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Golub v. Kirk-Scott, LTD Appellant's Brief Dckt. 41501

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IN THE SUPREME COURT OF THE STATE OF IDAHO

41501

ALAN GOLUB and MARILYN GOLUB,

Supreme Court No. 41501-2013

husband and wife,

Plaintiffs/Respondents,

v.

KIRK-SCOTT, LTD., a Texas corporation;
KIRK-HUGHES DEVELOPMENT, LLC,
a Delaware limited liability company;
GERALDINE KIRK-HUGHES and PETER SAMPSON,
husband and wife; KIRK-HUGHES & ASSOCIATES, INC.,
a Nevada corporation,

Defendants/Appellants,

and

KELLY POLATIS, an individual,
and DELANO D. and LENORE J. PETERSON, husband and wife,
INTERNAL REVENUE SERVICE;
TOMLINSON NORTH IDAHO, INC., an Idaho corporation,

Defendants.

APPELLANTS' BRIEF

Appeal from the District Court of the First Judicial District for Kootenai County, Honorable
Lansing L. Haynes, District Judge, Presiding.

Michael Bissell, Residing at Spokane, Washington, Attorneys for Appellants, Kirk-Hughes
Development, LLC; Geraldine Kirk-Hughes, Peter Sampson, and, Kirk-Hughes & Associates,
Inc.

Matthew Crotty, Residing at Spokane, Washington, Attorney for Appellant Kirk-Scott, Ltd.

Michael Howard, Residing at Coeur d'Alene, Idaho, Attorneys for Respondents, Golub

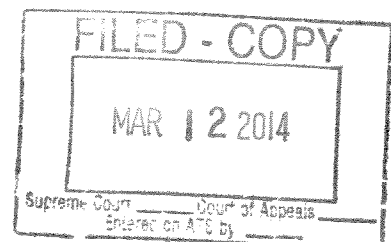


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I. STATEMENT OF THE CASE

A. Nature of Case

This case concerns the relative priorities of a deed of trust and a subsequently recorded judgment in certain real property located in Coeur D'Alene, Idaho.

B. Course of Proceedings

On January 25, 2013, Respondents Alan and Marilyn Golub (“the Golubs”) commenced this declaratory judgment action in the District Court for Kootenai County seeking a determination as to whether a March 11, 2009 default judgment in favor of the Golubs and against Geraldine Kirk-Hughes, Peter Sampson, Kirk-Hughes Development, LLC, and Kirk-Hughes & Associates, Inc. (collectively “Kirk-Hughes”), which was subsequently recorded, had priority over a November 18, 2004 deed of trust in favor of Kirk-Scott Ltd. (“Kirk-Scott”) against certain real property.

On May 9, 2013, the Golubs moved for summary judgment, and on August 9, 2013, the District Court granted the Motion.

On August 19, 2013, the District Court issued its final judgment.

On August 21, 2013, Kirk-Scott moved to alter/amend the Court's August 9, 2013, Order and August 19, 2013, Judgment pursuant to Rule 59. Kirk-Hughes joined in Kirk-Scott's Motion to Amend.

On September 27, 2013, the District Court denied Kirk-Scott's Motion to Amend.

On September 30, 2013, Kirk-Hughes filed its Notice of Appeal.

On November 21, 2013, the District Court *sua sponte* sanctioned Kirk-Hughes for joining Kirk-Scott's Motion to Amend/Alter and, on December 3, 2013, issued its Order regarding Sanctions in which the District Court ordered Kirk-Hughes to pay Golub \$2,400.00 in attorneys' fees. Notably, Golub had never asked for sanctions against Kirk-Hughes.

C. Statement of Facts.

1. In mid-2004, Ms. Kirk-Hughes entered into negotiations to purchase certain real property in Kootenai County owned by Lenore and Delano Peterson (the "Peterson Property"). Alan Golub was the listing agent. (R, Vol. 1, p. 324, ¶ 1.) Ms. Kirk-Hughes was expected to purchase the Property in the fall of 2004, and Alan Golub, as the listing agent, expected to receive a large commission from the transaction. (R, Vol. 1, p. 72, L. 15-20.)

