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FILED
NOV 20 2014

No. 70604-7-1

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON
CRB

In the Court of Appeals
State of Washington
Division One

COURT OF APPEALS
STATE OF WASHINGTON
NOV 20 2014

Towne Owners Association, Plaintiff,

v.

Brian D. Beckmann, et al., Defendants.

DCR Services, LLC, Third-Party Plaintiff/Appellant

v.

The Condo Group, LLC, et al., Third-Party Defendants/Respondents.

Appeal from King County Superior Court
The Honorable Monica Benton, Case No. 11-2-08939-8 SEA

Petition for Review

Rodney T. Harmon
P.O. Box 1066
Bothell, WA 98041
(425) 402-7800
rodharmon@msn.com

Attorney for Glacier Real Estate
Investments, LLC, successor in
interest to DCR Services, LLC

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I. Identity of Petitioner.

The petitioner is Glacier Real Estate Investments, LLC ("Glacier"), which succeeded to the interests of DCR Services, LLC ("DCR") in the subject matter of this case. On September 30, 2014, DCR filed a motion in the Court of Appeals for substitution of Glacier for DCR. Appendix B. DCR has assigned to Glacier its promissory note and deed of trust encumbering the foreclosed property. *Id.* DCR has also deeded to Glacier its fee interest in the foreclosed property. *Id.* The motion is pending resolution. This petition is filed under the authority of RAP 3.2(d)(4).

II. Court of Appeals Decision.

Glacier seeks review of the decision of Division I of the Court of Appeals in *Towne Owners Assn. v. Beckman*, Court of Appeals Case No. 70604-7-I filed on September 2, 2014. DCR Services, LLC and The Condo Group, LLC were third parties in that case. No motion for reconsideration was filed. The Court of Appeals' decision is reproduced in Appendix A.

III. Issues Presented for Review.

This case is a dispute between the purchaser at a condominium lien foreclosure sale and a party who sought to redeem the property.

1. During the redemption period following a sheriff's auction of real property, does the judgment debtor retain an interest to which a lien can attach?

2. Does the term "redemption" under RCW 6.23.010 (1)(b) include a creditor whose lien attached after the sheriff's auction but during the redemption period?
3. Did DCR Services successfully redeem the property?

The Court of Appeals answered these questions in the negative, solely on the basis of the recent case of *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wn.2d 754, 328 P.3d 895 (2014) in which it perceived the Supreme Court to have held that the only creditors who may redeem are those whose liens attached to the foreclosed property *before* the sheriff's auction. This petition asks whether the Court intended such an application of its holding, which would resurrect the repudiated case of *Hardy v. Herriott*, 11 Wash. 460, 39 P. 958 (1895).

IV. Statement of the Case.

On March 7, 2011, the Towne Owners Association commenced the foreclosure action against the owner of Unit 38,¹ Brian Beckmann. (CP 1-4). The superior court entered a default judgment against Beckmann and his lender. (CP 18). On June 1, 2011, the court clerk issued an order of sale, commanding the sheriff to seize and sell the Property. (CP 41). The order provided for a one year redemption period. (CP 20). On August 5, 2011, the sheriff sold the property and The Condo Group was the high bidder at

¹ The address of the property is 3058 128th Ave SE #38, Bellevue, WA.

the sale for \$6,200. (CP 46). On September 21, 2011, the superior court confirmed the sale. (CP 45).

Eight months after the sheriff's auction, on April 18, 2012, DCR loaned Beckmann \$2,500, and Beckmann granted DCR a deed of trust against the property to secure repayment of the loan. (CP 176, 400). On April 19, 2012, for an additional \$2500, Beckmann conveyed his fee interest in the condominium unit to DCR by quit claim deed. (CP 174, 180). On June 7, 2012, DCR notified the King County Sheriff of its intent to redeem, providing a copy of its deed of trust, a declaration stating the amount due on the promissory note secured by the deed of trust, and a check for the sheriff's fee. (CP 252, 257). On June 14, 2012, DCR tendered \$6,840.04 to the sheriff (sheriff's sale price plus 12% interest). (CP 259).

The Condo Group objected to DCR's redemption (CP 254), so DCR filed a third-party complaint in the foreclosure action to obtain a declaration of the parties' rights. (CP 76) DCR and The Condo Group filed cross-motions for summary judgment, and on June 4, 2013, the superior court entered summary judgment for The Condo Group, ruling that DCR is not a redemptioner under Chapter 6.23. (CP 434). On July 2, 2013, DCR appealed to Division I of the Court of Appeals. (CP 438). On September 2, 2014, Division I filed its decision affirming the trial court. Appendix A. Division I based its decision entirely upon the Supreme Court's recent

decision in *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wn.2d 754, 328 P.3d 895 (2014). Because it perceived it was merely applying the rule it believed was announced in that case, Division I chose not to publish its decision.

V. Argument.

A. The Court of Appeals' decision is grounded on a faulty understanding of *BAC Home Loans v. Fulbright*.

As in *Fulbright*, the statute applicable in this case is RCW 6.23.010,² which provides that property sold subject to redemption could be redeemed by a creditor with a lien that is subsequent in time to that on which the property was sold:

(1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property sold.

(b) A creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in this subsection are termed redemptioners.

(2) As used in this chapter, the terms "judgment debtor," "redemptioner," and "purchaser," refer also to their respective

² The statute was first enacted in 1873. Laws of 1873, ch. 33, §365, p. 101. It remains substantively unchanged from the date of its enactment. *Ford v. Nokomis State Bank*, 135 Wash. 37, 39-41, 237 P. 314 (1925); *BAC Home Loans Servicing, LP v. Fulbright*, 180 Wn.2d 754, 328 P.3d 895 (2014).

successors in interest.

The Court of Appeals grounded its decision entirely on a faulty understanding of *BAC Home Loans v. Fulbright*. It reasoned that a post-auction lien is not extinguished by a foreclosure sale and therefore does not give rise to a statutory right of redemption:

DCR's interest was created nearly eight months after the foreclosure sale. Its interest was not affected in any way by Towne's foreclosure action. Following *Fulbright*, we conclude that DCR is not a proper redemptioner under former RCW 6.23.010 because DCR did not have a lien extinguished by the foreclosure sale.

