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Nº 66611-8-I

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

SHANGRI-LA COMMUNITY CLUB

Respondent

vs.

MELVIN STRUCK & MARY STRUCK, h/w

Appellants

FILED
COURT OF APPEALS
STATE OF WASHINGTON
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RESPONDENT'S BRIEF

ORIGINAL

Craig Sjostrom #21149
Attorney at Law
1204 Cleveland Ave.
Mount Vernon, WA 98273
(360) 848-0339

Attorney for Respondent

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A. Issue Presented

The sole issue for decision is whether the Order Granting Summary Judgment and the Judgment & Decree of Foreclosure entered by Judge David Needy on January 3rd, 2011 were proper. Clearly, they were.

B. Statement of the Case

Respondent is a homeowners association, charged with the management of a private community water system, located in Skagit County, serving a residential subdivision known as “Shangri-La on the Skagit”. Appellants own one of the parcels within the subdivision (lot 17), and, along with their daughter, own an adjacent lot (#16). Appellants failed to pay the assessments lawfully imposed for water service, and as a consequence liens were recorded against each lot, which liens were subsequently foreclosed in two separate actions.

In the subject foreclosure action, which concerns Lot 17, Respondent sought an order of summary judgment (CP 6, 7, 8 & 9). Appellants raised a number of issues at the hearing, none of which were

germane to Respondent's claims. For example, Appellants claimed that they had not been properly served, which was incorrect (RP 8-9, CP 19); and that the subject lien had been improperly recorded, without presenting any supporting evidence or authority (RP 11-12). Appellants also argued that a default had been improperly entered, which likewise had no factual or legal basis. (RP 9). Essentially, Appellants are confusing the two cases, which admittedly were subject to similar summary judgment motions argued simultaneously, but were two separate, distinct causes of action.

After the entry of the summary judgment order, an Order of Sale was obtained. Then, apparently in an effort to prevent a Sheriff's execution sale, Appellants paid an amount into the Court Registry, but did not obtain any orders barring execution of the judgment. The amount paid was insufficient to pay off the judgment. Respondent has refrained, of its own volition, from pursuing an execution sale pending the outcome of this appeal.

With respect to the subject case, there was no dispute that Appellants had not paid their assessments; that Respondent had the right to lien the property, and, that the lien was subject to foreclosure (RP 13). The trial court thus properly entered an order of summary judgment and a

decree of foreclosure against Lot 17, (CP 20 & 21), which was appealed (CP 30). The other case, concerning Lot 16, has not been resolved and is still pending in the Skagit County Superior Court.

B. Responses to Assignments of Error

1. Appellants assert that a default judgment was entered in the Lot 16 case, not the one being appealed, which apart from the fact that the assertion is incorrect, that issue is irrelevant to the current appeal.
2. As with Assignment of Error #1, any references to relief granted or not granted in the Lot 16 case (not before this Court) would be irrelevant.
3. There is no issue of material fact such that the lien recorded against Lot 17 (the parcel that is the subject of this appeal) was not properly recorded and/or is not enforceable. The granting of summary judgment was not error.

In addition, Appellants in what is styled as their “Statement of the Case” (see Appellants’ Brief, pp.9-10), assert that their request for what they call a “roving judge” was denied, and they in essence assign that as error as well. There is, however, no separate assignment of error

concerning this issue, so the same may not be considered. RAP 10.3(g).

C. Responsive Argument

First, again, Appellants confuse the Lot 17 case (the one being appealed) with the Lot 16 case. The argument concerning the default against Karen Struck, in the Lot 16 case, is irrelevant to the issues in the Lot 17 case.

As an attempt at clarity, the arguments presented in Appellants' Brief will be responded to in turn:

1. Again, the case referenced is not the one being appealed, so the argument is irrelevant.
2. Karen Struck is not a defendant in the present action, so any reference to her is irrelevant.
3. This argument is undisputed; the lien being foreclosed was recorded against Lot 17 under Skagit County Auditor's File No. 200610300173 (CP 2). Again, the claims concerning the Lot 16 case are irrelevant. There is no assignment of error relating to this argument, so the same may not be considered. RAP 10.3(g).

4. Appellant's Brief starts the paragraph numbering again at #1 at this point. Again, this issue is undisputed.
5. (Appellant's Brief second paragraph #2) This argument is incomprehensible. No order was entered in the case being appealed on the date stated.
6. (Appellant's Brief second paragraph #3) This argument seems to be that the lien recorded against Lot 16 stated the Assessor's Tax Parcel Number for Lot 17. However, that issue relates to the Lot 16 case and is thus irrelevant to this appeal.
7. The next two paragraphs are confusing and hard to follow. The bottom line, though, is that it is undisputed that the lien recorded against the subject property (AFN 2006010300173) was the one foreclosed in the action being appealed.

Appellants provide no argument or citation to authority such that any material issue of fact existed with respect to the validity of the lien being foreclosed. Similarly, no allegation or arguments was made such that the payments for assessments for the subject lot had been paid; quite the contrary (RP 4). All of the arguments raised, both in connection with the summary judgment motion and the present appeal (to the extent they

can be understood at all), are irrelevant, unsupported by authority, do not establish any issues of disputed material fact, and thus do not justify reversal.

D. Request for Award of Attorney's Fees on Appeal

The Shangri-La Covenants provide for payment of attorney's fees and costs in connection with foreclosure of assessment liens. CP 8, page 3, paragraph 5. As Shangri-La has a basis for an award of fees in the trial court, it has a like rights on appeal. *Thompson v. Lennox*, 151 Wash.App. 479 (2009). Respondent is thus entitled to award of attorney's fees and costs on appeal pursuant to RAP 18.1.

In addition, as this appeal is frivolous and made without reasonable cause, Respondent should be awarded its attorney's fees and costs on appeal under RAP 18.9. See, e.g., *In re Guardianship of Wells*, 150 Wash.App. 491 (published at 149 Wash.App. 1007) (2009).

E. Conclusion

The trial court properly granted summary judgment. No disputed material facts exist, and as a consequence both the order granting summary

judgment and the Judgment and Decree of Foreclosure based thereon were properly entered. No legitimate arguments or authorities in contravention have been presented by Appellants. This Court should therefore affirm the trial court, and award attorney's fees on appeal pursuant to the Shangri-La Covenants, RAP 18.1, and RAP 18.9.

Respectfully submitted on 9/30, 2011



CRAIG SJOSTROM #21149
Attorney for Appellant
1204 Cleveland Ave.
Mount Vernon, WA 98273
(360) 848-0339
Fax (360) 336-3488
cdsjostrom@comcast.net

CERTIFICATE OF MAILING

I certify that on September 30th, 2011, I mailed by regular U.S. Mail, postage prepaid, a copy of the foregoing Respondent's Brief to Appellants *pro se* at the following address:

Melvin Struck & Mary Struck
12024 8th Ave. NW
Seattle, WA 98177



CRAIG SJOSTROM #21149
Attorney for Respondent