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No. 71228-4-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JP MORGAN CHASE BANK, N.A.,

Respondent,

v.

THE CONDO GROUP, LLC,

Respondent,

ZION SERVICES LLC,

Appellant.

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

BRIEF OF RESPONDENT THE CONDO GROUP, LLC

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I. INTRODUCTION

The Legislature enacted the judicial foreclosure and redemption statutes to ensure that judgment debtors' property is sold at judicial foreclosure sales for "the highest and best price." Respondent The Condo Group LLC submitted the highest bid for a judgment debtor's unit in a condominium at a judicial foreclosure sale. Appellant Zion Services LLC refused to participate in the sale. Instead it purchased a separate \$8,000 judgment against the judgment debtor, rejected the Condo Group's tender to fully satisfy the judgment, and insisted that the judgment gave it the right to "redeem" the property from the Condo Group.

The trial court correctly held that Zion was not a "creditor" with the right to redeem under the redemption statute because Zion had no basis to reject the Condo Group's tender that fully satisfied its judgment. This Court should affirm the trial court's summary judgment order rejecting Zion's attempt to "redeem" the condominium.

II. RESTATEMENT OF ISSUES

1. Can a judgment creditor reject an unconditional tender of full satisfaction of its judgment?

2. Did the trial court correctly hold that the Condo Group, as the successful purchaser of a debtor's property sold at a sheriff's sale, was not a "stranger," but had a legitimate interest in paying off a subsequent judgment owed by the debtor?

3. Was Zion a creditor with the right to redeem after rejecting an unconditional tender in full satisfaction of Zion's judgment?

III. RESTATEMENT OF FACTS

A. The Condo Group purchased Unit 310 of the Onyx Condominiums at a judicial foreclosure sale in August 2012.

On August 18, 2006, Hai Poon purchased unit 310 of the Onyx Condominiums located on Capitol Hill in Seattle. (CP 145-47) Hai Poon became delinquent on condominium assessments due the Onyx Homeowner Association in August 2010. (CP 158, 166-67) On March 14, 2012, the Onyx HOA commenced an action against Hai Poon in King County Superior Court, seeking a judgment for \$10,491.01 in delinquent assessments and to foreclose the resulting condominium lien for unpaid assessments against Unit 310 that arose under the Condominium Act, RCW 64.34.364(1). (CP 152-55) After Hai Poon failed to answer, on May 24, 2012, the superior

court entered a Default Judgment and Order of Foreclosure Decree against Hai Poon. (CP 169-71)

The Onyx Foreclosure Decree directed the Sheriff to sell the property. (CP 170; *see also* CP 176, 191-92) On August 17, 2012, the Condo Group purchased Onyx Unit 310 at the judicial foreclosure sale for a high bid of \$35,000.00. (CP 92, 96-98, 178-79) The superior court confirmed the sale on September 13, 2012. (CP 195-96) After purchasing Onyx Unit 310, the Condo Group immediately took possession and commenced renovating the property. (CP 92)

B. Zion purchased an unrelated judgment against Hai Poon and attempted to redeem the Onyx Condo after refusing the Condo Group's tender of the full judgment balance.

Hai Poon was delinquent on assessments levied against another property he owned, unrelated to the Onyx condo. (CP 141-43, 216, 229-30) On April 20, 2012, the Asia Homeowner's Association obtained an \$8,023.10 default judgment against Hai Poon in King County Superior Court, but did not commence a judicial foreclosure sale. (CP 241-44) RCW 4.56.190-200 provide that judgments "shall be a lien" on "[t]he real estate of any judgment debtor" in the same county in which the judgment is entered. Because the Asia HOA judgment was entered while Hai

Poon still owned the Onyx Condo, the judgment lien attached to the Onyx Condo.

