IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

SQUIRRELS NEST II LLC, a Washington limited liability company,	)	NO. 65109-9-I
Appellant,	)	DIVISION ONE
v.	)	
FISHER BROADCASTING – SEATTLE TV, L.L.C., a Delaware limited liability company, d/b/a KOMO TV,	)	UNPUBLISHED OPINION
	)	FILED: April 18, 2011
Respondents.	)	

Lau, J. — Entry of a judgment by a superior court serves as constructive notice to purchasers that a judgment lien has attached to a judgment debtor's real property. While a judgment may also be separately filed for record in the county auditor's office, such recording is unnecessary for the lien to be effective against subsequent purchasers. Fed. Intermediate Credit Bank of Spokane v. O/S Sablefish, 111 Wn.2d 219, 758 P.2d 494 (1988). Because Squirrels Nest had constructive notice of the Fisher judgment lien, we affirm the trial court's grant of summary judgment in Fisher Broadcasting's favor.

FACTS

The material facts are undisputed. Fisher Broadcasting hired Saeed Kaley to remodel a house. Citing defective construction work, Fisher sued Kaley[1] on

December 11, 2008. Kaley was personally served with the summons and complaint on December 15, 2008, but did not appear or defend the case. On January 26, 2009, Fisher obtained an order of default and default judgment against Kaley for $102,029.51, which was filed the same day. The Fisher judgment was entered into the superior court management and information system (SCOMIS) and included in the court's execution docket on January 30, 2009.

Meanwhile, the Kaleys sold their Kirkland condominium (the property) on January 28, 2009 to the Heathcotes for the purchase price of $175,000.[2] In addition to the Fisher judgment discussed above, the property was also encumbered by two deeds of trust. Homecomings Financial LLC held the primary mortgage, and Debra Starr held a second note and deed of trust for $20,000.[3]

The deed from the Kaleys to the Heathcotes was signed by the Kaleys on January 23, 2009, and recorded on January 28, 2009.[4] The sale closed on January

[1] Fisher's complaint also named as defendants Kaley's business, Kaley Design, Inc. dba Case Remodeling. This opinion refers to all defendants as "Kaley."

[2] This was a short sale and required the lender's approval because the purchase price was less than the amount that the seller owed on the two deeds of trust.

[3] "Second" means in second position to the primary lender, Homecomings Financial LLC.

[4] The parties dispute the closing date. Fisher claims the sale closed on January 28, 2009, when the deed was recorded. It relies on the escrow instructions, which state that "all acts necessary to complete the . . . transaction includ[e]" recording. Squirrels Nest argues the sale closed on January 27, 2009, based on the settlement closing statement dated January 27, 2009. But both parties agree that this disputed fact is immaterial.

28, 2009.[5]

The Heathcotes purchased title insurance from Old Republic National Title Insurance (ORT) to insure their title against liens and encumbrances, including the risk that "[s]omeone else has a lien on [their] Title, including a . . . judgment . . . ."[6] An endorsement to the policy states, "When We Settle Your Claim, We have all the rights You have against any person or property related to the claim. You must transfer these rights to Us when We ask, and You must not do anything to affect these rights. You must let Us use your name in enforcing these rights."

Before issuing the title insurance policy, ORT completed a litigation search. A page from the "datedown results" from this search dated January 15, 2009, shows four pending lawsuits filed against Kaley, including the Fisher lawsuit. Across this page is a handwritten notation, "No j[udgmen]ts." The record discloses no further investigation by ORT to determine the status of the Fisher lawsuit before closing. ORT issued the title

insurance policy to the Heathcotes effective January 28, 2009. In February 2009, Fisher's attorney notified the Heathcotes about Fisher's judgment lien. On the Heathcotes' tender, ORT agreed to defend and indemnify them pursuant to their title policy.

ORT sued Fisher in Squirrels Nest's name to quiet title. The parties cross

[5] After the sale closed, the Heathcotes transferred the condominium into their limited liability corporation, Squirrels Nest II LLC.

