No. 98804-8
IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

Court of Appeals, Div. I
No. 80399-9-I

KELLIE MARIE DAVIS, CHARLES L.F. PAULSON, ERICK J.C. PAULSON, Individually and as Trustee of the CHESTER L.F. PAULSON REVOCABLE TRUST,

Appellants,

v.

FRED FINDAHL,

Respondent.

RESPONDENT'S ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Intervenor Defendants Daniel and Randell Walton (collectively "Walton") ask that the Court deny the petition for review filed by Appellants Kellie Marie Davis, Charles L.F. Paulson, Erick J.C. Paulson, individually, and as Trustees of the Chester L.F. Paulson Revocable Trust (collectively "Paulson").

II. COURT OF APPEALS' DECISION

Paulson petitions the Court to review the Court of Appeal's unpublished opinion of June 22, 2020 (the "Decision"), which affirmed the trial court's entry of summary judgment in favor of Respondent Fred Findahl ("Findahl") and dismissing Paulson's claims.

III. ISSUE PRESENTED FOR REVIEW

1. Does the Court of Appeal's Decision conflict with a decision of the Court, pursuant to RAP 13.4(b)(1)?

2. Has Paulson met their burden of demonstrating a substantial public interest, pursuant to RAP 13.4(b)(4), as a basis for review by the Court, when the unpublished decision of the Court of Appeals was based on the unique facts of this case?

IV. STATEMENT OF THE CASE

In February 2011, the Yarrow Hill Owners Association ("Yarrow Hill") sued Thomas Mino in the King County Superior Court for unpaid homeowner association assessments. CP 454. Mr. Mino owned lot 65 (the "Subject Property") of the Yarrow Hill subdivision in Kirkland. CP 455. The Yarrow Hill action was titled "Complaint for Collection of and Judicial Foreclosure of Lien for Unpaid Assessments." CP 454. The complaint named Mr. Mino, "Jane Doe" Mino, the Bank of America, and John Does 1-10. CP 454.

On December 22, 2011, Yarrow Hill obtained a default judgment (the "First Judgment") for unpaid assessment for $24,199.08 against Mr. Mino. CP 465. The First Judgment stated that the Yarrow Hill's assessment lien "is hereby adjudged and decreed to be a first and paramount lien upon the above-described real estate…and that said assessment lien be and it is hereby foreclosed and the property therein described is hereby ordered sold by the Sheriff of King County, Washington…." CP 468.

On April 6, 2012, Chester Paulson obtained a judgment (the "Paulson Judgment") against Mr. Mino for $374,527.07 for an unpaid promissory note in the Multnomah County Circuit Court in

the State of Oregon. CP 542. Mr. Paulson domesticated the Oregon judgment in the King County Superior Court on June 6, 2012. CP 541. Thus, the Paulson Judgment was filed *after* the Yarrow Hill lawsuit commenced and *after* Yarrow Hill's First Judgment was entered.

Twenty months after entry of the First Judgment, on February 27, 2014, Yarrow Hill returned to the superior court to "supplement"[1] the First Judgment to collect homeowner association assessments that had come due since the First Judgment. CP 476. Since Mr. Mino had abandoned the home, Yarrow Hill also sought a court determination that no redemption period should apply following foreclosure of the lien. CP 478. Notice of Yarrow Hill's motion was sent by certified mail to Mr. Mino at his South Carolina address and to a Pittsburgh Pennsylvania address. CP 484. Yarrow Hill filed a signed receipt of certified mail with a signature appearing to be someone with the last name "Mino" from the Pittsburgh address. CP 484.

[1]As discussed below, while this judgment is titled a "supplemental" judgment, the judgment is actually a second judgment. Rather than amending the original judgment amount, the court entered an entirely new judgment, and made clear that, with one exception, the original judgment remained in full force and effect.

The trial court, by Judge Marianne C. Spearman, granted Yarrow Hill's Motion for Supplemental Judgment and Waiver of Redemption Period on March 28, 2014 ("Second Judgment"). CP 488. The Second Judgment included $27,095.30 for assessments that had been unpaid since the First Judgment. CP 488. The Second Judgment cancelled the terms of paragraph G of the First Judgment (addressing redemption rights) and stated: "Pursuant to RCW 61.12.093, the purchasers at the sheriff's sale shall take title to the property at issue free from all redemption rights." CP 488. Critically, however, the Second Judgment stated: "Except as modified herein, this Court's default judgment dated December 22, 2011 remains in full force and effect."[2]

Execution of the First Judgment and the Second Judgment was conducted through the King County Sheriff's Office. CP 493-496. Prior to the sale, Yarrow Hill mailed notice of the sheriff's sale by regular and certified mail to the judgment debtor at the judgment debtor's last known address. CP 373.

[2] The only change Judge Spearman made to the First Judgment was that Paragraph G, which allowed a one-year redemption period, would be deleted (because the redemption period had lapsed, as discussed below.)

