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Case No. 932123

SUPREME COURT OF THE STATE OF WASHINGTON

HELENE M. RAUN,

Appellant-Petitioner

vs.

JOHN H. CAUDILL, *et al.*

Defendants-Respondents.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENTS

The Respondents, John H. Caudill and Lucille J. Caudill, as Trustees for the Caudill Living Trust dated November 1, 2000, Wanell J. Barton, as Trustee for the Wanell J. Barton Family Trust dated May 7, 1998 and any amendments, Earl L. Boettcher and Mary C. Boettcher, as Trustees for the Boettcher Living Trust dated May 12, 1992, Belva M. Williams, Larry Loutherbach and Shanna Loutherbach, as Trustees of the Loutherbach Living Trust dated February 9, 2001, and Dale Walker and Carol Walker, the Respondent “Caudill Investors,” respectfully requests this Court deny review of the April 19, 2016 unpublished opinion of the Court of Appeals in the case *Raun v. Caudill*, 2016 Wash. App. LEXIS 814 (Wash. Ct. App. Apr. 19, 2016). The decision of the Court of Appeals affirmed the orders of the trial court dismissing the action and awarding sanctions against Petitioner Raun’s counsel.

II. ANSWER TO ISSUES PRESENTED FOR REVIEW

The Appellant Raun’s most recent Petition for Review made to the Washington Supreme Court should be denied because:

1. The decision of the Court of Appeals is not in conflict with any decision of the Supreme Court;
2. The Petition for Review does not involve an issue of substantial public interest premised upon any claim pled by

Appellant Raun, and does not warrant review by the Washington Supreme Court; and

3. The Appellant Raun's Petition for Review is not meritorious and the Supreme Court should award Respondent Caudill Investors reasonable attorney fees and costs pursuant to R.A.P. 18.1 and 18.9 incurred in preparing this answer.

The Petition for Review and the decision of the Court of Appeals do not meet the legal standards or conditions outlined by R.A.P. 13.4(b). Furthermore, the Petitioner's Petition for Review is without legal merit and should be dismissed with costs and fees awarded to Respondent Caudill Investors pursuant to R.A.P. 18.1 and 18.9 as addressed herein.

III. STATEMENT OF THE CASE

The Court of Appeals affirmed the judgment of the Trial Court, dismissing Petitioner Raun's claims, including an award of CR 11 sanctions. *Raun*, 2016 Wash. App. LEXIS 814. Costs were awarded pursuant to R.A.P. 14.3.

In the 1990's, Clare House Bungalow Homes, LLC purchased real property described as 4827 S. Palouse Highway, Spokane, Washington ("subject property") including bungalow unit 2506 ("Unit 2506") (CP 7-9, 461), which was subsequently leased to Petitioner Raun. (CP 4-19).

The Respondents Caudill Investors loaned money to Clare House Bungalow Homes LLC (“Clare House”), which was secured by deeds of trust encumbering the real property owned by Clare House on which was located Clare House Bungalow Homes (the “subject property.”) The subject property was owned by Clare House, and the Respondent Caudill Investors were secured creditors of Clare House. (CP 10, 462).

Petitioner Raun entered into a Resident Agreement with Clare House Bungalow Homes, LLC that had an effective date of August 2, 2000. (CP 9, 462). Later, on or about March 20, 2002, Petitioner, together with her late husband, entered into a Resident Agreement Addendum that modified the terms and conditions of the original agreement. (CP 9-10, 462). The Respondent Caudill Investors were not a party to neither the original Resident Agreement, nor the Resident Agreement Addendum. (CP 9-10, 20-32, 462).

