

8-26-2015

Cummings v. Stephens Clerk's Record v. 1 Dckt. 43081

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HORTON

IN THE
SUPREME COURT
OF THE
STATE OF IDAHO

Docket # 43081

STEVEN B. CUMMINGS,
Plaintiff-Appellant,
vs.

ROGER L. STEPHENS,
Defendant,
NORTHERN TITLE COMPANY OF IDAHO,
Defendant/Respondent.

CLERK'S RECORD ON APPEAL

David C. Nye, District Judge

*Appealed from the District Court of the Sixth Judicial District
of the State of Idaho, in and for the County of Bear Lake.*

Nathan M. Olsen
PETERSEN MOSS HALL & OLSEN
485 "E" Street
Idaho Falls, ID 83402
Attorney for Plaintiff-Appellant

Brad H. Bearnson
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, UT 84321
Attorney for Defendant-Respondent

Volume 1 of 1

FILED - COPY
AUG 26 2015
Supreme Court _____ Court of Appeals _____
Entered on ATS by _____

COPY 43081

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

STEVEN B. CUMMINGS, an individual)
residing in Utah,)
)
Plaintiff/Appellant,)
)
vs.)
)
ROGER L. STEPHENS, an individual)
residing in Providence, Utah;)
)
Defendant,)
)
and)
NORTHERN TITLE COMPANY OF IDAHO, INC.,)
an Idaho Corporation;)
)
Defendant/Respondent.)
_____)

CASE NO. CV-2009-000183
Supreme Court No. 43081

CLERK'S RECORD ON APPEAL

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, in and for
the County of Bear Lake.

HONORABLE DAVID C. NYE
Sixth District Judge

NATHAN M. OLSEN
Peterson Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402
Attorney for Steven Cummings,
Plaintiff/Appellant,

BRAD H. BEARNSON
Bearnson & Caldwell, LLC
399 North Main, Suite 270
Logan, UT 84321
Attorney for Northern Title Co of Idaho,
Defendant/Respondent

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DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY

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2014 SEP 24 AM 9:15

MERRY J. SLACK, CLERK
IN THE SUPREME COURT OF THE STATE OF IDAHO

STEVEN B. CUMMINGS

DEPUTY _____ CLERK

CASE NO.

) Docket No. 40793-2013

) Plaintiff/Appellant/Cross-Respondent,

)

) vs.

)

) **PETITION FOR REHEARING**

) ROGER L. STEPHENS,

)

) Defendant/Respondent/Cross-Respondent,

)

) Appeal from Bear Lake County,
) Case No. CV-2009-000183

) And

)

) NORTHERN TITLE COMPANY OF IDAHO,
) INC.

)

) Defendant/Respondent/Cross-Appellant,

)

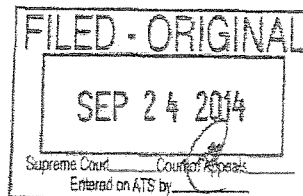
)

Cross Appeal from the Sixth Judicial District Court
Of the State of Idaho, in and for the County of Bear Lake

Brad H. Bearnson, Esq.
Residing at Logan, Utah, for Respondent/Cross-Appellant,
Northern Title Company of Idaho, Inc.

Randall C. Budge, Esq.
Residing at Pocatello, Idaho, for Respondent/Cross-Respondent, Roger L. Stephens

Nathan M. Olsen, Esq.
Residing at Idaho Falls, Idaho, for Appellant and Cross-Respondent



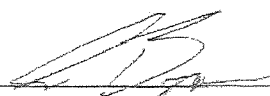
COMES NOW Cross-Appellant, NORTHERN TITLE COMPANY OF IDAHO, INC., and pursuant to Rule 42 of the Idaho Appellate Rules, hereby petitions for a rehearing, seeking clarification of the *Court's Opinion* (September 19, 2014).

Northern Title respectfully requests clarification of the following: (1) the vacating of the District Court's order of costs and attorney fees against Northern Tile, (2) the deeming of Northern Title as a prevailing party, (3) the District Court's jurisdiction in determining Northern Title's costs and reasonable attorney fees, and (4) whether the costs and attorney fees awarded to Stephens should be augmented in an amount equivalent to those costs and fees incurred by Bearnson & Caldwell, LLC on Stephens' behalf.

In accordance with Rule 42, Northern Title's memorandum in support is filed herewith. No further briefing should be required where each of the above issues were fully raised and briefed in Northern Title's Cross Appeal, to which Cummings had the opportunity to respond. Northern Title respectfully requests the Court's clarification.

DATED this 22nd day of September, 2014.

BEARNSON & CALDWELL, LLC



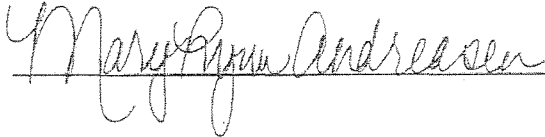
Brad H. Bearnson
Aaron K. Bergman
*Attorneys for Respondent/Cross-Appellant
Northern Title Company of Idaho, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of September, 2014, I served a true and correct copy of the above and foregoing PETITION FOR REHEARING, to the following person(s) by U.S. Mail and Email:

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DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

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MERRY MADSEN, CLERK

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IN THE SUPREME COURT OF THE STATE OF IDAHO

DEPUTY _____ CASE NO.

STEVEN B. CUMMINGS)

Plaintiff/Appellant/Cross-Respondent,)

vs.)

ROGER L. STEPHENS,)

Defendant/Respondent/Cross-Respondent,)

And)

NORTHERN TITLE COMPANY OF IDAHO,)
INC.)

Defendant/Respondent/Cross-Appellant,)

Docket No. 40793-2013

**MEMORANDUM IN SUPPORT OF
CROSS APPELLANT'S PETITION
FOR REHEARING SEEKING
CLARIFICATION**

Case No. CV-2009-000183

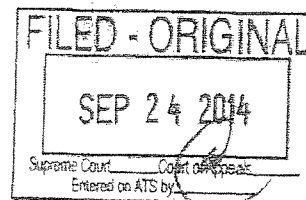
Appeal from Bear Lake County,

Cross Appeal from the Sixth Judicial District Court
Of the State of Idaho, in and for the County of Bear Lake

Brad H. Bearnson, Esq.
Residing at Logan, Utah, for Respondent/Cross-Appellant,
Northern Title Company of Idaho, Inc.

Randall C. Budge, Esq.
Residing at Pocatello, Idaho, for Respondent/Cross-Respondent, Roger L. Stephens

Nathan M. Olsen, Esq.
Residing at Idaho Falls, Idaho, for Appellant and Cross-Respondent



COMES NOW Cross-Appellant, NORTHERN TITLE COMPANY OF IDAHO, INC., and pursuant to Rule 42 of the Idaho Appellate Rules, hereby requests clarification of the Court's September 19, 2014 *Opinion*. In accordance with Rule 42, a memorandum in support is provided, herein.

BACKGROUND

This *Petition for Clarification* is regarding a cross-appeal from judgments wherein the buyer was denied damages against the seller Roger L. Stephens ("Stephens"), and awarded judgment against the title company, Northern Title Company of Idaho, Inc. ("Northern Title"). Plaintiff Steven Cummings ("Cummings") appealed the District Court's award of fifty-thousand dollars (\$50,000), and Northern Title cross appealed.

On September 19, 2014, the Court issued its *Opinion*, granting Northern Title's cross-appeal. "We reverse the judgment against Northern Title. Because the remaining issues raised by Northern Title in its cross-appeal sought to reverse the award of damages for other reasons, we need not address those issues." *Cummings v. Stephens*, WL 4656515 (Sept. 19, 2014). One of the issues remaining was the "district court's award of attorney fees and costs, [and whether such] should be reversed, where Northern Title prevailed in whole or in part at trial." *Cross Appellant's Reply*, 10 (Nov. 15, 2013).

ARGUMENT

Under Idaho Appellate Rule 48, where a matter of procedure is not set forth by statute or rule "proceedings in the Supreme Court shall be in accordance with the practice usually followed in such or similar cases . . ." I.A.R. 48. Where clarification is sought regarding the Court's

Opinion, the issue lies with this Court. See e.g. *State v. Hoffman*, 137 Idaho 897, 55 P.3d 890 (Idaho Ct. App. 2002) (holding “appropriate method to obtain clarification of sentences is to request such clarification from the court that imposed them”).

Northern Title’s cross-appeal raised “[w]hether the district court’s award of attorney fees and costs should be reversed where Northern Title prevailed in whole or in part at trial.” *Cross Appellant’s Brief*, 10 (Nov. 15, 2013); see also *id.* at 34-41. Northern Title requested:

Even without this appeal, Northern Title prevailed with a very successful defense. With this appeal if Northern Title prevails, it is clearly the prevailing party. Therefore, the Court should deem Northern Title a prevailing party, accompanied therewith an order for determination of its trial fees and costs.

Cross Appellant’s Brief, 41. The bases for these costs and fees are found in contract,¹ and Idaho Code section 12-120(3). *Id.*

In issuing its *Opinion* the Court reversed “the judgment” against Northern Title, but did not expressly vacate the District Court’s cost and fee order against Northern Title. See R., Vol. 9, 1816-1817. Nor did the Court remand the matter for a determination of Northern Title’s costs and fees as a prevailing party. See *Cummings v. Stephens*, WL 4656515 (Sept. 19, 2014). It will likely be reflected that the Court’s *Opinion* implies this very outcome, and therefore a petition

¹ See also *Cross Appellant’s Reply*, 35 (Feb. 10, 2014) (“paragraph four (4) of those same Escrow General Provisions provides an additional, if not more appropriate basis, for an award of all of Northern Title’s fees and costs on appeal and at trial: In the event the Escrow Agent initiates or is joined as a party to any litigation relating to this escrow, Buyer and Seller jointly and severally agree to pay all costs, expenses and attorney’s fees incurred by Escrow Agent in such litigation. Trial Ex. 111, ¶ 4”)

for rehearing or clarification is unnecessary.² But, even in those cases where jurisdiction is implied, there is at least an order remanding the case back to the District Court.³ Here, there is no order remanding costs and attorney fees back to the District Court. Therefore as a threshold matter, Northern Title requests clarification as to whether the District Court has jurisdiction to address Northern Title's fees and costs as the prevailing party.

Second, it would be helpful for this Court to clarify the impact of its *Opinion* on Northern Title's costs and fees. Namely, that Northern Title is the prevailing party. As the Court in *Eighteen Mile Ranch v. Nord* held, a defendant's success is no less significant than a plaintiff's:

In litigation, avoiding liability is as good for a defendant as winning a money judgment is for a plaintiff. The point is, while a plaintiff with a large money judgment may be more exalted than a defendant who simply walks out of court no worse for the wear, courts must not ignore the value of a successful defense. as a matter of law is the prevailing party.

Eighteen Mile Ranch, LLC, 141 Idaho 716, 719, 117 P.3d 130, 133 (2005). Similarly here, Northern Title's successful appeal has resulted in Cummings obtaining *none* of his requested relief. As this Court noted, for Northern Title, Cummings' failure to prove liability *and* resulting damages is all that really matters.⁴ Just as the Court did in *Eighteen Mile Ranch*, Northern Title

² See e.g. *Hutchins v. State*, 100 Idaho 661, 603 P.2d 995 (1979) (after general reversal, trial court free to correct any error in original findings and conclusions as to matters not passed on by appellate court); see also *J.R. Simplot Co. v. Chemetics Int'l*, 130 Idaho 255, 257, 939 P.2d 574, 576 (1997)(where court did not pass on question of entitlement to attorney fees as prevailing party, district court had jurisdiction to determine the prevailing party and award attorney fees accordingly).

³ See fn. 2, *supra*.

⁴ "We reverse the judgment against Northern Title. Because the remaining issues raised by Northern Title in its cross-appeal sought to reverse the award of damages for other reasons, we need not address those issues." *Cummings v. Stephens*, WL 4656515 (Sept. 19, 2014).

should sua sponte be deemed a prevailing party. See *Eighteen Mile Ranch, LLC*, 141 Idaho at 719-120, 117 P.3d at 133-134 (holding “Darrin, Reed, and Casey are clearly prevailing parties”).

