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

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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 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

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STATEMENT OF THE CASE

A. Nature of Case

This case presents a question as to whether a property owner may quiet title against a stale and unenforceable deed of trust it granted to secure a loan. Plaintiffs-Appellants, Bret and Mary Bennett, sued Defendant-Respondent, Bank of Eastern Oregon (“BEO”), to quiet title to their real property situated in Payette County, Idaho. The first basis was the lapse of the statute of limitations, pursuant to Idaho Code § 5-214A within which the grantee could foreclose on the deed of trust. Second, on BEO’s violation of Idaho Code § 45-1503(1), Idaho’s One Action Rule. Lastly, the Bennetts also sought to quiet title with regards to a judgment BEO recorded in 2010 but has since expired due to the operation of Idaho Code § 10-1110.

B. Course of Proceedings

The Bennetts initiated the lawsuit on April 24, 2019 by filing a Complaint to Quiet Title. *Clerk’s Record (CR) 2, 5-36*. BEO’s counsel, Yturri Rose, LLP, filed a Notice of Appearance on May 31, 2019. *CR 2*. Shortly thereafter, on June 3rd, BEO filed its Motion to Dismiss pursuant to Idaho Rule of Civil Procedure 12(b)(6). *CR 2, 37-39*. The parties each filed pre-hearing memorandums asserting their positions. *CR 3, 40-56, 59-68, 69-80*. A hearing was then held on the motion on July 19, 2019. *CR 81-84*. At the hearing, the Court orally granted BEO’s motion to dismiss. *Id.* The Order and Judgment dismissing Plaintiff’s case were then entered on July 26, 2019. *CR 3, 90-92, 93*. The Bennetts then filed their Notice of Appeal on September 4, 2019. *CR 3, 86-89*. BEO did not cross appeal. *CR 2-4*.

C. Statement of Facts.

The district court disposed of this case upon BEO's motion to dismiss pursuant to Rule 12(b)(6) of the Idaho Rules of Civil Procedure. *CR 81-83*. As such, the facts are those as alleged in the Complaint and are not in dispute.

The Bennetts are residents of Payette, Idaho, living at the real property located at 303 S. Iowa Ave., Payette, Idaho (formally 301 S. Iowa Ave., Payette, Idaho); legally described as:

That portion of the West Half of the Southwest Quarter of the Southwest Quarter in Section 35, Township 9 North, Range 5 West of the Boise Meridian, Payette County, Idaho, described as follows:

Beginning at a point located 25 feet East and 718.3 feet North of the Southwest corner of said Section;
Thence East to the East side line of said West Half of the Southwest Quarter of the Southwest Quarter;
Thence North 261.2 feet;
Thence West to a point due North of the Point Of Beginning;
Thence South 261.2 feet to the Point Of Beginning,
EXCEPT the North 100 feet of the West 330 feet thereof

(hereinafter referred to as "The Residence"). *CR 5-6, Compl. ¶ 1*. The Bennetts are the fee simple owners of The Residence. *Id.*

In 2007, the Bennetts began operating Apache Motorsports, Inc. ("Apache Motorsports"), located at 2482 SW 4th Ave., Ontario, Oregon 97914, a motorsports retail and repair business. Apache Motorsports leased a building from Tomahawk Properties, LLC ("Tomahawk Properties"), a company also owned by the Bennetts. *CR 6, Compl. ¶ 5*. In 2008, Apache Motorsports and/or Tomahawk Properties acquired one or more business loans from BEO. *CR*

6-7, *Compl.* ¶ 6. The Bennetts personally guaranteed these loans. *Id.*

As part of the aforementioned financing package with BEO, the Bennetts either executed a \$100,000.00 promissory note (Loan No. 10576825) or personally guaranteed said obligation, and granted BEO a security interest, by way of deed of trust, in The Residence as collateral for said obligation. *CR 7, Compl.* ¶ 7; *CR 13-19*. The deed of trust was recorded with the Payette County Recorder's Office on April 11, 2008, as Instrument Number 352655. *CR 7, Compl.* ¶ 8; *CR 13*. The loan number for the promissory note secured by the deed of trust is identified on the deed of trust at the top of pages 2-6 as Loan No. 10576825. *CR 7, Compl.* ¶ 8; *CR 14-18*. The deed of trust expressly states that it was executed "in connection with a loan or other financial accommodations between [BEO] and Apache Motorsports, Inc.; and Tomahawk Properties, LLC." *CR 7, Compl.* ¶ 9; *CR 19*. Additionally, the deed of trust expressly states that its maturity date is May 5, 2009. *CR 7, Compl.* ¶ 10; *CR 18*.

