

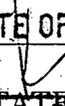
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COURT OF APPEALS
DIVISION II

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NO. 46684-8-II

STATE OF WASHINGTON

IN THE COURT OF APPEALS FOR THE STATE OF
WASHINGTON

BY: 
DEPUTY

DIVISION II

PUBLIC UTILITY COMMISSION OF OREGON,

Plaintiff/Respondent,

v.

CERTAIN REAL PROPERTY in Pierce County, and the Owners
Thereof and Parties Interested Therein Including JOSEPH YE and
JANICE LOU, husband and wife;

Defendants/Appellants,

and

STAN EFFERDING, an individual; and U.S. BANK NATIONAL
ASSOCIATION,

Defendants,

APPELLANTS' OPENING BRIEF

Appeal from the Judgment of Pierce County Superior Court
The Honorable Elizabeth Martin

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 ORIGINAL

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I. INTRODUCTION

Defendants/Appellants Joseph Ye and Janice Lou (“Ye” and “Lou,” respectively) own a home in Pierce County that they purchased from defendant Stan Efferding in 2011. In 2013, plaintiff/respondent Public Utility Commission of Oregon (the “Commission”) commenced this action against Ye, Lou and others to foreclose on an alleged judgment lien by selling the home now owned by Ye and Lou.¹

The alleged judgment lien is based on an order the Commission obtained in 2007 in an administrative proceeding in Oregon.² The order directs “VCI Company f/k/a Stan Efferding and Stanley Johnson dba Vilaire” to pay to the Commission the amount of \$203,391.97. CP 11. The order was filed in 2010 as a “foreign judgment” under the Uniform Enforcement of Foreign Judgments Act in Pierce County Superior Court.

The trial court granted summary judgment to the Commission, allowing the Commission to foreclose on Ye and Lou’s

¹ The Complaint alleges: “This lawsuit is an *in rem* proceeding against Pierce County property more fully identified below. The purpose is to enforce a judgment lien on real property previously owned by Defendant Stan Efferding (“Efferding”).” CP 1.

² Ye and Lou were not parties to the 2007 administrative proceeding in Oregon.

home. This Court should reverse because the “foreign judgment” upon which the alleged judgment lien is based was not entered against Stan Efferding, the prior owner of Ye and Lou’s home. As described in detail below, the evidence in the 2007 Oregon administrative proceeding establishes that the only party against whom judgment was sought and entered was VCI Company, a Washington business corporation, that never owned Ye and Lou’s home. In the alternative, the record below establishes, at a minimum, that there is a question of fact regarding the identity of the defendant/judgment debtor in the Oregon administrative proceeding, precluding summary judgment.

II. ASSIGNMENTS OF ERROR

Ye and Lou make the following assignments of error:

1. The trial court erred when it concluded that there are no disputed questions of material fact and granted summary judgment in favor of the Commission. CP 264-65.

2. The trial court erred when it concluded that the Commission is entitled to foreclose the judgment lien described in the First Amended Complaint on the subject real property pursuant to RCW 4.56.190 and RCW 60.12 *et seq.* CP 264-65.

III. STATEMENT OF ISSUES

The following issues pertain to the Assignments of Error:

1. Whether the trial court erred by not finding that the only defendant/judgment debtor in the Oregon proceedings was VCI Company, a Washington business corporation.

2. In the alternative, whether the trial court erred by not finding a question of fact regarding whether Stan Efferding, individually, was a defendant and judgment debtor in the Oregon proceedings.

3. Whether the trial court, sitting in equity, erred by not finding that the foreclosure of Ye and Lou's home would be inequitable and unconscionable.

IV. STATEMENT OF THE CASE

A. The 2007 Order

In September 2007, the Commission commenced an administrative proceeding in Oregon to recover overpayments in the amount of \$203,391.97 made by the Commission to a phone company participating in the Oregon Telephone Assistance Program ("OTAP"), a service designed to provide reduced rates for qualifying low income customers. CP 20-23. The phone company had registered to do business in the State of Oregon on May 22, 2003 under the name, "Stan Efferding and Stanley Johnson dba Vilaire." CP 21. According to the Commission's Administrative Complaint, on December 17, 2003, the Commission granted the

petition of Stan Efferding dba Vilaire for designation as a federal and state Eligible Telecommunications Carrier. CP 21. Stan Efferding dba Vilaire was then designated as a carrier authorized to participate in OTAP. CP 21.

