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Shepard's[®] BriefCheck™ Summary Report

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14/5	123 Idaho 674 Idaho Power Co. v. Benj. Houseman Co.	See #13	No quotes	See #13
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Shepard's®: Report Content

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◆ Comprehensive Report forIdaho Code sec. 45-1508

Subsection reports by specific court citation

History (1)

1957, ch. 181, § 8, p. 345; am. 1990, ch. 401, § 3, p. 1122.

Citing Decisions (32)

Idaho Supreme Court

Breckenridge Prop. Fund 2016, LLC v. Wally Enter., 170 Idaho 649, 516 P.3d 73, 2022 Ida. LEXIS 96, 1.

2022 WL 3581124 🕕

B Neutral: 170 Idaho 649 p.659516 P.3d 73 p.83

B Neutral: 170 Idaho 649 p.659516 P.3d 73 p.83

LE Cited by: 170 Idaho 649 p.658516 P.3d 73 p.82

LE Cited by: 170 Idaho 649 p.658516 P.3d 73 p.82

Court: Idaho | Date: August 22, 2022

Gordon v. United States Bank Nat'l Ass'n, 166 Idaho 105, 455 P.3d 374, 2019 Ida. LEXIS 232, 2019 2.

WL 6884983 🚇

LB Cited by: 166 Idaho 105 p.116; 455 P.3d 374 p.385

Court: Idaho | Date: December 18, 2019

3. Fannie Mae v. Hafer, 158 Idaho 694, 351 P.3d 622, 2015 Ida. LEXIS 151 💠

LE Cited by: 158 Idaho 694 p.707; 351 P.3d 622 p.635

Court: Idaho | Date: June 22, 2015

4. Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 2009 Ida. LEXIS 96 A

B Neutral: 147 Idaho 497 p.503211 P.3d 106 p.112

B Neutral: 147 Idaho 497 p.503211 P.3d 106 p.112

LB Cited by: 147 Idaho 497 p.501211 P.3d 106 p.110

LE Cited by: 147 Idaho 497 p.501211 P.3d 106 p.110

Court: Idaho | Date: June 16, 2009

5. PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180, 2009 Ida. LEXIS 18 •



B Neutral: 146 Idaho 631 p.640200 P.3d 1180 p.1189

B Neutral: 146 Idaho 631 p.640200 P.3d 1180 p.1189

LB Cited by: 146 Idaho 631 p.635200 P.3d 1180 p.1184

LE Cited by: 146 Idaho 631 p.635200 P.3d 1180 p.1184

Court: Idaho | Date: January 30, 2009

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6. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429, 2006 Ida. LEXIS 82



LE Cited by: 143 Idaho 42 p.44; 137 P.3d 429 p.431

Court: Idaho | Date: May 25, 2006

7. Taylor v. Just, 138 Idaho 137, 59 P.3d 308, 2002 Ida. LEXIS 178 A



B Neutral: 138 Idaho 137 p.14159 P.3d 308 p.312 **B** Neutral: 138 Idaho 137 p.14159 P.3d 308 p.312 LE Cited by: 138 Idaho 137 p.13959 P.3d 308 p.310

LB Cited by: 138 Idaho 137 p.13959 P.3d 308 p.310

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8. Idaho Power Co. v. Benj. Houseman Co., 123 Idaho 674, 851 P.2d 970, 1993 Ida. LEXIS 100 🔔



LE Cited by: 123 Idaho 674 p.675; 851 P.2d 970 p.971

Court: Idaho | Date: April 29, 1993

9. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 📥



Positive: 79 Idaho 473 p.473; 321 P.2d 210 p.210

Court: Idaho | Date: January 29, 1958

Idaho Court of Appeals

10. Security Pac. Fin. Corp. v. Bishop, 109 Idaho 25, 704 P.2d 357, 1985 Ida. App. LEXIS 690 A



LB Cited by: 109 Idaho 25 p.30; 704 P.2d 357 p.362

Court: Idaho Ct. App. | Date: July 31, 1985

11. Pichon v. L.J. Broekemeier, Inc., 108 Idaho 846, 702 P.2d 884, 1985 Ida. App. LEXIS 656



LB Cited by: 108 Idaho 846 p.850; 702 P.2d 884 p.888

Court: Idaho Ct. App. | Date: June 28, 1985

Idaho District Court

12. 440 v. Riverbank, 2014 Ida. Dist. LEXIS 37

LE Cited by:

Court: Idaho Dist. Ct. | Date: October 16, 2014

13. Fannie Mae v. Noordam, 2014 Ida. Dist. LEXIS 15

LE Cited by:

Court: Idaho Dist. Ct. | Date: September 19, 2014

14. Ormesher v. Citimortgage, Inc., 2014 Ida. Dist. LEXIS 42

LE Cited by:

Court: Idaho Dist. Ct. | Date: July 30, 2014

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

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Court: Idaho Dist. Ct. | Date: May 20, 2014

16. Liberty Bankers Life Ins. Co. v. Witherspoon, 2014 Ida. Dist. LEXIS 16

LE Cited by:

Court: Idaho Dist. Ct. | Date: January 08, 2014

17. Marina at Black Rock v. Idaho Independent Bank, 2011 Ida. Dist. LEXIS 93

LE Cited by:

Court: Idaho Dist. Ct. | Date: May 11, 2011

9th Circuit - Court of Appeals

18. Northwest Equipment Sales Co. v. Western Packers, Inc., 623 F.2d 92, 1980 U.S. App. LEXIS 15872, 29 U.C.C. Rep. Serv. (CBC) 1078

LE Cited by: 623 F.2d 92 p.95

Court: 9th Cir. Idaho | Date: July 10, 1980

19. <u>United States v. Stadium Apartments, Inc.</u>, 425 F.2d 358, 1970 U.S. App. LEXIS 9801, 1970 WL 25 Q

<u>United States V. Stadium Apartments, Inc.</u>, 425 F.2d 358, 1970 U.S. App. LEXIS 9801, 1970 WL 25

LE Cited by: 425 F.2d 358 p.364

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9th Circuit - U.S. District Courts

20. Allen v. Campbell, 706 F. Supp. 3d 1047, 2020 U.S. Dist. LEXIS 220635 (A)

LIB Cited by: 706 F. Supp. 3d 1047 p.1056; 2020 U.S. Dist. LEXIS 220635

Court: Dist. Idaho | Date: November 23, 2020

21. Anderson v. Northwest Tr. Servs., 2016 U.S. Dist. LEXIS 126798, 2016 WL 4974957

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23. Russell v. Onewest Bank FSB, 2011 U.S. Dist. LEXIS 121836, 2011 WL 5025236



B Neutral: 2011 U.S. Dist. LEXIS 121836 Court: Dist. Idaho | Date: October 20, 2011

24. Sterling Sav. Bank v. Ralston, 2010 U.S. Dist. LEXIS 37445, 2010 WL 1506732

B Neutral: 2010 U.S. Dist. LEXIS 37445 Court: Dist. Idaho | Date: April 13, 2010

25. Davis v. Keybank Nat'l Ass'n, 2005 U.S. Dist. LEXIS 29435, 2005 WL 2847239

LE Cited by: 2005 U.S. Dist. LEXIS 29435 Court: Dist. Idaho | Date: October 26, 2005

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26. Baker v. Nationstar Mortg., LLC (In re Baker), 574 B.R. 184, 2017 Bankr. LEXIS 2110 A



LE Cited by: 574 B.R. 184 p.190

Court: Bankr. Dist. Idaho | Date: July 28, 2017

27. Thorien v. Baro Enterprises, LLC (In re Thorien), 2008 Bankr. LEXIS 3910, 2008 WL 5683488



LE Cited by: 2008 Bankr. LEXIS 3910

Court: Bankr. Dist. Idaho | Date: November 06, 2008

28. In re Wiebe, 353 B.R. 906, 2006 Bankr. LEXIS 2966 A

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Court: Bankr. Dist. Idaho | Date: October 31, 2006

29. In re Jay, 2002 Bankr. LEXIS 1547, 49 Collier Bankr. Cas. 2d (MB) 1516 🕒



LEXIS 1547 p.7

Court: Bankr. Dist. Idaho | Date: December 31, 2002

30. Young v. Washington Fed. Sav. & Loan Ass'n, 156 B.R. 282, 1993 Bankr. LEXIS 964



Idaho Code § 45-1508

LIB Cited by: 156 B.R. 282 p.287

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LE Cited by:

Court: Bankr. Dist. Idaho | Date: January 15, 1992

32. In re Bear Lake West, Inc., 36 B.R. 413, 1984 Bankr. LEXIS 6355 A



LB Cited by: 36 B.R. 413 p.415

Court: Bankr. Dist. Idaho | Date: January 27, 1984

Other Citing Sources: (37)

Annotated Statutes

1. <u>11 U.S.C. sec. 362</u>

Content: Statutes

2. Idaho Code sec. 11-310

Content: Statutes

3. Idaho Code sec. 11-401

Content: Statutes

4. Idaho Code sec. 11-402

Content: Statutes

5. Idaho Code sec. 45-1506

Content: Statutes

Practical Guidance

6. Methods of Residential Foreclosure State Law Survey

Content: Practical Guidance

7. Foreclosure Redemption State Law Survey

Content: Practical Guidance

Law Reviews and Periodicals

8. ARTICLE: CRYPTO IN REAL ESTATE FINANCE, 75 Ala. L. Rev. 93

Idaho Code § 45-1508

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9. ARTICLE: AN ECONOMIC ANALYSIS OF MORTGAGOR PROTECTION LAWS, 77 Va. L. Rev. 489

Content: Law Reviews | Date: April 01, 1991

Treatise Citations

10. Remedies, 1 Asset Based Financing: A Transactional Guide @ 9.10

Content: Treatises

11. Construction Lender?s Remedies on Borrower?s Default*This chapter was prepared by Robert M. Berger, Adjunct Professor of Law, Northwestern University Law School, Senior Counsel, Krasnow Sanberg Cornblath & Hobbs (Chicago), and Executive Vice President and General Counsel, Capri Capital L.P. He gratefully acknowledges the assistance of Robert E. Gordon, Paul Meyer, Christopher Vidovic, Bruce Mason and Thomas Kiriakos as to certain aspects of the chapter, and of Louis A. Chaiten, Robert C. Linton, Kathryn A. Lloyd, Christopher S. Napier, Leonard X. Rosenberg, Lane W. Vanderslice and Rebecca Zucker as to certain annual updates of the chapter, all of whom are or had been associated with Mayer Brown Rowe & Maw (Chicago), and of Kathy Zambrano of Northwestern University Law School for assistance with the 2002 annual update. The 2013 update was prepared by Smita G. Korrapati, Esq., a member of the New York Bar and Peter S. Britell, Partner at Venable LLP., 4 Construction Law P 14.06

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Briefs

12. BRECKENRIDGE PROP. FUND 2016 v. v., 2021 ID S. Ct. Briefs LEXIS 833

Content: Court Filings | Date: August 10, 2021

13. BRECKENRIDGE PROP. FUND 2016 v. WALLY ENTERPRISES, 2021 ID S. Ct. Briefs LEXIS 745

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14. BRECKENRIDGE PROP. FUND 2016 v. v., 2021 ID S. Ct. Briefs LEXIS 657

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 BERGEMAN v. SELECT PORTFOLIO SERVICING & MOHAMED ELABED, 2018 ID S. Ct. Briefs LEXIS 509

Content: Court Filings | Date: May 21, 2018

16. GORDON v. U.S. BANK NAT'L ASS'N, 2018 ID S. Ct. Briefs LEXIS 1146

Content: Court Filings | Date: March 29, 2018

17. GORDON v. U.S. BANK NAT'L ASS'N, 2018 ID S. Ct. Briefs LEXIS 1011

Content: Court Filings | Date: March 29, 2018

18. GORDON v. U.S. BANK NAT'L ASS'N, 2018 ID S. Ct. Briefs LEXIS 162

Content: Court Filings | Date: March 29, 2018

19. BURNSIDE v. NORTHWEST, 2017 ID S. Ct. Briefs LEXIS 1079

Content: Court Filings | Date: July 26, 2017

20. BURNSIDE v. NORTHWEST, 2017 ID S. Ct. Briefs LEXIS 991

Content: Court Filings | Date: July 26, 2017

21. FEDERAL HOME LOAN MORTG. CORP. v. BUTCHER, 2014 ID S. Ct. Briefs LEXIS 111

Content: Court Filings | Date: March 19, 2014

22. FEDERAL HOME LOAN MORTG. CORP. v. BUTCHER, 2014 ID S. Ct. Briefs LEXIS 112

Content: Court Filings | Date: February 20, 2014

23. Federal Nat'l Mortg. Assoc v. Allen, 2011 ID S. Ct. Briefs LEXIS 311

Content: Court Filings | Date: October 07, 2011

24. Fannie Mae v. ALLEN, 2011 ID S. Ct. Briefs LEXIS 310

Content: Court Filings | Date: September 16, 2011

25. WASHINGTON FED. SAV. v. VAN ENGELEN, 2011 ID S. Ct. Briefs LEXIS 321

Content: Court Filings | Date: September 13, 2011

BLACK DIAMOND ALLIANCE LLC v. KIMBALL, 2009 ID S. Ct. Briefs LEXIS 144

Content: Court Filings | Date: June 12, 2009

27. SPENCER v. JAMESON, 2008 ID S. Ct. Briefs LEXIS 61

Content: Court Filings | Date: February 06, 2008

Motions

28. DAVIS v. KEYBANK NAT'L ASS'N, 2006 U.S. Dist. Ct. Motions LEXIS 80345

Content: Court Filings | Date: February 23, 2006

29. DAVIS v. KEYBANK NAT'L ASS'N, 2006 U.S. Dist. Ct. Motions LEXIS 80349

Content: Court Filings | Date: February 16, 2006

30. ALLEN v. CAMPBELL, 2020 U.S. Dist. Ct. Motions LEXIS 40989

Content: Court Filings | Date: May 08, 2020

31. Russel v Onewest Bank FSB, 2011 U.S. Dist. Ct. Motions LEXIS 21033

Content: Court Filings | Date: September 19, 2011

32. RUSSELL v. ONEWEST BANK F.S.B., 2011 U.S. Dist. Ct. Motions LEXIS 21032

Content: Court Filings | Date: August 31, 2011

33. Russel v Onewest Bank FSB, 2011 U.S. Dist. Ct. Motions LEXIS 21031

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34. ROCKROSE v. FIRST AMERICAN TITLE, 2006 U.S. Dist. Ct. Motions LEXIS 18208

Content: Court Filings | Date: May 04, 2006

35. WIEBE, 2006 U.S. Bankr. Ct. Motions LEXIS 2788

Content: Court Filings | Date: September 01, 2006

36. JAROLD JENNINGS, 2003 U.S. Bankr. Ct. Motions LEXIS 1029

Content: Court Filings | Date: July 10, 2003

Pleadings

37. Russel v Onewest Bank FSB, 2011 U.S. Dist. Ct. Pleadings LEXIS 2677

Content: Court Filings | Date: May 17, 2011



Idaho Code § 45-1508

Statutes current through all legislation from the 2024 Regular Session.

Idaho Code > Title 45 Liens, Mortgages and Pledges (Chs. 1 — 19) > Chapter 15 Trust Deeds ($\S\S$ 45-1501 — 45-1515)

45-1508. 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 <u>section 45-1506</u>, <u>Idaho Code</u>, 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 <u>section 45-1506</u>, <u>Idaho Code</u>, 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 <u>section 45-1506</u>, <u>Idaho Code</u>, 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.

History

1957, ch. 181, § 8, p. 345; <u>am. 1990, ch. 401, § 3</u>, p. 1122.

Annotations

STATUTORY NOTES

Legislative Intent.

Section 5 of <u>S.L. 1990, ch. 401</u> read: "The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law:

- "a. The sentence added to subsection (3) of section 45-1505, Idaho Code;
- "b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of <u>section 45-1506</u>, <u>Idaho Code</u>;
- "c. The changes reflected in Section 4 [§ 45-1510] of this act; and
- "d. Various mere semantical changes and corrections of obvious grammatical and typographical errors."

Compiler's Notes.

The term "this act" near the beginning of the section refers to S.L. 1957, Chapter 181, which is compiled as <u>§§ 45-901</u>, <u>45-902</u>, <u>45-904</u>, <u>45-905</u>, <u>45-907</u>, <u>45-908</u>, <u>45-1003</u>, <u>45-1506</u> to <u>45-1506</u> and <u>45-1507</u> to <u>45-1515</u>.

JUDICIAL DECISIONS

Applicability.

The buyer protections afforded by this section apply only to sales challenged for a failure to comply with the procedural provisions of § 45-1506; good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. This section does not apply to a foreclosure sale that was void for a lack of default at the time of the sale. Baker v. Nationstar Mortg., LLC, 574 B.R. 184, 2017 Bankr. LEXIS 2110 (Bankr. D. Idaho 2017).

Bankruptcy.

Where prior to the commencement of bankruptcy proceedings, a purchaser at a trust deed sale was an entity under a specific local law against whom a subsequent bona fide purchaser could not perfect an interest, notwithstanding the provisions of the general recording laws, the rights of purchaser of bankrupt debtor's residence, as of the time of the sale, could not be avoided under § 544 (a) (3) of the Bankruptcy Code (11 U.S.C. § 544 (a) (3)). Young v. Washington Fed. Sav. & Loan Ass'n, 156 B.R. 282, 1993 Bankr. LEXIS 964 (Bankr. D. Idaho 1993).

Claims Against Mortgagor's Successor.

A mortgagee is not precluded from suing to collect the entire debt secured by a mortgage where the debt was not due and where there was no basis to foreclose the mortgage at the time the property was sold to a third party by the trustee of prior deeds of trust for less than the fair market value of the property. <u>Idaho Power Co. v. Benj. Houseman Co.</u>, 123 Idaho 674, 851 P.2d 970, 1993 Ida. LEXIS 100 (1993).

Constitutionality.

The statutory right of redemption, following an execution sale of real property, given by §§ 11-310, 11-401, 11-402 and following judicial foreclosure of a mortgage, given by § 6-101 is expressly denied to the grantor in a trust deed by this section where the sale is made by the trustee by notice and sale, or advertisement and sale, pursuant to the power contained in the deed and the applicable portions of said chapter 15 of title 45. The legislative withdrawal of this legislatively given right of redemption is not a denial of due process, where the withdrawal is effected only in cases where the property owner by his contract so agrees. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 (1958).

Discharge of Security Interest.

Although the seller of various items of fruit packing machinery had retained a security interest to secure the purchase price, a subsequent foreclosure sale of the real property to which the machinery was affixed discharged the security interest held by the seller of the machinery, where the purchase at the foreclosure sale of the real estate and fruit packing machinery was in good faith. *Northwest Equip. Sales Co. v. Western Packers, Inc., 623 F.2d 92, 1980 U.S. App. LEXIS 15872 (9th Cir. 1980).*

Equitable Remedies.

Although this section prevents the purchaser from redeeming the property sold, it does not prevent equity from ordering compensation to the vendor for her conveyance of the property. <u>Pichon v. L.J. Broekemeier, Inc., 108</u> Idaho 846, 702 P.2d 884, 1985 Ida. App. LEXIS 656 (Ct. App. 1985).

Good Faith Purchaser.

Idaho Code § 45-1508

Bidder was not a good faith purchaser because the foreclosure sale was void for failure to comply with § 45-1505(2); and the bidder was not a good faith purchaser for value because he did not acquire title to the real property. Taylor v. Just, 138 Idaho 137, 59 P.3d 308, 2002 Ida. LEXIS 178 (2002).

Irregularity In Sale.

This section does not require that the grantor to a deed of trust demonstrate harm resulting from an irregularity in a non-judicial foreclosure sale in order to have the sale set aside. The district court may not impose this additional requirement, thereby increasing the grantor's burden. <u>Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 2009 Ida.</u> LEXIS 96 (2009).

Completed foreclosure sale was not invalidated or reversed, despite any alleged error in postponement or a purported violation of § 45-1506(8), where the borrower received proper notice of the initial foreclosure sale and proper subsequent procedures remedied any prior problems with the postponement. Gordon v. United States Bank Nat'l Ass'n, 166 Idaho 105, 455 P.3d 374, 2019 Ida. LEXIS 232 (2019).

Cited in:

Bear Lake W., Inc. v. Stock, 36 B.R. 413, 1984 Bankr. LEXIS 6355 (Bankr. D. Idaho 1984); PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180, 2009 Ida. LEXIS 18 (2009).

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Shepard's request: Idaho Code § 45-1508

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Full text request: Idaho Code § 45-1508

The full text of this report is identical to citation #1



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Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: ABaker v. Nationstar Mortg., LLC (In re Baker) 574 B.R. 184,2017 Bankr. LEXIS 2110: (Bankr. Dist. Idaho July 28, 2017)

No subsequent appellate history. Prior history available.

Appellate History (2)

Prior

In re Baker (Chapter 13) 1.

