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No. 71228-4-I

IN THE COURT OF APPEALS
STATE OF WASHINGTON
DIVISION ONE

JPMORGAN CHASE BANK, N.A., Plaintiff/Respondent,

v.

THE CONDO GROUP, LLC, Defendant,
And
ZION SERVICES LLC, Defendant/Appellant.

APPELLANT ZION SERVICES, LLC'S COMBINED REPLY BRIEF

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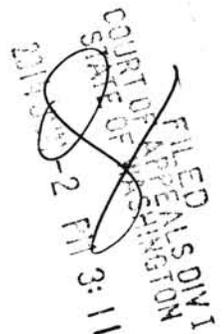


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I. INTRODUCTION

This case raises two issues related to the redemption statute. First, does the redemption statute give the purchaser at a Sheriff's sale the right to interfere in the relationship between an unrelated creditor and debtor for the purpose of eliminating redemption rights? Second, does the July 28, 2013 amendment to the redemption statute give mortgage lenders the right to redeem from sales that occurred before the amendment?

Zion Services, LLC ("Zion") had a valid judgment against the property that is the subject of this action, properly submitted its notice of intent to redeem, and completed all steps necessary to redeem. The Condo Group does not dispute any of these facts, but argues instead that as the purchaser at the Sheriff's sale, it has the power to short circuit the redemption process by offering to satisfy Zion's lien against the property after the redemption process begins. The Condo Group's position is entirely unsupported by the redemption statute, which gives no such right to purchasers. In fact, the only reference to a purchaser's power to satisfy liens excludes "subsequent" liens such as Zion's. The superior court erred in granting the Condo Group summary judgment on this issue.

Following Zion's redemption, JPMorgan Chase Bank, N.A. ("JPMorgan") attempted to redeem the property. JPMorgan was not a redemptioner under the law as it existed at the time of the Sheriff's sale, but argues that it can redeem based on a law that took effect nearly a year

later. JPMorgan is incorrect. As an initial matter, the amended statute should not have applied to JPMorgan's redemption at all. Further, even if this Court finds that the amended statute could apply to JPMorgan's redemption, JPMorgan still should not have been allowed to redeem, because it did not satisfy the definition of a redemptioner at the time the amendment took effect. Again, the superior court erred in granting JPMorgan summary judgment on this issue.

II. REPLY TO THE CONDO GROUP

A. Factual Background

The facts related to Zion's redemption are undisputed and laid out in detail in Zion's opening brief, but are summarized here for the Court's convenience. The Onyx Homeowners Association brought suit to foreclose a lien against property owned by Hai Poon ("Property"), for unpaid condominium assessments. CP 347-350. All defendants failed to answer, and the Property was sold at Sheriff's sale on August 27, 2012. CP 358-359. The Condo Group was the high bidder at the Sheriff's sale. Id.

Separate from the Onyx proceedings, another Condominium Association obtained a judgment against Poon on April 20, 2012 ("Asia Judgment"). CP 361-364. The Asia Judgment was assigned to DCR Services, LLC, which then assigned the judgment to Zion. CP 286 and 291-294. As a matter of law, the Asia Judgment acted as a lien against the

Property. Zion redeemed the Property pursuant to the Asia Judgment. CP 286-287 and 296-306.

The Condo Group does not dispute that Zion completed all steps necessary to complete redemption. Instead, it argues that it has the power to circumvent the redemption statute. After Zion delivered notice of its intent to redeem but before redemption was complete, the Condo Group offered to satisfy the Asia Judgment and tendered a check to Zion in purported satisfaction of the judgment. CP 287 and 306-07. The Condo Group does not dispute that it was not the debtor under the Asia Judgment, nor does it claim that it acted as an agent for the debtor – it made the offer as a third party. Zion rejected the offer and completed redemption. CP 287 and 367-368. The Condo Group refused to cooperate, resulting in this litigation.

B. The Redemption Statute Does not Allow the Condo Group to Eliminate Zion's Redemption Rights

The Condo Group does not dispute that Zion was a proper redemptioner. Instead, it argues that because it offered to satisfy the Asia Judgment, the judgment automatically became void. The Condo Group was not a party to the judgment, was not the agent of the debtor, and Zion did not accept the Condo Group's offer. The Condo Group claims that, as the purchaser at the Sheriff's sale, it has the right to force Zion to accept satisfaction of the judgment, but this right is found nowhere in the redemption statute.

