No. 99609-1

SUPREME COURT OF THE STATE OF WASHINGTON

JOSE DIAZ,

Petitioner,

v.

NORTH STAR TRUSTEE and U.S. ROF II; and all other persons unknown claiming any right, title, estate, lien or interest in the real estate described in the complaint herein,

Respondents.

ANSWER TO PETITION FOR REVIEW

Tom B. Pierce, WSBA #26730
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I. INTRODUCTION

The decision of the Court of Appeals presents no issues of substantial public interest, does not conflict with existing law, and merely affirmed dismissal of a frivolous lawsuit on summary judgment and an award of sanctions against Appellant's counsel.

This lawsuit involves Appellant / Plaintiff Jose Diaz's ("Mr. Diaz" or "Appellant") claim for quiet title, damages, and injunction of nonjudicial foreclosure sale against deed of trust beneficiary, U.S. ROF II, and North Star Trustee, as they attempted to foreclose a senior deed of trust on a condominium he previously purchased from a condominium association's lien foreclosure action. Unfortunately, Diaz continues to refuse to acknowledge that the senior lien holder was dismissed with prejudice from the association's foreclosure action after payment of the six months' super priority lien, was not named as a judgment debtor therein and therefore did not have its interest extinguished. The facts are undisputed and are evidenced by court documents and orders from the condominium assessment lien foreclosure lawsuit. Respondents U.S. ROF II and North Star Trustee were granted summary judgment dismissing Diaz's Complaint when undisputed facts clearly showed that the condominium foreclosure action did not extinguish the beneficiary's deed of trust. The trial court also ordered CR 11 sanctions against Diaz's counsel, Russell Odell, in the amount of one thousand dollars ($1,000.00) for not disclosing to the court, Diaz's similar and denied lawsuit.

II. STATEMENT OF ISSUES

1. Whether this Court should deny the petition for review when the Appellant has failed to establish that any of the four tests set forth in RAP 13.4(b) have been met?

2. Whether this Court should deny the petition for review when the Appellant has failed to present an issue of substantial public interest or demonstrate any conflict with a decision of the Supreme Court or Court of Appeals, as the undisputed facts evidenced by court orders dictated the dismissal of the frivolous lawsuit on summary judgment and an award of sanctions against Appellant's counsel?

III. STATEMENT OF THE CASE

A. Initiation of Condominium Lawsuit to Foreclose Delinquent Assessments. In May 2012, Roseberg Avenue Condominium Association ("Roseberg COA") filed a foreclosure lawsuit, King County Case No. 12-2-19078-0 SEA ("Condo Lawsuit"), to collect delinquent assessments on real property commonly known as 11915 Roseberg Avenue South, #107, Seattle, WA 98168 (the "Condo"). CP 1563-65. Named as defendants in the Condo Lawsuit were Tatayna Jensen and John Doe Jensen (owner of the Condo, hereinafter "Jensen"), Bank of America, N.A., as successor in interest to BAC Home Loans Servicing, LP, a Texas Corporation, f/k/a Countrywide Home Loans Servicing, LP; and Mortgage Electronic Registration Systems, Inc. (collectively "BOA"). CP 1563-65. BOA held two liens on the Condo under Deeds of Trust both

recorded in the official records of King County on May 18, 2007: (1) Senior Deed of Trust, recorded as instrument number 20070518000785, with Jensen the named borrower. ("Jensen Deed of Trust") and (2) Junior Deed of Trust, recorded as instrument number 20070518000786. CP 1313-32. BOA is predecessor in interest to U.S. ROF II, the current beneficiary of the Senior Deed of Trust. CP 1548-50.

