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Division III
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Case No. 366111

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

WILMINGTON TRUST, NATIONAL ASSOCIATION, AS TRUSTEE FOR
NEWCASTLE INVESTMENT TRUST 2014-MH1,

Appellant,

vs.

OKANOGAN COUNTY and CHRISTINA VALDOVINOS and EDILBERTO
VALDOVINOS,

Respondents.

APPELLANT'S OPENING BRIEF

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TABLE OF CONTENTS

I. INTRODUCTION..... 1
II. ASSIGNMENTS OF ERROR 1
III. STATEMENT OF THE CASE..... 2
A. Background..... 2
B. Motion to Vacate..... 3
IV. ARGUMENT..... 4
C. Standard of Review..... 4
D. County Failed to Comply with the Notice Statute..... 5
E. County Failed to Comply with Due Process..... 6
F. County’s Arguments In Support of Notice Are Unavailing. 8
G. Judgment is Void as to the Deed of Trust; Must Be Vacated..... 9
V. CONCLUSION 11

CASES

Allied Fid. Ins. Co. v. Ruth, 57 Wn. App. 783, 790-91 (1990)..... 10, 11
Amunrud v. Bd. of Appeals, 158 Wn.2d 208, 215 (2006)..... 4
Brickum Inv. Co. v. Vernham Corp., 46 Wn. App. 517, 520-21 (1987)..... 10
Bucci v. Nw. Tr. Servs., Inc., 197 Wn. App. 318, 323-24 (2016)..... 2
Hatch v. Princess Louise Corp., 13 Wn. App. 378, 379 (1975)..... 6
Hein v. Taco Bell, 60 Wn. App. 325, 328 (1991) 4
In re Marriage of Powell, 84 Wn. App. 432 (1996)..... 10
In re Proceedings of King Cty. for Foreclosure of Liens, 117 Wn.2d 77, 90 (1991)
..... 6, 7
Jones v. Flowers, 547 U.S. 220 (2006)..... 9, 10
Leen v. Demopolis, 62 Wn. App. 473, 478 (1991) 11
Mennonite Bd. of Missions v. Adams, 462 U.S. 791 (1983) 5, 7, 9
Mid-City Materials v. Heater Beaters Custom Fireplaces, 36 Wn. App. 480, 486
(1984)..... 10
Mueller v. Miller, 82 Wn. App. 236, 251 (1996)..... 10
Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306 (1950) 6
Wright v. JP Morgan Chase Bank NA, No. 4:16-CV-5155-EFS, 2017 U.S. Dist.
LEXIS 61893, at *10-12 (E.D. Wash. 2017)..... 2

STATUTES

RCW 84.64.050 1, 5, 9

I. INTRODUCTION

In a real property tax foreclosure action by Okanogan County, the County identified a lienholder, but did not give the lienholder notice. The County took judgment by default against the lienholder. After the property sold at tax sale, the lienholder’s successor, Appellant, moved to vacate for lack of jurisdiction. The motion was denied. Appellant appeals.

The County’s failure to give notice to the lienholder violated both the applicable Washington notice statute and due process. The Court did not have jurisdiction over the lienholder. The judgment against the lienholder is void. The motion to vacate should have been granted. The Court should be reversed.

II. ASSIGNMENTS OF ERROR

1. Whether the Court committed legal error in holding that the County gave notice pursuant to RCW 84.64.050(4) and obtained jurisdiction over the lienholder.
2. Whether the Court committed legal error in holding that the County satisfied its due process obligations to the lienholder.
3. Whether the Court committed legal error in holding that “standing” is a prerequisite that must be satisfied before a void order is vacated, and holding that Appellant did not have said “standing”.

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III. STATEMENT OF THE CASE

A. Background

This action concerns real property in the County commonly known as 410 S 4th St Brewster, WA 98812 (the “Property”).

In 1997, the owners of the Property, Rosa and Roberto Covarrubias, obtained a loan from Washington Mutual Bank (“WaMu”) secured by a Deed of Trust against the Property¹. The Deed of Trust was recorded with the County². The Deed of Trust identifies WaMu’s address as 1201 Third Avenue, Seattle, WA 98101³, which is an office tower in downtown Seattle⁴

In 2008, in what was a highly publicized event, particularly in this State, WaMu failed (by far the biggest bank failure in U.S. history) and its assets were acquired by JPMorgan Chase Bank, N.A. (“Chase”)⁵.

In 2017, the County filed the underlying tax foreclosure action against the Property. The County obtained a title report which identified the Deed of Trust as

1 CP 5-9

2 CP 5-9

3 CP 5

4 The tower was called the “Washington Mutual Tower,” but apparently now is called “1201 Third”. See <http://www.1201third.com/>

5 *Bucci v. Nw. Tr. Servs., Inc.*, 197 Wn. App. 318, 323-24 (2016); *Wright v. JP Morgan Chase Bank NA*, No. 4:16-CV-5155-EFS, 2017 U.S. Dist. LEXIS 61893, at *10-12 (E.D. Wash. 2017).

a lien against the Property. By mistake, the report listed WaMu's address as 201 3rd Ave Seattle, WA, which is a non-existent address.⁶

The County mailed its foreclosure notice to the non-existent address in the title report⁷. The mailing was returned to the County as undeliverable because there was "no such number"⁸. The County took no corrective action. The County attempted no other mailings to WaMu or Chase addresses. Nor did the County attempt personal service on either WaMu or Chase. The County essentially decided that neither WaMu nor Chase would not get notice of the foreclosure.