1. The Condo Group's Argument Turns the Redemption Procedure on its Head

The Condo Group first argues that its “right” to satisfy Zion’s judgment is a natural consequence of the redemption statute because “[a] judgment creditor may use the redemption statute to satisfy its judgment – nothing more.” Condo Group’s Resp. at 6. But this case is not about Zion’s use of the redemption statute. Indeed, there is no dispute that Zion followed the redemption statute. This case is about whether the redemption statute grants the purchaser at a Sheriff’s sale the power to terminate the rights of redemptioners. The redemption statute is a detailed statute addressing numerous procedural and substantive issues – nowhere does the statute contain the right claimed by the Condo Group.

The statute’s silence as to the Condo Group’s claimed right is not a result of general silence about the rights of purchasers. To the contrary, the statute discusses those rights extensively. For example, among other rights, the statute discusses:

- The purchaser’s right to notice of intent to redeem – RCW 6.23.080(1) and (2);
- The purchaser’s ability to substantiate the amounts it is owed in redemption – RCW 6.23.050, 080, and 090;
- The purchaser’s right to receive a sheriff’s deed if no party redeems – RCW 6.23.060;

- The purchaser’s entitlement to rents during the redemption period – RCW 6.23.090;
- The purchaser’s right to possession depending on the type of sale – RCW 6.23.110; and
- The purchaser’s right to receive redemption payment if somebody does redeem – RCW 6.23.080.

Conspicuously, the statute does not discuss the right of a purchaser to terminate redemption rights, either by forcing acceptance of payments or through other means. The Condo Group prefers to overlook this glaring omission, the Court should not.

Additionally, the redemption statute does discuss the purchaser’s ability to satisfy certain liens, just not the type the Condo Group claims. The Condo Group argues that the statute gives purchasers the right to pay any lien when “necessary for the protection of the interest of the judgment debtor.” Condo Group’s Resp. at 20. However, looking at the entire provision, it actually refers to amounts “paid by the purchaser on a prior lien or obligation . . . to the extent the payment was necessary for the protection of the interest of the judgment debtor or a redemptioner. . .” RCW 6.23.020(2) (emphasis added). Zion’s lien is not a “prior” lien.

To the extent that RCW 6.23.020(2) establishes a right to pay liens, it is expressly limited to prior liens, and therefore excludes subsequent liens like Zion’s. Under the doctrine of “expressio unius est exclusio

alterius,” the fact that the legislature expressly included a reference to prior liens implies that the legislature intended to exclude the ability to pay any other liens. See, e.g., Landmark Development Inc. v. City of Roy, 138 Wn.2d 561, , 980 P.2d 1234 (1999) (noting that under the doctrine expressio unius est exclusio alterius “[l]egislative inclusion of certain items in a category implies that other items in that category are intended to be excluded.”)

The redemption statute provides a clear procedure for redemption; Zion followed that procedure. The redemption statute does not discuss any right of a purchaser to prevent redemption by paying off creditors, and the only discussion of satisfying liens is expressly limited to satisfying prior liens, not the subsequent liens of redemptioners. The logical conclusion is that the Legislature did not refer to such a right because it did not intend to create such a right. Zion respectfully requests this Court decline the Condo Group’s invitation to create the right on behalf of the Legislature.

2. The Condo Group’s Non-Redemption Authorities Do Not Support Its Case

Finding little support in the redemption statute itself, the Condo Group instead looks to non-redemption statutes and cases to bolster its case, but these authorities are not persuasive. First, the Condo Group argues that Richter v. Trimberger supports its argument because “a judgment creditor has no right to collect judgment interest following an

unconditional tender in satisfaction of its judgment.” 50 Wn. App. 780, 785, 750 P.2d 1279 (1988). Richter is not relevant, because it involved the satisfaction of a judgment by the judgment debtor. Id. Nobody disputes that a judgment debtor has the right to satisfy its own debts – that’s a defining characteristic of the creditor/debtor relationship – but that does not apply to the Condo Group. The Condo Group was not the judgment debtor or an agent of the judgment debtor. It was a third party, and Richter provides no support for its argument.

