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

<p>DPW Enterprises LLC and Mountain Prime 2018 LLC,</p> <p style="text-align: center;"><b>Plaintiffs,</b></p> <p style="text-align: center;"><b>v.</b></p> <p>Jeremy L. Bass; Dwayne Pike; and Unknown Parties in Possession of the real property commonly known as:</p> <p>1515 21st Ave., Lewiston, ID 83501,</p> <p style="text-align: center;"><b>Defendants.</b></p>	<p><b>PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT AS AGAINST DEFENDANT JEREMY L. BASS</b></p> <p>Case No.: CV35-24-1063</p>
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COMES NOW, Plaintiffs by and through their counsel of record, Lewis N. Stoddard, and hereby submits this Reply Memorandum in Support of Motion for Summary Judgment against Defendant Jeremy L. Bass

**I. INTRODUCTION**

This is a straightforward action for ejectment of Jeremy L. Bass, the former owner of the property commonly known as 1515 21<sup>st</sup> Ave., Lewiston, ID 83501 ("Property") following a non-judicial foreclosure and resulting Trustee's Sale. Plaintiffs were the successful purchasers and were entitled to possession of the Property on the tenth day following the sale, yet nearly seven months later, Plaintiffs are being denied possession by Mr. Bass based upon a number of

conclusory and baseless accusations aimed at trying to invalidate the underlying sale so that he may continue to occupy the Property.

As is discussed in greater detail below when the undisputed land records of Nez Perce County are considered in conjunction with well-established Idaho case law, it is clear that summary judgment is appropriate and Mr. Bass should be ejected from the Property.

## II. STANDARD OF REVIEW

While the standard of review applicable to motions for summary judgment is well known to the Court it bears repeating that in order to forestall summary judgment, a party “must do more than present a scintilla of evidence, and merely raising the ‘slightest doubt’ as to facts is not sufficient to create a genuine issue.” *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 362 (1969); *G&M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 517, 808 P.2d 851 (1991). A disputed fact will not be deemed “material” for summary judgment purposes unless it relates to an issue disclosed by the pleadings. *Argyle v. Slemaker*, 107 Idaho 668, 669-70, 691 P.2d 1283, 1284-85 (Ct. App. 1984)(emphasis added). Thus, any dispute of fact is not sufficient to create a genuine issue<sup>1</sup> of material fact which would thereby preclude entry of summary judgment. *Id.* Rather, the particular fact in dispute must be of such significance so as to possibly render the outcome of the case different than if the fact did not exist. *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998); *See also Rife v. Long*, 127 Idaho 841, 849, 908 P.2d 143, 151

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<sup>1</sup> In addition to the foregoing, it is well established that to survive summary judgment on the basis of a contested issue of fact, the factual dispute must be “genuine.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact reaches the level of being a “genuine” dispute thereof if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Id.* Thus, “the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Id.* at 247-48 (emphasis in original). To that end, neither a mere scintilla of evidence, slight doubt, nor conclusory assertion is sufficient to create a genuine issue of material fact. *Mendenhall v. Aldous*, 146 Idaho 434, 196 P.3d 352, 354 (2008).

(1995)(“A material fact is one upon which the outcome of the case may be different”).

### **III. ARGUMENT**

In his opposition, Mr. Bass opposes Plaintiffs’ Motion for Summary Judgment based upon the contention that Plaintiffs are not bona fide purchasers for value. In support of his contention, Mr. Bass submits an affidavit with conversations he purportedly had a year prior to the subject foreclosure sale with a prospective buyer who was attempting to purchase the property from Mr. Bass prior to any foreclosure sale, and video recording excerpts which Mr. Bass asserts reflects collusive behavior and a non-competitive bidding process. Beyond the foregoing, Mr. Bass submits conclusory arguments wherein he continues to assert: 1.) qualms he has with his prior bank, loan servicer, and Trustee; 2.) bid manipulation and/or sale manipulation; 3.) notice of foreclosure defects; and 4.)insufficient eviction notice. As is set forth more fully below, all of Defendant’s arguments fail.

#### **A. The Underlying Trustee’s Sale is Valid and Terminated Defendant’s interest in the Property.**

Mr. Bass continues to assert, without any legal support, that he is the rightful owner of the Property and his opposition primarily focuses on the contention that Plaintiffs are not bona fide purchasers in good faith because Mr. Bass claims that they were on notice of his various property issues before the sale. Ultimately, Defendant’s arguments are without legal support and directly refuted by Idaho law.

