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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

Defendants.

Case No. CV35-24-1063
**MEMORANDUM IN SUPPORT
OF DEFENDANT'S RESPONSE
- AUCTION**

DEMAND FOR JURY

9
10 **I. Introduction**

11 This memorandum is submitted in support of the Defendant's response to the Plaintiff's
12 Complaint for Eviction. It addresses the statutory requirements and legal implications of
13 conducting a foreclosure auction as a "public auction" under *Idaho Code § 45-1504*, particularly
14 in light of alleged auction fixing, collusion between the buyer, trustee, and mortgage servicer,
15 and a breach of contract by Carrington Mortgage Services.

16
17 **II. Additional Facts**

18 Carrington Mortgage Services had agreed to allow the Defendant to pay off the house rather
19 than proceeding with an auction that was already under suspicion for collusion, price-fixing, and
20 coercion. The Defendant was informed by a developer involved in the auction process that the
21 auction was being rigged, involving threats, intimidation, and potential use of force to compel
22 the Defendant to act against his will. This coercion is akin to extortion, where threats are used to
23 obtain property, money, or other benefits. Carrington was aware of the Defendant's ability to pay

1 off the house, but the funds were tied up in probate following the Defendant's mother's passing
2 on July 7th, 2023.

3
4 Carrington agreed to a payoff arrangement and began the process of calculating the correct
5 figures, despite continuing to downplay the fraudulent actions. As proof of this verbal and
6 binding agreement, Carrington sent new figures for the payoff. Although the numbers were
7 incorrect, the Defendant proceeded with the understanding that paying off the house would
8 remove it from the auction process, thereby minimizing further damages and allowing the
9 Defendant to seek recourse later. Carrington further demonstrated their commitment to this
10 arrangement by not paying the property taxes or the house insurance, obligations which would
11 have otherwise been theirs to cover. In November, the Defendant paid the home insurance for
12 the year and the second half of the year's property taxes, reinforcing the understanding that the
13 property was being transitioned out of the foreclosure process.

14
15 Despite these ongoing efforts and regular updates provided by the Defendant on the probate
16 process, Carrington abruptly proceeded with the auction, breaching the agreement that had been
17 established. This action not only violated the terms of the payoff arrangement but also
18 constituted a breach of contract, as Carrington had agreed to halt the foreclosure process in
19 exchange for the Defendant paying off the demanded amount.

20 21 **III. Legal Analysis**

22 **A. Trustee's Powers under Idaho Code § 45-1504:**

23 *Idaho Code § 45-1504* grants the trustee the authority to sell the property described in a
24 trust deed through a public auction if the borrower defaults. This statute requires that the

1 auction be open, competitive, and conducted in a manner that ensures transparency and
2 fairness for all potential bidders. The trustee, acting as a fiduciary, must manage the sale with
3 integrity, ensuring that the process is not influenced by improper actions or collusion. The
4 statutory mandate to "sell the property at a public auction" implies that the auction must
5 adhere to principles of openness and fairness, where all interested parties can participate
6 without undue influence or manipulation.

7 **B. Definition of "Public Auction"**

8 According to Black's Law Dictionary:

9 *"A public auction is an auction held openly, allowing all qualified bidders to*
10 *participate, with the sale going to the highest bidder. Public auctions are typically*
11 *advertised in advance, and the rules are established to promote transparency and*
12 *fairness."*

13 This definition emphasizes that a public auction must be open to the public, allowing for
14 fair competition among bidders, with no hidden agreements or preferential treatment. The
15 trustee's role is to conduct the auction impartially, ensuring that the process reflects these
16 principles. Furthermore, in *Kane v. Union State Bank, 21 F. Supp. 225 (D. Idaho 1937)*, the court
17 held that a public auction must be conducted in a manner that fosters competitive bidding
18 and does not allow for collusion among bidders.

19
20 The fixing of an auction, where the outcome is predetermined through collusion between
21 the buyer, trustee, mortgage servicer, or other interested parties, violates the very essence of
22 what a "public auction" is supposed to represent. Such practices undermine the competitive
23 nature of the auction, preventing it from being truly "public" as required by law. This
24 manipulation of the auction process caused great harm to me, as it effectively stole the equity
25 I had built up in my home.

