

FILED
Court of Appeals
Division I
State of Washington
5/28/2021 10:35 AM

FILED
SUPREME COURT
STATE OF WASHINGTON
5/28/2021
BY SUSAN L. CARLSON
CLERK

No. 99832-9

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

Court of Appeal Cause No. 80484-7

HUY YING CHEN and YUEH HUA CHEN, Husband and Wife,

Petitioner

v.

THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION
FKA THE BANK OF NEW YORK TRUST COMPANY, N.A. AS SUCCESSOR TO
JPMORGAN CHASE BANK, N.A. AS TRUSTEE FOR RESIDENTIAL ASSET MORTGAGE
PRODUCTS, INC. MORTGAGE ASSET BACKED PASS THROUGH CERTIFICATES
SERIES 2005 RP3, PAUL D. SAVITSKY AS VICE PRESIDENT OF JPMORGAN CHASE
BANK N.A. *FIKIA* JPMORGAN CHASE BANK., STEVEN K. LINKON ATTORNEY OF
ROUTH CRABREE OLSEN, CHRISTOPHER LUHUS ATTORNEY IN WASHINGTON
OF MCARTHY & HOLTHUS LLP,

Respondents

PETITION FOR REVIEW

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IDENTITY OF PETITIONER

Petitioner, CHEN, HUY-YING (hereinafter referred to as “Petitioner” or “Chen”), respectfully requests that this Honorable Court review the Court of Appeals’ Decision rendered in Cause No. 80484-7-I.

CITATION TO COURT OF APPEALS DECISION

Petitioner attaches as “*Appendix A*,” the Court of Appeals March 1, 2021 order and as “*Appendix B*,” the order denying Motion for Reconsideration, entered by the Court of Appeals on April 30, 2021.

ISSUES PRESENTED FOR REVIEW

1. Pursuant to RAP 13.4(b)(2), Division I's decision conflicts with this Court’s opinion in *Hazel v. Van Beek*, 954 P. 2d 1301, 135 Wash. 2d 45, 135 Utah, rev. 1998, thereby creating a split in the Divisions of the Courts of Appeals that a Sheriff’s Deed issued without confirmation of sale.
2. Pursuant to RAP 13.4(b)(2), Division I's decision conflicts with the opinion in *American Trucking Assns., Inc. v. Frisco Transp. Co.*, 358 US 133, 79 S. Ct. 170, 3 L. Ed. 2d 172 - Supreme Court, 1958, thereby creating a split in the Divisions of the Courts of Appeals I regarding certain clerical errors.
3. Pursuant to RAP 13.4(b)(2), Division I's decision conflicts with the opinion in *Miebach v. Colasurdo*, 685 P. 2d 1074, 102 Wash. 2d 170, 102, which creates a split in the Divisions of the Courts of Appeals that is sufficient to justify a decree setting the sale aside on equitable grounds.
4. Pursuant to RAP 13.4(b)(2), Division I's decision conflicts with the opinion in *Seattle-First Nat'l Bank v. Kawachi*, 588 P. 2d 725, 91 Wash. 2d 223 - Wash: Supreme Court, 1978,

which was properly a part of the matter in controversy, but it does not bar litigation of ... do out of transactions entirely separate and apart from the claim adjudicated...the parties involved were not necessarily involved in that adjudication and are not barred under the doctrine of res judicata.

5. Pursuant to RAP 13.4(b)(2), Division I's decision conflicts Court of Appeal Washington Division Two. May 9, 1997, *Gabriele Westberg v. All-Purpose Structures*, thereby creating a split in the Divisions of the Courts of Appeals II that assigned to a bias against Pro Se litigants.
6. Pursuant to RAP 13.4(b)(2), Division I's decision conflicts with the Federal Court opinion in *United States of America v. Tacoma Gravel and Supply Co., Inc., et al.*, 376 F.2d 343 (9th Cir. 1967) thereby creating a split in the Divisions I of the Courts of Appeals that a federal order applied in Washington Court not applied for statute of limitation of 10 years but statue of extinguish of six years.

STATEMENT OF THE CASE

This case initiated in King County Superior Court (“KCSC”) on May 10, 2006, under Case No. 06-2-16117-3 and the case was “stayed” on March 21, 2007 (Sub Docket no. 70) after Petitioner filed Chapter 11 in the Bankruptcy Court of Western Washington Division I, under Case No. 07-01115 PHB. On November 29, 2007, the Bankruptcy Court issued an order of summary judgment without subject jurisdiction on mistaken Rooker-Feldman doctrine,¹ and Petitioner subsequently appealed to U.S. District Court, which quickly recalled his orders back into Bankruptcy Court of Western Washington Division I under Case No. 07-01115.

Petitioner argued that Respondents’ foreign judgment brought into KCSC was invalid or the principle of *res judicata* must be barred into KCSC from that foreign judgment because the

case been post as “stay” by an adversary case from original case (06-2-16117-3), which was established on May 10, 2006. If KCSC assumed This Bankruptcy Court summary judgement that order supposed went back to this Case No. 06-2-16117-3, not act as a foreign judgement at all. Either the foreign judgment or back to original Case No. 06-2-16117-3 is immaterial- they would all be void for statute of limitation for 10 years or statue of extinguish for 6 years life span. The COA overlooked this crucial fact.

The *Rooker-Feldman* doctrine deprives the bankruptcy court of subject-matter jurisdiction to review a state court decision and precludes federal jurisdiction if the relief requested in federal court would reverse or void a state court decision. *Exxon Mobil Corp. v. Saudi Basic Industries Corp.*- 544 US 280, 125 S. Ct. 1517, 161 L. Ed. 2d 454 - Supreme Court, 2005. The *Rooker-Feldman* doctrine merely recognizes that 28 U. S. C. § 1331 is a grant of original jurisdiction and does not authorize district courts to exercise appellate jurisdiction over state-court judgments, which Congress has reserved to this Court, see § 1257(a)."). The King County Superior Court denied Petitioner’s motion for invalid sheriff sale and void sheriff deed without stated any reasons but obviously adopted Respondents’ res judicata argument. The Court, in *Seattle-First Nat’l Bank v. Kawachi* 588 P. 2d 725, 91 Wash. 2d 223 - Wash: Supreme Court, 1978, found that ...adjudication and are not barred under the doctrine of **res judicata**. (emphasis added). The Bankruptcy Court found that the doctrine of res judicata would also preclude it from revisiting the State Court decision. Although Petitioner had argued that res judicata could not apply because the State Court decision was not incorporated into a foreclosure judgment before bankruptcy filing, the Bankruptcy Court noted that in the case of decisions that have not ripened into a judgment because of a bankruptcy filing, courts have held that a judgment is not always a condition to the application of res judicata.

Proceedings in Superior Court

On July 13, 2018, Petitioner filed a quiet title action that lawsuit against JP Morgan Trust and on the same day filed a separate motion to invalid of sheriff sale and void sheriff deed in violation RCW 4.56. and RCW 6.17. The Sheriff's Deed must be set aside **without confirmation of sale**, *Hazel v. Van Beek*, 954 P. 2d 1301, 135 Wash. 2d 45, 135 Utah, rev. 1998. Even if not considering about that foreign judgement void as above "a" for BANKRUPTCY COURT lack of subject matter jurisdiction of *Rooker-Feldman* doctrine, Procedurally mistaken that CHEN's alleged this foreign judgment expired on November 29, 2017 by law, thereby prohibited the Court from confirming the sale because such the date of confirmation sale been stopped when a lien pass 10 years of statute of limitation or 6 years of statute of repose/ statute of extinguish after entry of the judgment, which is prohibited by RCW 4.56.210(1)or RCW 4.16.

The Court of Appeals Decision

The Writ of Execution had not been completed via an order of confirmation sale and hearing of confirmation sale never been established. It was a clerical mistake that the COA record reflects that misled the COA. Respondents wrongfully represented that an order of confirmation of sale was entered by the lower court. Pursuant to the record of proceeding, regarding hearing of confirmation sale that Civil Judge Beth said clearly that she overruled were only for Petitioner's raised issues and not for motion for confirmation of sale. Therefore, Respondents were obligated to file a motion for confirmation of sale according RCW 6.24.100, which they never did. Thus the COA erred as a matter of law when it ruled that a confirmation of sale was properly entered and that Petitioner's claims were without merit.

The Court stated in its March 1, 2021 Opinion that: "A nunc pro tunc order allows a court to date a record reflecting its action back to the time the action in fact occurred." The court relied

on the case of *State v. Hendrickson*, 165 Wn.2d 474, 478, 198 P.3d 1029 (2009). This case is inapplicable to the case at bar. The COA erred as a matter of law because its action back to the time **the action in fact never occurred**. There are clear factual differences which make the *Hendrickson* case distinguishable from the case at bar.

ARGUMENT WHY REVIEW SHOULD BE GRANTED

The COA Division I's opinion directly contradicts ruling by the opinion in *American Trucking Assns., Inc. v. Frisco Transp. Co.* 358 US 133, 79 S. Ct. 170, 3 L. Ed. 2d 172, which shows that the COA misconstrued the lower court's findings stated "*overrule [Chen's] objections and confirm the sheriff's sale.*" It is clear from the record that there was a clerical error which leads the reader to believe that an order of confirmation was properly entered, when in fact, no order of confirmation was ever entered by the lower court. COA affirmed State Court order which denied Petitioner's motion to invalidate the sheriff sale and void sheriff deed because COA was misled by a clerical errors of court record. Although Petitioner lists this clerical error in his "motion for reconsideration," the COA still denied the motion. The clerical errors completely misled the original judgment the Superior Court intended to sign. An abstract of important clerical errors are listed below:

- The COA, affirming the lower court in its March 1, 2021 Opinion stated: "*The record does not support Chen's claim. At the hearing on February 10, 2017, the superior court stated on the record that it would "overrule [Chen's] objections and confirm the sheriff's sale."*

It clearly proved none such record presented in hearing on February 10, 2017 by following this court's statement. Pursuant to the Statement of Arrangements, the following exchange took place during the February 10, 2017 hearing:

Page 36 line 25 THE COURT: Mr. Luhrs, do you have an...

Page 37 line 1 ...do you have an order for the court to sign?

