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COURT OF APPEALS
DIVISION II

STATE OF WASHINGTON
BY  DEPUTY

No. 46208-7-II

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

SEVEN SALES LLC,
Appellant,

vs.

BEATRICE OTTERBEIN and PIERCE COUNTY, WA,
Respondent

**APPELLANTS' REPLY TO RESPONDENT PIERCE COUNTY'S
BRIEF**

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I. ARGUMENT

A. Washington Garnishment Law and Lien Foreclosure Laws are not in conflict here

The Superior Court’s primary error below stems from the argument proposed by Pierce County here: that the garnishment laws in RCW Chapter 6.27 are in conflict with RCW 84.64.080. There is no conflict. RCW 84.64.080 provides for the foreclosure of real property to satisfy tax liens, and to prevent counties from being in the position of having to determine ownership of surplus funds. See id.; see also Stephenson v. Pleger, 208 P.3d 583, 585 (Wash. App. Div. II 2009). The garnishment laws are designed to “effectively enforce[] the debtor’s unpaid obligations” while minimizing the administrative burden to garnishees. RCW 6.27.005.

Seven Sales LLC (“Seven Sales”) does not assert that county treasurers should be placed in the position of determining ownership of funds between competing creditors and the record title holder. Seven Sales does not seek to confuse “record title holder” with a meaning contrary to that asserted by Pierce County. Seven Sales merely asserts that Pierce County is in possession of money that is payable on demand to Beatrice Otterbein. As a judgment creditor Seven Sales is

entitled to enforce its judgment against Ms. Otterbein through garnishment procedures.

Here, upon receiving the writ of garnishment Pierce County was not asked to determine ownership, but to undertake the same investigation that it must undertake every time it receives a garnishment – to determine if it is either in possession of funds belonging to the named defendant (Ms. Ottebein), whether the defendant maintained a financial account with Pierce County, or whether the defendant is an employee. See RCW 6.27.190, RCW 6.27.040 (subjecting counties to garnishments in “the same manner and effect as provided in the case of other garnishees”). If Pierce County is holding any monies, then it is prohibited from disbursing them to the defendant. RCW 6.27.120 (“after the service of a writ of garnishment it shall not be lawful, except as provided in this chapter . . . for the garnishee to pay *any* debt owing to the defendant at the time of such service, or to deliver, sell or transfer, or recognize *any* sale or transfer of, *any* personal property or effects belonging to the defendant in the garnishee's possession *or under the garnishee's control* at the time of such service.”) (Emphasis added).

Seven Sales proposes an interpretation of RCW 84.64 and RCW 6.27 that harmoniously carries out the intent of both chapters. Pierce

County, and the Superior Court below, interprets RCW 84.64.080 to: First, remove all of Title 6's application to enforce judgments (based entirely on the former's inclusion of the phrase "on application thereof" in a notice form); second, creates some sort of trust or limbo where surplus funds are either held in a trust or otherwise are owned by no one until an application is made for them by the title holder; and third, incentivizes and allows counties to wait three years to obtain complete ownership of surplus funds to the detriment of creditors and former title holders.

Seven Sales interpretation, however, provides more protection to creditors, counties, and defendants in this type of situation. The defendant is provided notice of all the proceedings. See RCW 6.27.130. This operates as an additional notice to a defendant that surplus funds exist and the garnishing creditor must mail that notice to the defendant's last known address, which could, and likely would, be more accurate than a prior notice by a county post-foreclosure. Creditors that have secured a judgment through the courts are able to enforce the judgment against a known debtor asset¹ that is at a known

¹ Potentially Seven Sales could seek other forms of collection for the same funds such as a writ of execution directing the obedience to a court order compelling Ms. Otterbein to apply for or assign part of the surplus funds to Seven Sales. See RCW 6.17.060.

location. The garnishee county would be protected by the garnishment statutes contained in RCW Chapter 6.27.

It is worth recognizing at this time that the underlying debt sought to be collected against represents funds that the judgment creditor actually suffered a loss of because of Ms. Otterbein. Surely it is good policy that court judgments are not meaningless and can be collected on.

It is true that, as Pierce County points out, “where the general statute, if standing alone, would include the same matter as the special act and thus conflict with it, the special act will be considered as an exception to, or qualification of, the general statute.” Wark v. Wash. Nat’l Guard, 87 Wn.2d 864, 867 (1976). The two statutes do not conflict and the goal of the Court is to read them harmoniously to effectuate the intent of both unless it is necessary for the more specific statute to qualify the general garnishment statute. See Jongeward v. BNSF R. Co., 278 P.3d 157, 174 Wn.2d 586, 614 (2012) (recognizing the need to interpret two subsections of the timber trespass statute “harmoniously, so that neither renders the other superfluous.”) Here, it is not necessary to utilize a strained reading of RCW 84.64.080 to create a conflict where none exists.

B. The Exemptions Described RCW 6.27.060 are Irrelevant Here

Pierce County points to language contained in RCW 6.27.060 that recognizes the existence of certain exemptions apparently to suggest that RCW 84.64.080 exempts surplus funds from the garnishment process. See Reply Brief 8. This confuses the concept of exemptions as used in Title 6 (and elsewhere) with a perhaps more commonly used definition of the term.

