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Keybank Nat'l Ass'n v. Pal I, LLC Appellant's Brief Dckt. 38645

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IN THE SUPREME COURT OF THE STATE OF IDAHO

KEYBANK NATIONAL ASSOCIATION, a national banking association,

Plaintiff-Respondent,

v.

PAL I, LLC, an Idaho limited liability company,

Defendant-Appellant,

and

BRIAN CHRISTENSEN, an individual; L.A. PARKINSON, an individual; BARNEY DAIRY, INC.; D.J. BARNEY, an individual; WILLIAM DAVIS, an individual; LOIS DAVIS, an individual; DELL RAY BARNEY, an individual; and DELL J. BARNEY, an individual, dba Barney Towing & Recovery,

Defendants.

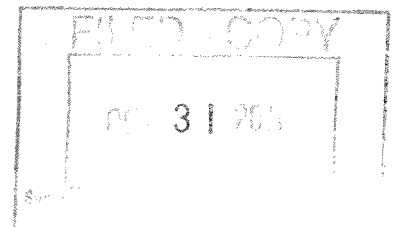
Supreme Court Docket No. 38645-2011

APPELLANT'S BRIEF ON APPEAL

Appeal from the District Court of the Seventh Judicial District for Madison County.
Honorable Gregory W. Moeller, District Judge, presiding.

B. J. Driscoll, Esq., residing at Idaho Falls, Idaho, for Appellant,
PAL I, LLC, an Idaho limited liability company

Thomas E. Dvorak, Esq., residing at Boise, Idaho, for Respondent,
KeyBank National Association, a national banking association



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STATEMENT OF THE CASE

This appeal raises the question of the effect of a secured creditor's failure to comply with the mandatory claim of exemption procedures of Idaho Code Section 11-203.

The defendant/appellant, PAL I, LLC ("PAL"), obtained a judgment against Tri-Steel Construction Company, Inc. ("Tri-Steel"). PAL located some equipment owned by Tri-Steel. In preparing to levy on that equipment, PAL discovered that three banks,¹ including plaintiff/respondent KeyBank National Association ("KeyBank"), had filed UCC-1 Financing Statements for security interests in equipment owned by Tri-Steel. PAL caused the sheriff to provide the banks with notice of the levy, instructions to claim an exemption, and the claim of exemption form pursuant to Section 11-203. Section 11-203 provides in pertinent part as follows:

The following procedures ***shall apply*** to a claim by the defendant or the defendant's representative that property levied upon is exempt and ***to any claim by a third party*** that property levied upon is his property or ***that he has a security interest therein***. . . A third party claimant ***shall prepare*** a written claim setting forth the grounds upon which he claims the property, ***and in the case of a secured party, also stating the dollar amount of the claim***. . . .

(a) The claim of exemption or third party claim ***shall be delivered or mailed*** to the sheriff within fourteen (14) days after the date the sheriff hand delivers or mails the documents required to be served upon the defendant and third parties under section 8-507A, Idaho Code. If the claim is mailed, it must be received by the sheriff within the fourteen (14) day period. . .

....

(c) . . . The sheriff ***shall refuse*** to accept or honor a claim not filed with him within that period and unless otherwise ordered by the court, ***shall***, after

¹ The other banks were Zions Bank National Association and U.S. Bank. The involvement of Zions Bank is discussed further hereinbelow.

such period has elapsed, *proceed to sell* or deliver the property levied upon to the plaintiff or other person in whose favor the execution runs. . .

I.C. § 11-203 (emphasis added).

The sheriff sent the notice, instructions, and statutory claim of exemption form to KeyBank's Rexburg and Boise offices. KeyBank then sent a letter to PAL's counsel inquiring about the execution and opposing the sale, but did not file a claim of exemption with the sheriff. With the statutory period for filing a claim having expired without receipt of any claim, the sheriff sold the property and delivered the proceeds to PAL pursuant to Section 11-203.

Two months later, KeyBank filed the present suit seeking to recover from PAL all proceeds of the sheriff's sale. Both parties moved for summary judgment. PAL argued that KeyBank's failure to comply with the simple, mandatory procedures of Section 11-203 precluded its claims to the sale proceeds in this case. KeyBank argued that it retained its security interest in the property despite its failure to comply with Section 11-203. The district court granted summary judgment to KeyBank and entered judgment against PAL.

Now on appeal, PAL seeks a ruling from this Court that KeyBank cannot claim an interest in levied property where KeyBank did not comply with Idaho Code Section 11-203. For the reasons set forth herein, this Court should reverse the district court, vacate the judgment to KeyBank, and direct entry of judgment in favor of PAL.

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STATEMENT OF FACTS

The facts are simple and undisputed. On April 2, 2010, PAL I, LLC (“PAL”), recovered a judgment against Tri-Steel Construction Company, Inc. (“Tri-Steel”), in the amount of \$20,224.00 in Bonneville County Case No. CV-09-5734.² PAL obtained a writ of execution directed to the Madison County Sheriff (“Sheriff”).³ The Sheriff executed the writ against certain Tri-Steel property and, on April 26, 2010, served notice and third party claim packets on KeyBank’s branch office in Rexburg and its main office in Boise.⁴ As of May 10, 2010, the Sheriff had not received a claim from KeyBank.⁵ KeyBank’s counsel had sent letters to PAL’s counsel and to the Sheriff inquiry about and objecting to the sale⁶ but filed no claim on the prescribed form stating the dollar amount of its claim.⁷ On June 9, 2010, the Sheriff sold the property and delivered the proceeds to PAL.⁸

COURSE OF PROCEEDINGS

KeyBank’s Complaint And PAL’s Answer

On August 16, 2011, KeyBank sued PAL and the eight buyers from the sheriff’s sale for quiet title and declaratory judgment, a creditor’s bill, attorney’s fees, and a judgment to

² R Vol. I, p. 90.

³ R Vol. I, p. 94.

⁴ R Vol. I, p. 84.

⁵ R Vol. I, p. 84.

⁶ R Vol. I, pp. 37, 43, and 64.

⁷ R Vol. I, p. 84.

⁸ R Vol. I, p. 65.

recover the proceeds from the sheriff's sale.⁹ PAL filed its answer to the complaint, raised various affirmative defenses, including failure to comply with Section 11-203, failure to mitigate, waiver, and estoppel.¹⁰

Cross-Motions For Summary Judgment

Without conducting any discovery, PAL filed a motion for summary judgment¹¹ and KeyBank filed a cross-motion for summary judgment.¹² PAL argued that Idaho Code Section 11-203 specifically and mandatorily required KeyBank, as a secured party, to file a claim of exemption form with the sheriff within 14 days and stating the dollar amount of its claim.¹³ Citing Section 11-203 and other authorities, PAL argued that KeyBank lost its right to claim an exemption in the levied property by failing to comply with Section 11-203.¹⁴ Because the Sheriff did not receive a claim of exemption, Section 11-203 required the Sheriff to sell the property and deliver the proceeds to PAL. PAL also cited various policy reasons for requiring KeyBank to comply with Section 11-203 like any other interested person with notice of the levy, such as encouraging bidding and higher recovery from sheriff sales, certainty as to the status of property following the sale, and protection of purchasers from lawsuits by secured parties lying in wait.¹⁵

⁹ R Vol. I, pp. 12-22.

¹⁰ R Vol. I, pp. 68-71.

¹¹ R Vol. I, pp. 73-74.

¹² R Vol. I, p. 96.

¹³ R Vol. I, pp. 77-78.

¹⁴ R Vol. I, pp. 78-81.

¹⁵ R Vol. I, pp. 80-81.