Second, the Condo Group claims that the doctrine of equitable subrogation gives people with interest in property the right to satisfy third party debts, but the Condo Group misstates the doctrine of equitable subrogation. Equitable subrogation is a rule that determines what happens after a junior creditor satisfies the lien of a senior creditor; it has nothing to do with whether the junior creditor may force an unwilling senior creditor to accept the payment.

Columbia Community Bank v. Newman Park, LLC, cited by the Condo Group, demonstrates the operation of the rule. Columbia Community Bank (“Columbia”) loaned money to Newman Park (“Newman”) and secured the loan with a junior deed of trust against the property. 166 Wn. App. 634, 635, 271 P.3d 869 (2012). Columbia then paid off Newman’s existing loan from another bank, Hometown National (“Hometown”), and delinquent property taxes on Newman’s property to

ensure that it would have a first position lien against the property. The Court held that when it satisfied the senior liens, Columbia became “subrogated” to the other Bank’s liens, becoming “the owner of the obligation and the mortgage to the extent necessary to prevent unjust enrichment.” Id. at 643.

There is no indication that Hometown objected to the satisfaction of its liens and no discussion of what would have happened had Hometown objected. The case, and equitable subrogation generally, is about the consequences of the satisfaction of a senior lien, not the right to force satisfaction of the lien.

Contrast Columbia Community Bank with the Condo Group’s position. The Condo Group does not claim that because Zion accepted satisfaction of its lien, it became subrogated to Zion’s lien position. It claims that because it offered to satisfy Zion’s lien, the lien was eliminated. Equitable subrogation does not speak to this issue.

Finally, the Condo Group claims that Zion is arguing for an “arbitrary right” to refuse to accept satisfaction of judgments, and that it would “result in an increase in bankruptcies and would unnecessarily clutter dockets with judgments that would have been satisfied.” Condo Group’s Resp. at 10. Zion has argued for no such right. A debtor always has the right to satisfy his debts, assuming he does so according to the terms of the contract or judgment. The Condo Group is not a debtor. The

sole issue raised by the dispute between the Condo Group and Zion is whether the redemption statute gives the purchaser at a Sheriff's sale the right to satisfy judgments to which it is not a party. The redemption statute provides no such right.

3. This Court Should Follow Colorado's Lead and Hold that Purchasers do not Have the Right to Eliminate Redemption Rights

Colorado has extensively considered the right of a purchaser at a sheriff's sale to eliminate redemption rights, and has adopted the same rule proposed by Zion – the redemption statute does not give a purchaser the right to eliminate redemption rights by satisfying judgments. The Condo Group argues that these Colorado cases actually support its position, based on an early case, Plute v. Schick, 101 Colo. 159, 71P.2d 802 (1937), but the Condo Group minimizes Davis Mfg. and Supply Co. v. Coonskin Properties, 646 P.2d 940 (Colo. 1982) ("Davis"), which expressly limited Plute.

Plute addressed a situation in which an individual purchased property at a sheriff's sale and then obtained a quitclaim deed from the judgment debtor/owner. Plute, 101 Colo. At 160-61. The plaintiff attempted to redeem the property based on a judgment, and the purchaser attempted to prevent redemption by tendering satisfaction of the judgment. The court concluded that the purchaser had the right to prevent redemption. Id. at 162. Although Plute did not discuss the quitclaim

deed, a later case, Davis, makes clear that the purchaser's obtaining a quitclaim deed was the determinative fact in Plute.

In Davis, the court dealt with a situation nearly identical to Plute. A judgment creditor attempted to redeem property, and after the creditor tendered notice of intent to redeem, but before tendering the redemption amount, the purchaser tried to preempt redemption by paying off the judgment. Davis, 646 P.2d at 942. The purchaser relied on Plute to support its position that a purchaser can eliminate redemption rights by satisfying judgments, but the court disagreed:

In Plute, the debtor-owner had issued the purchaser a quitclaim deed which made the purchaser the owner even before issuance of the public trustee's deed. There is no dispute in the instant case about the right of the debtor to pay its own debts and to obtain a satisfaction thereof . . .

Id. at 944 (emphasis added).

The Condo Group ignores this language, claiming that Plute is not about quitclaim deeds but instead applies to any case in which the purchaser offers to satisfy a judgment before posting of redemption funds. Condo Group's Resp. at 18. Plute may not have mentioned quitclaim deeds, but, in Davis, the Colorado Supreme Court limited Plute to cases involving quitclaim deeds (or grants of agency).

