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PATTY O. WEEKS
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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

DPW ENTERPRISES LLC and
MOUNTAIN PRIME 2018 LLCS,

Plaintiffs,

v.

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

1515 21ST Ave., Lewiston, ID 83501

Defendants.

CASE NO. CV35-24-1063

MEMORANDUM OPINION
AND ORDER ON PLAINTIFFS'
MOTION FOR SUMMARY
JUDGMENT

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

BACKGROUND

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

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

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

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

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

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

SUMMARY JUDGMENT STANDARD

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

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

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

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

ANALYSIS

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

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

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

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

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

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

¹ The payment conditions of the sale were as follows:

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

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

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

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

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

The purchaser at the trustee's sale shall be entitled to possession of the property on the tenth day following the sale, and any persons remaining in possession thereafter under any interest except one prior to the deed of trust shall be deemed to be tenants at sufferance.

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

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

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

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

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

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

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

Id. (emphasis in original).

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

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

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

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

ORDER

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

IT IS SO ORDERED.

Dated this 5th day of November 2024.



MICHELLE M. EVANS – District Judge

CERTIFICATE OF MAILING

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

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Jeremy L. Bass
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PATTY O. WEEKS, CLERK

By  Deputy

