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6
7 IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT
8 FOR THE STATE OF IDAHO, IN AND FOR NEZ PERCE COUNTY

DPW Enterprises LLC and Mountain Prime 2018
LLC,

Plaintiff,

vs.

Jeremy L. Bass, Dwayne Pike, and Current
occupant, and Unknown Parties in
Possession of the real property commonly
known as 1515 21st Avenue, Lewiston,
Idaho 83501

Defendants.

Case No. CV35-24-1063

**MEMORANDUM IN SUPPORT OF
RECONSIDERATION**

DEMAND FOR JURY

9 COMES NOW the Defendant Jeremy L. Bass, (hereinafter "Defendant Bass"), Perforce Pro Se,
10 and hereby upon the Honorable Court's granting of *MOTION FOR RECONSIDERATION* would submit
11 this *MEMORANDUM IN SUPPORT OF RECONSIDERATION*. This submission provides detailed legal
12 authorities that are directly relevant to the core issues concerning the validity of the trustee's sale
13 and the limitations of good faith purchaser protections under Idaho law. Additional arguments
14 are not intended, only clarification in regard to the question of authority. These authorities clarify
15 the protections afforded by *Idaho Code § 45-1508* and how those protections apply—or do not
16 apply—under the specific circumstances found in Defendant Bass' case.

I. INTRODUCTION

17
18 Plaintiffs sought summary judgment on the basis that they are entitled to possession of the
19 property located at *1515 21st Avenue, Lewiston, ID 83501*, following an attempted trustee's sale
20 from a non-judicial foreclosure. The Trustee's sale is a publicly held auction, with the one in
21 contention having been held on February 29th, 2024, on the front steps of the Nez Perce County
22 Court House.

23 Plaintiffs, styling themselves as bona fide purchasers for value of Defendant Bass' property
24 and averring that said acquisition was in good faith, sought to avail themselves of the narrow and

1 specific conditions required to gain the sweeping and unassailable immunity afforded to such
2 purchasers under *Idaho Code § 45-1508*. In stark contrast, Defendant Bass has mounted a
3 formidable challenge to the trustee's sale, casting a pall over the process by impugning the
4 integrity of and had alleged a multitude of procedural and substantive improprieties that fatally
5 compromise the auctions validity.

6 Defendant Bass categorically rejected the validity of the sale, asserting that the purported
7 transfer of title is *void ab initio* as the process was fundamentally flawed with pervasive
8 irregularities. He highlighted, *inter alia*, collusion and misconduct among involved parties,
9 evidenced by improper conduct tainting both the preparatory and execution stages, and the
10 conspicuous absence of a legitimate default.

11 **II. SUPPLEMENTAL CASE LAW**

12 **1. *Breckenridge Prop. Fund 2016, LLC v. Wally Enter., 170 Idaho 649 (2022)***

13 **Explanation of *Breckenridge Prop. Fund 2016, LLC v. Wally Enter.*:**

14 In *Breckenridge Prop. Fund 2016, LLC v. Wally Enter.*, the Idaho Supreme Court addressed
15 whether an auctioneer's on-site imposition of specific payment terms—such as requiring
16 cashier's checks payable to the trustee directly—could legally restrict a bidder from
17 participating. The case clarified the discretionary authority of trustees to set payment terms,
18 while emphasizing that these terms must align with *Idaho Code § 45-1506*'s purpose of
19 promoting fair trade and transparency. The Court highlighted that on-site terms must be
20 reasonable, yet it did not endorse practices that could unfairly limit competitive bidding or
21 violate the Sherman Act's principles of fair commerce in public auctions.

22 **Key Facts of the *Breckenridge Prop. Fund 2016, LLC* Case:**

- 23 • **Foreclosure Sale:** Breckenridge attended a foreclosure auction with cashier's checks made
24 payable to an affiliate rather than to the trustee, Weinstein & Riley, P.S.
- 25 • **Auctioneer's Terms:** At the start of the auction, the trustee specified that only checks
26 payable directly to Weinstein & Riley, P.S. would be accepted.

- 1 • **Opportunity to Comply:** The trustee allowed Breckenridge a one-hour delay to secure
- 2 checks compliant with the on-site payment terms. Despite this time allowance,
- 3 Breckenridge failed to procure compliant checks within the hour.
- 4 • **Bid Rejection and Award:** With Breckenridge unable to present checks payable to the
- 5 trustee, the trustee rejected Breckenridge's bid, awarding the property to Cornerstone, the
- 6 only bidder meeting the payment requirement.
- 7 • **Claims by Breckenridge:** Breckenridge argued that the lack of advance notice of the
- 8 payment terms violated *Idaho Code § 45-1506* and principles of fair trade. The claims
- 9 included negligence, negligence per se, estoppel, and demands for equitable remedies,
- 10 asserting that the terms were unfairly restrictive.

11 **Court's Decision:**

- 12 • **Summary Judgment Partially Affirmed:** The Court affirmed that the trustee acted within their
- 13 rights under Idaho law, upholding the discretion to impose reasonable payment terms at
- 14 the time of sale without advance notice.
- 15 • **Rejection of Bid Justified:** The Court concluded that no statutory requirement mandates pre-
- 16 auction disclosure of specific payment terms, meaning the auctioneer's decision to specify
- 17 acceptable payment formats on-site was legally permissible.
- 18 • **Attorney Fees Decision Reversed:** The appellate court found that the district court's award
- 19 of attorney fees to Cornerstone and Wally was inappropriate, as Breckenridge's complaint
- 20 did not establish a direct commercial relationship with the defendants.

