

75433-5

No. 75433-5-1

75433-5

**THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE**

SEAWIND HOMEOWNERS ASSOCIATION

v.

THE ROSALIND ROMANO LIVING TRUST, DATED THE
11th DAY OF OCTOBER, 2006; ROSALIND L. ROMANO;
ROSALIND L. ROMANO, TRUSTEE OF THE ROSALIND
ROMANO LIVING TRUST, DATED THE 11th DAY OF
OCTOBER, 2006; ANY SUCCESSOR TRUSTEE or
BENEFICIARY OF THE ROSALIND ROMANO LIVING
TRUST, DATED THE 11th DAY OF OCTOBER, 2006;
HOUSEHOLD FINANCE CORPORATION III;

and

DYNAMIC FUNDING, LLC, Appellant.

On Appeal from King County Superior Court
Case No. 14-2-27437-8
HON. BRUCE E. HELLER

RESPONDENT'S BRIEF

Julia A. Phillips
WSBA# 32735
Attorneys for Respondent U.S. Bank Trust, N.A., as Trustee for LSF9
Master Participation Trust, by its attorney in fact and successor loan
servicer Caliber Home Loans, Inc.
Aldridge Pite, LLP
9311 SE 36th Street, Suite #100
Mercer Island, WA 98040
(206) 232-2752
jphillips@aldridgepite.com

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I. INTRODUCTION:

Appellant Dynamic Funding LLC (“Dynamic”) obtained an Order to Show Cause as to whether it had made a “qualifying offer” to purchase a property for \$53,500, which by Appellant’s own estimate is worth \$120,000 - \$146,801, and upon which Respondent is owed over \$196,000.00. Dynamic is attempting to distort the meaning of RCW 6.23.120 to reap a windfall at Respondent’s expense.

The trial court properly denied Appellant’s order to show cause. This Court should affirm the trial court finding that a purchase offer of \$53,500 was insufficient because it failed to consider that Respondent was a junior lienholder that had redeemed the property such that any “qualifying offer” would include the amount due under the redeemed debt.

II. RESTATEMENT OF THE ISSUES

1. Whether the Homestead Exemption applied in this case so as to allow the application of RCW 6.23.120.
2. Whether the Property Owner in this case could claim a Homestead.
3. Whether RCW 6.23.120 applies after a redemption, and if it does, whether it requires a qualifying offer to include a redemptioner’s unpaid debt.
4. Did the trial court err in allowing Appellant to litigate the issue of a qualifying offer under RCW 6.23.010 as part of an Order to Show Cause proceeding?

III. RESTATEMENT OF THE CASE

A. Factual Background of Sheriff’s Sale

Appellant Dynamic Funding LLC never had any interest in the real

property at issue and never intervened in the case. The property is located at 22224 24th Ave. S., #H-63, Des Moines, WA 98198 (the "Property"), and is part of a condo association. CP 21. Due to the nonpayment of condominium assessments starting in March of 2011, the condominium, Seawind Homeowner Association (the "Association") brought suit on October 6, 2014 for lien foreclosure. CP 1-8. The Complaint alleged the record owner of the Property was Rosalind L. Romano, trustee of the Rosalind Romano Living Trust, Dated the 11th Day of October, 2006 (the "Rosalind Romano Living Trust"). CP 2. The Complaint also sought the Appointment of a Receiver and asked that the purchaser at the foreclosure sale be entitled to immediate possession of the Property. CP 5, 7. The Complaint stated that the owner could not claim the homestead exemption, as it did not apply in actions to foreclose Association liens. CP 4-5.

Household Finance Corporation III ("HSBC") was named as a defendant in the action by way of its status as beneficiary and lender under a Deed of Trust against the Property, recorded in King County on May 31, 2007 under recording number 20070531003428. CP 3; 151-158. The Deed of Trust was granted by the record owner, Rosalind L. Romano, trustee of the Rosalind Romano Living Trust. CP 151-158. The underlying promissory note, in the amount of \$168,060.00, is signed solely by Rosalind Romano. CP 145-150. HSBC did not appear or answer and an Order of Default was entered against it on December 17, 2014. CP 13-14.

