Treiger/Owens v. Bank of America, N.A., et al, No. 61671-4-I

Cox, J.—(concurring) I agree that the Maplewood property was the separate property of Owens at the time she signed the Agreement Regarding Closing of Sale and Holding of Net Proceeds in Trust ("trust agreement"). The trial court properly rejected her claim to the contrary. I also agree that the supplemental dissolution decree is a judgment that created a lien against the Maplewood real estate on May 9, 2006, the date of entry of that decree. I write separately to support reversal of this portion of the trial court's decision in order to clarify why Bank of America's claim to priority over this judgment lien is untenable. Lastly, because we need not reach the bank's argument that the failure of Document 1376 to comply with RCW 4.64.030 affects the lien priorities in this case, I believe it is unnecessary to address that issue.

Our statutes make clear that a dissolution decree is a judgment.[1] Our statutes and case law also make clear that, upon entry, judgments become liens against the excess value over any homestead exemption of real property of the judgment debtor in the county where the judgment is entered.[2] A judgment lien constitutes constructive notice to all who deal with the real property subject to the lien.[3]

Here, the trial court entered its supplemental decree on May 9, 2006. The

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[1] RCW 26.09.010(5).

[2] RCW 4.56.190 and .200; 6.13.090; BNC Mortgage, Inc. v. Tax Pros, Inc., 111 Wn. App. 238, 246, 46 P.3d 812 (2002).

[3] Hartley v. Liberty Park Assocs., 54 Wn. App. 434, 438, 774 P.2d 40 (1989); see also 28 Marjorie Dick Rombauer, Washington Practice: Creditors' Remedies—Debtors' Relief § 7.7, at 88-89 (1998).

decree expressly awarded to Treiger:

> One half proceeds of the sale of the real property located at 10263 Maplewood Place Southwest, Seattle, Washington, which has a gross value of at least $1,116,000 and one encumbrance with an approximate balance of $469,982.[4]

Accordingly, this decree created a judgment lien against Owens' real property—Maplewood—located in King County, Washington. That lien secures her obligation to pay Treiger one-half of the net proceeds of the sale of her property to the extent those proceeds exceed her claim of homestead. It follows that this judgment lien gave constructive notice to the bank of Treiger's interest in the real estate. More specifically, this May 2006 judgment lien established the priority of his lien over the bank's later lien, which was created by the recording of the prejudgment writ of attachment in the King County Auditor's Office on December 20, 2006.

The bank does not address the judgment lien statutes in its briefing. Rather, it focuses on the above-quoted language of the supplemental decree awarding Treiger "proceeds of the sale of real property." Seizing on that language, the bank characterizes Treiger's interest as nothing more than "an award of personal property," not "an express lien against the Maplewood property."[5] The implication is that Treiger only has an interest in personal property, not in the Maplewood real estate.[6] In making this argument, the bank

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[4] Clerk's Papers at 75.

[5] Brief of Respondent Bank of America, N.A. at 26.

[6] See Kshensky v. Pioneer Nat'l Title Ins. Co., 22 Wn. App. 817, 821 n.3, 592 P.2d 667 (1979) (suggesting that the proceeds of sale of a former marital residence was personal property that could be the subject of a levy under RCW 4.56.190 or could be secured by the filing of a financing statement under the Uniform Commercial Code).

heavily relies on Kshensky v. Pioneer National Title Insurance Co.[7]

There, Estera Kshensky and Ignac Kshensky were divorced in 1964.[8] The divorce decree awarded their Seattle residence to Ms. Kshensky as her sole and separate property.[9] The decree also stated that Mr. Kshensky had a lien on half of the proceeds of any sale of the residence in excess of $14,250, the price they had paid for the residence in 1958, provided he was living at the time of the sale.[1]

In 1977, Ms. Kshensky sold the residence to John Herrin for $61,000.[11] Herrin had no knowledge of the lien created by the 1964 divorce decree.[12] Pioneer National Title Insurance Company provided title insurance to Herrin, insuring him against unknown liens against the property.[13] Ms. Kshensky kept all the proceeds of the sale to Herrin and apparently left the country.[14]