21 **Application to Defendant Bass' Case:**

22 The only procedural similarity between *Breckenridge Prop. Fund 2016, LLC* and

23 Defendant Bass' case is the presence of printed checks; however, Breckenridge's checks did

24 not specify exact bid amounts, as they were to be filled in if Breckenridge won the bid. The

25 issue in Breckenridge was centered on the form of payment rather than on any pre-

26 arranged bid amounts.

27 The Idaho Supreme Court's ruling does not authorize trustees to guide bidders in

28 placing precise bids nor to engage in pre-auction coordination regarding bid amounts.

1 Importantly, Plaintiffs in Bass' case arrived with printed checks that matched the final
2 bid amount exactly, down to the cent—confirming the Plaintiff's statement of pre-auction
3 coordination. This precise pre-calculation of amounts, absent in Breckenridge, raises
4 questions about trustee involvement and procedural fairness in Bass' case.

5 Unlike in Breckenridge, where the auctioneer allowed a one-hour correction period for
6 Breckenridge to obtain a properly payable check, no such leniency or standard practice was
7 extended here, leaving Defendant Bass the choice to participate in an auction he knew to be
8 rigged making him party to the collusion, or stand his ground, provide his due diligence to
9 minimize damage in case of innocent buyers and document the whole process but not place
10 a bid.

11 **Key Legal Points from *Breckenridge Prop. Fund 2016, LLC*:**

12 **1. Trustee Authority Over Payment Requirements:**

- 13 • While trustees have the authority to impose on-site payment conditions, these
14 must be reasonable and non-restrictive regarding fair access. Breckenridge
15 established that conditions set on-site must align with the principle of
16 competitive fairness. Bass' case reaffirms the holding that at the time of the
17 auction, terms may be provided, but not ahead of the auction that is not already
18 noticed.

19 **2. Absence of Permission for Pre-Arranged Bid Amounts:**

- 20 • Breckenridge's checks involved only payee discrepancies, with amounts left unspecified,
21 distinguishing it from Bass' case where pre-determined bid amounts were confirmed to be
22 printed on checks. The Idaho Supreme Court in Breckenridge did not address nor permit
23 practices allowing trustees to coordinate exact bidding amounts, thus preventing use of
24 Breckenridge as authority for such actions.

25 **3. Inapplicability as a Sherman Act Exception:**

- 26 • The ruling in Breckenridge does not support an exception to Sherman Act principles
27 concerning fair bidding practices in public auctions. Rather, it reaffirmed Idaho Code's
28 guidelines for fair competition and transparency in foreclosure auctions. Using

1 Breckenridge to justify pre-arranged amounts conflicts with this intention, as it would
2 favor collusion over open market principles. Bass' case thus raised issues of potential
3 Sherman Act violations in relation to trustee involvement.

4 **Conclusion:**

5 *Breckenridge Prop. Fund 2016, LLC v. Wally Enter.* provides no basis for allowing trustees
6 to engage in bid pre-arrangements or to restrict access by specifying exact bid amounts. The
7 Court's decision affirms trustee discretion in a manner consistent with *Idaho Code § 45-1506*,
8 but does not create exceptions for practices compromising competitive bidding integrity. In
9 Defendant Bass' case, the issue of pre-arranged bid amounts on Plaintiffs' checks suggested
10 trustee misconduct that violated both Idaho foreclosure standards and the Sherman Act,
11 confirmed in writing, warranting reconsideration or invalidation of the sale.

12 **2. *Baker v. Nationstar Mortg., LLC*, 574 B.R. 184 (Bankr. D. Idaho 2017)**

13 "The buyer protections afforded by *Idaho Code § 45-1508* apply only to sales challenged
14 for a failure to comply with the procedural provisions of *Idaho Code § 45-1506*. *Taylor v. Just*,
15 *138 Idaho 137, 59 P.3d 308, 313 (Idaho 2002)*. And good faith purchasers are not insulated
16 against every claim or reason for voiding a foreclosure sale. See, e.g., *Taylor, 59 P.3d at 313*
17 (holding that *Idaho Code § 45-1508* does not apply to a foreclosure sale that was void for a
18 lack of default at the time of the sale)." —*Baker v. Nationstar Mortg., LLC (In re Baker)*, 574
19 *B.R. 184, 191 (Bankr. D. Idaho 2017)*

20 **Explanation of *Baker v. Nationstar Mortg., LLC***

21 In *Baker v. Nationstar Mortg., LLC*, the United States Bankruptcy Court for the District of
22 Idaho thoroughly examined the scope of protections provided to good faith purchasers
23 under *Idaho Code § 45-1508*. Specifically, the court clarified that these protections are
24 limited to sales challenged for procedural defects. The decision also emphasized that the
25 statute does not shield purchasers from all claims or grounds for invalidating a sale,
26 particularly when the sale itself was void due to substantive defects, such as the absence
27 of a valid default.

28 **Key Facts of the *Baker v. Nationstar Mortg., LLC* Case:**

- The homeowner (Baker) held a mortgage serviced by Nationstar Mortgage.
- Nationstar initiated a non-judicial foreclosure sale in accordance with Idaho law.
- Baker contested the foreclosure, arguing that there was no default on the mortgage loan at the time of the sale.
- The property was subsequently sold to a third-party buyer at the foreclosure sale.
- The buyer sought protection as a good faith purchaser under *Idaho Code § 45-1508*, which generally insulates buyers from certain defects in the foreclosure process.

Court's Decision:

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

Application to Defendant Bass' Case:

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

Key Legal Points from *Baker v. Nationstar Mortg., LLC*:

1. Limitations of Good Faith Purchaser Protections:

- *Idaho Code § 45-1508* provides protections to purchasers in foreclosure sales only when the sale is challenged for procedural defects. It does not insulate buyers from the consequences of substantive defects.
- In *Baker v. Nationstar Mortg., LLC*, the absence of a valid default rendered the sale void, and the protections of *§ 45-1508* were deemed inapplicable.
- In Defendant Bass' case, the presence of collusion or lack of a valid default at the time of the foreclosure sale each on their own are substantive defects that renders the sale void.

