

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

JEREMY L. BASS,

Plaintiff,

v.

MICHAEL NEWELL, Esq. at IDEA LAW  
GROUP LLC, CARRINGTON MORTGAGE  
SERVICES, and BANK OF AMERICA,

Defendants.

Case No. CV35-22-1875

OPINION AND ORDER ON MOTION TO  
DISMISS AND STRIKE THE SUMMONS  
AND COMPLAINT

THIS MATTER is before the Court on Defendant's *Motion to Dismiss and Strike the Summons and Complaint*.<sup>1</sup> The Court heard oral arguments on the matter on January 26, 2023. The Plaintiff Jeremy Bass appeared pro se. The Defendant Michael Newell appeared pro se.<sup>2</sup> The Court, having reviewed the briefs submitted by the parties, having heard arguments of counsel, and being fully advised in the matter, hereby renders its decision.

**FACTUAL BACKGROUND**

In September of 2008, the Plaintiff Jeremy Bass entered into a loan agreement with Zion's Bank for the purchase of property located in Lewiston, Idaho. Shortly after entering into

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<sup>1</sup> Filed January 17, 2023.

<sup>2</sup> The other named defendants did not appear in this matter as it appears they have not been served with a summons.

the agreement Bass's loan was sold by Zion's to Bank of America. Bass asserts that he made payments on the promissory note until 2019 when he went into forbearance on the loan.<sup>3</sup>

It was during this forbearance period that Bass alleges he received a notice from Carrington Mortgage, the servicer of the deed of trust, attempting to "trick" him into signing a new promissory note.<sup>4</sup> Bass asserts that he did not sign the new note but instead sought clarification from Land Title which then provided him with a letter of full reconveyance showing that his debt had been satisfied. Bass has asserted that despite the existence of the letter of full reconveyance, the Defendant Michael Newell, brought forth a new deed of trust which Bass alleges exhibits his forged signature.<sup>5</sup>

On August 16, 2022, Newell sent Bass a Notice of Default and a sale of the property was set for December 30, 2022. On December 12, 2022, Bass sent Newell a cease and desist letter asserting that the loan had been paid in full and that there is no outstanding debt with Bank of America. Bass also demanded that the scheduled sale of the property be halted.<sup>6</sup> On December 27, 2022, Bass filed a *Complaint* against Newell, Bank of America, and Carrington Mortgage Services, seeking injunctive and declaratory relief, as well as damages for breach of contract and breach of the duty of good faith and fair dealing.<sup>7</sup> Additionally, Bass issued a request for a temporary restraining order. These documents, as well as a Summons, were served upon Idea Law Group, LLC on December 29, 2022. However, in the Summons, Bass only listed Bank of America as the named Defendant. Bass did not serve the above documents on Michael Newell<sup>8</sup> or either of the other named defendants Bank of America or Carrington Mortgage Services. On

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<sup>3</sup> It is asserted by the Defendant that Bass continued to make payments into 2020. *Affidavit in Support of Motion to Dismiss and Strike the Summons and Complaint*, Exhibit C.

<sup>4</sup> *Complaint*, at 2.

<sup>5</sup> Newell is the trustee appointed to effectuate the foreclosure

<sup>6</sup> *Opposition to Defendant's Motion to Dismiss on Statute of Limitations Grounds*, Exhibit B.

<sup>7</sup> It appears from the *Complaint* that the basis for these damages is the alleged forgery of loan documents.

<sup>8</sup> *Affidavit in Support of Motion to Dismiss and Strike the Summons and Complaint*, pg. 2, paragraph 11.

January 17, 2023, Newell filed a Notice of Limited Appearance and a Motion to Dismiss and Strike Summons and Complaint.

### **ANALYSIS**

The Defendant Michael Newell has moved to dismiss the complaint and strike the summons issued by the Plaintiff asserting numerous errors in both the Complaint and the summons.