The tax delinquency was not timely paid. In late 2017, the County obtained a default judgment and auctioned the Property for sale. The winning bidders were Christina and Edilberto Valdovinos. The County gave the Valdovinos's a Treasurer's Deed to the Property⁹.

B. Motion to Vacate.

Wilmington is the current holder of the Note secured by the Deed of Trust¹⁰. In July of 2018, Wilmington moved to vacate, for lack of jurisdiction, the default judgment as to the Deed of Trust¹¹. The motion to vacate was opposed by the

6 CP 25-28.

7 CP 31

8 *Id.*

9 CP 10

10 CP 60-63

11 CP 1-4. The motion did not seek to unwind the County's sale of the Covarrubias's ownership interest.

County and the Valdovinos¹². The Court Commissioner denied the motion to vacate¹³.

Wilmington moved the Superior Court for revision of the Commissioner's order¹⁴. The motion for revision was opposed by the County¹⁵. The Superior Court denied the motion for revision¹⁶.

Wilmington appeals both orders for error of law¹⁷. The County clearly failed to comply with the applicable notice statute conferring jurisdiction. The County additionally failed to comply with due process. The Court had no jurisdiction over the Deed of Trust. The motion to vacate should have been granted.

IV. ARGUMENT

C. Standard of Review.

Whether the trial court may properly exercise personal jurisdiction is a question of law reviewable de novo when the underlying facts are undisputed. *Hein v. Taco Bell*, 60 Wn. App. 325, 328 (1991). Constitutional challenges are also questions of law subject to de novo review. *Amunrud v. Bd. of Appeals*, 158 Wn.2d 208, 215 (2006).

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12 CP 15-32, 35-50

13 CP 67-74

14 CP 75-79

15 CP 147-156

16 CP 161-63

17 CP 166

D. County Failed to Comply with the Notice Statute.

In a real property tax foreclosure action, notice is governed by RCW 84.64.050(4), which provides, in relevant part:

...Notice and summons must be served or notice given in a manner reasonably calculated to inform the owner or owners, *and any person having a recorded interest in or lien of record upon the property*, of the foreclosure action to appear within thirty days after service of such notice and defend such action or pay the amount due. Either (a) personal service upon the owner or owners *and any person having a recorded interest in or lien of record upon the property*, or (b) publication once in a newspaper of general circulation, which is circulated in the area of the property and mailing of notice by certified mail to the owner or owners *and any person having a recorded interest in or lien of record upon the property*, or, if a mailing address is unavailable, personal service upon the occupant of the property, if any, is sufficient. If such notice is returned as unclaimed, the treasurer must send notice by regular first-class mail...

RCW 84.64.050(4) (emphasis added)

In short, as to lienholders, the above statute requires that the county either personally serve the lienholder with the notice, or mail the notice to the lienholder *plus* publish the notice locally. *Id.* The notice to lienholder requirements were added to the statute following the Supreme Court's decision in *Mennonite Bd. of Missions v. Adams*, 462 U.S. 791 (1983), where it was held notice was required by due process. *In re Proceedings of King Cty. for Foreclosure of Liens*, 117 Wn.2d 77, 90 (1991).

Here, the County failed to comply with the statute. While the County did *attempt* one mailing, the mailing failed because it was wrongly addressed. The

County blames this mistake on the title company, but the County cites to no authority for proposition that the title company's mistake excused compliance with the statute. In any event, the County *knew* the mailing failed because it was wrongly addressed, yet the County took no corrective action.

Strict compliance is required of a statute conferring jurisdiction. *Hatch v. Princess Louise Corp.*, 13 Wn. App. 378, 379 (1975). Without compliance with the statute, there can be no jurisdiction. The County plainly did not comply with the statute, which requires a mailing to the lienholder. The inquiry ends there. As a matter of statute alone, there was no jurisdiction over the Deed of Trust.

E. County Failed to Comply with Due Process.

Citing *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950), the U.S. Supreme Court in *Mennonite* held that due process requires notice to lienholders of tax lien foreclosures:

Since a mortgagee clearly has a legally protected property interest, he is entitled to notice reasonably calculated to apprise him of a pending tax sale. *Cf. Wiswall v. Sampson*, 14 How. 52, 67 (1853). When the mortgagee is identified in a mortgage that is publicly recorded, constructive notice by publication must be supplemented by notice mailed to the mortgagee's last known available address, or by personal service. But unless the mortgagee is not reasonably identifiable, constructive notice alone does not satisfy the mandate of [*Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950)].

Mennonite, 462 U.S. 791, 798.

