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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

THE MEADOWS HOME OWNERS
ASSOCIATION,

Plaintiff,

v.

JAYAKRISHNAN K. NAIR

Defendants.

NO.17-2-05181-31

MOTION TO COMPEL ACCOUNTING AND
ISSUE CERTIFICATE OF REDEMPTION

I. RELIEF REQUESTED

COMES NOW Defendant Jayakrishnan Nair, owner and primary resident of the home at 13506 34th AVE SE Mill Creek WA 98012, a ~4000 sqft 5 bed home at a premium Mill Creek neighborhood, and professionally appraised at around \$845,000, which was subject to a spurious "HOA assessment" of \$720 (from a newly "sprung" HOA that he had never even joined in the first place) and a subsequent "sheriff sale" for \$40,000 without any service of process, hereby respectfully moves the Court for the following declaratory and injunctive relief, affirming that:

- a) Homeowner has already exercised his statutory right of redemption before Sheriff's officially stated deadline [Exhibit 1] on August 5 2019, on or about 3pm, when he dropped off a cashier's check with Snohomish County Sheriffs Office, for which he was given a time stamped receipt by Ms. Kate Oliver. He had also paid the \$149 redemption fee and completed all paperwork [Exhibit 2]; and

1 b) Regardless of the above, the redemption period for the homeowner from the
2 sheriff sale on 7/27/2018 had also automatically statutorily extended by six
3 months to January 27, 2020 pursuant to RCW 6.23.030 (1); and

4
5 c) The statutorily allowed amount necessary to complete redemption pursuant to
6 RCW 6.23.020 (2), 6.23.090 (2) and 6.23.080(4) have already been tendered to
7 the Sheriff; as the purchasers have grossly & fraudulently exaggerated the amount
8 on the redemption statement without any statutory basis, and not disclosed the
9 rental incomes received. Any overage from the rents received shall be returned to
10 Homeowner by the Purchaser; and

11
12 d) Snohomish County Sheriff shall issue a certificate of redemption for Homeowner.

13
14 **II. STATEMENT OF FACTS**

15
16 1. Jayakrishnan Nair purchased the property at 13506 34th AVE SE Mill Creek WA
17 98012 as the primary residence for his family, on Feb 02, 2006 from PRH LLC as
18 a new construction home they built, designed and optimized to their needs. Please
19 see Homestead Declaration recorded with Snohomish County Recorder [Ex 3].

20
21 2. Mr. Nair's home is a five bedroom fully furnished almost 4000 sqft house
22 appraised at around \$845,000. His family consisting of his paralyzed mother and
23 her live-in secondary caretaker had decided to sublet one of three vacant
bedrooms in the home to a person named Mathew Hale [Ex 4]. In addition to

1 being his primary residence his home is also a cash-positive home for Mr. Nair as
2 he is able to rent three bedrooms in this home for month-to-month tenants like
3 Hale, to help cover his caregiving expenses and best utilize the space in the large
4 home. Family takes up two bedrooms, other three are rented out to tenants.

5
6 3. On July 2018, Mr. Nair received a nasty surprise at his home that there was a
7 sheriff sale pending on the home in a couple of weeks, and he was completely
8 kept in the dark about it as he never received any service or notice even by mail,
9 from anyone. A new HOA had apparently formed in the wake of an old defunct
10 HOA (which had been dead for years after infighting and fraud) in the small 26-
11 home community and obtained an ex parte default judgment and order of sale, all
12 without any service of process. For a period of existence of less than 2 years, the
13 new HOA (which Nair had never even joined) had taken a default order for \$16k
14 [Ex_3] without any service or notification (please note the annual dues is only
15 \$360). Almost 95% of the judgment is in gross attorney fees & late fees.

16
17 4. After his pro se efforts to stay the sale failed, the sheriff sale went through on July
18 27, 2018 and Joyous Investments "purchased" the property for \$40,000. Please
19 note that the market value of this pristine home is close to 21 times this value.

