10-23-2014

Countrywide Home Loans, Inc. v. Sheets Appellant's Brief Dckt. 42063

IN THE SUPREME COURT OF THE STATE OF IDAHO

COUNTRYWIDE HOME LOANS, INC., Plaintiff / Respondent vs. RALPH E. SHEETS, JR. and DEBRA SHEETS; And DOES 1-10, Defendants / Appellants	)	SUPREME COURT #42063-2014

DEFENDANTS' / APPELLANTS' OPENING BRIEF

Appeal from the District Court of the Third Judicial District

of the State of Idaho, in and for Adams County, Idaho

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DISTRICT JUDGE

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2. Whether the affidavits presented by BofA in support of its motions for summary judgment were legally and factually sufficient to eliminate the material issues of fact and law raised by the pleadings, discovery and affidavits presented by Sheets in opposition to said motions.

3. Whether the district court abused its discretion in rejecting the affirmative defenses of unclean hands and estoppel raised by Sheets in their pleadings and responses to BofA's summary judgment motions.

4. Whether the district court had legal authority to grant declaratory relief in the absence of BofA expressly pleading for such relief, and if so, was the granting of such relief at the summary judgment stage of proceedings an abuse of the court's discretion.

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STATEMENT OF THE CASE

This case arose from an action by Countrywide Home Loans, Inc. n/k/a Bank of America, N.A. (hereinafter referred to as "BofA") seeking equitable rescission of a Deed of Reconveyance ("Full Reconveyance") executed and recorded by ReconTrust Company, N.A. (a wholly owned subsidiary of BofA), which released a Deed of Trust that secured residential real property owned and occupied by Appellants, Sheets. BofA's Complaint sought rescission based upon unilateral mistake, with no allegation or evidence that such mistake was in any way caused by the actions of Sheets. R. Vol. 1 p. 9-34

The rescission action was originally filed in the name of Countrywide Home Loans, Inc. in March 2010, following a year of almost continuous mistakes, miscommunications and inactions by BofA and various subsidiaries thereof, in connection with what should have been a routine refinancing of Sheets existing home loan, which Sheets had held and kept current since 2004 (hereinafter the "2004 Loan"). A timeline of events which led to the filing of suit is set forth in Appendix "A" attached hereto. The failed refinancing of the 2004 Loan, which ultimately resulted in the unilateral mistake that BofA sued to rescind shall hereinafter be referred to as the "2009 Refinancing". On June 21, 2010, Sheets filed an Answer to Complaint and Demand for Jury Trial, raising various defenses to the suit filed by BofA arising from actions taken by BofA in connection with the failed 2009 Refinancing, and in the aftermath thereof. R. Vol. 1 p. 34-40. By informal stipulation of counsel, Sheets reserved the right to file a counterclaim pending the outcome of initial discovery between the parties.

As of the initial filing of BofA's Complaint, the bank was represented by local Boise counsel (Derrick O'Neill). However, after the filing of Sheets' Answer to Complaint and Demand for Jury Trial, BofA retained out-of-state trial counsel (Eric Coakley).

In January 2011, after receiving responses from BofA to Sheets' initial discovery requests, Sheets filed a Counterclaim and Demand for Jury Trial. R. Vol. 1 p. 41-48

Prior to the summary judgment decision which is the subject of this appeal, BofA had previously filed and argued both a Motion to Dismiss Counterclaims and a Motion for Judgment on the Pleadings. The Motion to Dismiss Counterclaims was partially granted and partially denied, R. Vol. 1 p. 51-65; and the Motion for Judgment on the Pleadings was denied in its entirety. R. Vol. 1 p. 96-103

During the course of litigation, Sheets served on BofA and related subsidiaries three (3) separate sets of Interrogatories, Requests for Production of Documents and Requests for Admissions. R. Vol. 2 p. 327-333; R. Vol. 2 p. 334-350; and R. Vol. 2 p. 351-365. BofA objected to a significant majority of the questions, or alternatively responded that that the requested information did not exist or could not be found. An examination of these objections shows a pattern of unnecessary parsing of words, and deliberate misstatements as to the legal relationship existing between BoA and related subsidiaries in order to avoid providing substantive responses. Further, BofA refused to produce documentation relating to internal policies and practices, none of which were protected by any recognized privilege. R. Vol. 2 p. 360. BoA refused to cooperate with counsel for Sheets with regard to scheduling depositions of employees having direct knowledge of the underlying facts of dispute.

