

Case No. 73808-9

In the Court of Appeals of the State of Washington,
Division One

Performance Construction, LLC,
Appellant/Cross-Respondent
v.

Colette Glenn, Cobalt Mortgage, Inc., and
Mortgage Electronic Registration System, Inc.,
Respondents

and

David Keene,
Respondent/Cross-Appellant

Appellant's Reply Brief

On Appeal from Snohomish County Superior Court
Case No. 15-2-01905-6
Hon. Joseph Wilson

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Table of Contents

I. Introduction 1

II. Argument..... 2

 A. The purpose of RCW 6.23.120. 2

 B. Colette Glenn is not a good faith purchaser without notice of RCW 6.23.120. 3

 1. The ex parte order did not authorize the issuance of a sheriff's deed to D&J Shires. 3

 2. Glenn took subject to RCW 6.23.120..... 4

 C. Colette Glenn is the successor to the interest of the D&J Shires, LLC. 5

 D. The redemption period was not shortened. 9

 1. The trial court did not limit the rights of upset offerors or shorten the statutory redemption period. 9

 2. The ex parte order is void because it was entered without notice to the foreclosure defendants. 11

 3. Performance Construction cannot be bound by a trial court order in a case to which it was not a party or in privity with a party. 12

 4. There is no statutory authority for the sheriff to issue a deed before the end of the redemption period. 13

 E. The condominium unit is a residential property, i.e. a property a person would be able to claim as a homestead. 14

 F. Performance’s offer was made through a broker authorized by RCW 6.23.120 to find a buyer. 15

 G. Colette Glenn’s offer was not a higher current, qualifying offer..... 20

Conclusion 20

Appendix A Order Directing Issuance of Sheriff's Deed (to David D. Keene)

Appendix B Sheriff's Deed (to D&J Shires, LLC)

Appendix C Assignment of Redemption Rights (to David D. Keene)

Table of Authorities

Cases

Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 276 P.3d 1277 (2012)	13
Barouh v. Israel, 46 Wn.2d 327, 281 P.2d 238 (1955)	6
Bessinger v. Grotz, 66 Cal.App.2d 947, 153 P.2d 369 (1944)	14
Brown v. State, 130 Wash.2d 430, 924 P.2d 908 (1996).....	6
Capital Inv. Corp. of Wash. vs. King County, 112 Wn.App. 216, 47 P.3d 161 (2002)	2, 14
Federal Nat'l Mortgage Ass'n v. Ndiaye, 188 Wn.App. 376, 353 P.3d 644 (2015).....	4
Fidelity Mutual Savings Bank v. Mark, 112 Wn.2d 47, 767 P.2d 1382 (1989)..	2, 3, 5, 7, 8, 9, 10, 14
First Nat'l Bank v. Tiffany, 40 Wash.2d 193, 242 P.2d 169 (1952)	15
GESA Federal Credit Union v. Mutual Life Ins. Co. of New York, 105 Wash.2d 248, 713 P.2d 728 (1986).....	9, 14
Graves v. Elliott, 69 Wn.2d 652, 419 P.2d 1008 (1966).....	10
Gross v. Fowler, 21 Cal. 392 (1863).....	14
Hall v. Yoell, 45 Cal. 584 (1873).....	14
In re Fourth Avenue South (Nelson v. Lanza), 18 Wn.2d 167, 138 P.2d 667 (1943).	8
In re Marriage of Leslie, 112 Wn.2d 612, 772 P.2d 1013 (1989).....	11
Jongeward v. BNSF R. Co., 174 Wn.2d 586, 278 P.3d 157 (2012)	15
Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass'n, 156 Wn.2d 253, 126 P.3d 16 (2006).....	6
Maynard Inv. Co. v. McCann, 77 Wash.2d 616, 624 (1970).....	4
McIver v. Commissioner, 36 T.C.M. (CCH) 719 (U.S. Tax Court 1977).....	18
Metropolitan Federal S&L Assn v. Roberts, 72 Wn.App. 104, 863 P.2d 615 (1993).....	9
Miebach v. Colasurdo, 102 Wn.2d 170, 685 P.2d 1074 (1984).	4

Millay v. Cam, 135 Wn.2d 193, 955 P.2d 791 (1998).....	14
Moore v. Martin, 38 Cal. 428 (1869).....	14
Mueller v. Miller, 82 Wn.App. 236, 917 P.2d 604 (1996).	12
Nugget Properties, Inc. v. County of Kittitas, 71 Wn.2d 760, 431 P.2d 580 (1967).....	4
P.H.T.S., LLC v. Vantage Capital, LLC, 186 Wn.App. 281, 345 P.3d 20 (2015).	9, 15, 16, 17
Pacific Erectors, Inc. v. Gall Landau Young Construction Company, 62 Wn. App. 158, 813 P.2d 1243 (1991).....	4
Perham v. Kuper, 61 Cal. 331 (1882);	14
Prince v. Savage, 29 Wn.App. 201, 627 P.2d 996 (1981).	10
Roberson v. Perez, 156 Wn.2d 33, 123 P.3d 844 (2005).....	13
Roderick Timber Co. v. Willapa Harbor Cedar Products. Inc., 29 Wn.App. 311, 627 P.2d 1352 (1981).....	4
Servatron, Inc. v. Intelligent Wireless Products, Inc., Wn.App. 666, 346 P.3d 831 (2015).....	11
W. T. Watts, Inc. v. Sherrer, 89 Wn.2d 245, 571 P.2d 203 (1977)	8

Statutes

RCW 4.28.320	4
RCW 6.13.070	15
RCW 6.13.080.	15
RCW 6.21.030	19
RCW 6.21.120	10, 13
RCW 6.23.010 (2).....	5
RCW 6.23.011	9
RCW 6.23.030	19
RCW 6.23.060	13
RCW 6.23.110	15
RCW 6.23.120 (1).....	20

RCW 25.15.070(2)(c)	4
RCW 61.12.093	9

Other Authorities

Alfred J. Schweppe, <i>Interest Acquired by Purchaser at Foreclosure or Execution Sale</i> , 5 Wash. L. Rev. 105, 121 (1930).....	7
Black's Law Dictionary 1016 (2009).....	17

Treatises

William B. Stoebuck & John W. Weaver, <i>Washington Practice: Real Estate Transactions</i> (2d ed. 2004).....	17, 18
A.C. Freeman, <i>The Law of Void Judicial Sales</i> (4th ed. 1902).....	14
<i>Burwell & Morford v. Seattle Plumbing Supply Co.</i> , 14 Wn.2d 537, 128 P.2d 859 (1942).....	14
David Rorer, <i>A Treatise on the Law of Judicial and Execution Sales</i> (1873).....	14

Court Rules

CR 5	12
CR 60 (b)(5).....	11

I. Introduction

This case concerns an upset offer made by Performance Construction, LLC pursuant to RCW 6.23.120. The parties' cross-appeals raise six issues:

1. Was Performance Construction's offer made during the redemption period?
2. Was the offer made to the proper party?
3. Was the offer made for a property that a person would be able to claim as a homestead?
4. Was the offer made through a broker listing the property?
5. Did Colette Glenn make a higher current, qualifying offer?
6. Is Colette Glenn a good faith purchaser without notice of RCW 6.23.120?

The answer to the first four issues is yes. Performance Construction made its offer:

- during the statutory redemption period,
- to the party entitled to a sheriff's deed at the end of the statutory redemption period,
- for a residential property,
- through a broker authorized by RCW 6.23.120 to find a buyer.

