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DIVISION ONE

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No. 75433-5-1

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

SEAWIND HOMEOWNERS ASSOCIATION

v.

THE ROSALIND ROMANO LIVING TRUST, DATED THE  
11th DAY OF OCTOBER, 2006; ROSALIND L. ROMANO;  
ROSALIND L. ROMANO, TRUSTEE OF THE ROSALIND  
ROMANO LIVING TRUST, DATED THE 11TH DAY OF  
OCTOBER, 2006; ANY SUCCESSOR TRUSTEE or  
BENEFICIARY OF THE ROSALIND ROMANO LIVING  
TRUST, DATED THE 11TH DAY OF OCTOBER, 2006;  
HOUSEHOLD FINANCE CORPORATION III;

and

DYNAMIC FUNDING, LLC, Appellant.

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On Appeal from King County Superior Court  
Case No. 14-2-27437-8  
HON. BRUCE E. HELLER

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**APPELLANT'S OPENING BRIEF**

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## I. INTRODUCTION

Appellant, Dynamic Funding, LLC, made an offer to purchase a condominium pursuant to Washington's upset statute, RCW 6.23.120, nearly one year after a sheriff's sale occurred in *Seawind Homeowners Association v. Romano*.

### A. Homestead Issue

RCW 6.23.120 applies to "any property that a person would be entitled to claim as a homestead..." In a recent decision by the Washington Court of Appeals, Division I, the Court stated:

"The legislature sought to limit RCW 6.23.120's application to foreclosed properties where a recently foreclosed judgment debtor who relied on the property for shelter - could obtain excess proceeds. Consequently, we hold that "any property that a person would be entitled to claim as a homestead" relates to the specific homestead status of the property at issue in the foreclosure action."

*Performance Construction v. Glenn*, 2016 WL 4272386 \*7, -- P.3d. -- (2016).

Turning to the homestead status of this particular case, we find several undisputed matters: (1) Rosalind Romano, an individual, owned the property during the time of foreclosure; (2) Ms. Romano occupied the property for the last 28 years as her primary residence; and (3) the stipulated judgment permitted Ms. Romano to occupy the property

throughout the redemption period.<sup>1</sup> Consequently, the property is one that the owner would be “entitled to claim as a homestead” within the meaning of RCW 6.23.120 as interpreted by the Court in *Performance Construction*.

Despite the above interpretation of RCW 6.23.120, the Superior Court ruled that it “does not apply because the homestead exemption is not available, see RCW 6.13.080(2)(b).” CP 199.

RCW 6.13.080(2)(b) provides that “The homestead exemption is not available *against an execution or forced sale in satisfaction of judgments obtained...* (emphasis added) On debts secured... by mortgages or deeds of trust on the premises that have been executed and acknowledged by both spouses or both domestic partners or by any claimant not married or in a state registered domestic partnership.”

First and foremost, it is an undisputed fact that the Respondent, Household Finance Corp. III, (1) has not initiated a foreclosure action; and (2) does not have a judgment to satisfy. But even if Respondent had foreclosed (which it could not because its lien was extinguished), RCW 6.13.080(2)(b) only preserves the right for lienholders to force a sale, but does not operate to bar a homeowner from claiming the property as a

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<sup>1</sup> Counsel has confirmed with Ms. Romano’s attorney of record in the underlying foreclosure case that Ms. Romano continued to occupy the property until the end of the redemption period on or around April 25, 2016. This fact was not in the trial court record.

homestead. Rather, the right to possession (which is at the heart of the homestead inquiry) is granted by RCW 6.23.110(4), which guarantees a right wholly independent from the right of a lienholder to force a sale exempt from the normal homestead protection of RCW 6.13.070.

It is Appellant's position that the Superior Court's ruling is erroneous. If we accept that Court's interpretation of RCW 6.23.120, it would imply that property forcibly sold in satisfaction of a judgment could never be claimed as a homestead. To adopt this interpretation of RCW 6.23.120 would be a legal absurdity, and contrary to the plain language of the Homestead Act (RCW 6.13) and the Redemption Act (RCW 6.23).

***B. Qualifying Offer Amount***

The next issue the Court must determine is whether a qualifying offer amount includes an extinguished lien held by a redemptioner, where the redemptioner was not the purchaser at the sheriff's sale. In order for the amount to be "qualifying," it must be "at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined under RCW 6.23.020." RCW 6.23.120.

There are two relevant subsections under RCW 6.23.020(2) that the Superior Court relied upon when it concluded that the offer was insufficient because it "failed in include the amount of Respondent's lien." CP 199.

First, the amount to be paid must include “(c) any sum *paid by the purchaser* (emphasis added) on a prior lien of obligation secured by an interest in the property.” RCW 6.23.020(2)(c). Here, the purchaser was Seawind Homeowners Association (hereinafter “Seawind”) as the Clerk issued it a certificate of purchase. CP 55. It is undisputed that Seawind did not pay off Respondent’s deed of trust. CP 132. In addition, after the foreclosure, Respondent’s lien was not a secured interest, as it was extinguished. Therefore, subsection (c) of RCW 6.23.020(2) was not a valid reason to include Respondent’s lien in the qualifying offer amount.

Second, RCW 6.23.020(2)(d) provides that “if the redemption is by a redemptioner and if the purchaser is also a creditor having a lien, by judgment, decree, deed of trust, or mortgage, prior to that of the redemptioner, *other than the judgment under which such purchase was made* (emphasis added), the redemptioner shall also pay the amount of such lien...” RCW 6.23.020, likewise does not compel the inclusion of Respondent’s extinguished lien into the qualifying offer amount.

Here, Respondent is a redemptioner, and its lien was extinguished. CP 29. But, RCW 6.23.020(2)(d) only permits the inclusion of the *purchaser’s lien*. The purchaser’s lien (i.e., Seawind’s lien) was obtained by the underlying judgment. Therefore, under the language of RCW

6.23.020, there is no way that Respondent's lien could be included in the redemption amount.

Additionally, to uphold the Superior Court's ruling would be contrary to well-established case law in this jurisdiction, stemming back nearly one hundred years, such as *De Roberts v. Stiles*, 24 Wash. 611, 64 P. 795 (1901) where the Washington Supreme Court held that redemption by a redemptioner (as opposed to a judgment debtor or successors-in-interest) entitles the redemptioner to a sheriff's deed, and not to reinstatement of the specific lien.

## **II. ASSIGNMENT OF ERROR**

The Superior Court erred in entering an Order Denying Appellant's Order to Show Cause. CP 198-99.

### Issues Pertaining to Assignment of Error

1. Whether the Homestead Act, at RCW 6.13.080(2)(b), in addition to granting an exception to the rule of RCW 6.13.070 that a homestead is exempt from forced sale, also prevents the application of a qualifying offer under RCW 6.23.120.
2. Whether the Redemption Act, at RCW 6.23.120 requires a qualifying offer amount to include a redemptioner's unpaid, foreclosed lien.

