

Supreme Court No. 92967-0
Court of Appeals No. 72504-1

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WASHINGTON STATE
SUPREME COURT

SUPREME COURT
OF THE STATE OF WASHINGTON

SELENE RMOF II REO ACQUISITIONS

Plaintiff-Respondent-Petitioner

vs.

VANESSA WARD,

Defendant-Appellant-Respondent,

RESPONDENT VANESSA WARD'S AMENDED SUPPLEMENTAL BRIEF

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I. INTRODUCTION

Respondent Vanessa Ward respectfully requests that this Court affirm the Court of Appeals' unanimous decision reversing the trial court's entry of judgment against Ms. Ward and dismiss this unlawful detainer action. As the Court of Appeals correctly held, Selene RMOF Acquisition, Inc. ("Selene") is not authorized "to pursue an unlawful detainer action under the statutory provisions" in the Deed of Trust Act, RCW chapter 61.24 ("DTA") "allowing the purchaser at a trustee's foreclosure sale to bring an unlawful detainer action." *Selene RMOF II REO Acquisitions II, LLC v. Ward*, 2016 WL 785097, at *1 (Wash. Ct. App. Feb. 29, 2016). Nor did the Court of Appeals err when it held that Ms. Ward has color of title derived from her 2004 notarized deed and thus, Selene could not establish superior title as required by RCW 59.12.030(6). *Id.* at *2.

II. SUPPLEMENTAL STATEMENT OF FACTS

Ms. Ward relies on the Statement of Facts set forth in her response to Selene's Petition for Review and adds the following facts, which are relevant to the Court's determination of whether the trial court erred when it granted Selene relief under the unlawful detainer statute.

First, Vanessa Ward became the legal title holder to the property in question, commonly known as 7911 S. 115th Place, Seattle, Washington,

when she purchased the property in 1999. RP 2:17-2:19; CP 29 She obtained a mortgage through Homecomings Bank. RP 2:22-3:8; CP 29. Her mortgage payments were around \$2100.00 per month and the payment included taxes and insurance. *Id.* Ms. Ward never sold her home, nor did she give permission to Mr. Dorsey to sell her home. RP 1:25-2; 6; CP 19, 29. In fact, Ms. Ward continued to make her mortgage payments to Homecomings from 1999-2007. CP 29; RP 4:8-12. Unbeknownst to Ms. Ward, sometime in 2001, Dorsey forged Ms. Ward's signature to a quitclaim deed. RP 13:5-15. The forged quitclaim purports to convey this property to Dorsey in lieu of foreclosure. CP 79. Thereafter, sometime in 2005, Dorsey sold Ms. Ward's property to Fred and Grace Brooks. *Id.*; RP 13:21-25. On or about 2007, the Brooks executed a special power of attorney to Dorsey. CP 29. Dorsey then sold the home to James Drier. CP 79. On or about April 2007, Mr. Drier secured a loan from First Franklin in the amount of \$565,000. CP 4, 79, 116. It is that deed of trust that was foreclosed upon on January 30, 2009. CP 116-118.

Ms. Ward never received the required notices pursuant to RCW 61.24 *before* the foreclosure sale on January 30, 2009. RP 6:12-14, 17:9-18. She only received notices two or three years *after* the foreclosure sale. RP 17:9-17.

Second, once Ms. Ward learned of the fraudulent transfer of her home, she sought legal advice. CP 29:14-21. On or about January 30, 2009, Ms. Ward filed a complaint in King County that alleged the fraudulent transfer of her home. *Id.* More importantly, she attached the signed, notarized quitclaim deed from Dorsey to Ward. CP 45, The quitclaim deed transferring the property back to her in 2004 was in writing, signed by Mr. Dorsey, and acknowledged before a notary public. *Id.* Moreover, in the trial court she asserted that she has legal title to the property, produced the executed, notarized quitclaim deed and reiterated that she was the rightful owner of the property. CP 45; RP 1:23-2:9.

