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IN SUPREME COURT  
OF THE STATE OF WASHINGTON

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SIXTY-01 ASSOCIATION OF APARTMENT OWNERS,  
a Washington non profit corporation,

Respondent,

vs.

VIRGINIA A. PARSONS and JOHN DOE PARSONS, wife and husband, or  
state registered domestic partners; JOHN DOE and JANE DOE, unknown  
occupants of the subject real property; and also all other persons or parties  
unknown claiming any right, title, estate, lien, or interest in the real estate  
described in the Complaint herein,

Defendants,

DANIEL PASHNIAK,

Petitioner,

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SUPPLEMENTAL BRIEF  
OF  
RESPONDENT SIXTY-01 ASSOCIATION OF APARTMENT OWNERS

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**Petition for Review Granted**  
Review of a Published Decision of  
The Court of Appeals (Division One), No. 69135-0-I  
(consolidated with 69136-8-I)

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 ORIGINAL

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## I. INTRODUCTION

Once a third party's bid at a sheriff's foreclosure sale is accepted, the foreclosing judgment creditor is statutorily *entitled* to confirmation of that sale, absent any irregularities in the *sheriff's* conduct of the sale. RCW 6.21.110(2),(3). If there is such an irregularity, the statutory remedy is to re-set the sale, with the prior sale's winning bidder's bid being the opening bid at the new sale. RCW 6.21.110(4).

In this consolidated appeal, one trial court confirmed a sheriff's sale, while another trial court reached an opposite result, ruling that a third party bidder can withdraw his bid after acceptance (because he failed to conduct any due diligence to determine that the sale was subject to a recorded prior deed of trust), get his money back, and force the foreclosing creditor to set up and conduct a new foreclosure sale all over again at significant delay and expense. In substance, the trial court granted a third party foreclosure investor a new, non-statutory right to engage in speculative bidding. The Court of Appeals held that such is not the law in Washington.

## II. ASSIGNMENTS OF ERROR AND ISSUES PRESENTED FOR REVIEW

### *Assignments of Error*

1. The trial court erred in entering the Order Vacating Sheriff's Sale on July 23, 2012 in *Sixty-01 v. Mallarino, et al*, King Co. Sup. No. 10-2-17742-6 ("*Mallarino*") (CP-B 348-349)<sup>1</sup>.

*Issues Pertaining to Assignments of Error*

1. Does the confirmation of sheriff sale statute, RCW 6.21.110(2),(3), provide that a foreclosing creditor is *entitled* to confirmation of that sale once the sheriff accepts a third party's bid, absent irregularities in the *sheriff's* conduct of the sale? (Assignment of Error No. 1). **Yes.**

2. Can a trial court employ equitable powers to override RCW 6.21.110(2),(3) and refuse to confirm a sheriff's sale even where there are no irregularities in the *sheriff's* conduct of the sale, and even where the purchaser had constructive notice of a recorded prior deed of trust that was, by law, not extinguished by the sheriff's sale? (Assignment of Error No. 1). **No.**

3. Can a trial court uphold an objection to confirmation of sheriff's sale and invalidate the sale even though that objection was not timely filed

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<sup>1</sup> Pursuant to stipulation between counsel for Plaintiff and Respondent in conference with Laurie Sanders of the Court of Appeals, the parties will cite to Clerk's Papers in *Sixty-01 v. Parsons et al*, King Co. Sup. No. 11-2-22195-4SEA as "CP-A \_\_\_", and Clerk's Papers in *Sixty-01 v. Mallarino, et al*, King Co. Sup. No. 10-2-17742-6SEA as "CP-B \_\_\_." Email from William Justyk dated November 7, 2012, filed November 8, 2012 (Court of Appeals file). The Court of Appeals consolidated both actions under the *Parsons* case number. Order dated Oct. 2, 2012 (Court of Appeals file). The Court of Appeals subsequently ordered that the briefs to be filed in the case would be the same as those permitted in cross appeals. Order dated Dec. 3, 2012 (Court of Appeals file).

within the statutorily mandated twenty days after the court clerk's mailing of the Notice of Return on Sheriff's Sale? (Assignment of Error No. 1).

