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.

APPENDIX TO
PETITION 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

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Appendix 1

FILED
SUPREME COURT
STATE OF WASHINGTON
5/4/2022
BY ERIN L. JOHNSON
CLERK

THE SUPREME COURT OF WASHINGTON

JOHN ERICKSON and SHELLEY ERICKSON, Petitioners, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, Respondent.	)	No. 10511-3 ORDER Court of Appeals No. 81468-9

Department I of the Court, composed of Chief Justice González and Justices Johnson, Owens, Gordon McCloud, and Montoya-Lewis (Justice Stephens sat for Justice Montoya-Lewis), considered at its May 3, 2022, 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.

DATED at Olympia, Washington, this 4th day of May, 2022.

For the Court

/s/ González, C.J.

CHIEF JUSTICE

APPENDIX 2

FILED
11/29/2021
Court of Appeals
Division 1
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN ERICKSON and SHELLEY ERICKSON, Petitioners, v. DEUTSCHE BANK NATIONAL TRUST COMPANY, Respondent.	No. 81648-9-1 DIVISION ONE UNPUBLISHED OPINION

HAZELRIGG, J. — John and Shelley Erickson appeal from a dismissal of their latest claims stemming from issues they have attempted to relitigate in various courts over many years. The Ericksons assert a number of claims under CR 60, including common-law fraud, fraud upon the court, lack of subject matter jurisdiction in a prior judgment, and breach of implied duty of good faith

and fair dealing. Because the Ericksons seek affirmative relief not available under CR 60, seek relief more than one year after the judgment was entered, and bring claims barred by the doctrine of collateral estoppel, we affirm the trial court's dismissal.

FACTS[1]

John and Shelley Erickson used their home in Auburn, Washington, to secure a loan from Long Beach Mortgage Co. The loan was sold into a pool of loans held in trust, with Deutsche Bank National Trust (Deutsche Bank)[2] serving as trustee. Long Beach Mortgage Co. was part of Washington Mutual, Inc. until it failed.[3] J.P. Morgan Chase (J.P. Morgan) purchased Washington Mutual, Inc.'s assets.

In 2009, the Ericksons sought to modify their loan, but were rejected. The Ericksons brought a claim in King County Superior Court in August 2010, seeking relief. The suit was removed to federal court, which awarded summary judgment

in favor of Deutsche Bank. In 2013, J.P. Morgan assigned its interest to DeutscheBank, who filed suit to foreclose on the Erickson's home in 2014. The trial court awarded summary judgment in favor of Deutsche Bank, which this court affirmed on appeal.

In 2019, the Ericksons again filed suit in King County Superior Court. They sought relief under CR 60 for: (1) relief from the 2015 foreclosure judgment for fraud upon the court; (2) declaratory judgment that the 2015 judgment is void; (3) common-law fraud; (4) breach of the implied covenant of good faith and fair dealing; and (5) relief from the 2015 judgment based on lack of subject matter

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1 We adopt the facts as set out in the opinion from the direct appeal in this matter. 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) http://www.courts.wa.gov/opinions/pdf/738330.pdf.

2 The Ericksons allege counsel for Respondent actually represent a separate entity and are "pretending to appear for Deutsche Bank." With no evidence to support this claim beyond the Ericksons'

own accusations, we refer to the parties as the trial court did below.

3 Deutsche Bank Nat. Tr. Co., No.73833-0-I, slip op. at 2.

jurisdiction. On June 16, 2020, the trial court granted summary judgment in favor of Deutsche Bank, dismissing the Ericksons' claims with prejudice.

The Ericksons appeal.

ANALYSIS

I. Summary Judgment

We review an order of summary judgment de novo, "considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party." Singh v. Fed. Nat'l Mortg. Ass'n., 4 Wn. App.2d 1, 5, 428 P.3d 373 (2018) (quoting Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015)).

A. Conversion to Summary Judgment from Motion to Dismiss

First, the Ericksons argue that the trial

court deprived them of their due process rights by improperly converting Deutsche Bank's motion to dismiss into a motion for summary judgment during the hearing.

"Either party may submit documents not included in the original complaint for the court to consider in evaluating a CR 12(b)(6) motion." McAfee v. Select Portfolio Servicing, Inc., 193 Wn. App. 220, 226, 370 P.3d 25 (2016). However, where "a party submits evidence that was not in the original complaint, such submissions convert a motion to dismiss to a motion for summary judgment." Cedar W. Owners Ass'n v. Nationstar Mortg., LLC, 7 Wn. App. 2d 473, 482, 434 P.3d 554 (2019) (quoting McAfee, 193 Wn. App. at 226).

Here, the Ericksons filed 31 documents and four motions over the course of the 13 months between the denial of their motion for a preliminary injunction and the hearing on Deutsche Bank's motion to dismiss. Additionally, the Ericksons failed to object to the conversion of the motion to dismiss into a motion for summary judgment. Generally, this court "may refuse to review any claim of error which was not raised in

the trial court." RAP 2.5(a), quoted in, Fireside Bank v. Askins, 195 Wn.2d 365, 374, 460 P.3d 157 (2020). Because the Ericksons' own submissions of significant evidence, beyond what was attached to their complaint, in response to Deutsche Bank's motion to dismiss prompted the conversion to a summary judgment proceeding, and because they failed to object below, the trial court did not err.

B. Merits of Summary Judgment Motion

Next, the Ericksons argue even if conversion into a motion for summary judgment was proper, the trial court erred as a matter of law in granting summary judgment in favor of Deutsche Bank on the merits. "Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Singh, 4 Wn. App. 2d at 5.

The court granted summary judgment on several bases: first, to the extent the complaint sought relief under CR 60, it was not filed timely; second, to the extent the complaint sought relief under CR 60, it sought affirmative relief not

appropriate under the court rule; third, the issues raised are barred by collateral estoppel.

The Ericksons argue the trial court erred in treating their "Independent Action" as a CR 60(b) motion. The Ericksons misconstrue the record in two ways. First, the trial court referred to their action as seeking relief under CR 60 generally. Second, the Erickson's complaint does seek relief under CR 60(b) as well as CR 60(c), stating "All Judgments and Orders rendered in the Judicial Foreclosure Action . . . must be vacated under CR 60(b)(5)." The trial court did not err by referring to the Erickson's actions as seeking relief under CR 60, and did not err because the Ericksons did seek relief under CR 60(b) as well as CR 60(c).

1. Timeliness

Under CR 60(b), a motion must be made to vacate the judgment "not more than 1 year after the judgment, order, or proceeding was entered or taken." The Ericksons admit in their complaint that they sought relief from the judgment

entered on August 27, 2015. Their CR 60 filing is dated May 13, 2019. Therefore, the trial court did not err in finding that, to the extent the Ericksons sought relief under CR 60(b)(5), the pleading was untimely.

2. Affirmative Relief under CR 60

In Fireside Bank, the Washington State Supreme Court discussed the relief available under CR 60. See 195 Wn.2d at 375–76. While the plaintiffs in Fireside Bank brought a motion under CR 60(b), the court discussed CR 60 broadly. The court held that "CR 60 is a limited procedural tool that governs relief from final judgment," balancing the principles of equity and finality. Id. at 375.

The rule is equitable in nature, "consistent with a court's 'inherent power to supervise the execution of judgments' that have prospective effect." Id. (quoting Pac. Sec. Cos. v. Tanglewood, Inc., 57 Wn. App. 817, 821, 790 P.2d 643 (1990)). However, "[n]o matter the circumstances," the only relief available "pursuant to CR 60 is relief 'from a final judgment,

order, or proceeding,' not any entitlement to affirmative relief." Id. at 375–76 (alteration in original) (quoting CR 60(b)).

Even if the Ericksons only sought relief under CR 60(c), the language of subsection (c) mirrors this language. It states "This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding." CR 60(c) (emphasis added).

The trial court correctly determined that the Ericksons were not entitled to affirmative relief under CR 60.

3. Collateral Estoppel

Next, the Ericksons argue that the trial court erred in granting summary judgment on the basis of collateral estoppel. They argue that "independent actions for fraud on the court are not barred by the doctrines of res judicata or collateral

estoppel."

The Ericksons are correct that independent

actions under CR 60 are not always subject to res judicata if the claim meets a "demanding standard." See United States v. Beggerly, 524 U.S. 38, 46–47, 118 S. Ct. 1862, 141 L. Ed. 2d 32 (1998) (analyzing Federal Rule of Civil Procedure 60). However, the Erickson's claim was not dismissed based upon res judicata, but upon collateral estoppel. The Ericksons cite no authority for the contention that collateral

estoppel does not apply in an action under CR 60. They cite Corporate Loan & Security Co. v. Peterson, which stated after one year, "the only remedy available for the vacation of a judgment is an independent action in equity or a collateral attack." 64 Wn.2d 241, 244, 391 P.2d 199 (1964).

However, the court in Corporate Loan & Security Co. does not hold collateral estoppel did not apply to these independent actions or collateral attacks.

Collateral estoppel prevents litigation of an issue if four elements are met. Hanson v. City of Snohomish, 121 Wn.2d 552, 561–62, 852 P.2d 295 (1993). The four elements are: (1) the issues presented in the previous and current adjudications are identical; (2) the prior adjudication ended in a final judgment on the merits; (3) the party against whom collateral estoppel is asserted was a party to the prior adjudication; and (4) application of the doctrine does not work an injustice. Id.

Here, the Ericksons present identical issues as they did in a federal proceeding in 2010, and again in a superior court action in 2014. Deutsche Bank Nat. Tr. Co., No.73833-0-I slip op. at 2. In 2017, this court held collateral estoppel precluded the Ericksons' 2014 claim. See Id. at 2–3. We held

the Ericksons were precluded from arguing Deutsche Bank does not possess the original note and therefore cannot foreclose. Id. at 3. In the present case, the Ericksons argue Deutsche Bank does not possess the valid, original, note, and therefore did not have standing to foreclose on their home. These issues are identical.

Second, both prior adjudications ended on a valid, final judgment on the merits. "[A] final judgment 'includes any prior adjudication of an issue in another

action that is determined to be sufficiently firm to be accorded conclusive effect.'" In re Dependency of H.S., 188 Wn. App. 654, 661, 356 P.3d 202 (2015). "A grant of summary judgment constitutes a final judgment on the merits and has the same preclusive effect as a full trial of the issue."

Brownfield v. City of Yakima, 178 Wn. App. 850, 870, 316 P.3d 520 (2014) (quoting Nat'l Union Fire Ins. Co. of Pittsburgh v. Nw. Youth Servs., 97 Wn. App. 226, 233, 983 P.2d 1144 (1999)). The federal court for the Western District of Washington entered summary judgment against the Ericksons, as did the King County Superior Court in 2014. Deutsche Bank Nat. Tr. Co., No.73833-0-I, slip op. at 3, 6.

Third, the Ericksons were parties to both the federal proceeding and the superior court proceeding. Id. at 6.

Finally, collateral estoppel will not work an injustice against the Ericksons. This is the third time the Ericksons have raised an identical claim. They have had more than a full and fair opportunity to litigate their case in both state and federal court. Each time, their claim has failed. During the hearing for a preliminary injunction,

the Ericksons' counsel at the time was warned the court was concerned about whether the claim "is a proper use of your role as an officer of the court" and that the court would consider sanctions if counsel continued with the case. Collateral estoppel is designed to promote "judicial economy and serves to prevent inconvenience or harassment of parties. Also implicated are principles of repose and concerns about the resources entailed in repetitive litigation." Christensen v. Grant County Hosp. Dist. No. 1, 152 Wn.2d 299, 306–

07, 96 P.3d 957 (2004). Application of collateral estoppel is appropriate here, where the Ericksons bring a third identical claim against the same party.

The Ericksons also allege that if this court holds their collateral attack is barred by collateral

estoppel, every collateral attack would be barred. They incorrectly anticipate the basis for our decision. Our decision does not rest upon the procedural posture of the Ericksons' claim as a collateral attack on a judgment, but on its substance. The Ericksons allege fraud based on the same facts as their prior litigation, which was decided on the merits. Because of the substance of their claim, it is barred by collateral estoppel. The trial court did not err in so finding.

C. Consideration of Evidence

The Ericksons also allege summary judgment was improper because the superior court never viewed the exhibits and declarations they submitted. This is based on the trial court's statements that it "didn't see" the Paatalo and Nora declarations when seeking to retrieve them within the digital record system. However, the trial court's initial confusion seemed to be because the

declarations had been filed early in the life of the case, stating "I didn't realize I was going that far back in the record to look for them." The declarations were attached to the Ericksons' May 13, 2019 complaint, filed long before the hearing on June 6, 2020. There is no reason to believe the trial court neglected to review the declarations in the 13 months between the filing of the complaint and the summary judgment hearing simply because it could not pull up the declarations during the hearing. As Deutsche Bank notes, the trial court made specific rulings with respect to both

declarations in its written order. The Ericksons have brought forth no evidence to suggest that the trial court did not review these declarations prior to making its decision.

Additionally, the court explicitly noted on

the record all it had "received and reviewed," before asking the Ericksons if there was "anything else that you filed that I should be considering?"—to which Ms. Erickson responded "I believe that's it." Therefore, any objection is waived by the Ericksons' failure to raise it below. See Fireside Bank, 195 Wn.2d at 374.

The trial court properly ruled there were no genuine disputes of material facts, and Deustche Bank was entitled to judgment as a matter of law. We affirm the trial court's summary judgment award in favor of Deutsche Bank.

II. Evidentiary Determinations

Finally, the Ericksons argue that the trial court erred by striking portions of the Nora declaration. We review evidentiary rulings related to a summary judgment motion de novo. Martinez-Cuevas v. DeRuyter Brothers Dairy, Inc., 196 Wn.2d 506, 514, 475 P.3d 164 (2020) (quoting

Wilkinson v. Chiwawa Cmtys. Ass'n, 180 Wn.2d 241, 249, 327 P.3d 614 (2014)). This is "consistent with the requirement that the appellate court conduct the same inquiry as the trial court." Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). "[E]videntiary error is grounds for reversal only if it results in prejudice." Bengtsson v. Sunnyworld Int'l, Inc., 14 Wn. App. 2d 91, 99, 469 P.3d 339 (2020) (quoting City of Seattle v. Pearson, 192 Wn. App. 802, 817, 369 P.3d 194 (2016)). "An error is prejudicial if 'within reasonable probabilities, had the error not occurred,

the outcome of the trial would have been materially affected.'" Id. The Ericksons have failed to demonstrate a reasonable probability that the outcome would have been different had the Nora declaration not been struck. Based on the court's

decisions regarding timeliness and unavailability of affirmative relief under CR 60, as well as its decision on the basis of collateral estoppel, it is unlikely the outcome would have been different had the Nora declaration been admitted. The trial court did not abuse its discretion in excluding the Nora declaration.

The Ericksons fail to demonstrate any reversible error by the trial court below. We affirm the trial court's award of summary judgment in favor of Deutsche Bank.

Affirmed.

/s/ Hazelrigg
_____

WE CONCUR:

/s/ Cohn, J. _____

/s/ Mann, C.J. _____

Appendix 3

TEXT OF TRANSCRIPT REPRODUCED IN 11 POINT FONT TO CONFORM TO LINE NUMBERING FORMAT

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

John Erickson and Shelley Erickson Appellant,	Case No. 19-2-12664-7 KNT COA # 81648-9-1
vs.	
Deutsche National Trust Company Trustee for Long Beach Mortgage Loan Trust 2006-4 Respondent.	

TRANSCRIPT OF PROCEEDINGS

June 5, 2020

BEFORE: THE HONORABLE JOHANNA BENDER

APPEARANCES

FOR THE APPELLANT:

Shelley Erickson, Pro Se

FOR THE RESPONDENT:

K.C. Hovda

TRANSCRIBED BY:

Andie Evered, CCR

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EXHIBITS

NONE

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1 (Whereupon, on June 5, 2020, before The
2 Honorable Bender, Judge in Superior Court for
3 King County, the following commenced:)
4 6/5/2020 hearing
5 THE COURT: Please just introduce
6 yourselves on the record, so we know that you're
7 being recorded as well.
8 (silence)
9 Are the Ericksons on the line? I see that
10 you're muted.
11 MS. ERICKSON: Could you hear us?
12 THE COURT: I un-muted you now. Is this
13 the Ericksons on the line?
14 MS. ERICKSON: This is Shelley Erickson.

MR. ERICKSON: John Erickson.

THE COURT: Thank you for your patience this morning.

Madam clerk, are you hearing the Ericksons?

THE COURT CLERK: Yes.

THE COURT: Okay, everybody. Thank you very much for your patience this morning, I appreciate it very much.

We are on the record in the matter of the Ericksons versus Deutsche Bank, I'm just going to

put the cause number on the record. It is 19-2-12664-7KNT.

