

## SUMMARY STATEMENT

*McOmber v. Thompson,*  
Docket No. 50980

This appeal arises out of Jonathan McOmber's purchase of a home from Shane and Keri Thompson. The home was in worse condition than McOmber thought when he bought it. After the sale, McOmber and his wife, Angela, began remodeling the home and discovered damage from water intrusion, dry rot, and mold in various parts of the home. As part of the sale, the Thompsons completed a standard Property Condition Disclosure Form ("disclosure form"), in which they answered "yes" to questions about past water intrusion, dry rot, and mold and answered "yes" that they had made repairs to the property. The McOmbers felt misled and filed an action against the Thompsons for the breach of duty to disclose/fraud, fraud, and breach of contract, among other claims. The McOmbers later sought to amend their complaint to add a claim for constructive trust.

During the litigation, Angela McOmber was dismissed from two of the claims and a claim for unjust enrichment was dismissed. The district court denied the McOmbers' motion to amend their complaint to add a claim for a constructive trust, finding that such a claim was not applicable in this case. The Thompsons then moved for summary judgment on the McOmbers' remaining claims. The district court granted summary judgment in favor of the Thompsons, finding that the McOmbers had failed to provide evidence that the Thompsons' statements on the disclosure form were false, or that the Thompsons had violated Idaho's Property Condition Disclosure Act based on how they completed the disclosure form, and as a result McOmber could not show that the Thompsons had breached the purchase and sale agreement. The McOmbers filed a motion for reconsideration, which the district court denied. The district court awarded attorney fees to the Thompsons below based on the attorney fee provision in the purchase and sale agreement.

The McOmbers appealed to the Idaho Supreme Court. The Idaho Supreme Court affirmed the district court's grant of summary judgment in favor of the Thompsons, determining that the McOmbers failed to establish the elements of common-law fraud, and that Jonathan McOmber could not establish that the Thompsons had breached their duty to disclose based on their statements on the disclosure form. The Idaho Supreme Court determined that the Thompsons were entitled to summary judgment with respect to Jonathan McOmber's breach of contract claim because he could not show that the Thompsons breached the agreement. The Idaho Supreme court reversed the district court's award of attorney fees and remanded the award to vacate the portion awarded against Angela McOmber because she was not a party to Jonathan McOmber's breach of the duty to disclose and breach of contract claims. No attorney fees were awarded on appeal.

***\*\*\*This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public\*\*\****