

FILED
COURT OF APPEALS
DIVISION II

2015 JUL 27 AM 9:10

STATE OF WASHINGTON
BY DEPUTY

NO. 47265-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

IOAN A. PAUNESCU and DANIELA PAUNESCU

APPELLANTS,

vs.

GERHARD H. ECKERT and MARGARETHE ECKERT AS
TRUSTEES OF THE ECKERT FAMILY TRUST, and SCOTT
RUSSON and JANE DOE RUSSON, husband and wife.

RESPONDENTS.

APPEAL FROM CLARK COUNTY SUPERIOR COURT
HONARABLE SUZAN L. CLARK

REPLY BRIEF OF APPELLANT

BEN SHAFTON
WSBA#6280
ATTORNEY FOR THE RESPONDENTS
900 WASHINGTON STREET,
SUITE 1000
VANCOUVER, WASHINGTON 98660
(360) 699-3001

ANTHONY SCISCIANI
WSBA #32342
ATTORNEY FOR THE
RESPONDENTS
701 PIKE STREET,
SUITE 2200
SEATTLE, WA 98101
(206) 262-1200

TABLE OF CONTENTS

I. TABLE OF AUTHORITIES..... i

II. FACTS.....Page 1

III. ARGUMENTS.....Page 2

 A. WHAT WAS BEN LUCESCU ROLE IN THIS RESIDENTIAL REFIANANCE?.....Page 2

 B. WHAT MISTAKES WERE ON PROMISSIOARY NOTE AND DEED OF TRUST?.....Page4

 C. THE PROPERTY WAS RESIDENTIAL LOAN AND RESIDENTIAL PROPERTY.....Page8

 D. WHY THE PROCESS OF FORECLOSURE WAS NOT DONE LEGALLY AND WHY FORECLOSURE WAS DONE ILLEGALLY.....Page10

 E. WHY THE LOWER COURT DID NOT JUDGE CORRECTLY AND WHY COUNSEL HAD NO RIGHT TO DO AND USE A DEPOSITION FOR SUMMARY JUDGMENT WHY IT WAS ILLEGAL....Page11

III.CONCLUSION.....Page18

I. TABLE OF AUTHORITIES.....i

STATUTES.....ii

RCW 61.24.005(2).....Page6

RCW 61.24.030(7)(A).....Page6

40.200.010.....Page9

40.200.010-1.....Page9

40.260.190.....Page9

CR 30.....Page11

CR 54.....Page 54

CR 60.....Page 15

FACTS

This Reply Brief to talk in detail and to explain why The Residential Refinance that was done in May 2007 was Residential property and had nothing to do with Commercial. Counsel comes and tries to state a claim that it was a commercial another time during this process The Eckerts said it was construction and another time they said it was a business loan, now all of these loans always ask for a Business plan but we never had one because it wasn't commercial, business, or construction. (I have copies of all the proof; it was talked about at the deposition). For commercial, business and construction loan the banks ask you have at least 2 years of income from a business which there was no trucking or care home at that time. When we bring to light everything that counsel has hidden in the dark so they can say and change everything so it come be good for counsel like they did in the trial court. We will prove that they had no valid case to be granted

attorneys fees and move forward from the deposition. Mr. Shafton stated in his Brief that we didn't want discovery, which again is false because our attorney at that time set up an motion for discovery conference and when it came close to going they said ohh, it's only a continuance, these are the lies the attorneys have done, We never had a discovery conference and counsel didn't want to do a deposition on Ioan A. Paunescu because they wouldn't have had 30 days before summary judgment and on December 12, 2014 that motion for court was to determine if Judge Clark to remain the Judge. There arguments should be dismissed and Paunescu Appeal should be approved by approving reversal of attorney fees and summary judgment and all claims Paunescu made prior should be granted.