The answer to the last two issues is no. Colette Glenn did not make a current, qualifying offer because her offer:

- contained a disqualifying term (conveyance of title by statutory warranty deed),
- did not distribute the purchase price in the manner required by RCW 6.23.120, and
- was not "current" because she did not tender the purchase price within two banking days after her offer was accepted.

Colette Glenn is not a good faith purchaser for value and without notice of because:

- The ex parte order did not authorize a premature sheriff's deed to her grantor, D&J Shires, LLC, and
- she had constructive knowledge of potential purchasers under RCW 6.23.120.

II. Argument

A. The purpose of RCW 6.23.120.

The parties agree that the purpose of the statute is to generate excess funds for foreclosed owners on underbid properties. Respondents assert that the court need not enforce the statute in this case because the judgment debtors have assigned their redemption rights to David Keene. They cite no authority to support their argument that the court should withhold enforcement of a statutory right depending upon the status of the holder of that right. Respondents are incorrect for two reasons.

First, it is a valuable right to receive upset offer proceeds. Judgment debtors should be able to sell that right, just as judgment debtors are able to sell their redemption rights. The alienability of property gives the property value. Respondents would deny judgment debtors that value.

Second, The Assignment of Redemption Rights to Mr. Keene was ineffective because the judgment debtors did not convey their underlying interest in the foreclosed property. CP 260; Appendix C. Instead, the assignment purported to convey only the judgment debtors' redemption rights. The Supreme Court has ruled that such an assignment is ineffective. "In *Fidelity Mutual Savings Bank v. Mark*,¹ the Washington Supreme Court held that a judgment debtor could not transfer a right to redeem without also transferring the underlying interest in the land." *Capital Investment Corp. of Washington v. King County*, 112 Wn.App. 216, 218, 47 P.3d 161 (2002). As the court put it in *Mark*²:

Although the right of redemption is not an interest in real property, the Legislature has linked the exercise of the right to the judgment debtor's ownership interest in

¹ *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 767 P.2d 1382 (1989).

² *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d at 52.

the property. Thus, former RCW 6.24.130 requires that a successor in interest succeed to the judgment debtor's interest in the property.

Respondents argue that the Slighters conveyed their underlying interest in the land with the following language:

This assignment is irrevocable and includes any rights in and to the above-described property available to the undersigned **under RCW 6.23 et seq** or as acquired thereafter. (boldface added)

CP 261. Contrary to Respondents' characterization, the judgment debtors transferred only their redemption rights under RCW 6.23, not their underlying interest in the real property. Like the assignment in *Mark*, this assignment was ineffective and the Slighters retained both their underlying interest in the property and their redemption rights.³

B. Colette Glenn is not a good faith purchaser without notice of RCW 6.23.120.

1. The ex parte order did not authorize the issuance of a sheriff's deed to D&J Shires, LLC.

The Respondents' argue that Colette Glenn was entitled to rely⁴ upon the sheriff's deed to her grantor, D&J Shires, LLC because that deed was authorized by the ex parte order. The problem with that argument is that the ex parte order did not authorize the sheriff to issue a deed to D&J Shires, but to David Keene. The operative words of the ex parte order are:

The Sheriff of Snohomish County, Washington be and is hereby directed to issue a Sheriff's Deed to DAVID D. KEENE

³ The Slighters conveyed their rights in the underlying property to Performance Construction, LLC by deed in March 2015. CP 455, 459. The trial court held the deed void because it located the property in both King and Snohomish counties. CP 47. The Slighters then executed a correction deed remedying this scrivener's error. CP 44. This conveyance is not relevant to this appeal, but it will be relevant to the disposition of the upset offer proceeds if this court reverses and remands for specific performance.

⁴ In her declaration, Glenn makes no claim that she had actual knowledge of the ex parte order, or the sheriff's sale before her purchase. CP 209-11.

CP 266. Glenn was not entitled to rely upon this order to support her own chain of title because her grantor was D&J, not Keene. CP 218. D&J Shires, LLC is a separate legal entity from David Keene. "A limited liability company formed under this chapter [RCW 25.15] shall be a separate legal entity...." RCW 25.15.070(2)(c). A court order to issue a deed to David Keene is not an order to issue the deed to a limited liability company of which he is a member. So, assuming for argument's sake that the court commissioner had the authority to enter the ex parte order, the order it entered did not authorize the deed the sheriff issued.

2. Glenn took subject to RCW 6.23.120.

Glenn had constructive knowledge of what was in her chain of title. RCW 4.28.320; *Miebach v. Colasurdo*, 102 Wn.2d 170, 175-76, 685 P.2d 1074 (1984). The sheriff's sale, and the foreclosure case in which it was ordered, are referenced in the recorded sheriff's levy and the sheriff's deed to D&J Shires. CP 242, 335. One is presumed to know the law. *Nugget Properties, Inc. v. County of Kittitas*, 71 Wn.2d 760, 765, 431 P.2d 580 (1967); *Maynard Inv. Co. v. McCann*, 77 Wash.2d 616, 624 (1970); *Federal Nat'l Mortgage Ass'n v. Ndiaye*, 188 Wn.App. 376, ¶ 18, 353 P.3d 644 (2015). The redemption statutes give notice of possible redemptioners. *W.T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 255, 571 P.2d 203 (1977), as well as possible purchasers under RCW 6.23.120. And Glenn's escrow agent, Stewart Title, had actual knowledge of the sheriff's sale, the redemption period and the void order. CP 357, 381. Knowledge of the agent is knowledge of the principal within the scope of the agency. *Roderick Timber Co. v. Willapa Harbor Cedar Products, Inc.*, 29 Wn.App. 311, 316-17, 627 P.2d 1352 (1981). No one may rely upon a void order. *Pacific Erectors, Inc. v. Gall Landau Young Construction Company*, 62 Wn. App. 158, 162, 813 P.2d 1243 (1991). Glenn's actual ignorance did not negate her constructive knowledge, nor did it diminish the substantive rights of potential purchasers under RCW 6.23.120.

C. Colette Glenn is the successor to the interest of the D&J Shires, LLC.

When D&J Shires purchased the property at the sheriff's sale, D&J became the party to whom to make an upset offer under RCW 6.23.120. D&J would become the property owner by sheriff's deed when the redemption period expired if (a) there were no redemption, and (b) D&J did not transfer its interest to another. Glenn argues that she did not purchase the property at the sheriff's sale, so she could not possibly be the proper party to whom to make an upset offer. Glenn brief, at 8. Glenn ignores RCW 6.23.010 (2) which includes the purchaser's successor in interest in the definition of "purchaser."⁵ One who acquires the interest of another is that party's successor in interest.⁶

Did D&J transfer its interest to Glenn by virtue of its deed to her? To begin with, Respondent Keene is correct when he points out that the deed from D&J to Glenn was a warranty deed and not a quitclaim deed. CP 218, Keene brief, at 11. The undersigned characterized it as a quit claim deed in the Appellant's brief, Appellant's opening brief, at 13, and that characterization was inaccurate and inadvertent. It also distracted the respondents from Performance's main point: that a warranty deed and a quit claim deed are alike in that both convey whatever estate the grantor has, even if it is less than the estate described in the deed.

Glenn and Keene argue that Glenn is not D&J's successor in interest as sheriff's sale purchaser because they intended Glenn to be D&J's successor in interest as fee owner. Keene brief, at 13. As authority, they cite two Supreme Court opinions, *Kershaw Sunnyside Ranches*,

⁵ "As used in this chapter, the terms 'judgment debtor,' 'redemptioneer,' and 'purchaser' refer also to their respective successors in interest." RCW 6.23.010 (2).

