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COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

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COURT OF APPEALS
DIVISION I
SEATTLE, WA

DANIEL PASHNIAK

Appellant/Cross-Respondent,

v.

SIXTY-01 ASSOCIATION OF APARTMENT OWNERS, a Washington
non profit corporation,

Respondent/Cross-Appellant.

BRIEF OF APPELLANT/CROSS-RESPONDENT DANIEL PASHNIAK

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I. INTRODUCTION

This case is the consolidation of two separate actions filed in King County Superior Court. There are a number of similarities which warrant this consolidation. The two parties are the same below; the plaintiff is Sixty-01 Association of Apartment Owners and the intervenor is Daniel Pashniak. Both actions were commenced as foreclosures of condominium assessment liens, and both disputes arise out of Sheriff's sales which took place on March 9, 2012.

There are also differences between the two which will complicate the record and the briefing. The two cases were pre-assigned to different judges. The *Mallarino* case was assigned to Judge Ronald Kessler.¹ The *Parsons* case was assigned to Judge Laura Inveen.² The two judges reached opposite results. Judge Kessler vacated the Sheriff's sale in the *Mallarino* case and ordered that Mr. Pashniak receive his money back. In the *Parsons* case, Mr. Pashniak was not yet represented by counsel on June 20, 2012, the day Judge Inveen signed an Order confirming the Sheriff's sale. To that point, he had been unable to put evidence of irregularities before the Court. Subsequently, Mr. Pashniak found counsel

¹ King County Superior Court Cause No. 10-2-17742-6SEA, *Sixty-01 Association of Apartment Owners*, Plaintiff, v. *Maria A. Mallarino and John Doe Mallarino, et al.*, Defendants, and *Daniel Pashniak*, Intervenor.

² King County Superior Court Cause No. 11-2-22195-4SEA, *Sixty-01 Association of Apartment Owners*, Plaintiff, v. *Virginia A. Parsons and John Doe Parsons, et al.*, Defendants, and *Daniel Pashniak*, Intervenor.

and asked Judge Inveen to vacate her order pursuant to CR 60(b), but the motion was denied.

As a result, Mr. Pashniak is the appellant in the *Parsons* case and Sixty-01 Association is the appellant in the *Mallarino* case.

At the suggestion of the Clerk's Office, the two cases were consolidated and will be briefed as if Mr. Pashniak were the appellant and Sixty-01 Association were cross-appellant.

There were already two separate indices of Clerk's Papers created before the consolidation. Again, with the concurrence of the Clerk, the record will be cited using the designation of CP-A for the *Mallarino* case and CP-B for the *Parsons* case.

II. ASSIGNMENTS OF ERROR

- A. The trial court erred in entering its Order Confirming Sale of Real Property (CP-B 145-47) (Appendix A).
- B. The trial court erred in entering its Order Denying Motion to Vacate. (CP-B 358-59) (Appendix B).

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. Did the trial court err in confirming the Sheriff's sale where the successful bidder withdrew his bid before the confirmation hearing?
- B. Did the trial court err in not vacating the Order Confirming Sale of Real Property where the judgment creditor obtained a false default

judgment which represented that all claimants to title had been foreclosed?

C. Did the trial court err in not vacating the Order Confirming Sale of Real Property where the judgment creditor entered into a stipulation and order with a lender, recognizing the priority of the lender's lien, but which was not filed in the court file until two days before the Sheriff's sale?

D. Did the trial court err in not vacating the Order Confirming Sale of Real Property on equitable grounds?

E. Did the trial court err in not vacating the Order Confirming Sale of Real Property, which Order was entered by default, where the purchaser exercised due diligence but was unable to obtain legal representation in time?

IV. CONSOLIDATED STATEMENT OF THE CASE

This consolidated appeal involves identical parties and issues, but the issues arise from two separate real properties. Both of the properties are condominium units at the Sixty-01 Condominiums in Redmond, King County, Washington. One of the condominiums, Unit 493, was owned by one Maria Mallarino. The other, Unit 10, was owned by one Virginia Parsons. Apparently both owners defaulted in the payment of their condominium dues or assessments because both were sued by Sixty-01 Association of Apartment Owners ("the Association"). The Association sued Maria Mallarino on May 18, 2010, under King County Cause No. 10-

2-17742-6SEA. CP-A 1. The Association sued Virginia Parsons on June 28, 2011, under King County Cause No. 11-2-22195-4SEA. CP-B 1.

Except for the names of the defendants and the amounts they owed, the two Complaints are identical. *Cf.* CP-A 1-8 and CP-B 1-8. However, the Association's attorneys drafted the two Complaints in a very curious and somewhat confusing manner. The caption of the Mallarino case states that the defendants are as follows:

MARIA A. MALLARINO and JOHN DOE MALLARINO, wife and husband, or state registered domestic partners; JOHN DOE and JANE DOE, Unknown Occupants of the Subject Real Property; **and also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the Complaint herein,**

CP-A 1 (emphasis added).

The Parsons caption is the same:

VIRGINIA A. PARSONS and JOHN DOE PARSONS, wife and husband, or state registered domestic partners; JOHN DOE and JANE DOE, Unknown Occupants of the Subject Real Property; **and also all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate described in the Complaint herein,**

CP-B 1 (emphasis added).

In other words, the Association was suing, but not identifying, all those claiming any interest in the two condominium units.

This purpose carries forward in the body of the two Complaints.

Paragraph 18 of the Complaint for Foreclosure of Condominium

Assessment Lien in the Mallarino case alleges in part as follows:

Defendants, each and all of them, may claim some right, title, interest, lien or estate in and to the Unit. Such claim to any right, title, interest, lien or estate, if any he has, **is subordinate, inferior and subject to the lien of the Association** being foreclosed in this action.

CP-A 6 (emphasis added).

The Parsons Complaint, at ¶ 18, is identical:

Defendants, each and all of them, may claim some right, title, interest, lien or estate in and to the Unit. Such claim to any right, title, interest, lien or estate, if any he has, **is subordinate, inferior and subject to the lien of the Association** being foreclosed in this action.

CP-B 6 (emphasis added).

Finally, the prayer of each Complaint identically asks at ¶ 6 and ¶ 9 that the Association's lien be determined to be prior to the interest of all defendants and to foreclose the interest of all other defendants.

