

No. _____

BEFORE THE UNITED STATES
SUPREME COURT

JOHN EARL ERICKSON AND
SHELLEY ANN ERICKSON,
Petitioners,

v.

DEUTSCHE BANK NATIONAL TRUST
COMPANY AS TRUSTEE FOR LONG BEACH
MORTGAGE LOAN TRUST 2004-6,
Respondent.

PETITION AND APPENDIX FOR
WRIT OF CERTIORARI TO THE
SUPREME COURT OF WASHINGTON

Respectfully submitted,
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*Admitted to practice before the United States Supreme Court only and not admitted to practice in any other jurisdiction

**Providing research, investigative, technical, filing and process services at the direction of qualified attorneys in all U.S. states exclusive of the State of Wisconsin

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QUESTIONS PRESENTED FOR REVIEW

- I. Does fraud on the court committed by officers of the court in civil proceedings violate due process requiring relief from judgments fraudulently procured on false pleadings supported by forged documents submitted by opposing counsel?
- II. Were Petitioners' Due Process Rights violated in the state court proceedings when they were denied the remedy of relief from the fraudulently procured judgment by the Superior Court's sua sponte conversion of Respondent's Motion to Dismiss to a Motion for Summary Judgment without notice or opportunity to be heard?

LIST OF PARTIES
Pursuant to Rule 14.1(b)(i)

Petitioners John Earl Erickson and Shelley Ann Erickson are named in the caption of the case.

An entity identified as Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 is named in the caption as the Respondent in the Independent Action 2019 in the Superior Court for King County, Washington in Case No. 19-2-12664-7 KNT from which this Petition arises because that is the name chosen for the Plaintiff in which the Foreclosure Action commenced in King County Superior Court in Case No. 14-2-00426-5 KNT against the Petitioners (and others who are no longer involved in these proceedings).

There are additional parties not named in the case caption in a Related Action which was previously consolidated. The additional parties are SELECT PORTFOLIO SERVICING, Inc. (“SPS”), a Utah corporation; STOEL RIVES, LLP (a law firm) and attorneys VANESSA POWER, JOHN GLOWNEY and WILL EIDSON, who are Defendants/Respondents in the still pending Related Action. See Related Actions, *infra*.

In the course of the Independent Action, Petitioners learned from a judicial admission in the Related Action (still pending review in the Washington Supreme Court in Appeal No. 101047-

8) that the entity identified as “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4” was not represented by the law firm and lawyers appearing in the Foreclosure Action. Part of the fraud on the court alleged to have been committed by officers of the court in the Related Action was the false identification of Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 as a Delaware corporation.

At the time of summary judgment proceedings in the Foreclosure Action, Will Eidson, an attorney from the law firm of STOEL RIVES, LLP next claimed that the purported Plaintiff was a national banking association. Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 was not a Delaware corporation and it is not a national banking association either. It purports to be Real Estate Mortgage Investment Conduit (REMIC) of which Deutsche Bank National Trust Company is the purported Trustee according to filing with the Securities and Exchange Commission (SEC).

The case from which this Petition arises was commenced against “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4” on May 13, 2019 in the Superior Court for King County, Washington in Case No. 19-2-12664-7 KNT because that is name of the Plaintiff in the judicial foreclosure action titled Deutsche Bank National Trust Company as

Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, et al., Case No. 14-2-00426-5 KNT, the Foreclosure Action commenced against the Petitioners in King County Superior Court on January 3, 2014. Summary Judgment was granted in the Foreclosure Action in the name of the purported Plaintiff on July 17, 2015. Judgment and Decree of Foreclosure was obtained in that name on August 27, 2015. On May 13, 2019, relief from the said Order and Judgment was sought by Independent Action recognized under CR 60(c) of the Rules of Washington Superior Court, in addition to other causes of action.

