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COURT OF APPEALS  
DIVISION II

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Supreme Court

STATE OF WASHINGTON

No. \_\_\_\_\_

BY  
**IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON**

**CHRISTA ALBICE, a married woman, and  
BART A. TECCA and KAREN L. TECCA, husband and wife,  
Respondents,**

vs.

**PREMIER MORTGAGE SERVICES OF WASHINGTON, INC.,  
a Washington Corp.; OPTION ONE MORTGAGE CORPORATION,  
a California Corp.;**

**Defendants,**

**RON DICKINSON and "JANE DOE" DICKINSON,  
husband and wife,  
Petitioners,**

**RON DICKINSON,  
Petitioner,**

vs.

**CHRISTA L. ALBICE f/k/a CHRISTA L. DEYOUNG;  
BART A. TECCA and KAREN L. TECCA, husband and wife,  
Any Subtenants, and All Others Acting By or Through Them,  
Respondents.**

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STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II

**ON APPEAL FROM THE COURT OF APPEALS, DIVISION II  
CAUSE NO. 39265-8-II**

**PETITION FOR REVIEW (with completed CP references)**

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**A. IDENTITY OF PETITIONERS**

Petitioners are Ron Dickinson and Cheryl Dickinson (“Dickinsons”) who were Defendants in the original action in the Mason County Superior Court Cause No. 07-2-00172-1 and Respondents in Court of Appeals, Division II Cause No. 39265-8-II.

**B. COURT OF APPEALS DECISION**

Dickinsons seek review of the Published Opinion of the Court of Appeals, Division II in Cause No. 39265-8-II. A copy of the decision is in the Appendix at pages A-1 through A-21. The Published Opinion was filed September 28, 2010. No motion for reconsideration was filed in the Court of Appeals.

**C. ISSUES PESENTED FOR REVIEW**

1. Is the Trustee’s Sale void pursuant to RCW 61.24.040(6) because it was conducted more than 120 days after the original sale date pursuant to the terms of a forbearance agreement between the lender, Option One Mortgage Corporation (“Option One”), and the borrowers, Bart A. Tecca and Karen L. Tecca (“Teccas”)?

2. Does the Trustee’s Deed delivered to the Dickinsons by the Trustee, Premier Mortgage Services of Washington, Inc. (“Premier”), following the foreclosure sale contain recitals insufficient to satisfy the requirements of RCW 61.24.040(7), because (1) the deed did not mention

the sale had been continued; (2) the Deed did not mention the existence of the forbearance agreement between Option One and the Teccas; (3) the Deed did not mention make up payments had been made; and (4) the Deed did not mention the last payment made by Teccas under the agreement and did not mention the circumstances of its rejection?

3. Is Ron Dickinson not entitled to bona fide purchaser protection pursuant to RCW 61.24.040(7) because: (1) he had experience with 35 foreclosure sales; (2) he had a conversation with the borrower, Karen Tecca, in which she asserted that she was not interested in selling the property to him and never would be; (3) the purchase price he paid at the sale was in the range of 13.68% and 30.37% of the evidence of the fair market value of the property based upon information substantially unavailable to him prior to the sale; and (4) there was a long delay from the initial date of sale and the actual date of sale?

4. Under the circumstances of this case, was the purchaser, Dickinson, subjected to a duty of inquiry into the validity of the sale?

5. If the purchaser, Dickinson, did have a duty to inquire, would he have discovered alleged defects prior to the date of sale?

6. Is the sale in this case void on equitable grounds?

7. Can the sale be void on the equitable ground that the bidding process was “likely chilled” when no showing of actual suppression has been made?

8. Should the Dickinsons’ judgment for damages for unlawful detainer by Albice/Tecca and their judgment for an award of costs and fees be upheld?

**D. STATEMENT OF THE CASE**

Subject to the following, Petitioners agree with the facts, background and procedural history set forth in the Published Opinion at Appendix A, pages 2-4.

Petitioners believe that the record below is contrary to the recitation set forth at footnote 1 on page 2 of Appendix A.

The Teccas were in breach of the forbearance agreement from the date of the first installment payment on April 16, 2006.

The terms of the forbearance agreement required Albice/Teccas to make a down payment and six, subsequent monthly installment payments of \$1,220.14. CP at 460. CP at 466. These monthly payments were payable on August 16, 2006, September 16, 2006, October 16, 2006, November 16, 2006, December 16, 2006 and January 16, 2007.

The Teccas did pay the \$3,000.00 down payment timely, but each of the six subsequent monthly payments was paid delinquent. See Exhibits C-H to Declaration of Karen Tecca filed May 24, 2007. CP at 1018-1031.

As was true with respect to the previous five monthly payments, the sixth and final monthly payment was forwarded by Karen Tecca via Western Union, late and in default of the forbearance agreement. Although it was due January 16, 2007 (CP at 466), it was not forwarded until February 2, 2007. See Exhibit H to the Declaration of Karen Tecca filed May 24, 2007. CP at 1031. At the time Ms. Tecca delivered the funds to Western Union in Puyallup, the payment was already seventeen days delinquent. CP at 454, lines 13-14.

Option One apparently made substantial efforts to accommodate the Teccas' defaults and enable them to bring their loan current pursuant to the terms of the forbearance agreement, even after the default in the final payment.

On January 31, 2007, Option One sent a letter to the Teccas, at their home, informing them that they had breached the "repayment agreement" and that the agreement was, therefore, null and void. Exhibit "C" to, and paragraph 5 of, the Declaration of Lisa Clary in Support of Dismissal filed with the trial court on April 27, 2007 ("Declaration of Clary"). CP at 1069 and 1078.

This letter further informed the Teccas that the foreclosure proceedings would “continue” without further demand. Exhibit “C” to the Clary Declaration. CP at 1078.

Lastly, the letter provided a toll free contact number for Option One’s “Borrower’s Assistance Team” and encouraged the Teccas to call if they had any questions. Paragraph 5 of the Declaration of Clary. CP at 1069.

There is no indication in the records of Option One that this letter was returned to sender for any reason. Id.

Option One maintained a Consolidated Notes Log (“Log”) for the Teccas’ account. CP at 280-281 and 301-304. This Log documents any conversations or actions throughout the loan. CP at 281. According to this Log, Option One made two contacts on February 1, 2007 with a person at a business number associated with this account and left messages to return the call. CP at 301. Again, on February 2, 2007, Option One made two calls to a business number associated with the account and left messages to return the call.