In support of its motion, KeyBank argued that its perfected security interest in the property survived its failure to comply with Section 11-203.¹⁶ KeyBank asked the district court to treat KeyBank's compliance with Section 11-203 as "optional and not mandatory."¹⁷ KeyBank cited the general rule that a judgment creditor can acquire no greater right in the levied property than the judgment debtor,¹⁸ so "[i]t would therefore be inequitable to interpret Idaho Code § 11-203 as negating [KeyBank's] priority simply because KeyBank did not file a claim of exemption."¹⁹ KeyBank also argued generally that "to strictly read Idaho Code § 11-203 as a mandatory provision that allows a judgment creditor . . . to trump a secured creditor if the secured creditor does not file a claim of exemption for the property" would contradict settled law and public policy,²⁰ although KeyBank never identified any specific law or policy that might be contradicted by application of the plain language of the statute. Interestingly, KeyBank claimed its security interest in the property was an interest "that cannot be waived."²¹ Then in its reply brief, KeyBank argued that PAL should have complied with the pre-judgment writ of attachment provisions of Idaho Code Section 8-506, *et seq.*, regardless of Section 11-203.²²

¹⁶ R Supp. Vol. I, pp. 4-5.

¹⁷ R Supp Vol. I, p. 5; *see also* R Supp. Vol. I, p. 30.

¹⁸ R Supp Vol. I, p. 5.

¹⁹ R Supp Vol. I, p. 4.

²⁰ R Supp. Vol. I, p. 5.

²¹ R Supp. Vol. I, pp. 18 and 29.

²² R Supp. Vol. I, pp. 29-30.

In its reply, PAL asked the district court to reject KeyBank's invitation to apply "equity" to the strictly legal issue of Section 11-203 because "[i]t is well understood that equitable principles cannot supersede the positive enactments of the legislature."²³ If anything, "equity aids the diligent and not those who slumber on their rights" like KeyBank had "slumbered" by not checking a box and mailing in the claim form that PAL provided.²⁴ Further, PAL rebutted KeyBank's claim that it could not waive its security interest by quoting the Supreme Court of the United States for the rule that "[a] party may waive any provision, either of a contract or of a statute, intended for his benefit."²⁵ Finally, PAL pointed out that its position gave meaning to the mandatory language of Section 11-203, whereas accepting KeyBank's position necessarily meant that the Idaho State Legislature enacted Section 11-203 and spelled out a detailed procedure requiring judgment creditors, judgment debtors, interested third parties, and sheriffs to perform specific acts within specific time periods for no reason at all.²⁶

The District Court's Memorandum Decision Granting Summary Judgment To KeyBank

On December 23, 2010, the district court entered a memorandum decision denying PAL's motion and granting KeyBank's motion for summary judgment.²⁷ The district court ruled that the legislature did not intend that Section 11-203 have any affect on a secured party's

²³ R Vol. I, p. 100.

²⁴ R Vol. I, p. 99.

²⁵ R Vol. I, p. 103 (*quoting Shutte v. Thompson*, 82 U.S. 151, 159 (1872) (cited 35 times for this legal issue).

²⁶ R Vol. I, pp. 103-104.

²⁷ R Vol. I, p. 108.

interest.²⁸ Instead, the court quoted from Idaho Code Section 28-9-315(a) of Idaho's Uniform Commercial Code that "[a] security interest . . . continues in collateral notwithstanding sale . . . or other disposition thereof unless the secured party authorized the disposition free of the security interest."²⁹ The court concluded that the statute "clearly implies that a perfected security interest survives the failure to comply with I.C. § 11-203 because the repercussions for failing to file an exemption are not provided for under I.C. §§ 11-203 or 28-2-403."³⁰ The district court quoted the general rule that a "creditor holding a perfected security interest has priority over a subsequent execution on a judgment [and] when the collateral has been sold in execution on the judgment may recover the money paid."³¹ The district court did not explain how the clear, specific, and mandatory requirements of Section 11-203 affect the general language of Section 28-9-315(a)(1) and general rule that security interests survive execution.

The district court went on to hold that PAL had to comply with the "mandatory" language from Section 8-506 regarding pre-judgment writs of attachment and gain KeyBank's consent to the sale as a prerequisite for KeyBank's compliance with Section 11-203.³² The district court relied on a case discussing execution on real property (not personal property like in this case) that predated the enactment of Section 11-203.³³ The court felt there was no evidence that KeyBank consented to the sale but had objected to the sale by letter to PAL's

²⁸ R Vol. I, p. 111.

²⁹ R Vol. I, p. 111 (*quoting* I.C. § 28-9-315).

³⁰ R Vol. I, p. 111.

³¹ R Vol. I, p. 112 (*quoting* 68A AM.JUR.2D *Secured Transactions* § 837).

³² R Vol. I, pp. 113-114.

counsel and the Sheriff.³⁴ The court concluded that to strictly enforce Section 11-203 against KeyBank would render Section 8-506 meaningless, disregarding PAL's argument that the district court's ruling rendered Section 11-203 "meaningless."³⁵

On January 3, 2011, the district court entered judgment against PAL.³⁶

PAL's Motion For Reconsideration

On January 11, 2011, PAL filed a motion for reconsideration, identifying multiple reversible errors in the district court's opinion.³⁷ First, PAL argued that the district court's decision violated several rules of construction by applying the general, older statute (Section 28-9-315(a)(1), originally enacted in 1967) over the specific, newer statute (Section 11-203, first enacted in 1991).³⁸ Second, PAL challenged the district court's conclusion that a secured party could not waive its security interest.³⁹ Third, PAL explained that various statutes distinguish between the procedures of Section 11-203 and Section 8-506. More specifically, Sections 11-301, 8-527, 11-203, and 8-507 all discuss the exclusive application of Section 8-507 through Section 8-507D to executions under Title 11, not Section 8-506 as the district court concluded.⁴⁰ Fourth, PAL pointed out that Section 11-203 is expressly mandatory whereas

³³ R Vol. I, pp. 113-114.

³⁴ R Vol. I, p. 114.

³⁵ R Vol. I, pp. 113-114.

³⁶ R Vol. I, p. 117.

³⁷ R Vol. I, p. 121.

³⁸ R Vol. I, pp. 125-129.

³⁹ R Vol. I, pp. 130-131.

⁴⁰ R Vol. I, pp. 131-132.

Section 8-506A is expressly permissive.⁴¹ Fifth, PAL explained that Section 8-506 expressly applies only to *pre-judgment* writs of attachment, whereas Section 11-203 expressly applies to *post-judgment* writs.⁴² Sixth, PAL argued that the district court's interpretation of Section 11-203 violated PAL's rights to equal protection by giving secured creditors, like KeyBank, greater rights in levied property than the very owners of the levied property, to the detriment of judgment creditors like PAL.⁴³ Both parties and the court acknowledged that judgment debtors owning levied property could waive their rights in that property by not filing a claim under Section 11-203, but the court held that secured parties could not. In this way, the court's distinction did not pass constitutional muster because it was arbitrary and capricious.

In opposition to PAL's motion, KeyBank merely restated the district court's analysis, suggested that Section 11-203 was ambiguous, and submitted that the court had properly construed Sections 11-203 and 28-9-315(a)(1) as "complimentary and cohesive, rather than conflicting."⁴⁴ KeyBank again acknowledged it had not complied with Section 11-203 but emphasized that it had not consented to the sheriff's sale.⁴⁵ KeyBank argued that PAL had no claim to an Equal Protection Clause violation because the district court could properly treat PAL and KeyBank differently (misstating PAL's argument).⁴⁶ Finally, KeyBank complained that if the district court held that KeyBank was required to comply with Section 11-203, then KeyBank

⁴¹ R Vol. I, p. 133.

⁴² R Vol. I, pp. 134-135.

⁴³ R Vol. I, pp. 135-138.

⁴⁴ R Supp. Vol. I, pp. 33-36.