2. On July 8, 2004, Kirk-Scott purchased approximately 45 acres of real property located near Coeur d'Alene Lake owned by Mavis Sloan ("the Sloan Property"), which is the subject of this action.¹ (R, Vol. 1, p. 73, L. 21-22.)

3. In November 2004, Mr. Golub contacted Darlene Moore (a real estate agent from Las Vegas with an interest in the expected commission of the Peterson Property), and expressed concern that the Peterson transaction was not going to close as scheduled. (R, Vol. 1, p. 306, ¶ 15.)

4. Ms. Moore informed Mr. Golub that she believed Ms. Kirk-Hughes was still interested in pursuing development of the Peterson property because Ms. Kirk-Hughes had recently created a development company and had requested Ms. Moore to draft a document to

¹ As discussed later, Kirk-Scott transferred title to the Sloan Property to Kirk-Hughes Development, LLC, for the purpose of development. (R, Vol. 1, p. 73, L. 18-22.)

grant Kirk-Scott an interest in the Sloan Property after Kirk-Scott transferred title to Kirk-Hughes Development, LLC. (R, Vol. 1, p. 306, ¶ 15.)

5. On November 19, 2004, Kirk-Scott deeded the Sloan property to Kirk-Hughes Development, LLC. (R, Vol. 1, p. 78, L. 13-14.)

6. That same day, Kirk-Hughes Development, LLC granted Kirk-Scott a \$1.35M deed of trust on the Sloan Property. (R, Vol. 1, p. 78, L. 17-20.)

7. Around the same time, Geraldine Kirk-Hughes was working closely with Mr. Golub while attempting to secure financing for the Peterson property and informed Mr. Golub that Kirk-Hughes Development, LLC had granted Kirk-Scott a deed of trust on the Sloan Property for the purpose of acquiring a project approval. (R, Vol. 1, p. 315, ¶ 22.)

8. Ms. Kirk-Hughes was unable to pay the purchase amount for the Peterson Property and the sale was never consummated. (R, Vol. 1, p. 74, L. 12-17.)

9. In March 2005, Mr. Kelly Polatis purchased the Peterson Property directly from the Petersons. Mr. Golub was thus denied the real estate commission because the property was purchased by Mr. Polatis rather than Ms. Kirk-Hughes.² (R, Vol. 1, p. 74, L. 14-17.)

10. Mr. Golub believed the purchase by Kelly Polatis was a straw-man transfer to avoid paying his real estate commission. (R, Vol. 1, p. 74, L. 18-21.) Therefore, in 2006 he contacted Darlene Moore and asked if Ms. Moore would be interested in suing Ms. Kirk-Hughes in order to recover the above-referenced real estate commission. (R, Vol. 1, p. 307, ¶ 17.) Ms. Moore told Mr. Golub that she was not interested in participating in litigation because

² While the Peterson Property was purchased by Kelly Polatis, in March 2005, title to the Peterson Property was later returned to Delano Peterson following a foreclosure action. (R, Vol. 1, p. 74 L. 20-21.)

"Balinda Antoine [of Kirk-Scott] had a mortgage on the Sloan parcel so there would be no asset to collect against." (R, Vol. 1, p. 307-308, ¶ 17.)

11. On October 30, 2007, the Golubs nevertheless sued Geraldine Kirk-Hughes, Peter Sampson, Kirk-Hughes Development, LLC, Kirk-Hughes & Associates, Inc., Kelly Polatis, Delano Peterson, and Lenore Peterson for the unpaid real estate commission in Kootenai County District Court, Case No. CV 07-8038. (R, Vol. 1, p. 162 - 169).

12. The Golubs obtained a default judgment against the Defendants in the amount of \$941,000.00 on March 11, 2009. (R, Vol. 1, p. 35-37.)