Third, the Court did not make a ruling as to the District Court’s improper use of attorney fees. The District Court’s use of attorney fees, to vindicate its sense of justice against Northern Title, was raised:

Even more disturbing, the district court appears to have used it[s] discretion in order to punish Northern Title. As explained in *Eighteen Mile Ranch*, a “court may not use the award or denial of attorney fees to vindicate his sense of justice beyond the judgment rendered on the underlying dispute between the parties.” 141 Idaho at 720, 117 P.3d at 134 (citation omitted). As set forth in Northern Title’s Memorandum of Fees and Costs, Brad Bearnson initially represented Stephens as co-counsel, but discontinued his representation of Stephens after Northern Title became a party. See R., Vol. 9, pp. 1681-1682. During that time period, Mr. Bearnson and Bearnson & Caldwell incurred \$35,575.84 in defending Stephens. *Id.* However, even though Stephens was deemed the prevailing party, the district court refused to award Bearnson & Caldwell any fees incurred on Stephens’ behalf.

* * *

The district court specifically asked and was informed that there was no duplication in fees claimed by Stephens counsel, Mr. Budge and Mr. Bearnson. See *Tr.*, Vol. 2, 1314:8-21. However, the district court also knew that Northern Title had agreed to indemnify Stephens, and that Northern Title would be responsible to pay his attorney fees. See *Tr.*, Vol. 1, 725:3-5; see also *id.* at 739:19-22; see also *id.* at 740:8-11. After knowing these facts, the district court summarily held “I’m not going to award Mr. Bearnson’s fees.” *Tr.*, Vol. 2, 1326:9-10. The district court’s award of all fees to Mr. Budge, and denial of all fees to Mr. Bearnson, even though both were legitimately incurred to defend Stephens, was clearly to punish Northern Title.


Cross Appellant’s Brief, 37-38. There remains a substantive issue as to whether the District Court’s denial of Mr. Bearnson’ fee was improper, and whether Stephens’ attorney fee award should be so augmented.

CONCLUSION

Northern Title respectfully requests clarification of the following: the vacating of the District Court's order of costs and attorney fees against Northern Tile; the deeming of Northern Title as a prevailing party; the District Court's jurisdiction to determine Northern Title's costs and reasonable attorney fees; and whether the costs and attorney fees awarded to Stephens should be augmented to compensate for Bearnson & Caldwell, LLC for services rendered on Stephens' behalf.

DATED this 22nd day of September, 2014.

BEARNSON & CALDWELL, LLC




Brad H. Bearnson
Aaron K. Bergman
*Attorneys for Respondent/Cross-Appellant
Northern Title Company of Idaho, Inc.*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 22nd day of September, 2014, I served a true and correct copy of the above and foregoing **MEMORANDUM IN SUPPORT OF CROSS APPELLANT'S PETITION FOR REHEARING SEEKING CLARIFICATION**, to the following person(s) by U.S. Mail and Email:

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, Idaho 83402
Nathan@pmholaw.com

Randall C. Budge
Brent L. Whiting
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
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COURT OF APPEALS

2014 OCT -3 AM 9:03

IN THE SUPREME COURT OF THE STATE OF IDAHO

STEVEN B. CUMMINGS,)
)
 Plaintiff/Appellant/Cross-Respondent,)
)
 vs.)
)
 ROGER L. STEPHENS,)
)
 Defendant/Respondent/Cross-Respondent,)
)
 and)
)
 NORTHERN TITLE COMPANY OF)
 IDAHO, INC.,)
)
 Defendant/Respondent/Cross-Appellant.)
)

Bear Lake Co.
Case No. CV-2009-000183

Idaho Supreme Court
Docket 40793-2013

DEPUTY
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APPELLANT'S PETITION FOR REHEARING

Appeal from the Sixth Judicial District Court
of the State of Idaho, in and for the County of Bear Lake

Nathan M. Olsen, Esq.
Residing at Idaho Falls, Idaho, for Appellant and Cross-Respondent

Randall C. Budge, Esq.
Residing at Pocatello, Idaho, for Respondent/Cross-Respondent, Roger L. Stephens

Brad Bearnson, Esq.
Residing at Logan, Utah, for Respondent/Cross-Appellant, Northern Title Company

FILED - ORIGINAL
 OCT - 3 2014
 Supreme Court Court of Appeals
 Entered on ATIS by

Appellant's Petition for Rehearing

The Appellant/Cross-Respondent, Steven B. Cummings (Cummings) by and through counsel of record, Petersen Moss Hall & Olsen, respectfully requests an order granting a rehearing in the above captioned matter; or in the alternative, moves this Court for reconsideration of its Opinion filed September 19, 2014, pursuant to IAR 42 and 32. The Appellants request that certain issues that were not adequately or accurately considered in the Opinion be reviewed, including the following:

AS IT PERTAINS TO RESPONDENT ROGER L. STEPHENS

1) Whether the Court adequately considered Cummings' pleading for relief under the covenants and warranties provided in the Warranty Deed including clearing of Cummings' title described in the deed, estopping Stephens from being granted the east side property described in the deed, reimbursement of loss of value for defects in Cummings' title to the property, and/or rescission;

2) Whether the Court adequately considered evidence admitted in Cummings' case-in-chief of Stephens' disclosed intent in selling the entire Stephens Ranch as indicated in the signed listing agreement, purchase and sale agreement, escrow agreement referencing both the signed purchase agreement and title commitment, and the Warranty Deed;

3) Whether the Court properly considered testimony of the realtors when there was an unambiguous purchase and sale contract as merged into the Warranty Deed, and whose testimony had not been admitted at the time that Cummings' claims were dismissed by the trial court;

4) Whether in preparing for issues at trial Cummings could have relied upon the trial court's previous finding of fact that Stephens had through "self help" had the August 3, 2007 Warranty Deed revised to remove from the deed the property on the east side of the highway;

5) Whether written findings of fact and conclusions of law are in fact required under a IRCP § 52(a) ruling, the failure of which requires a new trial.

AS IT PERTAINS TO RESPONDENT/CROSS APPELLANT NORTHERN TITLE CO.

1) Whether the Court should adopt alternative theories of negligence and/or breach of contract warranting the award of damages, particularly since the trial court's finding of negligence by Northern Title as "abstractor of title" was raised *sua sponte* by the trial court in its Memorandum Decision;

2) Whether Cummings adequately appealed the trial court's decision to not award damages under Northern Title's breach of contract;

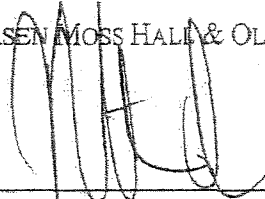
3) Whether Cummings did indeed adequately cite the record in supporting his appeal on specific damages that should have been awarded for Northern Title's breach of contract and/or negligence;

4) Whether the equitable relief requested in paragraph 7 of Cummings' Prayer for Relief warrants a holding invalidating the November 8, 2007, Warranty Deed revised and recorded by Northern Title.

A brief will be filed within fourteen (14) days of the filing date of this petition.

DATED this 29 day of September, 2014.

PETERSEN MOSS HALL & OLSEN

A handwritten signature in black ink, appearing to be 'N.M. Olsen', written over a horizontal line.

Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 29 day of September, 2014, I served a true and correct copy of the foregoing **Appellant's Petition for Rehearing** on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
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Pocatello, Idaho 83204-1391
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EMAIL: rcb@racinelaw.net

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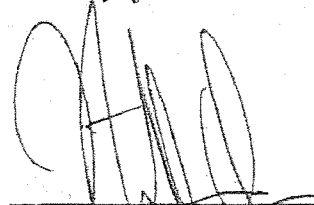
Method of Service:

mail () hand () fax () email

Attorneys for Roger L. Stephens

mail () hand () fax () email

Attorneys for Northern Title Company



Nathan M. Olsen

In the Supreme Court of the State of Idaho

DISTRICT COURT
 SIXTH JUDICIAL COURT
 BEAR LAKE COUNTY, IDAHO
NOV 5 2014
 DATE TIME
 CLERK
 DEPUTY CASE NO.

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.)

REMITTITUR
 Supreme Court Docket No. 40793
 Bear Lake County Court # 2009-183

TO: SIXTH JUDICIAL DISTRICT, COUNTY OF BEAR LAKE.

The Court having announced its Opinion in this cause September 19, 2014, and having denied Appellant's Petition for Rehearing and Respondent's Petition for Rehearing on November 5th, 2014; therefore,

IT IS HEREBY ORDERED that the District Court shall forthwith comply with the directive of the Opinion, if any action is required.

IT IS FURTHER ORDERED that Stephens' and Northern Title's costs on appeal, including attorney fees, will be addressed in a subsequent order.

DATED this 5th day of November, 2014.

Stephen Kozin
 Clerk of the Supreme Court
 STATE OF IDAHO

cc: Counsel of Record
District Court Clerk
District Judge
Publisher(s)

Brad H. Bearnson (I.S.B. 7086)
 Aaron K. Bergman (I.S.B. 8878)
 BEARNSON & CALDWELL, LLC
 399 North Main, Suite 270
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bbearnson@bearnsonlaw.com
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Attorneys for Defendant Northern Title

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO
 2014 NOV 10 PM 1:03
 KERRY HADDOCK, CLERK
 DEPUTY _____ CASE NO. _____

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,)	Case No. CV-2009-183
)	
Plaintiff,)	
)	MOTION TO REOPEN PROCEEDINGS
)	
vs.)	&
)	
ROGER L. STEPHENS, an individual)	NORTHERN TITLE COMPANY OF
residing in Providence, Utah,)	IDAHO, INC.'S RENEWED MOTION FOR
NORTHERN TITLE COMPANY OF)	ATTORNEY'S FEES AND COSTS
IDAHO, INC., an Idaho Corporation,)	
JOHN DOES I-X.)	
)	
Defendants,)	
)	
)	

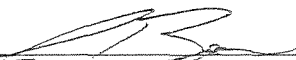
COMES NOW Defendant, Northern Title Company of Idaho, Inc., by and through
 Counsel of Bearnson & Caldwell, LLC, and pursuant to the Supreme Court of the State of Idaho's
Remittitur (Nov. 5, 2014) moves the Court to reopen this matter for further proceeding for the
 purpose of complying with the directive of the Supreme Court's *Opinion* (Sept. 19, 2014). In
 furtherance of the Court's directive, Defendant Northern Title hereby renews its motion to the
 Court for an order awarding costs and attorneys' fees against Plaintiff, as more fully described in

the Motion for Order Awarding Attorney's Fees and Costs, Memorandum of Fees and Costs, Affidavit of Randall C. Budge in Support of Fees and Costs, Affidavit of Brad H. Bearnson in Support of Fees And Costs, and proposed Order Awarding Attorney's Fees and Costs as previously filed with the Court on or about January 27, 2011; and Northern Title Company of Idaho, Inc.'s Motion for Attorney Fees and Costs , Northern Title Company of Idaho, Inc.'s Brief in Support of Motion for Attorney Fees and Costs, Memorandum of Fees and Costs, and Second Affidavit of Brad H. Bearnson in Support of Motion for Fees and Costs, which were previously filed with the Court on or about February 5, 2013, and which pleadings and affidavits are hereby incorporated herein by reference as if set forth in full.

A proposed Order Awarding Fees and Costs, and Notice of Hearing will each be subsequently submitted to the Court.

DATED this 17th day of November, 2014.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

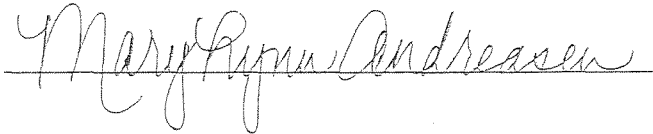
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 7th day of November, 2014, I served a true and correct copy of the above and foregoing **MOTION TO REOPEN PROCEEDINGS & DEFENDANT NORTHERN TITLE COMPANY OF IDAHO, INC.'S RENEWED MOTION FOR ORDER AWARDING ATTORNEYS FEES AND COSTS** to the following person(s) as follows:

Nathan M. Olsen	<input checked="" type="checkbox"/>	U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	<input type="checkbox"/>	Hand Delivery
485 "E" Street	<input type="checkbox"/>	Overnight Mail
Idaho Falls, Idaho 83402	<input type="checkbox"/>	Facsimile (208-524-3391)
	<input checked="" type="checkbox"/>	Email (Nathan@pmhclaw.com)

Randall C. Budge	<input checked="" type="checkbox"/>	U.S. Mail/Postage Prepaid
Jason E. Flaig	<input type="checkbox"/>	Hand Delivery
RACINE, OLSON, NYE, BUDGE &	<input type="checkbox"/>	Overnight Mail
BAILEY, CHARTERED	<input type="checkbox"/>	Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	<input checked="" type="checkbox"/>	Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391		jef@racinelaw.net

Honorable David C. Nye	<input checked="" type="checkbox"/>	U. S. Mail/Postage Prepaid
624 E. Center, Room 220	<input type="checkbox"/>	Hand Delivery
Pocatello, Idaho 83205	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile (208-344-5510)
	<input checked="" type="checkbox"/>	Email amyw@bannockcounty.us



2014 NOV 14 AM 10:27

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearnsonlaw.com
abergman@bearnsonlaw.com
Attorneys for Defendant Northern Title

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,)

Case No. CV-2009-183

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
)
JOHN DOES I-X.)
)
Defendants.)

