71227-6 71227-6

No. 71227-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JPMORGAN CHASE BANK, N.A.,

Respondent,

v.

THE CONDO GROUP, LLC

Appellant,

ZION SERVICES LLC,

Defendant.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE JEAN RIETSCHEL

REPLY BRIEF OF APPELLANT

SMITH GOODFRIEND, P.S.

By: Howard M. Goodfriend
WSBA No. 14355

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

HECKER WAKEFIELD
& FEILBERG, P.S.

By: Jordan M. Hecker,
WSBA 14374

321 First Avenue West
Seattle WA 98119
(206) 447-1900

Attorneys for Appellant

TABLE OF CONTENTS

I. INTRODUCTION 1

II. REPLY ARGUMENT 1

A. The trial court interpreted the new redemption statute to operate retroactively by allowing those whose rights were terminated by sheriff's sale to divest a foreclosure sale purchaser of an interest in real property. 1

1. Chase was not entitled to redeem under the plain language of the statute prior to its amendment. 3

2. The Legislature did not state its intent to grant a right of redemption to lenders whose liens had expired by foreclosure sales occurring before the statute's effective date. 10

3. Application of the new redemption statute to condominium lenders whose interests have already been terminated would modify existing legal relationships by granting those lenders a new substantive right in real property. 13

4. The new redemption statute takes away the rights of foreclosure sale purchasers. 14

5. The new redemption statue is not remedial because it does more than regulate procedure. 17

6. The new redemption statute is not curative. 19

B. Retroactive application of the new redemption statute violates constitutional principles of due process, impairment of contract, and separation of powers 20

III. CONCLUSION 21

TABLE OF AUTHORITIES

FEDERAL CASES

Landgraf v. USI Film Products, 511 U.S. 244, 114 S. Ct. 1483, 128 L.Ed.2d 229 (1994) 9-10, 16, 21

STATE CASES

Barstad v. Stewart Title Guar. Co., Inc., 145 Wn.2d 528, 39 P.3d 984 (2002) 19

Caritas Services, Inc. v. Dept of Soc. and Health Services, 123 Wn.2d 391, 869 P.2d 28 (1994) 16

Densley v. Dep't of Retirement Systems, 162 Wn.2d 210, 173 P.3d 885 (2007) 10, 14

Geddis v. Packwood, 30 Wash. 270, 70 Pac. 481 (1902) 11

Houk v. Best Dev. & Const. Co., Inc., __ Wn. App. __, 322 P.3d 29 (2014) 17

In re Carrier, 173 Wn.2d 791, 272 P.3d 209 (2012) 6, 8, 15-16

In re Detention of Williams, 147 Wn.2d 476, 55 P.3d 597 (2002) 12

In re Estate of Haviland, 177 Wn.2d 68, 301 P.3d 31 (2013) 6-8, 15

In re F.D. Processing, Inc., 119 Wn.2d 452, 832 P.2d 1303 (1992) 8

Loeffelholz v. Univ. of Washington, 175 Wn.2d 264, 285 P.3d 854 (2012) 16

Matter of Estate of Burns, 131 Wn.2d 104, 928 P.2d 1094 (1997) 6, 8, 10, 15

Miebach v. Colasurdo, 102 Wn.2d 170, 685 P.2d 1074 (1984) 15

Millay v. Cam, 135 Wn.2d 193, 955 P.2d 791 (1998) 12

Severson v. Penski, 36 Wn. App. 740, 677 P.2d 198, *rev. denied*, 101 Wn.2d 1015 (1984) 17-19

State v. Velasquez, 176 Wn.2d 333, 292 P.3d 92 (2013) 20

State v. Watson, 146 Wn.2d 947, 51 P.3d 66 (2002) 20

Summerhill Village Homeowners Ass'n v. Roughley, 166 Wn. App. 625, 270 P.3d 639, 289 P.3d 645 (2012) 13, 19-20

United Parcel Serv., Inc. v. Dept of Revenue, 102 Wn.2d 355, 687 P.2d 186 (1984) 12