⁴⁵ R Supp. Vol. I, p. 37.

would be deprived of procedural due process because Section 11-203 does not expressly state the consequence of a secured party's failure to comply with the claim of exemption procedures, thus depriving KeyBank of "meaningful notice" or a "meaningful opportunity to respond."⁴⁷

PAL replied, challenging KeyBank's notion that Section 11-203 was ambiguous, but that it is very clear and specific.⁴⁸ PAL also challenged KeyBank's assertion that the district court could and did construe Section 11-203 and Section 28-9-315(a)(1) as complimentary and cohesive, but instead unjustifiably expanded Section 28-9-315(a)(1) while construing Section 11-203 out of existence.⁴⁹ PAL emphasized that KeyBank could and did waive its rights in the property.⁵⁰ PAL also pointed out that KeyBank completely ignored the repeated statutory references that Section 8-507, not 8-506, apply to post-judgment proceedings like this.⁵¹ PAL then clarified its Equal Protection argument and rebutted KeyBank's suggestion that Section 11-203 deprived KeyBank procedural due process.⁵²

On February 25, 2011, the district court entered a Memorandum Decision on Reconsideration denying PAL's motion.⁵³ The court held it had correctly applied Section 28-9-315(a)(1), did not apply the general statute over the specific, did not apply an older statute

⁴⁶ R Supp. Vol. I, p. 40.

⁴⁷ R Supp. Vol. I, p. 41.

⁴⁸ R Vol. I, p. 141.

⁴⁹ R Vol. I, pp. 141-142.

⁵⁰ R Vol. I, pp. 142-144.

⁵¹ R Vol. I, pp. 144-145.

⁵² R Vol. I, pp. 145-148.

over a newer one, correctly decided KeyBank had not waived its rights in the property, and correctly required PAL's compliance with Section 8-506A in this case.⁵⁴ The court stated that Section 11-203 did not expressly provide for the consequence of a secured party's failure to file a claim of exemption.⁵⁵ The court found no Equal Protection violation because PAL and KeyBank were not members of "suspect classes, such a [sic] gender, race, or religion."⁵⁶

On March 17, 2011, PAL timely filed its Notice of Appeal.⁵⁷

Post-Judgment Proceedings

On May 18, 2011, following entry of judgment and notice of appeal in this case, Zions Bank National Association ("Zions") sued PAL seeking judgment for the same proceeds from the sheriff's sale that the district court already awarded to KeyBank in this case by claiming a security interest in the levied property.⁵⁸ The Zions case raises exactly the same issues as the present case, namely the effect of the failure of a secured party with notice of the execution to file a claim of exemption pursuant to Section 11-203. PAL had caused the Sheriff to serve notice of the levy and the claim of exemption packets on Zions as it had with KeyBank. PAL argued to the district court that its failure to require a secured party's compliance with Section 11-203 would expose judgment creditors like PAL to a multiplicity of lawsuits. Now facing

⁵³ R Vol. I, p. 153.

⁵⁴ R Vol. I, pp. 154-162.

⁵⁵ R Vol. I, pp. 161-162.

⁵⁶ R Vol. I, pp. 162-163.

⁵⁷ R Vol. I, p. 166.

⁵⁸ See p. 7-9 of the Memorandum Decision on Post-Judgment Motions, a copy of which is attached to PAL's Motion to Augment the Clerk's Record dated September 23, 2011. This Court entered an Order Granting Motion to

double liability for the same sheriff sale proceeds the court already awarded to KeyBank, PAL moved the court for an order setting aside KeyBank's judgment and consolidating the cases.⁵⁹ The court denied PAL's motion.⁶⁰

ISSUES PRESENTED ON APPEAL

1. Did the district court commit reversible error by reaching a decision that renders Idaho Code Section 11-203 meaningless?
2. Did the district court commit reversible error by holding KeyBank's security interest survived the failure to comply with Idaho Code Section 11-203?
3. Did the district court commit reversible error by requiring PAL's compliance with Idaho Code Section 8-506A as a prerequisite to KeyBank's compliance with Idaho Code Section 11-203?
4. Did the district court commit reversible error by interpreting Idaho Code Section 11-203 to violate PAL's right to Equal Protection?
5. Is PAL entitled to an award of its attorney's fees and costs under Idaho Code Section 12-120(1), Idaho Rule of Civil Procedure 54, and Idaho Appellate Rules 40 and 41?

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Augment the Clerk's Record on September 28, 2011. This Court may also take judicial notice of the contents of that case, *Zions Bank National Association v. PA I, LLC*, Madison County Case No. CV-2011-367.

⁵⁹ See pp. 7-10 of the Memorandum Decision on Post-Judgment Motions, a copy of which is attached to PAL's Motion to Augment the Clerk's Record dated September 23, 2011.

⁶⁰ See p. 10 of the Memorandum Decision on Post-Judgment Motions, a copy of which is attached to PAL's Motion

ARGUMENT

STANDARD OF REVIEW

“The Supreme Court [of Idaho] reviews a district court’s decision on summary judgment using the same standard as that properly employed by the trial court when originally ruling on the motion If the evidence reveals no disputed issues of material fact, and only a question of law remains, this Court exercises free review.” *Zollinger v. Carrol*, 137 Idaho 397, 399 (2002) (citations omitted). “This Court has free review over the construction of a statute. . . .” *In re City of Shelley*, 151 Idaho 289, --- (2011).

I.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY REACHING A DECISION THAT RENDERS IDAHO CODE SECTION 11-203 MEANINGLESS.

A. Section 11-203 Applies Exactly To KeyBank’s Claim That It Has A Security Interest In The Levied Property.

Idaho Code Section 11-203 states, “*The following procedures shall apply . . . to any claim by a third party* that property levied upon is his property or *that he has a security interest therein.*” (Emphasis added.)

Here, the entire basis for KeyBank’s claim in this case is a security interest in the Tri-Steel property that PAL levied upon.⁶¹ There is no dispute that KeyBank received all notices and other documents required to be served in conjunction with the levy on Tri-Steel’s

to Augment the Clerk’s Record dated September 23, 2011.

⁶¹ R Vol. I, pp. 12-22.

property.⁶² Clearly, Section 11-203 applies to KeyBank's claim to a security interest in the levied property.

B. Section 11-203 Required KeyBank To Perform Specific Acts That KeyBank Failed To Perform.

"The word shall, when used in a statute, is mandatory." *Goff v. H.J.H. Co.*, 95 Idaho 837, 839 (1974) (citations omitted). After establishing its scope, Section 11-203 sets forth two specific, mandatory acts a third party claiming a security interest in levied property must perform. First, the secured party "shall prepare a written claim setting forth the grounds upon which he claims the property, and in the case of a secured party, also stating the dollar amount of the claim." I.C. § 11-203(a). This written claim must be on "the claim of exemption form as provided in section 8-507C" that the sheriff is required to serve on the judgment debtor and interested third parties. I.C. § 11-203; *see also* I.C. § 8-527 ("If any personal property . . . executed upon be claimed by a third person as his property . . . the same rules shall prevail as to the contents and making of said claim . . . as in the case of a claim after levy upon execution, as provided in section 11-203, Idaho Code").

Second, the secured party "shall" deliver its claim form "to the sheriff within fourteen (14) days" after the sheriff mailed the documents to the third party. The sheriff's timely receipt of a third party's claim to a security interest in levied property is critical. Section 11-203 mandates, "The sheriff shall refuse to accept or honor a claim not filed with him within that

⁶² See I.C. §§ 11-301 and 8-507 thru 8-507D; R Vol. I, p. 84.

period . . .” I.C. § 11-203(c). If the sheriff never sends anything to the secured party, then the 14-day period to file a claim never arises. This makes sense because notice of the proceeding would be necessary to affect the rights of third parties. However, once the sheriff sends the documents to the third party, if that party claims a security interest in the levied property, Section 11-203 expressly and mandatorily requires that party to file a claim with the sheriff within 14 days.

