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WASHINGTON STATE
SUPREME COURT

COA 50349-2-II

NO. 93319-7

SUPREME COURT OF THE STATE OF WASHINGTON

NYLUND HOMES, INC.,
Respondent/Plaintiff,

vs.

JERZY GRUCA,
Appellant/Defendant.

· APPELLANT'S REPLY BRIEF

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Appellant/Defendant

cmni
1-23-17

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I. REPLY TO RESPONDENT’S BRIEF.

Respondent’s Brief (“Res.Br.”) makes clear that this case does not come within the terms of Chapter 59.12 RCW and its arguments and responses can be easily condensed to one common denominator:

The statutes and judicial precedents do not apply to Respondent and the manner in which it conducts its real estate investing business and this Court should disregard the indisputable fact that on the day Respondent purchased Appellant’s home, May 20, 2016, two lawsuits were pending before the Superior Court—one to stop the foreclosure, *Gruca v. Bank of New York, et al.*, Cause No. 14-2-02945-8, and another to quiet title, *Gruca v. Law Offices of Les Zieve, et al.*, Cause No. 16-2-00694-2. CP at 30, 50, 51, 176 and 184; Opening Brief (“Br.”) at 2-3.

In support of its self-declared immunity from the laws and relevant judicial opinions, Respondent enlists the aid of untruths, deception and misrepresentations. For example, Respondent states in its Brief:

“Gruca agrees he did not attempt to stay that foreclosure sale pursuant to the requirements of RCW 61.24.130.... Although Gruca had filed two prior civil actions alleging these matters, he did not seek a stay of the sale, leaving him no grounds for the arguments in the Unlawful Detainer action. Further, both civil matters have been dismissed with prejudice and without appeal.” Res.Br. at 1, 3.

Respondent does not state where this Court can find such an agreement in the record, nor does Respondent direct the Court where in RCW 61.24.130 the Legislature mandated that Appellant must attempt to stop the foreclosure or be successful.

Further, Respondent defeats its own argument by admitting in its Brief that:

“Gruca filed two lawsuits, one in 2014, and one in 2016.... In 2014 Gruca filed a Chapter 13 Bankruptcy also to stop the then scheduled foreclosure sale.... After dismissal of his Bankruptcy, the Trustee of the Deed of Trust reset the nonjudicial foreclosure sale.” Res.Br. at 2-3.

In an attempt to deceive or otherwise mislead this Court, Respondent mischaracterizes and makes unclear the following facts regarding the defendants named in the 2014 and 2016 actions:

“Gruca filed two lawsuits, one in 2014, and one in 2016 against his Lender, Servicer, and Trustee.... The first lawsuit alleging wrongful foreclosure was filed on October 10, 2014.... The Lender and Servicer [named in the 2014 lawsuit] were dismissed on April 1, 2016. CP 176.... Prior to the foreclosure sale date, on April 1, 2016, Gruca filed a new Superior Court Case and recorded a Lis Pendens against the property..., but he failed to seek a stay of the sale pursuant to RCW 61.24.130. CP 30.... The 2016 lawsuit was dismissed with prejudice on September 2, 2016. CP 184.” Res.Br. at 2-3.

Respondent makes clear that the 2014 lawsuit remained pending against the Trustee after the April 1, 2016 dismissals, and that together with the 2016 lawsuit, were pending on May 20, 2016 at the time the foreclosure sale was conducted.

To further confuse and deceive this Court, Respondent misrepresents the fact that: “The 2016 lawsuit was dismissed with prejudice on September 2, 2016.” Res.Br. at 3. This is not true. The 2016 lawsuit named the following defendants: (1) LAW OFFICES OF LES ZIEVE c/o BENJAMIN D. PETIPRIN; (2) BANK OF AMERICA; (3) LAND SAFE TITLE OF WASHINGTON; (4) M.E.R.S.; (5) AMERICA’S WHOLESALE LENDER CORPORATION; (6) BANK OF NEW YORK MELLON; (7) SPECIALIZED LOAN SERVICING INC.; and (8) PARTIES UNKNOWN CLAIMING ANY RIGHT, TITLE, LIEN OR INTEREST IN THE REAL PROPERTY COMMONLY KNOWN AS 8413 NE 108TH AVE. VANCOUVER, WASHINGTON 98662. CP at 30.

