7-22-2019

Gregory v. Stallings Appellant's Brief Dckt. 46818

IN THE SUPREME COURT OF THE STATE OF IDAHO

JON GREGORY,	)	**No. 46818**
	)	
Petitioner-Appellent,	)	**Bingham County Case No.**
	)	**CV-2017-1651**
vs.	)	
	)	
RICHARD STALLINGS, and EILEEN STALLINGS	)	
	)	
Respondent-Appellee.	)	
	)	

PETITIONER'S BRIEF

APPEAL FROM THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JUDGE DARREN B. SIMPSON
District Judge

JARED M. HARRIS
Baker & Harris
266 W. Bridge St.
Blackfoot, Idaho 83221

ATTORNEY FOR RESPONDENT-APPELLEE

DAVID N PARMENTER
NATHAN D. RIVERA
Parmenter Rivera LLP
P.O. Box 700
Blackfoot, Idaho 83221
(208)785-5618

ATTORNEYS FOR PETITIONER-APPELLENT

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STATEMENT OF THE CASE

Nature of The Case

Appellant appeals the district court's decision to dismiss his petition for rehearing on the defendants' motion for summary judgment. He seeks reversal of the decision. For your convince Jon Gregory's Affidavit in Support of Motion for Reconsideration is attached with exhibits.

Statement of the Facts and Course of Proceedings

This case centers on the Stallings, hereafter Appellee or Stallings failure to pay Jon Gregory, hereafter Appellant or Gregory for the sale of a property which both parties agreed to develop. Gregory purchased a two-acre parcel of land in Rexburg, Idaho for development of student housing or other university housing development for $205,000. However, he needed the other two-acres to develop the project. In September 2007, Stallings contacted Gregory, expressing interest in purchasing the other two-acre parcel and going in as joint ventures in the development of the project. Stallings obtained a bank loan in order to finance their share of the purchase of the other two acres, for around the same price $205,000. As the parties were working on the development in 2008, the market in residential and commercial properties crashed, causing economic turmoil in the United States

and particularly to the parties in this case. Century mortgage advised Gregory they could not provide a draw for construction work and essentially went out of business. Summit Development had done some initial work but were unable to complete the project. Gregory also owned an adjacent but separate property known as G's Dairy Delights, LLC and took the proceeds from that sale and invested them in the project (of approximately $292,629.00), to keep the venture viable. He began working to try and sell the property to recoup the investments that he, Appellees, and others had invested in the properties and joint venture. He was able to locate a buyer, Rockwell Court Limited Partnership, who was willing to purchase the property. Then, on February 2, 2009, Gregory transferred his interest to his parcel to Pioneer Point LLC, a company established to develop the property. Later, on December 8, 2010, Pioneer Point LLC and the Stallings entered into a construction loan with Century Mortgage Company to finance a portion of the construction, with the work to be completed seven calendar months from that date. On the same day, Pioneer Point LLC and the Stallings signed a promissory note of $945,000 to multiple lenders with an agreement to pay the note within six months, or by June 10. 2009, with the option to extend up for another six months.

On May 2, 2012, Pioneer Point LLC transferred what had been Mr. Gregory's property to Richard Stallings. Then, on November 14, 2012, Stallings, through attorney Garrett Sandow, told Gregory that he planned on taking two draws from a sell of both parcels and would give Mr. Gregory the remaining balance, which was $106,000 on the first draw and $150,000 on the second draw, **Exhibit M.** The Stallings sold both parcels of property on December 21, 2012 to Rockwell Court LP for $1,086,438.89. After that sale, all the mortgage investors other than the parties were paid back their initial investments.

On September 9, 2013, Gregory was informed by Garrett Sandow, through email, that Richard Stallings no longer intended to pay Gregory the balance of those draws, **Exhibit I**. Mr. Sandow advised Gregory that he had four years from the date of the notice to file suit against Stallings, which was the first time Stallings had ever advised Gregory he did not plan on paying him. Until that date Gregory had understood, from prior representations by Stallings that he would get his money, albeit at the "end of the line". **Exhibit M**, dated November 14, 2012 establishes that Gregory would get his funds in two separate draws following closing- one of $106,000.00 and a second draw of $150,000.00. **Exhibit N**, dated

December 27, 2012 sets forth the amount that Stallings proposed paying Gregory $155,482.28, over the next few months. Gregory fully anticipated that the draws were still forthcoming, because of Stallings assurances, and the buyer was paying out additional amounts after closing as the development progressed. Not all the funds were paid at closing, but some were withheld as the development was completed by the buyer. In addition, Stallings had advised Gregory that he would be the last to be paid, and Gregory knew the buyer was still finishing the development stage.

Therefore, the first he knew of Stallings decision not to pay anything occurred on September 9, 2013. On September 6, 2017, Gregory sued the Stallings for breach of contract. The district court dismissed the case on summary judgment, finding an oral contract did exist, but that Gregory was barred from bringing suit due to the four-year statute of limitations on oral contracts. On January 18, 2019, the district court denied Gregory's motion for reconsideration. Gregory timely appealed.

ISSUE PRESENTED

Did the court err in denying Gregory's motion for reconsideration of summary judgement when Gregory produced enough evidence of a genuine dispute of a material fact, that there was not a statute of limitation violation, and when estoppel would otherwise govern?

