TABLE OF APPENDICES

Appendix 1

FILED
SUPREME COURT
STATE OF WASHINGTON
10/6/2021
BY ERIN L. LENNON
CLERK

THE SUPREME COURT OF WASHINGTON

PNC BANK, NATIONAL ASSOCIATION, Respondent, v. Laura Cozza, Petitioner,	)	No. 99796-9 **ORDER** Court of Appeals No. 80966-1-I

Department II of the Court, composed of Chief Justice González and Justices Madsen, Stephens, Yu, and Whitener (Justice Johnson sat for Justice Madsen), considered at its October 5, 2021, Motion Calendar whether review should be granted pursuant to RAP 13.4(b) and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the petition for review is denied. The Clerk's motion to strike the Petitioner's reply is granted.

DATED at Olympia Washington, the 6th day of October, 2021.

For the Court González C.J.
CHIEF JUSTICE

Appendix 2

FILED
4/21/2021
Court of Appeals
Division 1
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

PNC BANK, NATIONAL ASSOCIATION, Respondent, v. LAURA COZZA, Appellant, MATTHEW COZZA; CITIFINANCIAL, INC.; OCCUPANTS OF THE PREMISES, Defendants.	No. 80966-1-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellant Laura Cozza moved for reconsideration of the opinion filed on March 15, 2021. Respondent PNC Bank filed an answer to the motion. A majority of the panel has considered the motion pursuant to RAP 12.4 and has determined that the motion should be denied. Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied

FOR THE COURT:

Appendix 3

FILED
3/15/2021
Court of Appeals
Division 1
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION ONE

PNC BANK, NATIONAL ASSOCIATION, Respondent, v. LAURA COZZA, Appellant, MATTHEW COZZA; CITIFINANCIAL, INC.; OCCUPANTS OF THE PREMISES, Defendants.	No. 80966-1-I DIVISION ONE UNPUBLISHED OPINION

CHUN, J. — Laura Cozza defaulted on her mortgage. PNC Bank, the holder of the promissory note, brought this action seeking judicial foreclosure. Cozza answered PNC's complaint and asserted counterclaims broadly alleging fraud. PNC moved for summary judgment for decree of foreclosure and to dismiss Cozza's counterclaims. Cozza cross-moved for summary judgment on judicial foreclosure. The

trial court granted PNC's motion for summary judgment and denied Cozza's cross-motion. We affirm.

I. BACKGROUND

In 2007, Laura Cozza and her then-husband Matthew Cozza agreed to a construction loan from National City Bank—PNC's predecessor by merger. They

Citations and pin cites are based on the Westlaw online version of the cited material.

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used the loan to construct a home in Washington.

In February 2008, the Cozzas signed a promissory note (Note) payable to National City Mortgage, a division of National City Bank. They also executed a Deed of Trust to secure the Note. National City Mortgage, a division of National City Bank, endorsed the Note to National City Mortgage Co., a subsidiary of National City Bank, which endorsed the note in blank.[1]

National City Corporation—National city Bank's parent company—merged with PNC in December 2008 and, as a result, National City Bank became a subsidiary of PNC. Before April 2013, PNC sold the Loan to Freddie Mac. In April 2013, Freddie Mac informed PNC that because PNC overstated Laura Cozza's income in violation of Freddie Mac's requirements, PNC needed to repurchase the Loan.

The Cozzas separated in 2010 and in 2011, during their divorce proceeding, Matthew Cozza

transferred all his interest in the property to Laura Cozza.[2] After the separation, Laura Cozza stopped making mortgage payments. While the parties dispute when Laura Cozza ceased payments, they agree she has not made payments since 2012. In 2014, Laura Cozza moved to Pennsylvania and has since rented out the property at issue.

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[1] When endorsed in blank, a note is "payable to bearer and may be negotiated by transfer of possession alone." Brown v. Dep't of Commerce, 184 Wn.2d 509, 523, 359 P.3d 771 (2015) (quoting RCW 62A. 3-205(b)).

[2] The record does not show this transfer, but the parties agree it occurred.

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No. 80966-1-I/3

In 2016, PNC sued the Cozzas, seeking judicial foreclosure. The Cozzas answered, asserting counterclaims. In 2019, PNC moved for summary judgment for judicial foreclosure and dismissal of the Cozzas' counterclaims. The Cozzas cross-moved for summary judgment , seeking dismissal of the foreclosure claim.

At a hearing on the motions, PNC produced the original Note signed by the Cozzas and endorsed in blank. At a second hearing, the trial court granted PNC's motion and denied the Cozzas' cross-motion. Neither the oral ruling nor the written order on the motions includes findings of fact or conclusions of law. The trial court then entered a Judgment and

Decree of Foreclosure, which dismisses the Cozzas' counterclaims with prejudice.

Laura Cozza[3] appeals.

II. ANALYSIS

A. PNC's Motion for Summary Judgment

Cozza says that the trial court erred in granting PNC's motion for summary judgment for judicial foreclosure and dismissal of counterclaims because genuine issues of material fact exist as to multiple issues. We disagree.

We review de novo summary judgment rulings. Matter of Estate of Ray, 15 Wn. App. 2d 353, 356, 478 P.3d 1126 (2020). "Summary judgment is appropriate if the record shows there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Id. A fact is material of the outcome of the litigation depends on it. Id. Courts "consider the

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[3] Below, this opinion refers to Laura Cozza as "Cozza" as Matthew Cozza is not a party to the appeal.