Of the seven defendants named in the 2016 lawsuit, only three have made an appearance. On August 5, 2016, attorney Tara J. Schleicher filed DEFENDANTS’ BANK OF NEW YORK MELLON, SPECIALIZED

LOAN SERVICING, LLC and MERS MOTION TO DISMISS. CP at 162. See also, CP at 198, 201, 211, 213, 222, 224, 230, 267 and 268. Thus, on September 2, 2016, the Superior Court only dismissed DEFENDANTS' BANK OF NEW YORK MELLON, SPECIALIZED LOAN SERVICING, LLC and MERS, which is contrary to Respondent's argument that: "The 2016 lawsuit was dismissed with prejudice on September 2, 2016."

Respondent argues further that Appellant "failed to seek a stay of the sale pursuant to RCW 61.24.130," in an attempt to justify the May 20, 2016 purchase while Appellant's two lawsuits were pending. Res.Br. at 3. This argument also contradicts Respondent's admissions that Appellant "filed two lawsuits" and had "recorded a Lis Pendens against the property...." Res.Br. at 2-3.

Respondent next contends that "[t]he Trustee's Deed contained all the representations described in RCW 61.24.040(7)," Res.Br. at 3 and 4, and that "the allegations in the Complaint that are not disputed provide evidence of compliance with RCW 59.12.032." Res. Br. at 5.

Respondent does not direct this Court's attention to any factual allegations in its unlawful detainer Complaint it believes were not disputed by Appellant. Ordinarily, "[a]n unchallenged finding of fact is a verity on appeal." *Cowiche Canyon Conservancy v. Bosley*, 118 Wash. 2d 801, 808, 828 P.2d 549 (1992).

Moreover, Respondent's arguments regarding the Deeds of Trust Act (DTA) are not well taken. The Legislature did not direct in RCW 61.24.130 that a homeowner must bring a civil action to enjoin a wrongful foreclosure and be successful in enjoining the wrongful foreclosure. This is so because the Legislature also provided in RCW 61.24.127(1), in pertinent part, that:

"The failure of the borrower or grantor to bring a civil action to enjoin a foreclosure sale under this chapter may not be deemed a waiver of a claim for damages...."

Further, the Trustee's Deed, on its face, denies compliance with RCW 59.12.032 because it relies on the fact that "Mortgage Electronic Registration Systems, Inc." is named the "Beneficiary":

"RECITALS:

I. This conveyance is made pursuant to the powers, including the power of sale, conferred upon said Trustee by that certain Deed of Trust between JERZY GRUCA, A MARRIED MAN AS HIS SEPARATE ESTATE, as Grantor, to LANDSAFE TITLE OF WASHINGTON, as Trustee, and AMERICA'S WHOLESALE LENDER as Lender, Mortgage Electronic Registration Systems, Inc., as Beneficiary, dated 1/26/2007, recorded 217/2007, as Instrument No. 4282805, in Book/Reel, Page/Frame, records of Clark County, Washington." CP at 6.

Definition "(E)" of the Deed of Trust named Mortgage Electronic Registration Systems, Inc. ("MERS") as the "beneficiary under this Security Instrument." CP at 241; Br. at 2.

On August 1, 2011, MERS, in its capacity as "beneficiary," assigned the note and deed of trust "The Bank of New York Mellon FKA The Bank of New York, As Trustee for the Certificateholders of CWABS, Inc., Asset-Backed Certificates, Series 2007-3." The Assignment was recorded on August 3, 2011 as Instrument Number 4782796. CP at 255; Br. at 2.

On June 2, 2015, The Bank of New York Mellon, pursuant to the assignment by MERS, appointed "Benjamin D. Petiprin, attorney at law," as successor trustee. CP at 41; Br. at 2.

Thus, the record demonstrates that the Trustee and The Bank of New York Mellon derived their status from MERS' assignment of the note and deed of trust in its unlawful capacity as "beneficiary" of the deed of trust.

