

FILED
Court of Appeals
Division II
State of Washington
4/26/2018 3:17 PM

COURT OF APPEALS, DIVISION II OF THE STATE OF WASHINGTON

ESTATE OF STEPHEN SPRING) no 51368-4-II
)
)
 appellant)
v.)
)
OUR COMMUNITY CREDIT UNION)
)
)
 respondent)
_____)

BRIEF OF APPELLANT ESTATE OF STEPHEN SPRING

(2) Tables.

Table of Contents

Introduction, page 3

Assignments of Error, page 4

Statement of the Case, page 5

Argument, page 7

Conclusion, page 8

Table of Cases

Roger Crane & Associates v. Felice, 74 Wn.App. 769, 875 P.2d 705 (1994) page
6

Klinke v. Famous Recipe Fried Chicken Inc. 94 Wn.2d 255, 616 P.2d 644 (1980).

Page 6

Court Rules Cited

CR 56; page 6

(3) Introduction.

In this case, the Estate of Stephen S. Spring wishes to attack the nonjudicial foreclosure which resulted in the Credit Union's seizure of the real property belonging to the estate in Mason County, Washington. Notice of the death of Mr. Spring was recorded in Mason County public records.

The estate had substantial equity in the property, and also suffered the loss of personal property stored on the real estate.

Although the Credit Union was contacted by the son of Stephen S. Spring, the Credit Union refused to deal with him as he was not at that time the legal representative of the estate.

The Credit Union filed a motion for summary judgment in this case on October 9, 2017. The motion urged Mason County Superior Court to find that the non judicial foreclosure was proper, the plaintiff's claims were barred and that the plaintiff had no standing to bring an action.

The court granted the motion on November 6, 2017.

(4) Assignments of Error.

The granting of a summary judgment in this matter was an error. The court's conclusions that the plaintiff had no standing and the claims were barred is incorrect.

Issues:

1. Were there no issues of genuine fact in this matter?
2. Did the moving party meet the burden required to obtain a summary judgment.

(5) Statement of the Case.

This case arises from an action for a writ of restitution for possession of property at 11 SE Channel Point Rd., in Mason County, Washington. (record page 3)

According to the “Statement of Facts” in Our Community Credit Unions motion for Summary Judgment dated November 1, 2017, Mr. Steven S. Spring granted a deed of trust to Our Community Credit Union on November 25, 2008 (record page 8)

According to this same document, Mr. Spring died on November 8, 2011 and the estate defaulted on the loan secured by this deed of trust on or about August 20, 2013. (record page 8)

According to this same document, OCCU filed a notice of trustee’s sale on June 16, 2015. Although Stephen J. Spring contested the foreclosure, the foreclosure was allowed to proceed. (record page 9)

On August 16, 2016, Stephen J. Spring filed a probate action on behalf of the Estate of his father, Stephen S. Spring, and was appointed administrator of the estate. Defendant’s Exhibit 9. (record page 2)

On February 22, 2017 The Estate filed the current lawsuit which is the subject of this appeal . (record page 2)

A motion for Summary Judgment was filed on October 9, 2017 and the court granted the motion on November 6, 2017. (record page 69, 70)

6) Argument.

There were facts in dispute in this matter, namely, did the trustee properly notify the estate of the foreclosure, and did the credit union improperly refuse an offer to cure the default by Stephen J. Spring.

The judgment in this matter is , of course, under CR 56. Under CR 56(c) the court must find that the case presents no genuine issues of fact and that the moving party is entitled to judgment as a matter of law.

Under *Roger Crane & Associates v. Felice*, 74 Wn.App. 769, 875 P.2d 705 (1994), , the appellate court is to decide the case on a de novo basis, engaging in the same analysis as the trial court. This case goes on to state that trial courts are required to view the evidence and all reasonable inferences from the evidence in the light most favorable to the non moving party.

Whether there are genuine issues of material fact exists when reasonable minds could reach different factual conclusions. *Klinke v. Famous Recipe Fried Chicken Inc.* 94 Wn.2d 255, 616 P.2d 644 (1980).

Appellant seeks a de novo review by the appellate court, a believe that under such a review, there are sufficient issues to allow this matter to proceed to trial.

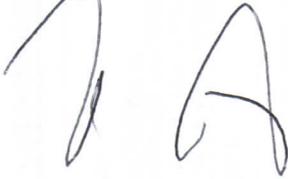
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7) Conclusion.

The estate requests the court reverse the trial court's ruling granting the motion for Summary Judgment, and remand the case to Superior Court for a trial.

Date: April ²⁵~~23~~, 2018

Signed

A handwritten signature in black ink, consisting of a stylized 'N' followed by a large 'A'.

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April 26, 2018 - 3:17 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51368-4
Appellate Court Case Title: Estate of Stephen Spring, Appellant v. Our Community Credit Union, Respondent
Superior Court Case Number: 17-2-00098-5

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