6. That it be adjudged that the Association has a valid lien under the terms of the Declaration and the Act upon the real property described on Exhibit "A" attached to this Complaint; and **that said lien is prior to the interests of the Defendants** therein, each and all of them;

* * *

9. That by such foreclosure and sale, **the rights of the Defendants, all and each of them, and all persons claiming by, through or under them, be adjudged inferior and subordinate to the Association's lien and be forever foreclosed** except for the statutory right of

redemption allowed by law;

Mallarino, CP-A 7 (emphasis added).

6. That it be adjudged that the Association has a valid lien under the terms of the Declaration and the Act upon the real property described on Exhibit "A" attached to this Complaint; and **that said lien is prior to the interests of the Defendants** therein, each and all of them;

* * *

9. That by such foreclosure and sale, **the rights of the Defendants, all and each of them, and all persons claiming by, through or under them, be adjudged inferior and subordinate to the Association's lien and be forever foreclosed** except for the statutory right of redemption allowed by law;

Parsons, CP-B 7 (emphasis added).

From these two identical pleadings, it is clear that both lawsuits were drafted to foreclose the Association's lien not only against Ms. Mallarino and Ms. Parsons but also against any other parties who claimed an interest in the property. This would include any mortgage lender having a recorded deed of trust against the property.

However, neither Complaint actually names a mortgage lender, and neither court file contains a declaration of service on any mortgage lender.

This being the case, when the Association got around to taking default judgments in these two cases, it had no right to foreclose any mortgage lender because it had never named or served any mortgage

lender.

Nonetheless, the language of both default judgments purports to foreclose all parties having such an interest. The default judgment against Ms. Mallarino was entered on November 3, 2011. CP-A 122-28. At paragraph VI, it unequivocally states that those claiming under her are foreclosed.

ORDERED, ADJUDGED and DECREED that all right, title, claim, lien, estate or interest of the Foreclosed Defendants, each and all of them, **and of all persons claiming by, through, or under them, in and to the Property or any part thereof is inferior and subordinate to Plaintiff's lien and is hereby foreclosed;**

CP-A 126 (emphasis added). Likewise, Ms. Parsons was defaulted on the same day and the judgment default contained the same language purporting to foreclose the interest of all claiming under Ms. Parsons.

ORDERED, ADJUDGED and DECREED that all right, title, claim, lien, estate or interest of the Foreclosed Defendants, each and all of them, **and of all persons claiming by, through, or under them, in and to the Property or any part thereof is inferior and subordinate to Plaintiff's lien and is hereby foreclosed;**

CP-B 20 (emphasis added).

If this ruling was correct, the Association's foreclosure eliminated all encumbrances on the title. However, the bald assertion in the two judgments that all those claiming an interest in the property by, through or under Ms. Mallarino or Ms. Parsons are "hereby foreclosed" is not correct

unknown claiming any right, title, estate, lien, or interest in the real estate.
...” CP-A 294, 297; CP-B 98-99.

Between the issuance of the Orders of Sale on January 13 and the scheduled Sheriff’s Sales on March 9, 2012, there occurred a curious event which the Association has chosen not to explain. Somehow Bank of America learned of the two default judgments and the two scheduled Sheriff’s Sales. It is undisputed that attorneys representing Bank of America contacted the attorneys for the Association. Bank of America must have learned of the two sales separately because two different law firms acted for the Bank. The Lane Powell firm contacted the Association in the *Mallarino* case and the Davis Wright Tremaine firm acted in the *Parsons* case. We know this because both law firms prepared court orders for the Association’s attorney to sign. The Davis Wright firm prepared a Stipulation and Order of Clarification. CP-B 79-82. The Lane Powell firm prepared a Stipulation and Order. CP-A 132-136. It is not known what discussions occurred between the lawyers, and the Association has offered no testimony to illuminate these two documents. However, the language of the two pleadings sheds light on the Bank’s concerns. Both pleadings recite that Bank of America holds a first position deed of trust against the property. CP-A 132; CP-B 80. But the language goes much further; both pleadings specifically agree that whoever purchases the

property at the Sheriff's Sale will take the property subject to the interest of Bank of America:

Plaintiff acknowledges and agrees that the purchaser at the Sheriff's Sale (whether Plaintiff or a third party) shall take any interest in the Subject Property subject to any valid interest of BANA in the Subject Property.

CP-A 133.

Association acknowledges and agrees that the purchaser at the Sheriff's Sale (whether the Association or a third party) shall take any interest in the Subject Property subject to any valid interest of BANA in the Subject Property, if any.

CP-B 81.

Both the Stipulations were signed by an attorney for the Association and by an attorney for Bank of America, thus creating in each case an agreement recognizing the Bank's encumbrance on the subject properties. But the Association and the Bank went further. The Stipulation and Order in each case was presented to a Court Commissioner and when the Orders were signed, the stipulations were thereby given the force of judicial orders. The Stipulation and Order of Clarification in the *Parsons* case was entered by Commissioner Nancy Bradburn-Johnson on March 7, 2012, just two days before the Sheriff's Sale. It contains an order that the Sheriff's Sale "shall not effect [sic] any asserted interest, if any, of Bank of America. . . ." CP-B 83.

Similarly, the Stipulation and Order in the *Mallarino* case included a judicial decree that the Sheriff's Sale would not affect the interest of the Bank. CP-A 135. This Order was signed by Commissioner Bradburn-Johnson on March 8, 2012, one day before the Sheriff's Sale and filed with the Clerk at 4:04 p.m.

Thus, without any hearing whatsoever, a judicial officer ruled twice on the validity and the priority of Bank of America's liens. These two stipulated orders, reciting the existence and the priority of the Bank of America loans, would be of great interest to any prospective purchaser, because they directly contradict the language of the two default judgments, which declare that all other parties' interests have been foreclosed. However, as Judge Kessler noted in his Order vacating the *Mallarino* sale, documents filed with the King County Clerk are not viewable in the electronic court records for 24 to 48 hours after filing. CP A-352. Thus, any prospective purchaser who wished to investigate the public record would find the default judgment stating that all other interests were foreclosed, but would not find the contradictory Stipulation and Order saying that Bank of America has a first priority lien.

At 10:00 a.m. on Friday, March 9, the King County Sheriff conducted the auction of the two condominium units. Daniel Pashniak bid \$16,200 for the Parsons unit and \$35,400 for the Mallarino unit, and he

was the successful bidder for both. CP-A 157; CP-B 85.

