

User Name: Jeremy Bass

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Recommendations (169)

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Based on 20 key passage(s) we have identified from your document.

Similar Briefs (4)

Briefs recommendations based on the legal concepts and citations in your document.

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Quote Check (0)

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Jurisdiction (2)

9th Circuit, Idaho

Extracted Concepts (25)

You have selected the following legal concepts in your document:

Good Faith Purchaser, Foreclosure Sale, Foreclosure Process, Statutory Requirements, Substantive Defect, Valid Title, Default, Material Irregularity, Non Judicial Foreclosure, Harm, Trustee, Procedural Defect, Actual Harm, Noncomplying, Compliance, Improper Conduct, Collusion, Security Interest, Acquisition, Nonjudicial, Fail To Comply, Auction, Auction Process, Entitled To Possession, Void Ab Initio

Recommendations

Concepts extracted from your document (25)

Good Faith Purchaser, Foreclosure Sale, Foreclosure Process, Statutory Requirements, Substantive

Defect, Valid Title, Default, Material Irregularity, Non Judicial Foreclosure, Harm, Trustee, Procedural Defect, Actual Harm, Noncomplying, Compliance, Improper Conduct, Collusion, Security Interest, Acquisition, Nonjudicial, Fail To Comply, Auction, Auction Process, Entitled To Possession, Void Ab Initio

Recommendation (169)

20 passages in your document have recommendations.

Key Passage 1

| □ The court ruled that the protections under Idaho Code § 45-1508 apply only to procedural defects and do not |
|--|
| extend to substantive defects, such as when there is a lack of default, or . |
| ☐ The statute does not protect purchasers from all claims or reasons for voiding a sale. |
| □ Specifically, Idaho Code § 45-1508does not apply when a foreclosure sale is void because of the absence of a valid |
| default at the time of sale. |
| ☐ The court held that the foreclosure sale was void due to the lack of default, and the buyer could not claim |
| protections as a good faith purchaser under Idaho Code § 45-1508. |

Cases recommended for key passage 1 (5)



Motion type:

motion to dismiss | Partial motion to strike | Partial

Matching legal concepts:

Notice Of Sale | Foreclosure | Interest In Property | High Bidder | Terms Of Section | Fail To Comply | Full Compliance | Bringing Suit | In Default | Invalidate | Trustee

Outcome: Deed of Trust beneficiary's motion to dismiss was granted, in part, because its appointment of a trustee the day before the Deed of Trust was assigned to it was valid; under Idaho Code Ann. § 45-1504(2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment.

Relevant passage: The high bidder brought suit, claiming the borrowers were foreclosed from asserting an interest in the property because the trustee had complied with the notice of sale procedures. The court held that full compliance with the notice of sale procedures did not prevent invalidation of the foreclosure when the buyer was not actually in default. The court reasoned that "by [the terms of section 45-1508] it only applies to sales challenged because of a failure to comply with the provisions of Idaho Code § 45-1506." Id. at 313.



Matching legal concepts:

Case Law | Subsequent Case | Foreclosure Sale | Fail To Comply | Default | Full Payment | Time Of Foreclosure | Time Of Sale | Not Valid | No Default | Original Owner | Trust Deed | Property Owner | Real Property

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: In case law, the Supreme Court of Idaho determined the foreclosure sale was void for failure to comply with Idaho Code Ann. § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust and that Idaho Code Ann. § 45-1508 did not suggest that the sale was nevertheless final. Subsequent case law does not conflict with this view of § 45-1508. The subsequent case law involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code Ann. § 45-1506(9), which requires full payment of the bid at the time of sale. The Supreme Court held that the sale was final and valid despite that failure, though the terms of § 45-1508 might initially have suggested otherwise. Subsequent case law is irrelevant to the Court's prior holding that, where there is no default at the time of a foreclosure sale, the sale is not a sale made by a trustee under this act and so is not valid.

A Jenkins v. Barsalou 145 Idaho 202 Idaho Supreme Court | 2008-01-02

Matching legal concepts:

Statutory Requirements | Redeeming Property | Valid Claim | Foreclosure | Foreclosure Sale | Equitable Relief | Auction

Outcome: Basis of other creditors' right to redeem based on judgment lien did not excuse creditor from complying with redemption statute, Idaho Code § 11-401(2). Under Idaho Code § 11-404, creditor failed to meet requirement of tender. Creditor did not redeem within statutory time period, Idaho Code § 11-403. Creditor was entitled to redeem one tract only.

Relevant passage: In Idaho, in order to redeem property after it has been auctioned at a foreclosure sale, one must comply with the applicable statutory requirements in Idaho Code §§ 11-401--407. In the absence of a valid claim to equitable relief, the Idaho Supreme Court strictly enforces the statutory requirements for redemption.

A Gordon v. United States Bank Nat'l Ass'n 166 Idaho 105 Idaho Supreme Court | 2019-12-18

Matching legal concepts:

Validity Of Sale | Foreclosure | Trustee | Failure | Purchaser | Failure To Give Notice | Interest In Property | Successor In Interest | Good Faith | Redeeming Property | Right To Redeem | Persons Claiming | No Right | Property Covered | Trustee Sale | Fail To Comply | Giving Notice | Trust Deed | Foreclosure Sale | Actual Knowledge | In Good Faith | Personal Service | Termination | Defect | Publication

Outcome: Am injunction was properly denied where the district court's summary judgment analysis implicitly addressed the borrower's preliminary injunction arguments, an alleged postponement error was not a sufficient basis to delay the foreclosure sale, and the lenders' failure to record a power of attorney did not invalidate the foreclosure.

Relevant passage: Idaho Code Ann. § 45-1508 establishes when foreclosure sales become final despite defects in notice proceedings. That statute states that a sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under Idaho Code Ann. § 45-1506 and of any other person claiming by, through or under such persons and such persons

shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with § 45-1506 shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of § 45-1506 shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

PHH Mortg. Servs. Corp. v. Perreira 146 Idaho 631 Idaho Supreme Court | 2009-01-30

Matching legal concepts:

Sale | Validity Of Sale | Good Faith | Fail To Comply | Provisions Of Section | In Good Faith | Purchaser

Outcome: District court did not err in refusing to consider new evidence owners presented in support of motion for reconsideration. Mortgage company did not have property title, Idaho Code Ann. § 55-605. Judicial estoppel was not bar to company's claim for possession of property. Company failed to comply with Idaho Code Ann. § 45-1506 in providing notice.

Relevant passage: Idaho Code Ann. § 45-1508 provides, any failure to comply with the provisions of section 45-1506, Idaho Code (regarding notice), shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale.

Key Passage 2

The parallels between Baker v. Nationstar Mortg., LLC and the current case are striking. Plaintiffs claim protection as good faith purchasers under **Idaho Code § 45-1508**, arguing that the trustee's sale must be upheld despite Defendant Bass's objections. However, Baker establishes that these protections do not extend to substantive defects such as the lack of a valid default or fraud. Defendant Bass has consistently maintained that the foreclosure sale was void because it was conducted without a valid default, and that improper conduct, including collusion, marred the auction process.

Cases recommended for key passage 2 (8)

Mulcahy v. Fed. Home Loan Mortg. Corp. 2014 U.S. Dist. LEXIS 15738 Western Dist. Wash. | 2014-02-07

Motion type:

motion to dismiss | Denied

Matching legal concepts:

Sale | Foreclosure Sale | Objection | Nonjudicial Foreclosure | Cancellation | Foreclosure Process | Procedural Irregularity | Judicial Declaration | Reasonable Reliance | Alleged Fact | No Effect | Wells Fargo | Waive

Relevant passage: Plaintiffs seek a judicial declaration that the foreclosure sale that occurred on December 27, 2010, is void and of no effect. In support, they allege a host of irregularities in the procedures leading up to the sale and reasonable reliance on Wells Fargo's statements that the sale had been cancelled. Defendants focus on the procedural irregularities, arguing that plaintiffs have failed to allege facts in support of certain objections and/or have waived their objections by failing to enjoin the foreclosure sale. Defendants do not address whether "the nonjudicial foreclosure process [was] fair and free from surprise." Cox v. Helenius, 103 Wn.2d 383, 387, 693 P.2d 683 (1985).

A Mortgage v. Thunder Props. 2020 U.S. Dist. LEXIS 179116

U.S. Dist. Nev. | 2020-09-29

Matching legal concepts:

Sale | Prejudice | Champion | Notice Of Default | Lack Of Notice | Supreme Court Explained | Fail To Provide | Foreclosure | Receive Notice | Us Bank | Foreclosure Sale | Summary Judgment | Suffer | Render

Outcome: HOA's failure to provide the holder of a deed of trust the notice required under Nev. Rev. Stat. ch. 116, plus undisputed evidence of the gross inadequacy of the foreclosure-sale price, made a case for equitable relief under Shadow Canyon, but as there was no evidence that the holder suffered prejudice as a result, the sale voidable, not void.

Relevant passage: Because NRS Chapters 107 and 116 required Champion to receive the notices of default and sale, the HOA's failure to provide that notice can render the foreclosure sale void. But, as the Nevada Supreme Court explained in U.S. Bank v. Resources Group, LLC, a void sale requires two findings: lack of notice and prejudice. And here, Champion has not argued, let alone established with evidence, that it suffered the prejudice needed to void the sale. So I cannot conclude on summary judgment that the sale is void.

A Dalby v. Ditech Fin. LLC 2019 U.S. Dist. LEXIS 201274

U.S. Dist. Alaska | 2019-11-20

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Foreclosure | Foreclosure Sale | Substantive Defect | Trustee | Unjust | Contest | Render | Notice Of Transfer | Facts Sufficient To State | Reimbursement

Relevant passage: Under Alaska law, a substantial defect in a foreclosure will render it void. Accordingly, a foreclosure sale "will be void 'only in cases which reach unjust extremes." Procedural defects may render a foreclosure sale voidable, but not void. Taking the facts in the FAC as true, the two Corrective Assignments and the Substitution of Trustee are "robosigned and/or void and/or invalid" and Mr. Dalby never received notices of transfer of services or otherwise and was never reimbursed for his five payments to Countrywide. Notably, Mr. Dalby does not contest the validity of the actual transfers of the DOT or the right of the trustee to bring a foreclosure sale. Indeed, he does not contest the right of BOA or MERS to execute a substitution of trustee. The Court finds that Mr. Dalby has not alleged facts sufficient to state a plausible claim that the foreclosure sale is void; the alleged defects are procedural or mechanical and do not rise to the level of unjust extremes or substantive defects with the foreclosure.

Salazar v. U.S. Bank N.A. 2015 U.S. Dist. LEXIS 49172

Central Dist. Cal. | 2015-04-06

Motion type:

motion to dismiss | Denied

Matching legal concepts:

Foreclosure Sale | Nonjudicial Foreclosure Sale | Overcoming The Presumption | Presumption Of Validity | Prejudice Resulting | Show Prejudice | Trust Deed | Sufficient Fact | In Default | Amount Due | Defect |

Prerequisite | Failure | Omission | Distinction | Demonstrate

Relevant passage: But, Plaintiff has already alleged sufficient facts to demonstrate that the foreclosure sale of her home was void, not voidable. This also overcomes the presumption of validity. See Ram, 234 Cal. App. 4th at 12 ("In the end, the importance of any distinction between a 'void' or 'voidable' nonjudicial foreclosure sale is simply whether the borrower, who is in default, must allege and prove a prerequisite tender of the amount due under the deed of trust and otherwise to show prejudice resulting from the defect, omission, or failure, before the sale will be set aside.").

A Wright v. Ocwen Loan Servicing, LLC 2011 U.S. Dist. LEXIS 163438

Central Dist. Cal. | 2011-07-12

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Prejudice | Non Judicial Foreclosure | Judicial Foreclosure Sale | Rebutting A Presumption | Overcoming The Presumption | Wrongful Foreclosure | Valid Sale | Debt Amount | No Facts | Receive Notice | Court Concludes | Proper Notice | Full Amount | Nonjudicial | Failure | Deficiency | Trustee

Relevant passage: Because the court concludes the sale is voidable rather than void, and because Wright does not allege a willingness or ability to tender the full amount of the debt, his wrongful foreclosure claim fails. It fails as well because Wright has alleged no facts showing that the purported deficiencies in the Substitution of Trustee caused him prejudice. See Odinma, 2010 U.S. Dist. LEXIS 54190, 2010 WL 2232169 at *7 ("[E]ven if Plaintiffs did not receive the proper notices . . . any failure to receive notice was not prejudicial, and therefore does not rebut the presumption of the valid sale"); Davenport, 725 F.Supp.2d at 877 ("When attacking a non-judicial foreclosure sale, a borrower must overcome a presumption of propriety.

Operation
Doscher v. Wells Fargo Mortg., Inc. 2015 U.S. Dist. LEXIS 112679
Southern Dist. Cal. | 2015-08-24

Matching legal concepts:

Willfully Oppressive | Foreclosure | Foreclosure Sale | Fraudulent | Sale Of Real Property | Equitable Cause Of Action | Power Of Sale | Fail To State | Registration System | Stating Facts | Trust Deed | Mortgage | Vacate

Relevant passage: In California, one of the elements of an equitable cause of action to set aside a foreclosure sale is that "the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust." In re Mortg. Electronic Registration Systems, Inc., 754 F.3d 772, 784 (9th Cir. 2014). Plaintiff fails to state facts purporting that the anticipated foreclosure sale is illegal, fraudulent, or willfully oppressive. Additionally, the sale has not yet occurred and there is nothing to set aside or vacate.

Wells Fargo Bank, N.A. v. SFR Invs. Pool 1, LLC 2019 U.S. Dist. LEXIS 29697 U.S. Dist. Nev. | 2019-02-25

Matching legal concepts:

Foreclosure | Sale | Commercially Unreasonable | Reasonableness Standard | Equitable Grounds | Commercially Reasonable | Foreclosure Sale | Wells Fargo | Inapplicable

Relevant passage: Wells Fargo argues that this court should set aside the foreclosure on equitable grounds and seeks a declaration that the sale was void because it was commercially unreasonable. However, the Nevada Supreme Court has held that the commercial reasonableness standard is inapplicable in the HOA foreclosure sale context. See Shadow Canyon, 405 P.3d at 644-46.



🗣 Fannie Mae v. Hafer 158 Idaho 694

Idaho Supreme Court | 2015-06-22

Matching legal concepts:

Case Law | Subsequent Case | Foreclosure Sale | Fail To Comply | Default | Full Payment | Time Of Foreclosure | Time Of Sale | Not Valid | No Default | Original Owner | Trust Deed | Property Owner | Real **Property**

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: In case law, the Supreme Court of Idaho determined the foreclosure sale was void for failure to comply with Idaho Code Ann. § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust and that Idaho Code Ann. § 45-1508 did not suggest that the sale was nevertheless final. Subsequent case law does not conflict with this view of § 45-1508. The subsequent case law involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code Ann. § 45-1506(9), which requires full payment of the bid at the time of sale. The Supreme Court held that the sale was final and valid despite that failure, though the terms of § 45-1508 might initially have suggested otherwise. Subsequent case law is irrelevant to the Court's prior holding that, where there is no default at the time of a foreclosure sale, the sale is not a sale made by a trustee under this act and so is not valid.

Argument recommendations for key passage (2)

NOTICE OF MOTION AND MOTION TO DISMISS COMPLAINT; MEMORANDUM OF POINTS AND **AUTHORITIES IN SUPPORT THEREOF**

MOHANNA v. WILMINGTON SAV. FUND SOC'Y, 2021 U.S. DIST. CT. MOTIONS LEXIS 606459

Law firm: WRIGHT, FINLAY & ZAK, LLP

Northern Dist. Cal. | 2021-09-01

Motion type:

motion to dismiss |

Argument: C. Plaintiff's Two Wrongful Foreclosure Claims Fail as a Matter of Law.

A claim for wrongful foreclosure requires: "(1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale ... was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering." Miles v. Deutsche Bank National Trust Co., 236 Cal. App. 4th 394, 408 (2015); see also, Knapp v. Doherty, 123 Cal. App. 4th 76, 86 (2004) (foreclosures are presumptively valid and challengers bear the burden of demonstrating improper procedure and resulting prejudice). Plaintiff's dual cause of action for wrongful foreclosure fail for numerous reasons separate and apart from the prior Settlement and res judicata.

MEISTER PARK HOMEOWNERS' ASSOCIATION'S OPPOSITION TO BANK OF NEW YORK MELLON'S MOTION FOR SUMMARY JUDGMENT

BANK OF NEW YORK MELLON v. MEISTER PARK HOMEOWNERS ASS'N, 2020 U.S. DIST. CT. MOTIONS LEXIS 447846

U.S. Dist. Nev. | 2020-04-20

Motion type:

motion for summary judgment |

Argument: 6. Even if the Bank could establish fraud surrounding the foreclosure sale, the Bank failed to demonstrate a nexus between the low sales price and any alleged fraud.

Here, the Bank fails to even attempt to make the necessary connection between what it believes was fraudulent conduct by the Association and the alleged low sales price at the foreclosure sale. This is because there is no evidence in this case, nor could there be, that a failure to accept a presale tender of an amount less than what was owed caused a low sales price. Simply put, this Court cannot set aside this foreclosure sale under Shadow Canyon. As such, the Court should deny the Bank's alternative request to set aside the foreclosure sale.

Key Passage 3

| □ Idaho Code § 45-1508 provides protections to purchasers in foreclosure sales only when the sale is challenged for |
|--|
| procedural defects. It does not insulate buyers from the consequences of substantive defects. |
| ☐ In Baker, the absence of a valid defaultrendered the sale void, and the protections of § 45-1508were deemed |
| inapplicable. |
| ☐ In Defendant Bass's case, the lack of a valid default at the time of the foreclosure sale is a substantive defect that |
| renders the sale void. |

Cases recommended for key passage 3 (9)

Pedersen v. Greenpoint Mortg. Funding, Inc. 2011 U.S. Dist. LEXIS 96397
Eastern Dist. Cal. | 2011-08-29

Motion type:

motion for injunctive relief | Denied motion to dismiss | Granted

Matching legal concepts:

Sale | Trustee | Redeeming Property | Debt Amount | Foreclosure Procedure | Trustee Sale | Damage | Nonjudicial | Prejudice | Default

Outcome: The borrowers' claims under the Homeowners Equity Protection Act, 15 U.S.C.S. § 1639 et seq., were dismissed as nothing in the record suggested that the loan at issue was taken to refinance the home at issue or to fund construction. The borrowers were given leave to amend their TILA and RESPA claims to sufficiently plead equitable tolling.

Relevant passage: When a sale is voidable rather than void because of irregularities in a nonjudicial trustee's sale, there may be grounds for setting it aside if they are prejudicial to the party challenging the sale. To set aside a sale, however, the party challenging it must tender the amount of the debt or at least the amount of the default, because the irregularities in the foreclosure procedures cannot be deemed to damage plaintiff when plaintiff could not redeem the property had sale procedures been proper.

A Schneidereit v. Trust of the Scott & Brian, Inc. 693 Fed. Appx. 733 9th Circuit - Court of Appeals | 2017-08-16

Matching legal concepts:

Trustee | Debt | Nonjudicial Foreclosure Sale | Offer To Pay | Debt Amount | Improper Procedure | Trustee Sale | Quiet Title | Full Amount | Prejudice | Mortgagee | Security

Outcome: In an action relating to a mortgage loan and nonjudicial foreclosure, the district court properly dismissed the borrowers' dependent abuse claim under Cal. Welf. & Inst. Code § 15610.30, because foreclosing on the home of a dependent was not, absent more, a \"wrongful use\" of property.

Relevant passage: An action to set aside a trustee's sale for irregularities in sale notice or procedure should be accompanied by an offer to pay the full amount of the debt for which the property was security. A mortgagee cannot quiet title without satisfying his debt. To attack a nonjudicial foreclosure sale, a plaintiff must plead and prove an improper procedure and the resulting prejudice.

A Flores v. EMC Mortg. Co. 997 F. Supp. 2d 1088

Eastern Dist. Cal. | 2014-02-18

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Invalidity Of Instrument | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | Presumption Arises | Trustee Sale | Final Adjudication | Alleged Fact | Rebuttable Presumption | Trust Deed | Required By Law | General Rule | Prejudice | Bylaw | Complain | Lender | Validity

Outcome: Mortgagors' claim for wrongful foreclosure failed to rebut the presumption that the nonjudicial foreclosure of the mortgagors' property was proper since the mortgagors did not show that the foreclosure was unauthorized and failed to tender the amount of the mortgage debt, and possession of the original note was not a prerequisite to foreclosure.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. A nonjudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity. To challenge foreclosure, it is necessary for the complaint to state a case within the code sections for which reason it is essential to allege the facts affecting the validity and invalidity of the instrument which is attacked.

Countrywide Home Loans, Inc. v. United States 2007 U.S. Dist. LEXIS 1625

Eastern Dist. Cal. | 2007-01-09

Motion type:

motion for summary adjudication | Granted motion for summary judgment | Partial

Matching legal concepts:

Trustee | Foreclosure Sale | Civ Code | Notice Of Default | Deficient | Non Judicial Foreclosure | Judicial Foreclosure Sale | Statutory Requirements | Notice Of Sale | Deception

Outcome: Summary judgment was denied because a genuine issue of fact existed as to whether the investor was a bona fide purchaser because there was information available to show that the lender who held the first lien could have had an equitable interest in the property despite the fact that the title showed no interest by the lender.

Relevant passage: Using Cal. Civ. Code § 1058.5(b), a trustee may set aside or void a otherwise completed non-judicial foreclosure sale even after the trustee's deed is delivered to the high bidding purchaser under certain circumstances in the absence of an intervening bona fide purchaser. Statutorily deficient notice of default and/or notice of the sale is grounds to set aside a sale. The statutory requirements of Cal. Civ. Code § 2924 must be strictly complied with, and a trustee's sale based on a statutorily deficient notice of default is invalid. In addition, fraud or deceit in the foreclosure process is likewise ground to set aside the sale. A foreclosure sale may also be set aside where there has been a mistake of such magnitude that to allow it to stand would be inequitable to purchaser and parties. Finally, an inadequate sale price coupled with a procedural irregularity may warrant a setaside of a completed foreclosure sale just as it may be a basis for aborting a sale not yet completed.

Rockridge Trust v. Wells Fargo, N.A. 985 F. Supp. 2d 1110

Northern Dist. Cal. | 2013-09-25

Matching legal concepts:

Tender Of Payment | Trustee | Payment Of Indebtedness | Voidable Sale | Damages To Plaintiff | Redeeming Property | Offer To Pay | Cancellation | Debt Amount | Trustee Sale | Trust Deed | Full Amount | General Rule | Rationale | Security

Outcome: In a suit arising out of a series of loan modification negotiations followed by foreclosure, the borrowers sufficiently asserted that a particular lender was engaged in debt collection under the FDCPA, although dismissal of another lender was warranted because it was only engaged in the nonjudicial foreclosure process.

Relevant passage: As a general rule under California law, an action to set aside a trustee's sale for irregularities in sale notice or procedure should be accompanied by an offer to pay the full amount of the debt for which the property was security. A valid and viable tender of payment of the indebtedness owing is essential to an action to cancel a voidable sale under a deed of trust. The rationale behind the rule is that if plaintiffs could not have redeemed the property had the sale procedures been proper, any irregularities in the sale did not result in damages to the plaintiffs.

