

12-24-2015

# Eagle Equity Fund, LLC v. Titleone Corp Respondent's Brief 2 Dckt. 42850

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**IN THE SUPREME COURT OF THE STATE OF IDAHO**

EAGLE EQUITY FUND, LLC, an Idaho  
Limited Liability Company,

Plaintiff-Appellant,

v.

TITLEONE CORPORATION, an Idaho  
Corporation; DAS INVESTMENTS, LLC, an  
Idaho Limited Liability Company; and  
COREY BARTON HOMES, INC., an Idaho  
Corporation,

Defendants-Respondents,

and

FIDELITY NATIONAL TITLE COMPANY  
(*fka* Land America Transnation *aka*  
Transnation Title & Escrow, Inc.), a Delaware  
Corporation; CHICAGO TITLE INSURANCE  
COMPANY, a Nebraska or Florida  
Corporation (*fka* Ticor Title Insurance  
Company, a California Corporation); RBC  
REAL ESTATE FINANCE, INC.;  
ALLIANCE TITLE & ESCROW CORP., a  
Delaware Corporation and JOHN DOES III-X,  
unknown individuals and/or companies,

Defendants.

Supreme Court No. 42850-2015

Ada County District Court Case No.  
CV-OC-2013-10112

**BRIEF OF RESPONDENT  
COREY BARTON HOMES, INC.**

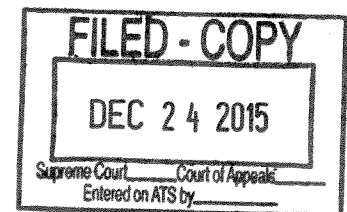
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APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL DISTRICT

HONORABLE JASON D. SCOTT, DISTRICT JUDGE, PRESIDING

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## I. STATEMENT OF THE CASE

This matter comes before the Court on appeal from the District Court's entry of summary judgment in favor of Defendant-Respondent Corey Barton Homes, Inc. ("CBH") dismissing all claims filed against it by Plaintiff-Appellant Eagle Equity Fund, LLC ("EEF"). Based on the dismissal of all claims asserted against CBH, the District Court denied EEF's motion to amend its Complaint to pursue a quiet title action against CBH. The District Court's decisions granting summary judgment in favor of CBH and denying EEF's motion to amend should be affirmed on appeal.

### A. Nature of the Case.

This case evolves from a loan transaction in November 2006 between EEF and Galiano, LLC ("Galiano") secured by real property located in Ada County, Idaho, which is commonly referred to as the Walnut Creek Subdivision ("Property"). Pursuant to an agreement between Galiano, EEF and RBC Centura Bank ("RBC"), EEF's interest in the Property was subordinated to a first position deed of trust held by RBC.

In February 2010, TitleOne Corporation ("TitleOne") executed and recorded a Reconveyance of Trust Deed for the EEF junior deed of trust ("Reconveyance"). EEF alleges TitleOne wrongfully recorded the Reconveyance, and has pursued various statutory and common law claims against TitleOne.

In May 2012, DAS Investments, LLC ("DAS") acquired title to several of the lots within the Property from Galiano. CBH subsequently purchased these lots from DAS under the terms and

conditions of a series of Purchase and Sale Agreements. Both DAS and CBH contend they did not have any notice of potential adverse claims by EEF at the time DAS acquired title to the portion of the Property purchased from Galiano in May 2012.

While the issues presented in the appeal by EEF primarily relate to its claims against TitleOne arising from the recordation of the Reconveyance, EEF also contends the District Court erroneously denied EEF's motion to amend its Complaint to allow EEF to commence a quiet title action against CBH and subsequent third party transferees. The District Court's orders and Judgment in this case with regard to the dismissal of the claims against CBH are fully supported by Idaho law and the undisputed facts presented in the record, and should, therefore, be affirmed.

**B. Proceedings Before the District Court.**

EEF does not present a separate description of the course of proceedings before the District Court. Pursuant to Idaho Appellate Rule 35(b)(3), CBH respectfully submits its statement of the proceedings as they relate to the claims made by EEF against CBH.