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No. 80966-1-I/4

facts submitted and all reasonable inferences from those facts in the light most favorable to the nonmoving party." Id. at 357. "The nonmoving party may not rely on speculation, argumentative assertions that unresolved factual issues remain, or having its affidavits accepted at face value." Heath v. Uraga, 106 Wn. App. 506, 513, 24 P.3d 413 (2001). If

the nonmoving party fails to show a genuine issue of material fact, then summary judgment is proper. Vallandigham v. Clover Park Sch. Dist. No. 400, 154 Wn2d 16, 26, 109 P.3d 805 (2005).

1. Judicial foreclosure

a. Standing

Cozza says that a genuine issue of material fact exists as to whether PNC had standing to sue. She contends the record shows that Freddie Mac, and not PNC, is the owner of the Note and Deed of Trust, so PNC cannot seek foreclosure. PNC responds that it has such standing, given that it is the holder of the Note. We agree with PNC.

"[I]t is the holder of a note who is entitled to enforce it"[4] Deutsche Bank Nat'l Tr. Co. v. Slotke, 192 Wn. App. 166, 173, 367 P.3d 600 (2016). And one who possesses a note holds it. Id. "A declaration by the beneficiary made under the penalty of perjury stating that the beneficiary is the actual holder of the promissory note or other obligation secured by the deed of trust shall be sufficient proof [of the status to enforce the note]." Bavand v. OneWest Bank,

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[4] Cozza says that a related issue is "whether PNC's fraud requires" the application of prior law. Citing Bain v. Metro. Mortg. Grp., Inc., 175 Wn.2d 83, 285 P.3d 34 (2012), she notes that prior law required that a creditor must own and hold the note to foreclose on a deed of trust. As discussed below, Cozza does not establish any issue of fact as to fraud, and thus we do not address this argument.
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196 Wn. App. 813, 824, 385 P.3d 233 (2016), as modified (Dec. 15, 2016) (emphasis omitted) (quoting RCW 61.24.030(7)(a)).

PNC submitted evidence that it holds and owns the Note. The declaration of PNC employee Sarah Greggerson says that PNC possessed the Note when it initiated the complaint. During her deposition, Cozza stated that she recognized her signature on the Note. And at the first summary judgment hearing, PNC produced what it claimed was the original Note in its possession.[5] National City Mortgage Co., a subsidiary of National city Bank, endorsed the note in blank and the National City Bank merged with PNC.[6]

Cozza submitted correspondence between Freddie Mac and PNC from 2013 in which Freddie Mac informed PNC that PNC must repurchase the Subject Loan because PNC inflated Cozza's income, which violated the sale guidelines. But this merely indicates that Freddie Mac owned the Note at some point. Nothing in this correspondence indicates that PNC did not buy back the loan.

Cozza contends that PNC should have produced evidence that it bought back the Loan. But possession of the Note suffices for PNC to have standing. See Deutsche Bank, 192 Wn. App. at 173.

Cozza also says that PNC cannot sue because it committed fraud by overstating Cozza's income and claiming ownership of the Loan when it was not

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[5] While Cozza disputed at the hearing that the Note was in fact the original Note she does not make a similar argument on appeal.

Cozza suggest that Tara Ingram, the document custodian who endorsed the Note in blank, lacked the

authority to do so, but points to no evidence to support this suggestion.

[6] When endorsed in blank, a note is "payable to bearer and may be negotiated by transfer of possession alone." Brown, 14 at 523 (quoting RCW 62A. 3-205(B)).
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No. 80966-1-I/6

the owner. We conclude that Cozza has not established a genuine issue of material fact about fraud, and thus fraud cannot constitute the basis for an argument that PNC lacks the authority to sue.[7]

Cozza relies only on the correspondence between Freddie Mac and PNC in her attempt to establish a genuine issue of material fact as to the existence of fraud. In these documents, Freddie Mac required PNC to repurchase the Loan because PNC overstated Cozza's income and that Freddie Mac failed to establish that PNC must repurchase the Loan. Freddie Mac responded by reiterating its previous position. This exchange hardly suffices to raise a genuine issue of material fact about fraud. Freddie Mac does not accuse PNC of fraud, and overstated income alone is not evidence of fraud. Thus, the trial court did not err.

b. Default

Cozza says that a genuine issue of material fact exists as to whether PNC "manufactured" her default. Cozza says that she made her mortgage payments for January, February, and March 2011, and that this conflicts with PNC's contention that she made none of those payments. PNC disagrees. We

[7] The elements of fraud are:
(1) a representation of existing fact, (2) its materiality , (3) its falsity, (4) the speaker's knowledge of its falsity, (f) the speaker's intent that it be acted upon by the person to whom it is made, (6) ignorance of its falsity on the part of the person to whom the representation is addressed, (7) the latter's reliance on the truth of the representation, (8) the right to rely upon it, and (9) consequent damage.

Frontier Bank v. Bingo Inv., LLC, 191 Wn. App. 43 59, 361 P.3d 230 (2015) (quoting Elcon Constr., Inc., v. E. Wash. Univ., 174 Wn.2d 157, 166, 273 P.3d 965 (2012)). They "must be established by clear, cogent, and convincing evidence." Id.

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conclude that, even assuming Cozza established an issue about when she stopped making payments, she has not established materiality.

Greggerson's declaration says that Cozza failed to make payments in January and February 2011. It says that Cozza made a payment in March 2011 but PNC returned the payment as insufficient to bring the account current. Greggerson noted that Cozza has not made a regular monthly payment under the Note since March 2011. Financial documents from 2011 corroborate this declaration. Greggerson stated that in 2012, Cozza made three payments under a trial payment plan for a potential loan modification, but afterward Cozza did not make any payments on the Loan. PNC submitted financial

documents showing that the three payments Cozza made in 2012 were combined and used to pay off her balance from January and February 2011.