Anatividad v. Wells Fargo Bank, N.A. 2013 U.S. Dist. LEXIS 74067

Northern Dist. Cal. | 2013-05-24

Motion type:

motion for relief | Denied motion to dismiss | Granted

Matching legal concepts:

Trustee | Foreclosure | Proof | Sale Of Real Property | Power Of Sale | Willfully Oppressive | Trustee Sale | First Element | Fail To Comply | Procedural Requisite | Trust Deed | Foreclosure Sale | Mortgage | Fraudulent

Outcome: In a real estate foreclosure case, sending a notice of default was not the basis for a cause of action under the FDCPA because it did not go beyond enforcing security interests and thus was not \"debt collection\"

activity under 15 U.S.C.S. § 1692a(6). Legally-mandated actions required for mortgage foreclosure are not necessarily debt collection.

Relevant passage: In order to set aside a foreclosure sale, a plaintiff must first establish that the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust. Justifications for setting aside a trustee's sale, which satisfy the first element, include proof that the trustee did not have the power to foreclose as well as proof of the trustee's failure to comply with the statutory procedural requirements for the notice or conduct of the sale.

Eshraghi v. Cal. Bank & Trust Corp. 2011 U.S. Dist. LEXIS 121141

Eastern Dist. Cal. | 2011-10-19

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | Presumption Arises

Outcome: Bank and loan servicer were not enjoined from evicting an owner from a residence after a trustee's sale of the property because the owner alleged no precise wrongs attributable to the bank and loan servicer relating to the foreclosure. The complaint did not address tender for purposes of permitting rescission under 15 U.S.C.S. § 1635.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. A nonjudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity.

Nugent v. Fed. Home Loan Corp. 2014 U.S. Dist. LEXIS 141029
Eastern Dist. Cal. | 2014-10-01

Lastern Bist. Gai. | 2014 10

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Sale | Foreclosure | Foreclosure Sale | Indebtedness

Outcome: Borrowers' Cal. Civ. Code § 2924 wrongful foreclosure cause of action based on a failure to provide notice of a rescheduled sale failed to state a claim because there was no remedy since the foreclosure sale had already occurred; a breach of contract claim failed since a trial period plan to modify the loan agreement did not create a contract.

Relevant passage: An allegation of tender of the indebtedness is necessary when the person seeking to set aside the foreclosure sale asserts the sale is voidable due to irregularities in the sale notice or procedure.

Matching legal concepts:

Case Law | Subsequent Case | Foreclosure Sale | Fail To Comply | Default | Full Payment | Time Of Foreclosure | Time Of Sale | Not Valid | No Default | Original Owner | Trust Deed | Property Owner | Real Property

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: In case law, the Supreme Court of Idaho determined the foreclosure sale was void for failure to comply with Idaho Code Ann. § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust and that Idaho Code Ann. § 45-1508 did not suggest that the sale was nevertheless final. Subsequent case law does not conflict with this view of § 45-1508. The subsequent case law involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code Ann. § 45-1506(9), which requires full payment of the bid at the time of sale. The Supreme Court held that the sale was final and valid despite that failure, though the terms of § 45-1508 might initially have suggested otherwise. Subsequent case law is irrelevant to the Court's prior holding that, where there is no default at the time of a foreclosure sale, the sale is not a sale made by a trustee under this act and so is not valid.

Key Passage 4

| □ Foreclosure sales conducted without a valid default are void, not merely voidable. This distinction is critical, as a void |
|--|
| sale has no legal effect and cannot confer valid title on a purchaser. |
| □Defendant Bass argues that the trustee's sale in this case was void due to a substantive defect: the lack of a valid |
| default. Therefore, Plaintiffs cannot claim to have acquiredvalid title, and their reliance on good faith purchaser protections is |
| misplaced. |

Cases recommended for key passage 4 (10)

A In re Ho 2017 Bankr. LEXIS 984 U.S. Bankr. Haw. | 2017-04-07

Matching legal concepts:

Nonjudicial Foreclosure Sale | Void Transaction | Good Faith Purchaser | Purchaser For Value | Hawaii Law | Valid Title | Good Title | Acquisition | Prior Decision

Outcome: Trustee's motion for reconsideration was denied where, although there was a tension between older and new decisions of the Hawaii Supreme Court, the bankruptcy court continued to believed that an improperly conducted nonjudicial foreclosure sale under Hawaii law was voidable, not void.

Relevant passage: In my prior decision, I held that a defective nonjudicial foreclosure sale is voidable, not void, under current Hawaii law. The difference matters because one who takes title in a void transaction cannot pass good title to anyone. But if the transaction is voidable, a good faith purchaser for value can acquire a valid title.

A Kelly v. Clear Recon Corp. 2019 U.S. Dist. LEXIS 197632 U.S. Dist. Alaska | 2019-11-14

Motion type:

motion to dismiss | Partial

Matching legal concepts:

Foreclosure | Defect | Foreclosure Sale | Trustee | Pleading Requirements | Retention Of Title | Voidable Sale | Interest In Property | Right To Proceed | Substantive Defect | Bona Fide Purchaser | Substantial Interest | Substantial Basis | Quiet Title | Cut Off | First Place

Relevant passage: To state a claim for quiet title under Alaska law, a plaintiff must allege that they have "a substantial interest in the property and that [their] title is better than that of the defendants." In Alaska, borrowers retain title to their property if a foreclosure sale was void. "Only substantial defects such as the lack of a substantive basis to foreclose in the first place will make a sale void." However, "[w]here a defect in a foreclosure sale makes it merely voidable . . . sale to a [bona fide purchaser] cuts off the trustor's ability to set aside the sale." A defect is "substantial" when goes to the trustee's right to proceed with the foreclosure rather than to "the mechanics of exercising the power."

Selene Fin., LP v. Cobblestone Manor VI Homeowners Ass'n 2022 U.S. App. LEXIS 5645
9th Circuit - Court of Appeals | 2022-03-03

Matching legal concepts:

Bona Fide Purchaser | Sale | Valid Tender | Bona Fide Purchaser Status | Transfer Title | Foreclosure Proceeding | Foreclosure Sale | Defect | Render

Outcome: In an appeal from a grant of summary judgment, bank's tender was sufficient under Nev. Rev. Stat. Ann. § 116.3116 because HOA provided bank with Statement of Account listing \$40.00/month assessment rate, with no outstanding maintenance or nuisance charges. In reliance on statement, bank tendered nine months' dues at that rate, a total of \$360.00.

Relevant passage: In the context of bona fide purchaser status, valid tender voids a foreclosure sale and prevents transfer of title. A party's status as a bona fide purchaser is irrelevant when a defect in the foreclosure proceeding renders the sale void.

Fields v. HSBC Bank USA, N.A. (In re Ho) 564 B.R. 49

U.S. Bankr. Haw. | 2017-01-18

Matching legal concepts:

Foreclosure | Foreclosure Sale | Overrule | Void Transaction | Good Faith Purchaser | Purchaser For Value | Hawaii Law | Recent Holding | Valid Title | Important Distinction | Good Title | Court Concludes | Election | Acquisition | Recent Decision | Prior Case | Prior Decision | Case Law | Inconsistency

Outcome: Among other matters, court concluded that an improperly conducted foreclosure sale under Hawaii law is voidable, not void, and that the Hawaii Supreme Court has impliedly overruled its earlier decisions to the contrary. Court granted the bank's motion to dismiss to that limited extent, with leave to amend.

Relevant passage: This (voidable, not void) is a technical but important distinction. One who takes title in a void transaction cannot pass good title to anyone. But if the transaction is voidable, a good faith purchaser for value can acquire a valid title. Hawaii case law on this point is inconsistent. In earlier cases, the Hawaii Supreme Court said that a defective foreclosure sale is "void" or, if notice was defective, "void and not voidable." The Hawaii Supreme Court has never expressly overruled these decisions. In more recent decisions, however, the Hawaii Supreme Court has repeatedly stated that an improper foreclosure sale is "voidable at the election of the mortgagor." In view of these repeated recent holdings, the court concludes that an improperly conducted

foreclosure sale under Hawaii law is voidable, not void, and that the Hawaii Supreme Court has impliedly overruled its earlier decisions to the contrary.

👽 Cedano v. Aurora Loan Servs. (In re Cedano) 470 B.R. 522

9th Circuit Bankr. Appellate Panel | 2012-04-09

Matching legal concepts:

Sale | Trustee | Foreclosure | Trust Deed | Beneficiary | Reasonable Inference | General Rule | Authorization | Debtor | Defect | Complain | Render

Outcome: Nonjudicial foreclosure sales were governed by Cal. Civ. Code § 2924. Debtor failed to allege that the foreclosure violated applicable California law and was improper. Consequently, his first four claims for relief were properly dismissed. His fifth claim for relief was abandoned. His professional negligence claim was also properly dismissed.

Relevant passage: The Complaint alleged that "[a]Ithough the Trustee's Deed Upon Sale appears valid on its face, it is invalid and void" because the foreclosure was not authorized by the beneficiary of the Note and DOT. Although "void," "voidable," and "invalid" are often used interchangeably, the "general rule" is that defects and irregularities in a sale render it merely voidable and not void. Little, 188 Cal. App. 3d at 1358. However, substantially defective sales have been held to be void. Id. We must accept facts and reasonable inferences in favor of the Debtor. Maya, 658 F.3d at 1068.

A Cedano v. Aurora Loan Servs., LLC (In re Cedano) 2012 Bankr. LEXIS 1528 9th Circuit Bankr. Appellate Panel | 2012-04-09

Matching legal concepts:

Sale | Trustee | Foreclosure | Trust Deed | Beneficiary | Reasonable Inference | General Rule | Authorization | Debtor | Defect | Complain | Render

Outcome: Foreclosure under a deed of trust granted by a bankruptcy debtor was proper since the nominee named in the deed of trust had the authority to undertake foreclosure, and also had authority to substitute an entity as trustee under the deed of trust with the right to initiate the nonjudicial foreclosure process.

Relevant passage: The Complaint alleged that "[a]Ithough the Trustee's Deed Upon Sale appears valid on its face, it is invalid and void" because the foreclosure was not authorized by the beneficiary of the Note and DOT. Although "void," "voidable," and "invalid" are often used interchangeably, the "general rule" is that defects and irregularities in a sale render it merely voidable and not void. Little, 188 Cal.App.3d at 1358. However, substantially defective sales have been held to be void. Id. We must accept facts and reasonable inferences in favor of the Debtor. Maya, 658 F.3d at 1068.

Nationstar Mortg. LLC v. SFR Invs. Pool 1, LLC 2021 U.S. Dist. LEXIS 170998

U.S. Dist. Nev. | 2021-09-09

Matching legal concepts:

Bona Fide | Bona Fide Purchaser | Trust Deed | Sale | Foreclosure Proceeding | Foreclosure Sale | Defect Render

Relevant passage: This argument is inapposite because even if it were a bona fide purchaser, it would fail to remove Plaintiff's deed of trust. The Nevada Supreme Court has previously found a deed of trust survives such

foreclosure sales even if the purchaser is a bona fide one, where, as here, the foreclosure was void because of on an improper rejection of tender. SFR II, 427 P.3d at 121 ("A party's status as a [bona fide purchaser] is irrelevant when a defect in the foreclosure proceeding renders the sale void.").

🔔 Lindsay v. Beneficial Reinsurance Co. (In re Lindsay) 59 F.3d 942

9th Circuit - Court of Appeals | 1995-07-12

Matching legal concepts:

Sale | Foreclosure Sale | Reasonably Equivalent | Fraudulent Conversion | Judgment As A Matter Of Law | Entitled To Judgment As A Matter Of Law | Permit | Applicable State Law | Foreclosure Law | Equivalent Value | According To Law | Invalidate | Presumption | Transfer

Outcome: In a bankruptcy matter, the issue of reasonably equivalent price was immaterial, and defendant was entitled to a judgment as a matter of law since its foreclosure sale complied with applicable state law.

Relevant passage: Under BFP, Beneficial was entitled to judgment as a matter of law that the foreclosure sale was not a fraudulent conveyance, so long as "all the requirements of the State's foreclosure law have been complied with." BFP, 114 S. Ct. at 1757. It could be set aside only if there were "irregularity in the conduct of the sale that would permit judicial invalidation of the sale under applicable state law." Id. Even if there were such an irregularity, that alone would not permit setting aside the foreclosure sale as a fraudulent conveyance. It would only destroy the irrebuttability of the presumption that the price was "reasonably equivalent value." The transfer could then be avoided if the price received was not reasonably equivalent to "the price that would have been received if the foreclosure sale had proceeded according to law." Id.

◆ Bank of N.Y. Mellon v. Williston Inv. Grp., LLC 2019 U.S. Dist. LEXIS 82621

U.S. Dist. Nev. | 2019-05-16

Motion type:

motion for summary judgment | Granted

Matching legal concepts:

Lien | Sale | Portion | Valid Tender | Bona Fide Purchaser | Trust Deed | Foreclosure Proceeding | Quiet Title | Foreclosure Sale | Defect | Counterclaim | Render

Relevant passage: Finally, Williston argues it is a bona fide purchaser. However, a "party's status as a BFP is irrelevant when a defect in the foreclosure proceeding renders the sale void." Id. at 121. "[A]fter a valid tender of the superpriority portion of an HOA lien, a foreclosure sale on the entire lien is void as to the superpriority portion, because it cannot extinguish the first deed of trust on the property." Id. Williston cannot prevail on its guiet title counterclaim.



Salazar v. U.S. Bank N.A. 2015 U.S. Dist. LEXIS 49172

Central Dist. Cal. | 2015-04-06

Motion type:

motion to dismiss | Denied

Matching legal concepts:

Foreclosure Sale | Nonjudicial Foreclosure Sale | Overcoming The Presumption | Presumption Of Validity | Prejudice Resulting | Show Prejudice | Trust Deed | Sufficient Fact | In Default | Amount Due | Defect |

Prerequisite | Failure | Omission | Distinction | Demonstrate

Relevant passage: But, Plaintiff has already alleged sufficient facts to demonstrate that the foreclosure sale of her home was void, not voidable. This also overcomes the presumption of validity. See Ram, 234 Cal. App. 4th at 12 ("In the end, the importance of any distinction between a 'void' or 'voidable' nonjudicial foreclosure sale is simply whether the borrower, who is in default, must allege and prove a prerequisite tender of the amount due under the deed of trust and otherwise to show prejudice resulting from the defect, omission, or failure, before the sale will be set aside.").

Argument recommendations for key passage (1)

MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT JPMORGAN CHASE BANK, NATIONAL ASSOCIATION

SHIREHAMPTON DRIVE v. JPMORGAN CHASE BANK, 2017 U.S. DIST. CT. MOTIONS LEXIS 481305 U.S. Dist. Nev. | 2017-08-24

Motion type:

Defendant's motion for summary judgment |

Argument: E. The defendant's answers to interrogatories do not set forth any evidence or contentions of any defect in the sale as are detailed in the Schroeder case. The bank is not entitled to relief against the bona fide purchaser

Most defects render the foreclosure voidable and not void. When a voidable error occurs, bare legal title passes to the sale purchaser, subject to the redemption rights of those injured by the defective foreclosure. Typically, a voidable error is "an irregularity in the execution of a foreclosure sale" and must be "substantial or result in a probably unfairness."

Key Passage 5

Baker v. Nationstar Mortg., LLCis directly applicable to Defendant Bass's case, as it underscores that Idaho Code § 45-1508does not protect purchasers from substantive defects, such as the absence of a valid default. Plaintiffs' claim to good faith purchaser protections must fail because the trustee's sale was void, and without valid title, they cannot maintain an ejectment action.

Cases recommended for key passage 5 (1)

Selene Fin., LP v. Cobblestone Manor VI Homeowners Ass'n 2022 U.S. App. LEXIS 5645
9th Circuit - Court of Appeals | 2022-03-03

Matching legal concepts:

Bona Fide Purchaser | Sale | Valid Tender | Transfer Title | Foreclosure Proceeding | Foreclosure Sale | Common Law | Defect | Render

Outcome: In an appeal from a grant of summary judgment, bank's tender was sufficient under Nev. Rev. Stat. Ann. § 116.3116 because HOA provided bank with Statement of Account listing \$40.00/month assessment rate, with no outstanding maintenance or nuisance charges. In reliance on statement, bank tendered nine months' dues at that rate, a total of \$360.00.

Relevant passage: This argument has already been rejected by the Nevada Supreme Court, which has held that valid tender voids a foreclosure sale and prevents transfer of title. See Diamond Spur, 427 P.3d at 121 ("A

party's status as a [bona fide purchaser] is irrelevant when a defect in the foreclosure proceeding renders the sale void."). SFR argues that the Nevada legislature's 2013 codification of the common law bona fide purchaser doctrine overrides Diamond Spur. However, Diamond Spur

Key Passage 6

In Idaho Power Co. v. Benj. Houseman Co., **123 Idaho 674**, 851 P.2d 970 (1993), the Idaho Supreme Court addressed the rights of mortgagees and lienholders in the context of foreclosure sales, particularly when a property is sold by trustees under prior deeds of trust. The case is significant because it clarifies the rights of junior lienholders when their security interest is extinguished in a foreclosure sale, and it emphasizes that foreclosure sales must be based on a valid default.

Cases recommended for key passage 6 (2)

First Interstate Bank, N.A. v. Eisenbarth 123 Idaho 895 Idaho Court of Appeals | 1993-06-03

Matching legal concepts:

Foreclosure | Interest In Property | Mortgagee | Trustee | Redeeming Property | Bank Lien | Right To Redeem | Persons Claiming | No Right | Property Covered | Trustee Sale | Independent Action | Trust Deed | Foreclosure Sale | Power Company | Termination | Purchaser | Render

Outcome: Summary judgment was properly entered in favor of a bank where its lien was extinguished, and its interest in a property was thereafter unavailable for a future foreclosure, leaving the bank with only a cause of action on the note.

Relevant passage: The foreclosure sale, therefore, served to foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section 45-1506, Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. I.C. § 45-1503. As a result, the Bank's lien against the property was extinguished and its interest in the property was thereafter unavailable for a future foreclosure, leaving the Bank with only a cause of action on the note. See Edminster v. Van Eaton, 57 Idaho 115, 120, 63 P.2d 154, 155 (1936) (second mortgagee had complete and independent action on the note where its interest was rendered substantially valueless by first mortgagee's foreclosure). See also Idaho Power Company v. The Berj. Houseman Company, 123 Idaho 652, 851 P.2d 970 (1993).

Liberty Bankers Life Ins. Co. v. Witherspoon 2014 Ida. Dist. LEXIS 16 Idaho Dist. Ct., Kootenai Cty. | 2014-01-08

Matching legal concepts:

Liberty | Foreclosure | Purchaser | Trustee | Junior Mortgagee | Junior Lien | Credit Bid | Senior Lien | Priority Lien | Trust Deed | Authorization | Impact

Relevant passage: In considering the impact of WKDT's senior lien on Liberty's trustee's deed, the Court is mindful that "[o]rdinarily, a junior mortgagee may foreclose first, with the purchaser taking subject to the senior's lien." First Sec. Bank of Idaho, N.A. v. Stauffer, 112 Idaho 133, 140, 730 P.2d 1053, 1060 (Ct. App. 1986). A reading of I.C. § 45-1508 together with I.C. § 45-1506(2) also supports a conclusion that while Liberty was authorized to foreclose its junior lien with respect to parcels A, D, and E, Liberty as the credit-bid purchaser took parcels A, D, and E subject to WKDT's first priority lien.

Key Passage 7

| □Idaho Power held a second mortgage on a property, securing a debt that had not yet matured. |
|---|
| □Benj. Houseman Company, which held senior deeds of trust on the same property, initiated a foreclosure sale |
| due to a default on the senior debt. |
| ☐The foreclosure sale resulted in the property being sold to a third-party purchaser for less than its fair market value. |
| □Idaho Power did not participate in or consent to the sale, but it subsequently sought to collect the full amount of |
| the debt secured by its mortgage, despite the foreclosure sale extinguishing its security interest in the property. |

Cases recommended for key passage 7 (10)

Atl. Nat'l Trust L.L.C. v. Gunderson 2000 U.S. Dist. LEXIS 20493 U.S. Dist. Or. | 2000-05-25

Motion type:

motion for summary judgment | Denied

Matching legal concepts:

Trust Deed | Foreclosure | Foreclosure Sale | Purchaser | No Deficiency | Rev Stat | Free And Clear | Paying Debt | Property Title | Debt Secured | Outstanding Balance | Lien

Outcome: Plaintiff sought summary judgment in suit to collect a promissory note. Its motion was denied. Merger doctrine did not apply. Case involved a personal liability on a debt. Fact questions existed on unjust enrichment.

Relevant passage: If given the option, a holder of both senior and junior trust deeds will not foreclose the junior trust deed. If it forecloses the junior trust deed, then the purchaser at the foreclosure sale obtains title to the property free and clear of the junior trust deed lien, but subject to the senior trust deed. The proceeds of the foreclosure sale pays the debt secured by the junior trust deed and, pursuant to Or. Rev. Stat. § 86.770(2), no deficiency can be collected against the debtor on that note. Although the debt of the senior trust deed remains unpaid, the purchaser may not seek to collect that debt.

Alvarez v. Wells Fargo Bank, N.A. 2016 U.S. Dist. LEXIS 38058
Eastern Dist. Cal. | 2016-03-23

Motion type:

motion to dismiss | Partial

Matching legal concepts:

Trustee | Nonjudicial Foreclosure Proceedings | Credit Bid | Sale Of Property | Trustee Sale | Trust Deed | Setoff | Loan | Lender

Relevant passage: In Aplanalp, the loan for the property had been set off by a judgment against the lender or defendants' note and thus was deemed satisfied. Id. at 612. Eight days later, in the nonjudicial foreclosure proceedings, the trustee under the note and deed of trust held a trustee's sale of the property where the defendants entered a credit bid of \$694,849.

Rex v. Chase Home Fin. LLC 905 F. Supp. 2d 1111
Central Dist. Cal. | 2012-11-19

Motion type:

motion to dismiss | Partial

Matching legal concepts:

Mortgage | Foreclosure | Lender | Voluntary Sale | Sale Clause | Power Of Sale | Mortgaged Property |
Foreclosure Sale | Satisfy The Debt | Agreed Upon Price | Bona Fide Sale | Sales Effort | Short Sale |
Court's Authority | Loan Balance | Selling Property | Trust Deed | Order Of The Court | Payment |
Mortgage Loan | Third Party | Restructure | Decree | Permit | Attempt

Outcome: 12 U.S.C.S. § 1818(i)(1) did not divest court of jurisdiction over case brought by non-parties to federal banking agency's consent order where order required defendant lender to create plan to redress certain practices and plan might provide same relief sought in case; primary jurisdiction doctrine and equitable abstention doctrine did not apply.

Relevant passage: A foreclosure sale is the sale of mortgaged property, authorized by a court decree or a power-of-sale clause, to satisfy the debt. A power-of-sale clause is a provision in a mortgage or deed of trust permitting the lender to sell the property without court authority if the payments are not made. In short, because a foreclosure sale is accomplished due to a court order or a clause within the mortgage, the sale itself is done by the lender and involuntarily entered into by the borrower. In contrast, the short sale is the voluntary sale of mortgaged property by the borrower where the borrower secures the agreement of the lender to release the mortgage upon a bona fide sale to a third party for an agreed upon price below the mortgage loan balance. If the voluntary sales efforts fail, presumably the lender could proceed to foreclosure or attempt a restructuring of the loan.

