IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CD TRUST UTD 10/22/92, CHRISTOPHER J. KOH and DAVID A. KOH, co-Trustees; and WESTAR FUNDING, INC., a Washington corporation, Respondents, v. QUALITY LOAN SERVICE CORP., Trustee, and DLJ MORTGAGE CAPITAL, INC., through its servicing agent, SELECT PORTFOLIO SERVICING, INC., Appellants.	)	No. 66761-1-I DIVISION ONE UNPUBLISHED OPINION FILED: October 29, 2012

Becker, J. — Two lenders issued sizeable loans to the same borrower and attempted to foreclose against the same home in Edmonds, Washington. The first lender's legal interest in the property was extinguished by a foreclosure sale. The sale was later voided by a bankruptcy court order, but the court order voiding sale was not recorded, and the records of title did not show that the first lender's interest in the property had been restored. As the second lender did not have notice of the order voiding sale, the second lender was a subsequent

mortgagee in good faith. The trial court did not err in granting summary judgment giving priority to the second lender.

On appeal, we review a summary judgment order *de novo* and therefore engage in the same inquiry as the trial court. Christiano v. Spokane County Health Dist., 93 Wn. App. 90, 93, 969 P.2d 1078 (1998), review denied, 163 Wn.2d 1032 (1999). Summary judgment is appropriate if, after viewing the pleadings and record and drawing all reasonable inferences in favor of the nonmoving party, the court finds there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Higgins v. Stafford, 123 Wn.2d 160, 168-69, 866 P.2d 31 (1994).

FACTS

In 1994, John Sanchez took out a $288,000 loan to purchase a home in Edmonds. The original lender, the now defunct Washington Mutual Bank, secured the loan with a deed of trust. In 1994, this deed was recorded in the office of the Snohomish County Auditor.

In 2008, Sanchez took out a loan of $375,000 that was secured by another deed of trust on the same property. This loan came from Westar Funding, Inc. The deed of trust was recorded in the office of the Snohomish County Auditor in October 2008.

The appellants are entities who claim that the 1994 deed of trust has priority: DLJ Mortgage Capital Inc., holder of the deed of trust; Quality Loan Service Corp., the current trustee; and

Select Portfolio Servicing Inc., the servicer of the 1994 home mortgage loan. We will refer to them collectively as "Select."

The respondents are entities who claim that the 2008 deed of trust has priority: Westar Funding Inc., the lender; CD Trust UTD 10/22/92, assignee of the deed of trust; and cotrustees Christopher and David Koh. We will refer to them collectively as "Westar."

The chronology suggests that Select's 1994 deed of trust would take priority over Westar's 2008 deed of trust. But by October 2008, before Westar recorded its deed of trust, two more transfers had been recorded. As a result, the title records showed that Select's deed of trust had been extinguished and Sanchez once again owned the property free and clear of encumbrances.

The first transfer after the recording of Select's deed of trust was a sale of the property to John Gamlam. This occurred as the result of Sanchez's default on the 1994 loan. On December 29, 2005, Sanchez filed for chapter 13 bankruptcy. Select was a named creditor in the proceeding. The automatic stay in bankruptcy barred Select from foreclosing. Select obtained conditional relief from the automatic bankruptcy stay. The relief was only for the purpose of providing the court an accounting of the amount still owing on the mortgage. In August 2006, despite the bankruptcy stay, Select held a nonjudicial foreclosure sale. Gamlam, a real estate investor and agent, was the winning bidder. Select accepted $563,000 from Gamlam for the Sanchez property. The trustee under Select's deed of trust, T.D. Escrow

Services, Inc., issued Gamlam a trustee's deed.

Gamlam's trustee's deed was recorded on September 5, 2006. The deed's recitals recounted the Washington Mutual loan to Sanchez, Sanchez's default on the loan, and the foreclosure sale to Gamlam. After this recordation, the title records showed fee simple title in Gamlam.

When Gamlam contacted Sanchez to inform him that he owned the house, Sanchez told Gamlam that he was in chapter 13 bankruptcy. Sanchez filed a motion in the bankruptcy court for injunctive relief and to rescind the sale of the property.