For starters, Idaho law supports the finality of a Trustee’s Sale and affords a Trustee’s Deed with a statutory presumption of compliance with the Idaho Trust Deeds Act. I.C. 45-1510(1).

Where a purchaser is one in good faith for value, the recitals and affidavits are considered conclusive. *Id.*<sup>2</sup>

With the foregoing in mind, Defendant argues that Plaintiffs are not purchasers in good faith because they had notice of issues with the property by virtue of postings that Mr. Bass made in the window of the Property and by virtue of a sign he held at the sale. Stated differently, Mr. Bass contends that because he believes that there are alleged wrongs with his underlying loan and because he posted those where others could see, no one could become a bona fide purchaser. What Mr. Bass fails to appreciate is that in order for such conclusory self-serving notices to have any bearing on this matter, his accusations would have to be true, which there is no evidence to support, nor is there any evidence as to what such postings disclosed, or whether they disclosed any irregularity in the underlying non-judicial foreclosure which would render the Trustee's Sale void, as opposed to merely expressing Defendant's various accusations of fraud. Thus, Defendant's conclusory assertions do not create an issue of material fact with respect to the conclusiveness of the Trustee's Deed in favor of Plaintiffs.

Additionally, Mr. Bass cites to *Federal Home Loan Mortg. Corp. v. Appel*, 143 Idaho 42 (2006) for the proposition that his public displays are sufficient notice to defeat bona-fide purchaser status and that notice of any potential defect is sufficient; however, *Appel*, does not support his proposition. Rather, the Idaho Supreme Court in *Appel*, noted that "status as a bona

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<sup>2</sup> See I.C. 45-1510(1):

When a trustee's deed is recorded in the deed records of the county where the property described in the deed is located, the recitals contained in the deed and the affidavits required under § 45-1505(7), shall be prima facie evidence in any court of the truth of the recitals and the affidavits. However, the recitals and affidavits are conclusive in favor of a purchaser in good faith for value or any successor in interest thereof...

fide purchaser in good faith, at least in the context of a non-judicial foreclosure sale, is generally not available where a purchaser is on inquiry notice of a **potential defect of statutory notice provisions.**” See *Federal Home Loan Mortg. Corp. v. Appel*, 143 Idaho at 47.

Here, no statutory notice defect has been alleged, let alone any evidence to support such defect presented to the Court by Mr. Bass, and thus Plaintiffs status as bona-fide purchasers for value is undisputed.

Even if Defendant’s arguments were considered to raise some sort of issue, Plaintiff’s would still be entitled to the presumption of compliance afforded to a Trustee’s Deed which places the burden of proof on Mr. Bass to affirmatively prove defects in the prior proceedings as would overcome the trustee’s deed. See *Bogart v. Bagley*, 64 Idaho 177 (1943)(wherein the court, construing identical statutory presumptions afforded to a tax deed, noted that the effect is to change the common-law order of proof and to cast the burden on the person attacking title to affirmatively prove irregularities or defects in prior proceedings as would overcome the prima facie case made by the tax deed.) Here, Mr. Bass, beyond challenging the actual sale which is addressed below, raises no challenges to, nor submits any proof of irregularities or defects in whether the Non-Judicial Foreclosure complied with the Idaho Trust Deed’s Act.

A similar attempt to challenge a Trustee’s Deed was raised in *Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc.*, 170 Idaho 649 (2022), wherein an unsuccessful third-party purchaser tried to set aside a sale. In affirming the District Court’s decision refusing to set aside the sale, the Idaho Supreme Court noted that the third-party purchaser claimed no defects in the notice of sale, but instead only claimed insufficient notice of payment restrictions by the Trustee and that because I.C. 45-1508 promotes finality, even if there were a defect in notice under I.C.

45-1506 the sale would still be valid and that because there was no violation of I.C. 45-1506, whether or not the successful purchase was one in good faith or not was immaterial.