SUMMARY OF THE ARGUMENT

The district court erred in granting Stallings' motion for summary judgment and denying Gregory's motion for reconsideration for three reasons. First, Gregory produced sufficient evidence about the timing of the breach of contract, which was subsequently contradicted by Stallings, illustrating that a genuine issue of material of fact was present. Second, though a discovery rule is not explicitly required by statute, this Court has used such a rule in breach of contract cases and should do so here. If the district court had correctly applied a discovery rule in Gregory's case, he would not have been found barred by the statute of limitations. Finally, even if Gregory is barred by the statute of limitations, the doctrine of either equitable estoppel should apply in order to create an equitable outcome because Gregory invested significantly more money into the development project and received none

of the payout from the sell. For these reasons, this Court should overturn the holdings of the district court.

ARGUMENT

I. THE DISTRICT COURT ERRED IN GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT AND DENYING RECONSIDERATION BECAUSE THE GENUINE DISPUTE OF WHEN THE CONTRACT WAS BREACH, THE FAILURE TO APPLY THE DISCOVERY RULE, AND THE NEED FOR ESTOPPEL.

A. Standard of Review

This Court's standard of review of summary judgment is the same as the district court's review and is governed by I.R.C.P 56. *Balivi Chem. Corp. v. Indus. Ventilation, Inc.*, 131 Idaho 449, 450, 958 P.2d 606, 607 (Ct. App. 1998). This Court must determine if the documents on file with the Court illustrate a genuine dispute of material fact. *Id.* Further all reasonable inferences that can be drawn from the record must be drawn in favor of nonmoving party, Gregory. *Lockheed Martin Corp. v. Idaho State Tax Comm'n*, 142 Idaho 790, 793, 134 P.3d 641, 644 (2006).

B. Gregory provided sufficient evidence that a material issue of fact arises about when the contract was breached.

The district court correctly determined that there was a valid, oral contract between Gregory and Stallings which was governed by a four-year statute of limitations. *See* I.C. § 5-217. However, the district court incorrectly ruled that no genuine dispute of fact arose regarding when the breach of contract occurred. Statute of limitations do not begin to toll until the claim has accrued, which in this case would be at the contract breach. *Spence v. Howell*, 126 Idaho 763, 770, 890 P.2d 714, 721 (1995). This Court has also recognized that the time a breach occurred is a factual question. *Id.*

Two cases are instructive in illustrating the factual nature of the time of breach. First in the partnership context, the Court of Appeals found that a dispute about whether the partnership contract ended at the dissolution of the partnership or at the completion of winding up the company was genuine dispute of fact that could not be disposed of on summary judgment. *Heilson v. Cook*, 108 Idaho 236, 238, 697 P.2d 1250, 1252 (Ct. App. 1985).

Second, this Court has recently reaffirmed the longstanding doctrine in Idaho concerning time for contract performance when the time is not specified.

Swafford v. Huntsman Springs, Inc., 163 Idaho 209, 213 409 P.3d 789, 793 (2017). In *Swafford*, this Court held that when a contract does not specify a performance date, then time for performance is a reasonable amount of time. *Id.* In *Swafford*, couple contracted to buy a piece of land, relying on a master plan for development of the surrounding area. Construction in 2007-2008 did not conform to the master plan, but the couple did not sue until 2015 which was two years outside the statute of limitations. The court refused to make a ruling on when the couple had constructive notice of the breach but stated that at the latest the breach occurred was in 2008 when the construction was completed.

Principles in both these cases apply here. Gregory left the closing up of the finances to Stallings. When Stallings communicated to Gregory that he would be sending payments in two draws, no time was specified. The district court, pointed to a statement, sent on December 27, 2012, as the time Gregory should have been expected to pay. The court reasoned that on that date, since Gregory was not paid, he should have been put on notice that Stallings did not intend to pay. However, Gregory had been informed by Stallings that he would not be paid until other parties, including Stallings himself had been paid first. In addition the buyer had

withheld funds from closing to finish the development and therefore the parties were waiting on the receipt of additional payments or draws through the first part of 2013. The financial statement was an affirmation of the amount that Gregory would receive, but Gregory reasonably believed that payouts to others would occur before he received that payment. If there was other evidence that would have made Gregory believe that Stallings was not going to follow through with the contract, Stallings did not present that evidence to the court.

The court erred in using the financial statement as the date of breach of contract instead of the reasonable amount of time for performance as iterated by this Court in *Swafford.* Like in *Swafford,* where the court refused to rule when there was a constructive notice of the breach, here, there is genuine dispute that the latest the breach occurred was when Gregory received the email from Sandow.

This proposition is further bolstered by *Heilson.* Like *Heilson,* where parties disagreed when the contract was dissolved, here, Gregory has presented evidence that the breach occurred when he discovered Stalling's intent not to pay him. His belief was not only an individual subjective belief of his own, but was confirmed by his attorney, Mr. Sandow, when Mr. Sandow informed him of the statute of

limitations on a breach of oral contract. The fact that Stallings disagrees with the date of breach, illustrates a genuine dispute of material fact. Because a genuine dispute of material fact exists, this Court should overturn the lower court's grant of summary judgment.

C. Gregory's claim did not violate the statute of limitations because a discovery rule should be applied in this case.

The lower court also erred in determining when the breach of contract occurred, because a breach date based on Gregory's discovery is appropriate in this case. While there is no explicit discovery rule governing the breach of oral contracts, this Court has essentially applied such a rule in some breach of contract cases.