Court: Bankr. Dist. Idaho | Date: January 20, 2017

2. **○** Citation you Shepardized™

Adversary proceeding at and Complaint dismissed at and in part:

Baker v. Nationstar Mortg., LLC (In re Baker), 574 B.R. 184, 2017 Bankr. LEXIS 2110 A

Court: Bankr. Dist. Idaho | Date: July 28, 2017

Citing Decisions (4)



Other Citing Sources: (2)

Annotated Statutes

1. <u>Idaho Code sec. 45-1506</u>

Content: Statutes

2. <u>Idaho Code sec. 45-1508</u>

Content: Statutes

Table Of Authorities (23)

U.S. Supreme Court

1. <u>Ashcroft v. Iqbal</u>, 556 U.S. 662, 129 S. Ct. 1937, 173 L. Ed. 2d 868, 2009 U.S. LEXIS 3472, 77 U.S.L.W. 4387, 21 Fla. L. Weekly Fed. S 853, 73 Fed. R. Serv. 3d (Callaghan) 837, 2009-2 Trade Cas. (CCH) P76785

Citing

First Ref: 574 B.R. 184 at p.188

Discussion: Court: U.S. | Date: May 18, 2009

2. <u>Bell Atl. Corp. v. Twombly</u>, 550 U.S. 544, 127 S. Ct. 1955, 167 L. Ed. 2d 929, 2007 U.S. LEXIS 5901, 75 U.S.L.W. 4337, 20 Fla. L. Weekly Fed. S 267, 41 Comm. Reg. (P & F) 567, 68 Fed. R. Serv. 3d (Callaghan) 661, 2007-1 Trade Cas. (CCH) P75709 Q

Citing

First Ref: 574 B.R. 184 at p.188

Discussion: Court: U.S. Date: May 21, 2007

3. <u>Jackson v. Birmingham Bd. of Educ.</u>, 544 U.S. 167, 125 S. Ct. 1497, 161 L. Ed. 2d 361, 2005 U.S. LEXIS 2928, 73 U.S.L.W. 4233, 18 Fla. L. Weekly Fed. S 193, 86 Empl. Prac. Dec. (CCH) P41871, 95 Fair Empl. Prac. Cas. (BNA) 669

Citing

First Ref: 574 B.R. 184 at p.188

Discussion: Court: U.S. | Date: March 29, 2005

4. <u>BFP v. Resolution Trust Corp.</u>, 511 U.S. 531, 114 S. Ct. 1757, 128 L. Ed. 2d 556, 1994 U.S. LEXIS 3776, 62 U.S.L.W. 4359, 8 Fla. L. Weekly Fed. S 129, 94 Cal. Daily Op. Service 3630, 94 D.A.R. 6865, 25 Bankr. Ct. Dec. (LRP) 1051, Bankr. L. Rep. (CCH) P75885, 30 Collier Bankr. Cas. 2d (MB) 345

Following

First Ref:574 B.R. 184 at p.190

Discussion: Court: U.S. | Date: May 23, 1994

5. Foman v. Davis, 371 U.S. 178, 83 S. Ct. 227, 9 L. Ed. 2d 222, 1962 U.S. LEXIS 65, 6 Fed. R. Serv. 2d (Callaghan) 1234

Following

First Ref: 574 B.R. 184 at p.192

Discussion: Court: U.S. | Date: December 03, 1962

9th Circuit - Court of Appeals

6. <u>Johnson v. Riverside Healthcare Sys.</u>, 534 F.3d 1116, 2008 U.S. App. LEXIS 15994, 91 Empl. Prac. Dec. (CCH) P43262, 103 Fair Empl. Prac. Cas. (BNA) 1553

Citing

First Ref: 574 B.R. 184 at p.188

Discussion: Court: 9th Cir. Cal. | Date: July 28, 2008

7. Navarro v. Block, 250 F.3d 729, 2001 U.S. App. LEXIS 8874, 2001 Cal. Daily Op. Service 3774, 2001 D.A.R. 4659

Citing

First Ref: 574 B.R. 184 at p.188

Discussion: Court: 9th Cir. Cal. Date: May 11, 2001

8. <u>Balistreri v. Pacifica Police Dep't</u>, 901 F.2d 696, 1988 U.S. App. LEXIS 19444, 15 Immigr. Cas. Rep. A2-51

Citing

First Ref:574 B.R. 184 at p.188

Discussion: Ourt: 9th Cir. Cal. Date: August 23, 1988

9. D.L. Evans Bank v. Hopkins (In re Fox Bean Co.), 144 Fed. Appx. 697, 2005 U.S. App. LEXIS 21809

Citing

First Ref:574 B.R. 184 at p.189

Court: 9th Cir. Idaho | Date: September 29, 2005

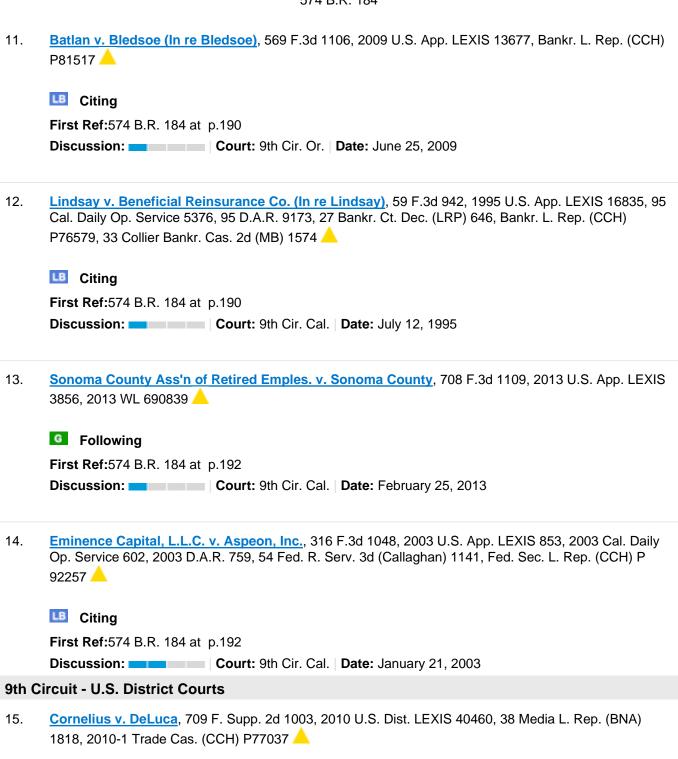
Tracht Gut, LLC v. L.A. Cnty. Treasurer & Tax Collector, 836 F.3d 1146, 2016 U.S. App. LEXIS 16513, 63 Bankr. Ct. Dec. (LRP) 13, Bankr. L. Rep. (CCH) P82999, 76 Collier Bankr. Cas. 2d (MB) 522



Citing

First Ref:574 B.R. 184 at p.190

Discussion: Court: 9th Cir. | Date: September 08, 2016



LE Citing

First Ref:574 B.R. 184 at p.188

Discussion: Court: Dist. Idaho | Date: April 26, 2010

9th Circuit - U.S. Bankruptcy Courts

16. Hillen v. City of Many Trees, LLC (In re CVAH, Inc.), 570 B.R. 816, 2017 Bankr. LEXIS 1203, 64 Bankr. Ct. Dec. (LRP) 50

Citing

First Ref: 574 B.R. 184 at p.188

Court: Bankr. Dist. Idaho | Date: May 02, 2017

Beach v. Bank of Am. (In re Beach), 447 B.R. 313, 2011 Bankr. LEXIS 631 17.



Citing

First Ref: 574 B.R. 184 at p.188

Discussion: Court: Bankr. Dist. Idaho | Date: February 25, 2011

18. In re Lifestyle Furnishings, LLC, 418 B.R. 382, 2009 Bankr. LEXIS 3342, 52 Bankr. Ct. Dec. (LRP) 88



Citing

First Ref:574 B.R. 184 at p.188

Court: Bankr. Dist. Idaho | Date: October 16, 2009

19. Hopkins v. D.L. Evans Bank (In re Fox Bean Co.), 287 B.R. 270, 2002 Bankr. LEXIS 1481, 49 Collier Bankr. Cas. 2d (MB) 1481 A

Citing

First Ref: 574 B.R. 184 at p.189

Court: Bankr. Dist. Idaho | Date: December 26, 2002

20. Ulberg v. Bank of Am., N.A. (In re Ulberg), 2011 Bankr. LEXIS 4532, 2011 WL 6016131



Citing

First Ref: 574 B.R. 184 at p.191

Court: Bankr. Eastern Dist. Cal. | Date: November 29, 2011

California Supreme Court

21. Bank of America National Trust & Savings & Trust Assn. v. Reidy, 15 Cal. 2d 243, 101 P.2d 77, 1940 Cal. LEXIS 211 A

Citing

First Ref: 574 B.R. 184 at p.191

Discussion: Court: Cal. | Date: March 27, 1940

California Courts of Appeal

22. 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 102 Cal. Rptr. 2d 711, 2001 Cal. App. LEXIS 2, 2001 Cal. Daily Op. Service 125, 2001 D.A.R. 129

■ Citing

First Ref:574 B.R. 184 at p.191

Discussion: Court: Cal. App. 2d Dist. Date: January 02, 2001

Idaho Supreme Court

■ Citing

23. <u>Taylor v. Just</u>, 138 Idaho 137, 59 P.3d 308, 2002 Ida. LEXIS 178 A

First Ref:574 B.R. 184 at p.191

Discussion: Court: Idaho | Date: November 22, 2002



A Caution

As of: October 25, 2024 11:01 PM Z

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

United States Bankruptcy Court for the District of Idaho
July 28, 2017, Decided

Bankruptcy Case No. 17-00044-JDP, Adv. Proceeding No. 17-06010-JDP

Reporter

574 B.R. 184 *; 2017 Bankr. LEXIS 2110 **

In Re: Teresa A. Baker, Debtor.Teresa A. Baker, Plaintiff, vs. Nationstar Mortgage, LLC and Duke Partners II, LLC, Defendants.

Core Terms

foreclosure sale, trustee sale, postpone, equivalent value, insolvent, alleges, argues, fails, deed, motion to dismiss, schedules, bankruptcy petition, bankruptcy case, title company, foreclosure, purchaser, reasons, void

Case Summary

Overview

HOLDINGS: [1]-Plaintiff sufficiently alleged that she was insolvent at the time of the transfer for 11 U.S.C.S. § 548 purposes; [2]-Even if defendant purchased the property for \$ 140,282, and plaintiff did not know if defendant knew of the postponement of the sale or communicated with the mortgagee before the sale, under Idaho Code Ann. § 45-1508, any failure by the mortgagee to comply with Idaho Code Ann. § 45-1506 was not a reason to invalidate the sale since plaintiff did not rebut the presumption that the sale was for reasonably equivalent value; [3]-Even if the mortgagee's misrepresentations provided a basis to set aside the sale to defendant, plaintiff did not compare the sale price to the value she would have received at properly conducted foreclosure sale; [4]-Plaintiff failed to state a claim under 11 U.S.C.S. § 544(b)(1) as defendant was a bona fide purchaser.

Outcome

Motion to dismiss granted, in part, and denied, in part.

LexisNexis® Headnotes

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Dismissal of Adversary Proceedings

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

HN1 Adversary Proceedings, Dismissal of Adversary Proceedings

Fed. R. Civ. P. 12(b)(6), made applicable in adversary proceedings by Fed. R. Bankr. P. 7012(b), allows motions to dismiss for failure to state a claim upon which relief may be granted. The bankruptcy court has explained the standard for its consideration of such a motion as follows: The purpose of such a motion is to test a claim's legal sufficiency. To survive a Rule 12(b)(6) motion, a complaint must plead sufficient facts, which when accepted as true, support a claim that is plausible on its face. A claim is plausible so long as it is based on a cognizable legal theory and has sufficiently alleged facts to support that theory. Under Rule 12(b)(6), the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims.

Baker v. Nationstar Mortg., LLC (In re Baker), 574 B.R. 184

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

HN2[3]

Defenses, Demurrers & Objections, **Motions to Dismiss**

A judge ruling on a defendant's motion to dismiss a complaint must accept as true all of the factual allegations contained in the complaint. While the court generally can not consider extraneous materials when evaluating a motion to dismiss, it may consider exhibits attached to, and documents incorporated by reference in, the complaint.

Bankruptcy Law > ... > Avoidance > Fraudulent Transfers > Elements

Real Property Law > Financing > Foreclosures

HN3 Fraudulent Transfers, Elements

11 U.S.C.S. § 548(a)(1) empowers a trustee to avoid the involuntary transfer of an interest of the plaintiff in property made within two years before the filing of the bankruptcy petition if the plaintiff was insolvent on the date that the transfer was made and she received less than reasonably equivalent value in exchange for the transfer. § 548(a)(1)(B). The term "transfer" is defined in the U.S. Bankruptcy Code to include the kind of involuntary transfer of a debtor's interest that occurs via a trustee's sale to foreclose a creditor's deed of trust lien. 11 U.S.C.S. § 101(54)(C)-(D). While § 548 expressly bestows this avoidance power on the trustee, under §§ 522(g) and (h), a debtor may assert a claim to avoid a transfer of otherwise exempt property if the transfer was not voluntary, the debtor did not conceal the property, and if the trustee does not attempt to avoid the transfer.

Bankruptcy Law > Case Administration > Commencement of Case

HN4 Case Administration, Commencement of Case

The U.S. Bankruptcy Code defines "insolvent" as a financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of property that may be exempted from property of the estate under 11 U.S.C.S.

§ 522. 11 U.S.C.S. § 101(32)(A).

Civil Procedure > Judgments > Enforcement & Execution > Fraudulent Transfers

Real Property Law > Financing > Foreclosures

Evidence > Inferences & Presumptions > Presumptions > Particular Presumptions

Evidence > Inferences & Presumptions > Presumptions > Rebuttal of Presumptions

HN5 Enforcement & Execution, Fraudulent **Transfers**

A prepetition mortgage foreclosure sale conducted in accordance with state law conclusively establishes that the price obtained at that sale was for reasonably equivalent value. A defendant is 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. A trustee's sale may be set aside only if there was an irregularity in the conduct of the sale that would permit judicial invalidation of the sale under applicable state law. Even if there was such an irregularity, and the presumption is therefore inapplicable, the transfer to the defendant resulting from the trustee's sale may only be avoided by a plaintiff if the price received at the sale was not reasonably equivalent to the price that would have been received if the foreclosure sale had proceeded according to law.

Bankruptcy Law > ... > Avoidance > Fraudulent Transfers > Elements

HN6 Fraudulent Transfers, Elements

While former <u>11 U.S.C.S.</u> § <u>548(a)(2)(A)</u> has been renumbered to § 548(a)(1)(B), its substance remains materially the same.

Real Property Law > Financing > Foreclosures

HN7 Financing, Foreclosures

Idaho Code Ann. tit. 45, ch. 15 governs the foreclosure of trust deeds. Idaho Code Ann. §§ 45-1501-45-1515. Idaho Code Ann. § 45-1506 describes the manner in which a trust deed is to be foreclosed. But Idaho Code Ann. § 45-1508 specifies that 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.

Real Property Law > Financing > Foreclosures

HN8[♣] Financing, Foreclosures

The buyer protections afforded by <u>Idaho Code Ann.</u> § <u>45-1508</u> apply only to sales challenged for a failure to comply with the procedural provisions of <u>Idaho Code Ann.</u> § <u>45-1506</u>. And good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. <u>Section 45-1508</u> does not apply to a foreclosure sale that was void for a lack of default at the time of the sale.

Bankruptcy Law > ... > Avoidance > Prepetition Transfers > Voidable Transfers

HN9 ▶ Prepetition Transfers, Voidable Transfers

Under 11 U.S.C.S. § 544(b)(1), a trustee may avoid any prebankruptcy transfer that a creditor holding an unsecured claim in the bankruptcy case could have voided under applicable law. § 544(b)(1). The presence of fraud alone does not render the foreclosure sale to a bona fide purchaser void.

Bankruptcy Law > Procedural Matters > Adversary Proceedings

Civil Procedure > ... > Pleadings > Amendment of Pleadings > Leave of Court

Evidence > Inferences & Presumptions > Presumptions > Particular Presumptions

Bankruptcy Law > Procedural Matters > Adversary Proceedings > Dismissal of Adversary Proceedings

<u>HN10</u>[♣] Procedural Matters, Adversary Proceedings

Fed. R. Civ. P. 15(a)(2), made applicable to an adversary proceeding by Fed. R. Bankr. P. 7015, provides that the court should freely give leave to amend when justice so requires. In the Ninth Circuit, this policy is to be applied with extreme liberality. Absent prejudice, or a strong showing of any of the remaining Foman factors, there exists a presumption under Rule 15(a) in favor of granting leave to amend. The Foman factors include undue delay, bad faith, dilatory motives on the part of the movant, repeated failures to cure deficiencies through earlier allowed amendments, undue prejudice to opposing parties, and futility. Additionally, dismissal with prejudice and without leave to amend is not appropriate unless it is clear that the complaint could not be saved by amendment.

Counsel: [**1] For Plaintiff: Patrick Geile, FOLEY FREEMAN, PLLC, Meridian, Idaho.

For Duke Partners II, LLC, Defendant: James Colborn, NEAL COLBORN, PLLC, Boise Idaho.

Judges: Honorable Jim D. Pappas, United States Bankruptcy Judge.

Opinion by: Jim D. Pappas

Opinion

[*186] MEMORANDUM OF DECISION

Introduction

On May 2, 2017, defendant Duke Partners II, LLC ("Defendant") filed a motion to dismiss this adversary proceeding under Civil *Rule* 12(b)(6)¹ for failure to state a claim. Dkt. No. 8. Plaintiff Teresa A. Baker ("Plaintiff"), the chapter 13 debtor in this bankruptcy case, opposes the motion. Dkt. No. 13.

On June 6, 2017, the Court conducted a hearing concerning the motion at which the parties presented oral argument and responded to questions of the Court.

¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, all Rule references are to the <u>Federal Rules of Bankruptcy Procedure, Rules 1001-9037</u>, and all Civil Rule references are to the <u>Federal Rules of Civil Procedure, Rules 1-86</u>.

Minute Entry, Dkt. No. 14. Following the hearing, the parties filed supplemental briefing. Dkt. Nos. 18, 19. Having taken the issues under advisement, considered the pleadings, briefs, and arguments of counsel, as well as the applicable law, this Memorandum sets forth the Court's findings, conclusions, and reasons for its disposition of the motion. *Rules* 7052.

Facts²

Plaintiff executed a deed of trust on her house ("the Property") in favor of her lender, Nationstar Mortgage, LLC ("Nationstar") on or about July [**2] 30, 2002. Compl. at 2, Dkt. No. 1. Sometime later, Plaintiff became delinquent on her payments and a trustee's foreclosure sale was scheduled. To address this, Plaintiff completed a series of loan modification paperwork which she submitted to Nationstar. Id. As the trustee's sale date approached, Plaintiff reached out to the federal Department of Housing and Urban Development ("HUD") to determine if a HUD representative could assist her in her efforts to resolve her situation with Nationstar. Id. at 3. A HUD representative then facilitated negotiations between Plaintiff and Nationstar to stop the foreclosure and modify the note. Id. Plaintiff also retained a bankruptcy attorney to file a chapter 13 bankruptcy petition if arrangement to postpone the trustee's sale could not be made.

On the morning of January 17, 2017, the day of the trustee's sale, Plaintiff contacted a HUD representative, Nationstar, and the title company. *Id.* The Nationstar representative told Plaintiff that the trustee's sale would be postponed. *Id.* Relying on this information, Plaintiff notified her bankruptcy attorney that she did not want a bankruptcy petition to be filed. *Id.* Soon thereafter, a HUD representative contacted [**3] Plaintiff regarding postponement of the scheduled sale. *Id.* Plaintiff also spoke with an attorney for the title company who indicated he would get back to her with answers about the postponement of the sale; apparently, he never did. *Id.*

Based upon these communications, Plaintiff assumed that the foreclosure sale had been postponed. *Id.* at 4. But the next day, a notice was posted on the front door [*187] from Defendant demanding that she vacate the

² The following facts are based upon the allegations of Plaintiff's complaint and information in the Court's docket in this adversary proceeding.

Property because the foreclosure sale had occurred, and Defendant had purchased the Property at the sale for \$158,000. *Id.* at 4- 5. According to her complaint, Plaintiff does not know whether Defendant knew of her attempts to postpone the sale, or whether there were any communications between Defendant and Nationstar prior to the foreclosure sale. *Id.*

Plaintiff contacted HUD and Nationstar. *Id.* at 4. A Nationstar representative told her the sale occurred because Plaintiff had not submitted all of the paperwork necessary to modify the loan and postpone the sale. *Id.* However, the representative also indicated that a deed had not yet been recorded transferring the Property to Defendant. *Id.*

Plaintiff's counsel then contacted the attorney for the title company and verified that a deed had [**4] not yet been recorded in Defendant's name. *Id.* An attorney for the title company also confirmed to Plaintiff's lawyer that the title company received no notification from Nationstar to postpone the trustee's sale. *Id.*

On January 20, 2017, Plaintiff filed a chapter 13 bankruptcy petition. *Id.* at 4. In her schedules, she valued the Property at \$180,000, and listed the amount of the Nationstar debt secured by the Property as \$140,282. *Id.* Plaintiff continues to reside at the Property. *Id.* at 5.

In the bankruptcy case, Defendant filed a motion for relief from the automatic stay, and after Plaintiff objected, the Court denied that motion on condition that Plaintiff promptly file an adversary proceeding to establish her rights to the Property. *Id.*

On April 7, 2017, Plaintiff filed an adversary complaint against Nationstar and Defendant. Dkt. No. 1. In Count One, Plaintiff seeks to avoid the trustee's foreclosure sale to Defendant as a fraudulent transfer under § 548(a). Compl. at 5. In particular, she alleges that the sale was an involuntarily transfer of her interest in the Property; that Plaintiff was insolvent on the date of the sale; and that Plaintiff did not receive reasonable equivalent value for her interest [**5] in the Property. *Id.* at 5-6. She also alleges that a deed to Defendant was not recorded prior to the filing of the bankruptcy petition. *Id.* at 6.

In Count Two, Plaintiff seeks to avoid the sale pursuant to §§ 544, 550, and 522 based upon common law fraud. *Id.* at 6. She argues that the Nationstar representative's false statement to her that the foreclosure sale would be postponed caused her not to seek the protection of the

bankruptcy. *Id.* at 7. She alleges that the Nationstar representative knew Plaintiff was awaiting a decision on her application for modification of the loan, and to postpone the sale in order, to decide whether she should file for bankruptcy, and that, by the representative's statements to her that the sale would be postponed, Nationstar intended to induce Plaintiff to not seek bankruptcy protection so the sale could be conducted. *Id.* Plaintiff alleges she had the right to rely upon the Nationstar representative's statements while negotiating her delinquency, and that she was proximately injured when her home was sold due to her reliance on those statements. *Id.*

On these theories, Plaintiff asks the Court to set aside the foreclosure sale or, in the event the transfer of the Property cannot be avoided, that Plaintiff [**6] recover the value of the Property that was transferred from Nationwide. *Id.* at 8.

On May 2, 2017, Defendant filed the motion to dismiss now before the Court, and on May 26, 2017, Plaintiff filed an opposition. Dkt. Nos. 8, 13. Nationstar filed a pleading entitled "Defendant Nationstar [*188] Mortgage, LLC's Joinder to [Defendant's] Motion to Dismiss Count I and Answer to Complaint." Dkt. No. 11. This odd pleading contained no additional argument or explanation of Nationstar's position concerning the motion, or Plaintiff's claims, other than listing "failure to state a claim" as an affirmative defense. Dkt. No. 11 at 5.

Counsel for Defendant and Plaintiff appeared at the hearing on Defendant's motion; despite its joinder, Nationwide was not represented at the hearing. See Minute Entry, Dkt. No. 15. Plaintiff and Defendant filed post-hearing briefs. Dkt. Nos. 18, 19. Nationwide did not.

Motion to Dismiss Standard

HN1[Civil Rule 12(b)(6), made applicable in adversary proceedings by Rule 7012(b), allows motions to dismiss for failure to state a claim upon which relief may be granted. This Court has explained the standard for its consideration of such a motion as follows:

The purpose of such a motion is to "test a claim's legal sufficiency." [**7] <u>Beach v. Bank of Am. (In re Beach), 447 B.R. 313, 318 (Bankr. D. Idaho 2011)</u> (citing <u>Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001)</u>). To survive a <u>Rule 12(b)(6)</u> motion, a complaint must plead sufficient facts, which when

accepted as true, support a claim that is "plausible on its face." Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009) (citing Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)). A claim is plausible so long as it is based on a cognizable legal theory and has sufficiently alleged facts to support that theory. In re Beach, 447 B.R. at 318 (citing Johnson v. Riverside Healthcare Sys., LP, 534 F.3d 1116, 1121-22 (9th Cir. 2008) (quoting Balistreri v. Pacifica Police Dep't, 901 F.2d 696, 699 (9th Cir. 1988))).

