STATE OF IDAHO)
County of KOOTENAI)ss

FILED_____

AT_____ O'Clock _____M
CLERK OF DISTRICT COURT

_____
Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE

STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

RONAN TELEPHONE COMPANY, EMPLOYEE PROFIT SHARING PLAN; et al.,

Plaintiffs,

vs.

STACY AKANA, a married man, and NORTH IDAHO CREDIT, CORP.,

Defendants.

Case No. **CV 2009 5323**

MEMORANDUM DECISION AND ORDER

KARL L. ROESCH, and CAROLE S. ROMEY,

Plaintiffs,

vs.

STACY AKANA, a married man, and NORTH IDAHO CREDIT, CORP.,

Defendants.

Case No. **CV 2009 5535**

MEMORANDUM DECISION AND ORDER

KARL L. ROESCH, RONAN TELEPHONE COMPANY, EMPLOYEE PROFIT SHARING PLAN; et al.,

Plaintiffs,

vs.

STACY AKANA, a married man, and NORTH IDAHO CREDIT, CORP.,

Defendants.

Case No. **CV 2009 7094**

MEMORANDUM DECISION AND ORDER

THOMAS H. BOONE, TRUSTEE OF BOONE, KARLBERG EMPLOYEES PROFIT SHARING PLAN, et. Al., *Plaintiffs*, vs. STACY AKANA, and RONI AKANA, husband and wife, STACY AKANA, a married man, NORTH IDAHO CREDIT, CORP., DARROLD GENE ROLLMAN and PATRICIA ALICE ROLLMAN, TWROS; and K7B INVESTMENTS, LLC, *Defendants*.	)	Case No. **CV 2009 7384** **MEMORANDUM DECISION AND ORDER**
JACK C. DOWNES, and GAIL L. DOWNES, et. al, *Plaintiffs*, vs. STACY AKANA, a married man, and NORTH IDAHO CREDIT, CORP., *Defendants*.	)	Case No. **CV 2009 9784** **MEMORANDUM DECISION AND ORDER**

I. INTRODUCTION AND BACKGROUND.

The above five cases are not consolidated. All five cases have a common defendant, Stacy Akana (Akana). In all five cases, there is a "judgment", thus, Akana is now a judgment debtor in each of the cases. The type or "quality" of "judgment" in each of the five cases varies.

All five cases have different plaintiffs, with some overlapping plaintiffs, but all plaintiffs in all five cases are represented by the same attorney, John Finney. Case No. CV 2009 9784 was originally assigned to District Judge Mitchell. Case No. CV 2009 7094 and CV 2009 5323 were originally assigned to District Judge Hosack who retired and had his caseload assigned to District Judge Ben Simpson. Case No. CV 2009 7384, and CV 2009 9784 were originally assigned to District Judge Lansing Haynes.

A question was raised by the Kootenai County Prosecuting Attorney, Civil Division, regarding the interest rate stated in the various *judgments* and the interest rate mentioned in the various *decrees of sale*. For expediency and judicial efficiency, all have been reassigned to Administrative District Judge Mitchell.

II. ANALYSIS.

At oral argument held on May 10, 2010, Finney framed the issue as:

> The Sheriff's office's concern is they see the word judgment and they say a judgment can only accrue interest at a "judgment rate" pursuant to statute, but what we actually have in my clients' opinion is a decree of sale that takes a debt and provides for a remedy being the sheriff's sale of the piece of property and it's not until that sale of the property, until there's actually a resolution or a satisfaction of a portion of that debt. So the issue is does the…note, rate of interest continue through the sate of sale or does the judgment that provides for the sale, a decree of sale, does that then switch it from a note rate of interest to a rate of interest on a judgment…section at issue is 28-22-104.

This frames the issue properly. The question for this Court is which rate of interest applies up to the date of the judgment, and which rate applies between the date of the judgment and the date of the sale. A judgment has been entered in each of these cases, but no sale has taken place. However, the decrees of sale indicate the interest rate as specified in the note apply.