NOTICE OF HEARING

ROGER L. STEPHENS, an individual,)
)
Third Party Plaintiff,)

vs.)

DOROTHY JULIAN, an individual)
residing in Eagle, Idaho, EVAN)
)
SKINNER, an individual residing in)
)
Montpelier, Idaho, RYAN OLSEN, an)
)
individual residing in Georgetown,)
)
Idaho, EXIT REALTY OF BEAR)
)
LAKE, LLC an Idaho Limited Liability)
)
Company, JOHN DOES 1-X.)

Third Party Defendants.)

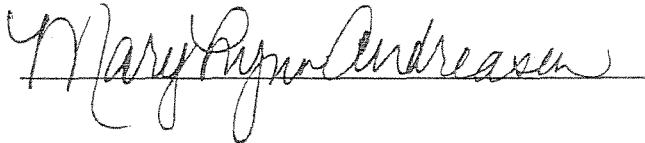
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of November, 2014, I served a true and correct copy of the above and foregoing NOTICE OF HEARING to the following person(s) as follows:

Nathan M. Olsen	[x] U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	[] Hand Delivery
485 "E" Street	[] Overnight Mail
Idaho Falls, Idaho 83402	[] Facsimile (208-524-3391)
	[x] Email (Nathan@pmholaw.com)

Randall C. Budge	[x] U.S. Mail/Postage Prepaid
Jason E. Flaig	[] Hand Delivery
RACINE, OLSON, NYE, BUDGE &	[] Overnight Mail
BAILEY, CHARTERED	[] Facsimile (435-752-6301)
P.O. Box 1391; 201 E. Center Street	[x] Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391	jef@racinelaw.net

With a courtesy copy to:	[x] U. S. Mail/Postage Prepaid
Honorable David C. Nye	[] Hand Delivery
P.O. Box 4165	[] Overnight Mail
Pocatello, Idaho 83205	[] Facsimile (208) 945-2780
	[] Email



Mary Lynn Anderson

In the Supreme Court of the State of Idaho

DISTRICT COURT
 BEAR LAKE COUNTY, IDAHO
 2014 NOV 18 PM 2:27
 KERRY HADDOCK, CLERK
 Deputy
 CASE NO.

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 AWARDING COSTS AND ATTORNEY FEES

Supreme Court Docket No. 40793-2013
 Bear Lake County No. 2009-183

Ref. No. 14-505

1. A MEMORANDUM OF COSTS AND CLAIM FOR ATTORNEY FEES and an AFFIDAVIT OF RANDALL C. BUDGE IN SUPPORT OF MEMORANDUM OF COSTS AND CLAIM FOR ATTORNEY FEES, with attachments, were filed by counsel for Respondent Roger Stephens on October 6, 2014.
2. A MEMORANDUM OF FEES AND COSTS and an AFFIDAVIT OF BRAD H. BEARNSON IN SUPPORT OF MEMORANDUM OF FEES AND COSTS, with attachments, were filed by counsel for Respondent-Cross-Appellant Northern Title Company of Idaho, Inc. on October 7, 2014.
3. An OBJECTION TO RESPONDENT/CROSS-RESPONDENT'S ATTORNEY FEES and an OBJECTION TO RESPONDENT/CROSS-APPELLANT'S ATTORNEY FEES were filed by counsel for Appellant on October 20, 2014.

The Court is fully advised; therefore, good cause appearing,

IT HEREBY IS ORDERED that Respondent Roger Stephens' MEMORANDUM OF COSTS AND CLAIM FOR ATTORNEY FEES be, and hereby is, GRANTED and costs and attorney fees are awarded to Respondent Roger Stephens and against Appellant as follows:

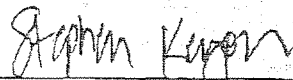
Costs:	\$ 168.00
Attorney fees:	<u>27,356.65</u>
TOTAL	<u>\$ 27,524.65</u>

IT FURTHER IS ORDERED that Respondent-Cross-Appellant Northern Title Company of Idaho, Inc.'s MEMORANDUM OF FEES AND COSTS be, and hereby is, GRANTED and costs and attorney fees are awarded to Respondent-Cross-Appellant Northern Title Company of Idaho, Inc. and against Appellant as follows:

Costs:	\$ 2,481.05
Attorney fees:	<u>23,348.63</u>
TOTAL	<u>\$ 25,829.68</u>

DATED this 17 day of November, 2014.

By Order of the Supreme Court



Stephen W. Kenyon, Clerk

cc: Counsel of Record

Randall C. Budge (ISB No. 1949)
Brent L. Whiting (ISB No. 6601)
RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED
P.O. Box 1391; 201 E. Center Street
Pocatello, Idaho 83204-1391
Telephone: 208-232-6101
rcb@racinelaw.net
blw@racinelaw.net

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO
2014 NOV 19 AM 11:47
KERRY HADDOCK, CLERK
DEPUTY _____ CASE NO. _____

Attorneys for Defendant Roger L. Stephens

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,
NORTHERN TITLE COMPANY OF
IDAHO, INC., an Idaho Corporation,
JOHN DOES I-X.

Defendants

Case No. CV-2009-183

**MOTION TO JOIN DEFENDANT
NORTHERN TITLE'S MOTION TO
RE-OPEN PROCEEDINGS**

ROGER L. STEPHENS, an individual,

Third Party Plaintiff,

vs.

DOROTHY JULIAN, an individual
Residing in Eagle, Idaho, EVAN
SKINNER, an individual residing in
Montpelier, Idaho, RYAN OLSEN, an
Individual residing in Georgetown,
Idaho, EXIT REALTY OF BEAR
LAKE, LLC an Idaho Limited Liability
Company, JOHN DOES 1-X

Third Party Defendants

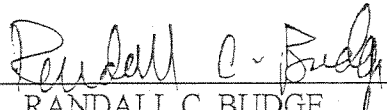
MOTION TO JOIN DEFENDANT NORTHERN TITLE'S MOTION TO RE-OPEN PROCEEDINGS

Page 1

COMES NOW the Defendant ROGER L. STEPHENS, through counsel, and joins Defendant Northern Title Company of Idaho, Inc.'s *Motion to Reopen Proceedings* set for hearing on Friday, January 2, 2015 at 1:30 p.m. and hereby notices this motion up for hearing to be heard at the same time, before the Honorable David C. Nye, at the Bear Lake County Courthouse, Paris, Idaho. Defendant Roger L. Stephens seeks to reopen proceedings before the District Court for the purpose of entering a final judgment, including awards of additional fees and costs in accordance with the Idaho Supreme Court's decisions and orders on remand.

DATED this 18th day of November, 2014.

RACINE, OLSON, NYE, BUDGE &
BAILEY, CHARTERED

By 
RANDALL C. BUDGE
*Attorneys for Defendant
Roger L. Stephens*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 18th day of November, 2014, I served a true and correct copy of the above and foregoing MOTION TO JOIN DEFENDANT NORTHERN TITLE'S MOTION TO REOPEN PROCEEDINGS to the following person(s) as follows:

Brad H. Bearnson [] U. S. Mail/Postage Prepaid
Aaron K. Bergman [] Hand Delivery
BEARNSON & CALDWELL, LLC [] Overnight Mail
399 North Main, Suite 270 [] Facsimile (208-524-3391)
Logan, Utah 84321 [] Email: bbearnson@bearnsonlaw.com
abergam@bearnsonlaw.com

Nathan M. Olsen [] U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen [] Hand Delivery
485 "E" Street [] Overnight Mail
Idaho Falls, Idaho 83402 [] Facsimile (208-524-3391)
[] Email: nolsen@pmholaw.com

Honorable David C. Nye [] U.S. Mail/Postage Prepaid
Bannock County Courthouse [] Hand Delivery
624 E. Center, Rm 220 [] Overnight Mail
Pocatello, Idaho 83205 [] Facsimile: 208-945-2780
[] Email: amyw@bannockcounty.us



RANDALL C. BUDGE

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2014 DEC 19 PM 4:05

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
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Attorneys for Plaintiff, Steven B. Cummings

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

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

**MEMORANDUM IN SUPPORT OF
PLAINTIFF'S MOTION TO STRIKE
DEFENDANT NORTHERN TITLE'S
"MOTION TO REOPEN
PROCEEDINGS & NORTHERN TITLE
COMPANY OF IDAHO, INC.'S
RENEWED MOTION FOR
ATTORNEY'S FEES AND COSTS" FOR
LACK OF JURISDICTION**

Plaintiff, Steven Cummings (Cummings), through counsel of record provides the following memorandum in support of his Motion to Strike Defendant Northern Title's "Motion to Reopen Proceedings & Northern Title Company of Idaho, Inc.'s Renewed Motion for Attorney's Fees and Costs" for Lack of Jurisdiction. This Motion is supported by the

pleadings in this case, including the Idaho Supreme Court's September 19, 2014, *Opinion* in this case and subsequent pleadings which are attached to the Affidavit of Nathan M. Olsen for convenience of the Court.

PROCEDURAL HISTORY

On September 19, 2014, the Idaho Supreme Court issued its *Opinion* on matters appealed in this case. The court affirmed the District Court's dismissal of Cummings' claims against Stephens, and reversed the trial court's judgment awarding Cummings damages for violations relating to Northern Title's duty as "abstractors of title." *Opinion* p. 26. The court's directive contained in the "Conclusion" states as follows:

We affirm the dismissal of Mr. Cummings' claims against Mr. Stephens and we reverse Mr. Cummings' judgment against Northern Title. We award Mr. Stephens and Northern Title costs, including reasonable attorney fees, on appeal.

Id. p. 27.

The *Opinion* did not reverse the District Court's decision finding that Cummings was the prevailing party against Northern Title or the District Court's subsequent order and judgment awarding Cummings' his attorneys fees and costs. Further, the *Opinion* did not reverse the District Court's decision denying Northern Title's attorneys fees and costs.

On September 22, 2014, Northern Title filed a "Petition for Rehearing" requesting that the Supreme Court "clarify" the following:

- (1) the vacating of the District Court's order of costs and attorney fees against Northern Title,
- (2) the deeming of Northern Title as a prevailing party,
- (3) the District Court's jurisdiction in determining Northern Title's costs and reasonable attorney fees, and

(4) whether the costs and attorney fees awarded to Stephens should be augmented in an amount equivalent to those costs and fees incurred by Bearnson & Caldwell, LLC on Stephens' behalf.

Respondent/Cross-Appellant's Petition for Rehearing – Page 2

Northern Title's Memorandum in support of its Petition acknowledged that:

In issuing its *Opinion* the Court reversed "the judgment" against Northern Title, but did not expressly vacate the District Court's cost and fee order against Northern Title. Nor did the Court remand the matter for a determination of Northern Title's costs and fees as a prevailing party.

Respondent/Cross-Appellant's Memorandum in Support of Petition for Rehearing - Page 3.

On November 5th, 2014, the Supreme Court denied Northern Title's Petition for Rehearing. On that same day the Court issued a "Remittitur" noting that it had announced its *Opinion* and had "denied" Northern Title's Petition for Rehearing. It then Ordered

That the District Court shall forthwith comply with the directive of the *Opinion*, if any action is required.¹

Of note, the Supreme Court did not remand the case for further proceedings but merely to comply with the *Opinion*.