"[Under Civil Rule 12(b)(6)], the issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the claims." Cornelius v. DeLuca, 709 F. Supp. 2d 1003, 1017 (D. Idaho 2010) (quoting Jackson v. Birmingham Bd. of Educ., 544 U.S. 167, 184, 125 S. Ct. 1497, 161 L. Ed. 2d 361 (2005)).

Hillen v. City of Many Trees, LLC (In re CVAH, Inc.), 570 B.R. 816, 2017 Bankr. LEXIS 1203, 2017 WL 1684119, *3-*4 (Bankr. D. Idaho 2017). HN2 [1] "[A] judge ruling on a defendant's motion to dismiss a complaint must accept as true all of the factual allegations contained in the complaint. Twombly, 550 U.S. at 572. While the Court generally can not consider extraneous materials when evaluating a motion to dismiss, it may consider exhibits attached to, and documents incorporated by reference in, the complaint. Gugino v. Wells Fargo Bank Northwest N.A. (In re Lifestyle Home Furnishings, LLC), 09.2 IBCR 41, 42, 2009 Bankr. LEXIS 3342 (Bankr. D. Idaho 2009) (citations omitted).

Analysis and Disposition

Defendant argues that Count One should be dismissed because Plaintiff did not allege sufficient specific facts to support the allegation of her insolvency, nor did she [**8] include sufficient facts or legal theories to support her claim that she received less than reasonably equivalent value as a result of the trustee's sale. Mot. to Dismiss at 4, Dkt. No. 9. Defendant argues Count Two should be dismissed as against Defendant because none of the allegations involve Defendant, but instead reference only co-defendant Nationstar. *Id.* at 9.

A. Count One - § 548

As relevant here, HN3 \(\begin{align*} \) \(\begin{align*} \\ \begi

1. Insolvency at the Time of the Transfer

Defendant argues that Plaintiff's complaint does not allege sufficient facts to support her claim that she was insolvent at the time of the transfer, the trustee's sale. Plaintiff argues that her bankruptcy schedules, which she incorporated [**9] in the complaint by reference, establish that she was insolvent when the sale occurred a few days before her bankruptcy filing.

HN4[1] The Code defines "insolvent" as a

financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation, exclusive of . . . property that may be exempted from property of the estate under section 522 of this title.

§ 101(32)(A); see also Hopkins v. D.L. Evans Bank (In re Fox Bean Co., Inc.), 287 B.R. 270, 282 (Bankr. D. Idaho 2002), subsequently aff'd sub nom, 144 Fed. Appx. 697 (9th Cir. 2005) (applying § 101(32)(A) to a § 548 analysis).

In a conclusory fashion, Plaintiff alleges only that "[Plaintiff] was insolvent at the time of the transfer." Compl. at 5. But that allegation musts be viewed in

³ While § 548 expressly bestows this avoidance power on the trustee, under §§ 522(g) and (h), a debtor may assert a claim to avoid a transfer of otherwise exempt property if the transfer was not voluntary, the debtor did not conceal the property, and if the trustee does not attempt to avoid the transfer. Here, Plaintiff alleged the transfer was involuntary, that she disclosed the Property in her bankruptcy schedules, and that, she believes, the trustee will not seek to avoid the transfer. Compl. at 6, Dkt. No. 1. These allegations are sufficient to establish Plaintiff's standing to pursue the avoidance claim; Defendant has not argued otherwise.

context with Plaintiff's schedules of her assets and debts filed in the bankruptcy case which indicate that, as of the petition date, Plaintiff's assets had a total value of \$358,585.73 and her debts totaled \$235,365.30. *In re Baker*, Case No. 17-00044-JDP, Dkt. No. 18 at 1. In addition, Plaintiff has claimed exemptions in her property, which have not been contested, exceeding \$200,000. *Id.* at 12-13. As a result, Plaintiff is correct that, for these purposes, she was "insolvent", [**10] at least on the petition date. Because Plaintiff filed her petition only three days after the transfer of the Property, for purposes of the motion, the information in Plaintiff's bankruptcy schedules adequately supports her allegation that she was insolvent at the time of the transfer of the Property to Defendant.

2. Receipt of Reasonably Equivalent Value

Defendant also argues Plaintiff's complaint fails to adequately allege that she did not receive reasonably equivalent value for the transfer because Plaintiff fails to allege that any procedural irregularities occurred in the trustee's foreclosure sale, or to otherwise explain how she can overcome the conclusive presumption arising under applicable case law that she received reasonably equivalent value from that sale. Plaintiff argues that Nationstar's alleged fraud, if proven to be true, constitutes [*190] sufficient grounds to overcome the case law presumption.

a. BFP v. Resolution Trust Corporation

To evaluate Defendant's argument, a review of pertinent case law is in order. "In [BFP v. Resolution Trust Corporation the Supreme Court held that HN5 a prepetition mortgage foreclosure sale conducted in accordance with state law conclusively established [**11] that the price obtained at that sale was for reasonably equivalent value." Tracht Gut, LLC v. L.A. Cty. Treasurer & Tax Collector (In re Tracht Gut, LLC), 836 F.3d 1146, 1152 (9th Cir. 2016) (citing BFP v. Resolution Trust Corp., 511 U.S. 531, 114 S.Ct. 1757, 128 L. Ed. 2d 556 (1994)).4 Thus, under BFP, Defendant is "entitled to judgment as a matter of law

⁴ BFP addressed § 548(a)(2)(A), the predecessor to § 548(a)(1)(B). But HN6[↑] while the Code provision's section number has changed, "its substance remains materially the same." Batlan v. Bledsoe (In re Bledsoe), 569 F.3d 1106, 1111 n.3 (9th Cir. 2009).

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." Lindsay v. Beneficial Reinsurance Co. (In re Lindsay), 59 F.3d 942, 948 (9th Cir. 1995) (quoting BFP, 114 S.Ct. at 1757). In other words, here, the trustee's sale may be set aside only if there was "an irregularity in the conduct of the sale that would permit judicial invalidation of the sale under applicable state law." Id. (quoting BFP, 114 S.Ct. at 1757). Of course, even if there was such an irregularity, and the presumption is therefore inapplicable, the transfer to Defendant resulting from the trustee's sale may only be avoided by Plaintiff if the price received at the sale was not reasonably equivalent to "the price that would have been received if the foreclosure sale had proceeded according to law." Id. (quoting BFP, 114 S.Ct. at 1757).

b. Idaho Foreclosure Law

Plaintiff's sole contention in her complaint is that the sale can be set aside under Idaho law because it was tainted by fraud. Defendant argues that, as a good faith purchaser for value, any failure by Nationstar or its agents to comply with state law should not result [**12] in invalidation of the sale by the Court, nor would it overcome the conclusive presumption that reasonably equivalent value was received by Plaintiff through the sale.

HN7 | Idaho Code chapter 15, title 45 governs the foreclosure of trust deeds. Idaho Code §§ 45-1501-15. Idaho Code § 45-1506 describes the manner in which a trust deed is to be foreclosed. But Idaho Code § 45-1508 specifies that "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 "

Plaintiff does not allege in her complaint that Defendant did not acquire the Property in good faith for value. Rather, Plaintiff states only that Defendant purchased the Property for \$140,282, and that she does not know if Defendant was aware of the potential postponement of the sale, or if Defendant had any communication with Nationstar prior to the sale. Thus, even assuming the facts are as Plaintiff alleges, under Idaho Code § 45-1508, any failure by Nationwide or its agents to comply with Idaho Code § 45-1506 would not constitute a reason to invalidate the sale to Defendant. Accordingly, under BFP, the facts Plaintiff alleges are insufficient to overcome the conclusive presumption that the sale to

Defendant was for reasonably equivalent value.

[*191] But Plaintiff [**13] is not asking the Court to set aside the trustee's sale based upon a failure to comply with the procedural requirements of <u>Idaho Code § 45-1506</u>. Instead, Plaintiff asserts that the sale should be set aside because it was tainted by Nationstar's fraudulent misrepresentations.

HN8 The buyer protections afforded by Idaho Code § 45-1508 apply only to sales challenged for a failure to comply with the procedural provisions of Idaho Code § 45-1506. Taylor v. Just, 138 Idaho 137, 59 P.3d 308, 313 (Idaho 2002). And good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. See, e.g., Taylor, 59 P.3d at 313 (holding that Idaho Code § 45-1508 does not apply to a foreclosure sale that was void for a lack of default at the time of the sale).

Even so, Plaintiff has cited no binding legal authority to support her position that, under Idaho law, if proven, Nationstar's misrepresentations would constitute good cause to invalidate the sale to Defendant, even as a good faith purchaser. Instead, Plaintiff cites to a decision from the California Court of Appeals that provides, under California law, courts may set aside a sale if "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 " Plaintiff's Resp. at 6 (citing [**14] 6 Angels, Inc. v. Stuart-Wright Mortgage, Inc., 85 Cal. App. 4th 1279, 1285, 102 Cal. Rptr. 2d 711 (Cal. App. 2001)). But the Court cannot apply this decision to these facts because it does not interpret Idaho law; the court in 6 Angels relies on an older California Supreme Court decision, Bank of America Nat'l Tr. Assn. v. Reidy, 15 Cal.2d 243, 248, 101 P.2d 77 (Cal. 1940)). Moreover, the vitality of the 6 Angels holding is questionable since the California Civil Code now contains specific provisions rendering a trustee's sale voidable when fraud or misstatements are involved. See In re Ulberg, No. 10-53637-E-13, 2011 Bankr. LEXIS 4532, 2011 WL 6016131, at *9 (Bankr. E.D. Cal. Nov. 29, 2011) (citing California Civil Code §§ 1695.13-14). Importantly, as near as the Court can discern, there are no similar Idaho decisions or Idaho Code provisions offering Plaintiff relief.

Simply put, Plaintiff has not shown that, even if Nationstar did defraud her, such fraud is a sufficient reason to set aside the foreclosure sale to Defendant under Idaho law. As a result, under BFP, as a matter of

law, the purchase price Defendant paid at the foreclosure sale is conclusively presumed to be "reasonably equivalent value" and Plaintiff's § 548(a) avoidance claim fails.

Moreover, even assuming Nationstar's misrepresentations do provide a basis to set aside the trustee's sale to Defendant, under *BFP*, whether Plaintiff in fact received reasonably equivalent value via the sale is measured by comparing the sale price to the [**15] value Plaintiff would have received at properly conducted foreclosure sale. Because Plaintiff's complaint refers only to the Property's "market value," and not the value of the Property at a properly conducted foreclosure sale, it fails to adequately allege a claim for relief against Defendant.

In sum, the Court concludes that Count One of the complaint should be dismissed as to Defendant. In addition, although Nationstar did not appear at the hearing or submit its own briefing, it is clear that, for the same reasons, Count One also fails against Nationstar. Based upon Nationstar's "joinder" in Defendant's motion, Count One will also be dismissed as to Nationstar.

[*192] B. Count Two - § 544(b)(1)

Defendant argues in Count Two that she has been the victim of common law fraud. However, the complaint alleges that Nationstar, not Defendant, perpetrated that fraud. Defendant therefore seeks dismissal of Count Two against it. However, while Plaintiff is not claiming that Defendant committed fraud, she is arguing that because Nationstar lied to her the trustee's sale may be set aside, thereby giving a bankruptcy trustee, or Plaintiff in this case, the power to avoid the transfer under § 544(b)(1).

HN9 Under § 544(b)(1), a trustee may [**16] avoid any prebankruptcy transfer that a creditor holding an unsecured claim in the bankruptcy case could have voided under applicable law. § 544(b)(1). Here, Plaintiff claims the foreclosure sale is avoidable under § 544(b)(1) because an unsecured creditor would have been able to void that sale using Idaho's common law of fraud. But as explained above, the presence of fraud alone does not render the foreclosure sale to a bona fide purchaser void. Again, Plaintiff has not alleged that Defendant is not a bona fide purchaser. Thus, it appears that Plaintiff cannot use § 544(b)(1) to avoid the transfer of the Property to Defendant.

Count Two, as pled in the complaint, must also be dismissed as to Defendant.⁵ Because the complaint requests monetary relief in the event the sale transfer is not avoided, Count Two will not be dismissed against Nationstar.

C. Count Three

Under Count Three, Plaintiff requests an award of attorney's fees and costs incurred for pursing this action and in the prosecution of the bankruptcy case. While Defendant did not seek dismissal of this Count, dismissal of Counts One and Two as to Defendant would necessarily compel dismissal of Count Three as to Defendant.

D. Dismissal Without Prejudice

HN10 [1] Civil Rule 15(a)(2), [**17] made applicable here by Rule 7015, provides that the Court should "freely give leave [to amend] when justice so requires." In the Ninth Circuit, this policy is "to be applied with extreme liberality." Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (citations omitted). "Absent prejudice, or a strong showing of any of the remaining Foman factors, 6 there exists a presumption under Rule 15(a) in favor of granting leave to amend ." Eminence Capital, 316 F.3d at 1052. Additionally, "[d]ismissal with prejudice and without leave to amend is not appropriate unless it is clear . . . that the complaint could not be saved by amendment." Id. at 1052 (citations omitted).

It is not clear that Plaintiff's complaint cannot be saved

⁵ During the motion argument, and in her post-hearing brief, Plaintiff raised additional arguments concerning the effect and timing of when Defendant received the trustee's deed, and when that deed was recorded. However, the dates of these two occurrences, and Plaintiff's theory of recovery based upon these events, were not clearly plead in the complaint. Therefore, any rights Plaintiff may have to attack the sale based upon such events are not, at this time, properly before the Court, and will not be addressed.

⁶The Foman factors include undue delay, bad faith, dilatory motives on the part of the movant, repeated failures to cure deficiencies through earlier allowed amendments, undue prejudice to opposing parties, and futility. Sonoma Cty. Ass'n of Retired Employees v. Sonoma Cty., 708 F.3d 1109, 1117 (9th Cir.2013) (citing Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962))

by amendment. There is also no showing of prejudice to Defendant, **[*193]** nor do the other <u>Foman</u> factors support dismissal with prejudice. For these reasons, Plaintiff may, if she chooses, file an amended complaint, within fourteen (14) days. If she fails to timely do so, upon request, the claims against Defendant shall be dismissed with prejudice.

Conclusion

For these reasons, a separate order will be entered granting Defendant's motion to dismiss. Count One will be dismissed as to both Defendant and Nationstar. Counts Two and Three will be dismissed only as to Defendant.

Dated: [**18] July 28, 2017

/s/ Jim D. Pappas

Honorable Jim D. Pappas

United States Bankruptcy Judge

ORDER GRANTING MOTION TO DISMISS

For the reasons set forth in the Court's Memorandum of Decision filed herein, and for other good cause,

IT IS HEREBY ORDERED THAT Defendant's Motion to Dismiss, Dkt. No. 8, and Nationstar's joinder to Defendant's Motion to Dismiss Count One, Dkt. No. 11, are **GRANTED**. Counts One, Two, and Three are **DISMISSED** as to Defendant. Plaintiff may, if she chooses, file an amended complaint within fourteen (14) days of entry of this order. If she fails to timely do so, upon request, the Court will enter an order that the dismissal be with prejudice.

Dated: July 28, 2017

/s/ Jim D. Pappas

Honorable Jim D. Pappas

United States Bankruptcy Judge

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Shepard's®: Report Content

Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

Shepard's®: △ Idaho Power Co. v. Benj. Houseman Co. 123 Idaho 674,851 P.2d 970,1993 Ida. LEXIS 100: (Idaho April 29, 1993)

No subsequent appellate history

Appellate History (1)

♀ Citation you *Shepardized*™ 1.

Idaho Power Co. v. Benj. Houseman Co., 123 Idaho 674, 851 P.2d 970, 1993 Ida. LEXIS 100 🔔



Court: Idaho | Date: April 29, 1993

Citing Decisions (2)

Idaho Court of Appeals

First Interstate Bank, N.A. v. Eisenbarth, 123 Idaho 895, 853 P.2d 640, 1993 Ida. App. LEXIS 81 1.

LE Cited by: 123 Idaho 895 p.898; 853 P.2d 640 p.643

Discussion: Court: Idaho Ct. App. | Date: June 03, 1993

9th Circuit - U.S. Bankruptcy Courts

2. In re Astle, 364 B.R. 735, 2007 Bankr. LEXIS 892, Bankr. L. Rep. (CCH) P80911

Y Caution: 364 B.R. 735 p.739

Discussion: Court: Bankr. Dist. Idaho | Date: March 22, 2007

Other Citing Sources: (5)

Annotated Statutes

1. Idaho Code sec. 6-101

Content: Statutes

2. Idaho Code sec. 6-108

Content: Statutes

3. Idaho Code sec. 45-1508

Content: Statutes

Treatise Citations

4. <u>Foreclosure by Action?Surplus or Deficiency*1997 revision by Anne Copps, Esq., of Albany, New York. Previous revision by James H. Backman, Professor of Law, J. Reuben Clark Law School, Brigham Young University, Provo, Utah., 4 Powell on Real Property @ 37.41</u>

Content: Treatises

5. Foreclosure, 12B Purchase and Sale of Real Property @ 36.07

Content: Treatises

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Warner v. Bockstahler, 48 Idaho 419, 282 P. 862, 1929 Ida. LEXIS 73 1 1.

■ Citing

First Ref:123 Idaho 674 at p.675

Discussion: Court: Idaho | Date: November 29, 1929

Clark v. Paddock, 24 Idaho 142, 132 P. 795, 1913 Ida. LEXIS 122, 46 L.R.A. (n.s.) 475 2.

Citing

First Ref:123 Idaho 674 at p.675

Discussion: Court: Idaho | Date: May 22, 1913



As of: October 25, 2024 11:01 PM Z

Idaho Power Co. v. Benj. Houseman Co.

Supreme Court of Idaho

April 29, 1993; April 29, 1993, Filed No. 20083, 1993 Opinion No. 46

Reporter

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

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

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

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

Appeal from summary judgment.

Disposition: Affirmed.

Core Terms

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

Case Summary

Procedural Posture

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

Overview

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

Outcome

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

LexisNexis® Headnotes

Real Property
Law > Financing > Foreclosures > General
Overview

HN1[♣] Financing, Foreclosures

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

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

Ellis, Brown and Sheils, Chtd., of Boise, for plaintiffrespondent. Martin T. Neils argued.

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

Opinion by: JOHNSON

Opinion

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

I.

THE BACKGROUND AND PRIOR PROCEEDINGS.

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

To secure payment, Zachreson gave Idaho Power a mortgage on each of the eleven properties. Each of the eleven mortgages was subject to one or the other of two senior deeds of trust. In 1988, the trustee of the two

senior deeds of trust instituted non-judicial foreclosure proceedings on all eleven parcels. The trustee gave Idaho Power notice of the foreclosure sales, but Idaho Power did not participate in any of the sales. The sales took place on July 5, 1988.

The successful bids at the foreclosure sales totaled \$ 455,679.57. The fair market value of the property sold was at least **[*675]** \$ 495,000.00. According to these figures, which are not disputed on appeal, the fair market value of the property exceeded the total of the amount secured by the senior deeds of trust and the debt secured by Idaho Power's mortgages.

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

II.

NEITHER <u>I.C. § 6-101</u> NOR <u>I.C. § 6-108</u> BAR IDAHO POWER'S ACTION.

Houseman asserts that <u>I.C. §§ 6-101</u> and <u>6-108</u> bar Idaho Power's right to recover from Houseman. We disagree.

The two statutes upon which Houseman premises its appeal provide:

6-101. Proceedings in foreclosure -- Effect of foreclosure on holder of unrecorded lien. -- There can be but one action for the recovery of any debt, or the enforcement of any right secured by mortgage upon real estate which action must be in accordance with the provisions of this chapter. In such action the court may, by its judgment, direct a sale of the incumbered property (or so much thereof as may be necessary) and the application of the proceeds of the sale to the payment of the costs of the court and the expenses of the sale, and the amount due to the plaintiff; and sales [***4] of real estate under judgments of foreclosure of mortgages and liens are subject to redemption as in the case of sales under execution; (and if it appear from the

sheriff's return that the proceeds are insufficient, and a balance still remains due, judgment can then be docketed for such balance against the defendant or defendants personally liable for the debt), and it becomes a lien on the real estate of such judgment debtor, as in other cases on which execution may be issued.

No person holding a conveyance from or under the mortgagor of the property mortgaged, or having a lien thereon, which conveyance or lien does not appear of record in the proper office at the commencement of the action, need be made a party to such action; and the judgment therein rendered, and the proceedings therein had, are as conclusive against the party holding such unrecorded conveyance or lien as if he had been made a party to the action.

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

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

HN1[1] A mortgagee may bring a direct action on a debt secured by the mortgage, if the mortgage is valueless. Clark v. [*676], 24 Idaho 142, 152, 132 P. 795, 798 (1913).

CONCLUSION.

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

We award costs to Idaho Power on appeal, together with attorney fees pursuant to <u>I.C. § 12-120(3)</u>.

Shepard's request: 123 Idaho 674

The Shepard's® report for this citation is identical to citation #13

Full text request: 123 Idaho 674

The full text of this report is identical to citation #13



Shepard's®: Report Content

Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Table Of Authorities: Narrowed By: Date: Jan 1 1658 to Oct 24 2024

2002)

No subsequent appellate history

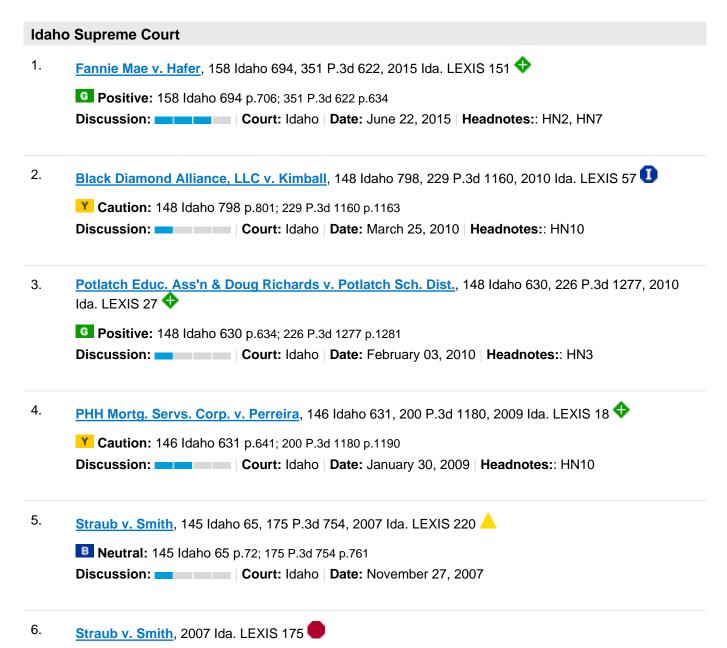
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♀Citation you *Shepardized*™ 1.