#### **1. Objections concerning the temporary restraining order**

Newell asserts that the Plaintiff may not seek a temporary restraining order without an affidavit or a verification of the facts in his complaint. Further, Newell asserts that a temporary restraining order may not be issued by this Court as: 1) Bass failed to serve the other named defendants; 2) no hearing has been set on the matter; 3) and no bond has been issued. At the January 26, 2022 hearing on this matter this Court denied Bass's request for a temporary restraining order on the record. Therefore these issues are now moot and need not be further address in this written opinion.

#### **2. Indispensable parties**

Newell argues that – due to the Plaintiff's allegations of forgery – the title company, closing agent, and notary are all indispensable parties who must be named in this suit. Newell asserts that there are no allegations in the complaint that the named Defendants knew of the alleged forgery and therefore the action cannot be maintained and the matter must be dismissed. Bass acknowledges that indispensable parties are not currently named in the complaint but requests more time to name and serve all necessary parties.<sup>9</sup>

I.R.C.P. 21, captioned "Misjoinder and nonjoinder of parties," provides that misjoinder, and inferentially nonjoinder, "is not ground for dismissal of an action." It further provides that "(p)arties may be dropped or added by order of

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<sup>9</sup> *Opposition to Defendant's Motion to Dismiss and Strike Summons and Complaint*, at 1.

the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just.”

*Holmes v. Henderson Oil Co.*, 102 Idaho 214, 216, 628 P.2d 1048, 1050 (1981). While the Court agrees with Newell’s assertion that the above mentioned parties are necessary to be joined, this issue can be remedied by an order from the Court, pursuant to Idaho Rule of Civil Procedure 19(a)(2), joining the parties. The failure of Bass to name these parties is not grounds for dismissal of his action.

### **3. Statute of Limitations**

Newell asserts that there has never been an amendment to the contract signed by Bass. Further Newell argues that, as Bass entered into the mortgage in 2009, Bass’s asserted causes of action are barred by the Statute of Limitations. While not expressly stated by Newell, this Court finds this argument to be a motion to dismiss pursuant to I.R.C.P. 12(b)(6). Additionally, this Court has been presented with matters outside of the pleadings by both parties and therefore it must treat the motion to dismiss as a motion for summary judgment. *See Paslay v. A&B Irrigation Dist.*, 162 Idaho 866, 869, 406 P.3d 878, 881 (2017).

Summary judgment is proper if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. When considering whether the evidence in the record shows that there is no genuine issue of material fact, the trial court must liberally construe the facts, and draw all reasonable inferences, in favor of the nonmoving party. The moving party has the burden of establishing there is no genuine issue of material fact.

If the moving party has demonstrated the absence of a question of material fact, the burden shifts to the nonmoving party to demonstrate an issue of material fact that will preclude summary judgment. The nonmoving party must present evidence contradicting that submitted by the movant, and which demonstrates a question of material fact. However, a mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.

*Johnson v. Wal-mart Stores, Inc.*, 164 Idaho 53, 56, 423 P.3d 1005, 1008 (2018) (internal citations omitted).

A party asserting that a fact ... is genuinely disputed must support the assertion by ... citing to particular parts of materials in the record, ... or by showing that the materials cited do not establish the absence ... of a genuine dispute. Thus, the party opposing summary judgment must bring to the trial court's attention evidence that may create a genuine issue of material fact . Mere conclusory allegations will not raise a genuine issue of material fact.

*Gordon v. U.S. Bank Nat'l Ass'n*, 166 Idaho 105, 119, 455 P.3d 374, 388 (2019) (internal citations omitted).

The trial court is not required to search the record looking for evidence that may create a genuine issue of material fact; the party opposing the summary judgment is required to bring the evidence to the court's attention.

*Silicon Int'l Ore, LLC v. Monsanto Co.*, 155 Idaho 538, 552, 314 P.3d 593, 607 (2013).

