

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

DEUTSCHE BANK TRUST COMPANY )	No. 65356-3-I
AMERICAS, AS TRUSTEE FOR )	
RALI 2006QA11, its successors and/or )	
assigns, )	
)	
Respondent, )	
)	
v. )	
)	
LUCIANO G. GIOVANNI, )	UNPUBLISHED OPINION
PAUL GOOD and DIANE GOOD, )	
husband and wife, )	
)	
Appellants. )	FILED: October 24, 2011
)	

Ellington, J. — This unlawful detainer case has befuddled a cadre of judges and commissioners simply because the parties did not follow the rules. Despite the confusion, the judges made sensible decisions and we affirm except for one ruling on sanctions.

BACKGROUND

The basic facts are undisputed. In 2006, Luciano Giovanni obtained bank financing to purchase a house in Federal Way. By the end of 2007, Giovanni was in default on the loan. In January 2008, Giovanni received a notice of trustee's sale. In March 2008, he received a letter on behalf of the trustee seeking \$16,839.95 to reinstate the loan and suspend the sale.

Meanwhile, Paul and Diane Good were leasing the property from Giovanni and living there. The Goods paid the \$16,839.95 to the trustee, and in April 2008, Giovanni conveyed the property to the Goods by quit claim deed. The deed was recorded.

In September 2008, the loan was again in default, and Giovanni was again served with a notice of trustee's sale. There is no evidence in the record that the Goods received notice. Giovanni did not cure the default, and the sale went forward. Deutsche Bank purchased the property at the sale.<sup>1</sup>

On October 6, 2009, Deutsche Bank filed an unlawful detainer action against Giovanni and "John and Jane Doe, Unknown Occupants of the Premises."<sup>2</sup> The summons stated that the defendants had 14 days to appear or answer the complaint, and that failure to do so would result in default judgment. The summons and complaint were served on Paul Good at the Federal way property on October 19, 2009.

Giovanni timely appeared through his attorney, Richard Llewelyn Jones. The Goods filed no response to the summons.

The case was filed in King County Superior Court in the Seattle courthouse with a Seattle designation, in violation of local rules calling for filing at the Maleng Regional Justice Center in Kent (Kent courthouse) when property is located in Federal Way.<sup>3</sup>

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<sup>1</sup> Nothing in the record indicates the Goods have made any effort to challenge the foreclosure.

<sup>2</sup> Clerk's Papers at 10.

<sup>3</sup> LCR 82(e)(3)(B) ("Kent Case Assignment Area. All of King County south of Interstate 90."); LCR 82(e)(4)(A)(iv) (case assignment designation area for cases involving unlawful detainer is the area where the property is located).

The complaint was not identified as an unlawful detainer and so received a civil case schedule and was assigned to a judge.

Deutsche Bank moved for an order to show cause in the Seattle ex parte department. Commissioner Eric Watness denied the motion because the case should have been filed in Kent, and ordered Deutsche to redesignate the case to Kent and to include a copy of his order with the new motion to show cause. Under the local rules, redesignation is accomplished by a motion to transfer.<sup>4</sup>

Instead, Deutsche refiled its motion in Seattle but typed a Kent designation code next to the cause number. Deutsche did not attach a copy of Commissioner Watness's order. Deutsche then presented the motion in Kent.

Judge Mary Roberts granted the motion and signed the order as presented, which required Giovanni and the "occupants of the premises" to appear for a show cause hearing at 9:00 a.m. on February 19, 2010 in room C-203 of the King County Superior Court in Seattle.<sup>5</sup> The accompanying note for commissioner's calendar listed the date but not the location. Room C-302 is a judicial mail room, which is not open to the public.

On February 18, 2010, through his attorney, Giovanni filed an answer to Deutsche's complaint. Giovanni admitted possession of the property and asserted he

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<sup>4</sup> LCR 82(e)(4)(D) ("[a]ll cases shall proceed in the original case assignment area until an order of transfer is entered").

<sup>5</sup> Clerk's Papers at 19-20. Deutsche contends Judge Roberts' order shows that "[e]vidently, the trial court determined the Seattle case assignment area facilitated just and efficient administration." Resp't Br. at 4. But the record is devoid of any indication the question was ever considered by Judge Roberts or even brought to her attention, and Judge Roberts' order notes she did not "review[ ] the files and records in the case." Clerk's Papers at 19.

was the “true and rightful owner.”<sup>6</sup> He made no mention of the Goods.

On February 19, 2010, Giovanni and the Goods arrived at the Seattle courthouse at about 8:15 a.m. They discovered they had been ordered to appear in a mailroom. They went to the courtroom of assigned Judge Julie Spector, whose bailiff directed them to the ex parte department of the Seattle courthouse,<sup>7</sup> where they met attorney Jones. They asked ex parte department clerk Robert Unchur where the hearing would be conducted. Unchur told Jones that cases with a Kent designation code are heard at the Kent courthouse. Unchur then e-mailed the Kent courthouse clerk to advise that the defendants were in Seattle, but would be on their way to Kent immediately.<sup>8</sup>

Unaware that anybody representing Deutsche was in the Seattle courthouse, the Goods, Giovanni, and Jones left for Kent, where Commissioner Nancy Bradburn-Johnson entered an order dismissing the unlawful detainer action because Deutsche failed to appear. She noted on the order that the court’s electronic court records system was down.