What is confusing here is that, for purposes of a deficiency judgment, interest accrues from the date of the sale pursuant to I.C. § 45-1512. Finney argues the pre-judgment interest based on the notes and deeds of trust applies until the sheriff's sale takes place. He states any deficiency judgment would be reduced to a simple money judgment which, in turn, would then be subject to interest at the statutory rate on judgments.

However, interest accrues at the rate set forth in the applicable debt instrument until judgment. In Idaho, these pre-judgment interest amounts can be allowed by an

agreement in contract or by statute only where damages are liquidated. *Bouten Construction Co. v. H.F. Magnuson Co.,* 133 Idaho 756, 761, 992, P.2d 751, 756 (1999) citing *Doolittle v. Meridian Joint Sch. Dist., No. 2,* 128 Idaho 805, 814, 919 P.2d 334, 343 (1996). "It is settled law in Idaho that pre-judgment interest is available only when damages are liquidated or are ascertainable by mere mathematical process." *Id.* Interest from the time of judgment until judgment is paid in full accrues at the legal rate set forth in I.C. § 28-22-104(2). *Bouten,* 133 Idaho 756, 759, 992 P.2d 751, 764.

Unreported cases may help clarify this distinction. *See U.S. v. Rice,* 1986 WL 15624 (S.D. Ohio, March 4, 1986) ("The Court further finds that there is due to plaintiff from defendants Theodore K. Butler and Linda S. Butler, jointly and severally, on the Promissory Note set out in the Complaint the sum of $8,951.03, with interest on the principal balance of $8,003.82 at the rate of $1.31 per day from December 1, 1985, through the date of judgment, with interest thereafter at the legal rate, and any authorized expenses incurred by the plaintiff chargeable to said defendants under the terms of said Promissory Note and related Mortgage Deed or as otherwise provided by law, through the date of sale."); *Federal Land Bank of Baltimore v. Heiser and American Bank,* 36 Pa.D.&C.3d 115, 120 (Pa.Com.Pl. 1985) (Having concluded that the Farm Credit Act does not preempt 42 Pa.C.S. § 8108, we hold that Federal Land Bank is entitled to interest on its judgment at the rate of six percent per annum, or a total of $7,330.14 for the period between the entry of judgment and the Sheriff's sale. Inasmuch as the Sheriff's proposed schedule of distribution awards Federal Land Bank an amount in excess of that figure, American Bank's exception is sustained."); *In re Donaldson,* 43 B.R. 506, 507 (Bkrtcy.S.D., 1984) ("Because this was a foreclosure by action and Federal Land Bank's claim was reduced to judgment, it is entitled to 18%

interest- the statutory rate at the time- from the date of judgment to the date of sale.")

Thus, the various plaintiffs in the instant actions are entitled to the interest and late fees, etc., at the rate of interest contemplated in their agreement *up to the date of the Judgments being entered*. Thereafter, the rate accrues at the statutory rate on judgments until paid by sheriff's sale and/or deficiency judgment. Pursuant to I.C. § 45-1512, a deficiency judgment accrues interest at the statutory rate as set forth in I.C. § 28-22-104(2).

The next issue is whether there truly is a "judgment" in each of these cases. "[U]ntil a final judgment has been entered, an order granting summary judgment is an interlocutory order and subject to reconsideration pursuant to I.R.C.P. 11(a)(2)(B). *Puckett v. Verska,* 144 Idaho 161, 166, 158 P.3d 937, 942 (2007), citing *Idaho First Nat'l Bank v. David Steed & Assocs.,* 121 Idaho 356, 361, 825, P.2d 79, 84 (1992). Idaho Rule of Civil Procedure 54(b)(1) reads:

> (1) Certificate of Final Judgment. When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment upon one or more but less than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of the judgment. In the absence of such determination and direction, any order or other form of decision, however designated, which adjudicates less than all the claims or the rights and liabilities of less than all the parties shall not terminate the actions as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.

