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IN THE SUPREME COURT OF THE
STATE OF IDAHO

GENESIS GOLF BUILDERS, INC.,)
formerly known as National Golf)
Builders, Inc., a Nevada)
corporation,)
Plaintiff,)
v.)
PEND OREILLE BONNER DEVELOPMENT,)
LLC, a Nevada limited liability)
company; et al.)
Defendants.)
_____)
VALIANT IDAHO, LLC, an Idaho limited)
liability company,)
Third Party Plaintiff-Cross)
Claimant-Respondent,)
v.)
JV L.L.C., an Idaho limited)
liability company,)
Defendant-Third Party)
Plaintiff-Cross Defendant-)
Appellant.)
_____)

DOCKET NO. 44584-2016
(Bonner County
Case CV-2009-1810)
APPELLANT'S BRIEF

APPELLANT'S BRIEF

Appeal from the District Court of the First Judicial District of
the State of Idaho, in and for the County of Bonner

THE HONORABLE BARBARA BUCHANAN, DISTRICT JUDGE, PRESIDING

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STATEMENT OF THE CASE

I. NATURE OF THE CASE

This is a foreclosure and lien priority case involving real property in Bonner County, Idaho, known as The Idaho Club golf course and residential development (herein "Idaho Club"). The developer of the real property was Pend Oreille Bonner Development, LLC (herein "POBD"). POBD defaulted on several secured loans, including in favor of the Appellant JV L.L.C. (herein "JV"), and in favor of RE LOANS, MORTGAGE FUND '08, and PENSCO TRUST, which were subsequently assigned to Respondent VALIANT IDAHO, LLC (herein "VALIANT"). POBD also defaulted on other secured loans and on payment of material and labor lien claims. POBD also became delinquent on the Bonner County real property taxes.

This action commenced in 2010 as a lien foreclosure case. As the case proceeded the claims for the various defaults and interests were asserted.

As indicated, POBD failed to pay the real property taxes on the "Idaho Club" properties to Bonner County, Idaho. Bonner County issued itself a Tax Deed in 2014. JV L.L.C. effectuated a redemption of a portion of the "Idaho Club" real property. VALIANT IDAHO, LLC subsequently purportedly effectuated a redemption of another portion of the "Idaho Club" real property.

The issues in this appeal involve the relative priorities between JV L.L.C. and VALIANT IDAHO, LLC in the foreclosed upon "Idaho Club" real properties. The issues also involve the award of costs against JV and the imposition of I.R.C.P. 11 sanctions against JV and attorney Gary Finney.

II. COURSE OF THE PROCEEDINGS

This action was commenced by a materialman and labor lien claimant, Genesis Golf Builders, in 2010 against numerous lenders, materialman and labor lien claimants, and other encumbrancers and claimants against the "Idaho Club" real property. The course of proceedings relevant to the issues in this appeal follow.

On July 21, 2014, VALIANT was substituted in the place of RE LOANS in the action (R. Vol V p 667). On November 19, 2014, VALIANT was substituted in the place of PENSCO and MF '08 in the action (R. Vol X p 1168 & 1171). Thereafter extensive motion practice was had and a trial was conducted. Numerous interlocutory orders were entered and numerous judgments and decrees of foreclosure were entered and vacated, as follows.

On January 20, 2015, VALIANT filed its Valiant Idaho, LLC's Motion For Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated and its supporting pleadings (R. Vol XIV p 1720). On February 2, 2015, JV filed its JV L.L.C.'s Memorandum In Opposition To Valiant Idaho, LLC's Motion For Summary Judgment and supporting pleadings. On February 27, 2015, JV filed its JV L.L.C.'s Supplemental Memorandum In Opposition To Valiant Idaho, LLC's Motion For Summary Judgment (R. Vol XXII p 2505).

On April 14, 2015, the District Court entered its Memorandum Decision & Order Granting Valiant Idaho, LLC's Motion For Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated (R. Vol XXII p 2560).

On April 28, 2015, JV filed its JV, L.L.C.'s Motion To

Alter, Amend And To Reconsider The Court's Memorandum Decision And Order Filed 4/14/2015 And Request For Oral Argument Time/Date For A Hearing; Not Yet To Be Set (R. Vol XXII p 2579).

On May 20, 2015, VALIANT filed its Valiant Idaho, LLC's Motion For Entry Of Final Judgment (R. Vol XXII p 2600). On June 23, 2015, the District Court entered its Memorandum Decision And Order Granting Motion For Entry Of Final Judgment (R. Vol XXIV p 2791). On July 7, 2017, JV filed its JV L.L.C.'s Objection To Entry Of Final Judgment - As Drafted By Valiant and Request For A Hearing (R. Vol XXIV p 2847).

On July 21, 2015, the District Court entered its Memorandum Decision And Order re: 1) JV LLC, North Idaho Resorts, LLC and VP, Incorporated's Motions To Reconsider 2) Valiant's Request For Entry of proposed Final Judgment And Decree of Foreclosure And Sale (R. Vol XXIV p 2856).

On July 22, 2015, VALIANT filed its Valiant Idaho, LLC's Motion For An Order Of Sale Of Real Property and supporting pleadings (R. Vol XXV p 2880).