Respondent does not argue in its Brief that MERS, The Bank of New York Mellon and the Trustee acted with lawful authority and in compliance with Chapters 59.12 and 61.24 RCW. Instead, Respondent argues that:

“Gruca was properly served with pleadings in an Unlawful Detainer action as allowed by RCW 61.24.060(1) and RCW 59.12.... Although Gruca had filed two prior civil actions alleging these matters, he did not seek a stay of the sale, leaving him no grounds for the arguments in the Unlawful Detainer action. Further, both civil matters have been dismissed with prejudice and without appeal. Gruca is attempting to re-litigate his disagreement with the foreclosure system through this proceeding.” Res.Br. at 3.

The aforementioned arguments strain credulity. By commencing in 2014 an action to enjoin the unlawful foreclosure and a bankruptcy proceeding, Appellant was able to cause the Trustee to voluntarily cancel the foreclosure without applying for injunctive relief from the courts. Respondent admits this fact in its Brief: “After dismissal of his Bankruptcy, the Trustee of the Deed of Trust reset the nonjudicial foreclosure sale.” Res.Br. at 2-3.

It is further untrue that the two civil actions have been “dismissed with prejudice and without appeal” as claimed by Respondent. The dismissed parties did not seek a CR 54(b) certification. Because the two lawsuits involved multiple parties and multiple claims, they fall within this Court’s “overall policy against piecemeal appeals.” *Doerflinger v. New York Life*, 88 Wn.2d 878, 882, 567 P.2d 230 (1977).

In a last ditch effort to persuade this Court that it was entitled to ignore the two pending lawsuits and the notice of lis pendens and purchase Appellant’s home, Respondent fraudulently argues that Appellant waived his right to argue the outcome of the foreclosure sale:

“Gruca disputes that the Trustee’s Deed may not be utilized as evidence pursuant to RCW 61.24.040(7) because “MERS” is listed as the beneficiary. In Washington, the mere fact MERS is listed as a beneficiary on the face of a Deed of Trust does not mean the Deed of Trust is unenforceable. *Merry v. Nw. Tr. Servs., Inc.*, 188 Wash. App. 174, 196-197 (2015). The paper trail of how the current Trustee came to hold authority was included within Gruca’s prior litigation in Clark County Case No. 162-00694-2, and by allowing dismissal with prejudice on his arguments, he waived his right to make any challenges to the completed sale. *Id.*; also *Frizzell v. Murray*, 179 Wash. 2d 301 (2013). Gruca’s right to challenge the Trustee’s Sale was also waived when he did not seek to restrain the Trustee’s Sale pending final disposition of his quiet title action prior to the date of the Trustee’s Sale. *Id.*; RCW 61.24.127 and .130.” Res.Br. at 5.

Respondent’s entire argument relies upon this Court ignoring the fact that the predicament in which Respondent languishes is entirely self-inflicted and legally avoidable—being derived from the inescapable result of greed.

Indeed, Respondent is asking this Court to disregard the language and portions of several statutes, which in turn would be contrary to the sound and practical principle of statutory interpretation that “legislative intent, will, or purpose, is to be ascertained from the statutory text as a whole, interpreted in terms of the general object and purpose of the act. *Cherry Point Fish Co. v. Nelson*, 25 Wash. 558, 563, 66 Pac. 55 (1901); *In re Horse Heaven Irrigation Dist.*, 11 Wn.2d 218, 226, 118 P.2d 972 (1941); *Cory v. Nethery*, 19 Wn.2d 326, 332, 142 P.2d 488 (1943); and *State v. Parker*, 97 Wn.2d 737, 741, 649 P.2d 637 (1982) (A statute must be read in its entirety, not piecemeal.)

It is not denied or contradicted by Respondent that before purchasing Appellant’s home on May 20, 2016, Respondent was aware that the two lawsuits commenced by Appellant remained pending in the

Superior Court and that a notice of Lis Pendens had been recorded against Appellant's real property.

Stated differently, Appellant's defense to the nonjudicial foreclosure sale was raised in two lawsuits pending at the time Respondent purchased Appellant's home. To avoid being hemmed in by RCW 4.28.320; RCW 7.28.260; RCW 59.12.032; RCW 61.24.130 and RCW 65.08.070, Respondent constructed an ill-conceived argument designed to defeat the aforementioned statutes by arguing that:

Appellant Gruca alleges that no evidence was presented in the trial court that RCW 59.12.032 was complied with. To avail itself of the use of RCW 59.12 to obtain possession of the property purchased at a foreclosure sale, Gruca argues a purchaser at the sale must show the requirements of RCW 61.24.040 and .060 were complied with.

