

FILED
CLALLAM CO CLERK
2017 JUN 16 P 1:15
BARBARA CHRISTENSEN

SUPERIOR COURT FOR THE STATE OF WASHINGTON
IN THE COUNTY OF CLALLAM

AGNEW 2, LLC, a Montana Limited
Liability Company,

Plaintiff,

v.

CHARLES ROGER BUCKNER,
Defendant.

NO. 17-2-00398-3

MOTION FOR TEMPORARY AND
PERMANENT INJUNCTION

I. RELIEF REQUESTED

Plaintiff, Agnew 2, LLC ("Agnew"), through its counsel at Carney Badley Spellman, requests that this court provide immediate relief by granting a temporary restraining order and preliminary injunction to enjoin Defendant, Charles Rodger Buckner ("Roger Buckner"), from wrongfully clouding title to real property located in Clallam County and owned by Agnew.

Agnew owns two separate properties that are presently under contract for sale. Roger Buckner, knowing that Agnew is trying to sell the properties, filed a fraudulent Deed of Trust and Subordination Agreement that claims a first position lien on both properties in the principal amount of \$20,000. Agnew cannot deliver clean title to the buyers of the properties due to Roger Buckner's wrongful lien on title, cannot close the purchase and sales agreements and is at risk of losing the sales and breaching the purchase and sale agreements.

Agnew seeks a preliminary injunction that clears Roger Buckner's Deed of Trust and Subordination Agreement from the title of both properties so that both properties can be sold and proposes that in lieu of a bond, Agnew is directed to deposit in the Court Registry \$10,000 from the sale proceeds of each property.

MOTION FOR TEMPORARY AND PERMANENT
INJUNCTION – I

AGN003-0003 4612929.docx



Record Certification: I Certify that the electronic copy is a
correct copy of the original, on the date filed in this office,
and was taken under the Clerk's direction and control.
Clallam County Clerk, by lg Deputy # pages: 8

CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Avenue, Suite 3600
Seattle, WA 98104-7010
(206) 622-8020

ORIGINAL

II. STATEMENT OF FACTS

Plaintiff, Agnew is a Montana Limited Liability Company.¹ Agnew's managing member and sole member is Olympic Holdings Living Trust (OHLT).² Heather Blakely is the grantor, beneficiary, and current Trustee of OHLT.³ She is also the former spouse of Defendant Roger Buckner, and mother of Roger Todd Buckner ("Todd Buckner").⁴

OHLT was formed in July 2013, and originally designated Gary Rhodes of Rhodes Tax Services ("Rhodes") as its Trustee and Successor Trustee.⁵ Todd Buckner was designated the Alternate Successor Trustee, whose appointment to Trustee would become effective if and only if the Trustee and Successor Trustee were unable to serve.⁶

Agnew purchased two separate parcels of property located in Clallam County and referred to herein as Property 1 and Property 2 (the "Property") using the personal funds of Heather Blakely.⁷ Agnew is the title owner of the Property.⁸

To protect its investment in the Property, OHLT, as Beneficiary, and Agnew, as Grantor, entered into a Deed of Trust dated July 17, 2013, which was filed in Clallam County on July 17, 2013 (the "OHLT DOT").⁹ The OHLT DOT, was executed by Trustee Rhoades on behalf of the Grantor, Agnew, and by Trustee Rhoades on behalf of the Beneficiary, OHLT.

In May 2014, OHLT's Trustee Rhodes was replaced by Andrew Mauritzen ("Mauritzen") who was appointed as OHLT's Trustee and Successor Trustee.¹⁰ Todd Buckner

¹ Declaration of Heather Blakely ("Blakely Decl."), ¶ 2.

² Id.

³ Id.

⁴ Id., ¶ 3.

⁵ Id., ¶ 4.

⁶ Id., ¶ 4, ¶ 5 and Exhibit A to the Blakeley Decl.

⁷ Id., ¶ 6.

⁸ Id., ¶ 7.

⁹ Id., ¶ 8.

¹⁰ Id., ¶ 8, ¶ 9 and Exhibit B to the Blakeley Decl.

