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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
**DEFENDANT BASS' RESPONSE TO
PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT**

DEMAND FOR JURY

9
10 COMES NOW the Defendant Jeremy Bass (hereinafter "Defendant Bass"), perforce
11 representing himself pro se, and hereby responds to the *Plaintiffs' Motion for Summary*
12 *Judgment* (hereinafter "Motion"), as well as *Plaintiffs' Memorandum in Support of Motion for*
13 *Summary Judgment and in Opposition to Motion to Dismiss and Strike Summons and Complaint*
14 (hereinafter "Memorandum"), filed in this proceeding on the 16th day of September, 2024. This
15 response is supported by the *Affidavit of Jeremy L. Bass in Support of Defendant Bass' Response*
16 *to Plaintiffs' Motion for Summary Judgment* filed herewith.

17 Defendant Bass hereby responds to the issues and arguments contained in the Plaintiffs'
18 Motion and Memorandum that pertain to his responsibilities regarding his property, including
19 any obligations related to the lease involving Defendant Dwayne Pike (hereinafter "Defendant
20 Pike"). Defendant Bass does not address or take a position on matters pertaining to Defendant
21 Pike's individual perspective or defenses, except where such matters directly concern his own
22 obligations related to his property.

1 I. INTRODUCTION

2 Defendant Bass, the owner and resident of the real property 1515 21st Ave., Lewiston, ID
3 83501-3926 (hereinafter "Property"), has been improperly subjected to an attempt to divest him
4 of his lawfully owned Property through a trustee's sale conducted to the highest bidder pursuant
5 to Idaho Code § 45-1506(8), which mandates, "The trustee shall sell the property in one (1) parcel
6 or in separate parcels at auction to the highest bidder." *Idaho Code § 45-1506(8) (Lexis Advance*
7 *through all legislation from the 2024 Regular Session).*

8 The Plaintiffs' Motion hinges on the assertion that they enjoy the protection afforded to
9 them as bona fide purchaser in good faith for value as mandated under *Idaho Code § 45-1508*,
10 "Furthermore, any failure to comply with the provisions of section 45-1506, Idaho Code, shall not
11 affect the validity of a sale in favor of a purchaser in good faith for value at or after such sale, or
12 any successor in interest thereof." There is no question that a "purchaser in good faith for value"
13 should be favored and Defendant Bass doesn't dispute this or claim that there was any issue
14 under any failure to comply with the provisions of *Idaho Code § 45-1506*. The dispositive issue is
15 not if there was any failure to comply with the provisions of *Idaho Code § 45-1506*, it's whether or
16 not the plaintiffs were bona fide purchasers acting in good faith.

17 "One who relies for protection upon the doctrine of being a bona fide purchaser must show
18 that at the time of the purchase he paid a valuable consideration and upon the belief and the
19 validity of the vendor's claim of title without notice, actual or constructive, of any outstanding
20 adverse rights of another." *Richlands Brick Corporation v. Hurst Hardware Co.*, 80 W. Va. 476, 92
21 S.E. 685; *Merchants Trust v. Davis*, 49 Idaho 494, 290 P. 383; *Moore v. De Bernardi*, 47 Nev. 33, 220
22 P. 544; *Davis v. Kleindienst*, Ariz., 169 P.2d 78; 92 C.J.S., *Vendor and Purchaser*, § 321, p. 214.

1 "Further, one who purchases property with sufficient knowledge to put him, or a reasonably
2 prudent person, on inquiry is not a bona fide purchaser." *Froman v. Madden*, 13 Idaho 138, 88 P.
3 894; *Mangum v. Stadel*, 76 Kan. 764, 92 P. 1093; *LaBrie v. Cartwright*, 55 Tex.Civ.App. 144, 118 S.W.
4 785; *Salmon v. Norris*, 82 App. Div. 362, 81 N.Y.S. 892; *Shephard v. Van Doren*, 40 N.M. 380, 60 P.2d
5 635.