On March 7, 2013, over six months after the Sheriff sold Hai Poon's Onyx Condo to the Condo Group at foreclosure sale, Zion Services LLC purchased the \$8,023.10 Asia HOA judgment for an undisclosed amount. (CP 105-06)¹ On June 10, 2013, Zion delivered a letter to the Sheriff stating its intent to redeem the Onyx condo as a junior lienholder under RCW 6.23.010(1)(b). (CP 93, 102) The letter stated that the total amount owed on the Asia HOA judgment was \$4,082.68, plus interest from September 5, 2012. (CP 107)

On June 17, 2013, the Condo Group tendered \$4,500 to Zion, to fully satisfy the Asia HOA judgment. (CP 93, 110-11) Zion rejected the Condo Group's tender, stating it "is proceeding with redemption." (CP 119) On June 28, 2013, Zion tendered redemption funds of \$38,624.66 to the Sheriff. (CP 113-15) The same day, the Sheriff placed those funds into the registry of the King County Superior Court. (CP 117)

¹ The Asia HOA judgment had been partially satisfied, reducing the judgment balance to approximately \$4,000. The record does not disclose who satisfied the judgment or when it was satisfied.

C. The trial court granted the Condo Group summary judgment, rejecting Zion's attempt to redeem the Onyx Condo based on the Asia HOA judgment.

In October 2013, Zion sought a declaratory judgment that it was authorized to redeem the Onyx condo under RCW ch 6.23. (CP 252-60)² King County Superior Court Judge Jean Rietschel granted summary judgment to the Condo Group (CP 552-55), ruling that Zion could not redeem the property because it had no right to reject the Condo Group's tender of the full amount of its assigned judgment:

[O]nce [t]he Condo Group tendered payment before the posting of the redemption amount, [t]he Condo Group had a sufficient interest in the matter that Zion did need to accept that and did not have a basis to not accept that and that does remove Zion group as a redeemer . . .

(RP 51) Zion appeals. (CP 572-83)

² Zion asserted its claim in the action commenced by JPMorgan Chase Bank to redeem the Onyx condo. The Condo Group has appealed the trial court's order that Chase was an authorized redemptioner (CP 556-59), in Case No. 71227-6-I, which is linked with the instant case for purposes of oral argument only.

IV. ARGUMENT

A. Judgment creditors cannot reject an unconditional tender to satisfy a judgment.

Only a “creditor” has the right to redeem property from judicial foreclosure under RCW 6.23.010(1)(b). After unjustifiably refusing the Condo Group’s tender, Zion was no longer a “creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property” entitled to redeem that property under RCW 6.23.010(1)(b). The trial court correctly held that Zion had no right to refuse an unconditional tender that fully satisfied its judgment, and that Zion therefore had no right to redeem.

A judgment creditor may use the redemption statute to satisfy its judgment – nothing more. *GESA Fed. Credit Union v. Mut. Life Ins. Co. of New York*, 105 Wn.2d 248, 255, 713 P.2d 728 (1986) (“redemption statutes [are] remedial in nature, designed to help creditors recover their just demands, nothing more”) (quotation omitted). Zion fails to acknowledge this fundamental principle or cite any authority to support its argument that a judgment creditor may reject a tender that fully and unconditionally satisfies its judgment because those funds come

from a “stranger” to the judgment. (App. Br. 13-14)³ Furthermore, Zion provides no authority for the proposition that a purchaser of real property affected by a judgment lien is a “stranger” to the judgment.

The Legislature articulated a clear policy that judgments be satisfied quickly and expeditiously in RCW ti. 6 relating to the satisfaction of judgments. See RCW ch. 6.21 (execution sales of judgment debtors’ property), RCW ch. 6.27 (garnishment), RCW ch. 6.32 (supplemental proceedings). Consistent with Title Six, Washington courts encourage the satisfaction of judgments and debts. For example, a judgment creditor has no right to collect judgment interest following an unconditional tender in satisfaction of its judgment. *Richter v. Trimberger*, 50 Wn. App. 780, 785, 750 P.2d 1279 (1988).

