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**IN THE DISTRICT COURT FOR THE SECOND JUDICIAL DISTRICT**

**FOR THE STATE OF IDAHO, IN AND FOR NEZ PERCE COUNTY**

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| --- | --- |
| 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** |

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

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

I. INTRODUCTION

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

The Plaintiffs' Motion hinges on the assertion that they enjoy the protection afforded to them as bona fide purchaser in good faith for value as mandated under ***Idaho Code § 45-1508***, "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." There is no question that a "purchaser in good faith for value" should be favored and Defendant Bass doesn't dispute this or claim that there was any issue under any failure to comply with the provisions of ***Idaho Code § 45-1506****.* The dispositive issue is not if there was any failure to comply with the provisions of ***Idaho Code § 45-1506***, it's weather or not the plaintiffs were bona fide purchasers acting in good faith.

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

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

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

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

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

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

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

1. **Bid Manipulation and Collusion**: The plaintiffs directly or by way of the individual present at the court house for the auction, knowingly engaged in collusive practices with the bank to manipulate the auction process in their favor. Pre-auction coordination resulted in an auction that was neither fair nor competitive, violating both state and federal regulations governing fair auction practices.(see audio, and chat evidence)
2. **Plaintiffs' Awareness of Property Issues:** Plaintiffs were fully aware of legal defects affecting the property. Defendant Bass was present at the auction with a sign stating the auction was fixed, and such prior knowledge disqualifies the Plaintiffs from claiming bona fide purchaser status. (see video, audio evidence)
3. **Direct Intimidation by the Buyers:** Prior to the auction, an individual who claimed to be a local developer, looking like the only person at the auction for the Plaintiffs attempted to coerce Defendant Bass into selling directly to them. These actions included boasting that the auction was rigged and attempting to intimidate Defendant Bass into selling under duress.
4. **Trustees’ Awareness of Auction Issues:** The trustees were aware of issues with the auction process and with the property itself, yet they allowed the auction to proceed, demonstrating a breach of fiduciary duty.
5. **Absence of Competitive Bidders:** The plaintiffs were the only bidders at the auction, arriving with pre-printed checks, further showing that the auction was prearranged for their benefit, contrary to the principles of a public auction.
6. **Up to date pricing:** The amount paid was a calculated total up to the date of the public auction, but is not published anywhere, or easily derived, coming in only approx. $1500 over the payoff quote in Evidence, just like I had to get the payoff just a few weeks before the auction was put on proving the was communications between the buying parties and the selling parties no matter what agreements made or not, the communication is enough to show cause of action.
7. **Due diligence:** A prominently displayed poster detailing the legal issues with the property had been in the window for two years, visible from the sidewalk. It’s inconceivable that the plaintiffs would have not tried to view the Property at some point in the last two years. If the plaintiffs exercise due diligence for their potential investment, the plaintiffs could not have participated in the auction without knowledge of these issues.
8. **Auction on the Wrong Instrument:** The auction was initiated on an incorrect instrument, rendering the foreclosure process invalid from the outset. This fundamental defect invalidates the foreclosure and subsequent sale as legally impermissible.

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

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

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

**II. STANDARD OF REVIEW**

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

*The judgment sought shall be rendered forthwith 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.*

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

In the case of ***Fannie Mae v. Ormesher, 2014 Ida. Dist. LEXIS 31***, the court ruled that summary judgment is not appropriate where material issues of fact exist, particularly regarding the validity of a trustee’s sale. The court emphasized that even if statutory presumptions exist in favor of a trustee's sale, the presumption can be rebutted when genuine issues of material fact concerning the foreclosure process are present. When determining whether a foreclosure sale was properly conducted under ***Idaho Code § 45-1506***, the court must scrutinize whether all statutory requirements were met, and if not, whether the purchaser is a bona fide purchaser.

