

Jan 27, 2017, 2:06 pm

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Case No. 92967-0

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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SELENE RMOF II REO ACQUISITIONS, LLC

Petitioner,

v.

VANESSA WARD

Respondent.

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**ANSWER OF PETITIONER  
SELENE RMOF II REO ACQUISITIONS, LLC  
TO AMICUS CURIAE BRIEF OF  
NORTHWEST CONSUMER LAW CENTER**

Submitted By:

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## I. INTRODUCTION

Petitioner Selene RMOF II REO Acquisitions II, LLC (“Selene”) answers the Amicus Brief of Northwest Consumer Law Center (“NCLC”) as follows below.

## II. ARGUMENT

### A. NCLC Erroneously Assumes Ms. Ward’s Unrecorded Quitclaim Deed Had Priority Over the 2007 Deed of Trust.

RCW 61.24.060(1) does not limit use of the unlawful detainer process to “only” or “strictly” a trustee’s sale purchaser, as Ms. Ward seeks the Court to infer. Statutory rights can be transferrable. *See, e.g., Miller and Starr*, 5 Cal. Real Est. § 13:267 (4th ed.), *citing Evans v. Superior Court*, 67 Cal.App.3d 162, 136 Cal.Rptr. 596 (Cal. 1977) (directly on-point); *see also* Supp. Briefing of Selene at 2 (citing similar cases).

NCLC avoids the primary question of whether RCW 61.24.060(1) applies to Selene, as successor in interest to the trustee’s sale purchaser (LaSalle Bank), because this statute does not turn on color of title and its application resolves the case in Selene’s favor.

Rather, NCLC suggests Selene did not acquire *any* rights in the subject property based on a hidden deed giving Ms. Ward superior title. Amicus Brief at 5. The flaw in NCLC’s reasoning is that, because Ms.

Ward did not record her alleged interest, she was not the record owner in 2007 when James Dreier encumbered the property with a deed of trust. CP 4, 29.

The Court of Appeals, Division Three, recently observed that a “record owner” is defined as “[a] property owner in whose name the title appears in the public records.” *Wash. Fed. v. Azure Chelan LLC*, 194 Wn. App. 1052 (2016) (unpublished), *citing* Black’s Law Dictionary 1280 (10th ed. 2014). Parties who are not record owners generally cannot assert superior title, based on the principle that “[p]arties who delay recording their deeds to property until after another has recorded a deed to the same property have the burden of proving actual or constructive notice of their interest in property by the other, and if they fail to do so, their prior conveyance is void as against that party by virtue of RCW 65.08.070.” *Levien v. Fiala*, 79 Wn. App. 294, 300, 902 P.2d 170 (1995); *see also Lind v. City of Bellingham*, 139 Wash. 143, 147, 245 P. 925 (1926) (a bona fide purchaser is entitled to rely on record title).<sup>1</sup>

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<sup>1</sup> “A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his or her heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record.” RCW 65.08.070.

NCLC incorrectly states that Selene must prove Ms. Ward was not the property's owner. Amicus Brief at 6. To the contrary, Ms. Ward bears the burden of demonstrating superior title. *See, e.g., Levien, supra.* But despite NCLC's belief in the validity of Ms. Ward's quitclaim deed, that instrument was not recorded and therefore was void as to LaSalle Bank's deed of trust and Selene's post-foreclosure interest in the property.<sup>2</sup>

Ms. Ward did not make her claimed deed known in 2005 when record owner Chester Dorsey conveyed the property to Fred Brooks. CP 29. Ms. Ward did not make her deed known in 2007 when Mr. Brooks conveyed the property to Mr. Dreier, or when Mr. Dreier obtained a mortgage loan with the property as collateral for repayment. *Id.* Indeed, Ms. Ward provided mortgage payments into 2007 when she stopped doing so, leading eventually to foreclosure. *Id.; accord Snohomish Cnty. v. Hawkins*, 121 Wn. App. 505, 510–11, 89 P.3d 713 (2004), *as amended on denial of reconsideration* (Apr. 26, 2004) (“A party ratifies an otherwise

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<sup>2</sup> Further, while deeds often recite nominal consideration because the true consideration is reflected in an excise tax payment on the transfer, Ms. Ward's 2004 quitclaim deed was never recorded at all. *Accord State ex rel. Namer Inv. Corp. v. Williams*, 73 Wn.2d 1, 9, 435 P.2d 975 (1968) (“The basis for any excise tax to be levied, then, must be the actual consideration paid or delivered or contracted to be paid or delivered in exchange for the ultimate transfer of the designated interest in real property.”). Consequently, the deed “for and in consideration of one dollar,” was likely *void on its face* due to a lack of actual consideration. CP 45.

voidable contract if, after discovering facts that warrant rescission, she remains silent or continues to accept the contract's benefits.”).

