

Nº 72131-3-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE

FORD SERVICES, LLC, a Washington limited liability company

Appellant

vs.

DEUTCHE BANK NATIONAL TRUST COMPANY

Respondent

BRIEF OF CITY OF SEDRO-WOOLLEY, Plaintiff Below

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION ONE

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STATEMENT OF THE CASE

The City of Sedro-Woolley, a Washington municipal corporation, commenced this action to foreclose delinquent municipal utility liens, against certain real property located in Skagit County. CP-34-36. At the time the case was commenced, the owners of the property were Jose Juan Amaro and Mary Amaro, residents of Skagit County. CP 34. They were personally served with the summons and complaint, failed to answer, and were defaulted by order dated January 11th, 2013. CP 61-62; CP 93.

The only other defendant was Deutsche Bank, the holder (as Trustee) of a deed of trust encumbering the subject property. CP 34-35. The deed of trust was wholly (or at least partially) subordinate to the Plaintiff's utility liens. Deutsche Bank was named as a defendant solely by virtue of its security interest in the property; no monetary judgment or personal liability was sought against that defendant.

Deutsche Bank was served with the summons and complaint in the State of California on November 14th, 2012. CP 120. It failed to answer, and so a default order was entered on January 28th, 2013. CP 117-118; CP 121. A Default Judgment against the Amaros and a Decree of Foreclosure of the Plaintiff's liens was entered on February 8th, 2013, with the Sheriff's

Sale taking place on April 19th, 2013. CP 29-30.

The high bidder at the sale was Heritage Forest, LLC, who paid \$40,000 to the Sheriff and received the certificate of sale. *Id.* On the same day as the sale, the Amaros executed a quitclaim deed to Zion Services, LLC, conveying their interest in the property, including their redemption rights. They also simultaneously granted a deed of trust in the property to Zion Services, LLC.

The sale was confirmed by order dated May 17th, 2013. CP 29-30. On that same day, Plaintiff and Zion Services stipulated to payment of \$10,697.70 from the sale proceeds to Plaintiff, with the balance disbursed to Zion Services, LLC. Subsequently, on September 3rd, 2013 Zion Services LLC assigned its deed of trust in the property to Ford Services, LLC; Ford Services LLC redeemed the property from Heritage Forest LLC (the sale purchaser) on January 9th, 2014, and received a Sheriff's Deed to the property on or about April 23rd, 2014.

More than a year after the sale, Deutsche Bank appeared in the action and sought to set aside the Decree of Foreclosure entered against it, and also sought invalidation of the sale, solely based on the admitted fact that no declaration concerning the City's inability to personally serve

Deutsche Bank in the State of Washington, pursuant to RCW 4.28.185, was filed prior to the Decree being entered. CP 56-60. Both Ford Services (the Appellant herein), and the City opposed Deutsche Bank's motion, but after argument the Superior Court vacated the judgment. CP 104-105.

Ford Services appealed from the Superior Court's order (CP 106-116), and the City agrees that the Court's decision was error; service on Deutsche Bank was proper and, even if it wasn't, the sale should not have been invalidated.

AUTHORITY AND ARGUMENT

1. In Personam v. In Rem Jurisdiction

RCW 4.28.185 sets forth a litany of acts, taken by a person outside the State, which subject that person to Washington *in personam* jurisdiction, and requires that a declaration be filed, prior to the entry of judgment, attesting to the inability of the plaintiff to serve the defendant personally in the State of Washington. The only basis upon which Deutsche Bank rests its claim that the foreclosure decree was wrongfully entered, is that the declaration was not filed beforehand.

In personam is simply the jurisdiction of the Court over the

persons appearing before it; by contrast, *in rem* jurisdiction deals with jurisdiction over things, such as real property and the interests therein. Foreclosures are *in rem* actions. *King County v. Lesh*, 24 Wn. 2d 414 (1946); *Napier v. Runkel*, 9 Wn.2d 246 (1941). *In rem* jurisdiction may be asserted even if no personal jurisdiction exists. *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 53 (1977); 14 Washington Practice, Civil Procedure, §5.1.