STATUTES

Laws 1897, ch. 50 11

Laws 1981, ch. 329 18

RCW ch. 6.23 12

RCW 6.23.010 ..... 2-4, 7, 9, 12, 19

RCW 6.23.030 18

RCW 6.23.090 16

RCW 6.24.145 (recodified) 18

RCW 9.95.240 8

RULES AND REGULATIONS

CR 35. 12

OTHER AUTHORITIES

18 William B. Stoebuck & John w. Weaver, Washington Practice § 19.19 (2004) 19

S.B. 5541, Final Bill Report, 2013 Reg. Sess. 14

S.B. 5541, House Bill Report, 2013 Reg. Sess. 14

I. INTRODUCTION

The trial court allowed Chase to assert a redemption right against the Condo Group that did not exist when the Condo Group purchased the Onyx condominium unit as the high bidder at the sheriff's sale. The trial court applied the new redemption statute, which came into existence after the sale had been conducted and after the Condo Group's purchase had been confirmed by the court, to allow Chase to divest the Condo Group of its substantive interest in real property, and to retroactively grant to Chase a property right after its interests were forever extinguished as a result of the sale. Under the trial court's order, the new redemption statute did more than draw upon an antecedent event. It impermissibly modified the parties' existing legal rights based upon an antecedent event. This Court should reverse and direct dismissal of Chase's action to assert redemption rights.

II. REPLY ARGUMENT

A. The trial court interpreted the new redemption statute to operate retroactively by allowing those whose rights were terminated by sheriff's sale to divest a foreclosure sale purchaser of an interest in real property.

Chase concedes that its interest as the mortgage lender in Hae Poon's Onyx condominium unit terminated when the sheriff

sold that condominium property at a foreclosure sale on August 17, 2012. Chase no longer had any interest in the property following the sale because Chase failed to pay off Hae Poon's delinquencies to the Onyx Homeowner's Association and allowed the property to be sold by the sheriff to the Condo Group, as high bidder for $35,000. (CP 250-52, 332-47)

Chase concedes that its lien in the condo property was extinguished by foreclosure of the super priority lien of the Onyx HOA and that following the sale, it had no right of redemption. (Resp. Br. 5) Chase was a named defendant and had notice of the Onyx Homeowner's Association lien foreclosure action. (CP 306) Chase did not appear, did not answer and did not pay the resulting judgment in favor of the Onyx HOA. (CP 327-28) Chase had actual or constructive notice of the sale, yet still failed to satisfy the judgment to protect its interest. (CP 341-48)

Chase and the Condo Group agree that had the sheriff's sale been conducted on or after July 28, 2013, the date amended RCW 6.23.010 became effective, Chase would be entitled to redeem the Onyx condominium unit from the sale. But Chase's argument – that its extinguished interest could be revived through redemption when, ten months after the superior court confirmed the sale to the

Condo Group, the Legislature amended RCW 6.23.010 to grant a new right of redemption to condominium lenders whose liens were subsequent in priority to the lien that was foreclosed and upon which the property was sold – disregards established principles of retroactivity law. Neither the language of the statute, nor its purpose and effect to expand the class of lenders entitled to redeem, supports the trial court's order reviving Chase's expired interest in real property at the expense of the sheriff's sale purchaser.

1. Chase was not entitled to redeem under the plain language of the statute prior to its amendment.

The text of RCW 6.23.010 does not support Chase's contention that the Legislature intended to grant a right of redemption to lender whose deed of trust interest was extinguished at a sheriff's sale conducted and confirmed before the date upon which the new law became effective. The redemption statute defines who has a right to redeem real property following a foreclosure sale. The precipitating event to determine whether Chase had a right to redeem must be the sheriff's sale because that act, and not the tender of redemption funds, defines the class of possible redemptioners.

RCW 6.23.010, as amended, gives "the following persons," in addition to the judgment debtor, the right to redeem:

> (b) *A creditor having a lien* by judgment, decree, deed of trust or mortgage *on any portion of the property*, or any portion of any part thereof, *separately sold,* subsequent in ~~time~~ priority to that on which the property was sold.