Likewise, a third party is entitled to protect its legal rights under the doctrine of equitable subrogation by discharging a debtor’s obligation to a creditor, even absent the creditor’s agreement. *Columbia Cmty. Bank v. Newman Park, LLC*, 177 Wn.2d 566, 573, ¶ 15, 304 P.3d 472 (2013) (where second creditor

³ This Court may affirm on any basis in the record. RAP 2.5(a). Whether the Condo Group addressed this argument in the Superior Court is immaterial. (App. Br. 13)

discharged first creditor's lien, second creditor would be subrogated to first creditor's lien position despite "the absence of any contractual agreement or assignment of rights between those two parties or the debtor"). The *Columbia Cmty Bank* Court expressly recognized that a third party acting to protect its own interests is not a "stranger" to the debt. 177 Wn.2d at 575-76, ¶ 19 (a "stranger to the underlying transaction" is someone "who is not acting under any legal compulsion or to protect some interest.").

The Condo Group was not a "stranger" to Hai Poon's debt once it purchased his condo at the foreclosure sale. The redemption statute gives a judicial foreclosure sale purchaser enforceable rights in the purchased property from the date of the sale. The purchaser is entitled to "possession of the property purchased" that begins "from the day of sale until a resale or redemption," as well as all "rents or the value of the use and occupation thereof during the period of redemption." RCW 6.23.090(1), 110(1). The purchaser's rights are also entitled to just compensation against the State's claim of eminent domain. *Petition of City of Seattle*, 18 Wn.2d 167, 170, 138 P.2d 667 (1943) (citing *Diamond v. Turner*, 11 Wash. 189, 39 Pac. 379 (1895)).

The Condo Group was not a “stranger” to the judgment, but was entitled to protect its own interests while furthering the public policy favoring the satisfaction of judgments and payment of outstanding debts. *See Columbia Cmty. Bank*, 177 Wn.2d at 580 ¶ 29. As the high bidder and successful foreclosure sale purchaser, the Condo Group had the right to eliminate junior lienholders, including the judgment lien acquired by Zion.

Zion’s proposed rule, under which judgment creditors could refuse an unconditional satisfaction of judgment, would make for poor policy and impose an unwarranted hardship on judgment debtors, as well as the third party making the tender. Zion would preclude family members, tenants, business affiliates, and other creditors of the judgment debtor from satisfying a judgment against the judgment debtor on the theory that they are “strangers” to the judgment, even if those third parties would be materially harmed if the judgment is not satisfied. (App. Br. 13)

Furthermore, granting a judgment creditor the arbitrary right to refuse an unconditional tender in satisfaction of a judgment would burden judgment debtors otherwise entitled to be free of judgments that accrue onerous interest at rates far in excess of market rates. *See* RCW 4.56.110(4) and RCW 19.52.020 (twelve

percent judgment interest where judgment is not based on contract specifying different rate, tort, or child support). Zion's position would impose unnecessary hardship on debtors, result in an increase in bankruptcies and would unnecessarily clutter dockets with judgments that would have been satisfied but for a judgment creditor's refusal to accept a satisfaction. A judgment creditor is entitled to receive full payment of its judgment, and not to profit from high interest rates at the expense of the judgment debtor or interested third parties. *GESA Federal Credit Union*, 105 Wn.2d at 255.

Current RCW 6.23.010(1)(b) allows redemption by 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 priority to that on which the property was sold."⁴ Once a full tender was made, Zion was no longer a "creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property" entitled to redeem that property under RCW 6.23.010(1)(b).

⁴ As discussed in the Condo Group's brief in case no. 71227-6-I, the Legislature amended RCW 6.23.010(1)(b) in 2013. The statute previously applied to liens "subsequent in time" rather than liens "subsequent in priority."

The Condo Group's tender effectively extinguished Zion's judgment and terminated its right to redeem the Onyx condo. The trial court properly held that Zion had no right to refuse the Condo Group's tender of funds to satisfy Zion's judgment. This Court should affirm the trial court's decision.

B. Zion's attempt to circumvent the judicial foreclosure sale process contravenes the purpose of the foreclosure and redemption statutes to protect creditors and debtors by encouraging the highest possible bids at judicial foreclosure sales.