### III. STATEMENT OF THE CASE

The relevant procedural history of *Seawind Homeowners Association v. The Rosalind Romano Trust, et al.*, King County Superior Court Case No. 14-2-27437-8, is as follows:

On or around October 6, 2014, Plaintiff Seawind Homeowners Association filed a complaint under RCW 61.12., RCW 64.32, and RCW 64.34 for lien foreclosure and for monies due against the judgment debtor for regular and special unpaid assessments. CP 1-8.

On or around October 30, 2014, Defendant Rosalind L. Romano filed an answer. CP 9-12. The answer stated the following: “Defendants have continuously occupied the Unit as Defendant Romano’s homestead for approximately 28 years and are entitled to the homestead, occupancy and redemption rights set forth in RCW 6.13 and RCW 6.23.” CP 12.

On or around December 17, 2014, the Court entered an Order of Default against Household Finance Corp. III. CP 20-36.

On or around February 11, 2015, the Court entered an Order of Default and Decree of Foreclosure against the judgment debtor and Household Finance Corp. III. CP 13-14. The Stipulated Judgment provided, in relevant part:

1.2 Defendant Rosalind L. Romano, an individual, is a member of Seawind Homeowners Association as the record owner of

certain real property commonly known as 22224 24<sup>th</sup> Ave S., #H-63, Des Moines, WA 98198...Defendants The Rosalind Romano Living Trust, Dated 11<sup>th</sup> of October, 2006, Rosalind Romano, Trustee of the Rosalind Romano Living Trust, Dated 11<sup>th</sup> Day of October, 2006....also have an interest in the unit.

CP 21.

2.12 It is further agreed that Defendants Romano will be allowed to occupy the Unit during the twelve-month redemption period.

CP 25.

2.13 It is further agreed that, pursuant to RCW 6.23.020, Defendants Romano retain the right to redeem the Unit during the twelve-month redemption period.

*Id.*

The Stipulated Judgment provided further that “The Defendants Romano are entitled to retain possession during the redemption period pursuant to RCW 6.23.110(4).” and that:

“the sheriff’s sale of the real property here is not subject to the homestead exemption pursuant to RCW 6.13.080(6). ....Any and all persons acquiring any right, title, estate, lien, or interest in and to the property or any part thereof are hereby forever foreclosed of any such right, title, estate, lie or interest as against Plaintiff in this action.”

CP 29.

An order of sale was issued on February 24, 2015, and on April 24, 2015, a sheriff’s sale was held and Seawind was the highest bidder, offering \$25,926.97. CP 37-39. Based on the stipulated judgment and the

date of the sheriff's sale, the redemption period was set to expire on April 25, 2016 (because April 24, 2016 fell on a Sunday). CP 54.

On or around December 11, 2015, Respondent, Household Finance Corp. III (hereinafter "HSFC") redeemed the property by tendering \$34,602.72 to the Sheriff's Civil Unit, and on or around December 28, 2015, a certificate of redemption was issued. CP 54-55.

On April 25, 2016, the day the redemption period was set to expire, Appellant entered a sales contract with Larson Real Estate, LLC, and made an offer to purchase the property for \$53,500.00 pursuant to RCW 6.23.120. CP 55.

After HSFC rejected Appellant's offer, despite being statutorily obligated to accept it under RCW 6.23.120, Appellant filed a Motion for Order to Show Cause. That Order was granted by Court Commissioner Henry H. Judson, and it "ordered that a hearing be set on the Chief Civil Department Calendar for June 3, 2016, and that Household Finance Corporation III (hereinafter "Respondent") shall appear and there show cause why the court should not enter an order providing the following:

- (1) Declare that a qualifying offer be made;
- (2) That Household Finance Corporation III should petition the King County Sheriff's deed within ten days of signing this Order and accept Dynamic's offer to purchase the Property in accordance with RCW 6.23.120; and

(3) The Court order such relief as the court deems just and equitable and advisable to carry out the purpose of RCW 6.23.120.”

CP 58-59.

The Respondent filed an opposing brief, CP 126-141, and the Appellant replied, CP 161-165. Oral argument was heard on June 3, 2016. Judge Heller informed the parties that he would issue his order at a later date. CP 197.

On June 22, 2013, Judge Heller entered an Order Denying Appellant’s requested relief. CP 198-99. In rejecting the Order to Show Cause, Judge Heller stated:

“Having reviewed Dynamic’s Motion, Household’s Opposition, Dynamic’s Reply, and having heard oral argument, the court hereby DENIES the motion. The court finds that (1) RCW 6.23.120 does not apply because the homestead exemption is not available, see RCW 6.13.080(2)(b), and (2) that the offer of \$53,500 was insufficient because it failed to include the amount of Household’s lien on the property. see RCW 6.23.020(2).”

CP 199.

Judge Heller’s first proffered reasoning is a clear error of law because in order for RCW 6.23.120 to apply, the property must be one in which any person may declare the property as a homestead. The judgment debtor’s answer states Ms. Romano occupied the property as a homestead for 28 years! CP 12. In addition, the stipulated judgment provides that the

judgment debtor retained the right to possession, CP 21-29, thus making homestead protection automatic under RCW 6.13.040.<sup>2</sup>

Judge Heller's second proffered reasoning is also a clear error of law. Respondent's *extinguished* lien could not, under RCW 6.23.020, be included into the "redemption amount." Therefore, it need not be factored into the amount necessary to make the offer "qualifying" under RCW 6.23.120. For these reasons, and as argued further below, Appellant's relief is warranted.

#### **IV. ARGUMENT**

##### **A. Standard of Review**

Here, Appellant requests that this Court interpret the application of the Homestead Act and the Redemption Act. Issues of statutory interpretation are questions of law that are reviewed *de novo*. *Optimer Int'l, Inc. v. RP Bellevue, LLC*, 170 Wash.2d 768, 771, 246 P.3d 785 (2011).

##### **B. The Property Fits Within the Scope of RCW 6.23.120**

- I. Because Ms. Romano is an Owner and Occupied the Property Throughout the Redemption Period, a Homestead Applied: Thus RCW 6.23.120 Applied to this Property.*

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<sup>2</sup> Although it was not on record before the trial court, Appellant requests that this Court take judicial notice of the fact that Ms. Romano occupied the property until the end of the redemption period.

In a recent appellate decision, Division One Court of Appeals held that RCW 6.23.120 includes within its scope any property that a person would be entitled to claim as a homestead. *Performance Construction v. Glenn*, 2016 WL 4272386, \*7, --P.3d -- (2016)16. The court concluded that this inquiry relates to the specific homestead status of the property at issue in the foreclosure action. In applying this interpretation to the facts in *Performance*, the Court determined that: “because the property was owned by Slighter LLC at the time of foreclosure, it was not property that the owner was using as a residence. See RCW 6.13.010; RCW 6.13.040(3). Consequently, it was not property in which the owner would be entitled to claim a homestead.” *Id.* at \*8.

Unlike *Performance*, where the owner of the property was a limited liability company, this case involves property owned by an individual, Rosalind Romano. Ms. Romano stated in her answer that she had occupied the property for the last 28 years as her primary residence, and further, that the stipulated judgment permitted her to remain in possession during the Redemption period. CP 11-12.

Turning to the Homestead Act and the Redemption Act, there are two sources which support a finding that Ms. Romano not only could have claimed, but did in fact already have a homestead in the property.

