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No. 102863-6

SUPREME COURT
OF THE STATE OF WASHINGTON

CYNTHIA HEBERT and JAMES D. HEBERT,
husband and wife,

Petitioner,

v.

SPRING CREEK EASEMENT OWNERS ASSOCIATION
(RMA) BOARD OF TRUSTEES,

Respondents.

ANSWER TO *AMICI CURIAE* MEMORANDA

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A. INTRODUCTION

This case presents a concise, legal question of substantial public importance – should remedial debtor statutes be construed in favor of individuals, allowing equitable relief, or should the law favor technicalities that result in forfeitures? The law seemed clear before this case, “redemption statutes [are] remedial in nature, designed to help creditors recover their just demands, nothing more.” *GESA Fed. Credit Union v. Mut. Life Ins. Co. of New York*, 105 Wn.2d 248, 255, 713 P.2d 728 (1986). “There is no question but that equity has a right to step in and prevent the enforcement of a legal right whenever such an enforcement would be inequitable.” *Miebach v. Colasurdo*, 102 Wn.2d 170, 177, 685 P.2d 1074 (1984) (setting aside inequitable foreclosure sale). This Court has recognized an “equitable exception to the redemption statute...that the right of redemption is not forfeited where the party redeeming substantially complies with the redemption statute.” *Fid. Mut. Sav. Bank v. Mark*, 112 Wn.2d 47, 54, 767 P.2d 1382 (1989) (citing *GESA*).

But Division III's opinion contravenes these clear holdings, leaving Washingtonians more vulnerable than before, contrary to the Legislature's intent.

Legislator and former Speaker of the House of Representatives Frank Chopp and current King County Assessor John Arthur Wilson understand how important this case is. Their *amici* memoranda detail why review by this Court is critical. This case should not slip past a "searching judicial lens." Wilson mem. at 1.

Amici explain that the stakes in these matters are high. Skyrocketing real estate values in Washington encourage speculators like Filbert Hill to search for any advantage to secure a windfall, at the expense of individual homeowners. As Rep. Chopp points out, Division III's opinion offers "more ammunition" to debt collectors which will cause individuals to suffer severe consequences if left undisturbed. Chopp mem. at 2.

Division III's opinion is contrary to law and bad public

policy that this Court should correct. *Amici* highlight that review and reversal are warranted.

B. STATEMENT OF THE CASE AND ISSUE

Amici tailor their support to the merits of the issue presented on appeal – can a court apply equitable relief in the statutory redemption process? In its answer to the petition for review, Filbert Hill accuses the Heberts of “failing to raise the Court of Appeals’ actual holding as an issue for review.” Ans. to pet. at 9 (cleaned up). Not true.

The Heberts’ petition explains that the Court of Appeals “dodged” the merits of the appeal, deciding the matter on the technicality that the Heberts did not appeal an incomplete, supplemental *in personam* judgment that is not required by the redemption statutes. Pet. at 12-13. That judgment, which does not affect the statutory price to redeem under chapter 6.23 RCW, was entered after the sheriff’s sale had already occurred. CP 7-8, 230-34.

The Heberts substantively address why Division III’s

decision was incorrect and bad public policy. Pet. at 25-26. That judgment was not necessary to decide the ultimate issue in the case – whether the Heberts substantially complied with the redemption statute. Division III misapprehended this point, determining that the supplemental judgment had to be directly appealed. Rather, the supplemental judgment merely played a key role in unfair circumstances that warranted equitable relief.¹ The Heberts point out why Division III’s opinion meets the RAP 13.4(b) criteria for review because it conflicts with precedent and presents an issue of substantial public importance. Pet. at 25-29.

Nothing should stop this Court from accepting review of the merits, which *amici* show has broad application beyond this single case. The merits are before the Court in this petition, and the Heberts’ arguments are supported by *amici curiae* parties urging the Court to grant review.

¹ *Albice v. Premier Mortg. Servs. of Washington, Inc.*, 157 Wn. App. 912, 239 P.3d 1148 (2010), *aff’d*, 174 Wn.2d 560 (2012) (equity can void a foreclosure sale where sale is “surrounded by...unfair circumstances”).