Page 37 line 2-5 “...Your Honor, I do not. I did not know how exactly you wanted it presented, because this was not on our motion to confirm sale, so that procedurally it was little bit different”

Clearly the February 10, 2017 hearing was not held to hear the Respondents’ motion to confirm foreclosure sale. The transcript shows that the additional exchange occurred:

Page 38 line 16-20 THE COURT: *So what I can do today is I can issue an order denying or overturning -- or overruling the objections, and then if -- then you'll just have to file, what, your separate motion to confirm?*

Page 38 lines 5-25 MS. MJAATVEDT: *Yeah.*

THE COURT: *So what I can do today is I can issue an order denying or overturning -- or overruling the objections, and then if -- then you'll just have to file, what, your separate motion to confirm?*

MR. LUHRS: *That's correct, Your Honor. And a situation, hypothetically, that I would worry about is if Mr. Chen, or counsel on behalf of Mr. Chen, would later file an objection. Can we just have language that says that an objection has already*

Page 39 line 5-8 THE COURT: *Mr. Luhrs, you wanted something, you wanted language that said what? That he can't relitigate the objections he's raised, that I've ruled on today?*

MR. LUHRS: *Correct,*

Page 39 line 23-25 THE COURT: *All right. So what I have written is, this matter came before the court on February 10, 2017. The court considered the pleadings and the record in the matter and the arguments of counsel, arguments of both parties, through the defendants' RCW 6.21.110 objections to the confirmation of a sheriff sale, plaintiff's response, and defendant's reply. Based on the foregoing, the objections raised by Mr. Chen pursuant to RCW 6.21.110 are overruled.*

Page 41 line 3-8 THE COURT: *So all I can say is I have denied all of the objections that you have raised and you'll have to determine if your appeal period begins from today or begins from the date of any order I might sign confirming the sale. That's something I'll leave to you to have to decide.*

Page 41 line 11-13 MR. LUHRS: *And Your Honor, in that order you're just indicating that we're entitled to confirmation of the sale or something thereabouts?*

Page 41 line 19-25 *THE COURT: Well, is there anybody else who's entitled to notice?*

MR. LUHRS: That's my concern. I want to still file the motion, at the very least just in an abundance of caution for the purposes of notice and just for the purposes of compliance with the...

THE COURT: Well, but then I'm not sure that I should say that you're entitled to confirmation of the sale, because there might be other objections raised by other parties.

MR. LUHRS: Okay.

Page 42 line 5-9 *THE COURT: So I think that what I would rather do is, if you haven't filed your motion for confirmation of the sale, let's put that off until that motion is properly before me. What's properly before me is just ruling on Mr. Chen's objections.*

It is absolutely clear that Respondents' Counsel fully understood this was not a hearing of confirmation sale but simply a hearing for the Court to consider the objections duly filed by Petitioner to the foreclosure sale. The COA misapprehended the weight of this exchange, which is clearly indicated in the Record of clerical error and no confirmation of sale be held.

The underlying sheriff's deed is void because the judgment expired prior to the foreclosure sale.

According to the COA and Respondents, judgments rendered by a Washington court are enforceable for a period of 10 years, unless the party obtains an extension. RCW 6.17.020(1), (3). A foreign judgment filed in a superior court shall be treated in the same manner as a judgment of the superior court. RCW 6.36.025(1). Here, Chase obtained the judgment on November 29, 2007. The sale occurred on December 16, 2016, within the 10-year time limit. The judgment had not expired and was enforceable. The COA states in its Opinion that "The sale occurred on December 16, 2016, within the 10-year time limit...." This is a misapplication on the part of the COA because although writ execution for sheriff sale bid action on December 16, 2016, that does not mean the statutory requirements of a judicial foreclosure action were met by Respondents. On the contrary. A foreclosure sale becomes valid and complete only upon confirmation by the court. A bid at

sheriff sale is merely an offer to purchase that does not become binding until confirmation. The Record on Appeal in this case demonstrates that there is no order of confirmation. All the Record reflects is a questionable Ex Parte *nunc pro tunc* order, which was entered after the original judgment lien ceased and thus must be rendered void as a matter of law. Petition for review should be accepted.

The COA's opinion directly contradicts ruling by this Supreme Court opinion in *Seattle-First Nat'l Bank v. Kawachi* 588 P. 2d 725, 91 Wash. 2d 223, as the COA misconstrued the lower court's findings stated the original motion for sheriff sale invalid and void sheriff deed barred by the doctrine of res judicata. The COA stated "...not reach the Respondents' assertion that Chen's lawsuit is also barred by the doctrine of res judicata". Petitioner's claims in the foreclosure should not be barred by res judicata. To make a judgment res judicata in a subsequent action there must be a concurrence of identity in four respects: (1) of subject-matter; (2) of cause of action; (3) of persons and parties; and (4) in the quality of the persons for or against whom the claim is made. Here, the subject matter and cause of action are completely different because a foreclosure sale of writ of execution cannot be same subject matter as a bankruptcy court summary judgement, which occurred beforehand and without confirmation of sale. If we apply *Northern Pac. Ry. v. Snohomish Cy.*, *supra*, to the present case, we note only one of its four ingredients, i.e., a concurrence of subject matter and cause of action already differentiate the proceedings before. The other two ingredients of res judicata as delineated in *Northern Pac. Ry.*, *supra* cannot meet "concurrence respects" therefore the doctrine of res judicata is not applicable. Petition for review should be granted.

Chen proffered an Expert Witness Report to the lower court, which was sufficiently made part of the Record in front of the COA. Chen respectfully submits that The Expert Witness Report

is sufficient to create legal arguments of standing / jurisdiction at the late stage and this Court took the easy route in affirming the lower court's erroneous ruling based on res judicata, etc. The Expert Witness Report clearly and physically found that Respondents were not an existent entity who cannot be a bona fide purchaser at the time it foreclosed on the subject property and attempted to acquire title. Their actions were deceitful and fraudulent. The COA chose to overlook this vital piece of material evidence, upon information and belief, due to Chen's pro se status. It is well established in Washington that the trial court "must treat pro se parties in the same manner it treats lawyers." *Westberg v. All-Purpose Structures, Inc.*, 86 Wash.App. at 411, 936 P.2d 1175; cf. *Bolte v. Third Ave. RR*, 38 A.D. at 237, 239, 56 N.Y.S. 1038. It is submitted that Chen was not treated the same way, as it appears that an Expert Witness Report submitted by Counsel would have carried much more weight with the COA in adjudicating this matter than it did because Chen is acting pro se. Accordingly, Petition for review should be accepted."

The court specified that it did not find sufficient evidence to establish that there were substantial irregularities in the Sheriff's Sale under RCW 6.21.110.

RCW 6.21.110 (3) states that: "If objections to confirmation are filed, the court shall nevertheless allow the order confirming the sale, unless on the hearing of the motion, it shall satisfactorily appear that there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting. In the latter case, the court shall disallow the motion and direct that the property be resold, in whole or in part, as the case may be, as upon an execution received as of that date."

The COA misconstrued the applicable portions of the Record which demonstrate that if Respondents had not filed its motion to confirm the sale on hearing, then the lower court could not have found sufficient evidence to establish whether or not substantial irregularities in the sheriff's

sale occurred under RCW6.21.110. The February 2017 hearing was not a hearing on any motion to confirm a sale. The purpose of the hearing, as admitted on the record by the lower court, was to hear Appellant's objections to the judicial foreclosure sale. The lower court purposely left open the possibility of Appellant or any other necessary party to file objections following the Respondents' filing of its motion to confirm sale.

The court indicated that pursuant to the statute relating to confirmation of execution sales, RCW 6.24.100, it is the judgment creditor or successful purchaser who moves for confirmation, rather than the judgment debtor. Respondents act as judgment creditor or successful purchaser no motion for confirming the sale before original foreign judgement expired its statutory life span. Sheriff deed should be void under RCW 4.56.210.

The Court's opinion in *State v. Hendrickson*, 165 Wn.2d 474, 478, 198 P.3d 1029 (2009) creates a split in the Divisions. A *nunc pro tunc* order "may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken" and due to Clerical error existent which misled the confirmation sale had been held cause of COA affirmed state Court order.

The lower court's order confirming the sale *nunc pro tunc* to February 10, 2017 is Void.

The lower court incorrectly entered an order which Respondents construe as confirming the sale *nunc pro tunc* on February 10, 2018. This Court stated in its March 1, 2021 Opinion that: "A *nunc pro tunc* order allows a court to date a record reflecting its action back to the time the action in fact occurred." This court relied on the case of *State v. Hendrickson*, 165 Wn.2d 474, 478, 198 P.3d 1029 (2009). This case is inapplicable to the case at bar. The COA erred as a matter of law because its action back to the time the action in fact never occurred. There are clear factual differences which make the *Hendrickson* case distinguishable from the case at bar.

A retroactive entry is proper only to rectify the record as to acts which did occur, not as to acts which should have occurred." *Id.* at 641. A *nunc pro tunc* order "records judicial acts done at a former time which were not then carried into the record." " *State v. Petrich*, 94 Wn.2d 291, 296, 616 P.2d 1219 (1980). A *nunc pro tunc* order "'may be used to make the record speak the truth, but not to make it speak what it did not speak but ought to have spoken.'" Based on the complete Record in this case, specifically the transcript of the February 17, 2017 hearing, Chen submits that the *nunc pro tunc* order dated February 10, 2018 is invalid. The order confirming the sale *nunc pro tunc* to the date of the hearing was invalid and the COA overlooked this significant and material fact which conclusively demonstrates.

The COA's opinion directly contradicts rulings of this Court when it misconstrued the lower court's findings stated that "Chen was incorrect in regard to King County Local Civil Rule 40.1(b)(1)(N)." and due to existing clerical error, the Opinion also improperly relies on to clerical error since the correction of a clerical error pending in COA which misled the issue of confirmation of sale. Thus, review by this Court is warranted.

COA misapprehended the Record when it found that Chen was incorrect in regard to King County Local Civil Rule 40.1(b)(1)(N).

King County Local Civil Rule 40.1(b)(1)(N) states: *Post-Foreclosure Motions. Following the entry of the order of foreclosure by the assigned judge, motions to confirm the sale and/or motions for an order to disburse funds shall be set in the Ex Parte and Probate Department and be presented in person with notice pursuant to LCR 7 (b) to all parties who have appeared.* Following a foreclosure sale/auction, if no one purchases the property at auction, it becomes bank owned property. The bank can then list it on the open market with an agent or sell it at a liquidation auction. However, this can only happen following a legal and **valid order of the Court confirming**

the foreclosure sale. Here, that did not happen. To be clear, motions to confirm the sale via Ex Parte for KCSC LCR 40.1(b)(1)(N) cannot apply. Further, KCSC LCR 40.1(b)(1)(N) cannot substitute for a legally valid judicially confirmed sale. Petition for review should be granted.