Noticeably absent from the documents produced by BofA in response to the multiple discovery requests of Sheets were:

a. Any document, email, memo to file or other writing of any kind produced or received between April 28, 2009 and October 25, 2009 by the BofA loan officer (Paul Campbell) assigned to process the failed 2009 Refinancing.

b. Any document (other than a Substitution of Trustee form, and the Full Reconveyance which BofA sought to rescind), email, memo to file or other writing of any kind produced or received by the employee of Recon Trust Company, N.A., (Jewel Elsmere) who executed and recorded the Full Conveyance, which documents would explain the circumstances surrounding the erroneous execution and recording of said instrument.

c. Documentation of any kind evidencing how the unilateral mistake that BofA sought to rescind occurred, even though a legally sufficient explanation of how the alleged mistake occurred was an essential element of the equitable relief BofA sought.

After the failed 2009 Refinancing, BoA appointed a customer service representative (Mona Lavario) to investigate the circumstances surrounding the failed 2009 Refinancing and to assist Sheets in completing the refinancing process. However, as set forth in the Affidavit of Jonathan D. Hallin (Sheets' former counsel), submitted in opposition of summary judgment, the appointed representative failed to follow through or respond to communications from Sheets' counsel, and ultimately took no action to solve the problem. R. Vol. 3, p. 383-413.

In October 2012, the parties attempted third party mediation, but said mediation failed, largely due to the refusal of trial counsel for BofA to bring a bank representative to the

mediation, or to mediate the dispute in good faith. In addition, at the mediation, trial counsel for BofA presented Sheets' counsel with additional discovery materials in electronic form (on CD), which documentation should have been produced well in advance of mediation. Much of the documentation produced consisted of electronically generated messages or coded entries, but despite specific request by counsel for Sheets, BofA failed to provide a legend or key necessary to decipher said entries.

In October 2012, BofA filed Motions for Summary Judgment, together with supporting briefs and affidavits. R. Vol. 1, p. 178-179 and R. Vol. 2, p. 180-230. In response, Sheets filed opposing responses and supporting briefs and affidavits. R. Vol. 2, p. 231-413. The district court held a hearing on said motions on March 1, 2013, and issued its Findings of Fact, Conclusions of Law and Order on Plaintiff's Motions for Summary Judgment on April 29, 2013 (hereinafter the "April 29th Order". R. Vol. 3, p. 414-441.

In addition to granting summary judgment in favor of the bank, the district court's April 29th Order required BofA to set forth a written plan for dealing equitably with Sheets in order for a Final Judgment to be issued. R. Vol. 3, p. 425-426. Sheets objected to the terms of the proposed plan submitted by BofA, R. Vol. 3, p. 469-477., and the district court held additional an additional hearing and required supplementary briefing by the parties. On December 6, 2013 the district court issued its Order on Proposed Judgment and Plan of Implementation (hereinafter the "December 6th Order"), R. Vol. 3, p. 508-520.

Sometime after the issuance of the district court's Order on Proposed Judgment and Plan of Implementation, out-of-state counsel for BofA left his firm without prior notice to counsel for

Sheets or the district court. As a result, Judgment was not entered until March 6, 2014, after which counsel for Sheets filed a timely Notice of Appeal.

ISSUES PRESENTED ON APPEAL

1. Whether the district court erred in its application of the standards set forth in I.R.C.P. Rule 56, in determining whether material issues of fact and law existed, which issues precluded the granting of BofA's summary judgment motions.

2. Whether the affidavits presented by BofA in support of its motions for summary judgment were legally and factually sufficient to eliminate the material issues of fact and law raised by the pleadings, discovery and affidavits presented by Sheets in opposition to said motions.

3. Whether the district court abused its discretion in rejecting the affirmative defenses of unclean hands and estoppel raised by Sheets in their pleadings and responses to BofA's summary judgment motions.

4. Whether the district court had legal authority to grant declaratory relief in the absence of BofA expressly pleading for such relief, and if so, was the granting of such relief at the summary judgment stage of proceedings an abuse of the court's discretion.

5. Whether after a de novo review of the district court record by this Court, do material issues of fact and law exist, which are legally sufficient to require reversal of the district court's summary judgment ruling and remand of the pending case for trial.

Argument

Summary judgment in Idaho is governed by I.R.C.P. 56, which is patterned on F.R.C.P. Rule 56. There are numerous cases (both Idaho and federal) interpreting this rule, and the burden of proof and standard of review are well established.

Summary judgment or adjudication is appropriate only when the movant shows that:

"there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a); *Matsushita Elec. Indus. v. Zenith Radio Corp.,* 475 U.S. 574, 587, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986); *T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Assn.,* 809 F.2d 626, 630 (9th Cir.1987).

"Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986).

The evidence of the party opposing summary judgment is to be believed and all reasonable inferences from the facts must be drawn in favor of the opposing party. *Anderson,* 477 U.S. at 255; *Matsushita,* 475 U.S. at 587. The Court must determine:

"whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson,* 477 U.S. at 251-252.