RCW 6.13.010 discusses what constitutes a “homestead.” The homestead consists of real property that the owner uses as a residence. RCW 6.13.010. To claim a residence as a homestead, the owner must occupy the property as a principal residence or intend to do. RCW 6.13.040(3). As used in this chapter, the term “owner” includes, but is not limited to, a purchaser under a deed of trust, mortgage, or real estate contract. Ms. Romano was the owner of the property by virtue of the quit claim deed issued to her in King County Recording No. 20150114001222. In addition, as Respondent points out, Ms. Romano is also the borrower under a deed of trust that *once* encumbered the property. CP 145. Therefore, Ms. Romano fits the definition of “owner” within the meaning of this chapter.

Next, Ms. Romano indicated in her answer that she has occupied the property as a primary residence for the last 28 years, CP 12, and she was permitted under the stipulated judgment to remain on the property during the redemption period, and did so. CP 21; CP 25. Therefore, the homestead applied automatically within the meaning of RCW 6.13.040(3).

Based upon the foregoing, the property in dispute fits within the scope of RCW 6.23.120, and Judge Heller's reasons for holding to the contrary, are, respectfully, without merit.

2. *RCW 6.13.080(2)(b) Does Not Prevent a Judgment Debtor from Declaring a Homestead.*

The property could be declared as homestead by Ms. Romano and was in fact her homestead. Contrary to Judge Heller's Order, RCW 6.13.080(2)(b) does not alter her ability to occupy the property as her primary residence because this statute relates to execution or forced sales in satisfaction of a judgment.

RCW 6.13.080(2)(b) provides in pertinent part that "the homestead exemption is not available *against an execution or forced sale in satisfaction of judgments obtained*: (emphasis added)

(2) On debts secured (b) by mortgages or deeds of trust on the premises that have been executed and acknowledged by both spouses or both domestic partners or by any claimant not married or in a state registered domestic partnership."

The statute confirms the beneficiary's right to execute or force sale in satisfaction of the debt secured by a deed of trust. It says nothing about the right to possession, which is the central issue for determining one's ability to claim the property as a homestead. Rather, the homestead immunity afforded by RCW 6.13.080 is an exception to the normal

homestead protection provided for in RCW 6.13.070. This statute provides as follows:

“(1) Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030. The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in RCW 6.13.030, shall likewise be exempt for one year from receipt, and also such new homestead acquired with such proceeds.”

RCW 6.13.070.

Reading the Homestead Act as a whole, it is clear that RCW 6.13.080 only operates as an exception to the rule that “the homestead is exempt from attachment and from execution or forced sale for the debtors of the owner...” RCW 6.13.070. The exemption, however, says nothing about the right to possession of the property post-execution. Rather, that issue is dealt with in RCW 6.23.110(4) *infra*, 16.

But even if RCW 6.13.080 somehow altered the rights to possession afforded by the Redemption Act, the exemption would unequivocally not apply in this case. It is undisputed that: (1) Respondent’s lien was extinguished, CP 29; (2) Respondent has never initiated any attempts to foreclose; and (3) Respondent has never obtained

a Judgment. For these reasons, RCW 6.13.080(2)(b) has no applicability to this case.

3. *A Beneficiary's Right to Execute on a Deed of Trust Against the Homestead Does Not Impact the Homeowner's Right to Claim Homestead.*

Judge Heller's reasoning is also incorrect because the right to execute and the right to possession post-foreclosure (which is necessary to claim a homestead) are two different rights governed by different statutes and apply at different times.

The Homestead Act and the Redemption Act grant two forms of protection to homeowners: (1) the right to be free from execution or forced sale of the homestead; (2) the right to live in the home during the redemption period that follows a forced sale, per the Redemption Act at RCW 6.23.110(4).

The legislature has protected the homestead in two ways that are relevant to this matter. First, the Homestead Act, at RCW 6.13.070 establishes an exemption from forced sale of a homestead. It provides in pertinent part:

“Except as provided in RCW 6.13.080, the homestead is exempt from attachment and from execution or forced sale for the debts of the owner up to the amount specified in RCW 6.13.030 [presently \$125,000].”

Second, the Redemption Act, at RCW 6.23.110(4), addresses the right to possession during the eight-or-twelve-month redemption period that follows an execution of forced sale. It provides:

“In case of any homestead as defined in chapter 6.13 RCW and occupied for that purpose at the time of the sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues or for value of occupation.”

The two statutes address the rights of the homeowners against two different opponents at two different points in time. Prior to execution and forced sale, the rights of the creditor and the homeowner are governed by RCW 6.13.070 and RCW 6.13.080. After execution and forced sale, the rights of the foreclosure sale purchaser and homeowners are governed by RCW 6.23.110. See *First Nat'l Bank of Everett v. Tiffany*, 40 Wn.2d 193, 197, 242 P.2d 169 (1952) (discussing former provisions now re-codified as RCW 6.13.070, 6.13.080 and RCW 6.23.110)

The Homestead Act, at RCW 6.13.080(2)(b) provides a limited exception to the rule that a homestead is “exempt from attachment and from execution or forced sale.” See, RCW 6.13.070. However, RCW 6.13.080 does not alter the right to possession provided to a judgment debtor in RCW 6.23.110(4).

In fact, the Washington Supreme Court has affirmed this argument in *First Nat'l Bank of Everett v. Tiffany*, 40 WN.2d 193, 242 P.2d 169 (1952). There the Supreme Court explained that RCW 6.13 and RCW 6.23 address the rights of the parties at two different times.

Prior to execution and forced sale, the rights of the parties are governed and defined by RCW 6.12.080 (Rem. Supp. 19645, Sec. 532) [now RCW 6.13.070] and RCW 6.12.100 (Rem. Rev. Stat. Sec 533) [now RCW 6.13.080]. The mortgaged homestead having been sold under execution or forced sale, these statutes have served their purpose and the future rights of the parties are then governed by an entirely different statute.

After execution or forced sale, the rights of the parties are governed by RCW 6.24.210 (Rem. Rev. Stat. (sup.) Sec 602) [now RCW 6.23.110], which, so far as here material reads as follows: "The purchaser from day of sale \*\*\* shall be entitled to possession of the property purchased\*\*\*in case of any homestead selected in the manner provided by law and occupied for that purpose at the time of sale, the judgment debtor shall have the right to retain possession thereof during the period of redemption without accounting for issues of value of occupation."

*Tiffany*, 40 Wn.2d at 197; see also 28 Wash. Prac., Creditors' Remedies-Debtors' Relief Sec. 7.22 ("The right to possession exists *even though* the judgment debtor is precluded from claiming the homestead exemption by one of the exceptions discussed in this section" including "debts secured by a condominium or homeowners association's lien") (citing *Tiffany*).

In this case, the ability of the Respondent or Seawind for that matter, to execute or force sale, does not impact the rights of possession provided to the judgment debtor under RCW 6.23.110(4). Here, Ms.

Romano continued to occupy the property during the redemption period; and thus the property was one in which she could claim as a homestead.

