

SUMMARY STATEMENT

Breckenridge v. Wally, Docket No. 48489 and 48703

This appeal arose regarding the legality of an auctioneer providing the terms of sale at the time of the nonjudicial foreclosure sale, including acceptable methods of payment, without providing earlier notice to potential bidders. Weinstein & Riley, P.S. (“W&R”) was the trustee for the property in foreclosure. W&R hired Gary’s Processing Service (“Gary’s”) to assist with the sale. Gary’s subcontracted with Wally Enterprises, Inc. (“Wally”) to hire an auctioneer and post notice of the sale on its website. Andrew Ashmore, agent for appellant Breckenridge Property Fund 2016, LLC, (“Breckenridge”) arrived at a foreclosure sale with endorsed checks to support Breckenridge’s bid. Jesse Thomas, agent for Cornerstone Properties, LLC, (“Cornerstone”) was also present. Before the auction, the auctioneer provided Ashmore and Thomas a packet of paperwork. The last page contained a requirement that endorsed checks would not be accepted as payment for a bid. Because Ashmore only had endorsed checks, the auctioneer gave Ashmore one hour to cure the payment defect, but the auction eventually proceeded with Ashmore unable to secure a different form of payment. As a result, the property sold to Cornerstone.

Breckenridge filed a complaint against Cornerstone, Wally, and W&R, alleging: (1) violations of Idaho Code section 45-1506; (2) estoppel; and (3) negligence/negligence per se, seeking mainly to void the sale to Cornerstone. Breckenridge also recorded a lis pendens against the property. The district court entered summary judgment for all defendants and quashed the lis pendens. The district court also awarded attorney fees to Cornerstone and Wally under Idaho Code section 12-120(3). Breckenridge timely appealed to this Court. The Idaho Supreme Court affirmed the district court’s decision dismissing Breckenridge’s claims against all defendants. The Court vacated the district court’s judgment awarding attorney fees to Wally and Cornerstone under Idaho Code section 12-120(3), concluding that no commercial transaction existed between Breckenridge and Wally or Breckenridge and Cornerstone. No party is entitled to attorney fees or costs on appeal.

******This summary constitutes no part of the opinion of the Court, but has been prepared by court staff for the convenience of the public.******