On July 30, 2015, JV filed its JV L.L.C.'s Motion To Alter, Amend, And Reconsider The Court's Memorandum Decision And Order Re: JV L.L.C.'s Motions To Reconsider, And JV L.L.C.'s Motion For Partial Summary Judgment For Affirmative Relief Concerning JV L.L.C.'s Redemption Deed And As To Valiant's Redemption Deed; And Request For Hearing.

On August 5, 2015, the Court entered its first Decree of Foreclosure (R. Vol XXVI p 3705) and its first Judgment (R. Vol XXVI p 3082).

On August 18, 2015, JV filed its Motion To Reconsider,

Alter, and Amend the Judgment (Rule 11(B) and Rule 52); And Request For Hearing (R. Vol. XXVI p 3095).

On August 19, 2015, VALIANT filed its Valiant Idaho, LLC's Motion To Amend Decree Of Foreclosure and supporting pleadings (R. Vol XXVII p 3240) and its Valiant Idaho, LLC's Motion To Alter, Amend, And/Or Reconsider The Order Of Sale Of Real Property and supporting pleadings (R. Vol XXVII p 3249).

On August 24, 2015, JV, VP, and NORTH IDAHO RESORTS filed a Stipulation For Settlement And For Judgment As Between Defendant V.P., Inc. And North Idaho Resorts And The Defendant JV, L.L.C. (R. Vol XXVIII p 3340). A proposed judgment was submitted in conformity therewith.

On August 26, 2015, JV filed its JV's Supplemental Motion To Alter, Amend, Set Aside The Judgment, Based On Valiant's Motions To Change The Order Of Sale And Change The Decree Of Foreclosure and supporting pleadings (R. Vol XXIX p 3386). On August 31, 2015, JV filed its JV's Reply To Valiant's Memorandum In Opposition TO JV's Motion filed on 07/21/15 and Motions To Strike (R. Vol XXIX p 3499).

On September 4, 2015, the District Court entered its Memorandum Decision And Order Granting In Part Reconsideration of the July 21, 2015, Memorandum Decision & Order (R. Vol XXX p 3527). On September 17, 2015, the District Court entered its Notice re: proposed Judgment (as Between Defendant V.P., Inc. and North Idaho Resorts and the Defendant JV, L.L.C.) (R. Vol XXX p 3545), its Order Vacating Decree Of Foreclosure Entered on August 5, 2015 (R. Vol XXX p 3549), and its Order Vacating Judgment Entered on August 5, 2015 (R. Vol XXX p 3552).

On September 25, 2015, VALIANT filed its Valiant Idaho, LLC's Third Motion For Summary Judgment and supporting pleadings (R. Vol XXX p 3623). On October 13, 2015, JV filed its JV, LLC's Objection and Memorandum In Opposition To Valiant Idaho, LLC's Third Motion For Summary Judgment and JV, LLC's Motion To Strike Valiant's Third Motion For Summary Judgment and Notice of Hearing for October 23, 2015 at 1:30 p.m. and supporting pleadings (R. Vol XXXII p 3748). On October 19, 2015, JV filed its JV, LLC's Response To Valiant's Motion To Strike Inadmissible Evidence (R. Vol XXXIII p 3884). On October 21, 2015, JV filed its JV L.L.C.'s Response To Valiant's Most Recent "Filings" and JV L.L.C.'s Objection Thereto (R. Vol XXXIII p 3972).

On October 30, 2015, the District Court entered its Memorandum Decision & Order re: Motions Heard on October 23, 2015 (R. Vol XXXIII p 4000).

On January 22, 2016, JV filed its JV L.L.C.'s Trial Memorandum (R. Vol XXXVI p 4316). Trial was held January 28 & 29, 2016 and March 16 & 17, 2016. On May 12, 2016, JV filed its JV L.L.C.'s Post Trial Memorandum and Argument (R. Vol XXXVII p 4489).

On May 27, 2016, the District Court entered its Memorandum Decision And Order (re: court trial held on January 28 and 29 and March 16 and 17, 2016) (R. Vol XXXVIII p 4589).

On June 22, 2016, the District Court entered its second Judgment (R. Vol XXXVIII p 4619) and its second Decree of Foreclosure (R. Vol XL p 4910). On July 14, 2016, the District Court entered its Order Vacating Judgment (R. Vol XLIII p 5266) and its Order Vacating Decree of Foreclosure entered on June 22,

2016 (R. Vol XLIII p 5268) .

On July 20, 2016, the District Court entered its last Decree of Foreclosure (R. Vol XLIV p 5317) and its last Judgment (R. Vol XLV p 5413) .

On August 2, 2016, JV filed its JV L.L.C.'s Motion To Alter, Amend and Reconsider re: 1. Memorandum Decision and Order 2. Judgment 3. Decree of Foreclosure 4. Order of Sale, and JV, LLC's Memorandum in Support And Request For Hearing (R. Vol XLV p 5521). On August 3, 2016, the District Court entered its Order Denying JV, L.L.C.'s Request For Oral Argument (R. Vol XLV p 5540) .