[6] "Title insurance is a guaranty of the accuracy of a company search and record title on a specific property." Kiniski v. Archway Motel, Inc., 21 Wn. App. 555, 560, 586 P.2d 502 (1978).

moved for summary judgment. The trial court granted Fisher's summary judgment motion and denied Squirrels Nest's summary judgment motion. It ruled:

> The Defendant Fisher's Motion for Summary Judgment is GRANTED pursuant to CR 56. The Plaintiff's Complaint is DISMISSED WITH PREJUDICE, and pursuant to RCW 4.56.200, Defendant shall be awarded judgment against Plaintiff that its judgment lien against Plaintiff's real property legally described as Unit 87, Building 8, Laurel Park, a condominium is valid and enforceable. It is further ordered Plaintiff's Motion for Summary Judgment is Denied.

Squirrels Nest appeals.

ANALYSIS

The crux of this dispute is whether Squirrels Nest had constructive notice of Fisher's judgment lien before closing. Squirrels Nest specifically argues that the bona fide purchaser doctrine entitles it to have title to the property quieted in its name. "That doctrine provides that a good faith purchaser for value, who is without actual or constructive notice of another's interest in the property purchased, has the superior interest in the property." Tomlinson v. Clarke, 118 Wn.2d 498, 500, 825 P.2d 706 (1992). It relies principally on Ellingsen v. Franklin Cnty., 117 Wn.2d 24, 810 P.2d 910 (1991) to argue it had no constructive notice of Fisher's judgment lien. Fisher counters that RCW 4.56.190-200, RCW 6.01.020, and Sablefish control the constructive notice question. We agree.

This court reviews a summary judgment order de novo, engaging in the same inquiry as the trial court. Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 860, 93 P.3d 108 (2004). "Statutory interpretation is a question of law, which we review de novo." Lake v. Woodcreek Homeowners Ass'n, 169 Wn.2d 516, 243 P.3d 1283,

(2010).

Under RCW 4.56.190, a judgment immediately becomes a lien against a judgment debtor's real property:

> **Lien of judgment.**
> The real estate of any judgment debtor, and such as the judgment debtor may acquire, not exempt by law, shall be held and bound to satisfy any judgment of the district court of the United States rendered in this state and any judgment of the supreme court, court of appeals, superior court, or district court of this state, and every such judgment shall be a lien thereupon to commence as provided in RCW 4.56.200 and to run for a period of not to exceed ten years from the day on which such judgment was entered unless the ten-year period is extended in accordance with RCW 6.17.020(3). As used in this chapter, real estate shall not include the vendor's interest under a real estate contract for judgments rendered after August 23, 1983.

(Emphasis added.)

And under RCW 4.56.200, a superior court judgment becomes a lien on the judgment debtor's real property located in the same county as the court that entered the judgment when the judgment is entered:

> The lien of judgments upon the real estate of the judgment debtor shall commence as follows:
> (1) Judgments of the district court of the United States rendered or filed in the county in which the real estate of the judgment debtor is situated, and judgments of the superior court for the county in which the real estate of the judgment debtor is situated, from the time of the entry or filing thereof.

(Emphasis added.)

And RCW 6.01.020 defines when a judgment is entered:

> **Entry of judgment--Superior court--District court--Small claims.** For purposes of this title and RCW 4.56.190 and 4.56.210, a judgment of a superior court is entered when it is delivered to the clerk's office for filing. A judgment of a district court of this state is entered on the date of the entry of the judgment in the docket of the court. A judgment of a small claims department of a district court of this state is entered on the date of the entry in the docket of that department.

(Emphasis added.)

Squirrels Nest does not dispute the plain meaning of the judgment lien statutes quoted above. Instead, it argues that Ellingsen overruled Sablefish.[7] But Squirrels Nest ignores a critical distinction between real property conveyances and judgment liens. Ellingsen involved a conveyance, while Sablefish, like the case here, involved a judgment lien.

