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SUPREME COURT
OF THE STATE OF WASHINGTON

CHRISTA L. ALBICE, a married woman, and BART A. TECCA and
KAREN L. TECCA, husband and wife,

Respondents,

v.

PREMIER MORTGAGE SERVICES OF WASHINGTON, INC., a
Washington Corporation; OPTION ONE MORTGAGE CORPORATION,
a California Corporation,

Defendants,

RON DICKINSON and "JANE DOE" DICKINSON, husband and wife,

Petitioners.

RON DICKINSON,

Petitioner,

v.

CHRISTA L. ALBICE fka CHRISTA L. DEYOUNG and BART A.
TECCA and KAREN L. TECCA, husband and wife; Any Subtenants, and
All Others Acting By or Through Them,

Respondents

SUPPLEMENTAL BRIEF OF PETITIONERS

FILED
JUN -3 2011
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STATE OF WASHINGTON
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A. INTRODUCTION

This case concerns two consolidated cases. In the first, Christa Albice and Bart and Karen Tecca (collectively "Albice/Teccas") sued to set aside a nonjudicial deed of trust foreclosure sale of their property. Ron and Cheryl Dickinson (collectively "Dickinsons") successfully bid for the property at the trustee's sale. In the second, the Dickinsons sued to evict the Albice/Teccas following their holdover after the sale.

The Dickinsons moved for summary judgment to establish that they were bona fide purchasers for value ("BFP") and entitled to quiet title in the premises. The Albice/Teccas also moved for summary judgment, arguing the sale should be set aside. The trial court granted the Dickinsons' motion, ruling they were BFPs. The court held that although the sale was continued for more than 120 days in violation of RCW 61.24.040(6), the Dickinsons' BFP status rendered the deed's compliance recitals conclusive evidence that the sale was proper.

The only issue at trial was whether the trustee, Premier Mortgage Services of Washington ("Premier"), was qualified to serve at the time of the sale pursuant to RCW 61.24.010(1)(a). Following a bench trial and numerous motions by both parties, the trial court concluded that Premier was authorized to act as trustee and refused to set aside the sale. The court awarded the Dickinsons damages and costs.

The Albice/Teccas appealed. The Court of Appeals, Division II, reversed in a published opinion. *Albice v. Premier Mortgage Servs. of Washington, Inc.*, 157 Wn. App. 912, 239 P.3d 1148 (2010). That decision should be reversed because it substantially undermines the stated objectives of the Deeds of Trust Act ("Act").

B. ISSUES PRESENTED FOR REVIEW

(1) Are defaulting borrowers precluded from a post-sale challenge to the nonjudicial foreclosure sale of their property where they waived any grounds for invalidating the sale by failing to bring a presale lawsuit to restrain the sale under RCW 61.24.310?

(2) Are the recitals in a trustee's deed delivered to the purchaser of a nonjudicially foreclosed property sufficient where they repeated the statutory language required by RCW 61.24.040(7) and also provided facts demonstrating the trustee's compliance with the notice provisions of the Act?

(3) Are the purchasers at a trustee's sale bona fide purchasers for value entitled to clear title despite any procedural defects in the sale where they did not know, nor should they have been expected to know, of any defects in the sale and the purchase price of the property was not so inadequate as to put them on notice of the need for further inquiry?

(4) Is a trustee qualified to conduct a foreclosure sale under the Act where it is a Washington corporation and at least one officer is a Washington resident at the time of the sale and through execution?

C. STATEMENT OF THE CASE

The Dickinsons largely agree with the factual section of the Court of Appeals decision. Pet. for Rev. at 3. They do not repeat those facts, or

the additional facts highlighted in the petition, here. Instead, they incorporate them by reference.

D. ARGUMENT

(1) Standard of Review

The issues upon which the Court of Appeals based its decision were largely resolved by the trial court on summary judgment.¹ This Court reviews summary judgment orders *de novo*, engaging in the same inquiry as the trial court. *Ellis v. City of Seattle*, 142 Wn.2d 450, 458, 13 P.3d 1065 (2000).

The Court also reviews a trial court's statutory interpretation *de novo*. *Nevers v. Fireside, Inc.*, 133 Wn.2d 804, 809, 947 P.2d 721 (1997). The Court's goal in interpreting a statute is to carry out legislative intent. *Cockle v. Dep't of Labor & Indus.*, 142 Wn.2d 801, 807, 16 P.3d 583 (2001). When the statute's words are plain and unambiguous, the Court applies the statute as written. *Enter. Leasing Inc. v. City of Tacoma*, 139 Wn.2d 546, 552, 988 P.2d 961 (1999) (citations omitted).

(2) The Court of Appeals Decision Undermines the Deeds of Trust Act

The Act establishes the procedures for nonjudicial foreclosures as a time-efficient alternative to judicial mortgage foreclosure proceedings.

¹ The only issue at trial was whether Premier was qualified to serve as trustee. CP 64. The Court of Appeals declined to consider it. *Albice*, 157 Wn. App. at 921 n.5.

Glidden v. Municipal Auth. of Tacoma, 111 Wn.2d 341, 346, 758 P.2d 487 (1988). A proper foreclosure action extinguishes the debt and transfers title to the property to the beneficiary of the deed or to the successful bidder at a public foreclosure sale. *In re Marriage of Kaseburg*, 126 Wn. App. 546, 558, 108 P.2d 1278 (2005). This Court has articulated the three basic objectives of the Act:

First, the nonjudicial foreclosure process should remain efficient and inexpensive. Second, the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure. Third, the process should promote the stability of land titles.