EEF initially filed its Complaint in this matter on June 5, 2013. R. at 21-68. EEF later amended its Complaint on December 10, 2013 to include DAS and CBH as defendants. R. at 568-586. EEF's First Amended Complaint included claims against CBH for: (1) fraudulent conveyance; (2) collusion to defraud; (3) unjust enrichment; and (4) tortious interference with economic advantage. *Id.* On February 10, 2014, EEF filed its Revised Second Amended Complaint, which included the same causes of action against CBH as the First Amended Complaint. R. at 980-997.



On May 20, 2014, the District Court issued its Memorandum Decision and Order Granting Defendant DAS Investments, LLC's Motion for Summary Judgment. R. at 2259-2270. On October 24, 2014, the District Court issued its Memorandum Decision and Order Granting Defendant Corey Barton Hones, Inc.'s Motion for Summary Judgment and Denying Plaintiff's Motion to Amend. R. at 3120-3136. On December 1, 2014, the Court entered Judgment, dismissing all claims brought by EEF. R. at 3222-3225.

Following entry of the Judgment, CBH sought an award of its attorney fees and costs. R. at 3267-3290. The District Court determined CBH was a prevailing party in its defense of EEF's claims, and awarded CBH \$15,356.00 for its attorney fees and costs. R. at 3822-3825. On February 23, 2015, the District Court issued its Amended Judgment, incorporating the awards of fees and costs to CBH and the other defendants. R. at 3842-3844.

EEF's appeal, as it relates to CBH, is taken from the issuance of the District Court's decision to deny EEF's motion to amend its Complaint. Since the District Court's denial of the motion to amend was based on the summary judgment orders granted in favor of CBH and DAS, EEF also takes issue with the District Court's determination that DAS and CBH are entitled to judgment as a matter of law against EEF.

**C. Statement of Facts.**

On November 17, 2006, EEF acquired an interest in the Property by way of a deed of trust securing Galiano's obligations under the terms and conditions of a promissory note in the amount of \$725,500.00. R. at 966-967, 1057. On November 17, 2006, Galiano also closed a loan transaction with RBC for \$6,063,300.00, secured by a deed of trust against the Property. R. at 1056. Galiano,

RBS and EEF entered into a Subordination Agreement, whereby EEF expressly agreed its interest in the Property was junior to the RBC deed of trust. R. at 1057.

On February 11, 2010, TitleOne executed and recorded the Reconveyance of the EEF deed of trust. R. at 655, 690-691. EEF did not receive notice of the Reconveyance recorded by TitleOne at the time it was filed. R. at 1058. EEF discovered the Reconveyance in March 2013. R. at 3810.

On May 7, 2012, CBH and DAS entered into multiple Purchase and Sale Agreements for the sale of forty-two (42) lots within the Property (“CBH Lots”). R. at 2764, 2769-2904. On May 8, 2012, DAS acquired title from Galiano to the CBH Lots described in the Purchase and Sale Agreements between DAS and CBH. R. at 1244, 1316-1327. DAS purchased the CBH Lots from Galiano without any actual knowledge of either the EEF deed of trust or a potential adverse claim by EEF to any portion of the Property. R. at 1245. At the time it acquired title to the CBH Lots, DAS also did not have any actual knowledge or notice of the Reconveyance recorded by TitleOne. R. at 1245. The title commitments and title insurance policies for the CBH Lots obtained by DAS prior to May 8, 2012 did not reference either the EEF deed of trust or Reconveyance. R. at 1276-1315.

CBH did not have actual knowledge or notice of any claim or interest in the Property by EEF when CBH entered into the Purchase and Sale Agreements with DAS on May 7, 2012. R. at 2765. CBH did not have actual knowledge or notice of any claim or interest in the Property by EEF when CBH acquired the first set of the CBH Lots from DAS on May 23, 2012. R. at 2765.

## **II. ADDITIONAL ISSUES PRESENTED ON APPEAL**

1. Whether the District Court properly determined that DAS did not have actual or constructive knowledge of an adverse claim by EEF to the portion of the Property DAS acquired from Galiano in May 2012.