The Court, in *Miebach v. Colasurdo*, 685 P. 2d 1074, 102 Wash. 2d 170, 102 set grounds to justify setting aside a decree on **equitable grounds**. COA misconstrued the lower court's findings stated that "Chen was incorrect when it stated: "Chen next argues that the sheriff's sale and deed should be set aside on equitable grounds because the property sold for only 40 percent of its fair market value." The Opinion also improperly relies which misled the confirmation sale had been held cause of COA affirmed state Court order. Petition for Review should thus be granted.

COA mistakenly found that Chen was incorrect when it stated: "Chen next argues that the sheriff's sale and deed should be set aside on equitable grounds because the property sold for only 40 percent of its fair market value..."

The COA found that "the record shows that the property sold at public auction for \$926,834.20. Chen offers no evidence in the record to show that this price is inadequate." This was a misapprehension of standing precedent. Although inadequacy of price alone is generally insufficient to set aside a nonjudicial foreclosure sale, "a grossly inadequate purchase price together with circumstances of other unfair procedures may provide equitable grounds to set aside a sale." *Albice v. Premier Mortg. Servs. Of Wash., Inc.*, 157 Wn. App. 912, 933, 239 P.3d 1148 (2010). Here, the record shows that the property sold at public auction for \$926,834.20. As applied to *Albice v. Premier Mortg. Servs. Of Wash., Inc.*, 157 Wn. App. 912, 933, 239 P.3d 1148 (2010), *Albice/Teccas* argue that Dickinson was not a bona fide purchaser because (1) he knew or should have known about the defects in the sale and (2) the purchase price was substantially below the property's fair market value. Specifically, they argue the following circumstances gave Dickinson notice of flaws in the foreclosure proceedings: (1) Dickinson was "intimately familiar with real

estate investment and the non-judicial foreclosure process”; (2) from experience, Dickinson knew foreclosure sales are usually continued for 30 days; (3) Dickinson spoke with Karen Tecca, who told him that they had no interest in selling, that the sale was not going to happen, and that they were “going to make up the payments”; and (4) Dickinson was “surprised” when the property came up for sale. Br. of Appellant at 19-20. *Albice/Teccas* further argue that a reasonably diligent inquiry would have revealed that the Teccas had entered into a forbearance agreement under which they had made all their payments and that the sale had been continued for a period beyond what was statutorily allowed. Albice/Teccas' expert witness, a certified general appraiser in Washington State, testified that the property was worth \$950,000 in February 2007. Karen Tecca stated in her declaration that the property had a value in excess of \$750,000. Her estimate was based on a 2003 appraisal of the property at \$607,000, assuming that it had substantially appreciated. In their brief, the Dickinsons argue that fair market value of the property was approximately \$428,000. Based on this record, the purchase price was between 13-18 percent of its fair market value. In considering the bona fide purchaser issue, the disparity between what Dickinson paid and the true value of the property strongly supports our conclusion that Dickinson should have further investigated the sale. See Restatement (Third) of Property: Mortgages § 8.3 cmt. b (1997) (a court is generally warranted in invalidating a sale where the price is less than 20 percent of fair market value). This comment contains a bright line rule that a foreclosure sale that is below 20 percent of the fair market value is considered grossly inadequate and this inadequacy is a stand-alone basis to invalidate a foreclosure sale. As is the case here, which the COA overlooked in rendering its March 1, 2021 Opinion.

A foreclosure sale becomes valid and complete only upon confirmation by the court. A bid at sale is merely an offer to purchase that does not become binding until confirmation. *In re*

Spokane Sav. Bank, 198 Wash. 665, 670-74, 89 P.2d 802 (1939); *Real Estate Finance Law* § 7.17, at 530. Under either RCW 6.24.100 or 61.12.060 then, the successful bidder at the foreclosure sale merely offers his bid to the court for acceptance at time of confirmation. The fact that the successful bidder is merely an offeror limits the court's discretionary powers to confirmation of the bid on motion of the purchaser or the establishment of an upset price which in essence is a rejection of the bid and a counteroffer to the purchaser. With this case due without hearing of confirmation sale so inadequate price no presented after its statutory life end. Therefore, the sheriff's foreclosure sale must be void and sheriff deed void too. Chen did provide the lower court and this Court a public appraisal report from www.Refinace.com and www.zillow.com which was based on 40% market value from public view of market appraisal. Therefore, the COA's claim that Chen proffered no evidence in the Record to show that the price was "inadequate" was a complete misstatement of the material facts and evidence on the Record.

This court has concluded that the upset provisions in RCW 61.12.060 were adopted directly from the opinion of the Wisconsin Supreme Court in *Suring State Bank v. Giese*, 210 Wis. 489, 246 N.W. 556 (1933). *Lee v. Barnes*, 61 Wn.2d 581, 584, 379 P.2d 362 (1963); *National Bank v. Equity Investors*, 81 Wn.2d 886, 925, 506 P.2d 20 (1973). In *Suring*, the Wisconsin Supreme Court concluded that the existence of a general depression empowers the trial court to grant three types of relief: (1) to refuse to confirm the sale if the bid is substantially inadequate or if inadequacy is coupled with an emergency that prevents competitive bidding; (2) to establish an upset price; or (3) to condition confirmation on credit of the fair market value against the debt, even if the credit precludes a deficiency judgment. Although the trial court had granted the third type relief, the Wisconsin Supreme Court reversed because the mortgagee should have been given the option to

accept or reject the condition. *Suring*, at 493-94. Accordingly, Petition for Review should be granted.

After 6 years, a judgment no longer is enforceable.

Pursuant to RAP 13.4(b)(2), the COA's Opinion conflicts with the Federal Court Opinion in *United States of America v. Tacoma Gravel and Supply Co., Inc., et al.*, 376 F.2d 343 (9th Cir. 1967). In interpreting this statute, the decisions of the Washington State Supreme Court are controlling. *In re Levinson*, 5 F.2d 75 (D.C.Wash.1925). That court has consistently held that this is a statute not of limitations but of extinguishment; after six years a Washington judgment has no further force or effect — it ceases to exist. *Bettman v. Cowley*, 19 Wash. 207, 53 P. 53, 40 L.R. A. 815 (1898); *Palmer v. Laberee*, 23 Wash. 409, 63 P. 216 (1900); *Ball v. Bussell*, 119 Wash. 206, 205 P. 423 (1922); *Roche v. McDonald*, 136 Wash. 322, 239 P. 1015, 44 A.L.R. 444 (1925), rev'd on other grounds, 275 U.S. 449, 48 S. Ct. 142, 72 L. Ed. 365 (1928); *St. Germain v. St. Germain*, 22 Wash. 2d 744, 157 P.2d 981 (1945). This statute is not a mere statute of limitation. *Roche v. McDonald, supra*, 136 Wash. at 326, 239 P. at 1016. It goes directly to the obligation of the judgment itself, and destroys it." *Palmer v. Laberee, supra*, at 415, 63 P. at 218. Consequently, the "judgment becomes inoperative for any purpose after the expiration" of six years. *Hinckley v. Seattle*, 37 Wash. 269, 270, 79 P. 779 (1905). In fact, the U.S. Ninth Circuit Court of Appeals convinced that this statute operates against the United States equally with private creditors. In *Custer v. McCutcheon*, 283 U.S. 514, 51 S. Ct. 530, 75 L. Ed. 1239 (1913), the Court had under consideration a state statute fixing a five-year limit on the time within which execution must issue on a judgment. The rationale implicit in the Court's opinion is that execution is a state granted right; a state can control by condition what it grants; the time element is a valid condition inherent in the right of execution; the right terminates upon expiration of the time so limited; this consequence attaches even though the judgment is in favor of the United States. The Court was careful to note

that " [t]he time limited for issuing executions is, strictly speaking, not a statute of limitations." 283 U.S. at 519, 51 S. Ct. at 532. Rather the lapse of more than five years from the date of entry of the judgment served to extinguish the government's right to execution altogether. So here the United States, having elected to pursue this claim in a court of the State of Washington, could obtain no more than what that state provides in the way of a judgment. R.C.W. 4.56.210 is as much a part of a Washington judgment as if fully incorporated therein. *In re Levinson*, 5 F.2d 75 (1925). "Thus since ten years have elapsed, appellant's judgment is not merely dormant, it is dead. Appellant has no judgment left to renew." *Id.*

Accordingly, Petition for Review should be granted.

Petitioner requests Respondent or Respondent's Counsel Make a Declaration Attesting to Legal Entity Status.

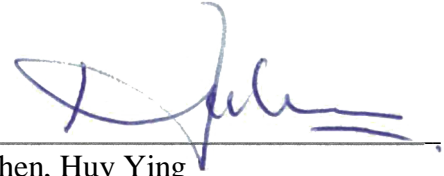
Pursuant to RAP 13.4(d), Petitioner requests that Respondent or Respondent's Counsel make a Declaration or Attestation to support their legal standing and their continuous objections to Petitioner's requests for relief. Respondent or Respondent's Counsel should file such Declaration or Attestation within 30 days of receipt of the instant Petition for Review. As this Court is aware, a party must demonstrate legal standing in order to participate in any legal proceeding. Respondent has failed to prove its legal entity status to the extent they could have acted as a bona fide purchaser at any foreclosure sale.

CONCLUSION

Based on the foregoing, Petitioner respectfully submits that the instant Petition for Review should be granted as there are clear conflicts between the position of Division I and other Court precedent, and because the decision effectively abrogates the "substantial factor" standard under the 10 assignments above.

Dated May 28, 2021.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Huy Ying Chen', is written over a horizontal line.

Chen, Huy Ying
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Appendix A

Court of Appeal Unpublished
Opinion

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

HUY-YING CHEN and YUEH HUA
CHEN, husband and wife,

Appellants,

v.

