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Supreme Court No. _____
COA No. 70604-7-I

Supreme Court of the State of Washington

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.

Reply to Answer to Petition for Review

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I. Identity of Petitioner.

Glacier Real Estate Investments, LLC replies to the answer of The Condo Group, LLC to Glacier's petition for review. By decision entered November 14, 2014, the Division One of the Court of Appeals has substituted Glacier for DCR Services, LLC.

II. The Condo Group raises three issues in its Answer to Petition for Review.

1. Whether the Court of Appeals actually addressed any issue challenging the Judgment Debtor's ability to create a lien on the interest remaining after a Foreclosure Sale, let alone evaluate or opine on the issue.
2. Whether Glacier's predecessor had the right to redeem its "alleged lien" when that lien was not foreclosed upon and indeed was not in existence at the time of the sale.
3. Whether Glacier has the right to redeem its "alleged lien" when that lien constitutes nothing more than a naked assignment of the right to redeem.¹

III. Argument in Response to Issues Raised in Answer to Petition.

A. At the time of the loan, Beckmann owned the fee title and could grant a deed of trust on his condominium.

Condo Group argues that the loan never existed because DCR owned the property at the time Beckmann granted a deed of trust on the property. Answer, at 3 ("However, at the time the loan took place, Glacier's predecessor owned the property.") The Condo Group is wrong on the facts. At the time of the loan, Beckmann owned the fee title and could grant a

¹ Answer to Petition for Review, at 2.

deed of trust on his condominium. DCR made the loan to Beckmann on April 18, 2012. (CP 176,400). Beckmann did not convey his fee title to DCR until the next day, April 19, 2012. (CP 174, 180). At the time of the loan, Beckmann could grant the deed of trust because he owned fee title to the property.

B. *Millay v. Cam* did not address the issue of whether the holder of a post-auction lien is a redemptioner.

The Condo Group quotes the 1998 case of *Millay v. Cam*, 135 Wn.2d 193, 203, 955 P.2d 791 (1998). *Millay* addressed the issues of what a party must do to redeem and when must they do it, and under what circumstances the time for redeeming may be equitably tolled. All of the redemptioners in *Millay* had liens that predated the sheriff's auction. So *Millay* did not address the issue of whether the holder of a lien that post-dates the sheriff's auction is a redemptioner under RCW 6.23.010.

C. Division I got into analytical difficulty when it failed to explain what a foreclosure action is.

Division I failed to take account of the established law that the purpose of the sheriff's auction is to identify the buyer and the offer price. *Hazel v. Van Beek*, 135 Wn.2d 45, 56, 954 P.2d 1301 (1998); *In re Spokane Sav. Bank*, 198 Wash. 665, 672, 89 P.2d 802 (1939). The order of confirmation establishes the acceptance of the offer. *ibid.* The giving of the sheriff's deed completes the sale. 27 Marjorie Dick Rombauer, Washington

Practice: Creditors' Remedies —Debtors' Relief § 3.19(h), at 169 (1998) ("title does not transfer until the sheriff's deed is issued.") . The judgment debtor retains fee title until the sheriff's deed is given.

The Court of Appeals failed to connect the dots. Had it done so, it would have either ruled that:

1. Beckmann could not grant the deed of trust because he had no longer had an interest in the property after the sheriff's auction.
- or
2. Beckmann could grant the deed of trust but DCR was not a redemptioner because the deed of trust was not a lien on the property at the time of the sheriff's auction.

Neither of these conclusions is tenable. The former contradicts long-established case law describing the interest of the judgment debtor during the redemption period. See petition for review, at 16. The latter contradicts the wording of the statute, which gives a redemption right to "a creditor having a lien."

C. The error of Division I decision would apply to both mortgagees and judgment lien creditors.

In its answer, The Condo Group makes a distinction between voluntary and involuntary liens. Answer, at 7. But the legislature made no such distinction. RCW 6.23.010(2) defines a redemptioner as "[a] creditor having a lien by judgment, decree, deed of trust, or mortgage." The Condo's Group's argument, and the Court of Appeals' ruling, would have the same effect on a deed of trust beneficiary as on a judgment creditor. If

the lien attached during the redemption period, neither could redeem. This rule would apply even to a judgment entered before the sheriff's auction if the judgment was not automatically a lien on the property. This would be so if:

- The judgment is a district court judgment that has not been transcribed to the superior court,
- The property is a homestead and the judgment has not been recorded,
- The judgment is entered in a different state and an abstract of judgment has not been filed in this state.