This Petition for Writ of Certiorari is styled in the name of the entity which was purportedly granted judgment in Case No. 14-2-00426-5 KNT and from which CR 60(c) relief was sought in King County Superior Court No. 19-2-12664-7 on the grounds that the July 17, 2015 Summary Judgment Order and the August 27, 2015 Judgment was procured by fraud on the court. It is now known that SPS directed the Foreclosure Action against Petitioners. The law firm and the lawyers who appeared in the Foreclosure Action and in the Independent Action actually represented SPS and concealed the identity of their actual client to prevent the Ericksons from being able to fully and fairly be heard in the Foreclosure Action and in the Independent Action.

LIST OF RELATED ACTIONS

Pursuant to Rule 14.1(b)(ii)

The following cases are related as defined by Rule 14.1(b)(ii):

THE FORECLOSURE ACTION

The Foreclosure Action was styled Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, and was initiated on January 3, 2014 in King County Superior Court as Case No. 14-2-00426-5 KNT. Summary Judgment granting the remedy of foreclosure was entered on July 17, 2015 and the Judgment and Decree of Foreclosure was entered on August 27, 2015. Petitioners' appeal from the Judgment in this Foreclosure Action was adversely decided on February 13, 2017 in Deutsche Bank Nat. Tr. Co. for Long Beach Mort. Loan Tr. 2006-4 v. Erickson, No.73833-0-I (Wash. Ct. App. Feb. 13, 2017) (unpublished) and is retrievable at <http://www.courts.wa.gov/opinions/pdf/738330.pdf>

THE INDEPENDENT ACTION

Proceedings recognized under Washington Rules of Superior Court at CR 60(c), Appendix 11, and other causes of action now pending on Petition for Writ of Certiorari were commenced on May 13, 2019 styled Erickson v. Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 in King County

Superior Court Case No. 19-2-12664-7 KNT. Summary Judgment was granted in favor of the Respondent was granted on June 16, 2021 (Appendix 4) without advance notice and opportunity to be heard (Appendix 3). Petitioners timely appealed to the Washington Court of Appeals in Appeal No. 81648-9. The Washington Court of Appeals affirmed the Superior Court's Order and Judgment on November 29, 2021 (Appendix 2). The Ericksons timely filed their Petition for Review at the Court of Appeals to be transmitted to the Washington Supreme Court December 28, 2021 which proceeded in the Supreme Court of Washington as Appeal No. 10511-3. The Washington Supreme Court denied the Petition for Review on May 4, 2022 (Appendix 1).

THE STOEL RIVES/SPS ACTION

Erickson v. Power, et al., King County Superior Court in Case No. 20-2-08633-9 against Defendants VANESSA POWER, STOEL AND RIVES (sic), SELECT PORTFOLIO SERVICES ("SPS"), WILL EIDSON and JOHN GLOWNEY (hereinafter the "Respondents"), the "STOEL RIVES/SPS Action", was filed by the Ericksons on May 7, 2020 while the Independent Action was pending. Summary Judgment was granted in favor of the Respondents on March 30, 2021 and was appealed to the Washington Court of Appeals in Appeal No. 82755-3. The Court of Appeals affirmed the Order Granting Summary Judgment. The

Ericksons' Petition for Review is now pending in the Supreme Court of Washington as Appeal No. 101047-8.

John Earl Erickson and Shelley Ann Erickson v. Vanessa Power and Stoel and Rives and Select Portfolio Servicing, John Glowney and Will Eidson, Thomas Reardon¹, and Lance Olsen², was commenced by the Petitioners on May 7, 2020 in the Superior Court for King County, Washington as Case No. Case No. 20-2-08633-0, while the Independent Action from which this Petition arises was pending.

A motion for consolidation of the Related Action into the Independent Action was filed by counsel for the Defendants, an nonparty attorney employed by Defendant STOEL RIVES, LLP. The Motion to Consolidate was granted was granted and the Related Action was consolidated into the Independent Action. When Summary Judgment was granted at oral argument on Respondent's Motion to Dismiss the Independent Action (Appendix 3) and memorialized in writing on June

¹ Thomas Reardon was never served with the Summons and Complaint in the Related Action and did not participate in the proceedings.