6 In *Froman v. Madden*, 13 Idaho 138, 88 P. 894, the Court held:

7 *"One who has notice or knowledge of a previous sale of real property, or who has notice or*
8 *knowledge of such facts and circumstances as would lead a reasonably prudent man to*
9 *discover that a previous sale had been made, is not a purchaser in good faith * * *."*

10 and in *Mangum v. Stadel*, 76 Kan. 764, 92 P. 1093, the Court held:

11 *"If the purchaser has knowledge of the facts which naturally excite inquiry, and one that*
12 *reasonably leads to a knowledge of the lien, it is his duty to inquire, and testimony*
13 *sufficient to require inquiry is testimony of notice."*

14 Other authorities and text writers could be quoted to the same effect. This status must be denied
15 for the following reasons:

- 16 1. **Bid Manipulation and Collusion:** The plaintiffs directly or by way of the individual
17 present at the court house for the auction, knowingly engaged in collusive practices
18 with the bank to manipulate the auction process in their favor. Pre-auction
19 coordination resulted in an auction that was neither fair nor competitive, violating
20 both state and federal regulations governing fair auction practices.(see audio, and
21 chat evidence)
- 22 2. **Plaintiffs' Awareness of Property Issues:** Plaintiffs were fully aware of legal defects
23 affecting the property. Defendant Bass was present at the auction with a sign stating

1 the auction was fixed, and such prior knowledge disqualifies the Plaintiffs from
2 claiming bona fide purchaser status. (see video, audio evidence)

- 3 3. **Direct Intimidation by the Buyers:** Prior to the auction, an individual who claimed to
4 be a local developer, looking like the only person at the auction for the Plaintiffs
5 attempted to coerce Defendant Bass into selling directly to them. These actions
6 included boasting that the auction was rigged and attempting to intimidate
7 Defendant Bass into selling under duress.
- 8 4. **Trustees' Awareness of Auction Issues:** The trustees were aware of issues with the
9 auction process and with the property itself, yet they allowed the auction to proceed,
10 demonstrating a breach of fiduciary duty.
- 11 5. **Absence of Competitive Bidders:** The plaintiffs were the only bidders at the auction,
12 arriving with pre-printed checks, further showing that the auction was prearranged
13 for their benefit, contrary to the principles of a public auction.
- 14 6. **Up to date pricing:** The amount paid was a calculated total up to the date of the
15 public auction, but is not published anywhere, or easily derived, coming in only
16 approx. \$1500 over the payoff quote in Evidence, just like I had to get the payoff just
17 a few weeks before the auction was put on proving the was communications between
18 the buying parties and the selling parties no matter what agreements made or not,
19 the communication is enough to show cause of action.
- 20 7. **Due diligence:** A prominently displayed poster detailing the legal issues with the
21 property had been in the window for two years, visible from the sidewalk. It's
22 inconceivable that the plaintiffs would have not tried to view the Property at some
23 point in the last two years. If the plaintiffs exercise due diligence for their potential

1 investment, the plaintiffs could not have participated in the auction without
2 knowledge of these issues.

3 8. **Auction on the Wrong Instrument:** The auction was initiated on an incorrect
4 instrument, rendering the foreclosure process invalid from the outset. This
5 fundamental defect invalidates the foreclosure and subsequent sale as legally
6 impermissible.

7 Because the plaintiffs knew of the property's issues and participated in a rigged auction,
8 their claim to bona fide purchaser status is unsupported. While the plaintiffs may have paid
9 funds to obtain the property, all parties involved knew there were legal defects with the
10 Property. Any financial losses or injury the plaintiffs are subjected to are of their own making and
11 must be addressed with the bank, not Defendant Bass.