Mr. And Ms. Erickson are on the line and have made their appearance. If I could have counsel for the defense, make your appearance, please.

MS. HOVDA: Yeah. Good morning, Your Honor. K.c Hovda on behalf of the defendant, Deutsche Bank.

THE COURT: And I know that my bailiff and clerk are on the line. Is anybody else on the line this morning?

(Silence)

THE COURT: Okay. Thank you again, everybody for your patience this morning. I appreciate it. I'm going to ask you to stay on mute unless you are called upon by the court to speak. If you'd just give me a minute here, I need to log in to another page on my computer. (inaudible).

We're here today on a number of motions, the defense has brought a motion to -- well, a motion to dismiss, although it was initially filed as a motion for summary judgment; a motion for protective order from a number of discovery

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requests; a motion to strike declarations as well submitted by the Ericksons.

The Ericksons have written a tremendous -- have submitted a tremendous number of materials.

I'm going to put on the record what I have received and reviewed so that the Ericksons can correct me if I am missing anything that I should have also reviewed.

They were -- they provided a motion for

void judgment of select portfolio servicing (sic) on Deutsche Bank National Trust Company for Long Beach Mortgage Loan Trust, which I am construing as a responsive pleading. Plaintiffs invoke cause of objection to defendant's motion for dispositive motion to strike plaintiffs' complaint without a jury trial; a substantive motion to strike, motion to dismiss. I understand that to be a motion to strike the motion to dismiss. Plaintiffs' motion for production of authority to action, which I construe as a response brief. Plaintiffs supplemental reply, objecting to Vanessa's void moot dispositive motion to dismiss an omnibus motion and combined reply brief in support of motion to dismiss and omnibus motion for protective order and to strike plaintiffs'

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declarations and moot miscellaneous, which I construe as a response brief. Plaintiffs reply, objection to Stole and Reeves authority to act and objection and reply motion to strike Vanessa Power declaration and motion for omnibus motion and omnibus motion for protective order and to strike plaintiffs declarations and all motions filed, which I construe as a motion to strike the motion to dismiss. And I -- and then finally plaintiffs reply and objection and motion to strike

defendant's reply motion in support of motion to consolidate and reassign. I can't, frankly, tell if that is an untimely filed response brief. To the extent that it is, I am striking it and disregarding it. Or, if it is a motion that was not accompanied by a note for motion, which is also improper and will be stricken. So in either event, I am not considering that brief.

Let me ask the Ericksons, was there anything else that you filed that I should be considering?

MS. ERICKSON: I believe that's it.

THE COURT: Okay. Thank you, very much. So the way this is going to work this morning, is I will hear from Deutsche Bank first,

and then I will hear from the Ericksons and then I will allow brief reply from Deutsche Bank. I do want to just clarify, Ms. Hovda, that in your motion to strike declarations, you referred to quite a few declarations. Two of them, I didn't see in the materials that I received. And it could be that they were buried and I just didn't find them. The pleadings that were submitted by

the Ericksons were very difficult to parse through because it was hard to tell what was an exhibit to a declaration versus a standalone declaration. But you did reference the Paatalo and Nora documents, and I didn't see those. So if you want to point me to where I should have been looking, I apologize if I simply overlooked them.

MS. HOVDA: I believe, Your Honor, that both of those declarations were filed very early in the case. But I -- they also may have been exhibits to other declarations. We also had a difficult time determining what was an exhibit versus a standalone declaration. So I -- I think they -- it could be that we misinterpreted them as standalone declarations. For example, I think the King declaration may have actually been an Exhibit. I -- and I apologize. I don't have the

docket in front of me to cite the date, but I could pull it up. But I believe those -- to the extent that they were independent declarations, they were filed quite early on in the case before the protective order was heard -- or the TRO was heard.

THE COURT: I just found them. I didn't realize I was going that far back in the record to look for them. So just give me one moment to review them, and then I'll hear your argument.

(Silence)

Madam Bailiff, our e-document reader ECR -- oh, it's finally loading, maybe. If not, I'm going to ask you to e-mail me those documents.

(Silence)

Madam Bailiff, I'm trying to pull up sub six and sub 13 from the Erickson file and ECR is not loading this morning. Are you able to e-mail me those documents?

(Silence)

Madam Bailiff?

(Silence)

THE COURT: All right. For -- because apparently Murphy's Law is governing our lives this morning, I can't pull that up electronically either. My bailiff's going to try to send them to me. I apologize for all the chaos this morning.

In the meantime, let me invite you, Ms. Hovda, to present any argument that you'd like

to be heard.

MS. HOVDA: Thank you, Your Honor. I'll refer to my client, the Deutsche Bank Trust just as the trust. And we're here today, as you said, on two motions, brought by the defense, a motion to dismiss and an omnibus motion that the Court only needs to reach in the event it doesn't grant the motion to dismiss.

For the motion to dismiss, we divided it into basically three buckets of claims that are raised in the complaint. Turning to the first bucket, claim one, is a CR -- a claim for -- based on 60 (b)(4) seeking to satisfy the 2015 foreclosure judgment based on fraud. This claim fails for three reasons, at least three reasons. First, a motion under CR 60 (b)(4) must be brought within quote, "within a reasonable time." And that actually was filed four years after the foreclosure, the 2015 foreclosure judgment, with no explanation about why the delay. Second, there's simply no evidence or possible allegations

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of fraud here, much less clear and convincing evidence -- or allegations (inaudible) with particularity. Many courts -- every court to address this issue has held that the note in this case is valid. And there's simply no evidence that the trust does not have standing to foreclose. And third, this is an argument that really applies to all of the claims. This claim seems to seek affirmative relief beyond what is available under CR 60 (b). 60 (b) can only be used to grant relief in the form of vacating the judgment. No other affirmative relief is available. We filed a notice of supplemental authority back in April citing a new Supreme Court case, Adkins, that reiterates this principle. So for those three reasons, the claim one based on 60 (b)(4) should be dismissed as feudal (sic). The second bucket of claims, claims two, three, four, are all claims really seeking affirmative relief outside of CR 60. This is a declaratory

relief claim, a common-law fraud claim and a breach of duty of good faith and fair dealing claim.

Again, to the extent these were actually brought as some sort of CR 60 argument, they

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failed because affirmative relief is not available, that's the Atkins case. But to the extent these are independent new claims outside of CR 60, they are clearly barred by collateral estoppel and fail on the merits as well.

THE COURT: And just to clarify -- sorry. Wouldn't setting aside the fraud judgment be barred by collateral estoppel also since it's been decided?

MS. HOVDA: Yes, Your Honor. I think there is some case law that suggests that if somebody comes forward with affirmative evidence of fraud in a CR 60 (b) motion, that, not always, would be barred by collateral estoppel. But, yes, we also think on the merits as far by collateral

estoppel because essentially it's a fraud argument to the extent. We understand it is that the trust and its counsel submitted fraud on the court by producing an inauthentic note. And that has been decided by federal courts, you know, the -- the Western District of Washington, the Ninth Circuit, this court, King County Superior Court and the Washington Court of Appeals. So, yes, we would argue collateral estoppel applies because it's really, actually, not a CR 60 argument. It's more

of a merit argument.

So turning back to the claims two through four, seeking -- explicitly seeking affirmative relief, they are barred by collateral estoppel. I am happy to march through the four elements of collateral estoppel, but they're clearly met here. The Court of Appeals found they were met in 2017. And the issues are identical here.

Again, the heart of both cases is the same. This is (inaudible) not producing enough

evidence to show it had ownership of the original note and that it cannot foreclose. Same parties to each case. Final judgment. We have all the elements here. And then again on the merits, all arguments questioning the standing of the (inaudible) to foreclose are unpredicted by the record and pure speculation. There's simply no evidence that's been provided to support that.

Turning to the last claim, claim five, which is (inaudible) -- CR 60 (b)(5) claim to set aside the foreclosure judgment based on lack of jurisdiction. The theory here seems to be the -- the foreclosure court lack's (sic) subject matter jurisdiction to hear the foreclosure action, and because the trust lacks standing to enforce the

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note, so sort of the same argument again. Again, all of them show the trust as holder of the note. It is and has been and this has been addressed by many courts. Further, the law in Washington is that Superior Courts have the authority to conduct

foreclosure proceedings, RCW 61.12. And this, again, seems to be really a merit question going back to that same issue, which is collaterally estopped from being raised here. But there has (inaudible) don't seem to contradict these or -- or respond in a substantive way to these merits, arguments, other than arguing that pro se pleadings should be liberally construed, and, you know, providing some more speculation that there's some conspiracy going on here, but that is simply insufficient on summary -- on summary judgment or even at the motion to dismiss is at an (inaudible) motion to dismiss (inaudible). We are fine if this court needs to construe this and convert it as a motion for summary judgment. However, all the documents cited are actually based on a request for judicial notice submitted by the Ericksons and we would maintain are all judicially noticeable documents and the court doesn't need to look further and --

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and make this a CR (inaudible) motion. But we -- we maintain we would prevail under either standard and the claims are futile. And so for that reason, we request that they be dismissed with prejudice.

On the omnibus motion, I'll just go over sort of the three categories of relief we're seeking there, but I think I'll just rest on the briefing unless the Court has any specific questions. We're seeking first a protective order quashing the discovery request issued by the plaintiff. Second, an order striking the numerous declaration filings. And third, an order just striking or disregarding the various other moot and not noted filing that we weren't sure what to do with.

So with that, I -- I'd just like to conclude and say the motion to dismiss should be granted with prejudice. The claim fails in a matter of law in ways that couldn't be cured by

amendment. This issue has been heard again and again by courts. And we ask that the Court dismiss with prejudice today. And alternatively, in the event that the Court does not, we ask that our omnibus motion be granted. And I'm happy to

answer any questions.

THE COURT: I don't have any questions at this time. Thank you very much.

If you could put yourself on mute. Thank you.

I'm going to take the Ericksons off of mute at this time and invite argument from you.

MS. ERICKSON: Okay. This case is an independent case. It's filed under Rule 60 (c) and not under Rule 60 (b)(4), contrary to what the defendant's (sic) falsely claim. Due to fraud upon the court and the administration of justice or finality, independent actions under Rule 60 (c) are reserved for those cases of injustice, which in certain instances that are deemed sufficiently

gross to demand a departure from rigid adherence to the doctrine of res judicata.

Defendants do not disclose the contract law they claim to represent through evidence, and they have filed this case in the name of Deutsche Bank National Trust trustees, whom is not a party to the PSA and suffers no loss, no harm, and no injuries (inaudible) -- intent to the contract they claim to represent.

Washington State has no duty to retreat

law as precedent in the state in State vs Judd, 1990 and State versus Renaldo Radman (phonetic), 2003, when the court found that there's no duty to retreat when a person is assaulted in a place where he or she has a right to be. I'm being assaulted on my property and it's being seized by people without authority to seize it.

This case is a coverup to (inaudible) securitization failure of the Ericksons' loan pursuant to trust contract governing documents at

no fault of the Ericksons. A borrower is (sic) standing to challenge a foreclosure sale ordered by a party with no authority to do so. Yvanova, supra, 62 Cal.4th at p. 943.

Long Beach Mortgage sold our deed of trust to unknown third parties two years before Chase assumed it as assets. That cannot be easy -- so easily dismissed. The trial court relied on the P&A agreement between Chase and the FDIC. To conclude the Chase Home Loan Financing parent company obtained the right to the Erickson deed trust, but the legal meaning of P&A is that Chase obtain whatever assets WAMU possessed as of September 2008. It does not exhaustedly list what assets those were. The P&A agreement sheds no

light on whether WAMU sold the Erickson deed of trust in 2006. Thomas Reardon's declaration in 2010 states, the Erickson mortgage is governed by the trust contract. Assuming, as you must, at that stage that the allegations of the operative

6 complaint are true, it would mean that Chase was
7 never WAMU's successor in interest as to the
8 Erickson deed of trust. And at most, (inaudible)
9 to transfer an asset, it never owned to Deutsche
10 Bank National Trust in 2012 and 2013, and was
11 fraud upon the court and fault. As a result, the
12 party's no legitimate claim to the Erickson deed
13 of trust foreclosed on our house and was
14 wrongfully granted SMJ by Judge Pechman and
Judge
15 Darvas. A second assignment was fabricated from
16 SPF (sic: SPS) to Deutsche Bank National Trust and
back to
17 SPF (sic: SPS) in 2018 when Deutsche Bank
National Trust is a non-party
18 to the trust. The assignment in 2012,
19 2013, and 2018, are forbidden by the trust
20 contract language the defendants agreed to and
21 claimed to represent.
22 This is precisely the kind of injury in
23 addition in the (inaudible), which held that a

24 borrower has standing to challenge a foreclosure
25 sale ordered by a party with no authority do to
18
1 so. Yvanova, supra, 62 Cal. 4th at p. 943. The
2 borrower owes money not to the world at large, but
3 to a particular person or institution, and only
4 the person or institution entitled to (inaudible)
5 may enforce the debt by the foreclosing of the
6 party. ID at P 89 38 by (inaudible).
7 The claim that Chase may have inherited
8 servicing rights and responsibilities from Long
9 Beach Mortgage or WAMU does not erase the
10 Ericksons' injury as a party with no beneficial
11 interest in our loan, directed foreclosure on our
12 house. Yet Chase was claiming ownership and
13 authority over the loan under those circumstances
14 and claimed it was a false claim. Also seeing
15 November 19th Deutsche Bank versus Barclay Bank
16 PLC in New York, court law Court of Appeals, the
17 highest court in New York.
18 Why would this court permit parties to

obtain a decision from this court by presenting an argument that has no basis whatsoever in the complaints or contracts. Deutsche Bank National Trust and Long Beach Mortgage 2004 trust contracts have agreed with each other to be under New York law. A familiar and eminently sensible proposition of law is that when parties set down

their agreement in a clear, complete document, the writing should be, as a rule, enforced according to its terms under WW Associates, Inc, and Giantontieri 72 in New York, 2d 157, (inaudible) 1990.

The Washington constitution protects contract law. The contraction (sic) expressed intentions of the parties must account for something. The trust is the contract law that is concealed from the court by the defendants. And the majority of the courts turn a blind eye to this specific contract law. Defendants have to be

13 of the know. They are continually, constantly,
14 willfully, intentionally violating their own
15 governing contract law with every (inaudible) they
16 made concealing and never disclosing the contract
17 plain language. They are governed by the courts
18 and that covers them and the courts and tried to
19 conceal it from the courts by falsely claiming the
20 Ericksons cannot question the PSA trust contract
21 law that affects the wrongful foreclosure on her
22 home by unauthorized parties that govern -- that
23 the defendants and this court, that evidence is
24 (inaudible) failure of the Ericksons' mortgage and
25 evidence a non-party without authority is
20
1 foreclosing on our home. See the MBA letter that
2 I sent and filed with the court that is addressed
3 to the Honorable Minutiae (phonetic: Mnuchin), the services
4 related to (inaudible) certificate holders in full
5 whether the borrower is or not. The certificate
6 holders suffer no loss, no harm, no injury.

We have filed this case under the administration of justice over finality case, Hazel-Atlas Company versus Hartford Company 322 U.S, 238 from the Supreme Court in 1944, the U.S. Supreme Court. There is no res judicata for motions for void judgments and motions for administration of justice outweighs the important interest in finality of litigation.

The defendant lacks a complete absence of jurisdiction and standing and has no permission to litigate in Deutsche Bank's name. Deutsche Bank has a memorandum out that's on their site, so it should be -- I ask that to be put under judicial notice.

I'm asking the servitors (sic) to stop litigating in Deutsche Bank National Trust's name because that is also part of their contract agreement. Debtor's allegations are not (inaudible) by the administration of justice

outweighs the important interests of finality, and

a void judgment is not time (inaudible). It is a wrong against the institutions set up to protect and safeguard the public. Institutions in which fraud cannot complacently be tolerated consistently with a good order of society. This case -- case violates Article III. There are no lenders, no creditors, no losses, either by Deutsche Bank nor the certificate holders, the certificate holders whom are only the beneficiaries of the trust contract. Deutsche Bank is not a party to the trust but only to the MLPA contract only -- Deutsche Bank can only sue the issuer and the depositor, not the borrowers; both suffer no loss. See the MBS letter to (inaudible) again, severe -- the servitor (sic) guaranteed payments to the certificate holders, whether or not the borrower pays the mortgage. So the servitor (sic) -- certificate holders suffer no loss either. By definition, the trustee is not injured by the diminishment of a trust corpus because the trustee's role is to maintain the trust for the

exclusive benefit of the certificate holders who retain the beneficial interests, whom holds the assets, but cannot sue the borrower -- whom cannot

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hold assets but cannot see the borrower. The recognition in law is that a trustee holds fair or legal title to the trust corpus is shorthand for (inaudible) by which law separates the holding of the title from the enjoyment of gain or injury or loss. To say the trustee suffered the injury would be a fiction directly at odds with centuries of trust law. See Cashmere Valley Bank versus Washington Department of Revenue. The certificate holders cannot sue the borrower. The borrower has no obligation to pay the certificate holders and the certificate holders are guaranteed payment by the servitor, whether or not the borrower pays the mortgage. (Inaudible) which also supports the MBS letter to the Honorable Minutiae (sic: Mnuchin). All U.S. jurisdictions

have adopted a matter of law and public policy, Article 9, 203 UCC, that remedy will only be granted to the one who paid value for the underlying obligation.