2. Void Sales Due to Substantive Defects:

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

3. Bidder's Involvement in Rigging the Auction:

- *Baker v. Nationstar Mortg., LLC* the court underscores that protections afforded to purchasers under *Idaho Code § 45-1508* do not extend to sales voided due to substantive defects. Specifically, while *§ 45-1508* provides that "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," it also clarifies 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." However, the court in *Baker v. Nationstar Mortg., LLC* makes clear that these protections apply only to procedural defects outlined in *§ 45-1506* and do not shield a purchaser from substantive issues—such as fraud or the absence of a valid

1 default—that render a sale void. Thus, when a sale is void on substantive grounds, the
2 good-faith purchaser protections under *Idaho Code § 45-1508* are unavailable.

- 3 • In this case, Defendant Bass alleged that the bidder (Plaintiffs), the trustees, and other
4 named parties engaged in improper conduct by coordinating before the auction—an
5 admission of coordination by Plaintiffs (*DPW Enterprises Dec., Wangsgard, ¶¶3-4, Oct.*
6 *18, 2024*) that further substantiates collusion. Such misconduct constitutes a
7 substantive defect that voids the foreclosure sale.

8 **Conclusion:**

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

14 **3. *Idaho Power Co. v. Benj. Houseman Co.*, 123 Idaho 674, 851 P.2d 970 (1993)**

15 **Explanation of *Idaho Power Co. v. Benj. Houseman Co.*:**

16 In *Idaho Power Co. v. Benj. Houseman Co.*, 123 Idaho 674, 851 P.2d 970 (1993), the Idaho
17 Supreme Court clarified the rights of mortgagees and lienholders in foreclosure sales. This
18 case underscores that junior lienholders lose their security interest in a foreclosure sale
19 of senior liens, but it also emphasizes that foreclosure sales must be based on a valid
20 default to properly extinguish these interests.

21 **Key Facts of the *Idaho Power Co. v. Benj. Houseman Co.* Case:**

- 22 • Idaho Power held a second mortgage on a property with a debt that was not yet due.
23 • The senior lienholder, Benj. Houseman Company, initiated foreclosure due to default on
24 senior debt.
25 • The property was sold to a third-party purchaser for less than fair market value.
26 • Idaho Power, not involved in the sale, later pursued the debt, claiming its security interest
27 was extinguished improperly.

28 **Court's Decision:**

- The court held that Idaho Power retained the right to collect its debt after the sale, even though its security interest was extinguished.
- It emphasized that while a foreclosure sale extinguishes junior liens, it does not eliminate the debtor's personal obligation to repay the loan.
- Importantly, a mortgagee can pursue debt collection even after a senior lien foreclosure extinguishes the security interest if the mortgage was rendered valueless.

Application to Defendant Bass' Case:

The relevance of *Idaho Power Co. v. Benj. Houseman Co.* to Defendant Bass' case lies in its insistence on a valid default as the basis for any foreclosure sale. Defendant Bass asserted that the public auction was improperly initiated without a valid default due to part performance of a binding verbal agreement, which took it out of default when the transfer of responsibilities commenced rendering it void under Idaho law. Additionally, Bass also argued that the Plaintiffs' conduct during the auction influenced the sale outcome, as the property was sold for less than fair market value—similar to the undervalued sale noted in *Idaho Power Co. v. Benj. Houseman Co.*

Key Legal Points from *Idaho Power Co. v. Benj. Houseman Co.*:

1. Mortgagee's Right to Collect Debt Despite Loss of Security Interest:

- *Idaho Power Co. v. Benj. Houseman Co.* establishes that a mortgagee can pursue the underlying debt if the security interest is extinguished improperly.
- In Defendant Bass' case, it was put to the court that the trustee's sale should be considered void due to improper conduct and the lack of a valid default, meaning that Plaintiffs cannot rely on the sale to extinguish Defendant Bass' rights or obligations regarding the property.

2. Improper Foreclosure Actions:

- The court's decision in *Idaho Power Co. v. Benj. Houseman Co.* emphasizes that foreclosure sales must be based on a valid default and conducted according to proper & legal procedures to extinguish parties' rights.

- Defendant Bass asserted that the trustee's sale in this case was conducted without a valid default and was tainted by collusion and improper conduct, which violates the principles established in *Idaho Power Co. v. Benj. Houseman Co.*

3. Sale for Less Than Fair Market Value:

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

Conclusion:

Idaho Power Co. v. Benj. Houseman Co. supports Defendant Bass' position that the trustee's sale was improperly conducted and, therefore, void. The improper conduct surrounding the sale and lack of a valid default each could render sale invalid, justifying Defendant Bass' challenge to the Plaintiffs' claim to the property.

4. *Taylor v. Just*, 138 Idaho 137, 59 P.3d 308 (2002)

Explanation of *Taylor v. Just*:

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

Key Facts of the Case:

- A foreclosure sale took place after the homeowner defaulted on a deed of trust.
- The foreclosure sale did not comply with the statutory requirements under *Idaho Code § 45-1505(2)*.
- Specifically, the sale suffered from procedural defects that were significant enough to invalidate it.

- A bidder at the foreclosure sale sought to assert rights as a good faith purchaser for value, claiming legitimate ownership despite the defects in the sale process.

