

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT IN AND
FOR THE STATE OF IDAHO, COUNTY OF BANNOCK

HAROLD L. RUPP SR. TRUST, an
Idaho trust; and VEDA J. RUPP
REVOCABLE LIVING TRUST, an
Idaho trust,

Plaintiffs,

vs.

CITY OF POCA TELLO, an Idaho
municipality; MILLENNIAL
DEVELOPMENT PARTNERS, LLC, a
Utah limited liability company;
PORTNEUF DEVELOPMENT, LLC
an Idaho limited liability company;
PORTNEUF BUILDERS, LLC, an
Idaho limited liability company; KEN
PAPE, individually; ARVIL B.
SWANEY, individually; and JOHN OR
JANE DOES 1- 10,

Defendants.

Case No. CV03-22-0398

**MEMORANDUM DECISION
AND ORDER**

NATURE OF THE ACTION

This is a property dispute involving undeveloped commercial real estate located east of the Northgate Interchange Exit from I-15 in Chubbuck, Idaho. That land is owned by the plaintiffs, Rupp Trusts.¹ The Rupp Trusts initiated this action by filing a complaint seeking declaratory relief and damages. Among the allegations raised in the complaint were claims for breach of contract for failure to perform provisions in the contract to allow access points to the Rupp Trusts' property for development purposes and allegations the Defendants engaged in a

¹ See Am. Compl. for Declaratory and Monetary J., Aug. 18, 2022, 2.

fraudulent scheme to deprive the value of the Rupp Trusts' property. The Rupp Trusts also alleged the Defendants interfered with prospective purchasers of the property. As a result of the Defendants' alleged conduct, the Rupp Trusts claimed to have been deprived of significant economic opportunities.

BACKGROUND AND RELEVANT PROCEDURAL HISTORY²

This case proceeded in the district court for several years. Eventually, all the named defendants, including Portneuf Development, LLC, Portneuf Builders, LLC, and Ken Pape (collectively referred to herein as "the Portneuf Defendants"), Millennial Development Partners, LLC, and Arvil B. Swaney (hereinafter "the Millennial Defendants"), and the City of Pocatello and Brian Blad, moved for summary judgment.³ Rupp Trusts filed two motions to continue the proceedings to allow them to complete additional discovery, which this Court denied. Rupp Trusts then filed a late response to the motions for summary judgment, which this Court declined to consider.⁴ Thereafter, this Court granted the Defendants' motions for summary judgment and dismissed the case with prejudice.⁵ Rupp Trusts appealed. Upon review, the Idaho Supreme Court considered the issue of "whether the district court properly granted summary judgment in light of the parties' ongoing discovery disputes."⁶ In its ruling, the Supreme Court affirmed the district court's denial of the Rupp Trusts' motions to continue because the Trusts did not demonstrate that the district court abused its discretion. However, the case was reversed and remanded as to "the district court's grant of summary judgment because the district court failed

² The factual background and procedural history are more thoroughly set forth in *Rupp as Tr. of Harold L. Rupp Sr. Tr. v. City of Pocatello*, 574 P.3d 335 (Idaho 2025). This Court adopts those findings as if fully set forth herein. *See Rupp*, 574 P.3d at 339-43.

³ See I.R.C.P. 56 Mot. for Summ. J., March 8, 2023 (Millennial Defs.); Mot. for Summ. J., March 8, 2023 (City of Pocatello and Brian Blad); Def., Ken Pape's, Mot. for Summ. J., March 8, 2023; Defs., Portneuf Development, LLC's, Mot. for Summ. J., March 8, 2023.

⁴ *See Rupp as Tr. of Harold L. Rupp Sr. Tr. v. City of Pocatello*, 574 P.3d 335, 339 (Idaho 2025).

⁵ *See J.*, May 26, 2023.