For example, in *Spence*, a couple who left a development project in the hands of a real estate agent in Idaho and moved to California in 1986 under the belief the real estate agent was moving forward in development. 126 Idaho at 767. Though the parties agreed to go into development in 1980, the couple learned from a family member that the real estate agent was not moving forward with development in 1988 and that point sued for breach of contract. *Id.* at 769. This Court found that the breach occurred when the couple discovered the development

was not going forward, not when the real estate agent started actually violating the contract by taking actions that were not in line with development of the property which had occurred many years earlier. *Id.* at 770.

Like the couple in *Spence*, Gregory was unaware of Stallings intent to breach the contract until notified by a third party. Though Stallings may have taken actions that indicated an intent to breach the contract, Gregory did not know of those actions. While the lower court used the financial statement from December 27 as evidence that Gregory should have known that Stallings would breach the contract, the fact that Stallings was giving Gregory an update on the status of the sale cuts in the opposite direction. The statement was confirmation that Stallings did intend to still pay Gregory. Gregory indicated that up until the email from Mr. Sandow, he was received multiple reassurances that he would be still paid. Further, Gregory knew that some construction by the buyer would delay the final payout until spring and summer of 2013. These facts show Gregory had no reason to believe that Stallings would not uphold his end of the promise.

In the case of the *Spence* couple, two years had passed where the couple was not actively looking into the property, and this Court still held in their favor. So

should the Court do here. Gregory learned of the intention to breach less than a year after the sale of the property, and was, until that time, under the belief that Stallings would fulfill his promise. A discovery rule is fitting, where Gregory had no reason to suspect that Stallings would breach the contract. Because a discovery rule should have been applied, Gregory is not in violation of the statute of limitations.

D. Even if Gregory violated the statute of limitations, his case should still be heard under the doctrine of equitable estoppel.

Statute of limitations may be overcome through the doctrine of equitable estoppel. *Ferro v. Society of Saint Pius X,* 413 Idaho 538, 541, 149 P.3d 813, 816 (2006). Equitable estoppel, which can be applied in Gregory's case, is established by showing:

> (1) a false representation or concealment of a material fact with actual or constructive knowledge of the truth; (2) that the party asserting estoppel did not know or could not discover the truth; (3) that the false representation or concealment was made with the intent that it be relied upon; (4) that the person to whom the representation was made, or from whom the facts were concealed, relied and acted upon the representation or concealment to his prejudice. *Id.* at 541.

The district court did not address this issue in its ruling on summary judgment, but if this Court affirms the district court's decision Stallings will be

unfairly enriched for his breach of contract. Gregory invested more than double the financial resources of Stallings and Gregory also invested more time, labor, and services than Stallings. So, Gregory will receive nothing for these investments, because of misrepresentations by Stallings.

Looking to the equitable estoppel factors, first it appears that Stallings told Gregory that he would send him payment for the sale, while never intending to follow through with that promise. Second, Gregory had no way of discovering the truth about the sale because the property had been transferred out of Gregory's name. Third, Stallings made representations to Gregory likely with the intention to avoid Gregory bring suit. Finally, Gregory relied on those representation to his detriment, as he was never paid for the sale of the property. All these facts show that Gregory's case should be heard on its merits regardless of the statute of limitations.

Further, equitable estoppel should apply in this case because Gregory did diligently pursue the suit after discovery of the breach of contract. Under *Ferro*, equitable estoppel does not eliminate the statute of limitations, instead it prevents a party from asserting it as a defense for a reasonable time after the party claiming

estoppel could have reasonably discovered the truth. 143 Idaho at 540. In *Ferro*, the court determined that equitable estoppel did not apply to a priest who filed his claim for infliction of emotional distress after the two-year statute of limitations period. *Id.* There, the court determined that the priest knew the statute of limitations on his claim, and in fact consulted multiple attorneys about his case, so there was no reason that he should have not timely filed. *Id.* at 544.

While the statute of limitations had not tolled when Gregory discovered the breach of contract, his case was very different from the priest in *Ferro*. Gregory was wrongfully told the statute of limitations for filing a case by attorney, Mr. Sandow. Gregory believed that he was pursing his case within the statute of limitations. Because Gregory believed that he was timely filing, based on information from an attorney, he showed that he was diligently pursuing his case. If Gregory had attempted to file after what he knew to the statute of limitations, it would be obvious that the reasonable time to raise equitable estoppel had passed because the action would have shown a lack of diligence to conform with the suit's procedural requirements.

Gregory has shown that he meets the elements to qualify for equitable estoppel and that he still has reasonable time to prevent Stallings from using the statute of limitations as a defense. At the very least, whether equitable estoppel applies in this case is a genuine issue of material fact which would require this Court to overturn the lower court's holding.

CONCLUSION

Based on the evidence and argument presented herein, Gregory respectfully requests that this Court overturn the decision of the district court.

DATED this 22nd day of July 2019.

DAVID N. PARMENTER, ESQ
Attorney for the Petitioner/Appellent

CERTIFICATE OF MAILING

I HEREBY CERTIFY that I have this 22nd day of July 2019, served two true and correct copies of the foregoing APPELLANT'S BRIEF, by placing the copies in the United States mail, postage prepaid, addressed to:

JARED M. HARRIS
Baker & Harris
266 W. Bridge St.
Blackfoot, Idaho 83221

EXHIBIT M

Subj: **Rexburg Property**
Date: 11/14/2012 10:24:26 A.M. Mountain Standard Time
From: staterecovery@hotmail.com
To: Gsandowlaw@aol.com
Garrett Sandow

The following facts are the reasons why the payoff on the Rexburg property should be alocated as stated.