**C. Respondent's Lien Should Not Be Included in the Redemption Amount According to RCW 6.23.020.**

“During the one-year redemption period under chapter 6.23 RCW, a licensed real estate broker may list property sold at a sheriff's sale. If the property is not redeemed by the judgment debtor at the end of the one-year period, the purchaser at the sheriff's sale shall accept the highest qualifying offer as defined under RCW 6.23.120(1).” *P.H.T.S., LLC, v. Vantage Capital, LLC*, 122 Wash. App. 461, 345 P.3d 20 (2015). RCW 6.23.120(1) requires that a qualifying offer be at least one hundred and twenty percent of the redemption amount, determined under RCW 6.23.020, and the normal commission of the real estate broker or agent handling the offer.

RCW 6.23.120 provides the following:

An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property and is at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined **under RCW 6.23.020** and (b) the normal commission of the real estate broker or agent handling the offer.

(2) The proceeds shall be divided at the time of closing with: (a) One hundred twenty percent of the redemption amount determined **under RCW 6.23.020** paid to the property owner,

RCW 6.23.120. [Emphasis Added].

RCW 6.23.120, in two separate sections, states unequivocally that the amount necessary to make a qualifying offer is 120% “greater than the redemption amount as defined by RCW 6.23.020.” Judge Heller erred in interpreting RCW 6.23.020 subsections (c) and (d) as requiring the offer to include Respondent’s **extinguished lien**.

RCW 6.23.020 provides, in pertinent part, the following:

(2) The person who redeems from the purchaser must pay: (a) The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption, together with (b) the amount of any assessment or taxes which the purchaser has paid thereon after purchase, and like interest on such amount from time of payment to time of redemption, together with (c) any sum paid by the purchaser on a prior lien or obligation secured by an interest in the property to the extent the payment was necessary for the protection of the interest of the judgment debtor or a redemptioner, and like interest upon every payment made from the date of payment to the time of redemption, and (d) if the redemption is by a redemptioner and if the purchaser is also a creditor having a lien, by judgment, decree, deed of trust, or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the redemptioner shall also pay the amount of such lien with like interest.

RCW 6.23.020(2)(a)-(d).

*1. Subsection (c) does not authorize the inclusion of Respondent’s lien.*

Appellant’s qualifying offer undoubtedly included sections (a) and (b) or RCW 6.23.020. Further, Appellant contends that the extinguished

lien held by Respondent need not be included in the redemption amount under either subsections (c) and (d).

Subsection (c) involves sums paid by the purchaser. “Purchaser” clearly refers to the purchaser at the sheriff’s sale. According to RCW 6.21.100, the purchaser ought to receive from the sheriff a copy of the certificate of purchase.<sup>3</sup> In addition, the *purchaser* “shall file the original certificate of sale for record with the recording officer in the county in which the property is located.” RCW 6.21.110(6). Here, Seawind received the certificate of purchase and filed the certificate of sale. CP 37-39. Therefore, Seawind was the purchaser.

In order to claim Respondent’s lien under subsection (c), the purchaser must have paid it off. Subsection (c) requires an amount to include sums including payments on liens or other obligations. Here, Seawind did not pay any sums on Respondent’s lien. Therefore, under this section, a qualifying offer amount need not include Respondent’s lien.

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<sup>3</sup> “Upon receipt of the purchase price, the sheriff shall give a copy of the certificate to the purchaser and the original certificate to the clerk of the court with the return on the execution to hold for delivery to the purchaser upon confirmation of the sale.” RCW 6.21.100.

Furthermore, Respondent's lien has been extinguished, so it is not a secured obligation that has been paid off, nor could an extinguished lien be paid off for that matter. RCW 6.23.020(c).<sup>4</sup>

2. *Subsection (d) does not authorize the inclusion of Respondent's extinguished lien.*

Subsection (d) only applies if the purchaser is a lien holder (“other than the judgment under which the purchase was made.”), in which case the redemptioner would have to pay off the **purchaser's lien**, if the purchaser's lien was prior. RCW 6.23.020.

Subsection (d) provides “if the redemption is by a redemptioner and if the purchaser is also a creditor having a lien, by judgment, decree, deed of trust, or mortgage, prior to that of the redemptioner, other than the judgment under which such purchase was made, the redemptioner shall also pay the amount of such lien with like interest.” In interpreting this statute, the Court of Appeals in *Prince v. Savage*, 29 Wn. App. 201, 205, 627 P. 2d 996 (1981) held that “the portion of RCW 6.24.140 (presently RCW 6.23.020) which requires payment of a purchaser's prior liens in

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<sup>4</sup> *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wn. 2d 754, 328 P.3d 895 (2014) dealt with the issue of who is a qualified redemptioner. *Id.* at 897. To suggest, as the Respondent does, that “another bite at the apple” means that the respondent's lien is reinstated to its original priority is contrary to foreclosure law 101. See, *Flanders v. Aumuck*, 320 Ore. 19, 29, 30, 51 P.477 (1897)(“a redemption will not reinstate the specific mortgage lien...” cited favorably by *Damascus Milk Co. v. Moriss*, 1 Wn. App. 501, 505-06, 463 P.2d 212 (1969).

order to redeem applies only to a lien creditor and not to a judgment debtor.” In order to determine if this subsection applies, the dispositive question is whether the Respondent is the purchaser. Respondent is not. Therefore, this section does not apply.

Respondent is essentially requesting relief that is contrary to well established Washington law, which has consistently maintained that only when a judgment debtor redeems does a redemptioner’s extinguished lien become reinstated.

In *De Roberts v. Stiles*, 24 Wash. 611, 64 P. 795 (1901), the Court addressed whether the successor-in-interest of an extinguished mortgage could foreclose after a senior lienholder had foreclosed. The Court held that when the successor-in-interest of the judgment debtor had redeemed the property, the act of redeeming “extinguished the foreclosure proceedings.” *Id.* at 619. The Court went on, stating that:

“Redemption by a mortgagee or any other redemptioner that the owner of the land would have led to a different result. Such a one would have been entitled to a sheriff’s deed transferring the absolute title to him, unless appellant had redeemed from such a redemption under the statute. A sheriff’s deed to such a one would then have made the foreclosure proceedings an absolute bar to appellant’s mortgage.”

*Id.* 619-620.

The ruling in *De Roberts* reflects the current Redemption Act, at RCW 6.23.040(2) which provides: “If the judgment debtor redeems, the

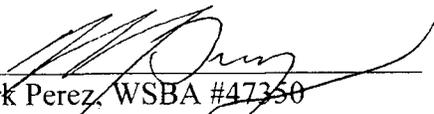
effect of the sale is terminated and the estate of the debtor is restored.” Here, the judgment debtor did not redeem, and therefore, Respondent’s contention that its lien is somehow reinstated upon its redemption is contrary to Washington law. See *Flanders v. Aumuck*, 320 Ore. 19, 29, 30, 51 P.477 (1897) (“a redemption will not reinstate the specific mortgage lien...”) cited favorably by *Damascus Milk Co. v. Moriss*, 1 Wn. App. 501, 505-06, 463 P.2d 212 (1969).