² Lance Olsen appeared by counsel objecting to service of process and insufficiency of the allegations against Lance Olsen. The Ericksons voluntarily dismissed Lance Olsen from the Related Action without prejudice.

16, 2020 (Appendix 4), the cases were de-consolidated.

Summary Judgment was granted in the Related Action on March 30, 2021; appeal was timely taken to the Court of Appeals in Appeal No. 82755-3; the Court of Appeals affirmed the Order granting Summary Judgment on April 25, 2022. The Ericksons sought rehearing on May 12, 2022 which was denied on May 24, 2022. The Ericksons' Petition for Review to the Washington Supreme Court was timely filed and is pending as Supreme Court Appeal No. 101047-8.

The Defendants appearing in the Related Action admitted in their Answer to the Ericksons' Complaint that STOEL RIVES, LLP and its named Defendant attorneys, Vanessa Power, John Glowney and Will Eidson represented SPS, a Utah corporation, in the Foreclosure Action. An officer of Deutsche Bank National Trust Company admitted in an email that STOEL RIVES, LLP was representing SPS in the Independent Action.

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Petitioners John Earl Erickson and Shelley Ann Erickson, by their attorney, Wendy Alison Nora, respectfully petition for a writ of certiorari to review the November 29, 2021 Opinion and Order of the Washington Court of Appeals (Appendix 2) following denial of their Petition for Review by the Supreme Court of Washington on May 4, 2022 (Appendix 1).

OPINIONS BELOW

On June 5, 2020, the King County, Washington Superior Court granted Summary Judgment in the Independent Action in favor of the named Respondent at oral argument on Respondent's Motion to Dismiss without advance notice to Petitioners or opportunity to be heard and despite the consolidation of the STOEL RIVES/SPS Action into the Independent Action which was then functionally de-consolidated. (See Related Actions, *supra*.) See Appendix 3. Judgment of Dismissal of the Independent Action was entered with prejudice on June 16, 2020 (Appendix 4). The Ericksons timely appealed from the Order Granting Summary Judgment and Judgment of Dismissal.

On November 29, 2021, the Court of Appeals affirmed the Judgment of Dismissal in an unpublished Opinion submitted herewith at Appendix 2. The Ericksons sought review of the Court of Appeals' Opinion at the Washington Supreme Court which denied the Petition for Review and terminated the review proceedings on

May 4, 2022.

JURISDICTIONAL STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a) Washington Supreme Court's entry of its May 4, 2022 Order denying the Ericksons' Petition for Review (Appendix 1) of the November 29, 2021 unpublished Opinion and Order of the Washington Court of Appeals. This Petition for Writ of Certiorari is filed within 150 days of the Washington Supreme Court's May 4, 2022 Order, under Rules 13.1 and 29.2 of this Court plus the additional 68 days allowed by the Order of this Court extending the time for filing this Petition which was granted for good cause shown under Rule 13.5 on August 9, 2022.

The May 4, 2022 Order of the Washington Supreme Court terminated the proceedings for review and is the final judgment of the Washington Supreme Court. Jurisdiction of this Court arises under 28 U.S.C. sec. 1257.

**CONSTITUTIONAL AMENDMENTS
AND RULES OF COURT INVOLVED**

This Petition for Writ of Certiorari to the Supreme Court of Washington is based on the violation of the Ericksons' Due Process Rights guaranteed under Section 1 the Fourteenth Amendment to the Constitution of the United States in the King County, Washington Superior

Court and the Washington Court of Appeals which the Supreme Court of Washington declined to review. Section 1 of the Fourteenth Amendment to the Constitution of the United States is set forth in Appendix 7.