On February 10, 2015, an Order of Default was also entered against Any Successor Trustee or Beneficiary of the Rosalind Romano Living Trust. CP 15-19. Also on February 10, 2015, the Rosalind

Romano Living Trust, Rosalind Romano as Trustee, and Rosalind Romano, individually, entered into a stipulated judgment and agreed order and decree of foreclosure, in the amount of \$18,257.13, agreeing that a decree of foreclosure was granted, and agreeing that Rosalind Romano would be allowed to occupy the Property during the 12 month redemption period. CP 20-25.

On April 24, 2015, the Property was sold to the Association for a credit bid of \$25,926.97, and the sale was later confirmed by the Court. CP 37-39. Thereafter, the Association filed a full satisfaction of judgment on January 4, 2016. A Certificate of Purchase was recorded in King County on July 7, 2015. CP 89-90.

B. Redemption by HSBC and Sale to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust.

HSBC was a qualified redemptioner under RCW 6.23.010(1)(b) and exercised its rights to redeem by paying the sum of \$34,602.72. CP 93. As such, the Sheriff issued a Certificate of Redemption of Real Estate on December 11, 2015. CP 93-94. It was recorded on January 13, 2016 under recording number 20160113000442. Request for Judicial Notice (“RJN”), Ex. D. On or about March 29, 2016, HSBC sold its rights to the Property to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, and the debt became serviced by Caliber Home Loans, Inc.. CP 159.¹

¹ Although the issue was not decided at the trial court level, there is nothing to indicate that U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, purchased its interest in the Property as anything other

On April 25, 2016, Appellant sent HSBC a written offer to purchase the Property for \$53,500.00. CP 96-97. This amount is a fraction of the amount due on the deed of trust and related promissory note. CP 160. The offer to Purchase was signed by Larson Real Estate LLC. CP 97. Larson Real Estate had apparently listed the Property for sale on Zillow.com for \$120,000.00, and the listing contains an estimate of the Property value as being \$146,801.00. CP 104-113. The Property was listed on Zillow.com on April 24, 2016, just one day before the \$53,500.00 offer such that the Property was “on the market” for less than a day, and for only the last day before the redemption period expired. CP 55.

C. Procedural Background

On May 19, 2016, Appellant, without notice to Respondents, filed an ex parte Motion for Order to Show Cause, seeking an order that they had made a “qualifying offer” pursuant to RCW 6.23.120 and that Respondent must accept the offer. CP 41-50. An Order to Show Cause was issued that same day, on May 19, 2016, setting a hearing on June 3, 2016. Thus, Respondents only had a narrow window to respond and show cause why they did not need to accept a \$53,500 offer that was less than half of Appellant’s own valuation of the Property. CP 58-59. Appellant also sought an order that would require Respondent to accept the purchase offer and petition the Sheriff for issuance of a Sheriff’s Deed to the

than that a bona fide purchaser.

Property within ten days of court ruling.² CP 59.

On June 1, 2016, Respondent opposed the Order to Show Cause. CP 126-133. In doing so, Respondent introduced a declaration showing that HSBC had sold its loan to U.S. Bank Trust, N.A., as Trustee for LSF9 Master Participation Trust, and that its agent Caliber Home Loans was in possession of the promissory note at issue. CP 142-144. Moreover, after paying the \$34,602.72 redemption fee, the total amount due under the promissory note equaled \$196,756.33 as of June 8, 2016. CP 160.

After a hearing on June 3, 2016, the trial court took the matter under advisement. CP 197. On June 24, 2016, the Court issued an Order denying the Motion to Show Cause because 1) RCW 6.23.120 did not apply as the homestead exemption was not available and 2) the offer of \$53,500 was insufficient because it failed to include the amount of Respondent's debt on the property, and Respondent had the legal status of a redemptioner. CP 198-199.

IV. ARGUMENT

A. Standard of Review

To the extent that the issues before the court raise questions of statutory interpretation, these are questions of law reviewed de novo. Beal Bank, SSB v. Sarich, 161 Wash. 2d 544, 547, 167 P.3d 555, 556 (2007) (En Banc).