As Fisher correctly notes, "For over 100 years, the Washington courts have consistently interpreted the judicial lien statutes to give judgment liens priority over later conveyances of real property subject to the lien." Resp't's Br. at 9. In Young v. Davis, 50 Wash. 504, 97 P. 506 (1908), a subsequent purchaser for value contended that he had taken the property without notice of a judicial foreclosure because no lis pendens, judgment, certificate of sale, or sheriff's deed had been recorded with the county auditor. The court held that entry of the judgment was sufficient to impart constructive notice on subsequent purchasers.

> Since the act of March 3, 1893 . . ., a judgment of the superior court has been a lien upon the real property of the judgment debtor in the county where the judgment is rendered, from the date of its entry, and this being so, it is of course constructive notice to anyone purchasing such real property.

Young, 97 Pac. at 506.

---

[7] But Squirrels Nest's arguments on this point are not entirely clear. "Whether the Heathcotes' condominium is subject to Fisher's judgment lien could vary depending on whether the lower court follows the Supreme Court's decision in Ellingsen, or its earlier decision in Sablefish. This inconsistency should be resolved by overruling Sablefish." Appellant's Br. at 7 (emphasis added). "The Ellingsen decision is at odds with the Supreme Court's earlier decision in Sablefish." Appellant's Br. at 13. "The Heathcotes do not argue that the Supreme Court silently overruled Sablefish in its later decision in Ellingsen. . . . [T]he court should re-evaluate Sablefish." Appellant's Reply Br. at 3-4.

In Sablefish, real property purchasers argued that a judgment lien was invalid because it was unrecorded and their property insurer did not tell them about it. Our Supreme Court rejected the argument and reaffirmed Young's holding. It applied RCW 4.56.200 to a federal district court judgment.

> A judgment lien on real estate is created by RCW 4.56.200 and when entered by a federal district court, commences upon real property in the county where the judgment is entered from the date of entry. Such entry serves as constructive notice to purchasers that a judgment lien has attached to a judgment debtor's property. While a judgment may also be separately filed for record in the county auditor's office, such recording is not necessary for the lien to be effective against purchasers of the property to which a lien has attached.

Sablefish, 111 Wn.2d at 222-23 (emphasis added).

Like the purchasers here, the Sablefish purchasers argued that while the judgment lien was effective against the judgment debtor from the time the judgment was entered, the judgment did not give constructive notice of the lien to subsequent purchasers for value. The purchasers relied on RCW 65.08.070, which makes an unrecorded conveyance void against subsequent purchasers for value. Sablefish specifically rejected that argument, holding that a judgment lien is not a conveyance.

And because the judgment lien statutes make no provision for recording to impart constructive notice within the county, Sablefish declined to read a recording requirement into the statute. Rather, the court held that under RCW 4.56.190-200, "[o]nce a money judgment becomes a lien . . . , it is constructive notice to anyone who purchases a judgment debtor's property." Sablefish, 111 Wn.2d at 227. Sablefish makes clear that when the Fisher judgment was entered on January 26, 2009, it constituted constructive notice of the judgment lien on the Kaley's King County

property. Squirrels Nest, therefore, acquired the property on January 28, 2009, subject to that judgment lien.

Squirrels Nest nonetheless argues that because Ellingsen conflicts with Sablefish, it impliedly overrules Sablefish. See supra note 7. We disagree. The principal question in Ellingsen dealt with "whether a conveyance of an easement gives constructive notice to a bona fide purchaser when that conveyance is 'recorded and filed' in the county engineer's office, but is not recorded with the county auditor?" Ellingsen, 117 Wn.2d at 25 (emphasis added).

