

Court Of Appeals No. 74772-0-1

COURT OF APPEALS

OF THE STATE OF WASHINGTON DIVISION I

Woodside Homeowners Association,

Appellant/Appellant

v.

Tammy Fouts

Respondent/Respondent

**RESPONDENT TAMMY FOUTS
RESPONSE BRIEF**

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Ronald Kessler

Reuben J. Ortega, WSBA #42470
ORTEGA LAW PLLC
13232 SE 252nd Street
Covington, WA 98042
253.234.7095 Telephone
206.693.4422 Fax

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2006 AUG -1 PM 12:34

TABLE OF CONTENTS

I. Introduction	1
II. Issues Pertaining to Assignment of Error	2
III. Statement of the Case	2
IV. Argument	6
A. The Appeal is moot and should be dismissed as the extended redemption period has expired and sanctions should be issued against Woodside.	6
B. Woodside’s failure to comply with the plain language of RCW 6.23.030 extended the redemption period by six months as a matter of law.	8
C. Even under a substantial compliance standard, the Notice required under RCW 6.23.030 must at a minimum include the actual cost of redemption.	10
V. Conclusion	10

TABLE OF AUTHORITIES

<u>WASHINGTON CASES</u>	PAGES
<i>Am. Cont'l Ins. Co. v. Steen</i> , 151 Wn.2d 512, 518, 91 P.3d 864 (2004)	8
<i>GESA Federal Credit Union v. Mutual Life Insurance Company of New York</i> , 105 Wash.2d 248, 713 P.2d 728 (1986)	10
<u>STATUTES</u>	
RCW 6.23.030	1,2,5,8,10
RCW 6.23.030(2)	10
RCW 6.23.030(3)	3,5,8,9,10
RCW 6.23.080(1)	4
RCW 6.23.110	7
RCW 6.23.110(4)	3
RCW 61.24.163	7

I. INTRODUCTION

Respondent Tammy Fouts (“Fouts”) respectfully asks this Court dismiss this appeal as moot and issue sanctions against Appellant Woodside Homeowners Association (“Woodside”) or in the alternative affirm the decision of the Trial Court in denying Appellant Woodside Homeowners Association (“Woodside”) motion to confirm redemption, denying Woodside's motion to order Sheriff to issue Sheriffs Deed to Woodside, denying fees and granting Fouts’ motion for extension of redemption period. The Trial Court correctly found that Woodside’s Notice of Expiration of Redemption Period failed to comply with RCW 6.23.030.

The matter before this court is moot as the extension to the redemption period as ordered by the Trial Court has expired and no redemption has occurred.

Regardless, the Trial Court, in its discretion, correctly recognized that RCW 6.23.030 requires more information than can be found on a blank form letter. The Trial Court understood that the primary purpose of the statute was not simply to provide notice of the end of the redemption period, as Woodside would argue, but the statute is structured to provide any potential redeemer with specific information related to the amount owed to redeemed, and the actual itemized amounts of fees and costs being requested to accomplish a redemption before the expiration of the redemption period.

**II. ISSUES PERTAINING TO
ASSIGNMENT OF ERROR**

Fouts believes that the issues pertaining to Woodside's

Assignment of error can best be stated as follows:

- A. Whether the appeal is moot and Woodside's failure to dismiss this appeal, is a violation of RAP 18.9?
- B. Whether RCW 6.23.030 requires a notice of expiration of redemption period to include all the information as set forth in such statute?
- C. Whether Woodside's failure to include any payoff amount or other itemized amounts as required by RCW 6.23.030, was significant enough that the notice requirement of RCW 6.23.030 was not properly given, and the failure of which operated to extend the redemption period an additional six months?
- D. Whether Woodside's attempt to have Fouts contact the King County Sheriff for the redemption amount satisfied all the requirements of RCW 6.23.030?
- E. Whether the Trial Court was correct in ruling that the Notice of Expiration of Redemption Period provided by Woodside was defective and extending the redemption period an additional six months?