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

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

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

**III. STATEMENT OF UNDISPUTED FACTS**

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

1. Purchasing of the Property  
   On September 5th, 2008 Defendant Bass purchased the Property for $146,418.00 from Mr. and Mrs. Tuddy, becoming the fee simple owner, and then pledged the Property as security under a deed of trust.
2. Letter of Full Reconveyance  
   A Letter of Full Reconveyance was issued and recorded on November 10, 2009, indicating satisfaction of the loan secured by the original Deed of Trust; see evidence no. XXX. Bank of America (hereinafter BOA) doesn't dispute the validity of the reconveyance (See Transcript of court hearing), nor does Defendant Bass have any reason to believe that the reconveyance is invalid. At this time it is the last undisputed and properly recorded instrument.
3. Conspiracy To Commit Mortgage Fraud  
   From approximately 2019-12-19 through approximately 2020-11-10, Carrington Mortgage Services (hereinafter CMS) sent new loans multiple times, which they tried to coerce me into signing a deed of trust dated for 2012-09-01 bearing their name and other erroneous information by way of bribery
4. Wrong Instrument foreclosed on  
   On or about 2024-04-25, CMS presented an instrument to the Idaho Department of Finance (hereinafter IDoF) under which the loan operated but left unrecorded while differing from the terms found in the disputed instrument the foreclosure was acted on.
5. Plaintiffs made a transaction at Trustee’s Sale  
   Plaintiffs claim to have made a winning bid for the Property at a trustee’s sale on February 29, 2024, for $165,346.71, based on a recorded Trustee’s Deed on March 4, 2024.
6. Redirection of Rental Payments  
   Idaho Housing and Finance Association (hereinafter IHFA) purported the 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**

1. 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.
2. Trustee’s Fiduciary Duty  
    A trustee has a fiduciary duty to act impartially and fairly for all parties involved in a sale. In this case, the trustee failed to act in good faith by allowing the auction to proceed despite being made aware of serious irregularities in the foreclosure process.
3. Breach of Contract   
    Additionally, Defendant Bass entered into a verbal agreement with the mortgage servicer, wherein it was agreed that Defendant Bass would pay off the home in full, and the process of calculating a payoff amount had already begun. As a result of this agreement, Defendant Bass began paying the taxes and insurance on the property, which were normally the servicer’s responsibility, further demonstrating part performance of the agreement.  
    Under the doctrine of part performance, this verbal agreement should be enforceable. Courts have held that part performance can be an exception to the Statute of Frauds when the actions of one party clearly indicate the existence of an agreement and demonstrate reliance on that agreement. In this case, Defendant Bass’s payment of taxes and insurance—responsibilities that normally belonged to the servicer—along with the servicer’s action of providing a payoff number, shows reliance on the verbal agreement to delay foreclosure and allow for full payment of the home.  
    In Idaho, part performance may remove a verbal agreement from the Statute of Frauds if the performance clearly indicates the existence of an agreement and reliance on it. See ChatGPT Analysis (2024). The fact that Defendant Bass began making payments for taxes and insurance, along with the servicer's provision of a payoff number, supports the existence of the agreement, rendering it enforceable. This agreement, which included a recalculated payoff number pending the clearing of a probate inheritance, should be upheld under the doctrine of part performance.
4. The Improper Foreclosure Process  
   The foreclosure process was invalid, as it was based on an incorrect instrument and involved improper loan documentation. Under ***Idaho Code § 45-1508***, we can infer that the trustee’s sale is void if based on fraudulent or defective documents if it is known to the buyer.  
   Additionally, Plaintiffs cannot claim the status of bona fide purchasers due to their knowledge of the auction irregularities and title defects, as supported by evidence including Defendant Bass’s public displays and the rigged auction process. According to ***Idaho Code § 45-1510(1)***, the status of a bona fide purchaser is not available to a party who is on inquiry notice of a potential defect. The Idaho Supreme Court in ***Federal Home Loan Mortg. Corp. v. Appel, 143 Idaho 42, 47, 137 P.3d 429, 434 (2006)***, held that a purchaser in a nonjudicial foreclosure sale cannot claim bona fide purchaser status if they were on inquiry notice of potential statutory defects. The Plaintiffs, being aware of the issues surrounding the foreclosure and having participated in a rigged auction, cannot be deemed to have acted in good faith as required by law.  
   Thus, the foreclosure should be considered void, and the Plaintiffs cannot assert rights based on their participation in a procedurally defective auction. The auction's improper foundation, based on the wrong instrument and conducted under dubious circumstances, disqualifies Plaintiffs from any claim of bona fide purchaser status.
5. Conflict of Interest with IDEA Law Group  
   The IDEA Law Group, which acted as the trustee in the foreclosure, has significant conflicts of interest due to its relationships with Carrington Mortgage Services. Lawyers from both entities regularly participate in industry events and serve on shared boards, which calls 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.
6. 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.

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

VI. CONCLUSION

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

**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

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: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_