Here, the entire basis for KeyBank’s claim is a security interest in the Tri-Steel property that PAL levied upon.⁶³ There is no dispute that KeyBank received all notices and other documents required to be served in conjunction with the levy on Tri-Steel’s property.⁶⁴ As such, Section 11-203 required that KeyBank prepare its claim form, identifying the basis for and “stating the dollar amount of the claim,” and file it with the sheriff within 14 days. There is no dispute that KeyBank failed to comply with the mandatory requirements of Section 11-203.

C. The District Court’s Decision Erroneously Renders Section 11-203 Meaningless.

Idaho law is clear that courts are “required to give effect to every word, clause and sentence of a statute, where possible. A rule of statutory construction is that courts will not nullify a statute or deprive the law of force or potency unless it is absolutely necessary.” *Univ. of Utah Hosp. and Med. Cntr. v. Bethke*, 101 Idaho 245, 248 (1980) (internal citation omitted); *see also Brown v. Caldwell School Dist. No. 132*, 127 Idaho 112, 117 (1995); *Matter of Permit No. 36-7200 in Name of Idaho Dept. of Parks and Rec.*, 121 Idaho 819, 823 (1992). “That the

legislature intended to . . . create a meaningless provision is an absurd result and one which we avoid.” *Walker v. Nationwide Financial Corp. of Idaho*, 102 Idaho 266, 268 (1981). Similarly, “It is a well-settled principle of statutory construction that statutes should not be construed to render other provisions meaningless.” *Moss v. Bjornson*, 155 Idaho 165, 166 (1988).

Here, the district court acknowledged that KeyBank failed to comply with Section 11-203, but opined that Section 11-203 does not expressly provide the consequence for a party’s failure to comply, whereas Section 28-9-315(a)(1) “clearly implie[d]” that KeyBank’s security interest survived despite its failure to comply with Section 11-203.⁶⁵ By interpreting Section 28-9-315(a)(1) to preserve KeyBank’s security interest in the levied property despite KeyBank’s failure to comply with Section 11-203, the district court necessarily concluded that the detailed statutory procedures of Section 11-203 are nothing but a legislative exercise in futility. Ironically, the court felt that Section 28-9-315(a)(1) “**clearly implies**”⁶⁶ one result while ignoring the plain language of Section 11-203 that **expressly requires** KeyBank to take certain actions.

Further, Section 11-203(c) requires a sheriff to “refuse to accept or honor a claim not filed with him within that period.” However, by granting summary judgment to KeyBank, the district court essentially ignores this prohibition and instead says, in essence, “I know the statute expressly prohibits the sheriff from accepting a claim not made in the time or in the manner required by the statute, but despite this prohibition I will accept KeyBank’s claim now.”

⁶³ R Vol. I, pp. 12-22.

⁶⁴ See I.C. §§ 11-301 and 8-507 thru 8-507D; R Vol. I, p. 84.

⁶⁵ R Vol. I, p. 111.

Importantly, the district court never held that Section 11-203 does not apply to the facts of this case. Instead, the district court relied on Sections 28-9-315(a)(1) and Section 8-506A and construed those laws so as to render the specific, mandatory procedures of Section 11-203 superfluous. At a minimum, the court's decision deprives Section 11-203 of potency when that result is not "absolutely necessary." *Bethke, supra*. Section 11-203 is directly in point with this case, but under the district court's analysis, Section 11-203 means nothing.

D. Section 11-203 Must Provide A Consequence For KeyBank's Failure To Comply.

The district court reasoned that because Section 11-203 does not expressly provide a consequence for a third party's noncompliance, no consequence exists for noncompliance.⁶⁷ However, Section 11-203 must provide a consequence. Otherwise, the statute is superfluous.

KeyBank's decision not to comply with Section 11-203, but instead to wait and assert its security interest in this lawsuit, invokes the maxim that "'one cannot blow both hot and cold.'" *KTVB, Inc. v. Boise City*, 94 Idaho 279, 281 (1971) (quoting *Godoy v. Hawaii*, 354 P.2d 78 (Haw. 1960)). In *KTVB*, this Court quoted this maxim while discussing the doctrine of quasi estoppel. "The requirements for proper application of quasi estoppel are, then, that a person against whom it is sought to be applied has previously taken an inconsistent position, with knowledge of the facts and his rights, to the detriment of the person seeking application of the doctrine." *Id.* at 282. The Court explained the essence of the doctrine as follows:

⁶⁶ R Vol. I, p. 111 (emphasis added).

⁶⁷ R Vol. I, p. 111.

“ . . . [A] person, with full knowledge of the facts, shall not be permitted to act in a manner inconsistent with his former position or conduct to the injury of another. To constitute this sort of estoppel the act of the party against whom the estoppel is sought must have gained some advantage for himself or produced some disadvantage to another. . . .”

Id. at 281 (quoting *Godoy, supra*). Application of this doctrine always depends on the specific facts and circumstances of the case at bar. *Id.* at 282.

In this case, KeyBank takes a position that is inconsistent with its prior position as a matter of law. In this action, KeyBank claims a security interest in the levied property. However, in PAL’s action against the debtor, KeyBank did not claim a security interest in the levied property as the law required before the sale. Specifically, KeyBank knew that Section 11-203 mandated that KeyBank, as a creditor claiming a security interest in the levied property, file a third-party claim of exemption with the sheriff in the prescribed manner and within the prescribed time--***if KeyBank claimed a security interest in the levied property***. KeyBank is charged with conclusive knowledge of Section 11-203 and KeyBank’s rights under Section 11-203 because “[a]ll citizens are presumptively charged with knowledge of the law.” *Atkins v. Parker*, 472, U.S. 115, 130 (1985) (citation omitted) (cited with approval in *Wilson v. State*, 133 Idaho 874, 880 (Ct.App. 2000)). Thus, KeyBank is charged with knowledge that Section 11-203 provides only one mandatory way to assert a security interest in levied property. Moreover, KeyBank had actual knowledge of how it was supposed to claim a security interest in the levied property because the documents the Sheriff served instructed KeyBank to file a claim with the Sheriff within 14 days.

Yet, having knowledge that Section 11-203 provides only one mandatory way to assert a security interest in levied property, KeyBank did not make any such claim in accordance with Section 11-203. Accordingly, by not filing a claim, KeyBank, as a matter of law, took the position that it did not claim a security interest in the levied property. This previous position in PAL's action against the debtor is inconsistent with KeyBank's current position in this case where KeyBank has sued PAL and others claiming a security interest in the property. Under the doctrine of quasi estoppel, this Court should estop KeyBank from denying its previous position that it claims no security interest in the levied property.

PAL suffered detriment from KeyBank's inconsistent position. Section 11-203's specific requirements that "[a] third party claimant shall prepare a written claim setting forth the grounds upon which he claims the property, and in the case of a secured party, also stating the dollar amount of the claim" and that the claim "shall be delivered or mailed to the sheriff within fourteen (14) days" all apply to KeyBank. But KeyBank did not file a claim form with the sheriff. PAL relied on KeyBank's not making a claim under Section 11-203 that expressly directs that "[t]he sheriff shall refuse to accept or honor a claim not filed with him within that period and unless otherwise ordered by the court, shall, after such period has elapsed, proceed to sell . . . the property levied upon to the plaintiff. . . ." I.C. § 11-203(c). In the absence of KeyBank having filed a claim, PAL moved forward with the sale incurring sheriff's fees, storage costs, and attorney's fees where the sheriff otherwise may have "release[d] the claimed property to the

defendant or his agent.” *Id.* Instead, to its detriment, PAL relied on the plain language of the statute and KeyBank’s inaction under Section 11-203.