1 remained Alternate Successor Trustee whose appointment to Trustee would become effective
2 if and only if the Trustee and Successor Trustee were unable to serve.¹¹

3 On December 22, 2016, Roger Buckner and Todd Buckner caused the filing of a deed
4 of trust (the "Buckner DOT") in Clallam County that claims to convey Agnew's interest in the
5 Property to secure the performance of a promissory note (the "Buckner Promissory Note").¹²
6 The Buckner Promissory Note claims a \$20,000 loan to Agnew from Roger Buckner for the
7 sum of \$20,000.¹³ On December 22, 2016, Roger Buckner and Todd Buckner also filed a
8 subordination agreement (the "Buckner Subordination Agreement") in Clallam County,
9 claiming that the OHLT DOT was subordinate to the Buckner DOT.¹⁴

10 The Buckner DOT is dated October 14, 2015 and executed by Todd Buckner "on behalf
11 of" OHLT, the managing member of Agnew, and Roger Buckner as "Beneficiary".¹⁵ The
12 Buckner Promissory Note is also dated October 14, 2015 and executed by Todd Buckner as the
13 managing member of Agnew, and Roger Buckner as the lender.¹⁶ Likewise, the Buckner
14 Subordination Agreement is dated October 14, 2015 and is executed by Todd Buckner as
15 "Alternate Successor Trustee" for OHLT, and Roger Buckner as "Lender".¹⁷ Todd Buckner's
16 and Roger Buckner's signatures were not notarized when the Buckner DOT and Buckner
17 Subordination Agreement were executed on October 14, 2015.

18
19
20 ¹¹ Id., ¶ 10, ¶ 11 and Exhibit C to the Blakeley Decl.

21 ¹² Id., ¶ 13.

22 ¹³ Id., ¶ 18. The Buckner Promissory Note states that Roger Buckner made a commercial loan to Agnew in the
23 amount of \$15,000. It also states that Roger Buckner loaned Heather Blakely \$5,000, which it refers to as the
24 "Legacy Debt." Both of these statements are false. As confirmed in an e-mail from Todd Buckner to Roger
25 Buckner and Heather Blakely, the \$15,000 "commercial loan" was a personal loan made by Roger Buckner to
26 Todd Buckner, "Dad loaned \$15k to me personally for which I owe Dad \$20k in return." Id. ¶ 21 and Exhibit F to
the Blakely Decl. The \$5,000 "Legacy Debt" is a fabrication and, instead represents a personal loan that Roger
Buckner made to Todd Buckner decades ago that was never repaid by Todd Buckner. Id. ¶ 22.

¹⁴ Id., ¶ 24.

¹⁵ Id., ¶ 15.

¹⁶ Id., ¶ 13.

¹⁷ Id., ¶ 26.

As of October 14, 2015, Todd Buckner had no authority to obligate Agnew to the Buckner DOT, the Buckner Promissory Note or the Buckner Subordination Agreement. Instead, as of October 14, 2015, Mauritzen was the Trustee for OHLT.¹⁸ Likewise, as of December 22, 2016, the date when the Buckner DOT first became a cloud on Agnew's title, Todd Buckner had no authority to take any action on behalf of Agnew.¹⁹ Heather Blakely had no knowledge of and did not authorize the Buckner DOT, the Buckner Promissory Note, or the Buckner Subordination Agreement, and only became aware of the Buckner DOT and the Buckner Subordination Agreement after they were filed in the Clallam County Recorder's Office on December 22, 2016.²⁰

Currently, Agnew has both Property 1 and Property 2 under contract for sale.²¹ However, the Buckner DOT is preventing Agnew from delivering clean title to the buyers.²² It is also preventing the buyers from obtaining title insurance.²³ The closing of Property 1 has been postponed three times due to the Buckner DOT's cloud on title, and it is unlikely that another extension will be granted.²⁴ The closing of Property 2 was scheduled for June 15,

¹⁸ Id., ¶ 16, ¶ 21, ¶ 28.

¹⁹ Id. In August of 2016, several months prior to the filing of the Buckner DOT and the Buckner Subordination Agreement, Todd Buckner, who was occupying the Property, was physically removed from the property by the Clallam County Sheriff's Office after Heather Blakely obtained a protective order that prohibited Todd Buckner from being on the Property. After being physically removed from the Property, Todd Buckner perjured himself when he faxed a signed Declaration, dated August 21, 2016, to the Clallam County Sheriff's Office in which he claimed that all of OHLT's interest in Agnew had been assigned over to a Montana Trust that he controlled and requested that Heather Blakely be arrested for trespass, breaking and entering, vandalism and other crimes. The Clallam County Sheriff took no action based on Todd Buckner perjured declaration. See ¶ 30 and ¶ 31 to the Blakely Decl. Moreover, Todd Buckner was incarcerated in Clallam County in September and October of 2016 after being convicted of violating a protective order that was obtained by a neighbor of Property 1. See ¶ 32 to the Blakely Decl. Heather Blakely cooperated with Clallam County in Todd Buckner's conviction. Id. Heather Blakely believes that the filing of the Buckner DOT and the Buckner Subordination Agreement is in direct retaliation for her actions that lead to Todd Buckner's removal from the Property and his incarceration. Id. She also believes that these retaliatory acts are a direct violation of the protective order she has against Todd Buckner.