Cox v. Helenius, 103 Wn.2d 383, 387, 693 P.2d 683 (1985) (citation omitted).

The Court of Appeals decision to void the sale undermines all three objectives of the Act, especially considering the Albice/Teccas' failure to pursue their presale remedies.

The Act contains safeguards to ensure that the nonjudicial foreclosure process is fair and free from surprise. *Cox*, 103 Wn.2d at 387. RCW 61.24.040 sets forth the procedural requirements for a nonjudicial foreclosure, including the contents for a notice of trustee's sale:

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

RCW 61.24.040(1)(f)(IX).

RCW 61.24.130 establishes the only means by which a borrower may preclude a sale once foreclosure has begun with receipt of the notice of sale and foreclosure.² That rule allows a court to issue a restraining order or an injunction to halt the sale on any proper ground. The Act “manifests a legislative preference for the presale injunction remedy.” Joseph L. Hoffman, *Court Actions Contesting the Nonjudicial Foreclosure of Deeds of Trust In Washington*, 59 Wash. L. Rev. 323, 327 (1984) (“Hoffman”). Thus, post-sale challenges are disfavored. *Glidden*, 111 Wn.2d at 348.

(a) The Albice/Teccas waived their right to challenge the sale

The Albice/Teccas waived their right to challenge the sale by failing to seek their presale remedies. Waiver results when a party (1) receives notice of the right to enjoin the sale, (2) has actual or constructive knowledge of a defense to foreclosure before the sale, and (3) fails to bring an action to enjoin the sale. *Plein v. Lackey*, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003). The statutory notices are sufficient to inform a party of the right to enjoin the sale. Hoffman at 335.

² Of course, an interested party can also halt the foreclosure proceedings by curing the default before the sale. RCW 61.24.090.

Furthermore, most substantive defenses arise early enough to permit the filing of a presale injunction action. *Id.* Thus, a party's failure to bring a presale action constitutes a waiver of the right to contest the completed sale. *Peoples Nat'l Bank of Wash. v. Ostrander*, 6 Wn. App. 28, 32, 491 P.2d 1058 (1971). Applied in this context, the waiver doctrine is consistent with the Act's objectives. *Plein*, 149 Wn.2d at 227-28.

The Albice/Teccas do not dispute that they received the notices of sale and foreclosure in June 2006. The notice of sale conformed to RCW 61.24.040(1)(f)(IX) and informed them of their right to enjoin the sale. CP 531. The notice of foreclosure contained similar language. CP 295. Nor do they dispute that they were notified when the sale would take place or that they were aware of the terms of the later forbearance agreement.³ CP 454; RP 14. They received at least a dozen communications from the loan servicer following their final default of the forbearance agreement. At any time between June 2006 and the actual sale in February 2007 they could have restrained the sale and litigated the issue of their alleged breach of the forbearance agreement and their underlying obligation on the property. But they did not. Instead, they waited until *after* the sale to assert their claimed defenses. The

³ The forbearance agreement provided, among other things, that the loan servicer could commence or resume foreclosure proceedings without further notice if they breached the agreement. CP 462.

Albice/Teccas waived their right to contest the sale because they were aware of their rights, but chose not to act. *See Plein*, 149 Wn.2d at 229. The Court of Appeals has subverted the spirit and intent of the Act by condoning the Albice/Teccas' delay.

(b) The notice requirements in the deed met the Act's requirements

The Act creates requirements for a foreclosure sale, specifying the language the trustee must include in a deed and the effect of that language:

[T]he facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be *prima facie* evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value[.]

RCW 61.24.040(7). This section is both procedural and substantive. It makes the trustee's deed conclusive evidence of compliance if the purchaser is a BFP. Assuming the required notice is given to all necessary parties, any irregularities are eradicated by recitals of compliance in the deed, at least as to BFPs. 27 Marjorie Dick Rombauer, WASH. PRAC. SERIES, *Creditors' Remedies – Debtors' Relief*, § 3.68 at 210 (1998).

The Court of Appeals criticizes the failure of the deed to mention the six sale continuances, the forbearance agreement, or the attempted make-up payments. *Albice*, 157 Wn. App. at 923. Relying on nonbinding authority, that court considered the recitals conclusory, claiming it was

impossible to determine whether the sale took place within the statutorily required time or whether the Albice/Teccas were actually in default at the time of the sale. *Id.* No case law requires these recitals.

The deed complied with the requisites of RCW 61.24.030 because it stated facts showing that the property was not used principally for agricultural purposes, a default had occurred making operative the power to sell, no action commenced by the lender was pending to seek satisfaction of the debt secured by the deed of trust, the deed of trust had been recorded in Mason County, the trustee had a street address in Washington, and the notice of sale had been transmitted or served in compliance with the statute. CP 446, 449-50. These recitals are virtually identical to those supplied by the statute and reiterated in the form deed recommended by the Washington State Bar Association in its *Washington Real Property Deskbook* ("Deskbook"), § 47.2 (3d ed. 1996).

