

5-20-2014

# Idaho Property Management Services v. Macdonald Appellant's Brief Dckt. 41733

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IN THE SUPREME COURT OF THE STATE OF IDAHO

Idaho Property Management Services,  
Inc. d/b/a The Rental Connection

Plaintiff/Respondent

v.

Don Macdonald

Defendant/Appellant

Supreme Court

Case No. 41733-2013

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Appellant's Brief

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Appeal from the District Court of the First Judicial District in and for Kootenai County

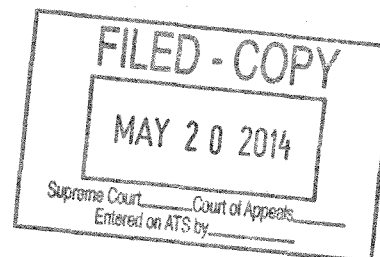
Honorable Judge Benjamin Simpson, District Judge presiding. Case CV2012-7482

Don Macdonald  
8485 W. Sunset Road, Apt. #208  
Las Vegas, Nevada 89113-2249

Pro se Appellant

Charles B. Lempesis  
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Attorney for Respondent



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## STATEMENT OF CASE

**I. STATEMENT OF CASE ON APPEAL:** This matter involves a dispute between the Plaintiff/Respondent, IDAHO PROPERTY MANAGEMENT d/b/a The Rental Connection (hereinafter referred to as “ I. P. Mgt.”) and Defendant/Appellant Don Macdonald (hereinafter referred to as “Macdonald”) relating to a mobile home located in a mobile home park managed by I. P. Mgt.

Macdonald loaned money to the owners of the mobile home, Christopher J. Pattison and Rebekah A. Pattison (hereinafter referred to collectively as the Pattisons and acquired a lien on the title to the mobile home as security for the loan. The Pattisons are not parties to this action and the associated CV12-7482 Kootenai County lawsuit.

The Pattisons abandoned their mobile home in the park on November 2011 and defaulted on their “Mobile Space Rental Agreement” dated August 18, 2010, R. Pages 21 and 22. The agreement was exclusively between the Pattisons and I. P. Mgt.

As listed as Paragraph IV in I. P. Mgt’s, Complaint For Monies Due And Removal or n The Alternative For Order For Foreclosure of Statutory Lien, R Pages 16 to 27, I. P. Mgt. terminated the Mobile Space Rental Agreement, R. Pages 21 and 22

### IV

Plaintiff terminated the Mobile Space Rental Agreement and requested that the home be removed from Dorchester Park. On or about November 9, 2011, the contract purchaser of Defendant's mobile home abandoned the 1969 Pathfinder HS TL.

Thereafter, I. P. Mgt. made demand upon Macdonald for the removal of the mobile home and for the payment of claimed rents. Macdonald refused the demand and I. P. Mgt. filed the action with the District Court, R. Pages 16 thru 27 and subsequently moved for Summary Judgment, R. Pages 60 thru 93.

In response to the Summary Judgment Motion, Macdonald submitted what he considered to be a sworn affidavit in opposition to I. P. Mgt.'s motion, R. Pages 172 thru 215.

While not specifically entitled "Affidavit," the sworn document, entitled "Defendant's Opposition for Plaintiff's Motion for Summary Judgment" Sworn Statement" was a document to which Macdonald was duly sworn prior to signing.

Defendant's Opposition For Plaintiff's Motion For Summary Judgment, dated July 9, 2013  
R. Pages 172 thru 215.

|   |   |   |
|---|---|---|
| <p>Plaintiff</p> <p>vs.</p> <p>Don Macdonald<br/>and if married, Jane Doe Macdonald<br/>Defendants</p> <hr/> <p>STATE OF IDAHO</p> <p>) ss</p> <p>COUNTY OF KOOTENAI</p> <p>Don Macdonald, being duly sworn deposes and says I am the Pro Se attorney in this<br/>matter.</p> | <p>Defendant's Opposition for Plaintiff's<br/>Motion for summary Judgment</p> | <p>The word –<br/>“Affidavit”<br/>was omitted</p> |
|---|---|---|

At the summary judgment hearing, the Court rejected the Sworn Statement" as not being in the proper affidavit form and rejected it and ruled in favor of I. P. Mgt.

