

STATE OF IDAHO)
County of KOOTENAI)^{ss}

FILED _____

AT _____ O'Clock _____ M
CLERK OF DISTRICT COURT

Deputy

**IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE
STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI**

FLEET MORTGAGE CORP.,

Plaintiffs,

vs.

MICHAEL J. WALKER, et ux, et al.

Defendants.

Case No. **CV 2000 5180**

**ORDER GRANTING SUMMARY
JUDGMENT DISMISSAL OF THE
CLAIMS OF FLEET MORTGAGE
CORP., as PLAINTIFF**

The Walkers have filed a Motion for Partial Summary Judgment seeking the dismissal of the claims of Fleet Mortgage Corp., as plaintiff in interest.

The Walkers' Motion is hereby **GRANTED**.

According to I.R.C.P. 17(a), a defendant may seek to dismiss an action by a plaintiff on the grounds that plaintiff is not the real party in interest. It is undisputed that Fleet Mortgage Corp., (Fleet), sold and transferred the title to the Walkers real property to FREDDIE MAC before it commenced suit against the Walkers. The Rule states that dismissal of the plaintiff cannot be granted until "a reasonable time has been allowed after objection for ratification... joinder or substitution, of the real party in interest". I.R.C.P. 17(a). The Walkers raised the objection to Fleet's right to sue in the Walkers' Motion for Leave to Amend Answer and Counterclaim filed December 27, 2001 by raising the issue that the property had previously been transferred to FREDDIE MAC. In our case neither Fleet, nor FREDDIE MAC, have taken steps to ratify, or to move for joinder or substitution.

The case of *Tingley v. Harrison*, 125 Idaho 86 867 P.2d 960 (1994), is on point with the matter before us. The *Tingley* court held that Rule 17(a) only allows retroactive

ratification where there was a mistake in naming the original party. *Id.* Neither Fleet nor FREDDIE MAC has articulated any reason why Fleet initiated the suit against the Walkers instead of FREDDIE MAC. Neither Fleet nor FREDDIE MAC has stated any reason why Fleet hasn't moved pursuant to I.R.C.P. 17(a) long ago, indeed, at the present time, no I.R.C.P. 17(a) motion has been made. Even if it were to be made, no facts have been shown why there has been no good faith effort by Fleet/FREDDIE MAC to correct this problem via I.R.C.P. 17(a) at an earlier date. In light of this, Fleet is dismissed as the plaintiff in interest. Both Fleet and FREDDIE MAC will be retained as third party defendants at the trial.

IT IS HEREBY ORDERED defendants Motion for Summary Judgment on Plaintiff Fleet Mortgage's Claims, is GRANTED.

Entered this 5th day of July, 2018.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the _____ day of July, 2018, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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