C. ARGUMENT

(1) Division III's Opinion Conflicts with Established Precedent and This Case Presents an Issue of Substantial Public Importance

Amici point out that the law favors individuals, abhors forfeitures, and allows equity to step in prevent miscarriages of justice in the context of foreclosures and statutory redemption. “[R]edemption statutes [are] remedial in nature, designed to help creditors recover their just demands, nothing more.” *GESA*, 105 Wn.2d at 255. The Heberts substantially complied with their statutory redemption rights, giving immediate notice they planned to redeem their property and posting \$135,323.03 (nearly the entire amount required) into the court registry before the time to redeem expired. Along the way, they begged for clarity from a court that refused to provide it. The trial court even made things worse by entering an incomplete *in personam* supplemental judgment, that does not affect the analysis of the redemption statutes.

Assessor Wilson observes that home values have

skyrocketed, so companies like Filbert Hill are incentivized to buy valuable lots at foreclosure/sheriff's sales and then seek to enforce redemption and other foreclosure statutes in a technical manner. The trial court and Division III were wrong to read the redemption statute in a way that removes equitable power to avoid a forfeiture. Division III also erred in imposing a greater barrier to relief by holding for the first time that a supplemental *in personam* judgment, having nothing to do with statutory redemption, must be timely appealed in addition to the *many steps* the Heberts took to preserve their arguments.²

Assessor Wilson explains how these barriers and advantages to speculators like Filbert Hill are bad public policy, policy that should be corrected as a matter of substantial public importance by this Court:

There are enough advantages inherent in our system, with rising costs of living, inflation, and the rest that pose a challenge to many Washingtonians

² The RAPs ordinarily must be “liberally interpreted to promote justice and facilitate the decision of cases on the merits.” RAP 1.2.

trying to make ends meet. We do not need court-sanctioned advantages like Division III's opinion that construed the redemption statutes in a way that allows for more forfeitures.

Wilson mem. at 5.

Rep. Chopp concurs and displays a common-sense mentality of a Legislator with decades of history working across the aisle. He explains: "all parties can be made whole so easily." Chopp mem. at 5. The Heberts tried and substantially complied with their obligation to redeem their home, posting nearly the entire amount necessary in the court registry. Why neither the trial court nor Division III allowed them the common-sense and equitable opportunity to cure their error and make everyone whole "is baffling." Chopp mem. at 5.

The decisions so far in this case are not just baffling, they are contrary to established precedent and present a matter of substantial public interest as shown by the *amici* participation in this case. RAP 13.4(b)(1), (2), (4). Review is warranted.

(2) Remedial Laws Like Statutory Redemption Must Be Construed to Favor Individuals and Implemented in a Way to Avoid Forfeitures; Not Construed in Favor of Purchasers at Sheriff Sales Who Know Debtors Have a Legal Right to Redeem

The *amici* memoranda from Assessor Wilson and Rep. Chopp highlight what should be clear – remedial laws are meant to *protect individual debtors* like the Heberts. Chopp mem. at 5-6. They must be construed accordingly, and foreclosure actions are not vehicles for speculative purchasers like Filbert Hill to acquire windfalls via technical application of remedial laws.

Filbert Hill takes a hyperbolic stance, suggesting sanctions would be appropriate for the Heberts’ argument that Filbert Hill is a speculator and not a *bona fide* purchaser. Ans. to pet. at 11-15. Filbert Hill is wrong; the facts and the clear law show that Filbert Hill was not a *bone fide* purchaser, a legal term of art.