A subsequent Motion for Reconsideration filed by Macdonald relating to the Sworn Statement" was denied by the Court, R. Page 332.

After granting I. P. Mgt.'s Motion for Summary Judgment, R. Pages 60 thru 63, the Court thereafter entered a Final Judgment, R. Pages 367 thru 369, awarding I. P. Mgt. \$10,349.26 in "monthly rent and other costs incurred from November 25, 2012 to July 31 2013" and \$11,657.95 "for attorneys" for a total judgment amount of \$22,007.21.

Prior to the entry of the Judgment, Macdonald has contested the amount of the award sought by I. P. Mgt. from Macdonald's Defendant's Answer on May 3, 2013, R. Pages 45 to 53, all the way thru to the November 26, 2013 Hearing, Tr. Pages 24 to 44. Macdonald has continually via multiple documents and hearings denied that he is the mobile home owner. In all efforts Macdonald has failed to convince the Court that he was never the mobile home owner

For example - In the Motion To Reconsider, Oral Proceedings, September 10, 2013. Reporter's Transcript (Tr. Pages 16 to 23)

Reporter's Transcript, September 10, 2013 (Tr. P. 17, L 14 thru P. 18, L 5)  
MR. MACDONALD: Okay. With regards to the lack of the word "affidavit" I would like to refer you to the Bates versus Capital State Bank case of 1910, which I noted in my September 3rd reply as Item 2. It describes the purpose of the pleading as, and I quote, its the value of the sufficiency of the pleading must be determined on the facts pleaded rather than upon any name given to the pleading or the cause of action and, in addition, Idaho Rule 1(a), titled Scope of Rules, allows that, and again I quote, rules should be liberally construed to secure the just, speedy, and inexpensive determination of every action and proceeding. Your Honor, the fact that I did not have the [Inserted 5/12/2014— *July 9, 2013, DEFENDANT'S OPPOSITION FOR PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT, R. Pages 172 thru 215*) properly labeled is meaningless. In your July 31st order it looks to me the summary judgment rules have been too strictly enforced in contradiction to the case and the rules I have just referenced.  
THE COURT (Judge Simpson): You might have to take that up with the Supreme Court.

(Underlined to add emphasis)



In addition

Idaho Rules of Civil Procedure Rule 1(a). Scope of Rules.

These rules govern the procedure and apply uniformly in the district courts and the magistrate's divisions of the district courts in the state of Idaho in all actions, proceedings and appeals of a civil nature whether cognizable as cases at law or in equity, including probate proceedings and proceedings in which a judge pro tempore is appointed pursuant to Idaho Court Administrative Rule 4; except that proceedings in the small claims department are governed by these rules only as provided by Rule 81. All references in these rules to the court or district court shall include the magistrate's division, and all references to judges or clerks shall include magistrates and their clerks and a judge pro tempore appointed pursuant to Idaho Court Administrative Rule 4, except as referred to in Rules 81, 82 and 83. These rules shall be liberally construed to secure the just, speedy and inexpensive determination of every action and proceeding.

(Underlined to add emphasis)

Macdonald believes that the Court erred by not liberally construing Rule 1(a) of the Idaho Rules of Civil Procedure.

II **COURSE OF PROCEEDINGS:** The original complaint in this matter was first filed by I. P. Mgt. on October 11, 2012. R. Pages 16 thru 27. Macdonald filed an Answer to the Complaint on May 3, 2013. Pages 45 thru 53.

On July 1, 2013, I. P. Mgt. moved for Summary Judgment, Pages 60 thru 63. In response to the motion, Macdonald filed his Sworn Statement". R. Pages. 172 thru 217.

However, at the hearing on I. P. Mgt.'s motion, the Court rejected the Sworn Statement as not being a proper affidavit and being mere argument. T. Page 8, L. 21 - Pages 9, L. 12 and further rejected Macdonald's request to modify the Sworn Statement to comply with the Court's view of what constitutes a proper form of affidavit. T. Page 11, L. 18 - Page 12, L. 4.