20
21 5. The Washington Supreme Court has held that a sheriff's sale may be set aside on
22 equitable grounds where (1) the buyer or his successor is not a bona fide
23 purchaser, (2) the price paid for the property is grossly inadequate, and (3) there
are "irregularities" surrounding the sale, such as a failure on the part of the

1 creditor to seek satisfaction of the debt from personal property before executing
2 against real property. Casa del Rey v. Hart, 110 Wn.2d 65, 69, 750 P.2d 261
3 (1988) (citing Miebach v. Colasurdo, 102 Wn.2d 170, 685 P.2d 1074 (1984)). All
4 three of these conditions are satisfied in the present case.

5
6 6. Soon after the sale on 7/27/2018, the purchaser paid off the ENTIRE first
7 mortgage for \$262,000 that the homeowner had on the property since 2006,
8 which was at 3.375% 30-year fixed FHA loan, and added to the redemption
9 amount at 12% for another \$26k. This made it harder for Mr. Nair to redeem the
10 property and he lost favorable terms on the first mortgage as can be seen from
11 notice and purchaser's redemption accounting [Ex_10].

12
13 7. The purchaser claims that he had to pay off the deed to stop a notice of trustee
14 sale recorded on the property, but the fact as can be clearly seen from the notice
15 [Ex 5], Page 2 line 2, the outstanding arrears was only \$24,435. There was no
16 reason whatsoever to pay off the entire \$241,328 in ADDITION to the balance
17 due. Statutorily, the Purchaser is only allowed to pay (and add to the redemption
18 invoice) what was necessary to maintain the judgment debtors interest in the
19 property, i.e. to prevent the trustee sale, for which the arrears of \$24,435 and the
20 monthly mortgage payments were sufficient. Payment of the remaining principal
21 balance of \$241,328 was entirely inappropriate and aimed at gross abuse/ fraud.

22
23 8. In the redemption notice [Ex: 1], the Sheriff has stated that the redemption period
would expire on August 5th at 4:30 pm, but this is incorrect as the deadline has

1 been mandatorily extended by six months to January 27, 2020 per RCW
2 6.23.030(2) as the notice requirements per RCW 6.23.030(1) were not met.

3
4 9. Mr. Nair never received any notice of expiration of redemption period, despite
5 being the homeowner, let alone in the 40 to 60 days preceding the expiration, as is
6 statutorily required. As the docket for the case clearly shows, no notice of
7 expiration was ever mailed and/or affidavit of mailing recorded with the clerk or
8 sheriff as is mandatorily required. Failure to comply with the section has therefore
9 AUTOMATICALLY extended the redemption period by another six months.

10
11 10. Mr. Nair has also requested a detailed accounting from the purchaser as the
12 expenses claimed in [Ex_6] seem incredibly bloated and including line items
13 (such as legal expenses for \$1600) that clearly have no legal basis to be the
14 redemptioners responsibility to pay.

15
16 11. The Statutes do not allow paying off mortgages, senior liens and other obligations in full
17 beyond what is necessary to be paid to maintain the judgment debtor's interest in the
18 property. Furthermore, the purchaser claims to have paid insurance and other legal
19 expenses that he has tacked on to the accounting in [Ex_4]. The Purchaser claims to have
20 only received about \$1250 per month in rent for a nearly 4000 sqft, 5 bedroom home in a
21 super premium golf course location close to the coveted I-5 and i-405 interchange, which
22 is laughable for anyone familiar with the prevailing rates in the area (each individual
23 room rents for much more at this home). Each BEDROOM rents for more than that, let
 alone the whole home, as can be seen from the lease with Mr. Hale for \$1500 for one

1 room. Furthermore the house has been active on airbnb.com and Joyous has made money
2 renting all five bedrooms on the site for as high as \$99/ night /room as advertised.

3
4 12. The purchaser has clearly not disclosed the full rents and incomes received, and has done
5 everything possible to put the redemption amount beyond Mr. Nair's reach by paying off
6 liens that are 30 year FHA loans, without any statutory basis to do so, only in order to
7 steal the nearly \$550,000 in NET equity he has built in his home over 13 years.