JP MORGAN CHASE BANK, as trustee, f/k/a THE CHASE MANHATTAN BANK, successor in interest to Chase Manhattan Bank, N.A.; THE BANK OF NEW YORK MELLON TRUST COMPANY, NATIONAL ASSOCIATION, f/k/a Bank of New York Trust Company, N.A., as successor to JP Morgan Chase Bank, N.A., as trustee for Residential Asset Mortgage Products, Inc., mortgage asset backed pass through certificates series 2005 RP3; PAUL D. SAVITSKY, as vice president of JP Morgan Chase Bank, N.A., f/k/a JP Morgan Chase Bank; STEVEN K. LINKON, attorney of Routh Crabtree Olsen; CHRISTOPHER LUHUS, attorney in Washington of McCarthy & Holthus, LLP; JOHN DOE #1, unknown parties,

Respondents.

No. 80484-7-I

DIVISION ONE

UNPUBLISHED OPINION

APPELWICK, J. — Huy-Ying Chen, appearing pro se, appeals the trial court's denial of his motion to set aside the sheriff's sale and deed following a judicial foreclosure action on Chen's real property. Chen's claims lack merit. We affirm.

FACTS

In 1999, Huy-Ying Chen and Yueh Hua Chen (collectively Chen) borrowed \$525,000 from Washington Mutual Bank to purchase a home located at 5112 189th Ave. N.E., Redmond WA 98052.¹ In 2006, JP Morgan Chase Bank (Chase), as successor to Washington Mutual Bank, initiated a judicial foreclosure action on the property. On March 19, 2007, Chen filed for bankruptcy. Chen subsequently removed the judicial foreclosure action to the bankruptcy court as an adversary proceeding. On November 29, 2007, the bankruptcy court granted Chase's motion for summary judgment, awarded Chase a judgment of \$647,478.68, and ordered a foreclosure sale of the property in satisfaction of the debt. Chen appealed. On March 24, 2008, the federal district court denied Chen's motion to stay the sale pending his appeal, noting that Chen was unlikely to prevail on appeal and that the foreclosure sale of the home was "unavoidable." Chen's appeal was dismissed several months later.

On April 18, 2008, King County Superior Court received Chase's "Judgment Summary and Affidavit of Steven K. Linkon for Filing a Foreign Judgment."² Chase filed notice of the foreign judgment in King County Superior Court on May 22, 2008. On October 2, 2008, the King County Sheriff received Chase's writ for order of sale to foreclose on the property. On January 2, 2009, the pending sale was canceled after the parties reached a settlement.

On September 28, 2011, Chen, acting pro se, filed a lawsuit against Chase and its successor Bank of New York Mellon Trust Company (BONYMT) in King County Superior

¹ Yueh Hua Chen passed away after the judicial foreclosure was filed.

² King County Superior Court Case No. 08-2-13281-1 SEA.

Court asserting breach of the settlement agreement contract and violations of the Real Estate Settlement Procedures Act, 12 U.S.C. § 2605, and the Consumer Protection Act, chapter 19.86 RCW.³ The superior court dismissed the suit with prejudice.

On October 20, 2016, the King County Sheriff received a new order of sale to foreclose on Chen's property. On December 12, 2016, Chen, acting pro se, filed a "Motion to Dismiss a Wrongful Judicial Foreclosure." The superior court denied the motion and permitted the sheriff's sale to proceed in satisfaction of the judgment. The sheriff's sale took place on December 16, 2016. On January 12, 2017, Chen, represented by counsel, filed an objection to confirmation of the sale. On February 10, 2017, the superior court overruled Chen's objections to confirming the sale. In an unpublished opinion, this court affirmed the superior court's ruling.⁴

On February 14, 2018, the superior court issued an order to confirm the sheriff's sale nunc pro tunc to February 10, 2017. In August 2018, Chen, acting pro se, filed a lawsuit in United States District Court seeking to prevent enforcement of the sale. The district court dismissed the lawsuit for lack of subject matter jurisdiction and denied Chen's motion for reconsideration.

On June 5, 2019, Chen, acting pro se, filed a lawsuit in superior court against Chase, BONYMT, and several other parties (collectively Respondents) again seeking to prevent enforcement of the sheriff's sale.⁵ Respondents moved to dismiss on the basis of res judicata and failure to state a claim. While the motion was pending, Chen filed a

³ King County Superior Court No. 11-2-33383-3 SEA.

⁴ JP Morgan Chase Bank v. Chen, 76624-4-1 (Wash. Ct. App. October 8, 2018) (unpublished), <https://www.courts.wa.gov/opinions/pdf/766244.pdf>, review denied, 193 Wn.2d 1003, 438 P.3d 125 (2019).

⁵ King County Superior Court No. 19-2-15034-3 SEA.

pro se motion to set aside the sale and vacate the deed. The superior court denied Chen's motion. This appeal followed.

DECISION

A sheriff's sale must be confirmed unless "there were substantial irregularities in the proceedings concerning the sale, to the probable loss or injury of the party objecting." RCW 6.21.110(3). "[C]onfirmation of judicial sales rests largely within the discretion of the trial court' and so is reviewed for manifest abuse of such discretion." Sixty-01 Ass'n of Apartment Owners v. Parsons, 181 Wn.2d 316, 322, 335 P.3d 933 (2014) (quoting Braman v. Kuper, 51 Wn.2d 676, 681, 321 P.2d 275 (1958)). "A trial court abuses its discretion when its decision is based on untenable grounds or untenable reasons." Shandola v. Henry, 198 Wn. App. 889, 896, 396 P.3d 395 (2017).

Chen asserts that the sheriff's deed is void because the judgment expired prior to the foreclosure sale. This court previously rejected the same claim raised by Chen in his 2017 objection to confirmation of sale:

Judgments rendered by a Washington court are enforceable for a period of 10 years, unless the party obtains an extension. RCW 6.17.020(1), (3). A foreign judgment filed in a superior court shall be treated in the same manner as a judgment of the superior court. RCW 6.36.025(1). Here, Chase obtained the judgment on November 29, 2007. The sale occurred on December 16, 2016, within the 10 year time limit. The judgment had not expired and was enforceable.

JP Morgan Chase Bank v. Chen, No.76624-4-1, slip. op. at 5 (Wash. Ct. App. October 8, 2018) (unpublished), <https://www.courts.wa.gov/opinions/pdf/766244.pdf>. The superior court confirmed the sale at the February 10, 2017 hearing. The judgment did not expire within the 10 year period.

Chen nevertheless asserts that the sheriff's deed is void, and the 10 year time limit has expired, because the sale was not confirmed by the court. The record does not support Chen's claim. At the hearing on February 10, 2017, the superior court stated on the record that it would "overrule [Chen's] objections and confirm the sheriff's sale." The court specified that it did not find sufficient evidence to establish substantial irregularities in the sheriff's sale under RCW 6.21.110. Because counsel for Chase did not bring an order for confirming the sale to the hearing, counsel submitted it later by motion as instructed. Accordingly, the superior court entered an order confirming the sale nunc pro tunc to February 10, 2017, the date of the hearing. "A nunc pro tunc order allows a court to date a record reflecting its action back to the time the action in fact occurred." State v. Hendrickson, 165 Wn.2d 474, 478, 198 P.3d 1029 (2009). The order confirming the sale nunc pro tunc to the date of the hearing was proper.

Chen next argues that the order confirming sale nunc pro tunc was obtained via a "conspiracy to defraud" because counsel submitted the request ex parte, in contradiction to the superior court judge's instructions. Chen is incorrect. King County Local Civil Rule 40.1(b)(1)(N) requires that motions to confirm a sale be presented ex parte. The record contains a letter from the superior court to counsel for Chase stating that documents he had presented for signature were being returned for presentation through ex parte.⁶ Counsel did so, and a superior court judge signed the order. Chen's assertion that these actions were somehow fraudulent or otherwise improper are unsupported and without merit.

⁶ We may take judicial notice of trial court records ancillary to the pending appeal. See ER 201; Spokane Research & Def. Fund v. City of Spokane, 155 Wn.2d 89, 98, 117 P.3d 1122 (2005).

Chen next argues that the sheriff's sale and deed should be set aside on equitable grounds because the property sold for only 40 percent of its fair market value. Although inadequacy of price alone is generally insufficient to set aside a nonjudicial foreclosure sale, "a grossly inadequate purchase price together with circumstances of other unfair procedures may provide equitable grounds to set aside a sale." Albice v. Premier Mortg. Servs. Of Wash., Inc., 157 Wn. App. 912, 933, 239 P.3d 1148 (2010). Here, the record shows that the property sold at public auction for \$926,834.20. Chen offers no evidence in the record to show that this price is inadequate.

Chen next argues that the sheriff's sale and deed should be set aside because Respondents are "nonexistent entities without any legal standing for foreclosure." In support of this assertion, Chen relies on the September 24, 2019 declaration of William Paatalo, a private investigator specializing in mortgage issues. Paatalo stated that thus far in his investigation, he had been "unable to identify and/or verify the existence of any claimant with rights to enforce the Note, or the whereabouts of said Note." Based on the evidence he was able to obtain, Paatalo opined that the assignments were deceptive and contain indicia of fraud. However, Paatalo specified that in order to complete his investigation, he would need to inspect the note and review its entire custodial history, review all documents related to the existence of both assignees in the chain of title as well as the authorities of all parties claiming to act on their behalf, and review the "Pooling and Servicing Agreement" recorded with the assignment. This evidence is not sufficient to demonstrate there were substantial irregularities in the proceedings concerning the sale.

Chen next asserts that the sale and deed must be set aside because he did not receive notice of his rights of redemption every two months following the sale. Under RCW 6.23.030(1), “[i]f the property is subject to a homestead as provided in chapter 6.13 RCW,” notice must be provided “at least forty but not more than sixty days before the expiration of the judgment debtor’s redemption period.” There is no requirement to provide notice every two months following the sale. Moreover, the remedy for failure to comply with this statutory notice requirement is to extend the judgment debtor’s redemption period for a period of six months. RCW 6.23.030(2). If this should occur, “[n]o further notice need be sent” and the time for redemption “shall not be extended.” RCW 6.23.020(2). Chen has not shown that the sale and deed should be set aside on this basis.⁷

Affirmed.

Luppelwick, J.

WE CONCUR:

Coburn, J.

Smith, J.

⁷ Because Chen’s present attempt to litigate the foreclosure and sheriff’s sale is legally and factually unsupported, we need not reach the Respondents’ assertion that Chen’s lawsuit is also barred by the doctrine of res judicata.

Appendix B

Denial of Motion for
Reconsideration

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

HUY-YING CHEN and YUEH HUA
CHEN, husband and wife,

Appellants,

v.

