STATE OF IDAHO)
COUNTY OF KOOTENAI) ss
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CLERK DISTRICT COURT

DEPUTY

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SUMMONS ISSUED

OCT 27 2009

IN THE DISTRICT COURT FOR THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

LAWRENCE SPENCER, THOMAS R. MACY AND WILLIAM McCRORY PLAINTIFFS, vs. NORTH IDAHO COLLEGE, a community college district organized pursuant to the laws of the State of Idaho and NORTH IDAHO COLLEGE FOUNDATION, an Idaho non-profit corporation, DEFENDANTS.	Case No. CV - 2009 - 8934 **COMPLAINT**

COMES NOW the Plaintiffs, LAWRENCE SPENCER, THOMAS R. MACY AND WILLIAM McCRORY all appearing *pro se* and hereby complains and alleges against the above-named Defendants as follows:

GENERAL INTRODUCTION

1. This matter relates to Article VIII, Section 3 of the Idaho Constitution that states that "No county, city, board of education, or school district, or other subdivision of the state,

ASSIGNED TO JUDGE MITCHELL

shall incur any indebtedness, or liability, in any manner, or for any purpose, exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds (2/3) of the qualified electors thereof voting at an election to be held for that purpose, nor unless, before or at the time of incurring such indebtedness, provisions shall be made for the collection of an annual tax sufficient to pay the interest on such indebtedness as it falls due, and also to constitute a sinking fund for the payment of the principal thereof, within thirty (30) years from the time of contracting the same. Any indebtedness or liability incurred contrary to this provision shall be void." Emphasis added.

2. The Plaintiffs in this matter allege that the Defendants entered into a certain lease agreement in contravention of Article VIII, Section 3 of the Idaho Constitution and that the lease should be declared void by the Court.

FACTUAL ALLEGATIONS

3. Plaintiff, LAWRENCE SPENCER ("SPENCER") is a resident of the County of Bonner, State of Idaho and is the owner of real property located within the County of Kootenai.

4. Plaintiff, THOMAS R. MACY ("MACY") is a resident of the County of Kootenai, State of Idaho.

5. Plaintiff, WILLIAM McCRORY ("McCRORY") is a resident of the County of Kootenai, State of Idaho and is the owner of real property located within said County.

6. Defendant, NORTH IDAHO COLLEGE a community college district organized pursuant to the laws of the State of Idaho ("the College") is an Idaho junior college formed under Title 33, Chapter 21 of the Idaho Code.

7. The College has the statutory authority to levy taxes upon real property located within its district boundaries.

8. The College is a political subdivision of the State of Idaho.

9. SPENCER, MACY and McCRORY are all residents, electors and/or taxpayers within the district boundaries of the College.

10. SPENCER, MACY and McCRORY are all subject to the College's taxing authority.

11. Defendant NORTH IDAHO COLLEGE FOUNDATION, an Idaho non-profit

corporation, ("the Foundation") is an Idaho non-profit corporation having its principal place of business within the County of Kootenai, State of Idaho.

12. The Foundation owns real property located in County of Kootenai, State of Idaho. Said real property is referred to herein as the "Mill Site" and is more fully described in Exhibit 1 attached hereto and incorporated herein by reference.

13. In January 2009, the College and the Foundation entered into a written agreement entitled "Agreement to Acquire Property" in which the Foundation would acquire fee title to the Mill Site upon "terms and conditions acceptable to the College" and the College shall thereafter have the "exclusive right to acquire title to the Mill Site" at a later date. The written agreement is "binding upon the College, the Foundation and their respective heirs, successors and assigns." A true and correct copy of the Agreement to Acquire Property is attached hereto as Exhibit 2 and is incorporated herein by reference.

14. After the execution of the Agreement to Acquire Property, the Foundation purchased the Mill Site for approximately ten million dollars ($10,000,000.00). Of this amount, approximately six million dollars ($6,000,000.00) of the purchase price is being financed by a third party bank and secured by a promissory note (the "Note"). The remaining amount of the purchase price, approximately four million dollars ($4,000,000.00) was paid to the prior owner of the Mill Site using College Funds. The use of approximately four million dollars ($4,000,000.00) of College funds for the acquisition of the Mill Site was characterized as "prepaid rent" for the Colleges's later rental of the Mill Site from the Foundation.

