

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF IDAHO**

In re:

GREG V. THOMASON and
DIANA THOMASON,

Debtors.

**Bankruptcy Case
No. 03-42400-JDP**

THOMASON FARMS, INC.,
et al.,

Plaintiffs,

vs.

GREG THOMASON and
DIANA THOMASON, husband
and wife, et al.,

Defendants.

**Adv. Proceeding
No. 04-6134-JDP**

NEW BRITIAN INVESTORS,
LLC,

**Counterclaimant/
Cross-Claimant,**

vs.

THOMASON FARMS, INC.,
et al.,

**Counter Defendants
and Cross Defendants.**

R. SAM HOPKINS, Trustee,

**Counterclaimant/
Cross-Claimant,**

vs.

THOMASON FARMS, INC.,
et al.,

**Counter Defendants
and Cross Defendants.**

**SUMMARY ORDER RE: NEW BRITAIN'S
MOTION FOR ADDITIONAL FINDINGS**

Appearances:

Jay A. Kohler, Idaho Falls, Idaho and John O. Avery, Idaho Falls, Idaho, Attorney for Plaintiffs.

Craig Christensen, Pocatello, Idaho, Attorney for Defendant New Britain Investors, LLC.

Dan C. Dummar, Rexburg, Idaho, Attorney for Defendant William Forsberg.

Monte Gray, Pocatello, Idaho, Attorney for Defendant R. Sam Hopkins.

New Britain Investors, LLC (“New Britain”) moves the Court to make additional findings of fact, conclusions of law, and to amend the final judgment issued in this adversary proceeding. “On a party’s motion filed not later than 10 days after entry of judgment, the court may amend its findings—or make additional findings—and may amend the judgment accordingly.” Fed. R. Bankr. P.

7052(b). The judgment was entered in this action on October 4, 2006. Docket No. 204. New Britain timely filed its motion on October 12, 2006. Docket No. 210.

The motion came before the Court for hearing on November 7, 2006. There were no oral or written objections to the motion. After careful review, the Court concludes the motion should be granted.

I.

New Britain asks the Court to clarify certain findings of fact.

Although each of the factual findings it asks the Court to adopt were referenced in the Court's Memorandum Decision at 41-43, Docket No. 138, as there are no objections, and the Court deems it proper, the Court will, as requested by New Britain, clarify its prior decision by adopting each of the following as factual findings:

1. That on or about July 28, 1993, Byron T. Thomason and Marilyn T. Thomason, husband and wife, Greg V. Thomason and Diana Thomason, husband and wife, and Nicholas A. Thomason and Sandra Thomason, husband and wife, executed and delivered to Robert Erikson a Promissory Note in the face amount of \$100,000.00 with interest thereon at the rate of eleven percent per annum, with interest only payments due beginning August 28, 1993, and on the 28th day of each successive month thereafter, and payable in full on the 28th day of July, 1998. Ex. 300.

2. That Byron T. Thomason and Marilyn T. Thomason, husband and

wife, Greg V. Thomason and Diana Thomason, husband and wife, and Nicholas A. Thomason and Sandra Thomason, husband and wife, as Mortgagors, executed and delivered to Robert Erikson, as Mortgagee, their Real Estate Mortgage dated July 28, 1993 and recorded on July 29, 1993 as instrument number 113340, in the official records of the County Recorder of Teton County, State of Idaho, pertaining to the following described real property:

Parcel 1:

Lots 2 and 3 in Section 31, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

Parcel 2:

The Southeast Quarter of the Northwest Quarter of Section 31, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

Ex. 301.

3. That on or about December 3, 1999, Robert Erikson as Assignor and New Britain Investors, LLC, as Assignee entered into an Agreement for Purchase and Sale of Interest. Ex. 303.

4. Robert Erikson thereafter executed an Assignment of Real Estate Mortgage with Power of Attorney, dated December 3, 1999, and recorded December 8, 1999 under instrument number 136061 in the official records of the County Recorder of Teton County, State of Idaho, and thereby assigned all of his right title and interest in and to said Promissory Note and Mortgage to claimant, New Britain Investors, LLC. Ex. 305.

5. A judgment was granted to New Britain Investors, LLC against Greg V. Thomason and Diana Thomason on October 10, 2000, by the Honorable Brent J. Moss, Idaho District Judge. Ex. 312.

II.

In addition to clarification of its factual findings, the Court makes the following supplemental findings of fact, all of which appear to be undisputed in the record:

A. That on or about the 24th day of February 1997, Robert A. Erickson executed his General Power of Attorney which was thereafter recorded on 8th day of December 1999 under instrument number 136062 in the official records of the County Recorder of Teton County, State of Idaho. Ex. 306.

B. An Abstract of Judgment was recorded on November 15, 2000, under instrument number 140176 in the official records of the County Recorder of Teton County, Idaho. Ex. 313.

III.

Finally, the Court clarifies its legal conclusion that New Britain has a valid, enforceable lien against the Teton Pastures property as follows:

New Britain Investors, LLC holds a valid lien in the following described real property, commonly referred to as the Teton Pastures property, which lien is superior to and has priority over all other claims or interests of the

parties as to said property:

Parcel 1:

Lots 2 and 3 in Section 31, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

Parcel 2:

The Southeast Quarter of the Northwest Quarter of Section 31, Township 6 North, Range 45 East, Boise Meridian, Teton County, Idaho.

IV.

For the reasons set forth above, **IT IS HEREBY ORDERED** that New Britain's Motion to Amend, Docket No. 210, be and is hereby **GRANTED**. The Court's findings of fact and conclusions of law are amended and supplemented as set forth above. All other findings and conclusions are as set forth in the Memorandum of Decision, Docket No. 138, and Final Judgment, Docket No. 204.

Dated: December 7, 2006



Honorable Jim D. Pappas
United States Bankruptcy Judge