⁶ *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 52, 767 P.2d 1382 (1989).

*Inc. v. Yakima Interurban Lines Ass'n*⁷ and *Brown v. State*,⁸ which held that a deed in the statutory warranty form is presumed to be a conveyance in fee simple absolute. But what happens if the grantor owns less than the estate described in the deed? The cases D&J cites do not address that question because the issue in those cases was whether the parties intended to convey an easement or fee simple absolute. There is no doubt that D&J intended to convey, and Glenn intended to acquire, a fee simple absolute estate in the condominium. D&J argues that, if it owned less than that estate, it conveyed nothing at all. Performance disagrees.

The grantor conveys the estate it has, even if that estate is less than what it warranted. In this respect, a quit claim deed and a warranty deed are the same. As the Supreme Court said in *Barouh v. Israel*:

A quitclaim deed is just as effectual to convey the title to real estate as any other deed, and a grantee of a quitclaim deed has the same rights as the grantee of a warranty deed, with the exception that he is given no warranty.⁹

Both types of deeds convey whatever the grantor has.

If a warranty deed conveys less than the estate described, then the grantee has a remedy against the grantor for damages measured by the diminution in value.¹⁰ This remedy would make no sense if, as D&J argues, there is a total failure of title when anything less than the described estate is conveyed. The logic of D&J's position would lead to absurd results. It is not unusual for a new owner of land to discover that she owns less than her seller warranted due to a

⁷ *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass'n*, 156 Wn.2d 253, 264, 126 P.3d 16 (2006).

⁸ *Brown v. State*, 130 Wash.2d 430, 437, 924 P.2d 908 (1996).

⁹ *Barouh v. Israel*, 46 Wn.2d 327, 333, 281 P.2d 238 (1955)

¹⁰ 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate Transactions* § 14.4, at 125 (2d ed. 2004); *West Coast Mfg & Inv. Co. v. West Coast Imp. Co.*, 31 Wn. 610, 72 P. 455 (1903).

neighbor's adverse possession of a portion of the property. If D&J is right, then the parties could not resolve the encroachment with a simple boundary line adjustment. According to D&J, the encroached-upon party has suffered a total failure of title and her predecessor is the true owner of the encroached-upon parcel; not only is there an encroachment to resolve, but something would have to be done about the title to the unencroached-upon portion of the parcel. This mess is avoided if the warranty deed conveyed what the grantor owned, even if it was less than what the grantor warranted.

There is a difficulty in categorizing the nature of the interest held by a sheriff's sale purchaser. The difficulty lies in the creation of that interest by statute rather than as part of the organic common law. Eighty-five years ago, Dean Alfred Schweppe surveyed 30 Washington Supreme Court cases touching on the nature of the purchaser's interest and found a variety of results:

The foregoing review of the cases shows that right down to the most recent times the court has entertained all shades of opinion on this subject, holding that at a foreclosure sale (a) legal title passes subject only to a right of redemption; (b) that equitable title passes; (c) that a substantial interest passes; (d) that "a valid subsisting interest in real property" passes; (e) that no title passes; and (f) differing views as to when title passes; whether it passes at the sale, at confirmation, at the expiration of the period of redemption, or at the giving of the sheriff's deed subsequent to such expiration.

Alfred J. Schweppe, *Interest Acquired by Purchaser at Foreclosure or Execution Sale*, 5 Wash. L. Rev. 105, 121 (1930). Probably because of the nonjudicial foreclosure statute enacted in the 1960's, the issue does not arise as frequently. However, three Supreme Court cases decided since 1930 are of note.

In *Fidelity Mutual Savings Bank v. Mark*,¹¹ the court held that a judgment debtor's

¹¹ *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 767 P.2d 1382 (1989).

interest during the redemption period must be conveyed by deed in order to assign the redemption right, but characterized the judgment debtor's interest as a "reversionary interest."¹² The rest of the owner's interest in the property must be in the purchaser.

In *W. T. Watts, Inc. v. Sherrer*,¹³ the court held that a labor lien for work ordered by a purchaser does not attach to the judgment debtor's fee interest if he redeems but would attach to the purchaser's fee interest if there were no redemption. "There should be no question that [a lien for labor or materials contracted for by the purchaser] will attach ... to the fee if the purchaser's interest ripens into ownership."¹⁴

In *In re Fourth Avenue South (Nelson v. Lanza)*,¹⁵ the court held that the sheriff's sale purchaser's interest is a valuable property right which entitles the bearer to a condemnation award if the property is taken by eminent domain.

"But whatever the interest a purchaser acquires in the property purchased at an execution sale may be called, it is, at least, an interest for which value was given and of which he cannot be deprived without compensation."¹⁶

Whatever interest D&J acquired in the condominium at the sheriff's sale, it was a substantial property interest that D&J conveyed to Glenn with its warranty deed.

¹² *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47 at 52.

¹³ *W. T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 571 P.2d 203 (1977).

¹⁴ *W. T. Watts, Inc. v. Sherrer*, 89 Wn.2d at 249.

¹⁵ *In re Fourth Avenue South (Nelson v. Lanza)*, 18 Wn.2d 167, 170, 138 P.2d 667 (1943).

¹⁶ *In re Fourth Avenue South (Nelson v. Lanza)*, 18 Wn.2d at 169-70.

D. The redemption period was not shortened.

1. The trial court did not limit the rights of upset offerors or shorten the statutory redemption period.

Respondents rely upon the following language in the ex parte order in support of their argument that the order extinguished Performance's right under RCW 6.23.120:

Such Sheriff's Deed shall be issued free and clear of any rights of redemption of any all parties.

CP 266; Appendix B. Whatever the court meant when it ordered that the deed would be "issued free and clear of any rights of redemption of any and all parties," it did not expressly limit the rights of upset offerors. By its own terms, the order did not apply to nonparties, like Performance Construction. Moreover, the ex parte order did not by its terms shorten the one year statutory redemption period.

RCW 6.23.120 "creates a substantive right to purchase property by making a qualified offer before the expiration of the redemption period." *P.H.T.S., LLC v. Vantage Capital, LLC*, 186 Wn.App. 281, ¶ 25, 345 P.3d 20 (2015). And as with substantive redemption rights, the court "may not alter the scheme the Legislature has established." *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 54-55 (1989); *P.H.T.S., LLC v. Vantage Capital, LLC*, 186 Wn.App. 281, ¶ 25, 345 P.3d 20 (2015). Performance Construction had a right to make an offer under RCW 6.23.120 during the statutory one-year redemption period. Statutory redemption rights are just that - statutory. "The right to redeem property sold under execution is a creature of statute and depends on the provisions of the statute creating the right." *GESA Federal Credit Union v. Mutual Life Ins. Co. of New York*, 105 Wash.2d 248, 713 P.2d 728 (1986). A sheriff's sale purchaser has no right to eliminate anyone's redemption rights. *Metropolitan Federal S&L Assn v. Roberts*, 72 Wn.App. 104, 113, 863 P.2d 615 (1993). Outside of a finding of abandonment, RCW 61.12.093, -.095, RCW 6.23.011, there is nothing in the Revised Code of Washington that

eliminates redemption rights.

David Keene argues that RCW 6.21.120 and 6.23.070 give the court the authority to shorten the statutory redemption period. Keene brief, at 22. RCW 6.21.120 directs the sheriff to issue a deed after the redemption period has expired. RCW 6.23.070 authorizes the court to order the sheriff to allow a redemption where the sheriff wrongfully refuses to allow it. Neither statute authorizes the court to shorten the redemption period.

