

72606-4

72606-4

NO. 72606-4-1

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

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UNION BANK, N.A.

*Respondent*

v.

DANIEL GLAEFKE

*Appellants.*

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BRIEF OF APPELLANT

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**A. ASSIGNMENT OF ERROR**

The trial court erred in entering the Order Granting Plaintiff's Motion for Summary Judgment and Judgment, and in failing to grant summary judgment in favor of appellant Danial Glaefke<sup>1</sup> ("Glaefke").

**B. ISSUES PERTAINING TO ASSIGNMENT OF ERROR**

1. Whether the trial court erred by failing to dismiss Respondent, Union Bank N.A.'s ("Union Bank") complaint as the cause of action thereunder was discharged under Glaefke's bankruptcy and was therefore barred by the injunction imposed by 11 U.S.C. § 524 (a)(2). CP 254-257.

2. Whether the trial court erred by granting Union Bank's summary judgment and ruling that Union Bank was not seeking a monetary judgment against Glaefke, but rather was seeking a rescission of the full reconveyance and reinstatement of the Deed of Trust and said claims are *in rem* equitable remedies, involve no request for monetary relief, and thus were not discharged in Glaefke's bankruptcy. CP 248-249.

**C. STATEMENT OF THE CASE**

**1. Facts pertaining to the case**

Glaefke purchased his home located at 16341 Inglewood Place NE, Bothell, WA 98020 (the "Property") in August of 1989. CP 45. On December 10, 2006 Glaefke executed a Promissory Note in the amount of

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<sup>1</sup> The original caption in this matter identifies the Defendant as "Daniel Glaefke". The proper spelling of Mr. Glaefke's given name is "Danial".

\$61,000 in favor of Frontier Bank (the "Promissory Note"). CP 50-51. Frontier Bank is the predecessor in interest to Union Bank. CP 190. The Promissory Note was secured against the Property by a Deed of Trust recorded on February 8, 2008 under King County recording Number 20080208000506 (the "Deed of Trust"). CP 53-61.

On January 24, 2012 a Full Reconveyance was recorded by Union Bank releasing the Deed of Trust and said Full Reconveyance was recorded under King County recording number 20120124001157 (the "Reconveyance"). CP 63. The Reconveyance was recorded in error. CP 191. At the time the Reconveyance was recorded Glaefke owed approximately \$41,061.80 in unpaid principal to Union Bank. CP 191-192.

On March 12, 2013 Glaefke filed for bankruptcy under Chapter 7 of the United States Bankruptcy Code under case number 13-12164-TWD (the "Bankruptcy"). CP 65. Union Bank was listed as a secured creditor in the Bankruptcy under Schedule D- Creditor Holding Secured Claims. CP 67. Union Bank moved for relief from the automatic stay and was granted said relief allowing Union Bank to enforce its remedies to foreclose upon and obtain possession of the Property. CP 73-80. On June 26, 2013 a Discharge of Debtor was entered discharging Glaefke's debts. CP 82-83.

## **2. Procedural history**

Union Bank filed its Complaint for Rescission and Deed of Reconveyance and Reinstatement of Deed of Trust on April 10, 2014 under King County Superior Court cause number 14-2-10246-1 SEA. CP 1-20. Glaefke filed his Answer and Affirmative Defenses on May 9, 2014 and said Answer was amended on September 15, 2014. CP 23-27 and CP 242-246. Glaefke and Union Bank filed cross motions for summary judgment on August 22, 2014. CP 28-36 and CP 163-173. The cross-motions for summary judgment were heard by the Honorable Judge John R. Ruhl on September 29, 2014. CP 250-253. Judge Ruhl denied Glaefke's motion for summary judgment and granted Union Bank's motion. CP 254-257 and CP 250-253.

## **D. ARGUMENT**

### **1. Standard of Review.**

The standard of review for motions on summary judgment was summarized by the court in *Trimble v. Washington State Univ.*, 140 Wn.2d 88, 993 P.2d 259 (2000), as follows:

The standard of review on summary judgment is well settled. Review is de novo; the appellate court engages in the same inquiry as the trial court. Summary judgment is appropriate if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. All facts submitted and all reasonable inferences from them are to be considered in the light most favorable to the nonmoving party. "The motion should be granted

only if, from all the evidence, reasonable persons could reach but one conclusion.”