**No.**

*RAP 13.4(d) Additional Issues Not Raised in Petition For Review<sup>2</sup>*

1. Can a deed of trust be extinguished through sheriff's sale where the beneficiary was never named as a defendant or served with process, and where the judgment does not decree foreclosure against same? **No.**

2. Can an intercreditor agreement confirming *statutory* and *recorded* subordination covenant (Declaration of Condominium) lien priorities constitute a "substantial irregularity" in the *sheriff's* conduct of the sale under RCW 6.21.110(3)? **No.**

3. Does failure to timely initiate a separate appeal under RAP 5.1(f) to the Court of Appeals of a trial court order denying a motion to vacate (a sheriff sale confirmation order) bar review of such trial court order? **Yes.**

4. If the Court determines that there is a substantial irregularity in the sheriff's conduct of the sale under RCW 6.21.110(3), rather than ordering the winning bid monies refunded, must the trial court order the

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Petitioner failed to expressly assign any errors *to the trial court*, and erroneously assigned error to the Court of Appeals. Petition at 1. RAP 13.4(e) requires the petition be in the form of brief as provided under RAP 10.3, except as otherwise provided in RAP 13.4. RAP 10.3(a)(4) requires assignments of error of the trial court.

sheriff to re-sell the property, with the opening bid being the previously-submitted winning bid, as required under RCW 6.21.110(4)? **Yes.**

### **III. CONSOLIDATED STATEMENT OF THE CASE**

#### **A. Facts Relevant to Issues Presented For Review**

##### 1. The Association And Its Declaration of Condominium Liens on the Units.

Respondent/Cross-Appellant Sixty-01 Association of Apartment Owners ("Association") is a Washington non profit corporation duly organized pursuant to Ch. 64.32 RCW, as amended by Ch. 64.34 RCW ("Act") for the operation of Sixty-01, a condominium, under the Declaration of Condominium recorded in the records of King County, Washington under Recording No. 7808300897 ("Declaration"). (CP-B 81). Mallarino is the owner of Unit 493 of Sixty-01, a Condominium ("Unit"). (CP-B 81, 86-8). Parsons is the owner of Unit 10 of Sixty-01, a Condominium ("Unit"). (CP-A 39, 44-9). Neither owner is a party to this appeal.

Under RCW 64.32.200(2) and Declaration §19.1, the Association has a continuing statutory lien against the Units, to secure the payment of all assessments levied by the Board of Directors for Sixty-01, which lien is subordinated to any recorded deeds of trust, whenever recorded. (CP-B 82-83, 104). Under Declaration § 19.2, the statutory lien may be foreclosed like a mortgage pursuant to Ch. 61.12 RCW. (CP-B 83, 105).

## 2. Association Foreclosure of Statutory Liens On Units.

The Association filed Complaints to foreclose its statutory lien against the Units. (CP-B 1-9, 10-12, 23, 28-31; CP-A 1-9, 12-14, 24, 28-31). The Complaints did not name any deed of trust lender as a defendant, and thus was not seeking to extinguish any deed of trust that may be encumbering the Unit. (CP-B 1-9, 13-21; CP-A 1-9). Deeds of trust on the Mallarino and Parsons Units were recorded in favor of Bank of America, N.A. ("Bank of America") under King County Recording Nos. 20060228003678 and 20070723000298, respectively ("Deed of Trust"). (CP-B 138-156; CP-A 80). The trial courts entered Judgments and Decrees of Foreclosure ("Judgment") against Mallarino and Parsons. The Judgments did not award any relief against Bank of America, and thus did not extinguish the Deeds of Trust. (CP-B 122-128, 132-136; CP-A 16-21). The Association set its sheriff's sales; the Sheriff's sale notices were mailed to all known addresses for all persons or parties with any interest in the Units, regardless of whether such interest would be extinguished by the sheriff's sale or not, including Bank of America. (CP-B 129-131; CP-A 71-73, 77-78).