On February 2, 2007 at “16:06”, 4:06 PM in the afternoon, Karen Tecca placed funds in the amount due on January 16, 2007 with Western Union. CP at 300. The Court is asked to take judicial notice of the fact that February 2, 2007 was a Friday.

On Monday, February 5, 2007, the Log indicates that Option One recognized that its cashier had received the Western Union payment late on February 2, 2007. CP at 301. Also on February 5, 2007, Option One immediately rejected the payment, directed Western Union to return it to the Teccas and sent a letter to the Teccas that the payment was being returned, stating the reason therefore, i.e., that the payment was not enough to bring the loan current. CP at 279-280, 302.

The Log further indicates that Option One made ten calls to either the borrowers' home number or the business number associated with their account between February 5, 2007 and February 13, 2007. CP at 302-304. On the eight occasions, when it "made contact" with persons or answering machines, Option One left messages for return calls. Id. There is no indication in the Log that the calls were returned. Also, there is no indication in the Log that Option One received any phone calls from Karen Tecca or the purported facsimile transmission from Ms. Tecca dated February 12, 2000 which is attached as Exhibit "I" (CP at 1033) to Ms. Tecca's Declaration filed May 24, 2007. CP at 301-304.

Ron Dickinson's highest level of formal education is graduation from high school. Ex. 40 at page 7. He has never held licenses for real estate sales, real estate brokerage, mortgage brokerage or real estate appraisal. Ex. 40 at page 7. He has never been involved in a lawsuit where

someone challenged a foreclosure sale at which he bought property. Ex. 40 at page 17.

Dickinson had been purchasing properties at foreclosure sales for eight or nine years at the time of the foreclosure sale at issue. Ex. 40 at pg. 33. Prior to that he worked on a crab boat, worked in a saw mill, ran a tugboat and was a truck driver and a heavy equipment operator. Ex. 40 at 34.

Dickinson never spoke to anyone at Option One prior to the sale. First Blado Declaration re Dickinson Deposition at pg. 7. CP at 964. Prior to the sale, he did have a brief conversation with Karen Tecca at her home. First Blado Declaration re: Dickinson Deposition at pages 6-7. CP at 963-964. This contact was initiated by Dickinson so he could offer to purchase the property prior to the sale. Id. The conversation was very brief, approximately one minute. First Blado Declaration re: Dickinson deposition at page 12. CP at 969. Ms. Tecca declined Mr. Dickinson's offer to buy the property and was primarily dismissive of the contact. Id. During the conversation, Ms. Tecca did not disclose the existence of a forbearance agreement or any details respecting the foreclosure process or details respecting her intention to cure the default. Id.

Dickinson did contact the trustee prior to the sale to find out when the sale was going to proceed or if it was gong to proceed. First Blado

Declaration re: Dickinson Deposition at pgs. 7, 9-10. CP at 964, 966-967. This contact was either through a recorded "sale line" or through a live person. Id.

Dickinson had no knowledge that there were statutory time limits on the continuance of a trustee's sale. Ex. 40 at pg. 30.

Dickinson's "research" of the property consisted of obtaining an over the counter property profile at the title company and a "narrow" view of the property approximately one week before the originally scheduled Trustee's Sale date Ex. 40 at Page 15.

The range of fair market values of the subject property established in the Trial Court record at the time of sale, is from \$428,000.00 to \$950,000.00. Based upon this record the purchase price at the Trustee's Sale ranges from 13.68% of fair market value to 30.37%. The Court of Appeals erroneously utilized a percentage range of 13% to 18%.

**E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

Review of this case should be accepted because this Petition involves issues of substantial public interest that should be determined by the Supreme Court.

As the Court of Appeals correctly noted, the Deed of Trust Act is to be construed by the Court to further three objectives: (1) the nonjudicial foreclosure process should remain efficient and inexpensive; (2) the process

should provide an adequate opportunity for interested parties to prevent wrongful foreclosure; and (3) the process should promote the stability of land titles. Cox v. Helenius, 103 Wn.2d 383, 387, 693 P.2d 683 (1985). See Appendix A at page 5. The decision of the Court of Appeals below, however, severely undermines all three of these objectives.

First, the Respondents *post sale challenge* to the sale has now consumed in excess of 3½ years and substantial expense to both the borrowers and the purchaser. The post sale challenge in and of itself violates RCW 61.24.130 which provides that the sole method to contest a foreclosure is to file an action to enjoin or restrain the sale *prior to* the sale. In re the Marriage of Kaseburg, 126 Wn. App. 546, 558, 108 P.3d 1278 (2005).

It is clear here that the Respondents waived their right to contest this sale. If a party (1) receives notice of a right to enjoin the sale, (2) has actual or constructive knowledge of a defense to foreclosure before the sale, and (3) fails to bring an action to enjoin the sale, it has waived the right to contest the sale. Plein v. Lackey, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003).

The Court of Appeals has condoned the conduct of a post sale challenge and in doing so has ignored the substantial efforts of Option One to facilitate timely cure and Respondents' constructive knowledge of those efforts as described above at Part D, pages 4 through 6.

The Court of Appeals has, accordingly, rendered a construction which effectively destroys the efficiency and greatly expands the potential cost of further deed of trust foreclosures.

The record below described at Part D, pages 4 through 6, clearly indicates that the process involved in this case provided an adequate opportunity for the Respondents to prevent wrongful foreclosure. They received at least a dozen contacts from Option One following the final default of the forbearance agreement but took no action to enjoin the sale. The Notice of Trustee's Sale provided notice that pre-sale injunction was their sole remedy and they failed to pursue it. The Respondents are charged with knowledge of the statutory requirements for protecting their interest in the property and were provided with adequate notice and a mutually agreed extension of time to prevent an allegedly wrongful foreclosure and they failed to take advantage of it.

The Court of Appeals' tacit approval of Respondents' conduct fails to acknowledge that they had abundant, not just adequate, opportunity to protect their interest and undermines the second objective of the construction of the Deed of Trust Act.

Lastly, the holding of the Court of Appeals contributes immeasurably to the future instability of land titles. As a result of this ruling, bona fide purchasers at trustee's sales, and purchasers and title

insurers participating in transactions downstream from a deed of trust foreclosure sale, have a heavy burden to conduct due diligence with respect to the validity of their respective interests.

