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ATTORNEY FOR DEFENDANT DWAYNE PIKE

IN THE DISTRICT COURT OF THE SECOND JUDICIAL DISTRICT OF THE STATE OF
IDAHO, IN AND FOR THE COUNTY OF NEZ PERCE

DPW Enterprises LLC and Mountain)	
Prime 2018 LLC,)	CASE NO. CV35-24-1063
)	
Plaintiff,)	DEFENDANT PIKE’S RESPONSE TO
v.)	PLAINTIFF’S MOTION FOR SUMMARY
)	JUDGMENT
Jeremy L. Bass, Dwayne Pike, and Current)	
occupant, and Unknown Parties in)	
Possession of the real property commonly)	
known as 1515 21 st Avenue, Lewiston,)	
Idaho 83501,)	
)	
Defendants.)	
)	

COMES NOW the Defendant Dwayne Pike (hereinafter “Defendant Pike”), by and through his attorney of record Ken Nagy of Idaho Legal Aid Services, Inc., and hereby responds to the *Plaintiff’s Motion for Summary Judgment* (hereinafter “Motion”), as well as *Plaintiff’s Memorandum in Support of Motion for Summary Judgment and in Opposition to Motion to Dismiss and Strike Summons and Complaint* (hereinafter “Memorandum”), filed in this proceeding on the 16th day of September, 2024. This response is supported by the *Affidavit of*

Dwayne Pike in Support of Defendant Pike's Response to Plaintiff's Motion for Summary Judgment filed herewith.

Defendant Pike hereby responds to those issues and arguments contained in the Plaintiff's Motion and Memorandum that pertain to him. Defendant Pike takes no position with regards to the issues and arguments contained in the Plaintiff's Motion and Memorandum that pertain to Defendant Jeremy L. Bass (hereinafter "Defendant Bass"), other than as addressed below.

I. RELEVANT FACTS

Defendant Pike currently resides at 1515 21st Avenue, Unit C, Lewiston, Idaho 83501, a portion of the real property that is the subject of this action. *Pike Aff.* at ¶2. Defendant Pike holds possession of said real property pursuant to a Residential Lease Agreement (hereinafter "Lease") that he entered into with Defendant Bass, the then-owner of said real property, on the 28th day of February, 2024. *Id.* at 3. The Lease obligates Defendant Pike to pay rent to Defendant Bass in the amount of \$700.00 per month. *Id.* Said Lease remains currently in effect and has not been terminated or modified by Defendant Bass or any other individual or entity in any way. *Id.* at ¶4

Defendant Pike receives a Section 8 housing voucher subsidy from the Idaho Housing and Finance Association (hereinafter "IHFA") for partial payment of the rent in the amount of \$423.00 per month. IHFA had been paying its portion of the rent to Defendant Bass and since the Plaintiff foreclosed upon the real property at issue herein, has been paying its portion of the rent to the Plaintiff. Defendant Pike has always and continues to pay the remaining rental amount owing under the Lease in the amount of \$277.00 per month to Defendant Bass. *Id.* at ¶5. Defendant Pike is current on his portion of the rental payment to Defendant Bass and IHFA is

current on its portion of the rent. Defendant Pike has not violated any other provision of the Lease. *Id.* at ¶6.

Defendant Pike has never received any notice from the Plaintiff to send rental payments to anyone other than Defendant Bass. Instead, he received the Notice to Vacate that is attached as Exhibit “B” to the Plaintiff’s Post Foreclosure Complaint for Ejectment and Restitution of Property (hereinafter “Complaint”) from the Plaintiff which instructed him to “make your required monthly lease payments during the remainder of your lease agreement. . . .” Defendant Pike has complied with that directive from the Plaintiff by continuing to make his monthly rental payments to Defendant Bass. *Id.* at ¶7.

Defendant Pike has received legal documents that the Plaintiff has filed with the Court alleging that the Plaintiff is the owner of the real property at issue herein. Defendant Pike is aware that issue is currently subject to dispute and he has no knowledge who is in fact the current legal owner of the real property at issue herein. Defendant Pike has therefore complied with the provisions of the Lease and the directive contained in the Plaintiff’s Notice to Vacate by remaining current on his rental payments to Defendant Bass. *Id.* at ¶8.

Defendant Pike has never received any notice, written or verbal, from the Plaintiff or any other individual or entity which has stated that he is in default on the rent with regards to the real property at issue in this proceeding. *Id.* at ¶9. Furthermore, Defendant Pike has never received any notice, written or verbal, from the Plaintiff or any other individual or entity which directed him to pay the rent to anyone other than Defendant Bass. *Id.*

II. STANDARD OF REVIEW

The Idaho Rules of Civil Procedure provide that upon the filing of a motion for summary judgment, “[t]he court must grant summary judgment if the movant shows that there is no

genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” I.R.C.P. 56.