The Court then took the Motion under advisement. T. Page 12, L. 6.

On July 31, 2013, the Court issued an Amended Order Granting Plaintiff's Motion for Summary Judgment. R. Pages 271 thru 275 (the "Order."). In the Order the Court held that Macdonald was the "legal owner" of the mobile home. R. Page 271.

The Court further held that Macdonald failed to submit an affidavit in opposition to I. P. Mgt.'s motion setting forth "specific facts showing that there is a genuine issue of material fact." R. Page 274. Based upon this finding, the Court granted I. P. Mgt.'s motion. R. Page 274.

On August 8, 2013 Macdonald moved for reconsideration of the Court's summary judgment ruling. R. Pages 276 thru 277. Macdonald's motion was supported by his Memorandum in Support of Motion for Reconsideration R. Pages 278 thru 298, and by his Reply to Plaintiff's August 16, 2013 Opposition to Defendants' Motion for Reconsideration. R. Pages 319 thru 331.

Following a hearing on Macdonald's motion, the motion was denied by the Court on September 26, 2013. R. Pages 332 thru 333.

In anticipation of the entry a judgment based upon I. P. Mgt.'s prior claims to damages, Macdonald filed a "Demand for Advance Notice of Proposed Judgment and Preliminary Objection" on October 1, 2013. R. Pages 334 thru 337. I. P. Mgt. thereafter on October 15, 2013 filed the "Affidavit of Ellen Booker" in which Ms. Booker claimed that I. P. Mgt.'s damages were \$9,764.17 in rental damages and \$585.09 in taxes for a total amount of \$10,349.26. R. Pages 341 thru 345.

Based upon the filing of the Affidavit of Ellen Booker and the attendand proposed judgment, on October 17, 2013 Macdonald filed his "Objection to Proposed Judgment. R. Pages 351 thru 355.

In this Objection, Macdonald argued that he was not the owner of the mobile home, that any judgment award for rents was strictly limited in accordance with I.C. 55-2009-A Notice of Lienholder -- Limit on Back Rent -- Abandonment and that only two (2) months of rent and that the execution on any judgment award was limited to foreclosing Macdonald's security interest in the mobile home and was not a personal judgment. R. Pages 351 thru 353.

The Court again rejected Macdonald's argument and a Final Judgment R. Pages 367 thru 369 was entered against Macdonald on December 2, 2013 awarding I. P. Mgt. the full amount of the claimed rental and tax damages in the amount of \$10,349.26 and \$11,657.95 "for attorneys" for a total amount of \$22,007.21.

The judgment was not limited to foreclosing Macdonald's security interest in the mobile home.

### **III. CONCISE STATEMENT OF FACTS ON APPEAL:**

1. I. P. Mgt. admits in the Verified Complaint that Macdonald was a mere lien holder in the mobile home. R. Page 17 (Allegation No. V - "MACDONALD, the lienholder") and has never submitted evidence that Macdonald was somehow the mobile home owner.

V

Pursuant to Idaho Code § 55-2001, et seq., Plaintiff obtained an Authorization to Conduct a Lien Sale from the Idaho Transportation Department in accordance with Idaho Code and gave Defendant MACDONALD, the lienholder, notice of the same. A copy of said Authorization to Conduct Lien Sale is attached hereto as Exhibit "8",  
(Underlined to add emphasis)

2. Macdonald's Opposition for Plaintiff's Motion for summary Judgment" Sworn Statement" shows that Macdonald was "duly sworn" and that the "deposes and says" that he has personal knowledge of the statements set forth in Sworn Statement", R. Page 172.

2. The (“Sworn Statement”) was signed by Don Macdonald, R. Page 178.
  
4. The (“Sworn Statement”) was identified as “the foregoing Affidavit” that “was SWORN TO and SUBSCRIBED before” Bonnie Mori, a notary public for the State of Idaho, R. Page 179.  
All in accordance with I. C. 51-106 Title 51, Notaries Public and Commissioners of Deeds Chapter 1 Idaho Notary Public Act
  
5. In the Sworn Statement Macdonald states that he does not own the mobile home and has no right to remove the mobile home from the park, R. Page 174 which the Pattisons owned.