III. STATEMENT OF THE CASE

The facts pertinent to this this appeal and the current issues before the Court, begin on January 2, 2015, when Woodside successfully bid for Fouts' property at a Sheriff's Sale and such sale was confirmed to be valid by Order of the Court on February 2, 2015. *CP 18*.

Pursuant to RCW 6.23.110(4), Fouts asserted her homestead rights and the accompanying right of possession. As

such, Woodside struck their pending motion for writ of assistance and proceeded to wait for the redemption period to expire. *CP 19*.

On or about November 10, 2015 Woodside sent to Respondent a document entitled “Notice of Expiration of Redemption Period” detailing the expiration of the 12 month redemption period (the “Notice”). *CP 20*. The Notice lacked a number of items, including: the adjusted date for the end of the redemption period, the actual dollar figure that Fouts could pay to redeem and the required itemized amounts as listed in the Statue. *CP 80*. The Notice specifically stated the following:

FOLLOWING IS AN ITEMIZED ACCOUNT OF THE AMOUNT REQUIRED TO REDEEM THE PROPERTY TO DATE:

YOU MAY REDEEM THE PROPERTY BY 4:30 PM ON OR BEFORE JANUARY 2, 2016, **BY PAYING THE AMOUNTS SET FORTH ABOVE** AND SUCH OTHER AMOUNT AS MAY BE REQUIRED BY LAW. *CP 80*.

Besides failing to “set forth above” an actual dollar figure the Notice failed its primary function by incorrectly stating when the redemption period should have expired. In addition, the Notice failed to include the itemized listing that details the total amount required to redeem as of the date of the notice, as required in RCW 6.23.030(3), including:

ITEM	AMOUNT
PURCHASE PRICE PAID AT SALE	\$

INTEREST FROM DATE OF SALE TO DATE OF THIS	
NOTICE AT . . . PERCENT PER ANNUM	\$
REAL ESTATE TAXES PLUS INTEREST	\$
ASSESSMENTS PLUS INTEREST	\$
LIENS OR OTHER COSTS PAID BY PURCHASER OR	
PURCHASER'S SUCCESSOR DURING REDEMPTION	
PERIOD PLUS INTEREST	\$
LIEN OF REDEMPTIONER	\$
TOTAL REQUIRED TO REDEEM AS OF THE DATE	
OF THIS NOTICE	\$

Unfortunately for Fouts, her legal counsel was disbarred in early December and she was left without legal representation to decipher the sufficiency of the Notice sent by Woodside.

On or about December 31, 2015, in accordance with RCW 6.23.080(1) Fouts sent a Notice of Intent to Redeem the real property located at 16604 SE 167th Street, Renton WA 98058 (the "Intent to Redeem") to the Sheriff providing at least five days written notice of Respondents intention to redeem and enclosing the exact dollar figure as provided for in the Notice. *CP 86-88.*

On January 4, 2016, the Sheriff, did send to Fouts the amount required to redeem, together with a Statement of Purchaser. The amount requested for redemption was \$13,578.79, a vastly different amount than was provided noted as the winning bidder of \$7,566.70. *CP 18, CP 55-77.* Somehow, over the course of a year, without paying property tax, association dues or any

utilities, the Appellants had nearly doubled the amount of money they had spent on the subject property. This attempt to have the Sheriff provide the information missing in the Notice, was approximately fifty-five (55) days late and not in compliance with RCW 6.23.030, which requires that a notice with all the information outlined in RCW 6.23.030 (3), be sent at least 40, but not more than 60 days before the expiration of the redemption period.