Finally, the Colorado Courts addressed this question again in WYSE Financial Services, Inc. v. Nat. Real Estate Inv., 92 P.3d 918

(Colo. 2004) (“WYSE”). In WYSE, the purchaser obtained authority to act as agent for the judgment debtor, similar to the case in Plute, but did not attempt to satisfy the judgment until after the judgment creditor had tendered redemption funds. Id. 92 P.3d at 919. The Court held that redemption was complete at the time the redemption funds had been tendered, and the redemption was “necessarily unaffected by [the purchaser’s] later attempts to satisfy the judgment, however successful.” Id. at 923.

Colorado has established a clear and rational system for addressing the purchaser’s right to prevent redemption by satisfying judgments, and Zion encourages this Court to adopt those rules as well.

- Purchasers who obtain quitclaim deeds, or otherwise obtain the authority to act on behalf of the debtor, step into the shoes of the debtor and may satisfy liens against the property.

- Purchasers who do not obtain quitclaim deeds, or otherwise obtain the authority to act on behalf of the debtor, receive no right to prevent redemption by satisfying liens – they are limited to the rights they purchased, the right to receive redemption funds, or the right to receive the property if nobody redeems.

- Once redemption funds have been tendered, redemption is complete and cannot be prevented by satisfaction of judgment, even by one who otherwise could have satisfied the judgment.

These rules not only create clear guidelines, but they are also consistent with the redemption statute. The Condo Group's rule requires creating rights found nowhere in the statute.

4. The Illinois Redemption Procedure is not Persuasive

Finally, the Condo Group relies on Illinois law to support its position. While Illinois does permit a purchaser to preempt at least certain types of redemption by satisfying outstanding judgments, its entire redemption procedure is substantially different from Washington's. See, e.g., Peterson v. Grisell, 330 Ill. App. 587 (1947). Under the Illinois redemption procedure, a judgment creditor such as Zion has no rights for the first 12 months following the Sheriff's sale. Id. at 593. If, after 12 months, no other party has redeemed the property, then a second 3 months redemption period begins during which judgment creditors may redeem. Id. at 593.

In Peterson, the purchaser tendered funds in satisfaction of the judgments before the creditor's redemption period began. The Court noted that before the first 12 month redemption period expires "judgment holders have no interest in the land." Id. at 594. No analogous situation exists in Washington; creditors receive redemption rights immediately upon the beginning of the redemption period. Further, the situation is not analogous to this case. Peterson involved satisfaction of a judgment before redemption rights even existed; this case involves attempted

satisfaction of a judgment after Zion already initiated redemption. To the extent that this Court looks to other states to inform its decision, Colorado's cases dealing with a similar redemption statute are more persuasive than Illinois' cases dealing with an entirely different regime.

C. Conclusion

Zion properly redeemed the Property. The Condo Group attempted to prevent redemption by satisfying the Asia Judgment, but it is had no authority to preempt redemption. Zion respectfully requests the court reverse the trial court's erroneous grant of summary judgment in favor of the Condo Group.²

III. REPLY TO JPMORGAN

D. Additional Factual Background Related to JPMorgan

Following Zion's redemption, JPMorgan attempted to redeem the Property based on its 2006 deed of trust ("Deed of Trust"). CP 309-343. Under the redemption statute as it existed at the time of the Sheriff's sale, JPMorgan was not a redemptioner because the 2006 Deed of Trust was not "subsequent in time" to the 2012 lien for assessments on which the Property was sold.

Following the sheriff's sale, the legislature amended RCW 6.23.010 effective July 28, 2013 – nearly a full year after the sheriff's sale. The amended statute removed the "subsequent in time" requirement and redefined a redemptioner as "[a] creditor having a lien by . . . deed of trust

. . . on any portion of the property . . . subsequent in priority to that on which the property was sold.” 5541.SL, 63rd Leg., 2013 Regular Session (July 28, 2013 effective date) (emphasis added) (“5541.SL”). On August 9, 2013 JPMorgan delivered notice to the Sheriff of its intent to redeem the Property. JPMorgan claims the right to redeem under this amendment.