At some point after the execution of the BEO loan documents, including Loan No. 10576825 and the deed of trust securing said loan, the Bennetts defaulted on said obligations. *CR 7, Compl.* ¶ 12. BEO thereafter brought an action against the Bennetts in Oregon state court and obtained judgment(s) against Plaintiffs. *CR 7, Compl.* ¶ 13. BEO then domesticated its Oregon state judgment(s) in Payette County, Idaho, in Case No. CV-2010-564. *CR 7, Compl.* ¶ 14, *CR 24-26*. The Abstract of Judgment filed in said case aggregates The Bennetts' obligations on four separate notes, one of which is for Loan No. 10576825 (though therein referred to as Note No. 10576825) for a principal sum of \$100,000.00 plus \$5,063.01 in interest and \$500.00 in

late fees for an aggregate balance of \$105,563.01 owed on said note. *CR 7-8, Compl. ¶ 14; CR 24-26.*

At no time prior to BEO domesticating its Oregon state judgment(s) in Payette County, did BEO exercise its rights under the deed of trust to foreclose on its lien interest in The Residence. *CR 8, Compl. ¶ 16.* At no time prior to BEO domesticating its Oregon state judgment(s) in Payette County, did BEO bring an action in Idaho in accordance with Idaho Code § 45-1503. *CR 8, Compl. ¶ 17.*

BEO recorded its Abstract of Judgment with the Payette County Recorder's Office on June 17, 2010 as Instrument No. 367053. *CR 8, Compl. ¶ 19; CR 24.* Pursuant to Idaho Code § 10-1110, BEO acquired a judgment lien in The Residence when it recorded its Abstract of Judgment with the Payette County Recorder's Office (hereinafter referred to as "BEO's Judgment Lien"). *CR 8, Compl. ¶ 20.* BEO never took any action to renew its Abstract of Judgment. *CR 9, Compl. ¶ 32.*

The Bennetts filed for chapter 7 bankruptcy relief on July 16, 2010 in the United States Bankruptcy Court for the District of Idaho; Case No. 10-02273-JDP. *CR 8-9, Compl. ¶ 21.* The Bankruptcy Court entered its Order Discharging Debtor on October 20, 2010. *CR 9, Compl. ¶ 22.*

BEO filed a proof of claim in the Bennetts' bankruptcy case. *CR 9, Compl. ¶ 23; CR 23.* Even though BEO was the beneficiary of the deed of trust and even had a judgment lien in The Residence, BEO asserted in the bankruptcy case that its claim for \$281,597.57 was completely

unsecured. *CR 9, Compl. ¶ 24; CR 24*. Based on BEO's unsecured claim, to which there were no objections, the bankruptcy estate disbursed to BEO \$4,658.38. *CR 9, Compl. ¶ 24; CR 31, 35*. The Bennetts' bankruptcy case closed on August 8, 2011. *CR 9, Compl. ¶ 26*.

Pursuant to Idaho Code §§ 5-214A, 45-1515, the time period in which BEO could foreclose on The Residence pursuant to its deed of trust expired no later than May 29, 2015.¹ *CR 9, Compl. ¶ 28*. At this present time, BEO has not, and refuses to, reconvey its beneficial interest in the deed of trust back to the Bennetts. *CR 9, Compl. ¶¶ 30 - 31*.

Pursuant to Idaho Code § 10-1111, BEO's Judgment Lien expired no later than July 8, 2016. *CR 10, Compl. ¶ 33*. BEO's Judgment Lien is therefore unenforceable. *CR 10, Compl. ¶ 34*. BEO recognizes that its Judgment Lien is expired by operation of law. *Reporter's Transcript (RT) p. 5, l. 3:5*. Yet still, BEO has not, and refuses to, release BEO's Judgment Lien. *CR 10, Compl. ¶¶ 35 - 36*.

BEO's deed of trust and its Judgment Lien cloud Plaintiffs' fee simple interest in The Residence and hinders their ability to alienate their interest in The Residence. *CR 10, Compl. ¶ 37*.

¹ That is computed by a period of five years since the deed of trust's stated maturity date of May 5, 2009, plus the 389 days that the 11 U.S.C. § 362(a) automatic stay prohibited BEO from taking any action to foreclose on The Residence. *CR 9, Compl. ¶¶ 26 - 28*.