Court's Decision:

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

Application to Defendant Bass' Case:

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

Key Legal Points from *Taylor v. Just*:

1. Void Sale Due to Non-Compliance with Statutory Requirements:

- *Taylor v. Just* establishes that a foreclosure sale that does not strictly comply with the statutory requirements set forth in *Idaho Code § 45-1505* is void.
- In Defendant Bass' case, the foreclosure sale is void due to procedural irregularities and statutory non-compliance, including the improper handling of the auction process and the involvement of the trustee and bidder in collusion.

- Because the sale was void ab initio, Plaintiffs cannot claim to have acquired valid title, and any attempt to rely on good faith purchaser protections is without merit.

2. Good Faith Purchaser Status:

- In *Taylor v. Just*, the Idaho Supreme Court clarified that good faith purchaser protections do not apply when the foreclosure sale is void due to statutory non-compliance.
- Plaintiffs' claim to good faith purchaser status in Defendant Bass' case is similarly unsupported because the sale itself was invalid. Without valid title, the protections afforded to good faith purchasers under Idaho law are inapplicable.

3. Impact on Ejectment Proceedings:

- Since the foreclosure sale in *Taylor v. Just* was found to be void, the purchaser could not claim ownership of the property and was not entitled to possession.
- Likewise, in Defendant Bass' case, the Plaintiffs' claim to possession is based on a void sale. As such, Plaintiffs lack standing to maintain an ejectment action against Defendant Bass because they did not acquire valid title through the defective foreclosure sale.

Legal Principles Highlighted:

- **Statutory Compliance and Validity of Foreclosure Sales:**
 - Foreclosure sales must strictly adhere to the statutory requirements outlined in *Idaho Code § 45-1505* to be valid.
 - A failure to comply with these statutory provisions renders the sale void ab initio, meaning it has no legal effect and cannot transfer valid title to the purchaser.
- **Void vs. Voidable Sales:**
 - A void sale is invalid from the outset and confers no legal rights on the purchaser, while a voidable sale is valid until it is annulled but can be challenged on certain grounds.
 - In Defendant Bass' case, the sale is void because of the procedural and substantive defects in the foreclosure process.

1 • **Good Faith Purchaser Protections:**

- 2 ○ The Idaho Supreme Court in *Taylor v. Just* held that the protections afforded to good
- 3 faith purchasers under Idaho law do not apply when the sale is void due to non-
- 4 compliance with statutory procedures.
- 5 ○ Plaintiffs cannot claim the protections of a good faith purchaser in this case
- 6 because the sale was not conducted in accordance with *Idaho Code § 45-1505*.

7 **Conclusion:**

8 *Taylor v. Just* is directly applicable to the present case and supports Defendant Bass'

9 position that the foreclosure sale is void due to statutory non-compliance and bidder

10 misconduct. As a result, Plaintiffs did not acquire valid title to the property, and their

11 claim to possession must fail. The principles established in *Taylor v. Just* make clear that

12 Plaintiffs cannot claim to be good faith purchasers, and their attempt to eject Defendant

13 Bass from the property is without legal basis.

14 **5. *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009)**

- 15 • "*Idaho Code § 45-1508* does not require that the grantor to a deed of trust demonstrate
- 16 harm resulting from an irregularity in the foreclosure sale in order to have the sale set
- 17 aside. The district court cannot impose this additional requirement under the statute,
- 18 thereby increasing the plaintiff's burden, just because it does not agree with the result." –
- 19 *Spencer v. Jameson*, 147 Idaho 497, 505, 211 P.3d 106, 114 (2009)
- 20 • "A trust deed must be foreclosed in the manner set forth in *I.C. § 45-1506*, which requires in
- 21 part that '[t]he purchaser at the sale shall forthwith pay the price bid and upon receipt of
- 22 payment the trustee shall execute and deliver the trustee's deed to such purchaser' *I.C.*
- 23 *§ 45-1506(9)*." – *Spencer v. Jameson*, 147 Idaho 497, 503, 211 P.3d 106, 112 (2009)
- 24 • "The sale is final once the trustee accepts the bid as payment in full unless there are
- 25 issues surrounding the notice of the sale (which are admittedly not present in this case).
- 26 This interpretation promotes the legislature's interest in preserving the finality of title to
- 27 real property. In addition, our interpretation does not deprive trust deed grantors of a

1 statutory remedy in cases such as this where the trustee wrongfully accepts a credit bid as
2 payment in full." – *Spencer v. Jameson*, 147 Idaho 497, 504, 211 P.3d 106, 113 (2009)

3 **Strict Compliance and Material Irregularities:**

4 The Idaho Supreme Court, in *Spencer v. Jameson*, highlighted that non-judicial
5 foreclosure statutes require strict adherence. Material irregularities in the foreclosure
6 process can serve as grounds to set aside the sale, regardless of whether harm to the
7 grantor is demonstrated. This principle is underscored in *Idaho Code § 45-1506*, where
8 failure to comply with statutory requirements may invalidate a sale if procedural
9 irregularities are significant, even if the buyer acts in good faith.

10 **Explanation of Spencer v. Jameson:**

11 In *Spencer v. Jameson*, 147 Idaho 497, 211 P.3d 106 (2009), the Idaho Supreme Court
12 considered whether a grantor must demonstrate actual harm resulting from irregularities
13 in the foreclosure process to set aside a sale. The Court held that Idaho Code § 45-1506
14 imposes no such requirement; any material irregularity alone is sufficient to invalidate the
15 sale. This decision is significant for understanding the standard for contesting foreclosure
16 sales in Idaho, clarifying that homeowner rights to challenge defective foreclosures do not
17 hinge on proving harm.