III . ARGUMENTS

A. WHAT WAS BEN LUCESCU ROLE IN THIS RESIDENTIAL REFIANCE?

We bring fourth information that was avoided by Counsels that shows the truth in our Arguments and to do this we have to bring

fourth Mr. Lucescu, he was the mortgage broker used by us and by The Eckerts, now The Department of Consumer and Business Services Division of Finance and Corporate Securities Before The Director of The Department of Consumer and Business Services had a final order to cease and desist for Mr. Lucescu business of American Capital Mortgage Corp. and the Director Finds that Mr. Lucescu company was engaged in Oregon Residential Mortgage Lending and that he obtained his license (ML#2491) to engage in Oregon Residential mortgage transactions on 11/9/2001. The license was set to expire on 11/9/2008. Now that being said about Mr. Lucescu shows us he had no Jurisdiction in Washington and only in Oregon, so he could not make the loan himself. Now he wasn't certified to make a Commercial Loan like Counsels wants to say but has no proof to their claim. Another thing we need to take a look at is the borrowers' settlement will show a Loan Origination fee that is usually paid to the mortgage broker but since Mr. Lucescu didn't have the authority to make this loan we can ask ourselves one question? Who took the Loan Origination fee? On the borrowers settlement statement paperwork we can see that The Eckert Trust profited from the transaction for the sum of \$5,800. Now that money was taken but not declared to the state for

a mortgage broker the Eckerts are not licensed as such. Again I want to mention that the Eckerts and Mr. Lucescu have done a lot of loans together and that Mr. Lucescu was found guilty of Fraud on Mortgage Loans to others, which we have the documents to support this. Mr. Lucescu did all the paperwork with Fidelity Title and Fidelity Title classified the loan in 2007 to what it was in truth (a Residential Refinance). Now due to The Eckerts not being in Washington State or in Oregon and The Eckerts being in California where they go every year from about October to June, They weren't here physically to sign the paperwork and that's why the commercial part and the Due of Sale on The Promissory Note were not initialed by Holder it is their loss and cannot turn back time. The Borrowers settlement statement shows that Fidelity Title Company made Title Insurance on the loan for a sum of \$290,000 and stated it was a lender Residential Refinance.(CP-83 exhibit 9,10,11). Mr. Lucescu knew Mr. Paunescu had very good credit, Mr. Shafton said we couldn't have gotten a Loan only through The Eckerts but that's not true, in 2006 we did a HELOC on our property, a bank would not approve you if you don't have good credit.

B. WHAT MISTAKES WERE ON PROMISSIOARY NOTE AND DEED OF TRUST?

If we want to understand this section we have to understand first what a trust is and what it's used for then we can understand the mistakes that were made in 2007 which cannot be changed " at that time it was said and it was written we cannot turn back time", or like counsels say if Paunescus would Have objected The Eckerts wouldn't have given the loan, at that time in 2007 the Paunescus were not aware of the fraud the Eckerts have done with many people and what they did with us, We cannot change what was done but we can prove it wasn't done legally, Counsels tries to hide all the truth and bring fourth only what helps their case and hide the rest of the truth. The first point I want to make is that a live person called the trustee must be in charge of the property. Further, you can actually be the trustee of your own living trust, keeping full control over all property legally owned by the trust. Property held in a trust is actually "owned" by the trustees of the trust, subject to the rights of the beneficiaries. The trust itself doesn't actually own anything, so if the Trust itself doesn't own anything how it can be named as a beneficiary on the deed of trust

and holder of the promissory note and say it has the right to foreclosure.

Now Mr. Russon did a quit claim Deed and stated the following “This Deed is given for the sole purpose of correcting the name of the Trust, and substituting the Trustees as Title holders of said real property, instead of **HOLDING THE PROPERTY IN THE NAME OF THE TRUST ITSELF**. Well here it shows that the said property was held in the Eckert Trust.(CP-83 Exhibit-6) which by Washington law was void.