During her deposition, Cozza stated that she had made her January, February, and March 2011 payments as well as three payments in 2012. Her declaration makes similar statements and says that PNC returned her March 2011 payment with no explanation. Cozza submitted a series of documents PNC sent her that state that she was inn default as of March 2011. One undated document titled "Current Loan Information," states that the "year to date" total payments equal $3,766.46 and that the next payment was due on March 1, 2011.

Cozza concedes that she has not made payments since 2012. But she says she has established a genuine issue of material fact as to whether PNC "manufactured" the default. Cozza says that PNC's calculations for the total amount owed "have to be off." Assuming she has shown an issue as to the

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time of the default, she has not pointed to evidence showing how that issue is material to the question of whether PNC "manufactured" the default. See Ray, 15 Wn. App. at 356 "holding that an issue is material only if it affects the outcome of the litigation).

c. Case of equity

Cozza seemingly argues the following: this is a case of equity, the trial court seems to have agreed, summary judgment is often inappropriate in equity cases, thus the trial court should have "set forth" its

decision to apply equity jurisdiction in its summary judgment ruling. See Cornish Coll. of the Arts v. 1000 Virgina Ltd. P'ship, 158 Wn. App. 203, 220-21, 242 P.3d 1 (2010) ("Due to the discretionary nature of decisions made in equity, granting equitable relief on summary judgment may be inappropriate in many cases."). Cozza says, based on the trial court's ruling, one cannot tell whether the trial court considered her arguments that PNC lacked standing and that the trial court should exercise equity jurisdiction.

The parties agree that the case is equitable in nature. But the trial court did not indicated whether it was treating the case as such. [8] Cozza cites no legal authority requiring that if a court exercises equity jurisdiction, it say so in its summary judgment ruling. We conclude that the trial court did not err.

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[8] During a hearing, the trial court noted, "[T]he Defendants specifically requested that this court exercise its considerable powers in equity in their favor" and ruled that by doing so, Cozza waived any personal jurisdiction argument. But this does not show whether the trial court agreed that it should exercise equitable jurisdiction.

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No. 80966-1-I/9

2. Dismissal of counterclaim for trespass

As to her claim for trespass,[9] Cozza says that a genuine issue of material fact exists as to the reason she moved out of her Washington hoe to Pennsylvania. She contends that she was forced out by

harassing trespassers sent by PNC. PNC responds that she left to rent out the property. It says that the trial court properly dismissed Cozza's claims because no trespass occurred. We conclude no genuine issue of material fact exists on this issue.

Cozza submitted a declaration stating that people come onto her property "every week," took photographs, and verbally abused her. Cozza submitted photographs that PNC's agents took of her house, a description of her home by an agent, and photographs of a car allegedly belonging to someone who came to empty the house. These establish only that PNC's agents have been to the property. And Section 7 of the Deed of Trust stares, "Lender or its agent may make reasonable entries upon and inspections of the Property. " Also, Section 9 states, "if (a) Borrower fails to perform the covenants ana agreements contained in the Security Instrument . . . the Lender may do and pay for whatever is reasonable, or appropriate to protect Lender's interest in the Property and rights under this Security Instrument." Cozza's evidence falls short of establishing a genuine issue of fact as to trespass, particularly since she must establish an issue of fact as to each of the elements of trespass.

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[9] "To establish intentional trespass, a plaintiff must show (1) an invasion of property affecting an interest in exclusive possession; (2) an intentional act; (3) reasonable foreseeability that the act would disturb the plaintiff's possessory interest; and (4) actual and substantial damages. " Wallace v. Lewis County, 134 Wn. App. 1, 15, 137 P.3d 101 (2006), as corrected (Aug. 15, 2006).

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No. 80966-1-I/10

3. Credibility

Cozza says that because this case involved issues of credibility, granting summary judgment for PNC was error. PNC responds that Cozza introduced no evidence creating an issue as to credibility. We conclude that the trial court did not err in this regard.

Cozza relies on Balise v. Underwood, 62 Wn.2d 195, 381 p.2D 966 (1963), for the proposition that if a party provides impeaching or contradicting evidence, an issue of credibility arises and in such a case, a court should deny a motion for summary judgment. But later cases clarify that "while a court should not resolve a genuine issue of credibility at a summary judgment hearing, '[a]n issue of credibility is present only if the party opposing the summary judgment comes forward with evidence which contradicts or impeaches the movant's evidence on a material issue.'" Laguna v. Dep't of Transp., 146 Wn. App. 260, 266–67, 192 P.3d 374 (2008) (alteration in original (quoting Howell v. Spokane & Inland Empire Blood Bank, 117 Wn.2d 619, 626–27, 818 P.2d 1056 (1991)). "impeachment of a witness does not establish the opposite of [their] testimony as fact," thus impeachment does not necessarily establish a genuine issue of material fact. Laguna, 146 Wn. App. at 267. Cozza has not provided

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evidence impeaching PNC's assertion that it held the Note when it initiated the complaint or establishing that PNC acted in bad faith10 or committed trespass.

Noor has she provided any evidence to impeach any other material factual assertion by PNC. Cozza has not established a "genuine issue of credibility."

See id. at 266.

4. PNC's failure to mediate in good faith

Cozza says that because a mediator found that PNC failed to mediate in good faith, Cozza is entitled to a defense under the Foreclosure Fairness Act. PNC responds that the applicable statutory provision precludes such a defense against judicial foreclosure. We agree with PNC.[11]

RCE 61.24.163(14)[12] provides:

> (14)(a) The mediator's certification that the beneficiary failed to act in good faith in mediation constitutes a defense to the nonjudicial foreclosure action that was the basis for initiating the mediation. In any action to enjoin the foreclosure, the beneficiary is entitled to rebut the allegation that it failed to act in good faith.
>
> (b) The mediator's certification that the beneficiary failed to act in good faith during mediation does *not constitute a defense to a judicial foreclosure or a future nonjudicial foreclosure action if a modification of the loan is agreed upon and the borrower subsequently defaults.*

(Emphasis added).