Here, Mr. Bass has not pointed to, nor presented any evidence of non-compliance with the Idaho Trust Deed's Act. Rather, the only proof before the Court is contained within the Trustee's Deed itself which notes that a Notice of Default was issued and recorded, a Trustee's Sale set after various postponements, and those notices being given as statutorily required and a sale being held, a bid accepted, and a Trustee's Deed being issued to Plaintiffs. There being no evidence of non-compliance with the Idaho Trust Deed's Act, the statutory consequence of the Trustee's Sale was to terminate all interests of Mr. Bass in the property.

**B. The Underlying Trustee's Sale Was Properly Held.**

Mr. Bass has similarly presents no evidence to support his conclusory assertion that the Trustee's Sale was fixed or not open to the public. Rather, Mr. Bass speculates that because only one bidder attended the sale and arrived with pre-printed checks for the purchase of the property there must have been price collusion of some form, or that the sale was not otherwise a public auction. Ultimately, beyond speculation, Mr. Bass has presented the Court with no evidence to support his conclusory assertions.

Turning first to whether the auction was public, the undisputed facts of this case as well as Defendant's own admissions and evidence demonstrate that the time and date of the sale was properly noticed, the sale was held in a public forum at the scheduled date and time and that anyone was allowed to attend, including Mr. Bass, who apparently showed up merely to protest the sale and even film the same. Thus, there is nothing in the record before the Court demonstrating that interested parties, or even protestors such as Mr. Bass were turned away. Rather, the opposite is clear from the facts before the Court including Mr. Bass' own video submissions which reflect that

his own personal actions through the use of a sign giving the impression that bidding was punishable by prison time could be equally the cause for only one bidder showing up at the subject sale.

With respect to Defendant's contention that because Plaintiffs' representative<sup>3</sup> showed up with a pre-printed check, there must have been collusion, again, such argument is without any legal or factual support. Specifically, in *Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc.*, 170 Idaho 649 (2022) the Idaho Supreme Court noted that Idaho Code § 451-1506(9) requires that payment be tendered at auction and that the Trustee is entitled to set the terms of the sale including acceptable forms of payment.<sup>4</sup> Here, Defendant presents no evidence to support any irregularity with the Trustee's Sale procedure. There's nothing in Idaho law that prevents a Trustee from disclosing the amount of the opening credit bid to be placed by the foreclosing lender to interested purchasers such that they can evaluate whether to participate in the sale, or to determine what they may wish to bid. There's similarly no evidence before the Court that Plaintiffs' bid was not the highest bid, or that the Trustee did not otherwise require the winning bidder to tender funds in the form of cashier's check(s) as was done here. Thus, Defendant's contention that because Plaintiffs had pre-printed checks ready to tender should they become the winning bidder is immaterial especially in light of Idaho's statutory requirement that funds be tendered "forthwith" and does not create an issue of material fact sufficient to withstand summary

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<sup>3</sup> Defendant Bass also contends that Plaintiffs' representative who attended the Trustee's Sale to bid on their behalf is the same individual, Glenda Morlan, with whom he had chatted with and had calls with several months prior. It is unclear upon what Mr. Bass is basing his conclusory argument, which is otherwise utterly baseless. As noted in the Second Declaration of DPW Enterprises, LLC, Plaintiffs utilized the services of Debbie Lawrence, a real estate agent from Moscow, Idaho to attend the Trustee's Sale and bid on its behalf and have never been affiliated with "Glenda Morgan" nor ever worked with such person.

<sup>4</sup> See *Breckenridge Property Fund 2016, LLC v. Wally Enterprises, Inc.*, 170 Idaho 649 (2022)(noting that the plain meaning of "'forthwith' is '[i]mmmediately; without delay[.]'"

judgment.

Lastly, in order to avoid summary judgment, it is incumbent upon Mr. Bass to set out facts that would be admissible in evidence, and any affidavit is to be based upon personal knowledge and show that the affiant is competent to testify to the matters stated. Here, Mr. Bass provides the Court with two types of purported evidence. The first is a printout of purported chats had and a transcription of a purported call with an interested purchaser identified as Glenda Morlan over 6 months prior to the actual Trustee's Sale for which Mr. Bass lays inadequate foundation for admission to this Court. Moreover, Mr. Bass appears to contend that statements made by a third party to him trying to convince him to sell his property is somehow proof that the non-judicial foreclosure and Trustee's sale being carried out by unrelated parties, somehow proves collusion, or that Ms. Morlan is the same representative that bid at the sale on Plaintiffs' behalf; however, Mr. Bass presents no evidence to support his speculation.