B. Payment of Super Priority Lien and Dismissal of BOA and MERS from Condo Lawsuit with Prejudice. On September 4, 2012, Roseberg COA obtained a Default Order, Order and Foreclosure Decree against BOA. CP 1484-87. On January 11, 2013, a Stipulation and Agreed Order of Dismissal ("Stipulation and Dismissal") was entered by the court dismissing BOA from the Roseberg COA Lawsuit with prejudice. CP 1488-90. The stipulations between Roseberg COA and BOA were incorporated into the trial court's order and stated, in part:

> "2. BOA had tendered payment to Plaintiff [Roseberg COA], and Plaintiff has accepted, the super priority lien amount of $1,164.00 (six-month x $194.00) as contemplated by RCW 64.34.364(3)."
>
> "3. Plaintiff acknowledges that the sum tendered reestablishes the above-referenced Deed of Trust as a lien fully senior to the lien being foreclosed by Plaintiff."
>
> "4. With the super priority lien now fully satisfied, in the event that Plaintiff elects to foreclose, such a foreclosure would not foreclose, affect, or impair Lenders' Deed of Trust."

"5. The terms and conditions stipulated to herein will continue to bind and inure both stipulating parties, including any successor in interest to either party."

"6. For the above reasons, Plaintiff and BOA hereby stipulate and agree to an order of dismissal as to Defendants Bank of America, N.A. and Mortgage Electronic Registrations Systems, Inc. as to their interests under BOA's Deed of Trust only."

"7. This stipulation does not affect Deed of Trust recorded in the official records of King County on May 18, 2007, as instrument number 20070518000786 ("Junior Deed of Trust"), which shall remain subject to RCW 64.34.364(3)"

"ORDERED that Defendants Bank of America, N.A. and Mortgage Electronic Registration Systems, Inc. are dismissed from this case with prejudice." CP 1488-90.

C. Default Judgment and Order of Foreclosure Decree Entered against Condo Owner only. Roseberg COA later had entered a Default Judgment and Order of Foreclosure Decree on January 29, 2013 against the sole remaining defendant, Jensen. CP 1493-95. The Default Judgment and Order of Foreclosure Decree specifically references and states that the January 11, 2013 Stipulation and Agreed Order of Dismissal of defendants Bank of America and MERS. CP 1494.

D. Sheriff's Return on Sale of Real Property. The Condo was sold at the Sheriff's public auction to Jose Diaz on January 15, 2016 in

the amount of $17,571.26. CP 1501.

E. Beneficiary U.S. ROF II and nonjudicial trustee, North Star Trustee, LLC. The beneficial interest to the Jensen Deed of Trust was conveyed and assigned to U.S. ROF II on March 28, 2017. CP 1614-15. North Star Trustee as the trustee of record proceeded to nonjudicially foreclose the senior Jensen Deed of Trust. CP 1065.

F. Diaz Complaint and Order Restraining Nonjudicial Sale. In March 2018, Mr. Diaz, as owner of Roseberg COA's foreclosed interest, filed a complaint against U.S. ROF II and North Star Trustee for injunctive relief and claims of damages under the Washington Consumer Protection Act and Washington Collection Agency Act. CP 742-54.

G. Partial Summary Judgment Granted in Favor of Plaintiff. On July 13, 2018, the trial court relied on *BAC v. Fulbright*, 180 Wn.2d 754, 328 P.3d 895 (Wash. 2014) and entered an Order Granting Partial Summary Judgment and held Mr. Diaz's title is superior to U.S. ROF II's interest. CP 1121-22.

H. Roseberg COA and U.S. ROF II Stipulate and Dismiss Default Judgment Entered September 4, 2012. On May 15, 2019, Roseberg COA and U.S. ROF II, as successor in interest to the Jensen Deed of Trust, entered into a Stipulated Motion to Vacate *Nunc Pro Tunc* Default Order, Order and Decree of Foreclosure against BOA. CP 1529-51. An Agreed Order to Vacate was entered May 15, 2019. CP 1553-55.