On August 16, 2016, the District Court entered its Memorandum Decision And Order Denying JV, LLC's and VP, Incorporated's Motions to Alter, Amend and Reconsider. (R. Vol XLVII p 5793) .

On August 22, 2016, the District Court entered its Memorandum Decision Order Awarding Costs And Attorneys' Fees To Valiant Idaho, LLC (R. Vol XLVIII p 5829) and its Judgment re: Costs and Attorneys' Fees (R. Vol XLVIII p 5844) .

On August 24, 2016, JV filed its JV L.L.C.'s Response, Objection and Opposition To Plaintiff's Motion For Sanctions (R. Vol XLVIII p 5847) and on August 25, 2016, filed its JV L.L.C.'s Correction to its Response, Objection and Opposition to Plaintiff's Motion for Sanctions.

On August 29, 2016, the District Court entered its Memorandum Decision Order Denying Valiant Idaho, LLC's Motion For Sanctions (R. Vol XLVIII p 5925) .

On September 20, 2016, JV filed its Notice of Appeal by JV

L.L.C. (R. Vol LI p 6137).

Several Writs of Execution were issued against JV and also against the Idaho Club real property. JV posted a cash bond, and on November 2, 2016, JV filed its JV, L.L.C.'s Motion and Application for Stay of Execution Upon Posting a Cash Deposit by JV L.L.C. (R. Vol LIX p 7311) and its JV L.L.C.'s Third Party Claim (Idaho Code § 11-203) (R. Vol LX p 7341). On November 3, 2016, VALIANT filed its Valiant Idaho, LLC's Motion for Sanctions Under I.C. § 12-123 and I.R.C.P. 11 (R. Vol LX p 7375).

On November 4, 2016, the District Court entered its Order Re: JV L.L.C.'s Third Party Claim And Motion For Stay of Execution (R. Vol LX p 7399) and on November 14, 2016, entered its Memorandum Decision And Order Granting Valiant Idaho, LLC's Motion For Sanctions (R. Vol LX p 7402).

On November 25, 2016, VALIANT filed its Valiant Idaho, LLC's Memorandum of Costs And Attorneys' Fees Against JV L.L.C. (R. Vol LX p 7438) and on December 2, 2016, JV filed its JV's Objection, And Motion To Disallow Valiant's Memorandum Of Attorney Costs and Fees (R. Vol LX p 7447).

On December 6, 2016, the District Court entered its Order Imposing Rule 11 Sanctions (R. Vol LX p 7458) and its Judgment re: Rule 11 Sanctions (R. Vol LX p 7462). JV subsequently posted a cash bond.

On January 13, 2017, JV filed its Amended Notice Of Appeal By JV L.L.C. I.A.R.17(m), Request For Additional Clerk's Transcripts, And Request For Additional Court Reporter's Transcript (R. Vol LXVI p 8235).

This appeal follows.

III. CONCISE STATEMENT OF FACTS

As it relates to the issues on appeal asserted by the Appellant JV, a concise statement of facts is as follows:

1. JV held a Mortgage recorded October 24, 1995 as Instrument No. 474746, records of Bonner County, Idaho against certain "Idaho Club" real property described therein (JV Defendant's Exhibit B) securing an indebtedness.

2. R.E. LOANS, LLC (herein "RE" or "RE LOANS") held a Mortgage recorded March 15, 2007 as Instrument Nos. 724829 and 724834, against certain "Idaho Club" real property described therein (VALIANT Plaintiff's Exhibit 1).

3. PENSCO TRUST CO., custodian fbo BARNEY NG (herein "PENSCO") held a Mortgage recorded August 6, 2008 as Instrument Nos. 756394, 756395, and 796396, against certain "Idaho Club" real property described therein (VALIANT Plaintiff's Exhibit 16).

4. MORTGAGE FUND '08 LLC (herein "MF" or "MF '08") held an All-Inclusive Mortgage recorded August 6, 2008 as Instrument Nos. 796397, 796398, and 396399, against certain "Idaho Club" real property described therein (VALIANT Plaintiff's Exhibit 18).

5. Certain subordinations were recorded regarding priority of the various mortgages.

6. On May 22, 2014, Bonner County issued and recorded a Tax Deed in favor of Bonner County as Instrument No. 859659 involving "Idaho Club" real property which was subject to the mortgages in favor of JV and/or, RE LOANS, PENSCO, and MF '08. Shortly after recording the Tax Deed, Bonner County instituted the process to sell the real property, to be sold at a public auction scheduled for July 9, 2014.

7. On July 2, 2014, JV gave the Bonner County Tax Collector a written Notice of Redemption (JV Defendant's Exhibit K) in order to redeem pursuant to Idaho Code § 63-1007 a portion of the "Idaho Club" real property subject to the Tax Deed, which was subject to JV's Mortgage recorded October 24, 1995. Pursuant to the redemption, JV paid \$140,999.86 to Bonner County.

8. On July 3, 2014, Bonner County issued a Redemption Deed to JV, which was recorded July 7, 2014 as Instrument No. 861430 and was subsequently re-recorded by Bonner County on August 22, 2014 as Instrument No. 863295 to "Correct Legal Descriptions" (JV Defendants Exhibit L).

