEED

EXHIBIT 6
 T. Garrett
 Deponent
 5-5-10
 Date Rptr. mdg
 www.idahotitle.com

FOR VALUE RECEIVED

Alva L Garrett GRANTOR
 do hereby CONVEY, RELEASE, REMISE and FOREVER QUIT CLAIM
 unto Alva L Garrett and Thelma V Garrett GRANTEE

whose current mailing address is:
 the following described real property located in _____ County, State of Idaho
 more particularly described as follows, to wit:

The West Twenty-six and two-thirds (26 2/3) Acres of and located
 in Southwest Quarter of the South-East Quarter, (SWK of SEK) TWP
 Five North, Two West, Section 32 of B.M. Canyon County, Idaho.

Described more fully, as follows:--Commencing at Section Corner
 53 1/3 Rods East, 80 Rods North,
 53 1/3 Rods West, 80 Rods South,
 in above described land.

9019497

RECORDED

90 OCT 24 PM 12 13

REC J KERR

CANYON COUNTY RECORDER

BY *Alva L. Garrett*

Rerecorded to correct Section

REQUEST Thelma V. Garrett
 TYPE Deed
 200

BY *Thelma V. Garrett*
 REC J KERR
 CANYON COUNTY RECORDER

90 JUN 20 PM 11 18

RECORDED

9011325

together with their appurtenances.
 Dated:

Alva L. Garrett
 ALVA L. GARRETT

STATE OF IDAHO County of Canyon ss.

On this 18th day of June
 in the year of 1990 before me, the undersigned, a Notary
 Public in and for said State, personally appeared Alva L. Garrett

known or identified to me to be the person whose name is sub-
 scribed to the within instrument, and acknowledged to me that he
 executed the same.

Signature: *Kimberly A. Compton*

Name: Kimberly A. Compton

(Type or print)

Residing at: Caldwell

My commission expires: 1-27-93

STATE OF IDAHO, COUNTY OF _____
 I hereby Certify that this instrument was filed for record at the re-
 quest of

at _____ minutes past _____ o'clock m.
 this _____ day of _____
 19 _____ in my office, and duly recorded in Book
 of Deeds at page _____

Ex-Officio Recorder

By _____ Deputy

Fees \$
 Mail to

This form furnished courtesy of

STEWART TITLE OF IDAHO, Inc.

000124



Stewart Title of Idaho

EXHIBIT D

000125

Client:1570015.1

ATTORNEYS AT LAW
TELEPHONE 208-46 81
9TH AND DEARBORN STS. - BOX 840
CALDWELL, IDAHO 83406-0840

1 STATE OF IDAHO)
2 County of Canyon) ss.

3 On this 27th day of January, 1995, before me, the
4 undersigned, a Notary Public in and for said State, personally
5 appeared ALVA L. GARRETT, known to me to be the person whose name
6 is subscribed to the within instrument, and acknowledged to me
7 that he executed the same.

8 IN WITNESS WHEREOF, I have hereunto set my hand and
9 affixed my official seal the day and year in this certificate
10 first above written.

Elsie Aguilar
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires 1-28-2000

11
12
13 STATE OF IDAHO)
14 County of Canyon) ss.

15 On this 27th day of January, 1995, before me, the
16 undersigned, a Notary Public in and for said State, personally
17 appeared THELMA V. GARRETT, known to me to be the person whose
18 name is subscribed to the within instrument, and acknowledged to
19 me that she executed the same.

20 IN WITNESS WHEREOF, I have hereunto set my hand and
21 affixed my official seal the day and year in this certificate
22 first above written.

Elsie Aguilar
Notary Public for Idaho
Residing at Caldwell, Idaho
My Commission Expires 1-28-2000

23
24
Contract for Wills - 3

000128

Last Will and Testament

OF

ALVA L. GARRETT

I, ALVA L. GARRETT, of Middleton, Canyon County, Idaho, over the age of twenty-one years and being of sound and disposing mind and memory, and not acting under duress, menace, fraud, or the undue influence of any person whomsoever, do make, publish and declare this my Last Will and Testament in manner following, that is to say:

FIRST: I direct that my body be decently buried with proper regard to my station in life and the circumstances of my estate.

SECOND: I direct that my personal representative hereinafter named, as soon as she has sufficient funds in her hands for that purpose, pay my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate.

THIRD: I declare that I am now married and leave surviving me my wife, Thelma V. Garrett, and my children by a former marriage, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, and the children of my wife by a former marriage, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz.

