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70604-7
No. ~~70607-7-I~~

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

TOWNE OWNERS ASSOCIATION, Plaintiff,

v.

BRIAN D. BECKMANN, et al., Defendants.

DCR SERVICES, LLC, Third-Party Plaintiff/Appellant

v.

THE CONDO GROUP, LLC, et al., Third-Party Defendants/Respondents.

APPELLANT'S OPENING BRIEF

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COURT OF APPEALS
DIVISION ONE

ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ASSIGNMENTS OF ERROR.....	3
III.	ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	3
IV.	STATEMENT OF THE CASE.....	4
	A. The Sheriff’s Sale	4
	B. DCR Redeemed From The Sheriff’s Sale.....	5
	C. The Superior Court Erred In Granting Summary Judgment For The Condo Group.....	8
	D. The Superior Court Erred In Denying DCR’s Motion For Summary Judgment Against The Condo Group	9
V.	ARGUMENT AND AUTHORITY	10
	A. Standard Of Review.....	10
	B. The Superior Court Erred In Granting Summary Judgment For The Condo Group.....	11
	1. DCR Is A Redemptioner, Because Its Deed Of Trust Is Subsequent In Time To That On Which The Property Was Sold	13
	2. DCR’s Deed of Trust Is A Valid Lien	17
	3. The Condo Group’s Policy Objections Are Not Relevant To Interpretation Of An Unambiguous Statute	24
	4. Summary	25
	C. The Superior Court Erred In Denying DCR’s Motion For Summary Judgment	26
VI.	CONCLUSION.....	26

TABLE OF AUTHORITIES

Cases

<u>American Continental Ins. Co. v. Steen,</u> 151 Wn.2d 512, 91 P.3d 864 (2004).....	24
<u>Atherton Condo. Apartment–Owners Assoc. Bd. of Dirs.</u> <u>v. Blume Dev. Co.,</u> 115 Wn.2d 506, 799 P.2d 250 (1990).....	10
<u>Burwell & Morford v. Seattle Plumbing Supply Co.,</u> 14 Wn.2d 537, 128 P.2d 859 (1942).....	23
<u>Carroll v. Hill Tract Imp. Co.,</u> 44 Wash. 569, 87 P. 835 (1906)	18
<u>Clark v. Payne,</u> 61 Wn. App. 189, 195, 810 P.2d 931 (1991).....	24
<u>Cochran v. Cochran,</u> 114 Wash. 499, 195 P. 224 (1921)	18
<u>De Roberts v. Stiles,</u> 24 Wash. 611, 64 P. 795 (1901)	18, 19
<u>Dep’t of Ecology v. Campbell & Gwinn LLC,</u> 146 Wn.2d 1, 43 P.3d 4 (2002).....	12, 15, 24
<u>Fidelity Mutual v. Mark,</u> 112 Wn.2d 47, 767 P.2d 1382 (1989).....	21, 22, 23
<u>Ford v. Nokomis State Bank,</u> 135 Wash. 37, 237 P. 314 (1925)	18
<u>Hisle v. Todd Pac. Shipyards Corp.,</u> 151 Wn.2d 853, 93 P.3d 108 (2004).....	10
<u>In re Freeman,</u> 94 Wn.2d 336, 617 P.2d 424 (1980).....	20
<u>Lilly v. Lynch,</u> 88 Wn. App. 306, 945 P.2d 727 (1997).....	11
<u>Marine Power & Equipment Co.</u> <u>v. The Human Rights, Comm’n Hearing Tribunal,</u> 39 Wn. App. 609, 694 P.2d 697 (1985).....	14
<u>Mobley v. Harkins,</u> 14 Wn.2d 276, 128 P.2d 276 (1942).....	23

<u>Morin v. Harrell,</u> 161 Wn.2d 226, 164 P.3d 495 (2007).....	10
<u>National Bank of Commerce v. Fountain,</u> 9 Wn. App. 727, 514 P.2d 194 (1973).....	23
<u>Prince v. Savage,</u> 29 Wn. App. 201, 627 P.2d 996 (1981).....	11, 17
<u>Singly v. Warren,</u> 18 Wash. 434, 51 P. 1066 (1898)	18, 19, 20
<u>Summerhill Village Homeowners Ass’n v. Roughley,</u> --- Wn. App. ---, 289 P.3d 645, (2012).....	passim
<u>W.T. Watts, Inc. v. Sherrer,</u> 89 Wn.2d 245, 571 P.2d 203 (1977).....	17
<u>Whatcom County v. City of Bellingham,</u> 129 Wn.2d 537, 909 P.2d 1303 (1996).....	12, 15, 24