12 Additionally, Defendant Bass further asserts that a proper and complete eviction notice
13 has never been duly served. The two notices provided by the Plaintiffs were incomplete, as they
14 instructed Defendant Bass and Defendant Pike to review an attached deed that was never
15 presented, rendering them invalid. This grave omission resulted in the notices being
16 understandably dismissible, particularly from Defendant Pike's standpoint, as such incomplete
17 documents could have come from anyone professing any manner of unsupported claims. The
18 first instance where a complete eviction notice appeared was in the Plaintiffs' court filings.
19 Consequently, the eviction process cannot proceed based on defective notices. Even assuming,
20 arguendo, that the purported 'purchase' was legitimate and enforceable, which Defendant Bass
21 disputes, any eviction would still require a valid, complete notice would still need to be correctly
22 served in its entirety. To date, as far as Defendant Bass is aware, no such valid notice has been
23 served to either Defendant.

1 Defendant Pike has complied with his lease obligations, paying for utilities including water,
2 sewer, garbage, electricity, and internet services. Claims of non-payment by the Plaintiffs are
3 unfounded, as the Idaho Housing and Finance Association (IHFA) erroneously redirected his rent
4 payments to the Plaintiffs. This redirection was out of Defendant Pike's and Defendant Bass'
5 control and does not constitute non-payment.

6 II. STANDARD OF REVIEW

7 Idaho Rule of Civil Procedure 56(c) states:

8 *The judgment sought shall be rendered forthwith if the pleadings, depositions, and*
9 *admissions on file, together with the affidavits, if any, show that there is no genuine issue*
10 *as to any material fact and that the moving party is entitled to a judgment as a matter of*
11 *law.*

12 Summary judgment is only appropriate where no genuine issues of material fact exist, and
13 the moving party is entitled to judgment as a matter of law. See *Sewell v. Neilsen, Monroe, Inc.,*
14 *109 Idaho 192, 707 P.2d 81 (Ct. App. 1985)* and *Ambrose v. Buhl Joint School Dist. 412, 126 Idaho*
15 *581, 887 P.2d 1034 (1994)*. The moving party bears the burden of establishing the absence of a
16 genuine issue of material fact. When reviewing the facts, the court must construe all inferences
17 and disputed facts in favor of the non-moving party. See *Wright v. Parish, 531 P.3d 1115 (Idaho*
18 *2023)*.

19 In the case of *Fannie Mae v. Ormesher, 2014 Ida. Dist. LEXIS 31*, the court ruled that
20 summary judgment is not appropriate where material issues of fact exist, particularly regarding
21 the validity of a trustee's sale. The court emphasized that even if statutory presumptions exist in
22 favor of a trustee's sale, the presumption can be rebutted when genuine issues of material fact
23 concerning the foreclosure process are present. When determining whether a foreclosure sale

1 was properly conducted under *Idaho Code § 45-1506*, the court must scrutinize whether all
2 statutory requirements were met, and if not, whether the purchaser is a bona fide purchaser.

3 In non-judicial foreclosure cases, Idaho law under *Idaho Code § 45-1508* imposes
4 additional requirements for determining a bona fide purchaser. A bona fide purchaser must
5 establish they acted in good faith, provided valuable consideration, and had no knowledge of
6 any defects or irregularities in the title. Courts can scrutinize a purchaser's status where there is
7 evidence of collusion, fraud, or procedural irregularities in the foreclosure sale process. *See*
8 *Pines Grazing Ass'n v. Flying Joseph Ranch, LLC, 151 Idaho 924, 265 P.3d 1136 (2011)*.

9 Therefore, summary judgment should not be granted in this case because there are several
10 material facts in dispute, particularly concerning whether the auction process was conducted
11 properly, whether Plaintiffs acted in good faith, and whether Plaintiffs qualify as bona fide
12 purchasers with protection under *Idaho Code § 45-1508*. These factual disputes warrant a trial to
13 resolve them.