The plain language of the redemption statute provides that the precipitating act – that which defines the parties' rights and interests in real property – is the sheriff's sale, or the date the property or a portion of the property was "separately sold."

Chase's contention that the "driving policy" of the amendment is to "put pressure on bidders" at the foreclosure sale (Resp. Br. 13), undermines its argument that the precipitating event to determine whether Chase has the right to redeem is its attempt to redeem after the 2013 amendment became effective. If the Legislature intended to regulate bidding at foreclosure sales by expanding the class of those capable of redeeming property, it is difficult to see how, as Chase argues, that goal is furthered by applying the statutory amendment to include lenders who had no redemption rights when the sale occurred.

Before bidding on the Onyx condominium unit, the Condo Group researched the possible class of redemptioners and tailored

its bid accordingly. (CP 245-46) If, as Chase contends, the new redemption statute was intended to drive up the bidding at foreclosure sales, that policy is furthered by prospective application of the amendment to sheriff's sales occurring after its effective date, but not by retroactive application to long completed sheriff's sales, such as the one that occurred ten months before the new redemption statute became effective. Logically, a new law proposed in 2013 could not possibly affect the conduct of parties bidding at a foreclosure sale conducted in 2012. Retroactive application of the statute would not influence conduct that already occurred

It is not enough to state, as Chase repeatedly does, that a statute does not apply retroactively merely because it draws upon antecedent events. (Resp. Br. 14, 23, 25) Instead, the court must analyze how a statute affects the legal rights and substantive interests that have become fixed with respect to those prior events. Chase's contention that the Legislature is free to enlarge the class of persons entitled to redeem and thereby divest another of its substantive rights purchased in reliance on the law as it existed at the time of the sale ignores the principles underlying retroactivity analysis.

The case primarily relied upon by Chase, *In re Estate of Haviland*, 177 Wn.2d 68, 301 P.3d 31 (2013), did not announce any new method of determining a precipitating event for retroactivity purposes, but relied upon established case law to hold that the court must look to the "subject matter regulated by the statute and consider its plain language to determine the precipitating or triggering event." *Haviland*, 177 Wn.2d at 75, ¶ 11, *citing In re Carrier*, 173 Wn.2d 791, 809, ¶ 39, 272 P.3d 209 (2012); *Matter of Estate of Burns*, 131 Wn.2d 104, 110-11, 928 P.2d 1094 (1997). Indeed, the *Haviland* Court's holding, that the precipitating event was the filing of a petition to disinherit an alleged abuser, was guided by the principle that a statute acts "retroactively when it takes away or impairs vested rights, or imposes new duties or disabilities in respect to past transactions" 177 Wn.2d at 75, ¶ 11.

The *Haviland* Court reasoned that the Legislature intended the amendment to the slayer statute to regulate the rights of recipients of decedent's estates, and not the underlying conduct of financial exploitation, which was already regulated in other statutes. 177 Wn.2d at 76, ¶ 12. Here, the underlying conduct is the borrower's default and the subsequent judgment of foreclosure. The amended redemption statute does not regulate these events any

more than the amended slayer statute regulated Ms. Haviland's financial exploitation. Instead, RCW 6.23.010 regulates the class of lien holders entitled to exercise redemption rights, defined by the foreclosure sale itself.

Chase's act of redemption, by which it seeks to divest a purchaser of its interest, is unrelated to creation of the class of possible redemptioners. Under Chase's flawed analysis, the *Haviland* Court should not have held that the precipitating act was the filing of the personal representative's petition, but the probate court's subsequent order divesting Ms. Haviland of her right, title and interest in the estate.

Further, in *Haviland*, the amendment to the slayer statute did not grant the personal representative any greater rights than the PR previously had because a beneficiary's claim to an estate could always be challenged based on established theories of undue influence or equitable theories of unjust enrichment. 177 Wn.2d at 80, ¶ 21. By the same token, the new law did not restrict the expectations of persons committing financial exploitation because their claims to a decedent's estate could not be fixed until a final decree of distribution. In that sense, *Haviland* holds unremarkably that a remedial law that does not upset existing rights and interests

can be applied even though it is based upon antecedent events, such as an abuser's financial exploitation of a vulnerable person before that person's death. *See In re F.D. Processing, Inc.*, 119 Wn.2d 452, 462-63, 832 P.2d 1303 (1992) (a remedial law "relates to practice, procedure or remedies, and does not affect a substantive or vested right."). Here, by contrast, the new redemption statute both grants condominium lenders new rights and takes away the rights of sheriff's sale purchasers.