ISSUES PRESENTED ON APPEAL:

Pursuant to Idaho Appellate Rule. 35(b)(4), Macdonald states that the following issues are presented on appeal are as follows:

**I. THE DISTRICT COURT ERRED IN ITS GRANTING . I.P. Mgt.’s MOTION FOR SUMMARY JUDGMENT AND IN DENYING MACDONALD’S MOTION FOR RECONSIDERATION.**

**II. THE DISTRICT COURT ERRED IN ENTERING JUDGMENT AGAINST THE DEFENDANT IN THE AMOUNT OF \$10,349.26 FOR CLAIMED RENT AND OTHER COSTS INCURRED FROM NOVEMBER 25, 2011 THROUGH JULY 31, 2013.**

**III. THE COURT ERRED IN AWARDING THE PLAINTIFF THE SUM OF \$11,657.95 IN ATTORNEYS’ FEES AND COSTS.**

## ATTORNEYS FEES ON APPEAL

Macdonald is not seeking attorney's fees because as appearing pro se but is seeking an award of costs on appeal as a matter of right pursuant to Idaho Appellate Rule 40 -Taxation of Costs.

### APPEAL ARGUMENT

#### **I. STANDARD OF REVIEW:**

In the Nield V. Pocatello Health Services, Inc. citation The summary judgment in this case was premised on the district court's determination that Nield had submitted no admissible evidence in opposition to Pocatello Health Services, Inc.'s summary judgment motion.

Thus, we are presented with an evidentiary issue. In this regard, we recently stated: The admissibility of evidence contained in affidavits and depositions in support of or in opposition to a motion for summary judgment is a threshold matter to be addressed by the court before applying the liberal construction and reasonable inferences rule to determine whether the evidence creates a genuine issue of material fact for trial.

This Court applies an abuse of discretion standard when reviewing a trial court's determination of the admissibility of testimony offered in connection with a motion for summary judgment. A trial court does not abuse its discretion if it –

- (1) Correctly perceives the issue as discretionary,
- (2) Acts within the bounds of discretion and applies the correct legal standards.
- (3) Reaches the decision through an exercise of reason. Nield V. Pocatello Health Services, Inc., 38823-2011 (Idaho Supreme Court, February 14, 2014), quoting, Gerdon v. Rydalch, Vol. 153 Idaho Pg. 237, 241, 280 P.3d 740, 744 (2012)

II. APPEAL ARGUMENT SECTION:

**1. THE DISTRICT COURT ERRED IN ITS GRANTING I. P. Mgt.'s MOTION FOR SUMMARY JUDGMENT AND IN DENYING MACDONALD'S MOTION FOR RECONSIDERATION.**

In this matter the appearance of the Defendant's Opposition For Plaintiff's Motion For Summary Judgment, dated July 9, 2013, R. Pages 172 thru 215 in form was rejected by the court.

It is the position the Judge erred holding that Macdonald did not file a proper affidavit.

Macdonald's, July 9, 2013, Defendant's Opposition for Plaintiff's Motion for Summary Judgment, R. Pages 172 thru 215 listed nine (9) Factual Discrepancies (genuine issues and specific facts) on pages 2 thru 5 all supported with 7 exhibits

Exhibit List

|   |  |
|---|--|
| A | 1/20/1992 Real Property Management Agreement. Excluding "A copy of the rules is attached"            |
| B | 8/10/2010 Mobile Space Rental Agreement  |
| C | 3/27/2012 Authorization to Conduct a Lien Sale along with Nancy Wendell instruction letter           |
| D | Affidavit of Ned Thomsen's 7/1/2013  |
| E | Affidavit of Charles Lempesis 7/1/2013   |
| F | 9/6/2011 Thirty Day Notice to Vacate Premise   |
| G | 7/4/2013 Defendant's request to Plaintiff to respond to 5/31/2013 Request for Production of Document |

I. P. Mgt. has failed to submit admissible evidence that Macdonald is the legal owner of the subject mobile home and the inclusion of any claim in the judgment that Macdonald is the legal owner of the subject mobile home would be in error. While the Amended Order Granting Plaintiff's Motion for Summary Judgment. R. Pages 271 thru 275 that was entered in the above captioned matter on July 31, 2013. It states that "Don Macdonald, was listed as the legal owner" of the subject mobile home, the references to the record, e.g. Verified Complaint, P.2; July 18, 2013 and Affidavit of Charles B. Lempesis re; Don Harris, R. Pages 233 thru 235 does not

establish that fact with any admissible evidence.