Here, Bass asserts that the Statute of Limitations has not yet run on his claims for fraud or breach of contract as he only recently discovered the fraud that is the basis for these claims.<sup>10</sup> While Bass asserts that his signature was forged as a basis for these claims, it does not appear to this Court that this assertion is supported in the record by any more than Bass's conclusory allegations. However, Newell has submitted copies of the Note and Deed of Trust, signed by Bass in 2009, to which Newell asserts no amendments were ever made. Based on the record presented this Court is constrained to find the only evidence of a signature by Bass which could have been forged dates back to 2009. Bass began to make payments to Zion's that year and continued to make payments on the Note until late 2020. It is inconceivable to this Court that Bass would do so believing that he did not actually enter into that agreement. Had he not entered

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<sup>10</sup> While Bass has not explicitly made a claim of fraud, he has raised allegations of forgery. Newell's motion to dismiss asserts that the statute of limitations has run on Bass's breach of contract and fraud claims.

into that agreement he would at least known or should have known of this alleged forged signature at that time. Bass's claims for both breach of contract and fraud are clearly barred by the statute of limitations.<sup>11</sup> Summary Judgment is appropriate and Bass's claims against Newell are dismissed.

#### **4. Improper Summons and Service**

Newell asserts that the summons issued by the Clerk of the Court is improper under the Idaho Rules of Civil Procedure. Newell asserts that the Summons should be stricken as it was not directed to him as a defendant and was not in the form provided in Idaho Rule of Civil Procedure 4(3)(b). The Summons served upon Idea Law Group listed only Bank of America as a named defendant. Therefore it failed to comply with Idaho Rule of Civil Procedure 4(a)(1)(G). Further, the summons issued appears to have been in the form required by Idaho Rules of Family Law Procedure 204 for use in family law proceedings rather than the proper form required pursuant to Idaho Rule of Civil Procedure 4(a)(3)(B). The Court finds that as to Defendant Michael Newell, the Summons as issued is improper and insufficient under the Idaho Rules of Civil Procedure and therefore it shall be stricken. The Court further finds that under Idaho Rule of Civil Procedure 4(c) service of process on Michael Newell is insufficient.

#### **ORDER**

IT IS HEREBY ORDERED that the Motion to Dismiss and Strike Summons and Complaint is GRANTED in part and DENIED in part, consistent with the above opinion.

DATED: February 17, 2023



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MARK T. MONSON  
District Judge

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<sup>11</sup> The relevant Statute of Limitations are: 5 years for breach of contract, I.C. §5-216, and 3 years from the time of discovery by the aggrieved party, I.C. §5-218.

## CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing document was delivered via e-mail to:

Jeremy L. Bass  
1515 21<sup>st</sup> Ave  
Lewiston, ID 83501  
Quantum.j.l.bass@rawdeal.io

- via first class mail  
- via email

William L. Bishop  
Michael J. Newell  
Teresa Scherenberg  
IDEA Law Group, LLC  
4530 S. Eastern Ave., Ste. 10  
Las Vegas, NV 89119  
bbishop@idealawgroupllc.com  
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tscherenberg@idealawgroupllc.com

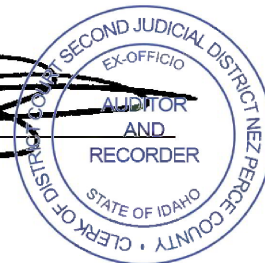
- via email  
- via email  
- via email

Dated: 2/17/2023 3:03:52 PM

PATTY O. WEEKS  
Clerk of the Court

By

  
Deputy Clerk



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

JEREMY BASS,

Plaintiff,

v.

MICHAEL NEWELL, Esq. at IDEA LAW  
GROUP LLC, CARRINGTON MORTGAGE  
SERVICES, and BANK OF AMERICA,

Defendants.