On November 10, 2014, Northern Title filed a "Motion to Reopen Proceedings & Northern Title Company of Idaho, Inc's Renewed Motion for Attorney's Fees and Costs." The Motion does not provide this Court any basis for authority under the Supreme Court's *Opinion* to reopen proceedings to reconsider the previous motion to the Court for an order awarding costs and attorneys' fees against Plaintiff, filed nearly four years ago on January 27, 2011, and later on February 5, 2013. Moreover, the face of the motion does not provide any basis or authority supporting jurisdiction of the District Court to consider the motion, given the finality of the

¹ The Remittitur also retains the Supreme Court's jurisdiction to decide attorney fees on appeal.

Supreme Court's *Opinion* which did not remand the case for further proceedings and expressly refused on rehearing to consider a reversal of the award of costs and fees to Cummings or the denial of fees to Northern Title.

On November 19, 2014, Defendant Roger Stephens filed a "Motion to Join Defendant Northern Title's Motion to Re-Open Proceedings," even though it has no interest or stake in the matter.

ARGUMENT

I. The District Court Lacks Jurisdiction to Consider Northern Title's Motion.

The Idaho Supreme Court has made it explicitly clear that, after it has ruled, the trial court's jurisdiction is limited to whatever directives that have been issued by the appellate court:

Where the appellate court remands a cause with directions to enter judgment for one of the parties, the judgment of the appellate court is a final judgment in the cause, and the entry thereof in the lower court is a purely ministerial act. ... A trial court has no authority to enter any judgment or order not in conformity with the order of the appellate court.

Hummer v. Evans, 979 P.2d 1188, 1191, 132 Idaho 830, 833 (1999)(citations omitted) (emphasis added).

When a case has been remanded to the trial court for further proceedings consistent with the Supreme Court's directive other than amending a judgment, the trial court may determine issues subsidiary to the Opinion, including a determination of attorney fees. *J.R. Simplon Co. v. Chemetics Intern., Inc.*, 130 Idaho 255, 258 939 P.2d 574, 577 (1997) However, the Supreme Court has been explicitly clear that there can be no further implicit jurisdiction, even for a determination of attorney fees, when the directive requires nothing more than an entry of judgment consistent with its Opinion. *Hummer v. Evans*, 132 Idaho at 833, 979 P.2d at 1191.

In fact, the Supreme Court's decision under *Hummer v. Evans* is somewhat similar to this case. In *Hummer*, the Supreme Court reversed an additional damages award that had been

granted to the Plaintiff in the trial court, holding that the Plaintiff's theory of damages for wrongful termination was not a tort-based claim but rather a contractual claim. Therefore, the Plaintiff had "not proven her (additional) damages with reasonable certainty." *Id.* 132 Idaho at 832, 979 P.2d at 1190. The directive of the Court at issue the *Hummer* case was as follows:

The district court's conclusion that Hummer's termination was a violation of public policy is affirmed. She is entitled to the initial award of damages and costs. The district court's grant of additur damages is reversed. Each party has prevailed in part on appeal. No costs or attorney fees are awarded.

Id.

The Remittitur stated that:

IT IS HEREBY ORDERED that the District Court shall forthwith comply with the directive of the Opinion, if any action is required; and

IT IS FURTHER ORDERED that no costs or attorney fees are allowed.

Id.

After the initial appeal, the Plaintiff in Hummer filed a Renewed Motion for Attorney Fees with the trial court, which was denied and subsequently appealed. Upon appeal, the Supreme Court expressly rejected the Plaintiff's reliance on *Chemetics* that the determination of attorney fees at the trial level was subsidiary to the Court's directive, making the following clear distinction:

After the Court's decision in Hummer I, the only action within the jurisdiction of the district judge was the ministerial act of entering any amended judgment necessary as a result of this Court's ruling reversing the damages award. The district judge did not, as Hummer appears to argue, have the power to revisit discretionary issues of the case simply because the Remittitur allowed the district judge to comply with "the directive of the Opinion, if any action is required."

Indeed, the language of the Remittitur provides that the opinion of the Court directs whether any continuing jurisdiction of the district judge exists. In this case, our ruling did not open the door for the district judge to address substantive issues in the case. This case is unlike *Chemetics*, where our reversal of the verdict in the first appeal in and of itself changed the prevailing party and thus granted the district judge jurisdiction to address any issue, like attorney fees, that was related to the result in the appeal.

In contrast, the implicit holding of Hummer I was that the district judge would have no jurisdiction to do anything other than enter an amended judgment. Jurisdiction to address a subsidiary issue such as attorney fees did not arise as a result of our holding.

Id. (emphasis added)

The “directive” at issue in the *Chemetics* decision (which allowed the District Court to consider attorney fees as a “subsidiary” issue) is distinctly different than the “directive” in this case.

The directive found the “Conclusion” in the *Chemetics* Opinion stated as follows:

The verdict in favor of Simplot on these Counts is accordingly reversed and the award of attorney fees is vacated. This matter is remanded so that Simplot’s attorney fee award as the prevailing party on Count III may be modified in accordance with this opinion.

J.R. Simplot Co. v. Chemetics Intern., Inc., 130 Idaho 258, 939 P.2d 577 (emphasis added)

Comparatively, the directive in this case is significantly limited in this case than that of

Chemetics, and in fact has essentially the same as the directive of the *Hummer* decision.:

We affirm the dismissal of Mr. Cummings’ claims against Mr. Stephens and we reverse Mr. Cummings’ judgment against Northern Title. We award Mr. Stephens and Northern Title costs, including reasonable attorney fees, on appeal.

Opinion p. 27.

In this case, the Supreme Court’s Remittitur is basic and clear, that the District Court “forthwith comply with the directive of the Opinion, if any action is required.” It did not remand the case for any further proceedings. Despite Northern Title’s Petition for Rehearing requesting as such, the Supreme Court did not reverse or disturb the District Court’s holding that Cummings was the prevailing party against Northern Title and its subsequent order awarding Cummings’ attorney fees.² Moreover, again, despite Northern Title’s request on re-hearing, the Supreme

² Its worth noting the concurring and dissenting opinion of Justice Jim Jones, which states that: “(T)he district court’s finding of ‘gross negligence, willful misconduct, or both’ effectively stands.” *Opinion* at 29.

Court did not grant Northern Title's appeal of the District Court's denial of Northern Title's request for attorney fees and costs.

Simply put, the only jurisdiction that the District Court now has is the ministerial act of entering an amended judgment with regard to the \$50,000 awarded to Cummings based on a violation of Northern Title's duties as abstractor of title (reversed by the Supreme Court.) It does not instruct the District Court to consider any other matters. Northern Title is improperly requesting that the Court exceed its jurisdiction for a case that is for all intents and purposes concluded. Its motion should be summarily stricken and denied.

II. The Only Action that the District Court Can Take is to Issue a Judgment Vacating Cummings' \$50,000 Judgment Against Northern Title.

The Supreme Court's Remittitur is specific and direct that:

That the District Court shall forthwith comply with the directive of the Opinion, if any action is required. (emphasis added)

The Dictionary defines "forthwith" to mean: "at once, immediately, without delay." *The American Heritage Dictionary of the English Language, New College Edition, 1976.* As directed under *Hummer*, the only action that is required or allowed at this juncture is the ministerial act of the District Court of issuing an Amended Judgment vacating its August 6, 2014, Second Amended Final Judgment, which awarded Cummings \$50,000.

By filing motions for the Court to re-consider matters long settled, both Northern Title and Roger Stephens are improperly prolonging this now 7 ½ year old case that has and remains closed since the Supreme Court's *Opinion* and denial of the respective petitions for rehearing. Their actions are only causing unnecessary and inappropriate costs for Cummings and the Court. The Court has no jurisdiction to entertain Northern Title and Roger Stephens' Motion, or any

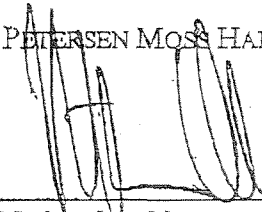
other issues for that matter. It should immediately submit the amended judgment and respect the finality of the Supreme Court's Opinion.

CONCLUSION

Pursuant to the foregoing, Northern Title's and Roger Stephens' Motion to Reopen Proceedings and Northern Title Company of Idaho, Inc's Renewed Motion for Attorney's Fees and Costs should be stricken for lack of jurisdiction. The District Court should immediately and without delay enter an amended judgment dismissing its Second Amended Final Judgment awarding Cummings \$50,000 in damages. It has no jurisdiction to consider any other action.

DATED this 19th day of December, 2014.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 19th day of December, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83204-1391
FAX: (208) 232-6109
EMAIL: rcb@racineclaw.net

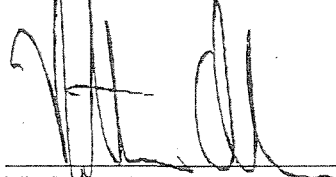
() mail () hand (✓) fax () email
Attorneys for Roger L. Stephens

Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bcarnsonlaw.com

() mail () hand (✓) fax () email
Attorneys for Northern Title Company

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

() mail () hand (✓) fax () email
courtesy chamber's copy



Nathan M. Olsen

Nathan M. Olsen, ISB No. 7373
 PETERSEN, MOSS, HALL & OLSEN
 485 "E" STREET
 IDAHO FALLS, ID 83402
 Telephone: (208) 523-4650
 Facsimile: (208) 524-3391
 Email: nolsen@pmholaw.com

DISTRICT COURT-
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2014 DEC 19 PM 4:49

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Attorneys for Plaintiff, Steven B. Cummings

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

STEVEN B. CUMMINGS, an individual
 residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
 residing in Providence, Utah; NORTHERN
 TITLE COMPANY OF IDAHO, INC., an
 Idaho corporation; JOHN DOES I-X,

Defendants.

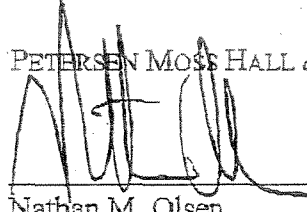
Case No.: CV-09-183

**MOTION TO STRIKE DEFENDANT
 NORTHERN TITLE'S "MOTION TO
 REOPEN PROCEEDINGS &
 NORTHERN TITLE COMPANY OF
 IDAHO, INC'S RENEWED MOTION
 FOR ATTORNEY'S FEES AND COSTS"**

Plaintiff, Steven Cummings (Cummings), through counsel of record hereby moves the Court to Strike Northern Title's "Motion to Reopen Proceedings & Northern Title Company of Idaho, Inc's Renewed Motion for Attorney's Fees and Costs." The basis of this motion, as fully set forth in Cummings' supporting memorandum filed herewith, is that this Court lacks jurisdiction to consider Northern Title's motion.

DATED this 19th day of December, 2014.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 19th day of December, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

Randall Budge, Esq.
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Pocatello, Idaho 83204-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

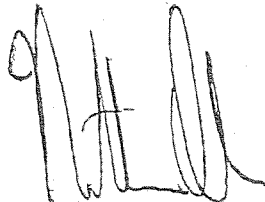
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Attorneys for Roger L. Stephens

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Attorneys for Northern Title Company

Honorable David C. Nye
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Nathan M. Olsen

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DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2014 DEC 19 PM 4:49

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. 

Attorneys for Plaintiff, Steven B. Cummings

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

STEVEN B. CUMMINGS, an individual
 residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
 residing in Providence, Utah; NORTHERN
 TITLE COMPANY OF IDAHO, INC., an
 Idaho corporation; JOHN DOES I-X,

Defendants.

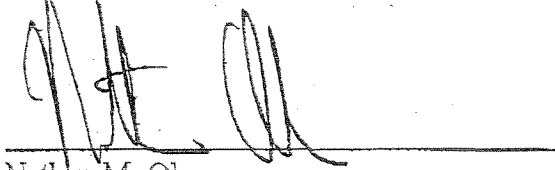
Case No.: CV-09-183

NOTICE OF HEARING

Please take notice that Plaintiff, Steven B. Cummings, will call his *Motion to Strike Defendant Roger L. Stephens' "Motion to Join Defendant Northern Title's Motion to Re-Open Proceedings"* and *Motion to Strike Defendant Northern Title's "Motion to ReOpen Proceedings & Northern Title Company of Idaho, Inc's Renewed Motion for Attorney's Fees and Costs"* on for hearing on the 2nd day of January, 2015, at 1:30 o'clock p.m., or as soon thereafter as counsel may be heard, before the Honorable David C. Nye, at the Bear Lake County Courthouse, Paris, Idaho. You are invited to attend and to participate.

