72131-3

72131-3

№ 72131-3-I

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

---

FORD SERVICES, LLC, a Washington limited liability company

Appellant

vs.

DEUTSCHE BANK NATIONAL TRUST COMPANY

Respondent



---

**REPLY BRIEF OF CITY OF SEDRO-WOOLLEY, Plaintiff Below**

---

Craig Sjostrom #21149
Attorney at Law
1204 Cleveland Ave.
Mount Vernon, WA 98273
(360) 848-0339

Attorney for City of Sedro-Woolley

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

*Cases* *Page*

*Statutes* *Page*

## REPLY TO RESPONDENT'S ARGUMENT

### 1. Sufficient Jurisdiction Does Exist

Respondent Deutsche Bank's whole argument rests on the contention that the distinction between *in personam* and *in rem* jurisdiction was wholly abolished by *Shaffer v. Heitner*, 433 U.S. 186, 97 S.Ct. 2569, 53 L.Ed.2d 53 (1977). That contention is simply wrong; *Shaffer* merely held that the "minimum contacts" standard to establish jurisdiction, originally laid out in *International Shoe v. Washington*, 326 U.S. 310, 66 S. Ct. 154, 90 L.Ed. 95 (1945), applied to *in rem* actions as well as to *in personam* ones.

*In rem*, or *quasi in rem*, cases are based on the forum State's authority over property located within that State, whereas *in personam* jurisdiction is based on the State's authority over persons. *Shaffer*, 433 U.S. at 199. The difference between *in rem* and *quasi in rem* is that the interests of the whole world are affected by *in rem* cases, whereas only persons having the interest in the property at issue are affected by *quasi in rem* cases. The effect of a judgment *in rem* (or *quasi in rem*) is limited to the

property that supports jurisdiction, and does not impose a personal liability on the property owner, since he is not before the court. *Shaffer, id.* The distinction between these types of jurisdiction was not eliminated in *Shaffer. Id.*

In *Shaffer*, the litigation did not involve the property located within the forum state (Delaware); the presence of that unrelated property was the sole basis for Delaware's assertion of jurisdiction. Here, however "claims to the property itself are the source of the underlying controversy between the plaintiff and the defendant", and thus "it would be unusual for the State where the property is located not to have jurisdiction." *Shaffer*, 433 U.S. at 208.

There is no dispute here that Deutsche Bank did have "minimum contacts"; it extended a loan secured by real estate located in the State of Washington, utilizing a Washington deed of trust.

In other words, unlike the party in *Shaffer* over which Delaware was asserting jurisdiction, here there can be no doubt that Deutsche Bank "purposefully availed [itself] of the privilege of

conducting activities within the forum State", i.e. Washington. *Shaffer*, 433 U.S. at 213; *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958), thus providing enough minimum contacts to satisfy the *International Shoe* criteria.

"[P]roperty cannot be subjected to a court's judgment unless reasonable and appropriate efforts have been made to give the property owners actual notice of the action". *Shaffer*, 433 U.S. 206, citing *Schroeder v. City of New York*, 371 U.S. 208, 83 S.Ct 279, 9 L.Ed.2d 255 (1962); *Walker v. City of Hutchinson*, 352 U.S. 112, 77 S,.Ct. 200; 1 L.Ed.2d 178 (1956); *Mullane v. Central Hanover Bank & Trust Co.*, 399 U.S.306, 70 S.Ct. 652, 94 L.Ed. 865 (1950). Deutsche Bank was personally served with the summons and complaint in the underlying action (in California). There is no argument that it did not have actual notice of the proceeding.

Deutsche Bank's argument that the RCW 4.28.185(4) affidavit is required, in every case, overstates the effects of *Shaffer*. That is only true when the jurisdiction claimed is of the *in personam* variety, which is not the case here. As was argued in the

City's original brief, RCW 4.28.185 sets forth a litany of acts, taken by a person outside the State, which subject that person to Washington *in personam* jurisdiction, and requires that a declaration be filed, prior to the entry of judgment, attesting to the inability of the plaintiff to serve the defendant personally in the State of Washington.