² Since the Show Cause Hearing, the Sheriff's Deed to the Property has now been issued to Respondent, and recorded in King County. RJF, Ex. C.

B. The Purpose of RCW 6.23.120 is to Generate Funds for Judgment Debtors Who Lose Their Homes at a Sheriff's Sale for Less than Fair Market Value. No Such Purpose Would Be Served In This Case.

Appellant argued the purpose of RCW 6.23.120 in their June 2, 2016 Reply brief, filed one day before the Order to Show Cause hearing. CP 161-196. Appellant correctly noted that the purpose of the statute is to benefit the judgment debtor. The statute provides as follows:

Listing of property for sale during redemption period—
Acceptance of qualifying offer if property unredeemed and
deed issued—Procedure—Disposition of proceeds.

(1) Except as provided in subsection (4) of this section, during the period of redemption for any property that a person would be entitled to claim as a homestead, any 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. If the property is not redeemed by the judgment debtor and a sheriff's deed is issued under RCW 6.21.120, then the property owner shall accept the highest current qualifying offer upon tender of full cash payment within two banking days after notice of the pending acceptance is received by the offeror. If timely tender is not made, such offer shall no longer be deemed to be current and the opportunity shall pass to the next highest current qualifying offer, if any. Notice of pending acceptance shall be given for the first highest current qualifying offer within five days after delivery of the sheriff's deed under RCW 6.21.120 and for each subsequent highest current qualifying offer within five days after the offer becoming the highest current qualifying offer. An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property and is at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined under RCW 6.23.020 and (b) the normal commission of the real estate broker or agent handling the offer.

(2) The proceeds shall be divided at the time of closing with: (a) One hundred twenty percent of the redemption amount determined under RCW 6.23.020 paid to the property owner, (b) the real estate broker's or agent's normal commission paid, and (c) any excess paid to the judgment debtor.

(3) Notice, tender, payment, and closing shall be made through the real estate broker or agent handling the offer.

(4) This section shall not apply to mortgage or deed of trust foreclosures under chapter 61.12 or 61.24 RCW. (emphasis added)

RCW 6.23.120 (emphasis added).

Remarkably, in raising the purpose of the statute on the eve of the Order to Show Cause hearing, Appellant has still never shown how the proposed purchase would provide any benefit to the Judgment Debtor. Nothing in Dynamic's pleadings shows any monetary disbursement to the Judgment Debtor or benefit in any way. The reason is obvious -- there is no benefit to the Judgment Debtor. In fact, allowing Appellant to use RCW 6.23.120 in the proposed manner could harm the Judgment Debtor, because the Judgment Debtor can still be held liable for the Respondent's loss, pursuant to the promissory note.

The simple truth is that Appellant is trying to use a borrower's statutory protection as a sword to purchase a property for \$53,500.00 when its estimated value is at least \$120,000.00, and when the indebtedness due to Respondent is over \$196,000. Interpreting the statute in this manner would lead to an inequitable windfall to Appellant that is contrary to the statutory purpose.

Additionally, none of the cases addressing RCW 6.23.120 has addressed the factual scenario in which a statutory redemptioner had redeemed. Appellant would like the Court to find that the redemption makes no difference whatsoever, but in fact it alters the amount of a qualifying offer. Moreover, by the very title of the statute, RCW 6.23.120 is only applicable if a property is “unredeemed” which is not the case here.

While the Judgment Debtor stipulated that they could live at the Property during the redemption period, they made no attempt to redeem. While the Judgment Debtor could have redeemed after Respondent did so, RCW 6.23.040(3) clarifies that to do so the Judgment Debtor would need to pay the deed of trust debt held by the Redemptioner.³ If the Judgment Debtor would need to pay this amount, at least \$196,756.33, it would turn the legislative intent of the redemption statutes on its head to find that a third party such as Appellant only has to pay \$53,500.00 for the Property, a fraction of what the Judgment Debtor would need to pay in this case.