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[10] Cozza offers no evidence arguing that PNC acted in bad faith as to the modifications. Cozza submitted a declaration alleging bad faith, but Cozza does not cite it on appeal, nor is the declaration enough to establish a genuine issue of material fact; See Heath, 106 Wn. App. at 513. (a party cannot reply on "having its affidavits accepted at face value").

[11] Because we conclude that PNC's failure to mediate in good faith is not a defense to judicial foreclosure, we do not address Cozza's contention that a genuine issue of material fact exists as to "bad faith modifications."

[12] In her opening brief, Cozza cites the 2011 version of the statute, but the current version is identical in pertinent part. Former RCW 61.24.163 (11) (2011).

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No. 80966-1-I/12

Division Two of this court held that this statute[13] precludes a defense against judicial foreclosure when a mediator decides a beneficiary failed to act in good faith. Wells Fargo Bank, N.A. for Option One Mortg. Loan Tr. 2006-1, Asset-Backed Certificates, Series 2006-1v. Gardner, noted at 5 Wn. App. 2d 1011, slip op. at 10 (2018); see GR 14.1 ("Washington appellate courts should not, unless necessary for a reasoned decision, cite or discuss unpublished opinions in their opinions"). The court set fourth two reasons why the defense does not apply to judicial foreclosures:

> First, the absence of any reference to "judicial foreclosure" in subsection (a) suggests that

> the legislature did not intend to provide an affirmative defense to judicial foreclosure. if the legislature had intended to extend the affirmative defense to both judicial and nonjudicial foreclosures, it could have clearly expressed that intent by including both terms in subsection (a). Second, the last antecedent rule is to merely a formalistic maxim based on punctuation, but is a sign of legislative intent. Under that rule, the qualifying phrase "if a modification of the loan is agreed upon and the borrower subsequently defaults, " applies only to a "a future nonjudicial foreclosure action," because that is the immediately preceding antecedent and there is no comma before the qualifying phrase.

Id. at 9 (quoting former RCW 61.24.163(14)(b)).[14]

B. Cozza's Cross-Motion for Summary Judgment

We review de novo summary judgment rulings. Ray, 15 Wn. App. at 356.

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[13] The court in this case interpreted the 2014 version of the stature. The language in the pertinent part of the 2014 version is identical to the current version.

[14] Gardner, slip op. at 8 ("one rule of grammar applied to statutory interpretation is 'the last antecedent rule, which states that qualifying or modifying words and phrases refer to the last antecedent.'" (quoting State v. Bunker, 169 Wn.2d 571, 578, 238 P.3d 487 (2010))).

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No. 80966-1-I/13

1. PNC's name in the case caption

Cozza says that PNC failed to name the proper party in the complaint's caption by including "successors and assigns" after its name. We agree with PNC that Cozza waived this argument.

"Generally, any objection to the capacity of a business to bring suit based solely on the identity of the named plaintiff must be raised in a preliminary pleading or by answer of the objections is deemed waived." Bus. Serv. of Am. II, In. v. WaferTech, LLC, 188 Wn.2d 846, 851, 403 P.3d 836 (2017). Cozza did not make any such objection. Thus, she waived her argument on this issue.

2. Issues of equity

Cozza says that the trial court erred in how it resolved issues of equity. She contends that the trial court failed to apply principles of equity bey declining to provide its reasoning for its rulings. As discussed below, the trial court did not err in declining to enter findings of fact and conclusions of law. And Cozza cites no law requiring any other type of reasoning in cases of equity. Aside from this contention, Cozza does to explain how the trial court erred in resolving issues of equity.

C. Findings of Fact and Conclusions of Law

Relying on the party presentation principle[15] and the separation of powers

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[15] According to the party presentation principle, "courts are essentially passive instruments of government" and should not be too involved in the adversarial process. See United States v. Sineneng-

Smith,___ U.S. ___, ___, 140 S. Ct. 1575, 1579, 206 L. Ed.

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No. 80966-1-I/14

doctrine, Cozza says that the trial court erred by not issuing finds of fact and conclusions of law. Cozza asks this court to remand the case for findings and conclusions related to whether recusal was required and whether a violation of the separation of powers doctrine occurred. PNC responds that Cozza waived this argument. PNC also says Washington law establishes a trial court need not enter findings of fact and conclusions of law when granting summary judgment. We conclude that even if Cozza did not waive this argument,[16] the trial court did not err. The trial court relied on Sinclair v. Betlach, 1 Wn. App. 1033, 1034, 467P.2d 344 (1970), in determining that entering findings of fact in a motion for summary judgment would be superfluous. Cozza contends that Sinclair is distinguishable of the facts, but other cases similarly hold. See, e.g., Davenport v. Washington Educ. Ass'n, 147 Wn. App. 704, 716 n.23, 197 P.3d 686 (2008) ("the Washington Supreme Court has 'held on numerous occasions that findings of fac t and conclusions of law are superfluous in both summary judgment and judgment of the pleadings proceedings.'" (quoting Washington Optometric Ass'n v. Pierce County, 73 Wn.2d 445, 448, 43 P.2d 861 (1968))). Cozza relies on State v. Agee, 89 Wn.2d 416, 419, 573 P.2d 355 (1977), but that criminal case

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2d 866 (2020) (quoting United States v. Samuels, 808 F.2d 1298, 1301 (8th Cir. 1987)). Cozza says the trial court violated this principle. But the record does not show that the trial judge was too involved in the adversarial process or otherwise failed to act as a neutral arbiter. And Cozza does not convincingly explain how this principle or the separation of powers doctrine required the trial court, contrary to other law, to enter findings and conclusions.