I. U.S. ROF II and North Star Trustee's Motion to Vacate Denied. Given this newly discovered evidence, U.S. ROF II and North Star Trustee filed a Motion to Vacate the Order Granting Partial Summary Judgment. CP 1440-55. The trial court denied the motion and its motion for reconsideration. CP 1633-37; CP 1670-71.

J. *Unpublished decision, Diaz v. Hsueh, No. 77771-8-I, rev. denied,* 194 Wn.2d 1003 (*2019).* In the intervening time frame, counsel for Respondents discovered Court of Appeals' unpublished decision *Diaz v. Hsueh*, a remarkably analogous case enjoying virtually identical facts to this matter, and which involved the same plaintiff, Jose Diaz, and his same counsel, Russell Odell. CP 1675-79. In *Diaz v. Hsueh*, the beneficial owner of the Deed of Trust also entered into a Stipulation and Agreed Order of Dismissal from a condo assessment foreclosure lawsuit after payment of the necessary six months super priority lien. CP 1675-79.

K. Second Motion for Reconsideration Granted, Partial Summary Judgment Vacated and CR 11 Sanctions Ordered against Mr. Odell. The trial court granted Respondents' motion for reconsideration, vacated the Order Granting Partial Summary Judgment dated July 13, 2018, and ordered CR 11 sanctions in the amount of $1,000.00 against Mr. Odell, for failing to disclose the *Diaz v. Hsueh* decision. CP 1875-78.

L. U.S. ROF II and North Star Trustee's Summary Judgement Granted. On October 4, 2019, the trial court granted Respondents' motion

for summary judgment and dismissed Diaz's complaint with prejudice. CP 2047-50. The trial court denied request for additional CR 11 sanctions and relief under RCW 4.84.185 for necessarily defending against the frivolous claims brought by Mr. Diaz. CP 2050.

M. Trial Court Affirmed on Appeal. The published opinion of the Court of Appeals affirmed the trial court's decision and is attached to Appellant's Petition for Review as App. A. Respondents reserve their right for review of their denied cross-appeal request for further CR 11 sanctions and fees and costs pursuant to RCW 4.84.185.

IV. LAW AND ARGUMENT

A. The Undisputed Facts, Confirmed by Court Order, Show Unequivocally that after Payment of the Super Priority Lien, the Predecessor in Interest Beneficiary, Bank of America, Reestablished the Jensen Deed of Trust in Senior Lien Priority Position on the Condo.

The merits of this lawsuit promptly and succinctly begin and end with the *Stipulation and Agreed Order of Dismissal of Defendants Bank of America and MERS* ("Stipulation and Dismissal") entered in the Condo Lawsuit on January 11, 2013. CP 1488-90. Even a cursory review of the Condo Lawsuit pleading would have revealed that the interest Mr. Diaz purchased at the Sheriff's sale was junior and subordinate to the deed of trust lien of predecessor in interest, BOA.

The Stipulation and Dismissal had already determined all the issues that Diaz sought to litigate in his lawsuit. Did BOA pay the six months of assessments to satisfy the super priority lien contemplated by

RCW 64.34.364(3)? Answer: Yes. Was BOA's deed of trust lien fully superior to the Roseberg COA lien that was foreclosed? Answer: Yes. Was BOA dismissed from the Roseberg COA Lawsuit with prejudice so that its deed of trust lien could not possibly be affected by the subsequent Condo lien foreclosure? Answer: Yes.

The Stipulation and Dismissal conclusively ended BOA's involvement in the Roseberg COA foreclosure lawsuit. BOA's payment of the six month super priority assessment lien and acceptance by Roseberg COA effectively settled and satisfied all claims against BOA under RCW 64.34.364 (3). The Washington Supreme Court has held that "[a] judgment by consent or stipulation of the parties is construed as a contract between them embodying the terms of the judgment. It excuses all prior errors and operates to end all controversy between the parties, within the scope of the judgment." *Washington Asphalt Co. v. Harold Kaeser Co.*, 51 Wn.2d 89, 91, 316 P.2d 126 (1957).