DATED this 19th day of December, 2014.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 19th day of December, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

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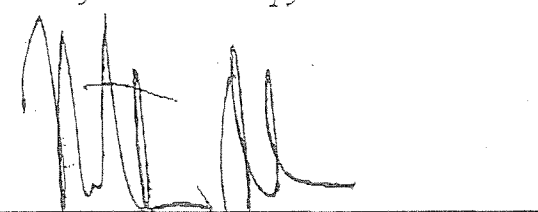
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Attorneys for Roger L. Stephens

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Attorneys for Northern Title Company

Honorable David C. Nye
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courtesy chamber's copy



Nathan M. Olsen

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO

Dec 19, 2014 4:49 pm
DATE TIME
CLERK

DEPUTY

CASE NO.

Nathan M. Olsen, ISB No. 7373
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Email: nolsen@pmholaw.com

Attorneys for Plaintiff, Steven B. Cummings

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

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

MOTION TO STRIKE DEFENDANT
ROGER L. STEPHENS' "MOTION TO
JOIN DEFENDANT NORTHERN
TITLE'S MOTION TO RE-OPEN
PROCEEDINGS"

Plaintiff, Steven Cummings (Cummings), through counsel of record hereby moves the Court to Strike Roger L. Stephens' (Stephens) "Motion to Join Defendant Northern Title's Motion to Re-Open Proceedings." This Motion is supported by the pleadings previously and contemporaneously filed, and the basis set forth below:

1) Because Northern Title's "Motion to Re-Open Proceedings" involves matters pertaining only to Northern Title, Stephens is not a real party in interest pursuant to IRCP § 17(a), and has no standing to join the motion.

2) The stated "purpose" of Stephens' Motion is to move the court to "enter final judgment, including awards of additional fees and costs in accordance with the Idaho Supreme Court's decision and orders on remand." However, the Motion does not cite any such "decisions and orders on remand" from the Supreme Court "awarding additional fees and costs" because no such "decisions and orders" exist. In other words, Stephens' motion is based on a fiction.

3) The Court lacks jurisdiction to consider Stephens' Motion for the same reasons set forth in Plaintiff's Motion to Strike Defendant Northern Title's "Motion to Reopen Proceedings & Northern Title Company of Idaho, Inc.'s Renewed Motion for Attorney's Fees and Costs" for Lack of Jurisdiction and its supporting brief.

DATED this 19th day of December, 2014.

PETERSEN MOSS NALL & OLSEN


Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 19th day of December, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Method of Service:

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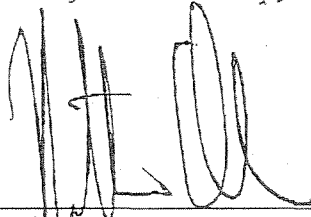
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Attorneys for Roger L. Stephens

Brad Bearnson, Esq.
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Logan, Utah 84321
FAX: (435) 752-6301
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Attorneys for Northern Title Company

Honorable David C. Nye
P.O. Box 4165
Pocatello, Idaho 83205
FAX: (208) 236-7418

() mail () hand (x) fax () email
courtesy chamber's copy



Nathan M. Olsen

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2014 DEC 24 AM 10: 58

KERRY HADDOCK, CLERK

DEPUTY _____ CASE NO. _____

Brad H. Bearnson (L.S.B. 7086)
Aaron K. Bergman (L.S.B. 8878)
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bbearnson@bearnsonlaw.com
abergman@bearnsonlaw.com
Attorneys for Defendant Northern Title

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,)

Case No. CV-2009-183

Plaintiff,)

**REPLY IN SUPPORT OF MOTION
TO REOPEN & RENEWED
MOTION FOR FEES AND COSTS**

vs.)

&

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

**RESPONSE IN OPPOSITION TO
CUMMINGS' MOTION TO STRIKE**

Defendants,)

COMES NOW Defendant, Northern Title Company of Idaho, Inc., by and through counsel of Bearnson & Caldwell, LLC, and files its *Reply in Support of Motion to Reopen and Renewed Motion for Fees and Costs*, as well as its *Response in Opposition to Cummings' Motion to Strike*.

BACKGROUND

On March 5, 2013, Plaintiff appealed the Court's verdict and Northern Title cross-appealed. See *Notice of Appeal* (March 3, 2013). The Idaho Supreme Court denied Plaintiff's appeal, and held "[w]e reverse the judgment against Northern Title." See *Cummings v.*

Stephens, 157 Idaho 348, 336 P.3d 281 (2014). The Idaho Supreme Court awarded Northern Title its fees and costs on appeal, and ordered that “the District Court shall forthwith comply with the directive of the Opinion, if any action is required.” *Remittitur* (Nov. 5, 2014).

ARGUMENT

“After a general reversal, a trial court is free to correct any error in its original findings and conclusions as to matters not passed on by the appellate court.” *Hutchins v. State*, 100 Idaho 661, 603 P.2d 995 (1979).

The Court has jurisdiction to reopen these proceedings to address Northern Title’s status as the prevailing party, and to correct its prior orders that are not in harmony with the Idaho Supreme Court’s reversal. In arguing that this Court lacks jurisdiction, Plaintiff relies on *Hummer v. Evans*, 129 Idaho 274, 923 P.2d 981 (1996), where the Idaho Supreme Court reversed the district court’s grant of additur damages, and on a second appeal held that “the issue of attorney fees was not a subsidiary issue fairly comprised therein.” *Hummer v. Evans*, 132 Idaho 830, 832-833, 979 P.2d 1188, 1190-1191 (1999). (emphasis added). Plaintiff’s reliance on *Hummer v. Evans* is misplaced. Here the Idaho Supreme Court did not merely change Cummings’ verdict, or his amount of damages. In contrast, the Idaho Supreme Court reversed Cummings’ verdict, entirely. “We reverse the judgment against Northern Title . . . [and] his judgment against Northern Title must be reversed” *Cummings*, 157 Idaho 348, 336 P.3d at 330.


This case is analogous to *J.R. Simplot Co. v. Chemetics International, Inc.*, 126 Idaho 532, 887 P.2d 1039 (1994), where the Idaho Supreme Court reversed the plaintiff’s verdict, and held the trial court did have jurisdiction over fees and costs, such being a “subsidiary issue fairly comprised therein.” *Hummer v. Evans*, 130 Idaho 255, 257, 939 P.2d 574, 576 (1997). Similarly here, the

reversal of Cummings' verdict changes the entire landscape of the case. Implicit in the Idaho Supreme Court's reversal is that this Court should "correct any error in its original findings and conclusions as to matters not passed on by the appellate court." *Hutchins v. State*, 100 Idaho 661, 603 P.2d 995 (1979). Cummings' only recovery has been reversed, obviously vesting jurisdiction in this Court to resolve the subsidiary issues of fees and costs to Northern Title.

The Court has jurisdiction to correct its orders. Cummings' verdict has been reversed, he has gained nothing by his lawsuit, and Northern Title is the prevailing party. The Court's orders should be corrected to comport with the Idaho Supreme Court's reversal.¹

DATED this 27th day of December, 2014.

BEARNSON & CALDWELL, LLC



Brad H. Bearnson
Aaron K. Bergman
Attorneys for Defendant Northern Title

¹ Notably, Cummings asks this Court to follow Justice Jones' lone dissenting opinion. Such is not the law of this case, and was not joined by any other Justice.

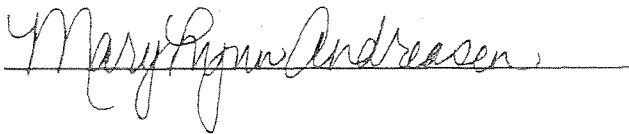
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 27th day of December, 2014, I served a true and correct copy of the above and foregoing **REPLY IN SUPPORT OF MOTION TO REOPEN & RENEWED MOTION FOR FEES AND COSTS & RESPONSE IN OPPOSITION TO CUMMINGS' MOTION TO STRIKE** to the following person(s) as follows:

Nathan M. Olsen	[x] U. S. Mail/Postage Prepaid
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Idaho Falls, Idaho 83402	[] Facsimile (208-524-3391)
	[x] Email (Nathan@pmholaw.com)

Randall C. Budge	[x] U.S. Mail/Postage Prepaid
Jason E. Flaig	[] Hand Delivery
RACINE, OLSON, NYE, BUDGE &	[] Overnight Mail
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Pocatello, Idaho 83204-1391	jef@racinelaw.net

Honorable David C. Nye	[x] U. S. Mail/Postage Prepaid
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 Email: nolsen@pmholaw.com

DISTRICT COURT
 SIXTH JUDICIAL COURT
 BEAR LAKE COUNTY IDAHO
Dec 31, 2014 12:04 pm
 DATE TIME
 CLERK
J. Mead
 DEPUTY CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

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

STEVEN B. CUMMINGS, an individual
 residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
 residing in Providence, Utah; NORTHERN
 TITLE COMPANY OF IDAHO, INC., an
 Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

REPLY IN SUPPORT OF
 PLAINTIFF'S MOTION TO STRIKE
 DEFENDANT NORTHERN TITLE'S
 "MOTION TO REOPEN
 PROCEEDINGS & NORTHERN TITLE
 COMPANY OF IDAHO, INC.'S
 RENEWED MOTION FOR
 ATTORNEY'S FEES AND COSTS" FOR
 LACK OF JURISDICTION

Plaintiff, Steven Cummings (Cummings), through counsel of record provides the following Reply in support of his Motion to Strike Defendant Northern Title's "Motion to Reopen Proceedings & Northern Title Company of Idaho, Inc.'s Renewed Motion for Attorney's Fees and Costs" for Lack of Jurisdiction.

Northern Title's response in opposition to Cummings' Motion to Strike does not indicate any direction given to the District Court by the Supreme Court other than to: "forthwith comply with the directive of the Opinion, if any action is required." Moreover, Northern Title is unable to identify any holdings in the Opinion that reverses the District Court's decision making Cummings the prevailing party in his claims against Northern Title – notwithstanding Northern Title's denied Petition for Rehearing requesting specific clarification as such. In addition, Northern Title cannot point to any holdings in the Opinion remanding the matter to District Court for a determination of attorneys fees to be awarded to Northern Title below – again, notwithstanding its request for clarification as such in its denied Petition for Rehearing.¹

As made explicitly clear in the *Hummer* decision, "compliance" with "the directive of the Opinion, if any action is required" does not in itself open the door to address any other issues in the case other what is directed, and:

Where the appellate court remands a cause with directions to enter judgment for one of the parties, the judgment of the appellate court is a final judgment in the cause, and the entry thereof in the lower court is a purely ministerial act. ... A trial court has no authority to enter any judgment or order not in conformity with the order of the appellate court.

Hummer v. Evans, 979 P.2d 1188, 1191, 132 Idaho 830, 833 (1999)(citations omitted) (emphasis added)

Northern Title's reliance on *J.R. Simplot Co. v. Chemetics Intern., Inc.*, 130 Idaho 255, 258 939 P.2d 574, 577 (1997) is misplaced. In that case, the Supreme Court remanded the case for further proceedings – thus allowing "subsidiary" issues not "passed on" by the Supreme

¹ It is also worth noting that – in its cross-appeal – Northern Title sought a reversal of the District Court's decision making Cummings the prevailing party and denying Northern Title's fees. The Supreme Court's Opinion did not grant Northern Title's appeal on those issues.

Court to be considered in the "further proceedings." *Id.* That is not the case here. This case was not "remanded" for "further proceedings" by the Supreme Court. Moreover, Northern Title's claims with regard to its prevailing party status and attorney fees below was before the Supreme Court on appeal and was denied. Thus the issue was not "passed on" by the Supreme Court.

Simply put, the Court should look primarily to the *Hummer* decision which came after the *Chemetics* decision, and in fact placed substantial limitations upon the application of *Chemetics*. In other words, *Hummer* is the more current law and precedent on this issue. *Chemetics* is the exception not the rule. Under the clear principles of *Hummer*, this Court has no jurisdiction to do anything other than amend the judgment. It has no jurisdiction to re-open the door to any other issues. It has no jurisdiction to interpret or make assumptions about what the Supreme Court wants or means to be done. Further, it has no jurisdiction to correct any perceived inconsistencies in the Supreme Court's Opinion. Its only jurisdiction is the "ministerial act" of amending judgments consistent with the "directive" of the Opinion.