8
9 13. The Association's dues that the homeowner purportedly missed for just over a year was
10 just \$30/month, and the purchaser has managed to come up with a redemption amount of
11 more than \$327,000, with very suspicious line items for accounting designed to inflate
12 the redemption amount and replace 3.375% FHA loan with 12% interest for redemption
13 advance, which is completely absurd and illegal. The only permitted costs per RCW
14 6.23.020 are the costs necessary to keep Mr. Nair's interest in the property, which could
15 have been done by simply paying the amounts / regular mortgage payments required to
16 reinstate the loan from going to a trustee sale during the purchaser's possession. This
17 amount is only about \$24k, which is a small fraction of \$262K and 12% interest.

18 **III. LEGAL ANALYSIS**

19 1. The redemptioner's accounting [Ex_10]states that he has paid off the entire lien
20 balance for the first mortgage, which was \$262K. However, RCW 6.23.020 states
21 thus clearly on what can be claimed on the redemption accounting: *.." any sum*
22 *paid by the purchaser on a prior lien or obligation secured by an interest in the*
23 *property to the extent the payment was necessary for the protection of the interest*
of the judgment debtor ".

1 2. The purchaser was only required to pay the minimum amount required to keep the
2 judgment debtors interest in the property, and NO MORE. Therefore the
3 purchaser's payoff of the first mortgage has no statutory basis as ONLY the 24k
4 that would have been entirely sufficient to keep the mortgage from foreclosure
5 (and thus protect the judgment debtor's interest in the home) is all that the statute
6 allows to be claimed. The judgment debtor is only required to pay what was
7 necessary to keep the home from going into a trustee sale from the first mortgage,
8 which was \$24,434.95 as can be seen from the Notice of Trustee Sale [Ex_12].
9

10 3. RCW 6.23.080 (4) controls here:

11 *" A purchaser who has paid a sum on a prior lien or obligation secured by*
12 *an interest in the property shall submit to the sheriff an affidavit, verified by*
13 *the purchaser or an agent, showing the amount paid on the prior lien or*
14 *obligation, or the prior lien or obligation may be disregarded."*
15

16 4. The Purchaser claims to have force placed insurance, while the homeowner has
17 already paid and maintained comprehensive insurance coverage [Ex 7]. It was not
18 necessary for the Purchaser to double pay the premium on the insurance.
19

20 5. Statutes do not allow extraneous legal charges to be brought to accounting. There
21 is no explanation on why these legal charges were necessary to protect the
22 judgment debtor's interest in the home, per the detailed sworn statement on
23 [Ex_6]. Such arbitrary and baseless expenses are not supported by statute.

1 6. Numerous courts acknowledge inherent judicial authority to toll statutory
2 redemption periods upon a finding of fraud, oppression, or other equitable
3 circumstances. See, e.g., Powers v. Powers, 221 Cal.App.2d 746, 34 Cal.Rptr.
4 835, 836 (1963) (redemption allowed after expiration of statutory period if
5 equitable conditions exist); Buell v. White, 908 P.2d 1175, 1177-78 (Colo.Ct.
6 App.1995) (extension of time for statutory redemption if prospective
7 redemptioner advised payment would not be accepted); Williams v. McCallum,
8 128 Idaho 637, 917 P.2d 794, 795 (1996) (statutory redemption permitted by
9 granting equitable relief); Pace v. Malonee, 79 Nev. 365, 385 P.2d 353, 354
10 (1963) (equitable relief permitted for statutory redemption); Dalton v. Franken
11 Constr. Cos., 121 N.M. 539, 914 P.2d 1036, 1040 (1996) (equitable relief
12 permitted if wrongful conduct by redemptioner in possession); Wilson v.
13 Crimmins, 172 Or. 616, 143 P.2d 665, 668 (1943) (equitable relief allowed when
14 prospective redemptioner advised tender will not be accepted). See 59 C.J.S.
15 Mortgages § 850(f). The tolling rule has been applied where a redemptioner in
16 possession submits a grossly exaggerated or fraudulent statement in accounting
17 actions to determine the sum required to redeem or where the prospective
18 redemptioner could not with due diligence ascertain the amount necessary to
19 redeem. Lavretta v. L. Hammel Dry Goods Co., 243 Ala. 34, 8 So.2d 264 (1942);
20 59 C.J.S. Mortgages § 850(f). See also Wilson v. Crimmins, 143 P.2d at 667-68.

