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WASHINGTON STATE
SUPREME COURT

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Mar 30, 2016

Court of Appeals
Division I
State of Washington

Supreme Court No. 92967-0

Court of Appeals No. 72504-1-I

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

VANESSA WARD

Appellant,

v.

SELENE RMOF II REO ACQUISITIONS, LLC

Respondent.

**PETITION FOR REVIEW OF
RESPONDENT SELENE RMOF II REO ACQUISITIONS**

Submitted By:

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I. IDENTITY OF MOVING PARTY

Petitioner Selene RMOF II REO Acquisitions II, LLC (“Selene”) seeks the relief as designated in Part 2 below.

II. STATEMENT OF RELIEF SOUGHT

Selene requests that the Washington Supreme Court accept discretionary review of the unpublished decision in this case by the Court of Appeals, Division One (hereinafter the “Court of Appeals”). Case No. 72504-1-I (Feb. 29, 2016). A copy of this decision is attached hereto as Appendix A.

III. STATEMENT OF THE CASE

A. Factual Summary.

The underlying action relates to real property located in King County, which is commonly known as 7913 South 115th Place, a/k/a 7911 South 115th Place, Seattle, Washington 98178 (the “Property”).

Appellant Vanessa Ward originally acquired title to the Property in 1999 via a recorded statutory warranty deed. CP 29; Request for Judicial Notice (“RJN”), Ex. A. In 2001, Ms. Ward deeded the Property to Chester Dorsey. *Id.*

Ms. Ward claimed that, in 2004, Mr. Dorsey transferred the Property back to her via a quitclaim deed. However, Ms. Ward acknowledged this quitclaim deed was never recorded. CP 29; CP 45.

In August 2005, Mr. Dorsey deeded the Property to Fred and Grace Brooks. CP 29; RJN, Ex. C. In April 2007, the Property was then transferred to James Dreier via a recorded statutory warranty deed. CP 29; RJN, Ex. D.

On April 3, 2007, Mr. Dreier granted a deed of trust to First Franklin Financial Corp., which secured repayment of a loan in the amount of \$452,000.00. CP 4. On April 13, 2007, this deed of trust was recorded with the King County Auditor. *Id.*

Mr. Dreier defaulted on the loan; as a result, on July 21, 2008, a Notice of Trustee's Sale was issued and recorded. CP 4. Ms. Ward admitted that she received the sale notice. Amended Verbatim Report of Proceedings, 18:4-6. Ms. Ward filed suit, but she failed to seek restraint of the sale, and her action was ultimately dismissed with prejudice. Amended Verbatim Report of Proceedings, 18:7-22; 21:10-22:10; *see also* CP 29-30.

On January 30, 2009, the Property was sold at a trustee's sale to LaSalle Bank National Association, as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust Mortgage Loan Asset-Backed Certificates, Series 2007-3 ("LaSalle Bank"). CP 4-5. On February 3, 2009, a trustee's deed was issued and recorded. *Id.* The trustee's deed conveyed all rights, title, and interest in the Property to LaSalle Bank. *Id.*; RCW 61.24.050(1).

On August 31, 2012, LaSalle Bank deeded the Property to Selene via a special warranty deed. CP 6-12. On October 12, 2012, the special warranty deed was recorded with the King County Auditor. CP 6-12.

B. Procedural Summary.

On April 2, 2014, Selene filed an Unlawful Detainer Complaint in the King County Superior Court to obtain possession of the Property. CP 1-12. The Complaint specified that “Vanessa D. Ward who is occupying the property is believed to be a tenant of the former owner of the property.” CP 1.

On August 26, 2014, the Superior Court entered an Order to Show Cause, scheduling a hearing for September 15, 2014. Supp. CP 122-123.

On September 12, 2014, Ms. Ward filed a motion to dismiss Selene’s action on the basis that she was not a tenant of the Property and therefore the unlawful detainer statute did not apply. CP 28-34. That same date, Ms. Ward also filed a motion to set the case for trial and to deny a writ of restitution. CP 35-85. Ms. Ward failed to serve her motions on Selene in advance of the show cause hearing, and she failed to file either a declaration of service or Note for Motion with respect to either pleading. Amended Verbatim Report of Proceedings, 10:1-11:24.

On September 15, 2014, the Superior Court granted a writ of restitution in favor of Selene, specifically finding that Selene was the

Property's owner, Selene was entitled to immediate possession thereof, and that all occupants were to be evicted from the Property. CP 95-99; *see also* Amended Verbatim Report of Proceedings, 1:18-19; 10:6-8; and 26:1-2.