E. JPMorgan Cannot Benefit From Prospective Application of the Amendment to the Redemption Statute

The majority of JPMorgan’s brief is aimed at establishing that even though 5541.SL was not enacted until after the sheriff’s sale, JPMorgan is a redemptioner because it attempted to redeem after the amendment took effect, and the amendment applies to the remainder of the redemption period. JPMorgan argues that under In re Haviland, 177 Wn.2d 68, 301 P.3d 31 (2013), prospective application of the amendment is appropriate because JPMorgan’s submission of its redemption request, which occurred after the amendment took effect, is the “precipitating event” under the redemption act.

JPMorgan’s precipitating event analysis is incorrect, but that issue has been fully and adequately briefed by the Condo Group in related appeal JPMorgan Chase Bank, N.A. v. The Condo Group, LLC and Zion Services LLC, No. 71227-6-I, which will be heard concurrently with this appeal. Zion will not repeat that argument, but instead joins in the Condo

Group's briefing on this issue and agrees that the superior court should be reversed for the reasons stated by the Condo Group.

Even if the Court concludes that prospective application of the amendment is appropriate, however, the Court should still conclude that JPMorgan was not a proper redemptioner. The "precipitating event" rule only determines whether application of an amendment to a set of facts is retroactive or prospective. Haviland, 177 Wn. 2d at 34. Where a statute requires looking to antecedent facts, Haviland allows it, but Haviland does not somehow make antecedent facts relevant to statutes that do not otherwise look to antecedent facts.

For example, in Haviland, the question was whether an amendment to the slayer statute that disinherited "financial abusers" applied where the statute was amended after the abuse, but before filing of the petition to declare the person an abuser. Id. at 33-34. The Court concluded that the filing of the petition was the "precipitating event" and because that occurred after the filing of the petition, the statute was properly being applied prospectively. Id. at 36. Because the statute disinherited anyone who had financially abused the decedent, the court looked to the antecedent abuse in applying the statute. Id. at 37-38. This is the correct application of the precipitating event doctrine – the abuser statute applies to anyone who has financially abused the elderly person, whether in the past or the present, so it is necessary to look to antecedent events.

The same analysis does not apply to the redemption statute. The redemption statute defines redemptioners as creditors “having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property . . . subsequent in priority to that on which the property was sold.” RCW 6.23.010(1)(b) (emphasis added). It does not refer to creditors who “had a lien by . . . deed of trust” or to “[a] creditor having had a lien by . . . deed of trust.” It expressly refers to the present condition of “having a lien by . . . deed of trust.” Id.

Assuming the delivery of the notice of intent to redeem is the “precipitating event” one must determine whether JPMorgan satisfied the redemption statute when the amendment took effect. JPMorgan does not satisfy this requirement. JPMorgan’s deed of trust was eliminated by Sheriff’s sale on August 27, 2012. CP 358-359. The statute took effect on July 28, 2013. JPMorgan attempted to redeem on August 9, 2013. CP 309-343. On July 28, 2013, JPMorgan’s deed of trust had been eliminated, so it was not “a creditor having a lien by . . . deed of trust.” RCW 6.23.010(1)(b).

JPMorgan did not satisfy the redemption statute on July 28, 2013. Therefore, JPMorgan was not a redemptioner, even if the precipitating event was the service of the notice of intent to redeem.

F. JPMorgan Misinterprets the Redemption Statute

JPMorgan argues that Zion's interpretation of RCW 6.23.010 must be incorrect, because all junior creditors' liens are extinguished at the sheriff's sale, so under Zion's rule, almost nobody would ever be a redemptioner. JPMorgan's Resp. at 29. Zion has never argued such an absurd position. RCW 6.23.010 provides that "Real property sold to redemption . . . may be redeemed by the following persons . . . [a] creditor having a lien by judgment, decree, [etc.]" RCW 6.23.010(1). There is no dispute that at the time of the sale, junior creditors have liens against the property. Those liens are extinguished by the sale, but, under RCW 6.23.020, the lien is simultaneously replaced with a right to redeem for a period of time following redemption, usually one year. RCW 6.23.020(1). A party's lien being extinguished and being immediately replaced with redemption rights is the normal operation of the redemption statute.