Statutes

5541.SL, 63rd Leg., 2013 Regular Session (July 28, 2013 Effective Date).....	7, 13
RCW Chapter 6.23.....	8, 11, 16
RCW 6.23.010	7, 13, 15, 22
RCW 6.23.010(1).....	13, 16
RCW 6.23.010(1)(a)	1, 13, 22
RCW 6.23.010(1)(b).....	11, 12, 14, 22
RCW 6.23.040(1).....	22
RCW 6.23.040(2).....	22

Other Authorities

Wash. Prac., Real Estate § 1.7	21
Washington Real Property Deskbook, 2d Ed., WSBA, Mortgages, § 48.79.....	19

Rules

CR 56(c).....	10
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I. INTRODUCTION

This case presents a straightforward question of statutory interpretation. The redemption statute defines a redemptioner as “[a] creditor having a lien by . . . deed of trust . . . on any portion of the property . . . subsequent in time to that on which the property was sold.” RCW 6.23.010(1)(a) (2012). Unless “subsequent in time” means something other than “subsequent in time,” DCR Services, LLC (“DCR”) is a redemptioner and the superior court erred by granting The Condo Group, LLC’s (“Condo Group”) motion for summary judgment and by denying DCR’s cross motion for summary judgment.

On August 5, 2011, the Condo Group was the high bidder on the property that is the subject of this lawsuit (the “Property”) at a sheriff’s sale. This sale was subject to a one-year redemption period. After the sale, but before the expiration of the redemption period, DCR loaned money to the owner of the Property, Brian D. Beckmann, and secured that loan with a deed of trust against the Property. DCR then gave notice to the King County Sheriff’s Office of its intent to redeem the Property and tendered the redemption amount to the sheriff.

DCR has “a lien by . . . deed of trust” on the Property. That lien is “subsequent in time” to the lien for condominium assessments on which

the Property was sold. By the plain language of the statute, DCR is a redemptioner, and it took all steps necessary to complete redemption before the redemption period expired. The Condo Group opposed redemption on the ground that DCR could not be a redemptioner because DCR obtained its lien after the sheriff's sale.

The Condo Group argues that the timing of DCR's deed of trust defeats redemption because 1) DCR's lien was not extinguished by the sale – a requirement found nowhere in the statute; 2) the owner could not grant a deed of trust after the sale – a position contrary to more than 100 years of law that owners retain title during the redemption period; and/or 3) the Condo Group disagrees with the policy implications of allowing DCR to redeem – an argument that substitutes the Condo Group's policy judgments for the plain language of the statute.

As the material facts were undisputed, DCR and the Condo Group cross moved for summary judgment. The plain language of the statute notwithstanding, the superior court denied DCR's motion and granted summary judgment in favor of the Condo Group, holding that DCR was not a redemptioner and quieting title in favor of the Condo Group as against DCR. DCR respectfully requests that this Court reverse the decision of the superior court granting summary judgment in favor of the

Condo Group, and because the facts are undisputed, requests that this Court remand with instructions to enter judgment in favor of DCR.

II. ASSIGNMENTS OF ERROR

1. The superior court's Order on Cross-Motion for Summary Judgment of Third-Party Defendant, the Condo Group, LLC and Third-Party Plaintiff, DCR Services LLC dated May 17, 2013 granting the Condo Group's Motion for Partial Summary Judgment was in error.

2. The superior court's Order on Cross-Motion for Summary Judgment of Third-Party Defendant, the Condo Group, LLC and Third-Party Plaintiff, DCR Services LLC dated May 17, 2013 denying DCR's Motion for Summary Judgment was in error.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Is DCR a redemptioner because it has a lien by deed of trust that is subsequent in time to the lien on which the Property was sold?

2. Is the Deed of Trust a valid lien against the Property because, under Washington law, Beckmann retained the right to encumber his property during the redemption period?

3. Can the Condo Group's policy concerns override the plain language of the redemption statute such that DCR is not a redemptioner?

IV. STATEMENT OF THE CASE

A. The Sheriff's Sale

On March 7, 2011, the Towne Owners Association ("Towne") brought the underlying action against Brian D. Beckmann and Jane Doe Beckmann ("Beckmann") seeking judicial foreclosure of a lien against the property described as:

UNIT 38, TOWNE, A CONDOMINIUM, ACCORDING TO THE CONDOMINIUM DECLARATION RECORDED UNDER RECORDING NUMBER 20060609000380, AND AMENDMENTS THERETO, IF ANY, AND IN VOLUME 218 OF CONDOMINIUMS, PAGE(S) 36 THROUGH 48, INCLUSIVE, IN KING COUNTY, WASHINGTON, TOGETHER WITH LIMITED COMMON ELEMENT(S), PARKING SPACE NUMBER(S) 68 AND 69.