On or about April of 2008, Clare House defaulted on the loan obligation secured by deeds of trust. (CP 10, 462). Subsequently, on or about May of 2008, the Respondent Caudill Investors elected to commence the process of non-judicial foreclosure on its deeds of trust pursuant to its legal rights under applicable Washington statutory and common law. (CP 10, 462). The residents of the Clare House Bungalow Homes formed the Clare House Bungalow Residents Association (“CHRA”), of which

Petitioner was a member. (CP 137). On February 3, 2009, Petitioner, as a member of the CHRA, filed a complaint in Spokane Superior Court to quiet title, restrain trustee's sale, and for other injunctive relief. (CP 10-11, 462).

The State Court Action was removed to United States Bankruptcy Court, Eastern District of Washington where it was heard as an adversary proceeding under the main bankruptcy case of Clare House Bungalow Homes, LLC. (CP 12, 463). Petitioner, as a member of CHRA, entered into a stipulation with Respondent Caudill Investors and with Respondent Gleesing agreeing not to seek to restrain a trustee sale of the subject property. (CP 11, 463). By Order and Judgment of April 8, 2011, the Bankruptcy Court ruled that the interest of Respondent Caudill Investors was subject to Petitioner's limited property right to occupy and possess her bungalow but that Respondent Caudill Investors continued to have all remedies available under state law with respect to enforcing their deeds of trust. (CP 210, 282-94, 463).

Notices of trustee's sale were issued by the Trustee, Respondent Gleesing, in the form prescribed by the Revised Code of Washington. (CP 465). The Notices were dated July 14, 2008, July 6, 2009, August 21, 2009, October 23, 2009, April 19, 2010, June 11, 2010, and July 16, 2010 (CP 207-09, 465-66). Petitioner Raun voluntarily vacated Unit 2506 on July 1, 2010. (CP 12-13, 466). Petitioner Raun vacated and abandoned Unit 2506

as the prior Litigation was pending, over a year before Respondents Caudill Investors took ownership of the subject property by way of Trustee's Sale Deed. (CP 12-13, 375-76). Petitioner Raun was represented by legal counsel at all material times, including July 1, 2010, and through legal counsel, litigated at length her property rights under the Resident's Agreement. (CP 404, 447-49, 466).

The trustee's sale proceeded pursuant to RCW 61.24 *et seq* and was held on September 30, 2011. (CP 14, 466). Title to the subject property was conveyed by way of Trustee's Deed dated September 30, 2011. (CP 14, 404, 452-56, 466). The trustee's sale was never sought to be set aside by the prior owner or any other party in interest. (CP 466).

Petitioner Raun commenced this case on September 27, 2012, asserting the following seven causes of action: (1) Unlawful Eviction; (2) Violation of RCW 59.18.290; (3) Continuing Trespass; (4) Violation of RCW 4.24.630; (5) Tort of Outrage; (6) Negligent Infliction of Emotional Distress; and (7) Conversion. (CP 4-32). This current litigation has been presented in a manner to circumvent the binding effect of the Bankruptcy Court's prior rulings, and to have this Court revisit legal and factual issues which have already been addressed and decided.

On November 14, 2012, Respondent Caudill Investors immediately moved to dismiss all of Petitioner Raun's causes of action pursuant to CR

12(b)(6). (CP 134-56). Both Petitioner Raun and Respondent Caudill Investors presented matters outside the pleadings which were not excluded by the Court, therefore, pursuant to CR 12(b), Respondent Caudill Investors' Motion to Dismiss was treated as one for summary judgment under CR 56. (CP 326-30). The Trial Court granted relief and dismissed Petitioner's real property causes of action: unlawful eviction, violation of RCW 59.18.290, violation of RCW 4.24.630, and conversion. (CP 326-30).

On February 4, 2013, Petitioner Raun filed a Motion for Reconsideration of the Trial Court's ruling on the Motion to Dismiss (CP 331-33). The Trial Court denied the Motion for Reconsideration on May 21, 2013 finding:

It is uncontested that the plaintiff vacated Unit 2506 more than one year before the defendants purchased Clare House Bungalow Homes at a trustee's sale; therefore, plaintiff cannot maintain the real property causes of action.