Notice by mail or other means as certain to ensure actual notice is a minimum constitutional precondition to a proceeding which will

adversely affect the liberty or property interests of any party, whether unlettered or well versed in commercial practice, *if its name and address are reasonably ascertainable.*

Id. at 800. (emphasis added).

Washington's notice statute, RCW 84.64.050(4), incorporates the requirements of *Menmonite. In re Proceedings of King Cty. for Foreclosure of Liens*, 117 Wn.2d 77, 90 (1991).

Here, the County failed to give the lienholder "reasonably calculated" notice under the circumstances. The County *knew* the mailing to the lienholder failed because the mailing was wrongly addressed, and *minimal* inquiry by the County would have disclosed a mailing or service address. For example:

- The County could have inquired with the title company about the erroneous address from the title report, which would have resulted in the title company correcting its error.
- The County, itself, could have reviewed the recorded Deed of Trust, which contained an address.
- The County could have Googled "Washington Mutual Bank," which search would have immediately returned hundreds of thousands of results discussing the asset sale to Chase in 2008. And there are dozens of Chase

addresses in this State capable of receiving service or mail, including a Chase branch in the County, in the City of Omak¹⁸.

Notably, the County's attorney conceded that the County typically researches addresses when mailings fail, but did not here¹⁹. No explanation was given as to why. The County essentially decided, as to this Property, that the lienholder would not get notice.

In sum, under the circumstances, the County clearly failed to give "reasonably calculated" notice to the lienholder, which was required by due process, as well as the statute which incorporates *Mennonite*. The Court's finding that "reasonably calculated" notice was given to the lienholder is untenable and cannot be sustained under Supreme Court precedent.

F. County's Arguments In Support of Notice Are Unavailing.

The County's arguments in support of notice, and jurisdiction over the Deed of Trust, are unavailing.

First, the County argued that posting of the foreclosure notice on the Property was sufficient notice to the lienholder. This exact argument was rejected

18 CP 2

19 THE COURT: So when, what action did the County take when they got the letter back that said no such address?

MR. GECAS: Well, they did post it at that point, and they don't have like a written process, but they do typically do some internet work just, if it's a human being, for example, to see if they can find an additional address, but, you know --

in *Mennonite*. *Id.* at 799. Furthermore, the statute, RCW 84.64.050(4), which incorporates *Mennonite*, does not permit service on the lienholder by posting.

Second, the County argued that the Supreme Court's decision in *Jones v. Flowers*, 547 U.S. 220 (2006) supported jurisdiction, which argument was adopted by the Commissioner²⁰. In *Jones*, it was held that a tax foreclosure notice mailed to a homeowner and returned as undeliverable did *not* satisfy due process²¹. In no way does *Jones* help the County.

G. Judgment is Void as to the Deed of Trust; Must Be Vacated.

Judgments entered without jurisdiction are null and void. *Mueller v. Miller*, 82 Wn. App. 236, 251 (1996); *Allied Fid. Ins. Co. v. Ruth*, 57 Wn. App. 783, 790-91 (1990); *Brickum Inv. Co. v. Vernham Corp.*, 46 Wn. App. 517, 520-21 (1987); *Mid-City Materials v. Heater Beaters Custom Fireplaces*, 36 Wn. App. 480, 486 (1984); *In re Marriage of Powell*, 84 Wn. App. 432 (1996). Void judgments "must be vacated whenever the lack of jurisdiction comes to light." *Allied Fid. Ins. Co. v. Ruth*, 57 Wn. App. 783, 790 (1990). The duty to vacate a void judgment is non-discretionary. *Leen v. Demopolis*, 62 Wn. App. 473, 478 (1991).

20 CP 72

21 In *Jones*, the summons was mailed to a correct address for the taxpayer, which address he had vacated which is why it was returned undeliverable. Contrast that with this case, where the notice was mailed to an address *known* by the County to be non-existent and erroneous.

The County, perhaps realizing the weakness of its jurisdictional defense, argued that Wilmington lacked “standing” to vacate. The County cited no authority for a “standing” prerequisite to vacating a void judgment. The County would have the Court keep on its books judgments known to be void, which is absurd and is not the law of this State. Void judgments must be vacated whenever the lack of jurisdiction comes to light.

Furthermore, it was established through sworn declaration from its authorized servicing agent that Wilmington acquired and holds the Note secured by the Deed of Trust²², making Wilmington the successor Deed of Trust “beneficiary”. It would make no sense for Wilmington to have brought the motion to vacate if it had no interest in the Deed of Trust.

Notably, no evidence or even suggestion was presented by the County that a party *other* than Wilmington has rights to the Deed of Trust. The County’s argument that Wilmington is not an interested party under the Deed of Trust is baseless. The argument is a red-herring intended to distract from the underlying jurisdictional issues.

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22 CP 60-63

V. CONCLUSION

The Court had no jurisdiction over the Deed of Trust. It was legal error for the Court *not* to vacate the default judgment as to the Deed of Trust. The Court should be reversed.

DATED May 3, 2019



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