Daniel Pashniak is a resident of Spokane County, Washington. CP-A 222. He is 81 years old, a retired college and university teacher. CPA 222-23. He has recently been diagnosed with Parkinson's disease, which affects his speech and writing. CP-B 187, ¶ 15. Mr. Pashniak has testified under penalty of perjury that he is not a wealthy man and that he invested a portion of his retirement savings in these two condominium units, thinking that he was purchasing them free and clear of all encumbrances. CP-B 186, ¶ 11.⁴

Within ten days of the sale, Mr. Pashniak had learned that both properties were encumbered by Bank of America loans, and on March 19, 2012, he sent a handwritten letter (CP-B 192) to the Association's attorney asking to withdraw his bid and receive his money back. Mr. Pashniak received no response to this letter. CP-B 187, ¶ 16. When time passed with no response, he realized that he would need a lawyer. *Id.* With the help of a Spokane attorney, he filed a Notice of Appearance in each case, saying that he opposed confirmation and asking that he receive notice of any hearing. CP-B 148-49. With the help of the same Spokane attorney,

⁴ Ironically, just 17 days before the Sheriff's sale in question, this Court decided *Summerhill Village HOA v. Roughley*, 166 Wn. App. 625 (February 21, 2012) in which the first mortgagee, Deutsche Bank, lost its interest at such a Sheriff's sale. If the *Summerhill* holding applied here, Mr. Pashniak would have been right in his understanding of the law.

he located Seattle attorney Ann Marshall of the firm Bishop White Marshall and Weibel. CP-B 187, ¶ 17. He sent Ms. Marshall a requested retainer of \$500 on May 22, 2012. CP-B 187-88, ¶ 18.

At the time he sent the retainer check, Mr. Pashniak was not aware of any scheduled hearing. CP-B 188, ¶ 19. Thinking he was represented, he left Spokane four days later, May 26, and traveled to Edmonton, Alberta for his sister's 94th birthday celebration. CP-B 188, ¶ 19.

Mr. Pashniak returned to Spokane on June 10, 2012. CP-B 187, ¶ 20. In his mail, he found two pieces of bad news. Ms. Marshall returned his retainer check with a letter declining to represent him because of a potential conflict with Bank of America. CP-B 194. In the same mail, he learned that the Association had filed a motion to confirm the *Parsons* sale and it was noted for eight days later, on June 18, 2012, before Judge Inveen. CP-B 187, ¶ 20. A few days later, he received notice that the Association had noted a motion for confirmation of the *Mallarino* sale for June 26, 2012 before Judge Kessler. CP-B 188, ¶ 20.

Not knowing what to do or how to proceed, Mr. Pashniak resumed his search for a Seattle lawyer. He again sought the help of a Spokane lawyer, and then tried to phone the two Seattle lawyers recommended by Ann Marshall in her letter, David Kerruish and David Leen. CP-B 188, ¶ 21. Eventually he was able to reach David Leen, even though the phone

number provided by Ms. Marshall was garbled. CP-B 188, ¶ 21. Mr. Leen testifies that it was several days before he could return Mr. Pashniak's call, and they first spoke on June 20, 2012. CP-B 196, ¶ 5. Because he was leaving on vacation, he could not take the case but he arranged for Mr. Pashniak to come to Seattle and meet with attorneys at Lasher Holzapfel Sperry and Ebberson. CP-B 196, ¶ 6.

Mr. Pashniak traveled to Seattle on June 22, 2012 and met with Robert Henry at the Lasher Holzapfel firm, who agreed to take his case. CP-B 188-89, ¶ 21.

Unfortunately, it was too late to respond in the *Parsons* case because Judge Inveen had already entered an Order Confirming Sale, on June 20, 2012. CP-B 145-47. However, in the *Mallarino* case, Judge Kessler granted additional time to investigate and respond to the motion to confirm. On July 23, 2012, after full briefing, Judge Kessler entered an Order Vacating Sheriff's Sale and ordered Mr. Pashniak's money returned to him. CP-A 34-49.

Mr. Pashniak appealed the Order Confirming Sale in the *Parsons* case and the Association appealed Judge Kessler's Order Vacating Sheriff's Sale in the *Mallarino* case. CP-A 350-53; CP-B 158-163.

Subsequently, a CR 60(b) motion was filed by Mr. Pashniak in the *Parsons* case, asking that the Order Confirming Sale be vacated and that

the sale be vacated. Judge Inveen denied the motion on September 28, 2012. CP-B 358-59. Mr. Pashniak then filed an Amended Notice of Appeal. CP-B 360-67.

V. ARGUMENT

A. Standard of Review.

A trial court ruling on a motion brought under CR 60(b) is reviewed for an abuse of discretion. *Rosander v. Nightrunners Transport, Ltd.*, 147 Wn. App. 392, 196 P.3d 711 (2008).

B. Principles and Authorities Pertaining to CR 60(b) Motions.

Civil Rule 60(b) allows a party to bring a motion to relieve the party from a previous order or judgment of the Court. Such a motion must be brought within a reasonable time, and not more than a year after the order was entered. CR 60(b).

The rule lists eleven separate grounds which will justify the granting of a CR 60(b) motion. The Motion to Vacate in this case was brought under subsections (1), (3) and (11). The pertinent provisions of the Rule are as follows:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

* * *

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

* * *

(11) Any other reason justifying relief from the operation of the judgment.

On appeal, a trial court's ruling under CR 60(b) is reviewed for abuse of discretion. *Showalter v. Wild Oats*, 124 Wn. App. 506, 510, 101 P.3d 867 (2004). Discretion is abused if it is exercised without tenable grounds or reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). In this case, the Order Confirming Sale was entered by default because Mr. Pashniak was not able to respond in time. Default judgments are generally disfavored in Washington based on "an overriding policy which prefers that parties resolve disputes on the merits." *Topliff v. Chicago Ins. Co.*, 130 Wn. App. 301, 304, 122 P.3d 922 (2005). The appellate court's primary concern is whether the default judgment was just and equitable. *Morris v. Palouse River Railroad*, 149 Wn. App. 366, 370, 203 P.3d 1069 (2009). Thus, the appellate court will "evaluate the trial court's decision by considering the unique facts and circumstances of the case before us." *Morris v. Palouse River Railroad*, 149 Wn. App. at 370 (quoting *Showalter*, 124 Wn. App. at 511).

The excusable neglect under subsection (1) is shown in section E below, discussing the diligent but unsuccessful attempts by Mr. Pashniak to obtain legal representation in time for the June 18, 2012 motion.

The irregularities under subsection (1) are the three irregularities

discussed in sections D, F and G below, which should have precluded confirmation of the Sheriff's sale if the Court had been aware of them.