13. Kirk-Hughes Development, LLC filed for bankruptcy on April 6, 2009 in Nevada. (R, Vol. 1, p. 79, L. 24-25.)

14. On September 17, 2010, while the bankruptcy was pending, Kirk-Scott's deed of trust on the Sloan Property was recorded. (R, Vol. 1, p. 39.)

15. On October 28, 2010, Kirk-Hughes Development, LLC's bankruptcy was dismissed, and within hours the Golubs recorded their judgment. (R, Vol. 1, p. 35). Recordation of the judgment gave them a judgment lien on the Sloan Property (owned by Kirk Hughes) with a priority date of October 28, 2010. (R, Vol. 1, p. 83, L. 2-3.)

16. On January 25, 2013, the Golubs filed the declaratory judgment action which ultimately led to this appeal. (R, Vol. 1 p. 28-52.)

17. On May 3, 2013, the Golubs moved for summary judgment. (R, Vol. 1, p. 67-69.) In his affidavit filed in support of the motion, Mr. Golub testified he "was not aware that Kirk-Scott had executed a Deed of Trust to Kirk-Hughes Development" before Kirk-Scott

recorded Kirk-Scott's Deed of Trust on September 17, 2010. (R, Vol. 1, p. 96, ¶14.) (Although not material to the resolution of this matter, it bears pointing out Mr. Golubs' statement is in error, as it was *Kirk Hughes Development, LLC* - not Kirk-Scott - who *executed* the Deed of Trust. (R, Vol. 1, p. 39-40.)

18. In the Memorandum in Support of Summary Judgment, the Golubs unequivocally stated that their judgment had a "priority date of October 28, 2010." (R, Vol. 1, p. 83, L. 2-3). Several pages later, they argue that they "had no actual knowledge of any interest claimed by Kirk-Scott . . . until the [Kirk-Scott] deed of trust was recorded on September 17, 2010." (R, Vol. 1, p. 90, L., 1-2).

19. On August 9, 2013, the Court granted the Golubs' motion. (R, Vol. 1, p. 414-420).

20. On August 19, 2013, the Court entered judgment on the order. (R, Vol. 1, p. 435 - 439.)

21. On August 21, 2013, Kirk-Scott moved to alter/amend the Court's August 9th and 19th orders (collectively the "Orders"). (R, Vol. 1, p. 440-458). Kirk-Hughes joined Kirk-Scott's Rule 59 motion on August 23, 2013, but did not raise any additional arguments. (Affid. of M. Howard, in the Augmentation Record pursuant to the Second Motion to Augment, filed March 5, 2014, ¶ 19.)

22. Kirk-Hughes filed a lis pendens against the property on September 20, 2013. (Lis Pendens in the Augmentation Record pursuant to the Order Granting Motion to Augment dated Feb. 27, 2014.)

23. On or about September 25, 2013, the Golubs purchased the subject property at a Sheriff's Sale via a credit bid. (R, Vol. 1, p. 524, L. 1-2.)

24. On September 30, 2013, Kirk-Hughes filed its Notice of Appeal. (R, Vol. 1, p. 534-540.)

25. On October 2, 2013, the District Court denied Kirk-Scott's Motion to Amend/Alter and, on November 21, 2013, *sua sponte* sanctioned Kirk-Hughes for joining Kirk-Scott's Motion to Amend. (R, Vol. 1, p. 548-556.)

II. ISSUES PRESENTED ON APPEAL

(A) Did the District Court err in granting the Golubs' Motion for Summary Judgment when it failed to address the "good faith" requirement under Idaho Code § 55-606?

(B) Did the District Court abuse its discretion by awarding sanctions against Kirk-Hughes?

III. ARGUMENT

A. Standard of Review

On appeal from summary judgment, this court may determine whether *either* party was entitled to judgment as a matter of law. *Hirst v. St. Paul Fire & Marine Ins. Co.*, 106 Idaho 792, 795, 683 P.2d 440 (Idaho Ct. App. 1984). A district court is not allowed to weigh evidence or resolve disputed factual issues, and must deny summary judgment if factual issues exist. *Carman v. Carman*, 114 Idaho 551, 553-54, 758 P.2d 710, 712 (Ct. App. 1988). The standard used on appeal from summary judgment is the same used by the district court in ruling on summary judgment. *U.S. Bank National Ass'n v. Kuenzli*, 134 Idaho 222, 999 P.2d 877 (2000).