The contract this party pretends to represent specifically states this under Article UCC 9. Article III mandates the party must suffer a loss. This constitutional (inaudible) it under Article III for the existence of standing are that

the plaintiff must personally have: One, suffered some actual or threatened injury. Two, that injury can be fairly traced to the challenged action of the defendant. And three, that the injury is likely to be redressed by a favorable decision.

The defendants' claim to represent -- the defendants' claim to represent the contract law that governs them in this court but fails to present it to the Court. The Court has not read the language of the contract law. In a contract

breach it is important to note who made what promises to whom and what in that contract. When the contract defendants alleged they represent -- what they represent was breached, the plaintiffs (inaudible) all of those details by refusing to identify and file the contract with the court to conceal the fraud they commit (inaudible) the Ericksons in this court. The plaintiffs fail to identify what assets JP Morgan Chase purchased as a result of the PAA (sic). Failing to recognize that the court (inaudible) are deposited here in the favor of the Ericksons. The breach to Deutsche Bank National Trust in this trust contract were actions. Long Beach Mortgage and

Security and Long Beach Mortgage made to the trustee at no fault of the Ericksons, and they're the only one that Deutsche Bank National Trust has the authority to sue -- and that's on a secure statute of limitations. These two parties reached their present -- representatives (inaudible) to

Deutsche Bank, not the Ericksons and are the only party Deutsche Bank can sue with a clear (inaudible) of (inaudible), not the Ericksons.

All parties are New York contracted parties. This is wholly irrelevant to the Ericksons and this trust where they are not parties to the Erickson mortgage. Deutsche Bank National Trust is not party to the trust nor the Erickson mortgage. This is a complaint and contract issue.

Deutsche Bank National Trust is a trustee who, by definition, holds only fair legal title without equitable -- equitable interests and is not injured by a diminished trust corpus. The certificate holders bear the injury, but -- bear the injury. But one, only if the Erickson mortgage was assigned to the trust within the strict guidelines of their own trust contract, the governing document -- documents, which it was not

-- but a breach by the-- by Long Beach Mortgage

and Long Beach Securities Corporation, not the Ericksons and all assignments after the date are forbidden by the trust contract and are in contradiction of this trust contract law. They are void. Fraudulent, forged, false, void, aberrational assignments. The certificate holders have to hold assignment -- held assets and they cannot pursue their own trust corpus. The certificate holders have to suffer a loss to claim harm and injury, but are guaranteed full payments by the servitors (sic) who was one who breached their warranty and representations and assignments and guarantee by the servitors (sic), not the Ericksons. Fanny Mae -- they're also guaranteed by Fannie Mae, the Economic Stabilization Act of 2008 known as the bailing (sic: bailout). The only valid assignment the Erickson mortgage to this trust -- the only valid assignment of the Erickson mortgage to this trust is omitted and missing in action and is assigned

to nobody.

Defendants continually threatened wrongful foreclosure and threats of wrongful sale at auction filing and disseminating fabricated -- false, fabricated and forbidden documents,

including the note and the assignment. The wrongdoing is continual there for tolls -- the fraud told by active concealment. See U.S. Supreme Court, McDonough versus Smith (inaudible) the Supreme Court answers an important section, 1983, fabrication of evidence or (inaudible) question. The statute of limitations does not start until after the litigation's done, successful or not. Res judicata consequences will not be applied to avoid -- to avoid judgment, which is one which from its inception is complete (inaudible) and without legal effect. Alcott versus Alcott 437 N.E. 2d 392, 3rd at appellate court, third district, 1982. A void judgment is not entitled to the respect according to a valid

adjudication that may be entirely disregarded or declared inoperative in any tribunal in which effect is sought to be given. It is attended by none of the consequences of a valid adjudication. It has no legal or binding force or efficiency for any purpose or at any place. It is not entitled to enforcement. All proceedings founded on the void judgment are, themselves, regarded as invalid 30 (a) (a)(m) judgments 44, 45. The lawyers violate or (inaudible) to ethics codes. See

Lorenzo versus The Securities and Exchange Commission. In a decision beneficial to the U.S. Securities Exchange Commission, the U.S. Supreme Court has affirmed that those persons who disseminate statements containing material representations or omissions, and I quote, “or omissions” are primarily liable for such misstatements, even if they did not directly make them. To assert claims against secondary actors, including bankers, lawyers, and accountants, who

disseminate statements made by others that they allegedly know are materially misleading and the commission is now clear to charge such persons as primary violators without demonstrating that the person who actually made the statement also violated the Federal Securities Law. The court endorsed the (inaudible) approach to scheme liability against those who distributed materially and misleading statements with (inaudible), regardless of whether they are actually the maker of the statement by holding that a (inaudible) can still violate section 17 (a) of the Securities Act and section 10 (b) of the Exchange Act and Rules 10 b-5 thereunder. Lorenzo allows -- also allows to assert claims against secondary actors who the

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signator disseminate alleged misstatements made by others. Lorenzo may also further (inaudible) the condition to alleged primary violations against gatekeepers and others who did not make alleged misstatements, but are nonetheless alleged to have

been involved in their dissemination. The lawyers in this instant case are in violation of RCW 244.030 and RCW 9.26.02, falsely claiming to represent a trustee of the beneficiary, who is not a beneficiary, who is (inaudible) a nonparty to the PSA contract whom (inaudible) have not given them permission to act in their name. There was no evidence or supporting declaration filed by the Deutsche Bank National Trust employees, whom the court could only speculate as to their existence or their interest in the proceeding. There have been no valid claim of injury, loss or harm by Deutsche Bank National Trust Company, nor the certificate holders, because there is no harm, foreclosure is considered as (inaudible) remedy equivalent to capital punishment. The courts violate Washington constitutional law.

A new case law from the U.S. Supreme Court, (inaudible) versus Indiana, states that state courts are in violation of the Eighth

Amendment when imposing sanctions. The Washington Supreme Court ruled unanimously (inaudible) losing your home is one of the worst sanctions. Washington, the Supreme Court, rule unanimously (inaudible) that the State cannot impose excessive fines and forfeiture as criminal penalties, the decision, of which united the courts of conservatives and liberals, make clear that the Eighth Amendment prohibition against excessive fines applies to the State and the local localities as well as (inaudible) associate Justice Ruth Bader Ginsberg wrote the majority opinion and announced it from the bench, the protection against excessive fines guards against abuse of government punitive or criminal law enforcement authority. Ginsberg wrote, quoting in part from the court ruling in 2010 that Second Amendment gun rights applied in (inaudible). She said this case, the safeguard we hold is fundamental to our scheme of ordered liberty. The constitution mandates the court

protect property owners. The majority opinion incorporated the Eighth Amendment through the 14th Amendment due process clause, which states that, "nor shall any state deprive any person of life, liberty, or property without due process."

The lawyer's (sic) in this case are in violation of -- of this.

THE COURT: All right. Thank you.

MS. ERICKSON: The defendants admit --

THE COURT: Ms. Erickson?

MS. ERICKSON: Yes.

THE COURT: This is Judge Bender speaking. I have given you quite a bit of time for argument. I do have another matter at 10 o'clock and I have to announce my ruling. So I'm going to give you two more minutes to wrap up your comments, please.

MS. ERICKSON: All right.

This is not under res judicata and they

are -- the defendants are representing Deutsche Bank National Trust trustees who is a nonparty. And they just admitted in a document they just sent me that they have been paid by a portfolio (sic: Select Portfolio) to do this. I have -- they only -- I just received it in the mail and they have hidden the fact that they're representing SPS. They are not Deutsche Bank National Trust.

THE COURT: All right. Thank you very much, Ms. Erickson.

Ms. Hovda, I don't have any final

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questions for you. Was there any brief rebuttal that you wanted to offer?

MS. HOVDA: I guess, just to say it sounded like when Ms. Erickson started that she said, this is an action under CR 60 (c) and I -- and I just urge the Court to ask (inaudible) this case says that no provision of CR 60 is appropriate for affirmative relief in CR 60. She

just says you can bring an independent action. And if you bring an independent action, it has to be sufficient; it's subject to collateral estoppel. And so with that, I'll just rest on the briefing (inaudible) and the motions (inaudible).

THE COURT: Thank you very much. What I'm going to do is rule as follows: Ms. Hovda, I'm going to ask you to take some pretty careful notes of my oral ruling so that you can submit a proposed order to the court that summarizes my oral comments; okay? Thank you.

First of all the motion to dismiss, I am construing as a Rule 56 motion. There was quite a bit of collateral information submitted by the opposing party, which I think does convert it to a summary judgment motion, and I am applying that standard. So applying that standard, I am

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considering whether construing this evidence in the light most favorable to the Ericksons, there

are any genuine issues of material fact. I am going to grant the motion on behalf of the defense and dismiss the complaint in its entirety. I do find a number -- I have frankly agreed with each of the issues raised by the defense, that this motion was not timely filed under the standards that govern Rule 60, that to the extent claims two, three and four are claims for affirmative relief, those claims are not properly brought in the context of Rule 60 motion, and that really the entirety of the claims are barred by issue preclusion or collateral estoppel. These are issues that have been fully, carefully, and thoroughly vetted by several courts in Washington State at both the Federal and State Trial and Appellate level, and this Court cannot revisit them. The court clearly, as to claim five, does have subject matter jurisdiction and can make that finding as a matter of law. There is no issue of material fact with respect to those questions. So for all of those reasons, I am

granting the motion to dismiss.

I'm going to grant -- with respect to the

omnibus motion, I'm going to rule as follows: The motion for a protective order is moot and therefore stricken. My dismissal obviates the need for any discovery.

I am going to rule on the motion to strike the declarations because I suspect there may be some appellate review of my decision and I want a clear record of what I have relied on with respect to the Paatalo (phonetic) declaration, I am striking all of the opinions set forth in that declaration. There is no foundation for Mr. Paatalo to present expert testimony in the subject area. I am also striking all hearsay statements. I will allow the declaration to the extent that it serves simply as an authentication of the results of online searches. So to the extent that the declaration simply says, "I searched as follows: And this is what I found," I

am allowing the declaration. Ms. Erickson's declarations are numerous, and they're almost all dated May 26, 2019. So it's hard to differentiate them for purposes of my record. I am striking her opinion in one of those declarations as to the authenticity of Kimberly Smith's signature. She has another declaration, also signed

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May 26, 2019, where she authenticates an e-mail from the -- or to the e-mail address, uncanduc1; that is hearsay, the e-mail itself. I'm striking all declarations by Ms. Erickson that were not properly executed, of which there were many. The Robertson declaration, I am not striking. It is -- I would note that it's from 2015 and it does not change my ruling with respect to the substance of the motion under CR 56, but I don't see anything about it that's inherently objectionable. The Nora declaration, I am striking for lack of personal knowledge. The King declaration, I am not striking, except I am striking the

statement that Chase is not a successor in interest to WAMU loans. That is either hearsay or improper opinion testimony; and, either way, is inadmissible. That's the May 30th, 2018, King declaration. The April 1st, 2018, King declaration, I am striking portions as follows: Again at paragraph five. The statement that Chase is not a successor in interest to WAMU loans, the hearsay statements contained in paragraph eight, the hearsay statements contained in paragraph 11 and the opinion in paragraph 12.

With respect to the Ericksons' motions,

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the document entitled Plaintiffs Invoke Cause of Objection to Defendant's Motion For Dispositive Motion to Strike Plaintiff's Complaint Without a Jury Trial, I construe that as a substantive motion to strike the motion to dismiss, and that is denied. The document titled Plaintiff's Reply, Objection to (inaudible) Reeves Authority to Act and Objection and Reply, Motion to Strike Vanessa

Power, Declaration and Motion for Omnibus Motion and Omnibus Motion for Protective Order and to Strike Plaintif'Fs Declarations on All Motions Filed. I construe that as a motion to strike the motion to dismiss, and it is denied.

I believe I've ruled on all of the issues before the court. Was there anything further from the defense that you wanted clarity on?

MS. HOVDA: No, Your Honor.

THE COURT: Thank you. Anything further from the Ericksons at this time before I disconnect the call?

MS. ERICKSON: Yes. I don't even know if this can apply or not, but it looks -- it appears to the Ericksons that the judge is ruling on hearsay of the JP Morgan Chase having been successor of interest to WAMU loans as well.

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THE COURT: I'm sorry, I didn't understand your question.

MS. ERICKSON: It appears to me that your

ruling on hearsay of JP Morgan's assets, because it's never been posted that the Erickson mortgage is a part of JP Morgan's assets. They are hearsay that they are successor in interest to WAMU's assets that would -- would have the Ericksons' mortgage on it, that they have not proven that the Ericksons' mortgage is on -- is -- was part of the JP Morgan assets and the WAMU assets, so you're ruling on hearsay.

THE COURT: Well, what I'm -- I'm not reaching the question of Chase's status. What I'm saying is that the evidence that was presented on that topic was not admissible as a matter of law. So, I'm going to ask Ms. Vota (sic: Hovda) to please write up an order and send it to the Ericksons for their review.

Let me say to Mr. And Ms. Erickson, I know that you may very well not agree with my ruling today, and that's fine. What I would ask you to do is simply indicate to Ms. Hovda whether you approve of my order as to form. And all that

means is that while you're preserving your right to object to any end appeal, my decision, you're simply agreeing that what Ms. Hovda has written down is a correct summary of what I said from the bench, even if you don't agree with it. Do you understand that procedure?

MS. ERICKSON: Yes.

THE COURT: Okay. So I'm going to ask you to do that. You can either sign off on the document or you can just send Ms. Hovda an e-mail indicating that you approve as to form, and she can attach that e-mail to the order that she then sends to me for me to sign and file.

I do need to disconnect the call. I do have some other folks coming on the line at 10 o'clock for another matter.

Go ahead, Ms. Hovda.

MS. HOVDA: One question, sorry. Did the court rule on that motion for proof of authority to act? I believe that there wasn't a ruling on

that, but I just wanted to make sure I didn't miss it. I -- I'm not sure if it was noted for hearing today or not, since that was an Erickson motion that may have been noted, but I'm not sure. (Missing: THE COURT:) Oh, I said the motion -- plaintiff's motion for production of authority to action, I

was construing as a response brief.

MS. HOVDA: That's right. Okay. Thank you for clarifying.

THE COURT: Thank you very much. And if you could make a record, I don't know if you had a chance to jot down everything that I put on the record at the beginning, great.

MS. HOVDA: I'll try. I didn't take the best notes from the beginning, but I'll try. I think I got most of it.

THE COURT: All right. Thank you very much everybody.

MS. ERICKSON: That wasn't a response

brief. That was a motion.

THE COURT: Well, I -- that is not how I understood it. That is not how I perceived the issues that were raised. And I am construing it as a responsive pleading.

So we're going to go ahead and end the call at this time. I appreciate everyone's patience with the technology. We're all getting used to proceeding this way. And you were all very gracious about us getting started this morning. So, thank you very much. And I'm going to go ahead and disconnect the Zoom call.

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MS. HOVDA: Thank you.

(End of audio recording)

40

C E R T I F I C A T E

STATE OF WASHINGTON)

) Ss.

COUNTY OF KING)

I, Andie Evered, do hereby declare under penalty of perjury under the laws of the State of Washington that the following is true and correct

1. That I am an authorized transcriptionist;

2. I received the electronic recording directly from Petitioner.

3. This transcript is a true and correct record of the proceedings to the best of my ability, including any changes made by the Judge reviewing the transcript.

4. I am in no way related to or employed by any party in this matter; and

5. I have no financial interest in the litigation.

Dated in Bend, Oregon, this 24th day of August 2020.