1
2 Had the auction been conducted starting at fair market value, as required by a fair and
3 transparent process, it is highly likely that a bid near or at the fair market value would have
4 been received. In such a scenario, there would have been up to approximately \$150,000 in
5 equity that they would have had to return to me. However, by rigging the auction for their own
6 benefit, they completely wiped away all the equity I had accumulated over the years through
7 overpayments and responsible financial management. It's theft of home own's equity that the
8 perpetrators have tried to normalize to make it seem as if there is no victim.

9
10 This deliberate and knowing act of fixing the auction not only deprived me of the
11 substantial equity in my home but also demonstrates a willful and malicious intent to cause
12 financial harm. By knowingly engaging in practices that prevented a fair market auction,
13 Carrington Mortgage Services and the trustee effectively stole the financial security I had
14 worked hard to build, causing significant and lasting injury.

15 16 **C. Relevant Idaho and U.S. Codes**

17 In addition to *Idaho Code § 45-1504*, several other related statutes and legal principles further
18 clarify the obligations of trustees and the requirements for conducting a public auction:

- 19 1. ***Idaho Code § 45-1506***: specifies the process and requirements for non-judicial
20 foreclosures, including notice, timing, and auction procedures. Failure to comply with
21 these statutory requirements can result in the auction being deemed invalid, as
22 established in *Wells Fargo Bank, N.A. v. Renz*, 124 Idaho 885, 865 P.2d 66 (1993).

2. ***Idaho Code § 45-1502***: provides definitions for terms used in Idaho's foreclosure statutes, including "trustee," "beneficiary," and "trust deed," ensuring clarity in the roles and responsibilities of each party involved in the foreclosure process.
3. ***Idaho Code § 45-1505***: details the requirements for notifying a borrower of default under a trust deed before proceeding with foreclosure. Proper notice is critical in ensuring that the borrower is fully informed of their rights and obligations.
4. ***Idaho Code § 45-1512***: describes the process for a trustee to reconvey title to the borrower upon satisfaction of the secured obligation, reinforcing the principle that the trustee must act in the best interests of all parties involved.
5. ***Idaho Code § 45-1513***: provides guidelines for conducting the sale, including the public nature of the auction, bidding procedures, and handling of proceeds. These guidelines are designed to ensure that the auction is conducted fairly and transparently.
6. ***Idaho Code § 55-809***: mandates that all deeds, mortgages, and other instruments affecting real property be recorded to provide notice to subsequent purchasers and creditors. The recording of the Trustee's Deed following a public auction is crucial in ensuring the validity of the sale, as unrecorded instruments may not provide the legal notice required by Idaho law. In this case, the auction cannot be considered a proper foreclosure sale because it was conducted using unrecorded instruments. Specifically, the Trustee's Deed, which should provide clear evidence of the transfer of title, was not recorded in accordance with Idaho law. This failure to record the deed means that the sale may not provide the legal notice required by *Idaho Code § 55-809*, rendering the foreclosure and subsequent auction questionable at best. Furthermore, the last uncontested and properly recorded instrument of title was a Letter of Full Reconveyance. This document, which signifies that the debt secured by the deed of trust has been fully

1 satisfied and the lien released, should have extinguished any subsequent claims against
2 the property. The use of unrecorded and possibly fraudulent instruments to conduct the
3 auction, in the face of a recorded Full Reconveyance, is a blatant violation of Idaho's
4 recording statutes and casts serious doubt on the validity of the foreclosure and auction
5 process.

6 7. **11 U.S.C. § 704**: outlines the duties of a trustee in bankruptcy, including the collection and
7 liquidation of the debtor's assets and the distribution of proceeds to creditors. These
8 duties emphasize the trustee's role in ensuring that the auction process is conducted
9 fairly and in accordance with the law.

10 8. **11 U.S.C. § 1106**: describes the duties of a trustee or examiner appointed in Chapter 11
11 bankruptcy cases, including conducting auctions of estate assets. This statute reinforces
12 the trustee's obligation to act impartially and in the best interests of all parties.

13 9. **12 U.S.C. § 1701j-3**: pertains to the rights of mortgage holders (including trustees) to
14 enforce due-on-sale clauses, which can impact foreclosure and auction proceedings. This
15 federal statute underscores the importance of adhering to contractual obligations and
16 ensuring that the auction process is conducted transparently.

17 10. **26 U.S.C. § 6335**: covers the procedures for the IRS to sell property seized for non-
18 payment of taxes, including auction procedures. This statute highlights the federal
19 standards for conducting auctions, which emphasize transparency and fairness.