Each of these parties is now required to conduct an inquiry into the factual basis of the recitals in the Trustee's Deed. In addition, each of the downstream parties is now required to conduct an inquiry into the sophistication of the third party purchasers at trustees' sales to determine if they had insufficient personal background to be charged with a duty of further inquiry where technical defects in the process occur.

Furthermore, purchasers at trustees' sales, particularly if they have participated in previous trustees' sales, would be required, under this ruling, to obtain a law degree or hire a lawyer to review the procedural background of each sale because such a purchaser is now charged with a substantial degree of knowledge as to the process. Failure to do so subjects such purchasers to post-sale disturbance of their interests in the properties acquired in such sales. Those burdens are made nearly impossible by the considerations of borrowers' privacy and the concomitant reluctance of lenders and trustees to disclose information.

Trustees would be required, under this ruling, to substantially monitor the pre-sale conduct of lenders and borrowers to assuredly complete a sale or prepare a trustee's deed resulting therefrom.

This litany of additional burdens not only undermines the sanctity of title and the stability of land titles, they also undermine the efficiency and greatly increase the expense of the foreclosure process.

Lastly, the Court's holdings with respect to Ron Dickinson's bona fide purchaser status essentially emaciates the protections for future trustee's sale purchasers under RCW 61.24.040(7). Unless a purchaser is participating in his or her first, or perhaps less than tenth, trustee's sale, RCW 61.24.040(7) provides him or her no protection. The Court of Appeals has substantially construed the bona fide purchaser protection out of the Deed of Trust Act.

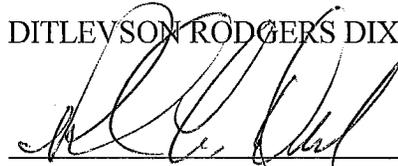
**F. CONCLUSION**

The Court should accept review for the reasons indicated in Part E.

Petitioners seek review in the form of reversal of the decision of the Court of Appeals in its entirety and affirming the rulings of the Trial Court.

Respectfully submitted this 18<sup>th</sup> day of November, 2010.

DITLEVSON RODGERS DIXON, P.S.



By: Richard L. Ditlevson, WSB # 735  
Attorney for Petitioners

# **APPENDIX A**

**Published Opinion**

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COURT OF APPEALS  
DIVISION II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY

CHRISTA L. ALBICE, a married woman, and  
BART A. TECCA and KAREN L. TECCA,  
husband and wife,

No. 39265-8-II

Appellants,

v.

PREMIER MORTGAGE SERVICES OF  
WASHINGTON, INC., a Washington  
Corporation; OPTION ONE MORTGAGE  
CORPORATION, a California Corporation;

PUBLISHED OPINION

Defendants,

RON DICKINSON and JANE DOE  
DICKINSON, husband and wife,

Respondents.

RON DICKINSON,

Respondent,

v.

CHRISTA L. ALBICE f/k/a CHRISTA L.  
DEYOUNG; BART A. TECCA and KAREN  
L. TECCA, husband and wife; Any  
Subtenants, and All Others Acting By or  
Through Them,

Appellants.

ARMSTRONG, J. — Christa Albice and Karen and Bart Tecca (Albice/Teccas) appeal the trial court's refusal to set aside a nonjudicial deed of trust foreclosure sale of their property. They argue that (1) the successful bidder at the foreclosure sale was not a bona fide purchaser; (2) even if he was, the trustee's deed failed to report procedural facts that would statutorily

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protect a buyer; (3) the sale was void for taking place beyond the statutorily limited timeframe; (4) the Teccas timely tendered funds sufficient to cure the loan default and require the trustee to discontinue the sale; and (5) the trustee lacked authority to conduct the sale because it had no corporate officer residing in Washington at the time of the sale. We hold that the sale did not comply with statutory requirements, that the purchaser was not a bona fide purchaser for value, that the trustee's deed failed to state facts that would protect a buyer, that the sale price was inadequate, and that the sale was surrounded by other unfair circumstances. Accordingly, we reverse.

## FACTS

### A. Background

Christa Albice and Karen and Bart Tecca owned improved real property on Hartstine Island in Mason County. Sisters Albice and Tecca inherited the 10-acre property from their parents free of any liens or encumbrances.

In 2003, the Teccas borrowed \$115,500 against the property secured by a deed of trust. The loan was serviced through a subsidiary of H&R Block known as Option One Mortgage Corporation (Option One). Premier Mortgage Services of Washington (Premier), also a subsidiary of H&R Block, was the trustee of the deed of trust.<sup>1</sup>

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<sup>1</sup> The exact nature of the relationship between Option One and Premier is unclear. The trial court concluded that Option One was affiliated with Premier. Our reading of the record suggests an even stronger connection. Lisa Clary, an Option One employee designated as the representative of Premier in this action, described Premier as Option One's "in-house trust deed service," handling all of Options One's foreclosures in Washington State at the relevant time. Clerk's Papers (CP) at 239-56. She explained that Option One monitored Premier's work and that both corporations accessed all loan information from a shared database. Michael Crockett, a licensed private investigator, stated that Premier is actually Option One.

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The Teccas fell delinquent on their loan payments to Option One in April 2006. Premier issued a Notice of Foreclosure and a Notice of Trustee Sale, informing the Teccas that it would hold a foreclosure sale on September 8, 2006. The Teccas contacted Option One to find out how to cure the delinquent payments and avoid foreclosure.

In July 2006, the Teccas and Option One entered into a forbearance agreement. The agreement stated that the Teccas owed \$5,126.97 to bring the loan current. The Teccas agreed to a down payment of \$3,000.00 and increased monthly payments, to be paid by the 16th of every month, through January 2007. On September 8, 2006, the crier of the sale announced that Premier was postponing the foreclosure sale.<sup>2</sup>

The Teccas made the down payment and, although late, made each of the subsequent monthly payments. The Teccas tendered the final payment, which was due on January 16, on February 2, 2007. On February 10, 2007, they received notice from Western Union that Option One had refused to accept their final payment. Western Union refunded the final payment on February 16, 2007.<sup>3</sup>

On February 16, 2007, Premier conducted a foreclosure sale of the property, 161 days after the original sale date set in the Notice of Trustee Sale. Through an agent, Ron Dickinson successfully bid \$130,000 for the property.

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<sup>2</sup> The sale was continued six times before the final sale took place.