On September 21, 2006, the bankruptcy court determined that Select, by foreclosing on the 1994 deed of trust, had exceeded the conditions of relief granted from the bankruptcy stay. The court issued an "Order Voiding Sale," declaring the foreclosure sale to Gamlam to be void. The order instructed Select and T.D. Escrow to "immediately refund the full and complete purchase funds paid by the purported third party purchaser."

Select did not return the sale proceeds to Gamlam as ordered. Select essentially acted as if the foreclosure sale to Gamlam remained valid. Gamlam sued Select in December 2006 for return of the $563,000 he paid for the property, plus interest. Gamlam prevailed and received an award of damages that included the purchase price, prejudgment interest from the date of the foreclosure sale, additional damages based on Select's "willful violation" of the bankruptcy stay, and attorney fees.

Select appealed to this court.

On March 6, 2008, the bankruptcy court dismissed Sanchez's bankruptcy petition. Sanchez then began to regroup. He arranged with Gamlam to purchase Gamlam's remaining interest in the property.

This was the second transfer after the recording of Select's deed of trust: a conveyance from Gamlam back to Sanchez. Gamlam agreed to sell his interests in the property back to Sanchez in exchange for $76,470.18. Gamlam gave Sanchez a quitclaim deed.

On August 29, 2008, the quitclaim deed to Sanchez was recorded. At the time, Sanchez was in the process of applying to Westar for a new loan on the house. Sanchez represented to Westar that he intended to use the loan proceeds for commercial purposes. The application asked whether Sanchez was presently delinquent or in default on any loans, and whether he had ever had a loan foreclosed upon. Sanchez answered "no" to both questions. The application asked how much he currently owed in "mortgages & liens" on the property. He answered "0.00."

At Westar's request, Sanchez requested a preliminary title commitment from Fidelity National Title Company of Washington. Fidelity searched the chain of title and found the recorded instruments by which Sanchez had previously bought the property, used it as security for the Washington Mutual loan in 1994, lost it to Gamlam in the nonjudicial foreclosure sale conducted by Select in August 2006, and reacquired it from

Gamlam by means of the quitclaim deed in August 2008. The bankruptcy court order of September 2006 that voided the sale to Gamlam did not show up in the title search because it had not been recorded.

Fidelity checked court filings for any actions against Sanchez. Fidelity found that Sanchez had filed for bankruptcy on December 29, 2005, and that the bankruptcy had been dismissed on March 6, 2008. Seeing that the action had been dismissed, Fidelity did not inquire further into the bankruptcy. It thus appeared to Fidelity that Sanchez held title to the property in fee simple, subject only to the presumptive community property interest of his spouse. Fidelity obtained a quitclaim deed from Sanchez's spouse and recorded it with the county auditor's office.

On August 29, 2008, Fidelity issued a preliminary title commitment and provided a copy to Westar. Westar inspected the property and confirmed that it was an "owner-occupied residence in excellent condition in a good neighborhood." Westar appraised the property at a value of $618,200.

On October 28, 2008, Westar loaned Sanchez $375,000, secured by a deed of trust against the property. Westar's deed of trust was recorded with the county auditor's office. Fidelity issued Westar a mortgagee title policy and insured Westar as a first position lien holder.

On June 8, 2009, this court affirmed Gamlam's judgment against Select in an unpublished opinion. Gamlam v. Select Portfiolio Servicing, Inc., noted at

150 Wn. App. 1035 (2009).

On December 16, 2009, First American Title Insurance Company recorded the 2006 bankruptcy order that voided the trustee's sale to Gamlam. At whose instance this was done is a question not answered in the appellate record.

In January 2010, Sanchez was in default on the Westar loan. He filed again for chapter 13 bankruptcy protection.

In May 2010 Westar filed a complaint in the bankruptcy court to prevent discharge of Sanchez's debt. By this time, Westar was aware of the outstanding mortgage debt Sanchez owed to Select on the 1994 deed of trust. Westar's complaint claimed that Sanchez had committed fraud in his loan application by overstating his income, falsely representing that the property was "free and clear" of encumbrances, and failing to disclose the prior foreclosure by Select, the foreclosure sale to Gamlam, and the bankruptcy court's order voiding the sale. Soon after receiving Westar's complaint, the bankruptcy court dismissed Sanchez's bankruptcy petition.

On June 4, 2010, Select recommenced foreclosure proceedings against Sanchez on the 1994 deed of trust by filing a notice of trustee's sale. The outstanding principal owed by Sanchez to Select was $305,794.85. Westar received notice of the scheduled sale.