Keene cites three cases in which a court ordered the sheriff to issue a sheriff's deed. *Graves v. Elliott*, 69 Wn.2d 652, 653-54, 419 P.2d 1008 (1966); *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 767 P.2d 1382 (1989); and *Prince v. Savage*, 29 Wn.App. 201, 627 P.2d 996 (1981). But in none of them can he demonstrate that the order was entered *before* the statutory redemption period expired. In none of these cases does the court recite the date the order was entered. From the dates these courts do provide, it is evident that the order for issuance of the deed had to have been entered *after* the redemption period expired. In *Graves v. Elliott*, the motion for an order to show cause was not made until well after the expiration of the redemption period. *Graves v. Elliott*, 69 Wn.2d at 654. In *Mark*, the motion for an order could not have been filed earlier than nine days before the redemption period ended. *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d at 50. In *Prince v. Savage*, the motion for an order could not have been filed earlier than five days before the redemption period ended. *Prince v. Savage*, 29 Wn.App. at 202.

Performance agrees with Keene that a court may determine whether a party has a statutory right to redeem. Keene brief, at 20. But it does not follow from that premise that a court may shorten the period in which that right may be exercised.

2. The ex parte order is void because it was entered without notice to the foreclosure defendants.

A court does not have the jurisdiction to grant default relief substantially different from that described in the complaint. As the Supreme Court has explained:

In entering a default judgment, a court may not grant relief in excess of or substantially different from that described in the complaint.

Further, a court has no jurisdiction to grant relief beyond that sought in the complaint. To grant such relief without notice and an opportunity to be heard denies procedural due process. To the extent a default judgment exceeds relief requested in the complaint, that portion of the judgment is void. (citations omitted)

In re Marriage of Leslie, 112 Wn.2d 612, 617-18, 772 P.2d 1013 (1989).

The foreclosure complaint stated: "The redemption period shall be 12 months." CP 230. The complaint prayed for the foreclosure of the defendants' rights, "except only for the statutory right of redemption allowed by law." CP 232. The default judgment provided that "the period of redemption shall be 12 months." CP 237. The challenged ex parte order (a) amended the summary judgment and (b) granted relief substantially different from that described in the complaint without providing the defendants in that action with notice and an opportunity to be heard. The ex parte order denied procedural due process and is therefore void for lack of jurisdiction. *In re Marriage of Leslie*, 112 Wn.2d 612, 617-18, 772 P.2d 1013 (1989).

A judgment entered by a court which lacks jurisdiction is void and must be vacated whenever the lack of jurisdiction comes to light. *Servatron, Inc. v. Intelligent Wireless Products, Inc.*, Wn.App. 666, ¶30, 346 P.3d 831 (2015); CR 60 (b)(5). In the 1996 case of *Mueller v. Miller*, the Court of Appeals voided a sheriff's sale because the sale occurred more than 10 years after the original judgment was entered. The court explained the circumstances under which a judgment is void:

A judgment is void when the court does not have personal or subject matter jurisdiction, or "lacks the inherent power to enter the order involved." [*State v.*

Petersen, 16 Wash.App. at 79, 553 P.2d 1110 (citing *Bresolin [v. Morris]*, 86 Wash.2d at 245, 543 P.2d 325; *Anderson [v. Anderson]*, 52 Wash.2d at 761, 328 P.2d 888) (additional citation omitted). A trial court has no discretion when faced with a void judgment, and must vacate the judgment "whenever the lack of jurisdiction comes to light." *Mitchell v. Kitsap County*, 59 Wash.App. 177, 180-81, 797 P.2d 516 (1990) (collateral challenge to jurisdiction of pro tem judge granting summary judgment properly raised on appeal) (citing *Allied Fidelity Ins. Co. v. Ruth*, 57 Wash.App. 783, 790, 790 P.2d 206 (1990)). As discussed above, since the judgment is void, this collateral attack through the quiet title action was proper. (boldface added)

Mueller v. Miller, 82 Wn.App. 236, 251, 917 P.2d 604 (1996). The court expressly approved a collateral attack of a void judgment. *Id.* In the present case, the court lacked the power to order the elimination of redemption rights, the shortening of the redemption period, and the premature issuance of a sheriff's deed. The trial court had no discretion when faced with a void order, and did not err in vacating it.

The ex parte order is additionally void because it was entered without the notice required by CR 5 to Slighter Property II, LLC and Thomas and Bonnie Slighter, foreclosure defendants who had timely appeared in the foreclosure action. CP 337.

Keene, at 24-25 of his brief, cites *Metro. Fed. Sav. & Loan Ass'n v. Roberts*, 72 Wn.App. 104, 863 P.2d 615 (1993) for the proposition that an order for a premature sheriff's deed is voidable, not void. That court did not characterize the order as either voidable or void. It held the trial court committed error and reversed it.

3. Performance Construction cannot be bound by a trial court order in a case to which it was not a party or in privity with a party.

Respondents argue that Performance is somehow bound by the ex parte order because of res judicata and/or collateral estoppel. That doctrine does not apply because Performance was not a party to the action in which the ex parte order was entered. Res judicata, or claim preclusion, prohibits *the same party* from litigating a second lawsuit on the same claim or any other claim that could have been, but was not, raised in the first suit. *Roberson v. Perez*, 156

Wn.2d 33, 41 n. 7, 123 P.3d 844 (2005). Collateral estoppel, or issue preclusion, prevents a party from relitigating an issue determined *against that party* in an earlier action, even if the second action differs significantly from the first one. *Roberson v. Perez*, 156 Wn.2d 33, 41 n. 6, 123 P.3d 844 (2005). Neither of these doctrines applies to Performance Construction because there was no prior litigation to which it was a party.

4. There is no statutory authority for the sheriff to issue a deed before the end of the redemption period.

The sheriff only has authority to issue a deed *after* the redemption period has expired. RCW 6.21.120¹⁷; RCW 6.23.060.¹⁸ The sheriff's issuance of the deed outside the time limit set by the statute is invalid, as the Supreme Court explained in *Albice v. Premier Mortgage Services of Washington, Inc.*¹⁹:

When a party's authority to act is prescribed by a statute and the statute includes time limits, ... failure to act within that time violates the statute and divests the party of statutory authority. Without statutory authority, any action taken is invalid.

The sheriff's issuance of the deed outside the time limit set by the statute is invalid.

California courts have repeatedly held that "a sheriff or commissioner's deed delivered before the period for redemption has expired is void." *Bessinger v. Grotz*, 66 Cal.App.2d 947,

¹⁷ RCW 6.21.120: "In all cases where real estate has been, or may hereafter be sold by virtue of an execution or other process, it shall be the duty of the sheriff or other officer making such sale to execute and deliver to the purchaser, or other person entitled to the same, a deed of conveyance of the real estate so sold. The deeds shall be issued upon request ... immediately after the time for redemption from such sale has expired in those instances in which there are redemption rights, as provided in RCW 6.23.060."

¹⁸ RCW 6.23.060: "If no redemption is made within the redemption period prescribed by RCW 6.23.020 or within any extension of that period under any other provision of this chapter, the purchaser is entitled to a sheriff's deed"

¹⁹ *Albice v. Premier Mortg. Servs. of Wash., Inc.*, 174 Wn.2d 560, ¶ 15, 276 P.3d 1277 (2012).