Towne, slip op. at p. 6. At the heart of the Court of Appeals' decision are these erroneous assumptions:

- (1) A "foreclosure sale" means the sheriff's auction,
- (2) The only interests extinguished by the foreclosure are those that existed at the time of the auction, and
- (3) After the auction, the judgment debtor retains no interest in the foreclosed property to which a lien could attach.

B. The decision of the Court of Appeals is in conflict with decisions of the Supreme Court.

The Court of Appeals' faulty premise is that the Supreme Court has now held that a judgment debtor's interest in foreclosed real property is extinguished as of the sheriff's auction. The wording *Fulbright* used, borrowed from Professor Rombauer's treatise in *Washington Practice*, led the Court of Appeals to its faulty premise. That premise leads directly and

logically to the overthrow of over a century of case law and the resurrection of the repudiated rule of *Hardy v. Herriott*, 11 Wash. 460, 39 P. 958 (1895). Accepting review of this case would provide an opportunity to clarify what the court meant in *Fulbright* and correct the mis-impression it caused, and prevent other courts from mistakenly applying the law.

The problematic wording is in the chronological sequence implied:

Generally, statutory redemption arises when a senior lienholder forecloses on the property, thereby extinguishing any junior liens. After the foreclosure sale, statutory redemption gives junior lienholders a grace period beyond the sale

Fulbright, 180 Wn.2d at _____. This gives the impression that the foreclosure sale is the sheriff's auction, and that it forecloses the judgment debtor's and lienholders' interest in the property, and all that they have left is their statutory redemption rights. That impression was so strong on Division I that it felt bound to follow it as precedent in an unpublished decision.

Division II noticed the wording problem in 2002 case and it avoided using similar language. *Capital Investment Corp. of Washington vs. King County*, 112 Wn.App. 216, 230, n.37, 47 P.3d 161 (2002) . If carried to its logical conclusion, this mis-impression leads back to the rule this court repudiated in *Hardy v. Herriott*, 11 Wash. 460, 39 P. 958 (1895).

1. The rule Division I has applied was repudiated by this Court in *Hays v. Merchants' Bank*, 10 Wash. 573, 577, 39 P. 98 (1895), rehrg. 14 Wash. 192, 193, 44 P. 137 (1896).

Hardy v. Herriott, *supra*, addressed whether a redemptioner was entitled to a credit for the purchaser's rents and profits during the redemption period, a subject the redemption statutes did not then address. The *Hardy* court held that after the sheriff's auction the judgment debtor's interest was purely personal property:

It follows that in this state the title of the mortgagor upon foreclosure sale, like the title of the judgment debtor upon execution sale, becomes extinguished, and all that remains to him is the right to redeem, which is wholly statutory.

Hardy v. Herriott, 11 Wash. 460, 462, 39 P. 958 (1895). This rule is entirely consistent with, and the logical conclusion of, the reasoning employed by Division I in this case. However, within six months after *Hardy* was decided, apparently stung by criticism, this court distanced itself from the rule announced in that case.

...[T]here has been a good deal said as to the announcement in *Hardy v. Herriott* of the doctrine that the title of the judgment debtor became extinguished by the sale of the land, and that all that was left to him was the equitable right to redeem, and that the purchaser at such sale acquired the full legal title the decision of that technical question was not necessary to the decision of the real question involved in *Hardy v. Herriott*.

Knipe v. Austin, 13 Wash. 189, 193, 43 P. 25 (1895). It was particularly awkward that just two months prior to *Hardy*, the Court had announced the opposite rule, namely:

A judgment debtor, until after the expiration of the time to redeem real estate sold on execution, is the holder of the legal title, and must in all respects be treated as the owner of the land.

Hays v. Merchants' Bank, 10 Wash. 573, 577, 39 P. 98 (1895). On the rehearing of *Hays*, the court openly repudiated the principle announced in *Hardy v. Herriott* and affirmed its earlier decision. *Hays v. Merchants' Bank*, 14 Wash. 192, 193, 44 P. 137 (1896).

2. *Hays v. Merchants' Bank* was followed by a long string of cases reiterating its holding.

These cases include *Singly v. Warren*, 18 Wash. 434, 444-45, 51 P. 1066 (1898) ("A certificate of sale executed by a sheriff does not pass title. At most, it is only evidence of an inchoate estate . . . [the purchaser] cannot be said to hold the title until he receives a deed in pursuance of the sale"); *De Roberts v. Stiles*, 24 Wash. 611, 618, 64 P. 795 (1901) ("A certificate of sale executed by a sheriff does not pass title."). *Cochran v. Cochran*, 114 Wash. 499, 503, 195 P. 224 (1921) ("It has become the well-settled law of this state that. . . the mortgagor is not by such [foreclosure] sale divested of his title to the land prior to the expiration of the redemption period, and can even then be divested of his title only upon his failure to redeem during that period."); *Ford v. Nokomis State Bank*, 135 Wash. 37,45,237 P. 314 (1925) (" ... [I]n this state we have consistently held ... that a certificate of sale executed by a sheriff does not vest title ... "); *Carroll v. Hill Tract Imp. Co.*, 44 Wash. 569, 574, 87 P. 835 (1906) ("Pending the redemption period, the

certificate of sale did not pass title ... "); *W.T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 248, 571 P.2d 203 (1977) (noting that the sheriff's certificate of purchase does not pass title to the purchaser and that a mechanic's lien for work done on the property for the sheriff's sale purchaser did not attach to the judgment debtor's fee interest in the property); and *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 52, 767 P.2d 1382 (1989) ("A judgment debtor-mortgagor retains legal title to the property during the redemption period.")

3. Hays v. Merchants' Bank relied upon two cases upholding the right to redeem of lien creditors whose liens attached after the sheriff's auction during the redemption period.