JP MORGAN CHASE BANK, as trustee,
f/k/a THE CHASE MANHATTAN BANK,
successor in interest to Chase
Manhattan Bank, N.A.; THE BANK OF
NEW YORK MELLON TRUST
COMPANY, NATIONAL
ASSOCIATION, f/k/a Bank of New York
Trust Company, N.A., as successor to
JP Morgan Chase Bank, N.A., as
trustee for Residential Asset Mortgage
Products, Inc., mortgage asset backed
pass through certificates series 2005
RP3; PAUL D. SAVITSKY, as vice
president of JP Morgan Chase Bank,
N.A., f/k/a JP Morgan Chase Bank;
STEVEN K. LINKON, attorney of Routh
Crabtree Olsen; CHRISTOPHER
LUHUS, attorney in Washington of
McCarthy & Holthus, LLP; JOHN DOE
#1, unknown parties,

Respondents.

No. 80484-7-I

ORDER DENYING MOTION
FOR RECONSIDERATION

The appellant, Huy Ying Chen, filed a motion for reconsideration. A majority of the panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied. Now, therefore, it is hereby

No. 80484-7-1/2

ORDERED that the motion for reconsideration is denied.

Luppelwick, J.

Judge

Appendix C

Media Transcription for hearing
02-10-2017

In the Matter of:
JP Morgan Chase Bank
vs.
Chen

VERBATIM REPORT OF PROCEEDINGS

February 10, 2017

1 SUPERIOR COURT OF WASHINGTON IN AND FOR KING COUNTY

2

3 In Re:)

4 JP MORGAN CHASE BANK,)

5 Plaintiff,)

6 vs.) 08-2-13281-1 SEA

7 HUY-YING CHEN and YUEH-HUA)

8 LEE CHEN,)

9 Defendants.)

10

11 VERBATIM REPORT OF PROCEEDINGS

12 BEFORE THE HONORABLE

13 BETH M. ANDRUS

14 (Work Product)

15

16 FEBRUARY 10, 2017

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24 TRANSCRIBED FROM RECORDING BY:

25 CHERYL J. HAMMER, RPR, CCR 2512

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A P P E A R A N C E S

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I N D E X

PROCEEDINGS:	PAGE
Ms. Mjaatvedt presents argument	6
Mr. Luhrs presents argument	18
Ms. Mjaatvedt presents rebuttal	30
Court issues ruling	34

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(BEGINNING OF TRANSCRIPTION)

(Proceedings begin at 1:40 p.m.)

MR. LUHRS: Thank you.

THE COURT: All right. The next matter is JP Morgan Chase bank versus Chen. This is Cause number 08-2-13281-1.

If counsel would come forward and make their appearance for the record.

MS. MJAATVEDT: Good afternoon, Your Honor. My name is Anne Mjaatvedt, and I'm the attorney for the defendants, and specifically here Mr. Chen.

THE COURT: Thank you so much. And how do you pronounce your last name?

MS. MJAATVEDT: Mjaatvedt.

THE COURT: Mjaatvedt. Thank you.

MS. MJAATVEDT: Thank you.

MR. LUHRS: Good afternoon, Your Honor. My name is Christopher Luhrs, and I represent Chase here today.

THE COURT: All right. Good afternoon. We are here this afternoon on an objection to a sheriff sale, to confirmation of a sheriff sale

1 under RCW 6.21.110 that was filed by Mr. Chen.

2 I have received the objection, the
3 response, and the reply. I have also gone and
4 listened to the hearing that was held in front of
5 Commissioner Judson back in December of 2016, because
6 I was having a hard time reading Commissioner Judson's
7 handwriting. I wanted to make sure I understood who
8 had appeared and what was said and what the ruling was
9 that he had ruled on.

10 So I have -- and I've also gone
11 through and looked at the docket for the 2011 case and
12 then also looked at the docket in this 2008 matter
13 that was essentially the filing of the foreign
14 judgment and the proceedings that happened thereafter.
15 So I'm trying. I hope I'm up to speed.

16 So Ms. Mjaatvedt, this is really your
17 objection, so I'm going to let you go first. Then
18 I'll hear from Mr. Luhrs, and then hear from you in
19 rebuttal.

20 MS. MJAATVEDT: Okay. Thank you, Your
21 Honor. Yeah, as you've brought out, that this is Mr.
22 Chen's objections to the sale that he filed pursuant
23 to the statute and I think -- and you've looked at the
24 materials, and there is a long history in this case.

25 I think that really sort of puts a

1 fine point on why it's so important that, you know,
2 all aspects of the sale process and all aspects of the
3 notice process are followed explicitly under the
4 statute, because, you know, part of the long
5 litigation history, I believe, is because there's been
6 confusion at several different steps on -- first on,
7 you know, where they mailed it, you know, and while it
8 might seem a small difference, that they mailed it to
9 the wrong town and the wrong zip code.

10 As they point out, Mr. Chen did use
11 that same Redmond address in his -- some of his
12 filings, but he used the correct zip code. And so
13 they did not actually receive the mailings on this.
14 They did eventually find out that the sale was
15 occurring, and that's when they tried -- they
16 basically raced into court to try to through the ex
17 parte process pro se to stop the sale.

18 THE COURT: So that's what I was going
19 to ask you. I don't have any -- I didn't see a
20 declaration from your client about whether he did or
21 did not receive this notice and how he did or did not
22 find out about it. Obviously he found out about it --

23 MS. MJAATVEDT: Yes, Your Honor.

24 THE COURT: -- at some point in
25 advance because he appeared in court in ex parte.

1 MS. MJAATVEDT: It can be a little bit
2 confusing in talking about time points with my client.
3 But he did eventually see something that was posted on
4 the door and that's when he went in to -- and he came
5 in a couple different times to try to go in through
6 the show cause process.

7 THE COURT: Right. It looked like he
8 filed something on the 5th of December --

9 MS. MJAATVEDT: And there's nothing --

10 THE COURT: -- in the 2011 case.

11 MS. MJAATVEDT: Uh-huh.

12 THE COURT: And then turned around and
13 filed something in this matter.

14 MS. MJAATVEDT: That's correct. And I
15 think that was based on him going -- I was not
16 retained at that point and that, I think, was based on
17 him going in, trying to through ex parte.

18 THE COURT: So how do you respond to
19 Mr. Luhrs' argument that the statute just requires
20 that they send the document in the mail to the last
21 known address?

22 MS. MJAATVEDT: Well, I think the
23 critical issue here, because I understand his argument
24 about the return receipt process.

25 THE COURT: Right.

1 MS. MJAATVEDT: But, you know, last
2 known address. Here, last known address, if there
3 were no other addresses out there or just Mr. Chen's
4 effort at pleading, that would be one thing, but they
5 knew the last known address, because that's the --
6 they used the correct address in the judgment summary
7 when they filed the foreign judgment in 2008.

8 And so, you know, this is just, as I
9 said, a statute that requires strict compliance and
10 that did not occur here. And, you know, at some point
11 after they actually had the sale it appears that the
12 return receipts were returned to the office, according
13 to the post office online documents.

14 THE COURT: You're saying that the
15 mail was returned?

16 MS. MJAATVEDT: It was held at the --
17 it was returned by the post office. It stayed there
18 without being picked up for whatever certain amount of
19 time that they wait for and then the post office
20 returned it to the law office.

21 THE COURT: To counsel. All right. I
22 thought I had a copy of the judgment with me. So
23 you're saying that the judgment --

24 MS. MJAATVEDT: The foreign judgment?
25 Sorry.

1 THE COURT: Yeah, the foreign

2 judgment, you said, had his --

3 MS. MJAATVEDT: Yeah, that's --

4 THE COURT: -- had his Sammamish

5 address on it?

6 MS. MJAATVEDT: Yeah. It's in Exhibit

7 C, which there's a lot of stamps on the bottom, but if

8 you go to the physical page 4 of that, it's the

9 affidavit of Steven K. Linkon. It says judgment and

10 summary at the top of the page.

11 THE COURT: Oh, I see. There it is in

12 the avid. Mr. Linkon's office, judgment and the

13 debtor's last known post office address is. That one.

14 MS. MJAATVEDT: Yes. And that's the

15 correct address with the correct zip code.

16 THE COURT: And so you're saying that

17 the 5112 address to Redmond wouldn't -- did not wind

18 it's way to this location.

19 MS. MJAATVEDT: That is correct, Your

20 Honor. I think they used a 98052, but that is -- you

21 know, is not -- those documents don't make it

22 necessarily to my client.

23 THE COURT: All right.

24 MS. MJAATVEDT: So then, so there's a

25 notice issue there, and as you can see, you know, and

1 one of the issues that was raised, and you probably
2 saw that in some of the other filings, is that Mr.
3 Chen could never figure out who, who the actual
4 creditors were, you know, apart from this long
5 history.

6 So, for example, like in Docket 16,
7 there was some filing by the sheriff of a sheriff's
8 return on docket part Number 16 of this case, where
9 they listed the Bank of New York Bank of Mellon as the
10 creditor, but then when the actual sheriff's service
11 and return came out here, it was the JP Morgan Chase.

12 THE COURT: Yeah, but he's been
13 litigating against JP Morgan Chase for at least almost
14 a decade, so how could he possibly be confused as to
15 who the debtor -- who the judgment creditor is?

16 MS. MJAATVEDT: Well, it's not clear
17 that that is who the creditor is, and part of it goes
18 back to the other issue, when he tried to do a loan
19 modification back in 2008 with the other law firm, and
20 it involved JP Morgan Chase and it involved Litton
21 Loan Services. At that point he wasn't clear if it
22 was Litton or JP Morgan Chase.

23 Then, so you keep seeing these
24 different creditors come in. He originally started
25 with Washington Mutual. Of course, like all of our

1 loans, they move, they move around, and so when he
2 went in and -- you know, he references that in some of
3 the pleadings, I think, when he went before Judge
4 Commissioner Judson was that, you know, he calls it
5 John Doe Number 1.

6 He just really has no idea who he's
7 dealing with, because he tried to call Steve Linkon,
8 he tried to call Litton Loan Services. Nobody could
9 tell him who was bringing this current sale. And so
10 it's just, it's just sort of this continuous fit of
11 confusion throughout.

12 And it's also heard back in 2008 and
13 2010 when he tried to do loan modifications with JP
14 Morgan Chase and with Lit -- and Litton was involved,
15 but when he called Litton when he didn't receive
16 anything, Litton said, we know nothing about this.