Case No. CV35-22-1875

ORDER ON MOTIONS  
FOR RECONSIDERATION

THIS MATTER is before the Court on Plaintiff's *Motion For Reconsideration of TRO Request or Request for Injunction and Motion for Reconsideration*.<sup>1</sup> On January 26, 2023, this Court denied Plaintiff's Request for a Temporary Restraining Order.<sup>2</sup> The Court found that the Plaintiff's motion did not adequately comply with the requirements set forth in I.R.C.P. 65. In his motion to reconsider, Plaintiff fails to provide any authority or argument that would support a finding that his Motion did in fact comply with I.R.C.P. 65.<sup>3</sup> Similarly, Plaintiff fails to support his Motion for Reconsideration of this Court's order on summary judgment with any authority or

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<sup>1</sup> Filed February 21, 2023. Bass filed separate Motions for Reconsideration of the denial of his Request for Temporary Restraining Order, as well as this Court's Order Granting the Defendant's Motion for Summary Judgment.

<sup>2</sup> The Court denied the request on the record.

<sup>3</sup> "[T]he purpose of a motion for reconsideration is to reexamine the correctness of an order." *Ciccarello v. Davies*, 166 Idaho 153, 162, 456 P.3d 519, 528 (2019).

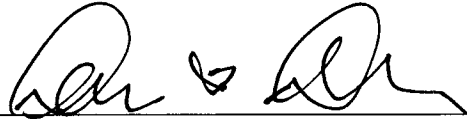


argument that would compel this Court to reconsider its order. Therefore, Plaintiff's motions for reconsideration are denied.

**ORDER**

IT IS HEREBY ORDERED that Plaintiff's Motions for Reconsideration are DENIED.

DATED: March 9, 2023

A handwritten signature in black ink, appearing to read 'Mark T. Monson', is written over a horizontal line.

MARK T. MONSON  
District Judge

## CERTIFICATE OF MAILING

I hereby certify that a true copy of the foregoing document was delivered via e-mail to:

Jeremy L. Bass  
1515 21<sup>st</sup> Ave  
Lewiston, ID 83501  
Quantum.j.l.bass@rawdeal.io

- via first class mail  
- via email

William L. Bishop  
Michael J. Newell  
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IDEA Law Group, LLC  
4530 S. Eastern Ave., Ste. 10  
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bbishop@idealawgroupllc.com  
mnewell@idealawgroupllc.com  
tscherenberg@idealawgroupllc.com

- via email  
- via email  
- via email

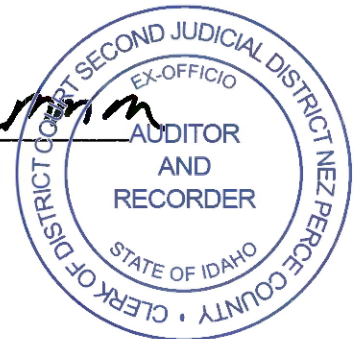
Dated: **3/9/2023 11:59:07 AM**

PATTY O. WEEKS  
Clerk of the Court

By



Deputy Clerk



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2024 SEP. 20 PM04:02  
PATTY O. WEEKS  
CLERK OF THE DIST COURT  
DEPUTY

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

DPW Enterprises LLC and Mountain  
Prime 2018 LLC,

Plaintiff,

v.

Jeremy L. Bass; Dwayne Pike; and Unknown  
Parties in Possession of the real property  
commonly known as:

1515 21<sup>st</sup> Ave., Lewiston, ID 83501,

Defendant.

CASE NO.CV 35-24-1063

ORDER DENYING MOTION  
TO APPOINT COUNSEL

The Court, having considered the Defendant Jeremy Bass' Motion for Appointment of Co-Counsel, and having heard argument on September 17, 2024, for reasons articulated on the record  
**HEREBY DENIES** the motion.

Dated this 20<sup>th</sup> day of September, 2024.