Ms. Ward also had an opportunity to disclose her claimed deed in January 2009 by seeking to restrain the trustee's sale (which she knew about), but she failed to do this. RP 18:4-17.<sup>3</sup> Ms. Ward had another opportunity for disclosure in March 2009; but her answer to an earlier, and not completed, unlawful detainer action only stated that LaSalle Bank's interest was “obtained fraudulantly [*sic*] and illegally.” CP 55. Likewise, Ms. Ward continued to conceal the deed during another earlier, and also not completed, unlawful detainer action in December 2012. CP 30.

Ms. Ward did not even make the deed known when Selene initiated its unlawful detainer action in April 2014. CP 74 (Answer). Instead, Ms. Ward finally included the deed with a motion to dismiss just days before Selene's show cause hearing, although this motion was not properly served or noted. CP 44-45; RP 10:1-11:24.

Consequently, the record in this case shows that Ms. Ward's unrecorded 2004 quitclaim deed – which remained hidden for ten years – was not senior to the fee simple property interest and rights that Selene acquired from the foreclosing beneficiary, LaSalle Bank. By virtue of its

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<sup>3</sup> Ms. Ward filed suit on the trustee's sale date, but did not follow the statutory procedure to obtain an injunction under RCW 61.24.130. Her lawsuit was later dismissed. RP 21:10-15.

successor-in-interest status, Selene was entitled to rely on RCW 61.24.060(1) as a basis for initiating summary proceedings to evict Ms. Ward. The Court of Appeals erred in disregarding Selene's rights.

B. Ms. Ward Did Not Have Color of Title, and the Unlawful Detainer Was Not a Proper Forum to Claim Otherwise.

If RCW 61.24.060(1) affords Selene proper grounds to pursue an unlawful detainer, consistent with the California *Evans* decision, then the question of "color of title" under RCW 59.12.030(6) need not be reached. *Cf. Puget Sound Inv. Grp. v. Bridges*, 92 Wn. App. 523, 963 P.2d 944 (1998) (plaintiff invoked RCW 59.12.030(6) because tax sale statutes in RCW 84.64 do not permit use of unlawful detainer like RCW 61.24.060 does).

Nonetheless, on this issue, NCLC incorrectly states that Selene must demonstrate Ms. Ward lacked color of title for two principal reasons. Amicus Brief at 6.<sup>4</sup>

First, the unlawful detainer action did not provide a forum for Ms. Ward to litigate her challenge to Selene's title. *See, e.g., Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985) ("[t]he action is a

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<sup>4</sup> NCLC cannot legitimately suggest that Ms. Ward possessed both actual title and color of title, as the two concepts are exclusive. *See, e.g., McCoy v. Lowrie*, 42 Wn.2d 24, 29, 253 P.2d 415 (1953) ("the term 'color of title', as we have defined it, means 'that which is a semblance or appearance of title, but is not title in fact or in law' and implies that a valid title has not passed.") (Internal citation omitted).

narrow one.”); *Fed. Nat. Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 353 P.3d 644 (2015); *Puget Sound Inv. Grp. v. Bridges*, *supra.* at 526; *see also*, *e.g.*, *Quon v. Sanguinetti*, 60 Ariz. 301, 303, 135 P.2d 880 (Ariz. 1943) (recognizing the “universal law” that tenants are estopped from bringing objections to title during eviction). It is firmly established that:

[i]n an unlawful detainer action, the court sits as a special statutory tribunal to summarily decide the issues authorized by statute and *not* as a court of general jurisdiction with the power to hear and determine other issues.

*Granat v. Keasler*, 99 Wn.2d 564, 571, 663 P.2d 830 (1983) (emphasis in original). It would be inapposite to require property owners to prove the invalidity of a defendant’s color of title claim in order to obtain a writ of restitution when the only issue subject to adjudication is possession.

Ms. Ward had alternative options that she did not exercise. She could have sought to restrain the trustee’s sale before it occurred, and asserted either actual title or color of title at that time. *See* RCW 61.24.130(1). Or she could have brought a separate civil action to adjudicate the 2004 quitclaim’s deed effect and ostensibly preclude Selene from pursuing an unlawful detainer. *See, e.g.*, *Evans v. Superior Court*, *supra.* at 168 (person subject to unlawful detainer can seek relief through

quiet title lawsuit).<sup>5</sup> It was improper, however, for Ms. Ward to wait until coming into a limited-issue forum and then producing a ten-year-old unrecorded deed as part of a motion to dismiss Selene's action.