The deed also complied with RCW 61.24.040(7) because it recited generally that "[a]ll legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in Chapter 61.24 RCW." *Id.* The deed specifically recited that the trustee recorded the mandatory notice of sale described in RCW 61.24.040(1) in Mason County, notified the Albice/Teccas of the sale pursuant to the statute, and caused a copy of the notice of sale to be

posted in a conspicuous place on the property, or in lieu of posting, caused a copy of the notice to be served upon an occupant of the property. It also recited that the notice of sale was published, that the trustee was authorized to sell the property to the highest bidder, and that the sale would take place not less than 190 days from the date of the default. CP 449-50. Like the previous recitals, these recitals are virtually identical to those supplied by RCW 61.24.040 and the Deskbook.

Contrary to the Court of Appeals determination, 157 Wn. App. at 925, the deed contains sufficient recitals as required by RCW 61.24.040(7) and are more than a "bald statement" that the trustee complied with the law. Thus, the Dickinsons are statutorily protected from any defects in the sale as BFPs.

The Court of Appeals wrongly suggests the Albice/Teccas had cured the default at the time of the sale. *Albice*, 157 Wn. App. at 924. They were in default when the forbearance agreement was signed; executing the agreement did not cure their default. *See In re Bell*, 386 B.R. 282, 287 (W.D. Wash. 2008). The forbearance agreement merely provided a means by which their default could be cured. For example, the agreement stated that "[b]orrowers have defaulted in making their payments and desire to remedy that default by bringing the Loan current[.]" CP 459. It also stated that "[b]orrowers are in default in

making their monthly payments under the Loan Documents[.]” CP 460. But the default had not been cured by the time of the sale because the Albice/Teccas materially breached the forbearance agreement. As a prerequisite to the validity of that agreement, the Albice/Teccas agreed to make a down payment and six monthly installment payments on the 16th of each consecutive month. CP 460, 466. The agreement provided that “[a]s to each and every payment made under this Agreement, *time shall be strictly of the essence and there shall be no grace period.*” *Id.* Their failure to strictly comply with the agreement constituted a material breach of that agreement. CP 462. While they made the initial down payment timely, each of their subsequent payments was late. CP 1018-31. Their last payment was 17 days late. CP 454, 1031. Thus, they were in default of the payments due under the forbearance agreement at the time of the sale and their default had not been cured. *See Bell*, 386 B.R. at 288 (execution of forbearance agreement did not cure borrower’s preexisting default or prevent trustee from proceeding with the sale when borrower was five days late in attempting to make the required payment).

In sum, the Albice/Teccas had proper notice of the sale under the Act. They waived any objections to the sale in any event by failing to sue to restrain it.

(3) The Dickinsons are BFPs

The Court of Appeals reasoned the Dickinsons were not BFPs because they were on notice of defects in the sale and either ignored them or failed to inquire further. *Albice*, 157 Wn. App. at 929-30. Regardless of any perceived procedural defects in the process, the Dickinsons are BFPs entitled to protection under RCW 61.24.040(7) and to clear title. The sale should not have been set aside.

A BFP is one who purchases property for value without knowledge, actual or constructive, of competing interests. *Glaser v. Holdorf*, 56 Wn.2d 204, 209, 352 P.2d 212 (1960). Under the Act, a BFP receives the benefit of conclusive recitals contained within a proper deed. RCW 61.24.040(7). Here, the deed of trust contained the required language. Therefore, if the Dickinsons are BFPs, then “RCW 61.24.040(7) renders these recitals conclusive as to the correctness of the foreclosure sale procedures.” *Glidden*, 111 Wn.2d at 347. They would be entitled to clear title.

The burden of establishing that a purchaser had prior notice of another’s claim, right, or equity, rests upon the one who asserts such prior notice. *Biles-Coleman Lbr. Co. v. Lesamiz*, 49 Wn.2d 436, 439, 302 P.2d 198 (1956). Constructive notice, where the purchaser “has knowledge or information of facts which are sufficient to put an ordinarily prudent man

upon inquiry, and the inquiry, if followed with reasonable diligence, would lead to the discovery of defects in the title or of equitable rights of others affecting the property in question," is sufficient to defeat a claim of BFP status. *Peterson v. Weist*, 48 Wash. 339, 341, 93 P. 519 (1908).

Here, the trial court determined on summary judgment that the Dickinsons were BFPs. The undisputed facts show they did not know, nor should they have been expected to know, about any defects in the sale. Ron's brief presale conversation with Karen did not produce information creating actual or constructive notice of any defects.

While Ron has purchased properties at foreclosure sales, he testified he was not familiar with the 120-day limitation on continuances. Ex. 40 at 30. He has only a high school education. CP 413-15. He is not an experienced businessman, but a manual laborer. Ex. 40 at 34. He does not hold a real estate license or a broker's license. *Id.* at 7. It was a huge leap of logic for the Court of Appeals to conclude that because Ron participated in, and acquired property at, prior trustee's sales he knew, or must have known, that statutorily the sale could not be continued more than 120 days. It is one thing to attend a trustee's sale and observe the process and quite another to study and commit to memory the statutory provisions governing that sale.