9. On July 7, 2014, VALIANT IDAHO, LLC recorded an Assignment Of Mortgage Note And Redemption Right (herein "RE Assignment"), as Instrument No. 861388, from RE LOANS to VALIANT regarding the RE LOANS Mortgage (VALIANT Plaintiff's Exhibit 72).

10. The RE Assignment was executed purportedly by an Attorney-in-Fact. There was no recorded power of attorney in the recording records of Bonner County, nor any ever introduced into evidence.

11. Following a purported redemption by VALIANT on July 7, 2014, Bonner County issued a Redemption Deed to VALIANT as assignee of RE, which was recorded July 8, 2014 as Instrument No. 861460 and was subsequently re-recorded by Bonner County on August 22, 2014 as Instrument No. 863298 to "Correct Legal Descriptions" (VALIANT Plaintiff's Exhibit 73).

12. On July 9, 2014, VALIANT IDAHO, LLC recorded an Assignment Of Mortgage, Note & Security Agreement (herein "PENSCO Assignment"), as Instrument No. 861559, from PENSCO to VALIANT

regarding the PENSCO Mortgage (VALIANT Plaintiff's Exhibit 80).

13. On July 16, 2014, VALIANT IDAHO, LLC recorded an Assignment Of Mortgage, Note & Security Agreement (herein "MF '08 Assignment"), as Instrument No. 861843, from MF '08 to VALIANT regarding the MF '08 Mortgage (VALIANT Plaintiff's Exhibit 85).

14. VALIANT made no purported tax redemptions as assignee of PENSCO or MF '08.

ISSUES ON APPEAL

The Appellant JV's statement of the issues on appeal is as follows:

(a) Did the District Court err by not subrogating JV to Bonner County's right, title, claim and interest regarding the delinquent property taxes and the Tax Deed, based upon the Tax Deed, the redemption by JV and Redemption Deed in favor of JV?

(b) Did the District Court err in awarding costs to VALIANT against JV?

(c) Did the District Court err in awarding sanctions to VALIANT against JV and Gary Finney?

ARGUMENT ON APPEAL

I. STANDARD OF REVIEW

As set forth in Hardy v. McGill, 137 Idaho 280, 284-5 (2002), 148 Idaho 851, 857, 230 P.3d 743, 749 (2010), the applicable standard of review from the decision of the District Court is, as follows:

The issues in this case encompass two aspects of the proceedings in the district court. Several issues are raised with regard to the district court's grant of motions for summary judgment; others relate to the district court's findings and conclusions entered after a bench trial. With respect to appellate review of a district court's decision on a motion for summary judgment, this Court applies the same standard used by the district court when that court ruled upon the motion. Summary judgment must be granted when "the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." I.R.C.P. 56(c); see also Friel v. Boise City Housing Authority, 126 Idaho 484, 485, 887 P.2d 29, 30 (1994). On review, this Court liberally construes the record in the light most favorable to the party opposing the motion, drawing all reasonable inferences and conclusions in that party's favor. Construction Management Systems, Inc. v. Assurance Co. of America, 135 Idaho 680, 682, 23 P.3d 142, 144 (2001). However, if the evidence reveals no disputed issues of material fact, and only a question of law remains, this Court exercises free review. Hines v. Hines, 129 Idaho 847, 850, 934 P.2d 20, 23 (1997).

A different standard applies when we review the findings and conclusions reached by a trial court following a bench trial. We recently explained this standard in Conley v. Whittlesey, 133 Idaho 265, 269, 985 P.2d 1127, 1131 (1999):

Review of the lower court's decision is limited to ascertaining whether the evidence supports the findings of fact, and whether the findings of fact support the conclusions of law. A trial court's findings of fact in a court tried case will be liberally construed on appeal in favor of the judgment entered, in view of the trial court's role as trier of fact. It is the province of the district judge acting as trier of fact to weigh conflicting evidence and testimony and to judge the credibility of the witnesses. If the findings of fact are based on substantial evidence, even if the evidence is conflicting, they will not be overturned on appeal. However, we exercise free review over the lower court's

conclusions of law to determine whether the court correctly stated the applicable law, and whether the legal conclusions are sustained by the facts found. [Citations omitted.]

The reviewing Court defers to the District Court's findings of facts unless clearly erroneous. The reviewing Court exercises free review on the application of the law and free review of the District Court's conclusions of law.

II. THE DISTRICT COURT ERRED IN REGARDS TO THE TAX DEED REDEMPTION BY JV L.L.C. BY NOT SUBROGATING JV TO THE COUNTY'S INTEREST BY VESTING TITLE IN JV OR ALTERNATIVELY BY GIVING JV THE BENEFIT OF THE TAX LIEN SUPER PRIORITY

While this foreclosure and priority adjudication action was pending, certain real property vested in POBD, which was subject to the various encumbrances, including the encumbrance held by JV and/or including the encumbrances held by VALIANT's predecessors RE LOANS, MF '08, and PENSCO TRUST, was the subject of proceedings by Bonner County pursuant to Idaho Code § 63-1006 for the issuance of a Tax Deed based upon delinquent taxes for numerous years.

