

Parkwest v. Barnson et al.: Whopper or Nothingburger?

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Procedural History

FACTS GIVING RISE TO THE DISPUTE:

- **March 2006:** ParkWest Homes, LLC (“ParkWest”) and Julie Barnson (“Barnson”) enter into written agreement to construct a home on real property owned by Barnson.
- **May 2006:** ParkWest registers under Idaho Contractor Registration Act and commences construction on Barnson home.
- **November 14, 2006:** Barnson causes two deeds of trust to be recorded against her property. Mortgage Electronic Services, Inc. (“MERS”) is the beneficiary under both deeds of trust. Transnation Title was the original Trustee; First American was appointed as successor Trustee in 2007.
- **November 28, 2006:** ParkWest records a mechanic’s lien claim against the property in the amount of \$189,177.99, plus interest.

Procedural History

HISTORY OF THE CASE (Round 1):

- **August 2007*:** ParkWest files an action to foreclose its mechanic's lien. ParkWest names Barnson and MERS as Defendants, but does not name Trustee under MERS' deeds of trust. ParkWest also files a *lis pendens* against Barnson's property.
- **September 2008:** ParkWest and Barnson enter into Stipulation for Entry of Final Judgment against *Barnson only*. (Entered on October 7, 2008.)
- **October 2008:** MERS files motion for summary judgment challenging validity of ParkWest's lien due to ParkWest's failure to comply with Idaho Contractor Registration Act. Court *grants* summary judgment in favor of MERS in January 2009.
- **March 2009:** ParkWest appeals district court's grant of summary judgment in favor of MERS to Idaho Supreme Court.
- **July 2009:** MERS' deeds of trust are foreclosed by First American through a Trustee's sale. Buyer at sale is Residential Funding Real Estate Holdings, LLC ("Residential").
- **June 2010:** Idaho Supreme Court *reverses* district court's grant of summary judgment in favor of MERS; holds that ParkWest substantially complied with Idaho Contractor Registration Act and, therefore, lien was valid. 149 Idaho 603, 238 P.3d 203 (2010) ("*ParkWest I*").

Procedural History

HISTORY OF THE CASE (Round 2):

- **November 10, 2010:** Residential intervenes in litigation and MERS seeks to be dismissed (motion to dismiss was granted in February 2011).
- **November 17, 2010:** Residential files motion for summary judgment challenging validity of ParkWest's lien against property arguing that Residential took free and clear of lien because ParkWest failed to name Trustee in action to foreclose its mechanic's lien within statutory time period.
- **March 2011:** District court grants Residential's motion for summary judgment and enters judgment in favor of Residential.
- **June 2011:** ParkWest files Notice of Appeal from district court's judgment. 154 Idaho 678, 302 P.3d 18 (2013) ("*ParkWest II*").

Issues on Appeal, *ParkWest II*

Idaho Supreme Court identified the key issues as follows:

1. Whether the “law of the case” doctrine forecloses additional challenges to the validity of a lien, when the party presently challenging the lien was not a party to the prior appeal.
2. Whether a lienor seeking to enforce a mechanic’s lien against property encumbered by a deed of trust must name the trustee of the deed of trust within the period of time required by statute to give the lien effect against subsequent holders of legal title.
3. Whether ParkWest’s judgment against Barnson, of which Residential had constructive notice, gives rise to any claim against the property.

154 Idaho 678, -- , 302 P.3d 18, 21-22 (2013).

“Law of the Case” Doctrine

- ❖ “. . . [U]pon an appeal, the Supreme Court, in deciding a case presented states in its opinion a principle or rule of law necessary to the decision, such pronouncement becomes the law of the case and must be adhered to throughout its subsequent process, both in the trial court and upon subsequent appeal.” *Swanson v. Swanson*, 134 Idaho 512, 515, 5 P.3d 973, 976 (2000) (internal citations omitted).
- ❖ The “law of the case” doctrine also prevents consideration on a subsequent appeal of alleged errors that could have been, but were not, raised in an earlier appeal. *Taylor v. Maile*, 146 Idaho 705, 709, 201 P.3d 1282, 1286 (2009).

Failure to Name Trustee

➤ “Title theory” vs. “lien theory”

- “*Trustee*” means a person to whom the *legal title* to real property is conveyed by trust deed, or its successor in interest. I.C. § 45-1502(4) (emphasis added).
- “[T]he deed of trust conveys to the trustee nothing more than a power of sale, capable of exercise upon occurrence of certain contingencies (such as default in payment) and leaves in the trustor a legal estate comprised of all [other] incidents of ownership. . . . Therefore, we hold that, even though title passes for the purpose of the trust, a deed of trust is for practical purposes only a mortgage with power of sale.” *Long v. Williams*, 105 Idaho 585, 586, 587-88, 671 P.2d 1048, 1050-51 (1983).

➤ Parties to Mechanics’ Lien Foreclosure Action

- “[I]n a foreclosure action, the action (1) must be timely brought under statute; and (2) must name the proper interested parties.” *Parkwest II*, citing *Willes v. Palmer*, 78 Idaho 104, 298 P.2d 972 (1956) (holding that where both husband and wife owned property, lienor’s failure to name wife in action to foreclose mechanics’ lien, lien was lost as to her interest).

Constructive (and Actual) Notice

Given the facts of this case, the “constructive notice” argument is a *BIG RED HERRING!*

Why didn't the fact that Residential had actual and constructive knowledge of ParkWest's lien sway the Court's opinion in favor of ParkWest?

- Court's decision ultimately hinged on (1) the nature of title conveyed to the Trustee and (2) ParkWest's failure to name the Trustee in its foreclosure action within the time frame required by I.C. § 45-510.
- Structure of mechanics' liens and trust deeds statutes effectively “trumped” constructive and/or actual notice arguments.
- Discussion of “constructive notice” was an afterthought to Court's initial decision, added only after ParkWest sought rehearing based on this issue.

. . . BUT What did the Trustee Convey?

Idaho Code Section 45-1506(10):

The trustee's deed shall convey to the purchaser the interest in the property ***which the grantor had, or had the power to convey, at the time of the execution by him of the trust deed*** together with any interest the grantor or his successors in interest acquired after the execution of such trust deed.

KEY DATE FOR THIS ANALYSIS:

November 14, 2006, when Barnson granted the two deeds of trust to MERS.

Area of Impact

The Idaho Supreme Court's decision in *ParkWest II* gives rise to very real, practical concerns:

- What do we do *now* with the pre-*ParkWest II* cases where a Trustee under a deed of trust was not named in a foreclosure action (regardless of the type of lien foreclosed)?
- What is the nature of title conveyed to the Trustee under a deed of trust? How far does “title theory” extend?
- Does this decision potentially expand the duties of the Trustee vis-à-vis the parties to the deed of trust and/or the property?
- Changes to “best practices”: always name the Trustee under deeds of trust encumbering the property (junior or senior) when commencing an action to foreclose a lien.

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