Courts have also held that a lien or security interest cannot be extinguished (or deemed insubordinate or inferior) when it was not a party to the case. BOA's lien was never judicially foreclosed or extinguished because it had been expressly dismissed from the Roseberg COA lawsuit. "It is a fundamental principle of mortgage law that a valid judicial foreclosure of a senior mortgage extinguishes all *junior interests* whose holders were **named as defendants**. *Worden v. Smith*, 178 Wash. App. 309, 319-320, 314 P.3d 1125 (2013) (emphasis added) (citing *U.S. Bank*

of Wash. v. Hursey, 116 Wash.2d 522, 526, 806 P.2d 245 (1991); Restatement (Third) of Property: Mortgages § 7.1 cmt. a (1997).

Diaz refuses to acknowledge or accept that as a matter of law, the deed of trust lien held by BOA on the Condo was never extinguished as it was stipulated and dismissed with prejudice from the Roseberg COA foreclosure action by court order on January 11, 2013. By claiming dismissed parties are still subject to a later judgment, Diaz's illogical argument would effectively nullify and reverse each and every Stipulation and Agreed Order of Dismissal in all cases and would circumvent the purpose and outcome of settlements, dismissals, and frustrate judicial economy.

B. Appellant has failed to establish that any of the tests under RAP 13.4(b) exist.

A petition for review will be accepted by the Supreme Court only:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

In the present case, the Petitioners fail to offer any argument or explanation why the Court of Appeals' decision (1) conflicts with a decision of the Supreme Court; (2) conflicts with another decision of the Court of Appeals; (3) is a significant question of law under the

Constitution of the State of Washington or of the United States is involved; or (4) involves an issue of substantial public interest.

Appellant attempts to frame his version of the interpretation of the super priority lien statutes as a matter of substantial public interest. This argument ignores the reality that, in this case, the issue of whether the six months of assessments were paid to satisfy the super priority lien contemplated by RCW 64.34.364(3) had been decided and incorporated into a valid and final order that Mr. Diaz either ignored, neglected or refused to understand. The petition for review attempts to portray Diaz as an "innocent purchaser", when the record establishes that Diaz was an "informed purchaser" who failed to do the necessary due diligence required of an investor electing to participate in the high-risk field of foreclosure auction bidding.

Mr. Diaz fails to provide any legal support to his ongoing claim that BOA's payment of the six month super priority" lien has to be timed perfectly before an unknown or unscheduled Sheriff's sale. This is neither feasible, logical nor necessary given BOA paid the six month condo assessment lien and entered into a Stipulation and Dismissal.

The statute that establishes the super priority lien, RCW 64.34.364, does not provide such ongoing obligation and no case law supports Mr. Diaz's frivolous claim. Instead, Mr. Diaz asks the court to write its own policy to mandate when six months of assessments should be paid and for how long. Mr. Diaz further asks the court to intervene and

pen a decision that would essentially vacate every possible stipulation and agreed order to dismiss which involved payment of six months of assessments by lenders, as requested, required and accepted by condominium associations and entered by our courts.

1. The Court of Appeals' published decision does not conflict with the clear language of RCW 64.34.364 or with any Courts' precedent.

RCW 64.34.364 balances the competing interests of mortgage lenders versus condominium associations by giving a limited priority to association liens for delinquent assessments over the lien of a prior recorded mortgage. This limited priority ("super priority lien") is limited to or capped at six months of assessments.

RCW 64.34.364 provides in relevant part:

> (3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

The Stipulation and Dismissal tracks exactly how this statutory scheme works in practice. That January 11, 2013 Stipulation and Dismissal established the following: (1) Payment by BOA satisfied the super priority lien contemplated by RCW 64.34.364(3); (2) The BOA

payment "reestablished as fully senior" the Jensen Deed of Trust to the lien of the Roseberg COA; and (3) BOA was dismissed from the Condo Lawsuit with prejudice.