(CP 1-4). The Property is commonly known as 3058 – 128th Avenue SE, Unit #38, Bellevue, Washington 98005. Id. Towne asserted a lien arising out of unpaid condominium assessments, including assessments for common area expenses. (CP 3-4). Towne also sought a judgment against Mortgage Electronic Registration Systems, Inc. ("MERS") that its rights in the Property, and the rights of anyone claiming through it, be adjudged inferior to Towne's lien and be forever foreclosed. (CP 2, 6).

Neither Beckmann nor MERS answered the complaint, and the superior court entered default judgment on May 19, 2011. (CP 18-22). Among other relief, the superior court entered a default judgment that Towne could foreclose its lien and the Property may be sold at a sheriff's sale and that the redemption period from the sheriff's sale would be one year. Id. On June 1, 2011, the superior court entered an order of sale, commanding the sheriff to seize and sell the Property. (CP 23-24).

The sheriff sold the Property on August 5, 2011. (CP 45-47). The Condo Group was the high bidder at the sale. Id.

B. DCR Redeemed From The Sheriff's Sale

Following the sale, DCR contacted Beckmann regarding his interest in the Property.¹ On April 18, 2012, DCR loaned Beckmann \$2,500 to be secured by a deed of trust against the property. (CP 400). On the same day, Beckmann executed, and DCR recorded, a deed of trust against the Property (the "Deed of Trust") (CP 248-50). This Deed of Trust is a lien against the Property that is subsequent in time to the lien on which the Property was sold and forms the basis for DCR's redemption.

¹ As discussed *infra* § V.B.2, Beckmann retained ownership of the Property during the redemption period.

On June 7, 2012, before the redemption period expired, DCR provided notice to the King County Sheriff that it intended to redeem the Property on June 14, 2012.² (CP 252). DCR enclosed a copy of the Deed of Trust, a Declaration from Gary DeBoer stating the amount due on the promissory note, and a check for \$103.00 to cover the sheriff's fee. (CP 252, 257). The sheriff sent a "Notice to Purchaser" to the Condo Group informing it that DCR intended to redeem. (CP 254). On June 14, 2012, DCR tendered the calculated redemption amount of \$6,840.04 to the sheriff along with all documents necessary to redeem. (CP 259).

The Condo Group objected to DCR's redemption. (CP 254-55). Ray Stevenson of the Condo Group wrote the sheriff claiming that the sheriff's sale of August 5, 2011 extinguished Beckmann's right to encumber his property and, therefore, DCR's lien was invalid. Id. The Condo Group denied that DCR had any statutory right to redeem and refused to cooperate in any redemption "unless and until a Court of competent jurisdiction [determined that DCR has] legal standing to demand a redemption or object to the issuance of a Sheriff's Deed in favor of [the Condo Group]." Id.

² All substantive acts that are the subject of this suit took place in 2012. The redemption statute has since been amended to read "subsequent in priority" rather than "subsequent

DCR responded to the Condo Group's letter, explaining to the sheriff that the Condo Group misstated the law, and that "the judgment debtor is the fee owner of the property and remains the fee owner of the property during the entire period of redemption until the sheriff's deed issues to the purchaser or the last redemptioner after expiration of the redemption period." (CP 259-60). As fee owner, Beckmann was "free to encumber or convey interests in the property (e.g., grant deeds of trust) during the redemption period." Id.

On June 18, 2012, the sheriff's office responded that "[t]here is clearly a dispute about whether [DCR] has redemption rights under 6.23.010." (CP 265). The letter stated that the redemption funds would be "deposited into the court registry with the Superior Court Clerk" and that "[t]he Sheriff's Office is merely an intermediary and has neither the authority nor the ability to resolve this matter." Id. Because the matter was in dispute, the sheriff declined to issue either a certificate of redemption or a sheriff's deed until it received an order from the superior court providing it clear direction. Id. This lawsuit followed.

in time." 5541.SL, 63rd Leg., 2013 Regular Session (July 28, 2013 effective date).

C. The Superior Court Erred In Granting Summary Judgment For The Condo Group

On February 15, 2013, the Condo Group moved for summary judgment, asking the superior court to order that: 1) DCR was not a redemptioner of the Property under RCW Chapter 6.23 (2012); 2) the statutory redemption period had expired and was not tolled; 3) title to the Property be quieted in favor of the Condo Group as against DCR; and 4) DCR's third-party claims against the Condo Group be dismissed with prejudice. (CP 435-36).