The cases relied upon by the *Haviland* Court confirm that the lynchpin of retroactivity analysis continues to be whether the new law modifies the legal effect of an antecedent event – whether the parties' rights and interests acquired under prior law would be modified. Thus, in *Carrier*, the Court held that the precipitating event to determine whether to count a prior conviction as criminal history was not the defendant's sentencing for a current offense because "the primary subject matter regulated by former RCW 9.95.240 continues to be the dismissal of pre-SRA convictions upon completion of a term of probation." *In re Carrier*, 173 Wn.2d 791, 809, ¶ 40, 272 P.3d 209, 218 (2012). In *Burns*, 131 Wn.2d 104, the Court held that the precipitating event was the decedent's receipt of Medicaid benefits for purposes of determining whether an

amendment that allowed the State to recover the full value of those benefits from the decedent's estate.

In each of these cases, the Court engaged in a meaningful analysis of how a new statute operated on a party's existing legal rights and interests. Many statutes permissibly draw upon antecedent events, but a new statute that modifies legal rights that became fixed based on those antecedent events should apply only prospectively.

Chase's insistence that the "precipitating event" occurred after the new redemption law came into effect obscures the most fundamental principle underlying retroactivity analysis – that a court will not apply a new law that modifies rights and interests that arose in reliance on prior law. *Landgraf v. USI Film Products,* 511 U.S. 244, 265-70, 114 S. Ct. 1483, 1497-99, 128 L.Ed.2d 229 (1994). Chase's contention that the act of redemption is the lynchpin to the operation of RCW 6.23.010 is misplaced because it was the foreclosure sale in which Chase's rights were extinguished and in which the Condo Group acquired its property interest that defined the parties' substantive legal rights.

2. The Legislature did not state its intent to grant a right of redemption to lenders whose liens had expired by foreclosure sales occurring before the statute's effective date.

The 2013 Legislature did not state any intent to revive the lien rights of lenders whose deed of trust interests had been terminated before the new redemption statute became effective on July 28, 2013. Chase does not even acknowledge, let alone attempt to distinguish, the strong presumption that legislative amendments may not attach new "legal consequences," or "new obligation[s] with respect to past transactions. *Matter of Estate of Burns*, 131 Wn.2d at 110; *Landgraf,* 511 U.S. at 269-70.

The presumption against retroactivity is overcome when the Legislature expressly provides for retroactive application. *See Densley v. Dep't of Retirement Systems*, 162 Wn.2d 210, 223, 173 P.3d 885 (2007) (amendment to retirement statute stated, "This act applies on a retroactive basis to members for whom compensation and hours were reported under the circumstances described in sections 1 through 6 of this act."). The Legislature did not do so here.

Chase turns the presumption on its head, advancing a presumption in favor of, not against, retroactive application,

contending that because the 2013 Legislature did not include a "reservation clause" in the new redemption statute, it necessarily applies to authorize mortgage lenders whose liens had been terminated to redeem. (Resp. Br. 26-27) The only example of such a "reservation clause" provided by Chase is in a case from the turn of the last century, construing the Redemption Act of 1897 that expanded the class of redemptioners to include for the first time a judgment creditor. *See Geddis v. Packwood*, 30 Wash. 270, 70 Pac. 481 (1902); Laws 1897, ch. 50 § 15.

The *Geddis* Court noted statutory language in the 1897 Act that "such rights conferred shall not be applicable to judgments entered before the [statute's] enactment," 30 Wash. at 272, but there is no reason to believe that in the absence of such a provision, the Court would have applied the new law retroactively to provide a right of redemption to a creditor whose lien had been extinguished by the sheriff's sale.