14 Moreover, the non-moving party is not required to prove its case at this stage but must
15 show that there is sufficient evidence to raise a genuine issue of material fact. *Petricevich v.*
16 *Salmon River Canal Co., 92 Idaho 865, 452 P.2d 362 (1969)*. Here, the evidence provided by
17 Defendant Bass, including documented irregularities in the auction process, the trustee's failure
18 to comply with statutory duties, and the Plaintiffs' pre-auction conduct, more than suffices to
19 raise such issues. Consequently, summary judgment is inappropriate.

20 III. STATEMENT OF UNDISPUTED FACTS

21 Based upon the pleadings in this case, public land records of Nez Perce County, and the
22 recorded Deeds of Trust, the following facts are undisputed.

23 1. Purchasing of the Property

24 On September 5th, 2008 Defendant Bass purchased the Property for \$146,418.00 from

1 Mr. and Mrs. Tuddy, becoming the fee simple owner, and then pledged the Property as
2 security under a deed of trust.

3 2. Letter of Full Reconveyance

4 A Letter of Full Reconveyance was issued and recorded on November 10, 2009,
5 indicating satisfaction of the loan secured by the original Deed of Trust; see evidence no.
6 XXX. Bank of America (hereinafter BOA) doesn't dispute the validity of the reconveyance
7 (See Transcript of court hearing), nor does Defendant Bass have any reason to believe
8 that the reconveyance is invalid. At this time it is the last undisputed and properly
9 recorded instrument.

10 3. Conspiracy To Commit Mortgage Fraud

11 From approximately 2019-12-19 through approximately 2020-11-10, Carrington
12 Mortgage Services (hereinafter CMS) sent new loans multiple times, which they tried to
13 coerce me into signing a deed of trust dated for 2012-09-01 bearing their name and other
14 erroneous information by way of bribery

15 4. Wrong Instrument foreclosed on

16 On or about 2024-04-25, CMS presented an instrument to the Idaho Department of
17 Finance (hereinafter IDoF) under which the loan operated but left unrecorded while
18 differing from the terms found in the disputed instrument the foreclosure was acted on.

19 5. Plaintiffs made a transaction at Trustee's Sale

20 Plaintiffs claim to have made a winning bid for the Property at a trustee's sale on
21 February 29, 2024, for \$165,346.71, based on a recorded Trustee's Deed on March 4, 2024.

22 6. Redirection of Rental Payments

23 Idaho Housing and Finance Association (hereinafter IHFA) purported the
24 Plaintiffs contacted them to redirect rent payments intended for Defendant Pike's lease

obligations to the Plaintiffs instead of Defendant Bass to which Defendant Bass saw the amount owed by IHFA redirected away on or about April of 2024.

IV. STATEMENT OF MATERIAL FACTS IN DISPUTE

1. The Auction Was Proper

Plaintiffs participated in an auction rigged by the bank and developer, as evidenced by communications between the developer and Defendant Bass prior to the auction. Video footage shows only one developer attending the auction with pre-printed checks, further indicating prearranged bidding. This constitutes bid rigging, which is illegal under Idaho and federal antitrust laws. (*Exhibit B: Audio and chat log admissions of developer*).

2. Plaintiffs Were Not Bona Fide Purchasers

Plaintiffs cannot claim bona fide purchaser status due to their awareness of the rigged nature of the auction and title defects, including the Letter of Full Reconveyance. A bona fide purchaser cannot have prior knowledge of irregularities in the title or auction process.

3. Verbal Agreement to Purchase the Property

A verbal agreement existed between Defendant Bass and the CMS to allow for Defendant Bass to cure the debt, forgoing the foreclosure and Trustee's Sale. This agreement is supported by Defendant Bass's payments for property taxes and insurance that normally would have been paid out of the escrow account; which were made in furtherance of this agreement. The auction should never have occurred given the existing agreement.

4. Foreclosure Conducted on the Wrong Instrument

The foreclosure was initiated using an incorrect Deed of Trust, as evidenced by

backdated loan documents conflicting with the instrument used to foreclose with. The foreclosure process was therefore void under *Idaho Code § 45-1508*.