Third, LaSalle Bank had actual knowledge of the title defect. CP 55; *see also* CP 30:4-9, 36:20-23, 37:15-16. Ms. Ward filed and served a lawsuit against multiple defendants including La Salle. CP 29:19-21; RP 2:7-13. Ms. Ward answered LaSalle's initial 2009 unlawful detainer complaint by asserting that she was the legal owner of the property and put LaSalle on notice of the fraudulent transfer of title. CP 29-30; CP 55. In return, LaSalle did not pursue the unlawful detainer action but instead purportedly transferred its rights to US Bank. CP 60-63. On or about December 2012, US Bank filed and served a subsequent unlawful detainer action against Ms. Ward. CP 61-67; CP 79; CP 116-117, 120. Ms. Ward

objected, asserting she was the legal owner. CP 30 The unlawful detainer action filed by US Bank was dismissed for lack of prosecution. CP 30.

LaSalle conveyed the property to Selene via special warranty deed on October 12, 2012. CP 120-21. However, that did not prevent U.S. Bank from commencing the unlawful detainer action against Ms. Ward in December 2012, despite the fact that US Bank had no beneficial interest in the property, as LaSalle sold the property to Selene two months earlier. CP 61-66, 117, 120. Ms. Ward again asserted the fraudulent chain of title and that she was the legal owner of the property. CP 30. Selene had actual notice fraudulent title before they purchased the property. CP 19. RP 1:25-2:4-5.

III. ARGUMENT

A. Summary of Argument.

This case presents two questions of first impression, which call upon the Court to determine the plain meaning of the term “the purchaser at the trustee’s sale” under the Deed of Trust Act (“DTA”), RCW 61.24.060 and RCW 61.24.040, and the term “color of title” under Washington’s unlawful detainer statute, RCW 59.12.030. The questions are: first, whether Selene, which did not purchase Ms. Ward’s home at the trustee’s sale, nonetheless was “the purchaser at the trustee’s sale” under RCW 61.24.060(1) RCW 61.24.040, with the statutory right to bring an

unlawful detainer action to evict her from her home: and second, even if Selene could exercise the unlawful detainer remedy, whether Selene could properly bring an unlawful detainer action against Ms. Ward under RCW 59.12.030 when she was not a tenant and had “color of title” to her home by virtue of a notarized quitclaim deed. The Court reviews these questions of law *de novo*. *Jametsky v. Olsen*, 179 Wn.2d 756, 761-62, 317 P.3d 1003 (2014) (explaining that “[s]tatutory interpretation is a question of law reviewed *de novo*”). To proceed with the unlawful detainer action, Selene must establish both its statutory right as a subsequent purchaser to bring the action *and* that Ms. Ward did not have color of title to her home. Failure to prove either is fatal to its claim. Selene fails on both counts.

B. A Purchaser at a Foreclosure Sale’s Statutory Right to Bring an Unlawful Detainer Action Does Not Extend to Selene, Which Did Not Purchase Ms. Ward’s Home at the Foreclosure Sale.

1. The Plain Language of the DTA Establishes that Only “the Purchaser at the Trustee’s Sale” Can Bring an Unlawful Detainer Action to Take Possession of a Property After the Sale.

The Court’s “‘fundamental objective’ when interpreting a statute is to discern and implement the intent of the legislature.” *Estate of Bunch v. McGraw Residential Ctr.*, 174 Wn.2d 425, 431-32, 275 P.3d 1119 (2012) (citation omitted). The legislature’s intent can be gleaned from the plain language of the statutory language and outside sources need not be

considered if the statute is not ambiguous. *Jametsky*, 179 Wn.2d at 762 (interpreting plain language in Distressed Property Conveyances Act to determine if a certificate of delinquency must be issued by county before a property is considered “at risk of loss due to nonpayment of taxes” and therefore a “distressed” property for purposes of the DPCA).