Appellant makes much of the fact that the mortgage lien was extinguished. While this may be true, the debt has not in any way been eliminated. While foreclosure eliminates the security of a junior

³ RCW 6.23.040(3) provides in pertinent part: A judgment debtor who redeems from a redemptioner under this section must make the same payments as are required to effect a redemption by a redemptioner, including any lien by judgment, decree, deed of trust, or mortgage, other than the judgment under which the property was sold, held by the redemptioner.

lienholder, the debts and obligations owed to that nonforeclosing junior lienholder are not affected by foreclosure under the statutes. In re Giannusa, 169 Wash. App. 904, 909, 282 P.3d 122, 124 (2012) (citing Beal Bank, 161 Wash.2d at 548, 167 P.3d 555 (2007) (En Banc) (foreclosure of a senior deed of trust does not extinguish the debt/obligation of any junior lienholder or otherwise preclude an action to recover that debt). Similarly in DeYoung v. Cenex Ltd., 100 Wash. App. 885, 895-896, 1 P.3d 587, 593 (2000), the court held in the context of a judicial foreclosure that a junior mortgagee foreclosed judicially may thereafter sue the debtor on the underlying obligation for the unsatisfied balance due, even if it exercises its redemption rights. In Cenex, the Court noted that in order to break even, the junior mortgagee redemptioner would need to get the amount paid to redeem the land, plus the money due on its own note. Id. at 895.

The same is true in this case. Respondent is entitled to the amount paid to redeem, plus the money due on the promissory note. The irony is that construing the statute in the way that Appellant desires would only increase the incentive for Respondent to seek recovery of the remaining debt from the Judgment Debtor, the very person that RCW 6.23.120 is supposed to benefit. Instead, it would allow a third party speculator to purchase the Property at a fraction of its value, increasing the loss to

Respondent, and thereby incentivizing Respondent to seek recovery against the Judgment Debtor.

The Court will avoid a literal reading of a statute which would result in unlikely, absurd, or strained consequences. Tingey v. Haisch, 159 Wash. 2d 652, 663-64, 152 P.3d 1020, 1026 (2007) (internal citations and quotations omitted). To find that a statute intended to benefit a judgment debtor should actually benefit a third party real estate investor would clearly be an absurd result. As argued below, RCW 6.23.120 should not even apply if there has been a redemption.

Conversely, if the statute is interpreted in the way that Respondent argued to the trial court, by requiring a payoff of at least 120% of the \$196,756.33 amount the Judgment Debtor would need to pay to redeem, Appellant would need to pay 120% of this amount, or no less than \$239,650.00. In that instance, then just as RCW 6.23.120 intended, the homeowner would benefit as there would be excess funds to pay to the Judgment Debtor.

Finally, Appellant also presented legislative history that another intent of the statute was to discourage speculation in the sheriff sale process. CP 169. If purchasers under RCW 6.23.120 can disregard redemptioner rights, and purchase homes at a small fraction of their fair market value, then speculation in the Sheriff sale process will only increase, contrary to the aim of the statute. Additionally, redemptioners will be less likely to redeem.

C. The Property Owner Was Not a Person Entitled to Claim a Homestead in the Property, Such That RCW 6.23.120 Did Not Apply and Appellant Could Not Invoke It

The governing statute, RCW 6.23.020, requires that the owner of the property is entitled to claim it as a homestead. Appellant argued in its Motion For Order to Show Cause that the property could be declared a homestead by “any” “person”. CP 163. This argument was recently rejected in Performance Constr., LLC v. Glenn, 2016 WL 4272386, at *7, wherein this court held that “any property that a person would be entitled to claim as a homestead” relates to the specific homestead status of the property at issue in the foreclosure action. Id. Moreover, the Court held that an owner, as set forth in RCW 6.23.120, applies solely to natural persons. Id. In Performance, the Court noted that the property was owned by an LLC at the time of the foreclosure, such that RCW 6.23.120 did not apply. Although both the LLC and the individuals were named, the Court noted that at the time of the foreclosure action, the property was owned by only the LLC.

Similarly, in this case, the foreclosure action was commenced on October 6, 2014. CP 1. At that time, Rosalind L. Romano, Rosalind L. Romano, trustee of the Rosalind Romano Living Trust, and the Rosalind Romano Living Trust were all named as Defendants. The Property, however, was owned solely the Rosalind Romano Living Trust, with Rosalind Romano acting as trustee of the trust. RJN, Ex. A. In fact,

Rosalind Romano quitclaimed the property to the Trust in 2006 and by the time of the foreclosure in this matter, the Trust had owned the Property for approximately eight years.

