IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

JPMORGAN CHASE BANK, N.A.,	)	No. 64443-2-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
F. CHRISTOPHER PACE and LYNN PACE,	)	UNPUBLISHED OPINION
	)	
	)	
Appellants.	)	FILED: August 29, 2011
	)	

Ellington, J. — Christopher and Lynn Pace lost their home to foreclosure. At the trustee's sale, JPMorgan Chase Bank NA (Chase) acquired the deed. Chase then filed this unlawful detainer action to acquire possession. Only at that point did the Paces challenge the foreclosure. But an unlawful detainer action is not a forum for litigating the merits of a foreclosure proceeding. Because it is undisputed that Chase purchased the deed at a trustee's sale to which the Paces mounted no challenge, the trial court properly granted Chase a writ of restitution.

BACKGROUND

Christopher and Lynn Pace owned real property in Bellingham. In February 2005, they executed a note and deed of trust in favor of Long Beach Mortgage Company. Washington Mutual Bank acquired Long Beach Mortgage, and after Washington Mutual's collapse, Chase acquired Washington Mutual. In October 2008,

Chase became the holder of the Paces' note. The Paces received written notification of the change.

The Paces stopped paying their mortgage in October 2008. Chase issued a notice of default in March 2009 and notices of foreclosure and trustee's sale in April 2009. The notices warned that the property would be sold at auction on July 24, 2009 unless the Paces sought to restrain the sale under chapter 61.24 RCW. As required by that statute, Chase also advised that "[f]ailure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale."[1]

The Paces did not contest the default or attempt to restrain the trustee's sale. Chase acquired the deed at the sale. On August 24, 2009, Chase recorded the deed and issued a notice to vacate. When the Paces refused, Chase commenced an unlawful detainer action.

The Paces argued Chase lacked standing to bring the unlawful detainer action because it had no authority to foreclose on the note. The Paces provided the court with a book chapter describing "mortgage backed securities" and a print-out from the Security and Exchange Commission's online database, which their counsel contended was proof that some of Long Beach Mortgage's notes had been pooled and sold, and Deutsche Bank was trustee of some of the resulting residential mortgage loan trusts. (No evidence was presented indicating that the Paces' mortgage was held by any of these trusts.)

The trial court rejected the Paces' defense, observing:

[1] Clerk's Papers at 113; RCW 61.24.040(1)(f)(IX).

> If there was any claim that the plaintiff in the foreclosure sale or the beneficiary of the deed of trust didn't have legal standing to go through the foreclosure sale, then the time to seek a stay of the sale is prior to the sale. An occupant of property is not entitled to come in after the sale has occurred and say that the sale shouldn't have taken place.[2]

The Paces' counsel agreed with the court, stating, "It is clear to me the bank is entitled to possession because they're a purchaser at a trustee sale."[3] The court granted summary judgment to Chase and issued a writ of restitution.

Paces nevertheless appeal. We review summary judgment decisions de novo.[4]

DISCUSSION

The Paces contend the court erred because they have raised a genuine issue of material fact as to whether Chase had authority to initiate the foreclosure action that divested them of their right to possess their home.

An unlawful detainer action under chapter 59.12 RCW is a summary proceeding for obtaining possession of real property. The court's jurisdiction is limited to determining which party is entitled to possession and ancillary issues such as damages and rent due.[5]

The Paces sought to defend against the unlawful detainer action by questioning

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[2] Report of Proceedings (November 6, 2009) at 4-5.

[3] Id.

[4] Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn.2d 16, 26, 109 P.3d 805 (2005). Summary judgment is affirmed when there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law. Id.; CR 56(c). All facts and reasonable inferences are considered in the light most favorable to the nonmoving party, and summary judgment is appropriate only if, from all the evidence, reasonable persons could reach but one conclusion. Id.

[5] Puget Sound Investment Group, Inc. v. Bridges, 92 Wn. App. 523, 526, 963 P.2d 944 (1998).

"whether Chase was in privity of contract with the Paces at the time it initiated the [d]eed of [t]rust foreclosure."[6] The trust deed statute, chapter 61.24 RCW, provides the only means by which a grantor may avoid a trustee's sale once foreclosure has begun.[7] The statute allows the grantor to seek to enjoin or restrain a sale "on any proper legal or equitable ground."[8] Thus, if the Paces believe Chase lacked authority to foreclose, the statute required them to raise the issue before the trustee's sale. "To allow one to delay asserting a defense until this late stage of the proceedings would be to defeat the spirit and intent of the trust deed act."[9]

By their silence, the Paces waived any objection to the foreclosure proceedings,[10] and unlawful detainer actions "do not provide a forum for litigating claims to title."[11] They offered no other defense to the unlawful detainer action, and the court therefore properly granted summary judgment to Chase.[12]

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[6] Br. of Appellant at 38.

[7] Cox v. Helenius, 103 Wn.2d 383, 388, 693 P.2d 683 (1985).

[8] RCW 61.24.130(1).

[9] Peoples Nat'l Bank of Wash. v. Ostrander, 6 Wn. App. 28, 32, 491 P.2d 1058 (1971); see also Brown v. Household Realty Corp., 146 Wn. App. 157, 165-71, 189 P.3d 233 (2008).

[10] Plein v. Lackey, 149 Wn.2d 214, 227, 67 P.3d 1061 (2003) (citing Country Express Stores, Inc. v. Sims, 87 Wn. App. 741, 749-51, 943 P.2d 374 (1997); Steward v. Good, 51 Wn. App. 509, 515-17, 754 P.2d 150 (1988); Koegel v. Prudential Mut. Sav. Bank, 51 Wn. App. 108, 114, 752 P.2d 385 (1988); Peoples Nat'l Bank v. Ostrander, 6 Wn. App. 28, 491 P.2d 1058 (1971); and Joseph L. Hoffman, Comment, *Court Actions Contesting the Nonjudicial Foreclosure of Deeds of Trust in Washington*, 59 Wash. L. Rev. 323, 335 (1984)). Under 2009 and 2011 amendments to chapter 61.24 RCW, the failure of a grantor or borrower to bring a lawsuit to enjoin a foreclosure sale does not, however, waive certain claims for damages. RCW 61.24.127.

[11] Bridges, 92 Wn. App. at 526.

[12] We do not address the Paces' argument that the court's failure to require Chase to prove privity of contract effected an unconstitutional taking. The authority cited in the

Chase requests attorney fees and costs on appeal under RCW 59.18.290(2), and is so entitled. Chase is directed to comply with RAP 18.1.

Affirmed.

WE CONCUR:

Paces' brief neither supports that proposition nor pertains to unlawful detainer actions or foreclosure. Further, the Paces had notice and an opportunity to challenge privity in an action to restrain the sale under RCW 61.24.130 and failed to do so.