- The term beneficiary, holder, and owner are crucial to proper statutory construction in this situation. The beneficiary must be “the holder of the instrument or document evidencing the obligations secured by the deed of trust, excluding persons holding the same as security for a different obligation.” RCW 61.24.005(2). However, in order to start a non-judicial foreclosure the Trustee “shall have proof that the beneficiary is the owner of any promissory note or other obligation secured by the deed of trust. “RCW 61.24.030(7)(a). This means that the beneficiary must be the holder and the owner of the instrument or document evidencing the obligations secured by the deed of trust in order to non-judicially foreclose. Further, the acceptable way for the

Trustee to have proof that the beneficiary is the owner is detailed in 61.24.030(7)(a). The statute that “(a) declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof as required under this subsection.” The legislature modified “holder” with the word “Actual.” The legislature did this in order to ensure that the “owner,” not the mere holder of the instrument or document evidencing the obligations, was acting as the beneficiary in order to ensure the three policies of the DTA were effectuated. Identifying the owner of the promissory note- distinguished from the holder or beneficiary- is an essential part of a Trustee’s role as a neutral judicial substitute under DTA because: (1) interested parties, i.e. stakeholders need an adequate opportunity to prevent wrongful foreclosure; (2) borrowers are entitled negotiate foreclosure alternatives with owners who have actual discretion to settle; and (3) all parties, not just beneficiaries, are entitled to a fair and inexpensive resolution of disputes with proper parties, which does not occur when non-judicial foreclosures are not transparent. It was an intent to fulfill these purposes of the DTA which led to the current language of RCW

61.24.030(7)(a). for Residential real Property, before the notice of trustee's sale is recorded, transmitted, or served, the trustee shall have proof that the beneficiary is the owner of any promissory note or other obligation.....etc.

- Due to the above Eckerts had no right to appoint a successor trustee legally.

C. THE PROPERTY WAS RESIDENTIAL LOAN AND RESIDENTIAL PROPERTY.

The Property itself was a Residential Property and Residential Loan on the property based on the following:

- The property was bought as a Residential Property and all loans were done as Residential.
- Ben Lucescu could only due Residential Loans.
- Promissory note on #17. States the following:

COMMERICAL PROPERTY: (OPTIONAL-NOT APPLICABLE UNLESS INITIALED BY HOLDER AND MAKER TO THIS NOTE). AS WE CAN SEE THAT IT WAS NEVER INITIALED BY THE ECKERTS SO IT CANNOT BE COMMERICAL.

- All the documents from fidelity show it was a RESIDENTIAL REFIANCE, THE TITLE CHARGES STATES IT WAS A REFINANCE FEE AND TITLE INSURANCE STATES LENDER RESIDENTIAL REFIANCE.
- COUNSEL is trying to state the following if the County classified the home on the plans and permits as Adult Family Home that it must be Commercial, Now that's incorrect for the following reasons: The home when we Refinanced with The Eckerts it was Residential there were no changes made to the home and also after we added on it was still considered Residential because in Clark County considered the property zoned as R1-6 which under section 40.200.010 show what R1-6 means it is a Single-Family Residential. And further table 40.220.010-1 uses f. Adult Family Homes states under 40.260.190 states "p"- uses allowed subject to approval of applicable permits. The table 40.220.010-1 are examples of uses allowable in single family residential zone districts. Now that being said it remained single family Residential, I am surprised that Mr. Shafton doesn't know this because he was on the board of zoning and land use in Clark County, he's been around quite some time and it's just not believable for me.

- All of the reasons above show the loan was residential and so was the property, how can counsel come and say it was commercial because all the documents show the truth, now counsel bring forth a lot of rcw and statues that some of them don't apply because the process to the foreclosure and eviction is done illegally, now I understand how hard it is for anyone to bring forth a case to The Court of Appeals because Attorneys and also Judges from the lower Court try to destroy you so you can never get there.