#### V. CONCLUSION

For the reasons set forth above, the Court should reverse the decision of the Superior Court, hold that the property is within the scope of RCW 6.23.120, that Dynamic’s offer was qualifying, and remand for assessment of proper disbursement of the qualifying offer amount per RCW 6.23.120(2).

RESPECTFULLY SUBMITTED ON THIS 12<sup>th</sup> day of September, 2016.

EMISSARY LAW

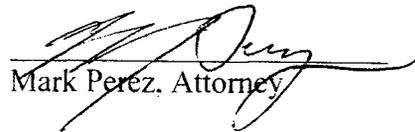
  
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Funding, LLC

CERTIFICATE OF SERVICE

The undersigned certifies, under penalty of perjury under the laws of the State of Washington, that on the ~~12<sup>th</sup>~~<sup>13<sup>th</sup></sup> day of September 2016, I emailed and mailed via regular U.S. mail a true and correct copy of this document to:

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DATED this ~~12<sup>th</sup>~~<sup>13<sup>th</sup></sup> day of September, 2016, at Seattle, Washington.

  
Mark Perez, Attorney

CLERK OF SUPERIOR COURT  
STATE OF WASHINGTON  
2016 SEP 13 PM 1:50

**EXH. "A"**

2016 WL 4272386

Only the Westlaw citation is currently available.  
Court of Appeals of Washington,  
Division 1.

Performance Construction, LLC, Appellant/Cross  
Respondent.

v.

Collette Glenn; Cobalt Mortgage, Inc.; and  
Mortgage Electronic Registration System, Inc.,  
Respondents,  
David Keene, Respondent/Cross Appellant.

No. 73808-9-1

FILED: August 15, 2016

Appeal from Snohomish Superior Court, No.  
15-2-01905-6, Honorable Joseph P. Wilson.

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#### Opinion

Appelwick, J.

\*1 ¶ 1 This is an appeal from summary judgment quieting  
title to property in Glenn. Keene, on behalf of D & J  
Shires LLC, purchased foreclosure property owned by  
Slighter LLC at a sheriff's sale. He then sought an  
assignment of redemption rights from Slighter LLC. The  
assignment of redemption rights from Slighter LLC to  
Keene was not done by deed and was ineffective.

Therefore, Slighter LLC remained a qualified  
redemptioneer and the redemption period was not  
extinguished. Because the redemption period had not  
expired when the sheriff's deed issued, the trial court  
properly declared the sheriff's deed void. Although the  
sheriff's deed was void, Shires held an inchoate interest in  
the property at the time it sold the property to Glenn. No  
redemption of that interest was made. Because Slighter  
LLC was not a person entitled to claim a homestead in the  
property, RCW 6.23.120 did not apply to the property and  
Performance was not entitled to invoke it to purchase the  
property from Glenn. Therefore, Glenn is entitled to a  
sheriff's deed and to quiet title of the property. We affirm.

#### BACKGROUND

¶ 2 In Washington, the judgment debtor and certain lien  
creditors are granted the statutory right to redeem  
property sold at a foreclosure sale. Fid. Mut. Sav. Bank v.  
Mark, 112 Wash.2d 47, 51, 767 P.2d 1382 (1989).  
Redemption is the process of canceling and annulling a  
defeasible title, such as is created by a mortgage, by  
paying the debt or fulfilling other conditions. Id. Chapter  
6.23 RCW governs the statutory redemption of real  
property sold at a sheriff's sale. P.H.T.S., LLC v. Vantage  
Capital, LLC, 186 Wash.App. 281, 287, 345 P.3d 20  
(2015). Real property sold subject to redemption may be  
redeemed by the following persons or their successors in  
interest:

(a) The judgment debtor, in the whole or any part of the  
property separately sold.

(b) A creditor having a lien by judgment, decree, deed  
of trust, or mortgage, on any portion of the property, or  
any portion of any part thereof, separately sold,  
subsequent in priority to that on which the property was  
sold. The persons mentioned in this subsection are  
termed redemptioners.

RCW 6.23.010(1). Unless redemption rights have been  
precluded because the mortgagor or his or her successor  
in interest has abandoned the property, the judgment  
debtor or any redemptioner may redeem the property from  
the purchaser at any time within one year after the date of  
the sale.' RCW 6.23.020(1); RCW 61.12.093. To redeem  
the property from the purchaser, the judgment debtor  
must pay (1) the amount bid at the sheriff's sale with  
interest, (2) any assessment or taxes paid by the purchaser  
with interest, and (3) any sum paid by the purchaser on a  
prior lien or obligation secured by an interest in the

property to the extent payment was necessary to protect the judgment debtor or a redemptioner.<sup>2</sup> RCW 6.23.020(2); *Vantage*, 186 Wash.App. at 287, 345 P.3d 20. The statute contemplates that there may be multiple successive redemptions. See RCW 6.23.040 (stating that if property is redeemed from the purchaser by a redemptioner, another redemptioner may, within sixty days after the first redemption, redeem it from the first redemptioner).

\*2 ¶ 3 If no redemption is made within the redemption period, the purchaser or the last redemptioner to redeem is entitled to a sheriff's deed at the end of the redemption period. RCW 6.23.060. But, of relevance to this case, there is an exception to this requirement—that entitles a third party to the property—outlined in RCW 6.23.120:

(1) Except as provided in subsection (4) of this section, during the period of redemption for any property that a person<sup>3</sup> would be entitled to claim as a homestead, any licensed real estate broker within the county in which the property is located may nonexclusively list the property for sale whether or not there is a listing contract. If the property is not redeemed by the judgment debtor and a sheriff's deed is issued under RCW 6.12.120, then the property owner shall accept the highest current qualifying offer upon tender of full cash payment within two banking days after notice of the pending acceptance is received by the offeror. If timely tender is not made, such offer shall no longer be deemed to be current and the opportunity shall pass to the next highest current qualifying offer, if any. Notice of pending acceptance shall be given for the first highest current qualifying offer within five days after delivery of the sheriff's deed under RCW 6.21.120 and for each subsequent highest current qualifying offer within five days after the offer becoming the highest current qualifying offer. An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property and is at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined under RCW 6.23.020 and (b) the normal commission of the real estate broker or agent handling the offer.

(2) The proceeds shall be divided at the time of closing with: (a) One hundred twenty percent of the redemption amount determined under RCW 6.23.020 paid to the property owner, (b) the real estate broker's or agent's normal commission paid, and (c) any excess paid to the judgment debtor.

(3) Notice, tender, payment, and closing shall be made through the real estate broker or agent handling the offer.

(4) This section shall not apply to mortgage or deed of trust foreclosures under chapter 61.12 or 61.24 RCW.

## FACTS

¶ 4 On June 12, 2013, the Brookwood Place Condominium Association (Brookwood) commenced a lien foreclosure action pursuant to chapter 61.12 RCW and chapter 64.34 RCW against Slighter Property II LLC (Slighter LLC) and Thomas Slighter and Bonnie Slighter. Brookwood filed the action, seeking to judicially foreclose on the real property (the Property) owned by Slighter LLC for failing to pay Brookwood's monthly condominium assessments.<sup>4</sup> Greenpoint Mortgage Funding Inc. and Nationstar Mortgage LLC were also named as defendants in the complaint, because they were both lienholders on the Property.