Bank of America responded to the sheriff's sale notices, demanding a stipulation expressly declaring that the sheriff's sales would not affect the Deeds of Trust, even though Bank of America was not a Defendant, was never served with process, and did not have a judgment

taken against it in the lawsuit. (CP-B 313; CP-A 74-6, 79-84).

Subsequently, the Association and Bank of America executed Stipulations and Orders that declared that the foreclosures do not affect Bank of America's deed of trust interest. (CP-B 122-156; CP-A 79-84).

3. Investor (Respondent Herein) High Bidder At Both Of Association's Sheriff's Sales.

Petitioner Daniel Pashniak ("Investor") personally attended each sheriff's sale and submitted to the Sheriff separate winning bids for each Unit. (CP-B 288, CP-A 337). The Sheriff's Returns on Sale of Real Property (and subsequent Deputy Cunio Declarations) state that the Sheriff's Sales were conducted according to the manner required by law. (CP-B 157-158, 194-195, 289, 300-301; CP-A 85-109, 336-350). The Clerk mailed her Notices of Return of Sheriff's Sale On Real Property on March 16, 2012. (CP-B 181-2; CP-A 110-1).

4. Investor Files Untimely Objection Regarding Mallarino Sale.

Under RCW 6.21.110(2), any objection to sale had to be filed by April 5, 2012, twenty days after the Clerk Mailed her Notice of Return. Investor filed his Objection in the Mallarino case on April 9, 2012, more than twenty days after the Clerk Mailed her Notice of Return. (CP-B 148-9). The Objection did not specify any particular irregularity in the sheriff's conduct of the sale, and did not state any authority in support of the Objection. (Id.).

5. Investor Files Objection Regarding Parsons Sale.

Investor filed an objection in the Parsons case on March 22, 2012. (CP-A 112-3). The Objection did not specify any particular irregularity in the sheriff's conduct of the sale, and did not state any authority in support of the Objection. (Id.).

6. Investor Background.

Investor is a real estate investor with experience in real estate legal matters in King and Spokane counties. (CP-B 222, 311, 325-336). Investor was in King County Superior Court in early 2012 and learned of the sheriff's sale for two condominiums at Sixty-01 from the legal notices posted on a board in the King County Courthouse. (CP-B 223). Investor claimed he only learned of the Deeds of Trust on the Units after the Sheriff's Sale. (CP-B 82-83, 104, 138-156, 224, 324). Investor admitted that he knew when he bid that Bank of America was not named as a party in each foreclosure. (CP-B 223, CP-A 186). Investor did not examine the court files prior to submitting his bids. (CP-B 222-8, 231, CP-A 185-94, 199).

**B. Procedure In Superior Court**

(I) *Mallarino Proceedings*: The Court entered an Order Vacating Sheriff's Sale, providing a directly contradictory result to that reached by the trial court in the Parsons proceeding, as addressed below. (CP-B 348-349). The Association timely filed its Notice of Appeal. (CP-B 350-3).

*II. Parsons Proceedings:* The Association's Motion to confirm sale made note of the Investor's Objection, but Investor elected not to respond to the Motion. (CP-A 121, 145-7). The Court confirmed the sale. (CP-A 145-7). Investor then filed his Notice of Appeal. (CP-A 158-63). Several months later, and while the instant appeals were pending, Investor filed a motion attempting to vacate the order confirming the sale, which the court denied. (CP-A 169-84, 358-9). The Court of Appeals affirmed the *Parsons* trial court decision and reversed the *Mallarino* trial court decision.

