70604-7

70604-7

NO. 70604-7-I
COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

TOWNE OWNERS ASSOCIATION, Plaintiff,

v.

BRIAN D. BECKMANN, et al., Defendants.

DCR SERVICES, LLC,
Third-Party Plaintiff/Appellant,

v.

THE CONDO GROUP, LLC, et al.,
Third-Party Defendants/Respondents.

BRIEF OF RESPONDENT THE CONDO GROUP, LLC

APPEAL FROM KING COUNTY SUPERIOR COURT
The Honorable Monica Benton, Case No. 11-2-08939-8 SEA

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I. INTRODUCTION

The Trial Court decision correctly recognized that there was never a "loan" transaction that actually took place. The Appellant, DCR Services LLC ("DCR"), is attempting to redeem a lien interest for a non-recourse "loan" which was a lending transaction in name only. In short, DCR's attempt to redeem was based on security for a loan that was illusory, at best.

DCR's seeks a determination that is an authorized redemptioner under RCW Ch. 6.23 (the "Redemption Statute). It provides a possible right of redemption to (1) lien creditors; and (2) the judgment debtor. *See* RCW 6.23.010. If proper, redemption would strip title from Condo Group as the foreclosure sale purchaser.

In this case, DCR obtained an assignment of the interest of the Defendant and Judgment Debtor, Brian D. Beckmann ("Beckmann"). However, as part of the same post-foreclosure-sale transaction, DCR supposedly loaned Beckmann $2,500. The loan was non-recourse; Beckmann was not personally liable for repayment. Instead, Beckmann granted a deed of trust on the subject property. Thus, DCR's only security for the repayment of the non-recourse loan was a "lien" on its own property.

Ultimately, it is nonsensical to secure a loan to a third party by placing a "lien" on the lender's property. DCR's purported deed of trust "lien" flowing from the "loan" transaction with Beckmann is ineffective. In other words, there was never an obligation capable of being secured by a lien and a lien cannot exist in the absence of such an underlying obligation.

Even if the Court determines the purported "loan" transaction was valid and somehow created a "lien" on DCR's own property, substantively the transaction was an improper attempt to transfer a "naked" right of redemption to the subject property. To create the illusion of compliance with the rule against such a "naked" transfer of a redemption right, DCR took great pains to create the appearance of a valid "loan" transaction.

The "loan" transaction was nothing more than an attempt to transfer the redemption rights. After all, the debtor Beckmann's ownership rights were transferred to DCR as part of the same transaction. Had those rights been exercised, the separate deed of trust interest of Third-Party Defendant, Bank of America N.A. ("BANA") would have reattached to the property. DCR and Beckmann tried to avoid this problem by the sham loan/assignment of the right to redemption. There is no other purpose to provide a "non-recourse" loan to a third party, secured by property you already own.

Even if the loan transaction is valid as a naked assignment of the redemption right, the "fee" nature of the foreclosed-upon debtor's reversionary interest (*i.e.* assigned from Beckmann to DCR) does not include the right to create the subject lien. In short, DCR ignores the complicated nature of real property rights by arguing that it is entitled to redeem as a lien creditor based on a deed of trust granted by the judgment debtor Beckmann after the foreclosure sale (the "Beckmann Deed of Trust"). DCR claims that the Redemption Statute expressly permits DCR to redeem because the Beckmann Deed of Trust is "subsequent in time" to the condominium assessment lien on which the underlying foreclosure action is based. The view is overly simplistic. Indeed, taken to its logical conclusion, even an invalid lien confers redemption benefits on its holder.

Simply put, DCR should not be entitled to redeem; the Beckmann Deed Of Trust does not provide DCR with an unconditional lien in its favor. If anything, the Beckmann Deed of Trust only provides a conditional property interest which evaporates upon expiration of the applicable one (1) year redemption period. The only exception is the scenario in which the judgment debtor (*i.e.* Beckmann) exercises the debtor's right to redeem, thereby restoring title to the subject property as though the foreclosure sale had not occurred. However, DCR (as Beckmann's purported assignee) is not attempting to redeem in the

capacity of the judgment debtor.

Finally, DCR should not be entitled to redeem because the Beckmann Deed Of Trust was not extinguished by the foreclosure sale and DCR was not a party to the underlying foreclosure action. The policies in favor of stability of title and for the protection of both judgment debtors and foreclosing lien holders support the determination that DCR should not be entitled to redeem under the circumstances.

Accordingly, Respondent The Condo Group LLC ("Condo Group") opposed DCR's improper attempt to redeem. DCR's claim that Condo Group opposed the redemption solely "because DCR obtained its lien after the sheriff's sale" is incorrect. As shown above, there are independent (though at times interrelated) arguments which establish that DCR is not entitled to redeem. A determination in Condo Group's favor on one (1) or more of these issues is fatal to DCR's appeal. Thus, Condo Group respectfully requests that the Court affirm Judge Benton's rulings. DCR is not an authorized redemptioner.

II. ASSIGNMENTS OF ERROR

Condo Group accepts Judge Benton's Order in this case. Condo Group does not make any assignments of error.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the Beckmann/DCR transaction created a valid loan on which a lien could be created.

2. Whether DCR may redeem as a beneficiary under the Beckmann Deed of Trust where the loan transaction between DCR and Beckmann was simply an attempt to transfer a "naked" right of redemption.

3. Whether DCR should be entitled to redeem where the Beckmann Deed Of Trust does not provide DCR with an unconditional lien in its favor and is not valid to the extent necessary to give rise to any right of redemption.

4. Whether the Beckmann Deed Of Trust should give rise to a right of redemption when it was not extinguished by the sale and DCR was not a party to the underlying foreclosure action.

IV. STATEMENT OF THE CASE

A. Towne Commences The Underlying Foreclose Action Against Beckmann.

On March 7, 2011, Towne commenced this action against Beckmann to obtain a Judgment for delinquent common expense assessment. CP 3-4 (Amended Complaint at 3-4, ¶¶ 9-10). Towne also sought to foreclose a condominium assessment lien on the unpaid assessments (the "Towne Lien") against the property commonly known as 3058 – 128th Avenue S.E., Unit No. 38, Bellevue, King County, Washington 98005-5158 ("Unit 38") and legally described as follows:

> UNIT 38, TOWNE, A CONDOMINIUM, ACCORDING TO THE CONDOMINIUM DECLARATION RECORDED UNDER RECORDING NUMBER 20060609000380, AND AMENDMENTS THERETO, IF ANY, AND IN VOLUME 218

OF CONDOMINIUMS, PAGE(S) 36 THROUGH 48, INCLUSIVE, IN KING COUNTY, WASHINGTON;

TOGETHER WITH LIMITED COMMON ELEMENT(S), PARKING SPACE NUMBER(S) 68 AND 69.

Tax Parcel No.: 8666430-0380-04.