As such, these cases did not involve the Court's adjudicating less than all the claims or the rights and liabilities of less than all the parties. It follows that an Order granting summary judgment as to all claims made and all parties involved is a final order. In *M & H Rentals, Inc. v. Sales,* 108 Idaho 567, 569, 700 P.2d 970, 972 (Ct.App. 1985), the Court of Appeals deemed the judgment at issue to be final for purposes of appealibility,

although it adjudicated less than all claims asserted in the lawsuit, because it was "the last in a series and it disposes of all remaining claims leaving none pending." *Id.* The Court noted Rule 54(b) is designed to prevent piecemeal appellate litigation and does not apply to a judgment which leaves no claims undecided. *Id.*

Thus, **substantively**, because all of plaintiffs' rights and liabilities were adjudicated in the Judgment filed in each case (except CV 2009 9784 where no Judgment has as yet been entered), the Court's Judgments created a final judgment in each case.

The next question is **procedurally,** is the Judgment a final "judgment". Idaho case law and the Idaho Rules of Procedure have determined this issue:

> In *Camp v. East Fork Ditch Co.,* this Court defined a final judgment as "an order or judgment that ends the lawsuit, adjudicates the subject matter of the controversy, and represents a final determination of the rights of the parties. It must be a separate document that on its face states the relief granted or denied." 137 Idaho 850, 867, 55 P.3d 304, 321 (2002) (internal citations omitted). We further stated in *In re Universe Life Insurance Co.,* that "**[a]n order granting summary judgment does not constitute a judgment**." 1144 Idaho at 756, 171 P.3d at 247. In addition, Idaho Rule of Civil Procedure 58(a) requires: **"Every judgment shall be set forth in a separate document."**

T.J.T., Inc., a Washington corporation, v. Ulysses, No. 35079-2010, 2010 WL 1491424, 2010 Opinion No. 41, Supreme Court Docket No. 35079, Slip Opinion p. 1 (Idaho April 15, 2010) (emphasis added). Analyzing just that language, this Court's "Summary Judgment and Decree of Sale" in CV 2009 5323 and CV 2009 5535, and this Court's "Judgments" in CV 2009 2009 7094and CV 2009 7384 "…adjudicates the subject matter of the controversy, and represents a final determination of the rights of the parties", those documents "end the lawsuit", and those documents are "*a separate document* that on its face states *the relief granted or denied*." (emphasis added). The Idaho Supreme Court in *T.J.T.* went on to state: "The judgment must be a separate document

that does not contain the trial court's legal reasoning or analysis." *T.J.T., Inc., a Washington corporation, v. Ulysses,* No. 35079-2010, 2010 WL 1491424, 2010 Opinion No. 41, Supreme Court Docket No. 35079, Slip Opinion p. 1 (Idaho April 15, 2010), citing *Spokane Structures, Inc. v. Equitable Inv., LLD,* No. 35349-2008, 2010 WL 309004, Slip Opinion, p. 4. In the present case, in this Court's "Summary Judgment and Decree of Sale" in CV 2009 5323 and CV 2009 5535, and this Court's "Judgments" in CV 2009 2009 7094and CV 2009 7384 are "a separate order that does not contain the trial court's legal reasoning or analysis."

There is confusion between *Goodman Oil*, *Goodman Oil Co. v. Scotty's Dura-Built Generator, Inc.,* 2010 WL 3667704 (February 3, 2010) and the substitute opinion in *T.J.T.* In *Spokane Structures,* just as in *Goodman Oil (*2010 WL 3667704, Slip Opinion, p. 4), 2004), the Idaho Supreme Court set forth its *mea culpa* as to the "confusion" its decisions have created:

> Unfortunately, this Court has at times contributed to the confusion by focusing upon whether the document "adjudicates the subject matter of the controversy, and represents a final determination of the rights of the parties," *Davis v. Peacock,* 133 Idaho 637, 641, 991 P.2d 362, 366 (1999), without also requiring that it be "a separate document" that "grant[s] the relief to which the party in whose favor it is rendered is entitled," I.R.C.P. Rules 58(a) & 54(c).

