

Supreme Court No. 92963-0
Court of Appeals No. 72504-1

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Washington State
Supreme Court

COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

SELENE RMOF II REO ACQUISITIONS

Plaintiff-Respondent-Petitioner

vs.

VANESSA WARD,

Defendant-Appellant-Respondent,

**APPELLANT VANESSA WARD'S RESPONSE TO RESPONDENT
SELENE RMOF II REO ACQUISITIONS' PETITION FOR REVIEW**

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Defendant-Appellant-Respondent

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I. IDENTITY OF THE RESPONDING PARTY

Respondent Vanessa Ward opposes the relief sought by petitioner Selene RMOF II REO Acquisitions II, LLC (“Selene”).

II. RESPONDENT’S STATEMENT OF THE CASE

A. Substantive Facts

This case was brought as an unlawful detainer action after RMOF Selene acquired a special warranty deed to Vanessa Ward’s home from LaSalle Bank National Association, as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust in 2012. CP-6. Ward alleges that she is the rightful owner of the property and the property was fraudulently transferred. Using this defense, she asked the trial court to dismiss the unlawful detainer action because she was never a tenant and she claims to have superior title. RP-1, 12-13. During the hearing, plaintiff’s counsel admitted she did not know whether the transfers that occurred between 1999- 2007 were fraudulent. RP-15.

Ward bought the property commonly known as 7911 S. 115th Place Seattle, WA in 1999 and that title was recorded. She obtained a mortgage through Home Comings Bank. CP-46-47. In 1999, her father became ill, so her friend, Chester Dorsey, offered her employment at his

car salon. Her father owned four properties and she learned her father's illness might be fatal. She discussed the possibility of Dorsey assisting her in obtaining lower interest rates on the mortgages. In 1999, she had signed a deed of trust with Dorsey for moneys she borrowed from him for the down payment. In 2004, they parted ways. Since she fully repaid Dorsey, he deeded the property back to her as proof of payment. The 2004 deed was notarized, but not recorded. CP-45. In between those two deeds, in 2001, Dorsey filed a fraudulent quit claim deed in lieu of foreclosure which was recorded, but Ward did not discover it until after she filed her notice of appeal. However, she did argue that Dorsey fraudulently obtained a deed. RP-13.

In 2005, after the house was deeded back to Ward, Dorsey sold the property to his uncle, Fred Brooks. CP-79 Soon after the sale, Dorsey's uncle gave him power of attorney and Dorsey obtained one loan in 2005 and two over the next two years. The best Ward could tell, they were a refinance loan. *Id.* In 2006, she tried to contact Home Comings about four times to find out what equity she had in the house, but someone always said someone would get back to her and no one ever did. *Id.* In 2007, she got behind in her mortgage payments around May or June. In September, a man came to her door and she thought it was someone from Home

Comings to talk about her mortgage payments. RP-3. But, it was a man named James Drier who said he was the new owner and that he had bought the house with Chester. *Id.* Drier came back two weeks later and Ward told him to get off her property. She then had a friend look up the chain of title and it showed that Chester had sold her house that he did not own. RP-3. Shortly after that she hired an attorney who filed a complaint for unfair and deceptive conduct, civil conspiracy and outrage on January 30, 2009, the same day as the foreclosure sale. CP-36.

In March 2009, she was served with a summons and complaint for unlawful detainer by LaSalle Bank. CP-50. She responded to LaSalle Bank's attorney, Karen Gibbon, P.S. on March 27. Her response disputed all claims and interest LaSalle had in her property and demanded they file the law suit with the court. They did not. CP-55. Her attorney who filed the civil complaint withdrew and the case was dismissed in 2011 for failure to timely comply with discovery requests, so this issue has never been addressed on the merits.