A tax deed was issued and recorded by Bonner County in favor of Bonner County on May 22, 2014 as Instrument No. 859659. Shortly after recording the Tax Deed, Bonner County instituted the process to sell the property at public auction to be held on July 9, 2014.

On July 2, 2014, JV gave the Bonner County Tax Collector a written Notice of Redemption (JV Defendant's Exhibit K) in order to redeem a portion of the real property subject to the Tax Deed pursuant to Idaho Code § 63-1007. The property redeemed was subject to JV's Mortgage recorded October 24, 1995. Pursuant to the redemption JV paid \$140,999.86 to Bonner County.

On July 2/3, 2014, Bonner County issued a Redemption Deed to JV, which was recorded July 7, 2014 as Instrument No. 861430 and was subsequently re-recorded by Bonner County on August 22, 2014 as Instrument No. 863295 (JV Defendants Exhibit L).

The District Court on April 14, 2015, entered its Memorandum Decision & Order Granting Valiant Idaho, LLC's Motion For Summary Judgment Against JV, L.L.C., North Idaho Resorts, LLC, and VP, Incorporated R. Vol XXII p 2560). The District Court set forth the holding in Hardy v. McGill, 137 Idaho 280, 286 (2002) and recited Idaho Code §§ 45-113, 45-114, and 45-105 and concluded that the redemption funds paid were to be simply added to the existing indebtedness with the redemptioner's existing priority. The facts of the case and the holding in Hardy v. McGill do not include any analysis of the provisions of Idaho Code §§ 45-113 or 45-114. The District Court did not analyze those provisions and did not take into account the distinguishing facts in this case compared to the facts in Hardy v. McGill.

A. The Effect Of The Tax Deed

Idaho Code § 63-1009, in effect at the time of the Tax Deed to JV in 2014, provided as follows:

63-1009. EFFECT OF TAX DEED AS CONVEYANCE. The deed conveys to the grantee the absolute title to the land described therein, free of all encumbrances except mortgages of record to the holders of which notice has not been sent as provided in section 63-1005, Idaho Code, any lien for property taxes which may have attached subsequently to the assessment and any lien for special assessments.

The plain language of the statute was affirmed by the Idaho Supreme Court in Regan v. Owen, 157 Idaho 758 (2014) and Regan v. Owen, 2017 Opinion No. 98 (September 8, 2017). By the Tax Deed,

Bonner County received absolute title, subject to the statutory right of redemption in favor of the record owner or parties in interest.

The Tax Deed was based upon the delinquency in the payment of real property taxes for which the County has a super first priority lien. Idaho Code § 63-1003(1) provides in relevant part (underline emphasis added), as follows:

63-1003. LIEN AND EFFECT OF DELINQUENCY.

(1) Any delinquency on real property taxes in accordance with the provisions of this title shall constitute a perpetual lien in favor of the county for all property taxes, late charges and interest on the property described and shall entitle the county to a tax deed for such property in the manner provided for in this title. Such delinquency entry shall further constitute prima facie evidence in any legal proceedings in which it may lawfully be used that the property described was subject to appraisal, assessment and taxation at the time the same was assessed, that said property was appraised, assessed and equalized according to law, that the property taxes levied on such property were levied according to law, that such taxes were not paid before the delinquency became effective, and that the property and taxes were entered upon the property roll.

Idaho Code § 63-1001 provides in relevant part, as follows:

63-1001. EFFECT OF DELINQUENCY - INTEREST RATE. To avoid delinquency, total payment must be made in full to the county tax collector by the due date. Any delinquency shall have the force and effect of a sale to the county tax collector as grantee in trust for the county of the property described. Any payment on a delinquency is, in effect, a partial redemption of the property from tax sale. Interest on a delinquency will be charged at one percent (1%) per month calculated from January 1 following the year the tax lien attached, provided however, that the interest shall not be charged on collection costs.

B. The Statutory Right of Redemption

Idaho Code § 63-1007, in effect on July 1, 2014 at the time of the redemption by JV, (underline emphasis added) provided as follows:

63-1007. REDEMPTION - EXPIRATION OF RIGHT.

(1) After the issuance of a tax deed, real property may be redeemed only by the record owner or owners, or party in interest, up to the time the county commissioners have entered into a contract of sale or the property has been transferred by county deed. In order to redeem real property, the record owner or owners, or party in interest, shall pay any delinquency including the late charges, accrued interest, and costs, including, but not limited to, title search and other professional fees. The property taxes accrued against such property subsequent to the issuance of a tax deed to the county shall be extended upon a valuation to be given by the assessor upon application of the tax collector. The property taxes shall be computed according to the authorized levies for the year or years to be extended, including the current calendar year which shall be calculated using the previous year's levies until the current levies are authorized.

(2) Should such payments be made, a redemption deed shall be issued by the county tax collector into the name of the redemptioner and the rights, title and interest acquired by the county shall cease and terminate; provided however, that such right of redemption shall expire fourteen (14) months from the date of issuance of a tax deed to the county, in the event the county commissioners have not extinguished the right of redemption by contract of sale or transfer by county deed during said redemption period. In the event a tax deed is issued and payment is not received within fourteen (14) months of the issuance of such tax deed, then said tax deed to the county is presumptive evidence of the regularity of all proceedings prior thereto and the fee simple title, after the issuance of said tax deed, rests in the county.