After receiving this information from the Sheriff, Fouts retained legal counsel who filed on January 5, 2016, a Motion requesting a hearing and asking the Court to confirm the redemption of the property or in the alternative extend the period for redemption for six months due to the defective Notice. *CP 22-23; CP 94-112.*

After requesting that Fouts move her motion, Woodside then filed and noted its own motion. The Trial Court denied Woodside's motion to confirm expiration of redemption period, directing Sheriff to issue Sheriffs Deed and granting order for writ of assistance by Order dated January 29, 2016. *CP 137-139.*

The Trial Court ruled that Woodside's notice did not substantially comply with the form set forth in RCW 6.23.030 and therefore proper notice was not provided to Fouts. The Order went on to extend the redemption period for 6 months, with a minor adjustment as to the start date of the redemption. *CP 140-158; CP 159-160.*

Prior to appealing this Order, on February 25, Woodside commenced a new cause of action, found under cause number 16-2-04497-2, seeking a declaratory judgment against Deutsche Bank and others, attempting to quiet title to Fouts' property. Thereafter, Woodside filed its notice of appeal, and this Court ruled that the Order of the Trial Court was a final Order from which an appeal may be taken and directed Woodside to file its Appellant's Brief by June 10, 2016. See Commissioner's ruling dated May 10, 2016.

Notably, on July 5, 2016, the redemption period as set by the Trial Court Order expired without any redemption payment being made. In addition, on July 28, 2016, Woodside filed a Motion for Order Issuing Writ of Assistance to have Fouts removed from the property.

IV. ARGUMENT

A. The Appeal is moot and should be dismissed as the extended redemption period has expired and sanctions should be issued against Woodside.

Pursuant to RAP 18.9(c)(2), this Court should dismiss this appeal as "frivolous, moot, or solely for the purpose of delay." Woodside filed this appeal in an effort to delay and frustrate any possibility that Fouts' had to stay in her home. By filing this appeal, Woodside put Fouts in the impossible position of having to either pay to redeem a house she would lose to foreclosure or attempt to mediate a modification of her home loan on a house to which her right of redemption was now in question and under

appellate review. This “Catch-22” resulted in Fouts failing to successfully mediate a resolution under RCW 61.24.163, the Washington State Foreclosure Fairness Act, and has done nothing more than delay matters and sabotage every effort Fouts made to stay in her home.

Further, even if this appeal was initially proper, Woodside should have dismissed this action at the expiration of the redemption period as the appeal is now moot. Though, Woodside may argue that the issues presented are legally significant and will provide needed clarity to the statute in question, the fact remains that Woodside moved to quit title to the property (See King County Case Number 16-2-04497-2) , before filing this appeal - clearly indicating that the decision of this Court had no bearing on Woodside’s rights. In addition, Woodside has already filed with the Trial Court a Motion For Order Issuing A Writ Of Assistance, under the assumption that Woodside has clear right of possession under RCW 6.23.110. Both of these actions, clearly indicated that Woodside has no need for this Court or respect for its time. However important Woodside may view the issues raised on appeal, Woodside clearly understands that the matter is moot and has moved on.

Given the apparent frivolous nature of this appeal, after the expiration of the redemption period, Fouts now requests sanctions against Woodside as detailed in RAP 18.9(a), as the matter before this Court was 1) filed for purpose of delay and 2) is moot and any

ruling by this Court will likely not impact the parties rights to the property.

B. Woodside's failure to comply with the plain language of RCW 6.23.030 extended the redemption period by six months as a matter of law.

Should this Court decide to review the merits of this appeal, Fouts looks to the Trial Court record in response to Woodside's appeal as the record clearly sets forth the deficiencies in Woodside's Notice of Expiration of Redemption Period. Woodside failed to comply with RCW 6.23.030, by failing to properly calculate the end of the redemption period, by leaving the amount needed to redeem blank, by failing to properly provide notice of any actual dollar figure that Woodside should pay to redeem and by forgoing the required itemized accounting of the amounts required to redeem.

Woodside's failure to comply with RCW 6.23.030 required the Trial Court to extend the redemption period by six months as a matter of law. RCW 6.23.030(3), clearly requires that a specific form is used, but more importantly that the information on the form be transmitted in the notice and affidavit of mailing. RCW 6.23.030(3) is not ambiguous and as such is interpreted as written. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004) (we interpret a statute as written if it is clear on its face.). This statute clearly requires the Plaintiff to give notice not only of the expiration of the redemption period but the amount required to

redeem is to be indicated in two separate locations for the judgment debtor. RCW 6.23.030(3).