D. WHY THE PROCESS OF FORECLOSURE WAS NOT DONE LEGALLY AND WHY FORECLOSURE WAS DONE ILLEGALLY

The Foreclosure was done based on Commercial Property as you can see in Section C. all the reasons that the foreclosure was supposed to be but Mr. Russon filed it illegally based on whatever he wanted nothing by proof but only what the Eckerts said, Now they did this because they have done it to many people and thought by foreclosing on the home that we wouldn't pay any further to the first mortgage and they would get it free and clear by fraud but what the Eckerts didn't expect was for us to fight back and prove everything they have done is illegally and have no right to the property.

- All notices were sent as commercial property and property we can see was Residential, Paunescu explained it in Opening Brief the different laws and Regulations

E. WHY THE LOWER COURT DID NOT JUDGE CORRECTLY AND WHY COUNSEL HAD NO RIGHT TO DO AND USE A DEPOSITION FOR SUMMARY JUDGMENT WHY IT WAS ILLEGAL.

The first thing I want to point out is that the information that Mr. Scisciani sent to me on May 20, 2015 and accused me of having a copy of about the Attorney fees, How I seen that something was filed is I went online to Washington case search and on the courts website and there when you put in the case number/name everything pops up that was filed in the case, but I never received a copy from Judge Clark or from Mr. Scisciani on February 13, 2015, The information Mr. Scisciani talking about is Public Record online. Now I have a couple of points to explain, First We have CR 30 DEPOSITIONS UPON ORAL EXAMINATION, If a party shows that when the party was served with notice under this subsection (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against the party. Now when Mr. Wuest Withdrew as our Attorney He stated that on November 13, 2014 was the day(CP 37) Mr. Shafton on

November 13, 2014 mailed the Notice of Deposition, Which I have a copy here in front of me, which didn't give us a chance to find a new Attorney, so by CR 30 subsection(b)(2) we had no chance of finding another lawyer because we weren't given time for this, The Law states the deposition may not be used against party, The deposition Mr. Shafton scheduled for November 24, 2014(have copy), a deposition on Daniela Paunescu was taken. They did it only on Daniela Paunescu, They said they will depose Ioan Paunescu but never did, because the law says discovery needs to be done within 30 day before summary judgment and this wouldn't have been enough time so that would have meant they would've had to change summary judgment date, and they didn't want that. Now this brings me to my next point, that on December 12, 2014, Mr. Shafton and Mr. Scisciani brought us before Judge Clark on a Citation stating Notice to Court and request for Determination concerning status of Judge, (have copy) This was done on the basis that something was said at the deposition which again CR 30, Deposition may not be used against party which again it was used here, Now Mr. Shafton and Mr. Scisciani could have stopped right there and could've said we made a mistake and need to make some changes, but they continued to move forward covering everything up., Methaphor they built a foundation on sand and here comes the rain. Now another point I have is the following the Deposition again was used in

determining the Summary Judgment which again CR 30 DEPOSITIONS UPON ORAL EXAMINATION, If a party shows that when the party was served with notice under this subsection (b)(2) the party was unable through the exercise of diligence to obtain counsel to represent him at the taking of the deposition, the deposition may not be used against the party., Both Mr. Scisciani and Mr. Shafton used the Deposition for Summary Judgement to win if we take a look at the following it will show some places where the Deposition was used at Declaration of Mr. Shafton dated Dec, 15,2014 and Response to Plaintiffs motion for Summary Judgment and brief in support of Defendants Eckert motion for summary judgment and also Russon defendants' opposition to Plaintiffs' motion for partial summary judgement these are only a few to name. Judge Clark approved their Summary Judgment based on all this information which was done illegally but the standards of the Law of Washington. Judge Clark entered Judgement, Rule 54. Judgment; cost states the following

(d) Costs; Attorney's Fees.

(2) Attorney's Fees.

(A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages.

