

FILED
Court of Appeals
Division II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
2/1/2018 8:00 AM

PNC BANK, NATIONAL ASSOCIATION,
ET, AL,

Plaintiff-Respondent,

vs.

CHARLES C. BABITZKE and MARY LOU
BABITZKE, ET AL,

Defendants,

JERRY C. REEVES,

Defendant-Appellant.

COURT OF APPEALS
CASE NO. **50763-3-II**

COWLITZ COUNTY
NO. **15-2-00284-9**

**APPELLANT, JERRY C. REEVES' OPENING BRIEF AND APPENDIX OF
RECORD**

Appeal to the Court of Appeals, Division II from the
Order of the Superior Court for Cowlitz County
The Honorable Stephen M. Warning Superior Court Judge

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Defendant-Appellant, Pro Se

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Of Attorneys for Cowlitz County Sheriff's
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February 1, 2018

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Of Attorneys for Gravity Segregation, LLC

February 1, 2018

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TABLE OF AUTHORITY

CASES CITED: PAGE NO.:

- 1. Capital Investment Corp. v. King County, 112 Wn. App. 216 (2002)

- 2. Central Life Assur. Soc’y v. Spangler, 204 Iowa 995, 216 N.W. 116,
(1927)

- 3. Performance Construction, LLC, v. Collete Glenn, et al., 195 Wn. App.
406, 380 P.3d 618 (2016)

STATUTES CITED:

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I. INTRODUCTION

Defendant Jerry C. Reeves was the purchaser of the interests of Charles And Mary Lou Babitzke of the house and real property at 1601 Guild, Road, Woodland, Washington on or about July 21, 2006. The sale was structured as a “wrap around” purchase wherein Defendant Reeves agreed to assume the payments to be made by Charles and Mary Lou Babitzke on their first mortgage loan with PNC Bank, the Plaintiff-Respondent in this case. Defendant Reeves also agreed to pay the Babitzkes an additional \$800,000 dollars, more or less, in annual payments of \$100,000 dollars commencing with the down payment of \$100,000 made on July 21, 2006. Mr. Reeves ultimately defaulted on the payments owed to Mr. and Mrs. Babitzke in 2008, and then to PNC Bank in April of 2012. PNC Bank then foreclosed on its first position loan via a Judicial Foreclosure proceeding commenced on March 18, 2015. CP 142. The foreclosure Complaint filed by PNC Bank named Defendant Jerry C. Reeves as the owner of the property at the time of the commencement of the foreclosure. CP 2. That proceeding ended in a Money Judgment and Decree of Foreclosure in favor of PNC Bank on March 30, 2016 naming Charles and Mary Lou Babitzke as the judgment debtors on the property. CP 209-210.

Approximately one year after the PNC foreclosure was commenced, Charles and Mary Lou Babitzke sold their interest in Defendant Reeves’ Note issued to them to Gravity Segregation, LLC. Gravity Segregation, LLC quickly commenced its own Judicial Foreclosure proceeding against Mr. Reeves on or

about March 30, 2016 in Cowlitz County Superior Court Case No. 16-2-00368-1. CP 142.

Mr. Reeves is currently defending in said second foreclosure since Charles and Mary Lou Babitzke had returned the original Promissory Note issued to them in 2006, to Mr. Reeves in a meeting in 2014, at Mr. and Mrs. Babitzke's new home. Mr. Reeves has shown that original Promissory Note to counsel for Gravity. CP 142.

The subject property was ultimately sold, via Cowlitz County Sheriff's Sale, to PNC Bank and a redemption period of one year was set which ended on July 29, 2017. PNC Bank successfully bid \$320,000 for the subject property at the Sheriff's Sale. CP 142-143.

In early May of 2017, Defendant Jerry C. Reeves sent a letter to the Cowlitz County Sheriff's office notifying them of his intent to redeem the subject property. CP 152-153. On May 19, 2017, Chief Cowlitz County Civil Deputy Lisa Praytor sent an email to counsel for PNC Bank, Mr. Jonathan Lloyd advising counsel for PNC Bank of Mr. Reeves' intent to redeem the subject property and advising that item 12 of the Judgment and Decree of Foreclosure states that Mr. Reeves' rights to the property were foreclosed except for the statutory right of redemption. This email also asked Mr. Lloyd to forward any documentation to her if Mr. Lloyd believed that Mr. Reeves' redemption rights were invalid. A 4.

Mr. Lloyd responded to Chief Praytor's email that same day essentially stating that counsel for PNC Bank did not believe that Mr. Reeves had a right to redeem under RCW 6.23.010 and that Mr. Reeves had not submitted any documents that

Defendant-Appellant Jerry C. Reeves' Opening Brief Page 2

showed a right to redeem under RCW 6.23.080 (2) since he was not a lien creditor nor an assignee and he had not supplied any documentation supporting either position. Mr. Lloyd also asked that Chief Praytor let him know if she disagreed with his conclusion at her earliest possible convenience. A 1. By letter dated June 12, 2017, Chief Praytor advised Mr. Reeves that it was the position of the Cowlitz County Prosecuting Attorney Dana Gigler that Mr. Reeves paperwork had not met the statutory requirements of the Revised Code of Washington. CP 183. On June 13, 2017, Mr. Reeves' Oregon counsel, Mr. Craig D. Curtright, contacted attorney Dana Gigler at the Cowlitz County Prosecuting Attorney's office. Attorney Gigler supplied Mr. Curtright with copies of the May 19, 2017, emails that Chief Praytor had received from PNC Bank's counsel referenced above. A 1. Attorney Gigler asked Mr. Curtright to respond to those emails setting forth Mr. Reeves's position on why he felt PNC Bank's counsel was wrong and why Mr. Reeves had the right to redeem. A 4. By this time almost one month had elapsed since Mr. Reeves gave the Cowlitz County Sheriff his paperwork supporting his intent to redeem.

On June 13, 2017, Mr. Curtright informed attorney Gigler that it was the position of Mr. Reeves that Mr. Reeves was the successor in interest of a judgment creditor, Mr. and Mrs. Babitzke, and that he therefore had a right to redeem. Mr. Curtright also directed attorney Gigler to review the case of *Investment Corp. of Washington v. King County*, No. 26405-6-II dated May 24, 2002. A 4. A copy of said case was scanned and sent to attorney Gigler for her review. A 9-14.

Attorney Gigler responded to Mr. Curtright's email by asking attorney Curtright what documentation he believed was necessary to trigger Mr. Reeves' right of redemption under RCW 6.23.080 and that Subsection 2(b) appeared to apply. A 4. This subsection deals with the rights of an assignee to redeem and requires the assignee to submit a copy of any assignment necessary to establish the claim, verified by the affidavit of the assignee and showing the amount then actually due on the judgment, decree, deed of trust or mortgage.

Mr. Curtright responded to attorney Gigler's email the next day advising that it was Mr. Reeves' position that he was not an assignee of any interest in the property but was the successor in interest to the judgment debtors, Mr. and Mrs. Babitzke. Mr. Curtright informed attorney Gigler that Mr. Reeves would therefore then have no information as to any amount of money that he would be owed but, instead, would merely be seeking numbers from PNC Bank as to the amount now owing on its judgment lien, including all statutory interest and costs. A 15-16. Apparently, attorney Gigler then reviewed the supplied case and sent it to PNC Bank's counsel asking for comment since she believed that Mr. Reeves may in fact have a right to redeem. A 18. On June 16, 2017, attorney Johnathan Lloyd responded to attorney Gigler, and copied attorney Curtright, stating that PNC did not believe that *Capital Investment Corp. v. King County*, 112 Wn. App. 216 (2002) provided a basis on which Mr. Reeves qualified as a valid redemptioner under RCW 6.23.010 but did also state that, to the extent the Sheriff and Ms. Gigler's office determined that Mr. Reeves has provided sufficient proof under RCW 6.23.080 to establish a right to redeem the subject property, PNC

would not challenge that determination. A 19-20.

Between June 16, 2017 and June 26, 2017, attorney Curtright received no further communications from attorney Gigler. On June 26, Mr. Curtright emailed attorney Gigler and asked her for her position on Mr. Reeves' request to redeem as a successor in interest to Charles and Mary Lou Babitzke. A 21. On June 30, 2017, attorney Gigler informed attorney Curtright that her client, the Cowlitz County Sheriff's office, had received a notice from Charles and Mary Lou Babitzke of their intent to redeem the subject property on or before July 15, 2017 and that her client believed that they had the superior right to redeem under the applicable Washington statute. A 23. This notice came from a letter to the Cowlitz County Sheriff's office dated June 28, 2017 from the Babitzkes' attorney, Mr. Ben Wolff. A 32. Mr. Wolff's letter also indicated that he did not believe that Mr. Reeves had a right to redeem and that the Babitzkes' partner, Gravity Segregation, LLC, would also have a right to redeem if it chose to do so. This letter was supplied to attorney Curtright by attorney Gigler on or about July 5, 2017 and attorney Gigler advised the Mr. Reeves would have to seek an order of the Cowlitz County Superior Court to redeem if he still felt he had a right to do so. A 25. Mr. Reeves filed a Motion for an Order Allowing Right of Redemption and for Extension of Time to Redeem on or about July 11, 2017, (CP 141-203) and a Supplemental Memorandum on or about July 25, 2017. CP 238-243. A hearing was held on July 26, 2017 at 2:00 P.M. at the Cowlitz County Court before the honorable judge Stephen M. Warning. After reviewing the submissions of the parties and the oral argument of the parties, judge Warning denied Defendant

Reeves' Motion for an Extension of Time to Redeem and his Motion for an Order Allowing him to Redeem.

The Order on Hearing, prepared by attorney Benjamin L. Wolff, reads as follows: (CP 244-245)

“This matter came before the Court on Defendant Jerry C. Reeves Motion for an Order Directing the Cowlitz County Sheriff’s Office to Allow Him to Redeem from PNC Bank and that the Time for Redemption be Extended by 60 days, July 11, 2017. A hearing was held on July 26, 2017. Before the Court were Mr. Jerry C. Reeves, appearing pro se; Frederick A. Haist, on behalf of PNC Bank, appearing by telephone; and, Benjamin L. Wolff, on behalf of Charles and Mary Lou Babitzke.

Based on the arguments of counsel and the pleadings and other documents on filed, Defendant Reeves’ motion is DENIED.

DATED this 26th of July, 2017.

Superior Court Judge Stephen M. Warning”

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1

Did the trial court error in ruling that the Defendant, Jerry C. Reeves could not redeem the subject property after he had supplied the Cowlitz County Sheriff’s

office with all of the paperwork showing that he was the successor in interest to the judgment debtors, Charles and Mary Lou Babitzke?

At issue will be whether Defendant Reeves had a right to redeem under RCW 6.23.010. Defendant will show that he supplied all of the paperwork required by statute to show that he was the successor in interest to the undisputed judgment debtors, Charles and Mary Lou Babitzke and that he, therefore, should have been given the paramount right to redeem over Mr. and Mrs. Babitzke and that, at a very minimum, Defendant Reeves should have received an Order allowing him to redeem on or before the final day for redemption which was July 29, 2017.

III. STATEMENT OF THE CASE

1. NATURE OF THE PROCEEDINGS AND RELIEF SOUGHT

Defendant-Appellant, Jerry C. Reeves appeals from the ruling of the July 26, 2017, ruling of the Superior Court of Cowlitz County which denied him the right to redeem the house and real property commonly known as 1601 Guild Road, Woodland, OR, following its foreclosure by PNC Bank. The final date set for possible redemption was July 29, 2017.

2. EFFECTIVE DATE FOR APPEAL

The Order Denying Defendant's Motion for an Order Allowing him the Right to Redeem (and Denying His Motion for an Extension of Time to Redeem) was signed and entered on or about July 26, 2017. Defendant Reeves filed his Notice of Appeal herein on or about August 7, 2017, well within the 30-day requirement

from the date of denial of Defendants Motion for an Order Allowing Him the Right to Redeem. Defendant's Appeal is, therefore timely.

IV. ARGUMENT

1. STANDARD OF REVIEW

Defendant has not been able to find a definitive case or relevant statute that sets forth the standard of review for the denial of a Motion for an Order Allowing the Right to Redeem a piece of real property. Defendant believes, however, that the review of such a motion would be de novo as it is with the denial of a Motion for Summary Judgment.