Diaz mistakenly contends the Stipulated Order and decision from the Court of Appeals was in contravention of binding case law, citing *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wn. 2d 754, 328 P.3rd 895 (2014). That contention is simply wrong. Unlike BOA, who in this case took affirmative steps to protect its interests pre-judgment, the senior lien lender in the *BAC Home Loans* case did not and the case is readily distinguishable.

Consistent with the statute's intent, BOA's payment of the six months super priority lien was not paid prior to the "institution of an action to enforce the lien" but paid after the Condo filed its foreclosure action and before the possible foreclosure sale. The statute does not require that the six months of payments *must* be paid on the eve of an indeterminate Sheriff's sale. Likewise, the statute does not require ongoing and unlimited assessment payments until a foreclosure sale is scheduled, especially when the lender is dismissed with prejudice from the foreclosure action.

This outcome was contemplated by the legislature. The official comments to RCW 64.34.364(3) reveal the balance between the need to enforce collection of unpaid assessments and the importance of protecting mortgage lenders' security interests:

3. The association's priority under subsection (3) is usually for a sum equal to the assessments which normally have come due in the six month prior to the foreclosure of either a mortgage or the lien for assessments. The period dates back from the time of the foreclosure sale, or the recordation of the declaration of forfeiture. **A significant departure from existing practice, the priority for the assessment lien strikes an equitable balance between the need to enforce collection of unpaid assessments and the obvious necessity for protecting the priority of the security interests of mortgage lenders. As a practical matter, mortgage lenders will most likely pay the assessments demanded by the association which are prior to its mortgage rather than having the association foreclose on the unit and eliminate the lender's mortgage lien**.

   See 2 Senate Journal, 51st Leg. Reg. Sess., App A at 2080 (Wash. 1990)(emphasis added).

The legislature's expected outcome is for mortgage lenders to pay the six months of assessments demanded by the association and for the association to remove the super priority lien.

In our case, contrary to Mr. Diaz's claim, BOA did not arbitrarily pay "any six months of assessments," but paid the specific amount requested by Roseberg COA and paid it when it was requested by Roseberg COA, as evidenced by their Stipulation and Dismissal.

The statute contemplates assessments due are based on a budget adopted by the association. The "which would have been due" language clearly contemplates payment in advance. Foreclosure sales are fluid events and can be moving targets. What if a senior lien lender paid the six months of assessments within the six months prior to a scheduled foreclosure sale and then that sale was continued or delayed for some reason? Diaz would argue that they would have to pay it again. That is

clearly not what the statute reads or requires, and the argument defies common sense. And most importantly, it flies in the face of the express language in the Stipulation and Dismissal which provided in the clearest of terms that BOA paid the super priority lien in full to earn its dismissal with prejudice from the Roseberg COA's assessment lien foreclosure action.

2. The Court of Appeals' published decision does not diminish a condominium association's authority expressly conferred by RCW 64.34.364 to collect delinquent assessments or otherwise impact any public policy intended by Washington Legislature.

Mr. Diaz's reliance on comments to the Uniform Condominium Act ("UCA") and concerns for associations and other unit owners bearing the burden of delinquent assessments were not concerns raised by our own legislators when enacting RCW 64.34.264. When assessment fees remain delinquent, condominium associations are not powerless but are equipped by this state's legislature to engage in their own self-help measures. The legislature supplemented the UCA super priority lien portion of the statute and added protections for associations to collect delinquent assessments. Specifically, RCW 64.34.364(9), provides in part:

> . . .**The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same**. . . . (Emphasis added).

Further, an association may take possession of and rent out a unit to capture rent and delinquent assessments during an action to foreclose a lien. RCW 64.34.364(10), provides:

> . . . From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. **If the rental is not paid, the receiver may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments**. . . . (Emphasis added).