15. The College approved of the use of the College's funds for the Foundation's acquisition of the Mill Site pursuant to a resolution the College's Board of Trustees passed and adopted on July 21, 2009. A true and correct copy of said resolution is attached hereto as Exhibit 3 and is incorporated herein by reference.

16. On July 23, 2009 the College and the Foundation entered into a Lease Agreement for the College's lease of the Mill Site from the Foundation (the "Lease Agreement"). A true and correct copy of the Lease Agreement is attached hereto as Exhibit 4 and is incorporated herein by reference.

17. The Lease Agreement purports to be for a term of one year effective "July 23, 2009, and shall expire at midnight July 22, 2010 . . . or such sooner date as the Note and the interest thereon shall have been fully paid and retired. See Paragraph 2 of the Lease Agreement.

18. The rents due from the College for its rental of the Mill Site are "payable semi-annually in the amount of $1,074,134.02 commencing February 1, 2010 and thereafter on August 1 and February 1 of each year of appropriation." See Paragraph 3 of the Lease Agreement.

19. Based upon the express terms of the Lease Agreement, the total yearly rents due from the College is $2,148,268.04. Even though the Lease Agreement is for a one (1) year term, the College has pre-paid rent in the amount of $4,000,000.00. This pre-payment of rent exceeds the total rents due for the initial term of the lease by more that $1,850,000.00 (the "Rental Surplus"), an amount greater than a semi annual rental installment of $1,074,134.02 called for under the terms of the Lease Agreement.

20. The Lease Agreement makes no provisions for the return of the Rental Surplus to the College in the event that the College does not renew the Lease Agreement.

21. Upon the payment in full of the Note, the Foundation is contractually obligated to "convey unencumbered fee simple title and exclusive possession and use of the Mill Site to the COLLEGE for no additional consideration . . . COLLEGE agrees to accept title to the Mill Site upon payment, defeasance or retirement of the Note." See Paragraph 20 of the Lease Agreement..

22. During the term of the Lease Agreement, and as "additional rental" the College "shall pay and discharge any and all taxes that may become due on the [Mill Site] as they become due, promptly and before delinquency, along with all taxes, assessments, rates, charges, license fees, municipal liens, levies, excises, or imposts, whether general or special, or ordinary or extraordinary, governmental charges related to the leasehold of COLLEGE, or on or against COLLEGE'S estate hereby created which may be subject to taxation, or on or against FOUNDATION by reason of its ownership of the fee underlying" the Lease Agreement. See Paragraph 13.1 of the Lease Agreement.

23 Under the terms of Lease Agreement and "for so long as the Note is outstanding," the College is entitled to "encumber by mortgage or deed of trust, or other proper instrument,

its leasehold interest and estate in the Property, together with all buildings and improvements placed by COLLEGE thereon, as security for any indebtedness of COLLEGE." See Paragraph 9 of the Lease Agreement.

24. Under the terms of the Lease Agreement, the College incurs the liability of restoring and repairing any damage of any improvement that may be located on the Mill Site at its sole cost and expense. See Paragraph 15.1 of the Lease Agreement.

25. Under the terms of the Lease Agreement, the College incurs the liability of indemnifying the Foundation from "all claims, liability, loss, or damage whatsoever on account of any such loss, injury, death, or damage." See Paragraph 18 of the Lease Agreement.

26. Under the terms of the Lease Agreement, the College incurs the liability of paying the Foundation interest on any delinquent rental payment. See Paragraph 24.2 of the Lease Agreement.

27. The Mill Site is comprised of approximately 17 acres.

28. The Mill Site was historically used as a lumber mill and log yard.

29. The College intends to acquire fee title to the Mill Site.

30. The College intends to acquire fee title to the Mill Site by paying off the amounts due under the Foundation's Note.

31. During the term of the Lease Agreement and thereafter, the College "plans to develop the entire [Mill] site with buildings for college classrooms, support facilities and possibly residence halls as an extension of its main campus" and the "Foundation is assisting the College on converting the property into a college campus." See, the Statement of the Foundation's attorney before the Surface Transportation Board, a copy of which is attached hereto as Exhibit 5 and incorporated herein by reference.