In its initial decision, 10 Wash. at 577, the *Hays* Court supported its core holding by citing to *Curtis v. Millard* and *McMillan v. Richards*. In *Curtis v. Millard*, 14 Iowa 128, 130 (1862), the Iowa Supreme Court held:

If, during the interim between the date of the sale and the delivery of the sheriff's deed to the purchaser, other judgments are rendered against the debtor, it has been repeatedly held that they attach as liens upon the debtor's interest, which is one of real value, consisting not only of the legal estate, rents and profits, but the consequent right to discharge the lien and make his estate absolute.

And in *McMillan v. Richards*, 9 Cal. 365, 412-13 (1858), the California Supreme Court, citing the same New York cases as *Curtis*, stated:

There is no difference, so far as the liens of the judgments are concerned, between our statute and that of New York. Here the statute requires the lien by the judgment of the creditor to be subsequent to that on which the property is sold; there the statute requires the judgment which creates the lien to be recovered before

the expiration of the time of the redemption. The period within which the judgment creating the lien must be recovered is not limited in either case by the sale.

McMillan v. Richards, 9 Cal. 365, 412-13 (1858).³

Hays, 10 Wash. at 577, also relied upon Abraham Freeman's treatise on Executions. That treatise states that it is the rule that a redemption is valid even if it is based upon a judgment confessed during the redemption period for the purpose of creating a right to redeem.

"It is ... immaterial whether the judgment ... was confessed for the purpose of creating a right to redeem after the sale was made."

Freeman, Abraham Clark, *A Treatise on the Law of Executions in Civil Cases*, § 317 (3rd ed. 1900). *Accord*, Rorer, David, *A Treatise on the Law of Judicial and Execution Sales*, § 1116 (1878) "The right of judgment creditors to redeem lands of their debtors from execution sales, when given by law, applies alike to creditors whose judgments are rendered before or

³ This holding of *McMillan* was affirmed by the California Supreme Court in *Salsbery v. Ritter*, 48 Cal.2d 1, 9, 306 P.2d 897 (1957) ("[Plaintiffs] urge that since the Ritter-Holland judgment was not obtained until after the sale of the property on execution, Ritter and Holland acquired no lien and were not eligible to redeem the property. This contention is without merit." See also Darryl A. Hart, Comment, *The Statutory Right of Redemption in California*, 52 Calif. L.Rev. 846, 859 (1964). Both *Salsbery* and the Hart Comment were relied upon for other points by *Millay v. Cam*, 135 Wn.2d 193, 200, 955 P.2d 791 (1998).

after the sale."

4. Cases from other states support the right to redeem of a post-auction lien creditor.

The North Dakota case of *The North Dakota Horse & Cattle Company v. Serumgard*, 17 N.D. 466, 117 N.W. 453 (1908), is directly on point and involved a redemption statute identical to Washington's statute. In *Serumgard*, the foreclosed mortgagor granted a mortgage after the sheriff's auction but before the expiration of the redemption period. The court, after a detailed review of the authorities, held that "a party seeking to redeem by virtue of holding a subsequent lien need only hold a lien at the time he seeks to redeem." *The North Dakota Horse & Cattle Company v. Serumgard*, 17 N.D. 466, 494, 117 N.W. 453 (1908).

The court noted that the sheriff's sale purchaser does not acquire the defendant's title to the land until the expiration of the time for redemption and the execution and delivery of the sheriff's deed. *The North Dakota Horse & Cattle Company v. Serumgard*, 17 N.D. 466, 485, 489, 117 N.W. 453 (1908). The court concluded that "[i]t is plain that during the time allowed by law for redemption the debtor possesses such an interest in the real property sold as will support a mortgage thereon," and "the right to redeem is coincident with the right or power to mortgage, when by the terms of the statute subsequent mortgagees are included among

redemptioners" *The North Dakota Horse & Cattle Company v. Serumgard*, 17 N.D. 466, 481, 117 N.W. 453 (1908). A post-auction mortgagee is a redemptioner.

The Minnesota case of *Bovey v. De Laittre Lumber Co.*, 48 Minn. 223, 50 N.W. 1038 (1892), was an action to foreclose a mechanic's lien. The judgment debtor, after the sale, and on the last day to redeem, executed a mortgage for \$2 on the foreclosed property. The court held that the mortgagee, Pearse, had the right to redeem, stating:

So long as the owner had a conveyable interest he could mortgage it. In case of a sale subject to right of redemption the owner has a conveyable interest till it is cut off by expiration of the time allowed him to redeem. The mortgage to Pearse was executed within that time, and was therefore valid.

Bovey v. De Laittre Lumber Co., 48 Minn. 223, 50 N.W. 1038, 1039 (1892).

In the Indiana case of *Hervey v. Krost*, 116 Ind. 268, 271, 19 N.E. 125 (1888), the court held that "a mortgagee, although his mortgage may have been executed after the sale, has the right of redemption secured to him, provided his mortgage shall have been duly recorded within the year for redemption."

In the Alabama case of *Couthaway v. Berghaus*, 25 Ala. 393 (1854), citing *Pollard v. Taylor*, 13 Ala. 604 (1848), the court held that a judgment obtained after the sheriff's auction, but before the expiration of the time for redeeming, was sufficient to authorize the judgment creditor to

redeem.

And in the Illinois case of *Becker v. Friend*, 200 Ill. 75, 80-81, 65 N.E. 683 (1902), after a judicial sale but during the redemption period, the judgment debtor confessed a judgment expressly for the purpose of enabling the judgment creditor to redeem. The court held that the redemption was valid, finding there is a bona fide indebtedness existing and due to such creditor. Becker relied upon *Arnold v. Gifford*, 62 Ill. 249, 252 (1871), which stood for the same proposition.

Against all of these authorities, petitioner can find no case or treatise supporting the Court of Appeals' decision except *BAC Home Loans v. Fulbright*.

5. The confusion from Fulbright can be dispelled by a consideration of when the "foreclosure sale" process ends.

The trouble is that the courts and our own statutes sometimes refer to the foreclosure or sale as if it were a particular event, i.e. the sheriff's auction. At other times, it appears that what is meant is that a foreclosure or a sale is a process that only ends when the sheriff's deed is given. The problem is well stated by the North Dakota Supreme Court:

The principal difficulty in the matter is to determine what constitutes a sale, or when the sale becomes an act fully completed. Is it when the sheriff or other proper person offers the premises at public auction and knocks them down to the highest bidder? Or not until the time for redemption expires and the purchaser obtains a deed in

pursuance of the provisions of the statute?