[16] Cozza did not object below when the court declined to issue findings and conclusions. Under RAP 2.5(a) we may decline to address issues raised for the first time on appeal. And Cozza does not respond to this waiver contention in her reply brief. But we address it because some of Cozza's other arguments relate to it.

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No. 80966-1-I/15

addresses a CrR 4.5 motion to suppress and not summary judgment. The trial court did not err in declining to enter findings of fact and conclusions of law on its summary judgment rulings.

D. Recusal

Cozza says the trial judge erred by failing to address a potential conflict of interest. PNC says that the trial judge did not have an interest requiring recusal. We conclude that the trial court acted within its discretion.

"We review a trial court's recusal decision for an abuse of discretion. Tatham v. Rogers, 170 Wn. App. 76, 87, 283 P.3d 583 (2012). "The court abuses its discretion when its decision is manifestly

unreasonable or is exercised on untenable grounds or for untenable reasons." Id.

"The Due Process Clause entitles a person to an impartial and disinterested tribunal in both civil and criminal cases." Id. at 90 (quoting Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S. Ct. 1610, 64 L. Ed. 2d 182 (1980)). But because "the common law and state codes of judicial conduct generally provide more protection than due process requires" courts typically "resolve questions about judicial impartially [sic] without using the constitution." JPMorgan Chase Bank, N.A. v. Stehrengerger, noted at 193 Wn. App. 1035, slip op. at 3–4 (2016); see GR 14.1 Under the Code of Judicial Conduct, a judge must recuse if their impartiality may reasonably be questioned. West v. Washington Ass'n of County Officials, 162 Wn. App. 120, 136–37, 252 P.3d 406 (2011). But recusal is unnecessary if a judge's interest is de minimis. Kok v. Tacoma Sch. Dist. No. 10, 179 Wn. App. 10, 26, 317 P3d 481 (2013). De
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No. 80966-1-I/16

minimis interests are insignificant and include "an interest in the individual holdings within a mutual or common investment fund." Stehrenberger, slip op. at 5 (quoting Comment 6 to the CJC 2.11).

Cozza says that the trial court judge, and likely all Washington state judges, have a conflict of interest in this case. She says that a "substantial amount" of judges' retirement funds are invested in mortgage-backed securities comprised of loans such as the one at issue here. She contends that judges are disinclined to rule against foreclosures in cases

involving fraud because doing so will impact the stability of mortgage backed securities. She says this is so give the "rampant" fraud relating to these types of investments. She says that the Due Process Clause of the United States Constitution prevents a judge from hearing a case in which the judge has an interest.

Cozza raised this argument before the trial court. She did not move to disqualify the judge—her attorney raised the issue in his declaration in support of her cross-motion for summary judgment. She requested that if the trial court believed a potential conflict existed, it should appoint a non-sitting Judge Pro Tempore. And she requested that if the trial judge declined to recuse himself, the court include reasoning for that decision in its summary judgment ruling. The trial judge did not address this issue at the hearings or in his order and did not recuse himself.

"[A]n interest in the individual holdings within a mutual or common investment fund"—such as the interest at issue—is de minimis. See Stehrenberger, slip op. at 5 (quoting comment 6 to the CJC 2.11). This case is

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No. 80966-1-I/16

like Stehrenberger in which the court held that the judge's retirement fund being invested by the state in diversified investments—including holdings in JPMorgan, the plaintiff there—was a de minimis interest not requiring recusal. Id. at 4–5; see GR 14.1 And while Cozza states that a failure to address a

request to recuse borders on "judicial tyranny," she does not cite law requiring that a trial court explicitly address such a request, which she did not make in a separate motion. The trial court did not err by declining to address the conflicts issue or recuse himself.

We affirm.

Chun, J.

WE CONCUR:

Coburn, J.

Bjorgen, J.

Appendix 4

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

PNC BANK, NATIONAL ASSOCIATION, its successors in interest and/or assigns, Plaintiff, v. MATTHEW COZZA; LAURA COZZA; CITIFINANCIAL, INC.; and OCCUPANTS OF THE PREMISES, Defendants.	No. 16-2-01090-0 ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT [CORRECTED]

This matter came before the Court on Plaintiff PNC Bank, National Association's Motion for Summary Judgment of Judicial Foreclosure Claim, and Plaintiff having appeared through its attorney, Michael J. Farrell and Defendant Laura Cozza, having appeared through her attorney, Scott Stafne, and the Court having heard arguments of counsel, and considered the clerk's file and the following documents filed by the parties:

1. Plaintiff's Motion for Summary Judgment on Judicial Foreclosure Claim;

2. Declaration of Sarah Greggerson in Support of Plaintiff's Motion for Summary Judgment of Judicial Foreclosure Claim;

3. Declaration of Stephen P. Yoshida in Support of Plaintiff's Motion for Summary Judgment on Judicial Foreclosure Claim with exhibits;

4. Laura Cozza's Response to Motion for Summary Judgment on Judicial Foreclosure Claim;

5.Declaration of Laura Cozza in Support of Opposition to Plaintiff's Motion for Summary Judgment on Judicial Foreclosure Claim;

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Portland, OR 97204
Telephone: 503-914-2015
Facsimile: 503-914-1725

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6. Declaration of Scott Stafne in Support of Opposition to Plaintiff's Motion for Summary Judgment on Judicial Foreclosure Claim with exhibits;

7. Plaintiff PNC Bank's Reply to Defendant Laura Cozza's Response to Motion for Summary Judgment on Judicial Foreclosure Claim.

The Court being fully advised in the premises, now, therefore,

IT IS ORDERED that Plaintiff's Motion for Summary Judgment on Judicial Foreclosure Claim and for Dismissal of Defendants' Counterclaims is granted and that Defendants' Cross-Motion for Summary Judgment is denied.