Exemptions are found throughout Title 6. See e.g. RCW 6.27.150 (amounts exempt from garnishment), RCW 6.15.010 *et. seq.* (personal property exemptions), RCW 6.13.010 *et. seq.* (homestead exemption). Each such exemption has certain manners of claiming. See e.g. RCW 6.13.040 (automatic homestead exemption in some circumstances), RCW 6.15.060 (personal property), RCW 6.27.160 (earnings exemptions). The term “exempt” or “exemption” under RCW Title 6 references a class of property that would otherwise be subject to an enforcement mechanism, but for the statutory protection preventing it. Exempt property does not mean property that is not subject to an enforcement mechanism merely because it does not fall within the statutorily described types of property that are subject to enforcement mechanisms. However RCW 84.64.080 impacts

surplus funds, it cannot be read to create an “exemption” as that term is used. Even if it did, then the exemption would need to be claimed, and it was not.

C. Seven Sales never sought to “intervene”

Pierce County argues that the “garnishment statutes do not specifically address the situation in this case, i.e. a creditor seeking to intervene and receive surplus forfeiture proceeds before the record owner has either applied for or received the proceeds.”² Reply Brief 8. Obviously, Seven Sales asserts, as argued herein and in Appellant’s Brief, that garnishment laws apply.³ For the sake of clarity: Seven Sales never sought to intervene under CR 24 in the foreclosure action, nor attempted to prevent the foreclosure by tendering a payment under RCW 84.64.060.

D. Pierce County misconstrues Seven Sales position regarding the application procedure of RCW 84.64.080

Seven Sales asserted below and again to this Court that the application procedure set forward in RCW 84.64.080 for the record title holder is silent as to who can make the application for the payment of surplus funds

² A garnishment could likely not be directed against a person who had actually received the proceeds.

³ It is somewhat unfair to suggest that the garnishment laws do not “specifically address the situation present in this case.” That suggests that the intentionally broad nature of Chapter 6.27 always yields where some possible reading of a “more specific” statute is available. Only where a conflict must arise or actually arises should the “more specific” statute possibly create an exception to Chapter 6.27.

to be delivered to the record title holder. Seven Sales does not assert that anyone can make the application to receive the payment. Seven Sales requested that Pierce County deposit the funds with the registry of the trial court. CP 98.

Seven Sales makes this assertion secondarily to the premise that the surplus proceeds from the foreclosure sale *are* the property of the record title holder. See Appellant's Brief 10-12. The application cannot be read to change ownership of the funds in any way. However, if RCW 84.64.080 does, despite Stephenson v. Pleger, 208 P.3d 583 (Wash. App. Div. II 2009) ruling to the contrary, somehow suspend Ms. Otterbein's ownership interest in the excess funds," then Seven Sales satisfied the application process as envisioned on her behalf. And as such the surplus funds were subject to garnishment as being owed to her.

Pierce County seeks to exclude Seven Sales' argument concerning the issue statement of "whether Pierce County can erect legal barriers to ownership of surplus proceeds in the form of an application process not authorized by law (assignment of error 1 and 3)" because Seven Sales did not address it. The issue statement is addressed in Appellant's brief 13-14 (including n. 2). Pierce County has never claimed the application by Seven Sales was defective insofar as it did not contain the waiver language on

Pierce County's form. Pierce County argues that Seven Sales cannot submit the application under RCW 84.64.080.

II. CONCLUSION

There is no reason to interpret RCW 84.64.080 as in conflict with RCW 6.27. The former provides the avenue for a county to foreclose a tax lien and protects county treasurers from being compelled to determine ownership of surplus funds that may result in a tax foreclosure sale. The latter allows judgment creditors (and only judgment creditors) to compel a garnishee, including a county treasurer, to not deliver property or funds of a judgment debtor (and only judgment debtors) to her. Upon receipt of a writ of garnishment the treasurer answers the same as any other garnishee. The treasurer would already have determined "record title holders" of various foreclosed properties under RCW 84.64.050 (4) ("prior to the sale of the property, the treasurer must order or conduct a title search of the property to be sold to determine the legal description of the property to be sold and the record title holder"), so the burden suffered is no greater than any other private or public garnishee.

DATED this August 17, 2014


Jonathan Baner, WSBA #43612
Attorney for Appellant

CERTIFICATE OF SERVICE

I, JONATHAN BANER, a person over 18 years of age, served: Court of Appeals division II and to **Pierce County Prosecuting Attorney Donna Yumiko Masumoto and Beatrice Otterbein** a true and correct copy of the document to which this certification is affixed, August 17, 2014 via first class mail postage pre-paid. Pierce County Prosecutor Ms. Masumoto was also served via e-mail. Beatrice Otterbein was served at a purported new address: 1513 Clydette Blvd in Vidalia, GA 30474. I declare under penalty of perjury under the laws of the State of Washington that the forgoing is a true and correct statement. Signed at Tacoma, WA on November 17, 2014.


Jonathan Baner,
Attorney for Appellants

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