Indeed, legislators' comments to RCW 34.64.364(10), (12) and (16) buttresses the intent of the statute to give associations multiple avenues to collect delinquent assessment fees and not rely on a mortgage lender to proceed with their own foreclosure.

> 11. Under subsection (10) the right to the appointment of a receiver to rent out a unit is automatically available to an association once a foreclosure has been commenced even if the declaration does not expressly provide for this remedy. . . .
>
> 12. **Subsections (12) and (16) make clear that the association may have remedies short of foreclosure of its lien that can be used to collect unpaid assessments. The association, for example, might bring an action in debt or breach of contract against a recalcitrant owner rather than resorting to foreclosure**.
>
> *See* 2 Senate Journal, 51st Leg., Reg. Sess., App. A at 2081 (Wash. 1990)(emphasis added).

Consistent with Washington legislature's intent under RCW 64.34.364, Ms. Army, attorney for the Roseberg COA, stated in their response to Mr. Diaz's motion to intervene and for sanctions, that several options existed: "Our office initially suggested garnishment as an option to collect on the judgment given the lender had appeared in the lawsuit."

CP 1,562-64. Further, in her declaration and as supported by her email exhibits confirming the same, Ms. Army stated:

> After obtaining a default judgment against Defendant Jensen, I informed the Association of its collection options. Initially, I did not recommend a sheriff's sale as I noted that the lender appeared in the lawsuit and paid the super lien priority amount.
>
> Our office was unable to locate Defendant Jensen believing she may have been currently residing in Russia. We then notified the Association that a sheriff sale would be an option to collect the delinquent dues if only to lease out the unit until the lender eventually foreclosed. CP 1584-88.

Mr. Diaz's public policy argument neglects relevant portions of RCW 64.34.364 that provide an association with alternative means to collect delinquent assessments. Similarly, Mr. Diaz's reliance on selective comments to the UCA are inapplicable to our own statute which affords proactive steps by an association. Contrary to the UCA, a condominium association in Washington does not have to rely on a lender's foreclosure to collect delinquent assessments.

3. Mr. Diaz attempts to rewrite established law by falsely claiming he is a Bona Fide Purchaser, and he continues to ignore the plain and express Stipulation and Dismissal in the Condo Lawsuit by falsely claiming it requires recording.

Mr. Diaz is not a bona fide purchaser. The bona fide purchaser doctrine ("BFP") exists to benefit a good faith purchaser, who is without actual or constructive notice of another's interest in the real property, be granted superior interest in the property. *Levien v. Fiala*, 79 Wn.App. 294, 298, 902 P.2d 170 (1995). However, if the purchaser has knowledge or

information that would cause an ordinarily prudent person to inquire further, and if such inquiry, reasonably pursued would lead to the discovery of title defects or of equitable rights of others regarding the property, then the purchaser has constructive knowledge of everything the inquiry would have revealed. *Albice v. Premier Mortg. Services of Washington, Inc.* 174 Wn.2d 560, 573, 276 P.3rd 1277 (2012). All that is required to trigger the duty of inquiry is "'information ... which would excite apprehension in an ordinary mind and prompt a person of average prudence to make inquiry." *Paganelli v. Swendsen,* 50 Wn.2d 304, 308, 311 P.2d 676 (1957) (*quoting Daly v. Rizzutto,* 59 Wash. 62, 65, 109 P. 276 (1910)).

Mr. Diaz perplexingly wants the Court to adopt the reasoning that he was permitted to cherry-pick his diligence by ignoring the January 11, 2013 Stipulation and Dismissal.

Mr. Diaz relies on the language of the January 29, 2013 Default Judgment: "the rights of all defendants, *including mortgage lenders*" were "inferior and subordinate to the plaintiff's lien and . . . *forever foreclosed*." (CP 235 (emphasis added)), Appellant's Petition for Review, page 17. Yet, he ignores the Default Judgment's specific reference to the January 11, 2013 Stipulation and Dismissal of BOA.