Moreover, that the sale took place 41 days after the 120-day limitation on continuances, standing alone, is not notice of a potential defect in the process. There are circumstances other than a trustee's violation of the rule that can result in the continuance of a sale beyond the 120-day limit that do not make the process defective. For example, RCW 61.24.130(4) provides that if a foreclosure sale is stayed as the result of the filing of a bankruptcy petition, the sale can be rescheduled as long as the trustee gives notice of the new date not less than 45 days from the date of the order dissolving the stay. Obviously, this new sale date could be well beyond the 120-day limit. That the sale here took place 41 days after the 120-day deadline is not notice of a defect, even to the most sophisticated purchaser.

Prior to the sale, Ron reviewed the notice of sale and contacted Premier to ascertain the status of the sale. CP 419, 425. He did not speak to anyone at the loan servicer's office and had no further communication with either company. CP 964. Shortly before the sale, he viewed the property and noticed its dilapidated condition. CP 420. Although he had a brief presale conversation with Karen, her response was not unexpected. CP 969. Karen merely declined Ron's offer to purchase the property and expressed her intent to cure the default. Under the circumstances, her response was typical of many homebuyers facing foreclosure and not

indicative of a defect in the foreclosure process. She did not disclose the existence of the forbearance agreement or any details surrounding the foreclosure sale. CP 969.

The Court of Appeals decision will undermine the Act and contribute to instability in land titles. BFPs and title insurers participating in trustee's sales will bear a heavy burden if they are required to conduct due diligence with respect to the validity of their interests. If the Court of Appeals decision stands, they will be required to inquire into the factual bases for the deed's recitals and into the sophistication of the third-party purchaser to determine if that purchaser has a sufficient background to be charged with a duty of further inquiry if technical defects occur in the foreclosure process.

Moreover, BFPs will be forced to hire legal counsel to review the procedural background of each sale if they have participated in previous trustee's sales because they will now be charged with a substantial degree of knowledge about the process, undermining the Act's purpose to keep the process simple and inexpensive. That burden is made nearly impossible by the considerations given to the borrower's privacy and the concomitant reluctance of lenders and trustees to disclose information. These burdens not only undermine the sanctity and stability of land titles, but also undermine the efficiency of the foreclosure process.

The Court of Appeals determined the sale price⁴ was markedly low in comparison to the Albice/Teccas' substantial equity in the property and, as a result, the Dickinsons should have been alerted to the discrepancy and made further inquiries into the legitimacy of the sale. *Albice*, 157 Wn. App. at 931. The purchase price of the property does not diminish the Dickinsons' status as BFPs because it was more than adequate based on the property's dilapidated condition.

A trustee is not required to obtain the best possible price for the trust property. *Cox*, 103 Wn.2d at 389. A sale price less than the fair market value at a foreclosure proceeding is not an irregularity. *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 538-39, 114 S. Ct. 1757, 128 L.Ed.2d 556 (1994); *Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903, 914-15, 154 P.3d 882 (2007).⁵ Property that must be sold at a foreclosure auction "is simply worth less. No one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques." *Resolution Trust*, 511 U.S. at 539.

⁴ Through an agent, the Dickinsons purchased the property at the trustee's sale for \$130,000. CP 1053.

⁵ But an inadequate purchase price can be a factor that puts a purchaser on notice of another party's claim of right to the property. *Casa del Rey v. Hart*, 110 Wn.2d 65, 72, 750 P.2d 261 (1988); *Miebach v. Colasurdo*, 102 Wn.2d 170, 176-776, 685 P.2d 1074 (1984).

Washington courts have not set a benchmark for when a foreclosure sale price is inadequate as a matter of law. In general, Washington courts have found the purchase price inadequate when it is less than 10% of the fair market value. *See, e.g., Miebach*, 102 Wn.2d at 177-79 (sale for less than 2% of the fair market value was a grossly inadequate sales price); *Cox*, 103 Wn.2d at 387-88 (purchase price of 3.9-5.9% of the fair market value was grossly inadequate); *Casa del Rey*, 110 Wn.2d at 72 (purchase for 4.9% of the fair market value was inadequate).

Here, the fair market value of the property was contested in the trial court. The Albice/Teccas contended the fair market value of the property was, by their estimates, \$750,000 or more. CP 642, 778, 994, 1001. They submitted two appraisals: a 2003 appraisal⁶ for \$604,000 and a 2007 appraisal for \$950,000. CP 386-410, 1038-49. By comparison, Ron testified the house located on the property was:

dilapidated . . . in dire need of repair. The roof needs to be fixed, gutters are falling off, the windows are shot out from vandals. Basically, if I, you know, end up retaining the property through this whole thing, I'll probably end up taking the house down and starting over because its [sic] not hardly worth saving.

Ex. 40 at 15-16. He also testified the assessed value of the property was \$428,000. *Id.* at 26-27. The fair market value was nearly the same as the

⁶ Interestingly, the 2003 appraisal indicated that no sales of comparable waterfront properties in excess of \$525,000 had been found. CP 1039.

assessed value because the home was basically a tear down and it would be expensive to rebuild the improvements. *Id.* at 27.

Based on the testimony provided by the Albice/Teccas, the property's fair market value ranged from \$607,000 to \$950,000. The purchase price of \$130,000 thus reflected approximately 13.68% to 21.4% of the fair market value. This is more than adequate value. *Steward v. Good*, 51 Wn. App. 509; 754 P.2d 150, *review denied*, 111 Wn.2d 1004 (1988) (holding purchase price of only 7.6% of fair market value at trustee's sale was adequate). Based on the Dickinsons' estimate of value, the purchase price represented 30.4% of fair market value. The Court thus erred by utilizing a range of 13-18% when it determined the purchase price was inadequate.