RCW 61.24.040 outlines the Trustee's obligation to record and mail Notices of Trustee's Sale and Notices of Foreclosure to the Grantor of the Deed of Trust. RCW 61.24.040(7) provides that the purchaser at a Trustee's Sale is entitled to rely on the recitals contained within a Trustee's Deed that all requirements of the Deed of Trust Act were followed, and that recording of these assertions are prima facie evidence of such compliance and conclusive evidence thereof. The Trustee's Deed given to Nylund Homes contained such recitals and compliance with the Act is presumed. CP 6-7.

RCW 61.24.060(1) provides that the purchaser at a foreclosure sale has the right to the summary proceedings in RCW 59.12 on the twentieth day following the sale as against the borrower and grantor on the deed of trust." Res.Br. at 4.

The Court of Appeal's holdings in *Fed. Nat'l Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 353 P.3d 644 (Div. Three, 2015) are instructive and disposes of Respondent's argument:

"RCW 59.12.032 authorizes the purchaser at a deed of trust foreclosure sale to bring an unlawful detainer action to evict the previous owner of the home, provided the sale complied with the statutory foreclosure rules.... In a

nonjudicial foreclosure, the grantor of the deed of trust, when facing the loss of his property, can bring an action to restrain the trustee's sale "on any proper legal or equitable ground." RCW 61.24.130(1). Failure to pursue presale remedies can, in some circumstances, constitute equitable waiver of those defenses. RCW 61.24.040(1)(f)(IX). Our Supreme Court has announced that waiver of defenses to a trustee's sale occurs when a party: (1) received notice of the right to restrain the sale, (2) had actual or constructive knowledge of a defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale. *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560, 569, 276 P.3d 1277 (2012); *Plein v. Lackey*, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003). Allowing the borrower to delay asserting a defense until after the sale would defeat the spirit and intent of the deed of trust act. *Plein v. Lackey*, 149 Wn.2d at 228. The intent is to provide an efficient and inexpensive foreclosure process. *Albice v. Premier Mortg. Servs.*, 174 Wn.2d at 567.... In [*Bain v. Metropolitan Mortgage Group, Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012)], our state high court held that MERS could not serve as a beneficiary under a deed of trust because it was not the holder of the promissory note, a prerequisite under the Washington deed of trust act. See RCW 61.24.005(2)."

Here, Appellant did not fail to pursue presale remedies.

Additionally, Appellant commenced an action to quiet title and recorded a notice of lis pendens. Appellant properly and timely brought the unlawful activities of MERS, The Bank of New York and the Trustee to the attention of the Superior Court well in advance of the sale of Appellant's home on May 20, 2016. Respondent, together with The Bank of New York and the Trustee, maliciously ignored the duly-enacted laws of this State and the judicial opinions of our appellate courts. The harm which Respondent intended to inflict upon Appellants and this State's judicial bodies is clearly evident from the record on appeal.

Respondent confirms in its Brief that it had notice of the two lawsuits commenced by Appellant before the foreclosure sale. Given this

fact, Respondent's reliance on the Trustee's Deed to bring its wrongful conduct within the terms of RCW 59.12.032, 61.24.040 and 61.24.060 must fail as a matter of law.

Further, *Plein*, *Albice* and *Frizzell* are easily distinguished from the facts in this case. In an apparent attempt to moot the two lawsuits, the Trustee, who was also named as a defendant in the quiet title action, simply sold Appellant's home to Respondent who was informed of the pendency of the two actions.

Thus, once Appellant's home was purchased by Respondent, there simply was no sale to enjoin. See, *State ex rel. Pay Less Drug Stores v. Sutton*, 2 Wn.2d 523, 528, 98 P.2d 680 (1940) (Object of a preliminary injunction is to preserve the status quo until such time that a trial on the merits can take place.). See also Rules of Professional Conduct (RPC), Rule 3.3 (Duty of candor and special obligation to protect a tribunal against conduct that undermines the integrity of the adjudicative process.).