Thus, this case is factually similar to Performance Constr., LLC v. Glenn, 2016 WL 4272386, at *7, wherein the Court held that the owner at the time of the foreclosure was not a natural person and could not claim the homestead. As in the Performance case, the Property at issue was owned by a Trust, and Rosalind Romano, in her capacity as trustee, had entered into a Deed of Trust on the Property under the name of the Trust. CP 151-158. While Rosalind Romano, as Trustee, quitclaimed the Property back to herself long after the commencement of the foreclosure action, the rationale in Performance similarly applies and the Court should hold that RCW 6.13.010 does not apply as the “owner” at the time of the foreclosure action was not a natural person capable of occupying the property as its principal residence.

Finally, RCW 6.23.120(4) provides that the statute “shall not apply to mortgage or deed of trust foreclosures under chapter 61.12 or 61.24 RCW.” Once Respondent redeemed, which they were only able to do because of its position as a redemptioner under a junior deed of trust, the same rationale should apply to prevent RCW 6.23.120 from applying to a deed of trust holder that redeems under RCW 6.23.010(1)(b).

D. Even if the Homestead Issue Is Decided in Appellant’s Favor, RCW 6.23.120 Only Applies In the Absense of Redemption Such That It Does Not Apply In This Case.

In moving for the Order to Show Cause, Appellant disingenuously argued that the facts in this case are nearly identical to the facts of P.H.T.S., LLC v. Vantage Capital., LLC, 186 Wn.App. 281, 289 n. 8, 345 P.3d 20 (2015). CP 45. In fact, that case is inapposite because the property in the P.H.T.S. case was purchased by a third party purchaser at a Sheriff’s Sale and there was no redemption. P.H.T.S., 186 Wash. App. at 286, 345 P.3d at 22 (Vantage Capital LLC purchased the condominium at the public auction for \$45,500). In this case, the property was purchased by the Association via credit bid and then redeemed by a statutory redemptioner that was owed money under a deed of trust lien and a promissory note. The fact of the redemption in this case, entirely absent in the P.H.T.S. case, radically alters the amount necessary to redeem, or more likely, invalidates the application of RCW 6.23.120 at all, based on the statute’s very title, stating “-Acceptance of qualifying offer **if property unredeemed** and deed issued-.” The statement that RCW 6.23.120 only applies if the property is unredeemed, coupled with the statute’s failure to even mention RCW 6.23.040, pertaining to what must be paid to a redemptioner, supports the conclusion that after a redemption, RCW 6.23.120 is inapplicable.

In this case, HSBC, as redemptioner, redeemed the property, pursuant to RCW 6.23.010(1)(b):

Redemption from sale—Who may redeem—Terms include successors.

(1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property separately sold.

(b) A creditor having a lien by ... 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. The persons mentioned in this subsection are termed redemptioners.

RCW 6.23.010(1)(b) (emphasis added). The Washington Supreme Court recently addressed this provision and found that parties such as Respondent are proper redemptioners under RCW 6.23.010(1)(b). See BAC Home Loans Servicing, LP v. Fulbright, 180 Wash. 2d 754, 762, 328 P.3d 895, 899 (2014). The Fulbright Court noted that statutory redemption gives junior lienholders a grace period beyond the sale to salvage something—i.e., the junior lienholder can “redeem the land” by purchasing the land at the sale price, with interest and taxes, from the purchaser. [T]he idea is that only one whose title or lien has been extinguished may have ‘another bite of the apple. Id. at 762, 328 P.3d at 898 (citing 27 Marjorie Dick Rombauer, *Washington Practice: Creditors' Remedies—Debtors' Relief* § 3.19(b), at 163 (1998)). Appellant’s interpretation of the statute would destroy a redemptioner’s opportunity to salvage anything and lead to a windfall for a third party after redemption.