#### **IV. ARGUMENT (ON CONSOLIDATED CASES)**

##### **A. Standard of Review is *De Novo*: At Issue Is Interpretation of RCW 6.21.110(2),(3) Providing Judgment Creditor is Entitled To Sale Confirmation Absent "Substantial Irregularities."**

The central issue in this consolidated case is the interpretation of a statute providing that a judgment creditor (Association) is "*entitled*" to an order confirming sheriff's sale absent "substantial irregularities in the proceedings *concerning the sale*" under RCW 6.21.110(2),(3). Investor did not (a) review the court files before bidding, (b) investigate the County Recorder records to discover the recorded Deeds of Trust; (c) investigate the recorded Declaration of Condominium subordination provisions; or (d) investigate RCW 64.32.200(2)'s statutory subordination provision. Yet Investor wants his bid back because he failed to apprehend that the sales

were each subject to a senior deed of trust. (CP-B 148-9, CP-A 112-3). Investor urges the Court to interpret RCW 6.21.110(2),(3) as authorizing a sale to be overturned even where the sheriff properly conducted these sheriff's sales, an interpretation not supported by a plain reading of that statute and case law interpreting same. Investor urges the Court to interpret RCW 6.21.110(2),(3) as authorizing the winning bid monies to be refunded to the Investor, which would violate and render superfluous RCW 6.21.110(4)'s requirement that in *any* court-ordered re-sale, the opening bid is the prior sale's winning bid.

Statutory interpretation is a question of law. *Barton v. Dept. of Transp.*, 178 Wn.2d 193, 202 (2013). Appellate courts review an objection to confirmation of sheriff's sale and a trial court's order confirming sale *de novo*, engaging in the same inquiry as the trial court. *Hazel v. Van Beek*, 85 Wn. App. 129, 133 (1997), *aff'd in part and rev'd in part*, 135 Wn.2d 45 (1998). Interpretation of statutes governing sheriff's sales is an issue of law, which appellate courts review *de novo*. *Hazel*, 85 Wn. App. at 137. The interpretation and applicability of statutes in general presents questions of law reviewed *de novo*. *Cosmopolitan Eng'g Group Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 298-9 (2006); *Quality Food Ctrs. V. Mary Jewell T, LLC*, 134 Wn. App. 814, 817, 142 P.3d 206 (2006); *In re Electric Lightwave, Inc.*, 123 Wn.2d 530, 536 (1994). In *de novo* review interpreting a statute, the primary objective

is to “ascertain and carry out the intent and purpose of the Legislature.”

*F.O.E. Tenino Aerie No. 564 v. Grand Aeri, F.O.E.*, 148 Wn.2d 224, 239 (2002).

**B. The Plain Meaning of the Sheriff’s Sale Confirmation Statute Mandates That the Foreclosing Creditor is *Entitled To Confirmation of the Sale If There Are No Irregularities With The Sheriff’s Conduct of the Sale.***

Investor asserts that he can simply withdraw his bid after the sheriff accepted it as the high bid and filed his Return on Sale, in effect forcing foreclosing creditors to incur substantial expense and delay to restart sheriff’s sale foreclosure proceedings on the whim of an investor who changes his mind. There is no right for a third-party investor to simply withdraw his bid, and under RCW 6.21.110(2),(3) a judgment creditor is *entitled* to confirmation of sale, unless a timely objection is filed that establishes “substantial irregularities” of the *sheriff’s* doings and undertakings in noticing and conducting the sheriff’s sale.

Investor cites *Davies v. Davies*, 48 Wn. App. 29 (1987) as support for his theory that a third-party bidder can withdraw his bid. *Davies* is inapplicable because in *Davies* no *third party investor* sought to retract his bid. The *judgment debtor* contested the *judgment creditor’s* right to refrain from confirming a prior sheriff sale for \$1k, withdrawing the *judgment creditor’s* \$1k bid, re-setting the sale and confirming the second sale for

\$30k. *Id.* The Court of Appeals held that the *judgment creditor* was *entitled* to confirmation of the second sale, and was not obligated to have the first, low-bid \$1k sale confirmed. *Davies*, 48 Wn. App. At 32. The *Davies* court did not have before it a *judgment creditor* seeking to confirm a sale (as the Association is here) and a third party *investor* seeking to withdraw his bid (Investor here) - and thus, the *Davies* Court's broad statement that "before confirmation, the highest bidder may be permitted to withdraw his bid" must be limited to a *judgment creditor* withdrawing her bid, and was *dicta* as to any third party *investor* attempting to withdraw his bid. *Davies*, 48 Wn. App. at 31. To now hold that the *Davies* Court's ruling applies to bar a *judgment creditor* from confirming a properly conducted sale because a third party *investor* changes his mind and wants to withdraw his bid, would effectively read out the "judgment creditor. . . is entitled to an order confirming the sale. . . on motion" language of RCW 6.21.110(2).