The newly discovered evidence under subsection (3) is the evidence discussed in sections D, F and G below. Specifically, the Court was not made aware that Mr. Pashniak tried in writing to withdraw his bid; the Court was not made aware of the false default judgment upon which the Sheriff's sale was based, and the Court was not made aware of the contradictory stipulated order filed by plaintiff 48 hours before the sale. The first fact was admittedly known by Mr. Pashniak before the June 18th motion, but he did not realize its legal significance and did not know how to put it before the Court. The latter two facts were only learned from an inspection of the court file after the June 18th motion was decided.

Finally, under subsection (11), the other reason justifying relief is the equitable issue. Mr. Pashniak is an 81 year old retired teacher, suffering from Parkinson's disease. If the March 9 Sheriff's sale is allowed to stand, he will forfeit more than \$51,000 from both sales and more than \$16,000 for the sale in this case. Equity abhors a forfeiture. As discussed in section H below, a court in this state has the equitable power to invalidate a foreclosure sale to avoid a harsh or inequitable result.

C. Statutory Authority Pertaining to Confirmation of Sheriff's Sales.

Enforcement of court-awarded judgments by execution is

authorized by Title 6 RCW. One kind of execution is upon the property of a judgment debtor. RCW 6.17.060. All property, real or personal, which is not exempted by law is liable to execution. RCW 6.17.090. Where real estate is sold under execution, the Sheriff auctions the realty to the highest bidder. RCW 6.21.100. The proceeds of such a sale are held by the Clerk of the Court, pending confirmation of the sale. *Id.* Either the judgment creditor or the purchaser may move the superior court to confirm the sale after 20 days have elapsed after the giving of notice of the filing of the Sheriff's return. RCW 6.21.110. If upon hearing of the motion it appears that there were substantial irregularities in the proceedings concerning the sale, then the court shall disallow the motion for confirmation and the property shall be resold. RCW 6.21.110(3).

D. A Sheriff's Sale Purchaser May Withdraw His Bid Before Confirmation.

Under Washington law, a Sheriff's sale of real property is not final until it has been confirmed by the Court. RCW 6.21.110. Either the plaintiff or the purchaser may bring the motion for confirmation. *Id.* Only when the sale has been confirmed does the plaintiff receive the sale proceeds from the Clerk of the Court.

Washington case law establishes that the winning bidder at a Sheriff's sale, such as Mr. Pashniak, has the right to withdraw his bid

before confirmation. *Davies v. Davies*, 48 Wn. App. 29, 737 P.2d 721 (1987). Mr. Pashniak gave notice of his wish to withdraw his bid in writing on March 19, ten days after the sale. CP-B 192. The Association did not respond, and eventually it moved for confirmation. In its motion papers, the Association provided the trial court with all the other pertinent pleadings and notices but did not tell the Court that Mr. Pashniak had withdrawn his bid. Without this information, the trial court confirmed the sale. CP-B 145-47.

The *Davies* case is indistinguishable from the instant case. In a divorce proceeding, Mr. Davies was granted a lien against real property awarded to Mrs. Davies, just as the Association had a lien against the Parsons condominium. When Mrs. Davies failed to pay, Mr. Davies foreclosed the lien and caused the Sheriff to schedule a Sheriff's sale, just as the Association did in this case. At the Sheriff's sale, Mr. Davies made a stupid mistake: he only bid \$1,000 for the real property. *Davies*, 48 Wn. App. at 30. He was the successful bidder. There is no suggestion in the *Davies* decision that his actions were the result of any overreaching, fraud or other misdeed against him. Rather, he simply made a mistake of his own volition.

After the sale, Mr. Davies learned that his ex-wife intended to exercise her right of redemption by paying him the \$1,000 he bid and

thereby receive the property back. She further intended to discharge the deficiency by filing bankruptcy. *Davies*, 48 Wn. App. at 30.

When he learned this, Mr. Davies withdrew his bid and filed a motion asking the trial court to either allow him to raise his bid or set aside the sale. 48 Wn. App. at 30. The trial court set aside the sale and ordered resale of the property. *Id.* Mrs. Davies appealed. Division Two affirmed the trial court, holding that “before confirmation, the highest bidder may be permitted to withdraw his bid.” *Davies*, 48 Wn. App. at 31. The Court of Appeals interpreted RCW 6.24.100, then the statute providing for confirmation of Sheriff’s sales, to require this result where either the judgment creditor or the purchaser does not want the sale to be confirmed:

We adopt the reasoning of *American Fed. Sav. & Loan* that nothing in the confirmation statute, RCW 6.24.100, authorizes the trial court to confirm a sale over the objection of the judgment creditor or purchaser. *See American Fed. Sav. & Loan*, 107 Wn.2d at 184.

Here, although Ellmont Davies moved the trial court to confirm his \$1,000 bid, he withdrew the motion before confirmation. Consequently, Ellmont Davies cannot be forced to buy Patricia’s property at the price he originally bid.

Davies, 48 Wn. App. at 31-32 (emphasis added). Like Mr. Davies, Mr. Pashniak withdrew his bid before confirmation and he cannot be forced to buy the property at the price he bid.

Respondent Association has suggested that the *Davies* decision should be limited in its application to cases where the judgment creditor is the same person as the successful bidder. Nothing in the *Davies* decision suggests such an artificial and narrow interpretation, and to the contrary, the Court of Appeals explicitly stated more than once that the judgment creditor or the purchaser had the right to abort the sale before confirmation.

It can be argued that the Association should have notified Judge Inveen that Mr. Pashniak had withdrawn his bid. With its Motion for Order Confirming Sale, the Association furnished the trial court with a number of documents relating to the sale, including the Order of Sale (CP-B 125-128), and the Sheriff's Return of Sale of Real Property (CP-B 131-132), but omitted to provide the Court with a copy of Mr. Pashniak's March 19 letter withdrawing his bid. In its Motion, the Association informed the Court that it had received a Notice of Appearance from Mr. Pashniak on or about March 19, 2012, but neglected to inform the Court that it also received Mr. Pashniak's letter on or about the same day. CP-B 121.

This is an irregularity of a different sort. It is not an irregularity in the conduct or circumstances of the Sheriff's sale. Rather, it is an irregularity in the confirmation process which undermines the default

Order Confirming Sale entered by Judge Inveen on June 20, 2012.