2. Whether CBH is entitled to an award of attorney fees and costs on appeal.

## **III. ATTORNEY FEES AND COSTS ON APPEAL**

Pursuant to Idaho Rule of Civil Procedure 54 and Idaho Code §§ 12-120(3) and 12-121, CBH hereby respectfully requests an award of its reasonable attorney fees on appeal. CBH also requests and award of its costs on appeal, pursuant to Idaho Appellate Rule 40 and Idaho Code § 12-101.

## **IV. ARGUMENT**

EEF's appeal is primarily directed at TitleOne relating to potential liability imposed by TitleOne's recordation of the Reconveyance. In addition to its causes of action against TitleOne, EEF also seeks to claim an interest in the CBH Lots sold by DAS to CBH. EEF contends the District Court erred when it determined that the Reconveyance recorded by TitleOne in February 2010 extinguished any interest EEF had in the Property. EEF further contends the District Court should have held that DAS, and in turn CBH, had constructive knowledge or inquiry notice of an adverse claim by EEF in the CBH Lots. EEF's arguments disregard the overwhelming, undisputed facts which support the District Court's decisions. After correctly determining that EEF no longer had any interest in the Property and CBH acquired title free and clear of any adverse claim by EEF, the District Court appropriately denied EEF's motion to amend to assert a quiet title action against

CBH and subsequent transferees. For the reasons set forth below, the Court should affirm the District Court's Judgment and orders as they pertain to the dismissal of all claims against CBH and the denial of EEF's Motion to Amend.

**A. Standard of Review.**

EEF has appealed from the District Court's ruling denying EEF's motion to amend to pursue a quiet title action against CBH. EEF's appeal also challenges the District Court's decisions to grant summary judgment in favor of CBH and DAS.

When reviewing a district court's denial of a motion to amend a complaint to add an additional cause of action, an abuse of discretion standard applies. *Weitz v. Green*, 148 Idaho 851, 858, 230 P.3d 743, 750 (2010). "In reviewing whether the trial court committed an abuse of discretion, this Court considers: (1) whether the trial court correctly perceived the issue as one of discretion; (2) whether the trial court acted within the outer boundaries of its discretion and consistent with legal standards applicable to the specific choices available to it; and (3) whether the trial court reached its decision by an exercise of discretion." *Parkside Schools, Inc. v. Bronco Elite Arts & Athletics, LLC*, 145 Idaho 176, 178, 177 P.3d 390, 392 (2008).

Summary judgment is proper "if the pleadings, depositions and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." I.R.C.P. 56(c).

This Court reviews a motion for summary judgment pursuant to the same standards as the District Court. *Mackay v. Four Rivers Packing Co.*, 145 Idaho 408, 410, 179 P.3d 1064, 1066 (2008). "[A]ll reasonable inferences that can be drawn from the record are to be drawn in favor of

the non-moving party,” and disputed facts will be liberally construed in favor of the non-moving party. *Id.* The non-moving party may not rest on a mere scintilla of evidence. *ParkWest Homes, LLC v. Barnson*, 154 Idaho 678, 302 P.3d 18 (2013).

This Court exercises “free review over matters of statutory interpretation.” *Ferrell v. United Financial Cas. Co.*, 155 Idaho 85, 88, 305 P.3d 529, 532 (2013); *Farmers Nat’l Bank v. Green River Dairy, LLC*, 155 Idaho 853, 856, 318 P.3d 622, 625 (2014). “The interpretation of a statute ‘must begin with the literal words of the statute; those words must be given their plain, usual, and ordinary meaning; and the statute must be construed as a whole. If the statute is not ambiguous, this Court does not construe it, but simply follows the law as written.’” *Verska v. St. Alphonsus Reg’l. Med. Cntr.*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011).

