

**BOISE, WEDNESDAY, JUNE 10, 2020 AT 8:50 A.M.**

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

**JENNIFER PORCELLO,**

**Plaintiff-Counterdefendant-Respondent,**

**v.**

**The Estate of ANTHONY J. PORCELLO, the  
Estate of ANNIE C. PORCELLO, and  
KALYN M. PORCELLO, as Personal  
Representative,**

**Defendants-Counterclaimants-  
Appellants.**

**Docket No. 46443**

**The Estate of ANTHONY J. PORCELLO, the  
Estate of ANNIE C. PORCELLO, and  
KALYN M. PORCELLO, as Personal  
Representative,**

**Third Party Plaintiffs-Appellants,**

**v.**

**MARK PORCELLO,**

**Third Party Defendant-Respondent.**

Appeal from the District Court of the First Judicial District, State of Idaho,  
Kootenai County. Cynthia C.K. Meyer, District Judge.

W. Christopher Pooser, Stoel Rives LLP, Boise, for appellants Estates of Anthony  
J. Porcello and Annie & Kalyn Porcello, as personal representatives.

Terrance R. Harris, Ramsden Marfice Ealy & Harris, Coeur d'Alene, for  
respondent Jennifer Porcello.

Peter J. Smith IV, Smith + Malek, PLLC, Coeur d'Alene, for respondent Mark  
Porcello.

This is a case involving interpretation of a promissory note and a deed of trust for a parcel of real property. In mid-2014, Mark and Jennifer Porcello (who were husband and wife at the time) sought to purchase the subject property in Hayden Lake, Idaho; after paying earnest money, the amount the couple needed for its purchase was \$312,000. Mark and Jennifer could not qualify for a loan themselves, but anticipated the sale of another property in Woodinville, Washington, and hoped those proceeds would assist in their purchase. To help Mark and Jennifer in purchasing the Hayden Lake property, Mark's parents, Annie and Tony Porcello, took out a 90-day high-interest ("hard money") loan in the amount of \$648,500, with two properties (including the Woodinville property) used as collateral. In turn, Mark and Jennifer signed a promissory note and deed of trust for the Hayden Lake property, in the same amount as the loan. With the proceeds of the loan, Mark and Jennifer purchased the Hayden Lake property. Jennifer and her children continued to occupy the Hayden Lake property after Mark and Jennifer separated, and later divorced.

The Woodinville property did not sell as quickly as anticipated, and to cover the amount owing on the "hard money" loan, Annie and Tony took out two subsequent conventional loans secured by the same two properties, respectively, in mid-2015. One of these conventional loans was used to pay part of the "hard money" loan, and when the Woodinville property sold later in 2015 for \$690,000, the proceeds from the sale repaid the "hard money" loan entirely.

In 2016, Annie and Tony sought non-judicial foreclosure on the Hayden Lake property, claiming that the entire balance of the note was due and owing. At this time Jennifer occupied the Hayden Lake property with her children. Jennifer filed for a declaratory judgment and injunction, arguing that any obligation under the note had been satisfied in full when the Woodinville property sold, notwithstanding the existence of the note. Annie and Tony filed a counter-claim against Jennifer and a third-party complaint against Mark.

After an eight-day trial in April and May 2018, the district court granted Jennifer's request for a declaratory judgment. By this time, Annie and Tony had died and been substituted in the litigation by their estates. The district court also denied the estates' request for a judicial foreclosure, and dismissed the third-party claims against Mark. The district court held that the note and deed of trust were latently ambiguous because the amount of the note was more than twice the amount Mark and Jennifer needed in order to purchase the Hayden Lake property. Accordingly, the district court considered parol evidence to interpret the note and deed of trust as having the condition that when the Woodinville property sold, Mark and Jennifer would own the Hayden Lake property free and clear. Annie's and Tony's estates timely appealed.