A similar case arose in Klickitat County in 1987, *Mosbrucker v. Greenfield Implement, Inc.*, 54 Wn. App. 647, 652, 774 P.2d 1267 (1989). Plaintiff Mosbrucker sued several individuals in their capacity as guarantors of a commercial lease. A default judgment was taken against one of the defendants, Mr. Clark. Clark moved under CR 60(b) to set aside the judgment and pointed out to the trial court that when Mosbrucker filed suite and later moved for default judgment, Mosbrucker's attorney did not file a copy of the lease containing the personal guaranty of Clark in the court file, even though Mosbrucker had a copy in his safety deposit box. After the default was taken, Clark hired an attorney who obtained a copy of the lease from the county auditor. It showed that Clark's name and signature as guarantor were deleted. Even though this discrepancy was pointed out to the trial court, Clark's CR 60(b) motion was denied.

On appeal, Division Three reversed, reasoning as follows:

In this case, failure to annex the lease to the complaint, or to provide it when the default judgment was obtained, could significantly impact the proceedings, because the alteration on the lease raises the question whether Mr. Clark had any liability as a guarantor for the judgment sought.

* * *

Although we do not believe fraud was a factor in the present case [footnote omitted], the challenge here, as in

the above cases, goes to the integrity of the proceedings.

Mosbrucker, 54 Wn. App. at 652. The Court of Appeals concluded that:

. . . the judge granting the default order and judgment may well have refused to do so had he seen that the signature upon which the judgment was sought had been crossed off – a fact which the Mosbruckers knew when they brought suit.

Mosbrucker, 54 Wn. App. at 653.

The same reasoning applies in the present case. The Association's attorneys knew that Mr. Pashniak had withdrawn his bid; they do not deny that they received his March 19, 2012 letter. But when they moved for confirmation of the sale, they did not provide a copy of the letter to the court. Just as in the *Mosbrucker* case, the trial court might have refused to confirm the sale on June 20 had it been aware of Mr. Pashniak's letter. Furthermore, like the *Mosbrucker* case, the order denying the CR 60(b) motion to vacate did not state whether the issue of the missing letter was considered. The Order Denying Motion to Vacate (CP-B 358-59) was prepared by the Association's counsel and made no mention of the missing letter, only stating that Mr. Pashniak did not meet his burden under CR 60.

The Court of Appeals in *Mosbrucker* was quite gentle with the trial court. After reciting the correct standard of review – abuse of discretion – the opinion did not explicitly hold that the trial court had abused its

discretion, yet the decision was reversed and the case remanded for consideration of whether the default would have occurred if the lease had been in the court file. *Mosbrucker*, 54 Wn. App. at 654.

The same result should be applied here. The Association did not reveal Mr. Pashniak's letter when it moved for reconsideration. Under *Mosbrucker*, that failure is an irregularity in the proceedings which goes to the integrity of the proceedings. If it had submitted the letter, the result might have been different.

The Association may argue that Mr. Pashniak also failed to make the trial court aware of his letter withdrawing his bid. However, his failure does not relieve the plaintiff's counsel of their obligations under the Rules of Professional Conduct. An attorney may not conceal a document having potential evidentiary value (RPC 3.4(a)) and in an *ex parte* situation, must inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision (RPC 3.3(f)). Since the trial court did not indicate in its order whether the presence of the letter withdrawing Mr. Pashniak's bid might have led to a different result in the confirmation motion, this case should be reversed and remanded.

E. Mr. Pashniak Exercised Diligence in His Search for an Attorney and Any Neglect in That Regard Is Excusable.

Appellant Pashniak exercised diligence in trying to find a lawyer to present the facts to the Court and to oppose confirmation of the sale. When the plaintiff did not respond to his March 19 letter withdrawing his bid, he knew he would need an attorney. CP-B 187. With the help of a Spokane lawyer, he located Seattle attorney Ann Marshall and on May 22, 2012, he sent her a retainer. CP-B 187, ¶¶ 17-18, CP-B 193. When he left Spokane on May 26 to attend his sister's 94th birthday party in Edmonton, there were no motions pending and Mr. Pashniak thought he had hired a lawyer to represent him. CP-B 188, ¶ 19.

When he returned from Edmonton on June 10, he learned that he did not have a lawyer because Ms. Marshall returned his retainer and declined to represent him. CP-B 188, ¶ 20, CP-B 194. At the same time he learned that a motion to confirm the Sheriff's sale in the *Parsons* case was noted for eight days later, June 18, in Seattle. CP-B 188, ¶ 20. That was simply not enough time for Mr. Pashniak to find and hire a lawyer. Mr. Pashniak tried to contact Seattle attorney David Leen, who was recommended by Ann Marshall, but he was delayed there too. CP-B 188, ¶ 21. When he finally was able to speak to David Leen, Mr. Leen was going on vacation. Declaration of David Leen, CP-B 196, ¶¶ 3-5. He was

not able to engage an attorney until June 22, when he met and immediately hired Seattle attorney Robert Henry. Henry Dec., CP-B 199, ¶ 3. By this time, it was too late to oppose confirmation because Judge Inveen had already signed the Order Confirming Sale on June 20. However, Mr. Henry was successful in persuading Judge Kessler to vacate the Sheriff's sale in the *Mallarino* case. CP-A 348-349.

Mr. Pashniak is a well-educated man, but as a layperson he had no idea how to respond to the motion himself or how to place evidence before the trial court. Furthermore, he is 81 years of age and suffers from Parkinson's Disease, which affects his speech as well as his writing, so he is not able to effectively represent himself. CP-B 187, ¶ 15. With no attorney for the June 18 motion, and no ability himself to research the law or investigate the legal proceedings concerning the Sheriff's sale, those facts and the arguments they support were effectively unavailable to Mr. Pashniak on June 18 and were also unavailable to the trial court.

F. Plaintiff's Default Judgment Untruthfully States That All Those Claiming Under Virginia Parsons Are Foreclosed.

Only after Mr. Pashniak engaged a lawyer on June 22, and the court file was examined, did appellant learn of the second irregularity which warrants the vacation of this Sheriff's sale. In a nutshell, the attorneys for the Association presented an incorrect and untruthful Default

Judgment to a Court Commissioner when they took a default. The falsity was not noticed and an incorrect Order was entered, which would mislead any prospective purchaser to think that the property was free of encumbrances.

Both in its Complaint and in the Default Judgment, the Association used the same language to describe claimants appearing on title to the property: “all persons claiming by, through and under them [the owners of the condominium].” Similarly, the Complaint in its caption includes among the parties to the suit “. . . all other persons or parties unknown claiming any right, title, estate, lien, or interest in the real estate. . . .” CP-B 1. This description is broad enough to include a bank’s deed of trust, as well as any other encumbrance on title. Anyone reading this caption would reasonably understand that the plaintiff was suing all encumbrancers.