²⁰ Id., ¶ 29.

²¹ Id., ¶ 33.

²² Id., ¶ 34.

²³ Id.

²⁴ Id., ¶ 33.

2017.²⁵ The Buyer of Property 2 is under a time constraint for closing and it is likely that Agnew will lose the sale without immediate relief from the Buckner DOT.

III. EVIDENCE RELIED UPON

The motion is supported by the declaration of Heather Blakely and the exhibits attached thereto.

IV. AUTHORITY AND ARGUMENT

Pursuant to RCW 7.40.020, a plaintiff is entitled to an injunction when: (1) “it appears by the complaint that the plaintiff is entitled to the relief demanded;” and (2) the relief demanded consists, in some part, of “restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce great injury to the plaintiff.”

To obtain an injunction, a plaintiff must show: “(1) that he has a clear legal or equitable right; (2) that he has a well-grounded fear of immediate invasion of that right; and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.” *Tyler Pipe Indus., Inc. v. Dept. of Revenue*, 96 Wn.2d 785, 792, 638 P.2d 1213 (1982), quoting *Port of Seattle v. Int’l Longshoremen’s & Warehousemen’s Union*, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958). These criteria are to be examined by the trial court “in light of equity including balancing the relative interests of the parties....” *Tyler Pipe*, 96 Wn.2d at 792. The Court need not adjudicate the ultimate rights in the lawsuit, but must only examine the likelihood that the plaintiff will ultimately prevail on the merits. *Id.* at 793.

For this court to grant a temporary restraining order and preliminary injunction under the present circumstances, Agnew must show: (1) that it is likely to prevail on the merits of its quiet title claim against defendant; and, (2) that it can satisfy the requisite elements set forth in *Tyler Pipe* for this court to provide injunctive relief.

A. Agnew Will Prevail on the Merits of its Quiet Title Claim

²⁵ *Id.* The closing of Property 2 has been briefly extended.

1 Agnew has shown sufficient facts for this court to determine it is likely to prevail on the
 2 merits of its quiet title claim since Todd Buckner had no authority to obligate or bind Agnew
 3 to the Buckner DOT, the Buckner Promissory Note or the Buckner Subordination Agreement.
 4 Further, the Defendant will not be able to show that Todd Buckner had any authorization or
 5 authority to execute these conveyances on behalf of Agnew or OHLT, or that the Buckner DOT
 6 was properly notarized, as required by law.

7 The Buckner DOT, Buckner Promissory Note, and Buckner Subordination Agreement
 8 are void as a matter of law. On the date these instruments were executed Mauritzen was the
 9 Trustee for OHLT, and the only person authorized to bind or obligate Agnew. Todd Buckner
 10 had no authorization or authority to execute the Buckner DOT, the Buckner Promissory Note
 11 or the Buckner Subordination Agreement on behalf of Agnew or OHLT. Further, the Buckner
 12 DOT was not notarized pursuant to the laws of Washington State.²⁶ Thus, these instruments
 13 are void, and cannot be used to assert a valid claim against Agnew's title to the Property.

14 RCW 7.28.010 provides a cause of action to quiet title.

15 Any person having a valid subsisting interest in real property, and a right
 16 to the possession thereof, may recover the same by action in the superior
 17 court of the proper county, to be brought against . . . the person claiming
 18 the title or some interest therein, and may have judgment in such action
 quieting or removing a cloud from plaintiff's title.

19 Agnew is the titled owner of the Property and as such has a "valid subsisting interest in
 20 real property," and a "right to possession thereof." The Buckner DOT and the Buckner

21 ²⁶ The notarial certificate affixed to the Buckner DOT (see "Exhibit D" of the Blakeley Decl.) does not comply
 22 with the requirements set forth in RCW 42.44.100. The notarial certificate is dated December 20, 2016 and was
 23 not affixed to the original Buckner DOT. Rather the certificate is affixed to the document titled
 24 "CONFIRMATION OF DEED OF TRUST SECURING COMMERCIAL PROMISSORY NOTE," a document
 25 later attached to the Buckner DOT that alleges to "evidence a complete binding agreement between the Parties" of
 26 the Buckner DOT. However, this notarial certificate, purporting to notarize the Buckner DOT by notarizing the
 attached Confirmation of Deed of Trust, only complies with the requirements for an "acknowledgement in an
 individual capacity" under RCW 42.44.100(1). For the purpose of the Buckner DOT the proper form of notarial
 certificate must comport with the requirements for an "acknowledgement in a representative capacity" under RCW
 42.44.100(2). RCW 42.44.100(2) requires certification that the person signing the instrument state "on oath" that
 they are "authorized to execute the instrument," and that they state their title and name the party on behalf of whom
 the instrument was executed. The notarial certificate attached to the Buckner DOT does not contain the information
 required under RCW 42.44.100(2). Thus the Buckner DOT is not properly notarized.