<sup>3</sup> According to legal counsel for Option One, a letter was sent to the Teccas on January 31, 2007, declaring breach of contract for nonpayment under the terms of the forbearance agreement and notifying them that the foreclosure proceedings would continue without further demand. Karen Tecca claims she never received written notice that they were in breach of contract.

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B. Procedural History

Albice/Teccas sued Premier, Option One, and the Dickinsons, seeking to set aside the foreclosure sale. They alleged that Option One breached the forbearance agreement with the Teccas and that Premier breached its fiduciary duty owed to the Teccas and conducted an improper foreclosure sale. Against the Dickinsons, Albice/Teccas sought to quiet title to the property. The Dickinsons counterclaimed to quiet title and filed cross-claims against Option One and Premier.<sup>4</sup>

The Dickinsons moved for summary judgment to establish that Ron Dickinson was a bona fide purchaser of the property and therefore entitled to quiet title. Albice/Teccas also moved for summary judgment, arguing that the foreclosure sale should be set aside as void because (1) Premier was not a qualified trustee with authority to conduct the sale and (2) the sale occurred after the statutory deadline. The trial court granted the Dickinsons' motion, ruling that Ron Dickinson was a bona fide purchaser for value. The court held that even though the sale was continued for more than 120 days in violation of RCW 61.24.040(6), Ron Dickinson's bona fide purchaser status rendered the deed's recitals of compliance with the statute conclusive evidence that the sale was proper.

After two rulings on Premier's qualification to act as a trustee in Washington State and subsequent motions for reconsideration, the parties tried the issue. Following a bench trial, the court ruled that Premier was eligible to serve as a trustee under Washington law. Accordingly, the court quieted title in favor of the Dickinsons and awarded them damages and costs.

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<sup>4</sup> The trial court dismissed Albice/Teccas' claims against Premier and Option One because of an arbitration agreement the Teccas signed. The trial court granted the Dickinsons' motion to voluntarily dismiss the cross claims against Premier and Option One.

ANALYSIS

I. WASHINGTON DEED OF TRUST ACT

The Deeds of Trust Act (Act) sets out the procedures that must be followed to properly foreclose a debt secured by a deed of trust. Chapter 61.24 RCW. A proper foreclosure action extinguishes the debt and transfers title to the property to the beneficiary of the deed of trust or to the successful bidder at a public foreclosure sale. *In re Marriage of Kaseburg*, 126 Wn. App. 546, 558, 108 P.3d 1278 (2005).

We construe the Act to further three objectives: (1) the nonjudicial foreclosure process should remain efficient and inexpensive; (2) the process should provide an adequate opportunity for interested parties to prevent wrongful foreclosure; and (3) the process should promote the stability of land titles. *Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985). In addition, because nonjudicial foreclosures lack the oversight inherent in judicial foreclosures, we strictly apply and interpret the Act in the borrower's favor. *CHD, Inc. v. Boyles*, 138 Wn. App. 131, 137, 157 P.3d 415 (2007).

A lawful foreclosure sale must comply with the timing and notice obligations of RCW 61.24.040. For example, a trustee may, for any cause the trustee deems advantageous, continue the sale for not more than a total of 120 days. RCW 61.24.040(6). And at any time prior to the 11th day before the sale, the borrower is entitled to cure the default set forth in the notice. RCW 61.24.090(1). Upon receipt of such payment, the trustee must discontinue the sale and reinstate the deed of trust. RCW 61.24.090(3).

To balance the procedural safeguards with the interests of a purchaser, the Act requires a foreclosing trustee to issue a deed that recites facts showing that the sale was conducted in

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compliance with statutory requirements. RCW 61.24.040(7). A bona fide purchaser is entitled to rely on these recitals as to the correctness of foreclosure sale procedures. RCW 61.24.040(7); *Glidden v. Mun. Auth. of Tacoma*, 111 Wn.2d 341, 347, 758 P.2d 487 (1998).

## II. STATUTORY DEFECTS IN THE SALE

Albice/Teccas argue that the trustee's failure to comply with certain statutory requirements renders the sale void. First, they claim that Premier had no authority to conduct the sale 161 days after the original sale date under RCW 61.24.040(6). Next, they claim that because they tendered funds sufficient to cure the default, the trustee should have discontinued the sale under RCW 61.24.090(3).<sup>5</sup> In addition, they assert that the recitals contained in the trustee's deed are "inadequate to demonstrate compliance with the statute." Br. of Appellant at 15, 18.

The Dickinsons counter that as bona fide purchasers for value, they are protected by the recitals in the deed of trust, which serve as conclusive evidence of a procedurally correct sale under RCW 61.24.040(7).<sup>6</sup>

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<sup>5</sup> Albice/Teccas also argue that Premier lacked authority to conduct the foreclosure sale because it did not qualify as a trustee under the Act without a corporate officer residing in Washington at the time of the sale. RCW 61.24.010(1)(a). Because we reverse on other grounds, we decline to address this issue.

<sup>6</sup> The Dickinsons contend that Albice/Teccas cannot, for the first time on appeal, argue that they tendered funds sufficient to cure the default prior to the sale or that the trustee's deed contained insufficient recitals. But both issues were before the court on summary judgment. Albice/Teccas argued that they tendered the final amount due to the lender 14 days prior to the sale in their original motion for summary judgment. The Dickinsons argued that "Dickinson, as a bona fide purchaser for value, was entitled to rely on the recitals made by the trustee in the deed." CP at 545. In reviewing summary judgment, we engage in the same inquiry as the trial court. *Morin v. Harrell*, 161 Wn.2d 226, 230, 164 P.3d 495 (2007). Whether the recitals in the deed of trust are sufficient for Dickinson to rely on is a necessary step in deciding whether Dickinson is entitled to the protection of RCW 61.24.040(7).

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We hold that the conclusional recitals in the deed of trust do not protect the Dickinsons from undisputed defects in the sale because they do not meet the statutory requirement of “facts showing” compliance with chapter 61.24 RCW. In addition, regardless of the sufficiency of the recitals, we hold that Dickinson was not a bona fide purchaser entitled to protection under RCW 61.24.040(7).

