

FILED
Court of Appeals
Division II
State of Washington
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NO: 54113-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STAN DENOVA
APPELLANT

V.

DEUTSCHE BANK NATIONAL TRUST COMPANY

BRIEF OF APPELLANT

STAN DENOVA
APPELLANT
261 OAK MEADOWS LN.
OAKVILLE WA. 98568
360-593-6477

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I INTRODUCTION

Stan DeNova, appellant in this case, sold to James Everham real property known as 6328 Wildflower St. Olympia, Wa. On January 25, 2005. This transaction consisted of a Sales and Purchase agreement and a Addendum to that agreement. The transaction included Long Beach Mortgage loan company as the lender.

In the sales and purchase agreement, the addendum specifically states that the sale was to exclude the garage commonly known as 6348 wildflower st. and the single wide trailer commonly known as 6340 wildflower st., Olympia Wa. 98502. Also included in the addenduum, a permanent easement agreement to live and maintain both buildings was to be given. The addendum also specifically stated that if any of those provisions could not be met, the contract was to become void.

All parties were in agreement and the sale of the property was completed.

Several years later, Long Beach mortgage went out of business as they were part of the sale of Washington mutual savings and loan. During this time Deutsche Bank apparently bought assets from the sale of Washington mutual and appellant's loan was one of those assets.

On August of 2016, Appellant was approached by James Everham and was told he was going to lose the property to foreclosure. It was at this time that Appellant, Stan Denova, discovered that the original easement agreement from Long Beach Mortgage for some reason had failed to record.

Appellant then recorded an easement agreement and correction deed to protect his interest in the property. The easement agreement was signed and notarized by both Stan DeNova and James Everham.

On July 28, 2017 the property was foreclosed on by Deutsche Bank.

On November 30, 2018 Deutsche Bank brought a show cause hearing against the appellant in an unlawful detainer action. The court ruled that the Appellant, Stan DeNova, presented legal and equitable defenses or set-offs, and there is a substantial issue of material fact of interest. These issues properly may be resolved through a trial.

Deutsche Bank withdrew their complaint.

Several months later, Deutsche Bank Files another lawsuit for Quiet title and ejectment. During the lawsuit, they filed for a hearing for summary judgement. On November 15th, 2019 the court granted them a summary judgement.

Appellant respectfully requests the chance to be heard and present evidence at trial, and to have the Appellant Court vacate the summary judgement.

II ASSIGNMENT OF ERROR

- 1) Appellant assigns error under Conclusions of Law, Adjudged and Decreed, #3, which states the "Easement" that was recorded on August 30, 2016 and the " Correction Deed" are both void.
- 2) Appellant assigns error under Conclusions of Law, Adjudged and Decreed, #4, which states Plaintiff's interest in the property by virtue of its Deed of Trust was superior and paramount to any interest of Defendants at the time of the trustee's sale conducted on July 28, 2017, and any interest held by any Defendant was foreclosed.

III ISSUES RELATING TO ASSIGNMENT OF ERROR

1) FEDERAL RULES OF CIVIL PROCEDURE. RULE 56

(A) Motion for Summary Judgment of Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense- or the part of each claim or defense- on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact of and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

IV STATEMENT OF CASE

Appellant, Stan DeNova, sold the property commonly known as 6328 wildflower St, Olympia Washington to James Everham. Appellant posses the original Sales and Purchase Agreement and Addendum. A permanent Easement and possession of the garage and mobile home were granted by the buyer and loan company. Deutsche bank also have these documents.

The Sales and Purchase agreement along with the Addendum are the "Heart beat of the Sale" and are the Instruments on how the Deed of Trust is written.

V ARGUMENT

The courts decision on the matter of the easement agreement keeps implying that the property was not subdivided and that the easement agreement was invalid. Properties do not have to be subdivided in order to obtain a easement agreement. In this case Appellant was not obtaining land in the sale of the property but just receiving permission to leave the mobile home and garage and gain access over the land to use them. Deutsche bank testified to this and called them both chattels still on the property. (See pg. 7 17-19) Report of proceedings. These buildings are not even mentioned in the Deed of Trust. If the sale of the property included these buildings they would have been on the Deed of Trust. It would only make sense for the bank to protect their assets. But they were not included in the sale.

The second Deed of trust was written between Appellant and James Everham only when appellant discovered that the original had failed to record. The second Deed of Trust was recorded on August 30th, 2016. The foreclosure of the property was on July 28th 2017. Eleven months since the easement was recorded, a forclosure was taking place and yet no objection to the easement agreement from Deutsche bank.

The court claimed that the easement agreement was not granted, joined, signed, or acknowledged by the plaintiff and therefore was ineffective and void. See Judgment #3 pg.2.

James Everham was the owner of the property at the time of the granting of the 2nd easement. There was no provisions in his contract that did not allow him to give easements on his property. Long beach mortgage had a clause in his contract that would allow them to accelerate his pay-off. This is common in mortgage contracts and I have discovered no law that says otherwise. Deutsche bank or the court cited no law to this either. This makes the easement agreement legal and disputes the court's decision.

Appellant has claimed that an easement was done at the time of sale of the property to James Everham. James Everham also testified to the original easement agreement, See pg.22 3-5 report of proceedings.

With the testimony of James Everham, appellants attorney, Ms. Goeller's declaration to the court explaining the courts ruling in the previous legal action, disallowing summary judgment and proceeding to trial, that the court had enough material facts of interest to deny summary judgment and proceed to trial. The court took a close look at the previous court case and was well aware of the decision, (See pg. 25 12-15). At the very least, the court should have allowed the Appellant to ask for discovery to clarify any questions the court might have and not allow summary judgment.

The courts decision #4 on pg. 4 of judgment claims plaintiff's interest in the property by virtue of its Deed of Trust was superior and paramount to any interest of Defendants at the time of the trustee's sale conducted on July 28, 2017. And any interest held by Defendant was foreclosed.

The Deed of Trust was written to reflect the original Sales and Purchase Agreement. Without the Sales and purchase agreement, No Deed of Trust. This is the document that protects the seller's, Appellant's interest. It also does protect the Loan Company's interest.

In this case the Deed of Trust does not mention the garage or mobile home on the property, which supports Appellant's claim that the two buildings were not to be included in the sale and that a permanent easement was to go along with the sale.

This brings us back to the original Sales and Purchase agreement. And the original easement agreement.

The court is well aware of both the Sales and Purchase agreement and the easement agreement.

The court needed to protect the interest of Defendant also in this case and does not make the claim that the Plaintiff's interest are superior.

VI CONCLUSION

The Appellant, Stan DeNova, has provided the court with enough Material Facts of Interest that this case should be allowed to proceed to trial. This court should reverse the superior courts summary judgment and allow the Appellant to proceed to trial.

RESPECTFULLY SUBMITTED THIS July 19, 2020

APPELLANT Stan DeNova
STAN DENOVIA

STAN DENOVA - FILING PRO SE

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