2. LEGAL ARGUMENT SURROUNDING ASSIGNMENT OF ERROR

NO. 1

Assignment of Error No. 1

Did the trial court error in ruling that the Defendant, Jerry C. Reeves, could not redeem the subject property after he had supplied the Cowlitz County Sheriff's office with all of the paperwork showing that he was the successor in interest to the judgment debtors, Charles and Mary Lou Babitzke?

RCW 6.23.010 states as follows:

“(1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, *or their successors in interest* (emphasis supplied):

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

(emphasis supplied).

(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.

(2) *As used in this chapter, the terms “judgment debtor,” “redemptioner,” and “purchaser” refer also to their respective successors in interest* (emphasis supplied).

The only real question before this Court is whether Defendant Jerry C. Reeves was a redemptioner’s successor in interest. Defendant Reeves believes that question is easily answered in the affirmative and that a review of the reasoning of the Court of Appeals in the case of *Capital investment Corp. v. King County*, 112 Wn. App. 216 (2002) shows how this is so. In *Capital Investment Corp.*, the Court reasoned as follows,

“Although the legislature did not define that phrase in Chapter 6.23 RCW, the words themselves suggest that a “successor in interest” is one who has acquired or succeeded to an interest once held by a predecessor. When the predecessor is a redemptioner, his or her interest is the right to redeem that emanates from the lien of his or her judgment, decree, deed of trust, or mortgage against the judgment debtor. At first glance then, a redemptioner’s successor in interest is one who has acquired or succeeded to the redemptioner’s judgment, decree, deed of trust, or mortgage.” *Supra* at 224.

Capital Investment Corp. v. King County, 112 Wn. App. 216 (2002) quotes with approval the Iowa case of *Central Life Assur. Soc'y v. Spangler*, 204 Iowa 995, 216 N.W. 116 (1927) which holds that an adult son who purchased his parents' farm became the parents' successor in interest and had the right to redeem after a judicial foreclosure. In that case, Central Life had purchased the Spanglers' farm at a sheriff's sale. The Spanglers validly deeded their remaining interest in the farm to their adult son. The son then tendered the amount needed to redeem, claiming that he had succeeded to his parents' right to redeem. Holding that he could redeem, the Iowa Supreme Court said, "We have held many times that the ownership of real estate and the right of redemption thereof are inseparable and in a sense identical in that they are parts of the same thing." 216 N.W. at 117 (citations omitted). The court went on to hold that the parents' deed had effectively conveyed their interest to the son; that he was their successor; and thus, he could redeem. See *Capital Investment Corp.*, *Supra* at 226.

The Iowa Supreme Court case cited above, clearly illustrates how Defendant Reeves has become the successor in interest to the judgment debtors, Charles and Mary Lou Babitzke, since he purchased all of their interest in the subject property in July of 2006 and obtained a Deed from the Babitzkes conveying their ownership interest in the subject property to Defendant Reeves. See also, *Performance Construction, LLC, v. Collette Glenn, et al.*, 195 Wn. App. 406, 380 P.3d 618 (2016), at note 13, which indicates that once Jerry C. Reeves purchased the interests of Charles and Mary Lou Babitzke, he should have become the only judgment debtor in the underlying foreclosure.

The Deed from the Babitzkes to Defendant Reeves unquestionably made him the Babitzkes' successor in interest and since the Babitzkes were undeniably named as the judgment debtors in the above-captioned matter, Defendant Reeves succeeded to their right to redeem. The denial of that right by the Cowlitz County Sheriff's office was wrongful as was the ruling by the trial court that denied Defendant's Motion for an Order Allowing him the Right to Redeem.

In his request to the Cowlitz County Sheriff's office to redeem, Defendant Reeves supplied the following documents and these were all of the documents that should have been required of a successor in interest to a judgment debtor to prove his right to redeem:

1. A copy of the Complaint naming Jerry C. Reeves as the current owner of the property at the time that Plaintiff, PNC Bank commenced its Judicial Foreclosure. CP 161.
2. The Note and Deed of Trust dated November 13, 2006 showing the payments to be made by Defendant Reeves to his sellers, Charles and Mary Lou Babitzke from their sale to Defendant Reeves. CP 155-159.
3. The duly recorded and valid Deed from Charles and Mary Lou Babitzke to Defendant Jerry C. Reeves wherein Charles and Mary Lou Babitzke deeded Mr. Reeves all of their right, title and interest in and to the subject property years prior to the filing of Plaintiff's Complaint. These documents prove Defendant Reeves' status as the successor in interest to Mr. and Mrs. Babitzke. CP 154.

Pursuant to RCW 6.23.040, the Judgment Debtor, or in this case, the Judgment

Debtors' successor in interest, has the paramount right to redeem.

In relevant part, RCW 6.23.040 states as follows,

“(1) If property is redeemed from the purchaser, by a redemptioner, as provided in RCW 6.23.020, another redemptioner may, within sixty days after the first redemption, redeem it from the first redemptioner. The property may be again, and as often as a redemptioner is so disposed, redeemed [sic] from any previous redemptioner within sixty days after the last redemption, and such sixty-day redemption periods may extend beyond the period prescribed in RCW 6.23.020 for redemption from the purchaser.

(2) The judgment debtor may also redeem from a redemptioner, but in all cases the judgment debtor shall have the entire redemption period prescribed by RCW 6.23.020, but no longer unless the time is extended under RCW 6.23.030 or 6.23.090. If the judgment debtor redeems, the effect of the sale is terminated and the estate of the debtor is restored.” (emphasis supplied).

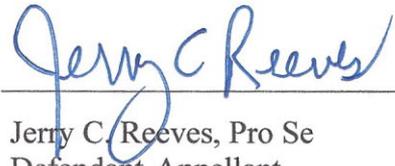
V. CONCLUSION

Defendant Jerry C. Reeves became the successor in interest to the judgment debtors, Charles and Mary Lou Babitzke in the above-captioned case when he purchased their interest in the subject property in 2006 and obtained and duly recorded a valid deed evidencing that purchase. Defendant Jerry C. Reeves has been wrongfully denied the right to redeem by the Cowlitz County Sheriff's office and by the Cowlitz County Superior Court. For these reasons, Defendant Reeves

should be given an Order of this Court allowing Defendant Reeves the right to redeem and setting a new date and time for him to do so that is just and reasonable under the circumstances of this case. Defendant Reeves submits that no more than sixty days would be required and reasonable under the circumstances.

DATED: This 1st day of February, 2018.

Respectfully Submitted,



Jerry C. Reeves, Pro Se
Defendant-Appellant
14300 SW McKinley Drive
Sherwood, OR 97140
Telephone: (503) 969-2600
Email: jerry@jcreeves.com

VI. APPENDIX

PAGE NO.:

- | | |
|--------------------------------------------------|--------|
| 1. Emails, Faxes and Letters between the Parties | A1-A40 |
|--------------------------------------------------|--------|

DECLARATION OF SERVICE

I hereby certify and declare that on February 1, 2018, a copy of the foregoing Opening Brief of Defendant-Appellant Jerry C. Reeves was electronically filed with the Washington Court of Appeals, Division II at the following address:

Clerk of the Court
COURT OF APPEALS FOR THE
STATE OF WASHINGTON
DIVISION II
950 Broadway, Suite 300 MS TB-06
Tacoma, WA 98402-4454

I hereby further certify and declare that on February 1, 2018, that I mailed a true and correct copy of the foregoing Opening Brief of Defendant-Appellant Jerry C. Reeves and a true and correct copy of the Verbatim Report of Proceedings for July 26, 2017, to the following attorneys of record for Plaintiff-Respondent and the parties of record:

Frederick Haist
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1201 Third Avenue
Suite 2200
Seattle, WA 98101
Frederickhaist@dwt.com

Attorney for Plaintiff-Respondent

Dana Gigler
Civil Deputy Prosecuting Attorney
Cowlitz County Prosecuting Attorney
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Vancouver, WA 98660
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Attorney for Charles and Mary Lou Babitzke

By: _____



Jerry C. Reeves, Pro Se
Plaintiff-Appellant
14300 SW McKinley Drive
Sherwood, OR 97140
Telephone: (503) 969-2600
Email: jerry@jcreeves.com



Craig Curtright <craigcurtright@gmail.com>

FW: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

5 messages

Gigler, Dana <GiglerD@co.cowlitz.wa.us>

Mon, Jun 12, 2017 at 3:27 PM

To: "craigcurtright@gmail.com" <craigcurtright@gmail.com>

Mr. Curtright, Pursuant to your request pursuant to RCW 42.56, please find the attached.

Dana E. Gigler

Civil Deputy Prosecuting Attorney

Cowlitz County Prosecuting Attorney

312 SW First Ave

Kelso WA 98626

360.577.3080

PRIVILEGED and CONFIDENTIAL COMMUNICATION: This e-mail message, including any attachment, are privileged and confidential. If you are the intended recipient, you are hereby notified that any disclosure, copying, distribution, or the taking of any action in reliance on the contents of this emailed information is strictly prohibited. If you are NOT the intended recipient, then please (i) do not read this e-mail, (ii) do not forward, print, copy or otherwise disseminate this e-mail, (iii) notify us of the error by a reply to this e-mail, and (iv) delete this e-mail from your computer.

From: Lloyd, Jonathan [mailto:JonathanLloyd@dwt.com]**Sent:** Friday, May 19, 2017 1:37 PM**To:** Praytor, Lisa <praytorl@co.cowlitz.wa.us>**Cc:** Haist, Frederick <FrederickHaist@dwt.com>**Subject:** RE: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

Dear Chief Praytor:

We have reviewed the materials from Mr. Reeves that you forwarded and question both (1) his status as a person who is entitled to invoke a right of redemption under RCW 6.23.010; and (2) the sufficiency of the evidence Mr. Reeves provided, even if he qualifies as a person who can redeem.

On the first point, we understand RCW 6.23.010 to provide that only a judgment debtor or a creditor "having a lien by judgment, decree, deed of trust, or mortgage" (or their successors) can redeem property that has been judicially foreclosed and sold at a sheriff's sale. It is our understanding that the Babitzkes – who were the grantors of PNC's deed of trust on the subject property (1601 Guild Road) and the judgment debtors in PNC's judicial foreclosure lawsuit – subsequently sold the property to Mr. Reeves (without informing PNC) and received a deed of trust from Mr. Reeves (the associated lien was junior to the lien of PNC's deed of trust). Consequently, Mr. Reeves is neither the judgment debtor

nor a creditor with a lien on the subject property, and we are not aware of any other basis on which Mr. Reeves can properly claim a right to redeem under RCW 6.23.010. The documentation Mr. Reeves provided you, and that you forwarded to us, merely reflects his grant of a deed of trust on the property to the Babitzkes, which does not establish his status as person who can redeem the subject property.

As to the second point, RCW 6.23.080(2) provides that person seeking to redeem a foreclosed property "shall submit to the sheriff the evidence of the right to redeem, as follows: (a) A lien creditor shall submit a copy of the docket of the judgment or decree under which the right to redeem is claimed, certified by the clerk of the court where such judgment or decree is docketed; or the holder of a mortgage or deed of trust shall submit the certificate of the record thereof together with an affidavit, verified by the holder or agent, showing the amount then actually due thereon. (b) An assignee shall submit a copy of any assignment necessary to establish the claim, verified by the affidavit of the assignee or agent, showing the amount then actually due on the judgment, decree, deed of trust, or mortgage." RCW 6.23.080(2). We do not believe that the documentation Mr. Reeves provided to you qualifies under either of these provisions – it does not demonstrate that he has a judgment, mortgage or deed of trust on the subject property, or that he was assigned any judgment, mortgage, deed of trust or redemption right on that property. Accordingly, even if Mr. Reeves did qualify as a person who can redeem under RCW 6.23.010, we do not believe he has properly triggered the right to redeem under the statute.

If you disagree with the assessment above, please let us know at your earliest convenience, including the basis for your conclusion.

In the interim, we will continue our efforts to calculate the recoverable amounts that PNC has incurred since the sheriff's sale, so that we can provide you with that information in the event you conclude that Mr. Reeves is entitled to redeem the property and has made a proper redemption request.

Please let me know if you have any questions.

Regards,

Jonathan

Jonathan Lloyd | Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW, Suite 800 | Washington, DC 20006-3401

Tel: (202) 973-4205 | Fax: (202) 973-4499

Email: jonathanlloyd@dwl.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Praytor, Lisa [mailto:praytorl@co.cowlitz.wa.us]

Sent: Friday, May 19, 2017 1:43 PM

To: Lloyd, Jonathan

Subject: RE: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

Mr. Lloyd,

I have attached everything I have from Mr. Reeves. I have left a message for him asking him approximately when he would be redeeming the property but haven't heard from him yet.