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Court: Idaho | Date: November 22, 2002

Citing Decisions (23)

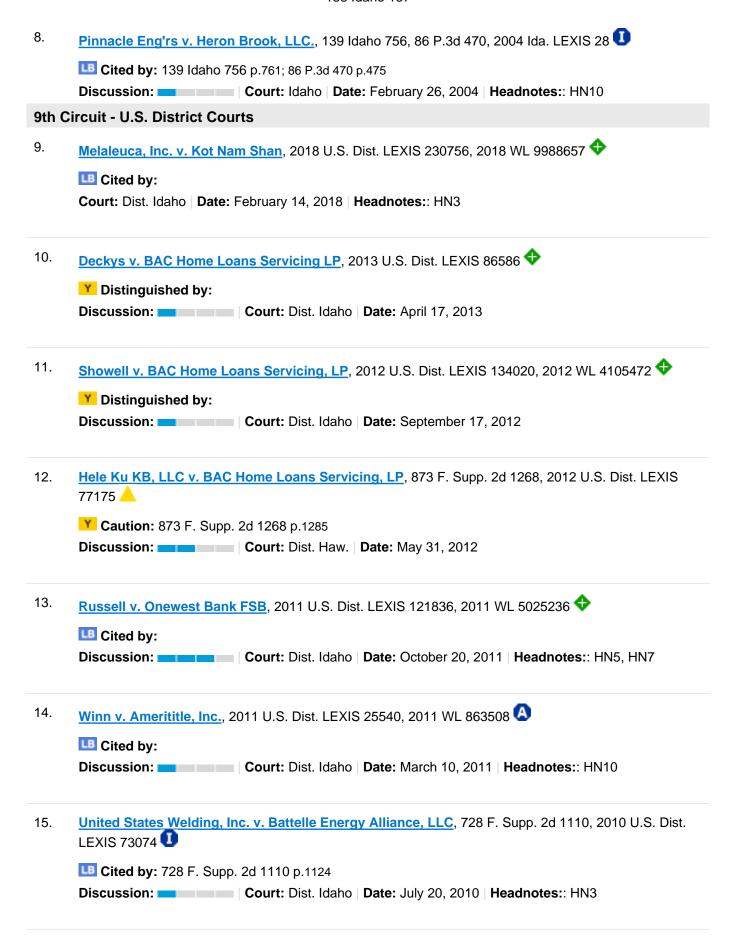


7. <u>Lexington Heights Dev., LLC v. Crandlemire</u>, 140 Idaho 276, 92 P.3d 526, 2004 Ida. LEXIS 103 LE Cited by: 140 Idaho 276 p.287; 92 P.3d 526 p.537

Discussion: Court: Idaho | Date: May 27, 2004

Discussion: Court: Idaho | Date: July 31, 2007

B Cited in Dissenting Opinion at:



16. In re Bell, 386 B.R. 282, 2008 U.S. Dist. LEXIS 16065

Discussion: Court: Western Dist. Wash. | Date: March 03, 2008 | Headnotes:: HN5

9th Circuit - U.S. Bankruptcy Courts

17. Baker v. Nationstar Mortg., LLC (In re Baker), 574 B.R. 184, 2017 Bankr. LEXIS 2110



Cited by: 574 B.R. 184 p.191

Caution: 386 B.R. 282 p.290

Discussion: Court: Bankr. Dist. Idaho | Date: July 28, 2017 | Headnotes:: HN7

18. Thorian v. Baro Enters., LLC (In re Thorian), 387 B.R. 50, 2008 Bankr. LEXIS 828, 49 Bankr. Ct. Dec. (LRP) 208 <u></u>

Y Caution: 387 B.R. 50 p.64 LE Cited by: 387 B.R. 50 p.63

Discussion: Court: Bankr. Dist. Idaho | Date: March 21, 2008

19. In re Jay, 2002 Bankr. LEXIS 1547, 49 Collier Bankr. Cas. 2d (MB) 1516 🔕

LEXIS 1547 p.16

Discussion: Court: Bankr. Dist. Idaho | Date: December 31, 2002

Hawaii Supreme Court

20. Lee v. HSBC Bank USA, 121 Haw. 287, 218 P.3d 775, 2009 Haw. LEXIS 265

Output Positive: 121 Haw. 287 p.294; 218 P.3d 775 p.782

Discussion: Court: Haw. | Date: November 05, 2009

Hawaii Intermediate Court of Appeals

Fannie Mae v. Brown, 133 Haw. 452, 330 P.3d 390, 2014 Haw. App. LEXIS 240 🔕 21.

Output Positive: 133 Haw. 452 p.452; 330 P.3d 390 p.390

Discussion: Court: Haw. Ct. App. Date: May 19, 2014 | Headnotes:: HN2

Nevada Supreme Court

Res. Grp., LLC v. Nev. Ass'n Servs., 135 Nev. 48, 437 P.3d 154, 2019 Nev. LEXIS 7, 135 Nev. Adv. 22. Rep. 8, 2019 WL 1233076 A

B Neutral: 135 Nev. 48 p.60; 437 P.3d 154 p.164

Court: Nev. | Date: March 14, 2019

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LB Cited by: 209 Ore. App. 528 p.537; 149 P.3d 150 p.155

138 Idaho 137

Discussion: Court: Or. Ct. App. | Date: December 06, 2006

Other Citing Sources: (40)

Annotated Statutes

1. <u>Idaho Code sec. 12-120</u>

Content: Statutes

2. Idaho Code sec. 45-1506

Content: Statutes

3. Idaho Code sec. 45-1508

Content: Statutes

Law Reviews and Periodicals

4. ARTICLE: Wrongful Foreclosures in Washington, 49 Gonz. L. Rev. 331

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5. ARTICLE: ATTORNEY FEE AWARDS IN IDAHO: A HANDBOOK, 52 Idaho L. Rev. 583

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6. Setting Aside a Completed Foreclosure, 2 Debtor-Creditor Law @ 13.14

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Briefs

7. IDAHO v. COEUR D'ALENE TRIBE, 2014 U.S. 9th Cir. Briefs LEXIS 3501

Content: Court Filings | Date: October 30, 2014

8. BELL, 2008 U.S. Dist. Ct. Briefs LEXIS 157

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9. Bell, 2007 U.S. Dist. Ct. Briefs LEXIS 1503

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10. Monsanto Co., 2004 U.S. Dist. Ct. Briefs LEXIS 4086

Content: Court Filings | Date: January 30, 2004

11. HIWALANI P S HOLDINGS v. WELLS FARGO BANK, N.A., 2013 HI App. Ct. Briefs LEXIS 752

Content: Court Filings | Date: December 16, 2013

12. HIWALANI P S HOLDINGS v. WELLS FARGO BANK, N.A., 2013 HI App. Ct. Briefs LEXIS 749

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13. HIWALANI P S HOLDINGS v. WELLS FARGO BANK, N.A., 2011 HI App. Ct. Briefs LEXIS 868

Content: Court Filings | Date: May 20, 2011

14. HIWALANI P S HOLDINGS v. WELLS FARGO BANK, N.A., 2011 HI App. Ct. Briefs LEXIS 939

Content: Court Filings | Date: April 27, 2011

15. HIWALANI P S HOLDINGS v. WELLS FARGO BANK, N.A., 2011 HI App. Ct. Briefs LEXIS 895

Content: Court Filings | Date: February 14, 2011

16. BRECKENRIDGE PROP. FUND 2016 v. v., 2021 ID S. Ct. Briefs LEXIS 833

Content: Court Filings | Date: August 10, 2021

17. TRICORE INVS. v. v. THE ESTATE OF, 2020 ID S. Ct. Briefs LEXIS 2954

Content: Court Filings | Date: August 19, 2020

18. TRICORE INVS. v. v. THE ESTATE OF, 2020 ID S. Ct. Briefs LEXIS 3336

Content: Court Filings | Date: August 18, 2020

19. PAPIN v. PAPIN, 2018 ID S. Ct. Briefs LEXIS 1250

Content: Court Filings | Date: September 04, 2018

20. GORDON v. U.S. BANK NAT'L ASS'N, 2018 ID S. Ct. Briefs LEXIS 1146

Content: Court Filings | Date: March 29, 2018

21. GORDON v. U.S. BANK NAT'L ASS'N, 2018 ID S. Ct. Briefs LEXIS 1011

Content: Court Filings | Date: March 29, 2018

22. GORDON v. U.S. BANK NAT'L ASS'N, 2018 ID S. Ct. Briefs LEXIS 162

Content: Court Filings | Date: March 29, 2018

23. TELFORD v. COPELAND, 2013 ID S. Ct. Briefs LEXIS 59

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24. Mickelsen Constr., Inc. v. Horrocks, 2011 ID S. Ct. Briefs LEXIS 329

Content: Court Filings | Date: September 22, 2011

25. MORRISON v. NORTHWEST NAZARENE UNIV., 2010 ID S. Ct. Briefs LEXIS 300

Content: Court Filings | Date: November 26, 2010

26. BLACK DIAMOND ALLIANCE v. KIMBALL, 2009 ID S. Ct. Briefs LEXIS 145

Content: Court Filings | Date: June 24, 2009

27. BLACK DIAMOND ALLIANCE LLC v. KIMBALL, 2009 ID S. Ct. Briefs LEXIS 144

Content: Court Filings | Date: June 12, 2009

28. LN MGMT. LLC SERIES v. BANK OF AMERICA, N.A., 2018 NV S. Ct. Briefs LEXIS 3993

Content: Court Filings | Date: September 04, 2018

29. TRP FUND IV v. BANK OF AMERICA, N.A., 2018 NV S. Ct. Briefs LEXIS 5190

Content: Court Filings | Date: July 19, 2018

30. Dakota Heritage Bank v. laccone, 2012 ND S. Ct. Briefs LEXIS 166

Content: Court Filings | Date: November 15, 2012

31. <u>STAFFORDSHIRE INVS. v. CAL-WESTERN RECONVEYANCE CORP.</u>, 2004 OR App. Ct. Briefs LEXIS 389

Content: Court Filings | Date: April 15, 2004

32. STAFFORDSHIRE INVS. v. CAL-WESTERN RECONVEYANCE CORP., 2004 OR App. Ct. Briefs LEXIS 390

Content: Court Filings | Date: March 22, 2004

33. <u>STAFFORDSHIRE INVS. v. CAL-WESTERN RECONVEYANCE CORP.</u>, 2003 OR App. Ct. Briefs LEXIS 154

Content: Court Filings | Date: December 16, 2003

34. RUCKER v. NOVASTAR MORTG. CO., 2012 WA App. Ct. Briefs LEXIS 1160

Content: Court Filings | Date: December 20, 2012

35. WOODIE v. WHITESELL, 2019 WY S. Ct. Briefs LEXIS 412

138 Idaho 137

Content: Court Filings | Date: June 10, 2019

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36. DAVIS v. KEYBANK NAT'L ASS'N, 2006 U.S. Dist. Ct. Motions LEXIS 80349

Content: Court Filings | Date: February 16, 2006

37. CRAFTON v. BLAINE LARSEN FARMS, INC., 2005 U.S. Dist. Ct. Motions LEXIS 38326

Content: Court Filings | Date: August 18, 2005

38. Russel v Onewest Bank FSB, 2011 U.S. Dist. Ct. Motions LEXIS 21033

Content: Court Filings | Date: September 19, 2011

39. RUSSELL v. ONEWEST BANK F.S.B., 2011 U.S. Dist. Ct. Motions LEXIS 21032

Content: Court Filings | Date: August 31, 2011

ROCKROSE v. FIRST AMERICAN TITLE, 2006 U.S. Dist. Ct. Motions LEXIS 18209 40.

Content: Court Filings | Date: May 09, 2006

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138 Idaho 137

First Ref:138 Idaho 137 at p.142

Discussion: Court: Idaho | Date: March 27, 1918

Oregon Supreme Court

7. Allen v. Ayer, 26 Ore. 589, 39 P. 1, 1895 Ore. LEXIS 11 A

LIB Citing

First Ref:138 Idaho 137 at p.142

Discussion: Court: Or. | Date: February 11, 1895



As of: October 25, 2024 11:01 PM Z

Taylor v. Just

Supreme Court of Idaho November 22, 2002, Filed

Docket No. 28105, 2002 Opinion No. 131

Reporter

138 Idaho 137 *; 59 P.3d 308 **; 2002 Ida. LEXIS 178 ***

JAMES L. TAYLOR, Plaintiff-Respondent-Cross Appellant, v. CHARLES C. JUST, in his capacity as Trustee; FAIRBANKS CAPITAL CORPORATION, a Utah corporation; RONALD DALE RUSH and TERILYN ANN RUSH, husband and wife, Defendants-Appellants-Cross Respondents.

Subsequent History: [***1] Released for Publication December 16, 2002.

Prior History: Appeal from the District Court of the Third Judicial District, State of Idaho, Canyon County. Hon. Sergio A. Gutierrez, District Judge.

Disposition: The judgment of the district court is reversed and remanded.

Core Terms

default, trust deed, district court, cure, foreclosure sale, attorney's fees, terms, void, promissory note, modified, real property, notice, summary judgment, foreclose, execute, grantor, Lender, good faith purchaser, foreclosure, purchaser, deliver, deed, parties

Case Summary

Procedural Posture

The District Court of the Third Judicial District, State of Idaho, Canyon County, granted judgment in favor of appellee trustee under a deed of trust to execute and deliver a trustee's deed to appellant highest bidder at the foreclosure sale. The bidder appealed.

The district court stated that a breach of contract cause of action would not lie and ordered the trustee to execute and deliver the trustee's deed to the bidder. The bidder argued that the trial court erred. The appellate court found that the agreement cured the default because under the agreement, there were no longer any sums past due. Because at the time of the sale there was no default in the performance of any obligations secured by the deed of trust, the foreclosure sale was void. <u>Idaho Code § 45-1506(12)</u> did not purport to limit the right of the grantor and beneficiary to come to their own agreement to cure a default. The foreclosure sale was void for failure to comply with Idaho Code § 45-1505(2). The bidder was not a good faith purchaser for value because he did not acquire title to the real property. Because the foreclosure sale was void, the alleged contract was likewise void. The alleged contract would circumvent the statutory requirement that a deed of trust can be foreclosed only if there is a default in an obligation the performance of which is secured by the deed of trust. The trustee was entitled to an award of a reasonable attorney fee.

Outcome

The judgment was reversed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Standards of Review > De Novo Review

Overview

Taylor v. Just, 138 Idaho 137

Civil Procedure > Judgments > Summary Judgment > General Overview

Civil Procedure > ... > Summary Judgment > Appellate Review > General Overview

Civil Procedure > ... > Summary
Judgment > Appellate Review > Standards of
Review

Civil Procedure > ... > Summary Judgment > Motions for Summary Judgment > General Overview

Civil Procedure > ... > Summary

Judgment > Entitlement as Matter of Law > General

Overview

Civil Procedure > Appeals > Standards of Review > General Overview

HN1[♣] Standards of Review, De Novo Review

In an appeal from an order of summary judgment, the appellate court's standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. Summary judgment is appropriate if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. If the evidence reveals no disputed issues of material fact, then only a question of law remains, over which the appellate court exercises free review.

Real Property
Law > Financing > Foreclosures > General
Overview

HN2[♣] Financing, Foreclosures

Idaho Code § 45-1505(2) (1997) grants authority to foreclose a deed of trust by nonjudicial sale. It provides, The trustee may foreclose a trust deed by advertisement and sale under this act if there is a default by the grantor owing an obligation the performance of which is secured by the trust deed. The statute requires that the default exist at the time of the

sale. It states that the trustee may foreclose a trust deed if there "is" a default by the grantor, not if there "has been" a default by the grantor.

Contracts Law > Contract Interpretation > Intent

Contracts Law > Contract Interpretation > General Overview

HN3[♣] Contract Interpretation, Intent

A contract must be construed to give effect to the intention of the parties. In order to ascertain that intent, the contract must be construed as a whole. If a contract's terms are clear and unambiguous, the contract's meaning and legal effect are questions of law, and the meaning of the contract and intent of the parties must be determined from the plain meaning of the contract's own words.

Estate, Gift & Trust Law > ... > Private Trusts Characteristics > Trustees > General Overview

Real Property
Law > Financing > Foreclosures > General
Overview

Estate, Gift & Trust Law > Trusts > General Overview

HN4 Private Trusts Characteristics, Trustees

<u>Idaho Code § 45-1506</u> (1997) provides that the trustee can postpone the sale at the request of the beneficiary.

Real Property
Law > Financing > Foreclosures > General
Overview

HN5 **I** Financing, Foreclosures

Idaho Code § 45-1506(12) gives the grantor the right to cure a default by paying those sums within 115 days after the recording of the notice of default. The statute simply grants a right to cure within 115 days after the recording of the notice of default and specifies how a grantor can exercise that right. It does not purport to limit the right of the grantor and beneficiary to come to their own agreement to cure a default.

Taylor v. Just, 138 Idaho 137

A void contract cannot be enforced.

Real Property
Law > Financing > Foreclosures > General
Overview

HN6[♣] Financing, Foreclosures

See Idaho Code § 45-1508 (1997).

Real Property
Law > Financing > Foreclosures > General
Overview

HN7 I Financing, Foreclosures

By its terms <u>Idaho Code § 45-1506</u> only applies to sales challenged because of a failure to comply with the provisions of <u>Idaho Code § 45-1508</u> (1997).

Contracts Law > Personal Property > Bona Fide Purchasers

Real Property Law > Priorities & Recording > Elements > Bona Fide Purchasers

Real Property Law > Deeds > General Overview

HN8 Personal Property, Bona Fide Purchasers

The doctrine of bona fide purchaser is peculiarly available for purposes of defense. This defense can be maintained only in favor of a title, though it may be defective, which a bona fide purchaser has, and it is not available for the purpose of creating a title. Where the title to land passes, though obtained by fraud, and the deed is therefore voidable, one who purchases from the grantee in good faith, and without notice, will be protected, because he had a title which he could and did convey, but when the deed was never in fact delivered, the grantee can convey no title for the protection of which the plea of a bona fide purchaser can be invoked.

Contracts Law > ... > Affirmative Defenses > Fraud & Misrepresentation > General Overview

<u>HN9</u>[Affirmative Defenses, Fraud & Misrepresentation

Civil Procedure > ... > Costs & Attorney
Fees > Attorney Fees & Expenses > Reasonable
Fees

Civil Procedure > ... > Costs & Attorney Fees > Attorney Fees & Expenses > General Overview

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

<u>HN10</u>[Attorney Fees & Expenses, Reasonable Fees

Idaho Code § 12-120(3) provides, In any civil action to recover in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs. The statute defines the term "commercial transaction" to mean all transactions except transactions for personal or household purposes. Idaho Code § 12-120(3) (1998).

Counsel: Mark L. Clark, Nampa, for appellants.

White Peterson Morrow Gigray Rossman Nye & Rossman, Nampa, for respondent. Kevin E. Dinius argued.

Judges: EISMANN, Justice. Chief Justice TROUT, and Justices SCHROEDER, WALTERS, and KIDWELL CONCUR.

Opinion by: EISMANN

Opinion

[**309] [*138] EISMANN, Justice.

This is an appeal from a judgment ordering the trustee under a deed of trust to execute and deliver a trustee's deed to the highest bidder at the foreclosure sale. Prior to the sale, the grantor and beneficiary had entered into an agreement resolving the default. Therefore, we reverse the judgment of the district court because the sale was void and the trustee cannot be required to execute and deliver a trust deed.

I. FACTS AND PROCEDURAL HISTORY

In April 1998, Ronald and Terilyn Rush executed a deed of trust on their residence to secure payment of a promissory note in the sum of \$ 37,000. The defendant Fairbanks Capital Corporation (Fairbanks Capital) later acquired the interest of the [*139] beneficiary [***2] under that deed of trust. The Rushes failed to make the monthly payments that came due under the promissory note for the months of November 2000 through February 2001. Fairbanks Capital retained the defendant Charles Just (the Trustee) to foreclose the deed of trust by nonjudicial sale, and he commenced foreclosure proceedings under <u>Idaho Code</u> § 45-1506, with the sale scheduled for July 19, 2001. The Trustee retained Pioneer Title Company (Pioneer Title) to conduct the sale.

On July 17, 2001, the Rushes and Fairbanks Capital executed a contract entitled "Forbearance Agreement" (Agreement) which addressed the Rushes' default. The Agreement altered the terms of the promissory note by modifying the payments due. As modified by the Agreement, the Rushes were to pay \$ 2,000 on July 17, 2001; \$ 575 by the seventeenth days of August, September, and October 2001; and \$ 4,984 by November 17, 2001. The Agreement provided that if the Rushes made the payments as modified, Fairbanks Capital would not proceed with the foreclosure. The Rushes timely paid the \$ 2,000, and Fairbanks Capital sent the Trustee an e-mail instructing him to stop the foreclosure proceedings. Because [***3] of a problem with the Trustee's Internet provider, however, he did not receive the e-mail until July 20, 2001, the day after the sale.

Pioneer Title held the foreclosure sale as scheduled on July 19, 2001. The plaintiff James Taylor (Taylor) was the highest bidder, and on the same day he tendered to Pioneer Title a certified check for the full amount of his bid. On July 20, 2001, the Trustee received the e-mail message from Fairbanks Capital. On July 23, 2001, the Trustee informed Taylor about the Agreement and told him he would not be receiving a trustee's deed. Taylor's check was returned to him.

On August 22, 2001, Taylor commenced this action. In count one of his complaint he requested a declaratory judgment that he is the legal owner of the real property. In count two, he alleged that the Trustee and Fairbanks Capital had breached a contract to convey the real property to him, and he sought either specific performance of that contract or damages for its breach. He alleged that the damages recoverable were \$

47,215, the difference between the price he bid and the fair market value of the real property.

The parties filed cross motions for summary judgment, which were heard on [***4] December 14, 2001. The district court ruled that the Agreement did not cure the default, it was simply a promise to cure the default, and that as a result the sale was valid. The district court therefore ruled that the sale was valid and that the Trustee was required to execute and deliver the trustee's deed to Taylor. The court granted summary judgment in favor of Taylor on count one of his complaint. With respect to count two, the district court stated that a breach of contract cause of action would not lie under the facts of this case. It also denied respondents' motion for summary judgment. The district court entered a judgment ordering the Trustee to execute and deliver the trustee's deed to Taylor. The respondents then appealed, and Taylor cross-appealed.

II. ISSUES ON APPEAL

- A. Was the foreclosure sale void?
- B. Is Taylor a good faith purchaser under <u>Idaho Code</u> § 45-1508?
- C. Did the district court err in not granting Taylor summary judgment on his claim for breach of contract?
- D. Did the district court err in awarding Taylor attorney fees?
- E. Is either the Trustee or Taylor entitled to attorney fees on appeal?