18 **Key Facts of the *Spencer v. Jameson* Case:**

- 19
 - David Spencer (the grantor) executed a deed of trust on his property to secure a loan.
 - 20 • After Spencer's default, the trustee initiated a non-judicial foreclosure sale.
 - 21 • Spencer alleged irregularities in the foreclosure, notably concerning notice of sale
 - 22 requirements.
 - 23 • The district court required Spencer to prove actual harm from these irregularities to set
 - 24 aside the sale.
 - 25 • Spencer appealed, arguing that the district court improperly increased his burden by
 - 26 requiring harm.

27 **Court's Decision:**

- The Idaho Supreme Court reversed the district court, ruling that *Idaho Code § 45-1506* does not require a grantor to demonstrate harm from irregularities in foreclosure to set aside the sale.
- The Court stressed that non-judicial foreclosure statutes require strict adherence, and any significant irregularity in the process justifies setting aside the sale.
- The decision emphasizes that the trustee's compliance with statutory procedures, rather than the grantor's injury, is central.

Application to Defendant Bass' Case:

Spencer v. Jameson is directly applicable to Defendant Bass' argument that the foreclosure sale should be set aside due to procedural and substantive irregularities, including collusion and manipulation of the auction process. In this case, the Plaintiffs have attempted to downplay the significance of these irregularities, suggesting that Defendant Bass cannot demonstrate harm sufficient to invalidate the sale. However, *Spencer* makes it clear that Idaho law does not require Defendant Bass to prove harm; the mere existence of material irregularities in the foreclosure process is sufficient to justify setting aside the sale.

Key Legal Points from *Spencer v. Jameson*:

1. No Requirement to Prove Actual Harm:

- *Spencer v. Jameson* holds that a grantor does not need to prove that they suffered actual harm as a result of procedural defects in the foreclosure process.
- In Defendant Bass' case, Plaintiffs cannot argue that Defendant Bass must demonstrate harm in order to challenge the sale. The focus should be on whether the foreclosure process complied with Idaho's statutory requirements, which Defendant Bass argued it did not.

2. Material Irregularities in the Foreclosure Process:

- *Spencer v. Jameson* emphasizes that strict compliance with non-judicial foreclosure statutes is required, and any material irregularity can serve as grounds for setting aside the sale.

- Defendant Bass has presented evidence of multiple irregularities in the foreclosure process, including the involvement of the bidder in rigging the auction, and procedural defects in the trustee's handling of the sale. These irregularities are sufficient to invalidate the sale under *Spencer*.

3. Trustee's Duty to Comply with Statutory Requirements:

- The trustee's duty to strictly adhere to the statutory requirements of *Idaho Code § 45-1506* is a central theme in *Spencer v. Jameson*.
- In this case, Defendant Bass asserted that the trustee failed to comply with these requirements, and as a result, the foreclosure sale is void. Under *Spencer v. Jameson*, the sale must be set aside due to these material deviations from the statutory procedures.

Legal Principles Highlighted:

- **Strict Compliance with Statutory Requirements:**
 - Idaho law requires strict compliance with the procedures outlined in the non-judicial foreclosure statutes. Any material irregularities—such as collusion, inadequate notice, or procedural defects—are grounds to set aside a sale.
 - In Defendant Bass' case, the numerous irregularities in the foreclosure process render the sale void and justify setting it aside.
- **No Requirement to Demonstrate Harm:**
 - The Idaho Supreme Court in *Spencer v. Jameson* made it clear that grantors do not need to show that they suffered actual harm in order to challenge a defective foreclosure sale.
 - Defendant Bass' challenge to the foreclosure sale does not require him to demonstrate harm; the material irregularities alone are sufficient to invalidate the sale.

Conclusion:

Spencer v. Jameson is directly applicable to Defendant Bass' case and supports the argument that the foreclosure sale must be set aside due to the procedural and

1 substantive irregularities in the process. The Idaho Supreme Court's decision in *Spencer v.*
2 *Jameson* makes clear that the existence of material irregularities is sufficient to justify
3 setting aside a foreclosure sale, and Plaintiffs cannot demand that Defendant Bass prove
4 harm in order to challenge the sale. The foreclosure process in this case was marred by
5 significant irregularities, and under *Spencer v. Jameson*, the sale is void.

6 **III. CONCLUSION**

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

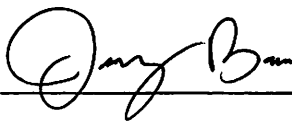
13 The cases of *Breckenridge Prop. Fund 2016, LLC, Baker v. Nationstar Mortg., LLC, Idaho Power*
14 *Co. v. Benj. Houseman Co., Taylor v. Just, and Spencer v. Jameson* all support Defendant Bass'
15 position that the foreclosure sale was void and that Plaintiffs did not acquire valid title to the
16 property with no new arguments added. Accordingly, the Court should set aside the foreclosure
17 sale and deny Plaintiffs' Motion for Summary Judgment.

Dated this 6th day of November 2024.

Respectfully submitted,

Jeremy L. Bass

Defendant/ Perforce Pro Se



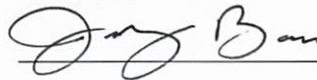
Signature

CERTIFICATE OF MAILING

I certify that I have sent by email and first-class mail this **MEMORANDUM IN SUPPORT OF RECONSIDERATION** to Plaintiffs and Co-Defendant's console on November 6th, 2024, at the following email address and postal address:

Email: lewis@hwmlawfirm.com [✓]	Ken Nagy
Postal: Lewis N. Stoddard, Bar No. 7766 [] Halliday, Watkins & Mann, P.C. 376 East 400 South, Suite 300 Salt Lake City, UT 84111	Idaho Legal Aid Services, Inc. Email: kennagy@idaholegalaid.org [✓] Counsel for Dwayne Pike

Jeremy L. Bass
Defendant/ Perforce Pro Se



Signature

ACKNOWLEDGMENT

STATE OF IDAHO)

: ss.