The North Dakota Horse & Cattle Company v. Serumgard, 17 N.D. 466, 484, 117 N.W. 453 (1908). *Serumgard* concluded that the sale must be completed to have its extinguishing effect.

Professor Rombauer's treatise in *Washington Practice* is a good example of the source of the confusion. In § 3.19, her reference to foreclosure makes one think she understands the foreclosure sale to mean the sheriff's auction. Yet, in the same section, she also observes that "title does not transfer until the sheriff's deed is issued." 27 Marjorie Dick Rombauer, *Washington Practice: Creditors' Remedies —Debtors' Relief* § 3.19(h), at 169 (1998). And she earlier makes it clear that she thinks a foreclosure is not completed until the sheriff's deed is delivered.

Once the sheriff's deed has been delivered to the purchaser, the mortgage foreclosure process has been completed.

27 Marjorie Dick Rombauer, *Washington Practice: Creditors' Remedies — Debtors' Relief* § 3.15, at 157 (1998). Reading all of this together, one should reach the conclusion that parties' rights are extinguished when the foreclosure sale is completed by execution and delivery of the sheriff's deed. But the wording of *Fulbright* makes it difficult to reach that point since it refers to the extinguishment of rights as something that happens at the beginning of the redemption period.

This court's other decisions make it clear that the sheriff's auction

is not the end of the process, but the beginning. The highest bid at the sheriff's auction is an offer, and acceptance of the offer occurs when the court confirms the sale, and at that point a contract of sale is formed. *Hazel v. Van Beek*, 135 Wn.2d 45, 56, 954 P.2d 1301 (1998); *In re Spokane Sav. Bank*, 198 Wash. 665, 672, 89 P.2d 802 (1939). But it is not fully performed until the sheriff's deed is executed, an act which, although it does not require a court order, is essential to complete the sale. *Hazel v. Van Beek*, 135 Wn.2d 45, 56, 954 P.2d 1301 (1998).

Other courts agree that the foreclosure or sale process is not complete until the sheriff's deed is issued. *Reynolds v. London & Lancashire Fire Ins. Co.*, 128 Cal. 16, 21 60 P. 467 (1900) ("[A] foreclosure, in the sense of a perfect extinguishment of the mortgagor's equity of redemption, may be said not to be complete until after the expiration of the statutory period for redemption."). The mortgage foreclosure process is consummated by the sheriff's deed *McMillan v. Richards*, 9 Cal. 365, 412, 70 Am. Dec. 655, (1858) ("... [T]he estate must remain in the mortgagor until a consummation of the sale by conveyance."); *Flanders v. Aumack*, 32 Or. 19, 26, 51 P. 447 (1897) (execution and delivery of the sheriff's deed described as the consummation of the execution); *Kaston v. Storey*, 47 Or. 150, 80 P. 217 (1905) ("There is no sale, in the legal sense, under a judgment or decree until the title passes.").

6. Since a judgment debtor can convey his interest in foreclosed property during the redemption period, he can mortgage it.

This court has acknowledged that describing the interests of the parties during the redemption process is "surrounded by difficulties" because these are statutory, and not court-made, rights. *Hays v. Merchants' Bank*, 14 Wash. 192, 194-5, 44 P. 137 (1896). But as the Oregon Supreme Court has said, "[d]uring the interim between the sale and the deed the rights of the parties interested are measured by the statute. *Flanders v. Aumack*, 32 Ore. 19, 51 P. 447 (1897).

This court has described the judgment debtor's interest in the property during the redemption period as a fee interest, *W. T. Watts, Inc. v. Sherrer*, 89 Wn.2d 245, 249, 252, 571 P.2d 203 (1977) and as a reversionary interest. *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 53, 767 P.2d 1382 (1989). In the latter case, this court held that a judgment debtor can convey his interest in the foreclosed property and thereby convey his right to redeem. *Fidelity Mutual Savings Bank v. Mark*, 112 Wn.2d 47, 53, 767 P.2d 1382 (1989).

What can be conveyed can be mortgaged. Either would support a mortgage.

Every kind of interest in real estate may be mortgaged if it be subject to sale and assignment. It does not matter that it is a right in remainder or reversion, a contingent interest, or a possibility coupled with an interest.

1 L. Jones, Law of Mortgages of Real Property, § 190, p. 222 (8th ed. 1928); RCW 64.04.010 ("A mortgage is created in the same manner as a deed.")

C. The decision of the Court of Appeals is in conflict with another decision of the Court of Appeals.

In *Capital Investment Corp. of Washington vs. King County*, 112 Wn.App. 216, 47 P.3d 161 (2002), Division II, applying *Fidelity Mutual Bank v. Mark*, held that "a redemptioner by judgment lien may not transfer a right to redeem without also transferring the underlying judgment." This decision makes little sense if the transferred judgment has been extinguished. If the judgment has been extinguished, there is nothing to assign. Division II was aware of this difficulty and carefully explained that the junior judgment lien would not be extinguished except by the expiration of the redemption period or a redemption by the judgment debtor.

After the sheriff's sale, JEA had a judgment lien that would terminate when a redemptioner junior to JEA or the judgment debtor redeemed from JEA, or the time to redeem expired, whichever occurred first, unless the judgment debtor redeemed (and terminated the effect of the sale) while JEA still had its right to redeem.

Capital Investment Corp. of Washington vs. King County, 112 Wn.App. 216, 47 P.3d 161 (2002). Division II explained its careful wording in a footnote that pointed to the type of wording in *Millay v. Cam* that the Supreme Court also used in *Fulbright*.