The Idaho Supreme Court has held that when considering a motion for summary judgment, “[a]ll disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. Summary judgment is appropriate 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.” *Wright v. Parish*, 531 P.3d 1115, 1120 (Idaho 2023).

III. ARGUMENT

1. Defendant Pike’s Tenancy is Protected by the Protecting Tenants at Foreclosure Act of 2009.

As discussed in Defendant Pike’s *Verified Answer and Affirmative Defenses* (hereinafter “Answer”) filed in this proceeding, Defendant Pike entered into the Lease on the 28th day of February, 2024 with Defendant Bass prior to the notice of foreclosure issued by the Plaintiff. *Answer* at 3-4; *Pike Aff.* at ¶3. A copy of said Lease is attached to the Pike affidavit filed herewith as Exhibit “A”. The Plaintiff’s Notice to Vacate, which is dated the 21st day of March, 2024, is attached to the Plaintiff’s Complaint as Exhibit “B”.

As indicated by the Trustee’s Deed attached to the Plaintiff’s Complaint as Exhibit “A”, the real property that is the subject of the Lease was not deeded to the Plaintiff until the 1st day of March, 2024. Therefore, when Defendant Pike entered into said Lease on the 28th day of February, 2024, Defendant Bass was still the owner of the real property at issue in this

proceeding. In light of these facts, the Lease entered into between Defendant Pike and Defendant Bass is a bona fide lease.

The federal Protecting Tenants at Foreclosure Act of 2009 (hereinafter “Act”) provides that a tenant with a bona fide lease agreement entered into prior to the date of notice of foreclosure must be allowed to occupy the premises until the end of the remaining term of the lease. 12 U.S.C. §5220 note (Pub. L. 111-22, div. A, title VII, §702, May 20, 2009, 123 Stat. 1660, as amended by Pub L. 111-203, title XIV, §1484(1), July 21, 2010, 124 Stat. 2204). In light of this federal statute, since the Lease was entered into by and between Defendant Bass and Defendant Pike prior to the Notice to Vacate, the Lease is bona fide and effective, and the Defendant must be allowed to continue to occupy said real property until the end of the term of the Lease, which is the 28th day of February, 2026. *Id.*

It is significant that the Plaintiff never contends in its Motion or in its Memorandum that the Act does not apply to Defendant Pike. It is therefore clear that Defendant Pike enjoys the protections of the Act, which requires the Plaintiff to honor the Lease.

2. The Plaintiff Has Failed to Meet its Burden Showing That There is No Genuine Dispute of Material Fact That Defendant Pike is Out of Compliance with Lease.

The Plaintiff has filed three separate declarations in support of its Motion. All three of those declarations contain a similar statement alleging that the declarer has not received any rental payments from Defendant Pike. *Stoddard Dec.* at ¶11; *DPW Enterprises Dec.* at 8; *Mountain Prime Dec.* at 8. However, none of those declarations state whether the declarers have received any rental payments *on behalf of* Defendant Pike. As indicated by the Pike declaration filed herewith in support of this response, the Idaho Housing and Finance Association has

redirected the rental assistance payments it had been making to Defendant Bass on behalf of Defendant Pike to the Plaintiff. *Pike Aff.* at 5.

Furthermore, as further indicated by the Pike declaration, Defendant Pike has continued to pay his portion of the rent that is due and owing under the Lease to Defendant Bass. *Id.* Defendant Pike is legally obligated to stay current on the rent under the provisions of the Lease by making those payments to Defendant Bass. *Id.* at Exh. “A”.

The Plaintiff contends in its unpagged Memorandum that Defendant Pike failed to comply with the instructions contained in its Notice to Vacate sent to Defendant Pike. *Memo.* at 11-14. In support of this argument, the Plaintiff quotes the following provision contained in said Notice to Vacate: “[i]f you believe you are a bona fide tenant with a [sic] unexpired lease or a bona fide tenant with an expired lease, you are required to make your required monthly lease payments during the remainder of your lease agreement if your lease is unexpired and/or during the 90 day notice of eviction period if your lease is expired.” *Memo.* at 13. The Notice to Vacate expressly directed Defendant Pike to continue to make his lease payments and it did not direct Defendant Pike to send those rental payments to the Plaintiff. *Id.* Defendant Pike therefore continued to make his rental payments to Defendant Bass in compliance with the plain wording of the Notice to Vacate. It is therefore unfounded that the Plaintiff now contends that Defendant Pike has failed to comply with the Lease or with the plain wording of the Notice to Vacate. In light of these considerations, the Plaintiff has failed to meet its burden to show that there is no genuine dispute as to any material fact regarding whether Defendant Pike is out of compliance with the Lease. The Plaintiff should therefore be denied judgment as a matter of law.