32. The Lease Agreement is a form of an installment land sale contract.

33. The College did not obtain the assent of two-thirds (2/3) of the qualified electors of the College's district as required by Article VIII, Section 3 of the Idaho Constitution prior to entering into the Lease Agreement.

34. The College did not petition the Court pursuant to Idaho Code Section 7-1304 for judicial examination seeking the validation of the Lease Agreement prior to the College entering

into the Lease Agreement.

35. The Lease Agreement is an illegal expenditure of public monies and violates the provisions of the Idaho Constitution and the Idaho Code.

36. The Lease Agreement and the present and future liabilities of the College arising, under the terms of the Lease Agreement are not the ordinary and necessary expenses of the College.

FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT)

37. SPENCER, MACY and McCRORY hereby realleges all of the foregoing as if fully set forth herein.

38. SPENCER, MACY and McCRORY are entitled to a judicial declaration that the Lease Agreement violates the provisions of Article VIII, Section 3 of the Idaho Constitution and is therefore void.

SECOND CAUSE OF ACTION
(PROHIBITIVE INJUNCTIVE RELIEF)

39. SPENCER, MACY and McCRORY hereby realleges all of the foregoing as if fully set forth herein.

40. SPENCER, MACY and McCRORY are entitled to the entry of a permanent injunction enjoining the College from making any further expenditures of tax dollars for any monies due under the Lease Agreement until such time, if ever, that the Lease Agreement is approved by the assent of two-thirds (2/3) of the qualified electors of the College's district as required by Article VIII, Section 3 of the Idaho Constitution or after College fully complies with and obtains judicial examination and approval of the Lease Agreement pursuant to the provisions of Title 7, Chapter 13 of the Idaho Code.

THIRD CAUSE OF ACTION
(AFFIRMATIVE INJUNCTIVE RELIEF)

41. SPENCER, MACY and McCRORY hereby realleges all of the foregoing as if fully set forth herein.

42. SPENCER, MACY and McCRORY are entitled to the entry of an affirmative order

compelling the Foundation to return to the College all monies that the Foundation has received from the College under the terms of the Lease Agreement including interest thereon at the statutory rate.

WHEREFORE, SPENCER, MACY and McCRORY pray for judgment as follows:

43. For the entry of declaratory judgment declaring that the Lease Agreement violates the provisions of Article VIII, Section 3 of the Idaho Constitution and is therefore void.

44. For the entry of a permanent injunction enjoining the College from making any further expenditures of tax dollars for any monies due under the Lease Agreement until such time, if ever, that the Lease Agreement is approved by the assent of two-thirds (2/3) of the qualified electors of the College's district as required by Article VIII, Section 3 of the Idaho Constitution or after College fully complies with and obtains judicial examination and approval of the Lease Agreement pursuant to the provisions of Title 7, Chapter 13 of the Idaho Code.

45. For the entry of an order or judgment compelling the Foundation to return to the College all monies that the Foundation has received from the College under the terms of the Lease Agreement including interest thereon at the statutory rate.

46. For an award of SPENCER, MACY and McCRORYS' costs pursuant to any applicable statute or rule.

47. In the event that SPENCER, MACY and McCRORY engage an attorney of record to represent them in this matter, for an award of SPENCER, MACY and McCRORYS' attorneys fees pursuant to Idaho Code Sections 7-1313, 12-120, 12-121 and any other applicable statute or rule.

48. For further and such relief as the Court deems just and equitable.

Lawrence Spencer
LAWRENCE SPENCER, *Pro Se*
Dated: 10-27-2009

Thomas R Macy
THOMAS R. MACY, *Pro Se*
Dated: 10-27-09

William McCrory
WILLIAM McCRORY, *Pro Se*
Dated: 10-27-2009