\*3 ¶ 5 Nationstar and Greenpoint did not answer the complaint, and the trial court entered a default order against them. Brookwood then moved for summary judgment as to the Slighters and Slighter LLC. The trial court granted Brookwood's motion. The trial court entered a personal judgment of \$20,772.04 against the Slighters and Slighter LLC and a decree of foreclosure as to all defendants. The trial court's order declared the lien foreclosed and ordered the Snohomish County Sheriff to sell the Property and apply the proceeds to the payment of the judgment against the defendants. The order noted that the period of redemption would be 12 months and that the sheriff would be ordered to issue a sheriff's deed at the termination of the 12 month period.

¶ 6 On November 1, 2013 the trial court entered an order of sale, commanding the sheriff to sell the Property. Pursuant to the trial court's order, the sheriff sold the Property at public sale on January 3, 2014. D & J Shires LLC (Shires) was the highest bidder. It purchased the Property for \$36,000. David Keene, a respondent and the cross-appellant in this action, is a member of Shires.<sup>5</sup> On January 30, 2014, the Slighters, on behalf of themselves individually and on behalf of Slighter LLC, assigned all redemption rights in the Property to Keene. On January 31, 2014 the trial court confirmed the sheriff's sale.

¶ 7 On March 4, 2014—months before the January 5, 2015 expiration of the 12 month redemption period<sup>6</sup>—Keene filed a motion for an order directing the sheriff to issue a sheriff's deed free and clear of any rights of redemption for the Property. Keene's motion stated that because the Slighters and Slighter LLC assigned their redemption rights to him and no longer possessed them,

there were no redemptioners who could exercise a right of redemption for the Property.<sup>7</sup> Keene's motion stated, "Here, since no eligible redemptioners exist, the Court should deem that the period of redemption is expired and direct the ... Sheriff to issue a Sheriff's Deed to Mr. Keene."

¶ 8 That same day, a commissioner entered an order directing the sheriff to issue a sheriff's deed. The order stated that there are no qualified redemptioners for the Property as defined in RCW 6.23.010. It directed the sheriff to issue Keene a sheriff's deed to the Property free and clear of any rights of redemption. On April 14, 2014, the sheriff issued the deed to Shires, not Keene.

\*4 ¶ 9 In May 2014, Collette Glenn purchased the Property from Shires for \$175,000. Glenn purchased the Property by taking out a loan from Cobalt Mortgage, Inc. (Cobalt) and paying the rest in cash. To secure repayment of her loan, Glenn executed a deed of trust encumbering the Property. Shires conveyed its interest in the Property to Glenn via a statutory warranty deed that was recorded on May 6, 2014.<sup>8</sup> Under the terms of the deed of trust, Cobalt was the lender and Mortgage Electronic Registration System, Inc. (MERS) was designated as beneficiary.

¶ 10 On January 3, 2015—two days before the statutory 12 month redemption period would have ended—Performance Construction LLC delivered to Glenn an offer to purchase the Property under RCW 6.23.120. Performance offered to pay Glenn \$92,500 for the Property. Glenn did not accept the offer.

¶ 11 Consequently, Performance commenced this action in January 2015 against Glenn, Cobalt, and MERS. Performance's complaint sought declaratory relief, specific performance, damages, and quiet title. Performance sought, among other things, a declaration that RCW 6.23.120 applied and that Performance made the highest qualifying offer under the terms of the statute, a declaration that Glenn is obligated to sell the Property to Performance under the terms of the offer, and a declaration that the sheriff's deed was void.

¶ 12 On March 16, 2015, Slighter LLC conveyed and quit claimed all of its rights, title, or interest in the Property to Performance.<sup>9</sup> Specifically, the quit claim deed noted that it was assigning any rights to excess proceeds under RCW 6.23.120(2)(c) to Performance.

¶ 13 On March 30, 2015, presumably because Performance sought to void the sheriff's deed, it amended its complaint to add Keene as a defendant.<sup>10</sup> Keene had

obtained the order for the sheriff's deed's issuance in his name.<sup>11</sup> On April 17, 2015, Glenn answered Performance's complaint and filed a third party complaint against Shires for breach of statutory warranties.

¶ 14 Thereafter, the parties filed cross motions for summary judgment. The trial court entered an order granting respondents' motions for summary judgment. The order also denied Performance's motion for summary judgment and dismissed Performance's claims with prejudice. Most notably, the order on the cross motions for summary judgment: (1) voided the order for issuance of the sheriff's deed; (2) voided the sheriff's deed; (3) declared that Performance did not make a qualifying offer under RCW 6.23.120 because the Property was not listed for sale as required by the statute; and (4) declared that Glenn was a bona fide purchaser and was entitled to have title to the Property quieted in her name. Performance filed a motion for reconsideration on July 10, 2015. The trial court denied the motion on July 28, 2015.

¶ 5 Performance appeals, asserting that the trial court ruled correctly as to the first two issues, but erred in granting summary judgment as to the third and fourth issues. Keene cross appeals, arguing that the trial court erred when it declared as void the superior court's order to issue the sheriff's deed and the sheriff's deed itself.

## DISCUSSION

\*5 ¶ 16 This court reviews summary judgment orders de novo. Hadley v. Maxwell, 144 Wash.2d 306, 310–11, 27 P.3d 600 (2001). Summary judgment is appropriate only where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); Peterson v. Groves, 111 Wash.App. 306, 310, 44 P.3d 894 (2002). When considering the evidence, the court draws reasonable inferences in the light most favorable to the nonmoving party. Schaaf v. Highfield, 127 Wash.2d 17, 21, 896 P.2d 665 (1995). An appellate court may affirm a trial court's disposition of a summary judgment motion on any basis supported by the record. Davies v. Holy Family Hosp., 144 Wash.App. 483, 491, 183 P.3d 283 (2008). To the extent that the issues before the court raise questions of statutory interpretation, these are questions of law we also review de novo. Bostain v. Food Express, Inc., 159 Wash.2d 700, 708, 153 P.3d 846 (2007).

¶ 17 We first address the validity of the sheriff's deed because it affects the status of the parties and their interest in the Property at the time of the offer made by

Performance.

¶ 18 Keene sought an assignment of Slighter LLC and the Slighters' rights to redeem the interest Shires purchased at the sheriff's sale. Slighter LLC and the Slighters individually assigned their redemption rights to Keene. This assignment was not in deed form. In his motion for an order directing issuance of the sheriff's deed, Keene argued that the assignment together with the interest purchased at the sheriff's sale extinguished any redemption rights and entitled him to take title to the property by sheriff's deed without waiting for the expiration of the statutory redemption period.