Meanwhile, in Seattle, attorney Katrina Glogowski brought Deutsche’s motion

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<sup>6</sup> Clerk’s Papers at 25.

<sup>7</sup> Show cause hearings for unlawful detainer actions are heard in the ex parte department. LCR 40.1(a)(2)(Q).

<sup>8</sup> Unchur testified he looked at the order to show cause and, “[n]oting the Kent designation [in the caption], told Mr. Jones that noted cases with Kent designations were heard at the Maleng Regional Justice Center in Kent.” Clerk’s Papers at 431. He then contacted the clerk at the Kent courthouse to alert her to Giovanni’s pending arrival. Giovanni challenges the court’s later finding that Unchur “did not advise defense counsel . . . to go to the [Kent courthouse].” Clerk’s Papers at 708. Given Unchur’s declaration, the finding is erroneous.

before Commissioner Carlos Velategui, who issued a writ of restitution and granted a default judgment against Giovanni for some \$1,250 in fees and costs.

On March 2, 2010, Deutsche filed a motion for reconsideration/relief from Commissioner Bradburn-Johnson's February 19 order. The following day, Deutsche also noted a motion to vacate that order before Judge Spector in Seattle, contending Giovanni failed to appear for the hearing in Seattle and obtained the Kent order by way of an irregular, unnoted hearing.

In his response to the motion to vacate, Giovanni identified the Goods as the "current occupants of the subject real property."<sup>9</sup> The Goods filed a supporting declaration on attorney Jones' pleading paper asserting, "We are the current occupants of the real property."<sup>10</sup> The Goods still did not formally appear, answer, or otherwise assert a defense.

Meanwhile, Giovanni filed a motion before Judge Spector seeking to vacate Commissioner Velategui's judgment on grounds it was obtained by procedural irregularities, to wit, improper filing in Seattle, failing to follow Commissioner Watness's directive, causing confusion with the room number, and obtaining an order to show cause ex parte in Seattle for a hearing set in Kent. Giovanni also asked the court to hold Deutsche in contempt for violating Commissioner Watness's order. Jones signed the motion as "Attorney for Defendants" and submitted a declaration of fees and costs to which he attached billing records identifying the Goods as "clients."<sup>11</sup>

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<sup>9</sup> Clerk's Papers at 126.

<sup>10</sup> Clerk's Papers at 218.

<sup>11</sup> Clerk's Papers at 255, 348 (emphasis added).

Before Judge Spector heard the parties' motions, Deutsche filed a belated request for judicial notice of the quit claim deed conveying the Federal Way property from Giovanni to the Goods. In its response to Giovanni's motion for contempt and to vacate, Deutsche noted, "All of the pleadings have been filed on behalf of Giovanni alone. But one gets the sense the true represented parties, the ones with an occupancy interest, are Paul Good and Diane L. Good."<sup>12</sup>

Both parties' motions were decided without oral argument. The court set aside Commissioner Bradburn-Johnson's February 19 order and imposed \$2,500 in sanctions against Jones for "causing confusion among 2 judicial officers."<sup>13</sup> The court denied Giovanni's motion to vacate Commissioner Velategui's order and judgment.

Giovanni filed a motion for reconsideration of both decisions. Again, Jones signed the motion as "Attorney for Defendants."<sup>14</sup> Giovanni supported the motions with declarations. The court denied the motions, ruling that Giovanni lacked standing to defend the unlawful detainer action because he had no interest in the property, and further, that his lack of interest meant he could not demonstrate facts amounting to a defense as required by CR 60. The court imposed \$500 in sanctions against Jones for filing an overlength brief.

Giovanni and the Goods appeal.

#### DISCUSSION

As an initial matter, Deutsche contends the Goods do not have standing to

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<sup>12</sup> Clerk's Papers at 389.

<sup>13</sup> Clerk's Papers at 399.

<sup>14</sup> Clerk's Papers at 415 (emphasis added).

appeal because they did not formally appear, answer, or otherwise assert a defense to the unlawful detainer action below.

The failure of the Goods to protect their interests here remains unexplained, and has significantly added to the confusion.<sup>15</sup> The Goods now claim to be the real party in interest, and argue their ownership interest was not foreclosed because they received no notice of the trustee's sale. They contend Deutsche's procedural irregularities in this unlawful detainer action denied them the opportunity to formally assert their defenses.