3. The Plaintiff Seeks Relief That it Did Not Properly Plead In Its Complaint.

In initiating this proceeding, the Plaintiff filed its Complaint seeking “an Order and Writ of Ejectment authorizing the County Sheriff to return possession of the premises located at 1515 21st Ave., Lewiston, ID 83501 to Plaintiff.” *Cmpl.* at 2. The Plaintiff has not expressly stated who it is seeking to have ejected from the premises. The most it alleges with regards to Defendant Pike is that he was issued the Notice to Vacate, that he indicated that he has a lease to the property, that he was provided with 90 days within which to vacate and that he has failed to vacate. *Id.* The Plaintiff has not alleged anywhere in its Complaint that Defendant Pike has failed to comply with the terms of the Lease or that he failed to pay the monthly rent, as it now contends in its Memorandum for the first time. Furthermore, nowhere in its Complaint does the Plaintiff expressly pray for an order ejecting Defendant Pike from the premises. Therefore, Defendant Pike has not been properly put on notice as to the relief that the Plaintiff is seeking, as required by the Idaho Rules of Civil Procedure. I.R.C.P. 8.

Even if the Complaint can be liberally construed to put Defendant Pike on proper notice as to the Plaintiff’s claim for ejectment as applying to him, according to the argument set forth in its Memorandum, the Plaintiff is no longer seeking to eject Defendant Pike for failing to timely vacate but instead for allegedly failing to pay the rent due under the Lease. As contended above, there is no evidence that Defendant has in fact failed to remain current on the rent. However, even if Defendant can be faulted for failing to pay the rent to the Plaintiff, which is legally unfounded, the Plaintiff has failed to serve Defendant Pike with the three-day notice requiring payment of the rent that is expressly required by Idaho law. I.C. §6-303. Furthermore, Idaho law expressly requires a party seeking possession of real property for nonpayment of rent to properly plead in its complaint that the above-described three-day notice was served upon the

defendant. I.C. §6-310. The Plaintiff has failed to issue and serve upon Defendant Pike the required three-day notice, and it has failed to properly allege such facts in its Complaint for possession, as expressly required by Idaho law. I.C. §§6-303 and 310. In light of these flaws in the Plaintiff's pleadings, the Plaintiff cannot now seek to eject Defendant Pike from the real property at issue in this proceeding for nonpayment of rent, as it is apparently attempting to do.

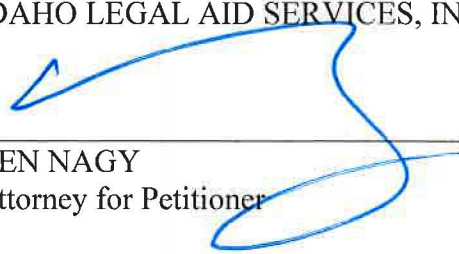
As an additional matter, Defendant Pike attached the Lease to his Answer. *Answer* at Exh. "A". Upon receipt of the Lease, if the Plaintiff believed that Defendant Pike had failed to pay the rent required under said Lease, the Plaintiff was required to issue and serve the required three-day notice as a condition-precedent to seeking the ejectment of Defendant Pike. It took no such action. Had the Plaintiff issued and served the required three-day notice, and had Defendant Pike failed to pay the required rent, it would have been incumbent upon the Plaintiff to seek to amend its Complaint to seek ejectment of Defendant Pike for nonpayment of the rent, as it now improperly seeks for the first time in its Memorandum. Presumably, the Plaintiff failed to take such action because it was unwilling to acknowledge that Defendant Pike held the premises pursuant to a valid lease agreement. As a result of the Plaintiff's tactical decision to forego the required three-day notice, it must now be denied the newly-stated relief that it is seeking in its Memorandum.

IV. CONCLUSION

The Plaintiff has failed to meet its burden to show that there is no genuine dispute as to any material fact regarding whether Defendant Pike is out of compliance with the Lease or that an order of ejectment should be issued with regards to Defendant Pike. The Plaintiff should therefore be denied judgment as a matter of law and the Plaintiff's Motion for Summary Judgment should be denied.

DATED this 1st day of October, 2024.

IDAHO LEGAL AID SERVICES, INC.



KEN NAGY
Attorney for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 1st day of October, 2024, I caused to be served a full, true and accurate copy of the foregoing by the method indicated below, and addressed to the following:

Lewis N. Stoddard
Halliday, Watkins & Mann, P.C.
376 East 400 South, Suite 300
Salt Lake City, UT 84111
Phone: (801) 355-2886
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____ U.S. mail
____ Hand delivered
____ Overnight mail
____ Facsimile transmission to #
____ Email
☒ i-Court

Jeremy L. Bass
1515 21st Ave.
Lewiston, ID 83501-3926
Email: Quantum.J.L.Bass@RAWdeal.io

____ U.S. mail
____ Hand delivered
____ Overnight mail
____ Facsimile transmission to #
☒ Email
____ i-Court



Ken Nagy