The Complaint also alleges, at ¶ 18 on page 6, that the claim of any defendant “to any right, title, interest, lien, or estate, if any he has, is subordinate, inferior and subject to the lien of the Association being foreclosed in this action.” CP-B 6. Anyone reading this allegation would reasonably understand that plaintiff was alleging it had priority over any other party appearing on the title.

Finally, the prayer of plaintiff's Complaint, ¶ 9 on page 7, asks for foreclosure and sale, so that the rights of the owners "and all persons claiming by, through or under them, be adjudged inferior and subordinate to the Association lien and be forever foreclosed. . . ." CP-B 7.

This unequivocal language in the Complaint alleges that the Association has priority over all other claimants on the title and seeks to foreclose them all. There is nothing in the Complaint to suggest otherwise.

Five months later, the Association took this fiction a step further by embedding it in a Court order. When the Association returned to the courthouse to take a default against Virginia Parsons, the owner of the condominium, it presented an incorrect and untruthful proposed order to Commissioner Velategui in the Ex Parte Department. CP-B 16-21. Even though no lender had been served, page 5 of the Order of Default and Default Judgment includes a grant of the following relief against the other parties having an interest in the property:

ORDERED, ADJUDGED and DECREED that all right, title, claim, lien, estate or interest of the Foreclosed Defendants, each and all of them, and of all persons claiming by, through, or under them, in and to the Property or any part thereof is inferior and subordinate to Plaintiff's lien and is hereby foreclosed; . . .

CP-B 20, ¶¶ VI (emphasis added).

This Default Judgment was presented to the Commissioner on November 3, 2011. It was entered and filed with the Clerk. Any person reading the above-quoted language would reasonably understand that all others claiming under the owner of the condominium had been foreclosed by the Court.

In fact, the opposite was true. The Association apparently made no attempt to serve Bank of America or any other party claiming under Virginia Parsons. Without service, the Court had no jurisdiction over Bank of America, and without jurisdiction the Court had no power to foreclose it. The Default Judgment foreclosing others was simply not true; it was nothing more than a hoax on the Court and a hoax on any prospective bidder.

The Association was given a chance to explain this incorrect and untruthful order in this case and in the companion case, because the Default Judgment in that case contained the same false representation. Appellant Pashniak pointed this out to both Judge Kessler and Judge Inveen. The Association offered no explanation. The Association argued below that Mr. Pashniak could have reviewed the public record and found the Bank of America deed of trust. CP-B 228. In other words, the Association would like the benefit of record notice created by one public record, but not the disadvantage of record notice arising out of another

public record, the incorrect and untruthful Default Judgment. The Association does not explain how any prospective bidder would be able to reconcile those two contradictory public records, but the fact that Bank of America and its attorneys felt it necessary to undo the incorrect language in the Default Judgment shows its potential to mislead the public.

Of course, this is not the first time that an order presented *ex parte* contained relief to which the presenter was not entitled, and it probably will not be the last. But it should not be condoned. In *Smith v. Smith*, 36 Wn.2d 164, 217 P.2d 307 (1950), one Mrs. Smith, appearing at an *ex parte* hearing, persuaded the Court to award her a judgment against her ex-husband to which she was not legally entitled. The husband moved to vacate the judgment, but the trial court denied the motion. Finding that the wife had perpetrated a fraud upon the Court, by not disclosing the true state of the case at the *ex parte* hearing, the Supreme Court found an abuse of discretion and reversed with instructions to vacate.

Here, the Association appeared *ex parte* and presented a Default Judgment which foreclosed all persons with an interest in the property, presumably without informing the Commissioner that no such defendants had been served and therefore the requested relief was improper. Here, too, under these facts and circumstances, the failure by the trial court to

vacate the Order Confirming Sale was an abuse of discretion and should be reversed.

G. Plaintiff Entered Into a Stipulation with a Non-Party Regarding Priority and Presented a Stipulated Order to the Court Too Late for Any Bidder to Be Aware of It.

The third irregularity is equally inexplicable. Two days before the Sheriff's sale, on March 7, 2012, a Stipulation and Order of Clarification was entered in this action by Commissioner Bradburn-Johnson. CP-B 79-84. The stipulation is between the Association and Bank of America, a non-party in the action. The purpose of the Stipulation and Order of Clarification appears to be to contradict the previously entered Default Judgment, which purported to foreclose all those claiming under Virginia Parsons. The Stipulation and Order of Clarification was entered 48 hours or less before the Sheriff's sale, and it states that Bank of America was not foreclosed. It goes even further, stating in paragraph 9 that "the purchaser at the Sheriff's Sale (whether the Association or a third party) shall take any interest in the Subject Property subject to any valid interest of BANA [Bank of America.]" CP-B 81. This information would be very important to any bidder, because it establishes the priority of Bank of America over any purchaser, such as Mr. Pashniak. Unfortunately, the filing on March 7 meant that it would not be in the public record in time for any purchaser or title insurance company to learn of it.

The Association did exactly the same thing in the companion *Mallarino* case, where a stipulation and order between the plaintiff and Bank of America was entered one day before the sale. CP-A 132-156. It was this irregularity more than any other that motivated Judge Kessler to vacate the *Mallarino* sale and order that Mr. Pashniak receive his money back. CP-A 348-49. Judge Kessler's Order in the *Mallarino* case states as follows in an order crafted by the trial court, not by either attorney:

The court also took judicial notice of the fact that a document filed in the clerk's office would not be viewable in the electronic court record for 24 to 48 hours after filing, although a hard copy would be viewable during working hours if a citizen knew to ask for paper filings not yet in the electronic court file. The order filed by plaintiff at 4:04 p.m. the day before the sale would only have been viewable by a citizen who went to the clerk's office between 4:04 p.m. to 4:30 p.m., when the office closes, and between 8:30 a.m. and the time of the sheriff's sale ninety minutes later. The court, exercising its equitable authority, concludes that a reasonable citizen, and even a reasonable citizen who buys property at sheriff's sales, would not have had inquiry notice of the lien.

The same flaw is evident in this case. Neither Mr. Pashniak nor any other prospective purchaser could be aware of this critical fact. The only information available to any purchaser would be the false statement in the Default Judgment that all claimants on the title had been foreclosed. Under these circumstances, appellant Pashniak's Motion to Vacate should have been granted. Failure to do so was an abuse of discretion. The trial

court's Order Denying Motion to Vacate should be reversed and the Order Confirming the Sheriff's sale should be vacated.