CP 3-4 (Amended Complaint at 3-4, ¶¶ 9-10).

In addition to Beckmann, Towne named Mortgage Electronic Registration Systems, Inc. ("MERS"), alleging that MERS was "listed as the beneficiary on deed(s) of trust recorded against [Unit 38]". CP 2 (Amended Complaint at 2, ¶ 3). Beckmann and MERS both failed to answer the complaint. CP 18-22 (Judgment, Order and Decree).

On May 19, 2011, the Court entered a Default Judgment and Foreclosure Decree in favor of Towne (the "Towne Judgment/Decree"). CP 18-22 (Judgment, Order and Decree). It provided for entry of a principal judgment in the amount of $2,518.08 against Beckmann. CP 18-19. It also established the validity of the Towne Lien. CP 19. Further, the judgment foreclosed a deed of trust lien interest (the "BANA Deed of Trust"), which is purportedly now held by BANA. CP 143-144 (Deed of Trust at 1-2); CP 108 (BANA's Answer, Counterclaim, Cross-Claim And Fourth Party Complaint at 9).

The judgment was never paid. CP 495-498 (Motion To Confirm Sale); CP 27 (Bid Letter). As a result, on June 1, 2011, the Court issued a

Praecipe for an Order of Sale directing the Sheriff of King County, Washington (the "Sheriff") to seize and sell Unit 38. CP 23-24.[1]

B. Condo Group Purchases Unit 38 At A Sheriff's Sale.

Subsequently, Condo Group learned of the pending Sheriff's sale of Unit 38 through public notices published in The Daily Journal of Commerce in June and July of 2011.[2] CP 190-194 (Stevenson Declaration); CP 30-31 (July 1, 2011 Affidavit of Publication). After conducting thorough due diligence, Condo Group decided to bid on Unit 38 at the Sheriff's sale. CP 190-194 (Stevenson Declaration).

On August 5, 2011, the Sheriff sold Unit 38 at public auction to Condo Group, the highest bidder, for $6,200.00.[3] CP 195-197 (Certificate of Purchase); CP 25-26 (Sheriff's Return On Sale). The Court confirmed the sale on September 21, 2011.[4] CP 45-47 (Order Confirming Sale).

The sale was based on the Towne Judgment/Decree. CP 20 (Judgment, Order and Decree at 3, ¶¶ 3-5). In part, it provides as follows:

3. If [Towne's] entire judgment amount is not paid forthwith

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1 The Clerk accordingly issued the Order of Sale on June 1, 2011. CP 41-43.

2 Specifically, the Notices of the Sheriff's sale of Unit 38 appeared in The Journal of Commerce on June 3, June 10, June 17, June 24, and July 1, 2011. CP 30-31 (July 1, 2011 Affidavit of Publication).

3 While the sale was originally set for July 22, 2011, the Sheriff postponed it to August 5, 2011. CP 32, 29 (Postponement Notices).

4 The Sale Confirmation Order incorrectly stated that the sheriff's sale occurred September 6, 2011. CP 45-47 (Order Confirming Sale); CP 535-538 (Motion To Correct Sale Confirmation Order). On December 14, 2011, the Court amended the Confirmation Order to correctly state the August 5, 2011 sale date. CP 48-49 (Order Correcting Date Of Sheriff's Sale In Prior Sale Confirmation Order).

upon entry, [the Towne Lien] may be foreclosed and [Unit 38] may be sold by the Sheriff of King County on [Towne's] request...at a foreclosure sale in the manner provided by law....

* * *

4. The rights of...Beckmann and [MERS], and all persons claiming by through or under them, including mortgage lenders, are adjudged inferior and subordinate to [the Towne Lien] and will be forever foreclosed and extinguished, unless the full in rem judgment amount is paid prior to the time of the Sheriff's sale, except for the statutory right of redemption allowed by law, if any.

5. The redemption period following a sheriff's sale of [Unit 38] shall be one year. [emphasis and bracketed text added]

CP 20 (Judgment, Order and Decree at 3, ¶¶ 3-5).

Mirroring the language of the Towne Judgment/Decree, the Certificate of Purchase specifies a one (1) year redemption period from the August 5, 2011 sale; *i.e.* through August 4, 2012. CP 195-197 (Certificate of Purchase); CP 20 (Judgment, Order and Decree at 3, ¶ 5).

C. DCR Attempts To Purchase Redemption Rights From Beckmann Under The Guise Of A "Loan" Transaction.

Significantly, as of the August 5, 2011 Sheriff's sale, DCR did not exist as an entity. CP 139 (Secretary of State Report). Again, DCR did not register as a limited liability company until March 28, 2012. *Id.* At the time of the Sheriff's sale, DCR was non-existent and could not have had any right, title or interest in Unit 38. CP 76-82 (DCR's Third-Party Complaint). After the purchase, Condo Group immediately took

occupancy of Unit 38 and commenced renovation efforts, at significant expense. CP 190-194 (Stevenson Declaration).

DCR alleges that in April of 2012 – more than eight (8) months after the Sheriff's sale – it "acquired redemption rights" in Unit 38. CP 78 (DCR's Third-Party Complaint at 3, ¶ 3.6); CP 564 (DeBoer Declaration). Specifically, DCR alleges that on April 18, 2012 it executed a "Deed of Trust, Non-Recourse Note and Quit Claim Deed Agreement" with Beckman. CP 174 (Deed of Trust, Non-Recourse Note and Quit Claim Deed Agreement (the "DCR/Beckmann Agreement")).

The DCR/Beckmann Agreement provides as follows:

1. DCR is willing to make a loan to the [sic] Beckmann, which loan is to be secured by the property located at 3058 120th Avenue SE #38, Bellevue. WA 98006 [sic], which property the parties acknowledge was the subject of a Sheriff's sale on August 5, 2011.

2. Beckmann warrants that he is the legal owner of the property and promises that he has not granted any other consensual deeds, deeds of trust, liens or the like against the property since the date of original purchase and promises that he will not grant any other deeds, deeds of trust, liens or the like against the property prior to recording of the above-referenced [sic] deed of trust.

3. In return for the payment of 2500^{00} by DCR, Beckmann will give DCR a **non-recourse promissory note** in the same amount and a deed of trust against the above property to secure payment of the note.