The violation of the Ericksons' Due Process Rights was the result of the Superior Court converting Respondent's Motion to Dismiss to proceedings for Summary Judgment approximately 30 minutes after oral argument on the Motion to Dismiss commenced. See Appendix 3, page 57a: Transcript of June 5, 2020 Oral Argument at original page 31, line 20-24.¹

At issue is Rule CR 12(b)(6) of the Washington Rules of Superior Court which is published online in the format which appears as Appendix 8. At what appears to be CR 12(b)(7) at page 178a of Appendix 8, there is a run on paragraph which specifically refers to the due process requirements for conversion of proceedings under CR 12(b)(6) to proceedings for summary judgment but appears at first glance to relate to CR

¹ This Court is asked to judicially notice that transcripts of proceedings ordinarily amount to one minute of time for each transcribed page. In any event, the sua sponte conversion of Respondent's Motion to Dismiss occurred after both parties had argued the Motion to Dismiss.

12(b)(7). That run on paragraphs reads:

(7) failure to join a party under rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the pleader may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56. (Emphasis added).

For the convenience of the Court, Petitioners have taken the liberty of reformatting the text of CR 12 as it should logically be formatted, consistent with the format which correctly appears following the text of CR 12(a)(4) at Appendix 8, page 176a-177a. The revised format is set forth as Appendix 9 and reads at page 184a:

(7) failure to join a party under rule 19.

A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the pleader may assert at the trial any defense in law or fact to that claim for relief.

If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by rule 56.
(Emphasis added.)

Appendix 10 sets forth CR 56 with the due process requirements therein. Specifically, at Appendix 10, page 188a-189a, CR 56(c) provides:

(c) Motion and Proceedings. The motion and any supporting affidavits, memoranda of law, or other documentation shall be filed and served not later than 28 calendar days before the

hearing. The adverse party may file and serve opposing affidavits, memoranda of law or other documentation not later than 11 calendar days before the hearing. The moving party may file and serve any rebuttal documents not later than 5 calendar days prior to the hearing. If the date for filing either the response or rebuttal falls on a Saturday, Sunday, or legal holiday, then it shall be filed and served not later than the next day nearer the hearing which is neither a Saturday, Sunday, or legal holiday. Summary judgment motions shall be heard more than 14 calendar days before the date set for trial unless leave of court is granted to allow otherwise. Confirmation of the hearing may be required by local rules. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is a genuine issue as to the amount of damages.

(Emphasis added.)

The sua sponte conversion of Respondent's Motion to Dismiss after oral arguments had already been made, deprived the Ericksons of the

procedural due process required under CR 12(b) and CR 56(c).

The Ericksons' Due Process Rights were also violated by the Respondent falsely contending that Cause One of Petitioners' Complaint in the Independent Action was filed pursuant to CR 60(b)(4), when it specifically relied on CR 60(c) which recognizes the availability of independent actions for relief from judgments and orders. See Appendix 11. Appendix 11 sets forth CR 60 in its entirety because it is more extensive and detailed than Rule 60(b) of the Federal Rules of Civil Procedure (Fed. R. Civ. P. 60(b)). CR 60(c) includes the separate provision which specifies the opportunity to file an independent action, which appears in greater detail in Fed. R. Civ. P. (d).

Unlike Fed. R. Civ. P. 60(b)(4) which provides for relief from void orders and judgments, it is CR 60(b)(5) which provides for relief from void orders and judgments in Washington Superior Courts. Moreover, although CR 60(b)(4) provides for relief from judgments and orders procured by fraud, misrepresentation or misconduct by the adverse party (upon which Petitioners did not rely), there is no one year time limitation for bringing a CR 60(b)(4) motion. Respondent incorrectly argued that the CR 60(b)(4) motion (which Petitioners did not bring) had to be brought within a "reasonable time." See (Appendix 3, page

30a, Tr. 9:20-21).² That requirement appears under CR 60(b) and does not apply to independent actions recognized by CR 60(c).