H. This Court May Vacate the Sheriff's Sale on Equitable or Statutory Grounds.

In addition to reversal of the Order Denying Motion to Vacate (CP-B 358-59), appellant Pashniak asks this Court to vacate the Sheriff's sale, or remand to the trial court to do so, on statutory and equitable grounds.

The Association's Motion for Confirmation of the Sheriff's sale is governed by RCW 6.21.110(3) which allows confirmation unless there were substantial irregularities in the proceedings concerning the sale. As discussed above, the records show three separate irregularities which warrant vacating the Sheriff's sale. The Association presented to a Commissioner and after entry filed in the Court file an Order of Default and Default Judgment which falsely states that all persons claiming an interest in the property under Virginia Parsons are foreclosed. CP-B 16-21. This public record would lead an unsuspecting bidder to believe that he or she would purchase the property at the Sheriff's sale free and clear of encumbrances.

The Association also entered into a Stipulation and Order of Clarification with Bank of America contradicting the earlier Default

Judgment, and acknowledging that any purchaser at the Sheriff's sale would take subject to the interest of Bank of America. CP-B 79-84. This Stipulation and Order was signed by a Court Commissioner and filed with the Clerk on March 7, 2012, no more than 48 hours before the Sheriff's sale. Because of the delay in filed pleadings reaching the court file, no prospective bidder could have been aware of this judicial decree contradicting the earlier judicial decree on the subject of whether the bank's lien was foreclosed or not.

Finally, after the sale but before confirmation, Mr. Pashniak withdrew his bid in writing, asking that the previous minimum bid by the Association be recognized. CP-B 192.

Under RCW 6.21.110, these three irregularities justify not only reversal of the Order Denying Motion to Vacate but also the Order Confirming Sale.

Furthermore, this Court is not limited to the statutory grounds for the relief Mr. Pashniak requests. The case law in this State regarding execution sales of real property makes clear this Court's authority to invalidate the sale entirely on equitable grounds.

In *Miebach v. Colasurdo*, 102 Wn.2d 170, 177, 685 P.2d 1074 (1984), our Supreme Court held that an execution sale of real property may be set aside on equitable grounds, and did so in that case. *Miebach*,

102 Wn.2d at 179. Even “slight circumstances indicating unfairness will be sufficient to justify a decree setting the sale aside on equitable grounds.” *Miebach*, 102 Wn.2d at 178. There is much more than “slight” evidence of unfairness here, where the plaintiff took secret action that could mislead and severely prejudice any purchaser.

The Court’s power to invalidate a foreclosure sale was recently reaffirmed, when the Washington Supreme Court filed its long-awaited decision on May 24, 2012 in *Albice v. Premier Mortgage Services of Washington, Inc.*, 174 Wn.2d 560, 276 P.3d 1277 (2012). This decision arose in the context of a deed of trust foreclosure sale, not a condominium lien foreclosure sale, but the analogies between the two are apt. Finding the trustee’s sale to be void on both statutory and equitable grounds, the case was remanded to the trial court to enter an order declaring the sale invalid. *Albice*, 174 Wn.2d at 575. The concurring opinion by Justice Stephens offers further reasoning for this case, arguing that the Supreme Court could have set aside the foreclosure sale on narrow equitable grounds alone. In so doing, Justice Stephens identified two equitable grounds in the *Albice* case justifying the result, both of which are present in this case: (1) a gross disparity between the sale price and the value of the property, and (2) unfair circumstances or procedural irregularities surrounding the sale. *Albice*, 174 Wn.2d at 575. Since the sale to

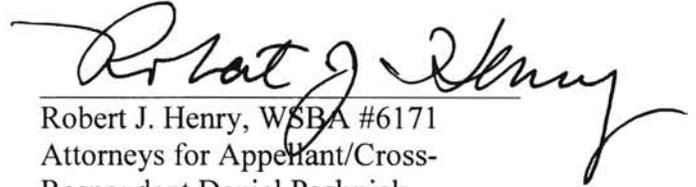
Mr. Pashniak involved both a gross disparity in the price and procedural irregularities, equity demands that it be set aside.

VI. CONCLUSION

Appellant recommends close attention to respondent's response. In all likelihood, the Association will focus on the actions of the Sheriff, which were indisputably correct. The Association will not explain why it failed to apprise the trial court of Mr. Pashniak's letter withdrawing his bid, nor will it explain why the trial court was not told of the *Davies* precedent, which requires that a purchaser be allowed to withdraw his bid before confirmation. The Association will not explain why it drafted, presented and filed in the public record a false default judgment, one which represents that title had been cleared by the foreclosure. And finally, the Association will not explain why it entered into a contradictory stipulation with Bank of America, but did not present it to the court until it was too late for prospective bidders to learn of it. Each of these irregularities warrants reversal of the trial court and vacation of the order confirming the Sheriff's sale.

Respectfully submitted this 20th day of November, 2012.

LASHER HOLZAPFEL
SPERRY & EBBERSON, P.L.L.C.

A handwritten signature in black ink, appearing to read "Robert J. Henry", written over a horizontal line.

Robert J. Henry, WSBA #6171
Attorneys for Appellant/Cross-
Respondent Daniel Pashniak
601 Union St., Suite 2600
Seattle, WA 98101
(206) 624-1230

CERTIFICATE OF SERVICE

I certify that on November 20th, 2012, I caused a copy of the foregoing document to be delivered to the following via messenger:

Michael Padilla
William J. Justyk
201 Queen Anne Avenue N., Suite 400
Seattle, WA 98109



Miriam Green

FILED
KING COUNTY, WASHINGTON

JUN 20 2012

SUPERIOR COURT CLERK
BY JANE SMOTER
DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

SIXTY-01 ASSOCIATION OF
APARTMENT OWNERS, a
Washington non profit corporation,

Plaintiff,

v.

VIRGINIA A. PARSONS and JOHN
DOE PARSONS, wife and husband, or
state registered domestic partners;
JOHN DOE and JANE DOE, unknown
occupants of the subject real property;
and also all other persons or parties
unknown claiming any right, title, estate,
lien, or interest in the real estate
described in the Complaint herein,

Defendants.