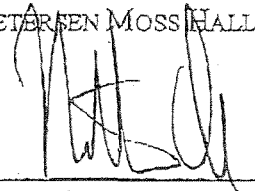
Finally, if the Court were to accept Northern Title's argument that it is now allowed to re-open the proceedings, then there should be nothing preventing Cummings from pursuing issues himself "consistent" with the directive of the Opinion. The Supreme Court did not reverse any of the District Court's findings that Northern Title was grossly negligent and/or committed willful misconduct. It simply reversed the District Court's damages decision based on Northern Title as the "abtractor of title." If the proceedings are re-opened, what would then prevent Cummings from seeking a reinstatement of damages based upon some other theory other than abtractor of title?

CONCLUSION

Pursuant to the foregoing, Northern Title's and Roger Stephens' Motion to Reopen Proceedings and Northern Title Company of Idaho, Inc's Renewed Motion for Attorney's Fees and Costs should be stricken for lack of jurisdiction. The District Court should immediately and without delay enter an amended judgment dismissing its Second Amended Final Judgment awarding Cummings \$50,000 in damages. If the court re-opens the proceedings, Cummings should be offered the opportunity himself to make his own motions that are "consistent" with the Supreme Court's Opinion.

DATED this 31st day of December, 2014.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 31st day of December, 2014, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

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Attorneys for Roger L. Stephens

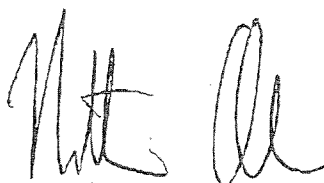
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Attorneys for Northern Title Company

Honorable David C. Nye
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courtesy chamber's copy



Nathan M. Olsen

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO

1/2/2015 2:20 pm
DATE TIME
CLERK

DEPUTY CASE NO.

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,
NORTHERN TITLE COMPANY OF
IDAHO, INC., an Idaho Corporation,
JOHN DOES I-X.

Defendants.

Case No. CV-2009-183

**AMENDED FINAL JUDGMENT
ON COSTS AND FEES**

Judgment is hereby entered in favor of Roger L. Stephens and against Steven B.

Cummings in the amount of \$155,209.21 for total costs and attorney fees.

DATED this 2nd day of January, 2015.



DAVID C. NYE
District Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of January, 2015, I served a true and correct copy of the above and foregoing to the following person(s) as follows:

Brad H. Bearnson
Aaron K. Bergman
BEARNSON & CALDWELL, LLC
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& OLSEN
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Randall C. Budge
RACINE OLSON NYE BUDGE
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 Overnight Mail
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 Email: amyw@bannockcounty.us



1/2/2015 1:36 pm
DATE TIME
CLERK

DEPUTY CASE NO.

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; NORTHERN TITLE CO. OF)
IDAHO, INC, an Idaho Corporation; and)
JOHN DOES I-X,)
)
Defendants.)
)

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

On January 2, 2015, Nathan M. Olsen, counsel for the above-named Plaintiff, and Brad H. Beamson and Aaron K. Bergman, counsel for the Defendant Northern Title, were present in the courtroom. The court reporter was Stephanie Morse and the court clerk was Karen Volbrecht.

Counsel for the Plaintiff Steven Cummings and counsel for the Defendant Roger L. Stephens submitted a Stipulation to Amended Final Judgment on Costs and Fees. Upon the Court's review of the signed stipulation and no objection from the Plaintiff;

IT IS HEREBY ORDERED the Court GRANTED the Stipulation to Amended Final Judgment on Costs and Fees and the Final Judgment was amended to reflect that judgment was entered in favor of Roger L. Stephens and against Steven B. Cummings in the amount of \$155,209.21.

This matter was scheduled for the Defendant Northern Title's Motion to Reopen

Proceedings and Renewed Motion for Attorney's Fees and Costs and Plaintiff's Motion to Strike Defendant Northern Title's "Motion to Reopen Proceedings and Renewed Motion for Attorney's Fees and Costs." Counsel provided argument concerning their respective positions.

After hearing argument, the Court found that it does have jurisdiction to rule on Northern Title's renewed motion for attorney fees and costs based on the Idaho Supreme Court's *Opinion* (Sept. 19, 2014). Further, the Court ruled that Northern Title lacks standing and this Court lacks jurisdiction over Bearnson and Caldwell's request for Costs as a Matter of Right and Discretionary Costs as to Defendant Stephens in the amount of \$35,575.84 as contained in the Memorandum of Fees and Costs filed February 5, 2013 and the request was DENIED.

IT IS FURTHER ORDERED that the Court finds the Defendant Northern Title is the prevailing party in this matter based upon the Idaho Supreme Court's *Opinion* dated September 19, 2014. Northern Title is entitled as against Steven Cummings to costs as a matter of right in the amount of \$5,559.64 and attorney fees in the amount of \$130,973.98, for a total award of costs and fees of \$136,533.62. No discretionary costs other than attorney fees are awarded.

The parties were advised of their right to appeal this decision and said appeal must be filed within forty-two (42) days of the Judgment of Costs and Fees signed herewith.

DATED this 2nd day of January, 2015.



DAVID C. NYE
Sixth District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 6th day of January, 2015, 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)

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Brad H. Bearnson U.S. Mail
Aaron K. Bergman
BEARNSON & PECK
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By Kan Vollbrecht
Deputy Clerk

DISTRICT COURT
SIXTH JUDICIAL COURT
BEAR LAKE COUNTY IDAHO

1/6/2015

DATE

TIME
CLERK

DEPUTY

CASE NO.

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 Utah,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE CO. OF IDAHO, INC, an Idaho Corporation; JOHN DOES, I-X.)

Defendants.)

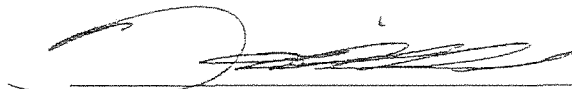
CASE NO. CV-2009-000183

AMENDED FINAL JUDGMENT
ON COSTS AND FEES AS
BETWEEN CUMMINGS AND
NORTHERN TITLE

JUDGMENT IS ENTERED AS FOLLOWS:

Judgment is hereby entered in favor of Northern Title Co. of Idaho, Inc. and against Steven Cummings in the amount of \$155,209.21 for total costs and attorney fees.

DATED: January 6, 2015.



DAVID C. NYE
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 6th day of ~~April, 2013~~ ^{January, 2015}, 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.

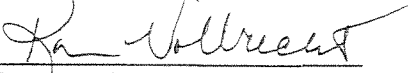
ATTORNEY(S) / PERSON(S)

Nathan M. Olsen
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402
U.S. Mail

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391
U.S. Mail

Brad Bearnson
BEARNSON & PECK
399 N. Main Street, Ste 300
Logan, UT 84321
U.S. Mail

KERRY HADDOCK,
Clerk of the Court

By 
Deputy Clerk

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2015 JAN -8 PM 1:01

CIRBY D. DAVIES, CLERK

DEPUTY _____ CASE NO.

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)
Utah,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual residing in)
Providence, Utah; NORTHERN TITLE CO. OF)
IDAHO, INC, an Idaho Corporation; JOHN)
DOES, I-X.)

Defendants.)

CASE NO. CV-2009-000183


****2ND****

AMENDED FINAL JUDGMENT
ON COSTS AND FEES AS
BETWEEN CUMMINGS AND
NORTHERN TITLE

JUDGMENT IS ENTERED AS FOLLOWS:

Judgment is hereby entered in favor of Northern Title Co. of Idaho, Inc. and against Steven Cummings in the amount of \$136,533.62 for total costs and attorney fees.

DATED: January 8, 2015.



DAVID C. NYE
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 8th day of January, 2015, 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
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402

Facsimile 524-3391

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

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Brad Bearnson
BEARNSON & PECK
399 N. Main Street, Ste 300
Logan, UT 84321

Email: bbearnson@bearnsonlaw.com
abergman@bearnsonlaw.com

By 
Deputy Clerk

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2015 JAN 27 PM 1:10

CINDY GARNER, CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE DEPUTY CASE NO.

STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in Utah,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual residing in Providence, Utah; NORTHERN TITLE CO. OF IDAHO, INC, an Idaho Corporation; JOHN DOES, I-X.)

Defendants.)


CASE NO. CV-2009-000183

**THIRD AMENDED
FINAL JUDGMENT ON COSTS
AND FEES AS BETWEEN
CUMMINGS AND NORTHERN
TITLE**

Judgment is entered as followed:

1. The Amended Final Judgment on Costs and Fees as between Cummings and Northern Title, dated January 6, 2015, and the Second Amended Final Judgment on Costs and Fees between Cummings and Northern Title, dated January 8, 2015, is null and void.
2. Northern Title Co. of Idaho, Inc. is awarded against Steven Cummings the amount of \$162,363.30 in costs and attorney fees.
3. The Court's Amended Final Judgment on Costs and Fees, dated January 2, 2015, entered in favor of Roger L. Stephens, is not affected by this Judgment.

DATED: January 27, 2015.


DAVID C. NYE
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 27th day of January, 2015, 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
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402

Facsimile - 524-3391

Randall C. Budge
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

Facsimile - 232-6109

Brad Bearnson
BEARNSON & PECK
399 N. Main Street, Ste 300
Logan, UT 84321

Email - bbearnson@bearnsonlaw.com
abergman@bearnsonlaw.com

Cindy Garner,
Clerk of the Court

By Kan Albrecht
Deputy Clerk

2015 FEB -5 PM 4: 50

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

Brad H. Bearnson (I.S.B. 7086)
Aaron K. Bergman (I.S.B. 8878)
BEARNSON & CALDWELL, LLC
399 North Main, Suite 270
Logan, Utah 84321
bbearnson@bearnsonlaw.com
Attorneys for Defendant Northern Title

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,)

Case No. CV-2009-183

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual)
residing in Providence, Utah,)
NORTHERN TITLE COMPANY OF)
IDAHO, INC., an Idaho Corporation,)
JOHN DOES I-X.)

NORTHERN TITLE COMPANY OF
IDAHO, INC.'S MOTION TO
VACATE ALL OUTSTANDING
JUDGMENTS AGAINST NORTHERN
TITLE

Defendants.)
_____)

COMES NOW Defendant, NORTHERN TITLE COMPANY OF IDAHO, INC., by and through counsel of Bearnson & Caldwell, LLC, and pursuant to Rule 60(b) hereby moves this Court to vacate the *Second Amended Final Judgment* dated August 6, 2014, entered in favor of Stephen Cummings in the amount of \$50,000.00, and its *Final Judgment on Costs and Fees* dated April 15, 2013 in the amount of \$112,448.09.

In this action, and based upon the Idaho Supreme Court's ruling, the Court has determined that Cummings is no longer the prevailing party – Northern Title is. Two (2) erroneous judgments were entered, and by the Court's *Third Amended Final Judgment on Costs and Fees between Cummings and Northern Title* dated January 27, 2015, both erroneous judgments were

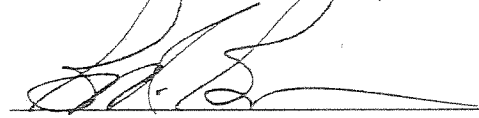
voided and Northern Title was awarded fees and costs of \$162,263.30. However, the Court still has not reversed its August 6, 2014 *Second Amended Final Judgment* of \$50,000.00 in favor of Cummings against Northern Title. Nor has the Court reversed its April 12, 2013 *Final Judgment on Costs and Fees* of \$112,448.09 in favor of Cummings against Northern Title.

Where the Idaho Supreme Court has ordered that the \$50,000 judgment must be reversed, and implicit as this Court noted, such changed the prevailing party status, the judgment of \$112,448.09 in favor of Cummings is also inappropriate. Yet, it stands as a recorded judgment lien against Northern Title.

To comply with the opinion of the Idaho Supreme Court, Northern Title respectfully requests that the Court enter an order vacating the presumably overlooked above two (2) judgments. A proposed order is provided, herewith.

DATED this 5th day of February, 2015.