Consistent with the policy to encourage satisfaction of judgments, the Legislature has strongly encouraged competitive bidding at foreclosure sales. This policy benefits judgment debtors, judgment creditors and junior lienholders, while also preserving property values within the neighborhood in which such sales are conducted. Rather than maximize the sale price for the Onyx condo by joining in the competitive bidding at the foreclosure sale, Zion laid quietly in wait, and then attempted to "redeem" the Onyx Condo by purchasing a small judgment against Hai Poon at the eleventh hour. The trial court properly rejected Zion's attempt to obtain a windfall as inconsistent with the Legislative scheme to encourage bidding at judicial foreclosure sales.

RCW ch. 6.21 allows judgment creditors to have the sheriff seize and sell the real property of judgment debtors by competitive bidding to satisfy judgments, but there are precautions built into the foreclosure process to maximize the sale price of properties sold at auction. For example, before real property may be sold, the sheriff must advertise the sale to the public through notices in a local newspaper and by posting notices at the courthouse and the property. RCW 6.21.030(2)(a)-(b). Then the sheriff must sell the property “to the highest bidder.” RCW 6.21.100(1).

The Legislature further encourages high bids by protecting the rights of judicial foreclosure sale purchasers. *See* RCW 6.23.090(1), 110(1) (purchaser entitled to possession from day of sale or, if occupied by a tenant, to “rents or the value of the use and occupation thereof during the period of redemption.”). “It is the policy of the law to protect third parties who, in good faith and for value, become purchasers at judicial sales so the highest and best price may be obtained.” *Grand Inv. Co. v. Savage*, 49 Wn. App. 364, 368-69, 742 P.2d 1262 (1987) (citing *Prince v. Mottman*, 84 Wash. 287, 295, 146 P. 841 (1915)).

RCW ch. 6.23 allows a judgment debtor and certain lienholders to “redeem” property, *i.e.*, buy the property from the

purchaser at the judicial foreclosure sale. *Summerhill Village Homeowners Ass'n v. Roughley*, 166 Wn. App. 625, 628-29, ¶ 12, 270 P.3d 639, 289 P.3d 645 (2012) (“Redemption is the process of canceling and annulling a defeasible title, such as is created by a mortgage or a tax sale, by paying the debt or fulfilling other conditions.”) (quotation omitted). A party seeking to redeem must “give the sheriff at least five days’ written notice of intention to apply” for redemption. RCW 6.23.080(1). A redeeming party must pay the purchaser the amount of the winning bid, any assessments or taxes paid after purchase, amounts the purchaser paid on prior liens secured by the property “to the extent the payment was necessary for the protection of the interest of the judgment debtor or a redemptioner,” and a redemptioner must pay the amount of the purchaser’s prior lien if they hold one. RCW 6.23.020(2)(a)-(d).

Courts interpret the redemption statute in light of its purpose of encouraging creditors to satisfy their judgments, and allow equitable principles to further that purpose. *Millay v. Cam*, 135 Wn.2d 193, 205-07, 955 P.2d 791 (1998) (allowing equitable tolling of redemption period because it “promotes the purpose of redemption statutes which is to allow creditors to recover their just

demands”); *GESA Federal Credit Union v. Mutual Life Ins. Co. of New York*, 105 Wn.2d 248, 254-56, 713 P.2d 728 (1986) (purchaser’s harmless procedural error did not bar it from receiving reimbursement from redemptioner for expenses it paid because “it has long been the practice in this state to liberally construe remedial legislation to accomplish legislative purpose”). Thus, the court will interpret the redemption statute “to avoid a person’s receiving an unearned windfall at the expense of another.” *Worden v. Smith*, 178 Wn. App. 309, 330, ¶¶ 52, 54, 314 P.3d 1125 (2013) (imposing equitable lien on redeemed property for property taxes erroneously paid from execution sale proceeds despite that redemption statute did “not provide for repayment of a lien mistakenly paid out of priority”) (quoting *Bank of Am., NA v. Prestance Corp.*, 160 Wn.2d 560, 567, 160 P.3d 17 (2007)).