ISSUED PRESENTED ON APPEAL

1. Whether a quiet title action, pursuant to Idaho Code § 6-412, may be maintained against a recorded judgment that is expired and unenforceable pursuant to Idaho Code § 10-1110.
2. Whether a quiet title action, pursuant to Idaho Code §§ 6-411 & 413 may be maintained by the grantor of a deed of trust against the grantee without proving that the obligation secured by such deed of trust has been paid.
3. Whether the domestication of a foreign judgment pursuant to Idaho's Enforcement of Foreign Judgments Act constitutes an "act or proceeding" excepted from Idaho's One Action Rule (I. C. § 45-1503(1)) in Idaho Code § 6-101(3), and if not, whether the remedy for such violation includes the waiver of the creditor's interest in the deed of trust that secured the obligation.

ATTORNEY'S FEES ON APPEAL

The Bennetts seek attorney fees on Appeal pursuant to Idaho Code 12-120(3) as the lien was granted to secure debt incurred during a commercial transaction. The Bennetts acquired the debt as part of the financing package for Apache Motorsports and/or Tomahawk Properties. *C.R. 19.*

ARGUMENT

1. The district court erred by holding that the Bennetts may not maintain an action under Idaho Code § 6-412 to quiet title against an expired judgment lien.

When BEO recorded its Abstract of Judgment, with the Payette County land record's office,

the judgment so recorded becomes a lien upon all real property of the judgment debtor in the county, not exempt from execution, owned by him at the time or acquired afterwards at any time prior to the expiration of the lien [...]. The lien resulting from recording of a judgment [...] continues five (5) years from the date of the judgment [.]

*Idaho Code § 10-1110.*²

BEO took no action to renew its judgment. BEO even recognizes that its judgment has expired. Its counsel conceded at the July 18th hearing: "First as kind of a preliminary matter, the judgment, I think it appears that everyone agrees the judgment is not an issue, that the judgment expired as a – by operation of law." *RT p. 4, l. 25: p. 5, l. 4*. There is no dispute that the BEO Judgment Lien has expired pursuant to Idaho Code § 10-1111 and is therefore unenforceable. The dispute then is whether the Bennetts are entitled to a judgment quieting title against an expired and unenforceable judgment lien that continues to cloud their interest in The Residence.

The Bennetts contend that pursuant to Idaho's codified law, they may bring an action to quiet title against an expired judgment.

² The statute has since been amended to extent the judgment's natural life to ten years instead of five. S.B. 1069, S.L. 2015, ch. 278, § 4. That change, however, did have retroactive applicability and applied to judgments entered on and after July 1, 2015. *Id. See also Smith v. Smith*, 164 Idaho 46, 50 n3 (2018).

QUIET TITLE ACTION — MAINTENANCE AGAINST JUDGMENT BARRED BY STATUTE OF LIMITATIONS. An action may be maintained to quiet title to lands against any judgment, the enforcement and collection of which is barred by the Statute of Limitations of the State of Idaho and which, except for the fact that its collection and enforcement is so barred by the Statute of Limitations, would constitute a lien upon said lands.

Idaho Code § 6-412. This allows a judgment debtor to maintain a cause of action to quiet title to any real property clouded by an expired and unenforceable judgment lien. It is an appropriate remedy when, as what happened in this case, the judgment holder refuses to release its expired judgment lien. The district court therefore erred in holding that because the judgment expired automatically by operation of law, the Bennetts do not have a cause of action under Idaho Code § 6-412. *RT p. 25, l. 2:8.*

The trial court's holding, in effect, denies the Bennetts standing to seek a declaratory judgment in this matter. In Idaho, a person interested in a contract whose rights are affected by a contract or statute may have determined any question of construction or validity arising under the contract or statute and obtain a declaration of rights, status, or other legal relations thereunder.

Idaho Code § 10-1202. A declaratory judgment can only be rendered in a case where an actual or justiciable controversy exists. *Wylie v. State*, 151 Idaho 26, 31 (2011). The controversy must be definite and concrete, touching the legal relations of the parties having adverse legal interests.

Id.

The right or status at issue 'may invoke either remedial or preventative relief; it may relate to a right that has either been breached or is only yet in dispute or a status undisturbed but threatened or endangered; but, in either or any event, it must involve actual and existing facts.'

Id. (citing *Harris v. Cassia County*, 106 Idaho 513, 516-17, 681 P.2d 988, 991-92 (1984)).