4. The parties further agree that if there are no subsequent, additional encumbrances or conveyances granted by Beckmann

> after this agreement is signed, then after recording the deed of trust, but in no case more than two weeks thereafter, DCR shall also pay to Beckmann the additional sum of $2500^{\underline{00}}$ for a quit claim deed to the above referenced property along with an assignment of any and all of Beckmann's rights in the property under RCW Ch. 6.23, including but not limited to redemption rights created by the Sheriff's sale. [emphasis and bracketed text added]

CP 174.[5]

On April 18, 2012, DCR recorded a deed of trust against the Property under King County Auditor's File No. 20120418000665 (the "Beckmann Deed of Trust"). CP 176-178 (Beckmann Deed of Trust); CP 570-572. Consistent with Paragraph 4 above, the following day, April 19, 2012, Beckmann executed a quit claim deed assigning "all interest" in Unit 38, as well as "any and all of grantor's rights in the property under RCW Ch. 6.23, including but not limited to redemption rights created by a Sheriff's sale on August 5, 2011" (the "Beckmann Assignment"). CP 180 (Quit Claim Deed/Assignment); CP 574.[6]

D. DCR Attempts To Redeem Solely Based On The Beckmann Deed of Trust.

On July 7, 2012, DCR delivered a redemption request letter to the Sheriff. CP 201 (Redemption Request Letter); CP 583. DCR claimed to be a "redemptioner" based on the Beckmann Deed of Trust. *Id.*

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[5] CP 564-568.

[6] DCR apparently paid $169.22 in real estate excise taxes in conjunction with the Beckmann Assignment. CP 576-577 (Excise Tax Affidavit).

In June of 2012, the Sheriff notified Condo Group of DCR's intent to redeem and forwarded a copy of the above letter from DCR. CP 199, 201. Again, prior to receiving the above redemption request letter, Condo Group was unaware of and could not have, as a practical matter, known of the existence of DCR or that it claimed a right to redeem Unit 38. CP 190-194 (Stevenson Declaration); CP 139 (Secretary of State Report). Again, at that point the Condo Group had expended significant funds to renovate Unit 38. CP 190-194 (Stevenson Declaration).

In response, Stevenson, Condo Group's managing member, notified the Sheriff that DCR was not an authorized redemptioner.[7] CP 204-205 (June 13, 2012 Letter from Stevenson to Cunio). Based on this position, Stevenson did not provide a redemption payoff amount. CP 190-194 (Stevenson Declaration).

The next day, June 14, 2012, DCR apparently sent the Sheriff a letter further outlining its position and claiming that DCR was tendering the "redemption amount". CP 207-208 (June 14, 2012 Letter From DeBoer to Cunio). In the letter, DCR also contends as follows:

> ...the property owner [*i.e.* Beckmann] is free to encumber or convey interests in the property (e.g., grant deeds of trust) during the redemption period.

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[7] On June 15, 2012, Stevenson provided a supplemental response to the Sheriff stating that Condo Group would provide a redemption amount if a Court determined that DCR was a proper redemptioner. CP 212 (June 15, 2012 Letter From Stevenson To Cunio).

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> There can be no serious dispute that DCR has a deed of trust on the property that is subsequent in time to the lien on which the property was sold. [DCR] is a redemptioner under RCW 6.23.010(1)(b).

Id. at 1-2. Again, at this point, the August 5, 2011 foreclosure sale had already taken place. CP 195-197; CP 25-26.

On June 15, 2012, Condo Group notified DCR that if a Court determined that DCR could redeem, Condo Group was entitled to reimbursement for taxes and condominium assessments paid during Condo Group's occupancy of Unit 38. CP 212 (June 15, 2012 Letter From Stevenson To Cunio).[8]

On June 18, 2012, the Sheriff notified DCR of Stevenson's above letter and the parties' clear dispute over redemption rights. CP 214 (June 18, 2012 Letter from Cunio to DeBoer). The notice stated that if DCR tendered funds in the amount it estimated was necessary for redemption, the Sheriff would deposit them in the court registry. *Id.* It further advised that the Sheriff would not issue a Certificate of Redemption to DCR or a Sheriff's Deed to Condo Group without a court order. *Id.*

Through a June 19, 2012 letter to the Sheriff, Condo Group

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[8] Since purchasing Unit 38, Condo Group has paid and continues to pay taxes and condominium assessments as they become due. CP 343-345 (Supplemental Stevenson Declaration). Condominium assessments are due monthly. *Id.* Thus, the total amount for which Condo Group seeks reimbursement continues to increase. *Id.* Ultimately, if this Court rules DCR is entitled to redeem, the Condo Group will provide a final accounting of all such taxes and assessments for which it seeks reimbursement. *Id.*

reiterated that DCR did not have standing to redeem. CP 216-217 (June 19, 2012 Letter From Stevenson To Cunio). Subsequently, on June 21, 2012, the Sheriff tendered DCR's estimated redemption payment of $6,840.04 into the Court registry. CP 50 (Letter Regarding Redemption From Cunio To Court Clerk). The Sheriff's tender letter further stated that due to the apparent "justiciable controversy" regarding DCR's right to redeem, the Sheriff would await further direction from the Court. *Id.*

On August 7, 2012, after learning of the Beckmann Deed of Trust, Condo Group tendered $3,000.00 to DCR, an amount sufficient to satisfy the purported $2,500 loan secured by the trust deed, plus interest. CP 347, 349. The tender was rejected.

On June 4, 2013, Judge Benton granted Condo Group's Motion for Summary Judgment in the underlying Superior Court action and denied DCR's Summary Judgment Motion. CP 434-437 (Order On Cross-Motions For Summary Judgment). The Order provides that DCR is not an authorized redemptioner of Unit 38. *Id.*

V. ARGUMENT

A. Standard of Review.

DCR seeks review of Judge Benton's Order granting summary judgment in favor of Condo Group and denying DCR's summary judgment motion on the same redemption-related issues. *See* Opening

Brief at 3; CP 434-437. Motions for summary judgment are reviewed de novo. *Frisino v. Seattle School Dist. No. 1*, 160 Wn.App. 765, 776, 249 P.3d 1044 (2011) (citation omitted).

The Appellate Court engages in the same analysis as the Trial Court. *Tanner Electric Cooperative v. Puget Sound Power & Light Co.*,128 Wn.2d 656, 668, 911 P.2d 1301 (1996) (citations omitted). In the Trial Court, summary judgment is proper if there are no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Id.*; *See also* CR 56(c). In this case, there are no material facts in dispute with respect to the central issue of this appeal; *i.e.* whether DCR is entitled to redeem Unit 38 based on the Beckmann Deed of Trust.

B. The "Loan" To Beckmann Did Not Create A Valid Lien Upon Which DCR Could Redeem Its Interest.

DCR claims to be a "redemptioner" based solely on the Beckmann Deed of Trust recorded April 18, 2012, months after the August 5, 2011 Sheriff's sale. CP 78-79 (Third-Party Complaint at 3-4, ¶¶ 3.6-3.9). In this regard, "[r]edemption is the process of cancelling and annulling a defeasible title, such as is created by a mortgage or a tax sale, by paying the debt or fulfilling other conditions." *City of Tacoma v. Perkins*, 42 Wash.2d 80, 85, 253 P.2d 957 (1953).