The Condo Group first argued that DCR was not a redemptioner because "DCR cannot satisfy the threshold requirement that redemption is only *potentially* available to a lien creditor which holds a lien that was **extinguished** by the Sheriff's sale." (CP 126-27) (emphasis in original). In response, DCR offered that the Condo Group's requirement of "extinguishment" was not found anywhere in the statute and was an invention of the Condo Group. (CP 356-57). DCR further pointed out that the *only* statutory requirement is that the redemptioner have a lien that is subsequent in time to that on which the Property was sold – a definition satisfied by DCR. Id.

The Condo Group next argued that DCR was not a redemptioner because “Beckmann’s rights were ‘extinguished’ by the [sheriff’s] sale” and “[s]imply put, after the Sheriff’s sale, Beckmann did not have a right to encumber the property; any such right was ‘foreclosed’ by the sale.” (CP 128). DCR responded that the Condo Group’s position was contrary to Washington law. The sheriff’s sale does not extinguish the judgment debtor’s title to his property; title remains vested with the judgment debtor until the expiration of the redemption period. (CP 359-61).

Finally, the Condo Group argued against DCR’s status as a redemptioner based on “Policy Considerations” (CP 130). DCR responded that redemption is a statutory scheme that the courts have held is unambiguous in defining redemptioners; where a statute is unambiguous policy considerations do not override plain meaning. (CP 361-62).

Nonetheless, the Superior Court granted the Condo Group’s motion for summary judgment.

D. The Superior Court Erred In Denying DCR’s Motion For Summary Judgment Against The Condo Group

Both the Condo Group and DCR agree that the facts of this case are not in dispute. The only issue is whether, based on those facts, DCR is a redemptioner as a matter of law. If the superior court erred in granting

the Condo Group's motion and finding that DCR was not a redemptioner, it necessarily follows that the superior court should have held DCR was a redemptioner.

As a result of the superior court's decision DCR timely initiated this appeal.

V. ARGUMENT AND AUTHORITY

A. Standard Of Review

The Court reviews summary judgment orders de novo, performing the same inquiry as the superior court. Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 860, 93 P.3d 108 (2004). The superior court grants summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Morin v. Harrell, 161 Wn.2d 226, 230, 164 P.3d 495 (2007) (citing CR 56(c)).

It is the moving party's burden to demonstrate that summary judgment is proper. Atherton Condo. Apartment-Owners Assoc. Bd. of Dirs. v. Blume Dev. Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990). This Court will consider all the facts submitted and the reasonable inferences from them in the light most favorable to the nonmoving party. Id. "Summary judgment is appropriate only if, from all the evidence,

reasonable persons could reach but one conclusion.” Lilly v. Lynch, 88 Wn. App. 306, 312, 945 P.2d 727 (1997).

B. The Superior Court Erred In Granting Summary Judgment For The Condo Group

Although this case appears complex on the surface, the actual questions presented and principles involved are straightforward. First, is DCR a redemptioner? The redemption statute defines a redemptioner as “a creditor having a lien by . . . deed of trust . . . on any portion of the property . . . subsequent in time to that on which the property was sold.” RCW 6.23.010(1)(b) (2012).³ DCR has a lien on the Property, by the Deed of Trust, and that lien is subsequent in time to that on which the Property was sold – DCR is a redemptioner.

Second, could Beckmann grant the Deed of Trust after the sheriff’s sale? The longstanding law in Washington is that a judgment debtor *retains* title to his property until the redemption period expires. See Prince v. Savage, 29 Wn. App. 201, 205, 627 P.2d 996 (1981) (“A judgment debtor is the fee owner of the property and *remains the fee owner during the entire period of redemption* and until the sheriff’s deed

³ Unless otherwise noted, all further references to RCW Ch. 6.23 are to the statute as it existed in 2012, not the amended statute that took effect on July 28, 2013. For ease of reading, further references omit the parenthetical ‘2012.’

issues to the purchaser or last redemptioner after expiration of the redemption period.”). Beckmann retained title to the Property during the redemption period and retained the power to grant the Deed of Trust against the Property – the Deed of Trust is valid.

Third, can the Condo Group’s policy concerns override the plain language of the redemption statute? The courts have held that RCW 6.23.010(1)(b) is unambiguous, and that ‘subsequent in time’ refers to the relative dates of the liens in question, not to any other standard such as lien priority. Summerhill Village Homeowners Ass’n v. Roughley, --- Wn. App. ---, 289 P.3d 645, 649 (2012). Courts do not construe statutes that are unambiguous. Whatcom County v. City of Bellingham, 129 Wn.2d 537, 546, 909 P.2d 1303 (1996). Where the meaning of a statutory provision is plain on its face, courts follow the plain meaning. Dep’t of Ecology v. Campbell & Gwinn LLC, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). The meaning of the redemption statute is plain on its face; the Condo Group cannot overcome the statute’s plain meaning by substituting its policy concerns for the text.