A-3

Technically I am supposed to gather the information within 5 days but I was out for 5 days at a conference and today is the first day I have had to work on it. So if you could get the information to me as soon as possible it would be appreciated.

Thank you.

Lisa Praytor

Chief Civil Deputy

Cowlitz County Sheriff's Office

312 SW First Avenue, Kelso, WA 98626

Phone: (360) 577-3092

From: Lloyd, Jonathan [mailto:Jonathan.Lloyd@dwt.com]

Sent: Friday, May 19, 2017 10:35 AM

To: Praytor, Lisa

Cc: Haist, Frederick

Subject: RE: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

Chief Praytor,

Thank you for your email. We are looking into your request, including contacting PNC Bank about costs and fees they may have incurred since the sheriff's sale, and will provide a substantive response to your email as soon as we can, hopefully next week. Please let me know if there is a specific deadline for us to provide the information to you.

On a related issue, can you please send me a copy of the documentation that Mr. Reeves provided you regarding his claimed right of redemption?

Regards,

Jonathan

Jonathan Lloyd | Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW, Suite 800 | Washington, DC 20006-3401

Tel: (202) 973-4205 | Fax: (202) 973-4499

1/31/2018

Gmail - FW: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

A - 4

Email: jonathanlloyd@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Praytor, Lisa [mailto:praytorl@co.cowlitz.wa.us]
Sent: Friday, May 19, 2017 1:08 PM
To: Lloyd, Jonathan
Subject: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

Mr. Lloyd,

Jerry Reeves has requested the redemption amount for the property located at 1601 Guild Road, Woodland, WA 98674. PNC Bank was the successful bidder at the sale with an amount of \$320,000.00.

Looking at the Decree of Foreclosure section of the Judgment and Decree of Foreclosure item 12 states Mr. Reeves' rights to the property were foreclosed except for the statutory right of redemption. He sent me a copy of a Corrected Statutory Warranty Deed Replacing "Deed of Trust" Dated July 21, 20106 Auditors Number 305063 to prove his interest in the property.

Would you please forward a list of approved costs that your client has incurred since the purchase of the property on July 29, 2016.

If you do not believe Mr. Reeves has the authority to redeem this property, please forward the documentation that shows his redemption rights are invalid.

Let me know if you have any questions or concerns regarding this redemption. Thank you for your time.

Lisa Praytor

Chief Civil Deputy

Cowlitz County Sheriff's Office

312 SW First Avenue, Kelso, WA 98626

Phone: (360) 577-3092

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Tue, Jun 13, 2017 at 7:51 AM

Dana:

Thank you for sending a copy of the letter from counsel for PNC. Here is my problem with his analysis. The Babitzkes were clearly given notice of a right to redeem on or before July 28, 2017. A copy of that notice is attached. However, the Babitzkes sold all of their right, title and interest in and to the subject property to my client, Jerry C. Reeves in July of

2006 and a deed reflecting that sale was duly and properly recorded in the deed records of Cowlitz County. The Babitzkes took back a lien on the property to secure the amounts that were owed by Mr. Reeves to them and memorialized the fact that Mr. Reeves had agreed to continue the payments due to PNC on the PNC first mortgage. So, Mr. Reeves is a successor-in-interest to the rights of Mr. and Mrs. Babitzke. The RCW quoted by counsel for PNC (6.23.010) clearly states that the term "judgment debtor" refers also to their respective "successors in interest". The documents that were sent on behalf of Mr. Reeves prove his status as a "successor in interest" to the Babitzkes because they memorialize the sale that took place between the Babitzkes and Mr. Reeves in 2006. If this were not true, PNC would not have named Mr. Reeves as a party to the PNC judicial foreclosure.

It is clear that PNC's attorney simply chose to ignore Mr. Reeves' status. Please let me know your findings, after review of this missive, as soon as possible. If necessary, Mr. Reeves is ready to seek a declaratory Motion in the Cowlitz County Superior Court. It is my hope, however, that this will not be necessary after further reflection on what I have presented for Mr. Reeves.

Sincerely,

Craig D. Curtright
Oregon counsel for Jerry C. Reeves and JC Reeves Corporation
OSB #822317

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--

Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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 **Babitzke Notice of Redemption.pdf**
831K

Gigler, Dana <GiglerD@co.cowlitz.wa.us>

Tue, Jun 13, 2017 at 3:27 PM

To: "Lloyd, Jonathan" <JonathanLloyd@dwt.com>, "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>

Cc: "Haist, Frederick" <FrederickHaist@dwt.com>, "craigcurtright@gmail.com" <craigcurtright@gmail.com>

Mr. Lloyd,

I am the civil deputy prosecuting attorney advising the Cowlitz County Sheriff's Office. Regarding the below mentioned case, it appears to me that Mr. Reeves may have a statutory right of redemption as a successor in interest under RCW 6.23.010 and *Capital Investment Corp. v. King County*, 112 Wn.App.216 (2002) since he purchased the property in 2006, well prior to entry of the 2016 judgment. You note below that the Babinskis sold the property subsequent to the foreclosure suit, but I'm not sure that is accurate.

The interest of the Cowlitz County Sheriff's office is ensuring that the law is accurately and fairly applied. Absent agreement of the parties here, we suggest that the parties seek an order from the court setting forth redemption rights or lack thereof.

In the meantime, we look forward to your calculation of recoverable costs discussed below.

[Quoted text hidden]

Lloyd, Jonathan <JonathanLloyd@dwt.com>

Wed, Jun 14, 2017 at 12:13 PM

1/31/2018

Gmail - FW: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>, "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>
Cc: "Haist, Frederick" <FrederickHaist@dwt.com>, "craigcurtright@gmail.com" <craigcurtright@gmail.com>

A-6

Ms. Gigler,

Thank you for your email. We are reviewing the case you cited, as well as other relevant case law, and discussing your email with our client. I anticipate we'll be in a position to provide a substantive response by early next week. Per your reference to the parties seeking a court order regarding Mr. Reeves' potential statutory right of redemption, we assume you will not take any further action on this matter prior to receiving our response and/or either a court order or agreement of the parties. If that is incorrect, please let me know at your earliest convenience.

Regards,

Jonathan

Jonathan Lloyd | Davis Wright Tremaine LLP
1919 Pennsylvania Avenue NW, Suite 800 | Washington, DC 20006-3401
Tel: (202) 973-4205 | Fax: (202) 973-4499
Email: jonathanlloyd@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Gigler, Dana [mailto:GiglerD@co.cowlitz.wa.us]
Sent: Tuesday, June 13, 2017 6:28 PM
To: Lloyd, Jonathan; Praytor, Lisa
Cc: Haist, Frederick; 'craigcurtright@gmail.com'

[Quoted text hidden]

[Quoted text hidden]

Lloyd, Jonathan <JonathanLloyd@dwt.com> Fri, Jun 16, 2017 at 10:34 AM
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>, "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>
Cc: "Haist, Frederick" <FrederickHaist@dwt.com>, "craigcurtright@gmail.com" <craigcurtright@gmail.com>

Ms. Gigler:

PNC does not believe that *Capital Investment Corp. v. King County*, 112 Wn. App. 216 (2002) provides a basis on which Mr. Reeves qualifies as a valid redemptioner under RCW 6.23.010, regardless of when he purchased the subject property from the Babitzkes (on that point, my email was not intended to suggest that the sale occurred after the foreclosure – indeed, the documentation Mr. Reeves provided in the email I was responding to reflects the 2006 date of that transaction – but we don't view that fact as material to the issue of Mr. Reeves' status as a valid redemptioner). Nonetheless, to the extent the Sheriff and your office determine that Mr. Reeves has provided sufficient proof under RCW 6.23.080 to establish his right to redeem the subject property, PNC will not challenge that determination.

In terms of proceeding with that redemption, can you please clarify how that process will proceed? We've reviewed the materials that Mr. Reeves submitted to the Cowlitz County Sheriff's Office and don't see anything identifying the date or time when Mr. Reeves plans to redeem the property, as RCW 6.23.080 requires. Will you be requiring Mr. Reeves to

submit a compliant notice providing that information, so that PNC can properly calculate the full amount of fees and interest that will be owing as of the redemption date? For your reference, here is an itemized account of the amount required to redeem the property as of June 15, 2017, which was included in the amended RCW 6.23.030 notice that we filed and served on the judgment debtors and property occupants earlier this week (this amount will increase to reflect interest through the redemption date once we know what that date is):

<u>Item</u>	<u>Amount</u>
Purchase price paid at sale	\$320,000.00
Interest from date of sale to date of this amended notice at \$29.08 per day	\$9,334.68
Real estate taxes	\$19,372.23
Assessments plus interest	\$0
Liens or other costs (hazard insurance) paid by purchaser or purchaser's successor during redemption period	\$1,266.00
Lien of redemptioner	Not applicable/unknown
TOTAL REQUIRED TO REDEEM AS OF THE DATE OF THIS NOTICE	\$349,972.91

Please let me know if you have any questions.

Regards,

Jonathan

Jonathan Lloyd | Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW, Suite 800 | Washington, DC 20006-3401

Tel: (202) 973-4205 | Fax: (202) 973-4499

Email: jonathanlloyd@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Gigler, Dana [mailto:GiglerD@co.cowlitz.wa.us]

Sent: Tuesday, June 13, 2017 6:28 PM

To: Lloyd, Jonathan; Praytor, Lisa

Cc: Haist, Frederick; 'craigcurtright@gmail.com'

[Quoted text hidden]

[Quoted text hidden]



Craig Curtright <craigcurtright@gmail.com>

Jerry C. Reeves' right to redeem at 1601 Guild Road

3 messages

Craig Curtright <craigcurtright@gmail.com>
 To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
 Cc: Jerry Reeves <jerry@jcreeves.com>

Tue, Jun 13, 2017 at 9:53 AM

Dana:

I did some further research on what is a successor in interest of a judgment creditor in Washington and came up with a case that I believe positively shows that Mr. Reeves was a successor in interest to the Babitzkes' right to redeem as a judgment debtor. The case of Capital Investment Corp. of Washington v. King County, No. 26405-6-II, dated May 24, 2002, gives several examples of what a person must do to become a successor in interest to a judgment debtor. Bottom line, once the Babitzkes sold the property to my client, their right to redeem followed according to the examples given in said case.

A copy of the case has been scanned and attached for your easy viewing.

I would think that this ends the controversy unless you think that there might be a case ruling differently out there that I have not found.

I look forward to your decision.

Sincerely,

Craig D. Curtright

--
 Craig D. Curtright
 Attorney at Law, OSB #822317
 West Linn, OR 97068
 Tel: 503.709.6030

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 **Washington Case Explaining Successor in Interest to a Judgment Debtor for Purposes of Redemption.pdf**
 2770K

Gigler, Dana <GiglerD@co.cowlitz.wa.us>
 To: Craig Curtright <craigcurtright@gmail.com>
 Cc: Jerry Reeves <jerry@jcreeves.com>

Tue, Jun 13, 2017 at 3:26 PM

Thank you for the follow up. Can you tell me your position regarding the necessary documentation to trigger the redemption right under RCW 6.23.080? Subsection 2(b) appears to apply:

(b) An assignee shall submit a copy of any assignment necessary to establish the claim, verified by the affidavit of the assignee or agent, showing the amount then actually due on the judgment, decree, deed of trust, or mortgage.

Have you prepared an affidavit showing the amount currently due?



CAPITAL INVESTMENT CORP OF WASHINGTON v. KING COUNTY
CAPITAL INVESTMENT CORP OF WASHINGTON v.
KING COUNTY

Print | 22 | Font size

Court of Appeals of Washington, Division 2.

CAPITAL INVESTMENT CORP. OF WASHINGTON, Appellant, v. KING COUNTY, a
political subdivision, et al., Respondents.

No. 26405-6-11.

Decided: May 24, 2002

Kenneth Wendell Masters, Charles Kenneth Wiggins, Wiggins Law Office, Bainbridge Is. Scott Alexander
Caldoo, Tacoma, for Appellant. Janine Elizabeth Joly, Deputy Pros Atty, for Respondents.