Where proper, redemption transfers title from a Sheriff's sale purchaser into the hands of another party, known as the "redemptioner". *Id.*; *see also* RCW 6.23.010(1)(b). Thus, a determination that DCR is an authorized redemptioner would eliminate Condo Group's interest in Unit 38 and fully vest title in DCR; *i.e.* as the "redemptioner".[9]

Fundamentally, DCR is attempting to redeem based on a non-recourse "loan" which was a lending transaction in name only. In this regard, the purported "promissory note" provides as follows:

> [DCR's] recovery against [Beckmann] for failure to pay any amount owing hereunder when due shall be limited solely to [Unit 38]. **[Beckmann] shall not be liable or have any personal liability in any other respect for the payment of any amount due under this Note.** [emphasis and bracketed text added]

CP 174. In addition, the above "note" provides only for repayment "on demand". *Id.*

In short, the "note" is not really a legitimate loan at all. The documents establish that there was never any intention that Beckmann would repay the purported loan from DCR. CP 174-80. After all, as part of the same transaction DCR acquired ownership of the real estate purportedly securing the non-recourse loan to Beckmann. *Id.* Thus, if DCR is allowed to redeem, its only recourse based on the Beckmann Deed

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[9] In that scenario, DCR would be required to pay Condo Group its $6,200 bid amount, plus interest, assessment, taxes and certain other amounts pursuant to the statute. CP 195-197 (Certificate of Purchase).

of Trust would be against itself; *i.e.*, as the beneficiary of the Beckmann Deed of Trust.

Indeed, Beckmann did not actually grant a valid underlying loan interest. Rather, Beckmann simply agreed to execute and record the Beckmann Deed of Trust in exchange for $2,500. Again, Beckmann was not personally obligated to repay the funds because the loan was "non-recourse". Certainly, the facts in this case are strikingly different from those contemplated by the Redemption Statute.

To emphasize, through a single transaction, DCR purchased Beckmann's "fee" interest in the subject property after the foreclosure sale. DCR also persuaded Beckmann to agree to grant a deed of trust on the property as part of the transaction. Thus, DCR is attempting to "redeem" based on a supposed "lien" it placed on its own property.

Ultimately, it is axiomatic that a party cannot secure a loan to another by placing a "lien" on their own property. Thus, DCR's purported deed of trust "lien" supposedly flowing from the "loan" transaction with Beckmann is ineffective. Simply put, DCR cannot redeem based upon a bogus loan secured by a "lien" on its own property. If this Court agrees, no further analysis is required.

C. DCR Obtained The Beckmann Deed Of Trust Through A Transaction That Was Nothing More Than The Transfer Of A "Naked" Right Of Redemption.

DCR concedes that it must establish that the April of 2012 "loan" transaction between DCR and Beckmann is not merely a "naked" assignment of redemption rights. *See* Opening Brief at 21-23; *see also Fid. Mut. Sav. Bank v. Mark*, 112 Wn.2d 47, 53, 767 P.2d 1382 (1989).

The Supreme Court in *Fid. Mut. Sav. Bank v. Mark* provides:

> ...permitting an assignee to exercise the right of redemption without having any other interest in the property is inconsistent with the legal effect of a redemption. The effect of redemption is to set aside the sale and restore the judgment debtor to the estate.... To allow an assignee without an interest in the property's title to redeem would accomplish nothing since any redemption would inure to the benefit of the holder of legal title—the judgment debtor-mortgagor.

Fid. Mut. Sav. Bank v. Mark, 112 Wn.2d 47, 53 (1989); *see also Gray v. C. A. Harris & Son, Inc.*, 200 Wash. 181, 187, 93 P.2d 385 (1939); *Ford v. Nokomis State Bank*, 135 Wash. 37, 45–46, 237 P. 314 (1925); *DeRoberts v. Stiles*, 24 Wash. 611, 618–20, 64 P. 795 (1901).

The substance of a transaction controls over form for redemption purposes. *Plummer v. Ilse*, 41 Wash. 5, 10-11, 82 P. 1009, 1011 (1905). Thus, DCR's attempt to allow a lien on its own property reveals that the transaction between Beckmann and DCR was nothing more than a "naked" assignment. *Id.; Fid. Mut. Sav. Bank v. Mark*, 112 Wn.2d 47, 53

(1989). Of course, such an assignment (*i.e.* without a valid transfer of an underlying lien interest in Unit 38) cannot give rise to any redemption rights. *Mark*, 112 Wn.2d at 53.

DCR argues that the *Mark* rule against "naked" assignments of redemption rights does not apply because DCR's purported right to redeem is based on a legitimate underlying loan transaction. *See* Opening Brief at 21-23. As seen above, the legitimacy of the loan is at issue.

Interestingly, DCR took great pains to negotiate a deal whereby it would arguably also acquire the right to redeem in the capacity of the judgment debtor (*i.e.* Beckmann). As part of the transaction with DCR, Beckmann executed a quit claim deed assigning "all interest" in Unit 38, including the debtor's right of redemption. CP 180 (Quit Claim Deed/Assignment).

One way or the other, DCR was hoping to buy a right of redemption. Given the "sale" transaction of the fee interest, there is no way that the so called "loan" transaction was anything other than an attempt to provide a second "naked" right to redeem.

Again, *Mark* stands for the proposition that any transaction which is actually a "naked" assignment of purported redemption rights should not create any right of redemption in favor of the assignee. *Mark*, 112 Wn.2d at 53. In this regard, *Mark* provides as follows:

> Our cases have consistently recognized that a valid conveyance is necessary to transfer the right of redemption.... To hold otherwise would permit a judgment debtor to convey the naked right to redeem without also conveying the debtor's reversionary interest in the property. This would create great uncertainty in dealing with real property as a judgment debtor could sell the right of redemption to any number of people, none of whom would be in a position to verify if they were the sole holders of this valuable right.

Mark, 112 Wn.2d at 53 (citations omitted).

Two points are noteworthy. First, a right of redemption can only be obtained if based on a "valid conveyance". *Id.* Second, the rule promotes the important policy of stability of title in the real property system. As shown above, the purported "loan" to DCR was a sham designed to convey "naked" redemption rights.

In short, through assignment DCR acquired the "fee" interest of Judgment Debtor Beckmann. However, DCR elected to forego the possibility of attempting to redeem in the capacity of the Judgment Debtor. The decision is not surprising. The Redemption Statute provides:

> If the judgment debtor redeems, the effect of the sale is terminated and the estate of the debtor is restored.

See RCW 6.23.040(2).

As a result, if DCR were allowed to redeem in the capacity of the judgment debtor, the BANA Deed of Trust would be "restored" as a lien

on Unit 38.[10] To avoid this result, DCR elected to redeem based on the Beckmann Deed of Trust. However, DCR should not be allowed to "cleanse title" from BANA's deed of trust lien. *See* RCW 6.23.040(2). Ultimately, DCR should not be permitted to "disavow" its status as debtor-via-assignment. *See* RCW 6.23.010(2). Thus, if allowed to redeem, DCR should take title subject to BANA's deed of trust lien interests.

