



Jerzy Gruca, Appellant V Nylund Homes, Inc., Respondent

2017 | Cited 0 times | Court of Appeals of Washington | October 31, 2017

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

NYLUND HOMES, INC., No. 50349-2-II

Respondent,

v.

JERZY GRUCA, UNPUBLISHED OPINION

Appellant.

WORSWICK, P.J. Jerzy Gruca appeals a writ of restitution and subsequent personal nonjudicial foreclosure sale. Gruca contends that the superior court erred in issuing the writ of restitution because (1) it lacked subject matter jurisdiction over the unlawful detainer action. Gruca also contends that the superior court erred in issuing its personal property disposal order because (2) it lacked statutory authority to enter the order and, alternatively, (3) Nylund Homes was statutorily required to place his personal property in a storage container on the property. We affirm.

FACTS

In 1993, Gruca acquired real property in Clark County by way of a statutory warranty deed. In 2007, Gruca received a , which loan was secured by a deed of trust in Clark County property. The 2007 deed of trust named



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Mortgage Electronic Registration Systems, Inc. (MERS) as beneficiary of the deed of trust. On Filed Washington State Court of Appeals Division Two

October 31, 2017 August 1, 2011, MERS assigned its beneficiary interest in the deed of trust to The Bank of New

York Mellon (Bank). 1

Gruca apparently defaulted on the loan and the Bank commenced foreclosure

proceedings. 2 Gruca subsequently filed multiple lawsuits in an attempt to stop a foreclosure sale of the Clark County property. On October 10, 2014, Gruca filed a complaint to enjoin the Bank from foreclosing on the property. Two of the three defendants, the Bank and Specialized Loan Servicing, were dismissed from the case on April 1, 2016. The suit was dismissed with prejudice in its entirety on August 19, 2016. Gruca also filed for Chapter 13 bankruptcy, which matter was dismissed by court order on May 7, 2015.

On June 2, 2015, the Bank appointed Benjamin D. Petiprin as successor trustee. Petiprin

May 20, 2016, at which Nylund Homes purchased the subject property.

On April 1, 2016, prior to the May 20 , Gruca filed a complaint to quiet title in the

property. On April 8, 2016 quiet title complaint did not seek to restrain the pending sale of the property under

RCW 61.24.130.

1 THE BANK OF NEW YORK MELLON FKA THE BANK OF NEW YORK, AS TRUSTEE FOR THE CERTIFICATEHOLDERS OF CWABS, INC., ASSET-BACKED CERTIFICATES, SERIES 2007-3 Papers at 255.

2 Although the parties do not identify, and we could not locate, documentation in the record to proceedings and

County property is not a proper subject of appeal from an unlawful detainer action. On June 13, 2016,



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Nylund Homes filed an eviction summons and complaint for unlawful

detainer against Gruca. The superior court entered an order for Gruca to show cause why a writ

subject property. In response, Gruca answered that the superior court lacked complete

jurisdiction over the unlawful detainer action because there existed a dispute as to whom had

proper title in the property, as evidenced by his pending quiet title action. 3

On June 24, 2016, the superior court entered an order gr

for an immediate writ of restitution. When Gruca vacated the property following the s execution of the writ of restitution, he left in the driveway a portable storage unit. After Nylund

Homes took possession of the property, it storage facility. On July 21, Nylund Homes provided Gruca with notice of its intent to sell or

dispose of the personal property Gruca had left at the premises. The notice informed Gruca that

he could arrange a time and place to retrieve his personal property within 30 days of service of

the notice; the notice further provided that Gruca was liable for storage and moving costs

incurred by Nylund Homes.

On July 22, the Clark County Sheriff informed the superior court that it satisfied the writ

of restitution. On July 29, Nylund Homes mailed Gruca a second notice of its intent to sell or

dispose of its property; the second notice included documentation showing storage and moving

costs incurred by Nylund Homes

storage costs. On September 2, Nylund Homes filed a motion for entry of order authorizing

anted on September

3 16. T

Nylund Homes.



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Gruca sought direct review by our Supreme Court

cause, order granting motion for immediate writ of restitution, and order on motion to dispose of court.

ANALYSIS

I. LEGAL PRINCIPLES

A. Standard of Review

In general, a party may not raise an issue for the first time on appeal. RAP 2.5. But, as an exception to this general rule, a party may raise the issue of lack of subject matter jurisdiction at any time. RAP 2.5(a)(1); MHM&F, LLC v. Pryor, 168 Wn. App. 451, 459, 277 P.3d 62 (2012). We review de novo the legal question of whether a trial court had subject matter jurisdiction over a controversy. Angelo Prop. Co., LP v. Hafiz, 167 Wn. App. 789, 808, 274 P.3d 1075 (2012). If a trial court lacks subject matter jurisdiction, it is powerless to decide the merits of the case. Angelo matter jurisdiction is void; and a party may challenge such judgment at any time. Angelo, 167 Wn. App. at 808.