On September 18, 2014, Ms. Ward appealed the Superior Court's decision. CP 92-94. On February 29, 2016, The Court of Appeals, Division One, reversed and held that Selene could not utilize the unlawful detainer statutes to evict Ms. Ward from the Property.

IV. ISSUES PRESENTED FOR REVIEW

1. The Court of Appeals erred when it held that Selene was not entitled to use the summary unlawful detainer process because it obtained title to the Property from the trustee's sale purchaser. Prior appellate decisions have recognized that a grantee or assignee can prosecute an unlawful detainer action.

2. The Court of Appeals also erred when it held that Ms. Ward's claim of a hidden, unrecorded quitclaim deed precluded Selene from exercising its rights under the unlawful detainer statutes. This holding conflicts with the published opinion of Division Three in *Fed. Nat. Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 353 P.3d 644 (2015).

V. GROUND FOR RELIEF AND ARGUMENT

A. Standard for Review.

Discretionary review of an appellate decision can be granted if:

- (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
- (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
- (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
- (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

R.A.P. 13.4(b). Review can be appropriate to interpret the import of a statute. *See Hartley v. State*, 103 Wn.2d 768, 773-74, 698 P.2d 77 (1985).

Here, review should be accepted because the Court of Appeals' decision erroneously precludes the transferee of title to real property after a trustee's sale from exercising its ability to evict holdover tenants. The decision involves a significant question of state law and matter of substantial public interest because an owner-assignee, such as Selene in this case, should be permitted to utilize the unlawful detainer statutes when it acquires all rights of the trustee's sale purchaser.

Further, the Court of Appeals erred in ruling that Ms. Ward's claim of an unrecorded quitclaim deed barred Selene from pursuing an unlawful detainer action. This holding is in conflict with *Ndiaye*, because "unlawful detainer actions are not the proper forum to litigate questions of

title.” 188 Wn. App. at 384.

Thus, the issues presented in this case fall squarely within the criteria for the acceptance of review under R.A.P. 13.4(b).

B. A Grantee or Assignee Receiving an Interest in Real Property Obtains the Grantor’s or Assignor’s Right to Commence an Unlawful Detainer.

The Washington Deed of Trust Act (“DTA”) furthers three goals:

(1) that the nonjudicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles.

Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 567, 276 P.3d 1277 (2012), *citing Cox v. Helenius*, 103 Wn.2d 383, 387, 693 P.2d 683 (1985).

Once a non-judicial foreclosure is complete, which is what occurred in this case, the trustee’s deed conveys “all of the right, title, and interest in the real and personal property sold at the trustee’s sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired.” RCW 61.24.050(1).¹

¹ Courts are generally protective of trustee’s sale purchasers: “[c]hallenging the trustee’s deeds after the sale undermines the policy of land title stability. If trustee’s deeds are easy to challenge, title insurers will not insure, secured lenders will not lend on, and buyers will not purchase real property with title obtained through a trustee’s deed.” *Amresco Indep. Funding, Inc. v. SPS Properties, LLC*, 129 Wn. App. 532, 538, 119 P.3d 884 (2005), *citing Plein v. Lackey*, 149 Wn.2d 214, 227–28, 67 P.3d 1061 (2003).

A subsequent conveyance by the trustee's sale purchaser via a "bargain and sale deed" provides the grantee or its later assigns with an estate in fee simple. RCW 64.04.040. A special warranty deed is a type of "bargain and sale deed" that contains covenants against defects incurred by the grantor. *See* 18 Wash. Prac., Real Estate § 14.2 (2d ed.).

Case 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.

In *Commercial Waterway Dist. No. 1 v. Larson*, the Supreme Court found that a water district's acquisition of rights to land by warranty deed entitled it to initiate an unlawful detainer against defendants in possession of that land. 26 Wn.2d 219, 173 P.2d 531 (1946). *Larson* cited with approval to *Erz v. Reese*, 157 Wash. 32, 288 P. 255 (1930), where a lessor's assignee (the Appellant) was allowed to proceed under the former unlawful detainer statute because:

Appellant is entitled to the rental under the assignment of the lease to him. If the assignment be a pledge, appellant, as pledgee, has the right to all the benefits of the pledge during his right to possession thereof.

157 Wash. at 37. The *Larson* Court concluded:

[i]t seems to us, that the district, having by warranty deed obtained title to the land here in question, was and is justified in contending that it is the owner of the tidelands here involved.