“[E]quity will not permit a wrong-doer to shelter himself behind a suddenly and secretly changed status, although he succeeded in making the change before the hand of the chancellor has actually reached him.” *State ex rel. Pay Less Drug Stores v. Sutton*, 2 Wn.2d at 529.

Here, Respondent completely destroyed the subject matter of its unlawful detainer lawsuit by thwarting the jurisdiction of the Superior Court over the two pending lawsuits. This wrongful action by the Respondent shines a bright light on what this appeal is about—“theft of title.” It was aptly stated by this Court in *Klem v. Wash. Mut. Bank*, 176 Wn.2d 771, 295 P.3d 1179 (2013) that:

“While the legislature has established a mechanism for nonjudicial sales, neither due process nor equity will countenance a system that permits the theft of a person's property by a lender or its beneficiary under the guise of a statutory nonjudicial foreclosure. *Klem v. Wash. Mut. Bank*, 176 Wn.2d at 790.

Respondent's attempt to qualify as a "bona fide purchaser" also fails. The law provides that "[i]f a person exercising reasonable care could have known a fact, he or she is deemed to have had knowledge of that fact." *Denaxas v. Sandstone Court of Bellevue, LLC*, 148 Wn.2d 654, 667, 63 P.3d 125 (2003). A "bona fide purchaser" must also act in good faith. *OneWest Bank, FSB v. Erickson*, 185 Wn.2d 43; 367 P.3d 1063 (2016); *Miebach v. Colasurdo*, 102 Wn.2d 170, 175, 176, 685 P.2d 1074 (1984) (Knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed.).

One cannot be heard to say that he did not know of these matters which were open, obvious, and of public record. *Dowgialla v. Knevage*, 48 Wn.2d 326, 335, 294 P.2d 393 (1956). One is presumed to know the law. *Nugget Props., Inc. v. County of Kittitas*, 71 Wn.2d 760, 765, 431 P.2d 580 (1967). Moreover, Respondent was Plaintiff in 80 unlawful detainer complaints filed in Clark County Superior Court, CP at 18-20, and Plaintiff in one complaint to quiet title, Cause No. 11-2-01291-7, CP at 20.

Respondent's inability to establish compliance with Chapters 59.12 and 61.24 RCW also defeats Respondent's ability to comply with Chapter 7.28 RCW, section 7.28.010 of which, in relevant part, provides that:

"Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title...."

To bring its conduct within the terms of RCW 7.28.010, Respondent must "hav[e] a valid subsisting interest in real property, and a right to the possession thereof...." Respondent does not demonstrate in its

Brief that it can meet these statutory requirements due to the fact that MERS is directly responsible for setting the nonjudicial foreclosure machinery in motion.

Finally, Respondent argues that it lawfully exercised dominion and control over Appellant's personal property pursuant to RCW 59.18.312(5) and that it was within its prerogative to remove Appellant's personal property into an expensive storage unit several miles away rather than placing this property within the portable storage unit Appellant was using to remove his personal property. Relying on the alleged perjurious declaration of its Officer, "Rod Nylund," ("Decl. Nylund"), CP at 146, Respondent further argues that: "No effort had been made to move or pack belongings in the home." Res.Br. at 5.

Respondent's lies, deceptions and fraudulent misrepresentations propagated below continue in this Court. For example, Respondent argues that: "No effort had been made to move or pack belongings in the home." The presence of a mobile storage unit in the driveway was clear evidence Appellant was engaged in the process of removing his personal property. See first Declaration of Emanuel McCray ("Decl. McCray I"), CP at 111-115 and second Declaration of Emanuel McCray ("Decl. McCray II"), CP at 170-172. See also: Appellant's "REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF DEFENDANT'S MOTION AND AFFIDAVIT FOR ORDER TO Defendants.) SHOW CAUSE RE: CONTEMPT OF COURT filed in the Superior Court on September 14, 2016. CP at 320-322.

Rather than allow Appellant to continue removing his personal property and placing the same under his own control and dominion, Respondent maliciously removed Appellant's personal property into an expensive storage unit, which is revealed in the following transactions:

1. "On July 20, 2016 the Clark County Sheriff executed on a Writ of Restitution delivering to Plaintiff possession of the property...." Decl.