/s/ Andie Evered

_____

Andie Evered, CCR
State of Washington CCR #2393

Appendix 4

TEXT OF ORDER REPRODUCED WITHOUT LINE NUMBERING

FILED
2020 JUN 16
KING COUNTY
SUPERIOR COURT CLERK
CASE #: 19-2-12664-7 KNT

HONORABLE JOHANNA BENDER

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

John and Shelley Erickson, husband and wife,	No. 19-2-12664-7 KNT
Plaintiffs,	ORDER:
v.	(1) GRANTING SUMMARY JUDGMENT TO DEFENDANT;
Deutsche Bank National Trust Company, as Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 Trust 2006-4,	(2) STRIKING CERTAIN DECLARATIONS IN WHOLE OR IN PART FILED BY DEFENDANTS;
Defendant.	(3) DENYING PROTECTIVE ORDER AS MOOT; AND
	(4) DENYING PLAINTIFFS' MOTIONS TO STRIKE DEFENDANT'S DISPOSITIVE MOTION

This matter came before the Court with oral argument upon Defendant Deutsche Bank National Trust Company, as Trustee for Long Beach Mortgage Loan Trust 2006-4 (the "Trust")'s Motion to Dismiss and Omnibus Motion for Protective Order and to Strike Plaintiffs' Declarations and Moot Miscellaneous Filings (the "Omnibus Motion"), as well as numerous filings by pro se Plaintiffs John and Shelley Erickson ("Plaintiffs"). The Court considered the arguments made at the June 5, 2020 hearing, as well as the pleadings and records on file, including the following filings by Defendant:

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Seattle, W A 98101
Telephone 206.624-0900

1. Defendant's Motion to Dismiss;

2. Defendant's Omnibus Motion; and

3. Defendant's Combined Reply in Support of Motion to Dismiss and Omnibus Motion.

The Court also considered the following filings by Plaintiffs:

1. Motion for Void Judgment of Select Portfolio Servicing and Deutsch Bank National Trust Company for Long Beach Mortgage Loan Trust 2006-4. The Court construes this as a

response brief.

2. Plaintiffs Invoke Cause of Objection to Defendant's Motion for Dispositive Motion to Strike Plaintiffs Complaint Without a Jury Trial. The Court construes this as a motion to strike the Trust's Motion to Dismiss.

3. Plaintiffs Motion for Production of Authority to Action. The Court construes this as a response brief.

4. Plaintiffs' Supplemental Reply Objecting to Vanessa's Void Moot Dispositive Motion to Dismiss and Omnibus Motion and Combined Reply in Support of Motion to Dismiss and Ominbus Motion for Protective Order and to Strike Plaintiffs' Declarations and Moot Miscellaneous. The Court construes this as a response brief.

5. Plaintiffs Reply Objection to Stoel and Rives Authority to Act and Objection and Reply Motion to Strike Vanessa Power Declaration and Motion for Omnibus Motion and Omnibus Motion and Protective Order and to Strike Plaintiffs Declarations and all Motions Filed. The Court construes this as a motion to strike all of the Trust's pending motions.

6. Plaintiffs Reply and Objection and Motion to Strike Defendant's Reply Motion in Support of Motion to Consolidate and Reassign. The purpose of this document is unclear. It may be a response to

the pending motion to dismiss, in which case is it untimely and it is STRICKEN. It may be a substantive motion, in which case it is improperly noted and is STRICKEN. It may be a response to a motion pending under

1069 17725.1 00521 61 -07199

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a different cause number (20-2-08633-0), in which case it was improperly filed and is STRICKEN.

Being fully advised, it is
ORDERED:

1. Defendant's Motion to Dismiss is converted to a Motion for Summary Judgment under CR 56 and is GRANTED. The Complaint is DISMISSED in its entirety, with prejudice. Construing the facts in the light most favorable to the Plaintiffs, the Court holds that there is no dispute of material fact. Specifically, the Court holds that to the extent this case seeks relief under CR 60, it was not timely filed and seeks affirmative relief not appropriate under CR 60. The Court further finds that the issues raised in the Complaint are barred by collateral estoppel and that the King County Superior Court who granted the Foreclosure Judgment in 2015 had subject matter jurisdiction.

2. The Trust's Request in the Omnibus Motion for a protective order from discovery is STRICKEN AS MOOT;

3. The Trust's Request in the Omnibus Motion to strike the Declarations filed to-date in this case by Plaintiffs is GRANTED IN PART and DENIED IN PART, specifically:

a. The opinions set forth in the Paatalo Declaration are STRICKEN based on lack of foundation, hearsay, and the rules governing expert testimony. The Paatalo Declaration is not stricken to the extent it authenticates online search results.

b. Portions of the multiple declarations filed by Shelley Erickson all dated May 26, 2019 are STRICKEN to the extent they opine on the validity of a signature on the Note, and to the extent they rely on hearsay to authenticate emails that were received by an unknown email addresses. Further, all Shelley Erickson declarations that were not properly signed under penalty of perjury are STRICKEN in their entirety.

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c. The Roberts Declaration is NOT STRICKEN;

d. The Nora Declaration is STRICKEN due to lack of personal knowledge;

e. The statement in the May 30, 2018 King Declaration that Chase is not the successor to WAMU is STRICKEN, but the remainder of the 2018 King Declaration is NOT STRICKEN;

f. The following statements in the 2019 King Declaration are STRICKEN:

i. Statements concluding that Chase is not the successor to WAMU; and

ii. The improper opinion statements in paragraphs 8, 11, 12.

4. The pleadings filed by Plaintiffs that were construed by the Court as Motions to Strike the Motion to Dismiss are DENIED.

5. Plaintiffs Reply and Objection and Motion to Strike Defendant's Reply Motion in Support of Motion to Consolidate and Reassign is STRICKEN. The purpose of this document is

unclear. It may be a response to the pending motion to dismiss, in which case is it untimely. It may be a substantive motion, in which case it is improperly noted. It may be a response to a motion pending under a different cause number (20-2-08633-0), in which case it was improperly filed.

Handwritten: The Court incorporates by reference its oral ruling.

SO ORDERED this ~~9~~th 16th day of June, 2020.

/s/ Johanna Bender
The Honorable Johanna Bender

Handwritten: Plaintiff appeared per (?) video conference; objection to substance noted for the record. (somewhat illegible)

Handwritten: Defense appeared per (?) video conference; no objection as to substance. (somewhat illegible)

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Appendix 5

FILED
Court of Appeals
Division 1
State of Washington
4/16/2021 3:59 PM

NO. 81648-9-1
IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON DIVISION I

John Earl Erickson and
Shelley Ann Erickson, in propria persona,
Plaintiffs/Appellants

v.

Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4,1
Defendant/Appellee

APPELLANTS' OPENING BRIEF

On Appeal from King County Superior Court
No. 19-2-12664-7 KNT
Judge Joanna Bender presiding

John Earl Erickson & Shelley Ann Erickson,
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1 In actuality, the entity which retained STOEL RIVES to procure the Order and Judgment in the underlying Foreclosure Action is Select Portfolio Servicing, Inc. ("SPS"), which has now been admitted to have been the party actually represented by STOEL RIVES. See CP 1016. See also, Identification of Parties, infra, Section I.A. [The further admission of counsel for SPS submitted in the Related Action Request for Judicial Notice Exhibit 1 has been stricken by Order of the Commissioner, but a Motion to Modify the Commissioner's Order will be timely filed.]

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an opportunity prepare and to be heard had been provided (and the record shows that it was not), the Superior Court would have erred in granting Summary Judgment as a matter of law under CR 60(b) because the Ericksons did not file a "CR 60(b) Motion" but commenced a new action in the inherent

power of the court (the "Independent Action").

E. If conversion to summary judgment had been constitutionally permissible upon required notice and opportunity to prepare and to be heard (which did not occur in this case), the Superior Court erred when it failed to find genuine disputes of material fact in the voluminous Exhibits and Declarations attached to the Complaint, which the Superior Court never saw before the hearing or had time to review.

F. The Superior Court erred when it struck certain of Appellant's Declarations and accompanying Exhibits which create genuine issues of material fact at a hearing noted as a Motion to Dismiss.

G. Summary judgment was granted in error without requiring the named Defendant, which was later learned to be misidentified and was actually SPS, to establish that there were no genuine disputes of material fact and without the Ericksons being allowed to demonstrate genuine, material factual disputes on a Motion for Summary Judgment, duly noted for hearing on no less than 28 days' advance notice.

TABLE OF AUTHORITIES

Washington Supreme Court Cases

I. INTRODUCTION

A. Identification of the Parties

On May 13, 2019, John Earl Erickson ("Mr. Erickson") and Shelley Ann Erickson ("Ms. Erickson"), collectively the "Ericksons, commenced an action against "Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4". The Ericksons' action seeks relief from the July 17, 2015 Order and the August 27, 2015 Judgment in Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, et al., No. 14-2-00426-5 KNT ("Foreclosure Action") for the exercise of the inherent power of the Court, by Independent Action recognized under CR 60(c). Attached to the Complaint are the Declarations of William J. Paatalo with Exhibits A-M and of Wendy Alison

Nora with Exhibit A attached thereto. The Ericksons also filed Requests for Judicial Notice ("RJN") with RJN Exhibits 1-19 and Supplemental Request for Judicial Notice Exhibit 20.

The Ericksons' original Complaint with the documents attached and their Requests for Judicial Notice, the Summons and the Case

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Schedule and the Motion for Order to Show Cause for Preliminary Injunction and Declarations in support of the Motion for Order are combined in manner different than how they were filed and totals of 809 pages. See CP 1-809 [1].

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[1] The Ericksons created proposed Appendices 1-A, 1-B, and 1-C by extracting them from the Clerk's Papers and reorganized the Clerk's Papers to assist the Court and the Ericksons in the review of the Ericksons' May 13, 2019 Complaint which is the operative pleading in this action. Proposed Appendix 1-A included the May 13, 2019 Complaint with the supporting Declaration of William J. Paatalo with Exhibits A-M in the correct

alphabetical order (CP 45-100, CP 301-336, CP 101-300). The Clerk's Papers are out of order with Exhibit D (CP 301-336) appearing after Exhibit M (CP 274-300). Proposed Appendix 1-B was the Ericksons' Request for Judicial Notice ("RJN") with RJN Exhibits 1-5. Proposed Appendix 1-C was RJN 6-18 and Supplemental RJN 19. Because the complete operative pleading consists of 809 pages and the byte volume of the sections must not exceed 60 MB, Appendices 1-A, 1-B, and 1-C were segmented for purposes of e-filing.

The Ericksons' Motion to File Appendices in the order in which they were filed was denied by the Clerk of this Court on January 7, 2021. The Clerk also denied their Motion to Supplement the Record on Appeal to include Exhibit A which was attached to the May 12, 2019 Declaration of Wendy Alison Nora (the "Nora Declaration") which was inexplicably missing from the documents which were filed as the May 13, 2019 Complaint. On January 15, 2021, the Ericksons moved to modify the Clerk's Order of January 7, 2021. On March 12, 2021, this Court denied the Motions to Modify the Clerk's Orders and set a deadline for filing the Appellants' Opening Brief (AOB).

Because the content of Exhibit A to the Nora Declaration which the Nora Declaration authenticates is the LinkedIn Profile of Jess Almanza which was attached to the Complaint filed on May 13, 2019 requires study, it is attached as Appendix 1 pursuant to RAP 10.4(c), which provides:

(c) Text of Statute, Rule, Jury Instruction, or the Like. If a party presents an issue which requires

The Ericksons also pleaded other causes of action [2] against the purported Plaintiff in Foreclosure Action because "Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" is the name of the Plaintiff in the Foreclosure Action in which Judgment was taken. This appeal has continued in the name of the putative Plaintiff which was granted judgment in the Foreclosure Action, although it was admitted on June 6, 2019 by Ronaldo Reyes, an officer of Deutsche Bank National Trust Company (CP 1016) in email

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study of a statute, rule, regulation, jury instruction, finding of fact, exhibit, or the like, the party should type the material portions of the text out verbatim or include them by copy in the text or in an appendix to the brief. (Emphasis added.)

2 The causes of action in the May 13, 2019 Complaint are
V. CAUSE ONE-FOR RELIEF FROM JUDGMENT FOR FRAUD ON THE COURT (the "Independent Action")
VI. CAUSE TWO-FOR DECLARATORY JUDGMENTS (to grant relief in the Independent Action)
VII. CAUSE TWO-FOR DAMAGES FROM COMMON LAW FRAUD (which should have been identified as Cause Three)
VIII. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (which should have been identified as Cause Four)
In addition, the Ericksons' Complaint informed the Court:
IX. CR 60 (b)(5) AUTHORIZES ALL JUDGMENTS GRANTED IN FAVOR OF DBNTC VOID AS A MATTER OF LAW FOR LACK OF STANDING WHICH IS REQUIRED TO ESTABLISH SUBJECT MATTER JURISDICTION; SUBJECT MATTER JURISIDCTION (sic) MAY BE CHALLENGED AT ANYTIME AND CANNOT BE WAIVED

response to Ms. Erickson's June 5, 2019 email to him that the attorneys from STOEL RIVES, LLP represent SELECT PORTFOLIO SERVICING, INC. ("SPS") in the Independent Action from which

this appeal was taken (Superior Court No. 19-2-12664-7-KNT). [3] The entity named as the putative beneficiary of the July 17, 2015 Summary Judgment Order (CP 703-706) and the August 27, 2015 Judgment (CP 693-699) is the named Respondent in this appeal, but for accuracy, the Respondent should be referred to as SPS because that is the entity

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[3] Throughout these proceedings on appeal, starting on October 14, 2020, the Ericksons have produced and relied on the June 6, 2020 Answer of the STOEL RIVES/SPS Defendants (Vanesa Power, STOEL AND RIVES (sic), SELECT PORTFOLIO SERVICING, John Glowney and Will Eidson) in Erickson, et al. v. Power, et al., No. 20-2-08633-9 (the "Related Action") as the further admission that SPS was represented by STOEL RIVES, LLP in Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, et al., No. 14-2-00426-5-KNT (the underlying "Foreclosure Action"). For the first time, on March 31, 2021, counsel for SPS, pretending to appear for Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 objected to this Court taking judicial notice of the June 6, 2020 Answer in the Related Action which has been

previously produced into the record of this appeal and moved to strike any reference to their own judicial admission in the Related Action from the Appellants' Opening Brief. This Court's Commisioner not only rejected the Request for Judicial Notice without permitting the Ericksons to be heard, but also ordered that the Ericksons' entire Opening Brief be stricken. Ericksons' Motion to Modify the Commissioners' April 5, 2021 Order will be filed under RAP 17.7.

which retained counsel and proceeded in the Foreclosure Action.

In Cause One of their Independent Action, the Ericksons alleged that the July 17, 2015 Order and August 27, 2015 Judgment was procured by fraud on the court. STOEL RIVES, LLP. Part of the alleged fraud on the Court is the misidentification of purported Plaintiff and concealment of the identity of SPS, which is the entity which actually initiated the Foreclosure Action through the STOEL RIVES attorneys.

B. Nature of the Action

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

The Foreclosure Action was commenced in the name of

"Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" by STOEL RIVES on January 3, 2014 as No. 14-2-00426-5 KNT. See May 13, 2019 Request for Judicial Notice Exhibit 1; CP 353-392. [4] Summary Judgment was granted in the name of the party named as Plaintiff in the Foreclosure Action on July 17, 2015. See May 13, 2019 Request for Judicial Notice Exhibit 10; CP 703-706. The Judgment and Decree of Foreclosure was obtained in favor of the named Plaintiff on August 27, 2015. See May 13, 2019 Request for Judicial Notice Exhibit 8; CP 693-699.

On June 5, 2020, Summary Judgment was orally granted in favor of "Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" and against the Ericksons (June 5, 2019

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[4] As stated above, STOEL RIVES has now admitted

that it represented SPS in the Foreclosure Action which the Ericksons have produced in connection with their Motions in this appeal, but when the Ericksons filed the judicial admission in the June 6, 2020 Answer in the Related Action as Request for Judicial Notice Exhibit 1 in connection with their Opening Brief, counsel for SPS objected and moved to strike all references to the judicial admission.

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Transcript 5) upon the Superior Court's sua sponte conversion of the October 17, 2019 Motion to Dismiss (CR 1495-1509), pursuant to CR 12(b)(6), without notice to the parties. The sua sponte conversion by the Superior Court occurred more than 30 minutes after the commencement of oral argument on June 5, 20196, depriving the Ericksons of their opportunity to prepare their opportunity to be fully and fairly heard on the genuine disputes of material fact. Page 31, line 20 to page 32, line 24 of the Transcript of the June 5, 2020 oral argument at the hearing noted as Motion to Dismiss (CP

5 The Transcript of the June 5, 2020 Hearing was submitted as Appendix 2 with the Ericksons' Motion for Acceptance of Appendices. The Motion for Acceptance of Appendices was denied on by this Court's Clerk on January 7, 2021. The Ericksons' Motion to Modify the January 7, 2021 Clerk's Order was filed on January 15, 2021. The January 15, 2021 Motion to Modify includes the Ericksons' Motions (a) for Acceptance of Appendices (b) to Supplement the Record and (c) to Stay filing of Appellants' Opening Brief Pending Determination of Motions or, in the alternative, for a Fourth Extension of Time to File Opening Brief was denied by this Court on March 12, 2021.