Although creative, DCR's transaction with Beckmann is really an improper attempt to subvert the clear rule against assignment of "naked" redemption rights through a transaction which appears to be a loan. Ultimately, the Court should not allow DCR to accomplish indirectly (*i.e.* through the Beckmann transaction) that which is directly prohibited (*i.e.* obtaining a "naked" assignment of redemption rights). *Mark*, 112 Wn.2d at 53. DCR should not be entitled to redeem. *Id.*

D. The "Fee" Nature Of The Foreclosed-Upon Debtor's Interest Does Not Include The Right To Create An Unconditional Lien.

1. The Redemption Statute Does Not Specifically Address Whether A Party Can Acquire A Redemption Right Based On A Post-Sale Deed Of Trust.

Even assuming that the lien was valid and not an assignment of a naked redemption right, DCR must establish that the purported "fee"

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[10] If the Court determines that DCR can redeem, Condo Group would be entitled to repayment of any assessments, taxes, interest thereon, and any other recoverable amounts. *See* RCW 6.23.020(2), .040(3) and .050. In that scenario, Condo Group respectfully requests and reserves the right to establish the amounts owed on remand.

interest held by a Judgment Debtor during the redemption period includes the right to create an unconditional deed of trust lien giving rise to a right of redemption. Significantly, the Redemption Statute does not expressly provide a Judgment Debtor with any such right. *See* RCW Ch. 6.23.

Nonetheless, DCR claims that this appeal presents a "simple" issue easily resolved based on the plain language of the Redemption Statute. *See* Opening Brief at 1, 15. Seizing on the "subsequent in time" language of the Redemption Statute, DCR argues that because the April 18, 2012 Beckmann Deed of Trust was created after the January of 2009 Towne Lien (*i.e.* "subsequently in time"), DCR is an authorized redemptioner.[11] *See* Opening Brief at 14; CP 208.

Taken to its logical conclusion, DCR's "literal" interpretation would allow a party in Beckmann's position (*i.e.* the judgment debtor) to convey a right of redemption by executing a deed of trust anytime, even after title fully vests in the purchaser (or a proper redemptioner) at the end of the redemption period. Such a result would be absurd![12] Even DCR would agree that a prior owner of property should not be allowed to

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[11] The Towne Lien arose in January of 2009, when Beckmann first became delinquent on condominium assessment. CP 452, 473-76. Indeed, a condominium association such as Towne "has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due." *See* RCW 64.34.364(1).

[12] The possibility of multiple redemptions occurring after the redemption period expires would also undermine the goal of promoting stability of title. *Graves v. Elliott*, 69 Wash. 2d 652, 656 (1966).

"create" a lien on his former property (*i.e.* to which title has fully vested in another), let alone create redemption rights based on such an invalid lien.

Fortunately, the courts are not required to blindly apply a literal statutory interpretation that would lead to such absurd results; nor should they do so. *Whatcom Cnty. v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). The proper method of statutory interpretation is more nuanced. *Id.* It permits consideration of common law principles. *Id.* Ultimately, the goal is to ascertain the legislative intent. *Id.*

In this regard, the *Whatcom Cnty.* opinion provides as follows:

> ...we avoid a literal reading if it would result in unlikely, absurd or strained consequences.... The purpose of an enactment should prevail over express but inept wording.... The court must give effect to legislative intent determined "within the context of the entire statute."... Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous.... The meaning of a particular word in a statute "is not gleaned from that word alone, because our purpose is to ascertain legislative intent of the statute as a whole."

Whatcom Cnty., 128 Wn.2d at 546 (citations omitted).

2. Historical Property Law Principles Establish That The Beckmann Deed Of Trust Does Not Create An Unconditional Lien That Gives Rise To A Right Of Redemption.

DCR argues it obtained redemption rights via the post-sale Beckmann Deed of Trust because Beckmann was the "fee owner" during the redemption period. *See* Opening Brief at 17-21. Put another way,

DCR argues that after the Sheriff's sale, Beckmann possessed a real property interest which allowed him to grant a lien on Unit 38 giving rise to a right of redemption to DCR. *Id.*

Again, the Redemption Statute does not expressly provide a Judgment Debtor with any such right. *See* RCW Ch. 6.23. Further, as shown below, courts interpreting the Redemption Statute have limited the pool of *potential* redemptioners to lien creditors who were defendants to the underlying foreclosure action and whose liens were extinguished by the foreclosure sale. *Summerhil v. Roughley*, 289 P.3d at 648 (2012); *Seattle Med. Ctr., Inc. v. Cameo.*, 54 Wn.2d at 194-95, 339 P.2d 93 (1959).

Beyond these insurmountable problems, research does not reveal any authority which allows a judgment debtor to grant a deed of trust or any other lien interest during the redemption period. Faced with this dearth of authority, DCR cites a string of cases which provide that during the redemption period, the debtor retains "fee" ownership and is not "divested of title" unless and until the debtor fails to redeem. *See* Opening Brief at 17-19. However, these cases do not address the nature or extent of the debtor's "fee" interest during the redemption period.

In short, without support, DCR argues that Beckmann had the necessary ownership interest to "create additional redemptioners by mortgaging" Unit 38. *See* Opening Brief at 19 (*quoting* Washington Real Property Desk Book, 2nd edition, WSBA, Mortgages, § 48.79).

DCR ignores the multi-faceted nature of real property rights. *See* 17 Wash. Prac., Real Estate § 1.1 (2d ed.). Indeed, real property is comprised of "an infinite collection" of interests, defined as follows:

> "Interest" is an all-inclusive term that refers to every legally protected right, power, privilege, or immunity a person may have with respect to land.

Id. These interests "may be held, separated, divided, transferred, restricted—combined and recombined like jack-straws." *Id.*

In particular, DCR fails to recognize that the purchaser (*i.e.* Condo Group) at a foreclosure sale also has a recognizable property interest. *W. T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 248, 571 P.2d 203 (1977) ("*Sherrer*"). Indeed, the Certificate of Purchase holder (*i.e.* Condo Group) obtains an "inchoate interest" that will ripen into title, unless the property is redeemed in accordance with the Redemption Statute. *Id. at 248-49, 252*; CP 196-197 (Certificate of Purchase). Thus, the purchaser holds a "valid subsisting interest in the real property" during the redemption period. *Sandberg v. Murphy*, 134 Wash. 685, 688, 236 P. 106 (1925).