But the Goods were served with the summons and complaint naming "unknown occupants." They filed a declaration identifying themselves as the occupants. They attended the hearings. They offer no explanation as to how they were prevented from formally appearing and defending. They may not wait until the appeal to do so, and we will not consider their arguments now. They are thus bound by the proceedings below.<sup>16</sup>

Under CR 60(b)(1), a court may vacate a final judgment on grounds of "irregularity in obtaining a judgment or order." An "irregularity" includes "failure to adhere to some prescribed rule or mode of proceeding, such as when a procedural matter that is necessary for the orderly conduct of trial is omitted or done at an unseasonable time or in an improper manner."<sup>17</sup> We review an order denying vacatur

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<sup>15</sup> The Goods appeared as the moving parties for the first time in July 2010, when they moved for reconsideration of the court's order dissolving the stay of the writ of restitution and ordering enforcement thereof. They still did not assert a right to possession.

<sup>16</sup> We offer no view as to what other recourse may remain available to the Goods.

for abuse of discretion.<sup>18</sup>

The above recital of events reveals that the court, on almost every occasion, acted sensibly given the information supplied by the parties, and court employees were helpful and solicitous. Until the final orders, the mistakes were those of the parties. The real question is whether the final orders granting the writ and imposing a judgment against Giovanni and sanctions upon Jones should have been vacated for procedural irregularity.

In fact, procedural irregularity characterized almost every order. Deutsche began by ignoring the local rules and then disregarded Commissioner Watness's order to correct the error. Deutsche then proceeded to confuse venues and locations in its pleadings. For his part, Giovanni defended by falsely asserting ownership, so that each judicial officer was presented with only a partial picture until the final motions to vacate, when Giovanni submitted declarations from court staff and, in a very unusual move, even obtained a deposition from Judge Roberts. The evidence from court staff made clear that the Kent order dismissing the unlawful detainer resulted from Deutsche's confusing pleadings, not Giovanni's misdeeds.

The court was thus faced with a true conundrum: an unlawful detainer in which the defending party had no legal interest in the action, the occupants and true owners remained on the sidelines, and the titleholder erred procedurally from the outset.

The court reasoned that, having transferred the property, Giovanni was without

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<sup>17</sup> In re Marriage of Adler, 131 Wn. App. 717, 723, 129 P.3d 293 (2006) (quoting Mosbrucker v. Greenfield Implement, Inc., 54. Wn. App. 647, 652, 774 P.2d 1267 (1989)).

<sup>18</sup> Griggs v. Averback Realty, Inc., 92 Wn.2d 576, 582, 599 P.2d 1289 (1979).



standing to challenge the writ or judgment, and in any event, could not seek to vacate the default against him because he could not state facts constituting a defense as required by CR 60(e).

We disagree with part of this reasoning. Giovanni was the named defendant and the subject of a monetary judgment. His lack of a right to possession was his defense. Had Giovanni presented this defense in a timely fashion instead of actively concealing it, it is highly unlikely there would have been a judgment entered against him. Like the Goods' failure to defend, Giovanni's conduct remains unexplained. He may be subject to sanctions for misleading the court. But he does not lack standing to challenge the judgment.

He does not, however, persuade us the judgment should be vacated. The fees and costs ordered against him were the risk he took by falsely asserting an ownership interest; he must bear the consequences of his representations. We decline to require the court to revisit this comedy of errors. The writ and judgment against Giovanni are affirmed.

Giovanni contends the court erred in refusing to find Deutsche in contempt for failing to follow Commissioner Watness's order. The court denied the motion. We affirm that ruling. The evidence establishes bumbling, but not contempt.

Attorney Jones was twice sanctioned, once for confusing two judicial officers and once for submitting an overlength brief. We reverse the first order, but affirm the second.

Imposition of sanctions is reviewed for abuse of discretion.<sup>19</sup> The sanction for

creating confusion among two judicial officers was based on findings that Jones had no legal or factual basis for appearing before the Kent commissioner and that he misrepresented the facts of the case to Commissioner Bradburn-Johnson, causing her and Commissioner Velategui to enter conflicting and contradicting orders.

But Jones had both legal and factual bases for believing the show cause hearing was noted at the Kent courthouse, where it should have been and where the bailiff told him it was. There is nothing in the record to support the finding that Jones purposefully misrepresented the circumstances to Commissioner Bradburn-Johnson. The \$2,500 sanction is reversed.

Jones does not deny filing an overlength brief in violation of LCR 7(b)(5)(B)(vi).<sup>20</sup> The court has statutory authority to impose sanctions to enforce procedural rules.<sup>21</sup> The \$500 sanction is affirmed.

As a final effort, Giovanni requests fees on appeal under RAP 18.1, contending he is entitled to attorney fees under the parties' deed of trust and CR 11. This is a frivolous argument. Giovanni does not explain how the deed of trust entitles him to attorney fees when he has no interest in the property. Nor is there a basis for fees under CR 11, which imposes on attorneys the responsibility to insure that assertions made in positions taken in litigation are done so in good faith and not for an improper purpose. The rule is intended to deter baseless filings and to curb abuses of the

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<sup>19</sup> State v. S.H., 102 Wn. App. 468, 473, 8 P.3d 1058 (2000).

<sup>20</sup> LCR 7(b)(5)(B)(vi) provides, "The initial motion and opposing memorandum shall not exceed 12 pages without authority of the court; reply memoranda shall not exceed five pages without the authority of the court."

<sup>21</sup> RCW 2.28.010, .020.