B. Unlawful Detainer Generally

Christensen v. Ellsworth, 162 Wn.2d 365, 370-71, 173 P.3d 228 (2007). The unlawful detainer statutes were created to facilitate summary proceedings as an alternative to a common law ejectment action. River Stone Holdings NW, LLC v. Lopez mary nature, the proceedings are limited to resolving questions related to

River Stone,



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199 Wn. App. at 92. Issues unrelated to possession are not properly included in an unlawful detainer action and must be resolved in a separate action. River Stone, 199 Wn. App. at 92. decide the issues authorized by statute and not as a court of general jurisdiction with the power to Granat v. Keasler, 99 Wn.2d 564, 571, 663 P.2d 830 (1983) (alteration in original).

In other words, although a superior court is normally a court of general jurisdiction and it may resolve most civil claims, when the superior court hears an unlawful detainer action under RCW 59.12.030, it sits in a statutorily limited capacity and lacks authority to resolve issues outside the scope of the unlawful detainer statute.

Angelo, 167 Wn. App. at 809.

C. Deeds of Trust Act Chapter 61.24 RCW

The Deeds of Trust Act permits for the private sale of foreclosed property as an alternative to judicial foreclosure proceedings. River Stone, 199 Wn. App. at 92- underlying deed of trust creates a three-party transaction in which a lender loans money to a borrower, the borrower deeds the property to a trustee, and the trustee holds the deed as security River Stone, 199 Wn. App. at 93. In the event that a borrower breaches the loan RCW 61.24.020; River Stone, 199 Wn. App. at 93. RCW 61.24.030, .031, and .040 provide detailed procedures with which a trustee must strictly River Stone), a recitation in the deed executed to a purchaser that the sale was conducted in compliance with all [Deeds of Trust Act] requirements is prima facie evidence of compliance and conclusive evidence of compliance for a River Stone, 199 Wn. App. at 93. purchaser gave the borrower/occupant statutorily required notice to vacate the property. RCW



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the summary unlawful detainer proceedings under chapter 59.12 RCW.

II. MOTION TO TAKE JUDICIAL NOTICE

As an initial matter, Gruca has filed a motion for this court to take judicial notice of certain facts. 4 court to take judicial notice of a deed of trust that does not reference the property or parties in this matter, as well as three bulletins issued by Freddie Mac that clarify certain selling and servicing requirements. At best, these documents may relate to a claim regarding a defective title in the Clark County property at issue. But, as will be addressed below, the allegation of defective title is not a proper defense raised in an unlawful detainer action.

the disposition of the issues before us. See *Washington Water Jet Workers Ass'n v. Yarbrough*,

4 Gruca originally filed his judicial notice motion in our Supreme Court. Our Supreme Court transferred the motion to this c 151 Wn.2d 470, 476 n. 4, 90 P.3d 42 (2004) (denying motion to take judicial notice based in part

on irrelevance of facts sought to be noticed to the issues before the court).

III. SUBJECT MATTER JURISDICTION

disposal order are void because the court lacked subject matter jurisdiction over the unlawful detainer action. We disagree.

A. Compliance with RCW 59.12.032

Gruca first argues that the superior court lacked subject matter jurisdiction because the court failed to determine whether Nylund Homes unlawful detainer action had complied with RCW 59.12.032. We disagree.

action, commenced as a result of a



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foreclosing on property and conduct And RCW 61.24.060 specifies the rights

Gruca does not cite, and we have not located, any legal authority supporting his

proposition that a superior court must determine compliance with RCW 59.12.032 has been met

as a necessary prerequisite to asserting jurisdiction over an unlawful detainer action. We hold

59.12.032 does not relate to th

detainer action. In MHM&F, Division One of this court noted that several decisions from our Supreme

Court have held that article IV, section 6 of our State Constitution is dispositive as to a superior

168 Wn. App. at

459-60. 5 The MHM&F court recognized that our Supreme Court has overruled prior precedents

lawful detainer actions as purely statutory.

168 Wn. App. at 459- precedent to the case before it, the

MHM&F court stated:

Whether the superior court ruled correctly or incorrectly in this particular case, it did not lack subject matter jurisdiction. The court s subject matter jurisdiction in cases involving the title or possession of real property is expressly granted by the WASH. CONST. art. IV, § 6. We narrowly construe exceptions to the constitution s jurisdictional grant. Cole[v. Harveyland, LLC], 163 Wn. App. [199, 206, 258 P.3d 70, (2011)]. Thus, it is incorrect to say that the court acquires subject matter jurisdiction from an action taken by a party or that it loses subject matter jurisdiction as the result of a party s failure to act. [Housing Auth. of City of Seattle v.]Bin, 163 Wn. App. [367, 376, 260 P.3d 900 (2011)].