Here, in this case, there is an actual controversy. BEO's Judgment Lien has expired and is unenforceable, yet BEO refuses to release its lien to clear this cloud on the Bennett's interest in The Residence. *CR 10, Compl.* ¶¶ 36 & 37. BEO, by filing a motion to dismiss, has not denied those allegations. That BEO now concedes during the litigation that its Judgment Lien is expired and unenforceable, *RT p. 4, l. 25; p. 5, l. 4*, does not prevent the Bennetts from obtaining a judgment quieting title against BEO's Judgment Lien; especially when BEO refused to release the lien prior to the Bennetts initiating this suit.

2. The district court erred when it held the Bennetts may not quiet title against a stale and unenforceable deed of trust encumbering The Residence.

Idaho Code § 6-411 provides that

[a]n action may be maintained to quiet title to lands against any mortgage, the enforcement and collection of which is barred by the Statute of Limitations of the State of Idaho, and which, except for the fact that its collection and enforcement is so barred, would constitute a lien upon such lands.

Idaho Code § 6-411. Further, Idaho Code § 6-413 provides that

[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. These statutes apply readily to the present case³: the enforcement and collection of BEO's deed of trust is barred by the statute of limitations, per Idaho Code sections 45-1515 and 5-214A. Thus, the Bennetts are entitled to a decree quieting title to The Residence against BEO's trust deed. The district court's conclusion otherwise ignores this direct and applicable Idaho statutory law.

The court applied *Trusty v. Ray*, 73 Idaho 232 (1952), to conclude that the Bennetts cannot quiet title against a BEO's deed of trust because there is no evidence that debt was paid.

When announcing its decision, the district court stated:

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 p. 26, l. 14; p. 27, l. 2. The district court reconciled the differences between Idaho Code § 6-413 and the holding in *Trusty v. Ray*, by limiting the application to Idaho Code §§ 6-411 & 413 to third parties seeking to quiet title from someone else's debt, although no such limiting language is included in those statutes.

The district court made clear that it relied on *Trusty v. Ray*. *RT p. 26, l. 14:16; p. 27,*

³ While both sections specifically apply to "mortgages" (likely due to the fact that, at the time those statutes were passed, deeds of trust were not widely used as lien tools), the Idaho legislature has evidenced an intent to apply mortgage foreclosure statutes, in general, to foreclosure of deeds of trust. *See, e.g., Idaho Code section 45-1515*.

l.20: p. 28, l. 5. Although *Trusty v. Ray* was decided in 1952, it makes no reference to either § 6-411 or § 6-413, both of which were enacted in 1951 by H.B. 152 in the Idaho Legislature. 1951 Idaho Sess. Laws p. 272.⁴ It may be that no party called to the Court's attention those then newly enacted laws. The *Trusty v. Ray* opinion also does not refer to H.B. 152 or its legislative enactments, now codified at 6-411 through 6-413. Instead, the Court referred specifically to Idaho Code sections 55-817, 5-201, and 5-216. *Trusty*, 73 Idaho at 236-237. Thus, that case was decided on a different statutory scheme. Further, none of the various reported cases relying on *Trusty v. Ray* appear to recognize or cite sections 6-411 or 6-413.

Regardless of the specific reason that neither *Trusty* nor its progeny considered or applied these code sections, they are the law of the State of Idaho. “The legislative power is vested in the senate and house of representatives, Idaho Const. art. III, § 1, not in this Court.” *Verska v. St. Alphonsus Reg'l Med. Ctr.*, 151 Idaho 889, 895 (2011). “This Court does not have the authority to modify an unambiguous legislative enactment.” *Hoffer v. Shappard*, 160 Idaho 870, 884 (2016). “If the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect.” *Id.* (quoting *Idaho Youth Ranch, Inc. v. Ada Cnty. Bd. of Equalization*, 157 Idaho 180, 184-85 (2014)). *Hoffer* reaffirmed this fundamental approach to separation of powers and the limits of the judiciary:

⁴ The full title of the Act, which appeared in Chapter 117, was “An act providing that an action may be maintained to quiet title against a mortgage or a judgment, the collection and enforcement of which mortgage or judgment is barred by the statute of limitations of the state of Idaho without requiring proof that said judgment has been paid or that the amount secured by such mortgage has been paid; and declaring an emergency.”