A. Standard of Review

On summary judgment, the trial court ruled that even though the sale was continued for more than 120 days in violation of RCW 61.24.040(6), Dickinson’s bona fide purchaser status rendered the deed’s recitals conclusive evidence that the sale was proper. We review a summary judgment de novo. *Hisle v. Todd Pacific Shipyard Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is proper when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). We consider all facts and reasonable inferences from them in the light most favorable to the nonmoving party. *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 125, 30 P.3d 446 (2001). The trial court can grant the motion only if, from all the evidence, reasonable persons could reach but one conclusion. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

B. Sufficiency of Recitals

The trustee’s deed recites information about the underlying debt obligation, the failure to cure the default, the lender’s request to sell the property, and the fulfillment of notice requirements prior to the sale. The deed also recites that “[a]ll legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in Chapter 61.24 RCW.” CP at 450.

Notably absent in the trustee's deed is any mention of the six continuances. Although the original sale date was September 8, 2006, the trustee's deed states that the original sale date on the Notice of Trustee Sale was "02/16/2007" (which was the actual sale date). CP at 444, 450. Nor does the trustee's deed mention the forbearance agreement or any of the make-up payments, including the tender of the last payment, which although late, would have cured the original default if accepted. The trustee's deed tells none of this story, reciting simply that "[a]ll legal requirements and all provisions of [Chapter 61.24 RCW] have been complied with" and that the original default had not been cured more than 11 days before the final sale.<sup>7</sup> CP at 450. These conclusional recitals make it impossible to determine, as a matter of fact, whether the sale took place within the statutorily required time or whether the borrowers were actually in default at the time of the sale.

#### 1. Purpose of Recitals

We construe a statute to give effect to the legislature's intent. *Udall v. T.D. Escrow Serv., Inc.*, 159 Wn.2d 903, 909, 154 P.3d 882 (2007). Where the statute's words are plain and unambiguous, we apply the statute as written. *Enter. Leasing, Inc. v. City of Tacoma*, 139 Wn.2d 546, 552, 988 P.2d 961 (1999). We also, when possible, give effect to every word, clause, and sentence of a statute. *Cox*, 103 Wn.2d at 387. In the absence of a term's statutory definition, we give the term its plain and ordinary meaning ascertained from a standard dictionary. *Am. Cont'l Ins. Co. v. Steen*, 151 Wn.2d 512, 518, 91 P.3d 864 (2004).

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<sup>7</sup> In fact, the final payment arguably triggered the statute that requires a trustee to discontinue a sale where the borrower tenders a cure for the default 11 days before the sale. RCW 61.24.090(3). Even if the Teccas were short the trustee's expenses as required by RCW 61.24.090(1)(b), the trustee had a fiduciary duty to notify the Teccas of any additional costs or fees due after they tendered the last payment under the forbearance agreement more than 11 days before the scheduled sale. RCW 61.24.090(1)(a), (3).

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The Act requires the foreclosing trustee to issue to the purchaser a deed that:

shall recite *the facts showing* that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value[.]

RCW 61.24.040(7) (emphasis added). Webster's Dictionary defines "recital" as "the formal statement or setting forth of some relevant matter of fact in a deed or legal document." WEBSTER'S THIRD NEW INT'L DICTIONARY at 1895 (2002). The statute unambiguously requires the trustee to recite facts in its deed showing compliance with the requirements of the chapter. Legal conclusions without supporting facts are insufficient to demonstrate that the sale complied with all the statutory procedural protections.

The Dickinsons point to the fact that the recitals contained in the trustee's deed are virtually identical to the form deed recommended by the Washington State Bar Association in the *Washington Real Property Deskbook*, 3d Ed. (Wash. State Bar Ass'n. Supp. 2001), § 47.11 (16). The deskbook, however, is not authority we are bound to follow. Had the trustee correctly identified the original sale date on the Notice of Sale, the deed would have contained inconsistent recitals—that the sale was continued for a period exceeding 120 days contrary to, not in compliance with, the terms of the statute. And had the trustee reported that Option One and the Teccas had executed a forbearance agreement under which the Teccas had actually paid all or most of the original delinquency, the recitals would have been, at the very least, seriously misleading as to whether the *original default* had been cured.<sup>8</sup> California courts have held that where recitals of regularity appear on the face of the deed but the deed also sets forth facts which

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<sup>8</sup> Notably, Option One's alleged letter of January 31 notified the Teccas that the February 16 sale would take place because they had breached the *forbearance agreement*, not the original note.

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are inconsistent with that recital, the deed is void on the basis that the recitals are not valid. *Dimock v. Emerald Props. LLC*, 81 Cal. App. 4th 868, 877, 97 Cal. Rptr.2d 255 (2000) (citing *Little v. CFS Serv. Corp.*, 188 Cal. App. 3d 1354, 1359, 233 Cal. Rptr 923 (1987)). We agree with this reasoning. We are unwilling to accept a trustee's legal conclusions contrary to the actual facts of the foreclosure process as conclusive evidence where an accurate reporting of the facts would have shown the legal conclusions to be incorrect.

Moreover, a trustee's bald statements that he or she has complied with the law, as distinguished from recitals of fact demonstrating such compliance, tend to dilute the statutory protections afforded borrowers by the Act.<sup>9</sup> See *Rosenberg v. Smidt*, 727 P.2d 778, 786 (Alaska 1986). While the purpose of RCW 61.24.040(7) is to enhance the reliability of land titles, conclusional recitals do so at the borrowers' expense. A conclusional recital in a trustee's deed requires little effort or oversight by the trustee yet it severely limits a borrower's ability to obtain post-sale relief. *Rosenberg*, 727 P.2d at 786 (noting that although factual recitals do not always protect against fraud, they tend to prevent more common failings of oversight and neglect). In contrast, requiring the trustee to recite the statutorily mandated facts of the loan-default procedure strikes the appropriate balance between the competing interests of all the parties. Where, as here, the deed contains legal conclusions but not factual recitals that establish compliance with RCW 61.24.040(7), we decline to extend protection to a purchaser beyond what the legislature clearly intended. We emphasize that the problem here is not that the recitals are wrong or misleading; rather, it is the trustee's failure to recite *any facts* triggering the protections

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<sup>9</sup> Washington State already affords purchasers broader protections than many other states by providing a conclusive presumption of compliance in favor of bona fide purchasers in all aspects of foreclosure. Grant Nelson and Dale Whitman, *Reforming Foreclosure: The Uniform Nonjudicial Foreclosure Act*, 53 DUKE L. J. 1399, 1505 (2004).