III. [***5] ANALYSIS

HN1 1 In an appeal from an order of summary judgment, this Court's standard of review is the same as the standard used by the trial court in ruling on a motion for summary judgment. Infanger v. City of Salmon, 137 Idaho 45, 44 P.3d 1100 (2002). All disputed facts are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving [**311] [*140] party. *Id.* Summary judgment is appropriate if the pleadings, depositions, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Id. If the evidence reveals no disputed issues of material fact, then only a question of

law remains, over which this Court exercises free review. *Id.*

A. Was the Foreclosure Sale Void?

Idaho Code § 45-1505(2) (1997) HN2[1] grants authority to foreclose a deed of trust by nonjudicial sale. It provides, "The trustee may foreclose a trust deed by advertisement and sale under this act if . . . there is a default by the grantor . [***6] .. owing an obligation the performance of which is secured by the trust deed." The statute requires that the default exist at the time of the sale. It states that the trustee may foreclose a trust deed if there "is" a default by the grantor, not if there "has been" a default by the grantor. Both parties agree that if the promissory note was not in default on July 19, 2001, the foreclosure sale was void. The issue in this case is whether there was still a default after the Rushes and Fairbanks Capital had entered into the Agreement. The district court held that the Agreement "amounts to a promise to cure a default and . . . it does not cure the default." In so holding, the district court erred.

HN3 A contract must be construed to give effect to the intention of the parties. Wing v. Martin, 107 Idaho 267, 688 P.2d 1172 (1984). In order to ascertain that intent, the contract must be construed as a whole. Id. If a contract's terms are clear and unambiguous, the contract's meaning and legal effect are questions of law, and the meaning of the contract and intent of the parties must be determined from the plain meaning of the contract's own words. Taylor v. Browning, 129 Idaho 483, 927 P.2d 873 (1996). [***7]

The Agreement expressly modified the payments due under the promissory note. It recited, "Whereas Borrower(s) and Lender are willing to modify the note as set forth below in order to permit Borrower(s) to continue to own and use the property." The parties agreed that the amounts due under the note, including various fees and costs relating to the foreclosure proceedings, totaled \$ 6,984.38. They then agreed as follows:

2. **Forbearance.** From and after the date of execution of this agreement, during the term hereof, so long as Borrower(s) does not default in any performance required by this Agreement and does not default in any performance required by the Note (except as modified by this Agreement) and Mortgage lender agrees to forbear from scheduling a sheriffs sale, and to forbear from proceeding with the filing of a Foreclosure.

- 3. <u>Duties of Borrower(s).</u> Borrower(s) shall make the following payments at the following times:
- A) On or before the earlier of July 17, 2001 or the date of execution of this agreement, Borrower(s) shall pay \$ 2000.00 to Lender.
- B) Thereafter Borrower(s) shall make monthly payments to Lender in the amount of \$575.00 [***8] for the months of August 2001 through and including October 2001 provided that payments shall be received by Lender no later than the 17th day of each of these months. A final balloon payment to reinstate loan is due on or before November 17, 2001 in amount of \$4984.28.
- 4. Effect of Default. Should Borrower(s) fail to make any payment required by this Agreement or perform any other act required by this Agreement or should any representation or warranty given by Borrower(s) be untrue or shall be breached, Lender shall have the right to pursue all remedies available to it under the Note, Mortgage and/or Final Judgment. executing In this agreement, Borrower(s) specifically acknowledges that the Notice of Default shall not be rescinded and shall be an instrument of record until withdrawn by Lender.

The Agreement also provided, "Except as specifically modified by this Agreement, all other terms of the Note shall remain unchanged from the original terms and no part of the Mortgage is modified by this Agreement." [**312] [*141] The Rushes paid the \$ 2,000 due upon execution of the Agreement.

The Agreement clearly provided: (1) that the terms of the promissory note were modified [***9] so that there were no longer any sums that were past due; (2) that Fairbanks Capital could not proceed with foreclosing the deed of trust unless there was a new default in the Agreement or in the promissory note; and (3) that if there was a future default then Fairbanks Capital could pursue all remedies available to it. Thus, the Agreement by its terms cured the default because under the Agreement, there were no longer any sums past due. Under its terms, it would require a new default by the Rushes for Fairbanks Capital to be able to foreclose the deed of trust.

Idaho Code § 45-1506 (1997) HN4 provides that the trustee can postpone the sale at the request of the beneficiary. Thus, the beneficiary could agree to postpone the sale to give the grantor additional time to cure the default. That is not what happened here,

however. The Agreement did not merely provide that the sale would be postponed. It eliminated the default by altering the terms of the promissory note so that there were no longer any sums past due.

Taylor points to one sentence in the Agreement which he contends shows that the default was not cured. That sentence states, "In executing this agreement, [***10] Borrower(s) specifically acknowledges that the Notice of Default shall not be rescinded and shall be an instrument of record until withdrawn by Lender." This sentence does not provide that the default is not cured. It simply provides that the notice of default will remain filed. Fairbanks Capital may have included this provision in the Agreement under the belief that if there were a future default, Fairbanks Capital could short-circuit the foreclosure process by relying upon the prior notice of default. Whatever the reason behind this provision, its terms do not contradict the fact that upon the execution of the Agreement, there were no longer any sums past due under the promissory note as it had been modified by the Agreement. Thus, because at the time of the sale on July 19, 2001, there was no default in the performance of any obligations secured by the deed of trust, the foreclosure sale was void.

Taylor also argues that the default could not be cured without actual payment of the entire amount then due under the terms of the deed of trust and promissory note, including a reasonable trustee's fee and attorney fees. Taylor relies upon Idaho Code & 45-1506(12) [***11] in making this argument. HINS That code section gives the grantor the right to cure a default by paying those sums within 115 days after the recording of the notice of default. The statute simply grants a right to cure within 115 days after the recording of the notice of default and specifies how a grantor can exercise that right. It does not purport to limit the right of the grantor and beneficiary to come to their own agreement to cure a default.

B. Is Taylor a Good Faith Purchaser Under <u>Idaho</u> <u>Code § 45-1508</u>

Taylor argues that he is entitled to a deed to the real property because he is a good faith purchaser under <u>Idaho Code § 45-1508</u> (1997), which provides:

HN6 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 <u>section 45-1506</u>, <u>Idaho</u> 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 [***12] 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.

That statute has no application in this case for two reasons.

[**313] [*142] First, HN7 by its terms it only applies to sales challenged because of a failure to comply with the provisions of Idaho Code § 45-1506. In this case, the Rushes have not contended that the foreclosure sale was void for failure to comply with Idaho Code § 45-1506. They have contended, and we have found, that 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.

Second, Taylor is not a good faith purchaser for value because [***13] he did not acquire title to the real property. The trustee refused to execute and deliver a deed. The doctrine of good faith purchaser for value is available to protect title obtained, not to acquire title. As this Court explained in <u>Ewald v. Hufton, 31 Idaho 373, 380, 173 P. 247, 247-48 (1918):</u>

PHN8 The doctrine of bona fide purchaser is peculiarly available for purposes of defense. (See the discussion in 2 Pomeroy, Equity Jurisdiction, § 735, et seq.) This defense can be maintained only in favor of a title, though it may be defective, which a bona fide purchaser has, and it is not available for the purpose of creating a title. This view is well expressed by Mr. Justice Bean in the case of Allen v. Ayer, 26 Or. 589, 39 Pac. 1, as follows:

"Where the title to land passes, though obtained by fraud, and the deed is therefore voidable, one who purchases from the grantee in good faith, and without notice, will be protected, because he had a title which he could and did convey, but when the deed was never in fact delivered, the grantee can convey no title for the protection of which the plea of a bona fide purchaser can be invoked."

[***14] Thus, Taylor is not entitled to obtain a deed to the real property based upon his contention that he is a good faith purchaser for value.

C. Did the District Court Err in Not Granting Taylor Summary Judgment on His Claim for Breach of Contract?

Taylor contends that even if the foreclosure sale is void, the facts in this case gave rise to a contract between him and either Fairbanks Capital or the Trustee, and he is entitled either to enforce that contract either by requiring the Trustee to execute and deliver a deed to the real property or by recovering damages. Because the foreclosure sale is void, the alleged contract is likewise void. The alleged contract would circumvent the statutory requirement, discussed above, that a deed of trust can be foreclosed only if there is a default in an obligation the performance of which is secured by the deed of trust. HN9[A void contract cannot be enforced. Quiring v. Quiring, 130 Idaho 560, 944 P.2d 695 (1997).

D. Did the District Court Err in Awarding Taylor Attorney Fees?

The district court awarded Taylor attorney fees in the sum of \$8,842.50 against the Trustee. The district court found that the gravaman [***15] of this case involved a commercial transaction, and so the prevailing party was entitled to an award of attorney fees under <u>Idaho Code</u> § 12-120(3). Because we reverse the judgment of the district court, we also reverse the attorney fee award to Taylor.

E. Is Either the Trustee or Taylor Entitled to Attorney Fees on Appeal?

The Trustee and Taylor both seek an award of attorney fees on appeal pursuant to Idaho Code \sigma 12-120(3). HN10HN10
That statute provides, "In any civil action to recover . . . in any commercial transaction unless otherwise provided by law, the prevailing party shall be allowed a reasonable attorney's fee to be set by the court, to be taxed and collected as costs." The statute defines the term "commercial transaction" to mean "all transactions except transactions for personal or household purposes." IDAHO CODE \sigma 12-120(3)
(1998). Both Taylor and the Trustee agree that Taylor's action against the Trustee was to recover in a

commercial transaction. Taylor bid at the foreclosure sale in order to obtain the real property for resale. As the prevailing party on the appeal, the Trustee is entitled [***16] to an award of a reasonable attorney fee under <u>Idaho Code § 12-120(3)</u>. <u>Hoffer v. Callister, 137 Idaho 291, 47 P.3d 1261 (2002)</u>. The Trustee is [**314] [*143] likewise entitled to an award of a reasonable attorney fee in the district court.

IV. CONCLUSION

We reverse the judgment of the district court and remand this case with instructions to enter a judgment dismissing the complaint with prejudice and to award the Trustee a reasonable attorney fee. We also award costs and attorney fees on appeal to the Trustee.

Chief Justice TROUT, and Justices SCHROEDER, WALTERS, and KIDWELL **CONCUR**.

Shepard's request: 138 Idaho 137

The Shepard's® report for this citation is identical to citation #15

Full text request: 138 Idaho 137

The full text of this report is identical to citation #15



Shepard's®: Report Content

History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

Shepard's®. A Comprehensive Report forIdaho Code sec. 45-1505

Subsection reports by specific court citation

History (1)

1957, ch. 181, § 5, p. 345; am. 1990, ch. 401, § 1, p. 1122; am. 2008, ch. 192, § 2, p. 603; am. 2009, ch. 136, § 1,

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Idaho Supreme Court

Losee v. Deutsche Bank Nat'l Trust Co., 165 Idaho 883, 454 P.3d 525, 2019 Ida. LEXIS 212, 2019 WL 1. 6442535

LB Cited by: 165 Idaho 883 p.889; 454 P.3d 525 p.531

Court: Idaho | Date: November 29, 2019

2. Houpt v. Wells Fargo Bank, Nat'l Assoc., 160 Idaho 181, 370 P.3d 384, 2016 Ida. LEXIS 70 •

LE Cited by: 160 Idaho 181 p.185, p.194; 370 P.3d 384 p.388, p.397

Court: Idaho | Date: March 09, 2016

Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S., 159 Idaho 679, 365 3.

P.3d 1033, 2016 Ida. LEXIS 4 💠

B Neutral: 159 Idaho 679 p.695365 P.3d 1033 p.1049

B Neutral: 159 Idaho 679 p.695365 P.3d 1033 p.1049

LE Cited by: 159 Idaho 679 p.690365 P.3d 1033 p.1044

LE Cited by: 159 Idaho 679 p.690365 P.3d 1033 p.1044

Court: Idaho | Date: January 06, 2016

4. Houpt v. Wells Fargo Bank, N.A., 2015 Ida. LEXIS 338

LEXIS 338

Court: Idaho | Date: December 29, 2015

5. Fannie Mae v. Hafer, 158 Idaho 694, 351 P.3d 622, 2015 Ida. LEXIS 151 •

LE Cited by: 158 Idaho 694 p.706; 351 P.3d 622 p.634

Court: Idaho | Date: June 22, 2015

6. Fed. Home Loan Mortg. Corp. v. Butcher, 157 Idaho 577, 338 P.3d 556, 2014 Ida. LEXIS 281

LB Cited by: 157 Idaho 577 p.580; 338 P.3d 556 p.559

Court: Idaho | Date: October 29, 2014

7. United States Bank N.A. v. CitiMortgage, Inc., 157 Idaho 446, 337 P.3d 605, 2014 Ida. LEXIS 292



LE Cited by: 157 Idaho 446 p.451; 337 P.3d 605 p.610

Court: Idaho | Date: October 29, 2014

Renshaw v. Mortg. Elec. Registration Sys., 155 Idaho 656, 315 P.3d 844, 2013 Ida. LEXIS 361, 2013 8.

WL 6660369

LB Cited by: 155 Idaho 656 p.658; 315 P.3d 844 p.846

Court: Idaho | Date: December 18, 2013

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WL 1760620 💠

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Court: Idaho | Date: April 25, 2013

10. Trotter v. Bank of N.Y. Mellon, 152 Idaho 842, 275 P.3d 857, 2012 Ida. LEXIS 84 A

LB Cited by: 152 Idaho 842 p.844; 275 P.3d 857 p.859

Court: Idaho | Date: March 23, 2012

11. Trotter v. Bank of N.Y. Mellon, 2012 Ida. LEXIS 33, 2012 WL 206004

B Neutral: 2012 Ida. LEXIS 33

Court: Idaho | Date: January 25, 2012

12. PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180, 2009 Ida. LEXIS 18



LB Cited by: 146 Idaho 631 p.637; 200 P.3d 1180 p.1186

Court: Idaho | Date: January 30, 2009

13. Taylor v. Just, 138 Idaho 137, 59 P.3d 308, 2002 Ida. LEXIS 178 A



LB Cited by: 138 Idaho 137 p.140; 59 P.3d 308 p.311

Court: Idaho | Date: November 22, 2002

14. Frontier Fed. Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553, 1993 Ida. LEXIS 128



Lie Cited by: 123 Idaho 808 p.812, p.813, p.811; 853 P.2d 553 p.558, p.556, p.557

Court: Idaho | Date: June 18, 1993

15. Frontier Fed. Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553, 1993 Ida. LEXIS 96 💠



LE Cited by:

Court: Idaho | Date: April 23, 1993

16. Frazier v. Neilsen & Co., 115 Idaho 739, 769 P.2d 1111, 1989 Ida. LEXIS 24 💠

LE Cited by: 115 Idaho 739 p.742, p.741; 769 P.2d 1111 p.1113, p.1114

Court: Idaho | Date: February 21, 1989

17. Brown's Tie & Lumber Co. v. Chicago Title Co., 115 Idaho 56, 764 P.2d 423, 1988 Ida. LEXIS 140 A



LE Cited by: 115 Idaho 56 p.60; 764 P.2d 423 p.427

Court: Idaho | Date: October 27, 1988

18. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 A



Lited by: 79 Idaho 473 p.474, p.481; 321 P.2d 210 p.210, p.214

Court: Idaho | Date: January 29, 1958

Idaho Court of Appeals

19. Watson v. Bank of Am., N.A., 2016 Ida. App. Unpub. LEXIS 464

LEXIS 464 Cited by: 2016 Ida. App. Unpub. LEXIS Court: Idaho Ct. App. | Date: October 27, 2016

20. Watson v. Bank of Am., N.A., 2016 Ida. App. Unpub. LEXIS 394 (A)

LEXIS 394 Court: Idaho Ct. App. | Date: September 15, 2016

21. Security Pac. Fin. Corp. v. Bishop, 109 Idaho 25, 704 P.2d 357, 1985 Ida. App. LEXIS 690 A



LE Cited by: 109 Idaho 25 p.26; 704 P.2d 357 p.358

Court: Idaho Ct. App. | Date: July 31, 1985

Idaho District Court

22. 440 v. Riverbank, 2014 Ida. Dist. LEXIS 34

LE Cited by:

Court: Idaho Dist. Ct. | Date: November 19, 2014

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Idaho Code § 45-1505

Statutes current through all legislation from the 2024 Regular Session.

Idaho Code > Title 45 Liens, Mortgages and Pledges (Chs. 1 — 19) > Chapter 15 Trust Deeds ($\S\S$ 45-1501 — 45-1515)

45-1505. Foreclosure of trust deed, when.

The trustee may foreclose a trust deed by advertisement and sale under this act if:

- (1) The 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; and
- (2) There is a default by the grantor or other person owing an obligation the performance of which is secured by the trust deed or by their successors in interest with respect to any provision in the deed which authorizes sale in the event of default of such provision; and
- (3) The trustee or beneficiary shall have (a) filed for record in the office of the recorder in each county wherein the trust property, or some part or parcel, is situated, a notice of default identifying the deed of trust by stating the name or names of the trustor or trustors and giving the book and page where the same is recorded, or a description of the trust property, and containing a statement that a breach of the obligation for which the transfer in trust is security has occurred, and setting forth the nature of such breach and his election to sell or cause to be sold such property to satisfy such obligation; and (b) mailed a copy of such notice by registered or certified mail, return receipt requested, to any person requesting such notice of record as provided in section 45-1511, Idaho Code. Service by mail in accordance with this subsection (3) shall be deemed effective at the time of mailing. In addition, the trustee shall mail the notice required in this section to any individual who owns an interest in property which is the subject of this section. Such notice shall be accompanied by and affixed to the following notice in twelve (12) point boldface type, on a separate sheet of paper, no smaller than eight and one-half (8 1/2) inches by eleven (11) inches:

"NOTICE REQUIRED BY IDAHO LAW

Mortgage foreclosure is a legal proceeding where a lender terminates a borrower's interest in property to satisfy unpaid debt secured by the property. This can mean that when a homeowner gets behind on his or her mortgage payments, the lender forces a sale of the home on which the mortgage loan is based. Some individuals or businesses may say they can "save" your home from foreclosure. You should be cautious about such claims. It is important that you understand all the terms of a plan to "rescue" you from mortgage foreclosure and how it will affect you. It may result in your losing valuable equity that you may have in your home. If possible, you should consult with an attorney or financial professional to find out what other options you may have. Do not delay seeking advice, because the longer you wait, the fewer options you may have.

Under Idaho law, you have five (5) days to rescind or undo certain contracts or agreements that relate to transferring interests in property or money in a foreclosure situation. An attorney or financial professional can tell you more about this option."

If the trust deed, or any assignments of the trust deed, are in the Spanish language, the written notice set forth in this section shall be in the Spanish language on a form to be prepared and made available by the office of the attorney general.

(4) No action, suit or proceeding has been instituted to recover the debt then remaining secured by the trust deed, or any part thereof, or if such action or proceeding has been instituted, the action or proceeding has been dismissed.

History

1957, ch. 181, § 5, p. 345; <u>am. 1990, ch. 401, § 1</u>, p. 1122; <u>am. 2008, ch. 192, § 2</u>, p. 603; <u>am. 2009, ch. 136, § 1</u>, p. 417.

Annotations

STATUTORY NOTES

Cross References.

Attorney general, § 67-1401 et seq.

Amendments.

The 2008 amendment, by ch. 192, in subsection (3), added the third and fourth sentences, the notice, and the last paragraph.

The 2009 amendment, by ch. 136, in subsection (3), deleted "canary yellow or some similarly colored yellow" following "on a separate sheet of" just prior to the notice.

Legislative Intent.

Section 5 of <u>S.L. 1990, ch. 401</u> read: "The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law:

- "a. The sentence added to subsection (3) of section 45-1505, Idaho Code;
- "b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of section 45-1506, Idaho Code;
- "c. The changes reflected in Section 4 [§ 45-1510] of this act; and
- "d. Various mere semantical changes and corrections of obvious grammatical and typographical errors."

Compiler's Notes.

The term "this act" in the introductory paragraph refers to S.L. 1957, Chapter 181, which is compiled as <u>§§ 45-901</u>, <u>45-902</u>, <u>45-904</u>, <u>45-905</u>, <u>45-907</u>, <u>45-908</u>, <u>45-1003</u>, <u>45-1506</u> to <u>45-1506</u> and <u>45-1507</u> to <u>45-1515</u>.

JUDICIAL DECISIONS

Assignments.

When lender transferred its interest in a promissory note, it also transferred its interest in the deed of trust. However, as there was no change in the name of the nominee (the named beneficiary in the deed of trust), no assignment of the deed of trust was necessary or recordable. The beneficiary/trustee may foreclose on the deed of trust under this section. Renshaw v. Mortg. Elec. Registration Sys., 155 Idaho 656, 315 P.3d 844, 2013 Ida. LEXIS 361 (2013).

Construction.

This section and § 45-1512 are in pari materia and must be construed together. Frontier Federal Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553 (1993).

Where the chain of assignments concerning the deed of trust was apparently corrupted when an alleged beneficiary made a transfer when it held no interest in the deed of trust, debtors' adversary complaint to nullify the deed of trust under § 45-1502 and this section could proceed to trial. Rinehart v. Fed. Nat'l Mortg. Assocs. (In re Rinehart), No. 11-41210-JDP, No. 11-08087-JDP, 2012 Bankr. LEXIS 3414 (Bankr. D. Idaho July 24, 2012).

Delay of Foreclosure Sale.

Where a deed of trust, which was drafted by counsel for plaintiff, specifically granted defendant trustee the power to delay the foreclosure sale and recognized its statutorily imposed notice obligations as trustee, the action of the defendant, in delaying the scheduled foreclosure sale after discovering a previously unknown trust deed, was necessary to clear that trust deed from title at the judicial sale and, therefore, was a proper exercise of its powers as trustee and could not form the basis for an insurer's bad faith claim. <u>Brown's Tie & Lumber Co. v. Chicago Title Co., 115 Idaho 56, 764 P.2d 423, 1988 Ida. LEXIS 140 (1988).</u>

Foreclosure Sale Void.

Summary judgment in favor of the foreclosure sale purchaser should not have been granted, given case law holding that a sale is void under subsection (2) when there was no default at the time of the foreclosure sale; there was evidence in the record that there had been no default. <u>Fannie Mae v. Hafer, 158 Idaho 694, 351 P.3d 622, 2015</u> Ida. LEXIS 151 (2015).

No Prerequisites.

Pursuant to this section, 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. Trustee is not required to prove it has standing before foreclosing on a deed of trust. <u>Trotter v. Bank of N.Y. Mellon, 152 Idaho 842, 275 P.3d 857, 2012 Ida. LEXIS 84 (2012)</u>; <u>Purdy v. Bank of Am., No. 1:11-CV-00640-EJL-REB, 2012 U.S. Dist. LEXIS 140935 (D. Idaho Sept. 26, 2012)</u>.

Notice of Trustee's Sale.

A beneficiary was not precluded from recovering a statutory deficiency judgment allowed by § 45-1512 by waiver or estoppel because the notice of trustee's sale stated that "the beneficiary elects to sell or cause the trust property to be sold to satisfy said obligation." Frontier Federal Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553 (1993).

