



IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

No. S-1-SC-40119

BOKE, N.A.,

Plaintiff,

v.

**THE UNKNOWN HEIRS AND DEVISEES
AND LEGATEES OF LINORA P. PACHECO,
Deceased, JOSE PACHECO, SANTA FE
COMMUNITY HOUSING TRUST, NEW
MEXICO MORTGAGE FINANCE
AUTHORITY, and OCCUPANTS OF THE
PROPERTY**

Defendants,

and

ASHOK KAUSHAL,

Appellant-Petitioner/Cross-Respondent,

v.

SANTA FE COMMUNITY HOUSING TRUST,

Appellee-Respondent/Cross Petitioner.

REPLY BRIEF

By: Santa Fe Community Housing Trust

Respectfully Submitted,

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New Mexico Cases:

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RELATED APPEALS:

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New Mexico Statutes:

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New Mexico Constitution:

N.M. Const. art VI, § 22

N.M. Const. art VI, § 132
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SUMMARY

The proceedings before this Court should be limited to determining whether the Judgment on the Mandate (RP 708) reflects the Opinion in *Kaushal I* (2021-NMCA-010) as ordered by the Court of Appeals Mandate and the Opinion itself. (*State ex rel. King v. UU Bar Ranch Ltd. Partnership*, 2009-NMSC-010, ¶22, 145 N.M. 769 (“The Court of Appeals 1 opinion and mandate set forth the full extent of the jurisdiction of the district court on remand.”); *Hughes v. Hughes*, 1984-NMSC-035, ¶4, 101 N.M. 74: (“Our mandate and opinion in the prior appeal set forth the full extent of the jurisdiction of the district court on remand.”))

This proceeding should not involve a rehash of the various options for resolution of an ambiguity found in section NMSA 1978 §39-5-18(D). That resolution was selected by *Kaushal I*. The only references involved in this process are the Opinion, the Court of Appeals Mandate and the form of judgment on the mandate entered by the District Court (RP 633, 709). *Id.*

Kaushal contends that the Trust and the District Court are confused and failed to understand that *Kaushal I* did not decide the primary issue before it (the redemption rights of the parties), and this failure then opens the door for the Memorandum Opinion in *Kaushal II* (COA No. A-1-CA-39814) to be entered and for *Kaushal* to advocate for the adoption of his position that he redeemed 100% of the property to the exclusion of anyone else, a proposition rejected by the District

Court, *Kaushal I* and by the Memorandum Opinion.

In response, if indeed *Kaushal I* failed to decide the redemption rights of the parties, that does not affect the finality these proceedings. *Kaushal I* was a final resolution of the case, except for a ministerial task of entering the judgment on the mandate. There was no mandate to initiate further proceedings found in either the Opinion or the Mandate itself. Finally, as recognized by *Kaushal*, the issue of the redemption rights is decided *de novo* as a matter of law and through a process of statutory interpretation. (“There is no question that the “meaning of language used in a statute is a question of law that we review *de novo*.” *Cooper v. Chevron U.S.A., Inc.*, 2002–NMSC–020, ¶ 16, 132 N.M. 382, 49 P.3d 61”” *Quynh Truong v. Allstate Ins. Co.*, 2010-NMSC-009, ¶ 22, 147 N.M. 583, 590, 227 P.3d 73, 80)

Kaushal I obviously determined that the Trust did not redeem the entire property. The only other redeemer was *Kaushal*. During this process, the Court of Appeals had to determine how those redemption rights were distributed somewhere else. It determined that both the Trust and *Kaushal* effectively exercised their rights and *Kaushal* redeemed a 50% interest in the property. (See N.M. Const. art VI, § 13, District Court is the court of general and original jurisdiction; N.M. Const. art VI, § 29, Court of Appeals has appellate jurisdiction only and N.M. Const. art VI, § 2, Supreme Court is an appellate court.)

Certainly, the Court of Appeals would not remand to a District Court an issue which is decided as a matter of law and is properly before the Court of Appeals.

If there is a dispute between the parties as to what *Kaushal I* means, then that needs to be presented before a court of general and original jurisdiction. It is not revisited by an appellate court long after jurisdiction has expired.