Investor asserts that *Miebach v. Colasurdo*, 102 Wn. 2d 170 (1984) gives trial courts an equitable power to overturn a sheriff's sale. However, that case is distinguishable, as the *Miebach* Court examined a *judgment debtor's* right to have a court employ equitable powers to overturn a sheriff's sale *to a third party investor*. *Miebach*, 102 Wn.2d at 170. Under *Miebach*, equitable authority could be employed to overturn a sheriff's sale, where (1) the *winning bidder* is not a bona fide purchaser, (2) there is

a gross inadequacy of the price paid, and (3) a simple judgment creditor (not a deed of trust or statutory lien creditor with a decree of foreclosure on specific real property, as here) fails to attempt to satisfy the judgment out of judgment debtor's personal property first. *Miebach*, 102 Wn.2d at 175. *Miebach* simply doesn't apply here: (1) the *investor's* knowledge that the *judgment debtor* wasn't aware of the underlying lawsuit led the *Miebach* court to conclude he wasn't a bona fide purchaser. *Miebach*, 102 Wn.2d at 177; (2) the real property in *Miebach* sold for less than \$2k despite equity of \$77k; there is no assertion that the price paid at sale for the real properties in this case, subject to first deeds of trust, was in any way inadequate (indeed, getting residential real property worth six figures each for \$16k and \$35k, respectively, *free and clear of any senior deed of trust* would be a huge windfall to this Investor); (3) in *Miebach* the judgment creditor failed to attempt to satisfy its simple \$1k monetary judgment (on a simple car loan debt, not decree of foreclosure of any real property lien) against judgment debtor's personal property before setting up a sheriff's execution sale on that simple judgment.

**C. "Substantial Irregularities " Under RCW 6.21.110(3)  
Means The *Sheriff's* Undertakings and Conduct of the Sale, Not  
Investor's Failure to Apprehend that the Sales Were Subject to A  
Senior Deed of Trust.**

Investor argues that RCW 6.21.110(3) “substantial irregularities in the proceedings *concerning the sale*” includes not only the sheriff’s undertakings and conduct of the sale, but also include the lender stipulations (intercreditor agreements) and the Judgments and Decrees of Foreclosure (this despite Investor never having examined the court files or the county land title records to detect the recorded deeds of trust, the recorded Declaration of Condominium unconditional subordination provision, or examined RCW 64.32.200(2)’s statutory mandate subordinating the Association’s lien to the deed of trust). Since Investor never even examined the trial court files prior to bidding, he would never have seen the court-filed intercreditor agreements even if they had been filed months before the sales.

The plain language of RCW 6.21.110(3) does not support Investor’s overly expansive reading: The lender stipulations and Judgments and Decrees of Foreclosure are not “proceedings concerning the sale” under RCW 6.21.110(3); those documents *do nothing to affect the noticing of or conduct of the sheriff’s sale*. Investor as objecting party has the burden to establish any substantial irregularities, and that the irregularities resulted in, or will result in, a probably loss or injury to him. *Braman v. Kuper*, 51 Wn.2d 676, 681 (1958). A finding that there are no “substantial irregularities in the proceedings concerning the sale” means that the “sale has been regularly and legally made,” *Betz v. Tower Sav.*

*Bank*, 185 Wash. 314, 325 (1936). An examination of the “proceedings concerning the sale” includes the “manner in which payment was made” to the sheriff, and “the manner in which the property shall be sold to bring the highest selling price obtainable.” *Betz*, 51 Wn.2d at 683-4; it includes objections by competing bidders over the sheriff’s actions in responding to those bidders and the nature of the bids themselves. *W.W. Williams v. Continental Securities Corp.*, 22 Wn.2d 1, 17-18 (1944); *Braman v. Kuper*, 51 Wn.2d 676, 683 (1958). (“Execution sales are not scrutinized by the courts with a view to defeat them”).