FOURTH: I hereby give and bequeath all items of tangible personal property contained in a written statement

/s/ ALVA L. GARRETT

prepared or to be prepared by me to the parties therein designated, and said written statement and list is hereby referred to by reference in this my Last Will and Testament and by this reference made a part hereof.

FIFTH: After the payment of my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate, I hereby give, devise and bequeath all the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my wife, Thelma V. Garrett.

SIXTH: In the event my wife, Thelma V. Garrett, shall have predeceased me, or we shall die as a result of a common accident, I hereby give, devise and bequeath all of the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my children by a former marriage, namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, and to the children of my wife by a former marriage, namely, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, share and share alike.

If any of said children shall have predeceased me and leave issue, his or her share shall go to his or her issue, and if more than one issue, then share and share alike to his or her

/s/ ALVA L. GARRETT

issue, and if any of said children shall have predeceased me and leave no issue, then his or her share shall go to said surviving children, share and share alike.

SEVENTH: I hereby nominate and appoint my wife, Thelma V. Garrett, as personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my wife, Thelma V. Garrett, is unable or unwilling to serve, I nominate and appoint my son, Jack A. Garrett, as first alternate personal representative of this my Last Will and Testament, and direct that he be not required to furnish any bond as such first alternate personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my son, Jack A. Garrett, is unable or unwilling to serve, I nominate and appoint my daughter, Eleanor J. Martin, as second alternate personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such second alternate personal representative, or bond in any capacity in connection with the probate of my estate.

EIGHTH: I hereby revoke all former wills and testamentary dispositions by me at any time heretofore made.

/s/ ALVA L. GARRETT

IN WITNESS WHEREOF, I, the said ALVA L. GARRETT, have set my hand to this, my Last Will and Testament contained on four sheets of paper, including the sheet on which the attestation certificate is concluded, upon each of which I have written my name at Caldwell, Idaho, this 27th day of January, 1995.

/s/ ALVA L. GARRETT

The foregoing instrument, consisting of four sheets of paper, including the sheet on which this attestation certificate is concluded, each of which was signed by the testator, in our presence was, at the date thereof, the 27th day of January, 1995, by the said ALVA L. GARRETT, signed and published as and for his Last Will and Testament in the presence of each of us, and each of us, who at his request and in his presence and in the presence of each other have subscribed our names as witnesses thereto.

/s/ WM. F. GIGRAY, JR.
Residing at Caldwell, Idaho

/s/ ELSIE AGUILAR
Residing at Caldwell, Idaho

Last Will and Testament

OF

THELMA V. GARRETT

I, THELMA V. GARRETT, of Middleton, Canyon County, Idaho, over the age of twenty-one years and being of sound and disposing mind and memory, and not acting under duress, menace, fraud, or the undue influence of any person whomsoever, do make, publish and declare this my Last Will and Testament in manner following, that is to say:

FIRST: I direct that my body be decently buried with proper regard to my station in life and the circumstances of my estate.

SECOND: I direct that my personal representative hereinafter named, as soon as he has sufficient funds in his hands for that purpose, pay my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate.

THIRD: I declare that I am now married and leave surviving me my husband, Alva L. Garrett, and my children by a former marriage, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, and the children of my husband by a former marriage, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp.

FOURTH: I hereby give and bequeath all items of tangible personal property contained in a written statement

/s/ THELMA V. GARRETT

prepared or to be prepared by me to the parties therein designated, and said written statement and list is hereby referred to by reference in this my Last Will and Testament and by this reference made a part hereof.

FIFTH: After the payment of my funeral expenses and the expenses of my last illness, all of my just debts and obligations and all of the expenses of the administration of my estate, I hereby give, devise and bequeath all the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my husband, Alva L. Garrett.

SIXTH: In the event my husband, Alva L. Garrett, shall have predeceased me, or we shall die as a result of a common accident, I hereby give, devise and bequeath all of the rest, residue and remainder of my property of every kind and nature, real, personal and mixed, wheresoever the same may be situated, owned by me at the time of my death, to my children by a former marriage, namely, Garret J. Longstreet, Thomas K. Longstreet and Cynthia A. Swartz, and to the children of my husband by a former marriage, namely, Eleanor J. Martin, John A. Garrett, Jack L. Garrett and Marilyn E. Clapp, share and share alike.

If any of said children shall have predeceased me and leave issue, his or her share shall go to his or her issue, and if more than one issue, then share and share alike to his or her

/s/ THELMA V. GARRETT

issue, and if any of said children shall have predeceased me and leave no issue, then his or her share shall go to said surviving children, share and share alike.