The King County Sheriff provided notices of the scheduled sale as required by RCW 6.21.030:

1. A Sheriff's Levy on Real Property Under Execution on Order of Sale was recorded with the King County Recorder, recording no. 20140414000677. CP 496.
2. The sheriff's office posted notice of the time and place of the sale, and a description of the property, in public places in the County. CP 369-370.
3. The sheriff's office had notice of the sale published once a week, for four consecutive weeks, in The Daily Journal of Commerce. CP 369.

The sheriff's sale was held on May 23, 2014. CP 382. Fred Findahl's bid of $68,000.00 was the highest bid at the sale. CP 382. The trial court, by Judge Beth Andrus, confirmed the sheriff's sale to Mr. Findahl on July 14, 2014, upon Yarrow Hill's motion for confirmation of the sale. CP 534. On July 16, 2014, Mr. Findahl received a sheriff's deed to the Real Property. CP 538.

On August 14, 2014, after Mr. Findahl purchased the Subject Property and received the sheriff's deed, he started the present action in the King County Superior Court to quiet title to the Subject Property. CP 546. Mr. Findahl named Wells Fargo Bank, Tolin

Nichols (a judgment creditor of Thomas Mino)[3] and Chester and Jane Doe Paulson as defendants. CP 546.

Default judgments were entered against all Defendants. CP 551, 554, 559. A default judgment was entered against Paulson on January 5, 2015. CP 560.

Believing he had completed the quiet title process, Mr. Findahl sold the Subject Property to Daniel and Randell Walton through a purchase and sale agreement dated June 8, 2016. CP 451. Mr. Findahl conveyed the Subject Property by statutory warranty deed to the Waltons, recorded on November 8, 2016. CP 565.

Wells Fargo initiated a separate judicial foreclosure action in the King County Superior Court on February 24, 2017. CP 408, 413, 408. Wells Fargo initially named Thomas D. Mino, Daniel and Randell Walton, Chester Paulson, and Unknown Occupants of the premises. CP 451. Mr. Findahl was added as a third-party defendant in April 2017. CP 451. Shortly after starting the judicial foreclosure action, on May 16, 2017, Wells Fargo sought to vacate the default judgment in this action. Daniel and Randell Walton were granted

[3] Mr. Findahl obtained a default judgment against Wells Fargo on November 24, 2014. CP 552. Mr. Findahl entered a stipulation quieting title with Nichols on February 2, 2015. CP 555.

leave to intervene in this action on May 30, 2017. CP 451. Upon receiving notice of the lawsuit against them, Paulson filed their own motion to vacate. CP 303. The default judgment against Wells Fargo was vacated on July 6, 2017. CP 451. The default judgment taken against Paulson was vacated on August 9, 2017. CP 451.

On March 29 and 30, 2018, Mr. Findahl and Paulson filed cross motions for partial summary judgment concerning the validity of Paulson's judgment lien. CP 423, 305-314. On April 27, 2018, the trial court granted Mr. Findahl's motion for partial summary judgment against Paulson. CP 679-83. On July 25, 2019, the parties settled all remaining claims with Wells Fargo. CP 693-695. On August 20, 2019, Paulson filed a notice of appeal, seeking review of the trial court's summary judgment order. CP 696-697.

The Court of Appeals issued its unpublished Decision on June 22, 2020, affirming the trial court's summary judgment order.

V. ARGUMENT

RAP 13.4(b) provides that a petition for review will be accepted by the Supreme Court only upon the showing of one of the following grounds:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or

> (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Paulson asserts that the Decision "not only conflicts with established law, RAP 13.4(b)(1), but also presents an issue of substantial public concern . . . RAP 13.4(b)(4)." Each is addressed in turn below.

1. Paulson Fails to Establish Grounds for Review Pursuant to RAP 13.4(b)(1)

Paulson identifies the Court's opinion in *U.S. Bank v. Hursey*, 116 Wn.2d 522, 806 P.2d 245 (1991) (Petition at 6-8), as the opinion of the Court that is in conflict with the Decision.

Hursey addressed the issue of whether *res judicata* bars a foreclosing senior lienor who mistakenly omitted a junior lienor, Hursey, from re-foreclosing its lien against the junior lienholder. In addressing this issue, the Court stated the well-established rule that, "Although a junior lienor's interest will be extinguished by being joined in the foreclosure of a senior lien, a decree of foreclosure does

not affect the interest of a junior who was not joined in the foreclosure action." *Id*. (citing *Spokane Sav. & Loan Soc. v. Lilipoulos*, 160 Wash. 71, 73-74, 294 P. 561 (1930)). It is this well-established rule that Paulson alleges that the Court of Appeals' Decision disregarded and created a conflict.

However, the Decision is not in conflict with *Hursey*. The conflict perceived by Paulson is the result of Paulson's over generalization of the rule stated in *Hursey*. Paulson reads *Hursey* to mean that a decree of foreclosure does not affect the interest of a junior who was not joined in the foreclosure action *even if the junior obtained its interest after the decree of foreclosure.* But the rule in *Hursey* is not so broad. The rule merely requires that an *existing* junior lienholder be named in the foreclosure action.