(CP 375-76). Accordingly, the Petitioner's following two tort claims survived dismissal: (1) tort of outrage; and (2) negligent infliction of emotional distress. (CP 375-76). The basis, in part, was a declaration signed by Dr. Lawrence S. Eastburn, which later proved to be highly misleading. (CP 403, 419, 460-61).

On November 7, 2013, Respondent Caudill Investors moved for Summary Judgment with regards to the remaining two tort claims. (CP 398-

400). On November 20, 2013, Petitioner Raun moved to Continue Hearing regarding the Summary Judgment Motions pursuant to CR 56(f) (CP 604-06) for the purpose of conducting further discovery including taking depositions at substantial time and expense. Notably, the discovery obtained was never utilized by Petitioner Raun because the depositions did not support her claims. This Continuance, and request to conduct further discovery, appeared to be calculated, not to actually discover pertinent evidence to support Petitioner Raun's claims, but rather, to put additional pressure on Respondent Caudill Investors, in an attempt to force settlement.

However, Respondent Caudill Investors did not succumb to the Petitioner's meritless tactics, and the Summary Judgment motions were heard on January 10, 2014. (CP 742-43). The Trial Court granted Summary Judgment in favor of the Respondents Caudill Investors, and dismissed Petitioner Raun's causes of action for the tort of outrage and negligent infliction of emotional distress with prejudice. (CP 1218-22).

On March 5, 2014, Respondents Caudill Investors moved the trial court for an order awarding costs, including attorneys' fees, pursuant to RCW 4.84.185, incurred in opposing the frivolous actions of Petitioner Raun. (CP 1223-26). Since September 27, 2012, Respondent Caudill Investors have been defending claims asserted against them by Petitioner Raun.

IV. ARGUMENT

A. **The Court of Appeals Properly Affirmed the Trial Court and Applied Controlling Case Law.**

The Division III Court of Appeals holding in this case is not in conflict with any decisions of either the Washington Supreme Court or another division of the Court of Appeals. In support of the Petition for Review, the Petitioner Raun argues: that both the Trial Court and the Court of Appeals “Disregarded Well Settled Principles Controlling Summary Judgment.” The Petitioner Raun’s argument is not premised on a “conflict” with decisions of the Supreme Court, but instead simply reargues prior unsuccessful theories.

1. The Court of Appeals Applied Correct Legal Standards to Affirm Dismissal of Property Tort Claims.

The decision of the Court of Appeals cited to and was correctly premised upon controlling case law regarding Summary Judgment. The Court of Appeals correctly cited to and relied upon the holdings of *Trimble v. Wash. State Univ.*, Wn.2d 88, 93, 993 P.3d 1124 (2000) and *Lybbert v. Grant County*, 141 Wn. 29, 34, 1 P.3d 1124 (2000).

Neither case cited above is in conflict with a decision of the Supreme Court, nor was the Court of Appeals application of such legal authority in error.

2. Affirming Dismissal of Property Tort Claims was Based on Controlling Case Law.

Rather than identify a conflict in law or conflict in application of legal standards, Petitioner Raun simply asserts prior meritless arguments premised upon unsupported facts. The Petitioner premises her real property tort claims on the general theory of unlawful eviction by a secured lender. (CP 4-19). These real property claims are without merit because the trustee's sale of real property, which included Unit 2506, occurred more than a year after Petitioner Raun voluntarily vacated Unit 2506. During the time that Petitioner Raun exercised her right to occupy the subject property and prior to purchasing the subject property during the period of time that Petitioner Raun occupied Unit 2506, Respondent Caudill Investors were not owners of the subject property. (CP 9-14). Furthermore, Petitioner Raun defaulted on her contractual obligations to the real property owner Clare House Bungalow Homes, LLC.

