

## SUMMARY STATEMENT

*Asher v. McMillan*

Docket No. 47684

This case arose from an award of restitution in favor of Terry Asher and Pamela Kitchens (“the Ashers”) against Lester McMillan. In 2009, the parties entered into an oral agreement for the purchase of a house. Pursuant to the agreement, the Ashers were to rent the house from McMillan for five years and thereafter buy it from him. For reasons that are disputed, the sale was never consummated. However, the Ashers continued to live in the house and pay monthly rent to McMillan. Relations between the parties eventually soured and McMillan filed an unlawful detainer action against the Ashers. The Ashers filed an answer in the unlawful detainer action and filed a separate complaint against McMillan. In their complaint, the Ashers sought specific performance of the agreement to sell, or, if the district court denied specific performance, an award of damages for breach of contract or restitution for the value of improvements they made to the house. The district court held the contract was unenforceable and denied the claims for specific performance and breach of contract. However, the district court awarded restitution for the value of certain improvements because it found McMillan would be unjustly enriched to retain them without payment. McMillan appealed, arguing that the district court erred by finding him unjustly enriched, erred by relying on the Ashers’ costs as evidence of the amount of unjust enrichment, and erred by awarding restitution not supported by the evidence.

The Idaho Supreme Court affirmed the decision of the district court in part. The Court held the district court did not err in finding McMillan unjustly enriched and did not err in relying on costs as evidence of the amount of unjust enrichment. However, the Court held the district court made a minor mathematical error in calculating the amount of restitution due, and remanded for the entry of a reduced award. Additionally, the Court held McMillan’s arguments on appeal were frivolous, unreasonable, and without foundation and awarded attorney fees to the Ashers under Idaho Code section 12-121.

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