

FILED

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Court of Appeals
Division III
State of Washington

Court of Appeals No. 296334

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

EXCELSIOR MORTGAGE EQUITY FUND II, LLC,

Respondent,

v.

STEVEN F. SCHROEDER,

Appellant.

**RESPONDENT'S SUPPLEMENTAL BRIEF REGARDING THE
APPLICABILITY OF SCHROEDER V. EXCELSIOR MGMT.
GRP., LLC**

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On January 24, 2012, this Court, in an unpublished decision, upheld the Stevens County Superior Court’s ruling that the Appellant, Steven Schroeder, was properly evicted from the real property acquired by the Respondent, Excelsior Mortgage Equity Fund II, LLC (“Excelsior”) at a trustee’s sale.

On February 13, 2013, the Washington Supreme Court ruled in two companion cases¹ that the underlying trustee’s sale -- the February 19, 2009 trustee sale that allowed Excelsior to acquire the property -- was possibly void because the property may have been “primarily agricultural at relevant times.” The Supreme Court therefore remanded these companion cases to the trial court to conduct a hearing to determine whether the 2009 trustee’s sale should be vacated.²

On September 4, 2013, the Supreme Court accepted review of this case but immediately remanded it to this Court for “reconsideration in light of *Schroeder v. Excelsior Mgmt. Grp., LLC*, 177 Wn.2d 94 (2013).” The Supreme Court does not provide any further guidance.

The Supreme Court’s Opinion does not review, analyze, address or even mention this Court’s January 24, 2012 ruling. There is nothing in that Opinion or even the September 4, 2013 Order of Remand that suggests this Court erred when it ruled for Excelsior on the unlawful detainer action.

¹ *Schroeder v. Excelsior Management Group, LLC*, 177 Wn.2d 94, 297 P3d 677, (2013) (Case Numbers 86433-1 and 86710-1).

² *Id* at 115.

So why did the Supreme Court order this Court to reconsider its previous decision? For practical reasons.

If the 2009 trustee's sale was invalid, then Schroeder is still the legal owner of the property. If he was the legal owner of the property, then the trial court lacked jurisdiction to order Schroeder off the property. If the trial court lacked jurisdiction, then this Court's January 24, 2013 Opinion is moot. But none of these questions can be answered, at least not until the trial court hold a hearing on remand and rules on whether the property was or was not principally used for agricultural purposes."

So what should this Court do? Hold this appeal in abeyance until the trial court can consider the companion cases on remand.

As stated above, the Supreme Court remanded the companion cases to the trial court to hold a hearing on whether the property was or was not "primarily agricultural at relevant times." If not, then the trustee's sale was valid and this Court's January 24, 2012 ruling should remain in tact. On the other hand, if the trial court rules that the property was principally used for agricultural purposes, then the trustee's sale was void and the trial court's order evicting Schroeder was void, and this Court's opinion is possibly moot.

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This Court should therefore hold this appeal in abeyance until the trail court can resolve the companion cases.

DATED this 19th day of November, 2013.

Respectfully Submitted,

LANDERHOLM, P.S.

s/ Bradley W. Andersen

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CERTIFICATE OF SERVICE

I certify that on the 19th day of November, 2013, I caused to be served the foregoing Respondent's Supplemental Brief Regarding the Applicability of Schroeder v. Excelsior Mgmt. Grp., LLC on the following parties at the following addresses via e-mail and regular U.S. Mail:

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