“Courts are not permitted to ignore terms in a statute.” *In the Matter of the Parentage of J.M.K. and D.R.K.*, 155 Wn.2d 374, 393, 119 P.3d 840 (2005) (rejecting an interpretation that “effectively ignore[d] the term ‘artificial insemination’” in statute at issue). As this Court has stated in specific reference to the DTA, the statute “must not be judicially construed in a way that renders any part of the statute superfluous.” *Plein v. Lackey*, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003); *see also State v. Johnson*, 179 Wn.2d 534, 544, 315 P.3d 1090 (2014) (“we presume the legislature says what it means and means what it says”) (citation omitted).

“As a means to gain possession of real property, unlawful detainer is available to one who holds a title as a *purchaser at a deed of trust foreclosure sale*[.]” *Puget Sound Investments Grp., Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998) (emphasis added). This is because the DTA provides authority for the purchaser at the foreclosure sale to bring an unlawful detainer action under RCW 59.12. *Id.* (citing RCW 61.24.060). The unlawful detainer statute requires that “[a]n

unlawful detainer action, commenced as a result of a trustee's sale under [the DTA], must comply with the requirements of RCW 61.24.040 and RCW 61.24.060.”

The DTA's plain language makes clear that the unlawful detainer remedy is available *only* to the party that purchases the property at the foreclosure sale. RCW 61.24.040, which sets forth the requirements for the notice of trustee's sale, provides that “[t]he purchaser *at the trustee's sale* is entitled to possession of the property on the 20th day following the sale,” and provides that at that time, “the purchaser has the right to evict occupants who are not tenants by summary proceedings under chapter 59.12 RCW.” RCW 61.24.040(1)(f)(X) (emphasis added). Similarly, RCW 61.24.060, which sets forth the “[r]ights and remedies of [the] trustee's sale purchaser[,]” authorizes “[t]he purchaser *at the trustee's sale*” to use the unlawful detainer statute to obtain possession of the property purchased at the sale and provides that “[i]f the trustee elected to foreclose the interest of any occupant or tenant, the purchaser of tenant-occupied property *at the trustee's sale* shall provide written notice to the occupants . . .” RCW 61.24.060(1), (2) (emphasis added).

Here, if the term “purchaser at the trustee's sale” was construed to include subsequent purchasers who were not purchasers at the trustee sale, as Selene argues, this limiting language in the DTA, “at the trustee's sale,”

which modifies the term “purchaser” in RCW 61.24.060(1) and RCW 61.24.040, would be ignored and rendered meaningless. The Court must presume that the legislature said what it meant and meant what it said, and that the unlawful detainer remedy under RCW 59.12 is limited to the “purchaser at the trustee’s sale” or “trustee’s sale purchaser” as expressly stated in the DTA. RCW 61.24.060(1); RCW 61.24.040.

In addition, courts must “give effect to every word in a statute.” *Dennis v. Dep't of Labor & Industries*, 109 Wn.2d 467, 479, 745 P.2d 1295 (1987) (explaining that “[n]o word” in a statute “is deemed inoperative or superfluous unless it is the result of an obvious mistake or error”). Here, RCW 61.24.060(1) refers to “*the* purchaser at the trustee’s sale” who can invoke the unlawful detainer remedy, as opposed to “*a* purchaser.” The legislature’s choice of the definite article “the” in this provision further demonstrates that it is *the* trustee’s sale purchaser, and only the trustee’s sale purchaser, who has that right under the DTA. *See City of Olympia v. Drebeck*, 156 Wn.2d 289, 297-98, 126 P.3d 802 (2006) (focusing on use of the definite article “the” and holding that statutory phrase “*the* new development” in the fee impact statutes of the Growth Management Act referred to the “*particular* new development” and did not encompass “development activity” more broadly) (emphasis in original).