In *Braman v. Kuper*, 51 Wn.2d 676 (1958), the judgment debtor objected to sale confirmation on the basis that the sheriff sold multiple parcels as one sale rather than by serial sales. *Braman*, 51 Wn.2d at 683-4. The *Braman* court determined that the *sheriff’s undertakings* did not rise to “substantial irregularities.” The *Braman* court had squarely before it the issue of whether *the sheriff’s actions* were “substantial irregularities” under predecessor to RCW 6.21.110(3).

**D. In the Event of Any Substantial Irregularity, Statutory Remedy is to Re-Set the Sale With Purchaser’s Bid As Opening Bid, Not Refund Purchaser’s Bid.**

If the Court determines that there is a substantial irregularity under RCW 6.21.110(3), the Court must nonetheless re-set the sale, with the Purchaser’s winning bid set as the opening bid in the second sale. RCW

6.21.110(4). Nothing in RCW 6.21.110(3),(4) permits the trial court to simply refund the Investor's monies in the event of a substantial irregularity. Refunding the bid monies ignores the mandate of RCW 6.21.110(4) to open any re-set sale with the prior sale's winning bid; refunding the bid monies effectively renders RCW 6.21.110(4) unenforceable if there is no longer monies in the trial court registry.

**E. Deed of Trust Beneficiary Bank of America Was Not Named As a Defendant, Judgment Does Not Decree Foreclosure Against Same, and Thus Sheriff's Sale Would Not Extinguish Its Recorded Deed of Trust.**

Because the Association's lien was subordinated to deeds of trust under RCW 64.32.200(2) and recorded Declaration of Condominium § 19.1, neither Complaint named respective deed of trust beneficiary Bank of America as a Defendant. (CP-B 1-9, 13-21, 104, CP-A 1-9). If a person or entity is not made a party to a foreclosure action, its interest is not affected by that foreclosure. *Hallgren Co. Inc. v. Correl, Inc.*, 13 Wn. App. 263, 265-6 (1975). A creditor foreclosing its interest in real property through judicial foreclosure may elect to name *or not name* as Defendants other lien creditors, and if not named, the foreclosure action has no effect on the interest of that creditor. *U.S. Bank of Wash. v. Hursey*, 116 Wn.2d 522, 526 (1991). The Deed of Trust Act, Ch. 61.24 RCW, includes an analogous provision for lien creditors who are not affected by nonjudicial

foreclosure proceedings. RCW 61.24.040(7). Here, Bank of America was not named as a defendant and the Judgments and Decrees of Foreclosure in these cases did not award any relief against Bank of America. (CP-B 122-128, CP-A 16-21).

Despite not having even *reviewed* the trial court files (and thus not having even *seen* the Judgments prior to bidding), Investor argues that the following language in each Judgment and Decree of Foreclosure is misleading:

VI. ....[A]ll right, title, claim, lien, estate or interest of the Foreclosed Defendants, each and all of them, and of all persons claiming by, through, or under them, in and to the Property of any part thereof is inferior and subordinate to Plaintiff's lien and is hereby foreclosed....”

(CP-B 126; CP-A 20). As a threshold matter, Investor cannot have been misled by any document he did not actually review, as here. Nonetheless, Investor argues that this language means he would take the property free and clear of encumbrances. (CP-B 214-216). Investor's argument is identical to the argument an investor made to the Court of Appeals in another foreclosure case. In *Mann v. Household Finance Corp. III*, 109 Wn. App. 387 (2001), the third party investor bid at a foreclosure sale of a junior deed of trust, which did not foreclose out the senior deed of trust. The investor then sought to rescind his purchase when the senior deed of trust lender commenced foreclosure, claiming he did not know about the senior deed of trust, despite the recording of that senior deed of trust.