  
MICHELLE M. EVANS-District Judge

## CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the attached to:

Lewis N. Stoddard                      lewis@hwmlawfirm.com                      [X] By E-mail

Jeremy Lee Bass                      Quantum.J.L.Bass@RAWdeal.io                      [X] By E-mail

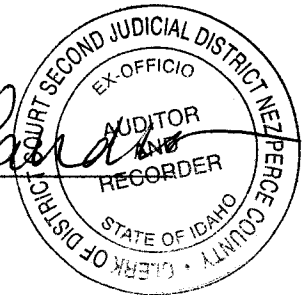
Ken E. Nagy                      kennagy@idaholegalaid.org                      [X] By E-mail

Jeremy Lee Bass                      [X] By mail  
1515 21st Ave  
Lewiston ID 83501

Dated: September 20, 2024

Patty Weeks  
Clerk of the Court

By: *[Signature]*  
Deputy Clerk



FILED  
2025 NOV. 05 AM 11:45  
PATTY O. WEEKS  
CLERK OF THE DIST COURT  
DEPUTY

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

DPW ENTERPRISES LLC and  
MOUNTAIN PRIME 2018 LLCS,

Plaintiffs,

v.

JEREMY L. BASS; DWAYNE PIKE, and  
UNKNOWN PARTIES IN POSSESSION  
OF THE REAL PROPERTY KNOWN AS:

1515 21<sup>ST</sup> Ave., Lewiston, ID 83501

Defendants.

CASE NO. CV35-24-1063

MEMORANDUM OPINION  
AND ORDER ON PLAINTIFFS'  
MOTION FOR SUMMARY  
JUDGMENT

This matter came before the Court on the Plaintiffs' Motion for Summary Judgment. The Plaintiffs are represented by Lewis Stoddard, of the firm Halliday, Watkins & Mann. Defendant Bass is representing himself as a pro se litigant. Defendant Pike is represented by Ken Nagy, of Idaho Legal Aid. The Court heard argument on the motion via Zoom on October 22, 2024. The Court, having heard argument and being fully advised in the matter, hereby renders its decision.

**BACKGROUND**

The Plaintiffs (hereinafter "DPW") initiated this lawsuit with the intent to eject the Defendants from real property located at 1515 21<sup>st</sup> Street, in Lewiston, Idaho.

Defendant Bass was the fee simple owner of the property located at 1515 21<sup>st</sup> Avenue, in Lewiston, Idaho. Bass pledged the property as security under a Deed of Trust which was recorded on October 30, 2009 as Instrument No. 774964 in the land records of Nez Perce County, Idaho. *Complaint, Ex. A; Decl. of Counsel in Support of Summary Judgment, Ex. A*. A Notice of Default was recorded on August 17, 2022. *Decl. of Counsel, Ex. B* (Instrument No. 902262). Defendant Bass was provided notice of the time and place for a Trustee's Sale, but the sale was postponed more than one time.

The Trustee Sale was eventually held on February 29, 2024 at 11:00 a.m. PST. *See Decl. of Counsel, Ex. C* (Affidavit of Mailing recorded on January 29, 2024 as Instrument No. 912340). DPW was the highest bidder at the Trustee's Sale and as a result they purchased the property for \$165,346.71. A Trustee's Deed was executed on March 1, 2024. *Complaint, Ex. A* (Instrument No. 912874). Defendant Bass was aware of the sale and he chose to attend the sale and record the proceedings. *Aff'd of Jeremy L. Bass in Support of Defendant's Response to Plaintiffs' Motion for Summary Judgment, Exhibit C*.

Following the Trustee Sale, counsel for DPW provided the Defendants a Notice of Eviction and Three Day Demand to Vacate the Property. *Complaint, Ex. B*. This notice informed Bass of the following: "Demand is hereby made upon you to move out and vacate the premises within three (3) calendar days from the date of the service of this Notice upon you." *Id. (bold in original)*. The Notice provided tenant Pike with information pertaining to additional rights that might apply pursuant to the Protecting Tenants at Foreclosure Act of 2009. *Id.*

Pike provided a copy of his lease to the Plaintiffs as an attachment to the Answer filed in this case. Pike asserts he has continued to pay rent to his former landlord, Bass. *Affidavit of Dwayne Pike in Support of Defendant Pike's Motion for Summary Judgment*, at 2. According to Pike, Idaho Housing and Finance Association subsidizes his rent payment in the amount of \$423.00/month. IHFA has been paying its portion of the rent to DPW, while Pike has continued to pay the remaining amount due each month, \$277.00, to Bass. *Id.*

At the time of hearing, Bass and Pike remain in possession of the property and both are refusing to leave the premises.