In *Fidelity Mutual Savings Bank v. Mark*, the Washington Supreme Court held that a judgment debtor could not transfer a right to redeem without also transferring the underlying interest in the land. In this case, we analogously hold that a redemptioner by judgment lien may not transfer a right to redeem without also transferring the underlying judgment. The trial court so ruled, and thus we affirm.

FACTS

Judgments: In 1997, there were three judgments against Eric Piltz. The judgment creditors were (or would become) David Ordell, 5-11 Properties, and Judgment Enforcement Administration (JEA).

Liens: Each of the three judgments was a lien against Piltz's King County real estate, which included some apartments on East Olive Avenue in Seattle (hereafter "the East Olive property"). It appears from subsequent events that Ordell's lien was superior; that 5-11's was next; and that JEA's was inferior.

Order of sale: In September 1997, Ordell obtained an order of sale from the King County Superior Court. The order directed the King County Sheriff to sell the East Olive property, subject to redemption, to satisfy Ordell's unpaid judgment.

Sale: In December 1997, the King County Sheriff held an execution sale at which Ordell was the successful bidder. Ordell paid \$38,346, and the sheriff issued a certificate of purchase. The superior court confirmed the sale, and four redemptions followed.

First redemption: In late May 1998, JEA notified the sheriff that it intended to redeem from Ordell. The sheriff notified Ordell, who stated the amount needed to redeem. In late June 1998, JEA paid \$40,573 and received a certificate of redemption.

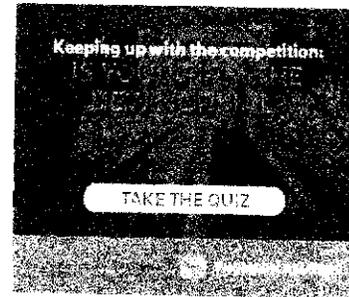
Second redemption: A few weeks after JEA redeemed from Ordell, 5-11 notified the sheriff that it intended to redeem from JEA. The sheriff notified JEA, which stated the amount needed to redeem. In late August 1998, 5-11 paid \$41,073 and received a certificate of redemption.

Third redemption: JEA wanted to re redeem from 5-11, but it lacked the \$135,000 that it needed to do that. Thus, it arranged to borrow \$158,000 from Capital Investment Corporation of Washington (CICW). As security, JEA gave a written assignment in which it stated:

Judgment Enforcement Agency hereby assigns to [CICW], for security purposes, all of JEA's right, title and interest in and to that certificate of redemption evidencing the redemption of certain real property located at 1205 & 1211 East Olive, Seattle, Washington, together with all of JEA's right, title and interest in and to such property, and together with the rents, profits and proceeds thereof, including the proceeds of any re-redemption of such property.

JEA did not assign, as security or otherwise, its judgment against Piltz or its judgment lien against Piltz' East Olive property.

JEA signed the loan documents on October 26, 1998. The same day, CICW delivered to the King County Sheriff cashier's checks for the redemption amount, a letter on CICW's letterhead, and, we assume for purposes of this appeal, a copy of the assignment quoted above. The letter stated:



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Judgment Enforcement Agency wishes to complete its redemption of the real property known as 1205 & 1211 East Olive, Seattle, Washington. To effectuate that redemption, we hand you for the account of Judgment Enforcement Agency the following:

1. Cashiers checks totaling \$134,714.19; and
2. A copy of an Assignment of Certificate of Redemption for Security Purposes evidencing a security interest in Judgment Enforcement Agency's certificate of redemption in favor of Capital Investment Corporation of Washington.

Please issue the certificate of redemption in favor of Judgment Enforcement Agency. Please retain the copy of the Assignment of Certificate of Redemption in your files, as evidence of Capital Investment Corporation's security interest. In the event the property is re-redeemed, you should contact Capital Investment Corporation regarding payment and satisfaction of that security interest.

If the property is not re-redeemed, please issue your Sheriff's deed to Judgment Enforcement Agency.

On November 2, 1998, the sheriff gave JEA a certificate of redemption.

Fourth redemption: On November 10, 1998, the judgment debtor, Piltz, quitclaimed to 5-11 all of his right, title, and interest in the East Olive property. On November 16, 1998, 5-11 notified the sheriff that it had acquired Piltz's interest and intended to exercise Piltz's right to redeem. The sheriff notified JEA-but not CICW-and JEA stated that \$245,030 would be needed to redeem. 5-11 paid the \$245,030, and 5-11 acquired the property as Piltz' successor in interest. The sheriff forwarded the \$245,030 to JEA-which then did not pay CICW.

Effects: An example drawn from the Washington State Bar Association's Real Property Deskbook describes the effects of these redemptions. It states:

An illustration of the California [Washington] 7 scramble system may be valuable at this point. Suppose A, B, C, and D are lienors on certain property with A being the senior mortgagee, B the second in priority, C third, and D fourth. At A's foreclosure sale following an action to which B, C, and D were parties, A bids in for the full amount of his lien and thereby becomes the purchaser of the property. After the sale C redeems from A by paying the amount A paid plus expenses, taxes, and other amounts allowed by statute. A's lien was extinguished by the foreclosure sale so he cannot re-redeem from C, but B still has an unsatisfied lien and can redeem. If B redeems he must pay the purchase price, expenses, and any liens held by C which are senior to B's lien. Assuming no expenses have been paid by C, B need only pay what C paid plus interest since C's lien is junior to the lien under which B seeks to redeem. Since C's lien is still unsatisfied, he may now re-redeem from B by paying what B paid, interest, expenses, and the amount of B's lien, since B's lien is senior to the lien of C. Should the mortgagor now desire to redeem from C, he must pay the amount which C paid (the purchase price plus the amount of B's lien, which C now owns), expenses, and also the amount of C's lien. Since D cannot now redeem because the effect of the sale has been terminated by the mortgagor's redemption, the statute provides that D's still unsatisfied lien will reattach to the property. The mortgagor now holds the property subject only to D's lien.

Here, A is Ordell; B is 5-11; C is JEA (or CICW, if CICW is JEA's successor in interest); and D does not exist.

Lawsuit: In February 2000, CICW sued JEA and the sheriff. It alleged that JEA had failed to repay the \$158,000 loan, and that the sheriff, "[i]n negligent disregard of the security documents," had "wrongfully delivered" \$158,000.00 to JEA. JEA defaulted and is not involved in this appeal. The sheriff moved for summary judgment, and the trial court granted the motion. CICW then filed this appeal.

DISCUSSION

On appeal, CICW claims that the sheriff had duties to notify it of the impending fourth redemption, and to pay it \$158,000 of the \$245,030 required to make that redemption. The sheriff denies owing any duty to CICW.

When unimpiring a redemption, a sheriff has a conditional duty to notify and a conditional duty to pay. RCW 6.23.080(1) provides:

(1) The person seeking to redeem shall give the sheriff at least five days' written notice of intention to apply to the sheriff for that purpose. It shall be the duty of the sheriff to notify the purchaser or redemptioner, as the case may be, of the receipt of such notice. At the time specified in such notice, the person seeking to redeem may do so by paying to the sheriff the sum required. The sheriff shall give the person redeeming a certificate stating the sum paid on redemption, from whom redeemed, the date thereof and a description of the property redeemed.

RCW 6.23.070 provides that after the sheriff receives the sum required to redeem, he or she shall forward that sum "to the person from whom the property is redeemed[.]"

The sheriff owes these conditional duties to the person from whom the redemption is being made. In the case of a first redemption, that person is the purchaser, or his or her successor in interest. In the case of a second or subsequent redemption, that person is the redemptioner who last redeemed the property, or that redemptioner's successor in interest. CICW was not the purchaser here, so the sheriff owed duties to it only if it was (1) a "redemptioner" or (2) the "successor in interest" of a redemptioner.

The first question is whether CICW was a redemptioner. RCW 6.23.010 provides:

(1) Real property sold subject to redemption . may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor.

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

(2) As used in this chapter, the terms "judgment debtor," "redemptioner," and "purchaser," refer also to their respective successors in interest.

This statute plainly requires that a redemptioner be a creditor of the judgment debtor, as opposed to the creditor of another redemptioner or someone else. CICW was never a creditor of Piltz, so it was never a redemptioner either.

II.

The next question is whether CICW was a redemptioner's (i.e., JEA's) "successor in interest." Although the legislature did not define that phrase in Chapter 6.23 RCW, the words themselves suggest that a "successor in interest" is one who has acquired or succeeded to an interest, once held by a predecessor. . . . When the predecessor is a redemptioner, his or her relevant interest is the right to redeem that emanates from the lien of his or her judgment, decree, deed of trust, or mortgage against the judgment debtor. At first glance then, a redemptioner's successor in interest is one who has acquired or succeeded to the redemptioner's judgment, decree, deed of trust, or mortgage.

This reasoning finds support in the law of this and other states. In the Washington case of Fidelity Mut. Sav. Bank v. Mark,⁴³ the Marks owned real estate that was subject to a lien held by Fidelity, Whatcom, and the Internal Revenue Service (IRS). Fidelity bought the property at a sheriff's sale, subject to redemption, for \$62,650. Several months later, the Marks assigned their right to redeem to Westside. They also executed a quitclaim deed by which they purported to convey to Westside their remaining interest in the land. The deed was ineffective, however, because the Marks failed to acknowledge or record it as required by Washington's real estate transfer statutes. Based on the assignment and invalid deed, Westside then attempted to redeem as the Marks' "successor in interest." Rejecting this attempt, the Washington Supreme Court held that "the naked right to redeem" could not be separated from "the debtor's reversionary interest in the property," and that a person could not succeed to a judgment debtor's right to redeem unless he or she successfully acquired the judgment debtor's underlying interest in the land. . . . To hold otherwise, the court explained, "would permit a judgment debtor to convey the naked right to redeem without also conveying the debtor's reversionary interest in the property[.]" and "create great uncertainty in dealing with real property."⁴⁴ The Marks had not effectively transferred their "reversionary interest in the property," so Westside had not succeeded to their right to redeem.

In the Arizona case of Perry v. Safety Federal Sav. & Loan Ass'n of Kansas City,⁴⁵ the Harveys mortgaged their property to Safety. Safety foreclosed its lien and purchased the property subject to redemption. The Harveys purported to transfer their remaining interest in the property to the Perrys, but they failed to acknowledge or record the deed as required by Arizona's real property transfer statutes. The Perrys attempted to redeem, arguing that they were the Harveys' "successor in interest." Disagreeing, the Arizona Court of Appeals ruled that "the Perrys did not acquire the interest of the judgment debtors Harvey in the mortgaged premises because of their failure to obtain a properly acknowledged deed in compliance with A.R.S. § 33-401B." Accordingly, they "did not become 'successors in interest' within the meaning of the redemption statute," and they "were not entitled to redeem the property for the amount of the first judgment."

In the Iowa case of Central Life Assur. Soc'y v. Spangler,⁴⁶ Central purchased the Spanglers' farm at a sheriff's sale. The Spanglers validly deeded their remaining interest in the farm to their adult son. The son then tendered the amount needed to redeem, claiming that he had succeeded to his parents' right to redeem. Holding that he could redeem, the Iowa Supreme Court said, "We have held many times that the ownership of real estate and the right of redemption thereof are inseparable and in a sense identical in that they are parts of the same thing."⁴⁷ The court went on to hold that the parents' deed had effectively conveyed their interest to the son; that he was their successor; and thus that he could redeem.

In the Idaho case of Hieb v. Mitchell,⁴⁸ the sheriff sold land that Hieb bought, subject to redemption. One of the redemptioners was Farmers Home Administration (FHA), which held a junior mortgage and lien. Because of federal regulations, FHA could transfer its mortgage only with the Secretary of the Treasury's approval, which FHA did not have. To overcome this impediment, FHA assigned its right to redeem-but not its mortgage-to Mitchell. Thus arined with a "naked right to redeem," . . . Mitchell then sought to redeem from Hieb. Hieb resisted and sued for an order declaring that Mitchell was not a qualified redemptioner. Mitchell acknowledged that he was not a creditor of the judgment debtor with a lien by judgment or mortgage, and that he was not a transferee of FHA's mortgage. He claimed, however, that he was FHA's "successor in interest" because he now held its naked right to redeem. Construing a statute almost identical to ours, the Idaho Supreme Court held that Mitchell was not FHA's "successor in interest" because he had not been "assigned[] the note and mortgage" on which FHA's right to redeem was based. A concurring justice added:

[T]he right of redemption, when there is such a right, is not an independent right. Rather, it is a right dependent upon a creditor's having acquired a lien either by a recorded judgment or by a recorded mortgage, and [it] cannot be separated from the mortgage or the judgment, as the case may be. It is not susceptible to being independently transferred.