950, 153 P.2d 369 (1944), citing *Perham v. Kuper*, 61 Cal. 331, 332 (1882); *Hall v. Yoell*, 45 Cal. 584, 588 (1873); *Moore v. Martin*, 38 Cal. 428, 438 (1869); and *Gross v. Fowler*, 21 Cal. 392, 396 (1863).

The deed having been executed before the expiration of the statutory period allowed for redemption, the question arises, whether it is void or only voidable. The plaintiff contends that it is only voidable--by which he means, as we suppose, that it is good until set aside by direct application to the Court, and that it cannot be attacked collaterally. If this be his meaning, the position is untenable. The real question is one of power. Had the Sheriff authority to execute the deed at the time?-and to this there can be but one answer. His power did not arise until the six months had elapsed.

Gross v. Fowler, 21 Cal. 392, 396 (1863). California authority is cited because Washington courts look to California case law on redemption issues since "Washington's redemption scheme is 'almost identical' to California's."²⁰

The invalidity of a premature sheriff's deed has long been the rule. "If the statute, under which the sale is made, does not authorize a conveyance until after the expiration of the time allowed the defendant to redeem his property, a deed made in advance of that time is a nullity." A.C. Freeman, *The Law of Void Judicial Sales* § 46, at pp. 149-50, (4th ed. 1902). "[A] deed made before the term of redemption expires is void." David Rorer, *A Treatise on the Law of Judicial and Execution Sales* § 771, at p. 266 (1873).

E. The condominium unit is a residential property, i.e. a property a person would be able to claim as a homestead.

Respondents argue that because a condominium lien foreclosure is not subject to the homestead exemption, citing RCW 6.13.080, then RCW 6.23.120 does not apply. Glenn brief, at

²⁰ *Capital Inv. Corp. of Wash. vs. King County*, 112 Wn.App. 216, 221, n. 7, 47 P.3d 161 (2002), citing *Burwell & Morford v. Seattle Plumbing Supply Co.*, 14 Wn.2d 537, 543, 128 P.2d 859 (1942); *Millay v. Cam*, 135 Wn.2d 193, 200, 955 P.2d 791 (1998); *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 52, 767 P.2d 1382 (1989); *GESA F. Credit Union v. Mutual Life Ins. Co.*, 105 Wn.2d 248, 253-4, 713 P.2d 728 (1986).

11. Respondents' conclusion does not follow from their premise. RCW 6.13.080 only governs the rights of the parties before a sheriff's sale, not afterwards. In *First Nat'l Bank v. Tiffany*, 40 Wash.2d 193, 197-98, 242 P.2d 169 (1952), the Supreme Court held that, before a forced sale, the rights of the parties are governed and defined by what is now RCW 6.13.070 - .080.²¹ After the sale, the rights of the parties are governed by what is now RCW 6.23.110.²² The court held that even though a mortgage foreclosure is an exception to the homestead exemption, the judgment debtor had the right to occupy the homestead during the redemption period. So the exposure of the homestead to a forced sale does not eliminate the character of the property as a homestead.

Respondents do not address the broad language applying RCW 6.23.120 (1) to any property that a person would be entitled to claim as a homestead.”

If Respondents' interpretation were correct, then RCW 6.23.120 would not apply to mortgage foreclosures because they are not subject to the homestead exemption either. And yet, RCW 6.23.120 (4) expressly excludes mortgage foreclosures from the operation of the statute. Respondents' interpretation would render subsection (4) superfluous. "[A] court must not interpret a statute in any way that renders any portion meaningless or superfluous." *Jongeward v. BNSF R. Co.*, 174 Wn.2d 586, ¶ 23, 278 P.3d 157 (2012).

F. Performance's offer was made through a broker authorized by RCW 6.23.120 to find a buyer.

Respondents interpret "listing" to mean a published written advertisement. They support their interpretation with two arguments: (1) *P.H.T.S. LLC v. Vantage Capital, LLC* so held, and

²¹ Formerly RCW 6.12.090 (Rem.Supp.1945, § 532) and RCW 6.12.100 (Rem.Rev.Stat. § 533).

²² Formerly RCW 6.24.210 (Rem.Rev.Stat. (Sup.) § 602).

(2) a contrary position would render a portion of the statute superfluous. Performance disagrees on both counts.

P.H.T.S. did not have to decide the issue before this court. In that case, the broker had posted an ad on Zillow.com. The appellant, Vantage Capital, made these contentions concerning the timing and content of the ad:

Vantage contends the listing on Zillow.com did not comply with the requirements for a qualifying offer under RCW 6.23.120(1) because it was posted one day before the end of the redemption period, the sale price of \$170,000 was more than double the minimum qualifying offer required by the statute, and the advertisement did not reference RCW 6.23.120 or provide a deadline for offers.[8] Vantage argues that as a consequence, the listing on Zillow.com is contrary to the intent of the statute to generate multiple offers.²³

The PHTS court answered Vantage Capital’s contentions in the negative:

RCW 6.23.120 does not require the licensed real estate broker to list the property for sale for a specific time or for a certain amount or to refer to the redemption statute. Nor does the statute preclude the licensed real estate broker from making an offer right before the expiration of the redemption period. ... Under the plain language of the statute, the court did not err in concluding *P.H.T.S.* made a qualifying offer.²⁴

Since there was a published ad in *P.H.T.S.*, the court did not need to decide whether a published ad is required. Instead, the court addressed whether the published ad in that case disqualified the offer.²⁵

But in considering the statute, the court laid the groundwork for deciding this issue

²³ *P.H.T.S., LLC v. Vantage Capital, LLC*, 186 Wn.App. 281, ¶ 17, 345 P.3d 20 (2015).

²⁴ *P.H.T.S., LLC v. Vantage Capital, LLC*, 186 Wn.App. at ¶ 22.

²⁵ The *P.H.T.S.* court could have been clearer about what it was deciding and what it was assuming without deciding. It also could have avoided using the term “listing” to define the term “listing” since circular definitions do not provide clarity. *Citizens Alliance for Property Rights Legal Fund v. San Juan County*, 184 Wn.2d 429, 359 P.3d 753 (2015) (statutory definition of “meeting” that includes the term “meeting” does not clarify what a “meeting” is.)

by defining the plain meaning of “listing.”²⁶ None of the definitions include posting an ad.

The type of listing contemplated by RCW 6.23.120 is a “nonexclusive” listing, also known as an open listing.²⁷ Prof. Stoebuck explained open listings as follows:

Listing agreements are of three kinds, the distinctions among them having to do with how exclusive the broker’s right to compensation is during the period of the agreement. These three types are properly called the “open listing,” the “exclusive agency,” and the “exclusive right to sell.” ...

Under an open listing, a broker is entitled to a commission only if, during the period covered by the agreement, he is the first person to be the “procuring cause” of a sale. ... A seller may safely give open listings to as many brokers as will take them. Thus, our listing broker, though he may expend ever so much effort in unsuccessful attempts to find buyers, has little protection against other persons who are attempting to effect a sale of the same land. For that reason, brokers are seldom willing to take open listings or, if they do so, to expend much effort and expense in working the listing.²⁸

It should be apparent that an open listing is not the type of listing a broker wants to disclose to other brokers. There would be nothing to prevent another broker from finding a buyer, obtaining his own open listing agreement from the seller, and earning the full commission. And yet, Respondents would have the court believe that the legislature intended to require brokers to publicize their open listings to other brokers. That would undercut the incentive to work the open listings created by the statute. The court should not assume the legislature intended to sabotage the effectiveness of the statute by undercutting the incentive to the brokers.

