

FAX FILED

UNITED STATES COURTS  
DISTRICT OF IDAHO

MAY 07 1997

LOGGED FILED

Stephen R. Drake  
MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED  
Post Office Box 829  
Boise, Idaho 83701  
Telephone: (208) 345-2000  
17-277.1

Attorneys for Debtor

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF IDAHO

In re SAWTOOTH ENTERPRISES, INC. )  
dba THE BUCKIN' BAGEL )  
)  
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)  
)  
Debtor(s) )  
\_\_\_\_\_ )

Case No. 96-03050 ACH

**OBJECTION TO COUNTIES' MOTIONS  
TO DECLARE THAT SALE OF PERSONAL  
PROPERTY DID NOT DIVEST COUNTIES'  
LIENS**

Comes now Timothy Wells, by and through undersigned counsel, and objects to the motions of Ada County and Blaine County (collectively the "Counties") to declare that the sale of personal property by the Debtor to Mr. Wells in this matter did not divest the Counties' liens.

**OBJECTION TO COUNTIES' MOTIONS TO DECLARE THAT SALE  
OF PERSONAL PROPERTY DID NOT DIVEST COUNTIES' LIEN - 1**

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Mr. Wells has no knowledge regarding whether the Counties received proper notice of the sale. However, even if the Counties were not notified, the Counties' liens should attach to the proceeds of the sale rather than to the property sold. Pursuant to Local Rule 2002.1(b)(2), all interests in property sold free and clear shall attach to the proceeds of the sale. The Order Approving Sale of Property Free and Clear of Liens ("Order") authorized the Debtor to sell "all of its property free and clear of all liens and interests of the parties . . . ." Order p.2. Consistent with the Order, the bill of sale by which the Debtor conveyed the property (a copy of which is attached hereto as Exhibit A) sold said property "pursuant to Bankruptcy Court Order free and clear of liens . . . ." Therefore, the Counties' liens may attach only to the proceeds.

Furthermore, even if the Counties are successful in their objections to the sale, the validity and effect of the sale is not changed. The Counties' motions are pursuant to 11 U.S.C. § 363 (b). Under 11 U.S.C. § 363(m):

The reversal or modification on appeal of an authorization under section (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith . . . .

*See also In Re Oyster Bay Cove, Ltd.*, 196 B.R. 251 (E.D.N.Y. 1996) (Bankruptcy court order directing that debtor's property be sold "free and clear" of all liens protected good faith bidder at auction from adverse effects of trustee's alleged failure to properly notify tax lien holders, who were left with only a claim against proceeds of sale). Mr. Wells was a bona fide purchaser for value without notice of the Counties' liens. Therefore, the title to his property is not changed by the Counties liens.

Finally, as the Counties' state law authorities indicate, it is the seller, not the purchaser, who is obligated to pay accrued property taxes and who faces potential criminal penalties for non payment. See Idaho Code § 63-1014. It would be manifestly unjust for the Counties' to now foreclose their liens against the property. Instead, the Counties' claims are against the debtor or the recipients of sale proceeds.

Therefore, Mr. Wells respectfully requests the Court to deny the Counties' motions. Alternatively, in the event the Court grants the Counties' motions, Mr. Wells requests that the Court order the Debtor or the recipients of the sale proceeds to satisfy the Counties' claims.

DATED this 7th day of May, 1997.

MOFFATT, THOMAS, BARRETT, ROCK &  
FIELDS, CHARTERED

By Stephen R. Drake  
Stephen R. Drake - Of the Firm

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 7<sup>th</sup> day of May, 1997, I caused to be served a true copy of the foregoing **OBJECTION TO COUNTIES' MOTIONS TO DECLARE THAT SALE OF PERSONAL PROPERTY DID NOT DIVEST COUNTIES' LIENS** to the following person(s) by the method indicated below.

Valencia J. Bilyeu  
Deputy Prosecuting Attorney  
Civil Division  
650 Main Street, 2d Floor  
Boise, ID 83702

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile (fax # 364-2295)

Joseph M. Meier  
Cosho, Humphrey, Greener & Welsh  
815 West Washington  
Boise, ID 83701

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile (fax # 338-3290)

Bernie R. Rakozy  
Bankruptcy Trustee  
824 West Franklin  
Boise, ID 83702

U.S. Mail, Postage Prepaid  
 Hand Delivered  
 Overnight Mail  
 Facsimile (fax # 343-4494)



Stephen R. Drake

**BILL OF SALE**

KNOW ALL MEN BY THESE PRESENTS, That on this 23rd day of January, 1997, the Seller, Sawtooth Enterprises, Inc., for \$165,000.00 received, and in accordance with the Order authorizing sale entered by the Bankruptcy Court entered on the 23rd day of January, 1997, Sawtooth Enterprises, Inc. does hereby convey, the property described on Exhibit "A" attached hereto to Buyer, Timothy Wells, and or his assigns. This sale is made pursuant to Bankruptcy Court Order free and clear of liens and sold "as is" "where is", without further warranties.

IN WITNESS WHEREOF, the Seller has hereunto set its hand and seal the day and year first above written.

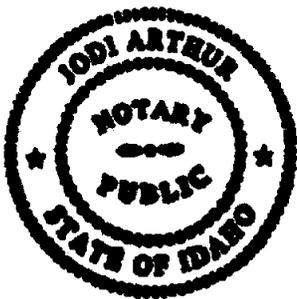
*[Handwritten Signature]*

Sawtooth Enterprises, Inc.

By: Rick Haener

Its: Treasurer

SUBSCRIBED AND SWORN to before me this 27th day of January, 1996.



*[Handwritten Signature]*

Notary Public, State of IDAHO

Residing at Boise, Idaho

My Commission Expires 9/13/2001