In addition, Idaho Code § 63-1010, in effect in 2014, provided as follows:

63-1010. DEEDS UPON REDEMPTION. In all cases where real property has been or may hereafter be sold for delinquency and a deed has been issued to the county therefor, and redemption has been made in the manner provided and in accordance with the provisions of section 63-1007, Idaho Code, the county tax collector, must issue a deed to the redemptioner; and upon the giving of such deed, such tax deed so issued to the county and the delinquency and tax sale upon which the same is based and all delinquencies and sales for prior year delinquencies shall become null and void, and all right, title and interest acquired by the county, under and by virtue of such tax deed, or tax sales, or delinquencies, shall cease and terminate.

In addition, regarding encumbrances and the right to redeem, Idaho Code §§ 45-113 and 45-114 (underline emphasis added)

provide, as follows:

45-113. RIGHT TO REDEEM FROM LIEN. Every person, having an interest in property subject to a lien, has a right to redeem it from the lien, at any time after the claim is due, and before his right of redemption is foreclosed.

45-114. RIGHTS OF JUNIOR LIENOR. One who has a lien inferior to another, upon the same property, has a right:

1. To redeem the property in the same manner as its owner might, from the superior lien; and,

2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby.

In addition to the right to redeem and the right to be subrogated, Idaho Code § 45-105 provides as follows:

45-105. SATISFACTION OF PRIOR LIEN. Where the holder of a special lien is compelled to satisfy a prior lien for his own protection, he may enforce payment of the amount so paid by him, as a part of the claim for which his own lien exists.

This provision provides "may" rather than "shall." This provision must be read in concert with Idaho Code §§ 45-113 and 45-114.

In applying the provisions of Idaho Code § 45-114, in favor of JV, who was a junior lienor based upon the priority of its Mortgage, it is important to clearly set forth what the statute means in subsection (2) by the words "to be subrogated." Black's Law Dictionary, Special Deluxe Fifth Edition, (1979), defines "Subrogation" in relevant part as follows:

The substitution of one person in the place of another with reference to a lawful claim, demand or right, so that he who is substituted succeeds to the rights of the other in relation to the debt or claim, and its rights, remedies, or securities.

Black's Law Dictionary, Special Deluxe Fifth Edition, (1979), defines "Subrogee" as follows:

A person who is subrogated; one who succeeds to the rights of another by subrogation.

The undisputed evidence is that JV, pursuant to its Mortgage, was a party in interest which held a recorded junior lien to the County's tax assessment and the issued tax deed, and that JV had rights to redeem pursuant to the statute. JV by the redemption was subrogated to the County's rights. This means that JV was substituted in the place of the County with reference to the County's claim, demand or right, and JV succeeds to the rights of the County in relation to the amount of taxes paid and the remedies and security of the County in the real property.

C. The Effect of the Redemption: JV is Subrogated To The County's Position, Whether Under A Title Theory or A Lien Theory

By the redemption and the Redemption Deed, pursuant to subrogation, JV either has absolute title to the real property redeemed (title theory), or has the County's lien first priority encumbrance (lien theory), as to the real property for which the tax redemption payment was made. Pursuant to Idaho Code § 45-114, JV is "One who has a lien inferior to another, upon the same property," and JV "has a right: 1. To redeem the property in the same manner as its owner might, from the superior lien; and, 2. To be subrogated to all the benefits of the superior lien, when necessary for the protection of his interests upon satisfying the claim secured thereby."

Idaho Code § 63-1007 and § 63-1010 each provide that upon the redemption payment being made, the County issues a redemption deed in the name of the redemptioner and that the County's rights cease and terminate because the taxes have been paid. Those provisions are silent as to the rights of the party that redeemed

and the results of the redemption.

It is logical that in the event the property owner redeems, the result of the redemption deed is to re-vest the real property in the property owner, subject to the prior existing encumbrances (except for the delinquent taxes, now paid). No additional statutory provisions are needed in that fact situation.

In this case, the property owner, POBD did not redeem. Rather, JV, the holder of a mortgage against the real party (and therefore a "party in interest") redeemed by paying \$140,999.86 on or about July 1, 2014. If JV was the only encumbrancer against the property (in addition to the County), priority would not matter, and simply applying Idaho Code § 45-105 and the holding in Hardy v. McGill, 127 Idaho 280 (2002) to add the redemption amount paid to the existing debt owed to JV would result in JV, by completing a foreclosure, being fully compensated to the extent allowed pursuant to law by recovery first against the real property and second pursuing any proper deficiency against the debtor. This is the result contemplated by Idaho Code § 45-105 and the holding relied upon by the District Court from Hardy v. McGill, 137 Idaho 280 (2002). This result does not apply to the circumstances in this case. The Court must apply the provisions of Idaho Code §§ 45-113 and 45-114 in favor of JV. The District Court failed to do so.

In this case, JV was not the only other encumbrancer against the real property, and as such, priority does matter. It was adjudicated that JV was not the only encumbrancer against the real property redeemed by JV. Also, it was adjudicated that JV did not have the remaining priority encumbrance, and rather was

an inferior encumbrancer behind the three encumbrances assigned to VALIANT.