6 The Court is asked to take judicial notice of the fact commonly known among practitioners and judges that one page of a transcript is the equivalent of at least one minute of court proceedings. Furthermore, in these proceedings there were periods of sufficient silence that the transcriber noted (Silence) in the June 5, 2020 Transcript. See Tr. 8:11, 8:15, 8:20, and 8:22. The conversion of the Motion to Dismiss occurred at least 30 minutes after the commencement of the June 5, 2020 hearing.

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1755-1756) reads:

20 First of all the motion to dismiss, I am
21 construing as a Rule 56 motion. There was quite

22 a bit of collateral information[7] submitted by the
23 opposing party, which I think does convert it to a
24 summary judgment motion, and I am applying that
25 standard. So applying that standard, I am
1 considering whether construing this evidence in
2 the light most favorable to the Ericksons, there
3 are any genuine issues of material fact.
4 I am going to grant the motion on behalf
5 of the defense and dismiss the complaint in its

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[7] The majority of the "collateral information" in the record was not "collateral information" but consisted of Declarations and Exhibits submitted as part of the May 13, 2019 Complaint and as Requests for Judicial Notice in support thereof. The contents of the Complaint and the documents submitted in support of the Complaint and specifically referenced therein do not support conversion of a motion to dismiss to a motion for summary judgment. Requests for Judicial Notice do not result in converting motions to dismiss to motions for summary judgment. See Jackson v. Quality Loan Serv. Corp. of Wash., 186 Wash.App. 838, 844, 347 P.3d 487 (Wash. App. 2015). As to the Declarations of Paatalo and Nora and the Exhibits attached thereto, the documents filed as part of the original Complaint do not convert a motion to dismiss to a motion for summary judgment because the Complaint and its attachments are not "matters outside the pleading". See CR 12(b) which provides:

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.

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6 entirety. I do find a number -- I have frankly
7 agreed with each of the issues raised by the
8 defense, that this motion [8] was not timely filed
9 under the standards that govern Rule 60, that to
10 the extent claims two, three and four are claims
11 for affirmative relief, those claims are not
12 properly brought in the context of Rule 60 motion,
13 and that really the entirety of the claims are
14 barred by issue preclusion or collateral estoppel.
15 These are issues that have been fully, carefully,
16 and thoroughly vetted by several courts in
17 Washington State at both the Federal and State
18 Trial and Appellate level, and this Court cannot
19 revisit them. The court clearly, as to claim
20 five, does have subject matter jurisdiction and
21 can make that finding as a matter of law. [9] There

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[8] The Ericksons did not file a "motion". They filed a new, independent action. If they had filed a motion, they would not have had to pay a new filing fee or serve a Summons and Complaint on the entity identified as the Plaintiff in the Foreclosure Action. The Erickons filed an Independent Action under the inherent

authority of the Superior Court as recognized by CR 60(c), 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 as discussed at length and allowed by the United States Supreme Court in Hazel-Atlas Glass v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), twelve (12) years after the original judgment when the concealed conduct amounting to fraud on the court was discovered.

9 One of the issues before the Superior Court in the Independent Action was the standing of the entity identified as the Plaintiff in the Foreclosure Action. Standing is an aspect of a court's power to grant relief. In Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wash.2d 207, n. 3, 45 P.3d 186,(Wash. 2002) the Washington Supreme Court wrote:

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22 is no issue of material fact with respect to those
23 questions. So for all of those reasons, I am
24 granting the motion to dismiss. (Emphasis added.)

Thereafter, the Superior Court struck the contents of certain of the Declarations and Exhibits including the Paatalo Declaration and the Nora Declaration which were attached to the Complaint

and were required to be construed as true for purposes of a CR 12(b)(6) Motion to Dismiss unless CR 12(f) applied.

CR 12(f) provides:

> (f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the courts own

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> 3. Although Airport raised the standing issue as an affirmative defense in its answer to Union's complaint, it failed to assert it on summary judgment. The Court of Appeals, however, correctly observed that standing is a jurisdictional issue that can be raised for the first time on appeal.

The Ericksons consistently challenged the standing of the entity seeking the remedy of foreclosure on the basis that it did not hold the Ericksons' March 3, 2006 Note, endorsed-in-blank by lawful authority. The Ericksons Note was not made payable to Long Beach Mortgage Company until March 3, 2006 (CP 580-583), after Mr. Almanza was not longer working at

Washington Mutual. The purported endorsement of their Note by Mr. Almanza was alleged to be a forgery in the May 13, 2019 Complaint and in the Declarations of Paatalo and Nora attached to and incorporated by reference in the Complaint.

> initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

In considering the Motion to Dismiss, the Declarations of Paatalo and Nora could be determined to be stricken as immaterial if res judicata/collateral estoppel barred the Independent Action, but those doctrines do not bar independent actions for fraud on the court because the very nature of an independent action for fraud on the court is that the underlying judgment was procured by fraud. Judgment was granted in the Foreclosure Action on the basis that the entity identified as “Deutsche Bank National Trust

Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" in the Foreclosure Complaint was the "holder" of the Note endorsed-in-blank but the Ericksons alleged that the endorsement-in-blank was a forgery. See May 13, 2019 Complaint, including but not limited to ¶¶3.3, 3.6, 3.9, 3.13, 5.9, 7.4.b.6, and footnote 1 on pages 28-29 (CP 1-35) as well as the Paatalo Declaration including Exhibit G (CP (CP 45-100, CP 301-336, CP 101-300 in the correct order) and the Nora Declaration (CP 347-340) with and Exhibit A (Appendix 1).

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Furthermore, although the conversion of the CR 12(b)(6) Motion to Dismiss to a Motion for Summary Judgment by the Court sua sponte more than 30 minutes after commencement of the hearing noted for hearing on the Motion to Dismiss was unconstitutional, if a motion for summary judgment had been filed and noted for hearing,

review of Paatalo Declaration and the Nora Declaration would have been required. See Section V. E, below.

II. ASSIGNMENTS OF ERROR

The Ericksons assign seven (6) errors on appeal, none of which are harmless individually because they prejudiced the Ericksons' right to receive substantial justice and all of which, in combination or cumulatively, are not harmless. The following errors are assigned:

A. The CR 12(b)(6) Motion to Dismiss filed by counsel for SPS could not have been granted under McCurry v. Chevy Chase Bank, 169 Wn.2d 96, 233 P.3d 861 (Wash. 2010) because there were allegations of fact which supported the relief requested.

STANDARD OF REVIEW: De novo

B. The Ericksons' Due Process Rights under the Fourteenth Amendment to the Constitution of the United States were violated when the Ericksons had no notice or opportunity to prepare for and

oppose a motion for summary judgment.
12

STANDARD OF REVIEW: De novo

C. The doctrines of res judicata and/or collateral estoppel are not applicable to independent actions to vacate judgments procured by fraud on the court.

STANDARD OF REVIEW: De novo

D. If notice of conversion of the Motion to Dismiss to a Motion for Summary Judgment had been given and opportunity prepare and to be heard had been provided (and the record shows that it was not), the Superior Court would have erred in granting Summary Judgment as a matter of law under CR 60(b) because the Ericksons did not file a "CR 60(b) Motion" but commenced a new action in the inherent power of the court (the "Independent Action").

E. Even if conversion to summary judgment were constitutionally permissible upon required notice to the Ericksons and opportunity for them to prepare and to be heard (which did not occur in this case), the Superior Court erred when it failed to find genuine disputes of material fact in the voluminous

Exhibits and Declarations attached to the Complaint, which the Superior Court never saw before the hearing or had time to review.

STANDARD OF REVIEW: De novo.

F. The Superior Court erred when it struck certain of Appellant's Declarations and accompanying Exhibits which create genuine issues of material fact at a hearing noted as a Motion to Dismiss.

STANDARD OF REVIEW: De novo.

G. Summary judgment was granted in error without requiring the named Defendant, which was later learned to be misidentified and was actually SPS, to establish that there were no genuine disputes of

material fact and without the Ericksons being allowed to demonstrate genuine, material factual disputes, duly noted for hearing on no less than 28 days' advance notice.

STANDARD OF REVIEW: De novo.

III. 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. (CP 1-809). Appellants concurrently moved for a temporary restraining order ("TRO") to prevent the sale of their home, which they built with their own hands and where they have resided for more than 30 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

noted for hearing on March 10, 2020 (CP 1755-

1756). 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. (Transcript of the hearing on June 5, 2020). Judgment was entered on June 16, 2020. The Ericksons timely appealed from the Order and Judgment on July 14, 2020.

IV. SUMMARY OF THE ARGUMENT

The Superior Court erred 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)).
>
> 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.

V. ARGUMENT

A. The CR 12(b)(6) Motion to Dismiss filed by counsel for SPS could not have been granted under McCurry v. Chevy Chase Bank, FSB, 169 Wn.2d 96, 233 P.3d 861 (Wash. 2010) because there were multiple allegations of fact which supported the relief requested.

In McCurry v. Chevy Chase Bank, FSB, 169 Wn.2d at 101, the

Supreme Court of Washington held:

> 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)).

The Ericksons alleged facts which met all nine (9) elements of fraud in the underlying Foreclosure Action (CP 1-35 at Section VII., CP 23-31 at ¶¶7.1-7.4.b.9) and incorporated evidentiary

support in the form of the Paatalo and Nora Declarations by attaching the Declaration and Exhibits to their May 13, 2019 Complaint (CP 45-100, CP 301-336, CP 101-300) and CP 347-340 plus the missing Exhibit A10).

The October 17, 2019 Motion to Dismiss (CP 1495-1510) asserted that the May 13, 2019 Complaint was filed under CR 60(b)(4), which it was not, and that the fraud alleged was barred by the doctrine of collateral estoppel because the validity of the document purporting

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10 See Appendix 2 for the missing Nora Exhibit A.

to be the Ericksons' March 3, 2006 Note had been adjudicated in the Foreclosure Action in which the fraud was alleged to have occurred.

The Motion to Dismiss further asserted that the damages claims were not permitted to be raised

in under CR 60(b)(4). The Ericksons responded that they had filed a new action: an Independent Action recognized by CR 60(c) and they were not proceeding under CR 60(b)(4). See the June 5, 2020 Transcript at Tr. 15:8-17:

8 MS. ERICKSON: Okay. This case is an
9 independent case. It's filed under Rule 60 (c)
10 and not under Rule 60 (b)(4), contrary to what the
11 defendant's falsely claim. Due to fraud upon the
12 court and the administration of justice or
13 finality, independent actions under Rule 60 (c)
14 are reserved for those cases of injustice, which
15 in certain instances that are deemed sufficiently
16 gross to demand a departure from rigid adherence
17 to the doctrine of res judicata.

Arguing against the Motion to Dismiss which had been noted for hearing on June 5, 2020, Ms. Erickson clearly addressed the nature of the action as an Independent Action which could not be dismissed as a matter of law in accordance with the longstanding pleading standard of

the Washington courts for over 50 years. See McCurry v. Chevy Chase Bank, FSB, 169 Wn.2d 103. Without notice, more than 30 minutes into the hearing11, the Superior Court converted the CR 12(b)(6) Motion to Dismiss to a Motion for Summary Judgment and dismissed the Independent Action on the grounds of "collateral estoppel" in violation of the Ericksons' Due Process Rights and contrary to law.

B. The Ericksons' Due Process Rights under the Fourteenth Amendment to the Constitution of the United States were violated when the Ericksons had no notice or opportunity to prepare for and oppose a motion for summary judgment.

The Ericksons did not have written notice or actual notice that they were going to have to defend the Independent Action against an unnoted and unfiled Motion for Summary Judgment prior to the June 5, 2020 hearing. The Superior Court converted the CR 12(b)(6) Motion to Dismiss to a

Motion for Summary Judgment more than 30 minutes after the June 5, 2020 hearing commenced.

In Loveless v. Yantis, 82 Wn.2d 754, 759-760, 513 P.2d 1023

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11 See Transcript of the June 5, 2020 Hearing at Tr. 31:20-32:24.

(Wash. 1973), the Washington Supreme Court held:

> Where the party had actual notice and time to prepare to meet the questions raised by the motions of the adversary, deviation from the time limit may be permissible. Herron v. Herron, 255 F.2d 589 (5th Cir. 1958); 4 Wright & Miller, Federal Practice & Procedure § 1169, at 644 n. 30 (1969). There was ample notice and time to prepare here. The appearance of intervenors as amicus curiae gave respondent adequate [513 P.2d 1027] opportunity to know the issues raised and be prepared to meet them. The motion to intervene is granted in this appeal and as a matter of right should have been granted in the trial.

No Motion for Summary Judgment was ever filed and the conversion occurred sua sponte more than 30 minutes after the hearing commenced, without providing the Ericksons with any time to prepare to meet the questions raised by the motions of their adversary or to argue against summary judgment.

CR 56(c) provides, in relevant part:

> Summary Judgment.
>
> . . .
>
> (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 Ericksons could not possibly have prepared to meet the

questions raised by an unfiled motion for summary judgment when the Superior Court gave no notice

whatsoever of its intent to sua sponte convert the filed and noted Motion to Dismiss to proceedings for Summary Judgment.

CR 12(b) provides:

> 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.)

The Superior Court gave the Ericksons no opportunity to present any material made pertinent to a summary judgment motion.

In Rosholt v. Snohomish County, 19 Wn.App. 300, 575 P.2d 726 (Wash. App. 1978), the Court of Appeals held:

> Due process requires that notice be reasonably calculated to inform a party of the pendency of proceedings affecting him or his property, and must afford him a meaningful opportunity to participate. See Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. 865 (1949); Pierce County v. Desart, 9 Wash.App. 760, 762, 515 P.2d 550 (1973).

The United States Supreme Court again made it clear in

Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187, 14 L.Ed.2d 62 (1965):

> A fundamental requirement of due process is "the opportunity to be heard." Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783. It is an opportunity which must be granted at a meaningful time and in a meaningful manner.

C. The doctrines of res judicata and/or collateral estoppel are not applicable to independent actions to vacate judgments procured by fraud on the court.

In Wiese v. Cach LLC, 189 Wash.App. 466, 358 P.3d 1213 (Wash. App., 2015), the Court of Appeals allowed the party alleged to have procured judgment by fraud on the court to proceed by independent action but preserved the defense of res judicata on remand. Therefore, in Wiese v. Cach LLC, supra, the Court of Appeals did not address whether or not the defense of res judicata (or collateral estoppel) barred the independent action on remand. This appeal squarely raises the issue that independent actions for fraud on the court are not barred by the doctrines of res judicata or collateral estoppel.

Wiese v. Cach, LLC cites to Corporate Loan & Sec. Co. v. Peterson, 64 Wn.2d 241, 391 P.2d 199 (Wash. 1964) in which the

Washington Supreme Court held that where the time for seeking relief from judgment has expired,

the remedy is an independent action or collateral attack:

> This does not preclude attacks by other procedures on judgments deemed to be void or procured through fraud. See Nevers v. Cochrane (1924), 131 Wash. 225, 229 P. 738; State ex rel. Northern Pac. R. Co. v. Superior Court (1918), 101 Wash. 144, 172 P. 336. As succinctly stated by Professor Trautman in his article, cited, supra,
> ". . . After the elapse of a year the only remedy available for the vacation of a judgment is an independent action in equity or a collateral attack." (p. 519) See State ex rel. Boyle v. Superior Court (1898), 19 Wash. 128, 52 P. 1013.
> Corporate Loan & Sec. Co. v. Peterson, 64 Wn.2d at 243-244.

The Ericksons' Independent Action for Fraud on the Court is plainly allowed under Washington law and cannot be subject to dismissal solely on the grounds of res judicata or collateral estoppel based on prior determination from which relief is sought because if res judicata or collateral estoppel barred

relief from judgments alleged to be procured by fraud on the court, the remedy of an independent action for fraud on the court would be defeated in every independent action. The

independent action for fraud on the court is an equitable remedy.

It is well-established that equity will not suffer a wrong without a remedy. In Rummens v Guaranty Trust Co., 199 Wash. 337, 346-347, 92 P.2d 228 (Wash. 1939), the Washington Supreme Court held:

> That principle is one of chancery jurisdiction which, expressed in the form of a precept, is probably the most important of the equitable maxims, namely, that equity will not suffer a wrong (or, as sometimes stated, a right) to be without a remedy. See also Cogdell v. 1999 O'Ravez Family, LLC, 153 Wash.App. 384, 389, 220 P.3d 1259, 1262 (Wash. App. 2009): Equity does not permit a wrong without a remedy. Crafts v. Pitts, 161 Wash.2d 16, 23,

> 162 P.3d 382 (2007). That is to say, equity must be applied in a meaningful manner. Arnold v. Melani, 75 Wash.2d 143, 152, 449 P.2d 800 (1968).