### **SUMMARY JUDGMENT STANDARD**

Summary judgment should be granted where there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. I.R.C.P. 56(c). In determining whether summary judgment is appropriate, the court must construe the pleadings, depositions, admissions, and affidavits in a light most favorable to the nonmoving party. *Stanger v. Walker Land & Cattle, LLC*, 169 Idaho 566, 573, 498 P.3d 1195, 1202 (2021).

When a motion for summary judgment is “supported by a particularized affidavit, the opposing party may not rest upon bare allegations or denials in his pleadings,” but must set forth “specific facts” showing a genuine issue. I.R.C.P. 56(e); *Verbillis v. Dependable Appliance Co.*, 107 Idaho 335, 337, 689 P.2d 227, 229 (Ct. App. 1984). A “mere scintilla of evidence or only slight doubt as to the facts is not sufficient to create a genuine issue of material fact for the purposes of summary judgment.” *Dickenson v.*

*Benewah Cnty. Sheriff*, 172 Idaho 144, 530 P.3d 691, 696 (2023), *citing Owens v. Smith*, 168 Idaho 633, 640, 485 P.3d 129, 136 (2021).

Finally, the initial burden of establishing the absence of a genuine issue of material fact is on the moving party, and once this burden is met, it is incumbent upon the non-moving party to establish an issue of fact regarding that element. *Packer v. Riverbend Commc'ns, LLC*, 167 Idaho 205, 209, 468 P.3d 1283, 1287 (2020); *Venable v. Internet Auto Rent & Sales, Inc.*, 156 Idaho 574, 581, 329 P.3d 356, 363 (2014).

## ANALYSIS

### **1. The Plaintiffs' motion for summary judgment is granted with respect to Defendant Bass.**

DPW came into possession of the property via a trustee's sale. Trust deeds are governed by the Idaho Trust Deeds Act, codified at Chapter 15, Title 45 of the Idaho Code. Defendant Bass has made conclusory allegations that there were defects in the trustee sale, however, nothing in the record supports Bass's arguments regarding issues with the sale.

The effect of a trustee's sale is set forth in I.C. § 45-1508.

A sale made by a trustee under this act shall foreclose and terminate all interest in the property covered by the trust deed of all persons to whom notice is given under section 45-1506, Idaho Code, and of any other person claiming by, through or under such persons and such persons shall have no right to redeem the property from the purchaser at the trustee's sale. The failure to give notice to any of such persons by mailing, personal service, posting or publication in accordance with section 45-1506, Idaho Code, shall not affect the validity of the sale as to persons so notified nor as to any such persons having actual knowledge of the sale. Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or any successor in interest thereof.



I.C. § 45-1508. With respect this trustee sale, it is clear that Bass had notice of the sale, and that he chose not to place a bid at the sale—Bass provided the Court with a recording he took during his attendance at the public auction. *Aff'd of Jeremy L. Bass in Support of Defendant's Response to Plaintiffs' Motion for Summary Judgment, Exhibit C.* Bass complains that the purchase was suspect because the purchaser provided a check with the exact amount of the sale, which he suggests is some form of collusion. However, the Plaintiffs explained that they provided their representative with several cashier's checks in varying amounts in order for payment to be tailored to the amount of a winning bid. *Second Decl. of DPW Enterprises LLC, at 2.*

In *Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc.*, 170 Idaho 649, 516 P.3d 73 (2022), the plaintiff challenged a trustee sale that required bidders to have checks that conformed to the payment conditions for the auction.<sup>1</sup> The