On appeal, the Ericksons quoted their Complaint in the Independent Action in their Opening Brief (Appendix 5, at 90a), writing:

Page 1 of the May 13, 2019 Complaint (CP 1-35) reads at lines 16-22:

John and Shelley Erickson, Plaintiffs, (hereinafter “Ericksons” and/or “Plaintiffs”, bring this independent action in this Court’s inherent authority to vacate judgments obtained by fraud on the Court as recognized in CR 60(c), acknowledged in Wiese v. Cach, LLC, 189 Wash.App. 466, 358 P.3d 1213 (Wash. App., 2015), citing Corporate Loan & Security Co. v. Peterson, 64 Wash.2d 241, 243-44, 391 P.2d 199 (1964), and discussed at length and allowed by the United States Supreme Court in Hazel-Atlas Glass v. Hartford-Empire Co.,

² This provision is unlike the comparable Fed. R. Civ. P. 60(b)(3) which limits the time for bringing motions for relief based on fraud, misrepresentation or other misconduct of the opposing party to one year.

322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944).³ (Emphasis added.)

STATEMENT OF THE CASE

Appellants' Independent Action, recognized under Rule 60(c) of the Washington Rules of Civil Procedure ("CR"), and for other causes of action was filed on May 13, 2019 in Superior Court. Appellants concurrently moved for a temporary restraining order ("TRO") to prevent the sale of their home of more than 40 years. The Superior Court denied the Motion for TRO. On May 24, 2019, hearing was held on the Appellants' Motion for Preliminary Injunction. The Motion for Preliminary Injunction was also denied. Nevertheless, Appellants continue to reside in the home they built with their own hands almost 40 years ago.

On June 5, 2020, the Superior Court held a hearing on the Motion to Dismiss the May 13, 2019 Complaint which was filed on October 17, 2019 and had been noted for hearing on March 10, 2020 and

³ Relief was granted in Hazel-Atlas Glass 12 years after alleged the fraud was discovered.

was postponed due to the an automatic stay in Ms. Erickson's unsuccessful effort to reorganize in Chapter 13.

On the record of the hearing on the Motion to Dismiss, the Superior Court converted the Motion to Dismiss to a Motion for Summary Judgment and granted summary judgment in favor of the Respondent orally at a hearing which had been noted on the Respondent's CR 12(b)(6) Motion to Dismiss for June 5, 2020. (Appendix 3: Transcript of the hearing on June 5, 2020). Judgment was entered on June 16, 2020 (Appendix 4.) The Ericksons timely appealed from the Order and Judgment on July 14, 2020.

SUMMARY OF THE ARGUMENT

The Superior Court violated the Ericksons' Due Process Rights by converting Respondent's CR 12(b)(6) Motion to Dismiss to a Motion for Summary Judgment on the record of the June 5, 2020 hearing without giving the Ericksons notice or opportunity to prepare to oppose the Motion for Summary Judgment. On a CR 12(b)(6) Motion to Dismiss, the Ericksons were entitled to maintain their action if it is possible that facts could be established to support the allegations in their

Complaint. *McCurry v. Chevy Chase Bank, FSB*, 169 Wn.2d 96, 101, 233 P.3d 861, 863 (Wash. 2010) provides:

Under CR 12(b)(6) a plaintiff states a claim upon which relief can be granted if it is possible that facts could be established to support the allegations in the complaint. See *Halvorson v. Dahl*, 89 Wn.2d 673, 674, 574 P.2d 1190 (1978) (“On a [CR] 12(b)(6) motion, a challenge to the legal sufficiency of the plaintiff’s allegations must be denied unless no state of facts which plaintiff could prove, consistent with the complaint, would entitle the plaintiff to relief on the claim.”); see also *Christensen v. Swedish Hosp.*, 59 Wn.2d 545, 548, 368 P.2d 897 (1962) (citing *Conley v. Gibson*, 355 U.S. 41, 78 S. Ct. 99, 2 L. Ed. 2d 80 (1957)).