Nylund at 1, CP at 146.

2. Respondent's attorney, Jean McCoy, caused Appellant to be served by certified mail with a copy of "NOTICE OF INTENT TO SELL OR DISPOSE" dated July 20, 2016 notifying Appellant he had 30 days to claim his personal property. CP at 131. Appellant signed for this Notice on July 25, 2016. CP at 135.
3. "Between July 20 and July 26, 2016 I had a crew moving, boxing and cleaning the home. Defendant's belongings were moved to storage at Iron Gate and rent for the unit was paid through August 31, 2016. As of July 26, 2016 I had rented the home to a third party pending the actions occurring in this case, and the tenant moved in." Decl. Nylund at 1-2, CP at 146-147.
4. In a letter dated July 29, 2016, Respondent's attorney, Jean McCoy, issued a demand for storage costs, etc., which were clearly avoidable. CP at 136-144. Among the attachments was a receipt from Iron Gate Storage indicating the storage unit was purchased on July 21, 2016. CP at 141.

Respondent's "NOTICE OF INTENT TO SELL OR DISPOSE" within 30 days was completely bogus because by the time Appellant received the Notice on July 25, 2016, his personal property had already been set in motion to be removed to Iron Gate Storage. Thus, Appellant had no opportunity to claim his personal property before Respondent ignored the portable storage unit in the driveway and removed Appellant's property to Iron Gate Storage. Appellant explained to Respondent the fraudulent nature of its Notice in a letter dated August 6, 2016. CP at 145.

Nevertheless, Respondent argues before this Court that the Legislature authorized it to exercise exclusive dominion and control over Appellant's personal property pursuant to RCW 59.18.312(5) and that this

Court's holding in *Fed Nat'l Mortgage Assn. v. Steinmann*, 181 Wn.2d 753 (2014) has no bearing on the facts of this case. Res. Br. at 6.

This argument is contrary to the Legislature's purpose and intent when enacting Chapter 59.18 RCW, which governs the relations of a "Residential Landlord" and its "Tenants," not residential homeowners.

In *Fed Nat'l Mortgage Assn. v. Steinmann*, 181 Wn.2d 753 (2014), this Court stated the obvious:

"Nor does the Residential Landlord-Tenant Act apply in these circumstances. Under the act, costs and attorney fees are available to a landlord who obtains a writ of restitution against a holdover tenant. RCW 59.18.290(2). But the Steinmanns did not occupy the home pursuant to a rental agreement establishing a landlord-tenant relationship between them and Fannie Mae. See RCW 59.18.030(19), (21). And Fannie Mae's right to possession of the premises derived solely from its purchase of the property at the trustee's sale, not from the termination of a rental agreement. Thus, when the Steinmanns refused to comply with Fannie Mae's notice to vacate, they were not residential tenants holding over after the termination of a rental agreement so as to entitle Fannie Mae to attorney fees under the Residential Landlord-Tenant Act. *Fed Nat'l Mortgage Assn. v. Steinmann*, 181 Wn.2d at 755-756.

Moreover, the face of RCW 59.18.312 makes plain and clear that the subject matter is applicable to a "landlord" and a "tenant." And even if RCW 59.18.312(5) can be construed to apply to a residential homeowner, that section, read in its entirety, does not authorize a landlord to store a tenant's personal property, "(e) if the tenant or the tenant's representative objects to storage of the property:"

"(5) When serving a tenant with a writ of restitution pursuant to RCW 59.12.100 and 59.18.410, the sheriff shall provide written notice to the tenant that: (a) Upon execution of the writ, the landlord must store the tenant's property only if the tenant serves a written request on the landlord to do so no later than three days after service of the writ; (b) the notice to the landlord requesting storage

may be served by personally delivering or mailing a copy of the request to the landlord at the address identified in, or by facsimile to the facsimile number listed on, the form described under subsection (6) of this section; (c) if the tenant has not made such a written request to the landlord, the landlord may elect to either store the tenant's property or place the tenant's property on the nearest public property unless the tenant objects; (d) if the property is stored, it may not be returned to the tenant unless the tenant pays the actual or reasonable costs of drayage and storage, whichever is less, within thirty days; (e) if the tenant or the tenant's representative objects to storage of the property, it will not be stored but will be placed on the nearest public property; and (f) the landlord may sell or otherwise dispose of the property as provided in subsection (3) of this section if the landlord provides written notice to the tenant first." RCW 59.18.312(5).