Second Mr. Bass presents video excerpts, which do not appear to be in their full and original format but appear to have been modified by Mr. Bass without any sufficient explanation as to how they were modified, how they have been stored, when they were taken, who has had possession etc... Stated differently, there is insufficient foundation laid for admission of these video clips before the Court.

Even if the clips are considered, they do little to establish collusion between the Trustee and Plaintiffs. In fact, the video clips presented by Mr. Bass reflect that a Trustee's Sale was held in front of the Nez Perce County Courthouse where anyone from the public was free to attend and the mere fact that only one bidder showed up to the sale is not enough to create an issue of fact based upon Defendant's conclusory accusation of collusion, especially when Defendant's own videos reflect his attempts to dissuade possible bidders through the use of a sign giving the



indication of jail time.

At the end of the day, Defendant's arguments in opposition to summary judgment are based upon nothing more than his own speculation. Defendant presents no evidence that Plaintiffs were in collusion with his lender or his trustee or that a price was agreed upon in advance of sale, but instead seeks to draw his own conclusions that because no one else showed up to participate in the auction it must have been fixed. As required by Idaho Code § 45-1506(8), the undisputed facts reflect that a sale was held on the date and time and place designated in the Notice of Postponed Trustee's Sale, and that the Trustee sold the property to the highest bidder. The undisputed facts similarly reflect that Plaintiffs' as the purchaser at the sale "forthwith" paid the price bid and that upon receipt a Trustee's Deed was issued consistent with the requirements of Idaho Code § 45-1506(9).

In the case at hand, the undisputed facts of this case prove all of the necessary elements to entitle Plaintiffs to possession of the Property pursuant to the Trustee's Deed. Summary Judgment in favor of Plaintiffs is proper.

**C. Defendant's Purported Issues With his Prior Lender, Servicer or Trustee Does Not Create an Issue of Material Fact to Withstand Summary Judgment.**

Defendant Bass continues to seek to litigate or co-mingle issues he has with the actions or inactions of his prior bank and/or servicer. In doing so, Defendant fails to appreciate that the present case is not the time nor place to litigate such issues. If Defendant has issues with various non-parties to the present suit, he can certainly litigate those issues against them, as he has attempted to do so previously; however, his qualms do not create an issue of material fact here.

Stated differently, none of Defendant's purported issues with his prior trustee, bank or servicer, evidence any non-compliance with the Idaho Trust Deeds' Act, which the Idaho Supreme Court has noted is "a comprehensive regulatory scheme for non-judicial foreclosure of deeds of

trust, which includes the exclusive remedies for a statutory violation.” *Spencer v. Jameson*, 211 P.3d 106, 147 Idaho 497 (2009). Given the comprehensiveness of the Idaho Trust Deeds Act, “the legislature did not intend for a sale to be set aside once the trustee accepts the credit bid as payment in full.” Rather, the legislature’s interest was “in preserving the finality of title to real property.” *Id.* Thus, “a sale is final once the trustee accepts a bid as payment in full unless there are issues surrounding the notice of the sale (which are admittedly not present in this case).” *Id.*

Here, Defendant Bass has not argued, nor submitted any proof of any statutory non-compliance with the Idaho Trust Deeds Act let alone any issues surrounding notice of the Trustee’s Sale, which his own Affidavit acknowledges he personally attended.<sup>5</sup> Even if there were issues surrounding notice of the Trustee’s Sale, Idaho Code 45-1508 provides that the validity of the sale as to persons having actual knowledge shall be unaffected.

#### **D. Defendant’s Challenges to the Notice to Vacate are Meritless.**

Mr. Bass, for the first time, also seeks to contest the entry of summary judgment because he contends that a “complete eviction notice has never been duly served;” however, Mr. Bass fails to provide a copy of the purported insufficient notices as part of his Affidavit for the court to review, and fails to cite to any law requiring that he be given notice and particular type of notice in order for the present ejectment action to be filed and pursued. Moreover, Mr. Bass makes his argument whilst acknowledging that he attended the subject Trustee’s Sale, where he would have become aware that the Property was sold, and whilst acknowledging that he continues to remain in possession of the Property and refusing to relinquish possession notwithstanding being served with a copy of the Complaint in this matter which contains what he acknowledges to be a

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<sup>5</sup> See Defendant Bass’ Response to Plaintiffs’ Motion for Summary Judgment, pages 3-4 (noting “Mr. Bass was present at the auction with a sign stating the auction was fixed.”)