Wells Fargo Bank, N.A. v. Spring Mt. Ranch Master Ass'n 2019 U.S. Dist. LEXIS 168413 U.S. Dist. Nev. | 2019-09-30

Motion type:

motion for summary judgment | Denied motion for summary judgment | Granted

Matching legal concepts:

Bona Fide Purchaser | Foreclosure | Foreclosure Sale | Interest In The Land | Power To Convey | Purchaser For Value | Acquiring Title | No Power | Remain Intact | Obligation | Property Interest | In Default | Lien | Encumbrance | Inland | Trustee

Relevant passage: Therefore, HOA's foreclosure sale was invalid to the extent it extinguished the DOT. While the sale remains intact, Plaintiff's DOT continues to encumber the Property and Premier One's interest is subject to this encumbrance. In light of this holding, Premier One cannot prevail even if the Court were to find it was a bona fide purchaser for value. See Bank of Am., 427 P.3d at 121 ("Because a trustee has no power to convey an interest in land securing a note or other obligation that is not in default, a purchaser at a foreclosure sale of that lien does not acquire title to that property interest.").

Rosenbaum v. Funcannon 308 F.2d 680
9th Circuit - Court of Appeals | 1962-09-24

Matching legal concepts:

Foreclosure | Debt | Mortgage | Receive Payment | Security Property | Sale Of Property | Paying Debt | Foreclosure Sale | Acquisition | Third Party

Outcome: Loss-payable mortgagee was not entitled to fire insurance proceeds because loss-payable mortgagee's purchase of mortgagor's property at foreclosure sale extinguished mortgagor's entire debt.

Relevant passage: Extinguishment of a mortgage or deed or trust by sale of the property at foreclosure does not necessarily extinguish the debt itself. Only to the extent that the mortgagee receives payment upon the debt through the foreclosure is the debt itself extinguished. If the security property does not bring enough to pay the debt, the debt itself remains to the extent that it is unpaid, notwithstanding extinguishment of the mortgage as such by sale to third parties or acquisition by the mortgagee as bidder at foreclosure sale.



Bankr. Central Dist. Cal. | 1986-02-06

Matching legal concepts:

Transfer | Non Judicial Foreclosure | Time Of Foreclosure | Interest In Property | Equity Interest | Trust Deed | Foreclosure Sale | Nonjudicial

Outcome: A sale to a third party at a pre-bankruptcy petition foreclosure sale that was noncollusive and regularly conducted established the reasonably equivalent value of the property and could not be attacked as a fraudulent conveyance.

Relevant passage: A non-judicial foreclosure involves two separate transfers. In addition to the transfer of a trust deed, at the time of the foreclosure sale there is a second transfer of equity interest in the property.

Doughty v. Holder 2014 U.S. Dist. LEXIS 7325

Eastern Dist. Wash. | 2014-01-21

Motion type:

motion for summary judgment | Granted

Matching legal concepts:

Foreclosure Judgment | Obligation | Interest In Property | Money Judgment | Monetary Obligation | Foreclosure Action | Federal Bank | Trust Deed | Foreclosure Sale | Payment | Amount Due | Promissory Note | Real Property | Lender

Relevant passage: As Defendants point out, the "foreclosure judgment" is a money judgment for the purpose of for setting the bid parameters for a foreclosure sale. The purpose of this "foreclosure judgment" does not create a monetary obligation upon the defendants against whom it is entered, but basically tells those defendants that this is the amount due and owing on the promissory note and unless that amount is tendered to plaintiff, there will be a foreclosure and the real property will be sold to satisfy the "foreclosure judgment," that being the obligation found to be secured by the deed of trust. "Payment of funds is not the object of the foreclosure action. Rather, the lender is foreclosing its interest in the property." Hulse v. Ocwen Federal Bank, FSB, 195 F.Supp.2d 1188, 1204 (D. Or. 2002).

A Forreststream Holdings Ltd. v. Shenkman 2018 U.S. Dist. LEXIS 206398 Northern Dist. Cal. | 2018-12-06

Motion type:

motion for leave | Denied motion for injunctive relief | Granted

Matching legal concepts:

Foreclosure | Lender | Purchase Of Property | Mortgage Debt | Foreclosure Sale | Third Party | Lien | Auction | Failure

Relevant passage: The failure to sell 28 Meadow Hill at auction did not prevent Mr. Shenkman's lender from foreclosing on the property. Mr. Shenkman sued his lender to enjoin foreclosure. On September 25, 2018, the foreclosure sale on the property proceeded. A Forreststream affiliate, Eliperio, purchased the property for the amount of Mr. Shenkman's mortgage debt. (By doing so, Forreststream was able to maintain some value from its lien on the property, whereas if the lender had foreclosed on the property, and kept it for itself or sold it to a third party, Forreststream would have been left with nothing.)

A Donell v. Perpetual Inv., Inc. 2007 U.S. Dist. LEXIS 45102

U.S. Dist. Nev. | 2007-06-11

Matching legal concepts:

Foreclosure | No Duty | Trust Deed | Foreclosure Sale | Contract Provision | Real Estate | Real Property

Outcome: Receiver of a real estate investment fund was entitled to have the deed of trust foreclosed and the land sold and was entitled to have the proceeds of such sale applied to the payment of moneys due the receiver because defendants failed to show misrepresentation or that they were wrongfully induced into executing the promissory note.

Relevant passage: The holder of a deed of trust has no duty to secure the real property before completing a foreclosure sale, nor any right to so proceed or go onto the real estate before foreclosure, unless otherwise provided by a contractual provision.

US Bank Nat'l Ass'n v. BDJ Invs., LLC 2019 U.S. Dist. LEXIS 125545

U.S. Dist. Nev. | 2019-07-26

Motion type:

motion for judgment as a matter of law | Granted motion for summary judgment | Denied motion for summary judgment | Granted

Matching legal concepts:

Bona Fide Purchaser | Foreclosure | Foreclosure Sale | Lien | Interest In The Land | Power To Convey | Interest In Property | Operation Of Law | Purchaser For Value | Prior To Sale | Acquiring Title | No Power | Remain Intact | Obligation | Trust Deed | Property Interest | In Default | Inland

Relevant passage: While the foreclosure sale remains intact, BDJ's interest in the Property is subject to Plaintiff's deed of trust. Finally, because the HOA superpriority lien was satisfied prior to the sale and was cured by operation of law, BDJ cannot prevail even if the Court were to find it was a bona fide purchaser for value. See Jessup, 435 P.3d at 1221 n.5; Bank of Am., 427 P.3d at 121 ("Because a trustee has no power to convey an interest in land securing a note or other obligation that is not in default, a purchaser at a foreclosure sale of that lien does not acquire title to that property interest.").

Treatise recommendations for key passage (10)

Collier on Bankruptcy | Federal

Matching legal concepts:

Foreclosure Judgment | Secured Creditor | Foreclosure Sale | Mortgage | Debt Instrument | Right To Claim | Foreclosure Law | Water Park | Bankruptcy Appellate | Appellate Panel | Mortgage Lien | Other Cost | Bargain | Benefit | Fee

Relevant passage: But this sequence depends on the terms of the debt instrument, the foreclosure judgment and state foreclosure law. In In re Sun 'N Fun Waterpark LLC, the Tenth Circuit Bankruptcy Appellate Panel held that, under relevant state law, a mortgage lien is extinguished by a foreclosure sale, but not by a mere foreclosure judgment. In that case, because a foreclosure sale had not yet occurred, the secured creditor had not received the benefit of its bargain. The secured creditor therefore retained its right to claim attorney's fees and other costs as provided in the mortgage.

45.01 Mortgagee Beneficiaries

Corbin on Contracts Desk Edition | National

Matching legal concepts:

Foreclosure | Mortgagee | Loan | Proceed Of Sale | Insufficient To Pay | Interest In Property | Debt Remaining | Real Estate Mortgage | Sale Result | Entire Debt | Loan Debt | Used To Pay | Amount Owed | Entire Amount | Foreclosure Sale | Security Interest | Deficiency | Lender | Liable

Relevant passage: A real estate mortgage is a security interest in the property granted by the owner (the mortgagor) to secure a loan made by the lender (the mortgagee). If the loan debt is not paid, the mortgagee may foreclose on the property, which will allow it to be sold. The proceeds of the sale will be used to pay the mortgagee the debt remaining on the loan. If the foreclosure sale results in a price that covers the entire amount owed including the costs of foreclosure, the debt has been satisfied. If the proceeds of the sale are insufficient to pay the entire debt, the owner will be liable for any deficiency.

45.1 Mortgagee Beneficiaries

Corbin on Contracts | National

Matching legal concepts:

Foreclosure | Mortgage | Foreclosure Sale | Loan | Secured By Mortgage | Deficiency | Purchase | Interest In Real Property | Satisfy The Debt | Purchase Of Property | Deficiency Judgment | Judicial Supervision | Loan Interest | Sale Of Property | Security Device | With Interest | Attendant Costs | Prospective Buyer | Debt Secured | Sufficient Fund | Property Value | Security Interest | Liability | Plus Interest | Personal Liability | Real Estate | Lender | Expense

Relevant passage: The mortgage as a security device. A prospective buyer of real estate will often seek to finance the purchase through a loan that will be repaid with interest but will also be secured by a mortgage on the purchased property. A mortgage is a security interest in real property granted by the owner (mortgagor) to secure a loan made by the lender (mortgagee). Normally, the debt secured by the mortgage is significantly less than the value of the property. If the debt is not paid, the mortgagee will seek repayment of the loan, interest, and attendant costs from the proceeds of a foreclosure sale of the property. If the foreclosure sale brings a price sufficient to cover what is owed, the mortgagee is satisfied. If the foreclosure sale does not produce sufficient funds to satisfy the debt plus interest and other foreclosure expenses, the owner could be personally liable for any deficiency. The liability for such a deficiency judgment may be subject to judicial supervision.

37.12 Mortgage Creation—Type of Obligation Secured

Powell on Real Property | National

Matching legal concepts:

Deficiency | Purchaser | Subsequent Purchaser | Foreclosure | Liable | Debt | Subject To A Mortgage | Mortgage Obligation | Foreclosure Sale

Relevant passage: On the other extreme, the mortgage may be foreclosed but the foreclosure sale may not bring in enough money to satisfy the full mortgage obligation. In that case, there is no longer a mortgage, but the mortgagor may remain liable for a judgment for the deficiency. Any subsequent purchasers who have assumed the debt may also be liable for the deficiency. However, if the subsequent purchaser did not assume the debt but only took title subject to the mortgage, such purchaser would not be liable for the deficiency.

top2015.12 BMO Harris Bank, N.A. v. Wildwood Creek Ranch, LLC

Powell on Real Property | National

Matching legal concepts:

Foreclosure | Third Party | Deficiency | Default | Trustee | Sale

Relevant passage: Wildwood renewed the note in 2009 and then defaulted in 2011. BMO foreclosed on the property via a trustee's sale. A third party successfully bid \$31,100 for the property, and BMO thereafter sued Wildwood and the Rudgears for the deficiency.

37.04 Modern Changes of Significance

Powell on Real Property | National

Matching legal concepts:

Foreclosure Sale | Acceleration | Mortgage | Restatement | Power Of Sale | Sales Price | Adoption | Permit | Real Estate Value | Judicial Foreclosure Action | Common Law View | Election Of Remedy | Deficiency Judgment | Deficiency Action | Doctrine Of Merger | Right To Insist | Sale Proceeding | Traditional Common Law | Mortgage Obligation | Fair Market Value | Purchase Money | Fair Value | Amount Due | Bad Faith | Fraud | Lender | Default | Waive | Calculation | Prohibition

Relevant passage: Chapter 8 is the foreclosure chapter. It covers acceleration, the foreclosure sale, deficiency actions, the inapplicability of the merger doctrine and rule of marshaling when multiple parcels are subject to foreclosure. Acceleration of the amount due under the mortgage is permitted upon the borrower's default unless the lender has waived its right to accelerate or "has engaged in fraud, bad faith or other conduct making acceleration unconscionable." The Restatement adopts an election of remedies approach. The mortgagee may not sue on the mortgage obligation and simultaneously bring a judicial foreclosure action or power of sale proceeding. The Restatement provides that "once the mortgagee opts to proceed under one of the two [options], it is prohibited from utilizing the other." As to deficiency judgments, "the Restatement permits [them] even though the mortgage is 'purchase-money' or is being foreclosed by the power of sale. On the other hand, it rejects the traditional common law view that the foreclosure sale price should automatically be used in measuring the deficiency. Instead, it adopts the "fair value" approach by giving the mortgagor "the right to insist that the greater of the fair market value of the real estate or the foreclosure sale price be used in calculating the deficiency."

Matching legal concepts:

Foreclosure Sale | Bankruptcy | Interest In Real Estate | Foreclosure Law | Mortgage Foreclosure Sale | Reasonably Equivalent | Equivalent Value | Bankruptcy Trustee | Owner Of Land | Fraudulent Transfer | Special Case | Conclusively Establish | Security Interest | Lender | Purchase | Debt

Relevant passage: The application of these principles to the special case where a mortgagee, a lender that has a security interest in real estate, forecloses on the debt of the landowner, the mortgagor, who has filed a bankruptcy action, has received much attention. The question of whether the deed to one purchasing at the foreclosure sale may be set aside by the bankruptcy trustee as a fraudulent transfer was answered by the United States Supreme Court in 1993. The Supreme Court held that the price received at a mortgage foreclosure sale conclusively established "reasonably equivalent value" for the property as long as the requirements of the state's foreclosure laws were met. In such cases, the foreclosures would not be set aside.

37.36 Foreclosure—Introduction

Powell on Real Property | National

Matching legal concepts:

Mortgagee | Mortgaged Land | Foreclosure | Termination Of Rights | Make Payment | Proceed Of Sale |
Transfer Title | Mortgage Obligation | Important Feature | Equitable Doctrine | Redemption Right | Court
Of Equity | Due Date | Foreclosure Sale | Common Law | Debtor | Loss | Purchaser | Default | Relationship

Relevant passage: The most important feature of the mortgage relationship is the power of the mortgagee to force the sale of the mortgaged land. The proceeds of the sale are used first to cover any loss which the mortgagee may have incurred because of the debtor's default in meeting the terms of the mortgage obligation. At common law, the mortgagee could appropriate the mortgaged land if the mortgagor failed to make payment on the exact due date. This right was limited by the development of the equitable doctrines of redemption. Subsequently, the equity courts, responding to the concerns of mortgagees, developed a procedure to terminate the right of redemption. Thus "foreclosure" developed as a way to transfer title from the mortgagor or his successor to the purchaser at the foreclosure sale (which may be, and in most cases is, the mortgagee itself).

660.5 Solutions

Powell on Real Property | National

Matching legal concepts:

Mortgagee | Commence A Suit | Considerable Value | Surplus Money | Foreclosure Action | Mortgage Lien | Practical Matter | Available Remedy | Foreclosure Sale | Benefit | Rights | Exception

Relevant passage: The second mortgagee is likely to have all of the same remedies available as the first mortgagee. However, as a practical matter, once the first mortgagee commences its foreclosure action, the second mortgagee will not foreclose, since the mortgage lien will be eliminated by the foreclosure of the first mortgagee. The exception is where the first mortgagee is relatively small and there is considerable value in the property so that the second mortgagee may benefit by buying the interest of the first mortgagee and foreclosing both mortgages. Normally, once the first mortgagee commences foreclosure, the second mortgagee will commence suit on the note. The second mortgagee would also have rights to any surplus money that might arise out of the foreclosure sale.

Matching legal concepts:

Foreclosure | Lien | Foreclosure Sale | Priority | Senior Mortgage | Taking Property | Purchaser | First Mortgage | Portion | Render | Conveyance Of Title | Entitled To Priority | Junior Mortgage | Country Club | Encumbrance | Meaningless | Language

Relevant passage: The defendant also argues that extinguishing a first mortgage would render the language in § 34-36.1-3.21(b) meaningless. Section 34-36.1-3.21(b) provides that "[a]ny foreclosure sale held by the association pursuant to [this section], and the title conveyed to any purchaser or purchasers pursuant to such sale, shall be subject to any lien or encumbrance entitled to priority over the [association's lien] * * *." However, in light of the split-lien concept, this section is not rendered entirely nugatory. For example, had the association foreclosed on the sub-priority portion of its lien (if there was one), defendant's first mortgage would have priority over that portion of the association's lien. Consequently, any purchaser at the foreclosure sale would take the property subject to the defendant's mortgage. See, e.g., Armand's Engineering, Inc. v. Town & Country Club, Inc., 113 R.I. 515, 520, 324 A.2d 334, 338 (1974) (noting that foreclosure on a junior mortgage does not extinguish a senior mortgage, and a buyer at a junior foreclosure sale takes the property subject to the senior mortgage). Here, the association foreclosed on its priority portion of the lien, so § 34-36.1-3.21(b) offers defendant no reprieve.

Argument recommendations for key passage (3)

PLAINTIFF U.S. BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

U.S. BANK, N.A. v. ASCENTE HOMEOWNERS ASS'N, 2021 U.S. DIST. CT. MOTIONS LEXIS 40805 U.S. Dist. Nev. | 2021-05-17

Motion type:

Plaintiff's motion for summary judgment |

Argument: I. INTRODUCTION

This action challenges an HOA's non-judicial foreclosure sale of a property for a grossly inadequate purchase price, and despite a full tender of the super priority lien. The primary dispute in

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AS TO LIABILITY AND APPLICATION FOR

DEFICIENCY JUDGMENT HEARING

BRANCH BANKING & TRUST CO. v. PLAZA, 2021 U.S. DIST. CT. MOTIONS LEXIS 8641

Law firm: HOLLAND & HART LLP U.S. Dist. Nev. | 2021-08-15

Motion type:

Plaintiff's motion for summary judgment |

Argument: B. BB&T is Entitled To Summary Judgment for Breach of Contract and Breach of Guaranty Following Defendants' default on the Loan Documents, Plaintiff caused the secured property to be sold at Sheriffs Sale in partial satisfaction of the Loan. See Exhibit 1H. However, the proceeds from the Sheriffs Sale failed to satisfy Defendants' indebtedness to Plaintiff-necessitating the current action.

NATIONSTAR MORTGAGE LLC'S MOTION FOR PARTIAL SUMMARY JUDGMENT

NATIONSTAR MORTG. LLC v. THE FALLS AT HIDDEN CANYON HOMEOWNERS' ASS'N, 2021 U.S. DIST. CT. MOTIONS LEXIS 40870 U.S. Dist. Nev. | 2021-05-05

Argument: 3. LVDG and Airmotvve are Not BFPs

LVDG had record notice of the deed of trust, inquiry notice that the nonjudicial HOA sale might not extinguish the deed of trust, and actual notice that banks continued to defend deeds of trust after HOA foreclosure sales. LVDG expected this suit and had every opportunity to assess this suit's merits and discount its foreclosure bid accordingly-which it did, paying less than 11% of the property's fair market value at the time of the sale. Accepting any bona fide purchaser defense would not protect LVDG and Airmotive's reasonable expectations; instead it would give them a windfall they neither relied on nor paid for.

Key Passage 8

| ☐ The court's decision in Idaho Power emphasizes that foreclosure sales must be based on a valid default and |
|--|
| conducted according to proper legal procedures. If the sale is not valid, the rights of the parties involved may not |
| be properly extinguished. |

Defendant Bass asserts that the foreclosure sale in this case was conducted without a valid default and was tainted by collusion and improper conduct, which violates the principles established in Idaho Power.

Cases recommended for key passage 8 (7)



A Flores v. EMC Mortg. Co. 997 F. Supp. 2d 1088

Eastern Dist. Cal. | 2014-02-18

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Invalidity Of Instrument | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | Presumption Arises | Trustee Sale | Final Adjudication | Alleged Fact | Rebuttable Presumption | Trust Deed | Required By Law | General Rule | Prejudice | Bylaw | Complain | Lender | Validity

Outcome: Mortgagors' claim for wrongful foreclosure failed to rebut the presumption that the nonjudicial foreclosure of the mortgagors' property was proper since the mortgagors did not show that the foreclosure was unauthorized and failed to tender the amount of the mortgage debt, and possession of the original note was not a prerequisite to foreclosure.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. A nonjudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity. To challenge foreclosure, it is necessary for the complaint to state a case within the code sections for which reason it is essential to allege the facts affecting the validity and invalidity of the instrument which is attacked.



Herrejon v. Ocwen Loan Servicing, LLC 980 F. Supp. 2d 1186

Eastern Dist. Cal. | 2013-11-01

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | Presumption Arises | Trustee Sale | Final Adjudication | Rebuttable Presumption | Trust Deed | Required

By Law | General Rule | Prejudice | Bylaw | Lender

Outcome: Mortgagors' claims were dismissed as their failure allege tender of amount owing on loan or ability to do so was construed as concession of inability to do so, and mortgagors pointed to nothing to avoid tender requirements of Cal. Civ. Code §§ 1485 and 1495; without meaningful tender, mortgagors' claims failed.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. A nonjudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity.

O'Connor v. Wells Fargo, N.A. 2014 U.S. Dist. LEXIS 136451

Northern Dist. Cal. | 2014-09-26

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Fraud | Sale Of Real Property | Wrongful Foreclosure | Power Of Sale | Willfully Oppressive | Foreclosure Decree | Trust Deed | By Fraud | Foreclosure Sale | Procurement | Prejudice | Inequitable | Mortgage | Indebtedness | Purchaser | Mistake | Vacate | Harm

Outcome: Bank's motion to dismiss was granted. Among numerous matters, the court concluded that neither plaintiff's new allegations nor arguments cured the deficiency that the court noted in its earlier order, and he again failed to plausibly and sufficiently allege that the bank was a debt collector (15 U.S.C.S. § 1692a(6)) under FDCPA.

Relevant passage: Courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties. The elements of a wrongful foreclosure claim are: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.



Toneman v. United States Bank 2013 U.S. Dist. LEXIS 84240

Central Dist. Cal. | 2013-02-22

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Fraud | Sale Of Real Property | Wrongful Foreclosure | Power Of Sale | Willfully Oppressive | Foreclosure Decree | Trust Deed | By Fraud | Foreclosure Sale | General Rule | Procurement | Prejudice | Inequitable | Mortgage | Indebtedness | Purchaser | Mistake | Vacate | Harm | Demonstrate

Outcome: In a case alleging wrongful foreclosure and other causes of action, because the borrowers pled no

facts showing that the bank entities pursued an action for recovery of a debt prior to seeking foreclosure, they failed to allege a violation of the security first rule under Cal. Code Civ. Proc. § 726.

Relevant passage: It is the general rule that courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties. To prevail on a wrongful foreclosure claim, a plaintiff must demonstrate that (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.

A Diamond Real Estate v. Am. Brokers Conduit 2017 U.S. Dist. LEXIS 13601 Northern Dist. Cal. | 2017-01-31

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Sale Of Real Property | Equitable Cause Of Action | Power Of Sale | Willfully Oppressive | Foreclosure | Trust Deed | Foreclosure Sale | Prejudice | Mortgage | Indebtedness | Fraudulent | Harm

Relevant passage: An equitable cause of action to set aside a foreclosure sale has the following elements: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering. Id. at 104 (collecting cases).



Toneman v. United States Bank 2013 U.S. Dist. LEXIS 98996

Central Dist. Cal. | 2013-06-14

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Fraud | Sale Of Real Property | Wrongful Foreclosure | Power Of Sale | Willfully Oppressive | Foreclosure Decree | Trust Deed | By Fraud | Foreclosure Sale | Procurement | Prejudice | Inequitable | Mortgage | Indebtedness | Purchaser | Mistake | Vacate | Harm | Demonstrate

Outcome: Borrowers failed to allege wrongful foreclosure since lender was not required to grant loan modification under the Home Affordable Modification Program even if borrowers were eligible, and borrowers were not parties to, or third party beneficiaries of, mortgage loan pooling and servicing agreement entitled to challenge loan securitization process.