(B) Timing and Contents of the Motion. Unless a statute or a court order provides otherwise, the motion must:

(i) be filed no later than 14 days after the entry of judgment;

(ii) specify the judgment and the statute, rule, or other grounds entitling the movant to the award;

(iii) state the amount sought or provide a fair estimate of it; and

(iv) disclose, if the court so orders, the terms of any agreement about fees for the services for which the claim is made.

Now this means that for any Attorney Fees that a motion has to be filed and one party get to oppose the motion and the other to file in this case Plaintiffs opposed the motion and defendants filed the motion, now on January 30, 2015 in front of Judge Clark for Attorney fees, now the motion was brought fourth but both Defendants had mistakes on their motions and that , Rule 54, (2) Attorney's Fees, (A) Claim to Be by Motion. A claim for attorney's fees and related nontaxable expenses must be made by motion unless the substantive law requires those fees to be proved at trial as an element of damages. In this case Mr. Shafton should've refiled the motion for Attorney fees because Plaintiffs had a right to oppose the motion but weren't given that chance and Judge Clark approve Mr. Shafton. Now as to Mr. Scisciani Judge Clark set a special proceeding and said that she will give a written decision on February 13, 2015((RP 1/30/2015 page 7) and that Plaintiff would have a chance to oppose the Attorney Fees ,which Plaintiff filed opposition on February 9, 2015, those were the terms she set, Now she set the terms for the proceedings but never followed through, she should have some documentation certified mail receipt, which she doesn't have. She

should've had Mr. Scisciani file another motion for Attorney Fees in this case but she didn't do that either so there is no valid Judgement concerning Attorney fees for the defendants. Why is it that Judge Clark instead of stating that the 13 of February is when the entry of the order is and yet we see that Judge Clark didn't enter the order on February 13, 2015(RP 1/30/2015 page 7) like she said and only on March 9,2015.(CP#97) Now we have to ask ourselves why that is what were both Defendents and the Judge trying to do here my opinion is that they tried intimidating us in seeing if we will file the motion on Notice of Appeal to court of Appeal filed on Feburary 24, 2015, thinking I would wait for her order which never came until this date either, doesn't help it coming from Mr. Scisciani or Mr. Shafton a special proceeding she chose but never followed through is not legal and she will be held responsible for not enforcing the Law. Due to all this illegally activity the following applies to the Plaintiffs CR 60 RELIEF FROM JUDGMENT OR ORDER, states the following:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. Also, on March 2, 2015(CP-89) Mr. Shafton did a Writ of Garnishment (with fee) on our LLC bank account which the whole lawsuit was a personal lawsuit and never involved paunescu business, even the writ was filed as personal. On March 20, 2015 there was an exemption claim filed by us (CP-99), On April 3, 2015 we went to court in front of Judge Clark, Mr. Shafton took us on a motion for exemption again we argued that it was an LLC business account that Mr. Shafton attached the writ of Garnishment to and that there was a different process for a business then for a personal garnishment, When we brought this fourth Mr. Shafton said “Judge this was a sole proprietorship” and Paunescu response was that here in front of you Judge we have proof that the sole proprietorship ended in 2009 and we changed the business to an LLC then the Judge asked Mr. Shafton what do you have to say to that? And he replied “I didn’t know it was an LLC” And, Paunescu replied he’s a liar

he knew from the discovery process he had the income taxes from 2007 through 2013. Then the Paunescu wanted to show proof of everything and the Judge Clark said I don't want to see any proof I am going to approve Mr. Shafton and she did and never cared to see the proof(When we come for the oral argument I will bring a copy of the DVD from April 3, 2015 so the court can see how she handled it) and this is what she did throughout the case never wanted to talk about ben Lucescu actually laughed and said who cares who Ben Lucescu is, and throughout the case Both Mr. Scisciani and Mr. Shafton were joinder in this Summary Judgement and the Judge never wanted to listen or see any proof. The code of conduct for a Judge for a Judge is not what she did and how she handled everything it's the opposite. The Code states that a Judge needs to hear everything and see proof, At the oral argument I will have a copy of the Judge code of conduct.

