

January 25, 2012

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IN THE SUPREME COURT OF THE STATE OF IDAHO

2012 Opinion No. 20

LESLIE BENZ,)

Plaintiff-Respondent,)

vs.)

D.L. EVANS BANK,)

Defendant-Appellant,)

and)

EAST AVENUE BLUFF, LLC, an Idaho limited)

liability company; TIMELESS DESIGN)

COMPANY; CLIFF R. IVERSON, dba LEI'S)

CUSTOM TILE; FISHER APPLIANCE, INC.;)

VIEWPOINT, INC.; CAD DRAFTING SYSTEMS,)

INC.; BUCKHORN ELECTRIC, LLC/DEVILAN)

HAIRE; A.C. HOUSTON LUMBER COMPANY;)

MIKE PUNNETT; PRECISION PLUMBING, INC.;)

WATSON BUILDERS, INC.; HARRIS)

REFRIGERATION HEATING AND ELECTRIC;)

FERGUSON ENTERPRISES, INC.; ROCKY)

MOUNTAIN HARDWARE, INC.; SWEET'S)

PORTABLE WASTE SERVICES, LLC; WHITE)

BUILDERS, LLC; MIKE'S WELDING AND)

METAL WORKS, LLC; SENTINEL FIRE &)

SECURITY, INC.; STEVE McCOY, dba McCOY'S)

PAINTING; CHRISTOPHER BRENNAN, dba)

BRENNAN'S CARPET; and PAUL COOPER, dba)

SUN VALLEY DRYWALL,)

Defendants.)

Docket No. 37814-2010

Appeal from the District Court of the Fifth Judicial District of the State of Idaho, Blaine County. Hon. Robert J. Elgee, District Judge.

Parsons, Smith, Stone, Loveland & Shirley, LLP, Burley, for Appellant.

Luboviski, Wygle, Fallowfield & Ritzau, P.A., Ketchum, for Respondent.

The judgment of the district court is reversed in part and affirmed in part.

In a unanimous decision, the Idaho Supreme Court affirmed the district court's holding that a buyer's vendee's lien, created in connection with a rescinded real estate contract, had priority over a deed of trust that the seller had granted to a bank to obtain a construction loan, where the bank had notice of the terms of the real estate contract when the loan was given. The Court reversed the portion of the district court's order granting the buyer \$111,207.58 in prejudgment interest on her lien.

The buyer in this case, Leslie Benz, signed a real estate purchase agreement to buy a townhome in Ketchum, Idaho for \$2,743,500.00 with East Avenue Bluff, LLC, a real estate development company owned by her friends, John and Stacey Rutherford. The real estate contract required three separate nonrefundable prepayments, over five months, totaling \$750,000.00.

After Ms. Benz's first two payments, East Avenue Bluff approached D.L. Evans Bank for a construction loan. After consideration of the nature of the deal and the risk, the Bank gave East Avenue Bluff a \$2,650,000.00 loan, secured by a deed of trust on the property.

Before construction was completed, the Rutherford's declared bankruptcy. The parties discovered that nearly 20 businesses had unsatisfied mechanics liens against the property. Ms. Benz filed a lis pendens and an action to foreclose her vendee's lien with the district court on August 12, 2009. Default judgment was entered against all of the parties with mechanics liens. The Bank foreclosed on its deed of trust, with the Bank as the purchaser at the foreclosure sale.

On April 5, 2010, Ms. Benz filed a summary judgment motion with the district court, asking for \$750,000.00, plus interest, to satisfy her vendee's lien. The district court found that Ms. Benz had a valid vendee's lien on the property, in the amount of her prepayments. Further, the district court held that her vendee's lien had priority over the Bank's deed of trust because the bank had knowledge of the prepayment terms at the time the construction loan was made. The court also granted Ms. Benz's motion for attorney fees, pursuant to Idaho Rule of Civil Procedure 37(c), to compensate for her attorney's time and effort spent proving the Bank had knowledge of the prepayments terms in the real estate purchase agreement. The Bank appealed, insisting its deed of trust had priority over Ms. Benz's lien.

On appeal, the Supreme Court affirmed the district court's order that Ms. Benz's lien had priority, holding that because the Bank had notice of the prepayment terms, it cannot be afforded protection as a good faith purchaser. The Court also affirmed the

award of attorney fees to Ms. Benz, pursuant to I.R.C.P. 37(c). However, the Court reversed the district court's award of prejudgment interest, holding that a vendee's lien secures only such amount of the payments under a real estate contract a buyer is entitled to recover back in case the sale falls through.