In June 2004, Stan Efferding submitted a request that the Commission change the name of the phone company to “VCI Company,” a Washington business corporation that was registered to conduct business in the State of Oregon.³ CP 21. The Commission granted the request. CP 8, 21.

In the 2007 administrative proceeding, the Commission sought to recover \$203,391.97 in overpayments that were made to VCI Company between June 2004 (when the name of the phone company was changed to VCI Company) and November 2006. CP 20. Exhibit 114 in the 2007 administrative proceeding shows that the total overpayment, \$203,391.97, was paid to VCI Company. CP 179. On September 26, 2007, the Commission entered an order by default, ordering “VCI Company f/k/a Stan Efferding and Stanley Johnson dba Vilaire” to pay to the Commission the amount of \$203,391.97 (the “2007 Order”). CP 8-11.

³ VCI Company was registered in Washington as a for profit business corporation on November 24, 2003, and became inactive on March 1, 2013. CP 96.

B. The 2010 Order

In order to give the 2007 Order, which was an administrative order, the same legal effect as a Circuit Court order, the Commission commenced an action in the Circuit Court of the State of Oregon for the County of Marion in August 2010.⁴ The Commission moved *ex parte* for an order regarding the effect of an administrative order issued by the State of Oregon, acting by and through the Commission. On August 27, 2010, the Circuit Court issued an Order Regarding Effect of Administrative Warrant (the “2010 Order”), directing that the 2007 Order “shall be treated as though it is an Oregon circuit court judgment.” CP 13. The Circuit Court action was closed eight (8) days after it was commenced, on August 31, 2010. CP 112.

⁴ If it had been filed in an Oregon county, the 2007 Order would have given rise to the equivalent of a judgment lien, as provided in ORS § 205.125 and ORS § 205.126. However, the 2007 Order could not be registered in Washington under the Uniform Enforcement of Foreign Judgments Act because it was not an order or judgment of a court. See RCW 6.36.010(1) (“Foreign judgment’ means any judgment, decree or order of a court of the United States or of any state or territory which is entitled to full faith and credit in this state.”). Thus, the Commission commenced a proceeding in the Oregon Circuit Court of Marion County to obtain an order permitting it to register the 2007 Order in the State of Washington as a “foreign judgment.”

C. The Proceedings in Pierce County

On October 8, 2010, the Commission filed the 2007 Order as a foreign judgment in Pierce County Superior Court under Cause No. 10-2-13815-9. CP 15-24. Also on October 8, 2010, the Commission filed a Judgment Summary in the Pierce County Superior Court. CP 26-27.

Stan Efferding owned real property in Pierce County commonly known as 8820 Frances Folsom St. SW, Lakewood, WA 98498 (the "Property"). CP 2. On October 20, 2010, the Commission recorded an Abstract of Judgment against the Property in the Pierce County Auditor's Office. CP 29-31. The Abstract of Judgment lists one "Defendant" as an original party to the action, VCI Company. CP 30. The Abstract of Judgment also lists four Judgment Debtors: VCI Company, Vilair, Stan Efferding, and Stanley Johnson. CP 30. On or about May 23, 2011, Stan Efferding sold the Property to defendants Ye and Lou for the sum of \$1,490,000. CP 2, 4. None of the proceeds from the sale were paid to the Commission. CP 2, 4.

On or about July 17, 2013, almost three years after filing the 2007 Order as a foreign judgment in Pierce County and almost six years after the 2007 Order was entered, the Commission filed its Complaint in this action, alleging that its judgment was not satisfied

when the Property was sold or at any time before the Property was conveyed.⁵ CP 4. The Commission claims in the Complaint that it is entitled to foreclose on its judgment lien and have the Property sold at a sheriff's sale to satisfy its lien. CP 5-6, 184-85.

The Commission moved for summary judgment against Ye and Lou. CP 125-50. On July 25, 2014, the Court entered its Order on Summary Judgment, granting the motion and ordering that the Commission is entitled to foreclose the judgment lien on the Property. CP 264-65.

On August 15, 2014, the Court granted Ye and Lou's motion to certify pursuant to CR 54(b). CP 267-69. This appeal followed. CP 260-69.

V. ARGUMENT

A. *De Novo* Standard of Review on Appeal

A motion for summary judgment is properly granted where there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. CR 56(c). The standard of review on appeal from an order on summary judgment is *de novo*. *Sane Transit v. Sound Transit*, 151 Wash.2d 60, 68, 85 P.3d 346

⁵ The parties later stipulated to dismiss defendant Lo, Inc. The Commission then filed a First Amended Complaint, substituting U.S. Bank, National Association for Lo, Inc. as a new defendant. CP 180-210.

