

FILED
Court of Appeals
Division III
State of Washington
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Case No. 366111

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

OKANOGAN COUNTY

Appellant,

v.

VARIOUS PARCELS OF REAL PROPERTY, ET AL.

Respondent.

RESPONDENT'S BRIEF

[AMENDED]

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I. INTRODUCTION

Respondents Christina and Edilberto Valdovinos (“Valdovinos”) are the buyers of Okanogan County Tax Parcel No. 0030170601 (the “Property”). They purchased the Property from Okanogan County in a tax sale. The Valdovinoses join the County in seeking to uphold the tax sale.

II. ASSIGNMENTS OF ERROR

Respondent Christina Valdovinos assigns no error to the Court and is in agreement with its holdings.

III. STATEMENT OF THE CASE

The Valdovinoses join the County’s statement of facts with the following additions. Okanogan County sold the Property at a tax foreclosure sale on Dec. 8, 2017 for \$21,000 to Christina and Edilberto Valdovinos. Since purchasing the Property, they have put over \$20,000 into updates for the home and shed on the property. *Declaration of Christina Valdovinos, Pg. 1, para. 3.* The home, which is a single wide trailer, received new sub-flooring and carpet. This was the largest project and cost over \$10,000. The Valdovinoses also had new plumbing installed, new sinks, repaired the holes in the walls and painted the entire interior. The shed on the property was completely run down when we purchased the Property. The Valdovinoses replaced all of the siding, the roof, windows and doors. They hired contractors to do most of the work, but Mr. Valdovinos has also spent countless hours working to make the property livable for the family.

IV. ARGUMENT

First, Wilmington has no standing because it has failed to present evidence of its successorship. Wilmington has failed to meet the most basic evidentiary burden—demonstrating that it is, in fact, the “successor to Chase/WaMu.” Wilmington merely made the bald-faced assertion that it is the successor of Chase/WaMu. Wilmington has not submitted any documentation to support its claim, and therefore the Court should deny its claim without further inquiry.

Second, Wilmington’s strategic choice not to record its interest to warn other buyers is fatal to its claims. There is no doubt Wilmington’s own actions caused the problems for which it seeks relief—Wilmington strategically choose not to file with Okanogan County Recorder a copy of its purported assignment of interest. This is an unfair business practices act in violation of RCW 19.86. Wilmington’s actions constitute unfair deceptive acts or practices in the conduct of trade and commerce impacting on the public interest. Their failure to do so proximately caused the Valdovinos’ injury.

Third, RCW 84.64 is strictly construed and Wilmington never was entitled to notice. Only those parties with a recorded interest—meaning those persons and entities who have filed their interest with the Okanogan County Recorder’s Office—are entitled to notice under RCW 84.64.050.

That statute provides in 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.

Wilmington clearly is not an “owner.” Therefore, pursuant to RCW 84.64.050(4)(a)—is not a “person having a recorded interest in or lien of record upon the property.” The Washington Supreme Court considered who is an owner under RCW 84.64 in the matter of In re Foreclosure of Liens, 130 Wash. 2d 142, 147(1996). The Court held,

“... regardless of what name appears as owner on the tax rolls, the proviso in the statute requires that the county treasurer order or conduct a title search to determine the record title holders, and provides that a record title holder is an “owner” for purposes of the statute.”

In other words, because Wilmington is not on the tax rolls or on a title report, it is not an owner. But neither is Wilmington a person “having a recorded interest” or a “lien of record.” Wilmington strategically chose not to record its “alleged” interest in the Property; therefore, it was not entitled to notice under RCW 84.64.050. In fact, there has been no showing that Wilmington did not receive notice of the sale by publication, there has only been the allegation that WaMu (a non-existent company) did not receive notice.

V. CONCLUSION

Considering the foregoing, the Court should uphold the trial court’s rulings made by the Okanogan County Superior Court.

DATED this 28th day of August, 2019.

THOMASON JUSTICE, PS



ALEX THOMASON, WSBA #35975
Attorney for Christina Valdovinos



CERTIFICATE OF SERVICE

THIS IS TO CERTIFY that on this 28th day of August, 2019, I, Allie Burgett, did serve via email (or other method indicated below), a true and correct copy of the foregoing by addressing and directing for delivery to the following:

<p>David Gecas Okanogan County Deputy Prosecuting Attorney PO Box 1130 Okanogan, WA 98840 dgecas@co.okanogan.wa.us cc: prosecutor@co.okanogan.wa.us</p>	<p><input checked="" type="checkbox"/> Via first class mail <input checked="" type="checkbox"/> Via email</p>
<p>Joseph Warn McIntosh McCarthy & Holthus, LLP Attorney for Wilmington Trust, National Association 108 1st Ave. South, Suite 300 Seattle, WA 98104 jmcintosh@mccarthyholthus.com</p>	<p><input checked="" type="checkbox"/> Via first class mail <input checked="" type="checkbox"/> Via email</p>
<p>Renee S. Townsley Washington Court of Appeals Div. III Clerk 500 N. Cedar Street Spokane, WA 99201</p>	<p><input checked="" type="checkbox"/> Via electronic filing</p>

DATED this 28th day of August, 2019.



ALLIE BURGETT, Legal Assistant

THOMASON JUSTICE, PS

August 28, 2019 - 10:35 AM

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