No. 11-2-22195-4SEA

ORDER CONFIRMING SALE OF
REAL PROPERTY AND DISBURSING
SALE FUNDS FROM COURT
REGISTRY

[CLERK'S ACTION REQUIRED]

This matter came on regularly for hearing on plaintiff's motion for an order confirming the sale of the real property described below ("Property") held herein on June 18, 2012. The court examined the records herein, including Plaintiff's Motion for Order Confirming Sale and Subjoined Declaration of Counsel, the Objection of Daniel W. Pashniak ("Purchaser"), and the Court file and finds:

ORDER CONFIRMING SALE OF REAL PROPERTY AND
DISBURSING FUNDS - 1

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LAW OFFICES OF JAMES L. STRICHARTZ
201 QUEEN ANNE AVENUE NORTH, SUITE 400
SEATTLE, WASHINGTON 98109-4824
(206) 388-0600
FAX (206) 285-2650

CONFIDENTIAL

App. A-1

1 That after levy and notice which were according to law and regular in all respects the
2 Sheriff sold the real property described in the Default Judgment, Order and Foreclosure Decree,
3 Order of Sale, and Sheriff's Return On Sale, to Daniel W. Pashniak, who was the highest and best
4 bidder at the sale for \$16,200.00; that Plaintiff's opening bid was \$16,197.03; that the Sheriff filed
5 her Return of Sale on March 16, 2012; that the Clerk of this Court mailed notice of the filing of the
6 return of sale on March 16, 2012 to the plaintiff and to all parties who have entered a written notice
7 of appearance in this action and that proof of such mailing is on file herein; that more than twenty
8 (20) days have elapsed since the mailing of the notice of the filing of the return of sale; that this
9 Motion has been regularly noted on the motion docket and marked "Sale of Land for
10 Confirmation" and that Purchaser has failed to allege any substantial irregularities in the
11 proceedings concerning the sale, and it further appearing that the sale was in all respects duly and
12 legally made and fairly conducted, now on the motion of Plaintiff, now, therefore,
13

14 IT IS ORDERED that the sale of the following described Property to third party DANIEL
15 W. PASHNIAK is hereby confirmed and approved and the Sheriff of King County, Washington,
16 and the Clerk of this Court are hereby ORDERED to forthwith:

17 (A) Deliver to the Purchaser, DANIEL W. PASHNIAK, by mail to Purchaser's address, PO
18 Box 14022, Spokane, WA 99214-0022, the original Sheriff's Certificate of Purchase to the Property
19 which is now held by the Clerk:
20

21 Unit No. 10, Sixty-01, a Condominium, intended for single family
22 residential use only, according to Survey Map and set of Plans
23 recorded in Volume 23 of Condominiums, Pages 34 through 67,
24 inclusive, records of King County, Washington under recording
25 No. 7808300898, as thereafter amended of record, and according to
26 Condominium Declaration recorded under Recording No.
27 7808300899, as thereafter amended of record;

28 Together with an undivided .000653 percentage interest in the
29 common areas and facilities appertaining to said unit;

30 Situate in the City of Redmond, County of King, State of
31 Washington.

32 (B) Disburse from the Court Registry the sum of \$16,197.03, being the proceeds of sale so
33 deposited by the Sheriff, payable to Plaintiff herein, SIXTY-01 ASSOCIATION OF
34

35 ORDER CONFIRMING SALE OF REAL PROPERTY AND
36 DISBURSING FUNDS - 2

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APP. A-2

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APARTMENT OWNERS, and delivered to Plaintiff's counsel, Law Offices of James L. Strichartz, at 201 Queen Anne Avenue North, Suite 400, Seattle, Washington 98109.

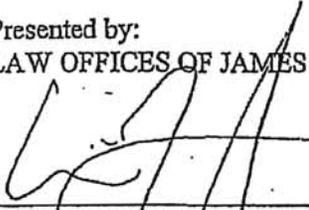
The Court reserves ruling on any surplus funds remaining in the Court Registry after disbursement of the foregoing sums.

DATED this 20 day of June, 2012.

Jenna C. Awan

JUDGE/COURT COMMISSIONER

Presented by:
LAW OFFICES OF JAMES L. STRICHARTZ



Michael A. Padilla, WSBA No. 26284
William J. Justyk, WSBA No. 35388
Attorneys for Plaintiff Sixty-01 Association
of Apartment Owners

ORDER CONFIRMING SALE OF REAL PROPERTY AND
DISBURSING FUNDS - 3
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APP. A-3

147

FILED
KING COUNTY, WASHINGTON

SEP 28 2012

SUPERIOR COURT CLERK
BY JANIE SMOTER
DEPUTY.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

SIXTY-01 ASSOCIATION OF
APARTMENT OWNERS, a
Washington non profit corporation,

Plaintiff,

v.

VIRGINIA A. PARSONS and JOHN
DOE PARSONS, wife and husband, or
state registered domestic partners;
JOHN DOE and JANE DOE, unknown
occupants of the subject real property;
and also all other persons or parties
unknown claiming any right, title, estate,
lien, or interest in the real estate
described in the Complaint herein,

Defendants.

No. 11-2-22195-4SEA

ORDER DENYING MOTION TO
VACATE ORDER CONFIRMING
SALE

This matter came on regularly for hearing on Intervenor's Motion to Vacate the Order Confirming Sale of Real Property and Disbursing Sale Funds from Court Registry. The court examined the records herein, including Intervenor's Motion for Order to Show Cause, Order to Show Cause, Declaration of Daniel W. Pashniak, Declaration of David Leen, Declaration of Robert J. Henry, Intervenor's Motion to Vacate, Plaintiff's Response in Opposition thereto and Declaration

ORDER DENYING MOTION TO VACATE ORDER CONFIRMING
SALE - 1

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App. B-1

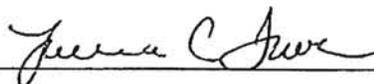
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1 of Counsel, Declaration of Eva Cunio, and any Rebuttal filed by Intervenor, the Court file, and the
2 ~~matter, noted without oral argument~~ ^{filed}
3 court having heard oral argument by counsel, and having found that Intervenor has not met his
4 burden under CR 60 to vacate the Order Confirming Sale of Real Property and Disbursing Sale
5 Funds from Court Registry, and having further found that this matter is stayed pending appeal, now
6 therefore,

7 IT IS ORDERED that Intervenor's Motion to Vacate is denied.

8
9 DATED this 28 day of September, 2012.

10
11 
12 _____
13 JUDGE/COURT COMMISSIONER

14 Presented by:

15 LAW OFFICES OF JAMES L. STRICHARTZ

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20 _____
21 Michael A. Padilla, WSBA No. 26284

22 William J. Justyk, WSBA No. 35388

23 Attorneys for Plaintiff Sixty-01 Association
24 of Apartment Owners

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35 ORDER DENYING MOTION TO VACATE ORDER CONFIRMING
36 SALE - 2

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APP. B-2

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