An issue of fact is genuine " 'if the evidence is such that a reasonable jury could return a verdict for the nonmoving party.' " *Villiarimo v. Aloha Island Air, Inc.,* 281 F.3d 1054, 1061 (9th Cir.2002) (quoting *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 248, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986)). The court must draw all reasonable inferences in favor of the nonmoving party. *Id.* "Summary judgment cannot be granted where contrary inferences may be drawn from the evidence as to material issues." *Easter v. Am. W. Fin.* 381 F.3d 948 (9th Cir.2004)

(citing *Sherman Oaks Med. Arts Ctr., Ltd. v. Carpenters Local Union No.1936,* 680 F.2d 594, 598 (9th Cir.1982).

Summary judgment proceeding is not a substitute for trial of factual issues which are genuine and material. *Tri State National Bank v. Western Gateway Storage Co.* 447 P.2nd 409, 92 Idaho 543.

If reasonable people could reach different conclusions based on the evidence, a motion for summary judgment must be denied. *Harpole v. State*, 958 P.2nd 594, 131 Idaho 437

The burden of demonstrating the absence of a genuine issue of material fact is on the party moving for summary judgment. *Wattenbarger v. A.G. Edwards & Sons, Inc.*, 246 P.2nd 961, 150 Idaho 308.

Rule 56(e) provides that summary judgment shall be entered only "if appropriate." This requirement is of particular importance in the present case, because BofA's Complaint sought purely equitable relief, and was not supported by a specific statute or any case law directly on point. In seeking equitable relief, BofA made its claim for relief subject to equitable defenses, a number of which were raised by Sheets. In order for BofA to prevail on a motion for summary judgment, it had the sole burden of establishing that there were no material facts or issues pertaining to the counterclaims or equitable defenses pleaded and raised by Sheets. BofA also had the sole burden to establish that it had not engaged in any conduct that would preclude the equitable relief it sought. As is reflected by the record of the summary judgment proceedings, BofA did not meet its burden. The failure of BofA to adequately rebut the defenses raised by

Sheets in their motions and supporting affidavits precluded the entry of summary judgment by the district court.

Both Idaho and federal cases have consistently held that appellate review of a summary judgment decision is essentially a de novo review rather than a review that enjoys a presumption of correctness as to the court decision being reviewed. *Reynolds v. Trout Jones Gledhill Fuhrman, P.A.*, 293 P. 3d 645 (Idaho 2013). The reason for this broader standard of review on appeal is the fact that summary judgment cuts off a party's right to present its case to the jury and is intended to be the exception rather than the rule.

In that a de novo appellate review involves a full review of the lower court record, **Sheets hereby incorporates by reference the full record prepared by the Clerk of Court for Adams County as if fully set forth herein.**

As set forth in this brief and supported by the record, there were numerous undisputed facts weighing heavily against the equitable relief sought by BofA in its Complaint, as well as numerous and material disputed facts that should have precluded the entry of the summary judgment by the district court.

Undisputed Facts and Admissions

Based on the contents of the pleadings and discovery responses that were part of the record available to the district court at the time of summary judgment, the following facts were undisputed, and were in and of themself legally sufficient to preclude the entry of summary judgment:

a. The series of events that culminated in the recording of the Full Reconveyance that BofA sued to rescind was started by a solicitation from Plaintiff to Sheets, inviting Sheets to apply for a refinancing of their existing 2004 home loan, which at the time was fully current in all respects. R. Vol. 2. P. 254.

b. BofA failed to identify any document required to be submitted by Sheets in connection with the 2009 Refinancing which was not submitted in a timely fashion by Sheets.

c. Internal documentation produced by BofA showed that the 2009 refinancing application of Sheets was initially estimated to close as early as June 2009. R. Vol. 2. P. 257.

d. BofA failed to produce any documentation to refute Sheets' allegations that numerous telephone calls between Sheets and the BofA loan officer (Paul Campbell) responsible for the failed 2009 Refinancing took place between April 2009 and January 2010, and were represented to have been recorded. Moreover, BofA admitted in discovery responses that to the extent that such verbal recordings may have existed, they had subsequently been destroyed, and that such destruction may have occurred after the commencement of BoA's suit. R. Vol. 2, p. 354.

e. BofA objected to and refused to produce any written internal policies regarding the recording or preservation of telephone calls between loan officers and customers, despite the fact that such documents enjoyed no legal privilege. R. Vol. 2. p. 354.

f. BofA admitted that the recording of the Full Reconveyance was a result of a mistake, and further admitted that it had "no records to indicate why or how the error may have occurred. R. Vol. 2. p. 364.

g. BofA admitted that Sheets was fully current on their existing 2004 Loan at the time they made application for refinancing in April 2009. R. Vol. 2. p. 335.

h. BofA refused to identify the closing/settlement agent who was assigned to close the 2009 Refinancing. R. Vol. 2. p. 354.