Here, the purchase price was not so inadequate as to put the Dickinsons on notice of the need for further inquiry. The Court of Appeals decision to set aside the sale undermines the protections available under RCW 61.24.040(7) to BFPs like the Dickinsons and compromises the Act's objectives.

(4) Premier Had Authority to Conduct the Sale

Although the Court of Appeals declined to consider the issue, the Albice/Teccas argued in their response to the petition for review that the sale should be set aside because Premier lacked the authority to conduct

the foreclosure sale where it did not have a corporate officer residing in Washington at the time of the sale. Resp. at 12-14. While the Dickinsons do not agree that the trial court's decision on this issue warrants further review under RAP 13.4(b), they nonetheless agree the issue should be resolved by the Court in the interests of judicial economy.

RCW 61.24.040(1)(a) states that a trustee "under this chapter shall be any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident." Under this rule, Premier was a duly authorized trustee.

The trial court entered extensive findings of fact and conclusions of law concerning Premier's corporate status and authority to act as trustee.⁷ CP 36-37, 39. The Albice/Tecca's failure to assign error to the bulk of those findings, Br. of Appellants at 1-2, renders them verities on appeal. See *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002). See also, *In re Santore*, 28 Wn. App. 319, 623 P.2d 702, review denied, 95 Wn.2d 1019 (1981) (unchallenged findings become the established facts of the case). Many factual matters are thus beyond dispute. Among the uncontested facts: Teresa Harding ("Harding") was

⁷ This Court reviews the trial court's findings of fact to determine if they are supported by substantial evidence. *Sunnyside Valley Irrig. Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). In turn, the Court reviews the findings to see if they support the trial court's conclusions of law. *Landmark Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 573, 980 P.2d 1234 (1999). Copies of the trial court's findings of fact and conclusions of law are in the Appendix.

employed by the loan servicer's office in May 2004. CP 36. She resided in Kirkland, Washington. *Id.*; RP 30-31. The loan servicer was affiliated with Premier; Premier is a Washington corporation. CP 36. Harding was elected Vice-President of Premier on July 1, 2001 and later elected to serve as a director. CP 36-37; 94-95; RP 33-34. She was informed of her responsibilities and understood the need to remain resident in Washington. *Id.* She resided in Washington until August 2007. The trustee's sale took place in February 2007.

The uncontested facts confirm that at the time of the trustee's sale and through the date of execution, Premier was a Washington corporation having at least one resident officer. It was authorized to conduct the sale.

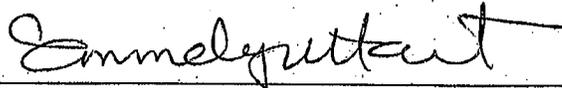
E. CONCLUSION

The trial court correctly ruled the trustee's sale should not be set aside because the Dickinsons were BFPs. The Court of Appeals' decision should be reversed because it substantially undermines the Act's objectives by refusing to recognize that the Albice/Teccas waived their right to challenge the sale, and that the Dickinsons' BFP status rendered the deed's compliance recitals conclusive evidence that the sale was proper.

This Court should reverse the Court of Appeals and reinstate the trial court's decision.

DATED this 3rd day of June, 2011.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973

Emmelyn Hart, WSBA #28820

Talmadge/Fitzpatrick

18010 Southcenter Parkway

Tukwila, WA 98188

(206) 574-6661

Richard L. Ditlevson, WSBA #735

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324 West Bay Dr. NW, Suite 201

Olympia, WA 98502

(360) 352-8311

Attorneys for Petitioners Ron and Cheryl Dickinson

APPENDIX

REC'D & FILED
MASON CO. WA.

2009 APR -6 P 4:11

PAT SWARTOS, CO. CLERK
BY _____ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

CHRISTA L. ALBICE, a married woman, and
BART A. TECCA and KAREN L. TECCA,
husband and wife,

Plaintiffs,

vs.

PREMIER MORTGAGE SERVICES OF
WASHINGTON, INC., a Washington
Corporation; OPTION ONE MORTGAGE
CORPORATION, a California Corporation;
RON DICKINSON and "JANE DOE" DICKINSON,
husband and wife,

Defendants.

No. 07-2-00172-1

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

RON DICKINSON,

Plaintiff,

vs.

CHRISTA L. ALBICE, fka CHRISTA L.
DEYOUNG and BART A. TECCA and KAREN L.
TECCA, husband and wife, Any Subtenants, and
All Others Acting By or Through Them,

Defendants.

07-2-00177-1

This matter having come on regularly for trial before the above-entitled Court, the
Honorable Toni A. Sheldon presiding, on the 24th day of March, 2009. Plaintiffs, CHRISTA L.
ALBICE, a married woman, and BART A. TECCA and KAREN L. TECCA, husband and wife,
appeared and were represented by DOUGLAS KIGER of BLADO KIGER, P.S.; and the

1 Defendants, RON DICKINSON and CHERYL DICKINSON, appeared and were represented by
2 RICHARD L. DITLEVSON of DITLEVSON RODGERS DIXON, P.S.