On July 6, 2010, Westar filed this suit to determine the relative lien priority as between Select's 1994 deed of

trust and Westar's 2008 deed of trust. Select counterclaimed for first lien priority and joined Sanchez and Gamlam as third party defendants, alleging that the two men were guilty of tortious interference, fraud, and civil conspiracy. Westar responded with affirmative defenses, asserting that Select's claims were barred by the statute of limitations and by the doctrines of comparative fault, unclean hands, estoppel, and failure to mitigate damages. The court later dismissed Sanchez and Gamlam from the proceedings.

On January 12, 2011, after hearing the two lenders' cross motions for summary judgment on the issue of lien priority, the trial court entered summary judgment in favor of Westar.

Select appeals.

THE RECORDING STATUTE

The general rule as to lien interests in real property is "first in time, first in right." Bank of America, N.A. v. Prestance Corp., 160 Wn.2d 560, 565, 160 P.3d 17 (2007). Washington is a "race-notice" state, in which priority is determined by recording. Zervas Group Architects, P.S. v. Bay View Tower LLC, 161 Wn. App. 322, 325 n.7, 254 P.3d 895 (2011). An unrecorded interest in real property is subordinate to a recorded interest. Zervas, 161 Wn. App. at 325. This is because of the provisions of the recording statute:

> A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. *Every such conveyance not so recorded is void*

> *as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his or her heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded.* An instrument is deemed recorded the minute it is filed for record.

RCW 65.08.070 (1927) (emphasis added). Under this statute, recording a conveyance protects its position against a subsequent bona fide purchaser or mortgagee.

The term "conveyance" is defined by statute to include any written instrument affecting title to real property:

> [E]very written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned *or by which the title to any real property may be affected*, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property.

RCW 65.08.060(3) (emphasis added). This definition expands upon a previous version of the law, which defined "conveyance" to include only "'deeds, mortgages, and assignments of mortgages.'" See Ellingsen v. Franklin County, 117 Wn.2d 24, 30, 810 P.2d 910 (1991), quoting Laws of 1897, ch. 5, § 1.

Select's deed of trust was a conveyance and it was duly recorded in 1994, putting Select in first position at that time. But Select's priority was removed by the 2006 trustee's deed to Gamlam. The trustee's deed recited the foreclosure of Select's deed of trust. To any party who later acquired an interest, the recordation of the trustee's deed provided

notice that Select's interest in the property had been satisfied—to the tune of a $563,000 sale price paid by Gamlam.

Select contends that the priority of its 1994 deed of trust was restored by the bankruptcy court order that voided the sale to Gamlam. Select overstates the reach of that order. Select and Sanchez were both parties to the bankruptcy proceeding and bound by the court's orders. The court order voiding the sale to Gamlam restored Select's deed of trust as against the borrower Sanchez. But the order was not recorded. Select cites no authority for the proposition that the order restored Select's deed of trust as a lien having priority in the chain of title.

Select cites the rule that a creditor violation of an automatic stay in bankruptcy is "void, not voidable." See In re Schwartz, 954 F.2d 569, 571 (9th Cir. 1992). In the context of a bankruptcy proceeding, this rule means that the debtor need not affirmatively challenge creditor violations of the stay. It was adopted to afford debtors better protection so that they can focus their attention on reorganization rather than policing and litigating creditor actions. Schwartz, 954 F.2d at 571. In the context of a lien priority dispute, the bankruptcy rule is not operative. A creditor whose sale is voided is not automatically restored to its presale position in the chain of title. The order voiding the sale to Gamlam could not, and did not, bind strangers to the bankruptcy proceeding such as Westar.

Determinations of lien priority arising under the recording act ordinarily rest on the chain of title as reflected in the county auditor's records. It is well settled that a bona fide purchaser of real

property may rely upon the record title. Ellingsen, 117 Wn.2d at 28; Cunningham v. Norwegian Lutheran Church, 28 Wn.2d 953, 956, 184 P.2d 834 (1947). Because the bankruptcy court order voiding the sale to Gamlam was not recorded, the record title continued to show Gamlam as the owner in fee simple until he quitclaimed the property to Sanchez.