Moreover, the fact that the Legislature saw fit to expressly provide for prospective application over 115 years ago and before the development of modern retroactivity law, does not support Chase's application of the doctrine of *expessio unius est exclusion alterius* here. The "reservation clause" from 1897, relied upon by

Chase, has not been in the statute for well over 100 years and was surely not considered when the 2013 Legislature amended RCW 6.23.010.

As the cases cited by Chase indicate, the doctrine applies where the *same* Legislature has used "certain language in one instance, but different, dissimilar language in another" in the *same* statute. *See Millay v. Cam*, 135 Wn.2d 193, 202, 955 P.2d 791 (1998) (applying doctrine because "Chapter 6.23 was enacted primarily in one legislative session."); *United Parcel Serv., Inc. v. Dept of Revenue*, 102 Wn.2d 355, 362, 687 P.2d 186 (1984) (comparing language of different portions of same statute); *In re Detention of Williams*, 147 Wn.2d 476, 490-91, 55 P.3d 597 (2002) (Legislature did not intent to allow CR 35 examinations in sexual violent predator proceedings because in enacting statute, Legislature established the "proceedings to determine whether the person is a sexually violent predator—including a probable cause hearing, transfer for evaluation, confinement, and trial.").

Contrary to Chase's contention that the "legislature knows how to limit the applicability of a redemption law . . . but chose not to do so in this case" (Resp. Br. 27), this Court has instead steadfastly held that the Legislature's silence means quite the

opposite – that a new law will not apply to modify prior legal relationships unless the Legislature makes its intent clear *and* to do so does not interfere with vested rights. The 2013 redemption law fails on both counts because it does not contain an express statement that it should be applied retroactively and because to do so would create new legal rights in condominium lenders at the expense of sheriff's sale purchasers.

3. Application of the new redemption statute to condominium lenders whose interests have already been terminated would modify existing legal relationships by granting those lenders a new substantive right in real property.

The new redemption statute was designed to preclude the extinction of the condo lender's lien rights by a homeowner's association's foreclosure. Chase concedes that the 2013 amendment was designed to change the law to provide condominium lenders a substantive right of redemption that they did not previously have.

The House and Senate reports both make clear that the purpose of the amendment was to overrule *Summerhill Village Homeowners Ass'n v. Roughley*, 166 Wn. App. 625, 270 P.3d 639, 289 P.3d 645 (2012), and to provide condominium lenders a

substantive property interest – a right to redeem that they did not have under the court's interpretation of the redemption statute. S.B. 5541, Final Bill Report, 2013 Reg. Sess.; S.B. 5541, House Bill Report, 2013 Reg. Sess.

Chase's contention that the new redemption statute has no application "to *completed* transactions" (Resp. Br. 22, emphasis in original) ignores the fact that Chase's transaction with respect to the Onyx condo was complete and final following the August 2012 sheriff's sale, after which it had no further rights in that property or expectation that it could redeem its interest. Here, as in *Densley v. Dept. of Retirement Systems*, 162 Wn.2d 210, 173 P.3d 885 (2007), Chase wants the new law applied to Chase because it provides Chase "with a new substantive right" – a right to redeem "to which [Chase] was not previously entitled." 162 Wn.2d at 224, ¶ 13, This Court should reverse the trial court and hold that the new redemption statute cannot retroactively expand the class of persons entitled to redeem property from foreclosure.

4. The new redemption statute takes away the rights of foreclosure sale purchasers.

The new redemption statute not only revives a creditor's interest in real property that had been terminated, it also imposes

upon the high bidder at the sheriff's sale "new duties or disabilities in respect to past transactions," *Haviland*, 177 Wn.2d at 75, ¶ 11, by allowing a creditor to divest the successful purchaser of his interest in property.