¶ 19 In Mark, the Washington Supreme Court held that a judgment debtor may not transfer a right to redeem without also transferring the underlying interest in the property's title. 112 Wash.2d at 52–53, 767 P.2d 1382. It reasoned that a judgment debtor-mortgagor retains legal title to the property during the redemption period. Id. at 52, 767 P.2d 1382. And, a sheriff's certificate of purchase does not pass title, but is only evidence of an inchoate interest which may or may not ripen into title. Id. at 52–53, 767 P.2d 1382. To allow an assignee without an interest in the property's title to redeem would accomplish nothing, because any redemption would inure to the benefit of the holder of legal title—the judgment debtor-mortgagor. Id. at 53, 767 P.2d 1382. Consequently, the Mark court held that an unacknowledged and unrecorded assignment of interest was insufficient to convey the judgment-debtors' interest in the property. Id. It stated the only way to convey title to real property is by a valid, acknowledged deed. Id. And, consequently, the rights of redemption were not validly transferred. See id. Years later in Capital Investment Corporation of Washington v. King County, the court, analogizing to Mark, held that a redemptioner whose lien is by judgment (instead of by mortgage) can effectively transfer his or her right to redeem only if he or she also transfers his or her underlying judgment. 112 Wash.App. 216, 228, 47 P.3d 161 (2002).

¶ 20 Here, the assignment of redemption rights from the Slighters and Slighter LLC to Keene stated that the assignment was irrevocable and “includes any rights in and to the above-described property available to the undersigned under RCW 6.23 et. seq or as acquired thereafter.” (Capitalization omitted.) Keene asserts that because the assignment was properly signed and notarized and recorded prior to Keene's motion for issuance of the sheriff's deed and because it included any rights in the property, it successfully conveyed all of the Slighters' and Slighter LLC's interest in the property. Keene also cites to the language of the foreclosure decree as evidence that the

Slighters and Slighter LLC had only the right of redemption after the sheriff's sale (“[A]ll right, title, claim, lien, estate, or interest of [defendants i]s [i]nferior and subordinate to the aforementioned Lien and is hereby foreclosed except only for the right of redemption allowed by law.”). Consequently, Keene argues that the Slighters and Slighter LLC withheld no rights to the property when they made the assignment to him. He argues that this case is distinguishable from both Mark and Capital because in Mark, the assignment failed because it had not been made in deed form and was neither notarized nor recorded and in Capital, the assignment was ineffective because the assignment was made through a certificate of redemption.

\*6 ¶ 21 Despite the minor factual differences, Mark and Capital clearly stand for the proposition that title to real property can only be conveyed by a valid deed and a valid transfer of an interest in the property's title is necessary to transfer the right of redemption. Mark, 112 Wash.2d at 52–53, 767 P.2d 1382; Capital, 112 Wash.App. at 228, 47 P.3d 161. The Slighters and Slighter LLC did not convey their interest in the Property to Keene through a deed.<sup>12</sup> We conclude that the language in the foreclosure decree and in the assignment of redemption rights together do not remedy the fact that the Slighters and Slighter LLC did not convey their interest in the property by deed. Therefore, Slighter LLC—as judgment debtor<sup>13</sup>—was still an eligible redemptioner at the time the sheriff issued the deed to the Property.

¶ 22 RCW 6.23.060 provides that if no redemption is made within the redemption period, the purchaser is entitled to a sheriff's deed. Here, the sheriff issued the deed before the end of the redemption period when there were still qualified redemptioners. The execution of a deed after the time for redemption has expired is a purely ministerial act. See RCW 6.21.120 (stating that it is the duty of the sheriff to issue a deed upon request immediately after the time for redemption from a sheriff's sale has expired); Diamond v. Turner et al., 11 Wash. 189, 192–93, 39 P. 379 (1895). The sheriff has no independent nor statutory authority to issue a sheriff's deed while redemption rights remain, nor may a court commissioner confer such authority when it is not otherwise conferred by law. See Severson v. Penski, 36 Wash.App. 740, 743–44, 677 P.2d 198 (1984) (affirming the trial court's decision to void a sheriff's deed even though the issuance of the deed was ordered by a county commissioner who misapplied the law). Here, the commissioner erred by concluding there were no qualified redemption rights remaining. The redemption period had not expired and the court commissioner lacked authority to shorten the redemption period or to order the sheriff to issue the deed early. The trial court correctly concluded

that the sheriff's deed—issued prior to the end of the statutory redemption period while redemption rights remained—was void.

¶ 23 In light of this conclusion, because the sheriff's deed was void, we turn to consideration of the status and rights of the parties. First, although Shires was not entitled to the sheriff's deed or absolute title prior to the expiration of the redemption period, it—as the purchaser of the Property at the sheriff's sale—held an inchoate interest in the Property. See *W.T. Watts, I. v. Sherrer*, 89 Wash.2d 245, 248, 571 P.2d 203 (1977) (stating that the Washington Supreme Court has recognized that a sheriff's certificate of purchase does not pass title but is only evidence of an inchoate interest which may or may not ripen into absolute title). Title is not absolute, because the interest of a sheriff's sale purchaser is subject to the right of redemption. See *id.* This interest gives the purchaser the right to a sheriff's deed only when redemption rights are extinguished. See RCW 6.21.120.

¶ 24 Here, during the one year redemption period, Slighter LLC—as judgment debtor—and any eligible lienholders would have been entitled to redeem the Property. See RCW 6.23.010. But, no parties sought to or redeemed the Property. Therefore, at the end of the redemption period, Shires would have been entitled to a sheriff's deed and absolute title of the Property. See RCW 6.21.120. Glenn succeeded to Shires' interest in the Property. Glenn held that inchoate interest in the Property at the end of the redemption period.<sup>14</sup> She was therefore entitled to the sheriff's deed unless Performance properly invoked the exception under RCW 6.23.120 as argued in its appeal.

\*7 ¶ 25 Glenn asserts that RCW 6.23.120 does not apply here. RCW 6.23.120 applies to “any property that a person would be entitled to claim as a homestead...” Glenn argues that at the time of the foreclosure sale, the Property was not one that a person could claim as a homestead, because in the foreclosure action, the trial court ordered that the Property “ ‘is not subject to the homestead exemption.’ ”<sup>15</sup> In other words, she reads the statutory language “any property that a person would be entitled to claim as a homestead” as related to the specific status of the property at issue in the foreclosure action. RCW 6.23.120. By contrast, Performance argues that the statutory language means the nature of the property generally. Performance asserts, “The condominium unit is a residential property, i.e.,[.] a property a person would be able to claim as a homestead.” (Boldface omitted.) Neither chapter 6.23 RCW nor chapter 6.13 RCW define “person.”

¶ 26 The court's fundamental objective in construing a statute is to ascertain and carry out the legislature's intent. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wash.2d 1, 9–10, 43 P.3d 4 (2002). If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Id.* Under this plain meaning rule, we look at both the wording of the statute and the wording of related or other provisions of the same act. *Pierce County v. State*, 144 Wash.App. 783, 806, 185 P.3d 594 (2008). If the statute remains susceptible to more than one reasonable meaning after such an inquiry, the statute is ambiguous and we resort to various statutory construction aides. *Id.*

¶ 27 Even without a statutory definition of “person,” the legislature's intent is clear when considering the statute as a whole and other related provisions. RCW 6.23.120 applies only when a third party has purchased the property at a sheriff's sale and the judgment debtor is unable to redeem. See RCW 6.23.120(1). RCW 6.23.120(1) requires that a qualifying offer be at least equal to the sum of one hundred twenty percent greater than the redemption amount and the normal commission of the real estate broker or agent handling the offer. RCW 6.23.120(2) then states that the proceeds from a qualifying offer made under the statute shall be divided at the time of closing with a portion paid to the property owner, a portion paid to the real estate broker, and any excess paid to the judgment debtor. Therefore, the intent of the legislature was clearly to encourage more and higher offers on a property in order to put money back in the hands of the judgment debtor. Thus, the legislature sought to protect a judgment debtor who had just lost his or her home through foreclosure and was unable to redeem.