Westar argues that Select, to enjoy the protection of the recording statute, RCW 65.08.070, should have recorded the order voiding sale. Select responds that RCW 65.08.070 does not apply because the bankruptcy court order is not a "conveyance." For this proposition, Select cites Federal Intermediate Credit Bank of Spokane v. O/S Sablefish, 111 Wn.2d 219, 758 P.2d 494 (1988). Sablefish holds that a lien created by a money judgment does not have to be recorded to be effective against a subsequent purchaser. The court's reasoning includes the statement that conveyances as defined by RCW 65.08.060(3) "must be by deed, and deeds, in turn, must be in writing, signed by the party bound, and acknowledged." Sablefish, 111 Wn.2d at 226-27. Select argues this statement in Sablefish shows the bankruptcy court order was not a "conveyance."

Whether or not the order technically meets the definition of a "conveyance," it would have been permissible for Select to record it. See Sablefish, 111 Wn.2d at 227 (permissible for a judgment creditor to record a judgment with the county auditor). Or there may have been other ways for Select to displace the priority of Gamlam's

title, perhaps by giving Gamlam his money back (as both the bankruptcy court and superior court had ordered it to do) and in return receiving, and recording, a quitclaim deed. The point is that Select did nothing. So far as Westar could see in the records of title, Gamlam's purchase extinguished Select's 1994 deed of trust. Gamlam then owned the property in fee simple, and when Gamlam quitclaimed it to Sanchez in 2008, by all appearances Sanchez took it free and clear of encumbrances.

It was not until December 2009 that the bankruptcy court order actually was recorded with the county auditor. This recording occurred too late to affect the priority of the deed of trust recorded by Westar in August 2008.

MORTGAGEE IN GOOD FAITH

Select contends that when Westar recorded its deed of trust in August 2008, it did not attain the status of a subsequent mortgagee in good faith because it had constructive or inquiry notice of the voiding of Gamlam's trustee's deed, and therefore had notice that Select's prior deed of trust had been restored.

"Although good faith is usually a question of fact, it may be resolved on summary judgment where no reasonable minds could differ on the question." Morris v. Swedish Health Servs., 148 Wn. App. 771, 778, 200 P.3d 261 (2009), review denied, 170 Wn.2d 1008 (2010); cf. Preston v. Duncan, 55 Wn.2d 678, 681-82, 349 P.2d 605 (1960). A good faith or *bona fide* purchaser or lender is one who gives valuable consideration and

who is without actual or constructive notice of another's interest in a property. Albice v. Premier Mortg. Servs. of Wash., Inc., 174 Wn.2d 560, 573, 276 P.3d 1277 (2012). The burden of proving that constructive notice exists rests upon the party who claims it exists. Biles-Coleman Lumber Co. v. Lesamiz, 49 Wn.2d 436, 439, 302 P.2d 198 (1956); Paganelli v. Swendsen, 50 Wn.2d 304, 308, 311 P.2d 676 (1957).

A purchaser is deemed to have constructive notice of any prior interest recorded in the auditor's office. Tomlinson v. Clarke, 118 Wn.2d 498, 500, 825 P.2d 706 (1992). A purchaser has constructive notice of liens on the property of the judgment debtor created by judgments filed or rendered in accordance with RCW 4.56.200. Sablefish, 111 Wn.2d at 223. Westar did not have constructive notice through either of these means. Fidelity, Westar's title company, researched the county auditor's records, which showed that Select's mortgage interest was extinguished in 2006 by the foreclosure sale to Gamlam. Fidelity checked court filings for judgment liens against the property and found none.

Fidelity's check of court filings revealed that Sanchez had filed for chapter 13 bankruptcy in 2005. Upon seeing that the bankruptcy was dismissed in 2006 and there were no money judgments entered against Sanchez in that proceeding, Fidelity looked no deeper into the bankruptcy file. Select argues that Fidelity's knowledge about the Sanchez bankruptcy filing should be imputed to Westar and that with such knowledge, Westar had constructive notice of the public records in the bankruptcy

proceeding, including the order voiding the foreclosure sale.