PAL suffered further detriment from KeyBank’s failure to comply with Section 11-203’s additional requirement that a secured party file a claim “stating the dollar amount of the claim.” I.C. § 11-203. This requirement is especially important to allow PAL to consider whether to contest the claim. If the property were worth \$10,000 and “the dollar amount” of KeyBank’s claim were \$50,000, then the judgment debtor has no equity in the property and PAL could avoid any additional expense trying to collect from this property. If the property were worth \$10,000 and “the dollar amount” of KeyBank’s claim were only \$500, then PAL could contest the claim to clarify that PAL should receive all sums received from the sale after payment of KeyBank’s \$500 claim up to the amount of PAL’s judgment. But if KeyBank files no claim and does not state the dollar amount of any claim, then PAL has no basis as a matter of law for considering KeyBank’s interest or how to proceed. As a matter of law, PAL reasonably concluded KeyBank claimed no interest in the levied property because KeyBank filed no claim. PAL’s reliance was reasonable because Section 11-203 requires the sheriff to reject any untimely claims and proceed with the sale. I.C. § 11-203(c). In reliance on the law and these facts, PAL incurred attorney’s fees, sheriff’s fees, storage fees, and other expenses from the sale, in expectation of receiving the proceeds from the sale.

PAL suffered even further detriment from KeyBank’s failure to comply with Section 11-203 by being subject to a multiplicity of lawsuits. In PAL’s action against the debtor, KeyBank

did not file a claim but then sued PAL in this case two months after the sheriff's sale. Zions Bank, who also did not file a claim under Section 11-203, has now sued PAL under the same theory as KeyBank (after monitoring the result KeyBank obtained in this case) seeking a judgment against PAL for the very same proceeds PAL recovered at the sale.⁶⁸ PAL would not be surprised if U.S. Bank (the third bank PAL gave notice of the sale to) also files suit in the near future or if this Court were to rule against PAL. The district court's erroneous decision has opened the door to this multiplicity of lawsuits and exposed PAL to double (or triple) liability from a single sheriff's sale.

In contrast with the detriment to PAL, the district court's decision excusing KeyBank's compliance with Section 11-203 provides KeyBank several advantages. When a judgment creditor executes on property, he assumes the risk that the sale of the property may not produce enough value to offset the costs of the execution (i.e., attorney's fees, sheriff's fees, storage fees, publication fees, etc.) By excusing KeyBank's compliance with Section 11-203, the court gives KeyBank the advantage of having someone else assume this risk and sell the collateral. This way KeyBank avoids the risk of incurring the expense of repossessing and selling collateral that may produce very little value, even possibly resulting in a net loss to KeyBank. But under the district court's decision, KeyBank can wait and see if sale of the

⁶⁸ See the Memorandum Decision on Post-Judgment Motions, a copy of which is attached to PAL's Motion to Augment the Clerk's Record dated September 23, 2011. This Court entered an Order Granting Motion to Augment the Clerk's Record on September 28, 2011. This Court may also take judicial notice of the contents of that case, *Zions Bank National Association v. PA I, LLC*, Madison County Case No. CV-2011-367.

collateral creates enough value for KeyBank to expend any resources to collect against the sale proceeds of the collateral. If the sale produces little value, KeyBank can let the collateral go and avoid the cost of repossession and resale. But if the sale produces enough value, then KeyBank sue the judgment creditor on KeyBank's security interest that KeyBank did not claim under the mandatory provisions of Section 11-203 after receiving notice that PAL had levied on the property. In fact, the district court's decision to excuse KeyBank's failure to comply with Section 11-203 gives third parties a strong incentive never to claim their security interests until after the sheriff's sale when they can evaluate the outcome with benefit of 20/20 hindsight.

To give Section 11-203 meaning, there must be a consequence for a third party's failure to comply. This consequence can arise under the doctrine of quasi estoppel, *see KTVB, supra*, and *Keesee v. Fetzek*, 111 Idaho 360, 362 (Ct.App. 1986); the doctrine of waiver, *Medical Services Group, Inc. v. Boise Lodge No. 310, Benev. And Protective Order of Elks*, 126 Idaho 90, 94 (Ct.Ap. 1994) and *Riverside Development Co. v. Ritchie*, 103 Idaho 515, 520 (1982); the doctrine of estoppel, *Twin Falls Clinic & Hospital Bldg. Corp. v. Hamill*, 103 Idaho 19, 22 (1982); or similar doctrines. The critical point is that KeyBank knew the facts and the law, Section 11-203 imposed a duty on KeyBank to file a claim with the sheriff specifically stating the amount of its security interest, and KeyBank failed to comply. This Court should not permit KeyBank to ignore its duties as a secured party under Section 11-203. KeyBank's inconsistency is exactly the type of conduct the mandatory provisions of the statute are designed to prevent.

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E. The District Court's Decision Undermines The Purposes Of Section 11-203.

The district court's refusal to recognize a consequence for KeyBank's failure to comply with Section 11-203 has immense negative consequences. The decision runs contrary to the express purpose of Section 11-203 of providing greater due process protections to judgment debtors and others claiming an interest in levied property, while helping sheriffs and creditors avoid the "cumbersome, expensive and time-consuming" procedure for resolving such claims.⁶⁹

The district court's decision undermines these objectives by replacing a simple, inexpensive, expedited procedure with a new lawsuit (or in this case, a few more lawsuits⁷⁰).

The duties Section 11-203 imposes are not mere technicalities. Requiring third parties to identify and state the dollar amount of their security interest provides a judgment creditor with the information necessary to determine whether and how to pursue collection. Requiring a third party to follow the specific procedures invokes a judgment creditor's right to contest a claim through expedited court proceedings. I.C. § 11-203(b). The district court felt "that I.C. § 11-203 was primarily intended to protect debtors and provide a means for secured parties to alert other creditors of their interests."⁷¹ However, protection of debtors is only part of the

⁶⁹ Statement of Purpose, H 264 (Idaho 1991).

⁷⁰ See p. 7-9 of the Memorandum Decision on Post-Judgment Motions, a copy of which is attached to PAL's Motion to Augment the Clerk's Record dated September 23, 2011 (Order Granting Motion to Augment the Clerk's Record entered September 28, 2011); see also *Zions Bank National Association v. PA I, LLC*, Madison County Case No. CV-2011-367.

⁷¹ R Vol. I, p. 111.

purpose for enacting Section 11-203, the other being to provide expedited, inexpensive procedures for creditors and sheriffs.⁷²

Further, Section 11-203 does not serve the purpose of allowing “secured parties to alert other creditors of their interests.” As the facts of this case demonstrate, the only time third party secured creditors will get notice and be subject to Section 11-203 is when the judgment creditor already knows of the third party’s possible claim and instructs the sheriff to serve them. Section 11-203 does not allow secured parties “to alert other creditors of their interests” as much as it allows judgment creditors to evaluate those interests and possibly challenge them.

Worse yet, under the district court’s rule, every person buying anything at a sheriff’s sale always risks being sued if a third party holds a security interest in the property, does not file a claim with the sheriff, and then decides to sue the buyers after the sale is complete. This concern is not a hypothetical, but exactly what happened in this case. Along with PAL, KeyBank sued Brian Christensen, L.A. Parkinson, Barney Dairy, Inc., D.J. Barney, William Davis, Lois Davis, Dell Ray Barney, and Dell J. Barney only because they purchased property at the sheriff’s sale.⁷³ This threat of suit unnecessarily creates a severe disincentive for anyone to bid at a sheriff’s sale. Debtors, third parties, creditors, sheriffs, and courts must follow the plain, mandatory procedures of Section 11-203 or the entire levy process becomes uncertain, unduly

⁷² Statement of Purpose, H 264 (Idaho 1991).