If the type of controversy is within the superior court s subject matter tha Marley[], 125 Wn.2d

[533, 539, 886 P.2d 189 (1994)] (quoting Robert J. Martineau, Subject Matter Jurisdiction as a New Issue on Appeal: Reining in an Unruly Horse, 1988 B.Y.U. L. REV. 1, 28)[, Indus., 186 Wn.2d 537, 549-51, 379 P.3d 120 (2016)].

5 (Citing State v. Posey, 174 Wn.2d 131, 135-41, 272 P.3d 840 (2012); ZDI Gaming, Inc. v. Wash. State



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Gambling Commission, 173 Wn.2d 608, 616-18, 268 P.3d 929 (2012); Williams v. Leone & Keeble, Inc., 171 Wn.2d 726, 730, 734, 254 P.3d 818 (2011); Dougherty v. Department of Labor & Industries, 150 Wn.2d 310, 316-20, 76 P.3d 1183 (2003); Young v. Clark, 149 Wn.2d 130, 133-34, 65 P.3d 1192 (2003); Shoop v. Kittitas County, 149 Wn.2d 29, 38, 65 P.3d 1194 (2003); Marley v. Department of Labor & Industries, 125 Wn.2d 533, 541, 886 P.2d 189 (1994), superseded by , 186 Wn.2d 537, 549-51, 379 P.3d 120 (2016)). 168 Wn. App. at 460. Similarly in Bin, Division One of this case

detainer action is within the subject matter jurisdiction granted to the superior court by the state

163 Wn. App. at 369; see also Tacoma Rescue Mission v. Stewart, 155 Wn. App.

250, 254 n. 9, 228 P.3d 1289 (2010) (noting that superior courts have broad general jurisdiction

over real estate disputes and, thus, there is a distinction between a superior court having subject matter jurisdiction in unlawful detainer act

6

requirements of RCW 59.12.032 concern matters of statutory interpretation and procedure rather than subject matter jurisdiction. Stated properly, the question before this court is whether RCW 59.12.032 requires the superior court to determine that the requirements of RCW 61.24.040 and .060 have been met before entering a writ of restitution and, if so, whether sufficient evidence demonstrated and (2) the purchaser provided Gruca with proper notice to vacate under RCW 61.24.060.

was required to raise these statutory interpretation and procedural claims in the superior court to preserve the issues for appeal. RAP 2.5(a); MHM&F, 168 Wn. App. at 459.

6 In Angelo, we distinguished Bin and our decision in Tacoma Rescue Mission, on the basis that those cases did not address the issue of whether the writ was properly invoked pursuant to the statutory grant of chapter 59.12 RCW, extended so as to permit it to address counterclaims outside the scope of chapter 59.12 RCW. Angelo, 167 Wn. App. at 823 n. 67. Because it resembles the procedural claims addressed in MHM&F, Bin, and Tacoma Rescue Mission, rather than the scope of subject matter jurisdiction addressed in Angelo, we apply those cases here notwithstanding our decision in Angelo. 1. RCW 61.24.060



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notice to vacate requirements of RCW 61.24.060 and, thus, he cannot raise this challenge for the first time on appeal. Moreover, Gruca provides no argument on appeal regarding Nylund 060. Accordingly, we do not address that issue further.

2. RCW 61.24.040

Regarding RCW 61.24.040, Gruca did not identify at the superior court, and does not identify on appeal, any specific notice provision of the statute that had not been complied with. Instead, Gruca raised several general arguments in the superior court concerning alleged defects in title.

in the title were sufficient to properly preserve a challenge compliance with

RCW 61.24.060 on appeal, the challenge cannot succeed. Here, Nylund Homes attached to its legal requirements and all provisions of said Deed of Trust have been complied with, as to acts to be performed and notices to be given, as provided in CP)

at 7. provisions of RCW 61.24.040. These recitations sufficient to show

compliance with RCW 61.24.040. RCW 61.24.040(7); River Stone, 199 Wn. App. at 93.

Accordingly, Gruca does not demonstrate that Nylund Homes failed to comply with RCW

61.24.040. B. Claims Related to Defects in Title

Next, Gruca argues that the superior court lacked subject matter jurisdiction based on several alleged defects in the title. 7

urisdiction, he raised

sufficiently similar arguments at the superior court to preserve the issue on appeal. Nonetheless, these arguments fail because they address alleged defects in title, which cannot be adjudicated in



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an unlawful detainer action.