An appellate court exercises free review in determining whether a genuine issue of material fact exists and whether the moving party is entitled to judgment as a matter of law. *Edwards v. Conchemco, Inc.*, 111 Idaho 851, 727 P.2d 1279 (Ct. App. 1986). All disputed facts and evidence are to be construed liberally in favor of the non-moving party, and all reasonable inferences that can be drawn from the record are to be drawn in favor of the non-moving party. *Idaho State Insurance Fund v. Van Tine*, 132 Idaho 902, 980 P.2d 566 (1999); *Rawson v. United Steelworkers of America*, 111 Idaho 630, 726 P.2d 742 (1986). Summary judgment must be denied if reasonable persons could reach differing conclusions or draw conflicting inferences from the evidence presented. *Iron Eagle Dev't, L.L.C. v. Quality Design Sys., Inc.*, 138 Idaho 487, 65 P.3d 509 (2003).

If the evidence reveals no disputed issues of material fact, what remains is a question of law, which is freely reviewed. *Farm Credit Bank of Spokane v. Stevenson*, 125 Idaho 270, 869 P.2d 1365 (1994). “On appeal, this Court exercises free review over the entire record that was before the district court in order to determine whether either party is entitled to judgment as a matter of law.” *Lowder v. Minidoka County Joint Sch. Dist. No. 331*, 132 Idaho 834, 837, 979 P.2d 1192 (1999). Under the rules of civil procedure, summary judgment may be rendered for any party, not just the moving party, and on any or all of the causes of action involved. *Brummett v. Ediger*, 106 Idaho 724, 726, 682 P.2d 1271 (1984) (recognizing that civil rules require liberal construction to secure the just, speedy and inexpensive determination of legal proceedings).

The interpretation of a statute is a question of law over which the Court exercises free review. *State v. Doe*, 147 Idaho 326, 328, 208 P.3d 730, 732 (2009). “If there exists a genuine issue of material fact with respect to respondent's knowledge of an unrecorded encumbrance, then summary judgment was improperly granted.” *Kalange v. Rencher*, 136 Idaho 192, 195, 30 P.3d 970 (2001) (citing *Farm Bureau Finance Co., Inc. v. Carney*, 100 Idaho 745, 747, 605 P.2d 509, 511 (1980)). Whether a subsequent interest in property takes subject to a prior interest in the same property is a question of notice. See I.C. § 55-606; *West Wood Invs., Inc. v. Acord*, 141 Idaho 75, 85, 106 P.3d 41 (2005). Whether subsequent party claiming an interest has notice of a prior interest is a question of fact. See *West Wood Invs., Inc.*, 141 Idaho at 85.

B. The Golubs Could Not Have Priority Over Kirk-Scott’s Deed of Trust Because They Had Actual Notice of It Prior to Recording Their Judgment.

The District Court erred in granting summary judgment because there are, at a minimum, questions of fact pertaining to the Golubs’ knowledge of Kirk-Scott’s property interest. The Golubs moved for summary judgment asserting that their interest was superior to all others pursuant to Idaho Code § 55-606. (R, Vol. 1, p. 83-84.) Kirk-Hughes opposed the motion, arguing that the Golubs could not qualify as “good faith” encumbrancers under I.C. § 55-606 due to their actual knowledge of Kirk-Scott’s prior interest. (R, Vol. 1, p. 327-330.) The District Court did not even address the “good faith” issue (and if it had it would have been faced with indisputable evidence precluding summary judgment), and therefore erred in granting summary judgment. (R, Vol. 1, p. 418-420.)