“complete eviction notice.”

Ultimately, Defendant’s argument does not provide him with a legal basis from which to avoid ejectment from the Property. Mr. Bass admits he attended the sale where the Property was sold to Plaintiffs and thus he had knowledge of the loss of his ownership in early March 2024 and did not vacate. Mr. Bass acknowledges in his briefing that he received the Notice to Vacate sent by Plaintiffs’ counsel in late March and yet he failed to vacate. Lastly, the record reflects that he was served with the Complaint for Ejectment in August and again he failed to vacate. In the intervening 7+ months, Mr. Bass continues to reside in the Property and continues to refuse to relinquish possession in contravention of Idaho Code §45-1506(11).

If Mr. Bass is entitled to any type of notice under Idaho law, he’s clearly received it and as such Summary Judgment in favor of Plaintiff is proper.

**E. Defendant’s Response Continues to Miscite and Misrepresent Case Law in violation of I.R.C.P. 11**

As was previously noted by this Court in ruling upon Defendant’s Motion for appointment of counsel, Defendant’s citation to case authority and the accuracy thereof is questionable, either because the cases being cited do not stand for the proposition asserted in the motion or do not exist at all. Defendant’s Response here suffers from the same trustworthiness and is either an affirmative attempt to mislead the court, or an improper reliance on computer technology without verifying accuracy. I.R.C.P. 11 provides that every pleading, written motion, and other paper must be signed by .... a party personally if the party is unrepresented and that in presenting a pleading, motion or other paper to the court, they are certifying to the best of their knowledge, information

and belief, that the legal contentions are warranted by existing law and that the factual contentions have evidentiary support.

Here, Defendant's Response is replete with mis-representations or erroneous citations as follows:

- 1.) On page 7 Plaintiff cites to *Pines Grazing Ass'n v. Flying Joseph Ranch, LLC*, 151 Idaho 924 (2011) for the proposition that "courts can scrutinize a purchaser's status where there is evidence of collusion, fraud, or procedural irregularities in the foreclosure sale process." A review of the quoted case reflects that it has nothing to do with a foreclosure sale process, or bona-fide purchaser status;
- 2.) On page 10 Plaintiff cites to *Kane V. Union State Bank*, 71 F. Supp. 225 (D. Idaho 1937), but Plaintiff can find no such case, nor case citation in Idaho; and
- 3.) On page 13, Plaintiff cites to *Wells Fargo Bank, N.A. v. Renz*, 124 Idaho 885 (1993), but Plaintiff can find no such case, nor case citation in Idaho;<sup>6</sup>

#### IV. CONCLUSION

Plaintiffs are the legal owner of the Property pursuant to a final and valid trustee's deed issued following a properly noticed and conducted Trustee's Sale. Plaintiffs were good faith purchasers and as such, are entitled to judgment as prayed for in Plaintiff's Complaint requiring that Defendant Jeremy Bass surrender the Property to Plaintiff and the Court should issue a Writ of Ejectment to the County Sheriff ordering that Jerney Bass be removed from the Property and that Plaintiff have immediate possession thereof.

DATED This October 18, 2024.

HALLIDAY WATKINS & MANN, P.C.

By: /s/ Lewis N. Stoddard  
Lewis N. Stoddard  
Attorneys for Plaintiff

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<sup>6</sup> The closest case that Plaintiff can locate is *Wells Fargo Bank, N.A. v. Renz*, 795 F.Supp.2d 898 (N.D. Cal, June 2011) which dealt with a claim under the Comprehensive Environmental Response, Compensation and Liability Act and not failure to comply with the procedural requirements of non-judicial foreclosure.

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this October 18, 2024, a true and correct copy of the above and foregoing document was served, which service was effectuated by the method indicated below and addressed as follows:

Jeremy L. Bass 1515 21 <sup>st</sup> Ave Lewiston, ID 83501	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email/iCourt
Ken Nagy Idaho Legal Aid Services, Inc. <a href="mailto:kennagy@idaholegalaid.org">kennagy@idaholegalaid.org</a> <i>Counsel for Dwayne Pike</i>	<input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> Email/iCourt

/s/ Lewis N. Stoddard  
Lewis N. Stoddard