⁷³ R Vol. I, pp. 12-22.

complicated, time-consuming, and expensive. To avoid these problems, the district court should have just required KeyBank to comply with the plain language of Section 11-203.

II.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY HOLDING KEYBANK'S SECURITY INTEREST SURVIVED THE FAILURE TO COMPLY WITH IDAHO CODE SECTION 11-203.

Instead of giving meaning to the plain language of Section 11-203, the district court immediately sidestepped the issue of KeyBank's failure to comply with Section 11-203 and instead quoted Section 28-9-315(a)(1) of Idaho's Uniform Commercial Code for the general rule that a security interest continues in collateral "notwithstanding sale . . . or other disposition thereof unless the secured party authorized the disposition free of the security interest." However, as explained below, the court's reliance on Section 28-9-315(a)(1) is flawed in several respects.

A. The District Court Erred In Applying Section 28-9-315(a)(1) Because The Levy Of Property Under Section 11-203 Is Beyond The Scope Of Section 28-9-315(a)(1).

The district court relied on Idaho Code Section 28-9-315(a)(1) to fill what it perceived as a gap in Section 11-203. The district court held that Section 28-9-315(a)(1) "clearly implies that a perfected security interest survives the failure to comply with I.C. § 11-203 because the repercussions for failing to file an exemption are not provided for under I.C. §§ 11-203 or 28-2-

403(2).”⁷⁴ However, the court erred in this regard because sale by levy under Section 11-203 is beyond the scope of Section 28-9-315(a)(1).

Idaho Code Section 28-9-109 defines the scope of the provisions of Chapter 9, Title 28 of the Idaho Code—including the application of Section 28-9-315(a)(1)—as follows:

- (a) Except as otherwise provided in subsections (c) and (d), this chapter applies to:
- (1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;
 - (2) An agricultural lien;
 - (3) A sale of accounts, chattel paper, payment intangibles or promissory notes;
 - (4) A consignment;
 - (5) A security interest arising under section 28-2-401, 28-2-505, 28-2-711(3) or 28-12-508(5), as provided in section 28-9-110; and
 - (6) A security interest arising under section 28-4-210 or 28-5-120.

I.C. § 28-9-109(a).

The district court relied on Section 28-9-109(a)(1) above to justify application of Section 28-9-315(a)(1) to the facts of this case. However, the levy on Tri-Steel’s property is not a “transaction” that “creates” a security interest. Simply, Section 28-9-315(a)(1) does not apply to this case because the issue of whether KeyBank’s security interest survives its failure to comply with Section 11-203 is beyond the scope of Chapter 9 altogether.

Moreover, subsections (c) and (d) of Section 28-9-109 further limit the scope of Chapter 9 by excluding even more transactions from the provisions of the chapter. Specifically,

⁷⁴ R Vol. I, p. 111.

subsection (c)(2) recites that Chapter 9 does not apply to the extent that “[a]nother statute of this state expressly governs the creation, perfection, priority or enforcement of a security interest created by this state or a governmental unit of this state.” Clearly, Section 11-203 is “another statute of this state that expressly governs the . . . priority or enforcement of a security interest” because it places duties on KeyBank to assert its security interest in the levied property. Thus, Section 28-9-109(c)(2) further excludes the application of Section 28-9-315(a)(1) in this case.

B. Assuming Section 28-9-315(a)(1) Applies In This Case, The District Court Erred By Holding KeyBank Did Not Authorize The Sale Of The Levied Property.

Section 28-9-315(a)(1) provides that a security interest continues in property following sale of the property “unless the secured party authorized the disposition free of the security interest.” If Section 28-9-315(a)(1) applied to this case, then KeyBank authorized the sale of the levied property “free of the security interest” as a matter of law when KeyBank failed to file a claim with the sheriff under Section 11-203.

C. Assuming Section 28-9-315(a)(1) Applies In This Case, The District Court Erred By Applying The General Statute Of Section 28-9-315(a)(1) Over The Specific Statute Of Section 11-203.

Idaho appellate courts have long recognized that “a specific statute will control over a general or vague statute when the two are in conflict.” *Mickelsen v. City of Rexburg*, 101 Idaho 305, 307 (1980) (citing *Christensen v. West*, 92 Idaho 87 (1968)). Here, the district court interpreted Section 28-9-315(a)(1) to conflict with Section 11-203 by holding KeyBank’s

security interest continued in the levied property despite KeyBank's failure to comply with Section 11-203. As such, the more specific statute controls over the more general statute.

Section 11-203 is the more specific statute. KeyBank's entire case arises from its claim to a security interest in property PAL levied upon and sold. Section 11-203 is found in Title 12 regarding "Enforcement of Judgments in Civil Actions," under Chapter 2 regarding "Property Subject to Execution – Exemptions." Section 11-203 contains the specific duties of third parties claiming a security interest in levied property, just as KeyBank does here. Section 11-203 is specifically in point with this case.

Alternatively, Section 28-9-315(a)(1) recites the general rule that a security interest in collateral survives sale or other transfer. This is the same rule many jurisdictions adopted directly from Article 9 of the Uniform Commercial Code. Despite the rule's prevalence, research produced no case in Idaho or any other jurisdiction holding that a security interest survives a secured party's failure to comply with statutory procedures for asserting its security interest in levied property, which is main issue in the present case.

Interestingly, Section 28-9-315(a)(1) itself contains an exception to the continuing nature of the security interest if the secured party "authorized" the disposition of the property free of the security interest. PAL submits that a court could reconcile Section 28-9-315 with Section 11-203 by holding that KeyBank's failure to comply with Section 11-203 and assert its security interest in the proper and timely manner under that statute constitutes authorization by operation of law for the sale of the property free and clear of KeyBank's security interest.

D. Assuming Section 28-9-315(a)(1) Applies In This Case, The District Court Erred By Applying The Older Statute Of Section 28-9-315(a)(1) Over The Newer Statute Of Section 11-203.

In Idaho, “Statutes are construed under the assumption that the legislature was aware of all other statutes and legal precedence at the time the statute was passed.” *Druffel v. State, Dept. of Transp.*, 136 Idaho 853, 856 (2002) (citations omitted). Moreover, if two statutes are in conflict, “the more recently enacted statute governs.” *State v. Gamino*, 148 Idaho 827, 829 (Ct.App. 2010) (citing *State v. Killinger*, 126 Idaho 737, 740 (1995); *Mickelsen v. City of Rexburg*, 101 Idaho 305, 307 (1980)). Again, the district court interpreted Section 28-9-315(a)(1) in conflict with Section 11-203 by holding KeyBank’s security interest continued in the levied property despite KeyBank’s failure to comply with Section 11-203.

The Idaho Legislature first enacted Section 11-203 in 1991,⁷⁵ whereas Section 28-9-315 relied on by the district court existed in essentially the same form since 1967.⁷⁶ Thus, the court should have applied the “more recently enacted statute” found in Section 11-203. The law presumes that the Idaho Legislature knew of Section 28-9-315 (or 28-9-306(2) as formerly known), and nevertheless enacted Section 11-203 requiring secured creditors to take

⁷⁵ See S.L. 1991, ch. 165, § 10, p. 395.