*Mann*, 109 Wn. App. at 389. The investor in *Mann* claimed that the notice of trustee's sale indicated that all deeds of trust (even a senior one) would be extinguished upon trustee's sale, based on language almost identical to the above-quoted judgment language. The language (reciting the effect of the forthcoming foreclosure sale) in the *Mann* notice of trustee's sale came directly, word-for-word, from the statutorily-provided form of Notice of Trustee's Sale under RCW 61.24.040(1)(f)(VIII).

The *Mann* Court reasoned that the senior deed of trust, enjoying lien priority over the junior deed of trust being foreclosed, was *not* one of the interests taken by, through, or under the grantor of the junior deed of trust. *Mann*, 109 Wn. App. at 393. The *Mann* Court held that the statutory form of notice of trustee's sale under RCW 61.24.040(1)(f)(VIII) did not state that a senior deed of trust would be extinguished, and "did not suggest to the Manns that any and all senior deeds of trust or other prior encumbrances were thereby extinguished. The Manns could not justifiably rely on such an interpretation." *Mann*, 109 Wn. App. at 394. Investor in the cases at bar is attempting to make substantially the same arguments that the investor in *Mann* made - but with the additional deficiency that Investor never even examined the Judgments and Decrees of Foreclosure prior to bidding. Investor's erroneous interpretation of the Judgment's provisions is not a "substantial irregularity" under RCW 6.21.110(3),

which is limited to the sheriff's doings and undertakings in noticing and conducting the sheriff's sale.

**F. Investor Waived Any Right to Object to Mallarino Sale By Failing to File Objection Within 20 Days; Such Waiver Removes Court Jurisdiction to Consider Any Late Objection.**

In the Mallarino case, the Clerk mailed her Notice of Return of Sheriff's Sale On Real Property on March 16, 2012. (CP-B 181-2). Under RCW 6.21.110(2), any objection to sale had to be filed by April 5, 2012, twenty days after the Clerk Mailed her Notice of Return. Investor filed his Objection on April 9, 2012. (CP-B 148-9).

Investor's objection was not timely. RCW 6.21.110(2) requires objections be filed within 20 days of mailing of the Clerk's notice of the filing of the sheriffs' return of sale. Failure to timely file an objection results in waiver of that right: "[W]e hold the deadline for procedural objections is mandatory." *Hazel v. Van Beek*, 135 Wn.2d 45, 52 (1998). In *Hazel*, the objecting party filed his objection three days after the twenty day deadline.

**G. Stipulating With A Deed of Trust Beneficiary That Statutory and Recorded Covenant (Declaration) Subordination of the Lien Being Foreclosed Results In No Extinguishment of That Deed of Trust Does Not Constitute Any "Substantial Irregularity."**

The *Mallarino* trial court's Order Vacating Sheriff's Sale expressly recited the timing of the filing of the Stipulation as a basis to deny confirmation of the sale. (CP-B 348-9). However, Investor never even examined the trial court files prior to bidding, and thus would not have seen the Stipulation even if had been filed months earlier. Implicit in the trial court's ruling was the premise that somehow potential third party bidders were entitled to notice of the Stipulation. Nothing in Washington law requires such separate disclosure of a prior recorded deed of trust that already imparts constructive notice, and which deed of trust enjoys lien priority pursuant to RCW 64.32.200(2) and a recorded Declaration of Condominium subordination provision - both of which Investor is charged with constructive notice. A recorded deed of trust imparts constructive notice of such real property interest to a purchaser at a sheriff's sale foreclosing a junior lienholder's interest. *Tomlinson v. Clarke*, 118 Wn.2d 498, 500 (1992). Entering into lender stipulations, as here, would not change the legal result that the Association's sheriff's sales would have no effect on each deed of trust. The *Mallarino* trial court order grafted some kind of new, extra-statutory obligation to do something - what? To give notice of that Stipulation and Order? To whom, and how? Or else face having the sheriff's sale vacated, and Investor's winning bid monies disbursed out of the trial court registry back to the Investor in violation of

RCW 6.21.110(4) (which requires that in *any* court-ordered re-sale, the opening bid is the prior sale's winning bid).