County of NEZ PERCE)

On the 6th day of November, 2024, before me, the undersigned Notary Public, personally appeared Jeremy Bass, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that s/he executed the same. IN WITNESS WHEREOF, I have set my hand and seal the day and year as above written.


Notary Public for Idaho

Residing at Clewiston

Commission Expires: 11/28/2025

User Name: Jeremy Bass
Date and Time: Wednesday, November 6, 2024 7:22:00 AM PST
Job Number: 237933963

Document (1)

1. Breckenridge Prop. Fund 2016, LLC v. Wally Enter.

Client/Matter: -None-

Search Terms: Breckenridge Prop. Fund 2016, LLC v. Wally Enterprises, Inc.

Search Type: Natural Language

Narrowed by:

Content Type

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-None-

Cited
As of November 6, 2024 3:22 PM Z

Breckenridge Prop. Fund 2016, LLC v. Wally Enter.

Supreme Court of Idaho

August 22, 2022, Filed

Docket Nos. 48489 & 48703

Reporter

170 Idaho 649, *649; 516 P.3d 73, **73; 2022 Ida. LEXIS 96, ***1; 2022 WL 3581124

BRECKENRIDGE PROPERTY FUND 2016, LLC, a Delaware limited liability company, Plaintiff-Appellant, v. WALLY ENTERPRISES, INC., a Kansas corporation dba WE SERVE IDAHO; WEINSTEIN & RILEY, P.S., a Washington professional corporation; CORNERSTONE PROPERTIES, LLC, an Idaho limited liability company, Defendants-Respondents, and JOHN DOES 1-10, and CORPORATIONS XYZ, Defendants. CORNERSTONE PROPERTIES, LLC, an Idaho limited liability company, Cross-Claimant, v. WEINSTEIN & RILEY, P.S., a Washington professional corporation, Cross-Defendant.

Prior History: [***1] Appeal from the District Court of the Seventh Judicial District of the State of Idaho, Bonneville County, Bruce L. Pickett, District Judge.

Disposition: The decision of the district court is affirmed in part and vacated in part.

Core Terms

district court, bid, commercial transaction, auction, attorney's fees, conditions, notice, gravamen, negligence per se, bidder, argues, court's decision, summary judgment, estoppel, lawsuit, purchaser, parties, checks, trust deed, announed, award of attorney's fees, highest bidder, foreclosure, concealed, complied, binding, equitable estoppel, terms of the sale, prevailing party, form of payment

Case Summary

Overview

HOLDINGS: [1]In a suit concerning the legality of an auctioneer providing the terms of sale at the time of the foreclosure sale, including acceptable methods of payment, 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; [2]-The Court noted that plaintiff alleged no other failure in relation to the pre-sale procedure.

Outcome

District court affirmed in part and vacated in part.

LexisNexis® Headnotes

Civil Procedure > Judgments > Pretrial Judgments > Judgment on Pleadings

Civil Procedure > ... > Summary Judgment > Motions for Summary Judgment > Notice Requirement

HN1125 Pretrial Judgments, Judgment on Pleadings

After the pleadings are closed, but early enough not to delay trial, a party may move for judgment on the pleadings. *Idaho R. Civ. P. 12(a)*. On such a motion, if matters outside the pleadings are presented to and not excluded by the court, the motion must be treated as one for summary judgment under *Idaho R. Civ. P. 56* where all parties must be given a reasonable opportunity to present all the material that is pertinent to the motion. *Idaho R. Civ. P. 12(a)*. A judgment on the pleadings is reviewed under the same standard as a ruling on summary judgment.

Civil Procedure > Judgments > Summary Judgment > Entitlement as Matter of Law

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

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170 Idaho 649, *649; 516 P.3d 73, **73; 2022 Ida. LEXIS 96, ***1

Disputes

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Scintilla Rule

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

Civil Procedure > ... > Summary Judgment > Burdens of Proof > Movant Persuasion & Proof

If the statute is not ambiguous, the Court does not construe it, but simply follows the law as written. The Idaho Supreme Court has consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature. Ambiguity occurs where reasonable minds might differ as to interpretations. However, ambiguity is not established merely because the parties present differing interpretations to the court.

Civil Procedure > Appeals > Appellate Briefs

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

HN1125 Appeals, Appellate Briefs

The Idaho Supreme Court will not consider arguments raised for the first time in the appellant's reply brief. A reviewing court looks only to the initial brief on appeal for the issues presented because those are the arguments and authority to which the respondent has an opportunity to respond in the respondent's brief.

Governments > Courts > Rule Application & Interpretation

HN1125 Courts, Rule Application & Interpretation

In the context of the timing of a search, there are few circumstances in which rigid rules are proper.

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

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

Real Property Law > Financing > Foreclosures > Judicial Foreclosures

HN1125 Mortgages & Other Security Instruments, Definitions & Interpretation

The whole premise of *Idaho Code § 45-15c(6)* is to

170 Idaho 649, *649; 516 P.3d 73, **73; 2022 Ida. LEXIS 96, ***1

Page 3 of 18

ensure immediate closure to resolve the uncertain status of the property. Indeed, the nature of these proceedings is that of expediency, which is why, unlike its judicial foreclosure counterpart that permits a one-year right to redemption, a deed of trust affords a creditor the right to nonjudicial foreclosure and a shorter 120-day period of cure. That said, the procedures to foreclose on trust deeds outside of the judicial process provide the express-lane alternative to foreclosure in the judicial system.

Governments > Legislation > Interpretation

HN1125 Legislation, Interpretation

No matter how other courts have interpreted forthwith, the Idaho Supreme Court must give the word its plain, usual, and ordinary meaning and, if that definition is unambiguous, the Court does not construe it, but simply follows the law as written.