Macdonald has raised unresolved material questions of fact that precluded the court for entering summary judgment.

I.R.C.P. 56(e) . . . there is a genuine issue for trial

As listed in Macdonald's Opposition for Plaintiff's Motion for summary Judgment", R. Pages 172 thru 215 there are nine (9) Factual Discrepancies listed.

The Idaho Supreme Court ruled in the Caddie Bates, Appellant, V. Capital State Bank & M. P. Meholin, Vol. 18 Idaho Pg. 429 (Idaho 1910) –

CADDIE BATES, Appellant,  
v.  
CAPITAL STATE BANK and M. P. MEHOLIN,  
Receiver, Respondents  
Supreme Court of Idaho  
July 28, 1910

Whatever name or designation might be given to this specific action, it still remains a fact that the action was instituted primarily for the recovery of the specific personal property described in the complaint, or its value, and the sufficiency of the pleading must be determined upon the facts pleaded rather than upon any name given to the pleading or the cause of action.

(Underlined to add emphasis)

In the Bates – Capital State Bank case the Plaintiff/Appellant action was brought to recover the possession of twenty-one first mortgage bonds of the Pacific and Idaho Northern Railway Co., or their alleged value of \$29,496.25.

To the complaint the defendants, Capital State Bank interposed a demurrer, on the ground that it does not state facts sufficient to constitute a cause of action; that the action is barred and that the complaint does not state a cause of action, because it nowhere is alleged therein that the plaintiff is entitled to the immediate possession of said bonds and further assertion by the defendant that although the facts alleged by the plaintiff in the complaint may be true, they do not entitle the plaintiff to prevail in the lawsuit.

Supreme Court therefore held that the complaint states a cause of action and that the court erred in sustaining the demurrer. The judgment is reversed and the cause remanded, with direction to the trial court to overrule the demurrer and to permit the defendants to answer.

(Underlined to add emphasis)



Macdonald has complied with –

Idaho Rules of Civil Procedure Rule 56(c).  
Motion for Summary Judgment and Proceedings Thereon.

The motion, affidavits and supporting brief shall be served at least twenty eight (28) days before the time fixed for the hearing. If the adverse party desires to serve opposing affidavits the party must do so at least 14 days prior to the date of the hearing. The adverse party shall also serve an answering brief at least 14 days prior to the date of the hearing.

The moving party may thereafter serve a reply brief not less than 7 days before the date of the hearing.

The judgment sought shall be rendered forthwith if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

Macdonald listed 9 genuine issues as to material facts

A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages. Such judgment, when appropriate, may be rendered for or against any party to the action.

The court may alter or shorten the time periods and requirements of this rule for good cause shown, may continue the hearing, and may impose costs, attorney fees and sanctions against a party or the party's attorney, or both.

(Underlined to add emphasis)

and

Idaho Rules of Civil Procedure Rule 56(e).  
Form of Affidavits - Further Testimony - Defense Required.

Macdonald supplied via ("Sworn Statement")

Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.

Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith.

The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits.

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of that party's pleadings, but the party's response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial.

If the party does not so respond, summary judgment, if appropriate, shall be entered against the party.

(Underlined to add emphasis)

Macdonald listed 9 genuine issues as to material facts

In regards omission of the Notary's signature there is no requirement in Idaho Code § 51-106 that requires the Notary's signature on the document that has be notarized.