DCR has a lien by deed of trust against the Property that is subsequent in time to that on which the Property was sold. DCR’s lien is valid, because it was granted by Beckmann while he still held title to the

Property. DCR is a redemptioner, and the Condo Group cannot overcome this result based on its policy concerns. These principles are sufficient to decide this case; the majority of the argument below is directed towards rebutting defenses aimed at directing the Court away from these rules.

1. DCR Is A Redemptioner, Because Its Deed Of Trust Is Subsequent In Time To That On Which The Property Was Sold

In the superior court, the Condo Group argued that a lien obtained after the sheriff's sale cannot provide the holder with redemption rights. The Condo Group's argument is contrary to the plain language of the redemption statute. RCW 6.23.010 provides that

Real property sold subject to redemption, as provided in RCW 6.21.080 . . . may be redeemed by the following persons or their successors in interest:

* * *

(b) A creditor having a lien by . . . deed of trust . . . on any portion of the property . . . subsequent in time to that on which the property was sold. The persons mentioned in this subsection are termed redemptioners.⁴

RCW 6.23.010(1).⁵

⁴ The judgment debtor, or his successor in interest, may also redeem the property, but as the judgment debtor, rather than as a redemptioner. RCW 6.23.010(1)(a). DCR obtained a quit claim deed from the judgment debtor in this case, but has sought to redeem only as the redemptioner.

⁵ The statute has since been amended to read "subsequent in priority" rather than subsequent in time. 5541.SL, 63rd Leg., 2013 Regular Session (July 28, 2013 effective

The statute expressly defines a redemptioner as: 1) a creditor; 2) having a lien by deed of trust; 3) on any portion of the property; 4) subsequent in time to that on which the property was sold. RCW 6.23.010(1)(b). The only requirement with respect to the date of the lien is that it must be “subsequent in time to that on which the property was sold”. The statute contains no language limiting redemption to liens “subsequent in time to that on which the property was sold [but prior in time to the sale itself]” or similar limitation. By necessity a lien obtained after the sale satisfies the statute. This makes sense because the judgment debtor still has the fee interest in the property and a right to redeem until expiration of the redemption period and therefore can pledge and encumber by deed of trust his interest in the property.

The Court of Appeals has addressed the meaning of “subsequent in time” and held that the language is unambiguous. Summerhill Village Homeowners Ass’n v. Roughley, --- Wn. App. ---, 289 P.3d 645, 649 (2012) (“the language of the [redemption] statute is unambiguous”)

date). DCR’s redemption took place under the previous version of the statute. The new version of the statute does not retroactively apply to DCR’s redemption. Washington courts strongly disfavor retroactive application of the law and presume that laws apply only prospectively. Marine Power & Equipment Co. v. The Human Rights, Comm’n Hearing Tribunal, 39 Wn. App. 609, 694 P.2d 697 (1985). Where, as here, the Legislature amends a law to alter the judiciary’s interpretation of the law, the amendment can only apply prospectively. Id.

(published opinion, Wn. App. citation not yet available) (“Summerhill”). A lien subsequent in time unambiguously means a lien created after the date on which the lien of sale was created. Id. at 648-49. Courts do not construe statutes that are unambiguous. Whatcom County v. City of Bellingham, 129 Wn.2d at 546. Where the meaning of a statutory provision is plain on its face, courts follow the plain meaning. Dep’t of Ecology v. Campbell & Gwinn LLC, 146 Wn.2d at 9-10. As the plain language of the statute establishes, subsequent in time is the sole requirement.

DCR is a redemptioner under the statute. DCR is a creditor, because it loaned money to Beckmann. DCR has a lien by the Deed of Trust it obtained from Beckmann. The lien is on the Property. And the lien is subsequent in time to that on which the sheriff’s sale was conducted. DCR is a redemptioner.

a. The Redemption Statute Imposes No Requirement That A Lien Be Extinguished By The Sale

In the superior court, the Condo Group attempted to overcome the plain language of RCW 6.23.010 by suggesting that the issue is not whether DCR’s lien is “subsequent in time” to that on which the Property was sold, but rather that DCR “cannot satisfy the threshold requirement”

that its lien “was extinguished by the Sheriff’s sale.” (CP 126-27). The Condo Group’s requirement that a lien be “extinguished” by the sheriff’s sale appears nowhere in the statute. Indeed, the word extinguish does not appear in the redemption chapter at all. See RCW Chapter 6.23.