Lender complied with this section in effecting a foreclosure sale of Chapter 11 debtors' property where the deed of trust was recorded, the debtors were in default, a notice of default stating the debtors' breach was recorded, and

Idaho Code § 45-1505

the debtors were properly served; the claim by the debtors that the lender did not provide the notice required by the deed of trust did not invalidate the sale because the debtors failed to establish that the alleged breach of the deed of trust would vitiate the statutory foreclosure process. <u>Thorian v. BARO Enters., LLC, 387 B.R. 50, 2008 Bankr. LEXIS 828 (Bankr. D. Idaho 2008)</u>.

Procedure.

In 1957, §§ 45-901 and 45-904 were amended to eliminate trust deeds from their operation and likewise the mortgage laws, directing attention to §§ 6-101 and 6-104 which were amended to draw a distinction between a trust deed or transfer in trust and a mortgage to the effect that mortgage foreclosure proceedings are not applicable to proceedings for the foreclosure of a trust deed by advertisement or notice and sale as authorized by chapter 181, such procedure being set out in § 45-1503, this section also requiring the recording of the trust deed and any assignment thereof and § 45-1506 requiring notice of trustee sale, setting up details of the complete procedure for sale. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 (1958).

Prohibition of Foreclosure.

A trustee may foreclose a trust deed if there is a default by the grantor. Where the lender and the homeowners had resolved their default by agreement prior to the foreclosure sale, the foreclosure sale was not authorized by statute and was, therefore, void. <u>Fannie Mae v. Hafer, 158 Idaho 694, 351 P.3d 622, 2015 Ida. LEXIS 151 (2015)</u>.

Suit to Recover Debt.

-Dismissal.

Subdivision (4) provides that if the suit upon the debt is dismissed, foreclosure may again be made of the trust deed; if, during the suit on the debt, the property covered by the trust deed has been conveyed or encumbered by the debtor, any revival of the security of the trust deed upon dismissal of the suit on the debt as provided in subdivision (4) shall be subject to any such conveyance or encumbrance. <u>Frazier v. Neilsen & Co., 115 Idaho 739, 769 P.2d 1111, 1989 Ida. LEXIS 24 (1989)</u>.

—Exhausting Security.

Holders of a promissory note secured by a deed of trust encumbering real property may sue for a money judgment on the note without first exhausting their security by judicial foreclosure or by exercise of the power of sale. <u>Frazier v. Neilsen & Co., 115 Idaho 739, 769 P.2d 1111, 1989 Ida. LEXIS 24 (1989)</u>.

-Prohibition of Foreclosure.

Section prohibited holders of promissory note secured by a deed of trust from prevailing on their complaint which asked for judgment upon the debt and judgment to foreclose the deed of trust. Subsection (4) provides that the summary foreclosure procedure cannot be utilized if judicial process is being used to recover the debt; such language does not prohibit the collection of a debt without foreclosure of the trust deed, but does prohibit foreclosure if there is an action on the debt pending. <u>Frazier v. Neilsen & Co., 115 Idaho 739, 769 P.2d 1111, 1989 Ida. LEXIS 24 (1989)</u>.

-Waiver of Security.

In subdivision (4) of this statute, the legislature contemplated a suit on debt independent of foreclosure provisions; if the creditor files suit to recover on the debt without first foreclosing on the security as provided by the statute, the security, as a matter of law, is waived at the time the action on the debt is filed. <u>Frazier v. Neilsen & Co., 115 Idaho</u> 739, 769 P.2d 1111, 1989 Ida. LEXIS 24 (1989).

Cited in:

Cite # 17, Report # 36, Full Text, Page 110 of 183 Idaho Code § 45-1505

<u>Security Pac. Fin. Corp. v. Bishop, 109 Idaho 25, 704 P.2d 357, 1985 Ida. App. LEXIS 690 (Ct. App. 1985); Liberty Bankers Life Ins. Co. v. Witherspoon, Kelley, Davenport & Toole, P.S., 159 Idaho 679, 365 P.3d 1033, 2016 Ida. LEXIS 4 (2016)</u>.

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Shepard's request: Idaho Code § 45-1505 (2)

The Shepard's® report for this citation is identical to citation #17

Full text request: Idaho Code § 45-1505(2)

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Shepard's®: Report Content

Appellate History: Requested

Citing Decisions: Narrowed By:

Other Citing Sources: Narrowed By:

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Shepard's®: Aspencer v. Jameson 147 Idaho 497,211 P.3d 106,2009 Ida. LEXIS 96: (Idaho June 16, 2009)

No subsequent appellate history

Appellate History (1)

♀Citation you *Shepardized*™ 1.

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6.	Idaho Code sec. 45-1503
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7.	Idaho Code sec. 45-1506
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9. Idaho Code sec. 45-1508

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13. CHILDREN'S HOME SOC'Y OF IDAHO v. LABRADOR, 2024 ID S. Ct. Briefs LEXIS 205

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V Distinguishing

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Discussion: | Court: Idaho Ct. App. | Date: July 23, 1997



As of: October 25, 2024 11:01 PM Z

Spencer v. Jameson

Supreme Court of Idaho June 16, 2009, Filed

Docket No. 34517, 2009 Opinion No. 85

Reporter

147 Idaho 497 *; 211 P.3d 106 **; 2009 Ida. LEXIS 96 ***

LAWRENCE SPENCER, Plaintiff-Appellant, v. DEE JAMESON, an individual, DAVIDSON TRUST CO., Custodian for IRA/SEP Account No. 68-0811-30, and JAMES A. RAEON, Successor Trustee, Defendants-Respondents.

Subsequent History: Released for Publication July 8, 2009.

Prior History: [***1] Appeal from the District Court of the First Judicial District, State of Idaho, Kootenai County. Hon. Lansing D. Haynes, District Judge.

Disposition: District court order granting summary judgment, reversed.

Core Terms

trust deed, bid, mobile home, credit bid, attorney's fees, sales, real property, district court, summary judgment, purchaser, proceeds, Parcel, excess of the amount, amount owing, secured note, time of sale, foreclosure, holder, recorded, non-judicial, argues, prevailing party, price bid, surplus, foreclosure sale, conveyed, expended, grantor, secured obligation, affixed

Case Summary

Procedural Posture

Plaintiff borrower filed suit against defendant lenders in the District Court of the First Judicial District, State of Idaho, Kootenai County, claiming irregularities in two non-judicial foreclosure sales and seeking to set them aside or recover a monetary surplus under <u>Idaho Code</u> Ann. § 45-1507. The district court granted summary judgment for the lenders. The borrower appealed.

Overview

The borrower executed promissory notes in favor of the lender, secured by two deeds of trust. The borrower later defaulted. The trustee sold the deeds at nonjudicial foreclosure sales. The borrower argued that a mobile home was personal property rather than real property and should not have been transferred to the trustee. He also argued that the lender submitted bids in excess of the amounts owed on the notes and that he was entitled to the surplus proceeds. The court held that the mobile home was affixed to the land at the time of sale and, therefore, was real property under Idaho Code Ann. § 55-101 and properly transferred to the trustee under Idaho Code Ann. §§ 45-1502(3) and 45-1503. Because the lender bid in excess of the amount of credit available to it under one of the deeds of trust, it did not pay the price owing before the trustee executed the Trustee's Deed as required by Idaho Code Ann. § 45-1506(9); however, it was unnecessary to set aside the sale. The court found that there were proceeds from the sales that went beyond the expenses of the sales and the trust deed obligations, and the trial court was required to distribute the excess under Idaho Code Ann. § 45-1507.

Outcome

The court reversed the district court's award of summary judgment for the lender and remanded for a determination of the amount of sale proceeds to be distributed along with who was entitled to such proceeds under *Idaho Code Ann. § 45-1507*. The court awarded

nonmoving party. If reasonable persons could reach differing conclusions or draw conflicting inferences from

the evidence presented, then summary judgment is

Spencer v. Jameson, 147 Idaho 497

the borrower court costs, but not attorney fees, on appeal.

LexisNexis® Headnotes

Real Property Law > Mobilehomes & Mobilehome
Parks > General Overview

improper.

Civil Procedure > ... > Summary
Judgment > Appellate Review > Standards of
Review

HN1[♣] Appellate Review, Standards of Review

When reviewing an order for summary judgment, an appellate court applies the same standard of review as was used by the trial court in ruling on the motion for summary judgment.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Summary
Judgment > Appellate Review > Standards of
Review

<u>HN2</u>[Entitlement as Matter of Law, Appropriateness

Summary judgment is proper if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. *Idaho R. Civ. P. 56(c)*. If there is no genuine issue of material fact, only a question of law remains, over which an appellate court exercises free review.

Civil Procedure > ... > Summary
Judgment > Appellate Review > Standards of
Review

<u>HN3</u>[♣] Appellate Review, Standards of Review

An appellate court reviewing a grant of summary judgment liberally construes all disputed facts in favor of the nonmoving party, and all reasonable inferences drawn from the record will be drawn in favor of the

<u>HN4</u>[基] Real Property Law, Mobilehomes &

<u>HN4</u>[♣] Real Property Law, Mobilehomes & Mobilehome Parks

Upon manufacture, a mobile home is a movable chattel and characterized as personal property. Once a mobile home is affixed to land it is converted to real property. *Idaho Code Ann. § 55-101*. Accordingly, a mobile home may be considered either real property or personal property under Idaho law.

Real Property Law > Financing > Mortgages & Other Security Instruments > Definitions & Interpretation

<u>HN5</u> ► Mortgages & Other Security Instruments, Definitions & Interpretation

A deed of trust, by definition, is limited to the conveyance of real property. <u>Idaho Code Ann. § 45-1502(3)</u>.

Real Property Law > General Overview

<u>HN6</u>[♣] Real Property Law

The Idaho Legislature has defined "real property" under Title 55, Chapter 1, which governs property and ownership, as follows: 1. Lands, possessory rights to land, ditch and water rights, and mining claims, both load and placer. 2. That which is affixed to land. 3. That which is appurtenant to land. <u>Idaho Code Ann.</u> § 55-101.

Real Property Law > Fixtures & Improvements > Fixture Characteristics

Real Property
Law > Financing > Foreclosures > Private Power of
Sale Foreclosure

Spencer v. Jameson, 147 Idaho 497

<u>HN7</u>[Fixtures & Improvements, Fixture Characteristics

A deed of trust is limited to the conveyance of real property. *Idaho Code Ann. § 45-1502(3)*. Accordingly, that which is land, affixed to the land, or appurtenant to the land, and falls within the parameters of the real property described in the deed, is conveyed under the deed of trust. *Idaho Code Ann. § 45-1502(5)* provides additional limitations on what real property can be transferred to the trustee for purposes of non-judicial foreclosure.

Real Property Law > Fixtures & Improvements > Fixture Characteristics

<u>HN8</u>[♣] Fixtures & Improvements, Fixture Characteristics

When faced with the issue of fixture, courts apply three general tests: (1) Actual or constructive annexation to the realty; (2) Appropriation to the use of that part of the realty to which it is connected; and (3) Intention of the party so annexing to make the article a permanent accession to the realty.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN9</u> Foreclosures, Private Power of Sale Foreclosure

A trust deed must be foreclosed in the manner set forth in *Idaho Code Ann. § 45-1506*, which requires in part 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. *Idaho Code Ann. § 45-1506(9)*.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN10</u>[Foreclosures, Private Power of Sale Foreclosure

A credit bid in a foreclosure sale made by the lender holding the note is the equivalent of a cash sale and, therefore, satisfies the statutory requirements for purchasing real property at a trustee's sale under <u>Idaho</u> <u>Code Ann. § 45-1506(9)</u>. However, there is a limitation on credit bids: the holder of a deed of trust note credit must bid in all or part of the amount owing pursuant to the note at the time of sale.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN11</u>[Foreclosures, Private Power of Sale Foreclosure

Property may only be transferred to the trustee for purposes of non-judicial foreclosure pursuant to <u>Idaho</u> <u>Code Ann. § 45-1503(1)</u> to secure an obligation under the trust deed.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN12</u>[Foreclosures, Private Power of Sale Foreclosure

See Idaho Code Ann. § 45-1508.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN13</u> Foreclosures, Private Power of Sale Foreclosure

Reading subsections (9) and (10) of Idaho Code Ann. § 45-1506 in their entirety, it is more reasonable to infer that the legislature did not intend for a non-judicial foreclosure sale to be set aside once the trustee accepts the credit bid as payment in full.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN14</u> Foreclosures, Private Power of Sale Foreclosure

Spencer v. Jameson, 147 Idaho 497

See Idaho Code Ann. § 45-1506(9).

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN15</u>[♣] Foreclosures, Private Power of Sale Foreclosure

See Idaho Code Ann. § 45-1506(10).

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN16</u>[Foreclosures, Private Power of Sale Foreclosure

Although <u>Idaho Code Ann. § 45-1506(9)</u> requires that the purchaser at a non-judicial foreclosure sale forthwith pay the price 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.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN17</u>[Foreclosures, Private Power of Sale Foreclosure

Where the holder of a deed of trust note is the bidder, crediting the bid against the note is the equivalent of a cash sale.

Real Property Law > ... > Liens > Nonmortgage Liens > Equitable Liens

Real Property Law > ... > Liens > Nonmortgage Liens > Lien Priorities

<u>HN18</u> **≥** Nonmortgage Liens, Equitable Liens

See Idaho Code Ann. § 45-105.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN19</u> Foreclosures, Private Power of Sale Foreclosure

Idaho Code Ann. § 45-1508 does not require that the grantor to a deed of trust demonstrate harm resulting from an irregularity in a foreclosure sale in order to have the sale set aside. The district court cannot impose this additional requirement under the statute, thereby increasing the plaintiff's burden, just because it does not agree with the result.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN20</u>[Foreclosures, Private Power of Sale Foreclosure

Idaho Code Ann. § 45-1506(9) does not authorize a trustee to execute a trustee's deed until the buyer pays the entire price bid. Accepting an excessive credit bid has a chilling effect on the trustee's ability to obtain the maximum amount of recovery for the debtor's property.

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

<u>HN21</u>[Foreclosures, Private Power of Sale Foreclosure

Idaho Code Ann. § 45-1507 requires that a trustee apply the proceeds from a foreclosure sale as follows: (1) To the expenses of the sale, including a reasonable charge by the trustee and a reasonable attorney's fee. (2) To the obligation secured by the trust deed. (3) To any persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear. (4) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

HN22[1] Reviewability of Lower Court Decisions,

Preservation for Review

An appellate court will not consider arguments raised for the first time on appeal.

Civil Procedure > Preliminary
Considerations > Equity > Adequate Remedy at
Law

Real Property

Law > Financing > Foreclosures > Private Power of Sale Foreclosure

HN23[♣] Equity, Adequate Remedy at Law

Idaho Code Ann. § 45-1502 et seq. provides a comprehensive regulatory scheme for non-judicial foreclosure of deeds of trust, which includes the exclusive remedies for a given statutory violation. Where a statute provides an adequate remedy of law, equitable remedies generally are not available. Equitable principles cannot supersede the positive enactments of the legislature.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Bad Faith Awards

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

HN24 ■ Basis of Recovery, Bad Faith Awards

Idaho Code Ann. § 12-120(3) allows recovery of attorney fees by the prevailing party in any commercial transaction. Idaho Code Ann. § 12-121 allows recovery of attorney fees by the prevailing party only if the court determines that the appeal was brought or defended frivolously, unreasonably, or without foundation. Thus, both statutes require that the party requesting attorney fees be a prevailing party.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Bad Faith Awards

HN25 ■ Basis of Recovery, Bad Faith Awards

<u>Idaho Code Ann. § 12-123(2)(b)</u> sets forth a specific procedure for attorney fees, requiring a motion by a party and notice and a hearing in the trial court.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Bad Faith Awards

HN26 Basis of Recovery, Bad Faith Awards

<u>Idaho Code Ann. § 12-123</u> limits an award of attorney fees to twenty-one days after the entry of judgment in a civil action.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Bad Faith Awards

HN27 Basis of Recovery, Bad Faith Awards

See Idaho Code Ann. § 12-123(2)(a).

Civil Procedure > Appeals > Costs & Attorney Fees

HN28 L Appeals, Costs & Attorney Fees

<u>Idaho Code Ann. § 12-123(2)(a)</u> makes no provision for attorney fees on appeal.

Civil Procedure > ... > Attorney Fees & Expenses > Basis of Recovery > Statutory Awards

<u>HN29</u>[■] Basis of Recovery, Statutory Awards

<u>Idaho Code Ann.</u> § 12-121 allows an award of reasonable attorney's fees to the prevailing party.

Civil Procedure > Appeals > Costs & Attorney Fees

<u>HN30</u>[基] Appeals, Costs & Attorney Fees

Reasonable attorney fees are available to the prevailing party on appeal under <u>Idaho Code Ann. § 12-121</u> only if the Court determines that the appeal was brought or defended frivolously, unreasonably, or without foundation.

Counsel: Ian Duncan Smith, Coeur d'Alene, argued for appellant.

Chapman Law office, PLLC, Coeur d'Alene, for respondent Jameson. Michael Ryan Chapman argued.

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Elsaesser, Jarzabek, Anderson, Marks, Elliott & McHugh, Chtd., Coeur d'Alene, for respondent Davidson Trust. Bruce A. Anderson argued.

Judges: BURDICK, Justice. Chief Justice EISMANN and Justices W. JONES and HORTON, CONCUR. J. JONES, J., specially concurring.

Opinion by: BURDICK

Opinion

[*500] [**109] BURDICK, Justice

I. NATURE OF THE CASE

This case arises out of two non-judicial foreclosure sales for separate but related deeds of trust. Appellant Lawrence Spencer appeals from the district court's order of summary judgment in favor of Respondent Davidson Trust Company, custodian for IRA/SEP account No. 68-0811-30 and James Raeon, successor trustee (Davidson Trust); and Respondent Dee Jameson, the trust beneficiary. We reverse the district court's award of summary judgment and remand for a determination of the amount of sale proceeds to be distributed along with who is entitled to such proceeds under [***2] Idaho Code § 45-1507.

II. FACTUAL AND PROCEDURAL BACKGROUND

On April 30, 2002, Spencer executed a promissory note for \$ 90,000 in favor of Davidson Trust. The note was secured by a Deed of Trust (DOT No. 1) on Spencer's real property Parcels Nos. 1, 2, and 3. Parcel No. 3 also included title to a 1981 Skyline mobile home, VIN # 01910302P. A few months later on November 13, 2002, Spencer entered into a Loan Commitment Agreement (Agreement) with Davidson Trust for a proposed loan in the amount of \$ 65,000. The Agreement provided that the loan was to be secured by Parcel No. 3 along with title to a 1977 mobile home, VIN # 73165. ¹ The Agreement also provided that \$ 42,500 of the \$ 65,000 was to be withheld from Spencer and paid to him

¹ During oral **[***3]** argument, Spencer's counsel conceded that the parties intended for the 1981 Skyline mobile home, rather than the 1977 mobile home, to serve as collateral under the Agreement.

incrementally upon completion of several tasks and improvements related to the mobile home. On November 14, 2002, Spencer executed a promissory note for \$ 65,000 in favor of Davidson Trust for the second loan. The following day on November 15, 2002, Spencer executed a Deed of Trust (DOT No. 2) as security for the second note. DOT No. 2 conveyed Parcel No. 3 by description, but made no reference to the 1977 mobile home, or the Agreement itself.

Between November 2002 and March 2004, Spencer completed six of the seven items set forth in the Agreement. It is undisputed that Spencer failed to complete item (g), which held back \$ 5,000 pending the completion of certain improvements entitled "[m]obile remodel costs." These improvements included "windows, carpets, drywall, etc. (to be paid upon completion)." Because Spencer did not complete item (g), he was only distributed \$ 60,000 of loan proceeds for the second loan.

Spencer later defaulted on his repayment obligations under both Deeds of Trust. On February 24, 2005, the trustee sold the deeds at two separate non-judicial foreclosure sales. It is undisputed that Spencer received proper notice for both sales. The sale of DOT No. 2 was conducted first at 10:00 a.m. Spencer did not attend this sale. Davidson Trust submitted a credit bid of \$ 86,507.45, which included the \$5,000 of loan proceeds withheld under item (g) of the Agreement. This was the highest bid and Davidson Trust was given a Trustee's Deed to [***4] Parcel No. 3. The sale of DOT No. 1 was conducted next at 10:30 a.m. Spencer did attend this sale and bid \$ 10 for the mobile home. Davidson Trust submitted a credit bid in the amount of \$ 204,074.37, which Davidson Trust calculated as being the cumulative amount owing under both deeds of trust. Davidson Trust submitted the highest bid and was given a Trustee's Deed to Parcels Nos. 1, 2, and 3 and title to the 1981 Skyline mobile home.

The Trustee's Deed for DOT No. 2 was recorded first at 11:29 a.m. and the Trustee's Deed for DOT No. 1 was recorded second at 11:30 a.m. The Trustee's Deed for the sale of DOT No. 1 listed the 1981 Skyline mobile home as part of the property sold; the Trustee's Deed for the sale of DOT No. 2 did not include any reference to a mobile home. The trustee subsequently executed an Amended Trustee's Deed on March 23, 2005 for DOT No. 1, which conveyed all three parcels and title to the 1981 Skyline mobile home as being the property secured under both Deeds of Trust.

[**110] [*501] On April 27, 2006, approximately

fourteen months after the sales, Spencer filed suit against Jameson and Davidson Trust, claiming irregularities in both non-judicial foreclosure sales. Spencer sought [***5] a declaratory judgment to set aside and reschedule the sales. In the alternative, Spencer argued that a monetary surplus was owed to him under *I.C.* § 45-1507.

On November 3, 2006, Jameson moved for summary judgment, which Davidson Trust joined. The district court granted summary judgment in favor of the respondents. Spencer filed a motion for clarification and reconsideration, which the district court denied. Spencer now appeals from the district court's order of summary judgment.

III. STANDARD OF REVIEW

HN1 When reviewing an order for summary judgment, this Court applies the same standard of review as was used by the trial court in ruling on the motion for summary judgment. See <u>Cristo Viene Pentecostal Church v. Paz, 144 Idaho 304, 307, 160 P.3d 743, 746 (2007).</u> HN2 Summary judgment is proper if "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." <u>I.R.C.P. 56(c)</u>. "If there is no genuine issue of material fact, only a question of law remains, over which this Court exercises free review." <u>Cristo, 144 Idaho at 307, 160 P.3d at 746</u> [***6] (quoting <u>Infanger v. City of Salmon, 137 Idaho 45, 47, 44 P.3d 1100, 1102 (2002)</u>).

This Court liberally construes all disputed facts in favor of the nonmoving party, and all reasonable inferences drawn from the record will be drawn in favor of the nonmoving party. *Id.* If reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented, then summary judgment is improper. *McPheters v. Maile*, 138 Idaho 391, 394, 64 P.3d 317, 320 (2003).