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afforded by chapter 61.24 RCW. We hold that the Dickinsons are unable to claim the protections of RCW 61.24.040(7); i.e., that the trustee's sale occurred within the statutorily required time and that the original defaults had not been cured. We next consider whether at least one of these flaws renders the sale void.

## 2. Sale Void Beyond 120 Days

The Dickinsons argue that the original sale was suspended subject to the forbearance agreement between the Teccas and Option One and that this does not violate the statute, which prohibits a trustee from continuing a sale for more than 120 days. Indeed, the forbearance agreement contains the following provision:

In the event that a foreclosure action is pending relating to the Loan at the time this Agreement becomes effective, . . . the foreclosure action will not be dismissed, but the Lender shall use its best efforts to ensure that the foreclosure is placed on hold pending satisfaction by Borrowers of the terms of this Agreement. Lender shall retain the right to continually postpone the foreclosure. . . or otherwise take any action reasonably necessary to maintain the "pending" status of the foreclosure action during the term of this Agreement.

CP at 467. Each time the sale was continued, the crier of the sale attributed the postponement to a "mutual agreement." CP at 358-59.

RCW 61.24.040(6) grants a trustee authority to continue a sale for any cause the trustee deems advantageous. *Wells Fargo Bank Minnesota v. Vincent*, 124 Wn. App. 1, 3-4, 93 P.3d 173 (2004). In *Vincent*, the court reasoned that the statute's plain language renders immaterial a trustee's reliance on "mutual agreement" when postponing a sale. *Vincent*, 124 Wn. App. at 4 n.5. There, the court held that absent an agreement to the contrary, the terms of the statute granted the trustee authority to continue the sale. *Vincent*, 124 Wn. App. at 3-4. Here, the Teccas did not contest Premier's or Option One's ability to continue the sale. Following

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*Vincent*, without an agreement restricting continuances of the sale, the grounds for continuing the sale were immaterial under the trustee's statutory authority.<sup>10</sup> We next consider whether the 120-day limit in RCW 61.24.040(6) divests a trustee of all authority to sell the property such that a sale after the 120 days is void.

A plain reading of the statute unambiguously limits what is otherwise unfettered discretion of the trustee to continue a sale. RCW 61.24.040(6) (trustee may "continue the sale for a period or periods *not exceeding a total of one hundred twenty days*") (emphasis added). Thus, one factor courts address in determining the validity of a sale is whether the sale occurred within 120 days. In *Felton v. Citizens Federal Savings and Loan Association of Seattle*, 101 Wn.2d 416, 424-25, 679 P.2d 928 (1984), although the trustee sale occurred more than three months after it was originally scheduled, in breach of an agreement, the court upheld the validity of the sale because the borrowers requested the delay and the sale occurred within the 120 days allowed by RCW 61.24.040(6). *See also In re Bell*, 386 B.R. 282, 289 (2008) (holding that a trustee sale postponed by oral notice complied with the Act where it was continued by public proclamation for less than a total of 120 days). Conversely, in *Bingham v. Lechner*, 111 Wn. App. 118, 131, 45 P.3d 562 (2002), the court addressed the effect of exceeding the 120-day limit. There, the trustee argued that the statute of limitations on enforcing payment of a loan did not bar him from reinstating foreclosure proceedings. *Bingham*, 111 Wn. App. at 127-28. He claimed that the statute of limitations tolled, and never restarted, when the original foreclosure

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<sup>10</sup> The forbearance agreement appears to permit indefinite continuances. *See* CP at 467 ("Lender shall retain the right to continually postpone the foreclosure . . ."). But a contract that conflicts with statutory requirements is unenforceable as a matter of law. *Pierce County v. State*, 144 Wn. App. 783, 841, 185 P.3d 594 (2008). Regardless of the terms in the agreement, Premier did not have the authority to continue the sale beyond the 120-day statutory limit.

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proceedings were initiated. *Bingham*, 111 Wn. App. at 127. The court, relying on RCW 61.24.040(6), held that the trustee was entitled to continue the initial sale for 120 days, during which time the statute of limitations tolled. *Bingham*, 111 Wn. App. at 131. But the court concluded that after 120 days, the trustee's right to conduct the original sale extinguished, restarting the statute of limitations. *Bingham*, 111 Wn. App. at 131. We agree that this provision divests a trustee of authority to conduct a sale more than 120 days from the date in the Notice of Sale.

In the absence of specific facts in the trustee's deed showing that the trustee held the sale within 120 days, including continuances, RCW 61.24.040(7) does not protect Dickinson from a showing to the contrary. The trustee held the sale 161 days after the date set forth in the Notice of Trustee Sale, well beyond the statutorily mandated 120-day limit. Accordingly, the sale was void.<sup>11</sup>

C. Bona Fide Purchaser Status

Even if the recitals were sufficient, Dickinson is unable to rely on the protection of RCW 61.24.040(7) because he was not a bona fide purchaser for value. Without such protections, the undisputed statutory defects in the sale, as demonstrated above, render the sale void.

Albice/Teccas argue that Dickinson was not a bona fide purchaser because (1) he knew or should have known about the defects in the sale and (2) the purchase price was substantially below the property's fair market value. Specifically, they argue the following circumstances gave Dickinson notice of flaws in the foreclosure proceedings: (1) Dickinson was "intimately

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<sup>11</sup> Because this procedural flaw renders the sale void, we need not consider whether it is also void because the trustee failed to set forth facts in the deed showing the true status of the Teccas' default, if any.

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familiar with real estate investment and the non-judicial foreclosure process”; (2) from experience, Dickinson knew foreclosure sales are usually continued for 30 days; (3) Dickinson spoke with Karen Tecca, who told him that they had no interest in selling, that the sale was not going to happen, and that they were “going to make up the payments”; and (4) Dickinson was “surprised” when the property came up for sale. Br. of Appellant at 19-20. Albice/Teccas further argue that a reasonably diligent inquiry would have revealed that the Teccas had entered into a forbearance agreement under which they had made all their payments and that the sale had been continued for a period beyond what was statutorily allowed.

The Dickinsons counter that postponing the sale beyond 120 days did not put Dickinson on notice of any procedural defects. They claim that Dickinson did not know, nor should he be expected to know, about the 120-day statutory limit on continuances. They also argue that Dickinson’s conversation with Karen Tecca produced no information creating actual or constructive notice of defects in the sale process and that Tecca merely declined an offer to purchase the property.