The Condo Group should not be allowed to impose its own requirements on redemption beyond those that appear in the statute. As discussed above, the statute expressly defines redemptioners and states that if someone meets the definition of a redemptioner then the property “may be redeemed” by that person. RCW 6.23.010(1). DCR meets the definition of redemptioner and may redeem the property.

The Condo Group argued that the extinguishment requirement “flows directly from the ‘subsequent in time’ rule” but this argument is backwards. (CP 127). The subsequent in time rule may generally result in redemptioners being those whose liens were extinguished by the sale, but that is a result of the circumstances of each case, not a rule in and of itself.

For example, in Summerhill, the court noted that the subsequent in time rule *usually* matched up with Washington’s lien priority rules, meaning one whose lien was extinguished usually had the right to redeem. But, when faced with a situation where the sale extinguished a lien but the lien was *prior* in time, the court held that the statutory language controlled

– whether the lien was subsequent in time was determinative, not whether it was extinguished by the sale. Summerhill, 289 P.3d at 649.

DCR had a lien that was subsequent in time to that on which the Property was sold. Whether that lien was extinguished by the sale is not relevant. DCR was a redemptioner.

2. DCR's Deed of Trust Is A Valid Lien

In the superior court, the Condo Group placed great weight on the argument that Beckmann could not grant the Deed of Trust because “[s]ince the judgment was not paid prior to the sale, Beckmann’s rights were ‘extinguished’ by the sale. . . . Simply put, after the Sheriff’s sale, Beckmann did not have a right to encumber the property; any such right was ‘foreclosed’ by the sale.” (CP 128). This argument is contrary to established Washington law.

“A judgment debtor is the fee owner of the property and *remains the fee owner during the entire period of redemption* and until the sheriff’s deed issues to the purchaser or last redemptioner after expiration of the redemption period.” Prince v. Savage, 29 Wn. App. 201, 205, 627 P.2d 996 (1981) (emphasis added); see also, W.T. Watts, Inc. v. Sherrer, 89 Wn.2d 245, 248, 571 P.2d 203 (1977) (noting that the sheriff’s certificate of purchase does not pass title to the purchaser). This rule, that a

foreclosure does not divest the owner of title during the redemption period, dates from the earliest days of Washington's statehood and has been reaffirmed numerous times. See Singly v. Warren, 18 Wash. 434, 444-45, 51 P. 1066 (1898) ("A certificate of sale executed by a sheriff does not pass title. At most, it is only evidence of an inchoate estate . . . [the purchaser] cannot be said to hold the title until he receives a deed in pursuance of the sale"); See also Ford v. Nokomis State Bank, 135 Wash. 37, 45, 237 P. 314 (1925) (" . . . in this state we have consistently held . . . that a certificate of sale executed by a sheriff does not vest title. . ."); Cochran v. Cochran, 114 Wash. 499, 503, 195 P. 224 (1921) ("It has become the well-settled law of this state that . . . the *mortgagor is not by such [foreclosure] sale divested of his title to the land prior to the expiration of the redemption period*, and can even then be divested of his title only upon his failure to redeem during that period." (Emphasis added)); Carroll v. Hill Tract Imp. Co., 44 Wash. 569, 574, 87 P. 835 (1906) ("Pending the redemption period, the certificate of sale did not pass title. . ."); De Roberts v. Stiles, 24 Wash. 611, 618, 64 P. 795 (1901) ("A certificate of sale executed by a sheriff does not pass title.").

On the day before the sheriff's sale, Beckmann held title to the Property. On the day after the sheriff's sale, Beckmann still held title to

the Property. De Roberts, 24 Wash. at 618 (1901). Since no title passed, it follows that if Beckmann could encumber his title on the day before the sheriff's sale, he could encumber it on the day after – and on any day thereafter until the expiration of the redemption period. He did so by granting the Deed of Trust to DCR; that Deed of Trust is a valid lien against the Property. See also, Washington Real Property Deskbook, 2d Ed., WSBA, Mortgages, § 48.79 (“[i]t also appears that throughout the period from the filing of the lis pendens to the end of the statutory redemption period following the sheriff's sale, *the mortgagor can create additional redemptioners by mortgaging the property. . .*”) (emphasis added).

a. *An Owner May Encumber Title That Is Subject To The Contingent Rights Of Others*

Contrary to the Condo Group's argument, that Beckmann's rights were limited by the potential rights of a third party does not defeat his ability to encumber the Property – contingent rights are a standard aspect of real property law and do not prevent the owner from encumbering his property. As noted in Singly, while Beckmann retained ownership of the Property during the redemption period, his ownership is subject to the “inchoate estate” of the purchaser. Singly, 18 Wash. at 444-45. The

Condo Group's inchoate estate may ripen into title at the end of the redemption period if nobody redeems, but that inchoate estate does not affect Beckmann's right to encumber the Property *before* the end of the redemption period. Id.