⁶ *Rupp Trusts*, 574 P.3d at 339.

to analyze the evidence before it and appeared to grant summary judgment as a sanction against the Trusts.”⁷

Thereafter, in compliance with the Idaho Supreme Court’s opinion remanding this case for further proceedings, this Court issued a notice setting the Defendants’ motions for summary judgment for hearing. Pursuant to that Notice of Hearing and consistent with the district court’s previous orders striking the Plaintiffs’ response brief and supporting documents filed in opposition to summary judgment as untimely, oral arguments regarding the motions for summary judgment were limited to the record currently before this Court.⁸ All of the Defendants subsequently filed notices of hearing setting oral arguments on their motions for summary judgment. The Plaintiffs then filed a Cross Motion for Partial Summary Judgment. In response to that motion, the Defendants joined together in asking this Court for an order “striking Plaintiffs’ Cross Motion for Partial Summary Judgment, Memorandum in Support of Cross Motion for Partial Summary Judgment, Declaration of Harold Lavelle Rupp, Jr. in Support of Cross Motion for Partial Summary Judgment, and Declaration of Nathan M. Olsen in Support of Cross Motion for Partial Summary Judgment.”⁹ A hearing regarding the motions to strike was held on November 3, 2025. At the conclusion of that hearing, this Court found the Plaintiffs’ motion was not timely filed pursuant to the Scheduling Order in this case and granted the Defendants’ request to strike the Cross Motion for Partial Summary Judgment and all the documents filed by the Plaintiffs in support of that motion.¹⁰

Oral arguments regarding the Defendants’ motions for summary judgment were heard on November 10, 2025. After hearing from counsel for each of the Defendants as well as counsel

⁷ *Id.*

⁸ Not. of Hr’g, Sept. 3, 2025, 1.

⁹ Mot. to Strike, Dec. 15, 2025.

¹⁰ Order Granting Mot. to Strike, Nov. 4, 2025, 2.

for the Plaintiffs, this Court took the issue of summary judgment under advisement. Having now fully considered the issues and the oral arguments presented by the parties, and after a careful review of the file, including the briefs properly submitted before this Court, and the relevant law, and in accordance with the Idaho Supreme Court’s opinion of August 19, 2025, this Court grants the Defendants’ motions for summary judgment.

ISSUE

Should this Court grant the Defendants’ motions for summary judgment?

DISCUSSION

In its Memorandum Decision and Order granting summary judgment in favor of the Defendants, this Court struck the late response brief and supporting documents filed by the Rupp Trusts in opposition to summary judgment. This Court then found the Plaintiffs did “not submit any reliable evidentiary material” that would establish a genuine issue of material fact and granted summary judgment in favor of the Defendants.¹¹ On appeal, the Idaho Supreme Court did not reverse this Court’s decision to strike the untimely brief and supporting documents filed by the Plaintiffs in opposition to summary judgment, and, significantly, the Plaintiffs did not seek review of that decision in their appeal. Therefore, the documents filed in opposition to the motions for summary judgment remain stricken from the record.

In remanding this case, the Supreme Court concluded the “district court failed to analyze [the Defendants’] submissions and determine, for each claim, whether there was no genuine dispute of material fact and whether [the Defendants] were entitled to judgment as a matter of law.”¹² In addition, the Supreme Court expressed concern that “the circumstances leading up to the written order granting summary judgment, calls into question whether the court entered

¹¹ Mem. Decision and Order, May 24, 2023, 11.

¹² *Rupp Trusts*, 574 P.3d at 348.

summary judgment as a sanction for the Trusts’ untimely summary judgment response.”¹³ The Supreme Court further took issue with the “fact that the district court did not permit the Trusts with an opportunity to argue in opposition to the summary judgment motions[.]”¹⁴ On those grounds, the Idaho Supreme Court remanded this case for a determination regarding whether there was no genuine dispute of material fact and whether the Defendants were entitled to judgment as a matter of law.¹⁵

The Defendants continue to maintain that summary judgment as to every count raised in the Amended Complaint is appropriate pursuant to Idaho Rule of Civil Procedure 56(e) because there is no evidence to support the Plaintiffs’ claims. For example, Defendants City of Pocatello and Brian Blad argued:

[T]he record shows that Plaintiffs have failed to properly address Defendants’ assertions of fact as required by Rule 56. As such, this Court is entitled to consider the facts asserted by Defendants as undisputed for the purposes of the motion for summary judgment. A review of the undisputed facts and the caselaw set forth at length in the memorandum in support of summary judgment shows that Defendants are entitled to an award of summary judgment.¹⁶

The Millennial Defendants made a similar argument: “Pursuant to Rule 56(e), the Court should deem the facts identified in the pending motion to be undisputed and grant summary judgment pursuant to the law cited and relied upon by the Millennial Defendants in their moving papers.”¹⁷ Likewise, the Portneuf Defendants contended: “There is no reason for the Court to wait to grant summary judgment because the motions stand unopposed and the Plaintiffs have failed to

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.* at 349.