Here, the Paulson's interest was created after foreclosure proceedings were started and, indeed, after a judgment of foreclosure was entered. (CP 336-24; CP 342-45.) Thus, unlike in *Hursey*, there was no junior lienor the Yarrow Hill could have named in the foreclosure action. Simply put, the issue here is not whether a senior lien holder failed to name an existing junior lien holder—the rule stated in *Hursey*—but, rather, whether a junior lien holder, who recorded its interest after a foreclosure judgment is

entered, but before a sheriff's sale, must be joined in the lawsuit or otherwise provided notice by the senior lien holder before the junior lien can be extinguished through foreclosure.

Both the trial court and the Court of Appeals answered, no. Indeed, the Court of Appeals noted, "But Paulson cites no authority in support of the proposition that a foreclosing party must give notice to lienholders who record their interest *after* the foreclosure commences." (Decision at 7.) (Emphasis added.) There is no such authority, and Paulson again fails to cite any in their Petition.

As the facts of *Hursey* are clearly distinguishable, there is no conflict between *Hursey* and the Decision that could justify the Court accepting review under RAP 13.4(b)(1).[4]

[4] Paulson attempts to sow confusion by arguing that the Court of Appeals "erroneously focused on the issue of whether the Paulsons' judgment lien had priority over Yarrow Hill's assessment liens." (Pet. at 5.) The Court of Appeals did not "focus" on the priority question. To the contrary, the Court of Appeals addressed the issue in direct response to one of Paulson's arguments. But this discussion in the Decision was mere *dicta* and had no impact on the Decision. The dismissal of Paulson's claim was affirmed because a foreclosing party has no duty to give notice to junior lienholders who record their interest after a foreclosure commences and a judgment is entered. Further, as it relates to RAP 13.4(b)(1), Paulson fails to identify how the Court of Appeal's alleged focus on the priority issue conflicts with an opinion of the Court, apart from the argument addressed above under *Hursey*.

2. Paulson Fails to Establish Grounds for Review Pursuant to RAP 13.4(b)(4)

Paulson baldly states that the Decision "presents an issue of substantial public concern" without providing any basis or argument for this proposition. (Pet. at 8.) Yet, merely reciting the legal standard is not sufficient to meet Paulson's burden of "showing" that the petition involves an issue of substantial public interest. The lack of any proffer of evidence or argument on his factor should alone dictate denial of the petition.

Furthermore, the Court of Appeal's Decision was based on the unique facts of this case. It has no broader impact on the public. Indeed, the Decision is not published and thus has no precedential authority. RAP 10.4(h); GR 14.1 ("Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court.").

The Court of Appeals determined that its Decision will not be published in the Washington Appellate Reports. Pursuant to RAP 12.3(d), the Court of Appeals uses the following criteria in determining whether to publish a decision:

> (1) Whether the decision determines an unsettled or new question of law or constitutional principle;

(2) whether the decision modifies, clarifies or reverses an established principle of law;

(3) whether a decision is of general public interest or importance; or

(4) whether a case is in conflict with a prior opinion of the Court of Appeals.

The Court of Appeals decided that none of these criteria were present including that the decision was not "of general public interest or importance." RAP 12.3(d)(3).

Paulson had the right to request that the Decision be published by demonstrating the same criterion stated above, including that the Decision was of general public interest or importance, by filing a motion to publish within 20 days after the opinion was filed. RAP 12.3(e). However, Paulson failed to timely file such a motion.

Furthermore, no public interest can be furthered by the Court reviewing this issue. Fatal to Paulson's claim is the undisputed fact that the original judgment obtained by Yarrow Hill, which was entered before Paulson recorded their interest, was valid, and Paulson, as a matter of law, was not entitled to notice. As the Court of Appeals stated:

> Paulson acknowledges she had no right to notice of Yarrow Hill's 2011 judicial foreclosure action

> because she was not a lienholder of record when Yarrow Hill filed the action. And Paulson does not challenge the adequacy of notice during the execution process.

(Decision at 5.) Thus, Paulson does not dispute that Yarrow Hill's original judgment was valid, that it had the right to foreclose it, and that the required notice was provided. Therefore, the original judgment was validly foreclosed, and it eliminated Paulson's judgment lien from the real property. On this undisputed basis and on these unique facts, Paulson's claim was properly dismissed. No public interest would be served by the Court reviewing the unique circumstances of this case.

VI. CONCLUSION

Paulson has failed to demonstrate a conflict between an opinion of this Court and the Decision, pursuant to RAP 13.4(b)(1), or a substantial public interest, pursuant to RAP 13.4(b)(4), as a basis for the Court to accept review of the Decision. The Court should therefore deny the Petition.

Respectfully submitted this 21st day of August, 2020.

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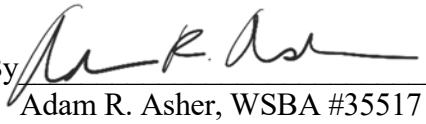
By 
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