She next received a Notice to Occupant purporting to evict her in October 2012. CP-57. She immediately called Solution Partners NW, who issued the notice, and spoke with a receptionist named Vanessa. Ward informed her that she owned the property and that she did not authorize

any sale. *Id.* In December 2012, she was served with a summons and complaint for unlawful detainer. The plaintiff was U.S. Bank. CP-60-63. She timely responded, informing them that she was the true owner and that any transfer of the property was done fraudulently. The action was filed and then dismissed for want of prosecution.

No further action was taken until June 2013 when RCO Legal mailed a 90 day notice to vacate to the wrong address. CP-69. They sent it to 7913 South 115th place instead of 7911. When Ward became aware of it, she immediately sent a response informing them that she disputed all claims and interest they alleged. CP-72-75. In January 2014 she received a summons and complaint for Unlawful Detainer from RCO and timely responded. CP-1-3. In May 2014, RCO Legal obtained a writ of restitution in default. Ward obtained an order to vacate the judgment and stay the writ on August 13 because they sent notice of the show cause hearing to the wrong address. CP-26-27. A new show cause hearing was scheduled for September 15, 2014. She has notified every person involved for the last seven years that she is the rightful owner and that any claims or interest they have in the property were obtained illegally.

B. Procedural Facts

On September 15, 2014, there was a show cause hearing and this unlawful detainer case was heard by pro tem Judge Wong at the King County Superior Court in Kent, Washington. Ward presented a motion to dismiss arguing that because she was the rightful owner of the house, and not a tenant, that an unlawful detainer action was the wrong action to bring. RP-1-2. The court denied her motion to dismiss and her motion to certify the case for trial and issued a writ of restitution in favor of Selene RMOF. CP-87. Ward timely appealed. CP-92-94. The Court of Appeals, Division One reversed and held that Selene cannot use the summary proceeding under the unlawful detainer statute for two reasons: 1). Selene failed to prove it was entitled to pursue an unlawful detainer action as the purchaser at the deed of trust foreclosure sale under RCW 59.12.032 and 2). RCW 59.12.030(6) does not apply because Ward's 2004 notarized quitclaim deed from Dorsey provided her with color of title.

III. ISSUES PRESENTED

1. Whether the Court of Appeals correctly reversed the writ of restitution and dismissed Selene's unlawful detainer action.

IV. ARGUMENT IN RESPONSE

A. The Court of Appeals decision does not conflict with Fed. Nat.

Mortg. Ass'n v. Ndiaye, 188 Wn. App. 376, 353 P.3d 644 (2015).

The Court of Appeals found that” unlawful detainer actions... do not provide a forum for litigating claims to title.” See *Selene RMOF II REO Acquisitions, LLC v. Ward*, No. 725041, 3 (Feb. 29, 2016) quoting *Puget Sound Inv. Grp., Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998). That is almost verbatim what Division Three held in *Fed. Nat. Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 384, 353 P.3d 644 (2015). If there is a question of title, then an unlawful detainer action is inappropriate. Therefore, a clouded title can necessarily be a defense to an unlawful detainer. This is the extent to which Ward argued about the title in the show cause hearing. She only raised the issue as a defense to support her motion to dismiss for failure to state a claim.

B. RCW 64.24.040 and RCW 61.24.060 are plain and unambiguous

The Court of Appeals held that Selene failed to provide any authority that they are entitled to bring an unlawful detainer action as the purchaser at the deed of trust foreclosure sale. *Selene RMOF II REO Acquisitions, LLC v. Ward*, No. 725041, 3 (Feb. 29, 2016). However, this Court does not need to inquire any further. RCW 59.12.032 plainly states:

“An unlawful detainer action, commenced as a result of a trustee's sale under chapter 61.24 RCW, must comply with the requirements of RCW 61.24.040 and 61.24.060.” And RCW 61.24.040 and 61.24.060 are both plain and unambiguous. They both state that the purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale. Selene was not the purchaser.