Under Washington law, which continues to use the *Conley v. Gibson* standard, a Motion to Dismiss under CR 12(b)(6) must not be granted “if it is possible that facts could be established to support the allegations in the complaint”. The conversion of the noted Motion to Dismiss *sua sponte* to a Motion for Summary Judgment, without notice and opportunity for the Ericksons to

prepare or to be heard, violated The Ericksons' Due Process Rights under the Fourteenth Amendment to the Constitution of the United States because they were not given the opportunity to prepare and argue that there were genuine disputes of material fact as opposed having met the CR 12(b)(6) McCurry standard, which they clearly met.

In 2018, the Ericksons discovered that the individual who purportedly endorsed a document purporting to be the original Note issued on March 3, 2006 was not employed by Long Beach Mortgage Company (the ostensible payee of the Note) and that the endorsement-in-blank was a forgery. They also alleged that the recorded Assignment of Mortgage was executed in a false capacity by an employee of JPMorgan Chase Bank, N.A. which did not acquire the Ericksons' Note and Mortgage by purchase from the FDIC as claimed as the authority for the execution of the Assignment of Deed of Trust. By producing and uttering documents endorsed and executed without lawful authority in the Foreclosure Action, counsel purporting to represent the Respondent and their actual client, SPS, violated RCW 9A.60.10(4), (5), and (6) and RCW 9A.60.20(1) which prohibit forgery and uttering.

Forged documents are unenforceable, confer no legal rights and are void. See, e.g., WFG Nat'l Title Ins. Co. v. Wells Fargo Bank, N.A., 51 Cal.App.5th 881, 887, 264 Cal.Rptr.3d 717, 722 (Cal. App. 2020). The use of forged documents in litigation violates the Due Process Rights of the opposing party. See McDonough v. Smith, 139 S. Ct. 2149, 204 L. Ed. 2d 506 (2019).

The Ericksons' Independent Action also exposed the false allegations in the Complaint in the Foreclosure Action regarding the capacity of the purported Plaintiff which was not a Delaware corporation, as alleged by counsel for the purported Plaintiff and was not a national banking association but purported to be a REMIC Trust in SEC filings. The misrepresentation of the identity and capacity of the purported Plaintiff in the Foreclosure Action prevented the Ericksons from defending in the Foreclosure Action because they were prevented from bringing their counterclaims against SPS and wasted precious litigation resources shadow-boxing with an entity which had not appeared by counsel in the Foreclosure Action. The Ericksons retained counsel to obtain relief from the judgment in the Foreclosure Action based on fraud on the court.

ARGUMENT

A. Introduction: The Petition for Writ of Certiorari satisfies the considerations for allowing the Petition under Rule 10(c).

Rule 10(c) provides the considerations for allowing this Petition. The state court decided an important question of federal law that has not been, but should be, settled by this Court and decided an important question of federal law in a way that conflicts with the relevant decisions of this Court. This Court found in McDonough v. Smith, *supra*, that a cause of action for violation of a party litigant's Due Process Rights may be brought under 42 U.S.C. sec. 1983 where the state prosecutor used forged documents in a criminal case. The use of forged documents in civil proceedings produced and uttered by officers of the court must also be found to violate Due Process Rights in civil proceedings because courts rely on the representations of officers of the court as to the validity and authenticity of documents presented as evidence in litigation.