The Respondent Caudill Investors were a secured lender with a lien on the subject property, and pursuant to Washington law, Respondent Caudill Investors exercised their right to commence a non-judicial foreclosure on the subject property, and notice of the trustee sale was done in accordance with a duty imposed under Washington law. (CP 10, 145). Furthermore, Petitioner Raun agreed by Stipulation to permit the trustee

sale to occur by agreeing not take any action to attempt to restrain it. (CP 11, 145).

Petitioner Raun claims that she was unlawfully evicted because her right to her bungalow was violated under the Resident Agreement. (CP 14; Appellant's Opening Brief 30). No eviction occurred and could not have occurred whether unlawful, lawful, or otherwise. Petitioner Raun simply moved out of her bungalow on July 1, 2010, more than one year *prior* to the date of the Trustee's sale of the subject property. (CP 12-13, 145). The Respondent Caudill Investors could not have commenced an unlawful detainer action against Petitioner as Petitioner had long since abandoned and vacated Unit 2506. (CP 145).

Petitioner continues to argue that she was under threat of summary eviction. (*See* Appellant's Opening Brief 30). However, even presuming Petitioner received notices that a Trustee's sale was to occur of the subject property, the Washington State Legislature requires such notice to be given to occupants of property that will be the subject of a trustee's sale. (RCW 61.24.040; CP 146). An affirmative statutory duty existed to provide Petitioner Raun with notice of the Trustee's sale because she was an occupant of the Unit. (CP 146).

Petitioner Raun has not and cannot demonstrate that the Court of Appeals decision was premised upon any conflict with the controlling laws

of the State of Washington.

3. *Petitioner Raun's Emotional Distress Claim Remains Frivolous and Dismissal was Affirmed Based Upon Proper Legal Authority.*

The Petitioner Raun's Emotional Distress claims were properly dismissed by the Trial Court at Summary Judgment. (CP 1218-1222). Furthermore, the Trial Court sanctioned Petitioner Raun's counsel \$23,000 under CR 11. (CP 2018-2022).

In support of the Petition for Review, Petitioner Raun cites to the cases of *Klem v. Washington Mut. Bank*, 176 Wn.2d 771, 792, 295 P.3d 1179 (2013) and *Lyons v. U.S. Bank, NA*, 181 Wn.2d 775, 787, 336 P.3d 1142 (2014). However, Petitioner Raun intentionally fails to draw the distinction between "Foreclosure Trustee" as referenced in each of the foregoing cases and the Respondents Caudill Investors status as a secured creditor and beneficiary under a deed of trust. The "foreclosure trustee" was and is Respondent and Defendant Gleesing, who actually was awarded Rule 11 sanctions of \$23,000 for Petitioner Raun's pursuit of the same frivolous emotional distress claim.

Respondent, Caudill Investors had no relationship or contract with Petitioner Raun that would give rise to a "duty." (CP 469). No duty could be breached and, as such, no damages could follow. (CP 469). Assuming a duty existed, Petitioner cannot provide any evidence to support any

relationship between the Notices of Trustee Sale and non-existent medical evidence of physical manifestations of emotional distress. (CP 469).

Furthermore, Petitioner Raun admitted that she had absolutely no contact or communication with, or even had knowledge of, any of the Caudill Investors. (CP 1132-33, 1184).

The Petitioner Raun has not presented any evidence or authority to sustain her Petition for Review premised upon a conflict with controlling law in the State of Washington.

B. The Public Interest Argument Advanced by Petitioner Raun is Equally Meritless.

In a desperate attempt to avoid imposition of costs, Petitioner Raun, for the first time, raises a strained argument premised on “Adverse Possession.” Such a claim was never pled, nor raised on appeal to the Court of Appeals for Division III, and would be frivolous if actually asserted as a cause of action because Ms. Raun’s occupancy of Unit 2506 was pursuant to a written Resident Agreement with the prior owner of the real property. (CP 18, 206, 214-224). The Respondent Caudill Investors were not the owners of the subject property at the time Petitioner Raun occupied and subsequently vacated the subject property. (CP 2019-210).