We can conceive of no principles of law that are more plain or obvious than these: (1) it is the province of the Legislature to make and amend laws; and (2) this Court is without authority to amend laws enacted by the Legislature because we think them unwise. *See* Idaho Const. art. III, § 1 ('The legislative power of the state shall be vested in a senate and house of representatives. ...'); Idaho Const. art. II, § 1 ('no . . . collection of persons charged with the exercise of powers properly belong[ing] to one of these departments shall exercise any powers properly belong[ing] to either of the others. ...').

Id. at 885.

In 1951, the Idaho Legislature ratified and the Governor signed into law House Bill 152, enacting Idaho Code sections 6-411 through 6-413. These unambiguous statutes apply here. The statute of limitations has run on BEO's opportunity to foreclose the deed of trust, and the Bennetts are therefore entitled to a decree in their name quieting title of the property secured by the deed of trust. The Bennetts respectfully request this Court reverse the district court's judgment dismissing the case and remand with instruction to deny BEO's Motion to Dismiss.

3. In the event the Court prohibits the Bennetts from quieting title against BEO's deed of trust for failure to first satisfy the underlying obligation, the Bennetts should still be able to quiet title against BEO's deed of trust to due to BEO's failure to abide by Idaho Code §§ 45-1503, Idaho's One Action Rule.

Idaho's One Action Rule generally requires a creditor secured by a deed of trust to first seek recourse in the real property secured by such deed of trust (i.e., foreclose) before it seeks its *in personam* recourse against the debtor. *Idaho Code § 45 -1503(1)*. "The purposes of the one action rule are to prevent a secured creditor from enforcing its rights by seeking recourse to more than one remedy, such as by obtaining both a money judgment on the mortgage debt and by foreclosing on the mortgage, [...]." 55 Am.Jur. 2d *Mortgages* § 455 (2009).

There are some exceptions to Idaho’s One Action Rule that allow the creditor to skip the foreclosure step and seek *in personam* recourse against the debtor: when the beneficiary’s lien interest in the collateral is substantially valueless⁵ or not located in Idaho⁶, or when the underlying obligation is secured by collateral situated in Idaho and at least one other state.⁷ Idaho Code § 45-1503 also permits collections suits against the debtor so long as such suit also seeks the foreclosure of the deed of trust. *Idaho Code § 45-1503(1)(b)*. In addition to these exceptions, the statute also permits other certain acts or proceedings to without first requiring foreclosure or waiver of the creditor’s lien interest. *Idaho Code §§ 45-1503(1)(d), 6-101(3)*. But for those permitted in subparts (c) & (d), the acts or proceedings excepted by Idaho Code § 6-101(3) are not aimed to permit the *in personam* recovery from the debtor, but are aimed to protect or safeguard the creditor’s lien interest in the collateral or otherwise allow the creditor to seek an *in rem* recourse, other than foreclosure, permitted by the security agreement.

- i. The domestication of a foreign judgment is not an excepted act or proceeding identified in Idaho Code § 6-101(3).*

While there are several specific acts or proceedings excepted from Idaho’s One Action Rule, there is a catch all exception for all actions that do “not include the collection of the debt or enforcement of the obligation or realization of the collateral securing the debt or other

⁵ *Idaho Code § 45-1503(1)(c)*

⁶ *Idaho Code § 45-1503(1)(d), incorporating Idaho Code § 6-101(3)(c)*

⁷ *Idaho Code § 45-1503(1)(d), incorporating Idaho Code § 6-101(3)(d)*

obligation.” *Idaho Code § 6-101(3)(m)*. This general exception clarifies the purpose of Idaho’s One Action Rule and the exceptions to it: a creditor must first seek *in rem* recourse before looking to the *in personam* recourse, unless the creditor’s lien interest is substantially valueless.

It’s not surprising, then, that not listed as an exception to Idaho’s One Action Rule is the domestication of a foreign judgment in Idaho. While admittedly the domestication of a foreign judgment may not be a “new case,” it still is not an excepted act or proceeding identified in section § 6-101(3).⁸ The excepted acts or proceedings provided in section 6-101(3) are not limited to “new cases” or even “lawsuits,” but certain acts or proceedings that may take place in existing lawsuits, bankruptcy cases, or probate actions. For instance, while the filing of a proof of claim in a bankruptcy action is an excepted act or proceeding per section 6-101(3)(k), it is not a “new case” in any bankruptcy context, but simply an administrative act taken in an already existing case. Thus one need not file a “new case” to violate Idaho’s One Action Rule, but simply engage in an act or proceeding not identified as an exception to 6-101(3).