Spokane Structures, No. 35349-2008, 2010 WL 309004, Slip Opinion, p. 5. This Court has read *Goodman Oil, T.J.T., Spokane Structures,* and *Camp v. East Fork Ditch Co.* This Court concludes that these cases, taken together, require the following in order for there to be a "final Judgment" or a "final order" in the present case:

1) There must be a "separate document" (*Camp, T.J.T., Spokane Structures*);

2) [that separate document] *does not* contain the trial court's legal reasoning and analysis (*Spokane Structures, T.J.T.*),

3) [that separate document] *does* state:

a) the relief granted or denied (i.e., in the present case, granting plaintiffs all amounts sought) (*Spokane Structures, T.J.T., Camp*); and

b) that this is a final determination of the rights of the parties (*Goodman, T.J.T., Camp, Spokane Structures*)

The Idaho Supreme Court in *Spokane Structures* stated:

> The "relief to which the party…is entitled" must be read in conjunction with other rules. Rule 8(a)(1) provides, "A pleading which sets forth a claim for relief…shall contain…(2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled." The "demand for judgment for the relief to which he deems himself entitled" obviously refers to the relief that the party seeks in the lawsuit. For example, neither the Builder in his complaint nor the landowner in its answer prayed for the granting of a motion for summary judgment. In this case, the relief sought by Builder was either specific performance of the Design/Build Agreement or damages, and the relief sought by Landowner was dismissal of Builder's complaint. The relief to which a party is entitled is the specific redress or remedy that the court determines the party should receive in the litigation, or with respect to a claim for relief in the litigation.

Spokane Structures, No. 35349-2008, 2010 WL 309004, Slip Opinion, pp. 4-5.

For the reasons set forth above, a final judgment has been entered in each case. The problem is the interest calculation is wrong.

In CV 2009 5323, *Roesch and Romey v. Akana et al.*, the plaintiffs have a Judgment against defendants North Idaho Credit entered on September 10, 2009, and filed on September 11, 2009, where North Idaho Credit disclaims any interest. That Judgment is not at issue. In CV 2009 5323, *Roesch and Romey v. Akana et al.*, the plaintiffs also have a "Summary Judgment and Decree of Sale" entered December 4, 2009, and filed December 8, 2009, entered following a November 24, 2009, hearing on plaintiffs' Motion for Summary Judgment. That Summary Judgment and Decree of Sale provides plaintiffs

judgment against Akana in the amount of $119,524.66 as of September 8, 2009, "…plus $35.753 per diem thereafter until the date of the sale decreed herein, plus late fees of $108.75 per month until the date of sale, plus attorney fees and costs to the date of sale, determined by the Idaho Rules of Civil Procedure." Summary Judgment and Decree of Sale, p. 2. (underlining in original). It is the underlined portion which is incorrect. If the judgment amount was $119,524.66 as of September 8, 2009, then the interest rate of 5.625% on judgments applicable under I.C. § 28-22-104, would amount to $18.41 per day ($6,723.2621/year divided by 365 days = $18.419896/day). Late fees are no longer available post judgment.

In CV 2009 5535, *Ronan Telephone Co. et al. v. Akana, and North Idaho Credit, Corp.,* the plaintiffs have a Judgment against defendant North Idaho Credit dated July 31, 2009, and entered August 3, 2009. That Judgment was reached via stipulation. That Judgment simply terminates their right, title and interest in the real property. Thus, that Judgment is not at issue. In CV 2009 5535, *Ronan Telephone Co. et al. v. Akana, et al.,*plaintiffs also have a "Summary Judgment and Decree of Sale" Judgment, entered November 12, 2009, filed November 13, 2009, following hearing on summary judgment held on November 12, 2009, against Akana, upon a promissory note secured by a deed of trust, for a total of "…$519,109.83 as of September 18, 2009, "plus $156.154 per diem thereafter until the date of sale decreed herein, plus late fees of $475.00 per month until the date off sale, plus attorney fees and costs to the date of sale, to be determined pursuant to Idaho Rules of Civil Procedure. Summary Judgment and Decree of Sale, pp. 2-3. (underlining added). It is the underlined portion which is incorrect. If the judgment amount was $519,109.83 as of September 18, 2009, then the interest rate of 5.625% on judgments applicable under I.C. § 28-22-104, would amount to $79.99 per day

($29,199.9927/year divided by 365 days = $79.9998/day).