It may be possible to express the same concepts by saying that JEA's judgment lien was *extinguished* at the sheriff's sale and *replaced* by a right to redeem with the features stated in the text. *See, e.g., Millay v. Cam*, 135 Wash.2d 193, 198, 955 P.2d 791 (1998)("[w]hen a mortgage is foreclosed and the property sold under execution, junior lien creditors *whose liens have been extinguished by the sale have the statutory right to redeem the property* from the purchaser.") (emphasis is Division II's). Under the redemption statute, however, an otherwise qualified junior lien continues after the sheriff's sale and forms part of the post-sale compensation that must be paid by another redemptioner. *E.g., RCW 6.23.020(2)(d), RCW 6.23.040(3)*. Such a lien also reattaches if the judgment debtor redeems before the lienholder does. *See RCW 6.23.040(2); 3 WASHINGTON STATE BAR ASS'N, REAL PROPERTY DESKBOOK § 6.15(4)*. For these reasons, we use the terminology in the text.

Division I's decision in this case conflicts with Division II's decision in *Capital Investment Corp. of Washington vs. King County*, and the conflict should be resolved by accepting review of this case.

D. The petition involves an issue of substantial public interest that should be determined by the Supreme Court.

This court has recently noted "the increased number of foreclosures and litigation surrounding the rights and priorities of lienholders in foreclosure." *Sixty-01 Association of Apartment Owners v. Parsons*, No. 89805-7 Aug 21, 2014, Slip Op. at n. 3. This is another such case and it presents an issue never before resolved by this court.

A foreclosed defendant likely has other creditors, who may not reduce their just debts to judgment until after a foreclosure auction. They should not be prevented from collecting their judgments out of the fair

value of the debtor's property.

One goal of statutory redemption is to encourage full value bidding at the foreclosure sale. *Capital Investment Corp. of Washington v. King County*, 112 Wn.App. 216, 227, 47 P.3d 161 (2002). Other creditors redeem when the sheriff's sale purchaser bids less than full value. "It thus appears that one of the primary purposes of statutory redemption is to force the purchaser at the execution sale to bid the property in at a price approximating its fair value." *Salsbery v. Ritter*, 48 Cal.2d 1, 11, 306 P.2d 897 (1957). "The redemption statute is remedial in its nature and purpose, and is intended not only for the benefit of creditors holding liens, but more particularly for the purpose of making the property of the debtor pay as many of his debts as it can be made to pay, and to prevent its sacrifice, and it should be liberally construed." *The North Dakota Horse & Cattle Company v. Serumgard*, 17 N.D. 466, 117 N.W. 453 (1908).

The judgment debtor benefits if his creditors can avail themselves of his equity in the foreclosed property. If they do not redeem and so satisfy the debt, he loses the benefit of the property and has to pay them out of his pocket. And the windfall goes to the sheriff's sale purchaser. And if a party like DCR Services is willing to lend money to the foreclosed debtor on a nonrecourse basis, as happened in this case, then the judgment debtor has that much more money in his pocket.

VI. Conclusion.

Petitioner asks the Court to review this case and decide that junior mortgage and judgment creditors have the right to redeem if their liens attach during the redemption period. Petitioner asks the Court to reverse the Court of Appeals and declare that DCR Services had a right to redeem the property, and remand for issuance of a sheriff's deed to DCR's transferee, Glacier Real Estate Investments, LLC.

Respectfully submitted this 2nd day of October, 2014

A handwritten signature in black ink, appearing to read "Rodney T. Harmon", written over a horizontal line.

Rodney T. Harmon, WSBA #11059
Attorney for Glacier Real Estate Investments, LLC

Appendix A - Decision Below

2014 SEP -2 AM 11:01

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

TOWNE OWNERS ASSOCIATION,)

Plaintiff,)

v.)

BRIAN D. BECKMANN and JANE DOE)

BECKMANN, husband and wife, and)
their marital community; and)

MORTGAGE ELECTRONIC)

REGISTRATION SYSTEMS, INC.,)

a Delaware corporation,)

Defendants.)

No. 70604-7-1

DIVISION ONE

UNPUBLISHED OPINION

FILED: September 2, 2014

DCR SERVICES, LLC, a Washington)
limited liability company,)

Appellant,)

v.)

THE CONDO GROUP, LLC, a)
Washington limited liability company,)

Respondent,)

BANK OF AMERICA, N.A., a national)
banking association, NORTHWEST)

TRUSTEE SERVICES, INC., a)

Washington corporation,)

Third-Party)
Defendants.)

BANK OF AMERICA, N.A., a national)
banking association,)

Fourth-Party)
Plaintiff,)

v.)
)
 TOWNE OWNERS ASSOCIATION,)
)
 Fourth-Party)
 Defendant.)
 _____)

BECKER, J. — This appeal arose from an attempt to gain a windfall by use of an erroneous interpretation of Washington’s redemption statute, former RCW 6.23.010 (1987). Appellant DCR Services LLC was not a proper redemptioner. We affirm the order of dismissal granted on summary judgment.

The real estate in question is unit 38 in a Bellevue condominium managed by Towne Owner’s Association. Brian Beckmann purchased unit 38 with lender financing. He signed a promissory note for \$357,100 on February 15, 2007, secured by a deed of trust on unit 38.

Beckmann became delinquent in his dues for common area expense assessments owed to Towne. Towne, the condominium association, had a lien for these unpaid assessments under the Condominium Act, RCW 64.34.364. In March 2011, Towne foreclosed on the lien and obtained a default judgment against Beckmann. As a result of the filing of the lawsuit, the lender’s deed of trust was “reprioritized” under the act, and at that instant, the lender “became a subordinate junior lienholder whose lien interests were extinguished,” thus bringing into play the provisions of the redemption statute. BAC Home Loans Servicing, LP v. Fulbright, ___ Wn.2d ___, 328 P.3d 895, 900 (2014).

The trial court entered an order of sale commanding the sheriff to seize and sell the property. The Condo Group LLC, respondent herein, purchased unit

38 at the sheriff's sale on August 5, 2011, for \$6,200. At this point, both Beckmann and the lender had redemption rights. The court order allowed for a one year redemption period.