C. LaSalle Bank had no right, title, or interest in the property to convey.

Even if Selene has the same rights LaSalle Bank had, despite Selene's lengthy recitation of the law on privity of contract, it still fails to argue that LaSalle Bank, had a “right, title, and interest” in the property to convey. Ward was not the one who took out a mortgage with LaSalle Bank and Ward was not the one whose loan was foreclosed. Unfortunately for LaSalle Bank, their loan was secured by property that did not belong to the person who obtained the loan.

The cases Selene cites are not relevant here. *Commercial Waterway Dist. No. 1 v. Larson*, 26 Wn.2d 219, 173 P.2d 531 (1946) is distinguishable for two reasons. First, the defendants in *Commercial Waterway* entered onto the waterway without color of title. Second, the rights of the grantor were not in question. Those are completely different

that the facts here. Here, Ward does have color of title and LaSalle Bank's interest has been called into question.

It is also important to note that Selene is not the first entity LaSalle Bank deeded the property to. After the trustee's sale, LaSalle Bank served Ward with a summons and complaint for unlawful detainer in 2009. When Ward answered that she was the rightful owner and claimed that LaSalle Bank fraudulently obtained title, LaSalle Bank did not file the complaint, but sold the property to U.S. Bank. U.S. Bank also served Ward a summons and complaint in in December 2012. CP-60-63. When Ward answered that she was the true owner and that any transfer of the property was done fraudulently, U.S. Bank conveyed the property back to LaSalle Bank. LaSalle Bank then deeded the property to Selene. By the time LaSalle Bank conveyed the property to Selene, it knew full well that the title was clouded.

Neither Sanders v. Gen. Petroleum Corp. of California, 171 Wash. 250, 258, 17 P.2d 890 (1933) nor *4105 1st Ave. S. Investments, LLC v. Green Depot WA Pac. Coast, LLC*, 179 Wn. App. 777, 780, 321 P.3d 254 (2014) bear any relevance to this case because those cases deal with leases and have nothing to do with a trustee's sale. In a lease, the lessee has agreed to be bound by the terms of the lease and a lessor is free to assign

his interest. Here, Ward was not a lessee and she did not agree to be bound by any terms. Conveying the property to Selene does not cleanse the transaction. Selene still only has the rights that LaSalle had and LaSalle knew there was a cloud on the title.

Lastly, *Washington Credit, Inc. v. Houston*, 33 Wn. App. 41, 650 P.2d 1147 (1982) is not on point. In that case, the issue was whether a homestead is extinguished when property is involuntarily conveyed at a sheriff's sale. It does not discuss a trustee's sale.

V. CONCLUSION

The Court of Appeals correctly held that Selene is precluded from using the unlawful detainer statute because: 1). Selene failed to prove it was entitled to pursue an unlawful detainer action as the purchaser at the deed of trust foreclosure sale under RCW 59.12.032 and 2). RCW 59.12.030(6) does not apply because Ward's 2004 notarized quitclaim deed from Dorsey provided her with color of title. Even if LaSalle Bank did convey its interest to Selene, Selene only has what interest LaSalle Bank had and Selene did not prove that LaSalle Bank had any interest.

This case does not meet any of the factors under RAP 13.4(b) for review by the Supreme Court and Ward respectfully requests that this Court denies review.

DATED this 2nd day of May, 2016.

Respectfully Submitted,

VANESSA WARD
Vanessa Ward, Defendant

PROOF OF SERVICE OF PETITION FOR REVIEW

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I, Vanessa Ward, swear under penalty of perjury and the laws of the State of Washington that I:

Mailed a copy of the _____ on _____
at the following address: _____

Personally served to Court of Appeals at 600 University
on May 2, 2016, 2016 One Union Square
Seattle WA
98101

to RCO Legal, attorney for Selene RMOF REO Acquisitions.

Court of Appeals Division ONE
OF THE STATE OF WASHINGTON

Signed at Seattle Washington on May 2, 2016, 2016.

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Vanessa Ward

Vanessa Ward

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