¹⁶ Reply Mem. in Supp. of Mot. for Summ. J., April 4, 2023, 3-4.

¹⁷ Reply in Supp. of Mot. for Summ. J., April 7, 2023, 3.

support their claims and allegations contained in the Amended Complaint for Declaratory Relief and Monetary Damages.”¹⁸

a. Standard of Review

“Summary judgment is proper ‘if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.’”¹⁹ The party moving for summary judgment bears the burden of demonstrating there are no genuine issues of material fact.²⁰ A mere scintilla of evidence or only slight doubt is not sufficient to create a genuine issue of material fact.²¹ Therefore, “[f]limsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment.”²² “[A] summary judgment will be granted whenever on the basis of the evidence before the court a directed verdict would be warranted or whenever reasonable minds could not disagree as to the facts.”²³

When reviewing a motion for summary judgment, the court “liberally construes the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party’s favor.”²⁴ “If there are conflicting inferences contained in the record or reasonable minds might reach different conclusions, summary judgment must be denied.”²⁵ However, “[i]t is well established that a party against whom a motion for summary judgment is sought ‘may not merely rest on allegations contained in his pleadings, but must

¹⁸ Reply Mem. in Supp. of Mots. for Summ. J., April 4, 2023, 2.

¹⁹ *Vreeken v. Lockwood Eng'g, B.V.*, 148 Idaho 89, 101, 218 P.3d 1150, 1162 (2009)(quoting prior version of IDAHO R.Civ. P. 56 (c)).

²⁰ *Id.* at 101, 218 P.3d at 1162.

²¹ *Mendenhall v. Aldous*, 146 Idaho 434, 436, 196 P.3d 352, 354 (2008).

²² *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 632, 368 (1969).

²³ *Snake River Equip. Co. v. Christensen*, 107 Idaho 541, 549, 691 P.2d 787, 795 (Idaho Ct. App. 1984).

²⁴ *Avila v. Wahlquist*, 126 Idaho 745, 747, 890 P.2d 331, 333 (1995).

²⁵ *Bilow v. Preco, Inc.*, 132 Idaho 23, 27, 966 P.2d 23, 27 (1998).

come forward and produce evidence by way of deposition or affidavit to contradict the assertions of the moving party and establish a genuine issue of material fact.”²⁶ Therefore, summary judgment will be granted in favor of the moving party when the nonmoving party fails to establish the existence of an element essential to that party’s case upon which that party bears the burden of proof at trial.²⁷

b. Analysis

As explained, this Court previously determined the response brief, the declarations, and the other materials submitted by the Plaintiffs in opposition to summary judgment were untimely for consideration per Idaho Rule of Civil Procedure 56(b)(2) and struck those materials from the record.²⁸ That ruling was not challenged on appeal and remains the law of this case.

Accordingly, the Notice of Hearing setting the Defendants’ motions for summary judgment issued in compliance with the Idaho Supreme Court’s opinion remanding this case for further proceedings limited oral arguments to the record currently before this Court.²⁹ Furthermore, pursuant to Rule 56(e)(2), “If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may ... consider the fact undisputed for purposes of the motion[.]”³⁰ Thus, this Court has the discretion

²⁶ *McCoy v. Lyons*, 120 Idaho 765, 770, 820 P.2d 360, 365 (1991)(quoting *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 791 P.2d 1285 (1990)); see also IDAHO R.CIV. P. 56(e).

²⁷ *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530-31, 887 P.2d 1034, 1037-38 (1994); *Badell v. Beeks*, 115 Idaho 101, 102, 765 P.2d 126, 127 (1988).

²⁸ See Mem. Decision and Order, May 24, 2023, 5-9.

²⁹ Not. of Hr’g, Sept. 3, 2025, 1.

³⁰ **Rule 56. Summary Judgment**

...

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party’s assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;
- (3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or
- (4) issue any other appropriate order.