As the Condo Group acknowledged, (CP 335-36), the relationship between Beckmann and the Condo Group is similar to the relationship between the vendor and vendee in a real estate contract. When the vendor sells his property to the vendee, the vendor retains title to the property (as does the judgment debtor in redemption), subject to the potential that the vendee will receive title when the purchase price is fully paid (as the purchaser will receive title if nobody redeems). If a vendor can encumber his contingent interest, by analogy, a judgment debtor can encumber his interest.

The Washington Supreme Court has held that a vendor to a real estate contract may encumber his title. In re Freeman, 94 Wn.2d 336, 617 P.2d 424 (1980) (holding that a vendor may assign the vendor's interest in a real estate contract as security for a debt and that the assignment of his interest conveyed an interest in the land). By the Condo Group's own argument, an analogous result should be reached here. During the

redemption period, Beckmann retained title to the Property and, just as does a vendor, retained the right to encumber the Property.

One obtains the same result in considering Beckmann analogous to the holder of a defeasible estate. A defeasible estate is a fee simple estate subject to the condition that it will vest in a third party if and when some defined event occurs. Provided he does not violate the condition, the holder of a defeasible estate is free to do with his property what he wishes, including grant a deed of trust against his property. See, e.g., Wash. Prac., Real Estate § 1.7 (noting that defeasibility does not create a new type of estate, it simply creates a fee simple estate subject to some condition).

The arguably limited nature of Beckmann's title did not affect his ability to grant the Deed of Trust against the Property. Even parties with limited interests in property retain the right to grant liens against the property. The Deed of Trust is a valid lien.

b. Beckmann Granted A Deed of Trust Against The Property, He Did Not Nakedly Transfer His Redemption Rights To A Third Party

Washington Courts have held that a judgment debtor may not transfer his naked redemption rights to a third party separate from his fee title to the property. Fidelity Mutual v. Mark, 112 Wn.2d 47, 53, 767 P.2d 1382 (1989). In the superior court, Towne and the Condo Group placed

significant weight on this rule, suggesting that the Deed of Trust was equivalent to a naked assignment of Beckmann's redemption rights. (CP 315-16). This argument overlooks the fact that the redemption statute distinguishes between the judgment debtor's redemption rights and the rights of redemptioners.

RCW 6.23.010 defines two categories of redemptioners: the judgment debtor, RCW 6.23.010(1)(a), and redemptioners, RCW 6.23.010(1)(b). Each category is subject to different redemption procedures; compare RCW 6.23.040(1) (applying to redemptioners) with RCW 6.23.040(2) (applying to the judgment debtor); and the consequences of redemption by each category differ; see RCW 6.23.040(2) (applying only to redemption by the judgment debtor). Fidelity Mutual prohibits Beckmann from nakedly assigning his redemption right as judgment debtor, but he did not nakedly assign this right.

DCR loaned Beckmann money and in exchange, Beckmann granted the Deed of Trust. This transaction did not transfer any redemption rights. It merely created the possibility that, if Beckmann defaulted on the loan, DCR could foreclose on the Deed of Trust. If it did foreclose, it would receive *all* of Beckmann's interest in the property,

including his redemption rights – exactly the type of non-naked transfer permitted by Fidelity Mutual.

As a consequence of the Deed of Trust, a new redemption right was *created* in DCR – it could now redeem as a redemptioner under the statute. This was not a naked assignment of the judgment debtor’s right of redemption, or indeed any assignment of any redemption rights; it was the creation of a new redemptioner by operation of the statute. The granting of the Deed of Trust does not implicate the Fidelity Mutual rule against naked assignments.⁶

⁶ Towne raised a similar argument that DCR cannot redeem as a redemptioner because, when it obtained a quit claim deed from Beckmann, the Deed of Trust merged with the quit claim deed, leaving it only able to redeem as the judgment debtor. This argument is incorrect. “The doctrine of merger is not favored either at law or in equity.” National Bank of Commerce v. Fountain, 9 Wn. App. 727, 730, 514 P.2d 194 (1973). “[C]ourts will not compel a merger of estates where the party in whom the two interests are vested does not intend such a merger to take place. . . .” Mobley v. Harkins, 14 Wn.2d 276, 281-82, 128 P.2d 276 (1942).