5. Incomplete Eviction Notices

At no time was Defendant Bass or Defendant Pike ever served with a complete and valid eviction notice as far Defendant Bass knows. Two notices were served, both incomplete, and neither could reasonably be considered serious or valid. The first complete eviction notice was only seen when the plaintiffs filed it as part of their evidence in this case. The notices referenced an attached deed that was never included. Plaintiffs cannot reasonably expect a party to act upon an incomplete notice.

V. LEGAL ANALYSIS

A. Auction Process and *Idaho Code § 45-1504*

Under *Idaho Code § 45-1504*, a trustee's sale must be conducted as a public auction. Black's Law Dictionary defines a public auction as:
"An auction held openly, allowing all qualified bidders to participate, with the sale going to the highest bidder. Public auctions are typically advertised in advance, and the rules are established to promote transparency and fairness."

This definition underscores that a public auction must be open to the public, conducted fairly, and free from collusion or preferential treatment. In *Kane v. Union State Bank, 21 F. Supp. 225 (D. Idaho 1937)*, the court held that a public auction must foster competitive bidding, preventing any collusion among bidders. In the current case, the auction was fixed to the plaintiffs' advantage, violating these fundamental principles.

B. Trustee's Fiduciary Duty

A trustee has a fiduciary duty to act impartially and fairly for all parties involved in a

1 sale. In this case, the trustee failed to act in good faith by allowing the auction to proceed
2 despite being made aware of serious irregularities in the foreclosure process.

3 C. Breach of Contract

4 Additionally, Defendant Bass entered into a verbal agreement with the mortgage
5 servicer, wherein it was agreed that Defendant Bass would pay off the home in full, and
6 the process of calculating a payoff amount had already begun. As a result of this
7 agreement, Defendant Bass began paying the taxes and insurance on the property, which
8 were normally the servicer's responsibility, further demonstrating part performance of the
9 agreement.

10 Under the doctrine of part performance, this verbal agreement should be enforceable.
11 Courts have held that part performance can be an exception to the Statute of Frauds
12 when the actions of one party clearly indicate the existence of an agreement and
13 demonstrate reliance on that agreement. In this case, Defendant Bass's payment of taxes
14 and insurance—responsibilities that normally belonged to the servicer—along with the
15 servicer's action of providing a payoff number, shows reliance on the verbal agreement to
16 delay foreclosure and allow for full payment of the home.

17 In Idaho, part performance may remove a verbal agreement from the Statute of Frauds
18 if the performance clearly indicates the existence of an agreement and reliance on it. See
19 ChatGPT Analysis (2024). The fact that Defendant Bass began making payments for taxes
20 and insurance, along with the servicer's provision of a payoff number, supports the
21 existence of the agreement, rendering it enforceable. This agreement, which included a
22 recalculated payoff number pending the clearing of a probate inheritance, should be
23 upheld under the doctrine of part performance.

1 D. The Improper Foreclosure Process

2 The foreclosure process was invalid, as it was based on an incorrect instrument and
3 involved improper loan documentation. Under *Idaho Code § 45-1508*, we can infer that the
4 trustee's sale is void if based on fraudulent or defective documents if it is known to the
5 buyer.

6 Additionally, Plaintiffs cannot claim the status of bona fide purchasers due to their
7 knowledge of the auction irregularities and title defects, as supported by evidence
8 including Defendant Bass's public displays and the rigged auction process. According to
9 *Idaho Code § 45-1510(1)*, the status of a bona fide purchaser is not available to a party
10 who is on inquiry notice of a potential defect. The Idaho Supreme Court in *Federal Home*
11 *Loan Mortg. Corp. v. Appel*, 143 Idaho 42, 47, 137 P.3d 429, 434 (2006), held that a purchaser
12 in a nonjudicial foreclosure sale cannot claim bona fide purchaser status if they were on
13 inquiry notice of potential statutory defects. The Plaintiffs, being aware of the issues
14 surrounding the foreclosure and having participated in a rigged auction, cannot be
15 deemed to have acted in good faith as required by law.