Again, on the other hand, the foreclosure decree specifically provides that after a Sheriff's sale Beckmann's rights in Unit 38 would be "forever foreclosed and extinguished" as a result of the sale, many months before the Beckmann Deed of Trust allegedly creating the purported "lien" in favor of DCR was signed. CP 20 (Judgment, Order and Decree at 3, ¶ 4). Simply stated, DCR does not hold a "subsequent in time" lien because Beckmann's ability to grant the purported "lien" was foreclosed and extinguished many months before the Beckmann Deed of Trust was signed. This order was not appealed.

In addition, during the redemption period, the judgment debtor, purchaser, and proper redemptioners (if any) all have differing real property interests in the purchased property. *Sherrer*, 89 Wn.2d at 248.

Research does not reveal any authority specifically addressing whether these competing property interests eliminate the ability of a judgment debtor to grant a deed of trust lien after the sale which gives rise to a right to redeem. However, "fee" ownership may be subject to conditions which, if satisfied, cut short the owner's "fee" interest. As but one example, a "defeasible fee" estate is one with a condition attached to it that may cause or allow it to come to an end. *See* 17 Wash. Prac., Real Estate § 1.7 (2d ed.); *see also* Restatement of Property §§ 44 to 58 (1936).

Likewise, a grantor may retain "fee" title subject to a "springing executory interest". *See* 17 Wash. Prac., Real Estate § 1.22 (2d ed.). In short, it is an axiomatic principle that a transferor cannot grant more rights than it owns or controls. *Singly v. Warren*, 18 Wash. 434, 434-37, 51 P. 1066 (1898).

The possibility of contingent limitations on a "fee" ownership interest establishes that Beckmann should not have the unlimited right to convey a property interest (*i.e.* a deed of trust lien) after the foreclosure sale which gives rise to a right to redeem. Indeed, Beckmann retained "fee" ownership subject to the limitation that if he failed to redeem, "fee simple" title to Unit 38 would transfer either to the purchaser (*i.e.* Condo Group) or a proper redemptioner (if any).

Real estate contracts provide an analogous scenario. When property is sold on a real estate contract, "fee title" remains with the seller until such a time as the full purchase price is paid. *See* RCW 61.30.010(1). Likewise, when property is sold through a foreclosure sale, "fee" ownership remains with the debtor until expiration of the redemption period. *Cochran v. Cochran*, 114 Wash. 499, 504, *aff'd*, 114 Wash. 499, 198 P. 270 (1921); *see also* RCW 6.23.040(2). If the debtor does not elect to redeem, "fee" ownership is transferred to either the purchaser or a proper redemptioner.

Thus, the courts balance the competing rights of the seller (*i.e.* the "Vendor") and the purchaser (*i.e.* the "Vendee") during the course of a real estate contract in a fashion directly pertinent to this situation. In both scenarios, one party (*i.e.* the debtor or the Vendor) retains "fee" title for a period of time. Likewise, another party (*i.e.* the purchaser or the Vendee) also has an interest in the land for which he paid, and the expectation (or at least possibility) of obtaining "fee" title to the subject property.

In this regard, the Vendor retains "fee" or "legal" title. *See* RCW 61.30.010(1). Simultaneously, the Vendee also holds an "equitable" real property interest. *Cascade Sec. Bank v. Butler*, 88 Wn.2d 777, 781-84 567 P.2d 631 (1977). This common sense rule is premised on the maxim that "equity regards that as done which ought to be done." *Id.*

As a result, the Vendee has the right to possession and control of the land. *State ex rel. Oatey Orchard Co. v. Superior Court*, 154 Wash. 10, 12-13, 280 P. 350 (1929).[13] It is noteworthy that the Redemption Statute expressly provides the purchaser with the right to possession of the property after the foreclosure sale.[14] *See* RCW 6.23.110(1).

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[13] The Vendee may also sue for trespass. *Lawson v. Helmich*, 20 Wn. 2d 167, 171-72 (1944).

[14] Not surprisingly, the purchaser's right to possession ends upon redemption by the judgment debtor or a proper redemptioner. *See* RCW 6.23.110(1).

Significantly, the Vendee (*i.e.* purchaser) in a real estate contract also holds a mortgageable property interest.[15] *Kendrick v. Davis*, 75 Wn.2d 456, 452 P.2d 222 (1969). Similarly, during the redemption period a purchaser in the Condo Group position holds a "valid subsisting" property interest which may be encumbered by a tax deed. *Sandberg*, 134 Wash. 685, 688 (1925). As a result, the purchaser is entitled to maintain an action to set aside a void tax deed. *Id.*

In short, the Vendee has a real property title interest comprised of many important rights. While the right may be "equitable", it is nonetheless valid and "lien-able". *Id.* Thus, the relationship between the Vendor and a Vendee in real estate contract is analogous to that of a debtor and a purchaser after a foreclosure sale.

Applied to the redemption scenario, the above principles establish that the purchaser at a foreclosure sale (*i.e.* Condo Group) should obtain the same "equitable" property rights as a Vendee. To illustrate, a judgment lien against the Vendee does not attach to the Vendor's "fee" interest in property subject to a real estate contract. *See* RCW 4.56.190. Likewise, a judgment lien against a Vendor does not attach to the Vendee's "equitable" interest in the property if the Vendee "forfeits" the

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[15] Condo Group recognizes that it has no right to lien its ownership rights in the current situation. This example/analogy is merely intended to show the wide variety of ownership rights that come into play under various scenarios.

real estate contract and "equitable" title returns to the Vendor. *Cascade Sec. Bank*, 88 Wn.2d 777, 781-84.

Simply put, whether a lien encumbers the interest of the Vendor or Vendee cannot be determined until after the *end* of the contract; *i.e.* when both bare "legal" title and "equitable" title vest in either the Vendor (through a forfeiture) or a Vendee (by paying off the contract). Thus, a judgment lien against either party in a real estate contract is "conditional"; it attaches only as against the party who ultimately ends up with the property. *Id.*

Likewise, during any redemption period, a lien based on a debtor-granted Deed of Trust could only attach <u>if</u> the debtor ultimately exercises his/her right to redeem. In other words, the only scenario in which a Deed of Trust in this situation could become valid, is if the debtor actually redeems his/her interest. Otherwise, the Deed of Trust is null and void at the end of the redemption period, when both "legal" and "equitable" vest in a purchaser in Condo Group's position. *See* RCW 6.23.060.

In this case, it is undisputed that DCR is <u>not</u> seeking to redeem as the successor in interest to Beckmann's interest as a Judgment debtor. *See* Opening Brief at 1, 3, 11. Under historic real estate contract principles, the conditional lien created by the Beckmann Deed of Trust could not have attached to Unit 38; it was not valid. Therefore, the Beckmann Deed

of Trust could not give rise to a right of redemption; DCR cannot satisfy the threshold requirement for redemption of "having a lien" in Unit 38. *See* RCW 6.23.010(1)(b). The possibility such a lien would attach was extinguished upon expiration of the redemption period in August of 2012. *See* RCW 6.23.060.

