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COURT OF APPEALS
STATE OF WASHINGTON
2015 JAN 29 PM 1:44

DIVISION ONE

JAN 29 2015

No. 72315-4-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

CATHERINE CINA

Appellant

v.

MAHARUKH GHADIALI,

Respondent.

Appeal from Superior Court for King County
Commissioner Henry H. Judson

APPELLANTS' OPENING BRIEF

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I. INTRODUCTION

This appeal involves an unlawful detainer and the failure of the court to grant a stay pending appeal of the unlawful detainer action against Appellant. Appellant was eventually forcibly evicted from her home. A stay pending appeal should have been granted and would have at least allowed Appellant the opportunity to have the court hear and review the unlawful detainer writ of restitution decision before being evicted from the property.

II. ASSIGNMENTS OF ERROR

1. The trial court erred on July 31, 2014 when it entered judgment in favor of the Respondent, and found in favor of Respondent in its Unlawful Detainer action and issued a Writ of Restitution.

2. The trial court erred on August 11, 2014 when it denied the Appellant's Motion to Stay pending appeal.

Issues Pertaining to Assignments of Error

Did the trial court erroneously issue a Writ of Restitution when the trustee's sale was invalid and Respondent did not have the right to possession? (Assignment of Error No. 1)

Did the trial court erroneously deny a motion to stay the unlawful detainer hearing pending appeal of the Unlawful Detainer and Writ of Restitution (Assignment of Error No. 2)

III. STATEMENT OF THE CASE

On November 27, 2013, Quality Loan Service Corp. recorded a Notice of Trustee's Sale in King County as instrument number 20131127001317 with a sale date of March 28, 2014. **CP 8-11**. On or about March 18, 2014, Quality Loan Service Corp. of Washington issued a "Notice of Continuance of Trustee's Sale" in response to a TRO obtained by the Washington Attorney General's Office, and a Consent Decree that was the result of the AG's action brought against QLS in King County Superior Court. This Notice postponed the Trustee's Sale

date to April 25, 2014. The sale was postponed again by QLS to June 6, 2014.

On April 17, 2014, Ms. Cina (Appellant) commenced a lawsuit in King County Superior Court wherein Wells Fargo Bank, N.A., Wells Fargo Home Mortgage, Freddie Mac, and Quality Loan Service Corporation of Washington were the defendants. (Case No. 14-2-10813-3). A First Amended Complaint was filed on April 30, 2014. **CP 155-165, CP 78-88**. On May 27, 2014, Freddie Mac removed the case to federal court. The case raised causes of action for Wrongful Foreclosure and Violation of the Deed of Trust Act, Fraud and Misrepresentation, Violation of the Consumer Protection Act (RCW §19.86) and other common law claims.

On June 6, 2014, Quality Loan Service Corporation auctioned Ms. Cina's property at a trustee's sale in King County. On June 18, 2014, Eastside Funding LLC recorded a Trustee's Deed alleging that the property was sold to Maharukh Ghadiali (Respondent). **CP 62-64**. On June 27, 2014, Maharukh Ghadiali executed a "Complaint for Unlawful Detainer" naming Catherine Cina and John Doe Tenants(s) as Defendants. **CP 1-4**. On July 8, 2014, Ms. Cina received the Summons and Complaint for Unlawful Detainer. Appellant filed an Answer to this Complaint on July 17, 2014. **CP 41-44**.

A hearing for a Writ of Restitution was held on July 31, 2014 before Commissioner Judson in King County Superior Court, where the writ of restitution was granted. **CP 136-139**. Ms. Cina filed a Motion to Stay Proceedings on Unlawful Detainer pending appeal. This motion was heard on August 11, 2014. **CP 141-146, CP 147-154**. The motion to stay was denied.

Because of the failure of the court commissioners to issue a stay pending appeal, on August 7, 2014, a King County Sheriff's deputy forcibly evicted the Ms. Cina from her home in an unsafe and confrontational manner that put Ms. Cina's safety at risk. **CP 187-191**. Ms. Cina had nowhere else to live at that point.

IV. SUMMARY OF ARGUMENT

The court erred in failing to grant a stay pending appeal after Appellants filed a Notice of Appeal of the Writ of Restitution. Because of the invalidity of the trustee's sale, respondent did not have the right to possession of the property, so a stay pending appeal should have been granted.

V. LEGAL ARGUMENT

A. Standard of Review

An appellate court reviews questions of law de novo. *State v. McCormack*, 117 Wash.2d 141, 143, 812 P.2d 483 (1991), *cert. denied*,

502 U.S. 1111, 112 S.Ct. 1215, 117 L.Ed.2d 453 (1992). Issues of statutory interpretation are reviewed de novo. *Hartson P'ship v. Goodwin*, 99 Wash.App. 227, 231, 991 P.2d 1211 (2000). This appeal involves both statutory interpretation and questions of law, so the court should apply the de novo standard of review.