i. BofA objected to a significant number of discovery requests served by Sheets on the basis that there was a substantive legal distinction between Countrywide Home Loans, Inc. and BofA, even though BofA was the legal successor in interest by merger to Countrywide at all times relevant to this case. R. Vol. 2. p. 334-344.

j. BofA refused to produce a single email, memo to file or other writing of any kind produced or received by Paul Campbell between April 28, 2009 and October 23, 2009, relating to the 2009 Refinancing. To claim that the loan officer assigned to the 2009 Refinancing worked on said transaction for over 5-1/2 months without creating any written paper trail was patently uncredible.

h. BofA refused to produce a single document (other than a Substitution of Trustee and the Full Reconveyance), email, memo to file or other writing of any kind produced or received by Jewel Elsmere, the employee of Recon Trust Company, N.A. who executed the Full Conveyance, which documents would explain the circumstances surrounding the execution and recording of said instrument.

i. BofA admitted in discovery that as of October 2012, Paul Campbell was still an employee, but failed to submit any affidavit from Mr. Campbell that refuted any of the claims or allegations made by Sheets as to the actions of Mr. Campbell. R. Vol. 2. p. 352.

j. BofA admitted in discovery that as of October 2012, Mona Lavario was still an employee, but failed to submit any affidavit or document from her that refuted any of the claims or allegations made in the Affidavits of Sheets and Sheets' prior counsel, Jonathan D. Hallin, as to her actions or lack thereof in the aftermath of the failed 2009 Refinancing. R. Vol. 2. p. 353.

k. BofA admitted in discovery that it was unable to identify the employee who requested the replacement of Timberline Title and Escrow, Inc., the original trustee under the 2004 Deed of Trust, with Recon Trust Company, a wholly owned subsidiary of BofA. R. Vol. 2. p. 355.

l. BofA was unable to identify the employee who requested or authorized the execution and recording of the Full Reconveyance that BofA sought to rescind. R. Vol. 2. p. 254.

m. BofA refused in discovery responses to confirm or deny whether there were any outstanding conditions to the closing of the 2009 Refinancing as of October 27, 2009, but produced documents evidencing that no such conditions existed. R. Vol. 2. p. 356 and R. Vol. 2. p. 368.

n. BofA refused to identify the person or department who was responsible for selecting a closing agent for the failed 2009 Refinancing. R. Vol. 2. p. 357.

o. BofA refused in discovery to identify the closing agent who was assigned to close the 2009 Refinancing. R. Vol. 2. p. 357-358.

p. BofA admitted that it could not produce any documentation or written explanation as to why the 2009 Refinancing did not close. R. Vol. 2. p. 354.

q. BofA admitted that it could not produce any documentation or written explanation as to why the Full Reconveyance was executed and recorded. R. Vol. 2. p. 356.

r. BofA failed to support its motions for summary judgment with affidavits of any persons who actually had a direct connection with the underlying events of this case, even though said persons were listed a potential witnesses. R. Vol. 2. p. 328-329.

Disputed Issues of Fact or Law

In order for BofA to prevail on its motions for summary judgment, it bore the burden of establishing the absence of any genuine dispute as to any material fact or issue, and was further required to show that it was entitled to judgment as a matter of law. BofA's motions, affidavits and supporting documentation failed to establish that either of those thresholds had been met. In the absence of such a showing by the movant, Sheets, as the non-moving party did not have any affirmative duty to establish its case as part of the summary judgment proceedings. Rather, under prevailing Idaho case law the motion is simply to be denied. *Indian Springs LLC v. Indian Springs Land Inv., LLC*, 147 Idaho 737, 746, 215 P.3d 457, 466 (2009) (citing *Cafferty v. Dep't of Transp., Div. of Motor Vehicle Servs.,* 144 Idaho 324, 327, 160 P.3d 763, 766 (2007)).

In the present case, the pleadings, discovery responses (or lack thereof) and other actions taken by BofA during the course of this dispute clearly established material and disputed issues of fact and law sufficient to defeat the summary judgment motions. These disputed issues included, but were not limited to:

1. Was there an enforceable agreement to loan money between BofA and Sheets as relates to the 2009 Refinancing? Pursuant to the terms of I.C. 9-505, a written commitment to lend money is an enforceable agreement. BofA committed in writing to loan Sheets the sum of $87,750.00, by approving and scheduling a closing for the 2009 Refinancing after review of the underlying application documentation. BofA further evidenced said approval by preparing and delivering proposed closing documents to Sheets and to an unknown closing agent selected by the bank. R. Vol. 2. p. 247-248. BofA further provided written documentation during the course of discovery in this matter confirming that all outstanding conditions for closing of the 2009 Refinancing had been met. R. Vol. 2. p. 368. These actions constituted confirmation of a commitment to lend money, and thus constituted an enforceable contract. Further, documents were produced showing that the loan was approved and cleared for closing R. Vol. 2. p. 369. Defendant Sheets showed up for closing, but according to his sworn affidavit was not allowed to close by the closing agent that the bank refused to identify. R. Vol. 2. p. 247-248. If the failure of the 2009 Refinancing to close was solely the fault of the bank, then that is a breach of contract. The Idaho Supreme Court has addressed whether the conduct of the parties may be examined in order to determine whether an enforceable agreement to loan money exists. In *Bajrektarevic v. Lighthouse Home Loans, Inc.*, 155 P.3d 691, 143 Idaho 890 (Idaho 2007), the Court looked to the conduct of the parties to determine that an enforceable agreement existed, and overturned a prior summary judgment in favor of the lender. The conduct of BofA clearly indicated an intention to close the loan, which Sheets reasonably relied upon.

2. If an enforceable agreement to lend money existed, was such agreement subject to specific enforcement? In *P.O. Ventures, Inc. v. Loucks Family Irrevocable Trust,* 144 Idaho 233, 237, 159 P.3d 870, 874 (2007) the Idaho Supreme Court stated:

> "Specific performance is an extraordinary remedy that can provide relief when legal remedies are inadequate. The inadequacy of remedies at law is presumed in an action for breach of a real estate purchase and sale agreement due to the perceived uniqueness of land. The decision to grant specific performance is a matter within the district court's discretion. When making its decision the court must balance the equities between the parties to determine whether specific performance is appropriate."

In order to be able to balance the equities in the present case, the district court should have ordered a trial in order to assure a full airing and understanding of the events that transpired between the parties. Further, given the background information that BofA was either unable or refused to disclose, the district court did not have adequate information to make said equitable determination in the context of a summary judgment motion.

3. Was BofA legally entitled to relief for a unilateral mistake? From the beginning of this case, BofA attempted to frame the failure of the 2009 Refinancing and the subsequent recording of the Full Reconveyance as a simple mistake, similar to a scrivener's error. However, given the fact that the bank presented no evidence that this was a mutual mistake, rather than a unilateral mistake which took place entirely without fault of the Sheets, there was a material issue at the time of the summary judgment hearing as to whether it was a legally excusable mistake, eligible for the equitable remedy of rescission. At the time of the summary judgment hearing, BofA was unable to cite any statute or on point case supporting its request for rescission. More importantly, it has been unable or unwilling to explain how the series of

mistakes took place. This raised the legitimate and material legal issue of whether an action for rescission that arises from the admittedly unilateral mistake qualifies for equitable relief at all, much less through the vehicle of summary judgment.

Idaho courts have generally viewed rescission as a potentially proper remedy where there is a mutual mistake, but have been unwilling to apply such remedy in cases of unilateral mistake not accompanied by fraud or deceit by the other party. The burden was on the BofA to establish by clear and convincing evidence facts supporting relief through rescission. BofA did not meet that burden. Not only was Sheets not a contributing factor to the mistake made by BofA in recording the Full Reconveyance, but they were in fact the victims of the string of institutional incompetence and dishonesty attributable solely to BofA. Sheets was entitled to the opportunity to present and prove their allegations to finders of fact, and to have their claim for damages or specific performance addressed.

At the time of the summary judgment proceedings, BofA had had 3 years to find a case from any jurisdiction, state or federal, wherein a Court has granted relief by way of summary judgment for a unilateral mistake not accompanied by fraud or misconduct by the opposing party, but failed to do so. Thus there was a material issue of fact whether BofA was legally entitled to the relief it sought.

4. Was BofA entitled to relief for a result caused by its employees' own willfully dishonest misconduct or gross negligence? There was irrefutable evidence contained within the discovery documents provided by BofA that the series of events that culminated in the recording

of the Full Reconveyance had its origin in two documents executed by BofA employees approximately one week after the failed 2009 Refinancing.

a. A patently false and fraudulent document executed by BofA employee Gilbert Beltron, dated November 4, 2009 and entitled First & Fixed Rate Second Funding / Disbursement Authorization Checklist (hereinafter the "Disbursement Authorization Checklist" or "Beltron Document"). R. Vol. 2. p. 375-376. November 4, 2009 was a week after the failed 2009 Refinancing, for which it is undisputed that no closing documents were executed by Sheets. Regardless of that undisputed fact, Mr. Beltron certified that he had personally reviewed the non-existent closing documents, including the never executed 2009 note and deed of trust, and that all closing documents were properly executed, notarized and otherwise in order. Mr. Beltron then separately certified that based upon his document review, he authorized the funding of the loan and recording of the loan documents. He also certified that he personally contacted the closing agent for the subject loan (the closing agent that BofA refused to identify) for any additional background documents necessary to authorize funding of the loan.