Chase relies on the notion that the sheriff's sale purchaser's legal title in the purchased property does not vest until issuance of the sheriff's deed one year after the sale. (Resp. Br. 21) But Washington's retroactivity law protects a broader spectrum of substantive rights than that of vested legal title. Moreover, Chase does not contest the Court's holding that the sheriff's sale purchaser obtains a substantive property right that vests upon entry of an order confirming sale. (App. Br. 23, *citing Miebach v. Colasurdo*, 102 Wn.2d 170, 685 P.2d 1074 (1984))

The fact that the Condo Group's interest in the purchased property is "statutory" does not make it less worthy of protection from retroactive legislation. (Resp. Br. 22) Many legal rights that are protected from retroactive diminishment arise by statute, including the right to be free of the collateral consequences of a conviction following successful completion of probation, *Carrier*, 173 Wn.2d at 812, ¶ 45, and the right to the receipt of Medicaid benefits. *Burns*, 131 Wn.2d at 117-18.

Further, that the purchaser's interest is something less than full legal title does not allow the Legislature to, through a subsequently enacted statute, divest the Condo Group of its substantive interest. Chase's argument that the purchaser's interest could be divested by the judgment debtor's act of redemption within 12 months ignores the fact that the Condo Group made its bidding and investment decisions based upon its knowledge that only a certain group of individuals had redemption rights at the time of the sheriff's sale.

The Condo Group has an immediate right to possess and improve the property. RCW 6.23.090. Its interest is not a "mere expectancy" but a reasonable expectation based on existing law, akin to Carrier's interest in eliminating the collateral consequences of a prior conviction, *Carrier*, 173 Wn.2d at812, ¶ 45, or the nursing homes' interest in reimbursement under existing statutory rates. *Caritas Services, Inc. v. Dept of Soc. And Health Services*, 123 Wn.2d 391, 413-14, 869 P.2d 28 (1994) (App. Br. 31).

"Individuals should have an opportunity to know what the law is and to conform their conduct accordingly." *Loeffelholz v. Univ. of Washington*, 175 Wn.2d 264, 272 ¶ 16, 285 P.3d 854 (2012), *quoting Landgraf v. USI Film Products*, 511 U.S. at 265.

Here, the Condo Group, after substantial due diligence, submitted the high bid at the sheriff's sale, took possession, and commenced improving the Onyx condo unit based on an accurate understanding of the state of title and the class of potential redemptioners in August 2012. The trial court erred in giving Chase new rights at the expense of the Condo Group based upon a law enacted 11 months after Chase's property interest had been extinguished by the sheriff's sale.

5. The new redemption statue is not remedial because it does more than regulate procedure

A "'right' is a legal consequence deriving from certain facts, while a remedy is a procedure prescribed by law to enforce a right." *Houk v. Best Dev. & Const. Co., Inc.*, __ Wn. App. __, ¶ 12, 322 P.3d 29, 32 (2014) (citation and quotation omitted). Arguing that amendments to the redemption statute should be given "immediate prospective application," Chase confuses the substantive 2013 amendment to the redemption statute at issue here with the law's procedural provisions. (Resp. Br. 24, *citing Severson v. Penski*, 36 Wn. App. 740, 677 P.2d 198, *rev. denied*, 101 Wn.2d 1015 (1984)). While the redemption statute contains both procedural and substantive provisions, the 2013 amendment modified only the

substantive right to redeem and not the procedure by which redemption occurs.

The statute's procedural aspects include the content of notice and the manner in which notice is given, while its substantive provisions include the class of persons who are entitled to redeem property from foreclosure. In *Severson*, this Court held that an amendment to former RCW 6.24.145 requiring additional notice to debtors was procedural and could be applied to properties that were previously sold at sheriff's sale but for which the right of redemption had not yet run. 36 Wn. App. at 745.

The amendment at issue in *Severson* did not expand the class of individuals entitled to redeem, as the amendment did here, but imposed additional notice requirements on foreclosure sale purchasers for the benefit of judgment debtors whose redemption rights were left unaffected by the change in the law. *See* Laws 1981, ch. 329, codified at RCW 6.23.030. Moreover, the additional procedural requirements – requiring written notice to the debtor every two months following a sheriff's sale – did not affect the purchaser's rights under the sheriff's sale, or the order confirming sale. 36 Wn. App. at 744.