26 Wn.2d at 232.

In *Sanders v. Gen. Petroleum Corp. of California*, the Supreme Court recognized that the assignee of a lease “undoubtedly had the right to bring an action in unlawful detainer and repossess the premises” after the lessee’s default. 171 Wash. 250, 258, 17 P.2d 890 (1933). The *Sanders* Court found the assignee’s rights to be properly obtained, holding:

[a]lthough strictly speaking Sanders borrowed the money from appellant with which he bought the service station and good will from O’Connor, appellant has now procured all that Sanders bought from O’Connor.

Id. at 258.

More recently, in *4105 1st Ave. S. Investments, LLC v. Green Depot WA Pac. Coast, LLC*, the unlawful detainer plaintiff was the assignee of the lessor’s rights, and it pursued the action against the assignee of the lease. 179 Wn. App. 777, 780, 321 P.3d 254 (2014), *review denied*, 181 Wn.2d 1004, 332 P.3d 984 (2014) (“1st Avenue South Investments LLC [the plaintiff]... acquired the rights to the lease from Bit Holdings Sixty-One. Built-E assigned its rights under the lease to Green Depot WA Pacific Coast LLC [the defendant]...”).² Although the unlawful detainer was resolved without the issuance of a writ of

² Indeed, the principle of unlawful detainer proceedings encompassing assignees is well-settled in the context of *tenants* who assign their lease rights to another party. *See, e.g., Daniels v. Ward*, 35 Wn. App. 697, 702, 669 P.2d 495 (1983) (“We conclude that a tenant who assigns a lease may still be subject to unlawful detainer proceedings.”). It is inapposite and inequitable for the Court of Appeals to have declared in this case that an *assignee or owner* receiving its rights in the property *from* a landlord or purchaser is completely barred from utilizing the summary unlawful detainer process.

restitution, the Court of Appeals had no difficulty accepting the action was properly brought in the first place.

Likewise, in *Washington Credit, Inc. v. Houston*, the Court of Appeals set aside a judgment reversing a sheriff's sale from which the grantee of the sale purchaser derived his title. 33 Wn. App. 41, 650 P.2d 1147 (1982), *review dismissed*, 100 Wn.2d 1010 (1983). The facts showed that:

Following the 1-year redemption period, a sheriff's deed was issued to Master Mortgages, Washington Credit's assignee. Master Mortgages then conveyed the property to William Miebach, who brought an unlawful detainer action against the Houstons.

Id. at 42. The majority in *Houston* upheld the sale process and implicitly accepted that Miebach could prosecute an unlawful detainer.

Looking beyond the Washington border, as the Supreme Court did to construe the unlawful detainer statute in *Munden v. Hazelrigg*, 105 Wn.2d 39, 46, 711 P.2d 295 (1985)³, persuasive California authority is *directly on-point* "that a subsequent purchaser from a purchaser at a foreclosure sale may bring an action" under that state's unlawful detainer

³ The *Munden* Court wrote:

[t]he California courts noted that an unlawful detainer action is a summary proceeding, the primary purpose of which is to obtain the possession of real property. In order to preserve the summary nature of this proceeding, the general rule is that issues unrelated to the right of possession are not properly raised in an unlawful detainer action.

105 Wn.2d at 47 (citing California cases).

law. *Evans v. Superior Court*, 67 Cal.App.3d 162, 169-70, 136 Cal. Rptr. 596 (Cal. Ct. App. 1977), *citing* Cal. Civ. Proc. Code § 1161a. *Evans* notes that the policy behind providing for “a summary method of ouster where an occupant holds over possession after sale of the property” would not be served “by restricting availability of the action to the original purchaser at a foreclosure sale.” 67 Cal.App.3d at 168.

Given the reasoning of these authorities, it was error for the Court of Appeals to have found that Selene is barred from utilizing the summary unlawful detainer process in RCW 59.12 *et seq.* as a means of evicting Ms. Ward simply because it was granted title to the Property by the trustee’s sale purchaser. Review should be accepted on this basis alone. R.A.P. 13.4(b)(2-4).

C. The Court of Appeals Also Erred in Holding that Ms. Ward’s Unrecorded Quitclaim Deed Provided Her Color of Title.

The Court of Appeals gave credence to Ms. Ward’s “2004 notarized quitclaim deed,” which was never recorded with the County Auditor or otherwise disclosed to anyone, finding that said deed afforded Ms. Ward with color of title. Slip Opin. No. 72504-1-I at *4.