Amicus curie filed briefs in support of the complaining litigant, alerting this Court to the all too common phenomenon of forged evidence being

submitted in criminal cases. See *amicus curiae* briefs in *McDonough v. Smith*, *supra*, in Supreme Court (SC) No. 18-485. Countless homes have been taken in judicial and nonjudicial foreclosure proceedings throughout the nation by the use of forged assignments of mortgages and deeds and trust and notes displaying forged endorsement resulting from the process of securitization which became widespread before the Residential Foreclosure Crisis of 2008-2009. This Court has yet to grant certiorari to review the ubiquitous practice of production and uttering of forged documents into evidence in civil litigation, despite previous efforts of counsel for homeowners to obtain review of the use of forged documents in foreclosure litigation. See, for example, *Alexander v. Bayview Loan Servicing, LLC*, SC No. 18-624; *Bank of New York Mellon v. Marin*, SC No. 18-711; *Rodriguez v. Bank of America, N.A.*, SC No. 18-723; and *Hernandez v. PNMAC Mortgage Opportunity Fund, et al.*, 20-112.

Press reports suggest that a new round of foreclosures may be imminent. Respect for the Rule of Law is threatened in what is becoming a divided nation. Allowing this Petition and addressing the use of forged documents in civil litigation will have a beneficial effect on restoring

respect for the Rule of Law to say nothing of the individual lives which will benefit from an end to what is an ongoing crime spree in which innumerable homeowners are being rendered homeless based on forged documents produced as evidence in litigation and filed in the public record which has been persistent since 2009.

B. Fraud on the court committed by officers of the court in civil proceedings violates due process requiring relief from judgments fraudulently procured.

In Hazel-Atlas Glass v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), this Court granted relief from a judgment procured by fraud 12 years earlier. In Marshall v. Holmes, 141 U.S. 589, 592, 12 S.Ct. 62, 35 L.Ed. 870 (1891) this Court acknowledged the right to equitable relief from a judgment procured based on false testimony and forged evidence. Relief from the use of forged documents as evidence in civil litigation must be granted to preserve the integrity of the courts.

The Washington courts, by refusing relief from judgment in the Foreclosure Action violated the Ericksons' Due Process Rights. The Ericksons

raised the constitutional issue at oral argument on the Motion to Dismiss (Appendix 3, page 55a, Tr. 29:24-30:3), in their Opening Brief (Appendix 5) and in their Petition for Review (Appendix 6). This constitutional issue is clearly before this Court.

C. Petitioners' Due Process Rights were violated in the state court proceedings when they were denied the remedy of relief from the fraudulently procured judgment by the Superior Court's sua sponte conversion of Respondent's Motion to Dismiss to a Motion for Summary Judgment without notice or opportunity to be heard.

As discussed at length in the sections above, the Ericksons Due Process Rights were violated by the Superior Court when it converted the proceedings on Respondent's Motion to Dismiss at oral argument to proceedings for Summary Judgment without notice and opportunity to be heard as required by the Washington Rules of Superior Court at CR 12(b)(6) and CR 56(c).

The Ericksons did not waive their Due Process Rights to be heard on the sua sponte conversion of the proceedings by knowingly,

intelligently and voluntarily relinquishing a known right because they were not informed of the Superior Court's intended conversion of the proceedings until the conversion occurred. (Appendix 3, page 57a, Tr. 31:20-24.) See *Johnson v. Zerbst*, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461, 146 A.L.R. 357 (1938).

The Ericksons lawfully raised the constitutional issue on appeal (Appendix 5 and 6) and preserved it as required. This constitutional issue is clearly before this Court.

CONCLUSION

This Court should allow the Petition for Writ of Certiorari and issue the Writ to the Washington Supreme Court in order to settle the issue that the ubiquitous use of forged documents in foreclosure proceedings throughout the nation is violates homeowners' Due Process Rights and to reiterate the Due Process Rights of litigants in state court proceedings to obtain relief from judgments and orders procured by fraud.

Dated at Madison, Wisconsin this 30th day of September, 2022.

RE-SUBMITTED ON NOVEMBER 21, 2022.

/s/ Wendy Alison Nora

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*Admitted to practice before the United States Supreme Court only and not admitted to practice in any other jurisdiction

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