3
4 The Court, having heard the trial of the above-entitled causes; being fully informed in the
5 premises and having announced its oral decision following trial on March 24th, 2009, now,
6 therefore the Court hereby enters the following:

7 I. FINDINGS OF FACT

8 1.1 ALBICE, et al v. PREMIER MORTGAGE, et al, Mason County Superior
9 Court Cause No. 07-2-00172-1.

10 1.1.1 Teresa Harding was employed by OPTION ONE MORTGAGE
11 CORPORATION ("OPTION ONE") on or about May 1, 2004.

12 1.1.2 As a result of that employment, Teresa Harding returned to the State of
13 Washington and resided in Kirkland, Washington.

14 1.1.3 OPTION ONE was affiliated with PREMIER MORTGAGE SERVICES OF
15 WASHINGTON, INC. ("PREMIER").

16 1.1.4 PREMIER is a Washington corporation.

17 1.1.5 On May 2, 2005 the Board of Directors of PREMIER, via a Consent in Lieu
18 of Special Meeting, elected Teresa Harding as vice president of PREMIER with an effective date
19 of July 1, 2004 and ratified and confirmed all actions she had taken from and after July 1, 2004.

20 1.1.6 Effective May 31, 2005 the sole shareholder of PREMIER, by resolution
21 pursuant to a Consent in Lieu of the Annual Shareholders Meeting, set the number of directors for
22 the corporation at two (2) members and elected Fabiola Camperi ("Camperi") and Monika C.
23 Troester ("Troester") to serve as directors.

24 1.1.7 The shareholder's action was consistent with Article II, Sections 1 and 2 of
25 PREMIER'S Bylaws which direct that PREMIER'S board of directors shall consist of at least one
26

1 (1) member and not more than seven (7) members and authorizing the shareholders to determine
2 the number of members at a shareholder's meeting.

3 1.1.8 Effective May 31, 2005 Camperi and Troester, in a Consent in Lieu of the
4 Annual Meeting of the Board of Directors of PREMIER, elected Teresa Harding as vice president
5 of PREMIER, "... to hold such office at the pleasure of this Board of Directors."
6

7 1.1.9 Teresa Harding was informed of her responsibility to serve as vice president
8 of PREMIER within 90 days of her employment by OPTION ONE and understood her
9 responsibility to so serve and to maintain her residency in the State of Washington.

10 1.1.10 Teresa Harding did maintain her residency in the State of Washington and
11 served as vice president of PREMIER until August 2007.

12 1.1.11 PREMIER filed annual reports in connection with its applications for
13 renewal of its Washington corporation license in 2006 and 2007 without identifying Teresa
14 Harding as an officer of the corporation.
15

16 (2) DICKINSON v. ALBICE, et al, Mason County Superior Court Cause No. 07-
17 2-00177-1.

18 1.2.1 Plaintiff, RON DICKINSON ("DICKINSON"), purchased, at a Trustee's
19 Foreclosure Sale on February 16, 2007, real property and improvements commonly known as 1222
20 E. South Island Drive, Shelton, Washington, and more particularly described as follows:
21

22 That portion of Government Lot eight (8) and of a tract of second-class tidelands
23 suitable for the cultivation of oysters, as conveyed by the State of Washington, to
24 J.D. Layne by deed recorded in Volume 8 of Oyster Lands, page 47, Auditor's
25 File No. 21435, all in Section fifteen (15), Township twenty (20) North, Range
26 two (2) West, W.M., particularly described as follows:

BEGINNING at the Northeast corner of said Government Lot eight (8); thence
South 1°59'46" West along the East line thereof, 45 feet; thence South 61°07'29"
West, 828.28 feet to the head of a cove lying on the Easterly side of Peale
Passage; thence South 37°41'31" West, 520 feet, more or less, to the Westerly
line of a tract of land conveyed to J.D. Layne by deed recorded in Volume 9 of

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Oyster Lands, page 47, Auditor's File No. 21435; thence Northwesterly along the Westerly line of said Layne tract to the Southerly line of a tract of land conveyed to Louise H. Meyers by deed recorded August 20, 1932, Auditor's File No. 69912; thence South 87°55'29" East along said Southerly line, 148 feet, more or less, to the Westerly line of said Government Lot eight (8); thence North 38°50'00" East, 280 feet, more or less, to the North line of said Government Lot eight (8); thence South 87°55'29" East along said North line, 817 feet, more or less, to the POINT OF BEGINNING; excepting therefrom road rights-of-way.

Parcel No. 22015 21 00020.

(the "Property").

1.2.2 Defendants, ALBICE and TECCA, failed and refused to surrender the possession of the Property which DICKINSON had purchased at the Trustee's Sale on February 16, 2007.

1.2.3 DICKINSON was entitled to possession on March 8, 2007, 20 days after the date of the Trustee's Sale.

1.2.4 DICKINSON was denied the use and enjoyment of the Property he acquired at the Trustee's Sale from March 8, 2007 to the date of trial.

1.2.5 The testimony of DICKINSON as to the fair market rent of the Property he acquired at the Trustee's Sale is more credible than the testimony offered by Defendants, ALBICE and TECCA, because DICKINSON has specific knowledge of the Mason County rental market; has two rental properties in Mason County; is in the business of buying, owning and renting residential properties and was so engaged in the time frame from March 8, 2007 to the date of trial.