RCW 4.56.200. So a judgment might be entered *before* the auction but not made a lien until *after* the auction. If that occurs during the redemption period, Glacier submits that the lien creditor is a redemptioner. The logic of Division I's decision is that the judgment lien creditor is not a redemptioner.

Every other state supreme court that has examined this issue has ruled in favor of Glacier's position. See cases cited in petition for review, at 11-13. That rule was well stated by the North Dakota Supreme Court in a case interpreting a redemption statute identical to Washington's:

[A] party seeking to redeem by virtue of holding a subsequent lien need only hold a lien at the time he seeks to redeem.

The North Dakota Horse & Cattle Company v. Serumgard, 17 N.D. 466, 494, 117 N.W. 453 (1908). A post-auction mortgagee is a redemptioner.

Why should the rule in Washington on this issue be the opposite of the rule

adopted by every other state that has considered it? If Washington is to be the outlier, then the lower courts, the bar, and the public deserve an explanation of why that is so.

At what time must a party have a lien on the property in order to be a redemptioner under RCW 6.23.010? In effect, The Condo Group argues, and the Court of Appeals held, that a creditor must have a lien on the property *at the time of the sheriff's auction* in order to be a redemptioner under RCW 6.23.010. Glacier contends that a creditor must have a lien on the property *at the time of the redemption* in order to be a redemptioner. This case asks the Supreme Court to decide which of these interpretations is correct.

D. The Condo Group's policy argument is based upon the erroneous assumption that the redemption statute exists for the benefit of the sheriff's sale purchaser.

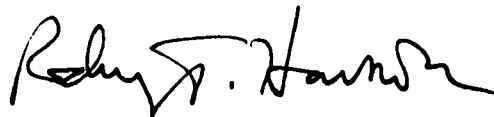
The redemption statute is not for the benefit of the sheriff's sale purchaser. It is for the benefit the judgment debtor and junior lien creditors. A redemption of the property takes any right to the property away from the sheriff's sale purchaser. But the judgment debtor or junior lien creditor saves equity in the property by redeeming for the benefit of the judgment debtor. If the judgment debtor redeems, it is as if the sheriff's sale never occurred. If a junior lien creditor redeems, the judgment debtor receives the benefit of satisfying the junior creditor's secured debt from his equity in the

property. That equity is not lost to the sheriff's sale purchaser but paid to the junior creditor. Both the judgment debtor and the junior creditor are benefitted. But whether the redemption is by the judgment debtor or by a junior creditor, the sheriff's sale purchaser loses any right to the property.

VI. Conclusion.

The recent severe financial crisis gave rise to great wave of foreclosures and, as a consequence, a great number of foreclosure cases. The Great Recession was a tragedy for many, but the judicial rules worked out by this Court as a consequence of that tragedy will protect many if (and when) a future financial crisis befalls us. This case asks the Court to resolve another such issue, one that may not be invoked until the distress of the next great recession. But that is the nature of great crises - they raise issues whose resolution is not applied until the next crisis. The issues presented in this case should be resolved now, before a similar distress occurs, so that the lower courts and the affected parties will know then what their protections are. The Court is urged to grant the petition for review.

Respectfully submitted this 17th day of November, 2014



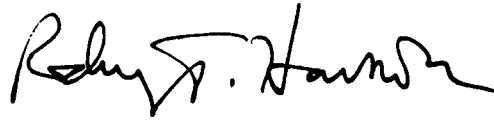
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Certificate of Service

I certify that on this day I mailed by U.S. Mail, postage prepaid, a copy of the document to which this certificate is attached to counsel for The Condo Group, LLC:

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Dated this 17th day of November, 2014

A handwritten signature in black ink, appearing to read "Rodney T. Harmon". The signature is fluid and cursive, with a horizontal line extending from the end of the name.

Rodney T. Harmon, WSBA #11059
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Attached for filing is petitioner's reply to respondent's answer to the petition for review. As I understand it, this case was just sent to the supreme court on Nov. 14, 2014 and has not been assigned a supreme court case number.

Case Name: Towne Owners Assn v. Beckmann; DCR Services, LLC v. The Condo Group, LLC
Court of Appeals Case No. 70604-7-I.

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