Relevant passage: Courts have power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly, or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties. To prevail on a wrongful foreclosure claim, a plaintiff must demonstrate that: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a

power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.

Baghdasarian v. SRT Partners, LLC (In re Baghdasarian) 2011 Bankr. LEXIS 4328
9th Circuit Bankr. Appellate Panel | 2011-07-08

Matching legal concepts:

Foreclosure | Trustee | Trust Deed | Foreclosure Sale | Mere Ministerial Act | Presumption Of Validity | Deemed Complete | Transfer Title | On Sale | Fraud | Evidence | Defect | Delivery | Execute

Outcome: An appeal from an order granting a motion for relief from stay under 11 U.S.C.S. § 362 was moot. The debtor had already been dispossessed from his home pursuant to a state-court judgment; the bankruptcy court had denied damages to the debtor for alleged violations of the stay; and there was no live case before the bankruptcy court for a remand.

Relevant passage: Under California law, a foreclosure generally is deemed complete on sale, even if the trustee's deed is not delivered until a later date. So long as the foreclosure sale is conducted regularly and properly, it is presumed valid, and the execution and delivery of a trustee's deed evidencing the transfer of title is a mere ministerial act. However, if there is a defect in procedure, unfairness or fraud leading up to the foreclosure sale, it is voidable.

Treatise recommendations for key passage (1)

37.05 Special Situations
Business Torts | National

Matching legal concepts:

Wrongful Foreclosure | Low Price | Foreclosure Sale | Gross Inadequacy | Selling Price | Defect | Showing Of Irregularity | Violation Of The Term | Date Of Foreclosure | Potential For Abuse | Sale Proceeding | Property In Question | Void Ab Initio | Inadequate Price | Foreclosure Process | Amount Of Damages | Foreclosure Action | Remaining Balance | Trust Deed | Property Value | Causal Connection | Matter Of Law | Balance Due | Fraud | Common Law | Debtor | Third Party | Mortgagee | Indebtedness | Mistake

Relevant passage: Texas has the most extensive jurisprudence concerning wrongful foreclosure. Under Texas law, a wrongful foreclosure in violation of the terms of the deed of trust is void ab initio as a matter of law. Texas courts recognize that foreclosures sales inherently have the potential for abuse. A trustee may conspire with a bidder to secure a lower price or the mortgagee may act in a manner to "chill the bidding" to try to obtain a lower price for itself. Under Texas common law, a debtor may recover for wrongful foreclosure if an irregularity occurs in the foreclosure process which deters third parties from bidding. A wrongful foreclosure action protects mortgagors against foreclosure sales where, through mistake, fraud, or unfairness, the sale produces an inequitably low price. The plaintiff must show an irregularity in the foreclosure sale and that the irregularity contributed to an inadequate price. The elements of a wrongful foreclosure claim are: (1) a defect in the foreclosure sale proceedings; (2) a grossly inadequate selling price; and (3) a causal connection between the defect and the grossly inadequate selling price. The amount of damages due for wrongful foreclosure is the difference between the value of the property in question at the date of foreclosure and the remaining balance due on the indebtedness.

Argument recommendations for key passage (3)

JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

SHIREHAMPTON DRIVE v. JPMORGAN CHASE BANK, 2021 U.S. DIST. CT. MOTIONS LEXIS 106269

Law firm: SMITH LARSEN & WIXOM

U.S. Dist. Nev. | 2021-07-11

Motion type:

motion for summary judgment |

Argument: I. INTRODUCTION

Finally, there is no evidence that the HOA's foreclosure sale was commercially reasonable. To the contrary, the sale price was grossly inadequate, and the evidence shows that the sale was unfair and oppressive, given the lack of notice to a beneficiary of record, and the Association's representation to the world that its foreclosure sale would not extinguish a first-position deed of trust.

SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO DIMISS LITIGATION

BANK OF NEW YORK MELLON v. MEISTER PARK HOMEOWNERS ASS'N, 2020 U.S. DIST. CT. MOTIONS LEXIS 447697

U.S. Dist. Nev. | 2020-04-14

Argument: C. Nevada Law Cannot Be Replaced with Inapplicable Bankruptcy Code Provisions or Illinois Court Rules

Importantly, there is nothing in Nevada law that would prohibit a Court from setting aside a foreclosure sale conducted on an extinguished Deed of Trust when there was a lis pendens recorded against the Property that had not been cancelled or withdrawn. The Nevada Supreme Court has not been shy about declaring foreclosure sales or portions of sales void even if the property sold to a good faith purchaser without notice, let alone a purchaser who at a foreclosure who had notice of ongoing litigation over the viability of the lien being foreclosed.

PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AGAINST ALL DEFENDANTS AS TO COUNTS 1 AND 2
FOR DECLARATORY JUDGMENT INVALIDATING NON-JUDICIAL FORECLOSURE AND COUNT 3 FOR
JUDICIAL FORECLOSURE ON MORTGAGE; MEMORANDUM IN SUPPORT OF MOTION; EXHIBIT "A";
DECLARATION OF INDEBTEDNESS AND ON PRIOR BUSINESS RECORDS; EXHIBITS "I"-"8";
DECLARATION OF CUSTODIAN OF RECORDS FOR TMLF HAWAII LLLC; DECLARATION OF COUNSEL;

EXHIBITS "9"-"11"; NOTICE OF HEARING AND CERTIFICATE OF SERVICE U.S. BANK v. KAMA, 2021 HI APP. CT. MOTIONS LEXIS 30

Law firm: A Hawaii Limited Liability Law Company

U.S. Dist. Haw. | 2021-09-02

Motion type:

Plaintiff's motion for summary judgment |

Argument: MEMORANDUM IN SUPPORT OF MOTION

C. The non-judicial foreclosure conducted in 2010 and evidenced by the Mortgagee's Affidavit of Foreclosure Sale under Power of Sale did not comply with the applicable statutes in effect at that time and is null and void.

Key Passage 9

□In Idaho Power, the property was sold for less than its fair market value, which was one of the issues raised by the junior lienholder. Similarly, in Defendant Bass's case, the bidder's conduct during the auction affected the fairness and legality of the sale, resulting in the property being sold under improper conditions.

Cases recommended for key passage 9 (10)

Aarons v. Patch of Land Lending, LLC (In re Aarons) 695 F. Supp. 3d 1162 Central Dist. Cal. | 2023-09-29

Matching legal concepts:

Junior Lienholder | Auction | Higher Amount | Dollar Amount | Market Value | Loss | Suffer

Relevant passage: In Bank of Seoul & Trust Co., upon which Appellant relied, the junior lienholder suffered a loss when property was sold at auction under market value. Bank of Seoul, 198 Cal. App. 3d at 120 The junior lienholder was present at the auction, and wanted to bid a higher amount, but due to the unexplained requirement that a bid must be for a specific dollar amount, the auctioneer rejected the junior lienholder's bid in favor of another bid. Id. at 118-19.

A Hoffman v. Lang (In re Swan) 2013 Bankr. LEXIS 464
Bankr. Northern Dist. Cal. | 2013-02-04

Matching legal concepts:

Sale | Applicable State Law | Reasonably Equivalent | Equivalent Value | Successful Bidder | Foreclosure | Foreclosure Sale | Price Paid | Presumption

Outcome: To avoid a fraudulent transfer under 11 U.S.C.S. § 548(a)(1)(B), even if not for reasonably equivalent value, trustee had to show either that debtor was insolvent, or after the transfer was unreasonably under capitalized, or that debtor intended to incur debts beyond her ability to pay, or the transfer was to an insider. Trustee failed to do so.

Relevant passage: If there is an actual foreclosure sale, the price paid by the successful bidder is presumed to have paid reasonably equivalent value if the sale was non-collusive and conducted in accordance with applicable state law.

United States v. Luis 2013 U.S. Dist. LEXIS 5449
Southern Dist. Cal. | 2013-01-14

Matching legal concepts:

Foreclosure | Jp Morgan | Foreclosure Sale | Property Title | Property Value | Sales Price | Fair Value

Relevant passage: The Court then finds that the value of the Rancho Santa Fe property on the date JP Morgan took control of the property, which is the date that it took title to the property at the foreclosure sale, was \$1,228,815 which is the JP Morgan's bid and the foreclosure sale price. See Yeung, 672 F.3d at 601, 604. The Court uses the JP Morgan's bid at the foreclosure sale rather than the RMV because JP Morgan's bid at the foreclosure sale was within the range of potential fair values of the property.

Thorian v. Baro Enters., LLC (In re Thorian) 387 B.R. 50

U.S. Bankr. Idaho | 2008-03-21

Motion type:

motion for leave | Denied motion to amend | Denied

Matching legal concepts:

Reasonably Equivalent | Foreclosure Sale | Conclusive Force | Applicable State Law | Time Of Sale | Foreclosure Law | Equivalent Value | Foreclosed Property | According To Law | Actual Value | Sales Price | Invalidate | Transfer | Permit

Outcome: A mortgage lender was granted summary judgment on Chapter 11 debtors RESPA claim on the basis that a letter from the debtors to the lender did not constitute a qualified written request, within the meaning of 12 U.S.C.S. § 2605(e)(1)(A), because the letter did not contain a request for information or a statement that the account was in error.

Relevant passage: The fair and proper price, or a "reasonably equivalent value," for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the state's foreclosure law have been complied with. Furthermore, any irregularity in the conduct of the sale that would permit judicial invalidation of the sale under applicable state law deprives the sale price of its conclusive force, and the transfer may be avoided if the price received was not reasonably equivalent to the property's actual value at the time of the sale, which would be the price that would have been received if the foreclosure sale had proceeded according to law.

Lindsay v. Beneficial Reinsurance Co. (In re Lindsay) 59 F.3d 942

9th Circuit - Court of Appeals | 1995-07-12

Matching legal concepts:

Reasonably Equivalent | Foreclosure Sale | Conclusive Force | Applicable State Law | Time Of Sale | Foreclosure Law | Equivalent Value | Foreclosed Property | According To Law | Actual Value | Sales Price | Invalidate | Transfer | Permit

Outcome: In a bankruptcy matter, the issue of reasonably equivalent price was immaterial, and defendant was entitled to a judgment as a matter of law since its foreclosure sale complied with applicable state law.

Relevant passage: A fair and proper price, or a "reasonably equivalent value," for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with. Any irregularity in the conduct of the sale that would permit judicial invalidation of the sale under applicable state law deprives the sale price of its conclusive force under 11 U.S.C.S. § 548(a)(2)(A), and the transfer may be avoided if the price received was not reasonably equivalent to the property's actual value at the time of the sale, which would be the price that would have been received if the foreclosure sale had proceeded according to law.



Abselet v. Alliance Lending Grp., Inc. 2011 U.S. Dist. LEXIS 163397

Central Dist. Cal. | 2011-05-03

Motion type:

motion for fees | Partial

Matching legal concepts:

Sale | Foreclosure | Property Value | Property's Market Value | Foreclosure Sale | Sales Price | Great Disparity | Fail To Demonstrate | Price Paid

Relevant passage: In addition, Plaintiff argues that the \$5.8 million sale price paid by Soda was only a fraction of the market value of the Property. However, "[i]t is settled that a great disparity between the foreclosure price and the value of the property, by itself is insufficient to set aside the sale." Knapp v. Doherty, 123 Cal. App. 4th

76, 93, 20 Cal. Rptr. 3d 1 (2004). Because Plaintiff has failed to demonstrate that the foreclosure sale was invalid, any inequity between the sale price at the foreclosure sale and the market value of the Property alone is insufficient to defeat Soda's Motion.

Atl. Nat'l Trust, L.L.C. v. Gunderson 132 F. Supp. 2d 1284

U.S. Dist. Or. | 2000-10-27

Motion type:

motion for summary judgment | Granted

Matching legal concepts:

Creditor | Rev Stat | Foreclosure Sale | Debtor | Purchaser | Non Judicial Foreclosure | Right To Dispose | In All Likelihood | Free And Clear | Debtor Property | Marketing Techniques | Below Market | Highest Bidder | Manner Prescribed | Open Market | Real Estate | Nonjudicial | Market Value | Resell | **Encumbrance**

Outcome: Plaintiff's motion for summary judgment was granted where the equitable defense of unjust enrichment could not prevent plaintiff from obtaining summary judgment against defendant for non-payment of the promissory note.

Relevant passage: The very nature of a foreclosure sale dictates that the debtor's property will, in all likelihood, be sold at a price below market value. Property subject to non-judicial foreclosure must be sold within a time and in a manner prescribed by the state. Or. Rev. Stat. § 86.755. Property that must be sold within those strictures is simply worth less. No one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques. As a result, a creditor is often the highest bidder at a foreclosure sale. As with any purchaser, if the creditor buys the property, the creditor owns it free and clear of all other encumbrances. Or. Rev. Stat. § 86.770(b). And as with any purchaser, the creditor has the right to dispose of it as the creditor sees fit, including reselling it on the open market.



A Steward Fin., LLC v. Bral (In re Bral) 622 B.R. 737

9th Circuit Bankr. Appellate Panel | 2020-11-30

Matching legal concepts:

Sale | Purchase Price Paid | Foreclosure | Foreclosure Sale | Sales Price | Sufficiency

Outcome: Bankruptcy court correctly held that creditor's state law claims for abuse of process and tortious interference based on debtor's role in the separate bankruptcy filing of an LLC were barred by federal preemption, as parties injured by wrongful bankruptcy court filings had to look to the Bankruptcy Code and Rules for redress.

Relevant passage: The purchase price paid for real properly at a regularly conducted foreclosure sale establishes its value for purposes of determining the sufficiency of the sale price.

A Shirehampton Drive Trust v. JPMorgan Chase Bank, N.A. 835 Fed. Appx. 181

9th Circuit - Court of Appeals | 2020-10-28

Matching legal concepts:

Sale | Fair Market Value | No Evidence | Evidence Of Fraud | Foreclosure | Low Price | Foreclosure Sale | Condemnation | Sales Price

Outcome: Residential real estate foreclosure sale was set aside because the sale price was exceptionally low, the statutorily required notices of the sale were not mailed to the deed of trust beneficiary, and one notice letter misrepresented the effect of foreclosure, which together, rendered the sale voidable for unfairness.

Relevant passage: Here, the sale price was exceptionally low, 3.5 percent of the fair market value. This low price alone does not condemn the sale. In Shadow Canyon, for example, the price garnered at the foreclosure sale was 11 percent of the property's fair market value, but the court did not void the sale because it found no evidence of fraud, unfairness, or oppression. Id. at 649-51.

Altus Bank v. State Farm Fire & Casualty Co. 758 F. Supp. 567

Central Dist. Cal. | 1991-01-23

Matching legal concepts:

Full Credit Bid | Property Worth | Foreclosure | Property Value | Foreclosure Sale | Mortgagee | Purchaser

Outcome: A mortgagee insured's full credit bid extinguished its debt and precluded any recovery by the insured under the provisions of an insurance policy, and the insurer had no duty to warn the insured of such consequences of a full credit bid.

Relevant passage: The purchaser at a foreclosure sale has the duty to assess the value of property correctly. The mortgagee is not required to open the bidding with a full credit bid, but may bid whatever amount it thinks the property worth.

Practical Guidance recommendations for key passage (1)

Foreclosure by Power of Sale

Non-jurisdictional

Matching legal concepts:

Property's Market Value | No Requirement | Duty To Obtain | Inadequacy Of Price | Circumstance Of Each Case | Power Of Sale | Judicial Conscience | Forced Sale | Fair Price | Fair Market Value | Foreclosure | Property Value | Foreclosure Sale | Sales Price | Bad Faith | Mortgagee | Trustee | Demonstrate

Relevant passage: Whether it is the mortgagee or a trustee exercising a power of sale, there is a duty to obtain the best possible price for the property. What constitutes a fair price depends on the circumstances of each case. There is no requirement, however, that the sale price approximate the fair market value of the property as a foreclosure sale is conducted in a forced-sale context. Inadequacy of price alone is not sufficient to demonstrate bad faith unless the price is so low as to shock the judicial conscience.

Treatise recommendations for key passage (1)

37.42 Foreclosure by Power of Sale

Powell on Real Property | National

Matching legal concepts:

Foreclosure | Market Condition | True Market Value | Foreclosure Sale | Current Economic Condition | Inadequacy Of Price | Good Faith | Quick Sale | Shocks The Conscience | Slightest Evidence | Foreclosed

Property | Sales Value | Judicial Sale | Short Time | Time Period | Appeal Court | Breach | Mortgagee | Purchaser | Confirm

Relevant passage: Like a judicial sale arising out of foreclosure by action, a sale under a power may not be attacked on the ground of mere inadequacy of price unless the bid was so low as to shock the conscience of the court or elements of unconscionable action or chilling of the bidding are present. Under Georgia law, the foreclosure sale must bring a true market value to be confirmed. The Georgia Court of Appeals determined that the phrase "true market value" means the price which would be obtained in a sale under usual market conditions rather than a price which would generate a quicker sale. Usual market conditions may reflect whatever current economic conditions exist, even if they are abnormally difficult, so long as they affect all similarly situated properties. A quick sale value would not reflect market conditions. Thus, it would not be appropriate to discount the value of a foreclosed property on the basis that a foreclosure sale is conducted in a short time period. Where the mortgagee is the purchaser at the sale, a court will closely scrutinize the transaction and set aside the sale on the slightest evidence of unfairness or of breach of the strictest good faith.

Key Passage 10

InTaylor v. Just, **138 Idaho 137**, 59 P.3d 308 (2002), the Idaho Supreme Court addressed the consequences of a foreclosure sale that failed to comply with the statutory requirements set forth in**Idaho Code § 45-1505(2)**. The Court determined that when a foreclosure sale does not meet the statutory criteria, it is void ab initio, meaning it has no legal effect from its inception. This decision is directly relevant to cases where substantive defects in the foreclosure processrender the sale invalid and the purchaser's claim to the property cannot be upheld.

Cases recommended for key passage 10 (4)

Russell v. Onewest Bank FSB 2011 U.S. Dist. LEXIS 121836
U.S. Dist. Idaho | 2011-10-20

Motion type:

motion to dismiss | Partial motion to strike | Partial

Matching legal concepts:

Notice Of Sale | Foreclosure | Interest In Property | High Bidder | Terms Of Section | Fail To Comply | Full Compliance | Bringing Suit | In Default | Invalidate | Trustee

Outcome: Deed of Trust beneficiary's motion to dismiss was granted, in part, because its appointment of a trustee the day before the Deed of Trust was assigned to it was valid; under Idaho Code Ann. § 45-1504(2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment.

Relevant passage: The high bidder brought suit, claiming the borrowers were foreclosed from asserting an interest in the property because the trustee had complied with the notice of sale procedures. The court held that full compliance with the notice of sale procedures did not prevent invalidation of the foreclosure when the buyer was not actually in default. The court reasoned that "by [the terms of section 45-1508] it only applies to sales challenged because of a failure to comply with the provisions of Idaho Code § 45-1506." Id. at 313.

Fannie Mae v. Hafer 158 Idaho 694
Idaho Supreme Court | 2015-06-22

Matching legal concepts:

Case Law | Subsequent Case | Foreclosure Sale | Fail To Comply | Default | Full Payment | Time Of Foreclosure | Time Of Sale | Not Valid | No Default | Original Owner | Trust Deed | Property Owner | Real **Property**

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: In case law, the Supreme Court of Idaho determined the foreclosure sale was void for failure to comply with Idaho Code Ann. § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust and that Idaho Code Ann. § 45-1508 did not suggest that the sale was nevertheless final. Subsequent case law does not conflict with this view of § 45-1508. The subsequent case law involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code Ann. § 45-1506(9), which requires full payment of the bid at the time of sale. The Supreme Court held that the sale was final and valid despite that failure, though the terms of § 45-1508 might initially have suggested otherwise. Subsequent case law is irrelevant to the Court's prior holding that, where there is no default at the time of a foreclosure sale, the sale is not a sale made by a trustee under this act and so is not valid.

A Hele Ku KB, LLC v. BAC Home Loans Servicing, LP 873 F. Supp. 2d 1268

U.S. Dist. Haw. | 2012-05-31

Motion type:

motion for summary judgment | Denied

Matching legal concepts:

Residential Capital | Reconveyance | Sale | Relevant Case Law | Capital Llc | Foreclosure | Foreclosure Sale | Other Jurisdictions | Investment | Appeal Court | Examine

Relevant passage: In holding that the sale was void, the Hawai'i Supreme Court examined relevant case law from other jurisdictions: Residential Capital, LLC v. Cal-Western Reconveyance Corp., 108 Cal. App. 4th 807, 134 Cal. Rptr. 2d 162 (Ct. App. 2003); Staffordshire Investments, Inc. v. Cal-Western Reconveyance Corp., 209 Ore. App. 528, 149 P.3d 150 (Or. 2006); and Taylor v. Just, 138 Idaho 137, 59 P.3d 308 (Idaho 2002). In each of these cases, the appellate court also held that the foreclosure sale which the plaintiff sought to enforce was void. Residential Capital, 134 Cal. Rptr. 2d at 174; Staffordshire Invs., 149 P.3d at 158; Taylor, 59 P.3d at 312.

A Thorian v. Baro Enters., LLC (In re Thorian) 387 B.R. 50

U.S. Bankr. Idaho | 2008-03-21

Motion type:

motion for leave | Denied motion to amend | Denied

Matching legal concepts:

Default | Foreclosure | Trust Deed | Foreclosure Sale | Debtor | Agreement | No Sum | Past Due | Promissory Note | Real Property | Lender | Execute

Outcome: A mortgage lender was granted summary judgment on Chapter 11 debtors RESPA claim on the basis that a letter from the debtors to the lender did not constitute a qualified written request, within the meaning of 12 U.S.C.S. § 2605(e)(1)(A), because the letter did not contain a request for information or a statement that the

account was in error.

Relevant passage: Debtors rely in part on Taylor v. Just, 138 Idaho 137, 59 P.3d 308, 313 (Idaho 2002). In Taylor, the court voided a foreclosure sale because it determined a default, which is required in order to sell real property under a deed of trust under Idaho Code § 45-1505(2), did not in fact exist. There, the borrower and lender entered into an agreement that eliminated the default by altering the terms of the promissory note so that no sums were past due. That agreement was executed prior to the foreclosure sale. Here, Debtors do not argue that an arrearage or default did not exist under the deed of trust, as was the case in Taylor.

Key Passage 11

| □A foreclosure sale took place after the homeowner defaulted on a deed of trust. |
|--|
| ☐ The foreclosure sale did not comply with the statutory requirements under Idaho Code § 45-1505(2). |
| □ Specifically, the sale suffered from procedural defects that were significant enough to invalidate it. |
| □A bidder at the foreclosure sale sought to assert rights as a good faith purchaser for value, claiming legitimate ownership |
| despite the defects in the sale process. |

Cases recommended for key passage 11 (10)



Russell v. Onewest Bank FSB 2011 U.S. Dist. LEXIS 121836

U.S. Dist. Idaho | 2011-10-20

Motion type:

motion to dismiss | Partial motion to strike | Partial

Matching legal concepts:

Notice Of Sale | Foreclosure | Interest In Property | High Bidder | Terms Of Section | Fail To Comply | Full Compliance | Bringing Suit | In Default | Invalidate | Trustee

Outcome: Deed of Trust beneficiary's motion to dismiss was granted, in part, because its appointment of a trustee the day before the Deed of Trust was assigned to it was valid; under Idaho Code Ann. § 45-1504(2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment.

Relevant passage: The high bidder brought suit, claiming the borrowers were foreclosed from asserting an interest in the property because the trustee had complied with the notice of sale procedures. The court held that full compliance with the notice of sale procedures did not prevent invalidation of the foreclosure when the buyer was not actually in default. The court reasoned that "by [the terms of section 45-1508] it only applies to sales challenged because of a failure to comply with the provisions of Idaho Code § 45-1506." Id. at 313.