Pursuant to Idaho Code §§ 45-113 and 45-114, it is clear that a junior lienor (an inferior non-priority encumbrancer) is subrogated to all the benefits of the superior lien that was satisfied, which is necessary to protect the inferior encumbrancer. Here, JV, whose encumbrance has been adjudicated to be inferior to VALIANT's assigned encumbrances, is subrogated to all the benefits of the County's superior tax lien. The benefits of the superior tax lien that existed at the time of redemption by JV was the vesting of the real property pursuant to Idaho Code §§ 63-1006 and 63-1009 with the absolute title to the land described therein. Idaho Code § 63-1007, provides for a redemption deed which "shall be issued by the county tax collector into the name of the redemptioner." The statute does not provide for a deed to be issued back into the name of the prior property owner.

Also, the Redemption Deed issued by the County provided that the County did "remit, release, and quit claim to JV, L.L.C., the redemptioner, ... all right, title, and interest acquired by Bonner County under and by virtue of any tax deed, tax sale, or delinquency entry on account of delinquent taxes for any of the years listed above" In addition to the statutory provisions for redemption, Bonner County actually conveyed its interest in the property to JV.

Idaho Code § 63-1007 provides that the right of redemption of the property owner or a party of interest expires fourteen (14) months from the date of issuance of a tax deed to the

County, unless extinguished by a contract of sale or transfer by the county deed during said redemption period. Here, the County transferred that right to JV. There was no other attempted redemption during the 14 months following the tax deed being recorded. Also, for comparison, see Idaho Code Title 11, Chapter 4 regarding redemptions for the sale of real property upon a judgment lien or mortgage foreclosure sale, which provides the process for redemption and subsequent redemptions.

Under the title theory, there being no subsequent redemption, JV, at the expiration of the 14 months following the issuance of the tax deed, had the benefit of the Idaho Code § 63-1009 effect of the tax deed and the redemption deed of conveying to JV the absolute title to the land described therein, free of all encumbrances. No other party of interest attempted to redeem during the 14 months, leaving title in JV.

Alternatively, under the lien theory, JV, as to the amount paid (\$140,999.86), has the first priority position provided by Idaho Code § 63-1003 and § 63-1009, together with interest as provided by Idaho Code § 63-1001 ("charged at one percent (1%) per month"). JV is entitled to foreclose the lien on the security (property redeemed) for this sum (redemption funds paid plus interest) with the first priority position, separate from the amount due it on its indebtedness secured by the adjudicated inferior position.

The District Court erred in its Memorandum Decision & Order Granting Valiant Idaho, LLC's Motion For Summary Judgment Against JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated, entered

April 14, 2015 (R. Vol XXII p 2560) giving VALIANT priority as to the assigned indebtednesses (from RE LOANS, MF '08, and PENSICO TRUST) over the redemption funds paid by JV, by only allowing JV to add these sums to the existing indebtedness with its existing priority, which was adjudicated to be in an inferior position. The District Court erred in its Memorandum Decision And Order re: 1) JV, LLC, North Idaho Resorts, LLC, and VP, Incorporated's Motions to Reconsider, 2) Valiant's Request for Entry of proposed Final Judgment and Decree of Foreclosure and Sale, entered July 21, 2015 (R. Vol XXIV p 2856) not reconsidering the subrogated interest of JV. The District Court erred in its Memorandum Decision And Order Granting In Part Reconsideration of the July 21, 2015 Memorandum Decision & Order, entered September 4, 2015 (R. Vol XXX p 3527) by not reconsidering the subrogated interest of JV. The District Court erred in the various decisions and orders set forth in the Course of Proceedings above by not subrogating JV to the interest of the Bonner County. These decisions are the basis for the District Court's last Judgment and its last Decree of Sale both entered July 20, 2016, which did not award JV relief on its subrogated rights to the interest of the County's super priority tax lien and deed, pursuant to the redemption funds paid and the Redemption Deed in favor of JV.

Throughout the case, JV, through successive motions and arguments, attempted to convince the District Court of the error in not subrogating JV to all the benefits of the superior County tax lien and Tax Deed and Redemption Deed, which was necessary for the protection of JV's interests upon paying the delinquent taxes in redemption. JV also took all steps

necessary to preserve its rights to be subrogated and to preserve the issue for appeal.

The relief requested is for the subrogated interest of JV to be given effect by reversing the District Court's findings and conclusion, and last entered judgment and last entered decree of foreclosure, and ordering one of the alternative reliefs sought, specifically either:

1. Under the title theory that JV, by the Redemption Deed and the passing of 14 months, holds fee simple absolute title free and clear of any of the interests held by VALIANT (and any other claimants) in the real estate redeemed; or,

2. Under the lien theory that JV holds the super first priority lien of the County for the amount of the taxes paid in redemption, and that JV is entitled to foreclose upon the same for the amount paid plus interest, with a first priority lien as compared to the interest acquired by VALIANT (and any other claimants) by the Sheriff's foreclosure sale process on the real property described in the Redemption Deed.

This relief effectuates the subrogated interests of JV to the County's interest by the Tax Deed and Redemption Deed process. This relief affords JV as an inferior lienor the protection provided for in the applicable statutes.