In Ellingsen, records of a 1908 road easement were maintained in the county engineer's office but never recorded with the county auditor under the general recording act, chapter 65.08 RCW. The county did not dispute that the easement was a conveyance subject to the recording requirement. The county contended that "recording and filing" the easement in the county engineer's office was sufficient to impart constructive notice because RCW 36.80.040[8] provided that it was an "office of record" and required it to maintain such documents. Ellingsen, 117 Wn.2d at 26. The court held that "recording and filing" in the county engineer's office does not impart constructive notice. The court reversed the Court of Appeals and affirmed the trial court's judgment quieting plaintiffs' title free of the county's claim of a road easement.

[8] RCW 36.80.040 provides in part: "The office of county engineer shall be an office of record; the county road engineer shall record and file in his or her office, all matters concerning the public roads, highways, bridges, ditches, or other surveys of the county, with the original papers, documents, petitions, surveys, repairs, and other papers, in order to have the complete history of any such road, highway, bridge, ditch, or other survey; and shall number each construction or improvement project."

We conclude that nothing in Ellingsen undermines the constructive notice rule applicable to judgment liens.

And while Squirrels Nest urges us to "overrule" or "reevaluate" Sablefish, we are not free to disregard binding Supreme Court precedent, and neither was the trial court. Hamilton v. Dep't of Labor & Indus., 111 Wn.2d 569, 571, 761 P.2d 618 (1988) ("Once this court has decided an issue of state law, that interpretation is binding until we overrule it.").[9]

Squirrels Nest next contends that "[t]he express requirement in the statute [RCW 4.64.020][10] that the verdict first be entered in the court's execution docket before notice is imparted insures that the information is publically available and discoverable." Appellant's Br. at 17. But RCW 4.64.020 provides extra protection for judgment creditors—not less—by permitting judgments to date back to the verdict. "If a judgment is entered on the basis of a verdict, the judgment lien may effectively date back to an

---

[9] Squirrels Nest also argues that because the Fisher judgment was not publicly available before closing, unlike in Sablefish and Young, these cases are not controlling. We disagree, based on the reasons discussed above. And we decline to speculate on the reasons for ORT's failure to follow-up on the Fisher lawsuit against Kaley.

[10] RCW 4.64.020 provides:

"(1) The clerk on the return of a verdict shall forthwith enter it in the execution docket, specifying the amount, the names of the parties to the action, and the names of the party or parties against whom the verdict is rendered; such entry shall be indexed in the record index and shall conform as near as may be to entries of judgments required to be made in the execution docket.

"(2) Beginning at eight o'clock a.m. the day after the entry of a verdict as herein provided, it shall be notice to all the world of the rendition thereof, and any person subsequently acquiring title to or a lien upon the real property of the party or parties against whom the verdict is returned shall be deemed to have acquired such title or lien with notice, and such title or lien shall be subject and inferior to any judgment afterwards entered on the verdict."

earlier time." 28 Marjorie Dick Rombauer, 28 Washington Practice: Creditors' Remedies—Debtors' Relief § 7.6, at 88 (1998). Nothing in this statute undermines a judgment lien's validity from the time the judgment is entered.

Squirrels Nest also contends that imputing constructive notice upon entry of a judgment under RCW 4.56.200 violates due process of law.[11] In essence, it claims that application of constructive notice here deprives it of its interest in the Kaley property. We disagree. Squirrels Nest had no legally protected interest in the Kaley property when the Kaley judgment was entered because the sale had not yet closed when the judgment was entered on January 26, 2009.[12] And Squirrels Nest cites no controlling or persuasive authority to support its due process violation argument.

Squirrels Nest next invokes equity to argue that Fisher has been unjustly enriched. Fisher counters that Squirrels Nest cannot satisfy the unjust enrichment elements.

"Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it." Young v. Young, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008). A claim of unjust enrichment requires proof of three elements—"(1) the defendant receives a benefit, (2) the received benefit is at the plaintiff's expense, and (3) the circumstances make it

[11] Squirrels Nest's briefs fail to identify whether the due process violation is based on federal or state constitution.