The domestication of a foreign judgment runs afoul of Idaho’s One Action Rule because it is not an act or proceeding specifically identified in Idaho Code 6-101(3); nor does it falls within the catch-all exception in section 6-101(3)(m). The domestication of a foreign judgment, for all intents and purposes, “includes the collection of the debt or enforcement of the obligation or realization of the collateral securing the debt” owed by the Bennetts.

⁸ “An EFJA filing does not involve initiating a new case.” *Grazer v. Jones*, 154 Idaho 58, 67 (2013).

- ii. *The remedy for BEO's violation of Idaho's One Action Rule is its waiver of its right to foreclose on the trust deed by advertisement and sale.*

Waiver of the creditor's interest in its trust deed is the proper remedy for when such creditor opts to domesticate its foreign judgment in Idaho without first foreclosing on its trust deed.

[W]hen a statute provides that there can be only one action for the recovery of any debt secured by mortgage, the bringing of an action and the obtaining of a judgment solely on the note are held to be a waiver of the right to sue to foreclose the mortgage securing it.

55 Am.Jur. 2d *Mortgages* § 463 (2009). Idaho has codified this waiver:

The trustee may foreclose a trust deed by advertisement and sale under this act if: [...] (4) No action, suit or proceeding has been instituted to recover the debt then remaining secured by the trust deed, or any part thereof, or if such action or proceeding has been instituted, the action or proceeding has been dismissed.

Idaho Code § 45-1505(4). This results in the same outcome had BEO asserted its lien interest in the collateral was substantially valueless when it domesticated its judgment in Idaho - which is what it asserted when it filed its proof of claim in the Bennetts' bankruptcy case.

When the creditor's lien interest is substantially valueless, *Idaho Code § 45-1503(1)(c)*, permits the creditor to bring an action against the grantor to enforce the obligation without first resorting to the security. *Idaho Code § 45-1503(1)(c)*. In such an event, if the court finds that the property is substantially valueless and enters judgment upon the obligation, the creditor is to reconvey its lien interest in the property to the debtor. *Idaho Code § 45-1503(3)*. This is the only exception in Idaho's One Action Rule that truly permits a creditor to proceed in Idaho with its *in*

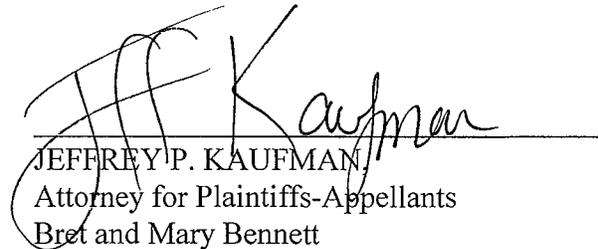
personam recourse against the debtor without first foreclosing on its trust deed. This Court is therefore asked to hold that when a creditor opts to domesticate a foreign judgment in Idaho, without first foreclosing on the collateral situated in Idaho, then the creditor waives its lien interest in the trust deed as if its interest in the trust deed is substantially valueless. Such a remedy fits within Idaho's statutory scheme and achieves the same purpose for which the Idaho Legislature enacted its One Action Rule.

The district court therefore erred when it failed to recognize BEO's violation of Idaho's One Action Rule and declined to rule that BEO waived its right to foreclose on its trust deed when it opted to domesticate its Oregon judgment in Idaho.

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).

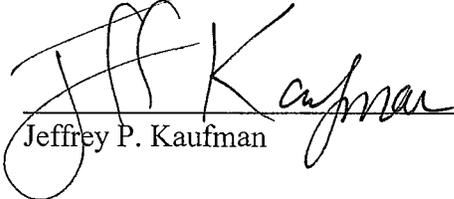
DATED this 24th day of December, 2019


JEFFREY P. KAUFMAN
Attorney for Plaintiffs-Appellants
Bret and Mary Bennett

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 24th day of December, 2019, I caused to be served two true copies of the foregoing APPELLANT'S BRIEF, by the method indicated below, and addressed to those parties marked served below

Served	Party	Counsel	Means of Service
<input checked="" type="checkbox"/>	Defendant-Respondent	Tim Helfrich, Brian DiFonzo YTURRI ROSE, LLP PO Box "S" Ontario, OR 97914	<input type="checkbox"/> U.S. Mail, Postage Paid <input type="checkbox"/> Hand Delivered <input type="checkbox"/> iCourt efileing



Jeffrey P. Kaufman