In the Colorado case of *Beckhart v. HTS Properties*, HTS held a mortgage on an apartment house. After foreclosing, it bought the apartment house at the sheriff's sale, subject to redemption. Under Colorado law, the judgment debtor and three tenants each had a right to redeem. The judgment debtor made no attempt to exercise or assign his right to redeem. Each of the three tenants purported to assign his or her right to redeem to one Beckhart, but to retain all of his or her other rights in the underlying lease. Beckhart attempted to redeem from HTS, but HTS resisted. Ruling that Beckhart had no right to redeem, the Colorado Court of Appeals said:

Other states with similar statutes have uniformly concluded that the statutory right of redemption may not be assigned separate from the underlying lease or other interest in the real property. The reasoning is that the statutory language expressly refers only to those who hold interests in the real property. Further, permitting such an assignment could create uncertainty in dealing with the property. Finally, the statutory goal of encouraging full value bidding at the foreclosure sale would be undermined if speculators could avoid the sale and instead purchase redemption rights for a nominal price, as occurred here.

We find this reasoning persuasive. Therefore, we agree with the trial court that our statutory scheme does not permit the right of redemption to be severed from the property interest it serves.

According to all five of these cases, the right to redeem cannot be severed from the interest that underlies it, and neither a judgment debtor nor a redemptioner can effectively transfer "the naked right to redeem" without also transferring the interest that underlies such right. According to the first three cases, a judgment debtor can effectively transfer his or her right to redeem only if he or she also transfers his or her underlying interest in the land. According to the last two cases, a redemptioner whose lien is by deed of trust or mortgage can effectively transfer his or her right to redeem only if he or she also transfers his or her underlying note and deed of trust or mortgage. Analogously, a redemptioner whose lien is by judgment can effectively transfer his or her right to redeem only if he or she also transfers his or her underlying judgment.

In addition to finding support in the cases, our reasoning finds support in logic and practicality. Suppose that the sheriff sells a judgment debtor's land that is subject to judgment liens held by A, B, and C in that order of priority. A obtains an order of sale and a sheriff's sale ensues. At that sale, A purchases the land, subject to redemption, for the amount of A's lien. C later redeems from A by reimbursing A for the purchase price and costs. B later redeems from C by reimbursing C for the purchase price and costs. C wants to redeem from B but lacks the necessary funds. To obtain those funds, C assigns X its right to redeem but not its judgment. X gives notice to the sheriff, who gives notice to B, that X is C's assignee and that X will redeem from B in thirty days. During those thirty days, C goes out and fully satisfies his judgment by executing on other property of the judgment debtor (which C can do, of course, because C still holds his judgment). C's judgment lien no longer exists, C is no longer a redemptioner within the meaning of RCW 6.23.010(1)(b), and C himself should not be able to redeem from B. But can X, the purported assignee, still redeem? The answer should be no—but to so hold is to say that X did not receive a meaningful right, and he cannot recoup whatever he paid C. If X is to receive a meaningful and effective right—and if C is to be prevented from assigning X a "right" that C can later pull out from under X's feet—the law should require, and it does require, that C transfer not just his "naked right to redeem," but his underlying judgment also.

In this case, JEA purported to transfer its right to redeem, as represented by its certificate of redemption and the proceeds of any re-redemption. At the same time, it purported to retain its judgment against Piltz. This was not permissible, and its assignment was ineffective. CICW did not become JEA's "successor in interest," and the sheriff did not owe any duty to CICW.

This result is not altered by the fact that JEA purported also to assign "all of [its] right, title and interest in and to [the East Olive] property." The holder of a lien does not have any right, title or interest in the land the lien encumbers; in the words of our Supreme Court:

[A] lien is a charge upon property for the payment or discharge of a debt or duty. [I]t confers no general right of property or title upon the holder; on the contrary, it necessarily supposes the title to be in some other person.

Before the sheriff's sale, JEA had a judgment lien with a duration of ten years from date of judgment, renewable for another ten. After the sheriff's sale, JEA had a judgment lien that would terminate when a redemptioner junior to JEA or the judgment debtor redeemed from JEA, or the time to redeem expired, whichever occurred first, unless the judgment debtor redeemed (and terminated the effect of the sale) while JEA still had its right to redeem. At neither time did JEA have an ownership interest or estate in the East Olive property. Necessarily then, JEA's attempt to assign such an interest or estate was not effective.

Nothing we have said means that CICW did or did not acquire rights against JEA. We hold only that CICW was not a redemptioner, or the successor in interest of a redemptioner, within the meaning of RCW 6.23.010. Based on those holdings, we conclude that the sheriff did not owe any duty to CICW under Washington's redemption statutes, and that the trial court did not err by summarily dismissing the sheriff from this case.

CICW's remaining arguments lack merit or need not be reached.

Affirmed.

FOOTNOTES

1. *Fidelity Mut. Sav. Bank v. Mark*, 112 Wash.2d 47, 767 P.2d 1382 (1989).

2. The judgment ultimately held by JEA was originally obtained by someone else, who later assigned it to JEA. The same is true of the judgment ultimately held by 5-11. The original holder of each judgment is

immaterial to this discussion. For convenience, we refer to 5-11's judgment as if held at all times by 5-11, and to JEA's judgment as if held at all times by JEA.

30. Clerk's Papers (CP) at 57. In addition to the written assignment, JEA gave CICW a deed of trust against the East Olive property and a UCC financing statement. The deed of trust was ineffective because JEA did not then own, and did not thereafter acquire, the East Olive property. See e.g., McGill v. Shugarts, 58 Wash.2d 203, 204, 361 P.2d 645 (1961) (grantors "could convey by deed no greater interest than they owned"); Sofie v. Kane, 32 Wash.App. 889, 895, 650 P.2d 1124 (1982) ("grantor can convey no greater title or interest than he or she has in the property"); cf. McKelvie v. Hackney, 58 Wash.2d 23, 31, 360 P.2d 746 (1961) ("one cannot sell what one does not own"). The UCC financing statement was ineffective because JEA was attempting to transfer a lien against real estate, and Article 9 does not apply to that type of transaction. Former RCW 62A.9-104(j). We do not further consider or discuss either document.

31. The parties dispute whether the assignment was actually enclosed with the letter. We assume it was because we must take the facts in the light most favorable to CICW. Security State Bank v. Burk, 100 Wash.App. 94, 97, 995 P.2d 1272 (2000).

32. CP at 50.

33. RCW 6.23.040(2) ("If the judgment debtor redeems, the effect of the sale is terminated and the estate of the debtor is restored."); RCW 6.23.010(2) (term "judgment debtor" includes judgment debtor's "successor in interest"); see Fidelity Mut. Sav. Bank, 112 Wash.2d 47 at 53, 767 P.2d 1382 (holding that judgment debtor may not transfer right to redeem without also transferring his or her estate in the land; implying the converse).

34. Bracketed material in original. According to the Washington Supreme Court, Washington's redemption scheme is "almost identical" to California's. Burwell & Morford v. Seattle Plumbing Supply Co., 14 Wash.2d 537, 543, 128 P.2d 859 (1942).

35. 3 Washington State Bar Ass'n, Real Property Deskbook § 46.15(4) (3rd ed.1996) (quoting Darryl A. Hart, The Statutory Right of Redemption in California, 52 Cal. L.Rev. 846, 851 (1964)). See also 5 Powell, Richard R., Powell on Real Property § 38.09[3], at 38-58 through 38-60 (1998); 27 Marjorie Dick Rombauer, Washington Practice: Creditors' Remedies-Debtors' Relief § 3.19, at 161-70 (1998); 28 Marjorie Dick Rombauer, Washington Practice: Creditors' Remedies-Debtors' Relief § 7.65-7.73, at 160-72 (1998).

36. CP at 5.

37. RCW 6.23.020(1) (subject to exceptions not pertinent here, judgment debtor or redemptioner can redeem from purchaser); RCW 6.23.010(2) (term "purchaser" refers also to purchaser's "successor in interest").

38. RCW 6.23.040(1) (judgment debtor or redemptioner can redeem from another redemptioner); RCW 6.23.010(2) (term "redemptioner" refers also to redemptioner's "successor in interest").

39. See Black's Law Dictionary 1431-32 (6th ed.1990) (successor in interest is "[o]ne who follows another in ownership or control of property [..]" or one who "retain[s] the same rights as the original owner"); Fidelity Mut. Sav. Bank, 112 Wash.2d at 52, 767 P.2d 1382 (judgment debtor's "successor in interest" is "one who has acquired (or succeeded to) the interest of the judgment debtor in the property") (quoting Call v. Thunderbird Mortg. Co., 58 Cal.2d 542, 550, 25 Cal.Rptr. 203, 375 P.2d 169 (1962)).

40. 112 Wash.2d 47, 767 P.2d 1382.

41. 112 Wash.2d at 52-53, 767 P.2d 1382.

42. 112 Wash.2d at 53, 767 P.2d 1382.

43. 25 Ariz.App. 443, 544 P.2d 267 (1976).

44. 544 P.2d at 269.

45. 544 P.2d at 269.

46. 204 Iowa 995, 216 N.W. 116 (Iowa 1927). Iowa does not use Washington's "scramble" system of redemption, but that makes no difference here.

47. 216 N.W. at 117 (citations omitted).

48. 117 Idaho 1075, 793 P.2d 1247 (1990).

49. See Fidelity Mut. Sav. Bank, 112 Wash.2d at 53, 767 P.2d 1382.

50. 793 P.2d at 1250.

51. 793 P.2d at 1251 (Bisline, J., concurring and dissenting). The dissenting portion of this opinion related to reasonable attorney fees, a matter not pertinent here.

52. 981 P.2d 208 (Colo.Ct.App.1998), cert. denied (1999).

53. Colo.Rev.Stat. 38-38-302 (judgment debtor can redeem within 75 days of sale); Colo.Rev.Stat. 38-38-303 (lienors can redeem, in order of priority, after 75 days); Colo.Rev.Stat. 38-38-305 (lessee "shall be

considered as a lienor"). Colorado's redemption scheme is "ordered" rather than "scrambled," but that makes no difference here.

- 17. Citations omitted.
- 18. 981 P.2d at 209-10.
- 19. Fidelity Mut. Sav. Bank, 112 Wash.2d at 53, 767 P.2d 1382.
- 20. Fidelity Mut. Sav. Bank, 112 Wash.2d at 53, 767 P.2d 1382; Perry, 544 P.2d at 269; Spangler, 216 N.W.2d at 117.
- 21. Hieb, 793 P.2d at 1250; Beckhart, 981 P.2d at 209-10.
- 22. See Hieb, 793 P.2d at 1251 (Bistline, J., concurring and dissenting).
- 23. Cf. Mercantile Ins. Co. of America v. Jackson, 40 Wash.2d 233, 236, 242 P.2d 503 (1952) (revocable assignment not effective against third party); Amende v. Town of Morton, 40 Wash.2d 104, 106, 241 P.2d 445 (1952) (same); Sundstrom v. Sundstrom, 13 Wash.2d 103, 108, 129 P.2d 783 (1942) (same).
- 24. CP at 57.
- 25. Swanson v. Graham, 27 Wash.2d 590, 597, 179 P.2d 288 (1947) (quoting 33 Am.Jur. 419 § 2); see also State v. Teuscher, 111 Wash.2d 486, 491, 761 P.2d 49 (1988) ("a lien is not a proprietary interest or estate in the land"); Sullins v. Sullins, 65 Wash.2d 283, 286, 396 P.2d 886 (1964) ("a lien is an encumbrance upon the property as security for the payment of a debt"); Mueber v. Rupp, 52 Wash.App. 445, 450, 761 P.2d 62 (1988) ("a lien, like a mortgage, is 'personal property'").
- 26. See RCW 4.56.100-.200.
- 27. See 3 Washington State Bar Ass'n, Real Property Deskbook § 46.15(4); 27 Rombauer, supra note 7 at 169-70. It may be possible to express the same concepts by saying that JEA's judgment lien was extinguished at the sheriff's sale and replaced by a right to redeem with the features stated in the text. See, e.g., Millay v. Cam, 135 Wash.2d 193, 198, 955 P.2d 791 (1998) ("when a mortgage is foreclosed and the property sold under execution, junior lien creditors whose liens have been extinguished by the sale have the statutory right to redeem the property from the purchaser.") (emphasis added). Under the redemption statute, however, an otherwise qualified junior lien continues after the sheriff's sale and forms part of the post-sale compensation that must be paid by another redemptioner. E.g., RCW 6.23.020(2)(d), RCW 6.23.040(3). Such a lien also reattaches if the judgment debtor redeems before the lienholder does. See RCW 6.23.040(2); 3 Washington State Bar Ass'n, Real Property Deskbook § 6.15(4). For these reasons, we use the terminology in the text.
- 28. See Morse Electro Products Corp. v. Beneficial Indus. Loan Co., 90 Wash.2d 195, 198, 579 P.2d 1341 (1978); Home Indem. Co. v. McClellan Motors, Inc., 77 Wash.2d 1, 3, 459 P.2d 389 (1969) ("assignee of a chose in action takes only those rights held by his assignor"); Young v. American Can Co., 131 Wash. 374, 376, 230 P. 147 (1924) ("assignor can assign no greater interest in the contract than he himself has"); Hays v. Flynn, 88 Wash.App. 514, 519, 945 P.2d 221 (1997) (assignee "cannot recover more than [assignor] could recover").