Second, even if Ms. Ward could assert a claim to the Property in the unlawful detainer proceeding, Ms. Ward was compelled to support her position. *See, e.g., Williams v. Striker*, 29 Wn. App. 132, 135, 627 P.2d 590 (1981), *citing* RCW 7.28.080 (claimant must prove color of title to be adjudged an owner of vacant land); 17 Wash. Prac., Real Estate § 8.20 (2d ed.) (claimant must hold or trace back to a title document). Color of title requires a showing of good faith. *See, e.g., Bellevue Square Managers, Inc. v. GRS Clothing, Inc.*, 124 Wn. App. 238, 246, 98 P.3d 498 (2004), *citing Bassett v. City of Spokane*, 98 Wash. 654, 656, 168 P. 478 (1917); *Petticrew v. Greenshields*, 61 Wash. 614, 618, 112 P. 749 (1911) (quitclaim deed for \$1 in consideration, coupled with making payments for owner, held to not be good faith color of title).

Here, the record reveals that Ms. Ward failed to act in good faith when she hid the unrecorded quitclaim deed for a decade. During that time, Ms. Ward made mortgage payments despite now asserting the

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<sup>5</sup> However, while such a remedy is generally available, Ms. Ward could not succeed given the facts presented, as the obligation secured by the 2007 Deed of Trust was not satisfied. *See Evans v. BAC Home Loans*, 2010 WL 5138394, \*4 (W.D. Wash. 2010); *see also Walker v. Qual. Loan Serv. Corp.*, 176 Wn. App. 294, 322 (2013), *as modified* (Aug. 26, 2013) (Court declined to quiet title and “void a consensual lien.”).

Property could not be encumbered and foreclosed upon subsequent to her secret 2004 deed. CP 29 (“Dorsey obtained one loan in 2005 and two over the next two years. The best I can tell, they were refinance loans.... In 2007, I got behind in my mortgage payments around May or June.”).

Therefore, Ms. Ward’s lack of good faith defeats her purported color of title as a defense to unlawful detainer, and Selene need not have “taken steps to eliminate Ms. Ward’s claimed interest....” Amicus Brief at 6.

### **III. CONCLUSION**

When Ms. Ward stopped supplying mortgage loan payments on behalf of the subject property’s record owner, a 2007 Deed of Trust was foreclosed. Selene later obtained the fee simple title and attendant rights of trustee’s sale purchaser LaSalle Bank, and initiated an unlawful detainer proceeding.

NCLC’s Amicus Brief disregards these facts as a means to reach a legal conclusion backing Ms. Ward’s position. But Ms. Ward’s quitclaim deed was not “valid on its face.” *Cf.* Amicus Brief at 6. Instead, it was unrecorded, undisclosed, and suddenly brought to light for the first time in a proceeding where claims relating to title are disallowed.

In conclusion, Selene’s rights as the Property owner included the ability to invoke RCW 61.24.060(1) and evict Ms. Ward. Yet, even if this

statutory right was deemed exclusive to a trustee's sale purchaser and non-transferrable, Selene could still obtain a Writ of Restitution because Ms. Ward did not have Selene's permission to remain in the property, and Ms. Ward lacked good faith color of title. *See* RCW 59.12.030(6).<sup>6</sup>

Based on the authorities and arguments stated above, Selene requests that the Supreme Court reject NCLC's reasoning and reverse the Court of Appeals' decision.

DATED this 26<sup>th</sup> day of January, 2017.

**RCO LEGAL, P.S.**



By: /s/ Joshua S. Schaer  
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RMOF II REO Acquisitions II, LLC

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<sup>6</sup> Notably, RCW 61.24.060(1) mandates twenty days' notice to occupants, while RCW 59.12.030(6) merely directs giving three days' notice. Occupants would be given a more robust warning if Selene and other subsequent property owners could rely upon the former statute.

### Declaration of Service

The undersigned makes the following declaration:

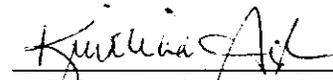
1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.

2. On January 27, 2017 I caused a copy of the **Answer of Petitioner Selene RMOF II REO Acquisitions II, LLC to Amicus Curiae Brief of Northwest Consumer Law Center** to be served to the following in the manner noted below:

Vanessa Ward 7911 S. 115 <sup>th</sup> Pl. Seattle, WA 98178  <i>Pro Se</i> Appellant	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile
Catherine C. Clark The Law Office of Catherine C. Clark, PLLC 2200 Sixth Ave., Suite 1250 Seattle, WA 98121  Attorneys for Amicus Northwest Consumer Law Center	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile
Sheila O'Sullivan Northwest Consumer Law Center 214 E. Galer St., #100 Seattle, WA 98102  Attorneys for Amicus Northwest Consumer Law Center	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile

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

Signed this 27<sup>th</sup> day of January, 2017.

  
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Kristine Stephan, Paralegal