Eshraghi v. Cal. Bank & Trust Corp. 2011 U.S. Dist. LEXIS 121141 Eastern Dist. Cal. | 2011-10-19

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | **Presumption Arises**

Outcome: Bank and loan servicer were not enjoined from evicting an owner from a residence after a trustee's sale of the property because the owner alleged no precise wrongs attributable to the bank and loan servicer

relating to the foreclosure. The complaint did not address tender for purposes of permitting rescission under 15 U.S.C.S. § 1635.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly: this presumption is conclusive as to a bona fide purchaser. A noniudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity.



A Flores v. EMC Morta, Co. 997 F. Supp. 2d 1088

Eastern Dist. Cal. | 2014-02-18

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Invalidity Of Instrument | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | Presumption Arises | Trustee Sale | Final Adjudication | Alleged Fact | Rebuttable Presumption | Trust Deed | Required By Law | General Rule | Prejudice | Bylaw | Complain | Lender | Validity

Outcome: Mortgagors' claim for wrongful foreclosure failed to rebut the presumption that the nonjudicial foreclosure of the mortgagors' property was proper since the mortgagors did not show that the foreclosure was unauthorized and failed to tender the amount of the mortgage debt, and possession of the original note was not a prerequisite to foreclosure.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. A nonjudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity. To challenge foreclosure, it is necessary for the complaint to state a case within the code sections for which reason it is essential to allege the facts affecting the validity and invalidity of the instrument which is attacked.

🔼 U. S. Bank Nat'l Ass'n v. Saticoy Bay LLC Series 3930 Swenson 2018 U.S. Dist. LEXIS 109820 U.S. Dist. Nev. | 2018-07-02

Motion type:

motion to dismiss | Partial

Matching legal concepts:

Foreclosure | Foreclosure Sale | Burden | Inadequacy Of Price | Title Holder | Sale Process | Alleged Irregularity | Statutory Presumption | Record Title | Us Bank | By Fraud

Relevant passage: U.S. Bank therefore will have "the burden to show that the sale should be set aside in light of [Saticoy's] status as the record title holder . . . and the statutory presumptions that the HOA's foreclosure sale complied with NRS Chapter 116's provisions." Id. (internal citations omitted). "[M]ere inadequacy of price is not in itself sufficient to set aside the foreclosure sale, but it should be considered together with any alleged irregularities in the sales process to determine whether the sale was affected by fraud, unfairness, or

oppression." Id. at 648. The "party challenging the foreclosure sale bears the burden of showing why the sale should be set aside." Id. at 647.

Countrywide Home Loans, Inc. v. United States 2007 U.S. Dist. LEXIS 1625

Eastern Dist. Cal. | 2007-01-09

Motion type:

motion for summary adjudication | Granted motion for summary judgment | Partial

Matching legal concepts:

Trustee | Foreclosure Sale | Civ Code | Notice Of Default | Deficient | Non Judicial Foreclosure | Judicial Foreclosure Sale | Statutory Requirements | Notice Of Sale | Deception

Outcome: Summary judgment was denied because a genuine issue of fact existed as to whether the investor was a bona fide purchaser because there was information available to show that the lender who held the first lien could have had an equitable interest in the property despite the fact that the title showed no interest by the lender.

Relevant passage: Using Cal. Civ. Code § 1058.5(b), a trustee may set aside or void a otherwise completed non-judicial foreclosure sale even after the trustee's deed is delivered to the high bidding purchaser under certain circumstances in the absence of an intervening bona fide purchaser. Statutorily deficient notice of default and/or notice of the sale is grounds to set aside a sale. The statutory requirements of Cal. Civ. Code § 2924 must be strictly complied with, and a trustee's sale based on a statutorily deficient notice of default is invalid. In addition, fraud or deceit in the foreclosure process is likewise ground to set aside the sale. A foreclosure sale may also be set aside where there has been a mistake of such magnitude that to allow it to stand would be inequitable to purchaser and parties. Finally, an inadequate sale price coupled with a procedural irregularity may warrant a setaside of a completed foreclosure sale just as it may be a basis for aborting a sale not yet completed.



Pank of Am., N.A. v. Saticov Bay LLC Series 2018 U.S. Dist. LEXIS 112753

U.S. Dist. Nev. | 2018-07-05

Motion type:

motion to dismiss | Partial motion to amend | Granted

Matching legal concepts:

Foreclosure | Foreclosure Sale | Burden | Inadequacy Of Price | Title Holder | Sale Process | Alleged Irregularity | Statutory Presumption | Record Title | Bank Of America | By Fraud

Relevant passage: Bank of America therefore will have "the burden to show that the sale should be set aside in light of [Saticoy's] status as the record title holder . . . and the statutory presumptions that the HOA's foreclosure sale complied with NRS Chapter 116's provisions." Id. (internal citations omitted). "[M]ere inadequacy of price is not in itself sufficient to set aside the foreclosure sale, but it should be considered together with any alleged irregularities in the sales process to determine whether the sale was affected by fraud, unfairness, or oppression." Id. at 648. The "party challenging the foreclosure sale bears the burden of showing why the sale should be set aside." Id. at 647.

Matching legal concepts:

Trustee | Debt | Nonjudicial Foreclosure Sale | Offer To Pay | Debt Amount | Improper Procedure | Trustee Sale | Quiet Title | Full Amount | Prejudice | Mortgagee | Security

Outcome: In an action relating to a mortgage loan and nonjudicial foreclosure, the district court properly dismissed the borrowers' dependent abuse claim under Cal. Welf. & Inst. Code § 15610.30, because foreclosing on the home of a dependent was not, absent more, a \"wrongful use\" of property.

Relevant passage: An action to set aside a trustee's sale for irregularities in sale notice or procedure should be accompanied by an offer to pay the full amount of the debt for which the property was security. A mortgagee cannot quiet title without satisfying his debt. To attack a nonjudicial foreclosure sale, a plaintiff must plead and prove an improper procedure and the resulting prejudice.

Natividad v. Wells Fargo Bank, N.A. 2013 U.S. Dist. LEXIS 74067

Northern Dist. Cal. | 2013-05-24

Motion type:

motion for relief | Denied motion to dismiss | Granted

Matching legal concepts:

Trustee | Foreclosure | Proof | Sale Of Real Property | Power Of Sale | Willfully Oppressive | Trustee Sale | First Element | Fail To Comply | Procedural Requisite | Trust Deed | Foreclosure Sale | Mortgage | Fraudulent

Outcome: In a real estate foreclosure case, sending a notice of default was not the basis for a cause of action under the FDCPA because it did not go beyond enforcing security interests and thus was not \"debt collection\" activity under 15 U.S.C.S. § 1692a(6). Legally-mandated actions required for mortgage foreclosure are not necessarily debt collection.

Relevant passage: In order to set aside a foreclosure sale, a plaintiff must first establish that the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust. Justifications for setting aside a trustee's sale, which satisfy the first element, include proof that the trustee did not have the power to foreclose as well as proof of the trustee's failure to comply with the statutory procedural requirements for the notice or conduct of the sale.



◆ Fannie Mae v. Hafer 158 Idaho 694

Idaho Supreme Court | 2015-06-22

Matching legal concepts:

Case Law | Subsequent Case | Foreclosure Sale | Fail To Comply | Default | Full Payment | Time Of Foreclosure | Time Of Sale | Not Valid | No Default | Original Owner | Trust Deed | Property Owner | Real **Property**

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: In case law, the Supreme Court of Idaho determined the foreclosure sale was void for failure to comply with Idaho Code Ann. § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust and that Idaho Code Ann. § 45-1508 did not suggest that the sale was nevertheless final. Subsequent case law does not conflict with this view of § 45-1508. The subsequent case law involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code Ann. § 45-1506(9), which requires full payment of the bid at the time of sale. The Supreme Court held that the sale was final and valid despite that failure, though the terms of § 45-1508 might initially have suggested otherwise. Subsequent case law is irrelevant to the Court's prior holding that, where there is no default at the time of a foreclosure sale, the sale is not a sale made by a trustee under this act and so is not valid.

A Trotter v. Bank of N.Y. Mellon 152 Idaho 842

Idaho Supreme Court | 2012-03-23

Matching legal concepts:

Trustee | Trust Deed | Nonjudicial Foreclosure Proceedings | Notice Of Default | Trust Beneficiary | Formal Notice | Trustee Sale | Authorization | Ownership | Demonstrate

Outcome: Bank, as trustee, was not required to prove it had standing before foreclosing on a deed of trust, Idaho Code Ann. § 45-1505, and the homeowner's claims were properly dismissed. Because the homeowner did not present argument to support his claim that the nominee had no authority to assign the deed of trust, he waived the issue.

Relevant passage: Once the notice of default has been recorded, the trustee must give formal notice of the trustee's sale to parties specified in the statute, Idaho Code Ann. § 45-1506. These are the only requirements that precede foreclosure. Pursuant to Idaho Code Ann. § 45-1505, a trustee may initiate nonjudicial foreclosure proceedings on a deed of trust without first proving ownership of the underlying note or demonstrating that the deed of trust beneficiary has requested or authorized the trustee to initiate those proceedings.

Treatise recommendations for key passage (2)

660.5 Solutions

Powell on Real Property | National

Matching legal concepts:

Foreclosure | Advertising | Payment Of Expense | Nonjudicial Proceedings | Recording Of A Deed | Additional Requirement | Delivery Of Deed | Net Proceeds Of Sale | Power Of Sale | Public Sale | Debt Owed | Notice Provision | Lender | Trustee | Confirm

Relevant passage: A number of states also have a nonjudicial proceeding available. Such a proceeding may be referred to as "foreclosure by advertisement," "power of sale foreclosure," or a "trustee's sale." This type of foreclosure requires only the provision of notice, advertisement, a public sale by bid, delivery of a deed and recordation of a deed. There may be an additional requirement in some states for court confirmation of the proceedings. Again, after payment of expenses, the net proceeds of sale are used to reduce the debt owed to the lender.

37.05 Special Situations

Business Torts | National

Matching legal concepts:

Wrongful Foreclosure | Low Price | Foreclosure Sale | Gross Inadequacy | Selling Price | Defect | Showing Of Irregularity | Violation Of The Term | Date Of Foreclosure | Potential For Abuse | Sale Proceeding | Property In Question | Void Ab Initio | Inadequate Price | Foreclosure Process | Amount Of Damages | Foreclosure Action | Remaining Balance | Trust Deed | Property Value | Causal Connection | Matter Of Law | Balance Due | Fraud | Common Law | Debtor | Third Party | Mortgagee | Indebtedness | Mistake

Relevant passage: Texas has the most extensive jurisprudence concerning wrongful foreclosure. Under Texas law, a wrongful foreclosure in violation of the terms of the deed of trust is void ab initio as a matter of law. Texas courts recognize that foreclosures sales inherently have the potential for abuse. A trustee may conspire with a bidder to secure a lower price or the mortgagee may act in a manner to "chill the bidding" to try to obtain a lower price for itself. Under Texas common law, a debtor may recover for wrongful foreclosure if an irregularity occurs in the foreclosure process which deters third parties from bidding. A wrongful foreclosure action protects mortgagors against foreclosure sales where, through mistake, fraud, or unfairness, the sale produces an inequitably low price. The plaintiff must show an irregularity in the foreclosure sale and that the irregularity contributed to an inadequate price. The elements of a wrongful foreclosure claim are: (1) a defect in the foreclosure sale proceedings; (2) a grossly inadequate selling price; and (3) a causal connection between the defect and the grossly inadequate selling price. The amount of damages due for wrongful foreclosure is the difference between the value of the property in question at the date of foreclosure and the remaining balance due on the indebtedness.

Argument recommendations for key passage (9)

MEISTER PARK HOMEOWNERS' ASSOCIATION'S OPPOSITION TO BANK OF NEW YORK MELLON'S

MOTION FOR SUMMARY JUDGMENT

BANK OF NEW YORK MELLON v. MEISTER PARK HOMEOWNERS ASS'N, 2020 U.S. DIST. CT. MOTIONS LEXIS 447846

U.S. Dist. Nev. | 2020-04-20

Motion type:

motion for summary judgment |

Argument: D. The Bank Mischaracterizes the Supreme Court of Nevada's Holding in Nationstar Moris., LLC v. Saticoy Bay LLC, Series 2227Shadow Canyon.

. Failure to mail a deed of trust beneficiary the statutorily required notices; . An HOA's representation that the foreclosure sale will not extinguish the first deed of trust; . Collusion between the winning bidder and the entity selling the property; . A foreclosure trustee's refusal to accept a higher bid; . A foreclosure trustee's misrepresentation of the sale date.

JPMORGAN CHASE BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

SHIREHAMPTON DRIVE v. JPMORGAN CHASE BANK, 2021 U.S. DIST. CT. MOTIONS LEXIS 106269 Law firm: SMITH LARSEN & WIXOM

U.S. Dist. Nev. | 2021-07-11

Motion type:

motion for summary judgment |

Argument: I. INTRODUCTION

Finally, there is no evidence that the HOA's foreclosure sale was commercially reasonable. To the contrary, the sale price was grossly inadequate, and the evidence shows that the sale was unfair and oppressive, given the lack of notice to a beneficiary of record, and the Association's representation to the world that its foreclosure sale would not extinguish a first-position deed of trust.

PLAINTIFF U.S. BANK, N.A.'S MOTION FOR SUMMARY JUDGMENT

U.S. BANK, N.A. v. ASCENTE HOMEOWNERS ASS'N, 2021 U.S. DIST. CT. MOTIONS LEXIS 40805 U.S. Dist. Nev. | 2021-05-17

Motion type:

Plaintiff's motion for summary judgment |

Argument: 1. HOA Foreclosure Sales Must be Commercially Reasonable.

(a) A foreclosure sale price obtained pursuant to a foreclosure proceeding that is otherwise regularly conducted in compliance with applicable law does not render the foreclosure defective unless the price is grossly inadequate.

MOTION FOR SUMMARY JUDGMENT

US BANK, N.A. v. ASCENTE HOMEOWNERS ASS'N, 2021 U.S. DIST. CT. MOTIONS LEXIS 115647 U.S. Dist. Nev. | 2021-03-13

Argument: UNREASONABLE

The Bank has presented no evidence whatsoever that the HOA Foreclosure Sale was not conducted in a commercially reasonable manner. On the contrary, the fact that no person or entity in the entire world appeared at the publicly noticed and held HOA Foreclosure Sale to bid in excess of the prevailing bid strongly indicates that the Property was worth not more than that amount at that point in time.

DEFENDANT SKYWORK INVESTMENT D, LLC'S MOTION TO DISMISS

TAKAI v. ENCORE CREDIT CORP., 2021 U.S. DIST. CT. MOTIONS LEXIS 95466 Western Dist. Wash. | 2021-06-10

Motion type:

Defendant's motion to dismiss |

Argument: II. BACKGROUND AND PROCEDURAL POSTURE

On August 14, 2015, Skywork purchased the Property at the nonjudicial foreclosure auction for \$ 294,000.00. Dkt. 1-4 pp. 54-56. Skywork had no relationship to the Property or the Plaintiffs prior to bidding at the foreclosure auction. Skywork is bona fide purchaser at the trustee sale, an independent third party who paid the highest bid at the foreclosure sale. The Trustee's Deed was recorded in the King County Official Records at No. 2015082700469. Id. This lawsuit was commenced only after the trustee's sale.

SFR INVESTMENTS POOL 1, LLC'S RESPONSE TO DEFENDANT ANTHEM COUNTRY CLUB COMMUNITY ASSOCIATION'S MOTION TO DISMISS; OR ALTERNATIVELY, MOTION TO DISMISS CAPITAL ONE, NATIONAL ASSOCIATION'S COMPLAINT PURSUANT TO F.R.C.P. 12(b)(7)

CAPITAL ONE v. SFR INVS. POOL 1 v. limited liab. co., 2021 U.S. DIST. CT. MOTIONS LEXIS 45056 U.S. Dist. Nev. | 2021-04-22

Motion type:

Defendant's motion to dismiss |

Argument: A. Failure to Properly Join a Party Under Rule 19.

The Bank acts as though SFR were responsible for the Association foreclosure sale. It was not. Nothing in NRS 116.3116 places this burden on a purchaser at a public auction. In fact, just the opposite is true. Even if the Bank could prove some irregularity with the sale, the Legislature created a statutory scheme that entitles SFR to rely on the conclusive proof of the recitals of the Association foreclosure deed to establish that the sale was conducted in a proper and lawful manner. For the Bank to prevail, it must litigate its claims of improper

foreclosure against the correct parties. Because it has not taken the necessary steps to do so, the Bank should be required to amend its Complaint to adequately assert claims against the Association or the Bank's Complaint should be dismissed in its entirety.

OPPOSITION TO U.S. BANK'S MOTION FOR PARTIAL SUMMARY JUDGMENT

US BANK, N.A. v. ASCENTE HOMEOWNERS ASS'N, 2020 U.S. DIST. CT. MOTIONS LEXIS 2005

Law firm: ROGER P. CROTEAU & ASSOCIATES, LTD.

U.S. Dist. Nev. | 2020-07-20

Argument: 9. THE HOA FORECLOSURE SALE WAS NOT COMMERCIALLY UNREASONABLE

It is undisputed that LVDG paid valuable consideration to purchase the Property at the time of the HOA Foreclosure Sale. Notably, LVDG did so without any notice of the correspondence between Miles Bauer and ACS. It is further undisputed that no party, including the Bank, appeared at the publicly noticed and held HOA Foreclosure Sale and bid in excess of this amount. This is the case despite the fact that BANA undisputably possessed actual notice of the HOA Foreclosure Sale. However, the Bank has presented no evidence whatsoever that the HOA Foreclosure Sale was not conducted in a commercially reasonable manner. On the contrary, the fact that no person or entity in the entire world appeared at the publicly noticed and held HOA Foreclosure Sale to bid in excess of the prevailing bid strongly indicates that the Property was worth not more than that amount at that point in time.

OPPOSITION TO MOTION FOR PARTIAL SUMMARY JUDGMENT

MORTGAGE v. THE FALLS AT HIDDEN CANYON HOMEOWNERS' ASS'N, 2020 U.S. DIST. CT. MOTIONS LEXIS 1500

Law firm: ROGER P. CROTEAU & ASSOCIATES, LTD.

U.S. Dist. Nev. | 2020-10-08

Argument: 5. THE HOA FORECLOSURE SALE WAS NOT COMMERCIALLY UNREASONABLE

It is undisputed that LVDG paid valuable consideration to purchase the Property. Notably, LVDG did so without any notice of the correspondence between Miles Bauer and ACS. It is further undisputed that no party, including the Bank, appeared at the publicly noticed and held HOA Foreclosure Sale and bid in excess of this amount. This is the case despite the fact that BANA undisputably possessed actual notice of the HOA Foreclosure Sale. However, the Bank has presented no evidence whatsoever that the HOA Foreclosure Sale was not conducted in a commercially reasonable manner. On the contrary, the fact that no person or entity in the entire world appeared at the publicly noticed and held HOA Foreclosure Sale to bid in excess of the prevailing bid strongly indicates that the Property was worth not more than that amount at that point in time.

<u>Defendants Mortgage Electronic Registration Systems, Inc.'S And U.S. Bank National Association's</u>

Supplemental Briefing In Support Of Motion To Dismiss Complaint

In re McCoy, 2011 U.S. Bankr. Ct. Motions LEXIS 181

Law firm: LANE POWELL PC U.S. Bankr. Or. | 2011-01-10

Argument: B. Review of Other States' Trust Deed Acts and Relevant Decisions.

a. Idaho's Trust Deed Act. Idaho's non-judicial foreclosure statute (the "Idaho Act") contains language almost identical to that found in Oregon's Trust Deed Act. In Idaho, a "beneficiary" is defined as:The person named or otherwise designated in a trust deed as the person for whose benefit a trust deed is given, or his successor in interest, and who shall not be a trustee.Idaho Code Ann. § 45-1502(1). This is nearly identical to Oregon's definition. And, as in Oregon, a non-judicial foreclosure sale is allowed under the Idaho Act if, inter alia, "(1) [t]he trust deed, any assignments of the trust deed by the trustee or the beneficiary and any appointment of a successor trustee are recorded in mortgage records in the counties in which the property described in the deed is situated[.]" Idaho Code Ann. § 45-1505(1) compare ORS 86.735(1).

Key Passage 12

| ☐ The Idaho Supreme Court determined that the foreclosure sale was void due to its failure to comply with the |
|--|
| statutory requirements of Idaho Code § 45-1505(2). |
| □ As a result of this non-compliance, the bidder did not acquirevalid title to the property. |
| ☐ The Court held that the bidder could not claim to be a good faith purchaser for value because the sale was void ab |
| initio (from the beginning). |
| □Without valid title, the bidder could not avail themselves of the protections provided to good faith purchasers under Idaho |
| law |

Cases recommended for key passage 12 (10)



Matching legal concepts:

Case Law | Subsequent Case | Foreclosure Sale | Fail To Comply | Default | Full Payment | Time Of Foreclosure | Time Of Sale | Not Valid | No Default | Original Owner | Trust Deed | Property Owner | Real Property

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: In case law, the Supreme Court of Idaho determined the foreclosure sale was void for failure to comply with Idaho Code Ann. § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust and that Idaho Code Ann. § 45-1508 did not suggest that the sale was nevertheless final. Subsequent case law does not conflict with this view of § 45-1508. The subsequent case law involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code Ann. § 45-1506(9), which requires full payment of the bid at the time of sale. The Supreme Court held that the sale was final and valid despite that failure, though the terms of § 45-1508 might initially have suggested otherwise. Subsequent case law is irrelevant to the Court's prior holding that, where there is no default at the time of a foreclosure sale, the sale is not a sale made by a trustee under this act and so is not valid.



Matching legal concepts:

Nonjudicial Foreclosure Sale | Void Transaction | Good Faith Purchaser | Purchaser For Value | Hawaii Law | Valid Title | Good Title | Acquisition | Prior Decision

Outcome: Trustee's motion for reconsideration was denied where, although there was a tension between older and new decisions of the Hawaii Supreme Court, the bankruptcy court continued to believed that an improperly conducted nonjudicial foreclosure sale under Hawaii law was voidable, not void.

Relevant passage: In my prior decision, I held that a defective nonjudicial foreclosure sale is voidable, not void, under current Hawaii law. The difference matters because one who takes title in a void transaction cannot pass good title to anyone. But if the transaction is voidable, a good faith purchaser for value can acquire a valid title.

Hills v. OCWEN (In re Hills) 299 B.R. 581

U.S. Bankr. Ariz. | 2002-12-02

Matching legal concepts:

Trustee | Trust Deed | Secured Creditor | Purchaser | Conducting A Sale | Statutory Notice Provision | Third Party Purchaser | Notice Of Sale | Rev Stat | Able To Prove | Alleged Defect | Sole Remedy | Good Title | Conclusive Evidence | Foreclosure | Actual Notice | Bona Fide | Presumption | Compliance

Outcome: Bankruptcy court concluded that the foreclosure sale could not be set aside where the trustee's sale was: (1) properly continued: (2) the bid information was posted in accordance with Arizona law; and (3) other requirements of Arizona law were met.