TITLE 51  
NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS  
CHAPTER 1  
IDAHO NOTARY PUBLIC ACT

51-106. SEAL. (1) Each notary public whose current commission became effective prior to July 1, 1998, shall provide and keep an official seal which shall conform to one (1) of the following configurations:

(a) A seal embosser engraved with the words "Notary Public," the notary public's name, and the words "State of Idaho."

(b) A rubber stamp with a serrated or milled edge border in rectangular or circular form, which contains the same information required for the seal embosser.

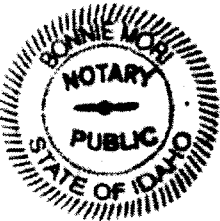
(2) Each notary public whose current commission became effective on or after July 1, 1998, shall provide and keep an official seal which shall be a rubber stamp with a serrated or milled edge border in a rectangular or circular form, which includes the words "Notary Public," the notary public's name, the words "State of Idaho," and nothing more.

(3) The seal shall be impressed below or near the notary public's official signature on each notary certificate which he administers.

(Underlined to add emphasis)

July 9, 2013, Defendant's Opposition for Plaintiff's Motion for Summary Judgment  
Page 8 of 8. (R. Pages 172 thru 215) is a valid notary acknowledgment.

The foregoing Affidavit was SWORN TO and SUBSCRIBED before on the  
8<sup>th</sup> day of July 2103



NOTARY PUBLIC FOR IDAHO  
Residing at Chand'Allee  
COMMISSION EXPIRES 12/8/15

CERTIFICATE OF SERVICE

On page 8  
Notary  
Bonnie Mori  
omitted  
signing her  
signature

**2. THE DISTRICT COURT ERRED IN ENTERING JUDGMENT AGAINST THE DEFENDANT IN THE AMOUNT OF \$10,349.26 FOR CLAIMED RENT AND OTHER COSTS INCURRED FROM NOVEMBER 25, 2011 THROUGH JULY 31, 2013.**

There has never been any admissible evidence by I. P. Mgt. proving that the Macdonald was the titled owner of the mobile home. Rather I. P. Mgt. is well aware of the fact that the Macdonald is the lienholder but has incorrectly and inappropriately pursued Macdonald as if he was the mobile home owner.

As a lienholder and in accordance with section #2 of the Notice of Lienholder -- Limit On Back Rent -- Abandonment I. C. 55-2009-A, there is a limit on back rent. It states "the Defendant is only liable for Utilities and "utilities" is then defined as a "charge" under Definitions I. C. 55-2003 item #12 which reads –

“Other charges means fees, service charges, utility charges or other financial obligations specified in the rental agreement, but not including rent.”

In this instance, I. P. Mgt. is not seeking any utility costs against the Macdonald.

Rent - which is specifically defined by Definitions 55- 2003 item #14

"periodic payments to be made in consideration for occupying a lot"

It should not be freely intermixed with the term "other charges" The reason for this is because of the major points is that "Rent" has a very limited and precise definition and it should not be freely intermixed with the term "other charges"

Therefore under Notice of Lienholder -- Limit On Back Rent -- Abandonment

I. C. 55-2009-A item #3, the defendant's rental liability, as a lien holder, is specifically limited to a maximum of 60 days of rent, or as in this case, a total of 2 months of rent in the total amount of \$590.00.

“The lien-holder shall be responsible for utilities from the date of notice. However, the landlord shall be entitled to a maximum of sixty (60) days rent due prior to notice to lienholder.

Any and all **costs** shall then become the responsibility of the legal owner or lienholder of the home.”

Bolded emphasis added.

Note that the legislature specifically did not reference or include “rents” in the second sentence.

Expressio unius est exclusio alterius.

The term "costs" is not defined by the statute unlike the terms: "fees", "rent", "service charges" and "other charges" which are all specifically defined by the statute in Definitions I. C. 55-2003. I. P. Mgt. is including costs and fees to which by statute they are not entitled.

The I. P. Mgt. is arguing incorrectly that listed costs should include rent, late fees and taxes. That is not what the statute says. In the Notice of Lienholder -- Limit On Back Rent -- Abandonment I. C. 55-2009-A, the legislature took the effort to specifically define the term RENT and specifically used the term rent immediately following the clause relating to costs. Based upon the legal doctrine of expressio unius est exclusio alterius, which means if a statute provides one thing, all others implied are excluded or the expression of one thing is to exclusion of another To toss the very specific and defined term of "rent" into the generic pot labeled "costs" goes against the express and carefully defined intent of the statute relating to rental liability.

