

COA 503492-II

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Supreme Court Case No. 93319-7

SUPREME COURT OF THE STATE OF WASHINGTON

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Nylund Homes, Inc.,

Respondent/Plaintiff,

v.

Jerzy Gruca,

Appellant/Defendant

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**BRIEF OF RESPONDENT**

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JEAN M. MCCOY, WSBA No. 21878  
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 ORIGINAL

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## I. INTRODUCTION

Respondent Nylund Homes, Inc. (hereafter “Nylund Homes”) purchased real property commonly known as 8413 NE 108th Avenue, Vancouver, Washington at a Trustee’s non-judicial foreclosure sale held in Clark County on May 20, 2016. Appellant Jerzy Gruca (hereafter “Gruca”) was the owner and Grantor of the Deed of Trust foreclosed, and was residing in the home at the time of the sale. Gruca agrees he did not attempt to stay that foreclosure sale pursuant to the requirements of RCW 61.24.130. Gruca’s previously filed lawsuits against the Trustee, Lender, Servicer, and Beneficiary have been dismissed with prejudice, and Gruca has not appealed these dismissals. Gruca alleges that notwithstanding the fact that his defenses against the non-judicial foreclosure sale have been rejected, he is entitled to re-argue the validity of the non-judicial foreclosure sale in the unlawful detainer proceeding.

## II. RESPONSE TO ASSIGNMENTS OF ERROR AND ISSUES PERTAINING

Appellant Gruca asserts the trial court did not have subject matter jurisdiction or personal jurisdiction sufficient to enter an Order for Writ of Restitution. Gruca alleges Nylund Homes failed to strictly comply with

RCW Chapters 59.12 and 61.24, and as a result the Superior Court's Orders are void.

Gruca's statements do not take into account well established foreclosure law relating to RCW 61.24, et seq. and the fact that based on the current posture of his litigation, he waived the right to stay the foreclosure sale and thus challenge the non-judicial foreclosure in the unlawful detainer proceeding.

### **III. RESPONSE TO STATEMENT OF THE CASE**

Gruca is the former owner of real property in Vancouver, Clark County, Washington known as 8413 NE 108th Avenue. Gruca filed two lawsuits, one in 2014, and one in 2016 against his Lender, Servicer, and Trustee alleging the invalidity and wrongful foreclosure of the Deed of Trust against his property. The first lawsuit alleging wrongful foreclosure was filed on October 10, 2014 under Clark County Superior Court Case No. 14-2-02945-8. The Lender and Servicer were dismissed on April 1, 2016. CP 176.

In 2014 Gruca filed a Chapter 13 Bankruptcy also to stop the then scheduled foreclosure sale, which case was dismissed by Order entered May 7, 2015. CP 48. After dismissal of his Bankruptcy, the Trustee of the Deed of Trust reset the non-judicial foreclosure sale. 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, under Superior Court Case No. 16-2-00694-2, but he failed to seek a stay of the sale pursuant to RCW 61.24.130. CP 30. The Trustee conducted the sale on May 20, 2016 and issued a Trustee's Deed to Respondent Nylund Homes as purchaser. CP 6-7. The Trustee's Deed contained all the representations described in RCW 61.24.040(7). The 2016 lawsuit was dismissed with prejudice on September 2, 2016. CP 184.

Gruca was properly served with pleadings in an Unlawful Detainer action as allowed by RCW 61.24.060(1) and RCW 59.12. Sub No. 6, CP 357. Gruca's response was that the Court lacked jurisdiction, litigation of title was required, a quiet title action was required and the foreclosure sale was held with no lawful authority. CP 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.

#### IV. ARGUMENT

#### **THE SUPERIOR COURT DID NOT LACK SUBJECT MATTER JURISDICTION OR PERSONAL JURISDICTION OVER THE APPELLANT.**

##### A. Compliance with Act

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 61.234.040(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. On tenant occupied property, the tenant is given a separate notice to vacate, and the time to vacate is longer than that of the grantor. RCW 61.24.060(2). There is no argument made that Gruca's property was

tenant occupied property. He was the Borrower and Grantor under the subject Deed of Trust and compliance with that section of the statute is presumed.

The Trustee's Deed, Exhibit "A" to Nylund Home's Complaint on file herein, and the allegations in the Complaint that are not disputed provide evidence of compliance with RCW 59.12.032.

B. Waiver of Right to Argue Outcome of Foreclosure

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. 16-2-00694-2, 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.

C. Arguments regarding Personal Property Disposition are Without Merit.

Gruca raises the issue of disposition of his personal property as well, alleging he was entitled to have his personal property loaded into the portable storage unit he had parked in the driveway. Prior to execution on the Writ of Restitution, Gruca did not provide Nylund Homes with any written notice of his request for disposition of his personal property. No effort had been made to move or pack belongings in the home. CP 146. To ensure the status quo was maintained, no personal property was disposed of or placed in the public roadway.

Nylund Homes did not request attorney fees in this matter, as did the Lender in *Fed. Nat'l Mortg. Ass'n v. Steinmann*, 181 Wash. 2d 753 (2014). Gruca cites this case for the proposition that the Landlord/Tenant Act does not apply to eviction actions applicable pursuant to RCW 61.24 and 59.12. However, RCW 59.18.312(5) specifically refers to service of the Writ of Restitution pursuant to RCW 59.12.100, and that the Sheriff will deliver a Request for Storage of Personal Property along with the Writ. The purpose of the Writ is for the occupant to notify the owner of the property how to dispose of his personal property. Gruca does not deny that prior to execution on the Writ of Restitution, no such request was served to Nylund Homes.

V. CONCLUSION

Gruca had the ability to raise his defenses to the non-judicial foreclosure and to stay the subject Trustee's Sale in his 2014 and/or his 2016 Clark County Superior Court lawsuits, but he failed to do so. Gruca is not entitled at this point to litigate his title issues.

DATED this 28th day of December, 2016.

Respectfully Submitted,

LANDERHOLM, P.S.

/s/ Jean M. McCoy  
JEAN M. MCCOY, WSBA No. 21878  
Attorneys for Respondent Nylund Homes,  
Inc.

CERTIFICATE OF SERVICE

The undersigned hereby certifies as follows:

1. My name is JEAN M. MCCOY. I am a citizen of the United States, over the age of eighteen (18) years, a resident of the State of Washington, and am not a party of this action.
2. On the 28th day of December, 2016, a copy of the foregoing BRIEF OF RESPONDENT was placed in the mail for delivery via first class United States Mail, postage prepaid, to the following person:

Jerzy Gruca  
P.O. Box 821552  
Vancouver, WA 98662

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED: December 28, 2016  
At: Vancouver, Washington

/s/ Jean M. McCoy  
JEAN M. MCCOY

## OFFICE RECEPTIONIST, CLERK

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Dear Supreme Court Staff, please find enclosed Brief of Respondent for the referenced case: **93319-7 - Nylund Homes, Inc., v. Jerzy Gruca.**

A Certificate of Service is included with the Brief

Please do not hesitate to contact me with any questions.

Jean M. McCoy | Attorney



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