Finally, even if, *arguendo*, it is determined that these proceedings need to continue in order to establish the redemption rights of the parties, then that still has to be remanded to the District Court, an improbable option as the only matter left is entry of a judgment on the mandate. A court sitting in an appellate capacity will not review matters not ruled on in the order appealed from. *Matter of Guardianship of C. G.* 2020-NMCA-023, ¶ 31, 463 P.3d 487.

In no event is there any jurisdiction for the Court of Appeals or this Supreme Court to revise the holdings in *Kaushal I* or adopt somehow Kaushal's position that the assignee of a single heir's redemption rights who wins the race to the courthouse forecloses redemption opportunities for everyone else.

Kaushal I

Kaushal contends, that in entering the Judgment on the Mandate, the District Court was confused and misunderstood the true intent of *Kaushal I* and now, long after jurisdiction has expired, Kaushal may seek to modify the published Opinion.

Kaushal's entire case before this Court rests on the shaky foundation of a

position that *Kaushal I* did not resolve any meaningful claims.¹ The Trust addresses the contents of *Kaushal I* in its Brief in Chief and will not duplicate that effort here. Suffice it to say that Kaushal's repeated conclusions about *Kaushal I* being misunderstood by the Trust, which then engages in distorted word couplings and deceptive contexts, does not change the language in *Kaushal I* which clearly reflects a final resolution of the redemption rights dispute. That was the only substantive issue before the appellate court.

The District Court found that the Trust redeemed 100% of the property because, *inter alia*, Kaushal needed a unity of interest which required securing redemption rights assignments from all of Lenora's heirs. In his Brief in Chief in *Kaushal I*, Kaushal argued strenuously that he needed only one heir's redemption rights assignment for him to exclusively redeem the entire property interest. The Trust also claimed a 100% redemption right. These were all or nothing arguments made by the parties. Kaushal appealed, seeking to flip the 100% ownership over to himself. The parties did not expect that the Court of Appeals would split the difference and recognize a 50% redemption right in Kaushal, leaving the balance for the Trust. But that is the only reasonable read of *Kaushal I*.

The only redeeming parties were the Trust and Kaushal. Determining the

¹ Even if this argument is accepted, to the extent that the redemption right dispute needs to be judicially resolved, the matter must be decided by a district court. Accordingly, Kaushal's efforts fail in any event.

redemption rights of one party necessarily determined the rights of the other party. Kaushal redeemed 50%. The Trust, as determined by *Kaushal I*, properly exercised its redemption rights and redeemed the remainder. In *Kaushal I*, the Court then instructed the District Court "...to allow for the exercise of Kaushal's, ***along with the Trust's***, rights to redemption consistent with this Opinion." *Id.* ¶ 28 (emphasis added). This is a clearly stated, understandable, simply crafted sentence. It does not need to be twisted or distorted to reach the conclusion that the Trust had redemption rights which the District Court was to allow to be exercised.

Standard of Review

Kaushal recognizes that the standard of review in this matter is *de novo*. It was also *de novo* when reviewed by the appellate court in *Kaushal I*. Acknowledging this standard of review makes it more than improbable that the Court of Appeals would decline to resolve the issue of the parties' redemption rights. The issue was squarely before it, was the only real issue before it and there were no factual matters to be remanded to the District Court.

In these proceedings, the *de novo* review involves the review of the Opinion and how it compares to the Judgment on the Mandate. The District Court did as instructed and recognized the respective redemption rights of the parties identified in the Opinion.

The Opinion directed the District Court to "...allow for the exercise of

Kaushal's, *along with the Trust's*, rights to redemption consistent with this Opinion." The District Court could not allow for the exercise of the Trust's right of redemption if the Trust had none or were unknown. Then, on February 22, 2021, the Court of Appeals issued its Mandate to the District Court with the Opinion attached and ordered the District Court to conduct such further "... proceedings consistent with said decision/order." (RP 633). Following the Court of Appeal's Mandate, the District Court issued its Judgment on the Mandate and, complying with the Opinion, confirmed that the parties had each successfully redeemed a 50% interest in the property. (RP 708).