SEVENTH: I hereby nominate and appoint my husband, Alva L. Garrett, as personal representative of this my Last Will and Testament, and direct that he be not required to furnish any bond as such personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my husband, Alva L. Garrett, is unable or unwilling to serve, I nominate and appoint my son, Thomas K. Longstreet, as first alternate personal representative of this my Last Will and Testament, and direct that he be not required to furnish any bond as such first alternate personal representative, or bond in any capacity in connection with the probate of my estate.

In the event my son, Thomas K. Longstreet, is unable or unwilling to serve, I nominate and appoint my daughter, Cynthia A. Swartz, as second alternate personal representative of this my Last Will and Testament, and direct that she be not required to furnish any bond as such second alternate personal representative, or bond in any capacity in connection with the probate of my estate.

EIGHTH: I hereby revoke all former wills and testamentary dispositions by me at any time heretofore made.

/s/ THELMA V. GARRETT

IN WITNESS WHEREOF, I, the said THELMA V. GARRETT, have set my hand to this, my Last Will and Testament contained on four sheets of paper, including the sheet on which the attestation certificate is concluded, upon each of which I have written my name at Caldwell, Idaho, this 27th day of January, 1995.

/s/ THELMA V. GARRETT

The foregoing instrument, consisting of four sheets of paper, including the sheet on which this attestation certificate is concluded, each of which was signed by the testatrix, in our presence was, at the date thereof, the 27th day of January, 1995, by the said THELMA V. GARRETT, signed and published as and for her Last Will and Testament in the presence of each of us, and each of us, who at her request and in her presence and in the presence of each other have subscribed our names as witnesses thereto.

/s/ WM. F. GIGRAY, JR.
Residing at Caldwell, Idaho

/s/ ELSIE AGUILAR
Residing at Caldwell, Idaho

EXHIBIT E

000139

Client:1570015.1

Blue

INSTRUMENT NO. 2008012250

QUITCLAIM DEED

For Value Received Alva L. Garrett, A Married man,
his interest on this date

do hereby convey, release, remise and forever quit claim unto
Jack L. Garrett

whose address is: 10231 Purple Sage Rd Middleton, ID

Hereinafter called the Grantee, the following described premises situated in Canyon County, Idaho,
to-wit:

The West twenty-six and two-thirds (26 2/3) Acres
located in the Southwest Quarter of the Southeast
Quarter (SW 1/4 of the SE 1/4), township Five North, Range
Two West, Section thirty two (32), Boise Meridian,
Canyon County, Idaho

Described more fully: Commencing at the SW corner
of the SE 1/4, sec 32, T 5N, R 2W, Canyon County, Idaho
53 1/3 Rods East, 80 Rods North, 53 1/3 Rods West,
80 Rods South.

together with their appurtenances.

Dated: Feb 14 - 2006

Alva L. Garrett

REQUEST TYPE: Quit Fee \$6.00

WILLIAM H. HIRST
CANYON COUNTY RECORDER
BY John Garrett

2008 MAR 5 PM 1 16

RECORDED

2008012250

EXHIBIT 5
Deponent: J. Garrett
Date: 5-5-10 Rptr. ndg
WWW.DEPOBOOK.COM

JLG0004

ACKNOWLEDGMENT

STATE OF IDAHO

COUNTY OF Canyon

On this 14th day of February in the year of 2006, before me, the undersigned, a Notary Public in and for said State personally appeared Alva L. Garrett

known to me to be the person(s) whose name(s) are subscribed to the within instrument, and acknowledged to me that they he executed the same as their free act and deed for the uses, purposes and consideration therein expressed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the said date.

(NOTARIAL SEAL)

Andrea Bybee
Notary Public, residing at Fruitland, Id.
My commission expires: 6-5-08

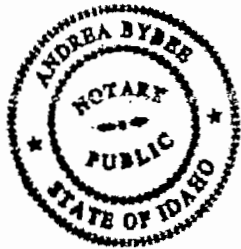


EXHIBIT F

000142

Client:1570015.1

Christ T. Troupis, ISB # 4549
TROUPIS LAW OFFICE
1299 E. Iron Eagle, Ste 130
PO Box 2408
Eagle, Idaho 83616
Telephone: 208/938-5584
Facsimile: 208/938-5482

Attorney for Defendant

IN THE DISTRICT COURT OF THE THIRD JUDICIAL DISTRICT
OF THE STATE OF IDAHO, IN AND FOR CANYON COUNTY

JACK L. GARRETT,

Plaintiff,

vs.

THELMA V. GARRETT,
An individual,

Defendant.