Moreover, given the nature of the statutes at issue, any doubt or ambiguity must be resolved in favor of Ms. Ward. Because the DTA lacks basic protections that borrowers are afforded in judicial foreclosure proceedings, courts “must strictly construe the statute in the borrower’s favor.” *Albice v. Premier Mortg. Servs. of Washington*, 174 Wn.2d 560, 567, 276 P.3d 1277 (2012); *see also Udall v. T.D. Escrow Servs., Inc.*, 159 Wn.2d 903, 915-16, 154 P.3d 882 (2007) (DTA “must be construed in favor of borrowers”). Similarly, because the unlawful detainer statute, RCW 59.12, is in derogation of common law and seeks to dispossess persons from property, it must be strictly construed against the party seeking to invoke it, in this case Selene. *See Housing Authority of City of Everett v. Terry*, 114 Wn.2d 558, 563, 789 P.2d 745 (1990). Although the plain language of the phrase “the purchaser at the trustee’s sale” is more than sufficient to resolve the statutory interpretation issue in Ms. Ward’s favor, these broader principles add further weight to her position.

Selene ignores this plain language of RCW 61.24.040 and RCW 61.24.060(1), and thereby directly contravenes RCW 59.12.032’s requirement that “[a]n unlawful detainer action, commenced as a result of a trustee’s sale” under the DTA “must comply with the requirements of RCW 61.24.040 and RCW 61.24.060.” RCW 59.12.032. As discussed above, this plain language of the DTA confirms that authority to bring an

unlawful detainer action to take possession after a trustee's sale is expressly limited to "the purchaser at the trustee's sale" and does not extend to subsequent purchasers. Yet despite this, Selene urges the Court to rely on a California case where the court permitted a subsequent purchaser to bring an unlawful detainer action. *See* Pet. for Review at 10. But this case does not interpret Washington's unlawful detainer statute or the DTA. *See Evans v. Superior Court*, 67 Cal. App. 3d 162, 168-170, 136 Cal. Rptr. 596 (Cal. Ct. App. 1977) (holding that Cal. Civ. Pro. Code § 1161a permits "a subsequent purchaser from a purchaser at a foreclosure sale" to maintain an unlawful detainer action without interpreting the statutory language).

Applying these established principles of statutory interpretation to the plain language of the DTA confirms that the Court of Appeals did not err when it "reject[ed] Selene's argument that it is entitled to pursue an unlawful detainer action under the statutory provisions allowing the purchaser at a trustee's foreclosure sale to bring an unlawful detainer action." *Selene*, 2016 WL 785097, at *1.. On this basis alone, the Court of Appeals' decision should be affirmed.

2. **This Court's Precedent Confirms that Upon Completion of the Trustee's Sale, the DTA Ceased to Have Any Continuing Effect Beyond the Parties to the Sale and the DTA's Statutory Right to Pursue an Unlawful Detainer Thus Cannot Extend to a**

Subsequent Purchaser.

Ignoring the DTA's plain language, Selene argues that "[c]ase law has long recognized that parties who are deeded real property rights consequently possess the lawful ability to evict tenants through an unlawful detainer action," Pet. for Review at 7. The Court should reject this argument, which relies on inapposite cases regarding property transfers and the rights of assignees. *Id.* at 7-9 (citing cases). None of those cases involves a statutory right which, by its terms, is expressly limited.

Selene's position that the statutory right in RCW 61.24.060(1) to pursue an unlawful detainer extends to a subsequent purchaser, notwithstanding the limiting phrase "purchaser at the trustee's sale, is also contrary to this Court's decision in *Fannie Mae v. Steinmann*, 181 Wn.2d 753, 336 P.3d 614 (2014). In *Steinmann*, the trustee sold the property to the highest bidder at the trustee's sale, Fannie Mae. *Id.* at 754. After the homeowners failed to vacate, Fannie Mae filed a complaint for unlawful detainer under RCW 59.12, as it was entitled to do as "the purchaser at the trustee's sale" under RCW 61.24.060(1). *Id.* Because the unlawful detainer statute has no provision for attorney fees, *see* RCW 59.12, Fannie Mae sought attorney fees under a provision in the deed of trust. *Id.* at 755. However, as this Court noted:

Fannie Mae was not a party to the deed of trust, and . . . the deed of trust as a security instrument effectively disappeared by the time Fannie Mae took title to the property . . . *And Fannie Mae's right to possession of the premises derived solely from its purchase of the property at the trustee's sale.*

Id. (emphasis added). Because there was no statutory right to attorney fees under RCW 59.12, and Fannie Mae had no right to attorney fees under the deed of trust to which it was never a party and which had been extinguished as a security instrument when the trustee's sale was completed, there was no basis for Fannie Mae's claim for attorney fees, and the Court so held. *Id.* at 756. Here, likewise, upon the completion of the trustee's sale, the DTA ceased to have any continuing effect beyond the parties to the trustee's sale as set forth in the statute. Selene's right, if any, to pursue an unlawful detainer under RCW 61.24.060(1) would have to be "derived solely from its purchase of the property at the trustee's sale," just as the Court said in reference to Fannie Mae's right, if any, to bring a claim for attorney fees in *Steinmann*. *Id.* at 755. Thus, because Selene was *not* the purchaser at the trustee's sale, and the DTA did not continue to operate beyond the parties to the trustee's sale, Selene could not exercise the right of unlawful detainer that the DTA expressly limits to "the purchaser at the trustee's sale." Any other interpretation of the DTA would extend the reach of RCW 61.24.060(1), potentially indefinitely to

successor purchasers, successors to those successors, and so on, without any limitation based on the statutory text and without finality.

Selene's argument also relies on the mistaken assumption that a party can contract around or otherwise modify a statute by contract or assignment. The Court rejected this argument in *Bain v Metro. Mortgage Grp., Inc.*, 175 Wn.2d 83, 285 P.3d 34 (2012), and it should do so here as well. As the Court explained in *Bain*, where it held that MERS was not a lawful beneficiary pursuant to the DTA:

The legislature has set forth in great detail how nonjudicial foreclosures may proceed. We find no indication the legislature intended to allow the parties to vary these procedures by contract. We will not allow waiver of statutory protections lightly. MERS did not become a beneficiary by contract or under agency principals.

175 Wn.2d at 108. As the Court noted, Washington courts have consistently rejected arguments where "a party has argued that we should give effect to its contractual modification of a statute." *Id.* at 107-08 (citing cases). For example, in *State ex rel. Standard Optical Co. v. Superior Court*, 17 Wn.2d 323, 328-29, 135 P.2d 839 (1943), the Court held that a company could not "engage in the practice of optometry" but avoid the statutory licensing requirements applicable to optometry by contracting with a person that complied with those requirements. 17 Wn.2d at 328-29. The Court should reject Selene's request that the Court

endorse its attempt to evade the statutory requirement that it must be “the purchaser at the trustee’s sale” to file an unlawful detainer action to take possession of Ms. Ward’s property after the foreclosure sale through its purchase agreement with LaSalle, the actual purchaser at the trustee’s sale.

C. Selene Could Not Properly Bring an Unlawful Detainer Action Because Ms. Ward Was Not a Tenant and Had Color of Title Because She Held a 2004 Notarized Quitclaim Deed to Her Home.

In an unlawful detainer action, the burden is on the plaintiff to prove, by a preponderance of the evidence, the right to possession of the property. *Duprey v. Donahoe* 52 Wn. 2d 129, 135, 323 P.2d 903 (1958). When proceeding with an unlawful detainer proceeding under RCW 59.12.030(6), the section of the unlawful detainer statute at issue here, the plaintiff must demonstrate that a person entered upon its property “without the permission of the owner and without having color of title thereto.” *Bridges*, 92 Wn. App. at 527. If the unlawful detainer defendant can establish color of title, the purchaser of the property “must establish superior title before it may proceed under RCW 59.12.030(6).” *Id.* .