BEARNSON & CALDWELL, LLC



Brad H. Bearnsen

Aaron K. Bergman

Attorneys for Defendant Northern Title

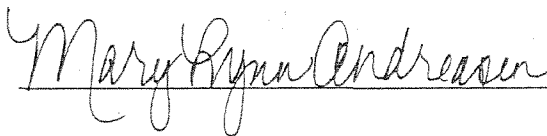
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 5th day of February, 2015, I served a true and correct copy of the above and foregoing **NORTHERN TITLE COMPANY OF IDAHO INC.'S MOTION TO VACATE ALL OUTSTANDING JUDGMENTS AGAINST NORTHERN TITLE** to the following person(s) as follows:

Nathan M. Olsen	<input checked="" type="checkbox"/>	U. S. Mail/Postage Prepaid
Petersen Moss Hall & Olsen	<input type="checkbox"/>	Hand Delivery
485 "E" Street	<input type="checkbox"/>	Overnight Mail
Idaho Falls, Idaho 83402	<input type="checkbox"/>	Facsimile (208-524-3391)
	<input checked="" type="checkbox"/>	Email (Nathan@pmholaw.com)

Randall C. Budge	<input checked="" type="checkbox"/>	U.S. Mail/Postage Prepaid
Jason E. Flaig	<input type="checkbox"/>	Hand Delivery
RACINE, OLSON, NYE, BUDGE &	<input type="checkbox"/>	Overnight Mail
BAILEY, CHARTERED	<input type="checkbox"/>	Facsimile (208) 232-6109
P.O. Box 1391; 201 E. Center Street	<input checked="" type="checkbox"/>	Email rcb@racinelaw.net
Pocatello, Idaho 83204-1391		jef@racinelaw.net

Honorable David C. Nye	<input checked="" type="checkbox"/>	U.S. Mail/Postage Prepaid
P.O. Box 4165	<input type="checkbox"/>	Hand Delivery
Pocatello, Idaho 83205	<input type="checkbox"/>	Overnight Mail
	<input type="checkbox"/>	Facsimile (208) 945-2780
	<input checked="" type="checkbox"/>	Email amyw@bannockcounty.us



Nathan M. Olsen, ISB No. 7373
 PETERSEN MOSS HALL & OLSEN
 485 "E" Street
 Idaho Falls, Idaho 83402
 Telephone: (208) 523-4650
 Facsimile: (208) 524-3391
 Email: nolsen@pmholaw.com

DISTRICT COURT
 SIXTH JUDICIAL DISTRICT
 BEAR LAKE COUNTY, IDAHO

2015 FEB 12 PM 3:55

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

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

STEVEN B. CUMMINGS, an individual
 residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
 residing in Providence, Utah; NORTHERN
 TITLE COMPANY OF IDAHO, INC., an
 Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

OBJECTION TO NORTHERN TITLE'S
 RULE 60(b) MOTION

Plaintiff, Steven Cummings (Cummings), through counsel of record hereby objects to Northern Title Company of Idaho, Inc.'s (Northern Title) Rule 60(b) Motion to "Vacate All Outstanding Judgments Against Northern Title." This motion was filed nearly five months after the Supreme Court fully decided the matters of this case. Of further note, this motion was filed nearly four months after Northern Title filed its "Motion to Reopen Proceedings" which was heard on January 2, 2015. The Court issued its "Third Amended Final Judgment" on January 27, 2015.

Simply put, this matter is completed. After more than 7½ long years, the case is over.

Northern Title continues to unduly prolong the matters in this case and continues to generate unnecessary legal and court costs.

A motion under IRCP § 60(b) is appropriate only under the following extraordinary conditions:

(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

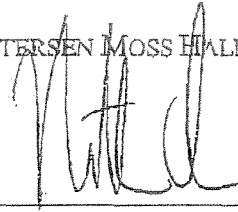
Id.

The moving party has the burden of demonstrating good cause for relief under a Rule 60(b) motion. *Lowe v. Lynn*, 103 Idaho 259, 263, 646 P.2d 1030, 1034 (Ct. App. 1982); *Thomas v. Thomas*, 119 Idaho 709, 711, 809 P.2d 1188, 1190 (Ct. App. 1991). Northern Title provides no such "good cause" for any of the aforementioned conditions in its Rule 60(b) Motion. *In fact it doesn't state any reason under the rule for its motion.* It does not provide any justification or reason why it should be allowed to again re-open this case. It does not provide any justification or reason why the issues raised in its 60(b) motion were not raised or addressed in its November 10, 2014 "Motion to Reopen Proceedings" or at the January 2, 2015, hearing in this matter (or at any other time prior to the amended and final judgments in this case). Northern Title simply has no excuse whatsoever for its failure to properly and timely address its claims in the motion.

The Court should allow this matter to remain final and strike or deny Northern Title's baseless motion. If the Court allows this motion to go forward, Cummings reserves the right to respond to its substance.

DATED this 12th day of February, 2015.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 12th day of February, 2015, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

Randall Budge, Esq.
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, Idaho 83204-1391
FAX: (208) 232-6109
EMAIL: rcb@racinelaw.net

Method of Service:

() mail () hand fax () email

Attorneys for Roger L. Stephens

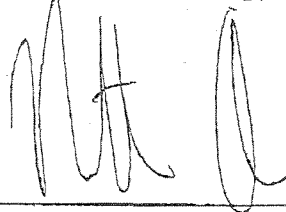
Brad Bearnson, Esq.
BEARNSON & CALDWELL
399 N. Main Street, Ste. 270
Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

() mail () hand fax () email

Attorneys for Northern Title Company

Honorable David C. Nye
624 E. Center, Room 303
Pocatello, Idaho 83201
EMAIL: amyw@bannockcounty.us

() mail () hand email
courtesy chamber's copy



Nathan M. Olsen

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2015 FEB 20 AM 9:45

CINDY GARNER, CLERK

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE ~~DEPUTY CLERK~~ CASE NO.

STATE OF IDAHO, IN AND FOR THE COUNTY OF BEAR LAKE

STEVEN CUMMINGS, an individual residing in)
Utah,)

Plaintiff,)

vs.)

ROGER L. STEPHENS, an individual residing in)
Providence, Utah; NORTHERN TITLE CO. OF)
IDAHO, INC, an Idaho Corporation; JOHN)
DOES, I-X.)

Defendants.)

CASE NO. CV-2009-000183

**POST-JUDGMENT ORDER
VACATING PRIOR
JUDGMENTS IN FAVOR OF
STEVEN CUMMINGS
AGAINST NORTHERN TITLE**

On February 5, 2015, Northern Title Co. of Idaho, Inc. filed a Motion to Vacate all Outstanding Judgments against Northern Title. That motion was based upon IRCP 60(b) and seeks to have the Court vacate (1) the Second Amended Final Judgment, dated August 6, 2014, entered in favor of Stephen Cummings in the amount of \$50,000.00 and (2) the Final Judgment on Costs and Fees, dated April 12, 2013¹, in the amount of \$112,448.09. Apparently, those two judgments have been recorded.


Steven Cummings has filed an Objection to Northern Title's Rule 60(b) motion on the basis that the motion is untimely in that this matter is completed and the motion was filed nearly four months after Northern Title filed its "Motion to Reopen Proceedings". The motion is not untimely. IRCP 60(b) is a post-judgment rule designed to be filed and decided after the case is completed.

¹ Northern Title's motion states that this Final Judgment on Costs and Fees is dated April 15, 2013. However, the Idaho Repository shows it was filed and issued on April 12, 2013.

Here, there are valid reasons for granting the motion, particularly under subsection (4) because the two challenged judgments are void and subsection (5) because it is no longer equitable that the judgments should have prospective application given the subsequent rulings of the Idaho Supreme Court and this Court.

THEREFORE, the Second Amended Final Judgment, dated August 6, 2014, and the Final Judgment on Costs and Fees, dated April 13, 2013, are vacated and have no more effect.

DATED: February ~~19~~, 2015 February 20, 2015



DAVID C. NYE
District Judge

CERTIFICATE OF MAILING/SERVICE

I hereby certify that on the 20th day of February, 2015, 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
Petersen Moss Hall & Olsen
485 "E" Street
Idaho Falls, ID 83402

Randall C. Budge U.S. Mail
RACINE OLSON NYE BUDGE & BAILEY
P.O. Box 1391
Pocatello, ID 83204-1391

Brad Bearnson U.S. Mail
BEARNSON & PECK
399 N. Main Street, Ste 300
Logan, UT 84321

Cindy Garner,
Clerk of the Court

By *Km Colwell*
Deputy Clerk

Nathan M. Olsen, ISB No. 7373
PETERSEN, MOSS, HALL & OLSEN
485 "E" STREET
IDAHO FALLS, ID 83402
Telephone: (208) 523-4650
Facsimile: (208) 524-3391
Email: nolsen@pmholaw.com

DISTRICT COURT
SIXTH JUDICIAL DISTRICT
BEAR LAKE COUNTY, IDAHO

2015 MAR 10 PM 3:57

CINDY GARNER, CLERK

DEPUTY _____ CASE NO.

Attorneys for Plaintiff, Steven B. Cummings

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

STEVEN B. CUMMINGS, an individual
residing in Utah,

Plaintiff,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah; NORTHERN
TITLE COMPANY OF IDAHO, INC., an
Idaho corporation; JOHN DOES I-X,

Defendants.

Case No.: CV-09-183

NOTICE OF APPEAL

TO: THE ABOVE NAMED RESPONDENT, NORTHERN TITLE COMPANY OF IDAHO, INC.; THE PARTY'S ATTORNEY, Brad Beamson, Esq., 399 N. Main Street, Suite 270, Logan, Utah 84321; and THE CLERK OF THE ABOVE ENTITLED COURT

NOTICE IS HEREBY GIVEN THAT:

1. The above named Appellant, Steven B. Cummings, appeals against the above named Respondent to the Idaho Supreme Court from the Third Amended Final Judgment on

Costs and Fees as Between Cummings and Northern Title entered in the above entitled action on the 27th day of January, 2015, Honorable Judge David C. Nye, presiding.

2. Appellant has a right to appeal to the Idaho Supreme Court, and the judgment described in paragraph 1 above is appealable under and pursuant to Rule 11(a)(1), I.A.R.

3. The preliminary statement of the issues on appeal that the Appellant intends to assert in the appeal are as follows:

A. Did the District Court err in assuming jurisdiction to make a determination that Respondent was the prevailing party and as such reversing its prior judgment awarding the Appellant attorney fees and further deciding to award Respondent its attorney fees?

B. If the District Court did properly retain jurisdiction to “correct errors,” should it have also addressed other issues with regard to Respondent’s liability in the case?

4. Has an order been entered sealing all or any portion of the record? NO.

5. Is a reporter’s transcript requested? Appellant requests a PARTIAL TRANSCRIPT, for the hearings held on January 2, 2015.

6. The Appellant requests the following documents to be included in the clerk’s record in addition to those automatically included pursuant to the following Rule 28, I.A.R.: See attached Exhibit A (highlighted documents only). Additionally, Appellant requests his “Memorandum in Support of Appellant’s Petition for Rehearing” filed with the Supreme Court on October 20, 2014, as well as the Order Denying Petition for Rehearing entered for Appellant and Respondent respectively on November 5, 2015, and the Post-Judgment Order Vacating Prior Judgments in Favor of Steven Cummings Against Northern Title entered by the District Court on February 20, 2015 (all of which do not appear on the repository contained on Exhibit A).

7. The Appellant requests the following documents, charts, or pictures offered or admitted as exhibits to be copied and sent to the Supreme Court: Not applicable.

8. I certify:

A. That a copy of this Notice of Appeal has been served on each reporter of whom a transcript has been requested as named below at the address set out below:

Stephanie Morse
Judge Nye's Court Reporter
P.O. Box 594, Inkom, ID 83245

B. That the clerk of the district court has been paid the estimated fee for preparation of the reporter's transcript;

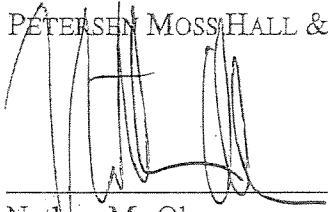
C. That the estimated fee for preparation of the clerk's record has been paid.

D. That the appellate filing fee has been paid; and

E. That service has been made upon all parties required to be served pursuant to Rule 20, I.A.R.

DATED this 9th day of March, 2015.

