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Bennett v. Bank of Eastern Oregon Appellant's Reply Brief Dckt. 47346

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Electronically Filed
2/25/2020 11:48 PM
Idaho Supreme Court
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IN THE SUPREME COURT OF THE STATE OF IDAHO

BRET W. BENNETT, an individual, and MARY E. BENNETT, an individual, Plaintiffs-Appellants, vs. BANK OF EASTERN OREGON, a national banking association, Defendant- Respondent	SUPREME COURT NO. 47346-2019 Case No. CV38-19-0402

APPELLANTS' REPLY BRIEF

Appeal from the District Court of the Third Judicial District of the State of Idaho,
in and for the County of Payette

Honorable Susan E. Wiebe, District Judge, Presiding

D. Blair Clark
Jeffrey P. Kaufman
LAW OFFICE of D. BLAIR CLARK, PC
1509 S. Tyrell Lane
Boise, ID 83706
Ph. 208.475.2050
Fax 208.475.2055
dbc@dbclarklaw.com
jeffrey@dbclarklaw.com
Clark ISB: 1367
Kaufman ISB: 8022
Attorneys for Plaintiff-Appellants

Tim Helfrich
Brian DiFonzo
YTURRI ROSE, LLP
PO Box "S"
Ontario, OR 97914
Ph. 541.889.5368
Fax 208.889.2432
thelfrich@yturrirose.com
bdifonze@yturrirose.com
Helfrich ISB: 3457
DiFonzo ISB: 7648
Attorneys for Defendant-Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

MATTERS ADDRESS IN THIS REPLY

In response to the matters discussed in Respondent's Brief, this Appellants' Reply Brief is filed to address:

A. Whether *Trusty v. Ray* should be overturned to the extent it conflicts with Idaho Code §§ 6-411 & 413.

B. Whether this is a frivolous appeal.

ARGUMENT

A. *Trusty v. Ray* should be overturned to the extent it conflicts with Idaho Code §§ 6-411 & 413.

Bank of Eastern Oregon ("BEO") argues that this Court's decision in *Trusty v. Ray*, 73 Idaho 232 (1952), requires that individuals bringing a cause of action pursuant to Idaho Code §§ 6-411 & 413 must prove that the underlying debt has been paid. However, there is no such requirement in Idaho Code § 6-411. Moreover, Idaho Code § 6-413 specifically states that proving payment of the underlying debt is not necessary. Thus, to the extent that *Trusty v. Ray* conflicts with the clear intent of the Idaho Legislature, it needs to be overturned.

1. Idaho Code §§ 6-411 & 413 are plain, clear, and unambiguous.

There is no dispute that Idaho Code §§ 6-411 & 413 are plain, clear, and unambiguous. Step one of statutory interpretation is to examine the statute's literal words. *State v. Burnight*, 132 Idaho 654, 659 (1999). "Where the language of a statute is plain and unambiguous, this Court must give effect to the statute as written, without engaging in statutory construction."

State v. Rhode, 133 Idaho 459, 462 (1999). "Courts are not at liberty to speculate upon the intentions of the legislature where the words are clear, and to construe an act upon their own notions of what ought to have been enacted." *Mr. Sutherland on Statutory Construction*, vol. 2, sec. 364 (quoted with approval, *Empire Copper Co. v. Henderson*, 15 Idaho 635, 639 (1908)). "We have recognized and applied the rule of construction that where a statute or constitutional provision is plain, clear, and unambiguous, it 'speaks for itself and must be given the interpretation the language clearly implies.'" *Moon v. Investment Bd.*, 97 Idaho 595, 596 (1976) (quoting *State v. Jonasson*, 78 Idaho 205, 210 (1956)). This Court has been steadfast in interpreting a clear and unambiguous statute as written.

> [W]e have never revised or voided an unambiguous statute on the ground that it is patently absurd or would produce absurd results when construed as written, and we do not have the authority to do so. 'The public policy of legislative enactments cannot be questioned by the courts and avoided simply because the courts might not agree with the public policy so announced.' *State v. Village of Garden City*, 74 Idaho 513, 525, (1953). Indeed, the contention that we could revise an unambiguous statute because we believed it was absurd or would produce absurd results is itself illogical. 'A statute is ambiguous where the language is capable of more than one reasonable construction.' *Porter v. Board of Trustees, Preston School Dist. No. 201*, 141 Idaho 11, 14, (2004). An unambiguous statute would have only one reasonable interpretation. An alternative interpretation that is unreasonable would not make it ambiguous. If the only reasonable interpretation were determined to have an absurd result, what other interpretation would be adopted? It would have to be an unreasonable one.

Verska v. St. Alphonsus Reg'l Med. Ctr, 151 Idaho 889, 896 (2011). Therefore, when the Idaho Legislature enacts a plain, clear, and unambiguous statute, a court interpreting such a statute must apply the law as it is written. However, that is not what happened in this case.