20 11. **15 U.S.C. § 78fff**: outlines the duties of a trustee appointed to oversee the liquidation of a
21 brokerage firm, including conducting auctions of assets. This statute further emphasizes
22 the trustee's role in ensuring that the auction process is conducted impartially and
23 without collusion.

- 1 12. **28 U.S.C. § 2001**: governs the sale of real property under the jurisdiction of a federal
2 court, often by a trustee or receiver. This statute underscores the importance of
3 conducting public auctions in a manner that is open, transparent, and free from
4 manipulation.
- 5 13. **28 U.S.C. § 2004**: covers the sale of personal property under federal court jurisdiction,
6 including auctions. This statute reinforces the principles of transparency and fairness in
7 the auction process.
- 8 14. **12 U.S.C. § 1821**: governs the powers of the Federal Deposit Insurance Corporation (FDIC)
9 when acting as a receiver, including conducting auctions of a failed institution's assets.
10 While the Idaho Code may provide limited or vague guidance on what constitutes a
11 "public auction," federal law, as exemplified by *12 U.S.C. § 1821*, sets a more stringent
12 standard that emphasizes transparency, fairness, and the prevention of collusion in the
13 auction process. The FDIC is required to conduct auctions in a manner that is open and
14 accessible to all qualified bidders, ensuring that the highest bid is accepted without bias
15 or manipulation. These federal standards are designed to protect the integrity of the
16 auction process and to prevent any party from exerting undue influence to manipulate
17 the outcome. In situations where state law may not fully define the parameters of a
18 public auction, federal standards like those set forth in *12 U.S.C. § 1821* provide clear
19 guidance on how such auctions should be conducted. This federal statute underscores
20 the broader policy goal of ensuring that all public auctions, regardless of the specific
21 context, are conducted transparently and free from collusion. By adhering to these
22 standards, auctions are more likely to achieve fair market value for the assets in
23 question, thereby protecting the interests of all parties involved. In the present case,
24 where the foreclosure auction was marred by allegations of fixing and collusion, *12 U.S.C.*

1 § 1821 offers a clear federal standard that highlights the deficiencies in the way the
2 auction was conducted under Idaho law.

3
4 D. Enforceability of Verbal Contracts in Idaho

5 In Idaho, verbal contracts can be enforceable, provided certain conditions are met, such as
6 clear evidence of the agreement, mutual assent, and consideration. The following Idaho
7 statutes and case law support the enforceability of verbal contracts:

8
9 1. *Idaho Code § 28-2-201: Statute of Frauds*

10 This section generally requires certain contracts to be in writing to be enforceable, such as
11 contracts for the sale of goods over \$500. However, it also recognizes exceptions where a
12 verbal contract may still be binding if:

- 13 • The goods are specially manufactured.
- 14 • The party against whom enforcement is sought admits in court that the contract
15 was made.
- 16 • Payment has been made and accepted, or goods have been received and accepted.

17 Although this statute primarily addresses goods, it underscores the concept that certain
18 verbal agreements can be binding and enforceable under specific circumstances, such as
19 where the agreement is clear and the terms have been partially performed.

20
21 2. *Idaho Code § 9-503: Evidence of Agreement*

22 This statute allows for the introduction of evidence to establish the existence and terms
23 of a verbal agreement. This is crucial in cases where the agreement is verbal but
24 supported by subsequent actions (such as payments made or services provided) that

confirm the existence of a binding contract. In the case at hand, the Defendant's payments for home insurance and property taxes, typically covered by the mortgage servicer, serve as evidence of the verbal agreement.

3. *Idaho Code § 29-110*: Consideration Required for Contracts

This statute affirms that consideration, which can be a promise, an act, or forbearance, is required to make a contract binding. The verbal agreement between the Defendant and Carrington Mortgage Services involved mutual promises—Carrington's promise to halt the auction in exchange for the Defendant's payment—constituting valid consideration and making the agreement enforceable under Idaho law.

4. *Idaho Code § 28-3-303*: Consideration

This statute provides that a contract is enforceable if it is supported by consideration, meaning that each party has provided something of value in exchange for the promise made by the other. In the case of the verbal agreement, the Defendant's promise to pay off the mortgage and Carrington's promise to halt the foreclosure both constitute consideration, binding the parties to their agreement.