1. My principle and interest paid out at the time my bank went broke was 287,000.

2. When my bank, America West closed down I had the F.D.I.C. come after me threatoning to go after everything that I have. Niether Larkins or John had any interest or financial responsability in helping me at all. Just because Iwas able to get out of that problem does not mean that I share that risk with John.

3. Tim Cobb told me he was really disapplonted in dealing with John because he could not get him to follow through in a promptly time. He commended me for getting things back in a efficient time. Tim Cobb told me that he would not have any future dealings with John.

4. This entire project was under John watch. I totally left everything up to his disgression. I am very disappointed that we sold this property under his advisment to some one who barrowed hard money on it. This ruined potential profits thst would have been good for both of us.

5. Since this property has drug on, I have been forced to sell some other property at a discount for need capital on a project in Caldwell.

Conclusion

My mistake was putting this in Johns hands. I feal if he would have been more ascertive we would not be in this position. For this reason I feal that Ishould at least get the money that I invested into this property back.

$86,000.00

Investment	286,000.
I recieved a draw	30,000.
balanced left	256,000.

$200,000 − 30,000

I plan on taking the following amounts and then giving the balance of each draw to Garret Sandow for Johns dispersel.
First draw 106,000
second draw 150,000

100
200

$ 300,000.00 Inf

STATE RECOVERY
100 MARK LN
BLACKFOOT, ID 83221
208-785-6591

150
200
350

290
200
100
590
240

1.1
650,000
150,000

150
100
250
− 170
80

200
30
$170,000.00

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parlaw@gmail.com

Attorney for Plaintiff

IN THE DISTRICT COURT OF THE SEVENTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BINGHAM

JON GREGORY, an individual Plaintiff, vs. RICHARD STALLINGS, an individual and EILEEN STALLING, an individual Defendants.	Case No. CV-2017-1651 AFFIDAVIT OF JON GREGORY IN SUPPORT OF MOTION FOR RECONSIDERATION

Jon Gregory being first duly sworn on oath, deposes and says:

1. I am the plaintiff in this matter.

2. I was aware of the closing scheduled on December 21, 2012, but knew that I had no money due at that time, because of further conditions, development, and draws. The agreement under the Real Estate Option Agreement with Memphis Development Group (Exhibit X), provided for a purchase price of $800,000, as well as reimbursement to me and Stallings for reimbursement of engineering costs and existing infrastructure in the sum of $300,000, which "cost shall be paid no later than 50% completion of the final development."

3. Exhibit N specifies that Stallings did receive some payment and credits around the

time of closing—but further specifies that we would be receiving draws in January or early February 2013.

4. The construction project took longer to complete than anticipated, thus delaying the payouts or draws to me and Stallings for several months, well into 2013. The draws were sent directly to Stallings, but it was my understanding that there were several smaller draws paid out over the spring and summer of 2013. Further, Stallings had advised me that I would receive my money last—from the final draw or draws.

5. I continued to receive information regarding the progress of the development and assurances that the draws would be forthcoming through 2013, until I actually received information by email from Stallings to Tim Cobb and forwarded to Mr. Sandow (as of September 9, 2018) that he did not intend to pay me, as he previously had agreed (Exhibit I).

FURTHER AFFIANT SAYETH NOT.

Dated this 29 day of OCTOBER, 2018.

JON GREGORY

STATE OF IDAHO)
:ss
County of Bingham)

SUBSCRIBED AND SWORN TO before me this 29 day of October, 2018.

My cmn exprs: 12/16/22

Notary Public in and for the
State of Idaho, residing at Pocatello therein

MARITZA WHITE
NOTARY PUBLIC - STATE OF IDAHO
COMMISSION NUMBER 69029
MY COMMISSION EXPIRES 12-16-2022

EXHIBIT I

I.

From: Tim Cobb <tim@Constructionenhancement.com>
To: Gsandowlaw <Gsandowlaw@aol.com>
Subject: Fwd: Rexburg Property
Date: Mon, Sep 9, 2013 5:26 pm

Garrett-

Hope you are doing well... I received the below from Richard Stallings in the past few weeks, and then followed up with a call to him and conversation, in which he mentioned some of the items that went wrong in this deal.

Give me a call when you get a moment.

509-990-2324

Sent from Tim's iPad

Begin forwarded message:

From: "State Recovery, Inc. ." <staterecovery@hotmail.com>
Date: August 27, 2013, 2:01:42 PM PDT
To: Tim Cobb <tim@Constructionenhancement.com>
Subject: Rexburg Property

Tim I have been doing a lot of thinking in reference to John Gregory and the sale of the Rexburg property. When John had the IRS call me it really caught me off guard. In that they asked me if I had anything to do with John Gregory and I assured them that we had no partnership and that I owed him no money in this transaction. Then shortly after that John told me that in selling of the property that the buyer only wanted to deal with one person not two, I thought that was strange but said nothing at that time. Latter I learned that the whole reason for this is because the IRS is after John for past taxes. I am very unhappy with John in trying to put me in the middle of his problems.. As I review this entire project I was no more than an investor in that John made all the decisions on this property. The only thing I did is purchase my ground and John thought he could market it. About two years ago John called up and said for us to go up to Rexburg and sign some papers. We thought we were selling the property and when we got up to Rexburg they had us sign a guarantee for 950,000.00. The closing agent said we were in good shape and it was a normal procedure. John should have said something to me. I am upset that John allowed this project to borrow hard money that took all the profits. I look at the opportunity cost of this project that was given away through Johns poor management of this property. I feel that I should get the full opportunity cost back on my risk of my investment. Beside the opportunity cost, by John having me talk to the IRS put me in a position that I am very uncomfortable with. I feel John is way out of line in putting me in any position that could threaten my financial position. In conclusion I feel in order for me to get a return on my investment there is no money owed to John from the current sell.