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<sup>1</sup> The payment conditions of the sale were as follows:

Breckenridge is a Delaware limited liability company. It buys real property at foreclosure sales, improves the property, and then sells it for a profit. On the date of the foreclosure sale, Ashmore attended the public auction as an agent for Breckenridge. Before the sale, Breckenridge had given Ashmore cashier's checks in various amounts made payable to an entity affiliated with Breckenridge. If Breckenridge turned out to be the highest bidder, Ashmore planned to endorse and deliver the cashier's checks to the trustee as payment. Ashmore confirmed the date, time, and location of the auction by emailing W&R the day before the sale. Ashmore also visited the auctioneer's website and noted no restrictions on payment methods listed.

When Ashmore arrived at the sale, Cook provided him with a packet of documents that included a payment condition for the auction: "NO ENDORSED CHECKS[.] CHECKS MADE PAYABLE TO WEINSTEIN & RILEY PS." (Capitalization in original). Ashmore objected to this condition. He had no checks from Breckenridge that were payable to W&R. As a result, Cook agreed to postpone the auction for one hour so Ashmore could attempt to remedy the situation. Breckenridge failed to obtain checks payable to W&R in the time available. As a result, Ashmore was not able to register to bid.

At about 2:00 p.m., Cook went ahead with the auction. At the time, Thomas and Ashmore were the only people in attendance. The opening bid from Cook was \$194,000. Thomas bid \$194,001. Ashmore tried to bid \$195,000, but Cook would not acknowledge his bid. Thus, Cornerstone was the winning bidder at the auction. Thomas gave Cook a \$200,000 certified check payable to W&R for the property. W&R later executed a trustee's deed conveying the property to Cornerstone. W&R refunded Cornerstone \$5,999.00.

*Breckenridge Prop. Fund 2016, LLC v. Wally Enterprises, Inc.*, 170 Idaho 649, 653–54, 516 P.3d 73, 77–78 (2022).

*Breckenridge* Court upheld the district court's determination that the auctioneer "was not required to accept bids from Breckenridge 'where it did not have checks that conformed to the payment conditions of the auction.'" *Id.* at 657, 516 P.3d at 73. As noted in *Breckenridge*, it is a common practice for bidders at trustees sales to bring several checks for the purpose of matching the amount of the final bid at auction. In the case before this court, Bass has not shown that the sale was faulty. Thus, the Plaintiffs were entitled to possession of the property as proscribed in I.C. §45-1506(11), which states:

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.

I.C. § 45-1506(11). As noted by the Court in *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009), there is a legislative "interest in preserving the finality of title or real property." *Id.* at 504, 211 P.3d at 113. Based upon the record of this case, there are no issues of material fact with respect to the fact that Bass defaulted on his payment obligations, a Notice of Default was issued and recorded, a Notice of Trustee's sale was issued, notice was provided in multiple methods, and a Trustee's sale was held where DPW was the highest bidder. As the highest bidder, DPW immediately issued a check in the amount of \$165,346.71 to purchase the property.

In an action for ejectment, the plaintiff must only prove three elements: "(1) ownership, (2) possession by the defendants, and (3) refusal of the defendants to surrender possession." *Pro Indiviso, Inc. v. Mid-Mile Holding Tr.*, 131 Idaho 741, 745, 963 P.2d 1178, 1182 (1998), *citing Petty v. Petty*, 70 Idaho 473, 223 P.2d 158 (1950). DPW has established all three elements, therefore DPW's motion for summary judgment is granted.

