

72504-1

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Court of Appeals No. 72504-1

COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

VANESSA WARD

Defendant-Appellant

vs.

SELENE RMOF II REO ACQUISITIONS,

Plaintiff-Appellee,

AMENDED OPENING BRIEF OF APPELLANT, VANESSA WARD

VANESSA WARD
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Defendant-Appellant

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A. ASSIGNMENTS OF ERROR

1. THE TRIAL COURT ERRED WHEN IT DENIED WARD'S MOTION TO DISMISS BECAUSE THE PLAINTIFF DID NOT BRING AN APPROPRIATE CAUSE OF ACTION

2. THE TRIAL COURT ERRED WHEN IT GRANTED A SUMMARY JUDGMENT MOTION BECAUSE THERE WERE DISPUTED ISSUES OF MATERIAL FACT.

i. Introduction and Issues Related to Assignments of Error

This case was brought as an unlawful detainer action after RMOF Selene acquired a special warranty deed to Vanessa Ward's home from LaSalle Bank National Association, as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust in 2012. CP-6. Ward alleges that she is the rightful owner of the property and the property was fraudulently transferred. Using this defense, she asked the trial court to dismiss the unlawful detainer action because she was never a tenant and she claims to have superior title. RP-1, 12-13. She also filed a motion to certify the case for trial. During the hearing, plaintiff's counsel admitted she did not know whether the transfers that occurred between 1999- 2007 were fraudulent. RP-15.

B. STATEMENT OF THE CASE

1. Procedural Facts

On September 15, 2014, there was a show cause hearing and this unlawful detainer case was heard at by pro tem Judge Wong at the King County Superior Court in Kent, Washington. Ward presented a motion to dismiss arguing that because she was the rightful owner of the house, and not a tenant, that an unlawful detainer action was the wrong action to bring. RP-1-2. The court denied her motion to dismiss and her motion to certify the case for trial and issued a writ of restitution in favor of Selene RMOF. CP-87. Ward timely appealed. CP-92-94.

2. Substantive facts

Ward bought the property commonly known as 7911 S. 115th Place Seattle, WA in 1999 and that title was recorded. She obtained a mortgage through Home Comings Bank. CP-46-47. In 1999, her father became ill, so her friend, Chester Dorsey, offered her employment at his car salon. Her father owned four properties and she learned her father's illness might be fatal. She discussed the possibility of Dorsey assisting her in obtaining lower interest rates on the mortgages. In 1999, she had signed a deed of trust with Dorsey for moneys she borrowed from him for the down payment. In 2004, they parted ways. Since she fully repaid Dorsey,

he deeded the property back to her as proof of payment. The 2004 deed was notarized, but not recorded. CP-45. In between those two deeds, in 2001, Dorsey filed a fraudulent quit claim deed in lieu of foreclosure which was recorded, but Ward did not discover it until after she filed her notice of appeal. However, she did argue that Dorsey fraudulently obtained a deed. RP-13.

In 2005, after the house was deeded back to Ward, Dorsey sold the property to his uncle, Fred Brooks. CP-79 Soon after the sale, Dorsey's uncle gave him power of attorney and Dorsey obtained one loan in 2005 and two over the next two years. The best Ward could tell, they were a refinance loan. *Id.* In 2006, she tried to contact Home Comings about four times to find out what equity she had in the house, but someone always said someone would get back to her and no one ever did. *Id.* In 2007, she got behind in her mortgage payments around May or June. In September, a man came to her door and she thought it was someone from Home Comings to talk about her mortgage payments. RP-3. But, it was a man named James Drier who said he was the new owner and that he had bought the house with Chester. *Id.* Drier came back two weeks later and Ward told him to get off her property. She then had a friend look up the chain of title and it showed that Chester had sold her house that he did not own.

RP-3. Shortly after that she hired an attorney who filed a complaint for unfair and deceptive conduct, civil conspiracy and outrage on January 30, 2009, the same day as the foreclosure sale. CP-36.

In March 2009, she was served with a summons and complaint for unlawful detainer by LaSalle Bank. CP-50. She responded to LaSalle Bank's attorney, Karen Gibbon, P.S. on March 27. Her response disputed all claims and interest LaSalle had in her property and demanded they file the law suit with the court. They did not. CP-55. Her attorney who filed the civil complaint withdrew and the case was dismissed in 2011 for failure to timely comply with discovery requests, so this issue has never been addressed on the merits.

She next received a Notice to Occupant purporting to evict her in October 2012. CP-57. She immediately called Solution Partners NW, who issued the notice, and spoke with a receptionist named Vanessa. Ward informed her that she owned the property and that she did not authorize any sale. *Id.* In December 2012, she was served with a summons and complaint for unlawful detainer. The plaintiff was U.S. Bank. CP-60-63. She timely responded, informing them that she was the true owner and that any transfer of the property was done fraudulently. The action was filed and then dismissed for want of prosecution.

No further action was taken until June 2013 when RCO Legal mailed a 90 day notice to vacate to the wrong address. CP-69. They sent it to 7913 South 115th place instead of 7911. When Ward became aware of it, she immediately sent a response informing them that she disputed all claims and interest they alleged. CP-72-75. In January 2014 she received a summons and complaint for Unlawful Detainer from RCO and timely responded. CP-1-3. In May 2014, RCO Legal obtained a writ of restitution in default. Ward obtained an order to vacate the judgment and stay the writ on August 13 because they sent notice of the show cause hearing to the wrong address. CP-26-27. A new show cause hearing was scheduled for September 15, 2014. She has notified every person involved for the last seven years that she is the rightful owner and that any claims or interest they have in the property were obtained illegally.