Signed November 15, 2019.

JUDGE OF THE SUPERIOR COURT

Presented by:

Michael J. Farrell, WSBA 18897
MB LAW GROUP, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Attorneys for Plaintiff PNC Bank, N.A.

Appendix 5

16-2-01090-0
JDDF 73
Judgment and Decree of Foreclosure
7179830

SCANNED 5
FILED IN OPEN COURT
12-6 2019
WHATCOM COUNTY CLERK
By _____ Deputy

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

PNC BANK, NATIONAL ASSOCIATION, its successors in interest and/or assigns, Plaintiff, v. MATTHEW COZZA; LAURA COZZA; CITIFINANCIAL, INC.; and OCCUPANTS OF THE PREMISES, Defendants.	No. 16-2-01090-0 JUDGMENT AND DECREE OF FORECLOSURE

JUDGMENT SUMMARY

Judgment Creditor:	PNC BANK, NATIONAL ASSOCIATION, its successors in interest and/or assigns

Attorneys for Judgment Creditor:	McCarthy & Holthus, LLP Wendy Walter, WSBA No. 33809 Warren Lance, WSBA No. 51586 Grace Chu, WSBA No. 51256 Judson Taylor, WSBA No. 46127 MB Law Group, LLP Stephen P. Yoshida, WSBA No. 18897
Judgment Debtors:	MATTHEW COZZA, LAURA COZZA
Attorney for Judgment Debtor:	Scott E. Stafne, WSBA No. 6964

Detailed Explanation and Itemized Judgment:

MB LAW GROUP, LLP
Attorneys at Law
117 SW Taylor Street, Suite 200
Portland, OR 97204
Telephone: 503-914-2015
Facsimile: 503-914-1725

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Principal Balance	$377,274.51
Interest Amount Interest Due From 2/01/2011 to 11/29/2019	$199,472.76

@ 5.99000%	$126.08
Pro Rata MIP/PMI	$52,791.17
Escrow Advance	$108.00
Total Fees	$1600.72
Accumulated Late Charges	$798.00
Other Fees Due	$10,027.72
Recoverable Balance	
Total	$642,198.96

Post judgment interest (principal plus accrued prejudgment interest, plus awarded costs, disbursements and attorney fees) shall accrue at 5.990000% from the date of the judgment.

This matter came before the Court on Plaintiff's Motion for Judgment and for Decree of Foreclosure against Defendants and the real property described below. The Court having reviewed the Plaintiff's order Granting Plaintiff's Motion for Summary Judgment entered herein on 11/15/2019, the Plaintiff's order Denying Defendant's Cross-Motion for Summary Judgment on Judicial Foreclosure Claim, the March 30, 2018 order of Default against defendant CitiFinancial, Inc., and the records and pleadings on file herein, and being fully advised, hereby finds that the allegations of the Complaint are true; that Plaintiff is entitled to judgment as a mater of law; that no just reason exists for delay and that judgment should be entered in favor of Plaintiff as more particularly set forth herein.

IT IS HEREBY ORDERED AND ADJUGED that Plaintiff shall have judgment as follows:

1. That PNC BANK, NATIONAL ASSOCIATION, its successors in interest and/or assigns is awarded judgment against LAURA COZZA; MATTHEW COZZA, CITIFINANCIAL INC.;

and OCCUPANTS OF THE PREMISES, and against the real property described below.

2. Plaintiff's lien is a valid first lien upon the property commonly known as 887 IOWA HEIGHTS ROD, SEDRO WOOLLEY, WA 98284 (the "Property") and legally described in

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the attached **Exhibit 1 to Judgment**, with Assessor's Parcel Number: 3704280965130000

3. Plaintiff's lien is foreclosed and the Property may be sold by the Sheriff of Whatcom County at a foreclosure sale in the manner provided by law, and the proceeds thereof are to be applied to the Judgment. Any increased interest and such additional amounts as Plaintiff may advance for taxes, assessments, municipal charges, and such other items as may constitute liens on the property, together with insurance and repairs necessary to prevent the impairment of the security, together with interest thereon from the date of payment may also be added to the Judgment and paid from sale of the Property.
4. Defendants' interests, and those of all persons claiming by, through or under them, as purchasers, encumbrances, or otherwise, are adjudged inferior and subordinate to that of Plaintiff and are forever foreclosed of all interest, lien, or claim in the real property described

above and every portion thereof, excepting only any statutory right of redemption as Defendants may have therein.

5. Plaintiff or any other party to this suit may become the purchaser at the sale of the real property. The purchaser is entitled to exclusive possession of the real property from and after the date of sale and is entitled to such remedies as are available at law to secure possession, including a writ of assistance, if Defendants or any other party or person shall refuse to surrender possession to the purchase immediately on the purchaser's legal demand for possession.
6. Plaintiff shall not be awarded a deficiency judgment against Defendants LARUA COZZA and MATTHEW COZZA.
7. This Judgment shall be supplemented by Plaintiff, through Declaration of Counsel, to reflect the amount due without further notice to Defendants.
8. That the period of redemption from such sheriff's sale be, and the same is hereby, fixes at eight (8) months next ensuing after said sale.

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9. Defendant's counterclaims are dismissed with prejudice

Dated: x 6 x day of December , 2019

Whatcom County Superior Court Judge

ROBERT E. OLSON

Presented by:

Michael J. Farrell, WSBA 18897
MB LAW GROUP, LLP
117 SW Taylor Street, Suite 200
Portland, OR 97204
Attorneys for Plaintiff PNC Bank, N.A.