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

HN1125 Foreclosures, Private Power of Sale Foreclosure

Before the auction begins, trustees can impose reasonable restrictions on the acceptable forms of payment in which a bid can be made at a trustee's sale.

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

HN1125 Elements, Bona Fide Purchasers

A trustee's sale to a good-faith purchaser for value is final, despite a violation of *Idaho Code § 45-15c(6)*.

Estate, Gift & Trust Law > ... > Trustees > Duties & Powers > Sales

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

HN1125 Duties & Powers, Sales

Discussing the sale of property at a trustee's sale, the Idaho Supreme Court has explained the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale. This finality, echoed in *Idaho Code § 45-15c(6)*, refers to actual notice, and it serves the legislature's interest in preserving the finality of title to real property. As for *Idaho Code § 45-15c(6)*, it is more reasonable to infer that the legislature did not intend for a sale to be set aside once the trustee accepts the credit bid as payment in full. As a result, the sale is final once the trustee accepts the bid as payment in full unless there are issues surrounding the notice of the sale.

Torts > ... > Proof > Violations of Law > Ordinances

Torts > ... > Proof > Violations of Law > Rules & Regulations

Torts > ... > Proof > Violations of Law > Statutes

Torts > ... > Proof > Violations of Law > Standards of Care

Torts > ... > Proof > Violations of Law > Safety Codes

HN1125 Violations of Law, Ordinances

To show common law negligence, a party must prove: (1) a duty, recognized by law, requiring the defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant's conduct and the resulting injury; and (4) actual loss or damage. Self-evident in the formulation of these elements is that a party cannot be held liable for negligence when there was no legal duty imposed under the circumstances. In Idaho, it is well established that statutes and administrative regulations may define the applicable standard of care owed, and that violations of such statutes and regulations may constitute negligence per se. Establishing negligence per se through a violation of a statute or regulation conclusively establishes the first two elements of a cause of action in negligence.

Civil Procedure > ... > Defenses, Demurrers & Objections > Affirmative Defenses > Estoppel

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

HN1125 Standards of Review, De Novo Review

The Idaho Supreme Court exercises free review over questions of law, which includes whether the district court correctly determined that a case is based on a commercial transaction for the purpose of *Idaho Code § 12-1-72(c)*.

Governments > Legislation > Interpretation

HN1125 Legislation, Interpretation

User Name: Jeremy Bass
Date and Time: Monday, October 28, 2024 6:13:00 AM PDT
Job Number: 237120394

Document (1)

1. Spencer v. Jameson

Client/Matter: -None-

Search Terms:

Search Type: Natural Language

Narrowed by:

Content Type

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-None-

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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: [***] 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 *Idaho Code 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 non-judicial 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. § 45-101* and properly transferred to the trustee under *Idaho Code Ann. §§ 45-1507(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. § 45-1505(b)*; 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 the borrower court costs, but not attorney fees, on appeal.

LexisNexis® Headnotes

Civil Procedure > ... > Summary

Jeremy Bass

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147 Idaho 497, *497, 211 P.3d 106, **106, 2009 Ida. LEXIS 96, ***1

Judgment > Appellate Review > Standards of Review

HN111 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

HN111 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

HN111 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 nonmoving party. If reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented, then summary judgment is improper.

Real Property Law > Mobilehomes & Mobilehome Parks > General Overview

HN111 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. § 45-101*. 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

HN525 Mortgages & Other Security Instruments, Definitions & Interpretation

A deed of trust, by definition, is limited to the conveyance of real property. *Idaho Code Ann. § 45-1502(c)*.

Real Property Law > General Overview

HN525 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 land and placer. 2. That which is affixed to land. 3. That which is appurtenant to land. *Idaho Code Ann. § 45-101*.

Real Property Law > Fixtures & Improvements > Fixture Characteristics

Real Property Law > Foreclosures > Private Power of Sale Foreclosure

HN111 Fixtures & Improvements, Fixture Characteristics

A deed of trust is limited to the conveyance of real property. *Idaho Code Ann. § 45-1502(c)*. 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(c)* provides additional limitations on what real property can be

Page 3 of 14

147 Idaho 497, *497, 211 P.3d 106, **106, 2009 Ida. LEXIS 96, ***1

transferred to the trustee for purposes of non-judicial foreclosure.

Real Property Law > Fixtures & Improvements > Fixture Characteristics

HN525 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

HN111 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(f)*.

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

HN111 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 *Idaho Code Ann. § 45-1506(f)*. 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

HN111 Foreclosures, Private Power of Sale Foreclosure

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

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

HN111 Foreclosures, Private Power of Sale Foreclosure

See *Idaho Code Ann. § 45-1506*.

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

HN111 Foreclosures, Private Power of Sale Foreclosure

Reading subsections (3) 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

HN111 Foreclosures, Private Power of Sale Foreclosure

See *Idaho Code Ann. § 45-1506(f)*.

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

HN111 Foreclosures, Private Power of Sale Foreclosure

Document (1)

1. *Taylor v. Just*

Client/Matter: -None-

Search Terms:

Search Type: Natural Language

Narrowed by:

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-None-

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: [****] 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, foreclosure, execute, grantor, lender, good faith purchaser, foreclosure, purchaser, deliver, deed, parties

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. *Idaho Code § 45-1502(1)* 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 § 45-1502(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

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

Jeremy Bass

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 § 45-1502(1) (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

Idaho Code § 45-1502 (1997) provides that the trustee can postpone the sale at the request of the beneficiary.

Real Property Law > Financing > Foreclosures > General Overview

HN5 Financing, Foreclosures

Idaho Code § 45-1502(1) 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.