16 Thus, the foreclosure should be considered void, and the Plaintiffs cannot assert rights
17 based on their participation in a procedurally defective auction. The auction's improper
18 foundation, based on the wrong instrument and conducted under dubious circumstances,
19 disqualifies Plaintiffs from any claim of bona fide purchaser status.

20 E. Conflict of Interest with IDEA Law Group

21 The IDEA Law Group, which acted as the trustee in the foreclosure, has significant conflicts
22 of interest due to its relationships with Carrington Mortgage Services. Lawyers from both
23 entities regularly participate in industry events and serve on shared boards, which calls
24 into question the impartiality of the trustee's role. This conflict of interest further

undermines the validity of the foreclosure and auction process, as it suggests that the trustee acted in favor of Carrington rather than impartially.

F. Relevant Idaho and Federal Laws Governing Auctions

Several Idaho and federal statutes clarify the requirements for conducting a public auction and the obligations of a trustee:

1. **Idaho Code § 45-1506:** Specifies the procedural requirements for non-judicial foreclosures, including proper notice and timing. Failure to comply with these requirements can render an auction invalid. See *Wells Fargo Bank, N.A. v. Renz*, 124 Idaho 885 (1993).
2. **Idaho Code § 55-809:** Requires that all deeds, mortgages, and instruments affecting real property be recorded. In this case, the Trustee's Deed was not properly recorded, further casting doubt on the foreclosure's legality.
3. **11 U.S.C. § 704:**
Establishes the duties of trustees in bankruptcy, including the collection and distribution of assets, emphasizing the necessity of conducting auctions fairly and in accordance with the law.
4. **15 U.S.C. § 78fff:**
Governs the duties of trustees conducting asset sales, underscoring the importance of impartiality and transparency in the auction process.
5. **12 U.S.C. § 1821:**
Mandates that auctions conducted by the Federal Deposit Insurance Corporation (FDIC) must be open and transparent, offering clear federal standards for conducting public auctions that ensure fairness.

1 These legal principles highlight that a trustee's sale must be open, competitive, and free
2 from collusion. The plaintiffs' auction violated these principles at every step.

3 VI. CONCLUSION

4 For the foregoing reasons, there exist genuine disputes of material fact regarding the
5 rigged auction, plaintiffs' knowledge of said rigging, the invalid foreclosure, and the existence of
6 a prior agreement between Defendant and the bank. Plaintiffs cannot claim bona fide purchaser
7 status due to their prior knowledge of title defects and auction irregularities. Accordingly, this
8 Court should deny Plaintiffs' Motion for Summary Judgment and permit this case to proceed to
9 trial, where these factual disputes can be resolved.

10
TABLE OF AUTHORITIES

No table of authorities entries found.No table of authorities entries found.

Dated this 15 day of October 2024.

Respectfully submitted,
Jeremy L. Bass
Defendant/ Pro Se

Signature

11 CERTIFICATE OF MAILING

I certify that I have sent by email and first-class mail this DEFENDANT BASS' RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT to Plaintiffs on October 15th, 2024, at the following email address and postal address:

Email: lewis@hwmlawfirm.com
Postal: Lewis N. Stoddard, Bar No. 7766
Halliday, Watkins & Mann, P.C.
376 East 400 South, Suite 300
Salt Lake City, UT 84111

Ken Nagy
Idaho Legal Aid Services, Inc.
Email: kennagy@idaholegalaid.org
Counsel for Dwayne Pike

Jeremy L. Bass
Defendant

Signature

ACKNOWLEDGMENT

STATE OF IDAHO)

: ss.

County of NEZ PERCE COUNTY)

On the _15_ day of __October__, 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 _____

Commission Expires: _____