As a consequence, the Court of Appeals ruled that “the summary procedures of unlawful detainer are not applicable here. Selene must establish superior title before it may proceed under RCW 59.12.030(6).”

Id. at **4-5. The Court of Appeals' acceptance of Ms. Ward's claimed interest in the Property is inconsistent with *Fed. Nat. Mortg. Ass'n v. Ndiaye*, 188 Wn. App. 376, 353 P.3d 644 (2015).

In *N'diaye*, the homeowner defended an unlawful detainer action "on the ground that Fannie Mae could not establish a chain of title." 188 Wn. App. at 378. But Division Three agreed with Fannie Mae that such claim was not available, because "the action is a narrow one, limited to the question of possession and related issues such as restitution of the premises and rent." *Id.* at 382. Claims relating to title *must be raised* in a *different* forum. *Id.*, citing *Puget Sound Inv. Grp., Inc. v. Bridges*, 92 Wn. App. 523, 526, 963 P.2d 944 (1998).

The Court of Appeals in this case relied heavily on *Bridges* for the proposition that Ms. Ward's purported quitclaim deed gave her "color of title." Slip Opin. No. 72504-1-I, at *4. However, *Bridges* precluded the party seeking a writ of restitution from obtaining it because: 1) a federal income tax foreclosure sale purchaser is not authorized to bring an unlawful detainer action, and 2) the homeowner actually held a cognizable statutory warranty deed. 92 Wn. App. at 527.

Here, by contrast, a trustee's sale purchaser – and the party to whom its interest is conveyed, as discussed above – does have statutory authority to evict through an unlawful detainer action. RCW

61.24.060(1). Moreover, Ms. Ward is only a mere tenant with a disputed claim to ownership of the Property and her unrecorded interest does not afford her “color of title.” *See, e.g., OneWest Bank, FSB v. Erickson*, -- Wn.2d --, 2016 WL 455940 at *10 (2016) (“[b]ecause Erickson’s interest [in the property] was not recorded at that time, record notice was not possible....”).⁴

N’diaye further found that the homeowner waived his right to restrain the trustee’s sale from occurring when he failed to raise title-related challenges beforehand. *Id.* at 383-384. Indeed, RCW 61.24.130(1) specifically permitted Ms. Ward to restrain the subject sale as a person with “an interest in” the Property; nonetheless, she similarly failed to take advantage of that opportunity. *See* Amended Verbatim Report of Proceedings, 18:4-6, 18:7-22; 21:10-22:10 (Ward had notice of the trustee’s sale and knowledge of arguments to challenge the same); *accord Merry v. Nw. Tr. Servs., Inc.*, 188 Wn. App. 174, 182, 352 P.3d 830 (2015) (waiver applies when a party has notice of the sale and knowledge of a defense to foreclosure); *Koegel v. Prudential Mut. Sav. Bank*, 51 Wn. App. 108, 113-114, 725 P.2d 385 (1988) (presale judicial remedies under

⁴ In fact, even if Ms. Ward brought a collateral lawsuit for declaratory judgment, her claim to title free of LaSalle Bank’s lien would fail given the hidden nature of the quitclaim deed. CP 29 (“The 2004 deed was notarized, but not recorded.”); *see also* RCW 61.24.127(2)(c) (prohibiting an action that affects the validity of a trustee’s sale).

the DTA are adequate and an unlawful detainer action is not an appropriate proceeding to attack the foreclosure).

The Court of Appeals' ruling in favor of Ms. Ward flips the principle that unlawful detainers are not a forum for litigating claims to title on its head. Essentially, the Court of Appeals is giving Ms. Ward the ability to assert her otherwise-prohibited claim to title by simply shutting the door on Selene's use of the unlawful detainer process.

This outcome compels Selene – and other similarly-situated property owners – to advance a lengthy civil action on the Superior Court docket where counterclaims attacking record title could then be raised. *See Munden, supra*. Such a result undermines both the DTA's goal of achieving stable land titles and the purpose of a summary statutory process for evicting holdover tenants.

The Court of Appeals' decision is in conflict with *N'Diaye* and related case law that strictly bars tenants from raising claims about title as a means of escaping an unlawful detainer action. Additionally, the decision raises an issue of substantial public interest because it encourages those occupants to conjure up and suddenly produce unrecorded deeds in order to allege a property interest and automatically block an owner's effort at eviction.

Therefore, the Supreme Court should accept review of this matter.

R.A.P. 13.4(b)(2), (4).