**B. The District Court Correctly Determined the Reconveyance Recorded by TitleOne Extinguished Any Interest EEF May Have Had in the Property.**

Idaho Code § 45-1203(4) provides in pertinent part that a “reconveyance of a trust deed ... when recorded, shall constitute a reconveyance of the trust deed identified therein, irrespective of any deficiency in the reconveyance procedure not disclosed in the release or reconveyance that is recorded other than forgery of the title insurer or title agent’s signature.”

Pursuant to the plain language of Idaho Code § 45-1203(4), any interest EEF had in the Property under the junior deed of trust granted by Galiano in November 2006 was terminated when the Reconveyance was recorded on February 11, 2010. EEF’s recorded interest in the Property, therefore, was extinguished over two (2) years prior to CBH obtaining title to the CBH Lots from DAS. The Reconveyance unequivocally states it fully reconveys the EEF deed of trust. The

District Court determined the Reconveyance substantially complied with Idaho Code § 45-1203(4), and, therefore, terminated any lien interest EEF had in the Property. R. at 3061.

EEF has an adequate and exclusive statutory remedy for damages against the title insurer(s) or title agent(s) who purportedly violated Idaho Code §§ 45-1203 or 45-1204. Consequently, EEF does not have any right to claim an interest in any portion of the Property against DAS, CBH or subsequent transferees.

C. **The District Court Rightfully Held that DAS is a “Bona Fide Purchaser” of the CBH Lots.**

“A bona fide purchaser is one who takes real property by paying valuable consideration and in good faith, *i.e.*, without knowing of adverse claims.” *Sun Valley Land and Minerals, Inc. v. Burt*, 123 Idaho 862, 866, 853 P.2d 607, 611 (Ct. App. 1993); *See also* Idaho Code §§ 55-606 and 55-812. “When determining whether a party is a bona fide purchaser, the Court must look at what notice the party had before and up to the time the party recorded its interest.” *Sun Valley Hot Springs Ranch, Inc. v. Kelsey*, 131 Idaho 657, 661, 962 P.2d 1041, 1045 (1998).

DAS acquired title to the Property from Galiano in May 2012. R. at 1244. DAS paid good and valuable consideration for the Property, and did not have any notice of an adverse claim by EEF at the time the deed was recorded conveying title to DAS. R. at 1244-1245. DAS was also not on constructive notice of a claim by EEF because the chain of title establishes that EEF’s deed of trust was reconveyed to Galiano in 2010. Indeed, the title commitment and title policy obtained by DAS in the spring of 2012 make no mention of either the EEF deed of trust or

the Reconveyance. R. at 1276-1315. Consequently, DAS was a bona fide purchaser of the CBH Lots when its Warranty Deed was recorded on May 8, 2012.

“The primary purpose of the recording statutes is to give notice to others that an interest is claimed in real property.” *Kalange v. Rencher*, 136 Idaho 192, 196, 30 P.3d 970, 974 (2001). “One claiming title to lands is chargeable with notice of every matter affecting the estate, which appears on the face of any recorded deed forming an essential link in his chain of title, and also with notice of such matters as might be learned by inquiry which the recitals in such instruments made it a duty to pursue.” *Id.* (Internal citations omitted).

EEF cites the *Kalange* decision to support its general assertion that “facts as they appear in the Ada County records indicate that some kind of inquiry is necessary to discern what went wrong.” Appellant’s Brief, p. 24. EEF’s argument, however, ignores the holding in *Kalange* while also failing to articulate how the recordation of the Reconveyance by TitleOne charges either DAS or CBH with notice of any adverse claim by EEF.<sup>1</sup>

In *Kalange*, the secured party recorded a deed of trust on November 2, 1994, securing indebtedness in the amount of \$65,000.00 under the terms of a promissory note with the owner of the subject property. *Id.* at 193. The parties to the promissory note also entered into a separate agreement relating to the sale of the maker’s business, which included a contingent

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<sup>1</sup> EEF identifies partial reconveyances that were recorded after the Reconveyance was recorded by TitleOne on February 10, 2010, to argue that DAS and CBH should be charged with inquiry notice of a potential adverse claim. Appellant’s Brief, p. 24. The District Court noted in its decision that the partial reconveyances referenced by EEF were not for any of the CBH Lots. R. at 3127. Consequently, the partial reconveyances referenced by EEF are irrelevant since these instruments are completely unrelated to the lots acquired by CBH from DAS.