Contrary to what Select's argument implies, not all public records automatically constitute constructive notice of interests in real property. Ellingsen, 117 Wn.2d at 27. In Ellingsen, Franklin County argued that a road easement document publicly recorded in the county engineer's office sufficed to impart constructive notice to the purchasers that the road easement encumbered their property. Rejecting this argument, the court explained that allowing all public records to impart constructive notice to buyers would "wreak havoc with the land title system":

> Under the County's theory all records of these multiple, scattered public offices would impart constructive notice of everything contained in those records because, like the engineer's office, those are public records in public offices. . . . To import constructive notice from every piece of paper or computer file in every government office, from the smallest hamlet to the largest state agency, would wreak havoc with the land title system. As a matter of fact, it would render impossible a meaningful title search.

Ellingsen, 117 Wn.2d at 29-30 (citation omitted). We followed Ellingsen in Dave Robbins Construction, LLC v. First American Title Co., 158 Wn. App. 895, 249 P.3d 625 (2010), where we declined to recognize the state heritage register as conferring constructive notice that a property was located within a historic district. We came to this conclusion because RCW 27.34, the chapter containing the heritage register statute, contained "no declaration it is intended to provide constructive notice to potential purchasers of real property, and as such, it does not provide such notice." Dave Robbins, 158 Wn. App. at 905.

Select does not cite any statutory

provision declaring that orders issued by a bankruptcy court impart constructive notice to potential purchasers of real property. We conclude that they do not. See Murphy v. City of Seattle, 32 Wn. App. 386, 392-93, 647 P.2d 540 (1982) ("Although the stipulation was of 'public record' insofar as it was filed with the clerk of the court as part of a lawsuit, such a filing cannot trigger the protection of the recording statute.").

Select argues we should rely on In re Professional Investment Properties of America, 955 F.2d 623 (9th Cir.), cert. denied, 506 U.S. 818 (1992), where the United States Court of Appeals for the Ninth Circuit held that the contents of a bankruptcy petition filed with the bankruptcy court can provide constructive notice of property encumbrances listed in the petition. In re Prof'l, 955 F.2d at 628. But in that case, the court ruled narrowly that the trustee himself, who was a party to the bankruptcy proceeding, had constructive notice of the facts set forth in the petition. In re Prof'l, 955 F.2d at 628 ("There is no practical reason why a trustee should not be put on inquiry notice by the very petition that created his position.") The case does not establish a rule that a nonparty to a bankruptcy is deemed to have constructive notice of the contents of bankruptcy filings. Westar was not a party to Sanchez's bankruptcy, so In re Prof'l is not on point.

Citing the maxim that "ignorance of the law excuses no one," Leschner v. Department of Labor & Industries, 27 Wn.2d 911, 926, 185 P.2d 113 (1947), Select contends any court order is "the

law" and Westar cannot claim good faith ignorance of the existence of the bankruptcy court order voiding the trustee's deed to Gamlam. This strained argument removes the old maxim from its proper context, in which "the law" refers to "a positive rule established by the legislature." Leschner, 27 Wn.2d at 926. The maxim does not charge Westar with knowledge of the sixty-third docket entry in a dismissed bankruptcy action to which Westar was not a party.

Constructive notice may also arise from a failure to make a reasonable inquiry. If a purchaser "has knowledge or information that would cause an ordinarily prudent person to inquire further, and if such inquiry, reasonably diligently pursued, would lead to discovery of title defects or of equitable rights of others regarding the property, then the purchaser has constructive knowledge of everything the inquiry would have revealed." Albice, 174 Wn.2d at 573. In other words, knowledge of facts sufficient to excite inquiry is constructive notice of all that the inquiry would have disclosed. Miebach v. Colasurdo, 102 Wn.2d 170, 176, 685 P.2d 1074 (1984).

Under Miebach, a purchaser cannot rely solely on the property records while ignoring evidence that someone else is visibly in possession of the property. Here, assuming Miebach also applies to encumbrancers, Westar visited the property and confirmed that it was an "owner-occupied residence" in good condition. This was consistent with the representations Sanchez made to Westar.

Select contends a number of

statements Sanchez made on his loan application show that Westar did not act as a reasonably prudent lender when it loaned money to Sanchez. First, Sanchez stated on the first page of the application that the purpose of the loan was a "refinance," even though he stated later in the application that he owed nothing in outstanding mortgages for the property.[1] Second, Sanchez described the property differently in two sections of the application: once as an investment property and later as his principal residence. Third, he denied having previously had property foreclosed upon, but the chain of title reviewed by Fidelity, Westar's title insurer, revealed Gamlam's trustee's deed that recited the foreclosure of WaMu's 1994 deed of trust. Fourth, Sanchez's quitclaim deed from Gamlam showed Sanchez paying Gamlam a price that fell far below the appraised value of the property. Select suggests Westar, upon reviewing the application, should have obtained a credit check on Sanchez or asked additional questions of Sanchez before approving the loan.