Ms. Erickson made it clear to the Superior Court that the Ericksons' Complaint was filed as an Independent Action and was not a Motion for Relief under CR 60(b)(4). She made an argument for equitable relief. See June 5, 2020 Transcript at Tr. 15:8-17. The alleged use of a document displaying a forged endorsement-in-blank in order to establish standing to foreclose on the Ericksons' home of over 30 years is an injustice sufficiently gross to demand a departure from rigid adherence to the doctrine of res judicata.

D. If notice of conversion of the Motion to Dismiss to a Motion for Summary Judgment had been given and opportunity prepare and to be heard had been provided (and the record shows that it was not), the Superior Court would

have erred in granting Summary Judgment as a matter of law under CR 60(b) because the Ericksons did not file a "CR 60(b) Motion" but commenced a new action in the inherent power of the court (the "Independent Action").

The Ericksons' Independent Action is recognized under CR 60(c), in Wiese v. Cach, LLC, supra, Corporate Loan & Security Co. v. Peterson, supra, and Hazel-Atlas Glass Co. v. Hartford-Empire Co., supra. The Superior Court erred as a matter of law in treating the Ericksons' Independent Action as a CR 60(b)(4) Motion. No determination has been made on the Independent Action pleaded as Cause One of the May 13, 2019 Complaint because the Superior Court misconstrued the May 13, 2019 Complaint as a CR 60(b)(4) Motion which it clearly was not.

E. If conversion to summary judgment had been constitutionally permissible upon required notice and opportunity to prepare and to be heard (which did not occur in this case),

the Superior Court erred when it failed to find genuine disputes of material fact in the voluminous Exhibits and Declarations attached to the Complaint, which the Superior Court never saw before the hearing or had time to review.

The judge of the Superior Court apparently did not even see the

Paatalo Declaration (CP 45-100, CP 301-336, CP 101-300) with Exhibits A-M or the Nora Declaration at CP 347-340, without Exhibit A, in error,[12] until after the hearing commenced. See June 5, 2019 Transcript at Tr. 7:12-9:5:

Page 7
THE COURT:
But you did reference the Paatalo and Nora documents, and I didn't see those. So if you want to point me to where I should have been looking, I apologize if I simply overlooked them.
MS. HOVDA: I believe, Your Honor, that both of those declarations were filed very early in the case. But I -- they also may have been exhibits to other declarations. We also had a

20 difficult time determining what was an exhibit
21 versus a standalone declaration. So I -- I think
22 they -- it could be that we misinterpreted them as 23
standalone declarations. For example, I think the 24
King declaration may have actually been an
25 Exhibit. I -- and I apologize. I don't have the
Page 8
1 docket in front of me to cite the date, but I
2 could pull it up. But I believe those -- to the
3 extent that they were independent declarations,
4 they were filed quite early on in the case before
5 the protective order was heard -- or the TRO was
6 heard.

---

12 The complete Nora Declaration and Exhibit A appears at CP 823-827 because it was apparently re-filed in connection with the Motion for Preliminary Injunction)

7 THE COURT: I just found them. I didn't
8 realize I was going that far back in the record to
9 look for them. So just give me one moment to
10 review them,13 and then I'll hear your argument.
11 (Silence)
12 Madam Bailiff, our e-document reader
13 ECR -- oh, it's finally loading, maybe. If not,
14 I'm going to ask you to e-mail me those documents.
15 (Silence)
16 Madam Bailiff, I'm trying to pull up sub
17 six and sub 13 from the Erickson file and ECR is

18 not loading this morning. Are you able to e-mail
19 me those documents?
20 (Silence)
21 Madam Bailiff?
22 (Silence)
23 THE COURT: All right. For -- because
24 apparently Murphy's Law is governing our lives
25 this morning, I can't pull that up electronically
Page 9
1 either. My bailiff's going to try to send them to
2 me. I apologize for all the chaos this morning.
3 In the meantime, let me invite you,
4 Ms. Hovda, to present any argument that you'd like
5 to be heard.
(Emphasis added.)

The Paatalo Declaration consists of a 27 page Declaration with Exhibits A-M (CP 45-100, CP 301-336, CP 101-300). The Paatalo

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13 The Paatalo Declaration (27 pages) and Exhibits A-M consisting of 289 pages (CP 45-100, CP 301-336, CP 101-300) could not have been reviewed in "a moment".

Declaration with Exhibits A-M was attached to the May 13, 2019 Complaint and consisted of 289

pages. It would be impossible for the Superior Court to review the 289 page Paatalo Declaration with Exhibits A-M during the hearing on June 5, 2020. Additionally, it is doubtful that Exhibit A to the Nora Declaration which was missing from the scanned copy of the May 13, 2019 Complaint (see CP 337-340) was ever viewed by the Superior Court at all because it does not appear in the Clerk's Pages as having been scanned into the record although it was filed with the May 13, 2019 Complaint.

According to the Clerk's Papers (CP 347-340), Exhibit A to the Nora Declaration was apparently not attached to the Nora Declaration. Compare to Appendix 1. See also the January 13, 2021 Declaration of Mary C. Anderson, filed on January 15, 2021 in support of the Ericksons' Motion to Modify the Clerk's Order denying their Motion to Supplement the Record to include a

document actually filed in the Superior Court. (Appendix 2.)

In Folsom v. Burger King, 135 Wn.2d 658, 958 P.2d 301 (Wash. 1998), the Washington Supreme Court explained:

> Summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the

> moving party is entitled to judgment as a matter of law. CR 56(c). Hutchins v. 1001 Fourth Ave. Assocs., 116 Wash.2d 217, 220, 802 P.2d 1360 (1991). The burden is on the party moving for summary judgment to demonstrate there is no genuine dispute as to any material fact and reasonable inferences from the evidence must be resolved against the moving party. Lamon v. McDonnell Douglas Corp., 91 Wash.2d 345, 349, 588 P.2d 1346 (1979) (citing Morris v. McNicol, 83 Wash.2d 491, 494-95, 519 P.2d 7 (1974)). The motion should be granted only if, from all the evidence, a reasonable

person could reach only one conclusion. Lamon, 91 Wash.2d at 350, 588 P.2d 1346 (citing Morris, [958 P.2d 305] 83 Wash.2d at 494-95, 519 P.2d 7). An appellate court engages in the same inquiry as the trial court when reviewing an order for summary judgment. Mountain Park Homeowners Ass'n v. Tydings, 125 Wash.2d 337, 341, 883 P.2d 1383 (1994). An appellate court would not be properly accomplishing its charge if the appellate court did not examine all the evidence presented to the trial court, including evidence that had been redacted. The de novo standard of review is used by an appellate court when reviewing all trial court rulings made in conjunction with a summary judgment motion. This standard of review is consistent with the requirement that evidence and inferences are viewed in favor of the nonmoving party, Lamon, 91 Wash.2d at 349, 588 P.2d 1346 (citing Morris, 83 Wash.2d at 494-95, 519 P.2d 7), and the standard of review is consistent with the requirement that the appellate court conduct the same inquiry as the trial court. Mountain Park Homeowners Ass'n, 125 Wash.2d at 341, 883 P.2d 1383.

As the Superior Court itself stated on June 5, 2020, at the time of the June 5, 2020 hearing, the Superior Court had not reviewed the evidence provided as attachments to the May 13, 2019 Complaint in the first

instance. June 5, 2020 Transcript, Tr. 7:12-9:5.

F. The Superior Court erred when it struck certain of Appellant's Declarations and accompanying Exhibits which create genuine issues of material fact at a hearing noted as a Motion to Dismiss.

According to the Clerk's Papers, Exhibit A to the Nora Declaration (Appendix 1) was apparently not attached to the Nora Declaration (CP 337-340). The Nora Declaration established the results of her on-line search for Jess Almanza and should have been considered in the very same way as the Paatalo searches were allowed if the case had

actually been proceeding on a motion for summary judgment. Both the Paatalo and Nora Declarations and their actual Exhibits supported the allegations of the Complaint to which they were attached and into which they were incorporated by reference support the Ericksons' allegation that fraud had been committed by the production of a document displaying the forged endorsement of Jess Almanza at Summary Judgment in the Foreclosure Action.[14]

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[14] The Ericksons' Request for Judicial Notice, Exhibit 2 is the February 21, 2021 Declaration of Jess Almanza which has been stricken by the Commissioner's April 5, 2021 Order. The Ericksons' Motion to Modify the Commissisoner's April 5, 2021 Order will be filed within the time allowed by RAP 17.7.

G. Summary judgment was granted in error without requiring the named Defendant, which was later learned to be misidentified and was actually SPS, to establish that there were no genuine disputes of material fact and without the Ericksons being allowed to demonstrate

genuine, material factual disputes on a Motion for Summary Judgment, duly noted for hearing on no less than 28 days' advance notice.

No Motion for Summary Judgment was ever filed, so the Ericksons could not respond to the assertion that there were no material facts at issue. Nevertheless, the Paatalo and Nora Declarations provided evidence from which reasonable inferences arose that the endorsement in-blank displaying the signature of Jess Almanza was a forgery intended to create the appearance that the party seeking the remedy of foreclosure had standing to proceed.

In Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wash.2d 207, n. 3, 45 P.3d 186,(Wash. 2002) the Washington Supreme Court held in footnote 3:

> 3. Although Airport raised the standing issue as an affirmative defense in its answer to Union's complaint, it failed to assert it on

> summary judgment. The Court of Appeals, however, correctly observed that standing is a jurisdictional issue that can be raised for the first time on appeal. See Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 103 Wash.App. 764, 768, 14 P.3d 193 (2000)
>
> 31
>
> (citing RAP 2.5(a); Mitchell v. Doe, 41 Wash.App. 846, 847, 706 P.2d 1100 (1985)), review granted, 143 Wash.2d 1019, 25 P.3d 1019 (2001).

The Washington Court of Appeals has held a judgment is void "[w]here a court lacks jurisdiction over the parties or the subject matter, or lacks the inherent power to make or enter the particular order." Chai v. Kong, 122 Wn. App. 247, 254, 93 P.3d 936 (2004). The purpose of pleading Section IX of the Complaint was to allege that relief granted to a party claiming standing to foreclose under a document which displays a forged endorsement is void.

H. The errors assigned are not harmless.

The Ericksons were deprived of their right to full and fair proceedings as set forth above. Constitutional errors which deprive a party of notice and opportunity to be heard are never harmless.

In In the Matter of The Det. of D.F.F., 172 Wash.2d 37, n. 6, 256 P.3d 357 (Wash. 2011), the Washington Supreme Court rebuked the dissent and wrote:

> 6. The dissent cites to a Ninth Circuit, Court of Appeals, case, M.L. v. Federal Way Sch. Dist., 394 F.3d 634 (9th Cir.2005), for the proposition that a structural error analysis is inapplicable in a civil context. Dissent at 366. We note that this split opinion is
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> 32
>
> not dispositive on the issue nor do we rely on the Ninth Circuit to determine state law issues. Several state courts have found structural error in a civil context. See

Perkins v. Komarnyckyj, 172 Ariz. 115, 116–20, 834 P.2d 1260 (1992) (applying structural error analysis to procedural error in civil trial); In re Marriage of Carlsson, 163 Cal.App.4th 281, 293, 77 Cal.Rptr.3d 305 (2008) ("failure to accord a party litigant his constitutional right to due process is reversible per se, and not subject to the harmless error doctrine"); Lakeside Regent, Inc. v. FDIC, 660 So.2d 368, 370 (Fla.Dist.Ct.App.1995) (applying structural error analysis to denial of discovery of "necessary, properly discoverable material" in a civil trial); Canterino v. Mirage Casino–Hotel, 118 Nev. 191, 194, 42 P.3d 808 (2002) (trial judge's ex parte communication with jurors was inherently prejudicial and no further showing was needed to require reversal); In re Adoption of B.J.M., 42 Kan.App.2d 77, 88, 209 P.3d 200 (2009) (applying structural error analysis to denial of due process right to attend trial in parental rights termination proceeding); Duffy v. Vogel, 12 N.Y.3d 169, 177, 905 N.E.2d 1175, 878 N.Y.S.2d 246 (2009) (trial court's failure to poll jury, an entitlement closely enmeshed with and protective of the right to trial by jury, defied

harmless error analysis); McGarry v. Horlacher, 149 Ohio App.3d 33, 41, 775 N.E.2d 865 (2002) (applying a "structural error" analysis in a civil context finding plaintiff was actually prejudiced as a result of having few peremptory challenges to exercise and it was not necessary to find plaintiff's substantial rights were affected); Sandford v. Chevrolet Div. of Gen. Motors, 292 Or. 590, 614, 642 P.2d 624 (1982) (finding that trial court's failure to poll the jury defied harmless error analysis); In re Termination of Parental Rights to Torrance P., Jr., 298 Wis.2d 1, 28, 724 N.W.2d 623 (2006) (applying structural error analysis to denial of the statutory right to counsel in parental right termination proceeding).

The denial of the Ericksons' Due Process Rights actually prejudiced

them by denying them notice and the opportunity to prepare for and be heard on the unnoted and unfiled motion for summary judgment. The remedy

is reversal and remand.

IX. CONCLUSION

This Court must reverse and remand this action for hearing on the noticed Motion to Dismiss under the standards of McCurry v. Chevy Chase Bank, supra. Alternatively, the Ericksons request that this Court reverse and remand for hearing upon a motion for summary judgment filed upon the required advance notice of no less than 28 days' and properly noted for hearing.

Dated this 16th day of April, 2021 at Auburn, Washington.

E-signed: /s/ John Earl Erickson

_____

John Earl Erickson, in propria persona
5421 Pearl Ave. S.E.
Auburn, Washington 98092
Telephone: (206) 255-6326/Email:
john206erickson@icloud.com

Dated this 16th day of April, 2021 at Auburn, Washington.

E-signed: /s/ Shelley Ann Erickson

Shelley Ann Erickson, in propria persona
5421 Pearl Ave. S.E
Auburn, Washington 98092
Telephone: (206) 255-6324/Email:
shelley206erickson@outlook.com

CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, I caused a true and correct copy of this Opening Brief to be served via E-Filing as set forth below:

Attorney Vanessa Power
STOEL RIVES, LLP
Attorney for Defendants Power, STOEL RIVES, SPS, Eidson and Glowney
600 University Street, Suite 3600
Seattle, Washington 98101

DATED this 16th day of April, 2021 in Auburn, Washington.

E-signed: /s/ Shelley Ann Erickson
Shelley Ann Erickson, in propria persona

Appendix 6

NO. 81648-9-1

IN THE SUPREME COURT FOR THE STATE OF WASHINGTON

John Earl Erickson and
Shelley Ann Erickson, in propria persona,
Plaintiffs/Appellants

v.

Deutsche Bank National Trust Company as Trustee for
Long Beach Mortgage Loan Trust 2006-4,[1]
Defendant/Appellee

PETITION FOR REVIEW OF NOVEMBER 29, 2021 DECISION OF THE COURT OF APPEALS FOR THE STATE OF WASHINGTON DIVISION I

On Appeal from King County Superior Court
No. 19-2-12664-7 KNT
Judge Joanna Bender presiding

John Earl Erickson & Shelley Ann Erickson,
in propria persona
5421 Pearl Ave S.E.
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1 See identification of parties, infra

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TABLE OF AUTHORITIES

IDENTITY OF PARTIES

On May 13, 2019, John Earl Erickson (“Mr. Erickson”) and Shelley Ann Erickson (“Ms. Erickson”), collectively the “Ericksons, commenced an action against “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4”. The Ericksons’ action seeks relief from the July 17, 2015 Order and the August 27, 2015 Judgment in Deutsche Bank National

Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4 v. Erickson, et al., No. 14-2-00426-5 KNT ("Foreclosure Action") and for the exercise of the inherent power of the Court, by Independent Action recognized under CR 60(c).

Attached to the Complaint are the Declarations of William J. Paatalo with Exhibits A-M and of Wendy Alison Nora with Exhibit A attached thereto. The Ericksons also filed Requests for Judicial Notice ("RJN") with RJN Exhibits 1-19 and Supplemental Request for Judicial Notice Exhibit 20.

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The Ericksons' original Complaint with the documents attached and their Requests for Judicial Notice, the Summons and the Case Schedule and the Motion for Order to Show Cause for Preliminary Injunction and Declarations in support of the Motion for Order are combined in manner which is different than how they were filed in paper form and total 809 pages. See Clerks' Papers (CP) 1-809.