Given that it was impossible that Mr. Beltron could have reviewed executed closing documents that all parties agree were never executed, this document was unquestionably false and fraudulent, and the legal significance of said document with regard to both Plaintiff's claim for relief and Sheets' counterclaims and affirmative defenses cannot be overstated.

b. At R. Vol. 2. p. 377-381. is a second document titled Conventional Loan Quality Job Aid: Refinance (hereinafter the "Loan Quality Checklist" or "Wigner Document") also dated November 4, 2009 and executed by BofA employee Kathryn Wigner and another

signatory whose signature is illegible. It also appears to be initialed by at least 3 different people. It also appears to be a post-closing checklist, the purpose of which was to confirm that all closing documents and other closing requirements had been met prior to loan funding (and prior to recording of the Full Reconveyance). According to this document, everything about the 2009 Refinancing was complete and accurate and funding was proper. However, given the undisputed fact that the 2009 Refinancing closing was never completed, this document was also indisputably false and fraudulent.

In its summary judgment pleadings and affidavits, BofA made no serious effort to explain or justify these documents. As a result, the unrefuted falsity of these documents called into serious question the veracity of all other documents produced by BofA in support of its claim for relief. It was strong and unrebutted evidence that BofA employees were willing to fabricate loan related paperwork, and it clearly established a material issue of fact and support for Sheets' defense of unclean hands, which by itself was sufficient to defeat the bank's summary judgment motions and possibly its entire claim.

5. Did the district court abuse its discretion in rejecting Sheets' unclean hands defense? The Beltron and Wigner Documents were clear evidence of unclean hands. Since the Complaint sounded solely in equity, it was subject to all applicable equitable defenses, including but not limited to the long established defense of unclean hands. The Idaho Supreme Court in the case of *Ada County Highway Dist. v. Total Success Investments, LLC*, 179 P.3d 323, 145 Idaho 360 (Idaho 2008) set forth the general concept of unclean hands as relates to actions in equity as follows:

The clean hands doctrine "stands for the proposition that 'a litigant may be denied relief by a court of equity on the ground that his conduct has been inequitable, unfair and dishonest, or fraudulent and deceitful as to the controversy in issue.'" *Gilbert v. Nampa Sch. Dist. No. 131,* 104 Idaho 137, 145, 657 P.2d 1, 9 (1983) (citing 27 Am. Jur. 2d Equity § 136 (1996)).

[E]quity will consider the conduct of the adversary, the requirements of public policy, and the relation of the misconduct to the subject matter of the suit and to [the] defendant. *Id.* at 145-46, 657 P.2d at 9-10 (internal quotations and citations omitted).

Additionally this Court has previously stated:

"In determining if [the clean hands] doctrine applies a court has discretion to evaluate the relative conduct of both parties and to determine whether the conduct of the party seeking an equitable remedy should, in the light of all the circumstances, preclude such relief. A trial court's decision to afford relief based on the unclean hands doctrine, or to reject its application, will not be overturned on appeal absent a demonstration that the lower court abused its discretion." *Sword v. Sweet,* 140 Idaho 242, 251, 92 P.3d 492, 501 (2004) (internal citations omitted).

While the *Sword* case notes that the unclean hands doctrine "is not favored and is to be applied with reluctance and scrutiny" the doctrine remains in place, and the discretion of the trial court to apply or disregard the doctrine is not unlimited. The district court's refusal to apply the doctrine to the obviously dishonest and fraudulent actions reflected by the Beltron and Wigner Documents constituted an abuse of that discretion.

6. Did the Beltron and Wigner Documents prevent BoA from meeting its burden of proof for summary judgment? In light of the obvious falsity of the Beltron and Wigner Documents, together with the fact that neither document could have resulted from either an innocent or merely negligent mistake, the relevant question for the district court became whether BoA had met its burden of proof required for summary judgment, not whether Sheets would ultimately prevail at trial. The clear answer was that BoA had not met that burden. Since the

Beltron and Wigner Documents had a direct nexus to the recording of the Full Reconveyance that BofA sought to rescind, the district court erred and abused its discretion in ruling that the summary judgment burden had been met. In addition, the failure of BoA to make any credible explanation justifying the execution of those documents called into serious question whether the bank could meet the clear and convincing evidence burden that is imposed upon claims for equitable relief, even if there was a full trial. BoA's claim for relief was indelibly stained by the falsity of those documents, which created an insurmountable obstacle to summary judgment.

