

FILED *E*
SUPREME COURT
STATE OF WASHINGTON
9/12/2017 8:00 am
BY SUSAN L. CARLSON
CLERK *slc*

No. 94089.4

SUPREME COURT OF THE STATE OF WASHINGTON

No. 16-2-01481-1

KITSAP COUNTY SUPERIOR COURT

DUKE PARTNERS, LLC,

Plaintiff,

v.

MARIE-LOUISE PAUSON

Defendant,

PETITIONER'S REPLY BRIEF

Marie-Louise Pauson, Pro SE

4811 Taylor AV NE
Bainbridge Island, WA 98110
maliposa@gmail.com

ORIGINAL

filed via
PORTAL

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ARGUMENT

Defendant denies Plaintiff Counsel's assertion stated in the introduction of her Response as follows: "Scalia's Jesinowski decision 135 S. Ct. 790 (2015) does not mean she gets a free house." The main issue in this Appeal does not involve anyone getting a free house. The fact is that there was never a Default in this case to warrant the foreclosure sale of Defendant's home which she purchased outright in January of 1994. Defendant has been fighting this particular legal battle in lower courts without the help of counsel for 7 years. There is no legal basis for the foreclosure sale of Defendant's home by Northwest Trustee Services, Inc. acting for the Claimed Creditor Bay View Loan Servicing, LLC. For a Writ of Restitution to comply, RCW 61.12.040, a legally valid Deed of Trust must exist. Without a lawful foreclosure, there can not be a lawful Writ of Restitution, RCW 59.12.032.

Defendant Denies Plaintiff Counsel's " Statement of the

Case” as follows:

1) *“Marie-Louise Pauson defaulted on her mortgage for the property located at 4811 Taylor Av NE Bainbridge Island WA 98110 in May of 2010.”*

Marie-Louse Pauson did not have a mortgage after September 5, 2008 and therefore did not default on a mortgage in 2010.

Plaintiff Counsel’s statement italicized above is false.

2) Referring to the second rescission notice Defendant mailed to the Claimed Creditor, Bay View Loan Servicing, LLC, Plaintiff’s Counsel writes: *“But Ms Pauson never returned the funds she had been lent or the collateral.”*

This so –called Claimed Creditor never responded to the Notice of Rescission they received and never filed a lawsuit contesting the rescission within 20 days. The law governing TILA Rescission, **15 U.S. Code § 1635 (b)** is noted below:

(b) Return of money or property following rescission

When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other

charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, down payment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the

property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.”

For the Claimed Creditor, Bay View Loan Servicing to have ignored the Notice of Rescission which they clearly received instead of establishing standing, injury or the wrongful nature of the rescission can only mean one thing. This party could not prove they owned the void mortgage which was illegally recorded on the Defendant's permanent residence.

3) Defendant Denies there was Default in her case and therefore the River Stone Holdings, NW, LLC case cited is not relevant here. Defendant asserts once again that a lawful foreclosure RCW 61.24.040 is a prerequisite to a lawful Writ of Restitution RCW from an Unlawful Detainer action RCW 59.12.032

4) Defendant actually transmitted her Notice of Bankruptcy to the Kitsap County Superior Court on September 21, 2016 as a courtesy. Defendant's bankruptcy was filed on

September 16, 2016 and a Bankruptcy Stay is in effect from the date on the notice whether or not anyone knows about it.

Exhibit A Here is the law regarding the Automatic Stay in Bankruptcy.

11 U.S. Code § 362 – Automatic Stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of

the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy

court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title. “

5) On December 19, 2016, Defendant filed a motion to Vacate the Judgment and Stay the Writ Exparte which was denied.

6) The Defendant's Bankruptcy was discharged on May 2, 2017 . The Bankruptcy Judge stated he did not have jurisdiction over property title disputes in this case. The Defendant's District Court case with Judge Leighton which involved the Defendant's lawsuit against Bay View Loan Servicing for a TILA violation and for such and other relief as the Court may deem proper, is currently under Appeal in the 9th Circuit Court of Appeals. Case No. 16-35800.

DEFENDANT DENIES HER APPEAL IS INCONSISTENT
WITH RAP 4.2

1. RCW19.86.920 is an act which the Washington State

Legislature created “to complement the body of Federal Law governing restraints of trade, unfair competition and unfair, deceptive, and fraudulent acts or practices in order to protect the public and foster fair and honest competition.” There are significant questions of law under the Constitution of the State of Washington reflected in this case which could be clarified by the Supreme Court.

2. The jurisdiction of the Superior Court was not invoked in the issue of rescission being effective which has a direct bearing on the validity of the foreclosure sale. A lawful foreclosure sale is a pre-requisite to a lawful Writ of Restitution RCW 59.12.032 and RCW 61.24.040.