17 It's just this sort of constant
18 changeover, you know, of actually who's involved and
19 it's very confusing. I mean, it's confusing for us as
20 attorneys. It's even more confusing for, you know,
21 members of the public who are trying to handle things
22 on their own.

23 THE COURT: So let me ask you this.
24 You make this representation or this statement in your
25 document that failure to get the 30 days' notice was

1 prejudicial to your client because they wouldn't have
2 been -- they didn't have time to come in and present
3 legal arguments as to why the sale should not proceed.

4 You've seen Mr. Luhrs' res judicata
5 arguments. Your client has been around this bend in
6 many different times, in many different courts. And
7 so I guess the question is, if I make Mr. Luhrs go out
8 and give your client 30 days' notice tomorrow of a new
9 sale, how can you possibly stop this sale? I just,
10 I'm not sure how you can.

11 I mean, even if he claims that he was
12 promised something and that there was a settlement
13 agreement or they negotiated, you've already litigated
14 that and you lost. Your client lost. I mean, even --
15 I'm not sure I can really change the slant of the
16 earth at this stage.

17 MS. MJAATVEDT: Well, that's why I'm
18 here, to try to --

19 THE COURT: I see.

20 MS. MJAATVEDT: -- convince you of,
21 Your Honor, and I appreciate the opportunity.

22 I guess, there's going into this, you
23 know, substantive argument about the res judicata is,
24 and I understand Mr. Luhrs' arguments, but in fact Mr.
25 Chen did not raise a promissory estoppel argument. He

1 raised it as a breach of contract. He lost on that
2 because there were no signed, you know, contracts that
3 we can hold up in court and say name one, name two,
4 boom.

5 But, so in terms of res judicata,
6 we're bringing that up as an irregularity. Not res
7 judicata, but promissory estoppel as a irregularity,
8 and also as its own -- as its own issue dealing with,
9 again, all these irregularities throughout this
10 process for Mr. -- for Mr. Chen.

11 And in terms of what he can turn
12 around and do right away, although we're not currently
13 involved in any of the other suits, you know, one of
14 the things he's tried to do in those suits is
15 basically what we will call quiet title, or get a
16 validation of debt, verification of debt, find out
17 who's holding, you know, who actually is being
18 represented here, who he can deal with, because,
19 Judge, at the end of the day, after all of this, he
20 was never seeking to stay in this house without paying
21 for it.

22 He wanted -- in 2008, he had a little
23 rough patch. He tried to get a loan modification.
24 They worked -- and based on their good faith, his good
25 faith dealing, he dismissed an appeal that would have

1 stayed that foreign judgment, and he dismissed that
2 because he thought they were working out a loan
3 modification to get lower payments for about three
4 years and then come back up to his regular payments
5 and get back into his loan properly.

6 And in fact, he tried to again get a
7 loan modification in 2010 because he tried to send
8 money to Litton, because that's the person he had sent
9 to before. They sent the check back. So that's
10 really all he's ever wanted. And so some of these
11 things that he's brought sort of as side issues is to
12 -- is to -- as best he could, you know, trying to
13 raise legal issues that you saw, but really, to find
14 out who it is and if he could deal with them and get
15 back in his loan, because that's all he's ever wanted.

16 That's still what he wants today, you
17 know, and he's gone through a lot.

18 THE COURT: Is he still living in the
19 house?

20 MS. MJAATVEDT: I'm sorry?

21 THE COURT: Is he still living there?

22 MS. MJAATVEDT: Yes, he is, with his

23 --

24 THE COURT: And he's not paying any
25 mortgage?

1 MS. MJAATVEDT: He's tried to pay.
2 You know, as you know, when -- I do a lot of loan
3 modifications. Once the default's declared, they send
4 the checks back. The general public may not. People
5 come to me all the time. They don't understand that.
6 So he tried to, but, you know, he's not going to send
7 one every month for years and nothing happens.

8 And in the meantime, in 2008, it was,
9 you know, he and his wife were listed as defendants.
10 You know, she died in 2009, and so he tried again in
11 2010. And, you know, so all along that's all he's
12 really wanted to do is to stay in the house and to pay
13 his bill and to not have this.

14 You know, this has hung over him for a
15 long, long time. He's tried to handle it himself.
16 Some of that, I believe, may be, you know, a cultural
17 issue in China when he was there, that people would go
18 before the government on their own to try to resolve
19 their issues and he's done that for quite some time,
20 but, you know, it's not that he's tried to use some
21 kind of legal trickery to not have to pay his
22 mortgage, because he would very much like to do so.

23 THE COURT: You mentioned in your
24 reply somewhere that, you know, he thinks that the
25 house is worth 1.5 plus and the debt that's owed to JP

1 Morgan Chase is 900 some odd thousand.

2 MS. MJAATVEDT: And then it was sold
3 just under -- the sale price was just under that by a
4 few thousand dollars.

5 THE COURT: Yeah, they bid the debt.

6 MS. MJAATVEDT: The bid. Right.
7 Exactly. And that's just based on -- I mean, you
8 know, that's why I didn't do it by affidavit. I mean,
9 but when you do Zillow or RedFin or whatever, that's
10 what houses in the area. It's well over a million
11 dollars, you know, moderately new houses.

12 THE COURT: But he doesn't have the
13 ability to refinance this and take out the JP Chase --
14 JP Morgan Chase debt, because otherwise he would have
15 done this a long time ago.

16 MS. MJAATVEDT: Well, I don't think
17 that with this -- I mean, that is cloud. He couldn't
18 refinance. I mean, I don't -- I've never been able to
19 get a bank to refinance when they have all these, you
20 know, this judgment and all these things sitting
21 there. And it's at this point --

22 THE COURT: Okay.

23 MS. MJAATVEDT: -- it would require,
24 you know, a direct working on a loan modification, I
25 would imagine. He certainly couldn't go to Wells

1 Fargo or BECU and refinance under these -- under this
2 cloud.

3 THE COURT: All right. Thank you.

4 Mr. Luhrs.

5 MR. LUHRS: Your Honor, thank you.

6 THE COURT: Ready to hear from you.

7 MR. LUHRS: Certainly, Your Honor. It
8 goes without saying this matter has been litigated for
9 quite some time, and just to give you just a very
10 brief background, unless you do not want to hear it,
11 Your Honor, just to explain how we got here today.

12 THE COURT: No, I'll hear you. I'll
13 hear you.

14 MR. LUHRS: Okay. So this, this
15 matter originated, at least from the lawsuit
16 standpoint, from a judicial foreclosure that was filed
17 with a 2006 case number. There was a summary judgment
18 that was filed to move on the foreclosure action that
19 they were seeking, and in March of 2007, Mr. Chen
20 filed a Chapter 11 bankruptcy action. The next month
21 --

22 THE COURT: So the judicial
23 foreclosure was way back in 2006, huh?

24 MR. LUHRS: That's correct.

25 THE COURT: Do you have a cause number

1 for that one?

2 MR. LUHRS: I do, Your Honor. I can
3 recite it for you if you're ready.

4 THE COURT: Certainly.

5 MR. LUHRS: 06-2-16117-3.

6 THE COURT: All right.

7 MR. LUHRS: And so, Mr. Chen filed
8 Chapter 11 bankruptcy in March of 2007. Then in April
9 of 2007, Mr. Chen removed the original and
10 aforementioned judicial foreclosure to the bankruptcy
11 court as an adversary action.

12 THE COURT: That I remember, yeah.

13 MR. LUHRS: And then in May of 2007,
14 Mr. Chen filed what was called a motion of complaint
15 to dismiss JP Morgan chin -- sorry -- JP Morgan Chase
16 bank foreclosure on Chen's house and damage
17 counterclaims in that adversary case, in which I'll
18 just very briefly on a tangential note, clearly Mr.
19 Chen was aware that JP Morgan Chase was involved back
20 in 2007.

21 Then in September of 2007, Chase filed
22 a motion for summary judgment in that adversary case.
23 Mr. Chen responded to that motion. So he is again
24 participating in this litigation. Then, that court
25 ruled in Chase's favor, and then in October of 2007,

1 the bankruptcy granted complete summary judgment to
2 Chase and specifically found that none of Chase -- Mr.
3 Chen's counterclaims were supported by disputed
4 material facts.

5 And then, in November of 2007, the
6 bankruptcy court granted a judgment and decree of
7 foreclosure in Chase's favor. So again, that's back
8 in November of 2007, nearly a decade ago.

9 THE COURT: Wow.

10 MR. LUHRS: In December of 2010 --
11 2007, Mr. Chen filed an appeal of the bankruptcy
12 court's decision and then there was a -- at one point
13 there was a question as to whether a stay was
14 appropriate.

15 That particular issue was reviewed by
16 the US District Court, and on March 22nd of 2008, that
17 stay was denied and it was found -- it says very
18 specifically that Chase may proceed to foreclose on
19 the property, and in May 22, 2008, Chase filed a
20 notice of a foreign judgment with this cause number
21 here today.

22 So I apologize for being a bit long
23 winded and trying to explain how we got here today,
24 but there's a lot of --

25 THE COURT: Uh-huh.

1 MR. LUHRS: -- litigation that has
2 gone into it.

3 THE COURT: Yeah.

4 MR. LUHRS: Which ties, I think, very
5 directly into the arguments we raised regarding res
6 judicata. Mr. Chen has had ample time, and not only
7 has had the time to do it, he has litigated this
8 issue. It's not a situation where he had the
9 opportunity, but for whatever reason did not.

10 He has responded to several motions
11 over the course of the past decade and even filed an
12 action in 2011, bringing claims of alleged breach of
13 contract, RISPA[phonetic], and Consumer Protection Act
14 claims. Again, I'm referring to that 2011 case.

15 There, Chase was able to dispose of
16 the action on a motion to dismiss under Rule 12 and
17 that was -- that was in favor of Chase and it was
18 granted with prejudice, so that he, Mr. Chen, could
19 not file another action.

20 And to the extent that there was not a
21 particular claim that was litigated in the past cases,
22 the numerous litigation, for instance, counsel
23 mentioned the promissory estoppel argument. Simply
24 because one cause was not included in the litigation
25 or included as a cause of action in Mr. Chen's

1 complaint does not preclude the fact that he had every
2 opportunity to advance an argument, but did not, for
3 whatever reason.