The Caudill Investors were a secured lender and properly pursued their remedy of a non-judicial foreclosure sale with respect to their

secured interest in the subject property. Furthermore, issuing a statutory notice of trustee sale does not amount to an action equal to an eviction as a matter of law, particularly where, as here, Petitioner agreed by Stipulation to permit commencement of such sale by agreeing to take no action to attempt to impede it. (CP 11, 57, 85-86, 147).

Respondent Caudill Investors proceeded with a trustee's sale pursuant to R.C.W. 61.24 *et seq*, conducted by Trustee Gleesing, and completed on September 30, 2011. (CP 14, 466). Title to the subject property was conveyed to Respondent Caudill Investors by way of Trustee's Deed dated September 30, 2011. (CP 14, 404, 452-56, 466). The trustee's sale was never sought to be set aside by the prior owner or any other party in interest, including Petitioner Raun. (CP 466). A year later, Petitioner Raun commenced the underlying action. (CP 4-32). Never was a claim for adverse possession raised before the Superior Court or Court of Appeals. *See Raun*, 2016 Wash. App. LEXIS 814.

Petitioner Raun's argument is without merit and is not advanced as a meritorious argument for review by this Court, but instead appears to seek to further delay.

C. The Supreme Court is Requested to Award Respondent Caudill Investors Reasonable Attorney Fees and Costs Pursuant to R.A.P. 18.1.

R.A.P. 18.1 only requires that the request for attorney fees be made in the brief or motion on the merits and, if the Court states in its opinion that fees should be awarded, an affidavit of fees and expenses must be filed no later 10 days prior to the date the case is set for oral argument. R.A.P. 18.1(b) and (c).

R.A.P. 18.7 requires that each paper filed in an appellate court be dated and signed as required by CR 11. This provision has been held to incorporate the remedies for violations of CR 11 into the appellate rules. *Bryant v. Joseph Tree*, 119 Wn.2d 210, 829 P.2d 1099 (1992). CR 11 allows for sanctions in three situations: (1) the assertion of a factually frivolous claim or defense, (2) the assertion of a legally frivolous claim or defense, and (3) the assertion of a claim or defense for purposes of harassment or delay. R.A.P. 18.9 provides this Court with the authority to sanction the assertion of a frivolous claim or defense and with the authority to sanction the use of the appellate rules or procedures for harassment or delay. There have been several cases imposing sanctions on appeal for violations of CR 11. *See e.g. Bryant*, 119 Wn. 2d at 210, 829 P.2d at 1099 (imposing sanctions of attorney fees for filing in the appellate court a groundless motion to disqualify opposing counsel); *See also In re*

Lasky, 54 Wn App. 841, 776 P.2d 695 (1989); *Lee v. The Columbian, Inc.*, 64 Wn. App. 535, 826 P.2d 217 (1992).

This Petition for Review lacks factual basis and legal merit as presented. An award of reimbursement of fees and costs incurred is appropriate and just.

V. CONCLUSION

Wherefore, the Respondents Caudill Investors respectfully request that the Supreme Court:

1. Deny the Petitioner Raun's Petition for Review; and
2. Award the Respondent Caudill Investors reimbursement of reasonable attorney fees and costs incurred as a result of hours responding to the Petition for Review under the applicable standards of R.A.P. 18.1 and R.A.P. 18.9.

DATED this 16th day of June, 2016.

MUNDING, P.S.



JOHN D. MUNDING, WSBA #21734
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AFFIDAVIT OF SERVICE BY MAIL

I, Ashley Boudreau, being first duly sworn upon oath, depose and say:

I am competent to be a witness in the above-entitled matter; on the 16th day of June, 2016, I caused to be mailed via U.S. Mail, a true and correct copy of the foregoing ANSWER TO PETITION FOR REVIEW on the following:

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DATED this 16th day of June, 2016.


Ashley Boudreau