Respondents argue that a broker operating under RCW 6.23.120 should “list” the property with a multiple listing agency. Cobalt brief, at 9. Professor Stoebuck more accurately

²⁶ *P.H.T.S., LLC v. Vantage Capital, LLC*, 186 Wn.App. at ¶¶ 19, 20, and 21.

²⁷ RCW 6.23.120 (1); *Graham v. Findahl*, 122 Wn. App. 461, 463, 93 P.3d 977 (2004), Black's Law Dictionary 1016 “open listing” (9th ed. 2009).

²⁸ 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate Transactions* § 15.4, at 193-94 (2d ed. 2004).

calls this “cross-listing” and points out that only exclusive-right-to-sell listings (not open listings) are cross-listed:

The multiple listing agency is a voluntary organization of real estate brokers in a defined area which pools, or “cross-lists,” their listings. Member brokers agree among themselves that all members may work and sell each other’s listings, with an agreed split of commissions. Generally, only a broker’s listings that are of the exclusive-right-to-sell kind are cross-listed. ... To facilitate cross-sales by other members, the listing broker will reproduce and distribute to them the listing card and usually a photograph of the premises and will, if there is a building on the premises, install a locked box, to which all members have the means of access, that contains a door key. Of course the members are legally entitled to work each other’s listings and to share commissions, because all have contractually agreed to it.²⁹

An open listing is not cross-listed on a multiple listing service for the obvious reason that the cross-listing broker would likely lose the commission to another broker. And Respondents point to no authority, or to anything in the record, establishing that a multiple listing service would even allow the cross-listing of an open (as opposed to exclusive-right-to-sell) listing.

The listing broker’s duty is to find a buyer. There is no statutory or case law specifying how a broker is to find a buyer.

When a real estate broker has a listing for the seller, his essential duty is to find a buyer who is ready, willing, and financially able to purchase the land on terms acceptable to the seller. He is to bring buyer and seller together, so that they may consummate the transaction. In strict contract theory, in the commonly used form of listing agreement, the broker has no “duty” to undertake anything; it is in form a unilateral contract, under which the broker gets a commission if he finds a ready, willing, and able buyer.³⁰

²⁹ 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate Transactions* § 15.5, at 194 (2d ed. 2004). See also *McIver v. Commissioner*, 36 T.C.M. (CCH) 719 (U.S. Tax Court 1977) (“It is common practice in the real estate brokerage business in Florida for a seller’s broker to ‘cross-list’ the property and to split the commission with the broker for the purchaser”).

³⁰ 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate Transactions* § 15.7, at 199 (2d ed. 2004).

A listing broker's duty has never been defined as requiring the public advertisement of the property for sale.

Cobalt argues that the statute cannot work unless all brokers trying to find a buyer are required to publicly advertise the property for sale. Cobalt brief, at 18. Cobalt assumes that the legislature expected real estate brokers to make public service announcements about the statute rather than look after the interest of their buyers. The legislature had a different idea. The legislature gave many brokers an incentive, the hope of earning the commission, to get them to find buyers and generate offers. It did not command an advertisement or specify its content. It harnessed the competitiveness and knowledge of real estate brokers. The legislature did not require a single broker take on a public ad campaign. It expected a single broker to produce a single buyer to make a single offer, and hoped that other brokers would do the same, and that the judgment debtor would be the beneficiary of the competition between them. It created an incentive for brokers to find buyers and generate offers. Cobalt's interpretation of the statute would take away that incentive.

If the legislature had intended the broker to publish a written advertisement with peculiar content, it knew how to express that intent but chose not to. For example, it requires the sheriff to publish notice of the sheriff's sale and specifies the content as well as where the notice must be posted. RCW 6.21.030. It requires the sheriff's sale purchaser to send notices to the judgment debtor warning of the expiration of the redemption period. RCW 6.23.030. Versions of both of these requirements were enacted in the same session law as what is now RCW 6.23.120. Laws of 1981, ch. 329. The legislature could have provided the same specification with respect to the definition or content of a "listing" in RCW 6.23.120, but it did not do so. The legislature could have required the sheriff or the sheriff's sale purchaser or the real estate broker to publish a

notice of the availability of the property under RCW 6.23.120, but it did not do so.

There are two sentences in RCW 6.23.120 (1) that use the term “listing.”

... [A]ny licensed real estate broker **within the county in which the property is located** may nonexclusively list the property for sale whether or not there is a listing contract....

An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker **listing the property**

Cobalt argues that the phrase “listing the property” would be superfluous if it did not mean posting an ad. Cobalt, at 10. But it cannot be said that words are superfluous if the subtraction of the words would change the meaning of the sentence. Deleting “listing the property” would change the meaning of the sentence and introduces a contradiction into the statute. The first sentence requires the broker to be a “broker within the county in which the property is located.” Without some kind of qualifying phrase, the second sentence would include *all* licensed brokers, not just those in the same county as the property. But it is apparent from the first sentence that the legislature did not intend to allow all brokers to handle upset offers, just those in the same county as the property. The phrase “listing the property” is not superfluous.

G. Colette Glenn’s offer was not a higher current, qualifying offer.

Performance has argued that Glenn’s offer was not qualifying because it required conveyance by warranty deed and did not distribute the purchase price as required by RCW 6.23.120, and was not current because Glenn did not tender the purchase price within two banking days after her offer was accepted. Appellant’s opening brief, at 24. Respondents did not address any of these disqualifying deficiencies.

Conclusion

D&J Shires, LLC bought the subject property for \$36,000 and sold it to Glenn for \$175,000, pocketing \$153,646.34 in net proceeds selling a property before the end of the

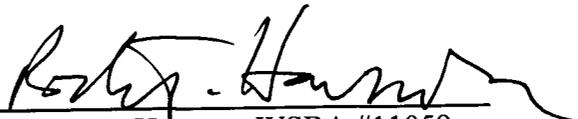
redemption period. CP 245, 365, 391. None of those funds found their way to the judgment debtor.

Colette Glenn made the mistake of buying real property from a sheriff's sale purchaser before the expiration of the one-year statutory redemption period. She is protected by the warranties of her grantor and indemnity of her title insurer, CP 218, 408, but she bought subject to the substantive rights established by RCW 6.23.120. Performance Construction has made the highest current, qualifying offer under that statute. Its offer was made within the statutory one-year redemption period by a licensed real estate broker in Snohomish County. Colette Glenn made an offer to buy the property, but the offer is neither qualifying nor current under RCW 6.23.120.

Colette Glenn is statutorily obligated to accept the offer of Performance Construction, and to deliver to it the bargain and sale deed attached to the offer. The Court should so declare and should:

- 1) reverse the trial court, except to the extent it voided the sheriff's deed and the ex parte order for its issuance,
- 2) grant Performance Construction's motion for summary judgment, and
- 3) remand this case with instructions to the trial court to deal with any procedural questions that arise during the closing.

Dated this 2nd day of February, 2016



Rodney T. Harmon, WSBA #11059
Attorney for Performance Construction, LLC

CL16707958

FILED

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SONYA KRASKI
COUNTY CLERK
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

BROOKWOOD PLACE CONDOMINIUM
ASSOCIATION, a Washington Non-Profit
Corporation;

Plaintiff

vs.