The Memorandum Opinion

This analysis also bears on the Memorandum Opinion entered in *Kaushal II*. This Memorandum Opinion was issued well after any jurisdiction over the merits of *Kaushal I* expired. It clearly alters the Opinion. The Opinion divides the redemption between the Trust and Kaushal. The Memorandum Opinion eliminates the Trust's redemption rights and recognizes a 100% redemption of the property by Kaushal - but the redemption was on behalf of himself and his fellow tenants in common. Determining whether a judgment on the mandate reflects the Opinion does not open up, post jurisdiction, the opportunity for the Court of Appeals to modify a previously published opinion. It is indeed ironic that Kaushal appealed entry of the Judgment on the Mandate in an attempt to reopen the proceedings so he could improve his

position and succeeded initially, but then ended up in a more compromised position. Kaushal finds himself in the awkward position of supporting the right of the Court of Appeals to file its Memorandum Opinion, which purports to overrule in part a published opinion, but then having to withdraw that support when it comes to the substance of the Memorandum Opinion.

The Judgment on the Mandate

The Judgment on the Mandate (RP 708) reflects the ultimate conclusion of the Opinion, which is that the Trust and Kaushal each redeemed 50% undivided interests in the property. Apparently, Kaushal would have the Judgment on the Mandate require the District Court to announce a variety of matters and take certain actions, none of which can be found anywhere in the Opinion. These include, depending on what argument Kaushal is making at the time, the following:

- The Judgment on the Mandate should adjudge that Kaushal is the sole and exclusive redeemer of the property.
- The Judgment on the Mandate should adjudge that Kaushal redeemed 100% of the property, but did so on behalf of himself and his cotenants.
- The Judgment on the Mandate should have recognized that the Trust perfected its right of redemption and that the Court of Appeals did not decide any other issue. However, that concludes the case.

- The Judgment on the Mandate should have determined that Kaushal redeemed 100% of the property on behalf of himself and his cotenants, but the cotenants have lost their rights.

- The Judgment on the Mandate should have provided that the Court of Appeals resolved nothing except that the Trust successfully confirmed its redemption rights. Therefore, the District Court should hold further proceedings to determine what those redemption rights are.

- The Judgment on the Mandate should have provided that the Court of Appeals failed to determine what the redemption rights of the two parties were, and the District Court should wait for some time beyond the period of jurisdiction to see if the Court of Appeals decides to modify its Opinion.

- The Judgment on the Mandate of should have said that since the Court of Appeals did not decide the redemption rights of the parties, the District Court is unable to allow the parties to exercise their redemption rights, and the parties need to take their dispute to another District Court for resolution as there is nothing further to be done in these proceedings.

None of the above is suggested in the Opinion.

Instead, the District Court was presented with an Opinion that concludes that Kaushal only redeemed a 50% property interest; the Trust was successful in

establishing its rights of redemption and the District Court was to allow both Kaushal and the Trust to exercise their redemption rights.

With the entry of the Court of Appeals Mandate, the Court of Appeals' and this Supreme Court's jurisdictions over the Opinion ended. There was no longer to be any tinkering with the Opinion. The District Court reasonably read the Opinion and did as instructed.

CONCLUSION

Kaushal seeks to have this Court enter a writ or opinion which establishes Kaushal's successful and exclusive redemption of the subject property. First, the only matter before this Court is the entry of a judgment on the mandate. Second, the redemption rights of the parties were established in *Kaushal I*. Third, there is no jurisdiction which supports any further review of *Kaushal I*. Fourth, if Kaushal and the Trust disagree about the holdings in *Kaushal I*, that needs to be presented to a court of original jurisdiction. Fifth, because *Kaushal I* held that Kaushal and the Trust each redeem 50% of the property and that holding is reflected in the Judgment on the Mandate, the Memorandum Opinion should be expressly overruled or stricken as being entered without jurisdiction and the Judgment on the Mandate confirmed.

Respectfully submitted,

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Abeita, Gomez and Wilkinson, LLP

/s/ Ronald J. VanAmberg

RONALD J. VanAMBERG

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing document to the following counsel of record electronically through the Odyssey System on February 5, 2024.

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