The record demonstrates that Appellant was never given the slightest opportunity to finish placing his personal property into the portable storage unit. This outcome was maliciously designed by the Respondent and its attorneys of record.

On November 13, 2016, Appellant served a Civil Demand Letter on Respondent and its attorneys and the owners and managers of the Iron Gate Storage via U.S.P.S. CERTIFIED MAIL RECEIPT NUMBER 7015 0640 0006 7921 2202 demanding that they relinquish control of Appellant's personal property. Appellant has not received a response from any of the addressees as of the date of this Reply Brief.

As to whether the Superior Court ever acquired jurisdiction of Respondent's complaint for unlawful detainer and whether this Court has power to affirm, this Court's earlier holding in *Fortier v. Fortier*, 23 Wn.2d 748, 749-750, 162 P.2d 438 (1945) is dispositive:

"The statement is found in many cases that, where the trial court has no jurisdiction of the subject matter, the appellate court can have none. This statement is accurate in the sense that, while this court has jurisdiction, procedurally, to

entertain an appeal, it has no greater jurisdiction of the subject matter or the merits than had the trial court. If it were not so, then there would be no remedy for the pretended judgments of the lower courts in those cases in which affirmative judgment was rendered without jurisdiction. The duty of this court, upon reversing on such a case, would be to render such a judgment as the trial court should have rendered it, which would be one dismissing the case." See also: *In re Jullin*, 23 Wn.2d 1, 16, 158 P.2d 319, 160 P.2d 1023 (1945), citing *In re Elvigen's Estate*, 191 Wn. 614, 622-623, 71 P.2d 672 (1937) (Exercise of power without authority "is a nullity.").

That the Superior Court lacked jurisdiction to pass upon the merits of this controversy is clear from the record. Pending before the Superior Court was two lawsuits authorized by the Legislature before Respondent and its attorneys engaged in their alleged malicious misconduct.

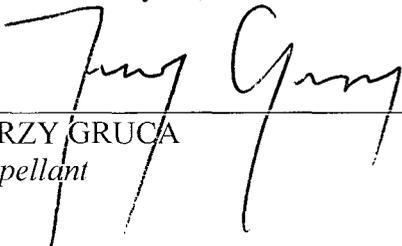
Affirmation of the Superior Court's orders would not only moot the quiet title action currently pending before the Superior Court, but would also raise serious constitutional questions regarding due process and the separation of powers. That being true, this Court does not have jurisdiction to affirm the Superior Court.

II. CONCLUSION.

For the foregoing reasons, Appellant requests that the Superior Court's award of possession be reversed; its orders vacated; and that the complaint be dismissed with prejudice.

Respectfully submitted,

Dated: January 14, 2017



JERZY GRUCA
Appellant

RECEIVED

JAN 23 2017

WASHINGTON STATE
SUPREME COURT

NO. 93319-7

SUPREME COURT OF THE STATE OF WASHINGTON

NYLUND HOMES, INC., Respondent/Plaintiff, vs. JERZY GRUCA, Appellant/Defendant.)	Clark County No. 16-2-01101-6 PROOF OF SERVICE
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EMANUEL MCCRAY DECLARES AS FOLLOWS:

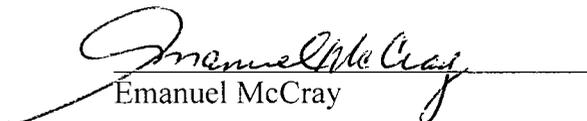
1. I am over the age of 18, am not a party to the within action, and make this declaration based upon personal knowledge and belief.

2. On January 17, 2017, I served copies of APPELLANT'S REPLY BRIEF by placing the same in the U.S. Mail in a sealed envelope with postage fully prepaid, for delivery to:

JEAN M. MCCOY
LANDERHOLM, P.S.
805 Broadway, Suite 1000
P.O. Box 1086
Vancouver, WA 98660
Of Attorneys for Respondent Nylund Homes, Inc.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 17th day of January 2017 at Vancouver, Washington.


Emanuel McCray