1 Subordination Agreement have clouded the title to the Property, preventing Agnew from
2 closing current sale contracts. Thus Agnew is entitled to injunctive relief by this court under
3 RCW 7.28.010.

4 The facts shown here are sufficient for this court to establish that Agnew is likely to,
5 and will, prevail on the merits of its quiet title claim. Agnew has a valid cause of action to quiet
6 title under RCW 7.28.010, and Defendants claim against Agnew's title has no legal authority.
7 Thus, Agnew will prevail.

8 **B. Agnew is Entitled to Injunctive Relief**

9 Agnew can satisfy the requisite elements for this court to grant injunctive relief.
10 Agnew's title has been clouded by the Defendant, preventing Agnew from closing sale contracts
11 for the Property. Thus, Agnew is entitled to immediate relief from this court in the form of a
12 temporary restraining order and preliminary injunction to enjoin Defendant from clouding title
13 so that Agnew may close its pending sale contracts for the Property.

14 For this court to grant an injunction, Agnew must show: (1) that it has a clear legal or
15 equitable right; (2) that it has a well-grounded fear of immediate invasion of that right; and (3)
16 that the acts complained of are either resulting in or will result in actual and substantial injury
17 to it. *Tyler Pipe*, 96 Wn.2d at 792.

18 Here, Agnew is the title owner of the Property, and as such has a legal right to clean
19 title. The Defendant, by filling the Buckner DOT and the Buckner Subordination Agreement,
20 has placed a cloud on Agnew's title, which is preventing Agnew from closing pending sale
21 contracts. This constitutes an "immediate invasion" of Agnew's legal right to title. Agnew will
22 suffer "actual and substantial injury" if it is unable to close its pending sale contracts on the
23 Property. Thus, Agnew satisfies all three prongs under *Tyler Pipe*, and is entitled to injunctive
24 relief. *Tyler Pipe*, 96 Wn.2d at 792.

25 **C. Deposits in Lieu of Bond**

1 Agnew has established all requisite elements for the issuance of a temporary restraining
2 order and preliminary injunction to quiet Agnew's title with respect the Buckner DOT and the
3 Buckner Subordination Agreement. Agnew seeks the entry of an order that immediately enjoins
4 Defendant Roger Buckner from asserting any legal claim on the title of the Property pursuant
5 to the Buckner DOT or the Buckner Subordination Agreement and that immediately quiets title
6 by striking the Buckner DOT and the Buckner Subordination Agreement from Agnew's title.

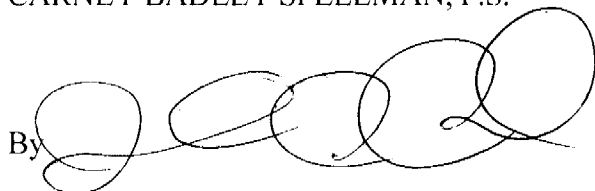
7 To protect Defendant Roger Buckner's rights and in lieu of an injunction bond, Agnew
8 requests that the injunction order provides that Agnew deposit \$10,000 from the proceeds of
9 the sale of Property 1 and Property 2, \$20,000 in total, into the court's registry until any rights
10 concerning the Buckner Promissory Note can be finally determined by this court.

11 **V. CONCLUSION**

12 Agnew has made a sufficient showing of fact for this court to determine that Agnew is
13 entitled to injunctive relief from the cloud Defendant has placed on Agnew's title. The Buckner
14 DOT and the Buckner Subordination Agreement are void as a matter of law. The Defendant
15 has invaded Agnew's legal right to clean title, which has caused and will continue to cause
16 actual and substantial injury to Agnew if an injunction is not granted immediately. Thus, this
17 court should immediately grant a temporary restraining order and preliminary injunction to
18 quiet Agnew's title.

19 DATED this 16th day of June, 2017.

20 CARNEY BADLEY SPELLMAN, P.S.

21
22
23 By 

24 John R. Welch, WSBA No. 26649
25 Attorneys for Plaintiff Agnew 2, LLC
26