JPMorgan, however, is not in the normal situation. At the time of the sheriff's sale, JPMorgan was not a redemptioner, so it lost its lien, and its lien was not replaced with a redemption right. On August 9, 2013, JPMorgan submitted its intent to redeem, but under the amended statute JPMorgan was a redemptioner only if it was a creditor "having" a lien by deed of trust. JPMorgan did not have a lien by deed of trust on August 9, 2013, and it was not a redemptioner.

JPMorgan asks this Court to rewrite the redemption statute, changing the definition of redemptioners from creditors having liens against the property, to creditors who at one time had liens by deed of trust against the property. This request is contrary to the plain language of the statute, and should be denied.

G. Conclusion

For the reasons stated in the Condo Group's related appeal, the pre-amendment version of RCW 6.23.010 should apply to JPMorgan's appeal. JPMorgan was not a redemptioner under that statute. However, should this Court determine that JPMorgan's notice of intent to redeem was the precipitating event, and the amended statute applies its effective date, JPMorgan still was not a redemptioner. JPMorgan must satisfy the requirements of the amendment. Because JPMorgan was no longer a creditor having a lien by deed of trust when the amendment took effect, it was not a redemptioner, and could not later redeem.

IV. CONCLUSION

Zion was a proper redemptioner and completed all steps necessary to redeem. The Condo Group had no ability to eliminate Zion's redemption rights by offering to satisfy the Asia Judgment. Zion was entitled to receive a certificate of redemption.

JPMorgan was not a proper redemptioner. Even if RCW 6.23.010 applies prospectively, JPMorgan did not meet the definition of a

redemption after the amendment took effect. JPMorgan should not have been permitted to redeem.

For these reasons, Zion respectfully requests that:

1. The Court reverse the superior court's Order on Cross-Motions for Summary Judgment of the Plaintiff, JPMorgan Chase Bank, N.A., the Defendant, The Condo Group, LLC, and the Defendant, Zion Services, LLC granting the Condo Group's motion for summary judgment against Zion;

2. The Court reverse the superior court's Order on Cross-Motions for Summary Judgment of the Plaintiff, JPMorgan Chase Bank, N.A., the Defendant, The Condo Group, LLC, and the Defendant, Zion Services, LLC denying Zion's motion for summary judgment against the Condo Group and JPMorgan;

3. The Court reverse the superior court's Order on Cross-Motions for Summary Judgment of the Plaintiff, JPMorgan Chase Bank, N.A., the Defendant, The Condo Group, LLC, and the Defendant, Zion Services, LLC granting JPMorgan's motion for summary judgment; and

4. The Court reverse the superior court's Order Granting JPMorgan Chase Bank, N.A. Summary Judgment.

DATED this 2nd day of June, 2014.

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CERTIFICATE OF SERVICE

I, Jane A. Mrozek, hereby certify that on the 2nd day of June, 2014, I caused to be served true and correct copies of the foregoing to the following person(s) in the manner indicated below:

Robert J. Bocko, WSBA #15724	<input type="checkbox"/>	U.S. Mail, postage prepaid
Philip R. Lempriere, WSBA #20304	<input checked="" type="checkbox"/>	Hand Delivered
Daniel J. Park, WSBA #43748	<input type="checkbox"/>	Overnight Courier
KEESAL, YOUNG & LOGAN	<input type="checkbox"/>	Facsimile
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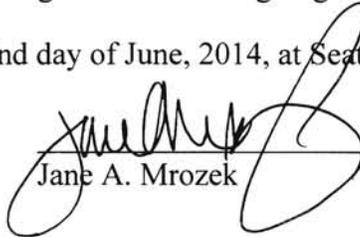
Jordan M. Hecker, WSBA #14374	<input type="checkbox"/>	U.S. Mail, postage prepaid
Joshua D. Brittingham, WSBA #42061	<input checked="" type="checkbox"/>	Hand Delivered
HECKER WAKEFIELD & FEILBERG, P.S.	<input type="checkbox"/>	Overnight Courier
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Smith Goodfriend, P.S.	<input checked="" type="checkbox"/>	Hand Delivered
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Seattle WA 98109	<input type="checkbox"/>	Facsimile
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*Attorneys for Respondent, The Condo
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I certify under penalty of perjury under the laws of the United States and the state of Washington that the foregoing is true and correct.

EXECUTED this 2nd day of June, 2014, at Seattle, Washington.



 Jane A. Mrozek

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