Warren Lance, WSBA No. 51586
McCarthy & Holthus, LLP
108 1st Avenue South, Ste. 300
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EXHIBIT 1 to Judgment

THE NORTH HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 37 NORTH, RANGE 4, EAST W.M.

EXCEPT IOWA HEIGHTS DRIVE, LYING ALONG THE EAST LINE THEREOF.

SITUATE IN WHATCOM COUNTY, WASHINGTON.

Appendix 6

CONSTITUTIONAL PROVISIONS AND STATUTES

United States Constitution

Article III, Sections One and Two:

Section. 1.
The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.
Section. 2.
The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;— between a State and Citizens of another State,—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

Fourteenth Amendment, Section 1:
All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they

reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Washington Constitution

Article IV, Section 6:
Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be

prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.

Washington Statutes

Revised Code of Washington 2.28.030:

A judicial officer is a person authorized to act as a judge in a court of justice. Such officer shall not act as such in a court of which he or she is a member in any of the following cases:
(1) In an action, suit, or proceeding to which he or she is a party, or in which he or she is directly interested.

(2) When he or she was not present and sitting as a member of the court at the hearing of a matter submitted for its decision.

(3) When he or she is related to either party by consanguinity or affinity within the third degree. The degree shall be ascertained and computed by ascending from the judge to the common ancestor and descending to the party, counting a degree for each person in both lines, including the judge and party and excluding the common ancestor.

(4) When he or she has been attorney in the action, suit, or proceeding in question for either party; but this section does not apply to an application to change

the place of trial, or the regulation of the order of business in court.
In the cases specified in subsections (3) and (4) of this section, the disqualification may be waived by the parties, and except in the supreme court and the court of appeals shall be deemed to be waived unless an application for a change of the place of trial be made as provided by law.

Revised Code of Washington 2.10.040: System created—Coverage—Exclusions.

The Washington judicial retirement system is hereby created for judges appointed or elected under the provisions of chapters 2.04, 2.06, and 2.08 RCW. All judges first appointed or elected to the courts covered by these chapters on or after August 9, 1971, and prior to July 1, 1988, shall be members of this system: PROVIDED, That following February 23, 1984, and until July 1, 1988, any newly elected or appointed judge holding credit toward retirement benefits under chapter 41.40 RCW shall be allowed thirty days from the effective date of election or appointment to such judgeship to make an irrevocable choice filed in writing with the department of retirement systems to continue coverage under that chapter and to be permanently excluded from coverage under this chapter for the current or any future term as a judge. All judges first appointed or elected to the courts covered by these chapters on or after July 1, 1988, shall not be members of this system, but may become members of the public employees' retirement system under chapter 41.40 RCW on the same basis as other elected officials as provided in RCW 41.40.023(3).

Any member of the retirement system who is serving as a judge as of July 1, 1988, has the option on or before December 31, 1989, of becoming a member of the retirement system created in chapter 41.40 RCW, subject to the conditions imposed by RCW 41.40.095. The option may be exercised by making an irrevocable choice filed in writing with the department of retirement systems to be permanently excluded from this system for all service as a judge. In the case of a former member of the retirement system who is not serving as a judge on July 1, 1988, the written election must be filed within one year after reentering service as a judge.

Revised Code of Washington 2.14.115: Discontinuing plan contributions—One-time irrevocable election.

Beginning January 1, 2007, through December 31, 2007, any member of the public employees' retirement system eligible to participate in the judicial retirement account plan under this chapter may make a one-time irrevocable election, filed in writing with the member's employer, the department of retirement systems, and the administrative office of the courts, to discontinue future contributions to the judicial retirement account plan in lieu of prospective contribution and benefit provisions under chapter 189, Laws of 2006.

Revised Code of Washington 41.40.023: Membership.

Membership in the retirement system shall consist of all regularly compensated employees and appointive and elective officials of employers, as defined in this

chapter, with the following exceptions:
(1) Persons in ineligible positions;

(2) Employees of the legislature except the officers thereof elected by the members of the senate and the house and legislative committees, unless membership of such employees be authorized by the said committee;
(3)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: AND PROVIDED FURTHER, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution,

shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file, on a form supplied by the department, a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (3)(b);

(4) Employees holding membership in, or receiving pension benefits under, any retirement plan operated wholly or in part by an agency of the state or political subdivision thereof, or who are by reason of their current employment contributing to or otherwise establishing the right to receive benefits from any such retirement plan except as follows:

(a) In any case where the retirement system has in existence an agreement with another retirement system in connection with exchange of service credit or an agreement whereby members can retain service credit in more than one system, such an employee shall be allowed membership rights should the agreement so provide;

(b) An employee shall be allowed membership if otherwise eligible while receiving survivor's benefits;

(c) An employee shall not either before or after June 7, 1984, be excluded from membership or denied service credit pursuant to this subsection solely on account of: (i) Membership in the plan created under chapter 2.14 RCW; or (ii) enrollment under the relief and compensation provisions or the pension provisions of the volunteer firefighters' [and reserve officers'] relief and pension [principal] fund under chapter 41.24 RCW;

(d) Except as provided in RCW 41.40.109, on or after July 25, 1999, an employee shall not be excluded from membership or denied service credit pursuant to this subsection solely on account of participation in a defined contribution pension plan qualified under section 401 of the internal revenue code;

(e) Employees who have been reported in the retirement system prior to July 25, 1999, and who participated during the same period of time in a defined contribution pension plan qualified under section 401 of the internal revenue code and operated wholly or in part by the employer, shall not be excluded from previous retirement system membership and service credit on account of such participation;

(5) Patient and inmate help in state charitable, penal, and correctional institutions;

(6) "Members" of a state veterans' home or state soldiers' home;

(7) Persons employed by an institution of higher learning or community college, primarily as an incident to and in furtherance of their education or training, or the education or training of a spouse;