B. The Court Erred in Granting the Writ of Restitution At the Unlawful Detainer Hearing

The unlawful detainer statute, RCW §59.12 *et seq.*, is in derogation of the common law and must therefore be strictly construed in favor of the tenant. *Hous. Auth. of City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d 745 (1990); *Truly v. Heuft*, 138 Wn.App. 913, 918, 158 P.3d 1276 (2007). The trustee's sale in this matter was in violation of the Deed of Trust Act, specifically RCW 61.24.031(1)(a) and 61.24.031(1)(b) and should be found to be invalid and rescinded because the Deed of Trust Act was not strictly followed by QLS or JP Morgan Chase.

Because a show cause hearing is merely a summary proceeding, the arguments and factual disputes were improperly disposed of on July 31, 2014 when the Court issued the Writ of Restitution. *Carlstrom v. Hanline*, 98 Wn. App. 780, 788, 990 P.2d 986 (Wash. App. Div. 1, 2000). An unlawful detainer action is an issue of right to possession. Because

the trustee's sale was unlawful and did not proceed according to the requirements of the Deed of Trust Act, Respondent is not the rightful owner of the property and does not maintain the right to possession. The Writ of Restitution should not have been issued because Respondent was not the rightful owner.

C. The Court Erred in Failing to Grant a Stay Pending Appeal of the of the Writ of Restitution

RCW 59.12.220, **Writ of Restitution Suspended Pending Appeal**, states as follows:

“If a writ of restitution has been issued previous to the taking of an appeal by the defendant, and said defendant shall execute and file a bond as provided in this chapter, the clerk of the court, under the direction of the judge, shall forthwith give the appellant a certificate of the allowance of such appeal; and upon the service of such certificate upon the officer having such writ of restitution such officer shall forthwith cease all further proceedings by virtue of such writ....”

The statute's only requirement for a stay of a Writ of Restitution pending appeal is a defendant's filing of a bond, intended to protect against the Respondent's potential economic loss that may accrue until the appeal is determined. *See* RCW 59.12.100.

Similarly, RAP 8.1 grants a party as a matter of right a stay against enforcement of any decision affecting its right to possession of property by the filing of a bond, cash, or alternate security. RAP 8.1(b).

Allowed alternate security includes "...the establishment of an account consisting of cash or other assets held by a party...or any other reasonable means of securing enforcement of a judgment." RAP 8.1(b)(4). "Once an unlawful detainer is commenced and the defendant does not cede the right to possession, the defendant has the right to have the issue determined." *Housing Authority of the City of Pasco and Franklin County v. Pleasant*, 126 Wn. App. 382, 389, 109 P.3d 423 (Wash. App. Div. 3, 2005). The Appellant raised in her Motion to Stay Proceedings on Unlawful Detainer arguments relating to Plaintiff's standing and statutory non-compliance. As a writ of restitution cannot issue without sufficient evidence showing compliance with statutory notice provisions, the Appellant's arguments hold substantial merit. *Id.*, citing *Marsh-McLennan Building, Inc. v. Clapp*, 96 Wn. App. 636, 641-42, 980 P.2d 311 (Wash. App. Div. 1, 1999).

Appellant requested the court authorize a surety in the amount of \$1,290.53 per month to be paid either by credit card or cash on a monthly basis beginning on August 8, 2014 and on the 8th of each month thereafter until the Appeal is resolved. The amount represents the monthly amount that would have been paid on the mortgage, which is sufficient to protect against any economic loss that could accrue to Respondent while the appeal is pending. Respondent demanded that Appellant post a bond

sufficient to reimburse Respondent for paying the “debts to the bank” (unspecified amounts) and to the homeowners association. **CP 171-172.** Appellant was wrongfully prohibited by the court from offering competent evidence at the hearing on July 31, 2014 to show that the HOA dues had already been paid and that the HOA admitted this fact. VRP, July 31, 2014, 7-9.

The court denied the stay pending appeal because Appellant could not pay the HOA dues and the back rent in one lump sum at the day of the hearing. This is in violation of the policy behind the Deed of Trust Act, RCW 61.24.130(1)(a), which requires the homeowner to make “the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.” The court denied the stay pending appeal solely because Appellants could not pay that amount into the court registry on the day of the hearing.

VI. CONCLUSION

Accordingly, this Court should reverse the trial court orders and remand for further proceedings.

Signed and dated this 29th day of January, 2015.



Jill Smith, WSBA #41162

CERTIFICATE OF SERVICE

I certify under penalty of perjury that the attached document was served upon the Court of Appeals for Division II, and properly served to the counsel listed below, on January 29, 2015 .

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