⁷⁶ The Idaho Legislature enacted the current version of Section 28-9-315 in 2001. See S.L. 2001, ch. 208, § 1. However, Idaho’s Uniform Commercial Code contained a nearly identical provision previously codified as I.C. § 28-9-306(2). See, e.g., *Newgen v. OK Livestock Exchange*, 117 Idaho 445, 447 (Ct.App. 1990); *Western Idaho Production Credit Ass’n v. Simplot Feed Lots, Inc.*, 106 Idaho 260, 263 (1984) (quoting I.C. § 28-9-306(2) as follows: “Except where this chapter otherwise provides, a security interest continues in collateral notwithstanding sale, exchange or other disposition thereof *unless the disposition was authorized by the secured party* in the security agreement or otherwise . . .” The language is substantially the same and nearly identical. The history of current Section 28-9-315 and the former 28-9-306(2) indicate this language has existed in Idaho’s Uniform Commercial

additional steps to assert any claim to a security interest in levied property. As such, the district court erred in applying Section 28-9-315(a)(1) over the newer Section 11-203.

III.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY REQUIRING PAL'S COMPLIANCE WITH IDAHO CODE SECTION 8-506A AS A PREREQUISITE FOR KEYBANK'S COMPLIANCE WITH IDAHO CODE SECTION 11-203.

In excusing KeyBank's failure to comply with Section 11-203, the district court held that "before PAL can insist" on KeyBank's compliance with Section 11-203, "it was incumbent upon them [i.e., PAL] to first comply with I.C. § 8-506A."⁷⁷ As explained below, the district court erred in this regard.

A. No Law Requires PAL's Compliance With Section 8-506A As A Prerequisite For KeyBank's Compliance With Section 11-203.

Section 11-203 contains no prerequisite that a judgment creditor comply with Section 8-506A before a secured party must comply with Section 11-203. The only prerequisite to the duties Section 11-203 imposes is the implied prerequisite that the sheriff provide notice to the defendant or interested third party of the levy. Obviously, without notice of the levy to the defendant or interested third party, any subsequent action adverse to him would violate due process. But there is no authority requiring PAL's compliance with Section 8-506A before KeyBank's compliance with Section 11-203.

Code since 1967. See S.L. 1967, ch. 161.

⁷⁷ R Vol. I, p. 114.

B. The District Court Erred In Applying Section 8-506A Because The Provisions Of Section 8-507, *Et Seq.*, Apply To PAL's Post-Judgment Levy, Not Section 8-506A.

Multiple sections of the Idaho Code tie the provisions of Section 8-507, *et seq.*, to levy on personal property under Title 11. Idaho Code Section 11-301 specifically states, "The provisions of sections 8-507 through 8-507D [not 8-506A], Idaho Code, shall apply to a levy upon personal property." I.C. § 11-301 (brackets added). Section 8-527 specifically requires that "[i]f any personal property attached, garnished or executed upon be claimed by a third person as his property . . . the same rules shall prevail as to the contents and making of said claim . . . as in the case of a claim after levy upon execution, as provided in section 11-203, Idaho Code." I.C. § 8-527. Further, Section 11-203 refers to the use of the specific form "provided in section 8-507C" and Section 11-203(a) refers to the documents required to be served upon the defendant and third parties "under section 8-507A." I.C. § 11-203. Coming full circle, Section 8-507(c) reiterates that "[t]he provisions of this section and sections 8-507A through 8-507D [not 8-506A], Idaho Code, shall apply to any levy by execution pursuant to chapters 2 and 3, title 11, Idaho Code." I.C. § 8-507(c) (brackets added).

Despite these repeated, explicit provisions in statutes tying levy by execution under Title 11, Chapters 2 and 3 to the procedures of Section 8-507, *et seq.*, the district court ignored Section 8-507, *et seq.*, and instead focused on Section 8-506A, which does not apply at all. The district court erred in this regard. Just because Section 8-506A mentions some of the terms at play in this case (e.g., "personal property," and "security interest") does not mean that section

applies. No section of the Idaho Code requires a judgment creditor's compliance with Section 8-506A in conjunction with a post-judgment levy by execution.

C. Section 8-506A Applies To Pre-Judgment Attachment Proceedings Whereas Section 8-507 Applies To Post-Judgment Execution Proceedings.

A close reading of the applicable statutes clearly reveals that Section 8-506A applies to pre-judgment attachment of property and not a post-judgment levy by execution to satisfy a judgment. Sections 8-501 through Section 8-506D relate to attachment of property. Section 8-501 states that in some cases a plaintiff may apply for an attachment of the defendant's property "as security for the satisfaction of any judgment that may be recovered." Section 8-502(e) sets forth the procedure to apply for a writ of attachment and requires the court to make "a preliminary determination of whether there is a reasonable probability that the plaintiff will prevail on its claim." Section 8-502(e) also authorizes the court to consider the value of the property subject to attachment to determine if the value is "clearly adequate to secure any judgment which may be recovered by the plaintiff." *Id.* Section 8-503 addresses the requirement that the plaintiff file an undertaking with the court to protect the defendant "if the defendant recover [sic] judgment." Section 8-504 authorizes a plaintiff to obtain multiple writs of attachment "at any time before judgment." Section 8-505 explains that a plaintiff may attach property "and if judgment be recovered," the property may be sold to satisfy the judgment. These sections make clear that the attachment proceedings apply to a

plaintiff's pre-judgment activities to ensure that, if he prevails, he will be able to satisfy his judgment against the defendant.

Contrast these pre-judgment attachment sections to the express reference of Section 8-507, *et seq.*, to Title 11 regarding "Enforcement of Judgments in Civil Actions" discussed above. Even a casual reading of these statutes evidences a clear distinction between those procedures applicable to pre-judgment attachment of a defendant's property as security for a prospective judgment, and those procedures applicable to post-judgment execution against a defendant's property to satisfy an actual judgment. In light of these sections, the district court's requirement that PAL comply with Section 8-506A before KeyBank had to comply with Section 11-203 is erroneous.

D. The District Court Misplaced Its Reliance On *Fulton v. Duro*.

KeyBank and the district court both relied on *Fulton v. Duro*, 107 Idaho 240 (Ct.App. 1984), to suggest PAL had to comply with Section 8-506A. However, *Fulton* does not provide any support for the court's extension. First, *Fulton* involves an execution against real property, not personal property, which invokes different rules and procedures. See I.C. § 11-102(1) (distinguishing between personal property and real property subject to execution); I.C. § 11-301 (providing a different procedure for levy on personal property); I.C. § 11-302 (providing different notice requirements for sale of personal property and real property); I.C. § 11-304 (providing different procedures for conducting the sale of personal property and real property); I.C. § 11-310 (providing a right of redemption to real property, but not personal

property); Chapter 4, Title 11, Idaho Code (entire chapter devoted to redemption rights in real property only). This Court should limit *Fulton* to its terms, namely that “[i]n levying on **real property** pursuant to a writ of execution, the sheriff must comply with I.C. § 8-506.” *Fulton*, *supra*, at 247 (emphasis added).

Second, *Fulton* predates enactment of Section 11-203 in 1991.⁷⁸ This is important because the *Fulton* court had no reason or opportunity to consider Section 11-203. Instead, the *Fulton* court extrapolated from Section 11-201 to extend the requirements of Section 8-506 to a levy on real property by writ of execution in an effort to fill a gap in the law providing no other procedure for the levy or for notice to the defendant and others. *Id.* at 246. Again, “Statutes are construed under the assumption that the legislature was aware of all other statutes and legal precedence at the time the statute was passed.” *Druffel v. State, Dept. of Transp.*, 136 Idaho 853, 856 (2002) (citations omitted). The court erred by relying on the inapposite precedent of *Fulton* predating Section 11-203.

E. Section 11-203 Is Expressly Mandatory Whereas Section 8-506A Is Expressly Permissive.

The district court further erred by holding PAL’s compliance with Section 8-506A was a mandatory prerequisite to KeyBank’s compliance with Section 11-203 because the requirements of Section 8-506A are expressly permissive, whereas the requirements of Section 11-203 are expressly and repeatedly mandatory. Section 11-203 repeatedly expresses duties in terms of the mandatory “shall.” On the other hand, Section 8-506A repeatedly employs the

permissive “may” to describe how property “may” be attached. See I.C. § 8-506A (property “may be attached by the following methods”); I.C. § 8-506A(a) (property “may be attached by taking possession”). This Court should not place the permissive actions of Section 8-506A ahead of the mandatory duties of Section 11-203.