**2. There are issues of material fact with respect to Defendant Pike's lease and rent payments.**

Defendant Pike was given notice of the trustee sale and elected to remain in possession of the property pursuant to the lease he entered into with Bass. Pike attached a copy of a lease that is dated February 28, 2024 (one day before the sale of the property) to the Answer filed in response to the Complaint. DPW asserted initially that Pike was in breach of the lease because he failed to make any rental payments to DPW. Pike avers that he has continued to pay rent to his former landlord, Bass, and that Idaho Housing and Finance Association pays a subsidized portion of the rent to DPW. *Affidavit of Dwayne Pike in Support of Defendant Pike's Motion for Summary Judgment*, at 2. The Court has not found any documentation in the record which established that IHFA is paying the subsidized rent amount directly to DPW, but in the response to summary judgment it appears that DPW is conceding this point. *See Plaintiffs' Reply Memorandum in Support of Motion for Summary Judgment Against Dwayne Pike*, at 4.

Both parties indicate that Pike, as a tenant, may have protection pursuant to the federal Protecting Tenants at Foreclosure Act of 2009. *See Complaint, Exhibit B.*<sup>2</sup> The Notice of Eviction and Three Day Demand to Vacate the Property then directs Pike to provide certain information to DPW in order for DPW to ascertain what rights Pike may have according to the PTFA. *Id.* The Notice of Eviction makes the following directive regarding rent:

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<sup>2</sup> The Notice of Eviction and Three Day Demand to Vacate the Property is addressed to "Jeremy L. Bass AND ALL OTHER OCCUPANTS." *Complaint, Exhibit B (emphasis in original)*. The Notice informs all occupants that "Demand is hereby made upon you to move out and vacate these premises within three (3) calendar days from the date of the service of this Notice upon you." *Id. (emphasis in original)*. The Notice then goes on to explain that a tenant of the former owner of the property may be entitled to additional rights provided in the Protecting Tenants at Foreclosure Act of 2009. *Id.*

If you believe you are a bona fide tenant with an unexpired lease or a bona fide tenant with an expired lease, you are required to make your monthly lease payments during the remainder of your lease agreement if your lease is unexpired and/or during the 90 day notice of eviction period if your lease is expired.

*Id. (emphasis in original).*

Neither party has explained to the Court whether or not the PTFA is applicable to Pike's situation. There are issues of fact pertaining to whether the lease is a bona fide lease that is still in effect, in addition to any other protections this act may provide.

Next, there are questions of material fact with respect to whether Pike has continued to pay rent. There are assertions that IHFA is making rent payments, but nothing in the record has verified these assertions. Pike avers that he continued to pay rent to Bass, but other than this statement, Pike has provided no evidence of the rental payments. Further, it is unclear where Pike would be required to pay rent to DPW. The Notice of Eviction and Three Day Demand to Vacate the Property directs Pike, as a tenant, to continue to pay rent, but it does not specify how the rent should be paid, or where the rent payment should be sent. Further, the lease itself does not clarify how rent would be paid, as it states: "The Tenant will pay the Rent on or before the first (1st) day of each and every month of the term of this Lease to the Landlord at 1515 21<sup>st</sup> Ave. or at such other place as the Landlord may later designate by cash or Money Order, Cashier's check." *Aff'd of Dwayne Pike, Exhibit A*, ¶ 11. As such, there are issues of fact on this record regarding the issue of whether Pike has paid his rent or not.

Based upon the material issues of fact surrounding whether Pike would have protections under the PTFA, including whether there is a bona fide lease, and the issues

of material fact regarding whether rent has been paid, and how or where it has been paid, summary judgment as to Pike is not appropriate at this juncture.

**ORDER**

The Plaintiffs' Motion for Summary Judgment as to Defendant Bass is hereby GRANTED. IT IS FURTHER ORDERED the Plaintiffs' Motion for Summary Judgment as to Defendant Pike is hereby DENIED.

IT IS SO ORDERED.

Dated this 5<sup>th</sup> day of November 2024.

  
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MICHELLE M. EVANS – District Judge

## CERTIFICATE OF MAILING


I hereby certify that a true copy of the foregoing MEMORANDUM OPINION AND ORDER ON PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT was delivered via email by the undersigned at Lewiston, Idaho, this 5<sup>th</sup> day of November, 2024 to:

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PATTY O. WEEKS, CLERK

By   
Deputy

