



Silverado Group

120 Wash.App. 1062 (2004) | Cited 0 times | Court of Appeals of Washington | March 23, 2004

Concurring: J Robin Hunt, Karen G Seinfeld

UNPUBLISHED OPINION

Todd and Janet Larson appeal the judgment entered against them in an unlawful detainer action, arguing that the trustee's sale of their property to the Silverado Group, L.L.C., is void and that the resulting unlawful detainer action is invalid because the trustee's deed was not recorded within 15 days of the sale. Because an untimely recording of a trustee's deed does not void the property transfer, we affirm.

FACTS

In 2000, the Larsons conveyed a deed of trust to secure a loan of \$124,000 to First Franklin Financial Corporation. When the Larsons defaulted on the loan and failed to cure that default, trustee Premier Mortgage Services of Washington, Inc., commenced non-judicial foreclosure proceedings.

Silverado bought the Larsons' property at a trustee's sale on April 4, 2003. On April 25, 2003, Silverado filed a complaint for unlawful detainer against the Larsons, seeking possession of the property and damages. The Larsons appeared pro se and argued that both the trustee's sale and the unlawful detainer action were void because Silverado had not recorded the trustee's deed within 15 days of the sale, which they claimed was required by statute. The trial court ordered them to surrender possession of the property to Silverado and awarded Silverado damages, attorney fees, and costs.

The Larsons filed a motion to vacate, arguing that Silverado had failed to show that it had recorded the trustee's deed within the statutory timeframe and that the sale thus had never been finalized. The trial court denied that motion. The Larsons then filed a motion for reconsideration, submitting evidence that Silverado had not recorded the deed until May 28, 2003. The trial court denied that motion as well.

In this pro se appeal, the Larsons again argue that the trustee's sale is void because the deed was not recorded in a timely manner.

ANALYSIS



Silverado brought its unlawful detainer action 21 days after the trustee's sale, as authorized by RCW 61.24.060: "The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale. . . . The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW." The Larsons contend that because the trustee's deed was not recorded within 15 days of the trustee's sale, the sale and the resulting unlawful detainer action are invalid.

This contention is based on a misunderstanding of the 15-day provision contained in RCW 61.24.050. The statute provides as follows:

When delivered to the purchaser, the trustee's deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution of the deed of trust, and such as the grantor may have thereafter acquired. If the trustee accepts a bid, then the trustee's sale is final as of the date and time of such acceptance if the trustee's deed is recorded within fifteen days thereafter. After a trustee's sale, no person shall have any right, by statute or otherwise, to redeem the property sold at the trustee's sale.

The legislature inserted the 15-day provision in 1998 to deal with the situation where a borrower or grantor files a bankruptcy action between the time the trustee's sale is conducted and the trustee's deed is recorded. 27 M. Rombauer, *Washington Practice: Creditors' Remedies--Debtors' Relief*, sec. 3.68, at 41 (Supp. 2003). Under the statute as previously written, a debtor could avoid the foreclosure sale if he or she recorded a notice of filing bankruptcy before the purchaser recorded the deed. See *In re Bankruptcy of Engles*, 193 B.R. 23, 27-28 (Bankr. S.D. Cal. 1996); see also *In re Bankruptcy of Washburn & Roberts, Inc.*, 795 F.2d 870, 872 (9th Cir. 1986) (trustee in bankruptcy can generally avoid any unrecorded transfer of land in Washington). The 15-day provision provides a grace period within which the deed can be recorded, thereby shielding the purchaser from the claims of third parties. *Engles*, 193 B.R. at 28. Even if purchasers do not record a deed until day 15, they will still hold title superior to those who record first, including debtors or their trustees in bankruptcy. *Engles*, 193 B.R. at 28.

In analyzing the 15-day provision contained in California Civil Code section 2924h(c), the *Engles* court observed that the statute does not provide that a foreclosure sale is invalid if not recorded within the 15-day window. "The amendment's purpose was simply to provide purchasers with a grace period in which to record their deeds and still maintain superior title." *Engles*, 193 B.R. at 27.

This analysis applies to RCW 61.24.050. The statute does not provide that a foreclosure sale is invalid if the trustee's deed is not recorded within 15 days of the sale. It states only that the sale is final as of the date that the trustee accepts a bid if the trustee's deed is recorded within 15 days of that acceptance.

Under Washington law, the purpose of the recording act is to require persons claiming an interest in

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real property to record such instruments as will give notice of their claims. *Chelan County v. Wilson*, 49 Wn. App. 628, 632, 744 P.2d 1106 (1987). Unrecorded conveyances of realty, however, are valid as between the parties. *Chelan County*, 49 Wn. App. at 632.

The signed trustee's deed conveyed all of the rights in the property to Silverado. RCW 61.24.050; *Kezner v. Landover Corp.*, 87 Wn. App. 458, 466-67, 942 P.2d 1003 (1997), review denied, 134 Wn.2d 1020 (1998); see also John A. Gose, *The Trust Deed Act in Washington*, 41 Wash. L. Rev. 94, 101 (1966) (the trustee's deed conveys the grantor's title to the purchaser at the trustee's sale). Whether the trustee's sale became "final" under the statute within 15 days is immaterial to Silverado's rights to take possession of the property from the Larsons. Silverado was entitled to possession 20 days after the sale, and it properly sought to take possession by filing an unlawful detainer action. See RCW 61.24.060.

The trial court's judgment against the Larsons is affirmed.

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 pursuant to RCW 2.06.040, it is so ordered.

QUINN-BRINTNALL, J.

We concur:

SEINFELD, J.

HUNT, C.J.