MORGAN, J.
We concur: SEINFELD, J., and HOUGHTON, J.

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A-15

Dana E. Gigler
Civil Deputy Prosecuting Attorney
Cowlitz County Prosecuting Attorney
312 SW First Ave
Kelso WA 98626
360.577.3080

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From: Craig Curtright [mailto:craigcurtright@gmail.com]
Sent: Tuesday, June 13, 2017 9:54 AM
To: Gigler, Dana <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>
Subject: Jerry C. Reeves' right to redeem at 1601 Guild Road

[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Wed, Jun 14, 2017 at 7:41 AM

Dana:

Thank you for your email. I was at the courthouse yesterday afternoon and did not have time to answer until this morning. It would be my position that Mr. Reeves is not an assignee of any interest in the property under which he is currently seeking a right of redemption. He is the successor in interest to the judgment debtors, Mr. and Mrs. Babitzke. He would, therefore, have no information as to any amount that he is owed as would, for instance, be the assignee of a judgment lien on the subject property. Any amount owing would have to come from the holder of the first mortgage that foreclosed and took judgment. In this case, that would be PNC and/or their counsel. It looks like the Sheriff's office has already requested that information from PNC's counsel and it would be Mr. Reeves' obligation to pay that figure, once received from PNC, if he is to successfully redeem.

This is my take on Washington's statutes. Keep in mind, I am an Oregon attorney without much experience in Washington foreclosure law and redemption. In fact, this is my first experience with a Washington redemption that just happens to apply to my Oregon client. So, if I am wrong, I am more than happy to assist Mr. Reeves in sending more documentation. If he were seeking to redeem because of his ownership of a judgment lien, things would be different. The amount that he is owed on that lien would be absolutely relevant if PNC wanted to pay that lien off and keep the property. It would then make sense for him to have to relate the amount owed on that lien so that PNC could pay it, if it chose to do so. Otherwise, the lien holder would have to pay what is owed to PNC in order to redeem and that information would have to come from PNC.

In this case, Mr. Reeves simply needs to know what PNC is owed, in total, so that he can redeem the property and place him back in title. PNC must then walk away having been fully satisfied of their full financial interest and their lien is released as having been fully paid and satisfied. If a judgment lien creditor has given notice of an intent to redeem, things would get much more interesting. Mr. Reeves would then have to know both the amount owing to the judgment lien creditor and PNC in order to fully redeem.

1/30/2018

Gmail - Jerry C. Reeves' right to redeem at 1601 Guild Road

A-16

Interestingly, in Oregon, the judgment lien creditors are given a much shorter time to redeem so that all of their relative positions are known before the judgment debtor has to decide if he is going to pay all of them off, plus the first mortgage holder that foreclosed, and fully redeem. Usually, however, the first mortgage is so large that judgment lien creditors are not interested.

That is my take on the statutory scheme of Washington.

Sincerely,

Craig D. Curtright

[Quoted text hidden]

1/30/2018

Gmail - FW: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

A-17

Email: jonathanlloyd@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Praytor, Lisa [mailto:praytorl@co.cowlitz.wa.us]
Sent: Friday, May 19, 2017 1:08 PM
To: Lloyd, Jonathan
Subject: PNC Bank vs Charles Babitzke et al Cowlitz County Case No. 15-2-00284-9

Mr. Lloyd,

Jerry Reeves has requested the redemption amount for the property located at 1601 Guild Road, Woodland, WA 98674. PNC Bank was the successful bidder at the sale with an amount of \$320,000.00.

Looking at the Decree of Foreclosure section of the Judgment and Decree of Foreclosure item 12 states Mr. Reeves' rights to the property were foreclosed except for the statutory right of redemption. He sent me a copy of a Corrected Statutory Warranty Deed Replacing "Deed of Trust" Dated July 21, 20106 Auditors Number 305063 to prove his interest in the property.

Would you please forward a list of approved costs that your client has incurred since the purchase of the property on July 29, 2016.

If you do not believe Mr. Reeves has the authority to redeem this property, please forward the documentation that shows his redemption rights are invalid.

Let me know if you have any questions or concerns regarding this redemption. Thank you for your time.

Lisa Praytor

Chief Civil Deputy

Cowlitz County Sheriff's Office

312 SW First Avenue, Kelso, WA 98626

Phone: (360) 577-3092

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Tue, Jun 13, 2017 at 7:51 AM

Dana:

Thank you for sending a copy of the letter from counsel for PNC. Here is my problem with his analysis. The Babitzkes were clearly given notice of a right to redeem on or before July 28, 2017. A copy of that notice is attached. However, the Babitzkes sold all of their right, title and interest in and to the subject property to my client, Jerry C. Reeves in July of

2006 and a deed reflecting that sale was duly and properly recorded in the deed records of Cowlitz County. The Babitzkes took back a lien on the property to secure the amounts that were owed by Mr. Reeves to them and memorialized the fact that Mr. Reeves had agreed to continue the payments due to PNC on the PNC first mortgage. So, Mr. Reeves is a successor-in-interest to the rights of Mr. and Mrs. Babitzke. The RCW quoted by counsel for PNC (6.23.010) clearly states that the term "judgment debtor" refers also to their respective "successors in interest". The documents that were sent on behalf of Mr. Reeves prove his status as a "successor in interest" to the Babitzkes because they memorialize the sale that took place between the Babitzkes and Mr. Reeves in 2006. If this were not true, PNC would not have named Mr. Reeves as a party to the PNC judicial foreclosure.

It is clear that PNC's attorney simply chose to ignore Mr. Reeves' status. Please let me know your findings, after review of this missive, as soon as possible. If necessary, Mr. Reeves is ready to seek a declaratory Motion in the Cowlitz County Superior Court. It is my hope, however, that this will not be necessary after further reflection on what I have presented for Mr. Reeves.

Sincerely,

Craig D. Curtright
Oregon counsel for Jerry C. Reeves and JC Reeves Corporation
OSB #822317

[Quoted text hidden]

--

Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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 **Babitzke Notice of Redemption.pdf**
831K

Gigler, Dana <GiglerD@co.cowlitz.wa.us>

Tue, Jun 13, 2017 at 3:27 PM

To: "Lloyd, Jonathan" <JonathanLloyd@dwt.com>, "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>

Cc: "Haist, Frederick" <FrederickHaist@dwt.com>, "craigcurtright@gmail.com" <craigcurtright@gmail.com>

Mr. Lloyd,

I am the civil deputy prosecuting attorney advising the Cowlitz County Sheriff's Office. Regarding the below mentioned case, it appears to me that Mr. Reeves may have a statutory right of redemption as a successor in interest under RCW 6.23.010 and *Capital Investment Corp. v. King County*, 112 Wn.App.216 (2002) since he purchased the property in 2006, well prior to entry of the 2016 judgment. You note below that the Babinskis sold the property subsequent to the foreclosure suit, but I'm not sure that is accurate.

The interest of the Cowlitz County Sheriff's office is ensuring that the law is accurately and fairly applied. Absent agreement of the parties here, we suggest that the parties seek an order from the court setting forth redemption rights or lack thereof.

In the meantime, we look forward to your calculation of recoverable costs discussed below.

[Quoted text hidden]

Lloyd, Jonathan <JonathanLloyd@dwt.com>

Wed, Jun 14, 2017 at 12:13 PM

To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>, "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>
 Cc: "Haist, Frederick" <FrederickHaist@dwt.com>, "craigcurtright@gmail.com" <craigcurtright@gmail.com>

Ms. Gigler,

Thank you for your email. We are reviewing the case you cited, as well as other relevant case law, and discussing your email with our client. I anticipate we'll be in a position to provide a substantive response by early next week. Per your reference to the parties seeking a court order regarding Mr. Reeves' potential statutory right of redemption, we assume you will not take any further action on this matter prior to receiving our response and/or either a court order or agreement of the parties. If that is incorrect, please let me know at your earliest convenience.

Regards,

Jonathan

Jonathan Lloyd | Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW, Suite 800 | Washington, DC 20006-3401

Tel: (202) 973-4205 | Fax: (202) 973-4499

Email: jonathanlloyd@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Gigler, Dana [mailto:GiglerD@co.cowlitz.wa.us]

Sent: Tuesday, June 13, 2017 6:28 PM

To: Lloyd, Jonathan; Praytor, Lisa

Cc: Haist, Frederick; 'craigcurtright@gmail.com'

[Quoted text hidden]

[Quoted text hidden]

Lloyd, Jonathan <JonathanLloyd@dwt.com>

Fri, Jun 16, 2017 at 10:34 AM

To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>, "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>

Cc: "Haist, Frederick" <FrederickHaist@dwt.com>, "craigcurtright@gmail.com" <craigcurtright@gmail.com>

Ms. Gigler:

PNC does not believe that *Capital Investment Corp. v. King County*, 112 Wn. App. 216 (2002) provides a basis on which Mr. Reeves qualifies as a valid redemptioner under RCW 6.23.010, regardless of when he purchased the subject property from the Babitzkes (on that point, my email was not intended to suggest that the sale occurred after the foreclosure – indeed, the documentation Mr. Reeves provided in the email I was responding to reflects the 2006 date of that transaction – but we don't view that fact as material to the issue of Mr. Reeves' status as a valid redemptioner). Nonetheless, to the extent the Sheriff and your office determine that Mr. Reeves has provided sufficient proof under RCW 6.23.080 to establish his right to redeem the subject property, PNC will not challenge that determination.

In terms of proceeding with that redemption, can you please clarify how that process will proceed? We've reviewed the materials that Mr. Reeves submitted to the Cowlitz County Sheriff's Office and don't see anything identifying the date or time when Mr. Reeves plans to redeem the property, as RCW 6.23.080 requires. Will you be requiring Mr. Reeves to

submit a compliant notice providing that information, so that PNC can properly calculate the full amount of fees and interest that will be owing as of the redemption date? For your reference, here is an itemized account of the amount required to redeem the property as of June 15, 2017, which was included in the amended RCW 6.23.030 notice that we filed and served on the judgment debtors and property occupants earlier this week (this amount will increase to reflect interest through the redemption date once we know what that date is):

<u>Item</u>	<u>Amount</u>
Purchase price paid at sale	\$320,000.00
Interest from date of sale to date of this amended notice at \$29.08 per day	\$9,334.68
Real estate taxes	\$19,372.23
Assessments plus interest	\$0
Liens or other costs (hazard insurance) paid by purchaser or purchaser's successor during redemption period	\$1,266.00
Lien of redemptioner	Not applicable/unknown
TOTAL REQUIRED TO REDEEM AS OF THE DATE OF THIS NOTICE	\$349,972.91

Please let me know if you have any questions.

Regards,

Jonathan

Jonathan Lloyd | Davis Wright Tremaine LLP

1919 Pennsylvania Avenue NW, Suite 800 | Washington, DC 20006-3401

Tel: (202) 973-4205 | Fax: (202) 973-4499

Email: jonathanlloyd@dwt.com | Website: www.dwt.com

Anchorage | Bellevue | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai | Washington, D.C.