The Ericksons also pleaded other causes of

action against the purported Plaintiff in Foreclosure Action because “Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4” is the name of the Plaintiff in the Foreclosure Action in which Judgment was taken. This appeal has continued in the name of the putative Plaintiff which was granted judgment in the Foreclosure Action, although it was admitted on June 6, 2019 by Ronaldo Reyes, an officer of Deutsche Bank National Trust Company (CP 1016) in email response to Ms. Erickson’s June 5, 2019 email to him that the attorneys from STOEL RIVES, LLP represent SELECT

PORTFOLIO SERVICING, INC. (“SPS”) in the Independent Action from which this appeal was taken (Superior Court No. 19-2-12664-7-KNT).

The entity named as the putative beneficiary of the July 17, 2015 Summary Judgment Order (CP 703-706) and the August 27, 2015 Judgment (CP 693-699) is the named Respondent in this appeal,

but for accuracy, the Respondent should be referred to as SPS because that is the entity which retained counsel and proceeded in the Foreclosure Action.

In Cause One of their Independent Action, the Ericksons alleged that the July 17, 2015 Order and August 27, 2015 Judgment was procured by fraud on the court. Part of the alleged fraud on the Court is the misidentification of purported Plaintiff and concealment of the identity of SPS, which is the entity which actually initiated the Foreclosure Action through the STOEL RIVES attorneys.

The causes of action in the May 13, 2019 Complaint are set forth below:

3

V. CAUSE ONE-FOR RELIEF FROM JUDGMENT FOR FRAUD ON THE COURT (the "Independent Action")

VI. CAUSE TWO-FOR DECLARATORY JUDGMENTS (to grant relief in the Independent

Action)

VII. CAUSE TWO-FOR DAMAGES FROM COMMON LAW FRAUD (which should have been identified as Cause Three)

VIII. BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING (which should have been identified as Cause Four)

In addition, the Ericksons' Complaint informed the Court:

IX. CR 60 (b)(5) AUTHORIZES ALL JUDGMENTS GRANTED IN FAVOR OF DBNTC VOID AS A MATTER OF LAW FOR LACK OF STANDING WHICH IS REQUIRED TO ESTABLISH SUBJECT MATTER JURISDICTION; SUBJECT MATTER JURISIDCTION (sic) MAY BE CHALLENGED AT ANYTIME AND CANNOT BE WAIVED

CITATION TO COURT OF APPEALS DECISION

The Decision of the Court of Appeals is unpublished. It is

provided in the Appendix accompanying this Petition for Review as Appendix 1.

CONSTITUTIONAL ISSUES PRESENTED FOR REVIEW

The Court of Appeals committed constitutional error by violating Petitioners' Due Process Rights in affirming the violation of Petitioners' Due Process Rights when both the Court of Appeals and the Superior Court treated Petitioners' Independent Action as a CR 60 Motion.

The Court of Appeals committed constitutional error by violating Petitioners' Due Process Rights in affirming the violation of Petitioners' Due Process Rights in the Summary Judgment proceedings in Superior Court without notice and opportunity to be heard.

STATEMENT OF THE CASE

Procedural History

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), acknow-ledged 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
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> Hazel-Atlas Glass v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944). (Emphasis added.)

The Foreclosure Action was commenced in the name of "Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" by STOEL RIVES on January 3, 2014 as No. 14-2-00426-5 KNT. See May 13, 2019 Request for Judicial Notice Exhibit 1;

CP 353-392.[1]

Summary Judgment was granted in the name of the party named as Plaintiff in the Foreclosure Action on July 17, 2015. See May 13, 2019 Request for Judicial Notice Exhibit 10; CP 703-706. The Judgment and Decree of Foreclosure was obtained in favor of the named Plaintiff on August 27, 2015. See May 13, 2019 Request for Judicial Notice Exhibit 8; CP 693-699.

On June 5, 2020, Summary Judgment was orally granted in

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1 As stated above, STOEL RIVES has now admitted that it represented SPS in the Foreclosure Action which the Ericksons have produced in connection with their Motions in this appeal, but when the Ericksons filed the judicial admission in the June 6, 2020 Answer in the Related Action as Request for Judicial Notice Exhibit 1 in connection with their Opening Brief, counsel for SPS objected and successfully moved to strike all references to the judicial admission.

favor of "Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" and against the Ericksons (June 5, 2019 Transcript[2]) upon the Superior Court's sua sponte conversion of the October 17, 2019 Motion to Dismiss (CR 1495-1509), pursuant to CR 12(b)(6), without notice to the parties. The sua sponte conversion by the Superior Court occurred more than 30 minutes after the commencement of oral argument on June 5, 20193, depriving the Ericksons of their

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2 The Transcript of the June 5, 2020 Hearing was submitted as Appendix 2 with the Ericksons' Motion for Acceptance of Appendices. The Motion for Acceptance of Appendices was denied on by this Court's Clerk on January 7, 2021. The Ericksons' Motion to Modify the January 7, 2021 Clerk's Order was filed on January 15, 2021. The January 15, 2021 Motion to Modify includes the Ericksons' Motions (a) for Acceptance of Appendices (b) to Supplement the Record and (c) to Stay filing of Appellants' Opening Brief Pending Determination of Motions or, in the alternative, for a Fourth Extension of Time to File Opening Brief was denied by this Court on

March 12, 2021.

3 The Court is asked to take judicial notice of the fact commonly known among practitioners and judges that one page of a transcript is the equivalent of at least one minute of court proceedings. Furthermore, in these proceedings there were periods of sufficient silence that the transcriber noted (Silence) in the June 5, 2020 Transcript. See Tr. 8:11, 8:15, 8:20, and 8:22. The conversion of the Motion to Dismiss occurred at least 30 minutes after the commencement of the June 5, 2020 hearing.

opportunity to prepare their opportunity to be fully and fairly heard on the genuine disputes of material fact.

Page 31, line 20 to page 32, line 24 of the Transcript of the June 5, 2020 oral argument at the hearing noted as Motion to Dismiss (CP 1755-1756) reads:

20 First of all the motion to dismiss, I am
21 construing as a Rule 56 motion. There was quite
22 a bit of collateral information 4 submitted by the

---

4 The majority of the “collateral information” in the record was not “collateral information” but consisted of

Declarations and Exhibits submitted as part of the May 13, 2019 Complaint and as Requests for Judicial Notice in support thereof. The contents of the Complaint and the documents submitted in support of the Complaint and specifically referenced therein do not support conversion of a motion to dismiss to a motion for summary judgment. Requests for Judicial Notice do not result in converting motions to dismiss to motions for summary judgment. See Jackson v. Quality Loan Serv. Corp. of Wash., 186 Wash.App. 838, 844, 347 P.3d 487 (Wash. App. 2015). As to the Declarations of Paatalo and Nora and the Exhibits attached thereto, the documents filed as part of the original Complaint do not convert a motion to dismiss to a motion for summary judgment because the Complaint and its attachments are not "matters outside the pleading".

See CR 12(b) which provides:

> 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

opposing party, which I think does convert it to a summary judgment motion, and I am applying that standard. So applying that standard, I am considering whether construing this evidence in the light most favorable to the Ericksons, there are any genuine issues of material fact. I am going to grant the motion on behalf of the defense and dismiss the complaint in its entirety. I do find a number -- I have frankly agreed with each of the issues raised by the defense, that this motion 5 was not timely filed under the standards that govern Rule 60, that to the extent claims two, three and four are claims for affirmative relief, those claims are not properly brought in the context of Rule 60 motion, and that really the entirety of the claims are barred by issue preclusion or collateral estoppel. These are issues that have been fully, carefully, and thoroughly vetted by several courts in Washington State at both the Federal and State

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material made pertinent to such a motion by rule 56.

5 The Ericksons did not file a "motion". They filed a new, independent action. If they had filed a motion, they would not have had to pay a new filing fee or serve a Summons and Complaint on the entity identified as the Plaintiff in the Foreclosure Action. The Erickons filed an Independent Action under the inherent authority of the Superior Court as recognized by CR 60(c), 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 as discussed at length and allowed by the United States Supreme Court in Hazel-Atlas Glass v. Hartford-Empire Co., 322 U.S. 238, 64 S.Ct. 997, 88 L.Ed. 1250 (1944), twelve (12) years after the original judgment when the concealed conduct amounting to fraud on the court was discovered.

9

18 Trial and Appellate level, and this Court cannot
19 revisit them. The court clearly, as to claim
20 five, does have subject matter jurisdiction and
21 can make that finding as a matter of law.6 There
22 is no issue of material fact with respect to those
23 questions. So for all of those reasons, I am
24 granting the motion to dismiss. (Emphasis added.)

Thereafter, the Superior Court struck the contents of certain of the Declarations and Exhibits

including the Paatalo Declaration and the Nora Declaration which were attached to the Complaint

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6 One of the issues before the Superior Court in the Independent Action was the standing of the entity identified as the Plaintiff in the Foreclosure Action. Standing is an aspect of a court's power to grant relief. In Int'l Ass'n of Firefighters, Local 1789 v. Spokane Airports, 146 Wash.2d 207, n. 3, 45 P.3d 186,(Wash. 2002) the Washington Supreme Court wrote:

> 3. Although Airport raised the standing issue as an affirmative defense in its answer to Union's complaint, it failed to assert it on summary judgment. The Court of Appeals, however, correctly observed that standing is a jurisdictional issue that can be raised for the first time on appeal.

The Ericksons consistently challenged the standing of the entity seeking the remedy of foreclosure on the basis that it did not hold the Ericksons' March 3, 2006 Note, endorsed-in-blank by lawful authority. The Ericksons Note was not made payable to Long Beach Mortgage Company until March 3, 2006 (CP 580-583), after Mr. Almanza was not longer working at Washington Mutual. The purported endorsement of their Note by Mr. Almanza was alleged to be a forgery in the May 13, 2019 Complaint and in the Declarations of Paatalo and Nora attached to and incorporated by

reference in the Complaint.

and were required to be construed as true for purposes of a CR 12(b)(6) Motion to Dismiss unless CR 12(f) applied.

CR 12(f) provides:

> (f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the courts own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

In considering the Motion to Dismiss, the Declarations of Paatalo and Nora could be determined to be stricken as immaterial if res judicata/collateral estoppel barred the

Independent Action, but those doctrines do not bar independent actions for fraud on the court because the very nature of an independent action for fraud on the court is that the underlying judgment was procured by fraud. Judgment was granted in the Foreclosure Action on the basis that the entity identified as "Deutsche Bank National Trust Company as Trustee for Long Beach Mortgage Loan Trust 2006-4" in the Foreclosure

Complaint was the "holder" of the Note endorsed-in-blank but the Ericksons alleged that the endorsement-in-blank was a forgery. See May 13, 2019 Complaint, including but not limited to ¶¶3.3, 3.6, 3.9, 3.13, 5.9, 7.4.b.6, and footnote 1 on pages 28-29 (CP 1-35) as well as the Paatalo Declaration including Exhibit G (CP (CP 45-100, CP 301-336, CP 101-300 in the correct order) and the Nora Declaration (CP 347-340) with and Exhibit A

(Appendix 1).

Furthermore, the conversion of the CR 12(b)(6)Motion to Dismiss to a Motion for Summary Judgment by the Court sua sponte more than 30 minutes after commencement of the hearing noted for hearing on the Motion to Dismiss was unconstitutional as set forth in the ARGUMENT below.

Statement of Facts

The factual basis for Petitioners' claims, supported by voluminous documentary evidence is set forth in the May 13, 2019 Complaint (CP 1-35), which sets forth the nine (9) elements of fraud in painstaking detail. The May 13, 2019 Complaint was

carefully designed to survive a Motion to Dismiss under the standard of McCurry v. Chevy Chase Bank, 169 Wn.2d 96, 233 P.3d 861 (Wash. 2010).

ARGUMENT-Reasons for Granting Review

Review should be accepted under one or more of the tests established in Rule 13.4 (b) as set forth below.

(1) The Court of Appeals' decision (Appendix 1) conflicts with decisions of the Supreme Court.

(a) Availability of independent actions for fraud on the court

In State ex rel. Northern Pac. R. Co. v. Superior Court, 101 Wash. 144, 146, 172 P. 336 (1918), the Washington Supreme Court held, with respect to the statutory predecessor to CR 60:

> . . . But this statute was not ample to do justice in all cases, and consequently this court has held a party may, after the expiration of the time limited by law, file a bill in equity to relieve himself of a judgment where its enforcement would result in inequity. Anderson v. Burgoyne, 60 Wash. 511, 111 P. 777; Rowe v. Silbaugh, 96 Wash. 138, 164 P. 923; Denny Renton Clay & Coal Co. v. Satori, 87 Wash. 545, 151 P. 1088.

The Washington Supreme Court cited to the foregoing

passage in State ex rel. Northern Pacific Ry. Co. v. Superior Court, supra, and its internal citations verbatim in Nevers v. Cochrane, 131 Wash. 225, 226, 229 P. 738 (1924). What was formerly referred to as a "bill of equity" has been recognized in CR 60(c) as an independent action, which may be brought for relief from void judgments or judgments procured through fraud.

In Corporate Loan & Sec. Co. v. Peterson, 64 Wn.2d 241, 243, 391 P.2d 199 (Wash. 1964), the Washington Supreme Court held, in denying relief from a default judgment as untimely:

> This does not preclude attacks by other procedures on judgments deemed to be void or procured through fraud. See Nevers v. Cochrane (1924), 131 Wash. 225, 229 P. 738; State ex rel. Northern Pac. R. Co. v.

Superior Court (1918), 101 Wash. 144, 172 P. 336. (Emphasis added.)

> As succinctly stated by Professor Trautman in his article, cited, supra, '* * * After the elapse of a year the only remedy available for the vacation of a judgment is an independent action in equity or a collateral attack. * * *' (p. 519) See State ex rel. Boyle v. Superior Court [7] (1898),

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[7] This is the earliest reference to the institution of separate proceedings for relief from judgments which has been located in available case law. The Supreme Court held:

19 Wash. 128, 52 P.1013.

> (b) Denial of notice and opportunity to be heard ("Due Process Rights") renders judgments void

A court enters a void judgment if it did not first provide notice and an opportunity to be heard. State ex. rel. Adams v. Super. Ct., Pierce Cty., 36 Wn.2d 868, 872, 220 P.2d 1081 (1950).

There is a substantial difference between proceedings on a CR 12(b)(6) Motion to Dismiss governed by McCurry v. Chevy Chase Bank, 169 Wn.2d 96, 233 P.3d 861 (Wash. 2010) and a Summary Judgment Motion under CR 56. The former allows the

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> A bill in equity, or perhaps a petition, would lie to set aside the judgment; but in such case the plaintiff or the party in interest would have to be legally brought in by service of process, and just cause for setting aside the judgment would have to be shown,-for instance, that the process in fact had not been served,-and this alone might not be sufficient, for a party is bound to proceed with reasonable diligence.

Petitioners here proceeded by independent action and served process on the purported judgment creditor, now known to have not appeared by counsel in the underlying foreclosure action. The underlying foreclosure action was commenced, continued and litigated to judgment affirmed on appeal by a law firm representing a concealed third party, Select Portfolio Servicing, Inc. (SPS).

action to survive upon the strength of the allegations in the Complaint and the latter requires opposition based on admissible evidence.

(2) The decision of the Court of Appeals is in conflict with a published decisions of the Court of Appeals

(a) The conversion of the Defendant's CR 12(b)(6) Motion to Dismiss to a CR 56 Motion for Summary Judgment without prior notice violated the Petitioners' Due Process Rights.

In Blenheim v. Dawson & Hall Ltd., 35 Wn.App. 435, 438-439, 667 P.2d 125 (Wash. App. 1983), the Court of Appeals held:

> Because this in substance was a summary judgment, there is a question of whether the parties were given reasonable opportunity to present materials on summary judgment as required by CR 12(c). . . . While ordinarily where a trial court treats a motion under CR 12(b)(6) or 12(c) as one for summary judgment it must ask all parties if they wish to present

> materials, where the appealing party in fact presented materials and argued the motion as one for summary judgment the trial court need not on its own initiative ask the parties if they wish to present additional materials. Review of this dismissal as a summary judgment is appropriate. (Emphasis added.)

Petitioners demonstrated that, on the basis of the Transcript of the June 5, 2020 Hearing on the Defendant's CR 12(b)(6)

Motion to Dismiss (Appendix 1), the first notice they had that the Superior Court was converting the scheduled CR 12(b)(6) Motion to Dismiss to a Motion for Summary Judgment under CR 56 was approximately 30 minutes into the June 5, 2020 Hearing (Tr. 31:20-32:24).