In River Stone, we held that a defendant to an unlawful detainer action cannot raise defective title as a defense to possession. 199 Wn. App. at 95-97. Similar to Gruca, the unlawful detainer defendant in River Stone argued on appeal that the trial court erred in issuing a writ of restitution due to allegations of a 8 199 Wn. App. at 95.

We held that the River Stone defendant could not raise these claims in an unlawful detainer s are not the proper forum to litigate questions of

s of Trust Act provided procedures for addressing alleged deficiencies in

7 For example, Gruca alleges that (1) MERS was unlawfully named as beneficiary in the deed of trust, (2) MERS unlawfully assigned the deed of trust to The Bank of New York Mellon, and (3) The Bank of New York Mellon unlawfully foreclosed on the Clark County property at issue. 8 The unlawful detainer defendant in River Stone specifically argued: (1) the promissory note was not properly assigned to the Trust, and therefore the Trust never obtained an interest in the note and had no lawful authority to foreclose on the property; (2) the appointment of the successor trustee was legally ineffective, and therefore the trustee lacked authority to engage in a foreclosure proceedings [sic]; and (3) the foreclosure and trustee s sale did not comply with the [Deeds of Trust A procedural requirements.

199 Wn. App. at 95. the foreclosure process. 199 Wn. App. at 96-97 (quoting Fed. Mortg. , 188 Wn. App. 376, 384, 353 P.3d 644 (2015)).

and because the unlawful detainer action was not the proper forum to litigate alleged defects in title, Gruca cannot demonstrate that the superior court erred in issuing its writ of restitution order.

IV. PERSONAL PROPERTY DISPOSAL ORDER

Finally, Gruca appears to make two arguments that the superior court erred in entering its personal property disposal order, which order awarded labor and storage costs against him.



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First, Gruca argues that the personal property disposal provisions of RCW 59.18.312 do not apply to purchasers of property at a trustee sale. In support of this argument, Gruca cites to *Fannie Mae v. Steinmann*, 181 Wn.2d 753, 755, 336 P.3d 614 (2014), in which the court held that the attorney fees provisions available to a landlord under RCW 59.18.290(2) who obtains a writ of restitution against a holdover tenant were not applicable to a purchaser of property at a trustee sale. Our Supreme Court reasoned that the attorney fees provisions were not applicable under the circumstances because there was not a landlord-tenant relationship between the purchaser and occupant. *Steinmann*, 181 Wn.2d at 755. Although that case discussed only the attorney fees provisions of RCW 59.18.290(2), its reasoning is equally applicable here.

Because by its plain language RCW 59.18.312 applies only to parties in a landlord-tenant relationship, it does not control the disposal of personal property following a writ of restitution executed pursuant to RCW 61.24.060(1). In contrast with RCW 59.18.312, RCW 61.24.060 does not to store property under chapter 61.24 RCW. On this point, the case of *Excelsior Mortg. Equity Fund II, LLC v. Schroeder*, 171 Wn. App. 333, 287 P.3d 21 (2012), is instructive. In *Excelsior*, the purchaser at a trustee's sale elected to utilize portions of RCW 59.18.312, specifically the notice and sale provisions, to deal with personal property left behind following an unlawful detainer action under chapter 59.12 RCW. 171 Wn. App. at 336, 339, 342. The *Excelsior* court expressly noted that chapter 59.12 RCW did not provide a procedure for the purchaser to dispose of s property. 171 Wn. App. at 338.



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The Excelsior court further held that the provisions of chapter 59.18 RCW were not applicable.

171 Wn. App. at 338. The court nonetheless held that the trial court's approval of the purchaser's

is narrow

App. at 344.

Like the purchaser in Excelsior, here Nylund Homes sought court guidance on the

bound by the provisions of RCW 59.18.312 when ordering a procedure by which to dispose of

property, instead stating that this Court has jurisdiction to enter this Order, and

to authorize a certain procedure CP at 345 (emphasis added). Because the superior court had

authority independent of RCW 59.18.312 personal property, Gruca fails to show error on this ground.

Second, Gruca argues in the alternative that the Superior Court erred by imposing storage

costs in its personal property disposal order because Nylund Homes was required to store his

personal property in a storage container left on the property, rather than store it at a storage

facility. In support of this argument Gruca relies on language in RCW 59.18.312 (5)(e) stating

stored but will be placed on the nearest public property. Br. of Appellant at 14 (quoting RCW

59.18.312(5)(e)). Gruca asserts that his placement of a storage container on the property

placement of a storage container constituted an objection under RCW 59.18.312, that statute

disposal orders.

A majority of the panel having determined that this opinion will not be printed in the

Washington Appellate Reports, but will be filed for public record in accordance with RCW

2.06.040, it is so ordered.

Worswick, P.J. We concur:



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Lee, J.

Sutton, J.