The statute by its very title only applies if the property is unredeemed, and that was not the case here. The Property was redeemed

by a statutory redemptioner. As such, RCW 6.23.120 does not even apply. If the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. Udall v. T.D. Escrow Servs., Inc., 159 Wash. 2d 903, 909, 154 P.3d 882, 886 (2007). Under this plain meaning rule, the court looks at both the wording of the statute and the wording of related statutes or other provisions of the same act. Pierce Cty. v. State, 144 Wash. App. 783, 806, 185 P.3d 594, 607 (2008), as amended on denial of reconsideration (July 15, 2008).

Consistent with this reading, RCW 6.23.120 provides that a qualifying offer is made as follows:

...An offer is qualifying if the offer is made during the redemption period through a licensed real estate broker listing the property and is at least equal to the sum of: (a) One hundred twenty percent greater than the redemption amount determined under RCW 6.23.020 and (b) the normal commission of the real estate broker or agent handling the offer.

RCW 6.23.120(1) (emphasis added).

Tellingly, there are different amounts to be paid on redemption, a price to be paid to the purchaser and a price to be paid to the redemptioner.

As set forth in 18 Wash. Prac., Real Estate § 19.19 (2d ed.):

The statute contains two primary discussions of the amount that must be paid upon redemption. RCWA 6.23.020(2) applies to a person who redeems from the sale purchaser...

RCWA 6.23.040 discusses the amount a redemptioner must pay when redeeming from another redemptioner, rather than from the purchaser. Such a redemptioner must pay: (1) the amount paid by the previous redemptioner, with interest

at eight per cent per annum; (2) the amount of any assessments or taxes the last redemptioner paid after redeeming, “with like interest”; and (3) the amount of any liens by judgment, decree, deed of trust, or mortgage, held by the last redemptioner, that are prior to the present redemptioner's lien with interest. RCWA 6.23.040(3) goes on to state that a judgment debtor who redeems from a redemptioner must make the same payments.

Id. The fact that RCW 6.23.120 only applies to unredeemed property and only mentions RCW 6.23.020 clearly supports the finding that once the property is redeemed, RCW 6.23.120 can not be invoked. Otherwise, the statute would reference RCW 6.23.040.

E. Even if RCW 6.23.120 Applies After Redemption, Appellant Failed to Make a Qualifying Offer Under the Statute

Even if RCW 6.23.120 applies after a redemption, the redemption amount determined under RCW 6.23.020 must be consistent with RCW 6.23.040 in that the debt on the deed of trust lien must be included in the redemption amount. It would be an absurd reading of the statute to require at least a \$196,000 payment from any party in interest, but allow a third party to pay just \$53,500 to buy the Property.

Specifically, RCW 6.23.020(2) provides:

(2) The person who redeems from the purchaser must pay:
(a) The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption, together with (b) the amount of any assessment or taxes which the purchaser has paid thereon after purchase, and like interest on such amount from time of payment to time of redemption, together with (c) any sum paid by the purchaser on a prior lien or obligation secured by an interest in the property to the extent the payment was

necessary for the protection of the interest of the judgment debtor or a redemptioner, and like interest upon every payment made from the date of payment to the time of redemption, and (d) if the redemption is by a redemptioner and if the purchaser is also a creditor having a lien, by ... deed of trust... prior to that of the redemptioner, other than the judgment under which such purchase was made, the redemptioner shall also pay the amount of such lien with like interest....

RCW 6.23.020(2)(emphasis added). Appellant conveniently ignores RCW 6.23.020(2)(c) and (d) so they can try to force a sale in an amount that is worth far less than the property value. Respondent paid HSBC on the prior lien deed of trust and is thus a purchaser. Under RCW 6.23.020(2)(c), the payment of the prior secured deed of trust lien against the property is necessary for the protection of Respondent.

Furthermore, RCW 6.23.020(2)(d) reiterates that if the purchaser is also a creditor with a deed of trust, the amount of the deed of trust lien has to be paid to redeem. Appellant cannot ignore all aspects of the statute addressing what a redemption offer in this case must be. Thus, Appellant did not submit a qualifying offer because the offer of \$53,500.00 is far less than the amount required to redeem under RCW 6.23.020. As set forth above, this is also consistent with RCW 6.23.040 after redemption.