1. The Golubs had prior knowledge of Kirk-Scott's Deed of Trust.

Idaho is a race notice jurisdiction and the priority of interests in land are governed by Idaho Code § 55-606, which provides in pertinent part:

Every grant or conveyance of an estate in real property is conclusive against the grantor, also against every one subsequently claiming under him, except a purchaser or encumbrancer, who in good faith, and for valuable consideration, acquires a title or lien by an instrument or valid judgment that is first duly recorded. (emphasis added).

The purpose of the race notice statute is to put others on notice that an interest in real property is claimed. *See Matheson v. Harris*, 98 Idaho 758, 761, 572 P.2d 861 (1977). A “good faith” encumbrancer is defined as a subsequent party that takes an interest without actual or constructive knowledge of adverse claims to the property. *See Farm Bureau Finance Co., Inc. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980) (emphasis added). “When a subsequent encumbrancer [Golub] has actual knowledge of a prior interest [Kirk-Scott's deed of trust], it makes no difference whether [the] prior interest was properly acknowledged and recorded.” *Id.* Put another way, Kirk-Scott's interest in the real property was conclusive against the Golubs unless the Golubs recorded their judgment without knowledge of that prior interest, and the evidence is to the contrary. *See* I.C. § 55-606.

At summary judgment, Golub argued that his judgment lien³ was superior to Kirk-Scott's deed of trust simply because the deed of trust was recorded while Kirk-Hughes was in bankruptcy. (R, Vol. 1, p. 84-86.) However, the validity of Kirk-Scott's recordation is irrelevant if Golub had actual knowledge of Kirk-Scott's interest when the judgment lien attached to the

³ As discussed in further detail below, the Golubs' judgment did not become a judgment lien until the judgment was recorded. *See* I.C. § 10-1110.

property. *See* I.C. § 55-606. In that regard, Mr. Golub himself, as well as Kirk-Hughes, presented evidence and argument at summary judgment which established beyond doubt (let alone raised a question of fact) that the Golubs did in fact have actual knowledge of Kirk-Scott's deed of trust. Specifically:

- a. Mr. Golub testified that he was unaware of a deed of trust *prior to* Kirk-Scott recording one during Kirk-Hughes Development's bankruptcy on September 17, 2010 (stated another way, he was aware of the deed of trust as of September 17, 2010);
- b. In the Memorandum in Support of Summary Judgment, the Golubs state that they "had no actual notice of any interest claimed by Kirk-Scott . . . until the Deed of Trust was recorded on September 17, 2010." (emphasis added);
- c. Darlene Moore testified that, prior to the time the Golubs obtained a judgment lien, she personally informed Mr. Golub that Kirk-Scott had an interest in the Sloan Property; and
- d. Geraldine Kirk-Hughes testified that she also informed Mr. Golub that a deed of trust was granted to Kirk-Scott.

(R, Vol. 1, p. 96, L. 9-12; p. 90, L. 1-2; p. 307-308, ¶ 17; p. 315-316, ¶ 22.)

Despite the foregoing undisputed facts, the District Court's decision is devoid of any good faith analysis as required under I.C. § 55-606. (R, Vol. 1, p. 418-420.) The District Court simply stated that "[t]his judgment lien has priority over [Kirk-Scott's] deed of trust because Idaho law gives priority to the first recorded conveyance." (R, Vol. 1, p. 419.) This is an incomplete statement of the law. Idaho does *not* give priority to the first recorded interest *when the party*

recording its interest has knowledge of a prior unrecorded conveyance. I.C. § 55-606. Given the unambiguous language of the statute, and clear holdings in prior cases, the District Court clearly erred by failing to consider the good faith issue, and as such summary judgment was improper.

2. Violation of an automatic bankruptcy stay does not invalidate Kirk-Scott's deed of trust, nor does it impact the fact of the Golubs' actual knowledge of Kirk-Scott's interest.

