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1. [*Idaho Power Co. v. Benj. Houseman Co.*](#)

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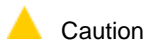
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Idaho Power Co. v. Benj. Houseman Co.

Supreme Court of Idaho

April 29, 1993 ; April 29, 1993, Filed

No. 20083, 1993 Opinion No. 46

Reporter

123 Idaho 674 *; 851 P.2d 970 **; 1993 Ida. LEXIS 100 ***

IDAHO POWER COMPANY, an Idaho corporation,
Plaintiff-Respondent, v. The BENJ. HOUSEMAN
COMPANY, Successor in Interest to the Zachreson
Company, Defendant-Appellant

Subsequent History: [***1] Released for Publication
May 21, 1993.

Prior History: Appeal from the District Court of the
Fourth Judicial District of the State of Idaho, Ada
County. Hon. George D. Carey, District Judge.

Appeal from summary judgment.

Disposition: Affirmed.

Core Terms

mortgage, foreclosure, senior deed, weatherization,
proceedings, sales, deficiency judgment, fair market
value, agree to pay, real estate, conveyance, foreclose,
costs, mortgage foreclosure, mortgaged property,
foreclosure sale, summary judgment, debt secured,
trustee sale, no right, unrecorded, mortgagee,
valueless, decree

Case Summary

Procedural Posture

Defendant mortgagor challenged the judgment of the
District Court of the Fourth Judicial District (Idaho),
which granted summary judgment in favor of plaintiff
mortgagee, power company, in the mortgagee's action
for the amount that the mortgagor's predecessor agreed
to pay for weatherization of buildings.

Overview

The mortgagee obtained a mortgage on each of eleven
properties of the mortgagor's predecessor as security

for payment for weatherization. The trustee of the two
senior deeds of trust to which the mortgages were
subject instituted foreclosure proceeding and sold all the
property. The mortgagee filed an action against the
mortgagor for the amount due on the debt. The trial
court granted summary judgment in favor of the
mortgagee. On appeal, the court affirmed the grant of
summary judgment. It held that the mortgagee was not
precluded from suing to collect the debt secured by the
mortgage where the debt was not due and where there
was no basis to foreclose the mortgage at the time the
property was sold to the third party by the trustee for
less than the fair market value. The court noted that the
mortgagee had no right to foreclose its mortgages
before the trustee sold the property and no right to
redeem the property from the purchaser at the
foreclosure sale pursuant to [Idaho Code § 45-1508](#). The
court concluded that once the mortgage became
valueless the mortgagee had the right to file the direct
action on the debt secured by the mortgage.

Outcome

The court affirmed the grant of summary judgment in
favor of the mortgagee in the mortgagee's action for the
amount that the mortgagor's predecessor agreed to pay
for the weatherization of buildings.

LexisNexis® Headnotes

Real Property

Law > Financing > Foreclosures > General
Overview

[HN1](#)  **Financing, Foreclosures**

A mortgagee may bring a direct action on a debt
secured by the mortgage, if the mortgage is valueless.

Counsel: Lojek, Gabbert & Strother, Chtd., of Boise, for defendant-appellant. Jeffrey A. Strother argued.

Ellis, Brown and Sheils, Chtd., of Boise, for plaintiff-respondent. Martin T. Neils argued.

Judges: Johnson, Justice. McDevitt, C.J., Bistline and Trout, JJ., and Judd, J., Pro Tem, concur.

Opinion by: JOHNSON

Opinion

[*674] [**970] This is a collection case. We hold that a mortgagee is not precluded from suing to collect the entire debt secured by a mortgage where the debt was not due and where there was no basis to foreclose the mortgage at the time the property was sold to a third party by the trustee of prior deeds of trust for less than the fair market value of the property.

I.

THE BACKGROUND AND PRIOR PROCEEDINGS.

On May 12, 1981, The Zachreson Company (Zachreson) entered into eleven weatherization agreements with Idaho Power Company. Each agreement required Idaho Power to weatherize a building owned by Zachreson. Zachreson agreed to pay for this work on July [***2] 12, 1991, or whenever the weatherized property was transferred, whichever occurred first. Zachreson agreed to pay a total of \$ 17,651.76. Idaho Power did not require Zachreson to pay interest.

To secure payment, Zachreson gave Idaho Power a mortgage on each of the eleven properties. Each of the eleven mortgages was subject to one or the other of two senior deeds of trust. In 1988, the trustee of the two senior deeds of trust instituted non-judicial foreclosure proceedings on all eleven parcels. The trustee gave Idaho Power notice of the foreclosure sales, but Idaho Power did not participate in any of the sales. The sales took place on July 5, 1988.

The successful bids at the foreclosure sales totaled \$ 455,679.57. The fair market value of the property sold was at least [*675] \$ 495,000.00. According to these figures, which are not disputed on appeal, the fair

market value of the property exceeded the total of the amount secured by the senior deeds of trust and the debt secured by Idaho Power's mortgages.

The Benj. Houseman Company (Houseman) is the successor in interest to Zachreson. Neither Zachreson nor Houseman ever paid any part of the \$ 17,651.76 owed to Idaho Power. [***3] Idaho Power sued Houseman for the amount Zachreson agreed to pay for the weatherization. The trial court granted summary judgment to Idaho Power, rejecting Houseman's arguments that the single-action statute ([I.C. § 6-101](#)) and the statute limiting deficiency judgments in mortgage foreclosures ([I.C. § 6-108](#)) barred Idaho Power's action. Houseman appealed.

II.

NEITHER [I.C. § 6-101](#) NOR [I.C. § 6-108](#) BAR IDAHO POWER'S ACTION.

Houseman asserts that [I.C. §§ 6-101](#) and [6-108](#) bar Idaho Power's right to recover from Houseman. We disagree.

The two statutes upon which Houseman premises its appeal provide:

6-101. Proceedings in foreclosure -- Effect of foreclosure on holder of unrecorded lien. --

There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales [***4] of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in the case of sales under execution; (and if it appear from the sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt), and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued.


No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a

lien thereon, which conveyance or lien does not appear of record in the proper office at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

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6-108. Deficiency judgments -- Amount restricted. -- No court in the state of Idaho shall have jurisdiction to enter a deficiency judgment in any case involving a foreclosure of a mortgage on real property in any amount greater than the difference between the mortgage [***5] indebtedness, as determined by the decree, plus costs of foreclosure and sale, and the reasonable value of the mortgaged property, to be determined by the court in the decree upon the taking of evidence of such value.

Neither of these statutes applies to this case. Under the terms of the mortgages, Zachreson's obligation to Idaho Power did not become due until the property was sold by the trustee of the senior deeds of trust. Therefore, Idaho Power had no right to foreclose its mortgages before the trustee sold the property. The sales by the trustee foreclosed and terminated all interest Idaho Power had in the property, and Idaho Power had no right to redeem the property from the purchaser at the trustee's sales. [I.C. § 45-1508](#). Idaho Power's mortgage lien on the property became valueless at the time of the trustee's sale. [Warner v. Bockstahler, 48 Idaho 419, 423, 282 P. 862, 863 \(1929\)](#).

[HN1](#) A mortgagee may bring a direct action on a debt secured by the mortgage, if the mortgage is valueless. [Clark v. \[*676\], 24 Idaho 142, 152, 132 P. 795, 798 \(1913\)](#).

III.

CONCLUSION.

We [***6] affirm the trial court's summary judgment in favor of Idaho Power.

We award costs to Idaho Power on appeal, together with attorney fees pursuant to [I.C. § 12-120\(3\)](#).