In retrospect, Westar made a bad loan that went into default. Perhaps in that sense, Westar failed to act as a reasonably prudent lender. But an imprudent lending decision is not enough to deprive a lender of the status of

[1] Select appears to assume the term "refinance" exclusively refers to a prior mortgage loan, rather than referring to any type of previous consumer, residential, or business loan. Select cites no authority or evidence to support this limited definition of the term. A dictionary definition of "refinance" refers to obtaining a new line of credit on "an outstanding indebtedness" without limiting the term to the residential mortgage context. See Webster's Third New International Dictionary 1908 (2002).

good faith mortgagee. To establish inquiry notice sufficient to defeat Westar's lien priority, Select must show that the alleged red flags in the Sanchez application pointed to the existence of another lender with an outstanding encumbrance on the property.

"'What makes inquiry a duty is such a visible state of things as is inconsistent with a perfect right in him who proposes to sell.'" Paganelli, 50 Wn.2d at 308, quoting Bernard v. Benson, 58 Wash. 191, 196, 108 P. 439 (1910). So far as Westar knew or should have known, Sanchez had a perfect right to use the property as security for the loan. The loan application was consistent with the record title showing Sanchez to be an owner in fee simple. Nothing in it should have necessarily alerted Westar to the intervening bankruptcy proceedings that restored Select's right to enforce its deed of trust.

This conclusion is supported by evidence submitted by Westar. Westar's president Eric Hogan declared that Westar "makes asset-based loans for commercial purposes based on the value of collateral securing the loan." He said it is reasonable and customary for asset-based lenders to rely on the value of the security and a first lien position as the basis of a lending decision. "Whether Mr. Sanchez had paid less than market value for the Property (or whether he had some off-record compensation arrangement with his vendor) was of no consequence as long as he was in record title and no one challenged that title." He said Westar approved the loan based primarily "on the clear title and 60.7 percent loan to assessed value

ratio." Terry Sarver, chief title officer in the Fidelity office that did the title work and closed escrow for the Westar loan, declared that Sanchez's bankruptcy filing was discovered in the course of a routine check of court filings, but since the bankruptcy was dismissed and the record showed no judgments against Sanchez, "we inquired no further about the substance . . . or pleadings filed in the bankruptcy." Sarver declared that this was standard practice among title companies in Washington. Select has provided no affidavits or other evidence to call into question Hogan's or Sarver's assertions that their actions in this case were consistent with industry standards.

Select claims that the recorded trustee's deed to Gamlam was at odds with Sanchez's denial of ever having had a loan foreclosed. Select contends that discrepancy should have caused Westar to review the docket entries in the dismissed bankruptcy case and to discover therein the bankruptcy court order voiding the sale to Gamlam. Select has presented no expert testimony, no legal authority, and no persuasive argument to support imposing such a duty of inquiry as a matter of law, and we decline to do so. A party seeking to avoid summary judgment cannot simply rest upon the allegations of his pleadings; he must affirmatively present the factual evidence upon which he relies. CR 56(e); Mackey v. Graham, 99 Wn.2d 572, 576, 663 P.2d 490, cert. denied, 464 U.S. 894 (1983).

Because Select did not offer any evidence to rebut Westar's proof that its scope of inquiry was reasonable,

customary, and consistent with standard practices, the evidence before the trial court presented no genuine dispute of fact as to whether Westar behaved reasonably, an essential showing for inquiry notice. Westar was entitled to summary judgment on the issue of its good faith.

As a mortgagee in good faith, Westar was entitled to rely upon record title. Cunningham, 28 Wn.2d at 956. According to the record title, Sanchez owned the property without encumbrance when Westar recorded its deed of trust in 2008. Because Westar recorded its deed of trust without actual or constructive notice of Select's outstanding interest, Westar's lien was entitled to priority over Select's.

Affirmed.

Becker, J.

WE CONCUR:

Leach, C.J.

Grosse, J.