Thank you
Richard Stallings

STATE RECOVERY
100 MARK LN
BLACKFOOT, ID 83221
208-785-6591

EXHIBIT N

STATEMENT

Richard Stallings

186 W 180 N
Blackfoot, ID 83221
(208)317-1133
staterecovery@hotmail.com

STATEMENT NO. [100]
DATE December 27, 2012
CUSTOMER ID Roxburg Property

DATE	DESCRIPTION	AMOUNT
	Richards Original Loan amount Per Terry Mockley	$ 289,000.00
	Loan extention cash advices	(9,000.00)
	Pay off to Beehive Credit Union	(11,785.27)
	Withdrawal when bank went under to reestablish loan	(30,000.00)
	First Payment (Kept By Richard)	(93,697.01)
		AMOUNT DUE
		$144,517.72

Next Payment end of January or first of February 2013	
Total	300,000.00
Paid to John	155,482.28
Paid to Richard	144,517.72

E MAILED FROM
RICHARD STALLINGS
TO GARRETT SANDOW

RICHARD GOT 50,000.00
DRAW + 9,000.00 LOAN
EXTENSIONS —
11,785.27 — CREDIT
UNION [illegible] [illegible] THE
USED TO OBTAIN SOME
MONEY

EXHIBIT X

Tim Cobb X

REAL ESTATE OPTION AGREEMENT

Contract ID #VP1108

THIS REAL ESTATE OPTION AGREEMENT (the "Option Agreement") is entered into as of July 19, 2011 by and between John Gregory and or Assigns ("Seller") located at P.O. Box 1296 Blackfoot, ID 8322, and Memphis Development Group, its successors and/or assigns ("Purchaser"), located at 4110 Eaton Avenue, Suite A, Caldwell, Idaho, 83607.

NOW THEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration received, Seller is willing to grant Purchaser an Option to purchase the Option Property on the terms and conditions set forth herein:

1. PROPERTY DESCRIPTION:
The property is located at and is described as Four (4) + acres on the North side of west 7th South commonly known as Pioneer Pointe in Rexburg, Idaho (full legal description to be included in final closing documents agreeable to Purchaser), an recorded plat, see 'Exhibit A', together with all of Seller's right, title, and interest in all common areas, amenities, appurtenances, fixtures, chattels, mineral rights and the underlying fee land (collectively referred to as the "Option Property").

2. GRANT OF OPTION:
Seller hereby grants to Purchaser the exclusive right and option to purchase the Option Property on the terms and conditions set forth herein ("the Option").

3. PURCHASE PRICE:
The purchase price shall be Eight Hundred Thousand ($800,000.00) Dollars. In addition Purchaser shall reimburse Seller for cost of engineering plans and existing infrastructure a sum of Three Hundred Thousand ($300,000.00) Dollars, said cost shall be paid no later than 50% completion of the final development. Third party verification of percentage completion shall be approved by both Purchaser and Seller. In addition said cost shall be carried out under the terms of an AIA contract between the Purchaser and Seller to be completed at land closing.

4. EXERCISE OF OPTION:
The Purchaser may exercise the Option at any time after the execution of this Option Agreement and prior to the expiration of the Option Term by notifying Seller of its intent to exercise the Option.

5. OPTION TERM:
The term of the Option shall commence upon execution of this Option Agreement and automatically expire if the Option is not exercised by December 31st, 2011 or extended as provided in Section 11 herein.

6. OPTION PAYMENT:
A Five thousand ($5,000.00) Dollar Option Payment shall be placed in Purchaser's agent's trust account in the form of a note upon execution of the Option Agreement by Seller and Purchaser. Upon Purchaser's acceptance and approval of all items listed under "Initial Due Diligence Items" in Section 8 and upon receipt of approvals for financing and other items as listed in Section 9, "Conditions Precedent to Option Payment," the Option Payment shall be deemed nonrefundable, Said time to meet these requirements not to exceed December 15th 2011. Purchaser shall notify Seller in writing indicating the election to proceed and will release the Five Thousand ($5,000.00) Dollar note Option Payment (the "Option Payment") to the Seller. The Option Payment shall be applied against the Purchase price as of the Closing Date.

7. INITIAL DUE DILIGENCE PERIOD:
Purchaser shall have one hundred fifty (145) days following the receipt from Seller of the "Initial Due Diligence Items" listed below to review said items and notify the Seller in writing of (a) its approval and acceptance of the Initial Due Diligence items, which approval and acceptance shall not be unreasonably withheld, and its election to proceed, or (b) if one or more of the Initial Due Diligence Items are not unacceptable, the reason(s) for not approving such item(s). In the event any such items are unacceptable to Purchaser, Seller shall have 10 business days following receipt of Purchaser's notificiation to notify Purchaser of any actions it intends to take to address the unapproved item to Purchaser's satisfaction. If any such item remains unapproved by Purchaser for any reason, Purchaser shall have the option of waiving the item and electing to proceed, or terminating this Option Agreement. In the event Purchaser elects not to continue this transaction during the initial Due Diligence Period, then this Option Agreement shall be null and void and all option notes or payments shall be returned to the Purchaser and neither party shall have any further liability or responsibility related to this transaction.

