

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

FIRST-CITIZENS BANK & TRUST
COMPANY, a North Carolina banking
association,

Respondent,

v.

VIENNE CORDET and JUAN CARLOS
MOROS, individually, and the marital
community composed thereof; and any other
occupants of 1707 – 380th Street South, Roy,
Washington 98580,

Appellants.

No. 41406-6-II

UNPUBLISHED OPINION

Johanson, J. — Vienne Cordet appeals from a final judgment and writ of restitution following a trustee’s sale. We affirm.¹

On March 1, 2010, the trustee for a deed of trust granted by Cordet and Juan Carlos Moros and secured by a parcel of property in Roy, issued a Notice of Trustee’s Sale to be held on June 4, 2010. On June 3, 2010, Cordet filed a petition for bankruptcy. The sale was continued to August 20, 2010. The bankruptcy court dismissed Cordet’s petition on August 13, 2010. The

¹ A commissioner of this court initially considered Cordet’s appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

trustee held the sale on August 20, 2010, at which First-Citizens Bank & Trust (First-Citizens) was the successful bidder.

On September 10, 2010, First-Citizens served Cordet with a notice to vacate premises. Cordet refused to vacate. First-Citizens brought a complaint for unlawful detainer and a motion for an order for Cordet to show cause why she had not vacated the premises. Cordet responded that First-Citizens had obtained the premises by fraud and that the trustee's sale was conducted illegally. She also noted that she had filed a separate quiet title action as to the premises.

After a hearing, a court commissioner issued a final judgment and an order for a writ of restitution as to the premises. Cordet moved to revise the commissioner's judgment and order. A superior court judge heard argument on Cordet's motion to revise and then denied it. Cordet appeals.

First, Cordet argues that the commissioner and the judge were biased and prejudiced against her because they had not understood the case before ruling on it. She fails to show any bias or prejudice. The fact that a judicial officer rules against a party does not mean he or she is biased or prejudiced. She complains that the judge said there was no transcript, while she had filed one prior to the argument. But what she filed was a narrative report of proceedings, based on her own recollection, not a transcript.

Second, Cordet argues that the commissioner and judge erred in allowing "the same party to be both Trustee and Beneficiary." Br. of Appellant at 7. But Eisenhower and Carlson, PLLC, was the trustee and First-Citizens was the beneficiary. The fact that an attorney from Eisenhower and Carlson represents First-Citizens does not make the trustee's sale unlawful. Third, Cordet argues that the judge erred in refusing her request to enter written findings of fact and conclusions

of law. But there is no requirement that a judge do so after denying a motion to revise. CR 52(a)(5)(B).

Fourth, Cordet argues that the commissioner and judge erred in not addressing her claims of fraud and illegal sale. But in the absence of a restraint on the trustee's sale under RCW 61.24.130(1), which Cordet did not obtain, First-Citizens was entitled to a writ of restitution. RCW 61.24.127(2)(c), (e). Cordet's quiet title action did not restrain the trustee's sale. Her remedies under that action are limited to money damages. RCW 61.24.127(2)(b), (f).

Fifth, Cordet argues that the commissioner denied her the right to confront her accuser. By this, we take her to mean that no employee of First-Citizens was present. But she does not show any requirement for a party's representative, other than its legal counsel, to be present.

Sixth, Cordet argues that the commissioner and judge erred in considering declarations and exhibits submitted by First-Citizens's attorney, contending that it is against public policy to do so. She does not provide any pertinent authority to support her position. A party may submit declarations and exhibits in support of motions. CR 7(b).

Seventh, Cordet complains that neither the commissioner nor the judge swore in First-Citizens's attorney. But as he was not testifying, there was no requirement that either do so.

Eighth, Cordet complains that First-Citizens did not serve its response to her motion to revise on her. As she responded to it, it appears that she did receive service. And even if that service was defective, she does not show any prejudice.

Finally, Cordet argues that the trustee's sale on August 20, 2010, was invalid under RCW 61.24.130(4) because it was conducted less than 45 days after the dismissal of her bankruptcy. But RCW 61.24.130(4) does not apply if the trustee's sale had been continued under RCW

No. 41406-6-II

61.24.040(6). RCW 61.24.130(5). The trustee had continued the sale to August 20. Cordet does not show that the trustee's sale was invalid.

We affirm the final judgment and order 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 in accordance with RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Hunt, P.J.

Van Deren, J.