PETERSEN MOSS HALL & OLSEN



Nathan M. Olsen
Attorney for the Appellant

CERTIFICATE OF SERVICE

I hereby certify that I am a duly licensed attorney in the State of Idaho, with my office in Idaho Falls, Idaho, and that on the 10 day of March, 2015, I served a true and correct copy of the foregoing document on the persons listed below by first class mail, with the correct postage thereon, or by causing the same to be delivered in accordance with Rule 5(b), I.R.C.P.

Persons Served:

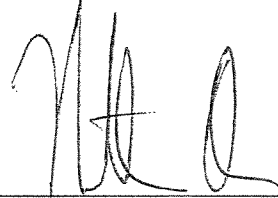
Method of Service:

Brad Bearnson, Esq.
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Logan, Utah 84321
FAX: (435) 752-6301
EMAIL: bbearnson@bearnsonlaw.com

mail () hand () fax () email
Attorneys for Northern Title Company

Honorable David C. Nye
624 E. Center, Rm. 303
Pocatello, Idaho 83201
EMAIL: anyw@bannockcounty.us

mail () hand () email
courtesy chamber's copy

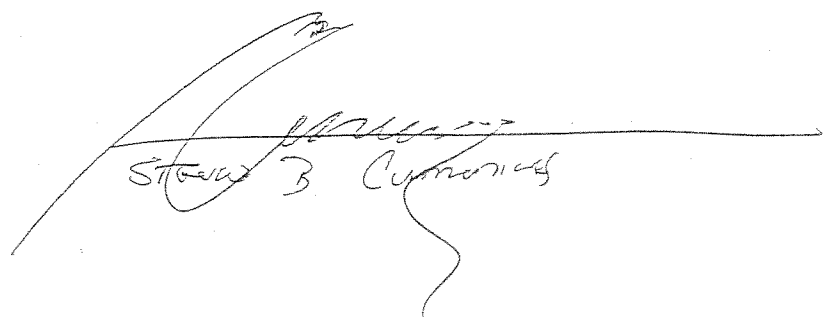


Nathan M. Olsen

RANDALL BUDGE, ESQ.
RACINE, OLSON, NYE,
BUDGE & BAILEY
P.O. Box 1391
POCATELLO, ID. 83204

mail

ATTORNEY
ROGER C. STOWERS



03/05/2013 NOTICE OF APPEAL

03/05/2013 Appealed To The Supreme Court

03/06/2013 Bond Posted - Cash (Receipt 545 Dated 3/6/2013 for 151.00)

03/11/2013 Brief Regarding Jurisdiction on Motion to Intervene

03/19/2013 Order

03/19/2013 Decision on Motion to Intervene

03/26/2013 Filing: L4 - Appeal, Civil appeal or cross-appeal to Supreme Court Paid by: Beamson, Brad H (attorney for Northern Title Company of Idaho, Inc) Receipt number: 0000679 Dated: 3/26/2013 Amount: \$109.00 (Combination) For: Northern Title Company of Idaho, Inc (defendant)

03/26/2013 Filing: Technology Cost - CC Paid by: Beamson, Brad H (attorney for Northern Title Company of Idaho, Inc) Receipt number: 0000679 Dated: 3/26/2013 Amount: \$3.00 (Combination) For: Northern Title Company of Idaho, Inc (defendant)

03/26/2013 Northern Title Company of Idaho, Inc's Notice of Cross Appeal

03/26/2013 Bond Posted - Cash (Receipt 680 Dated 3/26/2013 for 100.00)

04/04/2013 Decision on Costs and Fees

04/04/2013 Civil Disposition entered for: Northern Title Company of Idaho, Inc, Defendant; Cummings, Steven, Plaintiff. Filing date: 4/4/2013

04/04/2013 Civil Disposition entered for: Stephens, Roger L, Defendant; Cummings, Steven, Plaintiff. Filing date: 4/4/2013

04/12/2013 Final Judgment on Costs and Fees

04/25/2013 Northern Title Company of Idaho, Inc.'s Amended Notice of Cross Appeal

05/14/2013 Notice of Amended Appeal

05/28/2013 Bond Posted - Cash (Receipt 1248 Dated 5/28/2013 for 906.30)

05/31/2013 Stipulated Notice of Lodging

06/03/2013 Bond Posted - Cash (Receipt 1333 Dated 6/3/2013 for 1112.80)

07/02/2013 Northern Title Company of Idaho, Inc's Request for Additions to the Clerk's Record

07/02/2013 Notice Of Hearing (No Oral Argument Requested)

07/03/2013 Hearing Scheduled (Motion 07/17/2013 01:30 PM) Request for Admission to the Clerk's Record

07/11/2013 Notice of No Objection to Northern Title Company of Idaho, Inc's Request for Additions to the Clerk's Record

07/16/2013 Order Granting Northern Title Company of Idaho, Inc's Request for Additions to the Clerk's Record

07/16/2013 Hearing result for Motion scheduled on 07/17/2013 01:30 PM: Hearing Vacated Request for Admission to the Clerk's Record

07/22/2013 Bond Posted for Transcript (Receipt 1869 Dated 7/22/2013 for 481.75)

09/03/2013 Bond Converted (Transaction number 140 dated 9/3/2013 amount 151.00)

09/03/2013 Bond Converted (Transaction number 141 dated 9/3/2013 amount 1,112.80)

09/03/2013 Bond Converted (Transaction number 142 dated 9/3/2013 amount 100.00)

09/03/2013 Bond Converted (Transaction number 143 dated 9/3/2013 amount 906.30)

09/03/2013 Bond Converted (Transaction number 144 dated 9/3/2013 amount 481.75)

08/01/2014 Amended Final Judgment

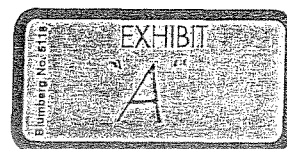
08/01/2014 Civil Disposition entered for: Northern Title Company of Idaho, Inc, Defendant; Stephens, Roger L, Defendant. Filing date: 8/1/2014

08/06/2014 Second Amended Final Judgment

09/24/2014 2014 Opinion No. 95

09/25/2014 Petition for Rehearing

09/25/2014 Memorandum in Support of Cross Appellant's Petition for Rehearing Seeking Clarification



10/03/2014 Appellant's Petition for Rehearing
 10/06/2014 Memorandum of Costs and Claim for Attorney Fees/Stephens
 10/07/2014 Memorandum of Fees and Costs/Northern Title
 10/20/2014 Objection to Respondent/Cross-Appellant's Attorney Fees/Stephen's
 10/20/2014 Objection to Respondent/Cross-Appellant's Attorney Fees/Northern Title
 11/05/2014 Remittitur
 11/10/2014 Motion to Reopen Proceedings & Northern Title Company of Idaho, Inc's
 Renewed Motion for Attorney's Fees and Costs

 11/14/2014 Hearing Scheduled (Motion 01/02/2015 01:30 PM) Northern Title's
 Renewed Motion for Attorney's Fees and Costs
 11/14/2014 Notice Of Hearing
 11/18/2014 Order Awarding Costs and Attorney Fees
 11/19/2014 Motion to Join Defendant Northern Title's Motion to Re-Open Proceedings
 Memorandum in Support of Plaintiff's Motion to Strike Defendant
 12/19/2014 Northern Title's "Motion to Reopen Proceedings & Northern Title Co of
 Idaho, Inc's Renewed Motion for Attorney's Fees and Costs" for Lack of
 Jurisdiction
 Motion to Strike Defendant Northern Title's "Motion to Reopen
 12/19/2014 Proceedings & Northern Title Co of Idaho, Inc's Renewed Motion for
 Attorney's Fees and Costs"

 12/19/2014 Notice Of Hearing
 12/19/2014 Hearing Scheduled (Motion 01/02/2015 01:30 PM)
 12/19/2014 Motion to Strike Defendant Roger L. Stephens' "Motion to Join Defendant
 Northern Title's Motion to Re-Open Proceedings"
 Reply In Support of Plaintiff's Motion to Strike Defendant Northern Title's
 12/31/2014 "Motion to Reopen Proceedings & Northern Title Company of Idaho, Inc's
 Renewed Motion for Attorney's Fees and Costs" For Lack of Jurisdiction
 12/31/2014 Stipulation To Amend Final Judgment On Costs and Fees
 Court Minutes Hearing type: Northern Title's Renewed Motion for Fees
 01/02/2015 Hearing date: 1/2/2015 Time: 1:30 pm Courtroom: Court reporter:
 Stephanie Davis Minutes Clerk: Karen Volbrecht Tape Number: Nathan M.
 Olsen Brad H. Bearnson Randall C. Budge
 01/02/2015 Amended Final Judgment on Costs and Fees
 01/02/2015 Minute Entry and Order
 Hearing result for Motion scheduled on 01/02/2015 01:30 PM: District
 01/05/2015 Court Hearing Held Court Reporter: Rodney Felshaw Number of Transcript
 Pages for this hearing estimated:
 Hearing result for Motion scheduled on 01/02/2015 01:30 PM: Motion
 01/05/2015 Granted Northern Title's Renewed Motion for Attorney's Fees and Costs
 Motion to Join Def Northern Title's Motion to Re-Open Proceedings
 01/06/2015 Amended Final Judgment on Costs and Fees as Between Cummings and
 Northern Title
 01/08/2015 2nd Amended Final Judgment on Costs and Fees as Between Cummings
 and Northern Title
 01/08/2015 Civil Disposition entered for: Stephens, Roger L, Defendant; Northern
 Title Company of Idaho, Inc, Defendant. Filing date: 1/8/2015
 01/27/2015 Third Amended Final Judgment on Costs and Fees as Between Cummings
 and Northern Title
 Miscellaneous Payment: For Certifying The Same Additional Fee For
 02/03/2015 Certificate And Seal Paid by: Cummings, Steven Receipt number:
 0000208 Dated: 2/3/2015 Amount: \$5.00 (Credit card)

 Miscellaneous Payment: Technology Cost - CC Paid by: Cummings,
 02/03/2015 Steven Receipt number: 0000208 Dated: 2/3/2015 Amount: \$3.00
 (Credit card)
 02/05/2015 Northern Title Company of Idaho, Inc's Motion to Vacate all Outstanding
 Judgments Against Northern Title
 02/12/2015 Objection To Northern Title's rule 60(b) Motion 84

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

STEVEN B. CUMMINGS, an individual)
residing in Utah,)
)
) Plaintiff/Appellant,)
)
) vs.)
)
)
) ROGER L. STEPHENS, an individual)
residing in Providence, Utah;)
)
) Defendant,)
)
) and)
)
) NORTHERN TITLE COMPANY OF IDAHO, INC.,)
an Idaho Corporation;)
)
) Defendant/Respondent.)
_____)

Supreme Court No. 43081

CERTIFICATE OF EXHIBITS

I, CINDY GARNER, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bear Lake, do hereby certify that the following is a list of the exhibits, offered or admitted and which have been lodged with the Supreme Court or retained as indicated:

EXHIBITS:

NO: _____ DESCRIPTION: _____ SENT/RETAINED

NONE

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this
15th day of June, 2015.

(SEAL)

CINDY GARNER,
Clerk of the District Court

By 
Karen Volbrecht, Deputy Clerk

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

STEVEN B. CUMMINGS, an individual
residing in Utah,
Plaintiff/Appellant,

vs.

ROGER L. STEPHENS, an individual
residing in Providence, Utah;
Defendant,
and
NORTHERN TITLE COMPANY OF IDAHO, INC.,
an Idaho Corporation;
Defendant/Respondent.

)
)
)
) **Supreme Court No. 43081**
)
) **CERTIFICATE OF CLERK**

I, CINDY GARNER, Clerk of the District Court of the Sixth Judicial District of the State of Idaho, in and for the County of Bear Lake, do hereby certify that the foregoing Clerk's Record in the above entitled cause was compiled and bound under my direction and contains true and correct copies of all pleadings, documents and papers designated to be included under Rule 28, IAR, the Notice of Appeal, any Notice of Cross-Appeal, and any additional documents requested to be included.

I further certify that all documents, x-rays, charts and pictures offered or admitted as exhibits in the above entitled cause, if any, will be duly lodged with the Clerk of the Supreme Court with any Reporter's Transcript and the Clerk's Record, as required by Rule 31 of the Idaho Appellate Rules.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Court this
15th day of June, 2015.

CINDY GARNER,
Clerk of the District Court

(SEAL)

By *Karen Allrecht*
Deputy Clerk