4 And so it would run afoul of the whole
5 principle of res judicata if that claim were able to
6 be advanced today, given that -- otherwise, you know,
7 someone could file a complaint and include a cause for
8 breach of contract, lose on that, and then file
9 another complaint and advance a claim on CPA, lose on
10 that, et cetera, et cetera.

11 So that the legal principle of res
12 judicata is that you're here for a reason, for this
13 exact situation. Quite frankly, this is a -- in my
14 view, a case that's pretty on point with regard to
15 that issue. So I think that there can be -- there can
16 be no question whatsoever that the judgment is valid.

17 You know, it's a constitutional
18 question, and we give full faith and credit to the
19 finality of judgements and there certainly is no
20 reason to question whatsoever the judgment that has
21 been rendered with regard to this subject property and
22 then later reviewed time and time and time again.

23 Moving then. So then, so that's the
24 judgment we're working on and for a period of about
25 eight, nine years, Chase has been trying to execute

1 upon the judgment, because it says very clearly that
2 to satisfy the judgment, sheriff sale is appropriate.

3 We finally get around at the end of
4 2016 to execute on the judgment and to arrange for the
5 sheriff sale, and that sheriff sale was advanced
6 pursuant to law. There was a praecipe and order of
7 sale that was filed in this action, again, directing
8 that the sheriff could execute the sale itself.

9 Your Honor, as you mentioned, the week
10 of December 16, 2016, which was the date of the sale,
11 that week, and even before, as early as December 5th,
12 Mr. Chen filed motions, documents, with the court to
13 try and frustrate the sale from going forward, and
14 even appeared, as you mentioned, Your Honor, before ex
15 parte court, before commissioner, and a ruling was
16 entered on December 15th with regard to the adequacy
17 of the sale and otherwise -- in other words, the sale
18 was not enjoined.

19 THE COURT: So is it your contention
20 -- so do you agree with counsel for Mr. Chen? Is it
21 Chen? No. Is it Chen?

22 MS. MJAATVEDT: Yeah, Mr. Chen.

23 THE COURT: Chen, that the last --
24 that the address to which you sent the 30 day notice
25 of the sale did not go to Chen's last known address?

1 MR. LUHRS: As far as I know, it was
2 sent to the last known address that we knew of. And
3 for instance, you know, I myself Googled the address
4 with both the Redmond and Sammamish address and they
5 both show the same property when you do that, but,
6 but...

7 THE COURT: But you note -- but she's
8 got the document that shows that the notice that was
9 sent to that address got returned as undeliverable,
10 right?

11 MR. LUHRS: I recognize that and I did
12 not investigate it further, but I take counsel at her
13 word, certainly.

14 THE COURT: Yeah.

15 MR. LUHRS: But I worry that that --

16 THE COURT: But we don't know whether
17 it was undeliverable because the post office didn't
18 recognize this address or if it's because nobody
19 wanted to sign off on the return receipt?

20 MR. LUHRS: That's correct, Your
21 Honor, we don't. At least I do not know the answer to
22 that question. It could be the case that it was
23 simply not signed.

24 THE COURT: So the envelope didn't say
25 wrong address, return to sender, no stamp, like that?

1 MR. LUHRS: Unfortunately, Your Honor,
2 I can't say either way. To my knowledge, I just can't
3 comment on that. I apologize, Your Honor.

4 THE COURT: Right. Because this says
5 -- all I've got says, unclaimed pack pulled time
6 expired on the 28th of December. I don't remember
7 anything earlier than that to show -- for example, the
8 tracking earlier than that, from the date that it
9 left.

10 Do you have the tracking from earlier
11 than that?

12 MS. MJAATVEDT: I have -- all I have
13 is what is in Exhibit K, you know, when I went online
14 and put the tracking number in.

15 THE COURT: Because wouldn't the
16 tracking number, wouldn't it show us when it was
17 actually first received by the post office and when
18 they made attempts to deliver to an address? Wouldn't
19 that --

20 MS. MJAATVEDT: Well...

21 THE COURT: Wouldn't that be in the
22 tracking information as well?

23 MS. MJAATVEDT: Well, I mean, just,
24 it's hard to -- it's hard to second-guess the US
25 Postal Service, but, you know, it looks like --

1 THE COURT: But that's, that's --

2 MS. MJAATVEDT: All they talk about is
3 starting in December 28th of 2016, unclaimed max hold
4 time. So I don't know from before that what, what
5 should have been, you know, what else happened. I
6 mean, that's -- I only have the entries that they have
7 when you go online. So it's not clear, but, I mean,
8 clearly there's no --

9 THE COURT: And I don't have -- I
10 don't have a declaration --

11 MS. MJAATVEDT: -- signed return
12 receipt.

13 THE COURT: -- from your client either
14 saying that I never got notice that there was a
15 registered -- piece of registered mail for me to come
16 and pick up. Nothing like that in the record?

17 MS. MJAATVEDT: No, Your Honor, not in
18 this case. There might be in the other pleadings.

19 THE COURT: I looked for it in the
20 2011 file. I didn't see it there either.

21 Okay. So your position then, I guess,
22 Mr. Luhrs, is it doesn't matter whether we put the
23 Redmond address or the Sammamish address; it's the
24 same physical location and it's -- it's the same
25 address.

1 MR. LUHRS: Correct, Your Honor. And
2 if I just would comment, what -- we don't know the
3 particularities of the postal service's attempts
4 beyond what was printed out from that tracking
5 information, but what we do know is that Mr. Chen had
6 actual notice of the sale.

7 THE COURT: Uh-huh.

8 MR. LUHRS: Mr. Chen petitioned the
9 court to frustrate the sale. Mr. Chen visited me in
10 my law office that week to discuss the sale that was
11 occurring that Friday.

12 THE COURT: Uh-huh.

13 MR. LUHRS: And there's just simply no
14 question about that. He had notice and was not
15 prejudiced in any way, shape, or form with regard to
16 the mailing of the notice.

17 In addition, the sheriff filed a
18 return on sale, I believe, on December 22nd, which
19 indicated that there was public notice of the sale by
20 virtue of a five week publication, and while the
21 purpose of that publication is to let the general
22 public know that there is an auction that is occurring
23 by virtue of a judgment of foreclosure, also there's
24 no reason that Mr. Chen would not also receive notice
25 by virtue of that publication, much in the same way

1 that any third party would receive notice of that
2 publication.

3 THE COURT: So when I looked at the
4 affidavit of publication that's on file in ECR, the
5 electronic court record, there was nothing attached to
6 it.

7 MR. LUHRS: I noted that, Your Honor,
8 and I apologize for that. I believe that we included

9 --
10 THE COURT: Did you include that in
11 your responsive papers?

12 MR. LUHRS: I believe I did, Your
13 Honor, but I want to look to be certain.

14 THE COURT: The bankruptcy. Yeah, I
15 couldn't. I didn't find it.

16 MS. MJAATVEDT: Your Honor, the first
17 time that I've seen what you're referring to that
18 shows the newspaper would be actually with the sheriff
19 return, which was considerably after that point, when
20 the sheriff's return was filed, which we have in our
21 Exhibit J.

22 But on the -- as you point out, on the
23 docket, on the ECR, Exhibit I, which they did with 30
24 days in advance, it just has that title page of
25 affidavit of publication.

1 THE COURT: Right. But the question
2 is, so your Exhibit J. That's the return of sale.

3 MS. MJAATVEDT: Correct, Your Honor,
4 and in that it does have -- it has the affidavit of
5 mailing, affidavit of publication, so...

6 And again, it talks about Bank of New
7 York Mellon Trust Bank. So if you look through J, if
8 you just walk through it and you look at the third
9 page, it's the New York Mellon Bank, and then you go
10 on to page what I have as Defendants' Exhibit J5, it
11 has the affidavit of publication, and then the next
12 page has the photocopy of the news article or the
13 classified ad.

14 THE COURT: I see the affidavit of
15 publication. But where is -- I'm not seeing what --
16 what Bank of Mellon? Where are you seeing Bank of
17 Mellon?

18 MS. MJAATVEDT: Well, I'm seeing that
19 on Defendants' Exhibit page J3.

20 THE COURT: Right. The title --

21 MS. MJAATVEDT: And these are all
22 documents that were filed as part of the sheriff's
23 return on December 14th.

24 THE COURT: Right. But that's just,
25 they're just saying that we're making a credit bid and

1 title should be in the following name as successor to
2 JP Morgan Chase.

3 MS. MJAATVEDT: Yeah, I understand
4 that. I just thought I would point that out, Your
5 Honor --

6 THE COURT: I see.

7 MS. MJAATVEDT: -- of how there's all
8 these.

9 THE COURT: So there was an affidavit
10 of publication. So this was published. So the sale
11 -- the notice of sale was published.

12 MS. MJAATVEDT: But again, it has the
13 wrong zip code and wrong address on J6.

14 THE COURT: You mean it just says
15 Redmond as opposed to Sammamish?

16 MS. MJAATVEDT: And the wrong zip
17 code. Yes, Your Honor.

18 THE COURT: And again, affidavit of
19 mailing. All right. Anything further from counsel?

20 MR. LUHRS: Your Honor, just quickly.
21 I think it's important to note that the standard for
22 review of whether an entity is entitled to
23 confirmation of sale under RCW 6.21.110, paragraph 4,
24 is a determination as to whether there is a
25 substantial irregularity with the sheriff's sale which

1 would give rise to the possibility to successfully
2 objecting at the sale, and it's our arguments, as
3 we've indicated in our briefing and via oral argument,
4 that I just simply do not see that there was a
5 substantial irregularity in the sale.

6 THE COURT: All right. And again, Ms.
7 -- I'm sorry. Pronounce your last name.

8 MS. MJAATVEDT: Mjaatvedt.

9 THE COURT: -- Mjaatvedt, I just want
10 to make sure I'm not overlooking anything. Did you
11 submit a declaration from your client? I see your
12 objection in Exhibits A through N. Is there a
13 declaration from your client that I'm overlooking?

14 MS. MJAATVEDT: No, Your Honor.

15 THE COURT: Okay. All right.

16 Anything further from on behalf of Mr. Chen?

17 MS. MJAATVEDT: Yeah. Just, I'd like
18 to address just a few of the points that were brought
19 up, you know, talking about how this started way back
20 in 2006.

21 You know, that this is where a lot of
22 the problems started was that this was a Washington
23 Mutual Loan that moved around and he had trouble
24 figuring out what it is they were charging him for.
25 That's why it first went into default, because he was

1 paying something and they were also pulling it out and
2 putting it into escrow.