In conclusion, both RCW 6.23.020 and RCW 6.23.040, which must be interpreted consistent with the overall redemption scheme, confirm that anyone seeking to purchase from a redemptioner with a deed of trust lien must include the debt related to that lien. Any other reading of the statute would nullify the provisions that require a subsequent redemptioner to also pay the amounts due under the deed of trust lien. To

glean the meaning of words in a statute, the Court does not look at those words alone, but all of the terms and provisions of the act in relation to the subject of the legislation, the nature of the act, and the general object to be accomplished and consequences that would result from construing the particular statute in one way or another. BAC Home Loans Servicing, LP v. Fulbright, 180 Wash. 2d at 766, 328 P.3d at 900. Reviewing the facts of this case and the governing statute, either RCW 6.23.120 does not apply, and even if it did, Appellant did not submit a qualifying offer. A qualifying offer in this case would be no less than \$239,650.00 when properly construing the amount necessary under the redemption statutes. Any other reading would nullify the Washington Supreme Court’s ruling in BAC Home Loans Servicing, LP v. Fulbright, wherein the Court reiterated that redeeming the property gives the redemptioner “another bite of the apple.” BAC v. Fulbright, 180 Wash. 2d at 761, 328 P.3d at 898.

F. Appellant Improperly Sought Disposition of RCW 6.23.120 Under a Show Cause Proceeding

In every single case construing RCW 6.23.120, the issue was decided after extensive briefing upon summary judgment. For example, in P.H.T.S., the issue was decided after cross motions for summary judgment were filed by the moving and the responding party. P.H.T.S., 186 Wash. App. at 286. In the two other cases to address the statute, the issue of whether there was a qualifying offer was also decided in the context of a motion for summary judgment. See Performance Constr., LLC v. Glenn, 2016 WL 4272386, at *4 (Wash. Ct. App. 2016) (parties filed cross

motions for summary judgment); Graham v. Findahl, 122 Wash. App. 461, 465, 93 P.3d 977, 979 (2004) (court addressed whether offer was a qualifying offer as part of motion for summary judgment). Respondent raises this issue to counter any argument about arguments being raised for the first time on appeal, and to allow the Court to provide direction that an Order to Show Cause proceeding was not the proper avenue to interpret RCW 6.23.110.

V. CONCLUSION

Respondent respectfully ask this Court to affirm the trial court's Order Denying Motion to Show Cause.

ALDRIDGE PITE, LLP

Dated: October 13, 2016

By: */s/ Julia A. Phillips*

JULIA A. PHILLIPS,
WSBA# 32735
ATTORNEYS for U.S. Bank
Trust, N.A., as Trustee for
LSF9 Master Participation
Trust, by it attorney in fact
Caliber Home Loans, Inc.

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KING COUNTY
SUPERIOR COURT OF WASHINGTON

75433-5

SEAWIND HOMEOWNERS
ASSOCIATION, Washington Non-Profit
Corporation,

Case No. 14-2-27437-8 KNT

DECLARATION OF SERVICE

Plaintiff(s),

vs.

THE ROSALIND ROMANO LIVING
TRUST, DATED THE 11 DAY OF
OCTOBER, 2006; ROSALIND L.
ROMANO, an individual, and JOHN or JANE
DOE ROMANO, an individual, and the
marital or quasi-marital community
comprised thereof; ROSALIND L.
ROMANO, TRUSTEE OF THE
ROSALIND ROMANO LIVING TRUST,
DATED THE 11' DAY OF OCTOBER, 2006;
ANY SUCCESSOR TRUSTEE or
BENEFICIARY OF THE ROSALIND
ROMANO LIVING TRUST, DATED THE
11" DAY OF OCTOBER, 2006; and
HOUSEHOLD FINANCE CORPORATION
III, a Delaware corporation

Defendant(s).

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STATE OF WASHINGTON
CLERK OF SUPERIOR COURT

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 4375 Jutland Drive, Ste. 200, P.O. Box 17935, San Diego, California 92177-0935.

On October 13, 2016, I served the following document(s):