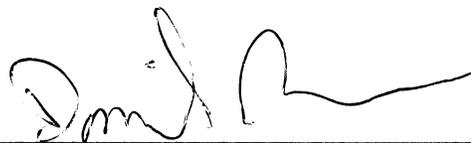
Everything above we see a lot has happened from the deposition til summary Judgment and kept going with the illegal entry of Judgment by Judge Clark , like I stated the process to be granted Judgement was done illegally and the Judge Clark never followed through on her order, she should have never approved the order on Summary Judgment because of reasons stated above.

Now, Mr. Shafton and Mr. Scisciani both brought forth on their opening brief a section talking about a letter that was written in 2009, Now that letter was written before all of the illegally things done and since it was a Residential Refinance Paunescus used the money for whatever they wanted to and a Residential refinance nobody can ask you what you did you the money. All the proof is in the documents that are brought fourth.

III . CONCLUSION

Paunescu claims should all be granted and everything from trial court reversed. Attorney fees on appeal granted to Paunescus. Counsel will try quit a lot more things to intimidate Paunescu til the Oral Argument one will be to extend it out as much as possible and the next thing will be to have a conference with us which we will not accept any conference with counsel. There have been so many things they have tried from the time we filed the Appeal, Which we will say at the Oral Argument.

This dated and submitted July 22, 2015



Daniela & Ioan Paunescu Pro Se

1
2
3 IN THE COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON
4
5

6 IOAN A. PAUNESCU and DANIELA) Case No.: 14-2-01830-8
7 PAUNESCU, husband and wife,)
8) CASE NO: 47265-II
9)
10 Plaintiffs,) **DECLARATION OF SERVICE**
11)

12 vs.
13)
14)

15)
16 GERHARD H. ECKERT and)
17 MARGARETHE ECKERT AS TRUSTEES)
18 OF THE ECKERT FAMILY TRUST, and)
19 SCOTT RUSSON, husband and wife.)
20 Defendants,)
21)
22)
23)

24 I HEREBY CERTIFY THAT ALL TIMES MENTIONED HEREIN I WAS AND
25 NOW A CITIZEN OF THE UNITED STATES OF AMERICA AND A RESIDENT OF
26 THE STATE OF WASHINGTON, OVER THE AGE OF EIGHTEEN YEARS.

27 I CAUSED TRUE AND CORRECT COPIES OF THE REPLY BRIEF TO BE
28 SERVED BY FIRST CLASS U.S. MAIL.

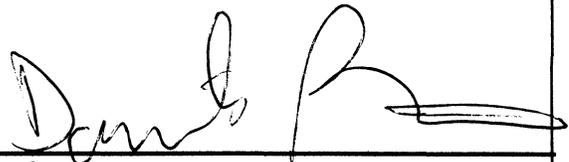
Mr. Ben Shafton
CARON, COLVEN, ROBINSON & SHAFTON, P.S.
900 WASHINGTON STREET, SUITE 1000
VANCOUVER, WA 98660
P-(360) 699-3001-F-(360) 699-3012

Mr. Anthony Sciscianni III
Scheer & Zehnder LLP
701 Pike Street, Suite 2200
Seattle, Wa 98101- p-(206) 262-1200-f-(206) 223-4065

This dated 22 of July, 2015

DECLARATION OF SERVICE- 1

Ioan a Paunescu & Daniela Paunescu ProSe
po box 87847 Vancouver, wa 98682
p-(360) 449-2255- f-(360) 836-4751


ProSe

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF SERVICE- 2

Ioana Paunescu & Daniela Paunescu ProSe
po box 87847 Vancouver, wa 98682
p-(360) 449-2255- f-(360) 836-4751