obligation to pay the secured party \$50,000.00 described in the agreement as an “alternative performance payment.” *Id.* The recorded deed of trust made no reference to the separate agreement or the contingent obligation referenced in the separate agreement. *Id.* The maker of the note subsequently borrowed money from a separate third party, and granted that lender a secured interest in the same property evidenced by a deed of trust recorded on November 21, 1995. *Id.* at 194. The debtor ultimately defaulted under its obligations to both secured parties, and a foreclosure of the subject property ensued. The holder of the senior deed of trust securing the \$65,000.00 promissory note asserted its secured interest included the \$50,000.00 contingent obligation referenced in the separate agreement with the debtor. The district court granted summary judgment in favor of the holder of the junior deed of trust, and specifically found the junior lienholder did not have constructive notice of the \$50,000.00 alternative performance payment. *Id.*

The Court affirmed the district court’s summary judgment order. With regard to the constructive notice argument proffered by the beneficiary under the senior deed of trust, the Court determined “[o]ne examining the record has no reason to believe the deed of trust is not what it purports to be, i.e., security for a debt in the amount of \$65,000.00. The only constructive notice that the recordation of the deed of trust could give then was the existence of the deed of trust and its lien upon the land described in the deed as security for the indebtedness of \$65,000.00 plus interest mentioned therein.” *Id.* at 196.

The *Kalange* decision does not remotely support EEF’s arguments. EEF contends that since TitleOne was not the trustee to the original deed of trust, DAS and CBH should be charged



with inquiry notice to determine whether TitleOne had authority to execute and record the Reconveyance. Appellant's Brief, pp. 24-25. EEF's argument ignores Idaho Code § 45-1202, which allows any title insurer or title agent to reconvey a deed of trust without being the original trustee of the deed of trust.

The District Court thoroughly analyzed and considered whether the form of the Reconveyance recorded by TitleOne charged third parties with constructive notice of a potential adverse claim by EEF, and concluded it did not. R. at 3127-3130. EEF has not offered any legitimate argument to reverse the District Court's analysis or decision on this issue.

**D. The District Court Correctly Applied the "Shelter Rule" Doctrine to Determine CBH Acquired Title from DAS Free and Clear of Any Adverse Claim by EEF.**

"The 'Shelter Rule' provides that one who is not a bona fide purchaser, but who takes an interest in property from a bona fide purchaser, may be sheltered in the latter's protection." *Sun Valley Land and Minerals, Inc. v. Burt*, 123 Idaho at 868. In reliance on California decisions construing the "Shelter Rule," the *Sun Valley Land* Court further held "a bona fide purchaser can transfer good title to a person who has notice of a prior adverse equity or right." *Id.* There are two exceptions to the rule: "(1) where the interest held by a bona fide purchaser was obtained from a grantor with notice of an outstanding interest in the property, and the property is reconveyed to the grantor; and (2) when the property is reconveyed from a bona fide purchaser to a person guilty of a violation of a trust or duty with respect to the property." *Id.*

CBH can rightfully claim that it did not have any notice of an adverse claim by EEF when CBH entered into the Purchase and Sale Agreements with DAS to purchase the Property in

May 2012, and is, therefore, a bona fide purchaser. The Court, however, does not need to determine whether CBH is a bona fide purchaser because the Shelter Rule, as articulated by the Court in the *Sun Valley Land* case, protects CBH from EEF's claims to any interest in the Property. EEF does not contest the District Court's application of the Shelter Rule to the case at bar, and would, therefore, appear to concede that if DAS is deemed a bona fide purchaser of the CBH Lots, then CBH took title free and clear of any adverse claim by EEF.