Case No: CV OC 09-8763-C

**ANSWERS TO PLAINTIFF'S
FIRST SET OF INTERROGA-
TORIES AND REQUESTS
FOR PRODUCTION TO
DEFENDANT**

COMES NOW, Defendant THELMA V. GARRETT, by and through her counsel of record, Christ T. Troupis, and answers and responds to Plaintiff's First Set of Interrogatories and Requests for Production to Defendant as follows:

INTERROGATORIES

INTERROGATORY NO. 1: Identify by name, address and telephone number each and every person or entity who possesses or claims to possess knowledge of any facts relating to the case-in-chief or defenses in this lawsuit (hereinafter "Litigation"), including, but not limited to, issues of liability and/or damages and state with particularity the facts about which they have knowledge that relate to this Litigation in any way.

Answers to Plaintiff's First Set of
Interrogatories & Requests for Production
to Defendant

INTERROGATORY NO. 5: Are you or your attorney or other agents aware of any written, oral or nonverbal statement or assertion, signed or unsigned, concerning the events giving rise to this action or its subject matter that has been made by any person who has or might have personal knowledge of the facts of this Litigation? If so, please separately state the following information for each such statement: (a) the date, time of day and place of the making of the statement; (b) the subject matter and content of the statement; and (c) the identity of the person or persons, if any, who wrote, recorded and/or transcribed the statement.

ANSWER TO INTERROGATORY NO. 5: None, other than those attached, although if further documents are discovered, they will be provided by supplement to these discovery requests and responses. See also Answer to Interrogatory No. 1.

INTERROGATORY NO. 6: If plaintiff has requested you to produce a "document" or "record" in one or more of the requests for production set forth below and you have not produced that "document" or "record" to plaintiff, please identify each and every such "document" and "record" that you have not produced.

ANSWER TO INTERROGATORY NO. 6: See documents produced herewith in response to Requests for Production Nos. 1-14. If other documents are found they will be provided by supplemental answer or response.

INTERROGATORY NO. 7: Please state each and every fact supporting your first affirmative defense that the interest of plaintiff was obtained by fraud, duress, undue influence or other inequitable means.

ANSWER TO INTERROGATORY NO. 7: At the present time, discovery is ongoing and this Defendant is unaware of all of the facts relating to the manner in which the

Plaintiff obtained his purported interest in the subject real property. However, the following facts are known to this Defendant. The grantor of the purported Quitclaim Deed, Alva Garrett, was of limited and diminished capacity at the time the alleged Quitclaim Deed was obtained. The deed purported to convey community property without the knowledge or consent of Thelma Garrett in violation of I.C. §32-912. Neither Alva Garrett nor Jack Garrett discussed the purported conveyance with Thelma Garrett at any time. The facts pertaining to the execution of the quitclaim deed were concealed from Thelma Garrett by Jack Garrett until after Alva Garrett died. There was no purported consideration for the conveyance.

INTERROGATORY NO. 8: Please state each and every fact supporting your second affirmative defense that the interest alleged to have been obtained by plaintiff in this matter was obtained in violation of a Contract for Wills.

ANSWER TO INTERROGATORY NO. 8: There is implied in every contract a covenant of good faith and fair dealing. It was the expressed intention of Alva and Thelma Garrett that their community property would pass intact to the surviving spouse and thereafter under the will of that spouse, as set out in their Contract for Wills and the Wills executed in conjunction with that Contract. Moreover, it was the intention of the parties that by conveying the property into their joint names, that it would become their community property, subject to disposition only upon their joint participation and consent.

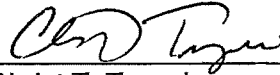
INTERROGATORY NO. 9: Please state each and every fact supporting your third affirmative defense that it would be inequitable, under the circumstances, to partition the property on terms prayed for by plaintiff.

ANSWER TO INTERROGATORY NO. 9: The proposed partition will confirm the

a personal computer, Blackberry, mobile phone, or similar device that would retain such records; therefore, no such records are known to exist.

Dated: February 26, 2010.

TROUPIS LAW OFFICE



Christ T. Troupis,
Attorney for Defendant
Thelma V. Garrett

VERIFICATION

STATE OF IDAHO)
 : **ss.**
County of Ada)

THELMA V. GARRETT, being first duly sworn upon oath, deposes and says as follows:

That she is the Defendant in the above-entitled action; that she has read and signed the foregoing Answers to Plaintiff's First Set of Interrogatories and Requests for Production to Defendant, knows the contents thereof; and that the statements contained therein are true as she verily believes.

Thelma V. Garrett
Thelma V. Garrett