Here, no *in personam* jurisdiction against Deutsche Bank was alleged; as stated, Deutsche Bank was named solely as a holder of a security interest in the property sought to be foreclosed, which is *in rem*. Since no *in personam* jurisdiction was alleged against Deutsche Bank, RCW 4.28.185 does not apply.

The operative statute is rather RCW 4.28.180, which states:

Personal service of summons or other process may be made upon any party outside the state. If upon a citizen or resident of this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of personal service within this state; *otherwise it shall have the force and effect of service by publication*. The summons upon the party out of the state shall contain the same and be served in like manner as personal summons within the state, except it shall require the party to appear and answer within sixty days after such personal service out of the state.

(Emphasis added)

Again, there is no allegation that Deutsche Bank “submitted to the jurisdiction of the courts of this state”, which would justify imposition of *in personam* jurisdiction. The force and effect of service was the same as service by publication, but the service was valid nonetheless. Under RCW 4.28.200, which deals with constructive service (such as service by publication), Deutsche Bank had the ability to defend the action within one year from entry of the judgment; however, that expired on February 8th, 2014, two months before Deutsche Bank’s motion was filed.

Hatch v. Princess Louise Corp., 13 Wn.App. 378, 379 (1975), dealt with a very similar issue as is present here. There, the in-state service declaration was not filed, and the Court held that *in personam* jurisdiction was lacking as a consequence; however, it went on to hold that *in rem* jurisdiction did exist.

Thus, the Court here did have the authority to enter the judgment against Deutsche Bank. Deutsche Bank had one year from entry of the decree to contest the same, and failed to do so. The judgment is therefore valid.

***2. Even if Service was Improper,
The Sale is Still Valid***

The sale acted to do two things; one, to divest the then-owners of the property (the Amaros) of their ownership interest (subject to their redemption rights), and two, foreclose Deutsche Bank's lien. There is no question that the Court had personal jurisdiction over the Amaros and that they were properly served and properly defaulted due to their non-response. Clearly, they were aware of the foreclosure, because they executed the conveyance to Zion Services on the day of the sale. Equally clearly, they did not contest the default entered against them. Ford Services, LLC, as the ultimate redemptioner, is thus the owner of the property.

If service on Deutsche Bank was improper, and the Court therefore did not have jurisdiction to foreclose its lien, that does not affect or impair the Court's ability to sell the property and divest the Amaros. All that would mean is that Deutsche Bank's lien would have been unaffected by the sale, and since it has priority over the Amaros (and by extension, the redemptioner, Ford Services, LLC), then its lien would be just as valid, and have the same priority with respect to the other parties, as it had prior to the sale taking place. Vacation of a judgment against one party does not

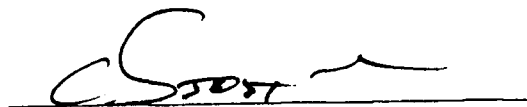
in and of itself negate the judgment against others.

Conclusion

The judgment was properly entered; Deutsche Bank was properly served for purposes of *in rem* jurisdiction, and its motion to set aside the decree is untimely. The claimed issue with respect to service of the summons and complaint would not have invalidated the sale in any case.

For all of these reasons, the Superior Court should be reversed, either altogether or at least with respect to the validity of the sale.

Respectfully submitted on 11/19, 2014, by

A handwritten signature in black ink, appearing to read 'C. Sjostrom', is written over a horizontal line.

CRAIG SJOSTROM WSBA #21149
Attorney for City of Sedro-Woolley

DECLARATION OF MAILING

CRAIG SJOSTROM declares as follows:

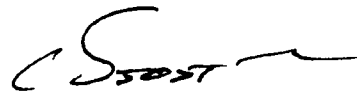
1. I am the attorney for the City of Sedro-Woolley in this matter.
2. On November 19th, 2014, I mailed by regular mail the City's Brief to the following:

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3. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed at Mount Vernon, WA, on November 19th, 2014.


CRAIG SJOSTROM #21149