¶ 28 RCW 6.13.010 discusses what constitutes a “homestead.” The homestead consists of real property that the owner uses as a residence. RCW 6.13.010. To claim a residence as a homestead, the owner must either occupy the property as a principal residence or intend to do so. RCW 6.13.040(3). In light of RCW 6.13.040(3), we read “owner” as applying solely to natural persons. A limited liability company is not capable of occupying a property as its principal residence.

¶ 29 Based on the legislative intent behind RCW 6.23.120—to protect a judgment debtor who had just lost his or her home—the legislature's deliberate connection of the statute to homestead property is instructive. The legislature sought to limit RCW 6.23.120's application to foreclosed properties where a recently foreclosed judgment debtor—who relied on the property for shelter—could obtain excess proceeds. Consequently, we hold that “any property that a person would be entitled to

claim as a homestead” relates to the specific homestead status of the property at issue in the foreclosure action.

\*8 ¶ 30 Here, because the Property was owned by Slighter LLC at the time of the foreclosure, it was not property that the owner was using as a residence. See RCW 6.13.010; RCW 6.13.040(3). Consequently, it was not property in which the owner would be entitled to claim a homestead. We hold that RCW 6.23.120 does not apply to the Property at issue here.<sup>16</sup>

¶ 31 Although the sheriff’s deed to Shires was void, Glenn acquired the inchoate interest under the sheriff’s certificate of purchase at the time she purchased the Property from Shires. She is entitled to receive a sheriff’s deed. Because RCW 6.23.120 does not apply to the Property, Glenn is entitled to quiet title. The trial court did not err when it granted summary judgment in favor of respondents.

¶ 32 Finally, Glenn asserts that she is entitled to an award

of costs on appeal under RAP 14.2 as the substantially prevailing party. Because Glenn is a prevailing party here, we grant her request upon timely filing and serving of a cost bill under RAP 14.4.

¶ 33 We affirm.

WE CONCUR:

Verellen, J.

Leach, J.

All Citations

--- P.3d ----, 2016 WL 4272386

#### Footnotes

- 1 Under RCW 6.23.020(1), the redemption period may be eight months if the property is not used principally for agricultural or farming purposes and the mortgage so declares, and the judgment creditor expressly waives any right to a deficiency judgment in the complaint. It is otherwise one year. Id.
- 2 A redemptioner who redeems from the purchaser must pay the same amounts as required of the judgment debtor plus the amount of any lien by judgment, decree, deed of trust, or mortgage held by the purchaser that is prior in time to the lien of the redemptioner who seeks to redeem.
- 3 “Person” is not defined in chapter 6.23 RCW nor in chapter 6.13 RCW, which discusses homesteads.
- 4 Although Brookwood initiated the foreclosure action against Slighter LLC and the Slighters, and although many other documents in the record imply that the Property was owned by both Slighter LLC and the Slighters individually, the Property was owned by only Slighter LLC at the time of the foreclosure action. On June 26, 2007, the Slighters conveyed all right, title, and interest in the Property to Slighter LLC via statutory warranty deed.
- 5 John Stefanchik is also a member of Shires.
- 6 The parties appear to disagree as to whether the redemption period was scheduled to end January 3, 2015 or January 5, 2015. The last day of a period of time prescribed by an applicable statute shall not be included in the computation of time if it is a Saturday or a Sunday. RCW 1.12.040. If the last day of a period is one of these days, the period runs until the end of the next day which is neither a Saturday nor a Sunday. See id. January 3, 2015 was a Saturday. Here, the next weekday was Monday, January 5, 2015.
- 7 In his motion, Keene asserted that defendant lenders Nationstar and Greenpoint do not qualify as redemptioners, because their interests were inferior to those of Brookwood and were foreclosed by the Brookwood action. Keene supported this assertion by citing to Summerhill Vill. Homeowners Ass’n v. Roughley, 166 Wash.App. 625, 629, 270 P.3d 639, 289 P.3d 645 (2012). He noted that a condominium association’s liens for common expense assessments has a priority over deeds of trust before the lien arises—often termed “super priority.” He claimed that under RCW 6.23.010, the holder of a deed of trust encumbering a condominium unit may not redeem the property after the foreclosure of a “super priority” lien under RCW 64.34.364 if the lien created by the deed of trust was acquired prior in time to when the “super priority” lien arose. Whether Nationstar or Greenpoint were qualified redemptioners is not before us on appeal.

- 8 Stefanchik signed the statutory warranty deed as a member of Shires.
- 9 The Slighters individually also quit claimed, "whatever right, title or interest" they had in the Property and excess proceeds under RCW 6.23.120 to Performance. But, the quit claim deed was not recorded until June 17, 2015.
- 10 We refer to Keene, Glenn, Cobalt and MERS collectively as "respondents."
- 11 The sheriff's deed itself was issued to Shires.
- 12 In fact, later, the Slighters and Slighter LLC did convey their rights in the underlying property to Performance through a quit claim deed.
- 13 The Slighters, individually, are also listed as judgment debtors in the trial court's order granting summary judgment in the Brookwood foreclosure action. But, the Property was owned by only Slighter LLC at the time this order was entered. Therefore, only Slighter LLC was a judgment debtor. See Prince v. Savage, 29 Wash.App. 201, 205, 627 P.2d 996 (1981) (stating that a judgment debtor is the fee owner of the property).
- 14 That Shires purported to convey more interest in the land than it actually had does not invalidate the conveyance of its inchoate interest in the Property. A grantor conveying land by statutory warranty deed makes five covenants against title defects. Mastro v. Kumakichi Corp., 90 Wash.App. 157, 162–63, 951 P.2d 817 (1998). One of the covenants is the warranty of seisin—a guarantee by the seller that he or she holds the land in fee simple. Id. Where covenants under the warranty deed are breached, an injured grantee is entitled to recover for damages for lost property or diminution in property value. Id. at 163, 951 P.2d 817. Here, Glenn effectively purchased the inchoate interest from Shires. The fact that Shires purported to convey fee simple title to the Property to Glenn when Shires had only an inchoate interest to convey provides Glenn the remedy of suing Shires for the diminution in value.
- 15 In the foreclosure action, the trial court concluded—without further explanation—that the real property is not subject to the homestead exemption pursuant to RCW 64.34.364(2) and RCW 6.13.080(6).
- 16 Because we hold that RCW 6.23.120 does not apply, we need not decide whether Performance made its offer to the proper party, whether Performance's offer was a qualifying offer under the statute, or whether Glenn was a bona fide purchaser. And, because we hold that respondents prevail in this action, we need not address the other specific arguments raised in Keene's cross appeal.