Upon learning of the sale, Mr. Kshensky sued Herrin, Pioneer National Title Insurance Company, and others.[15] The trial court granted the defendants' summary judgment motion, dismissing the action.[16]

On appeal, Mr. Kshensky argued that Herrin was obligated to pay him one-

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[7] 22 Wn. App. 817, 592 P.2d 667 (1979).
[8] Id. at 818.
[9] Id.
[1] Id. at 818 n.2 ("In the event [Ms. Kshensky] shall sell the above mentioned property at any future time for a total sales price in excess of $14,250.00, then [Mr. Kshensky] shall be entitled to a lien on the proceeds of such sale in a sum equal to one-half of the total sales price in excess of $14,250.00.").
[11] Id. at 819.
[12] Id.
[13] Id.
[14] Id.
[15] Id.
[16] Id.

half of the proceeds of the sale above the $14,250 threshold amount based on the lien created by the language in the divorce decree.[17] This court disagreed, concluding that the lien of that decree attached only to the proceeds of sale and that Herrin was without notice of the lien and, thus, a bona fide purchaser of the real estate.[18]

Kshensky is distinguishable from this case both on the facts and the law. First, the Kshensky court did not consider or discuss the judgment lien statutes and case law that we have addressed in these opinions. Thus, that court did not rule on the question whether the divorce decree in that case created a judgment lien, by operation of law, against the real estate described in that decree. In contrast, we hold that the decree in this case created a judgment lien against the Maplewood real estate on the date of entry of the decree, May 9, 2006. Treiger, as a judgment lien creditor of Owens, has a fully perfected right to payment from the proceeds of sale of the real estate prior to payment of the bank's later recorded lien.

Second, the purchaser of the property in Kshensky was a bona fide purchaser. Herrin had no notice of the lien created by the decree.[19] Unlike Herrin, Bank of America is not entitled to the status of a bona fide purchaser for two reasons. The first reason is that it had constructive notice of Treiger's judgment lien against Maplewood from May 9, 2006, the date of entry of the supplemental decree. The second reason is that the bank had further

[17] Id. at 819-20.
[18] Id. at 820-21.
[19] Id. at 819, 821.

constructive notice of that judgment lien because Treiger ***recorded*** the supplemental decree in the King County Auditor's Office on October 27, 2006. That supplemental decree was of record in the auditor's office prior to the time the bank recorded its writ of attachment against Maplewood on December 20, 2006. Either the trial court's entry of judgment on May 9, 2006, or the recording of the supplemental decree in the auditor's office on October 27, 2006, was sufficient to establish priority of Treiger's interest in Maplewood over the bank's later-recorded writ of attachment. In short, the bank's reliance on Kshensky is misplaced.

The lead opinion in this case observes "While Treiger recorded the supplemental decree on October 27, 2006, this was not necessary." This is true. Nevertheless, the recording of the supplemental decree in the auditor's office on October 27, 2006 is an independent reason why we reverse the trial court's decision that the bank's writ of attachment has priority over Treiger's right to receive his share of the net proceeds of the sale of Maplewood.

Finally, the bank argues that the Order Regarding Closing of Sale of Real Property, Etc., which the court entered on August 28, 2006 (Document 1376), does not comply with the provisions of RCW 4.64.030.[2] Specifically, the document lacks the judgment summary on its face page that the plain language of the statute requires.[21] Based on this defect, the bank claims that it is entitled

[2] Brief of Respondent Bank of America, N.A. at 31-34 (citing RCW 4.64.030(3) ("The clerk may not enter a judgment, and a judgment does not take effect, until the judgment has a summary in compliance with this section.")).

[21] See RCW 4.64.030 (form of judgment summary).

to priority over this judgment.

As the lead opinion correctly observes, this order is a judgment that Treiger also recorded prior to December 20, 2006, the date the bank recorded its writ of attachment. Thus, the bank presumably had constructive notice of its contents, notwithstanding the failure of the document to comply with the plain words of the statute. Because the failure of the document to comply with the statute is irrelevant to the outcome in this case, there is no need to address the bank's argument that the absence of the judgment summary affects lien priority. Accordingly, I express no opinion on this issue.

Based on this analysis, I agree to reverse and remand for entry of judgment in favor of Treiger.

Cox, J.