Instead the trial court held:

> And I agree with the defendant that Trusty versus Ray is not inconsistent with Idaho Codes 6-411 and 413. And they say the general rule is that a mortgagor or his successor in interest cannot quiet title against a mortgagee while the secured debt remains unpaid, although the statute of limitations has run against the right to foreclose the mortgage. And I mean, there's nothing in the statutes, Title Six, that bars the plaintiff from bringing a quiet title action. But it's clear that when a plaintiff is in the same position as the plaintiffs are in this case, they can't bring a quiet title action until the debt on the mortgage has been paid.

TR Vol I, p. 26, L.14:21. Despite the plain and clear language of the statute specifically removing the need to prove the satisfaction of the debt, the trial court nonetheless required the Bennetts to show proof that the debt has been satisfied.

2. Trusty v. Ray cannot co-exist with Idaho Code §§ 6-411 & 413 without conflict.

In 1952, this Court issued the *Trusty v. Ray* decision. Although issued after the enactment of Idaho Code §§ 6-411 & 413, the decision involved facts that occurred prior to the statutes' enactment and the decision did not address, or even mention, Idaho Code §§ 6-411 & 413. In that case, and relying upon its prior decision in *Gerken v. Davidson Grocery Co.*, 50 Idaho 315, (1931), this Court held that an individual in privity with a mortgagor could not quiet title against the mortgagee while the secured debt remains unpaid. In *Gerken*, this Court stated: "This principle has too often been applied to require lengthy citation of authority. 'He who seeks equity must do equity.' There is no more firmly established rule than that the liability to pay a mortgage debt rests upon the mortgaged land as well as upon the mortgagor." *Gerken*, 50 Idaho at 320-21. BEO cites several cases from this Court reiterating this rule, yet all such decisions

pre-date Idaho Code §§ 6-411 & 413. Further, even though there may be a lengthy citation of authority standing for that principle, there is no Idaho statute or constitutional provision mandating its application in quiet title actions. It's quite the opposite, actually. Idaho Code § 6-413 abrogated this common law 'he who seeks equity must do equity' rule and eliminated the requirement to show proof that the debt has been satisfied.

> [t]he party seeking to maintain such action shall be entitled to a decree quieting title to his lands against the lien of any such judgment or mortgage upon proof that the collection and enforcement of such judgment or mortgage is barred by the Statute of Limitations *and without the necessity of proving that any such judgment or the indebtedness secured by any such mortgage has been paid*.

Idaho Code § 6-413 (emphasis added). The statute is plain, clear and unambiguous and should be applied as it is written.

Trusty v. Ray cannot be reconciled with Idaho Code § 6-413 without writing additional words into the statute. The trial court admitted as much when it was asked to reconcile the two: "I think if it were a third party and there was somebody else's debt, there might be something to that, but this is their debt. And we've got case law that specifically says they can't bring a quiet title action with the debt." TR Vol I, p. 27, L. 18:22. Yet there is no such language limiting Idaho Code § 6-413 to third parties or somebody else's debt. To co-exist without a conflict is to write into the statute language that the legislature did not intend. "Doing so would simply constitute revising the statute, but [this Court does] not have the authority to do that. The legislative power is vested in the senate and house of representatives, Idaho Const. art. III, § 1,

not in this Court." *Verksa v. St. Alphonsus Reg'l Med. Ctr.*, 151 at 895. To the extent it is inconsistent with Idaho Code § 6-413, *Trusty v. Ray* must be overturned.

B. This Is Not a Frivolous Appeal.

Idaho Code §§ 6-411-413 are clear, plain, and unambiguous statutes the Bennetts are seeking to have enforced. That they seek to overturn or otherwise limit *Trusty v. Ray* in light of its conflict the clear language of said statutes is not frivolous. BEO cites several cases upholding *Trusty v. Ray*, but none of those cases are from an Idaho state court, but are decisions out of Federal district or bankruptcy courts, which do not have the power to overturn or otherwise limit *Trusty v. Ray*'s application. Simply put, the Bennetts are asking this Court enforce the clear, plain, and unambiguous Idaho statute as the Idaho Legislature wrote it.

CONCLUSION

For the foregoing reasons, the Bennetts respectfully request that the Court reverse the district court's order dismissing the case, remand with instructions to deny BEO's Motion to Dismiss, and award the Bennetts costs and fees on appeal pursuant to Idaho Code § 12-120(3).

DATED this 25th day of February, 2020

/s/ Jeffrey P. Kaufman
JEFFREY P. KAUFMAN,
Attorney for Plaintiffs-Appellants
Bret and Mary Bennett

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 25th day of February, 2020, I caused to be served a true copy of the foregoing APPELLANTS' REPLY BRIEF, by the method indicated below, and addressed to those parties marked served below

Served	Party	Counsel	Means of Service
X	Defendant-Respondent	Tim Helfrich, Brian DiFonzo YTURRI ROSE, LLP PO Box "S" Ontario, OR 97914	☐ U.S. Mail, Postage Paid ☐ Hand Delivered X iCourt efiling

/s/ Jeffrey P. Kaufman
Jeffrey P. Kaufman