In CV 2009 7094, *Roesch v. Akana, et al.,* the plaintiffs have a Judgment against defendant North Idaho Credit Corp., that was entered October 16, 2009, and filed on October 20, 2009. That Judgment was reached via stipulation. That Judgment simply terminates that corporation's right, title and interest in a note and deed of trust. Thus, that Judgment is not at issue. In CV 2009 7094, *Roesch v. Akana, et al.,* plaintiffs also have a Judgment, entered November 24, 2009, filed November 27, 2009, taken by default, against Akana upon a $87,000 promissory note secured by a deed of trust, for a total of $194,881.13 as of November 18, 2009"plus $63.699 per diem to sale as a lien with a priority date of April 20, 2005, which is hereby foreclosed against the following real property…" Judgment, p. 3. (underlining added). It is the underlined portion which is incorrect. If the judgment amount was $194,881.13 as of November 18, 2009, then the interest rate of 5.625% on judgments applicable under I.C. § 28-22-104, would amount to $30.03 per day ($10,962.063 divided by 365 days = $30.033049/day). A Writ of Execution was entered by the Clerk of Court on April 1, 2010, in the amounts set forth in the November 24, 2009, Judgment.

In CV 2009 7384, *Boone et al v. Akana, et al.,* the plaintiffs have a Judgment against defendants Rollman and defendant K&B Investments LLC that was entered October 1, 2009, and filed on October 5, 2009. That Judgment was reached via stipulation. That Judgment simply terminates their right, title and interest in a note and deed of trust. Thus, that Judgment is not at issue. In CV 2009 7384, *Boone et al v. Akana, et al.,*plaintiffs also have a Judgment, entered November 4, 2009, filed November 6, 2009, taken by default, against Akanas upon a $350,000 promissory note secured by a deed of trust, for a total of $439,922.40 as of October 9, 2009 "plus $143.836 per diem to sale as a

lien with a priority date of May 2, 2007, which is hereby foreclosed against the following real property…" Judgment, p. 2. (underlining added). It is the underlined portion which is incorrect. If the judgment amount was $439,922.40 as of October 9, 2009, then the interest rate of 5.625% on judgments applicable under I.C. § 28-22-104, would amount to $67.79 per day ($24,745.63 divided by 365 days = $67.79626/day).

Finally, in CV 2009 9784, *Downes et al v. Akana,* the plaintiffs have a Judgment against defendants North Idaho Credit Corp, via stipulation, entered March 2, 2009, and filed March 3, 2009. That Judgment simply terminates the right, title and interest of that corporation, and accordingly, is not at issue. In CV 2009 9784, *Downes et al v. Akana,* plaintiffs have filed for default against Akana, in the amount of "$207,697.19, owed to May 13, 2010", "plus $55.479 per day until the date of Sheriff's sale." Affidavit of Amount Due, p. 2. (emphasis in original). If the Judgment amount is $207,697.19 as of May 13, 2010, then the interest rate of 5.625% on judgments applicable under I.C. § 28-22-104, would amount to $32.008126/day ($11,682.966/year divided by 365 days = $32.008126/day).

III. ORDER.

IT IS HEREBY ORDERED that counsel for Plaintiffs in all these actions submit new corrected proposed Judgments in each case, against Stacy Akana (and in CV 2009 7384 against Roni Akana as well), with the correct interest figure, as set forth in this Memorandum Decision and Order. In CV 2009 9784, since no Judgment has been signed by the Court, a new proposed Judgment will need to be filed with the correct interest figure as set forth in this Memorandum Decision and Order.

Entered this 1st day of June, 2010.

_____
John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of June, 2010, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	Fax #	Lawyer	Fax #
John A. Finney	(208) 263-8211	Gregory L. Decker	667-1742
Darrin A. Murphey	446-1621	R. D. Watson	765-5079

Stacy Akana and Roni Akana
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_____
Jeanne Clausen, Deputy Clerk