Summary:

In Idaho, verbal contracts are generally enforceable if they are supported by mutual assent, consideration, and clear evidence of the agreement's terms. The key statutes and case law cited above reinforce the principle that verbal agreements can be binding, particularly where one party has acted in reliance on the agreement, as would be the case with Carrington Mortgage Services agreeing to halt the foreclosure in exchange for the

1 Defendant's promise to pay off the mortgage. In this case, the verbal agreement between
2 the Defendant and Carrington Mortgage Services would likely be considered enforceable
3 under Idaho law, particularly given the evidence of payments and other actions
4 demonstrating both parties' intent to be bound by the agreement.
5

6 **E. Breach of Contract**

7 The elements of a claim for breach of contract under Idaho law are:

- 8 1. ***Existence of a Contract***: Carrington Mortgage Services and the Defendant had a verbal
9 and binding agreement allowing the Defendant to pay off the house rather than proceed
10 with the auction. This agreement was evidenced by Carrington's actions, including
11 sending payoff figures and allowing the Defendant to assume responsibilities typically
12 held by the mortgage servicer (such as paying taxes and insurance).
- 13 2. ***Breach of the Contract***: Carrington Mortgage Services breached the contract by
14 proceeding with the auction despite agreeing to a payoff arrangement and receiving
15 regular updates on the probate process. The auction was held out of the blue, without
16 honoring the agreement to hold off on foreclosure.
- 17 3. ***Causation of Damages***: The breach of the contract caused significant harm to the
18 Defendant, including the potential loss of his home and the financial and emotional toll
19 associated with the improper auction process.
- 20 4. ***Amount of Damages***: The damages incurred by the Defendant include the value of the
21 property, legal costs, and other financial losses directly related to Carrington's breach of
22 the agreement, such as time spent securing the Defendant's property from further theft
23 by having to get 3 storage units to put the whole household into, or having to live in a
24 house that was halfway through a renovation that had to stop in order to minimize

1 damages. The exact amount of damages will be determined based on the property value
2 and additional costs borne by the Defendant.

3 The elements of a claim for breach of contract are as follows:

4 (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused
5 damages, and (d) the amount of those damages. *O'Dell v. Basabe*, 119 Idaho 796, 813, 810
6 P.2d 1082, 1099 (1991)(plaintiff has the burden of proving the existence of a contract and
7 the fact of its breach); *Suitts v. First Sec. Bank of Idaho, N.A.*, 110 Idaho 15, 22, 713 P.2d 1374,
8 1381 (1985)(the damages recoverable must be caused by the breach); *Watkins Co., LLC v.*
9 *Storms*, 152 Idaho 531, 539, 272 P.3d 503, 511 (2012)(the amount of damages must be
10 proved). Additionally, good faith and fair dealing are implied obligations of every contract.
11 *Luzar v. Western Surety*, 107 Idaho 693, 696, 692 P.2d 337, 340 (1984). The implied covenant
12 of good faith and fair dealing “requires that the parties perform, in good faith, the
13 obligations imposed by their agreement, and a violation of the covenant occurs only when
14 either party violates, nullifies or significantly impairs any benefit of the contract.” *Shawver*
15 *v. Huckleberry Estates, L.L.C.*, 140 Idaho 354, 362, 93 P.3d 685, 693 (2004). Further, a breach
16 of the implied covenant of good faith and fair dealing does not occur when one party is
17 “merely exercising its express rights under the...agreement.” *Idaho First Nat. Bank v. Bliss*
18 *Valley Foods, Inc.*, 121 Idaho 266, 288, 824 P.2d 841, 863 (1991) (citing *First Security Bank of*
19 *Idaho v. Gaige*, 115 Idaho 172, 176, 765 P.2d 683, 687 (1988)).

20 21 **F. Conflict of Interest: IDEA Law Group**

22 The trustee, IDEA Law Group, had a significant conflict of interest, which compromised their
23 ability to act impartially or neutrally in the foreclosure process. Lawyers from IDEA Law Group
24 and representatives from Carrington Mortgage Services regularly interact with each other at

1 industry events and through organizations such as the American Legal & Financial Network
2 (ALFN). The ALFN is a trade association that represents the interests of the mortgage servicing
3 industry and creditors' rights law firms, including foreclosure trustees.