1.2.6 The Property consists of a 3-bedroom, 2-bath home in disrepair on a parcel with 1,000 feet of low bank saltwater front.

1.2.7 The fair market rent of the Property is \$1,250.00 per month.

1.2.8 That Plaintiff was deprived of possession for 24 months and 29 days as of the date of judgment.

1 1.2.9 That Plaintiff's damages consist of \$41.60 per day for a total of \$30,708.22.

2 *Based on the foregoing Findings of Fact, the Court makes the following*

3 **II. CONCLUSIONS OF LAW**

4 2.1 Annual renewal reports filed by PREMIER in 2006 and 2007 do not control the
5 determination of whether or not Teresa Harding was an officer of PREMIER at the times relevant to
6 the PREMIER Trustee's Sale of the Property to DICKINSON.
7

8 2.2 PREMIER'S internal corporate records control that determination.

9 2.3 Those records establish that Teresa Harding was an officer of PREMIER at all times
10 relevant to its Trustee's Sale of the Property to DICKINSON.
11

12 2.4 PREMIER was qualified to act as Trustee at the time of the Trustee's Sale to
13 DICKINSON pursuant to the Deed of Trust Act, Chapter 61.24 RCW.

14 2.5 DICKINSON, previously found in this Court's Order on Cross Motions for Summary
15 Judgment, Motion for Reconsideration, and Motion to Strike Reconsideration entered herein on June
16 2, 2008 to be a bona fide purchaser for value, is entitled to Judgment for his damages in the amount of
17 fair market rent for the period he was denied possession of the Property by ALBICE and TECCA
18 pursuant to both RCW 7.40.200 and RCW 59.04.050.
19

20 2.6 DICKINSON is not entitled to doubling of the fair market rental value of the Property
21 pursuant to RCW 59.12.170.
22

23 2.7 DICKINSON is not entitled to damages in the amount of unpaid taxes from March 8,
24 2007 to the date of trial.

25 2.8 DICKINSON is entitled to an Order and Judgment granting him a writ of restitution
26 restoring to him, possession of the Property he acquired at the Trustee's Sale.

1 2.9 Judgment should be entered dismissing all of Plaintiffs' claims in Cause No. 07-2-
2 00172-1, with prejudice.

3 2.10 Judgment should be entered in favor of DICKINSON in Cause No. 07-2-00177-1 in
4 the amount of \$30,708.22 against Defendants, ALBICE and TECCA, jointly and severally.
5

6 2.11 Judgment should be entered in favor of DICKINSON in Cause No. 07-2-00177-1
7 against Defendants, ALBICE and TECCA, jointly and severally, for DICKINSON'S costs herein in
8 an amount established by an Affidavit of RICHARD L. DITLEVSON Re: Costs.

9 ~~2.12 Judgment should be entered against Defendants, ALBICE and TECCA, jointly and
10 severally, awarding DICKINSON prejudgment interest in the amount of \$3,761.50 and interest on the
11 principal and cost judgment amounts at the rate of 12% per annum from March 24, 2009.~~

12 DATED this 6 day of April, 2009.

13
14
15 151 Toni A. Shudo
16 JUDGE

17 Presented by:

18
19 151
20 Richard L. Ditlevson, WSB #735
21 Attorney for Defendants DICKINSON

22 Copy received, notice of presentation waived, approved for entry:

23 Approved by TALEP...K
24 Douglas N. Kiger, WSB #26211
25 Attorney for Plaintiffs, ALBICE/TECCA
26

RECEIVED & FILED

APR - 6 2009

PAT SWARTOS, Clerk of the Superior Court of Mason Co. Wash.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF MASON

CHRISTA L. ALBICE, a married woman, and
BART A. TECCA and KAREN L. TECCA,
Husband and wife,

Plaintiffs,

No. 07-2-00172-1

vs.

JUDGMENT

PREMIER MORTGAGE SERVICES OF
WASHINGTON, INC., a Washington
Corporation; OPTION ONE MORTGAGE
CORPORATION, a California Corporation;
RON DICKINSON and "JANE DOE" DICKINSON,
husband and wife,

Defendants.

RON DICKINSON,

Plaintiff,

No. 07-2-00177-1

vs.

CHRISTA L. ALBICE, fka CHRISTA L.
DEYOUNG and BART A. TECCA and KAREN L.
TECCA, husband and wife, Any Subtenants, and
All Others Acting By or Through Them,

Defendants.

Judgment Summary:

A. Judgment creditor: Ron Dickinson and Cheryl Dickinson

B. Judgment creditors' attorneys: Richard L. Ditlevson
Ditlevson Rodgers Dixon, P.S.
324 West Bay Drive NW, Ste. 201
Olympia, Wa. 98502

Judgment - 1

ORIGINAL

DITLEVSON RODGERS DIXON, P.S.
ATTORNEYS AT LAW
324 West Bay Drive NW, Suite 201
Olympia, Washington 98502
(360) 352-8311, FAX: (360) 352-8501