SLIGHTER PROPERTY II, LLC, a
Washington limited liability company;
THOMAS SLIGHTER, an individual,
BONNIE SLIGHTER, an individual, and the
marital community comprised thereof;
NATIONSTAR MORTGAGE, LLC, a
Delaware limited liability company; and
GREENPOINT MORTGAGE FUNDING,
INC., a New York corporation;

Defendants

NO. 13-2-05481-5

ORDER DIRECTING ISSUANCE OF
SHERIFF'S DEED

THIS MATTER having come before the above-entitled Court upon the motion of
DAVID D. KEENE for an order directing the Sheriff of SNOHOMISH County, Washington, to
issue a Sheriff's Deed free and clear of any rights of redemption as conferred by RCW 6.23 *et*
seq. for the following described property :

UNIT 204, OF LATITUDE, A CONDOMINIUM,
SURVEY MAP AND PLANS RECORDED IN
VOLUME 189 OF CONDOMINIUMS, PAGES 1
THROUGH 17, INCLUSIVE, AND
AMENDMENTS THERETO; CONDOMINIUM
DECLARATION RECORDED UNDER

ORDER DIRECTING
ISSUANCE OF SHERIFF'S DEED - 1

ORIGINAL

Law Office of
STEPHEN M. HANSEN, P.S.
ALBERS MILL, SUITE 100
1821 DOCK STREET
TACOMA, WASHINGTON 98402
(253) 302-6835
(253) 301-1147 Fax

41

Appendix A

EXHIBIT I
264

1 RECORDING NUMBER 20030401001952, AND
2 AMENDMENTS THERETO, IN SNOHOMISH
3 COUNTY, WASHINGTON

4 ASSESSOR'S TAX PARCEL ID#: 420500-1020

5 I. FINDINGS

6 BASED UPON the Court's review of the instant motion, and declarations filed in support
7 of the motion, the Court specifically FINDS as follows:

- 8 1. Plaintiff's *Complaint for Lien Foreclosure*, filed in the above-entitled matter on
9 June 12, 2013, sought a judgment and foreclosure for unpaid monthly
10 condominium homeowner's association's assessments, fees, interest, and
11 attorneys' fees owed by Defendant SLIGHTER based upon the Plaintiff's
12 Homeowner's Association lien against the subject property. The Complaint, at
13 page 6, paragraph 11.3 prayed for foreclosure of its lien as follows:

14 That by such foreclosure and sale, the rights of each
15 of the Defendants and persons claiming by, through,
16 or under them should be adjudged inferior and
subordinate to Plaintiff's Lien and be forever
foreclosed, except only for the statutory right of
redemption allowed by law, pursuant to RCW
64.34.364.

- 17 3. All Defendants were properly served. On July 31, 2013, a default order was
18 entered against Defendants Nationstar Mortgage, LLC ("Nationstar") and
19 Greenpoint Mortgage Funding, Inc. ("Greenpoint"). On October 9, 2013,
20 Plaintiff obtained a Judgment and Foreclosure Decree against Defendants
21 SLIGHTER and *all named Defendants* for Plaintiff's assessments, interest and
22 attorney's fees. A Praecipe for Order of Sale was filed in this matter and an Order
23 of Sale was entered on October 23, 2013. On January 3, 2014, the Sheriff of
24 SNOHOMISH County conducted a foreclosure sale. Mr. DAVID KEENE, the
25 moving party herein, was the successful bidder at this foreclosure sale. The
26 Sheriff's Sale for the subject-property was confirmed by virtue of an order entered

27 ORDER DIRECTING
28 ISSUANCE OF SHERIFF'S DEED - 2

Law Office of
STEPHEN M. HANSEN, P.S.
ALBERS MILL, SUITE 103
1821 DOCK STREET
TACOMA, WASHINGTON 98402
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1 on January 31, 2014.

2 4. On January 30, 2014, DAVID D. KEENE, for good and valuable consideration,
3 purchased an assignment of Defendants SLIGHTER's and SLIGHTER
4 PROPERTY II, LLC's redemption rights (collectively, "Defendants
5 SLIGHTER").

6 5. All parties who possesses a lien interest in the subject-property were named as
7 Defendants in this matter. There are no other parties or entities who are able to
8 redeem the subject property.

9 II. ORDER

10 BASED UPON the FINDINGS of the Court as entered above, it is hereby ORDERED,
11 ADJUDGED and DECREED as follows:

- 12 1. The motion is hereby GRANTED;
- 13 2. There are no qualified redemptioners for the above-described property as defined
14 in RCW 6.23.010;
- 15 3. The Sheriff of SNOHOMISH County, Washington, be and is hereby directed to
16 issue a Sheriff's Deed to DAVID D. KEENE for the following described real
17 property

18 UNIT 104, BUILDING T, BROOKWOOD PLACE
19 CONDOMINIUM, A CONDOMINIUM,
20 ACCORDING TO THE DECLARATION
21 THEREOF, RECORDED UNDER SNOHOMISH
22 COUNTY AUDITOR'S FILE NO 200606210170,
23 AND IN SURVEY MAPS AND PLANS
24 RECORDED UNDER AUDITOR'S FILE NO
25 200606215001, AND ANY AMENDMENTS
26 THERETO SITUATE IN THE COUNTY OF
27 SNOHOMISH, STATE OF WASHINGTON

28 ASSESSOR'S TAX PARCEL ID#: 008821-020-104-00

- 24 4. Such Sheriff's Deed shall be issued free and clear of any rights of redemption of
25 any and all parties, and shall be issued forthwith following payment to the
26 SNOHOMISH County Sheriff of any fees due to the Sheriff in accordance with

27 ORDER DIRECTING
28 ISSUANCE OF SHERIFF'S DEED - 3

Law Offices of
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ALBERS HILL, SUITE 103
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TACOMA, WASHINGTON 98402
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(253) 301-1147 Fax

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the issuance of such Deed,

DONE IN OPEN COURT this 3rd day of March, 2014.

MAR 04 2014

JUDGE COURT COMMISSIONER

Presented By:

Law offices of STEPHEN M. HANSEN, P.S.

STEPHEN HANSEN, WSBA# 15642
Attorney for DAVID KEENE

**ORDER DIRECTING
ISSUANCE OF SHERIFF'S DEED -4-**

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1048045

1L 08

IN THE SUPERIOR COURT OF WASHINGTON FOR SNOHOMISH COUNTY

BROOKWOOD PLACE CONDOMINIUM ASSOCIATION, A WASHINGTON NON-PROFIT CORPORATION, PLAINTIFF,

VS

SLIGHTER-PROPERTY II, LLC, A WASHINGTON LIMITED LIABILITY COMPANY, THOMAS SLIGHTER, AN INDIVIDUAL, BONNIE SLIGHTER, AN INDIVIDUAL, AND THE MARITAL COMMUNITY COMPRISED THEREOF, NATIONSTAR MORTGAGE, LLC, A DELAWARE LIMITED LIABILITY COMPANY, AND GREENPOINT MORTGAGE FUNDING, INC., A NEW YORK CORPORATION, DEFENDANTS

SHERIFF'S DEED TO REAL PROPERTY

NO 13 2 05481 5
JUDGMENT RENDERED ON 10/9/2013
ORDER OF SALE ISSUED 10/23/2013
DATE OF SALE 1/3/2014
DATE OF REDEMPTION N/A
DATE OF DEED 4/9/2014