This Court should therefore interpret the redemption statute to encourage bidding at the sheriff’s sale, rather than to encourage speculators to stand idly by as Zion did here. Zion’s election to not bid at the sheriff’s sale, but to lie in wait while allowing the property to be sold at a lesser price, and then seek to redeem after rejecting a good faith tender of payment in full satisfaction of its judgment, negates the statutory protections designed to encourage bidding at

sheriff's sales. See *Summerhill*, 166 Wn. App. at 632 n.18 (criticizing would-be redemptioner that "waited silently until after the super priority lien was foreclosed, and then tried to redeem"). Faced with attempts to use the redemption process to circumvent bidding at judicial foreclosure sales, other courts have held that a foreclosure purchaser may as a matter of right satisfy a redemptioner's judgment prior to the posting of redemption funds.

For example, in *Peterson v. Grisell*, 330 Ill. App. 587, 71 N.E.2d 832 (1947), the court rejected Zion's argument (App. Br. 13-14) that a purchaser cannot satisfy a redemptioner's judgment without the redemptioner's consent, even if the purchaser tenders satisfaction of the judgment prior to the posting of redemption funds: "[T]he consent of the judgment creditor is necessary only where tender of payment is made by the purchaser after redemption had been undertaken, whereas prior thereto . . . the purchaser had a right to make payment irrespective of the creditor's consent." 71 N.E.2d. at 836. The court reasoned that this rule best served "[t]he avowed purpose of the redemption statute, [which] is to afford the judgment creditor a remedy to collect his judgment, and to provide a means by which the debtor's property shall go as far as possible toward the payment of his debts." 71 N.E.2d at 837.

The Illinois court found no injustice in refusing to allow redemption because the redemptioners “could have bid at the Master’s sale, and while they had a right to refrain from bidding, they have no absolute right to acquire the property . . . irrespective of a tender of payment of their judgment.” 71 N.E.2d at 837. The court stressed that by tendering payment of the redemptioners’ judgment the purchaser “fulfill[ed] every purpose of the statute” and that by rejecting the tender the redemptioners demonstrated that their true motive was “not the satisfaction of their judgment,” but pursuing “a speculative chance to acquire this property.” 71 N.E.2d at 837.

In *Plute v. Schick*, 101 Colo. 159, 71 P.2d 802 (1937) (App. Br. 19-20), the Colorado Supreme Court likewise refused to allow redemption where the foreclosure purchaser offered to satisfy the redemptioners’ assigned judgment prior to the posting of redemption funds. Noting that the redemptioners “were at all times strangers to the title,” the Colorado Supreme Court refused to allow redemption because it would distort the purpose of the redemption statute – allowing judgments creditors to satisfy their judgments:

The redemption laws were enacted with the beneficent view of helping creditors to recover their just demands, nothing more. Equity has always kept

her watchful eye on the respective claims of those involved in mortgage foreclosure proceedings and their attendant circumstances. The redemption laws may not be used as an instrument of oppression when substantial justice can be done without enforcing them to the letter. . . . When the plaintiffs acquired the Connor-Baxter judgment they had a right to have that paid, and their money is awaiting them.

Plute, 71 P.2d at 804.

Later Colorado cases have not overruled *Plute*. In *WYSE Financial Services, Inc. v. National Real Estate Inv., LLC*, 92 P.3d 918 (Colo. 2004) (App. Br. 22), the court held that a foreclosure purchaser could not prevent redemption because the purchaser did not tender funds to satisfy the redemptioner's judgment until *after* the redemptioner had completed the redemption process by posting the required funds. 92 P.3d at 923 (distinguishing *Plute* "because the satisfaction in that case occurred before even a tender of the redemption amount by the lienor"). Such a distinction makes sense in light of the redemption statute's requirement that a redeeming party give five days' notice of its intent to redeem. RCW 6.23.080(1). After redemptioners give notice, purchasers can prevent redemption by satisfying the judgment prior to the posting of redemption funds, but they cannot unwind a redemption that has been completed. Here, the Condo Group tendered funds to satisfy

Zion's assigned judgment before Zion posted the redemption amount. (CP 93, 110-11, 113-15)

Davis Mfg. and Supply Co. v. Coonskin Properties, Inc., 646 P.2d 940 (Colo. App. 1982), did not "limit[] *Plute* to situations involving quit claim deeds." (App. Br. 20)⁵ *Plute* did not base its holding on the fact the purchaser had also received a quitclaim deed from the owner-judgment debtor, but as *WYSE* confirmed, on the inequity of allowing redemption despite the purchaser's offer to satisfy the judgment before the posting of redemption funds. *WYSE*, 92 P.3d at 923 ("[t]he equities of the case clearly figured prominently in the court's holding that a judgment lienor was required to accept payment in satisfaction of its judgment.").