4
5 The IDEA Law Group and Carrington Mortgage Services both hold leadership positions
6 within ALFN, including on the IDEA Committee, which focuses on inclusion, diversity, equity,
7 and awareness. The connections between these organizations and their representatives, who
8 serve on boards and committees together, raise serious questions about the impartiality of
9 the trustee in this case. The fact that they regularly collaborate and participate in the same
10 events, such as the IDEA Summit hosted by ALFN, suggests that the trustee may have been
11 influenced by their relationships with Carrington Mortgage Services, rather than acting solely
12 in the best interests of the borrower and beneficiaries.

13
14 This conflict of interest undermines the trustee's ability to act in good faith and fulfill their
15 fiduciary duties as required by Idaho law. The trustee's primary duty is to act impartially and
16 in the best interests of all parties involved in the foreclosure process, including the borrower
17 and creditors. However, the close relationship between IDEA Law Group and Carrington
18 Mortgage Services suggests that the trustee may have been biased in favor of the mortgage
19 servicer, leading to a foreclosure process that was neither fair nor transparent.

20 21 **III. Conclusion**

22 Fixing an auction where the trustee, mortgage servicer, and buyer work together to
23 predetermine the outcome is a clear violation of the principles governing a public auction. Such
24 actions breach the trustee's fiduciary duties, contravene the statutory requirements outlined in

Idaho Code § 45-1504 and related laws, and render the auction invalid under the law.

Furthermore, Carrington Mortgage Services' decision to proceed with the auction, despite a binding payoff agreement, constitutes a breach of contract. The legal requirement for a public auction is that it must be open, fair, and competitive, with the sale determined solely by the highest bid received during the auction process, free from collusion or undue influence.

The conflict of interest involving IDEA Law Group further exacerbates the issues in this case, as the trustee's impartiality is called into question. Given the close relationships between IDEA Law Group and Carrington Mortgage Services, the foreclosure process was compromised, resulting in an unfair and biased outcome.

TABLE OF AUTHORITIES

STATUTES:

<i>Idaho Code § 28-2-201: Statute of Frauds</i>	8
<i>Idaho Code § 28-3-303: Consideration</i>	9
<i>Idaho Code § 29-110: Consideration Required for Contracts</i>	9
<i>Idaho Code § 45-1502</i>	5
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<i>Idaho Code § 9-503: Evidence of Agreement</i>	8

US CODE:

<i>11 U.S.C. § 1106</i>	6
<i>11 U.S.C. § 704</i>	6
<i>12 U.S.C. § 1701j-3</i>	6
<i>12 U.S.C. § 1821</i>	7
<i>15 U.S.C. § 78fff</i>	6
<i>26 U.S.C. § 6335</i>	6
<i>28 U.S.C. § 2001</i>	7
<i>28 U.S.C. § 2004</i>	7

SECONDARY SOURCES:

1	Black's Law Dictionary Definition of "Public Auction"	3
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CASES:

4	<i>Idaho First Nat. Bank v. Bliss Valley Foods, Inc.</i> , 121 Idaho 266, 288, 824 P.2d 841, 863 (1991)	11
5	<i>Luzar v. Western Surety</i> , 107 Idaho 693, 696, 692 P.2d 337, 340 (1984)	11
6	<i>O'Dell v. Basabe</i> , 119 Idaho 796, 813, 810 P.2d 1082, 1099 (1991)	11
7	<i>Shawver v. Huckleberry Estates, L.L.C.</i> , 140 Idaho 354, 362, 93 P.3d 685, 693 (2004).	11
8	<i>Suitts v. First Sec. Bank of Idaho, N.A.</i> , 110 Idaho 15, 22, 713 P.2d 1374, 1381 (1985)	11
9	<i>Watkins Co., LLC v. Storms</i> , 152 Idaho 531, 539, 272 P.3d 503, 511 (2012)	11

Dated this 13 day of August 2024.

Respectfully submitted,
 Jeremy L. Bass
 Defendant/ Pro Se

 Signature

CERTIFICATE OF MAILING

I certify that I have sent by email and first-class mail this MEMORANDUM IN SUPPORT OF DEFENDANT'S RESPONSE to Plaintiffs on August 13th, 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	
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Jeremy L. Bass
 Defendant

 Signature

ACKNOWLEDGMENT

STATE OF IDAHO)

: ss.

County of NEZ PERCE COUNTY)

On the _13_ day of __August__, 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: _____