VI. CONCLUSION

Selene respectfully suggests that the Court of Appeals misconstrued the extent to which unlawful detainer is available as a remedy to evict occupants of real property after a trustee's sale.

If the Court of Appeals' decision is left to stand, many property owners like Selene will be subject to title-based challenges and extensive litigation in trial courts throughout the state; a result that could otherwise be avoided through the use of a summary process.

Therefore, Selene requests that the Supreme Court review the Court of Appeals' decision reversing the Superior Court's grant of a writ of restitution in Selene's favor.

DATED this 30th day of March, 2016.

RCO LEGAL, P.S.



By: /s/ Joshua S. Schaer
Joshua S. Schaer, WSBA #31491
Attorneys for Petitioner Selene
RMOF II REO Acquisitions II, LLC

Declaration of Service

The undersigned makes the following declaration:

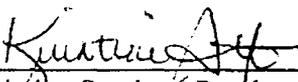
1. I am now, and at all times herein mentioned was a resident of the State of Washington, over the age of eighteen years and not a party to this action, and I am competent to be a witness herein.

2. On March 30, 2016 I caused a copy of the **Petition for Review of Respondent Selene RMOF II REO Acquisitions** to be served to the following in the manner noted below:

Vanessa Ward 7911 S. 115 th Pl. Seattle, WA 98178 <i>Pro Se</i> Appellant	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input type="checkbox"/> Facsimile
---	---

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed this 30th day of March, 2016.



Kristine Stephan, Paralegal

EXHIBIT A

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

SELENE RMOF II REO)
ACQUISITIONS II, LLC,)
)
Respondent,)
)
v.)
)
VANESSA D. WARD, AND)
ALL OCCUPANTS OF THE PREMISES)
LOCATED AT 7913 SOUTH 115TH)
PLACE, m/k/a 7911 SOUTH 115TH)
PLACE, SEATTLE, WA 98178,)
)
Appellant.)

No. 72504-1-1

UNPUBLISHED OPINION

FILED: February 29, 2016

2016 FEB 29 AM 9:40
STATE OF WASHINGTON
COURT OF APPEALS

VERELLEN, A.C.J. — A grant of a writ of restitution in an unlawful detainer action may be premature if there are unresolved claims to title. A party may not proceed under RCW 59.12.030(6) of the unlawful detainer statute unless it can show that a person entered upon its land “without the permission of the owner and without having color of title thereto.” Vanessa Ward appeals the judgment entered against her on an unlawful detainer action. She holds a 2004 notarized quitclaim deed. This deed provides Ward color of title. Therefore, we conclude the summary procedures of unlawful detainer are not applicable. Because Selene RMOF II REO Acquisition II, LLC did not purchase the property at a trustee’s foreclosure sale, we reject 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. We reverse.

FACTS

In 2012, Selene purchased property located at 7911 South 115th Place in Seattle from LaSalle Bank National Association, as Trustee for Merrill Lynch First Franklin Mortgage Loan Trust, Mortgage Loan Asset-Backed Certificates, Series 2007-3. LaSalle Bank had previously purchased the property at a trustee's sale. The grantor of the foreclosed deed of trust traces his interest in the property back to a 2005 deed from Chester Dorsey.

Selene's theory of the case is that Dorsey obtained title to the property after the previous owner, Vanessa Ward, quitclaimed him the deed in 2001. Dorsey then sold the property to Fred and Grace Brooks in 2005. Two years later, Dorsey, as attorney in fact for the Brooks, conveyed the property to James Dreier. Thereafter, Dreier took out a loan secured by a deed of trust on the property. After Dreier defaulted on his loan obligations in 2008, the trustee's sale was scheduled.

Ward's theory of the case is that she only "discussed" deeding the property to Dorsey so he could obtain a lower interest rate on her mortgage.¹ Ward maintains she never followed through with the conveyance, but claims Dorsey fraudulently executed and recorded a 2001 quitclaim deed to that effect. Dorsey then executed a quitclaim deed conveying the property back to her for one dollar in 2004; this quitclaim deed was notarized, but not recorded. Ward acknowledges receiving notice of the trustee's sale. She filed a lawsuit for unfair and deceptive conduct, civil conspiracy, and outrage before the scheduled sale, but the lawsuit was dismissed with prejudice for failure to timely comply with discovery requests.

¹ Clerk's Papers (CP) at 29; Report of Proceedings (Sept. 15, 2014) at 25.