Moreover, in *Davis* the redemptioner's judgment was entered *after* the judicial foreclosure sale. 646 P.2d at 942. Properly viewed *Davis* thus allows judgment creditors obtaining their judgments *after* the judicial foreclosure sale to redeem regardless of an offer to satisfy their judgments, because these judgment creditors had no prior notice of the sale and could not

⁵ Zion wrongly states that the Colorado Supreme Court decided *Davis*, when in fact it was a Court of Appeals decision. (App. Br. 20) Thus, *Davis* cannot "limit" *Plute* and to the extent the decisions conflict, *Plute* controls.

participate in bidding at the judicial foreclosure sale. Here, the judgment creditor, the Asia HOA, obtained its judgment against Hai Poon five months *before* the sale of the Onyx condo. (CP 241-44) The judgment creditor had a full and fair opportunity to participate in the bidding at the sale but instead circumvented that process by waiting until the Condo Group submitted a low bid before attempting to “redeem.”

Regardless, this Court should refuse to follow *Davis* because it demonstrates the inequity of Zion’s position that the assignee of a judgment may redeem property despite the purchaser’s offer to fully satisfy the judgment. In *Davis*, the redemptioner participated at the judicial foreclosure sale, but rather than outbidding the purchaser – thereby maximizing the value received for the judgment creditor’s property – the redemptioner then obtained an unrelated judgment entered after the sale in order to redeem the property. 646 P.2d at 942. Following *Davis* in the manner urged by Zion would encourage parties to forego bidding at judicial foreclosure sales. Those parties that do participate will have the incentive to minimize the cash they commit to the process if their rights as successful purchasers at a judicial foreclosure sale could be so easily undermined by any person astute enough to acquire any

judgment against the debtor. This Court should refrain from adopting a rule that will only encourage judicial foreclosure sale participants to depress their bids for fear of surprise last minute “redemptions.”

This Court should affirm the trial court’s refusal to allow Zion to redeem and adopt the rule in *Peterson* and *Plute* that foreclosure purchasers may as a matter of right prevent redemption by paying off a redemptioner’s judgment before the posting of redemption funds. This rule serves RCW Title 6’s purposes of encouraging the satisfaction in full of judgments and obtaining “the highest and best price” by encouraging interested parties to engage in competitive bidding at judicial foreclosure sales – not to sit on their hands waiting to seize the property at the last minute by “redeeming” it based on minor and unrelated judgments. This principle is eminently fair and equitable, encouraging both the satisfaction of judgments and maximizing bidding at foreclosure sales.

Finally, the redemption statute, RCW 6.23.020(2)(c), expressly recognizes that a purchaser at a judicial foreclosure sale may pay off prior liens when “necessary for the protection of the interest of the judgment debtor.” (App. Br. 17-18) Here, the Condo

Group protected the judgment debtor, Hai Poon, by paying off a judgment that would have continued to act as a lien on all of his remaining non-exempt property.

The Condo Group's offer to satisfy Zion's judgment was consistent with the language, purpose, and policy of the judicial foreclosure and redemption statutes. Washington would be well served by following the well established majority rule.

V. CONCLUSION

This Court should affirm the trial court's order granting the Condo Group's motion for summary judgment against Zion.

Dated this 30th day of April, 2014.

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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 April 30, 2014, I arranged for service of the foregoing Brief of Respondent The Condo Group, LLC, to the court and to the parties to this action as follows:

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DATED at Seattle, Washington this 30th day of April, 2014.



Victoria K. Vigoren