IV.

THE DISTRICT COURT COMMITTED REVERSIBLE ERROR BY INTERPRETING SECTION 11-203 TO VIOLATE PAL’S RIGHT TO EQUAL PROTECTION.

This Court explains, “In reviewing the constitutionality of a statute, Idaho appellate courts are obligated to ‘seek an interpretation of a statute that upholds its constitutionality.’ When the court finds that a statute is capable of two interpretations, one which would make it constitutional and the other unconstitutional, the court should adopt that construction which upholds the validity of the act.” *State v. Hellickson*, 135 Idaho 742, 744 (2001) (quotation and citations omitted).

Here, the district court interpreted Section 11-203 so as to render it unconstitutional as violative of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States (“Equal Protection Clause”). Specifically, the court interpreted Section 11-203 in a manner that gives secured parties greater rights in levied property than the owner of the levied property by holding that KeyBank did not lose its security interest in the property despite its admitted failure to comply with Section 11-203. The district court tried to limit the

⁷⁸ See S.L. 1991, ch. 165, § 10, p. 395.

application of the Equal Protection Clause only to those cases involving “suspect classes, such a [sic] gender, race, or religion.”⁷⁹ In reality, the law is not so narrow.

The Supreme Court of the United States explains analysis of the Equal Protection Clause as follows:

In applying that clause, this Court has consistently recognized that the Fourteenth Amendment does not deny to States the power to treat different classes of persons in different ways. The Equal Protection Clause of that amendment does, however, deny to States the power to legislate that different treatment be accorded to persons placed by a statute into different classes on the basis of criteria wholly unrelated to the objective of that statute. A classification ‘must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike.’

Reed v. Reed, 404 U.S. 71, 75 (1971) (citations and quotation omitted).

This Court recently cited this language from *Reed* in *Credit Bureau of Eastern Idaho, Inc. v. Lecheminant*, 149 Idaho 467 (2010). In *Lecheminant*, the Idaho Supreme Court held the unequal treatment of persons under Idaho Code Section 11-204 was “arbitrary and does not demonstrate a substantial relation to the objective of community property legislation” and therefore unconstitutional as violative of the Equal Protection Clause.

Certainly, a judgment debtor owning property must file a claim of exemption to maintain his interest in the property. Even this district court indicated that it would require a judgment debtor to file a claim to protect any interest in the property, which would be

⁷⁹ R Vol. I, pp. 162-163.

consistent with all district judges in this state. Likewise, if an owner with notice of the levy can lose his interest in property by failing to file a claim, then a secured party with notice should be held to lose its interest in the property as well. Despite PAL's call for equal protection, the district court interpreted Section 11-203 in such a way that violates PAL's rights to equal protection by giving secured parties greater rights in levied property than the property owner to PAL's detriment.

The district court's interpretation gives secured creditors greater property rights than owners at the expense of judgment creditors like PAL. Treating secured parties differently here is unconstitutional because it is "wholly unrelated to the objective" of Section 11-203, which is to provide a procedure for owners and third parties with an opportunity to assert a claim in property, for judgment creditors to contest those claims, and for speedy resolution of those claims by the sheriff or court.⁸⁰ The district court's placement of secured parties in a better position than owners is arbitrary in that there is no justifiable reason that a secured party need not comply with the claim of exemption procedure to preserve its security interest while an owner must comply or lose its interest in the property. In light of the purpose of Section 11-203, the court's special treatment to secured parties bears no substantial relation to the object of Section 11-203. The court's interpretation of the statute thwarts the intent of the Equal Protection Clause that "all persons similarly circumstanced shall be treated alike." *Reed, supra*.

⁸⁰ Statement of Purpose, H 264 (Idaho 1991).

PAL submits that Section 11-203 is capable of only one reasonable and constitutional interpretation, namely that judgment debtors and third parties must comply with the claim of exemption procedures or they cannot assert an interest in that property later. Applying the rule that “courts are obligated to ‘seek an interpretation of a statute that upholds its constitutionality,’” *Hellickson, supra*, this Court should apply Section 11-203 equally to both judgment debtors and third parties.

V.

THIS COURT SHOULD AWARD PAL ITS ATTORNEY’S FEES AND COSTS.

On appeal, “Costs shall be allowed as a matter of course to the prevailing party unless otherwise provided by law or order of the Court.” I.A.R. 40(1). Thus, if PAL is the prevailing party, the Court should award costs to PAL.

Idaho Code Section 12-120(1) provides, “. . . in any action where the amount pleaded is twenty-five thousand dollars (\$25,000) or less, there shall be taxed and allowed to the prevailing party, as part of the costs of the action, a reasonable amount to be fixed by the court as attorney’s fees.” KeyBank sued PAL for an amount less than \$25,000.⁸¹ Pursuant to Idaho Appellate Rule 41(a) and Idaho Code Section 12-120(1), this Court should award PAL its attorney’s fees and costs.

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CONCLUSION

Based on the district court's interpretation of Section 11-203, the legislature went to the trouble of enacting a lengthy, specific, mandatory statute, with specific deadlines for parties, specifically including secured parties, to perform simple and specific acts for no reason at all. Instead, the district court embarked on an extensive but ultimately irrelevant discussion of Section 28-9-315(a)(1) and Section 8-506A, all in an attempt to excuse KeyBank's failure to comply with the simple, clear, and mandatory provisions of Section 11-203. To give Section 11-203 meaning and to apply it equally to all interested parties, this Court should reverse the district court's decision granting summary judgment to KeyBank and remand the case with instructions to enter summary judgment in favor of PAL. The Court should also award PAL its costs and attorney's fees incurred below and on appeal.

RESPECTIVELY SUBMITTED this 28 day of October, 2011.

SMITH, DRISCOLL & ASSOCIATES, PLLC

By: 
B. J. Driscoll
Attorneys for Appellant,
PAL I, LLC

⁸¹ R Vol. I, pp. 12-22.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 28 day of October, 2011, I caused a true and correct copy of the foregoing **APPELLANT'S BRIEF ON APPEAL** to be served, by placing the same in a sealed envelope and depositing it in the United States Mail, postage prepaid, or hand delivery, facsimile transmission or overnight delivery, addressed to the following:

- ☒ U.S. Mail
- ☐ Facsimile Transmission
- ☐ Overnight Delivery
- ☐ Hand Delivery

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B. J. Driscoll

IN THE SUPREME COURT OF THE STATE OF IDAHO

KEYBANK NATIONAL ASSOCIATION, a national banking association,

Plaintiff-Respondent,

v.

PAL I, LLC, an Idaho limited liability company,

Defendant-Appellant,

and

BRIAN CHRISTENSEN, an individual; L.A. PARKINSON, an individual; BARNEY DAIRY, INC.; D.J. BARNEY, an individual; WILLIAM DAVIS, an individual; LOIS DAVIS, an individual; DELL RAY BARNEY, an individual; and DELL J. BARNEY, an individual, dba Barney Towing & Recovery,

Defendants.

Supreme Court Docket No. 38645-2011

APPELLANT'S BRIEF ON APPEAL

Appeal from the District Court of the Seventh Judicial District for Madison County.
Honorable Gregory W. Moeller, District Judge, presiding.

B. J. Driscoll, Esq., residing at Idaho Falls, Idaho, for Appellant,
PAL I, LLC, an Idaho limited liability company

Thomas E. Dvorak, Esq., residing at Boise, Idaho, for Respondent,
KeyBank National Association, a national banking association