IV. ANALYSIS

On appeal, Spencer claims the district court erred in granting summary judgment to the respondents. First, Spencer argues that the character of the 1981 Skyline mobile home is personal property rather than real property and, therefore, the mobile home was improperly transferred to the trustee for purposes of

non-judicial foreclosure under <u>I.C. § 45-1501</u>, et seq. ² In addition, Spencer argues the sales should be set aside pursuant to <u>I.C. § 45-1508</u> because Davidson Trust submitted bids in excess of the amounts he owed under the notes secured by the trust deeds. Alternatively, Spencer argues that he is entitled to surplus proceeds from the sales under <u>I.C. § 45-1507</u>. Each argument will be discussed [***7] in turn.

A. Character of the Mobile Home

Spencer argues that the character of the 1981 Skyline mobile home is personal property rather than real property and, therefore, the mobile home was not subject to foreclosure. Before addressing Spencer's argument, we find it necessary to clarify why this issue is pertinent to the case. HN4[1] Upon manufacture, a mobile home is a movable chattel and characterized as personal property. Once a mobile home is affixed to land it is converted to real property. See *I.C.* § 55-101. Accordingly, a mobile home may be considered either real property or personal property under Idaho law. However, HN5 a deed of trust, by definition, is limited to the conveyance of real property. I.C. § 45-1502(3). Thus, we must determine whether at the time of the sale the 1981 Skyline mobile home was converted to real property and, therefore, was properly transferred to the trustee for purposes of non-judicial foreclosure under I.C. § 45-1503; or whether the mobile remained [***8] personal property, in which case the mobile home was not subject to foreclosure under the statute.

<u>HN6</u>[The Idaho Legislature has defined "real property" under Title 55, Chapter 1, [**111] [*502] which governs property and ownership, as follows:

- 1. Lands, possessory rights to land, ditch and water rights, and mining claims, both load and placer.
- 2. That which is affixed to land.
- 3. That which is appurtenant to land.

I.C. § 55-101. As set forth above, HNT a deed of trust is limited to the conveyance of real property. See I.C. § 45-1502(3). Accordingly, that which is land, affixed to the land, or appurtenant to the land, and falls within the parameters of the real property described in the deed, is conveyed under the deed of trust. Idaho

² <u>Idaho Code § 45-1501</u> has been repealed; therefore, the statutory provisions governing the non-judicial foreclosure of trust deeds will be referred to as <u>I.C. § 45-1502</u>, <u>et seq.</u> throughout the remainder of this opinion.

Code § 45-1502(5) provides additional limitations on what real property can be transferred to the trustee for purposes of non-judicial foreclosure. In this case, the question is whether the 1981 Skyline mobile home was affixed to the real property described as Parcel No. 3 in DOT No. 1 and DOT No. 2 at the time of the sale. HN8[↑] When faced with the issue of fixture, we apply three general tests: "(1) Actual or constructive annexation to the realty; (2) Appropriation to the use of that [***9] part of the realty to which it is connected; [and] (3) Intention of the party so annexing to make the article a permanent accession to the realty." Prudente v. Nechanicky, 84 Idaho 42, 47, 367 P.2d 568, 570-71 (1961).

The evidence demonstrates that the 1981 Skyline mobile home was affixed to the land at the time of sale and, therefore, was converted to real property. See I.C. § 55-101. As set forth in Ed Jameson's affidavit dated November 3, 2006, Spencer completed items (a) through (f) in the Agreement related to the mobile home, which were: (a) well set-up, with pump, pressure tanks, lines; (b) septic system with inspections, and hookup to home; (c) driveway completion to county standards; (d) power lines and pedestal, with inspections and hookup; (e) mobile title in file; and (f) foundation, decks, and mobile set-up, including attachment and conversion to real property. These tasks and improvements show: (1) the mobile home was actually annexed to the realty, (2) the mobile home was appropriated to the use of that part of the realty to which the home was connected, and (3) it was Spencer's intention to make the mobile home a permanent accession to the realty. See id. Most persuasively, [***10] item (f) specifically required "attachment and conversion to real property." Because the 1981 Skyline mobile home was affixed to the land at the time of sale, we hold that the mobile home was properly transferred to the trustee for purposes of nonjudicial foreclosure under I.C. § 45-1503.

B. Credit Bids

Next, Spencer argues that Davidson Trust's bids were in excess of the amounts owing under the notes secured by the trust deeds and, therefore, Davidson Trust did not "forthwith pay the price bid" before the trustee executed and delivered the Trustee's Deeds as required by L.C. 45-1506(9). Spencer further argues that because Davidson Trust is not a good faith purchaser for value, L.C. 45-1508 mandates that the sales be set aside due to Davidson Trust's failure to comply with this statutory provision. Each sale will be discussed

separately.

1. The sale for DOT No. 2 is final.

First, Spencer argues Davidson Trust's credit bid for DOT No. 2 was \$ 5,000 in excess of the amount Spencer owed under the note secured by the trust deed. Although the original amount of the loan was \$65,000, only \$ 60,000 was actually disbursed to Spencer; Davidson Trust withheld the \$ 5,000 because Spencer failed [***11] to complete item (g) of the Agreement which called for "[m]obile remodel costs, including windows, carpets, drywall, etc. (to be paid upon completion)." Davidson Trust expended \$ 45,000 to complete these improvements after the sale. The district court held the \$ 5,000 was properly included in Davidson Trust's credit bid for two reasons. First, the district court determined that pursuant to the terms of DOT No. 2, Davidson Trust was permitted to make the \$ 5,000 advances to protect its security interest (the mobile home) and to charge Spencer's account for the expenditure. The district court also determined that Davidson Trust could charge Spencer's account for the \$ 5,000 because he agreed to complete the "mobile remodel costs" listed in item (g) of the Agreement, which Spencer failed to do.

[**112] [*503] HN9[1] A trust deed must be foreclosed in the manner set forth in I.C. § 45-1506, which requires in part that "[t]he 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 " I.C. § 45-1506(9). In this case, Davidson Trust submitted a credit bid of \$86,507.45 for DOT No. 2 and the trustee subsequently [***12] executed a Trustee's Deed to Davidson Trust for the sale. This Court recently determined that HN10 a credit bid in a foreclosure sale made by the lender holding the note is the equivalent of a cash sale and, therefore, satisfies the statutory requirements for purchasing real property at a trustee's sale under I.C. § 45-1506(9). Federal Home Mortgage Corp. v. Appel, 143 Idaho 42, 45, 137 P.3d 429, 432 (2006). However, the Court imposed a limitation on credit bids, requiring that the holder of a deed of trust note credit bid "in all or part of the amount owing pursuant to the note" at the time of sale. Id.

We find that Davidson Trust bid in excess of the amount of credit available to it under DOT No. 2. Only \$ 60,000 of the \$ 65,000 was actually advanced to Spencer and thus "owing pursuant to the note" at the time of the sale. *Id.* (emphasis added). Accordingly, Davidson Trust bid in excess of the amount of credit available to it under

the note secured by DOT No. 2 by at least \$ 5,000 and, therefore, did not pay the price owing before the trustee executed the Trustee's Deed for DOT No. 2 as required by *I.C.* § 45-1506(9). ³

The respondents argue that the \$ 5,000 was properly included in Davidson Trust's bid because DOT No. 2 specifically allows Davidson Trust to make any advances necessary to protect the security interest and to charge Spencer's account for such advances. However, the \$5,000 was not advanced until after the sale. In Ed Jameson's Affidavit dated March 27, 2007, he states that approximately \$ 60,000 was expended in relation to the three parcels of property, and of that \$ 60,000, over \$ 5,000 was expended to complete item (g) of the Agreement. Jameson stated this expenditure was made "[b]etween February 24, 2005, and April 27, 2006." The sale for DOT No. 2 occurred at 10:00 a.m. on the morning of February 24, 2005. Thus, the \$5,000 was not expended until after the sale of DOT No. 2, and accordingly did not constitute an amount owing under the note at the time of the sale.

The respondents also argue the \$5,000 was properly included in Davidson Trust's bid because Spencer failed to complete the "mobile remodel costs" as required under item (g) of the Agreement. As set forth above, Davidson Trust did not expend [***14] the \$5,000 it withheld to complete the improvements until after the sale of DOT No. 2. Therefore, the \$5,000 was not an amount owing at the time of the sale.

Finally, the respondents argue the \$ 5,000 should be treated the same as property taxes, which were properly charged to Spencer's account and included in Davison Trust's credit bid. However, the payment of property taxes was an obligation secured by DOT No. 2, whereas the "mobile remodel costs" were not. hw11 Property may only be transferred to the trustee for purposes of non-judicial foreclosure pursuant to
<a href="https://example.com/hw1503

Based on our analysis set forth above, we find that Davidson Trust did not pay the price bid before the trustee executed the Trustee's Deed to DOT No.2 as

required by <u>I.C. § 45-1506(9)</u>. Even though Davidson Trust failed to comply with this provision, however, we find it unnecessary to set aside the sale. <u>Idaho Code § 45-1508</u>, which governs the finality of the sale, states in pertinent [***15] part:

hn12 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 [**113] [*504] 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... [A]ny 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."

Upon initial reading of this provision, it would appear we are required to set aside the sale of DOT No. 2 due to Davidson Trust's failure to comply with L.C. § 45-1506(9), unless the Court finds that Davidson Trust is a good faith purchaser for value. Nevertheless, after HN13 reading subsections (9) and (10) of I.C. § 45-1506 in their entirety, we find that 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. Idaho Code § 45-1506(9) states:

HN14 The purchaser at the sale shall forthwith pay the price [***16] bid and upon receipt of payment the trustee shall execute and deliver the trustee's deed to such purchaser, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.

Immediately following this provision, <u>Idaho Code § 45-1506(10)</u> states:

HN15 The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.

Thus, <u>HN16</u> although <u>I.C.</u> § 45-1506(9) requires that the purchaser forthwith pay the price bid, the sale is final once the trustee accepts the bid as payment in full

³ Davidson Trust overbid by at least \$ 5,000 since the interest and fees [***13] calculated for DOT No. 2 were based on \$ 65,000 being the principal amount owed.

unless there are issues surrounding the notice of the sale (which are admittedly not present in this case). This interpretation promotes the legislature's interest in preserving the finality of title to real property. In addition, our interpretation does not deprive trust deed grantors of a statutory remedy in cases such as this where the trustee wrongfully [***17] accepts a credit bid as payment in full. Grantors may still turn to L.C. 45-1507 which governs the manner which the sale proceeds are to be distributed for relief. Therefore, we hold that the sale for DOT No. 2 was final once the trustee accepted Davidson Trust's bid as payment in full and subsequently executed the Trustee's Deed for DOT No. 2.

Because the sale of DOT No. 2 is final, we need not address whether Davidson Trust is a good faith purchaser for value, as that determination would only be applicable to our analysis if we found reason to set aside the sale.

2. The sale for DOT No. 1 is final.

Spencer also argues the sale for DOT. No. 1 should be set aside because Davidson Trust bid \$ 86,507.45 in excess of the amount owing under the note secured by the trust deed. During the trustee's sale for DOT No. 1, Davidson Trust submitted a credit bid in the amount of \$ 204,074.37, which included the remaining principal balance under the promissory note secured by DOT No. 1, along with the alleged payoff amount for the second note secured by DOT No. 2 and related fees.

The respondents assert they were compelled to satisfy the amount owing under the note secured by DOT No. 2 for their own [***18] protection and, therefore, properly included the payoff amount for DOT No. 2 and related fees in their bid for DOT No. 1. In support of their assertion, the respondents cite to Federal Home Loan Mortgage Corp. v. Appel, 143 Idaho 42, 137 P.3d 429 (2006), and Thompson v. Kirsch, 106 Idaho 177, 677 P.2d 490 (Ct. App. 1984). In Federal Home Loan, debtors in a foreclosure sale argued that a credit bid made by the lender for the amount owed on the note satisfied the statutory requirements for "purchase money" or "paying the price" pursuant to I.C. § 45-1506(9). Federal Home Loan, 143 Idaho at 44, 137 P.3d at 431. This Court held "that HN17 where the holder of the deed of trust note is the bidder, crediting the bid against the note is the equivalent of a cash sale." Id. at 45, 137 P.3d at 432. Thus, Federal Home Loan dealt with whether а credit bid constitutes [**114] [*505] "paying the price" for a trust deed under the statute.

Thompson, on the other hand, is more relevant to the respondents' argument. In that case, the Thompsons, holders of a second deed of trust, satisfied a first deed of trust to prevent foreclosure of the prior lien. 106 Idaho at 181, 677 P.2d at 494. The district court included [***19] the amounts the Thompsons paid to service the debt on the first deed of trust in determining the amount of mortgage indebtedness that was owed under the Thompsons' second deed of trust. Id. On appeal, the Kirsches, those indebted under both deeds of trust, argued it was error for the district court to include these amounts. Id. The Thompsons, however, contended that I.C. § 45-105 entitled them to reimbursement for any sums they paid in satisfaction of the first deed of trust. Id. Idaho Code § 45-105 states: HN18 1 "Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as part of the claim for which his own lien exists." The Idaho Court of Appeals held that the second deed of trust was the functional equivalent to a mortgage and that I.C. § 45-105 entitled the Thompsons to include payments they made to prevent foreclosure of the first deed of trust as part of the mortgage indebtedness created by their junior encumbrance. Id. at 181-82, 677 P.2d at 494-95. (citing Miller v. Stavros, 174 So.2d 48, 49 (Fla. Dist. Ct. App. 1965) (holding that "amounts paid by the holder of a second mortgage to protect [***20] his security are properly included in a decree foreclosing the second mortgage")). Conversely, this case does not involve the holder of a special lien paying off a "prior lien." See I.C. § 45-105. DOT No. 1 was the prior lien under the facts of this case, which was sold after DOT No.2. Davidson Trust did not make advances to prevent the foreclosure of DOT No. 1 before it bid on DOT No. 2. Therefore, Davidson Trust was not compelled to satisfy a prior lien for its own protection when it bid on DOT No. 1.

The respondents also argue that the \$86,507.45 was properly included in its bid for DOT No. 1 because DOT No. 1 contains a future advance clause. DOT No. 1 states that the property conveyed "secure[s] payment of all such further sums as may hereafter be loaned or advanced by the Beneficiary herein to the Grantor herein" At the time DOT No. 1 was sold, the \$65,000 loan advance plus interest and fees had already been paid off as the trustee had previously accepted Davidson Trust's bid for \$86,507.45 for DOT No. 2 as payment in full. As such, only \$117,566.92 was owing under the note secured by DOT No. 1 at the time of sale. Yet, Davidson Trust bid \$204,074.37. Davidson Trust [***21] did not pay the full price bid before the trustee executed the Trustee's Deed for DOT No. 1 as

required by <u>I.C.</u> § 45-1506(9). Still, we find it unnecessary to set aside the sale. The trustee accepted Davidson Trust's bid for DOT No. 1 as payment in full, which, as set forth above, was the point in time when the sale became final. Again, because the sale for DOT No. 1 is final, we need not address whether Davidson Trust is a good faith purchaser for value.

The district court also held that the sale for DOT No. 1 is final despite the irregularity in Davidson Trust's credit bid, but did so under the reasoning that Spencer had failed to demonstrate harm resulting from the excessive credit bid. <a href="https://www.hnn.edu.org/hnn.edu.or

Although neither [***22] party attributes fault to the trustee, we note that MN20[**] I.C. § 45-1506(9) does not authorize a trustee to execute a trustee's deed until the buyer pays the entire price bid. Accepting an excessive credit bid has a chilling effect on the trustee's ability to obtain the maximum amount of recovery for the debtor's property. Here, the trustee executed the Trustee's Deeds for DOT No. 1 and DOT No. 2 before Davidson Trust paid its bids in full. Pursuant to I.C. § 45-1506(9), the trustee should have required [**115] [*506] that Davidson Trust pay cash for the excess amounts before executing the Trustee's Deeds.

C. Surplus

In the alternative, Spencer argues that he is entitled to surplus proceeds from both sales. <u>HN21[1] Idaho Code</u> § 45-1507 requires that the trustee apply the proceeds from the foreclosure sale as follows:

- 1) To the expenses of the sale, including a reasonable charge by the trustee and a reasonable attorney's fee.
- (2) To the obligation secured by the trust deed.
- (3) To any persons having recorded liens subsequent to the interest of the trustee in the trust deed as their interests may appear.
- (4) The surplus, if any, to the grantor of the trust deed or to his successor in interest entitled to such surplus.

I.C. § 45-1507. [***23] As set forth above, Davidson Trust bid \$ 86,507.95 in excess of the amount owing under the note secured by DOT No. 2, and also bid at least \$ 5,000 in excess of the amount owing under the note secured by DOT No. 2. Accordingly, there are proceeds from the sales that go beyond the expenses of the sales and the obligations secured by the trust deeds. See I.C. § 45-1507.

The respondents argue that even if Davidson Trust submitted excessive bids, Spencer is not entitled to proceeds from the sales. The respondents claim that Michael Thompson, the holder of a recorded lien on Parcel No. 3 subsequent to the interest of Davidson Trust, is entitled to these proceeds under I.C. § 45-1507(3) before Spencer is entitled to a surplus under I.C. § 45-1507(4). This argument is based on two subordination agreements signed by Thompson, through which Thompson subordinated his interest in Parcel No. 3 to both Deeds of Trust held by Davidson Trust. Based on these subordination agreements, the respondents argue that Spencer has failed to state a claim upon which relief can be granted. However, neither respondent raised this argument before the district court. In fact, Jameson argued that the subordination [***24] agreements supported the district court's award of summary judgment in his response to Spencer's motion for reconsideration. HN22[1] This Court will not consider arguments raised for the first time on appeal. Johannsen v. Utterbeck, 146 Idaho 423, 429, 196 P.3d 341, 347 (2008).

In addition, the respondents argue that the \$86,507.45 was properly deducted under I.C. § 45-1507(3) since the lien for DOT No. 2 was still a subsequently recorded lien at the time the Trustee's Deed for DOT No. 1 was recorded. The respondents' argument is based on the district court's determination that the Trustee's Deed for DOT No. 1 was recorded at 11:29 a.m. and that the Trustee's Deed for DOT No. 2 was recorded at 11:30 a.m. This argument fails for two reasons. First, the district court erred in determining the order in which the sales were recorded; the sales were actually recorded in reverse order--the Trustee's Deed for DOT No. 2 was recorded first at 11:29 a.m. and the Trustee's Deed for DOT No. 1 was recorded second at 11:30 a.m. More importantly, the order in which the Trustee's Deeds were recorded is irrelevant. The lien on DOT No. 2 was extinguished when the trustee accepted Davidson Trust's bid, not when [***25] the Trustee's Deed for DOT No. 2 was executed.

Finally, the respondents argue that it would be

inequitable for this Court to award Spencer a surplus. The respondents argue that because Spencer defaulted under two separate promissory notes, he will obtain a windfall if he prevails. However, equity is not available to the respondents. HN23 1 Idaho Code § 45-1502, et seq. provides a comprehensive regulatory scheme for non-judicial foreclosure of deeds of trust, which includes the exclusive remedies for a given statutory violation. "Where a statute provides an adequate remedy of law, equitable remedies generally are not available." 27A Am. Jur. 2d Equity § 213 (2008). "It is well understood that equitable principles cannot supersede the positive enactments of the legislature." Davis v. Idaho Dept. of Heath & Welfare, 130 Idaho 469, 471, 943 P.2d 59, 61 (Ct. App. 1997). Because I.C. § 45-1502, et seg. applies and dictates the requirements for relief [**116] [*507] in this case, the Court will not allow equity to interfere.

Based on the analysis set forth above, we hold there are sale proceeds in excess of the amounts secured by the trust deeds. However, part of the property conveyed subject to the trust deeds [***26] was Parcel No. 3, upon which Thompson has an existing lien. Therefore, we reverse in part the district court's award of summary judgment in favor of the respondents and remand for a determination of the amount of sale proceeds to be distributed along with a determination of who is entitled to such proceeds under *I.C.* § 45-1507.

D. Attorney Fees

All parties request attorney fees on appeal. First, Jameson requests attorney fees under I.C. §§ 12-120(3), 12-121, and 12-123. HN24 [1] "[Idaho Code] § 12-120(3) . . . allows recovery of attorney fees by the prevailing party in any commercial transaction." Mackay v. Four Rivers Packing Co., 145 Idaho 408, 415, 179 P.3d 1064, 1071 (2008). Idaho Code § 12-121 allows recovery of attorney fees by the prevailing party only if the Court determines that the appeal was brought or defended frivolously, unreasonably, or without foundation. Thus, both statutes require that the party requesting attorney fees be a prevailing party. Here, Jameson is not a prevailing party and, therefore, is not entitled to attorney fees under I.C. §§ 12-120(3) or 12-121.

We also deny Jameson's request for attorney fees on appeal under <u>I.C. § 12-123</u>. <u>HN25</u> [1] <u>Idaho Code § 12-123(2)(b)</u> sets forth [***27] a specific procedure for attorney fees, requiring a motion by a party and notice and a hearing in the trial court. See <u>Roe Family Servs.</u>

v. Doe, 139 Idaho 930, 938, 88 P.3d 749, 757 (2004). Those were not followed in this case. Furthermore, HN26 ↑ the statute limits an award of attorney fees to twenty-one days after the entry of judgment in a civil action. Idaho Code § 12-123(2)(a) states: HN27 ↑ [A]t any time prior to the commencement of the trial in a civil action or within twenty-one (21) days after the entry of judgment in a civil action, the court may award reasonable attorney's fees to any party to that action adversely affected by frivolous conduct." HN28 ↑ The statute makes no provision for attorney fees on appeal. Therefore, attorney fees are not awardable under I.C. § 12-123 for the appellate process.

Davidson Trust requests attorney fees on appeal under *I.C.* § 12-121. Again, *HN29* 1.C. § 12-121 allows an award of "reasonable attorney's fees to the prevailing party" *I.C.* § 12-121. Davidson Trust is not a prevailing party. Therefore, it is not entitled to attorney fees under *I.C.* § 12-121.

Finally, Spencer requests attorney fees pursuant to <code>I.C. § 12-121</code>. As set forth above, <code>HN30[]</code> reasonable attorney <code>[***28]</code> fees are available to the prevailing party under <code>I.C. § 12-121</code> only if the Court determines that the appeal was brought or defended frivolously, unreasonably, or without foundation. <code>Garcia, 144 Idaho at 546, 164 P.3d at 826</code>. Although Spencer is the prevailing party on appeal, we find no evidence to suggest that the respondents defended this appeal frivolously, unreasonably, or without foundation. <code>I.R.C.P. 54(e)(1)</code>. As such, we deny Spencer's request for attorney fees on appeal.

V. CONCLUSION

For the reasons set forth above, we reverse the district court's order of summary judgment in favor of Davidson Trust and remand with instructions for the district court to determine the amount of sale proceeds to be distributed along with a determination of who is entitled to such proceeds under <u>I.C.</u> § <u>45-1507</u>. We award Spencer court costs, but not attorney fees, on appeal.