(2004). The appellate court engages in the same inquiry as the trial court. *Citizens for Responsible Wildlife Mgmt. v. State*, 149 Wash.2d 622, 630-31, 71 P.3d 644 (2003); *Herron v. Tribune Publ'g Co.*, 108 Wash.2d 162, 169, 736 P.2d 249 (1987).

City of Sequim v. Malkasian, 157 Wn.2d 251, 261, 138 P.3d 943 (2006).

B. The Trial Court Should Not Have Granted Summary Judgment. Rather, the Trial Court Should Have Found that Judgment in Oregon was Entered Against VCI Company, not Stan Efferding. In the Alternative, the Trial Court Should Have Found A Question of Fact Regarding Whether or Not Judgment in Oregon Had Been Entered Against Stan Efferding, Individually.

The Commission's alleged judgment lien against the Property now owned by Ye and Lou is based on the 2007 Order. As defined in the Uniform Enforcement of Foreign Judgments Act, "[j]udgment debtor' means the party against whom a foreign judgment has been rendered." RCW 6.36.010(4). Thus, summary judgment allowing the Commission to foreclose on the Property was only proper if there was no genuine issue of fact that judgment was entered against Stan Efferding, individually, by the 2007 Order. If, on the other hand, the 2007 Order was entered only against VCI Company, and not Stan Efferding, individually, the Commission is

not entitled to foreclose on property in Washington previously owned by Stan Efferding, individually.⁶

The following evidence in the record establishes that the 2007 administrative proceedings were brought against VCI Company, not Stan Efferding, individually, and that the 2007 Order was likewise entered against VCI Company, and not against Stan Efferding, individually.

First, the Commission alleged in the 2007 Administrative Complaint that the name of the phone company participating in OTAP was changed from Stan Efferding dba Vilaire to VCI Company, and that “VCI Company is a foreign business corporation that was incorporated in the State of Washington.” CP 21; 176-77.

Second, the Commission submitted evidence in the 2007 administrative proceeding showing that all of the \$203,391.97 in overpayments were paid to VCI Company, not to Stan Efferding, individually. CP 179.

Third, the 2007 Order recites that “[i]n 2004, the Commission granted Stan Efferding’s request to change the name of the phone company from Stan Efferding, dba Vilaire, to VCI Company.” CP 8.

⁶ There is no dispute that VCI Company never owned the Property.

Fourth, the 2007 Order recites that “[o]n December 5, 2006, the Commission opened an investigation to examine the OTAP billings revenue and remittance reporting of VCI Company f/k/a Stan Efferding and Stanley Johnson, dba Vilaire (Defendants).” CP 8. “F/k/a” means formerly known as – the names following f/k/a are listed for identification purposes and to clarify that VCI Company was previously known as Stan Efferding and Stanley Johnson dba Vilaire. The only entity that was the subject of the Commission’s investigation was VCI Company, a Washington business corporation.

Fifth, the 2007 Order was entered against “Defendants VCI Company f/k/a Stan Efferding and Stanley Johnson, dba Vilaire ...” CP 11. Although the 2007 Order refers to “Defendants,” the names following f/k/a are only listed for identification purposes and to clarify that VCI Company was previously known as Stan Efferding and Stanley Johnson dba Vilaire. The 2007 Order, by its terms, was only entered against one entity, VCI Company, a Washington business corporation.

Finally, when the Commission recorded its Abstract of Judgment in Pierce County, it correctly listed only one Defendant as an original party to the action – VCI Company. CP 30.

The evidence conclusively establishes that VCI Company was the subject of the Commission's investigation, administrative Complaint and 2007 Order, not Stan Efferding. Thus, VCI Company, a Washington business corporation, was the only defendant or judgment debtor in the Oregon proceedings. Accordingly, since VCI Company never owned the Property, the judgment against VCI Company could not become a judgment lien against the Property. The trial court should have denied the Commission's motion for summary judgment.

Alternatively, the Court should find at a minimum that there was a question of fact regarding whether or not Stan Efferding, individually, was a defendant or judgment debtor in the 2007 proceedings in Oregon. For this reason as well, the trial court should not have entered summary judgment allowing the Commission to foreclose its alleged judgment lien on the Property.