*Trimble*, 140 Wn.2d at 92-93 (citations omitted).

In the instant case, Union Bank was not entitled to judgment as a matter of law

**2. The trial court erred by failing to dismiss Union Bank’s complaint as the cause of action thereunder was discharged under Glaefke’s bankruptcy and was therefore barred by the injunction imposed by 11 U.S.C. § 524 (a)(2).**

At the time Glaefke filed the Bankruptcy in March of 2013, Union Bank did not hold a secured interest in the Property, rather Union Bank held the Promissory Note and a cause of action for rescission of the Reconveyance and reinstatement of the Deed of Trust. Union Bank’s security in the Property was released upon the recording of the Full Reconveyance on January 24, 2012. Under the reasoning of *U.S. Nat’l Assoc. v. Oliverio* equitable principles allow a party to reinstate an inadvertently released security interest. *U.S. Nat’l Assoc. v. Oliverio*, 109 Wn.App. 68, 72-73, 33 P.3d 1104 (2001). The key distinguishing fact in this case, making it a case of first impression, is Glaefke’s intervening bankruptcy following the inadvertent reconveyance of the Deed of Trust by Union Bank.

The discharge in the Bankruptcy discharged Glaefke from all debts that arose prior to filing the petition on March 12, 2013. With respect to a Chapter 7 discharge, Section 727(b) of the Bankruptcy code provides as follows (emphasis added):

(b) Except as provided in section 523 of this title, **a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter**, and any liability on a claim that is determined under Section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

11 U.S.C. §727 (b).

The relevant question then becomes whether Union Bank's cause of action for rescission of the Reconveyance and reinstatement of the Deed of Trust is "debt" subject to the discharge. The Bankruptcy Code defines "debt" as a "liability on a claim". 11 U.S.C. § 101(12). In turn, the Code defines a claim broadly. A "claim" means: (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured or unsecured. 11 U.S.C. §101(5). Under this broad definition of claim "all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy

case.” *In re First Jersey Securities, Inc.*, 180 F.3d 504, 510 (3<sup>rd</sup> Cir. 1999). “The term ‘debt’ is sufficiently broad to cover any possible obligation to make payment, whether that obligation to make payment is liquidated or unliquidated, fixed or contingent, disputed or undisputed, and whether or not it is embodied in a judgment.” *In re Mazzeo*, 131 F.3d 295, 302 (2<sup>nd</sup> Cir. 1997). The definition of claim “is meant to be very broad and sweeping so as to further the ‘fresh-start’ policy of the Bankruptcy Code”. *In re Indian River Estates*, 293 B.R. 429, 434 (Bkrcty.N.D. Ohio 2003).

Union Bank’s claim for reinstatement and rescission falls squarely within the definition of a “claim” as reinstating the Deed of Trust gives rise to Union Bank’s right to payment. The Supreme Court has ruled that a creditor’s right to foreclose on a mortgage is a “claim” as the remedy of foreclosure necessarily gives rise to a payment in the form of the proceeds from the sale of the debtor’s property. *Johnson v. Home State Bank*, 501 U.S. 78, 84, 111 S.Ct. 2150 (1991). For purposes of the analysis herein, there is no distinction between a mortgage and a deed of trust. *See* RCW 61.24.020. Allowing Union Bank to reinstate the Deed of Trust provides Union Bank with the right to foreclosure and as such the right to payment in the form of the proceeds from the sale of the Property. *See* RCW 61.24.005 *et seq.* Under the *Johnson v. Home State Bank* analysis the

cause of action for reinstatement of the Deed of Trust is a “claim” and as such it was discharged under 11 U.S.C. §727 (b).

