

SUMMARY STATEMENT

Mulberry v. Burns Concrete

Docket No. 45184

Burns Concrete, Inc., and Canyon Cove Development Company, LLP, appealed the Bonneville County district court's judgment in favor of Nora Mulberry and TN Properties, LLC, regarding the extinguishment of a right of first refusal (ROFR). The district court entered partial summary judgment in favor of Mulberry finding the ROFR was personal to Mulberry and Canyon Cove, and it was subsequently extinguished when Canyon Cove assigned it to Burns Concrete. On reconsideration, the district court held that the ROFR was a servitude, appurtenant to the purchased property, and reaffirmed it was extinguished by Canyon Cove's assignment to Burns Concrete. The Idaho Supreme Court vacated and remanded the district court's decision. The Court held that the ROFR was personal between Mulberry and Canyon Cove and was not extinguished when Canyon Cove purported to assign the ROFR to Burns Concrete.