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Court of Appeals No. 72504-1

COURT OF APPEALS DIVISION ONE
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
COURT OF APPEALS
NO. 72504-1
FILED
MAY 10 2011
CLERK OF COURT

VANESSA WARD

Defendant-Appellant

vs.

SELENE RMOF II REO ACQUISITIONS,

Plaintiff-Appellee.

REPLY BRIEF OF VANESSA WARD

VANESSA WARD
7911 South 115th Place
Seattle, WA 98178
Phone: (206) 384-6502

Defendant-Appellant

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A. SUPPLEMENTAL STATEMENT OF FACTS

The property in dispute only has one address and that address is 7911 S 115th Place, Seattle, WA 98178. That has always been the address and the Respondent was even ordered by the court to use the correct address in all further proceedings because they kept sending paperwork to the incorrect address of 7913 S 115th place. Further, Ward did discuss deeding the property to Dorsey, but she explained at the show cause hearing that she never signed the deed. RP 13. 25. When Chester Dorsey deeded the subject property to Ward via Quitclaim Deed in 2004, it was not necessary for it to be recorded because it was a receipt for payment of the loan Ward had borrowed from Dorsey. When Ward learned of the foreclosure sale, she hired an attorney right away, but the attorney did not file the complaint until the day of the sale. CP 29-30.

B. ARGUMENTS IN REPLY

1. Defendants in an unlawful detainer action may assert any answer or defense for the first time at a show cause hearing and, therefore, it is not necessary for them to note a motion to dismiss or to set for trial six days in advance.

RCW 59.18.380 allows a defendant in an unlawful detainer action to appear on the day of the show cause hearing and assert any legal or

equitable defense. Ward's motion to dismiss was not required to be in writing and she was legally allowed to make the oral motion for the first time at the show cause hearing. Therefore, it was not error for the trial court to consider it.

In addition, because a show cause hearing is a summary proceeding, the purpose of the hearing is to determine whether there are material issues of fact related to the possession of the property or any defenses. Ward's "motion" to certify for trial was just her argument in writing. Since she was allowed to make that argument for the first time at the show cause hearing, there was no error in considering it, even though it was not noted. In an unlawful detainer action, it would be impossible to note motions 6 days ahead of time in most cases because the defendant is only entitled to 7 days' notice of the show cause hearing.

2. Ward did not bring any collateral claims in the unlawful detainer. She only raised a defense to support her motion to dismiss.

Ward did not file a counterclaim or bring any collateral claims of her own. Instead, she presented the facts surrounding the dispute over the title to show that the case was in the wrong court. Collateral issues may be asserted if they are related to the issues of possession. *Kelly v. Powell*, 55 Wn. App. 143, 150, 776 P.2d 996 (Ct. App. Div. I 1989) Here, the collateral issues Ward presented were germane to the issue of possession

because if she was not subject to the unlawful detainer statutes then the plaintiff was not entitled to an expedited calendar and a summary proceeding to determine possession in the first place.

Respondent argues that Ward did not allege that the foreclosure failed to comply with the statutory rules applicable to non-judicial foreclosure proceedings, but the proceeding did not get that far because, as Respondents point out, a show cause hearing is not the place to debate those issues. In the unlawful detainer action, Ward only argued that she was not a tenant and therefore the action was brought in the wrong court. She wanted to reserve her day in court for another, more appropriate venue.

3. Selene was put on inquiry notice that Ward had an interest in the property.

Notice of another's claim can be imputed when the buyer has "such information as would excite apprehension in an ordinary mind and prompt a person of average prudence to make inquiry..." *Albice v. Premier Mortgage Services of Washington, Inc.*, 174 Wn.2d 560, 577, 276 P.3d 1277 (2012) citing *Glaser v. Holdorf*, 56 Wn.2d 204, 209, 352 P.2d 212 (1950).

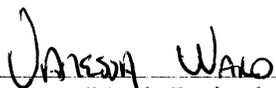
LaSalle Bank, who sold the property to Selene, knew of Ward's claim to the property and would have been required to disclose that. CP 55. At that point, Selene should have inquired about the nature of the claim and whether it had any merit. Therefore, Selene was on notice that there was another claim and it cannot be a bona fide purchaser for value as it claims.

B. CONCLUSION

Ward had a right to present the issues in her motion to dismiss to the trial court. Those claims were germane to the issue of possession and Selene is not a bona fide purchaser for value. Ward is the rightful owner of the home and an unlawful detainer action should not have been brought. Instead, an ejectment action should have been filed to determine who has superior title. Therefore, this case should be remanded for dismissal.

DATED this 30th day of November, 2015.

Respectfully Submitted,



Vanessa Ward, Defendant

PROOF OF SERVICE OF Reply Brief of VANESSA WARD
Court of Appeals Case # 72504-1-1

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

US mail.

I have a copy of the Reply Brief of Vanessa Ward on
11-30-2015 at the following ~~number~~ ^{Address}: SELENE RMOF Acquisitions II REO LLC
13553 SE. 30th Ave. #303
Bellevue, WA 98006

Personally served to _____ at _____
on _____, 2015

to RCO Legal, attorney for Selene RMOF REO Acquisitions. (Att Joshua Shear)

Signed at Seattle Washington on 11-30, 2015.

VANESSA WARD

Vanessa Ward

PROOF OF SERVICE OF Reply Brief of Vanessa Ward
Court of Appeals Case # 72504-1-1

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

~~I faxed a copy of the~~ _____ on

_____ at the following number: _____.

Personally served to Court of Appeals Court at Seattle, WA.

on 11-30-2015, 2015

to RCO Legal, attorney for Selene RMOF REO Acquisitions.

Signed at Seattle Washington on 11-30, 2015.

Vanessa Ward

Vanessa Ward