There is no authority which specifically provides that a post-sale deed of trust granted by the judgment debtor creates a valid lien. As a result, there is no basis on which DCR can establish that the Beckmann Deed of Trust gives rise to a valid lien on Unit 38. Since it does not create a valid lien, the Beckmann Deed of Trust cannot give rise to any redemption rights. *See* RCW 6.23.010(1)(b).

This determination is also supported by the foreclosure decree which specifically provides:

> If [Towne's] entire judgment amount is not paid forthwith upon entry, [t]he rights of...Beckmann...will be forever foreclosed and extinguished.... [bracketed text added]

CP 20 (Judgment, Order and Decree at 3, ¶ 4). In other words, if the judgment against Beckmann was not paid prior to the Sheriff's sale, Beckmann's rights would be extinguished. *Id.*

In this case, since the judgment was not paid prior to the sale, Beckmann's rights were "extinguished" by the sale. As such, DCR did not and could not have obtained any lien rights in the property. After the

Sheriff's sale, Beckmann did not have a right to encumber the property; any such right was "foreclosed" by the sale. *Id.* It is noteworthy that Beckmann did not appeal the determination in the foreclosure which provides that his rights were "forever foreclosed".

During the redemption period the state of title is "in flux". *Id.* Indeed, the judgment debtor, purchaser, and proper redemptioners all have interests, or at least potential rights, in the purchased property. *Sherrer*, 89 Wn.2d at 248. Thus, courts must balance these competing property interests to determine whether a judgment debtor may grant a deed of trust or any other lien interest during the redemption period. *Id.*

Allowing judgment debtors to freely encumber a foreclosed-upon property after the Sheriff's sale would unfairly trammel the rights of purchasers. Since research does not reveal any authority which allows a judgment debtor to grant a deed of trust or any other lien interest during the redemption period, the Beckmann Deed of Trust cannot and should not create a valid lien giving rise to a right of redemption.

In essence, without applicable authority, DCR argues that after the Sheriff's sale, Beckmann had the right to encumber Unit 38 as he saw fit until expiration of the redemption period. *Id.* None of the cases cited by DCR supports its position.

The *Prince* case addressed whether the redemption amount tendered by a judgment debtor must include "other liens held by the purchaser in addition to the amount of the bid plus taxes and interest." *Prince v. Savage*, 29 Wash. App. 201, 202, 627 P.2d 996 (1981). In contrast, the issue here involves whether a post-sale deed of trust granted by the judgment debtor creates a valid lien and/or gives rise to redemption rights.

Cochran (*i.e.* another case on which DCR relies) addresses an entirely distinct situation in which the brother of the judgment debtor had advanced some of the funds tendered to redeem the property. *Cochran v. Cochran*, 114 Wash. 499, aff'd, 114 Wash. 499, 198 P. 270 (1921). In that context, *Cochran* determined the brother did not have "equitable title" based on the resulting trust doctrine. *Id.* The facts of *Cochran* bear no resemblance to the current situation.

Likewise, the *Singly v. Warren* case also arose in a much different context. *Singly v. Warren*, 18 Wash. 434, 434-37. The *Singly* court addressed a scenario in which the debtor appealed the foreclosure judgment and decree, but did not supersede the judgment. *Singly v. Warren*, 18 Wash. 434, 434-37. Thus, the sheriff sale occurred during the pendency of the appeal. *Id.* at 435. The purchaser assigned the certificate of sale (*i.e.* issued by the sheriff to the purchase). *Id.* at 435-37.

Thereafter, the judgment and foreclosure decree upon which the foreclosure sale was based were reversed on appeal. *Id.* at 435.

The court ultimately determined that the assignee holding the certificate of sale was did not hold "legal title" and was not a bona fide purchaser. *Id.* at 445. Thus, upon reversal of the judgment, title to the property vested in the judgment debtor. *Id.* at 445-47. In reaching this result, the court cited the principle that a "certificate of sale...does not pass title". *Id.* at 445. However, the court did not further define the nature of the "legal title" retained by the judgment debtor during the redemption period. *Id.*

In short, *Singly*, *Prince,* and *Cochran* do not address issues even remotely related to the present issue. *Prince*, 29 Wash. App. 201; *Cochran*, 114 Wash. 499; *Singly*, 18 Wash. at 437. At most, these cases stand for the proposition that a judgment debtor retains "fee" ownership through expiration of the redemption period. *Prince*, 29 Wash. App. at 205; *Cochran*, 114 Wash. at 503-04. However, the purchaser (*i.e.* Condo Group) also has an interest in the foreclosed property during the prior of redemption. *W. T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 248 (1977).

In short, without any authority, DCR argues that as a "fee owner", a debtor has "every available" property interest, including the ability to encumber it with a deed of trust lien. *Id.* Under DCR's imprecise theory

of title, one either owns property fully, or not at all. *Id.* It is an "all or nothing" proposition. *Id.*

E. The Beckmann Deed Of Trust Was Not Extinguished By The Sale And Should Not Provide A Right Of Redemption To DCR As A Non-Party To The Foreclosure Action.

Analysis of applicable case law reveals principals which establish that the only junior lien holders entitled to redeem are those who are: (1) defendants to the underlying foreclosure action and thus, (2) whose liens were extinguished by the foreclosure sale. *Seattle Med. Ctr., Inc. v. Cameo Corp.*, 54 Wn.2d 188, 194-95 (1959); *see also Millay v. Cam*, 135 Wn.2d 193, 198, 955 P.2d 791 (1998). These two (2) criteria are interrelated. Indeed, the only liens extinguished by a foreclosure sale are those in favor of defendants in the foreclosure action.

In *Cameo*, the Washington Supreme Court addressed a scenario in which multiple liens were foreclosed in a single foreclosure action. *Cameo*, 54 Wn.2d at 194-95. In this context, the *Cameo* court reinforced the notion that the right of redemption is only potentially available a defendant in the underlying foreclosure action. *Id.*

Specifically, the *Cameo* opinion provides:

> ...a junior mortgagee or judgment lien claimant, **who is defendant in a suit to foreclose a senior mortgage**, may elect, in simple cases at least, to obtain foreclosure of his own lien and thereby lose his right of redemption, or to waive foreclosure and preserve his redemption right. [emphasis added]

Cameo, 54 Wn.2d at 194-95.

Similarly, in *Millay v. Cam*, the Supreme Court characterized redemption as a right which is only potentially available to parties holding liens extinguished by the foreclosure sale. *Millay v. Cam*, 135 Wn.2d at 198 (1998). In this regard, *Millay v. Cam* provides as follows:

> When a mortgage is foreclosed and the property sold under execution, junior lien creditors **whose liens have been extinguished by the sale** have the statutory right to redeem the property from the purchaser. [emphasis added]

Millay v. Cam, 135 Wn.2d at 198; *accord DeYoung v. Cenex Ltd.*, 100 Wash.App. 885, 895 , 1 P.3d 587 (2000).

