

11-22-2013

Cummings v. Stephens Augmentation Record Dckt. 40793

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In the Supreme Court of the State of Idaho

STEVEN B. CUMMINGS,)
)
Plaintiff-Appellant-Cross Respondent,)
v.)
ROGER L. STEPHENS, an individual residing)
in Providence, Utah,)
Defendant-Respondent,)
and)
NORTHERN TITLE COMPANY OF IDAHO,)
INC., an Idaho corporation,)
Defendant-Respondent-Cross)
Appellant,)
and)
JOHN DOES I-X,)
Defendants.)

ORDER GRANTING MOTION TO
AUGMENT THE RECORD
Supreme Court Docket No. 40793-2013
Bear Lake County No. 2009-183

LAW CLERK

A MOTION TO AUGMENT THE RECORD was filed by counsel for Respondent Roger Stephens on November 18, 2013. Therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent Roger Stephens' MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

1. Minute Entry & Order, file-stamped March 17, 2011.

DATED this 22nd day of November, 2013.

For the Supreme Court

AUGMENTATION RECORD

Stephen Kenyon
Stephen W. Kenyon, Clerk

cc: Counsel of Record

In the Supreme Court of the State of Idaho

STEVEN B. CUMMINGS,)
)
Plaintiff-Appellant-Cross Respondent,)
v.)
)
ROGER L. STEPHENS, an individual residing)
in Providence, Utah,)
)
Defendant-Respondent,)
)
and)
)
NORTHERN TITLE COMPANY OF IDAHO,)
INC., an Idaho corporation,)
)
Defendant-Respondent-Cross)
Appellant,)
)
and)
)
JOHN DOES I-X,)
)
)
Defendants.

ORDER GRANTING MOTION TO
AUGMENT THE RECORD

Supreme Court Docket No. 40793-2013
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IT HEREBY IS ORDERED that Respondent Roger Stephens' MOTION TO AUGMENT THE RECORD be, and hereby is, GRANTED and the augmentation record shall include the document listed below, file stamped copies of which accompanied this Motion:

- 1: Minute Entry & Order, file-stamped March 17, 2011.

DATED this 22nd day of November, 2013.

For the Supreme Court


Stephen W. Kenyon, Clerk

cc: Counsel of Record

DISTRICT COURT
 SIXTH JUDICIAL COURT
 BEAR LAKE COUNTY IDAHO
 March 17, 2011 12:59pm
 DATE TIME
 CLERK

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

STEVEN CUMMINGS, an individual residing in)
 Montana,)
)
 Plaintiff,)
)
 vs.)
)
 ROGER L. STEPHENS, an individual residing in)
 Providence, Utah, JOHN DOES 1-X,)
)
 Defendants.)

CASE NO. CV-2009-000183
 MINUTE ENTRY
 &
 ORDER

On March 17, 2011, counsel for the above-named Plaintiff, Nathan M. Olsen, and Brad Bearson, counsel for the Defendant, appeared for further proceedings. Stephanie Morse acted as court reporter.

This matter was set for Plaintiffs' Motion to Reconsider, Motion to Disallow Defendant's Attorney Fees and Costs, Motion to Object to Defendant's Proposed Judgment, and the Defendant's Motion to Strike Affidavit of Counsel and Motion for Order Awarding Fees and Costs.

The first issue addressed was the Defendant's Motion to Strike Affidavit of Counsel. Mr. Olsen and Mr. Bearson provided argument to the Court concerning their respective positions. After hearing argument, the motion requesting the affidavit be stricken because it was filed untimely was DENIED because it was filed more than fourteen days before hearing. Upon further argument, the Court GRANTED the Motion to Strike only as it relates to Exhibit A and B which is attached to Exhibit 1, Dr. Curtis Baum's Affidavit. At this time Exhibit 1 (Dr. Curtis Baum's

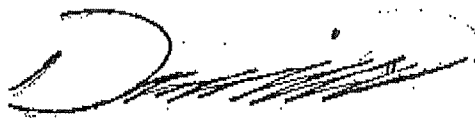
Affidavit) shall remain as an attachment to the Affidavit of Counsel. SO ORDERED.

The Court heard argument regarding the Plaintiff's Motions to Reconsider. Mr. Olsen and Mr. Bearson provided argument to the Court concerning their respective positions. Mr. Bearson submitted a copy of a plat map attached to Lori Thornock's affidavit and Exhibit 17 from Mr. Cumming's deposition for the Court's consideration. Based upon the argument and the information before the Court;

The Plaintiffs' Motion to Reconsider is GRANTED. The Affidavit of Counsel, and particularly Exhibit 1 of that affidavit, creates a genuine dispute of material fact regarding Defendant's knowledge as to what property was intended to be sold. The Court informed counsel that the affidavit of Dr. Baum is not admissible at trial. Plaintiff's counsel stated they would find Dr. Baum and have him testify at trial. This matter shall be reset for court trial and the parties are to submit, within two weeks, unavailable trial dates for the rest of this calendar year.

SO ORDERED.

DATED this 17th day of March, 2011.



DAVID C. NYE
Sixth District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 22nd day of March, 2011, I mailed/served a true copy of the foregoing document on the attorney(s) / person(s) listed below by mail with correct postage thereon or causing the same to be hand delivered.

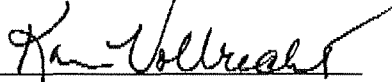
ATTORNEY(S) / PERSON(S)

Nathan M. Olsen U.S. Mail
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Brad Bearnson U.S. Mail
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Logan, UT 84321

KERRY HADDOCK,
Clerk of the Court

By 
Deputy Clerk