(8) Employees of an institution of higher learning or community college during the period of service necessary to establish eligibility for membership in the retirement plans operated by such institutions;

(9) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(10) Persons appointed after April 1, 1963, by the *liquor control board as contract liquor store managers;
(11) Employees of a labor guild, association, or organization: PROVIDED, That elective officials and employees of a labor guild, association, or organization which qualifies as an employer within this chapter shall have the option of applying for membership;

(12) Retirement system retirees: PROVIDED, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(13) Persons employed by or appointed or elected as an official of a first-class city that has its own retirement system: PROVIDED, That any member elected or appointed to an elective office on or after April 1, 1971, shall have the option of continuing as a member of this system in lieu of becoming a member of the city system. A member who elects to continue as a member of this system shall pay the appropriate member contributions and the city shall pay the employer contributions at the rates prescribed by this chapter. The city shall also transfer to this system all of such member's accumulated contributions together with such

further amounts as necessary to equal all employee and employer contributions which would have been paid into this system on account of such service with the city and thereupon the member shall be granted credit for all such service. Any city that becomes an employer as defined in RCW 41.40.010(13) as the result of an individual's election under this subsection shall not be required to have all employees covered for retirement under the provisions of this chapter. Nothing in this subsection shall prohibit a city of the first class with its own retirement system from: (a) Transferring all of its current employees to the retirement system established under this chapter, or (b) allowing newly hired employees the option of continuing coverage under the retirement system established by this chapter.

Notwithstanding any other provision of this chapter, persons transferring from employment with a first-class city of over four hundred thousand population that has its own retirement system to employment with the state department of agriculture may elect to remain within the retirement system of such city and the state shall pay the employer contributions for such persons at like rates as prescribed for employers of other members of such system;

(14) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(15) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to

the director within thirty days after employment in an eligible position;

(16) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: PROVIDED, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application;

(17) The city manager or chief administrative officer of a city or town, other than a retiree, who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from date of their appointment to such positions. Persons serving in such positions as of April 4, 1986, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1986, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions.

Persons serving in such positions who have not opted for membership within the specified thirty days, may do so by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(18) Persons serving as: (a) The chief administrative officer of a public utility district as defined in RCW 54.16.100; (b) the chief administrative officer of a port district formed under chapter 53.04 RCW; or (c) the chief administrative officer of a county who serves at the pleasure of an appointing authority: PROVIDED, That such persons shall have the option of applying for membership within thirty days from the date of their appointment to such positions. Persons serving in such positions as of July 25, 1999, shall continue to be members in the retirement system unless they notify the director in writing prior to December 31, 1999, of their desire to withdraw from membership in the retirement system. A member who withdraws from membership in the system under this section shall receive a refund of the member's accumulated contributions upon termination of employment or as otherwise consistent with the plan's tax qualification status as defined in internal revenue code section 401.
Persons serving in such positions who have not opted for membership within the specified thirty days, may do so at a later date by paying the amount required under RCW 41.50.165(2) for the period from the date of their appointment to the date of acceptance into membership;

(19) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by local governments to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(20) Beginning on July 22, 2001, persons employed

exclusively as trainers or trainees in resident apprentice training programs operated by housing authorities authorized under chapter 35.82 RCW, (a) if the trainer or trainee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or (b) if the employee is a member of a Taft-Hartley retirement plan;

(21) Employees who are removed from membership under RCW 41.40.823 or 41.40.633; and

(22) Persons employed as the state director of fire protection under RCW 43.43.938 who were previously members of the law enforcement officers' and firefighters' retirement system plan 2 under chapter 41.26 RCW may continue as a member of the law enforcement officers' and firefighters' retirement system in lieu of becoming a member of this system.

RCW 41.40.095
Transfer of membership from judicial retirement system.
(1) Any member of the Washington judicial retirement system who wishes to transfer such membership to the retirement system provided for in this chapter shall file a written request with the director as required by RCW 2.10.040 on or before December 31, 1989, or within one year after reentering service as a judge.

Upon receipt of such request, the director shall transfer from the judicial retirement system to this retirement system: (a) An amount equal to the employee and employer contributions the judge would have made if the judge's service under chapter 2.10 RCW had originally been earned under this chapter, which

employee contributions shall be credited to the member's account established under this chapter; and (b) a record of service credited to the member. The judge's accumulated contributions that exceed the amount credited to the judge's account under this subsection shall be deposited in the judge's retirement account created pursuant to chapter 2.14 RCW.

(2) The member shall be given year-for-year credit for years of service, as determined under *RCW 2.10.030(8), earned under the judicial retirement system. Service credit granted under the judicial retirement system pursuant to RCW 2.10.220 shall not be transferred under this section. The director instead shall reverse the transfer of contributions and service credit previously made under RCW 2.10.220 and shall credit the member for such periods of service and contributions under this chapter as though no transfer had ever occurred.

(3) All employee contributions transferred pursuant to this section shall be treated the same as other employee contributions made under this chapter.

Revised Code of Washington 41.40.124: Discontinuing judicial retirement account plan contributions—Additional benefit—One-time irrevocable election— Justices and judges.

(1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of

future service credit from the date of the election in lieu of future employee and employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2) A member who made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by an additional one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a seventy-five percent of average final compensation benefit. The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement, subject to rules adopted by the department.

(3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional one and one-half percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 1 or plan 2 who are not currently employed as a supreme court justice, court of appeals judge, or superior court judge, and who have past service as a supreme court justice, court of appeals judge, or superior court judge; and

(b) Inactive vested members of plan 1 or plan 2 who have separated, have not yet retired, and who have past service as a supreme court justice, court of appeals judge, or superior court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.