Relevant passage: In the context of foreclosures, pursuant to Ariz. Rev. Stat. § 33-811(B) (2002), a trustee's deed creates a "presumption of compliance" and "conclusive evidence" that the sale has been conducted regularly in accordance with the required statutory notice provisions. A purchaser who purchases for value without actual notice of any alleged defect in the notice of the sale is held to hold good title by means of the trustee's deed issued in its favor. Accordingly, the sale as to a bona fide, third-party purchaser is valid. A party's sole remedy, if he is able to prove that there have been any irregularities with the sale, is to proceed against the secured creditor or the trustee under the secured creditor's deed of trust who allowed the agent to conduct the sale.

Breckenridge Prop. Fund 2016, LLC v. Wally Enter. 170 Idaho 649 Idaho Supreme Court | 2022-08-22

Matching legal concepts:

Trustee | Fully Paid | Payment | Notice Of Sale | Title Of Real Property | Legislature Did Not Intend | Credit Bid | Sale Of Property | Trustee Sale | Actual Notice | Reasonable Inference | Preserve

Outcome: In a suit concerning the legality of an auctioneer providing the terms of sale at the time of the foreclosure sale, without providing earlier notice to potential bidders, the printed conditions of the foreclosure sale were binding on plaintiff when announced by the auctioneer, whether it knew of the conditions beforehand or not.

Relevant passage: Discussing the sale of property at a trustee's sale, the Idaho Supreme Court has explained the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale. This finality, echoed in Idaho Code § 45-1508, refers to actual notice, and it serves the legislature's interest in preserving the finality of title to real property. As for Idaho Code § 45-1506, it is more reasonable to infer that the legislature did not intend for a sale to be set aside once the trustee accepts the credit bid as payment in full. As a result, the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale.

Hallas v. Ameriquest Mortg. Co. 406 F. Supp. 2d 1176

U.S. Dist. Or. | 2005-12-22

Motion type:

motion for summary judgment | Granted motion to amend | Denied

Matching legal concepts:

Trustee | Third Party | Nonjudicial Foreclosure Sale | Action To Quiet Title | Subject Real Property |

Original Transaction | Statutory Prerequisite | Bona Fide Purchaser | Alleged Irregularity | Trust Act | Trustee Sale | Bringing Action | Prior Owner | Trust Deed | Appeal Court

Outcome: In a suit arising out of a nonjudicial foreclosure and subsequent sale of real property, defendants were entitled to summary judgment on the property owner's claims because the owner waived her right to bring them, pursuant to the Washington Deed of Trust Act, Wash. Rev. Code § 61.24.130, by failing to assert them before the foreclosure sale.

Relevant passage: In Steward, the property at issue had been sold to a third party at a nonjudicial foreclosure sale. Following the sale, the previous owners brought an action to quiet title in their favor, arguing that the trustee failed to strictly comply with the statutory prerequisites of the Deed of Trust Act. The appellate court described the issue as whether, and under what circumstances, a party may obtain post-sale relief from a trustee's sale, where the subject real property has been sold to third party strangers to the original transaction. Steward, 51 Wash. App. at 512, 754 P.2d at 152. The court agreed with the purchasers that once there is a purchase by an established bona fide purchaser, there may be no post-sale relief for alleged irregularities in the sale. Id.

A Hobson v. Wells Fargo Bank, N.A. 2012 U.S. Dist. LEXIS 19944

U.S. Dist. Idaho | 2012-02-15

Motion type:

motion for summary judgment | Granted

Matching legal concepts:

Assignment | Sale | Notice Of Sale | Interest In Property | Standing To Object | Credit Bid | No Standing | Fully Paid | Payment | Trustee

Relevant passage: But even if the assignment caused some irregularity in the credit bid, "the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale (which are admittedly not present in this case)." Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 113 (Idaho 2009). Therefore, Hobson no longer had any interest in the property after the bid was accepted and has no standing to object to the assignment. Id.

A Gordon v. United States Bank Nat'l Ass'n 166 Idaho 105 Idaho Supreme Court | 2019-12-18

Matching legal concepts:

Validity Of Sale | Foreclosure | Trustee | Failure | Purchaser | Failure To Give Notice | Interest In Property | Successor In Interest | Good Faith | Redeeming Property | Right To Redeem | Persons Claiming | No Right | Property Covered | Trustee Sale | Fail To Comply | Giving Notice | Trust Deed | Foreclosure Sale | Actual Knowledge | In Good Faith | Personal Service | Termination | Defect | Publication

Outcome: Am injunction was properly denied where the district court's summary judgment analysis implicitly addressed the borrower's preliminary injunction arguments, an alleged postponement error was not a sufficient basis to delay the foreclosure sale, and the lenders' failure to record a power of attorney did not invalidate the foreclosure.

Relevant passage: Idaho Code Ann. § 45-1508 establishes when foreclosure sales become final despite defects in notice proceedings. That statute states that a sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under Idaho Code Ann. § 45-1506 and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to

any of such persons by mailing, personal service, posting or publication in accordance with § 45-1506 shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of § 45-1506 shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.

Russell v. Onewest Bank FSB 2011 U.S. Dist. LEXIS 121836

U.S. Dist. Idaho | 2011-10-20

Motion type:

motion to dismiss | Partial motion to strike | Partial

Matching legal concepts:

Validity Of Sale | Trustee Sale | Trust Deed | Failure | Failure To Give Notice | Good Faith Purchaser | Interest In Property | Successor In Interest | Redeeming Property | Safe Harbor Provision | Right To Redeem | Purchaser For Value | Persons Claiming | No Right | Property Covered | Fail To Comply | Foreclosure | Giving Notice | Actual Knowledge | Termination

Outcome: Deed of Trust beneficiary's motion to dismiss was granted, in part, because its appointment of a trustee the day before the Deed of Trust was assigned to it was valid; under Idaho Code Ann. § 45-1504(2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment.

Relevant passage: The trust deed statute includes a buyer safe harbor provision that limits a borrower's ability to challenge a finalized sale. Idaho Code Ann. § 45-1508 provides that a trustee sale under this act forecloses and terminates all interest in the property covered by the trust deed to all persons who are given notice under Idaho Code Ann. § 45-1506, as well as any other person claiming by, through or under such persons given notice. Such persons shall have no right to redeem the property from the purchaser at the trustee's sale. Failure to give notice to such persons as required by § 45-1506 shall not affect the validity of the sale as to persons notified or having actual knowledge of the sale. Furthermore, failure to comply with the provisions of § 45-1506 shall not affect the validity of a sale in favor of a good faith purchaser for value at or after such sale, or any successor in interest thereof.



A Yanagi v. Bank of Am., N.A. (In re Simon) 639 B.R. 576

U.S. Bankr. Haw. | 2022-02-17

Matching legal concepts:

Foreclosure | Bona Fide Purchaser | Foreclosure Sale | Trustee | Legal Contention | General Matter | **Current Owner | Property Owner | Rights**

Outcome: A trustee's claims that a mortgagee improperly foreclosed a mortgage on the debtors' property was not precluded by a state court judgment in a summary possession action where the record did not permit the bankruptcy court to determine the theory by which the state court determined the highest bidder's right to possession.

Relevant passage: As a general matter, the trustee's legal contentions are correct. The Hawaii Supreme Court has decided that a foreclosure sale cannot be set aside if the property has come into the hands of a bona fide purchaser. This means that a judgment recognizing the rights of the foreclosure purchaser could be based on either of two determinations: that the foreclosure sale was properly conducted, or that the current owner of the property is a bona fide purchaser.



U.S. Bankr. Idaho | 2019-02-14

Matching legal concepts:

Foreclosure | Legal Title | Purchase Of Property | Void Ab Initio | Post Petition | Selling Property | Property Title | Foreclosure Sale | Acquisition

Outcome: There was evidence in the record that the HOA had notice of debtor's bankruptcy at the time it foreclosed and purchased the Property. The court could not from the record find that the HOA would be entitled to annulment of stay under 11 U.S.C.S. § 362(d)(1). Accordingly, the LLC had not met its burden of proving there was cause to annul the stay.

Relevant passage: The HOA's postpetition acts of foreclosing, acquiring, and selling the Property are void ab initio. Schwartz, 954 F.2d at 572-73. Thus, the HOA did not obtain valid, legal title to the Property through its foreclosure sale. Consequently, SFR did not obtain valid, legal title when it purchased the Property from the HOA.

Treatise recommendations for key passage (1)

38.09 Judgment Creditors—Enforcement of Judgment Lien

Powell on Real Property | National

Matching legal concepts:

Purchaser | Sheriff | Debtor | Uniform Fraudulent Transfer Act | Judgment Lien | Judgment Debtor | Statutory Redemption | Junior Lienor | Redeeming Property | Substantial Sale | Transfer Ownership | Statutory Redemption Period | Actual Transfer | Procedural Defect | Execution Sale | Forced Sale | Fraudulent Conversion | Good Title | Low Price | Plus Interest | Purchase Price | Overturn | Discover

Relevant passage: In many states, the purchaser at the execution sale does not obtain the sheriff's deed. Therefore, the actual transfer of ownership is not accomplished until after a statutory redemption period has run. During the time set for redemption, the debtor or junior lienors are entitled to redeem the property from the sheriff's sale by repaying the purchaser the amount that was bid plus interest. The purchaser at the sale needs to be cautious because the property may be lost if it is later discovered that the judgment debtor did not have good title, if the judgment underlying the judgment lien is later reversed, or if the sale is voided because of procedural defects. A sheriff's sale, however, will generally not be overturned merely because the purchase price is considered to be inadequate, unless other substantial sale irregularities also exist. Under the Uniform Fraudulent Transfer Act, a low price at a forced sale is not a fraudulent conveyance provided the sale is otherwise properly conducted.

Key Passage 13

The decision in Taylor v. Just is highly relevant to Defendant Bass's opposition to Plaintiffs' Motion for Summary Judgment. Plaintiffs in this case claim that they are entitled to possession of the property as good faith purchasers, despite Defendant Bass's arguments regarding defects in the foreclosure process. However, Taylor v. Justmakes clear that a foreclosure sale that fails to comply with statutory requirements is void from the outset, meaning no valid title passes to the purchaser. Defendant Bass argues that the foreclosure sale in this case was marred by both procedural and substantive defects, including non-compliance with statutory requirements and bidder collusion, which renders the sale void and precludes Plaintiffs from claiming title.

Cases recommended for key passage 13 (6)



Motion type:

motion for summary judgment | Granted motion to amend | Denied

Matching legal concepts:

Trustee | Third Party | Nonjudicial Foreclosure Sale | Action To Quiet Title | Subject Real Property | Original Transaction | Statutory Prerequisite | Bona Fide Purchaser | Alleged Irregularity | Trust Act | Trustee Sale | Bringing Action | Prior Owner | Trust Deed | Appeal Court

Outcome: In a suit arising out of a nonjudicial foreclosure and subsequent sale of real property, defendants were entitled to summary judgment on the property owner's claims because the owner waived her right to bring them, pursuant to the Washington Deed of Trust Act, Wash. Rev. Code § 61.24.130, by failing to assert them before the foreclosure sale.

Relevant passage: In Steward, the property at issue had been sold to a third party at a nonjudicial foreclosure sale. Following the sale, the previous owners brought an action to quiet title in their favor, arguing that the trustee failed to strictly comply with the statutory prerequisites of the Deed of Trust Act. The appellate court described the issue as whether, and under what circumstances, a party may obtain post-sale relief from a trustee's sale, where the subject real property has been sold to third party strangers to the original transaction. Steward, 51 Wash. App. at 512, 754 P.2d at 152. The court agreed with the purchasers that once there is a purchase by an established bona fide purchaser, there may be no post-sale relief for alleged irregularities in the sale. Id.

Graham v. PNC Mortg. (In re Graham) 2018 U.S. Dist. LEXIS 120688
U.S. Dist. Nev. | 2018-07-19

Motion type:

motion for stay | Denied motion to dismiss | Granted

Matching legal concepts:

Foreclosure | Foreclosure Sale | Purchaser | Prior Owner | Demonstrate | Equity | State Court Action | Sufficient To Overcome | Future Possibility | Taking Property

Relevant passage: Appellants also fail to demonstrate that the third parties had notice of Appellants' claim in equity, as a foreclosure sale pursuant to a deed of trust terminates the prior owner's property interest. Id. at 1116. As the Nevada Supreme Court made clear in Shadow Wood, "[t]hat [the prior owner] retained the ability to bring an equitable claim to challenge [the] foreclosure sale is not enough in itself to demonstrate that [the purchaser] took the property with notice of any potential future dispute as to title." Id. Thus, even if this Court had authority to reconsider what appears to be a final state court action finding that the foreclosure sales may proceed, and even if the Court could take action without the purchasers being parties to the appeal, it would lack the power to reverse the sales absent some showing of equities sufficient to overcome the position of the "innocent" purchasers.

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Foreclosure | Judicial Stay | Mechanical Defect | Foreclosure Sale | Violation Of Court Order | Render | Notice Of Sale | Lack Of Notice | Actual Effect | Direct Violation

Relevant passage: , clear error in the amount due on the secured debt was insufficient to render the sale void or voidable absent actual effects on the sale or bad faith. More strikingly still, in Rosenberg v. Smidt, the Supreme Court of Alaska held that the allegations that the trustee had failed to give "actual notice of the sale" to appellants before their property was sold at a foreclosure sale went to the "mechanics of exercising the power" rendering the sale voidable, not void. Thus, even where the mechanical defects resulted in lack of notice of foreclosure, the sale was not void. In contrast, in Richardson v. Estate of Berthelot, the Supreme Court of Alaska held that a foreclosure sale "completed in violation of a judicial stay" was void because it was a non-mechanical defect that risked undermining the efficacy of judicial stay orders and reached unjust extremes. Mr. Dalby's allegations do not rise to the level of a direct violation of a court order.

Schneidereit v. Trust of the Scott & Brian, Inc. 693 Fed. Appx. 733
9th Circuit - Court of Appeals | 2017-08-16

Matching legal concepts:

Trustee | Debt | Nonjudicial Foreclosure Sale | Offer To Pay | Debt Amount | Improper Procedure | Trustee Sale | Quiet Title | Full Amount | Prejudice | Mortgagee | Security

Outcome: In an action relating to a mortgage loan and nonjudicial foreclosure, the district court properly dismissed the borrowers' dependent abuse claim under Cal. Welf. & Inst. Code § 15610.30, because foreclosing on the home of a dependent was not, absent more, a \"wrongful use\" of property.

Relevant passage: An action to set aside a trustee's sale for irregularities in sale notice or procedure should be accompanied by an offer to pay the full amount of the debt for which the property was security. A mortgagee cannot quiet title without satisfying his debt. To attack a nonjudicial foreclosure sale, a plaintiff must plead and prove an improper procedure and the resulting prejudice.

Yates v. Aurora Loan Servs., LLC 2011 U.S. Dist. LEXIS 62644
Northern Dist. Cal. | 2011-06-13

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Fraud | Valid Sale | Foreclosure Decree | Foreclosure Sale | Procurement | Prejudice | Trustee | Sufficient Evidence | Rebutting A Presumption | Procedural Irregularity | Successful Challenge | Conclusive Presumption | Unlawful Conduct | Fail To Comply | Procedural Requisite | Trust Deed | Bank Of America | By Fraud | Factual Question | Defendant Argues | General Rule | Inequitable | Mortgage | Purchaser | Mistake | Vacate

Relevant passage: Defendant argues that all of Plaintiffs' claims must be dismissed because the recording of the trustee's deed upon sale creates a conclusive presumption of a valid sale, and Plaintiffs have not shown fraud or unlawful conduct in the procurement of the foreclosure decree or the sale itself. See Bank of America Nat. Trust & Sav. Ass'n v. Reidy, 15 Cal.2d 243, 248, 101 P.2d 77 (1940) ("It is the general rule that courts have

power to vacate a foreclosure sale where there has been fraud in the procurement of the foreclosure decree or where the sale has been improperly, unfairly or unlawfully conducted, or is tainted by fraud, or where there has been such a mistake that to allow it to stand would be inequitable to purchaser and parties."). However, prejudicial procedural irregularities can rebut the presumption of a valid sale. See 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal.App.4th 1279, 1284, 102 Cal. Rptr. 2d 711 (2001) ("Accordingly, '[a] successful challenge to the sale requires evidence of a failure to comply with the procedural requirements for the foreclosure sale that caused prejudice to the person attacking the sale.' Whether there is sufficient evidence to overcome this presumption is generally a question of fact.") (internal citations omitted).

Dank of Am., N.A. v. Saticoy Bay LLC Series 2018 U.S. Dist. LEXIS 112753

U.S. Dist. Nev. | 2018-07-05

Motion type:

motion to dismiss | Partial motion to amend | Granted

Matching legal concepts:

Sale | Former Owner | Foreclosure Sale | Bona Fide | Recording Of A Notice | Similar Argument | Ability To Raise | Bona Fide Purchaser Status | Statutory Foreclosure | Post Hoc | Subsequent Purchaser | Trust Deed | Evidence | Contention | Lender

Relevant passage: Notice of the lender's deed of trust is not sufficient, in and of itself, to deprive a subsequent purchaser of bona fide purchaser status. Id. at 1115-16 (rejecting a similar argument, stating the "law does not support [the] contention" that "a purchaser at a foreclosure sale can never be bona fide because there is always the possibility that the former owner will challenge the sale post hoc"). "[W]hen an association's foreclosure sale complies with the statutory foreclosure rules, as evidenced by the recorded notices, . . . and without any facts to indicate the contrary, the purchaser would have only 'notice' that the former owner had the ability to raise an equitably based post-sale challenge, the basis of which is unknown to that purchaser." Id. at 1116.

Argument recommendations for key passage (2)

SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO DIMISS LITIGATION

BANK OF NEW YORK MELLON v. MEISTER PARK HOMEOWNERS ASS'N, 2020 U.S. DIST. CT. MOTIONS LEXIS 447697

U.S. Dist. Nev. | 2020-04-14

Argument: C. Nevada Law Cannot Be Replaced with Inapplicable Bankruptcy Code Provisions or Illinois **Court Rules**

Importantly, there is nothing in Nevada law that would prohibit a Court from setting aside a foreclosure sale conducted on an extinguished Deed of Trust when there was a lis pendens recorded against the Property that had not been cancelled or withdrawn. The Nevada Supreme Court has not been shy about declaring foreclosure sales or portions of sales void even if the property sold to a good faith purchaser without notice, let alone a purchaser who at a foreclosure who had notice of ongoing litigation over the viability of the lien being foreclosed.

MOTION FOR SUMMARY JUDGMENT AGAINST DEFENDANT JPMORGAN CHASE BANK, NATIONAL **ASSOCIATION**

SHIREHAMPTON DRIVE v. JPMORGAN CHASE BANK, 2017 U.S. DIST. CT. MOTIONS LEXIS 481305 U.S. Dist. Nev. | 2017-08-24

Motion type:

Defendant's motion for summary judgment |

Argument: E. The defendant's answers to interrogatories do not set forth any evidence or contentions of any defect in the sale as are detailed in the Schroeder case. The bank is not entitled to relief against the bona fide purchaser

Most defects render the foreclosure voidable and not void. When a voidable error occurs, bare legal title passes to the sale purchaser, subject to the redemption rights of those injured by the defective foreclosure. Typically, a voidable error is "an irregularity in the execution of a foreclosure sale" and must be "substantial or result in a probably unfairness."

Key Passage 14

| □ Taylor v. Just establishes that a foreclosure sale that does not strictly comply with the statutory requirements set forth in |
|---|
| Idaho Code § 45-1505 I s void. |
| □ In Defendant Bass's case, the foreclosure sale is void due to procedural irregularities and statutory non- |
| compliance, including the improper handling of the auction process and the involvement of the trustee and bidder in collusion |
| ☐ Because the sale was void ab initio, Plaintiffs cannot claim to have acquiredvalid title, and any attempt to rely on good |
| faith purchaser protections is without merit. |

Cases recommended for key passage 14 (9)

Countrywide Home Loans, Inc. v. United States 2007 U.S. Dist. LEXIS 1625
Eastern Dist. Cal. | 2007-01-09

Motion type:

motion for summary adjudication | Granted motion for summary judgment | Partial

Matching legal concepts:

Trustee | Foreclosure Sale | Civ Code | Notice Of Default | Deficient | Non Judicial Foreclosure | Judicial Foreclosure Sale | Statutory Requirements | Notice Of Sale | Deception

Outcome: Summary judgment was denied because a genuine issue of fact existed as to whether the investor was a bona fide purchaser because there was information available to show that the lender who held the first lien could have had an equitable interest in the property despite the fact that the title showed no interest by the lender.

Relevant passage: Using Cal. Civ. Code § 1058.5(b), a trustee may set aside or void a otherwise completed non-judicial foreclosure sale even after the trustee's deed is delivered to the high bidding purchaser under certain circumstances in the absence of an intervening bona fide purchaser. Statutorily deficient notice of default and/or notice of the sale is grounds to set aside a sale. The statutory requirements of Cal. Civ. Code § 2924 must be strictly complied with, and a trustee's sale based on a statutorily deficient notice of default is invalid. In addition, fraud or deceit in the foreclosure process is likewise ground to set aside the sale. A foreclosure sale may also be set aside where there has been a mistake of such magnitude that to allow it to stand would be inequitable to purchaser and parties. Finally, an inadequate sale price coupled with a procedural irregularity may warrant a set-aside of a completed foreclosure sale just as it may be a basis for aborting a sale not yet completed.

◆ Baghdasarian v. SRT Partners, LLC (In re Baghdasarian) 2011 Bankr. LEXIS 4328
9th Circuit Bankr. Appellate Panel | 2011-07-08

Matching legal concepts:

Foreclosure | Trustee | Trust Deed | Foreclosure Sale | Mere Ministerial Act | Presumption Of Validity | Deemed Complete | Transfer Title | On Sale | Fraud | Evidence | Defect | Delivery | Execute

Outcome: An appeal from an order granting a motion for relief from stay under 11 U.S.C.S. § 362 was moot. The debtor had already been dispossessed from his home pursuant to a state-court judgment; the bankruptcy court had denied damages to the debtor for alleged violations of the stay; and there was no live case before the bankruptcy court for a remand.

Relevant passage: Under California law, a foreclosure generally is deemed complete on sale, even if the trustee's deed is not delivered until a later date. So long as the foreclosure sale is conducted regularly and properly, it is presumed valid, and the execution and delivery of a trustee's deed evidencing the transfer of title is a mere ministerial act. However, if there is a defect in procedure, unfairness or fraud leading up to the foreclosure sale, it is voidable.

A Flores v. EMC Mortg. Co. 997 F. Supp. 2d 1088

Eastern Dist. Cal. | 2014-02-18

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Invalidity Of Instrument | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | Presumption Arises | Trustee Sale | Final Adjudication | Alleged Fact | Rebuttable Presumption | Trust Deed | Required By Law | General Rule | Prejudice | Bylaw | Complain | Lender | Validity

Outcome: Mortgagors' claim for wrongful foreclosure failed to rebut the presumption that the nonjudicial foreclosure of the mortgagors' property was proper since the mortgagors did not show that the foreclosure was unauthorized and failed to tender the amount of the mortgage debt, and possession of the original note was not a prerequisite to foreclosure.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. A nonjudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity. To challenge foreclosure, it is necessary for the complaint to state a case within the code sections for which reason it is essential to allege the facts affecting the validity and invalidity of the instrument which is attacked.

Anatividad v. Wells Fargo Bank, N.A. 2013 U.S. Dist. LEXIS 74067

Northern Dist. Cal. | 2013-05-24

Motion type:

motion for relief | Denied motion to dismiss | Granted

Matching legal concepts:

Trustee | Foreclosure | Proof | Sale Of Real Property | Power Of Sale | Willfully Oppressive | Trustee Sale | First Element | Fail To Comply | Procedural Requisite | Trust Deed | Foreclosure Sale | Mortgage | Fraudulent

Outcome: In a real estate foreclosure case, sending a notice of default was not the basis for a cause of action under the FDCPA because it did not go beyond enforcing security interests and thus was not \"debt collection\" activity under 15 U.S.C.S. § 1692a(6). Legally-mandated actions required for mortgage foreclosure are not necessarily debt collection.