III. THE DISTRICT COURT ERRED IN AWARDING COSTS AGAINST JV

The District Court awarded only a portion of VALIANT's costs incurred in the foreclosure against POBD on the indebtedness foreclosed upon which is secured by real property. The District Court awarded and allocated to VALIANT against JV a portion

consisting of 0.375 of the "Costs As A Matter Of Right" in the sum of \$9,014.99 and "Discretionary Costs" in the sum of \$32,464.70, for a total sum \$41,479.69. Several of these costs are actually costs which should have awarded against POBD and added to the secured indebtedness foreclosed against the real property security. (R. Vol XLVIII p 5829 - 5846).

The costs of the foreclosure properly awarded should all be awarded against the indebtedness for foreclosure against the real property security. In addition, as to specific items, JV makes the following arguments:

JV should not be required to pay any portion of the Costs As A Matter of Right and the Discretionary Costs associated with the testimony of Barney Ng in the total sum of \$1,396.93. Mr. Barney Ng was the agent and/or beneficiary for RE, PENSCO, and MF '08. That cost should, if awardable, be allocated to the foreclosure of the debt against POBD and the real property security.

JV should not be required to pay any portion of the title premium for the litigation guarantee for the foreclosure action in the sum of \$20,705.00. JV was only one of the numerous defendants with claims against the real property that had to be identified and named to foreclose out the various interest. That cost, if awardable, is properly allocated to the foreclosure of the debt against POBD and the real property security. Awarding that cost 0.375 against JV as a personal judgment is not equitable.

JV should not be required to pay for travel expenses in the sum of \$5,815.42. VALIANT chose to use counsel from Boise, Idaho for a Bonner County case. The decision to use counsel in Boise is a decision for the foreclosing party, but is not so exceptional as

to be properly allocated against JV. As the District Court stated subsequent to the award of costs, in denying a motion by VALIANT for sanction, "The defendant's numerous motions for reconsideration and/or to alter and amend the judgment were undoubtedly cumulative and repetitive, and thus frustrating to Valiant. However, because these motions had the above-described (essentially, positive) impact on the adjudication of the case, this Court cannot [make an award pursuant to I.C. §§ 12-121 or 123]." (R. Vol XLVIII p. 5935). The travel costs should not be awarded against JV.

In addition, with a grant of the relief sought above regarding the Redemption Deed and JV's subrogated interest to the County's position, the prevailing party analysis would be substantially different.

The costs of the foreclosure should all be allocated to and added to the secured indebtedness of POBD and not against JV. The award against JV should be vacated. If any amount is properly awardable against JV, most of the items sought should be disallowed as against JV.

IV. THE DISTRICT COURT ERRED IN AWARDING SANCTIONS AGAINST JV AND ATTORNEY GARY FINNEY

The District Court found and concluded that sanctions were appropriate under I.R.C.P. 11 (2016) in regards to JV, L.L.C.'s Third Party Claim (R. Vol LX p 7402) because 1) the claim was not timely filed, 2) the claim set forth the same legal arguments previously rejected by the Court, and 3) the posting of a cash bond for the costs awarded against JV could not stay the

foreclosure sheriff's sale.


I.R.C.P. 11(c) (2) provides that a motion for sanctions "... must be served under Rule 5, but it must not be filed or be presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service...."

As shown of record, VALIANT dated its Valiant Idaho, LLC's Motion For Sanctions Under I.C. 12-123 and I.R.C.P. 11 on November 3, 2016 and also filed it the same date (R. Vol LX p 7375). The Court immediately took up the motion on November 4, 2016 (the next day) and entered its Order RE: JV L.L.C.'s Third Party Claim And Motion For Stay Of Execution on November 4, 2016 (R. Vol LX p 7399) which took under advisement possible sanctions under I.C. § 12-123 and I.R.C.P. 11. At no time was JV and/or attorney Gary Finney given the opportunity to withdraw or appropriately correct the challenged filing within 21 days. VALIANT failed to comply with I.R.C.P. 11(c) (2). The District Court abused its discretion on November 14, 2016 in awarding sanctions against JV and attorney Gary Finney contrary to I.R.C.P. 1(c) (2). The District Court failed to give JV and Gary Finney the opportunity to withdraw or appropriately correct the document. The sanctions should be vacated.

CONCLUSION

The Appellant JV is entitled to relief vacating the Judgment and the Decree of Foreclosure and remanding on the grounds set forth above. JV is entitled to be subrogated to the County's tax deed interest under either the title theory or the lien theory. JV is entitled to have the award of costs vacated and the costs disallowed. JV and Gary Finney are entitled to have the imposition of sanctions vacated.

RESPECTFULLY SUBMITTED this 14 day of November, 2017.



JOHN A. FINNEY
FINNEY FINNEY & FINNEY, P.A.
Attorney for Appellant JV

CERTIFICATE OF SERVICE

I hereby certify that on this 14 day of November, 2017, two (2) true and correct copies of the foregoing, were served by deposit in the U.S. Mail, postage prepaid, and were addressed to:

Richard L. Stacey
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& Stacey PLLC
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