No. 72504-1-1/3

In 2014, Selene filed this unlawful detainer action. The complaint alleged Ward was occupying the property and was "believed to be a tenant of the former owner of the property."² Ward filed a motion to dismiss the action on the basis that she was not a tenant and had color of title to the property. She attached the 2004 notarized quitclaim deed conveying all interest of Dorsey to her. After a show cause hearing, the trial court granted the writ of restitution.

Ward appeals.

ANALYSIS

Ward contends the court erred in issuing a writ of restitution. She argues she cannot be guilty of unlawful detainer because she is not a tenant and has color of title to the property. We agree.

Our analysis is limited to questions of law, which we review de novo.³ "The unlawful detainer statute, chapter 59.12 RCW, provides a summary proceeding for obtaining possession of real property, and gives the proceeding priority over other civil cases."⁴ The scope of an unlawful detainer action is narrow, "limited to the question of possession and related issues such as restitution of the premises and rent."⁵ "Unlawful detainer actions offer a plaintiff the advantage of speedy relief, but do not provide a forum for litigating claims to title."⁶

² CP at 1.

³ Mountain Park Homeowners Ass'n v. Tydings, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).

⁴ Puget Sound Inv. Grp., Inc. v. Bridges, 92 Wn. App. 523, 526, 963 P.2d 944 (1998).

⁵ Munden v. Hazelrigg, 105 Wn.2d 39, 45, 711 P.2d 295 (1985).

⁶ Puget Sound, 92 Wn. App. at 526.

Selene brought its unlawful detainer action under chapter 59.12 RCW, relying on the provision authorizing the purchaser at a deed of trust foreclosure sale to bring an unlawful detainer action to evict the previous owner of the home.⁷ But Selene was not the purchaser at the deed of trust foreclosure sale; LaSalle Bank purchased the property at the sale and later conveyed it to Selene. Selene cites no authority that it is entitled to pursue an unlawful detainer action as the purchaser at the deed of trust foreclosure sale.

The only provision that appears to have any application here is RCW 59.12.030(6), under which a “person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days’ notice” is guilty of unlawful detainer.

While RCW 59.12.030(6) does not define “color of title,” it is discussed in the unlawful detainer context in Puget Sound Investment Group, Inc. v. Bridges.⁸ There, the Internal Revenue Service foreclosed on Bridges’ home and sold it at a tax sale to the Puget Sound Investment Group.⁹ Bridges refused to surrender possession because he had a statutory warranty deed. Puget Sound initiated an unlawful detainer action under RCW 59.12.030(6).¹⁰ This court held that Bridges’ statutory warranty deed gave him color of title and precluded any relief under the unlawful detainer statute.¹¹

Here, Ward holds a 2004 notarized quitclaim deed from Dorsey. Consistent with Puget Sound, this deed provides Ward color of title. Therefore, the summary procedures

⁷ See RCW 59.12.032 (“An unlawful detainer action, commenced as result of a trustee’s sale . . . must comply with the requirements of RCW 61.24.040 and 61.24.060).

⁸ 92 Wn. App. 523, 525, 963 P.2d 944 (1998).

⁹ Id. at 525.

¹⁰ Id.

¹¹ Id. at 527.

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of unlawful detainer are not applicable here. Selene must establish superior title before it may proceed under RCW 59.12.030(6).¹²

Selene's other arguments are not persuasive. Ward was entitled to defend against the unlawful detainer action whether or not she served and noted her motion to dismiss.¹³ Ward's claims are not a post-sale contest that were waived for failure to enjoin the trustee's sale.¹⁴ Whether Selene is a bona fide purchaser for value and the impact of the trustee's deed, together with Ward's knowledge of the trustee's sale, are all beyond the scope of this unlawful detainer action and this appeal.¹⁵

We reverse.

WE CONCUR:

Tricker, J

Ward, J

Jan, J

¹² Alternatives available to Selene include an ejectment or quiet title action.

¹³ See RCW 59.18.380 ("At the time and place fixed for the hearing of plaintiff's motion for a writ of restitution, the defendant, or any person in possession or claiming possession of the property, may answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy.").

¹⁴ See RCW 61.24.040(1)(f)(IX).

¹⁵ See Munden, 105 Wn.2d at 45 ("In order to protect the summary nature of the unlawful detainer proceedings, other claims, including counterclaims, are generally not allowed," except "when the counterclaim, affirmative equitable defense, or setoff is 'based on facts which excuse a tenant's breach.'" (quoting First Union Mgmt., Inc. v. Slack, 36 Wn. App. 849, 854, 679 P.2d 936 (1984))).