A bona fide purchaser is one who purchases property without actual or constructive knowledge of competing interests and pays the vendor valuable consideration. *Glidden*, 111 Wn.2d at 350; *Glaser v. Holdorf*, 56 Wn.2d 204, 209, 352 P.2d 212 (1960). A purchaser is on notice if he has knowledge of facts sufficient to put an ordinarily prudent man on inquiry and a reasonably diligent inquiry would lead to the discovery of title or sale defects. *Steward v. Good*, 51 Wn. App. 509, 513, 754 P.2d 150 (1988) (citing *Peterson v. Weist*, 48 Wash. 339, 341, 93 P. 519 (1908)). We must therefore determine whether the events surrounding the sale created a duty on Dickinson’s part to inquire into possible flaws in the foreclosure process. See *Glidden*,

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111 Wn.2d at 350-51. A combination of factors convinces us that Dickinson had a duty to further investigate the circumstances of the sale.

We give substantial weight to a purchaser's real estate investment experience when determining whether a purchaser had inquiry notice. *Compare Steward*, 51 Wn. App. at 513 (noting that the bona fide purchasers had little real estate investing experience at the time of the sale) and *Miebach v. Colasurdo*, 102 Wn.2d 170, 176, 685 P.2d 1074 (1984) (holding that the purchaser with 23 years of investment experience was not a bona fide purchaser). Dickinson is in the business of investing in real estate. Of his 13 properties in Washington, he purchased the majority through nonjudicial foreclosure sales. By the time of the sale at issue, Dickinson had attended over 35 foreclosure sales. He stated that he had familiarized himself with various Washington foreclosure laws as a necessity for conducting his business. Thus, even without specific knowledge of statutory requirements for a proper sale, Dickinson's familiarity with the foreclosure process provides context for assessing whether certain facts put him on notice.

Before the actual sale, Dickinson approached Karen Tecca and asked if she was interested in selling him the property directly. According to Dickinson, Tecca responded that she was not interested in selling the property and never would be. In light of this conversation, Dickinson claimed that he was surprised when the property came up for auction. Moreover, on the original sale date, Dickinson learned that the sale was being continued; he obviously tracked the continuances through to the actual sale 161 days later. In *Miebach*, 102 Wn.2d at 176-77, the purchaser drove by the sale property twice and once knocked on the door, noticing a permit for improvements on the door. The court found these circumstances, coupled with an inadequate purchase price, sufficient to alert a prudent purchaser of the need to further investigate the sale.

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*Miebach*, 102 Wn.2d at 176-77. Dickinson's personal encounter with Karen Tecca should have similarly raised his suspicions regarding the circumstances of the foreclosure. That he was surprised when the property came up for auction reinforces our conclusion that Dickinson had a duty to confirm the status of the default.

Here too, the sale price was markedly low in comparison to the Albice/Teccas' substantial equity in the property.<sup>12</sup> A sale price less than the fair market value at a foreclosure proceeding is not an irregularity. See *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 538-39, 114 S. Ct. 1757, 128 L. Ed. 2d 556 (1994). But an inadequate purchase price can be a factor that puts a purchaser on notice of another party's claim of right to, or equity in, the property. See *Casa del Rey v. Hart*, 110 Wn.2d 65, 72, 750 P.2d 261 (1988); *Miebach*, 102 Wn.2d at 176-77. The low auction price relative to the fair market value should have alerted Dickinson to the discrepancy between the underlying debt obligation and the Albice/Teccas' remaining equity in the property. That Dickinson evaluated the property at less than the Teccas' estimation does not relieve him of noting this considerable discrepancy. Dickinson's agent was authorized to spend up to \$450,000

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<sup>12</sup> Albice/Teccas' expert witness, a certified general appraiser in Washington State, testified that the property was worth \$950,000 in February 2007. Karen Tecca stated in her declaration that the property had a value in excess of \$750,000. Her estimate was based on a 2003 appraisal of the property at \$607,000, assuming that it had substantially appreciated. In their brief, the Dickinsons argue that fair market value of the property was approximately \$428,000. Based on this record, the purchase price was between 13-18 percent of its fair market value. In considering the bona fide purchaser issue, the disparity between what Dickinson paid and the true value of the property strongly supports our conclusion that Dickinson should have further investigated the sale. See *RESTATEMENT (THIRD) OF PROPERTY: MORTGAGES* § 8.3 cmt. b (1997) (a court is generally warranted in invalidating a sale where the price is less than 20 percent of fair market value).

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at the sale, yet he spent only \$130,000.<sup>13</sup> Like the purchaser in *Meibach*, Dickinson was aware that he was paying only a fraction of the property's value. Thus, the low price was another factor that should have raised Dickinson's suspicions as a prudent investor.

Together, these facts created a duty on Dickinson's part to inquire into the legitimacy of the sale. A reasonably prudent real estate investor concerned with protecting his assets would have inquired into the particulars of the Teccas' default, especially with the knowledge that they had no intention of relinquishing their property. The long delay should have further alerted him that the Teccas were likely trying to cure the default on their loan and prevent a foreclosure. When Dickinson contacted the trustee to confirm the date of the sale, he could have easily also confirmed the circumstances of the default. As in *Meibach*, 120 Wn.2d at 177, Dickinson's conduct does not match that of an ordinary prudent investor.

Once on inquiry notice, it is clear that Dickinson would have discovered serious defects in the foreclosure sale process. With reasonably diligent inquiry, he could have learned that the six continuances were a result of the Teccas' payments under a forbearance agreement and that they attempted to cure their default more than 11 days prior to the actual sale date. Accordingly, we hold that Dickinson is not a bona fide purchaser protected under RCW 61.24.040(7). Rather, he is bound by Albice/Teccas' uncontroverted evidence that the sale was conducted in violation of the Act.

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<sup>13</sup> And \$450,000 was probably already a significant underestimation of the property's fair market value. Purchasers reasonably anticipate lower prices at a foreclosure sale because properties sold at a foreclosure auction are "simply worth less." *Resolution Trust Corp.*, 511 U.S. at 539.

### III. SALE VOID ON EQUITABLE GROUNDS

In addition, Albice/Teccas argue that the substantially inadequate sale price, in conjunction with unfair circumstances surrounding the sale, establishes equitable grounds to set aside the foreclosure sale.