8. INITIAL DUE DILIGENCE:
No later than 15 business days following execution of this Option Agreement Seller shall provide Purchaser with:

A. A preliminary title commitment including copies of all easements and other agreements in effect with respect to all or a portion of the Property, all permits, all tax statements and notices of actual or proposed adjustment of tax valuations, and all appraisals, topographical maps, geotechnical or soil studies, feasibility studies, engineering studies, utility locations, environmental and Hazardous Materials reports and studies and other reports and studies relative to the Option Property or its use or development in Seller's possession and/or control;

B. Copies of all correspondence in Seller's possession and/or control with all governmental entities relative to the Option Property;

C. A copy of all current leases, maintenance/service contracts and agreements, and any other contracts relating to the ownership, operation and maintenance of the Option Property, if any;

D. Evidence as to local improvement districts and governmental assessments affecting the Option Property and proposed assessments and easements.

9. CONDITIONS PRECEDENT TO OPTION PAYMENT:
Conditions precedent to making the Option Payment non-refundable shall include:

A. Zoning:
The Option Property is currently zoned (Medium Residential 2). Purchaser wishes to develop the Option Property as Multi-Family Apartments. The Purchaser's proposed development shall consist of a minimum of Sixty(60) units of residential apartment housing units. This Option Agreement is contingent upon the completion of all planning and zoning approvals required by the City of Rexburg and all other government entities having jurisdiction over the proposed development for said density requirement, Seller to support the proposed use. Purchaser's application for such approvals shall not be unnecessarily delayed.

B. Entitlements:
All federal, state, county and city permits, approvals and licenses necessary for Purchaser's intended development of the Property including any zoning changes, annexations, site plan approvals, variances or platting required (including legal access to the parcel). This shall be deemed to include confirmation of the availability to the Option Property at reasonable expense of water, sewer, gas, power, telephone, cable and all other necessary utilities, but does not include the building permits required for construction of the proposed development.

C. Financing:
Commitments for all financing including but not limited to Low Income Housing Tax Credits, Federal HOME funds, other HUD or USDA funding, Federal Home Loan Bank loans and/or grants, construction and permanent loans, and investment partnership approvals. It is expressly understood that said commitments will be contingent upon completion and approval of a Phase 1 Environmental Site Assessment and, if direct federal funding is involved, a federal environmental review conducted in accordance with the National Environmental Policies Act of 1969 (NEPA).

10. ADDITIONAL CONDITIONS PRECEDENT FOR CLOSING:
In addition to the conditions described in Section 9, which shall be conditions precedent for closing as well as conditions precedent for making the Option Payment non-refundable, the following conditions shall be additional conditions for closing:

A. Survey:
Purchaser's receipt and review, at Purchaser's expense, of an acceptable ALTA survey of the Option Property from a licensed surveyor, and Purchaser's approval of the same, which shall not be unreasonably withheld.

B. Deed:
Purchaser's receipt and appoval, which shall not be unreasonably withheld, of a good and sufficient warranty, free of all liens and encumbrances not previously approved by Purchaser, except: for:

1. All easements, rights of way, covenants and restrictions of record approved by Purchaser.
2. Current and future year's real estate taxes.
3. Assessments existing as of the date of this Option Agreement.
4. Zoning and other governmental laws and regulations provided none of the foregoing interfere with the intended use of the Option Property by Purchaser.

C. Status of Property:
As of the closing date, the Subject Property shall be free of all occupants, tenants and personal possessions of Seller.

D. Condition of Property:
Purchaser's acceptance of the physical condition of all improvements located on the Option Property; if any exist. Seller agrees to allow Purchaser reasonable access to all improvements for the purpose of a physical inspection by Purchaser and Purchaser's representatives. In the event Seller cannot deliver to Purchaser good and marketable title to the Option Property, or the conditions of improvements on the Option Property; if any exist, do not meet Purchaser's approval upon final inspection, Purchaser shall have the option of waiving the item and electing to proceed, or terminating this Option Agreement. In the event Purchaser notifies Seller that Purchaser will not continue this transaction, then this Option Agreement shall be null and void and all option notes and payments shall be returned to the Purchaser and neither party shall have any further liability or responsibility related to this transaction.

11. EXTENSION OF OPTION:
Purchaser shall be granted up to two (2) extensions of Sixty (60) days each to close the transaction upon the deposit of an additional Three Thousand ($3,000.00) Dollar cash Option Payment for each extension (the "Extension Payment"). Said Extension Payment(s) shall be released to seller on the first of each extension month to be deemed nonrefundable at that time. These option payments shall also be applied against the Purchase price as of the Closing Date.

12. ASSIGNMENT:
Purchaser shall have the right, after giving written notice to Seller, to assign its rights under this Option Agreement to any entity controlled by, or under common control of the Purchaser. Should the proposed use change from multifamily apartments, Sellers written approval shall be required.

13. RIGHT TO ENTER:
Seller agrees to provide access to the Property to Purchaser, Purchaser's agents, inspectors and engineers or surveyors for the purpose of determining the suitability of the Property for the Purchaser's purposes. Purchaser shall be allowed to perform surveys, environmental and geotechnical testing, water and soils testing or any other studies or testing deemed necessary on the Property, with Seller's standard form of indemnity as addressed in the Option Agreement. Purchaser shall in no event allow liens to be placed on the property prior to closing and shall be responsible for insuring their own contractors and employees.