Real Property Law > Financing > Foreclosures > General Overview

HN6 Financing, Foreclosures

See *Idaho Code § 45-1502* (1997).

Real Property Law > Financing > Foreclosures > General Overview

HN7 Financing, Foreclosures

By its terms *Idaho Code § 45-1502* only applies to sales challenged because of a failure to comply with the provisions of *Idaho Code § 45-1502* (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

HN9 Affirmative Defenses, Fraud & Misrepresentation

A void contract cannot be enforced.

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

HN10 Attorney Fees & Expenses, Reasonable Fees

Idaho Code § 12-1203 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 § 12-1203* (1998).

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

White Peterson Morrow Gligay Rossman Nye & Rossman, Nampa, for respondent. Kevin E. Dinis 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 [**310] [**139] acquired the interest of the beneficiary [**2] under that deed of trust. The Rushes failed to make the monthly payments that came due

User Name: Jeremy Bass
Date and Time: Monday, October 28, 2024 8:15:00 AM PDT
Job Number: 237120541

Document (1)

1. Idaho Power Co. v. Benj. Houseman Co.

Client/Matter: -None-

Search Terms:

Search Type: Natural Language

Narrowed by:

Content Type

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-None-

Caution
As of: October 28, 2024 1:15 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: [***] 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 mortgage was not
precluded from suing to collect the debt secured by the
mortgage where the debt was not due and where there
was no basis to foreclose the mortgage at the time the
property was sold to the third party by the trustee for
less than the fair market value. The court noted that the
mortgagee had no right to foreclose its mortgages
before the trustee sold the property and no right to
redeem the property from the purchaser at the
foreclosure sale pursuant to *Idaho Code § 45-1509*. 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

HN11 Financing, Foreclosures

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

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Jeremy Bass

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123 Idaho 674, *674; 851 P.2d 970, **970; 1993 Ida. LEXIS 100, ***1

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

Ellis, Brown and Sheets, Chid., of Boise, for plaintiff-
respondent. Martin T. Neils argued.

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

Opinion by: JOHNSON

Opinion

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

I.

THE BACKGROUND AND PRIOR PROCEEDINGS.

On May 12, 1981, The Zachreson Company
(Zachreson) entered into eleven weatherization
agreements with Idaho Power Company. Each
agreement required Idaho Power to weatherize a
building owned by Zachreson. Zachreson agreed to pay
for this work on July [*2] 12, 1981, 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. § 6-103*) barred Idaho
Power's action. Houseman appealed.

II.

NEITHER *I.C. § 6-101* NOR *I.C. § 6-103* BAR IDAHO
POWER'S ACTION.

Houseman asserts that *I.C. §§ 6-101* and *6-103* bar
Idaho Power's right to recover from Houseman. We
disagree.

The two statutes upon which Houseman promises 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. *I.C. § 45-1509*. Idaho Power's
mortgage lien on the property became valueless at the
time of the trustee's sale. *Warner v. Bockstahler*, 48
Idaho 419, 423, 282 P. 862, 863 (1928).

HN11 (¶) A mortgagee may bring a direct action on a
debt secured by the mortgage, if the mortgage is
valueless. *Clark v. I-8781*, 24 *Idaho 142, 152, 132 P.*
795, 798 (1913).

III.

CONCLUSION.

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

We award costs to Idaho Power on appeal, together
with attorney fees pursuant to *I.C. § 12-1233*.

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Document (1)

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

Client/Matter: -None-

Search Terms:

Search Type: Natural Language

Narrowed by:

Content Type

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Caution
As of: October 28, 2024 11:00 AM 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

Bankruptcy Law > Procedural Matters > Adversary
Proceedings > Dismissal of Adversary ProceedingsCivil Procedure > ... > Defenses, Demurrers &
Objections > Motions to Dismiss > Failure to State
Claim**HN1** Adversary Proceedings, Dismissal of
Adversary Proceedings**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. § 548(b)(1) as defendant was a
bona fide purchaser.

Fed. R. Civ. P. 12(b)(6), made applicable in adversary
proceedings by Fed. R. Bankr. P. 7012(h), 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.

Civil Procedure > ... > Responses > Defenses,
Demurrers & Objections > Motions to Dismiss**HN2** Defenses, Demurrers & Objections,
Motions to Dismiss**Outcome**

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

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

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evaluating a motion to dismiss, it may consider exhibits
attached to, and documents incorporated by reference
in, the complaint.

Presumptions > Presumptions > Particular
PresumptionsEvidence > Inferences &
Presumptions > Presumptions > Rebuttal of
Presumptions**HN3** 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**HN4** Fraudulent Transfers, Elements

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

Real Property Law > Financing > Foreclosures

HN5 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.

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

Real Property Law > Financing > Foreclosures

HN3 Fraudulent Transfers, Elements

11 U.S.C.S. § 548(c)(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 § 542(a) and (b), 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 &

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Real Property Law > Financing > Foreclosures

HN5 Financing, Foreclosures

The buyer protections afforded by Idaho Code Ann. §
45-1508 apply only to sales challenged for a failure to
comply with the procedural provisions of Idaho Code
Ann. § 45-1506. And 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.

Bankruptcy Law > ... > Avoidance > Prepetition
Transfers > Voidable Transfers**HN6** 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.

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**[*188] 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) 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 8, 2017, the Court conducted a hearing
concerning the motion at which the parties presented
oral argument and responded to questions of the Court.
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.

¹Unless otherwise indicated, all chapter and section
references are to the Bankruptcy Code, 11 U.S.C. §§ 101-
1532, all Rule references are to the Federal Rules of
Bankruptcy Procedure, Rules 1001-9097, and all Civil Rule
references are to the Federal Rules of Civil Procedure, Rules
1-86.