At summary judgment, the Golubs argued that they did not have “constructive notice” of Kirk-Scott’s interest because the deed of trust was recorded during Kirk-Hughes’s bankruptcy in violation of the automatic stay, and because the deed was not validly acknowledged under Idaho law. (R, Vol. 1, p. 86-89.) However, the alleged defects only bear on the issue of constructive notice, which is nothing more than a legal presumption of notice which is imputed by law. *Barton v. Cannon*, 94 Idaho 422, 426, 489 P.2d 1021 (Idaho 1971). “Constructive notice is neither notice nor knowledge, but is a fiction by which, for the promotion of sound policy or purpose, the legal rights and interests of the parties are treated as though they had actual notice or knowledge.” *Id.* While various legal principles (for example, that one cannot record a deed of trust against the debtor’s property while the debtor is in bankruptcy) may impact the legal fiction of constructive notice by nullifying the effect of recording an interest, actual notice is simply a question of fact entirely removed from fiction – i.e., it either exists or it doesn’t, and there is no law supporting the proposition that filing a deed of trust during bankruptcy nullifies the deed of trust itself.

In this matter Kirk-Hughes does not argue that Kirk-Scott's interest is superior because the September 2010 recordation imparted constructive notice. Rather, Kirk-Hughes asserts that the Golubs' interest could not be superior to Kirk-Scott's because they had actual knowledge of Kirk-Scott's interest prior to the time their judgment became a lien on the property.

3. Proper acknowledgement is not relevant to the Golubs' "good faith" status under I.C. § 55-606.

The District Court determined that there was no genuine issues of material fact regarding the Golubs' priority in the property after determining that "Kirk-Scott's deed of trust recordation was not properly acknowledged and certified--as required by I.C. § 55-805 and I.C. § 55-811." (R, Vol. 1, p. 419.) Here again the District Court erred by failing to recognize that actual knowledge renders acknowledgement and recordation of a deed of trust immaterial. *See Farm Bureau Finance Co., Inc. v. Carney*, 100 Idaho 745, 605 P.2d 509 (1980). Simply put, the lack of proper acknowledgement does not affect the validity of Kirk-Scott's deed of trust - it merely nullifies the legal effect of recording the deed of trust.⁴ *See Hunt v. Hunt*, 110 Idaho 649, 718 P.2d 560 (Ct. App. 1985) (explaining that while acknowledgement is a precondition to recordation, a lack of acknowledgement will not undermine a document's validity). "The recordation of a deed only serves to place on constructive notice those who do not have actual notice of the interest of estate held by the grantees of the recorded deed." *Ralls v. Fouraker*, 109 Idaho 488, 491 (1985) (explaining that actual knowledge nullifies the need for constructive

⁴ Here, the deed was actually recorded, and Golub admits that he learned of Kirk-Scott's interest a month before he recorded his judgment lien. While the recordation may not have been enough to impart constructive notice, Golub, or his agent, knew of the attempted recording, and thus gained actual knowledge.

notice through proper recordation). Here, the Golubs had actual notice, and as such whether the deed of trust was properly acknowledged and/or recorded is immaterial.

C. The Golubs' Judgment Lien is Subordinate to Kirk-Scott's Interest as a Matter of Law.

As a matter of law, a judgment does not become a judgment lien until it is recorded. I.C. § 10-1110 (“from the time of such recording, *and not before*, the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county”) (emphasis added). Here, the undisputed evidence is that the Golubs’ had actual knowledge of Kirk-Scott’s deed of trust a full month prior to the time they filed their judgment and it became a lien. (R, Vol. 1, p. 90, L.1-2; R, Vol. 1, p. 83, L. 1-3.) Consequently, they cannot qualify as good faith encumbrancers under I.C. § 55-606 as a matter of law. Indeed, this Court should determine that Kirk-Scott’s deed of trust is superior to the Golubs’ judgment lien as a matter of law, and remand to the District Court with instructions to enter an order consistent with that determination.