14. TITLE COMPANY:
Title and escrow shall be handled by Pioneer Title Company.

15. CLOSING:
Closing shall occur according to the usual and customary closing procedures in effect in Madison County, Idaho, within 30 days of the date that Purchaser notifies Seller of its intent to close, however; no later than January 15th, 2012 (unless extended as indicated in Section 11 herein).

16. CLOSING COSTS:
Seller shall pay the costs of a standard coverage title insurance policy, transfer or sale taxes, and any title curative work it elects to undertake and all real estate sales commissions. Purchaser shall pay recording fees, cost of additional title insurance required by lenders and/or investors and all costs in connection with physical inspections, and any other investigations made in connection with Purchaser's Due Diligence Review, including additional Engineering Fees required by the development only agreed upon in advance in writing. The Purchaser and Seller shall pay for their own respective attorney fees. All escrow fees shall be paid equally by Purchaser and Seller, except as otherwise provided in the Option Agreement.

17. NOTICES:
All notices and other communications provided for in this Option Agreement shall be in writing, effective on the date hand delivered, sent by facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, addressed as below, or to such other address as the parties may designate to the other parties in writing.

PURCHASER:	SELLER:
Community Development, Inc.	Jon C Gregory

4110 Eaton Avenue, Suite A
Caldwell, Idaho 83607
Attn: C. Fred Cornforth, CEO

P.O. Box 1296
Blackfoot, ID 83221
Attn: Jon C Gregory

18. BROKER COMMISSION / MULTI STATE REFFERAL FEE:
Seller agrees to pay a Three (3%) percent commission of the final sales price, NOT including any reimbursable items as stated in section 3 herein, payable at closing, to Tim Cobb Broker of Vantage Partners LLC.

19. TIME IS OF THE ESSENCE; NO WAIVER:
Time is of the essence regarding the dates set forth in this Option Agreement. Any extensions of deadlines set forth in this Option Agreement must be agreed to in writing by both parties. Unless otherwise explicitly stated in this Option Agreement:
(a) performance under each paragraph of this Option Agreement which references a date shall be required by 5:00 p.m. Mountain Time on the stated date; and
(b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the time requirement.

In the event that the date upon which any action is to be taken pursuant to this Option Agreement is a Saturday, Sunday, or legal holiday, the action may be taken upon the next business day. No waiver of the breach of any provision of this Option Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or any other provision of this Option Agreement.

20. PURCHASER'S DEFAULT:
Upon default by Purchaser and subsequent termination of this Option Agreement by Seller, Seller may, as its sole remedy, retain any non-refundable Option Payment and any additional cash Extension Payments deposited by Purchaser as liquidated damages.

21. SELLER'S DEFAULT:
Upon default by Seller, Purchaser may enforce this Option Agreement and pursue any and all remedies available at law or equity, including taking action for specific performance and damages.

22. FEDERAL FUNDS:
Purchaser hereby informs Seller that Purchaser or Purchaser's successor or assignee may utilize federal funds with respect to the acquisition of the Option Property. Because federal funds may be so used, Purchaser discloses to Seller as follows:

A. This sale is voluntary. The Purchaser, or its successor or assignee, is not a governmental entity and does not possess the power of eminent domain.

B. Purchaser estimates the fair market value of the Option Property to be Purchaser's proposed purchase price of Eight Hundred Thousand ($800,000.00) Dollars.

23. SELLER'S WARRANTIES; INDEMNITY:

A. If, prior to closing, Seller becomes aware of any fact or circumstance which would materially change a representation, then Seller will immediately give notice of such changed fact or circumstance to Purchaser, but such notice shall not relieve the Seller of its liabilities or obligations hereunder.

B. Seller shall issue a certificate at the closing stating that all of Seller's representations and warranties are true and correct as of said date, except as to facts, if any, concerning which Purchaser was previously notified in writing.

C. If Seller gives notice of a material change prior to closing, Purchaser shall have the right without penalties to terminate the Option Agreement and have the deposited promissory note and Option Payment and all interest thereon immediately returned without further liability. Seller shall reimburse Purchaser for its due diligence costs incurred in connection with this Option Agreement within ten (10) days after presentment of a schedule thereof to Seller.

D. Seller shall indemnify, defend, and hold Purchaser harmless from and against any and all losses, claims, fines, penalties, causes of action, suits, losses, costs, expenses (including attorneys' fees), and damages arising from or out of the inaccuracy of Seller's representations or warranties herein or a breach of its covenants hereunder and shall pay all of Purchaser's costs and expenses, including reasonable attorneys' fees incurred in enforcing this duty to indemnify and hold harmless, up until closing and recording of the property in Canyon County.

E. Seller shall provide Purchaser at closing any and all building plans, specifications and inspection reports pertaining to this sale not already provided hereunder.

24. SELLER REPRESENTATION TO PURCHASER:

As an inducement to Purchaser to enter this transaction, Seller makes the following representations, warranties and agreements.

A. The Option Property and Seller's use and occupancy thereof do not, to the best of Seller's knowledge, and will not at closing, violate any applicable covenant, condition or restriction or any applicable statute, ordinance, regulation, order, permit, rule, agreement or law, including, without limitation, any building, zoning, hazardous or toxic waste, health or environmental restriction or any governmental requirement concerning fill, use, construction, maintenance, repair, replacement, operation or occupancy of the Option Property.