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to consider the facts which have not been opposed as undisputed for purposes of summary judgment. Rule 56(e)(3) additionally affords the court with the discretion to grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show the movant is entitled to summary judgment.³¹ In this case, the Plaintiffs have not filed any opposition briefing, declarations, affidavits, or provided any other reliable evidentiary material that would meet the requirements of Rule 56 to oppose the pending motions. As such, pursuant to the discretion afforded under Rule 56(e), this Court considers the facts which have not been opposed as undisputed for purposes of the pending motions for summary judgment. Thus, the Defendants' motions for summary judgment effectively stand unopposed.

1. The undisputed facts show the Defendants are entitled to judgment as a matter of law.

This Court has now studied the record, including the undisputed facts of this case, and has further considered the oral arguments made by the Plaintiffs' counsel at the hearing regarding the motions for summary judgment. The motions for summary judgment and the supporting evidentiary materials filed by the Defendants, together with the undisputed facts, show the Defendants have met their burden of demonstrating there are no genuine issues of material fact in this case. The Plaintiffs did not provide any reliable evidentiary material that would meet the requirements of Rule 56 to oppose the pending motions or to show a genuine issue for trial. Rule 56 of the Idaho Rules of Civil Procedure is clear: the party opposing summary judgment must present more than a conclusory assertion that an issue of fact exists but must respond to the motion with specific facts showing there is a genuine issue for trial. Rule 56(e) affords this Court with the discretion to grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show the movant is entitled to

³¹ *Id.*

summary judgment. That is the case here. All the Defendants set forth evidence in the record demonstrating there is no genuine issue of material fact as to any of the claims raised in the amended complaint, and the Plaintiffs failed to come forward and produce evidence to contradict the assertions of the moving parties and establish a genuine issue of material fact. Thus, based on the undisputed facts and the caselaw set forth at length in the Defendants' memorandums in support of summary judgment, and considering the case in the light most favorable to the Rupp Trusts, the Plaintiffs have failed to meet their burden pursuant to IRCP 56, and there is no dispute of material fact in this case. The undisputed evidence shows the Plaintiffs cannot establish the claims they have asserted against any of the Defendants, including fraud, breach of contract, regulatory taking, declaratory judgment, civil conspiracy, violation of the Lanham Act, and intentional interference with prospective economic advantage. Thus, because there is no evidence to support the various claims and theories set forth in the amended complaint, summary judgment in favor of all the Defendants is granted.

CONCLUSION

A review of the entire record shows there is no dispute of material fact in this case. The Plaintiffs did not file any opposition briefing, declarations, affidavits, or provide any other reliable evidentiary material that would meet the requirements of Rule 56 in response to the pending motions for summary judgment.³² In its discretion, this Court considered the facts which had not been opposed as undisputed for the purposes of summary judgment. Those undisputed facts along with the supporting materials on record, show the Defendants are entitled judgment as a matter of law. The Plaintiffs cannot establish the claims they have asserted

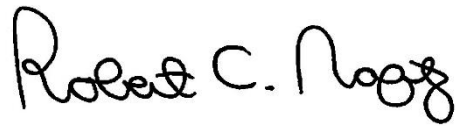
³² In compliance with the Idaho Supreme Court's opinion remanding this case for further proceedings and consistent with the district court's previous orders, the late response brief and supporting documents filed by the Rupp Trusts in opposition to summary judgment remain stricken from the record.

against any of the Defendants, and summary judgment in favor of all the Defendants is therefore granted.

This case is dismissed as to each of the Defendants. Counsel for the Defendants shall submit proposed judgments for this Court's consideration.

IT IS SO ORDERED.

DATED this 23rd day of December 2025.

A handwritten signature in black ink, reading "Robert C. Naftz". The signature is written in a cursive, flowing style with a large initial "R".

ROBERT C. NAFTZ
DISTRICT JUDGE

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I served a true and correct copy of the foregoing document upon each of the following individuals in the manner indicated.

| | |
|---|--|
| Nathan M. Olsen Steven L. Taggart nolsen@olsentaggart.com staggart@olsentaggart.com | <input checked="" type="checkbox"/> E-Mail |
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JASON DIXON, Clerk

DATED: 12/23/2025

By: 
MONICA SANADA
Deputy Clerk