ORIGINAL

No. 7582329 4/14/2014 11:14 AM
Thank you for your payment.
1500A

I, TY TREMARY, THE SHERIFF OF SNOHOMISH COUNTY, STATE OF WASHINGTON, DO HEREBY CERTIFY THAT UNDER AND BY VIRTUE OF THE PROCEDURE INDICATED ABOVE, ISSUED OUT OF THE ABOVE ENTITLED COURT, IN THE ABOVE ENTITLED ACTION, DULY ATTESTED, AND DIRECTED AND DELIVERED TO ME, BY WHICH I WAS COMMANDED TO LEVY UPON AND SELL THE RIGHT, TITLE AND INTEREST OF THE DEFENDANT IN PROPERTY HERINAFTER DESCRIBED ACCORDING TO LAW, AND APPLY THE PROCEEDS OF THE SUCH SALE TO THE SATISFACTION OF THE JUDGMENT IN SAID ACTION, WITH INTEREST AND COSTS OF SUIT, I DULY LEVIED ON AND SOLD AT PUBLIC AUCTION, AFTER DUE AND LEGAL NOTICE, TO: D&J SHIRES, LLC, WHO WAS THE HIGHEST AND BEST BIDDER THEREFORE, AT SUCH SALE, FOR THE SUM OF \$36,000.00, THE REAL ESTATE, SITUATED IN SNOHOMISH COUNTY, STATE OF WASHINGTON, HERINAFTER DESCRIBED, THE DESCRIPTION OF WHICH IS INCORPORATED BY THIS REFERENCE I THEREUPON DELIVERED TO SAID PURCHASER A CERTIFICATE OF SALE AS REQUIRED BY LAW I FURTHER CERTIFY THAT ON 3/4/14, I RECEIVED AN ORDER DIRECTING ISSUANCE OF SHERIFF'S DEED, AS THERE ARE NO QUALIFIED REDEMPTIONERS

NOW, THEREFORE, I, SHERIFF OF SNOHOMISH COUNTY, OR MY AUTHORIZED DEPUTY, BY VIRTUE OF THE PROCEDURE INDICATED ABOVE AND PURSUANT TO THE STATUTES RELEVANT TO SUCH PROCEDURE, DO HEREBY GRANT, BARGAIN, SELL, CONVEY AND CONFIRM, D&J SHIRES, LLC, AS THE PURCHASER AT SAID SALE, OR AS HIS SUCCESSOR IN INTEREST, OR AS A REDEMPTIONER SO HERETO ENTITLED, AND TO HIS HEIRS, SUCCESSORS AND ASSIGNS FOREVER THE REAL ESTATE, THE DESCRIPTION OF WHICH IS INCORPORATED ABOVE, AS FULLY AS I CAN, MAY OR OUGHT TO BY VIRTUE OF THE PROCEDURE INDICATED ABOVE, THE ORDERS OF SAID COURT, AND THE STATUTES OF THIS STATE

AS EVIDENCE OF MY SO GRANTING AND CONVEYING, I OR MY AUTHORIZED DEPUTY HEREBY SET MY HAND ON THE DATE INDICATED ABOVE, AT EVERETT, WASHINGTON

STATE OF WASHINGTON
COUNTY OF SNOHOMISH

TY TREMARY, SHERIFF
SNOHOMISH COUNTY SHERIFF'S OFFICE

BY *Brent Meyer*
UNDERSHERIFF BRENT MEYER
EVERETT, WASHINGTON

DOCKET # 14001364 / 13006490

LEGAL DESCRIPTION UNIT 104, BUILDING T, BROOKWOOD PLACE CONDOMINIUM, A CONDOMINIUM, ACCORDING TO THE DECLARATION THEREOF, RECORDED UNDER SNOHOMISH COUNTY AUDITOR'S FILE NO 200606210170, AND IN SURVEY MAPS AND PLANS RECORDED UNDER AUDITOR'S FILE NO 200606215001, AND ANY AMENDMENTS THERETO SITUATE IN THE COUNTY OF SNOHOMISH, STATE OF WASHINGTON, ASSESSOR'S PROPERTY TAX PARCEL OR ACCOUNT NUMBER 008821-020-104-00, ADDRESS OF PROPERTY 18930 BOTHELL EVERETT HWY, #T-104, BOTHELL, WA 98012

ORIGINAL DOCUMENT, DO NOT MISPLACE WILL NOT BE REPLACED WITHOUT COURT ORDER



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01/20/2014 3:19 PM STA 60
SNOHOMISH COUNTY, WASHINGTON

WHEN RECORDED RETURN TO:

D + JSHiles, LLC
4079 27th Ave. West
STE 403
Seattle WA 98199

SUPERIOR COURT, SNOHOMISH COUNTY, WASHINGTON

BROOKWOOD PLACE
CONDOMINIUM ASSOCIATION, a
Washington Non-Profit Corporation:

NO. 13-2-05481-5

Plaintiff

ASSIGNMENT OF REDEMPTION
RIGHTS

vs.

SLIGHTER PROPERTY II, LLC, a
Washington limited liability company;
THOMAS SLIGHTER, an individual,
BONNIE SLIGHTER, an individual,
and the marital community comprised
thereof; NATIONSTAR
MORTGAGE, LLC, a Delaware
limited liability company; and
GREENPOINT MORTGAGE
FUNDING, INC., a New York
corporation;

*Not previously
Recorded*

Defendants

FOR VALUE RECEIVED, the undersigned, THOMAS SLIGHTER, and
BONNIE SLIGHTER, on behalf of themselves individually, and on behalf of
SLIGHTER PROPERTY II, LLC, a Washington limited liability company as the
Company's duly authorized Member/Managers, hereby irrevocably grant, assign,
transfer and convey unto DAVID D. KEENE, and/or assigns, the Undersigned's
rights of redemption conferred upon the Undersigned by virtue of RCW 6.23 *et*
seq. and pursuant to that certain Sheriff's Sale of the SNOHOMISH County
Sheriff made on January 3, 2014, by virtue of the Order of Sale entered in the
above-captioned Superior Court matter, Cause No. 13-2-05481-5, on October 23,
2013.

THIS ASSIGNMENT OF REDEMPTION RIGHTS pertains to the following legally described property:

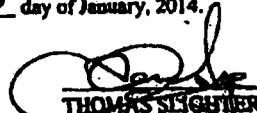
UNIT 104, BUILDING T, BROOKWOOD PLACE
CONDOMINIUM, A CONDOMINIUM,
ACCORDING TO THE DECLARATION
THEREOF, RECORDED UNDER SNOHOMISH
COUNTY AUDITOR'S FILE NO 200606210170,
AND IN SURVEY MAPS AND PLANS
RECORDED UNDER AUDITOR'S FILE NO
200606215001, AND ANY AMENDMENTS
THERE TO SITUATE IN THE COUNTY OF
SNOHOMISH, STATE OF WASHINGTON

ASSESSOR'S TAX PARCEL ID#: 008821-020-104-00

THE UNDERSIGNED warrants that this Assignment is made freely and voluntarily and with knowledge of the rights to redemption under RCW 6.23 *et seq.* The Undersigned has been afforded the opportunity to consult with counsel of the Undersigned's choice prior to executing this Assignment and has either obtained such counsel or elected to forego such counsel. The Undersigned waive notice of presentment of this Assignment to the Court in the above-referenced matter.

THIS ASSIGNMENT IS IRREVOCABLE AND INCLUDES ANY RIGHTS IN AND TO THE ABOVE-DESCRIBED PROPERTY AVAILABLE TO THE UNDERSIGNED UNDER RCW 6.23 *et seq.* OR AS ACQUIRED THEREAFTER.

DATED this 30th day of January, 2014.


THOMAS SLIGHTER, individually, and on
behalf of SLIGHTER PROPERTY II, LLC,
a Washington limited liability company, as
one of its Member/Managers


BONNIE SLIGHTER, individually, and on
behalf of SLIGHTER PROPERTY II, LLC,
a Washington limited liability company, as
one of its Member/Managers