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STATE OF WASHINGTON
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NO. 78668-2

SUPREME COURT
OF THE STATE OF WASHINGTON

Court of Appeals No. 32963-8 II

T.D. ESCROW SERVICE, INC. dba T.D. SERVICE COMPANY

Respondent,

vs.

WILLIAM UDALL, *et al*

Petitioners.

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Answer ~~REPLY~~ OF RESPONDENT T.D. SERVICES, INC.
TO PETITION FOR DISCRETIONARY REVIEW

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ORIGINAL

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I. INTRODUCTION

For this court to accept discretionary review, the petition must be timely filed and have a basis well grounded in the reasons set forth in RAP 13.4(b).

This court should deny the Petition for Discretionary Review for the following reasons:

1. The petition is untimely (See, T.D.'s Answer to Motion for Extension filed herewith);
2. There are no conflicts between the Division II published opinion in this case and other precedents (either Appellate Courts or the Supreme Court) in this state;
3. There are no constitutional issues involved;
4. There is no demonstration in the petition that there are issues of "substantial public interest" which would warrant review of the opinion.

II. ARGUMENT AGAINST FURTHER REVIEW

Division II determined that the Washington Deed of Trust Act, RCW 61.24 allowed the trustee to abort a sale when (1) it was discovered, after the auction, that the bid was \$100,000 below the amount of the debt and (2) the error was discovered before the trustee's deed was delivered to the bidder for recording.

Because RCW 61.24.050 specifically defines finality of the sale as requiring “delivery to the purchaser” of the trustee’s deed *and* subsequent recording, the court decided the case on ordinary rules of statutory construction rather than find an ambiguity in the statute, as urged by Mr. Udall.

To say that there is substantial public interest in this issue is more than a stretch. This case is the *only* time the issue has been addressed in this state in a published opinion. There are very few situations that occur where the trustee can not or should not complete a sale; one being an intervening bankruptcy and another would be where there is a substantial error that would leave one of the parties substantially damaged. Here, if the sale went through, the lender is out \$100,000, the homeowner (who was not even joined in the action) out a potential surplus (or at least satisfaction of his debt) and the auctioneer is faced with a substantial claim for negligence. Recission of the bid, the remedy approved by Division II, is the most sensible solution to this problem.

III. CONCLUSION

Division II properly held that, under the facts of the case, and under unambiguous statutory language, that the trustee could decline to accept the deficient bid and cancel the sale. There is no articulated reason why this court should accept this case.

Respectfully submitted this 3rd day of June, 2006.



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