Thereafter the word RENT in section #1 is referenced in Sale To Satisfy Liens

I. C. 55-2009-B. relating to the costs of sale –

“When a home has been abandoned, the landlord, as the possessory lienholder, may proceed to conduct a sale of the abandoned home to satisfy the lien and costs of sale, if an authorization to conduct a lien sale has been issued by the department or a judgment has been entered in favor of the landlord on the claim which gives rise to the lien or the legal owner of the home and any lienholder have signed a release of any interest in the home.”

Sale To Satisfy Liens I. C. 55-2009-B, item #2-F relating to the costs of a civil action That the person may be liable for costs if the lienholder brings an action and if a judgment is entered in favor of the lienholder.

Sale To Satisfy Liens I. C. 55-2009-B, item #5 specifically states that an application fee is recoverable as cost. It reads –

An applicant shall include with his application for lien sale a fee of ten dollars (\$10.00), which shall be deposited in the abandoned vehicle trust account. The fee shall be recoverable as a cost by the lienholder.

In Disposition Of Proceeds I. C. 55-2009-F again relating to the costs of sale and specifically limiting the amount of the cost; In item 1-A, it reads –

“To discharge the lien; then to actual costs of selling the property. The cost of selling shall be the actual cost, not to exceed two hundred dollars (\$200), for each abandoned home.”

In Resident Action For Damages I. C. 55-2014 in section #4 again relating to the costs of a civil action.

“If, upon the trial, the verdict of the jury, or, if the case be tried without a jury, the finding of the court, be in favor of the plaintiff against the defendant, judgment shall be entered for such special damages as may be proven. General damages may be awarded but shall not exceed five hundred dollars (\$500). Judgment may also be entered requiring specific performance for any

breach of agreement shown by the evidence, and for costs and disbursements.”

The use of the term "costs" in Title 5, Chapter 20 of Manufactured Home Residence Act is specifically related to the out of pocket expenses incurred in selling the mobile home and in litigation. The term costs is not related to the specifically defined term of "rent", that is, the "periodic payments to be made in consideration for occupying a lot", as defined in Definitions I. C. 55-2003 item #14.

Nor does the term cost include late fees, as late fees are specifically defined by the legislature as a "fee" defined in Definitions 55-2003 item #4. Nor does the term cost include the Plaintiffs claim for taxes. The costs are used in the statute to discuss court costs and foreclosure fees – Not taxes.

In Notice of Lienholder -- Limit On Back Rent -- Abandonment I. C. 55-2009-A, item 2, the statute specifically states that the lien holder would be liable for all utilities from the date of the notice, up to the maximum of 60 days rent prior to the notice and "all other costs."

The statute then specifically identifies the respective categories of the lienholder's obligations - utilities, rent and costs.

To now accept I. P. Mgt's argument that the specifically defined term of rent should be included in the phrase "any and all costs" goes against the specific definitions and specific listings of the lienholder's statutory liability.

I. P. Mgt. may argue that the final sentence of Notice of Lienholder -- Limit On Back Rent -- Abandonment I.C. 55-2009-A, item #2 that states –

“The home may not be removed from the lot without a signed written agreement from the landlord or manager showing clearance for removal, showing all moneys due and owing paid in full, or an agreement reached with the legal owner and the landlord.”

This is an indication that all of the rents must be paid by the lienholder exclusively to just

remove the mobile home. But for this to be in effect only if the lienholder takes possession of the mobile home subject to foreclosing of the lienholder's security interest and only then. However, if the lienholder does not want to take possession of the mobile home as in this case, then the lienholder's interest is subject to the sale of the mobile home by the landlord and the distribution of the proceeds in conformity with Disposition of Proceeds I.C. 55-2009-F. In reading page 1, paragraph 9 of the August 18, 2010 of the Mobile Space Rental Agreement, R Page 21 and 22, between Pattison

and I. P. Mgt. which states –

“No mobile home shall be removed from the park until the rental payments, including the month when the mobile home is moved are paid”.