In Burwell & Morford v. Seattle Plumbing Supply Co., 14 Wn.2d 537, 128 P.2d 859 (1942), the Supreme Court considered merger in the context of redemption.. In that case, Burwell’s agent purchased four judgment liens against a property, obtained a quit claim deed from the property’s owner, then redeemed based on the judgment liens. The Supreme Court held that the judgment liens did not merge with the quit claim, because no merger of title was intended. Id. The same rule applies here. DCR obtained a lien by Deed of Trust against the Property. It then obtained a quit claim deed from the judgment debtor, and redeemed based on the Deed of Trust. Just as in Burwell & Morford, no merger occurred and DCR may redeem as a redemptioner.

3. The Condo Group's Policy Objections Are Not Relevant To Interpretation Of An Unambiguous Statute

Finally, failing to find any authority directly supporting its arguments, the Condo Group argued to the superior court that “Fundamental Policy Considerations Weigh Against Allowing DCR to Redeem.” (CP 130). Whether the Condo Group disagrees with the policy implications of DCR’s redemption is irrelevant.

The courts do not construe unambiguous statutes based on policy concerns. Whatcom County v. City of Bellingham, 129 Wn.2d at 546. Where the meaning of a statutory provision is plain on its face, courts follow that plain meaning. Dep’t of Ecology v. Campbell & Gwinn LLC, 146 Wn.2d at 9-10; see also, American Continental Ins. Co. v. Steen, 151 Wn.2d 512, 518, 91 P.3d 864 (2004) (“An unambiguous statute is not subject to judicial construction, and we will not add language to an unambiguous statute even if we believe the legislature intended something else but did not adequately express it.”); and Clark v. Payne, 61 Wn. App. 189, 192, 195, 810 P.2d 931 (1991) (noting that “[i]f the statutory language is plain and unambiguous, the court’s inquiry must end. . .” and noting that even if policy arguments have merit, “changes in public policy are best left to the Legislature. . .”).

As discussed above, the redemption statute is unambiguous and lays out a “highly technical statutory scheme, not for casual tinkering by courts.” Summerhill, 289 P.3d at 649. The courts have specifically addressed the “subsequent in time” rule and held that it unambiguously refers to the respective dates of the liens in question. Id. (holding, in the context of whether the statute referred to time or lien priority, that “the language of the [redemption] statute is unambiguous”). Substituting the Condo Group’s policy concerns for the statute would be improper.⁷

4. Summary

DCR has a lien against the Property, by the Deed of Trust, that is subsequent in time to that on which the Property was sold. Beckmann granted a valid Deed of Trust while he remained the fee owner of the Property. DCR is therefore a redemptioner. The superior court erred in granting summary judgment to the Condo Group holding that DCR is not a redemptioner. DCR respectfully requests that the Court reverse this decision and deny the Condo Group’s motion for summary judgment.

⁷ Further, while the Condo Group raises concerns that “DCR’s approach would generally harm . . . judgment debtors” (among others) (CP 132) it bears mentioning that DCR is the only party that put any money into the hands of the judgment debtor. DCR’s approach allowed the judgment debtor to salvage something from his ownership after the sale, rather than be left with nothing.

C. The Superior Court Erred In Denying DCR's Motion For Summary Judgment

The material facts of this case are not in dispute, and only two legal outcomes are possible – DCR either is a redemptioner or DCR is not a redemptioner. As established above, the superior court erred in granting summary judgment that DCR was not a redemptioner as a matter of law. For the same reasons that this ruling was in error, the superior court erred in denying DCR's motion for summary judgment. DCR respectfully requests that the Court reverse the superior court's denial of its motion for summary judgment and remand for entry of judgment in its favor against the Condo Group.

VI. CONCLUSION

For the reasons mentioned above, DCR respectfully requests that:

- 1) the Court reverse the summary judgment ruling of the superior court holding that DCR was not a redemptioner, that the redemption period has expired, and quieting title in favor of the Condo Group as against DCR;
- 2) the Court reverse the summary judgment ruling of the superior court denying its motion for summary judgment; and
- 3) the Court remand for further proceedings.

DATED this 13th day of September, 2013.

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CERTIFICATE OF SERVICE

I, Betty Lou Taylor, hereby certify that on the 13th day of September, 2013, I caused to be served true and correct copies of the foregoing to the following person(s) in the manner indicated below:

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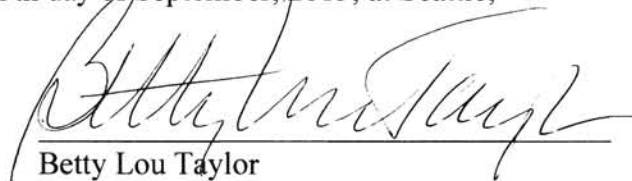
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I certify under penalty of perjury under the laws of the United States and the state of Washington that the foregoing is true and correct.

EXECUTED this 13th day of September, 2013, at Seattle, Washington.


Betty Lou Taylor