In April 2012, appellant DCR Services LLC—an entity with no previous connection to unit 38—entered into a transaction with Beckmann. The transaction was designed to make DCR a statutory redemptioner with the right to redeem unit 38 from The Condo Group. DCR loaned Beckmann \$2,500. As security for the loan, Beckmann gave DCR a deed of trust on unit 38 and signed a promissory note. For an additional \$2,500, Beckmann quitclaimed to DCR all of his rights in the property, including redemption rights created by the sheriff's sale. The promissory note relieved Beckmann of any personal liability in the event he defaulted on the loan. It also limited DCR's remedy to foreclosing on the property interest secured by the note.

DCR delivered a letter to the sheriff asserting its intent to redeem unit 38.

The redemption statute, before its amendment in 2013, provided that property sold subject to redemption could be redeemed by a creditor with a lien that is "subsequent in time" to that on which the property was sold:

(1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property sold.

(b) A creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, *subsequent in time* to that on which the property was sold. The persons mentioned in this subsection are termed redemptioners.

(2) As used in this chapter, the terms “judgment debtor,” “redemptioneer,” and “purchaser,” refer also to their respective successors in interest.

Former RCW 6.23.010 (emphasis added).

As changed by the amendment in 2013, the statute now reads that a redemptioner includes any claimant having a lien “subsequent in priority” instead of “subsequent in time” to the foreclosing lien. RCW 6.23.010(1)(b). The amendment is not at issue in this appeal.

DCR did not claim to be a successor of the judgment debtor, Beckmann. DCR claimed to be a redemptioner under former RCW 6.23.010(1)(b) as a creditor having a lien on unit 38 “subsequent in time” to the lien on which the property was sold, i.e., subsequent to the Towne lien for the unpaid assessments.

The Condo Group objected to giving DCR status as a redemptioner. This litigation ensued between DCR and The Condo Group. Both parties moved for summary judgment. The Condo Group argued that a lien creditor is eligible to be a redemptioner only if the lien held by the creditor is one that was extinguished in the sheriff’s sale. The trial court granted The Condo Group’s motion, finding that DCR was not a proper redemptioner.

DCR appeals. Appellate courts review appeals of summary judgment de novo, performing the same inquiry as the superior court. Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 860, 93 P.3d 108 (2004).

At the time DCR filed this appeal, it had a viable theory with roots in Summerhill Vill. Homeowners Ass’n v. Roughley, 166 Wn. App. 625, 289 P.3d

645 (2012). We held in Summerhill that the phrase “subsequent in time” in former RCW 6.23.010(1)(b) was to be taken literally. Summerhill, 166 Wn. App. at 632-33. We followed Summerhill’s interpretation in BAC Home Loans Servicing, LP v. Fulbright, 174 Wn. App. 352, 298 P.3d 779 (2013), reversed, ___ Wn.2d ___, 328 P.3d 895 (2014). Relying on Summerhill, DCR argued that the plain language of the statute extended redemption rights on a foreclosed property to the holder of any valid lien created after the lien on which the property was sold in foreclosure. DCR’s brief summarized its theory as follows:

DCR is a redemptioner under the statute. DCR is a creditor, because it loaned money to Beckmann. DCR has a lien by the Deed of Trust it obtained from Beckmann. The lien is on the Property. And the lien is subsequent in time to that on which the sheriff’s sale was conducted. DCR is a redemptioner.

The Supreme Court’s recent decision in Fulbright makes DCR’s theory no longer viable. The court held that under the former redemption statute, “it is not relevant which lien arises first, but which lien has statutory priority and can subordinate, under certain circumstances, other liens. Every interest extinguished in this manner comes under the redemption statute by operation of law.” Fulbright, 328 P.3d at 900. The only reasonable way to interpret the phrase “subsequent in time” is to mean “when lien priority is established.” Fulbright, 328 P.3d at 900. This interpretation gives effect to the policy underlying the right of redemption, which is to give junior lienholders an opportunity to salvage something from their investment after their title or lien has been extinguished by a foreclosure sale. Fulbright, 328 P.3d at 898.

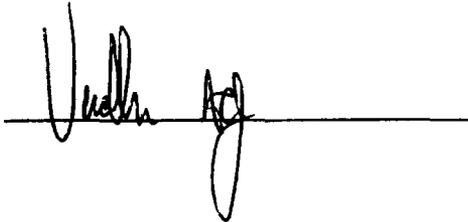
DCR's interest was created nearly eight months after the foreclosure sale. Its interest was not affected in any way by Towne's foreclosure action. Following Fulbright, we conclude that DCR is not a proper redemptioner under former RCW 6.23.010 because DCR did not have a lien extinguished by the foreclosure sale.

DCR conceded this result at oral argument. DCR was asked whether "subsequent in time" applied only to those interests extinguished in a foreclosure sale. DCR responded that this court's holding in Summerhill allowed for redemption of nonextinguished liens. Asked how future attempts to create redemption rights after a foreclosure sale might be prevented, DCR responded that the easiest way would be to make the right of redemption contingent on having an interest extinguished by the foreclosure. The Fulbright decision did just that in its interpretation of the former redemption statute.

The trial court correctly granted summary judgment in favor of The Condo Group.

Affirmed.

WE CONCUR:



Appendix B - Motion for Substitution of Parties

NO. 70607-7-1

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

TOWNE OWNERS ASSOCIATION,

Plaintiff,

v.

BRIAN D. BECKMANN, et. al.,

Defendants,

DCR SERVICES, LLC,

Third-Party
Plaintiff/Appellant,

THE CONDO GROUP, LLC, et. al.,

Third-Party
Defendants/Respondents.

DCR SERVICES, LLC'S
MOTION TO
SUBSTITUTE PARTIES
UNDER RAP 3.2

I. RELIEF SOUGHT

Third-Party Plaintiff DCR Services, LLC ("DCR") has transferred all of its interest in the property that is the subject matter of this lawsuit to

Glacier Real Estate Investments, LLC (“Glacier Real Estate”). Pursuant to RAP 3.2(a), DCR respectfully requests the Court substitute Glacier Real Estate Investments, LLC as the Third Party Plaintiff/Appellant in this matter in place of DCR Services, LLC.

