

FILED

JAN 14 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By: _____

No. 304019

**COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON**

**JAMES M. SMITH, an individual; JANE A. SMITH, an individual,
COLUMBIA STATE BANK, a Washington State Chartered Bank,**

Defendants/Appellant,

and

GRANITE FARMS, LLC

Intervenor/Respondent

v.

**BRIAN A. WORDEN and ANNE MEREDITH WORDEN, husband
and wife,**

Plaintiffs/Respondent.

BRIEF OF KAL FARMS, LLC

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I. INTRODUCTION

On August 12, 2011, KAL Farms, LLC, a Washington limited liability company, purchased certain real property commonly known as 824 South Lake Road and 3710 and 3771 Hanson Loop Road, Burbank, Washington 99323 (hereinafter the "Property") at a Sheriff's Sale. The property had previously been owned by Defendants James M. Smith and Jane A. Smith. Plaintiffs, Brian A. Worden and Anne Meredith Worden, husband and wife, held a first position lien against the subject property. Columbia State Bank held a second position lien. Defendants James M. Smith and Jane A. Smith subsequently defaulted on payments to Brian A. Worden and Anne Meredith Worden. The Wordens chose to execute on the subject property, and the property was sold by the Walla Walla County Sheriff on August 12, 2011 at 10:00 a.m. to KAL Farms, LLC (hereinafter "KAL Farms") for the sum of One Million Six Hundred Twenty-Five Dollars and 00/100 (\$1,625,000.00).

On September 19, 2011, the parties executed a stipulated order directing distribution of surplus sale proceeds. The stipulated order was prepared by counsel for Columbia State Bank. The stipulated order directed distribution of surplus sale proceeds first to pay outstanding real property taxes due and owing on the property, second to outstanding storm

water taxes, third to Defendants James M. Smith and Jane A. Smith, and last to Columbia State Bank. The Stipulated Order was signed by all parties, and was granted by the Hon. Judge Lohrmann on September 19, 2011. Proceeds were distributed according to the order.

On September 29, 2011, after distribution of all sale proceeds, counsel for Columbia State Bank filed a Motion to Amend the Stipulated Order so that no proceeds were paid for outstanding property taxes or storm water taxes. However, these sums had already been distributed, and, in effect, the amended order would require purchaser KAL Farms to pay those sums to Columbia State Bank.

KAL Farms, not a party to the action, filed an objection to the Bank's amended order as purchaser of said property. An objection was filed because at the time Columbia State Bank filed its Motion to Amend the Stipulated Order, the taxes had already been paid and no lien existed against the property. Had Columbia State Bank's motion been granted, then if and when the property was redeemed, no payment would have been authorized under the redemption statute RCW 6.23.020 for repayment to KAL Farms for payments made to Columbia State Bank. KAL Farms arguably would not have obtained repayment as it would have had the liens existed after KAL Farms took possession of the property and KAL

Farms paid the liens. The Walla Walla County Superior Court, the Honorable Judge Lohrmann presiding, subsequently denied Columbia State Bank's motion to amend.

In April 2012, Alan Mehlenbacher, owner of KAL Farms, received notice that Granite Farms LLC intended to redeem the property. Granite Farms indicated at time of tendering money to the Walla Walla County Sheriff for redemption, that no taxes had been paid on the property prior to redemption. Alan Mehlenbacher, believing this to be incorrect (because of payment of taxes at the time KAL Farm purchased the property), directed his counsel to draft and record a Notice of Payment of Taxes prior to conclusion of the redemption. On May 3, 2012, KAL Farms, received the redemption amount of One Million Seven Hundred Forty-Seven Thousand Two Hundred Fifteen Dollars and 47/100 (\$1,747,215.47) (excluding any monies for taxes paid from the proceeds of the sale), for redemption of the property originally purchased by KAL Farms.

KAL Farms, prior to disbursement of the redemption amount, filed a Motion to Pay which sought disbursement of the redemption amount (then deposited with the Walla Walla Superior Court Clerk) to be repaid to KAL Farms, together with an additional payment by redemptioner to Saalfeld Griggs, successor in interest to Columbia State Bank, for taxes

paid at the time of purchase. The Walla Walla County Superior Court, Judge Lohrmann presiding, denied KAL Farms' motion.

The trial court later granted KAL Farms' Order Directing Clerk of Court to Disperse Funds, after which time KAL Farms received the redemption amount for the property. It is KAL Farms' position that KAL Farms has no further interest or liability in this action, as it no longer owns the property at issue, nor will KAL Farms realize a benefit for payment of a lien upon said property. Further, KAL Farms has never been made a party to this action, but rather filed motions to protect its interests as purchaser of the property.

II. ARGUMENT: THIS COURT LACKS JURISDICTION OVER KAL FARMS, LLC BECAUSE KAL FARMS, LLC HAS NEVER BEEN MADE A PARTY TO THE UNDERLYING ACTION

“In order to acquire complete jurisdiction, so as to be authorized to hear and determine a cause or proceeding, the court necessarily must have jurisdiction of the parties ... and of the subject matter involved. Generally, a valid judgment consists of three jurisdictional elements: jurisdiction of subject matter, jurisdiction of person, and power or authority to render a particular judgment.” *State v. Barnes*, 146 Wash. 2d 74, 85, 43 P.3d 490, 496 (2002).

A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. 3A Wash. Prac., Rules Practice CR 19 (5th ed.)

If a new defendant is added after an action has been commenced, the new defendant must be served with a summons and complaint (in this case, the amended complaint), just as the original defendants were. See, e.g., *James Talcott v. Allahabad Bank*, 444 F.2d 451 (5th Cir. 1971) (personal jurisdiction over third party defendant must be secured by proper service of third party summons). See also *Nelson v. Adams USA, Inc.*, 529 U.S. 460, 120 S. Ct. 1579, 146 L.Ed.2d 530 (2000) (denial of due process

to amend pleadings and judgment to impose liability upon new defendant, without giving new defendant an opportunity to defend).

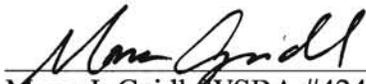
In the present matter, KAL Farms, LLC was never made a party to the underlying lawsuit, never filed a Motion to Intervene, and never was joined as a party by the trial court. Further, KAL Farms, LLC is not an indispensable party as contemplated by the joinder statute. The property at issue in this matter has been redeemed in its entirety from KAL Farms, and KAL Farms holds no further interest in the property. Complete relief can be granted in the absence of KAL Farms and the absence of KAL Farms in this appeal does not in any way impair or impede Appellant's ability to protect its interest in this action.

III. CONCLUSION

In the absence of jurisdiction over KAL Farms, KAL Farms should be removed as a listed respondent in this appeal. The property that is the subject matter of this appeal has been completely redeemed by Granite Farms, LLC and KAL Farms has never been a party to any of the underlying proceedings. For these reasons, KAL Farms respectfully requests this court to remove KAL Farms as a listed Respondent.

RESPECTFULLY SUBMITTED this 9th day of January, 2013.

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