By contrast, here the 2013 amendment gave rights to an entirely new class of redemptioners and modified the substantive rights of purchasers who relied upon existing law in submitting the high bid at the sheriff's sale. Unlike the amendment in *Severson,* the new redemption statute is not a procedural law.

6. The new redemption statute is not curative.

The new redemption statute was designed to overrule a prior judicial interpretation of the statute. By definition, it is not curative. *Barstad v. Stewart Title Guar. Co., Inc.*, 145 Wn.2d 528, 537, 39 P.3d 984 (2002) ("curative" amendment "clarifies or technically corrects an ambiguous statute without changing prior case law constructions of the statute."). As the *Summerhill* court held, former RCW 6.23.010(b)(1), in granting redemption rights to a judgment debtor whose lien was "subsequent in time," was not ambiguous. *Summerhill*, 166 Wn. App. at 632, ¶ 18.

Chase ignores the *Summerhill* court's holding entirely, arguing that the prior redemption statute was ambiguous because a "leading treatise" misread RCW 6.23.010 to include a creditor with a lien "subsequent in priority," when the statute formerly said "subsequent in time" to that being foreclosed. (Resp. Br. 28, *citing* 18 William B. Stoebuck & John w. Weaver, Washington Practice §

19.19 (2004). But "[a] statute is not ambiguous merely because multiple interpretations are conceivable." *State v. Velasquez*, 176 Wn.2d 333, 336, ¶ 6, 292 P.3d 92 (2013).

This Court will not rewrite clear statutory language, "even if we believe the Legislature intended something else but did not adequately express it." *State v. Watson*, 146 Wn.2d 947, 955, 51 P.3d 66 (2002). But that is precisely Chase's argument here – that the 2013 Legislature sought to "cure" what the *Summerhill* Court held was clear and unambiguous language.

The Legislature enacted the new redemption statute to change an unambiguous law and to overrule a judicial decision. The new redemption statute is not curative.

B. Retroactive application of the new redemption statute violates constitutional principles of due process, impairment of contract, and separation of powers.

This Court need not consider the Condo Group's constitutional arguments if it holds that the new redemption statute operates prospectively to authorize redemption by condominium lenders whose liens were not yet eliminated by sheriff's sales occurring on or before July 28, 2013, the effective date of the amendment. Indeed, the presumption against retroactive

application of a new law that purports to modify interests fixed under the prior law is grounded in the constitutional protections granted by the 14th amendment's due process and contract clauses. *Landsgraf,* 511 U.S. at 265.

Similarly, the Legislature's attempt to overrule a prior decision and impose a new rule of law on legal relationships established under the court's previous interpretation of the law raises separation of power concerns. (App. Br. 32) These concerns can be avoided by holding that the new redemption statute operates prospectively from the date of sheriff's sales occurring on or after its effective date.

III. CONCLUSION

This Court should reverse and direct entry of judgment in favor of the Condo Group.

Dated this 19th day of May, 2014.

HECKER WAKEFIELD & FEILBERG, P.S.

By: _____
Jordan M. Hecker,
WSBA 14374

SMITH GOODFRIEND, P.S.

By: _____
Howard M. Goodfriend
WSBA No. 14355

Attorneys for Appellants

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on May 19, 2014, I arranged for service of the foregoing Reply Brief of Appellant, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	___ Facsimile ___ Messenger X U.S. Mail ___ E-Mail
Jordan Hecker Hecker Wakefield & Feilberg, P.S. 321 First Avenue West Seattle, WA 98119	___ Facsimile ___ Messenger ___ U.S. Mail X E-Mail
Robert J. Bocko Philip R. Lempriere Daniel J. Park Keesal, Young & Logan 1301 Fifth Avenue, Suite 3300 Seattle, WA 98101	___ Facsimile ___ Messenger X U.S. Mail X E-Mail
Cale L. Ehrlich Christopher I. Brain Tousley Brain Stephens PLLC 1700 7th Ave., Suite 2200 Seattle, WA 98101-4416	___ Facsimile ___ Messenger X U.S. Mail X E-Mail

DATED at Seattle, Washington this 19th day of May, 2014.

V. Vigoren

Victoria K. Vigoren