Chief Justice EISMANN and Justices W. JONES and HORTON, **CONCUR**.

Concur by: J. JONES

Concur

J. JONES, J., specially concurring.

I concur in the Court's opinion even though it produces a harsh result for the Davidson Trust. Such a result could certainly have been anticipated because the bids submitted by Davidson Trust substantially exceeded the total [***29] amount owing on the obligations secured by the two deeds of trust. As noted in the opinion, a credit bid exceeding the trust deed obligation has a chilling [**117] [*508] effect on the trustee's ability to obtain the maximum amount of recovery for the debtor's property. Allowing a beneficiary to submit a credit bid in excess of the debtor's obligation would give the beneficiary an unwarranted competitive advantage over cash bidders who might be willing to pay more than the debtor's obligation. Such a practice would also deprive the debtor of any excess sale proceeds that might otherwise be available for his or her benefit. A credit bid is designed to allow the beneficiary to bid up to the total owing on the trust deed obligation without having to produce cash in that amount at the trust deed sale, not to allow the beneficiary to avoid a competitive trustee's sale.

In <u>Federal Home Loan Mortgage Corp. v. Appel, 143</u> <u>Idaho 42, 45, 137 P.3d 429, 432 (2006)</u>, we described the purpose of a credit bid as follows:

There is no reason why the holder of the deed of trust note should not be able to purchase the property at a trustee sale by bidding in all or part of the amount owing pursuant to the note. After all, [***30] the holder of the note is the party to be benefitted by the sale. It makes no sense to require the note holder to bring cash to the sale in order to pay himself. His bid, if successful, immediately reduces or eliminates the debtor's obligation. We hold that where the holder of a deed of trust note is the bidder, crediting the bid against the note is the equivalent of a cash sale.

It is clear that the upper limit of a credit bid is the amount owing on the obligation secured by the trust deed. If the beneficiary were permitted to bid in excess of the amount owing on the obligation secured by the trust deed, without having to pay the excess in cash, there would be no need for a competitive auction -- the beneficiary would always be able to outbid a cash purchaser.

A trust deed beneficiary should not submit a bid in excess of the amount owing on the trust deed obligation without expecting to have to pay cash for the excess. Had a third party submitted bids identical to those

submitted by the Davidson Trust, the third party would not have been excused from paying the total amount of the two bids. There is no reason to treat Davidson Trust any differently. On the other hand, a trustee should [***31] not accept a beneficiary's credit bid exceeding the trust deed obligation. Idaho Code § 45-1506(9) requires the purchaser to pay the price bid at the time of sale and provides for delivery of the trustee's deed upon receipt of payment by the trustee. The trustee is provided with options in the event of a refusal by the purchaser to pay the purchase money. Since a credit bid is limited to the amount of the obligation secured by the trust deed, the portion of a bid exceeding that amount must be paid in cash. Where the beneficiary fails to pay the excess amount in cash, he has failed to pay the price bid and the trustee, having failed to receive full payment, delivers the trustee's deed at his potential peril.

It is not entirely clear how these sales went awry. The record contains an affidavit executed by the vice president and trust officer of Davidson Trust, attached to which are two written credit bids that were apparently furnished to the trustee. The affidavit indicates that both bids were to be submitted and that they were to be submitted in the order in which the trustee actually conducted the two sales -- DOT No. 2 being brought up for sale at 10:00 a.m. on February 24, 2005, and [***32] DOT No. 1 being brought up at 10:30 a.m. Thus, it appears the trustee conducted the sales as requested by Davidson Trust.

It is unknown why Davidson Trust did not attempt to handle the matter in a single sale by foreclosing DOT No. 2, including the amount owing on the obligation secured by DOT No. 1. Or, it could have foreclosed both trust deeds, seeking only the amount owing pursuant to each. Nor is it known why the trustee did not call attention to the fact that the credit bids exceeded the total available credit. The bids, as presented to and accepted by the trustee, appear destined to produce the unfortunate result actually obtained here.

What this case illustrates is that the beneficiary should be scrupulous in determining the amount owing pursuant to the obligation(s) secured by the deed(s) of trust ⁴ [**118] [*509] and, where the beneficiary does

⁴ The written credit bids also contain some overlap. Both bids included the delinquent taxes on parcel No. 3 in the amount of \$ 1,783.36, the \$ 5,000 amount related to item (g) of the Agreement, and attorney fees and costs in the amount of \$ 1,865.40. While it isn't entirely clear, it appears that these

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not personally attend the sale, should provide clear-cut instructions to the trustee. The case also illustrates that the trustee should pay attention to the amount owing to the beneficiary on the obligation(s) secured by the trust deed(s) and make sure that any credit bid submitted by the beneficiary does not exceed that amount, unless the beneficiary [***33] produces cash to make up the difference.

Shepard's request: 147 Idaho 497

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Full text request: 147 Idaho 497

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Statutes current through all legislation from the 2024 Regular Session.

Idaho Code > Title 45 Liens, Mortgages and Pledges (Chs. 1 — 19) > Chapter 15 Trust Deeds ($\S\S$ 45-1501 — 45-1515)

45-1506. Manner of foreclosure — Notice — Sale.

- (1) A trust deed may be foreclosed in the manner provided in this section.
- (2) Subsequent to recording notice of default as hereinbefore provided, and at least one hundred twenty (120) days before the day fixed by the trustee for the trustee's sale, notice of such sale shall be given by registered or certified mail, return receipt requested, to the last known address of the following persons or their legal representatives, if any:
 - (a) The grantor in the trust deed and any person requesting notice of record as provided in <u>section 45-1511</u>, Idaho Code.
 - **(b)** Any successor in interest of the grantor including, but not limited to, a grantee, transferee or lessee, whose interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such interest.
 - **(c)** Any person having a lien or interest subsequent to the interest of the trustee in the trust deed where such lien or interest appears of record prior to the recording of the notice of default, or where the trustee or the beneficiary has actual notice of such lien or interest.
- (3) The disability, insanity or death of any person to whom notice of sale is to be given under subsection (2) of this section shall not delay or impair in any way the trustee's right under a trust deed to proceed with a sale under such deed, provided the notice of sale required under subsection (2) of this section has been mailed as provided by law for service of summons upon incompetents or to the administrator or executor of the estate of such person.
- (4) The notice of sale shall set forth:
 - (a) The names of the grantor, trustee and beneficiary in the trust deed.
 - **(b)** A description of the property covered by the trust deed.
 - **(c)** The book and page of the mortgage records or the recorder's instrument number where the trust deed is recorded.
 - (d) The default for which the foreclosure is made.
 - (e) The sum owing on the obligation secured by the trust deed.
 - (f) The date, time and place of the sale which shall be held at a designated time after 9:00 a.m. and before 4:00 p.m., standard time, and at a designated place in the county or one (1) of the counties where the property is located.
- (5) At least three (3) good faith attempts shall be made on different days over a period of not less than seven (7) days, each of which attempts must be made at least thirty (30) days prior to the day of the sale, to

serve a copy of the notice of sale upon an adult occupant of the real property in the manner in which a summons is served. At the time of each such attempt, a copy of the notice of sale shall be posted in a conspicuous place on the real property unless the copy of the notice of sale previously posted remains conspicuously posted. Provided, however, that if during such an attempt personal service is made upon an adult occupant and a copy of the notice is posted, then no further attempt at personal service and no further posting shall be required. Provided, further, that if the adult occupant personally served is a person to whom the notice of sale was required to be mailed, and was mailed, pursuant to the foregoing subsections of this section, then no posting of the notice of sale shall be required.

- **(6)** A copy of the notice of sale shall be published in a newspaper of general circulation in each of the counties in which the property is situated once a week for four (4) successive weeks, making four (4) publishings in all, with the last publication to be at least thirty (30) days prior to the day of sale. It shall be unlawful for the trustee for the trustee's sale to have a financial interest in a newspaper publishing such notice or to profit, directly or indirectly, based on the publication of such notice of sale and such conduct shall constitute a misdemeanor, punishable by imprisonment in the county jail for a term not to exceed one (1) year, or by a fine not to exceed one thousand dollars (\$1,000), or by both such fine and imprisonment.
- (7) An affidavit of mailing notice of sale and an affidavit of posting, when required, and publication of notice of sale as required by subsection (6) of this section shall be recorded in the mortgage records in the counties in which the property described in the deed is situated at least twenty (20) days prior to the date of sale.
- (8) The sale shall be held on the date and at the time and place designated in the notice of sale or notice of rescheduled sale as provided in section 45-1506A, Idaho Code, unless the sale is postponed as provided in this subsection or as provided in section 45-1506B, Idaho Code, respecting the effect of an intervening stay or injunctive relief order. The trustee shall sell the property in one (1) 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. The attorney for such trustee may conduct the sale and act in such sale as the auctioneer of trustee. The trustee may postpone the sale of the property upon request of the beneficiary by publicly announcing at the time and place originally fixed for the sale the postponement to a stated subsequent date and hour. No sale may be postponed to a date more than thirty (30) days subsequent to the date from which the sale is postponed. A postponed sale may itself be postponed in the same manner and within the same time limitations as provided in this subsection. For any loan made by a state or federally regulated beneficiary, which loan is secured by a deed of trust encumbering the borrower's primary residence as determined pursuant to section 45-1506C(1), Idaho Code, the trustee, prior to conducting any trustee's sale previously postponed pursuant to this section, shall mail notice of such trustee sale at least fourteen (14) days prior to conducting such sale by the same means and to the same persons as provided in subsection (2) of this section. The trustee or beneficiary shall, prior to conducting the trustee's sale, record an affidavit of mailing confirming that such notice has been mailed as required by this section. The filing of such affidavit of mailing is conclusive evidence of compliance with this section as to any party relying on said affidavit of mailing.
- **(9)** 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, provided that in the event of any refusal to pay purchase money, the officer making such sale shall have the right to resell or reject any subsequent bid as provided by law in the case of sales under execution.
- (10) The trustee's deed shall convey to the purchaser the interest in the property which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.
- (11) The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance.
- (12) Whenever all or a portion of any obligation secured by a deed of trust which has become due by reason of a default of any part of that obligation, including taxes, assessments, premiums for insurance or

advances made by a beneficiary in accordance with the terms of the deed of trust, the grantor or his successor in interest in the trust property or any part thereof, or any beneficiary under a subordinate deed of trust or any person having a subordinate lien or encumbrance of record thereon, at any time within one hundred fifteen (115) days of the recording of the notice of default under such deed of trust, if the power of sale therein is to be exercised, or otherwise at any time prior to the entry of a decree of foreclosure, may pay to the beneficiary or their successors in interest, respectively, the entire amount then due under the terms of the deed of trust and the obligation secured thereby, including costs and expenses actually incurred in enforcing the terms of such obligation and a reasonable trustee's fee subject to the limitations imposed by subsection (6) of section 45-1502, Idaho Code, and attorney's fees as may be provided in the promissory note, other than such portion of the principal as would not then be due had no default occurred, and thereby cure the default theretofore existing, and thereupon, all proceedings theretofore had or instituted shall be dismissed or discontinued and the obligation and deed of trust shall be reinstated and shall be and remain in force and effect, the same as if no acceleration had occurred.

- (13) Any mailing to persons outside the United States and its territories required by this chapter may be made by ordinary first class mail if certified or registered mail service is unavailable.
- (14) Service by mail in accordance with the provisions of this section shall be deemed effective at the time of mailing.
- (15) On or after the tenth day, as provided in subsection (11) of this section, if the property is reasonably determined by the purchaser to be unoccupied, the purchaser may:
 - (a) Dispose of any titled personal property remaining on the premises in the manner described by applicable law; and
 - **(b)** Remove any nontitled personal property from the premises and place it in suitable storage. The purchaser may dispose of the nontitled personal property only after providing ninety (90) days' written notice as follows:
 - (i) First class mail to the last known address of the last known occupant of the property; and
 - (ii) Posting a notice in a conspicuous place on the premises that such nontitled personal property may be disposed of following such ninety (90) day period, and providing a name, address and phone number to contact regarding further information as to the location and disposition of such nontitled personal property; and
 - (iii) The notice shall generally describe the nontitled personal property that was left on the premises and that the purchaser intends to dispose of the property and the anticipated method of disposition.
 - **(c)** If the owner of the nontitled personal property fails to claim the nontitled personal property within ninety (90) days of the date that written notice was provided under paragraph (b) of this subsection, then any and all of his rights in said property shall extinguish, and the purchaser shall have no further liability regarding said property or to any potential claimants of said property.

History

1957, ch. 181, § 6, p. 345; am. 1967, ch. 74, § 1, p. 170; am. 1983, ch. 190, § 3, p. 514; <u>am. 1990, ch. 401, § 2</u>, p. 1122; <u>am. 2011, ch. 323, § 1, p. 939; <u>am. 2012, ch. 326, § 1, p. 905; <u>am. 2016, ch. 364, § 1, p. 1071.</u></u></u>

Annotations

STATUTORY NOTES

RESEARCH REFERENCES

A.L.R.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 323, added the last three sentences in subsection (8).

The 2012 amendment, by ch. 326, added the second sentence in subsection (6).

The 2016 amendment, by ch. 364, added subsection (15).

Legislative Intent.

Section 5 of <u>S.L. 1990, ch. 401</u> read: "The legislature finds and declares that the following referred to amendatory provisions contained in this act are merely clarifications of existing law and are not intended to be and are declared not to be changes in existing law:

- "a. The sentence added to subsection (3) of section 45-1505, Idaho Code;
- "b. The changes reflected in subsections (2)(a), in the first phrase of subsection (2)(b), in subsection (13) and added subsection (14) of <u>section 45-1506</u>, <u>Idaho Code</u>;
- "c. The changes reflected in Section 4 [§ 45-1510] of this act; and
- "d. Various mere semantical changes and corrections of obvious grammatical and typographical errors."

Compiler's Notes.

The words enclosed in parentheses so appeared in the law as enacted.

Effective Dates.

Section 4 of S.L. 2011, ch. 323 provided: "This act shall be in full force and effect on and after September 1, 2011."

Section 2 of S.L. 2012, ch. 326 declared an emergency. Approved April 5, 2012.

JUDICIAL DECISIONS

Applicability.

The buyer protections afforded by § 45-1508 apply only to sales challenged for a failure to comply with the procedural provisions of this section; good faith purchasers are not insulated against every claim or reason for voiding a foreclosure sale. Section 45-1508 does not apply to a foreclosure sale that was void for a lack of default at the time of the sale. Baker v. Nationstar Mortg., LLC, 574 B.R. 184, 2017 Bankr. LEXIS 2110 (Bankr. D. Idaho 2017).

Costs Recoverable by Beneficiary.

Expenses of the trustee's sale, including a reasonable charge by the trustee and a reasonable attorney's fee incurred up to the time of sale, interest accrued from the date of sale to the date of judgment at the rate provided in the promissory note, and costs of the action for a deficiency and reasonable attorney fees incurred in the action were recoverable by the beneficiary in an action to obtain a deficiency judgment. <u>Farber v. Howell, 111 Idaho 132, 721 P.2d 731, 1986 Ida. App. LEXIS 433 (Ct. App. 1986)</u>.

Curing Default.

A tender of money to cure a default under subsection (12) of this section, which would usually be indispensable, is not required when its futility is shown; however, the fact that a bank manager had stated that he would have to check to see if a payment curing the default could be accepted was not enough, standing alone, to establish that an actual tender would have been futile. Owens v. Idaho First Nat'l Bank, 103 Idaho 465, 649 P.2d 1221, 1982 Ida. App. LEXIS 252 (Ct. App. 1982).

In order to constitute a valid tender of money, the law requires an actual, present, physical offer and a mere spoken offer to pay does not qualify as a valid tender; therefore, where an agent for property owners, whose property was to be sold after they defaulted on a note to a bank, only made an oral offer to cure the default in a phone conversation with the bank manager, the offer did not constitute a valid tender. <u>Owens v. Idaho First Nat'l Bank, 103 Idaho 465, 649 P.2d 1221, 1982 Ida. App. LEXIS 252 (Ct. App. 1982)</u>.

Agreement between the parties did not merely provide that the sale would be postponed; it eliminated the default by altering the terms of the promissory note so that there were no longer any sums past due. <u>Taylor v. Just, 138 Idaho</u> 137, 59 P.3d 308, 2002 Ida. LEXIS 178 (2002).

Excessive Bid.

Because the lender bid in excess of the amount of credit available to it under one of the deeds of trust, it did not pay the price owing before the trustee executed the trustee's deed as required by this section. However, it was unnecessary to set aside the sale, as the sale became final when the trustee accepted the lender's bid. <u>Spencer v. Jameson, 147 Idaho 497, 211 P.3d 106, 2009 Ida. LEXIS 96 (2009)</u>.

Injunction Against Foreclosure.

If plaintiff had produced money and defendant had refused to accept the amount, an injunction to stay foreclosure would have been in order; however, where there was no evidence that there was an actual production or delivery of money coupled with plaintiff's offer to pay, an injunction against foreclosure was properly denied. Statement of defendant that the entire balance of the deed of trust was due was not sufficient to constitute a refusal, thus excusing plaintiff from making a valid tender in order to avoid foreclosure of deed of trust. <u>Allied Invs., Inc. v. Dunn, 104 Idaho 764, 663 P.2d 300, 1983 Ida. LEXIS 442 (1983)</u>.

Postponement.

Any alleged error occurring at the postponement of a foreclosure was remedied through the later notices of, and the borrower's apparent acquiescence to, the postponement where she was properly informed. <u>Gordon v. United States</u> <u>Bank Nat'l Ass'n, 166 Idaho 105, 455 P.3d 374, 2019 Ida. LEXIS 232 (2019)</u>.

Procedure.

In 1957, §§ 45-901 and 45-904 were amended to eliminate trust deeds from their operation and likewise the mortgage laws, directing attention to §§ 6-101 and 6-104 which were amended to draw a distinction between a trust deed or transfer in trust and a mortgage to the effect that mortgage foreclosure proceedings are not applicable to proceedings for the foreclosure of a trust deed. Roos v. Belcher, 79 Idaho 473, 321 P.2d 210, 1958 Ida. LEXIS 248 (1958).

If no bankruptcy is ever filed and no stay intervenes, postponement of a foreclosure sale proceeds according to subsection (8) of this section; but if a stay is in effect on the date of a scheduled sale, postponement proceeds according to § 45-1506A. If a stay has been lifted before the scheduled sale date, then postponement proceeds according to § 45-1506B. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429, 2006 Ida. LEXIS 82 (2006).

Unlike sales postponed under § 45-1506A or this section, which require recorded affidavits certifying compliance with the notice requirements, a sale postponed under § 45-1506B is simply rescheduled at the original sale and no further notice of any kind is necessary. A bidder who is told at a scheduled sale that the sale is being postponed and rescheduled pursuant to § 45-1506B(3) has no reason to inquire whether the trustee is following the proper postponement statute and, thus, may have no knowledge that the actual notice provisions were not complied with. Fed. Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 137 P.3d 429, 2006 Ida. LEXIS 82 (2006).

Lender complied with this section in effecting a foreclosure sale of Chapter 11 debtors' property where the notice of sale was published in the Idaho Statesman; the claim by the debtors that the lender did not provide the notice required by the deed of trust did not invalidate the sale, because the debtors failed to establish that the alleged breach of the deed of trust would vitiate the statutory foreclosure process. <u>Thorian v. BARO Enters., LLC, 387 B.R. 50, 2008 Bankr. LEXIS 828 (Bankr. D. Idaho 2008)</u>.

This section requires that notice of the foreclosure sale be mailed to the personal representative of the estate of the deceased person who was entitled to notice. At the time the notice was mailed in this case, the owner was not the personal representative of the estate; the fact that she was appointed as personal representative eighteen months later did not retroactively validate the failure to comply with the section. <u>PHH Mortg. Servs. Corp. v. Perreira, 146 Idaho 631, 200 P.3d 1180, 2009 Ida. LEXIS 18 (2009)</u>.

Where a mortgagor defaulted upon her mortgage loan repayment obligation, a trustee's sale was scheduled, the sale was postponed when the mortgagor agreed to make a partial payment in exchange for the postponement. The trustee verbally announced the time and place for the rescheduled sale, and the property was sold at the rescheduled sale. The buyer instituted an ejectment action to remove the mortgagor from the property, and the mortgagor claimed that she was deprived of due process because she did not receive notice of the postponed sale date. The notice was sufficient because the trustee's announcement at the original sale date complied with subsection (8) of this section. While the mortgagor might have prevailed if she had persisted in her argument that the sale had been cancelled rather than postponed, her attorney failed to pursue this argument on appeal, and the court was not in a position to act upon a ground not presented on appeal. <u>Black Diamond Alliance, LLC v. Kimball, 148 Idaho 798, 229 P.3d 1160, 2010 Ida. LEXIS 57 (2010)</u>.

Pursuant to § 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. Trustee is not required to prove it has standing before foreclosing on a deed of trust. <u>Trotter v. Bank of N.Y. Mellon, 152 Idaho 842, 275 P.3d 857, 2012 Ida. LEXIS 84 (2012)</u>; <u>Purdy v. Bank of Am., No. 1:11-CV-00640-EJL-REB, 2012 U.S. Dist. LEXIS 140935 (D. Idaho Sept. 26, 2012)</u>.

Simultaneous Foreclosure.

Where acceptable to the mortgagees, there is no impediment to ordering a simultaneous foreclosure; the foreclosure sale would result in each party being reimbursed by priority to the extent of the proceeds, neither would receive a redemption right, and each would receive a deficiency to the extent his or her debt was not satisfied, with appropriate credit being given for the reasonable value of the security. <u>First Sec. Bank v. Stauffer, 112 Idaho 133, 730 P.2d 1053, 1986 Ida. App. LEXIS 499 (Ct. App. 1986)</u>.

Cited in:

Ellis v. Butterfield, 98 Idaho 644, 570 P.2d 1334, 1977 Ida. LEXIS 441 (1977); Security Pac. Fin. Corp. v. Bishop, 109 Idaho 25, 704 P.2d 357, 1985 Ida. App. LEXIS 690 (Ct. App. 1985); Young v. Washington Fed. Sav. & Loan Ass'n, 156 B.R. 282, 1993 Bankr. LEXIS 964 (Bankr. D. Idaho 1993); Frontier Federal Sav. & Loan Ass'n v. Douglass, 123 Idaho 808, 853 P.2d 553 (1993); Wilhelm v. Johnston, 136 Idaho 145, 30 P.3d 300, 2001 Ida. App. LEXIS 74 (Ct. App. 2001).

Terms of Sale.

Cite # 25, Report # 52, Full Text, Page 177 of 183 Idaho Code § 45-1506

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. <u>Breckenridge Prop. Fund 2016, LLC v. Wally Enter.</u>, 170 Idaho 649, 516 P.3d 73, 2022 Ida. LEXIS 96 (2022).

RESEARCH REFERENCES

A.L.R.

Action for damages for attempted wrongful foreclosure. 104 A.L.R.6th 485.

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