3) Because Duke Partners is not a Bona Fide Purchaser of the Plaintiff's permanent residence, their title and ownership to the property is subject to the outcome of the lawsuits and the Notice of Rescission recorded on the property title in question. Defendant still holds some interest in the property. There are Lis Pendens recorded on the title and Plaintiff knew or should

have know about these disputes before they purchased the property at auction. RCW 4.28. 320, RCW 4.28.325. Title will only be determined when the lawsuits are settled in this case.

4) Neither Defendant nor Plaintiff's Counsel are able to comment with authority on whether or not there may be a conflict between the different divisions of the Court of Appeals. There are cases taking place right now which are arguing the plain statutory intent of RCW 61.24.050(1), RCW 4.28.320, and RCW 59.12.100. In one case, it is claimed that RCW 61.24.050(1) is evidence of legislative intent the DTA does specify the voiding of a trustee sale if it is determined the trustee has nothing to convey. Defendant argues in her case that the trustee had nothing to convey and no authority existed by operation of law to do anything since the first notice of rescission was mailed in 2008.

5) Appeals involving TILA Rescission and unlawful foreclosure continue to be prominent in all Appellate Courts. People are still recovering from the worst economic decline

since the Great Depression. Defendant disagrees with Plaintiff's Counsel again on the significance of this issue which Counsel failed to dispute at all when Defendant's Statement for the Grounds for Direct Review was submitted months ago.

CONCLUSION

Obviously Defendant is not an attorney and she believed that by stating the Grounds for Direct Review by the Supreme Court, she was executing the correct procedure. Plaintiff's Counsel did not read RAP 13.1 very carefully. Following is the rule:

Rule 13.1

a) One method of seeking review. The only method of seeking review by the Supreme Court of decisions of the Court of Appeals is review by permission of the Supreme Court, called "discretionary review."

This case has never been before the Court of Appeals and consequently there is no petition seeking discretionary review.

Contrary to Plaintiff Counsel's statement, Defendant's Kitsap County Superior Court case is still pending as further

legal action is being taken.

The Plaintiff has illegally evicted the Defendant from her home and continues to trespass by occupying the property without having legal possession of it. Plaintiff unlawfully called the Police in February and had Defendant wrongfully arrested charging the Defendant with Criminal Trespass. This unlawful legal action has been Dismissed by the Court but the injury Defendant has suffered by this hurtful action remains. Because Defendant's Appeal is ultimately another one of the many known and unknown cases of financial abuse in the state of Washington, Defendant respectfully asks the Supreme Court to decide her appeal on the merits.

In addition, Defendant asks the Court to penalize or sanction the Plaintiff for their unlawful eviction of the Defendant from her Taylor Av residence on December 20, 2016, five days before Christmas, for their unlawful destruction of the Defendant's property which has already been described and for trespass of this property ever since.

Respectfully submitted,

DATED September 11, 2017 s/Marie-Louise Pauson

4811 Taylor Av NE

Bainbridge Island, WA 98110

maliposa@gmail.com

CERTIFICATE OF SERVICE

On September 11, 2017, I filed a copy of this Reply Petition and Exhibits with the Washington State Appellate Courts Portal and emailed a copy of the same documents to Elizabeth Powell powelllaw@comcast.net. I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

s/Marie-Louise Pauson

September 11, 2017

EXHIBIT A

**SUPREME COURT
STATE OF WASHINGTON
9/12/2017 8:00 am
BY SUSAN L. CARLSON
CLERK**

United States Bankruptcy Court
Western District of Washington

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 13 of the United States Bankruptcy Code, entered on 09/16/2016 at 4:28 PM and filed on 09/16/2016.

Marie-Louise Pauson
4811 Taylor Ave NE
Bainbridge Island, WA 98110
SSN / ITIN: xxx-xx-9516
dba Pauson and Associates



The bankruptcy trustee is:

K Michael Fitzgerald
600 University St #2200
Seattle, WA 98101
206-624-5124

The case was assigned case number ~~16-14767-CMA~~ to Judge Christopher M Alston.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available with a Pacer account log in at <https://ecf.wawb.uscourts.gov> or via public terminals at the Clerk's Office, 700 Stewart St, Room 6301, Seattle, WA 98101 or 1717 Pacific Avenue, Suite 2100, Tacoma, WA 98402.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Mark L. Hatcher
Clerk, U.S. Bankruptcy
Court

MARIE=LOUISE PAUSON - FILING PRO SE

September 11, 2017 - 8:16 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94089-4
Appellate Court Case Title: Duke Partners, LLC v. Marie-Louise Pauson
Superior Court Case Number: 16-2-01481-1

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The Original File Name was 20160917103931108.pdf

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- powelllaw@comcast.net

Comments:

Sender Name: Marie=Louise Pauson - Email: maliposa@gmail.com
Address:
4811 Taylor Av NE
Bainbridge Island, WA, 98110
Phone: (206) 855-5814

Note: The Filing Id is 20170911195814SC993661

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