> (b) Availability of independent actions for fraud on the court
>
> In Wiese v. CACH, LLC, 189 Wash.App. 466,

478, 358 P.3d 1213 (Wash. App., 2015), the Court of Appeals held:

> ¶ 27 Typically, vacation of a judgment is sought under CR 60. However, Washington courts recognize that vacation of a judgment deemed to be void or procured through fraud may also be sought through an independent action in equity or a collateral attack. Corporate Loan & Sec. Co. v. Peterson, 64 Wash.2d 241, 243-44, 391 P.2d 199 (1964). The plaintiffs characterize their case as an "independent suit in equity which seeks to vacate the underlying collection action judgments." (Emphasis added.)

These Petitioners characterized Count One of their Complaint as an independent action in equity. The purported Defendant (appearing herein by counsel for SPS without disclosing counsel's actual client) characterized the Independent

Action as a "motion" under CR 60(b)(4). The Court of Appeal ignored the clear submission of the

Independent Action and repeated the Superior Court's error in treating the Independent Action as a Motion under CR 60. Count One of the Complaint pleaded the Independent Action for Fraud on the Court and Count Five of the Complaint pleaded that the Summary Judgment in the underlying Foreclosure Action was void for fraud on the court under CR 60(b)(5). Additional causes of action for damages were joined in the Independent Action, along with a cause of action for declaratory relief from the fraud on the court.

At no time did Petitioners plead for relief under CR 60(b)(4) and this Court's long-standing case precedent was disregarded by the Superior Court and the Court of Appeals in dismissing and affirming the dismissal of the entire Complaint as time-barred under CR 60(b)(4). This Court's recent decision in Fireside Bank v. Askins, 195 Wash.2d 365, 377, 460 P.3d 157, 163 (Wash. 2020)

specifically held, “Without question, a debtor seeking judgment for amounts wrongfully collected or statutory

damages pursuant to the CPA must bring an independent cause of action, rather than bringing a CR 60 motion”. Here, Petitioners did exactly what is required to obtain affirmative relief under Fireside Bank v. Askins, supra–they filed an Independent Action and served the purported Defendant, which appeared pretended counsel (actually representing SPS) with the Independent Action. Petitioners did not proceed under a CR 60 Motion and the reference to CR 60(b)(5) established that there is no time-bar for relief from void judgments which counsel for the Petitioner’s characterized as obtained without subject matter jurisdiction because the issue of standing is jurisdictional.

> (3) A significant question of law under the Constitution of the State of Washington or of the United States is involved.

Clause 1 of the Fourteenth Amendment to the Constitution of the United States of America provides Due Process Rights to citizens of the states.[8] (Appendix 3) The Court of Appeals

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[8] The Article I, Section 3 of the Constitution of the State of Washington also guarantees due process of law:

committed constitutional error by violating Petitioners' Due Process Rights in affirming the violation. This Court has held that a court enters a void judgment if it did not first provide notice and an opportunity to be heard. State ex. rel. Adams v. Super. Ct., Pierce Cty., 36 Wn.2d 868, 872, 220 P.2d 1081 (1950). In Watson v. Washington Preferred Life Ins. Co., 81 Wn.2d 403, 502 P.2d 1016 (Wash. 1972), this Court held:

> The essence of procedural due process is notice and the right to be heard. The

> notice must be reasonably calculated to apprise a party of the pendency of proceedings affecting him or his property, and must afford an opportunity to present his objections before a competent tribunal. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652, 94 L.Ed. [502 P.2d 1020] 865 (1950). . . [I]n Ware v. Phillips, 77 Wash.2d 879, 882, 468 P.2d 444, 446 (1970), we observed, 'It is fundamental that a notice to be meaningful must apprise the party to whom it is directed that his person or property is in jeopardy.'

The source of this Court's holdings on procedural due process are generally United States Supreme Court cases applying the Fourteenth Amendment to the Constitution of the United

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SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

States of America. Accordingly, this Court applies Article I, Section 3 of the Constitution of the State of Washington in conformity with the United States

Supreme Court's application of the Due Process Clause of the Fourteenth Amendment. See Watson, supra, citing Mullane v. Central Hanover Bank & Trust Co., supra. See also Williams v. Board of Directors of Endicott School Dist. 308, 10 Wn.App. 579, 583, 519 P.2d 15 (Wash. App. 1974):

> 'The fundamental requisite of due process of law is the opportunity to be heard.' Grannis v. Ordean, 234 U.S. 385, 394, 34 S.Ct. 779, 783, 58 L.Ed. 1363 [519 P.2d 18] (1914). The hearing must be 'at a meaningful time and in a meaningful manner.' Armstrong v. Manzo, 380 U.S. 545, 552, 85 S.Ct. 1187 1191, 14 L.Ed.2d 62 (1965).

(3) The Petition for Review raises significant constitutional issues which must be addressed to assure that the courts of the State of Washington do not violate the Due Process Rights of litigants by

(a) converting CR 12(b)(6) Motions to Motions for Summary Judgment without notice and opportunity to be heard;

(b) failing to permit proceedings for the long-standing right

to relief from judgments alleged to be procured by fraud; and

(c) determining that affirmative relief is available in the Independent Action.[9]

(4) This Petition involves an issue of substantial public interest that should be determined by the Supreme Court.

(a) Re-articulation of the historical remedy of a "bill of equity" (now known as an independent action) for relief from judgments deemed to be void or procured by fraud is a matter of substantial public interest and should be reiterated by the

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9 In the concurring opinion in Fireside Bank v. Askins, 195 Wash.2d at 386 Wiggins, J. states:

> ¶46 Finally, the highest court of at least one other state, when engaging in lengthy discussion regarding the limits of its equivalent of CR 60(b),

> permits affirmative relief in cases where judgment was obtained by fraud. Kawamata Farms, Inc. v. United Agri Prods. , 86 Haw. 214, 258-59, 948 P.2d 1055 (1997). While we need not follow the Hawaii Supreme Court, we, too, should reserve our judgment regarding the scope of CR 60(b) for a case that stretches the limits of relief, as did Kawamata Farms, not one where the relief squarely falls within those limits.

Here, Petitioners' Independent Action permits the joinder of additional causes of action under established Washington law. Fireside Bank v. Askins, 195 Wash.2d at 377.

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Supreme Court (Corporate Loan & Sec. Co. v. Peterson, supra; Wiese v. CACH, LLC, supra);.

(b) Re-articulation that Due Process Rights require notice to allow the opportunity to be heard before a Motion to Dismiss is converted to a Motion for Summary Judgment (Blenheim v. Dawson & Hall Ltd., supra); and

(c) Remand for determination of the CR 12(b)(6) Motion to Dismiss as originally scheduled

or for hearing on a properly noticed Motion for Summary Judgment with opportunity to respond.

CONCLUSION

The Court of Appeals violated Petitioners' Due Process Rights by failing to grant relief from the Summary Judgment Order by reversing and remanding Petitioners' Independent Action for hearing on the noticed Motion to Dismiss under the standards of McCurry v.Chevy Chase Bank, supra. Alternatively, the Ericksons request that this Court reverse and remand for hearing upon a motion for summary judgment filed upon the

required advance notice of no less than 28 days' and properly noted for hearing.

Dated this 28th day of December, 2021 at Auburn, Washington.

E-signed: /s/ John Earl Erickson

John Earl Erickson, in propria persona
5421 Pearl Ave. S.E.
Auburn, Washington 98092
Telephone: (206) 255-6326
Email: john206erickson@icloud.com

Dated this 28th day of December 2021 at Auburn, Washington.

E-signed: /s/ Shelley Ann Erickson

_____

Shelley Ann Erickson, in propria persona
5421 Pearl Ave. S.E
Auburn, Washington 98092
Telephone: (206) 255-6324
Email: shelley206erickson@outlook.com

CERTIFICATE OF COMPLIANCE

I hereby certify that I directed the foregoing Petition to be prepared in accordance with the requirements of RAP 13.4 and RAP 18. 17 and that the preparer informed me that the Petition was prepared in 14 point Times New Roman font and consists of 4,837 words including footnotes and exclusive of the signature block, certifications and contents of the Appendix, according to the word count tool for the word-processing program upon

which the Petition was prepared. The preparer was directed to create the Appendix attached hereto to contain the documents required by

RAP 13.4.

E-signed: /s/ Shelley Ann Erickson
Shelley Ann Erickson, in propria persona

CERTIFICATE OF SERVICE

I hereby certify that on December 28, 2021, I caused a true and correct copy of this Petition for Review and the Appendix attached thereto to be served via E-Filing as set forth below:

Attorney Vanessa Power
Attorney Ann Dorsheimer
STOEL RIVES, LLP
Attorneys for Respondent Deutsche Bank National Trust Company as Trustee for the Long Beach Mortgage Loan Trust 2006-4*
600 University Street, Suite 3600
Seattle, Washington 98101

*In actuality, STOEL RIVES, LLP attorneys represent SPS and do not represent Deutsche Bank National Trust Company as Trustee for the Long Beach Mortgage Loan Trust 2006-4.

DATED this 28th day of December, 2021 in Auburn, Washington.

E-signed: /s/ Shelley Ann Erickson
Shelley Ann Erickson, in propria persona

Appendix 7

Fourteenth Amendment to the Constitution of the United States, Section 1

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.

Appendix 8

CR 12
DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve an answer within the following periods:

(1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon the defendant pursuant to rule 4;

(2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);

(3) Within 60 days after the service of the summons upon the defendant if the summons is served upon the defendant personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.

(4) Within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross claim against another party shall serve an answer thereto within 20 days after the service upon that other party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of

the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter,

(2) lack of jurisdiction over the person,

(3) improper venue,

(4) insufficiency of process,

(5) insufficiency of service of process,

(6) failure to state a claim upon which relief can be granted,

(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.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings 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.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after

the service of the pleading upon the party or upon the courts own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived,

(A) if omitted from a motion in the circumstances described in section (g), or

(B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of failure to join a party indispensable under rule 19,

and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3)Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be affirmatively pleaded.

[Adopted effective July 1, 1967; Amended effective January 1, 1972; January 1, 1980; September 18, 1992; April 28, 2015.]

Appendix 9

CR 12
DEFENSES AND OBJECTIONS

(a) When Presented. A defendant shall serve an answer within the following periods:

(1) Within 20 days, exclusive of the day of service, after the service of the summons and complaint upon the defendant pursuant to rule 4;

(2) Within 60 days from the date of the first publication of the summons if the summons is served by publication in accordance with rule 4(d)(3);

(3) Within 60 days after the service of the summons upon the defendant if the summons is served upon the defendant personally out of the state in accordance with RCW 4.28.180 and 4.28.185 or on the Secretary of State as provided by RCW 46.64.040.

(4) Within the period fixed by any other applicable statutes or rules.

A party served with a pleading stating a cross claim against another party shall serve an answer thereto within 20 days after the service upon that other party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of

the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court.

(A) If the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action.

(B) If the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross claim, or third party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:

(1) lack of jurisdiction over the subject matter,

(2) lack of jurisdiction over the person,

(3) improper venue,

(4) insufficiency of process,

(5) insufficiency of service of process,

(6) failure to state a claim upon which relief can be granted,

(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.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings 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.

(d) Preliminary Hearings. The defenses specifically enumerated (1)-(7) in section (b) of this rule, whether made in a pleading or by motion, and the motion for judgment mentioned in section (c) of this rule shall be heard and determined before trial on application of any party, unless the court orders that the hearing and determination thereof be deferred until the trial.

(e) Motion for More Definite Statement. If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, or if more particularity in that pleading will further the efficient economical disposition of the action, the party may move for a more definite statement before interposing a responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the court is not obeyed within 10 days after the notice of the order or within such other time as the court may fix, the court may strike the pleading to which the motion was directed or make such order as it deems just.

(f) Motion To Strike. Upon motion made by a party before responding to a pleading or, if no responsive pleading is permitted by these rules,

upon motion made by a party within 20 days after the service of the pleading upon the party or upon the courts own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant,immaterial, impertinent, or scandalous matter.

(g) Consolidation of Defenses in Motion. A party who makes a motion under this rule may join with it any other motions herein provided for and then available to the party. If a party makes a motion under this rule but omits therefrom any defense or objection then available to the party which this rule permits to be raised by motion, the party shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subsection (h)(2) hereof on any of the grounds there stated.

(h) Waiver or Preservation of Certain Defenses.

(1) A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, or insufficiency of service of process is waived,

(A) if omitted from a motion in the circumstances described in section (g), or

(B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by rule 15(a) to be made as a matter of course.

(2) A defense of failure to state a claim upon which relief can be granted, a defense of

failure to join a party indispensable under rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

(3)Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

(i) Nonparty at Fault. Whenever a defendant or a third party defendant intends to claim for purposes of RCW 4.22.070(1) that a nonparty is at fault, such claim is an affirmative defense which shall be affirmatively pleaded by the party making the claim. The identity of any nonparty claimed to be at fault, if known to the party making the claim, shall also be affirmatively pleaded.

[Adopted effective July 1, 1967; Amended effective January 1, 1972; January 1, 1980; September 18, 1992; April 28, 2015.]

Appendix 10

CR 56
SUMMARY JUDGMENT

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross claim, or to obtain a declaratory judgment may, after the expiration of the period within which the defendant is required to appear, or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For Defending Party. A party against whom a claim, counterclaim, or cross claim is asserted or a declaratory judgment is sought may move with or without supporting affidavits for a summary judgment in such party's favor as to all or any part thereof.

(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.

(d) Case Not Fully Adjudicated on Motion. If on motion under the rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action, the facts so specified shall be

deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of a pleading, but a response, by affidavits or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear from the affidavits of a party opposing the motion that for reasons stated, the party cannot present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had

or may make such other order as is just.

(g) Affidavits Made in Bad Faith. Should it appear to the satisfaction of the court at any time that any of the affidavits presented pursuant to this rule are presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney fees, and any offending party or attorney may be adjudged guilty of contempt.

(h) Form of Order. The order granting or denying the motion for summary judgment shall designate the documents and other evidence called to the attention of the trial court before the order on summary judgment was entered.

[Adopted effective July 1, 1967; Amended effective September 1, 1978; September 1, 1985; September 1, 1988; September 1, 1990; September 1, 1993; April 28, 2015.]

Appendix 11

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RELIEF FROM JUDGMENT OR ORDER

(a) Clerical Mistakes. Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders. Such mistakes may be so corrected before review is accepted by an appellate court, and thereafter may be corrected pursuant to RAP 7.2(e).

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud; etc. On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons:

(1) Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment or order;

(2) For erroneous proceedings against a minor or person of unsound mind, when the condition of such defendant does not appear in the record, nor the error in the proceedings;

(3) Newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b);

(4) Fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party;

(5) The judgment is void;

(6) The judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application;

(7) If the defendant was served by publication, relief may be granted as prescribed in RCW 4.28.200;

(8) Death of one of the parties before the judgment in the action;

(9) Unavoidable casualty or misfortune preventing the party from prosecuting or defending;

(10) Error in judgment shown by a minor, within 12 months after arriving at full age; or

(11) Any other reason justifying relief from the operation of the judgment.

The motion shall be made within a reasonable time and for reasons (1), (2) or (3) not more than 1 year after the judgment, order, or proceeding was entered or taken. If the party entitled to relief is a minor or a person of unsound mind, the motion shall be made within 1 year after the disability ceases. A motion under this section (b) does not affect the

finality of the judgment or suspend its operation.

(c) Other Remedies. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding.

(d) Writs Abolished--Procedure. Writs of coram nobis, coram vobis, audita querela, and bills of review and bills in the nature of a bill of review are abolished. The procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

(e) Procedure on Vacation of Judgment.

(1) Motion. Application shall be made by motion filed in the cause stating the grounds upon which relief is asked, and supported by the affidavit of the applicant or the applicant's attorney setting forth a concise statement of the facts or errors upon which the motion is based, and if the moving party be a defendant, the facts constituting a defense to the action or proceeding.

(2) Notice. Upon the filing of the motion and affidavit, the court shall enter an order fixing the time and place of the hearing thereof and directing all parties to the action or proceeding who may be affected thereby to appear and show cause why the relief asked for should not be granted.

(3) Service. The motion, affidavit, and the order to show cause shall be served upon all parties

affected in the same manner as in the case of summons in a civil action at such time before the date fixed for the hearing as the order shall provide; but in case such service cannot be made, the order shall be published in the manner and for such time as may be ordered by the court, and in such case a copy of the motion, affidavit, and order shall be mailed to such parties at their last known post office address and a copy thereof served upon the attorneys of record of such parties in such action or proceeding such time prior to the hearing as the court may direct.

(4) Statutes. Except as modified by this rule, RCW 4.72.010-.090 shall remain in full force and effect.

Adopted effective July 1, 1967; [Amended effective September 26, 1972; January 1, 1977; April 28, 2015.]