In *Bridges*, one of the few Washington cases discussing color of title in the unlawful detainer context, the Internal Revenue Service foreclosed on the Bridges' home and sold it at a tax sale to Puget Sound Investment Group (“Puget Sound”). 92 Wn. App. at 525. The Bridges refused to surrender possession of the home, and in the subsequent

unlawful detainer, obtained an order quashing the writ of restitution. *Id.* at 525. The Court of Appeals affirmed the trial court, finding that because the Bridges held a statutory warranty deed, which gave them color of title, “Puget Sound must establish superior title before it may proceed under RCW 59.12.030(6)” and that the “appropriate procedure” to establish superior title, as a necessary precursor to an unlawful detainer action, “is an action in ejectment and quiet title under RCW 7.28.” *Id.* at 527.

The Court of Appeals relied on *Bridges* in another unlawful detainer action brought under RCW 59.123.030(6), where the issue of whether an assignee of the tenant had color of title by virtue of the lease assignment by the original tenant. *See Bellevue Square Managers, Inc. v. GRS Clothing, Inc.*, 124 Wn. App. 238, 98 P.3d 498 (2004). While the Court of Appeals concluded that the assignee did not have color of title, it did so in part because, unlike defendant in *Bridges*, who “had clearly held valid title at one point[,]” the assignee in *Bellevue Square Managers* “never had color of title[.]” *Id.* at 246-247 (internal marks omitted). As the court explained, the “distinction between once holding a valid title and never holding a valid title is sound.” *Id.* at 247. Further, “one cannot possess color of title if it knows that the title is invalid” and based on the record in the case, “it is reasonable to conclude that [the assignee] never believed it had valid title.” *Id.*

Here, it is undisputed that Ms. Ward, like the Bridges, “clearly held valid title at one point[,]” when she purchased her home in 1999. *See* CP 46-47. She held a 2004 quitclaim deed that included a full legal description of the property, signed by the grantor and notarized. CP 45. The record makes clear that she believed her title to her home was a valid title. *See, e.g.*, CP 19; CP 74. In the written motion she presented to the Court in the unlawful detainer action, she declared under penalty of perjury that she was challenging “the filing of a writ to evict me from my property that I have owned since 1999[,]” a property she alleged had been “stolen” by other parties by fraudulent means. *Id.*; *see also* RP 2:7-9 (Ms. Ward’s testimony that “I claim to be, and always have been, the legal owner.”). In an earlier unlawful detainer proceeding, brought by LaSalle, she disputed its claim to the title. Moreover, Selene itself had doubts about whether the chain of title it had was “real,” as its counsel explained at the hearing, in response to Ms. Ward’s testimony that transfers of her home to other persons were fraudulent: “I don’t know what’s fraudulent, what’s real out here. But this is the chain of title that we have.” RP 14:24-25. Selene’s counsel’s statements undermine any argument that it has met its burden to show Ms. Ward did not have color of title.

D. Ms. Ward Did Not Waive Her Right to Challenge the Foreclosure Sale and the Subsequent Transfer of Title

In *Albice*, 174 Wn.2d at 568, this Court held that if the conduct of a foreclosure sale does not strictly comply with the DTA, a court can set aside the sale if it would be inequitable under the circumstances and inconsistent with the goals of the DTA to apply the defense of waiver, regardless of whether the homeowner sought to enjoin the trustee's sale under RCW 61.24.130. As the Court observed in *Albice*, the statute states that “[f]ailure to bring . . . a lawsuit *may* result in waiver of any proper grounds for invalidating the Trustee's sale,” and thus “neither requires nor intends for courts to strictly apply waiver. Under the statute, *we apply waiver only where it is equitable under the circumstances and where it serves the goals of the act.*” *Id.* (quoting RCW 61.24.040(1)(f)(IX)) (emphasis added).