D. The District Court's Sanctions Order Should Be Reversed.

The District Court levied \$2,400.00 in sanctions against Kirk-Hughes after it joined in Kirk-Scott’s Rule 59 Motion to Alter/Amend the 2013 Judgment. (R, Vol. 1, p. 562, L. 12-15.) The District Court imposed the sanctions *sua sponte* for Golubs’ costs “incurred because of the filing of the Motion to Amend/Alter Judgment and supporting briefing.” (R, Vol. 1, p. 556.) The court ordered Golub to file a memorandum of costs and fees along with a proposed judgment that apportioned the incurred costs between Kirk-Scott and Kirk-Hughes. (R, Vol. 1, p. 556.) Notably, in joining Kirk-Scott’s motion, Kirk-Hughes did not file any additional documents or advance any arguments. (Affid. of M. Howard, in the Augmentation Record

pursuant to the Second Motion to Augment, filed March 5, 2014, ¶ 19.) Moreover, while the Golubs had moved for sanctions against Kirk-Scott, they did not seek sanctions against Kirk-Hughes. (R, Vol. 1, p. 499, L. 5-25.)

In response to the court's order, the Golubs filed a memorandum of fees and costs. (Memo. of Fees and Costs, in the Augmentation Record pursuant to the Second Motion to Augment, filed March 5, 2014.) In his affidavit filed in support of the memorandum, Mr. Howard (counsel for Respondents) stated that "[b]ecause the Kirk-Hughes Defendants did not file any additional pleadings, or advance arguments beyond simply joining in Kirk-Scott's Motion, there was no separate time devoted to responding to the Kirk-Hughes Defendants' joinder." (Affid. of M. Howard, in the Augmentation Record pursuant to the Second Motion to Augment, filed March 5, 2014, ¶ 19.) Nevertheless, the Golubs apportioned the fees by dividing the total amount (\$4,800.00) equally between Kirk-Scott and Kirk-Hughes. (Memo. of Fees and Costs, in the Augmentation Record pursuant to the Second Motion to Augment, filed March 5, 2014.) Kirk-Hughes opposed the motion on the grounds that it did not cause the Golubs to incur *any* expenses, but the court nevertheless imposed \$2,400.00 in sanctions against Kirk-Hughes. (R, Vol. 1, p. 562, L. 12-15.) Because Kirk-Hughes did not cause the Golubs to incur any fees or costs, the District Court abused its discretion by awarding sanctions and should be reversed.

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IV. CONCLUSION

Based on the foregoing, summary judgment in favor of the Golubs should be reversed, the award of sanctions should be reversed, and the District Court should be directed to enter an order stating that the Kirk-Scott deed of trust has priority over the Golubs' judgment lien.

DATED this 10th day March, 2014.

CAMPBELL & BISSELL, PLLC

By: 

MICHAEL S. BISSELL

Attorneys for Defendants/Appellants
Kirk-Hughes Development, LLC, Geraldine
Kirk-Hughes, Peter Sampson, and Kirk-Hughes
& Associates, Inc.

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CERTIFICATE OF SERVICE

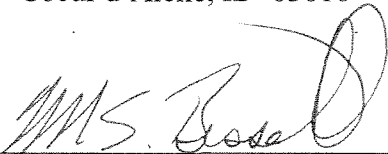
I HEREBY CERTIFY that on the 11th day of March, 2014, I caused to be served a true and correct copy of the foregoing document to the following:

- HAND DELIVERY Michael T. Howard
- U.S. MAIL Winston & Cashatt, P.S.
- OVERNIGHT MAIL 601 W. Riverside #1900
- FACSIMILE Spokane, WA 99201
- EMAIL

- HAND DELIVERY Matthew Z. Crotty
- U.S. MAIL Crotty & Son Law Firm, PLLC
- OVERNIGHT MAIL 421 W. Riverside Avenue, Ste. 1005
- FACSIMILE Spokane, WA 99201
- EMAIL

- HAND DELIVERY Ryan M. Best
- U.S. MAIL Best Law, PLLC
- OVERNIGHT MAIL 421 W. Riverside Avenue, Ste. 1005
- FACSIMILE Spokane, WA 99201
- EMAIL

- HAND DELIVERY Douglas S. Marfice
- U.S. MAIL Ramsden & Lyons
- OVERNIGHT MAIL P.O. Box 1336
- FACSIMILE Coeur d'Alene, ID 83816
- EMAIL



 MICHAEL S. BISSELL