C. ARGUMENT

1. THE FACTS PLEADED DO NOT SUPPORT AN UNLAWFUL DETAINER CAUSE OF ACTION.

RCW 59.12.030 defines how and when a person can be guilty of unlawful detainer. Subsections one through five and seven refer specifically to tenants. Subsection six is the only subsection that could apply to a non-tenant and refers to:

A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040....

An unlawful detainer action under RCW 59.12.030 is "limited to the question of possession and related issues such as restitution of the premises and rent." *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). By its terms, RCW 59.12.030 only governs the actions of a "tenant of real property."

Ward is not a tenant and has no landlord-tenant relationship with the plaintiff or with any of the plaintiff's predecessors. In addition, she has color of title to this property because she has a deed to the property dated 1999 and 2004. Therefore, she cannot be guilty of unlawful detainer.

The plaintiff may argue RCW 61.24.060 gives them a right to summary proceedings under RCW 59.12, but RCW 61.24.060 still limits this remedy to when the possessor has an interest junior to the deed. Ward's interest is not junior because she has a deed that is older.

The appropriate action to bring in this situation is an ejectment action under RCW 7.28. In that action, the court can determine who has superior title to the land. A show cause hearing is not the appropriate place to litigate claims to title. *Puget Sound Inv. Group, Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944, (Ct. App. Div. 1 1998). This is especially

true when there is evidence of a fraudulent transfer. Even the plaintiff admitted that the Deed of Trust that was foreclosed was not executed by Ward and that she may have a claim against for the fraudulent transfer of the deed. RP-15-16.

In Puget Sound, Mr. Bridges' property was foreclosed upon at a tax sale. Bridges brought a quiet title action alleging the IRS seizure and sale was procedurally defective. A jury found for Bridges, but the trial court entered an order dismissing the quiet title action, finding Bridges failed to prove the procedural defects. *Id.* at 527-28. Puget Sound Investment Group then brought an unlawful detainer action against Bridges, arguing that he lost color of title in that proceeding. The court found that because Bridges had a deed to the property, he had color of title and Puget Sound must establish superior title before it could proceed under RCW 59.12.030(6). The court held the appropriate procedure was an action in ejectment and quiet title under RCW 7.28.

This case is analogous to *Bridges*. Ward has a deed dated 1999. That is ten years before the foreclosure sale and twelve years before the Plaintiff bought the property. She did not lose color of title because the loans obtained against her house and all subsequent sales were fraudulent, defective, and void as a matter of law.

When the trial court allowed the plaintiff to maintain an action for unlawful detainer, and to use the shortcut provided in RCW 59.12, it essentially allowed the plaintiff to avoid having to prove they have a superior title and punished the defendant for being the victim of fraud.

2. WHETHER WARD IS THE TRUE OWNER, AND THE DEED OF TRUST WAS FRAUDULENTLY TRANSFERRED IS A DISPUTED ISSUE OF MATERIAL THAT SHOULD BE HEARD BY A JURY.

The Washington Constitution and RCW 4.40.060 guarantee a party's right to have a jury determine issues of fact and that right is inviolate. Wash. Const. art I, § 21. A show cause hearing is a shortcut put in place to mitigate a plaintiff's damages pending trial. It does not replace the trial. Because it is a shortcut in the litigation process, certain procedures must be strictly followed. *See Meadow Park Garden Assoc. v. Canley*, 54 Wn.App. 371, 374, 773 P.2d 875, (Ct. App. Div. 2 1989). In an unlawful detainer action, the right to a jury is preserved in the trial on the ultimate issues. *Id.* at 376. This is the only reason issuing a writ pending trial does not offend the Washington Constitution. *Id.*

A show cause hearing is not the final determination of the rights of the parties, but is a summary proceeding¹ which allows a court to

¹ *Carlstrom v. Hanline*, 98 Wn. App. 780, 788, 990 P.2d 986 (2000)

expeditiously determine who should possess the property while an unlawful detainer action is pending.² It is a hearing on the plaintiff's motion for a writ which the court can either grant or deny³. Either way, the court must direct the parties to proceed to trial⁴ unless there are not genuine issues of material fact. See *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Here, the trial court erred in issuing the writ and not setting the case for trial because there are disputed issues of material fact.

Both parties allege they have superior title. Plaintiff cannot show, by a preponderance of the evidence, that they are entitled to possession because Ward has a deed to the property. She further alleges that plaintiff's deed was obtained through fraud. She did not sell her house to anyone after 2004. She did not obtain a loan or refinance her house after 2004 and she was not foreclosed on ever. LaSalle Bank foreclosed on James Dreier, who was not the legal owner of the house. He had a deed, but that deed was obtained fraudulently and was void as a matter of law. The plaintiff has not established clear title to the property, so they are not entitled to summary judgment. In fact, the plaintiff admitted that they do not know what occurred between 1999 and 2007. RP-15. They also admitted that she may have a claim for a fraudulent transfer. RP-16.

² *Meadow Park*, 54 Wn.App. at 375; *Carlstrom*, 98 Wn. App at 788.

³ *Meadow Park*, 54 Wn.App. at 374.

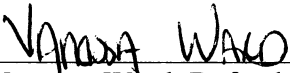
⁴ *Id.*

D. CONCLUSION

The facts pleaded do not support an unlawful detainer claim. Even if the court finds that an unlawful detainer claim is supported, whether Ward is the true owner and whether Selene RMOF obtained a fraudulent deed, is a question of fact for the jury. Therefore, this court should remand the case to trial court for dismissal or, in the alternative, remand it for trial.

DATED this 22 day of May, 2015.

Respectfully Submitted,



Vanessa Ward, Defendant