On April 29, 2013 the district court issued its Findings of Fact, Conclusions of Law and Order on Plaintiff's Motions for Summary Judgment, wherein it granted summary relief in favor of BofA based upon the court's stated authority to grant declaratory relief pursuant to I.C. 10-1201. However, the court did not set forth any prior case law that such statute provided it the authority to exercise such authority in the absence of an express pleading requesting such relief. R. Vol 3, p. 419. BofA did not plead for declaratory relief in its Complaint, and did not raise the issue of declaratory relief until the filing of its summary judgment motions. It also offered no case authority that authorized the application of that statute in the absence of express pleading. Further, at the district court expressly states in its April 29th Order, "the true relief sought by BofA was rescission of the Deed of Reconveyance" R. Vol 3, p. 424. Given the court's acknowledgment that the relief sought by BofA was equitable relief based upon rescission, the district court's order did not contain any recitation of case authority that such equitable relief was not subject to the equitable defenses presented by Sheets. The court also referenced mutual mistake in its decision R. Vol. 3, p 419, even though there was no evidence in the record that

BofA's mistake was anything other than a unilateral mistake, caused by dishonest employees. In fact, the court included express language to point out that the need for rescission had be caused by BoA's "own conduct and mistakes", which occurred "through absolutely no fault of the Sheets". R. Vol 3, p. 425-426. Finally the court expressly required BofA to submit a written plan as to how it would fairly deal with Sheets moving forward as a prerequisite to entry of final judgment, the purpose of which was "so that the parties may be placed back in the position they were in as of the Sheets' last payment, October 30, 2009." R. Vol. 3, p. 425.

On June 25, 2013, BoA submitted a Notice Regarding Plan Moving Forward and proposed Final Judgment to the district court for approval. R. Vol. 3, p. 442-468. Sheets filed an Objection to Plaintiff's Notice Regarding Plan Moving Forward and Proposed Final Judgment, on the grounds that the proposed plan of the bank did not in fact put the parties back in the respective positions they occupied on October 30, 2009, but rather treated the 2004 Loan as if it had been fully in force during the pendency of the litigation. R. Vol. 3, p. 469-478. The matter was heard on September 9, 2013, at which time the Court requested submission of additional briefs by the parties.

On October 1, 2013, Sheets filed their Response to Court's Request for Legal Authority R. Vol. 3, p. 478-486, and on October 1, BofA filed its Plaintiff's Supplemental Brief in Support of Proposed Plan and Entry of Final Judgment. R. Vol. 3, p. 487-507. The district court did not schedule a hearing on these submissions.

On December 8, 2013, the Court entered its Order on Proposed Judgment and Plan of Implementation. R. Vol. 3, p. 508-519. Disturbingly, the Court refused to consider certain

arguments made by Sheets as to the court's April 29th ruling on the basis that the filing was not specifically titled as a motion for reconsideration. R. Vol 3, p. 509. This strict reading of Sheets' pleading was in stark contrast to the latitude the court had given BofA by implying a request for declaratory judgment in BofA's Complaint, where no express prayer for such relief was made. R. Vol. 1, p. 9-33. The court's Order on Proposed Judgment also erroneously states that such prayer was contained within BofA's Complaint, when in fact it was not plead until the summary judgment phase of the proceedings. R. Vol. 3, p. 510. Finally, the court acknowledges that the error that precipitated the filing of suit by BofA was in fact a unilateral mistake, but did not state any authority providing for relief from said mistake. R. Vol 3. p. 510.

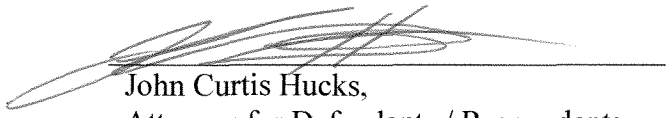
Conclusion

In its April 29th Order, the district court cited the case of *Edwards vs. Conchemco Inc.*, 111 Idaho 851 (Ct. App. 1986) for the principal that in order "to withstand a motion for summary judgment, the non-moving party's case must be anchored in something more than mere speculation. A mere scintilla is not enough to create a genuine issue. R. Vol. 3, p. 417-18. If that is minimum standard, then the pleadings, discovery and affidavits presented by Sheets in opposition to summary judgment in this case far exceeded that threshold.

As previously discussed above, under the de novo standard of review, no deference or presumption of correctness is to be afforded the decision of the district court. Given the voluminous case record, together with the district court's own acknowledgement that the erroneous recording of the Full Reconveyance and the lawsuit that followed was precipitated solely by the unilateral mistake of BofA, combined with the fact that the BofA refused during the

course of litigation to either disclose the full background facts, or to work with Sheets to provide them the loan refinancing for which they clearly qualified, the Court should have denied summary judgment and required a trial, whereby all parties would have had a full opportunity to present and defend their respective claims. Requiring BofA to bring the employees directly responsible for the failed 2009 Refinancing and the debacle that followed out of the shadows and into court to explain their actions would in all likelihood have resulted in a fair and equitable settlement of this case before such trial occurred. Accordingly, Sheets respectfully requests that this Court reverse the decision of the district court and remand this matter for the setting of trial.