From: Gigler, Dana [mailto:GiglerD@co.cowlitz.wa.us]

Sent: Tuesday, June 13, 2017 6:28 PM

To: Lloyd, Jonathan; Praytor, Lisa

Cc: Haist, Frederick; 'craigcurtright@gmail.com'

[Quoted text hidden]

[Quoted text hidden]



Craig Curtright <craigcurtright@gmail.com>

PNC Bank vs. Charles Babitzke, et al; Cowlitz County Case No. 15-2-002849-9

1 message

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Mon, Jun 26, 2017 at 7:39 AM

Dear Dana:

Hopefully by now you have received and reviewed the latest email from Jonathan Lloyd, the attorney at Davis Wright Tremaine LLP that represents the interests of PNC Bank in the above-captioned matter. Attorney Lloyd has now taken the position that, although he does not believe that the Capital Investment Corp. v. King County case, affirmatively gives my client, Jerry C. Reeves, a right of redemption, he will not fight your decision if you decide that he is in fact entitled to such.

I think he is dead wrong in his analysis. Mr. Reeves, once he purchased the interests of Charles and Mary Lou Babitzke in 2006, became the person entitled to their right of redemption. He is, in fact, the successor-in-interest to Charles and Mary Lou Babitzke and he has sent the documentation showing so. He is, therefore, entitled to redeem the property from PNC Bank. Do not feel bad for PNC Bank because they get, if Mr. Reeves successfully redeems, every dollar that they are entitled to including interest. Mr. Reeves merely gets a chance to protect any appreciation in the property and he still has to worry about the amounts that the Babitzkes are claiming is owed to them in a separate matter. The Babitzkes claim that they successfully sold their paper from my client, Jerry C. Reeves to a company known as Gravity Segregation LLC and Graivity is, itself, foreclosing on Mr. Reeves' interest. Mr. Reeves has taken the position that Gravity has no such claim. However, if Gravity were to win, after Mr. Reeves redeems, Gravity would receive the benefit of Mr. Reeves' redemption and the Babitzkes get part of that by contract. The Gravity matter will likely be set for trial later this year. So, the biggest potential loser is still my client, but nobody is hurt if he redeems from PNC Bank.

Please let me know your decision as soon as possible since time is running short. We are now approaching about one month from the final date to redeem and Mr. Reeves will want to redeem on or before the final day to do so. If your decision is against him, he will want to immediately file a motion with the Cowlitz County Superior Court to challenge that decision.

Thank you.

Sincerely,

Craig D. Curtright
OSB# 822317

--
Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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A-22



Craig Curtright <craigcurtright@gmail.com>

Out of Office: PNC Bank vs. Charles Babitzke, et al; Cowlitz County Case No. 15-2-002849-9

1 message

Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>

Mon, Jun 26, 2017 at 7:39 AM

I am out of the office until Monday June 26, 2017



Craig Curtright <craigcurtright@gmail.com>

PNC Bank vs. Charles Babitzke, et al; Cowlitz County Case No. 15-2-002849-9

8 messages

Gigler, Dana <GiglerD@co.cowlitz.wa.us>

Fri, Jun 30, 2017 at 3:08 PM

To: "craigcurtright@gmail.com" <craigcurtright@gmail.com>, "Lloyd, Jonathan" <JonathanLloyd@dwt.com>, "bwolff@pacifier.com" <bwolff@pacifier.com>

Cc: "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>

Good afternoon,

The Cowlitz County Sheriff's Office is in receipt of notice from the Babitzke's pursuant to RCW 6.23 of intention to redeem property in this matter on or before July 15, 2017. Upon review of materials, statutes, and relevant case law, it appears that the Babitzke's have a clear right of redemption as judgment debtors. I understand that Mr. Reeves has asserted a right to redeem. However, any right of redemption may have (which remains unclear to me at this time) would, at a minimum, appear to be secondary to the Babitzke's right. Upon their anticipated presentation of appropriate documentation, CCSO intends to proceed with the Babitzke's redemption.

Dana E. Gigler

Civil Deputy Prosecuting Attorney

Cowlitz County Prosecuting Attorney

312 SW First Ave

Kelso WA 98626

360.577.3080

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Craig Curtright <craigcurtright@gmail.com>

Fri, Jun 30, 2017 at 3:33 PM

To: Jerry Reeves <jerry@jcreeves.com>

Sent from my iPad

Begin forwarded message:

A-24

From: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Date: June 30, 2017 at 3:08:16 PM PDT
To: "'craigcurtright@gmail.com'" <craigcurtright@gmail.com>, "'Lloyd, Jonathan'" <JonathanLloyd@dwt.com>, "'bwolff@pacifier.com'" <bwolff@pacifier.com>
Cc: "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>
Subject: PNC Bank vs. Charles Babitzke, et al; Cowlitz County Case No. 15-2-002849-9

[Quoted text hidden]

Jerry Reeves <jerry@jcreeves.com>
To: Craig Curtright <craigcurtright@gmail.com>

Sat, Jul 1, 2017 at 8:14 PM

?

Sent from my iPhone

[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: Jerry Reeves <jerry@jcreeves.com>

Sun, Jul 2, 2017 at 3:48 AM

Sent from my iPad

Begin forwarded message:

From: Jerry Reeves <jerry@jcreeves.com>
Date: July 1, 2017 at 8:14:52 PM PDT
To: Craig Curtright <craigcurtright@gmail.com>
Subject: Re: PNC Bank vs. Charles Babitzke, et al; Cowlitz County Case No. 15-2-002849-9

[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Wed, Jul 5, 2017 at 12:01 PM

Dana:

Thank you for your email. As you know, I am no expert on the Washington law on redemption. However, my client is the successor-in-interest to the Babitzkes under his purchase documents and he wants to redeem. Do his right not trump that of the Babitzkes? If not, what happens if the Babitzkes lose their foreclosure proceeding currently pending (being pursued through their partners, Graivity Subrogation, LLC)? My client is claiming that he was released by the Babitzkes when they returned the original promissory note to him at a meeting in 2014. If my client prevails he remains in title and the Babitzkes would have nothing to show for their having spent \$350,000 to redeem. However, if my client redeems, the Babitzkes' interests are protected, their case goes forward and my client takes the risk of loss because his loss to the Babitzkes becomes their gain.

It seems to me that my client has the superior right to redeem, not the Babitzkes.

Let me know as soon as possible if your offices agrees or disagrees so that we can file a motion with Cowlitz County Superior Court.

Sincerely,

Craig D Curtright

[Quoted text hidden]

--

Craig D. Curtright

A-25

Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>
Cc: Jerry Reeves <jerry@jcreeves.com>, "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>

Wed, Jul 5, 2017 at 2:49 PM

Craig,

I will admit that I am not an expert in this area either, but the statute is clear on its face that the judgment debtor has a right of redemption and the Babitzke's are named as the judgment debtors, so they appear to have the first right of redemption. Just this morning, I also received a claim of redemption from Gravity Segregation LLC as well as documentation of the Babitzke's assignment of their right to Gravity. The letter I received from the Babitzke's also asserts that they expect and agree with Gravity's redemption right.

I see that you assert your client was given a promissory note in 2014, but I don't have any documentation of that. At this point, I think it is probably best for you to pursue your interest in Superior Court or attempt to come to agreement with the Babitzke's. The County will certainly abide by an order from the Court.

Dana E. Gigler

Civil Deputy Prosecuting Attorney

Cowlitz County Prosecuting Attorney

312 SW First Ave

Kelso WA 98626

360.577.3080

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From: Craig Curtright [mailto:craigcurtright@gmail.com]
Sent: Wednesday, July 05, 2017 12:02 PM
To: Gigler, Dana <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>
Subject: Re: PNC Bank vs. Charles Babitzke, et al; Cowlitz County Case No. 15-2-002849-9

Dana:

[Quoted text hidden]

A-26

[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Wed, Jul 5, 2017 at 4:05 PM

Dana:

Jerry Reeves was given back the original promissory note that he issued to the Babitzkes in 2006. The Babitzkes and Gravity know it. Gravity's attorneys were allowed to view it. Gravity thought it was buying that note from the Babitzkes (which they sold two years after they gave Jerry the original back). Gravity bought the note from the Babitzkes on a purported lost note affidavit issued by the Babitzkes along with a mere copy of that note. From Jerry's point view, this was fraud on the part of the Babitzkes.

However, I will advise Jerry of your decision.

Sincerely,

Craig D. Curtright

Sent from my iPad
[Quoted text hidden]

Jerry Reeves <jerry@jcreeves.com>
To: Craig Curtright <craigcurtright@gmail.com>

Wed, Jul 5, 2017 at 4:41 PM

Hi cri

Sent from my iPhone
[Quoted text hidden]

A - 27



Craig Curtright <craigcurtright@gmail.com>

PNC/Babitzke Redemption for Property at 1601 Guild Road, Woodland, WA; Cowlitz County Superior Court Case No. 15-2-00284-9

4 messages

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Thu, Jul 6, 2017 at 12:56 PM

Dana:

Please send me all of the paperwork supplied by the Babitzkes and/or their partners, Gravity Segregation, LLC, submitted on behalf of their effort(s) to redeem from PNC in the above referenced matter. I will be assisting my client, Jerry C. Reeves with filing a motion next week with the court to get a judicial determination on his rights to redeem (if any). My client believes that once the Babitzkes sold their property to him, he gained the paramount right to redeem from PNC. I take it that Jerry needs to notice you, the Babitzkes, and Gravity's counsel with his motion. Let me know if anybody else needs notice.

Sincerely,

Craig D. Curtright

--
Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>
Cc: Jerry Reeves <jerry@jcreeves.com>

Thu, Jul 6, 2017 at 1:16 PM

Probably PNC as well, but I leave that to your expertise. I will forward to you what I have

Dana E. Gigler
Civil Deputy Prosecuting Attorney
Cowlitz County Prosecuting Attorney
312 SW First Ave
Kelso WA 98626
360.577.3080

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A - 28

From: Craig Curtright [mailto:craigcurtright@gmail.com]
Sent: Thursday, July 06, 2017 12:57 PM
To: Gigler, Dana <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>
Subject: PNC/Babitzke Redemption for Property at 1601 Guild Road, Woodland, WA; Cowlitz County Superior Court Case No. 15-2-00284-9

[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>

Thu, Jul 6, 2017 at 1:31 PM

Thanks. I will notice PNC also.

So, Gravity is redeeming, not the Babitzkes. Interesting. Gravity merely bought Jerry's paper without getting the original note (which the Babitzkes returned to Jerry). Their interest did not arise until after PNC filed it foreclosure. In other words, the case was already lis pendens when they appeared and partnered with the Babitzkes.

Their rights appear inferior to me since Jerry was the purchaser of the Babitzkes interests prior to the PNC foreclosure by many years.

Sincerely,

Craig D. Curtright
[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: Jerry Reeves <jerry@jcreeves.com>

Thu, Jul 6, 2017 at 1:32 PM

[Quoted text hidden]



Craig Curtright <craigcurtright@gmail.com>

FW: Babitzke Redemption for 1601 Guild Rd, Woodland

1 message

Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>

Thu, Jul 6, 2017 at 1:17 PM

Attached is what the Sheriff's office received from Gravity's counsel

Dana E. Gigler
Civil Deputy Prosecuting Attorney
Cowlitz County Prosecuting Attorney
312 SW First Ave
Kelso WA 98626
360.577.3080

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-----Original Message-----

From: Praytor, Lisa
Sent: Wednesday, July 05, 2017 8:45 AM
To: Gigler, Dana <GiglerD@co.cowlitz.wa.us>
Subject: Babitzke Redemption for 1601 Guild Rd, Woodland

Dana,

I have attached the paperwork received from Kyle Fielding. He represents Gravity Segregation. Gravity Segregation is claiming a right of redemption. What do you think?

Lisa Praytor
Chief Civil Deputy
Cowlitz County Sheriff's Office
312 SW First Avenue, Kelso, WA 98626
Phone: (360) 577-3092

-----Original Message-----

From: socopier@co.cowlitz.wa.us [mailto:socopier@co.cowlitz.wa.us]
Sent: Wednesday, July 05, 2017 8:52 AM
To: Praytor, Lisa
Subject: Message from "RNP0026738DE9FC"

This E-mail was sent from "RNP0026738DE9FC" (Aficio MP 4002).