II. STATEMENT OF FACTS

On September 26, 2014, Third-Party Plaintiff DCR transferred all of its interest in the property that is the subject of this appeal to Glacier Real Estate. Attached as Exhibits A and B to the Declaration of Cale L. Ehrlich In Support of Motion to Substitute Parties under RAP 3.2 are copies of the assignment of DCR’s deed of trust to Glacier Real Estate, and the Quit Claim Deed transferring all interest in the property to Glacier Real Estate.

Glacier Real Estate now holds all of DCR’s former interest in the property, and DCR has no remaining ownership interests.

III. STATEMENT OF GROUNDS

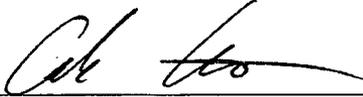
Under RAP 3.2(a), “[t]he appellate court will substitute parties to a review when it appears that . . . the interest of a party in the subject matter of the review has been transferred.” The party with “knowledge of the transfer of a party’s interest in the subject matter of the review . . . shall promptly move for substitution of parties.”

DCR has transferred all interest in the property that is the subject matter of this appeal to Glacier Real Estate. Substitution of Glacier Real Estate for DCR is required by RAP 3.2, and DCR respectfully requests the Court enter an order substituting the parties.

Pursuant to General Order In re Noting Motions for Hearing –
September 2012, this motion is presented for decision without oral
argument and without being noted for a specific hearing date.

DATED this 30th day of September, 2014.

TOUSLEY BRAIN STEPHENS PLLC

By: 

Christopher I. Brain (WSBA #5054)

Email: cbrain@tousley.com

Cale L. Ehrlich (WSBA #44359)

Email: cehrlich@tousley.com

1700 Seventh Avenue, Suite 2200

Seattle, Washington 98101

206.682.5600

Attorneys for DCR Services, LLC,
Third-Party Plaintiff/Appellant

CERTIFICATE OF SERVICE

I, Nadine Morin, hereby certify that on the 30th day of September, 2014, I caused to be served true and correct copies of the foregoing to the following person(s) in the manner indicated below:

Michael G. Fulbright, WSBA #11821
LAW OFFICE OF MICHAEL FULBRIGHT
11820 Northup Way, Suite E200
Bellevue, WA 98005
*Attorneys for Plaintiff,
Towne Owners Association*

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Christopher G. Varallo, WSBA #29410
Steven J. Dixon, WSBA #38101
WITHERSPOON KELLEY
422 W. Riverside Avenue, Suite 1100
Spokane, WA 99201
*Attorneys for Third-Party Def.,
Bank of America, N.A*

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

Jordan M. Hecker, WSBA #14374
HECKER WAKEFIELD & FEILBERG, P.S.
321 First Avenue West
Seattle, WA 98119
*Attorneys for Third-Party Def./
Respondent, The Condo Group, LLC*

- U.S. Mail, postage prepaid
- Hand Delivered
- Overnight Courier
- Facsimile
- Electronic Mail

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2014 OCT -2 1:11:43 PM

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

EXECUTED this 30th day of September, 2014, at Seattle, Washington.



Nadine Morin

NO. 70607-7-I

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION ONE

TOWNE OWNERS ASSOCIATION,

Plaintiff,

v.

BRIAN D. BECKMANN, et. al.,

Defendants,

DCR SERVICES, LLC,

Third-Party
Plaintiff/Appellant,

THE CONDO GROUP, LLC, et. al.,

Third-Party
Defendants/Respondents.

DECLARATION OF
CALE L. EHRLICH IN
SUPPORT OF MOTION
TO SUBSTITUTE
PARTIES UNDER RAP
3.2

I, Cale L. Ehrlich, being over the age of eighteen and fully
competent to testify hereto, declare and state as follows:

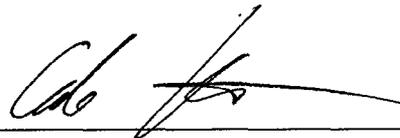
1. I am an associate of the law firm Tousley Brain Stephens, PLLC, attorneys for Third-Party Plaintiff in this action. I have personal knowledge of the following facts and, if called to testify, could and would competently testify as follows.

2. Attached as Exhibit A to this declaration is a true and correct copy of the Assignment of Deed of Trust between DCR Services, LLC and Glacier Real Estate Investments, LLC recorded under King County Recording Number 20140929001102.

3. Attached as Exhibit B to this declaration is a true and correct copy of the Quit Claim Deed between DCR Services, LLC and Glacier Real Estate Investments, LLC recorded under King County Recording Number 20140929001103.

I declare under penalty of perjury that the forgoing is true and correct.

Executed on this 30th day of September, 2014, at Seattle, King County, Washington.



Cale L. Ehrlich, WSBA #44359

CERTIFICATE OF SERVICE

I, Nadine Morin, hereby certify that on the 30th day of September, 2014, I caused to be served true and correct copies of the foregoing to the following person(s) in the manner indicated below:

Michael G. Fulbright, WSBA #11821 U.S. Mail, postage prepaid
LAW OFFICE OF MICHAEL FULBRIGHT Hand Delivered
11820 Northup Way, Suite E200 Overnight Courier
Bellevue, WA 98005 Facsimile
Attorneys for Plaintiff, Electronic Mail
Towne Owners Association

Christopher G. Varallo, WSBA #29410 U.S. Mail, postage prepaid
Steven J. Dixon, WSBA #38101 Hand Delivered
WITHERSPOON KELLEY Overnight Courier
422 W. Riverside Avenue, Suite 1100 Facsimile
Spokane, WA 99201 Electronic Mail
Attorneys for Third-Party Def.,
Bank of America, N.A

Jordan M. Hecker, WSBA #14374 U.S. Mail, postage prepaid
HECKER WAKEFIELD & FEILBERG, P.S. Hand Delivered
321 First Avenue West Overnight Courier
Seattle, WA 98119 Facsimile
Attorneys for Third-Party Def./ Electronic Mail
Respondent, The Condo Group, LLC

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

EXECUTED this 30th day of September, 2014, at Seattle, Washington.