**H. Investor's Appeal of Parsons Court Order Denying His Motion to Vacate is Defective and Should Be Dismissed.**

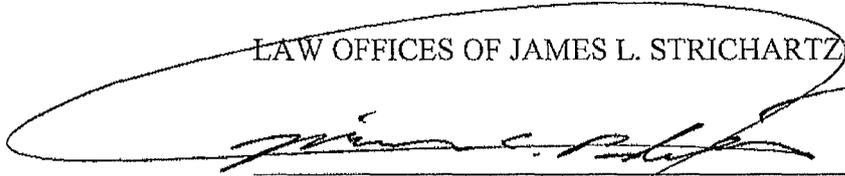
Three months after the Parsons sheriff's sale was confirmed, and while Investor's appeal was pending, Investor moved to vacate the confirmation order, which was denied. (CP-A 169-84, 358-9). Investor filed an "Amended Notice of Appeal" of the denial of his motion. (CP-A 360-7). At no time did Investor initiate a new separate appeal proceeding; at no time did Investor pay the RAP 5.1(b) statutory appeal fee. RAP 7.2(e) and RAP 5.1(f) requires initiation of a *separate review* of an order denying a CR 60 motion to vacate.

**V. CONCLUSION**

Once the sheriff properly conducts a sale, as here, a third party bidder cannot overturn the sale. Investors must conduct due diligence and review recorded documents to see if there are any prior encumbrances. The Supreme Court should affirm the decision of the Court of Appeals.

Dated this 2 day of May, 2014.

LAW OFFICES OF JAMES L. STRICHARTZ



Michael A. Padilla, WSBA No. 26284  
Attorneys for Respondent Sixty-01 Association of  
Apartment Owners, a Washington non-profit  
corporation

CERTIFICATE OF SERVICE

RICHARD E. PHILLIPS declares and states as follows:

1. I am a paralegal at the law firm Law Offices of James L. Strichartz, am over the age of 18, and am otherwise competent to testify.

2. Pursuant to a mutual agreement between Robert Henry, counsel for Petitioner, Daniel Pashniak, and Michael Padilla, counsel for Respondent Sixty-01 Association of Apartment Owners, as authorized by Supreme Court Order No. 25700-B-334, on the 2nd day of May 2014, I served a true and correct copy of the foregoing Supplemental Brief of Respondent Sixty-01 Association of Apartment Owners on counsel for the Petitioner on May 2, 2014 by email at the following address:

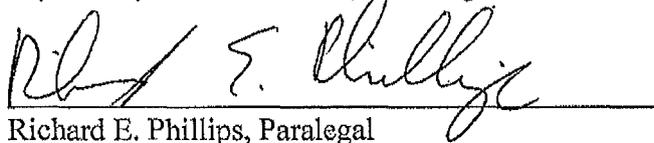
henry@lasher.com

and filed said Supplemental Brief by email at the following address:

supreme@courts.wa.gov

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 this 2nd day of May, 2014 at Seattle, Washington

  
Richard E. Phillips, Paralegal

## OFFICE RECEPTIONIST, CLERK

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**From:** OFFICE RECEPTIONIST, CLERK  
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**Subject:** RE: Sixty-01 Mallarino RE: 89805-7 - Sixty-01 Association of Apartment Owners v. Daniel W. Pashniak

Rec'd 5-2-14

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Dear State of Washington Supreme Court,

Attached for electronic filing is the Supplemental Brief of Respondent Sixty-01 Association of Apartment Owners.

Please consider this filing as the original for the Court's file. A copy will not be delivered by regular mail or courier.

Sincerely,

Rick Phillips  
Paralegal  
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201 Queen Anne Ave. North, Suite 400  
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