Washington courts have not set a benchmark for when a foreclosure sale price is inadequate as a matter of law. In general, Washington courts have found the purchase price inadequate when it is less than 10 percent of the fair market value. *See e.g., Miebach*, 102 Wn.2d at 177-79 (sale for less than 2 percent of the fair market value was a grossly inadequate sales price); *Cox*, 103 Wn.2d at 387-88 (purchase price between 3.9 and 5.9 percent of the fair market value was grossly inadequate); *Casa del Rey*, 110 Wn.2d at 72 (purchase for 4.9 percent of the fair market value was inadequate). The *Restatement (Third) of Property* states that a court is generally warranted in invalidating a sale where the price is less than 20 percent of fair market value. RESTATEMENT (THIRD) OF PROPERTY: MORTGAGES § 8.3 cmt. b (1997). As noted above, Dickinson purchased the property for between 13 and 18 percent of its fair market value.

Inadequacy of price alone, however, is generally insufficient to set aside a nonjudicial foreclosure sale. *Udall*, 159 Wn.2d at 914-15. But a grossly inadequate purchase price together with circumstances of other unfair procedures may provide equitable grounds to set aside a sale. *Udall*, 159 Wn.2d at 914. Where violations of a sale are technical, a borrower must show that the circumstances surrounding the sale unfairly harmed or prejudiced the borrower. *Steward*, 51 Wn. App. at 515.

According to Albice/Teccas, the string of continuances chilled the bidding process, contributing to the substantially low sale price. At the initial sale, four or five bidders appeared;

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only two bidders appeared at the actual sale 161 days later. The crier of the sale commented that the sale was continued so many times that nobody thought it was going to happen. And the actual sale, originally scheduled for 10:00 A.M., was not held until 11:45 A.M. A trustee's actions that effectively suppress competitive bidding need not be intentional to warrant relief. See *Country Express Stores, Inc. v. Sims*, 87 Wn. App. 741, 748-49, 943 P.2d 374 (1997). Here, the trustee's continuances and delayed start of the actual bidding likely chilled the bidding process by reducing the number of potential bidders.<sup>14</sup> Dickinson paid only a fraction of the amount he was prepared to pay, suggesting he would have paid more had the bidding been competitive.

More importantly, circumstances surrounding the default and the Teccas' attempts to save their substantial equity in the property constitute unfair circumstances warranting the setting aside of the sale on equitable grounds. In *Cox*, 103 Wn.2d at 386, the trustee conducted the sale even though he had actual notice of a pending action where the borrowers were challenging their underlying debt obligation. The court reasoned that given his fiduciary duties to both the borrower and the lender, the trustee should have informed the borrower's attorney that she had failed to properly restrain the sale until resolution of the underlying dispute. *Cox*, 103 Wn.2d at 390. The court held that the trustee's action, along with the inadequate purchase price, resulted in grounds to set aside the sale. *Cox*, 103 Wn.2d at 388.

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<sup>14</sup> To set aside a sale on the grounds of chilled bidding, the challenger to a sale must establish that bidding was actually suppressed with affirmative, factual evidence. *Country Express Stores*, 87 Wn. App. at 749. Albice/Teccas do not argue that the sale should be set aside on these grounds alone; rather, the chilled bidding is an additional unfair circumstance in support of setting aside the sale on the grounds of inadequate price. In this case, they need not prove actual suppression.

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Here, the Teccas tendered the final payment under the forbearance agreement on February 2, 2008, more than 11 days before the sale on February 16, 2008. Although this amount may not have been sufficient to automatically discontinue the sale under RCW 61.24.090(3),<sup>15</sup> it was sufficient to require that Premier, as a fiduciary to both the lender and Albice/Teccas, cancel the sale, give the Teccas notice of any additional costs due, and reschedule the sale with additional public notices.<sup>16</sup> The harm to the lender would be minimal in again delaying the sale. The harm to Albice/Teccas in proceeding with the sale was enormous—the loss of \$300,000-\$800,000 of equity in the property. A trustee is not required to obtain the best possible price for the trust property; nonetheless, a trustee must take reasonable and appropriate steps to avoid sacrificing the debtor's interest in the property. *Cox*, 103 Wn.2d at 389. Here, the trustee acted with complete disregard for the Albice/Teccas' substantial interest in the property. We have no hesitation in holding that under *Cox*, these circumstances more than warrant setting aside the nonjudicial foreclosure sale. We vacate the trial court's order approving the sale and remand for the trial court to enter an order declaring the sale void.

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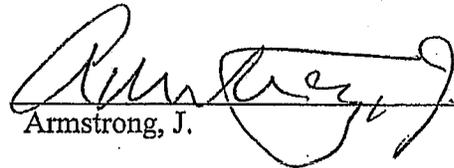
<sup>15</sup> In addition to paying the default amount, the Teccas also needed to pay the expenses and costs incurred by the trustee. RCW 61.24.090(1)(b).

<sup>16</sup> Under the forbearance agreement, the Teccas contracted to pay Option One. But it would be disingenuous to suggest that payment to Option One did not put Premier on notice of the Teccas' attempt to cure the default. As noted above, Premier and Option One are closely affiliated, sharing access to the same loan information, including foreclosure payments. Lisa Clary, an Option One employee designated as Premier's representative in this action, stated that she knew the Teccas' final payment under the agreement was tendered late and rejected. Moreover, the signatory of the Deed of Trust, Kim Thorne, was employed by Option One. Thus, Premier was on notice, either actual or constructive, that the Teccas tendered their final payment under the forbearance agreement.

IV. ATTORNEY FEES

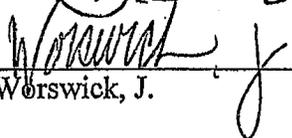
Finally, Albice/Teccas argue that if we find that the trustee's sale was void, the judgment entered for rent, costs, and statutory attorney fees should be reversed. RCW 59.12.170 provides that the court shall assess damages occasioned by an unlawful detainer. Costs, including statutory attorney fees, are awarded to a prevailing party pursuant to RCW 4.84.010. Because we have set aside the sale as void, we also reverse the trial court's judgments for rent, costs, and statutory attorney fees in favor of Dickinson. We award costs and fees to Albice/Teccas as the prevailing party. RCW 4.84.010.

We reverse.

  
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Armstrong, J.

We concur:

  
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Penovar, S.J.

  
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Worswick, J.