DATED this 22nd day of October, 2014.



John Curtis Hucks,
Attorney for Defendants / Respondents

Appendix "A" – Timeline of History of Dispute

December 2004:	Sheets obtains residential loan from Countrywide Home Loans, Inc., d/b/a America's Wholesale Lender in the original amount of $65,250 (the "2004 Loan"). R. Vol. 1, p. 14-33.
Fall 2008:	Countrywide Home Loans solicits Sheets to apply for refinancing of the "2004 Loan". R. Vol. p. 254.
April 2009:	BoA completes acquisition and merger with Countrywide Home Loans.
April 2009:	Sheets submits application for refinancing of 2004 Loan with BoA.
April- October 2009:	Processing of 2009 Refinancing application drags on for over 5 months, during which time loan officer for BoA (Paul Campbell) makes numerous representations to Sheets regarding the status and terms of said loan. Loan officer further advises Sheets that all telephone calls are being recorded and preserved. However, during discovery, BoA refuses to produce any documentation or verbal recordings from said period contradicting Sheets' version of events.
October 23, 2009.	Electronic entry produced by BoA shows loan closing scheduled for 10/27/2009. R. Vol. 2, p. 259.
October 27, 2009:	Ralph Sheets meets with mobile loan closer, who refuses to allow him to either see or sign 2009 Refinancing documents. R. Vol. 2, p. 247-248. Sheets, who is a professional truck driver returns home two days later and finds copies of 2009 Refinancing documents, which have been sent directly to him by BofA office in Utah. R. Vol. 2, p. 248, 262-263.
November 4, 2009:	BoA employees execute false and fraudulent documentation certifying that the 2009 Refinancing documents had been fully executed and authorizing funding of 2009 Refinancing loan. R. Vol. 2, p. 375-381.

November 9, 2009:	BofA, acting through its agent, MERS, records a Substitution of Trustee replacing Timberline Title and Escrow, Inc. with ReconTrust, a wholly owned subsidiary of BofA. R. Vol 2, p. 274.
November 9, 2009:	ReconTrust records a Full Reconveyance of the 2004 Deed of Trust, and falsely represents within said instrument that the underlying note had been surrendered for cancellation. R. Vol. 1, p. 33.
November 2009:	Sheets makes repeated telephone calls to BofA loan officer attempting to determine status of 2009 Refinancing transaction. R. Vol. 2, p. 248.
November 27, 2009:	Sheets attempts to make November 2009 payment on 2004 Loan. Payment is rejected. Sheets' online account summary reflects both the 2004 Loan and the 2009 Refinancing as open accounts. R. Vol. 2, p. 264.
December 2009.	Sheets again attempts to make monthly payment on 2004 Loan, but payment is rejected.
November 2009 to March 2010:	Sheets hires legal counsel (Jonathan Hallin) who attempts to resolve dispute surrounding 2009 Refinancing. Despite the appointment of a specific BoA employee (Mona Lavario) to resolve matter, no resolution reached. BofA employee advises counsel for Sheets by telephone on two separate occasions (3/3/10 and 3/8/10) not to make further payments on 2004 Loan until matter is cleared up. R. Vol. 2, p. 391.
January 2010.	BoA sends Notice of Intent to Accelerate on 2004 Loan, which threatens foreclosure of the Deed of Trust released of record by Full Reconveyance. R. Vol. 2, p. 288.
Early 2010;	BoA makes erroneous reports to credit agencies regarding status of 2004 Loan, alleging that payments under 2009 Loan are delinquent, even though bank rejected previous attempts by Sheets to make payments.
March 29, 2010	Counsel for BofA writes to Sheets demanding that Sheets execute a Stipulation for rescission of Full Reconveyance. R. Vol. 2, p. 305-308.

March 30, 2010:	One day after sending Stipulation, BofA files suit against Sheets seeking rescission of Full Reconveyance based on mistake. R. Vol. 1, p. 9-34.
May 25, 2010:	Despite fact that suit has been filed for rescission of Full Reconveyance, BoA sends notice to Sheets of intent to commence foreclosure on 2004 Loan. R. Vol. 2, p. 290-291.
December, 2011 to date:	During pendency of suit, BoA erroneously and repeatedly force-places hazard insurance on subject property, even though 2004 Loan documents did not include an escrow for taxes and insurance, and even though Sheets has kept insurance in place and real estate taxes paid throughout pendency of suit. R. Vol. 2, p. 292-297.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 22nd day of October 2014, I caused two true and correct copies of the foregoing document to be served by U.S Mail, postage prepaid to the following:

DERRICK J. O'NEILL
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ERIC P. ACCOMAZZO
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