21
22 7. Likewise, in Millay vs Cam, 955 P.2d 791 (1998), 135 Wash. 2d 193. the
23 Honorable Supreme Court of Washington has found it must allow equitable
tolling when justice requires. Also see Finkelstein v. Security Properties, Inc., 76

1 Wash. App. 733, 739-40, 888 P.2d 161 (1995) (citing Douchette v. Bethel Sch.
2 Dist. No. 403, 117 Wash.2d 805, 812, 818 P.2d 1362 (1991)), review denied, 127
3 Wash.2d 1002, 898 P.2d 307 (1995). The predicates for equitable tolling are bad
4 faith, deception, or false assurances by the defendant and the exercise of diligence
5 by the plaintiff. Finkelstein, 76 Wash. App. at 739-40, 888 P.2d 161. In
6 Washington equitable tolling is appropriate when consistent with both the purpose
7 of the statute providing the cause of action and the purpose of the statute of
8 limitations. Douchette, 117 Wash.2d at 812, 818 P.2d 1362.

9
10 8. The Washington Supreme Court further states on Millay vs Cam, "We hold the
11 statutory redemption period may be equitably tolled when the redemptioner in
12 possession submits a grossly exaggerated statement of the sum required to redeem
13 and the prospective redemptioner cannot with due diligence ascertain the sum
14 required to redeem within the time remaining." This is exactly the case here as the
15 Homeowner/ Redemptioner has done all the diligence (and completed the steps to
16 timely exercise the redemption right) to obtain a fair statutorily valid redemption
17 amount but has been disallowed from redemption by an invalid and grossly
18 bloated redemption amount that is exponentially higher than the statutes would
19 allow. Moreover, at the conservative rate \$1500/ per month/ room as had been the
20 going rate BEFORE the sale, the house generates \$7500 / month in rental income.
21 For the 18 months since the date of sale, the gross rental proceeds are \$135,000.
22 This amount is far greater than the sale price of \$40,000 and all the allowed
23 expenses including the \$24K to cure the default for the trustee sale.

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IV. REDEMPTION ACCOUNTING

Based on the above facts, the correct redemption amount should be amended from the claims in [Ex_6] as follows:

1. Allowed Claims

a) Additional Property Tax:	\$2770.68
b) Filing Fee	\$100
c) Filing Fee	\$67
d) Purchase of Property	\$40,000
e) Property taxes 1st half 2019	\$3020.37

Total Allowed Claims: 45,958.05

2. Allowed Expenses

a) Labor for Leaks/repairs	\$150
b) Plumbing Repair	\$95.12

Total Allowed Expenses: \$245.12

3. Disallowed Expenses

a) Legal Expense	\$1625	(See III.9)
b) American Family Insurance	\$525.28	(See III.8)

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4. Statutorily Amended Claims:

a) 1st Lien Payoff Claimed: \$262,261.69

Statutorily Allowed to maintain Judgment Debtor's interest in the property pursuant to
RCW 6.23.020 : **\$24,434.95**

5. Credit for Income Received:

RENTS RECEIVED (Claimed): \$15,000
Rents Received (Actual: \$7500/ month minimum market rate): \$135,000

FINAL STATEMENT FOR AMOUNT TO REDEEM

Claims:

Allowed: \$45,958.05
Amended: \$24,434.95

Expenses:

Allowed: \$245.12
TOTAL INVOICE: \$70,638.12

MINUS CREDITS

Paid via Cashier's Check on 8/5/2019: \$1000

Rents: \$15,000 (Claimed: \$1250/ mo for a 4000 sqft premium mansion)
MOTION TO COMPEL ACCOUNTING AND
ISSUE CERTIFICATE OF REDEMPTION

1 Actual/ Market Rate: \$135,000

2 DISPUTE IN RENT

3

4 According to fair market rental rates, the rent for a single bedroom is about \$1500 per
5 room including utilities, which is the same as rent that the Purchaser has claimed to have
6 collected from Mr. Hale and also Mr. Nair had rented to Mr. Hale as can be seen from
7 lease prior to the sale while living there as primary resident owner renting vacant room.