As briefed in Division III, “A bona fide purchaser for value is one who without notice of another’s claim of right to, or equity in, the property prior to his acquisition of title, has paid the vendor a valuable consideration.” *Miebach*, 102 Wn.2d at

175. In a sheriff's sale where the owner retains a right to redeem the property, the purchaser only acquires "the exact estate purchased—property subject to redemption rights" and unlike typical, fee simple purchasers the buyer has "no right to alter the nature of the property" until after the redemption period runs. *Metro. Fed. Sav. & Loan Ass'n v. Roberts*, 72 Wn. App. 104, 113, 863 P.2d 615 (1993); *see also*, *Casa del Rey v. Hart*, 110 Wn.2d 65, 71, 750 P.2d 261, 264 (1988) ("investors" who "knew that they were purchasing an interest sold to satisfy a judgment" at sheriff's sale were not *bona fide* purchasers).

Here, Filbert Hill purchased property on the courthouse steps knowing it was sold below market value to satisfy a debt with the Heberts maintaining a right to redeem. CP 7-8. This is not a couple buying their dream home, only later to discover some hidden defect in the title. Rather, Filbert Hill, a commercial enterprise speculating in foreclosed properties, purchased the property at the Kittitas County Courthouse, after notices were posted and the Sheriff "proclaimed aloud, in the presence and

hearing of bystanders” that the property was sold to satisfy a judgment on a parcel of property belonging to the Heberts. CP 7-8. They had “notice of another’s claim of right to, or equity in, the property prior to his acquisition of title,” *Miebach*, 102 Wn.2d at 175, and had to wait until the redemption period ran to see whether the Heberts would exercise their right to claim the property before they did anything with it.

Filbert Hill overblows a line in *Casa Del Rey* about the purchaser’s knowledge that “third parties” have a legal claim to the land purchased. Ans. to pet. at 13-14. But to the extent that articulation of the test even matters, as Filbert Hill must admit (and as the *Casa Del Ray* court articulated elsewhere in its opinion) the true test is whether the purchaser is “without notice of *another’s* claim of right to, or equity in, the property.” *Miebach*, 102 Wn.2d at 175; *Casa Del Ray*, 110 Wn.2d at 70 (emphasis added) (quotation omitted). If the purchaser knows that *another person* has a legal or equitable interest in the land, the purchaser is not entitled to extra protections that apply to

bona fide purchasers. *Id.*

That is not Filbert Hill. Filbert Hill had express notice of another's interest in the land, it was proclaimed aloud on the courthouse steps at the sale. CP 7-8. It purchased a limited interest in the property from the Sheriff subject to another person's redemption rights. *Metro. Fed. Sav. & Loan Ass'n*, 72 Wn. App. at 113. Filbert Hill cites no case of its own where similar circumstances warranted *bona fide* purchaser status.

Filbert Hill focuses on this ancillary issue because it exposes the error that has existed all along. "Without the intervening rights of a *bona fide* purchaser, there is no question but that equity has a right to step in and prevent the enforcement of a legal right whenever such an enforcement would be inequitable." *Miebach*, 102 Wn.2d at 177 (cleaned up). This is why courts allow equitable relief to apply to redemption sales. *See Fid. Mut. Sav. Bank*, 112 Wn.2d at 54 ("we fashioned an equitable exception to the redemption statute and held that the right of redemption is not forfeited where the party redeeming

substantially complies with the redemption statute”).

The trial court committed legal error when it determined it had no such equitable power, despite unjust circumstances that will result in a severe forfeiture. And Division III created conflicts in law given the question is whether the Heberts substantially complied with the redemption statutes, not whether they appealed an *in personam* judgment entered long after the sale occurred.

Assessor Wilson and Rep. Chopp highlight the inequity of applying technicalities to grant a windfall to a company like Filbert Hill purchasing property on the courthouse steps it knows another has a right to redeem over individual families like the Heberts. This case warrants review by this Court to correct conflicts on an issue of public importance. RAP 13.4(b)(1), (2), (4). Otherwise, Washingtonians will be more vulnerable to forfeiting their homes or other valuable property unjustly.

D. CONCLUSION

Amici show that this case warrants review. It has broad

implications across Washington. The Court should grant review and reverse to correct conflicts and resolve issues of substantial public importance. RAP 13.4(b)(1), (2), (4).

This document contains 2,068 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 22nd day of May, 2024.

Respectfully submitted,

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DECLARATION OF SERVICE

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

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