3 You know, and throughout, as -- I
4 wasn't going to go into this deeply, but opposing
5 counsel brought it up, is throughout this bankruptcy
6 what he was trying to do is figure out who had the
7 title, how it had passed, who actually had it, and
8 that's a lot of the litigation. It's not him trying
9 to frustrate anything.

10 It's, he's trying to figure out what's
11 going on, and while his stay was denied, his appeal
12 was still pending when the foreign judgment was filed
13 here. So the bankruptcy court may have its basis for
14 a stay, but the fact is that there was still an appeal
15 pending at that time.

16 You know, and then he moved into
17 talking about the 2011 case. So, you know, there was
18 significant time there based on the plaintiff not
19 bringing a new sale, which I guess is the good news
20 and the bad news. You know, but again, at that point
21 it brought all these issues up again and he tried to
22 respond.

23 And going to Mr. Luhrs' argument about
24 res judicata, they're completely two separate causes
25 of action. So I could bring two alternative claims or

1 even successive claims under certain conditions,
2 because you can say, oh, there is no signed contract,
3 but yes, there is promissory estoppel, or, there is
4 some kind of inducement, or, there is a settlement
5 agreement, there's a severance agreement.

6 You know, we can bring those separate
7 causes of action, and while they're separated in time,
8 here it's partly because now it's the sale has been
9 brought up again. So he's trying to respond to point
10 out this is a substantial irregularity in this whole
11 process, and this is an unusual one for sure starting
12 in 2006, 2008, and here we are in 2017, but that's,
13 that's sort of how it's been.

14 It's not just him slowing down or
15 frustrating the process. I mean, everything stopped
16 for a little while and then it all of a sudden came up
17 again.

18 So, and then going -- these are just
19 clean-up, some small things. You know, with Googling
20 an address, yeah, that's one thing and we use it all
21 the time and it works out great. I don't think the
22 post office Googles. I think things come to a
23 specific post office -- we've all had problems with
24 our mail -- and it just stays there. They don't --
25 they don't Google to figure out, oh, this is that.

1 Sometimes they do, sometimes they don't.

2 For example, he received the return of
3 the sheriff sale, but he didn't -- it was mailed out
4 on the 27th and he didn't receive it into January. We
5 don't know -- even though it was addressed to the old
6 address, we don't know if the time was -- that it was
7 moving from post office to post office or what
8 happened, but... You know, these are things that do
9 occur.

10 And so, you know, these are all, I
11 believe, fairly substantial irregularities when you
12 look at this, even though it's stretched out over
13 time, that involved in this sale, because you have to
14 have a judgment and then you have to go through the
15 sale. That within that, those two time points are
16 substantial irregularities.

17 So both under the statute and under
18 this court's equitable powers, I believe that the sale
19 should be denied or confirmation should be denied.

20 THE COURT: All right. Thank you very
21 much.

22 So the purpose of the hearing today is
23 for the court to consider the objections that Mr. Chen
24 has raised with regard to the sheriff's sale of the
25 real property. This court is going to overrule those

1 objections and confirm the sheriff's sale.

2 The court does not find sufficient
3 evidence presented by Mr. Chen to establish
4 substantial irregularities in the sheriff's sale under
5 RCW 6.21.110. There is no evidence presented by Mr.
6 Chen that he did not receive the notice of the sale.
7 It was -- there is proof in the record that it was
8 sent by both regular mail first class mail and by
9 certified mail return request -- return receipt
10 requested.

11 There is evidence in the record that
12 the return receipt envelope was returned to the
13 sender, but there's no evidence as to whether it was
14 returned because the person to whom it was addressed
15 simply failed to come in and pick it up or if it was
16 because Mr. Chen never knew that it was sitting there
17 waiting for him to pick up.

18 There's no evidence from Mr. Chen as
19 to either of those issues. The fact that he did
20 receive a mailing sent to the Redmond address after
21 the fact by the sheriff's department is evidence that
22 the address of 5112 189th Avenue Northeast, Redmond,
23 even with the different zip code, would be recognized
24 by the post office as the same address with the
25 Sammamish address and zip code.

1 In addition, there is evidence in the
2 record that Mr. Chen did in fact receive notice of the
3 sale by virtue of the fact that he filed documents
4 with this court as early as December 5th in the 2011
5 cause number and then subsequently the following week
6 in the 08 cause number seeking to prevent the and
7 enjoin the sheriff's sale.

8 There's no indication in any of the
9 materials that he filed at that time that he had not
10 received notice of the sale. And I've listened to the
11 hearing to see if there's anything that was presented
12 orally to that effect and I heard nothing during the
13 ex parte hearing either.

14 A lot of the issues that have been
15 raised or objections that have been raised, other than
16 the notice, are all issues that this court finds were
17 already litigated or could have been and should have
18 been litigated in the prior 2011 lawsuit, which was
19 dismissed with prejudice, and from what I can tell, no
20 appeal was filed.

21 So for these reasons, the court is
22 overruling the objections and will confirm the sale.

23 MS. MJAATVEDT: Thank you, Your Honor.
24 (Unintelligible.)

25 THE COURT: Mr. Luhrs, do you have an

1 order for the court to sign?

2 MR. LUHRS: Your Honor, I do not. I
3 did not know how exactly you wanted it presented,
4 because this was not on our motion to confirm sale, so
5 that procedurally it was little bit different.

6 I can certainly prepare one and submit
7 it to you however you prefer receiving it, Your Honor.

8 THE COURT: So what I have as proposed
9 orders are both, they're from you, Ms. Mjaatvedt.

10 MS. MJAATVEDT: I did send one.

11 THE COURT: Yeah, I think the judgment
12 I have got inadvertently filed in the wrong file.

13 That's not -- that's the incident global judgment.

14 Okay.

15 MS. MJAATVEDT: Yeah.

16 THE COURT: So what I can do today is
17 I can issue an order denying or overturning -- or
18 overruling the objections, and then if -- then you'll
19 just have to file, what, your separate motion to
20 confirm?

21 MR. LUHRS: That's correct, Your
22 Honor. And a situation, hypothetically, that I would
23 worry about is if Mr. Chen, or counsel on behalf of
24 Mr. Chen, would later file an objection. Can we just
25 have language that says that an objection has already

1 been litigated, and so...

2 THE COURT: The court, having
3 considered the pleadings. So I'm looking -- I'm
4 working off of Ms. Mjaatvedt's proposed order.

5 Mr. Luhrs, you wanted something, you
6 wanted language that said what? That he can't
7 relitigate the objections he's raised, that I've ruled
8 on today?

9 MR. LUHRS: Correct, Your Honor. Just
10 exactly that the objection, I guess, as contemplated
11 in RCW 6.21.110, those objections were heard and
12 denied, something to that effect.

13 THE COURT: Yeah, that's what I did --

14 MR. LUHRS: Just because the posture
15 is a little bit different, where we -- where you're
16 ruling to that we are entitled to the order of sale
17 and yet we'll have to subsequently file a motion to
18 confirm sale.

19 And I imagine the way we'll put
20 together that order is to kind of echo some of what
21 you say in today's order, Your Honor, if that works
22 for the court.

23 THE COURT: All right. So what I have
24 written is, this matter came before the court on
25 February 10, 2017. The court considered the pleadings

1 and the record in the matter and the arguments of
2 counsel, arguments of both parties, through the
3 defendants' RCW 6.21.110 objections to the
4 confirmation of a sheriff sale, plaintiff's response,
5 and defendant's reply.

6 Based on the foregoing, the objections
7 raised by Mr. Chen pursuant to RCW 6.21.110 are
8 overruled.

9 MS. MJAATVEDT: I guess the only --
10 because as you pointed out, this statute is a little
11 bit of a odd duck. In other words, we have to file
12 our exceptions based not on any motion by plaintiff,
13 but in fact based strictly on the date of the
14 sheriff's return.

15 THE COURT: I see.

16 MS. MJAATVEDT: And so I guess that's
17 why I'm a little... I'm not sure what will happen
18 with that either should my client decide to file an
19 appeal or motion for reconsideration of how, how
20 exactly that works, if there's a motion that he then
21 can't answer.

22 Maybe, Judge, we had discussed this
23 prior to the court today to try to figure out how this
24 works, because it's kind of odd.

25 THE COURT: Well, I can see that. I

1 can't give you legal advice, obviously.

2 MS. MJAATVEDT: I understand, Judge.

3 THE COURT: So all I can say is I have
4 denied all of the objections that you have raised and
5 you'll have to determine if your appeal period begins
6 from today or begins from the date of any order I
7 might sign confirming the sale. That's something I'll
8 leave to you to have to decide.

9 MS. MJAATVEDT: Thank you, Your Honor.

10 THE COURT: So...

11 MR. LUHRS: And Your Honor, in that
12 order you're just indicating that we're entitled to
13 confirmation of the sale or something thereabouts?

14 MS. MJAATVEDT: Well, I guess what I
15 don't quite understand is why we're not just
16 considering your motion today, because it makes it a
17 odd posture.

18 MR. LUHRS: I --

19 THE COURT: Well, is there anybody
20 else who's entitled to notice?

21 MR. LUHRS: That's my concern. I want
22 to still file the motion, at the very least just in an
23 abundance of caution for the purposes of notice and
24 just for the purposes of compliance with the...

25 THE COURT: Well, but then I'm not

1 sure that I should say that you're entitled to
2 confirmation of the sale, because there might be other
3 objections raised by other parties.

4 MR. LUHRS: Okay.

5 THE COURT: So I think that what I
6 would rather do is, if you haven't filed your motion
7 for confirmation of the sale, let's put that off until
8 that motion is properly before me. What's properly
9 before me is just ruling on Mr. Chen's objections.

10 MS. MJAATVEDT: Thank you, Your Honor.

11 MR. LUHRS: That makes sense, Your
12 Honor.

13 THE COURT: Okay.

14 MR. LUHRS: Thank you.

15 THE COURT: All right. I have signed
16 the proposed order. Thank you very much.

17 MR. LUHRS: Thank you, Your Honor.

18 THE COURT: All right. I have one
19 more hearing to go, so if the counsel want to...
20 Although, I suppose I can take the next matter up here
21 at the bar. It's going to take you a while to pack.

22 (End of proceedings at 2:27 p.m.)

23 (END OF TRANSCRIPTION)

24

25

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