Relevant passage: In order to set aside a foreclosure sale, a plaintiff must first establish that the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust. Justifications for setting aside a trustee's sale, which satisfy the first element, include proof that the trustee did not have the power to foreclose as well as proof of the trustee's failure to comply with the statutory procedural requirements for the notice or conduct of the sale.

Eshraghi v. Cal. Bank & Trust Corp. 2011 U.S. Dist. LEXIS 121141
Eastern Dist. Cal. | 2011-10-19

Matching legal concepts:

Nonjudicial Foreclosure Sale | Trustee | Statutory Notice Requirement | Adjudication Of Rights | Common Law Presumption | Substantial Evidence | Final Bid | Bona Fide Purchaser | Procedural Irregularity | Presumption Arises

Outcome: Bank and loan servicer were not enjoined from evicting an owner from a residence after a trustee's sale of the property because the owner alleged no precise wrongs attributable to the bank and loan servicer relating to the foreclosure. The complaint did not address tender for purposes of permitting rescission under 15 U.S.C.S. § 1635.

Relevant passage: A properly conducted nonjudicial foreclosure sale constitutes a final adjudication of the rights of the borrower and lender. As a general rule, a trustee's sale is complete upon acceptance of the final bid. If the trustee's deed recites that all statutory notice requirements and procedures required by law for the conduct of the foreclosure have been satisfied, a rebuttable presumption arises that the sale has been conducted regularly and properly; this presumption is conclusive as to a bona fide purchaser. A nonjudicial foreclosure sale is accompanied by a common law presumption that it was conducted regularly and fairly. This presumption may only be rebutted by substantial evidence of prejudicial procedural irregularity.

Pedersen v. Greenpoint Mortg. Funding, Inc. 2011 U.S. Dist. LEXIS 96397
Eastern Dist. Cal. | 2011-08-29

Motion type:

motion for injunctive relief | Denied motion to dismiss | Granted

Matching legal concepts:

Sale | Trustee | Redeeming Property | Debt Amount | Foreclosure Procedure | Trustee Sale | Damage | Nonjudicial | Prejudice | Default

Outcome: The borrowers' claims under the Homeowners Equity Protection Act, 15 U.S.C.S. § 1639 et seq., were dismissed as nothing in the record suggested that the loan at issue was taken to refinance the home at issue or to fund construction. The borrowers were given leave to amend their TILA and RESPA claims to sufficiently plead equitable tolling.

Relevant passage: When a sale is voidable rather than void because of irregularities in a nonjudicial trustee's sale, there may be grounds for setting it aside if they are prejudicial to the party challenging the sale. To set aside a sale, however, the party challenging it must tender the amount of the debt or at least the amount of the default,

because the irregularities in the foreclosure procedures cannot be deemed to damage plaintiff when plaintiff could not redeem the property had sale procedures been proper.

A Dalby v. Ditech Fin. LLC 2019 U.S. Dist. LEXIS 201274

U.S. Dist. Alaska | 2019-11-20

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Foreclosure | Judicial Stay | Mechanical Defect | Foreclosure Sale | Violation Of Court Order | Render | Notice Of Sale | Lack Of Notice | Actual Effect | Direct Violation

Relevant passage: , clear error in the amount due on the secured debt was insufficient to render the sale void or voidable absent actual effects on the sale or bad faith. More strikingly still, in Rosenberg v. Smidt, the Supreme Court of Alaska held that the allegations that the trustee had failed to give "actual notice of the sale" to appellants before their property was sold at a foreclosure sale went to the "mechanics of exercising the power" rendering the sale voidable, not void. Thus, even where the mechanical defects resulted in lack of notice of foreclosure, the sale was not void. In contrast, in Richardson v. Estate of Berthelot, the Supreme Court of Alaska held that a foreclosure sale "completed in violation of a judicial stay" was void because it was a non-mechanical defect that risked undermining the efficacy of judicial stay orders and reached unjust extremes. Mr. Dalby's allegations do not rise to the level of a direct violation of a court order.

📤 Frontier Fed. Sav. & Loan Ass'n v. Douglass 123 Idaho 808

Idaho Supreme Court | 1993-04-23

Matching legal concepts:

Trustee | Trust Deed | Purchaser | Sale | Receive Payment | Price Bid | Separate Parcel | Trustee Sale | Selling Property | Highest Bidder | Beneficiary | Inter Alia | Auction | Execute

Outcome: Mortgagor was entitled to deficiency judgment against mortgagees because there was no violation of the deed of trust foreclosure statute and mortgagor did not waive right to sue under the terms of the note.

Relevant passage: Idaho Code § 45-1506(8) dictates, inter alia, that the trustee shall sell the property in one parcel or in separate parcels at auction to the highest bidder. Any person, including the beneficiary under the trust deed, may bid at the trustee's sale. In addition, Idaho Code § 45-1506(9) provides that the purchaser at the sale shall forthwith pay the price bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser.



Russell v. Onewest Bank FSB 2011 U.S. Dist. LEXIS 121836

U.S. Dist. Idaho | 2011-10-20

Motion type:

motion to dismiss | Partial motion to strike | Partial

Matching legal concepts:

Accepted Payment | Violation Of Trust | Notice Of Sale | Foreclosure | Trust Deed | Foreclosure Sale | Statutory Scheme | Remedy | Execute

Outcome: Deed of Trust beneficiary's motion to dismiss was granted, in part, because its appointment of a trustee the day before the Deed of Trust was assigned to it was valid; under Idaho Code Ann. § 45-1504(2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment.

Relevant passage: Idaho Code Ann. § 45-1508 prevents grantors from voiding a foreclosure sale where: (1) notice of sale was given under § 45-1506; (2) the trustee accepted payment and executed the deed to the bidder; and (3) the statutory scheme affords the grantor alternative protections or remedies for the particular violation of the Trust Deed statutes at issue.

Treatise recommendations for key passage (1)

37.05 Special Situations

Business Torts | National

Matching legal concepts:

Wrongful Foreclosure | Low Price | Foreclosure Sale | Gross Inadequacy | Selling Price | Defect | Showing Of Irregularity | Violation Of The Term | Date Of Foreclosure | Potential For Abuse | Sale Proceeding | Property In Question | Void Ab Initio | Inadequate Price | Foreclosure Process | Amount Of Damages | Foreclosure Action | Remaining Balance | Trust Deed | Property Value | Causal Connection | Matter Of Law | Balance Due | Fraud | Common Law | Debtor | Third Party | Mortgagee | Indebtedness | Mistake

Relevant passage: Texas has the most extensive jurisprudence concerning wrongful foreclosure. Under Texas law, a wrongful foreclosure in violation of the terms of the deed of trust is void ab initio as a matter of law. Texas courts recognize that foreclosures sales inherently have the potential for abuse. A trustee may conspire with a bidder to secure a lower price or the mortgagee may act in a manner to "chill the bidding" to try to obtain a lower price for itself. Under Texas common law, a debtor may recover for wrongful foreclosure if an irregularity occurs in the foreclosure process which deters third parties from bidding. A wrongful foreclosure action protects mortgagors against foreclosure sales where, through mistake, fraud, or unfairness, the sale produces an inequitably low price. The plaintiff must show an irregularity in the foreclosure sale and that the irregularity contributed to an inadequate price. The elements of a wrongful foreclosure claim are: (1) a defect in the foreclosure sale proceedings; (2) a grossly inadequate selling price; and (3) a causal connection between the defect and the grossly inadequate selling price. The amount of damages due for wrongful foreclosure is the difference between the value of the property in question at the date of foreclosure and the remaining balance due on the indebtedness.

Argument recommendations for key passage (1)

SFR INVESTMENTS POOL 1, LLC'S OPPOSITION TO PLAINTIFF'S MOTION TO DIMISS LITIGATION

BANK OF NEW YORK MELLON v. MEISTER PARK HOMEOWNERS ASS'N, 2020 U.S. DIST. CT. MOTIONS LEXIS 447697

U.S. Dist. Nev. | 2020-04-14

Argument: C. Nevada Law Cannot Be Replaced with Inapplicable Bankruptcy Code Provisions or Illinois Court Rules

Importantly, there is nothing in Nevada law that would prohibit a Court from setting aside a foreclosure sale conducted on an extinguished Deed of Trust when there was a lis pendens recorded against the Property that had not been cancelled or withdrawn. The Nevada Supreme Court has not been shy about declaring foreclosure sales or portions of sales void even if the property sold to a good faith purchaser without notice, let alone a purchaser who at a foreclosure who had notice of ongoing litigation over the viability of the lien being foreclosed.

Key Passage 15

In Spencer v. Jameson, **147 Idaho 497**, 211 P.3d 106 (2009), the Idaho Supreme Court considered whether a grantor must demonstrateactual harm resulting from an irregularity in the foreclosure process to have the sale set aside. The Court held that **Idaho Code § 45-1506** does not impose such a requirement. Instead, any material irregularity in the foreclosure process can serve as grounds for setting aside the sale, regardless of whether the grantor sufferedactual harm. This case is critical in understanding the standard for challenging foreclosure sales in Idaho and the rights of homeowners to seek redress for defects in the foreclosure process.

Cases recommended for key passage 15 (8)



Motion type:

motion for summary judgment | Granted

Matching legal concepts:

Sale | Notice Of Sale | Trustee | United States Bankruptcy Code | Original Date | Date And Time | Designated Place | Time And Place | Fully Paid | Notice Provision | Payment

Relevant passage: Idaho Code § 45-1506 requires that "[t]he sale [] be held on the date and at the time and place designated in the notice of sale" I.C. § 45-1506(8). "[T]he sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding notice of the sale." Spencer v. Jameson, 147 Idaho 497, 504, 211 P.3d 106, 113 (2009). When the original date and time for a sale is rescheduled because of a stay under the provisions of the U.S. Bankruptcy Code, the trustee is required to follow the notice provisions set forth in Idaho Code § 45-1506A.

Breckenridge Prop. Fund 2016, LLC v. Wally Enter. 170 Idaho 649 Idaho Supreme Court | 2022-08-22

Matching legal concepts:

Trustee | Fully Paid | Payment | Notice Of Sale | Title Of Real Property | Legislature Did Not Intend | Credit Bid | Sale Of Property | Trustee Sale | Actual Notice | Reasonable Inference | Preserve

Outcome: In a suit concerning the legality of an auctioneer providing the terms of sale at the time of the foreclosure sale, without providing earlier notice to potential bidders, the printed conditions of the foreclosure sale were binding on plaintiff when announced by the auctioneer, whether it knew of the conditions beforehand or not.

Relevant passage: Discussing the sale of property at a trustee's sale, this Court has explained "the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale." Spencer v. Jameson, 147 Idaho 497, 504, 211 P.3d 106, 113 (2009). This finality, echoed in Idaho Code section 45-1508, refers to actual notice, and it serves "the legislature's interest in preserving the finality of title to real property." Id. As for Idaho Code section 45-1506, "it is more reasonable to infer that the legislature did not intend for a sale to be set aside once the trustee accepts the credit bid as payment in full." Id. at 504, 211 P.3d at 113. As a result, "the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale (which are admittedly not present in this case).

Motion type:

motion for consolidation | Denied motion to dismiss | Partial motion for judgment on the pleadings | Denied motion for judgment | Denied

Matching legal concepts:

Genuine Issue Of Material Fact | Notice Of Sale | Trustee | Good Faith | Designated Place | Fannie Mae | Trustee Sale | Property Dispute | Time And Place | Fully Paid | Payment | In Good Faith | Purchaser

Relevant passage: Even if the pleadings were factually accurate, a genuine issue of material fact exists about whether the trustee's sale of the disputed property was conducted pursuant to I.C. § 45-1506, and whether Fannie Mae is a purchaser in good faith. Among other things, I.C. § 45-1506 requires that "[t]he sale [] be held on the date and at the time and place designated in the notice of sale " I.C. § 45-1506(8). "[T]he sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding notice of the sale." Spencer v. Jameson, 147 Idaho 497, 504, 211 P.3d 106, 113 (2009).



A Hobson v. Wells Fargo Bank, N.A. 2012 U.S. Dist. LEXIS 19944

U.S. Dist. Idaho | 2012-02-15

Motion type:

motion for summary judgment | Granted

Matching legal concepts:

Assignment | Sale | Notice Of Sale | Interest In Property | Standing To Object | Credit Bid | No Standing | Fully Paid | Payment | Trustee

Relevant passage: But even if the assignment caused some irregularity in the credit bid, "the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale (which are admittedly not present in this case)." Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 113 (Idaho 2009). Therefore, Hobson no longer had any interest in the property after the bid was accepted and has no standing to object to the assignment. Id.



A Gordon v. United States Bank Nat'l Ass'n 166 Idaho 105

Idaho Supreme Court | 2019-12-18

Matching legal concepts:

Validity Of Sale | Foreclosure | Trustee | Failure | Purchaser | Failure To Give Notice | Interest In Property | Successor In Interest | Good Faith | Redeeming Property | Right To Redeem | Purported Violation | Persons Claiming | No Right | Property Covered | Trustee Sale | Fail To Comply | Alleged Error | Giving Notice | Trust Deed | Foreclosure Sale | Provisions Of Section | Actual Knowledge | In Good Faith | Personal Service | Termination | Invalidate | Lender | Publication

Outcome: Am injunction was properly denied where the district court's summary judgment analysis implicitly addressed the borrower's preliminary injunction arguments, an alleged postponement error was not a sufficient basis to delay the foreclosure sale, and the lenders' failure to record a power of attorney did not invalidate the foreclosure.

Relevant passage: FINALITY OF SALE. A sale made by a trustee under this act shall foreclose and terminate

all interest in the property covered by the trust deed of all persons to whom notice is given under section 45-1506, Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with section 45-1506, Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof. I.C. § 45-1508 (italics added). The Lenders claim that section 45-1508, along with Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009), dictate that the completed foreclosure sale should not be invalidated or reversed—despite any alleged error in postponement or purported violation of section 45-1506(8).



Russell v. Onewest Bank FSB 2011 U.S. Dist. LEXIS 121836

U.S. Dist. Idaho | 2011-10-20

Motion type:

motion to dismiss | Partial motion to strike | Partial

Matching legal concepts:

Notice Of Sale | Foreclosure | Interest In Property | High Bidder | Terms Of Section | Fail To Comply | Full Compliance | Bringing Suit | In Default | Invalidate | Trustee

Outcome: Deed of Trust beneficiary's motion to dismiss was granted, in part, because its appointment of a trustee the day before the Deed of Trust was assigned to it was valid; under Idaho Code Ann. § 45-1504(2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment.

Relevant passage: The high bidder brought suit, claiming the borrowers were foreclosed from asserting an interest in the property because the trustee had complied with the notice of sale procedures. The court held that full compliance with the notice of sale procedures did not prevent invalidation of the foreclosure when the buyer was not actually in default. The court reasoned that "by [the terms of section 45-1508] it only applies to sales challenged because of a failure to comply with the provisions of Idaho Code § 45-1506." Id. at 313.



Matching legal concepts:

Foreclosure | Foreclosure Sale | Assigned Property | Interest In Property | Defender Of Wildlife | Establish Standing | Wells Fargo Bank | Standing To Challenge | Limited Circumstance | Fully Paid | Payment | Trustee

Relevant passage: Hobson does not have standing to challenge defendant Wells Fargo Bank, NA's assignment of the property after the foreclosure sale because she no longer had an interest in the property. See Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 113 (Idaho 2009) (stating that, except for limited circumstances not relevant here, a foreclosure "sale is final once the trustee accepts the bid as payment in full"); see also Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992) (requirements to establish standing).

Matching legal concepts:

Full Payment | Time Of Sale | Original Owner | Fail To Comply | Foreclosure | Foreclosure Sale | Property Owner

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: Id. at 142, 59 P.3d at 313. Spencer does not conflict with this view of Idaho Code section 45-1508. Spencer involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code section 45-1506(9), which requires full payment of the bid at the time of sale. Spencer, 147 Idaho at 503-04, 211 P.3d at 112-13.

Key Passage 16

| □David Spencer (the grantor) executed a deed of trust on his property to secure a loan. |
|--|
| Following Spencer's default on the loan, the trustee initiated a non-judicial foreclosure sale. |
| Spencer alleged that there were irregularities in the foreclosure process, particularly with regard to the notice of sale |
| equirements. |
| The district court required Spencer to demonstrate that he sufferedactual harm as a result of the irregularities in order to |
| have the sale set aside. |
| Spencer appealed the decision, arguing that the district court had improperly increased his burden by imposing |
| a requirement to show harm. |

Cases recommended for key passage 16 (8)

A June Mitsuko Masaoka v. Jpmorgan 2011 U.S. Dist. LEXIS 163934 Central Dist. Cal. | 2011-09-08

Motion type:

motion to dismiss | Partial

Matching legal concepts:

Foreclosure Sale | Notice Of Default | Prejudice | Complain | Recording Of A Notice | Non Judicial Foreclosure | Judicial Foreclosure Sale | Sale Aside | Opportunity To Amend | Equitable Basis | Foreclosure Process | Appointed Trustee | Procedural Irregularity | Striking Similarity | Technical Error | Amended Complaint | Trustee Sale | Alleged Fact | Duly Appointed | First American | Amount Owed | Receive Notice | Trust Deed | Nonjudicial | Assignment | Loan | Wrongful | Uphold

Relevant passage: Ms. Masaoka also asserts two procedural irregularities in the foreclosure process. She alleges that she never received notice of default and that First American was not the duly appointed trustee and wrongfully recorded Notice of Trustee's sale. Irregularities in a non-judicial foreclosure sale may be grounds for setting the sale aside if the irregularities are prejudicial to the party challenging the sale. Ferguson v. Avelo Mortg., LLC, 195 Cal. App. 4th 1618, 126 Cal. Rptr. 3d 586, 591, 595-96 (Cal. Ct. App. 2011) (upholding foreclosure sale even though notice of default was invalid and substitution of trustee occurred before assignment of deed of trust because substitution of trustee became effective long before foreclosure sale actually occurred and borrower had never tendered amount owed on loan). Ms. Masaoka has failed to allege facts which show that she was prejudiced by these technical errors, and thus has not alleged an equitable basis for setting aside the sale. Given her previous opportunity to amend her complaint, and the similarity between the two complaints on

these issues, amendment is likely futile.



Salazar v. U.S. Bank N.A. 2015 U.S. Dist. LEXIS 49172

Central Dist. Cal. | 2015-04-06

Motion type:

motion to dismiss | Denied

Matching legal concepts:

Foreclosure Sale | Nonjudicial Foreclosure Sale | Overcoming The Presumption | Presumption Of Validity | Prejudice Resulting | Show Prejudice | Trust Deed | Sufficient Fact | In Default | Amount Due | Defect | Prerequisite | Failure | Omission | Distinction | Demonstrate

Relevant passage: But, Plaintiff has already alleged sufficient facts to demonstrate that the foreclosure sale of her home was void, not voidable. This also overcomes the presumption of validity. See Ram, 234 Cal. App. 4th at 12 ("In the end, the importance of any distinction between a 'void' or 'voidable' nonjudicial foreclosure sale is simply whether the borrower, who is in default, must allege and prove a prerequisite tender of the amount due under the deed of trust and otherwise to show prejudice resulting from the defect, omission, or failure, before the sale will be set aside.").

A Keating v. U.S. ROF III Legal Title Trust 2015-1 (In re Keating) 2017 Bankr. LEXIS 1955 Bankr. Central Dist. Cal. | 2017-07-14

Matching legal concepts:

Sale Of Real Property | Wrongful Foreclosure | Power Of Sale | Willfully Oppressive | Trust Deed | Prejudice | Mortgage | Indebtedness | Fraudulent | Harm

Outcome: Debtor's wrongful foreclosure claim against the loan servicer was unlikely to succeed because no loan modification application was on file on the date of the foreclosure sale, and consequently, the servicer did not violate any applicable state law by proceeding with the sale.

Relevant passage: To prevail on a wrongful foreclosure claim, the party challenging the sale must show: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale (usually but not always the trustor or mortgagor) was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering it. Id. at 104.



♦ Ng v. US Bank Tr. 2016 U.S. Dist. LEXIS 69991

Northern Dist. Cal. | 2016-05-26

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Wrongful Foreclosure | Foreclosure Sale | Lack Of Authority | Foreclosure Deed | Second Defendant | Sale Of Property | Willfully Oppressive | Show Prejudice | Trust Deed | Beneficiary | Indebtedness | Fraudulent | Liable

Relevant passage: Second, Defendants seek dismissal of Ng's claim for wrongful foreclosure. "A beneficiary or trustee under a deed of trust who conducts an illegal, fraudulent or willfully oppressive sale of property may be liable to the borrower for wrongful foreclosure." "[W]hen seeking to set aside the foreclosure sale, the plaintiff must also show prejudice and a tender of the amount of the secured indebtedness, or an excuse of tender." "Tender has been excused when, among other circumstances, the plaintiff alleges the foreclosure deed is facially void, as arguably is the case when the entity that initiated the sale lacked authority to do so." A plaintiff may bring a claim for wrongful foreclosure only once the foreclosure sale has occurred.

A Sladky v. Wu (In re Sladky) 2013 Bankr. LEXIS 2424

Bankr. Northern Dist. Cal. | 2013-06-10

Matching legal concepts:

Sale Of Real Property | Non Judicial Foreclosure | Foreclosure Statute | Wrongful Foreclosure | Power Of Sale | Foreclosure Action | Willfully Oppressive | Trust Deed | Foreclosure Sale | Nonjudicial

Outcome: Debtors had not adequately pleaded the element of prejudice as to their wrongful foreclosure claim. The debtors did not allege that no entity could have foreclosed, that they were not in default on the note, or that the foreclosure sale would not have occurred but for the alleged irregularities in the chain of title.

Relevant passage: A wrongful foreclosure action requires allegations of a violation of California's non-judicial foreclosure statutes. The elements of a cause of action to set aside a foreclosure sale are: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering.

A Gutierrez v. Bank of Am., N.A. 2014 U.S. Dist. LEXIS 49135

Eastern Dist. Cal. | 2014-04-08

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Foreclosure | Prejudice | Sale Of Real Property | Equitable Cause Of Action | Power Of Sale | Willfully Oppressive | Trust Deed | Foreclosure Sale | Case Law | Mortgage

Outcome: The court adopted the majority view that plaintiffs lacked standing to challenge the Pooling and Servicing Agreement to which they were not parties, and thus dismissal of the wrongful foreclosure claim was proper; they did not allege they are able to meet the debt, and thus their quiet title claim under Cal. Code Civ. Proc. § 761.020 failed.

Relevant passage: Finally, Plaintiffs have not adequately alleged that the foreclosure was prejudicial. Case law instructs that the elements of an equitable cause of action to set aside a foreclosure sale are: (1) the trustee or mortgagee caused an illegal, fraudulent, or willfully oppressive sale of real property pursuant to a power of sale in a mortgage or deed of trust; (2) the party attacking the sale was prejudiced or harmed; and (3) in cases where the trustor or mortgagor challenges the sale, the trustor or mortgagor tendered the amount of the secured indebtedness or was excused from tendering." Lona v. Citibank, N.A., 202 Cal. App. 4th 89, 104, 134 Cal. Rptr. 3d 622 (2011).