Because BOA was not a defendant when the January 29, 2013 Default Judgment was entered, its interest was not foreclosed or extinguished, per *Worden v. Smith*, *supra*.

The January 29, 2013 Default Judgment's specific reference to the January 11, 2013 Stipulation and Dismissal of BOA provides Mr. Diaz with at least constructive notice and a duty of inquiry because the court order which he relies on need only provide "notice of what a reasonable inquiry would reveal." Likewise, an ordinarily prudent person would inquire further. Mr. Diaz either did not engage in a "reasonable inquiry" or mistakenly made his "reasonable inquiry" after his purchase at the foreclosure sale rather than before. That surely is not consistent with what an ordinarily prudent person would do before bidding $17,571.26 on property at a Sheriff's auction.

Mr. Diaz is bound by the same current and existing legal authority, and he has a duty to conduct a "reasonable inquiry" prior to his purchase of subject condominium at the Sheriff's sale. Mr. Diaz had "information" which would "prompt a person of average prudence to make an inquiry." That reasonable inquiry could have been a simple question to the Sheriff conducting the sale or it could have been a simple email sent to the Roseberg COA. Mr. Diaz obviously knew a super priority lien had to be paid because he sent such an email to Ms. Patricia Army, attorney for Roseberg COA, two days after the auction. CP 1588. Ms. Army confirmed to Diaz that the Bank paid the "Priority Fees" prior to Mr. Diaz's purchase and emailed him a copy of the Stipulation and Dismissal. For Mr. Diaz, "presale diligence does not mean it can turn a blind eye to the circumstance" that existed prior to the Sheriff' sale.

To excuse his own inaction Diaz also argues that the satisfaction of the super priority lien somehow required recording. This argument is without merit and unsupported by any legal authority. The undisputed facts show that the six months of assessments were paid. A "lien" is an encumbrance upon property as security for the payment of a debt. *Sullins v. Sullins*, 65 Wn.2d 283 (1964). Here, the debt was paid and there was nothing to be secured or capable of conveyance and there was no need to record the Stipulation and Dismissal. Roseberg COA's delinquent assessments, save for the six months of payments, were still unpaid and the foreclosure continued through the eventual Sheriff's sale. This was made clear in the Stipulation and Dismissal of which Diaz should have recognized and he is charged with constructive knowledge of its being.

Though the September 4, 2012 Default Order was vacated by agreed order in May 2019, it was entirely inconsequential to Diaz's interest. Neither the trial court nor the Court of Appeals relied on the agreed order to vacate because it was rendered moot by the January 11, 2013 Stipulation and Dismissal. Indeed, when presented with the vacated default order, the trial court denied U.S. ROF's request for vacating Mr. Diaz's partial summary judgment.

Prior to the matter at hand, Diaz had bid on a condominium interest at its foreclosure auction, and then claimed he was a bona fide purchaser after realizing the condo interest was subject to a senior deed of trust. *See* unpublished case, *Diaz v. Hsueh*, *supra*, not cited for

precedential authority but to demonstrate his prior history of bidding at condominium foreclosure sales. Both cases involve a beneficiary's payment of a six month super priority condo assessment lien and stipulation and dismissal of the lenders with prejudice. That is precisely why Diaz and his counsel wrongfully withheld the existence of the *Diaz v. Hsueh* from the trial court and why the trial court imposed CR 11 sanctions against Mr. Odell in the amount of $1,000, which he coincidentally is not appealing.

V. CONCLUSION.

For the reasons set forth herein, the Supreme Court should deny Appellant's Petition for Review and leave unchanged the Court of Appeals' ruling in favor of U.S. ROF and North Star Trustee, LLC.

Respectfully submitted this 1st day of June, 2021.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY under the penalty of perjury pursuant to the laws of the State of Washington that on the 1st day of June 2021, service was made of the:

1. **ANSWER TO PETITION FOR REVIEW**

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