- 1 C. Judgment debtors: Christa L. Albice and
- 2 Bart A. Tecca and Karen L. Tecca,
- 3 jointly and severally,
- 4 D. Judgment debtor's attorney: Douglas Kiger
- 5 Blado Kiger, P.S.
- 6 3408 S. 23rd Street
- 7 Tacoma, Wa. 98405-1609
- 8 E. Principal judgment amount \$ 30,708.22
- 9 F. Costs: 518.20
- 10 03/12/07 Filing fee Mason County 157.00
- 11 (Summons/Complaint Unlawful Detainer)
- 12 02/06/09 Witness fees (Teresa Harding) 161.20
- 13 (RCW 4.84.090)
- 14 03/24/09 Statutory attorney's fees 200.00
- 15 (RCW 4.84.080)
- 16 G. Prejudgment interest
- 17 H. Total judgment: *RM* ~~3,761.50~~ *X*
- 18 ~~\$ 34,987.92~~ *51,226*
- 19 I. The principal and cost judgment amounts shall bear interest at the rate of 12% per annum
- 20 from April 6, 2009 until paid in full.
- 21 J. Costs and other recovery amounts shall bear interest at the rate of 12% per annum after
- 22 entry.

JUDGMENT

THIS MATTER having come on regularly for trial before the above-entitled Court, the Honorable Toni A. Sheldon presiding, on the 24th day of March, 2009. The Court, having heard the trial of the above-entitled causes, being fully informed in the premises and having heretofore entered its Findings of Fact and Conclusions of Law, now, therefore, it is hereby

ORDERED that Plaintiffs' claims in Cause No. 07-2-00172-1 are dismissed with prejudice.

ORDERED that Plaintiff, RON DICKINSON, is awarded and shall have judgment in Cause No. 07-2-00177-1 against the Defendants, CHRISTA L. ALBICE, a married woman, and BART A. TECCA and KAREN L. TECCA, husband and wife, jointly and severally, in the amount of \$30,708.22 as set forth in the above Judgment Summary. It is further

1 ORDERED that Plaintiff, RON DICKINSON, is awarded and shall have judgment in
2 Cause No. 07-2-00177-1 against the Defendants, CHRISTA L. ALBICE, a married woman, and
3 BART A. TECCA and KAREN L. TECCA, husband and wife, jointly and severally, for his costs
4 in the amount of \$518.20 as set forth in the above Judgment Summary. It is further

TMS
[Handwritten signature]

5 ~~ORDERED that Plaintiff, RON DICKINSON, is awarded and shall have judgment in~~
6 ~~Cause No. 07-2-00177-1 against the Defendants, CHRISTA L. ALBICE, a married woman, and~~
7 ~~BART A. TECCA and KAREN L. TECCA, husband and wife, jointly and severally, for~~
8 ~~prejudgment interest as set forth in the above Judgment Summary. It is further~~

10 ORDERED that Plaintiff, RON DICKINSON, is awarded and shall have judgment in
11 Cause No. 07-2-00177-1 against the Defendants, CHRISTA L. ALBICE, a married woman, and
12 BART A. TECCA and KAREN L. TECCA, husband and wife, jointly and severally, for judgment
13 interest as set forth in the above Judgment Summary. It is further

15 ORDERED that Plaintiff, RON DICKINSON, is entitled to the issuance of a Writ of
16 Restitution in Cause No. 07-2-00177-1.

17 DATED this 6 day of April, 2009.

18 *Toni A. Sheldon*
19 _____
20 Toni A. Sheldon, Judge

21 Presented by
22 *[Signature]*
23 _____
24 Richard L. Ditlevson, WSB #735
25 Attorney for Defendants DICKINSON

26 Copy received, notice of presentation waived, approved for entry:

approved by telephone

Douglas N. Kiger, WSB #26211
Attorney for Plaintiffs, ALBICE/TECCA

DECLARATION OF SERVICE

On said day below I emailed and deposited in the U.S. Mail a true and accurate copy of the following document: Supplemental Brief of Petitioners in Supreme Court Cause No. 85260-0 to the following:

Dick Ditlevson
Ditlevson Rodgers Dixon, P.S.
324 West Bay Dr. NW, Suite 201
Olympia, WA 98502

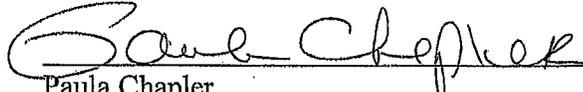
Douglas Kiger
Blado Kiger Bolan, P.S.
4717 S. 19th Street, Suite 109
Tacoma, WA 98405

Original efiled with:

Washington Supreme Court
Clerk's Office
415 12th Street W
Olympia, WA 98504-0929

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: June 3, 2011, at Tukwila, Washington.


Paula Chapler
Talmadge/Fitzpatrick

OFFICE RECEPTIONIST, CLERK

To: Paula Chapler
Subject: RE: Albice v. Premier Mortgage and Dickinson, Cause No. 85260-0

Rec. 6-3-11

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Paula Chapler [<mailto:paula@tal-fitzlaw.com>]
Sent: Friday, June 03, 2011 10:20 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: Albice v. Premier Mortgage and Dickinson, Cause No. 85260-0

Per Ms. Hart's request, attached please find the Supplemental Brief of Petitioner for filing in the following case:

Case Name: Christal L. Albice, et al. v. Premier Mortgage, et al.
Cause No. 85260-0
Attorney: Emmelyn Hart, WSBA #28820
Talmadge/Fitzpatrick
18010 Southcenter Parkway
Tukwila, WA 98188
(206) 574-6661

Sincerely,

Paula Chapler
Legal Assistant
Talmadge/Fitzpatrick