Central Dist. Cal. | 2012-12-10

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Foreclosure | Trust Deed | Without Merit | Right To Foreclose | Purported Transfer | Repeated Assertion | Foreclosure Process | Proper Character | Amount Owing | Procedural Irregularity | By Fraud | Legal Title | Damage | Prejudice | Assignment | Loan | Wrongful

Relevant passage: Plaintiff's argument that any and all purported transfers or assignments of an interest in the deed of trust pertaining to the property are void, depriving the foreclosing defendants of any right to foreclose on the property, is also without merit. Plaintiff's repeated assertions that he has been damaged by being "wrongfully deprived of legal title by fraud," are properly characterized as allegations of irregularities in the process by which the foreclosure was carried out, not in the deed of trust itself. To the extent that there were any procedural irregularities in the foreclosure process, plaintiff fails to allege any prejudice that resulted therefrom, because he has not alleged a credible ability to tender the amount owing under his loan. See Fontenot, 198 Cal. App. 4th at 272.

A Carney v. Bank of Am. Corp. 2011 U.S. Dist. LEXIS 160978

Central Dist. Cal. | 2011-10-20

Motion type:

motion to dismiss | Denied

Matching legal concepts:

Foreclosure Sale | Prejudice | Trustee | Nonjudicial Foreclosure Sale | Notice Of Default | Sale Aside | Wrongful Foreclosure | Foreclosure Process | Amount Owed | Trust Deed | Impropriety | Complain | Assignment | Loan | Uphold

Relevant passage: Mr. Carney's claims for wrongful foreclosure based on the foreclosure process fail because he has failed to allege prejudice as a result of the specific improprieties in the process asserted in his complaint. Irregularities in a nonjudicial foreclosure sale may be grounds for setting the sale aside if the irregularities are prejudicial to the party challenging the sale. Ferguson v. Avelo Mortg., LLC, 195 Cal. App. 4th 1618, 126 Cal. Rptr. 3d 586, 591, 595-96 (Cal. Ct. App. 2011) (upholding foreclosure sale even though notice of default was invalid and substitution of trustee occurred before assignment of deed of trust because substitution of trustee became effective long before foreclosure sale actually occurred and borrower had never tendered amount owed on loan).

Key Passage 17

oSpencer v. Jameson holds that a grantor does not need to prove that they sufferedactual harm as a result of procedural defects in the foreclosure process.

oln Defendant Bass's case, Plaintiffs cannot argue that Defendant Bass must demonstrateharm in order to challenge the sale. The focus should be on whether the foreclosure process complied with Idaho's statutory requirements, which Defendant Bass argues it did not.

Cases recommended for key passage 17 (1)



Northern Dist. Cal. | 2013-07-10

Motion type:

motion to dismiss | Granted

Matching legal concepts:

Foreclosure Sale | Prejudice | Wrongful Foreclosure | Foreclosure Process | Procedural Defect | Provide Evidence | No Prejudice | Fail To Comply | Procedural Requisite | Injunctive Relief | Civil Code | Interpretation | Confirm | Suffer

Relevant passage: Third, defendants argue that plaintiffs have suffered no prejudice arising from the alleged wrongful foreclosure. Under California law, to challenge a foreclosure sale successfully, the plaintiff must provide evidence of failure to comply with the procedural requirements for the foreclosure sale that cause prejudice to the person attacking the sale. See Angell v. Superior Court, 73 Cal. App. 4th 691, 700, 86 Cal. Rptr. 2d 657 (1999). Defendants also assert that cases interpreting Civil Code § 2924 confirm that minor procedural defects in the foreclosure process do not support injunctive relief.

Key Passage 18

oThe trustee's duty to strictly adhere to the statutory requirements of **Idaho Code § 45-1506** is a central theme in Spencer v. Jameson.

oln this case, Defendant Bass asserts that the trustee failed to comply with these requirements, and as a result, the foreclosure sale is void. Under Spencer v. Jameson, the sale must be set aside due to these material deviations from the statutory procedures.

Cases recommended for key passage 18 (7)



Matching legal concepts:

Trust Deed | Validity Of Sale | Trust Deeds Act | Failure | Fail To Comply | Foreclosure | Purchaser | Failure To Give Notice | Notice Of Sale | Interest In Property | Successor In Interest | Good Faith | Redeeming Property | Legislature Did Not Intend | Right To Redeem | Persons Claiming | No Right | Property Covered | Trustee Sale | Fully Paid | Giving Notice | Foreclosure Sale | Provisions Of Section | Actual Knowledge | Payment | In Good Faith | Personal Service | Real Property | Termination | Default | Publication | Respondent

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: Respondents cite Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009), for the proposition that "under the Idaho Trust Deeds Act, the legislature did not intend for a sale to be set aside once a trustee accepts a bid as payment in full unless there are issues surrounding the notice of the sale." The section of Idaho's Trust Deeds Act addressed to finality, and the section discussed in Spencer, is Idaho Code section 45-1508, which provides that [a] sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section 45-1506, Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by

mailing, personal service, posting or publication in accordance with section 45-1506, Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof. In Taylor, this Court determined the foreclosure sale "was void for failure to comply with Idaho Code § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust" and that Idaho Code section 45-1508 did not suggest that the sale was nevertheless final.

7 440 v. Riverbank 2014 Ida. Dist. LEXIS 37 Idaho Dist. Ct., Kootenai Cty. | 2014-10-16

Motion type:

motion for summary judgment | Granted

Matching legal concepts:

Sale | Notice Of Sale | Trustee | United States Bankruptcy Code | Original Date | Date And Time | Designated Place | Time And Place | Fully Paid | Notice Provision | Payment

Relevant passage: Idaho Code § 45-1506 requires that "[t]he sale [] be held on the date and at the time and place designated in the notice of sale " I.C. § 45-1506(8). "[T]he sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding notice of the sale." Spencer v. Jameson, 147 Idaho 497, 504, 211 P.3d 106, 113 (2009). When the original date and time for a sale is rescheduled because of a stay under the provisions of the U.S. Bankruptcy Code, the trustee is required to follow the notice provisions set forth in Idaho Code § 45-1506A.



Matching legal concepts:

Validity Of Sale | Foreclosure | Trustee | Failure | Purchaser | Failure To Give Notice | Interest In Property | Successor In Interest | Good Faith | Redeeming Property | Right To Redeem | Purported Violation | Persons Claiming | No Right | Property Covered | Trustee Sale | Fail To Comply | Alleged Error | Giving Notice | Trust Deed | Foreclosure Sale | Provisions Of Section | Actual Knowledge | In Good Faith | Personal Service | Termination | Invalidate | Lender | Publication

Outcome: Am injunction was properly denied where the district court's summary judgment analysis implicitly addressed the borrower's preliminary injunction arguments, an alleged postponement error was not a sufficient basis to delay the foreclosure sale, and the lenders' failure to record a power of attorney did not invalidate the foreclosure.

Relevant passage: FINALITY OF SALE. A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section 45-1506, Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with section 45-1506, Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof. I.C. § 45-1508 (italics added). The Lenders claim that section 45-1508, along with Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106 (2009), dictate that the completed foreclosure sale should not be invalidated or reversed—despite any alleged error in postponement or purported violation of section 45-1506(8).

Fannie Mae v. Ormesher 2014 Ida. Dist. LEXIS 31

Idaho Dist. Ct., Kootenai Cty. | 2014-05-20

Motion type:

motion for consolidation | Denied motion to dismiss | Partial motion for judgment on the pleadings | Denied motion for judgment | Denied

Matching legal concepts:

Genuine Issue Of Material Fact | Notice Of Sale | Trustee | Good Faith | Designated Place | Fannie Mae | Trustee Sale | Property Dispute | Time And Place | Fully Paid | Payment | In Good Faith | Purchaser

Relevant passage: Even if the pleadings were factually accurate, a genuine issue of material fact exists about whether the trustee's sale of the disputed property was conducted pursuant to I.C. § 45-1506, and whether Fannie Mae is a purchaser in good faith. Among other things, I.C. § 45-1506 requires that "[t]he sale [] be held on the date and at the time and place designated in the notice of sale " I.C. § 45-1506(8). "[T]he sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding notice of the sale." Spencer v. Jameson, 147 Idaho 497, 504, 211 P.3d 106, 113 (2009).

A Trotter v. Bank of N.Y. Mellon 152 Idaho 842

Idaho Supreme Court | 2012-03-23

Matching legal concepts:

Trustee | Trust Deed | Nonjudicial Foreclosure Proceedings | Notice Of Default | Trust Beneficiary | Formal Notice | Trustee Sale | Authorization | Ownership | Demonstrate

Outcome: Bank, as trustee, was not required to prove it had standing before foreclosing on a deed of trust, Idaho Code Ann. § 45-1505, and the homeowner's claims were properly dismissed. Because the homeowner did not present argument to support his claim that the nominee had no authority to assign the deed of trust, he waived the issue.

Relevant passage: Once the notice of default has been recorded, the trustee must give formal notice of the trustee's sale to parties specified in the statute, Idaho Code Ann. § 45-1506. These are the only requirements that precede foreclosure. Pursuant to Idaho Code Ann. § 45-1505, a trustee may initiate nonjudicial foreclosure proceedings on a deed of trust without first proving ownership of the underlying note or demonstrating that the deed of trust beneficiary has requested or authorized the trustee to initiate those proceedings.

Breckenridge Prop. Fund 2016, LLC v. Wally Enter. 170 Idaho 649 Idaho Supreme Court | 2022-08-22

Matching legal concepts:

Trustee | Fully Paid | Payment | Notice Of Sale | Title Of Real Property | Legislature Did Not Intend | Credit Bid | Sale Of Property | Trustee Sale | Actual Notice | Reasonable Inference | Preserve

Outcome: In a suit concerning the legality of an auctioneer providing the terms of sale at the time of the foreclosure sale, without providing earlier notice to potential bidders, the printed conditions of the foreclosure sale were binding on plaintiff when announced by the auctioneer, whether it knew of the conditions beforehand or not.

Relevant passage: Discussing the sale of property at a trustee's sale, this Court has explained "the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale." Spencer v. Jameson, 147 Idaho 497, 504, 211 P.3d 106, 113 (2009). This finality, echoed in Idaho Code section 45-1508, refers to actual notice, and it serves "the legislature's interest in preserving the finality of title to real property." Id. As for Idaho Code section 45-1506, "it is more reasonable to infer that the legislature did not intend for a sale to be set aside once the trustee accepts the credit bid as payment in full." Id. at 504, 211 P.3d at 113. As a result, "the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale (which are admittedly not present in this case).

Russell v. Onewest Bank FSB 2011 U.S. Dist. LEXIS 121836

U.S. Dist. Idaho | 2011-10-20

Motion type:

motion to dismiss | Partial motion to strike | Partial

Matching legal concepts:

Notice Of Sale | Foreclosure | Interest In Property | High Bidder | Terms Of Section | Fail To Comply | Full Compliance | Bringing Suit | In Default | Invalidate | Trustee

Outcome: Deed of Trust beneficiary's motion to dismiss was granted, in part, because its appointment of a trustee the day before the Deed of Trust was assigned to it was valid; under Idaho Code Ann. § 45-1504(2), the beneficiary vested the authority of trusteeship through the act of recording not the date of assignment.

Relevant passage: The high bidder brought suit, claiming the borrowers were foreclosed from asserting an interest in the property because the trustee had complied with the notice of sale procedures. The court held that full compliance with the notice of sale procedures did not prevent invalidation of the foreclosure when the buyer was not actually in default. The court reasoned that "by [the terms of section 45-1508] it only applies to sales challenged because of a failure to comply with the provisions of Idaho Code § 45-1506." Id. at 313.

Key Passage 19

oThe Idaho Supreme Court in Spencer v. Jameson made it clear that grantors do not need to show that they sufferedactual harm in order to challenge a defective foreclosure sale.

oDefendant Bass's challenge to the foreclosure sale does not require him to demonstrateharm; the material irregularities alone are sufficient to invalidate the sale.

Cases recommended for key passage 19 (4)



Mulcahy v. Fed. Home Loan Mortg. Corp. 2014 U.S. Dist. LEXIS 15738

Western Dist. Wash. | 2014-02-07

Motion type:

motion to dismiss | Denied

Matching legal concepts:

Sale | Foreclosure Sale | Objection | Nonjudicial Foreclosure | Cancellation | Foreclosure Process | Procedural Irregularity | Judicial Declaration | Reasonable Reliance | Alleged Fact | No Effect | Wells Fargo | Waive

Relevant passage: Plaintiffs seek a judicial declaration that the foreclosure sale that occurred on December 27, 2010, is void and of no effect. In support, they allege a host of irregularities in the procedures leading up to the sale and reasonable reliance on Wells Fargo's statements that the sale had been cancelled. Defendants focus on the procedural irregularities, arguing that plaintiffs have failed to allege facts in support of certain objections and/or have waived their objections by failing to enjoin the foreclosure sale. Defendants do not address whether "the nonjudicial foreclosure process [was] fair and free from surprise." Cox v. Helenius, 103 Wn.2d 383, 387, 693 P.2d 683 (1985).

A Bavand v. Onewest Bank, FSB 587 Fed. Appx. 392 9th Circuit - Court of Appeals | 2014-10-20

Matching legal concepts:

Trustee | Technical Error | Show Prejudice | Foreclosure | Foreclosure Sale | State Court

Outcome: Judgment was affirmed as holder (H) was beneficiary of mortgagor's promissory note under Washington Deed of Trust Act and had right to enforce note and any instrument securing note's repayment; H took possession of note and deed of trust on March 19, 2009, and was note's holder during foreclosure period in 2011, entitled to file for foreclosure.

Relevant passage: Washington state courts have required the borrower to show prejudice before they will set aside a trustee's foreclosure sale in the face of allegations of technical errors.

Rivac v. Ndex West LLC 2013 U.S. Dist. LEXIS 177073

Northern Dist. Cal. | 2013-12-17

Matching legal concepts:

Foreclosure Sale | Prejudice | Foreclosure Process | Provide Evidence | Fail To Comply | Procedural Requisite

Outcome: Borrowers failed to allege basis for challenging foreclosure sale since securitization of borrowers' mortgage loan did not nullify right to foreclose against borrowers' real property upon borrowers' default, borrowers were unable to tender amount due, and absence of promissory note in nonjudicial foreclosure did not render foreclosure invalid.

Relevant passage: Under California law, to challenge a foreclosure sale successfully, the plaintiff must provide evidence of failure to comply with the procedural requirements for the foreclosure sale that cause prejudice to the person attacking the sale. Absent any allegation of prejudice, plaintiffs do not have standing to complain about irregularities in the foreclosure process post-foreclosure.

A Natividad v. Wells Fargo Bank, N.A. 2013 U.S. Dist. LEXIS 74067

Northern Dist. Cal. | 2013-05-24

Motion type:

motion for relief | Denied motion to dismiss | Granted

Matching legal concepts:

Prejudice | Harm | Nonjudicial Foreclosure Sale | Alleged Deficiency | Demonstrate

Outcome: In a real estate foreclosure case, sending a notice of default was not the basis for a cause of action under the FDCPA because it did not go beyond enforcing security interests and thus was not \"debt collection\" activity under 15 U.S.C.S. § 1692a(6). Legally-mandated actions required for mortgage foreclosure are not necessarily debt collection.

Relevant passage: Irregularities in a nonjudicial foreclosure sale may be grounds for setting aside the sale if the irregularities are prejudicial to the party challenging the sale. Thus, the party attacking the sale must allege that they were prejudiced or harmed by the violation. The prejudice or harm element is met only if a plaintiff demonstrates that the foreclosure would have been averted but for the alleged deficiencies.

Key Passage 20

For the reasons set forth in the supplemental case law discussed above, Defendant Bass respectfully submits that Plaintiffs' Motion for Summary Judgment should be denied. Procedural and substantive defects, including the lack of a valid default, collusion between the bidder and the trustee, and violations of statutory requirements, marred the foreclosure sale in question. These defects render the sale void under Idaho law, and Plaintiffs cannot claim to be good faith purchasersentitled to possession of the property.

Cases recommended for key passage 20 (2)

<u>Dalby v. Ditech Fin. LLC 2019 U.S. Dist. LEXIS 201274</u>
U.S. Dist. Alaska | 2019-11-20

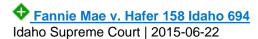
Motion type:

motion to dismiss | Granted

Matching legal concepts:

Foreclosure | Foreclosure Sale | Substantive Defect | Trustee | Unjust | Contest | Render | Notice Of Transfer | Facts Sufficient To State | Reimbursement

Relevant passage: Under Alaska law, a substantial defect in a foreclosure will render it void. Accordingly, a foreclosure sale "will be void 'only in cases which reach unjust extremes." Procedural defects may render a foreclosure sale voidable, but not void. Taking the facts in the FAC as true, the two Corrective Assignments and the Substitution of Trustee are "robosigned and/or void and/or invalid" and Mr. Dalby never received notices of transfer of services or otherwise and was never reimbursed for his five payments to Countrywide. Notably, Mr. Dalby does not contest the validity of the actual transfers of the DOT or the right of the trustee to bring a foreclosure sale. Indeed, he does not contest the right of BOA or MERS to execute a substitution of trustee. The Court finds that Mr. Dalby has not alleged facts sufficient to state a plausible claim that the foreclosure sale is void; the alleged defects are procedural or mechanical and do not rise to the level of unjust extremes or substantive defects with the foreclosure.



Matching legal concepts:

Case Law | Subsequent Case | Foreclosure Sale | Fail To Comply | Default | Full Payment | Time Of Foreclosure | Time Of Sale | Not Valid | No Default | Original Owner | Trust Deed | Property Owner | Real Property

Outcome: Dismissing a borrower's improper foreclosure, breach of contract, and related claims was error where a loan servicer clearly communicated an offer to modify the loan, the borrower had accepted the offer by making trial period plan payments and submitting all required documents, and the servicer could not unilaterally refuse permanent modification.

Relevant passage: In case law, the Supreme Court of Idaho determined the foreclosure sale was void for failure to comply with Idaho Code Ann. § 45-1505(2), which requires that there be a default in order to sell the real property secured by a deed of trust and that Idaho Code Ann. § 45-1508 did not suggest that the sale was nevertheless final. Subsequent case law does not conflict with this view of § 45-1508. The subsequent case law involved a foreclosure sale in which the original owners of property challenged the sale of that property on the ground that the bidder failed to comply with Idaho Code Ann. § 45-1506(9), which requires full payment of the bid at the time of sale. The Supreme Court held that the sale was final and valid despite that failure, though the terms of § 45-1508 might initially have suggested otherwise. Subsequent case law is irrelevant to the Court's prior holding that, where there is no default at the time of a foreclosure sale, the sale is not a sale made by a trustee under this act and so is not valid.

Similar Briefs

Briefs (4)

 CORNERSTONE'S RESPONSE BRIEF, Idaho Supreme Court | August 10, 2021 | 2021 ID S. CT. BRIEFS LEXIS 833

Outcome: No outcome identified

<u>Judge: Bruce L. Pickett | Counsel: Jones Gledhill Fuhrman Gourley, P.A. (Daniel L. Glynn) | Counsel: Stover, Gadd & Associates, PLLC (David W. Gadd) | Counsel: Holden, Kidwell, Hahn & Crapo, P.L.L.C. (D. Andrew Rawlings)</u>

Matching legal concepts from your document: Trustee, Non Judicial Foreclosure, Nonjudicial, Foreclosure Sale, Good Faith Purchaser

Similar cites from your document:

4. Spencer v. Jameson | 147 Idaho 497

△ 3. Taylor v. Just | 138 Idaho 137

2. RESPONDENTS' BRIEF, Idaho Supreme Court | March 29, 2018 | 2018 ID S. Ct. Briefs LEXIS 1011

Outcome: No outcome identified

<u>Judge: Robyn M. Brody | Judge: Jonathan P. Brody | Judge: B. Lynn Winmill | Counsel: Law Office of Gittel Gordon (Gittel Gordon) | Counsel: Parsons Behle & Latimer A Professional Corporation (Jon A. Stenquist)</u>

Matching legal concepts from your document: Foreclosure Process, Foreclosure Sale, Fail To Comply

Similar cites from your document:

A. Spencer v. Jameson | 147 Idaho 497

3. Taylor v. Just | 138 Idaho 137

3. RESPONDENTS' BRIEF, Idaho Supreme Court | March 29, 2018 | 2018 ID S. Ct. Briefs LEXIS 1146

Outcome: No outcome identified

<u>Judge: Robyn M. Brody | Judge: Jonathan P. Brody | Judge: B. Lynn Winmill | Counsel: Law Office of Gittel Gordon (Gittel Gordon) | Counsel: Parsons Behle & Latimer A Professional Corporation (Jon A. Stenquist)</u>

Matching legal concepts from your document: Foreclosure Process, Foreclosure Sale, Fail To Comply

Similar cites from your document:

A 3. Taylor v. Just | 138 Idaho 137

4. Spencer v. Jameson | 147 Idaho 497

4. RESPONDENTS' BRIEF, Idaho Supreme Court | March 29, 2018 | 2018 ID S. Ct. Briefs LEXIS 162

Outcome: No outcome identified

<u>Judge: Robyn M. Brody</u> | <u>Judge: Jonathan P. Brody</u> | <u>Judge: B. Lynn Winmill</u> | <u>Counsel: Law Office of Gittel Gordon</u> | <u>Counsel: Parsons Behle & Latimer A Professional Corporation</u> (Jon A. Stenguist)

Matching legal concepts from your document: Foreclosure Process, Foreclosure Sale, Fail To Comply

Similar cites from your document:

A. Spencer v. Jameson | 147 Idaho 497

A 3. Taylor v. Just | 138 Idaho 137

Cited in your document

Cited In Your Document (7)

1. A Baker v. Nationstar Mortg., LLC (In re Baker)

Cases Bankr. Dist. Idaho | July 28, 2017 | 574 B.R. 184

Discussion Level Cited

OVERVIEW: Motion to dismiss was granted as even if defendant (D) purchased property for \$ 140,282, and plaintiff (P) did not know if D knew of postponement of sale, under Idaho Code Ann. § 45-1508, any failure by mortgagee to comply with Idaho Code Ann. § 45-1506 was not reason to invalidate sale as P did not rebut presumption of reasonably equivalent value.

2. A Idaho Power Co. v. Benj. Houseman Co.

Cases Idaho | April 29, 1993 | 123 Idaho 674

Discussion Level Cited

OVERVIEW: A mortgagee was not precluded from filing an action to collect a debt secured by a mortgage where the mortgage became valueless when a trustee foreclosed on the mortgagor's property and sold it to a third party for less than fair market value.

3. A Taylor v. Just

Cases Idaho | November 22, 2002 | 138 Idaho 137

Discussion Level Cited

OVERVIEW: Sale to the bidder by the trustee was void because prior to the sale the grantor and beneficiary had entered into an agreement resolving the default. The sale was void and the trustee could not be required to execute and deliver a trust deed.

4. A Spencer v. Jameson

Cases Idaho | June 16, 2009 | 147 Idaho 497

Discussion Level Cited

OVERVIEW: Mobile home that was affixed to the land at the time of a non-judicial foreclosure sale, it was

real property under Idaho Code Ann. § 55-101 and was properly transferred to the trustee under Idaho Code Ann. §§ 45-1502(3) and 45-1503. The trial court erred in failing to distribute excess sales proceeds in accordance with Idaho Code Ann. § 45-1507.

5. **♦** Idaho Code § 45-1508

Statutes-Legislation

Discussion Level Analyzed

6. A Idaho Code § 45-1505

Statutes-Legislation

Discussion Level Discussed

7. A Idaho Code § 45-1506
Statutes-Legislation

Discussion Level Mentioned

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