

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

U.S. BANK, NATIONAL ASSOCIATION,
AS TRUSTEE FOR THE C-BASS
MORTGAGE LOAN ASSET-BACKED
CERTIFICATES, SERIES 2007-CB3,

Respondent,

v.

LELA CROSS and KRISTI DUKE and All
Occupants of the Premises located at 15647
Heidi Lane Southeast, Tenino, WA 98589,

Appellants.

No. 41007-9-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — Lela Cross and Kristi Duke (collectively referred to as Cross) appeal from the writ of restitution entered in favor of U.S. Bank. Finding no error, we affirm.¹

Cross executed a deed of trust in 2006 securing property located at 15647 Heidi Lane Southeast in Tenino. Cross defaulted on the loan in November 2008. On February 20, 2009, a notice of default was mailed to Cross and posted at the property. On March 27, 2009, a notice of trustee sale was mailed to Cross and posted at the property, setting the trustee's sale for June 26, 2009. A trustee's sale was held on June 26, 2009, at which U.S. Bank was the highest bidder.

¹ A commissioner of this court initially considered U.S. Bank's motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

No. 41007-9-II

On July 10, 2009, U.S. Bank was issued a trustee's deed to the property.

On September 10, 2009, U.S. Bank filed a complaint for unlawful detainer, seeking a writ of restitution as to the property. On June 9, 2010, Cross filed a counterclaim to the complaint for unlawful detainer, asserting defects in the foreclosure process that led to the trustee's sale. On June 21, 2010, U.S. Bank filed a motion for an order issuing a writ of restitution. On July 13, 2010, Cross filed a motion to stay the hearing on U.S. Bank's motion for a writ of restitution. After a hearing, on July 16, 2010, the trial court denied Cross's motion for a stay and issued a writ of restitution. Cross moved for reconsideration, but on July 29, 2010, the court denied that motion.

Cross appeals, arguing that she never received notice of the trustee's sale, that the trustee's sale was improper, that U.S. Bank did not have authority to foreclose on the deed of trust, that the trial court erred in entering judgment without a U.S. Bank representative being present for confrontation, and that the trial court erred in not addressing their fraud claims. However, in an unlawful detainer action brought under RCW 59.12.030, the only issue to be addressed is who has the right to possess the property. *Savings Bank of Puget Sound v. Mink*, 49 Wn. App. 204, 209, 741 P.2d 1043 (1987); *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). U.S. Bank, as holder of the trustee's deed, had the right to possess the property. Counterclaims of the type brought by Cross cannot be entertained in an unlawful detainer proceeding, although they may be pursued in separate litigation. *Mink*, 49 Wn. App. at 209; *Munden*, 105 Wn.2d at 45. Therefore, the trial court did not err in refusing to address their counterclaims regarding the validity of the trustee's sale before issuing the writ of restitution.

As to Cross's confrontation claim, U.S. Bank was represented by counsel at the unlawful

No. 41007-9-II

detainer hearing. Cross cites no authority, and we are aware of none, that would require another representative of the holder of the trustee's deed to be present at the unlawful detainer hearing for purposes of confrontation.

We affirm the issuance of the writ of restitution.

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:

HUNT, J.

PENOYAR, C.J.