The Notice provided by Woodside failed to comply on a number of levels. First, Woodside admits the Notice failed to properly calculate the end of the redemption period, given that the 12-month mark fell on a weekend the redemption period should as a matter of law been extended to the following week day, January 4, 2016. If this was the only defect, the argument for substantial compliance might have been persuasive. However, the Notice was further defective. Woodside admits the Notice failed to properly provide any actual dollar figure, which Fouts could have paid to redeem. Rather Fouts was left to attempt to calculate and pay an amount sufficient to redeem to the Sheriff on the afternoon the redemption period was set to expire. This amount was only provided to Fouts, by the Sheriff two hours before the redemption period was set to expire. In addition, Woodside again admits, the Notice failed to include the required detail and itemization failing to showing not only the total amount required to redeem as of the date of the notice, but the “purchase price paid at sale,” the “interest from date of sale to date of this notice at . . . percent per annum,” the “real estate taxes plus interest,” the “assessments plus interest,” the “liens or other costs paid by purchaser or purchaser's successor during redemption period plus interest,” and the “lien of redemptioner,” all of which was required in RCW 6.23.030(3).

Given the Notice's multiple deficiencies, it is clear that the Plaintiffs failed to comply with RCW 6.23.030.

C. Even under a substantial compliance standard, the Notice required under RCW 6.23.030 must at a minimum include the actual cost of redemption.

Woodside attempts to argue that the Trial Court erred in its analysis by imposing a strict compliance standard. However, Woodside's argument fails to recognize that under either a strict or substantial compliance standard the multiple deficiencies found in Woodside's Notice were sufficient enough to extend the redemption period by six months pursuant to RCW 6.23.030(2).

Woodside's failure to comply with RCW 6.23.030 cannot be blamed on the Trial Court imposing a burdensome standard; the record clearly indicates that the information provided by Woodside was insufficient under any standard. Even the court in one substantive case cited by Woodside, *GESA Federal Credit Union v. MutuaJ Life Insurance Company of New York*, 105 Wash.2d 248, 713 P.2d 728 (1986), recognizes that to even get to the minimum threshold of "substantial compliance" a "purchaser who provides the redemptioner with actual notice of the costs of redemption substantially complies with the Section .150 notice requirement."

V. CONCLUSION

For all the above reasons, Respondent Tammy Fouts respectfully requests that this Court to dismiss this appeal and issue sanctions against Woodside or in the alternative affirm the decision

of the Trial Court, and dismiss this appeal.

Dated this 1st day of August, 2016.

ORTEGA LAW PLLC

By: 
Reuben J. Ortega, WSBA #42470
ORTEGA LAW PLLC
Attorney for Respondent
13232 SE 252nd Street
Covington, WA 98042

DECLARATION OF SERVICE

I hereby certify under penalty of perjury under the laws of the State of Washington, that the foregoing is true and correct:

That I caused to be delivered a true and correct copy of the foregoing document:

RESPONDENT'S RESPONSE BRIEF was forwarded to:

David M. Tall, Esq.
Oseran Hahn, P.S.
10900 NE Fourth Street #1430
Bellevue, WA 98004
Fax: 425-455-9201
Email: dtall@ohswlaw.com

by the following method:

Depositing same first class postage pre-paid in the United States Mail, addressed to the person identified above.

Sending via electronic mail per the agreement of the parties.

That I caused to be delivered a true and correct copy of the foregoing document:

RESPONDENT'S RESPONSE BRIEF was forwarded for filing to:

Washington State Court of Appeals, Division I,
One Union Square, 600 Union Street,
Seattle, WA 98101
Fax: 206-389-2613

DATED this 1st day of August, 2016, in Covington, WA.

By: 
Reuben J. Ortega, WSBA #42470

2016 AUG - 1 PM 12: 34
COURT OF APPEALS
STATE OF WASHINGTON