To the best of Seller's knowledge, no hazardous or toxic waste or other hazardous or toxic material or substance has been deposited or spilled on or under or released from the Option Property or exists on or under the Option Property. Any Hazardous Wastes removed from the property by the previous or current owner have been properly disposed of and are not or will not become the responsibility of any Purchaser. Seller hereby indemnifies Purchaser from any claim arising from the disposal of any Hazardous Materials in the past.

B. Seller has not received any notice of the existence of any current violation of any applicable covenant, condition or restriction or any applicable statute, ordinance, regulation, order, permit, rule or law, including, without limitation, any building, zoning or environmental restriction or requirement concerning filling, use, construction, maintenance, repair, replacement, operation or occupancy of the Option Property which has not been disclosed to Purchaser and will not have been resolved to Purchaser's satisfaction.

C. There are no obligations in connection with the Option Property which will be binding upon Purchaser after closing, except the leases, loan obligations and those other agreements relative to the Option Property which Purchaser elects in writing to assume at closing.

D. To the best of Seller's knowledge, there is no plan, study or effort being made by any governmental or quasi-governmental authority or agency or any non-governmental person.

E. There is no written or oral agreement which will prevent or impede Seller's timely and full performance of all of Seller's obligations under this Option Agreement.

F. There are no assessments for public improvements or other governmental or quasi-governmental fees, charges or assessments, except real property taxes, levied against or, to the best of Seller's knowledge, threatened with respect to the Option Property or its use.

G. All permits and approvals required for the Option Property's present use and status have been obtained and all conditions contained therein have been satisfied, except as set forth in paragraph (A) above.

H. There are no claims, actions, suits or governmental investigations or proceedings existing or, to the best of Seller's knowledge, threatened against or involving the Option Property (including, without limitation any condemnation or eminent domain proceeding or matter related to the formation of or assessment by a local improvement district), except as set forth in paragraph (A) above.

I. Any and all agreements with third parties with respect to the Option Property, including, but not limited to, brokerage agreements, management agreements,

maintenance agreements and janitorial agreements will be canceled by Seller upon closing without cost, penalty or expense to Purchaser, unless otherwise specifically authorized by Purchaser in writing.

J. To Seller's knowledge, there are no attachments, executions, or assignments for the benefit of creditors, or voluntary proceedings in bankruptcy or under any other debtor relief laws contemplated by or pending or threatened by or against Seller or the Option Property that could affect the Option Property or Seller's transfer of the Option Property.

K. All insurance policies now maintained on the Option Property will be kept in effect, up to and including the closing. Seller has received no notice from any insurance company or rating organization of any defects in the condition of the Option Property, or of conditions that would prevent the continuation of existing coverage or would increase the present rate of premium.

L. All documentation heretofore or hereafter furnished to the Purchaser relative to the Option Property is true, complete and correct, contains no factual inaccuracies and accurately represents all factual matters stated therein.

M. No representation made by Seller contains any untrue statement of material fact or fails to state a material fact necessary in order to make statements contained therein not misleading or necessary in order to provide a prospective Purchaser of the Option Property with adequate information as to the Option Property.

25. ATTORNEY'S FEES:
In the event of any litigation, both parties agree to submit to binding mediation as a means of conflict resolution between the parties relating to this Option Agreement. The prevailing party shall be entitled to recover all costs and expenses incurred, including reasonable attorney's fees, if any.

26. ENTIRE AGREEMENT:
This Agreement contains the entire Option Agreement and understanding between the parties and is subject to no understandings, conditions or representations that are not set forth herein. This Option Agreement may only be amended in writing and signed by both parties. Time is of the essence in the performance of this Option Agreement.

27. JOINT AND SEVERAL LIABILITY:
Each individual, corporation or agency signing this Option Agreement as Seller and Purchaser shall be jointly and severally liable for the performance of every term and condition of this Option Agreement.

28. INVALID PROVISION:
If any provision of this Option Agreement shall be invalid or unenforceable, the remaining provisions shall remain in full force and effect.

29. PARTIES BOUND:
This Option Agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors and assigns.

30. GOVERNING LAW:
This Option Agreement shall be governed by and enforced in accordance with the laws of the State of Idaho.

31. CAPTIONS:
The captions in this Option Agreement are inserted only for convenience and in no way construe or interpret the provisions hereof or affect their scope or intent.

32. RIDERS:
The riders and exhibits or addendums, if any, attached hereto, signed and initialed by the parties are made a part of this Option Agreement hereof.

33. MULTIPLE ORIGINALS:
This Option Agreement may be executed as facsimile originals and each copy of this Option Agreement bearing the facsimile transmitted signature of any party's authorized representative shall be deemed to be an original. Notwithstanding the validity of the facsimile originals, it is intended that this Option Agreement be manually executed in two originals and that each party shall receive a fully executed original.

34. ACCEPTANCE: This Option agreement is made subject to the acceptance of Seller and Buyer on or before (Date) August 12th 2011 at 5:00 pm (MST). If acceptance of this Option agreement is no received within the time specified, the offer is withdrawn and the entire Earnest / Option Money, if any, shall be refunded to Buyer on demand.

Seller acknowledges receipt of a completely filled in copy of the option agreement which the Seller has fully read and has had all desired opportunity to review with an attorney of his/her/its choosing. In the event that the Purchaser fails to complete the Purchase as herein provided, the Option Payment shall be distributed as follows: After deduction of any title insurance and escrow cancellation charges, the Option Payment shall be distributed 100% to Seller.

PURCHASER:

Memphis Development Group

By: _____
Its: _____

SELLER:

A _____

By: JON GREGORY
Its: _____