The operative statute is rather RCW 4.28.180, which, again, states:

> Personal service of summons or other process may be made upon any party outside the state. If upon a citizen or resident of this state or upon a person who has submitted to the jurisdiction of the courts of this state, it shall have the force and effect of personal service within this state; *otherwise it shall have the force and effect of service by publication.* The summons upon the party out of the state shall contain the same and be served in like manner as personal summons within the state, except it shall require the party to appear and answer within sixty days after such personal service out of the state.
>
> (Emphasis added)

Again, there is no allegation that Deutsche Bank "submitted to the jurisdiction of the courts of this state", which would justify imposition of *in personam* jurisdiction. All that is alleged is that Deutsche Bank had enough minimum contacts with Washington to

satisfy the *Shaffer* and *International Shoe* tests. The force and effect of service was the same as service by publication, but the service was valid nonetheless. Under RCW 4.28.200, which deals with constructive service (such as service by publication), Deutsche Bank had the ability to defend the action within one year from entry of the judgment; however, that expired on February 8th, 2014, two months before Deutsche Bank's motion was filed.

Again, as has been argued previously, *Hatch v. Princess Louise Corp.*, 13 Wn.App. 378, 379 (1975), dealt with a very similar issue as is present here. There, the in-state service declaration was not filed, and the Court held that *in personam* jurisdiction was lacking as a consequence; however, it went on to hold that *in rem* jurisdiction did exist.

Thus, the Skagit County Superior Court here did have the authority to enter the *in rem* (or, if you like, *quasi in rem*) judgment against Deutsche Bank. Deutsche Bank had one year from entry of the decree to contest the same, and failed to do so. The judgment is therefore valid.

## 2. Even if Service was Improper, The Sale is Still Valid

The foreclosure sale acted to do two things; one, to divest the then-owners of the property, i.e. the Amaros, of their ownership interest (subject to their redemption rights), and two, foreclose Deutsche Bank's lien. There is no question that the Court had personal jurisdiction over the Amaros and that they were properly served and properly defaulted due to their non-response. Clearly, they were aware of the foreclosure, because they executed the conveyance to Zion Services on the day of the sale. Equally clearly, they did not contest the default entered against them. Ford Services, LLC, as the ultimate redemptioner, is thus the record owner of the property.

If, for the sake of argument, service on Deutsche Bank was improper (because the RCW 4.84.185[4] affidavit was not filed), and the Court thus did not have jurisdiction to foreclose its lien, that does not affect or impair the Court's ability to sell the property and divest the Amaros. All that would mean is that Deutsche Bank's lien would have been unaffected by the sale, and since it has priority over the Amaros (and by extension, the redemptioner,

Ford Services, LLC), then its lien would be just as valid, and have the same priority with respect to the other parties, as it had immediately prior to the sale taking place. Deutsche Bank does not contest this proposition, and in support thereof cites to *Spokane Savings & Loan Society v. Liliopolous*, 160 Wash. 71 (1930).

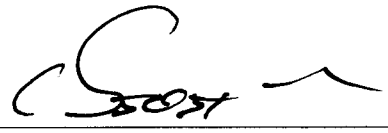
In short, vacation of a judgment against one party, based on lack of jurisdiction over that party, does not in and of itself negate the judgment against others, over which the Court did have jurisdiction.

## CONCLUSION

The judgment was properly entered; Deutsche Bank was properly served for purposes of *in rem* (or *quasi in rem*) jurisdiction, and its motion to set aside the decree is untimely. The claimed issue with respect to service of the summons and complaint would not have invalidated the sale in any case.

For all of these reasons, the Superior Court should be reversed, either altogether or at least with respect to the validity of the sale.

Respectfully submitted on January 20th, 2015, by



CRAIG SJOSTROM WSBA #21149
Attorney for City of Sedro-Woolley

## DECLARATION OF MAILING

CRAIG SJOSTROM declares as follows:

1. I am the attorney for the City of Sedro-Woolley in this matter.

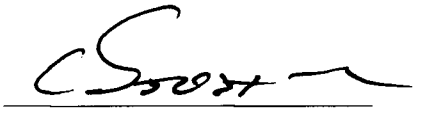
2. On January 20th, 2015, I sent via email, and mailed by regular mail, the City's foregoing Reply Brief to the following:

   Cale Erlich, Attorney for Petitioner
   TOUSLEY BRAIN STEPHENS PLLC
   1700 Seventh Ave., Suite 2200
   Seattle, WA 98101

   John Glowney, Attorney for Respondent
   STOEL RIVES LLP
   600 University St., Suite 600
   Seattle, WA 98101

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

Signed at Mount Vernon, WA, on January 20th, 2015.



CRAIG SJOSTROM WSBA #21149