Here, it would be inequitable to find that Ms. Ward waived her right to challenge both the foreclosure sale and the alleged transfer of title to Selene's predecessor in interest because she has consistently maintained that she had valid title to her home. She raised this defense in two prior unlawful detainer actions, both of which were ultimately abandoned by the plaintiffs, first LaSalle and then U.S. Bank. *See* Resp. to Pet. for Review at 4; CP 55. Moreover, a party will be deemed to have waived his or her right to challenge a trustee's sale *only* if the party “(1) received notice of the right to enjoin the sale, (2) had actual or constructive knowledge of a

defense to foreclosure prior to the sale, and (3) failed to bring an action to obtain a court order enjoining the sale.” *Plein*, 149 Wn.2d at 227. (emphasis added). Here, there is a factual dispute whether Ms. Ward received the necessary notice, which is necessary for waiver to apply, even apart from the unfairness of finding waiver under these circumstances. *See* RP 17:9-18 (Ms. Ward’s statements at the unlawful detainer hearing that she did not receive proper notice before the foreclosure sale on January 30, 2009.¹ Division III’s decision in *Fed. Nat’l Mortgage Ass’n v. Ndiaye*, 188 Wn. App. 376, 353 P.3d 644 (2015) does not compel a different result, contrary to Selene’s argument. In that case, Ndiaye “concede[d] that he received notice that he had a right to restrain the sale and he failed to bring the action to restrain. 188 Wn. App. at 382.

¹ Ms. Ward appeared *pro se* in the unlawful detainer proceeding, and therefore, any ambiguity in her testimony as set forth in the Verbatim Report of Proceedings about whether she had notice of the foreclosure before the trustee’s sale should be resolved in Ms. Ward’s favor. *See Garaux v. Pulley*, 739 F.2d 437, 439 (9th Cir. 1984) (“The rights of *pro se* litigants require careful protection where highly technical requirements are involved, especially when enforcing those requirements might result in a loss of the opportunity to prosecute or defend a lawsuit on the merits.”); *see also Trujillo v. Northwest Trustee Servs., Inc.*, 181 Wn. App. 484, 508, 326 P.3d 768 (2014), *rev’d on other grounds*, 183 Wn.2d 820, 355 P.3d 1100 (2015) (recognizing that rights of *pro se* litigants require careful protection with respect to procedural rights such as notice of foreclosure) (citing *Garaux*). And in any event, as discussed above, whether she had notice of the foreclosure before the trustee’s sale it is a question of fact based on the record before the Court. *Compare* Verbatim Report of Proceedings at RP 17:9-18 *with id.* at 18:4-6.

E. Ms. Ward Is Entitled to Costs and Statutory Attorney Fees.

Ms. Ward respectfully requests she be awarded costs, including statutory attorney fees, pursuant to RCW 4.84.010, RAP 14.2, and RAP 18.1.²

IV. CONCLUSION

For the foregoing reasons, Ms. Ward respectfully requests that the Court affirm the Court of Appeals' holding that Selene was not "the purchaser at the trustee's sale" under RCW 61.24.060(1) and, as such, did not have authority under the DTA to bring the unlawful detainer action and could not meet its burden to establish superior title as required by RCW 59.12.030(6).

Respectfully submitted this 3rd day of November, 2016.

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² If this court would like additional briefing on this issue, Ms. Ward is happy to provide it, as the page limit for a supplemental brief is 20 pages.

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Dear Clerk,

Please file the attached Amended Supplemental Brief for Respondent. Selene's counsel, Mr. Schaer has requested that we remove any reference to his supplemental brief and we have agreed and amended Respondent's supplemental brief accordingly. Please file today if possible, so we do not have to get leave of the court.

Case Name: Ward v. Selene RMOF II REO

Case No. 92967-0

Attorney Mary C. Anderson (44137) and Erin C. Sperger (45931) (for Respondent)

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Sincerely,

Erin Sperger

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