Furthermore, a deed of trust containing language stating that it is being executed “for the purpose of securing payment of the indebtedness evidenced by a Promissory Note and Security Agreement” has specifically been found to be an “enforceable obligation” and therefore debt. *In re Perma Properties*, 983 F.2d 964, 967 (10<sup>th</sup> Cir. 1992). In the instant case, the Deed of Trust provides at page 2 of 9 “This Deed of Trust, including the assignment of rents and the security interest in rents and personal property, is given to secure (A) payment of the indebtedness”. CP 54.

Furthermore, the Deed of Trust provides (emphasis added):

Payment and Performance. Except as otherwise provided in the Deed of Trust, **Grantor shall pay to Lender all amounts secured by this Deed of Trust as they become due**, and shall strictly and in a timely manner perform all of Grantor’s obligations under the Note, this Deed of Trust and the Related Documents.

*Id.*

Under the broad definitions of debt and claim, under the stated policy of the Bankruptcy Code of giving the debtor a “fresh-start” and under the analysis of *Johnson* and *Perma Pacific Properties*, Plaintiff’s claim was discharged under 11 U.S.C. § 727(b).

As the cause of action to rescind the Reconveyance and reinstate the Deed of Trust was discharged in the bankruptcy, the injunction

imposed by 11 U.S.C. 524 (a)(2) prohibits Union Bank from proceeding against Glaefke. Section 524 provides as follows:

(a) A discharge in a case under this title –

...

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

...

11. U.S.C. § 524(a)(2).

The trial court erred by failing to dismiss Union Bank's complaint as the cause of action thereunder was discharged under Glaefke's bankruptcy and was therefore barred by the injunction imposed by 11 U.S.C. § 524 (a)(2).

**3. The trial court erred by granting Union Bank's summary judgment and ruling that Union Bank was not seeking a monetary judgment against Glaefke, but rather was seeking a rescission of the full reconveyance and reinstatement of the Deed of Trust and said claims are *in rem* equitable remedies, involve no request for monetary relief, and thus were not discharged in Glaefke's bankruptcy.**

Glaefke agrees with the general proposition that a lien on real property, an action against a debtor *in rem*, passes through the bankruptcy court unaffected. *Johnson*, 501 U.S. 78 at 84. In this instance, however,

Union Bank's lien, the Deed of Trust, had been released and no longer existed at the time the Bankruptcy was filed. Instead, Union Bank had a cause of action to rescind the reconveyance and reinstate the lien. As analyzed above, the cause of action was discharged as all prepetition debt of the debtor is discharged in bankruptcy. 11 U.S.C. § 727(b).

It is well settled that a discharge under Chapter 7 discharges all prepetition debt of the debtor. *Judd v. Wolfe*, 78 F.3d 110, 114 (3<sup>rd</sup> Cir. 1996). Debt is defined as "liability on a claim". 11 U.S.C. § 101(12). A "claim" broadly is a right to payment. 11 U.S.C. § 101 (5). A Deed of Trust instrument has been specifically found to be a "claim" as it gives rise to a payment from the proceeds of a foreclosure and a "debt" as it is an enforceable obligation. *Johnson*, 501 U.S. at 84, *In re Perma Properties*, 983 F.2d at 967. It follows then that Respondent's cause of action to reinstate the Deed of Trust is a cause of action to reinstate a "debt", and is not therefore seeking only *in rem* equitable remedies.

#### **E. CONCLUSION**

Glaefke respectfully requests that the Court reverse the trial court's decision on summary judgment in favor of Union Bank and reverse the trial court's ruling denying summary judgment to Glaefke and remand the matter to the trial Court for further proceedings consistent with the court's ruling.

Dated this 29th day of December, 2014

GALVIN REALTY LAW GROUP, P.S.



Jennifer Sehlin, WSBA No. 25111  
Attorneys for Appellant

FILED  
DEC 29 2014  
COURT

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
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UNION BANK, N.A.,  
  
Respondent,  
  
v.  
  
DANIEL GLAEFKE,  
  
Appellant.

No. 72606-4-1  
  
DECLARATION OF SERVICE

The undersigned declares under penalty of perjury and under the laws of the State of Washington that I am a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and am competent to be a witness herein.

On December 29, 2014, I hand delivered a copy of the Brief of Appellant and Declaration of Service to the following:

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