Scan Date: 07.05.2017 08:52:07 (-0700)
Queries to: socopier@co.cowlitz.wa.us

201707050852.pdf
939K

MCDONALD FIELDING PLLC

175 W. CANYON CREST ROAD SUITE 204
ALPINE, UTAH 84004
(801) 610-0014

KYLE C. FIELDING

kyle@mcdonaldfielding.com

June 29, 2017

Cowlitz County Sheriff's Office
Attn: Lisa Praytor
312 SW 1st Ave
Kelso, WA 98626

RE: Redemption on 1601 Guild Road, Woodland WA

Dear Ms. Praytor,

This law firm represents Gravity Segregation, LLC, a Utah limited liability company ("Gravity"), which is a "redemption" in connection with the above-described real property sold by your office on July 29, 2016 (the "Property" as more particularly described in the enclosed Notice to Judgement Debtor of Sale of Real Property).

Enclosed with this letter is evidence of Gravity's right to redeem. In short, Gravity is the assignee beneficiary of the Deed of Trust dated November 13, 2006, executed by Jerry C. Reeves in favor and for the benefit of Charles and Mary Lou Babitzke, which was filed for record on November 13, 2006, as Entry No. 3317246 in the office of the Cowlitz County Recorder (copy enclosed). Gravity is also the assignee of the underlying note/loan secured by that Deed of Trust (copy enclosed), as evidenced by the enclosed assignment documents including: (1) Assignment of Deed of Trust/Mortgage and Notice of Interest, (2) Allonge (showing endorsement of the underlying note to Gravity), (3) Assignment Agreement, and (4) Bill of Sale.

Gravity intends to redeem the Property by paying the amount required by RCW 6.23.020. This letter is Gravity's five-day notice as required by RCW 6.23.080(1). Please provide me with the final redemption amount, and procedure regarding how and when to make that payment. Also enclosed with this letter is a Redemptioner's Affidavit as required by RCW 6.23.080(2), showing the payoff balance on Gravity's lien as \$841,912.93 as of today's date. Please contact me for an updated balance if and when another redemptioner expresses intent to redeem.

Sincerely,

MCDONALD FIELDING PLLC



Kyle C. Fielding

A-31



Craig Curtright <craigcurtright@gmail.com>

FW: Babitzke Redemption

1 message

Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>

Thu, Jul 6, 2017 at 1:18 PM

Attached is what the Sheriff's office received from Babitzke's counsel

Dana E. Gigler

Civil Deputy Prosecuting Attorney

Cowlitz County Prosecuting Attorney

312 SW First Ave

Kelso WA 98626

360.577.3080

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 **201706301339.pdf**
56K

Benjamin Lee Wolff, Attorney at Law

315 W. Mill Plain Blvd. Suite 212
Vancouver, WA 98660
(360) 695-3811
Fax: (360) 695-1671

June 28, 2017

Lisa Praytor
Chief Civil Deputy
Cowlitz County Sheriff's Office
312 SW First Ave.
Kelso, WA 98626

Re: PNC Bank v. Babitzke, Cowlitz Case No. 15-2-00284-9

Dear Ms. Praytor:

It was a pleasure speaking with you today. My clients, Charles and Mary Lou Babitzke, intend to exercise their statutory right as the judgment debtors to redeem their property sold at sheriff's sale to the Plaintiff in the above referenced matter. We understand that this will require depositing the funds identified in *Amended Notice of Expiration of Redemption Period*, June 15, 2017, with additional fees and costs as determined by you. We intend to submit these funds no later than 4:00 P.M. on July 15, 2017.

Others may also seek to redeem pursuant to RCW 6.23. The Babitzkes have sold their property interests to Gravity Segregation, LLC, and therefore, Gravity is a successor in interest vested with the right to redeem pursuant to RCW 6.23.010(2). Such a transfer has substantial legal authority, including for example, *De Roberts v. Stiles et al.*, 24 Wn. 611, 618 (1901) and *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 52 (1989). It is only out of an abundance of caution that Babitzkes are also asserting their statutory right to redeem as the judgment debtor.

A purported junior creditor, Mr. Jerry Reeves, may also attempt to exercise a redemption right. It is important to realize that Mr. Reeves does not have redemption rights. The right of redemption is a statutory right granted under RCW 6.23 reserved for the judgment debtor, the Babitzkes, or a "creditor having a lien by judgment, decree, deed of trust, or mortgage . . ." RCW 6.23.010(1)(b). The Babitzkes are exercising their right as the judgment debtor. Mr. Reeves does not have the status of a judgment debtor. Mr. Reeves is not a creditor of the Babitzkes. Therefore, Mr. Reeves is not able to provide evidence of a right to redeem as required pursuant to RCW 6.23.080.

Sincerely,


Benjamin L. Wolff

cc: clients

A-33



Craig Curtright <craigcurtright@gmail.com>

PNC/Babitzke Redemption for Property at 1601 Guild Road, Woodland, WA; Cowlitz County Superior Court Case No. 15-2-00284-9

4 messages

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Thu, Jul 6, 2017 at 12:56 PM

Dana:

Please send me all of the paperwork supplied by the Babitzkes and/or their partners, Gravity Segregation, LLC, submitted on behalf of their effort(s) to redeem from PNC in the above referenced matter. I will be assisting my client, Jerry C. Reeves with filing a motion next week with the court to get a judicial determination on his rights to redeem (if any). My client believes that once the Babitzkes sold their property to him, he gained the paramount right to redeem from PNC. I take it that Jerry needs to notice you, the Babitzkes, and Gravity's counsel with his motion. Let me know if anybody else needs notice.

Sincerely,

Craig D. Curtright

--
Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>
Cc: Jerry Reeves <jerry@jcreeves.com>

Thu, Jul 6, 2017 at 1:16 PM

Probably PNC as well, but I leave that to your expertise. I will forward to you what I have

Dana E. Gigler
Civil Deputy Prosecuting Attorney
Cowlitz County Prosecuting Attorney
312 SW First Ave
Kelso WA 98626
360.577.3080

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A - 34

From: Craig Curtright [mailto:craigcurtright@gmail.com]
Sent: Thursday, July 06, 2017 12:57 PM
To: Gigler, Dana <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>
Subject: PNC/Babitzke Redemption for Property at 1601 Guild Road, Woodland, WA; Cowlitz County Superior Court Case No. 15-2-00284-9

[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>

Thu, Jul 6, 2017 at 1:31 PM

Thanks. I will notice PNC also.

So, Gravity is redeeming, not the Babitzkes. Interesting. Gravity merely bought Jerry's paper without getting the original note (which the Babitzkes returned to Jerry). Their interest did not arise until after PNC filed it foreclosure. In other words, the case was already lis pendens when they appeared and partnered with the Babitzkes.

Their rights appear inferior to me since Jerry was the purchaser of the Babitzkes interests prior to the PNC foreclosure by many years.

Sincerely,

Craig D. Curtright
[Quoted text hidden]

Craig Curtright <craigcurtright@gmail.com>
To: Jerry Reeves <jerry@jcreeves.com>

Thu, Jul 6, 2017 at 1:32 PM

[Quoted text hidden]

A - 35



Craig Curtright <craigcurtright@gmail.com>

Redemption in PNC v. Babitzke; Cowlitz Co. Case No. 15-2-00284-9

2 messages

Craig Curtright <craigcurtright@gmail.com>
To: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>

Mon, Jul 17, 2017 at 6:42 AM

Dana:

Hello:

I am wondering if Gravity Segregation, LLC, redeemed on the Babitzke property in the above-referenced matter. If memory serves me correct, Gravity gave notice on the intent to redeem or or before July 15, 2017.

My client, Jerry C. Reeves, has filed a motion to allow him to redeem which is set to be heard on July 26, 2017 at 2:00 p.m. You should have a copy of his motion by now. Let me know if you did not receive it.

I look forward to your response.

Sincerely,

Craig D. Curtright

—
Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>
Cc: Jerry Reeves <jerry@jcreeves.com>

Mon, Jul 17, 2017 at 9:50 AM

I did receive a copy of the motion. The property has not yet been redeemed as the Sheriff's Office had not yet sent all of the information to Gravity necessary.

I am out of the office on the 26th, so I will not be able to attend the hearing.

Dana E. Gigler

Civil Deputy Prosecuting Attorney

Cowlitz County Prosecuting Attorney

312 SW First Ave

Kelso WA 98626

360.577.3080

A-36

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From: Craig Curtright [mailto:craigcurtright@gmail.com]
Sent: Monday, July 17, 2017 6:42 AM
To: Gigler, Dana <GiglerD@co.cowlitz.wa.us>
Cc: Jerry Reeves <jerry@jcreeves.com>
Subject: Redemption in PNC v. Babitzke; Cowlitz Co. Case No. 15-2-00284-9

[Quoted text hidden]

A - 37



Craig Curtright <craigcurtright@gmail.com>

Fwd: Out of Office: PNC v. Babitzke Redemption hearing set for July 26, 2017

1 message

Jerry Reeves <jerry@jcreeves.com>

Tue, Jul 25, 2017 at 2:27 PM

To: Craig Curtright <craigcurtright@gmail.com>

Sent from my iPhone

Begin forwarded message:

From: "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>

Date: July 25, 2017 at 1:24:04 PM PDT

To: Jerry Reeves <jerry@jcreeves.com>

Subject: **Out of Office: PNC v. Babitzke Redemption hearing set for July 26, 2017**

I am out of the office until Monday July 31, 2017. I will not have access to emails.

A-38



Craig Curtright <craigcurtright@gmail.com>

PNC v. Babitzke redemption

1 message

Craig Curtright <craigcurtright@gmail.com>

To: "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>

Thu, Jul 27, 2017 at 9:25 AM

Cc: Jerry Reeves <jerry@jcreeves.com>, "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>

Hello Chief Praytor:

The Cowlitz County Superior Court denied Jerry Reeves' Motion to allow him to redeem the property at 1601 Guild Road, Woodland, OR yesterday. That leaves, I believe, only Gravity Segregation LLC's potential redemption in the hopper. Would you please advise me if, and when, Gravity redeems? Or, anybody else? I believe the deadline likely falls tomorrow since your office is closed for such on the 29th. I especially need to know if nobody shows up to redeem by the deadline to redeem. Jerry will likely be filing an appeal of the court's decision if nothing else get worked out quickly with Gravity and the Babitzkes.

Thank you in advance.

Sincerely,

Craig D. Curtright

--

Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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A - 39



Craig Curtright <craigcurtright@gmail.com>

Out of Office: PNC v. Babitzke redemption

1 message

Gigler, Dana <GiglerD@co.cowlitz.wa.us>
To: Craig Curtright <craigcurtright@gmail.com>

Thu, Jul 27, 2017 at 9:25 AM

I am out of the office until Monday July 31, 2017. I will not have access to emails.

A-40



Craig Curtright <craigcurtright@gmail.com>

Redemption in PNC v. Babitzke; Cowlitz Co. Case No. 15-00284-9

1 message

Craig Curtright <craigcurtright@gmail.com>

Mon, Jul 31, 2017 at 8:14 AM

To: "Praytor, Lisa" <praytorl@co.cowlitz.wa.us>, "Gigler, Dana" <GiglerD@co.cowlitz.wa.us>

Cc: Jerry Reeves <jerry@jcreeves.com>

Hello Chief Paytor:

I am wondering whether Gravity Segregation, LLC, and/or Mr. and Mrs. Babitzke, redeemed last week in the above-captioned matter. Would you please let me know as soon as possible?

My client, Jerry C. Reeves, did not receive any word from his contacts. He was told that Gravity was still "thinking about it" as of noon on Friday.

I look forward to your response.

Sincerely,

Craig D. Curtright

--

Craig D. Curtright
Attorney at Law, OSB #822317
West Linn, OR 97068
Tel: 503.709.6030

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JC REEVES CORPORATION

February 01, 2018 - 7:09 AM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50763-3
Appellate Court Case Title: Jerry Reeves, et al, Appellant v. PNC Bank NA, Respondent
Superior Court Case Number: 15-2-00284-9

The following documents have been uploaded:

- 507633_Briefs_20180201070733D2153577_0653.pdf
This File Contains:
Briefs - Appellants
The Original File Name was PNC Brief Final 50763-3-II.pdf

A copy of the uploaded files will be sent to:

- bwolff@pacifier.com
- christinekruger@dwt.com
- frederickhaist@dwt.com

Comments:

Defendant-Appellant Jerry C. Reeves' Opening Brief

Sender Name: Jerry Reeves - Email: jerry@jcreeves.com
Address:
14300 SW McKinley Drive
Sherwood, OR, 97140
Phone: (503) 969-2600

Note: The Filing Id is 20180201070733D2153577