[12] Squirrels Nest does not argue that it had any property interest at the time the Heathcotes entered into the purchase and sale agreement or at the time the default judgment was entered. Rather, it states that the Heathcotes "purchased" the condominium on January 27, 2009, after the judgment lien's entry.

unjust for the defendant to retain the benefit without payment." Young, 164 Wn.2d at 484-85. All three elements must be established for unjust enrichment. See Young, 164 Wn.2d at 484.

A person is unjustly enriched when he or she profits or enriches himself or herself at the expense of another, contrary to equity. Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wn. App. 719, 731-32, 741 P.2d 58 (1987). "Enrichment alone will not suffice to invoke the remedial powers of a court of equity. It is critical that the enrichment be unjust both under the circumstances and as between the two parties to the transaction." Farwest Steel, 48 Wn. App. at 732. The mere fact that a defendant has received a benefit from the plaintiff is insufficient alone to justify recovery. The doctrine of unjust enrichment applies only if the circumstances of the benefits received or retained make it unjust for the defendant to keep the benefit without paying. Chandler v. Wash. Toll Bridge Auth., 17 Wn.2d 591, 601, 137 P.2d 97 (1943).

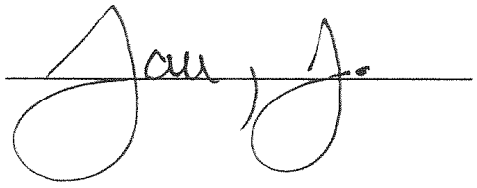
Squirrels Nest fails to show why it is unjust for their title insurer, ORT, to bear the loss occasioned by the Fisher judgment when the duty to defend and indemnify Squirrels Nest under the title policy was triggered by ORT's error or omission. In addition, the Fisher judgment lien was not a benefit conferred by Squirrels Nest. Fisher lawfully obtained a valid money judgment against Kaley. Under RCW 4.52.020, the judgment became a lien against the Kaley property while the property was owned by Kaley and before Squirrels Nest had any interest in it. Therefore, Squirrels Nest fails to establish the benefit conferred element of its unjust enrichment claim. And Squirrels Nest cites no controlling or persuasive authority applying unjust enrichment principles

to the judgment lien statutes.[13]

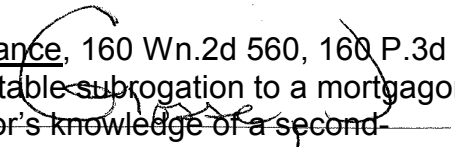
Squirrels Nest argues that it is entitled to relief under the rule of comparative innocence.[14] It argues, "The Heathcotes could not have learned of and protected themselves against Fisher's judgment lien. On the other hand, regardless of whether Fisher was **required** to record its judgment to provide constructive notice, it **could have** done so and this entire problem would have been avoided." Appellant's Br. at 21. But as we reasoned above, Sablefish forecloses Squirrels Nest's comparative innocence claim. And it cites no authority applying this rule to the judgment lien statutes.

CONCLUSION

Because Squirrels Nest's arguments conflict with judgment lien statutes RCW 4.56.190-200 and 6.01.020, and long-standing Supreme Court precedent, we affirm the trial court's order granting summary judgment to Fisher and denying summary judgment to Squirrels Nest.



WE CONCUR:



[13] Squirrels Nest cites Bank of Am. NA v. Prestance, 160 Wn.2d 560, 160 P.3d 17 (2007) in a footnote. There, the court applied equitable subrogation to a mortgagor that satisfied a first-position lien, despite the mortgagor's knowledge of a second-position lien. Prestance is not applicable here. And "placing an argument . . . in a footnote is, at best, ambiguous or equivocal as to whether the issue is truly intended to be part of the appeal." State v. Johnson, 69 Wn. App. 189, 194 n.4, 847 P.2d 960 (1993)

[14] The comparative innocence rule helps courts allocate loss between two parties when one party created or contributed to the loss or failed to take steps to prevent it. Cunningham v. Norwegian Lutheran Church of Am., 28 Wn.2d 953, 963, 184 P.2d 834 (1947).