Nadine Morin

EXHIBIT A

When recorded return to: Glacier Real Estate Investments, LLC
P.O. Box 1475
Edmonds, WA 98020

Document Title	Assignment of Deed of Trust
Grantor(s)	DCR Services, LLC
Grantee(s)	Glacier Real Estate Investments, LLC
Legal Description (abbr.)	Unit 38, Towne, a Condominium, according to King County Recording Number 20060609000380
Assessor's Property Tax Parcel Number(s)	866430-0380
Reference Numbers of Related Documents	20120418000665



20140929001102

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PAGE-001 OF 002
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KING COUNTY, WA

ASSIGNMENT OF DEED OF TRUST

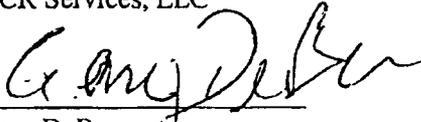
For value received, the undersigned as Beneficiary, hereby grants, conveys, assigns and transfers to Glacier Real Estate Investments, LLC, whose address is P.O. Box 1475, Edmonds, WA 98020, all beneficial interest under that certain Deed of Trust, dated April 18, 2012, executed by Brian D. Beckmann, Grantor, to Old Republic Title, Ltd, Trustee, and recorded on April 18, 2012 under recording no. 20120418000665, records of King County, Washington, describing the land therein as:

Unit 38, Towne, a Condominium, according to the condominium declaration recorded under Recording Number 20060609000380 and amendments thereto, if any, and in Volume 218 of Condominiums, pages 36 through 48, inclusive, commonly known as 3058 128th Ave SE, Unit #38, Bellevue, WA 98005, together with parking space numbers 68 and 69,

together with the promissory note therein referred to, the money due and to become due thereon, with interest, and all rights accrued or to accrue under said Deed of Trust.

Tax Acct. No. 866430-0380

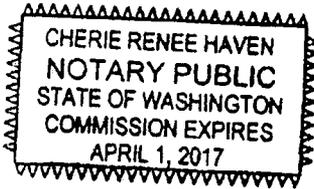
DCR Services, LLC



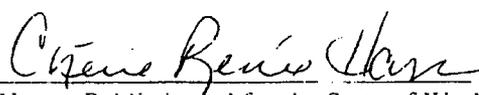
Gary DeBoer
Manager

STATE OF WASHINGTON }
 }
COUNTY OF KING }

I certify that I know or have satisfactory evidence that Gary DeBoer is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of DCR Services, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.



Given under my hand and official seal this 26th day of September, 2014.



Notary Public in and for the State of Washington,
residing at REDMOND

EXHIBIT B



20140929001103

PERFORMANCE CO QCD 73.00
PAGE-001 OF 002
09/29/2014 13:23
KING COUNTY, WA

When recorded return to:

Glacier Real Estate Investments LLC

PO BOX 1475
Edmonds, WA 98020

E2692686

09/29/2014 13:23
KING COUNTY, WA
TAX \$482.75
SALE \$26,840.00

PAGE-001 OF 001

Document Title	Quit Claim Deed
Grantor(s)	DCR Services, LLC
Grantee(s)	Glacier Real Estate Investments, LLC
Legal Description (abbr.)	Unit 38, Towne, a Condominium, according to King County Recording Number 20060609000380
Assessor's Property Tax Parcel Number(s)	866430-0380
Reference Numbers of Related Documents	

When recorded return to:

Glacier Real Estate Investments, LLC
P.O. Box 1475
Edmonds, WA 98020

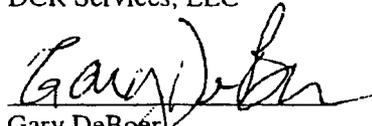
QUIT CLAIM DEED

The grantor, DCR Services, LLC, for and in consideration of valuable consideration, conveys and quitclaims to Glacier Real Estate Investments, LLC all of its right, title and interest in and relating to the following described real property, situated in the County of King, State of Washington, together with all after-acquired title of the grantor herein:

Unit 38, Towne, a Condominium, according to the condominium declaration recorded under King County Recording Number 20060609000380 and amendments thereto, if any, and in Volume 218 of Condominiums, pages 36 through 48, inclusive, commonly known as 3058 128th Ave SE, Unit #38, Bellevue, WA 98005, together with parking space numbers 68 and 69.

Grantor represents and warrants that it has not previously conveyed or encumbered the above-described property.

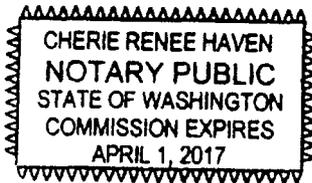
DCR Services, LLC

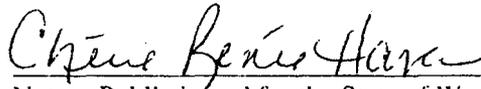

Gary DeBoer
Manager

STATE OF WASHINGTON }
COUNTY OF KING }

I certify that I know or have satisfactory evidence that Gary DeBoer is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Manager of DCR Services, LLC to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Given under my hand and official seal this 26th
day of September, 2014.




Notary Public in and for the State of Washington,
residing at REDMUND

Appendix C - Relevant Statutes

Washington Statutes

RCW 64.04.010. Conveyances and encumbrances to be by deed
Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid.

Former RCW 6.23.010.¹

(1) Real property sold subject to redemption, as provided in RCW 6.21.080, or any part thereof separately sold, may be redeemed by the following persons, or their successors in interest:

(a) The judgment debtor, in the whole or any part of the property sold.

(b) A creditor having a lien by judgment, decree, deed of trust, or mortgage, on any portion of the property, or any portion of any part thereof, separately sold, subsequent in time to that on which the property was sold. The persons mentioned in this subsection are termed redemptioners.

(2) As used in this chapter, the terms "judgment debtor, " "redemptioner, " and "purchaser, " refer also to their respective successors in interest.

¹ The 2013 amendment to RCW 6.23.010 substituted "subsequent in priority" for "subsequent in time," a clarifying amendment that made no substantive change. *BAC Home Loans v. Fulbright*, _____.