8

9 The property is 5 bedrooms, nearly 4000 sqft. If renting by the room, the MINIMUM
10 Rent that would be fair and acceptable would be \$7500. For 18 months the Purchaser
11 should have, or could have, or would have collected \$135,000 in rent however, he has
12 only accounted for \$15,000, which means the redemption accounting is inaccurate and
13 bogus. The purchaser has not disclosed the true rents received and is banking on deceiving
14 the Court into thinking he only collected 10% of the fair market rent according to any
15 reasonable market research on the neighborhood and the size and condition of the
16 pristine, fully furnished five bedroom 4000 sqft property at a premium location.

17

18 Purchaser had full access to the property and admits he has been collecting rent from one
19 bedroom from Mr. Hale at \$1250 per month, per his own submission. He has also listed
20 the other four bedrooms on airbnb and neighbors verify the property is being used for
21 rentals and Airbnb for the entire period under his possession, in the last 18 months. He
22 has not disclosed the remaining rent / Airbnb income he has received, and it is absolutely
23 inconceivable that he would not have collected additional rent or that he would have let
the other four rooms be vacant during this period.

MOTION TO COMPEL ACCOUNTING AND
ISSUE CERTIFICATE OF REDEMPTION

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Therefore the Purchaser has an additional \$120,000, AT LEAST, in rents that he has not disclosed which the Court must compel to disclose, or in the alternative, apply fair market rental income for the period that the Purchaser had possession of the home. The current redemption accounting brought by the Purchaser to the Sheriff is therefore bloated, bogus, inaccurate and includes large statutorily unsupported claims that he has used to exponentially balloon a mere \$16k default judgment (on an HOA claiming \$30 monthly payments). The homeowner/judgment debtor has taken the steps to redeem the home in GOOD FAITH, and has already tendered a cashiers check for \$1000 plus the redemption fee of \$149 to the Sheriff before August 5, 2018. However, the Sheriff has not issued a certificate of redemption waiting on a Court determination on the accounting for the redemption amount.

V. CONCLUSION

For the foregoing reasons, the Court should grant Mr. Nair’s motion and affirm that Mr. Nair's redemption rights have been exercised as of August 5 2019, when he filed the redemption notice and paid the fee and \$1000 cashier's check to Sheriff's office. Joyous Investments should be ordered to provide an accurate accounting of the rents received, failing which a fair market rent (of \$7500/mo for 18 months for a 4000 sqft home, i.e. \$135,000) should be applied as credit for the redemption, which would mean homeowner Mr. Nair is owed a refund. As he has already timely exercised his right of redemption, Sheriff should also be ordered to issue a certificate of redemption.



JUNE 20, 2020

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AFFIDAVIT OF SERVICE

Jayakrishnan Nair, a US legal resident over the age of 18 hereby declare as follows:

1. On 6/20/2020, I served Sound Legal Partners LLC, representing the Meadows HOA with the following documents:

MOTION TO COMPEL ACCOUNTING AND ISSUANCE OF SHERIFF'S DEED
EXHIBITS THEREOF

3. Address(es) of service:

Rachel Burkemper

Sound Legal Partners LLC

6161 NE 175th ST, #205

Kenmore WA 98028

and

Mike Fulbright
Law Office of Michael Fulbright
1409 140th Place NE, Suite 102
Bellevue, WA 98007
(425) 429-6888

4. Service was made as indicated below:

- By delivery to the person
- By USPS Priority mailing to the above address(es) of service.

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.



JUNE 20, 2020

8646 230th Way NE

Redmond WA 98053