This lien extinguishment principal flows directly from the "subsequent in time" rule on which DCR bases its redemption claim:

> To qualify as a redemptioner, the holder of a lien by deed of trust must have acquired that lien "subsequent in time" to the one being foreclosed. This comports with Washington's first in time, first in right rule of lien priority, and **allows junior lienholders an opportunity to salvage something if their liens have been extinguished by foreclosure**. [emphasis added]

Summerhill Vill. Homeowners Ass'n v. Roughley, 289 P.3d 645, 648 (2012) (correcting and superseding 166 Wash.App. 625). In other words, *Summerhill* also characterizes redemption as a right potentially available to those lien creditors with liens that were extinguished by the Sheriff's sale. *Id.*

In this case, the Beckmann Deed of Trust was not extinguished by the August of 2011 Sheriff's sale; nor could it have been. DCR was not a party to the underlying foreclosure action. Likewise, the Beckmann Deed of Trust was granted after the foreclosure sale as part of a purported April 18, 2012 loan transaction. CP 174 (DCR/Beckmann Agreement); CP 176-178 (Beckmann Deed of Trust).

Thus, the Beckmann Deed of Trust was not (and could not have been) extinguished by the Sheriff's sale, and cannot give rise to any redemption rights. *See, e.g., Cameo*, 54 Wn.2d at 194-95; *Millay v. Cam*, 135 Wn.2d 193, 198 (1998).

F. Fundamental Policy Considerations Support The Position That DCR Does Not Have A Right To Redeem.

1. The Policy In Favor Of Stability Of Title Should Result In A Determination That DCR Is Not Entitled To Redeem Based On The Beckmann Deed Of Trust.

Fundamental policy goals support the position that DCR is not entitled to redeem. In this regard, "maintenance of stability of land titles, either by rule of decision or by statute, is highly desirable." *Graves v. Elliott*, 69 Wn.2d 652, 656 (1966) (overruled on other grounds by *GESA Fed. Credit Union v. Mut. Life Ins. Co. of New York*, 105 Wn.2d 248, 713 P.2d 728 (1986)).

Allowing DCR to redeem based on the Beckmann Deed of Trust would be contrary to this policy. Indeed, such a ruling would create uncertainty as to who could potentially redeem property purchased at a sheriff's sale and cloud title for years. Under DCR's approach, any party could potentially "swoop in" and obtain title to the property by purchasing redemption rights during the redemption period. The result would be exponential uncertainty of title for a one (1) year period after any Sheriff's sale, the epitome of instability.[16] *See* RCW 6.23.020(1)(b).

Worse yet, DCR's position would allow a judgment debtor to create any number of redemptioners by executing multiple deeds of trust, one after another, beyond the redemption period. *See* RCW 6.23.040(1). Indeed, the Redemption Statute permits the possibility of unlimited "successive redemptions", as follows:

> If property is redeemed from the purchaser by a redemptioner, as provided in RCW 6.23.020, another redemptioner may, within sixty days after the first redemption, redeem it from the first redemptioner. The property may be again, and as often as a redemptioner is so disposed, redeemed from any previous redemptioner within sixty days after the last redemption, and such sixty-day redemption periods may extend beyond the period prescribed in RCW 6.23.020 for redemption from the purchaser.

See RCW 6.23.040(1).

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[16] While not applicable here, if the foreclosing party waives the right to a deficiency judgment, the redemption period is only eight (8) months. *See* RCW 6.23.020(1)(a).

Thus, taken to its logical conclusion, DCR would allow Beckmann (*i.e.* the judgment debtor) to execute fifty such post-sale deeds of trust, under which each successive deed of trust holder would be entitled to redeem the property following redemption by a more senior deed of trust holder. Under this theory, title to the property could remain in chaos for years. *See* RCW 6.23.040(1).

In response, DCR argues that the entire redemption scheme undermines stability of title. CP 363-364 (DCR's Summary Judgment Response at 14-15). Thus, any "instability" resulting from allowing a post-sale deed of trust holder in DCR's position to redeem is inconsequential; it is "part of the process". *Id.*

Of course, the very nature of redemption creates the possibility of some "instability" during the redemption period by redemptioners named in the foreclosure action. However, allowing judgment debtors to grant trust deeds giving rise to redemption rights *after* the sale without limitation exponentially increases the "instability" contemplated by the Redemption Statute. In this context, the policy of promoting stability of title provides additional support for the position that DCR cannot redeem.

2. Adopting DCR's Approach In This Case Would Harm Judgment Debtors And Foreclosing Plaintiffs As A Class.

Stability of title aside, DCR's approach would generally harm both judgment debtors and foreclosing lien holders. Specifically, as a class, both parties benefit if the foreclosed property is sold for the highest possible price. Indeed, judgment debtors would directly benefit to the extent they receive "surplus" funds; *i.e.* amounts paid in excess of the amount secured by the underlying debt. *See* RCW 61.12.150. Likewise, foreclosing plaintiffs would benefit from higher bid amounts; they would be more likely to receive full reimbursement for the debt secured by the underlying lien.

In contrast, allowing the judgment debtor the unfettered right to encumber the property after a foreclosure sale would decrease the number of bidders and drive down bid amounts, to the detriment of both judgment debtors and foreclosing plaintiffs as a class. Potential purchasers would be less willing to risk purchasing a property that could become immediately encumbered with one or more liens after the foreclosure sale. At the least, market forces would cause such potential purchasers to bid lower amounts which reflect the significant risk the purchased property will become "littered" with as-yet-created liens. Such a system would unfairly punish judgment debtors and foreclosing plaintiffs. It should be rejected.

DCR argues it should be allowed to redeem as the "only party that put money into the judgment debtor's hands". *See* Opening Brief at 23, n. 7; CP 364-65 (DCR's Summary Judgment Response at 15-16). By narrowly focusing on Beckmann, DCR fails to acknowledge the broader point that allowing post-sale trust deeds to give rise to redemption rights would harm judgment debtors as a class. To reiterate, DCR's position would chill bidding and reduce the number of purchasers. Thus, judgment debtors as a class would be less likely to receive surplus funds after a foreclosure sale.

RESPECTFULLY SUBMITTED this 14th day of October, 2013.

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THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

DCR SERVICES, LLC, Appellant. v. THE CONDO GROUP LLC, a Washington Limited Liability Company, et al, Respondent.	)	NO. 70607-7-I DECLARATION OF SERVICE

I, Leslie Peppard, hereby certify under penalty of perjury under the laws of the State of Washington that on October 14, 2013, I caused to be filed via ABC Legal Messengers, the original and one copy of the following pleadings:

1. Brief of Respondent The Condo Group, LLC; and
2. Declaration of Service.

And served the above-pleadings via e-mail and U.S. Mail upon:

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