**E. The District Court Appropriately Exercised Its Discretion When It Determined EEF's Proposed Action to Quiet Title Would Be Futile.**

Idaho Rule of Civil Procedure 15(a) provides in pertinent part that, once a responsive pleading has been filed, a complaint may only be amended by "leave of court or by written consent of the adverse party; and leave shall be freely given when justice so requires." When determining whether an amended complaint should be allowed under Rule 15(a), the court may consider whether the new claims proposed to be inserted into the action by the amended complaint state a valid claim. *Black Canyon Racquetball Club, Inc. v. Idaho First Nat. Bank, N.A.*, 119 Idaho 171, 175, 804 P.2d 900, 904 (1991). "If the amended pleading does not set out a valid claim, or if the opposing party would be prejudiced by the delay in adding the new claim, or if the opposing party has an available defense such as a statute of limitations, it is not an abuse of discretion for the trial court to deny the motion to file the amended complaint." *Id.*

EEF's proposed amended complaint sought to assert a quiet title cause of action against CBH and all subsequent purchasers of the CBH Lots. EEF alleged its interest in the CBH Lots

was superior to CBH on the grounds that the Reconveyance was voidable and the EEF deed of trust was, therefore, enforceable against CBH and subsequent transferees.

The District Court rightfully denied EEF's motion to amend on the grounds the proposed quiet title claim against CBH is futile. The District Court already determined as a matter of law that DAS was a bona fide purchaser of the CBH Lots, and, therefore, applied the Shelter Rule to hold that CBH and all subsequent transferees took title to the CBH Lots free and clear of any interest EEF may have had by way of its "erstwhile deed of trust." R. at 3133. Since none of the exceptions to the Shelter Rule apply to the case at bar, the District Court correctly concluded EEF's new claim was invalid and could not provide any relief to EEF. The District Court properly exercised its discretion to deny EEF's motion to amend.

As set forth above, the Reconveyance terminated and extinguished any rights EEF may have had under its junior deed of trust. EEF's sole and exclusive remedy is limited to potential liability for the recordation of the Reconveyance. Since the form of the Reconveyance substantially complies with Idaho Code § 45-1203, any interest EEF had under its deed of trust was fully reconveyed. EEF has not, and cannot, cite to any authority to support the proposition that its junior deed of trust can be revived or deemed enforceable.

The District Court's order is further supported by the application of Idaho Code § 45-1205, which contains the sole and exclusive remedy for EEF for any damages caused by the alleged wrongful recordation of the Reconveyance by TitleOne.

There is nothing in the record to support EEF's argument that the District Court abused its discretion when it denied EEF's motion to amend. By all accounts, the District Court clearly

recognized the decision to deny EEF's motion as discretionary, and the District Court acted well within the boundaries of its discretion to deny the requested relief.

**F. CBH is Entitled to an Award of Its Reasonable Attorney Fees and Costs on Appeal.**

The District Court rightfully held that CBH was a prevailing party in its defense of EEF's claims. R. at 3822-3825. In the event this Court determines CBH is also the prevailing party in this appeal, CBH is entitled to its costs under Idaho Appellate Rule 40 and its reasonable attorney fees under Idaho Code §§ 12-120(3) and 12-121.

**1. CBH is entitled to attorney fees because this case is primarily a commercial transaction under Idaho Code § 12-120(3).**

Idaho Code § 12-120(3) mandates an award of attorney fees to the prevailing party in a civil action to recover on any "commercial transaction." The statute "requires that the court hearing any action arising out of a commercial transaction shall award a reasonable attorney fee to the prevailing party." *Farm Credit Bank v. Stevenson*, 125 Idaho 270, 275, 869 P.2d 1365, 1370 (1994). Commercial transactions are broadly defined to include "all transactions except for personal or household purposes." *De Groot v. Standley Trenching, Inc.*, 157 Idaho 557, 566, 338 P.3d 536, 546 (2014). Idaho Code § 12-120(3) "does not require that there be a contract between the parties before the statute is applied; the statute only requires that there be a commercial transaction." *In re Univ. Place/Idaho Water Ctr. Project*, 146 Idaho 527, 541, 199 P.3d 102, 116 (2008).