That clearly means that rental payments would be paid by the Pattisons, the mobile home owners not the lienholder Macdonald.

Based upon the admissible evidence that is presently before the Court, the extent of the Macdonald's interest in the mobile home was and is strictly limited to that of a secured party and not that of as a legal owner.

Any monetary judgment that may be entered for the I. P. Mgt.'s claiming monetary relief is limited to foreclosing out the Macdonald's security interest in the subject mobile home and does not attach to any other asset owned by Macdonald.

To subject the lienholder to personal liability would cause a detrimental effect on any loan for the purchase or sale of a mobile home. No lender would ever extend credit to someone wishing to purchase a mobile home if the lender were to be held liable for any and all of the mobile home owner's obligations including the Mobile Space Rental Agreement, R Page 21 and 22, which the lender is not a party

In this case Macdonald in fact had never seen this rental agreement until I. P. Mgt. initiated the action against the Macdonald on October 11, 2012

According to Disposition Of Proceeds I.C. 55-2009-F. It states that any monetary judgment that may be entered on behalf of the Plaintiff is limited to the proceeds of the judicial lien sale of the subject mobile home. Moreover any monetary judgment that may be entered against the Macdonald is limited to foreclosing the Defendant's security interest in the subject mobile home and, subject only to any liability being limited to the Defendant's security interest, Any claimed damages for rents are limited to rents accruing for a maximum of 60-days as stated in item #2 in the Notice of Lienholder -- Limit On Back Rent -- Abandonment I.C.55-2009-A.

Because the I. P. Mgt. did not provide any additional evidence as to other "costs" that the I. P. Mgt.is claiming, the I. P. Mgt. judgment is limited to the maximum of 60-days rent. which the amount is based upon the Mobile Home Rental Agreement, R. Pages 21 and 22, in the Verified Complaint, R. Pages 16 to 27, would be a total of \$590.00.

Because the Macdonald is not the legal owner of the subject mobile home and merely has, or had, a security interest in the same, as stated in Notice of Lienholder -- Limit On Back Rent – Abandonment, I.C. 55-2009-A, the Macdonald is not liable for any rents, other that the maximum of \$590.00 and then only to the extent, of the Macdonald's security interest. 60–days rent maximum and even then no personal liability.

**3. THE COURT ERRED IN AWARDING THE PLAINTIFF THE SUM OF \$11,657.95 IN ATTORNEYS' FEES AND COSTS.**

In the event that this matter is remanded back to the District Court, then in that event there is no prevailing party and the award of fees and costs should be vacated. Cannon vs. Perry, 144 Idaho 728,732 (2007)

In addition, any fee award should also be limited to foreclosing on your security interest in the mobile home and not a personal judgment. I.C. 55-200-B and I.C. 55-2009-F



## CONCLUSION


The trial court's rejection of the Sworn Statement the Defendant's Opposition For Plaintiff's Motion For Summary Judgment, R. Pages 172 thru 215, should be vacated and this matter remanded back to the court for further disposition.

In the alternative, the amount of the damage award should be reduced significantly as argued above and be strictly limited to foreclosing out Macdonald's security interest in the mobile home and remanded back to the court for further disposition.

No personal liability should be attached to Macdonald

Macdonald should be awarded costs on appeal.

DATED THIS 13<sup>th</sup> day of May, 2014.



Don Macdonald,  
Pro Se Attorney For  
Defendant/Appellant Don Macdonald

## CERTIFICATE OF SERVICE

I, Don Macdonald, a party in the above captioned matter appearing herein pro se, does hereby certify that on the 15<sup>th</sup> day of May, 2014 I served, or caused to have served, two (2) true and correct copies of the foregoing document upon the following person as indicated:

Charles Lempesis  
Attorney At Law  
1950 Bellerive Lane #10  
Coeur d' Alene Idaho 83814

USPS first class mail, postage prepaid 9405 5036 9930 0296 1145 5)

  
Don Macdonald