C. The Trial Court, Sitting in Equity, Should Have Denied Summary Judgment Because the Foreclosure of Ye and Lou's Home Would be Inequitable and Unconscionable.

The Washington Supreme Court has long recognized that "it is the rule that a party may obtain relief in equity against a judgment after the expiration of one year from the date of the entry, provided the proper grounds for equitable intervention are shown."

Dale v. Cohn, 14 Wn.2d 214, 218, 127 P.2d 412 (1942); *see also* *Fisch v. Marler*, 1 Wn.2d 698, 709, 97 P.2d 147 (1939) (same).

Here, as detailed above, the evidence shows that in 2006, the Commission commenced an investigation and in 2007, drafted an Administrative Complaint to recover funds from VCI Company, a Washington business corporation, not from Stan Efferding, individually, or Stan Efferding dba Vilaire. The evidence also shows that the Commission had been doing business since 2004 with VCI Company, a Washington business corporation, not with Stan Efferding, individually, or Stan Efferding dba Vilaire. All of the evidence presented to the Commission before it entered the 2007 Order on default showed that the Commission had overpaid VCI Company, not Stan Efferding, individually, or Stan Efferding dba Vilaire. And, the 2007 Order was entered against VCI Company, not against Stan Efferding, individually, or Stan Efferding dba Vilaire.

Simply put, the evidence is overwhelming that the Commission was never entitled to a judgment in Oregon against Stan Efferding, individually, or Stan Efferding dba Vilaire and never obtained a judgment in Oregon against Stan Efferding, individually, or Stan Efferding dba Vilaire. Under these circumstances, foreclosing on the alleged judgment lien by selling Ye and Lou's

home in Washington, which they acquired from Stan Efferding, individually, not from VCI Company, “has now become inequitable and unconscionable.” *Fisch*, 1 Wn.2d at 710. *See also Malo v. Anderson*, 62 Wn.2d 813, 815, 384 P.2d 867 (1963) (“[t]here is no question but that equity has a right to step in and prevent the enforcement of a legal right whenever such an enforcement would be inequitable.”) (quoting *Thisius v. Sealander*, 26 Wn.2d 810, 818, 175 P.2d 619 (1946)).

Contrary to the Commission’s argument below that the alleged judgment lien should be enforced against property previously owned by Stan Efferding because of the Full Faith and Credit Clause, “the circumstances disclosed by the evidence are such as will warrant an equity court in granting the extraordinary remedy of enjoining further enforcement of the judgment.” *Fisch*, 1 Wn.2d at 709. The foreign judgment is entitled to Full Faith and Credit and may be enforced against the judgment debtor, VCI Company, but it may not be enforced against Stan Efferding, individually, or against property that he previously owned.

In addition, the Uniform Enforcement of Foreign Judgments Act provides that a foreign judgment filed in the State of Washington is subject to defenses and counterclaims, as well as

proceedings to reopen, vacate or stay the judgment. Specifically,

RCW 6.36.025(1) provides:

A copy of any foreign judgment authenticated in accordance with the act of congress or the statutes of this state may be filed in the office of the clerk of any superior court of any county of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of the superior court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses, set-offs, counterclaims, cross-complaints, and proceedings for reopening, vacating, staying, or extending as a judgment of a superior court of this state and may be enforced, extended, or satisfied in like manner.

Thus, the 2007 Order, filed in Pierce County as a “foreign judgment,” is subject to the defense that it is not a judgment against Stan Efferding, individually, but is only a judgment against VCI Company, a Washington business corporation.

At the very least, there are questions of fact regarding the identity of the judgment debtor, precluding a grant of summary judgment on equitable grounds.

VI. CONCLUSION

The trial court erroneously granted the Commission’s motion for summary judgment. This Court should reverse the Order

granting summary judgment and permitting the Commission to foreclose on Ye and Lou's home.

DATED this 15th day of December, 2014.

A handwritten signature in cursive script, appearing to read "Janis G. White", is written over a horizontal line.

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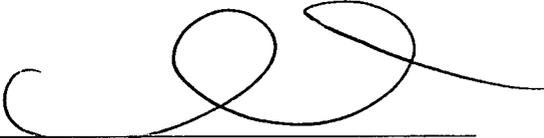
CERTIFICATE OF SERVICE

I hereby certify that on the date given below I caused to be served the foregoing document entitled **APPELLANTS' OPENING BRIEF** on the following individuals in the manner indicated:

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