EEF's claims clearly arise from a commercial transaction, as that term is defined under Idaho law. EEF and Galiano entered into a commercial transaction for the development loan to improve the Property. EEF's junior deed of trust and claimed interest in the Property is related

to its business dealings with Galiano, and should, therefore, be deemed a commercial transaction for the purposes of applying Idaho Code § 12-120(3).

CBH purchased the CBH Lots from DAS as part of a commercial transaction. CBH entered into a series of Purchase and Sale Agreements with DAS, and performed under those contracts. The agreements between CBH and DAS were not for personal reasons, but were instead part of the regular and ordinary business of CBH to acquire lots for the construction and sale of residential homes to third parties.

Since the gravamen of this action arises from a series of commercial transactions, the Court should award reasonable attorney fees to CBH as the prevailing party on this appeal, pursuant to Idaho Code § 12-120(3).

**2. CBH is entitled to an award of its attorney fees on appeal under Idaho Code § 12-121 on the grounds EEF's appeal of the orders and Judgment dismissing CBH are frivolous.**

Idaho Code § 12-121 provides in pertinent part, “in any civil action, the judge may award reasonable attorney’s fees to the prevailing party or parties.” The amount of attorney’s fees to be awarded under Idaho Code § 12-121 is committed to the sound discretion of the trial court. *Lettunich v. Lettunich*, 141 Idaho 425, 435, 111 P.3d 110, 120 (2005). Idaho Code § 12-121 also allows the Court “to apportion and award reasonable attorney fees for claims that are brought or defended unreasonably, frivolously or without adequate foundation in fact or law.” *Bird-Sallaz v. Sallaz*, 157 Idaho 342, 347, 336 P.3d 275, 280 (2014). The Court may award attorney fees on appeal, if the appeal is made without a reasonable basis in fact or law, even if the appeal involves

a matter of first impression. *Arnold v. City of Stanley*, 158 Idaho 218, 224, 345 P.3d 1008, 1014 (2015).

EEF's appeal does not have any reasonable basis in fact or law. EEF is asking this Court to disregard the plain language of Idaho Code § 45-1203 regarding the effect of the recordation of the Reconveyance. EEF does not offer any valid legal argument as to how it can continue to claim any interest in the Property. The statute unequivocally provides that EEF's deed of trust is fully reconveyed upon the recording of a reconveyance of the deed of trust. The only exception to the legal effect of recording the Reconveyance is if there is a forgery of the title insurer or title agent. EEF has never claimed the Reconveyance recorded by TitleOne in February 2010 was forged. Consequently, EEF has no legal basis to bring this appeal to seek a reversal of the District Court's orders that EEF's interest in the Property was terminated when the Reconveyance was filed.

EEF also does not present any factual or legal basis to overturn the District Court's application of the Shelter Rule to dismiss CBH from the case. The District Court properly granted summary judgment in favor of DAS on the grounds it was a bona fide purchaser of the CBH Lots. In turn, the District Court determined the Shelter Rule allowed CBH to acquire title free and clear of any adverse claim of EEF. EEF's appeal does not raise any reasonable challenge to the District Court's findings or application of established law on these issues, and should, therefore, be deemed a frivolous appeal for the purpose of awarding attorney fees to CBH.

**V. CONCLUSION**

For the reasons set forth above, CBH respectfully requests that this Court affirm the orders and Judgment of the District Court as they pertain to the dismissal of EEF's claims against CBH. CBH further requests an award of its reasonable attorney fees and costs on appeal.

DATED this 24<sup>th</sup> day of December, 2015.

GREENER BURKE SHOEMAKER OBERRECHT P.A.


By:   
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David T. Krueck  
*Attorneys for Respondent  
Corey Barton Homes, Inc.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 24<sup>th</sup> day of December, 2015, I served two (2) true and correct copies of the foregoing by delivering the same to each of the following individuals by the method indicated below, addressed as follows:

David M. Fogg	<u>  X  </u>	U.S. Mail
Aaron J. Tribble	<u>  X  </u>	Facsimile
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Thomas E. Dvorak	<u>  X  </u>	U.S. Mail
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